

IN THE SUPREME COURT OF THE STATE OF NEVADA

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ASHLEY W. BENNETT

Appellant,

vs.

STATE OF NEVADA

Respondent.

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**APPENDIX TO APPELLANT'S OPENING BRIEF – VOLUME TWO**

**Appeal from Dismissal of Petition for Determination of Factual Innocence  
Eighth Judicial District Court, Clark County**

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1 MS. DE LA GARZA: That's fine.

2 THE COURT: There's no question to you  
3 right now.

4 THE WITNESS: All right. Can I sit down?

5 THE COURT: Let me stop for a second. I  
6 have not cleared the courtroom. I don't want to  
7 clear the courtroom, but if there are gasps and  
8 reactions and other inappropriate behavior, then I  
9 will.

10 Everyone here, like I said, I don't  
11 know what side you're on. I don't know who you care  
12 about. But you have to basically sit there and sit  
13 there. No noise. No gestures. No looking at your  
14 defendant or anything else.

15 You just have to sit there and  
16 listen and be quiet and not disrupt the proceedings  
17 or else I will have to clear the court. I don't want  
18 to do that but I will. So please sit there and be  
19 quiet and don't react. And just listen to what's  
20 going on, please.

21 All right. Go ahead.

22 BY MS. DE LA GARZA:

23 Q. Okay. Let me back you up a little bit.

24 You said you knew Face from around  
25 your neighborhood just from seeing him around. Do

1 you see Face here in the courtroom today?

2 A. Sitting right there behind the old boy  
3 with the blue jacket on.

4 Q. So behind the guy with the blue jacket?

5 A. That's right.

6 Q. If I told you that was Mr. Bindrup, what  
7 is Face wearing?

8 MR. KOOT: Could we have that gentleman  
9 remove the paper from the front of his face.

10 THE COURT: The gentleman with the paper  
11 in front of his face --

12 MR. KOOT: I want him to remove the paper  
13 so we could see him. Thank you.

14 THE COURT: All right. She has  
15 identified him.

16 MS. DE LA GARZA: And she knows him as  
17 Face.

18 Q. Did you know Face's real name?

19 A. No.

20 MS. DE LA GARZA: For the record, I'd  
21 like it to reflect the identification of Ashley  
22 Bennett, who is sitting behind Mr. Bindrup and who  
23 Ms. Neal knew even though he had a piece of paper  
24 halfway up his face.

25 MR. BINDRUP: Objection. That's not



87  
1 necessary.

2 THE COURT: The record will reflect the  
3 identification of the defendant, Mr. Bennett.

4 BY MS. DE LA GARZA:

5 Q. Additionally you met with Detective  
6 Bodnar on May 8th in reference to this incident and  
7 you looked at some lineups; is that correct?

8 A. Uh-huh.

9 Q. I'm showing you what has been marked as  
10 State's Exhibit 19. Do you recognize that?

11 A. Yeah.

12 Q. And how do you recognize that?

13 A. That's my handwriting.

14 Q. Okay.

15 A. The date is May 8th. My initials are  
16 P.N. And Face was one of the shooters.

17 Q. All right. So when Face got there in  
18 that parking lot, tell me what you saw him do.

19 A. He came through this way and got to  
20 dumping on Doughboy.

21 Q. Tell me what you mean by dumping on him.

22 A. Shooting.

23 Q. How many times did he shoot; do you know?

24 A. I don't know.

25 Q. Was it more than one time?

Sharon M. Euliano  
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A. Yes.

Q. Was it more than ten times?

A. I don't know.

Q. You just know that it was more than one  
 shot?

A. Uh-huh.

Q. Did you ever see Face's gun?

A. No.

Q. But you know that he had a gun?

A. Yeah.

Q. And you saw him --

MR. BINDRUP: Objection. Leading the  
 witness, your Honor.

THE COURT: Sustained.

BY MS. DE LA GARZA:

Q. Now, you said other people came out of  
 the woodwork. Tell me who else you saw out there.

A. There was like three guys on this side,  
 three or four guys on this side, but there was people  
 outside, people that live there, kids and people  
 outside.

Q. So there were kids outside?

A. Yeah.

Q. And were there also adults?

A. Yes.

1 Q. Okay. But you say that there was about  
2 three guys over here, and I'll just for the record  
3 say that's kind of to the west, basically the  
4 southwest of 2535, right in this area.

5 A. Uh-huh.

6 Q. Now, what made those three guys stand out  
7 to you?

8 A. They were closest to Doughboy.

9 Q. Okay. So the three guys that were  
10 closest to Doughboy, tell me what you know about  
11 them.

12 A. I really don't know nothing about but one  
13 of them and that's Wayne.

14 Q. Okay. Tell me about Wayne. Do you see  
15 Wayne here in the courtroom today?

16 A. Yeah.

17 Q. Would you please point to him and  
18 describe something that he's wearing?

19 A. If she can move her head. Right there.  
20 The one in the jail suit, blue.

21 Q. The blue jail suit?

22 A. Yes.

23 Q. This person you know as Wayne?

24 A. Yes.

25 Q. Do you know him as any other name?

1 A. Wacky-G.

2 Q. Wacky-G.

3 A. Come on. Let quit beating around the  
4 bush.

5 MS. DE LA GARZA: Okay. Would the record  
6 reflect the identification of Mr. Gantt behind  
7 Ms. Wildeveld.

8 THE COURT: Yes.

9 BY MS. DE LA GARZA:

10 Q. Okay. Let's put a G where you saw  
11 Mr. Gantt.

12 MS. WILDEVELD: I'm sorry. I didn't see  
13 that.

14 MS. DE LA GARZA: I'm sorry. Step back  
15 and let her see.

16 Q. And you're saying he was the closest of  
17 these three guys to Doughboy?

18 A. Uh-huh.

19 Q. What did you see Wacky-G do at that time,  
20 Wayne?

21 A. He was shooting at Doughboy right back  
22 here in the parking lot.

23 Q. So he was standing behind the cars there  
24 shooting at Doughboy?

25 A. Uh-huh.

1 Q. Did you happen to see what type of gun he  
2 had?

3 A. I just know that it was silver.

4 Q. It looked silver?

5 A. Uh-huh.

6 Q. Is that all you know about it? Did it  
7 look like a revolver or did it look like the old  
8 western --

9 A. Okay, one of those types of guns.

10 Q. All right. But you saw a gun and it was  
11 silver?

12 A. Yes.

13 Q. Did he shoot just one time?

14 A. Nope.

15 Q. Multipal times?

16 A. Yes.

17 Q. Give me approximately how many numbers  
18 you think he shot.

19 A. I can't tell you how many numbers because  
20 there was just so many guns going off.

21 Q. Okay. But there were multipal gunshots?

22 A. Yes.

23 Q. Now, once you saw Wacky-G shoot at  
24 Doughboy, was that at the same time that Face and  
25 Lailoni were shooting?

1 A. Yes.

2 Q. Did they all come upon and shoot at the  
3 same time?

4 A. Yes.

5 Q. Did you see who shot first?

6 A. I think it was Lailoni.

7 Q. And why do you say that?

8 A. Because that's the first gun I seen.

9 Q. So you saw Lailoni pull out his gun  
10 first?

11 A. Uh-huh.

12 Q. And he started shooting?

13 A. Uh-huh.

14 Q. Now was Wacky-G just shooting at the same  
15 exact time or did there come a time when everybody  
16 else stopped?

17 A. He was the last one.

18 Q. Now tell me what you mean by saying he  
19 was the last one.

20 A. Because Doughboy had already turned and  
21 fell, and Wacky-G shot him in the back. I don't know  
22 if it hit the back or the butt or legs. He was the  
23 last one to shoot.

24 Q. Okay. So was that while everybody else  
25 was shooting or had everybody else stopped?

1 A. Everybody else stopped.

2 Q. And Wacky-G continued shooting?

3 A. Yes.

4 Q. Now when you say that Doughboy had  
5 already turned, had he already fallen?

6 A. No.

7 Q. He had just turned?

8 A. Uh-huh.

9 Q. And is that a yes for the record?

10 A. Yes.

11 Q. And when he turned, which way was he  
12 facing?

13 A. He turned back this way and he fell like  
14 right here.

15 Q. So when he turned, he was facing  
16 Apartment No. 2535?

17 A. Yeah.

18 Q. Now, you said that there were a couple of  
19 other people there with Wacky-G, is that right, in  
20 that vicinity?

21 A. Uh-huh.

22 Q. And you don't know exactly who they were;  
23 is that correct?

24 A. No.

25 Q. But do you see either of those -- do you

1 see those two people here in court?

2 A. I can't be certain. I can't. I thought  
3 about this all last night and before I get up to --  
4 get up here and testify. I can't be certain about  
5 those other two. I can't.

6 Q. Okay. Now let me just back up a little  
7 bit. Did you meet with Detective Bodnar on May 1st?

8 A. Yes.

9 Q. And were you asked to look at some  
10 photos?

11 A. Yes.

12 MR. SULLIVAN: Judge, objection. If  
13 she's going into the photos of the other three, then  
14 I don't want those photos shown to her. We're here  
15 to test her credibility and her ability to recant or  
16 not recant but recall. I don't want those photos  
17 shown to her. She said she doesn't recall the other  
18 three. Now, if she's shown photos of the three that  
19 have already been shown, that's fine. That's only  
20 fair.

21 MR. KOOT: The State's going to impeach  
22 our own witness, Judge.

23 THE COURT: They're allowed to impeach  
24 their own witness. If she's saying she doesn't  
25 remember now but she remembered at some point in the



1 past, they're allowed to bring that up.

2 BY MS. DE LA GARZA:

3 Q. Now, Pamela --

4 THE WITNESS: What's impeach your own  
5 witness?

6 THE COURT: That means they're going to  
7 ask you some questions. You say you don't remember  
8 today. They're going to try and show that at one  
9 point in the past you did make some identification.

10 THE WITNESS: Okay.

11 BY MS. DE LA GARZA:

12 Q. So do you remember meeting with Detective  
13 Bodnar on May 1st and being shown some Polaroids?

14 A. Uh-huh.

15 Q. I'm showing you what has been marked as  
16 State's Exhibits 22 through 24. Do you recognize  
17 these? And I just mean in terms of do you recognize  
18 what is shown.

19 MR. SULLIVAN: Judge, could I see what  
20 the State is showing the witness?

21 THE COURT: Yes.

22 MR. SULLIVAN: Judge, I'm going to object  
23 because each photo has a name at the base of the  
24 photo with an identification. I would also like to  
25 take the witness on voir dire if I could.

1 THE COURT: For what purpose?

2 MR. SULLIVAN: To see if she recognizes  
3 any of the three or any of the others in the  
4 courtroom that she saw eight people shoot or seven.  
5 I'd like to see if she can recognize them if they  
6 stand up, turn around or can recall her recollection  
7 prior to this type of questioning.

8 MS. DE LA GARZA: Judge, she has already  
9 stated she wasn't sure. She couldn't be certain  
10 right now. But I'm asking her to look at the  
11 Polaroids that she looked at on that date and  
12 identify them.

TAL  
seen  
the

13 THE COURT: Could I see them.

14 MR. PIKE: Your Honor, with reference to  
15 that, I respectfully say that is a misstatement of  
16 what she said. She said she thought about it, that  
17 she has had an opportunity to think about whether or  
18 not anybody else that is here in the courtroom,  
19 whether they're charged or not was there. Not  
20 whether she identified anybody, not whether she can't  
21 remember. But her own testimony is now that she has  
22 thought hard about that identification process, she's  
23 not sure of it, has questions in her own mind.

24 So what we need to do at this point  
25 as far as voir dire is go through the identification

1 process with her today and find out how suggestive it  
2 was, find out if she was -- what she was told,  
3 whether or not they were identifying the people for  
4 her and she was confirming what the officers were  
5 saying. And that is what specifically I think  
6 Mr. Sullivan and I desire to do at this point in  
7 time.

8 MS. DE LA GARZA: Judge, we'll get there.  
9 I'm asking her if she was shown some photos and we'll  
10 get to all of that.

11 THE COURT: When she was shown these  
12 photos, did they have names on the bottom of the  
13 photos?

14 MS. DE LA GARZA: He actually was  
15 covering up the names.

16 MR. SULLIVAN: Judge, my last request is  
17 I understand for impeachment purposes. But why  
18 should it be impeached, the charges having been  
19 dismissed against her? She's not being prosecuted on  
20 the crime. The State has agreed to dismiss the  
21 charges against her.

22 THE WITNESS: No, they haven't.

23 MS. De LA GARZA: Judge, I don't think  
24 she's aware of that.

25 MR. SULLIVAN: So what would be the

1 impeachment purposes?

2 THE COURT: What they're trying to point  
3 out, what I'm gathering is at some point she did make  
4 identification. Today she's saying that she can't.  
5 They want to bring out the fact in the past she made  
6 the identification. They're allowed to do that. I'm  
7 going to allow that. You are certainly free when the  
8 time comes to point out the fact that she rethought  
9 her position.

10 MR. PIKE: Specifically, your Honor, as  
11 to the question stated by the witness now to the  
12 prosecuting attorney, were the charges dismissed  
13 against her, yes --

14 THE WITNESS: I didn't know that.

15 MR. PIKE: -- they have been dismissed  
16 against her.

17 MR. KOOT: Didn't I tell you -- one  
18 second. Let me follow up on that. Did you and I  
19 talk before?

20 THE WITNESS: Uh-huh.

21 MR. KOOT: Last Friday, right?

22 THE WITNESS: Uh-huh.

23 MR. KOOT: Did I tell you I was going to  
24 dismiss the charges --

25 THE WITNESS: Shit --

1 MR. KOOT: -- at that time?

2 THE WITNESS: I don't know.

3 MR. KOOT: Do you remember me talking to  
4 you about the charges, that I was going to dismiss  
5 those charges before you even testified?

6 THE WITNESS: Yeah, I think so. I mean I  
7 was -- there was a lot of shit on my mind that day.

8 MR. KOOT: I'm sure that's true. But you  
9 and I talked about that, right?

10 THE WITNESS: Yes, I think we did.

11 MR. KOOT: And just for the record, we  
12 did dismiss those charges. So my question of you,  
13 does that change any of your testimony at all, what  
14 you've given so far --

15 THE WITNESS: No.

16 MR. KOOT: -- as it pertains to Lailoni,  
17 Face or Wacky-G? Does that change your testimony?

18 THE WITNESS: No, it don't change it.  
19 But hold on. You can give me those charges right  
20 back and take me to court.

21 THE COURT: No. Let's not. Let's not.  
22 Ma'am --

23 THE WITNESS: Let's get all this shit  
24 right.

25 THE COURT: -- we're not going to get

1 into a discussion about that here.

2 MR. KOOT: I need to clear up.

3 THE COURT: For the moment I'm going to  
4 let the State proceed.

5 THE WITNESS: No. I want to -- what  
6 he's --

7 THE COURT: There's no question right  
8 now.

9 MR. KOOT: I want to clear this up.

10 THE WITNESS: Yes, please.

11 THE COURT: Ma'am.

12 THE WITNESS: I'm standing right here.  
13 I'll --

14 The BAILIFF: Let the judge speak.

15 THE WITNESS: He said we could talk.

16 THE COURT: Let's have your take your  
17 seat back on the witness stand and we'll make this  
18 formally on the record. We're not just going to have  
19 an informal discussion here.

20 MR. KOOT: Let me clear this up.

21 THE WITNESS: Please do.

22 MR. KOOT: Do you have a question of what  
23 I just said?

24 THE WITNESS: About this man right here  
25 in the blue pinstripe or whatever, he's putting it

1     like since you guys dropped the charges on me, that's  
2     why I'm here testifying. No, that's not so. So he  
3     could get that shit up out of his head. That's not  
4     so.

5                   THE COURT: Ma'am, watch your language,  
6     please.

7                   THE WITNESS: That's not so.

8                   MR. KOOT: Thank you. That was basically  
9     going to be my point. But just so you understand,  
10    just so you understand --

11                  THE WITNESS: I understand. I wanted him  
12    to understand that's not the reason.

13                  MR. KOOT: Right. And why is it that you  
14    are here?

15                  THE WITNESS: Because.

16                  MR. KOOT: Why?

17                  THE WITNESS: It's what's right.

18                  MR. KOOT: Okay.

19                  THE WITNESS: It's what's right. I  
20    could feel their pain.

21                  MR. KOOT: What Ms. De La Garza was going  
22    to do now is -- you had given a statement before to  
23    Detective Bodnar, right?

24                  THE WITNESS: Uh-huh.

25                  MR. KOOT: And in that statement you had

1 mentioned some other gentlemen that -- at that time  
2 when you gave the statement you mentioned some other  
3 gentlemen who had been involved in shooting Doughboy,  
4 right?

5 THE WITNESS: Uh-huh.

6 MR. PIKE: Objection, your Honor.

7 MR. KOOT: Is that correct?

8 MR. PIKE: That's a misstatement of what  
9 she said.

10 MR. KOOT: Wait a second.

11 MR. PIKE: She said they were involved in  
12 the shooting. She said --

13 MR. KOOT: I'm in the process now of  
14 impeaching. I'm going to start the impeachment  
15 process if I might.

16 THE COURT: Well, whose witness is she?  
17 I think it's Ms. De La Garza's witness. She can  
18 take her and do the impeachment.

19 I want defense counsel to look at  
20 these with the names covered up on the pictures. If  
21 they're sufficiently covered, then I'll let her show  
22 her the pictures. If you want more stickies on the  
23 top, then I'll put more stickies on the top. I want  
24 defense counsel to have a chance to review those  
25 pictures and see if the identity or any



1 identification marks on those pictures are adequately  
2 covered up.

3 MR. PIKE: For the record, the names are  
4 covered and are not readable --

5 THE COURT: I'm going to let her --

6 MR. PIKE: -- as long as just the front  
7 is shown.

8 THE COURT: Yes, just the front is to be  
9 shown and, of course, these sticky things are  
10 supposed to stay on there. All right.

11 MS. DE LA GARZA: If I could show her  
12 the front side, I'm going to back up a little bit,  
13 Judge.

14 THE COURT: Okay.

15 BY MS. DE LA GARZA:

16 Q. So, Pam, let me ask you this. You met  
17 with Detective Bodnar on May 1st; is that correct?

18 A. Uh-huh.

19 Q. And at that time he initially showed you  
20 some Polaroid pictures; is that correct?

21 A. Yes.

22 Q. And from those Polaroid pictures you  
23 identified a couple of people that were there at that  
24 shooting; is that correct?

25 A. Uh-huh.

1 Q. Did you state at that time that you  
2 ~~weren't~~ -- what did you tell Detective Bodnar  
3 regarding those people in the Polaroids that you  
4 picked out?

5 A. I think I just told him the names. They  
6 got it on tape.

7 Q. Okay. But I'm going to have to ask you.  
8 So you picked out the other two  
9 people from those Polaroids?

10 A. Uh-huh, yes.

11 Q. And would that have been Wing, and Chewy?  
12 Are those the names you gave him?

13 MR. SULLIVAN: Objection. Leading.

14 MR. BINDRUP: Objection.

15 THE COURT: Sustained.

16 BY MS. DE LA GARZA:

17 Q. Did you give him two other names in  
18 regard to those Polaroids that you picked out?

19 A. Yes.

20 Q. And what were those names?

21 A. Wing and Chew.

22 Q. And do you see them here in the courtroom  
23 today?

24 A. Yeah.

25 Q. Could you point out Wing for us.

1           A.    He's behind the old boy with the glasses  
2 with the blue suit on.

3           Q.    With the blue suit on?

4           A.    Uh-huh.

5           MS. DE LA GARZA:  For the record, Judge,  
6 that is behind Mr. Pike and that's Jermaine Webb if  
7 the record would reflect the identification.

8           THE COURT:  Yeah, the record will reflect  
9 the indication.

10          BY MS. DE LA GARZA:

11           Q.    What about Chewy?  Was it Chewy or Chew?

12           A.    I don't know.  I just said Chew.

13           Q.    You said Chew at the time.  Do you see  
14 Chew here in court today?

15           A.    Yes.

16           Q.    Where is he sitting?

17           A.    Behind the same gentlemen, with the beige  
18 suit own.

19           Q.    With the beige suit on?

20           A.    Uh-huh.

21           MS. DE LA GARZA:  Again, that's behind  
22 Mr. Pike and would the record reflect Louis Matthews.

23           THE COURT:  Yes.

24          BY MS. DE LA GARZA:

25           Q.    And those are the two people that you

1 pointed out on the Polaroids for Detective Bodnar; is  
2 that correct?

3 A. Yes.

4 Q. What did you see Wing do?

5 A. Nothing. I -- there was so many people  
6 out there that -- nothing. I don't think he had a  
7 gun in his hand. I really didn't see him shoot.

8 Q. How long had you known Wing at that time?

9 A. I really didn't know him. Just --

10 MR. BINDRUP: Your Honor, would you  
11 direct the witness to speak louder again.

12 THE COURT: Can you speak into the mic  
13 again, please.

14 BY MS. DE LA GARZA:

15 Q. Okay. You said you really didn't know  
16 him?

17 A. Yeah.

18 Q. But you identified him as Wing?

19 A. Uh-huh.

20 Q. And then you continued to say just seeing  
21 him. Explain that to the court. What do you mean by  
22 just seeing him?

23 A. Around the neighborhood.

24 Q. Okay. So how long had you seen him  
25 around the neighborhood?

1 A. Since I lived on the other side.

2 Q. So how long would that be?

3 A. Like five years.

4 Q. Okay. How did you know him by Wing?

5 A. My daughter.

6 Q. Now let me ask you about Chew. How did  
7 you know him?

8 A. From around the neighborhood.

9 Q. And how long had you been seeing him  
10 around the neighborhood?

11 A. About two or three years.

12 Q. And what kind of contact did you have  
13 with him?

14 A. None.

15 Q. Now when you saw Wing, where was he  
16 initially? If I can ask you to come up to this chart  
17 again. Can we have you use that pen and use a W  
18 where you saw Wing.

19 A. Right here over on the side. Right here.  
20 Right around here.

21 Q. Okay. And you've drawn a couple of kind  
22 of curved lines right there to the east of 2535. And  
23 those curved lines are kind of beside the victim,  
24 Doughboy; is that correct?

25 A. Uh-huh.

1 Q. Now, did you see him actually walking  
2 with Doughboy?

3 A. No, I can't say I seen him walking.

4 Q. But he was walking around the same time  
5 that Doughboy was there or later or earlier?

6 A. Uh-huh, the same time. I could see  
7 little kids walking around there too.

8 Q. Okay. But Wing was there also?

9 A. I think so.

10 Q. All right. Now what about Chew? Where  
11 did you see Chew?

12 A. If he was with these guys, they were  
13 coming up the side of the building, and I can't be  
14 too sure.

15 THE COURT REPORTER: I'm sorry?

16 THE WITNESS: On the side of this  
17 building right here, that's what I said.

18 MR. SULLIVAN: For the record, Judge, she  
19 said, "I can't be too sure."

20 MS. DE LA GARZA: That's correct.

21 Q. Would you put a C where you put that line  
22 for Chew.

23 Okay. You can go ahead and have a  
24 seat.

25 Now Ms. Neal, on May 8th when you

1 were meeting with Detective Bodnar, and you were  
2 shown the series of photo lineups, I'm showing you  
3 what has been marked as State's Exhibit 20. Do you  
4 recognize that?

5 A. Yes.

6 Q. And what is that? Or tell me how you  
7 recognize it.

8 A. My initials, the date and Chewy was one  
9 of the shooters is what I wrote.

10 Q. You did write that on that date; is that  
11 correct?

12 A. Uh-huh.

13 MS. DE LA GARZA: And I'd move for the  
14 admission of State's Exhibit 20.

15 THE COURT: Any objection?

16 MR. PIKE: Could I see that.

17 MR. SULLIVAN: Judge, I'll note a  
18 continuing objection based on the incidents that  
19 occurred earlier.

20 THE COURT: All right. It's overruled.

21 BY MS. DE LA GARZA:

22 Q. And I'm showing you what has been marked  
23 as State's Exhibit 21. Do you recognize that?

24 A. Yes.

25 Q. How do you recognize that?

1           A.    My handwriting, the date and initials,  
2           and he was one of the shooters.

3           Q.    Okay. And who is that that you were  
4           pointing out was one of the shooters in State's  
5           Exhibit 21?

6           A.    That's Wing.

7           MS. DE LA GARZA: I'd move for the  
8           admission of State's Exhibit 21.

9           THE COURT: Any objection?

10          MR. PIKE: Your Honor, in reference to  
11          State's Exhibit 21, if the Court can note an  
12          objection, and subject to argument after the  
13          detective comes into the presentation of this.

14          THE COURT: All right. For now they'll  
15          both be admitted.

16                   (Whereupon, State's Exhibits Nos. 20  
17                   and 21 were admitted into  
18                   evidence.)

19          BY MS. DE LA GARZA:

20          Q.    Now when you met with Detective Bodnar,  
21          Pamela, do you remember telling him that you couldn't  
22          remember Wing's and Chew's faces, but you would know  
23          if you saw them again?

24          A.    Uh-huh.

25          Q.    And, in fact, you did point them out in



1 that Polaroid and you pointed them out in the photo  
2 lineup; is that correct?

3 A. Uh-huh, yes.

4 MS. DE LA GARZA: The Court's indulgence.

5 Q. Ms. Neal, in regard to Wing, isn't it  
6 true that when you met with Detective Bodnar, you  
7 gave a statement?

8 A. Yes.

9 Q. And you said that that was a taped  
10 statement; is that correct?

11 A. Uh-huh.

12 Q. And in that statement didn't you state  
13 that you saw him shoot?

14 A. Yeah.

15 MR. BINDRUP: Objection. Leading.

16 THE COURT: Overruled.

17 BY MS. DE LA GARZA:

18 Q. And in regard again to Chew, isn't it  
19 correct that you told Detective Bodnar that you saw  
20 him shoot?

21 A. Yes.

22 MS. DE LA GARZA: And, Judge, I'm  
23 referring to her statement. It would be page 89.

24 MS. WILDEVELD: Thank you.

25 MS. DE LA GARZA: That's on Chew and

1 Wing. Both of them are on 89.

2 Pass the witness, your Honor.

3

4

CROSS-EXAMINATION

5

BY MR. SULLIVAN:

6

Q. Ms. Neal --

7

A. Yes.

8

9

Q. -- on March 3rd of this year 2001, you were residing at 2529; is that correct?

10

A. Yes.

11

12

Q. And on March 3rd you said you saw my client, Chew; is that correct?

13

A. Yes.

14

15

Q. And you said he was up here with Wing; is that correct?

16

A. Yes.

17

18

Q. At any time did you see Chew shoot a weapon as you recall today under oath?

19

(A.) No.

20

21

22

Q. Were you under oath when the police officers questioned you? Did they say you're under oath?

23

A. No, I don't think so.

24

Q. But you're under oath today, correct?

25

A. Uh-huh.

1 Q. And you understand the penalties of  
2 perjury if you lie?

3 A. Yes, I do.

4 Q. Ms. Neal, do you also have an aka, Pamela  
5 Lisa Davis?

6 A. That's my maiden name.

7 Q. That's your maiden name?

8 A. Uh-huh.

9 Q. Where are you employed at?

10 A. I'm not.

11 Q. What's the highest degree of education  
12 you have? Did you complete high school?

13 A. No.

14 MS. WILDEVELD: Your Honor, I can't hear  
15 the witness.

16 MR. SULLIVAN: She said "No."

17 But if you could speak up, Ms. Neal,  
18 that will save them from re-asking the questions.

19 THE WITNESS: No.

20 BY MR. SULLIVAN:

21 Q. How about do you wear glasses or  
22 contacts?

23 A. No.

24 Q. Have you had your eyes checked in the  
25 last five years by a doctor?

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1 A. No.

2 Q. On March 3rd, that day, had you been  
3 drinking any alcohol within 24 hours?

4 A. Yes.

5 Q. What did you have to drink?

6 A. I probably had a cooler or a Smirnoff  
7 cooler.

8 Q. Did you drink those in the day sometimes?

9 A. Uh-huh.

10 Q. Did you drink the night before on the  
11 2nd?

12 A. I'm not sure.

13 Q. Okay. Do you recall what day of the week  
14 March 3rd was?

15 A. No.

16 Q. So the day Doughboy was killed, you don't  
17 even know what day of the week it was?

18 A. No, I don't.

19 Q. Okay. Had you taken any drugs within 24  
20 hours of the shooting?

21 A. No.

22 Q. How about medication?

23 A. No.

24 Q. Now you've been arrested before, right?

25 A. Yes.

1 Q. What were you arrested for? What was the  
2 charge?

3 A. What arrest you want?

4 Q. The one you've got.

5 A. Traffic tickets.

6 MR. KOOT: Your Honor, we don't mind a  
7 little discovery here, but we're objecting simply  
8 because it's not admissible and relevant. With our  
9 silence we don't want counsel to believe that this  
10 testimony that's being published that we're not  
11 objecting to this.

12 MR. SULLIVAN: Judge, I'll save counsel a  
13 lot of time.

14 MR. KOOT: I don't mind a little  
15 discovery here. I just want to make sure that the  
16 objection remains on the record for the future.

17 THE COURT: All right.

18 MR. KOOT: Thank you.

19 BY MR. SULLIVAN:

20 Q. Ms. Neal, what were you most recently  
21 arrested for and charged with?

22 A. Attempted murder.

23 Q. Attempt murder?

24 A. Uh-huh.

25 Q. Who were you charged with attempting to

1 murder?

2 A. I got the paper in my purse. I don't  
3 know the name by heart.

4 Q. What date was that?

5 A. April 15th.

6 Q. Okay. Now this incident occurred on  
7 March 3rd, correct?

8 A. Uh-huh.

9 Q. Did you give the police any statements on  
10 March 3rd that you saw these individuals in the area?

11 A. No.

12 Q. Okay. In fact, who and when initiated  
13 the contact with you regarding this murder of  
14 Doughboy?

15 A. I did.

16 Q. You did?

17 A. Yes, I did.

18 Q. And who did you call and when?

19 A. My cousin's girlfriend, the detectives  
20 wanted to talk to her, and she wanted me to go down  
21 there with her.

22 Q. When was that?

23 A. The 1st.

24 Q. The 1st of what?

25 A. May 1st.

1 Q. Okay. After your April 15th attempt  
2 murder case?

3 A. Uh-huh.

4 Q. Prior to this date of Doughboy's death,  
5 did you know my client?

6 A. No.

7 Q. Okay.

8 MR. KOOT: His client, I just need to  
9 know who the client is.

10 BY MR. SULLIVAN:

11 Q. Do you know who I represent, sitting  
12 there?

13 A. You just said Chew; didn't you?

14 Q. That's right.

15 MR. KOOT: Okay. Thank you.

16 THE COURT: And Chew is Mr. Matthews; is  
17 that right?

18 MR. SULLIVAN: That's correct, your  
19 Honor.

20 THE COURT: All right.

21 BY MR. SULLIVAN:

22 Q. On the date of this shooting can you tell  
23 me what my client was wearing when Doughboy was shot?

24 A. No.

25 Q. Do you know if he had on gloves?

1 A. No.

2 Q. Did you notice anything on his hands at  
3 all?

4 A. (Nodding negatively.)

5 Q. No?

6 A. No.

7 Q. Okay. Could you see his hands?

8 A. No.

9 Q. Could you see his body and person, his  
10 face?

11 A. There was so much going on, I wasn't  
12 looking. I can't really say.

13 Q. When you were questioned by the  
14 detectives about Chew -- well, strike that.

15 When you were first questioned  
16 about this murder of Doughboy, isn't it true you  
17 mentioned three names right off the top of your head,  
18 Lailoni, Wacky-G and --

19 A. And Face.

20 Q. -- and Face?

21 A. Uh-huh.

22 Q. At that time you didn't say Chew or Wing  
23 or any other individual here today; did you?

24 A. No.

25 Q. And then the tape recorded statement went



1 on for quite a while, correct?

2 A. Uh-huh.

3 Q. The officers were talking to you about a  
4 murder, Eric's murder and a couple other murders?

5 A. Uh-huh.

6 Q. And eventually you came up with the name  
7 Chew off the top of your head or did they suggest  
8 that name to you?

9 A. No, they didn't suggest it.

10 Q. You said you didn't know Chew before  
11 today, before the Doughboy shooting; isn't that  
12 correct?

13 A. I didn't mean it like that. I mean I  
14 know him from the neighborhood. Like personally know  
15 him like I'm talking to you, talking to him like  
16 that, no.

17 Q. Do you know why they call him Chew?

18 A. No.

19 Q. Okay. But your testimony today is that  
20 he did not have a gun; is that correct?

21 A. I don't think so.

22 Q. Okay. Are you sure he was even there?

23 (A.) I sat down and I talked with my momma for  
24 a long time. I wasn't going to come to court at  
25 first. And my momma said if I seen it, I need to do

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IN STATE #122

1 the right thing. Plus she said you also need to tell  
2 the truth and not put people in jail that --

3 Q. That don't belong there?

4 A. -- that don't belong there.

5 Q. And you don't feel he belongs there  
6 because he wasn't a part of the shooting, correct?

7 A. I just can't remember. There was a lot  
8 of people outside.

9 Q. Do you go by a nickname, Kookiedoo  
10 (phonetic)?

11 A. Yes.

12 Q. You have a cousin named Eric Bass; is  
13 that correct?

14 A. Yes.

15 Q. Eric was killed?

16 A. Yeah.

17 Q. Was Eric associated with any type of  
18 gang?

19 A. Do you mean was he in one?

20 Q. Yes.

21 A. No.

22 Q. Do you feel a gang is responsible for  
23 Eric's death?

24 A. I don't know.

25 Q. Do you feel that GPK is responsible for

1 his death?

2 A. I don't know.

3 Q. You know the Gerson Park Kingmen, right?

4 A. (Nodding affirmatively.)

5 Q. At one point did you think they killed  
6 Eric Bass?

7 MR. KOOT: Before counsel asked, the  
8 witness shook her head in the affirmative but we  
9 didn't get a verbal response for the court reporter,  
10 so I just need a verbal response.

11 THE WITNESS: What was the question?

12 BY MR. SULLIVAN:

13 Q. Did you ever think that the GPK was  
14 responsible for Eric's death?

15 A. Yes.

16 Q. You did, correct?

17 A. Yes, I did.

18 MR. SULLIVAN: Thanks, counsel. Sorry  
19 about that.

20 Q. Now you're familiar with the Rolling 60s;  
21 isn't that true?

22 A. Yes.

23 Q. And, in fact, your cousin Ronnie Harvey  
24 is a Rolling 60; isn't he?

25 A. Yes.

1 Q. And Doughboy was a Rolling 60; wasn't he?

2 A. Yes.

3 Q. Do you know if these gentlemen are  
4 associated with the GPK?

5 MR. KOOT: Are we referring to now,  
6 "these gentlemen" all the --

7 MR. SULLIVAN: That's correct.

8 THE COURT: The defendants.

9 MR. SULLIVAN: The defendants.

10 THE WITNESS: I don't know if all of them  
11 are.

12 BY MR. SULLIVAN:

13 Q. What are your thoughts? Most of them  
14 though are GPK; aren't they?

15 A. Yeah.

16 MR. BINDRUP: Objection to what her  
17 thoughts might be.

18 THE COURT: Sustained.

19 BY MR. SULLIVAN:

20 Q. When you saw Doughboy get shot, at any  
21 time did you see anybody else trade guns or pass guns  
22 or shoot a different gun?

23 A. No.

24 Q. Okay. Could you hear of anybody speaking  
25 down there?

1 A. No.

2 Q. You only saw actions, correct?

3 A. That's it.

4 Q. How far would you say you were from  
5 Doughboy when he was actually shot?

6 A. I was on my balcony in front of my door.

7 Q. He was shot down here. Can you  
8 approximate for the Court how far that would be in  
9 feet?

10 A. No.

11 Q. Do you know 3 feet is a yard?

12 A. Is it?

13 Q. Yeah.

14 A. Well, just I was on my balcony, and he  
15 was in the grass. Now you decipher that.

16 Q. Well, I don't live there.

17 MR. KOOT: Your Honor, I object to the  
18 argumentative --

19 THE WITNESS: I was telling you where I  
20 was standing and telling you where he was at.

21 THE COURT: Sustained.

22 BY MR. SULLIVAN:

23 Q. Were you frightened once you heard the  
24 gunshots?

25 A. Yes.

1 Q. You were very frightened, in fact;  
2 weren't you?

3 A. Yes.

4 Q. It shook you up?

5 A. It shook my babies up.

6 Q. Did you run in the house to check on your  
7 babies?

8 A. Sure did.

9 Q. Is it fair to say you didn't get a long  
10 look at these gentlemen shooting? Did you stand  
11 there and watch the whole shooting?

12 A. Yeah.

13 MS. WILDEVELD: I'm sorry. I didn't hear  
14 the response.

15 THE WITNESS: Yes.

16 BY MR. SULLIVAN:

17 Q. How long would you say you think you saw  
18 Face? How many seconds if you had to count in your  
19 mind that you saw Face shooting?

20 A. Maybe ten.

21 Q. I'm sorry?

22 A. Ten, maybe ten.

23 Q. How about Lailoni, how many seconds did  
24 you see him?

25 A. Maybe five.

1 Q. Five seconds.

2 How about Wacky-G?

3 A. Ten or 15.

4 Q. Ten or 15 seconds?

5 A. Uh-huh.

6 Q. How about my client, Louis Matthews?

7 A. I didn't see him shooting. I just  
8 can't -- I can't remember.

9 Q. Okay. Other than having your case, your  
10 attempt murder case dismissed today and given  
11 immunity --

12 A. Hold on. We're gonna to stop right  
13 there.

14 Q. No, we're not. I'm asking you a  
15 question.

16 A. I'm going to stop right there because  
17 they didn't give me immunity for this, no. I'm done.  
18 Take me to jail or wherever you want me to go, but  
19 I'm done. Don't question me like that. I mean that  
20 it wasn't that. For me to get off my charges, it  
21 wasn't that.

22 THE COURT: That's all you have to say.  
23 Ma'am, have a seat.

24 THE WITNESS: I'm not testifying no more.

25 THE BAILIFF: Ma'am, the judge asked you

1 to have a seat. You need to please have a seat now.

2 THE COURT: Have a seat there for a  
3 minute.

4 MR. KOOT: Your Honor, could we have a  
5 little recess so I could talk to the witness.

6 THE WITNESS: No. I told the man in the  
7 office. You can't talk to me -- wait. I'm going to  
8 tell you what I saw and that's it.

9 MR. SULLIVAN: Judge, I'll note my  
10 objection to a continuance. We're here to determine  
11 her credibility.

12 THE COURT: Well, she's clearly not  
13 understanding what is going on. First, for the  
14 record --

15 THE WITNESS: No. He said immunity,  
16 Judge. It wasn't that.

17 THE COURT: Okay --

18 THE WITNESS: It wasn't that. That's why  
19 I said leave me my charges. Just give me my charges  
20 because I don't want nobody to think I'm trying to  
21 put them out there to get off on my shit. No, no.  
22 It's not like that.

23 THE COURT: Okay. Just for the record,  
24 it's not an attempt murder case. It's battery with  
25 use of a deadly weapon is the more serious charge.



1 Secondly, what he wants to ask is  
2 what you're saying, he wants to ask if there is any  
3 deal that you made that has caused you to testify  
4 here today.

5 THE WITNESS: No, I didn't make a deal.  
6 That's what he should have said the first time. I  
7 didn't make a deal.

8 MR. SULLIVAN: Thanks for your answer.

9 THE WITNESS: You're welcome.

10 BY MR. SULLIVAN:

11 Q. Have you been promised any money for your  
12 testimony today?

13 A. No.

14 Q. Any other favors of any type?

15 A. Nope.

16 MR. SULLIVAN: I don't have any other  
17 questions, Judge.

18 Thanks witness.

19  
20 CROSS-EXAMINATION

21 BY MR. PIKE:

22 Q. Okay, ma'am. I have a few questions I'd  
23 like to ask you now in reference to --

24 A. Go ahead.

25 Q. Thank you.

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1                   You indicated that when you came  
2 out of your apartment, that's at 2529?

3           A.     Yes.

4           Q.     Is there a balcony that you came out  
5 onto?

6           A.     Yes.

7           Q.     And you looked over here and you saw  
8 Doughboy walking with a group of people. Now, when  
9 Doughboy came around that group of people, then did  
10 that include Chewy and Wing or Chew and Wing or could  
11 it have included Chew and Wing?

12          A.     I can't say if they were with him or he  
13 was with them.

14                 MR. SULLIVAN: Judge, we're still having  
15 a hard time hearing.

16                 THE COURT: Yes. Could you scoot back up  
17 by the microphone.

18 BY MR. PIKE:

19           Q.     Okay. For the record, you said you can't  
20 recall if he was with them or they were with him.

21           A.     Yeah.

22           Q.     About how many people were in this group  
23 that came around?

24          A.     I really can't say because it was a lot  
25 of people outside.

1 Q. And you said you knew an individual that  
2 you know by the name of Wing through your daughter?

3 A. Uh-huh.

4 Q. Is that a yes?

5 A. Yes.

6 Q. I'm sorry. For the record.

7 And you lived in the neighborhood.  
8 Does that mean you lived at the Gerson Park  
9 neighborhood at one point in time in your life?

10 A. Yes.

11 Q. How long ago was that?

12 A. From '85 to '88.

13 Q. '85 to '88, okay.

14 And is that the time that you knew  
15 the person that you've identified as Wing?

16 A. No.

17 Q. Okay. About how old do you believe Wing  
18 to be?

19 A. He's a youngster. I couldn't give you  
20 the approximate age. I just know he should still be  
21 in school.

22 Q. You indicated there were a lot of kids, a  
23 lot of youngsters going around that area with  
24 Doughboy as he was walking around that area?

25 A. (Nodding affirmatively.)

1 Q. Is that yes?

2 A. Yes.

3 Q. Now, as you sit here today and you've  
4 been able to think about this, I assume that you've  
5 probably thought about it an awful lot from the time  
6 that you first saw all of this happen --

7 A. Uh-huh.

8 Q. That's a yes again?

9 A. Yes. Sorry.

10 Q. -- to the time that you talked to the  
11 police and up until today's date?

12 A. Uh-huh.

13 Q. Is that a yes?

14 A. Yes.

15 Q. Okay. And on the record you heard that  
16 the battery charge against you was dismissed so you  
17 know what it is like to be charged with a crime you  
18 didn't commit?

19 A. Uh-huh.

20 Q. Is that a yes?

21 A. Yes.

22 Q. And you didn't commit that battery with a  
23 deadly weapon that you were charged with; did you?

24 A. Never went to trial for it, so I wouldn't  
25 know. I didn't get in front of a jury or nothing, so

1 I don't know.

2 Q. As you sit here today, were you guilty of  
3 it or not guilty of it?

4 A. What I did ain't got nothing to do with  
5 what's going on here.

6 Q. Well, respectfully I understand your  
7 position. I'm just trying to make a record.

8 So my question to you is, Were you  
9 guilty of the battery with a deadly weapon that you  
10 were charged with?

11 MS. DE LA GARZA: Objection as to  
12 relevance, your Honor.

13 THE COURT: Overruled.

14 THE WITNESS: Was I charged? YES

15 BY MR. PIKE:

16 Q. Were you charged? We'll start with that  
17 question.

18 A. Did the police arrest me? Yes. Did I go  
19 to court about it? I went to court one time about  
20 it.

21 Q. In fact, it was dismissed this morning  
22 before you came into court on a motion by Mr. Koot.  
23 You weren't here but that happened this morning.

24 A. Uh-huh.

25 Q. And you understand that now; is that

1 correct?

2 A. Yes.

3 Q. You understand although counsel was  
4 asking about that question about immunity and you  
5 said there's been no agreement --

6 A. No.

7 Q. Okay. In court earlier, for your  
8 information at this point in time, Mr. Koot gave you  
9 immunity and put that on the record. So now  
10 understanding that you have that immunity, were you  
11 guilty of that battery with a deadly weapon or were  
12 you not guilty?

13 (A.) I'm not going to answer that.

14 MR. PIKE: Your Honor, I would request  
15 that Court to direct the witness to answer that  
16 question.

17 (THE WITNESS: He can't make me answer.  
18 I'm not going to say whether I did something or not  
19 in front of all these people. I could be and I could  
20 not be, but I'm not going to say it.

21 MR. KOOT: I don't even see the relevance  
22 of it, Judge.

23 THE WITNESS: The judge can't make me  
24 answer that and neither can you.

25 THE COURT: Hold on.

1 MR. PIKE: It is relevant because if she  
2 was charged with a crime that she didn't commit, and  
3 now that she's had an opportunity to have gone  
4 through what my client is going through for a crime  
5 that he didn't commit, and so she has had now an  
6 opportunity to live through this and she's  
7 understanding. And that's the reason why she's  
8 having second thoughts about this identification  
9 process, the parade of photographs that was given to  
10 her by the North Las Vegas detective, that at this  
11 point in time becomes relevant in reference to how  
12 she perceives and what she told the police at that  
13 point in time.

14 MR. KOOT: Well, I hear a lot of words,  
15 but I still don't see the relevance of it. We're  
16 talking about whether or not there was an inducement  
17 for her testimony. Number one, the charge is  
18 dismissed. If the jury down the road wants to  
19 construe that has an inducement, they may do so.

20 If she had been convicted, that  
21 conviction could be brought out for purposes of  
22 impeachment. I don't see any relevancy and I've  
23 never seen it done in a court of law where a witness  
24 is asked about conduct that they've committed in the  
25 past, specific acts of bad conduct, unless there is



1 some relevance such as in a self defense case. I  
2 just don't see any relevance in this case.

3 THE COURT: I'm going to sustain the  
4 objection.

5 BY MR. PIKE:

6 Q. In reference to this, ma'am, then as you  
7 said when Doughboy came around here he was with a  
8 group of people and they were just being together and  
9 they were kicking it together.

10 A. I didn't say that. You just said that.  
11 I just said he was walking around that corner and  
12 there was some other boys walking around that corner.

13 Q. Okay. That was what I understand your  
14 testimony to be at this point in time, guys were  
15 walking with him. Is that the words you recall  
16 using?

17 A. Yeah.

18 Q. Okay. And there were about three or four  
19 guys with him?

20 A. Uh-huh, yes.

21 Q. Thank you.

22 Now -- and did you see Doughboy  
23 turn as he was being shot? Did you?

24 A. Yes.

25 Q. Did you see somebody else leaving or

1 going this direction that had also been shot?

2 A. That had also been shot?

3 Q. Yes. Anybody that looked like they were  
4 hurt.

5 MS. DE LA GARZA: And, Judge, just for  
6 the record, he's pointing north.

7 THE COURT: North up the sidewalk.

8 BY MR. PIKE:

9 Q. Northeast up the sidewalk where the hash  
10 marks are at.

11 A. No.

12 Q. You didn't see anybody going in that  
13 direction?

14 A. (Nodding negatively.)

15 Q. And again that's a no? You're shaking  
16 your head.

17 A. Yes.

18 Q. Now when Doughboy came to the two Xs here  
19 that you've marked in the front of 2535, who did you  
20 see first go off over to the right direction from  
21 there or towards the east? Was it Chew or Wing?

22 A. I can't say.

23 Q. And did Chew or Wing or both of them  
24 appear to be moving away from that direction because  
25 of the shots?

1 A. I can't say.

2 Q. Did they appear to be moving away from  
3 that direction at the same time that the shots were  
4 being fired?

5 A. I really can't say.

6 Q. As you sit here today and you've had an  
7 opportunity to think about this over time, there's  
8 nothing that you can recall specifically about Chew  
9 or Wing to indicate that they were involved in this  
10 in any way; can you?

11 A. There was a lot of people outside.

12 Q. About how many?

13 A. There was --

14 Q. About 20 or more?

15 A. A lot of kids and adults. No, I can't  
16 tell you how many people. I can't give you a number.  
17 I just know there was a lot of people outside.

18 Q. Okay. And so the answer to my question  
19 then is there's nothing you can identify that they  
20 did directly towards that? You can't remember  
21 anything at this time; can you?

22 A. Yes, I can remember things, some things  
23 but...

24 Q. But in reference to Chew and to Wing, you  
25 can't remember them doing anything that would in your

1 mind indicate they were involved in this at all?

2 A. No.

3 Q. Okay. And Mr. Sullivan asked you if you  
4 had a nickname.

5 A. Yes.

6 Q. And you do have a nickname; isn't that  
7 right?

8 A. Uh-huh.

9 Q. That's a yes?

10 A. Yes.

11 Q. And just because you have a nickname  
12 doesn't mean you're involved in a gang?

13 A. No. My father gave me that nickname.

14 MR. PIKE: Great. No further questions.

15

16 CROSS-EXAMINATION

17 BY MR. SCHIECK:

18 Q. We're almost done, Ms. Neal. There are  
19 only three more of us that have to do this. Thank  
20 you for your patience.

21 Could you come back up to the  
22 diagram. I want to ask you some questions about the  
23 diagram.

24 Now you told us that you were on  
25 your balcony here outside your apartment, which is D;

L40  
=

1 is that correct?

2 A. Yes.

3 Q. Did you stay on the balcony or did you go  
4 down the stairs at all while this was going on?

5 A. I didn't go down the stairs until he was  
6 just laying on the ground.

7 Q. So after the shooting was over you went  
8 down the stairs?

9 A. Uh-huh.

10 Q. Is that a yes?

11 A. Yes.

12 Q. So everything that you observed having to  
13 do with the shooting would have been from actually up  
14 on the balcony and not on the stairwell?

15 A. Yes.

16 Q. And you indicated that you first saw  
17 Doughboy as he's coming around the corner of the  
18 apartment building across from you and there were  
19 some guys with him. Lailoni wasn't one of the guys  
20 that was there with him?

21 A. No.

22 Q. You didn't see Lailoni until later?

23 A. Yes.

24 Q. And you indicated that he came from the  
25 east or from the northeast where you've drawn the L?

1 A. Right here.

2 MR. KOOT: Northwest, counsel.

3 MR. SCHIECK: Okay, northwest.

4 Q. And you indicated that he walked -- was  
5 he walking or running? How was he moving?

6 A. Walking.

7 Q. He was walking. A fast walk? Slow walk?

8 A. A regular walk.

9 Q. Just a regular normal walk.

10 He walked between the two buildings  
11 and then over into the parking lot area?

12 A. Uh-huh.

13 Q. Is that correct?

14 A. Yes.

15 Q. Okay. And it was there while he was in  
16 the parking lot area that he fired the shots?

17 A. Yes.

18 Q. Okay. He didn't fire any shots before he  
19 got there to the parking area?

20 A. No.

21 Q. And you were able to actually see the gun  
22 from your balcony then?

23 A. Yes.

24 Q. And where did he go after the shooting  
25 was over?

1 A. I don't know.

2 Q. And what about the individual that we  
3 have been referring to as Face, where did he first  
4 fire shots?

5 A. Right here.

6 Q. In the same area where Lailoni was at?

7 A. They wasn't standing shoulder to shoulder  
8 if that's what you mean.

9 Q. Okay. How close were they standing to  
10 each other?

11 A. I don't know. I couldn't tell you.

12 Q. Their backs were to you then?

13 A. Yes.

14 Q. And where was Doughboy when the first  
15 shots were fired?

16 A. Right here.

17 Q. Okay. When the first shots were fired  
18 did he move in any direction or did he just stay in  
19 the same spot?

20 A. He turned.

21 Q. He just turned?

22 A. Yes.

23 Q. And then didn't move any more until he  
24 fell down?

25 A. When he turned, he fell.

1 Q. Okay. And how long from the first shot  
2 to the last shot would you say this took?

3 A. I don't know. I wasn't counting seconds,  
4 minutes, none of that.

5 Q. Do you have any estimate?

6 A. No.

7 Q. Was it fast or was it slow?

8 A. I don't know.

9 Q. You identified at least three guns being  
10 used; is that correct?

11 A. Yes.

12 Q. Okay. Were the shots overlapping each  
13 other?

14 A. I don't know. I just heard shots.

15 Q. Could you describe anything that -- you  
16 can go ahead and take a seat.

17 Can you describe anything that any  
18 of the individuals were wearing?

19 A. Nope.

20 Q. So you can't tell us for instance what  
21 Lailoni was wearing?

22 A. Black pants.

23 Q. Short pants or long pants?

24 A. Long pants.

25 Q. Anything else that you recall?



1

A. No.

2

3

Q. What about Face, do you recall what he was wearing?

4

A. No. I real wasn't paying too much attention to their clothes.

6

7

Q. So you wouldn't be able to tell me on anybody else what they were wearing?

8

A. No.

9

10

Q. You said there were a lot of other people out there in the area?

11

A. Yes, there was.

12

Q. You said there were some kids out there?

13

A. Uh-huh.

14

Q. Is that yes?

15

A. Yes.

16

17

Q. Are those kids that live in your neighborhood or live in those apartments?

18

A. Yes.

19

Q. So those were children of your neighbors?

20

A. Yes, I guess.

21

22

Q. You recognize the children as being from your neighborhood?

23

24

A. There was a lot of kids out there. I wasn't looking at each individual child.

25

Q. An you said there were adults out there

1 too --

2 A. Yes.

3 Q. -- that weren't associated with the  
4 shooting, they were just --

5 A. Out.

6 Q. --out?

7 Were those your neighbors also?

8 A. Yes.

9 Q. And who all was out there?

10 A. A lot of people.

11 Q. Okay. Can you name them?

12 A. No, I'm not going to name anybody that  
13 was out there. There was a lot of people outside.  
14 Put it like that.

15 Q. And they were neighbors of yours?

16 A. Could have been. Could have not been.  
17 Could have been just somebody walking through.

18 Q. Well, you said there was a lot of people  
19 out there.

20 A. Yeah.

21 Q. Was there a lot of people walking through  
22 there?

23 A. A lot of people walk through there all  
24 the time. I wasn't trying to see what every  
25 individual person out there was doing. That's what

1 I'm saying. I can't speak on what you're talking  
2 about.

3 Q. But those people would have been  
4 witnesses to the events that transpired; wouldn't  
5 they?

6 A. Yes, they would have.

7 Q. And those people might have  
8 information --

9 A. They probably do.

10 MS. DE LA GARZA: Objection as to  
11 speculation, your Honor.

12 THE COURT: Overruled.

13 BY MR. SCHIECK:

14 Q. Who were the people that were out there?

15 A. I don't know.

16 Q. You don't know a single name of a single  
17 person that was out there?

18 A. If I did -- you didn't hear me the first  
19 time -- I'm not telling you that.

20 Q. Well, let me ask you this. Do you  
21 remember the names --

22 A. I remember a lot of people outside.

23 Q. And do you remember who any of them were?  
24 I'm not asking you who they are. I'm asking you if  
25 you remember who they were.

1 A. Yes, I do.

2 Q. So you know who they are, but you're just  
3 not going to tell us?

4 A. No.

5 Q. And these are people that most likely are  
6 witnesses to what happened?

7 A. They probably were witnesses. I don't  
8 know.

9 Q. These are witnesses that could either  
10 corroborate what you say or perhaps say what you're  
11 saying isn't correct?

12 A. That's true.

13 Q. Okay. What are the names that you know?

14 A. Excuse me.

15 Your Honor, he must didn't hear me.

16 THE COURT: Well, he might have heard  
17 you --

18 THE WITNESS: No. That's what I'm saying  
19 because I'm not going to tell him.

20 THE COURT: He might have heard you but  
21 he's entitled to have you answer the question. If  
22 you know who they are, you need to tell him.

23 MS. DE LA GARZA: I think it's been asked  
24 and answered, your Honor. Objection.

25 MR. KOOT: Is there a reason why you

1 don't want to tell him?

2 THE WITNESS: I'm done, your Honor.

3 MR. KOOT: You don't want to put them in  
4 danger; is that the reason?

5 MR. BINDRUP: Objection. Leading.

6 MR. SCHIECK: I'm still on cross  
7 examination.

8 MR. KOOT: Is that the reason?

9 THE WITNESS: Yes.

10 THE COURT: It's Mr. Schieck's turn. If  
11 she's aware of witnesses --

12 MR. KOOT: Well, Judge, she can't go  
13 putting those people in danger and they would be in  
14 danger. I object to this line of questions because  
15 we all know the reality. This woman has come forward  
16 and she's endangering herself. We know that and she  
17 knows it. And if she start naming witnesses out  
18 there and neighbors, then she's putting them in  
19 jeopardy, and I see no reason to do that. I mean  
20 that is the reality.

21 MR. SCHIECK: The reality is --

22 MR. KOOT: The reality is you're trying  
23 to get this witness to stop testifying so her  
24 testimony will be stricken by this tactic and that's  
25 exactly what's going on --

1 MR. SULLIVAN: I object. That's not what  
2 we're doing.

3 MR. KOOT: -- if we force her to name  
4 names.

5 MR. SULLIVAN: I'll object, that  
6 Mr. Schieck was asking for corroborating witnesses,  
7 that goes directly to the case. It doesn't go to  
8 badgering her or trying to get her not to testify or  
9 not to show up.

10 MR. KOOT: I've been in the courtroom a  
11 few days and I know what you guys are doing. There's  
12 no relevance to it. There's no reason for her to  
13 come forward. The detectives canvased the area. The  
14 people who are willing to testify said it. We have  
15 names of other people that live there. They could go  
16 out and question those witnesses. We can find out  
17 everybody that lived there. They can go out and  
18 question those witnesses. But to make this witness  
19 reveal names of neighbors and put them in jeopardy is  
20 wrong.

21 THE WITNESS: I'm not going to do it  
22 anyway.

23 MR. KOOT: Well, I know you're not going  
24 to do it and I don't blame you for not doing it. And  
25 I object to the line of questioning. Let them ask

1 the detectives.

2 MR. SCHIECK: The detectives weren't eye-  
3 witnesses.

4 MR. KOOT: Well, let him ask the  
5 question, but he's stuck with the answer, which is,  
6 "I ain't saying nothing."

7 MR. SCHIECK: In which case I'd move to  
8 strike her testimony.

9 MR. KOOT: Well, of course. See. Was I  
10 right? Did I fall off the turnip truck yesterday or  
11 was I right about this tactic? That's exactly where  
12 they're going and they're going to get this every  
13 time we have a gang case like this.

14 THE COURT: The rules don't change  
15 because it's a gang case. I understand your  
16 frustration.

17 MR. KOOT: Yes, you know about  
18 frustration. You can weigh the relevance of that  
19 line of inquiry. There are other ways for them to be  
20 able to identify people who live in that  
21 neighborhood.

22 We have statements from about all  
23 of the witnesses that she knows. We have statements  
24 from them. They have those statements. And they  
25 simply said I didn't see anything. When I heard the

1 shots, I ran inside and protected my babies or I  
2 didn't hear anything or I didn't see anything or I  
3 did hear the shooting and I hid. They know that and  
4 they have these statements. Now what are we going to  
5 gain by forcing this witness?

6 THE WITNESS: I'm not going to --

7 MR. KOOT: I know you're not going to do  
8 it.

9 But what would we gain by having  
10 her name the names of her neighbors? Nothing.

11 MR. SCHIECK: Your Honor, for the record,  
12 we have no statements from any other witness. If the  
13 State has statements from other neighbors that say  
14 they saw anything, we would like them.

15 MR. KOOT: Nobody saw nothing just like  
16 the rest of these cases. Nobody sees a dam thing  
17 even though they're out there. But we have the names  
18 of those neighbors and we have those statements.  
19 Yes, we do.

20 MS. WILDEVELD: Your Honor, I don't have  
21 those statements.

22 MR. SCHIECK: Nobody on the defense has  
23 those statements.

24 MR. KOOT: No, no. We have some  
25 handwritten statements. But trust me. Nobody else



1 has come forward.

2 MR. SULLIVAN: Judge, I don't think that  
3 gives the State the right just to convict these guys  
4 and put them in prison because they don't have any  
5 statements or --

6 MR. KOOT: What is the relevance of  
7 this?

8 MR. SULLIVAN: They're eye-witnesses.

9 MR. KOOT: All I'm asking the judge to  
10 do -- you can ask the questions. But they're stuck  
11 with the answers. And I'm objecting to striking her  
12 direct testimony. If you strike it, then I'll ask  
13 for a stay and we'll appeal it.

14 THE COURT: I can't think of any other  
15 case where the defense would ask a witness was anyone  
16 else around who saw what you saw, and that wouldn't  
17 be relevant. It's relevant. The question itself is  
18 seeking relevant information.

19 MR. KOOT: Well, you are one of the only  
20 judges that unfortunately has to preside in this  
21 particular community, you know. You don't get this  
22 downtown very much because we don't get this kind of  
23 case downtown very much.

24 THE COURT: Well, I understand that. You  
25 know, I watch these cases happen. Every night on TV

1 I watch them put up a chart where the murders are and  
2 my courtroom is in the middle of the dot. I  
3 understand that. But to not have the witness answer  
4 a question that seeks relevant information --

5 MR. KOOT: Well, if there was somebody  
6 standing next to her, fine. But how does she know if  
7 anybody witnessed anything? She could give the names  
8 of her neighbors. We know the names of her  
9 neighbors. She wasn't standing up there with anybody  
10 because she's already testified she was by herself.  
11 So how in the heck does she know who witnessed  
12 anything?

13 MS. WILDEVELD: Your Honor, the  
14 preliminary hearing is a discovery process.

15 THE COURT: No, the preliminary hearing  
16 is not a discovery process.

17 MS. WILDEVELD: It's an opportunity where  
18 we could gather discovery. And she is one of the  
19 witnesses who is placing who came first, who did the  
20 shooting, where each person was standing. These  
21 people apparently live in this neighborhood. She was  
22 saying that these people were all there. Obviously  
23 other people who don't live in that area were there  
24 as well, and we need to talk to those people. And if  
25 she has that knowledge, she needs to give us that

1 knowledge.

2 MR. KOOT: She doesn't know who saw what.

3 MR. SULLIVAN: Objection.

4 THE WITNESS: I'm not going to answer  
5 that.

6 BY MR. SCHIECK:

7 Q. Do you recall the names of --

8 A. No, I don't.

9 Q. Which is contrary to what you testified  
10 to a few minutes ago.

11 A. Put it however you want to and leave it  
12 at that. Don't ask me that no more.

13 Q. Well, you were under oath a few moments  
14 ago when you said you did know the names.

15 A. I said I knew the names and I said I was  
16 not going to tell you. I said it in front of the  
17 judge, in front of everybody in here. Don't keep  
18 asking me that because I'm not going to answer it.  
19 Lock me up, whatever you're going to do, but I'm not  
20 going to answer that.

21 MR. SCHIECK: Your Honor, could she be  
22 directed to answer the question.

23 THE COURT: Does the State have any legal  
24 authority? I understand the practical reasons. Does  
25 the State have any legal authority that says that a

1 witness does not have to identify other potential  
2 witnesses because she's concerned about the possible  
3 safety of he or she?

4 MR. KOOT: I don't have any legal  
5 authority for that. I don't know how this witness  
6 knows if anybody else saw it. I don't know if she's  
7 standing on her balcony, was she in a position to see  
8 other people standing on their balcony watching it  
9 and does she know that they saw what she saw? Does  
10 she know that they knew these individuals? I don't  
11 know. I mean, maybe the question is too broad, you  
12 know.

13 Are you aware of -- was anybody  
14 standing next to you?

15 THE WITNESS: No, there was nobody on my  
16 porch.

17 THE COURT: And you are refusing, even if  
18 I direct you to answer the question, you are  
19 refusing?

20 THE WITNESS: Even if you direct me, your  
21 Honor, because I don't know what those other people  
22 saw out there.

23 THE COURT: Okay. That's not the  
24 question. The question is --

25 THE WITNESS: I'm not telling you the

1 names, nobody's name. It's enough I'm in this. I've  
2 got to watch my back, my kids' back. No, I'm not  
3 saying.

4 THE COURT: Even if you go to jail?

5 THE WITNESS: Take me to jail. I've been  
6 putting myself and my family in jeopardy. I don't  
7 need to put no more outsiders in jeopardy. That's  
8 enough for me and my family. But I'm not answering  
9 that question, your Honor.

10 MR. KOOT: Well, and I think that at a  
11 later date, Judge, if there is no other way that we  
12 can find this out. There were other people out  
13 there, for gosh sake's. Let me ask them. Have they  
14 sent an investigator out there? Have they questioned  
15 the witnesses that we've identified? Have they done  
16 that?

17 We've got statements from about two  
18 or three people. We know who all was living in those  
19 apartments. We've got the names of them. Have they  
20 sent their investigators out to check with these  
21 people?

22 MR. BINDRUP: That doesn't matter.

23 MR. KOOT: Let me check the discovery.  
24 I'll find a report.

25 MR. BINDRUP: Mr. Schieck has been --

1 because of her unwillingness to continue to testify  
2 -- moving to strike and I would join in that at this  
3 juncture. The Court needs to rule on that. This  
4 other matter about investigation and everything else  
5 is peripheral.

6 MR. KOOT: Well, because it's a bogus  
7 question.

8 MR. SULLIVAN: Judge, we'd also join in  
9 that motion. I'm not going to bust into a spiel  
10 about the constitution or our rights. But when  
11 you're weighing that in practicality of safety or  
12 eyewitness to what a person did not or did see,  
13 that's not fair. I'm not going to bust into the  
14 constitution or their rights. But you're weighing  
15 their rights of them being incarcerated to Mr. Koot's  
16 feel about safety because this neighborhood is lower  
17 economic, it's different, our rights are different in  
18 this neighborhood --

19 MR. KOOT: No --

20 MR. SULLIVAN: It's a dangerous  
21 neighborhood, that's what he said.

22 MR. KOOT: These witnesses, if there were  
23 other witnesses, Judge, if there were other  
24 witnesses, let's assume that we name -- in fact where  
25 is that little diagram with the names on it? We had

1 a diagram with names on it. The Court's indulgence  
2 one moment.

3 In fact, one of these defendants I  
4 think drew a diagram and put names on them. I'm  
5 looking for that diagram. It might have even been  
6 Mr. Schieck's client.

7 MR. PIKE: Procedurally while that's  
8 going on, I believe --

9 MR. KOOT: Here. Here. Mr. Schieck's  
10 client, the one who started this whole thing, his  
11 client put in on 2531, he puts in the name of Pat, so  
12 he knows of one witness. This is his own client.

13 MR. SCHIECK: It doesn't matter.

14 MR. KOOT: He puts in the name of Floyd  
15 on Apartment 2535. In fact, he says, he describes  
16 three people who were in a position to see him  
17 shooting. That's what he tells the police. Now  
18 here's Mr. Schieck badgering this witness for names  
19 when his own client gives the police three witnesses  
20 out there in the apartment complex who could have  
21 seen him. And Mr. Schieck knows those names. So  
22 what are we badgering this witness for?

23 MR. SULLIVAN: Judge, even if counsel had  
24 40 names and we said you're right, 40 names are  
25 there, and they didn't see anything --

1 MR. KOOT: What I'm saying --

2 MR. SULLIVAN: But she's got two people  
3 that we don't know because she hasn't given the  
4 names. We don't know if those two people didn't see  
5 any one of these guys not present or present.

6 MR. KOOT: Lailoni named three people who  
7 he claimed would have seen him. They've got the  
8 names of those three. They could go out and question  
9 those three people.

10 THE COURT: Well, there may be others.  
11 What I'm going to do today, she has been instructed  
12 to answer. She said she's going to go to jail. I'm  
13 going to hold her in contempt. She's going to be  
14 held in jail. We'll continue this until tomorrow.

15 If the State has any authority as  
16 to why someone should not have to answer a question  
17 about what they saw in the area at the time, I'd be  
18 glad to entertain it. I think it's a relevant  
19 question. I'll entertain any authority to show it's  
20 not a relevant question, but I think it's a relevant  
21 question. I think that she's bound to answer it and  
22 I understand the circumstances.

23 I'm not happy about it either  
24 because all that's going to happen with these cases  
25 is everything that happens in North Las Vegas goes to



1 the grand jury. That's a situation we're creating.

2 MR. KOOT: We don't need to go to the  
3 grand jury.

4 THE COURT: Everything out of North Las  
5 Vegas goes to the grand jury.

6 MR. KOOT: I need to perpetuate this  
7 testimony. I need to perpetuate the testimony and  
8 this tactic of getting a witness to put the finger on  
9 neighbors, people who have already had an opportunity  
10 to come forward, who haven't come forward, who won't  
11 come forward, they've got the names themselves. And  
12 now to have this woman, to put her in this spot for  
13 no gain, there is absolutely no possibility of a  
14 gain. We could get the --

15 THE WITNESS: I'll say it. But I want  
16 the judge to know I'm going to protect myself too.  
17 I'll say it. I'll say the names. Then you could  
18 take me to jail afterwards. But I'll tell who was  
19 out there. They already told me. It was Toy. I  
20 don't know about Pat.

21 THE COURT: If you're willing to answer  
22 the question --

23 THE WITNESS: It was Michelle downstairs.  
24 That's who it was.

25 THE COURT: If you're willing to answer

1 the question, you don't need to go to jail.

2 MR. KOOT: She just did. And they knew  
3 the names. Mr. Schieck's client knew the names.

4 THE COURT: Mr. Schieck, if you want to  
5 proceed with your questioning, then we'll proceed.  
6 She said she'll say the names.

7 MR. KOOT: This tactic, I'm telling  
8 you --

9 MR. PIKE: Your Honor, at this point in  
10 time I want to have it stricken anyway because  
11 throughout this entire witness's testimony, every  
12 time she has been drawn into a corner, Mr. Koot has  
13 taken that opportunity to very loudly educate her as  
14 to what she has to say in order to modify her  
15 testimony so that she can get out of this corner or  
16 that corner.

17 So in reference to all this  
18 educated testimony she's received from the argument  
19 of counsel, I would move that that be stricken from  
20 the record and that the entire testimony of this  
21 witness be stricken also.

22 THE COURT: I'm going to deny that  
23 motion. I don't think that the argument has been  
24 improper to that extent that it would cause that. So  
25 I'm going to deny that.

1 BY MR. SCHIECK:

2 Q. So the three names you gave us were  
3 Toy --

4 A. No, I gave you two.

5 Q. Toy and Pat?

6 A. No, I didn't say Pat. I don't know if  
7 Pat was out there. I said Michelle and Toy.

8 Q. Which are the same names Mr. Koot read  
9 off when he was talking about who might have been out  
10 there?

11 A. I told the police who was out there also.

12 Q. You went down and gave your statement to  
13 the police on May 1st --

14 A. Uh-huh.

15 Q. -- is that correct?

16 A. Yes.

17 Q. And that's like almost two months after  
18 the shooting?

19 A. Yes.

20 Q. When you went down to the police, you  
21 didn't go down by yourself; did you?

22 A. No.

23 Q. You went down with Tammy?

24 A. Yes.

25 Q. And Tammy is your cousin's girlfriend?

1 A. Yes.

2 Q. That would be Eric?

3 A. Yes.

4 Q. And Eric is the one that was shot and  
5 killed?

6 A. Yes.

7 Q. And the one that you say you blame the  
8 Gersons on?

9 A. I never said I blamed them for that.

10 Q. I thought you said, when Mr. Pike was  
11 asking you questions, that you thought that GPK was  
12 involved in that.

13 A. Oh, yes.

14 Q. So two months after witnessing this  
15 shooting, you went down with the girlfriend of your  
16 cousin and jointly gave a statement to the police?  
17 She sat in there while you gave your statement?

18 A. Yes, she did.

19 Q. And when the police had wanted to talk to  
20 Tammy, they wanted to talk to her about Eric's death;  
21 didn't they?

22 A. Yes.

23 Q. Tammy wasn't a witness to anything in  
24 this case?

25 A. No.

1 Q. So they wanted to talk to her about who  
2 might have killed Eric and that's when you went down  
3 with her and talked about who killed Doughboy?

4 A. Yes, I did.

5 Q. And that's when you had this rush of  
6 conscience that you should come forward and tell  
7 this?

8 MR. KOOT: Objection. Argumentative.

9 THE COURT: Sustained.

10 BY MR. SCHIECK:

11 Q. And it was only after your cousin was  
12 killed?

13 A. Yes.

14 Q. And you were trying to get who was  
15 responsible for killing your cousin too; weren't you?

16 A. Yes.

17 Q. And you thought Lailoni was involved in  
18 that; didn't you?

19 A. Yes.

20 Q. You thought it would be nice to involve  
21 him in Doughboy's murder too?

22 A. No, I didn't think it would be nice. I  
23 saw it with my own two eyes.

24 Q. You had your own case that came up on  
25 April 15th, right?

1 A. Yes.

2 Q. There were witnesses to that case too  
3 that saw it with their own two eyes?

4 A. Yes, there was.

5 Q. And those witnesses won't get to come  
6 forward and testify like you do because the State is  
7 dismissing your case.

8 A. I don't have nothing to do with that.  
9 You have to talk to them two people sitting at that  
10 table.

11 Q. The prosecutors?

12 MR. KOOT: Me. Move to strike.

13 MR. SCHIECK: She said two people. I  
14 was trying to identify which two.

15 MR. KOOT: Your Honor, I move to strike.  
16 It's argumentative and it's not relevant. We had  
17 this before.

18 THE COURT: Overruled.

19 BY MR. SCHIECK:

20 Q. Again just so we're clear, other than Toy  
21 and Michelle, you can't give us any other names?

22 A. No.

23 MR. SCHIECK: Thank you. No further  
24 questions.

25 . . .

CROSS-EXAMINATION

BY MS. WILDEVELD:

Q. Ms. Neal, you said numerous times there were lots of people out there including --

A. Yes, ma'am.

Q. There were maybe ten or more?

A. More than ten, more than 20.

Q. More than 30?

A. Probably more than 30. It was a lot of people I saw. I can't give you an exact number.

Q. Are those people who are always around that area?

A. I don't know. But there was a lot of people. I just can't say who was this, who was this, who was this. I don't know.

Q. Do you know most of the people who live in your area?

A. Excuse me?

Q. Do you know most of the people who live in your area?

A. Yeah, in my little area right there, yes.

Q. Did you see a lot of those people out there?

A. Kids.

Q. You saw the little kids out there that

1 live in the area?

2 A. Yes.

3 Q. Do they all live in the apartment  
4 complexes 2535 and 2531, 2529?

5 A. No. They probably vary at what building  
6 they live in. I don't know.

7 Q. They're people who are usually hanging  
8 around right in that circular area in front of your  
9 building?

10 A. Yes.

11 Q. And you saw them all out there that day?

12 A. I don't know. There was a lot people. I  
13 wasn't looking for certain individuals.

14 Q. Now you walked out right when the  
15 shooting started, right?

16 A. Before.

17 Q. So you came out of your building right  
18 before the shooting started?

19 A. Uh-huh.

20 Q. You hadn't descended the stairs yet?

21 A. No.

22 Q. You were still on your balcony?

23 A. Yes.

24 Q. When the shooting occurred, you heard gun  
25 fire right?



1 A. Uh-huh.

2 Q. It was loud?

3 A. Uh-huh.

4 Q. That scared you, right? Were your  
5 kids --

6 A. I wouldn't say it scared me. I live over  
7 there. I hear it all the time. You get used to it  
8 if you live over there.

9 Q. You are a mother, right?

10 A. Uh-huh.

11 Q. So you have maternal instincts?

12 A. Yes.

13 Q. Your first inkling was to go grab your  
14 children, right?

15 A. No. I already told my kids what to do  
16 when they hear gunshots. Hit the floor.

17 Q. You said you heard gunshots and ran to go  
18 see if your kids were okay, right?

19 A. No.

20 Q. You stuck around to watch the gunshots?

21 A. I had already locked my door. I didn't  
22 want to make any sudden moves.

23 Q. So you stayed there and you watched  
24 everything?

25 A. Sure did.

1 Q. Weren't you afraid of them seeing you?

2 A. That's why I didn't make any sudden  
3 moves.

4 Q. Were you dressed?

5 A. Yeah.

6 Q. And you were ready to go out?

7 A. Uh-huh.

8 Q. And you are pretty tall, right?

9 A. Six-two.

10 Q. So you were pretty noticeable, right?

11 A. I don't know. Am I? You're looking at  
12 me. Am I pretty noticeable?

13 Q. I mean you're taller than a lot of women  
14 would be, right?

15 A. I don't know. What's the average height  
16 for a woman?

17 Q. Five-eight.

18 A. I guess so.

19 Q. Did you bend down when you heard the  
20 gunshots in order to not be seen?

21 A. I don't know. No, I don't think so. I  
22 don't think I bent down, no.

23 Q. So if you hear a loud bang, the only  
24 thing you'd do is just stand there like a statue?

25 MR. KOOT: Your Honor, I think the

1 witness -- I think it's getting argumentative.  
2 That's why we're getting argument from the witness.  
3 The questions are argumentative.

4 MS. WILDEVELD: In no way do I want to  
5 argue with the witness.

6 THE COURT: Overruled.

7 BY MS. WILDEVELD:

8 Q. So you were too shocked to move?

9 MR. KOOT: Your Honor, she's explained  
10 herself. She didn't want to make any sudden moves.  
11 She didn't --

12 THE COURT: Let her ask the question.  
13 She's allowed to maybe ask some tough questions.

14 MR. KOOT: Well, they're not tough.  
15 They're argumentative and facetious.

16 THE COURT: Counsel. Counsel.

17 MR. KOOT: I understand the Court's  
18 ruling.

19 THE COURT: Then start following it.  
20 I'm tired.

21 MR. KOOT: Okay. I will.

22 THE COURT: I'm tired of you yelling.

23 Go ahead, counsel.

24 BY MS. WILDEVELD:

25 Q. So you were too shocked to move when you

1 heard the gunshots?

2 A. Yes.

3 Q. Did the other people stay still as well  
4 or was everyone running?

5 A. I don't know. I don't know.

6 Q. From what you saw -- I'm not asking you  
7 to name names or anything. I'm just asking you to  
8 describe the scene that you saw.

9 A. I just seen people running, kids running.

10 Q. Okay. So when people -- when you  
11 started hearing gunshots, everyone started taking  
12 cover?

13 A. I don't know about everyone. I don't  
14 know who ran, who didn't. I seen people running, but  
15 I can't say yeah, everybody right here ran and  
16 everybody right here ran. I don't know.

17 Q. Would it be fair to say there was a  
18 commotion when the gunshots started?

19 A. Yes, a big commotion I saw.

20 Q. So people were running away from the  
21 gunshots or running past that?

22 A. I don't know. I wasn't looking. I  
23 just -- I don't know.

24 Q. Now, not all -- how many people total  
25 did you see with guns out there?

1 A. Three.

2 Q. You saw three total guns?

3 A. (Nodding.)

4 Q. And out of those three total guns, did  
5 they all start shooting at once?

6 A. Yes.

7 Q. So there wasn't like a second and then  
8 the next shot went and then the next shot went?

9 A. No

10 Q. You said you saw Lailoni coming from the  
11 west?

12 A. Where the L's at --

13 Q. Right.

14 A. -- do you see it?

15 Q. Right.

16 A. That's where he came from.

17 Q. I'm just clarifying.

18 A. Okay. I'm just showing you though.

19 Where the L's at, I wrote it up there.

20 Q. All right.

21 A. Okay.

22 Q. So then you have them all meeting in the  
23 center?

24 A. No, I don't have them meeting in the  
25 center. That's where they ended up at.

1 Q. The lines that are drawn on there, they  
2 all meet kind of in the center, right?

3 A. In the parking lot.

4 Q. Okay. So did one person arrive first?

5 (A) I don't know. I wasn't looking to see  
6 who got in the parking lot first. I just know they  
7 were in the parking lot.

8 Q. Okay. But you did see Doughboy walking  
9 around from the east side of the building, right?

10 A. Yes.

11 Q. So you were able to witness where  
12 Doughboy was?

13 A. Uh-huh.

14 Q. And then you were able to witness Lailoni  
15 coming from the west? I mean that's pretty specific;  
16 isn't it?

17 (A) I guess.

18 MR. KOOT: That's argumentative, Judge.  
19 That's the kind of question I'm objecting to. That  
20 is argumentative.

21 MS. WILDEVELD: I'm sorry.

22 THE COURT: Sustained.

23 BY MS. WILDEVELD:

24 (Q) So you could see Doughboy walking down  
25 from the east, right?

1 A. (Nodding affirmatively.)

2 Q. You could see Lailoni coming over from  
3 the west, and you could see Face coming up from the  
4 southwest, right?

5 A. Yes.

6 Q. So if you could see all of that, can you  
7 tell me where -- who got to the middle first?

8 A. I don't know who got to the middle first.  
9 I wasn't trying to see who got to the middle first.

10 Q. When you walked out of your apartment,  
11 which way were you looking?

12 A. Straight ahead into the parking lot.

13 Q. Did you have a car in the parking lot?

14 A. Yes, I did.

15 Q. Where was your car parked?

16 A. C.

17 Q. Okay. So you were focused on C when you  
18 were walking out of your building?

19 A. No, I wasn't looking at my car. I was  
20 looking in the parking lot like I'm looking out here.  
21 Just looking.

22 Q. But you saw Doughboy coming around the  
23 corner with a group of people?

24 A. Uh-huh.

25 Q. You saw one of the people in that group

1 enter into the parking lot, right?

2 A. Uh-huh.

3 Q. Which person was that?

4 A. Wacky-G.

5 Q. How do you know it was Wacky-G?

6 A. I seen him with my eyes. That's how I  
7 know.

8 Q. Were you focusing on Wacky-G or were you  
9 looking at everything in the parking lot?

10 A. I was just looking. I wasn't focusing on  
11 any certain person. Just looking.

12 Q. How do you know Anthony?

13 A. I just know him from the neighborhood.  
14 Even when he was a little kid, a baby, my husband  
15 used to ride four-wheel motorcycles with his dad.

16 Q. So you know Anthony's dad?

17 A. Uh-huh.

18 Q. What's Anthony's dad's name?

19 A. I guess it's the same as his son. I just  
20 called him Master G.

21 Q. But you would know his dad's gang  
22 affiliation then?

23 A. Is his dad in a gang?

24 Q. I don't know; is he?

25 A. You just said it. You said "his dad's



1 gang affiliation."

2 Q. Do you know whether or not his dad is in  
3 a gang?

4 A. I don't know.

5 Q. But you know they have the same name?

6 A. Uh-huh.

7 Q. Can you tell me what Anthony was wearing  
8 that night?

9 A. No.

10 Q. You were looking right at him, right?

11 A. Yes.

12 Q. And you saw it was Anthony?

13 A. Uh-huh.

14 Q. How did you know it was Anthony?

15 A. His face. His face.

16 Q. What did his hair look like?

17 A. I think it was braided. I'm not sure  
18 though.

19 Q. Do you know if he was wearing shorts or  
20 pants?

21 A. I don't know.

22 Q. You said they all three started shooting  
23 at once?

24 A. Uh-huh.

25 Q. How could you tell that?

1 A. By hearing more than one gun.

2 Q. So you couldn't see that; you heard it?

3 A. Uh-huh. I seen guns and I heard guns.

4 Q. When you saw that though it was shocking

5 to you, right?

6 A. Uh-huh.

7 Q. And you were frightened, right?

8 A. Just in shock.

9 Q. Would you say frightened and shocked were

10 the same thing?

11 A. I wasn't frightened, just shocked to see

12 that.

13 Q. Did you know your children whereabouts?

14 A. They were in the house. I had just left

15 them in the house.

16 Q. What kind of gun did you see Anthony

17 shooting?

18 A. A silver gun.

19 Q. It was silver.

20 Do you know the difference between

21 a revolver and an automatic?

22 A. A revolver is like you put the bullets in

23 a little round chamber like that, like a western gun,

24 the old western gun.

25 Q. On direct examination you said it was a

1 revolver?

2 A. Yes.

3 Q. So Anthony had a silver revolver?

4 A. I know it was silver.

5 Q. Do you know what kind of gun it was?

6 A. No, I don't.

7 Q. You said -- on direct examination you  
8 said you heard shots multiple times?

9 A. Uh-huh.

10 Q. Did you count how many times you heard  
11 that gun?

12 A. No.

13 Q. Because that would have been kind of  
14 impossible to do; wouldn't it?

15 A. Yes.

16 Q. And there was a lot guns, you heard more  
17 than one gun going off?

18 A. Uh-huh.

19 Q. And you were looking right at them when  
20 they were shooting?

21 A. Yes.

22 Q. You can't tell me what Anthony was  
23 wearing?

24 A. No.

25 Q. There were cars in the parking lot too?

1 A. Yes.

2 Q. And there were people running all over?

3 A. Not in the parking lot.

4 Q. Is it possible you would have gotten one  
5 of the guys walking with Doughboy and Anthony mixed  
6 up?

7 A. It's possible.

8 Q. It is possible.

9 It's possible that maybe you saw  
10 Anthony back next to 2535 and not in the parking lot?

11 A. Oh, no. Where I said I saw him at,  
12 that's where I saw him at.

13 Q. So he couldn't have been to the right of  
14 2535?

15 A. No.

16 Q. There was a lot going on, so it would be  
17 understandable if there a little mix-up.

18 A. I understand. Do you understand? I  
19 understand what I seen with my eyes.

20 Q. I'm just asking you if it's possible.

21 A. Okay. I'm just telling you that's where  
22 I saw him at. Where I say he was at, that's where he  
23 was at.

24 MS. WILDEVELD: I have nothing further.

25 Thank you.

1 THE WITNESS: You're welcome.

2  
3 CROSS-EXAMINATION

4 BY MR. BINDRUP:

5 Q. Do you have any other names beside  
6 Pamela Neal?

7 THE WITNESS: Is he talking to me?

8 MR. BINDRUP: Yes.

9 THE WITNESS: Could you repeat that,  
10 please.

11 BY MR. BINDRUP:

12 Q. Do you have any other names besides  
13 Pamela Neal?

14 (A) That's the name I go by since 1988, '89.

15 Q. Okay. Is there a reason that the  
16 criminal complaint in your other matter listed you as  
17 Pamela Davis?

18 (A) No. I haven't used that name since 1989.

19 Q. Okay. Your were furnished a copy of your  
20 criminal complaint which charged you with five counts  
21 of conspiracy to committed murder, burglary while in  
22 possession of a deadly weapon, battery with use of a  
23 deadly weapon with substantial bodily harm,  
24 discharging a firearm at or into structure, and  
25 coercion with use of a deadly weapon.

1 A. That's what it says.

2 Q. Okay. And the name on that was Pamela  
3 Davis.

4 A. Uh-huh.

5 Q. Do you have any idea why they charged you  
6 as Pamela Davis?

7 A. No, I don't. I told the police when I  
8 got to the station, I asked them why it was under  
9 Davis.

10 Q. Is it possible you were charged as Pamela  
11 Davis because when you were arrested on that other  
12 charge you lied to the police and said your name was  
13 Pamela Davis?

14 A. No, I didn't. If anything, I told them  
15 the truth, Pamela Neal, and they still didn't change  
16 it.

17 Q. Do you --

18 A. Maybe you just have to go down to  
19 Northtown jail and asked them why they used that  
20 name.

21 Q. But you certainly never used it in the  
22 past?

23 A. Yes, in the past when it was my name. I  
24 got married in '89. I've been using Neal since then.  
25 When they arrested me, Detective Koun, Caan, whatever

1 -- however you pronounce his last name -- said he  
2 had me under Davis. I said my last name is Neal.  
3 That's what he left it as. I don't know anything  
4 beyond that.

5 Q. And I'm not asking for it, but you have a  
6 social security number, correct?

7 A. Yes.

8 Q. Have you ever used more than one social  
9 security number?

10 A. No, same one.

11 Q. You just have one date of birth, correct?

12 A. The day my mother had me.

13 Q. Have you ever used another date of birth?

14 A. Never.

15 Q. During February and March of this year  
16 when you were residing in 2529, what was your  
17 approximate rent per month?

18 A. In February and March of this month?

19 Q. Of this year.

20 A. I mean of this year.

21 Q. February and March of 2001 when you lived  
22 at 2529.

23 A. It was zero.

24 Q. Okay. And was that because --

25 A. I had a baby and I took a leave off my

1 job and I didn't have any income, so they put the  
2 rent as zero.

3 Q. Okay. And that's because HUD paid for  
4 your normal monthly rent, correct?

5 A. Could you speak up. I didn't hear you.

6 Q. You paid no rent in part because HUD paid  
7 for your rent directly to the landlord.

8 A. Yes.

9 MR. KOOT: What does that this have to do  
10 with anything?

11 MR. BINDRUP: You'll see in the next few  
12 questions.

13 The COURT: Well, I'd like to get a clue  
14 now. What's the relevance?

15 MR. BINDRUP: Okay. She indicated yes.

16 Q. On your charge that was 01FN0625X, you  
17 were released on a \$20,000 bail, correct?

18 A. Yes.

19 Q. That was through a Swift bail bond?

20 A. Yes.

21 MR. KOOT: What's the relevance of this,  
22 Judge. I object to the relevance.

23 BY MR. BINDRUP:

24 Q. My next question is: Did you receive the  
25 proceeds to pay for your bond and get released from



1 custody on that charge of yours with the help of  
2 anyone associated with the State or the district  
3 attorney's office?

4 A. No. My mom and dad got me out of jail.

5 Q. I noticed you were escorted to court by  
6 two individuals this morning; is that correct?

7 A. False.

8 Q. You came to court voluntarily on your  
9 own?

10 A. With one individual, yes, and it was  
11 voluntary because I asked them to pick me up.

12 Q. Okay. Between the time that you gave  
13 your statement, which was on May 1st, 2001, did the  
14 State or district attorney's office or any police  
15 representative assist you in finding appropriate  
16 housing for you?

17 A. No.

18 Q. You totally did that on your own?

19 A. Did it on my own.

20 Q. And you received no funds whatsoever from  
21 the district attorney's office or the police  
22 department?

23 A. No.

24 Q. Have you received any funds at all from  
25 Secret Service?

1

A. No.

2

Q. So you're telling me that --

3

THE COURT: Did you mean Secret Service  
4 or Secret Witness?

5

MR. BINDRUP: Secret Witness. I'm sorry.

6

THE WITNESS: No, I didn't receive any  
7 from them either.

8

BY MR. BINDRUP:

9

Q Aren't you expecting because of your  
10 testimony today that they will assist you one way or  
11 the other in the future?

12

A. No.

13

Q. Their dismissing this multiple count  
14 complaint against you you'll agree was a benefit to  
15 you, correct?

16

A. Was it a benefit to me?

17

Q. Was that a benefit to you? You had a  
18 five-count criminal complaint charging you with a  
19 violent offense against an Antonio Luni and a Tanesha  
20 Luni. Was that a benefit to you that your case was  
21 dismissed today?

22

A. I wouldn't call it a benefit. That's  
23 something they did. You have to ask them about that.

24

Q. Would you call it good news for you  
25 today?

1

A. I would call it good news.

2

Q. And the good news came only because you gave your statement on May 1st and you agreed to come in and testify against these individuals today, correct?

3

4

5

6

7

8

9

Q. Did the detective promise you --

10

11

A. No, he did not. He didn't promise me anything.

12

13

14

15

16

Q. Please wait until I finish my question.

Did the detective promise or did he seem to indicate to you that your charge, your April 15th charge would go away if you agreed to proceed and testify against these people?

17

A. No.

18

19

20

Q. So you are telling me that your criminal case that went away today has nothing to do with you testifying today?

21

A. Has nothing to do with it.

22

23

Q. And it has nothing to do with you giving a statement on May 1st of this year?

24

A. Nothing. They didn't ask me about it.

25

I told them about it.

1 Q. And --

2 A. He also made it very clear that me  
3 telling him, that wouldn't get me off on what I was  
4 charged with. Understand? Anything else you want to  
5 know?

6 Q. Yes, and I'll continue.

7 A. Go ahead.

8 Q. Thank you.

9 And your statement on May 1st, 2001  
10 that you gave to the North Las Vegas Police  
11 Department, was that a true and correct statement  
12 that you gave them?

13 A. To the best of my knowledge.

14 Q. And you're telling me you had no other  
15 statements that you gave to them either before or  
16 after that date?

17 A. I don't think so, not that I can recall.  
18 MR. KOOT: Which date was that, counsel?

19 MR. BINDRUP: May 1st, 2001.

20 Q. Do you recall at the end of your  
21 interview the detective making an appointment with  
22 you for the following day at 1:30?

23 A. Oh, yes, that's true.

24 Q. So you did see him another time?

25 A. Not the next day.

1 Q. When after May 1st, 2001 did you meet  
2 with him again?

3 A. I think it was May 8th.

4 Q. Okay. So when he set that appointment  
5 for the next day at 1:30, you didn't go to that?

6 A. No, I didn't.

7 Q. Did you cancel or did they cancel?

8 A. I just didn't go.

9 Q. Do you recall that when he -- do you  
10 recall him giving you a little slip to write down  
11 when the appointment was going to be?

12 A. He might have. I can't remember.

13 Q. Do you remember mentioning that you  
14 thought he was handing you money at that point?

15 A. No.

16 MR. BINDRUP: May I approach the  
17 witness, please.

18 THE WITNESS: Come on up.

19 THE COURT: Yes.

20 BY MR. BINDRUP:

21 Q. I'm showing you -- do you mind looking at  
22 this. I'm showing you what appears to be an  
23 interview of Pamela Neal conducted on May 1st, 2001.  
24 I'm showing you what is marked page 112, which when  
25 the question was asked line 3 on --

1 A. No, I could read it. Let me read that.

2 Q. Would you read what is highlighted on  
3 that page from 3 to 7 and tell me when you're done.

4 A. Yes.

5 Q. Have you finished reading that?

6 A. Yes I did say that.

7 Q. Okay. So you recall then after your  
8 interview that you had told detectives that you  
9 thought they were going to give you money?

10 A. It didn't go like that. It's because he  
11 dug in his pocket and he said, "I've got to give you  
12 something." And he had his money with his cards.  
13 And he took his cards off his money, and I said, "I  
14 thought you were going to give me some money for a  
15 minute." And me and Tammy and him, we all three of  
16 us laughed. He was giving me his card, and I've got  
17 the card right here in my purse.

18 Q. You're telling me that was a joke then  
19 about your suggestion about the money, that you  
20 didn't really expect any money that day?

21 A. Didn't expect anything at all.

22 Q. And you didn't expect any money?

23 A. Didn't expect any money at all.

24 Q. Do you recall telling the detectives on  
25 May 1st that you had court in the morning as well,

1 the next day? That would have been May 2nd.

2 A. That I had court when?

3 Q. Court in the morning.

4 A. No You said I told him that May 1st?

5 Q. All right. That's okay. I'll move on to  
6 the next question?

7 A. No. Let's get back to that one. You  
8 asked that question. Let me answer it.

9 THE COURT: No, if he doesn't want an  
10 answer, you don't have to give an answer. He can  
11 move on.

12 THE WITNESS: That will work.

13 BY MR. BINDRUP:

14 Q. You were asked about any alcohol or drug  
15 use on March 3rd, 2001. During April and March are  
16 you telling me then that other than alcohol, that you  
17 ingested no narcotics or drugs during that time?

18 MR. KOOT: Your Honor, I object.  
19 Relevance.

20 THE COURT: I'll sustain the objection.  
21 That's too far of a time period to be relevant.

22 BY MR. BINDRUP:

23 Q. During the first part of March and more  
24 specifically on --

25 MR. KOOT: That's a compound question.

1 Let's be specific.

2 BY MR. BINDRUP:

3 Q. On March 2nd and March 3rd of 2001, were  
4 you using any controlled substances at all?

5 A. On March 2nd or 3rd?

6 Q. Right.

7 A. No.

8 Q. During that general time period before  
9 the incident occurred, had you ingested any  
10 marijuana?

11 MR. KOOT: Are you talking about the 2nd  
12 or 3rd or the 3rd or 2nd? I object to this. It's  
13 not relevant. It goes too far back to effect her  
14 memory.

15 MR. BINDRUP: During -- the question  
16 being during that time period --

17 THE COURT: I think two or three days  
18 before could still have an effect. I'm going to  
19 allow it to a period two or three days before that,  
20 but that's as far as it goes.

21 BY MR. BINDRUP:

22 Q. Okay. Two or three days before March  
23 3rd, 2001 had you ingested any marijuana?

24 A. No.

25 Q. Any cocaine?



1 A. No, I don't smoke cocaine. I smoke weed.  
2 Don't smoke no cocaine.

3 Q. Okay. So for those three days you didn't  
4 smoke any weed for those particular days?

5 A. Didn't have no money to buy none.

6 Q. Okay. If you -- so marijuana is  
7 something that occasionally you use yourself?

8 A. Yes.

9 Q. And you know that that is a felony  
10 offense in the State of Nevada?

11 MR. KOOT: Objection, your Honor.

12 THE COURT: Sustained.

13 THE WITNESS: If you get caught with it,  
14 it's a felony.

15 BY MR. BINDRUP:

16 Q. Okay. So how many -- you said you had a  
17 cooler. Was that one cooler or two coolers or three  
18 coolers on March 2nd or March 3rd? Do you recall at  
19 all?

20 A. One.

21 Q. And did you drink enough that that would  
22 have affected your perception on that day?

23 A. No.

24 Q. What about when you went to the police  
25 station on May 1st, had you used any -- during that

1 time period up to two or three days before had you  
2 used any either marijuana or alcohol?

3 A. Yeah, alcohol. My dad took me to a bar.

4 Q. On that day, May 1st?

5 A. Oh, no. I don't know what day it was.  
6 It wasn't May 1st.

7 Q. Are you talking about a day or two before  
8 your interview that you had gone to a bar with your  
9 dad?

10 A. No.

11 Q. Well, when are you telling me you went to  
12 a bar with you dad?

13 A. Okay. Ask the question before that. You  
14 said during the time period. What time period were  
15 you talking about?

16 Q. May 1st, 2001 when you gave your  
17 interview at North Las Vegas.

18 A. Did I drink that day?

19 Q. No. And for two or three days before  
20 that date did you do any drinking then?

21 A. No.

22 Q. What about smoking marijuana?

23 A. No.

24 Q. And you didn't use any drugs during that  
25 time period either?

1 A. No.

2 Q. When you went in for the photo lineup on  
3 May 8th and for a few days before then, did you use  
4 any drugs or alcohol?

5 A. No. May 8th they came to my home. I  
6 didn't go down there.

7 Q. Okay. I'm showing you what has been  
8 introduced as State's Exhibits, 19, 20 and 21. And  
9 you pointed out some writing on this such as Lailoni  
10 was one of the shooters.

11 I'm showing you State's Exhibit 18.  
12 Is that your handwriting?

13 A. Yes.

14 Q. I notice on each one of these photo  
15 lineups that your statement is the same, it is so and  
16 so was one of the shooters. Now did the detective  
17 tell you what to say on those?

18 A. No, he didn't.

19 Q. Was it just a coincidence that you happen  
20 to use the same exact wording on each photo lineup  
21 that you happen to observe?

22 A. That's what I wrote.

23 Q. So the detective didn't suggest to you  
24 what to say on those days?

25 A. No.

1 Q. On the criminal complaint that was  
2 dismissed today, did you have an occasion to, after  
3 your arrest, to be interviewed by detectives  
4 concerning the case against Antonio Luni and Tanesha  
5 Luni?

6 A. What do you mean?

7 Q. Were you questioned by police about the  
8 incident what happened on April 15th that led to your  
9 multipal count criminal complaint?

10 A. When I was arrested?

11 Q. Yes. After you were arrested, did you  
12 have an occasion to talk with police about what had  
13 happened on April 15th?

14 A. Yes.

15 Q. And is it accurate to say that you lied  
16 to police about your involvement or told the truth to  
17 them about your involvement?

18 A. I told the truth.

19 Q. Do you recall indicating to the police  
20 that you barged into the house on that day?

21 A. No. I told them I knocked on the door.

22 Q. Do you recall being asked whether or  
23 not --

24 MR. KOOT: Your Honor, I object to the  
25 relevancy of this. She did give a statement. The

1 statement is of record. I don't see the relevance of  
2 the details of that particular case.

3 THE COURT: Sustained.

4 BY MR. BINDRUP:

5 Q. Your testimony today though was that --  
6 I think the last thing you said about it was that you  
7 had nothing to do with it; is that correct?

8 A. I can't remember word for word, but if  
9 that's what it says, that's what I said.

10 Q. You mentioned that Toy and Michelle were  
11 also outside and could have seen this incident on  
12 March 3rd. Do you know Toy's last name?

13 A. Yes.

14 Q. What is it?

15 A. Snyder.

16 Q. Do you know Michelle's last name?

17 A. Wilson.

18 Q. And you're saying there is no other  
19 individuals that you recall seeing out there that you  
20 could identify?

21 A. I don't think so.

22 Q. Are you not mentioning other individuals  
23 because you don't want them involved in this case?  
24 Is that one of the reasons?

25 A. I don't have nothing to do with their

1 involvement in this case. I'm not trying to put them  
2 in it. I told you who I seen outside.

3 I finally answered that question  
4 for him. Didn't I, Judge?

5 All right. I answered it. I told  
6 you. That's all I'm telling you because you asked me  
7 that question and I answered that.

8 Q. You talked about an individual by the  
9 name of Face. Do you know his real name?

10 A. No.

11 Q. You indicated you had found out about his  
12 name before; is that true?

13 A. I got his name in the paper.

14 Q. So what do you think his name is?

15 A. If what the paper states is true, his  
16 name is Ashley Bennett.

17 Q. Okay. You said that you met or first saw  
18 Mr. Bennett about nine years ago?

19 A. Yes, about eight years.

20 Q. If you had said to the police that you  
21 had only met him several years ago, which would be  
22 the correct statement?

23 A. Could you say that again, please.

24 Q. If you had told the police -- on the  
25 other hand you said today you knew him about nine

1 years ago. If you had told the police that you had  
2 known him just for several years, which statement  
3 would be more correct?

4 MR. MOOT: Your Honor, that's misleading.  
5 Several could be eight or nine.

6 THE WITNESS: Yes.

7 THE COURT: Let's let her answer the  
8 question.

9 MR. MOOT: Well, what I'm saying is it's  
10 the answer --

11 THE WITNESS: He's saying nine or several  
12 years. What's the difference, several or nine? Nine  
13 is several.

14 BY MR. BINDERUP:

15 (Q) Do you recall ever telling the police you  
16 only knew him for an approximate four-year period?

17 (A) Yes.

18 Q. So my question is now, which is true,  
19 four years or nine years?

20 (A) Nine.

21 Q. And when you were out on your balcony, do  
22 you know the approximate time of day?

23 (A) It was after 3:30. I can say that  
24 because I pick my son up at 3:20 and bring him back  
25 to the house, and that only takes me like five

1 minutes to go up the street, so it was 3:30, 3:35. I  
2 don't know about prior to that time.

3 Q. Okay. So right before you were on the  
4 balcony, you had brought your son to the apartment?

5 A. Uh-huh.

6 Q. Okay. So that would have been just a few  
7 minutes before?

8 A. Yeah, about five minutes before.

9 Q. And when the shooting occurred, how many  
10 of your children were inside?

11 A. All of them.

12 Q. And that's how many and what were their  
13 ages?

14 A. Four. A 12-year old, an 8-year old, a 3-  
15 year old and back in March my baby was like six  
16 months, maybe six or seven months.

17 Q. So you had four children inside. Any  
18 other adults or any other people inside your  
19 apartment?

20 A. No.

21 Q. You just happened to be outside on the  
22 balcony?

23 A. I was leaving.

24 Q. You were in route leaving?

25 A. I was going to leave.



1 Q. Where were you going to go to?

2 A. Take the girl downstairs to work girl.

3 Q. Okay. So you got out of the apartment,  
4 you shut the door and you proceeded --

5 A. No. I turned around and locked it and I  
6 turned back around and that's when I saw Doughboy  
7 coming from that side, Lailoni coming from this way,  
8 Face coming from this way, some boys on the other  
9 side. And I stood right there. I never went to the  
10 stairs.

11 When I finally got to the stairs  
12 and down the stairs, I stayed on the stairs. My baby  
13 ran outside and said, "Mommy, telephone. Momma,  
14 telephone. Telephone." She said, "It's Eric." But  
15 I just stood on the stairs. I didn't go to the phone  
16 because I was just looking.

17 Q. Okay. And then at what point were you at  
18 when you heard the first shot?

19 A. I was still on my balcony.

20 Q. Okay. And the last shot, were you still  
21 at the same spot?

22 A. Still on the balcony.

23 Q. As you were on your balcony, the only  
24 thing that directed you to this interior area was the  
25 first gunshot; wasn't it?

1           A.     I was already looking in that direction.  
2     No, it wasn't a gunshot. I was already looking in  
3     that direction.

4           Q.     Here you are on your way going someplace.  
5     Wasn't the first time that you paid attention to the  
6     area when you heard the first gunshot?

7                   MS. DE LA GARZA: Objection. Asked and  
8     answered.

9                   THE COURT: Sustained.

10           THE WITNESS: I was on the balcony and I  
11     looked in the parking lot like I always do. I  
12     looked. Sometimes I sit on my porch four, five  
13     hours. I sit on the porch just to get some air, to  
14     look, see what's going on outside.

15     BY MR. BINDRUP:

16           Q.     At the time when the last gunshot went  
17     off, you were still standing in the same spot?

18           A.     Still standing on the balcony.

19           Q.     So with your four kids inside the  
20     apartment, you're telling this court that you kept  
21     your eyes focused on the interior area that whole  
22     time?

23           A.     Yes.

24           Q.     You didn't do what you had told your kids  
25     and warned your kids to do to hit the dirt?

1 A. No.

2 Q. You didn't do that?

3 A. No.

4 Q. You didn't run back in and lock the door  
5 behind you?

6 A. No, because I didn't want to make any  
7 sudden moves.

8 Q. Okay. After the last shot, what did you  
9 do then? Did you stay out there or did you go inside  
10 your apartment?

11 A. I went inside and I looked. Then I came  
12 back outside and the phone rung and it was my cousin  
13 Eric, and he wanted me to get on the phone my  
14 daughter said. But I started advancing, going down  
15 the stairs and I stood on the stairs for a while. I  
16 stood on the stairs just looking because I seen some  
17 more guys running across the street coming to the guy  
18 that was shot and I never got on the phone.

19 And my cousin Eric came running  
20 through screaming my name to get my kids. And he  
21 also told Michelle downstairs to get her kids, put on  
22 their shoes. "And you all get the hell from over  
23 here until this shit dies down." Those were his  
24 exact words.

25 Q. Okay. The bottom arrow that you drew

1       between 2531 --

2           A.     That's right --

3           Q.     -- 2529 --

4           A.     That --

5           Q.     -- that was Mr. Bennett?

6           A.     Yes.

7           Q.     Now you are not suggesting you watched  
8       him and then watched all the other people at the same  
9       time and in their same direction? You didn't keep  
10      your eyes focused on any one individual; did you?

11          A.     No.

12          Q.     You didn't keep your eyes just focused on  
13      Mr. Bennett and watching everything he did?

14          A.     No.

15          Q.     Because there was other stuff happening,  
16      right?

17          A.     That's right.

18          Q.     There was other people coming in from the  
19      top, right?

20          A.     That's right.

21          Q.     There was Doughboy and other individuals  
22      coming from another side?

23          A.     That's right.

24          Q.     There was gunshots all over, correct,  
25      when it started, gunshots all over?

1 A. Yeah.

2 Q. And so you never focused on any one thing  
3 during that chaos; did you?

4 A. No.

5 Q. At the time that you saw Mr. Bennett as  
6 he was walking in this direction, northerly, you were  
7 only able to see basically his back side?

8 A. No, I saw the front of his face when he  
9 came through.

10 Q. At what point were you able to see the  
11 front of his face? When he was by 2531?

12 A. Coming in between the buildings.

13 Q. As soon as he passed in between the  
14 buildings and went out into the main courtyard, at  
15 that point you just started seeing his back, right?

16 A. That's right.

17 Q. And that's why you testified previously  
18 today you never saw Mr. Bennett with a gun?

19 A. No. I said I never saw Chew with a gun,  
20 not Mr. Bennett.

21 MR. KOOT: Your Honor, that's not what  
22 she said.

23 THE COURT: Yeah, I'm not sure that was  
24 the testimony either.

25 THE WITNESS: No.

1 BY MR. BINDRUP:

2 Q. Did you see Mr. Bennett with the gun?

3 A. Yes.

4 Q. When you testified previously that you  
5 didn't -- you're saying your previous testimony is  
6 that you didn't see him shoot the gun?

7 MR. KOOT: Your Honor, I don't believe --

8 THE WITNESS: I didn't hear that.

9 THE COURT: No, I wrote down what she  
10 said and that wasn't it.

11 BY MR. BINDRUP:

12 Q. Do you ever recall saying today that you  
13 did not see Mr. Bennett with a gun?

14 A. No. I recall not seeing Chew with a gun,  
15 not Mr. Bennett.

16 Q. And you couldn't describe at all what  
17 sort of gun Mr. Bennett had; could you?

18 A. No.

19 Q. You hear gun fire. Isn't it possible  
20 that you are simply assuming Mr. Bennett had a gun?

21 A. No.

22 Q. You just can't describe it in any way?

23 A. Can't describe it.

24 Q. And you can't remember on that day how  
25 Mr. Bennett was dressed; can you?

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A. No.

Q. You don't remember pants, shirt or any identification of any clothing on him?

A. I can't remember the colors of what they wore. I wasn't interested in the clothes that they had on.

Q. You were just more focused on the shots, right?

A. Shocks, not the shots, shock from just seeing that.

Q. And it was a person other than Mr. Bennett that shot first, correct?

A. Uh-huh, yes.

Q. And it was a person other than Mr. Bennett that shot last, right?

A. Yes.

Q. And isn't it possible due to the area and you said there was a lot of people out there, that there were other individuals with guns that you didn't notice?

A. Could have been.

Q. Other people shooting that you didn't notice?

A. Could have been.

MR. BINDRUP: The Court's indulgence,

1 please.

2 I have nothing further.

3 THE COURT: Any redirect?

4 MS. DE LA GARZA: The Court's indulgence.

5 REDIRECT EXAMINATION

6 BY MS. DE LA GARZA:

7 Q. Ms. Neal, I want to talk about and I  
8 believe you were asked by defense attorneys how you  
9 came about talking to the police about this incident.

10 A. Uh-huh.

11 Q. Is it correct to say you went to the  
12 police station with your cousin's girlfriend?

13 A. Yes, ma'am.

14 Q. And they were actually questioning her  
15 about your cousin's death?

16 (A.) They weren't really questioning her. We  
17 were just talking about how it all came about and  
18 about Eric getting killed.

19 Q. How was it that you came to talk about  
20 the killing of Doughboy?

21 A. I just looked at Tammy and told her I  
22 couldn't hold it anymore because I see how his  
23 friends and family was feeling when they came to get  
24 him off the ground, and I could feel their pain. And  
25 I told Tammy I couldn't hold on no more because now I

See notes from 10  
MS. DE LA GARZA



1 feel the same pain that they felt that day.

2 Q. And at that time when you gave the police  
3 your statement, you were being truthful?

4 A. Yes, ma'am, as best as I could remember  
5 it.

6 Q. And, in fact, you even were thinking that  
7 you could just give that statement and not have to  
8 testify in court any further?

9 A. That's right and I told them that.

10 Q. So you just wanted to get it off your  
11 chest, be as truthfully as you could, give them all  
12 of the information and then you thought you would be  
13 done with it?

14 A. That's right.

15 Q. You didn't expect to be here testifying  
16 today?

17 A. That's right.

18 Q. So do you think your memory was better  
19 then or now?

20 A. I can't say.

21 Q. But you were being very truthful with  
22 them at that point?

23 A. Yes, ma'am.

24 Q. There was no reason for you not to be  
25 truthful at that point; was there?

1 A. No.

2 Q. In fact, during your interview with

3 Detective Bodnar, didn't you tell him that the three

4 boys were walking right beside Doughboy and talking

5 even though you couldn't hear what they were saying?

6 (A) Uh-huh.

7 Q. So that was your impression of the

8 situation at that time --

9 A. What I seen.

10 Q. -- that they were walking with Doughboy?

11 A. Uh-huh.

12 Q. You just couldn't hear what they were

13 saying?

14 A. Yes, ma'am.

15 Q. And, in fact, when you started giving the

16 police information, at that time you did give them

17 information about other witnesses and who you thought

18 were there --

19 A. Yes, ma'am.

20 Q. -- didn't you?

21 A. Yes, I did.

22 Q. So the only reason that you were

23 concerned here is because it was out in public and

24 everybody is going to know it?

25 A. I don't care any more 'cuz like I told

1 the police and I told you, and I told you, I'm  
2 telling this judge and anybody in here, I'm going to  
3 protect myself and my kids --

4 THE COURT: I'm sorry. Did somebody  
5 object?

6 THE WITNESS: -- at all costs.

7 MR. SULLIVAN: Yes.

8 MS. WILDEVELD: I have an objection.

9 THE COURT: I've kind of heard this.  
10 I'll sustain the objection. The testimony is  
11 stricken.

12 BY MS. DE LA GARZA:

13 Q. But you gave the information previously  
14 during that testimony?

15 A. Yes, I did.

16 MS. WILDEVELD: Objection --

17 THE COURT: Overruled.

18 BY MS. DE LA GARZA:

19 Q. Mr. Bindrup asked you about your  
20 testimony about Face, I believe, and you tell me if  
21 I'm correct. Your testimony was that you saw Face  
22 going into that parking lot area; is that correct?

23 A. Yes, ma'am.

24 Q. And that's in between 2531 and 2529?

25 A. Yes, ma'am.

1 Q. Your testimony is you saw him with a gun  
2 shoot Doughboy?

3 A. Yes, ma'am.

4 MS. DE LA GARZA: No further questions.

5 THE COURT: Any recross?

6 MR. PIKE: Nothing on behalf of Defendant  
7 Webb.

8 MR. SULLIVAN: No, your Honor.

9 MR. BINDRUP: No, your Honor.

10 MS. WILDEVELD: No.

11 MR. SCHIECK: No, your Honor.

12 THE COURT: Thank you. You're excused.

13 Is the State going to put on any  
14 more witnesses?

15 MR. KOOT: No.

16 THE COURT: Let's take about a ten-minute  
17 recess.

18  
19 (Whereupon a recess was had.)  
20

21 THE COURT: Are any of the defendants  
22 going to put on anything today?

23 MR. PIKE: Your Honor, I discussed this  
24 with my client, Mr. Webb. At this point in time he  
25 understands he has the right to testify or present

1 witnesses. We will not be presenting any witnesses  
2 at this time.

3 THE COURT: Same for your client,  
4 Mr. Sullivan?

5 MR. SULLIVAN: Yes, Judge, as to  
6 Mr. Matthews.

7 MR. SCHIECK: Yes, your Honor.

8 MS. WILDEVELD: Yes, your Honor.

9 MR. KOOT: On the exhibits, your Honor --

10 THE COURT: Yes.

11 MR. KOOT: -- I would move for Number 17  
12 testified to but we didn't enter that. That was a  
13 photo of Wacky-G. What's his name? Gantt.

14 THE COURT: Mr. Gantt.

15 All right. Any objection to that  
16 being admitted?

17 MR. PIKE: None as to Defendant Webb.

18 MR. SULLIVAN: No.

19 MR. SCHIECK: No.

20 MR. BINDRUP: No.

21 MS. WILDEVELD: No.

22 THE COURT: All right. It will be  
23 admitted.

24 (Whereupon, State's Exhibit No. 17  
25 was admitted into evidence.)

1 MR. KOOT: And, lastly, I believe  
2 Dr. Tellhoff took off with the exhibits that he used  
3 to explain. They were Exhibits 19 through 14. I  
4 have identical copies.

5 MR. PIKE: No objection to replacing  
6 those and remarking them.

7 MR. SULLIVAN: No objection.

8 THE COURT: All right. Those will be  
9 replaced, re-marked, and admitted.

10 MR. KOOT: Thank you. Nine through 14.

11 (Whereupon, State's Exhibits Nos. 9  
12 through 14 were admitted into  
13 evidence.)

14 THE COURT: All right. Anything else  
15 before argument?

16 State, do you want to make an  
17 opening?

18 MR. KOOT: Yeah, I'll reserve for  
19 rebuttal.

20 THE COURT: All right. Let's start with  
21 Mr. Sullivan and work our way down here.

22 MR. SULLIVAN: Just briefly, and it is my  
23 understanding -- and I hope I'm correct -- the  
24 conspiracy charge has been dropped by the State.

25 THE COURT: That was my understanding.

1 MR. SULLIVAN: Their star and leading  
2 witness today indicated -- I know she has changed  
3 her testimony for whatever reason. I don't know why  
4 she would change it if, in fact, my client was a  
5 shooter because she has named the other three  
6 gentlemen as shooters. So the only reason she has  
7 changed it is because she didn't have two officers  
8 there pitching photos at her telling her who may or  
9 may not have been involved in the shooting.

10 But she places my client on the  
11 side of 2535 with Mr. Pike's client, Jermaine Webb.  
12 If that's the case, even if you accept that, they  
13 would have been riddled with bullets from the  
14 shooting based on where the car was and where  
15 Doughboy went down, so that's inconsistent in and of  
16 itself.

17 She said -- and I think her words  
18 were -- I said, Do you understand you're under oath  
19 today and the penalty of perjury goes with it, not  
20 like when you were in the detective's room? And she  
21 said yeah. And she says, I can't honestly say  
22 whether or not Chew was present. Did Chew have a  
23 gun? Chew did not have a gun if he was. Did you see  
24 his hands? Were there gloves? There were no gloves.  
25 Did you see his hands? I don't know.

1 Judge, I want to -- in this  
2 argument it's kind of a hybrid because I want to  
3 bring in the fact of bail setting not only for a  
4 motion to dismiss, but if the Court does bind him on  
5 the scintilla of evidence, I want to address the  
6 issue of bail because I'll make a proffer that Louis  
7 Matthews --

8 THE COURT: Why don't you save your bail  
9 argument until later.

10 MR. SULLIVAN: Okay. That's fine, Judge.

11 At any rate, you've heard her  
12 testimony. She said he wasn't involved if he was  
13 even there, but she couldn't be for sure, but she  
14 wasn't sure. She had been drinking that night. With  
15 that, Judge, the Court was here. You were awake for  
16 the arguments. You heard it all.

17 THE COURT: I don't think the drinking  
18 that night came into it.

19 MR. SULLIVAN: She said she drank that  
20 day. She had a cooler.

21 THE COURT: One cooler.

22 MS. DE LA GARZA: I don't think --

23 THE COURT: Well, I don't think she said  
24 she wasn't sure because she had been drinking. She  
25 said she wasn't sure because she thought about it.



1 MR. SULLIVAN: I understand. I  
2 apologize. I meant to say that she had been  
3 drinking.

4 THE COURT: Okay.

5 MR. SULLIVAN: Judge, you were here. I'm  
6 going to submit it based on that. I'll save the  
7 rest for the issue of bail.

8 THE COURT: Okay.

9 MR. PIKE: In reference to my client,  
10 Mr. Webb, the State has failed to prove through any  
11 testimony, either through any individual or any  
12 officer, number one, that there was any gang  
13 involvement at all on the part of my client. He was  
14 not involved with, identified as a gang member, given  
15 any significance to the names that he had or anything  
16 in reference to that. So the enhancement, obviously,  
17 has to be dropped because they never even identified  
18 the fact there was a gang that my client allegedly  
19 was a member of.

20 Additionally, there have been no  
21 articulable facts or any specific facts brought  
22 forward to believe from the testimony today of the  
23 one eyewitness that they brought forward that my  
24 client did anything to indicate that he was involved  
25 in the shooting in any way. In fact, according to

1 the testimony, he walked out with the alleged victim,  
2 then moved over to the side where presumably he was  
3 seeking refuge along with Mr. Sullivan's client.

4 So if you're looking at the  
5 standard of being slight or marginal evidence, at  
6 best the State could prove that he may have been  
7 merely present at that point in time. And that's not  
8 enough to bind him over on the murder charge.

9 MR. SCHIECK: Your Honor, my argument is  
10 a little bit shorter. Obviously the quantity and  
11 quality of evidence against some of the defendants is  
12 different from others, and for whatever her testimony  
13 was worth the eyewitness's implication of Pam Neal.

14 However, I would submit, your  
15 Honor, there has been absolutely no testimony  
16 elicited that would show that my client or any of the  
17 clients are in fact members of a gang, specifically  
18 the Gerson Park Kingsmen, and further that the  
19 killing of Doughboy was in any way for the benefit  
20 of, at the direction of, or in affiliation with a  
21 criminal gang with the specific intent to promote,  
22 further, or assist the activities of the Gerson Park  
23 Kingsmen. So we would ask that the criminal gang  
24 enhancement be stricken.

25 MS. WILDEVELD: Your Honor, I would join

1 in with Mr. Schieck's argument about the gang. There  
2 was no evidence that Mr. Gantt was involved in any  
3 gang. When asked about Mr. Gantt's father, she  
4 didn't know if anyone in the family was involved in  
5 gangs, so the gang enhancement should be dropped.  
6 Although I think that Ms. Neal's testimony was very  
7 unreliable, she does place Mr. Gantt there. However,  
8 we'd ask the Court to strike the testimony if not  
9 stricken in her testimony, but based on her  
10 identification of Mr. Gantt, I would ask that the  
11 charges be dismissed. Although if her testimony be  
12 stricken, I'd ask the charges be dismissed, your  
13 Honor.

14 MR. BINDRUP: I would join in with the  
15 last two representations, your Honor, and submit it.

16 THE COURT: State.

17 MR. KOOT: Realistically on the case  
18 against Mr. Matthews and Webb is weak at best. And  
19 if we were to go -- in fact, I doubt seriously that  
20 it would ever go to trial based on what we've  
21 elicited here today. Nevertheless, the witness did  
22 testify that she gave a statement, a truthful  
23 statement she believed to be truthful on May the 1st,  
24 a taped statement. And she did name in that  
25 statement both Mr. Matthews and Mr. Webb as shooters.

1 Today she tells us that she can't be sure of that.

2                   Nevertheless, she continued to say  
3 that when she gave her statement on the 1st, she told  
4 the truth as best as she knew it. I think that that  
5 is sufficient to warrant a bindover, again conceding  
6 that no prosecutor would ever take this to a jury  
7 trial based on that evidence alone. If there is  
8 additional evidence forthcoming, then we'd be in a  
9 different position, and I would submit it on that.

10                   THE COURT: Well, if she had just come in  
11 and told a different story, that might be one thing.  
12 But she kind of split it. She said she went home.  
13 She talked to her mom. She thought about it. She  
14 had a heart to heart with herself and she just wasn't  
15 sure anymore and she just couldn't in good conscience  
16 name Mr. Matthews or Mr. Webb as being involved in  
17 the offense. And I'm going to take her for what she  
18 said today, that she's thought about it, given it a  
19 little going over and just can't say that for sure.

20                   So based on the testimony and  
21 evidence presented, I find probable cause to believe  
22 that Ashley William Bennett, Lailoni Deandra  
23 Morrison, and Anthony Gantt have committed the  
24 offense of murder with deadly weapon. The gang  
25 enhancement is stricken. I bind them up to the

1 Eighth Judicial District Court to answer to those  
2 charges.

3 The cases against Mr. Graves and  
4 Mr. Matthews are -- I'm sorry.

5 MR. PIKE: Mr. Webb.

6 THE COURT: -- Mr. Webb and Mr. Matthews  
7 are dismissed.

8 Also, there's another case with  
9 Mr. Matthews on today 00FN0536X. I'm just going to  
10 give him credit for time served on that last  
11 remaining 50 bucks and the last little bit of  
12 counseling and close that out.

13 MR. SULLIVAN: Thanks.

14 THE COURT: Thank you all.

15 THE CLERK: June 19th, 9 a.m., Department  
16 7.

17 THE COURT: Mr. Bindrup wanted to be  
18 heard on bail.

19 MR. BINDRUP: May I proceed, your Honor.

20 THE COURT: Yes.

21 MR. BINDRUP: As to Mr. Bennett I would  
22 ask that the Court in light of and again although the  
23 Court deemed it was sufficient evidence to bind it  
24 over, if the Court looks at this particular case,  
25 that Mr. Bennett has been a life-long resident here.

1 His fiancée is present in court. He does have a  
2 child with her. He has been here his whole life and  
3 although he has a couple of prior convictions, I  
4 would ask the Court to set a bail setting in this  
5 matter.

6 MR. KOOT: I have the same opposition. I  
7 mean, I oppose any bail. I think that we have a good  
8 case against him and he is a two-time convicted  
9 felon. And I think he spent some time out of the  
10 county when he went to prison.

11 THE COURT: I note that the felonies  
12 before were assault with a deadly weapon, in  
13 possession -- ex-felon in possession of firearm,  
14 possession of controlled substance. Given the nature  
15 the offense, I'm not going to set bail at this time.

16 MS. WILDEVELD: Your Honor, in addition,  
17 I would like to address my client's custody status.  
18 He's 16 years old. He just turned 16 while  
19 incarcerated. His mother is present, his grandmother  
20 and his family. He's a life-long resident of Las  
21 Vegas. His mother does not live in the area where  
22 this occurred. I would ask that he be either  
23 released on bail or put on house arrest where he can  
24 stay with his family.

25 MR. KOOT: He's got a terrible long

1 history and a very long juvenile record. I had it  
2 brought up from juvenile court.

3 Do you happen to have it with you?

4 MS. WILDEVELD: Your Honor, juvenile  
5 arrest records consist of grand theft auto and --

6 MR. KOOT: It's amazing.

7 MS. WILDEVELD: -- probation revocation.

8 MR. KOOT: I think he went to a youth  
9 camp. Didn't he?

10 MS. WILDEVELD: No.

11 THE COURT: He was in custody, in  
12 juvenile custody at the time the confession was made.

13 MS. WILDEVELD: He was in custody on a  
14 probation violation.

15 MR. KOOT: I don't think that speaks too  
16 well of him, Judge.

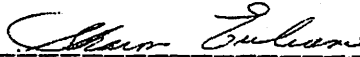
17 MS. WILDEVELD: His parents can afford  
18 house arrest and they are present.

19 THE COURT: Well, Mr. Morrison has -- due  
20 to his youth, I guess he has a lot of advantage in  
21 that he's not facing the death penalty, but the crime  
22 itself, as the witness said, there are people all  
23 around, shots fired. This could have been a lot  
24 worse than it was. I'm just not inclined to set bail  
25 at this time.

(Whereupon the proceedings concluded.)

\* \* \* \*

ATTEST: Transcript to the best of my knowledge,  
skill, and ability.



Sharon M. Euliano, CCR No. 175

\* \* \* \*



# EXHIBIT H

DATE: 12/16/05  
CASE NO. 01-C-175914-C

I N D E X

TIME 12:31 PM  
JUDGE: Leavitt, Michelle

STATE OF NEVADA

[ ] vs Bennett, Ashley W

[E]

0001 D1 Ashley W Bennett

008435 Dustin, Cynthia L.  
NO. 1 8th Judicial District Court  
Dept 5 Clark County Court Hse  
200 Third St  
Las Vegas, NV 89101

0002 D Lailoni D Morrison  
P O Box 650  
Indian Springs, NV 89018

000824 Schieck, David M.  
NO. 1 302 E Carson #600  
Las Vegas, NV 89101

0003 D Anthony Gantt  
P O Box 208  
Indian Springs, NV 89070

Pro Se

NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0001	06/07/01	INFO/INFORMATION	Fee \$0.00			06/07/01	
0002	06/07/01	ARRN/INITIAL ARRAIGNMENT		AL		06/19/01	
0003	06/08/01	CBO /CRIMINAL BINDOVER		AL			
0004	06/08/01	NOEV/NOTICE OF EXHIBIT(S) IN THE VAULT				06/08/01	
0005	06/19/01	CALC/CALENDAR CALL (VK 8/7/01)		AL	VC	08/16/01	
0006	06/19/01	JURY/TRIAL BY JURY (VK 8/7/01)		AL	VC	08/20/01	
0007	06/29/01	MOT /DEFT'S MOTION FOR DISCOVERY OF PROSECUTION FILE RECORDS AND INFO		0003		07/19/01	
0008	06/20/01	ORDR/ORDER APPOINTING COUNSEL		0002			
0009	06/20/01	ORDR/ORDER		0001			
0010	06/20/01	APPL/EX-PARTE APPLICATION FOR APPOINTMENT OF INVESTIGATOR APPLICATION		0001			Y
0011	06/20/01	APPL/EX-PARTE APPLICATION FOR ORDER TO PRODUCE DEFENDANT FOR POLYGRAPH		0001			Y
0012	07/02/01	TRAN/REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING		AL			
0013	06/21/01	ORDR/ORDER TO PRODUCE DEFENDANT FOR POLYGRAPH EXAMINATION		0001			
0014	06/22/01	REQT/EX PARTE MOTION FOR APPOINTMENT OF INVESTIGATOR AND FOR EXCESS FEES		0002			
0015	06/21/01	ORDR/ORDER FOR APPOINTMENT OF INVESTIGATOR		0001			
0016	06/25/01	EXPR/EX PARTE ORDER APPOINTING INVESTIGATOR AND FOR EXCESS FEES		0002			
0017	07/02/01	TRAN/REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING				06/05/01	
0018	07/03/01	ROC /RECEIPT OF COPY					
0019	07/14/01	ASSG/Reassign Case From Judge Gibbons TO Judge Douglas					
0020	07/05/01	NOEV/NOTICE OF TRANSCRIPTS ON THE SHELVES				06/05/01	
0021	07/19/01	MOT /DEFT'S MOTION TO SEVER		0002	GR	07/31/01	
0022	07/19/01	MOT /DEFT'S MOTION TO SET BAIL		0002	GR	07/31/01	
0023	07/19/01	MOT /DEFT'S MOTION TO SUPPRESS		0002	GP	09/13/01	
0024	07/20/01	OCAL/STATUS CHECK: DEFT GANTT'S MTN FOR DISCOVERY		0003		07/31/01	

(Continued to page 2)

NO.	FILED/REC CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0025	07/10/01	JOIN/NOTICE OF JOINDER IN MOTION FOR DISCOVERY OF PROSECUTION FILES RECORDS AND INFORMATION NECESSARY TO A FAIR TRIAL	0002 0002		07/10/01	Y
*0026	07/10/01	OPPS/STATES OPPOSITION TO DEFENDANTS MOTION FOR DISCOVERY OF PROSECUTION FILES RECORDS AND INFORMATION NECESSARY TO A FAIR TRIAL	0003 0003			Y
0027	07/11/01	APPL/EX PARTE APPLICATION FOR ORDER TO PRODUCE DEFENDANT FOR POLYGRAPH EXAMINATION	0001 0001			Y
0028	07/11/01	ORDR/ORDER TO PRODUCE DEFENDANT FOR POLYGRAPH EXAMINATION	0001 0001			
0029	07/23/01	CERT/CERTIFICATE OF MAILING	AL			
0030	07/31/01	MOT /ALL PENDING MOTIONS 7-31-01	AL		07/31/01	
0031	07/31/01	OCAL/STATUS CHECK: TRIAL STATUS/WAIVER OF RIGHT TO SPEEDY TRIAL	AL AL	MH	08/07/01	
0032	07/31/01	MOT /DEFT'S MOTION TO SUPPRESS STATEMENT OF ANTHONY GANTT	0003 0003	DN	08/28/01	
0033	08/03/01	MOT /DEFT'S MOTION FOR BAIL REDUCTION	0001	GR	08/28/01	
0034	08/03/01	MOT /DEFT'S MOTION TO SEVER SET IN ERR ON WRONG DAY	0001 0001	VC	08/17/01	
0035	07/19/01	ROC /RECEIPT OF COPY	0001		07/19/01	
0036	07/20/01	ORDR/ORDER TO TRANSCRIPT	0003			
0037	07/20/01	LIST/NOTICE OF EXPERT WITNESSES	AL			
0038	08/03/01	MOT /DEFT'S MOTION TO SEVER	0001	GR	08/28/01	
0039	07/25/01	REQT/EX PARTE REQUEST AND ORDER FOR THE COURTS IN-CAMERA INSPECTION OF	0003 0003			Y
JUVENILE RECORDS						
0040	08/07/01	CALC/CALENDAR CALL	0001		10/25/01	
0041	08/07/01	CALC/CALENDAR CALL (VJ 08-28-01)	0002 0002	VC	10/25/01	
0042	08/07/01	JURY/TRIAL BY JURY (VJ 10/25/01)	0001	VC	10/29/01	
0043	08/07/01	JURY/TRIAL BY JURY (VJ 08-28-01)	0002 0002	VC	10/29/01	
0044	08/07/01	CALC/CALENDAR CALL	0003		11/15/01	
0045	08/07/01	JURY/TRIAL BY JURY (VJ 11/15/01)	0003	VC	11/19/01	
0046	08/07/01	OCAL/STATUS CHECK: TRIAL DATE	0001		08/28/01	
0047	08/08/01	MOT /DEFT'S JOINDER IN MOTIONS TO SEVER	0003	GR	08/28/01	
0048	08/08/01	MOT /DEFT'S MOTION RO RELEASE WITHOUT BAIL OR FOR REDUCTION OF BAIL	0003 0003	GP	08/28/01	
0049	08/09/01	TRAN/REPORTER'S TRANSCRIPT OF STATUS CHECK: TRIAL STATUS/ WAIVER OF RIGHT TO	AL AL		08/07/01	Y
SPEEDY TRIAL - ALL DEFENDANT'S MOTION TO SUPPRESS STATEMENTS OF MORRISON						
*0050	08/09/01	TRAN/REPORTER'S TRANSCRIPT OF DEFENDANT'S MOTION FOR DISCOVERY OF PROSECUTION FILES, RECORDS & INFORMATION NECESSARY TO A FAIR TRIAL	AL AL		07/19/01	Y
0051	08/10/01	MOT /ALL PENDING MOTIONS 8-7-01	AL		08/07/01	
0052	08/01/01	ORDR/EX PARTE REQUEST AND ORDER FOR INSPECTION OF JUVENILE HALL RECORDS	0003 0003			
0053	08/01/01	ROC /RECEIPT OF COPY	0003		07/31/01	
0054	08/03/01	ROC /RECEIPT OF COPY	0001		08/03/01	
0055	08/03/01	ROC /RECEIPT OF COPY	0001		08/03/01	
0057	08/08/01	NOTC/NOTICE OF JOINDER IN MOTIONS TO SEVER	0003			

(Continued to page 3)

NO.	FILED/REC CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0058	08/17/01	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS ARRAIGNMENT	AL		06/19/01	
0059	08/15/01	REQT/GANTTS EXPEDITED EX-PARTE REQUEST AND EXPEDITED ORDER FOR THE COURTS	0003			Y
		IN-CAMERA INSPECTION OF JUVENILE RECORDS	0003			
0060	08/28/01	CALC/CALENDAR CALL	0002		01/10/02	
0061	08/28/01	JURY/TRIAL BY JURY (VJ 1/10/02)	0002	VC	01/14/02	
0062	08/29/01	MOT /ALL PENDING MOTIONS 8/28/01	AL		08/28/01	
0063	08/31/01	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS	*D		08/28/01	
0064	08/27/01	OPPS/STATES OPPOSITION TO DEFENDANT LAILONI MORRISONS MOTION TO SUPPRESS	0002			
0065	08/27/01	OPPS/STATES OPPOSITION TO DEFENDANT ANTHONY GANTT'S MOTION TO SUPPRESS	0002			
0066	09/04/01	ORDR/ORDER DENYING DEFENDANTS MOTION TO SUPPRESS	0003		09/04/01	
0067	09/11/01	ORDR/ORDER TO PRODUCE DEFENDANT FOR POLYGRAPH EXAMINATION	0003			
0068	09/10/01	ORDR/ORDER DENYING DEFENDANTS MOTION TO SUPPRESS	0001			
0069	09/12/01	EXPT/EX PARTE APPLICATION FOR ORDER TO PRODUCE DEFENDANT FOR POLYGRAPH EXAMINATION	0003		08/28/01	
0070	09/13/01	EXH /EXHIBITS FOR COURTS CONSIDERATION	0003			
0071	09/19/01	TRAN/REPORTER'S TRANSCRIPT DEFT' MOTION TO SUPPRESS	0001		09/13/01	
0072	10/15/01	MOT /DEFT'S MTN IN LIMINE EVIDENCE GANG AFFILIATION/28	0001		11/08/01	
0073	10/15/01	ROC /RECEIPT OF COPY	0001		10/15/01	
0074	10/17/01	MOT /DEFT'S MTN TO REDUCE BAIL/29	0001			
0075	10/18/01	ROC /RECEIPT OF COPY	0002	DN	10/23/01	
0076	10/19/01	ROC /RECEIPT OF COPY	0002		10/18/01	
0077	10/19/01	LIST/DESIGNATION OF WITNESSES	0001		10/18/01	
0078	10/19/01	NOTC/NOTICE OF ALIBI PURSUANT TO NRS 174.233	0001			
0079	10/19/01	ROC /RECEIPT OF COPY	0001		10/18/01	
0080	10/23/01	SUBP/SUBPOENA	0001	SC	10/31/01	
0081	10/23/01	SUBP/SUBPOENA	0001	SV	10/22/01	
0082	10/23/01	SUBP/SUBPOENA	0001	SC	10/31/01	
0083	10/23/01	SUBP/SUBPOENA	0001	SV	10/22/01	
0084	10/23/01	SUBP/SUBPOENA	0001	SC	10/31/01	
0085	10/25/01	JURY/TRIAL BY JURY VJ 10-30-01	0001	SV	10/22/01	
0086	10/25/01	LIST/NOTICE OF WITNESSES	0001	SC	10/31/01	
0087	10/30/01	CALC/CALENDAR CALL	0001	SV	10/22/01	
0088	10/30/01	JURY/TRIAL BY JURY (VJ 11/8/01)	0001	VC	10/30/01	
0089	10/31/01	MOT /ALL PENDING MOTIONS 10-30-01	AL			
0090	10/29/01	SUBP/SUBPOENA	0001		11/08/01	
0091	10/29/01	SUBP/SUBPOENA	0001	VC	11/13/01	
			0001		10/31/01	
			0001	SC	10/31/01	
			0001	SV	10/25/01	
			0001	SC	10/31/01	
			0001	SV	10/24/01	

(Continued to page 4)

NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0092	10/29/01	SUBP/SUBPOENA		0001	SC	10/31/01	
				0001	SV	10/27/01	
0093	10/30/01	ORDR/ORDER TO PRODUCE DEFENDANT FOR POLYGRAPH EXAMINATION		0001			
0094	10/30/01	ORDR/ORDER FOR APPOINTMENT OF INVESTIGATOR		0001			
0095	10/31/01	SUBP/SUBPOENA		0001	SC	10/31/01	
				0001	SV	10/29/01	
0096	10/31/01	SUBP/SUBPOENA DUCES TECUM		0001	SC	10/31/01	
				0001	SV	10/29/01	
X 0097	11/08/01	MOT /DEFT'S MTN IN LIMINE TO PRECLUDE EVID OF GANG AFFILIATION/34	VK 11-27-01	0003	VC	01/10/02	
				0003			
0098	11/08/01	MOT /DEFT'S MTN TO REMAND TO JUVENILE COURT/35	VK 11-27-01	0003	VC	01/10/02	
				0003			
0099	11/06/01	ROC /RECEIPT OF COPY		0001		11/06/01	
0100	11/06/01	SUPP/SUPPLEMENTAL DESIGNATION OF WITNESSES		0001			
0101	11/08/01	CALC/CALENDAR CALL		0001		11/20/01	
0102	11/08/01	JURY/TRIAL BY JURY	Vj 11-20-01	0001	VC	11/26/01	
0103	11/07/01	OTTE/ORDER TO TRANSPORT		0003		11/14/01	
0104	11/09/01	MOT /ALL PENDING MOTIONS	11/8/01	0001		11/08/01	
0105	11/08/01	REQT/NOTICE OF MOTION AND MOTION TO CONTINUE		0001		11/08/01	
0106	11/09/01	ROC /RECEIPT OF COPY		0003		11/09/01	
0107	11/09/01	ROC /RECEIPT OF COPY		0003		11/08/01	
0108	11/09/01	ROC /RECEIPT OF COPY		0003		11/08/01	
0109	11/15/01	CALC/CALENDAR CALL	VK 11-27-01	0003	VC	01/10/02	
0110	11/15/01	JURY/TRIAL BY JURY	VK 11-27-01	0003	VC	01/14/02	
0111	11/20/01	JURY/TRIAL BY JURY	VJ 11-27-01	0001	VC	11/27/01	
0112	11/20/01	MOT /ALL PENDING MOTIONS	11-20-01	AL		11/20/01	
0113	11/21/01	ARRN/STATE'S REQUEST TO CALENDAR		0003	GR	11/27/01	
0114	11/21/01	ARRN/STATE'S REQUEST ENTRY OF PLEA		0003		11/27/01	
0115	11/27/01	MOT /ALL PENDING MOTIONS	11-27-01	0003		11/27/01	
0116	11/27/01	SENT/SENTENCING		0003		04/02/02	
X 0117	11/27/01	HEAR/STATE'S REQUEST FOR HANDWRITING SAMPLE		0001	GR	12/06/01	
0118	11/27/01	CALC/CALENDAR CALL		0001		01/10/02	
0119	11/27/01	JURY/TRIAL BY JURY (VJ 1/3/02)		0001	VC	01/07/02	
0120	11/27/01	MEMO/GUILTY PLEA MEMORANDUM/AGREEMENT		0003			
0121	11/28/01	SUBP/SUBPOENA		0001	SV	11/26/01	
				0001	SC	11/30/01	
0122	11/28/01	SUBP/SUBPOENA		0001	SV	11/28/01	
				0001	SC	11/30/01	
0123	11/28/01	SUBP/SUBPOENA		0001	SV	11/26/01	
				0001	SC	11/13/01	
0124	11/28/01	SUBP/SUBPOENA		0001	SV	11/26/01	
				0001	SC	11/30/01	
0125	11/26/01	FUS /FILED UNDER SEAL EX PARTE MOTION		0001			
0126	11/26/01	FUS /FILED UNDER SEAL ORDER		0001			
0127	12/04/01	MOT /DEFT'S PRO PER MTN TO DISMISS COUNSEL AND APPOINTMENT OF ALTERNATE COUNSEL/50		0003	OC	12/18/01	
				0003			
0128	12/06/01	TRAN/REPORTER'S TRANSCRIPT STATE'S REQUEST: ENTRY OF PLEA		AL		11/27/01	
				AL			
X 0129	12/03/01	REQT/NOTICE OF MOTION AND MOTION TO COMPEL HANDWRITING SAMPLE		0001	SC	12/06/01	
				0001			
0130	12/06/01	TRAN/REPORTER'S TRANSCRIPT PRETRIAL MOTIONS		AL		11/27/01	

(Continued to page 5)

NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0131	12/05/01	REQT/EX PARTE	MOTION FOR ORDER FOR CONTACT VISIT	0002			
X0132	12/05/01	OBJ /DEFENDANT BENNETTS	OBJECTION TO THE STATES NOTICE OF MOTION AND MOTION TO COMPEL HANDWRITING SAMPLE	0001			Y
0133	12/05/01	ROC /RECEIPT OF COPY		0001		12/05/01	
0134	12/10/01	EXPR/EX PARTE	ORDER GRANTING MOTION FOR CONTACT VISIT	0002			
X0135	12/10/01	ORDR/ORDER	GRANTING MOTION TO COMPEL PRODUCTION OF HANDWRITING SAMPLES	0001		12/10/01	
0136	12/11/01	ROC /RECEIPT OF COPY		0002			
0137	12/13/01	SUBP/SUBPOENA		0001	SC	01/11/02	
0138	12/24/01	MOT /DEFT'S MTN FOR DISCOVERY/51	VH 12-28-01	0001	SV	12/12/01	
0139	12/24/01	ROC /RECEIPT OF COPY		0001		12/24/01	
0140	12/28/01	MOT /DEFT'S MTN FOR DISCOVERY /52		0001	MR	01/03/02	
0141	12/28/01	ORDR/ORDER	SHORTENING TIME	0001			
0142	12/28/01	REQT/EX PARTE	MOTION FOR ORDER SHORTENING TIME	0001			
0143	12/28/01	DOW /SUPPLEMENTAL DESIGNATION OF WITNESS		0001			
0144	12/28/01	ROC /RECEIPT OF COPY		0001		12/28/01	
0145	12/28/01	ROC /RECEIPT OF COPY		0001		12/28/01	
0146	01/03/02	MOT /ALL PENDING MOTIONS (1/3/02)		0001		01/03/02	
0147	01/03/02	JURY/TRIAL BY JURY (VJ 1/10/02)		0001	VC	01/14/02	
0148	01/10/02	CALC/CALENDAR CALL		0001		01/17/02	
0149	01/10/02	CALC/CALENDAR CALL		0002		01/17/02	
0150	01/10/02	JURY/TRIAL BY JURY		0001	JV	02/04/02	
0151	01/10/02	JURY/TRIAL BY JURY (VJ 1/17/02)		0002	VC	01/22/02	
0152	01/11/02	MOT /ALL PENDING MOTIONS 1/10/02		AL		01/10/02	
0153	01/14/02	ORDR/MEDIA REQUEST TO PERMIT CAMERA ACCESS TO PROCEEDINGS AND ORDER GRANTING				01/14/02	
0154	01/17/02	MOT /ALL PENDING MOTIONS (1/17/02)		AL		01/17/02	
0155	01/17/02	CALC/CALENDAR CALL		0002		01/31/02	
0156	01/17/02	JURY/TRIAL BY JURY VJ 1-28-02		0002	VC	01/29/02	
0157	01/22/02	ORDR/MEDIA REQUEST TO PERMIT CAMERA ACCESS TO PROCEEDINGS AND ORDER GRANTING		0001		01/22/02	
0158	01/24/02	TRB /TRIAL BEGINS				01/22/02	
X0159	01/22/02	INFO/AMENDED INFORMATION		0001		01/22/02	
0160	01/22/02	OPPS/STATES OPPOSITION TO DEFENDANTS MOTION IN LIMINE TO PRECLUDE EVIDENCE OF GANG AFFILIATION		0001			Y
0161	01/25/02	JLST/DISTRICT COURT JURY LIST		0001			
0162	01/29/02	SUBP/SUBPOENA		0001	SC	01/28/02	
0163	01/29/02	SUBP/SUBPOENA		0001	SV	01/19/02	
0164	01/29/02	SUBP/SUBPOENA		0001	SC	01/28/02	
0165	01/29/02	SUBP/SUBPOENA		0001	SV	01/19/02	
0166	01/29/02	SUBP/SUBPOENA		0001	SC	01/28/02	
				0001	SV	01/18/02	
				0001	SC	01/28/02	
				0001	SV	01/25/02	

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NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0167	01/29/02	SUBP/SUBPOENA		0001	SC	01/28/02	
				0001	SV	01/24/02	
0168	01/29/02	SUBP/SUBPOENA		0001	SC	01/28/02	
				0001	SV	01/24/02	
0169	01/29/02	SUBP/SUBPOENA		0001	SC	01/28/02	
				0001	SV	01/24/02	
0170	01/29/02	SUBP/SUBPOENA		0001	SC	01/28/02	
				0001	SV	01/24/02	
0171	01/29/02	SUBP/SUBPOENA		0001	SC	01/28/02	
				0001	SV	01/24/02	
0172	01/29/02	SUBP/SUBPOENA		0001	SC	01/28/02	
				0001	SV	01/18/02	
0173	01/31/02	CALC/CALENDAR CALL		0002		03/14/02	
0174	01/31/02	JURY/TRIAL BY JURY VJ 3/14/02		0002	VC	03/18/02	
0175	01/30/02	SUPP/SUPPLEMENTAL DESIGNATION OF WITNESSES		0001			
0176	02/04/02	HEAR/PENALTY HEARING		0001		02/06/02	
0177	02/04/02	INST/INSTRUCTIONS TO THE JURY INSTRUCTION NO 1		0001			
0178	02/04/02	VER /VERDICT		0001		02/04/02	
0179	02/06/02	SENT/SENTENCING		0001		03/21/02	
0180	02/05/02	REQT/EX PARTE MOTION FOR ORDER TO PREPARE TRANSCRIPT		0002			
				0002			
0181	02/06/02	STIP/STIPULATION WAIVING SEPARATE PENALTY HEARING AND ALLOWING SENTENCE TO BE IMPOSED BY THE COURT		0001			Y
				0001			
0182	02/07/02	SUBP/SUBPOENA		0001	SC	01/31/02	
				0001	SV	01/31/02	
0183	02/07/02	SUBP/SUBPOENA		0001	SC	01/31/02	
				0001	SV	01/31/02	
0184	02/11/02	MOT /DEFT'S MTN FOR NEW TRIAL/67		0001	DN	02/21/02	
0185	02/11/02	ROC /RECEIPT OF COPY		0001		02/11/02	
0186	02/12/02	NOEV/NOTICE OF EXHIBIT(S) IN THE VAULT				01/22/02	
0187	02/13/02	TRE /TRIAL ENDS				02/06/02	
0188	02/14/02	ORDR/ORDER TO PREPARE TRANSCRIPT		0002			
0189	02/15/02	ROC /RECEIPT OF COPY		0002		02/15/02	
0190	02/20/02	OPPS/STATES OPPOSITION TO DEFENDANTS MOTION FOR NEW TRIAL		0001			
				0001			
0191	03/01/02	ORDR/ORDER DENYING DEFENDANTS MOTION FOR NEW TRIAL		0001		03/01/02	
				0001			
0192	03/13/02	TRAN/REPORTER'S TRANSCRIPT PORTION OF JURY TRIAL - DAY 1 (JURY SELECTION NOT TRANSCRIBED) VOLUME 1		0001		01/22/02	Y
				0001			
0193	03/13/02	TRAN/REPORTER'S TRANSCRIPT PORTION OF JURY TRIAL - DAY 2 (JURY SELECTION NOT TRANSCRIBED) VOLUME II		0001		01/23/02	Y
				0001			
0194	03/13/02	TRAN/REPORTER'S TRANSCRIPT PORTION OF JURY TRIAL - DAY 3 (JURY SELECTION NOT TRANSCRIBED) VOLUME III		0001		01/24/02	Y
				0001			
0195	03/13/02	TRAN/REPORTER'S TRANSCRIPT JURY TRIAL - DAY 4 VOLUME IV		0001		01/25/02	
				0001			
0197	03/13/02	TRAN/REPORTER'S TRANSCRIPT JURY TRIAL - DAY 9 VOLUME IX		0001		02/01/02	
				0001			

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NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0198	03/13/02	TRAN/REPORTER'S TRANSCRIPT JURY TRIAL - DAY 6	0001			01/29/02	
		VOLUME VI	0001				
0199	03/13/02	TRAN/REPORTER'S TRANSCRIPT JURY TRIAL - DAY 7	0001			01/30/02	
		VOLUME VII	0001				
0200	03/13/02	TRAN/REPORTER'S TRANSCRIPT JURY TRIAL - DAY 8	0001			01/31/02	
		VOLUME VIII	0001				
0201	03/13/02	TRAN/REPORTER'S TRANSCRIPT JURY TRIAL - DAY 10 - VERDICT VOLUME X	0001			02/04/02	
0202	03/13/02	TRAN/REPORTER'S TRANSCRIPT JURY TRIAL - DAY 11 WAIVER OF PENALTY PHASE VOLUME XI	0001			02/06/02	
0203	03/14/02	MOT /BINDRUP'S MTN TO WITHDRAW AS COUNSEL & CONTINUE SENTENCING/68 VH 3-15-02	0001	VC		03/26/02	
0204	03/14/02	CALC/CALENDAR CALL	0002			05/23/02	
0205	03/14/02	JURY/TRIAL BY JURY	0002			06/07/02	
0206	03/15/02	MOT /SCOTT BINDRUP'S MTN TO WITHDRAW AS COUNSEL /71	0001	GR		03/19/02	
			0001				
0207	03/15/02	ORDR/ORDER SHORTENING TIME	0001			03/19/02	
0208	03/15/02	ROC /RECEIPT OF COPY	0001			03/15/02	
0209	03/15/02	SUBP/SUBPOENA	0002	SC		03/18/02	
			0002	SV		03/14/02	
0210	03/13/02	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS JURY TRIAL DAY 5 VOLUME V	0001			01/28/02	
			0001				
0211	03/15/02	REQT/EX PARTE MOTION FOR ORDER SHORTENING TIME	0001				
			0001				
0212	03/19/02	HEAR/CONFIRMATION OF COUNSEL <i>WISDOM</i>	0001			03/21/02	
0213	03/19/02	OCAL/STATUS CHECK: SET SENTENCING DATE	0001			03/21/02	
0214	03/19/02	MOT /DEFT'S PRO PER MTN TO DISMISS COUNSEL OF RECORD/74	0001	MT		04/02/02	
			0001				
0215	03/19/02	MOT /DEFT'S PRO PER MOTION TO TO PROCEED IN FORMA PAUPERIS /75	0001	GR		04/02/02	
			0001				
0216	03/19/02	MOT /DEFT'S PRO PER MTN TO RESET SENTENCING/76	0001	GR		04/02/02	
			0001				
0217	03/21/02	MOT /ALL PENDING MOTIONS 3/21/02	0001			03/21/02	
0218	03/21/02	OCAL/STATUS CHECK: SENTENCING	0001			04/02/02	
0219	03/27/02	ORDR/ORDER APPOINTING COUNSEL AT THE COURT APPOINTED HOURLY RATE	0001				
			0001				
0220	03/28/02	MOT /ALL PENDING MOTIONS (03-28-02)	AL			03/28/02	
0221	03/29/02	ORDR/ORDER	0001				
0222	04/02/02	SENT/SENTENCING	0001	GR		06/18/02	
0223	04/03/02	MOT /ALL PENDING MOTIONS 04/02/02	0001			04/02/02	
0224	05/07/02	ORDR/ORDER FOR INVESTIGATOR FEES IN EXCESS OF STATUTORY AMOUNT	0001				
			0001				
0225	05/07/02	APPL/EX-PARTE APPLICATION FOR INVESTIGATOR FEES IN EXCESS OF STATUTORY AMOUNT	0001				
			0001				
0226	05/21/02	EXPR/EX PARTE ORDER GRANTING MOTION FOR CONTACT VISIT	0002				
			0002				
0227	05/22/02	LIST/NOTICE OF WITNESSES	0002				
0228	05/24/02	SENT/SENTENCING	0003	GR		06/06/02	
0229	05/24/02	LIST/SUPPLEMENTAL NOTICE OF WITNESSES	0002				
						05/28/02	
0230	05/28/02	TRB /TRIAL BEGINS				05/28/02	
0231	05/28/02	INFO/AMENDED INFORMATION	0002			05/28/02	
0232	05/29/02	JLST/DISTRICT COURT JURY LIST	0002				

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NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0233	06/04/02	MOT	/ALL PENDING MOTIONS 6/04/02	AL		06/04/02	
0234	06/05/02	ORDR	/MEDIA REQUEST TO PERMIT CAMERA ACCESS TO PROCEEDINGS AND ORDER GRANTING	0002		06/05/02	
0235	06/05/02	ORDR	/ORDER REQUIRING MATERIAL WITNESS TO POST BAIL OR BE COMMITTED TO CUSTODY	0002			
0236	06/07/02	SENT	/SENTENCING	0002	GR	08/01/02	
0237	06/06/02	JLST	/AMENDED DISTRICT COURT JURY LIST	0002			
0238	06/10/02	MOT	/DEFT'S MTN FOR NEW TRIAL /85 VJ(6/11/02)	0001	VC	06/13/02	
0239	06/10/02	TRE	/TRIAL ENDS			06/07/02	
0240	06/07/02	INST	/INSTRUCTIONS TO THE JURY	0002			
0241	06/06/02	PINU	/PROPOSED JURY INSTRUCTIONS NOT USED AT TRIAL	0002			
0242	06/10/02	ROC	/RECEIPT OF COPY	0001		06/07/02	
0243	06/07/02	JMNT	/VERDICT	0002		06/11/02	
0244	06/10/02	ROC	/RECEIPT OF COPY	0001		06/10/02	
0245	06/10/02	ORDR	/ORDER SHORTENING TIME	0001			
0246	06/11/02	NOEV	/NOTICE OF EXHIBITS IN THE VAULT			05/28/02	
0247	06/10/02	MOT	/DEFT'S MTN FOR NEW TRIAL	0001	DN	06/18/02	
0248	06/11/02	AFFD	/AFFIDAVIT OF SERVICE/ARREST	0002	SV	06/06/02	
0249	06/17/02	OPPS	/STATES OPPOSITION TO DEFENDANT ASHLEY BENNETTS MOTION FOR NEW TRIAL	0001			
0250	06/18/02	MOT	/ALL PENDING MOTIONS 06-18-02	0001		06/18/02	
0251	06/18/02	JMNT	/ADMINISTRATION/ASSESSMENT FEE	0003		06/19/02	
0252	06/18/02	JMNT	/GENETIC TESTING FEE	0003		06/19/02	
0253	06/18/02	JMNT	/JUDGMENT OF RESTITUTION	0003		06/19/02	
0254	06/18/02	JUDG	/JUDGMENT OF CONVICTION - PLEA OF GUILTY	0003		06/18/02	
0255	06/20/02	JMNT	/ADMINISTRATION/ASSESSMENT FEE	0001		06/21/02	
0256	06/20/02	JMNT	/GENETIC TESTING FEE	0001		06/21/02	
0257	06/20/02	JMNT	/JUDGMENT OF RESTITUTION	0001		06/21/02	
0258	06/20/02	JUDG	/JUDGMENT OF CONVICTION - JURY TRIAL	0001		06/20/02	
0259	06/28/02	NOAS	/NOTICE OF APPEAL	0001	AP	06/28/02	
0260	07/02/02	ORDR	/STIPULATION AND ORDER FOR PAYMENT OF EXCESS ATTORNEY FEES AND EXPENSES	0002		07/02/02	
0261	07/10/02	STAT	/CASE APPEAL STATEMENT	0001			
0262	07/25/02	OCAL	/STATUS CHECK: ANY OTHER MOTIONS	0002	OC	08/01/02	
0263	07/26/02	TRAN	/REPORTER'S TRANSCRIPT SENTENCING	0002		07/25/02	
0264	08/01/02	MOT	/ALL PENDING MOTIONS 8/1/02	0002		08/01/02	
0265	08/05/02	ORDR	/ORDER APPOINTING COUNSEL	0002	HG	08/02/02	
0266	08/08/02	JMNT	/ADMINISTRATION/ASSESSMENT FEE	0002		08/09/02	
0267	08/08/02	JMNT	/GENETIC TESTING FEE	0002		08/09/02	
0268	08/08/02	JMNT	/JUDGMENT OF RESTITUTION	0002		08/09/02	
0269	08/08/02	JUDG	/JUDGMENT OF CONVICTION - (JURY TRIAL)	0002	GR	08/08/02	
0270	08/15/02	STAT	/CASE APPEAL STATEMENT	0002			
0271	08/15/02	NOAS	/NOTICE OF APPEAL	0002	AP	08/15/02	
0272	08/19/02	ORDR	/STIPULATION AND ORDER FOR PAYMENT OF EXCESS ATTORNEY FEES AND EXPENSES	0002		08/19/02	
0273	08/29/02	ORDR	/ORDER FOR INVESTIGATOR FEES IN EXCESS OF STATUTORY AMOUNT	0001		08/29/02	
0274	08/29/02	NOAS	/NOTICE OF APPEAL	0002	AP	08/29/02	
0275	08/29/02	APPL	/EX PARTE APPLICATION FOR INVESTIGATOR FEES IN EXCESS OF STATUTORY AMOUNT	0001			

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NO.	FILED/REC CODE	REASON/DESCRIPTION	FOR	OC SCH/PER C
0276	08/30/02	STAT/CASE APPEAL STATEMENT	0002	
0277	09/20/02	TRAN/REPORTER'S TRANSCRIPT STATUS CHECK RE: ANY OTHER MOTIONS	0002 0002	08/01/02
0278	11/01/02	NOTC/NOTICE OF TRANSCRIPTS ON SHELVES IN FILE ROOM JURY TRIAL		05/28/02
0279	10/31/02	TRAN/REPORTER'S TRANSCRIPT JURY TRIAL DAY EIGHT	0002 0002	06/07/02
0280	10/31/02	TRAN/REPORTER'S TRANSCRIPT JURY TRIAL DAY SEVEN	0002 0002	06/06/02
0281	10/31/02	TRAN/REPORTER'S TRANSCRIPT JURY RIAL DAY THREE	0002 0002	05/30/02
0282	10/31/02	TRAN/REPORTER'S TRANSCRIPT JURY TRIAL DAY ONE	0002	05/28/02
0283	10/31/02	TRAN/REPORTER'S TRANSCRIPT JURY TRIAL DAY FIVE	0002 0002	06/04/02
0284	10/31/02	TRAN/REPORTER'S TRANSCRIPT JURY TRIAL DAY TWO	0002	05/29/02
0285	10/31/02	TRAN/REPORTER'S TRANSCRIPT OF JURY TRIAL DAY SIX	0002 0002	06/05/02
0286	10/31/02	TRAN/REPORTER'S TRANSCRIPT JURY TRIAL DAY FOUR	0002 0002	05/31/02
0287	<u>05/14/03</u>	HEAR/AT THE REQ OF THE CT: CONFIRMATION OF COUNSEL (C. ORAM)	0001 0001	GR 05/29/03
0288	06/11/03	NOTC/NOTICE OF APPOINTMENT OF COUNSEL	0001	
0289	06/18/03	REQT/MOTION FOR APPOINTMENT OF COUNSEL	0003	
0290	06/18/03	REQT/MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS	0003 0003	
0291	06/18/03	PET /PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION	0003 0003	
0292	06/20/03	CASO/CASE (RE)OPENED		06/20/03
0293	06/20/03	PET /PTN FOR WRIT OF HABEAS CORPUS	0003	DN 10/21/03
0294	06/20/03	MOT /DEFT'S PRO PER MTN FOR APPTMNT OF COUNSEL/92	0003 0003	DN 09/30/03
0295	06/20/03	MOT /DEFT'S PRO PER MTN FOR LEAVE TO PROCEED IN FROMA PAUPERIS/93	0003 0003	GR 09/30/03
0296	06/20/03	PPOW/ORDER FOR PETITION FOR A WRIT OF HABEAS CORPUS	0003 0003	SC 09/30/03
0297	08/20/03	ORDR/ORDER FOR TRANSCRIPTS	0003	08/20/03
0298	09/03/03	OPPS/STATES OPPOSITION TO DEFENDANTS (1) MOTION FOR OF COUNSEL (2)	0003 0003	Y
APPLICATION AND ORDER TO TRANSPORT AND PRODUCT INMATE AND (3) PETITION FOR WRIT OF HABEAS CORPUS				
0299	09/30/03	MOT /ALL PENDING MOTIONS FOR 9/30/03	0003	09/30/03
0300	10/26/03	ASSG/Reassign Case From Judge Douglas To Judge Leavitt		
0301	10/27/03	CSCL/CASE CLOSED		10/21/03
0302	11/05/03	ORDR/ORDER DENYING DEFENDANTS REQUEST FOR APPOINTMENT OF COUNSEL AND REQUEST FOR TRANSPORT	0003 0003	HG 10/21/03 Y
0303	11/13/03	JUDG/FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER	0003 0003	HG 09/30/03
0304	12/10/03	NOED/NOTICE OF ENTRY OF DECISION AND ORDER	0003	11/13/03
0305	06/09/04	APCL/APPEAL TO SUPREME COURT: CLOSED 40097		06/03/04
0306	07/02/04	JMNT/CLERK'S CERTIFICATE JUDGMENT AFFIRMED	0002	07/06/04

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NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0307	07/02/04	CCJA/NEVADA SUPREME COURT CLERKS CERTIFICATE/	0002			07/02/04	
		JUDGMENT - AFFIRMED	0002				
0308	07/06/04	REQT/EX PARTE MOTION FOR PAYMENT OF FINAL	0002				
		ATTORNEYS FEES AND COSTS	0002				
0309	07/15/04	ORDR/ORDER GRANTING MOTION FOR EXCESS FEES	0002			07/15/04	
		AND COSTS	0002				
0310	10/07/04	APCL/APPEAL TO SUPREME COURT: CLOSED 39864			GR	10/05/04	
0311	11/08/04	JMNT/CLERK'S CERTIFICATE JUDGMENT AFFIRMED	0001			11/12/04	
0312	11/08/04	CCJA/NEVADA SUPREME COURT CLERKS CERTIFICATE/	0001			11/08/04	
		JUDGMENT - AFFIRMED	0001				
0313	11/16/04	PET /DEFT'S PTN FOR WRIT OF HABEAS CORPUS	0002		DN	12/28/04	
0314	11/16/04	CASO/CASE (RE)OPENED				11/16/04	
0315	11/10/04	PET /PETITION FOR WRIT OF HABEAS CORPUS POST	0002				
		CONVICTION AND APPOINTMENT OF COUNSEL	0002				
0316	11/16/04	ORDR/ORDER FOR PETITION FOR WRIT OF HABEAS	0002			11/16/04	
		CORPUS	0002				
0317	12/15/04	OPPS/STATES OPPOSITION TO DEFENDANTS	0002				Y
		PETITION FOR WRIT OF HABEAS CORPUS AND	0002				
		DEFENDANTS MOTION TO APPOINT COUNSEL					
0318	01/03/05	PET /DEFT'S PTN FOR WRIT OF HABEAS CORPUS	0001		VC	02/17/05	
		POST CONVICTION/96 VA 01/03	0001				
0319	01/06/05	PET /DEFT'S PTN FOR WRIT OF HABEAS CORPUS	0001			04/28/05	
0320	01/06/05	HEAR/DEFT'S REQUEST FOR APPOINTMENT OF	0001		MT	04/28/05	
		COUNSEL/98	0001				
0321	01/03/05	CERT/CERTIFICATE OF SERVICE BY MAIL	0001			12/29/04	
0322	01/03/05	AFFD/AFFIDAVIT IN SUPPORT OF REQUEST TO	0001				
		PROCEED IN FORMA PAUPERIS	0001				
0323	01/06/05	EIE /ENTRY IN ERROR					
0324	01/06/05	PPOW/ORDER FOR PETITION FOR A WRIT OF HABEAS	0001		SH	02/22/05	
		CORPUS	0001				
0325	01/12/05	JUDG/FINDINGS OF FACTS, CONCLUSIONS OF LAW	0002		HG	12/28/04	
		AND ORDER	0002				
0326	01/13/05	OPPS/STATES OPPOSITION TO DEFENDANTS	0001				
		PETITION FOR WRIT OF HABEAS CORPUS	0001				
0327	01/13/05	OPPS/STATES OPPOSITION TO DEFENDANTS MOTION	0001				
		TO APPOINT COUNSEL	0001				
0328	01/19/05	NOED/NOTICE OF ENTRY OF DECISION AND ORDER	0002			01/12/05	
0329	02/16/05	MOT /DEFT'S PRO PER MTN ENLARGEMENT OF TIME	0001		GR	02/24/05	
0330	02/24/05	MOT /ALL PENDING MOTIONS 2/24/05	0001			02/24/05	
0331	02/18/05	STAT/CASE APPEAL STATEMENT	0002		AP	02/18/05	
0332	02/18/05	NOAS/NOTICE OF APPEAL	0002			02/18/05	
0333	02/18/05	ROA /DESIGNATION OF RECORD ON APPEAL	0002				
0334	02/28/05	OCAL/STATUS CHECK: SUPPLEMENTAL PETITION	0001			04/28/05	
0335	03/14/05	ORDR/ORDER GRANTING DEFENDANTS MOTION FOR	0001		HG	02/24/05	
		ENLARGEMENT OF TIME	0001				
0336	03/18/05	EXPR/EX PARTE ORDER GRANTING ATTORNEYS FEES	0001			03/18/05	
		IN EXCESS OF THE STATUTORY LIMIT	0001				
0337	03/18/05	ORDR/NUNC PRO TUNC ORDER	0001			03/18/05	
0338	11/27/01	INFO/AMENDED INFORMATION	0003			11/27/01	
0339	04/11/02	RAO /MEDIA REQUEST AND ORDER	0003		GR	04/11/02	
0340	04/28/05	MOT /ALL PENDING MOTIONS 4-28-05	0001			04/28/05	
0341	04/28/05	HEAR/HEARING: DEFT'S PETITION FOR WRIT OF	0001		GP	07/12/05	
		HABEAS CORPUS	0001				

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NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0342	05/24/05	APCL/APPEAL TO SUPREME COURT: CLOSED 44745	0002	AP	05/19/05		
0343	05/31/05	SUPP/SUPPLEMENT TO PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION	0001				
0344	06/01/05	ROC /RECEIPT OF COPY	0001		06/01/05		
0345	06/16/05	AFFT/AFFIDAVIT OF BETTY LEMONCELLO	0001				
0346	06/16/05	ROC /RECEIPT OF COPY	0001		06/16/05		
0347	06/16/05	AFFT/AFFIDAVIT OF MARIE CRUMP	0001				
0348	06/20/05	JMNT/CLERK'S CERTIFICATE JUDGMENT AFFIRMED	0002		06/21/05		
0349	06/20/05	CCJA/NEVADA SUPREME COURT CLERKS CERTIFICATE/ JUDGMENT - AFFIRMED	0002		06/20/05		
0350	06/24/05	REQT/EX PARTE MOTION FOR AN ORDER TO TRANSPORT DEFENDANT	0001				
0351	06/24/05	OTTE/ORDER TO TRANSPORT DEFENDANT	0001	SH	07/12/05		
0352	07/07/05	OPPS/STATES OPPOSITION TO DEFENDANTS SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION	0001				Y
0353	07/11/05	ROC /RECEIPT OF COPY	0001		07/11/05		
0354	07/11/05	RPLY/REPLY TO STATES OPPOSITION TO DEFENDANTS SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION	0001				Y
0355	07/12/05	HEAR/ <u>EVIDENTIARY HEARING: GROUNDS 1,3,4,5</u>	0001		11/04/05		
0356	07/21/05	ROC /RECEIPT OF COPY	0001		07/21/05		
0357	07/21/05	AFFT/AFFIDAVIT OF DIANE CRUM RICHARMOND	0001				
0358	07/26/05	RSPN/SUPPLEMENTAL RESPONSE TO DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION	0001				Y
0359	08/16/05	ROC /RECEIPT OF COPY	0001		08/16/05		
0360	08/16/05	SUPP/PETITIONERS SUPPLEMENTAL FACTS TO PETITIONERS SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS ( POST CONVICTION)	0001				Y
0361	10/14/05	REQT/EX PARTE MOTION FOR AN ORDER TO TRANSPORT DEFENDANT	0001				
0362	10/14/05	OTTE/ORDER TO TRANSPORT DEFENDANT	0001	SH	11/01/05		
0363	11/18/05	NOAS/NOTICE OF APPEAL	0001	AP	11/18/05		
0364	11/18/05	STAT/CASE APPEAL STATEMENT	0001				
0365	11/28/05	NOEV/NOTICE OF EXHIBIT(S) IN THE VAULT			11/18/05		
0366	11/29/05	JUDG/FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER	0001		11/29/05		
0367	12/14/05	NOED/NOTICE OF ENTRY OF DECISION AND ORDER	0001		11/29/05		
0368	12/15/05	MOT /DEFT'S MNT TO APPT APPELLATE COUNSEL/105	0001		12/27/05		

IN THE SUPREME COURT OF THE STATE OF NEVADA

ASHLEY WILLIAM BENNETT

Appellant,

vs

STATE OF NEVADA et. al.,

Respondent

District Court Case No: C175914

NV Supreme Court Case No: 46324

\* Dear Clerk Bloom:

Please return me 1 filed/stamped copy  
of the instant motion ... THANK YOU ☺

REQUEST FOR TRANSCRIPTS OF PROCEEDINGS

TO: Court Reporter(s) for the 8th Judicial District Court • Dept 12

1) Gina Shrader and 2) Cheryl Gardner

Per NRAP Rule 9, the above Appellant Pro-Se respectfully requests copies  
of the Transcripts of Proceedings listed below:

1] 8th Judicial District Court • Honorable Judge Michelle Leavitt presiding

2] Dates of Transcripts needed:

2.1) 11-01-05 and 11-02-05 / Gina Shrader, Court Reporter

2.2) 11-04-05 / Cheryl Gardner, Court Reporter

3] Nature of Proceedings: Evidentiary Hearing on Habeas Corpus Post-Conviction Relief

4] Number of copies needed: 1

I, the above Appellant Pro-Se, hereby certify that on the date below, I ordered  
the above transcripts from the above Court Reporter(s). Appellant is In-Forma-  
Pauperis, thus no payment is required. Further, Appellant requires such transcripts  
to prepare his Appellant's Opening Brief ["AOB"] to appeal the dismissal of his  
Petition for Writ of Habeas Corpus Post-Conviction Relief within 120 days per  
NRAP Rule 31a(1). Thus, Appellant would greatly appreciate if the above  
Court Reporters would fill his instant request for transcripts expeditiously.

DATED this 10th day of JANUARY, 2006

BY: Ashley Bennett

ASHLEY BENNETT # 73265 • Pro-Se  
High Desert State Prison / POB 650  
Indian Springs NV 89018-0650

DATE: \* 1-10-6

---

MS CHERYL GARDNER

MS GINA SHRADER

, Court Reporter

8th Judicial District Court • Dept 12

200 Lewis Ave • LV NV 89155-1601

Dear Court Reporter:

- 1] Per the Nevada Rules of Appellate Procedure ["NRAP"] Rule 9, enclosed is my "Request For Transcripts Of Proceedings" for the dates & times indicated.
- 2] I am Indigent & have In-Forma-Pauperis [IFP] status. Thus, no payment is required of me for you to send me such transcripts.  
\* See NRAP Rule 9(a)
- 3] I've enclosed a Large Manilla Self-Addressed-Stamped-Envelope [SASE] <sup>.74 d</sup> to pay for you to mail me such transcripts. As such, I would appreciate it if you could send me said transcripts as soon as possible. That, because I need them to prepare & file my Appellant's Opening Brief [AOB] to the Nevada Supreme Court within 120 days as required by NRAP Rule 31 a(1).
- 4] Thank you for your assistance & I look forward to receiving my transcripts from you soon.

Yours very respectfully ... ASHLEY BENNETT ☺

PS: Postage Paid via NDOC Brass Slip #893749

CERTIFICATE OF SERVICE :

I, ASHLEY BENNETT, hereby certify that on the date below I mailed a true & correct copy of the foregoing "Motion" entitled "Request For Transcripts of Proceedings" 'via 1st Class U.S. Mail Postage Prepaid by depositing such in the Prison Institutional Mailbox : \*Jiri NDOC Brass Slip #893749

- 1) Gina Shader, Court Reporter / Dept 12 \*1 Copy + Letter  
200 Lewis Ave • LV NV 89155-1601
- 2) Cheryl Gardner, Court Reporter / Dept 12 \*1 Copy + Letter  
200 Lewis Ave • LV NV 89155-1601
- 3) Clark County DA \*1 Copy  
200 Lewis Ave • LV NV 89155
- 4) Nevada Supreme Court \*1 Original + 2 Copies (Return me stamped / filed copy)  
Janette M. Bloom, Clerk • 201 S. Carson St #201 • Carson City NV 89701-4702

DATED this 10th day of JANUARY, 2006

BY: Ashley Bennett

ASHLEY BENNETT #73265 • Pro-Se  
High Desert State Prison / POB 650  
Indian Springs NV 89018-0650

# EXHIBIT I



IN THE SUPREME COURT OF THE STATE OF NEVADA

ASHLEY WILLIAM BENNETT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39861

FILED

OCT 05 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

Appeal from a judgment of conviction, pursuant to a jury verdict, of one count of first-degree murder with use of a deadly weapon. Eighth Judicial District Court, Clark County; Michael L. Douglas, Judge.

Bennett challenges his conviction on various grounds. We conclude that all of his arguments lack merit, and we affirm his conviction.

Bennett first contends that the district court erred in denying his motion for a mistrial after the State was permitted to introduce evidence that Bennett intimidated and threatened the State's witness Anthony Gantt, causing him to be reluctant to testify. We conclude that the district court did not abuse its discretion in denying Bennett's motion for mistrial.<sup>1</sup> We have noted that the prosecution's suggestions of witness intimidation by a defendant are reversible error, unless the prosecutor also presents substantial credible evidence that the defendant was the source of the intimidation.<sup>2</sup> However, if counsel "opens the door" by

<sup>1</sup>Johnson v. State, 118 Nev. 787, 796, 59 P.3d 450, 456 (2002) (noting that denial of a motion for mistrial is within the district court's sound discretion, and will not be overturned absent a palpable showing of abuse).

<sup>2</sup>See Lay v. State, 110 Nev. 1189, 1193, 886 P. 2d 448, 450-51 (1994).

attacking the credibility of a witness for the other side, opposing counsel may elicit evidence of intimidation as an explanation of the witness's circumstances and to rehabilitate the witness.<sup>3</sup>

Here, the record indicates the district court correctly concluded that Bennett opened the door to the line of questioning regarding threats. Bennett placed Gantt's credibility in issue by inquiring about Gantt's reluctance to testify. Bennett also elicited testimony about the presence of threatening individuals in the courtroom. Additionally, the State presented substantial credible evidence that Bennett was the source of intimidation. Gantt testified that Bennett threatened that he was going to bring Gantt's family in to watch Gantt testify. The record shows that this threat was particularly intimidating to Gantt because Gantt's father and uncle were members of GPK, the same gang to which Bennett belonged, and Gantt's family did not want him to make a deal with the State and to testify. In fact the record reflects that Gantt's initial refusal to testify occurred only after his cousin and others walked into the courtroom. Thus, we conclude that the district court did not err in denying Bennett's motion for a mistrial.

Relying on NRS 48.045(2), Bennett also argues that he must be given a new trial since no pretrial hearing was conducted to determine whether Gantt's allegations of threats and/or intimidation should have been admitted.

NRS 48.045(2) prohibits introduction of evidence of other crimes, wrongs, or acts as proof of a person's character, but allows such

---

<sup>3</sup>See Rippo v. State, 113 Nev. 1239, 1253, 946 P.2d 1017, 1026 (1997) (citing Wesley v. State, 112 Nev. 503, 513, 916 P.2d 793, 800 (1996)); see also United States v. Pierson, 121 F.3d 560 (9th Cir. 1997).

evidence to prove motive, opportunity, intent, or other relevant issues.<sup>4</sup> Prior to admission of collateral act evidence, the district court must conduct a hearing on the record and outside the presence of the jury and make certain determinations.<sup>5</sup> "Failure to conduct a Petrocelli hearing on the record is grounds for reversal on appeal unless either the record is sufficient for this court to determine that the evidence is admissible under the test for admissibility of bad act evidence . . . or where the result would have been the same had the district court not admitted the evidence."<sup>6</sup>

In Evans v. State,<sup>7</sup> we considered application of NRS 48.045(2) to evidence of witness intimidation and determined NRS 48.045(2) to be inapposite. We observed that evidence that a defendant threatened a witness with violence after a crime was committed is directly relevant to the question of the defendant's guilt.<sup>8</sup> We, therefore, concluded that "evidence of such a threat is neither irrelevant character evidence nor evidence of collateral acts requiring a hearing before its admission."<sup>9</sup> Accordingly, in the instant case, we conclude that a Petrocelli hearing was not required and, thus, the district court did not err in failing to conduct a Petrocelli hearing.

---

<sup>4</sup>NRS 48.045(2); see also Evans v. State, 117 Nev. 609, 628, 28 P.3d 498, 511 (2001).

<sup>5</sup>Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

<sup>6</sup>King v. State, 116 Nev. 349, 354, 998 P.2d 1172, 1175 (2000).

<sup>7</sup>Evans, 117 Nev. 609, 628, 28 P.3d 498, 511-12 (2001).

<sup>8</sup>Id. at 628, 28 P.3d at 512.

<sup>9</sup>Id.

Bennett also complains that the district court improperly restricted his cross-examination of Pam Neal, a witness during the State's case-in-chief. Bennett argues that the district court's ruling limited his ability to show Neal's bias and motive to fabricate. We do agree. Bennett was permitted to inquire concerning the events surrounding Neal's arrest, the specific charges she faced, and her belief that a GP member was responsible for the death of her cousin, Eric Bass. Additionally, Bennett elicited adequate testimony from Neal regarding dismissal of her criminal charges to imply that the charges may have been dismissed in return for her favorable testimony. Since the district court limited Bennett's impeachment of Neal only by the restriction that Bennett was not to try to prove whether Neal in fact committed the crimes she was charged with, we conclude that the district court acted within its discretion and did not err in limiting Bennett's cross-examination of Neal.

Bennett next argues that the district court improperly limited the testimony of two of Bennett's witnesses, Reginald Do Fobbs and Lakeshia Reed. Bennett argues that Fobbs' and Reed's testimony was admissible to impeach the credibility of Neal with a prior inconsistent statement pursuant to NRS 51.036. We conclude that the district court did not err in limiting Bennett's examination of Fobbs and Reed. Under NRS 51.036, an out-of-court statement that would otherwise be inadmissible hearsay is admissible if the declarant testifies at trial, is subject to cross-examination concerning the statement, and the statement is inconsistent with his testimony.<sup>10</sup> Here, the district court prevented Bennett from questioning Fobbs about a conversation he had with Neal

<sup>10</sup>NRS 51.036(2)(a).

regarding certain statements of homicide detectives. These statements were clearly hearsay and did not fit within any recognized hearsay exception. Additionally, during Neal's cross-examination, Bennett failed to elicit specific testimony from Neal regarding the homicide detectives' statements. Thus, any testimony of this nature from Fobbs could not possibly be inconsistent with Neal's testimony. Additionally, Bennett's contention that Reed's proposed testimony about a conversation she overheard between Neal and Bennett was admissible under NRS 51.035 is without merit. Bennett never questioned Neal about a conversation she had with Bennett or the content of such a conversation. Thus, as with Fobbs, anything that Reed might testify to regarding such a conversation could not possibly be inconsistent with Neal's testimony.

Bennett also claims that the State violated Brady v. Maryland<sup>11</sup> when it failed to disclose Gantt's pre-sentence report and his statement to the court at the time he entered his plea. We disagree. Whether the State adequately disclosed information under Brady involves both factual and legal questions which we review de novo.<sup>12</sup> Brady established the rule that the prosecution's suppression of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment.<sup>13</sup> Failure to disclose such information violates due process regardless of the prosecutor's

---

<sup>11</sup>373 U.S. 83 (1963).

<sup>12</sup>Lay v. State, 116 Nev. 1185, 1193, 14 P.3d 1256, 1262 (2000).

<sup>13</sup>373 U.S. at 87; see also Jimenez v. State, 112 Nev. 610, 618-19, 918 P.2d 687, 692 (1996).

motive.<sup>14</sup> Evidence is considered material where there is a reasonable probability of a different outcome had the evidence been disclosed.<sup>15</sup> Further, "[m]ateriality 'does not require demonstration by a preponderance' that disclosure of the evidence would have resulted in acquittal."<sup>16</sup> A reasonable probability that the result would have been different is shown when the non-disclosure undermines confidence in the outcome of the trial.<sup>17</sup> Evidence must also be disclosed to impeach the credibility of the State's witnesses.<sup>18</sup>

Here, the State did not provide Bennett with Gantt's pre-sentence report or Gantt's plea canvass. However, there is no indication in the record that Bennett ever requested these materials or made a timely objection to the State's failure to produce the materials, and the State did provide Bennett with a copy of Gantt's plea memo and his agreement to testify, which was admitted into evidence. Additionally, there is nothing in the record to show that Gantt's pre-sentence report and plea canvass would be favorable to Bennett or that such evidence was material. Accordingly, we conclude that Bennett's bare assertion, based purely on speculation, that it is "reasonably probable" that the documents would show Gantt undermined his involvement in the case, is insufficient to sustain his claim of a Brady violation.

<sup>14</sup>Lay, 116 Nev. at 1194, 14 P.3d at 1362.

<sup>15</sup>Id.

<sup>16</sup>Id. (quoting Kyles v. Whitley, 514 U.S. 419, 434 (1995)).

<sup>17</sup>Id.

<sup>18</sup>Id.



Finally, Bennett alleges two instances of error regarding the jury instructions given at his trial: (1) the malice aforethought instruction was meaningless and incomprehensible, and (2) the express and implied malice instruction was unconstitutionally vague. First, we have directly addressed Bennett's argument regarding the malice aforethought instruction in Leonard v. State,<sup>19</sup> and have concluded that the language "a heart fatally bent on mischief" in the malice aforethought instruction is constitutional. We noted that "[a]lthough these phrases are not common in today's general parlance, . . . their use did not deprive appellant of a fair trial."<sup>20</sup> Second, the express and implied malice instruction given at Bennett's trial was essentially the exact definition of express and implied malice as set forth in NRS 200.020. The statutory language used in the instruction is well established in Nevada,<sup>21</sup> and although we have characterized the language as "archaic," we have also found it to be essential.<sup>22</sup> The instruction differed only in that it contained the phrase "may be implied" instead of "shall be implied," a change that we have found to be preferable.<sup>23</sup> Thus, we conclude that Bennett's jury instruction challenges lack merit.

<sup>19</sup>117 Nev. 55, 79, 17 P.3d 397, 413 (2000).

<sup>20</sup>Id. (quoting Leonard v. State, 114 Nev. 1196, 1208, 369 P.2d 280, 296 (1998)).

<sup>21</sup>Leonard, 117 Nev. at 78, 17 P.3d at 413.


<sup>22</sup>Kays v. State, 104 Nev. 730, 740, 766 P.2d 270, 272 (1988).

<sup>23</sup>Leonard, 117 Nev. at 78, 17 P.3d at 413.

Having concluded that Bennett's contentions lack merit, we  
ORDER the judgment of the district court AFFIRMED.

 C.J.  
Shearing

 J.  
Rose

 J.  
Maupin

cc: Eighth Judicial District Court Dept. 11, District Judge  
Christopher R. Oram  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk



# EXHIBIT J

● ORIGINAL ●

FILED

Nov 29 5 21 PM '05

*Shirley E. Augustine*  
CLERK

1 ORDR  
2 DAVID ROGER  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 MARC DIGIACOMO  
6 Chief Deputy District Attorney  
7 Nevada Bar #006955  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 -vs-

15 ASHLEY WILLIAM BENNETT,  
16 #1107300

17 Defendant.

CASE NO: C175914

DEPT NO: XII

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND ORDER

DATE OF HEARING: 11/4/2005  
TIME OF HEARING: 10:30 A.M.

18 THIS CAUSE having come on for hearing before the Honorable Michelle Leavitt,  
19 District Judge, on the 4th day of November, 2005, the Petitioner being present, represented  
20 by CYNTHIA DUSTIN, the Respondent being represented by DAVID ROGER, District  
21 Attorney, by and through MARC DIGIACOMO, Chief Deputy District Attorney, and the  
22 Court having considered the matter, including briefs, transcripts, arguments of counsel,  
23 documents on file herein as well as an evidentiary hearing on November 1 and 2, 2005, now  
24 therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. That Petitioner was found Guilty by a jury on February 4, 2002.
2. That Petitioner filed his first motion for new trial on February 11, 2002.
3. That in the first motion for new trial, Petitioner's trial counsel made a record of the

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RECEIVED  
NOV 29 2005  
COUNTY CLERK

1 testimony of Reginald Fobbes.

2 4. That Petitioner's trial counsel and an investigator met with all of the Petitioner's  
3 witnesses prior to trial and conducted an investigation into the facts underlying the charges.

4 5. That Petitioner never objected to the representation by Melinda Simpkins.

5 6. That prior to trial, on at least one occasion, Petitioner's attorney, Melinda  
6 Simpkins, and an investigator met with Reginald Fobbes to determine the relevant evidence  
7 which he had to present.

8 5. That the trial court determined that Reginald Fobbes' testimony was hearsay and  
9 as such inadmissible.

10 6. That the Nevada Supreme Court affirmed that determination.

11 7. That no evidence presented at the evidentiary hearing in this matter indicated to  
12 this Court that Reginald Fobbs provided information at the time of trial in addition to the  
13 proffered evidence.

14 8. That the evidence proffered at the evidentiary hearing in this matter would not  
15 have changed the Court's determination on the merits of the admissibility of Mr. Fobbs'  
16 testimony.

17 9. That asserting that Pamela Neal was biased against Defendant because she  
18 believed he was involved in another homicide was potentially highly prejudicial information  
19 which may have resulted in violent character evidence being admitted against Petitioner.

20 10. That Defendant's Attorney, Scott Bindrup, made a tactical decision to not ask  
21 more questions concerning Ms. Neal's alleged bias as the answers could have been highly  
22 prejudicial to his client.

23 11. That after receiving new counsel, Stanley Walton, Petitioner filed another motion  
24 for new trial on June 17, 2002.

25 12. That Mr. Walton never indicated that Reginald Fobbs had any additional  
26 information.

27 13. That Petitioner has not attacked the effective representation of Mr. Walton.

28 14. That Petitioner's second motion for new trial was denied on June 18, 2002.



1 appeal. See id; Evitts v. Lucey, 469 U.W. 387, 105 S.Ct. 830 (1985).

2 3. That Scott Bindrup's determination as to which questions to ask Pamela Neal was  
3 a tactical decision virtually unreviewable by this Court. See Dawson v. State, 108 Nev. 112,  
4 825 P.2d 593 (1992).

5 4. That Defendant could have raised the recantation of Anthony Gantt with the trial  
6 court and failed to do so. Defendant does not have good cause for the failure. As such, it is  
7 procedurally barred by NRS 34.810. See NRS 176.515 and NRS 34.810.

8 4. That this Court rejects the argument that merely because the trial court made  
9 slightly different rulings in two separate trials involving different evidence that an equal  
10 protection claim is available. As such, this Court does not find a violation of the equal  
11 protection clause of the Fourteenth Amendment. See Snow v. State, 105 Nev. 521, 779 P.2d  
12 96 (1989).

13 5. That Petitioner's third ground of relief was rejected by the Nevada Supreme Court  
14 and, as such, is denied as Law of the Case. See Pellegrini v. State, 117 Nev. 860, 34 P.3d  
15 519 (2001).

16 ORDER

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

19 DATED this 23 day of November, 2005.

20   
21 DISTRICT JUDGE

22 DAVID ROGER  
23 DISTRICT ATTORNEY  
24 Nevada Bar #002781

25 BY   
26 MARC DIGIACOMO  
27 Chief Deputy District Attorney  
28 Nevada Bar #006955

mb

1 NOED

2 District Court

3 Clark County, Nevada

FILED

Dec 14 9 42 AM '05

*Shirley B. Parra*  
CLERK

4 ASHLEY WILLIAM BENNETT,

5 Petitioner,

6 Case No. C175914

7 vs

8 Dept. No. XII

9 THE STATE OF NEVADA,

10 Respondent.

NOTICE OF ENTRY OF  
DECISION AND ORDER

11 PLEASE TAKE NOTICE that on November 29, 2005, the court entered a decision or order in this  
12 matter, a true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to  
14 appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date  
15 this notice is mailed to you. This notice was mailed on December 14, 2005.

16 SHIRLEY B. PARRAQUIRRE, CLERK OF COURT

17 By: *Brandi J. Wendel*  
Brandi J. Wendel, Deputy Clerk

18 CERTIFICATE OF MAILING

19 I hereby certify that on the 14<sup>th</sup> day of Dec., 2005, I placed a copy of this Notice of Entry of  
20 Decision and Order in:

21 The bin(s) located in the Office of the County Clerk of:  
22 Clark County District Attorney's Office - Appellate Division  
Attorney General's Office - Appellate Division

23 ☒ The United States mail addressed as follows:

24 Ashley William Bennett, #73265  
25 P.O. Box 1989  
Ely, NV 89301

Cynthia Dustin, Esq.  
601 S. Seventh St.  
Las Vegas, NV 89101

26 *Brandi J. Wendel*  
27 Brandi J. Wendel, Deputy Clerk

28 Notice of Entry of Decision and Order/2-01/jh

# EXHIBIT K

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

ASHLEY BENNETT,

Petitioner,

vs.

E.K. MCDANIEL, *et al.*,

Respondents.

3:06-cv-536-ECR-VPC

ORDER

This action proceeds on a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, by petitioner Ashley Bennett, a Nevada prisoner represented by counsel. Respondents have filed an answer (docket #36) to the amended habeas corpus petition. For the reasons stated below, Petitioner's habeas corpus petition will be denied.

**A. Background**

This case involves the state court conviction of petitioner on charges of first degree murder with the use of a deadly weapon, resulting in two consecutive life sentences without the possibility of parole. Petitioner was originally charged with five other defendants with Conspiracy to Commit Murder, Murder with the Use of a Deadly Weapon with Intent to Promote, Further or Assist a Criminal Gang. Petitioner was appointed Scott Bindrup from the murder conflict panel to represent him.

The conspiracy and gang enhancements were not supportable at preliminary hearing and those charges were dismissed, along with three of the defendants. Petitioner, along with Lailoni



1 Morrison and Anthony Gantt were bound over on Murder with the Use of a Deadly Weapon charges.  
 2 The three defendants' cases were severed and Gantt entered into a plea agreement promising to  
 3 testify against petitioner.

4 While Bindrup was counsel of record, his associate, Melinda Simpkins, worked  
 5 closely with him, assuming responsibility for a significant part of the case. Simpkins had been  
 6 practicing law for only three months and had no felony trial experience. Petitioner was convicted as  
 7 charged following a nine-day trial. Thereafter, petitioner filed a motion for new trial which was  
 8 denied. Prior to sentencing, Bindrup moved to withdraw as attorney of record. The motion was  
 9 granted and new counsel was appointed for sentencing, where petitioner was sentenced to two  
 10 consecutive life terms without the possibility of parole.

11 Petitioner's direct appeal was unsuccessful as was his state post-conviction efforts.  
 12 Petitioner is now before this court, raising five grounds for relief.

### 13 **B. Analysis**

14 Under the Antiterrorism and Effective Death Penalty Act ("AEDPA"), at 28 U.S.C. §  
 15 2254(d),

16 An application for a writ of habeas corpus on behalf of a person in  
 17 custody pursuant to the judgment of a State court shall not be granted with  
 18 respect to any claim that was adjudicated on the merits in State court  
 proceedings unless the adjudication of the claim –

19 (1) resulted in a decision that was contrary to, or involved an  
 unreasonable application of, clearly established Federal law, as determined by  
 the Supreme Court of the United States; or

20 (2) resulted in a decision that was based on an unreasonable  
 21 determination of the facts in light of the evidence presented in the State court  
 proceeding.

22 The AEDPA "modified a federal habeas court's role in reviewing state prisoner  
 23 applications in order to prevent federal habeas 'retrials' and to ensure that state-court convictions are  
 24 given effect to the extent possible under law." *Bell v. Cone*, 535 U.S. 685, 693-694 (2002). A state  
 25 court decision is contrary to clearly established Supreme Court precedent, within the meaning of §  
 26 2254 "if the state court applies a rule that contradicts the governing law set forth in [the Supreme

1 Court's] cases" or "if the state court confronts a set of facts that are materially indistinguishable from  
 2 a decision of [the Supreme Court] and nevertheless arrives at a result different from [the Supreme  
 3 Court's] precedent." *Lockyer v. Andrade*, 538 U.S. 63, 73 (2003), citing *Williams v. Taylor*, 529  
 4 U.S. 362, 405-406 (2000); *Bell*, 535 U.S. at 694.

5 Furthermore, a state court decision is an unreasonable application of clearly  
 6 established Supreme Court precedent "if the state court identifies the correct governing legal  
 7 principle from [the Supreme Court's] decisions but unreasonably applies that principle to the facts of  
 8 the prisoner's case." *Lockyer*, 538 U.S. at 73. The "unreasonable application" clause requires the  
 9 state court decision to be more than merely incorrect or erroneous; the state court's application of  
 10 clearly established federal law must be objectively unreasonable. *Id.* The state court's factual  
 11 determinations are presumed to be correct, and the petitioner has the burden of rebutting that  
 12 presumption by clear and convincing evidence. *See* 28 U.S.C. § 2254(e)(1).

### 13 **Ground One**

14 Ground one of Petitioner's federal habeas petition alleges that his primary trial  
 15 counsel was inexperienced and newly admitted to the bar causing him to receive ineffective  
 16 assistance of counsel in violation of his Sixth and Fourteenth Amendment rights.

17 Petitioner argues that counsel's inexperience made her unable to properly cross-  
 18 examine crucial witnesses. Petitioner contends that Ms. Simpkins, an attorney who had only be  
 19 licensed to practice for approximately three months at the time of trial, was charged with the  
 20 responsibility for preparing the majority of the case and failed in that task. He suggests that  
 21 Simpkins was unprepared to present petitioner's defense witnesses because she had never conducted  
 22 direct examination of any witness prior to petitioner's trial and, as a result, she was "unable to elicit  
 23 information that was necessary to present a defense" on petitioner's part. Petitioner does not specify  
 24 what information Simpkins should have, but did not bring out through her examination.

25 Respondents note that the Nevada Supreme Court denied this count after applying the  
 26 proper federal legal standard as established under *Strickland v. Washington*, 466 U.S. 668 (1988),

1 and argue the claim is belied by the record.

2           In *Strickland v. Washington*, 466 U.S. 668 (1984), the Court established the standards  
3 by which claims of ineffective counsel are to be measured. The Court propounded a two prong test;  
4 a petitioner claiming ineffective assistance of counsel must demonstrate (1) that the defense  
5 attorney's representation "fell below an objective standard of reasonableness," and (2) that the  
6 attorney's deficient performance prejudiced the defendant such that "there is a reasonable probability  
7 that, but for counsel's unprofessional errors, the result of the proceeding would have been different."  
8 *Strickland*, 466 U.S. at 688, 694.

9           The limited experience of a criminal defense attorney, by itself, is insufficient to  
10 support a claim of ineffective assistance of counsel. *United States v. Cronin*, 466 U.S. 648,  
11 665(1984); *Ortiz v. Stewart*, 149 F.3d 923, 933 (9th Cir.1998). Because petitioner has failed to  
12 demonstrate specifically what evidence counsel was unable to present, he has failed to demonstrate  
13 that Simpkins' performance actually prejudiced him as required under *Strickland*. Moreover, it was  
14 Bindrup, the highly experienced attorney who was actually appointed as petitioner's counsel and  
15 who employed Ms. Simpkins, who cross-examined the chief witnesses against petitioner. As was  
16 brought out during the evidentiary hearing on state post-conviction review, although Simpkins had  
17 only been a lawyer for three months, she had worked with Bindrup as a paralegal for many years. As  
18 a result, Bindrup was well aware of her experience and her legal knowledge. Additionally, with the  
19 exception of a short period of time during voir dire, Mr. Bindrup was present at counsel table for the  
20 entire trial, available and assisting Ms. Simpkins in her handling of the examinations.

21           This court has reviewed the transcripts of the trial, and having done so, finds that the  
22 Nevada Supreme Court's decision to deny this claim was not an unreasonable determination of the  
23 facts in light of the evidence. Simpkins' participation in the trial does not reflect the skills of a  
24 novice attorney and counsel Bindrup was present at the proceedings and fully participated therein.  
25 Petitioner is not entitled to relief on Ground one.

1                   **Ground Two**

2                   Ground two of Petitioner's federal habeas petition alleges that his constitutional right  
3 to a fair trial was violated because a critical state witness – one of only two that identified petitioner  
4 as a shooter – committed perjury while testifying against him. Petitioner references an affidavit  
5 signed by Wayne Gantt on July 3, 2002 and presented to the state district court in support of the  
6 supplement to his state post-conviction petition for writ of habeas corpus. *See* exhibit "A" to the  
7 Supplement to the Petition for Writ of Habeas Corpus (Exhibit 33 to the State's Motion to Dismiss).

8                   Mr. Gantt, who was fifteen at the time of the shooting, avers in his affidavit that he  
9 had been unduly pressured by police and his counsel to name petitioner as being involved in the  
10 homicide through threats to seek the death penalty against Gantt if he refused. Gantt further avers  
11 that he made false statements and offered false testimony against petitioner. He contradicts his trial  
12 testimony by stating that he "did not see Ashley Bennett nowhere at the crime scene" and stating that  
13 Ashley Bennet is innocent of the charge of homicide for which he is imprisoned. *Id.*

14                  In addressing this claim, the Nevada Supreme Court cited to and relied upon *Callier*  
15 *v. Warden*, 111 Nev. 976, 901 P.2d 619 (1995). *Callier* sets out a four-part analysis to be used in  
16 Nevada in determining whether recantations of witness testimony would require a new trial. The  
17 analysis includes a determination that (1) the court is satisfied that the trial testimony of material  
18 witness was false; (2) the evidence showing that false testimony was introduced at trial is newly  
19 discovered; (3) that the evidence could not have been discovered and produced for trial even with the  
20 exercise of reasonable diligence; and (4) it is probable that had the false testimony not been  
21 admitted, a different result would have occurred at trial. *Callier*, 111 Nev. at 990, 901 P.2d 627-628.  
22 This standard is similar to that approved by the Ninth Circuit in *U.S. v. Krasny*, 607 F.3d 840 (9<sup>th</sup>  
23 Cir. 1979) *cert. denied* 445 U.S. 942 (1980), which held,

24                  In general, a defendant seeking a new trial on the basis of newly discovered  
25 evidence must meet the following requirements: (1) It must appear from the  
26 motion that the evidence relied on is, in fact, newly discovered, i. e.,  
discovered after the trial; (2) the motion must allege facts from which the  
court may infer diligence on the part of the movant; (3) the evidence relied on  
must not be merely cumulative or impeaching; (4) must be material to the

1 issues involved; and (5) must be such as, on a new trial, would Probably  
2 produce an acquittal.

3 *Id.* at 843. This standard, applied most consistently by the Ninth Circuit has not been adopted by a  
4 majority of the circuits. The majority seem more inclined to adopt a less stringent standard requiring  
5 only a showing that the new evidence would produce a possibility of acquittal. *See, e. g., United*  
6 *States v. Wallace*, 528 F.2d 863, 866 (4th Cir. 1976) (witness recantation); *United States v.*  
7 *Anderson*, 165 U.S.App.D.C. 390, 405, 509 F.2d 312, 327 n.105 (D.C.Cir.1974) (dictum), *Cert.*  
8 *denied*, 420 U.S. 991 (1975); *United States v. Smith*, 433 F.2d 149, 151 (5th Cir. 1970) (per curiam);  
9 *Gordon v. United States*, 178 F.2d 896, 900 (6th Cir. 1949), *Cert. denied*, 339 U.S. 935 (1950);  
10 *Larrison v. United States*, 24 F.2d 82, 87 (7th Cir. 1928). *See generally* 2 C. Wright, *Federal*  
11 *Practice and Procedure* § 557, at n.24 (1969 & Supp. 1979). Despite there being a disagreement  
12 among the circuits as to whether the required showing is that the new evidence will “probably”  
13 obtain an acquittal or merely make acquittal a “possibility,” the United States Supreme Court has not  
14 spoken on the subject. Thus petitioner cannot attack the decision on the basis that it is an objectively  
15 unreasonable or incorrect application of clearly established federal law as determined by the United  
16 States Supreme Court. His sole remaining recourse is a showing that the decision was an  
17 unreasonable factual determination.

18 The Nevada Supreme Court determined that Gantt’s affidavit was not newly  
19 discovered evidence. It was available in 2002, but it was not presented to the court until 2005. This  
20 conclusion is not unreasonable. Although Nevada law allows new evidence claims to be presented  
21 in a post-conviction petition for writ of habeas corpus rather than a motion for a new trial, the  
22 Nevada Supreme Court’s determination as to the age of the affidavit is accurate. It was executed by  
23 Gantt and notarized on July 4, 2002. See Exhibit 33. The affidavit was not presented to the state  
24 court until it was attached by counsel to the supplemental petition for post-conviction review filed on  
25 March 4, 2005. *Id.* Petitioner feasibly could have presented the affidavit at a much earlier time.  
26

1           The court further concluded that the affidavit would not have ensured a different  
2 result at trial given the testimony of Pamela Neal, who also identified petitioner as one of the killers.  
3 This factual determination is also supported by the transcript of proceedings, a review of which  
4 reveals adequate evidence to support the conviction, even without Mr. Gantt's testimony.

5           While the Nevada Supreme Court did not directly address the remaining two factors,  
6 apparently finding that the miss on two points was sufficient to end the inquiry, that does not make  
7 the decision erroneous or unreasonable as petitioner must meet all the elements of the test and has  
8 failed to do so.

### 9           **Ground Three**

10          Ground three of petitioner's habeas petition alleges that his right to the effective  
11 assistance of counsel was violated when counsel failed to interview or speak to petitioner's alibi  
12 witnesses prior to trial.

13          Counsel has "a duty to make reasonable investigations or to make a reasonable  
14 decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691. More  
15 specifically, "a particular decision not to investigate must be directly assessed for reasonableness in  
16 all the circumstances, applying a heavy measure of deference to counsel's judgments." *Id.*

17          The facts alleged in this claim are belied by the record. Ms. Simpkins testified at the  
18 state court evidentiary hearing that she had interviewed all of petitioner's alibi witnesses, that she  
19 had discussed the interviews with lead counsel and had been advised by him as to what questions  
20 would be appropriate to ask those witnesses. Exhibit 24, pp. 43. Thus, petitioner cannot succeed on  
21 this claim and the Nevada Supreme Court's decision was not improper.

### 22          **Ground Four**

23          Ground four of petitioner's habeas petition alleges that his right to confront and cross-  
24 examine witnesses against him was violated because the court improperly limited the examination of  
25 Pamela Neal. Ms. Neal, one of the principal witnesses against petitioner, was questioned on direct  
26 examination by the prosecution about the existence of certain criminal charges that had been lodged

1 against her and then subsequently dismissed right about the time she testified at petitioner's  
2 preliminary hearing. She testified that the charges were dismissed because of a lack of evidence.  
3 Thereafter, petitioner sought to attack the credibility of the witness by questioning her on the  
4 underlying facts of those charges. The court disallowed the questioning. Petitioner also wanted to  
5 bring in certain statements that Ms. Neal purportedly made regarding her motive for going to police  
6 and testifying against petitioner via the testimony of her brother. This testimony, too, was disallowed  
7 by the court which found it to be inadmissible hearsay.

8 A criminal defendant's Sixth Amendment rights include the right to cross-  
9 examination, *Davis v. Alaska*, 415 U.S. 308, 315-16 (1974), and to present relevant evidence,  
10 *Michigan v. Lucas*, 500 U.S. 145, 149-52 (1991). However, "trial judges retain wide latitude insofar  
11 as the Confrontation Clause is concerned to impose reasonable limits on cross-examination based on  
12 concerns about, among other things, harassment, prejudice, confusion of the issues, the witness'  
13 safety, or interrogation that is repetitive or only marginally relevant." *Wood v. Alaska*, 957 F.2d  
14 1544, 1549 (9th Cir.1992).

15 In order to determine whether a Sixth Amendment violation occurred, it is, therefore,  
16 necessary to make a two-part inquiry. *Wood*, 957 F.2d at 1549-50. First, the Court must inquire  
17 whether the excluded evidence is relevant. *Id.* at 1550. If the evidence is relevant, the Court asks  
18 next whether other legitimate interests outweigh the interest in presenting the evidence. *Id.* There is  
19 a Sixth Amendment violation if the trial court abuses its discretion. *Id.* If the Court finds that there  
20 was a Sixth Amendment violation, the Court must then determine whether or not that error was  
21 harmless. A claim that a trial court erred by limiting cross-examination in violation of a defendant's  
22 Sixth Amendment rights is subject to harmless-error analysis. *See Delaware v. Van Arsdall*, 475  
23 U.S. 673, 684 (1986). When seeking a writ of habeas corpus on the basis of trial error, the petitioner  
24 must demonstrate that the trial error "had substantial and injurious effect or influence in determining  
25 the jury's verdict." *See Brecht v. Abrahamson*, 507 U.S. 619, 638 (1993); *Bonin v. Calderon*, 59  
26 F.3d 815, 824 (9th Cir. 1995). In other words, a petitioner must establish that the error resulted in

1 “actual prejudice.” *See Brecht*, 507 U.S. at 637.

2 In deciding this claim in state court, the Nevada Supreme Court said:

3 Bennett argues that the district court’s ruling limited his ability to show  
4 Neal’s bias and motive to fabricate. We disagree. Bennett was permitted  
5 to inquire concerning the events surrounding Neal’s arrest, the specific  
6 charges she faced, and her belief that a GPK member was responsible for  
7 the death of her cousin, Eric Bass. Additionally, Bennett elicited adequate  
8 testimony from Neal regarding dismissal of her criminal charges to imply  
9 that the charges may have been dismissed in return for her favorable  
10 testimony. Since the district court limited Bennett’s impeachment of Neal  
11 only by the restriction that Bennett was not to try to prove whether Neal in  
12 fact committed the crimes she was charged with, we conclude that the  
13 district court acted within its discretion and did not err in limiting  
14 Bennett’s cross-examination of Neal.

15 Exhibit 21, pp. 4-5.

16 The Nevada Supreme Court’s evaluation of this claim was accurate. First, the  
17 specific facts related to what Ms. Neal had been charged with were not relevant to petitioner’s  
18 defense. The court also determined that the information sought by the defense in trying to bring out  
19 the facts underlying the charges would not have added any relevant or legitimate information about  
20 petitioner’s guilt that could not come in by other means. Counsel was able to question Neal about  
21 the charges, to present to the jury the fact that they were brought and to question her about her  
22 motivation to testify. Further, questions to other state witnesses supported Neal’s assertion that she  
23 was not granted immunity or given a deal for her testimony and the jury was made aware that the  
24 State gave her money to help her relocate her family to a different neighborhood. The jury would  
25 have been able to use this information in evaluating her credibility.

26 The Nevada Supreme Court was correct in its determination of this claim and there  
was no error or unreasonableness in its legal or factual determination.

#### 27 Ground Five

28 Petitioner’s final claim for relief is that his appellate counsel was ineffective for  
29 failing to raise issues on direct appeal that he has raised to this federal court in these proceedings.  
30 Specifically, petitioner contends that counsel should have raised the district court’s error in denying



1 petitioner's motion for a new trial based upon the district court's limits on allowing petitioner to  
2 impeach Neal through exculpatory evidence. He contends that counsel's failure to properly cite to  
3 the record prevented the Nevada Supreme Court from properly considering this issue.<sup>1</sup>

4 The due process clause of the Fourteenth Amendment guarantees a criminal defendant  
5 the right to the effective assistance of counsel in direct appeal. *Evitts v. Lucey*, 469 U.S. 387 (1985).  
6 The same standard for evaluating performance of counsel on trial applies in the appeal process.  
7 *Smith v. Murray*, 477 U.S. 527, 533 (1986). In order to show the requisite prejudice on a claim of  
8 ineffective assistance of appellate counsel, petitioner must demonstrate that the claim would have  
9 been successful on appeal. *Miller v. Keney*, 882 F.2d 1428 (9<sup>th</sup> Cir. 1989).

10 Petitioner cannot prevail on this claim. On direct appeal the Nevada Supreme Court  
11 considered petitioner's claims that the district court improperly limited cross examination of Pamela  
12 Neal and the testimony of petitioner's witnesses, Reginald Don Fobbs and Lakiesha Reed, which  
13 testimony, he contends, should have been admitted to impeach the credibility of Neal with prior  
14 inconsistent statements. The Nevada Supreme Court denied relief on this claim explaining the  
15 standard for admissibility of hearsay testimony and finding that, because there had not been a proper  
16 opportunity for Neal to admit the statements which would have warranted the rebuttal testimony  
17 from Fobb and Reed, their testimony about out-of-court conversations was clearly inadmissible.

18 Because petitioner has not demonstrated that the Nevada Supreme Court's decision on  
19 this claim was an unreasonable or contrary application of clearly established federal law or that its  
20 factual determinations were unreasonable in light of the evidence, he cannot obtain relief on this  
21 claim.

22 Finally, petitioner suggests that he should be allowed discovery and the ability to  
23 supplement the petition based upon that discovery. This request is made pro forma and is not

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24  
25 <sup>1</sup>It is not clear to this court what claim appellate counsel should have raised but did not. It appears  
26 the claims addressed by the Nevada Supreme Court on appeal are very similar, if not identical, to the  
one petitioner claims was missing. Petitioner must provide sufficient specificity for his claims to obtain  
a thorough review. *Jones v. Gomez*, 66 F.3d 199, 205 (9<sup>th</sup> Cir. 1995), *cert. denied*, 517 U.S. 1143  
(1996).

1 supported with the specifics required under the rules governing section 2254 petitions. *See Id.*, Rule  
2 6.

### 3 **Certificate of Appealability**

4 In order to proceed with his appeal, petitioner must receive a certificate of  
5 appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9<sup>th</sup> Cir. R. 22-1; *Allen v. Ornoski*, 435  
6 F.3d 946, 950-951 (9<sup>th</sup> Cir. 2006); *see also United States v. Mikels*, 236 F.3d 550, 551-52 (9th Cir.  
7 2001). Generally, a petitioner must make “a substantial showing of the denial of a constitutional  
8 right” to warrant a certificate of appealability. *Id.*; 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529  
9 U.S. 473, 483-84 (2000). “The petitioner must demonstrate that reasonable jurists would find the  
10 district court’s assessment of the constitutional claims debatable or wrong.” *Id.* (*quoting Slack*, 529  
11 U.S. at 484). In order to meet this threshold inquiry, the petitioner has the burden of demonstrating  
12 that the issues are debatable among jurists of reason; that a court could resolve the issues differently;  
13 or that the questions are adequate to deserve encouragement to proceed further. *Id.*

14 Pursuant to the December 1, 2009 amendment to Rule 11 of the Rules Governing  
15 Section 2254 and 2255 Cases, district courts are required to rule on the certificate of appealability in  
16 the order disposing of a proceeding adversely to the petitioner or movant, rather than waiting for a  
17 notice of appeal and request for certificate of appealability to be filed. Rule 11(a). This Court has  
18 considered the issues raised by petitioner, with respect to whether they satisfy the standard for  
19 issuance of a certificate of appealability, and determines that none meet that standard. The Court  
20 will therefore deny petitioner a certificate of appealability.

21 **IT IS THEREFORE ORDERED** that the Amended Petition for Writ of Habeas  
22 Corpus (docket #33) is **DENIED**.

23 ///

24 ///

25 ///

26

1                   **IT IS FURTHER ORDERED** that the certificate of appealability is **DENIED**. The  
2 Clerk shall enter judgment accordingly.

3                   Dated this   18th   day of May , 2010.

4 

5 UNITED STATES DISTRICT JUDGE

# EXHIBIT L

FILED

UNITED STATES COURT OF APPEALS

JUL 18 2011

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ASHLEY BENNETT,

Petitioner - Appellant,

v.

E.K. MCDANIEL, Warden and  
ATTORNEY GENERAL OF THE STATE  
OF NEVADA,

Respondents - Appellees.

No. 10-16351

D.C. No. 3:06-cv-00536-ECR-VPC  
District of Nevada,  
Reno

ORDER

Before: CANBY and GOULD, Circuit Judges.

The request for a certificate of appealability is denied. *See* 28 U.S.C.

§ 2253(c)(2). All pending motions, if any, are denied as moot.

# EXHIBIT M

**Date:** 11/5/01

**To:** Ralph Dymont, Dymont Investigations, LTD

**From:** Dennis R. Reefer, Investigator, Dymont Investigations, LTD

**RE:** BENNETT CASE: Interview with Reginald Don Fobbs on 11/5/01 at  
2:15pm

---

At approximately 2:15pm on 11/5/01 writer interviewed REGINALD DON FOBBS, B/M/34, DOB: 9/29/67, SS# 530-94-5109, Home Address: 2108 Larey, North Las Vegas, NV. ID# 853277, AKA Killer Reg. in the Las Vegas City Jail at Stewart and Mojave. Subject is the brother of Pam Neal.

Subject stated that he was in jail at the time that doughboy was killed. He stated that upon getting out on 3/12/01 that he talked to his sister, Pam Neal about the shooting and she told him that she did not see the shooting. Subject stated that he is close to his sister as they both have the same mother but different fathers. Subject stated that after 4/15/01 at 12:30am, in which her first cousin Eric Bass was shot to death at 2500 West St, that she was out to get who did the killing. Subject stated that Pam Neal was arrested for shooting a young girl in the chin on the same day. Subject stated that Pam Neal was told by Detectives Bodnar and Rodriguez that Ashley Bennett paid \$2500.00 to have Eric Bass killed. Subject stated that the detectives told her that they would prosecute her for shooting the girl in the mouth but would drop the charges if she would testify against the 5 defendants at the preliminary exam. Subject stated that his sister, Pam Neal, did not want to testify and was not planning on attending the preliminary exam. He stated that she had her own preliminary exam on the same day in the A.M. and did not attend because she did not want to be in court. When she did not show up for her hearing, the detectives (Bodnar, Rodriguez and one other detective) began looking everywhere for her and finally found her at her grandmother's home. He stated that they brought her to court in a burgundy Crown Vic. Subject stated that Louis Matthews relatives called the grandmother of Pam Neal and practically begged her to talk to Pam Neal about telling the truth that Matthews was not involved in the shooting. Subject stated that Pam Neal is missing and no one knows where she is. He stated that she does not plan on testifying at the trial.

11/5/01

Confidential

1





*BENNETT CASE: Interview with Reginald Don Fobbs on 11/5/01 at 2:15pm*

Subject stated that he has a criminal record. He has been arrested and convicted of two Armed Robberies for which he has served 18 months and 3 years respectively. He has been arrested for Intimidation of a witness, Intimidation of a Police Officer (GM) and Domestic Violence. Subject stated that he will be in City Jail until 12/15/01 after which he is to be transferred to CCDC for 75 days for the Intimidation of the Police Officer charge.

Subject stated that he knows Ashley Bennett and knows that he is getting a raw deal. He stated that he was not involved in this shooting. He stated that he would testify in court for Ashley, if needed.

Writer gave subject his business card with instructions to call writer should he recall any more information about the case.

Writer recommends that this subject be subpoenaed and added to our witness list. Writer also recommends that he be interviewed again by either Scott or Melinda as he is no doubt going to be an important witness in this case.

11/5/01

Confidential

2



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Civil Writ**

**COURT MINUTES**

**June 16, 2020**

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A-20-810154-W	Ashley Bennett, Plaintiff(s) vs. Nevada State of, Defendant(s)
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**June 16, 2020**

**8:00 AM**

**Minute Order**

**HEARD BY:** Leavitt, Michelle

**COURTROOM:** Chambers

**COURT CLERK:** Haly Pannullo

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- The court having reviewed the Petition hereby orders the State to respond to the Writ by July 15, 2020. Thereafter the matter is set for a hearing on July 30, 2020 at 10:30 am to determine whether the Petition meets the statutory requirements outlined in NRS 34.960 to permit the court to set the matter for an evidentiary hearing to establish the factual innocence of the Petitioner based on newly discovered evidence. NRS 34.960(1)

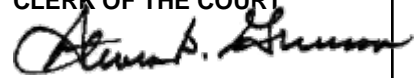
Petitioner is ordered to serve notice and a copy of the petition upon the Clark County District Attorney and the Attorney General. NRS 34.960 (1)

CLERK'S NOTE: The above minute order has been distributed to:  
nak@clydesnow.com; kep@clydesnow.com; washburn@smithwashburn.com;  
jspringer@rminnocence.org; Alexander Chen <Alexander.Chen@clarkcountysda.com>  
hvp/6/16/20

PRINT DATE: 06/16/2020

Page 1 of 1

Minutes Date: June 16, 2020



**RSPN**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**ALEXANDER G. CHEN**  
Chief Deputy District Attorney  
Nevada Bar #10539  
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-

**ASHLEY BENNETT, aka,**  
Ashley William Bennett, #1107300

Defendant.

CASE NO: A-20-810154-W

01C175914-1

DEPT NO: XII

**STATE'S RESPONSE TO DEFENDANT'S PETITION FOR DETERMINATION OF  
FACTUAL INNOCENCE**

DATE OF HEARING: JULY 27, 2020  
TIME OF HEARING: 12:00 PM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through ALEXANDER G. CHEN, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Petition for Determination of Factual Innocence.

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On June 7, 2001, ASHLEY WILLIAM BENNETT (hereinafter "Defendant"), along  
4 with his co-defendants, was charged by way of Information with one count MURDER WITH  
5 USE OF A DEADLY WEAPON (OPEN MURDER) (Felony – NRS 200.010, 200.030,  
6 193.165).

7 Jury trial commenced on January 22, 2002. On February 4, 2002, the jury returned a  
8 verdict of Guilty of FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON. On  
9 February 6, 2002, the parties filed a Stipulation Waiving Separate Penalty Hearing and  
10 Allowing Sentence to be Imposed by the Court.

11 On February 11, 2002, Defendant filed a Motion for New Trial. The State filed its  
12 Opposition on February 20, 2002. On February 21, 2002, Defendant's Motion was denied.  
13 The Court filed its Order on March 1, 2002.

14 On June 10, 2002, Defendant filed an additional Motion for New Trial. The State filed  
15 its Opposition on June 17, 2002. On June 18, 2002, Defendant's second Motion for New Trial  
16 was denied.

17 On June 18, 2002, Defendant was sentenced to Life in the Nevada Department of  
18 Corrections without the possibility of parole plus an equal and consecutive term of Life  
19 without the possibility of parole for the use of a deadly weapon. The Judgment of Conviction  
20 was filed on June 20, 2002.

21 On June 28, 2002, Defendant filed a Notice of Appeal. On October 5, 2004, the Nevada  
22 Supreme Court affirmed Defendant's conviction and remittitur issued on November 8, 2004.

23 On January 3, 2005, Defendant filed a Petition for Writ of Habeas Corpus. The State  
24 filed its Opposition on January 13, 2005. On May 31, 2005, Defendant filed a Supplement to  
25 Petition for Writ of Habeas Corpus. The State filed its Opposition on July 7, 2005. On July  
26 11, 2005, Defendant filed his Reply to the State's Opposition. On July 26, 2005, the State filed  
27 a Supplemental Response to Defendant's Petition for Writ of Habeas Corpus. On August 16,  
28 2005, Defendant filed an additional Supplement to his Petition for Writ of Habeas Corpus. On

1 November 1, 2005, the Court held an evidentiary hearing regarding Defendant's claims. On  
2 November 4, 2005, the Court denied Defendant's Petition. The Court filed its Findings of Fact,  
3 Conclusions of Law and Order on November 29, 2005.

4 On November 18, 2005, Defendant filed a Notice of Appeal. On August 29, 2006, the  
5 Nevada Supreme Court issued an order affirming the Court's decision and remittitur issued on  
6 September 28, 2006.

7 On February 10, 2020, Defendant filed the instant Petition for Determination of Factual  
8 Innocence. The State responds as follows:

9 **STATEMENT OF THE FACTS<sup>1</sup>**

10 Pam Neal also indicated to the Court that Defendant had his girlfriend confront her brother  
11 about Neal talking to the police and asked her to say that he didn't have anything to do with  
12 the shooting. JTT2 p. 20-22. JTT4 64, 70-72. 83-121; 102

13  
14 On March 3, 2001, Pamela Neal was living at the Buena Vista Springs Apartments  
15 located at 2529 Morton Avenue, Apartment D. Jury Trial Transcript Day 4 ("JTT4"), January  
16 25, 2002, p. 24. At some point in the afternoon, Neal left her apartment to take one of her  
17 neighbors, Michelle Wilson, to work. Id. at 26-28. Neal testified that Wilson needed to be at  
18 work between 4:00-4:30P.M., and that she probably left her apartment around 3:30P.M. Id. at  
19 29. When Neal was leaving her apartment she saw a group of men surround the victim and  
20 begin shooting at him. Id. Neal testified that there were multiple guns and the group fired  
21 approximately twenty (20) times. Id. at 29-30. Neal knew the victim as "Dough Boy." Id. at  
22 30. Neal testified that she believed the Dough Boy was there to see another neighbor, Monique  
23 Hunt. Id. at 31. Neal also testified that Hunt and Dough Boy were affiliated with the Rolling  
24 60's, a local gang. Id. at 31-32. Dough Boy appeared to be leaving Hunt's apartment and was  
25 walking in the parking lot in the direction of Neal's apartment. Id. at 33. Neal testified that  
26 there were five (5) or six (6) other men outside around Dough Boy. Id. at 33-34. The men

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27 <sup>1</sup> The State would like to correct a misrepresentation in Defendant's Statement of the Facts.  
28 Defendant claims that he was never a member of any gang, however, defense counsel admitted  
he was a gang member. See Transcript: Jury Trial, Day One ("JTT1"), January 22, 2002, p. 4.

1 appeared to all be talking with one another when Neal saw Dough Boy throw his hands up in  
2 the air. Id. at 34.

3 Neal testified that, of the group of men around Dough Boy, she recognized Wayne  
4 Gantt, who she knew as “Wacky G,” Chew and Wing. Id. at 35. She initially stated that she  
5 did not recognize the other three (3) men, but that they appeared to be “youngsters,” age  
6 twenty-five (25) and younger. Id. Neal stated that, when Dough Boy put his hands in the air,  
7 other men approached the group. Id. at 36. One of the individuals Neal knew as Lailoni and  
8 the other man she recognized to be “Face.” Id. at 38. Neal identified Face in-court as  
9 Defendant. Id. at 38-39. Neal testified that she saw Lailoni and Defendant shoot Dough Boy.  
10 Id. at 39. Neal also stated that she was about eighteen (18) to twenty (20) feet from the  
11 shooting. Id. at 47. Neal testified that she did not speak to police when they arrived. Id. at 50.

12 Neal went to the police on May 1, 2001. Id. Detectives wanted to talk to her cousin,  
13 Eric Bass’s, girlfriend about his murder. Id. at 51. Neal felt like she needed to come forward  
14 after her cousin was murdered. Id. at 51-52. Neal told police that Lailoni, Defendant and  
15 Wacky G were involved in the murder of Dough Boy. Id. 53. Detectives showed her  
16 photographic lineups and she identified pictures of Wacky G, Lailoni, Chew, Wing and  
17 Defendant. Id. at 55-60. Neal testified that these individuals were a part of the Gerson Park  
18 Kingsmen (“GPK”), another local gang. Id. at 65-66. Neal also testified that Wacky G and  
19 Defendant had silver guns while Lailoni had a black gun. Id. at 67. She also stated that Lailoni  
20 shot first and Wacky G shot last. Id. at 68-69. Neal also testified that Lailoni was wearing  
21 black pants.

22 Anthony Gantt testified that he knew Defendant and that he also went by “Face.” JTT6  
23 71-72. Gantt acknowledged that he was also charged with the murder of Joseph Williams and  
24 that he entered into an agreement with the State to testify against Defendant. Id. at 78. Gantt  
25 testified that, on March 3, 2001, he was at a gathering at an individual he knew as “L-Wack’s”  
26 house. Id. at 82. Gantt was at L-Wack’s house because his little brother, Mark Doyle, had been  
27 killed the previous day. Id. at 82-83. Gantt was at L-Wacks with Defendant, an individual  
28 known as “T-Wack,” Chew, an individual named Henry and Lailoni. Id. at 83. Gantt arrived

1 at approximately 11:00A.M. to 12:00P.M. Id. Eventually, the group planned to shoot up the  
2 Hunt's house and were going to leave L-Wack's. Id. Gantt testified that Defendant made the  
3 plan. Id. at 84. Gantt, Defendant, Lailoni, T-Wack and Chew all walked towards the Hunts'  
4 house. Id. The group was going to shoot up the house because individuals that lived there were  
5 affiliated with the Rolling 60's. Id. at 85. The 60's were feuding with the GPK. Id. Gantt  
6 testified that the other individuals he was with were affiliated with GPK. Id. at 86.

7 While the group was walking through the parking lot, they encountered Dough Boy.  
8 Id. at 90. When the group saw Dough Boy, Gantt testified that Defendant said, "there go the  
9 60 n\*gg\*r,"<sup>2</sup> and started shooting. Id. Dough Boy tried to run away. Id. Once Defendant began  
10 shooting, everyone else started to shoot as well. Id. at 91. Gantt testified that Lailoni had a .38  
11 super, he had a .32, and that T-Wack, Chew and Defendant all had 9-millimeters. Id. at 93-94.  
12 After the shooting, Gantt testified that all the individuals went their separate ways. Id. at 98.  
13 Gantt testified that he ran across the park and Henry was with him. Id. at 99-100. Henry had a  
14 .357, but was not involved in the shooting. Id. at 100. Gantt testified that he had borrowed his  
15 gun from an individual he knew as "R-Wack." Id. at 104. Gantt testified that he is known as  
16 "Wacky-G." Id. at 132. Gantt admitted that he shot Joseph Williams. Id. at 106. (125-26)

17 On March 3, 2001, James Golden was employed as a security guard at the Buena Vista  
18 Springs Apartments. JTT5, January 28, 2002, p. 3. On that day, Golden was working from  
19 9:00 A.M. to 5:00P.M. Id. Some time in the afternoon hours, Golden heard gunshots. Id.  
20 Golden testified that he heard at least twenty (20) shots. Id. at 4. Golden was with one of the  
21 property workers, Don Stewart, when he heard the shots. Id. at 6. Golden drew his weapon  
22 and waited until the shots ceased before he went to the area where the shots came from. Id. at  
23 7. Golden saw suspicious individuals running through the park west of 2529 Morton. Id. at 8-  
24 9. The individuals were about twenty (20) yards away from Golden and he only really noticed  
25 their clothing. Id. at 10. All three (3) suspects appeared to be wearing white shirts and black  
26 pants. Id. at 11. Golden recognized one of the individuals as Wayne and identified him in a  
27 photographic lineup. Id. at 11-14. As he ran away, the individual reached into his pants and

28 <sup>2</sup> The word was modified for the sake of this brief because of the sensitive nature of the word used. For actual wording, see transcript.



1 Stewart informed Golden that the individual had a gun. Id. at 15-16. Golden also testified that  
2 he believed the individuals were less than eighteen (18) years old and were all African  
3 American. Id. at 18.

4 Monique Hunt testified that Joseph Williams was her on-again off-again boyfriend. Id.  
5 at 50. Hunt stated that she also goes by “Nicki.” Id. at 59. Hunt testified that Williams was  
6 known as Dough Boy because was was chubby. Id. at 51. Hunt also testified that Williams  
7 was affiliated with the Rolling 60 Crypts. Id. On March 3, 2001, Hunt was living at 2535  
8 Morton, Apartment B. Id. Dough Boy had permission to come to her house on that date. Id.  
9 Hunt left her apartment to go shopping at approximately 10:00A.M. and returned to her  
10 grandmother’s house across the street between 3:00-3:30P.M. Id. at 53. Hunt saw a commotion  
11 happening across the street in her apartment complex and eventually her aunt ran over and told  
12 her that Dough Boy had been shot. Id. at 57. Hunt drove her car back across the street, but  
13 William had already been taken to the hospital. Id. at 57-58. Hunt went to the hospital to give  
14 them Williams’ information. Id. at 58. Hunt left to take her grandmother home and, when she  
15 returned to the hospital, she was informed that Williams had died. Id. at 58-59. Williams  
16 suffered gunshot wounds to the chest, back, left arm, left leg, right hand, right leg, left buttock,  
17 right buttock and left hand. JTT7, January 30, 2002, p. 24-33. Projectiles retrieved were  
18 medium caliber, meaning over a .25 but less than a .40 caliber. Id. at 34. A 9-millimeter is  
19 considered a medium caliber. Id. at 35. There were a total of fourteen (14) entrance wounds  
20 on the body. Id. The cause of death was determined to be multiple gunshot wounds and the  
21 manner of death was ruled a homicide. Id. at 39.

22 On March 3, 2001, at approximately 3:09P.M., North Las Vegas Police Department  
23 (“NLVPD”) Officer Jason Arnona was dispatched to 2535 Morton in reference to a victim  
24 with a gunshot wound. JTT5 at 64. When Officer Arnona arrived, he observed the victim,  
25 Joseph Williams, lying on the ground with multiple gunshot wounds to his body. Id. at 65.  
26 Officer Arnona testified that he noticed five (5) to seven (7) gunshot wounds. Id. at 67. Officer  
27 Arnona also testified that there were at least two dozen shell casings in the area. Id. at 69.

1 Additionally, Officer Arnona impounded the victim's car, a blue 1977 Cadillac. Id. at 76-77.  
2 There was no weapon located in the vehicle. Id. at 78.

3 On March 3, 2001, NLVPD Officer Robert Aker was also dispatched to the 2500 block  
4 of Morton in reference to shots being fired. Id. at 85. Officer Aker spoke with Larasha Hill  
5 and Eddie Edwards, who stated that they had witnesses the shooting, and had them complete  
6 a written statement. Id. at 87. Hill did not want a statement attached to her name and she did  
7 not want to be involved. Id. at 89. Officer Aker also collected a statement from Kelly Freeland.  
8 Id. at 90.

9 On March 3, 2001, at approximately 3:00P.M., Detective Michael Bodnar was called  
10 out to the 2500 block of Morton. JTT7 at 108-09. Detective Bodnar spoke with witnesses at  
11 the scene, but they all indicated they only heard gunshots and did not see anything. Id. at 111.  
12 On March 7, 2001, Detective Bodnar received an anonymous phone call indicating the caller  
13 knew of some individuals that may have been involved in the case. Id. at 115. Based on that  
14 information, Detective Bodnar contacted Gantt on March 21, 2001. Id. Detective Bodnar also  
15 contacted Defendant. Id. at 117. Defendant did not initially deny being involved in the murder.  
16 Id. at 118. On May 1, 2001, Detective Bodnar contacted Pam Neal regarding the shooting. Id.  
17 at 118-19. At that time, Pam identified Defendant, Lailoni and Gantt as the shooters. Id. at  
18 119. Neal also identified Defendant as one of the shooters in a photographic lineup. Id. at 124.  
19 On May 7, 2001, Detective Bodnar again contacted Gantt, and he identified Defendant,  
20 Lailoni, Chew, T-Wack and Henry as being involved in the shooting. Id. at 126.

21 On March 3, 2001 at approximately 4:15P.M., Sandra Nielson-Hanes, an NLVPD  
22 crime scene investigator, was dispatched to 2529 Morton to process a "very large shooting  
23 scene." JTT5 at 112-13. Upon arrival, Sandra helped the primary crime scene investigator  
24 create a rough sketch diagram of the crime scene. Id. at 116. Sandra located eight (8) A-MERC  
25 9-millimeter casings, seven (7) R&P .32 casings, nine (9) .38 super casings and four (4) Win  
26 Luger 9-millimeter casings at the scene. Id. at 123, 134-35, 141-42, 146-47, 150-51; JTT6,  
27 January 29, 2002, p. 9-13, 15, 23. There were thirty-nine (39) pieces of evidence located at the  
28

1 scene. JTT5 at 126. There was also a Win Luger 9-millimeter located that had not been shot.  
2 JTT6 at 12.

3 On May 23, 2001, James Krylo, a firearms examiner working in the Las Vegas  
4 Metropolitan Police Department (“LVMPD”) forensic laboratory, examined the projectiles  
5 and shell casings recovered in this case. JTT7 at 69-71. Krylo testified that the eight (8) A-  
6 MERC cartridge cases had all be fired from the same gun. Id. at 85. Krylo also testified that  
7 the four (4) WIN 9-millimeter casings were fired from a single gun. Id. at 86. Krylo also  
8 determined that there was a total of (4) firearms involved in the incident. Id. Krylo testified  
9 that the seven (7) .32 cartridge casings were fired from the same Colt .32 semiautomatic pistol.  
10 Id. at 87. That firearm was recovered under a different event number than the one from this  
11 case. Id. at 87-88. Krylo also testified that the nine (9) .38 super cartridge casings were fired  
12 from the same Colt .38 super semiautomatic pistol, which was also recovered under a different  
13 event number. Id. at 88.

## 14 **ARGUMENT**

### 15 **I. DEFENDANT HAS FAILED TO PROVE THAT HE IS FACTUALLY** 16 **INNOCENT.**

17 NRS 34.960 states in relevant part:

18 1. At any time after the expiration of the period during which a  
19 motion for a new trial based on newly discovered evidence may  
20 be made pursuant to NRS 176.515, a person who has been  
21 convicted of a felony may petition the district court in the county  
22 in which the person was convicted for a hearing to establish the  
23 factual innocence of the person based on newly discovered  
24 evidence. A person who files a petition pursuant to this subsection  
25 shall serve notice and a copy of the petition upon the district  
26 attorney of the county in which the conviction was obtained and  
27 the Attorney General.

28 2. A petition filed pursuant to subsection 1 must contain an  
assertion of factual innocence under oath by the petitioner and  
must aver, with supporting affidavits or other credible documents,  
that:

(a) Newly discovered evidence exists that is specifically  
identified and, if credible, establishes a bona fide issue of factual  
innocence;

1           (b) The newly discovered evidence identified by the  
petitioner:

2           (1) Establishes innocence and is material to the case  
and the determination of factual innocence;

3           (2) Is not merely cumulative of evidence that was  
4 known, is not reliant solely upon recantation of testimony by  
5 a witness against the petitioner and is not merely impeachment  
evidence; and

6           (3) Is distinguishable from any claims made in any  
previous petitions;

7           3. In addition to the requirements set forth in subsection 2, a  
petition filed pursuant to subsection 1 must also assert that:

8           (a) Neither the petitioner nor the petitioner's counsel knew of  
9 the newly discovered evidence at the time of trial or sentencing or  
10 in time to include the evidence in any previously filed post-trial  
motion or postconviction petition, and the evidence could not have  
11 been discovered by the petitioner or the petitioner's counsel  
through the exercise of reasonable diligence; or

12           (b) A court has found ineffective assistance of counsel for  
13 failing to exercise reasonable diligence in uncovering the newly  
discovered evidence.

14           4. The court shall review the petition and determine whether  
15 the petition satisfies the requirements of subsection 2. If the court  
determines that the petition:

16           (a) Does not meet the requirements of subsection 2, the court  
17 shall dismiss the petition without prejudice, state the basis for the  
dismissal and send notice of the dismissal to the petitioner, the  
18 district attorney and the Attorney General.

19           (b) Meets the requirements of subsection 2, the court shall  
20 determine whether the petition satisfies the requirements of  
subsection 3. If the court determines that the petition does not meet  
the requirements of subsection 3, the court may:

21           (1) Dismiss the petition without prejudice, state the basis  
22 for the dismissal and send notice of the dismissal to the petitioner,  
the district attorney and the Attorney General; or

23           (2) Waive the requirements of subsection 3 if the court  
24 finds the petition should proceed to a hearing and that there is other  
evidence that could have been discovered through the exercise of  
25 reasonable diligence by the petitioner or the petitioner's counsel  
at trial, and the other evidence:

26  
27 ///

28 ///

- 1 (I) Was not discovered by the petitioner or the  
petitioner's counsel;  
2 (II) Is material upon the issue of factual innocence;  
3 and  
(III) Has never been presented to a court.  
4

5 (emphasis added).

6 Here, Defendant claims that three (3) affidavits from three (3) separate witnesses, two  
7 (2) of which testified at trial and one (1) who did not, support his claim that he is factually  
8 innocent of the murder of Williams. Defendant's claim is meritless as Defendant has failed to  
9 satisfy his burden under the statute.

10 As an initial matter, the affidavit of co-defendant, Anthony Gantt, cannot constitute  
11 newly discovered evidence. "Newly discovered evidence" means evidence that was not  
12 available to a petitioner at trial or during the resolution by the trial court of any motion to  
13 withdraw a guilty plea or motion for new trial and which is material to the determination of  
14 the issue of factual innocence." NRS 34.930. Defendant admits in his Petition that the affidavit  
15 by Gantt was previously considered by this Court as well as the Nevada Supreme Court in  
16 Defendant's Petition for Writ of Habeas Corpus, which was denied on November 4, 2005, and  
17 affirmed on August 29, 2006. Petition at 3, fn 2. Therefore, this evidence was previously  
18 available to Defendant and presented to the Court and cannot be used as "newly discovered  
19 evidence" to form the basis of Defendant's Petition. Thus, Gantt's affidavit should be wholly  
20 disregarded by this Court.

21 Further, claims regarding the Gantt affidavit are barred by the law of the case doctrine  
22 and/or res judicata. "The law of a first appeal is law of the case on all subsequent appeals in  
23 which the facts are substantially the same." Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798  
24 (1975) (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). "The doctrine of  
25 the law of the case cannot be avoided by a more detailed and precisely focused argument  
26 subsequently made after reflection upon the previous proceedings." Id. at 316, 535 P.2d at  
27 799. Under the law of the case doctrine, issues previously decided on direct appeal may not  
28 be reargued in a habeas petition. Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532

(2001) (citing McNelton v. State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, this Court cannot overrule the Nevada Supreme Court. NEV. CONST. Art. VI § 6.

The Nevada Supreme Court has ruled previously that Gantt's testimony was not newly discovered evidence and that it was not probable that a different result would have occurred at trial if Gantt had not testified as he did. Order of Affirmance, No. 46324, filed August 29, 2006, p. 3. Additionally, the Nevada Supreme Court noted on direct appeal that, if any witness intimidation occurred, Defendant was the one threatening and attempting to intimidate Gantt. See Petition, Exhibit I, p. 1-2 ("Additionally, the State presented substantial credible evidence that Bennett was the source of intimidation."). Moreover, this Court has already determined that Defendant failed to raise the Gantt affidavit in a timely manner. See Petition, Exhibit J, p. 3. Therefore, Defendant's claims regarding Gantt are also barred by res judicata. See Mason v. State, 206 S.W.3d 869, 875 (Ark. 2005) (recognizing the doctrine's applicability in the criminal context); see also York v. State, 342 S.W. 528, 553 (Tex. Crim. Appl. 2011). Accordingly, by simply continuing to file motions with the same arguments, his motion is barred by the doctrines of the law of the case and res judicata. Id.; Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Therefore, Defendant's claims regarding Gantt are barred both by the law of the case and res judicata and Defendant's Petition should be denied.

Moreover, Defendant's claims regarding Calvin Walker, an individual that never testified at trial, are precluded based on Defendant's failure to raise the issue sooner. Walker's affidavit was dated April of 2012. Generally, a claim must be raised within a reasonable time after the remedy became available. The Nevada Supreme Court has determined that a reasonable time is one (1) year after the claim became available. See Rippo v. State, 134 Nev. 411, 412, 423 P.3d 1084, 1090 (2018); see also Pellegrini, 117 Nev. at 874-75, 34 P.3d at 529. However, Defendant's Petition was not filed until February 10, 2020, nearly eight (8) years after Defendant's claim regarding the Walker affidavit became available. Defendant had the ability to raise this issue in a post-conviction petition for writ of habeas corpus years prior to the instant Petition being filed. Therefore, Defendant's claims regarding Walker are barred.

1 The State would also note that, without the full date on which the affidavit was signed,  
2 Walker's affidavit may not be admissible. See NRS 53.045. Therefore, Walker's affidavit  
3 should be wholly disregarded by this Court and Defendant's Petition should be denied.

4 Furthermore, Defendant's claims regarding Pam Neal are precluded based on  
5 Defendant's failure to raise the issue sooner. Neal's affidavit was dated February 11, 2017.  
6 Generally, a claim must be raised within a reasonable time after the remedy became available.  
7 The Nevada Supreme Court has determined that a reasonable time is one (1) year after the  
8 claim became available. See Rippo v. State, 134 Nev. 411, 412, 423 P.3d 1084, 1090 (2018);  
9 see also Pellegrini, 117 Nev. at 874-75, 34 P.3d at 529. However, Defendant's Petition was  
10 not filed until February 10, 2020, almost three (3) years after Defendant's claim regarding the  
11 Neal affidavit became available. Defendant had the ability to raise this issue in a post-  
12 conviction petition for writ of habeas corpus years prior to the instant Petition being filed.  
13 Therefore, Defendant's claims regarding Neal are barred. Therefore, Neal's affidavit should  
14 be wholly disregarded by this Court and Defendant's Petition should be denied.

15 Additionally, even if this Court were to review Defendant's claims as to all three (3)  
16 affidavits, Defendant has still failed to meet his burden under NRS 34.960.

- 17 **a. Defendant has failed to present newly discovered evidence exists that, if**  
18 **credible, establishes a bona fide issue of factual innocence.**  
19 **b. Recantation of a witness does not qualify as newly discovered evidence**  
20 **under NRS 34.960.**  
21 **c. The evidence presented by Defendant is not "material."**  
22 **d. The evidence presented by Defendant is cumulative.**  
23 **e. The evidence presented by Defendant constitutes impeachment evidence.**  
24 **f. Defendant has failed to prove that he is factually innocent.**

25 ///

26 ///

27 ///

28 ///

1 **CONCLUSION**

2 For the foregoing reasons, Defendant's Petition for Determination of Factual Innocence  
3 must be denied.

4 DATED this 15th day of July, 2020.

5 Respectfully submitted,

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

9 BY /s/ Alexander G. Chen  
10 ALEXANDER G. CHEN  
11 Chief Deputy District Attorney  
12 Nevada Bar #10539

13 **CERTIFICATE OF ELECTRONIC SERVICE**

14 I hereby certify that service of the above and foregoing, was made this 15<sup>th</sup> day of July

15 2020, by email to:

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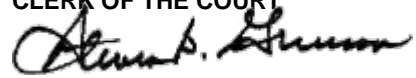
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**EIGHTH JUDICIAL DISTRICT COURT**  
**CLARK COUNTY, STATE OF NEVADA**

ASHLEY BENNETT,  
Petitioner,  
  
vs.  
STATE OF NEVADA,  
Respondent,

Case No. A-20-810154-W  
01C175914-1  
  
Dept. XII

**REPLY IN SUPPORT OF DEFENDANT ASHLEY BENNETT'S PETITION FOR**  
**DETERMINATION OF FACTUAL INNOCENCE**

DATE OF HEARING: JULY 27, 2020  
TIME OF HEARING: 12:00 PM

1  
2 I. THE FACTUAL INNOCENCE STATUTE INTENTIONALLY DOES NOT HAVE  
3 A STATUTE OF LIMITATIONS AND IS WHOLLY SEPARATE FROM STATE  
4 HABEAS CLAIMS; THUS THE STATE’S CLAIM THAT MR. BENNETT’S  
5 FACTUAL INNOCENCE PETITION IS UNTIMELY IS MERITLESS.

6 Under the plain language of the recently enacted Nevada Post-Conviction Determination  
7 of Factual Innocence Statute, Mr. Bennett’s Petition to Establish Factual Innocence is not subject  
8 to any time bars, and is clearly not subject to any limitation period governing state habeas. The  
9 Nevada Legislature intentionally omitted a statute of limitations for petitions to establish factual  
10 innocence that evidence of innocence can be discovered many years, even decades, after the  
11 original conviction. Specifically, the Legislature provided, “*At any time* after the expiration of  
12 the period during which a motion for a new trial based on newly discovered evidence may be  
13 made pursuant to NRS 176.515, a person who has been convicted of a felony may petition the  
14 district court in the county in which the person was convicted for a hearing to establish the  
15 factual innocence of the person based on newly discovered evidence.” Nev. Rev. Stat. § 34.960  
16 (2020) (emphasis added). Further, the Legislature emphasized that “Any claim of factual  
17 innocence that is made pursuant to NRS 34.900 to 34.990, inclusive, is separate from any state  
18 habeas claim that alleges a fundamental miscarriage of justice to exclude procedural or time  
19 limitations pursuant to NRS 34.726<sup>1</sup> or 34.810.” Nev. Rev. Stat. § 34.950 (2020).  
20

21 First, the State argues that Mr. Bennett should have presented his newly discovered  
22 evidence<sup>2</sup> in separate post-conviction petitions for writ of habeas corpus years before the  
23

---

24 <sup>1</sup> The cases used by the State to support their timeliness argument explicitly only apply to successive Habeas Corpus  
25 petitions filed in state courts and are therefore entirely inapplicable to the current action. *See Rippo v. State*, 134  
26 Nev. 411, 423 P.3d 1084, 1096 (2018); *Pellegrini v. State*, 117 Nev. 860, 34 P.3d 519, 525 (2001); *see also* Nev.  
27 Rev. Stat. § 34.726 and § 34.810.

28 <sup>2</sup> Mr. Bennett’s Factual Innocence Petition is based on two pieces of newly discovered evidence including Calvin  
Walker’s (Mr. Walker) affidavit, signed April 2012 and Pamela Neal’s (Ms. Neal) declaration, signed February 11,  
2017. Mr. Walker, a new eyewitness, states that Mr. Bennett was not involved in Mr. Williams’ murder. Ms. Neal,  
the eyewitness who identified Mr. Bennett as one of the shooters, is recanting her prior statements and admitting that

1 pending petition was filed. The State fails to cite any authority for this proposition and, in fact,  
2 ignores the Innocence Statute's plain language. Despite the State's unsupported contention to the  
3 contrary, Mr. Bennett diligently sought to compile sufficient evidence to prove his factual  
4 innocence and is not required to litigate the evidence piecemeal, potentially limiting his ability to  
5 meet the required burden. The evidence outlined in the statements provided by Mr. Gantt, Mr.  
6 Walker and Ms. Neal when combined prove Mr. Bennett is factually innocent of this crime and  
7 until he obtained all of the evidence, he could not pursue a remedy.  
8

9         Second, the State asserts that an innocence claim must be raised within a reasonable time  
10 after the remedy becomes available. In so doing, the State wholly ignores the fact that the  
11 procedural mechanism for a factual innocence petition was not available until October 1, 2019.  
12 (*See* Response 11:21-22). Mr. Bennett filed his Petition for Determination of Factual Innocence  
13 on February 10, 2020, a little more than 4 months after the remedy became available which  
14 cannot be characterized in any scenario as "untimely." Finally, the State attempts to use its own  
15 delay to convince this Court to dismiss Mr. Bennett's claim of innocence. After Mr. Bennett  
16 received Ms. Neal's declaration in 2017, he completed his intensive post-conviction  
17 investigation and applied to have the Clark County Conviction Review Unit (CRU) review his  
18 case. On March 18, 2018, Mr. Bennett's case was submitted to the CRU for possible review. On  
19 April 30, 2018, the CRU accepted Mr. Bennett's case and began their investigation. Almost ten  
20 months later, on February 26, 2019, the CRU decided to cease investigation of Mr. Bennett's  
21 case, and he was told he could seek other relief. On March 19, 2019, the Nevada legislature  
22 proposed Assembly Bill No. 356, Post-Conviction Determination of Factual Innocence, which  
23  
24  
25  
26

---

27 she was coerced into testifying against Mr. Bennett by the police detectives investigating the case. Both of these  
28 statements are newly discovered and have never been considered by a court.

1 was signed into law on June 7, 2019, became effective on October 1, 2019, and is now NRS  
2 34.900 et seq. Four months later, Mr. Bennett filed the current action.

3 In sum, the State's timeliness arguments are without merit. Not only is there no statute of  
4 limitation on the filing of factual innocence petitions, but also Mr. Bennett filed his Petition  
5 within one year of the CRU ceasing their investigation on his case, and within approximately  
6 four months of the statutory remedy for a determination of factual innocence becoming available.  
7

8 II. THE COURT MUST CONSIDER THE NEWLY DISCOVERED EVIDENCE  
9 WITH ALL OTHER EVIDENCE TO DETERMINE IF MR. BENNETT  
ESTABLISHES A BONA FIDE ISSUE OF FACTUAL INNOCENCE.

10 The Innocence Statute requires a petitioner to show that "*when viewed with all other*  
11 *evidence in the case*, regardless of whether such evidence was admitted during trial, the newly  
12 discovered evidence demonstrates" his factual innocence. Nev. Rev. Stat. § 34.960(2)(d)  
13 (2020)(*emphasis added*). As in other jurisdictions, the Innocence Statute requires the court to  
14 consider all evidence together, not to consider the newly discovered evidence exclusively. (*See*  
15 Petition 22:5-23). Here, the newly discovered evidence, especially when viewed with all other  
16 evidence presented, establishes Mr. Bennett's factual innocence. (*See* Petition 23-25).  
17

18 The State concedes Ms. Neal and Mr. Walker's affidavits are newly discovered evidence.  
19 However, the State attempts to convince the court to fully disregard Anthony Gantt's (Mr. Gantt)  
20 affidavit simply because it is not new. This argument is a red-herring and should not be  
21 considered.  
22

23 A. Actual Perpetrator Mr. Gantt's Affidavit Corroborates Mr. Walker's 2012 Affidavit and  
24 Must Be Considered with the Newly Discovered Evidence

25 The new evidence that proves Mr. Bennett's innocence includes:

- 26 (A) a 2017 declaration from Ms. Neal, recanting her trial testimony where she  
27 identified Mr. Bennett as one of the shooters, stating that she could not identify  
28 the shooters and admitting that she was coerced into testifying against Mr.  
Bennett by the police detectives investigating the case; and (B) a 2012 declaration

1 from an eyewitness to the shooting, Mr. Walker, who states Mr. Bennett was not  
2 involved in the crime. This evidence is additionally corroborated by the 2002  
3 affidavit from an actual perpetrator, Mr. Gantt, who exculpates Mr. Bennett of  
4 any involvement in Mr. Williams' murder, recants his trial testimony, and states  
that police detectives investigating the case coerced him into testifying against  
and implicating Mr. Bennett.

5 (Petition 19:13-21). Mr. Bennett does not assert that Mr. Gantt's affidavit stands alone as new  
6 evidence, simply that it supports and corroborates Mr. Walker's affidavit and the Court should  
7 consider them together. Mr. Gantt's affidavit is included within the parameters of the Innocence  
8 Statute as "all other evidence in the case, regardless of whether such evidence was admitted  
9 during trial". Nev. Rev. Stat. § 34.960(2)(d).

10  
11 Further, the State argues the Court's consideration of Mr. Gantt's affidavit is barred by  
12 the law of the case doctrine and/or res judicata. (*See* Response 10:21-22). Under law of the case  
13 doctrine, the State argues Mr. Gantt's affidavit should not be considered in this Petition as it was  
14 available in 2002 and submitted as evidence in prior post-conviction proceedings. Again, as  
15 explained above, "[a]ny claim of factual innocence that is made pursuant to NRS 34.900 to  
16 34.990, inclusive, is separate from any state habeas claim that alleges a fundamental miscarriage  
17 of justice to exclude procedural or time limitations pursuant to NRS 34.726 or 34.810." Nev.  
18 Rev. Stat. § 34.950. Thus, Mr. Gantt's affidavit should be reconsidered as supporting evidence of  
19 innocence, as the determination of factual innocence is a wholly different procedure than state  
20 habeas. Using the same reasoning, res judicata does not apply to Mr. Gantt's affidavit.

21  
22 Interestingly, besides attacking Mr. Gantt's affidavit, the State does not address any other  
23 previously existing evidence and its impact on Mr. Bennett's Determination of Factual  
24 Innocence, including: 1) Ms. Neal's inconsistent statements during the investigation and  
25 bolstering her recantation; 2) Michelle Wilson's trial testimony corroborating Ms. Neal's  
26 recantation; 3) Reginald Don Fobb's testimony further corroborating Ms. Neal's recantation; 4)  
27  
28

1 Mr. Gantt's testimony and plea agreement corroborating his recantation; and 5) James Golden's  
2 testimony supporting Mr. Bennett's factual innocence. When this evidence is combined with Ms.  
3 Neal's declaration and Mr. Walker's affidavit, with the support of Mr. Gantt's corroborating  
4 affidavit, the reasonable conclusion is that Mr. Bennett was wrongfully convicted and should, at  
5 the very least, be given a chance to prove his innocence at a hearing before this Court.  
6

7 III. THE INNOCENCE STATUTE DOES NOT PRECLUDE EVIDENCE OF  
8 RECANTATION AND THE STATE'S UNSUPPORTED CLAIM TO THE  
9 CONTRARY SHOULD BE REJECTED.

10 In the final page of their Response, the State merely lists the statutory requirements under  
11 NRS 34.960 and claims Mr. Bennett does not meet them. While concise, this list provides no  
12 argument, authority or analysis rebutting Mr. Bennett's fully supported assertions in his petition  
13 showing that he, in fact, complies with each of the statutory requirements. (*See* Response 12:17-  
14 24). The State's failure to complete any cognizable legal argument could be viewed as  
15 concession of all of the rest of the required elements of the Innocence Statute. In addition, the  
16 State wrongfully asserts that a "[r]ecantation of a witness does not qualify as newly discovered  
17 evidence under NRS 34.960." (Response 12:19-20). Under the Innocence Statute, newly  
18 discovered evidence must not rely "*solely* on the recantation of the testimony of a witness against  
19 the petitioner" but it does not preclude evidence of recantation. Nev. Rev. Stat. §  
20 34.960(6)(b)(1)-(2)(2020) (emphasis added).  
21

22 Ms. Neal's recantation and Mr. Walker's affidavit alone provide the court with sufficient  
23 evidence to carefully review Mr. Bennett's claim of factual innocence. However, when  
24 combined with all other exculpatory evidence discussed in the Petition, it is reasonably probable  
25 that Mr. Bennett's jury would have found Mr. Bennett not guilty of the charges and Mr. Bennett  
26 respectfully requests this Court to grant him a hearing and to reverse his wrongful conviction.  
27  
28

1 **CONCLUSION**

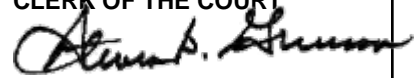
2 Based on the foregoing, as well as Mr. Bennett's Petition for Determination of Factual  
3 Innocence, Mr. Bennett respectfully requests the Court to hold a hearing based on newly  
4 discovered evidence so his post-conviction innocence claim may be heard.  
5

6 DATED this 23th day of July 2020.

7 /s/ Katherine E. Pepin  
8 NEIL A. KAPLAN  
9 KATHERINE E. PEPIN  
10 *Attorneys for Petitioner Ashley Bennett*

11 /s/ Jennifer Springer  
12 JENNIFER SPRINGER  
13 *Attorney for Petitioner Ashley Bennett*

14 /s/ D. Loren Washburn  
15 D. LOREN WASHBURN  
16 *Attorney for Petitioner Ashley Bennett*



**SUPP**

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DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ASHLEY WILLIAM BENNETT,  
#1107300

Defendant.

CASE NO: A-20-810154-W

(C175914)

DEPT NO: XII

**STATE'S SUPPLEMENTAL RESPONSE TO DEFENDANT'S PETITION FOR  
DETERMINATION OF FACTUAL INNOCENCE**

DATE OF HEARING: DECEMBER 7, 2020  
TIME OF HEARING: 10:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through ALEXANDER G. CHEN, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Petition for Determination of Factual Innocence.

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On June 7, 2001, ASHLEY WILLIAM BENNETT (hereinafter "Defendant"), along  
4 with his co-defendants, was charged by way of Information with one count MURDER WITH  
5 USE OF A DEADLY WEAPON (OPEN MURDER) (Felony – NRS 200.010, 200.030,  
6 193.165).

7 Jury trial commenced on January 22, 2002. On February 4, 2002, the jury returned a  
8 verdict of Guilty of FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON. On  
9 February 6, 2002, the parties filed a Stipulation Waiving Separate Penalty Hearing and  
10 Allowing Sentence to be Imposed by the Court.

11 On February 11, 2002, Defendant filed a Motion for New Trial. The State filed its  
12 Opposition on February 20, 2002. On February 21, 2002, Defendant's Motion was denied.  
13 The Court filed its Order on March 1, 2002.

14 On June 10, 2002, Defendant filed an additional Motion for New Trial. The State filed  
15 its Opposition on June 17, 2002. On June 18, 2002, Defendant's second Motion for New Trial  
16 was denied.

17 On June 18, 2002, Defendant was sentenced to Life in the Nevada Department of  
18 Corrections without the possibility of parole plus an equal and consecutive term of Life  
19 without the possibility of parole for the use of a deadly weapon. The Judgment of Conviction  
20 was filed on June 20, 2002.

21 On June 28, 2002, Defendant filed a Notice of Appeal. On October 5, 2004, the Nevada  
22 Supreme Court affirmed Defendant's conviction and remittitur issued on November 8, 2004.

23 On January 3, 2005, Defendant filed a Petition for Writ of Habeas Corpus. The State  
24 filed its Opposition on January 13, 2005. On May 31, 2005, Defendant filed a Supplement to  
25 Petition for Writ of Habeas Corpus. The State filed its Opposition on July 7, 2005. On July  
26 11, 2005, Defendant filed his Reply to the State's Opposition. On July 26, 2005, the State filed  
27 a Supplemental Response to Defendant's Petition for Writ of Habeas Corpus. On August 16,  
28 2005, Defendant filed an additional Supplement to his Petition for Writ of Habeas Corpus. On

1 November 1, 2005, the Court held an evidentiary hearing regarding Defendant's claims. On  
2 November 4, 2005, the Court denied Defendant's Petition. The Court filed its Findings of Fact,  
3 Conclusions of Law and Order on November 29, 2005.

4 On November 18, 2005, Defendant filed a Notice of Appeal. On August 29, 2006, the  
5 Nevada Supreme Court issued an order affirming the Court's decision and remittitur issued on  
6 September 28, 2006.

7 On February 10, 2020, Defendant filed the instant Petition for Determination of Factual  
8 Innocence. The State filed its Response on July 15, 2020. On July 23, 2020, Defendant filed  
9 his Reply.

10 On November 30, 2020, in preparing for the upcoming hearing on Defendant's Petition,  
11 the State became aware of a clerical error wherein an incomplete draft of the State's Response  
12 was filed. The State, therefore, submits the instant Supplemental Response.

### 13 **STATEMENT OF THE FACTS**<sup>1</sup>

14 On March 3, 2001, Pamela Neal was living at the Buena Vista Springs Apartments  
15 located at 2529 Morton Avenue, Apartment D. Jury Trial Transcript Day 4 ("JTT4"), January  
16 25, 2002, p. 24. At some point in the afternoon, Neal left her apartment to take one of her  
17 neighbors, Michelle Wilson, to work. Id. at 26-28. Neal testified that Wilson needed to be at  
18 work between 4:00-4:30P.M., and that she probably left her apartment around 3:30P.M. Id. at  
19 29. When Neal was leaving her apartment she saw a group of men surround the victim and  
20 begin shooting at him. Id. Neal testified that there were multiple guns and the group fired  
21 approximately twenty (20) times. Id. at 29-30. Neal knew the victim as "Dough Boy." Id. at  
22 30. Neal testified that she believed the Dough Boy was there to see another neighbor, Monique  
23 Hunt. Id. at 31. Neal also testified that Hunt and Dough Boy were affiliated with the Rolling  
24 60's, a local gang. Id. at 31-32. Dough Boy appeared to be leaving Hunt's apartment and was  
25 walking in the parking lot in the direction of Neal's apartment. Id. at 33. Neal testified that  
26 there were five (5) or six (6) other men outside around Dough Boy. Id. at 33-34. The men

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27 <sup>1</sup> The State would like to correct a misrepresentation in Defendant's Statement of the Facts.  
28 Defendant claims that he was never a member of any gang, however, defense counsel admitted  
he was a gang member. See Transcript: Jury Trial, Day One ("JTT1"), January 22, 2002, p. 4.

1 appeared to all be talking with one another when Neal saw Dough Boy throw his hands up in  
2 the air. Id. at 34.

3 Neal testified that, of the group of men around Dough Boy, she recognized Wayne  
4 Gantt, who she knew as “Wacky G,” Chew and Wing. Id. at 35. She initially stated that she  
5 did not recognize the other three (3) men, but that they appeared to be “youngsters,” age  
6 twenty-five (25) and younger. Id. Neal stated that, when Dough Boy put his hands in the air,  
7 other men approached the group. Id. at 36. One of the individuals Neal knew as Lailoni and  
8 the other man she recognized to be “Face.” Id. at 38. Neal identified Face in-court as  
9 Defendant. Id. at 38-39. Neal testified that she saw Lailoni and Defendant shoot Dough Boy.  
10 Id. at 39. Neal also stated that she was about eighteen (18) to twenty (20) feet from the  
11 shooting. Id. at 47. Neal testified that she did not speak to police when they arrived. Id. at 50.

12 Neal went to the police on May 1, 2001. Id. Detectives wanted to talk to her cousin,  
13 Eric Bass’s, girlfriend about his murder. Id. at 51. Neal felt like she needed to come forward  
14 after her cousin was murdered. Id. at 51-52. Neal told police that Lailoni, Defendant and  
15 Wacky G were involved in the murder of Dough Boy. Id. 53. Detectives showed her  
16 photographic lineups and she identified pictures of Wacky G, Lailoni, Chew, Wing and  
17 Defendant. Id. at 55-60. Neal testified that these individuals were a part of the Gerson Park  
18 Kingsmen (“GPK”), another local gang. Id. at 65-66. Neal also testified that Wacky G and  
19 Defendant had silver guns while Lailoni had a black gun. Id. at 67. She also stated that Lailoni  
20 shot first and Wacky G shot last. Id. at 68-69. Neal also testified that Lailoni was wearing  
21 black pants. Pam Neal also indicated to the Court that Defendant had his girlfriend confront  
22 her brother about Neal talking to the police and asked her to say that he didn’t have anything  
23 to do with the shooting. JTT2 p. 20-22. JTT4 64, 70-72. 83-121; 102

24 Anthony Gantt testified that he knew Defendant and that he also went by “Face.” JTT6  
25 71-72. Gantt acknowledged that he was also charged with the murder of Joseph Williams and  
26 that he entered into an agreement with the State to testify against Defendant. Id. at 78. Gantt  
27 testified that, on March 3, 2001, he was at a gathering at an individual he knew as “L-Wack’s”  
28 house. Id. at 82. Gantt was at L-Wack’s house because his little brother, Mark Doyle, had been

1 killed the previous day. Id. at 82-83. Gantt was at L-Wacks with Defendant, an individual  
2 known as “T-Wack,” Chew, an individual named Henry and Lailoni. Id. at 83. Gantt arrived  
3 at approximately 11:00A.M. to 12:00P.M. Id. Eventually, the group planned to shoot up the  
4 Hunt’s house and were going to leave L-Wack’s. Id. Gantt testified that Defendant made the  
5 plan. Id. at 84. Gantt, Defendant, Lailoni, T-Wack and Chew all walked towards the Hunts’  
6 house. Id. The group was going to shoot up the house because individuals that lived there were  
7 affiliated with the Rolling 60’s. Id. at 85. The 60’s were feuding with the GPK. Id. Gantt  
8 testified that the other individuals he was with were affiliated with GPK. Id. at 86.

9       While the group was walking through the parking lot, they encountered Dough Boy.  
10 Id. at 90. When the group saw Dough Boy, Gantt testified that Defendant said, “there go the  
11 60 nigger,” and started shooting. Id. Dough Boy tried to run away. Id. Once Defendant began  
12 shooting, everyone else started to shoot as well. Id. at 91. Gantt testified that Lailoni had a .38  
13 super, he had a .32, and that T-Wack, Chew and Defendant all had 9-millimeters. Id. at 93-94.  
14 After the shooting, Gantt testified that all the individuals went their separate ways. Id. at 98.  
15 Gantt testified that he ran across the park and Henry was with him. Id. at 99-100. Henry had a  
16 .357, but was not involved in the shooting. Id. at 100. Gantt testified that he had borrowed his  
17 gun from an individual he knew as “R-Wack.” Id. at 104. Gantt testified that he is known as  
18 “Wacky-G.” Id. at 132. Gantt admitted that he shot Joseph Williams. Id. at 106. (125-26)

19       On March 3, 2001, James Golden was employed as a security guard at the Buena Vista  
20 Springs Apartments. JTT5, January 28, 2002, p. 3. On that day, Golden was working from  
21 9:00 A.M. to 5:00P.M. Id. Some time in the afternoon hours, Golden heard gunshots. Id.  
22 Golden testified that he heard at least twenty (20) shots. Id. at 4. Golden was with one of the  
23 property workers, Don Stewart, when he heard the shots. Id. at 6. Golden drew his weapon  
24 and waited until the shots ceased before he went to the area where the shots came from. Id. at  
25 7. Golden saw suspicious individuals running through the park west of 2529 Morton. Id. at 8-  
26 9. The individuals were about twenty (20) yards away from Golden and he only really noticed  
27 their clothing. Id. at 10. All three (3) suspects appeared to be wearing white shirts and black  
28 pants. Id. at 11. Golden recognized one of the individuals as Wayne and identified him in a

1 photographic lineup. Id. at 11-14. As he ran away, the individual reached into his pants and  
2 Stewart informed Golden that the individual had a gun. Id. at 15-16. Golden also testified that  
3 he believed the individuals were less than eighteen (18) years old and were all African  
4 American. Id. at 18.

5 Monique Hunt testified that Joseph Williams was her on-again off-again boyfriend. Id.  
6 at 50. Hunt stated that she also goes by “Nicki.” Id. at 59. Hunt testified that Williams was  
7 known as Dough Boy because was was chubby. Id. at 51. Hunt also testified that Williams  
8 was affiliated with the Rolling 60 Crypts. Id. On March 3, 2001, Hunt was living at 2535  
9 Morton, Apartment B. Id. Dough Boy had permission to come to her house on that date. Id.  
10 Hunt left her apartment to go shopping at approximately 10:00A.M. and returned to her  
11 grandmother’s house across the street between 3:00-3:30P.M. Id. at 53. Hunt saw a commotion  
12 happening across the street in her apartment complex and eventually her aunt ran over and told  
13 her that Dough Boy had been shot. Id. at 57. Hunt drove her car back across the street, but  
14 William had already been taken to the hospital. Id. at 57-58. Hunt went to the hospital to give  
15 them Williams’ information. Id. at 58. Hunt left to take her grandmother home and, when she  
16 returned to the hospital, she was informed that Williams had died. Id. at 58-59. Williams  
17 suffered gunshot wounds to the chest, back, left arm, left leg, right hand, right leg, left buttock,  
18 right buttock and left hand. JTT7, January 30, 2002, p. 24-33. Projectiles retrieved were  
19 medium caliber, meaning over a .25 but less than a .40 caliber. Id. at 34. A 9-millimeter is  
20 considered a medium caliber. Id. at 35. There were a total of fourteen (14) entrance wounds  
21 on the body. Id. The cause of death was determined to be multiple gunshot wounds and the  
22 manner of death was ruled a homicide. Id. at 39.

23 On March 3, 2001, at approximately 3:09P.M., North Las Vegas Police Department  
24 (“NLVPD”) Officer Jason Arnona was dispatched to 2535 Morton in reference to a victim  
25 with a gunshot wound. JTT5 at 64. When Officer Arnona arrived, he observed the victim,  
26 Joseph Williams, lying on the ground with multiple gunshot wounds to his body. Id. at 65.  
27 Officer Arnona testified that he noticed five (5) to seven (7) gunshot wounds. Id. at 67. Officer  
28 Arnona also testified that there were at least two dozen shell casings in the area. Id. at 69.

1 Additionally, Officer Arnona impounded the victim's car, a blue 1977 Cadillac. Id. at 76-77.  
2 There was no weapon located in the vehicle. Id. at 78.

3 On March 3, 2001, NLVPD Officer Robert Aker was also dispatched to the 2500 block  
4 of Morton in reference to shots being fired. Id. at 85. Officer Aker spoke with Larasha Hill  
5 and Eddie Edwards, who stated that they had witnesses the shooting, and had them complete  
6 a written statement. Id. at 87. Hill did not want a statement attached to her name and she did  
7 not want to be involved. Id. at 89. Officer Aker also collected a statement from Kelly Freeland.  
8 Id. at 90.

9 On March 3, 2001, at approximately 3:00P.M., Detective Michael Bodnar was called  
10 out to the 2500 block of Morton. JTT7 at 108-09. Detective Bodnar spoke with witnesses at  
11 the scene, but they all indicated they only heard gunshots and did not see anything. Id. at 111.  
12 On March 7, 2001, Detective Bodnar received an anonymous phone call indicating the caller  
13 knew of some individuals that may have been involved in the case. Id. at 115. Based on that  
14 information, Detective Bodnar contacted Gantt on March 21, 2001. Id. Detective Bodnar also  
15 contacted Defendant. Id. at 117. Defendant did not initially deny being involved in the murder.  
16 Id. at 118. On May 1, 2001, Detective Bodnar contacted Pam Neal regarding the shooting. Id.  
17 at 118-19. At that time, Pam identified Defendant, Lailoni and Gantt as the shooters. Id. at  
18 119. Neal also identified Defendant as one of the shooters in a photographic lineup. Id. at 124.  
19 On May 7, 2001, Detective Bodnar again contacted Gantt, and he identified Defendant,  
20 Lailoni, Chew, T-Wack and Henry as being involved in the shooting. Id. at 126.

21 On March 3, 2001 at approximately 4:15P.M., Sandra Nielson-Hanes, an NLVPD  
22 crime scene investigator, was dispatched to 2529 Morton to process a "very large shooting  
23 scene." JTT5 at 112-13. Upon arrival, Sandra helped the primary crime scene investigator  
24 create a rough sketch diagram of the crime scene. Id. at 116. Sandra located eight (8) A-MERC  
25 9-millimeter casings, seven (7) R&P .32 casings, nine (9) .38 super casings and four (4) Win  
26 Luger 9-millimeter casings at the scene. Id. at 123, 134-35, 141-42, 146-47, 150-51; JTT6,  
27 January 29, 2002, p. 9-13, 15, 23. There were thirty-nine (39) pieces of evidence located at the  
28

1 scene. JTT5 at 126. There was also a Win Luger 9-millimeter located that had not been shot.  
2 JTT6 at 12.

3 On May 23, 2001, James Krylo, a firearms examiner working in the Las Vegas  
4 Metropolitan Police Department ("LVMPD") forensic laboratory, examined the projectiles  
5 and shell casings recovered in this case. JTT7 at 69-71. Krylo testified that the eight (8) A-  
6 MERC cartridge cases had all be fired from the same gun. Id. at 85. Krylo also testified that  
7 the four (4) WIN 9-millimeter casings were fired from a single gun. Id. at 86. Krylo also  
8 determined that there was a total of (4) firearms involved in the incident. Id. Krylo testified  
9 that the seven (7) .32 cartridge casings were fired from the same Colt .32 semiautomatic pistol.  
10 Id. at 87. That firearm was recovered under a different event number than the one from this  
11 case. Id. at 87-88. Krylo also testified that the nine (9) .38 super cartridge casings were fired  
12 from the same Colt .38 super semiautomatic pistol, which was also recovered under a different  
13 event number. Id. at 88.

## 14 **ARGUMENT**

### 15 **I. DEFENDANT HAS FAILED TO PROVE THAT HE IS FACTUALLY** 16 **INNOCENT.**

#### 17 **a. Defendant has failed to present newly discovered evidence exists that, if** 18 **credible, establishes a bona fide issue of factual innocence.**

19 NRS 34.960 states in relevant part:

20 1. At any time after the expiration of the period during which a  
21 motion for a new trial based on newly discovered evidence may  
22 be made pursuant to NRS 176.515, a person who has been  
23 convicted of a felony may petition the district court in the county  
24 in which the person was convicted for a hearing to establish the  
25 factual innocence of the person based on newly discovered  
26 evidence. A person who files a petition pursuant to this subsection  
27 shall serve notice and a copy of the petition upon the district  
28 attorney of the county in which the conviction was obtained and  
the Attorney General.

2. A petition filed pursuant to subsection 1 must contain an  
assertion of factual innocence under oath by the petitioner and  
must aver, with supporting affidavits or other credible documents,  
that:

1 (a) Newly discovered evidence exists that is specifically  
2 identified and, if credible, establishes a bona fide issue of factual  
innocence;

3 **(b) The newly discovered evidence identified by the  
petitioner:**

4 **(1) Establishes innocence and is material to the case  
and the determination of factual innocence;**

5 **(2) Is not merely cumulative of evidence that was  
6 known, is not reliant solely upon recantation of testimony by  
7 a witness against the petitioner and is not merely impeachment  
evidence; and**

8 **(3) Is distinguishable from any claims made in any  
previous petitions;**

9 3. In addition to the requirements set forth in subsection 2, a  
10 petition filed pursuant to subsection 1 must also assert that:

11 (a) Neither the petitioner nor the petitioner's counsel knew of  
12 the newly discovered evidence at the time of trial or sentencing or  
13 in time to include the evidence in any previously filed post-trial  
14 motion or postconviction petition, and the evidence could not have  
15 been discovered by the petitioner or the petitioner's counsel  
through the exercise of reasonable diligence; or

16 (b) A court has found ineffective assistance of counsel for  
17 failing to exercise reasonable diligence in uncovering the newly  
18 discovered evidence.

19 4. The court shall review the petition and determine whether  
20 the petition satisfies the requirements of subsection 2. If the court  
21 determines that the petition:

22 (a) Does not meet the requirements of subsection 2, the court  
23 shall dismiss the petition without prejudice, state the basis for the  
24 dismissal and send notice of the dismissal to the petitioner, the  
25 district attorney and the Attorney General.

26 (b) Meets the requirements of subsection 2, the court shall  
27 determine whether the petition satisfies the requirements of  
28 subsection 3. If the court determines that the petition does not meet  
the requirements of subsection 3, the court may:

(1) Dismiss the petition without prejudice, state the basis  
for the dismissal and send notice of the dismissal to the petitioner,  
the district attorney and the Attorney General; or

(2) Waive the requirements of subsection 3 if the court  
finds the petition should proceed to a hearing and that there is other  
evidence that could have been discovered through the exercise of  
reasonable diligence by the petitioner or the petitioner's counsel  
at trial, and the other evidence:

(I) Was not discovered by the petitioner or the  
petitioner's counsel;



1 (II) Is material upon the issue of factual innocence;  
2 and  
3 (III) Has never been presented to a court.

4 (emphasis added).

5 Here, Defendant claims that three (3) affidavits from three (3) separate witnesses, two  
6 (2) of which testified at trial and one (1) who did not, support his claim that he is factually  
7 innocent of the murder of Williams. Defendant's claim is meritless as Defendant has failed to  
8 satisfy his burden under the statute.

9 As an initial matter, the affidavit of co-defendant, Anthony Gantt, cannot constitute  
10 newly discovered evidence. "'Newly discovered evidence' means evidence that was not  
11 available to a petitioner at trial or during the resolution by the trial court of any motion to  
12 withdraw a guilty plea or motion for new trial and which is material to the determination of  
13 the issue of factual innocence." NRS 34.930. Defendant admits in his Petition that the affidavit  
14 by Gantt was previously considered by this Court as well as the Nevada Supreme Court in  
15 Defendant's Petition for Writ of Habeas Corpus, which was denied on November 4, 2005, and  
16 affirmed on August 29, 2006. Petition at 3, fn 2. Therefore, this evidence was previously  
17 available to Defendant and presented to the Court and cannot be used as "newly discovered  
18 evidence" to form the basis of Defendant's Petition. Thus, Gantt's affidavit should be wholly  
19 disregarded by this Court.

20 Further, claims regarding the Gantt affidavit are barred by the law of the case doctrine  
21 and/or res judicata. "The law of a first appeal is law of the case on all subsequent appeals in  
22 which the facts are substantially the same." Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798  
23 (1975) (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). "The doctrine of  
24 the law of the case cannot be avoided by a more detailed and precisely focused argument  
25 subsequently made after reflection upon the previous proceedings." Id. at 316, 535 P.2d at  
26 799. Under the law of the case doctrine, issues previously decided on direct appeal may not  
27 be reargued in a habeas petition. Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532  
28 (2001) (citing McNelson v. State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)).

1 Furthermore, this Court cannot overrule the Nevada Supreme Court. NEV. CONST. Art. VI §  
2 6.

3 The Nevada Supreme Court has ruled previously that Gantt's testimony was not newly  
4 discovered evidence and that it was not probable that a different result would have occurred  
5 at trial if Gantt had not testified as he did. Order of Affirmance, No. 46324, filed August 29,  
6 2006, p. 3. Additionally, the Nevada Supreme Court noted on direct appeal that, if any witness  
7 intimidation occurred, Defendant was the one threatening and attempting to intimidate Gantt.  
8 See Petition, Exhibit I, p. 1-2 ("Additionally, the State presented substantial credible evidence  
9 that Bennett was the source of intimidation."). Moreover, this Court has already determined  
10 that Defendant failed to raise the Gantt affidavit in a timely manner. See Petition, Exhibit J, p.  
11 3. Therefore, Defendant's claims regarding Gantt are also barred by res judicata. See Mason  
12 v. State, 206 S.W.3d 869, 875 (Ark. 2005) (recognizing the doctrine's applicability in the  
13 criminal context); see also York v. State, 342 S.W. 528, 553 (Tex. Crim. Appl. 2011).  
14 Accordingly, by simply continuing to file motions with the same arguments, his motion is  
15 barred by the doctrines of the law of the case and res judicata. Id.; Hall v. State, 91 Nev. 314,  
16 316, 535 P.2d 797, 799 (1975). Therefore, Defendant's claims regarding Gantt are barred both  
17 by the law of the case and res judicata and Defendant's Petition should be denied.

18 Moreover, Defendant's claims regarding Calvin Walker, an individual that never  
19 testified at trial, are precluded based on Defendant's failure to raise the issue sooner. Walker's  
20 affidavit was dated April of 2012. Generally, a claim must be raised within a reasonable time  
21 after the remedy became available. The Nevada Supreme Court has determined that a  
22 reasonable time is one (1) year after the claim became available. See Rippo v. State, 134 Nev.  
23 411, 412, 423 P.3d 1084, 1090 (2018); see also Pellegrini, 117 Nev. at 874-75, 34 P.3d at 529.  
24 However, Defendant's Petition was not filed until February 10, 2020, nearly eight (8) years  
25 after Defendant's claim regarding the Walker affidavit became available. Defendant had the  
26 ability to raise this issue in a post-conviction petition for writ of habeas corpus years prior to  
27 the instant Petition being filed. Therefore, Defendant's claims regarding Walker are barred.  
28 The State would also note that, without the full date on which the affidavit was signed,

1 Walker's affidavit may not be admissible. See NRS 53.045. Therefore, Walker's affidavit  
2 should be wholly disregarded by this Court and Defendant's Petition should be denied.

3 Furthermore, Defendant's claims regarding Pam Neal are precluded based on  
4 Defendant's failure to raise the issue sooner. Neal's affidavit was dated February 11, 2017.  
5 Generally, a claim must be raised within a reasonable time after the remedy became available.  
6 The Nevada Supreme Court has determined that a reasonable time is one (1) year after the  
7 claim became available. See Ripppo v. State, 134 Nev. 411, 412, 423 P.3d 1084, 1090 (2018);  
8 see also Pellegrini, 117 Nev. at 874-75, 34 P.3d at 529. However, Defendant's Petition was  
9 not filed until February 10, 2020, almost three (3) years after Defendant's claim regarding the  
10 Neal affidavit became available. Defendant had the ability to raise this issue in a post-  
11 conviction petition for writ of habeas corpus years prior to the instant Petition being filed.  
12 Therefore, Defendant's claims regarding Neal are barred. Therefore, Neal's affidavit should  
13 be wholly disregarded by this Court and Defendant's Petition should be denied.

14 Additionally, even if this Court were to review Defendant's claims as to all three (3)  
15 affidavits, Defendant has still failed to meet his burden under NRS 34.960.

16 **b. Recantation of a witness does not qualify as newly discovered evidence**  
17 **under NRS 34.960.**

18 NRS 34.960 specifically states that the newly discovered evidence presented in a  
19 Petition to Establish Factual Innocence cannot rely solely on the recantation of a witness. NRS  
20 34.960(2)(b)(2). Petitioner attempts to circumvent this requirement by claiming that he has  
21 instead provided the recantation testimony of two (2) witnesses. However, Petitioner's claim  
22 clearly contradicts the purpose of the statute. NRS 34.960(2)(b)(2) does not state that a Petition  
23 cannot be based on the recantation testimony of a *single* witness. Instead, the statute  
24 specifically precludes recantation testimony generally as "newly discovered evidence."  
25 Therefore, the affidavits of Pam Neal and Anthony Gantt, aside from being precluded for  
26 review by this Court as demonstrated above, cannot constitute newly discovered evidence  
27 under the statute and Defendant's claim fails. Thus, the Petition must be denied.

28 **c. The evidence presented by Defendant is not "material."**

1 Pursuant to NRS 34.940, evidence is material only if “the evidence establishes a  
2 reasonable probability of a different outcome.” Here, Defendant has failed to demonstrate that  
3 affidavits presented to this Court are material. Instead, Defendant conclusorily states that these  
4 affidavits themselves establish a reasonable probability of a different outcome without  
5 providing any facts or evidence in support of his contention. Petition at 19. Defendant’s own  
6 self-serving statements that the outcome would likely have been different are not sufficient to  
7 meet his burden under the statute. As demonstrated, *infra*, the evidence provided by Defendant  
8 is merely impeachment evidence that could have been easily rebutted by the State. Therefore,  
9 the affidavits submitted by Defendant are not material and Defendant’s Petition must be  
10 denied.

11 **d. The evidence presented by Defendant constitutes cumulative and/or**  
12 **impeachment evidence.**

13 NRS 34.960(2)(b)(2) also requires that any “newly discovered” evidence not be  
14 cumulative of evidence that was known. NRS 34.960(2)(b)(2) also precludes a defendant from  
15 using impeachment evidence as the basis for a Petition to Establish Factual Innocence. Here,  
16 the affidavits presented by Defendant are merely impeachment evidence and, thus,  
17 Defendant’s Petition must be denied.

18 Defendant first presents a 2017 affidavit from Pam Neal in support of his Petition.  
19 Defendant’s Exhibit A. In her affidavit, Neal states that she was pressured by the police to  
20 identify Defendant as one of the shooters in order to receive a favorable negotiation in an  
21 unrelated case. However, this amounts to impeachment evidence which could have been used  
22 on cross-examination to cast doubt on Neal’s statement to police and identification of  
23 Defendant. In fact, this information was presented to the jury on cross-examination. JTT4 at  
24 111-16. Trial counsel asked Neal whether she had given police false information in order to  
25 have the case against her dismissed, which Neal answered that she did not. *Id.* Gantt also  
26 testified that he believed Neal had previously lied in her testimony “to get her case dropped.”  
27 JTT6 at 113. Thus, the Neal affidavit is also cumulative and cannot be the basis for  
28 Defendant’s Petition pursuant to NRS 34.960(2)(b)(2). Further, Neal’s affidavit does not cast

1 doubt on her previous trial testimony as Neal admitted that Defendant had previously  
2 confronted her to lie and say that Defendant had nothing to do with the shooting. JTT2 at 20-  
3 22; JTT4 63, 70-72, 102. Thus, the Neal affidavit merely provides impeachment evidence and  
4 cannot form the basis for Defendant's claim pursuant to NRS 34.960(2)(b)(2). Therefore,  
5 Defendant's claim must be denied.

6 Defendant presents a 2012 affidavit from Calvin Walker, an individual that did not  
7 testify in Defendant's trial, in support of his Petition. Defendant's Exhibit B. Walker merely  
8 states that he did not know any of the shooters but that he did know Defendant at the time of  
9 the shooting. Id. However, Walker's testimony would amount to impeachment evidence to  
10 cast doubt on the eyewitness testimony and identification of Defendant as one of the shooters.  
11 Thus, the Walker affidavit merely provides impeachment evidence and cannot form the basis  
12 for Defendant's claim pursuant to NRS 34.960(2)(b)(2). Therefore, Defendant's claim must  
13 be denied.

14 Defendant also presents the 2002 affidavit from Anthony Gantt stating that he was  
15 coerced by police into identifying Defendant as one of the shooters. Defendant's Exhibit C.  
16 However, this amounts to impeachment evidence which could have been used on cross-  
17 examination to cast doubt on Gantt's statement to police and identification of Defendant. In  
18 fact, this information was presented to the jury on cross-examination. JTT6 at 117-29. Trial  
19 counsel asked Gantt whether he had given police false information in order to receive a  
20 favorable negotiation and "not die in prison," which Gantt answered that she did not. Id. Trial  
21 counsel also asked Gantt if he had tried to remove his attorney from representing him because  
22 he had been coerced into taking the negotiations. Id. at 127. Gantt was also questioned as to a  
23 letter he wrote to Defendant where Gantt said he would not testify against Defendant because  
24 he had been pressured into lying. Id. at 128-29. Thus, the Gantt affidavit is also cumulative  
25 and cannot be the basis for Defendant's Petition pursuant to NRS 34.960(2)(b)(2). Further,  
26 Gantt's affidavit does not cast doubt on her previous trial testimony as it was noted on the  
27 record that the co-defendant and other GPK gang members attended Defendant's trial and  
28 attempted to intimidate Gantt into not testifying. JTT6 at 74. Thus, the Gantt affidavit merely

1 provides impeachment evidence and cannot form the basis for Defendant's claim pursuant to  
2 NRS 34.960(2)(b)(2). Therefore, Defendant's claim must be denied.

3 **e. Defendant has failed to prove that he is factually innocent.**

4 According to NRS 34.920

5 "Factual innocence" means that a person did not:

- 6 1. Engage in the conduct for which he or she was convicted;
- 7 2. Engage in conduct constituting a lesser included or  
8 inchoate offense of the crime for which he or she was convicted;
- 9 3. Commit any other crime arising out of or reasonably  
10 connected to the facts supporting the indictment or information  
11 upon which he or she was convicted; and
- 12 4. Commit the conduct charged by the State under any  
13 theory of criminal liability alleged in the indictment or  
14 information.

15 Here, Defendant provides no newly discovered evidence to this Court affirmatively  
16 demonstrating that Defendant was did not commit the crimes charged. Rather, Defendant  
17 provides this Court with affidavits from individuals who are unable to affirmatively state who  
18 was involved in the crime or that Defendant was definitely not involved in the shooting.  
19 Affidavits by individuals who cannot identify the shooter do not satisfy Defendant's burden  
20 under the statute. As Defendant has failed to provide newly discovered evidence  
21 demonstrating that he is factually innocent of the crimes he was convicted of, Defendant has  
22 failed to meet his burden under NRS 34.960 and his Petition must be denied.

23 ///

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1 **CONCLUSION**

2 For the foregoing reasons, Defendant's Petition for Determination of Factual Innocence  
3 must be denied.

4 DATED this 30th day of November, 2020.

5 Respectfully submitted,

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

9 BY /s/ALEXANDER CHEN  
10 ALEXANDER G. CHEN  
11 Chief Deputy District Attorney  
12 Nevada Bar #10539

13 **CERTIFICATE OF ELECTRONIC FILING**

14 I hereby certify that service of the above and foregoing, was made this 30th day of  
15 November, 2020, by Electronic Filing to:

16 D. Loren Washburn, Esq.  
17 [lwashburn@smithwashburn.com](mailto:lwashburn@smithwashburn.com)

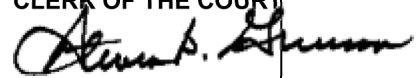
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25 Secretary for the District Attorney's Office

26  
27 01FN0810A/AC/SS-Appeals/dd-MVU  
28



RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

ASHLEY BENNETT,	)	CASE NO. A-20-810154-W
Petitioner,	)	DEPT. NO. XII
vs.	)	
STATE OF NEVADA,	)	
Respondent.	)	

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

MONDAY, DECEMBER 7, 2020

**RECORDER'S TRANSCRIPT OF HEARING:  
DEFENDANT ASHLEY BENNETT'S PETITION FOR  
DETERMINATION OF FACTUAL INNOCENCE**

APPEARANCES ON PAGE 2:

RECORDED BY: SARA RICHARDSON, COURT RECORDER



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For the State:

ALEXANDER G. CHEN, ESQ.  
Chief Deputy District Attorney  
SKYLER SULLIVAN, ESQ.  
Deputized Law Clerk  
(Appearing via video)

For the Defendant:

KATHERINE E. PEPIN, ESQ.  
NEIL A. KAPLAN, ESQ.  
JENNIFER SPRINGER, ESQ.  
DAVID L. WASHBURN, ESQ.  
(Appearing via video)

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Las Vegas, Nevada; Monday, December 7, 2020

[Hearing commenced at 10:31 a.m.]

THE CLERK: Good morning, Judge.

THE COURT: Good morning. Okay, State of Nevada versus Ashley Bennett, Case A810154. Will the parties make their appearances please?

MR. WASHBURN: Yes, Your Honor, for the Defense, Loren Washburn; I'm local counsel, right here. Arguing today will be primarily, I think, Ms. Katherine Pepin of Clyde, Snow and Sessions, out of Salt Lake City who is appearing there in a conference room, Your Honor.

THE COURT: Okay. Thank you.

MS. CHEN: For the State, Alex Chen. Also here is Skyler Sullivan; she'll be doing most of the arguing.

THE COURT: Okay. Go ahead. I mean, is counsel from Salt Lake going to make their appearance?

MS. PEPIN: Yes, Your Honor, Katherine Pepin here in Salt Lake for Mr. Bennett. Also here with me is Jennifer Springer from the Rocky Mountain Innocence Center and my co-counsel, Neil Kaplan.

THE COURT: Okay. And does anyone else need to make their appearance?

THE CLERK: That's it from the --

THE COURT: Okay.

MR. WASHBURN: No, Your Honor.

THE COURT: All right. Is Mr. Bennett going to join us?

1 MS. PEPIN: No. We -- he was unable to join today. The  
2 conferencing at High Desert was already booked.

3 THE COURT: Okay. All right. It's your petition so I'll let you  
4 begin.

5 MS. PEPIN: Thank you, Your Honor. I'd like to get started at  
6 the outset as I'm sure this Court is already aware, but this hearing is  
7 going to be one of the first under this new factual innocence statute. It  
8 has been passed here in Nevada and as you already recognized in the  
9 notice of your hearing, but I'd just like to bring this up as well, the  
10 purpose of this hearing is limited. It's to determine whether the petition  
11 we filed meets the statutory minimum requirement and then if the Court  
12 determines that it does, then we could move forward with an evidentiary  
13 hearing and other steps that are available under that statute.

14 I'd like to first start out by addressing the State's argument  
15 that Mr. Bennett's claim is time-barred under the petition. The statute --

16 THE COURT: I just want to make sure because last night I  
17 reviewed the docket and the State did file a supplemental response on  
18 November 30<sup>th</sup>. I just wanted to make sure you received that and had  
19 an opportunity to review it.

20 MS. PEPIN: Yes. We are aware that that was filed. Mr.  
21 Chen sent me an email and let me know.

22 THE COURT: Okay. I wasn't sure.

23 MS. PEPIN: Thank you. So going into the time-barred  
24 argument, we do not -- the claim itself is not time-barred. The new  
25 factual innocence statute itself provides no time limitation under which a

1 claim must be brought. The only --

2 THE COURT: I agree with you. I agree with you.

3 MS. PEPIN: Okay.

4 THE COURT: Do you want to move on?

5 MS. PEPIN: Okay. Thank you. Then we can get started into  
6 the statutory requirements under -- that we must satisfy in order to move  
7 forward with the evidentiary hearing. So, in order to satisfy subsection  
8 2, Mr. Bennett must first demonstrate that the newly discovered  
9 evidence exists, and if credible, would establish innocence and is  
10 material to the case and the determination of factual innocence.

11 So the two new pieces of evidence that we have brought  
12 forward, of course, is a 2017 affidavit of Pamela Neal. She was the  
13 State's star witness at the time of trial and we also have the 2012  
14 affidavit of Mr. Walker. Mr. Walker was not presented during trial. He  
15 was not known to either the Defense, nor I believe the State at the time  
16 that the original case was heard just based on the nature of this case. It  
17 was a shooting in a crowded courtyard. When the police went to  
18 interview and try and figure out what was going on even though there  
19 were several dozen people in the courtyard, no one came forward. And  
20 it wasn't until a later date that we learned that there was a witness who  
21 was willing to come forward. We believe that these two pieces of  
22 evidence, together, help establish the factual innocence of Mr. Bennett.

23 First, going back to Ms. Neal, not only has she now recanted  
24 her trial testimony that Mr. Bennett was a shooter, but she has also  
25 come forward and stated that she was coerced into testifying against Mr.

1 Bennett at trial, that she was told that her kids were going to be taken  
2 away, that she was going to suffer some penalty if she did not come  
3 forward and testify and claim that Mr. Bennett was a shooter. That in  
4 conjunction with Mr. Walker's affidavit, he says that he was present in  
5 the courtyard during the shooting. He was familiar with both the victim  
6 and Mr. Bennett and was actually friends with the victim more affiliated  
7 with him. He says that he witnessed the shooting; he knows Ashley,  
8 and conclusively states, that Ashley was -- Mr. Bennett, excuse me, that  
9 Mr. Bennett was not the shooter. We believe that these two pieces of  
10 new evidence together clearly establish the factual innocence, at least  
11 the burden that they need to satisfy for today to move forward with an  
12 evidentiary hearing.

13           Secondly, we have to say that the -- show that the evidence is  
14 not merely cumulative. They define cumulative evidence as evidence  
15 that was significantly referred to during trial or evidence that is in  
16 addition to or corroborative of what has already been given at trial.  
17 Going back to the affidavit of Pamela Neal, the recantation portion of  
18 Ms. Neal's affidavit cannot be cumulative in and of itself because she is  
19 recanting what she said at trial and that her truthful testimony we assert  
20 was never actually presented to the Jury at trial.

21           In addition, the trial Court excluded evidence about Ms. Neal's  
22 motive to lie and relevant facts regarding the aggressive crimes with  
23 which she was charged. The charges that were actually dropped at Mr.  
24 Bennett's preliminary hearing. The Jury never heard that evidence. And  
25 then with Calvin Walker, Calvin Walker never testified at trial and he is

1 the first non-biased witness that could really come forward and state  
2 what had happened. He was no way -- in no way implicated in the  
3 shooting, like Mr. Gantt, who also testified against Mr. Bennett, but he's  
4 also a third-party witness that the trial Court never got to hear, the Jury  
5 never got to hear.

6 THE COURT: And he --

7 MS. PEPIN: And the evidence --

8 THE COURT: His affidavit when he was an inmate at the  
9 Nevada Department of Corrections in 2012, correct?

10 MS. PEPIN: Correct.

11 THE COURT: Serving a pretty lengthy sentence. Was he --

12 MS. PEPIN: Correct.

13 THE COURT: -- an inmate with Mr. Bennett at the time?

14 MS. PEPIN: Not that I'm aware of, Your Honor, no.

15 THE COURT: Okay. He just decided to come forward, I  
16 mean, because it appears to me as though he was sentenced in  
17 February, 2012 and then two months later he just decides to file an  
18 affidavit on behalf of Mr. Bennett?

19 MS. PEPIN: Correct. It seems that in the timeline that is what  
20 happened. In the affidavit itself he states that when he first learned what  
21 had happened, of the shooting, he wasn't compelled to come forward  
22 because he thought since he knew that Ashley wasn't involved he didn't  
23 believe that Ashley, Mr. Bennett, excuse me, would actually be  
24 convicted of this crime. But then he later learned that Mr. Bennett, not  
25 only had been convicted, but was still serving his sentence in prison in

1 2012, and so that's when he chose to come forward.

2 THE COURT: Okay.

3 MS. PEPIN: So then the next problem that we have to satisfy  
4 is that the newly discovered evidence is not reliant solely upon  
5 recantation. While Ms. Neal's affidavit, certainly a portion of it is  
6 recanting her trial testimony, we believe it gives more than just her  
7 recantation. So not only does she say that what she said at trial wasn't  
8 true, but she admits that she was coerced into testifying against Mr.  
9 Bennett by the police detectives that investigated the case. And then,  
10 with the affidavit from Calvin Walker, his couldn't be recantation  
11 testimony, obviously, just because he'd never testified at that trial in the  
12 first place.

13 THE COURT: But is Mr. Walker's testimony simply  
14 impeachment of the other witnesses, because he doesn't say who it was  
15 and who the shooter was? I mean, his affidavit simply says, I was there,  
16 I'm not going to tell you who did it, but I can tell you Mr. Bennett didn't do  
17 it.

18 MS. PEPIN: Correct. And I --

19 THE COURT: Correct?

20 MS. PEPIN: -- that is not recantation evidence because he is  
21 not a --

22 THE COURT: No, it's impeachment evidence.

23 MS. PEPIN: -- or impeachment evidence.

24 THE COURT: He's impeaching the eye witnesses at the time  
25 of trial, correct?

1 MS. PEPIN: He's giving inconsistent testimony with what they  
2 gave, but I believe impeachment testimony --

3 THE COURT: Do you mind saying that again, I apologize. I  
4 didn't hear.

5 MS. PEPIN: Oh, I'm sorry. His testimony may be inconsistent  
6 with what the witnesses at trial said, but he is his own first eyewitness  
7 account of the crime. He is testifying as to what he saw, whereas  
8 impeachment evidence would be more along the lines of Ms. Neal was  
9 lying because I didn't see her at the scene of the crime. So, his  
10 evidence is his more -- of his own first eyewitness account of what he  
11 believes or what he saw.

12 THE COURT: But he doesn't give us an eyewitness account  
13 of what he saw.

14 MS. PEPIN: Correct. At least not within the affidavit itself, but  
15 I believe that could be satisfied at the evidentiary hearing portion of this  
16 if the Court has concerns with his testimony once more. That's at the  
17 point that we can more dig into what he saw; the more specific facts of  
18 the crime at that evidentiary hearing stage.

19 THE COURT: Okay. Go ahead.

20 MS. PEPIN: And then as you have already pointed out, we  
21 also have to establish that the newly discovered evidence is not merely  
22 impeachment evidence. I'm sorry, were you -- did I interrupt you?

23 THE COURT: No, no. Go ahead.

24 MS. PEPIN: The new evidence that we have put forward not  
25 only impeaches Neal and Gantt and talks about how they lied at trial, but



1 it directly contradicts their evidence at trial and that they both state that  
2 they were coerced into doing so by the police. Now we recognize that  
3 the affidavit of Mr. Gantt itself can't be considered new evidence  
4 because the Court has already heard that at a point in time. But the  
5 statute itself, does allow for the Court to consider all evidence presented  
6 at trial and all other evidence in the overall analysis of whether he  
7 establishes that factual innocence and so I will refer to that at points  
8 during my argument. But we do recognize that Mr. Gantt's affidavit is  
9 not considered new evidence for the purposes of this statute.

10 But the new evidence put forward is more than just  
11 impeachment evidence. So Mr. Walker's affidavit does not even  
12 reference a witness, instead, like we already discussed, he was giving  
13 his own first eye account or can at least have stated that he can give a  
14 first eye account as to what he saw and that Mr. Bennett was not a  
15 shooter.

16 And then, we have to show that the newly discovered  
17 evidence demonstrates the factualness of the Petitioner and this is  
18 where we -- when I said that the Court can consider all evidence  
19 including Mr. Gantt's affidavit. So the newly discovered evidence  
20 considered in conjunction with both the evidence that was presented at  
21 trial, evidence that was presented at prior habeas petitions, and this  
22 newly discovered evidence demonstrates that Mr. Bennett is factually  
23 innocent of the crimes to which he's currently convicted.

24 So now, especially with the recantations of both Ms. Neal and  
25 Mr. Gantt, who are the only two witnesses that testified against Mr.

1 Bennett and placed him as a shooter at the crime, so there's no  
2 remaining evidence that proves or establishes that Mr. Bennett was in  
3 any way involved with the murder of Mr. Williams. Ms. Neal has not only  
4 recanted her trial testimony, but has declared under the penalty of  
5 perjury that she was coerced into lying against Mr. Bennett. And her  
6 recantation is corroborated by the evidence that actually was presented  
7 at trial.

8           So we have the testimony of Michelle Wilson, who Ms. Neal  
9 used as saying that she was going to go pick up Ms. Wilson when she  
10 saw the shooting. Ms. Wilson stated that she did not believe that Ms.  
11 Neal had witnessed the shooting or could not have witnessed the  
12 shooting based on the timing and when they saw each other. Mr. Gantt  
13 in addition, has both recanted his trial testimony and corroborated that  
14 he was also coerced into lying and testifying against Mr. Bennett and he  
15 is a convicted actual perpetrator of the murder of Mr. Williams and has  
16 declared that he --

17           THE COURT: I'm assuming Mr. Gantt has served his time  
18 and he is now out?

19           MS. PEPIN: To my knowledge, yes, Your Honor.

20           THE COURT: Okay. That's what I thought. Okay.

21           MS. PEPIN: This evidence together demonstrates that the  
22 evidence that was presented by the State against Mr. Bennett at trial  
23 was at some point either manufactured or perjured. And then we have  
24 the affidavit of Calvin Walker that proves that Mr. Bennett is factually  
25 innocent. He has declared that he witnessed the shooting, personally

1 knew Mr. Bennett, and that Mr. Bennett wasn't involved. His testimony  
2 is particularly persuasive given in his affidavit that he states that he was  
3 more affiliated with and a friend of the victim. He would not have  
4 motivation to lie and say that Mr. Bennett was innocent of this crime  
5 when he testified that he would be innocent of the crime that killed his  
6 friend.

7           This evidence is also consistent with the trial testimony of Mr.  
8 Golden. Mr. Golden was a security guard who was interviewed by  
9 police on the day of the shooting and he didn't see the shooting, but he  
10 heard the gunshots and he saw three young, under the age of 18,  
11 individuals running away from the scene of the crime and he identified  
12 one of those individuals as Mr. Gantt and said that they looked like they  
13 were stuffing guns into their pants. He identified these individuals as all  
14 being under the age of 18. Mr. Bennett was 26 at the time the shooting  
15 occurred and so this is consistent with that Mr. Bennett was not involved  
16 in the shooting.

17           And this new evidence is more consistent with the physical  
18 evidence or lack of physical evidence against Mr. Bennett that was  
19 presented at trial. The only evidence that linked him to the crime was  
20 the testimony of eyewitnesses and the co-defendant. There was never  
21 any physical evidence that linked Mr. Bennett to this crime, including the  
22 ballistics now says anything that was recovered at the scene where  
23 there was physical evidence that was produced against his -- the other  
24 co-defendants in this crime.

25           We believe that this evidence in conjunction all together and

1 the new evidence presented at trial, not only establishes his factual  
2 innocence, but again, is more consistent with the evidence that was  
3 presented at trial and demonstrates that Mr. Bennett is innocent of the  
4 crime for which he is convicted and serving his sentence.

5 I'd be happy to answer any questions if you have additional --

6 THE COURT: I mean, I know this is a new statute and one of  
7 the requirements is it must contain an assertion of factual innocence  
8 under oath by the Petitioner. I don't know if --

9 MS. PEPIN: Yes.

10 THE COURT: -- you can point me to that assertion, because I  
11 mean, factual innocence has a specific definition in 34.920 and I did not  
12 see that in this petition, so.

13 MS. PEPIN: Yes, Your Honor. We actually included that. It's  
14 the last page of the petition that we included, so page 29.

15 THE COURT: I don't know if that would be enough, I mean, I  
16 saw page 29, Petitioner's oath, but I mean, I don't believe that your  
17 petition, I mean, it basically says he's read it and it's all true and I  
18 thought maybe you might say that, but factual innocence has a very  
19 specific definition in 34.920.

20 MS. PEPIN: Correct.

21 THE COURT: I mean, and the -- you know, the statute says  
22 he has to specifically assert, under oath, that he did not engage in the  
23 conduct for which he is convicted, that he didn't commit anything that  
24 would be construed as a lesser included offense or commit any other  
25 crime arising out of or reasonably connected to the facts and didn't

1 commit any conduct alleged by the State under any theory of criminal  
2 liability. I mean, I thought you might say page 29 was that assertion, but  
3 since 34.920 contains such a specific definition, I mean, do you believe  
4 that meets that definition?

5 MS. PEPIN: We believe it does and the fact that in the  
6 petition we state over and over again that Mr. Bennett is innocent of the  
7 crime for which he's convicted; he was not involved in the shooting of  
8 Mr. Williams in any way. We do make those statements in the petition  
9 and in his oath that everything in the petition is correct, we believe does  
10 satisfy that requirement that is included under the statute.

11 THE COURT: Okay. Thank you. Anything else? Okay.

12 MS. PEPIN: Not at this time. Thank you.

13 THE COURT: Sorry. Thank you, very much. So, Ms.  
14 Sullivan.

15 MS. SULLIVAN: I would just like to point out -- to clarify what  
16 counsel said at the beginning of her statement that the State isn't  
17 asserting that the claim itself is time-barred, because this is a new type  
18 of petition. However, the evidence presented in the petition is precluded  
19 from review by this Court because of *Rippo v. State*, which says that  
20 claims must be raised within a reasonable amount of time, which has  
21 been determined to be one year. And although this type of petition is  
22 new an actual innocence claim can be raised as a way to get around the  
23 procedural bars in a petition for writ of habeas corpus. So, the State still  
24 maintains that these affidavits are precluded from review by this Court  
25 based on not being raised in a timely fashion as the newest one was, I

1 think, completed in 2017.

2 And then moving on to the evidence presented by Petitioner.  
3 Starting with Mr. Gantt's affidavit, this is barred from review by this Court  
4 based on the law of the case doctrine. The Nevada Supreme Court has  
5 determined that his affidavit can't be used as newly discovered evidence  
6 and that it doesn't present a reasonable probability of a different result  
7 which is required under NRS 34.960 to grant an evidentiary hearing on  
8 this type of petition. And this affidavit has also been previously  
9 considered by this Court and therefore it's barred by res judicata as well.

10 Moving on, as the Court noted specifically, all this evidence  
11 presented in this petition is impeachment evidence. Mr. Walker would  
12 be used to impeach the eyewitnesses presented at trial. As noted by  
13 this Court, his affidavit is unreliable. He made this affidavit two months  
14 after he got into prison, 10 years after the trial happened, saying that he  
15 didn't know Mr. Bennett was still incarcerated. And now all of a sudden,  
16 he's incarcerated and he knows Mr. Bennett is still incarcerated and  
17 makes all these claims that he knows him and that he wasn't there.  
18 However, this was a very chaotic scene as noted by all the witnesses.  
19 The police officers who responded, Mr. Golden, there were several  
20 people in the courtyard. People were running away from the scene.  
21 Just because Mr. Walker now claims he didn't see him at the time,  
22 doesn't mean that Mr. Bennett was not involved in the crime in any way.

23 And then moving on to Ms. Neal, her affidavit now, is  
24 impeachment evidence which would go against her prior statements to  
25 police and the photographic lineup in which she identified Mr. Bennett.

1 Sorry, Court's indulgence. Furthermore, her affidavit is unreliable  
2 because she testified, at trial, that she had been previously intimidated  
3 by the Petitioner's girlfriend to recant her testimony and take back her  
4 statements to police prior to her testimony at trial. And in any event, the  
5 information that she was coerced based on her own criminal case is  
6 cumulative because it was presented to the Jury at trial. The Jury had  
7 the opportunity to review her testimony in light of all the evidence,  
8 including the fact that she had been given some, what the Petitioner  
9 called a benefit, although the State did not dismiss her case based on  
10 her testimony at the preliminary hearing. She did have a criminal case  
11 which was at some point dismissed and that was considered by the  
12 Jury.

13 And furthermore, Mr. Gantt's affidavit, if considered by this  
14 Court, is similarly unreliable. It's on the record in the trial transcript that  
15 there were witnesses in the courtroom attempting to intimidate Mr. Gantt  
16 during the trial to prevent him from testifying. And the information that  
17 he was receiving a benefit in the form of a Guilty Plea Agreement with  
18 the State was presented during the trial and any sort of motivation for  
19 him to lie was presented to the Jury and considered by them when  
20 weighing his testimony. And in the end, the Jury determined that Mr.  
21 Bennett was guilty of the crimes beyond a reasonable doubt, and  
22 Petitioner has not presented to this Court any sort of reasonable  
23 probability that the outcome of the trial would have been different based  
24 on this evidence of everything was previous, aside from Mr. Walker's  
25 testimony, which is unreliable at best, was presented to the Jury in this

1 Court and the probability of a different outcome at trial is required under  
2 the statute to move forward in an evidentiary hearing.

3 So, the State maintains that Petitioner has not met their  
4 burden under the statute and that an evidentiary hearing should not be  
5 granted.

6 THE COURT: Thank you, very much. Anything -- uh-oh -- did  
7 I lose counsel from Salt Lake? Oh, no. Okay. I couldn't see you there  
8 for a minute, so I just wanted to make sure I didn't lose you. I didn't lose  
9 you, right?

10 MS. PEPIN: No. I'm sorry; I turned off my video to not be  
11 distracting --

12 THE COURT: Okay. Because I was like, uh-oh, what  
13 happened. Okay. Do you have anything in response?

14 MS. PEPIN: Yes, I just have a brief response. Counsel spent  
15 time focusing on that the evidence that we've brought forward today is  
16 unreliable and gave various different reasons why the affidavits, the  
17 veracity of the affidavits should be questioned by this Court, but at least  
18 at this stage, the Court to a certain extent, can assume the credibility of  
19 the affidavits and then may explore the veracity of their testimony at the  
20 evidentiary hearing and this comes from the language itself.

21 THE COURT: Okay. But specifically says, and if credible,  
22 right, newly discovered evidence exists that is specifically identified, and  
23 if credible, right?

24 MS. PEPIN: Correct. And so at this stage, the Court can -- it  
25 allows the Court to assume the credibility of the witnesses that we have



1 brought forward in affidavits. It's easy to question just because they're  
2 not here, we can't ask them these questions that opposing counsel has  
3 raised. At that stage it's more appropriate to raise these arguments at  
4 that evidentiary hearing. At that point, we can have these witnesses in  
5 person. We can ask them these questions about why their story has  
6 changed. What was different then that has come forward now? Why  
7 did you not choose to come forward? I can tell you what the affidavit  
8 says, but I can't give you that testimony myself. That should come from  
9 Ms. Neal and that should come from Mr. Walker, and they should have  
10 the opportunity to speak with you as well and give their story and their  
11 first eyewitness account of what happened to them throughout this  
12 process. That's why I say at this point, we need to be able to have that  
13 evidentiary hearing to address those specific arguments.

14           Lastly, I'd like to address the probability of a different outcome  
15 at trial which is raised at the end. We do believe that this evidence  
16 shows that there would have been an entirely different outcome at trial.  
17 Like I previously said, the only evidence that actually linked Mr. Bennett  
18 to the crime itself was the testimony of Ms. Neal and the testimony of  
19 Mr. Gantt. If the Court had not had -- if the Jury had not had that  
20 evidence at the time, Mr. Bennett certainly would not have been  
21 convicted because there was no specific evidence that placed him at the  
22 crime, that placed him as a shooter. All that evidence solely came from  
23 their eyewitness accounts. Assuming that what they say in their affidavit  
24 is correct, they no longer can place Mr. Bennett at the scene. They no  
25 longer point him as a shooter. If that evidence had not been presented,

1 we assert that Mr. Bennett would not have been convicted and there  
2 certainly would have been a different outcome at trial. Thank you.

3 THE COURT: Okay. Anything else by either side?

4 MR. CHEN: No, Your Honor.

5 THE COURT: Okay. I just wanted to make sure. Okay. At  
6 this time the Court's going to deny the petition without prejudice and  
7 make a finding that Mr. Bennett has not met the requirements of  
8 Subsection 2, based on Ms. Neal's affidavit being recantation and Mr.  
9 Walker's two months after entering prison and almost 10 years after the  
10 incident is impeachment testimony only, and so, therefore, I'm going to  
11 deny it. The State can prepare the order and thank you very much.

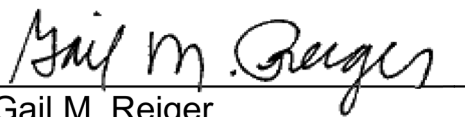
12 MR. CHEN: Thank you.

13 MS. PEPIN: Thank you.

14 [Hearing concluded at 10:57 a.m.]

15 \* \* \* \* \*

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21 ATTEST: I do hereby certify that I have truly and correctly transcribed  
22 the audio/video proceedings in the above-entitled case to the best of my  
23 ability.

24   
25 Gail M. Reiger  
Court Recorder/Transcriber

**ORDR**

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Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ASHLEY WILLIAM BENNETT,  
#1107300

Defendant.

CASE NO: A-20-810154-W  
C175914-1

DEPT NO: XII

**ORDER DENYING DEFENDANT'S PETITION FOR DETERMINATION OF  
FACTUAL INNOCENCE**

DATE OF HEARING: 12/07/2020  
TIME OF HEARING: 10:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 7th day of December, 2021, the Defendant not being present, represented by KATHERINE PEPIN, ESQ. and NEIL KAPLAN, ESQ., the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through ALEXANDER G. CHEN, Chief Deputy District Attorney and SKYLER SULLIVAN, ESQ., and the Court having heard the arguments of counsel and good cause appearing therefor,

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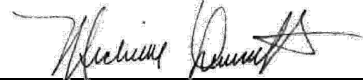
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1 COURT FINDS Mr. Bennett has not met the requirements as outlined in subsection 2  
2 based upon Ms. Neil's affidavit being recantation and Mr. Walker's affidavit being provided  
3 two months after entering prison and almost ten years after the incident is impeachment  
4 testimony only; therefore, IT IS HEREBY ORDERED that the Petition is DENIED  
5 WITHOUT PREJUDICE.

6 DATED this \_\_\_\_\_ day of January, 2021.

Dated this 18th day of January, 2021



DISTRICT JUDGE

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

FF9 752 AB7E 4159  
Michelle Leavitt  
District Court Judge

11  
12 BY /s/ Alexander G. Chen  
13 ALEXANDER G. CHEN  
14 Chief Deputy District Attorney  
Nevada Bar #010539

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1 **CSERV**

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3 DISTRICT COURT  
CLARK COUNTY, NEVADA

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6 Ashley Bennett, Plaintiff(s) CASE NO: A-20-810154-W  
7 vs. DEPT. NO. Department 12  
8 Nevada State of, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 1/18/2021

15 Dept 12 Law Clerk	dept12lc@clarkcountycourts.us
16 Melina Hernandez	mhernandez@smithwashburn.com
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