

**No. 82602**

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IN THE NEVADA SUPREME COURT

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Jul 21 2021 03:55 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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**Rickie Slaughter,**

Petitioner-Appellant,

**v.**

**Charles Daniels, et al.,**

Respondents-Appellees.

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

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**Petitioner-Appellant's Appendix to the Opening Brief  
Volume XII 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.

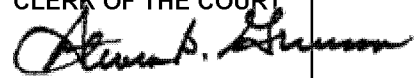
Participants in the case who are registered users in the appellate electronic filing system will be served by the system and include: Alexander Chen.

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
---	--

/s/ Richard D. Chavez

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EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY

RICKIE SLAUGHTER,

Petitioner,

v.

RENEE BAKER and the ATTORNEY  
GENERAL for the STATE OF NEVADA,

Respondents.

Case No. A-18-784824-W  
Dept. No. III

Date of Hearing:  
Time of Hearing:

(Not a Death Penalty Case)

PETITION FOR WRIT OF HABEAS CORPUS  
(POST-CONVICTION)

1. Name of institution and county in which you are presently imprisoned  
or where and how you are presently restrained of your liberty: Saguaro Correctional  
Center, Eloy, Pinal County, Arizona. (In the custody of the Nevada Department of  
Corrections; transferred to an out-of-state institution pursuant to a contract with a

private corrections company. Previously housed at Ely State Prison, Ely, 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.

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

4. Case Number: C204957.

5. (a) Length of Sentence: Total aggregate sentence of 52 years to life:

Count	Charge	Term of imprisonment
1	Conspiracy to commit kidnapping	24 to 60 months
2	Conspiracy to commit robbery	24 to 60 months, consecutive to Count 1
3	Attempted murder with use of a deadly weapon	60 to 180 months, plus an equal and consecutive 60 to 180 months, consecutive to Count 2
4	Battery with use of a deadly weapon	The court did not adjudicate Mr. Slaughter on this count, since it was an alternative count to Count 3
5	Attempted robbery with use of a deadly weapon	48 to 120 months, with an equal and consecutive 48 to 120 months, concurrent with Count 3
6	Robbery with use of a deadly weapon	48 to 120 months, with an equal and consecutive 48 to 120 months, consecutive to Count 3
7	Burglary while in possession of a firearm	48 to 120 months, concurrent with Count 6
8	Burglary	24 to 60 months, concurrent with Count 7
9	First-degree kidnapping with substantial bodily harm with use of a deadly weapon	15 years to life, plus an equal and consecutive 15 years to life, consecutive to Count 6
10	First-degree kidnapping with use of a deadly weapon	5 years to life, plus an equal and consecutive 5 years to life, concurrent with Count 9
11	First-degree kidnapping with use of a deadly weapon	5 years to life, plus an equal and consecutive 5 years to life, concurrent with Count 9
12	First-degree kidnapping with use of a deadly weapon	5 years to life, plus an equal and consecutive 5 years to life, concurrent with Count 9
13	First-degree kidnapping with use of a deadly weapon	5 years to life, plus an equal and consecutive 5 years to life, concurrent with Count 9
14	First-degree kidnapping with use of a deadly weapon	5 years to life, plus an equal and consecutive 5 years to life, concurrent with Count 9



(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 [x]

If "yes", list crime, case number and sentence being served at this time:  
Nature of offense involved in conviction being challenged: N/A

7. Nature of offense involved in conviction being challenged: Attempted murder with use of a deadly weapon, first-degree kidnapping with substantial bodily harm with use of a deadly weapon, robbery with use of a deadly weapon, and other charges associated with an alleged home invasion and robbery.

8. What was your plea?

(a) Not guilty X (c) Guilty but mentally ill \_\_\_\_\_

(b) Guilty \_\_\_\_\_ (d) Nolo contendere \_\_\_\_\_

9. If you entered a plea of guilty or guilty but mentally ill 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 or guilty but mentally ill was negotiated, give details: Mr. Slaughter originally pled guilty but was allowed to withdraw his plea and proceeded to trial.

10. If you were found guilty after a plea of not guilty, was the finding made by: (a) Jury x (b) Judge without a jury \_\_\_\_\_

11. Did you testify at the trial? Yes \_\_\_\_\_ No x

12. Did you appeal from the judgment of conviction? Yes x No \_\_\_\_

13. If you did appeal, answer the following:

(a) Name of Court: Nevada Supreme Court

(b) Case number or citation: No. 61991

(c) Result: Judgment of conviction affirmed.

14. If you did not appeal, explain briefly why you did not: Not applicable.

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 x No \_\_\_\_\_

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

(a) (1) Name of Court: Eighth Judicial District Court

(2) Nature of proceeding: First state post-conviction petition for a writ of habeas corpus.

(3) Grounds raised:

1. Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth Amendment rights of the U.S. Constitution because his attorneys provided ineffective assistance of counsel when they failed to subpoena and/or call Detective Jesus Prieto to testify as a witness at trial to elicit several key pieces of evidence critical to the defense, such as: prior, inconsistent statements; exculpatory photo lineup evidence; and evidence that impeached the integrity of the police investigation.
2. Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth Amendment rights of the U.S. Constitution because his attorneys provided ineffective assistance of counsel when they failed to subpoena and call Officer Anthony Bailey as a witness to elicit prior, inconsistent statements made by victim Ivan Young regarding the crimes and descriptions of the perpetrators.
3. Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth Amendment rights of the U.S. Constitution because his attorneys provided ineffective assistance of counsel when they failed to adequately cross-examine the state's eyewitnesses regarding crucial information that would have impeached their overall memory and prior identifications of petitioner.
4. Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth Amendment rights of the U.S. Constitution because his attorneys provided ineffective assistance of counsel when they failed to subpoena and call eyewitness Destiny Waddy to testify at trial to elicit her description of the perpetrator's "get away" vehicle as being a Pontiac Grand Am, not a Ford Taurus.

5. Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth Amendment rights of the U.S. Constitution because his attorneys provided ineffective assistance of counsel when they failed to subpoena and/or call the records custodians for 9-1-1 dispatch records for the North Las Vegas and Las Vegas Metropolitan Police Departments as witnesses to testify regarding the actual time victim Jermaun Means called 9-1-1. Said testimony would have bolstered petitioner's defense that he was on the opposite side of town, away from the crime scene, when the crimes occurred.
6. Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth Amendment rights of the U.S. Constitution because his attorneys provided ineffective assistance of counsel when they failed to call defense investigator Craig Retke to elicit testimony regarding the amount of time it would take a person to drive the distance between the crime scene and Mrs. Holly's work place, using the fastest routes available.
7. Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth Amendment rights of the U.S. Constitution because his attorneys provided ineffective assistance of counsel when they failed to investigate and discover that critical state witness Jeff Arbuckle had an extensive criminal background/record, received benefits from the state, and had a personal bias against petitioner which constituted material impeachment evidence to impeach his credibility.
8. Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth Amendment rights of the U.S. Constitution because his attorneys provided ineffective assistance of counsel when they failed to subpoena and call Officer Mark Hoyt to elicit prior, inconsistent statements made by eyewitnesses.
9. Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth Amendment rights of the U.S. Constitution because his attorneys provided ineffective assistance of counsel when they failed to exercise due diligence to investigate and discover material impeachment evidence against the state's eyewitnesses. The prosecutors provided witnesses with monetary compensation each time they attended private pre-trial meetings with the prosecutors to discuss their testimonies.
10. Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth Amendment rights of the U.S. Constitution because his attorneys provided ineffective assistance of counsel when they failed to investigate and discover

1 that petitioner's photo, used in the first set of lineups  
2 from which petitioner was identified, had been obtained  
3 during an illegal field interview in violation of petitioner's  
Fourth Amendment rights. The picture and photo lineups  
should have been suppressed.

4 11. Petitioner is in custody in violation of his Sixth, Four-  
5 teenth, and Fifth Amendment rights of the U.S. Constitu-  
6 tion because his appellate attorney provided ineffective  
7 assistance of counsel when he failed to raise a valid and  
8 preserved *Batson* claim that had a reasonable probability  
9 of reversing petitioner's conviction.

10 12. Petitioner is in custody in violation of his Sixth, Four-  
11 teenth, and Fifth Amendment rights of the U.S. Constitu-  
12 tion because his appellate attorney provided ineffective  
13 assistance of counsel when he failed to raise a preserved,  
14 valid claim regarding the state's failure to preserve excul-  
15 patory evidence that had a reasonable probability of re-  
16 versing petitioner's conviction.

17 13. Petitioner is in custody in violation of his Sixth, Four-  
18 teenth, and Fifth Amendment rights of the U.S. Constitu-  
19 tion because his trial attorneys provided ineffective assis-  
20 tance of trial counsel when they called, against peti-  
21 tioner's wishes, witness Noyan Westbrook, knowing that  
22 she did not recall the alibi facts on which they planned to  
23 examine her. Defense counsel attempted to have the wit-  
24 ness lie on the stand, and that opened the door for the  
25 state's attack and undermined the credibility of the de-  
26 fense.

27 14. Petitioner is in custody in violation of his Sixth, Four-  
teenth, and Fifth Amendment rights of the U.S. Constitu-  
tion because his trial attorneys provided ineffective assis-  
tance of counsel when they committed a chain of errors  
that, when viewed cumulatively, resulted in extreme prej-  
udice and a denial of petitioner's constitutional rights to  
due process and fair trial.

(4) Did you receive an evidentiary hearing on your petition, ap-  
plication or motion? Yes \_\_\_\_\_ No  x

(5) Result: Petition denied.

1 (6) Date of Result: The district court issued a notice of entry of a  
2 written order denying the petition on July 24, 2015. The Ne-  
3 vada Supreme Court issued an order of affirmance on July 13,  
4 2016.

5 (7) If known, citations of any written opinion or date of orders en-  
6 tered pursuant to such result: See paragraph (6), above.

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

9 (1) Name of court: Eighth Judicial District Court

10 (2) Nature of proceeding: Second state post-conviction petition for  
11 a writ of habeas corpus.

12 (3) Grounds raised:

13 1. Petitioner is in custody in violation of his Sixth, Four-  
14 teenth, and Fifth Amendment rights of the U.S. Constitu-  
15 tion because his trial counsel provided ineffective assis-  
16 tance of counsel when they failed to adequately investi-  
17 gate information that the bullet shot into victim Ivan  
18 Young had a high probability of being a different caliber  
19 than a .357 magnum. Alternatively, petitioner's trial  
20 counsel was ineffective for failing to cross-examine and  
21 test the state's firearm expert on this point.

22 2. Petitioner is in custody in violation of his Sixth, Four-  
23 teenth, and Fifth Amendment rights of the U.S. Constitu-  
24 tion because his trial and appellate counsel failed to chal-  
25 lenge numerous instances of prosecutorial misconduct at  
26 trial and on direct appeal which were plain error.

27 3. Petitioner is in custody in violation of his Sixth, Four-  
teenth, and Fifth Amendment rights of the U.S. Constitu-  
tion because his trial counsel provided ineffective assis-  
tance of counsel when they failed to develop testimony  
and evidence regarding the relationship between the per-  
petrator's time of departure from the crime scene and the  
time that Jermaun Means called 9-1-1.

1  
2 4. Petitioner is in custody in violation of his Sixth, Four-  
3 teenth, and Fifth Amendment rights of the U.S. Constitu-  
4 tion because his trial counsel provided ineffective assis-  
5 tance of counsel when in the opening statement, they  
6 promised the jury favorable testimony that was never pro-  
7 duced.

8 5. Petitioner is in custody in violation of his Sixth, Four-  
9 teenth, and Fifth Amendment rights of the U.S. Constitu-  
10 tion because his trial counsel provided ineffective assis-  
11 tance of counsel when they failed to adequately investi-  
12 gate, view, and/or obtain the original documents of the  
13 second set of photo lineups.

14 6. Petitioner is in custody in violation of his Sixth, Four-  
15 teenth, and Fifth Amendment rights of the U.S. Constitu-  
16 tion because his appellate attorney provided ineffective  
17 assistance of counsel when he failed to challenge the con-  
18 secutive nature and failure to aggregate the sentences as  
19 violating the cruel and unusual punishment and equal  
20 protection clauses of the law in light of evolving standards  
21 of decency in Nevada.

22 (4) Did you receive an evidentiary hearing on your petition, appli-  
23 cation or motion? Yes \_\_\_\_\_ No x \_\_\_\_\_

24 (5) Result: Petition denied.

25 (6) Date of result: The district court issued a notice of entry of a  
26 written order denying the petition on June 13, 2016. The Ne-  
27 vada Court of Appeals issued an order of affirmance on April  
19, 2017.

(7) If known, citations of any written opinion or date of orders en-  
tered pursuant to such result: See paragraph (6) above.

(c) As to any third petition, application or motion, give the same  
information:

(1) Name of court: United States District Court, District of Nevada, Case No. 3:16-cv-00721-RCJ-WGC.

(2) Nature of proceeding: Petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

(3) Grounds raised: Substantially the same grounds as raised in this petition.

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes \_\_\_\_\_ No x

(5) Result: Pending.

(6) Date of result: N/A.

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

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 post-conviction proceeding? Yes. If so, identify:

a. Which of the grounds is the same: See statement regarding cause and prejudice, *infra*.

b. The proceedings in which these grounds were raised: See statement regarding cause and prejudice, *infra*.

c. Briefly explain why you are again raising these grounds. See statement regarding cause and prejudice, *infra*.

18. If any of the grounds listed in Nos. 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 ½ by 11 inches attached to

1 the petition. Your response may not exceed five handwritten or typewritten pages in  
2 length.). See statement regarding cause and prejudice, *infra*.

3 19. Are you filing this petition more than 1 year following the filing of the  
4 judgment of conviction or the filing of a decision on direct appeal? Yes If so, state  
5 briefly the reasons for the delay. (You must relate specific facts in response to this  
6 question. Your response may be included on paper which is 8 ½ by 11 inches attached  
7 to the petition. Your response may not exceed five handwritten or typewritten pages  
8 in length.) See statement regarding cause and prejudice, *infra*.

9 20. Do you have any petition or appeal now pending in any court, either  
10 state or federal, as to the judgment under attack? Yes x No \_\_\_\_\_

11 If yes, state what court and the case number: *Slaughter v. Baker et al.*,  
12 Case No. 3:16-cv-0072-RCJ-WGC (D. Nev.).

13 21. Give the name of each attorney who represented you in the proceeding  
14 resulting in your conviction and on direct appeal: Various attorneys represented Mr.  
15 Slaughter in the trial court, but he was ultimately represented by Osvaldo Fumo and  
16 Dustin Marcello at trial. He was represented by William Gamage on direct appeal.

17 22. Do you have any future sentences to serve after you complete the sen-  
18 tence imposed by the judgment under attack? Yes \_\_\_ No x \_\_\_\_\_

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

#### 22 STATEMENT REGARDING CAUSE AND PREJUDICE

23 This is Mr. Slaughter's third post-conviction petition in this Court. He is filing  
24 a new post-conviction petition because he has found new evidence through the federal  
25 discovery process that supports some of the grounds for relief in this petition. Even  
26 though he is filing outside the one-year deadline that normally applies to post-convic-  
27 tion petitions, this particular petition is timely because it relies on evidence he wasn't



able to obtain previously, despite diligent efforts. In addition, the new evidence also shows he is actually innocent of the crimes of conviction. In light of his innocence, Mr. Slaughter requests the Court review (or re-review) all of the claims for relief in this petition—including claims he may have raised that the Court may have rejected previously—in order to prevent a miscarriage of justice. Mr. Slaughter proposes to brief these issues and other related arguments in greater detail if and when the State files a motion to dismiss the petition. But Mr. Slaughter provides a fulsome preview of these arguments here nonetheless.

To start, the following chart of the claims in this petition may be useful:

<b>Claim</b>	<b>Previously raised in Nevada state courts?</b>	<b>Relies on new evidence?</b>
One	Yes – direct appeal	Yes
Two(A)	Yes – first post-conviction petition	Yes
Two(B)	Yes – second post-conviction petition	Yes
Two(C)	Yes – first post-conviction petition	Yes
Two(D)	Yes – first post-conviction petition	Yes
Two(E)	Yes – first post-conviction petition	No
Three(A)	Yes – first post-conviction petition	Yes
Three(B)	Yes – first post-conviction petition	No
Three(C)	Yes – first post-conviction petition	No
Three(D)	Yes – second post-conviction petition	No
Four(A)	Yes – first post-conviction petition	Yes
Four(B)	Yes – first post-conviction petition	No
Four(C)	Yes – first post-conviction petition	No
Four(D)	Yes – first post-conviction petition	No
Five	Yes – first, second post-conviction petitions	Yes
Six(A)	Yes – second post-conviction petition	No
Six(B)	Yes – second post-conviction petition	No
Six(C)	Yes – second post-conviction petition	Yes
Six(D)	Yes – second post-conviction petition	Yes
Six(E)	No	Yes
Six(F)	No	No
Six(G)	No	No
Seven(A)	No	No
Seven(B)	No	No
Seven(C)	No	Yes
Seven(D)	No	Yes
Seven(E)	Yes – direct appeal	Yes

Seven(F)	Yes – direct appeal	No
Seven(G)	Yes – direct appeal	No
Eight	Yes – direct appeal	No
Nine(A)	Yes – first post-conviction petition	No
Nine(B)	Yes – first post-conviction petition	No
Nine(C)(1)	No	No
Nine(C)(2)	No	No
Nine(C)(3)	No	Yes
Nine(C)(4)	No	Yes
Ten	No	No
Eleven(A)	No	Yes
Eleven(B)	No	Yes
Eleven(C)	No	Yes

**A. Mr. Slaughter is raising claims that rely on new evidence.**

Some of the claims in this petition are brand new claims that rely on new evidence Mr. Slaughter recently received through the federal discovery process. He may therefore advance these claims in this otherwise untimely petition.

Although Nevada law places procedural restrictions on petitions—for example, the one-year statute of limitations in NRS 34.726, and the restrictions on successive petitions in NRS 34.810(1)(B)—a petitioner can get around those procedural bars by showing “that the factual or legal basis for a claim was not reasonably available to counsel” before the filing of the petition. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); *see also Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). Many of the claims in this petition qualify. For one, the State withheld material evidence at trial, and that evidence was not reasonably available to Mr. Slaughter until he finally got the information through the federal discovery process. As a result, he has good cause for his failure to present these claims earlier—the factual basis for those claims wasn’t available to him when he filed his previous petitions.

There are two types of claims in this petition that rely on new evidence. Some of them are claims Mr. Slaughter hasn’t presented to the Court before. Others are

1 claims Mr. Slaughter tried to present to the Court before, but he didn't have the full  
2 factual basis for the claims available to him, because he didn't have access to the  
3 relevant evidence. Because both sets of claims rely on new evidence, Mr. Slaughter  
4 has good cause for presenting these claims to this Court now. He can also establish  
5 prejudice, since these claims entitle him to relief on the merits.

6 **1. Some of the claims are brand new.**

7 Ground Eleven in this petition is a claim based on *Brady v. Maryland*, 373 U.S.  
8 83 (1963), and *Napue v. Illinois*, 360 U.S. 264, 266 (1959). Mr. Slaughter was unable  
9 to present this claim before because the State suppressed the factual basis for the  
10 claim, and Mr. Slaughter did not have access to the information until he received it  
11 through the federal discovery process. He may therefore present this claim now.

12 **a. The State suppressed information about Mr. Slaugh-**  
13 **ter's alibi timeline.**

14 The prosecution withheld two crucial pieces of information that directly related  
15 to Mr. Slaughter's alibi. This case involves a home invasion and robbery that took  
16 place in North Las Vegas in the evening. Mr. Slaughter had an alibi: he was halfway  
17 across town, picking up his girlfriend (Tiffany Johnson) at her workplace, at about  
18 the same time the incident was taking place. In order to prove that alibi, Mr. Slaugh-  
19 ter needed to show three things. First, when did the suspects leave the crime scene?  
20 Second, how long did it take to get from the crime scene to Ms. Johnson's workplace?  
21 (It was about a 20 or 30 minute drive away.) Third, when exactly did Mr. Slaughter  
22 arrive to pick up Ms. Johnson? If Mr. Slaughter could show he picked up Ms. Johnson  
23 fewer than 20 minutes after the incident ended, he could've convinced the jury it  
24 would've been impossible for him to have been involved in the robbery.

25 The State withheld material information and made misrepresentations on the  
26 record that were relevant to Mr. Slaughter's alibi. As Ground Eleven(A) explains,  
27 one of the victims called 911 at 7:11 p.m. But the prosecution failed to turn over a

1 key document that memorialized when, exactly, the 911 call took place. (Mr. Slaugh-  
2 ter eventually received that document through the federal discovery process. Ex. 6.<sup>1</sup>)  
3 Then, when the defense wanted to tell the jury during closing argument that the call  
4 came in at 7:11 p.m., the prosecutor objected on the grounds that the defense hadn't  
5 proven that at trial. The prosecutor also misleadingly suggested to the court that the  
6 call came in at 7:00 p.m. That was wrong; the call came in at 7:11 p.m., and the  
7 victims left at about 7:08 p.m. Because the prosecutor failed to turn over the relevant  
8 document and misrepresented the timeline to the court, the defense was stuck argu-  
9 ing to the jury that the call came in at 7:00 p.m., so the suspects would've left before  
10 7:00 p.m.—a shift in the timeline of about eight to 11 minutes in the prosecution's  
11 favor, when every minute mattered.

12 Meanwhile, as Ground Eleven(C) explains, the State also withheld material  
13 impeachment information regarding when Mr. Slaughter arrived to pick up Ms. John-  
14 son. Ms. Johnson testified Mr. Slaughter arrived between 7:00 p.m. and 7:15 p.m.,  
15 but no later than 7:20 p.m. Since the suspects left the crime scene at 7:08 p.m., and  
16 since it would've taken about 20 or 30 minutes for Mr. Slaughter to get from the crime  
17 scene to her workplace—assuming he went straight there with no stops, and no time  
18 to clean up—it would've been impossible for Mr. Slaughter to have picked up Ms.  
19 Johnson by 7:15 p.m. (or even 7:20 p.m.). The prosecution argued Mr. Slaughter didn't  
20 pick up Ms. Johnson until much later, at some point after 7:30 p.m. It called Ms.  
21 Johnson's manager, Jeffrey Arbuckle, to testify. He said he'd left work at 7:30 p.m.,  
22 and Mr. Slaughter hadn't shown up yet. But when he talked to the police soon after  
23 the incident, he said he left at 7:15 p.m. That change added another shift in the  
24 timeline in the prosecution's favor, this one a total of about 15 minutes.

---

26 <sup>1</sup> Mr. Slaughter is filing new exhibits along with this petition. He is not refileing  
27 documents already in the Court's record. For such documents, he refers to transcripts  
as, for example, "Tr. [date]," and written filings as, for example, "[date] Motion."

1 Mr. Arbuckle had a motive to shift his story. He had previously fought with  
2 Mr. Slaughter and had even placed a trespassing complaint against Mr. Slaughter—  
3 mere weeks before the home invasion took place. But the State did not turn over any  
4 information memorializing that complaint. (Mr. Slaughter eventually received a rel-  
5 evant document through the federal discovery process. Ex. 1. Thus, the defense  
6 lacked a key tool to help discredit Mr. Arbuckle’s version of events.

7 In all, the prosecution withheld two pieces of critical information about Mr.  
8 Slaughter’s alibi timeline: the 911 call records, which disclosed precisely when Mr.  
9 Means called 911; and records memorializing the complaint Mr. Arbuckle made to  
10 the police about Mr. Arbuckle, which helped explain why he changed his story on the  
11 stand. By withholding this information, the prosecution was able to shift the timeline  
12 in its favor by a total of about 26 minutes. That shift introduced enough ambiguity  
13 into Mr. Slaughter’s alibi that the jury found it unconvincing. Had it not been for  
14 that shift, it would’ve been obvious to the jury Mr. Slaughter couldn’t have been at  
15 the crime scene when the suspects left, and the jury probably would’ve acquitted Mr.  
16 Slaughter.

17 **b. The State suppressed information about the photo**  
18 **lineups.**

19 The State showed at least two photographic lineups to the victims in this case.  
20 The first photographic lineup was highly suggestive, and four of the seven victims (or  
21 eyewitnesses) identified Mr. Slaughter off of that suggestive lineup. *See* Ground One,  
22 *infra*. Three victims ultimately identified Mr. Slaughter in court during the trial.  
23 Discrediting those identifications was a key aspect of the defense’s job.

24 As Ground Eleven(B) explains, there was a second photographic lineup in this  
25 case. Mr. Slaughter’s photo was in that lineup, but none of the victims identified Mr.  
26 Slaughter from that lineup, which was not nearly so suggestive. That information  
27

1 would've been a crucial tool for undermining the credibility of the victims' identifica-  
2 tions. But the State hid the results of the lineup from the defense. All the State  
3 would admit was that the police created the lineup and showed it to the victims—the  
4 prosecutor refused to say whether the victims made any identifications. To the con-  
5 trary, the prosecutor suggested in court that the outcome of this second photographic  
6 lineup was unhelpful to the defense. It was not until the federal discovery process  
7 that Mr. Slaughter got confirmation from the relevant detective that none of the vic-  
8 tims identified Mr. Slaughter from that lineup. Ex. 14 at 87-88. Had the defense  
9 known that ahead of time, it would've had a much easier time explaining away the  
10 victims' purported identifications: if they didn't identify a picture of Mr. Slaughter  
11 from the second lineup (which was much less suggestive, and which used a more con-  
12 temporaneous picture of Mr. Slaughter), then the jury couldn't have much confidence  
13 in their initial identifications.

14 **c. Mr. Slaughter has good cause to present these claims**  
15 **in this petition.**

16 Ground Eleven relies on new information Mr. Slaughter did not receive until  
17 recently, through the federal discovery process. He couldn't have received that infor-  
18 mation any sooner, because the State actively suppressed it. *See* Exs. 16, 17. It was  
19 not until Mr. Slaughter received a discovery order from the federal court that he was  
20 able to get access to the information. Ex. 13. Because this claim relies on previously  
21 suppressed evidence, Mr. Slaughter has good cause for raising this claim now. *See,*  
22 *e.g., Hathaway*, 119 Nev. at 252, 71 P.3d at 506; *see also Pellegrini*, 117 Nev. at 887,  
23 34 P.3d at 537. The Court should therefore review this claim on the merits.

1                   **2. Mr. Slaughter raised some of the claims before, but the new**  
2                   **evidence is relevant to those claims.**

3           In addition to Ground Eleven, some of the other grounds for relief also rely on  
4 new evidence, mainly the same previously suppressed evidence described already re-  
5 garding Ground Eleven. Although Mr. Slaughter already litigated some of these is-  
6 sues in his prior post-conviction petitions in this Court, he is now relying on new  
7 evidence to support those claims. He was unable to present the full version of these  
8 claims before, because until now the State had suppressed key information regarding  
9 those claims. Mr. Slaughter therefore has good cause to re-raise these claims in the  
10 present petition. *See, e.g., Hathaway*, 119 Nev. at 252, 71 P.3d at 506; *see also Pel-*  
11 *legrini*, 117 Nev. at 887, 34 P.3d at 537.

12                   **a. Ground One relies on new evidence.**

13           As noted above, the police put together at least two photographic lineups in  
14 connection with this case. As Ground One explains, the first photographic lineup was  
15 highly suggestive, and four of the victims purported to identify Mr. Slaughter after  
16 viewing that suggestive lineup. (As other grounds explain, the police created a second  
17 photographic lineup including Mr. Slaughter's picture and showed that lineup to the  
18 victims, but none of them identified Mr. Slaughter from that second lineup.) Mr.  
19 Slaughter raised a version of this claim on direct appeal. However, Mr. Slaughter  
20 has new evidence to support this claim. In particular, as part of the federal discovery  
21 process, Mr. Slaughter conducted a deposition of Detective Jesus Prieto. Detective  
22 Prieto was the lead detective regarding the home invasion, and he was responsible  
23 for putting together the photo lineups and showing them to the victims. He testified  
24 during his deposition about the photo lineups, and he agreed that the picture of Mr.  
25 Slaughter in the first photographic lineup differed from the filler photos in the lineup  
26 in various respects. *See Ex. 14* at 34-37, 192-95, 205-09. He also confirmed he  
27 would've had access to other photographs of Mr. Slaughter he could've used (instead

1 of the suggestive photo he chose to use). *See id.* at 43-49. He said there were methods  
2 he could've used to help minimize some of the differences. *Id.* at 87-88. And he dis-  
3 cussed the second photo lineup, which undermines confidence in the results from the  
4 first photo lineup.

5 Detective Prieto's deposition includes significant testimony that improves this  
6 claim for relief. Mr. Slaughter did not have access to this testimony until the federal  
7 court issued its discovery order (Ex. 13), which authorized the deposition. He there-  
8 fore has good cause to re-raise this issue in light of this new testimony. *See, e.g.,*  
9 *Hathaway*, 119 Nev. at 252, 71 P.3d at 506; *see also Pellegrini*, 117 Nev. at 887, 34  
10 P.3d at 537.

11 **b. Ground Two(A) relies on new evidence.**

12 As Ground Two(A) explains, trial counsel was ineffective for failing to present  
13 the 911 records. To be clear, the State was at fault for suppressing those material,  
14 exculpatory records. But in the alternative, trial counsel should've subpoenaed them  
15 as well. Those records were exculpatory; they proved the 911 call came in at 7:11  
16 p.m., which provided the foundation to argue the suspects left at 7:08 p.m. As it stood  
17 at trial, the defense was stuck arguing the call came in at 7:00 p.m., which shifted  
18 the timeline in the prosecution's favor by about eight to 11 critical minutes.

19 While Mr. Slaughter litigated a version of this claim before, in his first post-  
20 conviction petition, he did not have the actual 911 records to confirm the time the call  
21 came in. Mr. Slaughter did not have access to those records until he received them  
22 through the federal discovery process (Ex. 13). Because this claim for relief relies on  
23 these new records to show the 911 call did, in fact, come in at 7:11 p.m., Mr. Slaughter  
24 has good cause to present these claims in this petition. *See, e.g., Hathaway*, 119 Nev.  
25 at 252, 71 P.3d at 506; *see also Pellegrini*, 117 Nev. at 887, 34 P.3d at 537.



1                   c.       Ground Two(B) relies on new evidence.

2           As Ground Two(B) explains, trial counsel was ineffective for failing to prove  
3 exactly when the suspects left the crime scene. Based on the 911 records and the 911  
4 call itself, the suspects left at about 7:08 p.m. But once again, the defense was stuck  
5 arguing the call came in at 7:00 p.m., which was less favorable for the alibi.

6           While Mr. Slaughter litigated a version of this claim before, in his second post-  
7 conviction petition, he did not have the actual 911 records to confirm the time the call  
8 came in. Mr. Slaughter did not have access to those records until he received them  
9 through the federal discovery process. Because this claim for relief relies on these  
10 new records to show exactly when Mr. Means called 911, and because the timing of  
11 that call is necessary to show exactly when the suspects left (as Ground Two(B) lays  
12 out), Mr. Slaughter has good cause to present these claims in this petition. *See, e.g.,*  
13 *Hathaway*, 119 Nev. at 252, 71 P.3d at 506; *see also Pellegrini*, 117 Nev. at 887, 34  
14 P.3d at 537.

15                   d.       Ground Two(C) relies on new evidence.

16           As Ground Two(C) explains, trial counsel was ineffective for failing to prove  
17 exactly how long it took to drive from the crime scene to Ms. Johnson's workplace.  
18 While Mr. Slaughter litigated a version of this claim before, in his first post-conviction  
19 petition, he is now relying in part of Detective Prieto's testimony to support this claim.  
20 Detective Prieto testified it would've taken about 30 minutes, if not longer, to make  
21 that drive. Ex. 14 at 123-24. Mr. Slaughter did not have access to this testimony  
22 until the federal court issued its discovery order (Ex. 13), which authorized the depo-  
23 sition. He therefore has good cause to re-raise this issue in light of this new testi-  
24 mony. *See, e.g., Hathaway*, 119 Nev. at 252, 71 P.3d at 506; *see also Pellegrini*, 117  
25 Nev. at 887, 34 P.3d at 537.

1 e. Ground Two(D) relies on new evidence.

2 As Ground Two(D) explains, trial counsel was ineffective for failing to impeach  
3 Mr. Arbuckle's testimony that he didn't leave work until 7:30 p.m. He had previously  
4 told the police he left work at 7:15 p.m., which was more favorable to the defense's  
5 timeline, but he shifted his testimony at trial. To be clear, as Ground Eleven(C) ex-  
6 plains, the State is at fault for failing to correct that testimony. But in the alterna-  
7 tive, trial counsel should've done a better job at impeaching Mr. Arbuckle about his  
8 prior inconsistent statement.

9 While Mr. Slaughter litigated a version of this argument before, in his first  
10 post-conviction petition, he is now relying in part of Detective Prieto's testimony to  
11 support this claim. Detective Prieto confirmed Mr. Arbuckle previously said he left  
12 work at 7:15 p.m. Ex. 14 at 139. Mr. Slaughter did not have access to this testimony  
13 until the federal court issued its discovery order (Ex. 13), which authorized the depo-  
14 sition. He therefore has good cause to re-raise this issue in light of this new testi-  
15 mony. *See, e.g., Hathaway*, 119 Nev. at 252, 71 P.3d at 506; *see also Pellegrini*, 117  
16 Nev. at 887, 34 P.3d at 537.

17 Similarly, trial counsel was ineffective for failing to introduce evidence of Mr.  
18 Arbuckle's bias against Mr. Slaughter—in particular his decision to file a complaint  
19 with the police against Mr. Slaughter, which he did about a month before the home  
20 invasion took place. To be clear, as Ground Eleven(C) explains, the State should've  
21 disclosed that information to the defense. But in the alternative, trial counsel  
22 should've discovered and introduced that information. While Mr. Slaughter litigated  
23 a version of this argument before, in his first post-conviction petition, he didn't have  
24 any records memorializing that Mr. Arbuckle had made a complaint. In fact, Mr.  
25 Slaughter didn't receive any such records until the federal discovery process. Because  
26 this claim for relief relies on this record, Mr. Slaughter has good cause to present this  
27

1 claims in this petition. *See, e.g., Hathaway*, 119 Nev. at 252, 71 P.3d at 506; *see also*  
2 *Pellegrini*, 117 Nev. at 887, 34 P.3d at 537.

3 **f. Ground Three(A) relies on new evidence.**

4 As Ground Three(A) explains, trial counsel was ineffective for failing to intro-  
5 duce evidence about the second, non-suggestive photo lineup, in which none of the  
6 victims identified Mr. Slaughter. To be clear, as Ground Eleven(B) argues, the State  
7 had a duty to disclose that information to the defense. But in the alternative, trial  
8 counsel should've laid the foundation themselves. While Mr. Slaughter litigated a  
9 version of this argument before, in his first post-conviction petition, he is now relying  
10 in part of Detective Prieto's testimony to support this claim. Detective Prieto con-  
11 firmed he showed the victims this second lineup, and—contrary to the prosecutor's  
12 suggestion—none of them identified Mr. Slaughter from the lineup. Ex. 14 at 87-88.  
13 Mr. Slaughter did not have access to this testimony until the federal court issued its  
14 discovery order (Ex. 13), which authorized the deposition. He therefore has good  
15 cause to re-raise this issue in light of this new testimony. *See, e.g., Hathaway*, 119  
16 Nev. at 252, 71 P.3d at 506; *see also Pellegrini*, 117 Nev. at 887, 34 P.3d at 537.

17 **g. Ground Four(A) relies on new evidence.**

18 As Ground Four(A) explains, trial counsel was ineffective for failing to call De-  
19 tective Prieto to testify. Detective Prieto could've laid the foundation for various ex-  
20 culpatory information, and his testimony would've cast a negative light over the en-  
21 tire police investigation. While Mr. Slaughter litigated a version of this claim before,  
22 in his first post-conviction petition, he is now relying on Detective Prieto's deposition  
23 testimony to illustrate how Detective Prieto would've testified at trial. Ex. 14. Mr.  
24 Slaughter did not have access to this testimony until the federal court issued its dis-  
25 covery order (Ex. 13), which authorized the deposition. He therefore has good cause  
26 to re-raise this issue in light of this new testimony. *See, e.g., Hathaway*, 119 Nev. at  
27 252, 71 P.3d at 506; *see also Pellegrini*, 117 Nev. at 887, 34 P.3d at 537.

1                   **h. Ground Five relies on new evidence.**

2           As Ground Five explains, trial counsel was ineffective for making empty prom-  
3       ises during opening. For example, counsel promised the jury it would hear helpful  
4       evidence about Mr. Slaughter’s alibi timeline, but counsel failed to put that infor-  
5       mation into evidence. Counsel also promised the jury it would hear from Detective  
6       Prieto, but neither side called him. While Mr. Slaughter has litigated related issues  
7       in both of his previous post-conviction petitions, he is now relying on additional evi-  
8       dence regarding (for example) his alibi timeline and Detective Prieto’s testimony in  
9       support of that claim. Mr. Slaughter didn’t have access to this information until the  
10      federal court issued its discovery order. Ex. 13. He therefore has good cause to re-  
11      raise this issue in light of this new testimony. *See, e.g., Hathaway*, 119 Nev. at 252,  
12      71 P.3d at 506; *see also Pellegrini*, 117 Nev. at 887, 34 P.3d at 537.

13                   **i. Ground Six(C) relies on new evidence.**

14           As Ground Six(C) explains, trial counsel was ineffective for failing to object to  
15      prosecutorial misconduct during closing argument. The prosecutor vouched for Mr.  
16      Arbuckle and said he didn’t have a reason to lie. But he did: he’d filed a trespassing  
17      complaint against Mr. Slaughter, which suggested he was biased against him. While  
18      Mr. Slaughter litigated a version of this claim before, in his second post-conviction  
19      petition, he didn’t have any records memorializing Mr. Arbuckle’s complaint; he  
20      didn’t receive those records until the federal discovery process (Ex. 13). Because this  
21      claim for relief relies on this new information, Mr. Slaughter has good cause to pre-  
22      sent this claims in this petition. *See, e.g., Hathaway*, 119 Nev. at 252, 71 P.3d at 506;  
23      *see also Pellegrini*, 117 Nev. at 887, 34 P.3d at 537.

24                   **j. Ground Six(D) relies on new evidence.**

25           As Ground Six(D) explains, trial counsel was ineffective for failing to object to  
26      another instance of prosecutorial misconduct, when the prosecutor suggested Mr.  
27

1 Slaughter couldn't have known the time the home invasion took place unless he was  
2 involved in the crime. That wasn't true; Detective Prieto had discussed the timing of  
3 the home invasion with him. Ex. 14 at 144. While Mr. Slaughter litigated a version  
4 of this claim before, in his second post-conviction petition, he is now relying on Detec-  
5 tive Prieto's deposition testimony to support this claim. Mr. Slaughter did not have  
6 access to this testimony until the federal court issued its discovery order (Ex. 13),  
7 which authorized the deposition. He therefore has good cause to re-raise this issue  
8 in light of this new testimony. *See, e.g., Hathaway*, 119 Nev. at 252, 71 P.3d at 506;  
9 *see also Pellegrini*, 117 Nev. at 887, 34 P.3d at 537.

10 **k. Ground Six(E) relies on new evidence.**

11 As Ground Six(E) explains, trial counsel was ineffective for failing to object to  
12 another instance of prosecutorial misconduct, when the prosecutor inappropriately  
13 disparaged Mr. Slaughter's alibi. While Mr. Slaughter litigated a version of this claim  
14 before, in his second post-conviction petition, he is now relying on new evidence sup-  
15 porting his alibi: Detective Prieto's deposition, the 911 records, and the records re-  
16 garding Mr. Arbuckle's trespassing complaint. Mr. Slaughter did not have access to  
17 this information until the federal discovery process. Ex. 13. He therefore has good  
18 cause to re-raise this issue in light of this new testimony. *See, e.g., Hathaway*, 119  
19 Nev. at 252, 71 P.3d at 506; *see also Pellegrini*, 117 Nev. at 887, 34 P.3d at 537.

20 **l. Ground Seven(C) relies on new evidence.**

21 Ground Seven(C) relates to Ground Six(C)—while Ground Six(C) alleges inef-  
22 fective assistance of counsel in connection with an instance of prosecutorial miscon-  
23 duct, Ground Seven(C) raises the same instance as a standalone due process viola-  
24 tion. Both claims rely on new evidence and are appropriately litigated here. *See,*  
25 *e.g., Hathaway*, 119 Nev. at 252, 71 P.3d at 506; *see also Pellegrini*, 117 Nev. at 887,  
26 34 P.3d at 537.

1                   **m.     Ground Seven(D) relies on new evidence.**

2           Ground Seven(D) relates to Ground Six(D)—while Ground Six(D) alleges inef-  
3   fective assistance of counsel in connection with an instance of prosecutorial miscon-  
4   duct, Ground Seven(D) raises the same instance as a standalone due process viola-  
5   tion. Both claims rely on new evidence and are appropriately litigated here. *See, e.g.,*  
6   *Hathaway*, 119 Nev. at 252, 71 P.3d at 506; *see also Pellegrini*, 117 Nev. at 887, 34  
7   P.3d at 537.

8                   **n.     Ground Seven(E) relies on new evidence.**

9           Ground Seven(E) relates to Ground Six(E)—while Ground Six(E) alleges inef-  
10   fective assistance of counsel in connection with an instance of prosecutorial miscon-  
11   duct, Ground Seven(E) raises the same instance as a standalone due process viola-  
12   tion. Although Mr. Slaughter litigated a version of Ground Seven(E) in his direct  
13   appeal, he is now relying on new evidence to support the claim, as with Ground  
14   Six(E). He therefore has good cause to re-raise this issue in light of this new testi-  
15   mony. *See, e.g., Hathaway*, 119 Nev. at 252, 71 P.3d at 506; *see also Pellegrini*, 117  
16   Nev. at 887, 34 P.3d at 537.

17                   **o.     Ground Nine(C)(3) relies on new evidence.**

18           Ground Nine(C)(3) relates to Ground Six(C)—while Ground Six(C) alleges in-  
19   effective assistance of counsel in connection with an instance of prosecutorial miscon-  
20   duct, Ground Nine(C)(3) raises a claim that appellate counsel should’ve raised the  
21   instance as a claim on direct appeal. Both claims rely on new evidence and are ap-  
22   propriately litigated here. *See, e.g., Hathaway*, 119 Nev. at 252, 71 P.3d at 506; *see*  
23   *also Pellegrini*, 117 Nev. at 887, 34 P.3d at 537.

1                   p.     Ground Nine(C)(4) relies on new evidence.

2             Ground Nine(C)(4) relates to Ground Six(D)—while Ground Six(D) alleges in-  
3 effective assistance of counsel in connection with an instance of prosecutorial miscon-  
4 duct, Ground Nine(C)(4) raises a claim that appellate counsel should’ve raised the  
5 instance as a claim on direct appeal. Both claims rely on new evidence and are ap-  
6 propriately litigated here. *See, e.g., Hathaway*, 119 Nev. at 252, 71 P.3d at 506; *see*  
7 *also Pellegrini*, 117 Nev. at 887, 34 P.3d at 537.

8                   3.     The new evidence is relevant to all of the ineffective assis-  
9                   tance of trial counsel claims viewed cumulatively.

10            As the grounds for relief explain, ineffective assistance of trial counsel claims  
11 require two showings: (1) deficient performance on the part of counsel; and (2) prej-  
12 udice, i.e., a reasonable probability that the error had an impact on the verdict. All  
13 of the ineffective assistance of trial counsel claims are related, because courts look at  
14 the cumulative impact of counsel’s errors and the effect they had on the trial. Even  
15 if a single isolated error isn’t detrimental enough for the Court to find prejudice, the  
16 Court might yet conclude a series of errors strung together had a prejudicial effect.

17            That is the case here. Mr. Slaughter maintains all the instances of deficient  
18 performance alleged in this petition were prejudicial, on an individual one-by-one ba-  
19 sis: had counsel performed effectively in just one of the various ways described in  
20 this petition, there is a reasonable probability of a different outcome. But the preju-  
21 dicial impact is all the more stark when all the errors are viewed together. In part  
22 for that reason, Mr. Slaughter is re-alleging some of his ineffectiveness claims that  
23 don’t rely on new evidence. The Court needs to assess the prejudicial impact of all  
24 the instances of deficient performance when viewed together. That is true for the  
25 ineffectiveness allegations that rely on new evidence, as well as the allegations that  
26 remain unchanged. The Court needs to look at all of them together, both new and  
27 old, to evaluate the prejudicial impact of all the errors. Mr. Slaughter therefore has

1 good cause to re-allege all of his ineffective assistance of trial counsel claims, not just  
2 the ones that rely on new evidence.

3 **B. Mr. Slaughter is actually innocent.**

4 Mr. Slaughter did not participate in the home invasion. As his new evidence  
5 helps show, he is actually innocent of the charged crimes. He therefore has good  
6 cause to present all the claims in this petition, new and old.

7 If an otherwise procedurally barred petitioner can establish that he or she is  
8 actually innocent of the crimes of conviction, the state courts may reach the merits of  
9 procedurally barred claims in order to prevent a fundamental miscarriage of justice.  
10 *See, e.g., Mitchell v. State*, 122 Nev. 1269, 1273-75, 149 P.3d 33, 35-37 (2006). In  
11 order to establish a “gateway” actual innocence claim, “a petitioner ‘must show that  
12 it is more likely than not that no reasonable juror would have convicted him in the  
13 light of . . . new evidence.’” *McQuiggin v. Perkins*, 569 U.S. 383, 399 (2013) (quoting  
14 *Schlup v. Delo*, 513 U.S. 298, 327 (1995)). That is the case here. In light all the  
15 evidence in the record, it is more likely than not that no reasonable trier of fact would  
16 have convicted Mr. Slaughter. The procedural bars therefore do not apply.

17 **1. Mr. Slaughter has a solid alibi.**

18 Mr. Slaughter presented an alibi defense at trial: at around the same time the  
19 home invasion was ending, he was halfway across town, picking up Ms. Johnson from  
20 work. But because of a combination of prosecutorial misconduct and ineffective as-  
21 sistance, Mr. Slaughter wasn’t able to present the tight timeline he needed in order  
22 to convince the jury. Based in part on the newly discovered evidence, he is now able  
23 to present a concrete timeline that proves his innocence.

24 As Grounds Two(A) and (B) explain, the suspects left the crime scene at 7:08  
25 p.m. But the jury heard the suspects couldn’t have left any later than 7:00 p.m.

26 As Ground Two(C) explains, it would’ve taken Mr. Slaughter about 20 or 30  
27 minutes to get from the crime scene to Ms. Johnson’s workplace—and that’s assuming



1 he didn't stop to drop off his co-conspirator, change out of the odd clothes he was  
2 supposedly wearing, dispose of evidence, clean up, or anything else. But the jury  
3 didn't hear how long that drive would've taken.

4 As Ground Two(D) explains, Mr. Slaughter arrived to pick up his girlfriend  
5 between 7:00 and 7:15 p.m., but no later than 7:20 p.m. While Mr. Arbuckle testified  
6 he couldn't have shown up before 7:30 p.m., he previously told the police he'd left  
7 work at 7:15 p.m. But the jury didn't know about Mr. Arbuckle's prior inconsistent  
8 statement, and it didn't know Mr. Arbuckle had a motive to change his testimony in  
9 the State's favor.

10 Based on new evidence, the suspects left at 7:08 p.m. If Mr. Slaughter was one  
11 of the suspects, the very earliest he could've gotten to Ms. Johnson's workplace  
12 would've been about 7:28 or 7:38 p.m. In truth, Mr. Slaughter arrived to pick her up  
13 at about 7:15 p.m. (right at the same time Mr. Arbuckle left), if not earlier. There's  
14 no way he could've done that if he'd been at the crime scene, so he must not have been  
15 at the crime scene.

16 The jury didn't know this. For all they knew, the suspects left the crime scene  
17 at about 7:00 p.m.; it would've taken some unknown amount of time to get from the  
18 crime scene to Ms. Johnson's workplace; and Mr. Slaughter probably showed up at  
19 the workplace maybe at 7:20 p.m., or perhaps 7:30 p.m., or perhaps even later. Faced  
20 with that indeterminate timeline, it's not much of a surprise the jury didn't think it  
21 rose to the level of reasonable doubt. In addition, the State presented jail calls placed  
22 by Mr. Slaughter that it argued reflected Mr. Slaughter trying to manufacture an  
23 alibi. In truth, they showed Mr. Slaughter trying to confirm what really happened  
24 that night. But the timeline the defense presented at trial was loose enough that the  
25 jury might've bought the State's argument. Had the jury had the concrete timeline  
26 Mr. Slaughter is now able to present, the jury would've been much more likely to  
27 credit the alibi and vote to acquit.

1                   **2.     The victims' identifications aren't reliable.**

2           Three victims purported to identify Mr. Slaughter at trial as one of the two  
3 suspects. (Four of the victims identified Mr. Slaughter off of a lineup, but of those  
4 four, only three could identify him at trial.) Those identifications aren't reliable. As  
5 Ground One explains, they were the product of a highly suggestive photographic  
6 lineup. Meanwhile, as Grounds Three(A) and Four(A) explain, the victims had seen  
7 a second photo lineup with Mr. Slaughter's picture, but none of them identified Mr.  
8 Slaughter from that second, non-suggestive lineup. That fact destroys the reliability  
9 of their identifications. But the jury wasn't aware of the second photo lineup. If the  
10 jury had known about it, it would've had a much harder time crediting the purported  
11 identifications.

12           There were additional reasons to disbelieve the victims who identified Mr.  
13 Slaughter off the first photo lineup. Ground One surveys some of those reasons. In  
14 addition, as Grounds Three(B), Three(C), Four(A), and Four(B) explain, there were  
15 other reasons to treat the victims' testimony with skepticism, but counsel did not  
16 present those reasons at trial. Had the jury been aware of all the reasons why the  
17 victims' identifications were unreliable, it would not have viewed those identifications  
18 in a favorable light.

19                   **3.     The ballistics information was misleading.**

20           As Ground Three(D) explains, the State presented an expert who testified the  
21 bullet fragments found in one of the victims' faces were consistent with a shell casing  
22 found in Ms. Johnson's car. The State made much of that testimony at trial, but the  
23 expert's testimony wasn't all that notable: the shell casing in the car could've been  
24 consistent with at least nine of other types of bullets, too. 2/12/16 Exhibits (document  
25 labeled Exhibit B). But trial counsel did a substandard job of cross-examining the  
26 expert. Had the jury known the expert couldn't really conclude the shell casing and  
27 the fragments matched, it wouldn't have given much weight to the expert's testimony.

1                   **4.     The 7-Eleven video didn't show anything.**

2           The State presented evidence that the suspects had used one of the victim's  
3 debit cards at an ATM in a 7-Eleven somewhere in Las Vegas. The State pulled a  
4 surveillance video from a specific 7-Eleven that showed a heavily dressed black man  
5 standing near an ATM soon after the home invasion. The prosecutor argued you  
6 could tell it was Mr. Slaughter in the video, but it's impossible to tell who was in that  
7 video: the quality is much too poor, and the man in the video is too heavily dressed  
8 to make out any of his features. The video had no probative value, and it shouldn't  
9 have come into evidence to begin with.

10                   **5.     Mr. Slaughter drove a different make of car.**

11           Finally, the State argued the suspects drove away in a green Ford Taurus,  
12 which is the same car Ms. Johnson owns (and to which Mr. Slaughter had access).  
13 But as Grounds Four(A), (C), and (D) explain, the victims thought the suspects were  
14 driving a Pontiac, not a Ford. The jury didn't get that full story. Had it known the  
15 suspects probably drove a different type of car, it wouldn't have bought the State's  
16 theory of the case.

17                   **6.     In all, the State doesn't have enough evidence to support**  
18                   **the conviction.**

19           In sum, there's precious little evidence to support Mr. Slaughter's guilt, partic-  
20 ularly in light of the new evidence. Mr. Slaughter has an unimpeachable alibi time-  
21 line that establishes his innocence. The contrary evidence is overwhelmingly weak:  
22 the victims' identifications have little if any probative value; the ballistics testimony  
23 has even less; and the 7-Eleven video and the supposed "match" between the cars  
24 have none whatsoever. A reasonable jury looking at all the evidence would decline to  
25 convict Mr. Slaughter. He therefore has good cause to present all the claims for relief  
26 in this petition, and the Court should consider them all in order to prevent a funda-  
27 mental miscarriage of justice.

1           C.     **The inadequate assistance of post-conviction counsel should pro-**  
2                   **vide good cause.**

3           Mr. Slaughter did not have counsel to assist him with his first post-conviction  
4 petition. He therefore has good cause to overcome the default of any claims that he  
5 couldn't reasonably raise on direct appeal, including but not limited to his ineffective  
6 assistance of trial and appellate counsel claims.

7           In federal habeas proceedings, if a petitioner procedurally defaults a claim of  
8 ineffective assistance of trial counsel, the petitioner can show good cause to overcome  
9 the default if the petitioner had inadequate assistance from initial state post-convic-  
10 tion counsel. *See Martinez v. Ryan*, 566 U.S. 1 (2012). As the *Martinez* Court recog-  
11 nized, a petitioner needs an attorney as a practical matter to competently litigate  
12 ineffective assistance of trial counsel claims. But if a state (like Nevada) requires  
13 petitioners to raise ineffectiveness claims in post-conviction proceedings—in which  
14 there is generally no right to counsel—then a petitioner who doesn't have competent  
15 post-conviction counsel might never have a fair shot to litigate the merits of an inef-  
16 fective assistance of trial counsel claim in state court. As a result, the federal courts  
17 recognize inadequate assistance of post-conviction counsel as good cause to overcome  
18 the default of an ineffective assistance of trial counsel claim: if the petitioner didn't  
19 have adequate post-conviction counsel in state court, then the petitioner shouldn't be  
20 blamed for failing to raise a legitimate ineffectiveness claim.

21           As of now, the Nevada courts—unlike the federal courts—do not recognize in-  
22 effective assistance of post-conviction counsel as good cause to excuse non-compliance  
23 with state procedural bars, at least in non-capital cases. *See Brown v. McDaniel*, 130  
24 Nev. Adv. Op. 60, 331 P.3d 867 (Nev. 2014). However, Mr. Slaughter respectfully  
25 suggests *Brown* was wrongly decided, and he intends to seek further review of this  
26 issue in the Nevada Supreme Court.

1 Assuming the Nevada Supreme Court revisits *Brown*, Mr. Slaughter will be  
2 able to show he received inadequate assistance from post-conviction counsel, since he  
3 didn't have a lawyer during the previous post-conviction proceedings. Meanwhile,  
4 Mr. Slaughter suffered prejudice, because each of the ineffectiveness claims in this  
5 petition is a winning claim for relief (as the claims themselves explain). Thus, Mr.  
6 Slaughter received inadequate assistance from state post-conviction counsel, and he  
7 should have the opportunity to litigate his ineffectiveness claims on the merits.

#### 8 GROUND FOR RELIEF

9 **Ground One: The victims' in-court identifications of Mr. Slaughter**  
10 **stemmed from the State's use of an impermissibly suggestive photo-**  
11 **graphic lineup, in violation of Mr. Slaughter's rights under the Fifth,**  
**Sixth, and Fourteenth Amendments to the United States Constitution,**  
**as well as under Article 1, Section 8, of the Nevada Constitution.**

12 The State's case rose and fell with three victims' in-court identifications of Mr.  
13 Slaughter as a perpetrator. But those identifications were the product of an imper-  
14 missibly suggestive photographic lineup. In that lineup, the background of Mr.  
15 Slaughter's photo was transparent, while the other five headshots had blue back-  
16 grounds. Because the background of Mr. Slaughter's photo is so different from the  
17 backgrounds of the other photos (among other reasons), Mr. Slaughter's photo stands  
18 out from the rest. That lineup created a grave risk that the victims would mistakenly  
19 pick Mr. Slaughter's photograph from the lineup. Meanwhile, the victims' identifica-  
20 tions were not otherwise reliable. Therefore, the admission of the identifications vi-  
21 olated Mr. Slaughter's due process rights, *see, e.g., Simmons v. United States*, 390  
22 U.S. 377 (1968), and the error was not harmless—quite the opposite, it had a sub-  
23 stantial and injurious effect on the verdict.

#### 24 A. The lineup was suggestive.

25 Detective Jesus Prieto created the first photographic lineup used in this case.  
26 *See* Ex. 9 (color copy). That lineup included a photograph of Mr. Slaughter taken a  
27 couple months before the incident. The background of Mr. Slaughter's picture is near-

1 white, to the point that it appears transparent. By comparison, the lineup includes  
2 five pictures of other individuals. Those five other photographs have blue back-  
3 grounds. Because the background of Mr. Slaughter's picture does not match the oth-  
4 ers, it is distinctive. For that reason, and for other reasons related to the condition,  
5 age, and composition of the photographs, Mr. Slaughter's photograph stands out from  
6 among the rest. *See, e.g.*, Ex. 14 at 34-37, 192-95, 205-09. These factors and others  
7 rendered the lineup suggestive. The lineup suggests, for example, that the five blue  
8 photographs are stock images that come from the same source, so the non-conforming  
9 photograph must be the actual photograph of the suspect.

10 The police had no need to design the photo lineup in this way. For one, they  
11 had other booking photos of Mr. Slaughter. *See* 2/25/11 Reply re: Motion to Preclude  
12 Identification (document internally marked "Exhibit D"); *see also* Ex. 14 at 41-47; Ex.  
13 19. The backgrounds of many of those photographs better match the other photo-  
14 graphs in the lineup and wouldn't have stood out in the same way. However, the  
15 police instead used a photograph with a drastically different background. Similarly,  
16 the police could've ran a black-and-white version of the lineup, which would've mini-  
17 mized some of the differences. *See, e.g.* Ex. 14 at 84-86. Instead, they insisted on  
18 using the suggestive color version.

19 The lineup in this case was unnecessarily and impermissibly suggestive, and  
20 it gave rise to a substantial likelihood of irreparable misidentification. The court  
21 should have suppressed the victims' identifications.

22 **B. The victims' identifications were not otherwise reliable.**

23 The suggestive lineup rendered the victims' identifications untrustworthy, and  
24 the circumstances do not suggest that their recollections were nonetheless reliable.

25 **1. Ivan Young.**

26 Mr. Young purported to identify Mr. Slaughter from the photo lineup as the  
27 shooter. But there is ample reason to doubt his ability to make a valid identification.

1 The police showed him the lineup while he was still in the hospital, recovering from  
2 various procedures related to his facial injuries. Mr. Young admitted that he  
3 “couldn’t really see good” at the time the police showed him the lineup. Tr. 5/16/11 at  
4 60. That is not surprising, since he had received facial wounds and had lost an eye  
5 during the incident. He also was unable to see well during the ordeal, since he had  
6 his head covered throughout much of it. *Id.* at 51.

7         Meanwhile, his account of the incident shifted in material ways over time, from  
8 his initial interviews with the police, to the preliminary hearing, and to the trial. *See*  
9 Ground Three Section B, *infra*. Most critically, his description of the assailants went  
10 through multiple iterations. At first, he told the police that one suspect was bald,  
11 wearing shorts and a blue shirt, while the other suspect—the shooter—had dread-  
12 locks and a Jamaican accent. Ex. 4 at 2. Then, at the preliminary hearing, he stated  
13 that one suspect wore a sports jersey and had dreadlocks; he identified the other sus-  
14 pect as Mr. Slaughter, claimed he was the shooter, and said he wore a hat, a blue  
15 shirt, and maybe shorts. Tr. 9/21/04 at 13-14, 20-21, 28. That was a big change; at  
16 first, Mr. Young identified the suspect with dreadlocks as the shooter, but then, Mr.  
17 Young said it was the *other* suspect (supposedly Mr. Slaughter) who was the shooter.  
18 In addition, at the preliminary hearing, Mr. Young said only one of the suspects had  
19 a Jamaican accent. *Id.* at 28-29. Finally, at trial, he testified that both suspects were  
20 wearing hats and wigs, and that they both had Jamaican accents. Tr. 5/16/11 at 49.  
21 His ever-changing description of the suspects suggests that he cannot remember what  
22 they actually looked like.

23         In addition, Mr. Young claimed at the preliminary hearing that he had met  
24 Mr. Slaughter before the incident (*see* Tr. 9/21/04 at 19), but he did not initially report  
25 that fact to the police (*see, e.g.*, Ex. 4 at 2; 3/25/15 Exhibits (interview transcript in-  
26 ternally marked “Exhibit A”)). The fact that he did not initially claim to have known  
27 one of the assailants suggests that his memory was altered by the suggestive lineup.

1 For these reasons and others, Mr. Young's recollection cannot be trusted.

2 **2. Joey Posada.**

3 Mr. Posada was a 12-year-old child who was put through a traumatic experi-  
4 ence during the incident. He did not have a good opportunity to see the perpetrators,  
5 and he gave only vague descriptions of them to the police after the incident: he de-  
6 scribed them as black males, with one suspect wearing braids, and the other with a  
7 dark afro; one of those two apparently wore a "tuxedo shirt." Ex. 2 at 11. His view of  
8 the suspects was obstructed during the ordeal, and he took only brief glances toward  
9 them. Tr. 9/21/04 at 88-89. He did not see who the shooter was. Tr. 5/18/11 at 43,  
10 56. Moreover, when the police asked Mr. Posada to come to the station for the lineup,  
11 they told him that they already had a suspect in custody, and that a picture of the  
12 suspect was in the lineup. *Id.* at 53. Telling Mr. Posada that information made it  
13 much more likely he would make an identification—even a mistaken one—as opposed  
14 to telling the police he could not identify anyone. For these reasons and others, Mr.  
15 Posada's identification is not reliable.

16 **3. Ryan John.**

17 After entering the house, the perpetrators immediately tied up Mr. John and  
18 put a jacket over his head to block his view. Ex. 2 at 9. As a result, he had little  
19 opportunity to view the suspects. Perhaps for that reason, he could only vaguely  
20 describe the robbers to the police as two black males, one with a Jamaican accent. *Id.*  
21 at 9-10. Unsurprisingly, when he participated in the photo lineup, his identification  
22 was ambiguous—he wrote, "This is the guy that *I think* called me over to Ivan  
23 [Young]'s house and tied me up and shot Ivan." 10/27/09 Motion to Dismiss at 46  
24 (emphasis added). For these reasons and others, Mr. John's identification is untrust-  
25 worthy as well.  
26  
27



1                   **4. Jermain Means.**

2           When confronted with the police's suggestive lineup, Mr. Means selected Mr.  
3 Slaughter's picture, writing, "The face just stand out to me." 10/27/09 Motion to Dis-  
4 miss at 45. That is an apt description, because Mr. Slaughter's photograph literally  
5 stands out from all the rest. At trial, however, Mr. Means was unable to identify Mr.  
6 Slaughter as a participant in the robbery. Tr. 5/16/11 at 37. Nonetheless, the State  
7 introduced his prior "identification" of Mr. Slaughter into evidence. *Id.* at 36. Mean-  
8 while, his initial description of the suspects—one wearing a beige suit jacket, and the  
9 other with a dreadlocks wig—was yet again vague. Ex. 2 at 10. His initial identifi-  
10 cation of Mr. Slaughter, which he later recanted, should not be trusted.

11                   **5. Jennifer and Aaron Dennis.**

12           Neither Ms. Dennis nor Mr. Dennis identified Mr. Slaughter in a lineup or at  
13 trial. Ms. Dennis described one suspect to the police as 5'10" and 170 pounds, and  
14 the other as 5'11" and 190 pounds. One was wearing a blue shirt with jeans, and the  
15 other was wearing a red shirt and blue jeans. Ex. 3 at 4. Mr. Dennis told the police  
16 that one of the suspects was wearing a black jacket. Ex. 2 at 11.

17                   **6. Destiny Waddy.**

18           Destiny Waddy was sitting in a car outside Mr. Young's house during the or-  
19 deal. She reported to the police that she saw two black males, one 5'8" and wearing  
20 a wig, the other 5'11"; both were wearing blue and white clothing. Ex. 2 at 10. Ms.  
21 Waddy was not able to identify anyone from the photo lineup, and she did not testify  
22 at trial.

23                   **1. The second photographic lineup.**

24           Finally, as Grounds Three(A) and Four(A) explain, the police showed the vic-  
25 tims a second photographic lineup with Mr. Slaughter's picture in it. That lineup was  
26 much less suggestive; the police didn't even realize Mr. Slaughter was in it. None of  
27 the victims identified Mr. Slaughter from that lineup. Their failure to recognize Mr.

1 Slaughter in a non-suggestive lineup erodes whatever faith the Court could otherwise  
2 have in their identifications.

3 \* \* \*

4 In sum, out of seven witnesses, only four picked Mr. Slaughter from the State's  
5 suggestive lineup, and only three identified Mr. Slaughter at trial. Of the three who  
6 testified against Mr. Slaughter, there are substantial reasons to doubt the accuracy  
7 of their accounts. Meanwhile, there are numerous inconsistencies in the witnesses'  
8 descriptions of the suspects—each person's recollection differs in some respect from  
9 the others, and some of the witnesses' descriptions changed over time as well. And  
10 none of the victims picked Mr. Slaughter from a second photo lineup. All told, these  
11 circumstances show that the suggestive nature of the lineup influenced the identifi-  
12 cations.

13 **C. The error wasn't harmless.**

14 The introduction of the witnesses' tainted identifications was not harmless er-  
15 ror—to the contrary, those identifications were at the core of the State's case. The  
16 other evidence of Mr. Slaughter's guilt was weak, and without the witnesses' identi-  
17 fications the State could not have proved Mr. Slaughter's involvement in the incident.

18 In brief, the State's other evidence chiefly involved two guns, a bullet core, and  
19 a bullet casing that were found in a car owned by Mr. Slaughter's girlfriend. Accord-  
20 ing to the State, the robbers brandished three guns during the incident. Two of those  
21 guns, the State said, were the two guns the police found in the car. But there was  
22 very little proof of that. The witnesses gave only vague descriptions of those two guns,  
23 and there was no physical evidence to link those guns to the crime scene. Crucially,  
24 the police did *not* find a gun that could have fired the bullet that injured Mr. Young.  
25 While the caliber of the bullet fragments that injured Mr. Young could have been  
26 consistent with the shell casing and the lead core the police found in the car, those  
27

1 fragments could have been consistent with many other calibers of bullets as well. *See*  
2 *generally* Ground Three, Section D, *infra*.

3 The State also submitted a surveillance videotape from a 7-Eleven store. The  
4 videotape, which was recorded about an hour after the incident, shows someone  
5 standing near an ATM in the store. Mr. John testified at trial that he had heard  
6 someone had used his stolen debit card at a 7-Eleven soon after the incident (but he  
7 did not specify which of the scores of 7-Eleven stores in Las Vegas). From that, the  
8 State argued that the tape showed Mr. Slaughter using Mr. John's ATM card. But  
9 the tape itself hardly shows anything, and the State was grasping at straws when  
10 they introduced it. *See generally* Ground Nine, *infra*.

11 In sum, the State had no physical evidence linking Mr. Slaughter to the crime.  
12 Mr. Slaughter did not confess to the crime; to the contrary, he had a solid alibi. The  
13 State had some inconclusive ballistics evidence and a 7-Eleven video of questionable  
14 relevance, but aside from the tainted identifications, the State's case lacked strong  
15 proof of Mr. Slaughter's guilt. The introduction of those tainted identifications had a  
16 substantial and injurious effect on the outcome of the trial. Mr. Slaughter should  
17 receive a new trial, where the State can try to prove its case without relying on its  
18 flawed lineup.

19 **Ground Two: Trial counsel failed to introduce foundational evidence re-**  
20 **garding Mr. Slaughter's alibi, in violation of Mr. Slaughter's rights un-**  
21 **der the Sixth and Fourteenth Amendments to the United States Consti-**  
**tution, as well as under Article 1, Section 8, of the Nevada Constitution.**

22 The State claimed that Mr. Slaughter was in Mr. Young's house committing  
23 various crimes on the evening of June 26, 2004. But as Mr. Slaughter's girlfriend  
24 (Tiffany Johnson) testified, Mr. Slaughter was halfway across town at that time, pick-  
25 ing her up from work. That gave him a strong alibi. Unfortunately, Mr. Slaughter's  
26 trial attorneys made only a half-hearted attempt at proving that alibi.  
27

1 In order to establish the alibi, defense counsel needed to prove three things.  
2 First, when exactly did the incident take place? Second, when exactly did Mr. Slaugh-  
3 ter pick up his girlfriend from work? Third, how long would it have taken Mr. Slaugh-  
4 ter to get from the crime scene to his girlfriend's workplace? Defense counsel failed  
5 to introduce specific evidence on all three issues. Had they done so, Mr. Slaughter's  
6 alibi would have been airtight. But as it stood, the defense timeline was ambiguous  
7 enough that the jury voted to convict.

8 Mr. Slaughter's attorneys provided ineffective assistance in this area. His at-  
9 torneys should have done five things to shore up Mr. Slaughter's alibi. First, they  
10 should have subpoenaed the 911 records to pin down when the victims first called the  
11 police. Second, they should have drawn the jury's attention to evidence about how  
12 much time elapsed between when the culprits left the house and when the victims  
13 called the police. Put together, those pieces of evidence would precisely establish  
14 when the culprits left the crime scene. Third, the attorneys should have called wit-  
15 nesses or introduced evidence to prove exactly how long it would take to get from the  
16 crime scene to Ms. Johnson's workplace. Fourth, while Ms. Johnson testified that  
17 Mr. Slaughter arrived at about 7:15 p.m., her coworker suggested it was after 7:30  
18 p.m., which better fit the State's timeline. Defense counsel should have introduced  
19 evidence to impeach the coworker's credibility. Finally, defense counsel should have  
20 refrained from calling a witness who provided inconsistent and confusing testimony  
21 regarding Mr. Slaughter's alibi.

22 Counsel provided deficient performance in each of these respects. There could  
23 be no strategic reason for failing to prove up Mr. Slaughter's alibi. In fact, defense  
24 counsel promised the jury it would get that proof, but the attorneys failed to deliver.  
25 In his opening statement, counsel said that "[t]here's no way" Mr. Slaughter could  
26 "drive from the [crime scene] all the way to where [Ms. Johnson] worked in four  
27 minutes. It just [isn't] possible." Tr. 5/16/11 at 18-19. Despite setting up that key

1 point during the opening, defense counsel failed to put in the work to lay the founda-  
2 tion for that conclusion.

3 Had Mr. Slaughter’s lawyers taken any of the steps outlined below—and cer-  
4 tainly if they had taken all of them—there is a reasonable probability the alibi  
5 would’ve given the jury reasonable doubt, and it would’ve voted to acquit. As a result,  
6 Mr. Slaughter received ineffective assistance of counsel at trial. *See Strickland v.*  
7 *Washington*, 466 U.S. 668 (1984).

8 **A. Counsel should’ve subpoenaed the 911 records.**

9 In order to establish Mr. Slaughter’s alibi, defense counsel needed to prove, as  
10 precisely as possible, the time that the crime took place. One of the victims, Jermain  
11 Means, had called 911, so the best way to prove when the offense occurred was to  
12 subpoena the 911 records. So long as Mr. Means called 911 immediately after the  
13 crime ended (*see* Section B, *infra*), the 911 call records would provide a firm indication  
14 of when the suspects left. If Mr. Slaughter could prove he was somewhere else when  
15 the incident ended, his alibi would have been complete.

16 Mr. Slaughter’s attorneys did not get copies of the 911 call records, so they  
17 were unable to state with specificity when the culprits left the crime scene. Those  
18 records would’ve indicated the calls were placed at about 7:11 p.m. *See* Ex. 6; Ex. 14  
19 at 100. Similarly, the police reports associated with the robbery at Mr. Young’s house  
20 suggest that the incident occurred at or shortly before 7:11 p.m. Ex. 2 at 1 (“date /  
21 time” of “6/26/04 / 19:11”), 9 (“On Saturday, 06-26-04 at 1911 hours, officers were  
22 dispatched to 2612 Glory View . . . .”); *see also* Ex. 3 at 1, 4 (similar); Ex. 4 at 1, 2  
23 (similar); Ex. 5 at 1, 5 (stating that officer responded at 7:15 p.m.).

24 This failure made itself plain toward the end of trial. The defense had submit-  
25 ted a PowerPoint presentation they proposed to use during their closing argument.  
26 Their presentation said Mr. Means placed the 911 call at 7:11 p.m. But the State  
27 objected to that statement, because the defense had failed to introduce evidence that

1 the 911 calls in fact took place at 7:11 p.m. Tr. 5/20/11 at 77-78. According to the  
2 State and the court, the defense could say only that the call came in at “about 7:00.”  
3 *Id.* at 82. That objection shifted the timeframe in the State’s favor by about eight to  
4 11 minutes and introduced a level of ambiguity in the timeline that should not have  
5 existed. The defense understood that the precise time of the 911 calls was an im-  
6 portant issue, but they boxed themselves out of presenting that information to the  
7 jury.

8 **B. Counsel should’ve proven how long it took Mr. Means to call 911.**

9 Once they had pinned down the time of the 911 calls, the next step in estab-  
10 lishing Mr. Slaughter’s alibi was to figure out how quickly the victims called 911 after  
11 the incident ended. For example, if Mr. Means had called 911 at 7:11 p.m., and if  
12 only a few minutes elapsed between when the culprits left and when he got to the  
13 phone, then Mr. Slaughter could prove that the robbers did not leave until about 7:08  
14 p.m.

15 Mr. Means called the police at 7:11 p.m. One minute and 38 seconds into the  
16 call, Mr. Means told the 911 dispatcher the incident occurred “about five . . . five  
17 minutes ago.” Ex. 20 at 1:38-1:40. As a matter of arithmetic, Mr. Means’s statement  
18 indicates the suspects left the house a few minutes before 7:11 p.m.—at about 7:08  
19 p.m.

20 Trial counsel failed to make this point during cross-examination of Mr. Means.  
21 His trial testimony suggested there was a short gap between the incident and the 911  
22 call (Tr. 5/16/11 at 30), but he did not testify with any precision on that issue. Simi-  
23 larly, while the State played the 911 call during trial, the defense lawyers didn’t high-  
24 light Mr. Means’s statement (which he made about a couple minutes into the call)  
25 that the incident occurred “about five minutes ago.”

26 Had defense counsel elicited this information from Mr. Means and pointed the  
27 jury toward his comment to 911 about the timing of the incident, the jury would have

1 learned the robbers left about three minutes before Mr. Means placed his call. As it  
2 was, counsel deprived the jury of this important piece of the puzzle. Instead, due to  
3 the State's objection, counsel was stuck arguing the suspects left earlier, at 7:00 p.m.  
4 *See* Tr. 5/20/11 at 77-82. Because counsel failed to obtain the 911 records and failed  
5 to pin down how soon after the incident Mr. Means called 911, the State was able to  
6 force a shift in the defense timeline of about eight to 11 minutes on the front end—a  
7 crucial, prosecution-friendly shift, in a case where every minute mattered.

8 **C. Counsel should've established the time it took to drive between**  
9 **the crime scene and Ms. Johnson's workplace.**

10 Mr. Slaughter maintains that during the time of the crime, he was halfway  
11 across town picking up his girlfriend, Tiffany Johnson, from work. The State agreed  
12 Mr. Slaughter had picked up Ms. Johnson sometime after 7:00 p.m. The question  
13 was whether Mr. Slaughter could have been in both places that evening. Could he  
14 have left the crime scene at about 7:08 p.m. and then driven to Ms. Johnson's work-  
15 place in time to pick her up?

16 In order for the defense to answer that question, it needed to show how far the  
17 crime scene was from Ms. Johnson's workplace. Ms. Johnson testified Mr. Slaughter  
18 picked her up between 7:00 and 7:15 p.m., but in no event was it later than 7:20 p.m.  
19 Tr. 5/19/11 at 21-22. (By the time of trial, Ms. Johnson had gotten married and  
20 changed her last name, but for the sake of simplicity, this amended petition will refer  
21 to her as Ms. Johnson.) If the robbery ended at about 7:08 p.m., could Mr. Slaughter  
22 have gotten to Ms. Johnson's workplace in twelve minutes or less?

23 The answer to that question was no—it would have taken at least 20 minutes  
24 if not longer (more like 30 minutes) to make that drive. *See* 3/25/15 Exhibits (docu-  
25 ments internally marked "Exhibit H"); Ex. 14 at 123-24. But the jury never learned  
26 the answer to that crucial question. That is because the attorneys incorrectly as-  
27 sumed they could simply add the drive-times to their closing presentation; the court

1 rejected that proposal in an off-the-record discussion. 3/25/15 Petition at 45-46. The  
2 attorneys should have laid an evidentiary foundation regarding the drive-times.

3 **D. Counsel should've impeached Mr. Arbuckle's testimony.**

4 The last piece of Mr. Slaughter's alibi depended on when he arrived at Ms.  
5 Johnson's workplace. Ms. Johnson testified that he showed up between 7:00 and 7:15  
6 p.m., but in no event was it later than 7:20 p.m. Tr. 5/19/11 at 21-22. However,  
7 Jeffrey Arbuckle (Ms. Johnson's coworker) testified Mr. Slaughter did not show up  
8 until 7:30 p.m. at the earliest. Tr. 5/17/11 at 42. That testimony created a potential  
9 problem for Mr. Slaughter's alibi. Defense counsel should have impeached Mr. Ar-  
10 buckle's recollection in order to shore up their timeline.

11 First, Mr. Arbuckle had previously told the police that he had left work at 7:15  
12 p.m., and that Ms. Johnson was still waiting for Mr. Slaughter at that point. Ex. 9  
13 3-4; Ex. 14 at 139. That prior statement to the police is inconsistent with Mr. Ar-  
14 buckle's trial testimony that he was sure Mr. Slaughter did not arrive to pick up Ms.  
15 Johnson until 7:30 p.m. at the earliest. But his prior statement—that Mr. Arbuckle  
16 left work at 7:15 p.m.—is consistent with Ms. Johnson's testimony that Mr. Slaughter  
17 arrived between 7:00 and 7:15 p.m., and no later than 7:20 p.m. Significantly, Mr.  
18 Arbuckle and Ms. Johnson's testimony matched on a key point: Mr. Slaughter pulled  
19 in right as Mr. Arbuckle was leaving. *See* Tr. 5/19/11 at 60 ("When [Mr. Arbuckle]  
20 was leaving the parking lot, Rickie was coming in the parking lot"); Tr. 5/17/11 at 42  
21 (similar). If Mr. Arbuckle left work at 7:15 p.m., as he originally said, then the wit-  
22 nesses' testimony would've matched perfectly: Mr. Slaughter showed up right as Mr.  
23 Arbuckle left, probably right at 7:15 p.m.

24 Defense counsel knew this prior inconsistent statement was important. In-  
25 deed, counsel tried to ask Mr. Arbuckle about it on cross. The State objected to the  
26  
27



1 question because Detective Prieto had not testified about Mr. Arbuckle's prior incon-  
2 sistent statement, and the court sustained the objection. Tr. 5/17/11 at 46.<sup>2</sup> Defense  
3 counsel should have called Detective Prieto to verify that statement (*see* Ground  
4 Four, Section A, *infra*) and should have proceeded to impeach Mr. Arbuckle with it.

5 Second, Mr. Arbuckle held bias against Mr. Slaughter. The two had a verbal  
6 altercation at the El Dorado Cleaners (where Mr. Arbuckle and Ms. Johnson worked)  
7 in late May 2004 or early June 2004. 3/25/15 Petition at 52. Soon after that alterca-  
8 tion, on June 3, 2004, Mr. Arbuckle filed a complaint or a report with the police re-  
9 garding Mr. Slaughter allegedly trespassing at 715 N. Nellis Boulevard, the location  
10 of the El Dorado Cleaners. 3/25/15 Exhibits (document internally marked as "Exhibit  
11 M"); Ex. 1. If Mr. Arbuckle wanted Mr. Slaughter locked up, that suggests he had a  
12 motive to shade his testimony in a way that would conform to the State's timeline.  
13 Defense counsel should have asked Mr. Arbuckle about this fight and about whether  
14 he pursued related criminal charges against Mr. Slaughter.

15 Finally, on information and belief, Mr. Arbuckle received payments from the  
16 State in exchange for his participation in pre-trial conferences. Trial counsel should  
17 have asked Mr. Arbuckle whether he had received any funds from the State for pre-  
18 trial preparation. That would have given the jury another reason to question his  
19 motives for testifying.

20 **E. Counsel shouldn't have called Ms. Westbrook.**

21 As detailed above, Mr. Slaughter had a legitimate alibi. Defense counsel failed  
22 to take the necessary steps to prove that alibi. Instead, the attorneys tried to estab-  
23  
24

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25  
26 <sup>2</sup> The official copy of the trial transcript for this day is missing four pages (45-  
27 48), including the pages where this exchange took place. The court reporter has pre-  
pared replacement copies of three of those pages. Those replacement pages are Ex.  
10.

1 lish Mr. Slaughter’s alibi by calling a different witness, Noyan (“Monique”) West-  
2 brook. But that testimony was unhelpful and undermined the defense’s credibility.  
3 Mr. Slaughter’s attorneys should not have called Ms. Westbrook.

4 Mr. Slaughter’s defense investigator spoke with Ms. Westbrook before the  
5 trial. Mr. Slaughter claimed that he was with Ms. Westbrook before picking up Ms.  
6 Johnson. While Ms. Westbrook did recall spending time with Mr. Slaughter in the  
7 past, she did not remember the specific days and times they were together. 3/25/15  
8 Exhibits (documents internally marked as “Exhibit O”). Notwithstanding her shaky  
9 memory, defense counsel had Ms. Westbrook fly from Arkansas to Las Vegas so she  
10 could be available at trial. Defense counsel also prepared a script of proposed testi-  
11 mony for her in advance. *Id.* Mr. Slaughter told his lawyers that he did not want Ms.  
12 Westbrook to testify if she did not have an independent recollection of the day of the  
13 incident, but his lawyers were insistent on calling her as a witness. Mr. Slaughter  
14 and defense counsel had multiple arguments about this subject. 3/25/15 Petition at  
15 73-76. Their arguments were substantial enough that Mr. Slaughter insisted on  
16 making a record of the issue during his trial. Outside the presence of the jury, Mr.  
17 Slaughter told the court he had asked his lawyers “not to present Ms. Westbrook,”  
18 although defense counsel disputed his account. Tr. 5/20/11 at 68-77.

19 Just as Mr. Slaughter predicted, Ms. Westbrook’s testimony did not go well.  
20 While she recalled being with Mr. Slaughter at some point in time, she could not  
21 specify the date, and she provided testimony that suggested she remembered spend-  
22 ing time with Mr. Slaughter in 2005—a year after the incident, well after Mr. Slaugh-  
23 ter had been taken into custody. Tr. 5/18/11 at 80-81, 88. Her weakness as a witness  
24 allowed the prosecutor to attack the credibility of Mr. Slaughter’s alibi and opened  
25 the door to additional evidence that suggested he was attempting to fabricate an alibi.  
26 It certainly did not help matters that counsel had previewed Ms. Westbrook as a star  
27 alibi witness during opening statements. Tr. 5/16/11 at 17.

1 Ms. Westbrook provided little upside as a defense witness and substantial  
2 downside. Reasonable attorneys would not have called her. Had Ms. Westbrook not  
3 testified, there is a reasonable probability that the jury would have believed Mr.  
4 Slaughter's alibi and voted to acquit.

5 **Ground Three: Trial counsel failed to fully cross examine and impeach**  
6 **the State's witnesses, in violation of Mr. Slaughter's rights under the**  
7 **Sixth and Fourteenth Amendments to the United States Constitution,**  
8 **as well as under Article 1, Section 8, of the Nevada Constitution.**

9 Three of the State's witnesses purported to identify Mr. Slaughter as one of the  
10 assailants. But their accounts had shifted over time in significant ways, suggesting  
11 that their recollections were faulty. A reasonable defense lawyer would have seized  
12 on these inconsistencies during cross-examination. But Mr. Slaughter's attorneys did  
13 not follow these lines of questioning. Similarly, the attorneys did not engage in a  
14 fulsome cross-examination of the State's firearms expert.

15 Counsel provided deficient performance in each of these respects. There could  
16 be no strategic reason for failing to undercut the testimony of the State's witnesses.  
17 Had Mr. Slaughter's lawyers taken any or all of these steps, there is a reasonable  
18 probability that the jury would have voted to acquit. As a result, Mr. Slaughter re-  
19 ceived ineffective assistance of counsel at trial. *See Strickland v. Washington*, 466  
20 U.S. 668 (1984).

21 **A. Counsel failed to ask the victims about the second photo lineup.**

22 The victims based their identifications of Mr. Slaughter on an initial, highly  
23 suggestive photo lineup. *See* Ground One, *infra*. But the witnesses were shown a  
24 second photo lineup that included a different picture of Mr. Slaughter, taken only  
25 days after his arrest. This time, the victims did not identify him as a suspect. Ex. 14  
26 at 87-88. This second photo lineup was the subject of a pre-trial motion (10/27/09  
27 Motion to Dismiss), and both the State and the court suggested that it would be a  
suitable subject for cross-examination (11/9/09 Opposition to Motion to Dismiss at 2;

1 Tr. 12/1/09 at 10-11). But defense counsel did not take the hint. They didn't call any  
2 police officers to testify about it, nor did they ask the victims whether they had seen  
3 this second photo lineup (the State conceded they had), nor did they ask the victims  
4 whether they had contemporaneously identified Mr. Slaughter in this second photo  
5 lineup (they didn't).

6 Defense counsel's failure to develop evidence regarding this second lineup is  
7 all the more puzzling given their odd mid-trial request for a jury instruction on this  
8 issue. After the State rested, one of Mr. Slaughter's attorneys discussed the second  
9 lineup with the court outside the presence of the jury. The attorney explained that  
10 the police had shown these lineups to the witnesses and none of them had identified  
11 Mr. Slaughter as one of the assailants in that lineup. Tr. 5/18/11 at 60. He asked for  
12 "jury instructions that these lineups were in fact [shown] and nobody selected Mr.  
13 Slaughter on them." *Id.* at 61. The court responded, "Jury instructions are based on  
14 the evidence presented at trial," so the defense ought to present evidence regarding  
15 that second lineup. *Id.* But the attorneys did not get the message, and they did not  
16 develop any evidence regarding this second lineup.

17 There was no reason for defense counsel not to present evidence on this topic.  
18 Undercutting the witnesses' identifications of Mr. Slaughter was a crucial task at  
19 trial. Part of that task involved establishing that the first lineup was suggestive. The  
20 fact that the witnesses failed to identify Mr. Slaughter in a later non-suggestive  
21 lineup would substantially undercut the reliability of the first identification. But  
22 defense counsel did nothing to elicit that fact, depriving the jury of a substantial rea-  
23 son to doubt the witnesses' testimony. On information and belief, defense counsel  
24 also didn't bother trying to ask the victims about the second photo lineup informally  
25 before trial.  
26  
27

1           **B. Counsel failed to fully cross-examine Mr. Young.**

2           Over time, Mr. Young's story changed in many key respects. Defense counsel  
3 failed to illustrate that for the jury. For example, he initially told the police that the  
4 two culprits were black males, one of whom "was bald and wearing shorts and a blue  
5 shirt," the other of whom had "dreadlocks and spoke with a Jamaican accent." Ex. 4  
6 at 2. He said he "kn[ew] for a fact" that the individual with dreadlocks was the  
7 shooter. *Id.* But Mr. Young changed his mind at the preliminary hearing. The  
8 shooter, he said, was Mr. Slaughter, who was wearing a hat; it was the other suspect  
9 who had the dreadlocks. Tr. 9/21/04 at 20-21, 28. That was a dramatic shift. At first,  
10 Mr. Young was sure the individual with dreadlocks was the shooter. By the prelimi-  
11 nary hearing, though, he reversed course—it was the *other* assailant (not the one  
12 with dreadlocks) who fired the gun. Then, at trial, his recollection changed again;  
13 this time, he said both suspects were wearing wigs. Tr. 5/16/11 at 49. And while he  
14 had previously said that only one assailant had a Jamaican accent (Tr. 9/21/04 at 28-  
15 29), at trial he said both suspects had Jamaican accents (Tr. 5/16/11 at 49). Mr.  
16 Slaughter's attorneys should have cross-examined Mr. Young about his shifting rec-  
17 ollection regarding the assailants' and the shooter's appearance. Effective cross-ex-  
18 amination would have eroded his credibility.

19           There were other shifts in Mr. Young's statements that would have given the  
20 jury additional reasons to doubt his identification. For one, he described the shooter  
21 at the preliminary hearing as being around 5'5" or 5'6" (Tr. 9/21/04 at 21), even though  
22 Mr. Slaughter is 5'9" (Ex. 11). In addition, during his initial police interview Mr.  
23 Young did not mention seeing the perpetrators' car (3/25/15 Exhibits (interview tran-  
24 script internally marked "Exhibit A")), but at trial he claimed to have seen a green  
25 Ford Taurus (Tr. 5/16/11 at 46). Mr. Young provided similarly conflicting accounts  
26 regarding his opportunity to see the culprits and his family during the incident, and  
27

1 on other topics. *Compare, e.g.*, Tr. 9/21/04 at 12-13; *with, e.g.*, Tr. 5/16/11 at 51. De-  
2 fense counsel failed to elicit additional useful details, including the fact that Mr.  
3 Young testified at the preliminary hearing that “there wasn’t really much chance” for  
4 him to see the perpetrators during their initial contact outside his house, since Mr.  
5 Young was distracted with buffing his car. Tr. 9/21/04 at 25.

6 A reasonable defense attorney would have seized on these various inconsisten-  
7 cies and other flaws in Mr. Young’s account in order to create doubt regarding his  
8 recollection. But defense counsel’s cross-examination of Mr. Young at trial was cur-  
9 sory at best, leaving the jury with few reasons to doubt Mr. Young’s testimony.

10 **C. Counsel failed to fully cross-examine Mr. John.**

11 Like Mr. Young, Mr. John’s version of events evolved over time and included  
12 various inconsistencies. Most significantly, Mr. John testified at trial that he was  
13 able to see the perpetrators throughout most of the incident, including during the  
14 shooting. Tr. 5/17/11 at 58-59. However, at the preliminary hearing, Mr. John testi-  
15 fied that the suspects had placed a jacket over his head immediately after he entered  
16 Mr. Young’s house. Tr. 9/21/04 at 54-55. That account is consistent with what Mr.  
17 John initially told the police. Ex. 2 at 9.

18 Just as with Mr. Young, a reasonable defense attorney would have drawn out  
19 this inconsistency and others during Mr. John’s cross-examination. But defense  
20 counsel did not cover these topics with Mr. John. Had the attorneys made this point,  
21 the jury would have had additional reason to be skeptical of whether Mr. John had a  
22 decent chance to view the perpetrators.

23 **D. Counsel failed to fully cross-examine the State’s firearm**  
24 **expert.**

25 Under the State’s theory of the case, Mr. Slaughter had injured Mr. Young with  
26 a .357 caliber bullet. That detail fit the State’s narrative because the police subse-  
27 quently found a .357 shell casing in the car Mr. Slaughter allegedly drove to and from

1 the incident. The prosecution wanted to prove to the jury the bullet jacket fragments  
2 found in Mr. Young's face and at the crime scene came from the same type of bullet  
3 as the casing found in Mr. Slaughter's car, because the jury could then conclude the  
4 casing and the fragments came from the same type (or perhaps even the same piece)  
5 of ammunition.

6 At this point, some background information about ammunition may be useful.  
7 In simplified terms, a "bullet" has two components: a metal "core," and a metal  
8 "jacket," which surrounds the core. In turn, a round of ammunition comprises the  
9 bullet (its core and its jacket), some form of propellant, and a "shell casing," which  
10 encloses the bullet and the propellant. When a round is fired, the bullet shoots out  
11 of the gun at high speed, and the shell casing is expelled with much less force. What  
12 likely happened in this case is that the perpetrator shot the gun at the floor near Mr.  
13 Young, the bullet jacket fragmented on impact, and some of the fragments shredded  
14 into Mr. Young's face. Under the State's theory, the jacket fragments found in Mr.  
15 Young's face and at the crime scene came from the same brand and caliber of ammu-  
16 nition (if not the same exact round of ammunition) as the .357 shell casing found in  
17 Ms. Johnson's car.

18 In an attempt to link the jacket fragments to the shell casing, the State called  
19 Angel Moses as an expert witness. Ms. Moses had analyzed the jacket fragments the  
20 police recovered from Mr. Young and his house. In her opinion, those fragments were  
21 made of materials that were consistent with the materials that are used to make a  
22 Winchester .357 Magnum silver tip hollow point bullet. Tr. 5/17/11 at 131. That  
23 testimony gave the jury the impression that the bullet used to shoot Mr. Young was  
24 in fact a .357 caliber bullet, which would be consistent with the .357 shell casing the  
25 police found in the car. But there were reasons to doubt that conclusion. The defense  
26 had originally hired an expert to review the ballistics information, and that expert  
27 concluded at least nine other bullet calibers and brands could be consistent with the

1 fragments. The expert even sent an email to one of Mr. Slaughter's defense lawyers  
2 explaining his analysis and suggesting potential topics "to consider for cross." 2/12/16  
3 Exhibits (document internally marked "Exhibit B").

4 Despite that suggestion, defense counsel did not adequately cross-examine Ms.  
5 Moses on this subject. Rather, the attorney focused on the expert's views regarding  
6 whether a generic lead bullet core that the police also found in the car could be linked  
7 to a .357 round. That line of questioning missed the mark. It did not make much  
8 difference whether the core came from a .357 round or some other round. The shell  
9 casing in the car was obviously from a .357 round, so it would be no surprise if the  
10 core in the car came from a .357 round. Based on the shell casing alone, the State  
11 could easily prove the car's association with a .357 round. The real question was  
12 whether the State could prove that the *jacket fragments* were from a .357 round, and  
13 thus establish a connection between the jacket fragments and the car. Defense coun-  
14 sel's cross examination did not address that issue and left the jury with the mistaken  
15 impression that the jacket fragments had the same caliber as the shell casing found  
16 in the car. The prosecutor emphasized that mistaken impression during his closing  
17 rebuttal, arguing to the jury that his expert was "able to determine . . . that the jack-  
18 eting that was in [Mr. Young's] face was a .357, and it was manufactured by Winches-  
19 ter. We know [Mr. Slaughter] has a little casing to a Winchester 357 in the trunk of  
20 his car." Tr. 5/20/11 at 136. Defense counsel should have addressed that incorrect  
21 inference during cross-examination.

22 **Ground Four: Trial counsel failed to call additional witnesses to provide**  
23 **exculpatory testimony, in violation of Mr. Slaughter's rights under the**  
24 **Sixth and Fourteenth Amendments to the United States Constitution,**  
**as well as under Article 1, Section 8, of the Nevada Constitution.**

25 Mr. Slaughter's defense counsel provided ineffective assistance when they  
26 failed to call additional witnesses in Mr. Slaughter's favor. The police investigation  
27 was flawed in critical respects, but defense counsel did not call the lead detective to



1 highlight the errors. Nor did the attorneys call the lead detective or other investigat-  
2 ing officers to testify about some of the witnesses' exculpatory statements. And de-  
3 fense counsel did not call Destiny Waddy, whose description of the getaway car con-  
4 flicted with the State's evidence.

5 Trial counsel provided deficient performance in each of these respects. There  
6 could be no strategic reason for failing to introduce this exculpatory evidence. On  
7 information and belief, defense counsel also didn't bother trying to speak to any of  
8 these potential witnesses informally before trial. Had Mr. Slaughter's lawyers taken  
9 any or all of these steps, there is a reasonable probability that the jury would have  
10 voted to acquit. As a result, Mr. Slaughter received ineffective assistance of counsel  
11 at trial. *See Strickland v. Washington*, 466 U.S. 668 (1984).

12 **A. Counsel failed to call Detective Jesus Prieto.**

13 Detective Jesus Prieto was the lead detective regarding the incident at Mr.  
14 Young's home. He testified at the preliminary hearing, but he did not testify at trial.  
15 That was a problem, because his investigation suffered from critical flaws, and the  
16 jury should have heard about those flaws. Defense counsel provided ineffective as-  
17 sistance when they failed to call him. The attorneys fully expected the State to call  
18 Detective Prieto, and they planned to cross-examine him during the State's case.  
19 Tellingly, the State chose not to call Detective Prieto. Because Mr. Slaughter's law-  
20 yers thought the State would call him as a matter of course, they did not bother to  
21 subpoena him, so they did not get to call him as part of their case. That oversight  
22 was a serious mistake that had a detrimental effect on Mr. Slaughter's defense.

23 Had defense counsel called Detective Prieto, they could have elicited numerous  
24 damning facts. First, he failed to collect surveillance footage from the area near Ms.  
25 Johnson's workplace. Mr. Slaughter had an alibi—he had picked up Ms. Johnson (his  
26 girlfriend) after work, at about the same time the perpetrators were leaving the crime  
27 scene. Detective Prieto knew that if he could nail down the time when Mr. Slaughter

1 arrived to pick her up, it would go a long way toward proving his guilt or innocence.  
2 He spoke to witnesses on numerous occasions in an attempt to establish that  
3 timeframe. But he did not collect available surveillance footage that could have  
4 shown exactly when Mr. Slaughter showed up. Ex. 14 at 143; *see also* Tr. 5/17/11 at  
5 45-46 (Jeffrey Arbuckle testifying that footage was available).<sup>3</sup> Defense counsel  
6 should have asked Detective Prieto why he failed to take this obvious step.

7 Second, and relatedly, Detective Prieto repeatedly tried to manipulate Ms.  
8 Johnson regarding the exact time when Mr. Slaughter picked her up. At first, Ms.  
9 Johnson told the police that Mr. Slaughter arrived at 7:00 p.m. Tr. 5/19/11 at 14.  
10 Detective Prieto responded that Ms. Johnson must have been lying, because Mr.  
11 Slaughter was somewhere else committing a crime at 7:00 p.m. *Id.* at 16. After that  
12 interview, Detective Prieto called her and threatened to arrest her if she did not tell  
13 him that Mr. Slaughter “picked [her] up at a later time.” *Id.* at 18. Detective Prieto  
14 made good on that threat and arrested her at work, for allegedly “obstructing justice.”  
15 *Id.* at 18, 42. As he interviewed her again, he implied that if Ms. Johnson did not  
16 cooperate with the police, her arrest would make it hard for her to get a job in the  
17 future. *Id.* at 47-48. Ms. Johnson felt she was being coerced to change her story. *Id.*  
18 at 48-49; *see also* 2/25/11 Reply re Motion to Preclude Involuntary Statement (docu-  
19 ments internally marked “Exhibit A” and “Exhibit C”). In light of the pressure, she  
20 said that Mr. Slaughter picked her up at 7:30 p.m. Tr. 5/19/11 at 19. At trial, she  
21 confirmed that Mr. Slaughter arrived “between 7:00 to 7:15; no later than 7:20.” *Id.*  
22 at 21. Defense counsel should have called Detective Prieto and asked him about his  
23 attempts to manipulate Ms. Johnson’s testimony. *See* Tr. 5/19/11 (11:00 a.m.) at 37  
24

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25 <sup>3</sup> The official copy of the trial transcript is missing four pages (45-48), including  
26 the pages where this exchange took place. The court reporter has prepared replace-  
27 ment copies of three of those pages, which are at Ex. 10.

1 (the prosecutor acknowledges defense counsel could argue Mr. Prieto “was inappropriate with” Ms. Johnson); Ex. 14 at 104-37.

3 Third, Detective Prieto could’ve confirmed Mr. Arbuckle told him he left work  
4 at 7:15 p.m.—not at 7:30 p.m., as Mr. Arbuckle testified at trial. Ex. 14 at 139.

5 Fourth, Detective Prieto put together the suggestive photo lineup that led to  
6 the witnesses’ faulty identifications. Tr. 9/21/04 at 103-04. Detective Prieto also put  
7 together the second photo lineup, which he also showed to the victims; none of the  
8 victims identified Mr. Slaughter in that second lineup. Ex. 14 at 87-88. Defense  
9 counsel should have called Detective Prieto and asked him about the second photo  
10 lineup; his testimony could’ve established none of the victims had picked Mr. Slaugh-  
11 ter from that lineup.

12 Fifth, Destiny Waddy had told the police that the getaway car was “possibly a  
13 Pontiac Grand Am.” Ex. 2 at 10; *see also* Tr. 5/16/11 at 19 (Jennifer Dennis testifies  
14 one of the suspects was talking about a Pontiac). But in his affidavit in support of a  
15 search warrant, Detective Prieto represented that the witnesses described the geta-  
16 way car as a Pontiac *or* a Ford, which conveniently happened to be the make of Ms.  
17 Johnson’s car. 10/27/09 Motion to Suppress; *see* Ex. 14 at 161-64. Defense counsel  
18 should have asked Detective Prieto why he made that change in the search warrant  
19 affidavit.

20 Sixth, Detective Prieto’s testimony could’ve helped draw attention to the sug-  
21 gestive nature of the first photo lineup and given other relevant information about  
22 that lineup specifically, the lineups in this case, and lineups more generally. *See* Ex.  
23 14 at 34-37, 84-86, 192-95, 205-09.

24 Seventh, the police seized shoes from Mr. Slaughter’s apartment. They  
25 thought they saw blood on them, so they wanted to test whether Mr. Young’s blood  
26 was present on it. In 2009, Detective Prieto signed an application for a search war-  
27 rant to get a buccal swab from Mr. Slaughter, since the crime lab wanted to com-  
pare

1 the blood against a sample from Mr. Slaughter (in addition to Mr. Young). In his  
2 application, he stated the lab previously tried to test the blood, but they “appeared to  
3 have been covered by some type of polish,” so they “were not able to test the substance  
4 due to the polish.” Ex. 17. But in a police report from 2004, he didn’t mention any-  
5 thing about polish; he simply stated the lab had tested the shoes for blood and gotten  
6 “negative results.” Ex. 8. Had the attorneys called Detective Prieto, they could’ve  
7 asked him questions about this inconsistency: in 2004, he stated there was no blood  
8 on the shoes, but in his 2009 search warrant application, he said the substance he  
9 thought was blood was covered by polish. *See also* Ex. 14 at 164-71.

10 Eighth, by calling Detective Prieto, the trial lawyers could’ve painted a picture  
11 of a lead detective who rushed to judgment and failed to conduct a proper investiga-  
12 tion. Once he got a tip from a confidential informant that Mr. Slaughter was respon-  
13 sible, Detective Prieto automatically assumed Mr. Slaughter was guilty; in response,  
14 the police did just enough work to justify an arrest and spent little time trying to get  
15 the bottom of who was actually responsible. *See, e.g.*, Ex. 14 at 101-03, 124-25 (De-  
16 tective Prieto states that even if Mr. Slaughter could’ve proved his alibi to a 100 per-  
17 cent certainty, he would still think Mr. Slaughter was guilty). The police also never  
18 identified the alleged co-conspirator.

19 Had defense counsel called Detective Prieto and asked questions on any or all  
20 of these topics and others, the jury would’ve had serious reasons to question the in-  
21 tegrity and accuracy of the police investigation. In turn, the jury would have felt  
22 reasonable doubt about whether the State had charged the right man.

23 In addition, Detective Prieto could have laid the foundation for prior incon-  
24 sistent statements by various witnesses. For example, he could have testified about  
25 various inconsistencies in Mr. Young’s accounts. *See* Ground Three, Section A, *supra*;  
26 *see also, e.g.*, 3/25/15 Exhibits (document internally marked “Exhibit A”). He could  
27 have also testified about Mr. Arbuckle’s prior inconsistent statements about when

1 Mr. Slaughter picked up Ms. Johnson. *See* Ground Two, Section D, *supra*; *see also*  
2 Ex. 9 at 3-4. Counsel should have called Detective Prieto to lay the foundation for  
3 those material prior inconsistent statements.

4 For all these reasons and more, defense counsel provided ineffective assistance  
5 when they failed to call Detective Prieto. Mr. Slaughter's trial attorneys knew that  
6 Detective Prieto was a crucial witness. In fact, they anticipated cross-examining him,  
7 and they mentioned Detective Prieto repeatedly in their opening statement. Tr.  
8 5/16/11 at 20-22. But they were not able to deliver because the State did not call him,  
9 and they had forgotten to subpoena him. 3/25/15 Petition at 7. They wanted to rem-  
10 edy that mistake by arguing during closing that the State's failure to call the lead  
11 detective should make the jury skeptical about the quality of the police investigation.  
12 But the prosecutor argued that the court should bar that argument, and the court  
13 agreed. Tr. 5/19/11 (11:00 a.m.) at 37-45. Defense counsel knew they needed to make  
14 that argument. In order to make that argument, they needed to call Detective Prieto.  
15 They should've done so.

16 **B. Counsel failed to call Officer Anthony Bailey.**

17 Just as defense counsel should have called Detective Prieto to lay the founda-  
18 tion for some of Mr. Young's prior inconsistent statements, defense counsel should  
19 have called Officer Anthony Bailey to lay the foundation for certain of Mr. Young's  
20 other prior inconsistent statements. Mr. Young had told Officer Bailey that one of  
21 the robbers was bald and wearing shorts and a blue shirt, while the other had dread-  
22 locks and spoke with a Jamaican accent. Ex. 4 at 2. According to Mr. Young, he was  
23 sure the assailant with dreadlocks had shot him. *Id.* At the preliminary hearing, Mr.  
24 Young specified that Mr. Slaughter was not the one with the dreadlocks. Tr. 9/21/04  
25 at 28. But he changed his mind and said that Mr. Slaughter *was* the shooter (*id.* at  
26 39)—even though he previously said the robber *with* the dreadlocks was the shooter.  
27 (Ex. 4 at 2). Defense counsel should have called Officer Bailey to help rebut that

1 claim. *See also* Ground Three, Section B, *supra*. In addition, there is no indication  
2 in the police reports that Mr. Young said he saw the getaway car. But when he tes-  
3 tified, he said he had seen it. Tr. 5/16/11 at 46. Had counsel called Officer Bailey,  
4 counsel could've confirmed he hadn't mentioned that at the time.

5 Defense counsel did not make a strategic decision not to call Officer Bailey.  
6 The attorneys made the same mistake that they made with Detective Prieto—they  
7 assumed the State would call Officer Bailey, so they did not bother to subpoena him.  
8 3/25/15 Petition at 20. In fact, Mr. Slaughter told the court he had asked his lawyers  
9 to call Officer Bailey, and they had neglected to do so. Tr. 5/20/11 at 66. The attor-  
10 neys' failure to secure Officer Bailey's testimony constituted deficient performance,  
11 and it prejudiced the defense's case.

12 **C. Counsel failed to call Destiny Waddy.**

13 Destiny Waddy was waiting in Mr. Means's car while Mr. Means and the other  
14 victims were tied up. She told Officer Mark Hoyt that the assailants left in a car that  
15 she described as possibly a Pontiac Grand Am. Ex. 2 at 10. That conflicted with the  
16 State's version of events, namely that the assailants were driving Ms. Johnson's Ford  
17 Taurus. Defense counsel should have called Ms. Waddy to testify about the getaway  
18 car. Her testimony would have gone a long way toward undercutting the State's the-  
19 ory, in part because Ms. Dennis recalled that the perpetrators mentioned a Pontiac.  
20 Tr. 5/16/11 at 149. That detail would have corroborated Ms. Waddy's recollection that  
21 the getaway car was a Pontiac, not a Ford.

22 Mr. Slaughter's attorneys knew this testimony was important. In fact, they  
23 promised the jurors they would hear it in their opening. Tr. 5/16/11 at 20-21. But  
24 the attorneys yet again made the same mistake that they made with Detective Prieto  
25 and Officer Bailey—they assumed the State would call Ms. Waddy, so they did not  
26 bother to subpoena her. 3/25/15 Petition at 33. Again, Mr. Slaughter told the court  
27 that he had asked his lawyers to call Ms. Waddy, and they had neglected to do so. Tr.

1 5/20/11 at 66. The attorneys' failure to secure Ms. Waddy's testimony constituted  
2 deficient performance, and it prejudiced the defense's case.

3 **D. Counsel failed to call Officer Mark Hoyt.**

4 Just as defense counsel should have called Ms. Waddy to testify about the get-  
5 away car, counsel should have called Officer Hoyt, who could have confirmed that Ms.  
6 Waddy described the car as a Pontiac. Ex. 2 at 10. That testimony would've helped  
7 show why Ms. Johnson's car wasn't the car used in the home invasion. It also  
8 would've contradicted Detective Prieto, who wrote in a search warrant affidavit that  
9 the witnesses described the car as a Pontiac *or* a Ford. *See* Ground Three(A), *supra*.  
10 In addition, Officer Hoyt could have described Mr. John's initial statement to the  
11 police that his head had been covered for much of the incident, which contradicted  
12 his account at trial that his head was uncovered until after the shooting. *Id.* at 9; *see*  
13 *also* Ground Three, Section C, *supra*. The only reason the attorneys did not call Of-  
14 ficer Hoyt is because they made the same mistake that they made with Detective  
15 Prieto, Officer Bailey, and Ms. Waddy—they assumed the State would call Officer  
16 Hoyt, so they did not bother to subpoena him. 3/25/15 Petition at 56. Yet again, Mr.  
17 Slaughter told the court that he had asked his lawyers to call Officer Hoyt, and they  
18 had neglected to do so. Tr. 5/20/11 at 66. Once again, this constituted deficient per-  
19 formance, and it prejudiced Mr. Slaughter.

20 **Ground Five: Trial counsel failed to deliver on promises made during**  
21 **opening statements, in violation of Mr. Slaughter's rights under the**  
**Sixth and Fourteenth Amendments to the United States Constitution.**

22 As described in certain of Mr. Slaughter's grounds for relief above, Mr. Slaugh-  
23 ter's defense counsel made a number of unfulfilled promises during opening state-  
24 ments. For one, counsel promised that the jury would learn about Mr. Slaughter's  
25 alibi—based on the timeline of events, he would have had four minutes to get from  
26 the crime scene to Ms. Johnson's workplace, and that was not nearly enough time.  
27 But counsel failed to introduce that evidence. *See* Ground Two, Sections A, B, C, and

1 D, *supra*. Meanwhile, counsel promised that Ms. Westbrook would be a star alibi  
2 witness, but her testimony was underwhelming and counterproductive, just as Mr.  
3 Slaughter had anticipated. *See* Ground Two, Section E, *supra*.

4 Counsel made other bad promises as well. Counsel suggested that the jury  
5 would hear from Detective Prieto, but he never appeared at trial. *See* Ground Four,  
6 Section A, *supra*. Counsel also suggested that the jury would hear from Destiny  
7 Waddy, but she did not appear, either. *See* Ground Four, Section C, *supra*. In these  
8 respects and others, counsel made various unfulfilled promises during opening state-  
9 ments. There could be no strategic reason for making those promises and then failing  
10 to deliver. The defense was prejudiced as a result, both because the unfulfilled prom-  
11 ises damaged the defense's credibility, and because the evidence counsel alluded to  
12 would have been material and exculpatory. As a result, Mr. Slaughter received inef-  
13 fective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668 (1984).

14 **Ground Six: Trial counsel failed to object to prosecutorial misconduct,**  
15 **in violation of Mr. Slaughter's rights under the Sixth and Fourteenth**  
16 **Amendments to the United States Constitution, as well as under Article**  
17 **1, Section 8, of the Nevada Constitution.**

18 The prosecutors made multiple inappropriate comments during the initial clos-  
19 ing argument and the rebuttal. These comments constituted prosecutorial miscon-  
20 duct. But Mr. Slaughter's attorneys failed to object to these comments. That failure  
21 constituted deficient performance for which there is no strategic justification. Had  
22 defense counsel objected to any or all of these comments, and had the jury been ap-  
23 propriately admonished, there is a reasonable probability it would have voted to ac-  
24 quit. As a result, Mr. Slaughter received the ineffective assistance of counsel. *See*  
25 *Strickland v. Washington*, 466 U.S. 668 (1984).

26 To be clear, Mr. Slaughter's trial attorneys were ineffective in numerous re-  
27 spects. They were ineffective for all the specific reasons explained in this Ground and  
Grounds Two through Six. Had his attorneys performed effectively in *any* of these



1 numerous respects, there would have been a reasonable probability of a different out-  
2 come. And had his attorneys performed effectively in *all* of the ways described in this  
3 Ground and Grounds Two through Six, there would have been an overwhelming like-  
4 lihood of a different outcome. For all the reasons explained in this amended petition,  
5 both individually and cumulatively, Mr. Slaughter received ineffective assistance of  
6 counsel. He is therefore entitled to a new trial.

7       **A.       The prosecutor inappropriately suggested Mr. Slaughter had at-**  
8       **tempted to fake a Jamaican accent.**

9       During trial, three witnesses—Ivan Young, Jennifer Dennis, and Ryan John—  
10 testified that the suspects had Jamaican accents. Tr. 5/16/11 at 49 (Mr. Young), 140  
11 (Ms. Dennis); Tr. 5/17/11 at 52 (Mr. John). None of them testified at trial that the  
12 accents sounded fake (although Ms. Dennis said she could not tell whether the accent  
13 was authentic). That fact was exculpatory, since Mr. Slaughter does not have a Ja-  
14 maican accent, and the jury heard jail house phone calls that Mr. Slaughter allegedly  
15 placed; those calls confirm that Mr. Slaughter does not have a Jamaican accent. *E.g.*,  
16 Tr. 5/18/11 at 86 (prosecutor plays phone calls to jury).

17       During the State’s initial closing argument, the prosecutor told the jury that  
18 the suspects “used fake accents.” Tr. 5/20/11 at 13. According to her, “Ivan Young  
19 said it appeared they were trying to talk Jamaican.” *Id.* So too with Mr. John: he  
20 said “it sounded like a fake accent.” *Id.* Ms. Dennis supposedly agreed—she suppos-  
21 edly said that “it sounded like they were putting on an act.” *Id.* Thus, the prosecutor  
22 concluded, the evidence showed the suspects “were putting on an act [by] using a  
23 different voice to disguise their identity.” *Id.* But none of those witnesses said any-  
24 thing of the sort, except perhaps Ms. Dennis, who said she did not know whether the  
25 accents were authentic (not that she believed the perpetrators were putting on an  
26 act). Aside from that minor caveat, the three witnesses testified that the suspects  
27 had Jamaican accents—not that it seemed as if the suspects were trying to fake an

1     accent or put on an act. The prosecutor therefore misrepresented the trial testimony,  
2     and defense counsel should have objected.

3             **B.     The prosecutor inappropriate said there was “no question” Mr.**  
4             **Slaughter “put a gun to” Mr. Young’s “face.”**

5             The prosecutor began his rebuttal argument by stating that “this man,” i.e.,  
6     Mr. Slaughter, “put a 357 to a guy’s face that he shot. There’s no question about  
7     that.” Tr. 5/20/11 at 130. Of course, that was one of the key questions for the jury to  
8     resolve. Defense counsel should have objected to that improper remark.

9             **C.     The prosecutor inappropriately vouched for Mr. Arbuckle.**

10            Next, the prosecutor tried to smear the defense’s alibi witnesses. He told the  
11     jury it should credit Mr. Arbuckle, who said Mr. Slaughter did not arrive to pick up  
12     Ms. Johnson until after 7:30 p.m. According to the prosecutor, the jury should “be-  
13     lieve Mr. Arbuckle [because he] has no reason to lie.” Tr. 5/20/11 at 132. With that  
14     remark, the prosecutor inappropriately vouched for Mr. Arbuckle as a witness. In  
15     fact, as Ground Two(D) explains, Mr. Arbuckle disliked Mr. Slaughter—to the point  
16     of calling the cops on him a month before the incident—and therefore had a motive  
17     to lie. Relatedly, the prosecution suggested the jury should believe Mr. Arbuckle and  
18     disbelieve Ms. Johnson in part because “We didn’t call Tiffany Johnson.” *Id.* That  
19     comments was improper, too. Defense counsel should have objected to the prosecu-  
20     tion’s vouching.

21            **D.     The prosecutor inappropriately suggested Mr. Slaughter knew the**  
22            **time of the crime, so he must’ve been there.**

23            Later on in his rebuttal, the prosecutor argued that Mr. Slaughter had tried to  
24     manufacture an alibi for himself for 7:00 p.m. on the night of the incident. But, the  
25     prosecutor asked rhetorically, “How does he know that fact that that’s when the crime  
26     occurred. Ask yourself that question.” Tr. 5/20/11 at 141; *see also id.* at 142. The  
27     prosecutor’s tacit answer was that Mr. Slaughter knew what time the incident oc-  
   curred because he was there. But, in fact, Detective Prieto had discussed the timing

1 of the robbery with Mr. Slaughter soon after his arrest. Ex. 7 at 6. Defense counsel  
2 should have objected to the prosecutor's improper insinuation.

3 **E. The prosecutor inappropriately suggested Mr. Slaughter's use of**  
4 **an alibi defense illustrated his guilt.**

5 Later, the prosecutor returned to this theme; he stated that if Mr. Slaughter  
6 had a real alibi, he would not need witnesses to lie for him, and "[t]hat alone would  
7 make him guilty." Tr. 5/20/11 at 142. Once again, the comment inappropriately sug-  
8 gested that Mr. Slaughter had manufactured an alibi and was guilty as a result. De-  
9 fense counsel should have objected to this insinuation as well.

10 **F. The prosecutor inappropriately stated, "You shoot a guy in the**  
11 **face, you don't just get 10 years."**

12 Next, the prosecutor suggested that soon after his arrest, Mr. Slaughter indi-  
13 cated during jail house phone calls that he might be willing to take a plea deal for  
14 eight or nine years to resolve this case. The prosecutor then dramatically turned  
15 toward Mr. Slaughter and said, "I got to tell Mr. Slaughter this, too, you shoot a guy  
16 in the face, you don't just get 10 years." Tr. 5/20/11 at 143. Defense counsel should  
17 have objected to this flagrant commentary.

18 **G. The prosecutor inappropriately told the jury, "If you are doing the**  
19 **job," it will convict.**

20 Toward the end of his rebuttal, the prosecutor suggested Mr. Slaughter knew  
21 he was responsible for the alleged crimes. He then closed with these remarks: "I  
22 suggest to you, if you are doing the job, 12 of you will go back in that room, you will  
23 talk about it and come back here and tell him you know, too." Tr. 5/20/11 at 150.  
24 Those were the final words the jury heard before retiring for deliberations. The pros-  
25 ecutor in effect told the jury it had a duty to reach a guilty verdict, and defense coun-  
26 sel should have objected to that improper statement.  
27

1       Ground Seven: The State committed prosecutorial misconduct during  
2 closing arguments, in violation of Mr. Slaughter's rights under the Fifth,  
3 Sixth, and Fourteenth Amendments to the United States Constitution,  
as well as under Article 1, Section 8, of the Nevada Constitution.

4       As described in Ground Six, *supra*, the prosecutors made a series of improper  
5 remarks during closing argument and rebuttal. For reference, those remarks are as  
6 follows:

- 7       A. The prosecutor inappropriately suggested Mr. Slaughter had attempted to  
8       fake a Jamaican accent.
- 9       B. The prosecutor inappropriately said there was "no question" that Mr.  
10       Slaughter "put a gun to" Mr. Young's "face."
- 11       C. The prosecutor inappropriately vouched for Mr. Arbuckle.
- 12       D. The prosecutor inappropriately suggested Mr. Slaughter knew the time of  
13       the crime, so he must have been there.
- 14       E. The prosecutor inappropriately suggested Mr. Slaughter's use of an alibi de-  
15       fense illustrated his guilt.
- 16       F. The prosecutor inappropriately stated, "You shoot a guy in the face, you  
17       don't just get 10 years."
- 18       G. The prosecutor inappropriately told the jury, "if you are doing the job," it  
19       will convict.

20       Each of these remarks, individually and cumulatively, were so unfair that they de-  
21       nied Mr. Slaughter due process. *See Darden v. Wainwright*, 477 U.S. 168, 181 (1986).  
22       Each of these instances of misconduct had a substantial and injurious effect on the  
23       verdict. Mr. Slaughter is therefore entitled to a new trial.

1       **Ground Eight: The State hearsay evidence that denied Mr. Slaughter**  
2       **his ability to confront the witnesses against him, in violation of Mr.**  
3       **Slaughter’s rights under the Fifth, Sixth, and Fourteenth Amendments**  
      **to the United States Constitution, as well as under Article 1, Section 8,**  
      **of the Nevada Constitution.**

4       The State introduced into evidence a surveillance videotape from a 7-Eleven  
5       store at 3051 E. Charleston Ave. in Las Vegas. It then played for the jury a snippet  
6       of the video, taken at about 8:00 p.m. the night of the incident. In the video, a black  
7       male can be seen standing near an ATM. According to the State, the man was Mr.  
8       Slaughter, using the ATM card he stole from Mr. John. But the only evidence the  
9       State presented that tended to prove that conclusion was hearsay evidence. Mr. John  
10      testified that after the robbery, he called his bank to report the stolen card, and some-  
11      one at the bank told him his card had been used “at a 7-11 just after 8 p.m.” Tr.  
12      5/17/11 at 61. That testimony was the only link between the video and the incident.  
13      But that testimony was hearsay—Mr. John was recounting the bank employee’s tes-  
14      timonial, out-of-court statement. The introduction of that hearsay testimony denied  
15      Mr. Slaughter the right to confront the witnesses against him. *See Crawford v. Wash-*  
16      *ington*, 541 U.S. 36 (2004). The error had a substantial and injurious effect on the  
17      verdict, since the jury was allowed to infer that the video showed Mr. Slaughter with  
18      the proceeds of the robbery. Indeed, the prosecutors repeatedly stressed this point  
19      during closing arguments. Tr. 5/20/11 at 25, 39-40, 53. Mr. Slaughter is therefore  
20      entitled to a new trial.

21      **Ground Nine: Direct appeal counsel failed to raise meritorious issues,**  
22      **in violation of Mr. Slaughter’s rights under the Sixth and Fourteenth**  
23      **Amendments to the United States Constitution, as well as under Article**  
      **1, Section 8, of the Nevada Constitution.**

24      Mr. Slaughter’s appellate attorney omitted crucial issues from his appeal: a  
25      solid *Batson* claim, and the police’s failure to document the use of a second photo-  
26      graphic lineup. These issues are plainly meritorious, and counsel should have in-  
27      cluded them in addition to or in lieu of some of the weaker claims in the appeal. This

1 failure denied Mr. Slaughter the right to the effective assistance of appellate counsel.  
2 *See Strickland v. Washington*, 466 U.S. 668 (1984); *Miller v. Keeney*, 882 F.2d 1428  
3 (9th Cir. 1989).

4       **A. Direct appeal counsel failed to litigate a *Batson* challenge.**

5       During jury selection, and after pursuing a disparate line of questioning, the  
6 State used a peremptory challenge to strike the last remaining African-American in  
7 the venire, Kendra Rhines (juror number 242). Defense counsel raised a claim under  
8 *Batson v. Kentucky*, 476 U.S. 79 (1986), regarding the State's use of the strike. The  
9 prosecutor explained he struck the juror because of her supposed distrust of the po-  
10 lice, but that was a pretextual explanation. Ms. Rhines explained during voir dire  
11 that she could be fair to both the State and the defense, and the State's decision to  
12 strike her rested on her race. *See* Tr. 5/13/11 (afternoon) at 1-19.

13       Despite this viable *Batson* claim, direct appeal counsel did not raise this issue.  
14 Counsel told Mr. Slaughter he chose not raise this claim because the juror was "not  
15 [a] member[] of your race." 3/25/15 Exhibits (document internally marked "Exhibit  
16 N"). That explanation defies both law and fact. As for the law, *Batson* does not re-  
17 quire that the juror at issue be the same race as the defendant. As for the facts, Mr.  
18 Slaughter and Ms. Rhines are both African-American. Counsel should have brought  
19 this claim, which was plainly stronger than at least some of the other claims in the  
20 direct appeal. Had the attorney raised this issue, there is a reasonable probability  
21 that the Nevada Supreme Court would have granted relief on that basis.

22       **B. Direct appeal counsel failed to litigate the State's failure to pre-**  
23       **serve the second photographic lineup.**

24       As discussed above, *e.g.*, Ground Three, Section A, *supra*, the police had shown  
25 the victims a second photo lineup with Mr. Slaughter's picture in it; none of the vic-  
26 tims identified Mr. Slaughter in that lineup. However, the police did not keep proper  
27 records of this photo lineup, including exactly who was involved in its creation, who

1 was shown it when, and what the victims said in response to the lineup. As a result,  
2 initial trial counsel filed a motion asking the court to take corrective action in light  
3 of this failure to preserve evidence. 10/27/09 Motion to Dismiss. The court denied  
4 that motion. Direct appeal counsel should have renewed the issue on appeal. This  
5 issue was plainly stronger than at least some of the other claims in the direct appeal.  
6 Had the attorney raised this issue, there is a reasonable probability that the Nevada  
7 Supreme Court would have granted relief on that basis.

8 **C. Direct appeal counsel failed to litigate prosecutorial misconduct**  
9 **issues.**

10 As Grounds Six and Seven explain, the State made multiple inappropriate  
11 comments during closing arguments. While direct appeal counsel raised some of  
12 these comments as issues on appeal, counsel did not raise all of these issues: (1) the  
13 issue described in Ground Six(A); (2) the issue described in Ground Six(B); (3) the  
14 issue described in Ground Six(C); and (4) the issue described in Ground Six(D). Coun-  
15 sel should've raised all of them, which would've substantially improved the prosecu-  
16 torial misconduct claims counsel did raise. Had the attorney litigated each of the  
17 improper remarks, there is a reasonable probability the Nevada Supreme Court  
18 would've granted relief.

19 **Ground Ten: The prosecutors exercised a racially motivated peremptory**  
20 **challenge, in violation of Mr. Slaughter's rights under the Fifth, Sixth,**  
**and Fourteenth Amendments to the United States Constitution, as well**  
**as under Article 1, Section 8, of the Nevada Constitution.**

21 As described above in Ground Nine, Section A, *supra*, the prosecutors used a  
22 peremptory challenge to strike an African-American juror after employing a dispar-  
23 ate line of questioning. Their purportedly race-neutral explanation for why they ex-  
24 ercised the strike was pretextual. As a result, the use of the peremptory strike vio-  
25 lated the Constitution. *See Batson v. Kentucky*, 476 U.S. 79 (1986).  
26  
27

1       **Ground Eleven: The prosecutors failed to disclose material exculpatory**  
2       **information, made relevant misrepresentations in open court, and failed**  
3       **to correct false testimony, in violation of Mr. Slaughter’s rights under**  
4       **the Fifth, Sixth, and Fourteenth Amendments to the United States Con-**  
5       **stitution, as well as under Article 1, Section 8, of the Nevada Constitu-**  
6       **tion.**

7       The State failed to disclose significant information about Mr. Slaughter’s alibi  
8       and the second photo lineup, and the prosecution made substantial misrepresenta-  
9       tions on the record about those topics. The State also failed to turn over impeachment  
10       evidence about Mr. Arbuckle and failed to correct his false testimony related to Mr.  
11       Slaughter’s alibi. It therefore violated Mr. Slaughter’s right to due process. *See*  
12       *Brady v. Maryland*, 373 U.S. 83 (1963); *Napue v. Illinois*, 360 U.S. 264, 266 (1959).

13       **A.       The prosecution didn’t disclose evidence regarding Mr. Means’s**  
14       **911 call and misrepresented the timing.**

15       As Ground Two(A) explains, a crucial part of Mr. Slaughter’s alibi involved  
16       when the incident at Mr. Young’s house ended. Based on the 911 records, the call  
17       came in at 7:11 p.m. But the prosecution didn’t turn over those records to the defense.  
18       *See* Exs. 16, 17. That issue—when the 911 call was placed, which helps pin down  
19       when the robbers left the crime scene—was a key component of Mr. Slaughter’s case.  
20       Meanwhile, the State knew or should’ve known this was an important issue, because  
21       Detective Prieto interrogated Ms. Johnson repeatedly and at length regarding Mr.  
22       Slaughter’s alibi (and even arrested her in connection with those interrogations). Ex.  
23       14 at 104-37. It would’ve been obvious the defense was going to need to establish a  
24       concrete timeline of the evening’s events, and the State knowingly held back a mate-  
25       rial piece of that puzzle.

26       Making matters worse, the prosecutor (Marc DiGiacomo) criticized the defense  
27       for failing to introduce this sort of evidence about the 911 call time, and he also made  
misleading comments about the issue. The problem arose when the defense proposed  
using a closing PowerPoint that stated the 911 call took place at 7:11 p.m. Mr. DiGiacomo objected. Tr. 5/20/11 at 77-78. He said the 911 call would have “gone to Metro



1 first” and would have been transferred from Metro to North Las Vegas. *Id.* at 79.  
2 Although 7:11 p.m. was “the time the call was transferred from Metro to North Las  
3 Vegas,” Mr. Means would have actually placed the 911 call earlier. *Id.* at 79. Mr.  
4 DiGiacomo objected that none of the call times were “in evidence” anyway. *Id.* Mr.  
5 DiGiacomo argued the defense could say only that Mr. Means placed the call at 7:00  
6 p.m., not 7:11 p.m., and the court agreed. *Id.* at 82; *see id.* at 84 (defense’s closing  
7 argument) (“[T]he suspects left about 7:00 . . . [the victims] called [the police] after  
8 7:00 p.m.”).

9 Mr. DiGiacomo misled the court and the defense when he argued Mr. Means  
10 called the police as early as 7:00 p.m. To his credit, Mr. DiGiacomo correctly said  
11 Metro transferred the call to North Las Vegas at about 7:11 p.m. Tr. 5/20/11 at 79;  
12 *see* Ex. 6 (North Las Vegas ticket for 911 call listing “time received” of 7:11 p.m.); Ex.  
13 14 at 100 (Detective Prieto says North Las Vegas picked up the call at 7:11 p.m.); Ex.  
14 20 at 0:00-0:12 (audio recording of 911 call) (Metro dispatcher explains to North Las  
15 Vegas dispatcher that she is transferring the call). But that transfer gave Mr. DiGiacomo  
16 no basis to shift the initial call time all the way down to 7:00 p.m. In fact, one  
17 minute and 38 seconds into the call with North Las Vegas, Mr. Means told the dis-  
18 patcher the incident occurred “about five . . . five minutes ago.” Ex. 20 at 1:38-1:40.  
19 As a matter of arithmetic, Mr. Means’s statement indicates the suspects left at about  
20 7:08 p.m.—but Mr. DiGiacomo misleadingly said Mr. Means would’ve placed his call  
21 no later than 7:00 p.m.

22 This was a material change in the timeline because every minute mattered to  
23 the defense’s alibi, and Mr. DiGiacomo’s comments convinced the court to erroneously  
24 shift the timeline by about eight to 11 minutes in the State’s favor. Had Mr. DiGiacomo  
25 turned over the 911 records to the defense and been candid with the court, the  
26 defense would’ve been able to conclusively show the 911 call came in at 7:11 p.m. and,  
27 in turn, that the robbers left at about 7:08 p.m. In turn, that would’ve given the jury

1 more reason to believe Mr. Slaughter's alibi and disbelieve the State's case. But as it  
2 stood, the jury was led to believe the 911 call came in at 7:00 p.m., so the robbers  
3 must've left before then—which would make it more likely Mr. Slaughter could've  
4 made it to Ms. Johnson's workplace by 7:20 p.m. The State's failure to turn this in-  
5 formation over and its related misstatements during trial were prejudicial, and they  
6 violated Mr. Slaughter's rights.

7 **B. The prosecution failed to turn over information about the second**  
8 **photo lineup and misrepresented its outcome.**

9 As Grounds Three(A) and Four(A) explains, the police showed the victims a  
10 second lineup with Mr. Slaughter in it, and none of the victims identified Mr. Slaugh-  
11 ter from that lineup. That would've given the jury a big reason to disbelieve the vic-  
12 tims' purported identifications. But the prosecution did not tell the defense about  
13 this failed second lineup. To the contrary, Mr. DiGiacomo misleadingly suggested  
14 some of the victims had, in fact, identified Mr. Slaughter from the lineup. The State  
15 should've been honest with the defense and the court and explained what really hap-  
16 pened when the police showed the victims this lineup.

17 During a pre-trial hearing, Mr. DiGiacomo admitted Detective Prieto had  
18 shown the second photo lineup to the victims. But he said it would take "a giant leap  
19 . . . to say Rickie Slaughter wasn't picked out of those photo lineups." Tr. 12/1/09 at  
20 9. That statement implies at least one of the victims *had* identified Mr. Slaughter  
21 from that lineup. But, as a matter of fact, *none* of the victims picked out Mr. Slaugh-  
22 ter from that lineup. Ex. 14 at 87-88. Mr. DiGiacomo's comments thus misrepre-  
23 sented the outcome of this lineup to the defense and to the state court.

24 The State's failure to turn over this information—and its suggestion that the  
25 second photo lineup wasn't helpful—proved prejudicial. A key challenge for the de-  
26 fense involved explaining to the jury why it shouldn't believe the victims who said  
27 they could identify Mr. Slaughter in court. One way to get the jurors to disbelieve

1 the victims would've been by telling them *none* of the victims were able to identify a  
2 Mr. Slaughter from the second lineup—a lineup that wasn't nearly as suggestive as  
3 the first lineup, and which used a much more contemporaneous photo of Mr. Slaugh-  
4 ter than the first lineup. But the State didn't tell the defense that the second lineup  
5 ended with none of the victims being able to identify Mr. Slaughter, and the State  
6 went so far as to suggest to the defense it shouldn't bother looking into the issue. The  
7 State therefore violated Mr. Slaughter's rights.

8 **C. The prosecution failed to turn over impeachment information**  
9 **about Mr. Arbuckle.**

10 As Grounds Two(C) and Three(D) explain, Mr. Arbuckle testified he left work  
11 at 7:30 p.m., and Mr. Slaughter hadn't arrived yet; that testimony hurt the defense's  
12 alibi. But Mr. Arbuckle had a motive to lie about the timing: he had it out for Mr.  
13 Slaughter and had called the cops on him for trespassing mere weeks before the inci-  
14 dent. The State did not turn that information over to the defense before trial. Had  
15 the defense known about the call, it would've been able to impeach Mr. Arbuckle  
16 about his motive to lie, which would've helped the defense discredit his testimony  
17 about the timing. The information was also important because it suggested Mr.  
18 Slaughter had a reason to avoid Mr. Arbuckle seeing him. The two had gotten into a  
19 fight, which caused Mr. Arbuckle to file a trespassing complaint against him. That  
20 is one explanation for why Mr. Slaughter arrived just as Mr. Arbuckle was leaving;  
21 perhaps Mr. Slaughter had gotten there even earlier, but he waited to pull in until  
22 Mr. Arbuckle left, to avoid another squabble. The failure to turn over this information  
23 therefore violated Mr. Slaughter's rights.

24 The State also failed to correct false testimony from Mr. Arbuckle. On direct  
25 examination, Mr. Arbuckle maintained he left work no earlier than 7:30 p.m. Tr.  
26 5/17/11 at 41-42. On cross-examination, the defense attorney asked him if recalled  
27 telling the police he left at 7:15, not 7:30 p.m. *Id.* at 46. Mr. Arbuckle said, "No, I

1 waited for about 30 minutes.” *Id.* The defense attorney tried to pin him down further,  
2 but the prosecutor objected to further questioning on this topic, and for some reason  
3 the court sustained the objection. *Id.* Rather than objecting, the prosecution  
4 should’ve corrected Mr. Arbuckle’s false testimony and allowed Mr. Arbuckle to clar-  
5 ify that he did, in fact, previously tell the police he left at 7:15 p.m. That information  
6 was crucial for the jury’s understanding of the alibi timeline, and the prosecution’s  
7 failure to correct the false testimony therefore caused prejudice.

8 **PRAYER FOR RELIEF**

9 Accordingly, Mr. Slaughter respectfully requests this Court:

- 10 1. Issue a writ of habeas corpus to have Mr. Slaughter brought before the  
11 Court so he may be discharged from his unconstitutional confinement;
- 12 2. Conduct an evidentiary hearing at which proof may be offered concern-  
13 ing the allegations in this amended petition and any defenses that may be raised by  
14 respondents; and
- 15 3. Grant such other and further relief as, in the interests of justice, may be  
16 appropriate.

17  
18 Dated November 20, 2018.

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  
25  
26  
27

1 VERIFICATION

2 Under penalty of perjury, the undersigned declares that he is counsel for the  
3 petitioner named in the foregoing petition and knows the contents thereof; that the  
4 pleading is true of her own knowledge except as to those matters stated on infor-  
5 mation and belief and as to such matters she believes them to be true. Petitioner  
6 personally authorized undersigned counsel to commence this action. The under-  
7 signed also affirms the preceding document does not contain the social security num-  
8 ber of any person.

9  
10 DATED November 20, 2018.

11  
12 /s/Jeremy C. Baron

13 JEREMY C. BARON

14 Assistant Federal Public Defender  
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1 CERTIFICATE OF SERVICE

2 I hereby certify that on November 20, 2018, I electronically filed the foregoing  
3 with the Clerk of the Eighth Judicial District by using the Court's electronic filing  
4 system.

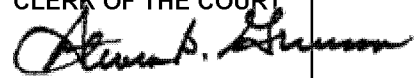
5 Participants in the case who are registered users in the electronic filing system  
6 will be served by the system and include: Steven Wolfson, Steven.Wolfson@clark-  
7 countyda.com, Motions@clarkcountyda.com

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

12 Michael Bongard  
13 Office of the Attorney General  
14 1539 Ave. F Suite 2  
Ely, NV 89301

15 Rickie Slaughter  
16 No. 85902  
17 Saguaro Correctional Center  
1252 E. Arica Road  
18 Eloy, AZ 85131

19 /s/ Jessica Pillsbury  
20 An Employee of the Federal Public  
21 Defender, District of Nevada  
22  
23  
24  
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Attorneys for Petitioner Rickie Slaughter

EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY

RICKIE SLAUGHTER,  
Petitioner,

v.

RENEE BAKER and the ATTORNEY  
GENERAL for the STATE OF NEVADA,  
Respondents.

Case No. A-18-784824-W  
Dept. No. III

(Not a Death Penalty Case)

INDEX OF EXHIBITS IN SUPPORT OF  
PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

**Exhibits Part 1 of 2 (see continuation for part 2)**

No.	DATE	DOCUMENT	COURT	CASE #
1.	6/3/2004	Las Vegas Metro Police Department Report		
2.	6/30/2004	North Las Vegas Police Report		
3.	6/30/2004	North Las Vegas Police Report		
4.	6/30/2004	North Las Vegas Police Report		
5.	6/30/2004	North Las Vegas Police Report		
6.	6/26/2004	North Las Vegas Police Department 911 Ticket		
7.	6/29/2004	North Las Vegas Police Report		
8.	6/30/2004	North Las Vegas Police Report		
9.	7/29/2004	North Las Vegas Police Report		
10.	5/17/2011	Trial Transcript		
11.	5/19/2011	State's Trial Exhibit 138	Eighth Judicial District Court	C204957
12.	8/2/2017	Motion for Leave to Conduct Discovery and For Court Order to Obtain Documents and Depositions; ECF 28	United States District Court	3:16-cv-00721-RCJ-WGC
13.	11/20/2017	Order; ECF 31	United States District Court	3:16-cv-00721-RCJ-WGC
14.	2/22/2018	Transcript of Deposition of Detective Jesus Prieto		
15.	2/22/2018	Exhibits Attached to Deposition of Detective Jesus Prieto (Retired); Taken February 22, 2018		
16.	11/1/2018	Declaration of Maribel Yanez		
17.	11/13/2018	Declaration of Jennifer Springer, Managing Attorney at the Rocky Mountain Innocence Center		
18.	11/5/2009	Application and Affidavit for Search Warrant		



No.	DATE	DOCUMENT	COURT	CASE #
19.	2/4/2010	Subpoena-Criminal Duces Tecum		

DATED November 20, 2018.

/s/Jeremy C. Baron

JEREMY C. BARON

Assistant Federal Public Defender

1 CERTIFICATE OF SERVICE

2 I hereby certify that on November 20, 2018, I electronically filed the foregoing  
3 with the Clerk of the Eighth Judicial District by using the Court's electronic filing  
4 system.

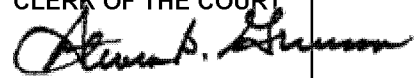
5 Participants in the case who are registered users in the electronic filing system  
6 will be served by the system and include: Steven Wolfson, Steven.Wolfson@clark-  
7 countyda.com, Motions@clarkcountyda.com

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

12 Michael Bongard  
13 Office of the Attorney General  
14 1539 Ave. F Suite 2  
Ely, NV 89301

15 Rickie Slaughter  
16 No. 85902  
17 Saguaro Correctional Center  
1252 E. Arica Road  
18 Eloy, AZ 85131

19 /s/ Jessica Pillsbury  
20 An Employee of the Federal Public  
21 Defender, District of Nevada  
22  
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12 Attorneys for Petitioner Rickie Slaughter

13 EIGHTH JUDICIAL DISTRICT COURT

14 CLARK COUNTY

15 RICKIE SLAUGHTER,

16 Petitioner,

17 v.

18 RENEE BAKER and the ATTORNEY  
19 GENERAL for the STATE OF NEVADA,

20 Respondents.

Case No. A-18-784824-W  
Dept. No. III

(Not a Death Penalty Case)

21 INDEX OF EXHIBITS IN SUPPORT OF  
22 PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

23 Continuation of Exhibits Part 2 of 2

No.	DATE	DOCUMENT	COURT	CASE #
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/s/Jeremy C. Baron

JEREMY C. BARON

Assistant Federal Public Defender

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CERTIFICATE OF SERVICE

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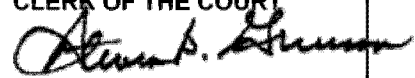
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1252 E. Arica Road  
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/s/ Jessica Pillsbury  
An Employee of the Federal Public  
Defender, District of Nevada



**RSPN**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
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**STEVEN S. OWENS**  
Chief Deputy District Attorney  
Nevada Bar #11663  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
  
Plaintiff,

-vs-

RICKIE LAMONT SLAUGHTER,  
#1896569

Defendant.

CASE NO: A-18-784824-W  
(04C204957)  
DEPT NO: III

**STATE'S RESPONSE TO DEFENDANT'S  
PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**

DATE OF HEARING: January 10, 2019  
TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through STEVEN S. OWENS, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction).

This response and opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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**POINTS AND AUTHORITIES**

**STATEMENT OF THE CASE**

On September 28, 2004, the State filed an Information charging Rickie Lamont Slaughter ("Defendant") with: Count 1 Conspiracy to Commit Kidnapping (Felony – NRS 199.480, 200.320); Count 2 – Conspiracy to Commit Robbery (Felony – NRS 199.480); Count 3 – Conspiracy to Commit Murder (Felony, NRS 199.480); Count 4 & 5 - Attempt Murder with Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.330, 193.165); Count 6 - Battery With Use of a Deadly Weapon (Felony – NRS 200.481); Count 7 - Attempt Robbery with Use of a Deadly Weapon (Felony – NRS 200.380, 193.330, 193.165); Count 8 - Robbery With Use of a Deadly Weapon (Felony – NRS 200.380, 193.165); Count 9 - Burglary While in Possession of a Firearm (Felony – NRS 205.060); Counts 10 - Burglary (Felony – NRS 205.060); Counts 11, 12, 13, 14, 15, & 16 - First Degree Kidnapping With Use of a Deadly Weapon (Felony – NRS 200.310, 200.320, 193.165); and Count 17 - Mayhem (Felony – NRS 200.280).

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

On August 8, 2005, Defendant was adjudicated guilty and sentenced to the Nevada Department of Corrections as follows: as to Count 1 – a minimum of 90 months and maximum of 240 months, plus an equal consecutive minimum of 90 months and maximum of 240 months for use of a deadly weapon; as to Count 2 – a minimum of 72 months a maximum of 180 months, plus an equal and consecutive minimum of 72 months a maximum of 180 months for the use of a deadly weapon; concurrent to Count 1; as to Count 3 – life with the possibility of parole after a minimum of 15 years; concurrent to Counts 1 and 2; as to Count 4 – life with a the possibility of parole after a minimum of 5 years, plus an equal consecutive life with the



1 possibility of parole after a minimum of 5 years for the use of a deadly weapon; concurrent to  
2 Counts 1, 2, and 3. Defendant received no credit for time served. The Judgment of Conviction  
3 was filed on August 31, 2005. Defendant did not file a direct appeal.

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

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

25 Defendant's jury trial commenced on May 12, 2011. On May 20, 2011, the jury  
26 returned a verdict of guilty on all counts in the original Information. On November 18, 2011,  
27 Defendant filed a Motion for a New Trial. The State filed its Opposition on January 12, 2012.  
28

1 Defendant filed a Reply on March 15, 2012. On May 17, 2012, this Court denied Defendant's  
2 Motion.

3 On October 16, 2012, Defendant was adjudicated guilty and sentenced to the Nevada  
4 Department of Corrections as follows: as to Count 1 - a minimum of 24 months and maximum  
5 of 60 months; as to Count 2 – a minimum of 24 months and maximum of 60 months,  
6 consecutive to Count 1; as to Count 3 – a minimum of 60 months and maximum of 180, plus  
7 a consecutive minimum of 60 months and maximum of 180 months for the deadly weapons  
8 enhancement, consecutive to Count 2; as to Count 5 – a minimum of 48 months and maximum  
9 of 120 months, plus a consecutive minimum of 48 months and maximum of 120 months for  
10 the deadly weapon enhancement, concurrent to Count 3; as to Count 6 - a minimum of 48  
11 months and maximum of 120 months, plus a consecutive minimum of 48 months and  
12 maximum of 120 months for the deadly weapon enhancement, consecutive to Count 3; as to  
13 Count 7 - a minimum of 48 months and maximum of 120 months, concurrent to Count 6; as  
14 to Count 8 – a minimum of 24 months and a maximum of 60 months, concurrent to count 7;  
15 as to Count 9 – life with the possibility of parole after a minimum of 15 years, plus a  
16 consecutive life with the possibility of parole after a minimum of 15 years for the deadly  
17 weapon enhancement; as to Count 10-14 – life with the possibility of parole after 5 years, plus  
18 a consecutive life with the possibility of parole after 5 years, all concurrent to Count 9.  
19 Defendant received 2,626 days for credit time served. Defendant was not adjudicated on Count  
20 4.

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

24 On March 25, 2015, Defendant filed a post-conviction Petition for Writ of Habeas  
25 Corpus ("First Petition"). The State filed its Response on June 2, 2015. This Court denied  
26 Defendant's Petition on June 18, 2015. The Findings of Fact, Conclusions of Law and Order  
27 were filed on July 15, 2015. On July 30, 2015, Defendant filed a Notice of Appeal. On July  
28

1 13, 2016, the Nevada Supreme Court affirmed the denial of the First Petition. Remittitur issued  
2 on August 8, 2016.

3 On February 12, 2016, while the appeal from this First Petition was pending, Defendant  
4 filed a second post-conviction Petition for Writ of Habeas Corpus (“Second Petition”). The  
5 State filed its Response on April 6, 2016. This Court held a hearing on the Second Petition on  
6 April 28, 2016. This Court denied the Second Petition, finding that it was time-barred, with no  
7 good cause shown for delay. Defendant filed a Notice of Appeal. The Nevada Supreme Court  
8 affirmed the denial of the Second Petition. Remittitur issued April 19, 2017.

9 On August 8, 2017, Defendant filed an Amended Petition for a Writ of Habeas Corpus  
10 Pursuant to 28 U.S.C. § 2254 before the federal District of Nevada, asserting may of the same  
11 claims Defendant raises in the instant matter. The federal petition seems ongoing.

12 Defendant filed the instant Petition for Writ of Habeas Corpus (Post-Conviction)  
13 (“Third Petition”) on November 20, 2018. The State responds as follows.

## 14 **ARGUMENT**

### 15 **I. DEFENDANT’S PETITION IS PROCEDURALLY BARRED**

#### 16 **A. Defendant’s Third Petition is untimely.**

17 Defendant’s Third Petition was not filed within one year of Remittitur from his direct  
18 appeal. Thus, his Petition is time-barred. The mandatory provision of NRS 34.726(1) states:

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

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

26 The Nevada Supreme Court has held that NRS 34.726 should be construed by its plain  
27 meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per the  
28 language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from

1 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.  
2 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998).

3 The one-year time limit for preparing petitions for post-conviction relief under NRS  
4 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),  
5 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite  
6 evidence presented by the defendant that he purchased postage through the prison and mailed  
7 the petition within the one-year time limit.

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

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

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

20 Remittitur on Defendant’s direct appeal issued on April 30, 2014. Therefore, Defendant  
21 had until April 30, 2015 to file a timely petition. However, the instant Third Petition was not  
22 filed until November 20, 2018, over three (3) years after the one-year time frame expired.  
23 Thus, this Court should dismiss Defendant’s Third Petition as untimely.

24 **B. Defendant’s Third Petition is successive and an abuse of the writ.**

25 NRS 34.810(2) provides that:

26 A second or successive petition *must* be dismissed if the judge or  
27 justice determines that it fails to allege new or different grounds  
28 for relief and that the prior determination was on the merits or, if  
new and different grounds are alleged, the judge or justice finds

that the failure of the petitioner to assert those grounds in a prior petition constitute an abuse of the writ.

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

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

In this Third Petition, Defendant raises only grounds that were already raised in an earlier petition (or on direct appeal) and grounds that could have been raised in a prior petition. Third Petition at 11–12 (admitting that Grounds 1, 2, 3, 4, 5, parts of 6 and of 7, 8, and parts of 9 have already been raised); see also Section II(A)–(K), *infra* (discussing the grounds that could have been raised at an earlier time). Thus, this Third Petition is an abuse of the writ and should be summarily dismissed.

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

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

14 **A. Defendant’s alleged good cause is not supported by new evidence.**

15 As good cause to overcome the mandatory procedural bars to his Third Petition,  
16 Defendant alleges “actual innocence” based on so-called “new evidence [found] through the  
17 federal discovery process that supports *some* of the grounds for relief.” Third Petition at 10–  
18 31 (emphasis added).<sup>1</sup> The United States Supreme Court has held that in order for a defendant  
19 to succeed based on a claim of actual innocence, he must prove that ““it is more likely than not  
20 that no reasonable juror would have convicted him in light of the new evidence’ presented in  
21 habeas 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

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25 <sup>1</sup> Defendant half-heartedly argues that all other claims are supported by “good cause” in that he “did  
26 not have counsel to assist him with his first post-conviction petition.” Third Petition at 30. However,  
27 as even Defendant correctly notes, Nevada does “not recognize ineffective assistance of post-  
28 conviction course as good cause to excuse non-compliance with state procedural bars.” Brown v.  
McDaniel, 130 Nev. \_\_\_, \_\_\_, 331 P.3d 867 (2014). With no other good cause asserted than the “new  
evidence” of actual innocence, all other claims must be summarily denied as lacking good cause to  
overcome the procedural bars.

1 bring the petitioner within the narrow class of cases implicating a fundamental miscarriage of  
2 justice. Schlup, 513 U.S. at 314, 115 S. Ct. at 861).

3 As an initial matter, Defendant himself admits that the “new” evidence supporting his  
4 actual innocence theory does not support all of Defendant’s current claims—only “some.”  
5 Third Petition at 10–31. Defendant raises neither “new evidence” nor any other good cause for  
6 re-raising the others or for not raising them in a timely manner, and thus, they are procedurally  
7 barred. See Section II(I), (K) *infra*. Namely, Grounds 2(E), 3(B), (C), and (D), 4(B), 3(C), (D),  
8 and (D), 6(A), (B), (F), and (G), 7(A), (B), (F), and (G), 8, 9(A) and (B), and 10 must be  
9 summarily denied, as no good cause has been asserted for them. Id.; see also Third Petition at  
10 11–12.

11 Moreover, Defendant has failed to make an adequate showing of actual innocence.  
12 Discovery of new evidence supporting an actual innocence claim is only good cause for delay  
13 when such evidence as withheld by the State, such as in a Brady claim, or if some other  
14 impediment external to the defense prevented the defense from being able to discover it sooner,  
15 or if the factual basis for a claim was not reasonably available to counsel. Hathaway, 119 Nev.  
16 at 252, 71 P.3d at 506; Huebler, 128 Nev. \_\_\_, \_\_\_, 275 P.3d at 95. Defendant’s “new evidence”  
17 arguments utterly fail. Indeed, they are likely disingenuous, as well. Before this Court,  
18 Defendant speaks of a “federal discovery process” that brought to light the so-called “new”  
19 evidence. Third Petition at 10. However, before the federal district court, Appellant argued  
20 that his counsel was ineffective for not using the *exact same evidence*, about which he clearly  
21 knew, at trial. See generally State’s Exhibit B.

22 As the first piece of “new evidence,” Defendant claims in this Third Petition that not  
23 until the federal discovery process did he receive a “key document” showing when one of the  
24 victims made the 911 call. Third Petition at 13–14. However, Defendant himself admits that  
25 counsel knew—and attempted to present to the jury during closing argument at trial in 2011—  
26 that the call was placed at 7:11pm. Id.; see also Third Petition, Exhibit 12 at 9; State’s Exhibit  
27 B at 29–30. Counsel did not need the “key document” itself, which reveals nothing other than  
28 that: the 911 call was received by the police at 7:11pm. Third Petition, Exhibit 6. Indeed, other



police reports Defendant attaches to this Petition seem to suggest a time of 7:11pm; and Defendant does not even suggest that he did not have access to these documents at the time of trial. See Third Petition, Exhibits 2, 3, 4 7, 9. By no stretch of the imagination can this single police record be called “new evidence” when counsel had the underlying information in 2011. There is no excuse for not raising the alibi-related claims that the time of 7:11pm allegedly support at some intervening time between 2011 and the 2018 filing of this procedurally barred Third Petition.

Second, Defendant claims that not until the federal discovery process did he receive impeachment evidence regarding Jeffrey Arbuckle, Defendant's girlfriend's manager who undermined Defendant's alibi timeline. Third Petition at 14–15. This allegedly included a trespass complaint Arbuckle had taken against Defendant. Id.; Third Petition, Exhibit 1. However, it is clear that Defendant knew about the alleged confrontations between Defendant and Arbuckle—including the trespass complaint—at the time of trial in 2011. State's Exhibit B at 32–33. In his federal petition, Defendant specifically argued that counsel was ineffective for not impeaching Arbuckle with this information at trial. Id. Defendant provides no rationale for how this information is “new”—let alone why trial counsel, who knew about the alleged difficulties, did not do his due diligence and discovery the trespass complaint before trial. If the claim is strictly that the trespass complaint, specifically, is “new evidence,” Defendant had knowledge of this at the very latest when he filed his federal Motion for Leave to Conduct Discovery on August 2, 2017. Third Petition, Exhibit 12 at 10. Though it is unclear when after that date he received the actual complaint document, even if Arbuckle's trespass complaint did constitute new evidence, Defendant waited at least an entire year and three months to bring the claim before this Court. That is, he did not bring the claim within a reasonable time after the good cause arose. See Pellegrini, 117 Nev. at 869–70, 34 P.3d at 525–26. Because of this delay, and because the failure to discover this “new evidence” was entirely Defendant's fault, there was no fundamental miscarriage of justice and this Court should not examine the so-called new evidence under the actual innocence framework. Schlup, 513 U.S. at 314, 115 S. Ct. at 861.

1 Third, Defendant claims that not until the federal discovery process did he obtain the  
2 full information about the second photographic lineup, wherein Defendant's photo was present  
3 but not identified. Third Petition at 15–16. However, it must first be noted that Defendant  
4 obtained this information in this specific format from his recent deposition of Detective Prieto,  
5 a lead detective on the case. Id., Exhibit 14 at 1, 87–88. Defendant offers absolutely no excuse  
6 for why this exact information could not have been obtained from Detective during trial  
7 discovery. Thus, similar to Arbuckle's trespass complaint discussed *supra*, the failure to  
8 discover this evidence was purely Defendant's fault—and thus, it cannot constitute good  
9 cause. Hathaway, 119 Nev. at 252, 71 P.3d at 506.

10 More importantly, Defendant utterly fails to disclose to this Court that Defendant knew  
11 that Defendant “was not selected as a suspect by any of the State's eyewitness” in the second  
12 photo lineup as far back as 2009. See State's Exhibit A (Defendant's Motion to Dismiss Case  
13 for Failure to Preserve or Destruction of Exculpatory Photo Lineup Identification Evidence,  
14 filed October 27, 2009). Thus, any argument that the evidence provided in Detective Prieto's  
15 recent deposition is even “new” to Defendant is belied by the record. Hargrove v. State, 100  
16 Nev. 498, 502, 686 P.2d 222, 225 (1984) (holding that “bare” and “naked” allegations, as well  
17 as those belied and repelled by the record, are insufficient for post-conviction relief).

18 Finally, Defendant fails to disclose the key fact that makes the second photo lineup  
19 utterly irrelevant to his actual innocence claim. When the investigation used this second photo  
20 lineup,<sup>2</sup> the witnesses had not been asked to identify Defendant but rather *another* suspect--  
21 Richard Jacquan—in that lineup. Third Petition, Exhibit 14 at 60–85. Defendant's photo had  
22 been included in that lineup by mistake; the various copies of this lineup were explicitly  
23 referred to in Detective Prieto's contemporary reports as “photo lineups of Richard.” Id. at 67–  
24 68, 79–81. Detective Prieto's reports specifically say, “Photo line ups of Richard were made  
25 and shown to all of the victims. None of the victims were able to identify Richard as a suspect.”  
26 Id. at 68. Detective Prieto said “yes” when he was asked at his deposition whether “[t]he

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27  
28 <sup>2</sup> This second photo lineup is identified as Exhibits 7, 9, 11, and 113 in Detective Prieto's recent  
deposition, due to different quality and color copies being used during that deposition. Third Petition,  
Exhibit 14 at 60–85.

1 purpose of these lineups was to identify Richard”—and that he would not have used the same  
2 lineup to have witnesses identify Defendant. Id. at 86–87.

3 It is vital for this Court to understand that Defendant did not claim that any of these  
4 three pieces of evidence were “new” when he argued these exact issues before the federal  
5 district court in his Amended Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. §  
6 2254, filed August 2, 2017. See State’s Exhibit B. Indeed, there, Defendant admitted that at  
7 the time of trial, counsel knew about *all* these issues. Id. Specifically, he argued that counsel  
8 knew what time the 911 call was placed and that to support his arguments, he should have  
9 subpoenaed the 911 records; in his closing argument PowerPoint, counsel attempted to include  
10 a slide that said the 911 call was made at 7:11pm, but the trial court did not permit him to show  
11 this slide to the jury because he had not elicited any evidence to support that time. Id. at 29–  
12 30. Defendant also argued that counsel knew about the problems between Arbuckle and  
13 Defendant—including the trespass complaint, which Defendant attached as an exhibit to his  
14 2017 federal petition—and that counsel was ineffective for not impeaching Arbuckle with that  
15 information. Id. at 32–33. Finally, Defendant argued that counsel was ineffective for not  
16 questioning eyewitnesses regarding whether they identified Defendant in the second photo  
17 lineup. Id. at 36–37. Defendant also admitted that he made a pre-trial motion regarding the  
18 issues with the second photo lineup. Id. at 11–12, 19. In other words, before the federal court,  
19 Defendant specifically argued that counsel was aware of these three pieces of evidence but  
20 that he was ineffective for not presenting them to the jury and/or for not obtaining specific  
21 documents. Now, before this Court, Defendant has reframed these same arguments to suggest  
22 that the evidence is, in fact, brand new. This is disingenuous, and this Court should not credit  
23 the arguments.

24 Indeed, Defendant’s arguments in this very Petition undermine his argument that this  
25 so-called “new” evidence is good cause to reassert these claims or to assert them for this first  
26 time in this successive Third Petition. For example, Defendant’s Ground Three explicitly  
27 accuses Defendant’s trial counsel of not “tak[ing] the hint” that the second photo lineup  
28 “would be a suitable subject for cross-examination”—and indeed, would have revealed that

1 “the victims did not identify [Defendant] as a suspect” in that second photo lineup. Third  
2 Petition at 45–46. Yet as good cause, Defendant explicitly relies upon Detective Prieto’s  
3 deposition, wherein Prieto discussed this exact information: that Defendant was not identified  
4 in the second photo lineup. Defendant cannot have it both ways. Either the information from  
5 Detective Prieto’s deposition is new and could not have been discovered by reasonable  
6 diligence before or during trial, and is thus evidence of actual innocence that can overcome  
7 the procedural bars—or, counsel was ineffective for not eliciting this information which he  
8 knew about at trial.

9 Lacking new evidence supporting a finding of actual innocence, Defendant cannot  
10 demonstrate good cause for re-raising or for the failure to previously raise his various Third  
11 Petition claims. Without good cause, this Court does not even need to examine potential  
12 prejudice, as, for this Court to consider his claims, he would need to establish both. NRS  
13 34.726. As such, Defendant cannot overcome the mandatory bars, and his Third Petition must  
14 be denied in its entirety.

15 Nonetheless, the State addresses each claim regarding the good cause alleged—if any.

#### 16 **B. First and Second Photo Lineups**

17 In Ground 1, Defendant claims that the first photo lineup was unduly suggestive and  
18 that, combined with alleged issues with the second photo lineup, meant there was no reliable  
19 identification. Third Petition at 31–37. Defendant admits that he raised the issue of the first  
20 lineup on direct appeal. Id. at 17; see also Slaughter Jr. v. State, Docket No. 61991, Order of  
21 Affirmance, filed March 12, 2014, at 2–3. Where an issue has already been decided on the  
22 merits by the Nevada Supreme Court, the Court’s ruling is law of the case, and the issue will  
23 not be revisited. Pellegrini v. State, 117 Nev. 860, 884, 34 P.3d 519, 535 (2001); McNelson v.  
24 State, 115 Nev. 396, 990 P.2d 1263, 1276 (1999), Hall v. State, 91 Nev. 314, 315–16, 535 P.2d  
25 797, 798–99 (1975), see also Valerio v. State, 112 Nev. 383, 386, 915 P.2d 874, 876 (1996);  
26 Hogan v. Warden, 109 Nev. 952, 860 P.2d 710 (1993). A defendant cannot avoid the doctrine  
27 of law of the case by a more detailed and precisely focused argument. Hall, 91 Nev. at 316,  
28 535 P.2d at 798–99; see also Pertgen v. State, 110 Nev. 557, 557–58, 875 P.2d 316, 362 (1994).

1       There is no good cause to re-raise the issue of the first photo lineup because nothing in  
2 Detective Prieto's recent deposition—Defendant's "new evidence"—changes the decision  
3 from the Nevada Supreme Court that the first photo lineup was *not* impermissibly suggestive.  
4 See Slaughter Jr. v. State, Docket No. 61991, Order of Affirmance, filed March 12, 2014, at  
5 2–3. The issue is barred by the procedural bar against claims that "fail[] to allege new or  
6 different grounds for relief [where] the prior determination was on the merits." NRS 34.810  
7 (2). Defendant does not even attempt to address this procedural bar.

8       Further, the issue of the second photo lineup was already raised in Defendant Second  
9 Petition. Third Petition at 8. There is no good cause for re-raising it because the evidence from  
10 Detective Prieto's 2018 deposition, concerning details about the second photo lineup, is not  
11 new. Section II(A), *supra*. Lacking good cause to re-raise this claim, it must be dismissed.

### 12       **C. Ineffective Assistance of Counsel Regarding Establishing Alibi**

13       In Ground 2, Defendant complains trial counsel was ineffective for failing to present  
14 911 records—which Defendant alleges the State suppressed—and to present other evidence  
15 that would have established a timeline for Defendant's alibi. Third Petition at 37–45. This  
16 issue was previously raised in Defendant's First Petition and denied on the merits by this  
17 Court, this decision being affirmed by the Nevada Supreme Court. *Id.* at 5; see also Slaughter  
18 Jr. v. State, Docket No. 68532, Order of Affirmance, filed July 13, 2016, at 1–3. There is no  
19 good cause for re-raising it now because *none* of the "new evidence" raised here to support  
20 Ground 2's various sub-parts is actually new: not the 911 call sheet, not the information from  
21 Detective Prieto's 2018 deposition, and not Arbuckle trespass complaint. Section II(A), *supra*.  
22 Thus, the good cause asserted for Grounds 2(A) to (D) fails. Moreover, Defendant does not  
23 assert that the "new evidence" is good cause to re-raise Ground 2(E)—nor does he offer any  
24 other good cause. See Third Petition at 11, 20–21, 43. All Ground 2's subsections must be  
25 dismissed as lacking good cause.

26       Though this Court need not examine anything beyond the lack of good cause,  
27 Defendant would never be able to show prejudice because the underlying claim is meritless.  
28 Even assuming counsel was deficient in not eliciting the exact time of the 911 call, there was

1 no prejudice under Strickland due to the overwhelming evidence of guilt as found by the  
2 Nevada Supreme Court. See Slaughter Jr. v. State, Docket No. 68532, Order of Affirmance,  
3 filed July 13, 2016, at 2. Some of this evidence would have undermined any alibi argument  
4 counsel could have made, since it included statements that Defendant was attempting to  
5 fabricate the alibi altogether. See, e.g., Third Petition, Exhibit 9 at 3 (detailing how Defendant  
6 instructed his girlfriend over the jail phone what to tell the jury about when he picked her up  
7 from work). Absent both good cause and prejudice, this claim should be dismissed.

8 **D. Ineffective Assistance of Counsel Regarding Cross-examination and Impeachment**

9 In Ground 3, Defendant complains that trial counsel was ineffective for failing to cross-  
10 examine and impeach the State's witnesses. Third Petition at 45–50. This issue was previously  
11 raised in Defendant's First Petition and denied on the merits by this Court, this decision being  
12 affirmed by the Nevada Supreme Court. Id. at 4; Slaughter Jr. v. State, Docket No. 68532,  
13 Order of Affirmance, filed July 13, 2016, at 1–3. There is no good cause for re-raising it now  
14 because the information from Detective Prieto's 2018 deposition regarding the second phot  
15 lineup, presented in this Third Petition to support one sub-part of this claim, is not new. Section  
16 II(A), *supra*. Further, nothing in Detective Prieto's deposition changes the Nevada Supreme  
17 Court's decision that even assuming counsel was, there was no prejudice under Strickland due  
18 to the overwhelming evidence of guilt. See Slaughter Jr. v. State, Docket No. 68532, Order of  
19 Affirmance, filed July 13, 2016, at 2. The good cause asserted for Grounds 3(A) fails.  
20 Defendant does not even attempt to assert good cause for Ground 3(B) through (D). See Third  
21 Petition at 11, 21, 47–50. All Ground 3's subsections must be dismissed as lacking good cause  
22 to re-assert them.

23 **E. Ineffective Assistance of Counsel for Failure to Call Witness re: 2<sup>nd</sup> Photo Lineup**

24 In Ground 4, Defendant complains that trial counsel was ineffective for failing to call  
25 additional witnesses, including Detective Prieto and others who could have testified regarding  
26 the investigation (including the second photo lineup) and regarding Defendant's alibi. Third  
27 Petition at 50–57. This issue was previously raised in Defendant's First Petition and denied on  
28 the merits by this Court, this decision being affirmed by the Nevada Supreme Court. Id. at 4;

1 Slaughter Jr. v. State, Docket No. 68532, Order of Affirmance, filed July 13, 2016, at 1–3.  
2 There is no good cause for re-raising it now because the information from Detective Prieto’s  
3 2018 deposition, presented in this Third Petition to support just one sub-part of this claim, is  
4 not new. Section II(A), *supra*. Indeed, Defendant’s argument in Ground 4(A) itself makes it  
5 clear that Detective Prieto was available to the defense at the time of trial to call as a witness  
6 and elicit this information from him—but the defense did not do so. Third Petition at 50–55.  
7 Defendant does not argue there was any impediment from the State, or from any other source,  
8 which would have withheld Detective Prieto’s testimony from the defense. See id. In fact,  
9 Defendant seems to blame trial counsel utterly: counsel “didn’t bother” to speak to Detective  
10 Prieto before trial, and “did not both to subpoena him” for trial. Id. at 51.

11 Further, nothing in Detective Prieto’s deposition changes the Nevada Supreme Court’s  
12 decision that even assuming counsel was deficient, there was no prejudice under Strickland  
13 due to the overwhelming evidence of guilt. See Slaughter Jr. v. State, Docket No. 68532, Order  
14 of Affirmance, filed July 13, 2016, at 2. The good cause asserted for Ground 4(A) fails.  
15 Defendant does not even attempt to assert good cause for Grounds 4(B) through (D). See Third  
16 Petition at 11, 21, 50–57. All Ground 4’s subsections must be dismissed as lacking good cause  
17 to re-assert them.

18 **F. Ineffective Assistance of Counsel for Failure to Deliver on Opening Statement**  
19 **Promises**

20 In Ground 5, Defendant complains that trial counsel was ineffective for failing to  
21 deliver on promises made during opening statement, including that the alibi would be  
22 established and that the jury would hear from Detective Prieto. Third Petition at 57–58. This  
23 issue was previously raised in Defendant’s First and Second Petitions and denied on the merits  
24 by this Court, this decision being affirmed by the Nevada Supreme Court. Id. at 4; Slaughter  
25 Jr. v. State, Docket No. 68532, Order of Affirmance, filed July 13, 2016, at 1–3; Slaughter Jr.  
26 v. State, Docket No. 70676, Order of Affirmance, filed April 19, 2017, at 1–3. There is no  
27 good cause for re-raising it now because, as discussed at length, the information from  
28 Detective Prieto’s 2018 deposition is not new. Sections II(A) and (E), *supra*. Further, nothing  
in Detective Prieto’s deposition changes the Nevada Supreme Court’s decision that even

1 assuming counsel was deficient, there was no prejudice under Strickland due to the  
2 overwhelming evidence of guilt. See Slaughter Jr. v. State, Docket No. 68532, Order of  
3 Affirmance, filed July 13, 2016, at 2. The good cause asserted for Ground 5 fails.

4 **G. Ineffective Assistance of Counsel for Failure to Object to Prosecutorial**  
5 **Misconduct**

6 In Ground 6, Defendant claims that counsel was ineffective for failing to object to  
7 various instances of alleged prosecutorial misconduct. Third Petition at 58–61. Some of the  
8 individual instances of alleged misconduct have been brought previously, and denied on the  
9 merits by this Court and the Nevada Supreme Court. Third Petition at 11; see also Slaughter  
10 Jr. v. State, Docket No. 61991, Order of Affirmance, filed March 12, 2014, at 4–6; Slaughter  
11 Jr. v. State, Docket No. 68532, Order of Affirmance, filed July 13, 2016, at 2–3. However,  
12 Appellant admits that several sub-sections of this claim do not rely upon the “new” evidence  
13 discussed *supra*. Third Petition at 11 (noting that Grounds 6(A), (B), (F), and (G) do not rely  
14 on new evidence). Thus, Defendant has asserted no good cause for re-raising or for not raising  
15 these particular IAC claims in an earlier petition.<sup>3</sup> Grounds 6(A), (B), (F), and (G) must be  
16 summarily dismissed as lacking good cause to overcome the procedural bars.

17 Grounds 6(C), (D), and (E)—all concerning treatment of Defendant’s alibi—are also  
18 unsupported by the “new” evidence discussed under the actual innocence framework.  
19 Appellant alleges that lately-gathered evidence of the alibi timeline, including information  
20 about Arbuckle, and of Detective Prieto’s deposition regarding that alibi reveals that there  
21 previously-unknown prosecutorial misconduct. Third Petition at 11. However, none of the  
22 evidence Defendant offers to support this claim can be called “new.” Information about  
23 Arbuckle—including his potential motives to lie, including the much-discussed trespass

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24  
25 <sup>3</sup> Defendant states he “is re-alleging some of his ineffectiveness claims that don’t rely on new  
26 evidence” because the cumulative effect of such alleged errors is relevant. Third Petition at 25.  
27 However, The Nevada Supreme Court has not endorsed application of its direct appeal cumulative  
28 error standard to the post-conviction Strickland context. McConnell v. State, 125 Nev. 243, 259, 212  
P.3d 307, 318 (2009). Nor should cumulative error apply on post-conviction review. Middleton v.  
Roper, 455 F.3d 838, 851 (8th Cir. 2006), cert. denial, 549 U.S. 1134, 1275 S. Ct. 980 (2007) (“a  
habeas petitioner cannot build a showing of prejudice on series of errors, none of which would by  
itself meet the prejudice test”).



1 complaint—was known or could have been discovered before trial; it is not new evidence.  
2 Third Petition, Exhibit 12 at 10; see also State’s Exhibit B at 32–33. Further, information from  
3 Detective Prieto was not withheld from the defense. Indeed, Defendant would know what he  
4 did and did not discuss with Detective Prieto. See Third Petition, Exhibit 7, at 6. Knowing this,  
5 Defendant could have called Detective Prieto as a witness to elicit the so-called alibi  
6 information. Thus, any evidence lately gathered from Detective Prieto<sup>4</sup> cannot be called “new”  
7 because Defendant has not argued that this information was not reasonably available to him at  
8 the time of procedural default—that is, upon filing of this first petition—and because there  
9 was no impediment external to the defense preventing Defendant from pursuing this claim at  
10 an earlier time. Clem, 119 Nev. at 621, 81 P.3d at 525; Hathaway, 119 Nev. at 252–53, 71  
11 P.3d at 506–07. Thus, the “good cause” alleged to assert these grounds fails.

#### 12 **H. Prosecutorial Misconduct**

13 In Ground 7, Defendant discusses the same alleged prosecutorial misconduct as alleged  
14 under an ineffective assistance of counsel claim in Ground 6. Third Petition at 58–61. Again,  
15 some of the individual instances of alleged misconduct have already been brought and rejected  
16 on the merits. Third Petition at 11; see also Slaughter Jr. v. State, Docket No. 61991, Order of  
17 Affirmance, filed March 12, 2014, at 4–6; Slaughter Jr. v. State, Docket No. 68532, Order of  
18 Affirmance, filed July 13, 2016, at 2–3. However, Appellant admits that several sub-sections  
19 of this claim do not rely upon the “new” evidence discussed *supra*. Third Petition at 11–12  
20 (noting that Grounds 7(A), (B), (F), and (G) do not rely on new evidence). Thus, Defendant  
21 has asserted no good cause for re-raising or for not raising these particular claims in an earlier  
22 petition. Grounds 7(A), (B), (F), and (G) must be summarily dismissed as lacking good cause  
23 to overcome the procedural bars. And as discussed, Grounds 7(C), (D), and (E) all concern  
24 treatment of Defendant’s alibi and could have been brought at an earlier time. Section II(H),  
25 *supra*. The “good cause” alleged to assert these grounds fails.

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26 <sup>4</sup> If Defendant is indeed arguing that the alleged misconduct could not have been known until the  
27 recent information from Detective Prieto, it simply does not make sense to accuse counsel of being  
28 ineffective for not objecting to prosecutorial misconduct of which he could not have known. Counsel  
could not have been ineffective under Defendant’s logic.

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1 The rest of Ground 9(C) concerns alleged prosecutorial misconduct and relates to  
2 Grounds 6(C) and (D). As discussed, these arguments are also unsupported by the “new”  
3 evidence discussed under the actual innocence framework. Section II(G), *supra*.

#### 4 **K. Alleged Batson Violation**

5 In Ground 10, Defendant complains of an alleged Batson violation. Third Petition at  
6 65. However, Defendant raised this alleged Batson issue through an ineffective assistance of  
7 appellate counsel claim during his First Petition; this Court denied it, and the Nevada Supreme  
8 Court denied it on appeal from this Court’s denial. See Slaughter Jr. v. State, Docket No.  
9 68532, Order of Affirmance, filed July 13, 2016, at 2. The Supreme Court ruled that Defendant  
10 filed to show that the issue would have had the probability of success on appeal. Id. Like  
11 Ground 8, it is thus barred the procedural bar against claims that “fail[] to allege new or  
12 different grounds for relief [where] the prior determination was on the merits.” NRS 34.810  
13 (2).

14 Defendant does not even attempt to address the procedural. Instead, he attempts to re-  
15 raise this claim by arguing the issue in a slightly different manner as detailed in Ground 9—  
16 and, moreover, with absolutely no showing of good cause for not raising it in an earlier  
17 petition. Appellant admits that this claim does not rely upon the “new” evidence discussed  
18 *supra*. Third Petition at 12. Thus, there was no impediment external to the defense preventing  
19 him from bringing this claims in a timely manner. Pellegrini, 117 Nev. at 869–70, 34 P.3d at  
20 525–26; Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07. Because there is no good cause  
21 alleged for not raising this claim, this Court need not examine prejudice. Thus, this claim  
22 should be summarily dismissed.

#### 23 **L. Alleged Brady Issue**

24 In Ground 11, Defendant complains of an alleged Brady violation. Third Petition at 66–  
25 70. This is a new claim not previously raised due to Defendant’s allegedly “new” evidence.  
26 Third Petition at 12. As discussed, Defendant had knowledge of the alleged “suppression” of  
27 all of this so-called new evidence at the very latest on August 2, 2017. Section II(A), *supra*.  
28 Defendant waited over a year to bring the claims before this Court—well beyond a reasonable

1 time after the alleged good cause arose. See Pellegrini, 117 Nev. at 869–70, 34 P.3d at 525–  
2 26.

3 Nonetheless, the State can show that the Brady claim is meritless. Brady v. Maryland,  
4 373 U.S. 83 (1963); Giglio v. U.S., 405 U.S. 150 (1972). First, Defendant alleges the State  
5 withheld Defendant’s current Exhibit 6, showing that the time of the 911 call was 7:11pm.  
6 However, as discussed, trial counsel already knew the time of the 911 call. Section II(A),  
7 *supra*. He had several other documents supporting a time of 7:11pm. Id. Counsel attempted to  
8 put that information in his PowerPoint in his closing argument; but since he had failed to elicit  
9 it, the trial court prohibited him from doing so. Id. This does not constitute suppression by the  
10 State.

11 Second, Defendant alleges that the State withheld information that none of the victims  
12 identified Defendant in the second photo lineup—discussed by Detective Prieto in Defendant’s  
13 current Exhibit 14. As discussed, Defendant knew at the time of trial that none of the victims  
14 identified Defendant in the second photo lineup. Third Petition, Exhibit 12 at 10; State’s  
15 Exhibit B at 36. Counsel thus could have inquired into this second photo lineup on cross-  
16 examination of the victims or by calling Detective Prieto himself. None of this information  
17 was “suppressed” by the State.

18 Third, Defendant alleges the State withheld Arbuckle’s trespass complaint included as  
19 Defendant’s current Exhibit 1. However, even if Defendant did not have the particular police  
20 report until the federal habeas discovery process, the document itself is not impeachment or  
21 exculpatory evidence under Brady. Indeed, it is significant that Defendant does not offer any  
22 authority supporting that such a complaint constitutes impeachment evidence under Brady or  
23 its progeny. See Third Petition at 69–70. At most, it is evidence that Arbuckle may have had  
24 *motive* to lie; it does not necessarily challenge his credibility and is therefore likely not  
25 material.

26 Regardless, Defendant cannot establish that State withheld it. Mazzan v. Warden, 116  
27 Nev. 48, 66, 993 P.2d 25 (2000); Jimenez v. State, 112 Nev. 610, 618–19, 918 P.2d 687 (1996).  
28 Arbuckle’s trespass complaint was clearly generated by Las Vegas Metropolitan Place

1 Department (“LVMPD”). Third Petition, Exhibit 1. The law enforcement agency working with  
2 the State prosecutors on this case was North Las Vegas Police (“NLVP”). See Third Petition,  
3 Exhibits 2–9, Exhibit 14 at 3–6. While it is true that “the state attorney is charged with  
4 constructive knowledge and possession of evidence withheld by other state agents, such as law  
5 enforcement officers,” it would not “appropriate to charge the State with constructive  
6 knowledge of the evidence” in this case because, unlike in other cases where the State is  
7 charged with such constructive knowledge, there is absolutely no evidence that LVMPD  
8 “assisted in the investigation of this crime” or “supplied [any] information” to NLVP other  
9 than routing the 911 call. State v. Bennett, 119 Nev. 589, 603, 81 P.3d 1, 10 (2003). Because  
10 the State did not have constructive knowledge of Arbuckle’s trespass complaint, it did not  
11 “withhold it,” and there was no Brady violation. And because the complaint was not  
12 suppressed, Defendant himself should have done his due diligence and obtained it before trial.  
13 There was no impediment external to the defense that prevented its discovery, and the failure  
14 to discover it was entirely Defendant’s fault; it cannot constitute good cause. Hathaway, 119  
15 Nev. at 252, 71 P.3d at 506.

16 Because of Defendant’s delay of over a year in bringing the so-called new evidence  
17 before this Court, and because the failure to discover it in the first place was not the result of  
18 State suppression but was entirely Defendant’ fault, there was no fundamental miscarriage of  
19 justice and Defendant’s Brady claim does not support actual innocence. Schlup, 513 U.S. at  
20 314, 115 S. Ct. at 861.

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1 **CONCLUSION**

2 Based on the foregoing, the State respectfully requests that Defendant's Petition for  
3 Writ of Habeas Corpus (Post-Conviction) be denied.

4 DATED this 19th day of December, 2018.

5 Respectfully submitted,

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

9 BY /s/STEVEN S. OWENS  
10 STEVEN S. OWENS  
11 Chief Deputy District Attorney  
12 Nevada Bar #04352

13 **CERTIFICATE OF ELECTRONIC TRANSMISSION**

14 I hereby certify that service of the above and foregoing was made this 19th day of  
15 December, 2018, by electronic transmission to:

16 JEREMY C. BARON, Asst. Fed. Public Defender  
17 Email: [jeremy\\_baron@fd.org](mailto:jeremy_baron@fd.org)

18 BY: /s/ Deana Daniels  
19 Secretary for the District Attorney's Office

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1 MTN  
 2 SUSAN K. BUSH, Esq.  
 3 Bar No. 8007  
 4 BUSH & LEVY, LLC.  
 5 528 S. Casino Center Blvd., Suite 202  
 6 Las Vegas, Nevada 89101  
 7 (702) 868-4411  
 8 Attorney for Petitioner,  
 9 RICKIE L. SLAUGHTER

FILED

OCT 27 2009

*Alfonso J. Hernandez*  
 CLERK OF COURT

DISTRICT COURT  
 CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,  
 9  
 10 Plaintiff,  
 11 vs.  
 12 RICKIE L. SLAUGHTER,  
 13 Defendant.

Case No.: C204957  
 Dept. No.: III

14 **MOTION TO DISMISS CASE FOR FAILURE TO PRESERVE OR DESTRUCTION OF**  
 15 **EXCULPATORY PHOTO LINEUP IDENTIFICATION EVIDENCE**

16 COMES NOW, the Defendant, RICKIE L. SLAUGHTER by and through his attorney,  
 17 SUSAN K. BUSH, of the law office of BUSH & LEVY, LLC., and hereby requests this  
 18 Honorable Court to dismiss the instant criminal case with prejudice or in the alternative to  
 19 prohibit identification testimony from eyewitnesses from being presented.

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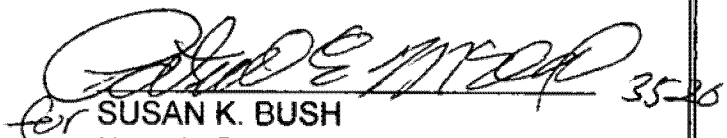


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This Motion is made and based upon the Memorandum of Points and Authorities  
attached hereto and any oral argument adduced at the time of hearing on this matter.

DATED this 23<sup>rd</sup> ay of October, 2009

  
for SUSAN K. BUSH 35-26  
Nevada Bar No. 8007  
BUSH & LEVY, LLC.  
528 S. Casino Center Blvd., Suite 202  
Las Vegas, Nevada 89101  
(702) 868-4411  
Attorney for Petitioner,  
RICKIE L. SLAUGHTER



NOTICE OF MOTION

TO: THE STATE OF NEVADA, Plaintiff:

PLEASE TAKE NOTICE that the undersigned will bring the foregoing MOTION TO DISMISS CASE FOR FAILURE TO PRESERVE EXCULPATORY PHOTO LINEUP IDENTIFICATION EVIDENCE on for hearing before the above-entitled Court on the 10 day of ~~October~~ November, 2009, at the hour of 9 a.m./p.m., or as soon thereafter as counsel may be heard on this matter.

DATED this 23<sup>rd</sup> day of October, 2009.

 3520

SUSAN K. BUSH

Nevada Bar No. 8007

BUSH & LEVY, LLC.

528 S. Casino Center Blvd., Suite 202

Las Vegas, Nevada 89101

(702) 868-4411

Attorney for Petitioner,

RICKIE L. SLAUGHTER

## STATEMENT OF FACTS

On June 26, 2004, victims Ivan Young ("Young"), Ryan John ("John"), Jermaun Means ("Means"), Jose Posada ("Posada"), Jennifer Dennis, and Arron Denis, were bound and robbed by two (2) perpetrators, while at Yong's residence located at 2612 Glory View, North Las Vegas, NV. During the robbery, Young was reportedly shot. John reported being robbed of a Well's Fargo ATM card, and Means reported being robbed of over \$1,300.00 in cash and a silver wireless phone.

The victims and witness descriptions of the perpetrators varied in large part. Young described the robbers and being two (2) black males "one was bald and was wearing shorts and a blue shirt. The second had dreadlocks and a Jamaican accent." (Exhibit 1, 6/29/04 NLVPD Police Report by Officer Anthony Bailey, at pg. 2). John described only one of the robbers and said he was "unsure how many" perpetrator's were present during the crimes. (Exhibit 2, 6/29/04 NLVPD Police Report by Officer Mark Hoyt, at pg. 10). John was only able to describe the perpetrator as a black male.

Means described the robbers as two (2) black males and recalled one of the perpetrators wearing a beige suit jacket and that the other had dread locks. Posada described the robbers and two (2) black males. Posada stated that one had "braids" and the other had a dark afro. Additionally, Posada described one of the perpetrators as wearing a "tuxedo shirt".

Jennifer Dennis only described the perpetrators as being two black males and stated that both were 5'10" and one wore a red shirt and blue jeans and the other wore a blue shirt and jean shorts. Aaron Dennis was only able to provide vague description of the robbers as being two (2) black males, one of whom wore a black jacket. (See Exhibit 2, NLVPD Police Report by Officer Mark Hoyt).

Crime Scene Investigators ("C.S.I.") for the NLVPD reported no forensic evidence present at the crime scene from which the perpetrators could be identified.

1 Based upon information from a confidential informant ("C.I."), Detective Jesse Prieto  
2 ("Prieto") of the North Las Vegas Police Department constructed a set of photographic lineups on  
3 June 28, 2004. This lineup contained the image of Petitioner, Rickie Slaughter, along with the  
4 images of five (5) other individuals. (Exhibit 3, 1<sup>st</sup> set of photo lineups). On this same date,  
5 Detective Prieto administered this photo lineup to Young. Mr. Young selected Mr. Slaughter as a  
6 potential suspect to the June 26, 2004 robbery.  
7

8 With this information, Detective Prieto obtained and executed a search warrant authorizing  
9 the search of both a residence where Mr. Slaughter was believed to stay, and a vehicle owned by  
10 Tiffany Johnson ("Johnson"), who was believed to be Mr. Slaughter's girlfriend at the time. The  
11 search of the residence and the vehicle revealed no relevant evidence to the instant offense. However,  
12 two (2) firearms were located in the trunk of Ms. Johnson's vehicle, but these guns were determined  
13 by the Las Vegas Metropolitan Police Department's ("LVMPD") forensic laboratory not to be the  
14 weapons used to shoot Mr. Young.  
15

16 On June 29, 2004, Mr. Slaughter was arrested and booked. a booking photo of Mr. Slaughter  
17 was taken at the NLVPD Detention Center (Exhibit 4, NLVPD Booking photo of Rickie Slaughter  
18 dated 6/29/04). That same day, the previously constructed photographic lineup arrays (see Exhibit  
19 3, 1<sup>st</sup> set of photo line up) of Mr. Slaughter were shown to victims Means and John. Both Means and  
20 John selected Mr. Slaughter as a possible suspect. Means noted "the face just stands out", and John  
21 wrote, "this is the guy that I think". On July 1, 2004, Detective Prieto again administered the same  
22 photographic array to Posada. Posada selected Mr. Slaughter's photo from the array (Exhibit 3, 1<sup>st</sup>  
23 set of photo lineup). No other victims or witnesses selected Mr. Slaughter as an alleged suspect.  
24 Detective Prieto preserved these identifications by having the witnesses sign and indicate the date  
25 and time that they viewed the photographic arrays. Due to Young's medical condition, Detective  
26 Prieto preserved Young's selection identified by Prieto's signature and a notation.  
27  
28

1 On an unknown date, another group of photographic lineup arrays was made by an unknown  
2 state official (Exhibit 5, 2<sup>nd</sup> set of photo lineups). This new group of photo lineup arrays contained  
3 Mr. Slaughter's June 29, 2004 NLVPD "mug shot" and a photograph of a former suspect in this case,  
4 Jaquan Richard ("Richard") in lineup positions 4 & 1, 3 & 5, 3 & 4, 4 & 2, and 4 & 3 ( See Exhibits  
5 5a, 5b, 5c, 5d and 5e).

6  
7 According to Detective Prieto's police reports this new group of photos containing Mr.  
8 Slaughter's and Mr. Richard's photographs was shown to all of the victims on an unknown date and  
9 by an unknown state official. (Exhibit 6, NLVPD report 12/10/04). However, no identifications or  
10 selections of Mr. Slaughter are noted as being made from the new set of photographic lineups. None  
11 of the State officials who administered this new group of photos to the victims preserved the names,  
12 signatures, dates, or times when these photographs were viewed. (Exhibit 5, 2<sup>nd</sup> set of photographs).

13  
14 On September 21, 2004, the preliminary hearing took place in the instant case. Justice of the  
15 Peace Natalie Tyrrell found that sufficient evidence existed to hold Mr. Slaughter over for trial. At  
16 the preliminary hearing, the State's case focused entirely on the identifications of Mr. Slaughter as  
17 the alleged perpetrator.

#### 18 POINTS AND AUTHORITIES

19  
20 "Eyewitness misidentification is the single greatest cause of wrongful convictions  
21 nationwide, playing a role in more than 75% of convictions overturned through DNA testing."<sup>1</sup> This  
22 is a case where identification of Mr. Slaughter is based exclusively upon eyewitness testimony. The  
23 State's failure to properly preserve establishing proof (i.e. officer's names, viewing witnesses names,  
24 signatures, etc.) of the State's eyewitness viewings of the second group of photographic arrays from  
25

26  
27 <sup>1</sup> Innocence Project (<http://www.innocenceproject.org/understand/Eyewitness-Misidentification.php>)  
28

1 which Mr. Slaughter was not selected as a suspect by any of the State's eyewitnesses violates his due  
2 process and prevents Mr. Slaughter from confronting and cross-examining these eyewitnesses at trial  
3 with this exculpatory and material evidence.

4 **Loss Or Destruction of Evidence- Bad Faith Present**

5 Due process requires that the prosecution disclose exculpatory evidence within its possession.  
6 Brady v. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194 (1963). The failure to preserve evidence violates  
7 a defendant's right to due process only, however, if that evidence possessed "exculpatory value that  
8 was apparent before the evidence was destroyed, and [is] of such a nature that the defendant would  
9 be unable to obtain comparable evidence by other reasonably available means." California v.  
10 Trombetta, 467 U.S. 479, 489 (1984).

12 A defendant must also demonstrate that the police acted in bad faith in failing to preserve  
13 potentially useful evidence. Arizona v. Youngblood, 488 U.S. 51, 58, 109 S. Ct. 333, 102 L. Ed. 2d  
14 281 (1988); *see also* Guam v. Muna, 999 F.2d 397, 400 (9th Cir. 1993).

16 The presence or absence of bad faith turns on the government's knowledge of the apparent  
17 exculpatory value of the evidence at the time it was lost or destroyed. Youngblood, 488 U.S. at 56-  
18 57; *see also* United States v. Cooper, 983 F.2d 928, 931 (9<sup>th</sup> Cir. 1993), Sheriff, Clark County v.  
19 Warner, 112 Nev. 1234 (Nev. 1996), State v. Hall, 105 Nev. 7 (Nev. 1989), and Howard v. State,  
20 95 Nev. 580 (Nev. 1979).

22 In United States v. Cooper, (relying on California v. Trombetta and Arizona v. Youngblood)  
23 the court began,

24 "[b]ecause of the government's bad faith actions, the laboratory equipment seized  
25 from Apotheosis Research lies broken and buried in a toxic waste dump. This  
26 equipment cannot be introduced at trial. It can neither support nor undermine Wayne  
27 Cooper and Vincent Gammill's repeated assertion that their lab lacked the physical  
28 capability to manufacture methamphetamine."

1 United States v. Cooper, 983 F.2d 928, 929 (9<sup>th</sup> Cir. 1993). Bad faith was based on information  
2 repeatedly provided to the government that the equipment was not capable of manufacturing  
3 methamphetamines. Id. The government argued that defendants had "other means to establish the  
4 physical capabilities of the destroyed lab equipment." Id. at 932. They argued defendants could  
5 question experts familiar with the properties of lab equipment and they could question the designer  
6 of the 125-gallon reaction vessel. Id. Ultimately, the court disagreed stating, "[g]eneral testimony  
7 about the possible nature of the destroyed equipment would be an inadequate substitute for testimony  
8 informed by its examination." Id.

10 In this case, Mr. Slaughter can demonstrate bad faith. Consistent with Youngblood, bad faith  
11 is present in this case based on the *apparent exculpatory value* of witnesses interviewed by the police  
12 who failed to identify Mr. Slaughter as a suspect. It cannot be argued that this apparent exculpatory  
13 value was not known to the government at the time it was lost or destroyed. Here, like Cooper,  
14 general testimony about the possible nature of the destroyed [evidence] in Mr. Slaughter's case  
15 would be an inadequate substitute for testimony informed by its examination, the examination of  
16 notes regarding officers who conducted the photo lineup in question, and names of witnesses who  
17 did not identify Mr. Slaughter as a suspect. More importantly, general testimony is not an option in  
18 Mr. Slaughter's case because unlike the defendants in Cooper, Mr. Slaughter was never aware of the  
19 information to begin with; That is, Mr. Slaughter does not know the names of the officers who  
20 conducted the exculpatory photo lineup identifications in question, and he does not know the names  
21 of the witnesses who did not identify him as a suspect. Therefore, apart from any desire, Mr.  
22 Slaughter, unlike defendants in Cooper, does not have the option of questioning experts in order to  
23 demonstrate the exculpatory value of witnesses who did not identify him as a suspect, particularly  
24 in a case hinging entirely upon eye witness identification testimony. In short, Mr. Slaughter is  
25 wholly precluded from meaningful cross-examination on the exculpatory identification results.

1 In conclusion, consistent with the reasoning in Youngblood, Mr. Slaughter's due process was  
2 violated by the bad faith failure to preserve apparently exculpatory evidence. The appropriate remedy  
3 is dismissal.

4 **Loss Or Destruction of Evidence- Bad Faith Absent**

5 In the alternative, if this Court does not find bad faith present, Mr. Slaughter's motion to  
6 dismiss should still be granted. Where there is no bad faith, the defendant has the burden of showing  
7 prejudice. Buchanan v. State, 119 Nev. 201, 220 (Nev. 2003). The defendant must show that "it  
8 could be reasonably anticipated that the evidence sought would be exculpatory and material to [the]  
9 defense." Id., see also Cook v. State, 114 Nev. 120, 125 (Nev. 1998). Further, the "materiality and  
10 potentially exculpatory character of lost or destroyed evidence must be determined on an ad hoc  
11 basis on the facts of each particular case". Deere v. State, 100 Nev. 565, 566-67 (Nev. 1984).  
12

13 In Cook, defendant was charged with three counts of sexual assault for the alleged rape of  
14 his former domestic partner. Cook, 114 Nev. 120. At the conclusion of his fourth trial, a jury found  
15 Cook guilty of one count of sexual assault. Cook, 114 Nev. 120. Following the investigation, the  
16 police subsequently lost the photos, reports, and sweater. Cook, 114 Nev. at 124-25.  
17

18 Cook alleged that lost photographs of blood on the carpet would have proven that he did not  
19 violently attack the victim and drag her several feet across the carpeted floor; that the lost photos of  
20 the bruise on his arm deprived him of the opportunity to rebut or impeach the victim's testimony that  
21 the bruise on his arm was caused by her act of slamming a door on his arm during her purported  
22 escape attempt; that his lost initial statement to police, given by Cook before he was aware of any  
23 of the victim's specific allegations, could have been used to corroborate Cook's trial testimony; the  
24 victim's lost initial statement to the police: Cook argues that the victim's initial statement may have  
25 been inconsistent with portions of her trial testimony as evidenced by the fact that her initial  
26 statement led police to charge Cook with only one count of fellatio, and not two; and Cook argues  
27  
28

1 that the sweater was both material and exculpatory evidence because it would have supported his  
2 testimony because no blood was on it and it would have demonstrated she was not wearing the  
3 sweater when she says she was, when her nose got bloody. Cook, 114 Nev. 124-25.

4 The court ruled that Cook has made the requisite showing of prejudice by demonstrating that  
5 the lost items of evidentiary value could have been reasonably anticipated to be both material and  
6 exculpatory. Cook, 114 Nev. at 126. Due to the State's negligent loss of evidence, Cook's ability to  
7 defend himself was severely undermined. Cook, 114 Nev. at 126. Accordingly, the State's failure to  
8 preserve such evidence violated Cook's right of due process and mandates reversal of his conviction  
9 and sentence. Cook, 114 Nev. at 126.

11 In footnote number 6, the Cook Court noted, "[w]e do not suggest the Sparks Police  
12 Department had a duty to collect evidence. Rather, we base our holding that Cook's defense was  
13 unduly prejudiced solely on the evidence that was gathered and then subsequently lost by the Sparks  
14 Police Department." Cook, 114 Nev. at 126. The court then concluded that Cook has established  
16 prejudice by showing that the lost items of evidentiary value could have been reasonably anticipated  
17 to be both exculpatory and material. Cook, 114 Nev. at 127.

18 In Buchanan defendant was convicted of three counts of first-degree murder in the deaths of  
19 her three infant sons. Buchanan, 119 Nev. at 202. On Appeal, defendant claimed that she was  
21 "irretrievably crippled and a fair trial became impossible" because the State discarded, consumed or  
22 failed to gather various tissues of the three infants, thus, impermissibly shifting the burden of proof  
23 to the defense. Buchanan, 119 Nev. at 219. In denying her appeal, the court noted that there was no  
24 evidence of bad faith on the part of law enforcement. Buchanan, 119 Nev. at 220. The murder  
25 investigation did not start until the third death, so any exculpatory value from any tissue from the  
26 first two victims would not have been apparent to law enforcement. Buchanan, 119 Nev. at 220.



1 Also, medical experts testified that because of the small size of infants, frequently the tissues are  
2 consumed in the testing. Buchanan, 119 Nev. at 220.

3 In Deere, the defendant appealed his conviction for first degree kidnapping, battery and  
4 sexual assault upon a Las Vegas prostitute. Id. The primary issue on appeal was the denial of  
5 defendant's pretrial motion to dismiss based on the "state's allegedly negligent failure to impound  
6 and preserve material and potentially exculpatory evidence, namely the blouse and undergarment of  
7 the victim." Id. The appeal was denied because defendant was unable to "demonstrate that it was  
8 reasonably likely that the lost evidence would have exculpated him; he thus cannot make the  
9 requisite showing of prejudice." Id.

11 In this case, the facts of Mr. Slaughter's case are analogous to those in Cook; That is, the lost  
12 evidence was both exculpatory and material. Like Cook, the exculpatory photo lineup evidence in  
13 Mr. Slaughter's case was collected by investigators. Next, like the evidence in Cook, the photo  
14 lineup evidence is *apparently* exculpatory (witnesses to the second photo lineup did not identify Mr.  
15 Slaughter), and material because Mr. Slaughter's case turns exclusively on identity as no other  
16 evidence ties Mr. Slaughter to the crime. More importantly, the first photo lineup was conducted  
17 using an older (out of date) photo of Mr. Slaughter, whereas the second photo lineup conducted used  
18 his booking photo from June 29, 2004. Thus, witnesses viewing a current (more accurate) photo of  
19 Mr. Slaughter at the second photo lineup failed to identify him as a suspect. Based on the foregoing,  
20 it is more than "reasonably anticipated that the evidence sought would be exculpatory and material  
21 to [the] defense." In this case, one which turns exclusively on witness identification testimony, any  
22 reasonable person would *highly* anticipated that the photo lineup evidence sought would be  
23 exculpatory and material to the defense.

24 The facts of Mr. Slaughter's case are unlike those of Buchanan and Deere. In Buchanan, the  
25 court noted the murder investigation did not start until the third death, so any exculpatory value from  
26

1 any tissue from the first two victims would not have been apparent to law enforcement, where as in  
2 Mr. Slaughter's case, the evidence was 1) in fact gathered; 2) during an investigation, and 3) this  
3 Court can fairly infer that such evidence was reasonably anticipated to be exculpatory and material  
4 to the defense as analyzed above.

5  
6 Moreover, the second group of photographic lineup arrays contains Mr. Slaughter's June 29,  
7 2004 booking photo taken only two (2) days after the crime. According to police reports, this second  
8 set of photographs "was shown to all of the victims" and Mr. Slaughter was not positively identified  
9 as a potential perpetrator by any of the State's eyewitnesses. Much to Mr. Slaughter's detriment,  
10 neither the names, signatures, dates, or times that the eyewitnesses viewed these arrays were  
11 preserved on the second set of photographs. More troubling and problematic is the fact that the State  
12 agent or agents who administered this group of photographic lineup arrays to the eyewitnesses cannot  
13 be ascertained because they did not preserve their name on the lineups. Based on the foregoing, Mr.  
14 Slaughter's dismissal should be granted even if this Court does not find bad faith. The above  
15 demonstrates that it was more than reasonably anticipated that the lost or destroyed information  
16 relating to the second photo lineup would be exculpatory and material to the defense.

17  
18 As a result of the State's failure, Mr. Slaughter's defense is emasculated. Identity is the  
19 defense, arguably Mr. Slaughter's sole defense. The State was arguably aware of this at the time of  
20 the investigation, or at least, as is the standard set in Buchanan, reasonably anticipated that the  
21 evidence sought would be exculpatory and material to [the] defense. As such, Mr. Slaughter is left  
22 without a means to reconstruct, authenticate, or establish the eyewitness' viewings of the second  
23 group of photographs. This inability to authenticate the facts and circumstances where Mr. Slaughter  
24 was not identified by the eyewitnesses prevents him from introducing and exploring this exculpatory  
25 evidence. Mr. Slaughter's defense against the instant charges is that he was mistakenly identified as  
26 a perpetrator by the State's eyewitnesses. The fact that the State case relies heavily upon the  
27  
28

1 eyewitness identifications of Mr. Slaughter—coupled with the fact that there is no physical evidence  
2 that directly links Mr. Slaughter to the crimes for which he is accused--provides the materiality and  
3 potentially exculpatory nature of the second set of photographic lineup arrays.

4       Finally, the state cannot be permitted to benefit from its own failure to preserve evidence  
5 favorable to the defendant. Sanborn v. State, 107 Nev. 399, 408 (Nev. 1991). In Sanborn, defendant  
6 sought reversal on appeal of his conviction because the state failed properly to collect and preserve  
7 the firearm which was used to inflict his wounds. Id. at 407. He asserted that the state's mishandling  
8 of the gun prejudiced him because analysis of fingerprints and blood from the gun was crucial to his  
9 theory that he acted in self-defense. Id. Overturning his conviction on other grounds, the court  
10 announced the following presumption that would apply in a retrial by the state: "the trial court shall  
11 instruct the jury that because the state failed to test the firearm that was used to inflict wounds on  
12 Sanborn for blood and fingerprints, the weapon is irrebuttably presumed to have been held and fired  
13 by the victim, Papili." Id. at 408.

16       In this case, State's case against Mr. Slaughter is buttressed by the absence of the second  
17 photographic lineup array evidence. Therefore, the State cannot be allowed to benefit from its own  
18 failure to preserve.

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CONCLUSION

Based upon the fact that all of the State's witnesses failed to identify Mr. Slaughter in the second photographic lineup and the circumstances under which these potentially exculpatory failures were not preserved by the State, Mr. Slaughter respectfully urges this court to enter an order dismissing the instant case with prejudice. In the alternative, Mr. Slaughter prays that this Court enter an order prohibiting the State from using the first photographic selections of Mr. Slaughter and the in-court identifications made at Mr. Slaughter's preliminary hearing and prohibit the State from eliciting any in-court identifications of Mr. Slaughter at trial.

Respectfully Submitted:

 3526  
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CASE: 04015160 ----- NORTH LAS VEGAS POLICE DEPARTMENT----- REF: 246198  
DATE: 6/29/04 -----POLICE REPORT----- PAGE: 1  
TIME: 7:46 -----INVESTIGATIVE PORTION----- OF: 2

\*\*\*\*\*  
-----INCIDENT FOLLOWUP-----

classification/additional information:  
AMURD

invest bureaus/units notified: I.D. BUREAU

location of occurrence: ! rpt dist:A1 neighborhood: APT  
2612 GLORY VIEW ! ADAM 1 AIRPORT

from: date / time ! to: date / time ! report: date / time  
6/26/04 / 19:11 ! 6/26/04 / 19:11 ! 6/26/04 / 19:11

hate crime? NO ! gang related? NO ! fingerprints? NO

routing? ! prosecute? ! prop report? ! vehl report? ! arrest rpt? ! attach?  
DETECTIVE ! YES ! NO ! NO ! NO !

\*\*\*\*\*  
-----METHOD OF OPERATION-----

residential---type: 111 target: 169 security:  
SINGLE FAMILY TARGET-OTHER

non-residntl---type: target: security:

entry---location: 318 DOOR method: 312 FRONT  
exit---location: 362 NO FORCE-UNLOCKED method: 362 NO FORCE-UNLOCKED

-----suspect actions:-----

A. 601 MULTI SUSPECTS B. 603 VEHICLE NEEDED C. 606 SUSPECT ARMED  
D. 607 DISCHARGED WEAPON E. 801 INFLICTED INJURY F. 803 FORCED VIC TO FLO  
G. 811 TOOK HOSTAGE H. 813 COVERED VICTIM FA I. 815 DEMANDED SPC ITEM

\*\*\*\*\*DISPOSITIONS\*\*\*\*\*

[ ]-UNFOUNDED/NO CRIME--0 [ ]-SUBMITTED D.A.-----5 [ ]-RECLASSIFY-----10  
[ ]-JUVENILE-----1 [ ]-ADMIN. CLEARED-----6 [ ]-VIC REFUSED PROS.--11  
[ ]-NON DETECTIVE CLR---2 [ ]-EXCEPTIONALLY CLR---7 [ ]-AFFIDAVIT-----12  
[ ]-DETECTIVE ARREST---3 [ ]-SCREEN CLEARED-----8 [ ]-CA/OA DENIAL-----13  
[ ]-SUBMITTED CITY ATTY-4 [ ]-NO CHGS FILED(NCF)--9 [ ]-OTHER-----14  
[ ]-SUBMITTED US ATTN-15

\*\*\*\*\*  
-----RECORDS-----

class code---ucr ! sid number ! date ser no ! date ser no  
! ! enter ! cleared  
! ! scope ! scope  
! !

records bureau processed ser no ! detective bureau processed ser no  
SCARFF/DENISE 1259 !

supervisor approving ser no ! officer reporting ser no  
NOWAKOWSKI/DENNIS 1225 ! BAILEY/ANTHONY 1366

CASE: 04015160  
DATE: 6/29/04  
TIME: 7:46

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

REF: 246198  
PAGE: 2  
OF: 2

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

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

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

AFTER GOING INSIDE AND WAITING FOR THE DOCTORS AND NURSES TO FINISH THEIR TREATMENT OF YOUNG, I WAS ABLE TO QUESTION HIM ABOUT THE INCIDENT. ONE OF THE TRAUMA PERSONNEL HANDED ME A PLASTIC CONTAINER HOLDING A SMALL PIECE OF COPPER METAL THAT ALSO APPEARED TO BE THE JACKETING FROM A PROJECTILE, SO I TOOK CUSTODY OF IT. THEY TOLD ME IT WAS RECOVERED FROM HIS FACE. YOUNG WAS VERY COHERANT AND REMEMBERED THE INCIDENT VERY WELL. HE TOLD ME THAT HE WAS OUTSIDE IN HIS GARAGE WORKING ON A CAR WHEN HE WAS APPROACHED BY TWO BLACK MALES (BM(S)). ONE WAS BALD AND WAS WEARING SHORTS AND A BLUE SHIRT. THE SECOND HAD DREADLOCKS AND SPOKE WITH A JAMAICAN ACCENT. THEY STARTED TALKING TO YOUNG.

ABOUT WORKING ON CARS. AFTER TALKING FOR A FEW MINUTES THEY BRANDISHED FIRE ARMS AND ORDERED YOUNG TO GO INSIDE. ONCE INSIDE THEY PUT EVERYONE IN THE HOUSE DOWN ON THE FLOOR AND STARTED ASKING FOR MONEY FROM EVERYONE. YOUNG SAID THEY PLACED SOMETHING OVER HIS HEAD AND FACE SO HE COULD NOT SEE AT ALL. DURING THIS TIME TWO OF YOUNG'S FRIENDS ARRIVED AND WERE PULLED INTO THE HOUSE AS WELL. YOUNG DID NOT KNOW WHAT HAPPENED TO THEM. YOUNG TOLD ME HE THOUGHT THE SUSPECTS GOT A CHECKCARD BUT UNKNOWN IF ANYTHING ELSE WAS TAKEN. YOUNG THEN TOLD ME THAT THE BM WITH DREADLOCKS CAME OVER TO HIM AND PLACED A GUN TO HIS FACE. THE BLACK MALE THEN SAID "HAVE YOU EVER SEEN ONE OF THESE BEFORE?" AFTER SAYING THAT, THE BM FIRED 1 SHOT STRIKING HIM IN THE FACE NEAR HIS CHIN. BOTH BMS THEN FLED AND GOT INTO A VEHICLE LEAVING THE SCENE.

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

NO ATTACHMENTS.

records bureau processed  
SCARFF/DENISE

ser no 1 detective bureau processed  
1259 1

ser no

supervisor approving  
NOWAKOWSKI/DENNIS

ser no 1 officer reporting  
1225 1 BAILEY/ANTHONY

ser no  
1366





CASE: 04015160 NORTH LAS VEGAS POLICE DEPARTMENT REF: ORIGINAL  
DATE: 6/29/04 POLICE REPORT PAGE: 1  
TIME: 7:46 INVESTIGATIVE PORTION OF: 12

-----INCIDENT ORIGINAL-----

classification/additional information:  
AMURDWDW/BURG/ROBB/FALSE IMPRISONMENT

invest bureaus/units notified: I.D. BUREAU/DETECTIVE

location of occurrence: rpt dist: A1 neighborhood: APT  
2612 GLORY VIEW ADAM 1 AIRPORT

from: date / time to: date / time report: date / time  
6/26/04 / 19:11 6/26/04 / 19:11 6/26/04 / 20:52

hate crime? NO gang related? YES fingerprints? NO

routing? prosecute? prop report? vehl report? arrest rpt? attach?  
DETECTIVE YES NO NO NO YES

-----METHOD OF OPERATION-----

residential---type: 111 target: security:  
SINGLE FAMILY

non-residtl---type: target: security:

entry---location: 325 GARAGE method:  
exit---location: 373 FORCED-UNIQUE METHODmethod:

suspect actions:

A. 601 MULTI SUSPECTS B. 606 SUSPECT ARMED C. 607 DISCHARGED WEAPON  
D. 704 SELECTIVE IN LOCT E. 801 INFLICTED INJURY F. 802 THREAT RETALIATIO  
G. 803 FORCED VIC TO FLO H. 914 BOUND/GAGGED VICT I. 901 KNEW VICTIMS NAME

\*\*\*\*\*DISPOSITIONS\*\*\*\*\*

[ ] -UNFOUNDED/NO CRIME--0 [ ] -SUBMITTED D.A.-----5 [ ] -RECLASSIFY-----10  
[ ] -JUVENILE-----1 [ ] -ADMIN. CLEARED-----6 [ ] -VOC REFUSED PROS.--11  
[ ] -NON DETECTIVE CLR--2 [ ] -EXCEPTIONALLY CLR--7 [ ] -AFFIDAVIT-----12  
[ ] -DETECTIVE ARREST---3 [ ] -SCREEN CLEARED-----8 [ ] -CA/CS DENIAL-----13  
[ ] -SUBMITTED CITY ACTY-4 [ ] -NO CECS FILED(NCF)--9 [ ] -OTHER-----14  
[ ] -SUBMITTED US ATTKY-15

-----RECORDS-----

class code---ucr : sid number ! date ser no ! date ser no  
! enter ! cleared  
! scope ! scope  
!

records bureau processed ser no ! detective bureau processed ser no  
SCARFF/DENISE 1259 !

supervisor approving ser no ! officer reporting ser no  
NOWAKOWSKI/DENNIS 1225 HCYT/MARK 1334

CASE: 04015160 ---NORTH LAS VEGAS POLICE DEPARTMENT--- REF: ORIGINAL  
DATE: 6/29/04 -----POLICE REPORT----- PAGE: 2  
TIME: 7:46 -----PERSONS PORTION----- OF: 12

\*\*\*\*\*  
name of person (001): ! type: V ! occupation: ! susp id?  
YOUNG/IVAN ! VICTIM ! PAINTER ! YES

sex ! race: W hisp:Y! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! HISPANIC ! 5/21/1973 ! 31 ! 000 ! 000 ! ! !

alias-aka: ! birthplace:  
alias-aka: ! ssn: [REDACTED]0271 mf no:

addr: 2612 GLORY VIEW NORTH LAS VEGAS NV 89030 !  
business: !

descriptors:  
descriptors:

\*\*\*\*\*  
name of person (002): ! type: W ! occupation: ! susp id?  
WADDY/DESTINEE ! WITNESS ! DENTAL ASSIST ! NO

sex ! race: B hisp:N! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
F ! BLACK ! 5/13/1981 ! 23 ! 300 ! 000 ! ! !

alias-aka: ! birthplace:  
alias-aka: ! ssn: 564738514 mf no:

addr: 2309 BAHAMA POINT NORTH LAS VEGAS NV 89031 ! 7022904223  
business: !

descriptors:  
descriptors:

\*\*\*\*\*  
name of person (003): ! type: V ! occupation: ! susp id?  
MEANS/JERMAUN ! VICTIM ! ! NO

sex ! race: B hisp:N! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! BLACK ! 12/11/1976 ! 27 ! 000 ! 000 ! ! !

alias-aka: ! birthplace:  
alias-aka: ! ssn: mf no:

addr: 2309 BAHAMA POINT NORTH LAS VEGAS NV 89031 ! 7026369620  
business: !

descriptors:  
descriptors:

records bureau processed ser no ! detective bureau processed ser no  
SCARFF/DENISE 1259 !

supervisor approving ser no ! officer reporting ser no  
NOWAKOWSKI/DENNIS 1225 ! HOYT/MARK 1334

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CASE: 04015160 -----NORTH LAS VEGAS POLICE DEPARTMENT----- REF: ORIGINAL  
DATE: 6/29/04 -----POLICE REPORT----- PAGE: 3  
TIME: 7:46 -----PERSONS PORTION----- OP: 12  
-----

\*\*\*\*\*  
name of person (004):                   ! type: V           ! occupation:           ! susp id?  
JOHN/RYAN                               ! VICTIM           ! LABORER           ! NO

-----  
sex ! race: W hisp:N!       dob       ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! WHITE                   !       /1985 ! 19 ! 000 ! 000 !       !       !

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alias-aka:                               ! birthplace:  
alias-aka:                               ! ssn:                   mf no:

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addr: 9030 BARR AVE LAS VEGAS NV 89124                               ! 7026479472  
business: VEGAS TRAFFIC SAFETY 4872 LMBW LV NV 89109                   ! 7027912008

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descriptors: GIRLFRIEND LIVES AT 2613 GLORY VIEW  
descriptors:

\*\*\*\*\*  
name of person (005):                   ! type: V           ! occupation:           ! susp id?  
DENNIS/AARON                           ! VICTIM           !                   ! NO

-----  
sex ! race: W hisp:N!       dob       ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! WHITE                   ! 2/08/1994 ! 10 ! 000 ! 000 !       !       !

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alias-aka:                               ! birthplace:  
alias-aka:                               ! ssn:                   mf no:

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addr: 2612 GLORY VIEW NORTH LAS VEGAS NV 89031                       !  
business:                               !

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descriptors:  
descriptors:

\*\*\*\*\*  
name of person (006):                   ! type: V           ! occupation:           ! susp id?  
POSADA/JOSE                           ! VICTIM           !                   ! NO

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sex ! race: W hisp:Y!       dob       ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! HISPANIC               ! 3/23/1992 ! 12 ! 000 ! 000 !       !       !

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alias-aka:                               ! birthplace:  
alias-aka:                               ! ssn:                   mf no:

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addr: UNKNOWN                               !  
business:                               !

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descriptors: IVAN YOUNG'S NEPHEW  
descriptors:

-----  
records bureau processed               ser no ! detective bureau processed               ser no  
SCARFF/DENISE                           1259 !

-----  
supervisor approving                   ser no ! officer reporting                   ser no  
NOWAKOWSKI/DENNIS                       1225 ! HOYT/MARK                       1334

.....  
CASE: 04015160 ---NORTH LAS VEGAS POLICE DEPARTMENT--- REF: ORIGINAL  
DATE: 6/29/04 -----POLICE REPORT----- PAGE: 4  
TIME: 7:46 -----PERSONS PORTION----- OF: 12  
.....

\*\*\*\*\*  
name of person (007): ! type: W occupation: ! susp id?  
HICKMAN/JAKE #1476 ! WITNESS ! POLICE OFFICER ! NO

sex ! race: hisp: ! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! ! ! ! 000 ! 000 ! ! ! !

alias-aka: ! birthplace:  
alias-aka: ! ssn: mf no:

addr: !  
business: NLVPD 1301 LMBE ! 7026339111

descriptors:  
descriptors:

\*\*\*\*\*  
name of person (008): ! type: W ! occupation: ! susp id?  
COON/CHRISSE #1457 ! WITNESS ! POLICE OFFICER ! NO

sex ! race: hisp: ! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! ! ! ! 000 ! 000 ! ! ! !

alias-aka: ! birthplace:  
alias-aka: ! ssn: mf no:

addr: !  
business: NLVPD 1301 LMBE ! 7026339111

descriptors:  
descriptors:

\*\*\*\*\*  
name of person (009): ! type: W ! occupation: ! susp id?  
BAILEY/ANTHONY #1366 ! WITNESS ! POLICE OFFICER ! NO

sex ! race: hisp: ! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! ! ! ! 000 ! 000 ! ! ! !

alias-aka: ! birthplace:  
alias-aka: ! ssn: mf no:

addr: !  
business: NLVPD 1301 LMEE ! 7026339111

descriptors:  
descriptors:

records bureau processed ser no ! detective bureau processed ser no  
SCARFF/DENISE 1259 !

supervisor approving ser no ! officer reporting ser no  
NOWAKOWSKI/DENNIS 1225 ! HOYT/MARK 1334

CASE: 04015160      ----NORTH LAS VEGAS POLICE DEPARTMENT----      REF: ORIGINAL  
DATE: 6/29/34      -----POLICE REPORT-----      PAGE: 5  
TIME: 7:46      -----PERSONS PORTION-----      OF: 12

name of person (010):	! type: W	! occupation:	! susp id?
ADAMS/CLINTON #1068	! WITNESS	! POLICE OFFICER	! NO

```
sex : race : hisp : dcb : age : hgt : wgt : hair : eyes : bld : cmp
M :      :      :      :      : 000 : 000 :      :      :      :      :
```

```
alias-aka:      ! birthplace:
alias-aka:      ! ssn:      mf no:
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addr: !
business: NLVPD 1301 LM3E ! 7026339111
```

```
descriptors:
descriptors:
```

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name of person (011):      : type: W      ! occupation:      ! susp id?
NOWAKOWSKI/DENNIS #1225    ! WITNESS      ! POLICE SERGEANT ! NO

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```
sex | race:  hisp:  dob      age | hgt | wgt | hair | eyes | bld | cmp
M   |       :      :      :    |    |    |      |      |      |

```

```
alias-aka:      ! birthplace:
alias-aka:      ! ssn:          mf nc:
```

```
addr: !
business: NLVPD 1301 LMBE ! 7026339111
```

```
descriptors:
descriptors:
```

```

name of person (012):      ! type: W      ! occupation:      ! susp id?
NOWAKOWSKI/DENNIS #1225    ! WITNESS      ! POLICE SERGEANT  ! NO

```

```
sex | race:  hisp: |      dob      | age | hgt | wgt | hair | eyes | bld | cmp
M   |         |         |      |    |    |    |      |      |     |

```

```
alias-aka:      birthplace:
alias-aka:      ssn:      mf no:
```

```
addr: !
business: NLVPE 1301 LMBE ! 7026339111
```

```
descriptors:
descriptors:
```

records bureau processed	ser no	detective bureau processed	ser no
SCARFF/DENISE	1259		

supervisor approving	ser no	officer reporting	ser no
NOWAKOWSKI/DENNIS	1225	HOYT/MARY	1334

CASE: 04015150 ---NORTH LAS VEGAS POLICE DEPARTMENT--- REF: ORIGINAL  
DATE: 6/29/04 ---POLICE REPORT--- PAGE: 6  
TIME: 7:46 ---PERSONS PORTION--- OF: 12

\*\*\*\*\*  
name of person (013): ! type: W ! occupation: ! susp id?  
BRADY/MARION #850 ! WITNESS ! I.D. TECH. ! NO

sex ! race: hisp: ! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
F ! ! ! ! 000 ! 000 ! ! ! !

alias-aka: ! birthplace:  
alias-aka: ! ssn: mf no:

addr: !  
business: NLVPD 1301 LMBE ! 7026339111

descriptors:  
descriptors:

\*\*\*\*\*  
name of person (014): ! type: W ! occupation: ! susp id?  
WALKER/SEAN #1523 ! WITNESS ! POLICE OFFICER ! NO

sex ! race: hisp: ! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! ! ! ! 000 ! 000 ! ! ! !

alias-aka: ! birthplace:  
alias-aka: ! ssn: mf no:

addr: !  
business: NLVPD 1301 LMBE ! 7026339111

descriptors:  
descriptors:

\*\*\*\*\*  
name of person (015): ! type: W ! occupation: ! susp id?  
SANDERS/JOHN #1244 ! WITNESS ! POLICE OFFICER ! NO

sex ! race: hisp: ! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! ! ! ! 000 ! 000 ! ! ! !

alias-aka: ! birthplace:  
alias-aka: ! ssn: mf no:

addr: !  
business: NLVPD 1301 LMBE ! 7026339111

descriptors:  
descriptors:

records bureau processed ser no ! detective bureau processed ser no  
SCARFF/DENISE 1259 !

supervisor approving ser no ! officer reporting ser no  
NOWAKOWSKI/DENNIS 1225 ! HOYT/MARK 1336

CASE: 04015160 ---NORTH LAS VEGAS POLICE DEPARTMENT--- REF: ORIGINAL  
DATE: 6/29/04 ---POLICE REPORT--- PAGE: 7  
TIME: 7:46 ---PERSONS PORTION--- OF: 12

\*\*\*\*\*  
name of person (016): ! type: S ! occupation: ! susp id?  
NO NAME ! SUSPECT ! NO

sex ! race: B hisp: N ! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! BLACK ! ! ! 508 ! 000 ! ! ! !

alias-aka: ! birthplace:  
alias-aka: ! ssn: mf no:

addr: !  
business: !

descriptors: SPOKE WITH JAMAICAN ACCENT  
descriptors: HAD DREAD LOCKS

\*\*\*\*\*  
name of person (017): ! type: S ! occupation: ! susp id?  
NO NAME ! SUSPECT ! NO

sex ! race: B hisp: N ! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! BLACK ! ! ! 511 ! 000 ! ! ! !

alias-aka: ! birthplace:  
alias-aka: ! ssn: mf no:

addr: !  
business: !

descriptors: LSW BLUE AND WHI CLOTHING  
descriptors:

\*\*\*\*\*  
name of person (018): ! type: W ! occupation: ! susp id?  
PRIETO/JESUS #674 ! WITNESS ! DETECTIVE ! NO

sex ! race: hisp: ! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! ! ! ! 000 ! 000 ! ! ! !

alias-aka: ! birthplace:  
alias-aka: ! ssn: mf no:

addr: !  
business: NLVPD 1301 LMEE ! 7026339112

descriptors:  
descriptors:

records bureau processed ser no ! detective bureau processed ser no  
SCARFF/DENISE 1259 !

supervisor approving ser no ! officer reporting ser no  
NOWAKOWSKI/DENNIS 1225 ! HCYT/MARK 1334

.....  
CASE: 04015160 -----NORTH LAS VEGAS POLICE DEPARTMENT----- REF: ORIGINAL  
DATE: 6/29/04 -----POLICE REPORT----- PAGE: 8  
TIME: 7:46 -----PERSONS PORTION----- OF: 12  
.....

\*\*\*\*\*  
name of person (019): ! type: W ! occupation: . susp id?  
MELGAREJO/EDWING #837 ! WITNESS ! DETECTIVE ! NO  
.....

sex ! race: hisp: ! dob ! age ! hgt ! wgt ! hair ! eyes ! hld ! cmp  
M ! ! ! ! 000 ! 000 ! ! ! !  
.....

alias-aka: ! birthplace:  
alias-aka: ! ssn: mf no:  
.....

addr: !  
business: NLVPD 1301 LMBE ! 7026339111  
.....

descriptors:  
descriptors:  
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.....  
records bureau processed ser no ! detective bureau processed ser no  
SCARFF/DENISE 1259 !  
.....

supervisor approving ser no ! officer reporting ser no  
NOWAKOWSKI/DENNIS 1225 : HOYT/MARK 1334  
.....



CASE: 04015160  
DATE: 6/29/04  
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-----NORTH LAS VEGAS POLICE DEPARTMENT----- REF: ORIGINAL  
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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

records bureau processed  
SCARFF/DENISE

ser no 1 detective bureau processed  
1259 1

ser no

supervisor approving  
NOWAKOWSKI/DENNIS

ser no 1 officer reporting  
1225 1 HOYT/MARK

ser no  
1334

CASE: 04015160  
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-----NORTH LAS VEGAS POLICE DEPARTMENT----- REF: ORIGINAL  
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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, JERMAJN 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, DESTINNE 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 1 detective bureau processed  
1259 1

ser no

supervisor approving  
NOWAKOWSKI/DENNIS

ser no 1 officer reporting  
1225 1 HOYT/MARK

ser no  
1334

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

CASE: 04015160  
DATE: 6/29/04  
TIME: 7:46

---NORTH LAS VEGAS POLICE DEPARTMENT--- REF: ORIGINAL  
---POLICE REPORT--- PAGE: 12  
---BOOKING PORTION--- OF: 12

name of arrestee: SLAUGHTER/RICKIE mf: 99089534 cs: 1896569  
sex | race/ethnic | date birth | age | hgt | wgt | hair | eyes | bld | cmp  
M | B N BLACK | [REDACTED] 1984 | 19 | 509 | 180 | BLK | BRO | MED | DRK

alias-aka: SLAUGHTER/RICKIE LAMONT | place of birth:  
alias-aka: | LAS VEGAS NV  
alias-aka: | ssn: [REDACTED] 827  
alias-aka: | driv lic/st: 1401804365 NV

scars, marks, TAT RF ARM "RICC"/SC ABDOM 6"  
tattoos, etc: SC R SIDE STAB WOUND  
illness/injuries:

address (house no; apt no; street, city, state, zip) | phone number  
3801 E CHARLESTON #114 LV NV

next of kin name: PATRICIA MITCHELL relation: MOTHER  
next of kin address: phone: 7022414277  
employer: NONE occupation: NONE

date/time of booking: 6/29/04 0133 abno: 253034  
place of arrest: 3801 E CHARLESTON #114 arresting officer: vehl  
date/time of arrest: 6/28/04 2300 PRIETO/JESUS YES  
officers present during booking: transporting officer: impd  
SAKAY 1265/GARCIA 1525 PRIETO/JESUS YES  
ad ID:

no.	orig	charge	warrant/nrs	cts	fgm	bail	case num
1	PC	02148	200.030 ATT MURD WDW	1	F	NONE	4015160
2	PC	00118	200.380 ROBB WDW	1	F	40,000	4015160
3	PC	00301	205.060 BURG WDW	1	F	15,000	4015160
4	PC	02743	200.460 FALSE IMPRISON WDW	1	F	10,000	4015160

records bureau processed ser no : detective bureau processed ser no  
SCARFF/DENISE 1259 :

supervisor approving ser no : officer reporting ser no  
NOWAKOWSKI/DENNIS 1225 : HOYT/MARK 1334

CASE: 04015160 NORTH LAS VEGAS POLICE DEPARTMENT REF: ORIGINAL  
DATE: 6/29/04 POLICE REPORT PAGE: 1  
TIME: 7:46 INVESTIGATIVE PORTION OF: 12

-----INCIDENT ORIGINAL-----

classification/additional information:  
AMURDWDW/BURG/ROBB/FALSE IMPRISONMENT

invest bureaus/units notified: I.D. BUREAU/DETECTIVE

location of occurrence: ! rpt dist: A1 neighborhood: APT  
2612 GLORY VIEW ! ADAM 1 AIRPORT

from: date / time ! to: date / time ! report: date / time  
6/26/04 / 19:11 ! 6/26/04 / 19:11 ! 6/26/04 / 20:52

hate crime? NO ! gang related? YES ! fingerprints? NO

routing? ! prosecute? ! prop report? ! vehl report? ! arrest rpt? ! attach?  
DETECTIVE ! YES ! NO ! NO ! NO ! YES

-----METHOD OF OPERATION-----

residential---type: 111 target: security:  
SINGLE FAMILY

non-residtl---type: target: security:

entry---location: 325 GARAGE method:  
exit---location: 373 FORCED-UNIQUE METHODmethod:

suspect actions:

A. 601 MULTI SUSPECTS B. 606 SUSPECT ARMED C. 607 DISCHARGED WEAPON  
D. 704 SELECTIVE IN LOOT E. 801 INFLICTED INJURY F. 802 THREAT RETALIATIO  
G. 803 FORCED VIC TO FLO H. 814 BOUND/GAGGED VICT I. 901 KNEW VICTIMS NAME

\*\*\*\*\*DISPOSITIONS\*\*\*\*\*

[ ] -UNFOUNDED/NO CRIME--0 [ ] -SUBMITTED D.A.-----5 [ ] -RECLASSIFY-----10  
[ ] -JUVENILE-----1 [ ] -ADMIN. CLEARED-----6 [ ] -VIC REFUSED PROS.--11  
[ ] -NON DETECTIVE CLR---2 [ ] -EXCEPTIONALLY CLR---7 [ ] -AFFIDAVIT-----12  
[ ] -DETECTIVE ARREST----3 [ ] -SCREEN CLEARED-----8 [ ] -CA/DA DENIAL-----13  
[ ] -SUBMITTED CITY ATTY-4 [ ] -NO CHGS FILED(NCF)--9 [ ] -OTHER-----14  
[ ] -SUBMITTED US ATTN-15

-----RECORDS-----

class code---ucr ! sid number ! date ser no ! date ser no  
! ! enter ! cleared  
! ! scope ! scope  
! ! !

records bureau processed ser no ! detective bureau processed ser no  
SCARFF/DENISE 1259 !

supervisor approving ser no ! officer reporting ser no  
NOWAKOWSKI/DENNIS 1225 ! HOYT/MARK 1334

CASE: 04015160 ---NORTH LAS VEGAS POLICE DEPARTMENT--- REF: ORIGINAL  
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\*\*\*\*\*  
name of person (001): ! type: V ! occupation: ! susp id?  
YOUNG/IVAN ! VICTIM ! PAINTER ! YES

sex ! race: W hisp:Y! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! HISPANIC ! 5/21/1973 ! 31 ! 000 ! 000 ! ! !

alias-aka: ! birthplace:  
alias-aka: ! ssn: [REDACTED]0271 mf no:

addr: 2612 GLORY VIEW NORTH LAS VEGAS NV 89030 !  
business: !

descriptors:  
descriptors:

\*\*\*\*\*  
name of person (002): ! type: W ! occupation: ! susp id?  
WADDY/DESTINEE ! WITNESS ! DENTAL ASSIST ! NO

sex ! race: B hisp:N! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
F ! BLACK ! 5/18/1981 ! 23 ! 000 ! 000 ! ! !

alias-aka: ! birthplace:  
alias-aka: ! ssn: [REDACTED]8514 mf no:

addr: 2309 BAHAMA POINT NORTH LAS VEGAS NV 89031 ! 7022904223  
business: !

descriptors:  
descriptors:

\*\*\*\*\*  
name of person (003): ! type: V ! occupation: ! susp id?  
MEANS/JERMAUN ! VICTIM ! ! NO

sex ! race: B hisp:N! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! BLACK ! 12/11/1976 ! 27 ! 000 ! 000 ! ! !

alias-aka: ! birthplace:  
alias-aka: ! ssn: mf no:

addr: 2309 BAHAMA POINT NORTH LAS VEGAS NV 89031 ! 7026369620  
business: !

descriptors:  
descriptors:

records bureau processed ser no ! detective bureau processed ser no  
SCARFF/DENISE 1259 !

supervisor approving ser no ! officer reporting ser no  
NOWAKOWSKI/DENNIS 1225 ! HOYT/MARK 1334

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CASE: 04015160 -----NORTH LAS VEGAS POLICE DEPARTMENT----- REF: ORIGINAL  
DATE: 6/29/04 -----POLICE REPORT----- PAGE: 3  
TIME: 7:46 -----PERSONS PORTION----- OF: 12  
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\*\*\*\*\*  
name of person (004): ! type: V ! occupation: ! susp id?  
JOHN/RYAN ! VICTIM ! LABORER ! NO

sex ! race: W hisp:N! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! WHITE ! 2/06/1985 ! 19 ! 000 ! 000 ! ! !

alias-aka: ! birthplace:  
alias-aka: ! ssn: mf no:

addr: 9030 BARR AVE LAS VEGAS NV 89124 ! 7026479472  
business: VEGAS TRAFFIC SAFETY 4872 LMBW LV NV 89108 ! 7027912008

descriptors: GIRLFRIEND LIVES AT 2613 GLORY VIEW  
descriptors:

\*\*\*\*\*  
name of person (005): ! type: V ! occupation: ! susp id?  
DENNIS/AARON ! VICTIM ! NO

sex ! race: W hisp:N! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! WHITE ! 2/08/1994 ! 10 ! 000 ! 000 ! ! !

alias-aka: ! birthplace:  
alias-aka: ! ssn: mf no:

addr: 2612 GLORY VIEW NORTH LAS VEGAS NV 89031 !  
business: !

descriptors:  
descriptors:

\*\*\*\*\*  
name of person (006): ! type: V ! occupation: ! susp id?  
POSADA/JOSE ! VICTIM ! NO

sex ! race: W hisp:Y! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! HISPANIC ! 3/25/1992 ! 12 ! 000 ! 000 ! ! !

alias-aka: ! birthplace:  
alias-aka: ! ssn: mf no:

addr: UNKNOWN !  
business: !

descriptors: IVAN YOUNG'S NEPHEW  
descriptors:

records bureau processed ser no ! detective bureau processed ser no  
SCARFF/DENISE 1259 !

supervisor approving ser no ! officer reporting ser no  
NOWAKOWSKI/DENNIS 1225 ! HOYT/MARK 1334

CASE: 04015160 ---NORTH LAS VEGAS POLICE DEPARTMENT--- REF: ORIGINAL  
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\*\*\*\*\*  
name of person (007): ! type: W ! occupation: ! susp id?  
HICKMAN/JAKE #1476 ! WITNESS ! POLICE OFFICER ! NO

sex ! race: hisp: ! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! ! ! ! 000 ! 000 ! ! ! !

alias-aka: ! birthplace:  
alias-aka: ! ssn: mf no:

addr: !  
business: NLVPD 1301 LMBE ! 7026339111

descriptors:  
descriptors:

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name of person (008): ! type: W ! occupation: ! susp id?  
COON/CHRISSE #1457 ! WITNESS ! POLICE OFFICER ! NO

sex ! race: hisp: ! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! ! ! ! 000 ! 000 ! ! ! !

alias-aka: ! birthplace:  
alias-aka: ! ssn: mf no:

addr: !  
business: NLVPD 1301 LMBE ! 7026339111

descriptors:  
descriptors:

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name of person (009): ! type: W ! occupation: ! susp id?  
BAILEY/ANTHONY #1366 ! WITNESS ! POLICE OFFICER ! NO

sex ! race: hisp: ! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! ! ! ! 000 ! 000 ! ! ! !

alias-aka: ! birthplace:  
alias-aka: ! ssn: mf no:

addr: !  
business: NLVPD 1301 LMBE ! 7026339111

descriptors:  
descriptors:

records bureau processed ser no ! detective bureau processed ser no  
SCARFF/DENISE 1259 !

supervisor approving ser no ! officer reporting ser no  
NOWAKOWSKI/DENNIS 1225 ! HOYT/MARK 1334



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CASE: 04015160 -----NORTH LAS VEGAS POLICE DEPARTMENT----- REF: ORIGINAL  
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name of person (010): ! type: W ! occupation: ! susp id?  
ADAMS/CLINTON #1068 ! WITNESS ! POLICE OFFICER ! NO  
.....

sex ! race: hisp: ! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! ! ! ! 000 ! 000 ! ! ! !  
.....

alias-aka: ! birthplace:  
alias-aka: ! ssn: mf no:  
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addr: !  
business: NLVPD 1301 LMBE ! 7026339111  
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descriptors:  
descriptors:  
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name of person (011): ! type: W ! occupation: ! susp id?  
NOWAKOWSKI/DENNIS #1225 ! WITNESS ! POLICE SERGEANT ! NO  
.....

sex ! race: hisp: ! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! ! ! ! 000 ! 000 ! ! ! !  
.....

alias-aka: ! birthplace:  
alias-aka: ! ssn: mf no:  
.....

addr: !  
business: NLVPD 1301 LMBE ! 7026339111  
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descriptors:  
descriptors:  
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\*\*\*\*\*  
name of person (012): ! type: W ! occupation: ! susp id?  
NOWAKOWSKI/DENNIS #1225 ! WITNESS ! POLICE SERGEANT ! NO  
.....

sex ! race: hisp: ! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! ! ! ! 000 ! 000 ! ! ! !  
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alias-aka: ! birthplace:  
alias-aka: ! ssn: mf no:  
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addr: !  
business: NLVPD 1301 LMBE ! 7026339111  
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descriptors:  
descriptors:  
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records bureau processed ser no ! detective bureau processed ser no  
SCARFF/DENISE 1259 !  
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supervisor approving ser no ! officer reporting ser no  
NOWAKOWSKI/DENNIS 1225 ! HOYT/MARK 1334  
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CASE: 04015160 -----NORTH LAS VEGAS POLICE DEPARTMENT----- REF: ORIGINAL  
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\*\*\*\*\*  
name of person (013): ! type: W ! occupation: ! susp id?  
BRADY/MARION #850 ! WITNESS ! I.D. TECH. ! NO  
-----

sex ! race: hisp: ! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
F ! ! ! ! 000 ! 000 ! ! ! !  
-----

alias-aka: ! birthplace:  
alias-aka: ! ssn: mf no:  
-----

addr: !  
business: NLVPD 1301 LMBE ! 7026339111  
-----

descriptors:  
descriptors:  
\*\*\*\*\*

name of person (014): ! type: W ! occupation: ! susp id?  
WALKER/SEAN #1523 ! WITNESS ! POLICE OFFICER ! NO  
-----

sex ! race: hisp: ! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! ! ! ! 000 ! 000 ! ! ! !  
-----

alias-aka: ! birthplace:  
alias-aka: ! ssn: mf no:  
-----

addr: !  
business: NLVPD 1301 LMBE ! 7026339111  
-----

descriptors:  
descriptors:  
\*\*\*\*\*

name of person (015): ! type: W ! occupation: ! susp id?  
SANDERS/JOHN #1244 ! WITNESS ! POLICE OFFICER ! NO  
-----

sex ! race: hisp: ! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! ! ! ! 000 ! 000 ! ! ! !  
-----

alias-aka: ! birthplace:  
alias-aka: ! ssn: mf no:  
-----

addr: !  
business: NLVPD 1301 LMBE ! 7026339111  
-----

descriptors:  
descriptors:  
-----

records bureau processed ser no ! detective bureau processed ser no  
SCARFF/DENISE 1259 !  
-----

supervisor approving ser no ! officer reporting ser no  
NOWAKOWSKI/DENNIS 1225 ! HOYT/MARK 1334  
-----

CASE: 04015160  
DATE: 6/29/04  
TIME: 7:46

-----NORTH LAS VEGAS POLICE DEPARTMENT----- REF: ORIGINAL  
-----POLICE REPORT----- PAGE: 7  
-----PERSONS PORTION----- OF: 12

\*\*\*\*\*  
name of person (016):                   ! type: S           ! occupation:           ! susp id?  
NO NAME                               ! SUSPECT           !                   ! NO

sex ! race: B hisp: N ! dob           ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! BLACK                               !           ! 508 ! 000 !           !           !

alias-aka:                               ! birthplace:  
alias-aka:                               ! ssn:                   mf no:

addr:  
business:

descriptors: SPOKE WITH JAMAICAN ACCENT  
descriptors: HAD DREAD LOCKS

\*\*\*\*\*  
name of person (017):                   ! type: S           ! occupation:           ! susp id?  
NO NAME                               ! SUSPECT           !                   ! NO

sex ! race: B hisp: N ! dob           ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! BLACK                               !           ! 511 ! 000 !           !           !

alias-aka:                               ! birthplace:  
alias-aka:                               ! ssn:                   mf no:

addr:  
business:

descriptors: LSW BLUE AND WHI CLOTHING  
descriptors:

\*\*\*\*\*  
name of person (018):                   ! type: W           ! occupation:           ! susp id?  
PRIETO/JESUS #674                   ! WITNESS           ! DETECTIVE           ! NO

sex ! race:   hisp:   ! dob           ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M !                               !           ! 000 ! 000 !           !           !

alias-aka:                               ! birthplace:  
alias-aka:                               ! ssn:                   mf no:

addr:  
business: NLVPD 1301 LMBE                               ! 7026339111

descriptors:  
descriptors:

records bureau processed           ser no ! detective bureau processed           ser no  
SCARFF/DENISE                   1259 !

supervisor approving           ser no ! officer reporting           ser no  
NOWAKOWSKI/DENNIS           1225 ! HOYT/MARK           1334

.....  
CASE: 04015160 -----NORTH LAS VEGAS POLICE DEPARTMENT----- REF: ORIGINAL  
DATE: 6/29/04 -----POLICE REPORT----- PAGE: 8  
TIME: 7:46 -----PERSONS PORTION----- OF: 12  
.....

\*\*\*\*\*  
name of person (019): ! type: W ! occupation: ! susp id?  
MELGAREJO/EDWING #837 ! WITNESS ! DETECTIVE ! NO  
.....

sex ! race: hisp: ! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp  
M ! ! ! ! 000 ! 000 ! ! ! !  
.....

alias-aka: ! birthplace:  
alias-aka: ! ssn: mf no:  
.....

addr: !  
business: NLVPD 1301 LMBE ! 7026339111  
.....

descriptors:  
descriptors:  
.....

.....  
records bureau processed ser no ! detective bureau processed ser no  
SCARFF/DENISE 1259 !  
.....

supervisor approving ser no ! officer reporting ser no  
NOWAKOWSKI/DENNIS 1225 ! HOYT/MARK 1334  
.....

CASE: 04015160  
DATE: 6/29/04  
TIME: 7:46

-----NORTH LAS VEGAS POLICE DEPARTMENT----- REF: ORIGINAL  
-----POLICE REPORT----- PAGE: 9  
-----NARRATIVE PORTION----- OF: 12

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

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  
DATE: 6/29/04  
TIME: 7:46

-----NORTH LAS VEGAS POLICE DEPARTMENT----- REF: ORIGINAL  
-----POLICE REPORT----- PAGE: 10  
-----NARRATIVE PORTION----- OF: 12

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, JERMA'N 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  
DATE: 6/29/04  
TIME: 7:46

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

REF: ORIGINAL  
PAGE: 11  
OF: 12

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





# TH 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 &amp; Time

Signature of Officer

Witness Name Printed

*Exhibit A - 1st set of*  
*Photo line ups*

*THIS IS IVAN YOUNG'S I.D. OF THE SUSPECT. Due to medical treatment,*

App.2589

**NORTH LAS VEGAS POLICE**  
**WITNESS PHOTO LINEUP IDENTIFICATION**Case #: 04-1516

## 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 circled number 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:

The face just stand out to me.

Signature of Officer

6741

Signature of Witness

Date &amp; Time

Signature of Officer

Witness Name Printed

"Exhibit A - 1st set ofPhoto line ups  
App.2590

# NORTH LAS VEGAS POLICE

## WITNESS PHOTO LINEUP IDENTIFICATION

Case #: 04-1516

## 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 circled number around the appropriate number corresponding to the number of the person in the line up. Place your initials next to it.
2. Complete any additional comments.
3. Then sign your name and fill in the date and the time.



#1



#2



#3



#4



#5



#6

RJ

## ADDITIONAL WITNESS COMMENTS:

This is the guy that I think that called me  
over to Evans House and tied me up and shot Ivan.

Signature of Officer

*[Handwritten Signature]* 674

Signature of Witness

*[Handwritten Signature]*

6-29-04 190

Date &amp; Time

Signature of Officer

**Exhibit A - 1st set of**

Witness Name Printed

**Photolineups**  
**App.2591**

# NORTH LAS VEGAS POLICE

## WITNESS PHOTO LINEUP IDENTIFICATION

Case #: 04-1516

## TO WITNESS:

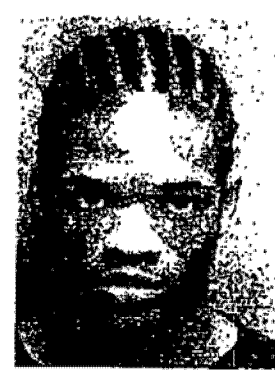
1. If you have previously seen one or more of the persons in the line up in regards to the crime in question, place a circle around the appropriate number corresponding to the number of the person in the line up. Place your initials next to the circled number.
2. Complete any additional comments
3. Then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



#1



#2



#3



#4



#5



#6

## ADDITIONAL WITNESS COMMENTS:

I saw him next to my  
uncle. This man had a gun!

Signature of Officer

Signature of Witness

Date &amp; Time

Signature of Officer

Witness Name Printed

Exhibit A - 1st set of Photolines

App.2592



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

BOOKING NAME: SLAUGHTER RICKIE  
RUE 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: 89534  
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	SKG 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								
5									
6									
7									
8									
9									
10									

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 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 7-13-09 [Signature]  
North Las Vegas Police Dept.



# PHOTO SPREAD

## WITNESS: PLEASE READ THESE INSTRUCTIONS CAREFULLY

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

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

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

2. in "NOTES" space, tell briefly how/where/when you saw or met person(s) you identified.
3. If you never have seen any person in this line-up, write your initials in the "NONE OF THE ABOVE" space.
4. Sign your name in the "VIEWED BY" space, and fill in the time and date spaces
5. Then hand this photo spread to the officer in charge.



#1 PERSON

DATE \_\_\_\_\_

INITIALS \_\_\_\_\_

NOTES \_\_\_\_\_



#2 PERSON

DATE \_\_\_\_\_

INITIALS \_\_\_\_\_

NOTES \_\_\_\_\_



#3 PERSON

DATE \_\_\_\_\_

INITIALS \_\_\_\_\_

NOTES \_\_\_\_\_



#4 PERSON

DATE \_\_\_\_\_

INITIALS \_\_\_\_\_

NOTES \_\_\_\_\_



#5 PERSON

DATE \_\_\_\_\_

INITIALS \_\_\_\_\_

NOTES \_\_\_\_\_



#6 PERSON

DATE \_\_\_\_\_

INITIALS \_\_\_\_\_

NOTES \_\_\_\_\_

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

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

AGENCY \_\_\_\_\_

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

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

OFFICER \_\_\_\_\_

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

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

WITNESS \_\_\_\_\_

DATE \_\_\_\_\_





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

Case #: 04-15160

**TO WITNESS:**

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



#1



#2



#3



#4



#5



#6

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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



NORTH LAS VEGAS POLICE  
WITNESS PHOTO LINEUP IDENTIFICATION

Case #: 04-15160

## WITNESS:

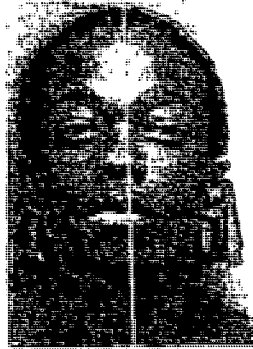
If you have previously seen one or more of the persons in the line up in regards to the crime in question, place a circle around the appropriate number corresponding to the number of the person in the line up. Place your initials next to the circled number.

Complete any additional comments

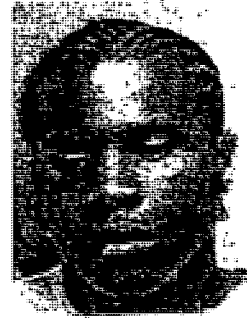
Then sign your name and fill in the date and the time.



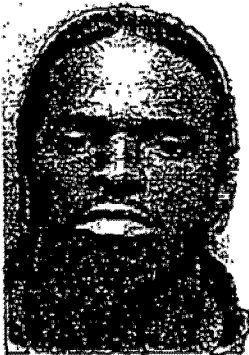
#1



#2



#3



#4



#5



#6

ADDITIONAL WITNESS COMMENTS:

Signature of Officer

Signature of Witness

Date &amp; Time

Signature of Officer

Witness Name Printed

Attachment B.3

Attachment B.4

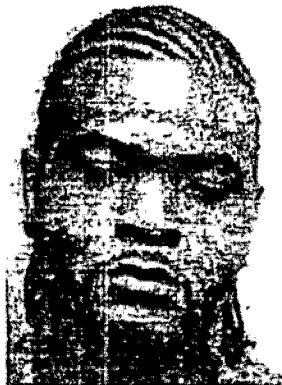


**NORTH LAS VEGAS POLICE**  
**WITNESS PHOTO LINEUP IDENTIFICATION**

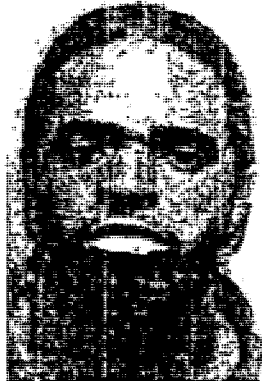
Case #: 04-15160

**TO WITNESS:**

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



#1



#2



#3



#4



#5



#6

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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



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

Case #: 04-15160

**TO WITNESS:**

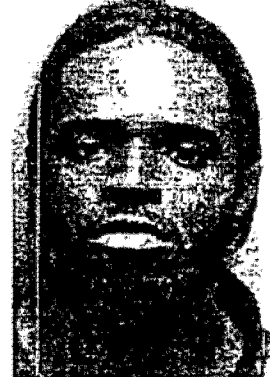
1. If you have previously seen one or more of the persons in the line up in regards to the crime in question, place a circle around the appropriate number corresponding to the number of the person in the line up. Place your initials next to the circled number.
2. Complete any additional comments
3. Then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



#1



#2



#3



#4



#5



#6

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

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

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

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

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

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





CASE: 04015160 ---NORTH LAS VEGAS POLICE DEPARTMENT--- REF: 250183  
DATE: 12/10/04 -----POLICE REPORT----- PAGE: 1  
TIME: 15:25 -----INVESTIGATIVE PORTION----- OF: 5

\*\*\*\*\*  
-----INCIDENT FOLLOWUP-----

classification/additional information:  
AMURDWDW/BURG/ROBB/FALSE IMPRISONMENT

invest bureaus/units notified:

location of occurrence: ! rpt dist:A1 neighborhood: APT  
2612 GLORY VIEW ! ADAM 1 AIRPORT

from: date / time ! to: date / time ! report: date / time  
6/26/04 / 19:11 ! 6/26/04 / 19:11 ! 9/21/04 / 7:29

hate crime? NO ! gang related? NO ! fingerprints? NO

routing? ! prosecute? ! prop report? ! vehl report? ! arrest rpt? ! attach?  
OTHER ! YES ! YES ! NO ! NO !

\*\*\*\*\*  
-----METHOD OF OPERATION-----

residential---type: target: security:

non-residtl---type: target: security:

entry---location: method:  
exit---location: method:

suspect actions:

A. B. C.  
D. E. F.  
G. H. I.

\*\*\*\*\*DISPOSITIONS\*\*\*\*\*

[ ] -UNFOUNDED/NO CRIME--0 [ ] -SUBMITTED D.A.-----5 [ ] -RECLASSIFY-----10  
[ ] -JUVENILE-----1 [ ] -ADMIN. CLEARED-----6 [ ] -VIC REFUSED PROS.--11  
[ ] -NON DETECTIVE CLR---2 [ ] -EXCEPTIONALLY CLR---7 [ ] -AFFIDAVIT-----12  
[ ] -DETECTIVE ARREST---3 [ ] -SCREEN CLEARED-----8 [ ] -CA/DA DENIAL-----13  
[ ] -SUBMITTED CITY ATTY-4 [ ] -NO CHGS FILED(NCF)--9 [ ] -OTHER-----14  
[ ] -SUBMITTED US ATTNY-15

\*\*\*\*\*  
-----RECORDS-----

class code---ucr ! sid number ! date ser no ! date ser no  
! ! enter ! cleared  
! ! scope ! scope  
! !

records bureau processed ser no ! detective bureau processed ser no  
SCARFF/DENISE 1259 !

supervisor approving ser no ! officer reporting S ser no  
HANKS/ROBERT EDWARD JR 0998 ! PRIETO/JESUS 0674

CASE: 04015160

DATE: 12/10/04

TIME: 15:25

---NORTH LAS VEGAS POLICE DEPARTMENT---

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

-----PERSONS PORTION-----

REF: 250183

PAGE: 2

OF: 5

name of person (001):

RICHARD/JACQUAN

! type: W

! WITNESS

! occupation:

! DRIVER

! susp id?

! YES

sex ! race: B hisp:N!

dob

! age

! hgt

! wgt

! hair

! eyes

! bld

! cmp

M ! BLACK

! 5/04/1978

! 26

! 509

! 206

! BLK

! BRO

!

alias-aka:

! birthplace:

alias-aka:

! sen: 8071 mf no:

addr:

business:

descriptors:

descriptors:

name of person (002):

ROBINSON/MARVIN

! type: S

! SUSPECT

! occupation:

! susp id?

!

sex ! race: B hisp:N!

dob

! age

! hgt

! wgt

! hair

! eyes

! bld

! cmp

M ! BLACK

! 2/21/1985

! 19

! 602

! 182

! BLK

! BRO

!

alias-aka:

! birthplace:

alias-aka:

! sen: mf no:

addr: 1115 EVANS NLV NV 89030

business:

descriptors:

descriptors:

records bureau processed

SCARFF/DENISE

ser no ! detective bureau processed

1259 !

ser no

supervisor approving

HANKS/ROBERT EDWARD JR

ser no ! officer reporting

0998 ! PRIETO/JESUS

S

ser no

0674

CASE: 04015160      ---NORTH LAS VEGAS POLICE DEPARTMENT--- REF: 250183  
 DATE: 12/10/04      -----POLICE REPORT----- PAGE: 3  
 TIME: 15:25      -----PROPERTY PORTION----- OF: 5

no. artcds type--descriptive information on property----- stolen recover  
 additional descriptive information----- value value

001 MISC E brd: size:  
 --- mod: cal: -----  
 ser:  
 coll: col2: dt last seen:  
 own#:

NLV PHOTO LINE UP CONTAINING MARVIN ROBINSON/VIEWED BY IVAN YOUNG

\*\*\*\*\*  
 ++++++-----> totals----->  
 \*\*\*\*\*  
 type: E-evidence; F-found; I-impounded; L-lost;  
 O-other; R-recovered; S-stolen; T-released; X-safekeeping  
 \*\*\*\*\*

records bureau processed	ser no ! detective bureau processed	ser no
SCARFF/DENISE	1259 !	
supervisor approving	ser no ! officer reporting	S ser no
HANKS/ROBERT EDWARD JR	0998 ! PRIETO/JESUS	0674

CASE: 04015160 -----NORTH LAS VEGAS POLICE DEPARTMENT----- REF: 250183  
DATE: 12/10/04 -----POLICE REPORT----- PAGE: 4  
TIME: 15:25 -----NARRATIVE PORTION----- OF: 5

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

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

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

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

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

RICHARD WENT ON TO TELL ME VARIOUS DETAILS OF THE CRIME. DETAILS NOT RELEASED TO THE PUBLIC. RICHARD SAID THAT SLAUGHTER TOLD HIM THE ROBBERY WENT BAD AND SLAUGHTER HAD TO SHOOT SOMEONE. SLAUGHTER TOLD HIM ABOUT ROBBING TWO PERSONS THAT CAME OVER TO THE RESIDENCE DURING THE ROBBERY. RICHARD SAID THAT

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

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

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

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

records bureau processed	ser no ! detective bureau processed	ser no
SCARFF/DENISE	1259 !	
supervisor approving	ser no ! officer reporting	S ser no
HANKS/ROBERT EDWARD JR	0998 ! PRIETO/JESUS	0674

1 RENE L. VALLADARES  
Federal Public Defender  
2 Nevada State Bar No. 11479  
3 JEREMY C. BARON  
Assistant Federal Public Defender  
4 District of Columbia Bar No. 1021801  
411 E. Bonneville Ave. Suite 250  
5 Las Vegas, Nevada 89101  
6 (702) 388-6577  
(702) 388-6419 (fax)  
7 jeremy\_baron@fd.org  
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  
AMENDED PETITION FOR A WRIT  
OF HABEAS CORPUS PURSUANT  
TO 28 U.S.C. § 2254

17  
18 Petitioner Rickie Slaughter, by and through his attorney of record, Assistant  
19 Federal Public Defender Jeremy C. Baron, hereby files this amended petition for a  
20 writ of habeas corpus by a person in state custody pursuant to 28 U.S.C. § 2254.  
21  
22  
23  
24

25 EXHIBIT 'B'  
26  
27

## INTRODUCTION

Rickie Slaughter's convictions stem from at least two major errors, one on the part of the police, and the other on the part of his defense attorneys. The State accused Mr. Slaughter of entering Ivan Young's house, tying up Mr. Young and his friends and family, robbing or attempting to rob some of the victims, and shooting Mr. Young. The prosecutors' most substantial evidence came from three victims, who purported to identify Mr. Slaughter as one of the two perpetrators. But the only reason those victims identified Mr. Slaughter is because the police prepared an unduly suggestive photographic lineup. That lineup includes pictures of six different faces, including Mr. Slaughter's. Mr. Slaughter's picture has a transparent background; all the other pictures have a blue background. Because of that stark difference (among others), Mr. Slaughter's photograph stands out from the rest. It is therefore no surprise that some of the victims chose Mr. Slaughter from the lineup. It is also no surprise that when the police showed the victims a *second* photographic lineup with a *different*, non-suggestive photograph of Mr. Slaughter, none of the victims appear to have identified Mr. Slaughter. Because the victims' identifications were the product of an unduly suggestive lineup, and because their recollections were otherwise unreliable, the identifications were not admissible.

Meanwhile, Mr. Slaughter's trial attorneys promised the jury an airtight alibi, but they failed to deliver. During opening statements, Mr. Slaughter's lawyers told the jury Mr. Slaughter was picking up his girlfriend, Tiffany Johnson, from work halfway across town mere moments after the incident ended. According to the defense theory, the crime ended at about 7:11 p.m., and Mr. Slaughter picked up Ms. Johnson at about 7:15 p.m. Ms. Johnson's workplace was about a 20 minute drive from Mr. Young's house. Thus, the attorneys argued, it would have been impossible for Mr. Slaughter to leave the crime scene at 7:11 p.m. and make it to Ms. Johnson by 7:15 p.m. But during trial, the lawyers were ineffective in their efforts to prove

1 this alibi. Among other failures, they could have done more to prove that the robbery  
2 ended at or very shortly before 7:11 p.m., and they could have introduced additional  
3 evidence that Mr. Slaughter picked up Ms. Johnson by 7:15 p.m. Those failures  
4 introduced a level of ambiguity into the timeline that should not have been there,  
5 making it easier for the jury to convict. Making matters worse, the defense attorneys  
6 insisted on calling a second alibi witness, notwithstanding Mr. Slaughter's objections  
7 that her testimony would be counterproductive. Just as Mr. Slaughter predicted, her  
8 testimony backfired, further undermining the jury's confidence in Mr. Slaughter's  
9 alibi.

10 Mr. Slaughter's case is littered with additional errors. Defense counsel  
11 intended to introduce exculpatory evidence through multiple witnesses, including  
12 police officers, who never ended up testifying. Defense counsel assumed the State  
13 would present these witnesses, and the lawyers planned to elicit favorable testimony  
14 on cross-examination. But the State did not call these witnesses, and the attorneys  
15 failed to subpoena them, so the defense was out of luck. That fundamental oversight  
16 deprived the jury of key information. For example, the State argued that Mr.  
17 Slaughter drove a Ford Taurus to and from the incident, but one of the witnesses  
18 recalled that the getaway car was possibly a Pontiac Grand Am. For obvious reasons,  
19 the State did not call that witness, and Mr. Slaughter's lawyers dropped the ball when  
20 they expected the opposite and failed to subpoena her. In addition to failing to call  
21 certain witnesses, defense counsel was lackluster in their cross-examinations of the  
22 witnesses that the State did present. At the same time, defense counsel failed to  
23 object to numerous instances of prosecutorial misconduct. Finally, appellate counsel  
24 omitted two winning issues from Mr. Slaughter's appeal, wasting space on weaker  
25 issues instead.

26 For these reasons and others, the Court should issue a writ of habeas corpus  
27 to discharge Mr. Slaughter from his unconstitutional confinement.



## PROCEDURAL HISTORY

### The Home Invasion, Mr. Slaughter's Arrest, and Guilty Plea.

Two individuals went into Ivan Young's house at 2612 Glory View Lane and committed various crimes against Mr. Young, his family, and his friends on June 26, 2004. During the incident, the culprits tied up six victims:

- Ivan Young. Mr. Young operated an under-the-table car detailing operation from his garage. He was working in the garage when the culprits first approached him. After bringing Mr. Young into his house and tying him up, the robbers demanded that Mr. Young tell them where he kept his money and his drugs. Mr. Young repeatedly refused to cooperate, and one of the culprits shot a gun toward the ground near him. The bullet fragments hit Mr. Young in the face, but Mr. Young survived.
- Jennifer Dennis. Ms. Dennis is Mr. Young's wife. She was in the house, and the robbers tied her up during the incident.
- Aaron Dennis. Mr. Dennis is Ms. Dennis's son. He was also in the house, and the robbers tied him up as well.
- Joey Posada. Mr. Posada is Mr. Young and Ms. Dennis's nephew. He was also in the house, and the robbers tied him up as well.
- Ryan John. Mr. John was standing outside his girlfriend's house, which neighbored Mr. Young's house, at the time of the incident. While he was outside, someone called him over to Mr. Young's house. He walked over to the house, where the perpetrators apprehended him and tied him up. One of the culprits stole his ATM card and demanded his pin number. Mr. John later heard that someone had used his ATM at a 7-Eleven soon after the incident.
- Jermaun Means. Mr. Means wanted Mr. Young to paint his car's rims, and he went over to Mr. Young's house to give him money. When he approached

1 the door, the robbers dragged him inside and tied him up. His girlfriend,  
2 Destiny Waddy, was waiting in the car; she was unaware that the alleged  
3 crimes were taking place.

4 At first, the police had few leads. But two days after the incident, a confidential  
5 informant contacted a detective. The informant had "been providing assistance to  
6 the [police] in return for favorable consideration for outstanding warrants." Ex. 8 at  
7 5. This informant claimed to have "overheard a subject named Ricky Slaughter  
8 bragging about having committed a robbery which was being reported on TV. This  
9 robbery was the one which had occurred on Glory View on June 26." *Id.*

10 Based on that tip, the police prepared a suggestive photo lineup that included  
11 Mr. Slaughter's picture. *See* Ground One, *infra*. After showing that lineup to the six  
12 victims and Ms. Waddy, four of the victims identified Mr. Slaughter as one of the  
13 perpetrators.

14 The police arrested Mr. Slaughter on June 28, 2004. Ex. 10. The State issued  
15 its first criminal complaint against Mr. Slaughter on July 1, 2004. Ex. 11. The State  
16 filed multiple amendments to the criminal complaints and informations in this case.  
17 Exs. 17, 18, 21, 22, 32, 50.

18 Mr. Slaughter's attorney filed a motion to reveal the identity of the confidential  
19 informant in justice court on August 17, 2004. Ex. 1. The State opposed the motion,  
20 and the court denied it on September 13, 2004. *Id.*

21 The justice court held a preliminary hearing on September 21, 2004, based on  
22 the second amended criminal complaint. Ex. 19. Jeff Rue from the Clark County  
23 public defender's office represented Mr. Slaughter. The court dismissed one of the  
24 charges but bound Mr. Slaughter over for trial on the other counts.

25 The state district court arraigned Mr. Slaughter on October 5, 2004. Ex. 1.  
26 Mr. Slaughter pled not guilty and invoked his state-law right to a speedy trial.  
27

1 Mr. Rue filed a motion to withdraw due to a conflict of interest on October 12,  
2 2004. Ex. 25. The court appointed Paul Wommer to replace Mr. Rue on October 19,  
3 2004. Ex. 27.

4 Mr. Slaughter submitted a proper person motion to dismiss counsel on or about  
5 December 7, 2004. Ex. 33. He explained that Mr. Wommer had failed to file any  
6 motions on his behalf or investigate his case, and he described his poor relationship  
7 with Mr. Wommer. He also explained that he had submitted a bar complaint against  
8 Mr. Wommer.

9 The court held a hearing regarding Mr. Slaughter's motion on December 13,  
10 2004. Ex. 34. (The transcript for this proceeding is incomplete, apparently as a result  
11 of a court order. *See* Ex. 35.) The court conducted a *Faretta* canvass and allowed Mr.  
12 Slaughter to represent himself, with Mr. Wommer as stand-by counsel.

13 Mr. Slaughter filed a variety of proper person pre-trial motions, including a  
14 motion to inspect the original photo lineups. Ex. 43. He asked the court to issue an  
15 order requiring the State to preserve "any and all original photo lineups containing  
16 an image of" Mr. Slaughter. *Id.* at 4. He also asked the court to allow him to view  
17 the original lineups that the witnesses used to identify Mr. Slaughter. *Id.* at 5. The  
18 State filed a response, asserting that it had already preserved the lineups. Ex. 44.

19 Mr. Slaughter also filed a motion for the release of the identity of the  
20 confidential informant. Ex. 42. The State opposed that motion. Ex. 46. In his reply  
21 in support of that motion filed March 18, 2005, Mr. Slaughter explained that the State  
22 had shown the witnesses different photo lineups on different occasions. Some of the  
23 witnesses identified Mr. Slaughter's picture in one of the lineups (the suggestive  
24 lineup). But none of the witnesses identified Mr. Slaughter's picture in the other,  
25 non-suggestive lineup. Ex. 49 at 4. Relatedly, Mr. Slaughter filed a motion for a  
26 continuance of the trial date. Ex. 54. He explained that he was planning to seek a  
27 court order requiring the police to disclose his mug shots. *Id.* at 4. His needed his

1 mug shots to prove that the police had used one of his photos in that second, non-  
2 suggestive lineup. *Id.*

3 Before trial, Mr. Slaughter and the State negotiated a guilty plea. Ex. 55. As  
4 part of the deal, Mr. Slaughter would plead guilty to four counts in a fourth amended  
5 information. The State agreed to seek a sentence of life with the possibility of parole  
6 after fifteen (15) years on the most severe count and stipulated that life without  
7 parole was not an available sentence for that count. *Id.* at 1. The State would not  
8 oppose concurrent time between counts. *Id.*

9 The court conducted a plea colloquy on April 4, 2005. Ex. 56. The prosecutor  
10 summarized the outcome of the deal as “either a 15 to life or a 15 to 40, depending on  
11 the Court’s decision at sentencing.” *Id.* at 25. Mr. Slaughter agreed that his  
12 understanding of outcome was that “the decision’s between 15 to 40 and 15 to life.”  
13 *Id.* The State accepted Mr. Slaughter’s guilty plea. *Id.* at 35.

14 Mr. Slaughter filed a request for an amended plea agreement on or about June  
15 27, 2005, and a motion to withdraw his plea on or about August 8, 2005. Exs. 57, 59.  
16 At sentencing, the prosecutor suggested Mr. Slaughter’s concern was that the State  
17 would not follow the negotiations at sentencing and would argue for a stiffer sentence.  
18 The prosecutor said Mr. Slaughter was also concerned that the court might not follow  
19 the negotiations and might impose a harsher sentence, regardless of what the State  
20 argued. The prosecutor said to the court, “It is our understanding you have every  
21 intention . . . to follow those negotiations so that he’s not looking at doing more than  
22 the 15 to either 40, if he gets that, or life if we get what we want.” Ex. 60 at 5.

23 Mr. Slaughter expressed confusion about the manner in which counts run  
24 concurrently if certain counts have consecutive weapons enhancements. *Id.* at 6. He  
25 asked whether, if the court ran all the counts concurrently, he would receive a total  
26 sentence of 15 to 40 years or 15 to life. *Id.* The court agreed that he would and said  
27 it was inclined to follow the negotiations. *Id.* at 6-7.

1 As promised, the prosecutor argued for a total sentence of 15 to life. As for the  
2 attempted murder charge, she represented that Mr. Slaughter did not shoot directly  
3 at Mr. Young—instead, he “shot into the floor [and] that was the ricochet that went  
4 up into [Mr. Young’s] face.” *Id.* at 9.

5 The court followed the negotiations and imposed the following sentence:

6 Count 1: A term of imprisonment of 90 months to 240 months, plus an  
7 equal and consecutive term of imprisonment of 90 months to 240  
8 months.

9 Count 2: A term of imprisonment of 72 months to 180 months, plus an  
10 equal and consecutive term of imprisonment of 72 months to 180  
11 months, concurrent with Count 1;

12 Count 3: A term of imprisonment of life with the possibility of parole after  
13 15 years, concurrent with Counts 1 and 2;

14 Count 4: A term of imprisonment of life with the possibility of parole after  
15 five years, plus an equal and consecutive term of imprisonment of  
16 life with the possibility of parole after five years, concurrent with  
17 Counts 1, 2 and 3.

18 *Id.* at 14-15; *see also* Ex. 61. As the court explained it, “Effectively Mr. Slaughter,  
19 you have a life sentence with a minimum of 15 years, which is what I believe you  
20 bargained for.” Ex. 60 at 15-16.

21 Mr. Slaughter Vacates His Guilty Plea.

22 Mr. Slaughter filed a proper person post-conviction petition for a writ of habeas  
23 corpus on or about August 7, 2006. Ex. 64. As his petition explained, he was initially  
24 under the impression that he would be eligible for parole to the streets within 15  
25 years. *Id.* (section labeled “Ground One”). After conducting additional research, he  
26 had become concerned that the State’s deal would not actually allow for that. He had  
27 filed his pre-sentencing motion to withdraw his guilty plea because of that concern.  
Prior to sentencing, the State reassured Mr. Slaughter that the deal would indeed  
allow him the possibility of release after 15 years. But just as he had feared, the

1 Nevada Department of Corrections (“NDOC”) had structured his sentences in such a  
2 way that his minimum total sentence exceeded 15 years—contrary to the State’s  
3 repeated assurances.

4 The State filed an opposition to the petition on November 7, 2006. Ex. 73.  
5 Once again, it claimed Mr. Slaughter would have the opportunity to be released after  
6 15 years. *Id.* at 5. Mr. Slaughter filed a reply, where he explained again that he  
7 would not. Ex. 74 at 6.

8 The court held a hearing on the petition on December 18, 2006. Ex. 76. Mr.  
9 Slaughter raised his concerns again, but the court disagreed with his understanding  
10 of his sentencing structure. As the court put it, “whatever the prison may have told  
11 you about the sentence, I know what the sentence is.” *Id.* at 12. The court denied the  
12 petition. *Id.* at 16; *see* Ex. 78.

13 Mr. Slaughter appealed. Ex. 77. The Nevada Supreme Court issued an order  
14 affirming in part, vacating in part, and remanding on July 24, 2007. Ex. 82. The  
15 opinion explained the problem with Mr. Slaughter’s sentence structure. Under  
16 Nevada law (N.R.S. § 212.1312), inmates serving multiple concurrent sentences  
17 cannot parole off any of their concurrent sentences until they are eligible for parole  
18 on the longest concurrent sentence. Mr. Slaughter was serving four concurrent  
19 sentences, but three of those sentences involved consecutive weapons enhancements:

- 20 Count 1: 90 to 240 months, plus an equal and consecutive 90 to 240 months  
21 for the weapons enhancement.
- 22 Count 2: 72 to 180 months, plus an equal and consecutive 90 to 240 months  
23 for the weapons enhancement.
- 24 Count 3: 15 years to life.
- 25 Count 4: 5 years to life, plus an equal and consecutive 5 years to life for the  
26 weapons enhancement.
- 27

1 Even though all four counts ran concurrently with each other, the consecutive  
2 weapons enhancements created a wrinkle. Mr. Slaughter was not eligible to parole  
3 off the underlying sentences in counts 1, 2, and 4, and onto the consecutive weapons  
4 enhancements in those counts, until he was eligible for parole on his longest  
5 concurrent sentence: the 15-to-life sentence on Count 3. Only after those 15 years  
6 passed would Mr. Slaughter have the chance to begin serving his sentences on the  
7 consecutive weapons enhancements, the longest of which required a minimum of 90  
8 months (7.5 years) before parole eligibility. That meant Mr. Slaughter's minimum  
9 total sentence was 22.5 years—not the 15 years he was promised.

10 The Nevada Supreme Court remanded the case for the trial court to answer  
11 two questions: (1) whether Mr. Slaughter was in fact promised a minimum 15-year  
12 total sentence, and (2) whether it was legally possible for NDOC to structure his  
13 sentences such that he would receive a minimum 15-year total sentence. *Id.* at 7.

14 The Nevada Attorney General's office filed a response to the Nevada Supreme  
15 Court's order on November 9, 2007. Ex. 87. The response explained that it was not  
16 legally possible to structure Mr. Slaughter's sentences in a way that would give him  
17 a minimum total 15-year sentence.

18 Mr. Slaughter filed a brief in support of his request to withdraw his guilty plea  
19 on or about March 28, 2008. Ex. 89. He explained that the prosecutors'  
20 misrepresentation regarding his parole eligibility rendered his plea unknowing and  
21 involuntary. The State filed an opposition on April 18, 2008. Ex. 91. It disputed that  
22 the prosecutors made a misrepresentation to Mr. Slaughter when they promised he  
23 would serve a minimum total 15-year sentence. Nonetheless, the State said it was  
24 amenable to withdrawing the convictions for the weapons enhancements, which  
25 would in effect give Mr. Slaughter a minimum total 15-year sentence. *Id.* at 9. Mr.  
26 Slaughter filed a proper person reply in support of his motion, again arguing that the  
27 proper remedy was to allow him to withdraw his plea. Ex. 92.

1 The court held an evidentiary hearing on June 19, 2008. Ex. 94. It ultimately  
2 found that Mr. Slaughter's plea was knowing and voluntary. It also held that NDOC  
3 was incorrectly interpreting Nevada law. According to the court, Nevada law did not  
4 preclude NDOC from paroling Mr. Slaughter from his underlying offenses to his  
5 enhancements on Counts 1, 2, and 4, before he was eligible for parole on Count 3.  
6 The court denied Mr. Slaughter's motion. Ex. 96.

7 Mr. Slaughter appealed the decision. Ex. 99. The Nevada Supreme Court  
8 issued an order of reversal and remand on March 27, 2009. Ex. 101. It held that  
9 NDOC had properly structured Mr. Slaughter's sentences—he could not parole off his  
10 underlying sentences and onto the weapon enhancements on Counts 1, 2, and 4, until  
11 he was eligible for parole after 15 years on Count 3. *Id.* at 5-6. The Nevada Supreme  
12 Court also concluded that Mr. Slaughter did not knowingly and voluntarily enter his  
13 plea because of the parties' misapprehension regarding the minimum total time Mr.  
14 Slaughter would have to serve before he became eligible to parole to the streets. *Id.*  
15 at 6-8. As a result, the court ruled, Mr. Slaughter should have the opportunity to  
16 withdraw his guilty plea. *Id.* at 8.

17 Pre-Trial Proceedings, Trial, and Direct Appeal.

18 On remand, Mr. Slaughter was initially represented by Susan Bush and  
19 Patrick McDonald. The lawyers filed various pre-trial motions on behalf of Mr.  
20 Slaughter. Most significantly, counsel filed a motion to dismiss the case because the  
21 police failed to preserve exculpatory evidence. Ex. 113. This motion described how  
22 Detective Jesus Prieto had created a (suggestive) photo lineup including Mr.  
23 Slaughter's image on June 28, 2004. Detective Prieto showed versions of this lineup  
24 to the witnesses, and some of them identified Mr. Slaughter from the lineup. But  
25 someone from the police had created a *second* photo lineup. This second lineup  
26 apparently included a picture of the man the police suspected as Mr. Slaughter's co-  
27 defendant, but it *also* included a picture of Mr. Slaughter (a different picture than the



1 one used in the first lineup). The police showed this lineup to all the victims, and  
2 none of them appeared to identify Mr. Slaughter from this new lineup.

3 As the motion explained, the police had failed to preserve basic information  
4 regarding this lineup, including which officers administered the lineup to which  
5 victims, and the time and date when the victims were shown this lineup. *Id.* at 5-6.  
6 Based on their failure to preserve evidence, the motion asked the court to either  
7 dismiss the case or exclude evidence relating to the first photo lineup and any ensuing  
8 identifications. *Id.* at 7-13.

9 The State filed an opposition to that motion. Ex. 115. It conceded that the  
10 police had shown a second photo lineup to the victims, and that the second lineup  
11 included a different picture of Mr. Slaughter. The State refused to admit that none  
12 of the victims had identified Mr. Slaughter from that second lineup, although the  
13 State suggested that Mr. Slaughter would be “free to cross-examine the witnesses on  
14 that fact.” *Id.* at 2 n.1. Mr. Slaughter filed a reply in support of the motion on  
15 November 17, 2009. Ex. 123.

16 The court held a hearing on the pre-trial motions on December 1, 2009. Ex.  
17 126. With regard to the motion to dismiss, defense counsel explained that the second  
18 photo lineup was “apparently shown to some or all of the alleged victims by whom,  
19 I’m not sure, when, I’m not sure, and what were the results, I’m not sure.” *Id.* at 7.  
20 The prosecutor agreed that the second lineup had been shown to the victims. *Id.* But  
21 he said it was a “giant leap . . . to say Rickie Slaughter wasn’t picked out of those  
22 photo lineups” (*id.* at 9), even though there was no indication that any of the witnesses  
23 identified *anyone* from the second lineup. The prosecutor suggested that the defense  
24 should simply cross-examine the detectives or the victims regarding that second  
25 lineup. *Id.* The court agreed, stating that the defense “argument is sloppy  
26 bookkeeping by the police department, which as defense attorneys that is often times  
27 a line of questioning you pursue at trial.” *Id.* at 11.

1 After a series of proper person attempts to dismiss his counsel, the court  
2 granted Mr. Slaughter's request for a new attorney on July 8, 2010. Ex. 1. Osvaldo  
3 Fumo took over as defense counsel on July 15, 2010. *Id.*

4 Mr. Fumo filed a variety of pre-trial motions on Mr. Slaughter's behalf,  
5 including a motion to preclude the victims' identifications of Mr. Slaughter. Ex. 135.  
6 The motion described the suggestive nature of the first photo lineup the police showed  
7 to the victims. The photograph the police used of Mr. Slaughter "stood out  
8 considerably compared to the other photographs due to a highlighted background,  
9 which was not present in the other photographs." *Id.* at 7. For that reason and others,  
10 the lineup was impermissibly suggestive, and it would violate due process if the court  
11 were to allow the victims to identify Mr. Slaughter at trial. The State filed oppositions  
12 to Mr. Fumo's motions, including the motion to suppress the identifications. It argued  
13 that the lineup was not suggestive. Ex. 138 at 4. Mr. Fumo filed a reply in support  
14 of that motion. Ex. 142. The court held a hearing on the new set of motions on March  
15 3, 2011. Ex. 144. Mr. Fumo requested that the court conduct an evidentiary hearing  
16 on the motion to suppress the identifications. *Id.* at 8. The court rejected that  
17 proposal and denied all the motions, including the motion to suppress. *Id.* at 12.

18 Trial began on May 12, 2011, with two days of jury selection. Exs. 155, 157,  
19 158. Opening arguments took place on May 16, 2011, and the trial continued for  
20 another five days. Exs. 162, 165, 167, 174, 175, 179. The jury found Mr. Slaughter  
21 guilty on all the charges on May 20, 2011. Ex. 180.

22 Mr. Slaughter filed a proper person motion to dismiss counsel and for a new  
23 trial on or about June 15, 2011. Ex. 184. The court allowed Mr. Slaughter to once  
24 again proceed in proper person. Ex. 1. He filed another proper person motion for a  
25 new trial on or about November 18, 2011. Ex. 187. The State opposed the second  
26 motion (Ex. 188), and Mr. Slaughter filed a reply in support of the motion (Ex. 189).  
27 The court held a hearing on May 17, 2012, and denied the motion. Ex. 190.

The sentencing hearing took place on October 16, 2012. Ex. 198. The court imposed the following terms of imprisonment:

Count	Charge	Term of imprisonment
1	Conspiracy to commit kidnapping	24 to 60 months
2	Conspiracy to commit robbery	24 to 60 months, consecutive to Count 1
3	Attempted murder with use of a deadly weapon	60 to 180 months, plus an equal and consecutive 60 to 180 months, consecutive to Count 2
4	Battery with use of a deadly weapon	The court did not adjudicate Mr. Slaughter on this count, since it was an alternative count to Count 3
5	Attempted robbery with use of a deadly weapon	48 to 120 months, with an equal and consecutive 48 to 120 months, concurrent with Count 3
6	Robbery with use of a deadly weapon	48 to 120 months, with an equal and consecutive 48 to 120 months, consecutive to Count 3
7	Burglary while in possession of a firearm	48 to 120 months, concurrent with Count 6
8	Burglary	24 to 60 months, concurrent with Count 7
9	First-degree kidnapping with substantial bodily harm with use of a deadly weapon	15 years to life, plus an equal and consecutive 15 years to life, consecutive to Count 6
10	First-degree kidnapping with use of a deadly weapon	5 years to life, plus an equal and consecutive 5 years to life, concurrent with Count 9
11	First-degree kidnapping with use of a deadly weapon	5 years to life, plus an equal and consecutive 5 years to life, concurrent with Count 9
12	First-degree kidnapping with use of a deadly weapon	5 years to life, plus an equal and consecutive 5 years to life, concurrent with Count 9
13	First-degree kidnapping with use of a deadly weapon	5 years to life, plus an equal and consecutive 5 years to life, concurrent with Count 9
14	First-degree kidnapping with use of a deadly weapon	5 years to life, plus an equal and consecutive 5 years to life, concurrent with Count 9

1 Ex. 199.

2 Mr. Slaughter filed a notice of appeal on or about October 24, 2012. Ex. 200.  
3 William Gamage represented Mr. Slaughter on appeal. After repeated delays and  
4 motions for extensions of time, Mr. Gamage filed an opening brief on September 4,  
5 2013. It included the following issues:

- 6 1. The identifications must be excluded because the photo lineup was  
7 unnecessarily suggestive, and the identifications lack reliability.
  - 8 A. The use of the unnecessarily suggestive photo lineup was  
9 unconstitutional.
  - 10 B. The identifications were not sufficiently reliable to warrant  
11 admission.
  - 12 C. The inclusion of the identifications is harmful error.
- 13 2. The authentication of the surveillance video was insufficient and,  
14 therefore, inadmissible.
- 15 3. The probative value of the video is outweighed by the prejudice to  
16 appellant, confusion of the issues, and misleading the jury.
- 17 4. Numerous instances of prosecutorial misconduct rise to a constitutional  
18 level and warrant reversal.
  - 19 A. Prosecutorial misconduct related to the 7-Eleven video.
  - 20 B. Misconduct during cross-examination of Ms. Westbrook.
  - 21 C. Misconduct related to 'that alone would make him guilty'  
22 argument.
  - 23 D. Misconduct related to 'I got to tell appellant this, too...' argument.
  - 24 E. Misconduct related to 'doing the job' argument.

25 Ex. 212.

26 The State filed an answering brief on October 10, 2013 (Ex. 213), and Mr.  
27 Gamage filed a reply on December 2, 2012 (Ex. 218). The Nevada Supreme Court  
issued an order of affirmance on March 12, 2014. Ex. 220. Remittitur issued on April  
3, 2014. Ex. 223. Mr. Gamage filed a petition for a writ of certiorari with the United  
States Supreme Court, which the Court denied on October 15, 2014. Exs. 224, 225.

First Post-Trial Post-Conviction Proceedings.

Mr. Slaughter filed a proper person post-conviction petition for a writ of habeas corpus on or about March 25, 2015. He raised the following claims:

1. Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth Amendment rights of the U.S. Constitution because his attorneys provided ineffective assistance of counsel when they failed to subpoena and/or call Detective Jesus Prieto to testify as a witness at trial to elicit several key pieces of evidence critical to the defense, such as: prior, inconsistent statements; exculpatory photo lineup evidence; and evidence that impeached the integrity of the police investigation.
2. Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth Amendment rights of the U.S. Constitution because his attorneys provided ineffective assistance of counsel when they failed to subpoena and call Officer Anthony Bailey as a witness to elicit prior, inconsistent statements made by victim Ivan Young regarding the crimes and descriptions of the perpetrators.
3. Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth Amendment rights of the U.S. Constitution because his attorneys provided ineffective assistance of counsel when they failed to adequately cross-examine the state's eyewitnesses regarding crucial information that would have impeached their overall memory and prior identifications of petitioner.
4. Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth Amendment rights of the U.S. Constitution because his attorneys provided ineffective assistance of counsel when they failed to subpoena and call eyewitness Destiny Waddy to testify at trial to elicit her description of the perpetrator's "get away" vehicle as being a Pontiac Grand Am, not a Ford Taurus.
5. Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth Amendment rights of the U.S. Constitution because his attorneys provided ineffective assistance of counsel when they failed to subpoena and/or call the records custodians for 9-1-1 dispatch records for the North Las Vegas and Las Vegas Metropolitan Police Departments as witnesses to testify regarding the actual time victim Jermaun Means called 9-1-1. Said testimony would have bolstered petitioner's defense that he was on the opposite side of town, away from the crime scene, when the crimes occurred.

- 1       6.     Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth  
2       Amendment rights of the U.S. Constitution because his attorneys  
3       provided ineffective assistance of counsel when they failed to call  
4       defense investigator Craig Retke to elicit testimony regarding the  
5       amount of time it would take a person to drive the distance between  
6       the crime scene and Mrs. Holly's work place, using the fastest routes  
7       available.
- 6       7.     Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth  
7       Amendment rights of the U.S. Constitution because his attorneys  
8       provided ineffective assistance of counsel when they failed to  
9       investigate and discover that critical state witness Jeff Arbuckle had  
10      an extensive criminal background/record, received benefits from the  
11      state, and had a personal bias against petitioner which constituted  
12      material impeachment evidence to impeach his credibility.
- 13      8.     Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth  
14      Amendment rights of the U.S. Constitution because his attorneys  
15      provided ineffective assistance of counsel when they failed to subpoena  
16      and call Officer Mark Hoyt to elicit prior, inconsistent statements  
17      made by eyewitnesses.
- 18      9.     Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth  
19      Amendment rights of the U.S. Constitution because his attorneys  
20      provided ineffective assistance of counsel when they failed to exercise  
21      due diligence to investigate and discover material impeachment  
22      evidence against the state's eyewitnesses. The prosecutors provided  
23      witnesses with monetary compensation each time they attended  
24      private pre-trial meetings with the prosecutors to discuss their  
25      testimonies.
- 26      10.    Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth  
27      Amendment rights of the U.S. Constitution because his attorneys  
provided ineffective assistance of counsel when they failed to  
investigate and discover that petitioner's photo, used in the first set of  
lineups from which petitioner was identified, had been obtained during  
an illegal field interview in violation of petitioner's Fourth Amendment  
rights. The picture and photo lineups should have been suppressed.
11.    Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth  
Amendment rights of the U.S. Constitution because his appellate  
attorney provided ineffective assistance of counsel when he failed to  
raise a valid and preserved *Batson* claim that had a reasonable  
probability of reversing petitioner's conviction.

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12. Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth Amendment rights of the U.S. Constitution because his appellate attorney provided ineffective assistance of counsel when he failed to raise a preserved, valid claim regarding the state's failure to preserve exculpatory evidence that had a reasonable probability of reversing petitioner's conviction.

13. Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth Amendment rights of the U.S. Constitution because his trial attorneys provided ineffective assistance of trial counsel when they called, against petitioner's wishes, witness Noyan Westbrook, knowing that she did not recall the alibi facts on which they planned to examine her. Defense counsel attempted to have the witness lie on the stand, and that opened the door for the state's attack and undermined the credibility of the defense.

14. Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth Amendment rights of the U.S. Constitution because his trial attorneys provided ineffective assistance of counsel when they committed a chain of errors that, when viewed cumulatively, resulted in extreme prejudice and a denial of petitioner's constitutional rights to due process and fair trial.

Ex. 226; *see also* Ex. 227 (supporting exhibits).

The State filed a response to the petition on June 2, 2015. Ex. 229. The court held a brief hearing on June 18, 2015, where it discussed its reasons for denying the petition. Ex. 230. Mr. Slaughter mailed a reply in support of his petition after the hearing, unaware that the court had already denied the petition. Ex. 231; *see also* Ex. 234 at 10-11. The court issued a notice of entry of a written order denying the petition on July 24, 2015. Ex. 232.

Mr. Slaughter filed a notice of appeal on or about July 30, 2015. Ex. 233. He submitted a proper person opening brief on or about February 8, 2016. Ex. 234. The Nevada Supreme Court issued an order of affirmance on July 13, 2016. Ex. 244. Remittitur issued on August 8, 2016. Ex. 245.

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Second Post-Trial Post-Conviction Proceedings.

Mr. Slaughter filed a second post-trial post-conviction petition for a writ of habeas corpus in state court on or about February 12, 2016. This petition included the following claims:

1. Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth Amendment rights of the U.S. Constitution because his trial counsel provided ineffective assistance of counsel when they failed to adequately investigate information that the bullet shot into victim Ivan Young had a high probability of being a different caliber than a .357 magnum. Alternatively, petitioner's trial counsel was ineffective for failing to cross-examine and test the state's firearm expert on this point.
2. Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth Amendment rights of the U.S. Constitution because his trial and appellate counsel failed to challenge numerous instances of prosecutorial misconduct at trial and on direct appeal which were plain error.
3. Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth Amendment rights of the U.S. Constitution because his trial counsel provided ineffective assistance of counsel when they failed to develop testimony and evidence regarding the relationship between the perpetrator's time of departure from the crime scene and the time that Jermaun Means called 9-1-1.
4. Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth Amendment rights of the U.S. Constitution because his trial counsel provided ineffective assistance of counsel when in the opening statement, they promised the jury favorable testimony that was never produced.
5. Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth Amendment rights of the U.S. Constitution because his trial counsel provided ineffective assistance of counsel when they failed to adequately investigate, view, and/or obtain the original documents of the second set of photo lineups.



1           6.     Petitioner is in custody in violation of his Sixth, Fourteenth, and Fifth  
2                 Amendment rights of the U.S. Constitution because his appellate  
3                 attorney provided ineffective assistance of counsel when he failed to  
4                 challenge the consecutive nature and failure to aggregate the  
5                 sentences as violating the cruel and unusual punishment and equal  
               protection clauses of the law in light of evolving standards of decency  
               in Nevada.

6     Ex. 235; *see also* Ex. 236 (supporting exhibits).

7           The State filed a response on April 6, 2016. Ex. 239. The court issued a notice  
8     of entry of a written order denying the petition on June 13, 2016. Ex. 242.

9           Mr. Slaughter filed a notice of appeal on or about June 22, 2016. Ex. 243. The  
10    Nevada Supreme Court transferred the case to the Nevada Court of Appeals on  
11    February 16, 2017. Ex. 246. The Nevada Court of Appeals issued an order of  
12    affirmance on April 19, 2017. Ex. 247. Remittitur issued on May 17, 2017. Ex. 248.

13   Federal Habeas Proceedings

14           Mr. Slaughter mailed his proper person petition for a writ of habeas corpus by  
15    a person in state custody pursuant to 28 U.S.C. § 2254 on or about August 16, 2016.  
16    ECF No. 1-1. The Court granted Mr. Slaughter's motion for counsel and appointed  
17    the Office of the Federal Public Defender on December 20, 2016. ECF No. 5. This  
18    amended petition follows.

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**GROUND ONE**

**STATEMENT REGARDING EXHAUSTION:**

**STATEMENT IN SUPPORT OF CLAIM:**

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1           **A.     The Lineup Was Suggestive.**

2           Detective Jesus Prieto created the first photographic lineup used in this case.  
3     *See Ex. 9 (color copy).* That lineup included a photograph of Mr. Slaughter taken a  
4     few months before the incident. The background of Mr. Slaughter's picture is near-  
5     white, to the point that it appears transparent. By comparison, the lineup includes  
6     five pictures of other individuals. Those five other photographs have blue  
7     backgrounds. Because the background of Mr. Slaughter's picture does not match the  
8     others, it is distinctive. For that reason, and for other reasons related to the  
9     condition, age, and composition of Mr. Slaughter's photograph, Mr. Slaughter's  
10    photograph stands out from among the rest. These factors and others rendered the  
11    lineup suggestive. The lineup suggests, for example, that the five blue photographs  
12    are stock images that come from the same source, so the non-conforming photograph  
13    must be the actual photograph of the suspect.

14           The police had no need to design the photo lineup in this way. Among other  
15    things, the police had an earlier booking photograph of Mr. Slaughter. Ex. 142  
16    (document internally marked "Exhibit D"). The background of that photograph better  
17    matches the other photographs used in the lineup and would not have stood out in  
18    the same way. However, the police did not use that photograph, and instead used a  
19    photograph with a drastically different background.

20           The lineup in this case was unnecessarily and impermissibly suggestive, and  
21    it gave rise to a substantial likelihood of irreparable misidentification. The court  
22    should have suppressed the victims' identifications.

23           **B.     The Victims' Identifications Were Not Otherwise Reliable.**

24           The suggestive lineup rendered the victims' identifications untrustworthy, and  
25    the circumstances do not suggest that their recollections were nonetheless reliable.

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1           1.     *Ivan Young.*

2           Mr. Young purported to identify Mr. Slaughter from the photo lineup as the  
3 shooter. But there is ample reason to doubt his ability to make a valid identification.  
4 The police showed him the lineup while he was still in the hospital, recovering from  
5 various procedures related to his facial injuries. Mr. Young admitted that he  
6 “couldn’t really see good” at the time the police showed him the lineup. Ex. 162 at 60.  
7 That is not surprising, since he had received facial wounds and had lost an eye during  
8 the incident. He also was unable to see well during the ordeal, since he had his head  
9 covered throughout much of it. *Id.* at 51.

10          Meanwhile, his account of the incident shifted in material ways over time, from  
11 his initial interviews with the police, to the preliminary hearing, and to the trial. *See*  
12 Ground Three Section B, *infra*. Most critically, his description of the assailants went  
13 through multiple iterations. At first, he told the police that one suspect was bald,  
14 wearing shorts and a blue shirt, while the other suspect—the shooter—had  
15 dreadlocks and a Jamaican accent. Ex. 4 at 2. Then, at the preliminary hearing, he  
16 stated that one suspect wore a sports jersey and had dreadlocks; he identified the  
17 other suspect as Mr. Slaughter, claimed he was the shooter, and said he wore a hat,  
18 a blue shirt, and maybe shorts. Ex. 19 at 13-14, 20-21, 28. That was a big change; at  
19 first, Mr. Young identified the suspect with dreadlocks as the shooter, but then, Mr.  
20 Young said it was the *other* suspect (supposedly Mr. Slaughter) who was the shooter.  
21 In addition, at the preliminary hearing, Mr. Young said only one of the suspects had  
22 a Jamaican accent. *Id.* at 28-29. Finally, at trial, he testified that both suspects were  
23 wearing hats and wigs, and that they both had Jamaican accents. Ex. 162 at 49. His  
24 ever-changing description of the suspects suggests that he cannot remember what  
25 they actually looked like.

26          In addition, Mr. Young claimed at the preliminary hearing that he had met  
27 Mr. Slaughter before the incident (*see* Ex. 19 at 19), but he did not initially report

1 that fact to the police (*see, e.g.*, Exs. 4 at 2; Ex. 227 (interview transcript internally  
2 marked "Exhibit A")). The fact that he did not initially claim to have known one of  
3 the assailants suggests that his memory was altered by the suggestive lineup.

4 For these reasons and others, Mr. Young's recollection cannot be trusted.

5 2. *Joey Posada.*

6 Mr. Posada was a 12-year-old child who was put through a traumatic  
7 experience during the incident. He did not have a good opportunity to see the  
8 perpetrators, and he gave only vague descriptions of them to the police after the  
9 incident: he described them as black males, with one suspect wearing braids, and the  
10 other with a dark afro; one of those two apparently wore a "tuxedo shirt." Ex. 2 at  
11 11. His view of the suspects was obstructed during the ordeal, and he took only brief  
12 glances toward them. Ex. 19 at 88-89. He did not see who the shooter was. Ex. 167  
13 at 43, 56. Moreover, when the police asked Mr. Posada to come to the station for the  
14 lineup, they told him that they already had a suspect in custody, and that a picture  
15 of the suspect was in the lineup. *Id.* at 53. Telling Mr. Posada that information made  
16 it much more likely he would make an identification—even a mistaken one—as  
17 opposed to telling the police he could not identify anyone. For these reasons and  
18 others, Mr. Posada's identification is not reliable.

19 3. *Ryan John.*

20 After entering the house, the perpetrators immediately tied up Mr. John and  
21 put a jacket over his head to block his view. Ex. 2 at 9. As a result, he had little  
22 opportunity to view the suspects. Perhaps for that reason, he could only vaguely  
23 describe the robbers to the police as two black males, one with a Jamaican accent. *Id.*  
24 at 9-10. Unsurprisingly, when he participated in the photo lineup, his identification  
25 was ambiguous—he wrote, "This is the guy that *I think* called me over to Ivan  
26 [Young]'s house and tied me up and shot Ivan." Ex. 113 at 46 (emphasis added). For  
27 these reasons and others, Mr. John's identification is untrustworthy as well.

1                   4.     *Jermain Means.*

2           When confronted with the police's suggestive lineup, Mr. Means selected Mr.  
3 Slaughter's picture, writing, "The face just stand out to me." *Id.* at 45. That is an apt  
4 description, because Mr. Slaughter's photograph literally stands out from all the rest.  
5 At trial, however, Mr. Means was unable to identify Mr. Slaughter as a participant  
6 in the robbery. Ex. 162 at 37. Nonetheless, the State introduced his prior  
7 "identification" of Mr. Slaughter into evidence. *Id.* at 36. Meanwhile, his initial  
8 description of the suspects—one wearing a beige suit jacket, and the other with a  
9 dreadlocks wig—was yet again vague. Ex. 2 at 10. His initial identification of Mr.  
10 Slaughter, which he later recanted, should not be trusted.

11                   5.     *Jennifer Dennis and Aaron Dennis.*

12           Neither Ms. Dennis nor Mr. Dennis identified Mr. Slaughter in a lineup or at  
13 trial. Ms. Dennis described one suspect to the police as 5'10" and 170 pounds, and  
14 the other as 5'11" and 190 pounds. One was wearing a blue shirt with jeans, and the  
15 other was wearing a red shirt and blue jeans. Ex. 3 at 4. Mr. Dennis told the police  
16 that one of the suspects was wearing a black jacket. Ex. 2 at 11.

17                   6.     *Destiny Waddy.*

18           Destiny Waddy was sitting in a car outside Mr. Young's house during the  
19 ordeal. She reported to the police that she saw two black males, one 5'8" and wearing  
20 a wig, the other 5'11"; both were wearing blue and white clothing. *Id.* at 10. Ms.  
21 Waddy was not able to identify anyone from the photo lineup, and she did not testify  
22 at trial.

23                                 \*     \*     \*

24           In sum, out of seven witnesses, only four picked Mr. Slaughter from the State's  
25 suggestive lineup, and only three identified Mr. Slaughter at trial. Of the three who  
26 testified against Mr. Slaughter, there are substantial reasons to doubt the accuracy  
27 of their accounts. Meanwhile, there are numerous inconsistencies in the witnesses'

1 descriptions of the suspects—each person's recollection differs in some respect from  
2 the others, and some of the witnesses' descriptions changed over time as well. All  
3 told, these circumstances show that the suggestive nature of the lineup influenced  
4 the identifications.

5 C. The Error Was Not Harmless.

6 The introduction of the witnesses' tainted identifications was not harmless  
7 error—to the contrary, those identifications were at the core of the State's case. The  
8 other evidence of Mr. Slaughter's guilt was weak, and without the witnesses'  
9 identifications the State could not have proved Mr. Slaughter's involvement in the  
10 incident.

11 In brief, the State's other evidence chiefly involved two guns, a bullet core, and  
12 a bullet casing that were found in a car owned by Mr. Slaughter's girlfriend.  
13 According to the State, the robbers brandished three guns during the incident. Two  
14 of those guns, the State said, were the two guns the police found in the car. But there  
15 was very little proof of that. The witnesses gave only vague descriptions of those two  
16 guns, and there was no physical evidence to link those guns to the crime scene.  
17 Crucially, the police did *not* find a gun that could have fired the bullet that injured  
18 Mr. Young. While the caliber of the bullet fragments that injured Mr. Young could  
19 have been consistent with the shell casing and the lead core the police found in the  
20 car, those fragments could have been consistent with many other calibers of bullets  
21 as well. *See generally* Ground Three, Section D, *infra*.

22 The State also submitted a surveillance videotape from a 7-Eleven store. The  
23 videotape, which was recorded about an hour after the incident, shows someone  
24 standing near an ATM in the store. Mr. John testified at trial that he had heard  
25 someone had used his stolen debit card at a 7-Eleven soon after the incident (but he  
26 did not specify which of the scores of 7-Eleven stores in Las Vegas). From that, the  
27 State argued that the tape showed Mr. Slaughter using Mr. John's ATM card. But

1 the tape itself hardly shows anything, and the State was grasping at straws when  
2 they introduced it. *See generally* Ground Nine, *infra*.

3 In sum, the State had no physical evidence linking Mr. Slaughter to the crime.  
4 Mr. Slaughter did not confess to the crime; to the contrary, he had a solid alibi. The  
5 State had some inconclusive ballistics evidence and a 7-Eleven video of questionable  
6 relevance, but aside from the tainted identifications, the State's case lacked strong  
7 proof of Mr. Slaughter's guilt. The introduction of those tainted identifications had a  
8 substantial and injurious effect on the outcome of the trial. Mr. Slaughter should  
9 receive a new trial, where the State can try to prove its case without relying on its  
10 flawed lineup.

11 **GROUND TWO**

12 **TRIAL COUNSEL FAILED TO INTRODUCE**  
13 **FOUNDATIONAL EVIDENCE REGARDING MR.**  
14 **SLAUGHTER'S ALIBI, IN VIOLATION OF MR.**  
15 **SLAUGHTER'S RIGHTS UNDER THE SIXTH AND**  
**FOURTEENTH AMENDMENTS TO THE UNITED**  
**STATES CONSTITUTION.**

16 **STATEMENT REGARDING EXHAUSTION:**

17 Mr. Slaughter exhausted subclaims A, C, D, and E in his initial state post-trial  
18 post-conviction proceedings. Exs. 226, 244. Mr. Slaughter exhausted subclaim B in  
19 his second state post-trial post-conviction proceedings. Exs. 235, 247.

20 **STATEMENT IN SUPPORT OF CLAIM:**

21 The State claimed that Mr. Slaughter was in Mr. Young's house committing  
22 various crimes on the evening of June 26, 2004. But as Mr. Slaughter's girlfriend  
23 (Tiffany Johnson) testified, Mr. Slaughter was halfway across town at that time,  
24 picking her up from work. That gave him a strong alibi. Unfortunately, Mr.  
25 Slaughter's trial attorneys made only a half-hearted attempt at proving that alibi.

26 In order to establish the alibi, defense counsel needed to prove three things.  
27 First, when exactly did the incident take place? Second, when exactly did Mr.



1 Slaughter pick up his girlfriend from work? Third, how long would it have taken Mr.  
2 Slaughter to get from the crime scene to his girlfriend's workplace? Defense counsel  
3 failed to introduce specific evidence on all three issues. Had they done so, Mr.  
4 Slaughter's alibi would have been airtight. But as it stood, the defense timeline was  
5 ambiguous enough that the jury voted to convict.

6 Mr. Slaughter's attorneys provided ineffective assistance in this area. His  
7 attorneys should have done five things to shore up Mr. Slaughter's alibi. First, they  
8 should have subpoenaed the 911 records to pin down when the victims first called the  
9 police. Second, they should have elicited testimony from witnesses to prove how much  
10 time elapsed between when the culprits left the house and when the victims called  
11 the police. Put together, those pieces of evidence would precisely establish when the  
12 culprits were at crime scene. Third, the attorneys should have called witnesses or  
13 introduced evidence to prove exactly how long it would take to get from the crime  
14 scene to Ms. Johnson's workplace. Fourth, while Ms. Johnson testified that Mr.  
15 Slaughter arrived at about 7:15 p.m., her coworker suggested it was after 7:30 p.m.,  
16 which better fit the State's timeline. Defense counsel should have introduced  
17 evidence to impeach the coworker's credibility. Finally, defense counsel should have  
18 refrained from calling a witness who provided inconsistent and confusing testimony  
19 regarding Mr. Slaughter's alibi.

20 Counsel provided deficient performance in each of these respects. There could  
21 be no strategic reason for failing to prove up Mr. Slaughter's alibi. In fact, defense  
22 counsel promised the jury it would get that proof, but the attorneys failed to deliver.  
23 In his opening statement, counsel said that "[t]here's no way" Mr. Slaughter could  
24 "drive from the [crime scene] all the way to where [Ms. Johnson] worked in four  
25 minutes. It just [isn't] possible." Ex. 162 at 18-19. Despite setting up that key point  
26 during the opening, defense counsel failed to put in the work to lay the foundation for  
27 that conclusion.

1 Had Mr. Slaughter's lawyers taken any of the steps outlined below—and  
2 certainly if they had taken all of them—there is a reasonable probability that the jury  
3 would have believed the alibi and voted to acquit. As a result, Mr. Slaughter received  
4 ineffective assistance of counsel at trial. *See Strickland v. Washington*, 466 U.S. 668  
5 (1984). Any ruling otherwise by the Nevada state courts is or would be contrary to,  
6 and an unreasonable application of, clearly established Federal law, as determined  
7 by the Supreme Court of the United States, or is or would be based on an  
8 unreasonable determination of the facts in light of the evidence presented in the State  
9 court proceeding.

10 A. Counsel Should Have Subpoenaed The 911 Records.

11 In order to establish Mr. Slaughter's alibi, defense counsel needed to prove, as  
12 precisely as possible, the time that the crime took place. The victims had called 911,  
13 so the best way to prove when the offense occurred was to subpoena the 911 records.  
14 So long as the victims called 911 immediately after the crime ended (*see* Section B,  
15 *infra*), the 911 call records would provide a firm indication of when the suspects left.  
16 If Mr. Slaughter could prove he was somewhere else when the incident ended, his  
17 alibi would have been complete.

18 Mr. Slaughter's attorneys did not get copies of the 911 call records, so they  
19 were unable to state with specificity when the culprits left the crime scene. On  
20 information and belief, those records would indicate that the calls were placed at or  
21 shortly before 7:11 p.m. The police reports associated with the robbery at Mr. Young's  
22 house suggest that the incident occurred at or shortly before 7:11 p.m. *See* Ex. 2 at 1  
23 ("date / time" of "6/26/04 / 19:11"), 9 ("On Saturday, 06-26-04 at 1911 hours, officers  
24 were dispatched to 2612 Glory View . . ."); *see also* Exs. 3 at 1, 4 (similar); 4 at 1, 2  
25 (similar); 5 at 1, 5 (stating that officer responded at 7:15 p.m.). The 911 records are  
26 presumably consistent with the police reports and suggest that the victims called 911  
27 at or shortly before 7:11 p.m. *See* Ex. 19 at 113 (Detective Prieto testifying that if the

1 police reports suggest the time of the crime is 7:11 p.m., the actual time of dispatch  
2 would likely be a couple minutes before that time).

3 This failure made itself plain toward the end of trial. The defense had  
4 submitted a PowerPoint presentation they proposed to use during their closing  
5 argument. Their presentation said the 911 calls took place at 7:11 p.m. But the State  
6 objected to that statement, because the defense had failed to introduce evidence that  
7 the 911 calls in fact took place at 7:11 p.m. Ex. 179 at 77-78. According to the State  
8 and the court, the defense could say only that the calls took place at "about 7:00." *Id.*  
9 at 82. That objection shifted the timeframe in the State's favor by up to 11 minutes  
10 and introduced a level of ambiguity in the timeline that should not have existed. The  
11 defense understood that the precise time of the 911 calls was an important issue, but  
12 they boxed themselves out of presenting that information to the jury.

13 Had defense counsel secured the 911 call records, they would have been a key  
14 first step in establishing Mr. Slaughter's alibi.

15 **B. Counsel Should Have Proven How Long It Took The Victims To Call**  
16 **911.**

17 Once they had pinned down the time of the 911 calls, the next step in  
18 establishing Mr. Slaughter's alibi was to figure out how quickly the victims called 911  
19 after the incident ended. For example, if Mr. John had called 911 at 7:11 p.m., and if  
20 Mr. John testified that only a couple minutes elapsed between when the culprits left  
21 and when he got to the phone, then Mr. Slaughter could prove that the robbers did  
22 not leave until 7:09 p.m.

23 Based on testimony at trial and at the preliminary hearing, it appears likely  
24 that the victims made their calls shortly after the incident ended. At the preliminary  
25 hearing, Mr. John testified that once the culprits left, he went outside, hopped a  
26 couple fences, and borrowed a neighbor's phone to call 911. Ex. 19 at 71. His  
27 testimony suggests that only a short time elapsed between the end of the incident

1 and his 911 call. But counsel did not pin him down on that during the preliminary  
2 hearing and did not elicit similar testimony from Mr. John at trial. Similarly, Mr.  
3 Means testified at trial that after the robbery concluded, he went out to his  
4 girlfriend's car and called 911. Ex. 162 at 30. His testimony also suggests a short  
5 gap between the end of the incident and his 911 call. Once again, defense counsel did  
6 not clarify that timing during cross-examination.

7 Had defense counsel questioned either witness on this point, the jury would  
8 have learned that the 911 calls took place soon after the robbers left. As it was,  
9 counsel deprived the jury of this important piece of the puzzle.

10 **C. Counsel Should Have Proven The Drive Time Between The Crime**  
11 **Scene And Ms. Johnson's Workplace.**

12 Mr. Slaughter maintains that during the time of the crime, he was halfway  
13 across town picking up his girlfriend, Tiffany Johnson, from work. The State agreed  
14 that Mr. Slaughter had picked up Ms. Johnson sometime after 7:00 p.m. The question  
15 was whether Mr. Slaughter could have been in both places that evening. Could he  
16 have committed the crime at Mr. Young's house at about 7:10 p.m. and then driven  
17 to Ms. Johnson's employer in time to pick her up?

18 In order for the jury to answer that question, it needed to know how far the  
19 crime scene was from Ms. Johnson's workplace. Ms. Johnson testified that Mr.  
20 Slaughter picked her up between 7:00 and 7:15 p.m., but in no event was it later than  
21 7:20 p.m. Ex. 174 at 21-22. (By the time of trial, Ms. Johnson had gotten married  
22 and changed her last name, but for the sake of simplicity, this amended petition will  
23 refer to her as Ms. Johnson.) If the robbery ended at about 7:10 p.m., could Mr.  
24 Slaughter have gotten to Ms. Johnson's workplace in ten minutes or less?

25 The answer to that question was no—it would have taken at least 20 minutes  
26 if not longer to make that drive. See Ex. 227 (documents internally marked "Exhibit  
27 H"). But the jury never learned the answer to that crucial question. That is because

1 the attorneys incorrectly assumed they could simply add the drive-times to their  
2 closing presentation; the court rejected that proposal in an off-the-record discussion.  
3 Ex. 226 at 45-46. The attorneys should have laid an evidentiary foundation regarding  
4 the drive-times.

5 D. Counsel Should Have Impeached Mr. Arbuckle's Testimony.

6 The last piece of Mr. Slaughter's alibi depended on when he arrived at Ms.  
7 Johnson's workplace. Ms. Johnson testified that he showed up between 7:00 and 7:15  
8 p.m., but in no event was it later than 7:20 p.m. Ex. 174 at 21-22. However, Jeffrey  
9 Arbuckle (Ms. Johnson's coworker) testified that Mr. Slaughter did not show up until  
10 7:30 p.m. at the earliest. Ex. 165 at 42. That testimony created a potential problem  
11 for Mr. Slaughter's alibi. Defense counsel should have impeached Mr. Arbuckle's  
12 recollection in order to shore up their timeline.

13 First, Mr. Arbuckle had previously told the police that he had left work at 7:15  
14 p.m., and that Ms. Johnson was still waiting for Mr. Slaughter at that point. Ex. 14  
15 at 3-4. That prior statement to the police is inconsistent with Mr. Arbuckle's trial  
16 testimony that he was sure Mr. Slaughter did not arrive to pick up Ms. Johnson until  
17 7:30 p.m. at the earliest. Meanwhile, that prior statement is consistent with Ms.  
18 Johnson's testimony that Mr. Slaughter arrived at least by 7:20 p.m., and it is also  
19 consistent with her testimony that she saw Mr. Slaughter arrive immediately after  
20 Mr. Arbuckle left. Ex. 174 at 60. If Mr. Arbuckle left at 7:15 p.m., as he originally  
21 said, then Mr. Slaughter may have shown up a few moments later, perhaps at 7:16  
22 p.m.

23 Defense counsel knew this prior inconsistent statement was important.  
24 Indeed, counsel tried to ask Mr. Arbuckle about it on cross. The State objected to the  
25 question because Detective Prieto had not testified about Mr. Arbuckle's prior  
26  
27

1 inconsistent statement, and the court sustained the objection. Ex. 165 at 46.<sup>1</sup>  
2 Defense counsel should have called Detective Prieto to verify that statement (*see*  
3 Ground Four, Section A, *infra*) and should have proceeded to impeach Mr. Arbuckle  
4 with it.

5 Second, Mr. Arbuckle held bias against Mr. Slaughter. The two had a verbal  
6 altercation at the El Dorado Cleaners (where Mr. Arbuckle and Ms. Johnson worked)  
7 in late May 2004 or early June 2004. Ex. 226 at 52. Soon after that altercation, on  
8 June 3, 2004, someone filed a complaint or a report with the police regarding Mr.  
9 Slaughter allegedly trespassing at 715 N. Nellis Boulevard, the location of the El  
10 Dorado Cleaners. Ex. 227 (document internally marked as "Exhibit M"). On  
11 information and belief, Mr. Arbuckle placed that complaint against Mr. Slaughter as  
12 payback for their fight. Perhaps if Mr. Arbuckle wanted Mr. Slaughter locked up, it  
13 would give Mr. Arbuckle a reason to shade his testimony in a way that would conform  
14 to the State's timeline. Defense counsel should have asked Mr. Arbuckle about this  
15 fight and about whether he pursued related criminal charges against Mr. Slaughter.

16 Finally, on information and belief, Mr. Arbuckle received payments from the  
17 State in exchange for his participation in pre-trial conferences. Trial counsel should  
18 have asked Mr. Arbuckle whether he had received any funds from the State for pre-  
19 trial preparation. That would have given the jury another reason to question his  
20 motives for testifying.

21 E. Counsel Should Not Have Called Noyan Westbrook.

22 As detailed above, Mr. Slaughter had a legitimate alibi. Defense counsel failed  
23 to take the necessary steps to prove that alibi. Instead, the attorneys tried to  
24 establish Mr. Slaughter's alibi by calling a different witness, Noyan ("Monique")  
25

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26 <sup>1</sup> The official copy of the trial transcript for this day is missing four pages (45-  
27 48), including the pages where this exchange took place. The court reporter has  
prepared replacement copies of three of those pages, which have been manually added  
to the filed copy of the transcript.

1 Westbrook. But that testimony was unhelpful and undermined the defense's  
2 credibility. Mr. Slaughter's attorneys should not have called Ms. Westbrook.

3 Mr. Slaughter's defense investigator spoke with Ms. Westbrook before the  
4 trial. Mr. Slaughter claimed that he was with Ms. Westbrook before picking up Ms.  
5 Johnson. While Ms. Westbrook did recall spending time with Mr. Slaughter in the  
6 past, she did not remember the specific days and times they were together. Ex. 227  
7 (documents internally marked as "Exhibit O"). Notwithstanding her shaky memory,  
8 defense counsel had Ms. Westbrook fly from Arkansas to Las Vegas so she could be  
9 available at trial. Defense counsel also prepared a script of proposed testimony for  
10 her in advance. *Id.* Mr. Slaughter told his lawyers that he did not want Ms.  
11 Westbrook to testify if she did not have an independent recollection of the day of the  
12 incident, but his lawyers were insistent on calling her as a witness. Mr. Slaughter  
13 and defense counsel had multiple arguments about this subject. Ex. 226 at 73-76.  
14 Their arguments were substantial enough that Mr. Slaughter insisted on making a  
15 record of the issue during his trial. Outside the presence of the jury, Mr. Slaughter  
16 told the court he had asked his lawyers "not to present Ms. Westbrook," although  
17 defense counsel disputed his account. Ex. 179 at 68-77.

18 Just as Mr. Slaughter predicted, Ms. Westbrook's testimony did not go well.  
19 While she recalled being with Mr. Slaughter at some point in time, she could not  
20 specify the date, and she provided testimony that suggested she remembered  
21 spending time with Mr. Slaughter in 2005—a year after the incident, well after Mr.  
22 Slaughter had been taken into custody. Ex. 167 at 80-81, 88. Her weakness as a  
23 witness allowed the prosecutor to attack the credibility of Mr. Slaughter's alibi and  
24 opened the door to additional evidence that suggested he was attempting to fabricate  
25 an alibi. It certainly did not help matters that counsel had previewed Ms. Westbrook  
26 as a star alibi witness during opening statements. Ex. 162 at 17.

1 Ms. Westbrook provided little upside as a defense witness and substantial  
2 downside. Reasonable attorneys would not have called her. Had Ms. Westbrook not  
3 testified, there is a reasonable probability that the jury would have believed Mr.  
4 Slaughter's alibi and voted to acquit.

5 **GROUND THREE**

6 **TRIAL COUNSEL FAILED TO FULLY CROSS-**  
7 **EXAMINE AND IMPEACH THE STATE'S WITNESSES,**  
8 **IN VIOLATION OF MR. SLAUGHTER'S RIGHTS**  
9 **UNDER THE SIXTH AND FOURTEENTH**  
10 **AMENDMENTS TO THE UNITED STATES**  
11 **CONSTITUTION.**

12 **STATEMENT REGARDING EXHAUSTION:**

13 Mr. Slaughter exhausted subclaims A, B, and C in his initial state post-trial  
14 post-conviction petition. Exs. 226; 244. Mr. Slaughter exhausted subclaim D in his  
15 second state post-trial post-conviction petition. Exs. 235; 247.

16 **STATEMENT IN SUPPORT OF CLAIM:**

17 Three of the State's witnesses purported to identify Mr. Slaughter as one of the  
18 assailants. But their accounts had shifted over time in significant ways, suggesting  
19 that their recollections were faulty. A reasonable defense lawyer would have seized  
20 on these inconsistencies during cross-examination. But Mr. Slaughter's attorneys did  
21 not follow these lines of questioning. Similarly, the attorneys did not engage in a  
22 fulsome cross-examination of the State's firearms expert.

23 Counsel provided deficient performance in each of these respects. There could  
24 be no strategic reason for failing to undercut the testimony of the State's witnesses.  
25 Had Mr. Slaughter's lawyers taken any or all of these steps, there is a reasonable  
26 probability that the jury would have voted to acquit. As a result, Mr. Slaughter  
27 received ineffective assistance of counsel at trial. *See Strickland v. Washington*, 466  
U.S. 668 (1984). Any ruling otherwise by the Nevada state courts is or would be  
contrary to, and an unreasonable application of, clearly established Federal law, as



1 determined by the Supreme Court of the United States, or is or would be based on an  
2 unreasonable determination of the facts in light of the evidence presented in the state  
3 court proceeding.

4       A.     Counsel Failed To Ask The Victims About The Second Photo Lineup.

5       The victims based their identifications of Mr. Slaughter on an initial, highly  
6 suggestive photo lineup. *See* Ground One, *infra*. But the witnesses were shown a  
7 second photo lineup that included a different picture of Mr. Slaughter, taken only  
8 days after his arrest. This time, the victims do not appear to have identified him as  
9 a suspect. *See, e.g.*, Exs. 113; 126 at 6-12; 227 (documents internally marked "Exhibit  
10 B"). This second photo lineup was the subject of a pre-trial motion (Ex. 113), and both  
11 the State and the court suggested that it would be a suitable subject for cross-  
12 examination (Exs. 115 at 2; 126 at 10-11). But defense counsel did not take the hint.  
13 They did call any police officers to testify about it, nor did they ask the victims  
14 whether they had seen this second photo lineup (which the State conceded they had),  
15 nor did they ask the victims whether they had contemporaneously identified Mr.  
16 Slaughter in this second photo lineup (which by all appearances they did not).

17       Defense counsel's failure to develop evidence regarding this second lineup is  
18 all the more puzzling given their odd mid-trial request for a jury instruction on this  
19 issue. After the State rested, one of Mr. Slaughter's attorneys discussed the second  
20 lineup with the court outside the presence of the jury. The attorney explained that  
21 the police had shown these lineups to the witnesses and none of them had identified  
22 Mr. Slaughter as one of the assailants in that lineup. Ex. 167 at 60. He asked for  
23 "jury instructions that these lineups were in fact [shown] and nobody selected Mr.  
24 Slaughter on them." *Id.* at 61. The court responded, "Jury instructions are based on  
25 the evidence presented at trial," so the defense ought to present evidence regarding  
26 that second lineup. *Id.* But the attorneys did not get the message, and they did not  
27 develop any evidence regarding this second lineup.

1       There was no reason for defense counsel not to present evidence on this topic.  
2       Undercutting the witnesses' identifications of Mr. Slaughter was a crucial task at  
3       trial. Part of that task involved establishing that the first lineup was suggestive. The  
4       fact that the witnesses failed to identify Mr. Slaughter in a later non-suggestive  
5       lineup would substantially undercut the reliability of the first identification. But  
6       defense counsel did nothing to elicit that fact, depriving the jury of a substantial  
7       reason to doubt the witnesses' testimony.

8       **B. Counsel Failed To Fully Cross-Examine Mr. Young.**

9       Over time, Mr. Young's story changed in many key respects. Defense counsel  
10      failed to illustrate that for the jury. For example, he initially told the police that the  
11      two culprits were black males, one of whom "was bald and wearing shorts and a blue  
12      shirt," the other of whom had "dreadlocks and spoke with a Jamaican accent." Ex. 4  
13      at 2. He said he "kn[ew] for a fact" that the individual with dreadlocks was the  
14      shooter. *Id.* But Mr. Young changed his mind at the preliminary hearing. The  
15      shooter, he said, was Mr. Slaughter, who was wearing a hat; it was the other suspect  
16      who had the dreadlocks. Ex. 19 at 20-21, 28. That was a dramatic shift. At first, Mr.  
17      Young was sure the individual with dreadlocks was the shooter. By the preliminary  
18      hearing, though, he reversed course—it was the *other* assailant (not the one with  
19      dreadlocks) who fired the gun. Then, at trial, his recollection changed again; this  
20      time, he said both suspects were wearing wigs. Ex. 162 at 49. And while he had  
21      previously said that only one assailant had a Jamaican accent (Ex. 19 at 28-29), at  
22      trial he said both suspects had Jamaican accents (Ex. 162 at 49). Mr. Slaughter's  
23      attorneys should have cross-examined Mr. Young about his shifting recollection  
24      regarding the assailants' and the shooter's appearance. Effective cross-examination  
25      would have eroded his credibility.

26      There were other shifts in Mr. Young's statements that would have given the  
27      jury additional reasons to doubt his identification. For one, he described the shooter

1 at the preliminary hearing as being around 5'5" or 5'6" (Ex. 19 at 21), even though  
2 Mr. Slaughter is 5'9" (Ex. 176). In addition, during his initial police interview Mr.  
3 Young did not mention seeing the perpetrators' car (Ex. 227 (interview transcript  
4 internally marked "Exhibit A")), but at trial he claimed to have seen a green Ford  
5 Taurus (Ex. 162 at 46). Mr. Young provided similarly conflicting accounts regarding  
6 his opportunity to see the culprits and his family during the incident, and on other  
7 topics. *Compare, e.g.*, Ex. 19 at 12-13; *with, e.g.*, Ex. 162 at 51. Defense counsel failed  
8 to elicit additional useful details, including the fact that Mr. Young testified at the  
9 preliminary hearing that "there wasn't really much chance" for him to see the  
10 perpetrators during their initial contact outside his house, since Mr. Young was  
11 distracted with buffing his car. Ex. 19 at 25.

12 A reasonable defense attorney would have seized on these various  
13 inconsistencies and other flaws in Mr. Young's account in order to create doubt  
14 regarding his recollection. But defense counsel's cross-examination of Mr. Young at  
15 trial was cursory at best, leaving the jury with few reasons to doubt Mr. Young's  
16 testimony.

17 C. Counsel Failed To Fully Cross-Examine Mr. John.

18 Like Mr. Young, Mr. John's version of events evolved over time and included  
19 various inconsistencies. Most significantly, Mr. John testified at trial that he was  
20 able to see the perpetrators throughout most of the incident, including during the  
21 shooting. Ex. 165 at 58-59. However, at the preliminary hearing, Mr. John testified  
22 that the suspects had placed a jacket over his head immediately after he entered Mr.  
23 Young's house. Ex. 19 at 54-55. That account is consistent with what Mr. John  
24 initially told the police. Ex. 2 at 9.

25 Just as with Mr. Young, a reasonable defense attorney would have drawn out  
26 this inconsistency and others during Mr. John's cross-examination. But defense  
27 counsel did not cover these topics with Mr. John. Had the attorneys made this point,

1 the jury would have had additional reason to be skeptical of whether Mr. John had a  
2 decent chance to view the perpetrators.

3 **D. Counsel Failed To Fully Cross-Examine The State's Firearm Expert.**

4 Under the State's theory of the case, Mr. Slaughter had injured Mr. Young with  
5 a .357 caliber bullet. That detail fit the State's narrative because the police  
6 subsequently found a .357 shell casing in the car Mr. Slaughter allegedly drove to  
7 and from the incident. The prosecution wanted to prove to the jury that the bullet  
8 jacket fragments found in Mr. Young's face and at the crime scene came from the  
9 same type of bullet as the casing found in Mr. Slaughter's car, because the jury could  
10 then conclude that the casing and the fragments came from the same type (or perhaps  
11 even the same piece) of ammunition.

12 At this point, some background information about ammunition may be useful.  
13 In simplified terms, a "bullet" has two components: a metal "core," and a metal  
14 "jacket," which surrounds the core. In turn, a round of ammunition comprises the  
15 bullet (its core and its jacket), some form of propellant, and a "shell casing," which  
16 encloses the bullet and the propellant. When a round is fired, the bullet shoots out  
17 of the gun at high speed, and the shell casing is expelled with much less force. What  
18 likely happened in this case is that the perpetrator shot the gun at the floor near Mr.  
19 Young, the bullet jacket fragmented on impact, and some of the fragments shredded  
20 into Mr. Young's face. Under the State's theory, the jacket fragments found in Mr.  
21 Young's face and at the crime scene came from the same brand and caliber of  
22 ammunition (if not the same exact round of ammunition) as the .357 shell casing  
23 found in Ms. Johnson's car.

24 In an attempt to link the jacket fragments to the shell casing, the State called  
25 Angel Moses as an expert witness. Ms. Moses had analyzed the jacket fragments that  
26 the police recovered from Mr. Young and from his house. In her opinion, those  
27 fragments were made of materials that were consistent with the materials that are

1 used to make a Winchester .357 Magnum silver tip hollow point bullet. Ex. 165 at  
2 131. That testimony gave the jury the impression that the bullet used to shoot Mr.  
3 Young was in fact a .357 caliber bullet, which would be consistent with the .357 shell  
4 casing the police found in the car. But there were reasons to doubt that conclusion.  
5 The defense had originally hired an expert to review the ballistics information, and  
6 that expert concluded that there numerous other bullet calibers and brands that  
7 could be consistent with the fragments. The expert even sent an email to one of Mr.  
8 Slaughter's defense lawyers explaining his analysis and suggesting potential topics  
9 "to consider for cross." Ex. 236 (document internally marked "Exhibit B").

10 Despite that suggestion, defense counsel did not adequately cross-examine Ms.  
11 Moses on this subject. Rather, the attorney focused on the expert's views regarding  
12 whether a generic lead bullet core that the police also found in the car could be linked  
13 to a .357 round. That line of questioning missed the mark. It did not make much  
14 difference whether the core came from a .357 round or some other round. The shell  
15 casing was obviously from a .357 round, so it would be no surprise if the core came  
16 from a .357 round. Based on the shell casing alone, the State could easily prove the  
17 car's association with a .357 round. The real question was whether the State could  
18 prove that the *jacket fragments* were from a .357 round, and thus establish a  
19 connection between the jacket fragments and the car. Defense counsel's cross  
20 examination did not address that issue and left the jury with the mistaken impression  
21 that the jacket fragments had the same caliber as the shell casing found in the car.  
22 The prosecutor emphasized that mistaken impression during his closing rebuttal,  
23 arguing to the jury that his expert was "able to determine . . . that the jacketing that  
24 was in [Mr. Young's] face was a .357, and it was manufactured by Winchester. We  
25 know [Mr. Slaughter] has a little casing to a Winchester 357 in the trunk of his car."  
26 Ex. 179 at 136. Defense counsel should have addressed that incorrect inference  
27 during cross-examination.

GROUND FOUR

TRIAL COUNSEL FAILED TO CALL ADDITIONAL WITNESSES TO PROVIDE EXCULPATORY TESTIMONY, IN VIOLATION OF MR. SLAUGHTER'S RIGHTS UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

STATEMENT REGARDING EXHAUSTION:

Mr. Slaughter exhausted this claim in his initial state post-trial post-conviction proceedings. Exs. 226, 244.

STATEMENT IN SUPPORT OF CLAIM:

Mr. Slaughter's defense counsel provided ineffective assistance when they failed to call additional witnesses in Mr. Slaughter's favor. The police investigation was flawed in critical respects, but defense counsel did not call the lead detective to highlight the errors. Nor did the attorneys call the lead detective or other investigating officers to testify about some of the witnesses' exculpatory statements. And defense counsel did not call Destiny Waddy, whose description of the getaway car conflicted with the State's evidence.

Trial counsel provided deficient performance in each of these respects. There could be no strategic reason for failing to introduce this exculpatory evidence. Had Mr. Slaughter's lawyers taken any or all of these steps, there is a reasonable probability that the jury would have voted to acquit. As a result, Mr. Slaughter received ineffective assistance of counsel at trial. *See Strickland v. Washington*, 466 U.S. 668 (1984). Any ruling otherwise by the Nevada state courts is or would be contrary to, and an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States, or is or would be based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

**A. Counsel Failed To Call Detective Jesus Prieto To Impeach The Quality Of The Investigation.**

Detective Jesus Prieto was the lead detective regarding the incident at Mr. Young's home. He testified at the preliminary hearing, but he did not testify at trial. That was a problem, because his investigation suffered from critical flaws, and the jury should have heard about those flaws. Defense counsel provided ineffective assistance when they failed to call him. The attorneys fully expected the State to call Detective Prieto, and they planned to cross-examine him during the State's case. Tellingly, the State chose not to call Detective Prieto. Because Mr. Slaughter's lawyers thought the State would call him as a matter of course, they did not bother to subpoena him, so they did not get to call him as part of their case. That oversight was a serious mistake that had a detrimental effect on Mr. Slaughter's defense.

Had defense counsel called Detective Prieto, they could have elicited numerous damning facts. First, he failed to collect surveillance footage from the area near Ms. Johnson's workplace. Mr. Slaughter had an alibi—he had picked up Ms. Johnson (his girlfriend) after work, at about the same time the perpetrators were leaving the crime scene. Detective Prieto knew that if he could nail down the time when Mr. Slaughter arrived to pick her up, it would go a long way toward proving his guilt or innocence. He spoke to witnesses on numerous occasions in an attempt to establish that timeframe. But he did not collect available surveillance footage that could have shown exactly when Mr. Slaughter showed up. *See Ex. 165 at 45-46 (Jeffrey Arbuckle testifying that footage was available).*<sup>2</sup> Defense counsel should have asked Detective Prieto why he failed to take this obvious step.

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<sup>2</sup> The official copy of the trial transcript is missing four pages (45-48), including the pages where this exchange took place. The court reporter has prepared replacement copies of three of those pages, which have been manually added to the filed copy of the transcript.

1       Second, and relatedly, Detective Prieto repeatedly tried to manipulate Ms.  
2 Johnson regarding the exact time when Mr. Slaughter picked her up. At first, Ms.  
3 Johnson told the police that Mr. Slaughter arrived at 7:00 p.m. Ex. 174 at 14.  
4 Detective Prieto responded that Ms. Johnson must have been lying, because Mr.  
5 Slaughter was somewhere else committing a crime at 7:00 p.m. *Id.* at 16. After that  
6 interview, Detective Prieto called her and threatened to arrest her if she did not tell  
7 him that Mr. Slaughter “picked [her] up at a later time.” *Id.* at 18. Detective Prieto  
8 made good on that threat and arrested her at work, for allegedly “obstructing justice.”  
9 *Id.* at 18, 42. As he interviewed her again, he implied that if Ms. Johnson did not  
10 cooperate with the police, her arrest would make it hard for her to get a job in the  
11 future. *Id.* at 47-48. Ms. Johnson felt she was being coerced to change her story. *Id.*  
12 at 48-49; *see also* Ex. 143 (documents internally marked “Exhibit A” and “Exhibit C”).  
13 In light of the pressure, she said that Mr. Slaughter picked her up at 7:30 p.m. Ex.  
14 174 at 19. At trial, she confirmed that Mr. Slaughter arrived “between 7:00 to 7:15;  
15 no later than 7:20.” *Id.* at 21. Defense counsel should have called Detective Prieto  
16 and asked him about his attempts to manipulate Ms. Johnson’s testimony. *Cf.* Ex.  
17 175 at 37 (the prosecutor acknowledges defense counsel could argue Mr. Prieto “was  
18 inappropriate with” Ms. Johnson).

19       Third, Detective Prieto put together the suggestive photo lineup that led to the  
20 witnesses’ faulty identifications. Ex. 19 at 103-04. On information and belief,  
21 Detective Prieto also put together the second photo lineup, which he or others  
22 working with him had shown to the victims; there is no indication that any of the  
23 victims identified Mr. Slaughter in that second lineup. Defense counsel should have  
24 called Detective Prieto and asked him about his motives in creating the initial  
25 suggestive lineup and in failing to appropriately document the results of the second  
26 photo lineup.



1 Fourth, Destiny Waddy had told the police that the getaway car was "possibly  
2 a Pontiac Grand Am." Ex. 2 at 10. But in his affidavit in support of a search warrant,  
3 Detective Prieto represented that the witnesses described the getaway car as a  
4 Pontiac or a Ford, which conveniently happened to be the make of Ms. Johnson's car.  
5 See Ex. 112. Defense counsel should have asked Detective Prieto why he made that  
6 change in the search warrant affidavit.

7 Had defense counsel called Detective Prieto and asked any or all of these  
8 questions, the jury would have had serious reasons to question the integrity and  
9 accuracy of the police investigation. In turn, the jury would have felt reasonable  
10 doubt about whether the State had charged the right man.

11 In addition, Detective Prieto could have laid the foundation for prior  
12 inconsistent statements by various witnesses. For example, he could have testified  
13 about various inconsistencies in Mr. Young's accounts. See Ground Three, Section A,  
14 *supra*; see also, e.g., Ex. 227 (document internally marked "Exhibit A"). He could  
15 have also testified about Mr. Arbuckle's prior inconsistent statements about when  
16 Mr. Slaughter picked up Ms. Johnson. See Ground Two, Section D, *supra*; see also  
17 Ex. 14 at 3-4. Counsel should have called Detective Prieto to lay the foundation for  
18 those material prior inconsistent statements.

19 For all these reasons and more, defense counsel provided ineffective assistance  
20 when they failed to call Detective Prieto. Mr. Slaughter's trial attorneys knew that  
21 Detective Prieto was a crucial witness. In fact, they anticipated cross-examining him,  
22 and they mentioned Detective Prieto repeatedly in their opening statement. Ex. 162  
23 at 20-22. But they were not able to deliver because the State did not call him, and  
24 they had forgotten to subpoena him. Ex. 226 at 7. They wanted to remedy that  
25 mistake by arguing during closing that the State's failure to call the lead detective  
26 should make the jury skeptical about the quality of the police investigation. But the  
27 prosecutor argued that the court should bar that argument, and the court agreed. Ex.

1 175 at 37-45. Defense counsel knew they needed to make that argument. In order to  
2 make that argument, they needed to call Detective Prieto. They should have done so.

3 **B. Counsel Failed To Call Officer Anthony Bailey.**

4 Just as defense counsel should have called Detective Prieto to lay the  
5 foundation for some of Mr. Young's prior inconsistent statements, defense counsel  
6 should have called Officer Anthony Bailey to lay the foundation for certain of Mr.  
7 Young's other prior inconsistent statements. Mr. Young had told Officer Bailey that  
8 one of the robbers was bald and wearing shorts and a blue shirt, while the other had  
9 dreadlocks and spoke with a Jamaican accent. Ex. 4 at 2. According to Mr. Young,  
10 he was sure the assailant with dreadlocks had shot him. *Id.* At the preliminary  
11 hearing, Mr. Young specified that Mr. Slaughter was not the one with the dreadlocks.  
12 Ex. 19 at 28. But he changed his mind and said that Mr. Slaughter *was* the shooter  
13 (*id.* at 39)—even though he previously said the robber *with* the dreadlocks was the  
14 shooter. (Ex. 4 at 2). Defense counsel should have called Officer Bailey to help rebut  
15 that claim. *See also* Ground Three, Section B, *supra*.

16 Defense counsel did not make a strategic decision not to call Officer Bailey.  
17 The attorneys made the same mistake that they made with Detective Prieto—they  
18 assumed the State would call Officer Bailey, so they did not bother to subpoena him.  
19 Ex. 226 at 20. In fact, Mr. Slaughter told the court he had asked his lawyers to call  
20 Officer Bailey, and they had neglected to do so. Ex. 179 at 66. The attorneys' failure  
21 to secure Officer Bailey's testimony constituted deficient performance, and it  
22 prejudiced the defense's case.

23 **C. Counsel Failed To Call Destiny Waddy.**

24 Destiny Waddy was waiting in Mr. Means's car while Mr. Means and the other  
25 victims were tied up. She told Officer Mark Hoyt that the assailants left in a car that  
26 she described as possibly a Pontiac Grand Am. Ex. 2 at 10. That conflicted with the  
27 State's version of events, namely that the assailants were driving Ms. Johnson's Ford

1 Taurus. Defense counsel should have called Ms. Waddy to testify about the getaway  
2 car. Her testimony would have gone a long way toward undercutting the State's  
3 theory, in part because Ms. Dennis recalled that the perpetrators mentioned a  
4 Pontiac. Ex. 162 at 149. That detail would have corroborated Ms. Waddy's  
5 recollection that the getaway car was a Pontiac, not a Ford.

6 Mr. Slaughter's attorneys knew this testimony was important. In fact, they  
7 promised the jurors they would hear it in their opening. *Id.* at 20-21. But the  
8 attorneys yet again made the same mistake that they made with Detective Prieto and  
9 Officer Bailey—they assumed the State would call Ms. Waddy, so they did not bother  
10 to subpoena her. Ex. 226 at 33. Again, Mr. Slaughter told the court that he had  
11 asked his lawyers to call Ms. Waddy, and they had neglected to do so. Ex. 179 at 66.  
12 The attorneys' failure to secure Ms. Waddy's testimony constituted deficient  
13 performance, and it prejudiced the defense's case.

14 **D. Counsel Failed To Call Officer Mark Hoyt.**

15 Just as defense counsel should have called Ms. Waddy to testify about the  
16 getaway car, counsel should have called Officer Hoyt, who could have confirmed that  
17 Ms. Waddy described the car as a Pontiac. Ex. 2 at 10. In addition, Officer Hoyt (or  
18 others) could have testified about the time they were dispatched to Mr. Young's house,  
19 which would have assisted the defense in developing their timeline regarding Mr.  
20 Slaughter's alibi. *See id.* at 1. Finally, Officer Hoyt could have described Mr. John's  
21 initial statement to the police that his head had been covered for much of the incident,  
22 which contradicted his account at trial that his head was uncovered until after the  
23 shooting. Ex. 2 at 9; *see also* Ground Three, Section C, *supra*. The only reason the  
24 attorneys did not call Officer Hoyt is because they made the same mistake that they  
25 made with Detective Prieto, Officer Bailey, and Ms. Waddy—they assumed the State  
26 would call Officer Hoyt, so they did not bother to subpoena him. Ex. 226 at 56. Yet  
27 again, Mr. Slaughter told the court that he had asked his lawyers to call Officer Hoyt,

1 and they had neglected to do so. Ex. 179 at 66. Once again, this constituted deficient  
2 performance, and it prejudiced Mr. Slaughter.

3 **GROUND FIVE**

4 **TRIAL COUNSEL FAILED TO MOVE TO SUPPRESS**  
5 **EVIDENCE FROM THE INITIAL PHOTO LINEUP ON**  
6 **THE GROUNDS THAT THE POLICE USED AN**  
7 **ILLEGALLY OBTAINED PHOTOGRAPH OF MR.**  
8 **SLAUGHTER, IN VIOLATION OF MR. SLAUGHTER'S**  
9 **RIGHTS UNDER THE SIXTH AND FOURTEENTH**  
10 **AMENDMENTS TO THE UNITED STATES**  
11 **CONSTITUTION.**

12 **STATEMENT REGARDING EXHAUSTION:**

13 Mr. Slaughter exhausted this claim in his initial state post-trial post-  
14 conviction proceedings. Exs. 226; 244.

15 **STATEMENT IN SUPPORT OF CLAIM:**

16 The police used a photograph of Mr. Slaughter in the first photographic lineup  
17 that they showed the victims. On information and belief, that photograph was the  
18 product of an illegal traffic stop of Mr. Slaughter. Defense counsel should have moved  
19 to suppress the victims' identifications because they stemmed from this illegally  
20 obtained photograph. Had defense counsel filed such a motion, it would have been  
21 successful, and the State would not have been able to introduce the victims'  
22 identifications at trial. Without those identifications, the State's case would have  
23 collapsed. *See* Ground One, Section C, *supra*.

24 Defense counsel's failure to file the motion could have no strategic justification.  
25 Defense counsel was aware of the issue, but they failed to file subpoenas in order to  
26 develop this claim. *See* Ex. 226 at 63-65. As a result, Mr. Slaughter received  
27 ineffective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668 (1984).  
Any ruling otherwise by the Nevada state courts is or would be contrary to, and an  
unreasonable application of, clearly established Federal law, as determined by the  
Supreme Court of the United States, or is or would be based on an unreasonable

determination of the facts in light of the evidence presented in the State court proceeding.

#### GROUND SIX

**TRIAL COUNSEL FAILED TO DELIVER ON PROMISES  
MADE DURING OPENING STATEMENTS, IN  
VIOLATION OF MR. SLAUGHTER'S RIGHTS UNDER  
THE SIXTH AND FOURTEENTH AMENDMENTS TO  
THE UNITED STATES CONSTITUTION.**

#### STATEMENT REGARDING EXHAUSTION:

Mr. Slaughter exhausted this claim in his initial state post-trial post-conviction proceedings and in his second state post-trial post-conviction proceedings. Exs. 226, 235, 244, 247.

#### STATEMENT IN SUPPORT OF CLAIM:

As described in certain of Mr. Slaughter's grounds for relief above, Mr. Slaughter's defense counsel made a number of unfulfilled promises during opening statements. For one, counsel promised that the jury would learn about Mr. Slaughter's alibi—based on the timeline of events, he would have had four minutes to get from the crime scene to Ms. Johnson's workplace, and that was not nearly enough time. But counsel failed to introduce that evidence. *See* Ground Two, Sections A, B, C, and D, *supra*. Meanwhile, counsel promised that Ms. Westbrook would be a star alibi witness, but her testimony was underwhelming and counterproductive, just as Mr. Slaughter had anticipated. *See* Ground Two, Section E, *supra*.

Counsel made other bad promises as well. Counsel suggested that the jury would hear from Detective Prieto, but he never appeared at trial. *See* Ground Four, Section A, *supra*. Counsel also suggested that the jury would hear from Destiny Waddy, but she did not appear, either. *See* Ground Four, Section C, *supra*. In these respects and others, counsel made various unfulfilled promises during opening

1 statements. There could be no strategic reason for making those promises and then  
2 failing to deliver. The defense was prejudiced as a result, both because the unfulfilled  
3 promises damaged the defense's credibility, and because the evidence counsel alluded  
4 to would have been material and exculpatory. As a result, Mr. Slaughter received  
5 ineffective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668 (1984).  
6 Any ruling otherwise by the Nevada state courts is or would be contrary to, and an  
7 unreasonable application of, clearly established Federal law, as determined by the  
8 Supreme Court of the United States, or is or would be based on an unreasonable  
9 determination of the facts in light of the evidence presented in the State court  
10 proceeding.

#### 11 GROUND SEVEN

12 TRIAL COUNSEL FAILED TO OBJECT TO  
13 PROSECUTORIAL MISCONDUCT, IN VIOLATION OF  
14 MR. SLAUGHTER'S RIGHTS UNDER THE SIXTH AND  
15 FOURTEENTH AMENDMENTS TO THE UNITED  
16 STATES CONSTITUTION.

#### 17 STATEMENT REGARDING EXHAUSTION:

18 Mr. Slaughter exhausted subclaims A, B, C, and D in his second state post-  
19 trial post-conviction proceedings. Exs. 235, 247. Mr. Slaughter has not fairly  
20 presented subclaims E, F, or G to the Nevada state courts.

#### 21 STATEMENT IN SUPPORT OF CLAIM:

22 The prosecutors made multiple inappropriate comments during the initial  
23 closing argument and the rebuttal. These comments constituted prosecutorial  
24 misconduct. But Mr. Slaughter's attorneys failed to object to these comments. That  
25 failure constituted deficient performance for which there is no strategic justification.  
26 Had defense counsel objected to any or all of these comments, and had the jury been  
27 appropriately admonished, there is a reasonable probability it would have voted to  
acquit. As a result, Mr. Slaughter received the ineffective assistance of counsel. *See*

1 *Strickland v. Washington*, 466 U.S. 668 (1984). Any ruling otherwise by the Nevada  
2 state courts is or would be contrary to, and an unreasonable application of, clearly  
3 established Federal law, as determined by the Supreme Court of the United States,  
4 or is or would be based on an unreasonable determination of the facts in light of the  
5 evidence presented in the State court proceeding.

6 To be clear, Mr. Slaughter's trial attorneys were ineffective in numerous  
7 respects. They were ineffective for all the specific reasons explained in this Ground  
8 and Grounds Two through Six. Had his attorneys performed effectively in *any* of  
9 these numerous respects, there would have been a reasonable probability of a  
10 different outcome. And had his attorneys performed effectively in *all* of the ways  
11 described in this Ground and Grounds Two through Six, there would have been an  
12 overwhelming likelihood of a different outcome. For all the reasons explained in this  
13 amended petition, both individually and cumulatively, Mr. Slaughter received  
14 ineffective assistance of counsel. He is therefore entitled to a new trial.

15 A. The Prosecutor Inappropriately Suggested Mr. Slaughter Had  
16 Attempted To Fake A Jamaican Accent.

17 During trial, three witnesses—Ivan Young, Jennifer Dennis, and Ryan John—  
18 testified that the suspects had Jamaican accents. Exs. 162 at 49 (Mr. Young), 140  
19 (Ms. Dennis); 165 at 52 (Mr. John). None of them testified at trial that the accents  
20 sounded fake (although Ms. Dennis said she could not tell whether the accent was  
21 authentic). That fact was exculpatory, since Mr. Slaughter does not have a Jamaican  
22 accent, and the jury heard jail house phone calls that Mr. Slaughter allegedly placed;  
23 those calls confirm that Mr. Slaughter does not have a Jamaican accent. *E.g.*, Ex.  
24 167 at 86 (prosecutor plays phone calls to jury).

25 During the State's initial closing argument, the prosecutor told the jury that  
26 the suspects "used fake accents." Ex. 179 at 13. According to her, "Ivan Young said  
27 it appeared they were trying to talk Jamaican." *Id.* So too with Mr. John: he said "it

1 sounded like a fake accent.” *Id.* Ms. Dennis supposedly agreed—she supposedly said  
2 that “it sounded like they were putting on an act.” *Id.* Thus, the prosecutor  
3 concluded, the evidence showed the suspects “were putting on an act [by] using a  
4 different voice to disguise their identity.” *Id.* But none of those witnesses said  
5 anything of the sort, except perhaps Ms. Dennis, who said she did not know whether  
6 the accents were authentic (not that she believed the perpetrators were putting on  
7 an act). Aside from that minor caveat, the three witnesses testified that the suspects  
8 had Jamaican accents—not that it seemed as if the suspects were trying to fake an  
9 accent or put on an act. The prosecutor therefore misrepresented the trial testimony,  
10 and defense counsel should have objected.

11 **B. The Prosecutor Inappropriately Said There Was “No Question” That**  
12 **Mr. Slaughter “Put A Gun To” Mr. Young’s “Face.”**

13 The prosecutor began his rebuttal argument by stating that “this man,” i.e.,  
14 Mr. Slaughter, “put a 357 to a guy’s face that he shot. There’s no question about  
15 that.” Ex. 179 at 130. Of course, that was one of the key questions for the jury to  
16 resolve. Defense counsel should have objected to that improper remark.

17 **C. The Prosecutor Inappropriately Vouched For Mr. Arbuckle.**

18 Next, the prosecutor tried to smear the defense’s alibi witnesses. He told the  
19 jury it should credit Mr. Arbuckle, who said Mr. Slaughter did not arrive to pick up  
20 Ms. Johnson until after 7:30 p.m. According to the prosecutor, the jury should  
21 “believe Mr. Arbuckle [because he] has no reason to lie.” *Id.* at 132. With that  
22 remark, the prosecutor inappropriately vouched for Mr. Arbuckle as a witness.  
23 Defense counsel should have objected to this witness vouching.

24 **D. The Prosecutor Inappropriately Suggested Mr. Slaughter Knew The**  
25 **Time Of The Crime, So He Must Have Been There.**

26 Later on in his rebuttal, the prosecutor argued that Mr. Slaughter had tried to  
27 manufacture an alibi for himself for 7:00 p.m. on the night of the incident. But, the  
prosecutor asked rhetorically, “How does he know that fact that that’s when the crime



1 occurred. Ask yourself that question." *Id.* at 141; *see also id.* at 142. The prosecutor's  
2 tacit answer was that Mr. Slaughter knew what time the incident occurred because  
3 he was there. But, in fact, Detective Prieto had discussed the timing of the robbery  
4 with Mr. Slaughter soon after his arrest. Ex. 8 at 6. Defense counsel should have  
5 objected to the prosecutor's improper insinuation.

6 **E. The Prosecutor Inappropriately Suggested Mr. Slaughter's Use Of An  
Alibi Defense Illustrated His Guilt.**

7 Later, the prosecutor returned to this theme; he stated that if Mr. Slaughter  
8 had a real alibi, he would not need witnesses to lie for him, and "[t]hat alone would  
9 make him guilty." *Id.* at 142. Once again, the comment inappropriately suggested  
10 that Mr. Slaughter had manufactured an alibi and was guilty as a result. Defense  
11 counsel should have objected to this insinuation as well.

12 **F. The Prosecutor Inappropriately Stated, "You Shoot A Guy In The Face,  
13 You Don't Just Get 10 Years."**

14 Next, the prosecutor suggested that soon after his arrest, Mr. Slaughter  
15 indicated during jail house phone calls that he might be willing to take a plea deal  
16 for eight or nine years to resolve this case. The prosecutor then dramatically turned  
17 toward Mr. Slaughter and said, "I got to tell Mr. Slaughter this, too, you shoot a guy  
18 in the face, you don't just get 10 years." *Id.* at 143. Defense counsel should have  
19 objected to this flagrant commentary.

20 **G. The Prosecutor Inappropriately Told The Jury, "If You Are Doing The  
21 Job," It Will Convict.**

22 Toward the end of his rebuttal, the prosecutor suggested Mr. Slaughter knew  
23 he was responsible for the alleged crimes. He then closed with these remarks: "I  
24 suggest to you, if you are doing the job, 12 of you will go back in that room, you will  
25 talk about it and come back here and tell him you know, too." *Id.* at 150. Those were  
26 the final words the jury heard before retiring for deliberations. The prosecutor in  
27

1 effect told the jury it had a duty to reach a guilty verdict, and defense counsel should  
2 have objected to that improper statement.

3 **GROUND EIGHT**

4 **THE STATE COMMITTED PROSECUTORIAL**  
5 **MISCONDUCT DURING CLOSING ARGUMENTS, IN**  
6 **VIOLATION OF MR. SLAUGHTER'S RIGHTS UNDER**  
7 **THE FIFTH AND FOURTEENTH AMENDMENTS TO**  
8 **THE UNITED STATES CONSTITUTION.**

9 **STATEMENT REGARDING EXHAUSTION:**

10 Mr. Slaughter has not presented subclaims A, B, C, or D to the Nevada state  
11 courts. Mr. Slaughter exhausted subclaims E, F, and G in his direct appeal. Exs.  
12 212, 218, 220.

13 **STATEMENT IN SUPPORT OF CLAIM:**

14 As described in Ground Seven, *supra*, the prosecutors made a series of  
15 improper remarks during closing argument and rebuttal. For reference, those  
16 remarks are as follows:

- 17 A. The prosecutor inappropriately suggested Mr. Slaughter had attempted to  
18 fake a Jamaican accent.
- 19 B. The prosecutor inappropriately said there was "no question" that Mr.  
20 Slaughter "put a gun to" Mr. Young's "face."
- 21 C. The prosecutor inappropriately vouched for Mr. Arbuckle.
- 22 D. The prosecutor inappropriately suggested Mr. Slaughter knew the time of  
23 the crime, so he must have been there.
- 24 E. The prosecutor inappropriately suggested Mr. Slaughter's use of an alibi  
25 defense illustrated his guilt.
- 26 F. The prosecutor inappropriately stated, "You shoot a guy in the face, you  
27 don't just get 10 years."

1 G. The prosecutor inappropriately told the jury, "if you are doing the job," it  
2 will convict.  
3 Each of these remarks, individually and cumulatively, were so unfair that they  
4 denied Mr. Slaughter due process. *See Darden v. Wainwright*, 477 U.S. 168, 181  
5 (1986). Each of these instances of misconduct had a substantial and injurious effect  
6 on the verdict. Any ruling otherwise by the Nevada state courts is or would be  
7 contrary to, and an unreasonable application of, clearly established Federal law, as  
8 determined by the Supreme Court of the United States, or is or would be based on an  
9 unreasonable determination of the facts in light of the evidence presented in the State  
10 court proceeding.

#### 11 GROUND NINE

12 THE STATE INTRODUCED HEARSAY EVIDENCE  
13 THAT DENIED MR. SLAUGHTER HIS ABILITY TO  
14 CONFRONT THE WITNESSES AGAINST HIM, IN  
15 VIOLATION OF MR. SLAUGHTER'S RIGHTS UNDER  
THE SIXTH AND FOURTEENTH AMENDMENTS TO  
THE UNITED STATES CONSTITUTION.

#### 16 STATEMENT REGARDING EXHAUSTION:

17 Mr. Slaughter exhausted this claim in his direct appeal. Exs. 212, 218, 220.

#### 18 STATEMENT IN SUPPORT OF CLAIM:

19 The State introduced into evidence a surveillance videotape from a 7-Eleven  
20 store at 3051 E. Charleston Ave. in Las Vegas. It then played for the jury a snippet  
21 of the video, taken at about 8:00 p.m. the night of the incident. In the video, a black  
22 male can be seen standing near an ATM. According to the State, the man was Mr.  
23 Slaughter, using the ATM card he stole from Mr. John. But the only evidence the  
24 State presented that tended to prove that conclusion was hearsay evidence. Mr. John  
25 testified that after the robbery, he called his bank to report the stolen card, and  
26 someone at the bank told him his card had been used "at a 7-11 just after 8 p.m." Ex.  
27 165 at 61. That testimony was the only link between the video and the incident. But

1 that testimony was hearsay—Mr. John was recounting the bank employee's  
2 testimonial, out-of-court statement. The introduction of that hearsay testimony  
3 denied Mr. Slaughter the right to confront the witnesses against him. *See Crawford*  
4 *v. Washington*, 541 U.S. 36 (2004). The error had a substantial and injurious effect  
5 on the verdict, since the jury was allowed to infer that the video showed Mr. Slaughter  
6 with the proceeds of the robbery. Indeed, the prosecutors repeatedly stressed this  
7 point during closing arguments. Ex. 179 at 25, 39-40, 53.

8 Mr. Slaughter is therefore entitled to a new trial. Any ruling otherwise by the  
9 Nevada state courts is or would be contrary to, and an unreasonable application of,  
10 clearly established Federal law, as determined by the Supreme Court of the United  
11 States, or is or would be based on an unreasonable determination of the facts in light  
12 of the evidence presented in the State court proceeding.

#### 13 GROUND TEN

14 DIRECT APPEAL COUNSEL FAILED TO RAISE  
15 MERITORIOUS ISSUES, IN VIOLATION OF MR.  
16 SLAUGHTER'S RIGHTS UNDER THE SIXTH AND  
17 FOURTEENTH AMENDMENTS TO THE UNITED  
STATES CONSTITUTION.

#### 18 STATEMENT REGARDING EXHAUSTION:

19 Mr. Slaughter exhausted this claim in his initial state post-trial post-  
20 conviction petition for a writ of habeas corpus. Exs. 226; 244.

#### 21 STATEMENT IN SUPPORT OF CLAIM:

22 Mr. Slaughter's appellate attorney omitted two crucial issues from his appeal:  
23 a solid *Batson* claim, and the police's failure to document the use of a second  
24 photographic lineup. These issues are plainly meritorious, and counsel should have  
25 included them in addition to or in lieu of some of the weaker claims in the appeal.  
26 This failure denied Mr. Slaughter the right to the effective assistance of appellate  
27 counsel. *See Strickland v. Washington*, 466 U.S. 668 (1984); *Miller v. Keeney*, 882

1 F.2d 1428 (9th Cir. 1989). Any ruling otherwise by the Nevada state courts is or  
2 would be contrary to, and an unreasonable application of, clearly established Federal  
3 law, as determined by the Supreme Court of the United States, or is or would be based  
4 on an unreasonable determination of the facts in light of the evidence presented in  
5 the State court proceeding.

6 A. Direct Appeal Counsel Failed To Litigate A *Batson* Challenge.

7 During jury selection, and after pursuing a disparate line of questioning, the  
8 State used a peremptory challenge to strike the last remaining African-American in  
9 the venire, Kendra Rhines (juror number 242). Defense counsel raised a claim under  
10 *Batson v. Kentucky*, 476 U.S. 79 (1986), regarding the State's use of the strike. The  
11 prosecutor explained he struck the juror because of her supposed distrust of the  
12 police, but that was a pretextual explanation. Ms. Rhines explained during voir dire  
13 that she could be fair to both the State and the defense, and the State's decision to  
14 strike her rested on her race. See Ex. 158 at 1-19.

15 Despite this viable *Batson* claim, direct appeal counsel did not raise this issue.  
16 Counsel told Mr. Slaughter he chose not raise this claim because the juror was "not  
17 [a] member[] of your race." Ex. 227 (document internally marked "Exhibit N"). That  
18 explanation defies both law and fact. As for the law, *Batson* does not require that the  
19 juror at issue be the same race as the defendant. As for the facts, Mr. Slaughter and  
20 Ms. Rhines are both African-American. Counsel should have brought this claim,  
21 which was plainly stronger than at least some of the other claims in the direct appeal.  
22 Had the attorney raised this issue, there is a reasonable probability that the Nevada  
23 Supreme Court would have granted relief on that basis.

24 B. Direct Appeal Counsel Failed To Litigate The State's Failure to  
25 Preserve The Second Photographic Lineup.

26 As discussed above, e.g., Ground Three, Section A, *supra*, the police had shown  
27 the victims a second photo lineup with Mr. Slaughter's picture in it; it does not appear

1 that any of the victims identified Mr. Slaughter in that lineup. However, the police  
2 did not keep proper records of this photo lineup, including exactly who was involved  
3 in its creation, who was shown it when, and what the victims said in response to the  
4 lineup. As a result, initial trial counsel filed a motion asking the court to take  
5 corrective action in light of this failure to preserve evidence. Ex. 113. The court  
6 denied that motion. Direct appeal counsel should have renewed the issue on appeal.  
7 This issue was plainly stronger than at least some of the other claims in the direct  
8 appeal. Had the attorney raised this issue, there is a reasonable probability that the  
9 Nevada Supreme Court would have granted relief on that basis.

#### 10 GROUND ELEVEN

11 THE PROSECUTORS EXERCISED A RACIALLY  
12 MOTIVATED PEREMPTORY CHALLENGE, IN  
13 VIOLATION OF MR. SLAUGHTER'S RIGHTS UNDER  
14 THE FOURTEENTH AMENDMENT TO THE UNITED  
STATES CONSTITUTION.

#### 15 STATEMENT REGARDING EXHAUSTION:

16 Mr. Slaughter has not fairly presented this claim to the Nevada state courts.

#### 17 STATEMENT IN SUPPORT OF CLAIM:

18 As described above in Ground Ten, Section A, *supra*, the prosecutors used a  
19 peremptory challenge to strike an African-American juror after employing a  
20 disparate line of questioning. Their purportedly race-neutral explanation for why  
21 they exercised the strike was pretextual. As a result, the use of the peremptory strike  
22 violated the Constitution. *See Batson v. Kentucky*, 476 U.S. 79 (1986). Any ruling  
23 otherwise by the Nevada state courts is or would be contrary to, and an unreasonable  
24 application of, clearly established Federal law, as determined by the Supreme Court  
25 of the United States, or is or would be based on an unreasonable determination of the  
26 facts in light of the evidence presented in the State court proceeding.  
27

PRAYER FOR RELIEF

Accordingly, Mr. Slaughter respectfully requests that this Court:

1. Issue a writ of habeas corpus to have Mr. Slaughter brought before the Court so that he may be discharged from his unconstitutional confinement;

2. Conduct an evidentiary hearing at which proof may be offered concerning the allegations in this amended petition and any defenses that may be raised by the respondents; and

3. Grant such other and further relief as, in the interests of justice, may be appropriate.

Dated this 2nd day of August, 2017.

Respectfully submitted,

RENE L. VALLADARES  
Federal Public Defender

/s/ Jeremy C. Baron  
JEREMY C. BARON  
Assistant Federal Public Defender

1                   **DECLARATION UNDER PENALTY OF PERJURY**

2           I declare under penalty of perjury under the laws of the United States of  
3 America and the State of Nevada that the facts alleged in this petition are true and  
4 correct to the best of counsel's knowledge, information, and belief.  
5

6           Dated this 2nd day of August, 2017.  
7

8                                   Respectfully submitted,

9                                   **RENE L. VALLADARES**  
10                                  Federal Public Defender

11                                  */s/Jeremy C. Baron*  
12                                  **JEREMY C. BARON**  
13                                  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