

1 **NOAS**

2 Rene L. Valladares

3 Federal Public Defender

4 Nevada State Bar No. 11479

5 *C.B. Kirschner

6 Assistant Federal Public Defender

7 Nevada State Bar No. 14023C

8 411 E. Bonneville Ave., Ste. 250

9 Las Vegas, Nevada 89101

10 (702) 388-6577

11 CB_Kirschner@fd.org

12 *Counsel for Petitioner Tyrone James

13 **EIGHTH JUDICIAL DISTRICT COURT**

14 **CLARK COUNTY**

15 Tyrone David James, Sr.,

16 Petitioner,

17 v.

18 State of Nevada,

19 Respondents.

Case No. 10C265506

Dept. No. XXVIII

20 **NOTICE OF APPEAL**

21 Notice is hereby given that Petitioner Tyrone James appeals to the Nevada
22 Supreme Court from the Findings of Fact, Conclusions of Law and Order entered in
23 this action on February 25, 2020. The Notice of Entry of Order was mailed on
24 February 26, 2020.

25 Dated this 24th day of March, 2020.

26 Respectfully submitted,
27 Rene L. Valladares
Federal Public Defender

/s/ CB Kirschner

C.B. Kirschner

Assistant Federal Public Defender

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on March 24, 2020, I electronically filed the foregoing
3 with the Clerk of the Eighth Judicial District Court by using the Court's electronic
4 filing system.

5 Participants in the case who are registered users in the electronic filing
6 system will be served by the system and include: Chief Deputy District Attorney
7 James.Sweetin@clarkcountyda.com, Motions@clarkcountyda.com.

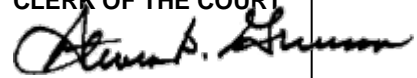
8 I further certify that some of the participants in the case are not registered
9 electronic filing system users. I have mailed the foregoing document by First-Class
10 Mail, postage pre-paid, or have dispatched it to a third party commercial carrier for
11 delivery within three calendars days, to the following person:

12 Geordan Goebel
13 Deputy Attorney General
14 Office of the Attorney General
15 100 North Carson Street
16 Carson City, NV 89701-4717

17 Tyrone James
18 #1063523
19 High Desert State Prison
20 PO Box 650
21 Indian Springs, NV 89070

22 /s/ Adam Dunn

23 An Employee of the Federal Public
24 Defender, District of Nevada
25
26
27



1 **ASTA**
2 Rene L. Valladares
3 Federal Public Defender
4 Nevada State Bar No. 11479
5 *C.B. Kirschner
6 Assistant Federal Public Defender
7 Nevada State Bar No. 14023C
8 411 E. Bonneville Ave., Ste. 250
9 Las Vegas, Nevada 89101
10 (702) 388-6577
11 CB_Kirschner@fd.org
12
13 *Counsel for Petitioner Tyrone James

14 **EIGHTH JUDICIAL DISTRICT COURT**
15 **CLARK COUNTY**

16 Tyrone David James, Sr.,
17
18 Petitioner,
19
20 v.
21
22 State of Nevada,
23
24 Respondents.

Case No. 10C265506
Dept. No. XXVIII

25 **CASE APPEAL STATEMENT**
26
27

1. Name of petitioner filing this case appeal statement:

Tyrone James

2. Identify the judge issuing the order appealed from:

Hon. Ronald J. Israel, District Court Judge, Dept. XXVIII, Eighth Judicial District, Clark County, Nevada.

3. Identify each appellant and the name and address of counsel for each appellant:

Tyrone James represented by C.B. Kirschner, Assistant Federal Public Defender, Federal Public Defender, District of Nevada, 411 E. Bonneville Ave., Suite 250, Las Vegas, NV 89101.

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent:

State of Nevada represented by James R. Sweetin, Deputy District Attorney, Clark County District Attorney's Office, 200 Lewis Avenue, Las Vegas, Nevada, 89155-2212.

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42:

N/A.

6. Whether petitioner/appellant was represented by appointed or retained counsel in the district court:

James was represented in the district court by counsel previously appointed to represent him in a related federal matter.

1
2 **7. Whether petitioner/appellant is represented by appointed or**
3 **retained counsel on appeal:**

4 James is represented on appeal by counsel previously appointed to represent
5 him in a related federal matter.

6
7 **8. Whether petitioner/appellant was granted leave to proceed in**
8 **forma pauperis, and the date of entry of the district court order granting**
9 **such leave:**

10 James was previously granted permission to proceed *in forma pauperis*.

11 **9. Date proceedings commenced in the district court (e.g., date**
12 **complaint, indictment, information or petition was filed):**

13 James filed his Post-Conviction Petition Requesting Genetic Marker Analysis
14 on July 16, 2019.

15
16 **10. Provide a brief description of the nature of the action and**
17 **result in the district court, including the type of judgment or order being**
18 **appealed and the relief granted by the district court:**

19 This is an appeal of the order denying James's post-conviction petition for
20 genetic marker testing.

21 **11. Indicate whether the case has previously been the subject of an**
22 **appeal to or original writ proceeding in the Supreme Court or Court of**
23 **Appeals and, if so, the caption and docket number of the prior proceeding:**

24 James previously filed appeals to this Court in:

25 *James v. State*, Docket 57178;

26 *James v. State*, Docket 71935;

27 *James v. State*, Docket 71935-COA.

1
2 **12. Indicate whether this appeal involves child custody or**
3 **visitation:**

4 This appeal does not involve child custody or visitation.

5
6 **13. If this is a civil case, indicate whether this appeal involves the**
7 **possibility of settlement:**

8 N/A, this is a criminal, post-conviction case.

9 Dated this 24th day of March, 2020.

10 Respectfully submitted,
11 Rene L. Valladares
12 Federal Public Defender

13 /s/ CB Kirschner
14 C.B. Kirschner
15 Assistant Federal Public Defender

1 **CERTIFICATE OF SERVICE**

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3 with the Clerk of the Eighth Judicial District Court by using the Court's electronic
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7 James.Sweetin@clarkcountyda.com, Motions@clarkcountyda.com.

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11 delivery within three calendars days, to the following person:

12 Geordan Goebel
13 Deputy Attorney General
14 Office of the Attorney General
15 100 North Carson Street
16 Carson City, NV 89701-4717

17 Tyrone James
18 #1063523
19 High Desert State Prison
20 PO Box 650
21 Indian Springs, NV 89070

22 /s/ Adam Dunn

23 An Employee of the Federal Public
24 Defender, District of Nevada
25
26
27

CASE SUMMARY**CASE No. 10C265506**

State of Nevada
vs
Tyrone James

§ Location: Department 28
§ Judicial Officer: Israel, Ronald J.
§ Filed on: 06/21/2010
§ Case Number History:
§ Cross-Reference Case Number: C265506
§ Defendant's Scope ID #: 1303556
§ ITAG Booking Number: 1000026255
§ ITAG Case ID: 1152658
§ Lower Court Case # Root: 10F09328
§ Lower Court Case Number: 10F09328X
§ Supreme Court No.: 57178
71935

CASE INFORMATION

Offense	Statute	Deg	Date	Case Type:	Felony/Gross Misdemeanor
1. SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 16 <i>Filed As:</i> SEXUAL ASSAULT	200.366.3b F	F 6/21/2010	01/01/1900	Case Status:	07/25/2019 Closed
2. OPEN OR GROSS LEWDNESS	201.210	G	01/01/1900		
3. SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 16 <i>Filed As:</i> SEXUAL ASSAULT	200.366.3b F	F 6/21/2010	01/01/1900		
4. OPEN OR GROSS LEWDNESS	201.210	G	01/01/1900		
5. BATTERY WITH INTENT TO COMMIT A CRIME	200.400	F	01/01/1900		

Related Cases

A-19-797521-W (Writ Related Case)


Statistical Closures

07/25/2019 Other Manner of Disposition - Criminal

DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number 10C265506
Court Department 28
Date Assigned 07/02/2018
Judicial Officer Israel, Ronald J.

PARTY INFORMATION**Defendant James , Tyrone D***Lead Attorneys***Kirschner, Courtney**
*Retained***Plaintiff State of Nevada****Wolfson, Steven B**
702-671-2700(W)**DATE****EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

06/21/2010  Criminal Bindover
CRIMINAL BINDOVER Fee \$0.00

06/21/2010 Hearing

CASE SUMMARY
















CASE No. 10C265506

INITIAL ARRAIGNMENT

06/23/2010	 Information <i>INFORMATION</i>
06/29/2010	 Notice of Witnesses and/or Expert Witnesses <i>NOTICE OF WITNESSES AND/OR EXPERT WITNESSES</i>
07/08/2010	 Order <i>ORDER RELEASING ALL CONFIDENTIAL RECORDS FOR IN-CAMERA INSPECTION BY COURT COURT</i>
07/27/2010	 Reporters Transcript <i>Reporter's Transcript of Preliminary Hearing - Heard 06-17-10</i>
08/05/2010	 Motion Filed By: Defendant James , Tyrone D <i>Discovery Motion</i>
08/16/2010	 Notice of Motion Filed By: Plaintiff State of Nevada <i>Notice of Motion and Motion to Admit Evidence of other Crimes, Wrongs or Acts</i>
08/16/2010	 Notice of Witnesses Party: Plaintiff State of Nevada <i>Supplemental Notice of Witnesses and/or Expert Witnesses (NRS 174.231)</i>
08/25/2010	 Opposition Filed By: Defendant James , Tyrone D <i>Opposition to State's Motion to Admit Evidence of Other Acts</i>
09/08/2010	 Motion in Limine <i>Defendants Motion In Limine To Preclude Lay Opinion Testimony That The Complaining Witness' Behavior Is Consistent With That Of A Victim Of Sexual Abuse</i>
09/10/2010	 Opposition to Motion <i>State's Opposition to Defendant's Motion in Limine to Preclude lay Opinion Testimony that the Complainign Witness Behavior is Consistent with that of a Victim of Sexual Abuse</i>
09/16/2010	 Transcript of Proceedings <i>Transcript of Proceedings: Petrocelli hearing: State's Notice of Motion and Motion to Admit Evidence of other Crimes, Wrongs or Acts September 10, 2010</i>
09/17/2010	 Motion to Reconsider Filed By: Defendant James , Tyrone D <i>Defendant's Motion to Reconsider Motion To Admit Evidence of Other Crimes, Wrongs or Acts</i>
09/21/2010	 Jury List
09/23/2010	 Amended Jury List
09/23/2010	 Verdict
09/23/2010	

CASE SUMMARY














CASE NO. 10C265506

	 Instructions to the Jury
10/22/2010	 Notice of Appeal (criminal) Party: Defendant James , Tyrone D
11/16/2010	 Case Appeal Statement Filed By: Plaintiff State of Nevada <i>Case Appeal Statement</i>
01/07/2011	 PSI <i>Supplemental PSI</i>
02/09/2011	 Judgment of Conviction <i>Judgment Of Conviction (Jury Trial)</i>
03/07/2011	 Notice of Appeal (criminal) Party: Defendant James , Tyrone D
03/07/2011	 Case Appeal Statement Filed By: Defendant James , Tyrone D
03/29/2011	 Reporters Transcript Filed By: Plaintiff State of Nevada <i>Recorder's Transcript RE: Overflow Calendar Call - Heard 09/17/2010</i>
04/06/2011	 Transcript of Proceedings Party: Plaintiff State of Nevada <i>Transcript of Proceedings: Calendar Call - Heard September 14, 2010</i>
04/06/2011	 Transcript of Proceedings Party: Plaintiff State of Nevada <i>Transcript of Proceedings: Plaintiff's Notice of Motion and Motion to Admit Evidence of Other Crimes, Wrongs or Acts - Heard August 26, 2010</i>
04/06/2011	 Transcript of Proceedings Party: Plaintiff State of Nevada <i>Transcript of Proceedings: Defendant's Motion for Discovery - Heard August 12, 2010</i>
04/22/2011	 Recorders Transcript of Hearing Party: Plaintiff State of Nevada <i>Recorder's Transcript of Hearing Re: Arraignment - Heard Thursday, June 24, 2010</i>
04/29/2011	 Reporters Transcript Filed By: Plaintiff State of Nevada <i>Transcript Re: Trial by Jury Day 2 - Volume II - Heard 09/22/2010</i>
04/29/2011	 Reporters Transcript Filed By: Plaintiff State of Nevada <i>Transcript Re: Trial by Jury Day 3 - Volume III - Heard 09/23/2010</i>
04/29/2011	 Reporters Transcript Filed By: Plaintiff State of Nevada <i>Transcript Re: Defendant's Motion to Reconsider Motion to Admit Evidence of Other Crimes, Wrong or Acts Trial by</i>

CASE SUMMARY

CASE NO. 10C265506


Jury Day 1 - Volume I - Heard 09/21/2010


04/29/2011	 Reporters Transcript Filed By: Plaintiff State of Nevada <i>Recorder's Transcript of Sentencing - Heard 01/19/2011</i>
04/29/2011	 Reporters Transcript Filed By: Plaintiff State of Nevada <i>Recorder's Transcript of Sentencing - Heard 12/01/2010</i>
08/06/2012	Case Reassigned to Department 9 <i>Case reassigned from Judge Bell</i>
11/30/2012	 NV Supreme Court Clerks Certificate/Judgment - Affirmed <i>Nevada Supreme Court Clerk's Certificate Judgment - Affirmed</i>
01/22/2013	Case Reassigned to Department 11 <i>Case reassigned from Judge Jennifer Togliatti Dept 9</i>
03/14/2013	 Petition for Writ of Habeas Corpus Filed by: Defendant James , Tyrone D <i>Petition for Writ of Habeas Corpus (Post - Conviction)</i>
03/14/2013	 Motion Filed By: Defendant James , Tyrone D <i>Motion to Appoint Counsel</i>
03/20/2013	 Order for Petition for Writ of Habeas Corpus
05/07/2013	 Response Filed by: Plaintiff State of Nevada <i>Response to Defendant's Petition for Writ of Habeas Corpus</i>
07/18/2013	 Stipulation and Order Filed by: Plaintiff State of Nevada <i>Stipulation and Order</i>
07/23/2013	 Notice of Entry of Order <i>Notice of Entry of Order</i>
11/05/2013	 Ex Parte Order Filed By: Defendant James , Tyrone D <i>Ex Parte Motion and Order to File Under Seal</i>
11/05/2013	 Filed Under Seal Filed By: Defendant James , Tyrone D <i>Ex Parte Motion for Expert-Motion for Supplemental fees.</i>
12/03/2013	 Notice of Entry of Order Filed By: Defendant James , Tyrone D <i>Notice of Entry of Order</i>
12/03/2013	 Order Filed By: Plaintiff State of Nevada


CASE SUMMARY


CASE NO. 10C265506


Stipulated Extension of Habeas Petition Dates and Propsed Order


02/26/2014  Stipulation and Order
Filed by: Plaintiff State of Nevada
Stipulated Extension of Habeas Petition Dates and Proposed Order


03/03/2014  Notice of Entry
Filed By: Defendant James , Tyrone D
Notice of Entry and Stipulation and Order


07/09/2014  Notice of Entry of Order
Filed By: Defendant James , Tyrone D
Notice of Entry of Order


07/09/2014  Stipulation and Order
Filed by: Defendant James , Tyrone D
Stipulated Extension of Habeas Petition Dates and Proposed Order


10/13/2014  Stipulation and Order
Filed by: Defendant James , Tyrone D
Stipulated Extension of Habeas Petition Dates and Proposed Order


10/24/2014  Notice of Entry of Order
Filed By: Defendant James , Tyrone D
Notice of Entry of Order


11/24/2014  Stipulation and Order
Filed by: Defendant James , Tyrone D
Stipulated Extension of Habeas Petition Dates and Proposed Order


11/24/2014  Notice of Entry of Order
Filed By: Defendant James , Tyrone D
Notice of Entry of Order

01/15/2015  Filed Under Seal
Filed By: Defendant James , Tyrone D
Ex-Parte Motion for Expert- Motion for Supplemental Fees

01/15/2015  Filed Under Seal
Filed By: Defendant James , Tyrone D
Ex Parte Motion and Order to File Under Seal







01/15/2015  Filed Under Seal
Filed By: Defendant James , Tyrone D
Proposed Order for Ex Parte Motion for Expert-Motion for Supplemental Fees

01/26/2015  Notice
Filed By: Defendant James , Tyrone D
Notice of Appearance

02/12/2015  Notice of Entry of Order
Filed By: Defendant James , Tyrone D
Notice of Entry of Order

CASE SUMMARY


CASE NO. 10C265506


02/12/2015	 Order to Release Medical Records Filed By: Defendant James , Tyrone D <i>Proposed Order for Ex Parte Motion to Release Medical Records</i>
03/12/2015	 Motion Filed By: Defendant James , Tyrone D <i>Petitioner's Request for the Extension of Time to File Supplemental Petition (Seventh Request)</i>
03/12/2015	 Filed Under Seal Filed By: Defendant James , Tyrone D <i>Ex Parte Motion and Order to File Under Seal</i>
03/12/2015	 Filed Under Seal Filed By: Defendant James , Tyrone D <i>Ex parte Motion for Paralegal Services-Motion for Supplemental Fees</i>
03/12/2015	 Filed Under Seal Filed By: Defendant James , Tyrone D <i>Proposed Order for Ex Parte Motion for Paralegal Services Motion for Supplemental Fees</i>
03/13/2015	 Notice <i>Notice of Change of Hearing</i>
03/20/2015	 Opposition Filed By: Plaintiff State of Nevada <i>Opposition to Defendant's Request For Extension Of Time To File Supplemental Petition (Seventh Request)</i>
04/06/2015	 Order for Production of Inmate Party: Plaintiff State of Nevada <i>Order for Production of Inmate</i>
04/07/2015	 Motion Filed By: Defendant James , Tyrone D <i>Motion for Order to Release Medical Records and LVMPD Reports</i>
04/16/2015	 Response Filed by: Plaintiff State of Nevada <i>Response to Defendant's Motion For Order To Release Medical Records And Lvmpd Records</i>
04/22/2015	 Amended Certificate of Mailing Filed By: Defendant James , Tyrone D <i>Amended Certificate of Service</i>
04/24/2015	 Reply Filed by: Defendant James , Tyrone D <i>Reply to State's Response in Opposition to Petitioner's Motion for Order to Release Medical Records and LVMPD Reports</i>
05/04/2015	 Response Filed by: Plaintiff State of Nevada <i>Department of Family Services Response to Defendant's Motion for Order to Release Medical Records and LVMPD Records</i>
05/20/2015	 Reply


CASE SUMMARY


CASE NO. 10C265506


Filed by: Defendant James , Tyrone D
Reply to Department of Family Service's Response to Petitioner's Motion for Order to Release Medical Records


06/08/2015  Order
 Filed By: Defendant James , Tyrone D
Order Releasing Records For In Camera Inspection By Court


06/08/2015  Notice of Entry of Order
 Filed By: Defendant James , Tyrone D
Notice of Entry of Order


06/09/2015  Order
 Filed By: Defendant James , Tyrone D
Order Releasing Records for in Camera Inspection by Court


06/09/2015  Notice of Entry of Order
 Filed By: Defendant James , Tyrone D
Notice of Entry of Order


07/07/2015  Notice of Change of Firm Name
 Filed By: Defendant James , Tyrone D
Notice of Change of Law Firm Affiliation


08/04/2015  Notice of Change of Address
 Filed By: Defendant James , Tyrone D
Notice of Change of Address

09/04/2015  Motion for Order
 Filed By: Defendant James , Tyrone D
Renewed Motion for Order to Release Medical Records and LVMPD Reports


09/04/2015  Petition
 Filed by: Defendant James , Tyrone D
Supplemental Petition for Post-Conviction Writ of Habeas Corpus

09/17/2015  Response
 Filed by: Plaintiff State of Nevada
Las Vegas Metropolitan Police Department's Response to Defendant's Renewed Motion for Order to Release Medical Records and LVMPD Reports

09/18/2015  Motion
 Filed By: Defendant James , Tyrone D
Motion for a Subpoena to Sunrise Hospital to Release Medical Records

10/09/2015  Motion
 Filed By: Defendant James , Tyrone D
Motion and Notice of Motion to File Under Seal

10/15/2015  Order to Release Medical Records
 Filed By: Defendant James , Tyrone D
Ex Parte Motion for a Subpoena to Sunrise Hospital to Release Medical Records and [Proposed] Order

10/23/2015  Exhibits
 Filed By: Defendant James , Tyrone D

CASE SUMMARY

CASE NO. 10C265506

Appendix of Exhibits to Petitioner's Supplement to Petition For Writ of Habeas Corpus

10/23/2015	 Supplemental Filed by: Defendant James , Tyrone D <i>Supplemental Motion to File Under Seal</i>
11/02/2015	 Exhibits Filed By: Defendant James , Tyrone D <i>Second Amended Appendix of Exhibits to Petitioner's Supplement to Petition for Writ of Habeas Corpus</i>
11/09/2015	 Acknowledgment Filed By: Plaintiff State of Nevada
12/30/2015	 Order for Production of Inmate Party: Plaintiff State of Nevada <i>Order for Production of Inmate</i>
01/15/2016	 Supplement Filed by: Defendant James , Tyrone D <i>Supplement to Supplemental Petition for Writ of Habeas Corpus</i>
01/15/2016	 Exhibits Filed By: Defendant James , Tyrone D <i>Appendix of Exhibits to Supplement to Supplemental Petition for Writ of Habeas Corpus</i>
04/21/2016	 Response <i>Response to Defendant's Supplemental Petition for Post-Conviction Writ of Habeas Corpus and Supplement to Supplemental Petition for Post-Conviction Writ of Habeas Corpus</i>
05/27/2016	 Request Filed by: Defendant James , Tyrone D <i>Request for Extension of Time</i>
05/31/2016	 Reply Filed by: Defendant James , Tyrone D <i>Reply to State's Response to Petitioner's Supplemental Petition for Post-Conviction Writ of Habeas Corpus</i>
08/01/2016	 Order Filed By: Defendant James , Tyrone D <i>Order for Supplemental Fees</i>
10/11/2016	 Order Filed By: Plaintiff State of Nevada <i>Application and Order for Transcripts</i>
10/19/2016	 Recorders Transcript of Hearing <i>Recorder's Transcript re: Defendant's Petition for Writ of Habeas Corpus; Evidentiary Hearing: Expert Issue</i>
11/08/2016	 Findings of Fact, Conclusions of Law and Order Filed By: Plaintiff State of Nevada
11/09/2016	 Notice of Entry Filed By: Plaintiff State of Nevada

CASE SUMMARY

CASE NO. 10C265506

	<i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
11/10/2016	 Order Filed By: Defendant James , Tyrone D <i>Order Appointing Margaret A. McLetchie as Court-Appointed Counsel</i>
11/10/2016	 Notice of Entry of Order Filed By: Defendant James , Tyrone D <i>Notice of Entry of Order</i>
12/08/2016	 Notice of Appeal (criminal) Party: Defendant James , Tyrone D <i>Notice of Appeal</i>
12/08/2016	 Case Appeal Statement Filed By: Defendant James , Tyrone D <i>Case Appeal Statement</i>
12/28/2016	 Request Filed by: Defendant James , Tyrone D <i>Request for Transcripts of Proceedings</i>
01/02/2017	Case Reassigned to Department 1 <i>Case reassigned from Judge Elizabeth Gonzalez Dept 11</i>
01/23/2017	 Reporters Transcript <i>Transcript of Proceedings: Hearing on Petition for Writ of Habeas Corpus (Post-Conviction) May 13, 2013</i>
01/23/2017	 Reporters Transcript <i>Transcript of Proceedings: Hearing on Confirmation of Counsel May 20, 2013</i>
01/23/2017	 Reporters Transcript <i>Transcript of Proceedings: Transcript of Proceedings Hearing on Petition for Writ of Habeas Corpus (Post-Conviction) (Continued) June 17, 2013</i>
01/23/2017	 Reporters Transcript <i>Transcript of Proceedings: Hearing on Petition for Writ of Habeas Corpus (Post-Conviction) June 8, 2016</i>
12/19/2017	 NV Supreme Court Clerks Certificate/Judgment - Affirmed <i>Nevada Supreme Court Clerk's Certificate Judgment - Affirmed</i>
07/02/2018	Case Reassigned to Department 28 <i>Reassigned From Judge Cory - Dept 1</i>
07/16/2019	 Petition <i>Post-Conviction Petition Requesting a Genetic Marker Analysis of Evidence Within the Possession or Custody of the State of Nevada (NRS 176.0918)</i>
07/16/2019	 Clerk's Notice of Hearing <i>Clerk's Notice of Hearing</i>
07/16/2019	 Clerk's Notice of Hearing <i>Clerk's Notice of Hearing</i>

CASE SUMMARY

CASE NO. 10C265506

07/23/2019	 Response <i>State's Response to Defendant s Post-Conviction Petition Requesting A Genetic Marker Analysis Of Evidence Within The Possession Or Custody Of The State Of Nevada (NRS 176.0918)</i>
07/24/2019	 Criminal Order to Statistically Close Case <i>Criminal Order To Statistically Close Case</i>
08/05/2019	 Motion for Order Filed By: Defendant James , Tyrone D <i>Motion to Preserve and Inventory Evidence, and Proposed Order, Regarding Petition for Genetic Marker Analysis</i>
08/05/2019	 Response <i>State's Response to Defendant s Post-Conviction Petition for Writ of Habeas Corpus (Post-Conviction) and support of the State s Motion to Dismiss</i>
08/08/2019	 Motion to Stay Filed By: Defendant James , Tyrone D <i>Motion for Stay of Petition for Writ of Habeas Corpus (Post-Conviction)</i>
08/08/2019	 Order Filed By: Defendant James , Tyrone D <i>Order on Petition for Genetic Marker Analysis</i>
08/09/2019	 Recorders Transcript of Hearing <i>Post Conviction Petition Requesting a Genetic Marker Analysis of Evidence Within the Possession for Custody of the State of Nevada</i>
12/09/2019	 Supplemental <i>State's Supplemental Response to Defendant s Post-Conviction Petition Requesting a Genetic Marker Analysis of Evidence within the Possession or Custody of the State of Nevada (NRS 176.0918)</i>
12/12/2019	 Reply Filed by: Defendant James , Tyrone D <i>Reply to State's Supplemental Response to Post-Conviction Petition Requesting a Genetic Marker Analysis of Evidence Within the Possession or Custody of the State of Nevada (NRS 176.0918)</i>
02/05/2020	 Recorders Transcript of Hearing <i>Post Conviction Petition Requesting a Genetic Marker Analysis of Evidence Within the Possession for Custody of the State of Nevada</i>
02/25/2020	 Findings of Fact, Conclusions of Law and Order
02/26/2020	 Notice of Entry <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
03/24/2020	 Case Appeal Statement Filed By: Defendant James , Tyrone D <i>Case Appeal Statement</i>
03/24/2020	 Notice of Appeal (criminal) Party: Defendant James , Tyrone D <i>Notice of Appeal</i>

DISPOSITIONS

CASE SUMMARY**CASE NO. 10C265506**06/24/2010 **Plea** (Judicial Officer: Bell, Linda Marie)

1. SEXUAL ASSAULT
Not Guilty
PCN: Sequence:
2. OPEN OR GROSS LEWDNESS
Not Guilty
PCN: Sequence:
3. SEXUAL ASSAULT
Not Guilty
PCN: Sequence:
4. OPEN OR GROSS LEWDNESS
Not Guilty
PCN: Sequence:
5. ASSAULT AND BATTERY
Not Guilty
PCN: Sequence:

01/19/2011 **Disposition** (Judicial Officer: Bell, Linda Marie)

1. SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 16
Guilty
PCN: Sequence:
2. OPEN OR GROSS LEWDNESS
Dismissed
PCN: Sequence:
3. SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 16
Guilty
PCN: Sequence:
4. OPEN OR GROSS LEWDNESS
Dismissed
PCN: Sequence:
5. BATTERY WITH INTENT TO COMMIT A CRIME
Guilty
PCN: Sequence:

01/19/2011 **Adult Adjudication** (Judicial Officer: Bell, Linda Marie)

1. SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 16
01/01/1900 (F) 200.366.3b (DC50106)
PCN: Sequence:

Sentenced to Nevada Dept. of Corrections
Term: Life with the possibility of parole after:25 yrs Year

01/19/2011 **Adult Adjudication** (Judicial Officer: Bell, Linda Marie)

3. SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 16
01/01/1900 (F) 200.366.3b (DC50106)
PCN: Sequence:

Sentenced to Nevada Dept. of Corrections
Term: Life with the possibility of parole after:25 yrs Year
Concurrent: Charge 1

01/19/2011 **Adult Adjudication** (Judicial Officer: Bell, Linda Marie)

CASE SUMMARY**CASE No. 10C265506****5. BATTERY WITH INTENT TO COMMIT A CRIME**

01/01/1900 (F) 200.400 (200.400)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Life with the possibility of parole after:2 yrs Year

Concurrent: Charge 1 & 3

Credit for Time Served: 250 Days

Condition

1. Lifetime Supervision

Fee Totals:

Administrative

Assessment Fee

25.00

\$25

DNA Analysis Fee

150.00

\$150

Fee Totals \$


175.00

HEARINGS06/24/2010 **Initial Arraignment (1:30 PM)**

Events: 06/21/2010 Hearing

*INITIAL ARRAIGNMENT Court Clerk: Sandra Harrell Relief Clerk: Nicole McDevitt /nm Reporter/Recorder: Kiara Schmidt Heard By: Randall Weed**Matter Heard; INITIAL ARRAIGNMENT Court Clerk: Sandra Harrell Relief Clerk: Nicole McDevitt /nm Reporter/Recorder: Kiara Schmidt Heard By: Randall Weed*

Journal Entry Details:

*DEFT. TYRONE ARRAIGNED, PLED NOT GUILTY and INVOKED THE 60-DAY RULE. COURT ORDERED, matter set for trial. CUSTODY 8/17/10 8:30 AM CALENDAR CALL (DEPT 5) 8/23/10 10:00 AM JURY TRIAL (DEPT 5) ;*08/12/2010  **Motion for Discovery (8:30 AM)** (Judicial Officer: Glass, Jackie)*Discovery Motion*

Granted; Defendant's Motion For Discovery

Journal Entry Details:

*Defendant TYRONE present in custody. Conference at the bench. Mr. Pandelis advised he provided Mr. Cox with alot of the requested discovery this morning. Further, he and his investigator ran a search on LMRS and found some additional police reports which will be provided to Mr. Cox later today. Mr. Cox just received the Preliminary Hearing transcript within the last couple of days and, in light of the last-minute discovery received, he is concerned that he may be ineffective if forced to go to trial on August 23 date; however, defendant invoked. Defendant acknowledged his attorney just received additional discovery but he does not wish to waive his right to a speedy trial. Colloquy. Motion GRANTED as all issues have been resolved. The Court FINDS that it is in the best interests of the defendant to RESET the TRIAL within 30 days as defendant is facing life sentences. Therefore, COURT ORDERED, current trial date VACATED and RESET. CUSTODY 9/14/10 8:30 AM CALENDAR CALL 9/20/10 10:00 AM JURY TRIAL ;*08/17/2010 **CANCELED Calendar Call (8:30 AM)***Vacated - per Judge*08/23/2010 **CANCELED Jury Trial (10:00 AM)***Vacated - per Judge*08/26/2010  **Motion to Admit Evidence (8:30 AM)** (Judicial Officer: Glass, Jackie)**08/26/2010, 09/10/2010***Motion for Clarification of Sentence*





Granted; State's Notice of Motion and Motion to Admit Evidence of Other Crimes, Wrongs or Acts

Journal Entry Details:

*Deputy District Attorney Pandelis present for the State. Deputy Public Defender Cox present for Defendant. Defendant present. Counsel requested a Petrocelli Hearing. COURT ORDERED, matter SET for a Petrocelli Hearing. Trial date STANDS. CUSTODY 9/10/10 1:30 PM PETROCELLI HEARING bjc ;*09/10/2010 **CANCELED Hearing (1:30 PM)** (Judicial Officer: Villani, Michael)*Vacated - On In Error*

CASE SUMMARY

CASE No. 10C265506

09/10/2010	<p>Hearing (1:30 PM) (Judicial Officer: Glass, Jackie)</p> <p><i>PETROCELLI HEARING: STATE'S NOTICE OF MOTION AND MOTION TO ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR ACTS</i></p> <p>Matter Heard;</p>
09/10/2010	<p>Motion in Limine (1:30 PM) (Judicial Officer: Glass, Jackie)</p> <p>Events: 09/08/2010 Motion in Limine</p> <p><i>Defendants Motion In Limine To Preclude Lay Opinion Testimony That The Complaining Witness' Behavior Is Consistent With That Of A Victim Of Sexual Abuse</i></p> <p>Granted; Defendants Motion In Limine To Preclude Lay Opinion Testimony That The Complaining Witness' Behavior Is Consistent With That</p>
09/10/2010	<p>CANCELED All Pending Motions (1:30 PM) (Judicial Officer: Glass, Jackie)</p> <p><i>Vacated</i></p>
09/10/2010	<p> All Pending Motions (1:30 PM) (Judicial Officer: Glass, Jackie)</p> <p><i>ALL PENDING MOTIONS 9/10/10</i></p> <p>Matter Heard;</p> <p>Journal Entry Details:</p> <p><i>Defendant TYRONE present in custody. DEFENDANT'S MOTION IN LIMINE (currently set for 9/21/10 but heard this date): State's Opposition to Defendant's Motion In Limine to Preclude Lay Opinion Testimony That The Complaining Witness's Behavior Is Consistent With That Of A Victim Of Sexual Abuse FILED IN OPEN COURT. Colloquy and arguments. COURT ORDERED, motion GRANTED and the State is urged to caution their lay witnesses that they are not to give any testimony that the alleged victim's behavior was consistent with a victim of sexual abuse. Mr. Pandelis advised that, based on the testimony today, there maybe new charges forthcoming in relation to the witness and the forensic interview is currently being scheduled. Mr. Cox acknowledged same and the COURT SO NOTED. PETROCELLI HEARING: STATE'S NOTICE OF MOTION AND MOTION TO ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR ACTS: Mr. Cox INVOKED the EXCLUSIONARY RULE and the COURT SO ORDERED. Defendant's mother present and left under protest. Nefertia Charles SWORN and TESTIFIED. During testimony, Mr. Cox objected to proceeding without first receiving the report from the examination done on the witness in 2005 from Southwest Medical. Mr. Pandelis does not have a copy of that report. Arguments. Objection NOTED; request to continue, DENIED. Following the conclusion of the testimony, arguments by counsel. Court stated its FINDINGS and ORDERED, motion GRANTED. Mr. Pandelis requested a copy of the transcript from today. COURT SO ORDERED and the Court Recorder is DIRECTED to have it prepared by the end of next week. Colloquy regarding the offer. Mr. Pandelis advised he will leave the offer open until Calendar Call. SO ORDERED. CUSTODY ;</i></p>
09/14/2010	<p> Calendar Call (8:30 AM) (Judicial Officer: Glass, Jackie)</p> <p>Matter Heard;</p> <p>Journal Entry Details:</p> <p><i>Defendant TYRONE present in custody. Both counsel announced ready. Mr. Pandelis moved to withdraw the offer advising the defendant rejected it and the COURT SO ORDERED. FURTHER, matter REFERRED to OVERFLOW; 9/20/10 trial date VACATED. CUSTODY 9/17/10 9:00 AM OVERFLOW (V) - DEPT. XVIII Chris Pandelis, DDA & Bryan Cox, DPD 8 - 10 witnesses; No OOS 2 - 3 days ;</i></p>
09/17/2010	<p> Overflow (9:00 AM) (Judicial Officer: Barker, David)</p> <p><i>Overflow (5) C. Pandelis / B. Cox 2-3 Days 8-10 Witnesses / No Out Of State Witnesses</i></p> <p>Hearing Set; Overflow (5) C. Pandelis / B. Cox 2-3 Days 8-10 Witnesses / No Out Of State Witnesses</p> <p>Journal Entry Details:</p> <p><i>COURT ORDERED, Trial set to start in Dept 7 on 9/20/10 at 9:30 A.M. Mr. Cox requested an afternoon start; COURT DIRECTED counsel to meet with Dept 7 Chambers to reschedule if necessary. CUSTODY 9/20/10 9:30 AM JURY TRIAL (DEPT 7);</i></p>
09/20/2010	<p>CANCELED Jury Trial (10:00 AM) (Judicial Officer: Glass, Jackie)</p> <p><i>Vacated</i></p>
09/21/2010	<p> Motion to Reconsider (9:00 AM) (Judicial Officer: Bell, Linda Marie)</p> <p>Events: 09/17/2010 Motion to Reconsider</p> <p><i>Defendant's Motion To Reconsider Motion To Admit Evidence Of Other Crimes, Wrongs Or Acts</i></p> <p>Denied;</p> <p>Journal Entry Details:</p>

CASE SUMMARY

CASE NO. 10C265506

Stacy Kollins, DDA, and Christopher Pandelis, DDA, present for the State of Nevada. - Bryan Cox, DPD, and Daniel Page, DPD, present on behalf of Deft. James. Deft. James not present. Court advised she has a couple of concerns. First, Court advised she does not believe it is appropriate practice, and she is not sure what authority she has, to overrule a ruling of another sitting District Court judge. That is the role of the Supreme Court. Second is the motion the Court received does not have any case law or legal citations so it does not provide any legal basis for her to reconsider. Court advised there are rules about when reconsideration is appropriate and those are not cited to. Finally, in reviewing the transcript, while the Court appreciates that Judge Glass probably has a different style, this Court does not believe there is anything in the transcript that shows she had any bias toward Deft. James. Her decision was based on the law. COURT ORDERED, motion DENIED. Mr. Cox advised they need to argue the limiting instruction. Court directed counsel to include that in their packet of instructions. Upon inquiry by Ms. Kollins, Court advised her judicial assistant does have the State's instructions. 9:14 a.m.--Off the record. CUSTODY ;

09/21/2010



Jury Trial (9:30 AM) (Judicial Officer: Bell, Linda Marie)

09/21/2010-09/23/2010

MINUTES

Trial Continues;

Trial Continues;

Verdict;

Journal Entry Details:

Christopher Pandelis, DDA, and Stacy Kollins, DDA, present for the State of Nevada. - Bryan Cox, DPD, and Daniel Page, DPD, present with Deft. James. 9:38 A.M.--OUTSIDE THE PRESENCE OF THE JURY, Juror #1-Cedric Griffin brought in and questioned regarding whether he overheard anything this morning about the trial on his way to court, to which the juror indicated he did not. Juror excused to the hallway. Court advised, for the record, Amy Coffee, DPD, had asked Mr. Cox outside how his case was going. She did not realize a juror was around that early. Jury Instructions settled on the record. 9:45 a.m.--Jury present. Further testimony and exhibits presented. (See worksheets.) 10:25 a.m.--OUTSIDE THE PRESENCE OF THE JURY, colloquy regarding verdict forms. 10:42 a.m.- Court reconvened with all present as before. Both sides having rested, Court instructed the Jury. Closing arguments by counsel. Bailiff sworn to take charge of the Jury. Clerk selected the alternates by random drawing: Alternate #1: Juror #5 - Alisa Price Alternate #2: Juror #14 - Vernon Zobian, Jr. 12:16 P.M.--Jury retired to deliberate. 2:15 P.M.--OUTSIDE THE PRESENCE OF THE JURY, Court addressed a question from the Jury. Ms. Kollins stated she thinks they are confused about which mom signed the consent to search what. Court and counsel reviewed Exhibit #2. Ms. Kollins stated the consent to search was for the van. The residence was searched on an oral consent to search. Court advised the response to the Jury will read: "Tahisha Scott signed the consent to search form for the van and not for the apartment at 207 N. Lamb." Response provided to the Jury. Off the record at 2:23 p.m. 3:09 P.M.--Court reconvened. Ms. Kollins and Mr. Page not present. Jury returned with VERDICTS as follow: GUILTY of COUNTS 1 & 3 - SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 16 (F). GUILTY of COUNTS 2 & 4 - OPEN OR GROSS LEWDNESS (GM). GUILTY of COUNT 5 - BATTERY WITH INTENT TO COMMIT A CRIME (F). Jury polled at request of Mr. Cox; 12 affirmed. Court thanked and excused the Jury. OUTSIDE THE PRESENCE OF THE JURY, COURT ORDERED, matter referred to P&P and set for sentencing; Deft. to REMAIN IN CUSTODY. CUSTODY 12-1-10 8:45 AM SENTENCING ;

Trial Continues;

Trial Continues;

Verdict;

Journal Entry Details:

Christopher Pandelis, DDA, and Stacy Kollins, DDA, present for the State of Nevada. - Bryan Cox, DPD, and Daniel Page, DPD, present with Deft. James. 10:17 A.M.--Court reconvened with all present as before. Further testimony and exhibits presented. (See worksheets.) 10:47 a.m.--OUTSIDE THE PRESENCE OF THE JURY, Mr. Cox advised the State made an allegation of a penetrating injury by Deft. James and argued he has the right to go into that argument. In the exam, the victim advised she was sexually active with her boyfriend. Ms. Kollins argued she was not active within the preceding 72 hours and argued that is straight Rape Shield law. Mr. Cox argued he was surprised in opening statements that there was a penetrating injury and is surprised by the testimony. Ms. Kollins argued swelling and redness is in the report which is consistent with a penetrating injury. Court read from statute. Further arguments by counsel. COURT ORDERED, the defense may NOT go into the victim's sexual history. 11:01 a.m.--Jury present. Further testimony and exhibits presented. 11:43 a.m.--Jury admonished and excused for lunch, to return at 1:00 p.m. this afternoon. OUTSIDE THE PRESENCE OF THE JURY, Deft. James advised he has written a number of questions down and counsel has refused to ask them and he feels they need to come out for the Jury. Court advised she will let Deft. speak with Mr. Cox about it. 11:45 a.m.--Court adjourned to hear Grand Jury Returns. 1:04 p.m.--Court reconvened with all present as before. Further testimony and exhibits presented. 2:44 p.m.--OUTSIDE THE PRESENCE OF THE JURY, conference at the bench. Court advised, as to the prior ruling, statute states when any part of a writing comes in, an attorney can introduce other parts of that writing. 3:06 p.m.--OUTSIDE PRESENCE, Juror #6-Jennifer Mills brought in. Court stated she understand the juror may know one of the prospective witnesses in the hall. Juror Mills advised it will not affect her ability to be fair and advised she was concerned with the witness being comfortable as she knows her teachers because of a program the witness is in. Court acknowledged. 3:08 p.m.--JURY PRESENT. Further testimony and exhibits presented. Conference at the bench. 4:43 p.m.--Court admonished the Jury

CASE SUMMARY**CASE No. 10C265506**

and excused them for the evening, to return at 9:30 a.m. tomorrow morning. **OUTSIDE THE PRESENCE OF THE JURY**, Court made a record that Ms. Charles became very emotional and Ms. Kollins approached her and asked if she was okay and did she need a break. Court advised there was no conversation regarding her testimony. Mr. Cox stated he did not realize the Court could hear and advised he wanted to at least hear what was being said. Court acknowledged. Court **ADMONISHED** Def. James regarding his right to not be compelled to testify. Colloquy regarding jury instructions. **CUSTODY CONTINUED TO: 9-23-10 9:30 AM ;**

Trial Continues;

Trial Continues;

Verdict;

Journal Entry Details:

Stacy Kollins, DDA, and Christopher Pandelis, DDA, present for the State of Nevada. - Bryan Cox, DPD, and Daniel Page, DPD, present with Def. James. 9:20 A.M.--**OUTSIDE THE PRESENCE OF THE JURY**, colloquy regarding procedure. Counsel agreed to blind alternates. 9:45 a.m.--Jury venire present. Introductions by Court and Counsel. Clerk called roll of the venire; voir dire oath administered. Jury selection commenced. 12:03 p.m.--Jury venire admonished and excused for lunch, to return at 1:15 p.m. this afternoon. 1:15 P.M.--**OUTSIDE THE PRESENCE OF THE JURY**, colloquy regarding potential demonstrative exhibits. Mr. Pandelis advised he did not schedule any witnesses today and advised he believes jury selection will take well into the afternoon and then they have openings. Colloquy. 1:20 p.m.--Jury venire present. Jury selection continued. 3:40 p.m.--Fourteen (14) jurors selected and sworn. Court thanked and excused the remaining venire. Court read the opening charge to the Jury. Opening statements by Ms. Collins and Mr. Page. Testimony and exhibits presented. (See worksheets.) 5:02 p.m.--Court admonished the Jury and excused them for the evening, to return at 10:00 a.m. tomorrow morning. **OUTSIDE THE PRESENCE OF THE JURY**, Ms. Kollins advised she objected to the suggestion of lubricant without foundation and that was sustained, however, Mr. Cox cross-examined on that again. Mr. Cox argued he asked if he investigated regarding lubrication. Ms. Kollins argued, in her mind, lubrication and a lubricated glove are separate items. Now the Jury is left with the impression that item does not exist or that the child lied about it. Court advised what she has is it was not in the detective's report and he does not recall it being an issue in the case. Court stated she does not believe this was the witness to clear it up. Ms. Kollins advised Detective Tomaino is under her subpoena and she can recall him on a limited issue if necessary. 5:08 p.m.--Court adjourned. **CUSTODY CONTINUED TO 9-22-10 10:00 AM ;**

SCHEDULED HEARINGS**Sentencing** (12/01/2010 at 8:45 AM) (Judicial Officer: Bell, Linda Marie)**12/01/2010, 01/19/2011**

12/01/2010

**Sentencing** (8:45 AM) (Judicial Officer: Bell, Linda Marie)**12/01/2010, 01/19/2011**

Continued;

Defendant Sentenced;

Journal Entry Details:

Christopher Pandelis, DDA, present for the State of Nevada. - Bryan Cox, DPD, present with Def. James. Conference at the bench. Mr. Pandelis advised Counts 2 & 4 should be dismissed as they were intended to be lesser-included offenses of Counts 1 & 3. **COURT ORDERED**, Counts 2 & 4 **DISMISSED**. **DEFT. JAMES ADJUDGED GUILTY OF COUNTS 1 & 3 - SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 16 (F) and COUNT 5 - BATTERY WITH INTENT TO COMMIT A CRIME (F)**. Matter argued and submitted. **COURT ORDERED**, in addition to the \$25.00 Administrative Assessment fee and \$150.00 DNA Analysis fee including testing to determine genetic markers, Def. **SENTENCED** to the Nevada Department of Corrections (NDC) as follows: Count 1 - to a **MAXIMUM** term of **LIFE** with a **MINIMUM** parole eligibility of **TWENTY FIVE (25) YEARS**; Count 3 - to a **MAXIMUM** term of **LIFE** with a **MINIMUM** parole eligibility of **TWENTY FIVE (25) YEARS**, **CONCURRENT** with Count 1; Count 5 - to a **MAXIMUM** term of **LIFE** with a **MINIMUM** parole eligibility of **TWO (2) YEARS**, **CONCURRENT** with Counts 1 & 3. **250 DAYS** credit for time served. **COURT FURTHER ORDERED**, a special **SENTENCE OF LIFETIME SUPERVISION** is imposed to commence upon release from any term of probation, parole or imprisonment and Def. is to register as a sex offender in accordance with NRS 179D.460 within 48 hours after sentencing or prior to release from custody. Court advised, before Def. is eligible for parole, a panel must certify Def. does not represent a high risk to reoffend based on current provisions at the time. **BOND**, if any, **EXONERATED**. ;

Continued;

Defendant Sentenced;

Journal Entry Details:

Chris Pandelis, DDA, present for the State of Nevada. - Bryan Cox, DPD, present with Def. James. Mr. Pandelis advised they need an amended PSI report. Mr. Cox advised they probably need 35 days and advised he was notified yesterday they left a count off. Colloquy. **COURT ORDERED**, matter **CONTINUED** 45 days. Court requested Mr. Pandelis clearly note what needs to be amended. **CUSTODY CONTINUED TO: 1-19-11 8:45 AM ;**

05/13/2013

**Petition for Writ of Habeas Corpus** (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)**05/13/2013, 05/20/2013, 06/17/2013, 11/18/2015, 06/08/2016, 07/25/2016, 10/03/2016**

Matter Continued;

CASE SUMMARY

CASE No. 10C265506

Matter Continued;
Continued;

Stipulated Extension of Habeas Petition Dates and Proposed Order

Matter Continued;
Hearing Set;

Matter Continued;
Denied;

Matter Continued;
Matter Continued;
Continued;

Stipulated Extension of Habeas Petition Dates and Proposed Order

Matter Continued;
Hearing Set;

Matter Continued;
Denied;

Matter Continued;
Matter Continued;
Continued;

Stipulated Extension of Habeas Petition Dates and Proposed Order

Matter Continued;
Hearing Set;

Matter Continued;
Denied;

Journal Entry Details:

COURT ORDERED, Petition SET for evidentiary hearing regarding the expert issue on July 25, 2016. State to prepare new transport order for the Deft. Deft to be transported to court for 9:00 AM, but the hearing will be held at the end of that calendar. Counsel to check availability of witness/former counsel and if the July 25th date does not work counsel to notify the Court. NDC 7-25-16 9:00 AM DEFENDANT'S PETITION FOR WRIT OF HABEAS

CORPUS...EVIDENTIARY HEARING: EXPERT ISSUE;

Matter Continued;
Matter Continued;
Continued;

Stipulated Extension of Habeas Petition Dates and Proposed Order

Matter Continued;
Hearing Set;

Matter Continued;
Denied;

MINUTES

Matter Continued;
Matter Continued;
Continued;

Stipulated Extension of Habeas Petition Dates and Proposed Order

Matter Continued;
Hearing Set;

Matter Continued;
Denied;

Journal Entry Details:

Mr. Langford indicated he had not received the file from the Public Defender's officer, therefore, requested a continuance. Colloquy regarding briefing schedule. There being no objection. COURT ORDERED, matter CONTINUED; SET for Status Check for stipulated briefing schedule. 7/19/13 9:00 AM PETITION FOR WRIT OF H.C. 7/19/13 9:00 AM STATUS CHECK: BRIEFING SCHEDULE ;

Matter Continued;
Matter Continued;
Continued;

Stipulated Extension of Habeas Petition Dates and Proposed Order

Matter Continued;
Hearing Set;

Matter Continued;
Denied;

Journal Entry Details:

CASE SUMMARY

CASE NO. 10C265506

Deft not present, in custody at the Nevada Department of Corrections. COURT ORDERED, Mr. Langford CONFIRMED as counsel for Deft. Mr. Langford requested 30 more days to review the file before filing a supplemental brief. NDC ...CONTINUED TO: 6-17-13 9:00 AM CLERK'S NOTE: A copy of the above minute order was distributed to: Tyrone James, ID# 1063523, High Desert State Prison, P.O. Box 650, Indian Springs, NV 89070. / dr;

Matter Continued;

Matter Continued;

Continued;

Stipulated Extension of Habeas Petition Dates and Proposed Order

Matter Continued;

Hearing Set;

Matter Continued;

Denied;

Journal Entry Details:

Deft not present, in custody at the Nevada Department of Corrections. Court ORDERED, matter CONTINUED one week for appointment of counsel. Drew Christensen, Esq., to be contacted to send someone for the appointment.

NDC ...CONTINUED TO: 5-20-13 9:00 AM CLERK'S NOTE: A copy of the above minute order was distributed to Tyrone James, ID# 1063523, High Desert State Prison, P.O. Box 650, Indian Springs, NV 89070. / dr ;

SCHEDULED HEARINGS

CANCELED Status Check (06/18/2014 at 9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)


Vacated - per Stipulation and Order

Status Check: Briefing Schedule

06/18/2014 **CANCELED Status Check** (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Vacated - per Stipulation and Order

Status Check: Briefing Schedule

03/23/2015  **Motion** (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)


Events: 03/12/2015 Motion

Petitioner's Request for Extension of Time to File Supplemental Petition (Seventh Request)

Granted; Petitioner's Request for Extension of Time to File Supplemental Petition (Seventh Request)

Journal Entry Details:

Deft not present, in custody at the Nevada Department of Corrections. CONFERENCE AT BENCH. COURT ORDERED, Petitioner's Request for Extension of Time GRANTED and per discussions with counsel a more realistic briefing schedule SET: Deft's supplement DUE September 4, 2015; State's response DUE October 24, 2015; Deft's reply DUE November 4, 2015; argument on the Petition RESET on November 18, 2015. NDC 11-18-15 9:00 AM PETITION FOR WRIT OF HABEAS CORPUS CLERK'S NOTE: Following proceedings, COURT ORDERED Deft transported for the November 18, 2015 hearing and State to prepare the transport order. A copy of the above minute order was placed in the attorney folder(s) of the District Attorney, attn. Christopher Laurent, and Robert Langford, Esq., counsel for Deft (Langford McLetchie). / dr 3-24-15;

04/20/2015  **Motion** (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

04/20/2015, 05/27/2015

Defendant's Motion for Order to Release Medical Records and LVMPD Reports

Matter Continued; Defendant's Motion for Order to Release Medical Records and LVMPD Reports

Granted;

Journal Entry Details:

Arguments by counsel. COURT ORDERED, Motion GRANTED. Court stated the CPS/DCFS records are to be provided for an in-camera review prior to them being released to the defense and in addition, if counsel would like the Court to review the medical records prior to them being released to the deft., the Court will but its inclination is to release them subject to a limitation of them being used for any other purpose. Colloquy between Court and counsel as to obtaining the records. Mr. Langford is to prepare the Orders. Court DIRECTED Mr. Sweetin to provide the records to the Court once he, or if he does receive them. COURT FURTHER ORDERED, matter SET for a status check for the in-camera review on its chamber calendar and no parties need to appear. NDC 6/19/15 3:00 AM STATUS CHECK: IN-CAMERA REVIEW ;

Matter Continued; Defendant's Motion for Order to Release Medical Records and LVMPD Reports

Granted;

Journal Entry Details:

Deft not present, in custody at the Nevada Department of Corrections. Mr. Laurent submitted on the pleadings. Mr. Rashbrook advised they did not receive the State's response. State provided a copy. COURT ORDERED, matter CONTINUED for argument in 2 weeks. NDC 5-4-15 9:00 AM DEFENDANT'S MOTION FOR ORDER TO RELEASE MEDICAL RECORDS AND LVMPD REPORTS 11-18-15 9:00 AM PETITION FOR WRIT OF HABEAS CORPUS;

CASE SUMMARY

CASE NO. 10C265506

06/19/2015



Status Check (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

06/19/2015, 06/26/2015

Status Check: In Camera Review

Matter Continued;

Minute Order - No Hearing Held;

Journal Entry Details:

The Court completed the in camera review of redacted documents 001-021, MARKED as Court's Exhibit 1 and SEALED. (See worksheet.) These records are to be released to the D.A. and Ms. McLetchie contingent upon both maintaining the confidentiality of these records and execution of the Court's receipt. If any additional disclosure of the records is to be made, counsel may seek an additional order of the Court. CLERK'S NOTE: A copy of the above minute order was distributed to Deputy District Attorney Ryan McDonald and Attorney Margaret McLetchie. ;

Matter Continued;

Minute Order - No Hearing Held;

Journal Entry Details:

Court notes no documents submitted. Matter CONTINUED for one week. 6-26-15 CHAMBERS STATUS CHECK CLERK'S NOTE: A copy of the above minute order was distributed to parties via electronic mail. / dr ;

07/02/2015



Minute Order (3:00 PM) (Judicial Officer: Gonzalez, Elizabeth)

Minute Order re In Camera Review of Records from LVMPD

Minute Order - No Hearing Held; Minute Order re In Camera Review of Records from LVMPD

Journal Entry Details:

The Court completed the in camera review of records from LVMPD 022 - 143, MARKED collectively as Court's Exhibit 2 and SEALED. (See worksheet.) These records are to be RELEASED to the District Attorney and Ms. McLetchie. The release of the following records is contingent upon both maintaining the confidentiality of these records and execution of the Court's receipt given the confidential nature of the victim and/or medical information: 026 - 90. If any additional disclosure of the records is to be made, counsel may seek an additional order of the Court. CLERK'S NOTE: A copy of the above minute order was distributed to Deputy District Attorney Ryan McDonald and Attorney Margaret McLetchie. / dr 7-2-15;

09/14/2015



Motion to Release (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Defendant's Renewed Motion for Order to Release Medical Records and LVMPD Reports

Matter Heard;

Journal Entry Details:

Ms. Charlotte Bible present on behalf of Las Vegas Metropolitan Police Department (LVMPD). Ms. Alina Shell present on behalf of Deft. Deft. not present. Ms. Shell stated she is seeking to obtain photos taken by the doctor during the assault examination as her expert witness needs these to determine if what the doctors testified to appears in the photos. Colloquy on the photo's actual existence and how they may be obtained. Ms. Bible stated all records have been provided, she contacted the Detective again and he looked through his file; there are no other photos or video of the examination in the LVMPD file. Mr. Burton stated as it was not clear from the motion what was missing; he has not reviewed the State's file. Colloquy regarding the State reviewing its file, obtaining the photos from Sunrise Hospital, the need for a subpoena, and the Court's review of the photo's prior to release if they are received. Colloquy regarding the Supplemental Petition; Court extended the Deft's. response to January 8th, 2016. NDC ;

10/28/2015



Motion to Seal/Redact Records (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Motion and Notice of Motion to File Under Seal

Granted; Motion and Notice of Motion to File Under Seal

Journal Entry Details:

Deft not present. Ms. Shell requested to simply redact personally identifiable information instead of sealing it. COURT ORDERED, request to redact Exhibits 2, 3, 5, and 6 and file the originals under seal GRANTED. Counsel to prepare the order. With regards to the petition for writ scheduled on November 18, Ms. Shell advised they have provided a courtesy copy of the appendix to the State; there is still the outstanding issue of the subpoena which was served on Sunrise Hospital on the 10th; they have not yet received a response. Court directed counsel to notify the Court if after the return date there is a problem, and ORDERED, status check on the records SET for November 18, 2015, at which time argument on the petition will be reset. NDC 11-18-15 9:00 AM STATUS CHECK: RECORDS...PETITION FOR WRIT OF HABEAS CORPUS;

11/02/2015



Minute Order (3:00 PM) (Judicial Officer: Gonzalez, Elizabeth)

Minute Order: In Camera Review

Minute Order - No Hearing Held; Minute Order: In Camera Review


Journal Entry Details:

CASE SUMMARY**CASE NO. 10C265506**

Court reviewed records submitted for in camera review. Pages numbered 1-13 and CD containing medical records printed and numbered as 14-52 are relevant to Defense's investigation. Therefore, 1-13 are ORDERED released and 14-52 released with an acknowledgment that these records include information protected by HIPPA and counsel acknowledges any disclosure must be limited to the expert who will keep records confidential and any filings to be submitted with an appropriate motion to seal those records. Court RETAINS original of submission as SEALED Court's Exhibit 1. CD containing medical records is available for review and comparison if deemed necessary by counsel. Documents numbered as 1-13 are marked as Court's Exhibit 2. Documents numbered as 14-52 are marked as Court's Exhibit 3 and SEALED. NDC CLERK'S NOTE: Exhibits LODGED with the Vault. (See worksheet.) A copy of this minute order was distributed via electronic mail to Deputy District Attorney Ryan MacDonald and to Attorney Margaret McLetchie for the Petitioner. / dr 11-2-15 ;

11/18/2015 **Status Check (9:00 AM)** (Judicial Officer: Gonzalez, Elizabeth)

*Status Check: Records
Off Calendar;*

11/18/2015  **All Pending Motions (9:00 AM)** (Judicial Officer: Gonzalez, Elizabeth)

*Matter Heard;
Journal Entry Details:
STATUS CHECK: RECORDS...DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS Ms. Shell advised they have received the in camera submission; she also corresponded by email with their expert, who will have a report by Monday, November 23rd. Ms. Shell requested to file a supplement sometime in January. COURT ORDERED, matter SET for briefing: Defendant's supplement DUE by January 22, 2016; State's response DUE by April 15, 2016; final reply, if any, DUE by May 27, 2016. Hearing on Defendant's Petition SET on June 8, 2016. Deft requested that he be transported for the hearing. Court DIRECTED the State to prepare a transport order. NDC 6-8-16 9:00 AM DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS;*


03/29/2016 **Minute Order (10:15 AM)** (Judicial Officer: Gonzalez, Elizabeth)

*Minute Order: In Camera Review
Minute Order - No Hearing Held; Minute Order: In Camera Review
Journal Entry Details:
Court reviewed records submitted for in camera review on 09/16/15. Pages numbered 1-22 are relevant to Defense's investigation. Therefore, 1-7 ORDERED RELEASED and 8-22 RELEASED with an Acknowledgment that these records include information protected by HIPPA and counsel acknowledges any disclosure must be limited to expert who will keep records confidential and any filings to be submitted with an appropriate motion to seal those records. Court retains original of submission as SEALED Court's Exhibit 1. (See worksheet.) Documents numbered as 1-7 are marked as Court's Exhibit 2. Documents numbered as 8-22 are marked as Court's Exhibit 3 and SEALED. CLERK'S NOTE: A copy of this minute order was distributed via electronic mail to Deputy District Attorney Ryan MacDonald and to Attorney Alina Shell and Attorney Margaret McLetchie for the Petitioner. / dr 3-29-16 ;*


07/25/2016 **Evidentiary Hearing (9:00 AM)** (Judicial Officer: Gonzalez, Elizabeth)

07/25/2016, 10/03/2016

*Evidentiary Hearing: Expert Issue
Matter Continued;
Matter Heard;
Matter Continued;
Matter Heard;*

07/25/2016  **All Pending Motions (9:00 AM)** (Judicial Officer: Gonzalez, Elizabeth)

*Matter Heard;
Journal Entry Details:
DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS...EVIDENTIARY HEARING: EXPERT ISSUE Ms. Shell advised she was contacted last week by Deputy D.A. Stacey Kollins requesting an extension of the hearing; no supplemental briefing is needed. Mr. Rogan advised Ms. Kollins should be appearing for this but if it is simply scheduling he can handle it. Ms. Shell noted that the only date that would work for the parties, including their expert, is October 3rd. Ms. Kollins appeared and confirmed the date. COURT ORDERED, matter CONTINUED to October 3, 2016. State to prepare new order to transport Deft for the October 3rd date. Copies of records from the Court's in camera review released to Ms. Kollins in open court. Acknowledgment signed. NDC 10-3-16 9:00 AM DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS...EVIDENTIARY HEARING: EXPERT ISSUE;*

10/03/2016  **All Pending Motions (9:00 AM)** (Judicial Officer: Gonzalez, Elizabeth)

*Matter Heard;
Journal Entry Details:*

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE No. 10C265506

DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS...EVIDENTIARY HEARING: EXPERT ISSUE Ms. Shell advised she was under the impression the hearing would be today and her expert is out in the hallway; hearing anticipated to last between a half to a full hour. COURT ORDERED, matter TRAILED to the end of the calendar. Matter RECALLED. Bryan Cox and Joyce Adams, SWORN and TESTIFIED. Matter submitted on the briefing. COURT ORDERED, based upon the information presented in the lengthy, well-documented appendix as well as the testimony, it does not appear that the lack of an actual expert nor the lack of obtaining the photographs were sufficient to cause Mr. Cox to be ineffective; for that reason the Petition is DENIED. State to prepare the order. Ms. Shell inquired if she can continue as counsel for Deft on appeal. Court noted counsel usually just continue from the petition; to the extent counsel will need an order the Court will sign one after Mr. Drew Christensen's approval. NDC ;

07/29/2019



Petition (9:00 AM) (Judicial Officer: Israel, Ronald J.)

07/29/2019, 11/25/2019, 01/13/2020

Post Conviction Petition Requesting a Genetic Marker Analysis of Evidence Within the Possession for Custody of the State of Nevada

Matter Continued;

Matter Continued;

Denied;

Journal Entry Details:

Court WAIVED the Deft's appearance. Argument by counsel. COURT ORDERED, PETITION DENIED. Mr. Sweetin to prepare the order. NDC;

Matter Continued;

Matter Continued;

Denied;

Journal Entry Details:

Deft. not present. Colloquy. Upon State's request, briefing schedule SET. State's response due by end of business day 12/9/19; Deft's reply due by end of business day 12/23/19. FURTHER, matter CONTINUED. NDC CONTINUED TO: 1/3/20 9:00 AM;

Matter Continued;

Matter Continued;

Denied;

Journal Entry Details:

Deft. JAMES not present, in the Nevada Department of Corrections (NDC). Ms. Kirschner from the Federal Public Defender's Office requested the Deft's presence be waived and the genetic markers analysis of the evidence held by the State of Nevada. Colloquy regarding 3 markers taken and one was tested and the Metropolitan Police Department was to preserve them. Ms. Kirschner noted the post-conviction petition was to be transferred from Department 24. Ms. Kirschner was notified from the Attorney General of another match to this case and was told it would come to this Department. (A797521 case in Dept. 24). Ms. Kirschner requested additional time to research this. COURT ORDERED, Matter CONTINUED. Court noted Counsel may notice a hearing if she would like it heard earlier.

11/25/19 9:00 AM POST CONVICTION PETITION REQUESTING A GENETIC MARKER ANALYSIS OF EVIDENCE WITHIN THE POSSESSION FOR CUSTODY OF THE STATE OF NEVADA CLERK'S NOTE: Case A797521 was to be closed. pursuant to 06/28/19 minute order and under NRS 34.730(3)(b).;

DATE

FINANCIAL INFORMATION

Defendant James , Tyrone D

Total Charges

175.00

Total Payments and Credits

0.00

Balance Due as of 3/26/2020

175.00

Plaintiff State of Nevada

Total Charges

3.50

Total Payments and Credits

3.50

Balance Due as of 3/26/2020

0.00

ORIGINAL

Electronically Filed
2/25/2020 11:21 AM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-VS-

TYRONE JAMES,
#1303556

Defendant.

CASE NO: **A-19-797521-W**
10C265506

DEPT NO: **XXVIII**

FINDINGS OF FACT, CONCLUSIONS

OF LAW AND ORDER

DATE OF HEARING: **JANUARY 13, 2020**
TIME OF HEARING: **9:00 AM**

This cause having presented before the Honorable RONALD J. ISRAEL, District Judge, on January 13, 2020; Petitioner being represented by COURTNEY KIRSCHNER, ESQ.; Respondent being represented by STEVEN B. WOLFSON, District Attorney, through JAMES R. SWEETIN, Chief Deputy District Attorney; and having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of Law:

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<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(a)	<input type="checkbox"/> Judgment of Arbitration

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On August 16, 2010, the State filed a Motion to Admit Evidence of Other Crimes, Wrongs or Acts. On August 25, 2010, Petitioner filed his Opposition. On September 8, 2010, Petitioner filed a Motion in Limine to Preclude Lay Opinion Testimony that the Complaining Witness' Behavior is Consistent with that of a Victim of Sexual Abuse. On September 10, 2010, the State filed its Opposition in open court. This Court conducted a Petrocelli hearing regarding the State's bad acts motion. Ultimately, the Court granted both the State's bad acts motion and Petitioner's motion in limine. On September 17, 2010, Petitioner filed a Motion to Reconsider Motion to Admit Evidence of Other Crimes, Wrongs or Acts. This Court denied Petitioner's Motion on September 21, 2010.

On January 19, 2011, Petitioner was sentenced to the Nevada Department of Corrections as follows: as to Count 1 – to a maximum term of life with a minimum parole eligibility after 25 years; as to Count 3 – to a maximum term of life with a minimum parole eligibility after 25 years, concurrent with Count 1; as to Count 5 – to a maximum term of Life with a minimum parole eligibility after 2 years, concurrent with Counts 1 and 3. The Court further ordered a sentence of lifetime supervision to be imposed upon Petitioner's release from any term of probation, parole, or imprisonment. Petitioner received 250 days credit for time served. The Court dismissed Counts 2 and 4, as they were lesser-included offenses of Counts 1 and 3. Judgment of Conviction was filed February 9, 2011.

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1 On March 7, 2011, Petitioner filed a Notice of Appeal. On October 31, 2012, the
2 Nevada Supreme Court issued an Order of Affirmance. Remittitur issued on November 26,
3 2012.

4 On March 14, 2013, Petitioner filed a post-conviction Petition for Writ of Habeas
5 Corpus ("First Petition") and Motion to Appoint Counsel. The State filed its Response on May
6 7, 2013. On May 20, 2013, Robert Langford Esq., was appointed as post-conviction counsel.
7 On September 4, 2015, Petitioner filed a Supplemental Petition for Post-Conviction Writ of
8 Habeas Corpus ("Supplement to First Petition"). On January 15, 2016, Petitioner filed another
9 Supplement to Supplemental Petition for Writ of Habeas Corpus ("Second Supplement to First
10 Petition"). On April 21, 2016, the State filed its Response to both Supplements. On October
11 3, 2016, this Court held an evidentiary hearing and heard sworn testimony from Bryan Cox,
12 Esq., and Dr. Joyce Adams. On November 8, 2016, this Court entered its Findings of Fact,
13 Conclusions of Law, and Order, denying the First Petition.

14 On December 8, 2016, Petitioner filed a Notice of Appeal. The Nevada Court of
15 Appeals affirmed the denial on November 14, 2017. Remittitur issued December 29, 2017.

16 Petitioner filed another Petition for Writ of Habeas Corpus (Post-Conviction) ("Second
17 Petition") on June 27, 2019. The State filed its Response to the Second Petition on August 6,
18 2019.

19 Petitioner filed a Post-Conviction Petition Requesting A Genetic Marker Analysis of
20 Evidence Within the Possession or Custody of the State of Nevada (NRS 176.0918) ("Genetic
21 Marker Petition") on July 16, 2019. The State filed its Response on July 23, 2019. This Court
22 heard the Petition on July 29, 2019, but continued it. On August 8, 2019, this Court signed an
23 Order requiring the Las Vegas Metropolitan Police Department and Bode Cellmark Forensics
24 Laboratory to preserve all evidence in this case, and, within ninety (90) days, to prepare an
25 inventory thereof and submit a copy of that inventory to the defense, the State, and this Court.
26 On January 13, 2020, the Court denied Petitioner's Petition for Genetic Testing.

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1 Petitioner submitted a Motion for Stay of his Second Petition on August 8, 2019, based
2 on the DNA testing. On August 19, 2019, this Court heard the Second Petition, noting the
3 Motion for Stay and setting a briefing schedule. The State filed its Response on September 4,
4 2019. On September 10, 2019, Petitioner filed a Reply. On September 25, 2019, the Court
5 granted Petitioner's Motion. On November 25, 2019, the Court reset the briefing schedule on
6 the Second Petition and set the matter for argument.

7 On January 13, 2020, the Court held a hearing and took the matter under advisement.
8 The Court now rules as follows:

9 ANALYSIS

10 **I. PETITIONER'S CLAIMS ARE PROCEDURALLY BARRED.**

11 **a. Petitioner's claims are untimely**

12 Pursuant to NRS 34.726(1):

13 Unless there is good cause shown for delay, a petition that challenges
14 the validity of a judgment or sentence must be filed within 1 year of
15 the entry of the judgment of conviction or, if an appeal has been taken
16 from the judgment, within 1 year after the Supreme Court issues its
remittitur. For the purposes of this subsection, good cause for delay
exists if the petitioner demonstrates to the satisfaction of the court:

17 (a) That the delay is not the fault of the petitioner; and

18 (b) That dismissal of the petition as untimely will unduly prejudice
the petitioner.

19 The Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain
20 meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per the
21 language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from
22 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.
23 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

24 The one-year time limit for preparing petitions for post-conviction relief under NRS
25 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
26 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
27 evidence presented by the defendant that he purchased postage through the prison and mailed
28 the Notice within the one-year time limit.

1 Furthermore, the Nevada Supreme Court has held that the district court has a *duty* to
2 consider whether a defendant's post-conviction petition claims are procedurally barred. State
3 v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The
4 Riker Court found that “[a]pplication of the statutory procedural default rules to post-
5 conviction habeas petitions is mandatory,” noting:

6 Habeas corpus petitions that are filed many years after conviction are
7 an unreasonable burden on the criminal justice system. The necessity
8 for a workable system dictates that there must exist a time when a
criminal conviction is final.

9 Id. Additionally, the Court noted that procedural bars “cannot be ignored [by the district court]
10 when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
11 has granted no discretion to the district courts regarding whether to apply the statutory
12 procedural bars; the rules *must* be applied.

13 In the instant case, the Judgment of Conviction was filed on February 9, 2011, and
14 Petitioner filed a direct appeal. On October 31, 2012, the Nevada Supreme Court affirmed the
15 Judgment of Conviction and remittitur issued on November 26, 2012. Thus, the one-year time
16 bar began to run from this date. The instant Second Petition was not filed until June 27, 2019.
17 This is over seven and a half years after remittitur issued on Petitioner’s direct appeal and in
18 is excess of the one-year time frame. Absent a showing of good cause for this delay and undue
19 prejudice, Petition’s claim shall be dismissed because of its tardy filing.

20 **b. Petitioner’s claims are successive.**

21 Petitioner’s Second Petition is procedurally barred because it is successive. NRS
22 34.810(2) reads:

23 A second or successive petition *must* be dismissed if the judge or
24 justice determines that it fails to allege new or different grounds for
25 relief and that the prior determination was on the merits or, if new and
different grounds are alleged, the judge or justice finds that the failure
of the petitioner to assert those grounds in a prior petition constituted
an abuse of the writ.

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1 (emphasis added). Second or successive petitions are petitions that either fail to allege new or
2 different grounds for relief and the grounds have already been decided on the merits or that
3 allege new or different grounds but a judge or justice finds that the petitioner's failure to assert
4 those grounds in a prior petition would constitute an abuse of the writ. Second or successive
5 petitions will only be decided on the merits if the petitioner can show good cause and
6 prejudice. NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

7 The Nevada Supreme Court has stated: "Without such limitations on the availability of
8 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-
9 conviction remedies. In addition, meritless, successive and untimely petitions clog the court
10 system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950.
11 The Nevada Supreme Court recognizes that "[u]nlike initial petitions which certainly require
12 a careful review of the record, successive petitions may be dismissed based solely on the face
13 of the petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words,
14 if the claim or allegation was previously available with reasonable diligence, it is an abuse of
15 the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497-498 (1991).
16 Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

17 Here, as discussed *supra*, this is Petitioner's Second Petition. Petitioner does not deny
18 that it is successive. Second Petition at 3–6. It raises only new and different grounds that could
19 and should have been raised at an earlier, appropriate time. NRS 34.810(2). Accordingly, this
20 Second Petition is an abuse of the writ, procedurally barred, and shall be denied absent a
21 showing of good cause and prejudice. NRS 34.810(3).

22 **II. PETITIONER HAS NOT DEMONSTRATED GOOD CAUSE TO OVERCOME** 23 **THE PROCEDURAL BAR.**

24 A showing of good cause and prejudice may overcome procedural bars. "To establish
25 good cause, appellants must show that an impediment external to the defense prevented their
26 compliance with the applicable procedural rule. A qualifying impediment might be shown
27 where the factual or legal basis for a claim *was not reasonably available at the time of default.*"
28 Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court

1 continued, “appellants cannot attempt to manufacture good cause[.]” Id. at 621, 81 P.3d at
2 526. Rather, to find good cause, there must be a “substantial reason; one that affords a legal
3 excuse.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v.
4 State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Any delay in the filing of the petition
5 must not be the fault of the petitioner. NRS 34.726(1)(a).

6 A petitioner raising good cause to excuse procedural bars must do so within a
7 reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34
8 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see
9 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506-07 (stating that a claim reasonably
10 available to the petitioner during the statutory time period did not constitute good cause to
11 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good
12 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,
13 453 120 S. Ct. 1587, 1592 (2000).

14 Further, to establish prejudice, the defendant must show ““not merely that the errors of
15 [the proceedings] created possibility of prejudice, but that they worked to his actual and
16 substantial disadvantage, in affecting the state proceedings with error of constitutional
17 dimensions.”” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United
18 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)).

19 Petitioner claimed he could show good cause in the form of “new evidence” that he
20 alleges supports his actual innocence and Brady claims. Second Petition at 11. However, as
21 discussed *infra*, these claims are meritless. Further, because his substantive claims are
22 meritless, Petitioner cannot demonstrate prejudice and his Second Petition is thereby denied.

23 **a. There was no ineffective assistance of counsel.**

24 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
25 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
26 defense.” The United States Supreme Court has long recognized that “the right to counsel is
27 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,
28 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323

1 (1993).

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

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

19 Counsel cannot be ineffective for failing to make futile objections or arguments. See
20 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
21 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
22 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
23 (2002).

24 Based on the above law, the role of a court in considering allegations of ineffective
25 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
26 whether, under the particular facts and circumstances of the case, trial counsel failed to render
27 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
28 (1978). This analysis does not mean that the court should “second guess reasoned choices

1 between trial tactics nor does it mean that defense counsel, to protect himself against
2 allegations of inadequacy, must make every conceivable motion no matter how remote the
3 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel
4 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
5 cannot create one and may disserve the interests of his client by attempting a useless charade.”
6 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

7 “There are countless ways to provide effective assistance in any given case. Even the
8 best criminal defense attorneys would not defend a particular client in the same way.”
9 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
10 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
11 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
12 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's
13 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
14 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

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

22 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the
23 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of
24 the evidence.” Means, 120 Nev. at 1012, 103 P.3d at 33. Furthermore, claims of ineffective
25 assistance of counsel asserted in a petition for post-conviction relief must be supported with
26 specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v.
27 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked” allegations are not
28 sufficient, nor are those belied and repelled by the record. Id. NRS 34.735(6) states in relevant

1 part, “[Petitioner] *must* allege specific facts supporting the claims in the petition[.] . . . Failure
2 to allege specific facts rather than just conclusions may cause your petition to be dismissed.”
3 (emphasis added).

4 Here, Petitioner alleged his counsel was ineffective for not testing the DNA from the
5 rape kit of the victim, T.H. Second Petition at 15. As an initial matter, any claim that trial
6 counsel should have had the DNA tested has been available for years and so is itself time
7 barred; accordingly, it cannot provide good cause to overcome the procedural bars. Riker, 121
8 Nev. at 235, 112 P.3d at 1077. Regardless, the claims of ineffectiveness are without merit.

9 Petitioner argued trial counsel did not know there had been DNA collected from the
10 victim’s rape kit. Second Petition at 10. However, this is belied by the record. Hargrove, 100
11 Nev. at 502, 686 P.2d at 225. In fact, Detective Daniel Tomaino testified at trial that a rape kit
12 had been collected. Transcript, Jury Trial (“JTT”) Day 1, at 252–53. Defense counsel actually
13 cross-examined Det. Tomaino regarding the rape kit. Id. at 267–68, 276. Dr. Theresa Vergara
14 also testified as to the details of the sexual assault examination, including the swabs of the
15 victim’s genitalia collected as part of the rape kit. JTT, Day 2 at 150, 154–58. Indeed, as the
16 First Petition made clear, previous counsel—including trial counsel and post-conviction
17 counsel—actually knew Petitioner’s DNA was *not* found on the victim. See Supplement to
18 First Petition, September 4, 2015, at 5–6; JTT, Day 1 at 276–77.

19 It was not an objectively unreasonable strategy to refrain from having the DNA tested.
20 First, given that Petitioner consistently maintained his innocence, had a test revealed that
21 Petitioner was lying, his defense would have been severely undermined. This strategic call
22 cannot be evaluated through the benefit of hindsight, knowing that there is now a potential
23 CODIS hit regarding T.H.’s rape kit. Counsel could not have known there was no match to
24 Petitioner unless and until such a test were completed, and the potential risk of having such a
25 test was high. Moreover, Petitioner invoked his right to a speedy trial. Recorder’s Transcript
26 of Hearing RE: Arraignment, June 24, 2010, at 2. Several weeks after this invocation,
27 Petitioner acknowledged on the record that he knew his counsel had just received new
28 evidence but insisted that he still did not want to waive his right to a speedy trial. Court

1 Minutes, August 12, 2010. Accordingly, the fact that there was likely no time for a DNA test
2 was of his own choosing and cannot be attributed to counsel. Given the factors counsel was
3 working with, this Court will not second-guess counsel's strategy not to pursue further DNA
4 investigations. Donovan, 94 Nev. at 675, 584 P.2d at 711.

5 **b. Defendant cannot establish actual innocence.**

6 As an initial matter, actual innocence is not a freestanding claim. It is a method by
7 which the mandatory time-bars may be excused if the "new evidence" at issue is both material
8 and exculpatory. The United States Supreme Court has held for over a quarter-century that
9 actual innocence is not "itself a constitutional claim, but instead a gateway through which a
10 habeas petitioner must pass to have his otherwise barred constitutional claim considered on
11 the merits." Herrera v. Collins, 506 U.S. 390, 404, 113 S. Ct. 853, 862 (1993). More recently,
12 the Court has noted that it has not "resolved whether a prisoner may be entitled to habeas relief
13 based on a freestanding claim of actual innocence." McQuiggin v. Perkins, 569 U.S. 383, 392,
14 133 S.Ct. 1924, 1931 (2013). The Nevada Supreme Court, too, "has yet to address whether
15 and, if so, when a free-standing actual innocence claim exists." Berry v. State, 131 Nev. Adv.
16 Op. 96, 363 P.3d 1148, 1154 (2015)

17 Regardless, in order for a defendant to obtain a reversal of his conviction based on a
18 claim of actual innocence, both the United States and Nevada Supreme Courts place the burden
19 on the defendant to show "'it is more likely than not that *no* reasonable juror would have
20 convicted him in light of the new evidence' presented in habeas proceedings." Calderon v.
21 Thompson, 523 U.S. 538, 560, 118 S. Ct. 1489, 1503 (1998) (emphasis added) (quoting Schlup
22 v. Delo, 513 U.S. 298, 315, 115 S. Ct. 851, 861, 130 L. Ed. 2d 808 (1995)); see also Pellegrini,
23 117 Nev. at 887, 34 P.3d 5at 537. It is true that "the newly presented evidence may indeed call
24 into question the credibility of the witnesses presented at trial." Schlup, 513 U.S. at 330, 115
25 S. Ct. at 868. However, this requires "a stronger showing than that needed to establish
26 prejudice." Id. at 327, 115 S. Ct. at 867.

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1 Newly presented evidence must be “reliable,” whether “exculpatory scientific
2 evidence, trustworthy eyewitness accounts, or critical physical evidence.” House v. Bell, 547
3 U.S. 518, 537 (2006) (quoting Schlup, 513 U.S. at 324, 115 S.Ct. at 865.) The U.S. Supreme
4 Court has narrowly interpreted reliability of scientific evidence, specifically noting that “DNA
5 testing alone does not always resolve a case. Where there is enough other incriminating
6 evidence and an explanation for the DNA result, science alone cannot prove a prisoner
7 innocent.” Dist. Attorney’s Office for Third Judicial Dist. v. Osborne, 557 U.S. 52, 62, 129 S.
8 Ct. 2308, 2316 (2009) (citing Bell, 547 U.S. at 540–548, 126 S. Ct. at 2064).

9 Petitioner alleges the CODIS hit suggesting that another man’s DNA was found in the
10 victim’s rape kit is new evidence of his actual innocence. Second Petition at 16. However,
11 Petitioner cannot prove that no reasonable juror would have convicted him in light of this
12 information for two reasons. First, it is not reliable, “exculpatory scientific evidence.” Schlup,
13 513 U.S. at 324, 330, 115 S. Ct. at 865, 868. The “CODIS Hit Notification Report” specifically
14 notes that a buccal swab from the individual potentially identified as a match must be obtained
15 “in order to *confirm* this hit.” Petitioner’s Exhibit 3 at 2 (emphasis added). That is, this is not
16 a conclusive match: “further action” is required. Id. at 5. Petitioner has not argued that he has
17 obtained this further testing. Accordingly, the CODIS hit itself is not reliable exculpatory
18 evidence.

19 Second, even assuming it is true that another man’s sperm was found on the victim,
20 that alone cannot prove Petitioner innocent. Osborne, 557 U.S. at 62, 129 S. Ct. at 2316. There
21 was overwhelming incriminating evidence and an explanation for the presence of any other
22 DNA. Id. This was not an identity case. T.H. was sexually assaulted by a person she had known
23 for at least a year, as Petitioner was dating the victim’s mother. Order of Affirmance, October
24 31, 2012, at 1.; JTT Day 2, at 4, 8–11. Petitioner assaulted T.H. in her own home and drove
25 her to school afterward. Accordingly, identity was not—and would not need to be—
26 established through DNA. As the Nevada Supreme Court found, “T.H.’s testimony was
27 consistent and [] the State presented sufficient evidence from which a rational trier of fact could
28 have found guilt beyond a reasonable doubt.” Order of Affirmance, October 31, 2012, at 1.

1 Further, any other sexual activity of the victim that could have explained the presence of
2 another man's sperm would have been barred via rape shield, as was in fact the case; the
3 Nevada Supreme Court found that evidence of T.H.'s sexual history was properly excluded.
4 Id. at 7–8. Finally, Petitioner was alleged to have sexually assaulted another quasi-step-
5 daughter. That victim actually testified in this case. Her testimony was admissible under NRS
6 48.045(2) because as the Nevada Supreme Court held, it showed that Petitioner had a motive
7 and opportunity, as well as a common plan, to perpetrate sexual crimes against the teenage
8 daughters of women he dated. Id. at 3.

9 Petitioner has not shown actual innocence and therefore cannot overcome the threshold
10 of the procedural bars.

11 **c. There was no Brady violation.**

12 Due process obliges a prosecutor to reveal evidence favorable to the defense before
13 trial when that evidence is material to guilt, punishment, or impeachment. Brady v. Maryland,
14 373 U.S. 83 (1963); Mazzan v. Warden, 116 Nev. 48, 66, 993 P.2d 25, 36 (2000). There are
15 three components to a successful Brady claim: “the evidence at issue is favorable to the
16 accused; the evidence was withheld by the state, either intentionally or inadvertently; and
17 prejudice ensued, *i.e.*, the evidence was material.” Mazzan, 116 Nev. at 67, 993 P.2d at 37.

18 Evidence cannot be regarded as “suppressed” by the government when the defendant
19 has access to the evidence before trial by the exercise of reasonable diligence. United States
20 v. White, 970 F.2d 328, 337 (7th Cir. 1992); see also United States v. Brown, 628 F.2d 471,
21 473 (5th Cir. 1980). Brady “does not place any burden upon the [g]overnment to conduct a
22 defendant's investigation or assist in the presentation of the defense's case.” United States v.
23 Marinero, 904 F.2d 251, 261 (5th Cir. 1990); accord United States v. Pandozzi, 878 F.2d 1526,
24 1529 (1st Cir. 1989); United States v. Meros, 866 F.2d 1304, 1309 (11th Cir. 1989). Nevada
25 follows the federal line of cases in holding that Brady does not require the State to disclose
26 evidence which was available to the defendant from other sources, including diligent
27 investigation by the defense. Steese v. State, 114 Nev. 479, 495, 960 P.2d 321, 331 (1998).

28 //

1 In the post-conviction context of determining whether a Brady claim can overcome the
2 procedural bars, the Nevada Supreme Court has held that “proving that the State withheld the
3 evidence generally establishes cause, and proving that the withheld evidence was material
4 establishes prejudice.” State v. Bennett, 119 Nev. 589, 81 P.3d 1, 8 (2003).

5 However, the United States Supreme Court has held that a convicted defendant’s “right
6 to due process is not parallel to a trial right, but rather must be analyzed in light of the fact that
7 he has already been found guilty at a fair trial, and has only a limited interest in postconviction
8 relief.” Osborne, 557 U.S. at 68–69, 129 S. Ct. at 2320. The Court held that “Brady is the
9 wrong framework” when examining a due process right to evidence post-conviction. Id. In
10 other words, Brady’s due process right to material evidence is incident to a defendant’s trial.
11 Once the trial is over and a defendant has been fairly convicted, that right expires. Id. Thus,
12 the Court held that “[i]nstead, the question is whether consideration of [a convicted
13 defendant’s] claim within the framework of the State’s procedures for postconviction relief
14 offends some principle of justice so rooted in the traditions and conscience of our people as to
15 be ranked as fundamental, or transgresses any recognized principle of fundamental fairness in
16 operation.” Id. (internal quotations omitted).

17 Here, Petitioner claimed the State violated Brady by “h[olding] onto the rape kit” and
18 “doing nothing with it for [seven] years.” Second Petition at 16–17. However, as the United
19 States Supreme Court explained a decade ago, “Brady is the wrong framework” in examining
20 any information generated after a defendant has already been convicted. Osborne, 557 U.S. at
21 68–69, 129 S. Ct. at 2320. Accordingly, Petitioner had no rights under Brady to the “new
22 evidence” at issue here—the DNA report generated years after Petitioner’s conviction.

23 Regardless, Petitioner has not established a Brady violation. First, as discussed *supra*,
24 the CODIS hit is not favorable to Petitioner because there was sufficient independent evidence
25 that Petitioner sexually assaulted T.H. Mazzan, 116 Nev. at 67, 993 P.2d at 37. Whether there
26 were other sources of male DNA found on her person is irrelevant, given her firm identification
27 of Petitioner and her consistent account of the assault. See Order of Affirmance, October 31,
28 2012, at 1. Second, the CODIS hit was not withheld. As Petitioner admits, when the State

1 received the CODIS hit, it turned this information over to the Attorney General's Office, which
2 then turned it over to Petitioner. Second Petition at 17–18. Moreover, the existence of the rape
3 kit itself was disclosed well before trial—and trial counsel even cross-examined witnesses
4 about it. JTT Day 1 at 267–68, 276; JTT Day 2 at 150, 154–57. Had the defense wished to test
5 the swabs collected in the rape kit, it could have done its due diligence and obtained its own
6 testing. See Steese, 114 Nev. at 495, 960 P.2d at 331.

7 Third and finally, there was no prejudice—that is, the evidence was not “material.”
8 Mazzan, 116 Nev. at 67, 993 P.2d at 37. As discussed *supra*, defense counsel elicited
9 testimony at trial that Petitioner's DNA had not been found on the victim. JTT Day 2 at 276–
10 77. He would not have been permitted to elicit evidence of the victim's other sexual activity
11 pursuant to Nevada's rape shield statute, as the Nevada Supreme Court noted when it denied
12 Petitioner's direct appeal. See Order of Affirmance at 7–8. The fact that the CODIS hit was
13 from a sperm fragment is also significant in explaining why this evidence would never have
14 been material. T.H. consistently recounted the sexual assaults, stating that Petitioner first
15 sexually assaulted her with his fingers, while wearing rubber gloves, and that he then used his
16 penis to rub her vulva; either way, he did not ejaculate. See Declaration of Arrest at 1–2; JTT,
17 Day 2, at 4, 21–26. According to T.H., herself, any sperm found on the victim would not have
18 been Petitioner's. That is, had this evidence been presented at trial, it would have supported
19 T.H.'s testimony rather than challenge its credibility.

20 Petitioner had no Brady right to the CODIS hit, given that he was convicted in 2010
21 and the CODIS hit was generated in 2018. Second Petition at 13. Regardless, Petitioner has
22 not established a Brady violation because this “new evidence” was neither favorable to the
23 accused, nor withheld, nor material. This claim is insufficient to overcome the procedural bars.

24 **d. There was no prosecutorial misconduct.**

25 The Nevada Supreme Court employs a two-step analysis when considering claims of
26 prosecutorial misconduct. Valdez v. State, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008).
27 First, the Court determines if the conduct was improper. Id. Second, the Court determines
28 whether misconduct warrants reversal. Id. As to the first factor, argument is not misconduct

1 unless “the remarks ... were ‘patently prejudicial.’” Riker v. State, 111 Nev. 1316, 1328, 905
2 P.2d 706, 713 (1995) (quoting, Libby v. State, 109 Nev. 905, 911, 859 P.2d 1050, 1054
3 (1993)). With respect to the second step, the Nevada Supreme Court will not reverse if the
4 misconduct was harmless error, which depends on whether it was of constitutional dimension.
5 Valdez, 124 Nev. at 1188, 196 P.3d at 476. Error of a constitutional dimension requires
6 impermissible comment on the exercise of a specific constitutional right, or if in light of the
7 proceedings as a whole, the misconduct “so infected the trial with unfairness as to make the
8 resulting conviction a denial of due process.” Id. at 1189, 196 P.3d at 477. If the error is not
9 of a constitutional dimension, the Court will reverse only if the error substantially affected the
10 jury’s verdict. Id. In determining prejudice, a court considers whether a comment had: 1) a
11 prejudicial impact on the verdict when considered in the context of the trial as a whole; or 2)
12 seriously affects the integrity or public reputation of the judicial proceedings. Rose, 123 Nev.
13 at 208–09, 163 P.3d at 418.

14 Here, Petitioner alleged “ongoing prosecutorial misconduct” in that the State did not
15 test T.H.’s rape kit for seven years, did not receive the CODIS hit for another year, and has
16 not tested two of the swabs from the rape kit. Second Petition at 17–18. However, Petitioner
17 has cited absolutely no authority supporting his assertions.

18 First, the State’s actions with regard to the rape kit were not improper. Valdez, 124
19 Nev. at 1188, 196 P.3d at 476. The State is under no duty to continue to test rape kits after
20 conviction. Even when it did receive the CODIS hit, there was no specific obligation. The duty
21 to provide exculpatory evidence does not extend to information generated after conviction.
22 Osborne, 557 U.S. at 68–69, 129 S. Ct. at 2320. Further, the law “does not require the State to
23 disclose evidence which is available to the defendant from other sources, including diligent
24 investigation by the defense.” Steese, 114 Nev. at 495, 960 P.2d at 331 (1998). Indeed, as
25 discussed *supra*, the defense could have had the rape kit independently tested, as it was aware
26 of its existence.

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1 Second, there has been no conduct warranting reversal. Valdez, 124 Nev. at 1188, 196
2 P.3d at 476. Even assuming there was a duty to turn over a CODIS hit generated years after a
3 sexual assault conviction, Petitioner admits that the District Attorney's Office provided the
4 information to the Attorney General's Office, which then passed the information along to
5 Petitioner. Second Petition at 17–18. The State in no way concealed this information. And
6 Petitioner has failed to establish there was any undue delay in the handling of this information,
7 let alone provided any precedent supporting an argument for undue delay. Moreover, as
8 discussed above, Petitioner cannot demonstrate actual innocence necessary to overcome the
9 procedural bars even now that he possesses this information. Accordingly, the length of time
10 it took the information to reach Petitioner is irrelevant.

11 Not only could Petitioner have had T.H.'s rape kit tested at any time, the State had no
12 duty to test evidence in a case where the jury had already found Petitioner guilty and
13 where his conviction had already been affirmed by the Nevada Supreme Court. And yet, the
14 State did in fact reveal the existence of the CODIS hit as soon as it received that information,
15 which was then disclosed to Petitioner. Petitioner's claim of "prosecutorial misconduct" fails.

16 **e. There was no Confrontation Clause issue.**

17 Petitioner claimed a Confrontation Clause in that he was not allowed to confront T.H.
18 with the information from the CODIS hit. Second Petition at 18. However, this claim—as well
19 as the Brady and prosecutorial misconduct claims—should be considered waived.

20 NRS 34.810(1) reads:

21 The court shall dismiss a petition if the court determines that:

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

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

27 (2) Raised in a direct appeal or a prior petition for a writ of
habeas corpus or postconviction relief.

28 unless the court finds both cause for the failure to present the
grounds and actual prejudice to the petitioner.

1 The Nevada Supreme Court has held that “challenges to the validity of a guilty plea
2 and claims of ineffective assistance of trial and appellate counsel must first be pursued in
3 postconviction proceedings.... [A]ll other claims that are appropriate for a direct appeal must
4 be pursued on direct appeal, or they will be *considered waived in subsequent proceedings.*”
5 Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added)
6 (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). “A
7 court must dismiss a habeas petition if it presents claims that either were or could have been
8 presented in an earlier proceeding, unless the court finds both cause for failing to present the
9 claims earlier or for raising them again and actual prejudice to the petitioner.” Evans v. State,
10 117 Nev. 609, 646–47, 29 P.3d 498, 523 (2001).

11 Because Petitioner’s Confrontation Clause claim does not challenge the validity of a
12 guilty plea nor allege ineffective assistance of counsel, the claim should have been pursued on
13 a direct appeal. NRS 34.810(1); Franklin, 110 Nev. at 752, 877 P.2d at 1059. As discussed
14 *supra*, Petitioner could have had the victim’s rape kit independently tested at an appropriate
15 time. Had he wished to confront the victim with the resulting information, he could have
16 attempted to do so at trial; or, at least, he could have challenged the trial court’s suppression
17 of the evidence on direct appeal. Accordingly, Petitioner cannot demonstrate good cause or
18 prejudice for not bringing this claim at an appropriate time and raising it for the first time only
19 in these habeas proceedings. It is thus waived and summarily dismissed. Id.


20 Nonetheless, it was in a similar context that the Nevada Supreme Court held that the
21 victim’s prior sexual activity was properly excluded at trial. Order of Affirmance, filed
22 October 31, 2012, at 7. Indeed, the Court held that Petitioner’s rights under the Confrontation
23 Clause were not violated when he was not permitted to examine T.H. about her sexual history.
24 Id. For similar reasons, Petitioner would not have been permitted to confront T.H. with
25 evidence from the CODIS hit. Thus, this claim is without merit and does not constitute either
26 good cause or prejudice for overcoming the mandatory procedural bars.

27 Therefore, as Petitioner has failed to demonstrate good cause to overcome the
28 procedural bars, his Petition is time-barred and successive and shall be denied.

ORDER


THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and it is, denied.

DATED this 21 day of February, 2020.


DISTRICT JUDGE
RONALD J. ISRAEL
4-19-197521-a

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

BY


JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144

hjc/SVU

1 NEO

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CLERK OF THE COURT

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 TYRONE JAMES,

5
6 Petitioner,

Case No: 10C265506

Dept No: XXVIII

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

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

10
11 **PLEASE TAKE NOTICE** that on February 25, 2020, the court entered a decision or order in this matter,
12 a true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
15 mailed to you. This notice was mailed on February 26, 2020.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Maricela Grant

18 Maricela Grant, Deputy Clerk

19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 26 day of February 2020, I served a copy of this Notice of Entry on the
21 following:

22 ☒ By e-mail:

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

24 ☒ The United States mail addressed as follows:

25 Tyrone James # 1063523
P.O. Box 650
Indian Springs, NV 89070

Rene Valladares
411 E. Bonneville Ave., Ste 250
Las Vegas, NV 89101

27 /s/ Maricela Grant

28 Maricela Grant, Deputy Clerk

ORIGINAL

Electronically Filed
2/25/2020 11:21 AM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

TYRONE JAMES,
#1303556

Defendant.

CASE NO: **A-19-797521-W**
10C265506

DEPT NO: **XXVIII**

FINDINGS OF FACT, CONCLUSIONS

OF LAW AND ORDER

DATE OF HEARING: **JANUARY 13, 2020**
TIME OF HEARING: **9:00 AM**

This cause having presented before the Honorable RONALD J. ISRAEL, District Judge, on January 13, 2020; Petitioner being represented by COURTNEY KIRSCHNER, ESQ.; Respondent being represented by STEVEN B. WOLFSON, District Attorney, through JAMES R. SWEETIN, Chief Deputy District Attorney; and having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of Law:

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<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

[Signature]
2/25/20

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1 On March 7, 2011, Petitioner filed a Notice of Appeal. On October 31, 2012, the
2 Nevada Supreme Court issued an Order of Affirmance. Remittitur issued on November 26,
3 2012.

4 On March 14, 2013, Petitioner filed a post-conviction Petition for Writ of Habeas
5 Corpus ("First Petition") and Motion to Appoint Counsel. The State filed its Response on May
6 7, 2013. On May 20, 2013, Robert Langford Esq., was appointed as post-conviction counsel.
7 On September 4, 2015, Petitioner filed a Supplemental Petition for Post-Conviction Writ of
8 Habeas Corpus ("Supplement to First Petition"). On January 15, 2016, Petitioner filed another
9 Supplement to Supplemental Petition for Writ of Habeas Corpus ("Second Supplement to First
10 Petition"). On April 21, 2016, the State filed its Response to both Supplements. On October
11 3, 2016, this Court held an evidentiary hearing and heard sworn testimony from Bryan Cox,
12 Esq., and Dr. Joyce Adams. On November 8, 2016, this Court entered its Findings of Fact,
13 Conclusions of Law, and Order, denying the First Petition.

14 On December 8, 2016, Petitioner filed a Notice of Appeal. The Nevada Court of
15 Appeals affirmed the denial on November 14, 2017. Remittitur issued December 29, 2017.

16 Petitioner filed another Petition for Writ of Habeas Corpus (Post-Conviction) ("Second
17 Petition") on June 27, 2019. The State filed its Response to the Second Petition on August 6,
18 2019.

19 Petitioner filed a Post-Conviction Petition Requesting A Genetic Marker Analysis of
20 Evidence Within the Possession or Custody of the State of Nevada (NRS 176.0918) ("Genetic
21 Marker Petition") on July 16, 2019. The State filed its Response on July 23, 2019. This Court
22 heard the Petition on July 29, 2019, but continued it. On August 8, 2019, this Court signed an
23 Order requiring the Las Vegas Metropolitan Police Department and Bode Cellmark Forensics
24 Laboratory to preserve all evidence in this case, and, within ninety (90) days, to prepare an
25 inventory thereof and submit a copy of that inventory to the defense, the State, and this Court.
26 On January 13, 2020, the Court denied Petitioner's Petition for Genetic Testing.

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1 Petitioner submitted a Motion for Stay of his Second Petition on August 8, 2019, based
2 on the DNA testing. On August 19, 2019, this Court heard the Second Petition, noting the
3 Motion for Stay and setting a briefing schedule. The State filed its Response on September 4,
4 2019. On September 10, 2019, Petitioner filed a Reply. On September 25, 2019, the Court
5 granted Petitioner's Motion. On November 25, 2019, the Court reset the briefing schedule on
6 the Second Petition and set the matter for argument.

7 On January 13, 2020, the Court held a hearing and took the matter under advisement.
8 The Court now rules as follows:

9 ANALYSIS

10 **I. PETITIONER'S CLAIMS ARE PROCEDURALLY BARRED.**

11 **a. Petitioner's claims are untimely**

12 Pursuant to NRS 34.726(1):

13 Unless there is good cause shown for delay, a petition that challenges
14 the validity of a judgment or sentence must be filed within 1 year of
15 the entry of the judgment of conviction or, if an appeal has been taken
16 from the judgment, within 1 year after the Supreme Court issues its
remittitur. For the purposes of this subsection, good cause for delay
exists if the petitioner demonstrates to the satisfaction of the court:

17 (a) That the delay is not the fault of the petitioner; and

18 (b) That dismissal of the petition as untimely will unduly prejudice
the petitioner.

19 The Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain
20 meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per the
21 language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from
22 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.
23 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

24 The one-year time limit for preparing petitions for post-conviction relief under NRS
25 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
26 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
27 evidence presented by the defendant that he purchased postage through the prison and mailed
28 the Notice within the one-year time limit.

1 Furthermore, the Nevada Supreme Court has held that the district court has a *duty* to
2 consider whether a defendant's post-conviction petition claims are procedurally barred. State
3 v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The
4 Riker Court found that “[a]pplication of the statutory procedural default rules to post-
5 conviction habeas petitions is mandatory,” noting:

6 Habeas corpus petitions that are filed many years after conviction are
7 an unreasonable burden on the criminal justice system. The necessity
8 for a workable system dictates that there must exist a time when a
criminal conviction is final.

9 Id. Additionally, the Court noted that procedural bars “cannot be ignored [by the district court]
10 when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
11 has granted no discretion to the district courts regarding whether to apply the statutory
12 procedural bars; the rules *must* be applied.

13 In the instant case, the Judgment of Conviction was filed on February 9, 2011, and
14 Petitioner filed a direct appeal. On October 31, 2012, the Nevada Supreme Court affirmed the
15 Judgment of Conviction and remittitur issued on November 26, 2012. Thus, the one-year time
16 bar began to run from this date. The instant Second Petition was not filed until June 27, 2019.
17 This is over seven and a half years after remittitur issued on Petitioner’s direct appeal and in
18 is excess of the one-year time frame. Absent a showing of good cause for this delay and undue
19 prejudice, Petition’s claim shall be dismissed because of its tardy filing.

20 **b. Petitioner’s claims are successive.**

21 Petitioner’s Second Petition is procedurally barred because it is successive. NRS
22 34.810(2) reads:

23 A second or successive petition *must* be dismissed if the judge or
24 justice determines that it fails to allege new or different grounds for
25 relief and that the prior determination was on the merits or, if new and
different grounds are alleged, the judge or justice finds that the failure
of the petitioner to assert those grounds in a prior petition constituted
an abuse of the writ.

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1 (emphasis added). Second or successive petitions are petitions that either fail to allege new or
2 different grounds for relief and the grounds have already been decided on the merits or that
3 allege new or different grounds but a judge or justice finds that the petitioner's failure to assert
4 those grounds in a prior petition would constitute an abuse of the writ. Second or successive
5 petitions will only be decided on the merits if the petitioner can show good cause and
6 prejudice. NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

7 The Nevada Supreme Court has stated: "Without such limitations on the availability of
8 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-
9 conviction remedies. In addition, meritless, successive and untimely petitions clog the court
10 system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950.
11 The Nevada Supreme Court recognizes that "[u]nlike initial petitions which certainly require
12 a careful review of the record, successive petitions may be dismissed based solely on the face
13 of the petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words,
14 if the claim or allegation was previously available with reasonable diligence, it is an abuse of
15 the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497-498 (1991).
16 Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

17 Here, as discussed *supra*, this is Petitioner's Second Petition. Petitioner does not deny
18 that it is successive. Second Petition at 3–6. It raises only new and different grounds that could
19 and should have been raised at an earlier, appropriate time. NRS 34.810(2). Accordingly, this
20 Second Petition is an abuse of the writ, procedurally barred, and shall be denied absent a
21 showing of good cause and prejudice. NRS 34.810(3).

22 **II. PETITIONER HAS NOT DEMONSTRATED GOOD CAUSE TO OVERCOME** 23 **THE PROCEDURAL BAR.**

24 A showing of good cause and prejudice may overcome procedural bars. "To establish
25 good cause, appellants must show that an impediment external to the defense prevented their
26 compliance with the applicable procedural rule. A qualifying impediment might be shown
27 where the factual or legal basis for a claim *was not reasonably available at the time of default.*"
28 Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court

1 continued, “appellants cannot attempt to manufacture good cause[.]” Id. at 621, 81 P.3d at
2 526. Rather, to find good cause, there must be a “substantial reason; one that affords a legal
3 excuse.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v.
4 State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Any delay in the filing of the petition
5 must not be the fault of the petitioner. NRS 34.726(1)(a).

6 A petitioner raising good cause to excuse procedural bars must do so within a
7 reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34
8 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see
9 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506-07 (stating that a claim reasonably
10 available to the petitioner during the statutory time period did not constitute good cause to
11 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good
12 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,
13 453 120 S. Ct. 1587, 1592 (2000).

14 Further, to establish prejudice, the defendant must show “not merely that the errors of
15 [the proceedings] created possibility of prejudice, but that they worked to his actual and
16 substantial disadvantage, in affecting the state proceedings with error of constitutional
17 dimensions.” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United
18 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)).

19 Petitioner claimed he could show good cause in the form of “new evidence” that he
20 alleges supports his actual innocence and Brady claims. Second Petition at 11. However, as
21 discussed *infra*, these claims are meritless. Further, because his substantive claims are
22 meritless, Petitioner cannot demonstrate prejudice and his Second Petition is thereby denied.

23 **a. There was no ineffective assistance of counsel.**

24 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
25 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
26 defense.” The United States Supreme Court has long recognized that “the right to counsel is
27 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,
28 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323

1 (1993).

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

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

19 Counsel cannot be ineffective for failing to make futile objections or arguments. See
20 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
21 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
22 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
23 (2002).

24 Based on the above law, the role of a court in considering allegations of ineffective
25 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
26 whether, under the particular facts and circumstances of the case, trial counsel failed to render
27 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
28 (1978). This analysis does not mean that the court should “second guess reasoned choices

1 between trial tactics nor does it mean that defense counsel, to protect himself against
2 allegations of inadequacy, must make every conceivable motion no matter how remote the
3 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel
4 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
5 cannot create one and may disserve the interests of his client by attempting a useless charade.”
6 United States v. Cronie, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

7 “There are countless ways to provide effective assistance in any given case. Even the
8 best criminal defense attorneys would not defend a particular client in the same way.”
9 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
10 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
11 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
12 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's
13 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
14 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

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

22 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the
23 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of
24 the evidence.” Means, 120 Nev. at 1012, 103 P.3d at 33. Furthermore, claims of ineffective
25 assistance of counsel asserted in a petition for post-conviction relief must be supported with
26 specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v.
27 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked” allegations are not
28 sufficient, nor are those belied and repelled by the record. Id. NRS 34.735(6) states in relevant

1 part, “[Petitioner] *must* allege specific facts supporting the claims in the petition[.] . . . Failure
2 to allege specific facts rather than just conclusions may cause your petition to be dismissed.”
3 (emphasis added).

4 Here, Petitioner alleged his counsel was ineffective for not testing the DNA from the
5 rape kit of the victim, T.H. Second Petition at 15. As an initial matter, any claim that trial
6 counsel should have had the DNA tested has been available for years and so is itself time
7 barred; accordingly, it cannot provide good cause to overcome the procedural bars. Riker, 121
8 Nev. at 235, 112 P.3d at 1077. Regardless, the claims of ineffectiveness are without merit.

9 Petitioner argued trial counsel did not know there had been DNA collected from the
10 victim’s rape kit. Second Petition at 10. However, this is belied by the record. Hargrove, 100
11 Nev. at 502, 686 P.2d at 225. In fact, Detective Daniel Tomaino testified at trial that a rape kit
12 had been collected. Transcript, Jury Trial (“JTT”) Day 1, at 252–53. Defense counsel actually
13 cross-examined Det. Tomaino regarding the rape kit. Id. at 267–68, 276. Dr. Theresa Vergara
14 also testified as to the details of the sexual assault examination, including the swabs of the
15 victim’s genitalia collected as part of the rape kit. JTT, Day 2 at 150, 154–58. Indeed, as the
16 First Petition made clear, previous counsel—including trial counsel and post-conviction
17 counsel—actually knew Petitioner’s DNA was *not* found on the victim. See Supplement to
18 First Petition, September 4, 2015, at 5–6; JTT, Day 1 at 276–77.

19 It was not an objectively unreasonable strategy to refrain from having the DNA tested.
20 First, given that Petitioner consistently maintained his innocence, had a test revealed that
21 Petitioner was lying, his defense would have been severely undermined. This strategic call
22 cannot be evaluated through the benefit of hindsight, knowing that there is now a potential
23 CODIS hit regarding T.H.’s rape kit. Counsel could not have known there was no match to
24 Petitioner unless and until such a test were completed, and the potential risk of having such a
25 test was high. Moreover, Petitioner invoked his right to a speedy trial. Recorder’s Transcript
26 of Hearing RE: Arraignment, June 24, 2010, at 2. Several weeks after this invocation,
27 Petitioner acknowledged on the record that he knew his counsel had just received new
28 evidence but insisted that he still did not want to waive his right to a speedy trial. Court

1 Minutes, August 12, 2010. Accordingly, the fact that there was likely no time for a DNA test
2 was of his own choosing and cannot be attributed to counsel. Given the factors counsel was
3 working with, this Court will not second-guess counsel's strategy not to pursue further DNA
4 investigations. Donovan, 94 Nev. at 675, 584 P.2d at 711.

5 **b. Defendant cannot establish actual innocence.**

6 As an initial matter, actual innocence is not a freestanding claim. It is a method by
7 which the mandatory time-bars may be excused if the "new evidence" at issue is both material
8 and exculpatory. The United States Supreme Court has held for over a quarter-century that
9 actual innocence is not "itself a constitutional claim, but instead a gateway through which a
10 habeas petitioner must pass to have his otherwise barred constitutional claim considered on
11 the merits." Herrera v. Collins, 506 U.S. 390, 404, 113 S. Ct. 853, 862 (1993). More recently,
12 the Court has noted that it has not "resolved whether a prisoner may be entitled to habeas relief
13 based on a freestanding claim of actual innocence." McQuiggin v. Perkins, 569 U.S. 383, 392,
14 133 S.Ct. 1924, 1931 (2013). The Nevada Supreme Court, too, "has yet to address whether
15 and, if so, when a free-standing actual innocence claim exists." Berry v. State, 131 Nev. Adv.
16 Op. 96, 363 P.3d 1148, 1154 (2015)

17 Regardless, in order for a defendant to obtain a reversal of his conviction based on a
18 claim of actual innocence, both the United States and Nevada Supreme Courts place the burden
19 on the defendant to show "'it is more likely than not that *no* reasonable juror would have
20 convicted him in light of the new evidence' presented in habeas proceedings." Calderon v.
21 Thompson, 523 U.S. 538, 560, 118 S. Ct. 1489, 1503 (1998) (emphasis added) (quoting Schlup
22 v. Delo, 513 U.S. 298, 315, 115 S. Ct. 851, 861, 130 L. Ed. 2d 808 (1995)); see also Pellegrini,
23 117 Nev. at 887, 34 P.3d 5at 537. It is true that "the newly presented evidence may indeed call
24 into question the credibility of the witnesses presented at trial." Schlup, 513 U.S. at 330, 115
25 S. Ct. at 868. However, this requires "a stronger showing than that needed to establish
26 prejudice." Id. at 327, 115 S. Ct. at 867.

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1 Newly presented evidence must be “reliable,” whether “exculpatory scientific
2 evidence, trustworthy eyewitness accounts, or critical physical evidence.” House v. Bell, 547
3 U.S. 518, 537 (2006) (quoting Schlup, 513 U.S. at 324, 115 S.Ct. at 865.) The U.S. Supreme
4 Court has narrowly interpreted reliability of scientific evidence, specifically noting that “DNA
5 testing alone does not always resolve a case. Where there is enough other incriminating
6 evidence and an explanation for the DNA result, science alone cannot prove a prisoner
7 innocent.” Dist. Attorney’s Office for Third Judicial Dist. v. Osborne, 557 U.S. 52, 62, 129 S.
8 Ct. 2308, 2316 (2009) (citing Bell, 547 U.S. at 540–548, 126 S. Ct. at 2064).

9 Petitioner alleges the CODIS hit suggesting that another man’s DNA was found in the
10 victim’s rape kit is new evidence of his actual innocence. Second Petition at 16. However,
11 Petitioner cannot prove that no reasonable juror would have convicted him in light of this
12 information for two reasons. First, it is not reliable, “exculpatory scientific evidence.” Schlup,
13 513 U.S. at 324, 330, 115 S. Ct. at 865, 868. The “CODIS Hit Notification Report” specifically
14 notes that a buccal swab from the individual potentially identified as a match must be obtained
15 “in order to *confirm* this hit.” Petitioner’s Exhibit 3 at 2 (emphasis added). That is, this is not
16 a conclusive match: “further action” is required. Id. at 5. Petitioner has not argued that he has
17 obtained this further testing. Accordingly, the CODIS hit itself is not reliable exculpatory
18 evidence.

19 Second, even assuming it is true that another man’s sperm was found on the victim,
20 that alone cannot prove Petitioner innocent. Osborne, 557 U.S. at 62, 129 S. Ct. at 2316. There
21 was overwhelming incriminating evidence and an explanation for the presence of any other
22 DNA. Id. This was not an identity case. T.H. was sexually assaulted by a person she had known
23 for at least a year, as Petitioner was dating the victim’s mother. Order of Affirmance, October
24 31, 2012, at 1.; JTT Day 2, at 4, 8–11. Petitioner assaulted T.H. in her own home and drove
25 her to school afterward. Accordingly, identity was not—and would not need to be—
26 established through DNA. As the Nevada Supreme Court found, “T.H.’s testimony was
27 consistent and [] the State presented sufficient evidence from which a rational tier of fact could
28 have found guilt beyond a reasonable doubt.” Order of Affirmance, October 31, 2012, at 1.

1 Further, any other sexual activity of the victim that could have explained the presence of
2 another man's sperm would have been barred via rape shield, as was in fact the case; the
3 Nevada Supreme Court found that evidence of T.H.'s sexual history was properly excluded.
4 Id. at 7–8. Finally, Petitioner was alleged to have sexually assaulted another quasi-step-
5 daughter. That victim actually testified in this case. Her testimony was admissible under NRS
6 48.045(2) because as the Nevada Supreme Court held, it showed that Petitioner had a motive
7 and opportunity, as well as a common plan, to perpetrate sexual crimes against the teenage
8 daughters of women he dated. Id. at 3.

9 Petitioner has not shown actual innocence and therefore cannot overcome the threshold
10 of the procedural bars.

11 **c. There was no Brady violation.**

12 Due process obliges a prosecutor to reveal evidence favorable to the defense before
13 trial when that evidence is material to guilt, punishment, or impeachment. Brady v. Maryland,
14 373 U.S. 83 (1963); Mazzan v. Warden, 116 Nev. 48, 66, 993 P.2d 25, 36 (2000). There are
15 three components to a successful Brady claim: “the evidence at issue is favorable to the
16 accused; the evidence was withheld by the state, either intentionally or inadvertently; and
17 prejudice ensued, *i.e.*, the evidence was material.” Mazzan, 116 Nev. at 67, 993 P.2d at 37.

18 Evidence cannot be regarded as “suppressed” by the government when the defendant
19 has access to the evidence before trial by the exercise of reasonable diligence. United States
20 v. White, 970 F.2d 328, 337 (7th Cir. 1992); see also United States v. Brown, 628 F.2d 471,
21 473 (5th Cir. 1980). Brady “does not place any burden upon the [g]overnment to conduct a
22 defendant’s investigation or assist in the presentation of the defense’s case.” United States v.
23 Marinero, 904 F.2d 251, 261 (5th Cir. 1990); accord United States v. Pandozzi, 878 F.2d 1526,
24 1529 (1st Cir. 1989); United States v. Meros, 866 F.2d 1304, 1309 (11th Cir. 1989). Nevada
25 follows the federal line of cases in holding that Brady does not require the State to disclose
26 evidence which was available to the defendant from other sources, including diligent
27 investigation by the defense. Steese v. State, 114 Nev. 479, 495, 960 P.2d 321, 331 (1998).

28 //

1 In the post-conviction context of determining whether a Brady claim can overcome the
2 procedural bars, the Nevada Supreme Court has held that “proving that the State withheld the
3 evidence generally establishes cause, and proving that the withheld evidence was material
4 establishes prejudice.” State v. Bennett, 119 Nev. 589, 81 P.3d 1, 8 (2003).

5 However, the United States Supreme Court has held that a convicted defendant’s “right
6 to due process is not parallel to a trial right, but rather must be analyzed in light of the fact that
7 he has already been found guilty at a fair trial, and has only a limited interest in postconviction
8 relief.” Osborne, 557 U.S. at 68–69, 129 S. Ct. at 2320. The Court held that “Brady is the
9 wrong framework” when examining a due process right to evidence post-conviction. Id. In
10 other words, Brady’s due process right to material evidence is incident to a defendant’s trial.
11 Once the trial is over and a defendant has been fairly convicted, that right expires. Id. Thus,
12 the Court held that “[i]nstead, the question is whether consideration of [a convicted
13 defendant’s] claim within the framework of the State’s procedures for postconviction relief
14 offends some principle of justice so rooted in the traditions and conscience of our people as to
15 be ranked as fundamental, or transgresses any recognized principle of fundamental fairness in
16 operation.” Id. (internal quotations omitted).

17 Here, Petitioner claimed the State violated Brady by “h[olding] onto the rape kit” and
18 “doing nothing with it for [seven] years.” Second Petition at 16–17. However, as the United
19 States Supreme Court explained a decade ago, “Brady is the wrong framework” in examining
20 any information generated after a defendant has already been convicted. Osborne, 557 U.S. at
21 68–69, 129 S. Ct. at 2320. Accordingly, Petitioner had no rights under Brady to the “new
22 evidence” at issue here—the DNA report generated years after Petitioner’s conviction.

23 Regardless, Petitioner has not established a Brady violation. First, as discussed *supra*,
24 the CODIS hit is not favorable to Petitioner because there was sufficient independent evidence
25 that Petitioner sexually assaulted T.H. Mazzan, 116 Nev. at 67, 993 P.2d at 37. Whether there
26 were other sources of male DNA found on her person is irrelevant, given her firm identification
27 of Petitioner and her consistent account of the assault. See Order of Affirmance, October 31,
28 2012, at 1. Second, the CODIS hit was not withheld. As Petitioner admits, when the State

1 received the CODIS hit, it turned this information over to the Attorney General's Office, which
2 then turned it over to Petitioner. Second Petition at 17–18. Moreover, the existence of the rape
3 kit itself was disclosed well before trial—and trial counsel even cross-examined witnesses
4 about it. JTT Day 1 at 267–68, 276; JTT Day 2 at 150, 154–57. Had the defense wished to test
5 the swabs collected in the rape kit, it could have done its due diligence and obtained its own
6 testing. See Steese, 114 Nev. at 495, 960 P.2d at 331.

7 Third and finally, there was no prejudice—that is, the evidence was not “material.”
8 Mazzan, 116 Nev. at 67, 993 P.2d at 37. As discussed *supra*, defense counsel elicited
9 testimony at trial that Petitioner's DNA had not been found on the victim. JTT Day 2 at 276–
10 77. He would not have been permitted to elicit evidence of the victim's other sexual activity
11 pursuant to Nevada's rape shield statute, as the Nevada Supreme Court noted when it denied
12 Petitioner's direct appeal. See Order of Affirmance at 7–8. The fact that the CODIS hit was
13 from a sperm fragment is also significant in explaining why this evidence would never have
14 been material. T.H. consistently recounted the sexual assaults, stating that Petitioner first
15 sexually assaulted her with his fingers, while wearing rubber gloves, and that he then used his
16 penis to rub her vulva; either way, he did not ejaculate. See Declaration of Arrest at 1–2; JTT,
17 Day 2, at 4, 21–26. According to T.H., herself, any sperm found on the victim would not have
18 been Petitioner's. That is, had this evidence been presented at trial, it would have supported
19 T.H.'s testimony rather than challenge its credibility.

20 Petitioner had no Brady right to the CODIS hit, given that he was convicted in 2010
21 and the CODIS hit was generated in 2018. Second Petition at 13. Regardless, Petitioner has
22 not established a Brady violation because this “new evidence” was neither favorable to the
23 accused, nor withheld, nor material. This claim is insufficient to overcome the procedural bars.

24 **d. There was no prosecutorial misconduct.**

25 The Nevada Supreme Court employs a two-step analysis when considering claims of
26 prosecutorial misconduct. Valdez v. State, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008).
27 First, the Court determines if the conduct was improper. Id. Second, the Court determines
28 whether misconduct warrants reversal. Id. As to the first factor, argument is not misconduct

1 unless “the remarks ... were ‘patently prejudicial.’” Riker v. State, 111 Nev. 1316, 1328, 905
2 P.2d 706, 713 (1995) (quoting, Libby v. State, 109 Nev. 905, 911, 859 P.2d 1050, 1054
3 (1993)). With respect to the second step, the Nevada Supreme Court will not reverse if the
4 misconduct was harmless error, which depends on whether it was of constitutional dimension.
5 Valdez, 124 Nev. at 1188, 196 P.3d at 476. Error of a constitutional dimension requires
6 impermissible comment on the exercise of a specific constitutional right, or if in light of the
7 proceedings as a whole, the misconduct “so infected the trial with unfairness as to make the
8 resulting conviction a denial of due process.” Id. at 1189, 196 P.3d at 477. If the error is not
9 of a constitutional dimension, the Court will reverse only if the error substantially affected the
10 jury’s verdict. Id. In determining prejudice, a court considers whether a comment had: 1) a
11 prejudicial impact on the verdict when considered in the context of the trial as a whole; or 2)
12 seriously affects the integrity or public reputation of the judicial proceedings. Rose, 123 Nev.
13 at 208–09, 163 P.3d at 418.

14 Here, Petitioner alleged “ongoing prosecutorial misconduct” in that the State did not
15 test T.H.’s rape kit for seven years, did not receive the CODIS hit for another year, and has
16 not tested two of the swabs from the rape kit. Second Petition at 17–18. However, Petitioner
17 has cited absolutely no authority supporting his assertions.

18 First, the State’s actions with regard to the rape kit were not improper. Valdez, 124
19 Nev. at 1188, 196 P.3d at 476. The State is under no duty to continue to test rape kits after
20 conviction. Even when it did receive the CODIS hit, there was no specific obligation. The duty
21 to provide exculpatory evidence does not extend to information generated after conviction.
22 Osborne, 557 U.S. at 68–69, 129 S. Ct. at 2320. Further, the law “does not require the State to
23 disclose evidence which is available to the defendant from other sources, including diligent
24 investigation by the defense.” Steese, 114 Nev. at 495, 960 P.2d at 331 (1998). Indeed, as
25 discussed *supra*, the defense could have had the rape kit independently tested, as it was aware
26 of its existence.

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1 Second, there has been no conduct warranting reversal. Valdez, 124 Nev. at 1188, 196
2 P.3d at 476. Even assuming there was a duty to turn over a CODIS hit generated years after a
3 sexual assault conviction, Petitioner admits that the District Attorney's Office provided the
4 information to the Attorney General's Office, which then passed the information along to
5 Petitioner. Second Petition at 17–18. The State in no way concealed this information. And
6 Petitioner has failed to establish there was any undue delay in the handling of this information,
7 let alone provided any precedent supporting an argument for undue delay. Moreover, as
8 discussed above, Petitioner cannot demonstrate actual innocence necessary to overcome the
9 procedural bars even now that he possesses this information. Accordingly, the length of time
10 it took the information to reach Petitioner is irrelevant.

11 Not only could Petitioner have had T.H.'s rape kit tested at any time, the State had no
12 duty to test evidence in a case where there the jury had already found Petitioner guilty and
13 where his conviction had already been affirmed by the Nevada Supreme Court. And yet, the
14 State did in fact reveal the existence of the CODIS hit as soon as it received that information,
15 which was then disclosed to Petitioner. Petitioner's claim of "prosecutorial misconduct" fails.

16 **e. There was no Confrontation Clause issue.**

17 Petitioner claimed a Confrontation Clause in that he was not allowed to confront T.H.
18 with the information from the CODIS hit. Second Petition at 18. However, this claim—as well
19 as the Brady and prosecutorial misconduct claims—should be considered waived.

20 NRS 34.810(1) reads:

21 The court shall dismiss a petition if the court determines that:

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

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

27 (2) Raised in a direct appeal or a prior petition for a writ of
habeas corpus or postconviction relief.

28 unless the court finds both cause for the failure to present the
grounds and actual prejudice to the petitioner.

1 The Nevada Supreme Court has held that “challenges to the validity of a guilty plea
2 and claims of ineffective assistance of trial and appellate counsel must first be pursued in
3 postconviction proceedings.... [A]ll other claims that are appropriate for a direct appeal must
4 be pursued on direct appeal, or they will be *considered waived in subsequent proceedings.*”
5 Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added)
6 (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). “A
7 court must dismiss a habeas petition if it presents claims that either were or could have been
8 presented in an earlier proceeding, unless the court finds both cause for failing to present the
9 claims earlier or for raising them again and actual prejudice to the petitioner.” Evans v. State,
10 117 Nev. 609, 646–47, 29 P.3d 498, 523 (2001).

11 Because Petitioner’s Confrontation Clause claim does not challenge the validity of a
12 guilty plea nor allege ineffective assistance of counsel, the claim should have been pursued on
13 a direct appeal. NRS 34.810(1); Franklin, 110 Nev. at 752, 877 P.2d at 1059. As discussed
14 *supra*, Petitioner could have had the victim’s rape kit independently tested at an appropriate
15 time. Had he wished to confront the victim with the resulting information, he could have
16 attempted to do so at trial; or, at least, he could have challenged the trial court’s suppression
17 of the evidence on direct appeal. Accordingly, Petitioner cannot demonstrate good cause or
18 prejudice for not bringing this claim at an appropriate time and raising it for the first time only
19 in these habeas proceedings. It is thus waived and summarily dismissed. Id.

20 Nonetheless, it was in a similar context that the Nevada Supreme Court held that the
21 victim’s prior sexual activity was properly excluded at trial. Order of Affirmance, filed
22 October 31, 2012, at 7. Indeed, the Court held that Petitioner’s rights under the Confrontation
23 Clause were not violated when he was not permitted to examine T.H. about her sexual history.
24 Id. For similar reasons, Petitioner would not have been permitted to confront T.H. with
25 evidence from the CODIS hit. Thus, this claim is without merit and does not constitute either
26 good cause or prejudice for overcoming the mandatory procedural bars.

27 Therefore, as Petitioner has failed to demonstrate good cause to overcome the
28 procedural bars, his Petition is time-barred and successive and shall be denied.

ORDER


THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and it is, denied.

DATED this 21 day of February, 2020.


DISTRICT JUDGE
RONALD J. ISRAEL
4-19-197521-a

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

BY


JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144

hjc/SVU

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****June 24, 2010**

10C265506

State of Nevada

vs

Tyrone

James

June 24, 2010**1:30 PM****Initial Arraignment**

**INITIAL
ARRAIGNMENT
Court Clerk: Sandra
Harrell Relief Clerk:
Nicole McDevitt /nm
Reporter/Recorder:
Kiara Schmidt Heard
By: Randall Weed**

HEARD BY:**COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Cox, Bryan A.

Attorney

Miller, James J.

Attorney

Public Defender

Attorney

Tyrone, James

Defendant

JOURNAL ENTRIES

- DEFT. TYRONE ARRAIGNED, PLED NOT GUILTY and INVOKED THE 60-DAY RULE. COURT ORDERED, matter set for trial.

CUSTODY

8/17/10 8:30 AM CALENDAR CALL (DEPT 5)

8/23/10 10:00 AM JURY TRIAL (DEPT 5)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****August 12, 2010**

10C265506

State of Nevada

vs

Tyrone

James

August 12, 2010**8:30 AM****Motion for Discovery****Defendant's Motion
For Discovery****HEARD BY:** Glass, Jackie**COURTROOM:** RJC Courtroom 15A**COURT CLERK:** Sandra Jeter**RECORDER:** Rachelle Hamilton**REPORTER:****PARTIES****PRESENT:**

Cox, Bryan A.

Attorney

Pandelis, Christopher P.

Attorney

Public Defender

Attorney

State of Nevada

Plaintiff

Tyrone, James

Defendant

JOURNAL ENTRIES

- Defendant TYRONE present in custody. Conference at the bench. Mr. Pandelis advised he provided Mr. Cox with alot of the requested discovery this morning. Further, he and his investigator ran a search on LMRS and found some additional police reports which will be provided to Mr. Cox later today. Mr. Cox just received the Preliminary Hearing transcript within the last couple of days and, in light of the last-minute discovery received, he is concerned that he may be ineffective if forced to go to trial on August 23 date; however, defendant invoked. Defendant acknowledged his attorney just received additional discovery but he does not wish to waive his right to a speedy trial. Colloquy. Motion GRANTED as all issues have been resolved. The Court FINDS that it is in the best interests of the defendant to RESET the TRIAL within 30 days as defendant is facing life sentences. Therefore, COURT ORDERED, current trial date VACATED and RESET.

CUSTODY

10C265506

9/14/10 8:30 AM CALENDAR CALL

9/20/10 10:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****August 26, 2010**

10C265506

State of Nevada

vs

Tyrone

James

August 26, 2010**8:30 AM****Motion to Admit Evidence**

**State's Notice of
Motion and Motion
to Admit Evidence of
Other Crimes,
Wrongs or Acts**

HEARD BY: Glass, Jackie**COURTROOM:** RJC Courtroom 15A

COURT CLERK: Sandra Jeter
Billie Jo Craig

RECORDER: Rachelle Hamilton**REPORTER:**

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Deputy District Attorney Pandelis present for the State. Deputy Public Defender Cox present for Defendant. Defendant present.

Counsel requested a Petrocelli Hearing. COURT ORDERED, matter SET for a Petrocelli Hearing. Trial date STANDS.

CUSTODY

9/10/10 1:30 PM PETROCELLI HEARING

bjc

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****September 10, 2010**

10C265506

State of Nevada

vs

Tyrone

James

September 10, 2010 1:30 PM**All Pending Motions****HEARD BY:** Glass, Jackie**COURTROOM:** RJC Courtroom 15A**COURT CLERK:** Sandra Jeter**RECORDER:** Rachelle Hamilton**REPORTER:****PARTIES****PRESENT:**

Cox, Bryan A.

Attorney

Pandelis, Christopher P.

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- Defendant TYRONE present in custody.

DEFENDANT'S MOTION IN LIMINE (currently set for 9/21/10 but heard this date): State's Opposition to Defendant's Motion In Limine to Preclude Lay Opinion Testimony That The Complaining Witness's Behavior Is Consistent With That Of A Victim Of Sexual Abuse FILED IN OPEN COURT. Colloquy and arguments. COURT ORDERED, motion GRANTED and the State is urged to caution their lay witnesses that they are not to give any testimony that the alleged victim's behavior was consistent with a victim of sexual abuse.

Mr. Pandelis advised that, based on the testimony today, there maybe new charges forthcoming in relation to the witness and the forensic interview is currently being scheduled. Mr. Cox acknowledged same and the COURT SO NOTED.

PETROCELLI HEARING: STATE'S NOTICE OF MOTION AND MOTION TO ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR ACTS: Mr. Cox INVOKED the EXCLUSIONARY RULE and the COURT SO ORDERED. Defendant's mother present and left under protest. Nefertia Charles

SWORN and TESTIFIED. During testimony, Mr. Cox objected to proceeding without first receiving the report from the examination done on the witness in 2005 from Southwest Medical. Mr. Pandelis does not have a copy of that report. Arguments. Objection NOTED; request to continue, DENIED. Following the conclusion of the testimony, arguments by counsel. Court stated its FINDINGS and ORDERED, motion GRANTED. Mr. Pandelis requested a copy of the transcript from today. COURT SO ORDERED and the Court Recorder is DIRECTED to have it prepared by the end of next week.

Colloquy regarding the offer. Mr. Pandelis advised he will leave the offer open until Calendar Call. SO ORDERED.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****September 14, 2010**

10C265506 State of Nevada
 vs
 Tyrone James

September 14, 2010 8:30 AM Calendar Call

HEARD BY: Glass, Jackie **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Sandra Jeter

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES

PRESENT:	Cox, Bryan A.	Attorney
	Pandelis, Christopher P.	Attorney
	Public Defender	Attorney
	State of Nevada	Plaintiff
	Tyrone, James	Defendant

JOURNAL ENTRIES

- Defendant TYRONE present in custody. Both counsel announced ready. Mr. Pandelis moved to withdraw the offer advising the defendant rejected it and the COURT SO ORDERED. FURTHER, matter REFERRED to OVERFLOW; 9/20/10 trial date VACATED.

CUSTODY

9/17/10 9:00 AM OVERFLOW (V) - DEPT. XVIII

Chris Pandelis, DDA & Bryan Cox, DPD
8 - 10 witnesses; No OOS
2 - 3 days

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****September 17, 2010**

10C265506

State of Nevada

vs

Tyrone

James

September 17, 2010**9:00 AM****Overflow**

**Overflow (5) | C.
Pandelis / B. Cox | 2-
3 Days | 8-10
Witnesses / No Out
Of State Witnesses**

HEARD BY: Barker, David**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** Sharon Chun**RECORDER:** Richard Kangas**REPORTER:****PARTIES****PRESENT:**

Cox, Bryan A.

Attorney

Pandelis, Christopher P.

Attorney

State of Nevada

Plaintiff

Tyrone, James

Defendant

JOURNAL ENTRIES

- COURT ORDERED, Trial set to start in Dept 7 on 9/20/10 at 9:30 A.M. Mr. Cox requested an afternoon start; COURT DIRECTED counsel to meet with Dept 7 Chambers to reschedule if necessary.

CUSTODY

9/20/10 9:30 AM JURY TRIAL (DEPT 7)

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****September 21, 2010**

10C265506

State of Nevada

vs

Tyrone

James

September 21, 2010 9:00 AM**Motion to Reconsider****HEARD BY:** Bell, Linda Marie**COURTROOM:** RJC Courtroom 15C**COURT CLERK:** Tina Hurd**RECORDER:** Renee Vincent**REPORTER:****PARTIES****PRESENT:****JOURNAL ENTRIES**

- Stacy Kollins, DDA, and Christopher Pandelis, DDA, present for the State of Nevada.

- Bryan Cox, DPD, and Daniel Page, DPD, present on behalf of Deft. James.

Deft. James not present. Court advised she has a couple of concerns. First, Court advised she does not believe it is appropriate practice, and she is not sure what authority she has, to overrule a ruling of another sitting District Court judge. That is the role of the Supreme Court. Second is the motion the Court received does not have any case law or legal citations so it does not provide any legal basis for her to reconsider. Court advised there are rules about when reconsideration is appropriate and those are not cited to. Finally, in reviewing the transcript, while the Court appreciates that Judge Glass probably has a different style, this Court does not believe there is anything in the transcript that shows she had any bias toward Deft. James. Her decision was based on the law. **COURT ORDERED, motion DENIED.** Mr. Cox advised they need to argue the limiting instruction. Court directed counsel to include that in their packet of instructions. Upon inquiry by Ms. Kollins, Court advised her judicial assistant does have the State's instructions. 9:14 a.m.--Off the record.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****September 21, 2010**

10C265506

State of Nevada

vs

Tyrone

James

September 21, 2010 9:30 AM**Jury Trial****HEARD BY:** Bell, Linda Marie**COURTROOM:** RJC Courtroom 15C**COURT CLERK:** Tina Hurd**RECORDER:** Renee Vincent**REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Stacy Kollins, DDA, and Christopher Pandelis, DDA, present for the State of Nevada.

- Bryan Cox, DPD, and Daniel Page, DPD, present with Deft. James.

9:20 A.M.--OUTSIDE THE PRESENCE OF THE JURY, colloquy regarding procedure. Counsel agreed to blind alternates. 9:45 a.m.--Jury venire present. Introductions by Court and Counsel. Clerk called roll of the venire; voir dire oath administered. Jury selection commenced. 12:03 p.m.--Jury venire admonished and excused for lunch, to return at 1:15 p.m. this afternoon.

1:15 P.M.--OUTSIDE THE PRESENCE OF THE JURY, colloquy regarding potential demonstrative exhibits. Mr. Pandelis advised he did not schedule any witnesses today and advised he believes jury selection will take well into the afternoon and then they have openings. Colloquy. 1:20 p.m.--Jury venire present. Jury selection continued. 3:40 p.m.--Fourteen (14) jurors selected and sworn. Court thanked and excused the remaining venire. Court read the opening charge to the Jury. Opening statements by Ms. Collins and Mr. Page. Testimony and exhibits presented. (See worksheets.) 5:02 p.m.--Court admonished the Jury and excused them for the evening, to return at 10:00 a.m. tomorrow morning. OUTSIDE THE PRESENCE OF THE JURY, Ms. Kollins advised she objected to the suggestion of lubricant without foundation and that was sustained, however, Mr. Cox cross-examined on that again. Mr. Cox argued he asked if he investigated regarding lubrication. Ms. Kollins argued, in her mind, lubrication and a lubricated glove are separate items. Now the Jury is

left with the impression that item does not exist or that the child lied about it. Court advised what she has is it was not in the detective's report and he does not recall it being an issue in the case. Court stated she does not believe this was the witness to clear it up. Ms. Kollins advised Detective Tomaino is under her subpoena and she can recall him on a limited issue if necessary. 5:08 p.m.--Court adjourned.

CUSTODY

CONTINUED TO 9-22-10 10:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****September 22, 2010**

10C265506

State of Nevada

vs

Tyrone

James

September 22, 2010 10:00 AM**Jury Trial****HEARD BY:** Bell, Linda Marie**COURTROOM:** RJC Courtroom 15C**COURT CLERK:** Tina Hurd**RECORDER:** Renee Vincent**REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Christopher Pandelis, DDA, and Stacy Kollins, DDA, present for the State of Nevada.

- Bryan Cox, DPD, and Daniel Page, DPD, present with Deft. James.

10:17 A.M.--Court reconvened with all present as before. Further testimony and exhibits presented.

(See worksheets.) 10:47 a.m.--OUTSIDE THE PRESENCE OF THE JURY, Mr. Cox advised the State made an allegation of a penetrating injury by Deft. James and argued he has the right to go into that argument. In the exam, the victim advised she was sexually active with her boyfriend. Ms. Kollins argued she was not active within the preceding 72 hours and argued that is straight Rape Shield law. Mr. Cox argued he was surprised in opening statements that there was a penetrating injury and is surprised by the testimony. Ms. Kollins argued swelling and redness is in the report which is consistent with a penetrating injury. Court read from statute. Further arguments by counsel. COURT ORDERED, the defense may NOT go into the victim's sexual history. 11:01 a.m.--Jury present. Further testimony and exhibits presented. 11:43 a.m.--Jury admonished and excused for lunch, to return at 1:00 p.m. this afternoon. OUTSIDE THE PRESENCE OF THE JURY, Deft. James advised he has written a number of questions down and counsel has refused to ask them and he feels they need to come out for the Jury. Court advised she will let Deft. speak with Mr. Cox about it. 11:45 a.m.--Court adjourned to hear Grand Jury Returns.

1:04 p.m.--Court reconvened with all present as before. Further testimony and exhibits presented.

2:44 p.m.--OUTSIDE THE PRESENCE OF THE JURY, conference at the bench. Court advised, as to the prior ruling, statute states when any part of a writing comes in, an attorney can introduce other parts of that writing. 3:06 p.m.--OUTSIDE PRESENCE, Juror #6-Jennifer Mills brought in. Court stated she understand the juror may know one of the prospective witnesses in the hall. Juror Mills advised it will not affect her ability to be fair and advised she was concerned with the witness being comfortable as she knows her teachers because of a program the witness is in. Court acknowledged. 3:08 p.m.--JURY PRESENT. Further testimony and exhibits presented. Conference at the bench. 4:43 p.m.--Court admonished the Jury and excused them for the evening, to return at 9:30 a.m. tomorrow morning. OUTSIDE THE PRESENCE OF THE JURY, Court made a record that Ms. Charles became very emotional and Ms. Kollins approached her and asked if she was okay and did she need a break. Court advised there was no conversation regarding her testimony. Mr. Cox stated he did not realize the Court could hear and advised he wanted to at least hear what was being said. Court acknowledged. Court ADMONISHED Deft. James regarding his right to not be compelled to testify. Colloquy regarding jury instructions.

CUSTODY

CONTINUED TO: 9-23-10 9:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****September 23, 2010**

10C265506

State of Nevada

vs

Tyrone

James

September 23, 2010 9:30 AM**Jury Trial****HEARD BY:** Bell, Linda Marie**COURTROOM:** RJC Courtroom 15C**COURT CLERK:** Tina Hurd**RECORDER:** Renee Vincent**REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Christopher Pandelis, DDA, and Stacy Kollins, DDA, present for the State of Nevada.

- Bryan Cox, DPD, and Daniel Page, DPD, present with Deft. James.

9:38 A.M.--OUTSIDE THE PRESENCE OF THE JURY, Juror #1-Cedric Griffin brought in and questioned regarding whether he overheard anything this morning about the trial on his way to court, to which the juror indicated he did not. Juror excused to the hallway. Court advised, for the record, Amy Coffee, DPD, had asked Mr. Cox outside how his case was going. She did not realize a juror was around that early. Jury Instructions settled on the record. 9:45 a.m.--Jury present. Further testimony and exhibits presented. (See worksheets.) 10:25 a.m.--OUTSIDE THE PRESENCE OF THE JURY, colloquy regarding verdict forms. 10:42 a.m.- Court reconvened with all present as before. Both sides having rested, Court instructed the Jury. Closing arguments by counsel. Bailiff sworn to take charge of the Jury. Clerk selected the alternates by random drawing:

Alternate #1: Juror #5 - Alisa Price

Alternate #2: Juror #14 - Vernon Zodian, Jr.

12:16 P.M.--Jury retired to deliberate.

2:15 P.M.--OUTSIDE THE PRESENCE OF THE JURY, Court addressed a question from the Jury. Ms. Kollins stated she thinks they are confused about which mom signed the consent to search what. Court and counsel reviewed Exhibit #2. Ms. Kollins stated the consent to search was for the van. The

residence was searched on an oral consent to search. Court advised the response to the Jury will read: "Tahisha Scott signed the consent to search form for the van and not for the apartment at 207 N. Lamb." Response provided to the Jury. Off the record at 2:23 p.m.

3:09 P.M.--Court reconvened. Ms. Kollins and Mr. Page not present. Jury returned with VERDICTS as follow:

GUILTY of COUNTS 1 & 3 - SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 16 (F).

GUILTY of COUNTS 2 & 4 - OPEN OR GROSS LEWDNESS (GM).

GUILTY of COUNT 5 - BATTERY WITH INTENT TO COMMIT A CRIME (F).

Jury polled at request of Mr. Cox; 12 affirmed. Court thanked and excused the Jury. OUTSIDE THE PRESENCE OF THE JURY, COURT ORDERED, matter referred to P&P and set for sentencing; Deft. to REMAIN IN CUSTODY.

CUSTODY

12-1-10 8:45 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****December 01, 2010**

10C265506

State of Nevada

vs

Tyrone

James

December 01, 2010**8:45 AM****Sentencing****HEARD BY:** Bell, Linda Marie**COURTROOM:** RJC Courtroom 15C**COURT CLERK:** Tina Hurd**RECORDER:** Renee Vincent**REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Chris Pandelis, DDA, present for the State of Nevada.

- Bryan Cox, DPD, present with Deft. James.

Mr. Pandelis advised they need an amended PSI report. Mr. Cox advised they probably need 35 days and advised he was notified yesterday they left a count off. Colloquy. COURT ORDERED, matter CONTINUED 45 days. Court requested Mr. Pandelis clearly note what needs to be amended.

CUSTODY**CONTINUED TO:** 1-19-11 8:45 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 19, 2011**

10C265506

State of Nevada

vs

Tyrone

James

January 19, 2011**8:45 AM****Sentencing****HEARD BY:** Bell, Linda Marie**COURTROOM:** RJC Courtroom 15C**COURT CLERK:** Tina Hurd**RECORDER:** Renee Vincent**REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Christopher Pandelis, DDA, present for the State of Nevada.

- Bryan Cox, DPD, present with Deft. James.

Conference at the bench. Mr. Pandelis advised Counts 2 & 4 should be dismissed as they were intended to be lesser-included offenses of Counts 1 & 3. COURT ORDERED, Counts 2 & 4 DISMISSED. DEFT. JAMES ADJUDGED GUILTY OF COUNTS 1 & 3 - SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 16 (F) and COUNT 5 - BATTERY WITH INTENT TO COMMIT A CRIME (F). Matter argued and submitted. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee and \$150.00 DNA Analysis fee including testing to determine genetic markers, Deft. SENTENCED to the Nevada Department of Corrections (NDC) as follows:
Count 1 - to a MAXIMUM term of LIFE with a MINIMUM parole eligibility of TWENTY FIVE (25) YEARS;

Count 3 - to a MAXIMUM term of LIFE with a MINIMUM parole eligibility of TWENTY FIVE (25) YEARS, CONCURRENT with Count 1;

Count 5 - to a MAXIMUM term of LIFE with a MINIMUM parole eligibility of TWO (2) YEARS, CONCURRENT with Counts 1 & 3.

250 DAYS credit for time served. COURT FURTHER ORDERED, a special SENTENCE OF LIFETIME SUPERVISION is imposed to commence upon release from any term of probation, parole or imprisonment and Deft. is to register as a sex offender in accordance with NRS 179D.460 within 48

hours after sentencing or prior to release from custody.

Court advised, before Deft. is eligible for parole, a panel must certify Deft. does not represent a high risk to reoffend based on current provisions at the time.

BOND, if any, EXONERATED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 13, 2013**

10C265506

State of Nevada

vs

Tyrone

James

May 13, 2013**9:00 AM****Petition for Writ of Habeas
Corpus****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Dulce Romea
Tia Everett**RECORDER:** Jill Hawkins**REPORTER:****PARTIES****PRESENT:**Kochevar, Brian J.
State of NevadaAttorney
Plaintiff**JOURNAL ENTRIES**

- Deft not present, in custody at the Nevada Department of Corrections. Court ORDERED, matter CONTINUED one week for appointment of counsel. Drew Christensen, Esq., to be contacted to send someone for the appointment.

NDC

...CONTINUED TO: 5-20-13 9:00 AM

CLERK'S NOTE: A copy of the above minute order was distributed to Tyrone James, ID# 1063523, High Desert State Prison, P.O. Box 650, Indian Springs, NV 89070. / dr

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 20, 2013**

10C265506

State of Nevada

vs

Tyrone

James

May 20, 2013**9:00 AM****Petition for Writ of Habeas
Corpus****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Dulce Romea**RECORDER:** Jill Hawkins**REPORTER:****PARTIES****PRESENT:**

Giordani, John

Attorney

Langford, Robert L

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- Deft not present, in custody at the Nevada Department of Corrections. COURT ORDERED, Mr. Langford CONFIRMED as counsel for Deft. Mr. Langford requested 30 more days to review the file before filing a supplemental brief.

NDC

....CONTINUED TO: 6-17-13 9:00 AM

CLERK'S NOTE: A copy of the above minute order was distributed to: Tyrone James, ID# 1063523, High Desert State Prison, P.O. Box 650, Indian Springs, NV 89070. / dr

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****June 17, 2013**

10C265506

State of Nevada

vs

Tyrone

James

June 17, 2013**9:00 AM****Petition for Writ of Habeas
Corpus****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Alice Jacobson**RECORDER:** Jill Hawkins**REPORTER:****PARTIES****PRESENT:**Langford, Robert L
Rhoades, Kristina A.
State of NevadaAttorney
Attorney
Plaintiff**JOURNAL ENTRIES**

- Mr. Langford indicated he had not received the file from the Public Defender's officer, therefore, requested a continuance. Colloquy regarding briefing schedule. There being no objection. COURT ORDERED, matter CONTINUED; SET for Status Check for stipulated briefing schedule.

7/19/13 9:00 AM PETITION FOR WRIT OF H.C.

7/19/13 9:00 AM STATUS CHECK: BRIEFING SCHEDULE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 23, 2015**

10C265506

State of Nevada

vs

Tyrone

James

March 23, 2015**9:00 AM****Motion**

**Petitioner's Request
for Extension of Time
to File Supplemental
Petition (Seventh
Request)**

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

COURT CLERK: Dulce Romea
Adrienne Theeck
Anntoinette Naumec-Miller

RECORDER: Jill Hawkins**REPORTER:****PARTIES**

PRESENT:	James	, Tyrone	D	Defendant
	Langford, Robert	L		Attorney
	Laurent, Christopher	J		Attorney
	State of Nevada			Plaintiff

JOURNAL ENTRIES

- Deft not present, in custody at the Nevada Department of Corrections.

CONFERENCE AT BENCH. COURT ORDERED, Petitioner's Request for Extension of Time GRANTED and per discussions with counsel a more realistic briefing schedule SET: Deft's supplement DUE September 4, 2015; State's response DUE October 24, 2015; Deft's reply DUE November 4, 2015; argument on the Petition RESET on November 18, 2015.

NDC

11-18-15 9:00 AM PETITION FOR WRIT OF HABEAS CORPUS

CLERK'S NOTE: Following proceedings, COURT ORDERED Deft transported for the November 18, 2015 hearing and State to prepare the transport order. A copy of the above minute order was placed in the attorney folder(s) of the District Attorney, attn. Christopher Laurent, and Robert Langford, Esq., counsel for Deft (Langford McLetchie). / dr 3-24-15

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****April 20, 2015**

10C265506

State of Nevada

vs

Tyrone

James

April 20, 2015**9:00 AM****Motion**

**Defendant's Motion
for Order to Release
Medical Records and
LVMPD Reports**

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

COURT CLERK: Dulce Romea
Phyllis Irby

RECORDER: Jill Hawkins**REPORTER:****PARTIES****PRESENT:**

Laurent, Christopher J
Rashbrook, Matthew J.
State of Nevada

Attorney
Attorney
Plaintiff

JOURNAL ENTRIES

- Deft not present, in custody at the Nevada Department of Corrections.

Mr. Laurent submitted on the pleadings. Mr. Rashbrook advised they did not receive the State's response. State provided a copy. COURT ORDERED, matter CONTINUED for argument in 2 weeks.

NDC

5-4-15 9:00 AM DEFENDANT'S MOTION FOR ORDER TO RELEASE MEDICAL
RECORDS AND LVMPD REPORTS

11-18-15 9:00 AM PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 27, 2015**

10C265506

State of Nevada

vs

Tyrone

James

May 27, 2015**9:00 AM****Motion****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Kristen Brown**RECORDER:** Jill Hawkins**REPORTER:****PARTIES****PRESENT:**

Langford, Robert L

State of Nevada

Sweetin, James R.

Attorney

Plaintiff

Attorney

JOURNAL ENTRIES

- Arguments by counsel. COURT ORDERED, Motion GRANTED. Court stated the CPS/DCFS records are to be provided for an in-camera review prior to them being released to the defense and in addition, if counsel would like the Court to review the medical records prior to them being released to the deft., the Court will but its inclination is to release them subject to a limitation of them being used for any other purpose. Colloquy between Court and counsel as to obtaining the records. Mr. Langford is to prepare the Orders. Court DIRECTED Mr. Sweetin to provide the records to the Court once he, or if he does receive them. COURT FURTHER ORDERED, matter SET for a status check for the in-camera review on its chamber calendar and no parties need to appear.

NDC

6/19/15 3:00 AM STATUS CHECK: IN-CAMERA REVIEW

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****June 19, 2015**

10C265506

State of Nevada

vs

Tyrone

James

June 19, 2015**3:00 AM****Status Check****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Dulce Romea**RECORDER:****REPORTER:****PARTIES****PRESENT:****JOURNAL ENTRIES**

- Court notes no documents submitted. Matter CONTINUED for one week.

6-26-15

CHAMBERS

STATUS CHECK

CLERK'S NOTE: A copy of the above minute order was distributed to parties via electronic mail. / dr

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****June 26, 2015**

10C265506

State of Nevada

vs

Tyrone

James

June 26, 2015**3:00 AM****Status Check****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Dulce Romea**RECORDER:****REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- The Court completed the in camera review of redacted documents 001-021, MARKED as Court's Exhibit 1 and SEALED. (See worksheet.) These records are to be released to the D.A. and Ms. McLetchie contingent upon both maintaining the confidentiality of these records and execution of the Court's receipt. If any additional disclosure of the records is to be made, counsel may seek an additional order of the Court.

CLERK'S NOTE: A copy of the above minute order was distributed to Deputy District Attorney Ryan McDonald and Attorney Margaret McLetchie.

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****July 02, 2015**

10C265506

State of Nevada

vs

Tyrone

James

July 02, 2015**3:00 PM****Minute Order****Minute Order re In
Camera Review of
Records from
LVMPD****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Dulce Romea**RECORDER:****REPORTER:****PARTIES****PRESENT:****JOURNAL ENTRIES**

- The Court completed the in camera review of records from LVMPD 022 - 143, MARKED collectively as Court's Exhibit 2 and SEALED. (See worksheet.) These records are to be RELEASED to the District Attorney and Ms. McLetchie. The release of the following records is contingent upon both maintaining the confidentiality of these records and execution of the Court's receipt given the confidential nature of the victim and/or medical information: 026 - 90. If any additional disclosure of the records is to be made, counsel may seek an additional order of the Court.

CLERK'S NOTE: A copy of the above minute order was distributed to Deputy District Attorney Ryan McDonald and Attorney Margaret McLetchie. / dr 7-2-15

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****September 14, 2015**

10C265506

State of Nevada

vs

Tyrone

James

September 14, 2015 9:00 AM**Motion to Release****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Shelley Boyle**RECORDER:** Jill Hawkins**REPORTER:****PARTIES****PRESENT:**

Burton, Chris

State of Nevada

Attorney

Plaintiff

JOURNAL ENTRIES

- Ms. Charlotte Bible present on behalf of Las Vegas Metropolitan Police Department (LVMPD). Ms. Alina Shell present on behalf of Deft.

Deft. not present. Ms. Shell stated she is seeking to obtain photos taken by the doctor during the assault examination as her expert witness needs these to determine if what the doctors testified to appears in the photos. Colloquy on the photo's actual existence and how they may be obtained. Ms. Bible stated all records have been provided, she contacted the Detective again and he looked through his file; there are no other photos or video of the examination in the LVMPD file. Mr. Burton stated as it was not clear from the motion what was missing; he has not reviewed the State's file. Colloquy regarding the State reviewing its file, obtaining the photos from Sunrise Hospital, the need for a subpoena, and the Court's review of the photo's prior to release if they are received. Colloquy regarding the Supplemental Petition; Court extended the Deft's. response to January 8th, 2016.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****October 28, 2015**

10C265506

State of Nevada

vs

Tyrone

James

October 28, 2015**9:00 AM****Motion to Seal/Redact
Records****Motion and Notice of
Motion to File Under
Seal****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Dulce Romea**RECORDER:** Jill Hawkins**REPORTER:****PARTIES****PRESENT:**

O'Halloran, Rachel

Attorney

Shell, Alina

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- Deft not present. Ms. Shell requested to simply redact personally identifiable information instead of sealing it. COURT ORDERED, request to redact Exhibits 2, 3, 5, and 6 and file the originals under seal GRANTED. Counsel to prepare the order.

With regards to the petition for writ scheduled on November 18, Ms. Shell advised they have provided a courtesy copy of the appendix to the State; there is still the outstanding issue of the subpoena which was served on Sunrise Hospital on the 10th; they have not yet received a response. Court directed counsel to notify the Court if after the return date there is a problem, and ORDERED, status check on the records SET for November 18, 2015, at which time argument on the petition will be reset.

NDC

11-18-15

9:00 AM

STATUS CHECK: RECORDS...PETITION FOR WRIT OF HABEAS

PRINT DATE: 03/26/2020

Page 30 of 43

Minutes Date: June 24, 2010

10C265506

CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****November 02, 2015**

10C265506

State of Nevada

vs

Tyrone

James

November 02, 2015**3:00 PM****Minute Order****Minute Order: In
Camera Review****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Dulce Romea**RECORDER:****REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Court reviewed records submitted for in camera review. Pages numbered 1-13 and CD containing medical records printed and numbered as 14-52 are relevant to Defense's investigation. Therefore, 1-13 are ORDERED released and 14-52 released with an acknowledgment that these records include information protected by HIPPA and counsel acknowledges any disclosure must be limited to the expert who will keep records confidential and any filings to be submitted with an appropriate motion to seal those records. Court RETAINS original of submission as SEALED Court's Exhibit 1. CD containing medical records is available for review and comparison if deemed necessary by counsel. Documents numbered as 1-13 are marked as Court's Exhibit 2. Documents numbered as 14-52 are marked as Court's Exhibit 3 and SEALED.

NDC

CLERK'S NOTE: Exhibits LODGED with the Vault. (See worksheet.) A copy of this minute order was distributed via electronic mail to Deputy District Attorney Ryan MacDonald and to Attorney Margaret McLetchie for the Petitioner. / dr 11-2-15

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****November 18, 2015**

10C265506

State of Nevada

vs

Tyrone

James

November 18, 2015 9:00 AM**All Pending Motions****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Dulce Romea**RECORDER:** Jill Hawkins**REPORTER:****PARTIES**

PRESENT:	James	, Tyrone	D	Defendant
	O'Halloran, Rachel			Attorney
	Shell, Alina			Attorney
	State of Nevada			Plaintiff

JOURNAL ENTRIES

- STATUS CHECK: RECORDS...DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

Ms. Shell advised they have received the in camera submission; she also corresponded by email with their expert, who will have a report by Monday, November 23rd. Ms. Shell requested to file a supplement sometime in January. COURT ORDERED, matter SET for briefing: Defendant's supplement DUE by January 22, 2016; State's response DUE by April 15, 2016; final reply, if any, DUE by May 27, 2016. Hearing on Defendant's Petition SET on June 8, 2016. Deft requested that he be transported for the hearing. Court DIRECTED the State to prepare a transport order.

NDC

6-8-16 9:00 AM

DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 29, 2016**

10C265506

State of Nevada

vs

Tyrone

James

March 29, 2016**10:15 AM****Minute Order****Minute Order: In
Camera Review****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Dulce Romea**RECORDER:****REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Court reviewed records submitted for in camera review on 09/16/15. Pages numbered 1-22 are relevant to Defense's investigation. Therefore, 1-7 ORDERED RELEASED and 8-22 RELEASED with an Acknowledgment that these records include information protected by HIPPA and counsel acknowledges any disclosure must be limited to expert who will keep records confidential and any filings to be submitted with an appropriate motion to seal those records. Court retains original of submission as SEALED Court's Exhibit 1. (See worksheet.) Documents numbered as 1-7 are marked as Court's Exhibit 2. Documents numbered as 8-22 are marked as Court's Exhibit 3 and SEALED.

CLERK'S NOTE: A copy of this minute order was distributed via electronic mail to Deputy District Attorney Ryan MacDonald and to Attorney Alina Shell and Attorney Margaret McLetchie for the Petitioner. / dr 3-29-16

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****June 08, 2016**

10C265506

State of Nevada

vs

Tyrone

James

June 08, 2016**9:00 AM****Petition for Writ of Habeas
Corpus****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Dulce Romea**RECORDER:** Debbie Winn**REPORTER:****PARTIES****PRESENT:**

Demonte, Noreen C.

James , Tyrone D

Shell, Alina

State of Nevada

Attorney

Defendant

Attorney

Plaintiff

JOURNAL ENTRIES

- COURT ORDERED, Petition SET for evidentiary hearing regarding the expert issue on July 25, 2016. State to prepare new transport order for the Deft. Deft to be transported to court for 9:00 AM, but the hearing will be held at the end of that calendar. Counsel to check availability of witness/former counsel and if the July 25th date does not work counsel to notify the Court.

NDC

7-25-16

9:00 AM

DEFENDANT'S PETITION FOR WRIT OF HABEAS
CORPUS...EVIDENTIARY HEARING: EXPERT ISSUE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****July 25, 2016**

10C265506

State of Nevada

vs

Tyrone

James

July 25, 2016**9:00 AM****All Pending Motions****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Dulce Romea**RECORDER:** Jill Hawkins**REPORTER:****PARTIES**

PRESENT:	James	, Tyrone	D	Defendant
	Rogan, Jeffrey			Attorney
	Shell, Alina			Attorney
	State of Nevada			Plaintiff

JOURNAL ENTRIES

- DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS...EVIDENTIARY HEARING:
EXPERT ISSUE

Ms. Shell advised she was contacted last week by Deputy D.A. Stacey Kollins requesting an extension of the hearing; no supplemental briefing is needed. Mr. Rogan advised Ms. Kollins should be appearing for this but if it is simply scheduling he can handle it. Ms. Shell noted that the only date that would work for the parties, including their expert, is October 3rd. Ms. Kollins appeared and confirmed the date. COURT ORDERED, matter CONTINUED to October 3, 2016. State to prepare new order to transport Deft for the October 3rd date.

Copies of records from the Court's in camera review released to Ms. Kollins in open court.
Acknowledgment signed.

NDC

10C265506

10-3-16 9:00 AM DEFENDANT'S PETITION FOR WRIT OF HABEAS
CORPUS...EVIDENTIARY HEARING: EXPERT ISSUE

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****October 03, 2016**

10C265506 State of Nevada
 vs
 Tyrone James

October 03, 2016 9:00 AM All Pending Motions

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

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT: James , Tyrone D Defendant
 Kollins, Stacey L. Attorney
 Shell, Alina Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS...EVIDENTIARY HEARING:
EXPERT ISSUE

Ms. Shell advised she was under the impression the hearing would be today and her expert is out in the hallway; hearing anticipated to last between a half to a full hour. COURT ORDERED, matter TRAILED to the end of the calendar.

Matter RECALLED. Bryan Cox and Joyce Adams, SWORN and TESTIFIED. Matter submitted on the briefing. COURT ORDERED, based upon the information presented in the lengthy, well-documented appendix as well as the testimony , it does not appear that the lack of an actual expert nor the lack of obtaining the photographs were sufficient to cause Mr. Cox to be ineffective; for that reason the Petition is DENIED. State to prepare the order.

Ms. Shell inquired if she can continue as counsel for Deft on appeal. Court noted counsel usually just continue from the petition; to the extent counsel will need an order the Court will sign one after Mr.

10C265506

Drew Christensen's approval.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****July 29, 2019**

10C265506

State of Nevada

vs

Tyrone

James

July 29, 2019**9:00 AM****Petition****HEARD BY:** Cherry, Michael A.**COURTROOM:** RJC Courtroom 15C**COURT CLERK:** Kathy Thomas**RECORDER:** Judy Chappell**REPORTER:****PARTIES****PRESENT:**

Kirschner, Courtney

Attorney

LoGrippe, Frank R.

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- Deft. JAMES not present, in the Nevada Department of Corrections (NDC). Ms. Kirschner from the Federal Public Defender's Office requested the Deft's presence be waived and the genetic markers analysis of the evidence held by the State of Nevada. Colloquy regarding 3 markers taken and one was tested and the Metropolitan Police Department was to preserve them. Ms. Kirschner noted the post-conviction petition was to be transferred from Department 24. Ms. Kirschner was notified from the Attorney General of another match to this case and was told it would come to this Department. (A797521 case in Dept. 24). Ms. Kirschner requested additional time to research this. COURT ORDERED, Matter CONTINUED. Court noted Counsel may notice a hearing if she would like it heard earlier.

11/25/19 9:00 AM POST CONVICTION PETITION REQUESTING A GENETIC MARKER ANALYSIS OF EVIDENCE WITHIN THE POSSESSION FOR CUSTODY OF THE STATE OF NEVADA

CLERK'S NOTE: Case A797521 was to be closed. pursuant to 06/28/19 minute order and under NRS 34.730(3)(b).

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****November 25, 2019**

10C265506 State of Nevada
 vs
 Tyrone James

November 25, 2019 9:00 AM Petition

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Michaela Tapia

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT:	Kirschner, Courtney	Attorney
	State of Nevada	Plaintiff
	Sweetin, James R.	Attorney

JOURNAL ENTRIES

- Deft. not present.

Colloquy. Upon State's request, briefing schedule SET. State's response due by end of business day 12/9/19; Deft's reply due by end of business day 12/23/19. FURTHER, matter CONTINUED.

NDC

CONTINUED TO: 1/3/20 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 13, 2020**

10C265506

State of Nevada

vs

Tyrone

James

January 13, 2020**9:00 AM****Petition****HEARD BY:** Israel, Ronald J.**COURTROOM:** RJC Courtroom 15C**COURT CLERK:** Jill Chambers**RECORDER:** Judy Chappell**REPORTER:****PARTIES****PRESENT:**

Kirschner, Courtney

Attorney

State of Nevada

Plaintiff

Sweetin, James R.

Attorney

JOURNAL ENTRIES

- Court WAIVED the Deft's appearance.

Argument by counsel. COURT ORDERED, PETITION DENIED. Mr. Sweetin to prepare the order.

NDC

STATE'S EXHIBITS

CASE NO. C265506

[illegible]

Court's EXHIBITS

CASE NO. C265506

[illegible]

VAULT EXHIBIT FORM

CASE NO: C265506	HEARING DATE: JUNE 26, 2015 (CHAMBERS)
DEPT. NO: XI	JUDGE: HON. ELIZABETH GONZALEZ
	CLERK: DULCE ROMEA
	RECORDER: N/A
PLAINTIFF: STATE OF NEVADA	JURY FEES: N/A
	COUNSEL FOR PLAINTIFF: DEPUTY DISTRICT ATTY. RYAN MCDONALD
DEFENDANT: TYRONE JAMES	
	COUNSEL FOR DEFENDANT: MARGARET MCLETTCHIE, ESQ.

COURT'S EXHIBIT

Date Offered	Objection	Date Admitted
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[illegible]

VAULT EXHIBIT FORM

CASE NO: C265506	HEARING DATE: JUNE 26, 2015 (CHAMBERS)
DEPT. NO: XI	JUDGE: HON. ELIZABETH GONZALEZ
	CLERK: DULCE ROMEA
	RECORDER: N/A
PLAINTIFF: STATE OF NEVADA	JURY FEES: N/A
	COUNSEL FOR PLAINTIFF: DEPUTY DISTRICT ATTY. RYAN MCDONALD
DEFENDANT: TYRONE JAMES	
	COUNSEL FOR DEFENDANT: MARGARET MCLEITCHIE, ESQ.

COURT'S EXHIBIT		Date Offered	Objection	Date Admitted
1.	REDACTED RECORDS 001 – 021 *** SEALED BY ORDER OF THE COURT ***	<div></div>	<div></div>	6-26-15
2.	LVMPD RECORDS 022 – 143 *** SEALED BY ORDER OF THE COURT ***	<div></div>	<div></div>	7-2-15

AMENDED ON 7/2/15

(GL)

VAULT EXHIBIT FORM

CASE NO: C265506	HEARING DATE: NOVEMBER 2, 2015 – MINUTE ORDER
DEPT. NO: XI	JUDGE : HON. ELIZABETH GONZALEZ
	CLERK: DULCE ROMEA
	RECORDER: JILL HAWKINS
PLAINTIFF: STATE OF NEVADA	JURY FEES: N/A
	COUNSEL FOR THE STATE: DEPUTY DISTRICT ATTORNEY RYAN MACDONALD
DEFENDANT: TYRONE JAMES	
	COUNSEL FOR PETITIONER: MARGARET MCLETCHE, ESQ.

COURT'S EXHIBITS

[illegible]

EXHIBIT(S) LIST

Case No.: **C265506**

Hearing Date:

MARCH 29, 2016 - MINUTE

ORDER: IN CAMERA REVIEW

Dept. No.: **XI**

Judge: *HON. ELIZABETH GONZALEZ*

Court Clerk: *DULCE ROMERA*

Recorder: N/A

Counsel for Plaintiff: DEPUTY D.A. RYAN

vs.

Defendant: **TYRONE JAMES**

MCDONALD

Counsel for Defendant: *MARGARET MCLEITCH;*

ALINA SHELL

HEARING BEFORE THE COURT

COURT'S EXHIBITS

[illegible]

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; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; NOTICE OF
ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT
MINUTES; EXHIBITS LIST

STATE OF NEVADA,

Plaintiff(s),

vs.

TYRONE D. JAMES,

Defendant(s).

Case No: 10C265506

Dept No: XXVIII

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 26 day of March 2020.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk