

IN THE NEVADA SUPREME COURT

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Elizabeth A. Brown
Clerk of Supreme Court

Rickie Slaughter,

Petitioner-Appellant,

v.

Charles Daniels, et al.,

Respondents-Appellees.

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

**Petitioner-Appellant's Appendix to the Opening Brief
Volume VIII 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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CRIM
MAIL

Case No. C204957

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CLERK OF THE COURT

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

Rickie Slaughter
Petitioner,

v.

The State of Nevada
Respondent.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

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're 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.

CLERK OF THE COURT

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CLERK OF THE COURT

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FEB 21 2016

CLERK OF THE COURT

(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, Nevada

2. Name and location of court which entered the judgment of conviction under attack: Eighth Judicial District Court, Clark County, Nevada; District Court Judge Douglas Hernandez, Department 3

3. Date of judgment of conviction: October 22, 2012

4. Case number: C204957

5. (a) Length of sentence: multiple life sentence, with various terms-of-years sentences running consecutive and concurrent. (See Judgment of Conviction).

(b) If sentence is death, state any date upon which execution is scheduled: N/A

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes No ✓

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

7. Nature of offense involved in conviction being challenged: (See Judgment of Conviction; 14 counts)

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

(a) Not guilty ✓ (b) Guilty (c) Nolo contendere

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

N/A

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

(a) Jury ✓ (b) Judge without a jury

11. Did you testify at the trial? Yes No ✓

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

13. If you did appeal, answer the following:

(a) Name of Court: Nevada Supreme Court

(b) Case number or citation: 61991

(c) Result: Affirmed

(d) Date of result: March 12, 2014 (not available)
(Attach copy of order or decision, if available.)

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

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

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

(a)(1) Name of court: 8th Judicial District Court

(2) Nature of proceeding: Petition for Writ of Habeas Corpus (Post-Conviction)

(3) Grounds raised: Various ineffective assistance of trial and Appellate Counsel claims

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result: Petition was summarily denied by this Court (Appeal pending).

(6) Date of result: 7/15/2015

(7) If known, citations of any written opinion or date of orders entered pursuant to such result:
7/15/2015

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

(1) Name of court: N/A

(2) Nature of proceeding:

(3) Grounds raised:

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result: N/A

(6) Date of result:

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

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

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

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

Citation or date of decision:

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

Citation or date of decision:

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

Citation or date of decision:

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (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.)

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

(a) Which of the grounds is the same: No; none

(b) The proceedings in which these grounds were raised: N/A

(c) Briefly explain why you are again raising these grounds. (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.) N/A

18. If any of the grounds listed in No.'s 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (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.) New evidence of Actual Innocence; Direct Appeal and Habeas procedure discriminated against me cause I was poor; did not have counsel to assist, I am untrained in law did not know. (See 23(a) Good Cause and Prejudice).

19. Are you filing this petition more than one 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.) Yes; (see explanation above) Actual Innocence; See, 23(a) "Good cause and Prejudice"

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 case number: Nevada Supreme Court # 108532

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: (Trial) - Osvaldo Fumo and Dustin Marcello; (Pre-trial) Susan Bush and Patrick McDonald; (Direct Appeal) - 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.

1 23(a) Good Cause And Prejudice

2 Nevada's Direct Appeal and State Habeas procedures as
3 a whole, violate poor criminal defendant's Equal Protection and
4 Due Process rights to have counsel assist litigating substantial ineffective
5 assistance of trial counsel claims; To this extent, the procedures conflict with
6 federal rights and should be voided. Further, new evidence demonstrates
7 that Mr. Slaughter is actually innocent.

8 Good Cause:

9 The State of Nevada provides, as of right, a poor criminal defendant
10 a Direct Appeal of a felony conviction obtained after a trial. As such, funda-
11 mental Equal Protection and Due Process guarantees of the 5th and 14th
12 Amendments of the U.S. Constitution, as well as Articles 1 section 3 and 8; Arti-
13 cle IV section 21 of Nevada's Constitution require that a poor defendant such
14 as Mr. Slaughter has a right to appointed counsel to effectively assist him in
15 vindicating his rights in that Direct Appeal contesting the fairness of his trial.
16 "Equal Protection and Due Process Clauses command that an indigent defendant
17 has a right to appointed counsel" to assist in first appeal as of right *U.S. v. Gillis*,
18 773 F.2d 549, 559 (4th Cir. 1985); See also, *Halbert v. Michigan*, 545 U.S. 605,
19 616-617 (2005).

20 Mr. Slaughter is an indigent defendant who invoked his right to counsel
21 both at trial and on Direct Appeal.

22 However, the State of Nevada has removed ineffective assistance of
23 trial counsel claims from being raised during it's Direct Appeals process, requiring
24 such claims to be raised in collateral State habeas corpus proceedings
25 where the appointment of counsel to assist poor defendants is not mandated
26 as of right. Mr. Slaughter's appellate counsel did not raise any ineffective
27 assistance of counsel claims on his behalf on Direct Appeal because any
28

1 attempts to do so would've been futile under current state law. See, i.e.,
2 Brown v. McDaniel, 331 P.3d 877, at 872 fn. 4 (Nev. 2014) (noting that Nevada
3 state petitioners are required to raise ineffective assistance of counsel claims on habeas).
4 Furthermore, the Court did not appoint Mr. Slaughter counsel to assist with his
5 1st (previous) habeas petition.

6 As such, Mr. Slaughter's 1st habeas petition constituted the functional
7 equivalent of his "one and only appeal" as of right to raise his ineffective
8 assistance of trial counsel claims. See i.e., Martinez v. Ryan, 132 S. Ct. 1309,
9 at 1315 (2012); Coleman v. Thompson, 112 S. Ct. 2546, 501 U.S. 722, 755-756
10 (1991). For which, Mr. Slaughter was denied counsel.

11 Consequently, Nevada's Direct Appeals process (which mandates counsel,
12 but disallows ineffective assistance of trial counsel claims) and the State Habeas
13 post-conviction procedures (which does not mandate appointment of counsel,
14 but allows ineffective assistance claims) taken together as a whole, operated
15 to discriminate against Mr. Slaughter (and other poor defendants) and infringe
16 upon his right to have counsel assist him in vindicating his most substantial
17 right deprivations - ineffective assistance of trial counsel. Unlike Mr.
18 Slaughter, rich defendants can hire counsel to assist in habeas proceedings.
19 But poor criminal defendants like Mr. Slaughter are left to fend for
20 themselves, drawing an unconstitutional separation of Rich from the Poor.
21 See, i.e., Douglas v. California, 372 U.S. 353, 357 (1963) (holding that "where
22 the merits of the one and only appeal an indigent has as of right are
23 decided without benefit of counsel, we think an unconstitutional line has been
24 drawn between rich and poor").

25 To these limited extents, Nevada's habeas procedure for post conviction
26 petitions and its Direct Appeals process should be rendered void
27 as coupled together, they impose procedural requirements that run afoul
28

1 of the Constitutional safeguards meant to protect the poor, depriving
2 poor defendants like Mr. Slaughter of due process and equal protection
3 of the law. Compare, e.g., *Evitts v. Lucey*, 469 U.S. 387, 396 (1985) (“
4 “A first appeal as of right. . . is not adjudicated in accord with
5 due process of law if the appellant does not have the effective assistance of an
6 attorney”). Any procedural defaults flowing from such circumstances
7 violate the federal constitution. Alternatively, the State’s actions in crafting
8 the previously mentioned procedures the way it has, constitute impediments
9 external to the defense that cannot fairly be attributed to Mr. Slaughter.

10 During litigation of his previous pro-se petition, without the help
11 of an attorney, Mr. Slaughter encountered similar difficulties as a prisoner
12 would trying to perfect a Direct Appeal on his own while trying to deter-
13 mine what claims were available to him. “Claims of ineffective assistance
14 at trial often require investigative work and an understanding of trial stra-
15 tegy.” *Martinez v. Ryan*, *supra* 132 S. Ct., at 1317. Simply put, the required
16 acute understanding of trial strategy was beyond Mr. Slaughter’s limited
17 comprehension and he lacked any ability to perform necessary investigative
18 work.

19 Mr. Slaughter is not a lawyer. His education does not exceed the
20 11th grade in high school. Being unlearned in the law with no formal train-
21 ing or education, the limited understanding of the law he does possess
22 has come from an “autodidactic” self-taught process; meaning he
23 teaches himself as he goes. Consequently, while trying to unravel the
24 mysteries of ineffective assistance of counsel claims to prepare his 1st habeas
25 petition Mr. Slaughter became deeply confused, misapprehended what claims
26 were available and how to bring them, could not distinguish the complexities
27 of presenting sub-claims, inter-related claims, alternative claims, and failed
28

1 to recognize that he could, and needed to, bring the claims he now raises in
2 this petition, and as a layman, he should not be penalized for this.
3

4 Prejudice:

5 (see pages 28-36 of this petition).
6

7 Actual Innocence:

8 (see pages 26-36 of this petition).
9

10 (also see, ground 1, p. 9-13)
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23(b) Ground 1

Mr. Slaughter is in State custody in violation of his 6th, 14th, and 5th Amendment of the U.S. Const., as well as Article I sec. 3 and 8; Article IV. Sec. 24, of the New Const. Because his trial counsel provided him ineffective assistance by failing to adequately investigate information that the bullet which victim Young was shot with had a high probability of being a different caliber than a .357 magnum. Alternatively, Mr. Slaughter's trial counsel was ineffective for failing to cross-examine and test the State's Firearm Expert on this point.

Supporting Facts:

During the police investigation in this case, there were two different locations and sources from which bullet components were collected by police. The first source and location came from the bullet "jacket fragments" retrieved from victim Ivan Young's ("Mr. Young") gunshot facial wounds. The second source and location was a .357 magnum winchester shell casing and lead core found in the trunk of a car owned by Tiffany Johnson ("Mrs. Johnson"), who at the time, was Mr. Slaughter's then-girlfriend.

Prior to trial, the State employed firearms expert Dinnah Angel Moses ("Mrs. Moses") and gave her the task of trying to identify, based on the jacket fragments from Mr. Young's wound, what type and caliber of bullet Mr. Young had been shot with. Using only the bullet jacket fragments from Mr. Young, Mrs. Moses over a span of 7 years produced 3 different reports based upon her experiment that produced 3 somewhat different results. In her final report, Mrs. Moses opined that she believed that the bullet jacket fragments from Mr. Young's injuries were "consis-

1 "either composed of the same elements (copper, nickel and zinc)
2 or have design features that are the same as Winchester® .357
3 magnum Silver Tip Hollow point bullets." However, this opinion
4 differed in a significant aspect from Mrs. Moses' previous
5 opinion in which she only opined that the frag fragments were
6 only "typical of Silver Tip Hollow point bullets commercial
7 marketed by Winchester" with no mention of caliber type.
8 See, Exhibit-A, attached: LVMPD Forensic Laboratory Reports
9 of Examination dated February 4, 2010 and Report of Exam-
10 ination dated December 7, 2004.

11 No ballistic comparisons of the bullet jacket fragments
12 was able to be conducted in this case.

13 Based on Mrs. Moses' reports, it was anticipated before
14 trial that the State's theory would be that Young was shot
15 with a .357 magnum Silver Tip Hollow point Winchester bullet and
16 that pursuant to such theory, the State would further argue that
17 the .357 magnum cartridge shell casing found in Ms. Johnson's
18 car was evidence of a connection to the crime which the State
19 would theorized implicated Mr. Slaughter.

20 As such, prior to trial defense counsel hired a firearm
21 expert named Lance Martini ("Mr. Martini"); Mr. Martini
22 reviewed Mrs. Moses' opinions regarding her attempts to identify
23 the caliber type of the bullet Young was shot with, and emailed
24 defense counsel for Mr. Slaughter "some aspects to consider
25 for Cross [examination]" to test the State's theory regarding
26 the bullet caliber. More specifically, Mr. Martini's email to
27 defense counsel read:

28 "The evidence jacket fragments are severely damaged

1 "and [Ms. Moses] only inquired of Szabo as to 38 and 357
2 Characteristics. Some aspects to consider for cross [examination]
3 "1. Based on the information in her notes, she did not compare/
4 Consider 9mm Luger, or 38 Super silvertip ammo (similar weight
5 and diameter as 357) as a possible source. Note: Both are semi-
6 auto pistol cartridges, likely evidence cartridge cases would be
7 left at scene.
8 "2. She also did not inquire as to other Silvertip calibers larger
9 than 357 (40 S & W, 10 mm, 41 magnum, 44 Special, 44 mag-
10 num, 45 auto, 45 colt). Can she eliminate any/all of these?
11 Note: 40, 10, 45 auto = semi-auto pistol. 41, 44 mag and spl,
12 45 colt = revolver.
13 "3. Can she rule out foreign manufactured ammunition as the project-
14 ile frag source? "
15 See Exhibit B, attached E mail from Lance Martini to Dustin Marcelllo
16 dated May 6, 2011. The email implies an opinion as to the possible source of the fragments.
17 Thus, Martini's email raised serious questions; Namely the possib-
18 ility that the bullet Young was shot ^{with} could have been, at least, (9) different
19 caliber types exclusive of a 357 caliber. This information could have
20 greatly undermined the State's theory that Young was shot with a 357,
21 and therefore refuted and persuasively challenged any attempt by the State
22 to try and draw a connection between the 357 shell casing found in Ms.
23 Johnson's vehicle and the bullet jacket fragments recovered from the
24 crime scene and Young's injuries. As such, the info. should have been further
25 investigated and used to cross-examine the State's expert at trial.
26 However, defense co-counsel Marcelllo (who was tasked with handling
27 the State's firearm Expert) failed to comprehend the significance of
28 Martini's email. Marcelllo did not use the info. at trial and he did not

1 Conduct any further investigation into the possibility that the source of the bullet
2 jacket fragments recovered from Young's injuries and the crime scene could ~~have~~
3 be (9) different potential caliber types within the Silver Tip bullet product
4 line. Defense co-counsel Marcello was admittedly inexperienced; he even
5 told the Court so. See Reporters Trial Transcript, May 19, 2011 (11:00 am vol.) at
6 p. 36 (Marcello explaining "I haven't tried that many cases"). In fact,
7 this was his first felony trial.

8 This inexperience may account for why Marcello became so confused
9 about the significance of the information in expert Martini's email, and
10 for why Marcello failed to follow up any further on it, or make proper use
11 of it at trial. At trial, defense counsel Marcello tried to use the info. from
12 Martini's email to challenge the caliber of the generic "lead core" found
13 in Ms. Johnson's trunk when cross-examining the State's expert. However,
14 Marcello never attempted to use the info. in Martini's email to
15 question or challenge the State's expert's opinion regarding the caliber
16 of ~~bullet~~ the "jacket fragments" from Young's injuries and the crime
17 scene ~~derived from~~, as Martini's email suggested he should. See Reporter's
18 Trial Transcript, May 17, 2011, at p. 133-171 (Marcello's cross-exam-
19 ination of the State's firearm expert Dinnah Angel Moses).

20 This failure was unreasonable, because it was known that the
21 State was trying to draw a connection between the "jacket fragments"
22 recovered from Young's injuries to the .357 shell casing recovered from
23 Ms. Johnson's trunk to implicate Slaughter in the alleged crimes. Thus,
24 any reasonably competent attorney would have utilized (and investigated)
25 information undercutting the State's purported theory.

26 The prejudice from defense counsel's error was substantial and clearly
27 requires reversal as Prosecutor's, in their closing arguments, heavily
28 relied on defense counsel's failure to "dispute" that Young was shot

1 with a .357 caliber:

2 " [Prosecutor DiGiacomo]: . . . Maybe I was somewhat
3 confusing in my opening, or maybe Mr. Marcello didn't understand
4 what we are saying. What that means is Rickie Slaughter had
5 access to a .357. There wasn't any dispute that the bullet
6 that hit Ivan in the face was a .357 silver tipped bullet.

7 " They didn't dispute that. That's what all the outside
8 of the bullet was with the canolure. She's able to determine
9 on it's chemical composition that the jacketing that was in
10 Ivan's face was a .357, and it was manufactured by Win-
11 chester. We know he has a little casing to a Winchester
12 .357 in the trunk of his car. . . . "

13 Reporters Trial Transcript, May 20, 2011, (11:00am), at p. 136 (emphasis added).

14 Additionally, the advantage gained by the State, due to defense
15 counsel's failure to challenge a theory he easily could have, is clearly visible.
16 As the State made reference to the connection between the jacket fragments
17 from Young's injuries to the shell casing during its arguments reflected
18 on at least (8) other pages of the trial transcripts, and the State showed
19 numerous photo's of Young's gruesome injuries with the words " .357
20 Magnum " superimposed over it in it's Power Point slides during
21 closing. See, i.e., Reporters Trial Transcript, May 20, 2011 (11:00 am)
22 at pages 7, p. 22-23, p. 48, p. 50-51, p. 130 and p. 137.

23 The prejudice is clear, Slaughter is entitled to reversal
24 of his convictions, due to counsel's ineffective assistance here. The alleged
25 connection, based on the State's Expert's Opinion should've been tested.
26 The opinions in Expert martini's Email constitute new evidence not presented at trial.
27 Slaughter further prays for the appointment of counsel and an evidentiary
28 hearing for this claim, as this issue needs to be further investigated (see page 26).

23(c) Ground 2

Mr. Slaughter is in custody of the State in violation of his 6th, 14th and 5th amendment rights of the U.S. Constitution, as well as Art. I, sec. 3 and 8; Art. IV, sec 24 of the Nev. Const. Because his trial and Appellate Counsel failed to challenge numerous instances of prosecutorial misconduct at trial and on Direct Appeal which were plain error

Good Cause:

Being unlearned or formally educated in the law Mr. Slaughter did not know that his claims had to be independently raised in his pro-se petitions for habeas relief which he previously filed. Mr. Slaughter was not provided counsel for his previous petition, and he wrongly believed that because his appellate attorney had mentioned other instances of "prosecutorial misconduct" that all instances of prosecutorial misconduct were reviewed by the NV. Supreme Court since appellate counsel had referenced his pro-se motion for new trial in his case appeal statement, and in Mr. Slaughter's motion for new trial he had raised some of these claims. Mr. Slaughter has now figured out that this was a grave misapprehension of the law and procedural requirements.

Supporting Facts:

During trial Prosecutor Fleck committed misconduct during her cross-examination of Professor Geoffrey Loftus ("Professor Loftus") a defense expert witness, when Ms. Fleck deliberately framed a series of questions to Professor Loftus with the sole intent and effect of insinuating to facts outside the record and disparaging a legitimate defense tactic of hiring an expert witness. Specifically, in the below exchange, Prosecutor Fleck discussed other criminal cases in which she had examined Professor Loftus:

" [Prosecutor Fleck]: Do you give the defense the questions

1 "they are going to ask you?"

2 [Professor Loftus]: I provide them with a suggested
3 direct-examination, with the proviso that they can use it anyway they
4 choose. They can toss it and construct something of their own or anything
5 in between.

6 [Prosecutor]: Those are questions that are asked in every case
7 and you and I had a similar exchange and all the same questions
8 were asked by the defense in another case? "

9 Reporters Trial Transcript, May 19, 2011, p. 111-112.

10 The "other cases" weren't part of the record, and the questions were
11 aimed solely at prejudicing the jury against Mr. Slaughter for hiring Loftus
12 (a legit defense tactic). The prosecutor also disparaged the amount of money
13 the expert was paid for his services. R.T.T., May 19, 2011, at p. 109-110.

14 In another instance, the prosecutor "Ms. Fleck" committed misconduct
15 during her closing argument when she ~~is~~ suggested that the jury was
16 aligned with the prosecution when she stated "Because of the defendant's
17 actions on June 26, 2004, we have all spent the last week or so looking at
18 evidence and hearing testimony." R.T.T., May 20, 2011, at p. 7. The
19 use of the word "we" in this context improperly implied that the jury and
20 the prosecution (and court) are all together against Mr. Slaughter.

21 Likewise, Ms. Fleck committed prosecutorial misconduct when she
22 intentionally distorted the exculpatory testimony of (3) of the State's eyewitnesses
23 ~~fact~~ Specifically, Ms. Fleck falsely proclaimed in closing:

24 " [Ms. Fleck]: ... They used fake accents. You have heard
25 from a number of victims in this case. Ivan Young said it appeared
26 they were trying to talk Jamaican. Ryan John said it sounded like
27 a fake accent; and Jennifer said it sounded like they were putting
28 on an act. So using a different voice to disguise their identity"

11
1 R.T.T., May 20, 2011, at p. 13

2 The above argument was misconduct because none of victims
3 mentioned testified that the perpetrators accents sounded "fake" contrary
4 to the prosecutors false assertion. See, i.e., R.T.T., May 16, 2011, at p. 49 and
5 p. 68 (Ivan Young's direct and cross-examination on the perpetrators' accents);
6 R.T.T., May 17, 2011, at p. 52 and p. 68 (Ryan John's direct and cross exam-
7 inations of the perpetrators' accents); R.T.T., May 16, 2011, at p. 140 (Jenn-
8 ifer Dennis' testimony about perpetrator's accents). The Prosecutor's argum-
9 ent was a gross mischaracterization that distorted the exculpatory value of
10 the witnesses' actual testimony, because Mr. Slaughter does not speak with an
11 accent. The prosecutors sole purpose in ~~mis~~ misstating the testimony was to
12 mislead the jury to convict Mr. Slaughter. The argument also injected the
13 prosecutors' personal opinions and beliefs into her commentary which is also improper.

14 Next, prosecutor Ms. Fleck improperly implied that the State
15 possessed further evidence which was not admitted at trial that incriminated
16 Mr. Slaughter when she compared shoes taken from Mr. Slaughter which the
17 jury never had a chance to see or consider, to an unknown individual on surveil-
18 lance footage allegedly committing a crime in the below portion of her
19 closing argument:

20 " [Ms. Fleck]: ... What other circumstantial evidence do we
21 have; Well, when he came into that 7-Eleven, when he was videoed,
22 he is wearing tennis shoes. His shoes are later taken from him.
23 If you look at the shoes and closely on the video from 7-Eleven, you
24 can even see the little pattern that is also on the defendants shoes "

25 R.T.T., May 20, 2011, at p. 53-54

26 Neither Mr. Slaughter's shoes, nor were photographs of his shoes, which
27 were confiscated by police were ever admitted at trial. See Trial Exhibit
28 Work sheet. In fact, the police failed to produce; i.e. the shoes before

1 trial because they had no inculpatory value. See, R.T.T., May 19, 2011, at
2 p. 36 lines: 10-14. Although, C.S.T. Fisher talked about the shoes while
3 looking at other pictures of other evidence while testifying on the stand,
4 he never introduced any photos of the shoes, thus the jurors never got to
5 see the shoes for themselves to assess them, and the prosecutors argument
6 was misconduct that should've been challenged at trial and on appeal.

7 During Prosecutor Mr. DiGiacomo's ("Mr. DiGiacomo") final rebuttal
8 argument he committed several instances of misconduct as well. First,
9 Mr. DiGiacomo impermissibly asserted his own personal opinion of Mr. Slaughter's
10 guilt and made commentary that improperly invoked the authority
11 of his supposedly greater experience and knowledge as a prosecutor which
12 invited undue jury reliance upon the personal conclusions Mr. DiGiacomo
13 endorsed, when he stated "The real question, the question about it is,
14 this man put a 357 to a guy's face that he shot. There is no question
15 about that. The question becomes, as I stand here everytime." R.T.T.,
16 May 20, 2011, at p. 130

17 Next, Mr. DiGiacomo unconstitutionally vouched for a State
18 witness ("Jeff Arbuckle") while stating his own personal opinion as to
19 the alleged incredibility of a defense witness ("Tiffany Johnson") and improperly
20 used the prestige of the prosecutor's office position as an authority to invade
21 upon the jury's function when he improperly commented "They said we
22 tell you that you have to find her credible. No, you don't. We didn't call
23 Tiffany Johnson. . . I am not telling you you should believe her. I
24 think you should believe Mr. Arbuckle who has no reason to lie."
25 R.T.T., May 20, 2011, at p. 132

26 Mr. DiGiacomo also knowingly manipulated and misrepresented evidence
27 and information to mislead the jury to believe that it was impossible for Mr. Slaughter,
28 (immediately after being "booked") to know what time he needed to alibi

1 himself unless he was guilty. When, in fact, Mr. DiGiacomo knew that
2 evidence (a police report) existed, which the jury had not heard about,
3 that indicated detectives had told Mr. Slaughter the time at which the
4 crimes were committed during an interrogation preceding his booking.
5 Specifically, Mr. DiGiacomo manipulated and twisted the following:

6 " Now the cops come in. They take Mr. Slaughter into
7 custody and throw Mr. Slaughter into jail. You haven't heard any
8 information that he knows why he went to jail other than he knows
9 what his charges are. . . he is booked in at 1:33, and at 1:45
10 in the morning he calls his girlfriend; the first call, he asked her
11 what happens. What does she say; I told them you picked me
12 up at 7:30. You got to tell them I or I am going to prison for
13 life.

14 " My question to you is, from the evidence you have heard here,
15 how does he know he needs to alibi himself for 7:30 at night.
16 How does he know that fact that that's when the crime occurred.
17 Ask yourself that question. It is answerable. He can't possibly
18 know he has to alibi himself for 7:00 o'clock at night.

19 He would have no idea that this crime was committed at that time"

20 RTT, May 20, 2011, at p. 139-141

21 In actuality, the police report by Detective Jesus Prieto attached
22 as an exhibit, which Mr. DiGiacomo was aware of (and the recording of
23 Mr. Slaughter's interrogation) demonstrate that Detectives discussed with
24 him before booking him into jail "the time of the robbery" See Exhibit
25 C attached, Police Report by Jesus Prieto, dated 8/12/04, at p-6
26 This manipulation of evidence; especially in light of the State's tactical reason
27 for not calling ~~det~~ detective Prieto at trial, constitutes egregious misconduct.
28 The prodigious amount of misconduct by the prosecutors should

1 have been challenged, as it infected Mr. Slaughter's entire trial with
2 unfairness violating his State and Federal rights to due process.
3 His attorneys failure to contest the enormous amount of prosecutorial
4 misconduct violates Mr. Slaughter's right to constitutionally effective
5 assistance of counsel. Even though his trial counsel failed to contempo-
6 raneously object; Appellate counsel was ineffective for failing to
7 raise these issues in Mr. Slaughter's Direct Appeal as the NV.
8 Supreme Court allows such claims to be reviewed under Plain-error
9 analysis whether an objection was lodged or not. Mr. Slaughter's
10 appellate counsel wasted (4) full pages of his opening brief on one
11 excessively long quotation from a case law opinion. Brevity would
12 have allowed appellate counsel space in the brief to raise these important
13 meritable issues, which had reasonable probability of establishing
14 "plain-error" and leading to a full reversal of Mr. Slaughter's wrongful
15 convictions.

16 As such, appellate counsel provided ineffective assistance of
17 counsel to Mr. Slaughter requiring reversal of his wrongful convictions.

18 Appellate counsel and trial counsel also should have challenged the fact that Prosecu-
19 tor DiGiacomo and his CSI witness Marion Brady misled the jury with what appears to
20 be false/perjurious testimony when, as a means of down-playing the significance of the lack of DNA
21 testing by police, the State led Mrs Brady to testify that the Science of "Touch-DNA" did not exist
22 during the 2004 investigation, and only came about in "like the last year or two" before Mr. Slaugh-
23 ter's trial. See, RTT, May 16, 2011, at p. 116. Meaning Touch DNA science didn't exist until 2009.
24 News Articles from the Las Vegas, Nevada area appear to contradict the testimony. As in 2001, con-
25 tact or Touch-DNA appear to have been collected from a sweatshirt in the Dwayne Jackson case and
26 analyzed that same year. See, Jackey Valley, Metro reviewing DNA cases after error led to wrongful convic-
27 tion, at <http://www.lasvegassun.com/news/2011/jul/07/dna/lab-switch-led-wrongful-conviction>.
28 (Published: July 7, 2011).

23(d) Ground 3

Mr. Slaughter is in State custody in violation of his 6th, 14th and 5th amendment rights of the U.S. Const., and in violation of Nev. Const. Art. I sec. 3 and 8; and Art. IV. Sec. 24. Because his trial Attorney rendered ineffective assistance when he failed to develop testimony and evidence regarding the relationship between the perpetrators departure time from the crime scene and the time victim Jermain Means called 911.

Supporting Facts:

Police reports by from Officer Mark Hoyt's pre-trial investigation indicated that the 911 call in this case was made at 7:11 pm (the dispatch time). Moreover, although Officers Hoyt's report did not say Jermain means made the 911 call, the report indicated that Means told police that he waited "a few seconds" after the perpetrators exited Young's house (the crime scene) and then got up, broke his restraints, and ran out to his car outside the house where his girlfriend Destiny Waddy was waiting. Moreover, defense counsels own investigator Craig Retke, discovered before trial during an interview with Destiny Waddy that when means came out to the car he borrowed Waddy's cell phone and made the 911 call. Waddy's interview with Retke also confirmed that shortly after ~~the~~ she saw the perpetrators exit Young's house, Means came out shortly thereafter and made the call. See Exhibits D and E, attached:

Police Report by Officer Mark Hoyt dated 8/12/04, at p. 10; and Case Investigation report by Craig Retke dated 2/14/11, at p. 2

All in all, these pieces of evidence indicated that Jermain means' 911 call was closely related to the time at which the perpetrators fled the crime scene; give or take a few seconds, it ~~was~~ appears they fled the scene at approximately 7:11 pm.

Defense Counsel built their defense for Mr. Slaughter around this

theory, and at trial defense counsel attempted to demonstrate that it was physically impossible for Mr. Slaughter to be a perpetrator to the crimes because he was picking up his then-girlfriend Tiffany Johnson from her job on the other side of town, approximately 8½ miles away from the crime-scene, at approximately 7:15 pm — a few minutes after the perp's fled the crime scene at 7:11 pm.

However, although Means testified at trial that he was the 911-caller, defense counsel failed to develop for the jury Means's testimony regarding how much time had elapsed between the time the perpetrators fled the crime-scene and the time he made the 911 call. Thus, a key point of evidence which had an apparent exculpatory value was omitted from the jury's consideration of the case. The failure by defense counsel to develop this crucial point (in addition to defense counsel's failure to present evidence of what time the 911 call was placed) made Mr. Slaughter's otherwise valid defense "fall-flat" and lose all value and meaning for the jury to consider. This was unreasonable prejudicial conduct by defense counsel. Because defense counsel knew the value of the evidence and in fact built the defense around it. A simple few questions in Means examination, and presentation of evidence of what time the 911 call was placed, would have made the defense powerful, as Mr. Slaughter could not have been in two places at once and it is physically impossible to drive the distance from the crime-scene to Tiffany Johnson's job in (4) minutes.

Had this error not occurred, there exist a reasonable probability that the result of the trial would have been different as at least one juror may have been swayed to feel the state had not made not it's burden, in light of the powerful defense theory.

23 (e) Ground 4

Mr. Slaughter is in State custody in violation of his 6th, 14th, and 5th amendment rights of the U.S. Const. and in violation of Nev. Const. Art. I., Sec. 3 and 8 as well as Art. IV. Sec. 24. Because his trial attorney rendered ineffective assistance of counsel when he promised the jury in his Opening Statement all kinds of favorable testimony that he never produced.

Supporting facts:

In his Opening Statement, defense counsel promised the jury that they would hear testimony from 1) Monique Westbrook stating Mr. Slaughter was with her from 4:00 to 7:00 pm on the day in question; 2) evidence that it was impossible for Mr. Slaughter to drive from the crime scene to pick Ms. Tiffany Johnson up in 4 minutes, 3) testimony by Destiny Waddy providing a description of the get away vehicle as a "Pontiac Grand Am" and not a Ford Taurus as the State suggested;

Defense counsel failed on his promise to produce any of this testimony. For one, he knew ahead of time that Monique Westbrook could not recall the time or day that she spent time with Mr. Slaughter ~~at~~ and as such should not have promised such a specific time line to the jury regarding her alibi testimony. Next, defense counsel failed to develop any of the evidence related to how much time it would take to drive from the crime scene to Tiffany Johnsons job or any of the collaterall facts that would give that fact meaning and value to the jury. Lastly, defense counsel knew that he had failed to subpoena witness Destiny Waddy thus he should not have promised this testimony, even the Prosecutor's hinted in an objection that defense counsel was making ~~was~~ promised he wouldn't fulfill:

"[Defense Counsel]: . . . There's one witness who was outside.

1 " Her name is Destiny [Waddy]. She writes in her statement what
2 she saw. "

3 "Mr. DiGiacomo: Objection, hearsay. "

4 "[Defense Counsel]: It's not expected testimony[?] "

5 " The Court: Just what's in response to the hearsay "

6 "[Defense Counsel]: If she's going to testify, it's what
7 I expect the evidence will show. "

8 " The Court: You're right. You can continue. "

9 "[Defense Counsel]: That she saw a green Pontiac Grand
10 Am "

11 RTT., May 16, 2011, p. 20-21

12 Defense counsel never presented any evidence of Waddy's
13 description of the getaway car, because he forgot to subpoena her.

14 All of defense counsel's unfulfilled promises no doubt left a negative
15 inference in the jury's minds when considering the case and reflected
16 negatively on the credibility of Mr. Slaughter's defense as a whole.

17 If not for these errors, jurors ^{would} ~~may~~ have perceived Mr. Slaughter's
18 defense and case in a different light. Jurors had to perceive Mr. Slaughter's
19 lawyers, and by extension Mr. Slaughter, as liars who failed to
20 produce on their promises. It is Elementary that a bad, or unfulfilled
21 opening statements is one of the most damaging errors counsel can make at trial.
22 There exist a reasonable probability that, if not for this prejudicial error
23 the result would have been different.

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23(f) Ground 5

Mr. Slaughter is in State custody in violation of his 6th, 14th and 5th amendment rights of the U.S. Const. Because his trial attorneys rendered ineffective assistance when they failed to adequately investigate, view, and/or, obtain the Original documents of the 2nd set of photo lineups.

Supporting facts:

Before trial, defense counsel discovered that a 2nd set of photo lineups existed in which Mr. Slaughter was apparently not identified as a perpetrator by any of the victim/eyewitnesses in this case. However, defense counsel filed a motion complaining that because the police did not have the eyewitnesses record their names and dates upon the 2nd set of photo lineup sheets (or any commentary), establishing that these witnesses had viewed these photo lineups would be problematic because so many years had elapsed (7 yrs at the time of trial) from when the witnesses viewed them the witness may no longer recall viewing the photo lineups. As such, defense counsel argued exculpatory evidence had been destroyed. See, Defendant's Motion To Dismiss for Failure To Preserve, filed October 27, 2009, in court records, (all facts stated therein are fully incorporated by reference in this ground).

Because of this defense counsel never introduced the evidence to the jury at trial. However, defense counsel never made any attempt to track down and obtain the "Originals" of this 2nd set of photo lineups. The defense only possessed Xerox "black and white photo copies" of the photo lineups. For all they could've known, the "Originals" may have had witness and police signatures and dates, on them to establish prior viewing. Had they discovered such, defense counsel would have certainly introduced the evidence and undermined the State's key evidence (eyewitness identifications of me) and there exist a reasonable probability I would not have been convicted. This issue needs to be investigated as I am unable to do so given my incarceration and indigence.

23(g) Ground 6

Mr. Slaughter is in State custody in violation of his 6th, 8th, 14th and 5th amendment rights of the U.S. Constitution, and in violation of NRS 176.035, Nev. Const. Art. 1, Sec. 3, 6 and 8 as well as Art. IV. sec. 24. Because his Appellate attorney rendered ineffective assistance when he failed to challenge the consecutive nature and failure to aggregate the sentences as being violating the Cruel and Unusual punishment and Equal Protection of the law Clauses in light of evolving standards of decency in Nevada

Supporting Facts:

During Mr. Slaughter's Direct appeal, the legislature amended NRS 176.035 to include a provision that sentencing courts shall pronounce any consecutive sentences to be aggregated/combined for a total minimum. Because Mr. Slaughter's direct appeal was still pending, when this amendment was effected and enacted as law, Mr. Slaughter was entitled to the benefit of this favorable change in the law of Nevada; And Appellate counsel should have alerted the Nevada Supreme Court by supplement or otherwise, that at the least a limited remand was necessary to allow the district court to aggregate Mr. Slaughter's multiple consecutive sentences. Equal protection would've necessitated it.

Mr. Slaughter was sentenced to numerous consecutive term-of-years, and Life, sentences in this case. Nevada's legislative change to Nevada's sentencing schemes requiring total minimum sentence aggregations of multiple consecutive sentences demonstrates an "evolving standard of decency" in Nevada for Cruel and Unusual punishment purposes, that has essentially eliminated consecutive sentences. It is a favorable change to criminal defendants for which Mr. Slaughter's Appellate counsel could and should've took advantage of on Mr. Slaughter's behalf. Failure to do so, was ineffective assistance.

23(b) Fundamental Miscarriage Of Justice - Actual Innocence

I. New Evidence

A) The "Martini Email" (see ground for details of evidence)

The opinion rendered by firearms Expert Lance Martini in his email ("the Martini" email") discussed under Ground I of this petition and attached as Exhibit B, constitutes "new evidence" for which Mr. Slaughter has only recently discovered. His former trial attorneys failed to previously inform Mr. Slaughter of the emails existence, or to use the information there-in at his trial. And what's more, Mr. Slaughter's former counsel had previously falsely informed him that they had turned over their "entire" case file regarding his case, when in fact, they really had not; defense counsel had only turned over "hard copy" papers and documents, but failed to turn over, or inform Mr. Slaughter that electronic Computer stored data such as "email correspondence" between counsel and the Expert Martini existed. As such, Mr. Slaughter had no knowledge of the Martini emails existence and could not have discovered this information any earlier.

It was only recently, in October 2015, that Mr. Slaughter was reviewing the file of another prisoner's case ("Raymond Sharpe") and saw a print-out of an email correspondence between that prisoner's lawyer and another person, that Mr. Slaughter realized that email correspondence may have took place between his own former lawyers and the various experts in his case. As a result, Mr. Slaughter immediately prepared and sent a letter, via regular postal mail, to his former lawyers Office requesting print-outs of any email correspondence that may exist which may have occurred between former defense counsel and the various experts hired during his trial. A copy of the letter Mr. Slaughter sent is attached as Exhibit E

1 Seemingly in response to his request, in January 2016, Mr. Slaughter
2 received an envelope in the regular mail which contained a couple of emails
3 that occurred between former defense counsel Dustin Maccello and 2 defense
4 experts before his trial; among them was the Martini email. After comprehend-
5 ing the significance of the material Mr. Slaughter began preparing the instant
6 petition (email detail under "ground 1" of this petition).

7 B) Request for Touch-DNA testing

8 In addition to the Martini-email, Mr. Slaughter is requesting pursuant
9 to NRS 176.0918, for "Touch-DNA" genetic marker testing to be performed on the
10 exterior surfaces of the gloves, guns and shoes collected as evidence by police and in
11 the State's custody. Current state-of-the-art DNA testing has advanced to a
12 level in which forensic Scientist can obtain and analyze what is known in their field
13 as "Touch-DNA," in which they are able to generate genetic DNA profiles from skin
14 cells, sweat, saliva, and even single-cells. This advanced generation of DNA
15 testing means that if skin tissue (which transfer skin cells and sweat) touches an
16 object, there exists an extremely high probability that it will leave a genetic profile
17 on that object that can later be analyzed.

18 As such, Mr. Slaughter seeks the State-of-the-art DNA testing of the afore-
19 mentioned evidence, in order to determine whether Touch-DNA belonging to any of
20 the victims is on any of the evidence, which was recovered from Mr. Slaughter's
21 apartment, and his girlfriend Ms. Johnson's car. The results of such DNA
22 testing would constitute new evidence as such testing of the exterior surfaces
23 of the evidence has never before been performed. ² It is clear that touch-DNA

24
25 ². At trial, the State and its CSI witness Marion Brady claimed that in the year 2004
26 the Science of Touch DNA did not exist and did not exist until "like the last year or two" preceding
27 Mr. Slaughter's trial, RTT, May 16, 2011, p. 116. As Slaughter is unaware when the Science developed,
28 Brady's testimony may/may not be perjurous. The testimony was intended to downplay the lack of testing.

1 Can be gathered from the evidence, because although it was not mentioned at trial,
2 a forensic report reveals that in October 2009, the State gathered genetic material
3 from the interior of the gloves (Mr. Slaughter seeks to test the exteriors) and were
4 able to generate Touch-DNA profiles to test. See Exhibit K attached: LVMPD
5 Forensic Lab Report of Examination - Biology/DNA Detail.

6 The lack of Touch-DNA belonging to the victims being found on the gloves
7 , guns, or shoes collected, has a reasonable probability to exonerate Mr. Slaughter
8 of the crimes. Because all of the victims in this case claimed to have had their
9 hands and wrist tied behind their backs by the perpetrators, who were wearing
10 according to the State, the gloves. See, e.g., RTT, May 20, 2011, at p. 51-53 (11:00am
11 vol.) (Prosecutor arguing "More circumstantial evidence that the Defendant is guilty of
12 these crimes, the gloves. . . . We know from Jennifer that he was wearing gloves
13 in the house; and Joey described them as like exercise gloves. There were cloth
14 patterns at the scene of the crime. . . . When officers went over to [Mr. Slaughter's
15 apartment] and conducted that search, 2 different kinds of gloves were found.
16 You can see the Nike logo on one of the gloves, the exercise type gloves, more
17 circumstantial evidence leading the defendant to this crime, the evidence described
18 by witnesses later found at the defendant's home"); see also, May 16, 2011, p. 133
19 (victim Jennifer Dennis testifying her hands were tied behind her back by perpet-
20 rator); RTT May 16, 2011, at p. 51-52 (victim Young testifying perpetrators tied
21 him up and then "dragged" him into the kitchen); RTT, May 16, 2011, at p. 29 (vict-
22 im Mr. Means testifying that perpetrators "grabbed" and tied him up); RTT,
23 May 17, 2011, at p. 51 (victim John testifying perpetrators tied him up, pistol whip-
24 ed, hit and kicked him); RTT, May 18, 2011, at p. 39-40 (victim Posada testifying
25 perp's tied both his hands together then tied one of his wrist to his cousin's hands).

26 Plus, crime scene photos of where the victims were restrained on their
27 bodies reveals they all had t-shirts on with the flesh of their arms, wrist and
28

1 hands exposed, thus, under the circumstances the perpetrators gloves, while
2 grabbing and tying the victims up would've certainly come into substantial contact
3 with the victims skin tissue on their hands, wrist and arms. See Evidence/ Exh-
4 ibits - State's Exhibits # 53-62 for trial on file with Clerk of Court.

5 Additionally, victim Mr. John claims that the perpetrator which he
6 believed to be Mr. Slaughter placed his gun against the flesh of his throat and
7 chin, and pistol-whipped John with a gun striking him on the hands and back,
8 as well as stomped on the back of John's Head with his shoes numerous
9 times. See, e.g., RTT, May 17, 2011, p. 51-54; see also, Reporter's Transcript of
10 Preliminary hearing, September 21, 2004, at p. 55-56. Thus, with so much
11 physical contact on exposed areas of Mr. John's body, (throat, chin, hands
12 head), John's touch-DNA would be on the Perpetrator's gloves, shoes, and the
13 guns. The State's own previous testing shows the significance of the evidence.

14 Consequently, Touch-DNA analysis, and the power of state-of-the-
15 art science can determine whether the gloves, guns, and shoes at issue
16 "touched" the victims in this case and therefore prove, or disprove, to a
17 reasonable probability whether these items were used in the commission
18 of the crimes Mr. Slaughter stands accused of, as the State so vigorously
19 claims, and thus, exonerate Mr. Slaughter. As such, resolution of the insta-
20 nt petition and whether Mr. Slaughter can overcome the procedural bars through
21 a gateway showing of actual innocence should await this Court's decision
22 as to whether to grant Mr. Slaughter's request for Touch-DNA testing.
23 And if DNA testing is granted, resolution of the petition should await the results
24 of such test, as exculpatory results would be more new evidence of actual inn-
25 ocence, supporting current claims. *(as independent finding)*

26 27 II. Actual Innocence And Prejudice

1 Mr. Slaughter was misidentified as the perpetrator; For example, the physical
2 descriptions of the perpetrators provided by the victims differed from his description
3 in key ways, as both photographic and testimonial evidence establish that on
4 the day in question Mr. Slaughter had at least one bruised or "black" eye and
5 distinctive healing facial scars and none of the victims described the perpetr-
6 ors as having these characteristics — in fact some affirmatively denied it — despite
7 having been "face to face" with perpetrators. See, e.g., RTT, May 19, 2011,
8 (9:00am Vol.), at p. 22-24 and p. 54-55 (Ms. Johnson confirming that Mr. Slaugh-
9 ter had healing facial scars and that "black-eye" he had on day in question
10 was visible in his booking photo taken (2) days after crimes occurred); See also,
11 RTT, May 17, 2011, at p. 68-69 and at p. 74 (Victim Mr. John testifying that he
12 was "face to face" with perpetrator he believed to be Mr. Slaughter and did
13 not see facial bruising, scars or black-eye); RTT May 18, 2011, at p. 55-56
14 (victim Mr. Posada acknowledging that he did not see bruising or scarring on
15 the perpetrator's face); RTT, May 16, 2011, p. 25-72 and p. 120-1144 (victims
16 Mr. Means and Mr. Young and Jennifer Dennis similarly never describing perpetr-
17 ors as having facial bruising or scars).

18 The perpetrators were described as having "jamaican-accent" and
19 identifying themselves as being from "Belize" and evidence establishes that
20 Mr. Slaughter does not speak with a jamaican accent or any accent; he was
21 born and raised in Las Vegas NV. See, e.g., RTT, May 16, 2011, p. 68 (victim
22 Mr. Young testifying both perpetrators spoke with "jamaican" accents and were
23 talking about going to "Belize"); RTT, May 17, 2011, p. 52 (victim Mr. John
24 testifying that perpetrators had "jamaican" accents and hating America); RTT,
25 May 18, 2011, p. 23 (Officer Todd Williams acknowledging that he monitored lots of
26 Mr. Slaughter's phone calls and never detected a jamaican accent).

27 Plus, evidence indicated that the 1st set of photo lineups from which the
28 eyewitnesses selected Mr. Slaughter's photo was constructed with suggestive

1 Features such as a difference in the background color and condition of Mr.
2 Slaughter's photo, which were designed to lead the victims to a higher probabili-
3 ty of selecting his photo because it "stood out" See, E.g., RTT, May 19, 2011, (9:00
4 am Vol.) at p. 100-105 (Psychology Expert Dr. Loftus testifying that the
5 difference in the background color of Mr. Slaughter's photo in comparison to the fillers
6 in the photo lineup was an improper feature that could psychologically act to unduly draw
7 witnesses' attention to Mr. Slaughter's photo and induce them to select it); RTT,
8 May 18, 2011, at p. 53 (victim Mr. Posada testifying that there was a "difference"
9 in Mr. Slaughter's photo background compared to the fillers); RTT, May 17, 2011,
10 at p. 71e (victim Mr. John acknowledging that Mr. Slaughter's photo appeared
11 to be "different" than the fillers); RTT, May 16, 2011, at p. 37-38 (victim
12 Mr. Means failing to make in-court identification, and acknowledging difference
13 in background color of Mr. Slaughter's photo compared to fillers); RTT, May 16,
14 2011, at p. 69-70 (victim Mr. Young acknowledging difference in background of
15 Mr. Slaughter's photo as compared to fillers). This also tainted the in-court identifications.
16 Plus, other exculpatory evidence exists which Mr. Slaughter's trial attorn-
17 ey failed to present at his trial, such as a 2nd set of photo lineups depicting
18 a photo of Mr. Slaughter taken (2) days after the crimes from which each of
19 the victims and eyewitnesses failed to identify Mr. Slaughter as a perpetrator
20 to the crimes See, Exhibit G, attached Rickie Slaughter Mugshot Profile
21 dated: 6/29/2004 and Photo Lineups; Also see, Petition for Writ of Habeas
22 Corpus filed March 25, 2015, at p. 5-8 and p. 17-20. Counsel also failed to present
23 exculpatory evidence that establishes that Mr. Slaughter was seen at approximately
24 7:15 pm picking up his girlfriend from her job across town on Nellis and
25 Bonanza, approximately 8½ miles from the crime scene just 4 minutes after
26 the perpetrators fled the crime scene on Lake Mead and Simmons St., when
27 it would take approximately 21 minutes to cross such a distance See, e.g.,
28 State's Response To Pro Per Petition for Writ of Habeas Corpus filed June 2,

2015, at p. 4 (stating that had "counsel called Detective Prieto it would have supported at the earliest [Mr. Slaughter] arrived at 7:15" at Ms. Johnson's job to pick her up on the day in question); see also, Exhibits H, attached Case Investigation report by Investigator Craig Retke and Google Maps[®] of fastest available routes and estimated driving times; also see, Petition for Writ of Habeas Corpus and Exhibits in Support filed: March 25, 2015, at p. 32-42 (Grounds 5-6). ("Previous Habeas Petition"); and Affidavit of Tiffany Johnson.

An eyewitness, who from police reports seemingly had the best view of the perpetrators get away vehicle — Destiny Waddy ("Ms. Waddy") — described the vehicle as a Pontiac Grand Am. See Exhibit D, attached Voluntary Witness Statement of Destiny Waddy dated: 06/26/2004 and Police Report by Officer Mark Hoyt ("Officer Hoyt") dated: 08/12/2004 at p. 10. And victim Jennifer Dennis informed police officer Jake Hickman that the perpetrators were talking about Mr. Young charging too much to paint graphics on their "Pontiac". See, RTT, May 16, 2011, at p. 148-149 (Officer Hickman testifying that Jennifer Dennis told him perpetrator "was talking about a Pontiac" and that Mr. Young charged him too much money for it). Thus, the State's theory that the get away car was a Ford Taurus like Mr. Slaughter's girlfriend owned was incredibly weak, as it was based upon Mr. Young's inconsistent sudden change in memory at trial (and prelim'), when in fact, Mr. Young had omitted and failed in (3) previous interviews with police to ever mention even seeing the perpetrator's vehicle. See, Exhibits I, attached: Transcript of Interview of Ivan Young dated: 7/15/04; and Police Report by Officer Anthony Bailey dated 6/29/04. Moreover, Mr. Young's sudden trial description of the getaway car was extremely generic as he did not provide a year model, license plate number or further characteristics other than saying "I believe it was a green Ford -- what was it? Like Taurus". RTT, May 16, 2011, at p. 46. And victim Jennifer Dennis described the car as being "blue or teal" and several different makes/models such as

1 "either a Mercury Topaz or maybe a Ford Tempo" RTT, May 16, 2011, at p. 122
2 and at p. 137. The State never asked the victims to view or identify Ms. Johnson's vehicle.
3 The guns allegedly recovered from Ms. Johnson's car were two small
4 caliber pistols: a .22 caliber and a .25 caliber pistol. The victims descr-
5 ived the perpetrators as having (3) guns and further described those guns
6 as being several different calibers: a 9 millimeter, a .357 caliber, a .22
7 caliber, a .380 caliber, and a .38 caliber. See, e.g., RTT, May 16, 2011,
8 at p. 65, and at p. 69 (victim Mr. Young describing perpetrators' gun as a "9
9 millimeter" and explaining the perpetrators told him they shot him with a ".380"
10); RTT, May 17, 2011, at p. 78 (victim Mr. John testifying that one gun was
11 "like a .22 or something like that, I don't remember what that was" and
12 that perpetrator said he had a .357) see also, Reporter's Transcript of Prelimin-
13 ary Hearing, at p. 36 (victim Mr. Young testifying that perpetrators "Kept on say-
14 ing it was a .38" "I don't know if it was .38 you know what I'm saying? Long
15 barrel")(September 21, 2004). The State never had them view or identify the guns found.

16 The State just made a stretching inference that because the witnesses
17 described the perpetrator's weapons as black and silver, revolver and semi-auto,
18 then the weapons from Ms. Johnson's car - the .22 and .25 caliber pistols
19 - were the weapons from the crime. However, this should not be overvalued
20 neither should the alleged description of various calibers that the perpetrators
21 told the victims they had, as they stretch pass 5 different kinds of guns
22 and nearly all pistols are black or silver, revolver or semi-automatic.
23 Thus, the assorted descriptions don't hold much value.

24 Similarly, the .357 shell casing found in Ms. Johnson's trunk is equiv-
25 al for the reasons stated in Ground 1 (see p. 9-13) and even at trial the
26 State's Expert had to admit that the bullet fragments recovered from Mr. Young's
27 injuries were not "unique" enough to say they came from one manufacturer source
28

1 and that all she could really say is that the fragments were consistent with
2 a "winchester type silver type hollow point" See, e.g., RTT, May 17, 2011,
3 at p.145 (Firearms expert Angel Moses explaining in regards to the fragments
4 retrieved from Mr. Young that "I wouldn't say, it's unique. It is the
5 same thing Winchester hollow points use. I don't like to use, unique,
6 because to me that means only one person or only one source creates that. I
7 can't tell you that"); see also supra, at p. 166-167 (Firearms Expert Angel
8 Moses testifying "can I relate those bullet fragments back to that cartridge
9 case? Not specifically, because there is nothing in there to tell me what
10 was loaded in that particular Cartridge case . . . the only I am saying is,
11 that they both came from the same manufacturer, which is winchester").
12 And both pistols found were concluded to not have been used to shoot Mr. Young
13 RTT, May 17, 2011, at p.133.

14 As such, this supposed circumstantial evidence was rather weak.
15 Next, the conversations recorded from the Jail calls between Mr. Slaughter
16 and Ms. Johnson were not attempts to change her statement. they were attempts
17 to confirm the time Mr. Slaughter had picked her up and to counter-act
18 Detective Prieto's coercive and improper tactics from unduly pressuring
19 Ms. Johnson to change her statement from exculpatory to falsely inculpatory
20 See Exhibit J attached Affidavit by Tiffany Johnson p. 1-2 (describ-
21 ing time Mr. Slaughter picked her up and Detective Prieto's unduly coercive
22 tactics) also see Case Investigation report by Investigator Craig Retke
23 dated: 02/01/2011. Plus, on all the jail calls Mr. Slaughter consistent maint-
24 ained his innocence that he did not commit the crimes.

25 The weakest evidence the state presented was the 7-11 videotap. It
26 depicted an individual whose identity was obscured from view because
27 the major portions of their head and face were covered with some kind of
28 clothing article possibly a scarf from a distance, walk in the store and

1 stand by an ATM See, i.e., RTT, May 20, 2011, at p. 53 (Prosecutor Fleck acknow-
2 ledging in closing argument that the individual in the video "covers his head
3 and face"). More importantly, the State did not, and could not produce an
4 ATM transaction record/receipt proving that the individual in the video was even
5 using a credit card taken during the robberies See, Reporters Transcript of MTN
6 for New Trial, May 17, 2012, at p. 20 (Prosecutor DiGiacomo explaining that
7 "there isn't a ATM transaction record. I think we told the Court that. . .
8 there wasn't one that was collected by police"). Plus, the State did not have any-
9 one attempt to identify the individual in the video. Thus, the value was zero to
10 none.

11 Lastly, there was no physical evidence that directly linked these crimes
12 to Mr. Slaughter which one would reasonably expect in a crime of this nature;
13 such as blood evidence, fiber, hair or fingerprint evidence. No confession. And
14 none of the "fruits" of the robberies were found within Mr. Slaughter's possession,
15 despite him being arrested approximately (48) hours later and the victims testifying to
16 substantial cash and property, being taken by the perpetrators See, e.g., RTT.
17 May 16, 2011, at p. 29 (victim McMeans testifying that he was robbed of "\$
18 1,500"); RTT, May 16, 2011, at p. 131 (victim Jennifer Dennis testifying
19 that perpetrators took "three-piece suits" from the crime-scene); RTT,
20 May 17, 2011, at p. 57 and at p. 61-62 (victim Mr. John testifying that perpet-
21 rators "debit card" "some other credit cards" and "300" dollars taken out
22 of his bank account).

23 None of these items were recovered or located whatsoever in the search
24 of Mr. Slaughter's shared apartment, or his girlfriend Ms. Johnson vehicle.

25 This accounts for the entirety of the State's case and reveals that the
26 State's case was built on weak eyewitness testimony and even weaker circumstan-
27 tial evidence which consisted of a set of circumstances that would potentially be
28 common to many people. In light of the new evidence of the "Martini email"

1 , as well as the exculpatory test results that will come from the Touch DNA
2 testing and the evidence Mr. Slaughter's prior attorney failed to present relating
3 to the time he picked Mrs. Johnson up in relation to the time the perpetrator's
4 left the crime scene and the exculpatory 2nd set of photo lineups from every
5 eyewitness failed to identify him from a photo taken 2 days after the crime
6 and placed in a non-suggestive photo spread it is more likely than not that no
7 reasonable juror would have found Mr. Slaughter guilty beyond a reasonable
8 doubt. Mr. Slaughter's conviction was a fundamental miscarriage of
9 justice and a substantial showing of factual, actual innocence, has been
10 made.

11 Epilogue

12 Mr. Slaughter hopes that the prior (invalidated) plea-bargain in-
13 which he engaged in, does not influence this Court to think that he is
14 guilty of the crimes in this case. Because the acceptance of that plea
15 bargain was made, based upon ^{unfortunate} ~~unfortunate~~ facts that at that time he was a
16 20 year old young black man, representing himself, with no money for
17 decent legal representation, and fearful of receiving the kind of harsh
18 multiple life sentences if wrongly convicted that he experiences now.
19 With no formal education passed the 11th grade, at that time, he could not
20 see how to prove his innocence in such a complex justice system and case.
21 Thus, he made a false plea of guilt out of fear, of receive alot more time.

22 Modern times reveals; to us all, that such occurrences of false
23 pleas happen; quite often. See, i.e., Doug McMurdo, \$1.5 million settlement
24 for DNA error on Clark County panel's agenda, Las Vegas Review-Journal (July
25 21, 2011), www.lvrj.com/news (explaining that Dwayne Jackson pled guilty
26 to accept deal for less severe sentence when he was actually innocent); also, see, i.e.,
27 Patt Morrison, Brian Banks finally exonerated: 'This is the greatest day of my life', [http://](http://www.scpa.org/programs/patt-morrison/2012/05/24/24645/brian-banks)
28 www.scpa.org/programs/patt-morrison/2012/05/24/24645/brian-banks.

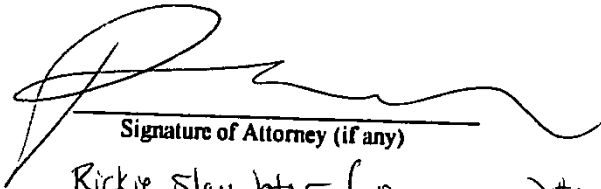
WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

EXECUTED at Ely State Prison, on the 10 day of the month of February of the year 2012.



Signature of petitioner

Rickie Slaughter #85902
Ely State Prison
Post Office Box 1989
Ely, Nevada 89301-1989

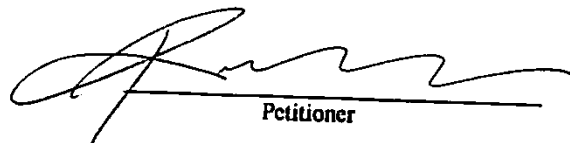


Signature of Attorney (if any)

Rickie Slaughter (proper-person) #85902
Attorney for petitioner
ESP, P.O. Box 1989
Ely, NV. 89301-1989
Address

VERIFICATION

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



Petitioner

Petitioner Pro Per - Rickie Slaughter #85902
Attorney for petitioner

Ely State Prison, P.O. Box 1989
Ely, Nevada 89301-1989

CERTIFICATE OF SERVICE BY MAIL

I, Rickie Slaughter, hereby certify pursuant to N.R.C.P. 5(b), that on this 10th day of the month of February, of the year 2016 I mailed a true and correct copy of the foregoing **PETITION FOR WRIT OF HABEAS CORPUS** addressed to:

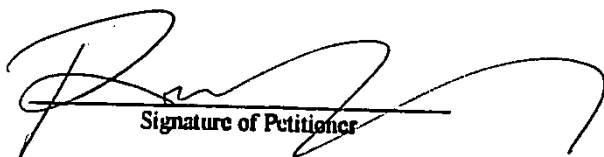
Respondent prison or jail official

Address

Attorney General
Heroes' Memorial Building
100 North Carson Street
Carson City, Nevada 89710-4717

Steven B. Wolfson
District Attorney of County of Conviction

200 Lewis Ave. 3rd Floor
Las Vegas, Nevada 89155
Address


Signature of Petitioner

AFFIRMATION PURSUANT TO NRS 239B.030

I, Rickie Slaughter, NDOC# 85902,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE
ATTACHED DOCUMENT ENTITLED Petition For Writ of
Habeas Corpus and Petitioners Exhibits In Support...

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 10th DAY OF February, 20 16.

SIGNATURE: 

INMATE PRINTED NAME: Rickie Slaughter

INMATE NDOC # 85902

INMATE ADDRESS: ELY STATE PRISON
P. O. BOX 1989
ELY, NV 89301

Original

Please Return
Filed stamped copy!

9

Electronically Filed

02/12/2016 04:10:12 PM

PP
DA

Rickie Slaughter #85902

Ely State Prison, P.O. Box 1989

Ely, Nevada 89301-1989

Petitioner in proper person

Ann L. Johnson

CLERK OF THE COURT

District Court

Clark County, Nevada

Rickie Slaughter,

Petitioner,

vs.

The State of Nevada,

Respondent.

Case No: C204957

Dept No: 111

Petitioners Exhibits In Support of Post-Conviction

Petition for Writ of Habeas Corpus

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CLERK OF THE COURT

RECEIVED

FEB 12 2016

CLERK OF THE COURT

“Exhibit A”

Las Vegas Metropolitan Police Department Forensic Laboratory Report of Examination Firearms/Toolmarks Unit		Distribution Date: FEB 04 2010	
		SUPPLEMENTAL 2	
Subject(s): SLAUGHTER, Rickie (s) YOUNG, Ivan (v)		Case:	04-15160
		Agency:	NLVPD
		Incident:	Att. Murder
		Requester:	Prieto – Detective M. DiGiacomo - CCDA

Evidence Examined

Booked by 850 (sealed envelope) dated 6-26-04 from "2612 Glory View"

Item 12A: one bullet fragment

Item 12B: one bullet fragment and two metal fragments

Booked by 1618 (sealed envelope) dated 6-29-04 from "3801 E. Charleston #114"

Item 1A: one bullet fragment

Item 1B: one "WINCHESTER" .357 Magnum cartridge case

Booked by 1621 (sealed envelope) dated 6-27-04 from "UMC Trauma 1800 W Charleston"

Item 1: two bullet fragments and three metal fragments

Note: These items have previously been examined. Please see reports dated 8-20-04 and 12-7-04 for additional information.

Examination Result

The bullet fragments in Items 12A, 12B, 1A and 1 are either composed of the same elements (copper, nickel and zinc) or have design features that are the same as Winchester® .357 Magnum SilverTip® hollow point bullets.

Disposition of Evidence

The above listed evidence will be released to the LVMPD Evidence Vault.

 8002 2.3.10

D. Angel Moses P#8002
Forensic Scientist II

Report Date

 2877

Reviewer

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY REPORT OF EXAMINATION**

NAME: SLAUGHTER, Rickie (s)
YOUNG, Ivan (v)

CASE: 04-15160
AGENCY: NLVPD
DATE: August 20, 2004
BOOKED BY: 850, 1618
REQUESTED BY: Prieto - NLVPD

INCIDENT: None Listed

I, Dinnah C. Caluag, do hereby declare:

AUG 23 2004

That I am a Firearms and Toolmark Examiner employed by the Las Vegas Metropolitan Police Department;

That on August 6, 2003, I first qualified in Clark County District Court as an expert witness to testify regarding firearms and toolmark examinations and comparisons;

That I received evidence in the above case and that I completed an examination of the following evidence:

Booked by 850 (sealed envelope) dated 6-26-04 from "2612 Glory View"
Item 12A - one bullet fragment
Item 12 B - one bullet fragment and two metal fragments
Booked by 1618 (sealed envelope) dated 6-29-04 from "3801 E. Charleston #114"
Item 1A - one bullet fragment
Item 1B - one .357 Magnum cartridge case
Booked by 1618 (sealed box) dated 6-29-04 from "1301 LMBE"
Item 10 - one Iver Johnson model Target .22 caliber revolver SN: M59842
and eight .22 Long Rifle cartridges
Booked by 1618 (sealed box) dated 6-29-04 from "1301 LMBE"
Item 11 - one Raven Arms model MP-25 .25 Auto caliber semiautomatic pistol SN: 675929,
and one magazine containing six .25 Auto cartridge cases

That the results of the examination are:

Firearms

The Iver Johnson revolver and Raven Arms pistol were test fired and found to be in normal operating condition with no noted malfunctions. The test cartridge cases did not meet acceptance criteria for entry into the National Integrated Ballistics Information Network (NIBIN).

Bullet Fragments

The three bullet fragments had not been fired by either of the submitted firearms. These fragments originated from cartridges larger than .22 or .25 caliber. The origin of the two metal fragments in Item 12B could not be determined.

Cartridge Case



The cartridge case had not been fired in either of the submitted firearms. This cartridge case does not meet acceptance criteria for entry into NIBIN.

That the evidence will be returned to the Evidence Vault.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on:

August 29, 2004


Dinnah C. Caluag #8002

Review #5666

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY REPORT OF EXAMINATION**

NAME:	SLAUGHTER, Rickie (s) YOUNG, Ivan (v)	Supplemental	
		CASE:	04-15160
		AGENCY:	NLVPD
		DATE:	December 7, 2004
		BOOKED BY:	1618, 1621
INCIDENT:	None Listed	REQUESTED BY:	Prieto - NLVPD Digiacomio - CCDA

I, Dinnah C. Caluag, do hereby declare:

DEC 07 2004

That I am a Firearms and Toolmark Examiner employed by the Las Vegas Metropolitan Police Department;

That on August 6, 2003, I first qualified in Clark County District Court as an expert witness to testify regarding firearms and toolmark examinations and comparisons;

That I received evidence in the above case and that I completed an examination of the following evidence:

- Booked by 850 (sealed envelope) dated 6-26-04 from "2612 Glory View"*
 - Item 12A - one bullet fragment
 - Item 12B - one bullet fragment and two metal fragments
- Booked by 1618 (sealed envelope) dated 6-29-04 from "3801 E. Charleston #114"*
 - Item 1A - one bullet fragment
 - Item 1B - one .357 Magnum cartridge case
- Booked by 1621 (sealed envelope) dated 6-27-04 from "UMC Trauma 1800 W Charleston"
 - Item 1 - two bullet jacket fragments and three lead fragments

*Note: Items previously examined. See report dated 8-20-04 for additional information.

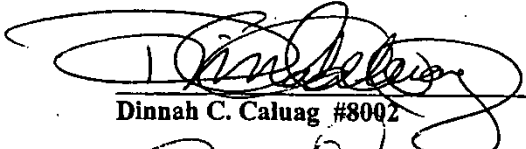
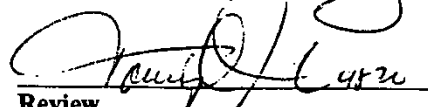
That the results of the examination are:

The five bullet fragments in Item 1 (from UMC Trauma) bear insufficient detail for microscopic comparison.
The two bullet jacket fragments in Item 1 and the two bullet fragments in Items 12A and 12B are all typical of Silver Tip® Hollow Point bullets commercial marketed by Winchester ammunition.

That the evidence will be returned to the Evidence Vault.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on: December 7, 2004


Dinnah C. Caluag #8002

Review

“Exhibit B”



Dustin Marcello <dustin3@gmail.com>

State of Nevada v. Rickie Slaughter 04C204957 - Documents for Ballistic and Toolmark Expert

Lance Martini <pfslabs@pacbell.net>
To: Dustin Marcello <dustin3@gmail.com>

Fri, May 6, 2011 at 1:10 PM

Marcello,

The Winchester Silvertip product line (to my knowledge) are the only handgun projectiles in the US that use a nickel over copper jacket. For Winchester, the Silvertip product line is the only one of their many that uses a nickel over copper jacket, all other handgun ammo that they produce uses copper only jackets. Not so much a question of % but of construction characteristics. In terms of % for other US manufacturers and for Winchester copper only jacketed ammo, nickel would only be a trace metal, somewhat on the same level as a contaminant. As I see it, she has a good foundation for identifying the fragments as Silvertip.

~~In terms of caliber, manufacturers may use the number, width, placement of cannelures and bullet to identify what bullet is.~~ Calibers of 380 and smaller within the Silvertip product line can be ruled out due to bullet weight (core and frag weight). 9mm which is similar to 38/357 in diameter can be ruled out based on the location of the cannelure, at least compared to the 9mm Silvertip ammo in my collection.

Ms. Caluag identifies a fragment in her notes, dam 5-1, as a damaged base. This rules out 38 Special projectiles based on Szabo's email and is consistent with 357.

The evidence jacket fragments are severely damaged and Ms. Caluag only inquired of Szabo as to 38 and 357 characteristics:

Some aspects to consider for cross:

1. Based on the information in her notes, she did not compare/consider 9mm Luger, or 38 Super Silvertip ammo (similar weight and diameter as 357) as a possible source. Note: both are semi-auto pistol cartridges, likely evidence cartridge cases would be left at scene.
2. She also did not inquire as to other Silvertip calibers larger than 357 (40 S&W, 10mm, 41 Magnum, 44 Special, 44 Magnum, 45 Auto, 45 Colt). Can she eliminate any/all of these? Note: 40, 10, 45 Auto = semi-auto pistol. 41, 44 mag and spl, 45 colt = revolver.
3. Can she rule out foreign manufactured ammunition as the projectile frag source?

Lance T. Martini
Paradigm Forensic Services
PO Box 721750
San Diego, CA 92172-1750 R>Ph. 858.484.9566
pfslabs@pacbell.net

“Exhibit C”

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

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

REF: 246305
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EVIDENCE. DURING THE SEARCH NO ITEMS LISTED ON THE SEARCH WARRANT WERE LOCATED IN THE RESIDENCE. DURING THE SEARCH A BLUE SHIRT WAS LOCATED IN THE APARTMENT AND A CAMERA ALONG WITH PAPER WORK LISTED UNDER JOHNSON AND SLAUGHTER'S NAME. WITNESSES AT THE SCENE SAID THAT ONE OF THE SUSPECTS WAS POSSIBLY WEARING A BLUE SHIRT, SO THE SHIRT WAS COLLECTED. ALL THESE ITEMS WERE COLLECTED AS POSSIBLE EVIDENCE. THE 1997 FORD WAS TOWED TO THE STATION FOR PROCESSING.

WHILE AT THE SCENE JOHNSON WAS INTERVIEWED ABOUT THE INCIDENT. SHE ACTED AS THOUGH SHE DIDN'T KNOW ANYTHING ABOUT THE ROBBERY. WHILE QUESTIONING HER SHE STATED THAT SLAUGHTER HAD PICKED HER UP FROM WORK AT 1:00 HOUR WHEN SHE GOT OFF.

BOTH JOHNSON AND SLAUGHTER WERE TRANSPORTED TO THE POLICE DEPARTMENT FOR FURTHER QUESTIONING.

BEFORE QUESTIONING SLAUGHTER HE WAS ADVISED OF HIS MIRANDA RIGHTS AND SIGNED A WAIVOR AGREEING TO TALK WITH ME. DURING THE INTERVIEW SHE INSISTED THAT SHE DIDN'T KNOW WHAT HE WAS TALKING ABOUT.

I THEN QUESTION JOHNSON FURHTER. JOHNSON AGAIN TOLD ME THAT SLAUGHTER DROPPED HER OFF AT WORK AT ABOUT 1 PM AND RETURNED TO PICK HER UP AT 7 PM. SHE STILL INSISTED THAT SHE KNEW NOTHING ABOUT THE INCIDENT. AFTER QUESTIONING SHE WAS TRANSPORTED BACK TO HER RESIDENCE.

I AGAIN SPOKE WITH SLAUGHTER AND TOLD HIM THAT JOHNSON TOLD ME SLAUGHTER DROPPED HER OFF AT WORK. I REMINDED HIM THAT HE HAD HER VEHICLE DURING THE TIME OF THE ROBBERY. AT THAT POINT SHE SAID THAT SHE WANTED HIS ATTORNEY. THE INTERVIEW WAS TERMINATED. HE WAS THEN TRANSPORTED AND BOOKED IN THE NLV JAIL FOR THE ABOVE LISTED CHARGES.

ON JUNE 29, 2004, I CONTACTED JOHNSON AT HER RESIDENCE AND QUESTIONED HER FURTHER. I TOLD HER THAT IT WASN'T POSSIBLE FOR SLAUGHTER TO HAVE PICKED HER UP AT 7 PM WHEN THE ROBBERY WAS COMMITTED AT THE SAME TIME. SHE NOW CHANGED HER STORY AND SAID THAT SLAUGHTER DIDN'T PICK HER UP UNTIL ABOUT 7:30 PM. SHE ALSO TOLD ME THAT SLAUGHTER ONLY HAD ABOUT SEVENTY DOLLARS THAT MORNING AND WHEN SHE GOT OFF FROM WORK HE HAD AN EXTRA HUNDRED DOLLAR BILL.

I LATER CONTACTED VICTIM JERMAUN MEANS AT HIS RESIDENCE. I SHOWED HIM THE PHOTO LINE THAT CONTAINING SLAUGHTER AND FIVE OTHER BLACK MALES SIMILAR IN APPEARANCE. I ASKED HIM IF HE RECOGNIZED ANYONE IN THE PICTURES FROM THE NIGHT OF THE ROBBERY. MEANS LOOKED AT THE PHOTOS AND IDENTIFIED SLAUGHTER AS THE SUSPECT. HE TOLD ME THAT HE STANDS OUT AS SOMEONE HE SAW.

I THEN CONTACTED RYAN JOHN AND HE CAME INTO THE POLICE DEPARTMENT TO VIEW THE PHOTO LINE UPS. JOHN LOOKED AT THE PHOTO LINE AND IDENTIFIED SLAUGHTER AS THE SUSPECT. HE TOLD ME THAT HE ROCOGNIZED HIM AS THE ONE THAT CALLED HIM OVER TO YOUNGS RESIDENCE AND THE ONE HE BELIEVED SHOT YOUNG.

I THEN CONTACTED WELLS FARGO SECURITY AND SPOKE WITH CHRIS GANDY TO FIND WHERE JOHN'S ATM CARD WAS USED. HE TOLD ME THAT JOHN'S CREDIT CARD WAS USED AT 3051 EAST CHARLESTON A 7-11 STORE LOCATED A COUPLE OF BLOCKS DOWN THE STREET

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ser no ! officer reporting
0755 ! PRIETO/JESUS

ser no
0674

66 Exhibit D

CASE: 04015160

DATE: 8/12/04

TIME: 4:15

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

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

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

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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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NOWAKOWSKI/DENNIS

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1225 | HOYT/MARK

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1334

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-----NORTH LAS VEGAS POLICE DEPARTMENT-----
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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
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
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-----NORTH LAS VEGAS POLICE DEPARTMENT-----
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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] 6948. 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
SCARFF/DENISE

ser no | detective bureau processed
1259 |

ser no

supervisor approving
NOWAKOWSKI/DENNIS

ser no | officer reporting
1225 | HOYT/MARK

ser no
1334

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

Time Occurred: 19.11

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: 5-18-81 Social Security # 8514 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 2 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: 1334

WITNESS: _____

[Signature]
SIGNATURE OF PERSON GIVING STATEMENT

“Exhibit E”

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 Flushing 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.

"Exhibit F"

Carbon Copy

Date: 10/7/2015

Rickie Slaughter #85902
Ely State Prison, P.O. Box 1989
Ely, NV. 89301-1989

Dustin Marcello, Esq.
1212 Casino Center
LV., NV. 89101

In re: State of Nevada v. Rickie Slaughter
Dist. Ct. Case # C204957

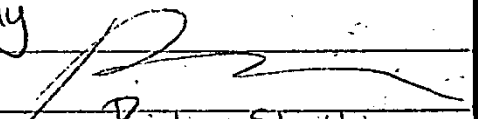
Dear Dustin

The Rocky Mountain Innocence Center in Utah may be contacting you at some point as they have recently accepted my case to investigate for further evidence of my innocence.

Feel free to discuss the case with them and inform "Ozzie" the same.

Also, Please send me any "Emails" which may have occurred in my case with the experts Jim Wheeler, Lance Martini, and Geoffrey Loftus between you or Oz and them; You only provided me the paper file, and it just recently came to my attention that there may be emails which you will need to print out from your computer.

Thank you for your time, Sincerely



Rickie Slaughter

CC:
File - Carbon Copies

Page 1 of 1

19

“Exhibit G”

**NORTH LAS VEGAS DETENTION/CORRECTIONS
MUGSHOT PROFILE**

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



SCARS, MARKS, TATTOOS:
SCARS, MARKS, TATTOOS:

DATE OF BIRTH: [REDACTED] / 1984 AGE: MF NUMBER: 89634
PLACE OF BIRTH: BOOK NUMBER: 253034
SOCIAL SECURITY NUMBER: 530497827 FED ID NUMBER:
DRIVERS LICENSE/STATE: CS NUMBER: 1896569
EMPLOYER: SID NUMBER:
OCCUPATION: FBI NUMBER:

ADDRESS: TELEPHONE:

EMERGENCY CONTACT: RELATION:
ADDRESS: TELEPHONE:

PLACE OF ARREST: DATE/TIME OF ARREST: / / :
ARRESTING OFFICER: TRANSPORTING OFFICER:
VEHICLE: IMPOUND:

BKG DATE:	06 / 29 / 2004	BKG TIME:	01 : 33	BKG OFF:	BKG OFFICER:			
NO	ORIG	OC	PCN	WARRANTS/NRS	CTS	FGM	BAIL	CASE NUMBER
1	PC P			200.030	01	F	100000	04015160
	ATT MURD WDW							
2	PC P			200.380	01	F	040000	04015160
	ROBB WDW							
3	PC P			205.060	01	F	040000	04015160
	BURG WDW							
4	PC P			200.460	01	F	010000	04015160
	FALSE IMPRISON WDW							

I, the undersigned, Legal Keeper of Records, North Las Vegas Police Department, does hereby certify that the foregoing copy has been compared by me with the original and that it is a true and correct transcript thereof from and of the whole or of a specified part of said original as the same appears on file in my official care and custody.
In testimony whereof, I have affixed my signature.
Date 7-13-04 [Signature]
North Las Vegas Police Dept.

NORTH LAS VEGAS POLICE
WITNESS PHOTO LINEUP IDENTIFICATION

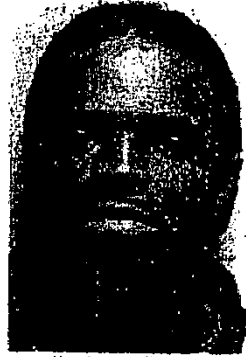
Case #: 04-15160

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

22

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

123

App. 1577

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.

<p>#1 PERSON</p> <p>DATE _____</p> <p>INITIALS _____</p> <p>NOTES _____</p>		<p>#2 PERSON</p> <p>DATE _____</p> <p>INITIALS _____</p> <p>NOTES _____</p>		<p>#3 PERSON</p> <p>DATE _____</p> <p>INITIALS _____</p> <p>NOTES _____</p>
<p>#4 PERSON</p> <p>DATE _____</p> <p>INITIALS _____</p> <p>NOTES _____</p>		<p>#5 PERSON</p> <p>DATE _____</p> <p>INITIALS _____</p> <p>NOTES _____</p>		<p>#6 PERSON</p> <p>DATE _____</p> <p>INITIALS _____</p> <p>NOTES _____</p>

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 Witness

Date & Time

Signature of Officer

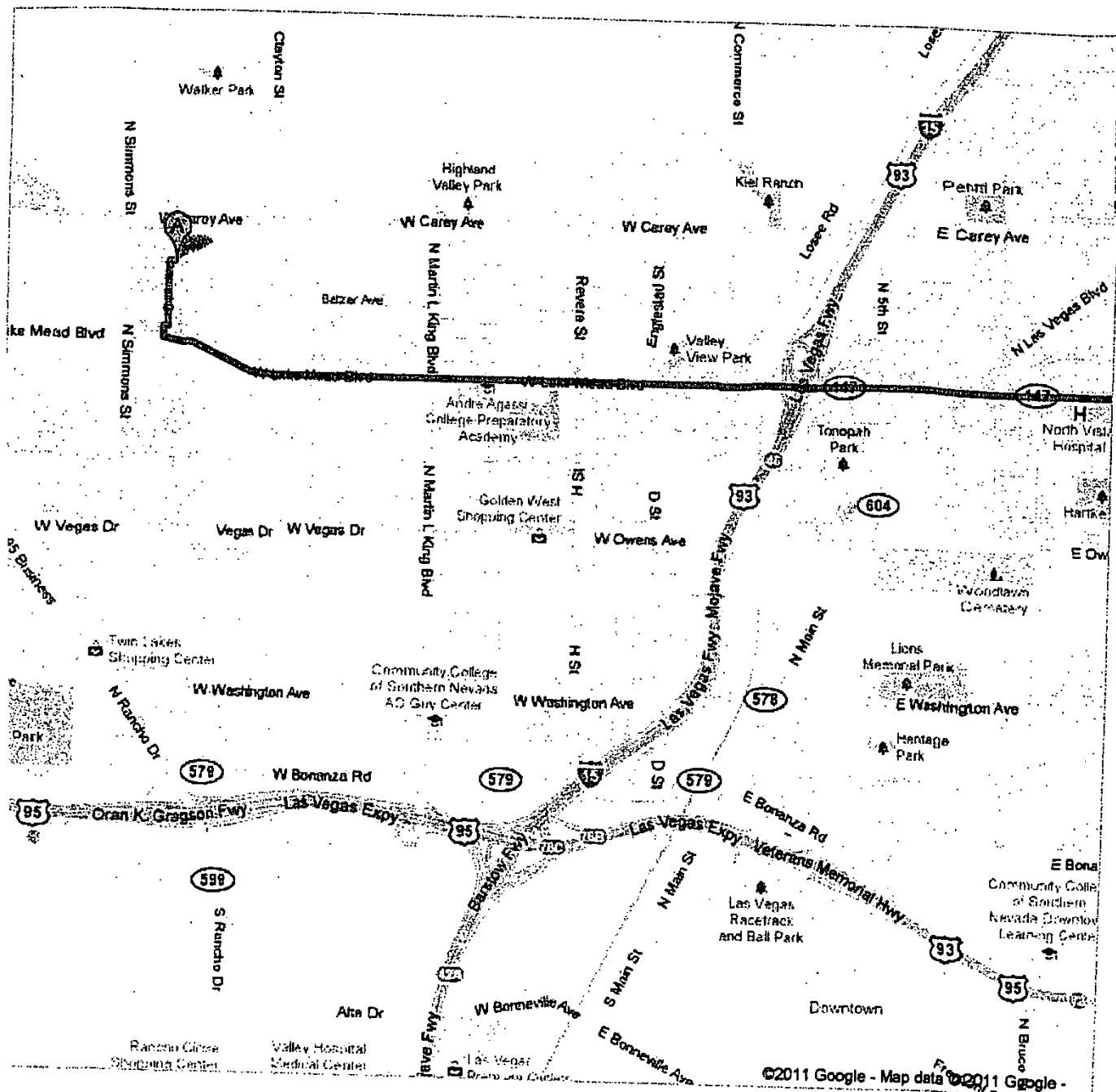
Witness Name Printed

“Exhibit H”

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

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

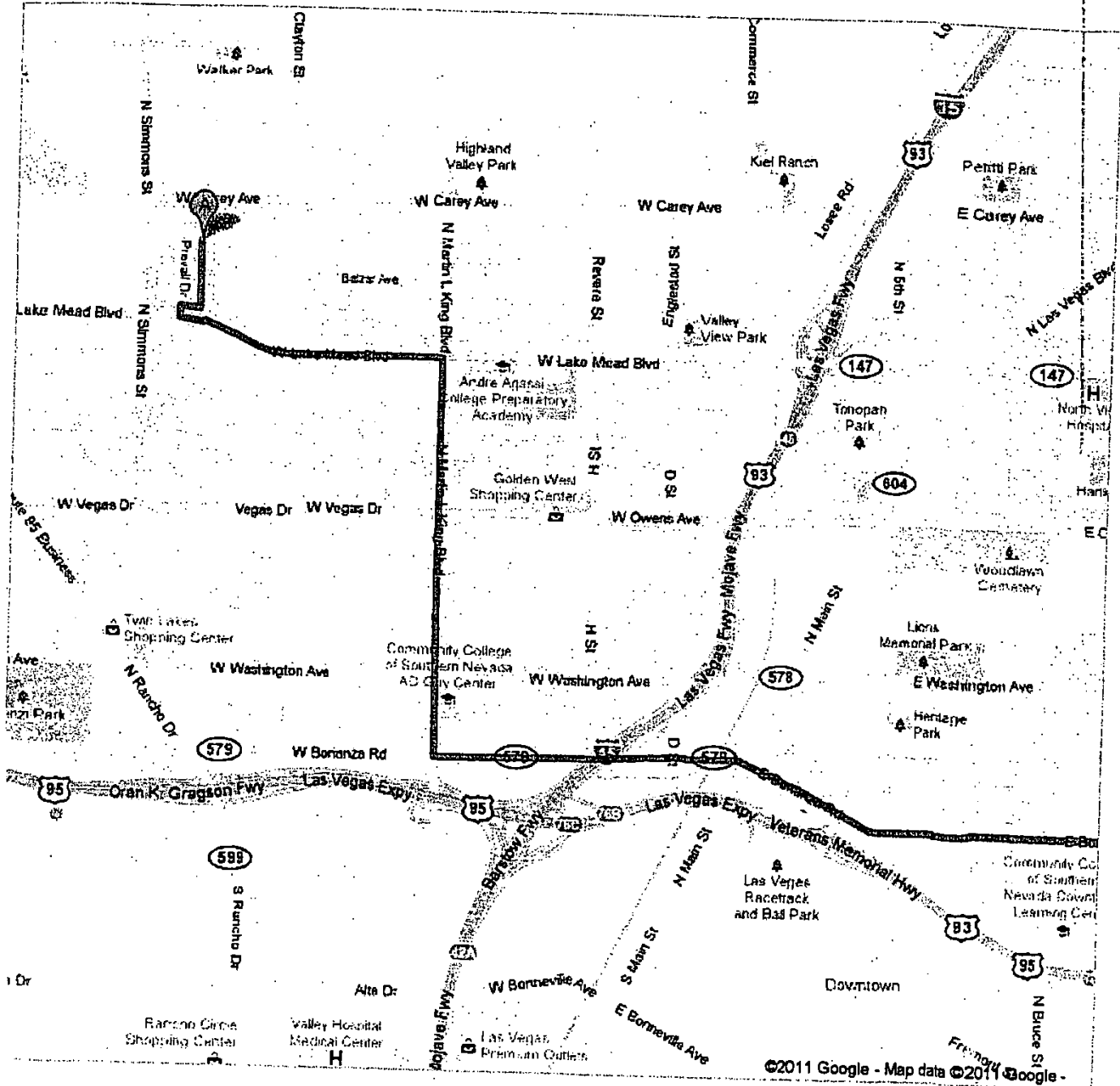
DROVE FROM 2612 GLORY VIEW N.L.V.
TO THE INTERSECTION OF NELLIS / BONANZA
TOTAL TIME 22 MINUTES. 8.3 MILES APPROX.

VARIED SPEED LIMITS.

29

Google maps

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

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Exhibit I

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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 them 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.
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66 Exhibit J 59

1
2 AFFIDAVIT OF TIFFANY HOLLY ("JOHNSON"), ESO.

3 STATE OF NEVADA)

4) ss.

5 COUNTY OF CLARK)

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

- 8 1. That on June 26, 2004, I was employed at Eldorado Cleaners located at Bonanza
9 and Nellis.
10 2. That on June 26, 2004, my shift on that day ended at 7:00 p.m.
11 3. That on June 26, 2004, Rickie Slaughter picked me up sometime between 7:00 –
12 7:15 p.m., but prior to 7:30 p.m. I know this to be true because Rickie Slaughter
13 had never previously picked me up so late, and if he had picked me up as late as
14 7:30 p.m., I would have remembered because it would have been so unusual.
15 4. That on or around June 28-29, of 2004, after a raid and search warrant execution
16 on my residence, I was taken from the shower naked and left outside with just a
17 blanket to cover up with. I was not permitted to put on clothes until just prior to
18 being taken to the North Las Vegas Police Station. I was then handcuffed and
19 taken to the North Las Vegas Police Station to be questioned by Detective Prieto.
20 5. During this June 28-29, 2004, interrogation, I repeatedly told Detective Prieto
21 that I did not have any knowledge of the crime he was investigating and that to
22 the best of my knowledge Rickie Slaughter picked me up at the normal time after
23 I get out of work around 7:00 p.m. to 7:15 p.m.
24 6. During the June 28-29, 2004, interview I felt that Detective Prieto pressured me
25 and became abusive and angry when I told him that to the best of recollection,
26 Rickie Slaughter picked me up after work at the normal time between 7:00 p.m.
27 and 7:15 p.m., he [Detective Prieto] repeatedly asserted that I was lying and said
28 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

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

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

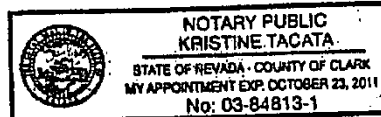
9
10 EXECUTED this: 24, day of FEBRUARY, 2011.

11
12
13
14 TIFFANY R. HOLLY ("JOHNSON")

15 *Tiffany R. Holly-Johnson*
16

17
18 SUBSCRIBED and SWORN to before me
19 this 24 day of FEBRUARY, 2011.

20 *[Signature]*
21 NOTARY PUBLIC





robbery See, RTT,

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Exhibit K

99

04-15160

Las Vegas Metropolitan Police Department Forensic Laboratory Report of Examination Biology/DNA Detail		Distribution Date: OCT 13 2009	
Subject(s):	Slaughter, Rickie (suspect) Dennis, Jennifer (victim)	Case:	04-15160
		Agency:	NLVPD
		Incident:	Attempted Murder
		Requester:	J. Prieto

The Biology/DNA Detail of the Las Vegas Metropolitan Police Department Forensic Laboratory examined evidence in this case and reports the following results:

Pkg #	Item #	Lab #	Description	Results
1618-6	6	KG1A	Black glove with hairs	
		KG1A1	• Possible hair root	• Inconclusive
		KG1A2	• Possible hair root	• Limited partial profile
		KG1A3	• Possible hair root	• No DNA profile obtained
		KG1A4	• Swabbing interior of glove	• Mixture profile
674-1	1	KG2	Reference buccal swabs – Jennifer Dennis	• Full female profile

CONCLUSIONS

Items KG1A1, KG1A2, KG1A3, KG1A4 and KG2 were subjected to PCR amplification at the following STR genetic loci: D8S1179, D21S11, D7S820, CSF1PO, D3S1358, TH01, D13S317, D16S539, D2S1338, D19S433, vWA, TPOX, D18S51, D5S818, and FGA. The sex-determining Amelogenin locus was also examined.

Conclusions with regard to the possible hair root (KG1A1) cannot be reached because data was not obtained above the reporting threshold.

The limited partial DNA profile obtained from the possible hair root (KG1A2) is not suitable for comparison.

The DNA profile obtained from the swabbing from the interior of the glove (KG1A4) is consistent with a mixture of at least two individuals. The major contributor is consistent with an unknown male. Jennifer Dennis (KG2) is excluded as a possible contributor to this mixture.

I returned the evidence to the vault.

I declare under penalty of perjury that the foregoing is true and correct.

Kellie M. Gauthier

Kellie Gauthier, P#8691
Forensic Scientist II

10-02-09

Jennifer Dennis
Reviewer

04-15160

MF 89534

Las Vegas Metropolitan Police Department Forensic Laboratory Report of Examination Biology/DNA Detail		Distribution Date: DEC 08 2009	
Subject(s):	Slaughter, Rickie (suspect) Young, Ivan (victim) Dennis, Jennifer (victim)	Case:	SUPPLEMENTAL 04-15160
		Agency:	NLVPD
		Incident:	Attempted Murder
		Requester:	J. Prieto

The Biology/DNA Detail of the Las Vegas Metropolitan Police Department Forensic Laboratory examined evidence in this case and reports the following results:

Pkg. #	Item #	Lab #	Description	Results
1647-1	1	KG3	White Reebok sneakers, size 10.5	• Negative presumptive tests for blood
674 (10.23.09)		KG4	Buccal swabs - Ivan Young	• Full male profile
1227-1	1	KG5	Buccal swabs - Rickie Slaughter	• Full male profile

* - Please refer to original report dated 10-02-09

CONCLUSIONS

Items KG4 and KG5 were subjected to PCR amplification at the following STR genetic loci: D8S1179, D21S11, D7S820, CSF1PO, D3S1358, TH01, D13S317, D16S539, D2S1338, D19S433, vWA, TPOX, D18S51, D5S818, and FGA. The sex-determining Amelogenin locus was also examined.

The DNA profile obtained from the swabbing from the interior of the glove (KG1A4*) is consistent with a mixture of at least two individuals. The major contributor is consistent with Rickie Slaughter (KG5). Jennifer Dennis (KG2*) and Ivan Young (KG4) are excluded as contributors to this mixture.

I returned the evidence to the vault.

I declare under penalty of perjury that the foregoing is true and correct.

Kellie W. Gauthier

Kellie Gauthier, P#8691
Forensic Scientist II

11-30-09

Reviewer

[Signature] H10072

9/27/04

04-15160 NLVPD SUPP.
Page 1 of 1

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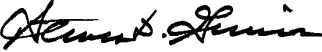
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CLERK OF THE COURT

1 NEO

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

4 RICKIE SLAUGHTER,

5
6 Petitioner,

Case No: 04C204957

Dept No: III

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

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

11 **PLEASE TAKE NOTICE** that on June 10, 2016, the court entered a decision or order in this matter, a
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
mailed to you. This notice was mailed on June 13, 2016.

15 STEVEN D. GRIERSON, CLERK OF THE COURT
16 /s/ Chaunte Pleasant

17 Chaunte Pleasant, Deputy Clerk

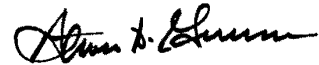
18
19 CERTIFICATE OF MAILING

20 I hereby certify that on this 13 day of June 2016, I placed a copy of this Notice of Entry in:

- 21 ☒ The bin(s) located in the Regional Justice Center of:
22 Clark County District Attorney's Office
Attorney General's Office – Appellate Division-
- 23 ☒ The United States mail addressed as follows:
24 Rickie Slaughter # 85902
25 P.O. Box 1989
Ely, NV 89301

26 /s/ Chaunte Pleasant

27 Chaunte Pleasant, Deputy Clerk



CLERK OF THE COURT

1 FCL
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 OFELIA MONJE
6 Deputy District Attorney
7 Nevada Bar #011663
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-

CASE NO: 04C204957

12 RICKIE SLAUGHTER,
13 aka Rickie L. Slaughter, #1896569

DEPT NO: III

14 Defendant.

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

15 DATE OF HEARING: APRIL 28, 2016
16 TIME OF HEARING: 9:00 AM
17

18 THIS CAUSE having come on for hearing before the Honorable DOUGLAS W.
19 HERNDON, District Judge, on the 28th day of April, 2016, the Petitioner not being present,
20 PROCEEDING IN FORMA PAUPERIS, the Respondent being represented by STEVEN B.
21 WOLFSON, Clark County District Attorney, by and through TALEEN PANDUKHT, Chief
22 Deputy District Attorney, and the Court having considered the matter, including briefs,
23 transcripts, and documents on file herein, now therefore, the Court makes the following
24 findings of fact and conclusions of law:

25 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

26 On September 28, 2004, the State filed an Information charging RICKIE
27 SLAUGHTER, aka Rickie L. Slaughter (hereinafter "Defendant") with: COUNT 1 -
28 Conspiracy to Commit Kidnapping (Felony - NRS 199.480, 200.320); COUNT 2 -

1 Conspiracy to Commit Robbery (Felony – NRS 199.480); COUNT 3 – Conspiracy to Commit
2 Murder (Felony – NRS 199.480); COUNTS 4 & 5 – Attempt Murder with Use of a Deadly
3 Weapon (Felony – NRS 200.010, 200.030, 193.330, 193.165); COUNT 6 – Battery With Use
4 of a Deadly Weapon (Felony – NRS 200.481); COUNT 7 – Attempt Robbery with Use of a
5 Deadly Weapon (Felony – NRS 200.380, 193.330, 193.165); COUNT 8 – Robbery With Use
6 of a Deadly Weapon (Felony – NRS 200.380, 193.165); COUNT 9 – Burglary While in
7 Possession of a Firearm (Felony – NRS 205.060); COUNT 10 – Burglary (Felony – NRS
8 205.060); COUNTS 11, 12, 13, 14, 15 & 16 – First Degree Kidnapping With Use of a Deadly
9 Weapon (Felony – NRS 200.310, 200.320, 193.165); and COUNT 17 – Mayhem (Felony –
10 NRS 200.280).

11 On April 4, 2005, Defendant entered into a Guilty Plea Agreement, wherein he agreed
12 to plead guilty to: COUNT 1 – Attempt Murder With Use of a Deadly Weapon (Felony –
13 NRS 200.010, 200.030, 193.330, 193.165); COUNT 2 – Robbery With Use of a Deadly
14 Weapon (Felony – NRS 200.380, 193.165); COUNT 3 – First Degree Kidnapping (Felony –
15 NRS 200.310, 200.320), and COUNT 4 – First Degree Kidnapping With Use of a Deadly
16 Weapon (Felony – NRS 200.310, 200.320, 193.165).

17 On August 8, 2005, Defendant was adjudicated guilty and sentenced to Nevada
18 Department of Corrections (NDC) as follows: as to COUNT 1 – a minimum of 90 months
19 and maximum of 240 months, plus an equal consecutive minimum of 90 months and maximum
20 of 240 months for use of a deadly weapon; as to COUNT 2 – a minimum of 72 months a
21 maximum of 180 months, plus an equal and consecutive minimum of 72 months a maximum
22 of 180 months for the use of a deadly weapon; concurrent to COUNT 1; as to COUNT 3 –
23 Life with the Possibility of Parole after a minimum of 15 years; concurrent to COUNTS 1 &
24 2; as to COUNT 4 – Life with a the Possibility of Parole after a minimum of 5 years, plus an
25 equal consecutive Life with the Possibility of Parole after a minimum of 5 for the use of a
26 deadly weapon; concurrent to COUNTS 1, 2 & 3. Defendant received no credit for time
27 served. Judgment of Conviction was filed on August 31, 2005. Defendant did not file a direct
28 appeal.

1 On August 7, 2006, Defendant filed a Petition for Writ of Habeas Corpus. Among other
2 things, Defendant claimed that his guilty plea was not voluntarily entered because he was
3 promised and led to believe that he would be eligible for parole after serving a minimum of 15
4 years. The State filed its Opposition on November 17, 2006. The District Court denied
5 Defendant's Petition on December 18, 2006. The Findings of Fact, Conclusions of Law and
6 Order was filed on January 29, 2007. On January 11, 2007, Defendant filed a Notice of
7 Appeal. On July 24, 2007, the Nevada Supreme Court affirmed the denial of several of the
8 claims raised in Defendant's Petition, but reversed the denial of Defendant's claim regarding
9 the voluntariness of his plea and remanded the matter for an evidentiary hearing and directed
10 the Attorney General to file a response to the underlying sentence structure/parole eligibility
11 claim. Slaughter Jr. v. State, Docket No. 48742 (Order Affirming in Part, Vacating in Part and
12 Remanding, July 24, 2007).

13 Upon remand, the District Court appointed post-conviction counsel to assist Defendant,
14 however, Defendant later elected to proceed pro per. On June 19, 2008, an evidentiary hearing
15 was held. After conducting an evidentiary hearing, the District Court denied Defendant's
16 claim that his guilty plea was involuntarily entered, but ordered Department of Corrections to
17 parole appellant from sentences for the deadly weapon enhancements for COUNTS 1, 2 & 4
18 at the same time as the sentences for the primary COUNTS 1, 2 & 5. Defendant filed a Notice
19 of Appeal on September 9, 2008. On March 27, 2009, the Nevada Supreme Court reversed
20 the judgment of the District Court, and ordered Defendant to be permitted an opportunity to
21 withdraw his guilty plea. Slaughter Jr. v. State, Docket No. 52385 (Order of Reversal and
22 Remand, March 27, 2009).

23 Defendant's jury trial commenced on May 12, 2011. On May 20, 2011, the jury
24 returned a verdict of guilty on all counts. On November 18, 2011, Defendant filed a Motion
25 for a New Trial. The State filed its Opposition on January 12, 2012. Defendant filed a Reply
26 on March 15, 2012. On May 17, 2012, the District Court denied Defendant's Motion.

27 On October 16, 2012, Defendant was adjudicated guilty and sentenced to the NDC as
28 follows: as to COUNT 1 – a minimum of 24 months and maximum of 60 months; as to

1 COUNT 2 – a minimum of 24 months and maximum of 60 months, consecutive to COUNT
2 1; as to COUNT 3 – a minimum of 60 months and maximum of 180, plus a consecutive
3 minimum of 60 months and maximum of 180 months for the deadly weapons enhancement,
4 consecutive to COUNT 2; as to COUNT 5 – a minimum of 48 months and maximum of 120
5 months, plus a consecutive minimum of 48 months and maximum of 120 months for the deadly
6 weapon enhancement, concurrent to COUNT 3; as to COUNT 6 – a minimum of 48 months
7 and maximum of 120 months, plus a consecutive minimum of 48 months and maximum of
8 120 months for the deadly weapon enhancement, consecutive to COUNT 3; as to COUNT 7
9 – a minimum of 48 months and maximum of 120 months, concurrent to COUNT 6; as to
10 COUNT 8 – a minimum of 24 months and a maximum of 60 months, concurrent to COUNT
11 7; as to COUNT 9 – Life with the Possibility of Parole after a minimum of 15 years, plus a
12 consecutive Life with the Possibility of Parole after a minimum of 15 years for the deadly
13 weapon enhancement; as to COUNTS 10-14 – Life with the Possibility of Parole after 5 years,
14 plus a consecutive Life with the Possibility of Parole after 5 years, all concurrent to COUNT
15 9. Defendant received 2,626 days for credit time served. Defendant was not adjudicated on
16 COUNT 4.

17 Judgment of Conviction was filed on October 22, 2012. Defendant filed a Notice of
18 Appeal on October 24, 2012. The Nevada Supreme Court affirmed the Judgment of
19 Conviction on March 12, 2014. Remittitur issued on April 30, 2014.

20 On March 25, 2015, Defendant filed a post-conviction Petition for Writ of Habeas
21 Corpus. The State filed its Response on June 2, 2015. The Court denied Defendant's Petition
22 on June 18, 2015. Findings of Fact, Conclusions of Law and Order was filed on July 15, 2015.
23 On July 30, 2015, Defendant filed a Notice of Appeal. Defendant's appeal is currently pending
24 under Docket No. 68532.

25 On February 12, 2016, Defendant filed a post-conviction Petition for Writ of Habeas
26 Corpus and Motion to Appoint Counsel. The State filed its Response on April 6, 2016. A
27 hearing was held on April 28, 2016.

28 //

1 This Court finds that Defendant's Petition is time-barred with no good cause shown for
2 delay. The mandatory provision of NRS 34.726(1) states:

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

- 9 (a) That the delay is not the fault of the petitioner; and
10 (b) That dismissal of the petition as untimely will unduly
11 prejudice the petitioner.

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

17 The one-year time limit for preparing petitions for post-conviction relief under NRS
18 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
19 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
20 evidence presented by the defendant that he purchased postage through the prison and mailed
21 the petition within the one-year time limit.

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

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

Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district court]
when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court

1 has granted no discretion to the district courts regarding whether to apply the statutory
2 procedural bars; the rules *must* be applied. Id.

3 Defendant's Remittitur was issued on April 30, 2014. Therefore, Defendant had until
4 April 30, 2015, to file a timely Petition. However, Defendant's instant Petition was not filed
5 until February 12, 2016, almost a year after the one-year time frame expired. Therefore, this
6 Court finds that Defendant's Petition is untimely.

7 Additionally, this Court finds that Defendant's Petition is successive and an abuse of
8 the writ. NRS 34.810(2) provides that:

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

13 Moreover, "[a] court must dismiss a habeas petition if it presents claims that either were or
14 could have been presented in an earlier proceeding, unless the court finds both cause for failing
15 to present the claims earlier or for raising them again and actual prejudice to the petitioner."
16 Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001).

17 In ground three, Defendant claims that counsel was ineffective for failing to develop
18 testimony and evidence regarding the perpetrators departure from the crime scene and the time
19 911 was called. Petition at p. 20-21. Generally, once a defendant files a notice of appeal with
20 the Nevada Supreme Court, that divests the district court of jurisdiction to hear the matter until
21 remittitur issues. See Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994).
22 However, "despite [the Court's] general rule that the perfection of an appeal divests the district
23 court of jurisdiction to act except with regard to matters collateral to or independent from the
24 appealed order, the district court nevertheless retains a limited jurisdiction to review
25 motions...." Foster v. Dingwall, 126 Nev. ___, 228 P.3d 453, 455 (2010). Accordingly, where
26 a defendant seeks "to alter, vacate, or otherwise change or modify an order or judgment
27 challenged on appeal [he] should file a motion for relief from the order or judgment in the
28 district court." Id. If a defendant files such a motion, the "district court has jurisdiction to

1 direct briefing on the motion, hold a hearing regarding the motion, and enter an order denying
2 the motion, but lacks jurisdiction to enter an order granting such a motion.” Id.

3 Here, in Defendant’s previous petition, filed March 25, 2015, he had already presented
4 the claim that trial counsel was ineffective for not developing testimony regarding the time the
5 911 phone call was made and how long it would take to drive from the crime scene to Tiffany
6 Johnson’s (“Johnson”) work. The District Court denied the petition on the merits. Defendant
7 filed a Notice of Appeal from his order denying his Petition for Writ of Habeas Corpus, which
8 is still pending before the Nevada Supreme Court. Because Defendant is raising the same
9 claim in the instant petition, this is not a collateral matter independent from the appealed order.
10 Therefore, this Court finds that it does not have jurisdiction over this claim. Furthermore,
11 this Court finds that this claim is successive, as it has been previously raised in Defendant’s
12 first timely Petition. NRS 34.810(2).

13 Additionally, this Court finds that Defendant’s claims in ground one, two, four, and five
14 are an abuse of the writ because Defendant could have raised these claims in his first timely
15 petition. NRS 34.810(2). In ground one, Defendant claims that counsel was ineffective for
16 failing to adequately investigate information regarding the type of bullet the victim was shot
17 with and failing to adequately cross-examine the State’s firearm expert. Petition at p. 9- 14.
18 In ground two, Defendant claims that trial and appellate counsel were ineffective for failing to
19 challenge numerous instances of prosecutorial misconduct. Petition at p. 14-19. Specifically,
20 Defendant claims that the State committed prosecutorial misconduct when it: 1) questioned
21 Professor Geoffrey Loftus in a way to insinuate facts outside the record; 2) suggested the jury
22 was aligned with the prosecution; 3) intentionally distorted exculpatory testimony; 4) implied
23 incriminating evidence not admitted at trial; 5) improperly asserted personal opinion and
24 invoked the authority of the State; 6) vouched for a State witness; 7) misrepresented evidence.
25 Id. Additionally, Defendant claims that trial and appellate counsel were ineffective for failing
26 to challenge false testimony. Petition at p. 19. In ground four, Defendant claims that counsel
27 was ineffective for promising the jury favorable testimony in his opening statement that he did
28 not produce. Petition at p. 22-23. In ground five, Defendant claims that counsel was

1 ineffective for failing to adequately investigate the second set of photo lineups. Petition at p.
2 24. Specifically, for failing to obtain the original copy of the second set of photo lineups. In
3 ground six, Defendant claims appellate counsel was ineffective for failing to raise a cruel and
4 unusual punishment claim on appeal. Petition at 25.

5 Defendant raises all these claims for the first time in the instant Petition. Accordingly,
6 this Court finds that these claims are an abuse of the writ because they could have been raised
7 in Defendant's first petition. Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059
8 (1994); NRS 34.810(1).

9 This Court finds that Defendant fails to show good cause to overcome the procedural
10 bars. To avoid procedural default under NRS 34.726 and NRS 34.810, a defendant has the
11 burden of pleading and proving specific facts that demonstrate good cause for his failure to
12 present his claim in earlier proceedings or comply with the statutory requirements. See Hogan
13 v. Warden, 109 Nev. 952, 959-60, 860 P.2d 710, 715-16 (1993); Phelps v. Nevada Dep't of
14 Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988).

15 To excuse a procedural default a defendant must demonstrate the following: 1) "[t]hat
16 the delay is not the fault of the petitioner" and 2) that the petitioner will be "unduly
17 prejudice[d]" if the petition is dismissed as untimely. Accord. NRS 34.810(3). Under the
18 first requirement, "a petitioner must show that an impediment external to the defense prevented
19 him or her from complying with the state procedural default rules." Hathaway v. State, 119
20 Nev. 248, 252, 71 P.3d 503, 506 (2003) (citing Pellegrini v. State, 117 Nev. 860, 886-87, 34
21 P.3d 519, 537 (2001); Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994); Passanisi
22 v. Director, Dep't Prisons, 105 Nev. 63, 66, 769 P.2d 72, 74 (1989). Once a petitioner has
23 established cause, he must show actual prejudice resulting from the errors of which he
24 complains, i.e., "a petitioner must show that errors in the proceedings underlying the judgment
25 worked to the petitioner's actual and substantial disadvantage." State v. Huebler, 128 Nev.
26 Adv. Rep. 19, ___, 275 P.3d 91, 94-95 (Nev. 2012) (citing Hogan v. Warden, 109 Nev. 952,
27 959-60, 860 P.2d 710, 716 (1993)).

28 //

1 As grounds for good cause, Defendant asserts his limited education and lack of legal
2 knowledge. Petition at p. 5-8. However, this Court finds that these claims are not recognized
3 as an impediment external to the defense constituting good cause to overcome procedural bars.
4 Indigent status, lack of assistance, and lack of knowledge of the law and legal procedures do
5 not constitute good cause to excuse the delay. See Phelps, 104 Nev. at 660, 764 P.2d at 1306,
6 superseded by statute on other grounds as stated in State v. Haberstroh, 119 Nev. 173, 69 P.3d
7 676 (2003).

8 Similarly, this Court finds that Defendant's claim that lack of legal assistance should
9 constitute good cause because Nevada's habeas procedure for post-conviction petitions "runs
10 afoul of Constitutional safeguards" is without merit. The United States Supreme Court has
11 ruled that defendants have no constitutional right to counsel in post-conviction proceedings.
12 Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546 (1991). Similarly, the Nevada Supreme
13 Court ruled that the Nevada Constitution does not provide the right to counsel in post-
14 conviction proceedings. McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996).
15 Accordingly, Nevada's habeas procedure for post-conviction does not violate any
16 constitutional rights.

17 This Court finds that Defendant has failed to make an adequate showing of actual
18 innocence. The United States Supreme Court has held that in order for a defendant to succeed
19 based on a claim of actual innocence, he must prove that "'it is more likely than not that no
20 reasonable juror would have convicted him in light of the new evidence' presented in habeas
21 proceedings." Calderon v. Thompson, 523 U.S. 538, 560, 118 S. Ct. 1489, 1503 (1998)
22 (quoting Schlup v. Delo, 513 U.S. 298, 327, 115 S. Ct. 851, 867 (1995)). Procedurally barred
23 claims may be considered on the merits, only if the claim of actual innocence is sufficient to
24 bring the petitioner within the narrow class of cases implicating a fundamental miscarriage of
25 justice. Schlup, 513 U.S. at 314 115 S. Ct. at 861).

26 First, Defendant has not presented any new evidence – let alone any new evidence
27 making it more likely than not that no juror would convict him in light of that new evidence.
28 As new evidence, Defendant presents an email from a firearm expert, Lance Martini.

1 However, Defendant concedes that counsel had this email and decided not to use it at trial.
2 Therefore, this Court finds that Defendant's claim that the email is new evidence is without
3 merit. Additionally, this Court finds that Defendant fails to demonstrate that a reasonable juror
4 *more likely than not* would not have convicted him in light of this email. (Emphasis added).

5 Furthermore, this Court finds that Defendant has failed to demonstrate prejudice. NRS
6 34.726(1)(b); see Pellegrini, 117 Nev. at 887, 34 P.3d at 537 (noting that defendant failed to
7 demonstrate "good cause and actual prejudice to overcome the [mandatory] statutory
8 procedural bars."). To establish prejudice, a petitioner must show error that worked to his
9 actual and substantial disadvantage and infected the entire proceedings with error of
10 constitutional dimensions. United States v. Frady, 456 U.S. 152, 170 (1982); see also Hogan
11 v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993).

12 As part of his actual innocence claim, Defendant requests touch DNA testing to be
13 performed on exterior surface of the gloves, gun, and shoes collected as evidence by police.
14 Petition at p. 27-29. This Court finds that Defendant fails to demonstrate that he has met the
15 requirement to obtain genetic marker testing. Defendant's Petition fails to comply with NRS
16 176.0918, which sets forth the requirements that a petition requesting a genetic marker analysis
17 of evidence must follow. Defendant fails to use the appropriate form as mandated by the
18 requirements and the record does not reflect that Defendant has served the Attorney General.
19 Therefore, Defendant's request is denied.

20 Additionally, this Court finds that Defendant fails to demonstrate a reasonable
21 possibility that he would not have been prosecuted or convicted if exculpatory results had been
22 obtained through a genetic marker analysis of the evidence. NRS 176.0918(3)(b). In this case,
23 the evidence against Defendant was overwhelming. Defendant was in possession of a green
24 Ford Taurus, which matched the description of the vehicle used by the perpetrators. Officers
25 searched Defendant's 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 as the weapon used to shoot
27 the victim. Additionally, Defendant was recorded asking his girlfriend to change her testimony
28 and inform officers that Defendant picked her up at 7:00 p.m. Defendant was also recorded

1 talking to another man about fabricating an alibi and asking about the guns that were found in
2 his car. Finally, Defendant was videotaped at a 7-eleven convenience store using an ATM
3 card stolen during the crime. In light of all the evidence against Defendant, he fails to
4 demonstrate that he would not have been prosecuted or convicted if exculpatory results have
5 been obtained from touch DNA analysis. Therefore, Defendant's request is denied.

6 Pursuant to NRS 176.0918 (4)(a), this Court may enter an order dismissing a petition
7 for genetic marker analysis without a hearing if this Court determines based on the information
8 contained in the petition, that the defendant does not meet the requirements set forth in NRS
9 176.0918. Defendant fails to demonstrate that he meets the requirements set forth in NRS
10 176.0918. Therefore, Defendant's request is denied without a hearing.

11 As part of his actual innocence claim, Defendant raises issues with the sufficiency of
12 the evidence presented against him at trial. Petition at p. 30-36. However, this Court finds
13 that the sufficiency of the evidence claim is not properly raised in a post-conviction petition
14 and is waived. This claim should have been raised, if at all, on direct appeal. The failure to
15 do so now precludes review because the claim is considered waived. NRS 34.810(1)(b)(2);
16 see also Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (overruled on other
17 grounds by Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223-24 (1999) (holding that
18 "claims of ineffective assistance of trial and appellate counsel must first be pursued in post-
19 conviction proceedings.... [A]ll other claims that are appropriate for a direct appeal must be
20 pursued on direct appeal, or they will be *considered waived in subsequent*
21 *proceedings.*")(emphasis added). NRS 34.724(2) (stating that a post-conviction petition is not
22 a substitute for the remedy of a direct review).

23 Moreover, this Court finds that Defendant attempts to reargue claims that were
24 explicitly rejected by the Nevada Supreme Court on direct appeal. Where an issue has already
25 been decided on the merits by the Nevada Supreme Court, the Court's ruling is law of the case,
26 and the issue will not be revisited. Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001); see
27 also McNelton v. State, 115 Nev. 396, 990 P.2d 1263, 1276 (1999); Hall v. State, 91 Nev. 314,
28 315-16, 535 P.2d 797, 798-99 (1975); Valerio v. State, 112 Nev. 383, 386, 915 P.2d 874, 876

1 (1996); Hogan v. Warden, 109 Nev. 952, 860 P.2d 710 (1993). "The doctrine of the law of
2 the case cannot be avoided by a more detailed and precisely focused argument subsequently
3 made after reflection upon the previous proceedings." Hall, 91 Nev. at 316, 535 P.2d at 799.
4 Accordingly, issues previously decided on direct appeal may not be reargued in a habeas
5 petition. Pellegrini, 117 Nev. at 888, 34 P.3d at 538. Furthermore, the district court cannot
6 overrule the Nevada Supreme Court. Nev. Const. Art. VI § 6.

7 Defendant has already argued on direct appeal that a suggestive pretrial photo lineup
8 impermissible tainted the in-court identification and that the 7-eleven surveillance video was
9 improperly admitted. Slaughter Jr. v. State, Docket No. 61991 (Order of Affirmance, March
10 12, 2014). The Nevada Supreme Court determined that the District Court did not err in finding
11 that the pretrial photo lineup was not suggestive and did not abuse its discretion admitting the
12 7-eleven surveillance video. Id. Accordingly, as Defendant raises identical claims in the
13 instant Petition, this Court finds that such claims are barred by the doctrine of law of the case.

14 Finally, as part of his actual innocence claim, Defendant claims counsel failed to present
15 exculpatory evidence during trial. Petition at p.31-33. However this Court finds that
16 Defendant's claim is successive and an abuse of the writ. NRS 34.810(2).

17 This Court finds that Defendant is not entitled to appointment of counsel. The United
18 States Supreme Court ruled in Coleman, 501 U.S. at 726, 111 S. Ct. at 2552, that the Sixth
19 Amendment provides no right to counsel in post-conviction proceedings. Similarly, the
20 Nevada Supreme Court observed that "[t]he Nevada Constitution...does not guarantee a right
21 to counsel in post-conviction proceedings, as we interpret the Nevada Constitution's right to
22 counsel provision as being coextensive with the Sixth Amendment to the United States
23 Constitution." McKague, 112 Nev. at 163, 912 P.2d at 258.

24 NRS 34.750 provides, in pertinent part:

25 [a] petition may allege that the Defendant is unable to pay the costs
26 of the proceedings or employ counsel. If the court is satisfied that
27 the allegation of indigency is true and the petition is not dismissed
28 summarily, the court may appoint counsel at the time the court
orders the filing of an answer and a return. In making its
determination, the court may consider whether:

//

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

4 Under NRS 34.750, it is clear that the court has discretion in determining whether to
5 appoint counsel. McKague specifically held that with the exception of NRS 34.820(1)(a)
6 which requires appointed counsel when the petitioner is under a sentence of death, one does
7 not have “[a]ny constitutional or statutory right to counsel at all” in post-conviction
8 proceedings. 112 Nev. at 164, 912 P.2d at 258. Further, the Nevada Supreme Court has
9 observed that a petitioner “must show that the requested review is not frivolous before he may
10 have an attorney appointed.” Peterson v. Warden, Nev. State Prison, 87 Nev. 134, 136, 483
11 P.2d 204, 205 (1971) (citing former statute NRS 177.345(2)). This Court finds that
12 Defendant’s claims are procedurally barred and without merit. Thus, Defendant fails to show
13 that the requested review is not frivolous. Peterson, 87 Nev. at 136, 483 P.2d at 205.
14 Accordingly, Defendant’s request for appointment of counsel is denied.

15 Finally, this Court finds that Defendant is not entitled to an evidentiary hearing. NRS
16 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

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


26 The Nevada Supreme Court has held that if a petition can be resolved without
27 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
28 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002).
However, a defendant is entitled to an evidentiary hearing if his petition is supported by
specific factual allegations, which, if true, would entitle him to relief unless the factual
allegations are repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605.

1 Here, an evidentiary hearing is unwarranted because the petition may be resolved
2 without expanding the record. Mann, 118 Nev. at 356, 46 P.3d at 1231; Marshall, 110 Nev. at
3 1331, 885 P.2d at 605. Defendant's claims are procedurally barred with no good cause to
4 overcome the procedural bars. No evidentiary hearing is warranted in order to deny such
5 claims. Accordingly, Defendant's request for an evidentiary is denied.

6 **ORDER**

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

9 DATED this 25 day of May, 2016.

10
11 
DISTRICT JUDGE

12 STEVEN B. WOLFSON
13 Clark County District Attorney
Nevada Bar #001563

14 BY 

15 OFELIA MONJE
16 Deputy District Attorney
Nevada Bar #011663

17
18
19 **CERTIFICATE OF SERVICE**

20 I certify that on the 23rd day of May, 2016, I mailed a copy of the foregoing proposed
21 Findings of Fact, Conclusions of Law, and Order to:

22 RICKIE SLAUGHTER,
23 aka Rickie L. Slaughter #85902
24 ELY STATE PRISON
4569 NORTH STATE ROUTE 490
25 P.O. BOX 1989
ELY, NV 89301

26 BY 

27 R. JOHNSON
28 Secretary for the District Attorney's Office

ED/OM/rj/M-1

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKIE LAMONT SLAUGHTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68532

FILED

JUL 13 2016

ORDER OF AFFIRMANCE

TRACIE N. WINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

This is a pro se appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Appellant Rickie Lamont Slaughter contends that the district court erred by denying his petition, which included claims of ineffective assistance of counsel. To prove ineffective assistance of counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 697. We give deference to the court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

In his petition, Slaughter contended that trial counsel was ineffective for failing to (1) elicit testimony from Detective Jesus Prieto,

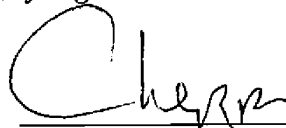
16-21874

Officer Anthony Bailey, Officer Mark Hoyt, Craig Retke, and Destiny Waddy, (2) adequately cross-examine the State's witnesses, (3) present evidence regarding the timing of a 911 call, (4) discover impeachment evidence regarding Jeff Arbuckle, (5) discover evidence that the State provided witnesses with monetary compensation, and (6) suppress evidence, and for eliciting testimony from Noyan Westbrook.¹ The district court denied these claims without conducting an evidentiary hearing. We conclude that the district court did not err. Although the district court's reasoning regarding the deficiency component of some of Slaughter's claims erroneously assumed disputed facts to be true, we agree with the district court that an evidentiary hearing was not required under the circumstances, see *Hathaway v. State*, 119 Nev. 248, 255, 71 P.3d 503, 508 (2003) (recognizing that an evidentiary hearing is warranted where a petitioner's claim is "supported by specific facts not belied by the record, which if true, would entitle him to relief"), and that Slaughter failed to demonstrate prejudice because the evidence against him was overwhelming. Multiple eyewitnesses identified Slaughter at trial and in a photographic lineup as one of the suspects and several identified him as the shooter. Slaughter's girlfriend owned a vehicle which resembled that described by the witnesses, and in it, law enforcement found two firearms

¹Slaughter claimed that appellate counsel was ineffective for (1) failing to raise a *Batson* claim and (2) challenge the State's failure to preserve evidence. We conclude that the district court did not err by denying these claims because Slaughter failed to demonstrate that they had a reasonable probability of success on appeal. See *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996) (applying *Strickland* to appellate counsel).

consistent with those used in the crimes and ammunition consistent with ballistic evidence recovered from the scene. In addition, the district court found that Slaughter was depicted in surveillance footage using a victim's stolen ATM card and that he made statements which indicated that he was attempting to fabricate an alibi. We give deference to these findings. *See Lader*, 121 Nev. at 686, 120 P.3d at 1166. Thus, even assuming that counsel were deficient, Slaughter failed to demonstrate a reasonable likelihood of a different result.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


Cherry, J.


Douglas, J.


Gibbons, J.

cc: Hon. Douglas W. Herndon, District Judge
Rickie Lamont Slaughter
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²To the extent appellant requested counsel, we conclude that the district court did not abuse its discretion by declining to appoint counsel. *See* NRS 34.750(1).

³We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICKIE LAMONT SLAUGHTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70676

FILED

APR 19 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. YOUNG
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Rickie Slaughter appeals from an order of the district court denying the postconviction petition for a writ of habeas corpus he filed on February 12, 2016.¹ Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Slaughter filed his petition nearly two years after issuance of the remittitur on direct appeal on April 30, 2014. *See Slaughter v. State*, Docket No. 61991 (Order of Affirmance, March 12, 2014). Thus, Slaughter's petition was untimely filed. *See* NRS 34.726(1). Moreover, Slaughter's petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.² *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Slaughter's petition was procedurally barred absent a demonstration of

¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

²*Slaughter v. State*, Docket No. 68532 (Order of Affirmance, July 13, 2016).

good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

First, Slaughter claimed he had good cause to overcome the procedural bars because counsel was not appointed during his previous postconviction proceeding. The appointment of counsel in this matter was not statutorily or constitutionally required. See *Brown v. McDaniel*, 130 Nev. ___, ___, 331 P.3d 867, 870 (2014); *Crump v. Warden*, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997); *McKague v. Warden*, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996); see also NRS 34.750(1). The state postconviction statutes do not permit the failure to appoint counsel for an initial petition in a non-capital case to provide good cause for a later petition. *Brown*, 130 Nev. at ___, 331 P.3d at 873. Thus, the failure to appoint postconviction counsel would not provide good cause for filing a late and successive petition.

Second, Slaughter claimed he had good cause because he is unlearned in the law. Slaughter's lack of legal knowledge did not constitute an impediment external to the defense that prevented him from complying with the procedural time bars. See *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding petitioner's claim of organic brain damage, borderline mental retardation and reliance on assistance of inmate law clerk unschooled in the law did not constitute good cause for the filing of a successive postconviction petition). Therefore, Slaughter's lack of legal knowledge did not provide good cause for filing a late and successive petition.

Third, Slaughter claimed he was actually innocent based on an email counsel received prior to trial from a firearms expert, counsel's failure to present exculpatory evidence known of at the time of trial, and the State's failure to present sufficient evidence Slaughter committed the crimes. Slaughter did not demonstrate actual innocence because he failed


to show that "it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence." *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)); see also *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Therefore, we conclude the district court did not err in denying Slaughter's claim of actual innocence without holding an evidentiary hearing. See *Berry v. State*, 131 Nev. ___, ___, 363 P.3d 1148, 1156 (2015).


Fourth, Slaughter requested genetic marker analysis be done on several pieces of evidence to test for touch DNA. We conclude the district court did not err by denying this request because Slaughter improperly included this claim within his postconviction petition rather than filing a separate petition on a form provided by the Nevada Department of Corrections as required by NRS 176.0918(2).

Having concluded Slaughter was not entitled to relief and, therefore, the district court did not err by denying the petition as procedurally barred, we

ORDER the judgment of the district court AFFIRMED.³


Silver, C.J.


Tao, J.


Gibbons, J.

³We conclude the district court did not abuse its discretion by declining to conduct an evidentiary hearing or appoint postconviction counsel. See NRS 34.750(1); *Rubio v. State*, 124 Nev. 1032, 1046, 194 P.3d 1224, 1233-34 (2008).

cc: Hon. Douglas W. Herndon, District Judge
Rickie Lamont Slaughter
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk



CERTIFIED COPY
This document is a full, true and correct copy of
the original on file and of record in my office.
DATE: 05/17/2017
Supreme Court Clerk, State of Nevada
By Ratna Deputy

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8 Attorneys for Petitioner Rickie Slaughter

9
10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

12 RICKIE SLAUGHTER,

13 Petitioner,

14 v.

15 RENEE BAKER, et al.,

16 Respondents.

Case No. 3:16-cv-00721-RCJ-WGC

**MOTION FOR LEAVE TO CONDUCT
DISCOVERY AND FOR COURT
ORDER TO OBTAIN DOCUMENTS
AND DEPOSITIONS**

17
18 Petitioner Rickie Slaughter, by and through his attorney of record, Assistant
19 Federal Public Defender Jeremy C. Baron, respectfully requests that this Court grant
20 him leave to conduct discovery under Rule 6 of the Rules Governing Section 2255
21 Cases and Federal Rule of Civil Procedure 26, *et seq.* This motion is based on the
22 attached points and authorities and all papers and pleadings on file herein.
23
24
25
26
27

INTRODUCTION

Rickie Slaughter mailed a proper person petition for a writ of habeas corpus by a person in state custody pursuant to 28 U.S.C. § 2254 on August 16, 2016. ECF No. 1-1. The Court granted Mr. Slaughter's motion for counsel and appointed the Office of the Federal Public Defender on December 20, 2016. ECF No. 5. Contemporaneously with the filing of this motion, Mr. Slaughter is filing an amended petition for a writ of habeas corpus. The amended petition includes eleven grounds for relief. Certain of those grounds would benefit from additional factual development, so Mr. Slaughter is requesting leave to conduct discovery in order to obtain certain documents and evidence, including:

- Records relating to any photographic lineups created by the police in connection with their investigation of the underlying incident in this case.
- A deposition of Detective Jesus Prieto, the lead detective in Mr. Slaughter's case.
- Records regarding the 911 calls made by the victims in this case.
- Records relating to a traffic stop conducted by the police of Mr. Slaughter in the months leading up to the incident.
- Records relating to a trespassing charge filed against Mr. Slaughter.

As this motion explains, there is good cause to seek discovery of these records, because the requested documents will likely provide material information regarding Mr. Slaughter's claims for relief. As a result, Mr. Slaughter respectfully requests that the Court grant him leave to conduct discovery and issue a corresponding order.

ARGUMENT

Under the federal rules governing habeas cases, courts should allow petitioners to conduct discovery so long as a petitioner can show "good cause." Mr. Slaughter can show good cause as to each of his requests.

A. Federal Law Permits Habeas Petitioners To Pursue Discovery Upon A Showing Of “Good Cause.”

Rule 6(a) of the Rules Governing § 2254 Cases allows a habeas petitioner to conduct discovery if the petitioner shows “good cause” for the discovery:

A party may invoke the processes of discovery available under the Federal Rules of Criminal Procedure or the Federal Rules of Civil Procedure or elsewhere in the usages and principles of law if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise

The decision whether to grant leave is within the discretion of the district court. *See Jones v. Wood*, 114 F.3d 1002, 1009 (9th Cir. 1997). Nonetheless, the “denial of an opportunity for discovery is an abuse of discretion when the discovery is necessary to fully develop the facts of a claim.” *Id.* at 1009 (*quoting Teague v. Scott*, 60 F.3d 1167, 1172 (5th Cir. 1995)); *see also Thomas v. Goldsmith*, 979 F.2d 746, 749-50 (9th Cir. 1992); *Toney v. Gammon*, 79 F.3d 693, 700 (8th Cir. 1996) (quoting Commentary to Rule 6, Rules Governing § 2254 Cases) (“Where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is confined illegally and is therefore entitled to relief, it is the duty of the Court to provide the necessary facilities and procedures for an adequate inquiry.”).

The Supreme Court has confirmed the importance of discovery in federal habeas proceedings. *See Bracy v. Gramley*, 520 U.S. 899 (1997). There, the Court explained that discovery should be allowed so long as a petitioner has alleged a constitutional claim for relief and could articulate a “theory” by which the evidence sought to be obtained could support the claim. *Id.* at 908-09; *see also Jones*, 114 F.3d at 1009 (reversing district court order denying a petition for habeas corpus, noting that although “discovery is available at the discretion of the district judge for good cause shown,” much of the discovery required by the petitioner was essential for him to fully develop his ineffective assistance of counsel claim). Although a petitioner

1 may not be able to prove his claim at a preliminary stage, that does not bar further
2 factual development; so long as the petitioner has a legitimate explanation for why
3 the requested documents are relevant to the claim, courts should permit discovery.

4 **B. Mr. Slaughter Can Establish “Good Cause” For His Requests.**

5 Through this motion, Mr. Slaughter is requesting five categories of discovery,
6 as follows:

- 7 1. From any relevant persons or entities, including but not limited to the
8 North Las Vegas Police Department, the Las Vegas Metropolitan Police
9 Department, the Clark County District Attorney’s Office, and any
10 related entities or departments:

- 11 a. Any and all documents, records, reports, or other materials
12 relating to any photographic lineups created by the police
13 in connection with their investigation of the underlying
14 incident in this case, namely, the alleged home invasion
15 and robbery of various victims at 2612 Glory View Lane in
16 North Las Vegas, Nevada, on June 26, 2004.

- 17 2. A deposition of Detective Jesus Prieto, the lead detective in the
18 investigation regarding the alleged home invasion and robbery at 2612
19 Glory View Lane in North Las Vegas, Nevada, on June 26, 2004, to cover
20 topics relating to the investigation, including but not limited to any
21 photographic lineups used by the police in this case.

- 22 3. From any relevant persons or entities, including but not limited to the
23 North Las Vegas Police Department, the Las Vegas Metropolitan Police
24 Department, Clark County, the City of North Las Vegas, the City of Las
25 Vegas, the Clark County District Attorney’s Office, and any related
26 entities or departments:
27

1 a. Any and all documents, records, reports, or other materials
2 related to 911 calls placed by Jermaun Means, Ryan John,
3 Destiny Waddy, or any other victims of or witnesses to the
4 alleged home invasion and robbery of various victims at
5 2612 Glory View Lane in North Las Vegas, Nevada, on
6 June 26, 2004. This request includes but is not limited to
7 records establishing the times at which the various
8 individuals called 911 in connection with this incident.

9 4. From any relevant persons or entities, including but not limited to the
10 North Las Vegas Police Department, the Las Vegas Metropolitan Police
11 Department, the Clark County District Attorney's Office, and any
12 related entities or departments:

13 a. Any and all documents, records, reports, or other materials
14 involving a complaint or other call made by Jeffrey
15 Arbuckle or any other individual to the police regarding
16 allegations that Mr. Slaughter trespassed on property
17 located at or near 715 N. Nellis Blvd. in North Las Vegas,
18 Nevada, on or about May or June of 2004.

19 5. From any relevant persons or entities, including but not limited to the
20 North Las Vegas Police Department, the Las Vegas Metropolitan Police
21 Department, those departments' Gang Intelligence Units, the Clark
22 County District Attorney's Office, and any related entities or
23 departments:

24 a. Any and all documents, records, reports, or other materials
25 related to any traffic stops conducted by members of the
26 police of vehicles in which the police identified Mr.
27 Slaughter as the driver or a passenger of the vehicle,

1 occurring on or after January 1, 2004, and on or before
2 June 26, 2004.

3 Mr. Slaughter can show good cause for each of these five requests.

4 1. *Photographic Lineups.*

5 Mr. Slaughter's amended petition contains two grounds for relief that involve
6 a second set of photographic lineups generated in this case. In brief, the key evidence
7 against Mr. Slaughter at trial was the fact that three (out of seven) witnesses
8 identified Mr. Slaughter in court as one of the two perpetrators. The only reason
9 those witnesses identified Mr. Slaughter was because the police had shown the
10 witnesses a highly suggestive photographic lineup. In that lineup, Mr. Slaughter's
11 picture stands out from among the other five filler photographs, which suggests in
12 various ways that Mr. Slaughter is the suspect. *See* Amended Petition, Ground One.
13 However, the police showed the witnesses *another* photographic lineup. This second
14 photographic lineup also included a photograph of Mr. Slaughter. But it does not
15 appear that any of the victims identified Mr. Slaughter in that second lineup.
16 Accordingly, Mr. Slaughter's amended petition alleges that his constitutional rights
17 were violated because his trial attorneys failed to introduce evidence at trial related
18 to this second photographic lineup. *See* Amended Petition, Grounds Three, Section
19 A, and Four, Section A.

20 On information and belief, none of Mr. Slaughter's lawyers ever received a
21 color copy of this second photographic lineup (unlike the first photographic lineup, for
22 which color copies are available). Instead, Mr. Slaughter's lawyers received black
23 and white copies. Those black and white copies are of relatively poor quality. Color
24 versions are necessary in order to conduct an accurate evaluation of this second
25 photographic lineup and, in turn, to conduct an accurate evaluation of the related
26 grounds for relief. For example, a color copy would allow counsel and the court to
27

1 better compare the suggestive nature of the first photographic lineup with the
2 apparently less suggestive nature of the second photographic lineup.

3 In addition, none of the copies of the second photographic lineup include any
4 notations whatsoever from the police who were involved in that lineup or from the
5 victims who were shown that photographic lineup. To the extent any police officers
6 or witnesses made any notes or comments on copies of the second lineup, and to the
7 extent any individuals generated any reports or documents memorializing the
8 outcome of those viewings, those documents would likely have exculpatory value.
9 Thus, they would be relevant to Mr. Slaughter's existing grounds for relief, and they
10 could potentially give rise to additional, related grounds for relief.

11 For those reasons, Mr. Slaughter has good cause to request these documents.
12 Mr. Slaughter respectfully asks the Court to allow him to seek discovery from the
13 North Las Vegas Police Department, the Clark County District Attorney's Office, and
14 any other relevant or related entities, regarding any and all documents related to the
15 photographic lineups used by the police in their investigation of this case, including
16 the second photographic lineup described above.

17 2. *Deposition of Detective Prieto.*

18 Mr. Slaughter's amended petition contains a ground for relief alleging that his
19 trial counsel provided ineffective assistance of counsel for failing to call Detective
20 Prieto to testify. As the amended petition explains, the police's investigation of the
21 case contains a number of disturbing aspects, and trial counsel should have called
22 Detective Prieto to testify in order to bring those issues to the jury's attention. *See*
23 Ground Four, Section A. Mr. Slaughter requests that the Court allow Mr. Slaughter
24 to depose Detective Prieto in order to generate a record of the testimony that
25 Detective Prieto would have offered had he been called at trial.

26 For example, as discussed above in subsection 1 and in the amended petition,
27 Detective Prieto generated the suggestive photographic lineup in this case that led to

1 the victims' purported identifications of Mr. Slaughter. At a deposition, Mr.
2 Slaughter could question Detective Prieto regarding how he generated that lineup
3 and why he chose to use the pictures he used. Additionally, Detective Prieto and/or
4 other officers working on the investigation generated a second set of photographic
5 lineups and showed those lineups to the witnesses. Those lineups contained pictures
6 of Mr. Slaughter, but the witnesses did not identify Mr. Slaughter from that second
7 photographic lineup. Unfortunately, the records defense counsel received in
8 discovery contain little to no information memorializing the use of these second
9 photographic lineups. At a deposition, Mr. Slaughter could question Detective Prieto
10 regarding how he generated this second lineup; why he chose to use the pictures he
11 used; which officers showed the lineups to which witnesses; and the outcome of the
12 viewings. The answers would be relevant to Mr. Slaughter's existing grounds for
13 relief, and they could potentially give rise to additional, related grounds for relief.

14 For those reasons and others, Mr. Slaughter has good cause to request that the
15 Court permit him to conduct a deposition of Detective Prieto. Through office staff,
16 undersigned counsel attempted to contact Detective Prieto on July 12, 14, 18, 25, and
17 27, 2017, regarding this matter to discuss Mr. Slaughter's case informally. As of this
18 date, Detective Prieto has not responded to these inquiries. Thus, Mr. Slaughter
19 respectfully asks the Court to allow him to conduct a deposition of Detective Jesus
20 Prieto of the North Las Vegas Police Department, pursuant to the provisions of
21 Federal Rule of Civil Procedure 30.

22 3. *911 Call Records.*

23 Mr. Slaughter's amended petition contains a ground for relief describing his
24 trial counsel's failure to establish a concrete timeline regarding his alibi. As the
25 amended petition explains, the incident at issue in this case took place up to and until
26 about 7:11 p.m. on June 26, 2004. Mr. Slaughter had an alibi for that time period.
27 He was halfway across town, picking up his girlfriend from work. His girlfriend (then

1 named Tiffany Johnson) testified that Mr. Slaughter arrived between 7:00 p.m. and
2 7:15 p.m., but no later than 7:20 p.m. Meanwhile, it would have taken Mr. Slaughter
3 about 20 minutes at the very least to drive from the crime scene to Ms. Johnson's
4 workplace. This timeline shows that Mr. Slaughter could not have committed the
5 crimes. It would have been physically impossible for him to have picked up Ms.
6 Johnson on or before 7:20 p.m. if he had left the crime scene at 7:11 p.m. *See*
7 Amended Petition, Ground Two.

8 It was crucial that trial counsel provide as much evidence as possible to back
9 up this alibi. Part of that effort required establishing when exactly the incident
10 ended. One way to show that was by proving precisely when the victims called 911.
11 Based on the victims' statements to the police, they called 911 almost immediately
12 after the robbers left the crime scene. If the 911 call records showed that the calls
13 took place at 7:11 p.m., and thus that the perpetrators were at the crime scene until
14 just before that time, then the State would have a hard time explaining how Mr.
15 Slaughter could have been halfway across town just a few minutes later. As it stood,
16 however, trial counsel did not subpoena these records and show them to the jury.
17 That omission allowed the State to argue that the incident ended earlier in the day,
18 around 7:00 p.m., which fit much more comfortably with the State's timeline.

19 On information and belief, the 911 call records would confirm that the call
20 times occurred at or shortly before 7:11 p.m. Thus, those records would be relevant
21 to Mr. Slaughter's existing grounds for relief, and they could potentially give rise to
22 additional, related grounds for relief. However, on information and belief, trial
23 counsel never received such documents. As a result, Mr. Slaughter has good cause to
24 request leave to conduct discovery in order to obtain these documents. Mr. Slaughter
25 respectfully asks the Court to allow him to seek discovery from the North Las Vegas
26 Police Department, the Clark County District Attorney's Office, and any other
27 relevant or related entities, regarding any and all documents related to the 911 calls

1 placed by the victims in this case on June 26, 2004, including but not limited to
2 records memorializing when the calls took place.

3 4. *Mr. Arbuckle's Trespassing Complaint.*

4 As discussed above in subsection 3, Mr. Slaughter alleges that trial counsel
5 provided ineffective assistance when they failed to shore up Mr. Slaughter's alibi.
6 One piece of that alibi required proving when the incident ended, as described above.
7 Another piece of that alibi required proving when Mr. Slaughter arrived to pick up
8 Ms. Johnson. Ms. Johnson testified at trial that Mr. Slaughter arrived between 7:00
9 p.m. and 7:15 p.m., but no later than 7:20 p.m. However, Ms. Johnson's boss, Mr.
10 Arbuckle, testified that he left work at 7:30 p.m., and Mr. Slaughter had not arrived
11 at that point. That testimony was crucial in the State's effort to disprove the defense's
12 timeline. But that testimony contradicted Mr. Arbuckle's earlier statement to the
13 police, which was consistent with Ms. Johnson's account. Defense counsel should
14 have introduced Mr. Arbuckle's prior inconsistent statement and should have done
15 anything else possible to impeach Mr. Arbuckle's recollection.

16 One way to attack Mr. Arbuckle's revised version of events was to introduce
17 evidence of his bias against Mr. Slaughter. On information and belief, Mr. Slaughter
18 and Mr. Arbuckle had a verbal altercation at Mr. Arbuckle and Ms. Johnson's
19 workplace in late May 2004 or early June 2004. It appears that this altercation
20 caused Mr. Arbuckle to file a trespassing complaint against Mr. Slaughter on or about
21 June 3, 2004. However, trial counsel did not receive any documentation regarding
22 that trespassing complaint that would confirm Mr. Arbuckle filed the complaint. If
23 Mr. Arbuckle had indeed tried to press charges against Mr. Slaughter, that would
24 suggest Mr. Arbuckle was biased against Mr. Slaughter, and it would give the jury a
25 defense-friendly explanation for why Mr. Arbuckle was now testifying in the State's
26 favor. Thus, documentation regarding this complaint would be relevant to Mr.

1 Slaughter's existing grounds for relief, and it could potentially give rise to additional,
2 related grounds for relief.

3 As a result, Mr. Slaughter has good cause to request leave to conduct discovery
4 in order to obtain these documents. Mr. Slaughter respectfully asks the Court to
5 allow him to seek discovery from the North Las Vegas Police Department, the Clark
6 County District Attorney's Office, and any other relevant or related entities,
7 regarding any and all documents related to a trespassing complaint filed against Mr.
8 Slaughter on or about June 3, 2004.

9 5. *Unconstitutional Traffic Stop.*

10 Mr. Slaughter's amended petition includes a ground for relief alleging that
11 trial counsel should have moved to suppress the victims' identifications of Mr.
12 Slaughter on the basis of a Fourth Amendment violation. *See* Ground Five. The
13 police showed the witnesses a suggestive photographic lineup that caused some of the
14 victims to purportedly identify Mr. Slaughter. On information and belief, the police
15 took this photograph after or in the course of an illegal traffic stop of a car in which
16 Mr. Slaughter was driving or a passenger a few months before the incident. The
17 police had no legitimate reason, pretextual or otherwise, to stop this vehicle on this
18 occasion. The sole purpose of the stop was to gather information for the police's gang
19 files. In the course of or after the stop, the police photographed Mr. Slaughter. On
20 information and belief, this is the photograph the police used in their first, suggestive
21 photographic lineup. The police violated Mr. Slaughter's Fourth Amendment rights
22 when they conducted this stop and took Mr. Slaughter's picture, and they perpetuated
23 that Fourth Amendment violation when they used that photograph in the lineup.
24 Trial counsel should have filed a motion to suppress the victims' identifications of Mr.
25 Slaughter, because the identifications stemmed from a Fourth Amendment violation.
26 Thus, documents related to this traffic stop would be relevant to Mr. Slaughter's
27

1 existing grounds for relief, and they could potentially give rise to additional, related
2 grounds for relief.

3 On information and belief, trial counsel did not receive documentation related
4 to this unconstitutional traffic stop. As a result, Mr. Slaughter has good cause to
5 request leave to conduct discovery in order to obtain these documents. Mr. Slaughter
6 respectfully asks the Court to allow him to seek discovery from the North Las Vegas
7 Police Department, the Las Vegas Metropolitan Police Department, those
8 departments' gang intelligence units, the Clark County District Attorney's Office, and
9 any other relevant or related entities, regarding any and all documents related to
10 traffic stops of vehicles in which Mr. Slaughter was travelling, between January 1,
11 2004, and June 26, 2004.

12 CONCLUSION

13 For the foregoing reasons, Mr. Slaughter respectfully requests that the Court
14 grant him leave and enter an order allowing him to conduct the above-described
15 discovery.

16
17 Dated this 2nd day of August, 2017.

18
19 Respectfully submitted,

20 RENE L. VALLADARES
21 Federal Public Defender

22 /s/ Jeremy C. Baron
23 JEREMY C. BARON
24 Assistant Federal Public Defender
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CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States District Court, District of Nevada by using the CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system and include: Michael Bongard.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing 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 non-CM/ECF participants:

Rickie Slaughter
No. 85902
Ely State Prison
PO Box 1989
Ely, NV 89301

/s/ Jessica Pillsbury
An Employee of the
Federal Public Defender

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RICKIE SLAUGHTER,

Petitioner,

vs.

RENEE BAKER, et al.,

Respondents.

Case No. 3:16-cv-00721-RCJ-WGC

ORDER

Petitioner has filed an unopposed motion for extension of time (third request) (ECF No. 12), which the court grants.

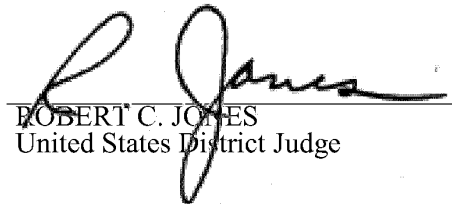
Currently before the court are petitioner's first amended petition (ECF No. 14) and motion for leave to conduct discovery and for court order to obtain documents and depositions (ECF No. 28). Respondents oppose the discovery motion (ECF No. 29), and petitioner has replied (ECF No. 30).

The court finds that petitioner has shown good cause for the five requests for discovery, for the reasons stated in petitioner's motion. Additionally, the court is not persuaded by respondents' argument that the request is premature because under 28 U.S.C. § 2254(d)(1) and Cullen v. Pinholster, 563 U.S. 170 (2011), the court's review is limited to the record before the state court. If petitioner can persuade the court that the state courts unreasonably applied federal law, then Pinholster and § 2254(d)(1) would not apply. If petitioner learns facts that lead to him presenting new claims, and if this court needs to consider those claims on their merits, then Pinholster and § 2254(d)(1) would not apply.

1 IT IS THEREFORE ORDERED that petitioner's unopposed motion for extension of time
2 (third request) (ECF No. 12) is **GRANTED**.

3 IT IS FURTHER ORDERED that petitioner's motion for leave to conduct discovery and for
4 court order to obtain documents and depositions (ECF No. 28) is **GRANTED**. Discovery shall be
5 completed within sixty (60) days from the date on which this Order is entered. Petitioner shall have
6 thirty (30) days from the completion of discovery to file and serve any appropriate motion.

7 DATED THIS 20th day of November, 2017.

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9 
10 ROBERT C. JONES
11 United States District Judge
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