

IN THE NEVADA SUPREME COURT

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Elizabeth A. Brown  
Clerk of Supreme Court

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**Rickie Slaughter,**

Petitioner-Appellant,

**v.**

**Charles Daniels, et al.,**

Respondents-Appellees.

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On Appeal from the Order Denying Petition  
For Writ of Habeas Corpus (Post-Conviction)  
Eighth Judicial District, Clark County  
(A-20-812949-W | 04C204957)  
Honorable Tierra Jones, District Court Judge

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**Petitioner-Appellant's Appendix to the Opening Brief  
Volume VII of XXII**

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Dated July 21, 2021.

Respectfully submitted,

Rene L. Valladares  
Federal Public Defender

/s/ *Jeremy C. Baron*  
Jeremy C. Baron  
Assistant Federal Public Defender

## CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2021, I electronically filed the foregoing with the Clerk of the Nevada Supreme Court by using the appellate electronic filing system.

Participants in the case who are registered users in the appellate electronic filing system will be served by the system and include: Alexander Chen.

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

Rickie Slaughter NDOC #85902 High Desert State Prison P.O. Box 650 Indian Springs, NV 89070	Erica Berrett Deputy Attorney General Office of the Attorney General 555 E. Washington Ave. Suite 3900 Las Vegas, NV 89101
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/s/ Richard D. Chavez

An Employee of the  
Federal Public Defender

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Please Return File stamped copy!!

Case No. C204957  
Dept. No. 111

FILED

MAR 25 2015

CLERK OF COURT

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

Rickie Slaughter  
Petitioner,

v.

PETITION FOR WRIT  
OF HABEAS CORPUS  
(POSTCONVICTION)

Warden Rene Baker  
Respondent.

INSTRUCTIONS:

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

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: Ely State Prison, White Pine County, state prisoner
2. Name and location of court which entered the judgment of conviction under attack: Eighth Judicial District Court, Clark County Nevada, Dept#3 Honorable Douglas Herndon
3. Date of judgment of conviction: 10-17-2012
4. Case number: C204957
5. (a) Length of sentence: Life

04C204957  
PWHC  
Petition for Writ of Habeas Corpus  
4443693



App. 1275

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CLERK OF THE COURT

- 1 (b) If sentence is death, state any date upon which execution is scheduled:....
- 2 6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? .
- 3 Yes ..... No ☒
- 4 If "yes," list crime, case number and sentence being served at this time: .....
- 5 .....
- 6 .....
- 7 7. Nature of offense involved in conviction being challenged: .....
- 8 .....
- 9 8. What was your plea? (check one)
- 10 (a) Not guilty ☒
- 11 (b) Guilty .....
- 12 (c) Guilty but mentally ill .....
- 13 (d) Nolo contendere .....
- 14 9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a
- 15 plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was
- 16 negotiated, give details: .....
- 17 .....
- 18 10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: (check one)
- 19 (a) Jury ☒
- 20 (b) Judge without a jury .....
- 21 11. Did you testify at the trial? Yes ..... No ☒
- 22 12. Did you appeal from the judgment of conviction? Yes ☒ No .....
- 23 13. If you did appeal, answer the following:
- 24 (a) Name of court: Supreme Court of State of Nevada
- 25 (b) Case number or citation: 61991
- 26 (c) Result: Order of Affirmance
- 27 (d) Date of result: March 12, 2014
- 28 (Attach copy of order or decision, if available.)



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

2 .....

3 .....

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

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

7 (a) (1) Name of court: .....

8 (2) Nature of proceeding: .....

9 .....

10 (3) Grounds raised: .....

11 .....

12 .....

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

14 (5) Result: .....

15 (6) Date of result: .....

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

17 .....

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

19 (1) Name of court: .....

20 (2) Nature of proceeding: .....

21 (3) Grounds raised: .....

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

23 (5) Result: .....

24 (6) Date of result: .....

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

26 .....

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

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

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

4 Citation or date of decision: .....

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

6 Citation or date of decision: .....

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

8 Citation or date of decision: .....

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

13 .....

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

16 (a) Which of the grounds is the same: NO.....

17 .....

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

19 .....

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

23 .....

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

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19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) No

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes ..... No ✓  
If yes, state what court and the case number: .....

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: Trial Counsel - Osvaldo Fumo and Dustin Marcello ;  
Appellate Counsel - William Gamage

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes ..... No ✓  
If yes, specify where and when it is to be served, if you know: .....

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

a) Ground 1

I am in custody in violation of my 6<sup>th</sup>, 14<sup>th</sup> and 5<sup>th</sup> Amendment rights of the U.S. Constitution as well as Article 1, sec. 3, 6, and 8; Article IV sec. 24 of the Nev. Constitution. Because my trial attorneys provided me ineffective assistance of counsel when he failed to subpoena and/or call Detective Jesus Prieto to testify as a witness at trial and elicit several key pieces of evidence that were critical to my defense, such as: Prior inconsistent witness statements, Exculpatory photo lineup evidence, and evidence that impeached the integrity of the police investigation.

Supporting Facts:

**I. Deficient Performance** - My trial attorney's performance fell below an objective standard of reasonableness because they failed to subpoena, secure the presence of, and/or otherwise call as a witness to my trial Detective Prieto so that he could lay a proper evidentiary foundation needed to introduce the following critical pieces of evidence that supported my defense: 1) evidence of state witness Jeff Arbuckle's ("Arbuckle") prior inconsistent statement to Detective Prieto which would have demonstrated that Arbuckle dramatically changed his story at trial and lied on the stand as well as, would have supported my defense that I was on the opposite side of town<sup>away</sup> from the crime scene at the very time the crimes were committed; 2) evidence of a 2<sup>nd</sup> set of photo lineups from which my trial attorney's believed each eyewitness had failed to select me as being a perpetrator to the crimes I was accused of; 3) evidence of Ivan Young's ("Young"), a state eyewitness, prior inconsistent statements to Detective Prieto which demonstrates that Young changed key points of his story at trial and other hearings reducing his reliability as an eyewitness; and 4) evidence impeaching Detective Prieto's credibility and the integrity of his investigation of this case.

The evidence that Detective Prieto could have provided was known to

1 my trial attorneys, and critical to undermining the State's case and  
2 supporting my defense to the charges.

3 As part of defense Counsel Osvaldo Fumo's pre-trial preparation  
4 Mr. Fumo built his defense strategy for my case almost entirely around his  
5 plans to elicit the exculpatory evidence that Detective Prieto had to offer and  
6 discrediting Detective Prieto's police work in this case. But, during trial,  
7 Mr. Fumo failed to call Detective Prieto, and informed me that he had  
8 "forgotten" to subpoena Detective Prieto as a witness based upon defense  
9 Counsel Fumo's mistaken belief that the State would "automatically" sub-  
10 peona and call Detective Prieto as a witness since he was a police witness.  
11 However, because Detective Prieto possessed evidence and information that would  
12 have severely undermined the State's case against me if presented to the jury,  
13 the State did not call Detective Prieto as a witness during my trial.  
14 Thus, my trial attorney's failure to subpoena and call Detective Prieto as a  
15 witness deprived the jury of considering crucial exculpatory information  
16 that have rebutted key aspects of the State's case. This mistake unfairly  
17- left the jury with a "one-sided" view of the evidence that favored the  
18 State.

19 Defense Co-Counsel Dustin Marcello partly acknowledged this on  
20 the trial record:

21 "Mr. Marcello: I think the issue was Mr. Fumo did it in opening  
22 statement, he indicated all the issues that Detective Prieto had with  
23 regards to the investigation that are no longer going to be brought out  
24 since the State did not call him." Trial Transcript, May 19, 2011 (C  
25 11:00 am Thursday), p. 35; lines: 18-24.

26 It is fundamentally unreasonable by any objective standards for  
27 defense counsel to rely solely on the State to subpoena and call the witnesses  
28 that are needed to produce evidence to support his client's defense. Below

is an in-depth review of the evidence omitted from the trial due to my trial attorneys failure to call Detective Prieto as a witness.

### 1\*) Evidence of Arbuckle's Prior Inconsistent Statement

At the period of time when the crimes occurred, Arbuckle was the Manager of El Dorado Cleaners and was Mrs. Tiffany Holly's ("Mrs. Holly") boss at those Cleaners, where she was employed. Mrs. Holly was my then-girlfriend, but was later married to someone else. During the police investigation, Arbuckle informed Detective Prieto during an interview that on the day in question, he had left the Cleaners at 7:15 pm and that as he left work he saw Mrs. Holly outside the Cleaners waiting for her ride. See Exhibit A, Police Report by Detective Prieto p. 3-4, dated 8/11/04 (stating that "During the investigation I contacted of one of [Holly's] co-workers, Jeff Arbuckle at El Dorado Cleaners. [on] June 26, 2004, Arbuckle said that he was working when [Holly] got off work. He said he left work it was 7:15 pm and [Holly] was still waiting outside the business for her ride") Mr. Fumo had received this information in his discovery materials and knew that the evidence was important, because during his pre-trial interview with Mrs. Holly she informed Mr. Fumo that on the day in question I had picked her up between 7 pm and 7:15 pm, and that as Arbuckle was leaving out of the parking lot of the Cleaners, I was arriving pulling into the parking lot.

This meant that Arbuckle's statement to Detective Prieto supported Mrs. Holly's anticipated testimony that I arrived between 7 and 7:15 pm, and as such, based upon other evidence, I could not have been the perpetrator to crimes ~~over~~ 8 1/2 miles committed approximately 8 1/2 miles across town at essentially the same time (See Grounds 5-6, p. 32-33). Mr. Fumo also knew that Arbuckle harbored an intense dislike and hostility towards me that was likely to influence his testimony at trial in a vindictive way as a means of exacting vengeance against me (See Ground 7).

1 At trial, Arbuckle changed his story while testifying for the State.  
2 Specifically, Arbuckle suddenly claimed that he waited with Mrs. Holly  
3 outside for her ride until 7:30 pm and then left as I was pulling in  
4 the parking lot. See Trial Transcript, May 17, 2011 p. 41-43 (Arbuckle's  
5 direct examination by the State). This change in Arbuckle's story favored the  
6 State's theory because it suggested that I arrived to pick Mrs. Holly up 30  
7 minutes late, during which time the crimes were being committed on the other  
8 side of town. However, due to Mr. Fumo's failure to call Detective Prieto  
9 as a witness and lay a proper foundation for the prior inconsistent that Arbuck-  
10 le had made to Detective Prieto, Mr. Fumo was unable to introduce the  
11 prior inconsistent statement Arbuckle made in order to impeach him as well  
12 to introduce the statement as substantive evidence as allowed by Nevada law:

13 "Mr. Fumo: . . . And you waited for about a half hour?"

14 "Arbuckle: At least."

15 "Fumo: How do you know that?"

16 "Arbuckle: Because I had other priorities, family at home waiting for me"

17 "Fumo: Pardon?"

18 "Arbuckle: I had other priorities at home. I tried to wait as  
19 long as I could though."

20 "Fumo: Do you recall talking to a Detective [Prieto]?"

21 "Arbuckle: I don't recall his name. I know he was a North  
22 Las Vegas Detective."

23 "Fumo: A tall gentlemen?"

24 "Arbuckle: Yes."

25 "Fumo: Probably about six foot five?"

26 "Arbuckle: Pretty tall."

27 "Fumo: Do you recall telling him you waited with [Mrs  
28 Holly] until 7:15?"

1 "Arbuckle: No, I waited for about 30 minutes."

2 "Furno: Okay. So if he wrote down in his report you waited  
3 until 7:15 he was mistaken?"

4 "Mr. DiGiuseppe: Objection, Judge. Assumes a fact not in  
5 evidence, first of all."

6 "The Court: I'll sustain the objection."

7 Trial Transcript, May 17, 2011, p. 46

8 As is clear above, the prosecutor successfully objected to Mr. Furno's  
9 attempt to introduce Arbuckle's prior-inconsistent <sup>statement</sup> to Detective Prieto on  
10 insufficient evidentiary foundational grounds. A reasonable attorney would  
11 have later sought to call Detective Prieto to the stand in response to Arbu-  
12 ckles inconsistent trial testimony, in order to impeach that testimony and  
13 introduce the prior-inconsistent statement to the jury. But Mr. Furno did  
14 not, and any reasons he had for this failure were the product of ill pre-  
15 paration, incompetence, and undue reliance upon the State to call the witnesses  
16 he needed for my defense for him. Mr. Furno's failure to call Detective  
17 Prieto was objectively unreasonable, resulting in deficient performance here.

18

## 19 2) The Exculpatory Photo lineup Evidence

20 During the police investigation of this case, there were 2 distinct "sets"  
21 of photo lineups presented to the eyewitnesses by police. See, Motion To Dismiss  
22 Case For Failure To Preserve or Destruction of Exculpatory Photo lineup Evidence  
23 , filed: October 27, 2009. A photo of me was depicted in both sets of photo  
24 lineups. In the 1st set of photo lineups, a photo of me, (illegally obtained  
25 during an unlawful police field-interview, see ground 10), was used and  
26 4 out of 6 eyewitnesses selected me as being a perpetrator to the crimes.  
27 However, in the 2nd set of photo lineups a booking photo of me taken 2 days  
28 after the crimes, pursuant to my arrest, was used and every single eyewit-



ness for the State in this case failed to select me as being a perpetrator from the 2<sup>nd</sup> set of photo lineups after viewing them. This 2<sup>nd</sup> set of photo lineups also depicted a photo of another one-time former suspect in this case named Jaquan Richards. See Exhibit B, attached (Mugshot Profiles of Rickie Slaughter and Jaquan Richards and 2<sup>nd</sup> set of photo lineups).

This 2<sup>nd</sup> set of photo lineups was presented by Detective Prieto to the eyewitnesses, based upon the reference Detective Prieto made to the 2<sup>nd</sup> set of photo lineups in his police report. See Exhibit C, attached Police Report by Detective Prieto and Memorandum from District Attorney's office (stating that "Photo lineups of Richard were made and shown to all of the victims. None of ~~them~~ victims were able to identify Richard as a suspect"). It is unknown if Detective Prieto was aware or realized that my 06-29-2004 arrest booking photo was included in the 2<sup>nd</sup> set of photo lineups that also included Richards photo. However, it is clear from the photo lineups themselves that "no one" ~~was~~ was identified from these photo lineups including "me".

Mr. Fumo was aware of this critical impeachment evidence which undermined the State's eyewitnesses' prior identifications of me, because it was included in the discovery files given to him. Well before the trial date, I personally brought the 2<sup>nd</sup> set of photolineups to Mr. Fumo's attention and asked him to find a way to admit and present these 2<sup>nd</sup> set of photolineups to the jury at my trial. In fact, Mr. Fumo had a transcript produced regarding previous defense counsels (Pat McDonald and Susan Bush esq.) previous motionwork regarding the 2<sup>nd</sup> set of photo lineups, in which the Court instructed defense counsel that he could "cross-examine" the witnesses and Detective at trial about these photo lineups. See Trial Transcript, Reporter's Transcript (December 1, 2009) of Defendant's Motion, p. 10-11 (the court stating "Well, you can ask questions about it. . . by all means you can cross-examine them on

that").

However, as mentioned before, because Detective Prieto was not called as a witness at trial, Mr. Fumo did not cross-examine Detective Prieto, (or direct examine him), about the 2<sup>nd</sup> set of photo lineups which were exculpatory. This was fundamentally unreasonable performance, especially when the State's case against me primarily rested upon eyewitness identification evidence. Mr. Fumo's improper reliance on the State to call Detective Prieto as a witness for him is recorded in Defense Co-Counsel Marcello's argument requesting jury instructions, instructing the jury about the 2<sup>nd</sup> set of photo lineups that my defense team failed to present:

" Mr. Marcello: There's a number of lineups that were [not] testified to at some point that were presented to witnesses in which at least one, two, three, four — actually all four of them actually contained a picture of Mr. Slaughter that no witness identified Mr. Slaughter... and now we're precluded from entering them based on the fact that the Detective who would have had any information about that is not being presented."

" The Court: I guess I'm not understanding what the issue what the request is."

" Mr. Marcello: I apologize. I forgot to preface it with what we were looking for is the jury instructions that these lineups were in fact selected and nobody selected Mr. Slaughter on them."

" The Court: Jury instructions are based on the evidence presented at trial. I mean to the extent that no witness come in to testify about that, both sides are free to call witnesses and ask witnesses questions. I'm not going to instruct the jury on something that isn't in evidence in the trial to show that there was a lineup that was proposed and shown to somebody they didn't identify so it's not kind of a phantom jury instruction unless there's testimony about it."

1 "Mr. Marcello: I understand, your honor." Trial Transcript, May 18,  
2 2011, p. 60-62

3 Although, co-defense counsel Marcello's argument was somewhat confusing,  
4 the 2<sup>nd</sup> set of photo lineups had not been presented. However, it is imperative  
5 to note the above discussion between Mr. Marcello and the Court occurred  
6 before my defense attorney's "opened their case-in-chief", and yet, they  
7 still failed to call detective Prieto "the detective who would have had any  
8 information about that" in their case-in-chief presenting my defense. A  
9 reasonable attorney would have realized and heeded the court's ruling that it  
10 would not give a "phantom jury instruction unless there's testimony about it."  
11 Calling detective Prieto as a witness to examine him about his police report  
12 referencing the 2<sup>nd</sup> set of photo lineups and the photo lineups themselves was  
13 minimally necessary to put the 2<sup>nd</sup> set of photo lineup evidence in front  
14 of the jury. Not to mention, imperative to secure the jury instruction  
15 that defense counsel himself sought. Defense counsel also should have  
16 been aware of Nevada case and procedural laws which required him to  
17 produce testimony on the 2<sup>nd</sup> set of photo lineups before obtaining the  
18 jury instruction on this issue. There can be no reasonable or legitimate  
19 excuse for defense counsel's error here.

### 20 3) Evidence Of Young's Prior-inconsistent Statement:

21 During the police investigation, Detective Prieto conducted interviews  
22 with eyewitness Ivan Young ("Young"). During an interview conducted  
23 on 07-01-2004 - 5 days after the crimes - Young recapped to Detective  
24 Prieto what he remembered about the perpetrators. In his statement,  
25 Young never mentioned seeing the perpetrators vehicle or described it, or  
26 that he felt that the perpetrators wore wigs or faked their jamaican  
27 accents. See Exhibit , attached Transcript of Ivan Young Interview dated  
28 7-15-2004. However, at trial, Young now claimed he saw the perpetrators

vehicle and described it as a green Ford Taurus, and that the perpetrators may have worn wigs. See Trial Transcript, May 16, 2011, p. 46 and 49. This change in testimony favored the State, because my girlfriend owned a green Ford Taurus which I had access to, and saying that the perpetrators may have worn wigs undermined the significance of the differences in the perpetrator's descriptions and my physical description. Thus, my attorney should have called Detective Prieto as a witness in order to introduce Young's prior inconsistent statement to impeach the credibility of his new claims at trial, as well as substantive evidence.

Defense Counsel's failure to call Detective Prieto here, robbed him of any meaningful opportunity to lay a proper foundation to introduce Young's prior inconsistent statement, and undermine his credibility. (Alternatively, defense counsel simply failed to conduct constitutionally adequate cross-examination of Young, see Ground 3).

#### 4) Evidence Impeaching The Thoroughness & Integrity of Detective Prieto's Police Tactics

During his pretrial investigation for my defense, based upon the evidence he discovered Mr. Fumo believed that Detective Prieto utilized a number of questionable (and some illegal) tactics to try and frame a case against me by

A) failing to collect evidence that would have favorably supported my alibi such as surveillance footage from an Albertsons grocery store located in the parking lot of El Dorado Cleaners (Mrs. Holly's work place) that would have captured the time that I picked her up from work on the day in question, See Trial Transcript, May 17, 2011, p. 45 (Arbuckle acknowledging that there was an Albertsons adjacent to El Dorado Cleaners that had a surveillance system filming the parking lot); B) Improperly using condemned coercive tactics on Mrs. Holly to manipulate her into making a false statement regarding what time I arrived to pick her up from work on the day in

question See Trial Transcript, May 19, 2011, p. 37 (11:00am) (Prosecutor DiGiacomo acknowledging that there was a basis to argue that "Prieto was inappropriate with [Mrs. Holly]" ), also Trial Transcript, May 19, 2011 (11:00am), p. 48-49 (Mrs. Holly testifying that she was "coerced" into making a false statement by Detective Prieto), see also Exhibit D, attached: Affidavit Of Tiffany Holly ("Johnson") dated February 24, 2011 (detailing the coercive tactics used by Detective Prieto); C) That Detective Prieto had intentionally altered my photo in the 1<sup>st</sup> photo lineup to make me stand out manipulating the odds that the eyewitnesses would pick my photo See Trial Transcript; May 19, 2011, p. 100-105 (expert witness Professor Geoffrey Loftus discussing that it is improper to present eyewitnesses photo lineups with a photo altered in the way mine was in the 1<sup>st</sup> set of photo lineups) Preliminary Hearing Transcript, September 21, 2004 (p. ) (Detective Prieto testifying at Preliminary hearing that he created my photo lineups himself); Trial Transcript, May 20, 2011, p. 128-129 (defense counsel Marcello arguing in closing that "the 4 eyewitnesses, they are wrong about what they saw. They were manipulated by detectives to pick the wrong person"); D) failing to properly document that every eyewitness for the State had failed to identify me from the 2<sup>nd</sup> set of photo lineups (See above section); E) Using a false statement in his Search Warrant Affidavit regarding the descriptions of the perpetrators get away vehicle that were provided to Officer Mark Hoyt See Trial Transcript, May 19, 2011 (11:00am), p. 43 (Defense counsel explaining that the jury would not get to hear that "Mark Hoyt indicated that he interviewed Destiny Waddy who indicated [the get away car] was a Grand Am. It was later changed by Detective Prieto to be a Ford in his affidavit for a search warrant").

Based upon the above mentioned facts, the State viewed Detective Prieto as having serious credibility problems and as such, made a "strategic" choice (that is reflected in the record) to not call Detective Prieto as a witness.

1 in an effort to conceal all of the above information from the jury's considera-  
2 tion. See Trial Transcript, May 19, 2011 (11:00pm volume), p. 37-38 (Prosecu-  
3 tor DiGiacomo characterizing his decision to not call Detective Prieto as a witn-  
4 ess as a "legitimate tactic by the prosecutor"). If the prosecutor was  
5 trying to conceal, defense counsel should have been calling Detective Prieto as a  
6 witness to reveal it.

7 Mr. Fumo and Mr. Marcello tried to complain to the Court about the  
8 State's choice to not call Detective Prieto as a witness. Saying that it prevented  
9 a lot of information important to my defense from be revealed. However, as the Court  
10 observed, and ruled, it was defense counsel's job to call the witnesses (like Prieto)  
11 he felt were needed for the defense.

12 "The Court: There is case law plenty about even if it makes  
13 your client get on the stand in order to make arguments and present theories  
14 there has to be evidence.

15 Mr. Marcello: We are saying the sufficiency wasn't good  
16 enough, not that they didn't do anything.

17 Mr. DiGiacomo: You don't have evidence of a follow-up.

18 Mr. Marcello: The State's didn't present any evidence that  
19 anything was done about his Crime Stopper Call.

20 Mr. DiGiacomo: . . . I don't have the duty to get up  
21 there and put in information. If they want to argue something, they  
22 have to present it to argue it. I think that's the point they are missing.

23 Trial Transcript, May 19, 2011 (11:00am volume) p. 44-45

24 Calling Detective Prieto as a witness for the defense posed no further  
25 risk to my defense, and would provided my attorney's the opportunity to  
26 confront Detective Prieto with the fact that he used extremely questionable  
27 and unreliable tactics as well as sloppy police work as the lead detective in  
28 the investigation of this case. Revealing this to the jury would have forced

1 the jury to consider the question of whether Detective Prieto's use of extremely  
2 "questionable" tactics, placed into "question" the reliability and results  
3 of his investigation.

## 4 II. Prejudice:

5 Defense Counsel's failure to call, and secure Detective Prieto  
6 's presence as a witness alone caused enough prejudice to justify reversal,  
7 but this error was also part of a cumulation of errors by defense counsel that  
8 severely undermined the outcome and fairness of my trial (see Ground 14).  
9 However, failing to call Detective Prieto prevented Defense Counsel from being  
10 able to impeach key state witnesses, like Arbuckle, Ryan John, Jermain  
11 Means, Young, Jose Posada and being able to support my defense witnesses  
12 like Mrs. Holly on points regarding my alibi, and ~~undermining~~ undermining  
13 the eyewitness identifications of me. Plus, as defense counsel themselves  
14 complained, it prevented numerous amounts of exculpatory and impeaching evide-  
15 nce from being revealed to the jury. Thus, There exist a reasonable proba-  
16 bility that had Defense Counsel not unreasonably relied on the State to  
17 subpoena defense witnesses needed for the defense, and subpoenaed and  
18 called Detective Prieto themselves as a witness, the outcome of my trial  
19 would have surely been different; One or more jurors may have had reason-  
20 able doubts in this case and changed the outcome.

## 21 III. Exigentary Hearing Requested

22 Based upon the facts presented an exigentary hearing  
23 is requested in order to fully air out this issue before the court and  
24 deal with any explanations defense counsel may wish to offer for his failures.  
25  
26  
27  
28

I b) Ground 2

I am in custody in violation of my 6<sup>th</sup>, 14<sup>th</sup>, and 5<sup>th</sup> amendment rights of the U.S. Const., as well as, Nev. Const. Art. 1, Sec. 3, 6, 8 and Art. IV, Sec. 24. Because my trial attorney's rendered ineffective assistance of counsel when they failed to subpoena and call Officer Anthony Bailey as a witness in my defense, to elicit a prior inconsistent statements that victim Ivan Young made regarding the crimes and descriptions of the perpetrators.

Supporting Facts:

I. Deficient Performance - my trial attorney's performance was deficient and fell below an objective standards of reasonableness when he failed to subpoena, secure the presence of, and call as a witness to my trial Officer Anthony Bailey ("Officer Bailey") in order to elicit testimony from him regarding Victim Young's original statement to police.

Before trial, my trial attorneys received pretrial documents through discovery. Within the documents was a police report written by Officer Bailey detailing the first in-depth interview, conducted by him, with Victim Ivan Young. The interview occurred on the day in question, shortly after the crimes while Young was in the hospital. Officer Bailey reported the following relevant facts from his interview of victim Young:

"... Young was very coherent and remembered the incident very well. He told me that he was outside in his garage working on a car when he was approached by two black males (B.M.'s). One was bald and was wearing shorts and a blue shirt. The second had dreadlocks and spoke with a jamaican accent. They started talking to Young about working on cars. After talking for a few minutes they brandished firearms and ordered Young to go inside. Once inside they put everyone in the house down on the floor and started asking for money from everyone. Young said they placed something over his head and face so he could not see at all. During this



1 time two of Young's friends arrived and were pulled into the house as  
2 well. Young did not know what happened to them. Young told me that  
3 he thought the suspects got a cheek card but unknown if anything else  
4 was taken. Young then told me that the Bm with dreadlocks came over  
5 to him and placed a gun to his face. The black male then said 'Have  
6 you ever seen one of these before?' After saying that, the Bm fired 1 shot.  
7 . . . Young told me that he knows for a fact the Bm with  
8 dreadlocks and a jamaican accent was the shooter. "

9 See Exhibit E, attached: Police Report by Officer Bailey dated 6/29/04 p. 2 (emph-  
10 asis added)

11 At my preliminary hearing, Young changed his description of the perpetrators  
12 and which suspect he believed to be the shooter in his testimony:

13 " [defense counsel]: Did the other guy have hair? "

14 " [Young]: Hair? "

15 " [Defense Counsel]: Yeah. "

16 " [Young]: I believe he had dreads. "

17 " [Defense Counsel]: He had dreads? "

18 " [Young]: Yes. "

19 " [Defense Counsel]: Rickie, was he shaved at that point? "

20 " [Young]: Shaved? "

21 " [Defense Cou]: Was he bald? "

22 " [Young]: I can't recall. "

23 " [Defense Counsel]: Well, you can't? "

24 " [Young]: I believe he had a hat on. I think he had a hat  
25 on. "

26 Preliminary Hearing Transcript, September 21, 2004, p. 28

27 \* \* \* \* \* \* \* \* \* \*

28 " [Defense Counsel]: Who shot? "

1 " [Young]: Who shot me? I believe it was Rickie shot me. "

2 Preliminary hearing Transcript, September 21, 2004, p.39

3 This was inconsistent with the statements Young had made to Officer Bailey.  
4 Because he told officer Bailey one suspect was ~~bait~~ bald and one had dread locks  
5 and a jamaican accent, and that he knew for a "fact" that the suspect with  
6 the dread locks was the one who shot him. And at Preliminary hearing, Young  
7 claimed that one suspect wore a hat (which he id'd as being me) and the  
8 other had dread locks, but that I was the shooter. Young also claimed at  
9 the preliminary hearing (for the 1<sup>st</sup> time despite 3 previous interviews with police),  
10 that the perpetrators sounded as if they were faking a jamaican accents, Prelimi-  
11 nary hearing Transcript, September 21, 2004, at p.28-32. Young never said this before.

12 My defense attorney possessed a copy of the Preliminary hearing Transc-  
13 ript well before the trial. As such, Young's inconsistencies at the Preliminary  
14 Hearing should have alerted Mr. Fumo that he <sup>needed</sup> ~~need~~ to secure Officer Bailey's  
15 presence as a witness in my defense at trial, because Officer Bailey's testim-  
16 ony regarding Young's prior-inconsistent statements would be needed and  
17 powerful in impeaching Young's credibility as one of the State's chief  
18 eyewitnesses. However, as with the other witnesses Mr Fumo forgot to subpoena,  
19 Mr. Fumo told me that he had "forgotten" to issue subpoena's for Officer  
20 Bailey's presence, because he had wrongfully assumed that the State would  
21 call all of the police, and other witnesses listed on it's witness list, for him.  
22 But, the State was not interested in calling Officer Bailey because the information  
23 Officer Bailey had to offer would have been damaging to one of their star eye-  
24 witness' (Young) credibility. Thus, the jury never <sup>needed</sup> ~~needed~~ testimony from Officer  
25 Bailey, and it was fundamentally unreasonable under any standard for Mr.  
26 Fumo to once again unduly rely on the State to call the witnesses needed  
27 to support my defense.

28 II. Prejudice - my trial attorney's failure to subpoena and call

1 as a witness in my defense Officer Bailey caused substantial undue prejudice  
2 to my attorney's ability to defend me against the charges. Because at my  
3 trial, Young (predictably) testified in a way that was significantly in-  
4 consistent with the statements he had made to Officer Bailey with regard to  
5 Young's description of the perpetrators, and who he believed had shot him,  
6 just like he did at the Preliminary Hearing. Thus, failing to ensure Off-  
7icer Bailey's testimony at my trial prevented Mr. Fumo from being able  
8 to take advantage of the rules of evidence which would have permitted him  
9 to admit into evidence before the jury, Young's prior-inconsistent state-  
10 ments to Officer Bailey for both impeachment purposes, as well as substan-  
11 tive evidence.

12 Having these prior-inconsistent statements in the record would have  
13 allowed my trial attorney to demonstrate <sup>that</sup> Young's memory of the perpetrators  
14 was unreliable and malleable, as he changed key points including which  
15 perpetrator he believed to have shot him. There is a reasonable probability  
16 that had my attorney called Officer Bailey as a witness and elicited the rele-  
17 vant prior inconsistent statements the jury may have disbelieved Young  
18 in light of other evidence, and additionally wondered why his testimony had  
19 changed in ways that benefited the State, and thus have <sup>created</sup> ~~formed~~ reasonable  
20 doubt in at least one juror's mind. Furthermore, although I submit that this  
21 claim alone requires reversal, it was only one error in a chain-of-errors by  
22 defense counsel (See Ground 14 ) that when viewed cumulatively  
23 together caused extreme prejudice, left the jury with a very "one-sided"  
24 view of the evidence that favored the State, and resulted in ineffective  
25 assistance of counsel and deprived me of ~~the my~~ State and federal  
26 constitutional rights to a fair trial.

### 27 III. Evidentiary Hearing Requested

28

c) Ground 3

I am in custody in violation of my 6<sup>th</sup>, 14<sup>th</sup>, and 5<sup>th</sup> amendment rights of the U.S. Constitution, as well as Nevada Constitutional Articles 1, sec. 3, 6, and 8; Article IV, Sec. 24. Because my trial attorney rendered ineffective assistance of counsel when he failed to adequately cross-examine the State's eyewitnesses regarding crucial information that would have impeached their overall memory and prior identifications of me.

Supporting Facts:

I. Deficient Performance - my trial attorney's performance was deficient and fell below an objective standard of reasonableness when my trial attorneys failed to adequately cross-examine and impeach the State's eyewitnesses identifications of me as well as their overall credibility with evidence that indicated: 1) that each eyewitness had failed to identify me on a prior occasion from a 2<sup>nd</sup> photo lineup, and 2) that the eyewitnesses had changed crucial aspects of their stories at each stage of the proceedings starting from their initial statements to police, to Preliminary Hearing, and finally at trial.

1) Failures To Identify On a prior-occasion:

Prior to trial, defense counsel Fumo and Marcello discovered that there existed evidence which indicated that each of the State's eyewitnesses, Ivan Young, Jermaine Means, Ryan John and Jose Poada, had failed to identify me on a prior occasion from a 2<sup>nd</sup> set of photo lineups containing a picture of my booking photo which was taken only 2 days after the crimes in question, pursuant to my arrest. See Exhibit B, attached: Mugshot Profiles of Rickie Slaughter, and Jaquan Richard, and 2<sup>nd</sup> set of photo lineups; See also, Ground 1, I.(2), (I hereby incorporate all facts stated under that ground by reference to support this section).

During the pretrial proceedings in this case this 2<sup>nd</sup> set of photo lineups which had obvious exculpatory value became a point of contention in numerous pretrial issues.

1, namely a motion to dismiss or alternatively suppress the State's inculpatory photo  
2 lineups. See Defendant's Motion To Dismiss Case, etc., filed on October 27, 2009

3 During the hearing on the Motion to dismiss, defense counsel argued that the State  
4 had failed to preserve exculpatory information when police failed to recording, identi-  
5 fying of information on the photo lineup cards of the 2<sup>nd</sup> set of photo lineup (i.e.,  
6 names, dates, signatures of viewing witnesses and officers), therefore making it  
7 difficult for defense counsel to set an evidentiary foundation to admit the 2<sup>nd</sup> set  
8 of photo lineups at trial in the event the eyewitnesses could not recall viewing  
9 the photo lineups themselves years prior.

10 In response to the defenses' argument at the hearing, Prosecutor DiGiacomo  
11 stated that he was willing to admit that each of the State's eyewitnesses had  
12 been shown the exculpatory set of photo lineups.

13 " [Defense Counsel]: Well, Exhibit 5 which is part of the motion, these photo-  
14 graphic lineups were apparently shown to some or all of the alleged victims by whom, I'm  
15 not sure, when, I'm not sure, and what were the results, I'm not sure okay.

16 " So it's a failure to record the showing of these photographic lineups to whom-  
17 ever they were shown to. All the information we have is that the client wasn't  
18 identified when these photo lineups were shown to the victims.

19 " The Court: How do you know they were shown to anybody.

20 " Mr. DiGiacomo: They were shown, Judge. I'm willing to agree to  
21 that " Reporter's Transcript, of Def't's Motions, December 1, 2009, at p. 7.

22 See also, Ground (failure to seek stipulation).

23 Ultimately, the Court denied defense counsels motion, and ruled that "  
24 Well, you can ask questions about it. I don't think this is a failure to preserve or  
25 destroy evidence. The evidence is a photo lineup and that's there. . . they may not  
26 have written things down the way you want them to write it down, then by all means you  
27 can cross-examine them on that " Reporter's Transcript, supra same id. p. 10-11

28 However, at trial, defense counsel completely failed to cross-examine any

1 of the eyewitnesses about these exculpatory photo lineups, seek a stipulation  
2 from the state about them, or otherwise enter them into evidence for the jury to consider  
3 at all. Despite defense counsel being aware of the Court's prior ruling. Moreover,  
4 during the trial, immediately after the State closed its case in chief, defense coun-  
5 sel moved the Court and requested the Court to give the jury, a jury-instruction instr-  
6 ucting the jury that the 2<sup>nd</sup> set of photo lineups had been viewed by each of the  
7 State's eyewitnesses, and that each eyewitness had failed to identify as a perpet-  
8 rator from them; The Court denied this mid-trial motion and instructed defense  
9 counsel that: "

10 " Jury Instructions are based on the evidence presented at trial. I  
11 mean to the extent that no witnesses come in to testify about that both sides are  
12 free to call witnesses and ask witnesses questions. I'm not going to instruct  
13 the jury on something that isn't in evidence in the trial to show that there was a  
14 lineup that was proposed and shown to somebody they didn't identify. . .  
15 Unless there's testimony about it " Trial Transcript, May 18, 2011, p. 60-62

16 Immediately after this ruling by the Court mid-trial, my trial attorneys  
17 opened their case-in-chief for my defense to the jury. And yet still, my trial  
18 attorney's did not try to recall the eyewitnesses Young, Means, John or Posacki  
19 back to the stand to try and cross-examine or better yet examine them at all  
20 about the exculpatory set of photo lineups. This was unreasonable performance by  
21 my trial attorneys to not even try to cross-examine the state's eyewitnesses about  
22 photo lineups of me that suggested the eyewitnesses had failed to identify me from.  
23 Especially, when the state had presented evidence by 4 eyewitnesses that they  
24 had identified me from a separate (1<sup>st</sup> set) of photo lineups as being a perpetrator.  
25 My trial attorneys missed prime opportunities to impeach the State's eyewitness prior  
26 identifications of me. And there can be no reasonable excuse for this when defense  
27 Counsel possessed powerful ammunition to eviscerate the eyewitnesses credibility with.

28 At the very least, a reasonable attorney would have sought to recall the

1 eyewitnesses during the presentation of my defense in the defense's case in chief to  
2 examine them about the 2nd set of photo lineups to demonstrate the lineups exculpat-  
3 ory value to the jury so that jurors could evaluate the eyewitnesses' credibility in light  
4 of the eyewitnesses' prior failures to identify me as a perpetrator. And even if,  
5 the eyewitnesses ~~to~~ failed to recollect viewing the 2nd set of photo lineups. The very  
6 fact that defense counsel had attempted to examine the eyewitnesses about the 2nd  
7 set of photo lineups unsuccessfully would have supported defense counsel's request for  
8 the jury instruction he sought earlier. Especially, in light of the Court's suggestion  
9 that defense counsel try and Prosecutor DiGiacomo's previous willingness to admit  
10 that the eyewitnesses had seen the exculpatory set of photo lineups, at the previous  
11 pretrial motion hearing on the issue.

## 12 2) Changes In The Eyewitnesses Stories

13 Ivan Young - Originally Young told police that 2 black males had robbed  
14 him, stating that "one was bald and wearing shorts and a blue shirt. The second  
15 had dreadlocks and spoke with a jamaican accent. . . [and that] he knows  
16 for a fact the [black male] with dreadlocks and a jamaican accent was the sh-  
17 ooter" See Exhibit E, attached: Police Report by Officer Bailey; see also, Ground 2

18 At my preliminary hearing, Young changed his story and testified now that  
19 one of the perpetrators wore a hat (which he identified as being me) and one had  
20 dreadlocks, however, he claimed that I was the shooter. Preliminary hearing tran., Sept-  
21 ember 21, 2004, p. 28-39. Young also described the height of the perpetrator which  
22 he alleged to be me as "about 5'6" You know what I'm saying? 5'5" Prelin.  
23 Hearing Tran, supra id at p. 21 Young described the other suspect as being left tall.

24 However, at my trial, my trial attorneys failed to cross-examine Young about  
25 any of these inconsistencies. Even though, evidence was admitted at trial which  
26 documented my physical height around the time in question (2 days after the crimes)  
27 as being 3 to 4 inches taller than the description Young gave of the perpetrator  
28 whom he thought (wrongfully) was me See Court Exhibits #25 admitted: 5-18-11

1 Mugshot Profile of Rickie Slaughter for 6/29/04 (listing my physical height  
2 on 6/29/04 as being "5'09"); See also, Exhibit , attached  
3 My trial attorneys decision to squander prime opportunities to attack Youngs reliability  
4 as an eyewitness had no tactical basis. In fact, Mr. Fumo's cross-examination of  
5 Young was extremely brief. Mr. Fumo failed to bring <sup>out</sup> important points, such as  
6 the fact that at Preliminary hearing Young testified that "there really wasn't  
7 much chance" for him to observe the perpetrators while in the garage because  
8 Young was simultaneously focused on actively buffing a car while they talked to him  
9 Prelim. Hearing Tran., supra at p. 25 ("PHT"). Furthermore, at trial, Young now  
10 claimed for the first time ever (despite multiple interviews with police, and a preliminary  
11 hearing) that the suspects wore "wigs" See Trial Transcript, May 16, 2011, p. 49  
12 (~~it took~~ Young testifying on direct examination "It looked like they were wearing like  
13 hats and wigs . . ."). This was completely inconsistent with any description young  
14 had ever given before and should have been challenged. Additionally, Young testified  
15 that he could see where everyone else in his family was while he was tied up;  
16 however, at the Preliminary hearing, he testified that he could not see where they  
17 where, he could only "hear" See Trial Transcript, May 16, 2011 p. 51, and compare  
18 with, Prelim. Hearing Tran., Sept. 21, 2004, at p. 12-13 (At prelim' Young later said that  
19 after he got dragged to the kitchen he could see his family-not before, but at trial  
20 he switched it saying he could see them before he got dragged to the kitchen).

21 All of these inconsistencies should have been pointed out by Counsel Mr. Fumo  
22 on cross examination to the jury, because Young's inability to maintain a consistent  
23 description of the perpetrators, or chronology of how the events transpired went  
24 to his credibility and the jury would have benefitted from being able to evaluate  
25 his reliability in light of this information.

26 **Ryan John** - victim and eyewitness John was probably the most in-  
27 consistent eyewitness of all, and my trial attorney performed deficiently when he failed  
28 to point this out during cross-examination of John, for the jury to see.



1 In his initial statement to police at the crime-scene, John told Officer Hoyt  
2 that he was called over to Young's house by an unknown black male standing  
3 in Young's garage. John stated that as he entered Young's house through the  
4 garage:

5 " the suspect placed a pistol to John's throat and told him to get on  
6 the ground in the kitchen and place his hands behind his back. There is another  
7 door that opens into the kitchen from the laundry room. John laid on the floor with  
8 his head towards the sink and his feet at the refrigerator. The suspect tied John's  
9 hands behind his back and stomped on John's head. The suspect then placed  
10 a black jacket over his head. The suspect then placed a gun to John's  
11 head and told him that if he moves, he was going to blow his brains out.  
12 The suspect then (sic) went into John's pockets and found an [ATM]  
13 card in a front pocket. The suspect then told John to tell him his per-  
14 sonal pin number to his ATM. John told him. The suspect then told  
15 John that if the number was wrong, he would come back and kill him.  
16 The suspect then walked away. John heard two males talking to [Young].  
17 John said that [Young] was close to him near the dining room area. John  
18 heard [Young] asking a male not to shoot him. The John heard a gun shot  
19 and [Young] scream. John then heard one of the suspects ask the other  
20 suspect if he shot him. The other male, in a jamaican accent said, yes I  
21 shot him. John then heard the suspect leave through the front door.  
22 About one to two minutes later, John stood up, taking the jacket off  
23 of his head. "

24 See Exhibit F, attached: Police Report by Officer Mark Hoyt dated 8/12/04,  
25 at p. 9-10

26 At the Preliminary hearing, John testified that when he was called over to  
27 Young's residence by the perpetrator (he alleged to be me), that he did not look at  
28 him. See Prelim. hearing Tran., p. 62 (John testifying that "I didn't look at him.

1 I was getting out of my car. He said 'hey, Mark, [Young] wants to talk to  
2 you.' So he turned around and walked in"). John also testified that after he  
3 entered the house, immediately, he was tied up and a Jacket was placed over his head  
4 that prevented him from seeing See, Prelim. Hearing Tran, at p. 54 (John testifying  
5 "I didn't see. That's all I seen then they threw a jacket over my head.  
6 Out of the jacket I could see their shoes walking by. I don't know whose  
7 shoes it was, just seen the shoes"); also supra at p. 55 (John explaining  
8 "Right. There was a jacket on my head. I don't know what's going on"); PHT  
9 supra id. at p. 57 (John explaining "No, I couldn't see. When I tried to lift  
10 up my head, I got kicked in the head. Then I got the jacket put over my head"  
11 ); PHT, supra at p. 58 (John stating "... I couldn't see. My head was  
12 covered..."). John also testified at the Prelim' that his head was  
13 covered ~~before~~ Young was shot so he only "heard" it occur and did not  
14 know who pulled the trigger. P.H.T., supra, at p. 58

15 However, at my trial, John now claimed that his head was not  
16 covered with the jacket until after Young was shot See Trial Transcript,  
17 May 17, 2011, at p. 55 (John falsely claiming that the perpetrators didn't cover  
18 everyone's heads until after they shot Young). This detail was significant  
19 because it affected whether, or not, John could credibly claim to be watching  
20 the perpetrators throughout the incident and thus, be a more reliable  
21 eyewitness. John's testimony at trial became very inconsistent with his  
22 initial statement to Officer Hoyt, and his sworn testimony at the Preliminary hearing,  
23 whereas, he now claimed at trial that he watched the perpetrators throughout  
24 the entire ordeal: (on direct-examination with prosecutor)

25 " [Mo. Fleck]: And could you see these guys while -- I mean,  
26 while you are hearing the shot being fired, can you see them, or just  
27 hearing what they are saying?

28 [John]: You could see them because I was like watching,

1 "trying to see what was going on because I was trying to get out of  
2 there, and I was waiting for both of them to go into the other room again."

3 " [Ms. Fleck]: What did you see? "

4 " [John]: Walking around, going through everything, like spraying  
5 Lysol on everything, or something all over the house I don't know why  
6 , but after they shot him, that's when they started covering everybody's  
7 heads up, so I couldn't see nothing after that. "

8 " [Ms. Fleck]: Tell us what you see before [Young] gets shot. "

9 " [John]: Them walking around, going through everything, going  
10 through everybody's pockets. Like the other guy that came in, I  
11 guess they took money out of his pockets. "

12 Trial Transcript, May 17, 2011, at p. 58-59

13 As is abundantly clear, John's trial testimony was completely different  
14 from his prelim' testimony as John lied on the stand to make it appear to the  
15 jury that he had a better opportunity to view the perpetrators throughout the  
16 crime than he really did. And my trial attorney was fundamentally unreasonable  
17 for not cross-examining John about his own previous inconsistent testimony  
18 which was made under oath at the preliminary. In fact, John even claimed  
19 at trial that he saw both perpetrators, whereas, at prelim' he said he never  
20 saw the other alleged perpetrator. Compare, the above excerpt of testimony with  
21 Prelim. Hearing Tran. (PHT), at p. 67 ( John testifying " . . . I had my head  
22 covered. The only person I seen was him, Rickie, and that's it. I didn't  
23 see the other guy. He stayed in the other room ")

24 There can be no reasonable or tactical excuse for my trial attorney's failure  
25 to confront eyewitness John with his own prior testimony that would have dem-  
26 onstrated that he had clearly lied on the stand either at the trial or at the  
27 Preliminary hearing; either way both versions of his story could not be true.  
28 John was allowed to lie with impunity, because of my trial attorney's failure.

1        II. Prejudice - my trial attorney's failure to adequately cross-examine  
2 the State's eyewitnesses caused extreme prejudice and led to my wrongful convic-  
3 tion. Had my trial attorney examined the State's eyewitnesses regarding the  
4 2nd set of photo-lineups from which I had not been identified, as well as the prior-incon-  
5 sistent testimony and statements that conflicted with some of the eyewitnesses trial  
6 testimony. There exist a reasonable probability that the outcome of my trial would  
7 have been different. Because the jury would have discovered that each of the State's  
8 eyewitnesses: Young, John, Means, and Posada, had failed to identify me on  
9 a prior-occasion from a photo-lineup that contained a picture of me that  
10 was taken only 2 days after the day in question. Furthermore, the jury would  
11 have also discovered that Young and John were highly unreliable eyewitnesses as their  
12 credibility would have been destroyed by the fact that they continuously changed  
13 many key aspects of their stories for no justifiable or excusable reason.  
14        These would have been powerful counter-points to their weak identifications  
15 of me. Add this to the facts that the eyewitnesses descriptions of the percep-  
16 trators differed from my physical description in significant ways: evidence presented  
17 indicated that I had "black eyes" on the day in question and none of the eyewit-  
18 ness described a perpetrator with black eyes. See Trial Transcript, May 19, 2011 (9:00am), at p. 51 (Mrs. Holly testifying that my mugshot depicted black eye and facial injuries  
19 that I had on day in question); Additionally, alot of evidence was presented that indicated  
20 that there were "suggestive" features in the 1<sup>st</sup> set photo lineups that I was identified  
21 in, that caused me to be wrongfully identified by the eyewitnesses. See Trial Transcript,  
22 May 19, 2011 (9:00am), at p. 100-105 (expert witness psychology professor Geoffrey  
23 Loftus testifying about suggestive elements in the 1<sup>st</sup> set of photo lineups that I was  
24 identified from). Plus, my trial counsel would have been able to discuss the 2<sup>nd</sup> photo lineups with expert  
25 Loftus. As such, with an adequate cross-examination on the eyewitnesses, in addition  
26 to other flaws in the state's ~~case~~ circumstantial case, the jurors would have been forced  
27 to confront the probability that the eyewitnesses may have misidentified me  
28

1 and had only identified me on a prior occasion because of undue suggestive  
2 influences in the 1st set of photo-lineups. Thus, there is certainly a reasonable  
3 probability that had my trial attorney not committed this grave error,  
4 at least one juror ~~would~~ have been swayed to feel reasonable doubt in the  
5 State's case and deadlocked the jury, or changed the deliberations completely.  
6 Moreover, although I submit that this error standing alone requires reversal, it  
7 was just one in a chain-of-errors by my trial attorneys (See Ground 14),  
8 that when viewed cumulatively caused substantial prejudice, that resulted in ineff-  
9 ective assistance of counsel and deprived me of my State and Federal rights to  
10 a fair trial by leaving the jurors with a very "one-sided" view of this  
11 case which favored the State completely, which led to my wrongful conviction.

### 12 III Exigentary Hearing Requested

#### d) Ground 4

I am in custody in violation of my 6<sup>th</sup>, 14<sup>th</sup>, and 5<sup>th</sup> amendment rights of the U.S. Const., as well as Nev. Const. Art. 1, Sec. 3, 6, and 8, and Art. IV., Sec. 24. Because my trial attorneys rendered ineffective assistance of counsel when they failed to subpoena and call eyewitness Destiny Waddy to the stand at trial to elicit her description of the perpetrator's "get-away" vehicle as being a Pontiac Grand Am, and not a Ford Taurus.

#### Supporting Facts

I. Deficient Performance - my trial attorney's performance was deficient and fell below an objective standard of reasonableness when he failed to secure the presence of and/or call eyewitness Destiny Waddy as a witness in my defense and elicit testimony from her that would have undermined the State's theory that the perpetrator's get-away vehicle was a Ford Taurus, & a similar model of car which I had access to.

Pretrial discovery documents provided to my trial attorneys well before trial, indicated that a witness named Destiny Waddy ("Ms. Waddy") was waiting in her boyfriend victim Means's car outside of victim Young's residence (where the crimes took place) while the crimes were in progress. Ms. Waddy explained to Officer Mark Hoyt ("Officer Hoyt") that while waiting on her boyfriend Means to return from the residence, she observed 2 black males exit Young's residence and get "into a dark green vehicle. Waddy said the vehicle was possibly a Pontiac Grand Am." See Exhibit F, attached: Police Report by Officer Hoyt dated 8/11/04, p. 10; See also, Exhibit G, attached: Witness Statement by Destiny Waddy dated 06/26/04. Ms. Waddy then watched the perpetrators drive away in the vehicle.

At trial, the State alleged that the get away vehicle was a "Ford Taurus" and evidence was presented that I had been driving a green Ford Taurus on the day in question. My trial attorney, Mr. Fumo, promised jurors in his opening statement that they would hear testimony from Ms. Waddy that the

1 get away vehicle was a Pontiac Grand Am;

2 "Mr. Fumo: . . . Well, nobody at the scene described a green Ford.

3 There was one witness who was outside. Her name is Destiny [Waddy] (sic)

4 She writes in her statement what she saw.

5 Mr. DiGiacomo: Objection, hearsay.

6 Mr. Fumo: It's not expected testimony [?]

7 The Court: Just what's in response to the hearsay.

8 Mr. Fumo: If she's going to testify, it's what I expect

9 the evidence will show.

10 The Court: You're right. You can continue.

11 Mr. Fumo: That she saw a green Pontiac Grand Am."

12 Trial Transcript, May 16, 2011, at p. 20-21. During the State's Case-in-chief

13 the State never called Ms. Waddy as a witness. And during the defense's

14 case-in-chief, my trial attorneys never called Ms. Waddy as a witness either.

15 When I asked my trial attorneys to call Ms. Waddy during our case in chief

16 Mr. Fumo told me that he could not call her as a witness. When I asked

17 him why not? Mr. Fumo informed me that he had "forgot" to subpoena

18 Waddy, mistakenly relying on the wrongful assumption that the State would

19 secure Ms. Waddy's presence at trial because Ms. Waddy was listed on the

20 State's witness list. Mr. Fumo further stated that he had planned to elicit

21 Ms. Waddy's vehicle description of the perpetrator's get-away car, when the

22 State called either Ms. Waddy or Officer Hoyt. However, because both of these wit-

23 nesses possessed evidence that undermined the State's theory, the State never

24 called either witness. It was fundamentally unreasonable for Mr. Fumo to

25 rely on the state to subpoena witnesses he needed for my defense. I even made

26 a record of me having requested Mr. Fumo to call Ms. Waddy as a witness:

27 "The Defendant: I just wanted to, when my attorneys

28 presented the case yesterday, the other day, I begged them to not close

1 the case before presenting the evidence of Destiny Waddy, Mark Hoyt  
2 and others not here to identify the vehicle.

3 "According to the police officer who took Destiny Waddy's  
4 statement, who ID'd the vehicle as a Pontiac Grand Am."

5 Trial Transcript, May 20, 2011, p. 66. The jury never heard about Ms. Waddy's  
6 description of the perpetrator's get away vehicle.

7 II. Prejudice - I suffered substantial prejudice to my defense  
8 because of Mr. Fumo's error in this regard. For one, Mr. Fumo's failure to  
9 produce significant testimony which he promised the jury would hear in his  
10 opening statement, no doubt left a negative inference in jurors' minds. And  
11 diminished the jury's faith in defense counsel, and by extension the credibility  
12 of the defense they put forth on my behalf. Secondly, had my attorney done  
13 his job and secured Ms. Waddy's testimony regarding her description of the  
14 perpetrator's vehicle being a Pontiac Grand Am. Ms. Waddy's testimony in  
15 this regard would have been supported by victim Jennifer Dennis' initial state-  
16 ment which she gave to Officer Jake Hickman. Officer Hickman testified that  
17 Jennifer Dennis had mentioned hearing the perpetrators talking about a "Pontiac"  
18 before fleeing:

19 "Mr. DiGiacomo: . . . If you could just go to the end of your  
20 report, I'm going to ask you questions about near the end of your report.

21 At some point did you question Ms. Dennis about why her house might  
22 be targeted or if she had any reason to believe her house would be  
23 targeted?"

24 "Officer Hickman: Yes. She stated that she didn't -- that  
25 Ivan wasn't into narcotics or drugs per se but he does paint cars and  
26 that's the only reason she could think of."

27 "Mr. DiGiacomo: And did she indicate to you that one of  
28 the suspects was talking about something to his graphics on a car?"



1 "Officer Hickman: Yes. She said that Ivan charged him too much."

2 "Mr. DiGiacomo: The suspect was talking about a Pontiac  
3 and that Ivan charged too much money for it?"

4 "Officer Hickman: Correct."

5 Trial Transcript, May 16, 2011, at p. 148-149.

6 Had my trial attorney presented testimony from Ms. Waddy about the  
7 perpetrators get away vehicle being a Pontiac Grand Am, Mr. Fumo could have  
8 connected Ms. Dennis statement that the perpetrator's said victim Young  
9 charged them too much for a "Pontiac" to make a logical and powerful  
10 argument that this was no coincidence and that the perpetrators get away  
11 vehicle was much more likely to be a Pontiac Grand Am than a Ford  
12 Taurus. However, Mr. Fumo's error prevented him from being able to connect  
13 these dots so to speak and rebut the State's theory in an impactful  
14 way.

15 Lastly, the State's theory that the perpetrator's get away vehicle was  
16 a green Ford Taurus was weak. Destiny Waddy had the best view of the  
17 vehicle and described it as a Pontiac Grand Am, and although at the trial  
18 7 years later victim Young described the perpetrator's vehicle as a Ford  
19 Taurus at trial this was an inconsistent statement compared to his 4 initial  
20 interviews with police (See Ground ). And none of the other witnesses  
21 described the get away vehicle as a Ford Taurus in their initial statements to  
22 police. Plus, the eyewitnesses did not identify the get away vehicle from a  
23 photograph or anything like that. Young simply provided a generic description  
24 of a Ford in his testimony. And his wife described the get away vehicle as  
25 several different makes and models in the colors blue or Teal. See Trial Transcript,  
26 May 16, 2011, at p. 122 (Jennifer Dennis on direct examination describing that the  
27 perpetrator's vehicle "had to be either a Mercury Topaz, or maybe a Ford Tempo  
28 teal or maybe blue four door"). Thus, the State's weak position could have

1 strongly rebutted by Ms. Waddy's testimony.

2 As such, There exist a reasonable probability that the outcome of my  
3 trial would have been different, had my attorney not committed the error of  
4 unduly relying on the State to call the witnesses needed for his defense, like  
5 Ms. Waddy. Additionally, although I submit that this claim standing alone  
6 requires reversal, it was only one error in a chain of errors committed by def-  
7 ense counsel (see Ground 14, p. 74 ) that when viewed ~~in~~ together  
8 cumulatively had an extremely prejudicial impact, deprived the jury of  
9 crucial information with exculpatory value, resulted in ineffective assistance of  
10 Counsel and deprived me of my right to a fair trial.

### 11 III. Evidentiary Hearing Requested

e) Ground 5

I am in custody in violation of my 6<sup>th</sup>, 14<sup>th</sup> and 5<sup>th</sup> amendment rights of the U.S. Const., as well as, Nev. Const. Art. 1, Sec. 3, 6, and 8, Art. IV, Sec. 24. Because my trial attorneys rendered ineffective assistance of counsel when he failed to subpoena and/or call the Records custodians for 911 Dispatch records for the North Las Vegas and Las Vegas Metro Police Departments as witnesses to testify regarding the actual time victim Jermaine Means' 911 call was made which would have bolstered my defense that I was on the opposite side of town away from the crime scene when the crimes occurred

Supporting Facts

I. Deficient Performance - Defense counsel's performance was deficient and fell below an objective standard of reasonableness when he "forgot" to subpoena and call as witnesses the North Las Vegas ("NLVPD") and Las Vegas Metro ("LVMPD") police department's 911 dispatch records custodians to my trial to elicit exculpatory information, regarding the time in which victim Means made his 911 call which was critically related to the time when the perpetrators fled the crime scene.

Prior to trial, during contact visits at the Clark County Detention Center (CCDC) with my attorneys, Mr. Fumo and Mr. Marcello informed me that police records indicated that the 911 call came in at 7:11 pm. And that investigator Retke had discovered that it takes between 21 and 24 minutes to drive the distance between the crime scene at 2612 Glory View Ln, in N. Las Vegas and Mrs. Holly's work place at 715 N. Nellis Blvd, in East Las Vegas using the fastest driving routes available. See Ground 6; and see Exhibit H, attached; Case Report by Investigator Retke and Google Map Printouts with investigative notes. Furthermore, my attorney's explained that victim Ryan John appeared to have made his 911 call between 2-3 minutes after the perpetrators fled the scene. My attorney's told me this would be crucial to proving my innocence.

1 Other information in my attorneys possession prior to trial, including  
2 a police report by Officer Hoyt detailing victim Means' statement to police,  
3 and a "Case Investigation" report by defense investigator Retke detailing  
4 investigator Retke's interview with victim Means girl friend Destiny Waddy.  
5 All indicated that victim Means also made a 911 call to report the crime,  
6 however, Means 911 call appeared to have been made only "seconds" after  
7 the perpetrators fled the crime-scene. See Exhibit F, attached: Police Report  
8 by Officer Hoyt Dated: 6/30/04, p. 10 (reporting that "Means then told me  
9 that the suspects then left out of the front door. After a few seconds, Means  
10 got up, broke the wires the suspects tied him up with and ran outside to  
11 his vehicle. Means' girlfriend, Destiny Waddy was waiting inside the  
12 vehicle."); also see, Exhibit I, attached: Case Investigation Report by  
13 defense investigator Retke dated: 02/14/11, p. 2 (reporting that Destiny Waddy  
14 explained ~~she~~ saw the suspects exit the house and "walk east bound across  
15 the street and get into an emerald green car. Waddy said they did not drive  
16 past the Glory View house when they left. She then saw her boyfriend as he  
17 came out to the car and used her phone to call 911")

18 Furthermore, adding these facts together, with the 911 dispatch time being  
19 (which is also noted in Officer Hoyt's police report) listed as "1911 hours" or more  
20 traditionally 7:11 pm, the evidence indicates that the perpetrator's fled the  
21 crime-scene at approximately 7:11 pm.

22 In addition to this, Mrs. Holly informed Mr. Fumo ~~that~~ in a pre-trial  
23 interview that I had picked her up from work on the day in question "between  
24 7:00-7:15 pm" at El Dorado Cleaners which is approximately 8 1/2 miles away  
25 from the crime scene on the opposite side of town. See Exhibit D, attached: Affid-  
26 avit of Tiffany Holly dated: 2/24/2011. Mr. Fumo had also been told by me  
27 and Mrs. Holly that as I was pulling into the parking lot of El Dorado Cleaners  
28, Arbuckle was pulling out. And Arbuckle's initial pre-trial statement to

1 Detective Prieto that Arbuckle had left work at E.I. Dorado Cleaners at  
2 "7:15 pm" on the day in question. See Ground ~~71~~ ; See also Exhibit  
3 A, attached: Police Report by Detective Prieto dated 8/11/04, p. 3  
4 As such, all this evidence in Mr. Fumo's pretrial possession indicated  
5 that while the perpetrators of the crime were just fleeing the crime scene  
6 at 2612 Glory View Ln, at approximately 7:11 pm, meanwhile I was  
7 arriving at E.I. Dorado Cleaners approximately 8 1/2 miles across town  
8 merely 4 minutes later at 7:15 pm. And based upon defense investigator  
9 Retke's determination that it would take between 21 to 24 minutes to  
10 drive across the physical distance between the crime scene and Mrs. Holly's  
11 work place utilizing the fastest routes available. This information meant  
12 that it was physically impossible for me to be the perpetrator to the crimes  
13 and arrive to pick Mrs. Holly up at the time I did, at 7:15 pm, and thus,  
14 indicated my innocence.

15 Based on the information he had, Mr. Fumo planned to incorporate  
16 this information into the defense and even prepared a typewritten Opening Statement  
17 draft which he provided me copies of, although in it he overlooked Means 911 call  
18 and only emphasized Ryan John's 911 call. See Exhibit J, attached: Typewritten  
19 document titled "Opening Statement - factually Innocent" p. 1-2

20 However, my attorneys failed to subpoena the Police 911 dispatch records  
21 custodians, Officer Hoyt, or any other person, who could have provided the  
22 evidentiary foundation needed to prove the time that the 911 call came in at,  
23 which was related to the perpetrators departure time from the crime scene.

24 During the trial, after the State presented it's witnesses which excluded the 911  
25 dispatch records custodians, officer Hoyt or anyone who could prove the 911 call time,  
26 my attorneys apologized to me stating that they had "forgot" to subpoena  
27 these police witnesses (and others) and was depending on the State to call these  
28 witnesses. My attorneys misguided assumption that the State would call the

witnesses needed to support our defense was unreasonable.

**II. Prejudice** - Due to my attorney's failure to subpoena and call the 911 dispatch records custodian or other personell as described above to admit evidence of what time means 911 call was made caused extreme prejudice to my defense because my attorneys were literally restricted by a court ruling (based upon defense counsels own failure to lay a proper foundation), from arguing to the jury the true and actual time (7:11pm) which police records indicated Means 911 call was made, and inturn was also the time the perpetrators fled the crime-scene; In fact, in response to a successful objection by the State, defense counsel was actually forced to argue a false scenario that favored the State's theory:

" Mr. DiGiacomo: Judge, just for the record, I object to the first line [of the Power Point slide] saying before 7:11pm. I don't think there is any testimony as to what that call came in "

\* \* \* \* \*

" Mr. DiGiacomo: . . . I know where he got 7:11 from. [But] There is no evidence in the record as to 7:11 anywhere, that that was the time the call was made. "

" The Court: You think you got it off of a report? "

" Mr. Marcello: Jermaun Means' 911 call was made at 7:11 o'clock "

" The Court: Where do you get that information? "

" Mr. Marcello: If the recording says - - "

" The Court: Where is the recording? "

Trial Transcript, ~~79-80~~ May 20, 2011, p. 79-80

" The Court: . . . The state's objection is there is no time stamp, as the Defense seemed to believe, on there that says anything about a time that the suspects left the house. You need to delete that off the slide "

1 "Mr. DiGiacomo: I have no problem to say it was about 7."

2 "Mr. Marcello: Just about 7:00 o'clock is fine."

3 "Mr. DiGiacomo: I think we are ready to go, Judge."

4 "The Court: Put about 7:00 p.m."

5 Trial Transcript, May 20, 2011, p. 81-82

6 As is clear from the record, defense counsel's own failure to lay a proper  
7 evidentiary foundation regarding the time that the 911 call was made, which was  
8 tied to the ~~the~~ time the perpetrators actually fled the crime scene, allowed the  
9 prosecutor to capitalize by getting the judge to restrict the defense's argument.  
10 Plus, the jury was deprived of crucial information that supported my innocence  
11 and had a reasonable probability of affecting their verdicts in this case. Because  
12 without knowledge of the true time (7:11 pm) that victim Means' made his 911-  
13 call, and it's relationship to the time the perpetrators fled the crime scene,  
14 the jury that convicted me had no reason to question the false suggestion that  
15 the 911-call ~~was~~ and the perpetrators departure occurred at 7:00 pm.

16 Defense counsel's error here deprived the jury of the truth and created a  
17 false 11 minute difference (7:00 pm versus 7:11 pm) that favored the State,  
18 as well as, diminished the exculpatory value of Mrs. Holly's testimony that I  
19 arrived to pick her up "between 7 and 7:15 ; no later than 7:20 ." Trial  
20 Transcript, May 19, 2011 (9:00am) p. 21 . Because driving the distance between  
21 the crime-scene and Mr. Holly's work place using the fastest routes would take 21 to  
22 24 minutes, making it to Mrs. Holly's work place at anytime before 7:11 pm,  
23 (when the perpetrators fled the crime-scene), would exclude me as a perpetrator; and  
24 arriving at 7:15 pm or even 7:20 pm leaves an impossible feat of only 4 to  
25 9 minutes to make a more than 20 minute drive, which would also exclude me  
26 as one cannot be in two places at once. Thus, this evidence would have enhanced  
27 Mrs. Holly's testimony, and if the jury believed her gave them reason to question  
28 the state's case and exonerate me with an acquittal.

1 However, without the 911-call time evidence (and Defense Investigator Retke's  
2 drive-time evidence; See Ground 6 ), even if the jury chose to believe Mrs.  
3 Holly's testimony at trial, the false "about 7:00 pm" 911-call time scenario  
4 defense counsel was left to argue, created a false scenario that could still support  
5 me being the perpetrator if jurors believed that I arrived at 7:20 pm. Thus  
6 the jury's verdict cannot be trusted in light of the false inculpatory ~~they~~ inform-  
7 ation they were made to consider. Additionally, Mr. Fumo made a promise to  
8 the jury in his Opening Statement (which he failed to keep), that the evidence  
9 would show:

10 "Mr. Fumo: . . . There's no way he can drive from the  
11 [Crime-scene] all the way to where [Mrs. Holly] worked in four minutes.<sup>23</sup>  
12 It just [isn't] possible."

13 Trial Transcript, May 16, 2011, p. 19. Mr. Fumo was referring to the "four  
14 minutes" between when the 911-call actually occurred (7:11pm) and the time that  
15 Mrs. Holly's testimony and Arbuckle's initial statement to police supported that  
16 I picked her up at (7:15 pm). (This evidence was also not presented ~~to~~ due to  
17 Mr. Fumo's failure; See Ground 1 ). The unkept promise Mr. Fumo made  
18 in Opening undoubtedly diminished the credibility of my defense in the jury's eyes  
19 as well causing significant prejudice.

20 There is a reasonable probability that if Mr. Fumo would have called the  
21 911-dispatch records custodian, Officer Hoyt or other relevant persons to testify to  
22 the actual time (7:11pm) that means 911-call was made the outcome of my  
23 trial would have been different. Furthermore, although this ground standing alone  
24 requires reversal of my wrongful convictions, it was also a link in a chain of  
25 cumulative errors that my trial attorneys made that caused substantial prejud-  
26 ice when considered together and deprived me of a fair trial (See Grounds 14 ).

### 27 III. Evidentiary Hearing Requested



## Ground 6

I am in custody in violation of my 6<sup>th</sup>, 14<sup>th</sup> and 5<sup>th</sup> amendment rights of the U.S. Const., as well as Nev. Const. Art. I, Sec. 3, 6, and 8, and Art. IV, Sec. 24. Because my trial attorneys rendered ineffective assistance of counsel when he failed to call Defense investigator Craig Retke to the stand to elicit testimony regarding the amount of time it would likely take a person to drive across the distance between the crime-scene and Mrs. Holly's work place using the fastest routes available, which would have bolstered my defense and severely undermined the State's case.

### Supporting Facts:

I. Deficient Performance: my trial attorney's performance was deficient and fell below an objective standard of reasonableness when he failed to call defense investigator Retke as witness and allowing him to testify to exculpatory information that would have undermined the State's case and aided the jury in understanding my defense. This failure deprived the jury of critical information.

At trial, the State argued, that as a perpetrator I must of fled the crime-scene, dropped off an unknown accomplice and drove to Mrs. Holly's work place to pick her up on the opposite side of town. The crime-scene is located at 2612 Glory View Ln., N. LV., NV. 89032; the main cross-roads being W. Lake Mead Blvd., and N. Simmons St. in N. Las Vegas. Meanwhile, Mrs. Holly's work place was located at 715 N. Nellis Blvd., LV., NV. 89101; The main cross roads being E. Bonanza Rd., and N. Nellis Blvd., in East Las Vegas. The physical distance between the two locations is approximately 8 and 1/2 miles apart. See Exhibit H, attached: Defense investigator Craig Retkes Case Investigation report and "Google Maps" Print outs with investigative notes.

The State's trial theory was that if I was the perpetrator then I must have arrived to pick Mrs. Holly up from her work place at 7:30 pm or later.

See Trial Transcript, May 20, 2011, p. 132-133

1 Prior to trial, my attorney Mr. Fumo anticipated the State's theory.  
2 As such, defense counsel interviewed Mrs. Holly about the day in question.  
3 Mrs. Holly informed defense counsel that on the day in question I arrived to  
4 pick her up between "7 and 7:15 pm", and that detective Prieto had used  
5 numerous techniques to coerce her to change her statement into a false one regarding  
6 what time I had picked her up See Exhibit D, attached: Tiffany Holly's  
7 Affidavit dated: 2-24-2011. Mrs. Holly also informed defense counsel during the  
8 pre-trial interview that just as her Manager Jefferey Arbuckle was pulling out  
9 the parking lot of her work place at El Dorado Cleaners, I was pulling in the  
10 parking lot See Trial Transcript, May 19, 2011, p. 60

11 Furthermore, police reports from pre-trial discovery indicated that Arbuckle  
12 initially told Detective Prieto that on the day in question "he was working when  
13 [Mrs. Holly] got off work. He said when he left work it was 7:15 pm and  
14 [Mrs. Holly] was still waiting outside the business for her ride" See Exhibit A  
15 attached: Police Report by Detective Prieto, p. 3-4 dated: 8/11/04. <sup>1</sup> This infor-  
16 mation combined with Mrs. Holly's statement indicated that I arrived to pick  
17 Mrs. Holly up from her place of work at El Dorado Cleaners at approximately  
18 7:15 pm.

19 Police reports from the pretrial discovery, also 911 dispatch records, indicated  
20 that victims of the crime called 911 to report the ~~the~~ crime at 7:11pm See Ex-  
21 hibit F, attached: Police Report by Officer Hoyt dated: 6/30/04, p. 9 (  
22 listing the 911 dispatch time as "1911 hours"). Officer Hoyt's police report also  
23 indicated that victim Means "told [Officer Hoyt] that the suspects then left out the  
24 front door. After a few seconds, Means got up, broke the wires the suspects tied  
25

26 <sup>1</sup> At trial, Arbuckle suspiciously changed his testimony regarding what time  
27 he left work. However, he did confirm that as he was pulling out the parking lot  
28 I was pulling in to pick Mrs. Holly up. See Trial Transcript, May 17, 2011, p. 42

1 him up with and ran outside to his vehicle. Mean's girlfriend, Destiny Waddy  
2 was waiting inside the vehicle " See Exhibit F, attached: Police Report by  
3 Officer Hoyt supra at p. 10. It was further discovered through an  
4 interview between defense investigator Retke and mean's girlfriend Destiny Waddy  
5 that after means exited the house he went " to the car and used her phone to  
6 call 911 " See Exhibit I, attached Case Investigation report by Retke dated  
7 02/14/11, at p. 2. All this indicated that means called 911 at 7:11 pm,  
8 "seconds" after the perpetrators fled the crime scene.

9 Based upon the evidence in his pre-trial possession defense counsel Mr. Fumo  
10 asked and directed defense investigator Retke to research and determine the  
11 fastest driving routes available at the time that a person could use to travel  
12 the distance between the crime scene on Glosy View and Mrs. Holly's work place  
13 on Nellis and Bonanza Rds. Using information from the Dept of transportation  
14 and "Google Maps" investigator Retke uncovered the fastest available routes  
15 between the two locations, and personally "timed" himself driving each route  
16 in order to determine the amount of time it would take to drive across the distance;  
17 He discovered that using various speeds it would take an individual between  
18 21 and 24 minutes utilizing the fastest routes available. See Exhibit H,  
19 attached: Case Investigation report and Google map Printouts with investig-  
20 ative notes. Defense investigator Retke compiled all of his investigative results  
21 and information into written reports and turned them over to Mr. Fumo before trial.  
22 At a contact visit at C.C.D.C. Mr. Fumo informed me that the "drive time"  
23 evidence gathered by investigator Retke would be used in my defense at trial.

24 However, at my trial, Mr. Fumo did not call investigator Retke to the  
25 stand as a witness in my defense. When I asked him why, Mr. Fumo and  
26 Mr. Marcello that they planned to simply show the Google map information regard-  
27 ing the distance and time it takes to drive the distance in their Power Point and on  
28 the courtroom projector during the Closing arguments and simply explain their meaning

1 to the jury then, instead of expending time calling Retke to the stand.

2 Needless to say, this plan by defense counsel backfired as well. And  
3 during an "off-record" discussion between Judge Herndon (my trial Judge)  
4 and co-defense counsel Mr. Marcello before closing arguments the Court told  
5 defense counsel that he was prohibited from discussing the Google information  
6 because he failed to lay any evidentiary foundation through testimony or other-  
7 wise during the trial to support this information. Mr. Marcello apologized  
8 to me for this error before summation and explained why the Court had prohibited  
9 him to speak about this during closing. The error was unreasonable.

## 10 II. Prejudice -

11 My trial attorney's failure to call defense investigator Retke as a  
12 witness in my defense ~~at~~ trial, and elicit testimony regarding investigator  
13 Retke's investigative findings relating to the amount of time it would take  
14 a person to drive the distance between the crime scene and Mrs. Holly's work  
15 place using the fastest routes available prevented him from being able to discuss  
16 crucial evidence with the jury. It left defense counsel with a "half-baked"  
17 argument in which defense counsel essentially asked the jury to "guess" how much  
18 time it would take to drive from the crime scene to Mrs. Holly's work place:

19 "Mr. Marcello: . . . Now, in order for Mr. Slaughter to have  
20 committed this crime and to also have picked up [Mrs. Holly], who worked at  
21 El Dorado Cleaners, he would have had to have traveled a distance of approx-  
22 imately 10 miles. Now, you are allowed to use your common sense, as well  
23 as your life experiences to understand that a trip in Las Vegas of 10 miles  
24 would take -- I will leave it to you to decide how long that trip would  
25 take in Las Vegas with normal traffic from 6:00 o'clock to 7:00  
26 o'clock to 8:00 o'clock

27 Trial Transcript, May 20, 2011, p. 84-85

28 Defense counsel also made unkept promises about what the evidence would

1 show in his opening statement. See Trial Transcript, May 16, 2011, p. 19. which surely  
2 diminished the credibility of my defense in the jury's eyes.

3 Defense counsel's error here, deprived him of the ability to give a "concrete"  
4 time-estimate to better aid the jury in understanding whether or not, in light of  
5 other evidence, it was even physically possible for me to be a perpetrator to the crimes.  
6 If jurors believed Mrs. Holly's testimony regarding what time I picked her up from  
7 work, and understood the amount of time it would take to drive the relevant dis-  
8 tance, there is a reasonable probability that the jurors would not have wrongly  
9 convicted me; At least one juror would have had a reasonable doubt. Moreover,  
10 this error contributed to a chain of errors by defense counsel throughout the trial  
11 (See Grounds 14; 1-13 ) that when viewed cumulatively completely destr-  
12 oyed the force/thrust of my defense, caused extreme prejudice, resulted in ineffective  
13 assistance of counsel, and deprived me of my state and federal constitutional  
14 rights to a fair trial.

### 15 III. Evidentiary Hearing Requested

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g) Ground 7

I am in custody in violation of my 6<sup>th</sup>, 14<sup>th</sup>, and 5<sup>th</sup> amendment rights of the U.S. Constitution, as well as, the Nev. Const. Art. 1, Sec. 3, 6, and 8, and Art. IV, Sec. 24. Because my trial attorneys rendered ineffective assistance of counsel when they failed to investigate and discover that critical State witness Jeff Arbuckle had an extensive criminal background/record, had received benefits from the State and had a personal bias against me, which all constituted material impeachment evidence that could have been used to impeach his credibility.

Supporting Facts:

I. Deficient Performance - my trial attorney's performance was

deficient and fell below an objective standard of reasonableness because he failed to adequately investigate and follow-up on the information that would have alerted and led a reasonable attorney to the discovery of material impeachment evidence against the State's key rebuttal witness Jeff Arbuckle. The information and evidence that Mr. Fumo failed to follow up on indicated 1) that Arbuckle had an extensive criminal record (see Exhibit K, attached: Case Investigation report by defense investigator Retke dated: 4/26/11); 2) that Arbuckle had received monetary and other benefits from the State; and 3) that Arbuckle had a very personal bias against me that may have motivated him to lie and slant his testimony against me in effort to achieve a personal vendetta of revenge.

1) Failure To Discover Arbuckle's Criminal Record

During the events in question, Arbuckle was the Manager of El Dorado Cleaners, in charge of Supervising employees, at the place in which Mrs. Holly was employed. During the police investigation, Detective Prieto interviewed Arbuckle as a witness to what time I picked Mrs. Holly up on the day in question, from her work place. Arbuckle informed Detective Prieto that on the

1 day in question "he was working when [Mrs. Holly] got off work. He said when  
2 he left work it was 7:15 pm and [Mrs. Holly] was still waiting outside the  
3 business for her ride." See Exhibit A, attached: Police Report by Detective Prieto  
4 dated 8/11/04, p. 3-4.

5 Prior to trial, defense counsel filed a "Notice of Alibi" in it explaining  
6 that he was with Mrs. Holly at the time of the crimes (later defense counsel filed  
7 another "Notice of Alibi Witnesses" or "N.O.A." adding additional witnesses to account  
8 for most of that day). In response to this, the State filed a "Notice of  
9 Witnesses" for its case-in-chief, as well as, a "Notice of Rebuttal Witness"  
10 in which Arbuckle was listed at the top of both of these witness list for the  
11 State. This indicated to defense counsel the importance of the testimony the  
12 State expected Arbuckle to give at trial. He was to be a very key witness.

13 As such, prior to trial, Mr. Fumo directed defense investigator Retke  
14 to locate and interview Arbuckle in order to be adequately prepared to cross-  
15 examine Arbuckle at trial in case his testimony changed in an adverse way  
16 (which I told Mr. Fumo was likely given our history See next section "3)"). The  
17 Defense investigator was unable to personally contact and locate Arbuckle for an  
18 interview, however investigator Retke did make contact with the current owner  
19 of El Dorado Cleaners, Ira Shirvani ("Shirvani"), who knew Arbuckle  
20 and told investigator Retke what he knew about Arbuckle. Investigator Retke  
21 detailed the following from his conversation with Shirvani in a written Case  
22 Investigation report which he gave to Mr. Fumo well in advance of the trial:

23 "Shirvani stated that Arbuckle is a bad individual and was  
24 in constant trouble and getting put in jail"

25 See Exhibit K, attached: Case Investigation report by investigator Retke  
26 dated: 04/26/11 p. 1

27 Despite having possession of this information, and full notice from the State  
28 that Arbuckle was a critical Rebuttal witness to my Alibi defense, Mr. Fumo

1 Completely failed to conduct any follow-up investigation into Arbuckle's crimin-  
2 al record and history. At the very least, a reasonable attorney would have  
3 been alerted to request an investigative review of Arbuckle's "S.C.O.P.E."  
4 records, after receiving notice that potentially critical impeachment evidence, such as a  
5 criminal record on one of the State's key rebuttal witnesses might be available. The  
6 failure to follow-up on this information was fundamentally unreasonable because  
7 the error prevented defense counsel from gathering fodder for cross-examination of  
8 this witness in the form of a potential felony conviction record on Arbuckle and leads  
9 to other impeachment evidence like past or present deals between Arbuckle and the State  
10 (see next sections).

## 11 2) Failure To Discover That Arbuckle had received "benefits" from 12 The State

13 Defense Counsel failed to discover that Arbuckle had been paid with  
14 "payment" vouchers from the State for secret "pre-trial" conferences with  
15 the State prosecutors and <sup>their</sup> ~~the~~ office constituents pursuant to an official, (yet  
16 unknown outside the Clark County D.A.'s office), policy in which prosecutors of  
17 the Clark County D.A.'s office routinely paid all witnesses \$25 plus dollars for  
18 each private "pre-trial" meeting the witness attended. See Exhibit L, attached  
19 reviewjournal.com article titled "Prosecutor Practice: Witnesses Often get  
20 paid, shocking defense community" (stating that "Prosecutors say they routinely  
21 pay a \$25 fee, plus mileage, to any witness who meets with them before trial  
22 . . . [Assistant District Attorney] Lalli, who joined the district attorney's  
23 office 15 years ago, said Clark County prosecutors have been paying witnesses  
24 to attend private pretrial meetings as long as he has worked there . . .").  
25 There have been numerous trial settings in this case going as far back as December  
26 2004, that were rescheduled at the last minute. Without doubt leading up to  
27 these trial dates the state had pretrial meetings with Arbuckle (and other witness-  
28 es; See Ground 9 ) to go over his anticipated testimony with prosecutors for



1 which Arbuckle was paid the routine secret / undisclosed payments.

2 The media story on these secretive, or otherwise undisclosed, witness  
3 payment policies in the Clark County District Attorney's office came to light on  
4 March 8, 2009, (unbeknownst to me due to my incarceration), in the above referenced  
5 Review-Journal Newspaper article by reporter Carri Geer Thevenot, in which she  
6 reported that prosecutor Michelle Fleck (who was also co-trial counsel for the State  
7 in my case), had in another case been providing these undisclosed payments to a  
8 witness who had perjured herself, just to get these payments from the State to  
9 fund her crack-cocaine addiction.

10 The breaking of this story did not discourage the Clark County District  
11 Attorney's policy, or prosecutors from still routinely providing these undisclosed  
12 payments over the next few years that followed. As reported on "Nevada Week  
13 in Review" (Public Broadcast Station - PBS) on 11-16-2013, representatives for  
14 the Clark County District Attorney's office, ~~he~~ stated that the payment policy  
15 was not condemned, and discontinued until the year 2013 by current District  
16 Attorney Steven B. Wolfson. Thus, my case is implicated and affected by the policy.

17 As such, the breaking of this story should have <sup>alerted</sup> ~~placed~~ defense counsel Mr.  
18 Fumo to request specific disclosure, or otherwise discover by due diligence, of any  
19 and all payments provided to Arbuckle, and other witnesses, for pretrial meetings  
20 he attended with prosecutors. Especially, given the fact that at these pretrial  
21 meetings witness testimony is often gone over, thus a witness's testimony may  
22 be shaped or influenced in whole, or in part, by these payments by the State pros-  
23 ecutor. Defense counsel had reason to know that Arbuckle would be a key witness  
24 for the State in both their case in chief, as well as, in the State's attempt to  
25 rebutt my alibi. Thus, it was unreasonable for Mr. Fumo to not investigate  
26 and discover information which relates to a legitimate area of cross-examination  
27 and mode of impeachment under the law. In the alternative, the State  
28 violated Constitutional Brady rules by failing to disclose this information to

the defense on it's own accord (See Ground )

### 3) Failure To Discover Evidence of Arbuckle's Personal Bias

Prior to trial, I personally informed defense counsel Mr. Fumo that Arbuckle could not be trusted to remain honest on the witness stand and stick to the original statement that he provided to police because a) Approximately, a month or so, before the day in question Arbuckle and I had gotten into a heated verbal argument at Mrs. Holly's work-place, and b) detective Prieto had a history of unlawfully coercing witnesses into changing their statements into false statements. See Exhibit D, attached: Affidavit by Tiffany Holly

However, unknown to me at the time of the incident, or before or during trial. In response to the verbal argument between me and Arbuckle, Arbuckle appears to have had filed a police report /or complaint with the police on 06-03-2004, requesting that I be "trespassed" from "715 N. Nellis Blvd" (El Dorado Cleaners, Mrs. Holly's work-place). I personally discovered this information after trial, after receiving Mr. Fumo's Case file regarding my case and reviewing a "print-out" of my S.C.O.P.E.-record which was contained in Mr. Fumo's personal trial file See, Exhibit m, attached: S.C.O.P.E. Printout for Rickie Slaughter (listing "060304 Tres 715 N. Nellis P#6539 040603-2698"). Based upon this SCOPE record and in his listing this address and information, defense counsel should have known that "715 N. Nellis" pertained to Arbuckle and Mrs. Holly's work place address as the address was listed on numerous other documents in Mr. Fumo's file including police reports and the State's Notice of Witnesses, as being Arbuckle's address.

Furthermore, combining all this with the information that I personally conveyed to Mr. Fumo regarding the "heated" argument that took place at Arbuckle and Mrs. Holly's work place between Arbuckle and I, it was professionally unreasonable for Mr. Fumo to not put this together and conduct some kind of follow-up investigation into the facts surrounding Arbuckle's apparent attempt to get a trespass complaint filed against me. Whether Mr. Fumo simply

1 overlooked this critical information, or deliberately made no attempt to uncover the  
2 facts. Mr. Fumo's actions were deficient. Because a reasonable attorney would  
3 have sought to develop factual information against a critical state witness which  
4 would indicate personal bias, or animus against his client which could potentially  
5 translate into a motive for a witness like Arbuckle to lie on the witness stand  
6 (which is exactly what happened at trial; See next section on prejudice). Especially,  
7 when Mr. Fumo was put on sufficient enough notice to alert him to potential  
8 problems that may arise with Arbuckle and his potential to slant his testimony  
9 against me.

10 **II. Prejudice** - Defense counsel's complete failure to conduct any  
11 meaningful investigation into Arbuckle, and follow-up on the multiple indicators  
12 which had been given to him that material impeachment existed relating to Arbuckle's  
13 credibility caused substantial prejudice, because Mr. Fumo lacked any meaningful  
14 means to impeach and undermine Arbuckle's credibility when Arbuckle in fact  
15 changed his story and lied on the stand at trial.

16 For example, at trial, Arbuckle testified in a way that dramatically differed  
17 factually from what he initially told Police. Initially, Arbuckle told detective Prieto  
18 that he had left work at 7:15 pm on the day in question and that when he left  
19 Mrs. Holly was outside the business waiting for her ride. See Exhibit A, attached  
20 Police Report by detective Prieto dated 8/11/04, p. 3-4. However, at trial  
21 Arbuckle now claimed for the 1st time ever that he waited outside with Mrs. Holly  
22 until approximately 7:30 pm or later for me to pick her up and saw me enter  
23 the parking lot of their work place as he was leaving; This inconsistent change  
24 in his story favored the State's theory. See Trial Transcript, May 17, 2011, p. 41-  
25 42.

26 Mr. Fumo was unable to impeach Arbuckle about his prior inconsistent statement  
27 (due to other errors by defense counsel; See Ground 14). However, had Mr. Fumo  
28 conducted follow-up investigations into the indications he had regarding Arbuckle's

1 personal bias / attempt trespass complaint against me, the monetary benefits Arbuckle  
2 received from the State for pretrial meetings, and Arbuckle's criminal record,  
3 Mr. Fumo would have possessed alternative means of impeaching and under-  
4 mining Arbuckle's credibility before the jury.

5 For instance, Arbuckle also testified on direct examination at my trial  
6 that he did not personally know me. See Trial Transcript, May 17, 2011, at  
7 p. 43 ("Mr. DiGiacomo: Did you know her boyfriend at the time?" [Arbuck-  
8 le]: Not personally"). This was another clear lie by Arbuckle, and evi-  
9 dence that Arbuckle and I had previously had a heated verbal argument and  
10 fallout could have been used to demonstrate that Arbuckle was being untruthful  
11 on the stand, and had a motivation to lie on me to exact revenge due to his  
12 personal animus toward me, which stemmed from an on-going dispute between  
13 he and I. Likewise, evidence that he had received monetary benefits from  
14 the State for attending private meetings in which Arbuckle's testimony was  
15 discussed and went over with prosecutors could have been used to demonstrate  
16 a motive to slant his testimony in favor of the State for the money. Not to ment-  
17 ion, that investigation into this area by Mr. Fumo may have led to other usable  
18 evidence to use in combination; such as addictions, debts, or needs for financial  
19 assistance on the part of Arbuckle which could make him vulnerable to need  
20 or want the State's payment vouchers enough to lie. And obviously, evi-  
21 dence of a felony conviction, or pending felony charges by the State, could  
22 have been used to demonstrate that Arbuckle was a convicted felon, or that he  
23 was trying to appease the State in hopes of leniency from the State on his  
24 pending charges by assisting the State in my case.

25 However, due to Mr. Fumo's failure to develop these impeachment areas throu-  
26 gh ~~minimal~~ minimal investigation efforts, Arbuckle's inconsistent testimony  
27 and credibility went virtually unchallenged. The State pounced on this  
28 failure in closing argument:

1 " Mr. DiGiacomo : . . . Let's see, [Mrs. Holly], the first thing  
2 she tells the police is 7:30 at night or before 7:30 at night. I am  
3 not telling you, you should believe her. I think you should believe  
4 Mr. Arbuckle, who has no reason to lie . . . " Trial Transcript,  
5 May 20, 2011, at p. 132-133; See also, Trial Transcript May 20, 2011, p. 54-55  
6 Arbuckle's testimony was pivotal to undermining my defense, and Mrs. Holly's  
7 testimony, that I picked her up at a time that made it impossible for me to be  
8 a perpetrator to the crimes. Thus, revealing Arbuckle's credibility problems to  
9 the jury was crucially needed in order to get the jury to see a reason to  
10 doubt Arbuckle's version of events. And confront the possibility that Mrs.  
11 Holly was telling the truth, and if so, whether it was physically impossible for  
12 me to be at the crime scene and near Holly's work place approximately 8 1/2  
13 miles away on the opposite side of town, at nearly the same time. The rest  
14 of the state's case was largely circumstantial, and the eyewitness evidence they  
15 presented had many inconsistencies and was overall weak ( See Grounds, 1-6 ).  
16 Thus, this point was one of the " make or break " points of contention at trial.  
17 Although this error standing alone requires reversal of my wrongful  
18 conviction because had Mr. Fumo not failed here, there is a reasonable  
19 probability that at least one juror would have been swayed to disbelieve Arbuckle  
20 on this point and changed the outcome of the trial by causing a dead lock  
21 or convincing other jurors to have reasonable doubt during deliberations. This  
22 ~~was~~ error was also one in a chain of errors by defense counsel ( see Ground  
23 14 ) that viewed cumulatively caused extreme prejudice to my defense  
24 resulted in ineffective assistance of counsel, deprived me of my state and  
25 federal constitutional rights to a fair trial.

### 26 III. Exigent Hearing Requested

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## h) Ground 8

I am in custody in violation of my 6<sup>th</sup>, 5<sup>th</sup> and 14<sup>th</sup> amendment rights of the U.S. Const., as well as Nev. Const. Art. I, sec. 3, 6, 8 ; and Art. IV, Sec. 24. Because my trial attorney failed rendered ineffective assistance of Counsel when he failed to subpoena and call Officer Mark Hoyt to the stand as a witness for my defense at trial and elicit prior-inconsistent statements made by the eyewitnesses.

### Supporting Facts :

**I. Deficient Performance** - my trial attorney's performance was deficient and fell below an objective standard of reasonableness when he failed to subpoena, secure the presence of, and call Officer Mark Hoyt ("Officer Hoyt") as a witness for my defense and elicit John's prior-inconsistent statements which he made to him, as well as the description provided to him of the perpetrator's vehicle which was used in their get-away.

Police reports by officer Hoyt which were provided to my trial attorney Mr. Fumo indicated that John did not have much of an opportunity to view the perpetrators through the commission of the crime, Because John's head was covered with a jacket blocking his sight early on in the incident See, Grounds 3 (I hereby incorporate all the facts alleged under those grounds by reference to support this claim). Officer Hoyt's police report also the time of the 911 dispatch, as well as, eyewitness Destiny Waddy's description of the perpetrators get-away vehicle as being a Pontiac Grand Am See Exhibit F, attached: Police Report by Officer Hoyt dated: 8/12/04, p. 10-11

Mr. Fumo informed me that he had "forget" to subpoena Officer Hoyt's presence to my trial, because he had wrongfully assumed that the State call all police witnesses<sup>and other witnesses</sup> listed on it's witness list. This was fundamentally unreasonable

**II. Prejudice** - my trial attorney's failure to secure officer Hoyt's testimony at ~~his~~ my trial regarding John's prior-inconsistent statement, and

1 the description of the get away vehicle provided to him cause significant  
2 prejudice because it prevented my trial attorney from having a way to count-  
3 er the state's evidence. At trial, John switch his story and lied to the  
4 jury by testifying that the perpetrator's had placed a jacket after victim  
5 Young was shot, See Trial Transcript, May 17, 2011 at p 58-59. However,  
6 John had told Officer Hoyt at the scene that the perpetrators had placed the  
7 jacket over his head from the beginning of the ordeal in the house before Young  
8 was shot. See Exhibit F, attached supra Police Report of Officer Hoyt.

9 And Mr. Fumo also could have elicited the fact that Officer Hoyt's  
10 police report listed the 911 dispatch time as 7:11 pm, which would have suppo-  
11 orted the defense theory that the perpetrators fled at that time and thus, could  
12 not have been me. See Ground

13 Lastly, the State's theory was that the perpetrators get away vehicle  
14 was a Ford Taurus, and Officer Hoyt listed the only provided description  
15 of the get away vehicle provided by eyewitnesses at the scene as being a Pontiac  
16 Grand Am, thus testimony regarding this fact would have undercut and  
17 helped to rebutt the State's theory that my girlfriends green Ford Taurus  
18 was the get away vehicle. Had my trial attorney called Officer Hoyt as a  
19 witness to elicit the relevant testimony, there exist a reasonable probability  
20 that atleast one juror would have had a reasonable doubt about the State's  
21 case and change the jury deliberations, caused a deadlock or even an  
22 acquittal. Furthermore, although this error standing alone requires reversal  
23 of my wrongful conviction, this error was only one in a long chain of errors  
24 committed by my trial attorneys (See Grounds ), that when viewed  
25 cumulatively caused substantial prejudice by leaving jurors with a very  
26 one sided version of the evidence that favored the State which resulted in  
27 ineffective assistance of counsel and deprived me of my state and federal rights to a fair trial.

28 **III. Evidentiary Hearing Requested**

## i) Ground 9

I am in custody in violation of my 6<sup>th</sup>, 14<sup>th</sup>, and 5<sup>th</sup> amendment rights of the U.S. Const., as well as, Nev. Const. Art. I, Sec. 3, 6, 8; and Art. IV, Sec. 24.

Because my trial attorneys failed to exercise due diligence and investigate and discover material impeachment evidence against the State's eyewitnesses, that prosecutors had provided it's witnesses monetary compensation each time they attended private pretrial meetings with the prosecutors in which the witnesses testimony was gone over, and quite possibly have been shaped

### Supporting Facts:

I. Deficient Performance - my trial attorney's performance was deficit and fell below an objective standard of reasonableness when defense counsel failed to investigate how much money was, and had been, paid to the State's eyewitnesses for attending private pretrial meetings with prosecutors, in which the eyewitnesses' ~~pt~~ potential ~~and~~ testimony was gone over. These "payments" from the State to it's witnesses, constituted "benefits" and inducements that were given to these witnesses for cooperating with the prosecution and thus, constitute material impeachment evidence. Because the witnesses cooperation, allegiance to the State, and ultimately the witnesses' testimony may have been shaped, or influenced, and/or motivated in whole, or in part, by these payments of monetary compensation.

On March 8, 2009, (unbeknowst to me due to my incarceration), a media story broke the light for the first time on the Clark County District Attorney's Office's secretive or otherwise undisclosed witness payment policy in a Las Vegas Review-Journal newspaper article by reporter Carri Greer Therenet, in which she reported that prosecutor Michelle Fleck, (who was, and is co-counsel for the State in my case), had in another criminal case been providing these undisclosed payments to a witness who had been perjuring herself, just to get these payments from the State to fund her crack-cocaine addiction. See



1 Exhibit L, attached: Reviewjournal.com Article Titled "Prosecutor Practice:  
2 Witnesses often get paid, shocking defense community."

3 In the article, it was reported that the Assistant District Attorney Chris  
4 Lalli, and other prosecutors, said that they have been routinely offering ~~the~~ and  
5 providing the monetary payments to witnesses, for each pretrial meeting the  
6 witnesses attended for atleast the previous decade and a half. See Exhibit L,  
7 attached supra at p.1 (reporting that "Prosecutors say they routinely  
8 pay a \$25 fee, plus mileage, to any witness who meets with them before  
9 trial. . . [Assistant District Attorney] Lalli, who joined the district attor-  
10 ney's office 15 years ago, said Clark County prosecutors have been paying  
11 witnesses to attend private pretrial meetings as long as has worked there  
12 . . ."). Based upon these statements from the Clark County D.A.'s  
13 Office, it is clear that this payment policy to compensate witnesses for coop-  
14 eration was an office-policy followed by all prosecutors, in that office.

15 Furthermore, the breaking of this story did not discourage the Clark  
16 County D.A.'s office policy, or prosecutors from still routinely providing these  
17 undisclosed payments to witnesses for their cooperation over the next few years  
18 that followed. Because as reported on the PBS (Public Broadcast Station)  
19 program "Nevada Week in Review," which aired on 11-16-2013, represen-  
20 tatives for the Clark County D.A.'s office stated that the witness payment  
21 policy was not condemned, and discontinued until that year (2013) by  
22 current District Attorney Steven B. Wolfson. Thus, my case is implicated  
23 and affected by the now condemned witness payment policy as my case 1<sup>st</sup>  
24 entered the District Court docket in 2004, and went to trial in 2011.

25 As such, the breaking of the March 8, 2009, media story by the Las  
26 Vegas Review-Journal, should have alerted defense counsel Mr. Fumo to  
27 exercise due diligence, investigative means, and/or request specific disclosure  
28 of any and all payments by the prosecutors to eyewitnesses Ivan Young,

1 Jermaun Means, Ryan John, and Jose Posada; As well as for witnesses  
2 Jennifer and Aaron Dennis, for any and all pretrial meetings these witnesses  
3 attended with prosecutors or their constituents. Especially, given the fact that  
4 there had been numerous trial-settings in this case that were continued and resch-  
5 eduled at the very last minute, going as far back as December 2004. And  
6 without doubt, a reasonable attorney would know that leading up to those trial  
7 dates the State definitely had pretrial meetings with it's key witnesses from  
8 which the witnesses would have been provided payments, pursuant to the policy.

9 That fact has the potential to net the witnesses a decent sum of money,  
10 especially witnesses Ivan Young, Jose Posada, Jennifer and Aaron Dennis who  
11 all live under the same roof as a family (that's an aggregate \$100 plus mileage  
12 cost, every pretrial meeting to the heads of that house X times however many pretr-  
13 ial meetings they've had).

14 Defense counsel had reason to know that all of these witnesses were crucial  
15 to the State's case-in-chief. Thus, it was objectively unreasonable for Mr.  
16 Fumo to not investigate this information which could have led to more usable  
17 evidence, and relates to a legitimate area of cross-examination and mode of  
18 impeachment under the law. In the alternative, the State violated constitut-  
19 ional Brady-rules by failing to disclose this information to defense counsel  
20 on it's own accord. (See ~~Fumo~~ ).

21 II. Prejudice - my trial attorney's failure to discover and investig-  
22 ate the information on the payments that have been provided to these witnesses  
23 prevented defense counsel from being able to cross-examine, and explore wheth-  
24 er the money provided by the prosecutors played a role, or motive, in these witne-  
25 sses changes in their testimony at trial, and allegiance to the State. For  
26 example, eyewitnesses Young, John and Posada made dramatic changes to their  
27 stories in their testimony at trial in key ways that favored the state, that when  
28 compared to their initial statements to police and testimony at the preliminary hearing

1 were flat-out inconsistent (See Grounds 3, I hereby incorporate  
2 all of the facts stated in these grounds here by reference). And witness Jennifer  
3 Dennis tried to change the model of vehicle that she heard the perpetrator's  
4 mention from a "Pontiac" to a "Buick", which was significant in the scheme  
5 of things, as it would ~~of~~ have detracted from Ms. Waddy's description of the  
6 get away vehicle being a Pontiac Grand Am, (a point of contention for the defense)  
7 See Trial Transcript, May 16, 2011, at p. 128 and 139; See also Ground 4

8 Thus, evidence on the amount of money these witnesses had been paid  
9 for cooperating with prosecutors at private pretrial meetings in which their  
10 testimony was discussed would have enabled Mr. Fumo to conduct a cross-  
11 examination regarding whether these payments influenced or motivated the changes  
12 in their testimony to benefit the State. Such an examination on this subject  
13 may have led to other relevant information such as whether any of the witnesses  
14 were ~~each~~ strapped for cash or in need financial aid, or had addictions that  
15 could have been funded with the money, etc. Regardless, eliciting information  
16 regarding the payments on cross-examination, together with the witnesses inco-  
17 sistent testimony, would have provided defense counsel a proper, powerful basis  
18 to make a logical inference in his argument to the jury and ask them whether  
19 to consider whether the payments had affected the witnesses testimony and  
20 motivated them to lie out of a feeling of allegiance to the state, or just  
21 to get the money.

22 Although this error standing alone requires reversal of my wrongful convict-  
23 ions, but had Mr. Fumo not failed here there exist a reasonable probability  
24 that at least one juror would have had reasonable doubts about the state's case  
25 and witnesses and changed the outcome of the trial. This error was also one  
26 in a chain-of-errors by defense counsel (see Ground 14) that when viewed  
27 cumulatively caused extreme prejudice, robbed the jury of critical infor-  
28 mation, resulted in ineffective assistance of counsel and deprived me of my

1 state and federal constitutional rights to a fair trial.

2 III. Evidentiary Hearing Requested

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j) Ground 10

I am in custody in violation of my 6<sup>th</sup>, 14<sup>th</sup> and 5<sup>th</sup> amendment rights of the U.S. Const., as well as, Nev. Const. Art. 1, sec. 3, 6, 8 and Art. IV, sec. 24. Because my trial attorney rendered ineffective assistance of counsel when he failed to investigate and discover that the picture of me used in the 1<sup>st</sup> set of photo lineups from which I was identified, had been obtained during an illegal police "field interview" in which my 4<sup>th</sup> amendment rights were violated, and thus the picture (and photo lineups) should have been suppressed.

Supporting Facts:

I Deficient Performance - my trial attorney's performance was deficient and fell below an objective standard of reasonableness. When he failed to investigate and follow-up on my claims to him that the photo of me utilized in the State's 1<sup>st</sup> set of photo lineups from which I was identified, was illegally obtained by police during an illegal field interview of me and thus should have been suppressed.

Months before trial, my trial attorney Fumo came to the Clark County Detention Center ("CCDC") and had a contact visit with me, at which Mr. Fumo asked me to tell ~~at~~ him where the photo in the State's 1<sup>st</sup> set of photo lineups had originated from (there were 2 distinct sets of photo lineups in this case, each containing a different photo of me) (See Grounds 3). I informed Mr. Fumo that the photo had originated from a vehicle stop a few months before the day in question, in which the Las Vegas Metropolitan Police had pulled me over for the sole purpose of ~~th~~ trying to gather "gang information" about me and my passenger, Nanshay Riles; I further informed Mr. Fumo that the police officers during this stop had informed me that they just wanted to take some pictures of me and Riles and ask ~~o~~ us some questions regarding our potential gang affiliations. I told Mr. Fumo that I did not receive any traffic citations that I could remember, and that I did not feel free to leave until the officer told me I could. I also gave Mr. Fumo the location of where the stop occurred.

1 and the picture was taken; <sup>near</sup> ~~on~~ the Maryland Parkway and Bonanza Rd. intersec-  
2 tion.

3 Mr. Fumo told me that the stop sounded "improper" and much like racial  
4 "profiling", and that he would have to look further into it. After our visit conclu-  
5 ded, I went back to my Unit on the 7<sup>th</sup> Floor of C.C.D.C., and began talking  
6 to an inmate there named Channon Somee ("Somee") about Mr. Fumo's and  
7 my discussion regarding the photo lineups and the vehicle stop being the origin for  
8 the photo. Somee was knowledgeable about the law. At that time, Somee inform-  
9 ed me that his case had been overturned based upon a similar issue and  
10 that he would let me see a copy of the Opinion of the Nevada Supreme Court  
11 in his case, so that I would be more informed on the issue.

12 I read the Somee Opinion, and at my next visit with Mr. Fumo  
13 I informed him that I believed, based upon what I knew had occurred at  
14 the vehicle stop, that I had valid 4<sup>th</sup> amendment and Due process issues to  
15 raise regarding the manner in which the photo of me in the 1<sup>st</sup> set of photo line-  
16 ups was illegally obtained. I then showed Mr. Fumo the Somee caselaw,  
17 which was also a published opinion. Mr. Fumo and I went over it together.  
18 When we finished I asked Mr. Fumo what he thought, and Mr. Fumo respo-  
19 nded by saying "it sounds like you may have a good issue. Write the  
20 motion up, and I'll take it from there." I asked Mr. Fumo why did  
21 I have to write the motion, and he responded by stating "Well you  
22 don't think I'm gonna write it do you, I like the way you write Rickie."  
23 The visit was then completed and Terminated.

24 This was part of a larger pattern of laziness by Mr. Fumo, inwh-  
25 ich Mr. Fumo would put me in a position that if I did not write the  
26 Motions for my case up myself, then they would not get written and submitted  
27 to the Court. Once I would write the motions, I would then give them  
28 to Mr. Fumo and he would have them typed-up and filed on my behalf

1 and argue them in court as if he had wrote them. Because of Mr. Fumo's  
2 laziness, I ended up writing every single motion that Mr. Fumo filed in  
3 my case, out of fear that the issue would be waived because Mr. Fumo  
4 wouldn't raise it. This motion writting process was mentioned by Mr. Fumo  
5 to Court personell like Law Clerk for Dept. 3 of the Eighth Judicial Dist.  
6 Court Steven Clough, Prosecutors Marc DiGiacomo and Michelle Fleck.  
7 Each have mentioned the fact that Mr. Fumo told them he had me write the  
8 motions in this case.

9 However, I did not write the motion based upon the Somee case law  
10 because Mr. Fumo failed to submit the relevant subpoenas and do the  
11 investigation needed to get the documents (gang intelligence files,  
12 police reports, and the relevant ~~ba~~ picture of me) to support the motion.  
13 And Mr. Fumo never filed the motion himself despite knowing it's relevance  
14 and likelihood for success. All of Mr. Fumo's actions and laziness here  
15 were fundamentally unreasonable and likely unethical to force clients in a position  
16 to have to write their own motions and assert their own rights.

17 II. Prejudice - Mr. Fumo's error here deprived me of a  
18 substantive and procedural right, and deprived Mr. Fumo of the opportunity to  
19 develop a valid basis to file a motion to suppress the 1<sup>st</sup> set of photo lineups,  
20 which I had a reasonably high probability of success. And had such a  
21 motion been filed and granted, the Court would have been forced to suppress  
22 the photo lineups ~~of~~ and eyewitness' in-court identifications flowing there-  
23 from as fruit of the poisonous tree against me. This would have exonerated  
24 the State's case against me. Because at trial, the eyewitness identifications  
25 stemming from the 1<sup>st</sup> set of photo lineups were the primary evidence in the Sta-  
26 tes case against me. Had the State been prevented from utilizing this evidence,  
27 by Court order, to the jury there exist a reasonable probability that the outcome  
28 of my trial would have been difficent. Because the case may have been dismissed

1 before trial for lack of sufficient evidence without the identifications, or the  
2 jury may have dead-locked, or even acquitted at trial in light of the remain-  
3 ing weakness of the remaining portions of the State's case.

4 Additionally, although this error alone requires reversal, it was only  
5 one in a chain-of-errors by my trial attorney (see Ground 14) that when  
6 viewed cumulatively resulted in ineffective assistance of counsel and deprived  
7 me of my state and federal constitutional rights to a fair trial

### 8 III Exigentary Hearing Requested



## k) Ground II

I am in custody in violation of my 6<sup>th</sup>, 14<sup>th</sup>, and 5<sup>th</sup> amendment rights of the U.S. Const., as well as, Nev. Const. Art. I, Sec. 3, 6, 8; and Art. IV, Sec. 24. Because my Appellate attorney failed to raise a valid and preserved "Batson" claim on Appeal that had a reasonable probability of obtaining a Reversal of my conviction, resulting in ineffective appellate counsel.

### Supporting Facts:

I. Deficient Performance - my Appellate attorney William Gamage's ("Mr. Gamage") performance was deficient and fell below an objective standard of reasonableness, when he failed to raise a preserved and valid claim under "Batson v. Kentucky", based upon Mr. Gamage's misapprehension of the law in which he wrongly believed that the contested jurors were not my race (and that they even had to be my race under the law, which in actuality is not required).

During jury-selection in my trial, my trial attorney raised a Batson challenge regarding the State's use of peremptory challenges to, inter alia, the lone remaining African-American on the potential jury panel, Kendra Rhines, (Ms. Rhines). In relation to the defenses challenge, the Court made the State provide an explanation for their challenge to Ms. Rhines:

"The Court: Here is what I will say, I will ask the State to the make the record as to Ms. Rhines, the African-American young lady, . . . . Because the State raised the issue for challenging for cause Ms. Jamesson and Mr. Doxie during the challenges for cause portion who are African-American, I will ask the State to make a record as to the reason behind the challenge behind Ms. Rhines."

"Mr. DiGiacomo: The same reason I challenged her for cause."

"The Court: The statements that were made for that discussion will be part of what is considered, here."

1 Trial Transcript, May 13, 2011, p. 12-13 (1:30pm vol.)

2 In response to the Court's demand for an explanation, prosecutor DiGiacomo  
3 began to <sup>explain that</sup> Ms. Rhines had an "inherent distrust" of police and authority based  
4 upon a previous comment she had made about teaching her sons how to act,  
5 or react, to getting pulled over by the police. However, a review of prosecutor  
6 DiGiacomo's own statements earlier in the jury selection process reveals that  
7 his reasons given were pretextual, and that he had already planned on using  
8 a preemptory challenge to exclude Ms. Rhines from the jury well before she  
9 even made the commentary he complained about in his explanation to the court:

10 "As far as Mr. Doxie, it was clear; for Ms. Rhines it is probab-  
12 ly a closer question, but I wasn't planning on making the challenge  
13 for cause, just using a preempt, when she was first describing this  
14 situation with the police, and I quote this, 'I need to teach my  
15 kids how to survive an encounter with the police.'

16 "That indicates a huge bias against the police, and based on that,  
17 I figured she qualified for a challenge for cause, #."

18 Trial Transcript, May 13, 2011, (9:00am) at p. 140-141 (bold face added)

19 Moreover, reviewing Ms. Rhines commentary reveals that she would have been  
20 a fair juror, and Mr. DiGiacomo was over exaggerating the context of her comments.  
21 Comparative analysis to other seated jurors, with Ms. Rhines answers in voir dire, also  
22 supports her being a fair and neutral juror, as she answered similar questions  
23 similarly. This was a solid Batson claim. The district court had abused its discretion

24 During the appeals process in my case for my direct appeal, my appellate  
25 attorney and I, discussed the grounds viable for my direct appeal. I explained  
26 to Mr. Gamage that I wanted to present the Batson claim among a few  
27 other claims, and ~~p~~ went over the transcript of the jury selection with him.  
28 Mr. Gamage told me he would do some research and think about it. However,

1 On September 4, 2013, Mr. Gamage wrote me a letter explaining that he had  
2 submitted an "Opening Brief" in my Direct Appeal, and explained that  
3 "We do not feel that it is in your best interest to <sup>bring</sup> Batson (not members  
4 of your race)." See Exhibit N, attached: Letter from William H.  
5 Gamage, Esq., dated: September 4, 2013, p. 1

6 Thus, this Batson claim was never brought on Appeal. As is clear,  
7 from the letter from Mr. Gamage referenced above, Mr. Gamage had a  
8 flawed and unreasonable <sup>apprehension</sup> of the facts, and the law that applied to this claim.  
9 Because the progeny of case law pertaining to Batson does not any longer require  
10 that the juror excluded on discriminatory grounds be a subject member of the  
11 defendant challenging the exclusions race. Moreover, the potential juror Ms.  
12 Rhimes, whom the Court made the prosecutor provide an explanation for, was  
13 African-American just like me. As such, Mr. Gamage's failure to bring  
14 this valid, preserved claim based upon his misapprehension of the facts  
15 and the law was fundamentally unreasonable by any standard.

16 **II. Prejudice** - Mr. Gamage's failure to file this Batson claim  
17 in my arguments for my Direct Appeal caused significant prejudice because  
18 the Batson claim had reasonably high likelihood and probability of success.  
19 And since this ground when meritorious requires automatic reversal the  
20 failure to include it in the brief constitutes the ultimate form of prejudice  
21 because my conviction was Affirmed without it. Furthermore, Appellate  
22 Counsel Mr. Gamage elected to include a 4 page long "quote" from  
23 a legal opinion, yet opted not to include the Batson based on a misappreh-  
24 ension of the ~~fact~~ facts and the law. A 4 page legal quote is excessive and  
25 Appellate Counsel could have condensed and summarized that quote to save  
26 at least 2 pages for the Batson claim. Had Mr. Gamage done that and  
27 argued the preserved Batson claim the outcome of my Direct Appeal had  
28 a reasonable probability of being a Reversal and Remand for a new trial

1 and not an Affirmance which is dramatically different

2 III Evidentiary Hearing Requested

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## 1) Ground 12

I am in custody in violation of my 6<sup>th</sup>, 14<sup>th</sup>, and 5<sup>th</sup> amendment rights of the U.S. Const., as well as Nev. Const. Art. 1, Sec. 3, 6, 8; and Art. IV., Sec. 24. Because my Appellate attorney rendered ineffective assistance of counsel when he failed to raise a preserved valid claim regarding the State's failure to preserve exculpatory evidence which had a reasonable probability of obtaining a Reversal of my Conviction on Direct Appeal

### Supporting Facts:

I. Deficient Performance — my appellate attorney Mr. Gamage's performance was deficient and fell below an objective standard reasonableness, when he failed to raise on Direct Appeal a claim my trial attorney's had preserved regarding the State's destruction and/or failure to preserve exculpatory eyewitness evidence that demonstrated that each of the State's eyewitnesses had failed to identify me on a prior occasion.

During the pretrial proceedings defense counsel filed a motion requesting dismissal, or to alternatively suppress the State's 1<sup>st</sup> set of photo lineups from which I was identified, due to the State's failure to preserve the eyewitnesses names, signatures, date's and times in which they viewed a 2<sup>nd</sup> set of photo lineups from which they had failed to identify me. See, Defendant's Motion To Dismiss Case For Failure To Preserve or Destruction of Exculpatory Photo lineup Identification Evidence (from here-in "Failure To Preserve Motion") filed: October 27, 2009. (I here-in incorporate all facts and exhibits in that motion by reference) See also, Grounds 1 and 3, I incorporate all facts of those grounds for this claim section.

The district Court denied this pretrial motion. See Reporter's Transcript of Def't's Motions, December 1, 2009.

At trial, my trial attorney raised this issue again and requested dismissal of the charges, however the trial court denied the motion again. See Trial Transcript, May 18, 2011, p. 60-63. Thus, the issue was preserved for appellate court.

1 review, Yet Appellate Counsel failed to raise it. This was unreasonable when Mr.  
2 Gamage spent 4 pages in the Opening Brief on one long excessive "quote" from  
3 a case law opinion. Pages which could have been in part atleast 2 of them, spent  
4 on litigating this ground.

5 II. Prejudice - I rely on the facts litigated at the motion hearings  
6 during the pretrial and mid trial proceedings pertaining to this issue to support  
7 my claim that this issue/claim was solid and had a reasonable probability of  
8 success on Appeal. And failure to include it caused substantial prejudice,  
9 as the Supreme Court of Nevada would have ordered Reversal of my convictions  
10 had this claim been litigated on my direct appeal and found meritorious by  
11 the Supreme Court of Nevada.

12 III. Evidentiary Hearing Requested

m) Ground 13

I am in custody in violation of my 6<sup>th</sup>, 14<sup>th</sup> and 5<sup>th</sup> Amendment rights of the U.S. Const., as well as Nev. Const. Art. 1, sec. 3, 6, and 8; Article IV. Sec. 24. Because my trial attorneys rendered ineffective assistance of counsel when he called (against my wishes) witness Noyan Westbrook, knowing that she did not recall the Alibi facts which he planned to examine her about. In fact, Defense counsel attempted to have the witness lie on the stand, and this opened the door for the state to attack and undermine the credibility of my defense.

Supporting Facts:

I. Deficient Performance - Mr. Fumo's performance was deficient and fell below an objective standard of reasonableness because he called witness Noyan Westbrook ("Ms. Westbrook"), even though Ms. Westbrook had informed him during a pre-trial ~~that~~ interview that she "did not" recall the specifics of the alibi Mr. Fumo wanted to examine her about (See Exhibit 0, attached: Case Investigation Report by Defense Investigator Craig Retke; 2 pages.) (Dated: 02/21, 23 and 25/2011.)

Specifically, on February 21<sup>st</sup> and 23<sup>rd</sup>, of 2011, pursuant to Mr. Fumo and my request defense investigator Craig Retke ("Retke") tracked down and interviewed Ms. Westbrook about the details of the time she had spent with me nearly 7 years prior on the day in question that the crimes I was accused of were committed. During his first interview with Ms. Westbrook, defense investigator Retke discovered that Ms. Westbrook's memory of the day in question was terrible, noting in his report numerous times that she "could not pinpoint which day or exact time" that she and I were together. The first interview occurred on February 21, 2011, solely between defense investigator Retke and Ms. Westbrook. However, on February 23, 2011, another interview was conducted this time between defense counsel Mr. Fumo,

1 Investigator Retke, and Ms. Westbrook. Investigator Retke noted in his  
2 case report, that this time, Ms. Westbrook told both Mr. Fumo and Invest-  
3 igator Retke that she "was still unable to say the exact date and time  
4 that [me] and herself were together." See Exhibit O, attached:  
5 Case Investigation Report by Investigator Retke dated: 02/21, 23 and  
6 25/2011.

7 Investigator Retke visited me at the Clark County Detention Center and  
8 told me about his interviews with Ms. Westbrook. He also informed me  
9 that I may wish to further discuss with Mr. Fumo whether, or whether not  
10 to present Ms. Westbrook as a witness at trial.

11 Mr. Fumo came to visit at Clark County Detention Center months before  
12 the trial. At this visit, I told Mr. Fumo that Ms. Westbrook did not seem to  
13 be a strong witness and that we could put up a good defense without her as  
14 a witness. However, Mr. Fumo ignored this. Mr. Fumo told me to "trust"  
15 him and let him handle the witnesses. Mr. Fumo told me that he would  
16 talk to Ms. Westbrook before trial and added "when I finish with her,  
17 she'll say whatever I want her to say." During this visit between Mr. Fumo  
18 and I, Mr. Fumo tried to persuade me to be comfortable with this.

19 On April 27, 2011, Mr. Fumo had Ms. Westbrook flown in to Las Vegas  
20 from Little Rock, Arkansas. After Ms. Westbrook's arrival into town,  
21 Mr. Fumo came to the Clark County Detention Center late at night and con-  
22 ducted a contact visit with me. This visit occurred somewhere in between  
23 the date of Ms. Westbrook's arrival on (4-27-2011) and my actual start  
24 date for my trial (5-11-2011). During this visit between me and Mr.  
25 Fumo, Mr. Fumo informed me that he had taken Ms. Westbrook to dinner  
26 and that during that dinner he had convinced Ms. Westbrook to say  
27 that she would recall and testify to facts which she told him she  
28 actually did not recall. Mr. Fumo further informed me that he pro-



1 vided Ms. Westbrook a prepared statement of the answers to give an  
2 examination in response to the questions he planned to ask her and told  
3 her to study the document (See Exhibit O, attached: Typewritten  
4 document titled Monique Westbrook), Mr. Fumo provided me copies  
5 of the document of answers which he provided to Ms. Westbrook, during  
6 this visit between him and I.

7 I then in turn told Mr. Fumo that I did not think what he was  
8 trying to do with Ms. Westbrook was a good idea, and that if Ms. West-  
9 brook could not fully recall the facts of the alibi based upon her own  
10 independent memory, then I did not want her to be called as a  
11 witness at my trial because we had already developed a decent def-  
12 ense without her, and did not need to take that kind of risk. Mr. Fumo  
13 then told me that he had not done all this and flew Ms. Westbrook out  
14 here for nothing and that I needed to trust him and he would win my  
15 case and get me out. Mr. Fumo then terminated our visit for the night.

16 Later before jury selection and throughout the State's case in chief,  
17 I asked Mr. Fumo to not call Ms. Westbrook and to instead focus on the  
18 other witnesses who could support our defense. Mr. Fumo then became  
19 angry and told me that he was "running the show" and that he was  
20 going to present Ms. Westbrook against my wishes whether I wanted  
21 him to, or not, in order to win the case. This started an argument with  
22 me and Mr. Fumo, in which I told Mr. Fumo that I felt his plan would  
23 backfire, and I then threatened to reveal Mr. Fumo's actions to the  
24 Court. Mr. Fumo then responded by telling me that if I revealed  
25 his actions to the Court regarding Ms. Westbrook, then Mr. Fumo would  
26 ensure that I lost my trial and was convicted which meant I would  
27 likely receive multiple life sentences.

28 The above statement by Mr. Fumo scared me and caused me to not

1 reveal this information mentioned and detailed above, to the Court out of  
2 an intense fear of being "rail roaded" by Mr. Fumo and receiving guaran-  
3 teed convictions. However, during the trial, I did inform the Court on  
4 the record that I had "asked Mr. Fumo to not present Ms. Westbrook"  
5 See Trial Transcript, May 20, 2011 (11:00 am vol.) p. 68.

6 Mr. Fumo's conduct was in this regard was unethical and unreasonable.

## 7 II. Prejudice:

8 Mr. Fumo presented Ms. Westbrook against my wishes, and  
9 his unprofessional conduct severely backfired and destroyed any chance  
10 I had of being acquitted. On the witness stand, Ms. Westbrook could not  
11 recall the answers that Mr. Fumo had prepared for her to respond with,  
12 which confused her memory even more. But, the "game-changer" was  
13 when Ms. Westbrook gave an answer to a question which Mr. Fumo had  
14 instructed her to provide on examination, which Mr. Fumo apparently had  
15 not fully researched and investigated:

16 "Mr. DiGiacomo: You can't even tell us what day of the  
17 week it was that you were with Mr. Slaughter, correct?"

18 Ms. Westbrook: No. I just remember it was directly  
19 before the investigators came 'cause, see, I didn't know anything about  
20 the case as far as the news or whatever, but the investigators came  
21 to my mom house and that was right before July 4<sup>th</sup> and that was  
22 right after he got locked up.

23 Trial Transcript, May 18, 2011, p. 81; See also Exhibit O, attached Type-  
24 written titled Monique Westbrook prepared by Mr. Fumo. The State thereafter  
25 seized this opportunity, and demonstrated with the aid of the Courts "Judicial  
26 notice" powers that I had not been provided an investigator until the  
27 year 2005 and suggested to the jury that Ms. Westbrook was lying  
28 and providing an alibi for a date in which I was already incarcerated

1 since I had been taken into custody a whole year before 2005. Trial  
2 Transcript, May 18, 2011, p. 85-91; and Trial Transcript, May 19, 2011, (C  
3 11:00 am vol.) p. 3-14. Reasonable attorneys would have foreseen this.

4 McFumo's conduct also opened the door for the State to introduce an  
5 old "Notice of Alibi" in which Ms. Westbrook had not been named as a  
6 witness in 2005, and further gave the State grounds to use other evidence  
7 such as jail phone call recordings from 2004, to suggest that I had  
8 fabricated an alibi defense. This shifted the polemics of the trial and  
9 focused the jury's attention on the incredibility of Ms. Westbrook's testimony.  
10 When I brought the fact up to the j. court that I had asked Fumo to  
11 not present Ms. Westbrook, Mr. Fumo responded by flat-out lying to  
12 the Court and trying to cover-up his unethical and ill prepared actions  
13 regarding Ms. Westbrook:

14 " Mr. Fumo: . . . In my opening I said Mr. Slaughter  
15 was with Ms. Westbrook from 4:00 o'clock in the afternoon until  
16 7:00 o'clock in the evening. That's what she told me when I pre-trial-  
17 ed her several months ago, and even before Court, when she took the  
18 stand " Trial Transcript, May 20, 2011 p. 71

19 When compared to Defense investigators Case report on this subject,  
20 it is more than clear that Mr. Fumo lied to the Court when he said "that's  
21 what [Ms. Westbrook] told me when I pre-trialed her several months ago"  
22 which also prejudiced me because it muddled the record; making it more difficu-  
23 lt to prove this claim. Additionally, Ms. Westbrook did not testify to the  
24 jury, the facts that Mr. Fumo promised in his opening statement which  
25 also certainly made jurors view my proposed defense as unsubstantiated.  
26 Mr. Fumo's decision to call Ms. Westbrook and try to get her to lie on the  
27 stand set me up for a vicious attack by the State that challenged my credibi-  
28 lity by making it seem as if "I" had created a false alibi. Mr. Fumo's

1 errors and unethical conduct were undoubtedly attributed directly to me  
2 in the jury's eyes. My fate was essentially sealed by my own attorney  
3 acting against me in a manner that significantly eased the prosecution's  
4 burden, by shifting the jury's focus from the State's case to the flaws  
5 of the defense Mr. Fumo put forth.

6 There is a reasonable probability that had Mr. Fumo listened to  
7 me and not called Ms. Westbrook, and had Mr. Fumo not attempted to  
8 try to get Ms. Westbrook to recall specific facts or lie on the stand when he  
9 knew that she could not remember the details of the day in question, the  
10 outcome of my trial would have been different. Furthermore, although this  
11 error standing alone requires reversal of my convictions, it must also be  
12 recognized that this error was one in a cumulation of prejudicial errors that  
13 defense counsel committed which when viewed together in combination worked  
14 to my extreme detriment and diminished my rights to effective assistance  
15 of counsel and deprived me of a fair trial. (See Ground 14).

### 16 III. Exigentary Hearing Requested

17 An exigentary hearing is required to fully air out this issue, I have  
18 presented sufficient factual allegations, not belied by the record in light of the  
19 evidence/exhibits attached; that if true would entitle me to the relief of a  
20 new trial. Based upon this, an exigentary hearing formally requested:  
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n) Ground 14

I am in custody in violation of my 6<sup>th</sup>, 14<sup>th</sup>, and 5<sup>th</sup> amendment right of the U.S. Const., as well as, Nev. Const. Art. I, Sec. 3, 6, 8, and Art. IV, Sec. 24. Because my attorney for trial, committed a chain-of-errors that when viewed cumulatively resulted in extreme prejudice and resulted in ineffective assistance of counsel, and a denial of my Constitutional rights to due process and fair trial

Supporting Facts:

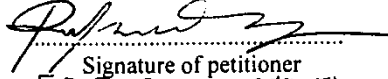
My trial attorney committed multiple errors as described in Grounds 1-13, that had cumulative impact which deprived me of effective assistance of counsel on appeal and at trial.

I am requesting that this Court consider~~ed~~ all of my trial attorney's error cumulatively under Strickland's totality of the circumstances prejudice test. And that all of my appellate attorney's errors be considered cumulatively as well. In addition, I am also asking this Court to consider the fact that the Nevada Supreme Court found 2 prosecutorial misconduct errors on Direct Appeal in this case and thus, the prejudice from those 2 errors should assessed in light of these errors when determining if my rights to due process, fair trial and effective assistance of counsel were violated.

Most of the claims in this petition require reversal standing alone, but cumulatively they reveal that my trial attorney allowed a very "one-sided" version of the evidence that favored the State to be presented to the jury, without contesting and challenging the evidence where he should have if performing reasonably.

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

3 EXECUTED at E.S.P. on the 22<sup>nd</sup> day of the month of March of the year 2015

4 

Signature of petitioner  
E.S.P., P.O. Box 1989, Ely Nevada 89301-1989  
Address

5 Pro- per

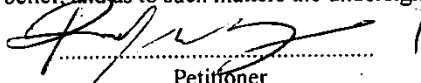
6 Signature of attorney (if any)

7 Attorney for petitioner

8 Address

9 VERIFICATION

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

13 

Petitioner  
Petitioner in proper person  
Attorney for petitioner

14 CERTIFICATE OF SERVICE BY MAIL

15 I, Rickie Slough, hereby certify, pursuant to N.R.C.P. 5(b), that on this 22<sup>nd</sup> day of the month of March of  
16 the year 2015, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS  
addressed to:

17 Rene Baker, (Warden)

Respondent prison or jail official

18 P.O. Box 1989, Ely State Prison

Address

19 Ely, Nevada 89301-1989

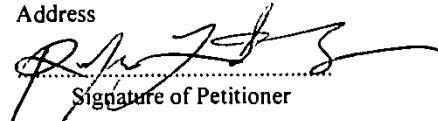
20 Attorney General  
21 Heroes' Memorial Building  
22 Capitol Complex  
23 Carson City, Nevada 89710

24 

District Attorney of County of Conviction

25 200 Lewis Ave., P.O. Box 89155

Address

26 

Signature of Petitioner

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Petition

For Writ of Habeas Corpus (Post-conviction)  
(Title of Document)

filed in District Court Case number C204957

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

-OR-

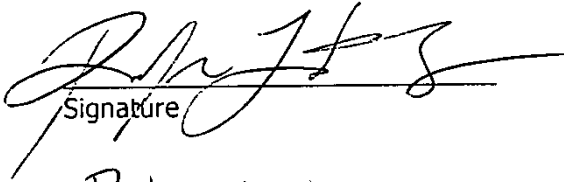
☐ Contains the social security number of a person as required by:

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

\_\_\_\_\_  
(State specific law)

-or-

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

  
Signature

3-22-2014  
Date

Rickie Slaughter  
Print Name

Petitioner  
Title

Ricke Slaughter # 85902  
Elly State Prison  
P.O. Box 1989  
Elly, Nevada 89301-1989

10

The Regional Justice Center  
Clerk of the Court (District Court)  
200 Lewis Ave. 3rd Floor  
LV. NV. 89155-1160

CONFIDENTIAL

Legal Mail





ELY STATE PRISON  
MAR 22 2015  
U6

Original !

Please Return file  
Stamped Copy !!

**FILED**

**MAR 25 2015**

*John J. Hill*  
CLERK OF COURT

1 Rickie Slaughter #85902

2 Ely State Prison, P.O. Box 1989

3 Ely, Nevada 89301-1989

4 - Petitioner in proper Person

5

6

District Court

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Clark County, Nevada

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Rickie Slaughter,

Case No: C204957

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Petitioner,

11

vs.

Dept. No: 3

12

Warden Rene Baker,

13

Respondent.

04C204957  
EXHS  
Exhibits  
4443805



14

15

Petitioner's Exhibits For Petition For Writ  
Of Habeas Corpus

16

17

Exhibit-A: Police Report by Detective Prieto

18

Exhibit-B: Mugshots / 2<sup>nd</sup> set of photo lineups

19

Exhibit-C: Police Report

20

Exhibit-D: Affidavit by Tiffany Holly

21

Exhibit-E: Police Report by Anthony Bailey

22

Exhibit-F: Police Report by Mark Hoyt

23

Exhibit-G: Witness Statement by Destiny Waddy

24

Exhibit-H: Google Map Print outs & Craig Retke's notes

25

Exhibit-I: Case Investigation Report by Craig Retke

26

Exhibit-J: Typewritten "Opening Statement" draft by Mr. Fumo

27

Exhibit-K: Case Investigation Report by Craig Retke

28

Exhibit-L: Review Journal Article "Prosecutor's Practice..."

29

30

CLERK OF THE COURT  
MAR 25 2015  
RECEIVED

26

## Exhibit Index Continued

- |    |  |
|----|--|
| 1  |  |
| 2  | Exhibit - M: Scope Print out for Rickie Slaughter                      |
| 3  | Exhibit - N: Letter from Appellate Attorney William Gamage             |
| 4  | Exhibit - O: Case Investigation Report by Craig Retke and Type written |
| 5  | examination draft titled "Monique Westbrook" prepared by Mr. Fumo.     |
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“Exhibit - A”

CASE: 04015160  
DATE: 8/11/04  
TIME: 8:26

-----NORTH LAS VEGAS POLICE DEPARTMENT----- REF: 247730  
-----POLICE REPORT----- PAGE: 3  
-----NARRATIVE PORTION----- OF: 4

ON JULY 1, 2004 I COMPLETED A PROCESSING REQUEST AND FOREWARDED SAME TO THE IDENTIFICATION BUREAU REQUESTING THE GUNS RECOVERED IN THIS CASE BE CHECKED FOR LATENT PRINTS. ~~CSI BRADY PROCESSED THE GUNS AND ONLY ONE NONE COMPARABLE PRINT WAS LOCATED.~~ SEE HER REPORT FOR DETAILS.

I ALSO COMPLETED A REQUEST FOR GUNS AND BULLET FRAGMENTS BE SENT TO THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT FORENSIC LABORATORY FOR EXAMINATION. I REQUESTED THE BULLET FRAGMENTS BE COMPARED TO THE GUNS RECOVERED. I ALSO REQUESTED THAT IT BE DETERMINED WHAT TYPE OF GUN THE BULLET FRAGMENTS WERE FIRED FROM.

ON JULY 2, 2004, I RESPONDED TO THE VICTIM'S RESIDENCE. JENNIFER DENNIS CONTACTED ME AND SAID THAT SHE HAD LOCATED A BULLET HOLE IN THE KITCHEN FLOOR WHERE HER HUSBAND, IVAN YOUNG, WAS SHOT. I EXAMINED THE FLOOR AND SAW WHAT APPEARED TO BE A BULLET IMPRESSION. THE BULLET IMPRESSION WAS LOCATED WHERE I INITIALLY SAW THE POOL OF BLOOD ON THE NIGHT OF THE INCIDENT. I LATER REQUESTED A CRIME SCENE INVESTIGATOR RESPONDED TO THE VICTIMS RESIDENCE AND TAKE PICTURES OF THE BULLET IMPRESSION. CSI FISHER RESPONDED AND TOOK THE PHOTOS.

ON JULY 20, 2004, I REQUESTED THE FILM IN THE CAMERA RECOVERED DURING THE SEARCH WARRANT BE DEVELOPED. I WAS ATTEMPTING TO LOCATE SOME PICTURES OF SLAUGHTER AND HIS ACCOMPLICE. NO PHOTOS OF THE NATURE WERE LOCATED.

DURING THE INITIAL INVESTIGATION OFFICERS RECEIVED INFORMATION THAT A SUBJECT IDENTIFIED AS ERRICK HAWKINS FIT THE DISCRIPTION OF THE SUSPECTS IDENTIFIED DURING THE ROBBERY.

I LATER CONTACTED HAWKINS AND SPOKE WITH HIM ABOUT WHERE A WAS ON JUNE 26, 2004. HAWKINS TOLD ME THAT HE WAS AT A FAMILY GET TOGETHER AT HIS AUNTS RESIDENCE. HE FURNISHED ME WITH HIS AUNTS NAME, URSULIA CHRISTMAS, HER ADDRESS, 2301 MAVERICK ST. HE ALSO GAVE ME HER PHONE NUMBER, 638-9536, SO I COULD VERIFY HIS STORY. HAWKINS DID NOT SPEAK WITH A JAMAICAN ACCENT.

I CALLED CHRISTMAS AND SPOKE WITH HER. SHE TOLD ME THAT HAWKINS WAS AT HER RESIDENCE ON SATURDAY, JUNE 26, 2004. SHE SAID THAT HE REMAINED AT HER RESIDENCE UNTIL EARLY SUNDAY MORNING.

DURING THE INVESTIGATION THE NORTH LAS VEGAS DETENTION CENTER MONITORED SLAUGHTER'S PHONE CALLS. DETENTION DETECTIVE TODD WILLIAMS SUPPLIED ME WITH THE CALLS MADE BY SLAUGHTER. DURING THESE CALLS SLAUGHTER TALKED WITH TIFFANY JOHNSON. DURING THE CALLS WITH JOHNSON, SLAUGHTER TOLD HER TO TELL THE POLICE HE CAME TO PICK HER UP AT 7 PM. DURING CALLS MADE TO AN UNIDENTIFIED MALE HE SAID THAT HE WAS GOING TO WAIT FOR A GOOD OFFER FROM THE DISTRICT ATTORNEY BEFORE TAKING A DEAL. DURING THE PHONE CALLS HE TALKS ABOUT THE GUNS THAT WERE FOUND AND HOW TO CREATE AN ALIBI TO EXPLAIN WHERE HE WAS ON THE NIGHT OF THE ROBBERY.

DURING THE INVESTIGATION I CONTACTED ONE OF JOHNSON'S CO-WORKERS, JEFF ARBUCKLE, AT ELDORODO CLEANERS. ONE JUNE 26, 2004, ARBUCKLE SAID THAT HE WAS WORKING WHEN JOHNSON GOT OFF WORK. HE SAID WHEN HE LEFT WORK IT WAS 7:15 PM AND

records bureau processed  
SCARFF/DENISE

ser no ! detective bureau processed  
1259 !

ser no

supervisor approving  
FITZ/HOWARD DOUGLAS

ser no ! officer reporting  
0652 ! PRIETO/JESUS

ser no  
0674

CASE: 04015160

---NORTH LAS VEGAS POLICE DEPARTMENT--- REF: 247730

DATE: 8/11/04

-----POLICE REPORT----- PAGE: 4

TIME: 8:26

-----NARRATIVE PORTION----- OF: 4

JOHNSON WAS STILL WAITING OUTSIDE THE BUSINESS FOR HER RIDE.

COPIES OF THE PHONE CALLS WERE MADE AND FORWARDED TO THE DISTRICT ATTORNEY'S OFFICE.

records bureau processed  
SCARFF/DENISE

ser no ! detective bureau processed  
1259 !

ser no

supervisor approving  
FITZ/HOWARD DOUGLAS

ser no ! officer reporting  
0652 ! PRIETO/JESUS

ser no  
0674

1  
2 Q. The date is July 1, year is 2004. Interview is being conducted with Ivan Young.  
3 Case number is 04-15160.

4 Okay. Hey Ivan, why don't you tell me about the incident that happened over to  
5 your house on the 26th of June.

6 A. While I was working in my garage, and two guys came up and held their guns on  
7 me. And tried to go into the house and pulled their guns on my wife, my son, my  
8 nephew and two other of my friends and just holded us in the house and trying to  
9 get money from us. And you know attempting to kill us and stuff. And then they  
10 shot me you know in the face and you know then they took off. I have never seen  
11 the guys in my life you know.

12 Q. Okay hey, when the guys came in your garage, you know earlier I had talked to  
13 you a few days ago, and you – I showed you some photos.

14 A. Uh huh.

15 Q. And you ID one of the persons from those photos. Is that one of the guys that had  
16 the guns that came into your garage?

17 A. Yes.

18 Q. Okay. And you had – the guns that they were carrying, can you describe the  
19 guns?

20 A. One was like a little small black revolver, like a wood handle grip on it, and it  
21 was round – it was like rounder. And then one was a 380, kind of a round barrel  
22 on it.

23 Q. What color was it?

24 A. Silver. I know it wasn't chrome. I know it was silver, because they stuck it right  
25 in front of my face you know. And I know they had a longer gun, I don't know  
26 what it was though.

27 Q. Was it a big gun or a smaller gun?

28 A. Nah, I think it was just like a nine millimeter, you know like automatic.

29 Q. Didn't you just see it too clear?

30 A. I didn't see that one too clear, because they just kept on sticking the other two in  
31 front of my face.

- 32 Q. Okay. What did the guys say when they were inside your house? Do you  
33 remember them saying anything to you?
- 34 A. Like just tying me up. Telling that they are going to kill me if I don't give them  
35 no money and stuff. You know, just one of the guys telling about he was from  
36 (unintelligible). He was trying to get back to the (unintelligible), because he  
37 didn't like it here in America. So I don't know, man, you know.
- 38 Q. ~~And you've never seen these guys before.~~
- 39 A. ~~Yeah, I have never seen him before.~~
- 40 Q. Okay, so anything else you can tell me? Is that pretty much it?
- 41 A. Yeah.
- 42 Q. Okay, all right, this concludes the interview.
- 43



66

Exhibit - B

99

BOOKING NAME: SLAUGHTER RICKIE  
TRUE NAME:

AKA #1: SLAUGHTER/RICKIE LAMONT

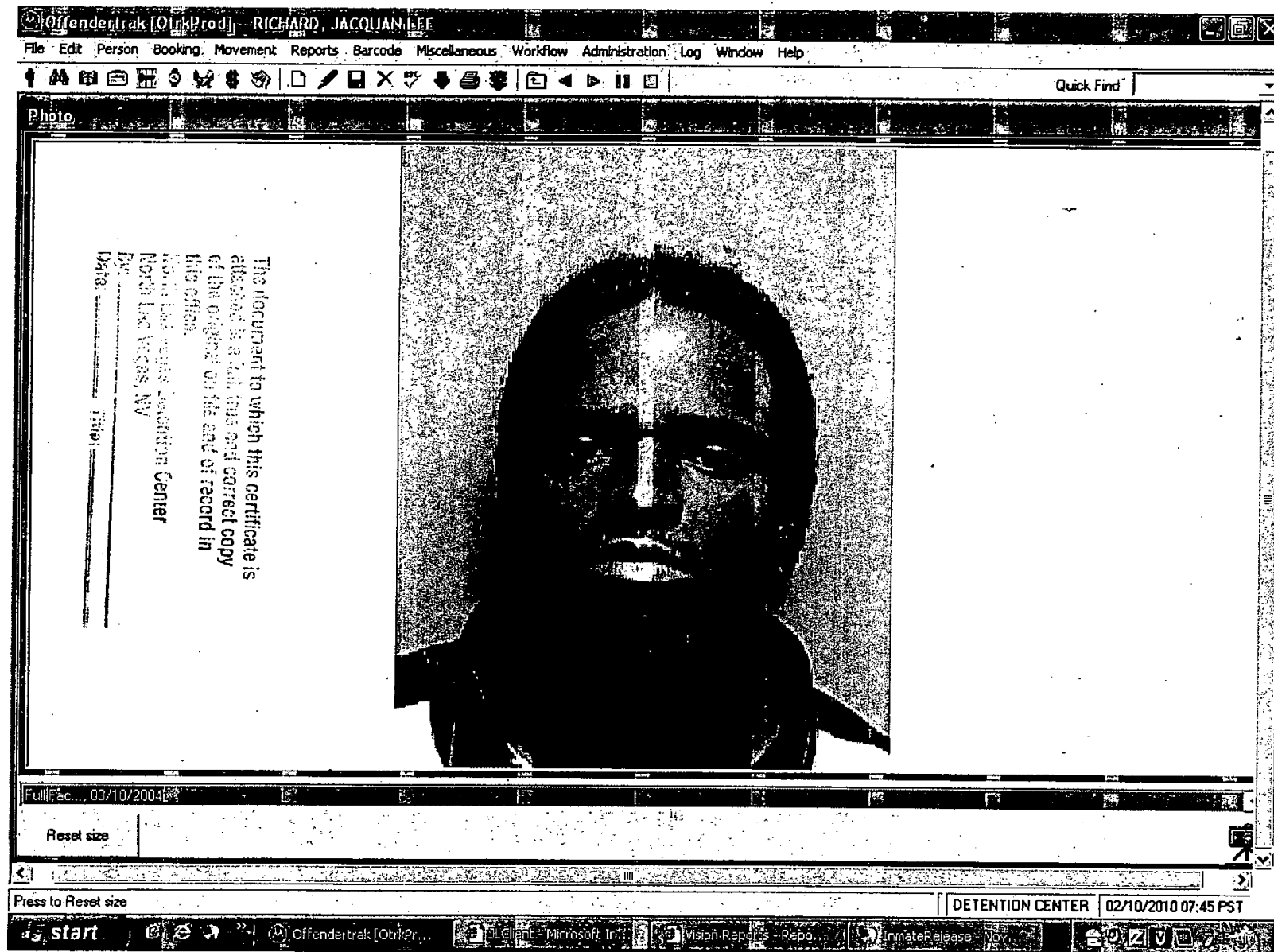
AKA #2:

AKA #3:

AKA #4:

SEX:	Male	RACE:	Black	PHOTO DATE:	06 / 29 / 2004
HAIR:	Black	EYES:	Brown	PHOTO TIME:	02 : 47
HEIGHT:	5'09"	WEIGHT:	180	PHOTO NUMBER:	3065732
BLD:	Medium	CMP:	Dark		



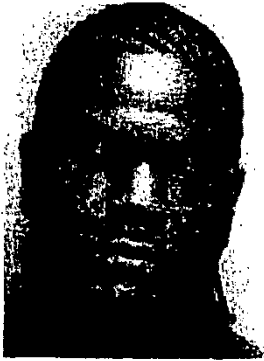


**NORTH LAS VEGAS POLICE**  
**WITNESS PHOTO LINEUP IDENTIFICATION**

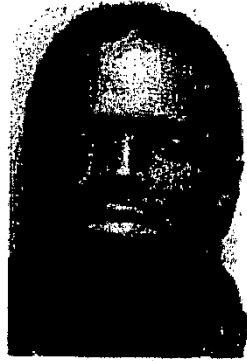
Case #: 04-15160

**TO WITNESS:**

1. If you have previously seen one or more of the persons in the line up in regards to the crime in question, place a circle around the appropriate number corresponding to the number of the person in the line up. Place your initials next to the circled number.
2. Complete any additional comments
3. Then sign your name and fill in the date and the time.



#1



#2



#3



#4



#5



#6

ADDITIONAL WITNESS COMMENTS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date & Time

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Witness Name Printed

**NORTH LAS VEGAS POLICE**  
**WITNESS PHOTO LINEUP IDENTIFICATION**

Case #: 04-15160

**TO WITNESS:**

1. If you have previously seen one or more of the persons in the line up in regards to the crime in question, place a circle around the appropriate number corresponding to the number of the person in the line up. Place your initials next to the circled number.
2. Complete any additional comments
3. Then sign your name and fill in the date and the time.



#1



#2



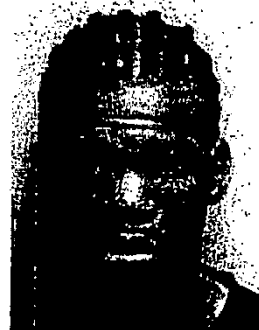
#3



#4



#5



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ADDITIONAL WITNESS COMMENTS: \_\_\_\_\_

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\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date & Time

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Witness Name Printed

# PHOTO SPREAD

## WITNESS: PLEASE READ THESE INSTRUCTIONS CAREFULLY

Positions of persons in this photo spread are numbered left to right, beginning with Number One (1) on your left.

1. If previously you have seen one or more of the persons in this photo spread, write your initials in the "INITIALS" space(s) beside the photo(s) of the person(s) you have seen.

OFFENSE/INCIDENT No. \_\_\_\_\_

2. in "NOTES" space, tell briefly how/where/when you saw or met person(s) you identified.

3. If you never have seen any person in this line-up, write your initials in the "NONE OF THE ABOVE" space.

4. Sign your name in the "VIEWED BY" space, and fill in the time and date spaces.

5. Then hand this photo spread to the officer in charge.



#1 PERSON

DATE \_\_\_\_\_

INITIALS \_\_\_\_\_

NOTES \_\_\_\_\_



#2 PERSON

DATE \_\_\_\_\_

INITIALS \_\_\_\_\_

NOTES \_\_\_\_\_



#3 PERSON

DATE \_\_\_\_\_

INITIALS \_\_\_\_\_

NOTES \_\_\_\_\_



#4 PERSON

DATE \_\_\_\_\_

INITIALS \_\_\_\_\_

NOTES \_\_\_\_\_



#5 PERSON

DATE \_\_\_\_\_

INITIALS \_\_\_\_\_

NOTES \_\_\_\_\_



#6 PERSON

DATE \_\_\_\_\_

INITIALS \_\_\_\_\_

NOTES \_\_\_\_\_

TIME PHOTO SPREAD SHOWN \_\_\_\_\_

NONE OF THE ABOVE \_\_\_\_\_

AGENCY \_\_\_\_\_

DATE PHOTO SPREAD SHOWN \_\_\_\_\_

VIEWED BY \_\_\_\_\_

OFFICER \_\_\_\_\_

Signature of witness to this viewing: \_\_\_\_\_

DATE OF OFFENSE \_\_\_\_\_

WITNESS \_\_\_\_\_

DATE \_\_\_\_\_

**NORTH LAS VEGAS POLICE**  
**WITNESS PHOTO LINEUP IDENTIFICATION**

Case #: 04-15160

**TO WITNESS:**

1. If you have previously seen one or more of the persons in the line up in regards to the crime in question, place a circle around the appropriate number corresponding to the number of the person in the line up. Place your initials next to the circled number.
2. Complete any additional comments
3. Then sign your name and fill in the date and the time.



#1



#2



#3



#4



#5



#6

ADDITIONAL WITNESS COMMENTS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature of Officer \_\_\_\_\_

Signature of Officer \_\_\_\_\_

Signature of Witness \_\_\_\_\_

Date & Time \_\_\_\_\_

Witness Name Printed \_\_\_\_\_

66 Exhibit - C 99



CASE: 04015160  
DATE: 9/24/04  
TIME: 10:18

-----NORTH LAS VEGAS POLICE DEPARTMENT----- REF: 250183  
-----POLICE REPORT----- PAGE: 4  
-----NARRATIVE PORTION----- OF: 5

DURING MY INVESTIGATION I LEARNED THAT RICKIE SLAUGHTER WAS MAKING SEVERAL PHONE CALLS TO A SUBJECT LATER IDENTIFIED AS JACQUAN RICHARD, ALSO KNOWN AS MACK. DURING THESE CALLS SLAUGHTER AND RICHARD TALKED ABOUT THE ROBBERY, HOW SLAUGHTER COULD CREATE AN ALIBI AND VARIOUS ASPECTS OF THE INCIDENT. I MADE SEVERAL ATTEMPTS TO CONTACT RICHARD DURING THE INVESTIGATION, BUT I WAS NOT ABLE TO DO SO.

PHOTO LINE UPS OF RICHARD WERE MADE AND SHOWN TO ALL OF THE VICTIMS. NONE OF THE VICTIMS WERE ABLE TO IDENTIFY RICHARD AS A SUSPECT.

I LEARNED THAT RICHARD HAD A WARRANT THROUGH PAROLE AND PROBATION. I CONTACTED PAROLE AND PROBATION AND ASKED THAT I BE NOTIFIED IF RICHARD WAS ARRESTED FOR THE WARRANT.

ON SEPTEMBER 17, 2004, I WAS CONTACTED BY THE CLARK COUNTY DETENTION CENTER (CCDC), THEY TOLD ME THAT RICHARD HAD BEEN ARRESTED FOR THE ABOVE LISTED WARRANT.

I WENT TO CCDC AND CONTACTED RICHARD FOR AN INTERVIEW. HE WAS ADVISED OF HIS MIRANDA RIGHTS AND DURING A TAPED INTERVIEW TOLD ME WHAT HE KNEW ABOUT THE ROBBERY. RICHARD SAID THAT SLAUGHTER TOLD HIM THAT HE COMMITTED THE ROBBERY. RICHARD SAID THAT HE WENT OVER TO SLAUGHTER'S RESIDENCE ON THE NIGHT OF THE ROBBERY. RICHARD SAID THAT HE GOT TO HIS RESIDENCE AFTER 7 THAT NIGHT, BUT HE DOESN'T KNOW THE EXACT TIME.

RICHARD WENT ON TO TELL ME VARIOUS DETAILS OF THE CRIME. DETAILS NOT RELEASED TO THE PUBLIC. RICHARD SAID THAT SLAUGHTER TOLD HIM THE ROBBERY WENT BAD AND SLAUGHTER HAD TO SHOOT SOMEONE. SLAUGHTER TOLD HIM ABOUT ROBBING TWO PERSONS THAT CAME OVER TO THE RESIDENCE DURING THE ROBBERY. RICHARD SAID THAT HE WAS TOLD ABOUT SLAUGHTER GETTING THE CREDIT CARD AND ABOUT GETTING SOME MONEY FROM A VICTIM WHO WAS COMING IN AS THEY ATTEMPTED TO LEAVE. DURING THE INTERVIEW I HAD TO STOP DURING INMATE DINNER SERVING. THIS WAS ABOUT 4:30. I RETURNED A COUPLE OF HOURS LATER AND CONTINUED THE INTERVIEW GETTING VARIOUS DETAILS. DURING THE INTERVIEW RICHARD IDENTIFIED SLAUGHTER'S ACCOMPLICE. RICHARD SAID THAT SLAUGHTER TOLD HIM IT WAS LITTLE MARV A DONNA GANG MEMBER. TO CONFIRM SLAUGHTER'S IDENTITY I SHOWED RICHARD A PHOTO LINE UP THAT CONTAINED SLAUGHTER. HE POINTED TO SLAUGHTER. I DID NOT ASK HIM TO INITIAL THE LINE UP. SEE INTERVIEW FOR DETAILS.

THROUGH FURTHER INVESTIGATION LITTLE MARV WAS IDENTIFIED AS MARVIN ROBINSON A DONNA STREET GANG MEMBER. I OBTAINED A PHOTO OF ROBINSON FROM A PREVIOUS NORTH LAS VEGAS JAIL BOOKING. I THEN CREATED A PHOTO LINE UP WHICH CONTAINED ROBINSON AND FIVE OTHER BLACK MALES SIMILAR IN APPEARANCE.

ON SEPTEMBER 21, 2004 I WENT TO THE PRELIMINARY HEARING FOR RICKIE SLAUGHTER, AT THE NORTH LAS VEGAS JUSTICE COURT. THERE I CONTACTED IVAN YOUNG, JENNIFER DENNIS, ARRON DENNIS, JOEY PASADA AND RYAN JOHN.

AFTER THE HEARING I SHOWED EACH OF THE VICTIMS THE PHOTO LINE UPS THAT I HAD PREPARED. YOUNG LOOKED AT THE LINE UP AND SAID HE WAS UNSURE, HE DEBATED

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records bureau processed      ser no 1      detective bureau processed      ser no  
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supervisor approving      ser no 1      officer reporting      ser no  
HANKS/ROBERT EDWARD JR      0998      PRIETO/JESUS      0674  
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6.6

Exhibit - D

53

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AFFIDAVIT OF TIFFANY HOLLY ("JOHNSON"), ESO.

STATE OF NEVADA )  
 ) ss.  
COUNTY OF CLARK )

I, TIFFANY HOLLY ("JOHNSON"), swears under penalty of perjury that the following assertions are true of ~~his~~ own personal knowledge:

1. That on June 26, 2004, I was employed at Eldorado Cleaners located at Bonanza and Nellis.
2. That on June 26, 2004, my shift on that day ended at 7:00 p.m.
3. That on June 26, 2004, Rickie Slaughter picked me up sometime between 7:00 – 7:15 p.m., but prior to 7:30 p.m. I know this to be true because Rickie Slaughter had never previously picked me up so late, and if he had picked me up as late as 7:30 p.m., I would have remembered because it would have been so unusual.
4. That on or around June 28-29, of 2004, after a raid and search warrant execution on my residence, I was taken from the shower naked and left outside with just a blanket to cover up with. I was not permitted to put on clothes until just prior to being taken to the North Las Vegas Police Station. I was then handcuffed and taken to the North Las Vegas Police Station to be questioned by Detective Prieto.
5. During this June 28-29, 2004, interrogation, I repeatedly told Detective Prieto that I did not have any knowledge of the crime he was investigating and that to the best of my knowledge Rickie Slaughter picked me up at the normal time after I get out of work around 7:00 p.m. to 7:15 p.m.
6. During the June 28-29, 2004, interview I felt that Detective Prieto pressured me and became abusive and angry when I told him that to the best of recollection, Rickie Slaughter picked me up after work at the normal time between 7:00 p.m. and 7:15 p.m., he [Detective Prieto] repeatedly asserted that I was lying and said it was 7:30 p.m.
7. Subsequent to the initial interview, Detective Prieto called me and told me that I was lying and could be arrested. I felt that if I did not tell Detective Prieto what

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he wanted to hear that I would be arrested and lose the ability to be a mother to my child.

8. During this subsequent interrogation, I felt pressure to say whatever Detective Prieto wanted me to say and based on that I told him what he wanted to hear to avoid being taken to jail. Specifically, I felt pressured to change what I believed to be true that Rickie Slaughter picked me up from work June 26, 2004, between 7:00 p.m. - 7:15 p.m., to what Detective Prieto told me I had to say, which was that Rickie Slaughter picked me up at 7:30 p.m.

EXECUTED this: 24, day of FEBRUARY, 2011.

TIFFANY R. HOLLY ("JOHNSON")

SUBSCRIBED and SWORN to before me  
this 24 day of FEBRUARY, 2011.

NOTARY PUBLIC



## Nevada Investigative Group, LLC

PILB#1496  
8414 W. Farm Rd #180-305  
Las Vegas, NV 89131  
(702) 296-3005

Case # C204957 / Rickie Slaughter

Dates: 02/01/11

Times: 6:00pm

Location: Telephonic [REDACTED]

Attorney/Client  
Privilege

Persons Involved: Tiffany Johnson

[REDACTED]  
Las Vegas, Nevada

Investigator Craig Retke

### Synopsis:

On the above date and time, I conducted a telephonic interview with Tiffany Johnson as she was at her house located at the above address.

### Details:

I called Tiffany Johnson on her cellular phone and I identified myself as a private investigator appointed to Rickie Slaughter's case. Johnson was very apprehensive initially but somewhat cooperative.

I asked Johnson if she would be willing to talk to me regarding the night of Slaughter's arrest and her arrest for ~~Obstructing a Police Officer~~. She stated she wanted to put all of those events behind her. I asked her if she was still living on Greymouth Street and she said she was and was living there with her husband of five years.

~~Johnson would not talk about her association with Slaughter~~ I asked her if she talked to Slaughter frequently and she said she talks to him occasionally.

Johnson explained she wanted to talk about how ~~North Las Vegas Police Department (NLVPD)~~ Detective Prieto treated her before the last trial date. Johnson stated he was continually calling her on her cell phone and stopping by her house to talk to her. Johnson stated ~~Det. Prieto was very adamant that Slaughter was a bad person who needed to get taken off the street~~

Johnson further explained that Det. Prieto was making her husband mad by continually bothering her. I asked Johnson if she would write down exactly what Det. Prieto was saying to her and I would pick the statement up

from her at her house. I asked her to call me on my cell when I could pick it up tomorrow, 02/02/11. Johnson stated she would call me.

Craig Retke  
Nevada Investigative Group LLC  
PILB #1496

In the year of 2009 Detective  
Prieto came to my home  
at 2655 E. Deersprings Way  
Apt 1155. I was at work  
but my husband was at home.  
Prieto then began to inform  
my husband that if he did not  
know Rickie was going back  
to court, and that I need  
to get in touch with him.

~~He also stated that Rickie~~  
~~was having a good chance to~~  
~~get out. He stated that we~~  
~~do not need another monster~~  
~~on the streets.~~

Prieto  
Also said that it looks that I  
have moved on with my life and  
I should not do anything to  
make it fall apart. The entire  
time he was aggressive. Prieto  
also implies what if Rickie gets  
out what would I do. I feel  
that if anything was needed to  
be know I would have been  
contacted by the DA not Detective  
Prieto by him coming to my  
home being aggressive towards  
my husband was to me disrespectful  
and did not need to take place.

Tiffany E. Halling  
2-10-11

“Exhibit - E”



CASE: 04015160

DATE: 6/29/04

TIME: 7:46

-----NORTH LAS VEGAS POLICE DEPARTMENT-----

-----POLICE REPORT-----

-----NARRATIVE PORTION-----

REF: 246198

PAGE: 2

OF: 2

ON SATURDAY 06/26/04 AT ABOUT 1911 HOURS OFFICER M. HOYT 1334 AND SEVERAL OTHER OFFICERS WERE DISPATCHED TO 2612 GLORY VIEW REFERENCE A SHOOTING VICTIM. I RESPONDED AS WELL TO ASSIST.

WHEN I ARRIVED, I ASSISTED IN SECURING WITNESSES AND THE SCENE. ONCE EVERYTHING WAS UNDER CONTROL I WAS ASKED BY SERGEANT D. NOWAKOWSKI TO FOLLOW THE SOUTHWEST AMBULANCE THAT WAS TRANSPORTING OUR VICTIM (IDENTIFIED AS IVAN YOUNG) TO UNIVERSITY MEDICAL CENTER'S TRAUMA RESUS DEPARTMENT FOR TREATMENT TO HIS FACIAL INJURIES AS A RESULT OF A GUN SHOT, AND REPORT BACK YOUNG'S CONDITION AS SOON AS POSSIBLE.

ONCE ARRIVED AT THE HOSPITAL, SOUTHWEST AMBULANCE MEDIC JOSHUA KINNUNEN FROM UNIT 524 HANDED ME A SMALL PIECE OF METAL HE HAD RECOVERED FROM YOUNG'S SHIRT. IT APPEARED TO BE THE COPPER JACKETING TO A PROJECTILE AND HELD EVIDENTIARY VALUE SO I TOOK CUSTODY OF IT.

AFTER GOING INSIDE AND WAITING FOR THE DOCTORS AND NURSES TO FINISH THEIR TREATMENT OF YOUNG, I WAS ABLE TO QUESTION HIM ABOUT THE INCIDENT. ONE OF THE TRAUMA PERSONNEL HANDED ME A PLASTIC CONTAINER HOLDING A SMALL PIECE OF COPPER METAL THAT ALSO APPEARED TO BE THE JACKETING FROM A PROJECTILE, SO I TOOK CUSTODY OF IT. THEY TOLD ME IT WAS RECOVERED FROM HIS FACE. YOUNG WAS VERY COHERANT AND REMEMBERED THE INCIDENT VERY WELL. HE TOLD ME THAT HE WAS OUTSIDE IN HIS GARAGE WORKING ON A CAR WHEN HE WAS APPROACHED BY TWO BLACK MALES (BM(S)). ONE WAS BALD AND WAS WEARING SHORTS AND A BLUE SHIRT. THE SECOND HAD DREADLOCKS AND SPOKE WITH A JAMAICAN ACCENT. THEY STARTED TALKING TO YOUNG ABOUT WORKING ON CARS. AFTER TALKING FOR A FEW MINUTES THEY BRANDISHED FIRE ARMS AND ORDERED YOUNG TO GO INSIDE. ONCE INSIDE THEY PUT EVERYONE IN THE HOUSE DOWN ON THE FLOOR AND STARTED ASKING FOR MONEY FROM EVERYONE. YOUNG SAID THEY PLACED SOMETHING OVER HIS HEAD AND FACE SO HE COULD NOT SEE AT ALL. DURING THIS TIME TWO OF YOUNG'S FRIENDS ARRIVED AND WERE PULLED INTO THE HOUSE AS WELL. YOUNG DID NOT KNOW WHAT HAPPENED TO THEM. YOUNG TOLD ME HE THOUGHT THE SUSPECTS GOT A CHECKCARD BUT UNKNOWN IF ANYTHING ELSE WAS TAKEN. YOUNG THEN TOLD ME THAT THE BM WITH DREADLOCKS CAME OVER TO HIM AND PLACED A GUN TO HIS FACE. THE BLACK MALE THEN SAID "HAVE YOU EVER SEEN ONE OF THESE BEFORE?" AFTER SAYING THAT, THE BM FIRED 1 SHOT STRIKING HIM IN THE FACE NEAR HIS CHIN. BOTH BMS THEN FLED AND GOT INTO A VEHICLE LEAVING THE SCENE.

YOUNG TOLD ME THAT HE KNOWS FOR A FACT THE BM WITH DREADLOCKS AND A JAMAICAN ACCENT WAS THE SHOOTER, AND THAT WITHOUT A DOUBT HE WOULD BE ABLE TO IDENTIFY THEM BOTH. YOUNG TOLD ME HE THOUGHT HE SAW 3 GUNS BUT COULD ONLY IDENTIFY TWO OF THEM. ONE WAS A .380 SEMI-AUTO AND THE OTHER WAS A SMALL BLACK REVOLVER. I THEN RETURNED TO THE SCENE OF THE SHOOTING WHERE OFFICER M. BRADY OF NLVPD'S CRIME SCENE ANALYST UNIT WAS INVESTIGATING. I TURNED BOTH OF THE PIECES OF JACKETING OVER TO HER AT THAT TIME.

NO ATTACHMENTS.

records bureau processed  
SCARFF/DENISE

ser no ! detective bureau processed  
1259 !

ser no

supervisor approving  
NOWAKOWSKI/DENNIS

ser no ! officer reporting  
1225 ! BAILEY/ANTHONY

ser no  
1366

“ Exhibit - F ”

CASE: 04015160  
DATE: 8/12/04  
TIME: 4:15

-----NORTH LAS VEGAS POLICE DEPARTMENT-----  
-----POLICE REPORT-----  
-----NARRATIVE PORTION-----

REF: ORIGINAL  
PAGE: 9  
OF: 11

ON SATURDAY, 06-26-04 AT 1911 HOURS, OFFICERS WERE DISPATCHED TO 2612 GLORY VIEW IN REFERENCE TO A SHOOTING VICTIM INSIDE THE RESIDENCE. OFFICER HICKMAN WAS THE FIRST OFFICER TO ARRIVE WITH OFFICER COON ARRIVING SHORTLY AFTER OFFICER HICKMAN. WHEN I ARRIVED, I WALKED INTO THE FRONT DOOR. THE FRONT DOOR OPENS TO A LARGE LIVING ROOM WITH A DINING AREA TO THE LEFT OF THE FRONT DOOR AND THE KITCHEN ON THE OTHER SIDE OF THE DINING AREA. THERE WAS A LARGE POOL OF BLOOD ON THE FLOOR IN THE DINING AREA AND A LAMP WAS TIPPED OVER IN THE LIVING ROOM. OFFICER COON WAS TALKING TO A FEMALE TRYING TO PLACE DOGS IN THE BACKYARD. OFFICER COON TOLD ME SHE WAS A WITNESS AND THE VICTIM, IVAN YOUNG WAS IN A BEDROOM ON THE EAST SIDE OF THE RESIDENCE. OFFICER HICKMAN WAS TALKING TO YOUNG GETTING HIS PERSONAL INFORMATION. YOUNG WAS LAYING ON A BED ON HIS BACK WITH HIS HANDS AGAINST HIS FACE. I COULD SEE A LOT OF BLOOD ON YOUNG'S NOSE AND CHIN AREA. YOUNG TOLD ME HE GOT SHOT BY TWO GUYS HE DID NOT KNOW WHILE HE WAS IN THE GARAGE. YOUNG BEGAN TO YELL SAYING THAT HIS FACE HURTS. AT THIS TIME, NORTH LAS VEGAS FIRE DEPARTMENT RESCUE UNIT #53 AND SOUTHWEST AMBULANCE UNIT #524 ARRIVED TO TREAT YOUNG. AS PARAMEDICS ROLLED YOUNG OUT OF THE RESIDENCE ON A GURNEY, I NOTICED THAT A SCREEN TO A WINDOW LOCATED ON THE WEST SIDE OF THE RESIDENCE WAS PULLED FROM THE WINDOW FRAME AND HANGING FROM THE TOP. AS PARAMEDICS LOADED YOUNG INTO THE AMBULANCE, OFFICERS WERE SEPARATING WITNESSES.

IVAN YOUNG'S WIFE WAS AT THE RESIDENCE WHEN IVAN WAS SHOT. OFFICER HICKMAN INTERVIEWED HER. REFER TO OFFICER HICKMAN'S FOLLOW-UP REPORT FOR FURTHER INFORMATION.

I THEN SPOKE TO A WHITE MALE, IDENTIFIED AS RYAN JOHN. JOHN TOLD ME HE WAS VISITING HIS GIRLFRIEND AT 2613 GLORY VIEW WHICH IS DIRECTLY ACROSS THE STREET FROM 2612 GLORY VIEW. JOHN LEFT HIS GIRLFRIENDS HOUSE AND STARTED TO WALK TO HIS VEHICLE THAT WAS PARKED IN FRONT OF 2613 GLORY VIEW. A BLACK MALE YELLED TO JOHN FROM THE GARAGE OF 2612 GLORY VIEW THAT IVAN WANTED TO TALK TO HIM. BECAUSE JOHN KNEW IVAN AND WAS FRIENDS WITH HIM, HE WALKED ACROSS THE STREET. THE UNIDENTIFIED BLACK MALE OPENED THE HOUSE DOOR INSIDE THE GARAGE THAT OPENS TO A LAUNDRY ROOM SO JOHN COULD WALK INSIDE. AS JOHN WALKED INTO THE LAUNDRY ROOM, THE SUSPECT PUT A PISTOL TO JOHN'S THROAT AND TOLD HIM TO GET ON THE GROUND IN THE KITCHEN AND PLACE HIS HANDS BEHIND HIS BACK. THERE IS ANOTHER DOOR THAT OPENS INTO THE KITCHEN FROM THE LAUNDRY ROOM. JOHN LAID ON THE FLOOR WITH HIS HEAD TOWARDS THE SINK AND HIS FEET AT THE REFRIGERATOR. THE SUSPECT TIED JOHN'S HANDS BEHIND HIS BACK AND STOMPED ON JOHN'S HEAD. THE SUSPECT THEN PLACED A BLACK JACKET OVER HIS HEAD. THE SUSPECT THEN PLACED A GUN TO JOHN'S HEAD AND TOLD HIM THAT IF HE MOVES, HE WAS GOING TO BLOW HIS BRAINS OUT. THE SUSPECT THEN WENT INTO JOHN'S POCKETS AND FOUND AN AUTOMATIC TELLER MACHINE (ATM) CARD IN A FRONT POCKET. THE SUSPECT THEN TOLD JOHN TO TELL HIM HIS PERSONAL PIN NUMBER TO HIS ATM. JOHN TOLD HIM. THE SUSPECT THEN TOLD JOHN THAT IF THE NUMBER WAS WRONG, HE WOULD COME BACK AND KILL HIM. THE SUSPECT THEN WALKED AWAY. JOHN HEARD TWO MALES TALKING TO IVAN. JOHN SAID THAT IVAN WAS

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SCARFF/DENISE

ser no | detective bureau processed  
1259 |

ser no

supervisor approving  
NOWAKOWSKI/DENNIS

ser no | officer reporting  
1225 | HOYT/MARK

ser no  
1334

CASE: 04015160

DATE: 8/12/04

TIME: 4:15

-----NORTH LAS VEGAS POLICE DEPARTMENT-----

-----POLICE REPORT-----

-----NARRATIVE PORTION-----

REF: ORIGINAL

PAGE: 10

OF: 11

CLOSE TO HIM, NEAR THE DINING ROOM AREA. JOHN HEARD IVAN ASKING A MALE NOT TO SHOOT HIM. THEN JOHN HEARD A GUN SHOT AND IVAN SCREAM. JOHN THEN HEARD ONE OF THE SUSPECTS ASK THE OTHER SUSPECT IF HE SHOT HIM. THE OTHER MALE, IN A JAMAICAN ACCENT SAID, YES I SHOT HIM. JOHN THEN HEARD THE SUSPECT LEAVE THROUGH THE FRONT DOOR. ABOUT ONE TO TWO MINUTES LATER, JOHN STOOD UP, TAKING THE JACKET OFF OF HIS HEAD. JOHN RAN TO THE LAUNDRY ROOM, PULLING ONE OF HIS HANDS FROM BEHIND HIS BACK AND JUMPED OUT OF A WINDOW THAT FACES NORTH TO THE REAR YARD. JOHN JUMPED SEVERAL YARDS NORTHBOUND, RUNNING AWAY FROM THE RESIDENCE. JOHN THEN CALLED THE POLICE FROM A CELLULAR TELEPHONE FROM AN UNKNOWN ADDRESS. JOHN HAD SEVERAL MARKS ON BOTH WRIST FROM BEING TIED UP AND WAS TREATED AT THE SCENE BY MEDICAL PERSONNEL. JOHN TOLD ME THAT HE COULD NOT IDENTIFY ANY OF THE SUSPECTS AND WAS UNSURE HOW MANY WERE THERE. JOHN CALLED WELLS FARGO BANK WHICH ISSUED THE ATM CARD. THEY TOLD JOHN THAT AN ATM WITHDRAWAL FOR \$201.50 WAS JUST TAKEN FROM AN UNKNOWN ATM MACHINE. WELLS FARGO WOULD NOT KNOW THE EXACT LOCATION UNTIL MONDAY BECAUSE IT WAS PAST NORMAL BUSINESS HOURS. JOHN COMPLETED A WITNESS STATEMENT AT THE SCENE.

ANOTHER VICTIM, JERMAUN MEANS TOLD ME THAT HE WENT OVER TO 2612 GLORY VIEW BECAUSE IVAN WAS PAINTING HIS VEHICLE. APPARENTLY, IVAN PAINTS VEHICLES OUT OF HIS HOME. AS MEANS WALKED UP TO THE FRONT DOOR, TWO UNKNOWN MALES OPENED THE DOOR AND BEGAN TO WALK OUT. ONE OF THE MALES WAS WEARING A BEIGE SUIT JACKET AND THE OTHER HAD DREAD LOCKS. MEANS BELIEVED THE MALE WITH THE DREAD LOCKS WAS WEARING A WIG. THE SUSPECTS GRABBED ONTO MEANS'S ARM AND PULLED HIM INTO THE RESIDENCE. THEY FORCED HIM TO THE FLOOR JUST INSIDE THE FRONT DOOR AND TIED HIS HANDS BEHIND HIS BACK. MEANS TOLD ME THAT BOTH MALES HAD GUNS IN THEIR HANDS BUT HE COULD NOT DESCRIBE THE WEAPONS. ONE OF THE SUSPECTS ASKED MEANS IF HE HAD ANY MONEY. MEANS TOLD HIM YES. ONE OF THE SUSPECTS REMOVED ABOUT \$1,300.00 DOLLARS FROM MEANS'S FRONT PANTS POCKET. MEANS REMEMBERED HAVING SEVEN \$100.00 BILLS. THE SUSPECT ALSO TOOK MEANS'S CELLULAR TELEPHONE. MEANS TOLD ME THAT THE SUSPECTS THEN LEFT OUT OF THE FRONT DOOR. AFTER A FEW SECONDS, MEANS GOT UP, BROKE THE WIRES THE SUSPECTS TIED HIM UP WITH AND RAN OUTSIDE TO HIS VEHICLE. MEANS'S GIRLFRIEND, DESTINEE WADDY WAS WAITING INSIDE THE VEHICLE. MEANS TOLD ME THAT HE DID NOT HEAR ANY GUN SHOTS SO HE BELIEVED IVAN WAS ALREADY SHOT BEFORE HE GOT THERE. MEANS RECEIVED MEDICAL ATTENTION AT THE SCENE AND HE COMPLETED A WITNESS STATEMENT. MEANS TOLD ME HE COULD NOT IDENTIFY THE SUSPECTS.

WADDY TOLD ME THAT SHE SAW TWO UNIDENTIFIED MALES WALK OUT OF THE RESIDENCE AND GOT INTO A DARK GREEN VEHICLE. WADDY SAID THE VEHICLE WAS POSSIBLY A PONTIAC GRAND AM. THE VEHICLE WAS LAST SEEN WESTBOUND ON GLORY VIEW. WADDY DESCRIBED THE MALES AS ONE WEARING A WIG, ABOUT 5'8" TALL. THE OTHER MALE WAS ABOUT 5'11" TALL. BOTH WERE WEARING BLUE AND WHITE CLOTHING. WADDY TOLD ME THAT SHE HAS NEVER SEEN THE TWO MALES BEFORE. WADDY ALSO COMPLETED A WITNESS STATEMENT AT THE SCENE.

records bureau processed  
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ser no ! detective bureau processed  
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supervisor approving  
NOWAKOWSKI/DENNIS

ser no ! officer reporting  
1225 ! HOYT/MARK

ser no  
1334

CASE: 04015160  
DATE: 8/12/04  
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-----NORTH LAS VEGAS POLICE DEPARTMENT-----  
-----POLICE REPORT-----  
-----NARRATIVE PORTION-----

REF: ORIGINAL  
PAGE: 11  
OF: 11

IVAN'S SON, AARON DENNIS WAS ALSO AT THE RESIDENCE WHEN HE WAS SHOT. DENNIS SAID THAT HIS FATHER CAME INTO THE HOUSE AND TOLD HIM, HIS MOTHER AND HIS COUSIN TO DO WHAT THEY SAY. TWO BLACK MALES WERE WALKING BEHIND IVAN. ONE WAS WEARING A BLACK JACKET. THE TWO MALES DEMANDED EVERYONE TO GET ON THE GROUND. ONE OF THE SUSPECTS TIED DENNIS'S HANDS BEHIND HIS BACK. DENNIS THEN ONLY REMEMBERED ONE OF THE MALES ASKING FOR MONEY AND SHOOTING IVAN. DENNIS COMPLETED A WITNESS STATEMENT AND HE WAS TREATED BY PARAMEDICS AT THE SCENE.

IVAN'S NEPHEW, JOSE POSADA TOLD ME TWO UNIDENTIFIED BLACK MALES WERE THREATENING IVAN FOR MONEY. THE SUSPECTS MADE POSADA AND DENNIS FACE A WALL AND ASKED THEM WHERE ALL THE TELEPHONES WERE. POSADA TOLD THE MALES AND THE SUSPECTS BROKE ALL OF THE TELEPHONES AND CELLULAR PHONES. POSADA SAID THE SUSPECTS TIED EVERYONE UP WITH WIRES FROM THE FLOOR LAMPS IN THE LIVING ROOM. POSADA THEN SAID HIS UNCLE IVAN WAS SHOT IN THE HEAD. POSADA DESCRIBED ONE OF THE MALES AS A BLACK MALE WITH BRAIDS. THE OTHER MALE WAS A BLACK MALE WITH A DARK AFRO. ONE OF THE SUSPECTS WAS WEARING A TUXEDO SHIRT. POSADA ALSO SAID THAT HE SAW THREE GUNS. THE TWO MALES THEN WALKED OUT OF THE FRONT DOOR. POSADA COMPLETED A WITNESS STATEMENT AT THE SCENE AND WAS TREATED BY PARAMEDICS.

CSI BRADY ARRIVED AND PROCESSED THE SCENE. DETECTIVES PRIETO AND MELGARJEO ALSO ARRIVED ON SCENE. OFFICER BAILEY WENT TO UNIVERSITY MEDICAL CENTER TO CHECK ON IVAN'S INJURIES. IVAN WAS LAST LISTED IN STABLE CONDITION. OFFICER BAILEY ALSO INTERVIEWED IVAN. REFER TO OFFICER BAILEY'S FOLLOW-UP REPORT FOR FURTHER DETAILS. TAMMY POSADA, JOSE'S MOTHER ARRIVED ON SCENE AND TOOK POSSESSION OF THE FOUR DOGS BELONGING TO IVAN. TAMMY ALSO TOOK CUSTODY OF JOSE AND DENNIS UNTIL FURTHER NOTICE. AT ABOUT 2330 HOURS, DISPATCH RECEIVED A TELEPHONE CALL FROM TOM WINTER ABOUT POSSIBLE INFORMATION ON THE SUSPECTS. WINTER TOLD ME HE OWNS SEVERAL PROPERTIES IN THE LAS VEGAS VALLEY. ONE OF HIS EX-TENANTS, ERIC HAWKINS OWNS A DARK GREEN CHEVY MALIBU AND WAS A SUSPECT IN A BURGLARY CASE ABOUT TWO MONTHS AGO. WINTER SAW A NEWS RELEASE AND TOLD ME THAT HAWKINS'S METHOD OF OPERATION MATCHES A BURGLARY TWO MONTHS AGO, SIMILAR TO 2612 GLORY VIEW. WINTER TOLD ME HAWKINS SPEAKS WITH A JAMAICAN ACCENT AND HAS A BROTHER-IN-LAW THAT HE IS ALWAYS SEEN WITH. WINTER TOLD ME HAWKINS'S SOCIAL SECURITY NUMBER IS ~~REDACTED~~. A RECORDS CHECK ON HAWKINS REVEALED THAT HE HAS BEEN ARRESTED IN THE PAST FOR NARCOTICS AND WEAPONS CHARGES WITH A D.O.B. OF 072284. HE IS LISTED AS 5'10" TALL AND 140 POUNDS. DISPATCH PROVIDED POSSIBLE ADDRESSES IN LAS VEGAS OF 1904 JOELLA OR 3332 PARAGON DRIVE.

ATTACHMENTS: FIVE WITNESS STATEMENTS.

records bureau processed  
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ser no | detective bureau processed  
1259 |

ser no

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ser no | officer reporting  
1225 | HOYT/MARK

ser no  
1334

<sup>66</sup> Exhibit G <sup>59</sup>

NORTH LAS VEGAS POLICE DEPARTMENT  
WITNESS STATEMENT

NORTH LAS VEGAS

POLICE TYPE OF CRIME: ATT MURDER

Case # 04-15160

Date Occurred: 2004 JUN 27 A 5:09  
6-26-04

Time Occurred: 1911

Location of Occurrence: 2612 GLORY VIEW

Name of Person Giving Statement: DESTINEE WATSON

Residence Address: 2309 Bahama Point Zip Code: 89031 Phone: 2904223

Business Address: / Zip Code: / Phone: /

Date of Birth: 81 Social Security # [REDACTED] Occupation: Dental Assistant

Best Time to Contact During the Day: 2904223 Best Place to Contact During the Day: 2904223

DETAILS: I was sitting in the car waiting for my boyfriend to come out  
I saw 2 black males walking toward a green (forest) car looked like  
a grand am approximate height one with wig on 5'8 (about)  
other a few inches taller maybe 5'11. wearing white and blue.  
The car I was sitting in was parked across from the house that the  
incident happened. The 2 guys I saw got in the green car one had on navy  
blue shorts and white shirt. Age 18-21

I HAVE READ THIS STATEMENT CONSISTING OF \_\_\_\_\_ PAGE(S) AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED  
HEREIN. THIS STATEMENT WAS COMPLETED AT (LOCATION) \_\_\_\_\_  
ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ AT \_\_\_\_\_ (AM/PM), 19 \_\_\_\_\_

WITNESS: [Signature] 1334

WITNESS: \_\_\_\_\_

[Signature]  
SIGNATURE OF PERSON GIVING STATEMENT

66 Exhibit H 53

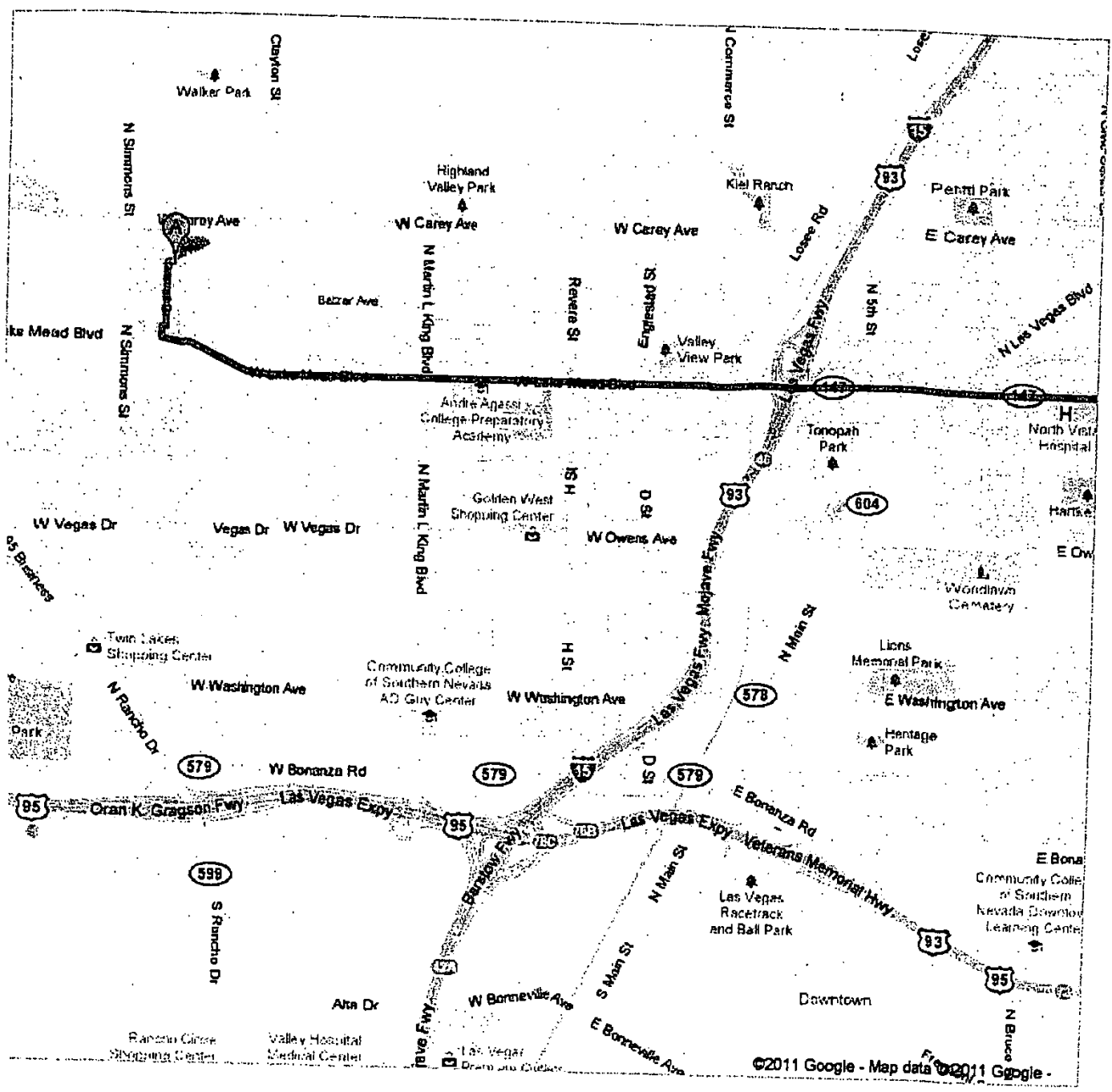


I drove from Eldorado Cleaners to the 2600 block of Glory View North Las Vegas, Nevada exactly reversing my previous route taken (see previous Google map). The route took approximately 24 minutes.

Craig Retke  
Nevada Investigative Group LLC  
PILB #1496

Google maps

To see all the details that are visible on the screen, use the "Print" link next to the map.



# Driving directions to Nellis @ Bonanza (S)



2612 Glory View Ln  
North Las Vegas, NV 89032

1. Head west on Glory View Ln toward Prevail Dr/Prevail Ln
2. Take the 1st left onto Prevail Dr/Prevail Ln
3. Turn right at Nobility St
4. Take the 1st left onto Victor Way
5. Turn left at W Lake Mead Blvd
6. Turn right at N Nellis Blvd



Nellis @ Bonanza (S)

8.2 miles 20-21 minutes

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.  
Map data ©2011 Google

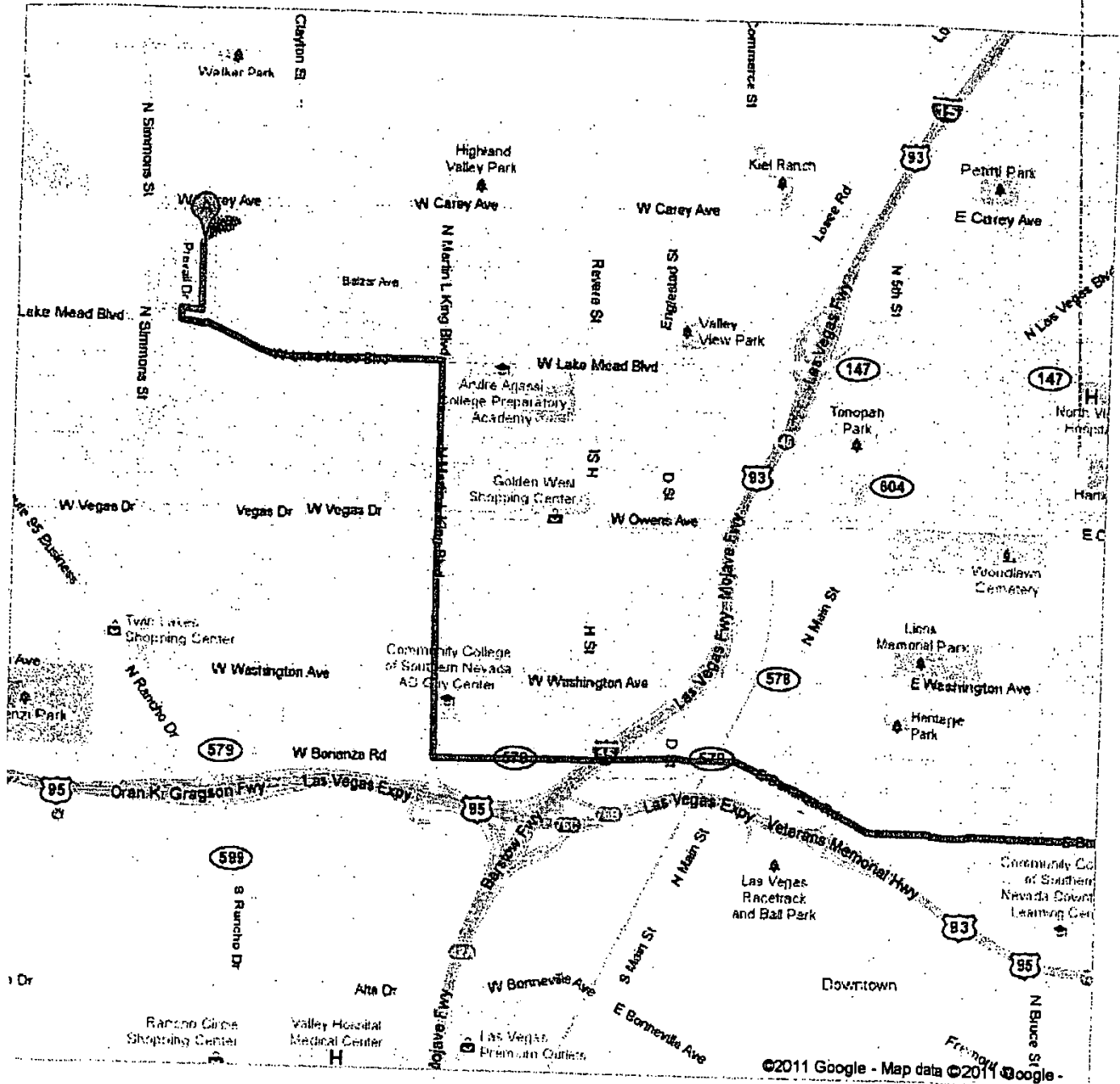
Report a problem

03/29/11

DROVE FROM 2612 GLORY VIEW N.L.V.  
TO THE INTERSECTION OF NELLIS / BONANZA  
TOTAL TIME 22 MINUTES. 8.3 MILES APPROX.

VARIED SPEED LIMITS.

To see all the details that are visible on the screen, use the "Print" link next to the map.



**Driving directions to Bonanza @ Nellis (W)**



**2600 Glory View Ln**  
North Las Vegas, NV 89032

1. Head south on Rejoice Dr/Rejoice Ln toward United Ln

2. Turn right at Nobility St

3. Take the 1st left onto Victor Way

4. Turn left at W Lake Mead Blvd

5. Turn right at N Martin L King Blvd

6. Turn left at W Bonanza Rd



**Bonanza @ Nellis (W)**

8 MILES 20-21 MINUTES

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.  
Map data ©2011 Google

Report a problem

03/29/11










DROVE FROM 2612

4/25/2011

715 N Nellis Blvd, Las Vegas, NV 89110 t...



715 N Nellis Blvd, Las Vegas, NV 89110

1. Head **south** on **N Nellis Blvd** toward **E Bonanza Rd**  
About 2 mins  
go 1.2 mi  
total 1.2 mi
-  2. Turn **right** onto **E Charleston Blvd**  
About 3 mins  
go 1.6 mi  
total 2.7 mi
-  3. Take the ramp onto **I-515 N/US-93 N/US-95 N**  
About 4 mins  
go 3.9 mi  
total 6.7 mi
-  4. Take exit **76C** for **Martin L King Blvd**  
About 1 min  
go 0.5 mi  
total 7.1 mi
-  5. Turn **right** onto **N Martin L King Blvd**  
About 4 mins  
go 1.3 mi  
total 8.5 mi
-  6. Turn **left** onto **W Lake Mead Blvd**  
About 2 mins  
go 0.9 mi  
total 9.4 mi
-  7. Turn **right** at the 1st cross street onto **Victor Way**  
go 151 ft  
total 9.4 mi
-  8. Turn **right** onto **Nobility St**  
go 75 ft  
total 9.4 mi
-  9. Take the 1st **left** onto **Prevail Dr/Prevail Ln**  
go 0.2 mi  
total 9.6 mi
-  10. Turn **right** onto **Glory View Ln**  
Destination will be on the left  
go 105 ft  
total 9.7 mi



2612 Glory View Ln, North Las Vegas, NV 89032

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

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Directions weren't right? Please find your route on [maps.google.com](http://maps.google.com) and click "Report a problem" at the bottom left.

4/25/2011

Google maps

715 N Nellis Blvd, Las Vegas, NV 89110 t...

Directions to 2612 Glory View Ln, North Las Vegas, NV 89032  
10.3 mi – about 18 mins

**Save trees. Go green!**

Download Google Maps on your  
phone at [google.com/gmm](http://google.com/gmm)



4/25/2011

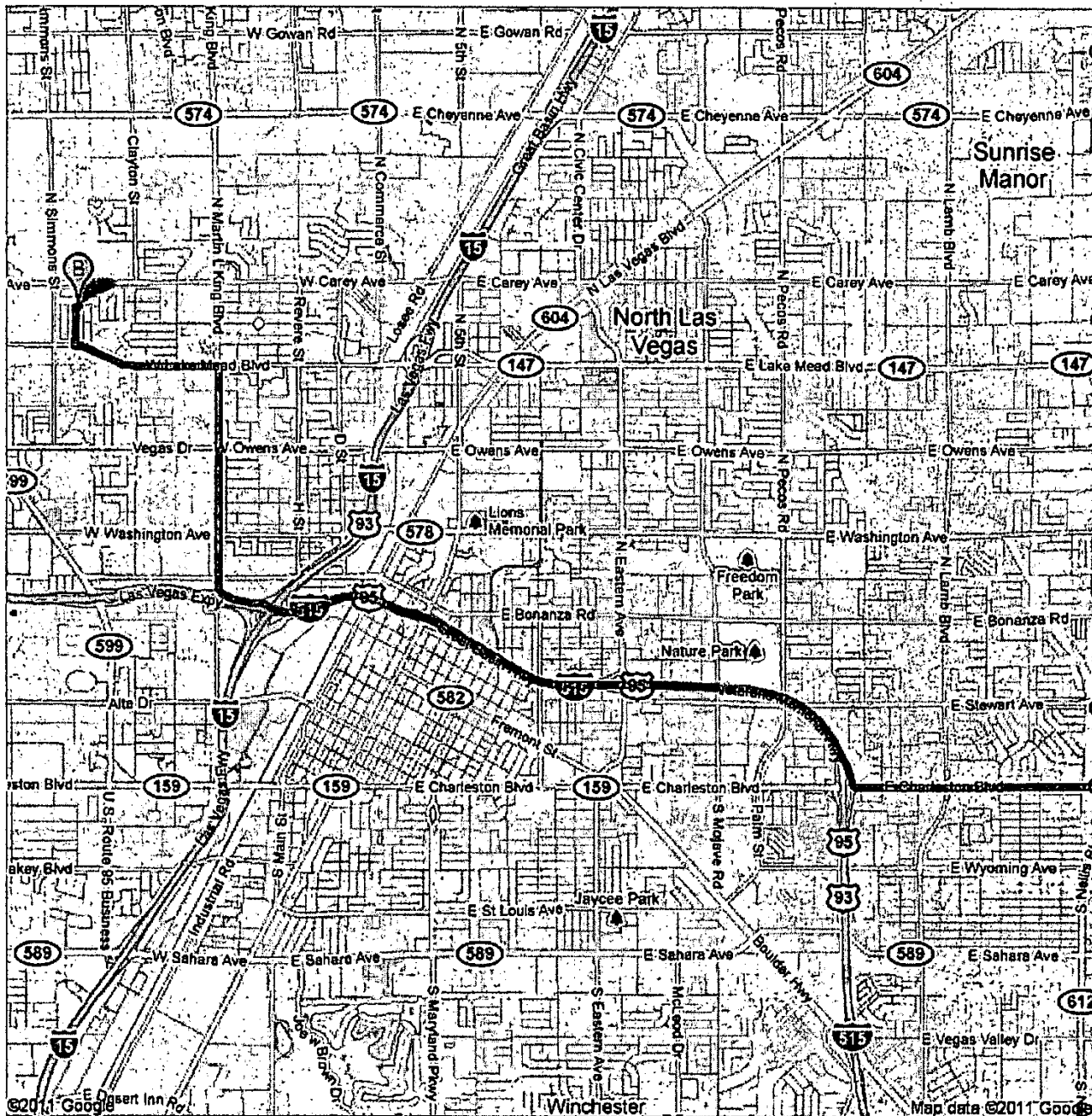
Google maps

715 N Nellis Blvd, Las Vegas, NV 89110 t...

Directions to 2612 Glory View Ln, North Las Vegas, NV 89032  
9.7 mi – about 18 mins

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4/25/2011

715 N Nellis Blvd, Las Vegas, NV 89110 t...

 715 N Nellis Blvd, Las Vegas, NV 89110

- |   |  |                            |
|---|--|----------------------------|
|   | 1. Head <b>south</b> on <b>N Nellis Blvd</b> toward <b>E Bonanza Rd</b><br>About 2 mins  | go 1.2 mi<br>total 1.2 mi  |
|    | 2. Turn <b>right</b> onto <b>E Charleston Blvd</b><br>About 3 mins   | go 1.6 mi<br>total 2.7 mi  |
|    | 3. Take the ramp onto <b>I-515 N/US-93 N/US-95 N</b><br>About 4 mins   | go 3.8 mi<br>total 6.5 mi  |
|    | 4. Continue onto <b>US-95 N</b><br>About 1 min   | go 0.9 mi<br>total 7.4 mi  |
|    | 5. Take exit <b>77</b> for <b>Rancho Dr</b> toward <b>US-95 BUS</b>  | go 0.4 mi<br>total 7.8 mi  |
|    | 6. Keep <b>right</b> at the fork, follow signs for <b>US-95 BUS N/Rancho Dr N</b> and merge onto <b>N Rancho Dr/U.S. Route 95 Business</b><br>About 2 mins | go 1.1 mi<br>total 8.9 mi  |
|    | 7. Turn <b>right</b> onto <b>Vegas Dr</b><br>About 1 min   | go 0.4 mi<br>total 9.3 mi  |
|    | 8. Turn <b>left</b> onto <b>N Simmons St</b><br>About 2 mins   | go 0.8 mi<br>total 10.1 mi |
|    | 9. Turn <b>right</b> onto <b>Devoted Way</b>   | go 174 ft<br>total 10.1 mi |
|  | 10. Turn <b>left</b> onto <b>Patriotic Ln</b>  | go 453 ft<br>total 10.2 mi |
|  | 11. <b>Patriotic Ln</b> turns <b>right</b> and becomes <b>Glory View Ln</b><br>Destination will be on the left   | go 0.1 mi<br>total 10.3 mi |

 2612 Glory View Ln, North Las Vegas, NV 89032

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

Map data ©2011 Google

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4/25/2011

Google maps

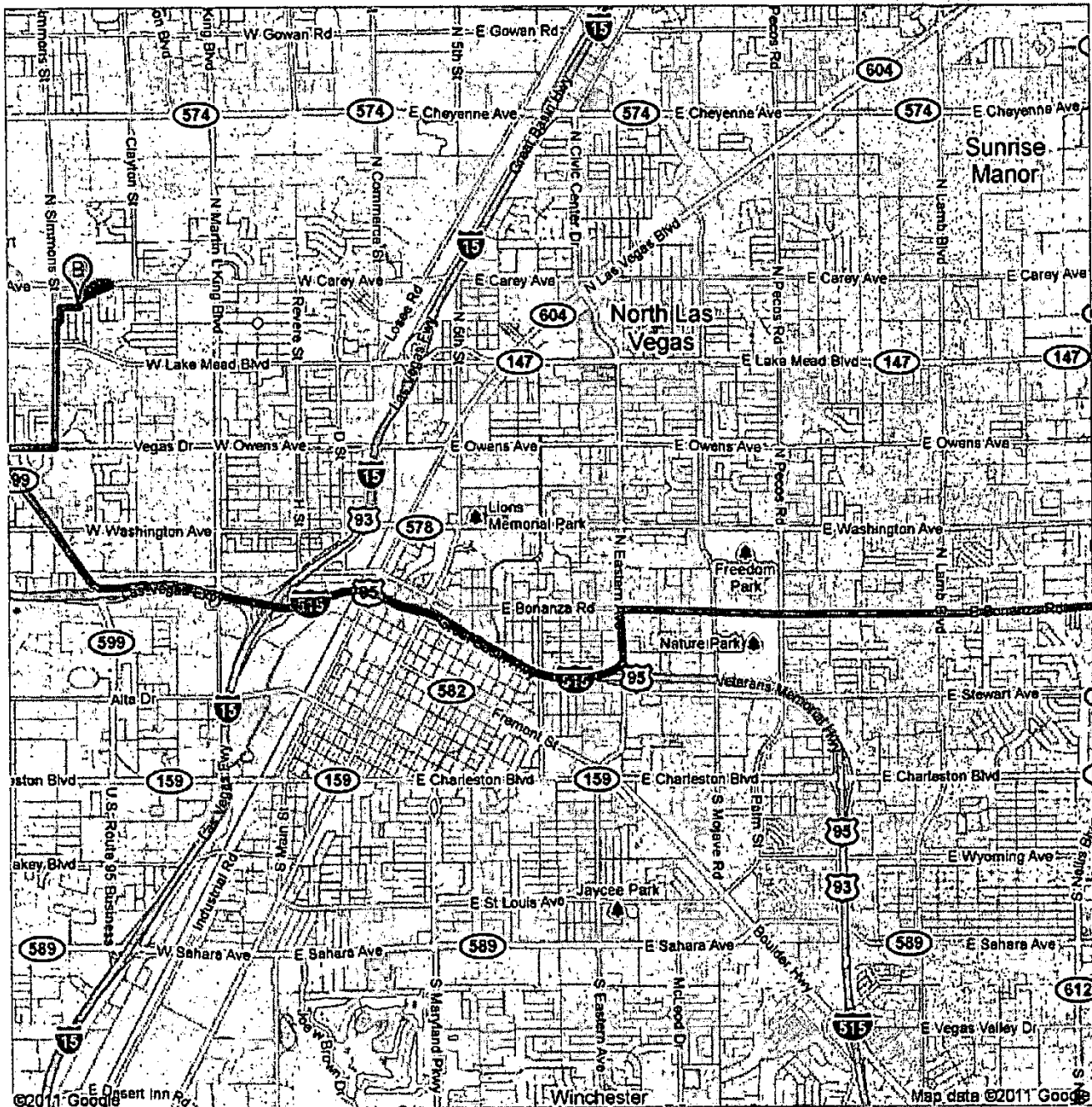
715 N Nellis Blvd, Las Vegas, NV 89110 t...

Directions to 2612 Glory View Ln, North Las Vegas, NV 89032

9.4 mi – about 19 mins


Save trees. Go green!

Download Google Maps on your phone at [google.com/gmm](http://google.com/gmm)



4/25/2011

715 N Nellis Blvd, Las Vegas, NV 89110 t...

 715 N Nellis Blvd, Las Vegas, NV 89110

1. Head south on N Nellis Blvd toward E Bonanza Rd

go 0.1 mi  
total 0.1 mi

2. Take the 1st right onto E Bonanza Rd  
About 7 mins

go 3.0 mi  
total 3.1 mi

3. Turn left onto N Eastern Ave  
About 1 min

go 0.3 mi  
total 3.5 mi



4. Take the Interstate 515 N/U.S. 93/U.S. 95 ramp

go 0.3 mi  
total 3.7 mi

5. Merge onto I-515 N/US-93 N/US-95 N  
About 2 mins

go 1.8 mi  
total 5.6 mi

6. Continue onto US-95 N  
About 1 min

go 0.9 mi  
total 6.5 mi



7. Take exit 77 for Rancho Dr toward US-95 BUS

go 0.4 mi  
total 6.9 mi

8. Keep right at the fork, follow signs for US-95 BUS N/Rancho Dr N and merge onto N Rancho Dr/U.S. Route 95 Business  
About 2 mins

go 1.1 mi  
total 8.0 mi

9. Turn right onto Vegas Dr  
About 1 min

go 0.4 mi  
total 8.3 mi

10. Turn left onto N Simmons St  
About 2 mins

go 0.8 mi  
total 9.1 mi



11. Turn right onto Devoted Way

go 174 ft  
total 9.2 mi




12. Turn left onto Patriotic Ln

go 453 ft  
total 9.2 mi

13. Patriotic Ln turns right and becomes Glory View Ln  
Destination will be on the left

go 0.1 mi  
total 9.4 mi

 2612 Glory View Ln, North Las Vegas, NV 89032

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

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“Exhibit - I”

## Nevada Investigative Group, LLC

PILB#1496  
8414 W. Farm Rd #180-505  
Las Vegas, NV 89131  
(702) 296-5005

---

### Case Investigation

**To:** Attorney Ozzie Fumo

**Date:** 02/14/11

**From:** Investigator Craig Retke

**Case #** C204957 / Rickie Slaughter

**Attorney/Client  
Privilege**

**Persons Involved:** Vanita Williams ( Monique Westbrook's Grandmother)  
Monique Westbrook  
Destinee Waddy  
Tiffany Johnson  
Investigator Craig Retke

#### Synopsis:

The following report details the up to date investigation which was conducted with or regarding the above persons by Investigator Retke. Investigation is ongoing.

#### Details:

On 02/08/11 at 9:00am I called (870) 254-2736, this is the last known number of **Monique Westbrook**. I spoke to a female and identified myself. This female identified herself as Vanita Williams, as the grandmother of Monique Westbrook. Vanita Williams stated that Monique had moved down south to her Grandpa's. Williams said that Westbrook was living with her in Arkansas. Williams would not give me the address or phone number of Monique. I gave Williams my name and phone number and asked that she give it to Monique. I received no call from Monique Westbrook.

On 02/09/11, I received no call from Monique Westbrook.

On 02/10/11 at 9:00am I again called and spoke to Vanita Williams and she said she hasn't been in contact with Monique.

02/11/11, I conducted a comprehensive search for Monique Westbrook which resulted in an address of 273 Rushing Rd., Malvern, AR 72104 and a phone number of (501) 467-3660. I called this phone number and received an answer from an older male adult. I asked for Monique Westbrook and this subject said "I think you have the wrong number".

\*\*\*\*\*

On 02/10/11, I attempted to locate **Destinee Waddy** on three phone numbers.

- (702) 254-9341, I received no answer.
- (818) 358-3286, I received no answer. Listed with address 12803 Burbank Blvd #D, Valley Village, CA 91607.
- (702) 420-0739. This number went to a voicemail box that was full. Listed with address 12803 Burbank Blvd #D, Valley Village, CA 91607.

On 02/13/11 at 7:55am I called (702) 420-0739. A female answered the phone and I asked her if this was Destinee Waddy and she said "yes". I then identified myself and explained I was working for Attorney Fumo on the case of Rickie Slaughter. I asked if she knew who I was talking about and she said "yes, that guy who robbed those people". I asked Waddy if she would explain to me what she witnessed that day on 06/26/04. Waddy said she was sitting in her car across the street from 2612 Glory View, North Las Vegas. Waddy said her boyfriend Jermaun Means had gone inside the Glory View house. Waddy said she couldn't see the front door of the house. She said a short time went by and she saw 3 guys walking form the porch area of 2612 Glory View. I asked if she saw them walk out the front door and she said "no". I asked her to describe these subjects. Waddy stated that all she could see is that one had dreadlocks, one had a heavy coat on and one had a beanie on. Waddy said she thought it was strange that these guys were wearing the clothes because it was hot outside. Waddy watched the three males walk East bound across the street and get into a emerald green car. Waddy said they did not drive past the Glory View house when they left. She then saw her boyfriend as he came out to the car and used her phone to call 911. She also said her boyfriends hands had marks on them like something had been wrapped around them. She said "I think he was tied up".

\*\*\*\*\*

On 02/10/11 I contacted Tiffany Johnson on (702) 824-8292. I asked her if she had composed the letter I asked her to write regarding the dealings she has had with North Las Vegas Detective Priedo. She stated that she did complete the letter. I asked if I could pick it up from her and she said to come by her house anytime. At 10:00 am I went to Tiffany Johnson's address of 1046 Greymouth St., Las Vegas, NV and contacted her. I asked if I could talk to her further regarding the case and she asked me to come in. Johnson had explained she had just been served a Subpoena by the District Attorney's office. Johnson gave me a letter describing her past dealings with Detective Priedo (see attached letter). I asked Johnson if she was familiar with the interviews she did with Detective Priedo on 07/15/04 and 07/20/04. I handed her the interview transcripts and had her look at them. I asked if she would like to talk about the case with me and she was very apprehensive. Johnson said that she didn't really want to get involved in this case anymore because it's been such a long time and she wanted to put it in her past.

I asked Johnson what she was doing the day of the incident and she said she was working at El Dorado Cleaners. She worked from 7am-7pm and Rickie had her car all day.

I asked her to confirm if she had a child with Rickie Slaughter. She stated that she did, his name is Rickie Jr., 7 years old.

Johnson asked me if she had to testify in court and I told her it was a possibility.

I asked if she would like to talk to me anymore and she said "no" that she would like to get this behind her.

I thanked her for her time, gave her my business card and asked her to call me if she remembered anything else.

\*\*\*\*\*

The Nevada Department of Motor Vehicles (DMV) does not classify or in any way group a searchable database to determine vehicles associated with any race, creed or color per the Civil Rights Act. It was determined that I am not able locate any information matching a green vehicle to an Afro American male.

\*\*\*\*\*

Continuing investigation to locate and interview:

- Joquan Richard, aka Lil Marv , D.O.B. 02/21/1985. CCDC and NDOC checks with negative results and several address checks returned negative.
- Cheryl Brown, girlfriend of Joquan Richard. Last known address of 1845 Decatur # 2, Las Vegas, NV. Phone number (702) 644-4396, disconnected as of this date.
- Tom Winters
- Erick Hawkins
- Lloyd Ham
- Marquis Lerner
- Research on Car Club (press release's etc.)

Craig Retke  
Nevada Investigative Group LLC  
PILB #1496

“Exhibit - J”



## Opening Statement

### Factually Innocent

The evidence in this case will show that Ricky Slaughter is not just not guilty, but rather factually innocent.

Make no mistake about it, what happened to Ivan Young, His family and friends that evening on June 26, 2004 was a tragedy. But the even bigger tragedy is that the perpetrators are still out there.

Ivan Young was shot between 6:30 and 7:11 p.m.

We can reasonably know this because Ryan John called the police at exactly 7:11 p.m.

The evidence in this case will show that Mr. Ricky Slaughter had absolutely nothing to do with it. Other than being a patsy so that the real criminals could get away with it.

Ricky was not at 2612 Glory View between 6:30 and 7:11 p.m. on June 26, 2004. The evidence in this case will show that he was over 10 miles away with a young woman named Monique Westbrook.

AND Monique Westbrook will come into this court and she will testify that on June 26, 2004 she and Ricky were together from approximately 4p.m. until 7p.m. that evening.

She will tell you that she called him at approximately 2p.m.

She will tell you that he arrived at her apartment at approximately 4 p.m.

She will tell you that she lives near the corner of Bonanza and Lamb in a housing complex called the Vera Johnson Manor, also called the Rogich.

She will tell you that she met with Ricky in the parking lot and that the two of them walked around the complex for a short while and then the two of them went inside her apartment.

She will tell you that she shared that apartment with her friend Shamika Brass. She will tell you that she and Shamika Brass are still friends to this day.

She will tell you that Shamika was not alone in her apartment. Shamika was there with her child's father Charles McKeller.

Monique will tell you that she and Ricky watched a movie and they had sex and that Ricky left the Vera Johnson Manor at approximately 7:00 p.m.

Ricky Slaughter is Factually Innocent

Tiffany Johnson

From the Vera Johnson manor at Bonanza and Lamb, Ricky drove to the El Dorado cleaners; which was on the corner of Bonanza and Nellis. There was also an Albertsons supermarket inside that complex at the time.

That drive, the evidence will show takes approximately 5 minutes. It is approximately a three mile drive from Bonanza and Lamb to Bonanza and Nellis.

On June 26, 2004 Ricky lived with his then girl friend. Her name is Tiffany Johnson.

Tiffany Johnson will come into this court and she will tell you that Ricky picked her up from where she worked inside the Albertsons Shopping Center at a place called the El Dorado cleaners at approximately 7p.m.

Now Tiffany will be the first to admit that Ricky is not the most punctual person in the world. But she will also tell you that there is no possible way her picked her up at 7:30 because if that were the case, she would have been pissed. – Her words not mine.

She will tell you that it was not unusual for him to be a few minutes late but there is no was he was later that 7:15.

Remember the call came into the police at 7:11.

The evidence in this case will show 2612 Glory View is a 10 mile drive to Bonanza and Nellis.

There is no way Ricky could have made that 10 mile drive in 4 minutes.

No One could make that drive in 4 minutes it is factually impossible

Ricky is factually innocent

Further the evidence in this case will show that there is no way for Ricky to have made that drive without stopping to add water. You see both Monique Westbrook and Tiffany Johnson remember that car very well. And it had a radiator leak.

She will also confirm that on June 26, 2004 Ricky had 2 black eyes and stitches that were recently removed from his face near his eyes.

None of the victims described a black eye

She will confirm that Ricky does not speak with a Jamaican accent.

She will also tell you, as she told Det. Prieto on June 28, 2004 that after Ricky picked her up she dropped him off at their apartment and she left to go and pick up her son from her grandfathers house. Ricky was without a vehicle after 7:30 ish

You see the evidence in this case will show that Ricky is factually Innocent.

## **The Victims**

The evidence will show that each of the Victims in this case remembers the assailants differently.

Defense Expert Gregory Loftus will explain why this is so.

And only three out of six identified Ricky as the assailant. The reason for this is because when a victim sees a six pack of pictures the brain believes the perpetrator is in there, and they want very much to pick someone out.

### **Ivan Young**

2 Black Males

One was bald with a blue shirt

The other had dreadlocks and spoke with a Jamaican accent

In his taped statement he states that one was talking about going back to Belize.

One guy was from Belize and did not like it here in America

### **Jennifer Dennis**

2 Black Males

One had a blue shirt and Jeans.

The other had a Red shirt and Jeans

She told police that her husband Ivan Young paints graphics on cars.

One of the suspects was talking about a Pontiac

and that Young charges too much money for his work (Hickman Rpt)

### **Ryan John**

2 Black Males

One spoke with a Jamaican Accent

Said he could not ID the suspects

### **Jermaun Means**

Saw 2 Black Males leave 2612 Glory View

One had a beige suit Jacket

The other had dreadlocks that was possibly a wig

He could see the guns but could not describe them

Took \$1300.00 and his cell phone.

Did not hear the gun shot

### **Destiny Waddy**

Was outside

Saw the suspects drive away in a Green Pontiac Grand AM

### **Aaron Dennis**

2 black males

### **Jose Posada**

2 black males one was wearing a tuxedo jacket

Detective Prieto

This is a case of sloppy police investigation

The evidence in this case will show that shortly after the incident occurred, it was broadcast all over the news. As you can imagine when something like this happens, the police do not always release all of the details. In this case the evidence will show that one fact that was not released was the fact that at least one of the perpetrators spoke with a Jamaican accent.

In any event, shortly after the incident was broadcast on the news; Det. Prieto received information that someone had called the police to report that he may know who is responsible for this crime.

The person who made this call was not someone trying to work off his own criminal cases. He is a respected Las Vegas Businessman named Tom Winter.

Tom Winter will come into this court and he will tell you that in 2004 he used to rent to a man named Eric Hawkins.

He will tell you that Eric Hawkins drove a green Chevy Malibu.

Destiny Waddy told police the suspects drove a green Pontiac grand AM.

Both Chevy and Pontiac are made by the same maker GM

Tom Winter will testify that he informed police that Eric Hawkins was believed by him to have the same method of operation as the suspects on the news.

He will tell you that he informed police that Eric Hawkins was known to hang around his brother in law.

Most importantly he will tell you that Eric Hawkins speaks with a Jamaican accent

Yet with all of this information what does Det Prieto do?

Does he meet with Mr. Hawkins so he can see him first hand. – NO

He simply calls him to ask him where he was on Saturday June 26, 2004

This call takes place over a month later and not surprisingly Mr. Hawkins knows exactly where he was that night. He claims that he was with his grand mother.

Does Det. Prieto meet with the grand mother – NO.

He just calls her and confirms Hawkins story.

The grandmothers name is Ms. Christmas

A Jamaican sur-name

In fact Det. Prieto never even made a photo line up with Eric Hawkins in it at all.

Ivan, Jennifer, Ryan, Jurmaun, and the kids never even had the opportunity to even ID or rule out Eric Hawkins as a suspect.

Detective Prieto's bias is evident in his report.

The incident occurred June 26, 2004.

On that date in her report to police Destiny Waddy told police she saw a green Pontiac Grand AM

She never mentioned a Ford. – Ever!

However within hours of the crime Det. Prieto had been informed by a CI. That he overheard Ricky talking about the incident.

The evidence will show that a CI or confidential Informant is a person who is working off their own criminal activity by snitching out the activity of another.

The evidence in this case will show that the CI in this case was deeply involved in the criminal justice system. We know this because Det. Prieto will tell you that the CI in this case has already snitched on two other armed robberies.

This CI tells Det. Prieto that Ricky did this crime in his Leaky Ford Taurus.

Even though none of the victims of this crime describe a green Ford – Det. Prieto in his search warrant to the judge lies to the Judge and states that a victim did in fact see a green Pontiac or Ford.

“During Hoyt’s initial investigation witnesses at the scene identified the suspects vehicle as a green Grand AM or Ford.”

Ladies and Gentlemen the evidence will show the “OR FORD” is a lie.

This is in Prieto’s June 28<sup>th</sup> 2004 affidavit to the Magistrate Judge.

The evidence will show that later on June 30<sup>th</sup> 2004 when Det. Prieto drafts his initial police report he will include the lie, when he knows full well that Destiny Waddy the only person to describe the get away vehicle only reported seeing a green Pontiac Grand AM. She never mentions a ford.

Also on June 30<sup>th</sup>, 2004 when Det. Prieto drafts his report he includes the name Johnson when he is describing one of the victims. Clearly he had Tiffany Johnson on his mind when he made this error in his report.

Detective Prieto did speak with Tiffany Johnson on June 28<sup>th</sup>, 2004. A mere thirty hours after the incident at Glory View had occurred. And during that initial meeting when Tiffany had no idea what had occurred she told him in no uncertain terms that Ricky picked her up from work that evening at 7 p.m. His normal time. She even told him *I have no reason to lie to you.*

The evidence will show that Det. Prieto threatens her to state it was later.

He accused her of planning it

He accused her of waiting in the car.

He then told her what happened to Ivan. She was crying.

He asks her where did he get the money? Her response is what money?

He threatens her – Who is going to watch your kid while you are in prison

Tiffany told Prieto she gave Ricky her car that day because it was acting FUNNY  
(Johnson Taped Stmt #2 at 11:30)

Later during the interview he asked her if Ricky bought anything. She replies that we bought some Freon because my car was leaking  
(Johnson Taped Stmt #2 at 18:07)

She knows nothing – because there is nothing to tell.

After being pressured. Having no sleep or food after her home has been ransacked she still maintains that Ricky picked her up no later than 7:15

All Detective Prieto had to do was pull the surveillance tape at the cleaners or at Albertsons and he could have verified the exact time Ricky picked Tiffany up. The evidence will show he failed to do so.

Later Det. Prieto lied on another affidavit.

On November 5<sup>th</sup> 2009 He signs an affidavit stating that he had Ricky's shoes tested and that there was blood on the shoe and that it was covered in polish.  
When in fact the report came back and affirmatively ruled out blood as the substance on the shoe. The report actually indicated the substance on Ricky's shoe was some form of rust.

Ricky actually freely gives Det. Prieto his DNA and none of Ricky's DNA was found at 2612 Glory View.

Jaquan Richard – Interviewed at the Jail – Confirms Ricky was at his house at 7pm  
Was the one who shot into Ricky's car.

Germ Jeremy McCoy – Had a beef with Ricky – Had him Jumped caused the Black eyes.

Ladies and Gentlemen the Physical Evidence in this case does not match.

\$1300.00 was taken from Jurman Means

\$201.50 was taken from the 7-11 ATM

Yet the evidence will show that a mere 30 hours later when Ricky and Tiffany's home was searched and destroyed by Det Prieto and his associates no money was found at Ricky's home or on his person.

There was blood everywhere from Ivan.

Someone stepped in that blood and left a shoeprint. All the victims were ruled out as having left that bloody shoeprint.

Circumstantially one of the perpetrators must have left the shoeprint.

Yet the evidence will show that no blood was found on Ricky's shoe. The person who left that bloody print drove away in a green Pontiac. Ricky's green ford was tested for blood. None of Ivan Youngs blood was found in Ricky's car.

The evidence will show Detective Prieto never even bothered to check Eric Hawkins Green Chevy Malibu for blood.

There was a bullet found in Ivan.

It does not match the caliber of the guns found in Ricky's car.

Destiny Waddy will tell you that she saw the suspects drove away in a green Pontiac Grand AM She pointed out tire maks as they drove away.

The tire marks were photographed

There will be no evidence that those tire marks were left by Ricky's leaky ford Tarus.

The evidence will show that Det. Prieto never even looked at Eric Hawkins green Chevy Malibu. We will never know if those tires match up.

Jennifer Dennis, Ivan's wife reported to police that one of the suspects stated that Ivan charges too much to paint cars. No evidence that Ricky ever had a car painted or inquired about having his car painted.

7-11

Someone goes into the 7-11 located at 3051 East Charleston and uses Ryan Johns ATM card at approximately 8:00 p.m.

Remember Ricky is without a car.

The government wants to make a big deal that both Ricky's apartment and the 7-11 are located on East Charleston.

What the evidence in this case will show is that if you were to walk out of Ricky and Tiffany Johnson apartment and look to the left there is an AM PM about one block away.

If you were to walk out of their apartment and look to your right there is a Circle K even closer. Just about a half block away. The evidence will show that both these convenience stores have an ATM.

If in fact Ricky was to have walked to that 7-11, he would have had to walk right past the circle K doors. The 7-11 is almost a mile away.

### The Guns

The guns do not match.

There were two guns found in Ricky's car. Neither one of them could have fired the bullet into Ivans head.

The witnesses describe a revolver and a small hand gun.

Well ladies and gentlemen all guns are either a revolver or hand gun.

The evidence will show they all come in black, silver or chrome.

The color doesn't tell us anything

The government expert will talk about two things.

Composition – What a bullet is made of ie. Copper, zinc, Iron, Lead

Design Features – The markings on the outside of a bullet.

None of her information can possibly tie Ricky to what happened at 2612 Glory View

The evidence will show that all of our blood is made up of the same composition sodium (salt), water, glucose (sugar). We all have it. What sets us apart is our DNA, Bullets do not have DNA,

What the government expert will tell you is 2 things.

1. the bullet fragment found at 2612 Glory View matches the bullet fragment found in Ivans head; and
2. That a bullet fragment found in Ricky and Tiffany's Ford contains lead. As do all bullets.

None of that information puts Ricky at the scene.

The evidence will show that there is no physical evidence that ties Ricky to this crime.

He is factually Innocent.

Ladies and Gentlemen at the conclusion of this case I am going to ask you to return a verdict of NOT GUILTY on all counts.

Not just because Ricky is NOT GUILTY.

Not just because the Government did not prove each and every element of every single charge beyond a reasonable doubt.

But because *Indeed Ricky is Factually Innocent*.



Prieto

I. *Lack of Investigation*

You have been a Cop for over twenty years  
You were trained in the academy  
You were taught how to write reports  
You were instructed to be fair  
You were instructed to be complete and thorough  
You typed your report on June 30, 2004 – Correct.  
That was four days after the Incident at 2612 Glory View  
You wrote your report after you had arrested Ricky  
You have reviewed your report prior to coming to court today  
You have been on this case since 2004  
You have probably read every report in this file  
The evening this happened it was on the news  
Now it's common for police to not give all details of a crime when it is broadcast for the news  
That way if a person calls in you can more easily check their truthfulness or knowledge of a crime when you receive information known only to a select few.  
For instance in this case the fact that one of the suspects spoke with a Jamaican accent was not broadcast on the news was it

On June 26, 2004 you are dispatched over to 2612 Glory View  
You were told it was a robbery  
When you arrived you noted the house was in disarray  
You noticed a pool of blood in the kitchen area (Show Photo of the Blood)  
You noticed a shoe print in the blood (Show Photo of Shoe Print in Blood)  
Every one in the house at the time had their shoes processed to see if their shoes matched the bloody foot print left at the scene.  
None of the witnesses' shoes matched the print in the blood  
You can assume that the print was left by one of the robbers  
Eventually you arrested Ricky  
You tested his shoes  
None of the shoes at Ricky house matched the ones that left the print did they

You had the house processed for finger prints  
You did not find Ricky' finger prints at the scene did you

You had the house processed for DNA – Hair fibers  
In fact none of Ricky's DNA was left at the scene

The person who shot Ivan Young did so at pretty close range  
You might expect there to be blood spatter on the shooter perhaps  
When you arrested Ricky you tested his skin for blood spatter  
You did not find any blood evidence on Ricky

You tested his clothes for blood spatter  
You did not find any of Ivan's blood on any of Ricky's clothes did you  
You tested Ricky's car for Ivan's blood  
You would agree with me that Ricky's car was messy (Introduce Picture of the Car)  
No evidence of Ricky or anyone for that matter, cleaning the car  
The person who stepped in Ivan's blood at 2612 Glory View, you think they were in  
Ricky's car that day correct  
Destiny Wadday said the suspects left in a Green Pontiac Grand AM  
Ivan's Blood was on the bottom of one of the robber's shoes  
You found no evidence of Ivan's BLOOD in Ricky's car did you  
At Ricky's home you didn't find a Dreadlock wig did you  
You didn't find a baseball cap did you  
You didn't find a tuxedo jacket did you  
You didn't find a brown or tan jacket did you  
You didn't find any money did you  
You didn't find Ryan Johns ATM card did you  
You did find a camera didn't you  
You developed the pictures on the camera  
There was nothing of any evidentiary value on the camera was there

According to your report, written June 30, 2004, you were contacted by Det. Devore of  
LVMPD.

He informed you that he had received information from a reliable confidential informant.

A snitch

This snitch gives the police information and in return he receives favorable treatment  
from the police or district attorney's office

He might get warrants quashed

He might get felony cases dismissed

He is certainly a person who is in the criminal justice system

He is a criminal

In fact this particular snitch had been assisting the government for over a year (pg5)

All this information was given for the government forgiving his outstanding warrants.

His warrants could have been for traffic tickets

His warrants could have been for felony cases

This particular snitch was a fairly hard core criminal

Well he had previously snitched and his information led to the arrest of two suspects  
wanted for two separate armed robberies.

This would have been the third

He probably was not the kind of upstanding citizen who was working off a traffic ticket

So in essence you were taking information from one criminal and arresting other  
criminals.

And as a reward for his being a snitch – he was allowed to continue his criminal activity  
here in Clark County.

You decided what criminal activity in Clark County would be forgiven and what criminal  
activity would be prosecuted

You got to play Judge and Jury

Another person you chose to believe during your investigation was Jacquan Richard

(Show Booking Photo)

Jacquan Richard is a gang member known as MACK - correct

Jaquan Richard was a felon at the time you were interviewing him in 2004

In fact the first time you spoke with him he was in the detention center

He told you that his girl Cheryl Brown drove him over to Ricky's house

Later when you spoke to Cheryl Brown she told you she never took him to Ricky's house

He told you that while he was at Ricky's house – Ricky had to leave to pick up his girl

Jacquan said it was after seven p.m.

But that couldn't be right because we know the robbery happened at 7:11p.m.

We know that according to you, you believe that Tiffany was picked up @ 7:30

So according to you Ricky committed this robbery on Glory View – Near Rancho and Craig Rd at 7:11 pm

Then drove to his apartment over 10 miles away

During that drive he dropped off another person

Disposed of a wig and other evidence

Went inside his apartment and had this conversation with Jacquan

Made several admissions to Jacquan

Then noticed the time and left Jacquan in his apartment and left to pick up Tiffany

According to you all this was done in less than 19 minutes

Jacquan never said he saw the money did he

He never said he saw blood on Ricky did he

He never said he saw the ATM card that was taken did he

He never saw a dreadlock wig

He never mentioned that Ricky or the other guy were talking in a Jamaican accent

Jacquan too received preferential treatment in Justice Court in response to information he provided you

He was allowed to continue his criminal activity

Today Jacquan Richard in on Federal Probation

He is currently on probation for being an Ex – Felon in possession of a firearm

He, as an Ex-Felon was carrying a 9MM hand gun and ammunition

II. *Tom Winters*

A few days after the robbery officer Hoyt received a call from a man named Tom Winters  
Tom Winters is not a man trying to work off warrants or criminal activity is he

He is a local businessman

He owns and rents out homes in Clark County

He was a good Samaritan

He informed you that he knows a man named Eric Hawkins

He informed you that Eric Hawkins was a suspect in the same type of home invasion  
robberies that occurred at 2612 Gory View

He told you that Eric Hawkins owns a green Chevy Malibu

Destiny Waddy said she saw the suspects drive away in a Green Pontiac Grand Am

Pontiac and Chevy are both made by General Motors  
He also told you that Eric Hawkins commits these crimes with his brother in law  
He told you that Eric Hawkins speaks with a Jamaican accent

The Jamaican accent was not public knowledge was it

It took you over a month to even call Eric Hawkins didn't it

You only spoke to him on the phone

Eric remembered that on June 26, 2004 he was at his Grandmothers house for a party

You then called his Grand mother

His Grandmothers last name is Christmas isn't it

Christmas is a popular Jamaican last name isn't it

She informed you that Eric was with her all day and all night

You never met with Eric Hawkins personally did you

You never went to his house and asked him if you could see his shoes to try to match  
them to the bloody print did you

You never got a search warrant to search his home did you

You never bothered to look inside his Green Chevy Malibu for DNA or the blood did you

You never even took a photo of the Green Chevy Malibu

So Destiny Waddy the only person to see the suspects drive away never got the opportunity to see the Green Chevy Malibu did she

She never had the opportunity to compare that car to the car she saw drive away on June 26, 2004 did she

You never made a photo line up with Eric Hawkins photo in it to show to anyone at 2612 Glory View on June 26, 2004 did you

So none of them got the opportunity to compare Eric Hawkins to the Suspects

You never inquired about Eric Hawkins' brother in law did you

You never spoke to him

You never drafted a report about him did you  
You never got a photo of him

You never showed his photo to anyone at 2612 Glory View

You never searched his home

You never compared his shoe to the print left at the scene did you

You never bothered to get his DNA did you

You never inquired about his alibi did you

\* \* \*

Detective you have triangulated a cell phone before haven't you.

Triangulation is a way to tell where a person has been by tracking their cell phone

As we move about Clark County our phones will "hit" off the various cell towers

So if you have a person's cell phone number, you can tell where they have been by obtaining their records.

You can tell where they have moved to and from

If one makes a call you can almost pinpoint their exact location at the time the call was made

You had Ricky's cell phone

You never attempted to triangulate Ricky's whereabouts on June 26, 2004 did you

### *III. Tiffany Johnson*

You are about 6ft 5 inches

You are an experienced Detective

Tiffany Johnson – She is about 5' 5"

So she is about a foot smaller than you

You are an imposing figure over her

She was only 19 years old in 2004 correct

She and Ricky had a child together

When you first spoke with Tiffany Johnson it was about 1 a.m. on June 28, 2004

About 30 hours after the robbery at Glory View

You recorded that conversation (PH Pg 107 ln 17)

She had no idea that you were coming over that night

She had no time to prepare to meet with you

She was a student

She was learning to be a medical tech and billing clerk

She wore scrubs

She had to use gloves for her classes

You spoke with her

She initially told you that Ricky picked her up at 7:00 p.m. on June 26, 2004

She told you that she thought she got off about 5 minutes early

She knows this because she had to clock in and out

She worked at the Eldorado cleaners

The Eldorado Cleaners was on the corner of Nellis and Bonanza

It was in a shopping center

The shopping center at the time had Albertsons as the main or anchor tenant

So it was a pretty big strip mall

She said she waited for about 7-8 minutes for Ricky to pick her up

So that would mean that according to her first meeting with you she placed Ricky at

Bonanza and Nellis at about 7:08

The call to the North Las Vegas Police Dept regarding the robbery at Glory View was received at exactly 7:11 p.m.

It would take longer than three minutes to drive from 2612 Glory View to the corner of Bonanza and Nellis wouldn't it

After you took 19 year old Tiffany from her home at 1 am and interrogated her at the north las vegas police station, you took her home

Her home had its doors blown off

Windows smashed

The house was torn up while several officers searched the apartment  
Then about an hour later you came back to her apartment and said you wanted to talk to her again  
You then took her back to the NLV police station  
You interrogated her again  
She was gone from her apartment for about another three hours  
She wasn't allowed to sleep  
The third time you spoke to her was July 6, 2004  
You told her if she didn't tell you the pick up time was 7:30 she could be charged with the exact crime as Ricky  
You told her that she could lose her son  
Now you don't think she was telling you the truth about the 7:08 pick up time do you  
You think it was closer to 7:30  
You never bothered to go to the management of the Eldorado cleaners and get Tiffany Johnson's payroll sheet to see when they clocked her out did you  
And  
You never bothered to pull the surveillance video from the shopping center where Tiffany Johnson worked at 1301 N. Nellis did you

Had you done so you could have confirmed the exact time she was picked up by Ricky

#### IV. The Shoes

Now on July of 2004 you sent Ricky's shoes to be tested  
His shoes are the white Reeboks (Show Photo of the Shoes)  
There is what appears to be a reddish stain on the shoes  
It has been confirmed that the reddish stain is not blood is it

Nov 5 04  
But later, on XXXXXXXX 09 you went to another Judge and asked that judge to allow you to get a sample of Ricky's DNA

You informed that judge that the reddish stain on the shoes was blood

At the time you drafted and signed that affidavit you already knew the stain on the shoe was not blood

\* You lied to the Judge in that affidavit didn't you!

You then went to Ricky and obtained his DNA didn't you

Ricky gave you his DNA

But nothing of value came back from that sample did it

You lied to the Judge for nothing didn't you?

*Bring both SW Affidavits*

Prieto

I. Lack of Investigation

You have been a Cop for over twenty years  
You were trained in the academy  
You wee taught how to write reports  
You were instructed to be fair  
You were instructed to be complete and through  
You typed your report on June 30, 2004 – Correct.  
That was four days after the Incident at 2612 Glory View  
You wrote your report after you had arrested Ricky  
You have reviewed your report prior to coming to court today  
You have been on this case since 2004  
You have probably read every report in this file

On June 26, 2004 you are dispatched over to 2612 Glory View  
You were told it was a robbery  
When you arrived you noted the house was in disarray  
You noticed a pool of blood in the kitchen area (Show Photo of the Blood)  
You noticed a shoe print in the blood  
Every one in the house at the time had their shoes processed to see if their shoes matched  
the bloody foot print left at the scene.  
None of the witnesses' shoes matched the print in the blood  
You can assume that the print was left by one of the robbers  
Eventually you arrested Ricky  
You tested his shoes  
None of the shoes at Ricky house matched the ones that left the print did they

In fact none of Ricky's DNA was left at the scene

The person who shot Ivan Young did so at pretty close range  
You might expect there to be blood spatter on the shooter perhaps  
When you arrested Ricky you tested his skin for blood spatter  
You did not find any blood evidence on Ricky  
You tested his clothes for blood spatter  
You did not find any of Ivan's blood on any of Ricky's clothes did you  
You tested Ricky's car for Ivan's blood  
You would agree with me that Ricky's car was messy (Introduce Picture of the Car)  
No evidence of Ricky or anyone for that matter, cleaning the car  
The person who stepped in Ivan's blood at 2612 Glory View, you think they were in  
Ricky's car that day correct  
Destiny Wadday said the suspects left in a Green Pontiac Grand AM  
Ivan's Blood was on the bottom of one of the robber's shoes  
You found no evidence of Ivan's BLOOD in Ricky's car did you  
At Ricky's home you didn't find a Dreadlock wig did you



You didn't find a baseball cap did you  
You didn't find a tuxedo jacket did you  
You didn't find a brown or tan jacket did you  
You didn't find any money did you  
You didn't find Ryan Johns ATM card did you  
You did find a camera didn't you  
You developed the pictures on the camera  
There was nothing of any evidentiary value on the camera was there

According to your report, written June 30, 2004, you were contacted by Det. Devore of LVMPD.

He informed you that he had received information from a reliable confidential informant.

A snitch

This snitch gives the police information and in return he receives favorable treatment from the police or district attorney's office

He might get warrants quashed

He might get felony cases dismissed

He is certainly a person who is in the criminal justice system

He is a criminal

In fact this particular snitch had been assisting the government for over a year (pg5)

All this information was given for the government forgiving his outstanding warrants.

His warrants could have been for traffic tickets

His warrants could have been for felony cases

This particular snitch was a fairly hard core criminal

Well he had previously snitched and his information led to the arrest of two suspects wanted for two separate armed robberies.

This would have been the third

He probably was not the kind of upstanding citizen who was working off a traffic ticket

So in essence you were taking information from one criminal and arresting other criminals.

And as a reward for his being a snitch – he was allowed to continue his criminal activity here in Clark County.

You decided what criminal activity in Clark County would be forgiven and what criminal activity would be prosecuted

You got to play Judge and Jury

## II. Tom Winters

A few days after the robbery officer Hoyt received a call from a man named Tom Winters  
Tom Winters is not a man trying to work off warrants or criminal activity is he

He is a local businessman

He owns and rents out homes in Clark County

He was a good Samaritan

He informed you that he knows a man named Eric Hawkins

He informed you that Eric Hawkins was a suspect in the same type of home invasion robberies that occurred at 2612 Gory View

He told you that Eric Hawkins owns a green Chevy Malibu

Destiny Waddy said she saw the suspects drive away in a Green Pontiac Grand Am

Pontiac and Chevy are both made by General Motors

He also told you that Eric Hawkins commits these crimes with his brother in law

He told you that Eric Hawkins speaks with a Jamaican accent

It took you over a month to even call Eric Hawkins didn't it

You only spoke to him on the phone

Eric remembered that on June 26, 2004 he was at his Grandmothers house for a party

You then called his Grand mother

His Grandmothers last name is Christmas isn't it

Christmas is a popular Jamaican last name isn't it

She informed you that Eric was with her all day and all night

You never met with Eric Hawkins personally did you

You never went to his house and asked him if you could see his shoes to try to match them to the bloody print did you

You never got a search warrant to search his home did you

You never bothered to look inside his Green Chevy Malibu for DNA or the blood did you

You never even took a photo of the Green Chevy Malibu

So Destiny Waddy the only person to see the suspects drive away never got the opportunity to see the Green Chevy Malibu did she

She never had the opportunity to compare that car to the car she saw drive away on June 26, 2004 did she

You never made a photo line up with Eric Hawkins photo in it to show to anyone at 2612 Glory View on June 26, 2004 did you

So none of them got the opportunity to compare Eric Hawkins to the Suspects

You never inquired about Eric Hawkins' brother in law did you

You never spoke to him

You never drafted a report about him did you

You never got a photo of him

You never showed his photo to anyone at 2612 Glory View

You never searched his home

You never compared his shoe to the print left at the scene did you

You never bothered to get his DNA did you

You never inquired about his alibi did you

\* \* \*

Detective you have triangulated a cell phone before haven't you.

Triangulation is a way to tell where a person has been by tracking their cell phone

As we move about Clark County our phones will "hit" off the various cell towers

So if you have a person's cell phone number, you can tell where they have been by obtaining their records.

You can tell where they have moved to and from

If one makes a call you can almost pinpoint their exact location at the time the call was made

You had Ricky's cell phone

You never attempted to triangulate Ricky's whereabouts on June 26, 2004 did you

III. Tiffany Johnson

You are about 6ft 5 inches

You are an experienced Detective

Tiffany Johnson – She is about 5' 5"  
So she is about a foot smaller than you  
You are an imposing figure over her  
She was only 19 years old in 2004 correct  
She and Ricky had a child together  
When you first spoke with Tiffany Johnson it was about 1 a.m. on June 28, 2004  
About 30 hours after the robbery at Glory View  
You recorded that conversation (PH Pg 107 ln 17)  
She had no idea that you were coming over that night  
She had no time to prepare to meet with you  
She was a student  
She was learning to be a medical tech and billing clerk  
She wore scrubs  
She had to use gloves for her classes  
You spoke with her  
She initially told you that Ricky picked her up at 7:00 p.m. on June 26, 2004  
She told you that she thought she got off about 5 minutes early  
She knows this because she had to clock in and out  
She worked at the Eldorado cleaners  
The Eldorado Cleaners was on the corner of Nellis and Bonanza  
It was in a shopping center  
The shopping center at the time had Albertsons as the main or anchor tenant  
So it was a pretty big strip mall  
She said she waited for about 7-8 minutes for Ricky to pick her up  
So that would mean that according to her first meeting with you she placed Ricky at  
Bonanza and Nellis at about 7:08  
The call to the North Las Vegas Police Dept regarding the robbery at Glory View was  
received at exactly 7:11 p.m.  
It would take longer than three minutes to drive from 2612 Glory View to the corner of  
Bonanza and Nellis wouldn't it  
After you took 19 year old Tiffany from her home at 1 am and interrogated her at the  
north las vegas police station, you took her home  
Her home had its doors blown off  
Windows smashed  
The house was torn up while several officers searched the apartment  
Then about an hour later you came back to her apartment and said you wanted to talk to  
her again  
You then took her back to the NLV police station  
You interrogated her again  
She was gone from her apartment for about another three hours  
She wasn't allowed to sleep  
The third time you spoke to her was July 6, 2004  
You told her if she didn't tell you the pick up time was 7:30 she could be charged with  
the exact crime as Ricky  
You told her that she could lose her son  
Now you don't think she was telling you the truth about the 7:08 pick up time do you

You think it was closer to 7:30

You never bothered to go to the management of the Eldorado cleaners and get Tiffany Johnson's payroll sheet to see when they clocked her out did you

And

You never bothered to pull the surveillance video from the shopping center where Tiffany Johnson worked at 1301 N. Nellis did you

Had you done so you could have confirmed the exact time she was picked up by Ricky

“Exhibit - K”

## Nevada Investigative Group, LLC

PILB#1496  
8414 W. Farm Rd #180-505  
Las Vegas, NV 89131  
(702) 296-5005

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### Case Investigation

Case #C204957 / Rickie Slaughter

Date: 04/26/11

Times: 9:30am - 2:30pm

Locations: See details

Attorney/Client  
Privilege

**Persons Involved:** Ira Shirvani  
715 N. Nellis  
Las Vegas, Nevada 89103

Investigator Craig Retke

#### Synopsis:

On the above date and time, an investigation was conducted regarding the shopping complex in the 700 block of North Nellis. Subpoenas were also served at several locations in the Las Vegas valley.

#### Details:

Subpoenas were prepared by Attorney Osvaldo Fumo and I served them at Fox 5 News station located at 25 TV5 Drive, Henderson, Nevada. Another Subpoena was served at 3355 S. Valley View Boulevard Las Vegas, Nevada. Another Subpoena was served at 1500 Foremaster Lane Las Vegas, Nevada.

At approximately 12:30 pm, I contacted Ira Shirvani, the new owner of Eldorado Cleaners located at 715 N. Nellis Las Vegas, Nevada. I explained to Shirvani that I would like to talk to the previous owner, Sharon Sineas and her son Jeff Arbuckle. Shirvani stated he purchased the cleaners from Sineas on 11/17/08 and has not seen her since that date. Shirvani stated that Arbuckle is a bad individual and was in constant trouble and getting put in jail. Shirvani has not seen Arbuckle since the time he was buying the store. I asked Shirvani if the store had surveillance cameras installed when he bought the store and he stated they didn't.

An overview of the entire strip mall complex at 700 N. Nellis reveals that now opposed to 2004, that only three businesses exist out of ten. Eldorado Cleaners, a Thai restaurant and a State of Nevada Welfare office where an Albertsons once was located. I attempted to talk to the owners of the Thai restaurant but they were not in and the two male employees inside were very uncooperative. Numerous photographs were taken of the area and surrounding businesses. No surveillance cameras were located, on the tops of the roofs, under the eaves or coming from inside the businesses pointed towards the complex. (see photographs).

“Exhibit - L”



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## PROSECUTOR PRACTICE: Witnesses often get paid, shocking defense community

### Defense attorneys say \$50 led woman to change testimony

BY CARRIE GEER, THE ENO  
LAS VEGAS REVIEW-JOURNAL

When Rodkesha Thomas received \$50 cash last year from the Clark County district attorney's office, the crack addict had one thing on her mind: getting high.

And that was all the incentive she needed to lie for the prosecution at a robbery trial four days later.

Prosecutors say they routinely pay a \$25 fee, plus mileage, to any witness who meets with them before trial. That news shocked members of the defense community, who argue that the practice violates the law and could be violating their clients' rights.

"There are people who are broke, or who are homeless, or who are drug addicts who need a fix, and for whom \$50 could potentially alter their testimony," Clark County Public Defender Philip Kohn said. "And for that reason, we should know about payments so we can ask them that question and the jury can make that determination: Did \$50 change or influence their testimony?"

Defense attorneys Daniel Bunin and Dayvid Figler said they didn't know about the pretrial payments until they met with Thomas in January at the Las Vegas Detention Center.

The 23-year-old woman told them she had testified falsely against their client, robbery suspect Thad Aubert, after a Clark County prosecutor had handed her an envelope with \$50 cash.

Bunin and Figler were skeptical at first. But a few days after they met with Thomas, Deputy District Attorney Michelle Fleck confirmed on the witness stand that her office had paid the woman for attending a pretrial conference.

"And we always do that with every witness when they come for pretrials," Fleck testified.

Aubert's lawyers have spread the word ever since.

"We started asking all these defense attorneys, and nobody knew about it," Bunin said.

Assistant District Attorney Christopher Lalli said his office makes no secret of the payments.

Lalli, who joined the district attorney's office 15 years ago, said Clark County prosecutors have been paying witnesses to attend private pretrial meetings as long as he has worked there. There's no reason defense lawyers can't do the same, he said.

"I think the statute allows and/or requires it," he said.

Special Public Defender David Schieck said Lalli must say that because he can't interpret the law one way for the prosecution and another way for the defense.

"Sometimes when we go out and even try to interview witnesses, we get accused of witness tampering," he said.

Other defense attorneys expressed similar sentiments.

"If the shoe was on the other foot, they would put us in jail for something like that," Assistant Federal Public Defender David Anthony said.

According to Nevada law, a witness is entitled to a \$25 fee "for attending the courts of this state in any criminal case, or civil suit or proceeding before a court of record, master, commissioner, justice of the peace, or before the grand jury, in obedience to a subpoena."

Numerous defense lawyers interviewed for this article, as well as a staff attorney with the American Civil Liberties Union of Nevada, said the statute clearly applies to court appearances -- not private meetings with prosecutors.

A Clark County judge has said prosecutors are interpreting the law incorrectly.

But Lalli, head of the office's criminal division, pointed to a section of the statute that says witnesses are to be paid the fee "for each day's attendance, including Sundays and holidays."

Courts don't meet on Sundays and holidays, Lalli said. "That's when people are preparing for trials."

Records show that the Victim Witness Assistance Center, a unit within the district attorney's office, paid out nearly \$652,000 in witness fees in fiscal 2008. About one-third of that money went to law enforcement agencies. The rest went to lay witnesses.

The records do not differentiate between fees paid for court appearances and fees paid for pretrial conferences.

"I don't really make a big distinction between those two things in my mind," Lalli said.

To him, all the uproar over a \$25 fee is much ado about nothing.

"Some suggestion that someone is going to come in and perjure themselves for \$25 is somewhat ludicrous to me," he said.

But testimony in the Aubert case suggests that's exactly what Thomas did.

Thomas testified for the prosecution in 2008 at Aubert's first trial, which ended in a hung jury. Bunin and Figler were appointed to represent him at his retrial, which ended in February with an acquittal. Thomas exercised her Fifth Amendment right against self-incrimination at the second trial and did not testify.

While preparing for the retrial, Bunin and Figler met with Thomas, who was held at the Las Vegas jail in a prostitution case. Thomas told them she lied at Aubert's first trial because she was afraid of the prosecutors and because they gave her money, Bunin said.

When Fleck confirmed the \$50 payment in court, Bunin and Figler asked District Judge Michael Villani to dismiss their client's case based on prosecutorial misconduct. The next day, Feb. 3, Villani heard testimony on the issue.

Thomas testified again during the evidentiary hearing, describing how an investigator with the district attorney's office found her before Aubert's first trial at a crack house in downtown Las Vegas.

According to testimony at the evidentiary hearing, she met with Fleck a few days later and walked away with \$50 cash, which included a \$25 witness fee and \$25 for a taxi. She received a separate \$25 payment for testifying at Aubert's first trial.

At the February hearing, Thomas said she recently had met with representatives of the district attorney's office, including Fleck, at the jail and told them she was changing her story about the robbery.

"Why did you tell them that you lied the last time?" Figler asked her.

"Just so I could get out of the office and get my money and go smoke crack," Thomas replied.

"And you're saying that the \$50 cash that was given to you was used for what purpose?" Figler asked.

"I wanted to go buy some dope," said Thomas, who admitted she was high during a pretrial conference with Fleck last year and when she testified at the trial four days later.

Although the word "taxi" was written on a voucher for the \$50 payment to Thomas, she testified she didn't need a taxi because her boyfriend had taken her to the meeting.

Records show that the Victim Witness Assistance Center made mileage payments totaling about \$299,000 in fiscal 2008. This fiscal year, the center has a \$1.7 million budget to cover all witness fees and travel expenses.

Villani ultimately denied the motion to dismiss Aubert's case, but he ruled that the statute pertaining to witness fees "does not apply to a pretrial conference." The ruling applied only to the robbery case and will have no immediate effect on future payments.

Bunin is considering pursuing the issue in federal court.

"We're looking into options," Bunin said. "It's possible that our client's civil rights were violated when the information about the payment wasn't disclosed prior to trial last year."

Lalli said the statute provides a "modest way" of reimbursing witnesses who often must take time off work to meet with prosecutors. Without the payments, "we would have situations where witnesses would be unable to talk to us before court proceedings, and I'm sure that's something the defense would like."

Defense lawyers also have to prepare their witnesses, Kohn said. "We just don't pay them, because the law doesn't allow it."

Figler said witnesses often hesitate to speak to defense attorneys in criminal cases. "Had we known there was this option of compensating them in cash for the inconvenience of coming into our office, maybe more might have come in, especially those to whom \$50 is a lot of money."

But Figler and Buhin both said the law doesn't permit that. "Especially without disclosure," Figler added.

Kohn and other defense attorneys also questioned whether prosecutors are paying witnesses for multiple pretrial meetings.

To that Lalli responded, "I don't think we've got rogue prosecutors out there who are doing this."

And Assistant Federal Public Defender Michael Pescetta wondered aloud whether prosecutors ever withhold fees for witnesses who show up for pretrial meetings and fail to provide information that helps the prosecution.

Kohn doesn't believe that paying witness fees for pretrial conferences is a good use of public funds. But he said the Nevada Supreme Court may have to settle the more important question of whether Clark County prosecutors have been following the law.

"The whole judicial process is built on the concept that the truth will come out under cross-examination and through the adversary system. And if we don't have all the information to develop a proper cross-examination ... that robs the jury of crucial information upon which they can derive their verdict."

Contact Carri Geer Thevenot at [cgeer@reviewjournal.com](mailto:cgeer@reviewjournal.com) or 702-380-8135.

**702-384-8710**

**Find this article at:**

<http://www.lvrj.com/news/40918132.html>

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“Exhibit - m”

NM-SLAUGHTER RICKIE LAMONT JR SID-03421720 000 SS-  
CS-1896569 BD- RC-B SX-M HT-509 WT-180 HR-BLK EY-BRO  
AK-MITCHELL RICK SID-03421720 003

SPC

BP-LVN FB-783122DC6 SI-NV04086823 O1-CON REG O2-F/A NO  
A1-2201 SUN AVE #D NLVN 89030 042004  
CP254 MPD FELONY ATT POSS CS #196399 04 NV 042004 REGISTERED  
CP255 MPD FELONY BURGLARY #190662 03 NV 042004 REGISTERED  
WC254 MPD 060304 TRES 715 N NELLIS P# 6539 040603-2698  
PP255 EJC 040104 DRUG COURT PARTICIPANT, IF COTNACTED CALL 393-9704, 24HRS  
PI254 040903 NLV-TAT RF ARM "RICC"/SC ABDOM 6"/SC R SIDE STAB WOUND  
PI253 012803 MPD\*\*TAT LR ARM-"RICE"\*\*  
PI255 050200 NLV-\*\*RUNAWAY INFO: HAIR DYED YELLOW\*\*  
MP255 NLV 050200 RUNAWAY JUVENILE - NOTIFY NLVPD 00-8207 \*CANCEL\* 050200  
DR255 MPD 020803 T/C LAMB/CHARLESTON 030208-1441  
DR254 MPD 011397 T/C OWENS/PATRICK (PEDALCYCLIST) 970113-1406  
CN254 JCS-J349101  
CN255 JCS-J750399 NLV-MF-89534  
AR211 NLV 053 062804 FLSE IMPRIS W/DEAD WEAP 04-15160 NLV  
AR212 NLV 052 062804 BURG W/DEAD WEAP 04-15160 NLV  
AR213 NLV 051 062804 ROBB W/DEAD WEAP 04-15160 NLV

\*\*DISPLAY CONTINUED ON NEXT PAGE\*\*

66 Exhibit - N 99

# GAMAGE & GAMAGE

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September 4, 2013

## Via First Class Mail

Rickie Slaughter  
Offender No. 85902  
High Desert State Prison  
P.O. Box 650  
Indian Springs, NV 89070-0650

Dear Mr. Slaughter:

We are in receipt of your letters dated July 29, 2013. Please find your opening brief enclosed.

Every prosecutorial misconduct argument that you wanted is in the brief, ~~in your words.~~ However, ~~we did have to cut into portions of your argument.~~ These cuts were necessary to get in everything we wanted in the opening brief. Editing is a part of the writing process. The quote from *State v. Long* and the statistics from the Innocence Clinic take up nearly 4 pages, each identification had to be laid out in the facts and scrutinized in the argument, and the video needed to be fleshed out as two completely separate issues.

We believe that the videotape and the statements by prosecutors regarding it were ridiculous. We do not see what it was probative of.

When one considers the source of the identifications, it raises a serious problem. We also believe Young's physical condition, the fact that John immediately had a coat put around his head, Posada's age, the fact that Means would not make an identification at trial, and that none of the other witnesses made identifications makes cast serious doubt onto the reliability of those who made identifications. Hopefully, *State v. Long* and the Innocence Clinic statistics will drive this point home to the court.

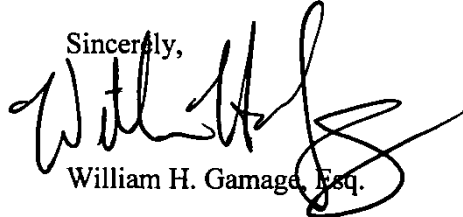
We understood your letter to mean that you wanted this office to use our professional discretion to decide which claims to bring aside from those you specifically wanted included. We do not feel that it is in your best interest to bring *Batson* (not members of your race), Actual Innocence (no new evidence), the 4<sup>th</sup> Amendment issue (no standing), the *Brady* issue regarding the unmarked photo lineups (courts see this as a police procedure issue and not a Prosecutorial withholding of evidence), the coercion of Tiffany (proper for cross-examination), and judicial



bias (another district court judge ruled). We believe that bringing any of these claims will hurt the credibility of the solid claims that we have brought before the court.

We hope you are satisfied with the brief. If there is something that you specifically want to get in our reply to the state's response, then send me 5-10 pages and I will do my best to work them in. Should you have any questions or concerns, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Will H. Gamaga', with a large, stylized flourish at the end.

William H. Gamaga, Esq.

"Exhibit - 0"

## **Nevada Investigative Group, LLC**

PILB#1496  
8414 W. Farm Rd #180-505  
Las Vegas, NV 89131  
(702) 296-5005

---

### **Case Investigation**

**Case # C204957 / Rickie Slaughter**

**Attorney/Client  
Privilege**

**Date:** 02/21, 23 and 25/2011

**Times:** See details

**Location:** Telephonic (702) 782-9807

**Persons Involved:** Noyan Monique Westbrook  
218 Stanely St.  
Malvern, Arkansas 72104  
Cell Phone #702-782-9807

Investigator Craig Retke

#### **Synopsis:**

On 02/21/11 at 7:40am (PST) I interviewed Monique Westbrook via telephone after she contacted me in reference to the message I left her on her Facebook account. This report also includes details of further investigation.

#### **Details:**

Monique Westbrook was very pleasant during our interview and explained the events that occurred on or before 06/26/04 between Rickie Slaughter and herself.

Westbrook stated she was with Slaughter at her friend's house, Shanika Brass, 511 N. Lamb #3 Las Vegas, Nevada in the Vera Johnson Housing complex. Westbrook stated she was there in the early part of the day but could not pinpoint which day or exact time. Westbrook said she was drinking and smoking Marijuana with Slaughter. Westbrook remembered Brass had a boyfriend with her at her house when she was there with Slaughter but did not remember his name.

Westbrook stated Slaughter and her left Brass's apartment and went to the motel or the daily, weekly rental rooms next to the State of Nevada Welfare office which is located at 3700 E. Charleston, Las Vegas, Nevada. Westbrook could not exactly say what time or exact day this occurred.

I asked Westbrook if she would be available to testify if needed and she stated she would. I explained to her I would like to consult with Attorney Fumo and call her back and asked her if she would be available for a telephone conference. Westbrook advised to call her anytime.

On 02/23/11, a telephone conference was conducted with Monique Westbrook, Attorney Fumo and myself. During this interview Westbrook was still unable to say the exact date and time that Slaughter and herself were together. On this same date, a CCDC visit was conducted with Rickie Slaughter, Attorney Marcello and myself and he was advised of the interview with Westbrook. Slaughter was also advised that Subpoena service was completed at the Las Vegas Housing Authority and the Las Vegas Metropolitan Police Department (Custodian of Records).

On 02/25/11, I went to the Vera Johnson Housing complex at 511 N. Lamb #3 Las Vegas, Nevada in an attempt to see if Shanieka Brass or any of her relatives were still staying at the apartment. I knocked on the front door and immediately above me in the second floor window, an unidentified black female adult pushed open the screen covering the window and asked what I wanted. I explained to her that I was looking for Shanieka Brass. She stated that Shanieka was the previous resident but she hasn't been there in a couple years. I asked her if she knew where she might be and she said she heard she was living on the West side in the, "Coast". *(this complex is located between Washington Ave. and Treeline and extends East from M.L.K. Boulevard to H Street to the East. It is also a Las Vegas Housing Authority property. The Subpoena served on the LVHA should determine her address.)*

Investigation is continuing.

Craig Retke  
Nevada Investigative Group LLC  
PILB #1496

Monique Westbrook

Please State your name for the record.

Please spell you last name

Monique please tell the jury where you live today

*Arkansas*

Do you remember a man by the name of Ricky Slaughter

*YES*

How do you know him

*We had a brief relationship*

When is the last time you saw Mr. Slaughter

*June of 2004*

Do you recall where is was that you last saw him

*Yes at my friend Shamika Brass' house – We were roomates*

Where did Shamika Brass live in June of 2004

*Shamika and I lived together at the Vera Johnson Manor – The Rogish on Bonanza and Lamb*

How long did you live at the Vera Johnson Manor

*I lived at the Vera Johnson Manor – on and off – from the time I was 17 until I turned 23*

So you lived there about 6 years.

*Yes*

Can you tell the jury about the last time you saw Mr. Slaughter

*It was a Weekend Saturday – Sunday it was Saturday June 26, 2004*

How do you know specifically that it was Saturday June 26, 2004

*I know the date because a few days after we were together I did not hear from Ricky any more, I was surprised but then an investigator came to see me and told me Ricky had been arrested.*

Have you seen him since that date in 2004

*No*

Do you recall the time of day it was

*We got together around 4pm. Dusk. He came to my house at Vera Johnson Manor. We then walked over to Shamika's house.*

Where did Shamika Brass live on June 26, 2004

*We lived together at the Vera Johnson Manor. Bonanza and Lamb*

Do you recall if anyone else was at Shamika Brass' house on June 26, 2004

*Yes. Her baby daddy Charles McKeller was there too.*

Are you and Shamika Brass still friends today

*Yes – we still talk on the phone. When I come to Vegas I still see her.*

How long did you and Ricky stay at Shamika Brass' house

*We were there until around 7 p.m.*

What happened at 7 p.m.

*Ricky left very quickly – He said he had to go.*

How do you know it was exactly at 7 p.m.

*I don't know it was at exactly 7 p.m. I just remember that it was dark outside when he left. It was Dusk. I remember that we watched a movie together and then had sex. We were together for at least 3 hours.*

Have you ever driven with Ricky in his car.

*Yes*

Do you recall what kind of car he drove

*Yes, it was a green car. I believe it was a green Ford Taurus*

Do you recall anything specific about the car.

*The only thing I remember about his car was that he was always under the hood. I couldn't tell you what he was doing but it seemed like every time we were in it he would have to pull over and do something to the engine. I think he had to add water.*

Did you see Ricky again after that Saturday night

*Yes he came over the next day around 11 am We were together until about 11 pm*

Did you ever see Ricky after Sunday June 27, 2004

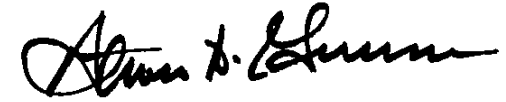
*No, not until I walked into the court room today.*

In the brief period that you know Ricky, did you ever see him with a gun

*NO*

In the brief period that you knew Ricky did you ever see him with a man with a Jamaican accent

*NO*



CLERK OF THE COURT

1 **RSPN**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JONATHAN VANBOSKERCK  
6 Chief Deputy District Attorney  
7 Nevada Bar #006528  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 RICKIE SLAUGHTER,  
13 aka Rickie L. Slaughter, #1896569  
14 Defendant.

CASE NO: 04C204957

DEPT NO: III

15 STATE'S RESPONSE TO DEFENDANT'S PRO PER  
16 PETITION FOR WRIT OF HABEAS CORPUS

17 DATE OF HEARING: JUNE 4, 2015  
18 TIME OF HEARING: 9:00 AM

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
19 District Attorney, through JONATHAN VANBOSKERCK, Chief Deputy District Attorney,  
20 and hereby submits the attached Points and Authorities in Response to Defendant's Pro Per  
21 Petition for Writ of Habeas Corpus.

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

25 //

26 //

27 //

28 //



1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On September 28, 2004, the State filed an Information charging RICKIE  
4 SLAUGHTER, aka Rickie L. Slaughter ("Defendant") with Conspiracy to Commit  
5 Kidnapping, Conspiracy to Commit Murder, Attempt Murder with Use of a Deadly Weapon,  
6 Battery With Use of a Deadly Weapon, Attempt Robbery with Use of a Deadly Weapon,  
7 Robbery With Use of a Deadly Weapon, Burglary While in Possession of a Firearm, Burglary,  
8 First Degree Kidnapping With Use of a Deadly Weapon, and Mayhem. On April 4, 2005,  
9 Defendant entered into a Guilty Plea Agreement, wherein he agreed to plead guilty to one  
10 count of Attempt Murder With Use of a Deadly Weapon, one count of Robbery With Use of  
11 a Deadly Weapon, one count of First Degree Kidnapping, and one count of First Degree  
12 Kidnapping With Use of a Deadly Weapon. On August 31, 2005, Defendant was sentenced  
13 to a maximum term of imprisonment of 480 months with a minimum parole eligibility of 180  
14 months.

15 On August 7, 2006, Defendant filed a Petition for Writ of Habeas Corpus. The district  
16 court denied Defendant's Petition on December 18, 2006. The Findings of Fact, Conclusions  
17 of Law and Order was filed on January 29, 2007. On January 11, 2007, Defendant filed a  
18 Notice of Appeal. On July 24, 2007, the Nevada Supreme Court found that Defendant had  
19 entered into the Guilty Plea Agreement unknowingly, and granted Defendant a new trial.

20 Defendant's jury trial commenced on May 12, 2011. On May 20, 2011, the jury found  
21 Defendant guilty of Conspiracy to Commit Kidnapping, Conspiracy to Commit Robbery,  
22 Attempt Murder with Use of a Deadly Weapon, Battery With a Deadly Weapon, Attempt  
23 Robbery With Use of a Deadly Weapon, Robbery With Use of a Deadly Weapon, Burglary  
24 While in Possession of a Deadly Weapon, Burglary, First Degree Kidnapping with Use of a  
25 Deadly weapon. On October 16, 2012, Defendant was sentenced to multiple life sentences.

26 On October 24, 2012, Defendant filed a Notice of Appeal. The Nevada Supreme Court  
27 affirmed the Judgment of Conviction on March 12, 2014. Remittitur issued on April 30, 2014.

28 //

1 Defendant filed the instant Petition for Writ of Habeas Corpus on March 25, 2015. The  
2 State Responds as follows.

### 3 ARGUMENT

#### 4 **I. Defendant Received Effective Assistance of Trial Counsel**

##### 5 **a. Standard of Review**

6 The Sixth Amendment to the United State Constitution provides that, “[i]n all criminal  
7 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his  
8 defense.” This court has long recognized that “the right to counsel is the right to the effective  
9 assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063  
10 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

11 To prevail on a claim of ineffective assistance of trial counsel a defendant must prove  
12 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of  
13 Strickland. 466 U.S. at 686-87, 104 S. Ct. at 2063-64; see also Love, 109 Nev. at 1138, 865  
14 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel’s  
15 representation fell below an objective standard of reasonableness, and second, that but for  
16 counsel’s errors, there is a reasonable probability that the result of the proceedings would have  
17 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden v. Lyons, 100 Nev.  
18 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).

19 The court begins with the presumption of effectiveness and then must determine  
20 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
21 ineffective. Means v. State, 120 Nev. 1001, 1011-1012 103 P.3d 32-33 (2004). “Effective  
22 counsel does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the  
23 range of competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev.  
24 430, 432, 537 P.2d 473, 474 (1975).

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

1 When ineffective assistance of counsel claims are asserted in a petition for post-  
2 conviction relief, the claims must be supported with specific factual allegations, which if true,  
3 would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225  
4 (1984). “Bare” and “naked” allegations are not sufficient, nor are those belied and repelled by  
5 the record. Id.

6 **b. Trial Counsel was not Ineffective for Failing to Call Witnesses**

7 Grounds I, II, IV, V, VI & VIII of Defendant’s Petition allege that trial counsel was  
8 ineffective for failing to present the testimony of several witnesses.

9 Defendant first argues that counsel was ineffective for failing to call Detective Prieto  
10 to testify at trial. Defendant argues that Detective Prieto would have been able to rebut the  
11 testimony of Mr. Arbuckle, would have been able to produce evidence of the exculpatory  
12 photographic lineup, would have been able to rebut testimony of Mr. Young, and would have  
13 been able to show that the investigation in this case was poor.

14 Defendant argues that Detective Prieto would have been able to introduce one of Mr.  
15 Arbuckle’s prior inconsistent statements. In Detective Prieto’s report, he states that Mr.  
16 Arbuckle left work at 7:15 and that Defendant’s girlfriend, Ms. Johnson<sup>1</sup>, was still waiting  
17 outside. At trial Mr. Arbuckle stated that Defendant picked Ms. Johnson up at 7:30. However,  
18 Defendant fails to show that this statement was necessarily inconsistent with the report. The  
19 report only indicates that he left the store at 7:15. The trial testimony shows Mr. Arbuckle  
20 was in his car when Defendant picked up Ms. Johnson. Therefore, Mr. Arbuckle could have  
21 left the store and waited in the car until Ms. Johnson was picked up. Had counsel called  
22 Detective Prieto it would have supported that at the earliest Defendant arrived at 7:15. This  
23 testimony would have conflicted with Ms. Johnson’s testimony who said that she was picked  
24 up before 7:15. Detective Prieto was also the lead detective on this case. If counsel called  
25 Detective Prieto, counsel would risk the detective bolstering the State’s testimony in many  
26 other respects. Therefore, counsel made a strategic decision, which is virtually  
27 unchallengeable on review, not to call Detective Prieto, and thus his performance was not  
28

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<sup>1</sup> Tiffany Johnson was the name of Defendant’s girlfriend at the time of the crime. However, Ms. Johnson has since remarried and her last name is now Holly. In Defendant’s Petition, Ms. Johnson is referred to as Ms. Holly.

1 deficient. See Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford  
2 v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

3 Defendant also claims that Detective Prieto could have produced evidence concerning  
4 an allegedly exculpatory second set of photographic lineups. However, as will be more  
5 thoroughly discussed below, these lineups were not exculpatory, as the witnesses were not  
6 asked to identify Defendant. As such, Detective Prieto's testimony concerning the lineup  
7 would have not helped Defendant's case, and thus counsel was not ineffective for failing to  
8 call him to testify. Defendant also claims that Detective Prieto could have rebutted Mr.  
9 Young's testimony that he saw a green Ford Taurus and that Defendant wore a wig during the  
10 crime. However, during the interview conducted by Detective Prieto, Mr. Young is never  
11 asked about this, and as such it would not have constituted a prior inconsistent statement and  
12 would thus be inadmissible hearsay.

13 Defendant also asserts that Detective Prieto would have testified about his poor  
14 investigation. However, these are all bare assertions that are without merit. Defendant nakedly  
15 asserts that Detective Prieto failed to collect evidence, forced Ms. Johnson to change her  
16 testimony, intentionally altered the first photographic lineup so Defendant would be identified,  
17 and using a false statement in his affidavit. These claims are all based on Defendant's self-  
18 serving statements and are insufficient to establish ineffective assistance of counsel. See  
19 Hargrove 100 Nev. at 502, 686 P.2d at 225.

20 Most importantly, Defendant cannot establish prejudice in this case. Even if counsel  
21 erred by not calling Detective Prieto, the result of the trial would not have changed in light of  
22 the overwhelming amount of evidence produced against Defendant. Four different witnesses  
23 identified Defendant as the person who shot Mr. Young. Defendant was in possession of a  
24 green Ford Taurus, which matched the description of the vehicle used by the perpetrators.  
25 Officers searched the Ford Taurus and found guns matching the description of the guns used  
26 in the crime, and a .357 shell casing which was the same caliber of the weapon that Defendant  
27 used to shoot Mr. Young in the face with. Additionally, Defendant was recorded asking Ms.  
28 Johnson to change her testimony and inform officers that Defendant picked her up at 7:00 p.m.

1 Defendant was also recorded talking to another man about fabricating an alibi and asking about  
2 the guns that were found in his car. Defendant is also videotaped at a 7-11 convenience store  
3 using an ATM card that he obtained during the robbery. In light of all this evidence the result  
4 of the trial would have remained the same had Detective Prieto testified.

5 Defendant next alleges that counsel was ineffective for failing to call Officer Anthony  
6 Bailey to testify at trial. Defendant alleges that Officer Bailey would have rebutted some of  
7 Mr. Young's allegedly inconsistent statements. However, Defendant's contention is without  
8 merit. While there were some minor inconsistencies regarding statements made by Mr. Young  
9 during his preliminary hearing and during the trial, Mr. Young's statements made at trial were  
10 not inconsistent with Officer Bailey's police report. In Officer Bailey's police report, Mr.  
11 Young states that the shooter had dreadlocks. See Exhibit "E" at 2. However, at trial, Mr.  
12 Young never states what hairstyle Defendant had when he shot Mr. Young. Mr. Young only  
13 testified that the perpetrators were wearing hats and wigs. As such, the statements made by  
14 Mr. Young were not inconsistent with Officer Bailey's police report and counsel's decision  
15 not to call him did not fall below an objective standard of reasonableness. Furthermore,  
16 Defendant fails to demonstrate that even if these statements regarding the inconsistencies were  
17 admitted at trial that the result of the proceedings would have been different. While there may  
18 have been minor inconsistencies regarding Mr. Young's testimony he was able to identify  
19 Defendant as the man who shot him in the photographic lineup and in open court. As such,  
20 Defendant fails to demonstrate that the result of the proceedings would have been different  
21 had Officer Bailey testified at trial. Accordingly, Defendant is not entitled to relief.

22 Defendant next alleges that counsel was ineffective for failing to call Destiny Waddy  
23 to testify at trial. Defendant alleges that Ms. Waddy told officers that she witnessed a green  
24 Pontiac Grand Am leaving the scene of the crime. However, the police report indicates that  
25 she only thought it may have been a green Grand Am. Counsel made a strategic decision not  
26 to call Ms. Waddy to testify. The State could have easily cleared up the confusion between a  
27 Grand Am and a Ford Taurus on cross-examination. Had counsel called Ms. Waddy to testify  
28 he may have run the risk that she could positively identify Defendant's car as the car she saw

1 leave the scene of the crime. As such, counsel made a strategic decision not to call Ms. Waddy,  
2 and thus his performance did not fall below an objective level of reasonableness. Additionally,  
3 Defendant cannot show that the results of the proceedings would have been different had Ms.  
4 Waddy testified in light of the overwhelming amount of evidence produced against Defendant  
5 at trial. Accordingly, Defendant's claim must fail.

6 Defendant next alleges that counsel was ineffective for failing to call 911 custodians at  
7 trial. Defendant argues that counsel was ineffective for failing to introduce 911 records  
8 showing that Jermaun Means called 911 at 7:11 p.m. First, Defendant has not presented this  
9 Court with any evidence showing that the 911 call was in fact made at 7:11p.m. Defendant  
10 also fails to demonstrate how long after the incident occurred that Mr. Means decided to make  
11 the call. Defendant only offers his self-serving statements claiming that the call was made  
12 "seconds" after Defendant fled the scene. However, there is no support for this in the trial  
13 transcript. Mr. Means only testifies that he called 911 sometime after the perpetrators left.  
14 Assuming *arguendo* that the call was made at 7:11, there is no evidence concerning how long  
15 Defendant was gone before the call was made. Accordingly, the evidence would not have  
16 been helpful at trial, and counsel made a reasonable decision not to call a custodian to testify.  
17 Additionally, as discussed above, the testimony would not have changed the outcome of the  
18 trial because there was no timeline establishing how long Mr. Means waited to make the call.  
19 Accordingly, Defendant is not entitled to relief.

20 Defendant next alleges that counsel was ineffective for failing to call defense  
21 investigator Craig Retke to testify at trial. Defendant argues that the failure to call Mr. Retke  
22 to testify prevented him from being able to introduce evidence regarding the amount of time  
23 the drive took from the crime scene to Ms. Johnson's work. Defendant fails to demonstrate  
24 that counsel's performance was deficient in this regard. First Defendant cannot show that this  
25 evidence would have been admissible at trial. The relevance of how long it took Mr. Retke to  
26 drive these routes is questionable, as he does not know if Defendant drove the speed limit, nor  
27 could he recreate the same traffic conditions from that night. The jury was presented with  
28 evidence stating how many miles were between the crime scene and Ms. Johnson's work.

1 Defense counsel made the strategic decision to let the jury use their own driving experiences  
2 to figure out how long it would take to drive nearly ten miles at 7:00 p.m. Accordingly,  
3 Defendant cannot show that counsel's performance was deficient. Defendant also fails to  
4 show that the result of the trial would have been different had Mr. Retke testified. As such,  
5 Defendant's claim must fail.

6 Defendant also alleges that counsel was ineffective for failing to call Officer Mark Hoyt  
7 to testify at trial. Defendant alleges that Officer Hoyt would have been able to rebut the  
8 testimony of Ryan John. As will be discussed more thoroughly below, Mr. John's testimony  
9 at trial contained slight inconsistencies from his testimony during the preliminary hearing.  
10 Mr. John testified at the preliminary that the jacket was placed over his head before the  
11 shooting, while at trial Mr. John testified that the jacket was placed over his head after Mr.  
12 Young was shot. However, these minor inconsistencies did not prejudice Defendant. Mr.  
13 John was able to identify Defendant as the perpetrator in a photographic lineup, at the  
14 preliminary hearing, and at trial. See Reporter's Tr. Proceedings, May 17, 2011, at 62-65.  
15 Furthermore, Mr. John testified that he did not witness Defendant shoot Mr. Young, therefore  
16 the timing of when the jacket was placed over Mr. John's head did not alter the jury's verdict  
17 in light of the evidence presented against Defendant at trial.

18 Defendant also claims that Officer Hoyt would have been able to testify that he was  
19 dispatched at 7:11 p.m., and that Destiny Waddy stated the perpetrators drove a green Pontiac  
20 Grand Am. However, Ms. Waddy only stated that the vehicle might have been a Grand Am.  
21 Additionally, the testimony regarding dispatch was irrelevant because Defendant has not  
22 established how long after the crime the 911 calls were made. Accordingly, Defendant has  
23 not demonstrated that this testimony, if admitted, would have changed the result of the trial  
24 and is thus not entitled to relief.

25 **c. Trial Counsel was not Ineffective for Failing to Investigate Various Issues**

26 In Ground VII of his Petition, Defendant claims that trial counsel was ineffective for  
27 failing to investigate Jeff Arbuckle. Specifically, Defendant argues that counsel should have  
28 investigated Mr. Arbuckle's criminal record, that counsel should have investigated whether

1 Mr. Arbuckle was paid for his testimony, and that counsel should have investigated Mr.  
2 Arbuckle's personal bias towards Defendant.

3 Defendant's naked allegations are without merit. Defendant first asserts that counsel  
4 was ineffective for failing to investigate Mr. Arbuckle's criminal record. Defendant fails to  
5 demonstrate that Mr. Arbuckle has a criminal record, or that counsel did not search for a  
6 criminal record. Furthermore, if Mr. Arbuckle did have a criminal record, it would have likely  
7 been disclosed in Brady materials provided to Defendant by the State. Defendant's naked  
8 assertion that counsel did not conduct any investigation of Mr. Arbuckle's criminal record  
9 does not establish deficient performance. See Hargrove 100 Nev. at 502, 686 P.2d at 225. As  
10 will be discussed more thoroughly below, Defendant presents this Court with no evidence that  
11 Mr. Arbuckle received compensation, or that his testimony was influenced by any statutory  
12 permitted payments. Finally, Defendant asserts that counsel was ineffective for failing to  
13 investigate Mr. Arbuckle's personal bias towards Defendant. This claim is belied by the  
14 record. Counsel hired a private investigator in order to locate Mr. Arbuckle. However, the  
15 investigator was unable to locate Mr. Arbuckle. See Exhibit "K" at 1. Accordingly,  
16 Defendant's claim is belied by the record and he is thus not entitled to relief.

17 Defendant also fails to establish prejudice. Defendant fails to demonstrate that the  
18 results of the proceedings would have been different had counsel investigated these issues.  
19 Defendant fails to show that Mr. Arbuckle had a criminal history, or that Mr. Arbuckle  
20 received payments for pretrial conferences. In light of the overwhelming amount of evidence  
21 produced against Defendant at trial, further investigation would not have changed the results  
22 of the proceedings. As such, Defendant has failed to satisfy Strickland's second prong and is  
23 thus not entitled to relief.

24 In Ground IX of his Petition, Defendant alleges that counsel was ineffective for failing  
25 to investigate potential impeachment material, including fees paid to State's witnesses.  
26 Defendant only offers naked allegations, which do not establish prejudice. Pursuant to NRS  
27 50.225, witnesses may receive up to \$25.00 per day for attending certain proceedings. Here,  
28 Defendant alleges that counsel was ineffective for failing to investigate what money had been



1 paid to witnesses in this case. Defendant has not presented this Court with any evidence that  
2 any of the witnesses in this case received money, and as such his assertion is naked speculation  
3 suitable only for summary rejection. See Hargrove 100 Nev. at 502, 686 P.2d at 225.

4 Moreover, even if witnesses were paid statutory fees for pre-trial conferences, the  
5 practice was permissible since it arises out of the statutory witness fees paid for appearance in  
6 court. As such, trial counsel cannot be ineffective for failing to investigate in this case because  
7 any fees paid would have been pursuant to the statute and thus proper. Accordingly Defendant  
8 cannot demonstrate that counsel's performance fell below an objective level of reasonableness.

9 Defendant also fails to demonstrate that he was prejudiced by counsel's lack of  
10 investigation. Defendant has presented this Court with no evidence that any of the witnesses  
11 attended pretrial conferences or received any payments. Defendant also cannot show that any  
12 of the witness's testimony was influenced by these alleged payments. As such, Defendant  
13 cannot show that the result of the proceedings would have been different had counsel  
14 investigated this issue. As such, Defendant is not entitled to relief.

15 In Ground X of the Petition, Defendant argues that counsel was ineffective for failing  
16 to investigate and challenge the alleged illegal use of photographs. Defendant claims that he  
17 told his attorney that he may be able to suppress the photographic lineups based on the Nevada  
18 Supreme Court's ruling in Somee v. State, 124 Nev. 434, 187 P.3d 152 (2008). Defendant  
19 then dubiously claims that his counsel forced him to write a motion, which Defendant failed  
20 to do. Defendant's only evidence of this encounter is his own self-serving statement. This  
21 highly implausible naked claim cannot establish ineffective assistance of counsel. See  
22 Hargrove 100 Nev. at 502, 686 P.2d at 225.

23 Additionally, Defendant cannot show that the result of the trial would have been  
24 different had counsel investigated this issue. Defendant presents this Court with absolutely no  
25 evidence that this photograph was illegally obtained. Defendant's bare assertion cannot  
26 establish prejudice in this case. Accordingly, Defendant is not entitled to relief.

27 //

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1           **d. Trial Counsel was not Ineffective for Failing to Cross Examine Witnesses**

2           Defendant asserts that counsel was ineffective for failing to effectively cross examine  
3 certain witnesses. Specifically, Defendant argues that counsel was ineffective for failing to  
4 cross-examine witnesses regarding the second photographic lineup, and for failing to point out  
5 inconsistencies in eye-witness testimony. Defendant first argues that counsel was ineffective  
6 for failing to ask witnesses questions about a second photographic lineup where there were no  
7 notes suggesting that the witnesses identified Defendant. However, Defendant fails to  
8 recognize that the purpose of this second lineup was to attempt to identify Jacquan Richards.  
9 Accordingly, there was no evidence that the suspects did not identify Defendant in this lineup.  
10 Had counsel asked these questions the witnesses may have stated that they did recognize  
11 Defendant, especially considering the witnesses had previously identified Defendant.  
12 Accordingly, counsel made a strategic decision not to ask these questions. As such, counsel's  
13 performance was not deficient. Furthermore, this would not have changed the outcome of the  
14 trial, as the witnesses had previously identified Defendant as the shooter.

15           Defendant next asserts that counsel was ineffective for failing to ask Ivan Young about  
16 changes made between his testimony at the preliminary hearing and statements made at trial.  
17 Defendant argues that counsel should have asked about Mr. Young's ability to observe  
18 Defendant, as Mr. Young stated at the preliminary hearing that he did not really pay attention  
19 to Defendant before he pulled a gun on him. However, when Mr. Young was being asked this  
20 question defense counsel was asking Mr. Young very specific details including whether  
21 Defendant was wearing earrings. Defendant also claims that Mr. Young changed his testimony  
22 several times. Officer Bailey visited Mr. Young in the hospital shortly after the crime  
23 occurred. In a police report written by Officer Bailey, Mr. Young states that the man with  
24 dreadlocks was the shooter. At the preliminary hearing Mr. Young stated that Defendant was  
25 the shooter, but that Defendant did not have dreadlocks. At trial Mr. Young testified that  
26 Defendant was the shooter, and that the perpetrators were wearing hats and wigs. While Mr.  
27 Young's testimony at trial may have slightly differed from the statement he made while at the  
28 hospital recovering from his injuries Defendant cannot establish prejudice. Mr. Young

1 identified Defendant in a photographic lineup and his testimony has been consistent that  
2 Defendant was the shooter. Additionally, Defendant was identified as the shooter by three  
3 other eyewitnesses. Accordingly, any slight inconsistencies in Mr. Young's testimony would  
4 not have changed the result of the trial in light of the overwhelming evidence produced against  
5 Defendant. As such, Defendant's claim must fail.

6 Defendant also asserts that counsel was ineffective for failing to point out  
7 inconsistencies in Ryan John's testimony. The inconsistencies that Defendant complains of  
8 were minor and would not have changed the outcome of the trial. Defendant complains that  
9 Mr. John changed his testimony as to when Defendant placed a jacket over his head, thus  
10 challenging Mr. John's ability to perceive him. At the preliminary hearing Mr. John testified  
11 that the jacket was placed over his head before the shooting, while at trial Mr. John testified  
12 that the jacket was placed over his head after Mr. Young was shot. However, this testimony  
13 was irrelevant because Mr. John never claimed to have witnessed the actual shooting during  
14 the preliminary hearing or at trial. However, Mr. John was able to identify Mr. Young in a  
15 photographic lineup and during the preliminary hearing and at trial. See Reporter's Tr.  
16 Proceedings, May 17, 2011, at 62. Thus counsel was not ineffective for failing to cross  
17 examine Mr. John on these minor inconsistencies. Additionally, counsel did challenge Mr.  
18 John's perception of Defendant pointing out the perpetrator did not have any tattoos or facial  
19 bruising. Id. at 69. Counsel also was able to get Mr. John to admit that Defendant's photo did  
20 not have a blue background supporting Defendant's theory of the case, that the photographic  
21 lineup in which Defendant was identified was misleading. Accordingly, Defendant fails to  
22 show that counsel's representation fell below an objective level of reasonableness.  
23 Additionally, Defendant fails to show that had counsel asked Mr. John more questions on  
24 cross-examination that the result of the trial would have been different in light of the evidence  
25 produced against Defendant at trial. As such, Defendant has failed to meet the second prong  
26 of Strickland, and is thus not entitled to relief.

27 //

28 //

1           **e. Trial Counsel was not Ineffective for Calling Noyan Westbrook as a Witness**

2           Defendant next alleges that trial counsel was ineffective for calling Noyan Westbrook  
3 to testify. Defendant asserts that calling Ms. Westbrook to testify hurt his case because it hurt  
4 his credibility and opened the door to introduce jail phone recordings. Defendant's arguments  
5 are without merit. While Ms. Westbrook's testimony was not able to affect the outcome of  
6 the trial in light of the overwhelming amount of evidence produced by the State, the testimony  
7 did not damage Defendant. While Ms. Westbrook could not remember the exact time she was  
8 allegedly with Defendant, she was able to inform the jury that Defendant never had dreadlocks,  
9 nor spoke with a Jamaican accent. Additionally, Defendant requested that Ms. Westbrook  
10 testify. On May 20, 2011, counsel for Defendant stated that Defendant "begged me to find  
11 Monique Westbrook." Reporter's Tr. Proceedings, May 20, 2011, at 69. Accordingly,  
12 Defendant fails to demonstrate that counsel's performance fell below an objective standard of  
13 reasonableness.

14           Defendant also fails to establish prejudice. As discussed above, Ms. Westbrook's  
15 testimony did not hurt Defendant's case. She was able to testify to some facts which supported  
16 Defendant's case. Defendant fails to demonstrate that the result of the trial would have been  
17 different had Ms. Westbrook not testified. As such, Defendant's claim must fail.

18           **II. Defendant Received Effective Assistance of Appellate Counsel**

19           Defendant next alleges that he received ineffective assistance of appellate counsel.  
20 Defendant first claims that appellate counsel was ineffective for failing to raise a Batson  
21 challenge. However, Defendant fails to demonstrate that counsel's decision to not raise a  
22 Batson challenge fell below an objective level of reasonableness. Here, appellate counsel  
23 made a decision to only focus on strong arguments, which had a chance of success on appeal.  
24 In a letter written by appellate counsel to Defendant, counsel explained that believed that  
25 presenting a Batson claim would hurt his credibility and weaken Defendant's chance of  
26 success on appeal. See Exhibit "N" at 2. In Jones v. Barnes, 463 U.S. 745, 751, 103 S. Ct.  
27 3308, 3312 (1983), the Supreme Court recognized that part of professional diligence and  
28 competence involves "winnowing out weaker arguments on appeal and focusing on one central

1 issue if possible, or at most on a few key issues.” Id. at 751, 752, at 103 S.Ct at 3313. In  
2 particular, a “brief that raises every colorable issue runs the risk of burying good arguments. .  
3 . in a verbal mound made up of strong and weak contentions.” Id. at 753, 103 S.Ct at 3313.  
4 Accordingly, counsel’s decision to not raise a Batson challenge was a strategic decision, which  
5 is virtually unchallengeable on review. See Dawson, 108 Nev. at 117, 825 P.2d at 596.

6 Additionally, Defendant cannot show that he was prejudiced by counsel’s decision to  
7 not raise a Batson challenge. In order to demonstrate prejudice Defendant must show that that  
8 the omitted issue would have had a reasonable probability of success on appeal. Hudson v.  
9 Ignacio, 117 Nev. 387, 393, 22 P.3d 1154, 1158 (2001). Here, any Batson challenge would  
10 have been unsuccessful on appeal. During voir dire defense counsel raised a Batson challenge.  
11 The court then asked the State to give a race neutral explanation as to why it exercised a  
12 challenge on a minority woman. In response the State noted that the woman was very  
13 distrustful of law enforcement and had negative experiences with law enforcement in the past.  
14 Defendant fails to show that this race neutral explanation was not valid or was pretextual.  
15 Because the State was able to give a valid reason for exercising a peremptory challenge, this  
16 issue would not have been successful on appeal. As such, Defendant fails to demonstrate that  
17 he was prejudiced as required by Strickland.

18 Defendant next argues that appellate counsel was ineffective for failing to argue that  
19 the State failed to preserve exculpatory evidence. On October 27, 2009, Defendant filed a  
20 Motion to Dismiss based on the State’s alleged failure to preserve exculpatory evidence.  
21 However, Defendant’s claim is without merit. As noted in the State’s response to Defendant’s  
22 motion, the purpose of the second set of photographs was for the witnesses to attempt to  
23 identify another suspect in this case, Jacquan Richards. None of the witnesses were able to  
24 identify Mr. Richards, thus there were no notations on the lineup cards. Defendant argues that  
25 the failure of officers to record the witness’s failure to identify Defendant constitutes a failure  
26 to preserve exculpatory evidence. However, the officers would have not noted whether the  
27 witnesses would have identified Defendant, especially in light of the witness’s previous  
28 identification of Defendant in the first photographic lineup. Appellate counsel made the

1 strategic decision not to pursue this issue on appeal, and to instead focus on the stronger  
2 appellate issues. As such, Defendant cannot show that counsel's performance was deficient.  
3 Defendant also cannot show prejudice as this issue would not have been successful on appeal.  
4 Defendant cannot show that the district court abused its discretion by denying his motion. The  
5 officer's failure to notate whether or not witnesses identified Defendant when the purpose of  
6 the lineup was to identify another suspect does not qualify as failure to preserve evidence. The  
7 officers had no reason to notate whether or not the witnesses identified Defendant when that  
8 was not the purpose of the lineup. Accordingly, Defendant has not demonstrated that this issue  
9 would be successful on appeal, and thus Defendant was not prejudiced by counsel's failure to  
10 raise this issue on appeal.

### 11 **III. Cumulative Error does not Warrant Relief**

12 Defendant finally argues that cumulative error warrants relief. The State would first  
13 note that cumulative error is not appropriate for habeas review. See McConnell v. State, 125  
14 Nev. 243, 259, 212 P.3d 307, 318 (2009); Middleton v. Roper 455 F.3d 838, 851, (C.A.8 (MO)  
15 2006), cert. den., 549 U.S. 1134, 127 S.Ct. 980 (2007) ("a habeas petitioner cannot build a  
16 showing of prejudice on a series of errors, none of which would by itself meet the prejudice  
17 test"). Accordingly, Defendant is not entitled to relief.

18 Even if cumulative error were applicable in this case, Defendant would still not be  
19 entitled to relief. As discussed above, trial counsel's representation of Defendant was effective  
20 thus there was no error to cumulate. As such, Defendant is not entitled to relief.

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1 CONCLUSION

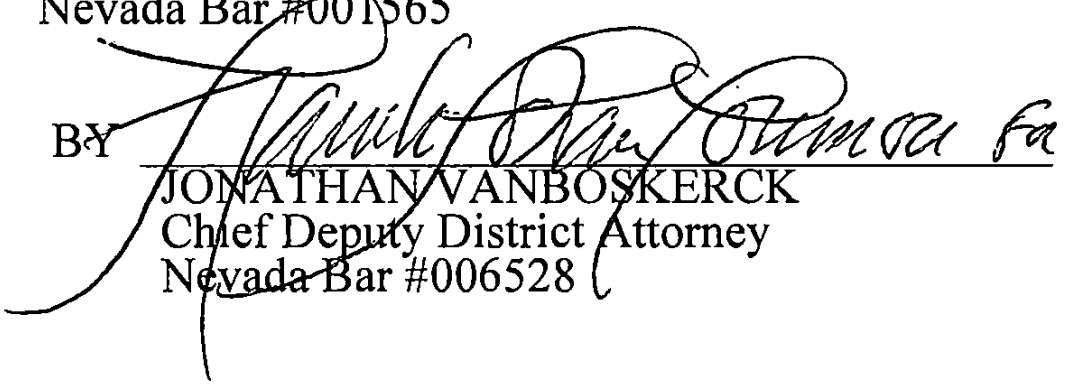
2 For the foregoing reasons, the State respectfully requests that Defendant's Petition for  
3 Writ of Habeas Corpus be denied.

4 DATED this 2nd day of June, 2015.

5 Respectfully submitted,

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

9 BY


  
10 JONATHAN VANBOSKERCK  
11 Chief Deputy District Attorney  
12 Nevada Bar #006528

13 CERTIFICATE OF MAILING

14 I hereby certify that service of the above and foregoing was made this 2nd day of June,  
15 2015, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

16 RICKIE SLAUGHTER,  
17 aka Rickie L. Slaughter #85902  
18 ELY STATE PRISON  
19 4569 NORTH STATE ROUTE 490  
20 P.O. BOX 1989  
21 ELY, NV 89301

22 BY

  
23 R. JOHNSON  
24 Secretary for the District Attorney's Office  
25  
26  
27

28 PL/JV/rj/M-1

  
CLERK OF THE COURT

RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

RICKIE LAMONT SLAUGHTER,

Defendant.

CASE NO. C204957

DEPT. NO. III

BEFORE THE HONORABLE DOUGLAS W. HERNDON  
DISTRICT COURT JUDGE

THURSDAY, JUNE 18, 2015

**RECORDER'S TRANSCRIPT RE: PETITION FOR WRIT OF HABEAS CORPUS  
(POST-CONVICTION RELIEF)**

APPEARANCES:

For the State:

WILLIAM FLINN, JR.  
Deputy District Attorney

For the Defendant:

No Appearances

RECORDED BY: SARA RICHARDSON, COURT RECORDER



1 LAS VEGAS, NEVADA, THURSDAY, JUNE 18, 2015, 10:26 A.M.

2 \* \* \* \* \*

3 THE COURT: So Mr. Slaughter is on page 3, 204957. This is on for a  
4 petition for writ of habeas corpus that he filed. He's not present in the Nevada  
5 Department of Corrections. So I'm just going to issue some findings based  
6 upon the pleadings without argument.

7 A couple of initial observations, first off, obviously Mr. Slaughter  
8 got -- well, let me back up even further. Procedurally, Mr. Slaughter faced a  
9 slew of charges involving conspiracies, kidnappings, robberies, attempt  
10 murders, batteries, first degree kidnappings with substantial bodily harm with  
11 use. The case was resolved some years ago with a plea. Thereafter, it was  
12 discovered that the timekeeper in the prison wasn't calculating time the way  
13 everybody envisioned when his plea was entered; and therefore, he was  
14 ultimately allowed to withdraw from that plea and at that point chose to go to  
15 trial, ended up being convicted at trial, had an appeal to the Supreme Court  
16 which was affirmed, and now he's back on post-conviction relief. He's filed a  
17 proper person petition for writ of habeas corpus.

18 Based upon the nature of the charges, he was obviously convicted  
19 of incredibly serious charges and has a very lengthy prison sentence.  
20 Sometimes people take the position, I think, incorrectly that somebody's  
21 sentence, in and of itself, should warrant the appointment of counsel or should  
22 warrant an evidentiary hearing on post-conviction relief. To begin with,  
23 Mr. Slaughter isn't asking for the appointment of counsel. So it's really just his  
24 argument about his issues and the request as to some of those issues that he  
25 be granted an evidentiary hearing.

1 I disagree with that proposition. The length of somebody's  
2 sentence isn't what determines whether or not you have an evidentiary hearing  
3 about a post-conviction relief request. It's the issues that determine that. The  
4 length of somebody's petition, in this case it was 80 pages long that he wrote,  
5 doesn't determine the validity of an issue and whether there should be the  
6 hearing, it's the issue itself.

7 In this particular case Mr. Slaughter, who is an incredibly intelligent  
8 and articulate guy, you know, spends an inordinate amount of time explaining  
9 things. Now, I think that to a certain extent there are things that he spends ten  
10 pages talking about that could be said in a page. But one of the reasons I think  
11 he's not entitled to an evidentiary hearing is because of the amount of  
12 specificity that he's put into his petition. I guess it kind of works against him in  
13 a certain respect. Because oftentimes you have pro per petitions where  
14 somebody alleges a certain issue and there isn't much specificity to it, but  
15 nonetheless, it's concerning to the Court and you think, We need to have a  
16 hearing because this needs to be fleshed out a little bit more.

17 In this particular case, because of the amount of specificity that  
18 he's put into everything, it's very clear what it is that he is alleging that he  
19 thinks was at fault. I don't have any question about any of those issues, I also  
20 think the record that we have from the trial is equally clear about what it was  
21 that occurred such that you can look at everything on the pleadings without the  
22 need for an evidentiary hearing. I don't think in sum that there needs to be any  
23 investigation beyond the record or a need to call any of the counsel or anybody  
24 as witnesses to further flesh out any of the issues that are there. So the  
25 request to have an evidentiary hearing is going to be denied and the petition's

1 going to be denied.

2           In a number of the -- he's -- well, he's got 14 issues that are alleged  
3 in the petition. A number of them are all revolve around the decision by his  
4 attorney not to call certain witnesses or -- and a lot of those, to be even more  
5 specific, a lot of those allegations revolve around his belief that somehow they  
6 could not bring out things about witnesses, inconsistent statements witnesses  
7 originally made or said because his attorney didn't call certain witnesses, police  
8 officers and lay witnesses. To begin with, obviously counsel has discretion as  
9 to how to proceed in a case. And that's very important. And a lot of times I  
10 think that defendants view that just as if I want my attorney to do something,  
11 they need to do that. It doesn't always work out so well that way. That's why  
12 attorneys have to have discretion.

13           This case offered one of those prime examples as we'll get into a  
14 little later in one of his issues, where he was alleging his counsel was  
15 ineffective for calling a certain witness. What was abundantly clear at trial is  
16 that Mr. Slaughter wanted that witness called, his attorney called that witness  
17 and things didn't go as well as Mr. Slaughter would have hoped when that  
18 witness actually got on the stand and was subjected to cross-examination.  
19 That's a prime example of why attorneys have a lot of experience with how  
20 things occur in the course of a trial and why it's important for them to have  
21 discretion and autonomy on certain strategic decisions in a trial despite the fact  
22 that their client may disagree with them.

23           But in any event, I would also just note, kind of as an overall  
24 proposition, this issue of whether or not his attorney was ineffective for not  
25 calling witnesses because he couldn't then bring out inconsistent statements or

1 whatnot, that these witnesses supposedly made to police officers and so forth,  
2 that's not generally how that occurs. In the course of a trial, it is oftentimes  
3 that the testifying witness may be the detective that was overall responsible for  
4 a case even though there were witness statements made to other officers who  
5 aren't called. But attorneys are always able to question the witnesses and bring  
6 out inconsistencies if there are any in their statements, by questioning them  
7 about those statements. And Mr. Fumo was able to do that in this trial. So  
8 that in and of itself is not an allegation that I think has any merit about his  
9 attorney's failure to call those certain witnesses.

10 But with the specificity to the folks that he's alleging should have  
11 been called, he alleges in Count 1 that his attorney should have called  
12 Officer Prieto from the North Las Vegas Police Department. Just because  
13 Mr. Slaughter believes that a witness's statement was inconsistent doesn't  
14 necessarily mean that it was, that's the first thing to bring up. And he's talking  
15 in his -- in his Ground Number 1 about the witness Arbuckle and statements  
16 that he made about when the defendant came to the cleaners and picked up  
17 another person, Holly Johnson, in the case.

18 There were very clear strategic decisions in my mind, about why  
19 the attorney would not want to call another police officer in the defendant's  
20 case-in-chief and then give the State the opportunity to examine that police  
21 officer on cross-examination with the ability to ask leading questions and  
22 establish more validity to whatever police investigation was done in the case as  
23 opposed the attorney's ability to argue later on about the failure to call  
24 witnesses and the failure to do a full investigation. And I don't think that  
25 anything about what he's alleging Prieto would have offered had he been called,

1 would have resulted in something that can be deemed now to have been  
2 prejudicial to the defendant not being able to get into that at the time of trial.  
3 And again, this another instance where if there were any inconsistent  
4 statements made to Prieto, they could have questioned the witness about those  
5 and the police statements.

6           The photo lineup issue that he's alleging in regard to that witness,  
7 Officer Prieto, the Court doesn't find that there is anything about that that  
8 would have been potentially exculpatory for the defendant and there was no  
9 ineffective assistance for failing to call the witness to talk about that. The  
10 particular witness that he's talking about within Officer Prieto, that being  
11 Mr. Young, talked about certain things in his first interview with the detective  
12 or with Officer Prieto, that weren't inconsistent anyway. So the use of the  
13 term inconsistent I don't think is appropriate as it relates to that. And the  
14 reality is that some of the things the defendant's alleging are really just his  
15 self-serving statements, there wasn't anything to support that.

16           And as with a number of these issues, it has to be stated as an  
17 overall proposition that there was an overwhelming amount of evidence against  
18 the defendant in a case, substantial evidence of his guilt in terms of eyewitness  
19 identifications and other evidence in the case.

20           In his second ground he's alleging that there was ineffective  
21 assistance for the failure to call Officer Bailey, and it's not -- hold on a moment,  
22 I'm sorry. It wasn't really clear to me exactly how he's alleging that what  
23 Mr. Young said that was within the Bailey report wasn't available to them to  
24 cross-examine him on at the time of trial or bring out absent the calling of  
25 Mr. Bailey. So I don't think that there was any prejudice resulting from the

1 failure to call him; and, again, we're talking about calling a police officer in the  
2 defense case which would allow the State to then bolster their own case by use  
3 of cross-examination with the officer; and I don't think the things that he's  
4 alleging about Mr. Young and the statements about the dreadlocks of one of the  
5 perpetrators of the crime, the hats, the wigs, those things, the way he's  
6 alleging it weren't inconsistent.

7           In Ground Number 4, he's alleging that his attorney was ineffective  
8 for failing to call a lay witness, last name Waddy, about the fact that a police  
9 report says that she thought the car might have been a Grand Am and  
10 ultimately, the car that was identified as being with the defendant at the time  
11 was a Ford Taurus. To begin with, similar cars, there was no evidence as to  
12 what she would or wouldn't have said if she came in and saw pictures of the  
13 similar-colored Ford Taurus as opposed to what she said to the police report  
14 that she thought the car could have been a Grand Am, it was just as risky that  
15 she would have come in and identified a photograph and said, yeah, actually,  
16 that's the car that I saw.

17           So, again, counsel has some discretion as to how they go about  
18 deciding whether to call particular witnesses in their case and he was able to  
19 argue certain things about the car in other effective ways during the trial.

20           In Ground Number 5, he's alleged ineffective assistance for failure  
21 to call the 9-1-1 custodian to introduce something about the 9-1-1 call. And he  
22 seems to base this on some conversation he had with his attorney. There's no  
23 evidence in the case at all about what time the 9-1-1 call was made, how long  
24 after the event the 9-1-1 call was made; in short, no evidence to indicate how  
25 long the defendant was gone after the event so that when that 9-1-1 call was

1 made somehow had some relationship to when he got back to the cleaners and  
2 would have at all been relevant to his guilt or innocence in the case. In short, I  
3 don't think there was any merit to the claim that this was ineffective assistance  
4 for failure to try and put in the 9-1-1 call or to call the custodian in that regard.

5 In Count Number 6, he's alleging ineffective assistance for the  
6 failure to call Investigator Craig Retke to testify about the time it took to drive  
7 from the crime scene to the cleaners. To begin with jurors, I mean, and part of  
8 his argument is the jurors were left just to use their common sense to figure out  
9 how much time that would have taken. Well, the reality is the jurors would  
10 always be left to their common sense in that regard.

11 Nobody drove that route on the night in question to kind of figure  
12 out how long it took at that time, what was the traffic on that date and that  
13 particular time, weather conditions on that date at that particular time, speed of  
14 the car at that date and that particular time. So the jurors are always going to  
15 be left with trying to decide in their own mind that area of town to this area of  
16 town, it being X number of miles, what reasonably do we think in our common  
17 sense would have been the amount of time that it was left to take that. So  
18 even if they should have called Officer Retke to talk about whatever timing it  
19 took him on whatever date that he did it on, at best I would think that would be  
20 harmless error, and I'm not prepared to even say that it was error not to call  
21 Mr. Retke.

22 In the 8<sup>th</sup> -- yeah, 8<sup>th</sup> ground, he's alleged ineffective assistance for  
23 the failure to call Mr. Hoyt arguing that there were some inconsistencies about  
24 Mr. John's testimony at the time and that he should have called -- his attorney  
25 should have called Mr. Hoyt to come in and address those, but again, there is

1 not necessarily something inconsistent because the defendant believes it's  
2 inconsistent. And more importantly, even if there is a slight inconsistency in  
3 something between the time of a preliminary hearing and the time of a trial,  
4 doesn't necessarily equate to it being prejudicial in the manner that it's brought  
5 out at the time of trial. And just like with witness statements to the police,  
6 counsel on behalf of the defendant is able to use transcripts from a preliminary  
7 hearing to point out what are alleged inconsistencies with the trial testimony  
8 that's occurring in court at that time.

9           Mr. John did identify the defendant in the photo lineup and he  
10 identified him at prelim and at trial. Even though he testified he did not witness  
11 the actual shooting of Mr. Young, I think the issue that he brings up about the  
12 jacket and where the jacket was is irrelevant to the proceedings.

13           In Ground Number -- let's see, Mr. Hoyt was actually Ground  
14 Number 8 I believe if I misspoke, yeah, so that was all of the ones related to  
15 witnesses.

16           In Ground Number 3, he alleged ineffective assistance for the failure  
17 to cross-examine essentially Mr. Young and Mr. John and issues regarding to  
18 the lineups, essentially the allegation is he failed to do that in an effective  
19 manner. I think that what he's really alleging in Ground Number 3 is complaints  
20 about the sufficiency of the evidence that was brought out at trial. I think from  
21 a review of the record, counsel's performance was certainly effective. He was  
22 diligent and prepared and reasonable in the way that he approached the  
23 cross-examination of all those witnesses and issues such that I do not think it's  
24 appropriate to refer to that performance as being ineffective in the way he  
25 approached those issues.



1           In Ground Number 7 he's alleged ineffect -- or no, that's not an  
2 ineffective assistance, I apologize, that there was some -- well, it is an  
3 ineffective assistance, but it's based upon a alleged failure to investigate  
4 Mr. Arbuckle. Mr. Slaughter makes some kind of naked allegations that are  
5 unsupported by anything that Mr. Arbuckle supposedly had some substantial  
6 criminal history that would have been learned by some investigation of him. To  
7 begin with, there was an investigation. The defense investigator attempted to  
8 locate Mr. Arbuckle but could not.

9           Additionally, had there been some relevant criminal history of  
10 Mr. Arbuckle, the State had an obligation to turn that over if it had been in  
11 existence, since Mr. Arbuckle was a potential witness in the case. The issue  
12 that Mr. Slaughter argues about with regard to Mr. Arbuckle having some bias  
13 against him because of some argument or whatnot that they had with each  
14 other, was brought out. I believe Mr. Arbuckle admitted to the fact that he had  
15 had an argument with the defendant prior to the date where this -- these events  
16 were alleged to have occurred. So that the very thing that he's arguing about  
17 that would have created bias on behalf of Mr. Arbuckle to influence his  
18 testimony in some fashion was actually brought out and so there was no  
19 prejudice there either.

20           In Ground Number 9 he alleged that his attorneys were ineffective  
21 for failure to investigate and question on the issue of State's witnesses being --  
22 receiving their witness fees for showing up for certain proceedings. To begin  
23 with, his, you know, any attorney can make the decision, strategically, as to  
24 whether they want to go into the fact that a witness got \$25.00 for showing  
25 up to testify pursuant to a subpoena, if they choose to or not. Sometimes in

1 trials attorneys go into that, other times, probably most often, they don't go  
2 into that at all. Simply put, it's legal for the witnesses statutorily to be paid for  
3 their time for having to attend certain court proceedings and being away from  
4 work or the other obligations in their life. There's no prejudice by the attorneys  
5 in this case deciding not to go into that issue at the time of trial.

6           Argument or Ground Number 10 was an allegation that his attorney  
7 was ineffective for failing to challenge the use of a particular photo in a photo  
8 lineup. The allegations are somehow that that was an illegal photo and that his  
9 attorneys should have done more to go into that at the time of trial. I don't  
10 think his attorney was ineffective for that at all. I mean, that would really be an  
11 issue to challenge prior to trial in terms of the admission of the lineup at the  
12 time of trial. And in review of everything in a case, I don't think that such a  
13 motion in limine would have had merit. So I don't find any fault with the  
14 attorney for not making that challenge that the defendant's saying he should  
15 have made at the time of the trial.

16           Moreover, as was discussed previously, any questioning of  
17 witnesses about those lineups, there was no ineffective assistance in regard to  
18 that as well. Mr. Slaughter focuses greatly on a number of his grounds with  
19 this issue of the second photo lineup as it pertained to the identification of the  
20 defendant, which was in the first photo lineup. Nobody was asked in the  
21 second photo lineup to identify the defendant. They were asked to look for and  
22 potentially identify a second person. Therefore, there were never any notations  
23 made about the failure to identify the defendant in the second photo lineup  
24 since nobody was ever asked to identify him in the second photo lineup. So his  
25 failure of his attorney to ask questions on that nonexistent issue does not rise

1 to the level of being ineffective at all.

2 And as was stated earlier, anything in regard to the photo lineups  
3 that were, you know, of minor inconsistencies in how folks testified, they were  
4 subjected to cross-examination at the time of trial and would have been  
5 subjected to cross-examination about the lineups, their statements to the police  
6 officers, and so forth such that cannot find that his attorney was ineffective at  
7 all.

8 In Ground Number 11, he's making allegations about his appellate  
9 counsel and a direct appeal that was taken. Ground Number 11 alleges that  
10 appellate counsel was ineffective for failing to raise the *Batson* challenge issue  
11 from trial at the time of the appeal. At the time of trial, it should first be noted,  
12 that the State proffered reasons that were nonracial for the peremptory  
13 challenge that was granted that was at issue and that those reasons involved  
14 the testimony of the juror during the jury selection process about distrust of  
15 police officers, negative experiences they had with police officers in the past,  
16 and that there wasn't any kind of showing that that -- that challenge was  
17 improper or that there had been any kind of systematic attempt to exclude the  
18 minorities from the jury. So his attorney's decision not to raise that issue on  
19 appeal was very reasonable. I believe his attorney also told him that he was  
20 raising the issues that he thought were strong on appeal and did not want to  
21 weaken credibility by raising an issue that he felt like was frivolous on appeal,  
22 which is obviously a wise decision by his appellate attorney.

23 Ground Number 12, the appellate, he's arguing that his appellate  
24 attorney was ineffective for failing to preserve exculpatory evidence not being  
25 raised -- or failure to raise on appeal that his trial attorney -- excuse me, the

1 State failed to preserve potentially exculpatory evidence and it's in regard to the  
2 second lineup in regard to the officer's attempt to identify Mr. Richards. This is  
3 the same issue I discussed a moment ago in that he seems to believe that  
4 somehow people were asked to identify him in that second lineup, and  
5 therefore, there should be evidence about their failure to do so, and that wasn't  
6 preserved.

7 But because nobody was actually asked to identify him in the  
8 second lineup, there was no evidence, written notations, anything like that  
9 about anybody's failure to identify him in that lineup. And, therefore, there was  
10 no potentially exculpatory evidence to preserve, and, therefore, there would  
11 have been no reason for anybody to raise that on appeal. And that's even more  
12 true that they didn't ask anybody to identify the defendant in the second lineup  
13 because he had already been identified in the first lineup.

14 Ground Number 13 is the issue that I alluded to earlier about  
15 Ms. Westbrook, the witness that was called. I don't find any error in the calling  
16 of Ms. Westbrook. To begin with, as I said, it was clear at the time of trial and  
17 the record that was made, that Mr. Slaughter wanted his attorneys to find  
18 Ms. Westbrook, that Mr. Slaughter wanted his attorneys, very vehemently, to  
19 put Ms. Westbrook on the stand at trial and they did so. She did have things to  
20 offer that were beneficial to Mr. Slaughter. Obviously, she did not testify as to  
21 the exact time that she was with the defendant, and, therefore, things didn't  
22 work out as well apparently as Mr. Slaughter had hoped they would with the  
23 calling of her.

24 On the other hand, she did provide the jury with some testimony  
25 that was of benefit to Mr. Slaughter in that he had never had dreadlocks, he did

1 not speak with a Jamaican accent, et cetera. So the decision to call her at the  
2 defendant's request was not unreasonable and counsel cannot be held to be  
3 ineffective because some of what she stated was not of benefit to  
4 Mr. Slaughter.

5 And finally, Ground Number 14 is kind of a catchall allegation that  
6 there was cumulative error because of all the other errors he's alleged. To  
7 begin with, I don't find that the vast, vast majority of what he's alleged was  
8 error or that his attorney was at all ineffective in the decisions that were made  
9 with regard to all of those. I believe I only referred to one of them as being  
10 potentially error, that was the failure to call Investigator Retke, and even if that  
11 was error, I think it was harmless considering the weight of evidence in the  
12 case and the nature of what it was that they were offering to put Mr. Retke on  
13 the stand to address. And, therefore, the ground regarding cumulative error  
14 does not form a basis for granting Mr. Slaughter any relief.

15 So for all those reasons as well as everything that's alleged, I will  
16 say, in the defendant -- or the State's points and authorities, which I agree with  
17 almost verbatim, absent what I've stated on the record here today, for all those  
18 reasons the petition's going to be denied.

19 Okay. Thank for standing there while I said all that.

20 MR. FLINN: Thank you, Your Honor, we'll order the transcript and do the  
21 findings and --

22 THE COURT: Appreciate it.

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MR. FLINN: -- comport with that.

PROCEEDING CONCLUDED AT 11:00 A.M.

\* \* \* \* \*

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-video recording of this proceeding in the above-entitled case.



SARA RICHARDSON  
Court Recorder/Transcriber

Original

Please Return  
File

Stamped copy !!

20

DA  
PP

Rickie Slaughter #85402

Ely State Prison, P.O. Box 1989

Ely, Nevada 89301-1989

Petitioner in proper person

Electronically Filed

07/15/2015 04:49:46 PM

District Court

Clark County, Nevada

*Ann L. Schum*

CLERK OF THE COURT

Rickie Slaughter,

Case No: MC 204957

Petitioner,

vs.

Dept. No: 3

The State of Nevada, et al.,

Hearing Date: ~~11~~ 2015

Respondents.

Hearing Time:

Petitioner's Reply To State's Response To Pro Per  
Petition For Writ of Habeas Corpus

Comes now, Petitioner Rickie Slaughter in my proper person,  
and submits the attached Points And Authorities in reply to the  
State's untimely ~~re~~ response to my Petition for Post Conviction habeas  
corpus relief, and respectfully request that this Court strike the State's  
response as being untimely and served deliberately late in bad faith.

This reply is made and based upon all papers and pleadings  
on file herein, the attached points and authorities in support here-of,  
and oral arguments at the time of any hearing if deemed necessary by  
the Court.

CLERK OF THE COURT

RECEIVED  
JUL 19 2015

## Points And Authorities

On March 25<sup>th</sup>, 2015, I filed a timely Post-conviction Petition For Writ of Habeas Corpus, along with an Affidavit to Proceed Informa Pauperis requesting the Appointment of Counsel.

On April 8<sup>th</sup>, 2015, this Court entered an Order For Petition For Writ of Habeas Corpus, Ordering the State / Respondent to respond to my Petition within 45 days from the Court's order being entered. This Court's Order further placed this matter on the Courts Calendar for hearing on June 4<sup>th</sup>, 2015.

On April 21<sup>st</sup>, 2015, I mailed 3 more motions to the Court to be filed: A Motion For Appointment of Counsel, A Motion For Transportation To Court Hearing for Court Appearance, a Motion To Extend Photo Copywork account. However, for reasons unknown to me, only my Motion To extend Photo copywork appears to have been filed and placed on the Courts Calendar.

On June 2<sup>nd</sup>, 2015, (~~10~~ days passed this Court's imposed deadline), and 2 days before the hearing scheduled to hear my Petition the State filed a response to my Petition for Habeas Corpus relief requesting that my petition be denied. Furthermore, as the State's "Certificate of Service" attached to it's Response indicates that a copy of the State's Response was not mailed to me in a reasonable, or sufficient amount of time that would permit me to file a written reply to the State's response before the scheduled hearing in this matter on June 4<sup>th</sup>, 2015. The State did not actually mail a response to me until June 3<sup>rd</sup>, 2015 as the Post mark on it's mailing envelope indicates, and I did not actually receive the State's response until June 8<sup>th</sup>, 2015 (4 days after the actual hearing) See Exhibit A, attached: NDOC Ely State Prison Legal Mail receipt dated: 06-08-2015



1 The State's Response was essentially a Motion To Dismiss as  
2 it requested that my petition be summarily dismissed and denied see  
3 State's Response To Pro Per Petition For Writ of Habeas Corpus at p. line  
4 As such, the State's dilatory response prejudiced me greatly  
5 because it undermined my right to file a reply within 15 days as  
6 allotted by statute see NRS 34.750(4). Moreover, I was not  
7 allowed to be physically present in-court at the hearing and counsel  
8 has not been appointed as neither of my motions have been addressed  
9 by the Court yet on these issues.

### 10 Legal Argument

#### 11 Point 1

12 The State's Response is the substantial equivalent  
13 of a Motion To Dismiss. Thus per NRS 34.750(4) I had a  
14 statutory right to have 15 days to file a reply. Because the  
15 State's dilatory conduct undermined this right, the State's Response  
16 should be stricken and/or the hearing on my petition re-set  
17

18  
19 NRS 34.750(4) provides in relevant part that a petitioner  
20 to a post-conviction habeas petition "shall respond within 15 days  
21 after service to a motion by the State to dismiss the action." id.  
22 In the instant case, The State did not file it's response  
23 requesting dismissal of my petition until 2 days before the  
24 scheduled hearing in this matter and I did not receive the State's  
25 response until June 8<sup>th</sup>, 2015, which was 4 days after the scheduled  
26 hearing. As a result, the State's delayed filing and service of  
27 it's response requesting dismissal of this action operated as an under-  
28 handed tactic that effectively nullified my statutory right to reply

1 undermining and implicating my due process rights to fundamental fairness  
2 as well. The Nevada Legislature's intent to allow a Petitioner an opportunity  
3 to reply to the State's request to "dismiss the action" for Post-Conviction  
4 habeas relief is clear from the language of NRS 34.750(4).

5 There was no excuse proffered by the State to explain its dilatory response  
6 which exceeded this Court's 45 day deadline, or the late service of that response  
7 to me. As such, the State's response should be stricken, and/or a  
8 hearing re-set in this matter in order to allow this Court to consider  
9 my reply to the State's request to dismiss my petition, which is outlined  
10 below in the next section.

## 11 Point 2

12 The State's request to Dismiss my Petition must be denied  
13 because the factual allegations raised require relief; Counsel  
14 should be appointed; and an Evidentiary Hearing is required.

### 15 Failures To impeach and adequately cross-examine witnesses

16 Although the State concedes that my trial attorney's failed to  
17 impeach, and/or, cross-examine eyewitnesses Ivan Young ("Young") and  
18 Ryan John ("John") about each of their own prior-inconsistent preliminary  
19 hearing testimony and prior-statements to police. The State attempts  
20 to down-play the significance of the eyewitnesses inconsistencies as being  
21 "minor" and unable to affect the jury's verdict. However, the State's  
22 mischaracterization in this regard is far from true and unsupported by the  
23 record. In fact, the inconsistencies in these eyewitnesses testimony which  
24 my trial attorney's failed to address at trial, had the reasonable probability  
25 of changing whether I would have been convicted, or not, in several ways  
26 including undermining legal sufficiency for aiding and abetting liability.

27 For example, not only would impeaching Young with his  
28

1 differing descriptions of the two perpetrators and chronology of the events  
2 have affected the jury's overall assessment of Young's reliability and cred-  
3 ibility of his identification of me as related to my mistaken identification  
4 defense; but even after rejecting the mistaken identification theory the jury  
5 still had to determine which of the two perpetrators the evidence produced by  
6 the State allegedly demonstrated me to be.

7 As such, confronting Young with his prior inconsistent statements  
8 to police and preliminary hearing testimony in which he changed the descrip-  
9 tion of which perpetrator he believed to have shot him would have also affected  
10 whether, or not, the jury believed that I was the shooter or the other perpe-  
11 trator. And this would have bore directly on the issue of whether, or  
12 not, I could be found legally culpable for the Attempted murder charge  
13 alleged in Count 3, because identifying me as the shooter was the only  
14 evidence supporting a finding of mens rea — the requisite specific intent  
15 to kill required to be proven beyond a reasonable doubt by Sharma  
16 v. State, 118 Nev. 648, 654-655, 56 P.3d 868 at 871-872 (2002); See  
17 also, Mitchell v. State, 149 P.3d 33, at 37 (Nev. 2006)

18 In fact, there was testimony at trial by Jose Posada ("Posada"),  
19 another eyewitness, that after one of the perpetrators shot Young, the other  
20 perpetrator immediately responded by asking "why" the other perpetrator  
21 had shot him, thus undermining the specific intent to kill as applied  
22 to the perpetrator who had not shot Young:

23 "Prosecutor Fleck: Were they saying anything while they  
24 were, you know, while the shot was being fired?"

25 "Posada: Yes. I heard, you shot him, and I think  
26 they said, why did you shoot him?"

27 Reporter's Transcript of Trial ("RT of Trial") May 18, 2011, p.44 lines  
28 3-6. Similarly, John gave testimony that supported Posada's in this

1 regard See RT of trial, May 17, 2011, p. 58. Additionally, none of the  
2 eyewitnesses were in a position to competently claim I was the shooter  
3 as they each testified at trial to not have physically/visually seen ~~who~~  
4 or which perpetrator had shot Young, although, 3 of them stated a "beli-  
5 ef" that I was the shooter See RT of trial, May 17, 2011, p. 59-60 (John  
6 testifying he "didn't see" who shot Young); RT of trial, May 18, 2011, p. 43  
7 (Posada testifying that he didn't see Young get shot); RT of trial, May 16, 2011,  
8 p. 30 (Means testifying that he didn't see Young get shot).

9 Therefore, Young was the only eyewitness in a position to do so, and  
10 given the fact that the State, in it's closing arguments, relied exclusively on  
11 the argument/theory that I was the shooter, impeaching and confronting Young  
12 on the descriptions of the shooter which he kept changing carried a reasonable  
13 probability of changing the outcome as to whether I was convicted on  
14 the Attempt murder Count and by extension probably the Kidnapping resu-  
15 lting in substantial bodily harm count connected to it. Thus, my  
16 trial attorney's failure was prejudicial to both my mistaken identification  
17 defense, as well as sufficiency of the evidence for the two counts mentioned.

18 As for John, impeaching his trial testimony with his prior inconsit-  
19 ent statements to Officer Hoyt and his preliminary hearing testimony  
20 was critical. Because at trial, John's "new version" of the incident  
21 made it appear as if he had un-obstructedly viewed both perpetrators  
22 for 20 to "30 minutes" See RT of trial, May 17, 2011, p. 58-59, while  
23 according to his preliminary hearing testimony and initial statements to police,  
24 he likely had less than one minute to view only "one" of the perpet-  
25 rators and said he never even saw the other See Preliminary hearing  
26 testimony transcript ("Prelim Transcript"), September, 2004, p. 53-56  
27 These inconsistencies went directly to the heart of John's ability to tell  
28 the truth, his credibility and reliability to make an accurate identification.

1 The United States Supreme Court has recognized, as being a funda-  
2 mental safeguard in eyewitness identification cases:

3 "the defendant's right to the effective assistance of an  
4 attorney, who can expose the flaws in eyewitness testimony during  
5 cross-examination and focus the jury's attention on the fallibility of such  
6 testimony during opening and closing arguments."

7 Perry v. New Hampshire, 132 S.Ct. 716, at 728, 181 L.Ed.2d 694 (2012) Ade-  
8 quate cross-examination is crucial to the reliability of the trial's outcome. See, i.e.,  
9 United States v. Tucker, 716 F.2d 576, at 586 (9th Cir. 1983) (holding that defense  
10 counsel's "decision not to utilize any of these prior statements prevented the  
11 jury from making an accurate determination as to the truth of [the witness']  
12 testimony. . . . a competent lawyer would have recognized the critical im-  
13 portance of using the prior-inconsistent statements for impeachment"); also see  
14 Brown v. State, 110 Nev. 846, 849-50, 877 P.2d 1071 (Nev. 1994) (holding that "we  
15 can only conclude that counsel's failure to zealously cross-examine the victim  
16 rendered the results of the case unreliable")

17 Furthermore, under Nevada law prior inconsistent statements are not only  
18 available for use as impeachment evidence, but also as "substantive evidence"  
19 to prove the facts of the matters asserted in the statements. Crowley v. State,  
20 120 Nev. 30, 83 P.3d 282 (Nev. 2004). Thus, there is no reasonable tactical basis  
21 for defense counsel's failure to bring out such inconsistencies in the eyewitness  
22 testimony when the central defense to the charges was misidentification. The  
23 prejudice to my defense was substantial because John's prior-inconsistent went to  
24 the heart and foundation of all his testimony regarding his ability to view the  
25 perpetrators and thus, would have completely destroyed him as an eyewitness in  
26 the jury's eyes, suggested he had perjured himself, and lent substantial supp-  
27 ort to my theory of defense that John and the other eyewitnesses had only  
28 misidentified me because of the improper suggestive taint of the photo lineups

1 they had viewed. This would have created a reasonable probability that the  
2 jury would have found my defense credible and believed in it enough to doubt  
3 the State's case. (as discussed in further detail later). Thus, the inconsistencies  
4 of whether, or not, John's head was covered with a jacket that obstructed  
5 his view of the perpetrators for nearly the entire span of events in Youngs home,  
6 are not "minor" inconsistencies as the State attempts to incredibly suggest.  
7 Plus, had defense counsel introduced John's prior inconsistent statements as subst-  
8 antive evidence that <sup>he</sup> had ~~a~~ virtually no opportunity to view the perpetrators,  
9 Jury Instruction No. 37 would have significantly bolstered the defense case  
10 because it underscored the "opportunity of the witness" to view the suspect  
11 perpetrator as critical to the value of the eyewitness testimony. See, Jury Instru-  
12 ction No. 37, May 20, 2011, ("Identification testimony is an expression of  
13 belief by the witness, it's value depends on the opportunity the witness had to  
14 observe the offender at the time of the offense. . . .")

15 With regard to the 2nd set of photo line ups, defense counsel could have  
16 simply asked the witnesses whether they recalled viewing a 2nd set of photo  
17 lineups, and asked whether or not, they recognized the copies of the 2nd set.  
18 Had the eyewitnesses answered "yes", defense counsel could have cut his examination  
19 there, and in Closing Argument drew a reasonable inference from the lack of  
20 any notations identifying me in the photo lineup to suggest to the jury that the  
21 eyewitnesser had obviously failed to identify me from the photo lineup. See e.g.,  
22 U.S. v. Thompson, 37 F.3d 450, 454 (9th Cir. 1994) (holding that a defendant is  
23 entitled to argue reasonable inferences to the jury regarding the lack of evidence wh-  
24 ich one would normally expect to be produced); see also, U.S. v. Latimer, 511 F.2d  
25 498, at 503 (10th Cir. 1975) (same). Notations on the photo lineup cards would be normally  
26 expected. In the event, that the eyewitnesses answered "no" to whether they recalled  
27 the 2nd set of photo lineups, defense counsel could have used this answer to support  
28 the request he made for a phantom jury instruction regarding these photo lineups;

1 RT of trial, May 18, 2011, p. 60-62 (trial Court explaining "I'm not going to instruct  
2 the jury on something that isn't in evidence to show that there was a lineup that was  
3 proposed and shown to somebody they didn't identify unless there's testimony about  
4 it") See also, Sanborn v. State, 107 Nev. 399, 408 (Nev. 1991) (Holding that when state  
5 fails to properly collect or preserve evidence favorable to the defendant, Court must  
6 give instruction to the jury that evidence is presumed to be favorable); see also, Daniels  
7 v. State, 956 P.2d 111 (1998) (same). An instruction presuming prior failures to "id" me.

8 Both of these scenarios would have severely undercut the State's eyewitness  
9 testimony and substantially supported the theory of defense that I was misidentified.  
10 The State, in its response, asserts an illogical conclusion that "there was no eviden-  
11 ce that the suspects (sic) did not identify Defendant in this lineup." First, I  
12 assume, the State committed a typo and meant "witnesses" not suspects. Regardless, the  
13 State seems to try and suggest that the eyewitnesses did identify me from the 2nd set  
14 of photo lineups; But if that is the case, one must ask the question: why didn't  
15 the State introduce the 2nd set of photo lineups to the jury at trial and elicit the  
16 (fictional) identifications to bolster the 1st set of photo lineup identifications (which  
17 defense counsel argued was suggestive)? The State's assertion defies logic, because  
18 another identification from a proper photo lineup would have re-inforced the 1st.

19 In another part of the State's response, the State sets forth another assertion  
20 that abandons common sense, but then again common sense is not common at all  
21 sometimes. The State argues, that because the police were also trying to identify  
22 another suspect that the "officers had no reason to note whether or not the  
23 witnesses identified Defendant when that was not the purpose of the lineup."  
24 However, some of the victim eyewitnesses never identified me from the 1st set  
25 of photo lineups, and as prosecutor DiGiacomo ~~ad~~ conceded at a pretrial hearing  
26 "all the victims were inside the house were shown the [2nd set of] photo lineups."  
27 Reporter's Transcript of Def't Motions, December 1, 2009, at p. 8 lines 12-14. Thus,  
28 the police had an interest in obtaining identifications of me from the victim eye-



1 witnesses who had never identified me, and an interest in obtaining another additional  
2 identification of me from the ones who already had, to bolster the first. Common sense  
3 begs one further question: if the police truly had no interest in noting an identification  
4 of me from the 2nd set of photo lineups, then why include my photo in the 2nd set of  
5 photo lineups at all? See RT of Def't's Motions, December 1, 2009, p. 9 (Prosecutor DiGiacomo explaining "The earlier photo lineups which previously already identified Rickie  
6 Slaughter -- well, some of them have. There is some people who didn't identify any  
7 body in those first ones"). Police had an interest in securing additional identifications  
8 of me period; and evidence, such as the 2nd set of photo lineups, that suggested the  
9 eyewitnesses had failed to identify me on a prior occasion should have been brought  
10 out on defense counsel's examination of Young, Means, John and Posada.  
11

#### 12 Failure To Call Witnesses

13 To begin, the State attempts, in its response, to invent fictional tactical  
14 excuses that are not supported by the record for defense counsel's failure to call  
15 witnesses that would have bolstered my defense. However, in my petition, I assert  
16 that defense counsel told me that he had negligently forgot to subpoena Detective  
17 Prieto, and other witnesses who were listed on the State's witness list such as  
18 Destiny Waddy, Officer Mark Hoyt, Officer Anthony Bailey, the 911 records  
19 custodian, etc. because he had unreasonably assumed that the State would  
20 subpoena and call all these witnesses since they were listed on the State's witness  
21 list. The trial record supports my claim. At trial, defense counsel made  
22 numerous complaints to the Court about how the "State's" failure to call all these  
23 witnesses prevented defense counsel from presenting evidence in support of  
24 his theory of defense:

25 "[defense Counsel]: I think the issue was Mr. Fumo did it in  
26 opening statement, he indicated all the issues that Detective Prieto had  
27 with regards to the investigation that are no longer going to be brought out since  
28 the State did not call him. We wanted to use this to essentially remedy that



1 " . . . I haven't tried that many cases. I have never seen a  
 2 lead detective not testify in a case or a lead agent not testify in a case. "  
 3 " The Court: You will. "  
 4 " [Defense Counsel]: Testifying as to those issues, the shoes missing  
 5 that we can't present to them that didn't have blood on them, that would  
 6 remedy those particular issues. "  
 7 RT of trial, May 19, 2011, (11:00 am), p. 35-36; See also, RT of trial, May 19, 2011 (11:00 am)  
 8 at p. 43 (defense counsel complaining that evidence that " Mark Hoyt indicated that  
 9 he interviewed Destinze Waddy who indicated [the get away car] was a Grand Am. It  
 10 was later changed by Detective Prieto to be a Ford in his affidavit for a search  
 11 warrant " could not be elicited because State did not call witness); RT of trial, May  
 12 18, 2011, p. 61 (defense counsel complaining that " now we're precluded from entering  
 13 [the 2nd set of photo lineups] based on the fact that the detective who would  
 14 have had any information about that is not being presented ").  
 15 Furthermore, defense counsel promised the jury in his opening statement that they  
 16 would hear favorable evidence about things that could have only come from witnesses Dest  
 17 ing Waddy. RT of trial, May 16, 2011, at p. 24 and the 911 dispatch records custodian RT  
 18 of trial, supra at 18-19, and Detective Prieto, RT of trial supra at p. 22.  
 19 Thus, it is clear that defense counsel's failure to call these witnesses was not  
 20 strategic but in fact was due to a negligent, inexperienced, assumption that the State  
 21 would call all the witnesses on it's witness list which Defense Counsel needed to  
 22 support his theory of defense. See i.e., RT of trial, May 19, 2011 p. 35-45. In light  
 23 of the record, the State's fictional invented excuses on behalf of counsel's failure to  
 24 call these witnesses must be rejected.  
 25 Courts have held, that it is not, the " Court's commission to invent strategic  
 26 reasons or accept any strategy counsel could have followed without regard to what  
 27 actually happened; when a petitioner shows that counsel's actions actually resulted  
 28 from inattention or neglect, rather than reasoned judgment, the petitioner has

1 rebutted the presumption of strategy, even if the government offers a possible  
2 strategic reason that could have, but did not, prompt counsel's course of action."<sup>99</sup>  
3 Marcrum v. Luebbers, 509 F.3d 489, 502 (8<sup>th</sup> Cir. 2007); Gomez v. Beto, 462 F.2d  
4 596, 597 (5<sup>th</sup> Cir. 1972) ("When defense counsel fails... to subpoena witnesses  
5 in support of the defense, it can hardly be said that the defendant has had the  
6 effective assistance of counsel"). In the instant case, defense counsel was deficient;  
7 At a minimum, I was entitled to an evidentiary hearing to prove defense counsel's  
8 reasons behind failing to call these witnesses in light of the support in the record  
9 supporting my contentions, to resolve the factual dispute between me and the State. See  
10 Vaillancourt v. Warden, 90 Nev. 431, at 432, 529 P.2d 204 (Nev. 1974) (explaining  
11 that where "something more than a naked allegation has been asserted, it is  
12 error to resolve the apparent factual dispute without granting the accused  
13 an evidentiary hearing.").

14 Defense counsel's failure to call witnesses to support the defense's case caused  
15 substantial prejudice. For one, the failure to produce the evidence he promised the  
16 jury they would hear and see in his opening statement certainly left a negative  
17 impact on the jurors' minds that reflected bad on the defense. Because "little is  
18 more damaging than to fail to produce important evidence that had been promised  
19 in an opening." English v. Romanowski, 602 F.3d 714, 729 (6<sup>th</sup> Cir. 2010) (quoting  
20 Anderson v. Butler, 858 F.2d 16, 17 (1<sup>st</sup> Cir. 1988)) (internal quotations omitted);  
21 See also, U.S. ex rel. Hampton v. Leibach, 347 F.3d 219, 259 (7<sup>th</sup> Cir. 2003) (holding un-  
22 fulfilled promise by defense counsel in opening statement caused prejudicial negative inference  
23 as to defendant and defense counsel's credibility). See, i.e., RT of trial, May 16, 2011,  
24 p. 20-21 (defense counsel promising in opening that Destiny Waddy was the only witness to  
25 describe the get-away car and that Shelday "she saw a green Pontiac Grand Am")  
26 RT of trial, supra at p. 18 (defense counsel promising the jury in opening that "[t]here's no  
27 way he can drive from the [crime scene] all the way to where [Mrs. Johnson] worked  
28 in four minutes"); RT of trial, supra at p. 22 (defense counsel's promises to jury that

1 the evidence would show Detective Prieto's inadequate investigation into an alternative  
2 suspect named Eric Hawkins).

3 The State makes a half-hearted attempt to suggest that the prior statement  
4 Detective Prieto received from Arbuckle wasn't "necessarily inconsistent" with  
5 Arbuckle's trial testimony. State's Response filed June 2, 2015, at p. 4. However,  
6 Arbuckle's initial statement that he left work at 7:15 pm, lacked any mention of  
7 him waiting until 7:30 pm with Ms. Johnson for her ride to come, as he newly claim-  
8 ed in his trial testimony. Thus, it was clearly a prior inconsistent statement;  
9 And as the State concedes, had "counsel called Detective Prieto [the statement]  
10 would have supported that at the earliest Defendant arrived at 7:15" to pick  
11 Ms. Johnson up. See State's Response supra at p. 4. As the 9th Cir. has held  
12 the "State is bound by its concessions" in pleadings Reynoso v. Giurbino,  
13 462 F.3d 1099, 1110 (9th Cir. 2006).

14 This would have been substantive evidence from a State Police witness corrob-  
15 rating my theory of defense that I could not have been the perpetrator because I  
16 was on the opposite side of town 8 1/2 miles away picking up Ms. Johnson at 7:15  
17 (approximately 4 minutes after the crimes were completed). It would have directly  
18 supported Ms. Johnson's testimony that I arrived to pick her up "between  
19 7:00 to 7:15; no later than 7:20", and powerfully undercut the State's argum-  
20 ent that I must've arrived at 7:30 or later. See, e.g., RT of trial, May 19, 2011  
21 (9:00 am) at p. 21 (Ms. Johnson testifying that I arrived between 7 to 7:15 no later  
22 than 7:20); RT of trial, May 20, 2011 at p. 133 (Prosecutor DiGiacomo arguing  
23 in his rebuttal "what is what Jeff Arbuckle told you; when I was leaving, Rickie  
24 was pulling in the parking lot, which tells you that, between 7:30, 7:40, some-  
25 where in that range, Rickie Slaughter came with his green car").

26 Defense Counsel also would have been able to bolster my defense through Detective  
27 Prieto by eliciting information about the 2nd set of photo lineups. Detective Prieto's  
28 police report could have served as a prior inconsistent statement had he tried to say

1 otherwise like the witnesses did recognize me. Because Detective Prieto never  
2 said any such thing in his report concerning the 2nd set of photo lineups. He also  
3 would have helped rebut Youngs testimony, and given Defense Counsel the opportuni-  
4 ty to confront him on the inadequacy of his investigation, inappropriate conduct  
5 with Ms. Johnson in which he coerced her to change her statement about what  
6 time I picked her up in effort to destroy a legit alibi. See RT of trial, May  
7 19, 2011, (11:06am) p. 37 (Prosecutor DiGiacomo acknowledging that there was evidence  
8 to support the argument that "Prieto was inappropriate with Tiffany Johnson").  
9 In light of this confrontation, jurors may have drew an inference as to the reason  
10 that Arbuckle had changed his testimony about what time I arrived, to a state-  
11 ment that supports the State; They may have believed Detective<sup>Prieto</sup> was the cause  
12 by means of corruption and coercion.

13 Waddy's testimony would have undermined the State's theory that  
14 the get away car was a Ford similar to my girlfriends car. And Hoyt,  
15 Retke, and the 911 dispatch custodian would have supported defense counsel's  
16 promise to the jury in his opening that there was "no way he can drive  
17 from the [crime scene] to all the way to where [Ms. Johnson] worked in four  
18 minutes." Because these witnesses would have set the evidentiary foundation  
19 necessary to support the inference that the 911 call was made at 7:11pm;  
20 and based upon what Means had told Hoyt and Means' testimony, it could  
21 have been reasonably inferred that Means made the call to 911 "a few seconds"  
22 after the perpetrators fled the house. Further, Retke would have given  
23 jurors an idea of the kind of time it takes to travel the distance between  
24 the crime scene and Ms. Johnson's place of work. See Officer Hoyt's Police report  
25 attached to petition at p. 10, as Exhibit F (stating dispatch time as 7:11pm and  
26 explaining that Means stated that "after a few seconds" after the perpetrators  
27 exited the house he got up and ran outside to his car where his girlfriend  
28 Waddy was waiting); Case Investigation reports by Retke attached to petition

1 as Exhibits H and Exhibit I (Retke's summary of interview with Waddy  
2 in which she told him that as soon the perpetrators drove away Means came  
3 to her and called 911; and Retke's report about amount of time it took  
4 him to drive distance between crime scene and Mrs. Johnson work place).

5 Most importantly, the State's evidence was weak. In it's response  
6 to my petition the State summarized the evidence it presented at trial as follows:

7 "Four different witnesses identified Defendant as the person who  
8 shot Mr. Young. Defendant was in possession of a green Ford Taurus, which  
9 matched the description of the vehicle used by the perpetrators. Officers  
10 searched the Ford Taurus and found guns matching the description of  
11 the guns used in the crime, and a .357 shell casing which was the  
12 same caliber of the weapon that Defendant used to shoot Mr. Young in  
13 the face with. Additionally, Defendant was recorded asking Mrs. John-  
14 son to change her testimony and inform officers that Defendant picked  
15 her up at 7:00 pm. Defendant was also recorded talking to another man  
16 about fabricating an alibi and asking about the guns that were found  
17 in his car. Defendant was also video taped at a 7-11 convenience store  
18 using an ATM card that he obtained during the robbery." State's Res-  
19 ponse filed June 2, 2015, p. 5-6.

20 However, although in passing this synopsis of the State's evidence may  
21 sound strong, closer scrutiny, reveals that each of the state's pieces of evi-  
22 dence was extremely weak.

23 To begin, the eyewitness testimony in this case is highly suspect and question-  
24 able in light of defense counsel's failures to bring out the inconsistencies mentioned,  
25 and the fact that the eyewitnesses had each failed to identify me on a prior occas-  
26 ion from the 2<sup>nd</sup> set of photo lineups. See, i.e., Gary L. Wells, E.P. See Lau, S.N. Rydell and C.A.  
27 E. Luis, Adult Eyewitness Testimony: Current Trends And Developments Recommendations  
28 for properly conducted line up Identification task, at 223-224 (D.F. Ross, J.D. Read and

1 m.P. Toglia eds.) (1994) (explaining that in a study of over 1000 wrongful convictions  
2 recall errors and inconsistencies by eyewitnesses were the leading cause of those wrong-  
3 ful convictions); also see, Brandon L. Garrett, *Judging Innocence*, 108 Columbia Law  
4 Review, 55 at 60 (2008) (noting that out of 200 wrongly convicted defendants later exon-  
5 erated by DNA evidence the "vast majority of the exonerates (79%) were convicted  
6 based on eyewitness testimony, we now know that all of these eyewitnesses were incorrect")  
7 Moreover, the physical descriptions of the perpetrators provided by the eyewitness-  
8 es didn't my physical description at the time. Evidence (photo and testimony) was produ-  
9 ced at trial, that established at the time of the crimes, I had healing facial scars and bruis-  
10 ing (a "black eye"); however none of the eyewitnesses has ever described the perpetrators  
11 as having such and several eyewitnesses affirmatively denied seeing anything of that nature  
12 See, e.g., RT of trial, May 19, 2011 (9:00 am) at p. 22-24 and 54-55 (Ms. Johnson explaining  
13 facial scars and confirming "black eye" present picture / booking photo) See also State's Exh-  
14 ibit for trial #138: mugshot profile of Rickie Slaughter; RT of trial, May 18, 2011, p. 55-56  
15 (eyewitness Jose Posada acknowledging that he did "not" recall seeing any facial scars or bruise-  
16 is on the perpetrators); RT of trial, May 17, 2011, p. 68-69 and 74 (John acknowledging that  
17 he was "face to face" with perpetrator he believed to be me and did not recall seeing bruises, black  
18 eye or scars on face); RT of trial, May 16, 2011, p. 33-72, 120, and 143 (Means and Young  
19 testimony, same).

20 There was also testimony from multiple eyewitnesses that the perpetrators had  
21 "jamaican accents", and evidence was produced on my behalf that I don't speak with  
22 a jamaican accent and never have. See RT of trial, May 16, 2011, p. 8 (Young testifying that  
23 both perpetrators had jamaican accents and were talk about going to "Belize"); RT of trial,  
24 May 17, 2011, p. 52 (John testifying that perpetrators had jamaican accents); RT of trial, May  
25 18, 2011, p. 79 (defense witness confirming she has never heard me speak with a jamaican accent).  
26 Additionally, there was evidence that the 1<sup>st</sup> set of photo lineups that I was identified from were  
27 constructed in a way that made me photo stand out from the fillers, and was likely suggestive  
28 and misleading to the eyewitnesses. See, R.T. of trial, May 19, 2011, (9:00 am) p. 100-101 and p. 104-

105 (Expert witness psychology professor Loftus explaining that the difference in the background color of my photo from the fillers in the 1<sup>st</sup> photo lineup is an improper feature that could have unduly drew the witnesses attention and misled the eyewitnesses to select my photo on this basis); RT. of trial, May 18, 2011, p. 53 (eyewitness Posada testifying that there was a "difference" in ~~the~~ <sup>my photo's</sup> background color compared to the fillers); RT. of trial, May 17, 2011, p. 76 (eyewitness John testifying and acknowledging that my photo looked "different" than the other filler photos in the photo lineup); RT. of trial, May 16, 2011, p. 69-70 (eyewitness Young acknowledge difference in my photo from fillers); RT. of trial May 16, 2011, p. 37-38 (eyewitness Mauns failing to make an in-court identification and acknowledging the difference in my background color of my photo compared to the fillers in the photo lineup); U.S. v. Saunders, 501 F.3d 384, at 390 (4<sup>th</sup> Cir. 2007) ("Differences such as background color can make a picture stand out, [in a photo lineup] and act to repeatedly draw a witness's eye to that picture"); U.S. Dept. of Justice, National Institute of Justice, Eyewitness Evidence: A Guide for Law Enforcement Section V-A p. 29 (1999) ("The investigator shall compose the lineup in such a manner that the suspect does not unduly stand out").

Next, the description of the get away vehicle being a Ford Taurus is undermined by defense counsel's deficient representation in failing to introduce Destiny Waddy's description of the get away vehicle as being a Pontiac Grand Am. She had the best view of the perpetrator's vehicle. Additionally, the Pontiac Grand Am description is consistent with victim Jennifer Dennis' testimony at trial that the perpetrator's were talking about a "Pontiac" during the crime. See, RT. of trial, 148-149 (Officer Hickman testifying that Jennifer Dennis initially told him that the perpetrators mentioned owning a "Pontiac"). Moreover, the description of the perpetrator driving a Ford Taurus by Young was in the most generic terms possible; Young did not provide a year model or license plate number and he never mentioned ever seeing the vehicle in his 3 interview with police about the incident. Plus, Jennifer Dennis described the get away vehicle as being "blue or teal" and several different makes or models. See RT. of trial, May 18, 2011, p. 122 and p. 137 (Dennis testifying that the get away vehicle "had to be either a Mercury Topaz or maybe



1 a Ford Tempo teal or maybe blue four door;" and on cross-examination adamantly  
2 confirming "Teal or blue, I wouldn't say green").

3 The guns found in Ms. Johnsons trunk were excluded by forensic test and  
4 determined not to be the weapons that Young was shot with, or by. RT. of trial, May 17, 2011  
5 (Expert witness Moses that the firearms found in the trunk could not have fired the bullet  
6 fragments retrieved from Youngs wounds). The firearms were small calibers: a 25 and  
7 a 22 caliber. And who owned these weapons has never been established. The witnesses  
8 to the crime described the guns they saw the perpetrators with as being several different  
9 larger calibers, including: a 9 millimeter, a 380 caliber and a 38 as well as a .357.  
10 none described them as being a 22 or 25 caliber pistols. The State attempted to  
11 make a long inference that because the witnesses described the handguns used by  
12 the perpetrators as being black or silver, revolver and semi-automatic that these small  
13 pistols must have been the weapons. But all pistols are black or silver, semi automatic  
14 or revolver, plus the State never even attempted to let the victims view the small pistols  
15 to see if they could identify them, or not. While it cannot be conclusively determined  
16 that Young was shot with a .357 caliber, it is possible and the bullet casing  
17 found in ~~8~~ the trunk of my girlfriends car could not be ballistically linked to  
18 the bullet fragments from Young's injuries RT. of trial, May 17, 2011, at p. 145 (Exp-  
19 ert witness Moses testifying that fragments from Young's injuries could not be said to be  
20 unique enough to say it came from one bullet source or brand); and RT. of trial, May 17,  
21 2011, p. 168 (State's expert witness Moses acknowledging that she "Can't tell us to a  
22 scientific degree of certainty whether or not" the bullet fragments from Youngs wounds  
23 and the shell casing from Ms. Johnson's trunk were the same bullet or round).

24 The conversations between Ms. Johnson and I over the phone, did not  
25 constitute attempts to create an alibi. They were conversations intended to confirm  
26 the time I picked her up and to counter-act the coercive effects of Detective  
27 Prieto's use of improper tactics on Ms. Johnson in Detective Prieto's attempt to  
28 brain wash her into changing her origia original statement.



1 And probably the weakest evidence presented by the State was the 7-11 convenience  
2 store video footage. It depicted an individual whose face and head were covered up  
3 and largely hidden from view, walk into the store and go stand at the ATM. See RT. of  
4 trial, May 20, 2011 ( ) p. 53 (Prosecutor Fleck acknowledging in her closing argument  
5 that the individual in the video "covers his head and face" to "disguise himself").  
6 Plus, the State never attempted to have anyone try to identify the individual in the video.  
7 More, the State never produced an ATM transaction record or other proof, to establish  
8 that the individual in the video was actually using an ATM card from the robberies.  
9 See, RT. of MTN for New Trial, May 17, 2011, p. 20 (Prosecutor DiGiacomo explain-  
10 ing that "there isn't a ATM transaction record. I think we told the court  
11 that. . . there isn't one that was collected by the police"). The value of this  
12 video was zero to none.

13 But most importantly, there was no physical evidence that directly linked  
14 these crimes to me produced at trial which one would reasonably expect, such as  
15 finger prints, Touch D.N.A., hair, or blood evidence. And none of the "fruits"  
16 of the robberies alleged was produced or located despite the victims testifying  
17 to substantial property and cash being taken. See, e.g., RT. of trial, May 16, 2011,  
18 p. 29 (Means testifying that he was robbed of "\$1,500"); RT. of trial, May 16, 2011,  
19 p. 131 (Penni testifying that the perpetrators took "three-piece suits"); RT. of trial,  
20 May 17, 2011, at p. 57 and 61-62 (John testifying that he was robbed of "my debit  
21 card and my ID, and I don't know probably some other credit cards" and "350"  
22 was taken off his debit card). None of this whatsoever was produced, and as is clear  
23 the circumstantial pieces of evidence were weak upon inspection.

24 In fact, the weak circumstantial evidence in this case is eerily similar  
25 (and mirrors) the type of evidence used in Carter v. Rafferty, to convict profes-  
26 sional boxer Rubin "Hurricane" Carter, whose wrongful conviction was the  
27 subject of the 1999 major motion picture film "The Hurricane" starring  
28 Denzel Washington. In Carter v. Rafferty, federal district court Judge Hadden

1	Lee Sarokin granted habeas relief, and summarized the State's evidence as follows
2	in determining it to be of weak circumstantial value:
3	"The Court must now assess the adverse impact of the prosecution's
4	failure to turn over the oral report in light of the totality of the circumstances.
5	In its summation, the state divided its case against petitioner's into six
6	'strands' of evidence
7	1. The identification of the killer's automobile by Patricia Valentine
8	2. The identification of petitioners by Alfred Bello
9	3. Circumstances surrounding the apprehension of the petitioners.
10	4. Motive
11	5. Location of a bullet and shotgun shell in the trunk of Carter's car.
12	6. False alibis presented by petitioners at the 1967 trial "
13	i.d. supra 621 F. Supp. 533, at 554 (D. N.J. 1985), affirmed on Carter v. Rafferty
14	826 F.2d 1299 (3rd Cir. 1987) (affirming grant of habeas petition). See also, Lay v.
15	State, 116 Nev. 1185, 1196-97, 14 P.3d 1256, 1264 (Nev. 2000) (granting habeas relief and
16	ordering new trial in case where defendant was identified as shooter in drive-by shooting by
17	3 separate eyewitnesses, defendant's fingerprint was found on stolen car used in shooting,
18	and another witness reported seeing defendant with rifle shortly before the shooting).
19	Thus, relief should be granted in light of the weak circumstantial nature of the
20	state's case and defense counsel's ineffectiveness.
21	Failure To Investigate Various Issues
22	In regard to Arbuckle's criminal, the witnesses payments from the state
23	and the facts surrounding the Somee v. State, 124 Nev. 434 (2008), I maintain
24	the position I asserted in my position and request an evidentiary hearing and
25	appointment of counsel to help assist me in developing the facts and discovery
26	of additional evidence, since the factual allegations consist of facts outside the
27	record. " [w]hen a defendant's allegations . . . are based on facts outside of
28	the record, an evidentiary hearing is required " Frazer v. U.S., 18 F.3d

1 778, at 781 (9th Cir. 1994); see also, *Earp v. Stokes*, 423 F.3d 1024, 1035 (9th Cir.  
2 2005); see also, *Martinez v. Ryan*, 132 S.Ct. 1309, 1317, 182 L. Ed. 2d 272 (2012)  
3 ("Without the help of an adequate attorney, a prisoner will have similar difficulties [as  
4 on Direct Appeal] vindicating a substantial ineffective-assistance-of-trial-counsel  
5 claim. Claims of ineffective assistance at trial often require investigative work and  
6 an understanding of trial strategy").

### 7 Ineffective For Calling Noyan Westbrook as a Witness

8 The State ridiculously claims that "Ms. Westbrook's testimony did  
9 not hurt Defendant's case." States Response, p.13. To the Contrary, defense  
10 Counsel decision to call Westbrook and to try to get her to falsely be more specific  
11 than she told him she could be "blew up" in his face and clearly unreasonable.  
12 Westbrook's testimony appeared as if she was providing an Alibi for June 24th,  
13 2005, a year after the crimes. See RT. of trial, May 20, 2011, ( ), p.131  
14 (Prosecutor DiGiacomo's rebuttal argument arguing "What I remember Monique [West  
15 brook] saying is that if she was with him, it was between 7 and 10:00 o'clock  
16 at night. I can't tell you the day of the week. We know it had to be the  
17 year 2005, a full year after Mr. Slaughter was arrested for the crime").

18 And defense counsel knew from previous interview and his decision to  
19 prepare a false, more specific examination plan for Westbrook that she would  
20 not be a good witness. See *Henry v. Poole*, 409 F.3d 48, 71 (2nd Cir. 2005) (ho-  
21 lding that "the presentation of a false alibi can be taken as evidence of conscious-  
22 ness of guilt, counsel's insistence on presenting and adhering to the non-alibi  
23 alibi cannot objectively be deemed merely a matter of strategy rather than  
24 unprofessional error").

25 The record supports that I told defense counsel not to present Westbrook.  
26 The States cite's that defense counsel told the court that I "begged" him to  
27 "find Monique Westbrook." Of course, defense counsel must "Find" witnesses  
28 or potential witnesses to interview them and determine their merit and value as a

1 potential witnesses, the choice to actually "call" is separate from finding them.  
2 After defense counsel's interviews with Westbrook there was only one reasonable  
3 choice — not to call her. At best this is a factual dispute requiring  
4 an evidentiary hearing to resolve. See, Mann v. State, 118 Nev. 351, 416 P.3d  
5 1228 (Nev. 2002)

6 Prejudice came from the fact that numerous pieces of damaging  
7 evidence came in through Westbrook's testimony, that otherwise wouldn't have  
8 like an previous Notice of Alibi omitting her name, records showing I did not  
9 receive an investigator to find witness until a year after my arrest and jail  
10 calls that the State used to make appear I tried to create a false alibi.  
11 As the Judge at trial acknowledged, his decision to admit all of this damaging  
12 evidence was based "solely" on defense counsel's decision to call Ms. Westbrook:

13 "The Court: I agree that it doesn't even become an issue  
14 if Ms. Westbrook doesn't testify. You can't be in 2 places at once.

15 It is her and Ms. Johnson saying; no he was with me although Ms.  
16 Westbrook was really vague at trial. Ms. Johnson was very specific, but  
17 my decision to admit those 2 things was based solely on Ms. Westbrook's  
18 testimony, and the attempts to impeach her saying that shortly before  
19 July 4<sup>th</sup> an investigator came to visit me, and that I gave him all  
20 this information." RT. of trial, May 19, 2011, (11:00 am), p. 11

21 Lastly, prejudice and evidence of Mr. Fumo (defense counsel)'s unethical  
22 plan to try and prepare a false more specific examination scheme with West-  
23 brook is clear from his opening statement in which he promised the jury  
24 that they would hear all kinds of specific times and dates from Westbrook  
25 that would alibi me and comparison to Retke's interview note indicating  
26 that Westbrook told defense counsel that she did not recall anything  
27 specific. RT. of trial, May 16, 2011, p. 17 (defense counsel's opening statement  
28 discussing and promising what Westbrook would say); See, e.g., English v. Romanowski

1, 602 F.3d 714, 729 (6th Cir. 2010) ("little is more damaging than to fail to  
2 produce important evidence that had been promised in an opening"; Court found  
3 prejudice).

#### 4 Ineffective Appellate Counsel

5 I stand on the arguments made in my petition in regard to  
6 this ground.

#### 7 Cumulative Error and Prejudice

8  
9 When assessing in ~~case~~ ineffective assistance of counsel on habeas  
10 review "prejudice may result from the cumulative impact of multiple deficiencies"  
11 Harris by and through Ramseyer v. Wood, 64 F.3d 1432, 64 F.3d 1438 (9th Cir. 1995).  
12 ; see also, Mak v. Blodgett, 970 F.2d 614 (9th Cir. 1992).

13 Although each claim standing alone individually warrants reversal,  
14 I also assert that cumulatively the errors also establish sufficient prejudice  
15 from defense counsel's errors under Strickland v. Washington, 466 U.S. 668,  
16 104 S.Ct. 2052 (1984).

#### 17 Conclusion

18  
19 In light of the above facts and Law, habeas relief should  
20 be granted. Alternatively, I request an Evidentiary hearing in order  
21 to further develop my claims and appointment of counsel

22 Dated this June 26<sup>th</sup>, 2015

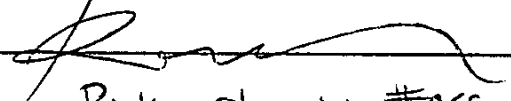
23   
Rickie Slaughter #85902

Exhibit <sup>66</sup> A <sup>55</sup>

NEVADA DEPARTMENT OF CORRECTIONS  
ELY STATE PRISON  
LEGAL MAIL

NAME: Slough Jr DOC#: 85902 UNIT: 6B31  
REPORT TO CONTROL AT ADMIN FOR THE FOLLOWING: Steven B. Wolfson  
LEGAL MAIL: \_\_\_\_\_ 700 Henri Ave  
CERTIFIED MAIL: \_\_\_\_\_ PO Box 552212  
REGISTERED MAIL: \_\_\_\_\_ L. 5450 N 184/55  
DATE: 6/8/15 OFFICER: [Signature]  
INMATE SIGNATURE: [Signature] DOC#: 85902 DATE: 6-8-15

DOC - 3020A (REV. 7/01)

**AFFIRMATION PURSUANT TO NRS 239B.030**

I, Rickie Slaughter, NDOC# 85902,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE  
ATTACHED DOCUMENT ENTITLED Reply to State's Response  
To Pro Per Petition For Writ of Habeas Corpus,

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY  
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 26<sup>th</sup> DAY OF June, 20 15.

SIGNATURE: 

INMATE PRINTED NAME: Rickie Slaughter

INMATE NDOC # 85902

INMATE ADDRESS: ELY STATE PRISON  
P. O. BOX 1989  
ELY, NV 89301



**CERTIFICATE OF SERVICE BY MAIL**

I, Rocke Slaughter, hereby certify pursuant to N.R.C.P. 5(b), that on this 2 day of the month of July, of the year 2015 I mailed a true and correct copy of the foregoing <sup>Reply to Response</sup> **PETITION FOR WRIT OF HABEAS CORPUS** addressed to:

C/O Marshall

Respondent prison or jail official

ESP P.O. Box 1989

Ely Nevada 89301

Address

Attorney General  
Heroes' Memorial Building  
100 North Carson Street  
Carson City, Nevada 89710-4717

Steve Wolfson

District Attorney of County of Conviction

200 Lewis Ave. 7th

WV. NV. 89155

Address

  
Signature of Petitioner

Mr. Rickie Slaughter #85902  
Ely State Prison, P.O. Box 1989  
Ely, Nevada 89301-1989

Attn: The Regional Justice Center  
Clerk of the Court

200 Lewis Avenue 3rd Floor  
Las Vegas, Nevada 89

LEGAL MAIL

Confidential

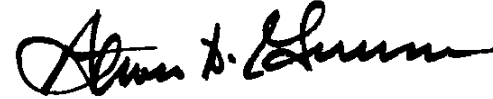


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CLERK OF THE COURT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

NEO

RICKIE SLAUGHTER,

Petitioner,

Case No: 04C204957

Dept No: III

vs.

THE STATE OF NEVADA,


Respondent,

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

**PLEASE TAKE NOTICE** that on July 15, 2015, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on July 24, 2015.

STEVEN D. GRIERSON, CLERK OF THE COURT



Barbara Belt, Deputy Clerk

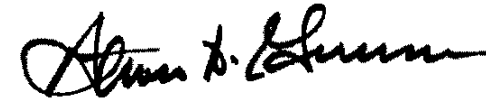
**CERTIFICATE OF MAILING**

I hereby certify that on this 24 day of July 2015, I placed a copy of this Notice of Entry in:

- ☒ The bin(s) located in the Regional Justice Center of:  
Clark County District Attorney's Office  
Attorney General's Office – Appellate Division-
- ☒ The United States mail addressed as follows:  
Rickie Slaughter # 85902  
P.O. Box 1989  
Ely, NV 89301



Barbara Belt, Deputy Clerk



CLERK OF THE COURT

1 **FCL**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JONATHAN E. VANBOSKERCK  
6 Chief Deputy District Attorney  
7 Nevada Bar #006528  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

CASE NO: 04C204957

12 RICKIE SLAUGHTER,  
13 aka Rickie L. Slaughter, #1896569

DEPT NO: III

14 Defendant.

15 FINDINGS OF FACT, CONCLUSIONS OF  
16 LAW AND ORDER

17 DATE OF HEARING: JUNE 24, 2015  
18 TIME OF HEARING: 9:00 AM

19 THIS CAUSE having come on for hearing before the Honorable DOUGLAS W.  
20 HERNDON, District Judge, on the 18th day of June, 2015, the Petitioner not being present,  
21 PROCEEDING IN FORMA PAUPERIS, the Respondent being represented by STEVEN B.  
22 WOLFSON, Clark County District Attorney, by and through WILLIAM FLINN, Deputy  
23 District Attorney, and the Court having considered the matter, including briefs, transcripts,  
24 arguments of counsel, and documents on file herein, now therefore, the Court makes the  
25 following findings of fact and conclusions of law:

26 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

27 On September 28, 2004, the State filed an Information charging RICKIE  
28 SLAUGHTER, aka Rickie L. Slaughter (hereinafter "Defendant") with Conspiracy to Commit  
Kidnapping, Conspiracy to Commit Murder, Attempt Murder with Use of a Deadly Weapon,

1 Battery With Use of a Deadly Weapon, Attempt Robbery with Use of a Deadly Weapon,  
2 Robbery With Use of a Deadly Weapon, Burglary While in Possession of a Firearm, Burglary,  
3 First Degree Kidnapping With Use of a Deadly Weapon, and Mayhem. On April 4, 2005,  
4 Defendant entered into a Guilty Plea Agreement, wherein he agreed to plead guilty to one  
5 count of Attempt Murder with Use of a Deadly Weapon, one count of Robbery with Use of a  
6 Deadly Weapon, one count of First Degree Kidnapping, and one count of First Degree  
7 Kidnapping with Use of a Deadly Weapon. On August 31, 2005, Defendant was sentenced to  
8 a maximum term of imprisonment of 480 months with a minimum parole eligibility of 180  
9 months.

10 On August 7, 2006, Defendant filed a Petition for Writ of Habeas Corpus. The district  
11 court denied Defendant's Petition on December 18, 2006. The Findings of Fact, Conclusions  
12 of Law and Order was filed on January 29, 2007. On January 11, 2007, Defendant filed a  
13 Notice of Appeal. On July 24, 2007, the Nevada Supreme Court found that Defendant had  
14 entered into the Guilty Plea Agreement unknowingly, and granted Defendant a new trial.

15 Defendant's jury trial commenced on May 12, 2011. On May 20, 2011, the jury found  
16 Defendant guilty of Conspiracy to Commit Kidnapping, Conspiracy to Commit Robbery,  
17 Attempt Murder with Use of a Deadly Weapon, Battery With a Deadly Weapon, Attempt  
18 Robbery With Use of a Deadly Weapon, Robbery With Use of a Deadly Weapon, Burglary  
19 While in Possession of a Deadly Weapon, Burglary, First Degree Kidnapping with Use of a  
20 Deadly weapon. On October 16, 2012, Defendant was sentenced to multiple life sentences.

21 On October 24, 2012, Defendant filed a Notice of Appeal. The Nevada Supreme Court  
22 affirmed the Judgment of Conviction on March 12, 2014. Remittitur issued on April 30, 2014.  
23 Defendant filed the instant Petition for Writ of Habeas Corpus on March 25, 2015. The State  
24 filed its Response on June 2, 2015.

### 25 **PETITION CLAIMS**

26 Defendant asserts that he received ineffective assistance of trial and appellate counsel.  
27 This Court is mindful of the standards under which such claims are viewed. To prevail on a  
28 claim of ineffective assistance of counsel, the defendant must prove that he was denied

1 “reasonably effective assistance” of counsel by satisfying the two-prong test of Strickland v.  
2 Washington, 466 U.S. 668, 686–87, 104 S. Ct. 2052, 2062–64 (1984); see also State v. Love,  
3 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under the Strickland test, a defendant must  
4 show: 1) that his counsel’s representation fell below an objective standard of reasonableness,  
5 and 2) that but for counsel’s errors, there is a reasonable probability that the result of the  
6 proceedings would have been different. Strickland, 466 U.S. at 687–88, 694, 104 S. Ct. at  
7 2065, 2068; Warden v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting  
8 Strickland’s two-part test in Nevada). “A court may consider the two (2) test elements in any  
9 order and need not consider both prongs if the defendant makes an insufficient showing on  
10 either one.” Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1997); Strickland, 466  
11 U.S. at 697, 104 S. Ct. at 2069.

12 Claims of ineffective assistance of counsel asserted in a petition for post-conviction  
13 relief must be supported with specific factual allegations, which if true, would entitle the  
14 petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare”  
15 and “naked” allegations are not sufficient, nor are those belied and repelled by the record. Id.  
16 Likewise, NRS 34.735(6) states a petitioner “must allege specific facts supporting the claims  
17 in the petition seeking relief from any conviction or sentence. Failure to allege specific facts  
18 rather than just conclusions may cause [the] petition to be dismissed.” NRS 34.735(6).  
19 Additionally, counsel cannot be ineffective for failing to make futile objections or arguments.  
20 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial Counsel has the  
21 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
22 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
23 (2002). Further, the petitioner bears the burden of proving disputed factual allegations by a  
24 preponderance of the evidence. Means v. State, 120 Nev. 1001, 1013, 103 P.3d 25, 33 (2004).

25 In Ground One of his Petition, Defendant alleges that trial counsel was ineffective for  
26 failing to call Detective Prieto to testify at trial. The Court finds that counsel’s decision to not  
27 call Detective Prieto was a strategic decision. By calling Detective Prieto as a witness, counsel  
28 would run the risk of allowing the State to cross-examine him, which would in turn bolster the

1 case against Defendant. Defendant also fails to demonstrate that he was prejudiced by  
2 counsel's decision not to call Detective Prieto. Detective Prieto's testimony would not have  
3 changed the outcome of the trial in light of the overwhelming evidence presented against  
4 Defendant. Four different witnesses identified Defendant as the person who shot Mr. Young.  
5 Defendant was in possession of a green Ford Taurus, which matched the description of the  
6 vehicle used by the perpetrators. Officers searched the Ford Taurus and found guns matching  
7 the description of the weapons used in the crime, and a .357 shell casing which was the same  
8 caliber of the weapon that Defendant used to shoot Mr. Young in the face. Additionally,  
9 Defendant was recorded asking Ms. Johnson to change her testimony and inform officers that  
10 Defendant picked her up at 7:00 p.m. Defendant was also recorded talking to another man  
11 about fabricating an alibi and asking about the guns that were found in his car. Defendant was  
12 also videotaped at a 7-11 convenience store using an ATM card that he obtained during the  
13 robbery. Accordingly, Defendant fails to demonstrate that counsel was ineffective for not  
14 calling Detective Prieto, nor has Defendant demonstrated that he was prejudiced by the  
15 decision. As such, Defendant's claim must fail.

16 In Ground Two of his Petition Defendant alleges that trial counsel was ineffective for  
17 failing to call Officer Anthony Bailey to testify at trial. The Court finds that had counsel called  
18 Officer Bailey he could have bolstered the State's case against Defendant, and that it was a  
19 reasonable strategic decision to not call Officer Bailey. Additionally, the Court finds that  
20 Defendant has failed to show that he was prejudiced by counsel's decision. The Court finds  
21 that Mr. Young's statements made at trial were not inconsistent with Officer Bailey's police  
22 report, and thus Defendant was not prejudiced by counsel's decision not to have Officer Bailey  
23 testify, especially in light of the overwhelming amount of evidence produced against  
24 Defendant at trial. Accordingly, Defendant has failed to demonstrate that counsel was  
25 ineffective for not calling Officer Bailey, nor has Defendant demonstrated that he was  
26 prejudiced by the decision. As such, Defendant's claim must fail.

27 In Ground Three of his Petition Defendant Alleges that trial counsel was ineffective for  
28 failing to effectively cross-examine several witnesses. Defendant first argues that counsel was



1 ineffective for failing to ask witnesses questions about a second photographic lineup where  
2 there were no notes suggesting that the witnesses identified Defendant. However, Defendant  
3 fails to recognize that the purpose of this second lineup was to attempt to identify Jacquan  
4 Richards. Accordingly, the Court finds that there was no evidence that the suspects did not  
5 identify Defendant in this lineup. Had counsel asked these questions the witnesses may have  
6 stated that they did recognize Defendant, especially considering the witnesses had previously  
7 identified Defendant. Accordingly, counsel made a strategic decision not to ask these  
8 questions. As such, counsel's performance was not deficient. Furthermore, this would not  
9 have changed the outcome of the trial, as the witnesses had previously identified Defendant as  
10 the shooter.

11 Defendant next alleges that counsel was ineffective for failing to point out  
12 inconsistencies in Ivan Young's testimony regarding the use of wigs during the robbery. While  
13 Mr. Young's testimony at trial may have slightly differed from the statement he made while  
14 at the hospital recovering from his injuries Defendant cannot establish prejudice. Mr. Young  
15 identified Defendant in a photographic lineup and his testimony has been consistent that  
16 Defendant was the shooter. Additionally, Defendant was identified as the shooter by three  
17 other eyewitnesses. Accordingly, any slight inconsistencies in Mr. Young's testimony would  
18 not have changed the result of the trial in light of the overwhelming evidence produced against  
19 Defendant. As such, Defendant's claim must fail.

20 In Ground Three of his Petition, Defendant also alleges that counsel was ineffective for  
21 failing to point out inconsistencies in Ryan John's testimony. The inconsistencies that  
22 Defendant complains of were minor and would not have changed the outcome of the trial.  
23 Defendant complains that Mr. John changed his testimony as to when Defendant placed a  
24 jacket over his head, thus challenging Mr. John's ability to perceive him. At the preliminary  
25 hearing Mr. John testified that the jacket was placed over his head before the shooting, while  
26 at trial Mr. John testified that the jacket was placed over his head after Mr. Young was shot.  
27 However, this testimony was irrelevant because Mr. John never claimed to have witnessed the  
28 actual shooting during the preliminary hearing or at trial. However, Mr. John was able to

1 identify Mr. Young in a photographic lineup and during the preliminary hearing and at trial.  
2 See Reporter's Tr. Proceedings, May 17, 2011, at 62. Thus the Court finds that counsel was  
3 not ineffective for failing to cross examine Mr. John on these minor inconsistencies.  
4 Additionally, counsel did challenge Mr. John's perception of Defendant pointing out the  
5 perpetrator did not have any tattoos or facial bruising. Id. at 69. Counsel also was able to get  
6 Mr. John to admit that Defendant's photo did not have a blue background supporting  
7 Defendant's theory of the case, that the photographic lineup in which Defendant was identified  
8 was misleading. Accordingly, Defendant fails to show that counsel's representation fell below  
9 an objective level or reasonableness. Additionally, Defendant fails to show that had counsel  
10 asked Mr. John more questions on cross-examination that the result of the trial would have  
11 been different in light of the evidence produced against Defendant at trial. As such, Defendant  
12 has failed to meet the second prong of Strickland, and is thus not entitled to relief.

13 In Ground Four of his Petition, Defendant argues that counsel was ineffective for failing  
14 to call Destiny Waddy to testify at trial. Defendant alleges that Ms. Waddy told officers that  
15 she witnessed a green Pontiac Grand Am leaving the scene of the crime. However, the police  
16 report indicates that she thought it may have been a green Grand Am. The Court finds that  
17 counsel made a strategic decision not to call Ms. Waddy to testify. Had counsel called Ms.  
18 Waddy to testify he may have run the risk that she could positively identify Defendant's car  
19 as the car she saw leave the scene of the crime. As such, counsel made a strategic decision not  
20 to call Ms. Waddy, and thus his performance did not fall below an objective level of  
21 reasonableness. Additionally, the Court finds that Defendant cannot show that the results of  
22 the proceedings would have been different had Ms. Waddy testified in light of the  
23 overwhelming amount of evidence produced against Defendant at trial. Accordingly,  
24 Defendant's claim must fail.

25 In Ground 5 of his Petition, Defendant claims that counsel was ineffective for failing to  
26 call the 911 custodian to testify. The Court finds that counsel's decision was reasonable  
27 because there was no evidence as to when the 911 call was made, or how long after the crime  
28 was committed that the call was made. Accordingly, this evidence was not relevant and

1 counsel's performance was not deficient. Additionally, the Court finds that Defendant cannot  
2 show that the results of the proceedings would have been different had the 911 custodian  
3 testified in light of the overwhelming amount of evidence produced against Defendant at trial.  
4 Accordingly, Defendant's claim must fail.

5 In Ground Six of his Petition, Defendant alleges that trial counsel was ineffective for  
6 failing to call defense investigator Craig Retke to testify at trial. Defendant argues that the  
7 failure to call Mr. Retke to testify prevented him from being able to introduce evidence  
8 regarding the amount of time the drive took from the crime scene to Ms. Johnson's work. The  
9 Court finds that Defendant has failed to establish prejudice because Mr. Retke could not  
10 recreate the exact conditions on the night of the robbery, and that the jury would have used its  
11 common sense to determine how long it would have taken Defendant to drive from the crime  
12 scene to his girlfriend's work. As such, Defendant fails to show that the result of the trial  
13 would have been different had Mr. Retke testified, and thus his claim must fail.

14 In Ground Seven of his Petition, Defendant alleges that trial counsel was ineffective for  
15 failing to investigate Jeff Arbuckle. Specifically, Defendant argues that counsel should have  
16 investigated Mr. Arbuckle's criminal record, that counsel should have investigated whether  
17 Mr. Arbuckle was paid for his testimony, and that counsel should have investigated Mr.  
18 Arbuckle's personal bias towards Defendant. The Court finds these claims to be naked  
19 assertions. Defendant has failed to present this Court with any evidence showing that Mr.  
20 Arbuckle had a criminal record or that he received compensation for his testimony.  
21 Additionally, counsel hired a private investigator to attempt to find Mr. Arbuckle, but the  
22 investigator was unsuccessful. Accordingly, all of Defendant's claims are either naked  
23 assertions or are belied by the record and must be denied. See Hargrove 100 Nev. at 502, 686  
24 P.2d at 225.

25 In Ground Eight of his Petition, Defendant alleges that counsel was ineffective for  
26 failing to call Officer Mark Hoyt to testify at trial. Defendant alleges that Officer Hoyt would  
27 have been able to rebut the testimony of Ryan John. The Court finds that Defendant was not  
28 prejudiced by any minor inconsistencies in Mr. John's testimony. Mr. John was able to

1 identify Defendant as the perpetrator in a photographic lineup, at the preliminary hearing, and  
2 at trial. See Reporter's Tr. Proceedings, May 17, 2011, at 62-65. Accordingly, the Court finds  
3 that the results of the trial would not have changed had Officer Hoyt been called to point out  
4 any minor inconsistencies in Mr. John's testimony.

5 In Ground Nine of his Petition, Defendant argues that trial counsel failed to investigate  
6 potential impeachment material, including fees paid to State's witnesses. Defendant only  
7 offers naked allegations, which do not establish prejudice. The State is permitted to pay  
8 witnesses \$25.00 for appearing in court. As such, trial counsel cannot be ineffective for failing  
9 to investigate in this case because any fees paid would have been pursuant to the statute and  
10 were thus proper. Accordingly Defendant cannot demonstrate that counsel's performance fell  
11 below an objective level of reasonableness, nor can Defendant demonstrate that the result of  
12 the trial would have been altered had counsel investigated this issue. As such, Defendant's  
13 claim must fail.

14 In Ground Ten of his Petition, Defendant argues that counsel was ineffective for failing  
15 to investigate and challenge the alleged illegal use of photographs. The Court finds that any  
16 motion counsel would have filed regarding the use of the photograph would have been  
17 meritless. Counsel cannot be ineffective for failing to make futile objections or arguments.  
18 Ennis, 122 Nev. at 706, 137 P.3d at 1103. Accordingly, Defendant is not entitled to relief.

19 In Ground Eleven of his Petition, Defendant complains that appellate counsel was  
20 ineffective for failing to raise a Batson challenge. The Court finds that counsel made a  
21 strategic decision to not raise this issue and to focus only on the strong arguments, and that  
22 this decision was reasonable. As such, the Court finds that counsel's performance was not  
23 deficient. Additionally, Defendant cannot demonstrate that he was prejudiced by counsel's  
24 decision not to raise this issue on appeal. During voir dire defense counsel raised a Batson  
25 challenge. The court then asked the State to give a race neutral explanation as to why it  
26 exercised a challenge on a minority woman. In response the State noted that the woman was  
27 very distrustful of law enforcement and had negative experiences with law enforcement in the  
28 past. Defendant fails to show that this race neutral explanation was not valid or was pretextual.

1 Because the State was able to give a valid reason for exercising a peremptory challenge, this  
2 issue would not have been successful on appeal. Accordingly, the Court finds that Defendant  
3 fails to demonstrate that he was prejudiced, and his claim must thus fail.

4 In Ground Twelve of his Petition, Defendant argues that appellate counsel was  
5 ineffective for failing to argue that the State failed to preserve exculpatory evidence. The  
6 Court finds that appellate counsel made a strategic decision to not raise this issue and to only  
7 focus on the strong arguments on appeal. The Court finds that counsel's decision to focus only  
8 on the strong arguments was reasonable, and thus counsel's performance was not deficient.  
9 Additionally, Defendant cannot demonstrate that he was prejudiced by counsel's decision not  
10 to raise this issue on appeal. Defendant claims that the State failed to preserve a second  
11 photographic lineup in which Defendant was not identified. However, the purpose of the  
12 second set of photographs was for the witnesses to attempt to identify another suspect in this  
13 case, Jacquan Richards. None of the witnesses were able to identify Mr. Richards, thus there  
14 were no notations on the lineup cards. As such, there was no exculpatory evidence to preserve.  
15 Because the State did not fail to preserve exculpatory evidence, this issue would not have been  
16 successful on appeal. Accordingly, the Court finds that Defendant fails to demonstrate that he  
17 was prejudiced, and his claim must thus fail.

18 In Ground Thirteen of his Petition, Defendant alleges that trial counsel was ineffective  
19 for calling Noyan Westbrook to testify. Defendant asserts that calling Ms. Westbrook to testify  
20 hurt his case because it hurt his credibility and opened the door to introduce jail phone  
21 recordings. Defendant's arguments are without merit. While Ms. Westbrook's testimony was  
22 not able to affect the outcome of the trial in light of the overwhelming amount of evidence  
23 produced by the State, the testimony did not damage Defendant. While Ms. Westbrook could  
24 not remember the exact time she was allegedly with Defendant, she was able to inform the  
25 jury that Defendant never had dreadlocks, nor spoke with a Jamaican accent. Additionally,  
26 Defendant requested that Ms. Westbrook testify. On May 20, 2011, counsel for Defendant  
27 stated that Defendant "begged me to find Monique Westbrook." Reporter's Tr. Proceedings,  
28 May 20, 2011, at 69. Accordingly, the Court finds that Defendant fails to demonstrate that

1 counsel's performance fell below an objective standard of reasonableness. The Court also  
2 finds that Defendant fails to establish prejudice. As discussed above, Ms. Westbrook's  
3 testimony did not hurt Defendant's case. She was able to testify to some facts which supported  
4 Defendant's case. Defendant fails to demonstrate that the result of the trial would have been  
5 different had Ms. Westbrook not testified. As such, Defendant's claim must fail.

6 In Ground Fourteen Defendant argues that cumulative error warrants relief. The Court  
7 would first note that cumulative error is not appropriate for habeas review. See McConnell v.  
8 State, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009); Middleton v. Roper 455 F.3d 838, 851,  
9 (C.A.8 (MO) 2006), cert. den., 549 U.S. 1134, 127 S.Ct. 980 (2007) ("a habeas petitioner  
10 cannot build a showing of prejudice on a series of errors, none of which would by itself meet  
11 the prejudice test."). Even if cumulative error were applicable in this case, the Court finds  
12 that Defendant would still not be entitled to relief. As discussed above, trial counsel's  
13 representation of Defendant was effective thus there was no error to cumulate. As such,  
14 Defendant is not entitled to relief.

15 **ORDER**

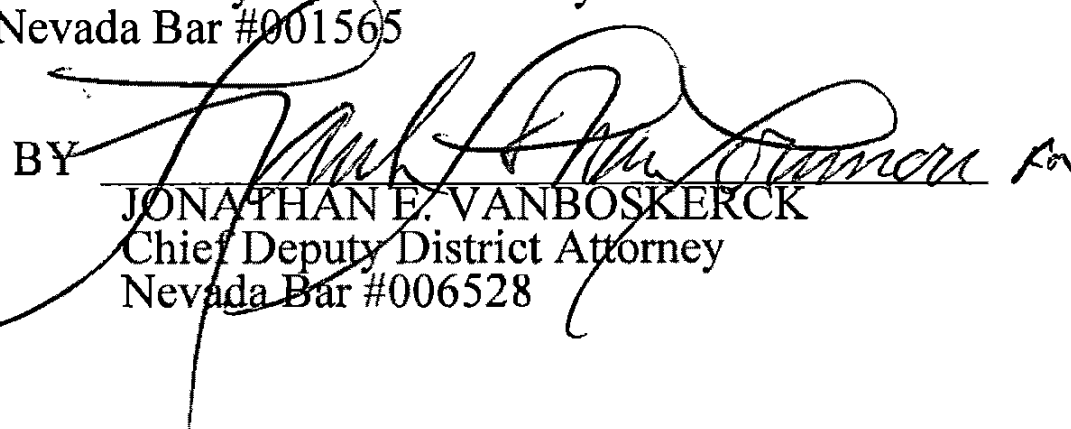
16 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief  
17 shall be, and it is, hereby denied.

18 DATED this 14 day of July, 2015.

19  
20   
21 DISTRICT JUDGE

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

24 BY

25   
26 JONATHAN E. VANBOSKERCK  
Chief Deputy District Attorney  
Nevada Bar #006528

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CERTIFICATE OF SERVICE

I certify that on the 9th day of July, 2015, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

RICKIE SLAUGHTER,  
aka Rickie L. Slaughter #85902  
ELY STATE PRISON  
4569 NORTH STATE ROUTE 490  
P.O. BOX 1989  
ELY, NV 89301

BY



R. JOHNSON  
Secretary for the District Attorney's Office

PL/JEV/rj/M-1