

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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**No. 82700**

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Elizabeth A. Brown  
Clerk of Supreme Court

**SHAWN GLOVER JR.**

Appellant,

v.

**THE STATE OF NEVADA**

Respondent.

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Appeal from Judgment of Conviction  
Eighth Judicial District Court, Clark County  
The Honorable Michael P. Villani, District Court Judge  
District Court Case No. C-16-312448-1 / A-20-821176-W

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**APPELLANT'S APPENDIX**

**VOLUME IV**

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## **CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on September 13, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD  
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1 consequences and social duty.

2 Malice aforethought does not imply deliberation or the lapse of  
3 any considerable time between the malicious intention to injure another and  
4 the actual execution of the intent but denotes rather an unlawful purpose and  
5 design in contradistinction to accident and mischance.

6 Instruction number 6. Express malice is that deliberate intention,  
7 unlawfully to take away the life of a fellow creature which is manifested by  
8 external circumstances capable of proof. Malice may be implied when no  
9 considerable provocation appears or when all the circumstances of the killing  
10 show an abandoned and malignant heart.

11 Instruction number 7. Murder of the first degree is murder which  
12 is perpetrated by means of any kind of willful, deliberate, and premeditated  
13 killing. All three elements, willfulness, deliberation, and premeditation must  
14 be proven beyond a reasonable doubt before an accused can be convicted of  
15 first-degree murder.

16 Instruction number 8. Willfulness is the intent to kill. There need  
17 no -- excuse me -- there need be no appreciable space of time between  
18 formation of the intent to kill and the act of killing.

19 Instruction number 9. Deliberation is the process of determining  
20 upon a course of action to kill as a result of thought, including weighing the  
21 reasons for and against the action and considering the consequences of the  
22 actions.

23 Instruction number 10. A deliberate determination may be arrived  
24 at in a short period of time, but in all cases the determination must not be  
25 formed in passion or if formed in passion, it must be carried out after there has

1 been time for the passion to subside and deliberation to occur. A mere  
2 unconsidered and rash impulse is not deliberate even though it includes the  
3 intent to kill.

4 Instruction number 11. Premeditation is a design, a determination  
5 to kill distinctly formed in the mind by the time of the killing.

6 Instruction number 12. Premeditation need not be for a day, an  
7 hour, or even a minute. It may be as instantaneous as successive thoughts of  
8 the mind. For if the jury believes from the evidence that the act constituting  
9 the killing has been preceded by and has been the result of premeditation, no  
10 matter how rapidly the act follows the premeditation, it is premeditated.

11 Instruction number 13. The law does not undertake to measure in  
12 units of time, the length of the period during which the thought must be  
13 pondered before it can ripen into an intent to kill, which is truly deliberate and  
14 premeditated. The time will vary with different individuals and under varying  
15 circumstances. The true test is not the duration of time, but rather the extent  
16 of reflection. A cold, calculated judgment and decision may be arrived at in a  
17 short period of time, but a mere unconsidered and rash impulse, even though  
18 it includes the intent to kill, is not the deliberation and premeditation as will fix  
19 an unlawful crime as murder in the first degree.

20 Instruction number 14. All murder, which is not murder of the first  
21 degree, is murder of the second degree. Murder of the second degree is  
22 murder with malice aforethought, but without the admixture of premeditation  
23 and deliberation.

24 Instruction number 15. You are instructed that if you find the State  
25 has established that the Defendant has committed first-degree murder, you

1 shall select first-degree murder as your verdict. A crime of first-degree murder  
2 includes a crime of second-degree murder. You may find the Defendant guilty  
3 of second-degree murder if: one, you have not found beyond a reasonable  
4 doubt that the Defendant is guilty of murder of the first degree; and, two, all 12  
5 of you are convinced beyond a reasonable doubt that the Defendant is guilty  
6 of the crime of second-degree murder.

7           If you are convinced beyond a reasonable doubt that the crime of  
8 murder has been committed by the Defendant, but you have a reasonable  
9 doubt whether such murder was of the first degree or second degree, you  
10 must give the Defendant the benefit of that doubt and return the verdict of  
11 murder of the second degree.

12           Instruction number 16. You are instructed that if you find the State  
13 has established this Defendant has committed second degree murder, you  
14 shall select second degree murder as your verdict. The crime of second  
15 degree murder can include the crime of voluntary manslaughter.

16           You may find the Defendant guilty of voluntary manslaughter if:  
17 one, you have found -- you have not found, beyond a reasonable doubt, that  
18 the Defendant is guilty of murder of the first degree or second degree, and  
19 two, all 12 of you are convinced beyond a reasonable doubt that the Defendant  
20 is guilty of the crime of voluntary manslaughter. If you are convinced beyond  
21 a reasonable doubt that the crime of murder has been committed by the  
22 Defendant, but you have a reasonable doubt as to whether such murder was  
23 of the second degree or voluntary manslaughter, you must give the Defendant  
24 the benefit of that doubt and return a verdict of voluntary manslaughter.

25           Instruction number 17. Voluntary manslaughter is the unlawful

1 killing of a human being without malice aforethought and without deliberation  
2 or premeditation. It is killing a person upon a sudden quarrel or heat of  
3 passion caused by a provocation sufficient to make the passion irresistible.  
4 The provocation required for voluntary manslaughter must either consist of a  
5 serious and highly provoking injury inflicted upon the person killing, sufficient  
6 to excite an irresistible passion in a reasonable person, or an attempt by the  
7 person killed to commit a serious personal injury on the person killing.

8           For the sudden, violent, impulse of passion to be irresistible  
9 resulting in a killing, which is voluntary manslaughter, there must not have  
10 been an interval between the assault or provocation and the killing sufficient  
11 for the voice of reason and humanity to be heard. For if there should appear  
12 to have been sufficient time for a cool head to prevail and the voice of reason  
13 to be heard, the killing shall be attributed to deliberate revenge and  
14 determined by you to be murder. The law assigns no fixed period of time for  
15 such an interval but leaves its determination to the jury under the facts and  
16 circumstances of the case.

17           Instruction number 18. The heat of passion which will reduce a  
18 homicide to voluntary manslaughter must be such an irresistible passion as  
19 naturally would be aroused in the mind of an ordinarily reasonable person in  
20 the same circumstances. A defendant is not permitted to set up his own  
21 standard of conduct and to justify or excuse himself because his passions  
22 were aroused unless the circumstances in which he was placed and the facts  
23 that confronted him were such as also would have aroused the irresistible  
24 passion of the ordinarily reasonable man if likewise situated.

25           The basic inquiry is whether or not at the time of the killing the



1 reason of the accused was obscured or disturbed by passion to such an extent  
2 as would cause the ordinarily reasonable person of average disposition to act  
3 rashly, and without deliberation and reflection, and from such passion rather  
4 than from judgment.

5 Instruction number 19. The prosecution is not required to present  
6 direct evidence of a defendant's state of mind as it existed during the  
7 commission of a crime and the jury may infer the existence of a particular  
8 state of mind from the circumstances disclosed by the evidence.

9 Instruction number 20. Assault means intentionally placing  
10 another person in reasonable apprehension of immediate bodily harm. As  
11 used in this instruction, reasonable apprehension is defined by the objective  
12 standard.

13 Instruction number 21. A deadly weapon is any instrument which  
14 if used in the ordinary manner contemplated by its design and construction  
15 will or is likely to cause substantial bodily harm or death or any weapon or  
16 device, instrument, material, or substance, which under the circumstances in  
17 which it is used, attempted to be used, or threatened to be used if readily  
18 capable of causing substantial bodily harm or death.

19 Instruction number 22. The State is not required to have recovered  
20 the deadly weapon used in alleged crime or to produce the deadly weapon in  
21 court at trial to establish that a deadly weapon was used in the commission of  
22 the crime.

23 Instruction number 23. Any person who willfully, unlawfully, and  
24 maliciously discharges a firearm within an occupied structure is guilty of  
25 discharging a firearm within a structure. Said structure must be within an area

1 designated by a city or county as a populated area for purposes of prohibiting  
2 the discharge of weapons.

3 Instruction number 24. The City of North Las Vegas Municipal  
4 Code 9.32.110 states that it is unlawful for any person to explode or fire any  
5 pistol, revolver, rifle, shotgun, or any other firearm within the limits of the City  
6 of North Las Vegas.

7 Instruction number 25. To constitute the crime charged there must  
8 exist a union or a joint operation of an act forbidden by law and intent to do  
9 the act. The intent with which the act is done is shown by the facts and  
10 circumstances surrounding the case. Do not confuse intent with motive.  
11 Motive is what prompts a person to act. Intent refers only to the state of mind  
12 with which the act is done. Motive is not an element of the crime charged.  
13 And the State is not required to prove a motive on the part of the Defendant in  
14 order to convict. However, you may consider the evidence of motive or lack of  
15 motive as a circumstance in the case.

16 Instruction number 26. The Defendant is presumed innocent until  
17 the contrary is proved. This presumption places upon the State the burden of  
18 proving beyond a reasonable doubt every element of the crime charged and  
19 that the Defendant is the person who committed the offense. A reasonable  
20 doubt is one based on reason. It is not mere possible doubt, but is such a  
21 doubt as would govern or control a person in the more weighty affairs of life.

22 If the minds of the jurors, after the entire comparison and  
23 consideration of all the evidence are in such a condition that they can say they  
24 feel an abiding conviction of the truth of the charge, there's not a reasonable  
25 doubt. Doubt, to be reasonable must be actual, not mere possibility or

1 speculation. If you have a reasonable doubt as to the guilt of the Defendant,  
2 he is entitled to a verdict of not guilty.

3           Instruction number 27. The evidence which you are to consider in  
4 this case consists of the testimony of the witnesses, the exhibits, and any facts  
5 admitted or agreed to by counsel. There are two types of evidence, direct and  
6 circumstantial. Direct evidence is the testimony of a person who claims to  
7 have personal knowledge of the commission of the crime which has been  
8 charged, such as an eyewitness. Circumstantial evidence is the proof of the  
9 chain of facts and circumstances, which tend to show whether a defendant is  
10 guilty or not guilty. The law makes no distinction between the weight to be  
11 given either or direct or circumstantial evidence. Therefore, all the evidence in  
12 the case, including the circumstantial evidence should be considered by you in  
13 arriving at your verdict. Statements, arguments, and opinions of counsel are  
14 not evidence in the case. However, if the attorneys stipulate to the existence  
15 of a fact, you must accept the stipulation as evidence and regard that fact as  
16 proved.

17           You must not speculate to be true any insinuations suggested by a  
18 question asked a witness. A question is not evidence and may be considered  
19 only as it supplies meaning to the answer. You must disregard any evidence  
20 to which an objection was sustained by the Court and any evidence ordered  
21 stricken by the Court. Anything you may have seen or heard outside the  
22 courtroom is not evidence and must also be disregarded.

23           Instruction number 28. The flight of a person after the commission  
24 of a crime is not sufficient in itself to establish guilt. However, if flight is  
25 proved, it is circumstantial evidence in determining guilt or innocence. The

1 essence of flight embodies the idea of deliberately going away with  
2 consciousness of guilt and for the purpose of avoiding apprehension or  
3 prosecution. The weight to which such circumstances entitled is a matter for  
4 the jury to determine.

5           Instruction number 29. The credibility or believability of a witness  
6 should be determined by his manner upon the stand, his relationship to the  
7 parties, his fears, motives, interest, or feelings, his opportunity to have  
8 observed the matter to which he testified, the reasonableness of his  
9 statements, and the strength or weakness of his recollections. If you believe  
10 that a witness has lied about any material fact in the case, you may disregard  
11 the entire testimony of that witness or any portion of his testimony which is  
12 not proved by other evidence.

13           Instruction number 30. Any testimony that a witness believed that  
14 the Defendant has a history of violence against persons is offered solely for  
15 the purpose of explaining the state of mind of the witness at the time she  
16 made her statement to police on January 1st, 2016. This testimony, if  
17 believed, is not to be considered as substantive evidence that the Defendant  
18 has a history of violence against persons or that he is a person of bad  
19 character.

20           Instruction number 31. A witness who has special knowledge, skill,  
21 experience, training, or education in a particular science, profession or  
22 occupation is an expert witness. An expert witness may give his opinion as to  
23 any matter in which he is skilled. You should consider such expert opinion  
24 and weigh the reasons, if any, given for it. You are not bound however by  
25 such an opinion. Give it the weight to which you deem it entitled, whether that

1 be great or slight, and you may reject it if, in your judgment, the reasons given  
2 for it are unsound.

3 Instruction number 32. In arriving at a verdict in this case as to  
4 whether the Defendant is guilty or not guilty, the subject of penalty or  
5 punishment is not to be discussed or considered by you and should in no way  
6 influence your verdict.

7 Instruction number 33. It is the constitutional right of a defendant  
8 in a criminal trial that he may not be compelled to testify. Thus, a decision as  
9 to whether he should testify is left to the Defendant on the advice of counsel of  
10 -- excuse me -- on the advice of counsel of his attorney. You must not draw  
11 any inference of guilt from the fact that he does not testify, nor should this fact  
12 be discussed by you or enter into your deliberations in any way.

13 Instruction number 34. Although you are to consider only the  
14 evidence in the case in reaching a verdict, you must bring to the consideration  
15 of the evidence your everyday common sense and judgment as reasonable  
16 men and women. Thus, you are not limited solely to what you see and hear as  
17 the witness testifies. You may draw reasonable inferences from the evidence,  
18 which you feel are justified in the light of common experience keeping in mind  
19 that such inferences should not be based on speculation or guess. A verdict  
20 may never be influenced by sympathy, prejudice, or public opinion. Your  
21 decision should be the product of sincere judgment and sound discretion in  
22 accordance with these rules of law.

23 Instruction number 35. When you retire to consider your verdict,  
24 you must select one of your number to act as foreperson who will preside over  
25 your deliberation and will be your spokesperson here in court. During your

1 deliberation you will have the exhibits which were admitted into evidence,  
2 these written instructions, and a form of verdict which has been prepared for  
3 your convenience. Your verdict must be unanimous. As soon as you have  
4 agreed upon a verdict, have it signed and dated by your foreperson and then  
5 return with it to this room.

6           Instruction number 36. If during your deliberation you should  
7 desire to be further informed on any point of law or hear again portions of the  
8 testimony, you must reduce your request to writing signed by the foreperson.  
9 The officer will then return you to court where the information sought will be  
10 given to you in the presence of and after notice to the District Attorneys and  
11 Defendant and his counsel.

12           Playbacks of testimony are time consuming and are not  
13 encouraged unless you deem it a necessity. Should you require a playback,  
14 you must carefully describe the testimony to be played back so the court  
15 recorder can arrange her notes. Remember, the Court is not at liberty to  
16 supplement the evidence.

17           Instruction number 37. During the course of this trial in your  
18 deliberations you are not to: one, communicate with anyone, in any way  
19 regarding this case or its merits, either by phone, text, internet, or other  
20 means; two, read, watch, or listen to any news or media accounts or  
21 commentary about the case; three, do any research such as consult a  
22 dictionary, using the internet, or using reference materials; four, make any  
23 investigation, test a theory of the case, recreate any aspect of the case, or in  
24 any other way investigate or learn about the case on your own.

25           Instruction number 38. Now you will listen to the arguments of

1 counsel who will endeavor to aid you to reach a proper verdict by refreshing in  
2 your minds the evidence and by showing the application thereof to the law,  
3 but whatever counsel may say, you will bear in mind that is your duty to be  
4 governed in your deliberation by the evidence as you understand it and  
5 remember it to be and by the law as given you in these instructions with the  
6 sole fixed and steadfast purpose of doing equal and exact justice between the  
7 Defendant and the State of Nevada.

8 Can I see counsel at the bench before you start?

9 [Sidebar begins at 10:45 a.m.]

10 THE COURT: There's a couple typos and so I read it as corrected,  
11 meaning you (indiscernible) spelled the E-G-A-T-E-R and stuff like that. I'm  
12 going to go through and fix it if you want a copy, let me know. They're little  
13 things.

14 MR. STANTON: No.

15 MR. BASHOR: No.

16 THE COURT: Okay.

17 [Sidebar ends at 10:45 a.m.]

18 THE COURT: State, closing argument when you're ready.

19 MR. FLINN: Thank you, Your Honor.

20 [STATE CLOSING ARGUMENT]

21 MR. FLINN: Shawn Glover murdered Patrick Fleming. He followed  
22 behind him down the stairs, he pulled out a gun, and he shot him, one fatal  
23 shot right in the back of the head. Patrick's death was almost instantaneous.  
24 But determined to make sure the job was done as though one bullet through  
25 the skull and brain stem is not enough, the Defendant followed Patrick's falling

1 body as it went down the stairs and hit the landing, and he stepped up to him  
2 and shot him twice more.

3 When the State introduced this case to you, Mr. Stanton told you  
4 this is a first degree murder case. Now, you know why. You have the  
5 evidence, and you have proof beyond a reasonable doubt that Shawn Glover  
6 is guilty of first degree murder. And now it's time for you to find him guilty  
7 and hold him accountable.

8 These are the facts from the evidence at trial. New Year's Day  
9 2016, at the townhome at Smokey Fog. Everybody's up in the morning.  
10 There's four adults in the house. Patrick, Miranda, Akira, and the Defendant.  
11 Patrick has already left, dropped off Angela at work, and had come back. And  
12 so, what happens is you have a family dispute, sort of some classic family  
13 drama. The overprotective dad goes a step too far in checking up on his  
14 daughter and what she's doing with her boyfriend. And they get in an  
15 argument about it. They're in the garage away from everybody else, all the  
16 little kids, and they're arguing it out. And at some point, Miranda comes down  
17 and she joins in, and as she told you she's sticking up for Akira, she's a grown  
18 woman, et cetera.

19 And they start to cool down. And that's when the Defendant, for  
20 the first time, inserts himself into this family dispute. And as you remember,  
21 Angela is Miranda's goddaughter. And the Defendant has just come back and  
22 been staying at the house for about a week. So, this really doesn't concern  
23 him, but he comes down with the phone. He's got Angela on the phone, and  
24 he gives it to Miranda, she talks to her, he takes the phone and goes back up.

25 The discussion continues, and it's winding down. As they told you,



1 they're starting to just calm down, say their sorries [sic]. And the Defendant  
2 inserts himself once more. This time he comes down and goes directly to  
3 Miranda, can I talk to you? She says: sure, of course. They've only been  
4 staying there for a few weeks. They're thinking, you know, we're arguing in  
5 somebody's house. She starts to go up the stairs with the Defendant. She  
6 gets up there, and there is something peculiar because the little kids had been  
7 running around playing, going in and out of the rooms, but now, they're in a  
8 closed bedroom.

9               And she has a conversation with the Defendant. And he tells her,  
10 hey, I hear what's going on down there. Do you want me to take care of this  
11 for you? He's already thinking about it. Miranda: no, no, no, you've got it  
12 wrong. Everybody's getting along. We're okay. I got this. Don't sweat it. But  
13 by that point, Patrick and Akira -- Patrick's already told her, hey, I'm sorry, and  
14 they're coming back up.

15              But now Patrick's interested in why -- why is the Defendant  
16 jumping in to his family, and pulling his wife away, and having a private  
17 conversation. Hey, why do you need to do that? This is between us. We're  
18 resolving this. And the Defendant is still agitated. You're yelling at these  
19 women. And Patrick is, no, no, no, no, it's not like that.

20              The Defendant keeps going with it. So, there comes a point where  
21 Patrick said, you know what, you and I need to have a conversation. We need  
22 to talk about this. Have a man-to-man talk downstairs, outside. And that's the  
23 point where Patrick, unsuspecting, thinks he's just in a family argument,  
24 makes, certainly, a fatal mistake. He goes first. He starts to walk down the  
25 stairs. The Defendant, maybe five steps down, directly behind, pulls out a gun,

1 and fires the fatal shot right into Patrick's skull, right in the back of his head,  
2 toward the left side. He continues. As I told you, he goes down, fires two  
3 more into the body.

4 At this point, he's not done, because Miranda and Akira hear all of  
5 this of course, and they come running over. So, they start to go down the  
6 stairs. And if you remember, from the pictures, the stairs have a couple of  
7 steps, another landing, and then they go down the rest of the way, making a  
8 left turn is you're going down. And they get a couple of steps down. Akira is  
9 behind Miranda, so she hasn't really made it around the corner. But Miranda  
10 sees -- she sees the Defendant standing there over Patrick's body, holding a  
11 gun. And what does he do? He points the gun right at her.

12 If you and your kids want to live, you'll shut the fuck up. That's  
13 what he tells her. She's obviously frozen in place. The Defendant wedges the  
14 door open against Patrick's body and heads off through the garage. He was  
15 located three days later.

16 That is the evidence of a first degree murder. Miranda and Akira  
17 told you the level of fear that they had that day. Their fear of the Defendant,  
18 knowing him, knowing what happened, and, of course, that day they told the  
19 police not all the details. They misled them a bit. They of course left the  
20 Defendant's name out of it. And why is that? Is it because there was some  
21 mysterious man that came over to purchase some pot from Patrick and  
22 decided to just shoot him, not take anything, and leave? Of course not. They  
23 were scared to death. Scared to death of Shawn Glover. He had just  
24 murdered Patrick. Patrick's body is laying there on the floor, blood on the  
25 door, on the floor. He's pointing a gun, threatening about snitching. What are

1 they supposed to do?

2           They talk to the police. The police can't stay with them. They don't  
3 know where to go. They've only been there a few weeks. They were  
4 supposed to go that day to go rent a new apartment. They're panicked. So,  
5 they leave the Defendant out of it, for the moment. And, of course, they came  
6 back around because, as Miranda told you, family helped. Got them out of  
7 that house, gave them a place to go, gave them some degree of feeling safe,  
8 and by the next day they realized there was really only one thing to do. One  
9 thing to do is the right thing to do. And the one thing to keep their family safe  
10 is to tell the police who did it, not make something up so that the actual  
11 murderer, the person who's threatened to kill them just roams free. Of course,  
12 that makes no sense.

13           So, they did. They swallowed it. They swallowed hard and went  
14 to the police station and said it was Shawn Glover. And if you'll notice when  
15 they were talking about the first statements that they made on January 1st,  
16 there were differences between -- inconsistencies between Akira and Miranda.  
17 You know, somebody knocked on the door, came in, and there was gun shots  
18 versus somebody's sitting up on the couch. But what they told you, under  
19 oath from that stand, the same thing they told the police the next day, was  
20 completely consistent between the two of them.

21           Of course, they were all -- they were both in different places at  
22 different times, but it all was consistent. It was all corroborated by physical  
23 evidence. And there's a reason for that. There's only one truth and if two  
24 people are telling the truth, it's consistent. And that's exactly what happened.

25           What makes this a first degree murder? It's a murder that's willful,

1 deliberate, and premeditated. You have instructions that go into great detail  
2 about what those mean, but it really boils down to this. It's willful because the  
3 Defendant acted. He knew what he was doing, and he intended to kill. He shot  
4 someone in the back of the head. It's deliberate, because he knows the  
5 consequences. I pull out my gun, and I shoot Patrick in the back of the head.  
6 He's dead, and I can make a decision to not do that. I have the time to do that.

7           And it's premeditated because he planned to do it. He closed the  
8 door, put the children away, followed Patrick from behind, pulled out his gun.  
9 He made decisions. And your instructions will tell you that time isn't the key  
10 part here. It doesn't have to be this long drawn out process. It can be  
11 successive decisions. And that's what happened.

12           The evidence of first degree murder is really grouped into four  
13 categories of the things you heard and what it tells you about the first degree  
14 murder. First, the gunshots themselves, the quantity, the locations,  
15 eyewitness testimony, what Miranda and Akira told you about the  
16 circumstances, the circumstances immediately before the shooting, the crime  
17 scene itself, and certainly, perhaps most compelling, Patrick's injuries and  
18 what Dr. Corneal told you them.

19           The gunshots. Three times. You saw the pictures of these -- the  
20 confined surroundings. The stairwell is pretty narrow. It goes down, and  
21 there is nowhere to go but two doors, garage, front door, and this little  
22 landing. Three shots. He shot him in the back of the head, but that wasn't  
23 enough. He's going to make sure he's dead. It's evidence of his intent to kill  
24 and his plan to do it, and he shoots him three times. First shot, back of the  
25 head.

1           And you remember Akira testified she's listening because she's  
2 sitting over on the couch when this -- when this happens. And she hears  
3 about five steps down the stairs. So, you figure the landing  
4 -- the couple stairs at the top, the landing, and then a few more on the way  
5 down. That's when she hears the first shot, there's a pause, then boom,  
6 boom, second and third shots. And that's because he shot him in the head.  
7 Now, Patrick's down, and he's finishing him off. There is no chance the  
8 Defendant's letting Patrick get up.

9           What about Miranda and Akira's testimony? It tells you of the  
10 deliberation, the premeditation -- again, it's the -- think about the kids. They  
11 were running around. Why does he put them in a room and close the door if  
12 he is not planning on something bad happening? You know, put the little kids  
13 -- one of them is his -- put them away for this. They don't need to see this.

14           Then he even tells Miranda, do you want me to take care of this?  
15 He's ready to go. He's ready to take care of it. And of course, he makes sure  
16 he's behind.

17           What they also told you shows his consciousness of guilt. And you  
18 have a flight instruction as well, and that's part of it. And it's evidence that the  
19 Defendant is conscious. He's aware. He knows what he has just done. It's no  
20 shock to him, and he's covering it up. He's got to do a couple of things. He  
21 has to threaten Miranda and Akira and make sure they're not interested in  
22 telling the real story. So, he does that and then he flees. He takes off.  
23 Nowhere to be found. It's a few days later before the police find him. It shows  
24 he's aware. It shows his intent, his plan, and that he knew full well what he  
25 was doing.

1 Patrick's body also, as part of the crime scene, starts to paint the  
2 picture. You'll see -- and you'll remember Miranda told you he was face down,  
3 a little bit more on the side when she found him, that she tried to do CPR while  
4 she was on the phone with 911. So, she had to kind of flip him a little bit. But  
5 he hit the ground right down there. And you can see blood on the door most  
6 likely from his head, spent shell casings, bullets, fragments all around the  
7 body.

8 The cases and bullets themselves, three spent .40 caliber casings  
9 right down there. Two of them -- well, one against the wall, one against the  
10 door. So, two right on the ground there. And a third in the righthand picture  
11 that's on the rug basically under Patrick's body. They're .40 caliber. And you'll  
12 remember the victim's gun is tucked neatly, still away, holstered on the inside  
13 holster in his pants. It hasn't gone anywhere. There's no round chambered.  
14 It's not been fired because there would be another round in the chamber. And  
15 there's no 9 millimeter cases anywhere.

16 Patrick had no chance to defend himself. He had no idea what was  
17 about to happen. The bullets and the fragments. In the left-hand picture you  
18 have a nearly intact bullet right up against Patrick's body. And there's some  
19 fragments that are eventually recovered from his arm. So, that bullet traveled  
20 through. And then the next two on the rug and when the rugs were moved, on  
21 that tile floor, more fragments from the bullets. And those relate to this defect  
22 in the rug and the tile.

23 So, when you look at the pictures and the crime scene analyst was  
24 testifying, she told you there's this hole in the rug. It goes through. They  
25 peeled the rug back, and this is where the fragment, or that last fragment is,

1 right there where that tile is broken away. And then you'll remember Detective  
2 Owens telling you what that means. Because there were -- if you look -- you  
3 saw the pictures. There's not bullet holes in the walls, anything like that.  
4 There's a bullet in Patrick Fleming's head, and there's bullets on the ground.  
5 And the one hit that tile, it had to come from above. That means standing  
6 over, shooting.

7           The injuries. This -- Dr. Corneal told you of course, the cause and  
8 manner of death, gunshot wound to the head, a homicide. This really is no  
9 surprise to anyone. Everybody from Miranda at the beginning, when she first  
10 went down to Patrick, to everybody that saw him, could have told you this  
11 part. But what they couldn't tell you, that Dr. Corneal can from examining  
12 Patrick's body, is the significance of the injuries themselves.

13           And in particular, this gunshot wound to the head. So, it goes in  
14 the back of the head, through the skull. And the trajectory, the path. The  
15 bullet travels rightward, downward and forward. And you can see from the  
16 picture the entrance wound is just slightly to the left of center. So not far off.  
17 And it's traveling down. The bullet gets lodged in his jaw. So, it goes through  
18 skull, severs the brainstem, lodges in the jaw, instantaneous death. The only  
19 way that bullet travels that way is if someone is shooting from behind and  
20 above, like on a stairway.

21           The gunshot wounds in the body have other significance. You  
22 remember the right upper arm, the right upper leg, almost really the groin  
23 area; those are both traveling downward on their path. So, again, consistent  
24 with the Defendant standing over Patrick. And what's important, they're  
25 perforating injuries. That shows that proximity and is consistent with the

1 crime scene and all this testimony about the defects in the floor, Detective  
2 Owens' testimony. Those bullets are going through and hitting the ground.  
3 Those are the fragments. That's the broken tile.

4 This is a first degree murder. There are two additional crimes on  
5 your verdict form that the Defendant committed, and they probably seem  
6 pretty obvious at this point, but assault with a deadly weapon, the Defendant  
7 threatened Miranda with the gun. He raised the gun to her. He threatened  
8 her. He put her in immediate fear. She told you, I thought I'm next. And  
9 under the circumstances, what just happened in that house, what she just saw,  
10 what she was just told, that fear is absolutely reasonable. Anyone would have  
11 felt that way.

12 And of course, under the manner in which it's used, the deadly  
13 weapon, it's of course a firearm, the Defendant's firearm. And discharging  
14 from within the structure, the Defendant maliciously fired his gun. How do  
15 you know it's malice? Again, pretty obvious, he just murdered somebody.  
16 There's fragments, cases all over the floor. And as part of the instructions, the  
17 law requires, of course, you can't shoot a gun in North Las Vegas, in that area.

18 What this case really boils down to is the Defendant put a bullet in  
19 the back of Patrick's head. And that is first degree murder all day long. The  
20 State has met its burden and proved to you, beyond a reasonable doubt, that  
21 the Defendant, Shawn Glover, is guilty of all crimes charged, including first  
22 degree murder with the use of a deadly weapon.

23 THE COURT: Does anybody need a break before we hear the  
24 closing argument for the Defendant? Counsel, when you're ready. Do you  
25 want to unplug that and re-plug it in?



1 [DEFENSE CLOSING ARGUMENT]

2 MR. BASHOR: Good morning, folks. The State has not met its  
3 burden. The State has not proven Shawn guilty beyond a reasonable doubt.  
4 That's what this case is about. It's defined in your instructions. You're going  
5 to hear that phrase like you do all over television and everywhere else, but it  
6 has special significance here because this is the courtroom and that is the  
7 burden, the burden of proof and the level of proof that is required for the State  
8 to prove guilt beyond a reasonable doubt.

9 Now, we're going to analyze some of this evidence. Common  
10 sense, we don't leave that and check it at the door. We bring it with us.  
11 Common sense, human experience. What makes sense under the  
12 circumstances. We're also told about feelings and emotions. A man was  
13 killed. It would be perfectly natural for you to have emotions about that  
14 because you're a human being. You can have those emotions. It just can't  
15 cloud your sincere judgment when analyzing the evidence in this case in  
16 coming up with your verdict. No one's saying that you -- all of a sudden,  
17 you've become some kind of robot. Of course, those emotions should enter  
18 your head, but they can't be used.

19 That's the lens I ask you to analyze this evidence through. Use  
20 your common sense. No sympathy, prejudice, public opinion. Use your  
21 sincere judgment and sound discretion. So, let's dive in.

22 Miranda. She tells you that she calls 911 right after this -- after the  
23 shooting. What does she tell 911? All crying, hysterical, little time to think.  
24 My husband answered the door, and he's been shot. Who shot your husband?  
25 I don't know. We attempted to discuss what she remembered and did not

1 remember from this first statement to the police later in that day on January  
2 1st, right? Has no recollection and a transcript of that statement is of no help  
3 to me. A transcript was of help to me 10 minutes before when I forgot what I  
4 allege Shawn told me when he pointed the gun. That transcript that I didn't  
5 sign, refreshed my recollection.

6 She said that she was afraid for herself and her family. What do  
7 we hear now? We hear, it's a typical argument, family stuff. The argument  
8 was really with me. It wasn't even with Akira. There was a lot of shouting and  
9 hand clapping, but nothing necessarily out of the ordinary. She tells you that  
10 Shawn asked to take care of something that he has no involvement in  
11 whatsoever; doesn't concern him at all. Use that lens. Use that common  
12 sense. Does that make any sense to you?

13 There's an argument going on in the garage between three  
14 members of a family. And it doesn't concern him, and he's hot to trot. For  
15 what reason? It makes no sense. And that the argument was over. Right?  
16 We hear apologies. I'm sorry, smiles. So, he kills Patrick? What? The  
17 argument's over. He says well, Shawn's angry. Patrick attempts to calm  
18 Shawn down. Shawn doesn't want to be touched. Patrick invites Shawn to  
19 talk about it and, for no reason whatsoever, he kills Patrick.

20 Credibility, instruction 29. The credibility of a witness should be  
21 determined by his manner upon the stand, his relationship with the parties, his  
22 fears, motives, interest, or feelings, his opportunity to have observed the  
23 matter to which he testified, the reasonableness of his statements, and the  
24 strength and weaknesses of their recollections. It's in your packet. You'll be  
25 given that packet. I know that the Judge read it. I'm not meaning to patronize

1 you. And these are the instructions on the law. And they're important in their  
2 entirety.

3 But let's explore some of the elements of this instruction when it  
4 comes to the testimony of Miranda. If Miranda came in here and said I lied  
5 because I was scared, and that's it, and I regret it, and here's what actually  
6 happened, that'd be perfectly reasonable. What we saw here on the stand was  
7 a hundred percent unreasonable. I don't remember what I told the police. I  
8 believe I said that. I might have said that. I don't know. All I know I was  
9 scared. For some reason in a higher state of emotion before giving her  
10 statement on January 1st, 2016 on 911 she was oh, yeah, yeah, yeah, I told  
11 them that. This person is not to be believed. Look at the credibility  
12 instruction. He's [sic] unable to answer simple and direct questions.

13 Let's talk about reasonableness, also part of that credibility  
14 instruction, right? I kept asking the police to stay for the safety of me and my  
15 family. What evidence do we have of this other than from Miranda? No  
16 police, no detective, no first responder, no CSA came into the courtroom, took  
17 this stand and said, yes, she was begging for us to stay. No one. Your source  
18 of that information is Miranda.

19 Recollections. I remember what I told 911. Don't remember what I  
20 said two hours later. And that transcript that you have in your hands, is of no  
21 help. It helped her on direct. We talked about that.

22 So, what do you do with this? You have these weird credibility  
23 issues. You have a choice. The instruction tells you so. You can take it and  
24 throw it all out. Look, I'm not -- I'm not stupid. I know you're not going to do  
25 that. But the instruction also invites you to look at what is proved by other

1 evidence. Cooperation. If you believe that Miranda's lied to you about  
2 material facts, I think the inability to recollect a statement made to police in  
3 which you lead the police on an investigation into the false person, according  
4 to you, who committed this crime, you probably have a pretty good  
5 recollection of it. Demand other evidence.

6           So, we go on to Akira. And before I forget, we've heard on first  
7 summation that well, you know, there was some inconsistencies in the first  
8 statement of Miranda and Akira. First of all, I don't know how much of the first  
9 statement of Miranda you got out of all that, but there's inconsistencies. And  
10 how do we know when they come around the next day that it's the truth?  
11 Well, they match. They had a day to talk with one another. A day to match.

12           So, Akira says Hatch is at the house, that Patrick sells marijuana,  
13 that he's a customer, that Patrick averages two to three customers a day, that  
14 she hears the shots. She doesn't see it. Doesn't see Hatch run away. She tells  
15 the police never seen Hatch before. Told police Miranda doesn't know Hatch.  
16 Told police she didn't know if Hatch went by any other names. And that's  
17 critical because later she says -- she says Shawn's Hatch, right? I'm so afraid  
18 for myself and my family. I'm so terrified I'm going to give the police his real  
19 street name. What I believe his street name to be. I thought we were so afraid  
20 that we were going to cast aspersions somewhere else.

21           She tells the police the car is not where it was usually parked. The  
22 car was missing. The keys were missing. Tells the police it's likely Hatch took  
23 the keys. We heard on first summation there was no evidence of anything  
24 being taken. The car was taken. The car was certainly of interest to the police.  
25 They dispatched a CSA to it. Took that buccal swab, that Q-Tip, swabbed the

1 gear shift, swabbed the steering wheel. Something was taken, the car. We  
2 heard. It wasn't parked where it was supposed to be, and the keys are  
3 missing.

4           The ID. This makes no sense. I'm so terrified. I'm so afraid. I  
5 want to protect my mother. I want to protect myself. So, I'm going to lead the  
6 police in a different direction. Let them go off on a different direction, but it  
7 was Hatch and that means Shawn Glover. You heard no evidence from  
8 anyone else that Hatch is Shawn Glover, none. No police officer, no detective.

9           Again, we have a description of the argument because it matches,  
10 right? The argument over allowing a boy in the car. It was loud, but by the  
11 time they exited the garage they were laughing and smiling, and Shawn is  
12 upset. He's upset about an argument he's not a party to, upset about an  
13 argument that has nothing to do with him, upset so much that he's  
14 premeditating and deliberating a killing. Look, I'm not saying -- and I would  
15 hope -- and I hope no one in this room ever has to experience even being  
16 within earshot of a killing. It's natural that somebody would be afraid. It's got  
17 -- well, at least at the very minimum a great shock. It's not an everyday  
18 occurrence.

19           No one's blaming Miranda and Akira for being afraid. Just like any  
20 normal human being would be. But afraid people across this country who are  
21 in earshot or witness a murder tell the police the truth. And when you're  
22 surrounded by the police, the people that are sworn to serve and protect, our  
23 protectors, our first-responders, the people who are far braver than me, go out  
24 in the front lines and protect us. And we know that. That's their rule, that they  
25 have sworn to do that. Those are the people you tell the truth to if you're

1 afraid. Those are the people, because you know what the police will do? They  
2 will attempt to find that person and arrest that person because that's their job  
3 to protect everyone.

4           So, the worst thing you can do in that circumstance is send the  
5 police along with incorrect information to only be left alone; that doesn't make  
6 sense either. I'm so afraid, I'm going to lie to the police, so they go off into  
7 wherever, and then I'm going to be alone. No. You tell them the truth. And  
8 Detective Owens knows that because as the detective is being brought  
9 different pieces of information, as we heard, and he testified to, that the  
10 decision to where to take an investigation depends on the totality of the  
11 information known.

12           So, if Shawn is the actual suspect, that first 12, 18, 24 hours he's  
13 not being pursued because the information they're giving is someone that  
14 they've never really seen before, that they don't really know, this unknown  
15 person has committed this crime. So, what do we do? We have these two  
16 witnesses who we know, if we believe them, are liars. So, what do we do?  
17 Well, we look for corroboration. We look for other -- as the credibility  
18 instruction told you, we look for other evidence out there. And we look at the  
19 totality of the evidence that they proposit to have against Shawn.

20           So, we learn that the CSA basically drives a huge collection,  
21 evidence collection kit. It's a van or a vehicle of some kind, stocked with all  
22 kinds of different tests, right? They can test for DNA, touch DNA included,  
23 right? Skin cells, fingerprints, blood tests, gun powder residue tests. So, let's  
24 take a look at the list of the physical evidence. The physical evidence  
25 connecting Shawn to that home. Let's look at the physical evidence that was

1 given to you. There's the list folks. That's your list. That's how much physical  
2 evidence ties Shawn to that scene.

3           We heard that there were -- as a comparable print now, we heard  
4 that there's, you know, prints that are just of no use whatsoever, right? We  
5 heard comparable is kind of your medium range, who knows, maybe if we put  
6 it in the system, we might get something. And then we heard there's this  
7 AGIS (phonetic), like the gold standard print. Now, they have a comparable  
8 print from the door leading -- from the garage. The door that goes in and out  
9 of the garage. They have a comparable print.

10           So, let's look at the results. Not tested, no results. That's okay.  
11 We know that the truck was taken. And we know that they used a touch DNA  
12 kit again. Remember about the gear shift and the steering wheel and the  
13 door? We saw the pictures of that, right? We saw the CSA doing that job and  
14 well, if the car was taken, which we hear from Akira that that was something  
15 that she wanted to point out to police the vehicle was taken. It wasn't found  
16 where it was supposed to be found. And we went out of our way to collect  
17 potential touch DNA. So, let's look at the results. They're going to put Shawn  
18 in that car, right? There they are. Not tested.

19           So, corroboration, right? We know that the weapon used in this  
20 killing was never recovered. We heard from Detective Owens that would  
21 mean -- it's an important piece of evidence in any murder investigation. That  
22 makes a lot of sense. It does. I mean, if you have a killer in possession of the  
23 murder weapon, it's pretty damning stuff, right? But we do have the shell  
24 casings, right? All three by the way are on the landing at the bottom. You  
25 don't see one up the stairs or on the stairs. You see all three on the bottom.

1           No tests are done on these casings whatsoever. Remember what  
2 we heard about prints and touch DNA? You have to touch a bullet to put it in a  
3 gun. And don't settle for excuses for the lack of physical evidence in this case.  
4 Let's just pretend that none of this stuff would be helpful to you. Well, North  
5 Las Vegas' budget problems are solved. We can get rid of all the CSAs. We  
6 can get rid of all the kits. We don't need them because they're going to be no  
7 help in solving an investigation or prosecuting a defendant in our courts.

8           So, you're going to hear well, the next day they came clean. They  
9 said it was Shawn. And then we hear on cross-examination of a CSA that their  
10 own science is limited, that you know, certain surfaces and -- versus other  
11 surfaces, and we heard that there's only one lab in the country that does the  
12 gunshot residue tests. We heard, you know, it's all limited. And it's poor at  
13 giving you a date and time. There's no  
14 -- it's not like when you leave your DNA, you leave a date and time stamp with  
15 it, right. That make sense. Test it. In this case, you have it, at least two things.  
16 You have it. Test it. Give the ladies and gentlemen of a jury some  
17 corroboration.

18           More excuses. There's no need to test because now they've come  
19 clean. We don't have our own lab. This is an open and shut case. And Mr.  
20 Stanton, in voir dire, made the point of an example of the cutting the plane of  
21 the cornea to see what the eye had seen. Obviously, that's outrageous, right?  
22 And it was explored for that reason because he's right. Some of the stuff on  
23 those shows is -- it's pure fiction. It's entertaining maybe, but it's pure fiction.

24           But I'm not talking about pure fiction. I'm talking about the stuff  
25 they have in the back of their van. We don't know what efforts were taken to



1 locate the weapon. I imagine that there were efforts made. And that's  
2 because of what Detective Owens told us, right? It's a critical piece of  
3 evidence in a murder investigation, but you don't have it. All the more reason  
4 more testing, more swabs, more prints should have been taken that day is this.  
5 Police, first responders, and detectives are told an unknown person did this,  
6 but it occurred on the stairs. We don't see swabbings of walls, powdering of  
7 walls. We don't see railings. We don't see shell casings being, you know,  
8 tested for any of this stuff.

9           If you're trying to find an unknown person, to the people that are at  
10 least in earshot of this crime, you're going to want to collect and test as much  
11 as you possibly can, or maybe not because the two things we do collect, we  
12 don't test. Our system demands more from the testimony, who if believed, of  
13 two witness are liars, to prove someone guilty beyond a reasonable doubt of a  
14 murder.

15           Okay. We have the suspect testimony of two people. We have no  
16 corroboration, no physical evidence whatsoever linking Shawn to this murder.  
17 Well, then Shawn must have had a reason to kill. That would make sense,  
18 right? Do not confuse intent with motive. Motive is what prompts a person to  
19 act. Intent refers only to the state of mind in which the act is done. Motive is  
20 not an element of the crime. I'm not telling you it's the elements you see in  
21 those instructions plus motive, right? But you can consider motive or lack of  
22 motive as a circumstance in this case because it is relevant.

23           So why? Why then? Why there? Why at that moment? Why  
24 under those circumstances do you commit what is alleged as a first degree  
25 murder? I'm not the only person interested in the why. We heard from

1 Detective Owens. We like to get the who, what, where, why when we respond  
2 to a scene, those are relevant and important.

3           So, Shawn kills Patrick for what reason? From what we heard,  
4 since the time Shawn moved in to the time that this occurs, that they were  
5 getting along. In fact, Patrick drove him to work the day before. He's not a  
6 party to the argument. It's not his home. His child's with Angela, not Akira.  
7 It's not like Shawn's going down to pound his chest to protect the mother of  
8 his child. And the argument's not all that serious apparently. There's -- it's  
9 loud. They're clapping. But it was over. Apologies. Coming back up the  
10 stairs. It's about none of those things.

11           Why then? Why in front of them? Why within earshot of them?  
12 It's not the best place to commit a first degree murder. Common sense told  
13 you he had not motive to kill. No reason. And if we're going to say the hot  
14 and bothered motive -- and I'm not saying -- the two other adults had more of  
15 a motive if we're going to follow that logic. Akira's being dressed down as a  
16 20-year-old woman for doing what adults are perfectly allowed and able to do,  
17 right? She's getting dressed down. Patrick and Miranda are to the point  
18 where they're clapping at each other and yelling at each other. That's actually  
19 more motive than Shawn. But who else had a motive? Hatch? A customer?  
20 Remember those casings were found at the bottom of the stairs, all three.

21           Okay. Before I conclude --- and I very much appreciate your  
22 attention -- I made a list of things brought up in the first summation.  
23 Fortunately, I covered all of them but one. The nefariousness of putting the  
24 children in the room. There's no other reason, right? He's planning to kill.  
25 How about not hearing your grandfather, your grandmother, your aunt argue?

1 And that's even if Shawn were there and Shawn was involved in this thing,  
2 which he wasn't.

3 So, reasonable doubt, that's what this case is about. We have no  
4 corroboration. We have no physical evidence, and we have no motive for first  
5 degree murder. Do not accept excuses in the absence of evidence. Mr.  
6 Stanton's going to get up last, and he should, because they have a burden of  
7 proof; that's how it works. It's their burden to prove this case beyond a  
8 reasonable case, but do not accept excuses for the absence of evidence.  
9 Demand corroboration. Demand motive. These doubts are reasonable, folks.  
10 Not saying E.T. did it. There are reasonable doubts. They exist. Remember  
11 this is a criminal case. It's a murder case. They have the highest burden of  
12 proof in the land, beyond a reasonable doubt. They have not met their  
13 burden, and I submit to you it's simply not enough. Not in our system of  
14 justice. It's not enough. And therefore, he's not guilty. Thank you for  
15 attention, folks.

16 THE COURT: Does anyone need a break before the rebuttal  
17 argument? All right. At this time, State, when you're ready.

18 [STATE REBUTTAL CLOSING ARGUMENT]

19 MR. STANTON: Thank you, Your Honor. I am. Let me kind of  
20 address Mr. Bashor's argument and the blank screens about the physical  
21 evidence in this case. Well, what theory of this murder do you want to operate  
22 from? Do you want to operate from the theory that a purchaser of narcotics  
23 knocks at the garage door, the door's opened, and for reasons that belie logic,  
24 common sense, and business, shoots a drug dealer without taking anything,  
25 things of value, that the person would be there to get? What DNA,

1 fingerprints, gunshot residue are you going to get from that?

2 Remember counsel's questioning of the crime scene analyst. Do  
3 you know of any samples -- and I'm talking throwing whatever you want -- in  
4 this case, fingerprints, DNA, gunshot residue, the railing, couch, counter -- if  
5 those results came back and said that the DNA was Akira, Ms. Sutton, Patrick  
6 Fleming, the Defendant, children would that make any difference? The key is  
7 there's no timestamp to that. The only DNA and fingerprints are relevant if  
8 that DNA is left at the operative, relevant time period involving this murder.  
9 Would you expect the DNA of the Defendant to be in the locations that the  
10 Defense is arguing should have been presented to you? No. The car, the  
11 house, his DNA is all over it in all locations.

12 So, what you saw here is exactly what should have been done.  
13 The testing wasn't to determine the identity of an unknown purchaser of  
14 narcotics because why? Not only do you have two eyewitnesses that know the  
15 assailant, not only marginally, but is a member of their family who they had  
16 been around for a long period of time.

17 So, if this is, hey, I've never seen this guy before, kind of knew him,  
18 had a mask on, had a hoodie, had a hat, that's when DNA, fingerprints could  
19 tell you a part of the story, but it will only tell you that the person touched this  
20 at some point in time. It wouldn't even tell you anything meaningful unless  
21 you could prove with certainty that that person had never been there before.  
22 And of course, if it's a drug dealer or purchaser, is he just going to knock on  
23 random doors to see if people are slinging weed? You'd have to know that.  
24 You'd have to know where to go.

25 And I'm waiting for Mr. Bashor to answer the question, well, where

1 was his client?

2 MR. BASHOR: Objection, Your Honor.

3 THE COURT: Sustained. Counsel, can you rephrase?

4 MR. STANTON: He said -- Mr. Bashor said, as he was making his  
5 comment about this Defendant, is the Defendant was not even there. Where is  
6 the evidence about that? In fact, the evidence is quite the contrary. Ms. Sutton  
7 and Ms. Veasley say the Defendant is in the apartment at the time of the  
8 shooting. Well, when the police arrive, where's Mr. Glover?

9 Remember whose home this is. It's Angela's home. If there was  
10 DNA and fingerprints of another person in this case, based upon the evidence  
11 you heard, DNA and fingerprints are only going to make a difference if it's a  
12 male, if it's a black male, and he's pulling the trigger of a gun. The DNA and  
13 fingerprints of a lot of people are going to be in that home. None of which  
14 would have any relevance to this case whatsoever.

15 The why, the motive, the lack of a motive. Counsel argues there  
16 was no motive for the Defendant to kill Patrick Fleming. But ladies and  
17 gentlemen, that presupposes that it's a motive based on a reasonable person's  
18 perspective. And I would submit to you that a person who's willing to talk to  
19 Ms. Sutton and say, do you want me to take care of things? Now, at the time  
20 Ms. Sutton doesn't understand the import of what she was just asked, she  
21 finds out very shortly and very tragically. That's the person whose mind --  
22 state of mind, is the determining motive, and that's Mr. Glover.

23 And it's evidenced, as Mr. Flinn told you, not only by what he says  
24 to Ms. Sutton but what he does in preparation. So, if Mr. Bashor tells you,  
25 look, the Defendant puts the kids in the room not because he's about to

1 commit murder, but he doesn't want to hear the kids hearing an argument.  
2 What's more logical? I agree with Mr. Bashor you are, as the law instructs  
3 you, not to leave your common sense at the door. Bring it into the  
4 deliberation room with you. So, what's the common sense interpretation of  
5 that? How about a person who's willing to -- and knows rationally to put the  
6 kids in the room because of what he's about to do, and says to Ms. Sutton, do  
7 you want me to take care of this?

8           And then armed with what? Not a carrot, a very powerful gun,  
9 fully loaded, and without telling anybody, walks right up behind Mr. Fleming  
10 and ends him. That's the motive, not from what you and I would do, but what  
11 the Defendant is prepared and willing to do. And that, what he saw and  
12 observed, offended him to the point that he did what he did. That's not our  
13 perspective of what's right and wrong. That's his.

14           Counsel says, and argues to you, that Ms. Veasley and Ms. Sutton  
15 are liars. He just said it to you, repeatedly. It's the core of their defense. So,  
16 I'm going to address one aspect that -- my very last comment to you before I  
17 sit down. But right now, let me ask you about whether or not they are indeed  
18 liars. So, if you're to believe Mr. Bashor that Ms. Sutton and Ms. Veasley lied  
19 to the police, then what you have to believe from the is that they have no  
20 motive or -- to lie to the police.

21           Now, you heard what -- and understand, ladies and gentlemen, the  
22 State, if you can recall, it's very subtle. The State never asked any question,  
23 any question of Ms. Veasley or Ms. Sutton on what we call direct examination.  
24 Mr. Flynn did it to both witnesses. The State's examination was what  
25 happened that day. That is their 2nd -- the January 2nd version of the

1 statement they gave to police.

2 We never ask a question of either one of those witnesses about  
3 what they said on January 1. Who did? The Defense did. They brought into  
4 issue that their statements were inconsistent. That's the core of their defense.  
5 That's what they want you to believe. Well, when you do that, their state of  
6 mind about why those statements are inconsistent is now fair game. And  
7 what did both of them tell you? We were afraid.

8 I would submit to you that that explanation, under the  
9 circumstances that you heard in this courtroom, is absolutely reasonable. As  
10 Mr. Flynn told you and as I am sure is not lost in your minds, they have no  
11 protection. At the end of the day, Detective Owens, Renee Harder, all the  
12 detectives, all the crime scene analysts, the tape, all comes down, people  
13 leave. And who's left in that home? Them, with the killer still outstanding,  
14 with children that they're responsible to protect, inside the home. Someone  
15 who they know, who's armed, and who has every reason in the world to cause  
16 them harm. But more importantly, ladies and gentlemen, their state of mind is  
17 what they know of the Defendant. And what do they tell you?

18 And the Judge gave you a very specific instruction after you heard  
19 the testimony of the witnesses in that regard. And that is they believed,  
20 because of what had happened, but also what they believed that the  
21 Defendant had been violent to others. That evidence can and should be used  
22 by you to look at her state of mind, Ms. Veasley and Ms. Sutton, in an  
23 explanation to you whether or not their first version and the inconsistencies  
24 were reasonable under the circumstances. And I would submit, under these  
25 facts, their perspective was abundantly reasonable.

1 Let me go back to kind of the question I had in voir dire about  
2 crime scene analyst shows. And kind of what's on television, and then the  
3 reality of what you see in this case. And it's a perfect example of the  
4 distinction between the two.

5 So, from Dr. Corneal's perspective, she looks at the body. The  
6 body of Mr. Fleming and the incredible amount of evidence, important  
7 evidence that is and was derived in her examination of that slice of the crime  
8 scene, his body. She could not tell you the sequencing of the shots fired that  
9 killed Mr. Fleming and injured him, from her perspective, but if you take a  
10 trained homicide detective with lots of experience and you expand the scope  
11 of knowledge and evidence for a homicide detective to evaluate, you have  
12 what Detective Owens told you. Because he and you, as the finder of facts  
13 looking at these photographs and what you heard and when people heard  
14 things, in what order, with what time delays, you can tell the exact sequence of  
15 these gunshots.

16 Mr. Flinn told you that the first shot was to Mr. Fleming's head.  
17 How do you know that? Well, in some sense, none of this is really relevant,  
18 but I think it's critical to know because it tells you how, and why, and who  
19 killed Mr. Fleming. Here to here, severs the brainstem, fractures the mandible.  
20 So, two things Dr. Corneal told you about that wound. One, kind of obvious,  
21 it's fatal. But two, my question is, Doctor, in your opinion, was this an  
22 instantaneously incapacitating injury? Answer, yes. It's uncontested in this  
23 case.

24 The severed brain stem. If he's walking, and I doubt he is, gravity  
25 is pulling Mr. Fleming to the bottom of that staircase. He is dead when he hits



1 the floor at the bottom of the stairs when he comes to rest. The wound on the  
2 inside of the thigh is as such a drastic angle there's no way he was shot  
3 walking down the stairs unless the shooter is above him pointing down or  
4 reaches over his shoulder and shoots in thigh going down.

5           What you heard from Detective Owens, as he examined Mr.  
6 Fleming, was crucial because remember, Detective Owens, number one,  
7 doesn't even know who the shooter is when he's looking at Mr. Fleming at the  
8 scene, but he's a trained homicide detective. Not only is he determining, as he  
9 said, the who, what, why, where, and how, he's trying to determine about the  
10 gun in Mr. Fleming's waistband. Just off center to the right, inside the buckle,  
11 and based upon a trained homicide detective, who also carries a firearm  
12 oriented to a righthanded shooter.

13           So, certainly, Detective Owens has to investigate this case as to  
14 whether or not there -- if there is a disagreement argument between two  
15 parties and the deceased person has a gun, was there any evidence of self-  
16 defense. The gun hasn't moved. And of course, that's why you examine the  
17 gun as you heard in this case. It's not even ready to fire. It couldn't have been  
18 fired. It had to be manually loaded by sliding back the slide mechanism to put  
19 a round in the pipe and in the chamber.

20           And further, Detective Owens, because he is who he is, noticed not  
21 only a bullet defect in Mr. Fleming's arm, his right arm, that there was an  
22 additional indication to him about more injury than just a bullet going through  
23 his right bicep. And sure enough, he's right, confirmed by the presence the  
24 next day when he's present at the autopsy, reviews an x-ray, and indeed  
25 confirmed as you hear it by Dr. Corneal, that this bone is completely fractured.

1           So, guess what happened to self-defense? It just grew wings and  
2 flew out the window. Even if he were capable after being shot, he couldn't  
3 have done it with his right arm, Mr. Fleming. And so, you have the two final  
4 shots. And as Mr. Flinn suggested to you, and I as well, what does that tell  
5 you? What does that tell you as evidence in this case? That while lying at the  
6 bottom of the stairs, standing right over him, not pointing a carrot, but a .40  
7 caliber semi-automatic handgun, pulls the trigger twice to a defenseless  
8 individual lying on the ground.

9           Now, counsel suggests and put up a slide that says why would  
10 someone do that if there's witnesses right there. You and I might not do that,  
11 but if you turn around and say -- and remember the exact words that Ms.  
12 Sutton testified to you from that chair, under oath, the Defendant said to her.  
13 It wasn't just a threat to her and Ms. Veasley, it was a threat to the children as  
14 well.

15           So why would someone do that? Well, guess what, ladies and  
16 gentlemen, did it work? For a while it did. For a while it did. But Mr. Bashor  
17 says, well, that's crazy. Guess what, they didn't tell the police the whole truth.  
18 Most of what they said, if you were going to consider it a lie, is the omission.  
19 Counsel says, well, she said Hatch. How's she afraid. That's inconsistent with  
20 Ms. Sutton. Well, ladies and gentlemen, that presumes Ben Owens knows  
21 who Hatch is. Okay? He doesn't know who Hatch is. Do you run Hatch  
22 through the database trying to find a guy by the name of Hatch? Even when  
23 the detectives knew his name 24 hours later, Shawn Glover, did they arrest  
24 him an hour later? The uncontroverted testimony is he was arrested several  
25 days after knowing who he was.

1 Ladies and gentlemen, there's one question that I was hoping Mr.  
2 Bashor would answer. Because if you believe the Defense theory of this case,  
3 you have to believe this. Patrick Fleming had a wife. Patrick Fleming had a  
4 step-daughter. You heard Ms. Veasley call Mr. Fleming in her testimony to  
5 you my dad. What you have to believe is that these liars took the stand, under  
6 oath, looked and identified that man, Mr. Glover, right in the eye and told you  
7 falsely, he's the killer of my husband and my father.

8 So, let me get this straight. You frame an innocent man, and that  
9 the justice that you want for the killer of your husband and your father is not to  
10 put the real killer in prison, but to frame an innocent man. So, with Mr. Bashor  
11 in accord with me, apply your common sense to that theory. Thank you.

12 THE COURT: All right. The Marshal -- Marshals will be sworn,  
13 thank you, to take charge of the ladies and gentlemen of the jury.

14 [The Clerk swore in the Marshals to take charge of the jury  
15 during deliberations.]

16 THE COURT: Okay. Thank you. Ladies and gentlemen of the jury,  
17 I need the two of you, jurors 13 and 14 are going to go with one of my  
18 marshals to the jury lounge where we are going to bring you lunch in about 30  
19 minutes give or take. Give us a little time, but we're going to bring you lunch,  
20 because we ordered lunch for the jury. And then the jury -- the rest of you,  
21 jurors 1 through 12 are going to have a working lunch while you deliberate.  
22 So, you are excused.

23 THE MARSHAL: All rise. The jury is exiting.

24 THE COURT: And so, juror number 13 and 14, you're going to go  
25 to -- you're under the same admonishment. You can't talk about the case until

1 you've been discharged.

2 Mr. Jones, you can't talk about the case okay? So, you're going to  
3 go to the jury lounge. My staff's going to bring you there. We're going to  
4 bring you lunch. Just hang out until you get further instructions from my staff,  
5 okay? Thank you.

6 [Outside the presence of the jury]

7 THE COURT: I can't see that door.

8 MR. STANTON: Yes, Your Honor.

9 THE COURT: Thank you. Okay. So, my clerk has your phone  
10 numbers. My clerk has the phone number?

11 MR. BASHOR: Yes.

12 THE COURT: Okay. So, thank you very much. Is there any other  
13 record we need to make? There was one objection, and I sustained it.

14 MR. BASHOR: No.

15 THE COURT: All right. Then I'll see you when I see you.

16 MR. BASHOR: Very good.

17 MR. STANTON: Thank you, Your Honor.

18 [Recess at 12:03 p.m., recommencing at 3:50 p.m.]

19 [Outside the presence of the jury]

20 THE MARSHAL: Remain seated. Come to order. Court is back in  
21 session.

22 THE COURT: All right. We're back on the record in C312448-1,  
23 State of Nevada v. Shawn Glover. Let the record reflect that the attorneys and  
24 the Defendant are present.

25 The jury's indicated they've reached a verdict. And where are the

1 alternates?

2 THE MARSHAL: Next door. They're going to be right behind  
3 them.

4 THE COURT: Do either of you have a problem with the alternates  
5 sitting in their seats in the jury box so that they can hear the verdict?

6 MR. STANTON: Not from the State.

7 MR. BASHOR: No, Your Honor. I do have a question. Now, do  
8 you prefer that we stand for the verdict?

9 THE COURT: No.

10 MR. BASHOR: Okay.

11 THE COURT: I appreciate the offer, but no.

12 MR. BASHOR: Okay.

13 THE COURT: And for the record, that's the same in every case. I  
14 just --

15 MR. BASHOR: It's good to know, Your Honor. I just -- different  
16 judges, different --

17 THE COURT: No, I hear you. Can I see counsel at the bench  
18 briefly?

19 [Sidebar begins at 3:52 p.m.]

20 THE COURT: I see you there with your file. And I see you there  
21 with your little note thing on the left. And I see you're going to write a date  
22 and then you're going to write the verdict in. That little piece of paper that's  
23 exactly the same as when I sat in that seat 24 years ago.

24 MR. STANTON: Yeah.

25 THE COURT: Twenty-four years ago, a jury trial would come back

1 -- a jury would come back, and you sat there, and you wrote guilty Count I. It's  
2 good to see that you're making a lot of progress in your office --

3 MR. STANTON: Well, it's funny you say that because I was just  
4 over and sitting around in the office, bullshitting about that we just adopted a  
5 new software to do subpoenas and stuff like that, that doesn't -- we spent \$2  
6 million for software that didn't work. So, then we go --

7 THE COURT: Oh, I'm aware.

8 MR. STANTON: -- find out that -- oh, you know about the whole  
9 thing?

10 THE COURT: Uh-huh.

11 MR. STANTON: So, now it's the breakout time, and they're not  
12 working. So --

13 THE COURT: Well, I'm just saying --

14 MR. STANTON: And the software looks like 2005.

15 MR. BASHOR: Is it (indiscernible).

16 MR. STANTON: Yeah.

17 THE COURT: Just in case in you guys think, you know --

18 MR. BASHOR: Good luck with that.

19 MR. STANTON: Yeah, oh yeah.

20 THE COURT: -- you're under funded, it's --

21 [Sidebar ends at 3:53 p.m.]

22 THE COURT: Okay. Do you have the jury?

23 THE MARSHAL: Yes, ma'am.

24 THE COURT: All right. Go ahead and bring them in.

25 THE MARSHAL: All rise. The jury is entering.

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[In the presence of the jury]

THE COURT: Counsel, will you stipulate to the presence of the jury.

MR. STANTON: Yes, Your Honor.

MR. BASHOR: Yes, Your Honor.

THE COURT: And for the record the parties have agreed that the alternates could remain in the jury box so that they could hear the verdict being returned. Has the jury elected a foreperson?

THE FOREPERSON: Yes, Your Honor.

THE COURT: And which juror is the foreperson?

THE FOREPERSON: Juror Number 2.

THE COURT: All right. Has the jury reached a verdict, Juror Number 2?

THE FOREPERSON: Yes, Your Honor.

THE COURT: Could you hand the verdict to my Marshal? Okay. At this time the clerk will now read the verdict of the ladies and gentlemen of the jury out loud.

THE CLERK: District Court Clark County, Nevada, the State of Nevada, Plaintiff v. Shawn Glover, a.k.a. Shawn Lynn Glover, Jr. Defendant, case number C-16-312448-1, Department IV.

Verdict. We the jury in the above-entitled case find the Defendant, Shawn Glover, a.k.a. Shawn Lynn Glover, Jr. as follows: Count I, murder with use of a deadly weapon. Guilty of first degree murder with use of a deadly weapon.

We the jury in the above-entitled case find the Defendant, Shawn

1 Glover, a.k.a. Shawn Lynn Glover, Jr. as follows: Count II, assault with the use  
2 of a deadly weapon. Guilty of assault with use of a deadly weapon.

3 We the jury in the above-entitled case find the Defendant Shawn  
4 Glover, a.k.a. Shawn Lynn Glover as follows: Count III, discharge of firearm  
5 from or within a structure or vehicle. Guilty of discharge of firearm from or  
6 within a structure or vehicle.

7 Dated this 3rd day of August 2018, John Graber, Foreperson.

8 Ladies and gentlemen of the jury, are these your verdicts as read,  
9 so say you one, so say you all?

10 JURORS: Yes.

11 THE COURT: Okay. Ladies and gentlemen of the jury, now I'm  
12 going to poll you, which is just a fancy way of asking you each if this was your  
13 verdict as read. Juror Number 1, was this your verdict, as read?

14 JUROR NUMBER 1: Yes.

15 THE COURT: Juror Number 2, was this your verdict, as read?

16 JUROR NUMBER 2: Yes.

17 THE COURT: Juror Number 3, is this your verdict, as read?

18 JUROR NUMBER 3: Yes.

19 THE COURT: Juror Number 4, was this your verdict, as read?

20 JUROR NUMBER 4: Yes.

21 THE COURT: Juror Number 5, was this your verdict, as read?

22 JUROR NUMBER 5: Yes.

23 THE COURT: Juror Number 6, was this your verdict, as read?

24 JUROR NUMBER 6: Yes.

25 THE COURT: Juror Number 7, was this your verdict, as read?



1 JUROR NUMBER 7: Oh, yes. Sorry.

2 THE COURT: You're Number 7. That's okay. Juror Number 8, was  
3 this your verdict, as read?

4 JUROR NUMBER 8: Yes.

5 THE COURT: Juror Number 9, was this your verdict, as read?

6 JUROR NUMBER 9: Yes.

7 THE COURT: Juror Number 10, was this your verdict, as read?

8 JUROR NUMBER 10: Yes.

9 THE COURT: Juror Number 11, was this your verdict, as read?

10 JUROR NUMBER 11: Yes.

11 THE COURT: Juror Number 12, was this your verdict, as read?

12 JUROR NUMBER 12: Yes.

13 THE COURT: All right. Ladies and gentlemen, I want to you know  
14 that a right to a trial by jury of our peers is the most basic, fundamental  
15 constitutional right, that wouldn't be available to any of us unless people like  
16 you are willing to step up and serve. I think you know from having  
17 participated in jury service that it's a duty that people often shirk away from  
18 because it requires personal and professional sacrifice. And I really -- myself  
19 and the parties -- appreciate your time and attention to this case.

20 On behalf of the 8th Judicial District Court, I want to thank you for  
21 all of your sacrifice to serve. The question may arise now can you talk about  
22 the case. You are free to talk about the case or not talk about the case as you  
23 see fit.

24 I'm going to ask my Marshal to bring you back to the jury room,  
25 and then I'm going to come back there briefly to thank you and ask you if

1 there's anything myself or my staff, including the jury services people could  
2 have done to make jury service any less stressful or more enjoyable, words to  
3 that effect. I will not discuss anything to do with the case, because I'm going  
4 to remain on the case going forward and will have matters to rule upon, so  
5 that wouldn't be proper.

6 But I will come back briefly just to thank you personally and ask  
7 you about staff and jury services. So, with that you have my greatest  
8 appreciation and you are excused.

9 THE MARSHAL: All rise. The jury is exiting.

10 [Outside the presence of the jury.]

11 THE COURT: Okay. The Clerk has reported the verdict in the  
12 minutes of the Court. The record should reflect that the Defendant's remanded  
13 to custody of the Sheriff to be held without bail.

14 The matter's referred to the Department of Parole and Probation.  
15 Preparation for presentence investigation report and the usual sentencing date  
16 would be --

17 THE CLERK: September 26, at 9:30 a.m.

18 THE COURT: Does that work?

19 MR. STANTON: September 26?

20 THE CLERK: At 9:30 a.m.

21 MR. STANTON: Yeah, that's fine with the State, Your Honor. And  
22 pursuant to the record, we previously developed, the State would, as the  
23 conditions previously stated, dismiss Count IV.

24 THE COURT: Okay. So, Count IV is ordered dismissed. Here's  
25 what I tell jurors. I reiterate I can't talk about the case or anyone who has

1 anything to do with the case or the Defendant or anything else. I don't tell  
2 them anything. I do ask them though if jury services or my staff could have  
3 done anything different that would have benefited them.

4 I will also ask on your behalf, if you want a few minutes to talk to  
5 them, I usually give them the spiel and say it can help a lawyer in their practice  
6 of law if you're willing to give them a few minutes of your time to discuss, you  
7 know, the matter. If you want to you can, and they would probably appreciate  
8 it. If you don't want to, you don't have to. And those of you that don't want to,  
9 will leave before any attorneys come in. I'm not going to do that, if you don't  
10 want to talk to them. If you want to talk to them, I will do that. What's your  
11 pleasure?

12 MR. BASHOR: I'm open to speaking with them, Your Honor.

13 MR. STANTON: I think Mr. Flinn is as well.

14 THE COURT: Okay. So, what I'm going to do then is do my thing,  
15 thank them, then if you'll have a seat here, I will let my staff know when it's  
16 time to come back. Okay?

17 MR. BASHOR: Thank you.

18 [Proceedings concluded at 4:00 p.m.]

19 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
20 audio/visual proceedings in the above-entitled case to the  
21 best of my ability.

22   
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25 \_\_\_\_\_  
Maukele Transcribers, LLC  
Jessica B. Cahill, Transcriber, CER/CET-708

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

AUG 03 2018 3:53pm

BY A. Trujillo  
ATHENA TRUJILLO, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

1 VER

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7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

CASE NO: C-16-312448-1

10 SHAWN GLOVER, aka  
11 Shawn Lynn Glover, Jr.,

DEPT NO: IX

12 Defendant.

13 VERDICT

14 We, the jury in the above entitled case, find the defendant SHAWN GLOVER, aka  
15 Shawn Lynn Glover, Jr., as follows:

16 **COUNT 1** - MURDER WITH USE OF A DEADLY WEAPON

17 *(Please check the appropriate box, select only one)*

- 18 ☒ Guilty of First Degree Murder with use of a Deadly Weapon  
19 ☐ Guilty of First Degree Murder  
20 ☐ Guilty of Second Degree Murder with Use of a Deadly Weapon  
21 ☐ Guilty of Second Degree Murder  
22 ☐ Guilty of Voluntary Manslaughter with Use of a Deadly Weapon  
23 ☐ Guilty of Voluntary Manslaughter  
24 ☐ Not Guilty

25 ///

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C-16-312448-1  
VER  
Verdict  
4768462



AA 798

1 ///

2 We, the jury in the above entitled case, find the defendant SHAWN GLOVER, aka  
3 Shawn Lynn Glover, Jr., as follows:

4 **COUNT 2** – ASSAULT WITH USE OF A DEADLY WEAPON

5 *(Please check the appropriate box, select only one)*

- 6 ☒ Guilty of Assault with use of a Deadly Weapon  
7 ☐ Guilty of Assault  
8 ☐ Not Guilty

9  
10 We, the jury in the above entitled case, find the defendant SHAWN GLOVER, aka  
11 Shawn Lynn Glover, Jr., as follows:

12 **COUNT 3** – DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR  
13 VEHICLE

14 *(Please check the appropriate box, select only one)*

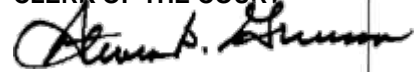
- 15 ☒ Guilty of Discharge of Firearm from or Within a Structure or Vehicle  
16 ☐ Not Guilty

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20 DATED this 3<sup>rd</sup> day of August, 2018.

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ORIGINAL

Electronically Filed  
8/30/2018 2:00 PM  
Steven D. Grierson  
CLERK OF THE COURT



1 SAO

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

5 DAVID L. STANTON  
6 Chief Deputy District Attorney  
7 Nevada Bar #002826  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

CASE NO: C-16-312448-1

12 SHAWN GLOVER, aka,  
13 Shawn Lynn Glover, Jr.,  
14 #1950305

DEPT NO: IX

14 Defendant.

15 STIPULATION AND ORDER

16 COMES NOW, the Defendant, SHAWN GLOVER, aka, Shawn Lynn Glover, Jr., by  
17 and through his counsel, RYAN BASHOR, DEPUTY PUBLIC DEFENDER, and the State  
18 of Nevada, by and through DAVID L. STANTON, Chief Deputy District Attorney, and  
19 pursuant to NRS 175.552(2), hereby agree and stipulate to the following:

- 20 1. The jury in the above-captioned case, having returned a verdict return a  
21 verdict of guilty on First Degree Murder, the parties hereby waive the  
22 penalty hearing before the jury as normally required under NRS  
23 175.552(1)(a);
- 24 2. Pursuant to NRS 175.552(2), both parties agree that the sentence on any  
25 charge for which the Defendant may be convicted shall be imposed by  
26 this Honorable Court after a pre-sentence investigation is conducted by  
27 the Department of Parole and Probation;

28 ///

///

///

///

DATED this 28<sup>th</sup> day of August 2018.

ATTORNEY FOR DEFENDANT

CLARK COUNTY DISTRICT ATTORNEY

BY: 

RYAN BASHOR,  
DEPUTY PUBLIC DEFENDER  
Attorney for Defendant  
Nevada Bar #011914

BY: 

DAVID L. STANTON  
Chief Deputy District Attorney  
Nevada Bar #002826

  
SHAWN GLOVER, aka,  
Shawn Lynn Glover, Jr.

IT IS SO ORDERED.

*Dated: August 28, 2018*

  
DISTRICT JUDGE

*C-16-312448-1 stipulation and order  
re sentencing*  
16FN0004X/saj/MVU



RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

vs.

SHAWN GLOVER, AKA:  
AKA: SHAWN LYNN GLOVER, JR.,  
Defendant.

CASE#: C-16-312448-1  
DEPT. IX

BEFORE THE HONORABLE JENNIFER P. TOGLIATTI, DISTRICT COURT JUDGE  
WEDNESDAY, OCTOBER 10, 2018

**RECORDER'S TRANSCRIPT OF PROCEEDINGS  
SENTENCING**

APPEARANCES:

For the State: DAVID STANTON, ESQ.  
Chief Deputy District Attorney  
WILLIAM F. FLINN, JR., ESQ.  
Deputy District Attorney

For the Defendant: RYAN J. BASHOR, ESQ.  
ROBERT E. O'BRIEN, ESQ.  
Deputy Public Defenders

ALSO PRESENT: PATRICIA FLEMING,  
CHARMAYNE WHITE, ROBIN FRANKLIN,  
[Victim Speakers] ROBBIE FRANKLIN,  
MARANDA K. SUTTON-FLEMING

RECORDED BY: YVETTE SISON, COURT RECORDER



1 Las Vegas, Nevada, Wednesday, October 10, 2018

2  
3 [Case called at 10:48 a.m.]

4 THE COURT: Okay, this is the time set for entry of judgment  
5 and imposition of sentence on C312448, State versus Glover. The  
6 record should reflect the presence of the – can you come down with –  
7 right there. The record should reflect the presence of the Defendant in  
8 custody. I have a Presentence Investigation Review. Let's start with the  
9 Presentence Investigation Report. I have one dated August 29<sup>th</sup>, 2018.  
10 Have you gone through that report with your client?

11 MR. BASHOR: Yes, Your Honor.

12 THE COURT: And based upon your review, does the defense  
13 take any issue with the contents of the report pursuant to the *Stockmeier*  
14 decision?

15 MR. BASHOR: No, Your Honor.

16 THE COURT: All right. The jury having returned its verdict  
17 August 3<sup>rd</sup>, 2018, I hereby adjudge the Defendant guilty of Count 1, First  
18 Degree Murder with Use of a Deadly Weapon, a Category A Felony.  
19 And Count 2, Assault with Use of a Deadly Weapon, a Category B  
20 Felony. And Count 3, Discharge of Firearm from or Within a Structure or  
21 Vehicle, a Category B Felony.

22 In addition to reviewing the Presentence Investigation Report,  
23 I have reviewed the Defendant's pre – excuse me, Sentencing  
24 Memorandum, which has given me significant information about the  
25 Defendant's early childhood, his criminal history, his mental state in the

1 weeks prior to the offense, his educational history and other personal  
2 matters, along with Exhibits 1 through 7 that were attached. That  
3 includes School District information about, you know, personal issues  
4 related to the Defendant, and exhibits with photographs and information  
5 about family members who specifically, I believe, the fact that his father  
6 was murdered.

7 I've also received a letter from Robin Franklin who is the sister  
8 of the named victim in the case, that was provided to me by facsimile by  
9 DA Victim Witness Assistance Center. I have a letter from Miranda  
10 Sutton-Fleming which was provided to me by DA Victim Witness. I have  
11 a notice – a defense notification of oral statement of six victim speakers.  
12 I may have said seven, but you've noticed six, unless I'm missing  
13 another one.

14 MR. STANTON: You're correct, Your Honor. There'll be four  
15 speaking this morning.

16 THE COURT: Okay. So was there any other – were there  
17 any other materials: Photographs, letters, or the like that you would  
18 have wanted me to review, that I didn't list out for the record?

19 MR. STANTON: Not on behalf of the State, Your Honor.

20 MR. BASHOR: No, Your Honor.

21 THE COURT: Okay. So obviously State, because this case  
22 went to trial and there was no negotiation, you have the right to argue as  
23 to the appropriate sentence. And I would assume you would like to do  
24 so at this time.

25 MR. STANTON: That's correct, Your Honor. Your Honor,

1 there's a couple of things that I think are kind of – rather significant in the  
2 limited -- what the State believes is a limited discretion – or decisions  
3 that the Court can make today. Number one is, you know, obviously on  
4 the murder case, the distinction between the three different sentences.  
5 So let me just speak to why I believe a life without possibility of parole is  
6 appropriate.

7           Number one, this isn't the first murder that this Defendant has  
8 committed. It's by, at least the PSI has said. Next is, when you hear  
9 cases as you did today and as this Court has heard over the decades  
10 about why someone takes another person's life. In mitigation, you often  
11 hear, age, narcotics, wrong place, wrong time. All of those I would  
12 submit do not apply in this case.

13           This gentleman is 32 years of age. He's largely been  
14 unemployed his entire life. He knows the victims in this case, and of  
15 course it's going to be very important is that there were multiple victims.  
16 Not only in just the murder he committed, but the actual charges that the  
17 jury returned. This was, by all accounts and by the evidence that this  
18 jury found, an execution. A planned, thought out execution of someone  
19 he knew, and presumably someone that he was friends with.

20           Certainly the family and the greater circumstances of people  
21 that were surrounding this event at this – and I – I'm sure the court  
22 remembers the photographs of this townhome where Azekura Beasley  
23 [phonetic] testified in the trial, that they had previously taken the  
24 Defendant to his place of employment. He had only been working there  
25 for a very brief period of time, the day before.

1           So what happens is in, you know, the wrong place the wrong  
2 time, or there is some provocation that causes the Defendant, or at least  
3 that one could reasonably argue mitigates the basis of why a killing took  
4 place. That doesn't exist in this case. This is an unprovoked  
5 execution/murder of an innocent man.

6           And then, if you want to know who you're sentencing, the one  
7 fact that I would submit to the Court that is uncontroverted, found by this  
8 jury is, while Mr. Fleming is lying at the bottom of the stairs, dying, the  
9 Defendant points a gun at his wife and stepdaughter and says, in effect:  
10 Don't tell anybody about what just happened, you know how I roll.  
11 That's who you're sentencing today.

12           Take out all the other factors, whatever, it's the old adage of:  
13 "What do you do when no one's looking?" And so, he has been granted  
14 parole before and he was – violated parole and they chose to  
15 dishonorably discharge him off the manslaughter case. So that tells you  
16 something about the Defendant's ability to perform on parole. And I  
17 would submit that along with another -- a number of other items of  
18 evidence, which speak to why a parole option does not suit this case  
19 and does not suit this Defendant.

20           The time that he's out from serving time for killing another  
21 person is very brief. And in this particular case, there were no  
22 circumstances that would warrant the exercise or use of deadly force.  
23 You're going to hear from the victims that will tell you about Mr. Fleming  
24 and about the loss in their life.

25           And all of these people know the Defendant, knew him before

1 these events, and that I think is a compelling fact of what punishment  
2 should fall around his shoulders. And that the Assault with a Deadly  
3 Weapon to the victim's wife done instant -- moments after his  
4 execution/murder, must be the maximum. And I would submit must be if  
5 it's to have any meaning, at all, consecutive in nature.

6 I would submit the case on that indicate again to the court that  
7 we have four speaking.

8 THE COURT: Sir, I realize you pled not guilty and went to trial  
9 but, do you have anything that you wish to say before sentencing's  
10 pronounced? Now is your opportunity, or you could let your lawyer  
11 speak for you if you would prefer.

12 THE DEFENDANT: Thank you, Your Honor, I'm going to let  
13 my lawyer speak for me.

14 THE COURT: Okay.

15 MR. BASHOR: And, Your Honor, I appreciate your preface to  
16 that statement with my client. That's precisely why he's uncomfortable,  
17 at this point, making a statement.

18 As for argument from a sentencing judge, you know, you got  
19 two things to look at: You have the nature of the offense and the crime  
20 and you have the person that has been convicted of committing that  
21 crime. Your Honor saw the evidence, Your Honor sat through this trial.  
22 I'm not going to belabor too much about what occurred that day.

23 Instead, I'm going to talk about why I submit Shawn is  
24 deserving of something less than life without the possibility of parole.  
25 Obviously I'm in a position where I would ask you to consider the 20 to

1 50 years, but most importantly that, that I believe, under the  
2 circumstances, Shawn does and can perform on parole 20 plus years  
3 from now. He'd be at least a 52 year old man.

4 The problem here is that I think the moment Shawn was born  
5 the tea leaves read that he'd either be dead or be in this position. I'm  
6 not a native of Las Vegas, but what I hear about the neighborhood in  
7 which he grew up, this Carey Arms, which I guess no longer exists, was  
8 just a nightmare. Constant violence. So much so that the North Las  
9 Vegas Police Department put a substation right in the complex and that  
10 didn't deter anything.

11 He was born, literally, into gang life. His grandfather, Larry  
12 Weatherspoon, when Shawn was eight, was murdered while he was  
13 attempting – not murdered, he was killed while he was attempting to, to  
14 commit a robbery. His father was murdered when Shawn was 14 years  
15 old, shot and killed. He was in the wrong neighborhood, apparently.  
16 That lifestyle made it common place to carry weapons. That lifestyle is  
17 what is ingrained in Shawn's head. It's – you got to survive by any  
18 means.

19 If you go to the police you either can't trust them in their  
20 minds, or you're, you know, a snitch which could be even worse. More  
21 evidence that from the moment Shawn was born this was the path. Both  
22 of his brothers are in prison. It's an upbringing, it's a mentality. It's a –  
23 and it's unfortunate. As evidenced by both sides in this case, you see a  
24 group of wonderful people here on behalf of Mr. Fleming. Another group  
25 of people have been here for Shawn.

1 Obviously both individuals in this case have had a lot of love  
2 for them and they're blessed with that. More about Shawn, the person.  
3 Shawn was in special education. Early on I had him tested by Dr. Kapel,  
4 a doctor that Your Honor relies on quite a bit in different sorts of  
5 proceedings. He found he had a full scale IQ of 75.

6 He's got a three year old daughter who I can attest that he  
7 loves very much, that he misses. That he – that to the best of the ability,  
8 the child's mother rarely makes it down to the jail to do a visit through  
9 the machine. He hasn't held her in almost two and a half years.

10 So this is the, the person, Judge, and, and obviously when a  
11 jury finds the result as they did here, there has to be a punishment. It  
12 has to be a severe punishment. But I submit these things, not to excuse  
13 anything, but to kind of give Your Honor a context of the person standing  
14 before you. I would submit that the odds of coming to a different  
15 resolution than the two I suggested would be extremely long for Shawn,  
16 and for those reasons, I would submit that something less than life  
17 without the possibility of parole, is the appropriate outcome here.

18 THE COURT: Who do you wish to call for at first?

19 MR. STANTON: I'd like to call first Charmayne White.

20 THE COURT: Ms. White, if you could face my clerk. Raise  
21 your right hand and be sworn.

22 THE CLERK: [Oath given to victim speaker and affirmed].  
23 Thank you. Please be seated. State and spell your first and last name  
24 for the record.

25 [Victim speaker, duly sworn, testified as follows]:

1 VICTIM SPEAKER: First name is C-H-A-R-M-A-Y-N-E,  
2 Charmayne. Last name is White, W-H-I-T-E.

3 THE COURT: Okay. Ms. White, if you want to have a seat  
4 and if you could pull that microphone a little bit closer to you. They'll do  
5 it. There you go. When you're ready.

6 VICTIM SPEAKER: Your Honor, I prepared a letter for you  
7 from the bottom of my heart to listen to what I just heard, I was – I was  
8 raised on the West side. I was raised around gang activity, but I choose  
9 to go to church. I choose to live a good life. I don't make a decision to  
10 where my – the person to, to, to say that I can take somebody's life.  
11 That is no reason for no one to do the actions that they do because of  
12 where you were and where you're raised at.

13 Because I was raised right around the corner and I am an  
14 upstanding citizen who work, who value life. I value so much more  
15 because I have a child. My son is the reason that I live and the reason  
16 that I do the things that I do. That wasn't in my letter, but that was just  
17 what I felt as I heard of the reasoning for the things that have taken  
18 place.

19 But my letter says that I can't have him anymore, Patrick  
20 Fleming, first given under the God who was the head of my life. I would  
21 also like to thank this Court for hearing this matter at hand. This jury has  
22 – this journey has, by far, been a life changing moment for the entire  
23 family and catastrophic events to Patrick's children. Never would I have  
24 imagined that Patrick R. Fleming would have been taken in such a  
25 senseless manner.



1           He was the armor of the family but he – we can't have him  
2 anymore. On January 1<sup>st</sup>, 2016, I received a call early in the morning.  
3 My first thought was that somebody was pulling a prank on me, but the  
4 seriousness in my father's voice reached my soul and it began to cringe.  
5 The past two and a half years have been really heartbreaking and  
6 painful. I know that Patrick is with God, but that gives me more comfort  
7 knowing that I will see him once again. I will laugh, I will smile. His  
8 voice I really miss, his family, his children and his wife. He loved his  
9 family and we will never forget him.

10           In life we are shown that life is wonderful during birth, but not  
11 once are we prepared for this type of death. Losing the elderly who  
12 have lived their lives span is completely different feeling compared to the  
13 loss of someone who still had a life ahead of him. And nothing prepared  
14 me for this unhealing pain. I will always remember my brother for his  
15 bravery. He stood up for his family and togetherness.

16           The hardest part was the week of his death. When I was in  
17 home, I was at home with his son who was in the shower and he began  
18 to sing. The song tore my heart apart. As Michael was in the shower he  
19 sang, "My daddy is dead because my Uncle Shawn shot him in the  
20 head. My Mama keep cryin' and I don't know why. My daddy is dead  
21 because Uncle Shawn shot him in the head."

22           All I could do is ask my sister to go in there and you hold your  
23 child. You do whatever it takes to stop his pain. His kids are lost. His  
24 wife feels abandoned and his family is left in pieces. The value that  
25 Patrick had clearly was not taught to Shawn Glover. He couldn't

1 possibly think it was okay to take someone's life. Shawn has extensive  
2 family history of violence, murder, and gang life is all he knows.

3 We all have parents to teach us the way of life, but Michael  
4 and Jordan doesn't have that anymore. Shawn Glover thinks he can  
5 pull the trigger, that he would be robbing us of the family dinners that  
6 can no longer exist. The daddy-daughter dances that will make his  
7 daughter feel alone and alienated from her peers. Or the late night  
8 hoops that he can't have with his dad anymore.

9 What about the vacation, the holidays that we had planned for  
10 family that will never ever come, especially New Year's. This is how my  
11 family started the birth of New Year, inter rationally, without death [sic].  
12 Every year we think about this now. Mr. Glover -- and I don't even want  
13 to say Mister, destroyed his life. He not only destroyed his life he  
14 destroyed Mariah's life. You destroyed her life unless the six month old  
15 Mr. Glover rubbed -- robbed her of everything. She doesn't have a  
16 positive father figure in her life.

17 Instead, all she will know is that this is a little girl that will think  
18 that having a dad exist through a glass. She will not have no bonding  
19 experience with him. She will only know of what another man could give  
20 her. She won't have her grandfather, except despite the circumstances.  
21 All she will know is a father who is a repeat offender of murder.

22 She will know him as a coward handing -- handling arguments  
23 inappropriately. She will only know of another man who will have to  
24 teach her. An upstanding man will now have to step into her life and  
25 show her the right things to do. When faced with problem he thinks

1 inappropriately and thinks inappropriately of people's lives. Well it's time  
2 for the court to remove his power and his right of – as a law abiding  
3 citizen and show him what it feels like to have something gone.

4 Shawn Glover is a menace to society –

5 UNIDENTIFIED SPEAKER: Yes.

6 VICTIM SPEAKER: -- and needs to be put away so that he  
7 cannot harm another soul. We can't have Patrick back but guess –  
8 Patrick can't get patrol – paroled from life. So, Judge Togliatti, I ask you  
9 and ask you to make a decision. And please consider Patrick's kids and  
10 his family and his community while making this difficult decision.

11 What would happen if Shawn Glover is released and allowed  
12 to see his children, Michael and Jordan, Miranda in the care again. We  
13 will – we will not want to see anything lost again. We don't need any  
14 more lives taken.

15 MR. STANTON: Thank you.

16 THE COURT: Thank you.

17 MR. STANTON: Next would be Robin Franklin.

18 THE COURT: If you could face my clerk, raise your right hand  
19 and be sworn.

20 THE CLERK: [Oath given to victim speaker and affirmed].  
21 Thank you. Please be seated, state and spell your first and last name  
22 for the record.

23 VICTIM SPEAKER: Robin Franklin, R-O-B-I-N F-R-A-N-K-L-  
24 I-N.

25 MR. STANTON: We've changed this a little bit.

1 VICTIM SPEAKER: Oh sorry. I, I gave you my letter already,  
2 but this one is for my mom. She's not able to read it so –

3 THE COURT: Okay.

4 VICTIM SPEAKER: -- I wanted to get my mother's  
5 perspective. My mom is in court. She didn't want to come up with me.

6 THE COURT: That's fine.

7 VICTIM SPEAKER: My name is Patricia Fleming and I'm the  
8 mother of Patrick Fleming who was murdered on January 1<sup>st</sup>, 2016 by  
9 Shawn Glover. I'm writing this letter to plead to the court for the  
10 maximum sentence for him taking my son's life. I'm specifically asking  
11 for life without parole. This young man, to my knowledge, has  
12 committed murder before and was released only to do it again, whereby  
13 I lost my only son.

14 As a mother, all I can see is my son as a baby and all of the  
15 memories that proceed him is [pause] proceeded him in his life. Forty-  
16 four years of life that was ruthlessly taken by Shawn Glover. His first  
17 step, his first words, graduating from high school, becoming a father,  
18 getting married. I have all of those memories to never have new ones to  
19 share as he continued to grow in age as a human being.

20 My son missed seeing his first grandchild being born. Family  
21 was everything to him. This was a huge milestone gone forever. No  
22 more celebrating holidays or birthdays kills me, slowly, every day to  
23 know that I will not see my son again. When this young man took my  
24 son he took my only son, my firstborn. This act has impacted my life in  
25 such a great way.

1 I cry every day for the loss that I have endured. My son was  
2 such a special person to me and the people around him. He had the  
3 ability to win over people and befriend him – over and befriend him. He  
4 was widely popular in Las Vegas around through – sorry, in Las Vegas  
5 through being a part of many sports teams and social groups working –  
6 and working all over.

7 He has a – he was a responsible husband and father. He was  
8 also a – an involved father and truly protective of his children. He was a  
9 man's man, and I miss his love and support every day. Today I look at  
10 his 12 year old twins' eyes and I'm reminded they will never truly know  
11 their father. I look at my daughters, the women I have left and I still feel  
12 a whole in my heart for losing my son.

13 These words cannot truly express the depth of my pain. I'm  
14 begging you to please consider the sentence of life without parole as it's  
15 the only thing that will bring some semblance of justice for my son. A  
16 parent is not supposed to precede their children in death, especially  
17 when that life is stolen.

18 THE COURT: Thank you.

19 VICTIM SPEAKER: Thank you.

20 MR. STANTON: Next, Your Honor, would be Robbie Franklin.

21 VICTIM SPEAKER: Hello.

22 THE CLERK: [Oath given to victim speaker and affirmed].

23 Thank you. Please be seated. State and spell your first and last name  
24 for the record.

25 VICTIM SPEAKER: My name is Robbie Franklin, twin sister

1 of Robin Franklin, R-0-B-B-I-E F-R-A-N-K-L-I-N. I'm the sister of  
2 Patrick's [indiscernible].

3 Just wanted to say that I'm requesting maximum sentencing of  
4 the ruling of Shawn Glover, who murdered my big brother on January  
5 the 1<sup>st</sup>, 2016. He has impacted my life and my children's lives,  
6 tremendously, and my life will never be the same. My brother and I had  
7 a bond that was unbreakable. He was my protector. I mean, that he  
8 was there for me no matter what. He is the oldest of three sisters: Me,  
9 myself, and my little sister. He's my only brother. He was my only  
10 brother until he was stolen from us, cowardly.

11 When Shawn Glover senselessly murdered my brother, I feel  
12 like I lost a part of my mother because she is not the same anymore.  
13 My mother is always crying. We never have good holidays because  
14 she's crying about her child that was taken away from her, away from  
15 our family. She cries all the time. She's very emotional. My Mom has  
16 seizures.

17 And with you taking my brother's life – with Shawn Glover  
18 taking my brother's life, her health is just down fall. It was like she  
19 turned 70, 70 years old overnight. My mom aged over 20 years after her  
20 son was taken away from her. I miss my brother so much, it's  
21 unimaginably [sic]. I miss our long talks. I miss our hugs, our kisses  
22 when we see each other; we were very close. That was my only brother  
23 and I will never see him again.

24 My brother was involved in a lot of different things that was  
25 going on in the community. He was a tow truck driver and he used to

1 help Metro. He always participated in the Martin Luther King parades.  
2 He was very active in the community. No one should feed their lives  
3 because of a monster like Shawn Glover, who doesn't value the  
4 meaning of life. He should be incarcerated for the rest of his life without  
5 the possibility of taking another life. Thank you.

6 THE COURT: Thank you.

7 MR. STANTON: Your Honor, final witness is Miranda Sutton-  
8 Fleming.

9 THE CLERK: [Oath given to victim speaker and affirmed].  
10 Thank you. Would you please be seated. State and spell your first and  
11 last name for the record.

12 MS. SUTTON-FLEMING: It's Miranda K. Sutton-Fleming, M-I-  
13 R-A-N-D-A S-U-T-T-O-N-F-L-E-M-I-N-G. Good morning, Your Honor.  
14 My name is Miranda K. Sutton-Fleming. I am Patrick Fleming's wife.  
15 We were married on November 21<sup>st</sup>, 2003. We have five children and  
16 four grandchildren. For 15 years we built our family, cherishing, loving,  
17 growing and making memories. Your Honor, on January 1<sup>st</sup>, 2016, I lost  
18 my best friend, the father of my children, my husband. A simple  
19 argument that didn't concern the Defendant, turned into my worst  
20 nightmare.

21 My husband asked to speak with the Defendant, headed down  
22 the stairs and was executed. Looking – looking into the barrel of the gun  
23 myself, while being threatened, knowing my children and grandchildren  
24 are behind me, was the worst fear I've ever known. Seeing my husband  
25 lying there is something I see every day. The tragedy this has caused

1 the family is overwhelming. My lifeline, provider, Patrick Fleming is no  
2 longer here to raise his children, to hold his mother, shake hands with  
3 his father, laugh with his siblings, or kiss his grandson.

4 Our family's broken because the Defendant chose to – chose  
5 not to walk away but to pick up a gun. Defendant – the Defendant had  
6 hid his gun, waited for my husband to turn his back, then shot him in the  
7 back of his head. The Defendant is a known gang member with no  
8 remorse, who has been incarcerated before and served minimal,  
9 minimal time.

10 A person that's violated, repeatedly, with a prior record. If the  
11 Defendant had served a full time given in 2012 he wouldn't have had the  
12 chance to murder my husband. The Defendant was free, working,  
13 raising his daughter, and chose to throw everything away by murdering  
14 my husband, a hard working family man that was community minded  
15 and loved his family.

16 Every morning I wake up I remind myself that Patrick's not  
17 here. I can't sleep most nights. It hurts emotionally to watch my  
18 children suffer. Patrick played a major part in his family's life and is truly  
19 missed. My children and I still suffer. Sorry, my children and I still cry.  
20 Our activities and lifestyles have try – changed. The financial hardship  
21 has pursued my life.

22 My soulmate and best friend's life was taken for no reason.  
23 Who will never see New Year's Eve the same. I've lost friendships.  
24 This has divided our family and we no longer feel safe. My children are  
25 still walking – waking up in the middle of the night with nightmares. I



1 constantly replay the day of the crime over and over in my head. I am  
2 stressed, anxious and hypertensive. Because of my children, I erase  
3 suicidal thoughts.

4 Paranoia never goes away. I've constantly – I'm constantly  
5 asking why? Why my family? Why my husband? Why would the  
6 Defendant do this after my husband befriended him? Taken the  
7 Defendant to work, bringing him in to be with his family -- then executed  
8 my husband. I'm afraid of what the Defendant might do after he is – he  
9 gets out. This isn't the first time this type of crime has been committed  
10 by him, and that he's sorry.

11 I don't want my family hurt by the Defendant, again. I want to  
12 be protected from Shawn Glover, forever. No more threats, fear,  
13 intimidation, or looking over my shoulder. On January 1<sup>st</sup>, 2016, the  
14 Defendant made a decision to give up all rights to his children, to his life,  
15 to freedom. It only took five months for him to violate his parole. When I  
16 look into my – to my baby's eyes I see Patrick.

17 When I look into his mother's face I see him. His father and  
18 mother still grieves from not having him as a pillar of our family. Losing  
19 him in a brutal, traumatic and horrifying manner would never haunt –  
20 would forever – will forever haunt my soul.

21 Today we come and honor Mr. Patrick Ramon Fleming.  
22 Honoring our family, rebuilding, and holding onto cherished memories.  
23 Thank you.

24 THE COURT: Thank you.

25 MR. STANTON: That will conclude the State's presentation.

1 THE COURT: Can you please give me an updated number  
2 for credit for time served?

3 MR. STANTON: Yes, Your Honor, my calculations are 1,000  
4 and 11 days.

5 THE COURT: Counsel, do you agree with –

6 MR. BASHOR: Yes.

7 THE COURT: Mr. Glover, certainly assist the Court in  
8 sentencing to be able to have tried the case and have an understanding  
9 of the facts and the overwhelming evidence in this circumstance. As to  
10 Count 1, I sentence you – well, first of all there's a \$25 administrative  
11 assessment fee that's required by Nevada law. You're given credit for  
12 the DNA sample previously provided, which is required by Nevada law  
13 in, on or about May 10<sup>th</sup>, 2012 in your previous Voluntary Manslaughter  
14 with Deadly Weapon conviction. Nevada law requires a \$3 DNA  
15 administrative assessment.

16 As to Count 1, I order restitution in the amount of \$25,303.27  
17 to State of Nevada Victims of Crime, which the PSI indicates has been  
18 paid out for expenses related to the victim's death. I sentence you to  
19 Life in Prison Without the Possibility of Parole at Count 1, with a  
20 Consecutive 48 to 180 months in the Nevada Department of Corrections  
21 for the Use of a Deadly Weapon.

22 At Count 2, Assault with a Deadly Weapon. I sentence you to  
23 28 to 72 months in the Nevada Department of Corrections to run  
24 Concurrent with Count 1. As to Count 3, Discharge of Firearm from or  
25 Within a Structure or Vehicle, I sentence you to 60 to 180 months in the

1 Nevada Department of Corrections to run Concurrent with Counts 1 and  
2 2. You have 1,011 days credit for time served and this case is closed.

3 [Proceedings concluded at 11:23 a.m.]

4 \* \* \* \* \*

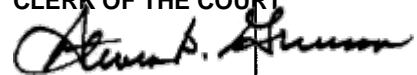
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15 ATTEST: I do hereby certify that I have truly and correctly transcribed  
16 the audio/video proceedings in the above-entitled case to the best of my  
17 ability.

18 Sandra A Pruchnic  
19 SANDRA PRUCHNIC  
Court Recorder/Transcriber

20 \*\*\*\*\*

21 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
22 audio/video proceedings in the above-entitled case to the best of my ability.

23 Kerry Esparza  
24 Kerry Esparza  
25 Court Recorder/Transcriber



1 JOCP

2  
3  
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5  
6 DISTRICT COURT

7 CLARK COUNTY, NEVADA

8  
9 THE STATE OF NEVADA,

10 Plaintiff,

CASE NO. C-16-312448-1

11 -vs-

DEPT. NO. IX

12 SHAWN GLOVER aka  
13 Shawn Lynn Glover, Jr.  
14 #1950305

15 Defendant.

16 JUDGMENT OF CONVICTION

17 (JURY TRIAL)

18  
19 The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 –  
20 MURDER WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS  
21 200.010, 200.030, 193.165; COUNT 2 – ASSAULT WITH A DEADLY WEAPON (Category  
22 B Felony) in violation of NRS 200.471; COUNT 3 – DISCHARGE OF FIREARM FROM OR  
23 WITHIN A STRUCTURE OR VEHICLE (Category B Felony) in violation of NRS 202.287;  
24 and COUNT 4 – OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED  
25 PERSON (Category B Felony) in violation of NRS 202.360; and the matter having been tried  
26 before a jury and the Defendant having been found guilty of the crimes of COUNT 1 –  
27  
28

AA 822

1 MURDER WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS  
2 200.010, 200.030, 193.165; COUNT 2 – ASSAULT WITH A DEADLY WEAPON (Category  
3 B Felony) in violation of NRS 200.471; and COUNT 3 – DISCHARGE OF FIREARM FROM  
4 OR WITHIN A STRUCTURE OR VEHICLE (Category B Felony) in violation of NRS  
5 202.287; thereafter, on the 10<sup>th</sup> day of October, 2018, the Defendant was present in court for  
6 sentencing with counsel RYAN BASHOR and ROBERT O'BRIEN, Deputy Public Defenders,  
7 and good cause appearing,  
8

9 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition  
10 to the \$25.00 Administrative Assessment Fee, \$25,303.27 Restitution to Nevada Victims of  
11 Crime (VC7000000) plus \$3.00 DNA Collection Fee, the Defendant is SENTENCED to the  
12 Nevada Department of Corrections (NDC) as follows: **COUNT 1 – LIFE WITHOUT** the  
13 possibility for parole plus a CONSECUTIVE term of ONE HUNDRED EIGHTY (180)  
14 MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS for the Use  
15 of a Deadly Weapon; **COUNT 2 - a MAXIMUM of SEVENTY-TWO (72) MONTHS** with a  
16 MINIMUM parole eligibility of TWENTY-EIGHT (28) MONTHS, CONCURRENT with  
17 COUNT 1; and **COUNT 3 - a MAXIMUM of ONE HUNDRED EIGHT (180) MONTHS**  
18 with a MINIMUM parole eligibility of SIXTY (60) MONTHS, CONCURRENT with  
19 COUNTS 1 and 2; with ONE THOUSAND ELEVEN (1,011) DAYS credit for time served.  
20 Defendant is given credit for time served as to the DNA Analysis Test and Fee  
21 previously collected on 05/10/12. COUNT 4 DISMISSED.  
22

23 DATED this 12<sup>th</sup> day of October, 2018.  
24

25  
26  
27  
28  
  
JENNIFER TOGLIATTI  
DISTRICT COURT JUDGE

AMT

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHAWN LYNN GLOVER, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 77425  
District Court Case No. C312448

FILED

NOV 23 2019

*Elizabeth A. Brown*  
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of conviction AFFIRMED."

Judgment, as quoted above, entered this 24th day of October, 2019.

IN WITNESS WHEREOF, I have subscribed  
my name and affixed the seal of the Supreme  
Court at my Office in Carson City, Nevada this  
November 18, 2019.

Elizabeth A. Brown, Supreme Court Clerk

By: Monique Mercier  
Deputy Clerk

C-16-312448-1  
CCJA  
NV Supreme Court Clerks Certificate/Judgm  
4878080



IN THE SUPREME COURT OF THE STATE OF NEVADA

SHAWN LYNN GLOVER, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 77425

**FILED**

OCT 24 2019

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

**ORDER OF AFFIRMANCE**

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of murder with the use of a deadly weapon, assault with a deadly weapon, and discharging a firearm within a structure.<sup>1</sup> Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge. Appellant Shawn Glover raises three issues.

First, Glover argues that the district court erred by admitting evidence that the shooting victim's wife (Miranda Sutton) and stepdaughter (Akira Veasley) believed that Glover had a history of violence. We disagree as the evidence was offered to show the basis for both Veasley's and Sutton's initial statements to law enforcement that the shooter was someone besides Glover—they feared for their safety, in part, due to their belief that Glover had a history of violence. See NRS 48.015 (defining relevant evidence); NRS 48.025 (providing that relevant evidence is generally admissible); NRS 48.045(1) (excluding character evidence offered to prove actions in conformity with that character). And the probative value of the evidence was not substantially outweighed by unfair prejudice because the district court limited the evidence to Veasley's and Sutton's beliefs that Glover had

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<sup>1</sup>Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

a violent past, explicitly excluding any act-specific testimony referencing gang affiliation or Glover's alleged prior conviction for violent crimes. See NRS 48.035(1) (providing for the exclusion of relevant evidence that is substantially more unfairly prejudicial than probative). Additionally, the district court issued an immediate limiting instruction as well as a subsequent jury instruction that the jury could use the evidence only for purposes of understanding Veasley's and Sutton's prior statements to law enforcement and not as substantive evidence of Glover's character. See *Summers v. State*, 122 Nev. 1326, 1333, 148 P.3d 778, 783 (2006) (noting the general presumption that "juries follow district court orders and instructions").

To the extent that Glover argues this was improper prior-bad-act evidence, we disagree because the challenged testimony did not reference any specific acts, instead focusing on Veasley's and Sutton's states of mind given their belief that Glover had been violent.<sup>2</sup> See *Lamb v. State*, 127 Nev. 26, 41, 251 P.3d 700, 710 (2011) (concluding that admission of a witness's testimony expressing fear that the defendant would shoot her, called for balancing probative value against the risk of unfair prejudice under NRS 48.035(1), but did not implicate a prior bad act under NRS 48.045(2)). Nonetheless, the district court here held an evidentiary hearing outside the jury's presence and properly concluded that the evidence was relevant for a nonpropensity purpose, proven by clear and convincing evidence, and that the danger of unfair prejudice did not substantially outweigh the evidence's probative value. See *Fields v. State*, 125 Nev. 776,

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<sup>2</sup>That Sutton testified that she knew, rather than merely believed, that Glover had a violent past does not change our conclusion since Sutton still did not reference a specific act.



782, 220 P.3d 724, 728 (2009). We therefore conclude that the district court did not abuse its discretion in admitting the challenged evidence. See *Chavez v. State*, 125 Nev. 328, 339, 213 P.3d 476, 484 (2009) (reviewing a district court's evidentiary rulings for an abuse of discretion).

Second, Glover argues that his convictions are not supported by sufficient evidence. Specifically, Glover highlights the lack of DNA or fingerprint evidence connecting him to the shooting and the inconsistent statements of Veasley and Sutton, who identified Glover as the perpetrator at trial. When reviewing a challenge to the sufficiency of the evidence, we consider "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The record shows that after asking Sutton if she wanted him to "handle" the victim (Patrick Fleming), Glover followed Fleming downstairs to talk. Within seconds, Veasley and Sutton heard three gunshots, and Sutton observed Glover standing over Fleming's body holding a gun. Glover pointed the gun at Sutton and threatened her not to report what she saw. The medical examiner testified that the bullets entered Fleming at a downward trajectory. Testimony also established that Glover fled the scene after the shooting. Viewing this evidence in the light most favorable to the State, a rational trier of fact could conclude beyond a reasonable doubt that Glover committed the charged crimes. See *Walker v. State*, 91 Nev. 724, 726, 542 P.2d 438, 438-39 (1975) (recognizing that "it is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness"); see also 193.165 (deadly weapon enhancement); NRS 200.010 (defining murder); NRS 200.030 (delineating

the differing degrees of murder); NRS 200.471 (defining assault); NRS 202.287 (defining discharging a firearm within a structure). That the State did not present physical evidence connecting Glover to the shooting does not change this conclusion. See *Hernandez v. State*, 118 Nev. 513, 531, 50 P.3d 1100, 1112 (2002) (concluding that circumstantial evidence alone may support a criminal conviction).


Third, Glover contends that the State committed prosecutorial misconduct by improperly shifting the burden of proof during closing argument. "When considering claims of prosecutorial misconduct, this court engages in a two-step analysis. First, we must determine whether the prosecutor's conduct was improper. Second, if the conduct was improper, we must determine whether the improper conduct warrants reversal." *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008).

Glover's closing argument attacked the State's lack of physical evidence and proffered that the State had not even proven that Glover was at the crime scene at the time of the shooting. In rebuttal, the prosecutor argued the evidence in support of the State's case and then said, "And I'm waiting for [defense counsel] to answer the question, well, where was his client." Glover objected and the court sustained the objection, but allowed the prosecutor to rephrase. The prosecutor then pointed out again that Glover had not provided evidence that he was not present at time of the shooting. We agree with Glover that the prosecutor's argument improperly shifted the burden of proof to the defense. *Whitney v. State*, 112 Nev. 499, 502, 915 P.2d 881, 883 (1996) (reiterating that comments on a defendant's failure to produce evidence or call witnesses impermissibly shifts the burden of proof to the defense). Nevertheless, we conclude that this prosecutorial misconduct was harmless given the overwhelming evidence

both that Glover was at the scene and committed the crimes. *See King v. State*, 116 Nev. 349, 356, 998 P.2d 1172, 1176 (2000) (concluding that even aggravated prosecutorial misconduct may constitute harmless error where there is overwhelming evidence of guilt). Accordingly we,

ORDER the judgment of conviction AFFIRMED.<sup>3</sup>

  
Gibbons C.J.

  
Parraguirre J.

  
Douglas Sr. J.

cc: Chief Judge, The Eighth Judicial District Court  
Eighth Judicial District Court, Dept. 9  
Clark County Public Defender  
Clark County District Attorney  
Eighth District Court Clerk

---

<sup>3</sup>The Honorable Michael Douglas, Senior Justice, participated in the decision of this matter under a general order of assignment.

**CERTIFIED COPY**

This document is a full, true and correct copy of  
the original on file and of record in my office.

DATE: November 18, 2019

Supreme Court Clerk, State of Nevada

By [Signature] Deputy

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

SHAWN LYNN GLOVER, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 77425**  
District Court Case No. C312448

**REMITTITUR**

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.  
Receipt for Remittitur.

DATE: November 18, 2019

Elizabeth A. Brown, Clerk of Court

By: Monique Mercier  
Deputy Clerk

cc (without enclosures):

Eighth Judicial District Court Dept. 9, District Judge  
Clark County Public Defender \ Howard Brooks, Chief Deputy Public Defender  
Clark County District Attorney \ Alexander G. Chen, Chief Deputy District  
Attorney

**RECEIPT FOR REMITTITUR**

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the  
REMITTITUR issued in the above-entitled cause, on NOV 23 2019

**Deputy** HEATHER UNGERMANN  
District Court Clerk

RECEIVED  
APPEALS

NOV 22 2019

CLERK OF THE COURT

# DISTRICT COURT CIVIL COVER SHEET

Electronically Filed  
9/14/2020 8:17 PM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

County, Nevada  
Case No. \_\_\_\_\_  
(Assigned by Clerk's Office)

## I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone): <div style="text-align: center;">Shawn Glover</div>	Defendant(s) (name/address/phone): <div style="text-align: center;">The State of Nevada</div>
<b>CASE NO: A-20-821176-W</b> <b>Department 18</b>	
Attorney (name/address/phone): <div style="text-align: center;">Lucas Gaffney, Esq. 1050 Indigo Drive, Suite 120 Las Vegas, NV 89145</div>	Attorney (name/address/phone): <div style="text-align: center;">Steven Wolfson, Esq. Clark County District Attorney 200 Lewis Ave. Las Vegas, NV 89155-2212</div>

## II. Nature of Controversy *(please select the one most applicable filing type below)*

### Civil Case Filing Types

<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<b>Probate</b> <i>Probate (select case type and estate value)</i> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value</b> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <input checked="" type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		<b>Other Civil Filing</b> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

*Business Court filings should be filed using the Business Court civil coversheet.*

September 14, 2020

Date

Signature of initiating party or representative

*See other side for family-related case filings.*



3. Date of Judgment of Conviction: **Judgment of Conviction filed October 15, 2018.**

4. Case number: **C-16-312448-1**

5. Length of sentence:

- **Count 1 –LIFE, without the possibility of parole, plus a consecutive term of One Hundred Eighty (180) Months with a Minimum parole eligibility of Forty-Eight (48 months) for the Use of a Deadly Weapon.**

- **Count 2 – Maximum of Seventy-Two (72) Months with a Minimum parole eligibility of Twenty-Eight (28) months; concurrent with Count 1.**

- **Count 3 – Maximum One Hundred Eighty (180) Months with a Minimum parole eligibility of Sixty (60 months), Concurrent with Counts 1 and 2**

- **One Thousand Eleven (1,011) Days credit for time served.**

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

**N/A**

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

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



7. Nature of offense involved in conviction being challenged: **Count 1 – Murder With Use of a Deadly Weapon. Count 2 – Assault With A Deadly Weapon; Count 3 – Discharge of Firearm From Or Within A Structure or Vehicle; Count 4 – Ownership or Possession of Firearm By Prohibited Person.**

8. What was your plea? (Check one)

(a) **Not guilty X**

(b) Guilty \_\_\_\_

(c) Guilty but mentally ill \_\_\_\_

(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: **N/A**

10. If you were found guilty after a plea of not guilty, was the finding made by: **N/A**

11. Did you testify at the trial? **Yes.**

12. Did you appeal from the judgment of conviction? **Yes.**

13. If you did appeal, answer the following:

(a) Name of Court: **Supreme Court of Nevada**

(b) Case number or citation: **77425**

(c) Result: **Order of Affirmance.**

(d) Date of result: **October 24, 2019.**

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

1           15.     Other than on direct appeal from the judgment of conviction and sentence, have  
2 you previously filed any petitions, applications, or motions with respect to this judgment in any  
3 court, state, or federal? **No.**

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

5                   (a)     (1)     Name of court: **N/A.**

6                           (2)     Nature of proceeding: **N/A.**

7                           (3)     Grounds raised: **N/A.**

8                           (4)     Did you receive an evidentiary hearing on your petition,  
9 application or motion: **N/A.**

10                          (5)     Result: **N/A.**

11                          (6)     Date of result: **N/A.**

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

14                   (c)     As to any second or subsequent additional applications or motions, give  
15 the same information as above, list them on a separate sheet and attach. **N/A**

16                   (d)     Did you appeal to the highest state or federal court having jurisdiction,  
17 the result or action taken on any petition, application or motion? **N/A.**

18                          (1)     First petition, application or motion?           **N/A.**

19                                   Citation or date of decision:   **N/A.**

20                          (2)     Second petition, application or motion?       **N/A.**

21                                   Citation or date of decision:   **N/A.**

22                          (3)     Third petition, application or motion?       **N/A.**

23                                   Citation or date of decision:   **N/A.**

1 (e) If you did not appeal from the adverse action on any petition, application  
2 or motion, explain briefly why you did not. (You must relate specific facts in response to this  
3 question. Your response may be included on paper which is 8 ½ by 11 inches attached to this  
4 petition. Your response may not exceed five handwritten or typewritten pages in length.):

5 **N/A.**

6 17. Has any ground being raised in this petition been previously presented to this or  
7 any other court by way of a petition for writ of habeas corpus, motion, application, or any other  
8 post-conviction proceeding? If so, identify: **No.**

9 18. Any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any  
10 additional pages you have attached, were not previously presented in any other court, state or  
11 federal, list briefly what grounds were not so presented, and give your reasons for not  
12 presenting them. (You must relate specific facts in response to this question. Your response may  
13 be included on paper which is 8 ½ by 11 inches attached to this petition. Your response may not  
14 exceed five handwritten or typewritten pages in length.): **See Exhibit A for a list of the**  
15 **grounds being raised in the instant petition. The grounds being raised are claims of**  
16 **ineffective assistance of counsel, which are properly presented for the first time during**  
17 **post-conviction relief proceedings.**

18 19. Are you filing this petition more than one year following the filing of the  
19 judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the  
20 reasons for the delay. (You must relate specific facts in response to this question. Your response  
21 may be included on paper which is 8 ½ by 11 inches attached to this petition. Your response  
22 may not exceed five handwritten or typewritten pages in length.): **No.**

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? **No.**

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: **Trial Counsel: Clark County Public Defender, Ryan Bashor, Esq.; Appellate Counsel: Clark County Public Defender, Kedric A. Bassett, Esq.**

22. Did you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? **No.**

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

Supporting FACTS (Tell your story briefly without citing cases or law.): **See Exhibit A.**

(a) Petitioner would respectfully raise issues as they become necessary.

Petitioner would respectfully request this Court allow the undersigned to supplement this Petition.

WHEREFORE, Petitioner prays that this Honorable Court allow Lucas Gaffney, Esq., to Supplement this Petition.

DATED this 14<sup>th</sup> day of September, 2020.

GAFFNEY LAW

/s/ *Lucas Gaffney*

LUCAS J. GAFFNEY, Esq.

Nevada Bar No. 12373

1050 Indigo Drive, Suite 120

Las Vegas, Nevada 89145

*Attorney for Petitioner*

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Under penalty of perjury, the undersigned declares that the Petitioner authorized him to commence this action.

/s/ Lucas Gaffney  
LUCAS J. GAFFNEY, ESQ.

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STEVEN WOLFSON  
Clark County District Attorney  
200 Lewis Avenue  
Las Vegas, Nevada 89101  
Motions@clarkcountynv.com

AARON D. FORD  
Nevada Attorney General  
100 N. Carson Street  
Carson City, Nevada 89701-4714  
*Respondent*

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**EXHIBIT A**

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

The Petitioner, Shawn Glover (“Glover”), by and through appointed counsel hereby files this petition for writ of habeas corpus pursuant to NRS 34.724. Earley alleges that, upon information and belief, he is being held in custody in violation of the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the Constitution of the United States of America, and Articles I and IV of the Nevada Constitution. This timely post-conviction petition for a writ of habeas corpus now follows. Earley requests full discovery rights and an evidentiary hearing.

**I. RELEVANT PROCEDURAL HISTORY**

An Indictment, filed on February 4, 2016, charged Glover with the crimes of: Count 1 - Murder with use of a Deadly Weapon; Count 2 - Assault with a Deadly Weapon; Count 3 - Ownership or Possession of a Firearm by a Prohibited Person; and Count 4 - Discharge of Firearm. On February 8, 2016, Glover was arraigned in District Court. He pled Not Guilty and waived his right to a trial within sixty (60) days.<sup>1</sup> On April, 25, 2016, after Glover's previous attorney withdrew, the Public Defender reconfirmed on the case, and the trial date was reset. On June 28, 2018, Glover's motion to bifurcate Count 3 (Ownership or Possession of a Firearm by a Prohibited Person) was granted as unopposed.

---

<sup>1</sup> On January 6, 2016, the North Las Vegas Justice Court appointed the Public Defender to represent Glover in case number 16CRN000001. On February 9, 2016, the State dismissed the North Las Vegas Justice Court case due to filing of the Indictment.

1 An Amended Indictment was filed with the court on July 21, 2018. The Amended  
2 Indictment charged Glover with the crimes of: Count 1 - Murder with use of a Deadly Weapon;  
3 Count 2 - Assault with a Deadly Weapon; Count 3 - Discharge of Firearm from or within a  
4 Structure or Vehicle; and Count 4 - Ownership or Possession of a Firearm by a Prohibited  
5 Person.

6 A five-day trial, beginning on July 30, and concluding on August 3, 2018, was  
7 conducted in District Court, Department IX, before the Honorable Jennifer Togliatti. After the  
8 presentation of evidence, and deliberation, the jury returned a verdict of: Count 1 - Guilty of  
9 First Degree Murder with use of a Deadly Weapon; Count; Count 2 - Guilty of Assault with use  
10 of a Deadly Weapon; and Count 3 - Guilty of Discharge of Firearm from or within a Structure  
11 or Vehicle. The State dismissed Count 4 after receiving the verdict.

12 The Court sentenced Glover to: Count 1 - Life without the possibility of Parole plus a  
13 consecutive term of 180 months with a minimum parole eligibility of 48 months for the use of a  
14 deadly weapon; Count 2 - a maximum of 72 months with a minimum parole eligibility of 28  
15 months, concurrent with Count 1; and Count 3 - a maximum of 180 months with a minimum  
16 parole eligibility of 60 months, concurrent with Counts 1 and 2. (Count 4 was dismissed. The  
17 court imposed 1,011 days credit for time served.

18 On November 8, 2018, Glover filed a Notice of Appeal in Nevada Supreme Court Case  
19 77425. On April 17, 2019, Glover filed his Appellant's Opening Brief, which raised the  
20 following issues:

- 21 1. There was insufficient evidence presented at trial to overcome the presumption  
22 of innocence and thereby to sustain the convictions against Shawn Glover.  
23  
24



1           2. Mr. Glover was denied his constitutionally guaranteed right to a fair trial when  
2           the State attempted to shift the burden of proof to him.

3           3. Glover was denied his constitutionally guaranteed right to a fair trial when the  
4           court allowed the state to solicit from Miranda Sutton and Akira Veasley  
5           Improper Character Evidence.

6           On May 16, 2019, the State filed its Respondent's Answering Brief. Glover did not file a  
7           Reply Brief. On November 23, 2019, the Nevada Supreme Court filed its Order of Affirmance.  
8           On November 18, 2019, the Nevada Supreme Court filed its Remittitur.

9           **II. STATEMENT OF FACTS**

10           In December of 2015, about two weeks before the death of the victim, Patrick Fleming  
11           (Fleming), his wife Miranda Sutton (Sutton), their 21-year old daughter Akira Veasley  
12           (Veasley), and 12-year old twins, moved into a townhouse with their goddaughter Angela. Trial  
13           Transcript (TT), Day 3 (III), pages 42-45. Shortly after that, around Christmas Eve, Shawn  
14           Glover (Glover) also moved into the townhouse. TT III 45-46. Glover has a daughter in  
15           common with Angela. TT III 46. On January 1, 2016, five adults, along with several children  
16           were living in Angela's townhouse on 4032 Smokey Fog Avenue, in N011h Las Vegas. TT III  
17           46-47.

18           On the morning of January 1, 2016, after he returned from taking Angela to work,  
19           Fleming got into an argument with his stepdaughter Veasley over her behavior the night before.  
20           TT III 47-48. The night before, Fleming had a friend follow and videotape Veasley while she  
21           drove Fleming's vehicle and picked up a boy for a date. TT III 74. The argument took place  
22           downstairs in the garage and Sutton was present. TT III 47-48. According to Sutton's testimony,  
23           "it was an argument. It was a loud argument. It was a lot of shouting and that's primarily why  
24

1 we went to the garage. There was a lot of handclapping, you know, when you talk with your  
2 hands. But other than that... it was a typical argument that we were having.” TT III 48. Sutton  
3 testified that she and Veasley were screaming during the argument. TT III 74-75.

4 At some point during the argument, according to Sutton, Glover came downstairs and  
5 told Sutton that Angela was on the phone and wanted to speak to her. TT III 49. After Sutton  
6 told Angela that everything was okay, Glover went back upstairs. TT III 49. Later, as the  
7 argument in the garage was winding down, Glover returned downstairs to the garage. TT II 49.  
8 Sutton testified that Glover asked her to come upstairs with him, which she did. TT III 50.  
9 Sutton testified that Glover asked her if she wanted him to handle the situation. TT III 50-51.  
10 Sutton told Glover that everything was fine and not to worry. TT III 50-51.

11 Sutton testified that shortly after Fleming and Veasley had come back upstairs Fleming  
12 confronted Glover about wanting to talk to his wife, Sutton. TT III 52. Glover indicated he was  
13 concerned because of the heated argument that occurred in the garage. TT II 52. According to  
14 Sutton, when Fleming attempted to touch Glover on his shoulder, Glover pulled away “like  
15 man, get off me, you’re too close to me.” TT III 52. Fleming then looked at Glover and said “do  
16 we have a problem, do we need to talk?” TT III 52. Fleming suggested he and Glover go  
17 downstairs to talk. TT III 52.

18 Sutton told Fleming that he did not need to talk to Glover, but Fleming pushed Sutton to  
19 the side and walked downstairs. TT III 52. Sutton testified that Mr. Glover followed Fleming.  
20 TT III 53. Sutton then went towards Angela’s bedroom when she heard three gunshots. TT III  
21 53. Sutton and Veasley ran to the landing at the top of the stairs and saw Fleming lying on the  
22 floor and Glover standing over him holding a gun. TT III 54. Sutton testified that Glover  
23 pointed the gun at her and said something to the effect of “don’t tell on me.” TT III 54, 62-63.

1 Sutton later testified that Glover told her “if you and your kids want to live, you’ll shut the fuck  
2 up.” TT II 64. In response, Sutton raised her hands and said “Okay.” TT III 54. At that point,  
3 Glover left and Veasley called 911. TT III 55.

4 Sutton testified that she moved Fleming’s body in an attempt to perform  
5 cardiopulmonary resuscitation (CPR). TT III 55-56. Sutton further testified that at some point  
6 during the argument, Glover took the five children into a bedroom to play, he told them to stay  
7 in the bedroom and closed the door. TT III 57.

8 On cross examination, Sutton testified that she told the 911 operator Fleming was shot  
9 after he answered the front door, and that she did not know who shot Fleming. TT III 67-68.  
10 Sutton also testified that she told the 911 operator that she knew Fleming had talked to someone  
11 on the phone that was supposed to come over to the house, but she did not see anything. TT III  
12 68. After the police arrived, Sutton gave a statement to detectives where she indicated that  
13 Fleming was selling marijuana and was looking to “re-up.” TT III 70-71. As such, Sutton left  
14 the police with the initial impression that a potential customer had shot Fleming during a drug  
15 deal.

16 Veasley testified to substantially the same version of events with a few exceptions.  
17 Veasley testified that when Glover and Fleming were arguing at the top of the stairs, Glover  
18 confronted Patrick for trying to physically harm Veasley and Sutton. TT III 94-95. Glover also  
19 indicated to Veasley that he heard her and Sutton crying. TT III 94. Veasley testified that  
20 Fleming grabbed Glover by his elbows but Glover pulled away. TT III 95. One of them  
21 suggested going downstairs to talk, and shortly after they went downstairs Veasley heard three  
22 gunshots. TT III 95. After she and Sutton ran over to the stairs she believed Glover warned  
23 them “about not snitching on him.” TT III 97.

1           Veasley further testified that immediately following the shooting, she told the detectives  
2 that there was a man named Hatch in the house who was a customer of Fleming's. TT III 103.  
3 And that Fleming would average two to three customers a day selling marijuana. TT III 103.  
4 Veasley told the detectives that Hatch waited upstairs during the argument, but at some point  
5 came down stairs to speak to Sutton. TT III 104. Fleming became upset with Hatch for speaking  
6 to Sutton and told Hatch to mind his own business. TT III 104. Veasley testified that she told  
7 the detectives she had never seen Hatch before, and as far as she knew Sutton did not know  
8 Hatch. TT III 104. Veasley also testified that she told the detectives that she did know if Hatch  
9 went by any other names or had any tattoos. TT III 105. Veasley then testified that the next day  
10 she told the detectives that Hatch is Glover, and she lied because she was afraid of him. TT III  
11 106. Veasley also testified that Fleming owned a Dodge Durango which he let other people  
12 drive. TT III 105. But Veasley noticed after the shooting that the keys to the Durango, which  
13 Fleming normally left on the kitchen counter were gone, and the Durango was missing. TT III  
14 105, 108.

15           Dr. Jennifer Corneal (Dr. Corneal) testified that Dr. Timothy Dutra (Dr. Dutra)  
16 performed the autopsy of Fleming. TT III 121. Dr. Corneal had merely reviewed the autopsy  
17 report and investigative files, including photographs, as it related to the autopsy performed on  
18 Fleming on January 2, 2016. TT III 121.

19           Dr. Corneal testified that Fleming was shot in the back of his head on the left side. TT  
20 III 123. The entrance wound was located in the back of Fleming's head. TT III 123, 124. The  
21 trajectory of the projectile was left to right, and downward. TT III 126. The projectile passed  
22 through Fleming's brain, which transected his brain stem and immediately incapacitated him.  
23 TT III 127. Dr. Corneal testified that she did not observe any soot or stippling that would  
24

1 indicate the gun was fired at close range. TT III 128. She further testified she could not  
2 determine the range at which the gun was fired possibly due to Fleming’s thick hair, which may  
3 have absorbed the soot—the gray material deposited around the wound edges—and/or the  
4 stippling—the unburnt gun powder that strikes the skin during a shooting at close range. TT III  
5 128.

6 Patrick was also shot in his inner, right upper arm, and in the right groin area. TT III  
7 129-130. The trajectory of the projectile in the groin area was right to left, front to back and  
8 downward. TT III 131. Dr. Corneal testified that the gunshot wound to the head was the cause  
9 of Patrick’s death, and the manner of death was homicide. TT III 131.

### 10 **III. GROUND FOR RELIEF**

#### 11 **LEGAL AUTHORITY RELEVANT TO ALL CLAIMS**

12 A conviction cannot stand when defense counsel fails to provide effective assistance  
13 during a critical stage of criminal proceedings. U.S. Const. Amends. V, VI, & XIV; Nevada  
14 Constitution Art. I. Counsel is ineffective, thereby depriving a defendant of his rights, when (1)  
15 it is deficient, such that counsel made errors so serious it ceased to function as the “counsel”  
16 guaranteed by the Sixth Amendment, and (2) when that deficiency prejudicial to the defendant,  
17 such that the result of the proceeding is rendered unreliable. Strickland v. Washington, 466 U.S.  
18 668, 687-88 (1984). The question of whether a defendant has received ineffective assistance is a  
19 mixed question of law and fact and is subject to independent review. State v. Love, 109 Nev.  
20 1136-38, 865 P.2d 322, 323 (Nev. 1993).

21 Performance of counsel will be judged against the objective standard for reasonableness,  
22 and is deficient when it falls below that standard. State v. Powell, 122 Nev. 751, 759, 138 P.3d  
23 453, 458 (Nev. 2006); Means v. State, 120 Nev. 1001, 103 P.3d 25 (Nev. 2004). Where counsel  
24

1 might claim that an action was a strategic one, the reviewing court must satisfy itself that the  
2 decisions were, indeed, reasonable. Strickland, 466 U.S. at 691.

3 Prejudice to the defendant occurs where there is a reasonable probability that, but for  
4 counsel's errors, the result of the proceeding would have been different." Kirksey v. State, 112  
5 Nev. 980, 988, 923 P.2d 1102, 1107 (Nev. 1996). A "reasonable probability" is one sufficient to  
6 undermine confidence in the outcome. Id.

7 With respect to post-conviction habeas corpus petitions, all factual allegations in support  
8 of an ineffective assistance of counsel claim must only be proven by a preponderance of the  
9 evidence. Powell, 122 Nev. at 759.

10  
11 **A. TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE TO THE**  
12 **PETITIONER BY FAILING TO OBJECT TO TESTIMONIAL HEARSAY**  
**INTRODUCED IN VIOLATION OF CRAWFORD V. WASHINGTON.**

13 Glover's state and federal constitutional rights to due process, confrontation and cross-  
14 examination were violated because trial counsel failed to object to the introduction of  
15 testimonial hearsay evidence in the form of Dr. Dutra's autopsy report and related findings.  
16 U.S. Const. amend. V, VI, XIV; Nevada Const. Art. I, Sec. 3, 6 and 8; Art. IV, Sec. 21.

17 This issue was considered by the United States Supreme Court. In Commonwealth v.  
18 Melendez-Diaz, 129 S.Ct. 2527 (2009), the Supreme Court found that admission of a laboratory  
19 analysts' affidavits violated the defendant's right of confrontation:

20 In short, under our decision in Crawford the analysts' affidavits were  
21 testimonial statements, and the analysts were "witnesses" for purposes of  
22 the Sixth Amendment. Absent a showing that the analysts were  
23 unavailable to testify at trial and that petitioner had a prior opportunity to  
24 cross-examine them, petitioner was entitled to "be confronted with" the  
analysts at trial.

Id. at 2532 (alteration in original) (quoting Crawford, 541 U.S. at 54).

1 As in Melendez-Diaz, evidence of the autopsy were admitted, even though the expert  
2 who performed the examinations did not testify at trial. Glover was denied the opportunity to  
3 question Dr. Dutra about his methodology, competence as an expert, and other factors relevant  
4 to the weight and admissibility of the testimony provided via Dr. Corneal. As set forth at length  
5 in Melendez-Diaz, findings by expert witnesses must be subject to confrontation:  
6

7 Nor is it evident that what respondent calls "neutral scientific testing" is as  
8 neutral or as reliable as respondent suggests. Forensic evidence is not  
9 uniquely immune from the risk of manipulation. According to a recent  
10 study conducted under the auspices of the National Academy of Sciences,  
11 "[t]he majority of [laboratories producing forensic evidence] are  
12 administered by law enforcement agencies, such as police departments,  
13 where the laboratory administrator reports to the head of the agency."  
14 National Research Council of the National Academies, Strengthening  
15 Forensic Science in the United States: A Path Forward 6-1 (Prepublication  
16 Copy Feb. 2009) (hereinafter National Academy Report). And "[b]ecause  
17 forensic scientists often are driven in their work by a need to answer a  
18 particular question related to the issues of a particular case, they  
19 sometimes face pressure to sacrifice appropriate methodology for the sake  
20 of expediency." *Id.*, at S-17. A forensic analyst responding to a request  
21 from a law enforcement official may feel pressure --or have an incentive --  
22 to alter the evidence in a manner favorable to the prosecution.

23 Confrontation is one means of assuring accurate forensic analysis. While  
24 it is true, as the dissent notes, that an honest analyst will not alter his  
testimony when forced to confront the defendant, post, at 10, the same  
cannot be said of the fraudulent analyst. See Brief for National Innocence  
Network as Amicus Curiae 15-17 (discussing cases of documented  
"drylabbing" where forensic analysts report results of tests that were never  
performed); National Academy Report 1-8 to 1-10 (discussing  
documented cases of fraud and error involving the use of forensic  
evidence). Like the eyewitness who has fabricated his account to the  
police, the analyst who provides false results may, under oath in open  
court, reconsider his false testimony. See Coy v. Iowa, 487 U.S. 1012,  
1019 (1988). And, of course, the prospect of confrontation will deter  
fraudulent analysis in the first place.

Confrontation is designed to weed out not only the fraudulent analyst, but  
the incompetent one as well. Serious deficiencies have been found in the  
forensic evidence used in criminal trials. One commentator asserts that

1 "[t]he legal community now concedes, with varying degrees of urgency,  
2 that our system produces erroneous convictions based on discredited  
3 forensics." Metzger, *Cheating the Constitution*, 59 Vand. L. Rev. 475, 491  
4 (2006). One study of cases in which exonerating evidence resulted in the  
5 overturning of criminal convictions concluded that invalid forensic  
6 testimony contributed to the convictions in 60% of the cases. Garrett &  
7 Neufeld, *Invalid Forensic Science Testimony and Wrongful Convictions*,  
8 95 Va. L. Rev. 1, 14 (2009). And the National Academy Report  
concluded: "The forensic science system, encompassing both research and  
practice, has serious problems that can only be addressed by a national  
commitment to overhaul the current structure that supports the forensic  
science community in this country." National Academy Report P-1  
(emphasis in original). Like expert witnesses generally, an analyst's lack  
of proper training or deficiency in judgment may be disclosed in cross-  
examination.

9 Melendez-Diaz, 129 S. Ct. at 2537 (footnote omitted).

10  
11 Glover's constitutional rights were violated as trial counsel failed to object to the State  
12 presenting the findings of an expert witnesses who did not testify at trial. Specifically, Dr.  
13 Dutra, the medical examiner who performed the autopsy and authored the autopsy report on  
14 Fleming did not testify at trial.<sup>2</sup> Instead, Dr. Dutra's findings were presented by Dr. Corneal. TT  
15 III 118-113. The State did not file formal notice that Dr. Corneal would testify as an expert  
16 witness pursuant to NRS 174.234(2).<sup>3</sup> Although the State indicated that Dr. Dutra had retired, it  
17 did not provide an explanation for why Dr. Dutra was unavailable to testify at Glover's trial.<sup>4</sup>  
18 TT III 121.

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20 <sup>2</sup> The State included Dr. Dutra (and/or designee) on its State's Notice of Expert Witnesses filed  
21 November 9, 2017. The Notice indicated that Dr. Dutra would "testify to all aspect [sic] of the  
22 coroner's investigation and conclusions in the death of Patrick Fleming. *See* Exhibit B.

23 <sup>3</sup> It is currently unknown if the State provided trial counsel with Dr. Corneal's CV, or some  
other documentation that listed Dr. Corneal's qualifications to testify as an expert.

24 <sup>4</sup> The defense never had an opportunity to cross examine Dr. Dutra.



1 Trial counsel also erred by not objecting to the district court allowing the State to  
2 present the findings of an expert witness without requiring those experts testify at trial. In doing  
3 so, trial counsel and the district court violated Glover’s rights under Crawford v. Washington,  
4 541 U.S. 36 (2004), as Dr. Dutra’s autopsy findings constituted testimonial hearsay evidence  
5 and was inadmissible under these circumstances. *See also* Bullcoming v. New Mexico, 564 U  
6 S. 647, 664, 131 S.Ct. 2705, 180 L.Ed.2d 610 (2011) (“A document created *solely* for an  
7 ‘evidentiary purpose,’ ... made in aid of a police investigation, ranks as testimonial.”) (emphasis  
8 added) (*quoting* Melendez-Diaz, 557 U.S. at 311, 129 S.Ct. 2527).

9 The Nevada Supreme Court has not decided in a published opinion whether autopsy  
10 reports constitute ‘testimonial evidence’ so as to trigger the protections of the Confrontation  
11 Clause. And courts elsewhere have been almost evenly divided in their opinions on this issue.  
12 *See* Rosario v. State, 175 So. 3d 843, 858 (Fla. Dist. Ct. App. 2015) (“In sum, we conclude that  
13 an autopsy report prepared pursuant to chapter 406 is testimonial hearsay under the  
14 Confrontation Clause.”); Commonwealth v. Brown, 2016 PA Super 98, 139 A.3d 208, 216  
15 (2016), *aff’d sub nom.* Commonwealth v. Brown, 646 Pa. 396, 185 A.3d 316 (2018); State v.  
16 Kennedy, 229 W. Va. 756, 768, 735 S.E.2d 905, 917 (2012) ([F]or purposes of use in criminal  
17 prosecutions, autopsy reports are under all circumstances testimonial.); United States v.  
18 Ignasiak, 667 F.3d 1217, 1233 (11th Cir. 2012) ([A]utopsy reports in this case are testimonial.);  
19 Wood v. State, 299 S.W.3d 200, 210 (Tex. App. 2009) (Holding that an autopsy report was a  
20 testimonial statement and that medical examiner was a witness within the meaning of the  
21 Confrontation Clause); United States v. Williams, 740 F. Supp. 2d 4, 10 (D.D.C. 2010) (Ruling  
22 the autopsy report and death certificate were excluded from evidence as testimonial hearsay.);  
23 Martinez v. State, 311 S.W.3d 104, 111 (Tex. App. 2010) (Holding that autopsy report was a  
24

1 testimonial statement and that medical examiner was a witness within the meaning of the  
2 Confrontation Clause of the Sixth Amendment.); State v. Navarette, 294 P.3d 435, 444  
3 (Defendant's confrontation rights were violated by forensic pathologist's testimonial hearsay to  
4 the jury); State v. Jaramillo, 2012-NMCA-029, ¶ 16, 272 P.3d 682, 687 (In the absence of the  
5 cross-examination requirement in satisfaction of the Confrontation Clause admission of autopsy  
6 report resulted in the violation of Defendant's right to confrontation.); United States v. Moore,  
7 651 F.3d 30, 72 (D.C. Cir. 2011), aff'd sub nom. Smith v. United States, 568 U.S. 106, 133 S.  
8 Ct. 714, 184 L. Ed. 2d 570 (2013)( [G]overnment's attempts to avoid the Confrontation Clause,  
9 on the grounds that the autopsy reports rank as non-testimonial and that the DEA reports  
10 contain raw data, rather than statements, are foreclosed by Bullcoming.); Garlick v. Lee, No.  
11 18CV11038CMSLC, 2020 WL 2854268, at 7 (S.D.N.Y. June 2, 2020) (Autopsy Report was  
12 testimonial and surrogate testimony from a qualified expert in medical examination was not a  
13 sufficient substitute for cross examination)

14       Indeed, an autopsy report is testimonial if "it would lead an objective witness to  
15 reasonably believe that the statement would be available for use at a later trial." Vega v. State,  
16 236 P.3d 632. It is also incriminating on its face. Under Crawford, 541 U.S. 36 (2004), the  
17 testimonial statement of an otherwise unavailable witness is inadmissible "unless the defendant  
18 had an opportunity to previously cross-examine the witness regarding the witness's statement.  
19 Id., Medina v. State, 122 Nev. 346, 353, 143 P.3d 471, 476 (2006); *see also* Polk v. State, 126  
20 Nev. 180; 233 P.3d 357 (2010) (Gunshot residue test results were inadmissible under Crawford  
21 where the witness was unavailable and had not been cross examined by the defense.

22       Under this authority, there can be no question that Glover was entitled to cross-examine  
23 Dr. Dutra and it was constitutional error to admit hearsay statements of Dr. Dutra's examination  
24

1 and his findings related to the autopsy of Fleming. Accordingly, there is no feasible strategic  
2 reason for trial counsel's failure to object to the admission of testimonial hearsay through Dr.  
3 Corneal's testimony at trial. As such, trial counsel was ineffective for failing to object to Dr.  
4 Corneal's testimony as including testimonial hearsay in violation of Glover's right to confront  
5 Dr. Dutra, thereby resulting in a violation of Glover's constitutional right to effective assistance  
6 of counsel, due process of law, and equal protection of laws. U.S. Const. Amends VI, VIII,  
7 XIV; Nev. Const. Art. 1 Sec. 6, 8.

8 Moreover, potential prejudice from a Crawford error is reviewed for harmless error.  
9 Medina, 122 Nev. at 346. Therefore, the state must show beyond a reasonable doubt that the  
10 error complained of did not contribute to the verdict. Polle v. State, 126 Nev. 180, 233 P.2d 257  
11 (2010); Idaho v. Wright, 497 U.S. 805, 827, 110 S.Ct. 3139, 3152 (1990). The State cannot  
12 meet its burden.

13 Based on the foregoing, Glover submits that he received ineffective assistance of  
14 counsel as provided herein. Glover requests this Court grant the instant petition and vacate his  
15 conviction and sentence. In the alternative, Glover requests that this Court grant an evidentiary  
16 hearing to determine the extent of counsel's deficient performance and create an adequate  
17 record regarding this claim as it is not belied by the record, and if true, would entitle him to  
18 relief. *See* Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

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1       **B. TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE TO THE**  
2       **PETITIONER BY POSSESSING A CONFLICT OF INTEREST**  
3       **RESULTING FROM THE PUBLIC DEFENDER’S OFFICE PREVIOUS**  
4       **REPRESENTATION OF FLEMING IN A CRIMINAL CASE.**

5       The adversarial process protected by the Sixth Amendment compelled trial counsel to  
6       act as Glover’s advocate. United States v. Cronin, 466 U.S. 648, 656 (1984). As such, trial  
7       counsel’s role required him to represent Glover fully and vigorously. Young v. Ninth Judicial  
8       Dist. Court, In & For City of Douglas, 107 Nev. 642, 649, 818 P.2d 844, 848 (1991), (1991)  
9       (internal quotations, citation omitted).<sup>5</sup> However, trial counsel was constitutionally ineffective  
10      in his representation of Glover due to conflicting loyalties. *See* Clark v. State, 108 Nev. 324,  
11      326, 831 P.2d 1374, 1376 (1992) (In general, a conflict exists when an attorney is placed in a  
12      situation conducive to divided loyalties.)

13      If a defendant shows counsel actively represented conflicting interests and that an actual  
14      conflict of interest adversely affected his lawyer’s performance prejudice is presumed. *See*  
15      Strickland, supra, 466 U.S. at 692 (internal quotations, citation omitted); *see also*, Clark, supra,  
16      108 Nev. at 326; Cuyler v. Sullivan, 446 U.S. 335, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980);  
17      Mannon v. State, 98 Nev. 224, 226, 645 P.2d 433, 434 (1982). This exception is based, in part,  
18      on the difficulty in measuring the effect of representation tainted by conflicting interests.  
19      Strickland, 466 U.S. at 692, 104 S.Ct. at 2067.

20      ///

21      ///

22      

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<sup>5</sup> *See also*, e.g., Greenberg Taurig v. Frias Holding Co., 331 P.3d 901, 904 (Nev. 2014)  
23      (“[a]ttorneys must zealously pursue the[ir] [clients’] interests ...”). This is “particularly true in  
24      criminal cases ...” Young, supra 107 Nev. at 649. (internal quotations, citation omitted).

1 Rule 2.1 of Nevada's Rules of Professional Conduct (NRPC) states:

2 (a) Except as provided in paragraph (b), a lawyer shall not represent a client if  
3 the representation involves a concurrent conflict of interest. A concurrent  
4 conflict of interest exists if:

5 (1) The representation of one client will be directly adverse to another  
6 client; or

7 (2) There is a significant risk that the representation of one or more  
8 clients will be materially limited by the lawyer's responsibilities to  
9 another client, a former client or a third person or by a personal interest  
10 of the lawyer.

11 (b) Notwithstanding the existence of a concurrent conflict of interest under  
12 paragraph (a), a lawyer may represent a client if:

13 (1) The lawyer reasonably believes that the lawyer will be able to provide  
14 competent and diligent representation to each affected client;

15 (2) The representation is not prohibited by law;

16 (3) The representation does not involve the assertion of a claim by one  
17 client against another client represented by the lawyer in the same  
18 litigation or other proceeding before a tribunal; and

19 (4) Each affected client gives informed consent, confirmed in writing.

20 In Waid, the Nevada Supreme Court adopted the Seventh Circuit's three-part test for  
21 analyzing former client conflicts of interest. Waid v. Eighth Judicial Dist. Court ex rel. Cty. of  
22 Clark, 121 Nev. 605, 610, 119 P.3d 1219, 1223 (2005). Pursuant to Waid, the Court must: (1)  
23 make a factual determination concerning the scope of the former representation, (2) evaluate  
24 whether it is reasonable to infer that the confidential information allegedly given would have  
been given to a lawyer representing a client in those matters, and (3) determine whether that  
information is relevant to the issues raised in the present litigation. Id.

Here, trial counsel failed to disclose the Public Defender's former representation of  
Fleming in two cases. The Public Defender represented Fleming in Las Vegas Justice Court

1 case number 01M20858X, that resulted in the court convicting Fleming of Battery Domestic  
2 Violence following a bench trial. *See* Exhibit C. The Public Defender also represented Fleming  
3 in Las Vegas Justice Court case number 10F15357X, where Fleming pleaded Nolo Contendere to  
4 a charge of Disorderly Conduct.

5 The precise scope of Fleming’s former representation is unknown, as is whether any  
6 information disclosed to the Public Defender’s Office would be relevant to the issues presented  
7 in the instant post-conviction Petition. As discussed below, Glover submits that both matters  
8 warrant an evidentiary hearing.

9 Glover further submits that given the nature of the conviction for battery domestic  
10 violence, it is reasonable to infer that Fleming would have provided confidential and/or  
11 sensitive information about his violent conduct to his public defender.<sup>6</sup> That information could  
12 have potentially been used to support a self-defense claim during Glover’s trial. Such a defense  
13 would have been bolstered by trial testimony that revealed: 1) Fleming initiated a confrontation  
14 with Glover following a heated argument with Sutton and Veasley; 2) Fleming pushed Sutton to  
15 the side when she attempted to deescalate the confrontation between Fleming and Glover; and  
16 3) that Fleming was in physical possession of a firearm at the time of his death. However, the  
17 Public Defender’s Office would have been precluded from utilizing any information Fleming  
18 disclosed about his history of violence in order to remain in compliance with NRPC 1.6, which  
19 governs the confidentiality of attorney-client communications.<sup>7</sup> Thus, there was a significant  
20

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21 <sup>6</sup> Presently, Glover does not know the identity of the victim in case 10F15357X. Nor does he  
22 know the factual basis underlying the disorderly conduct charge.

23 <sup>7</sup> NRPC 1.6<sup>7</sup>—Confidentiality of Information—provides:

24 (a) *A lawyer shall not reveal information relating to representation of a client  
unless the client gives informed consent*, the disclosure is impliedly authorized in

1 risk that the representation of Fleming materially limited trial counsel's responsibilities to  
2 Glover. As such, a conflict of interest existed and trial counsel should have withdrawn or  
3 obtained informed consent from Glover to continue the representation.

4 Because trial counsel did not disclose the conflict, the district court never had an  
5 opportunity to determine if the public defender should be disqualified due to its former  
6

---

7 order to carry out the representation, or the disclosure is permitted by paragraphs  
8 (b) and (d).

9 (b) A lawyer may reveal information relating to the representation of a client to the  
10 extent the lawyer reasonably believes necessary:

- 11 (1) To prevent reasonably certain death or substantial bodily harm;
- 12 (2) To prevent the client from committing a criminal or fraudulent act in  
13 furtherance of which the client has used or is using the lawyer's  
14 services, but the lawyer shall, where practicable, first make reasonable  
15 effort to persuade the client to take suitable action;
- 16 (3) To prevent, mitigate, or rectify the consequences of a client's criminal  
17 or fraudulent act in the commission of which the lawyer's services have  
18 been or are being used, but the lawyer shall, where practicable, first  
19 make reasonable effort to persuade the client to take corrective action;
- 20 (4) To secure legal advice about the lawyer's compliance with these Rules;
- 21 (5) To establish a claim or defense on behalf of the lawyer in a controversy  
22 between the lawyer and the client, to establish a defense to a criminal  
23 charge or civil claim against the lawyer based upon conduct in which  
24 the client was involved, or to respond to allegations in any proceeding  
concerning the lawyer's representation of the client; or
- (6) To comply with other law or a court order.
- (7) To detect and resolve conflicts of interest arising from the lawyer's  
change of employment or from changes in the composition or  
ownership of a firm, but only if the revealed information would not  
compromise the attorney-client privilege or otherwise prejudice the  
client.

(emphasis added)

1 representation of Fleming. Additionally, Glover never had an opportunity to give informed  
2 consent in order to potentially waive the conflict.

3 Based on the foregoing, Glover submits that he received ineffective assistance of  
4 counsel due to trial counsel's conflict of interest as provided herein. Because an actual conflict  
5 of interest which adversely affects a lawyer's performance will result in a presumption of  
6 prejudice to the defendant, prejudice to Glover is presumed. Glover requests this Court grant the  
7 instant petition and vacate his conviction and sentence. In the alternative, Glover requests that  
8 this Court grant an evidentiary hearing to develop the facts that will assist this Court in  
9 conducting the Waid analysis and determine the extent of counsel's deficient performance. An  
10 evidentiary hearing is warrant as this claim is not belied by the current record, and if true, would  
11 entitle Glover to relief. *See Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

#### 12 **IV. CONCLUSION**

13 Glover submits that he received ineffective assistance of counsel as discussed above.  
14 Accordingly, Glover respectfully requests this Honorable Court grant the instant petition, vacate  
15 his conviction and sentence, and schedule his case for trial. In the alternative, Glover requests  
16 that this Court grant an evidentiary hearing to determine the extent of counsel's deficient  
17 performance to create an adequate record regarding the claims contained herein.

18 DATED this 14<sup>th</sup> day of September, 2020.

19 GAFFNEY LAW

20 /s/ Lucas Gaffney

21 LUCAS J. GAFFNEY, Esq.

22 Nevada Bar No. 12373

23 1050 Indigo Drive, Suite 120

24 Las Vegas, Nevada 89145

*Attorney for Petitioner*



# **EXHIBIT B**

**REGISTER OF ACTIONS****CASE No. 01M20858X****State of Nevada vs Fleming, Patrick Ramon**§  
§  
§  
§  
§Case Type: **Misdemeanor**  
Date Filed: **09/24/2001**  
Location: **JC Department 4****PARTY INFORMATION****Defendant** **Fleming, Patrick Ramon AKA Flemming, Patrick****Lead Attorneys**  
**Mark D. Cichoski**  
*Public Defender*  
7024554685(W)**State of Nevada** **State of Nevada****CHARGE INFORMATION**

Charges: Fleming, Patrick Ramon	Statute	Level	Date
1. BATTERY (DOMESTIC VIOLENCE)	200.481	Misdemeanor	09/11/2001

**EVENTS & ORDERS OF THE COURT**

	DISPOSITIONS
10/29/2002	<b>Disposition</b> (Judicial Officer: Bixler, James M.) 1. BATTERY (DOMESTIC VIOLENCE) PLEA NOLO/FOUND GUILTY
10/29/2002	<b>Plea</b> (Judicial Officer: Bixler, James M.) 1. BATTERY (DOMESTIC VIOLENCE) Guilty
10/29/2002	<b>Conversion Sentence Event Type</b> (Judicial Officer: Bixler, James M.) 1. BATTERY (DOMESTIC VIOLENCE) Condition - Adult: 1. COUNSELING, 10/29/2002, Active 10/29/2002 Comment (DATE: 10/29/2002 JC FINE: 0200 AA FINE: 115 JC TOTAL: 0315 JC EXCUSED: 0315) Comment (COMM SERV (DAYS): (HRS):002 (MINS):) Comment (MAY DO 48 HRS COMM/SRVC IN LIUE OF FINE; ATTEND DO;MESTIC VIOLENCE PROGRAM.) Comment (CTS (MOS): 00 CTS (DAYS): 000 CTS (HRS): )
	OTHER EVENTS AND HEARINGS
09/11/2001	<b>ARREST WARRANT REQUEST</b> <i>ARREST WARRANT REQUEST</i>
09/24/2001	<b>TRANSFERRED TO JC</b> <i>TRANSFERRED TO JC</i>
09/24/2001	<b>CTRACK Track Assignment JC04</b>
09/25/2001	<b>RECEIVED FROM DA</b> <i>RECEIVED FROM DA</i>
09/28/2001	<b>SUMMONS ISSUED</b> (Judicial Officer: Bixler, James M. ) <i>MISD ARRGN</i>
09/28/2001	<b>Arraignment</b> (8:00 AM) (Judicial Officer Bixler, James M.) Result: COMPLETED
10/31/2001	<b>BENCH WARRANT ISSUED</b> (Judicial Officer: Bixler, James M. ) <i>MISD ARRGN</i>
10/31/2001	<b>Arraignment</b> (8:00 AM) (Judicial Officer Bixler, James M.) Result: COMPLETED
09/16/2002	<b>ARRAIGNMENT COMPLETED</b> (Judicial Officer: Bixler, James M. ) <i>MOTIONS</i>
09/16/2002	<b>BENCH WARRANT QUASHED</b> (Judicial Officer: Bixler, James M. ) <i>BENCH WARRANT</i>
09/16/2002	<b>Motion</b> (8:00 AM) (Judicial Officer Bixler, James M.) Result: COMPLETED
10/29/2002	<b>SEE CHARGE/DISPOSITION/SENT RECORDS</b> (Judicial Officer: Bixler, James M. ) <i>NONJURY TRIAL</i>
10/29/2002	<b>COURTESY NOTICE OF DISPOSITION GENERATED</b> <i>MinuteCode1: COURTESY NOTICE OF DISPOSITION GENERATED MinuteCode3: COURTESY NOTICE OF DISPOSITION GENERATED</i>
10/29/2002	<b>Bench Trial</b> (8:00 AM) (Judicial Officer Bixler, James M.) Result: GUILTY/SENT

05/28/2003	<b>REQUIREMENTS COMPLETED</b> (Judicial Officer: Bixler, James M. ) <i>OTHER</i>
05/28/2003	<b>OTHER</b> (8:00 AM) (Judicial Officer Bixler, James M.) Result: COMPLETED

**REGISTER OF ACTIONS****CASE No. 10F15357X****State of Nevada vs Fleming, Patrick Ramon**§  
§  
§  
§  
§Case Type: **Felony**  
Date Filed: **10/26/2010**  
Location: **JC Department 2****PARTY INFORMATION****Defendant Fleming, Patrick Ramon****Lead Attorneys**  
**G. Darren Cox**  
*Public Defender*  
7024554685(W)**State of Nevada**  
**State of Nevada****CHARGE INFORMATION****Charges: Fleming, Patrick Ramon**  
1. DISORDERLY CONDUCT**Statute**  
12.33.010**Level**  
Misdemeanor**Date**  
08/10/2010**EVENTS & ORDERS OF THE COURT****DISPOSITIONS**

04/07/2011 **Disposition** (Judicial Officer: Sciscento, Joseph S.)  
1. DISORDERLY CONDUCT  
PLEA NOLO/FOUND GUILTY

04/07/2011 **Plea** (Judicial Officer: Sciscento, Joseph S.)  
1. DISORDERLY CONDUCT  
GUILTY

04/07/2011 **Conversion Sentence Event Type** (Judicial Officer: Sciscento, Joseph S.)  
1. DISORDERLY CONDUCT  
Condition - Adult:  
1. Impulse Control Counseling, 04/07/2011, Active 04/07/2011  
Comment (DATE: 04/07/2011 JC FINE: 0233 AA FINE: 102 JC TOTAL: 0335 JC EXCUSED: )  
Comment (NONE;MAY DO 23 HRS COMM/SERV & PAY \$102 AA FEES IN LIEU; OF FINE)

**OTHER EVENTS AND HEARINGS**

08/10/2010 **ARREST WARRANT REQUEST**  
ARREST WARRANT REQUEST

08/10/2010 **COMPLETED BY CL**  
MinuteCode1: COMPLETED BY CL MinuteCode3: COMPLETED BY CL

10/26/2010 **TRANSFERRED TO JC**  
TRANSFERRED TO JC

10/26/2010 **COMPLETED BY JI**  
MinuteCode1: COMPLETED BY JI MinuteCode3: COMPLETED BY JI

10/26/2010 **CTRACK Track Assignment JC02**

11/03/2010 **RECEIVED FROM DA**  
RECEIVED FROM DA

11/03/2010 **Criminal Complaint**

11/03/2010 **Request for Arrest Warrant Filed**

11/03/2010 **Filed Under Seal**

11/03/2010 **Declaration of Warrant Summons (Affidavit)**

11/03/2010 **Minute Order**

11/05/2010 **ARREST WARRANT ISSUED** (Judicial Officer: Oesterle, Nancy C. )  
WARRANT REQUEST

11/05/2010 **Arrest Warrant Request** (8:00 AM) (Judicial Officer Oesterle, Nancy C.)  
Result: COMPLETED

11/05/2010 **Arrest Warrant - Face Sheet**

11/05/2010 **Arrest Warrant Confidential**

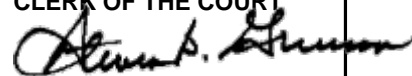
12/10/2010 **JCON Accounting Detail**  
Rcpt #: 09964759 Deft Name: FLEMING, PATRICK RAMON Payer Name: 1 STOP BAIL BONDS Deft ID: 00978383 Fund: 660 Payment  
Type: CHK Location: ITK Case #: 10F15357X

12/10/2010 **BAILED/BONDED**  
BAILED/BONDED

12/10/2010 **NJCIS - CLEAR/SERVE**  
NJCIS - CLEAR/SERVE

12/10/2010 **Surety Bond**  
 12/10/2010 **Bail Receipt**  
 12/10/2010 **Bail Receipt**  
 12/10/2010 **Temporary Custody Record**  
 12/11/2010 **Waiver of Extradition After Admission to Bail**  
 12/13/2010 **Warrant Arrest Documents**  
 12/14/2010 **P/H DATE SET** (Judicial Officer: Oesterle, Nancy C. )  
     *WARRANT HEARING*  
 12/14/2010 **Bench Warrant Return Hearing** (8:00 AM) (Judicial Officer Oesterle, Nancy C.)  
     Result: COMPLETED  
 12/14/2010 **Financial Affidavit**  
 04/07/2011 **SEE CHARGE/DISPOSITION/SENT RECORDS** (Judicial Officer: Sciscento, Joseph S. )  
     *PRELIM HEARING*  
 04/07/2011 **COURTESY NOTICE OF DISPOSITION GENERATED**  
     *MinuteCode1: COURTESY NOTICE OF DISPOSITION GENERATED MinuteCode3: COURTESY NOTICE OF DISPOSITION GENERATED*  
 04/07/2011 **Preliminary Hearing** (8:00 AM) (Judicial Officer Sciscento, Joseph S.)  
     Result: GUILTY/SENT  
 04/07/2011 **Bond Exoneration**  
 04/07/2011 **Notice of Disposition and Judgment**  
 04/19/2011 **Ex Parte Order**  
     *FOR TRANSCRIPT*  
 04/20/2011 **Transcript of Proceedings**  
 10/04/2011 **Counseling Report**  
 10/04/2011 **Counseling Report**  
 10/11/2011 **REQUIREMENTS COMPLETED** (Judicial Officer: Sciscento, Joseph S. )  
     *OTHER*  
 10/11/2011 **OTHER** (8:00 AM) (Judicial Officer Sciscento, Joseph S.)  
     Result: COMPLETED

# EXHIBIT C



1 NWEW  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 DAVID L. STANTON  
6 Chief Deputy District Attorney  
7 Nevada Bar #003202  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

CASE NO: C-16-312448-1

12 SHAWN GLOVER, aka,  
13 Shawn Lynn Glover, Jr.,  
14 #1950305

DEPT NO: IX

14 Defendant.

15 STATE'S NOTICE OF EXPERT WITNESSES  
16 [NRS 174.234(2)]

17 TO: SHAWN GLOVER, aka, Shawn Lynn Glover, Jr., Defendant; and

18 TO: RYAN BASHOR, Counsel of Record:

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF  
20 NEVADA intends to call the following expert witnesses in its case in chief:

21 **DR. DUTRA**, and/or designee; A medical doctor employed by the Clark County  
22 Coroner Medical Examiner. He will testify to all aspect of the coroner's investigation and  
23 conclusions in the death of Patrick Fleming. This will include identification, cause and manner  
24 of death. This witness will testify that the examination by the coroner's office and the autopsy  
25 in particular, evidence a clear case of homicide and not any other medical/legal means of death.  
26 Testimony will include that the injury was instantaneously incapacitating and the directionality  
27 of the projectile inside the body of Mr. Fleming. All aspects of the autopsy report and the  
28 photographs will be discussed in detail through this witness.

1            **DETECTIVES BEN OWENS, NLVPD #1173 and SAYOKO WILSON-FAY,**  
2   **NLVPD #1437,** They will testify to all aspects of crime scene investigation from initial  
3 observations to the memorialization process of the crime scene. Further, these witnesses will  
4 testify to the crime scene and interpreting this as a homicide and no other explanation of the  
5 cause/manner of death. Their testimony will include that no evidence of self-defense exists  
6 and evidence directly showing a murder.

7            These witnesses are in addition to those witnesses endorsed on the Information or  
8 Indictment and any other witnesses for which a separate Notice of Witnesses and/or Expert  
9 Witnesses has been filed

10           The substance of each expert witness' testimony and a copy of all reports made by or  
11 at the direction of the expert witness has been provided in discovery.

12           A copy of each expert witness' curriculum vitae, if available, is attached hereto.

13           STEVEN B. WOLFSON  
14           DISTRICT ATTORNEY  
15           Nevada Bar #001565

16           BY

17             
18           DAVID L. STANTON  
19           Chief Deputy District Attorney  
20           Nevada Bar #003202

21           **CERTIFICATE OF SERVICE**

22           I certify that on the 9th day of November, 2017, I e-mailed a copy of the foregoing  
23 State's Notice of Expert Witnesses, to:

24           Ryan Bashor, Public Defender  
25           [bashorj@clarkcountynv.gov](mailto:bashorj@clarkcountynv.gov)

26           /s/ Stephanie Johnson

27           Employee of the District Attorney's Office

28           16FN0004X/saj/MVU



## Curriculum Vitae

**Timothy Franklin Dutra, M.D., M.S., Ph.D.**

### **Current Occupation:**

Medical Examiner (Forensic Pathologist)  
Clark County Coroner's Office  
1704 Pinto Lane  
Las Vegas, NV 89106  
Tel. (702) 455-3210  
E-mail: tdutra@co.clark.nv.us

### **Personal Data:**

Languages: English & Spanish

### **Board Certifications:**

Forensic Pathology  
ABP Diplomate and certified, September 9, 2009.

Blood Banking and Transfusion Medicine  
ABP Diplomate and certified, September 9, 2005

Anatomic and Clinical Pathology  
ABP Diplomate and certified, November 11, 1998

### **Most Recent Fellowship:**

Fellowship, Forensic Pathology  
St. Louis University  
(A.C.G.M.E. accredited: 10/01/08 – 9/30/09)  
St. Louis City Medical Examiner's Office

### **Recent Colleague:**

Visiting Colleague, Forensic Pathology  
(10/05/09 – 10/31/09)  
Servicio Medico Forense  
Mexico, D.F. 06720

**Recent Teaching:**

Instructor: Physiology Laboratory  
Monterey Peninsula College  
Monterey, CA 93940

**Recent Research:**

Co-Investigator: "Marrow Tissue Cultivation ex vivo  
in vitro for Blood Cell Collection (animal cell model)"  
LABioMed Research Institute  
Torrance, CA 90502

**Previous Fellowship:**

Fellowship, Blood Bank and Transfusion Medicine  
University of Wisconsin  
(A.C.G.M.E. accredited: 08/01/04 – 07/31/05)  
University of Wisconsin Hospital  
Madison, WI 53792-2472

**Previous Pathology Practice:**

Post-Certification Pathology Practice (1999 – 2003)  
Physician Specialist, Anatomic and Clinical Pathology,  
including gross and microscopic surgical pathology,  
aspiration cytopathology and bone marrow pathology.  
Section Chief of Clinical and Special Chemistry.  
Blood Bank and Transfusion Medicine acting Chief,  
during absences of BB & TM Section Chief.  
Pathology Department  
Martin Luther King, Jr. Hospital  
Los Angeles, CA 90059

**Locum Tenens Practice:**

Locum tenens Pathology Practice (9/00, 9/01, 9/02, & 9/03)  
One month locum tenens for each of four years, as Acting Director  
for a solo practice Pathology Department, including coverage  
of surgical pathology and clinical laboratory.  
Pathology Department  
Orthopaedic Hospital  
Los Angeles, CA 90007

**Current Licensure:**

Active Status Medical Doctor, Nevada, renewal 7/1/2011  
Physician and Surgeon, California, renewal 3/2011  
Practitioner, D.E.A., U.S., renewal 7/2011

**Educational Degrees:**

University:	University of California at Berkeley, B.A. in Chemistry and Zoology, 1968
Medical School:	University of Southern California, M.D., 1972
Graduate School:	University of Southern California, M.S. in Anatomy and Cell Biology, 1986
Graduate School:	University of California at Los Angeles, Ph.D. in Anatomy and Cell Biology, 1993

**Professional Societies:**

Fellow, National Association of Medical Examiners, 2009 –  
Fellow, College of American Pathologists, 1999 –  
Fellow, American Society of Clinical Pathologists, 1999 –  
Member, American Association for the Advancement of Science, 1994 –

**Recent Meetings and Courses:**

Annual Meeting, American Society for Clinical Pathology  
San Francisco, CA, 10/27 – 10/31/10  
Interim Meeting, National Association of Medical Examiners  
Seattle, WA, 2/23/10  
Segunda Conferencia Internacional de la Medicina Forense  
Mexico City, 4/28 – 4/30/10  
Annual Meeting, National Association of Medical Examiners  
San Francisco, CA, 10/11 – 10/15/09  
Osler Anatomic Pathology Review Course  
Los Angeles, CA, 3/9 – 3/12/09  
Medicolegal Death Investigator Training Course  
St. Louis, MO, 4/17 – 4/21/09

**Professional Training/Practice Chronology:**

Internship: Cottage Hospital (Santa Barbara, CA),  
rotating internship, 1972-73

Residency: Cottage Hospital (Santa Barbara, CA),  
first year, Pathology, 1973-74

General Practice: Santa Barbara, CA, 1974-77. General admission privileges  
for Cottage and Goleta Valley Hospitals.

General Practice: King City, CA, 1977-78. General admission privileges  
for George L. Mee Memorial Hospital.

Residency: Highland/Alameda County Hospital (Oakland, CA),  
second and third years, General Surgery, 1978-80

Residency: Duke University Medical Center (Durham, NC),  
first and second years, Orthopaedics, 1980-82

Residency: Los Angeles County/U.S.C. Medical Center,  
third year, Orthopaedics, 1982-83

Graduate School: University of Southern California School of Medicine,  
Department of Anatomy and Cell Biology, 1984-86

Graduate School: University of California at Los Angeles School of Medicine,  
Department of Anatomy and Cell Biology, 1987-93

Residency: Harbor-U.C.L.A. Medical Center (Torrance, CA), second through  
fifth years, Anatomic and Clinical Pathology, 1994-9

Fellowship: Orthopaedic Hospital (Los Angeles, CA), six months of  
Fellowship, Bone and Soft Tissue Pathology, 1998-99

Pathology Practice: Los Angeles, CA, 1999-2003. Anatomic and Clinical  
Pathology privileges at King-Drew Medical Center

Fellowship: University of Wisconsin (Madison, WI), one year Fellowship,  
Blood Banking and Transfusion Medicine, 2004-05

Research Scientist: LABioMed Research Institute, 2005-07. Co-investigator:  
"Marrow stromal fibroblastic cell cultivation *in vitro* on  
de-cellularized bone marrow extracellular matrix"

Instructor: Physiology Laboratory, Fall and Spring semesters, 2007-08  
Monterey Peninsula College (Monterey, CA)

Fellowship: St. Louis City Medical Examiner's Office (St. Louis, MO),  
one year Fellowship, Forensic Pathology, 2008-09

**Teaching Experience:**

Teaching Assistant: Anatomy Dissection Laboratory, Fall semester, 1985  
University of Southern California School of Medicine

Teaching Assistant: Anatomy Dissection Laboratory, Fall semesters. 1987-88  
University of California at Los Angeles School of Medicine

Assistant Lecturer: "Head, Neck, & Dental Embryology", Fall semesters, 1990-91  
University of California at Los Angeles School of Medicine

### Teaching Experience (continued):

Staff Pathologist: Routinely presented histopathology of cases for review  
at the weekly hospital Tumor Board Conferences  
Martin Luther King, Jr. Hospital, Los Angeles, CA 1999-03

Staff Pathologist: Routinely presented histopathology case reviews at  
subspecialty surgical Resident training conferences  
King-Drew Medical Center, Los Angeles, CA 1999-2003

Lecturer: "Blood Banking and Transfusion Medicine", Winter, 2005  
University of Wisconsin School of Medical Technology

Instructor: Physiology Laboratory, Fall and Spring semesters, 2007-08  
Monterey Peninsula College

### Publications:

Dutra, T.F. and Bernard, G.W.: "Size-selective Comparison of Fetal Calvarial versus Adult Marrow Osteogenic Colony-forming Entities"; *Anatomical Record*; 239: 1 – 8; 1994

Dutra, T.F. and Bernard, G.W.: "Post-fracture stimulation of in vitro osteogenesis is not systemic"; *International Journal of Oral Biology*; 23: 213 – 217; 1998

Dutra, T. and French, S.: "Marrow stromal fibroblastic cell cultivation in vitro on de-cellularized bone marrow extracellular matrix"; manuscript published in *Experimental and Molecular Pathology* on 9/22/2009

### Presentations:

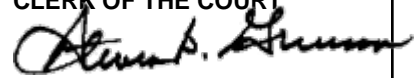
Dutra, T.F.: "Cultured Human Circulating Fibrocytes Express CD34 and Endothelial Markers"; Hematopoietic Stem Cell Transplantation (Sixth International Symposium); San Diego, CA; 4/16-4/18/98

Dutra, T.F.: "Flow Cytogenetics"; Clinical Cytogenetics Program, California State University at Dominguez Hills; 4/25/01

Dutra, T.F. and Graham, M.A.: Poster presentation: "Big People, Big Hearts: histochemical and immunohistochemical stain comparisons of hypertrophic heart sections from morbidly obese decedents, compared with heart sections from age matched controls"; 43<sup>rd</sup> Annual Meeting of the National Association of Medical Examiners; 9/11-9/16/09

Dutra, T.F.: "Marrow stromal fibroblastic cell cultivation in vitro on de-cellularized bone marrow extracellular matrix", Pathology Grand Rounds, Harbor-UCLA Medical Center, 1/22/10

Dutra, T.F.: "La Muerte Subita", Segunda Conferencia Internacional de la Medicina Forense, Mexico City, 4/28/10



**RSPN**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
JOHN NIMAN  
Deputy District Attorney  
Nevada Bar #14408  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

SHAWN GLOVER, aka,  
Shawn Lynn Glover, Jr.  
#1950305

Petitioner,

-vs-

WILLIAM GITTERE, Warden; CHARLES  
DANIELS, Director NDC; and THE STATE  
OF NEVADA,

Respondents.

CASE NO: A-20-821176-W

C-16-312448-1

DEPT NO: XVII

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

DATE OF HEARING: JANUARY 8, 2021  
TIME OF HEARING: 10:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JOHN NIMAN, Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Petitioner's Petition for Writ of Habeas Corpus, and in support of its Motion to Strike the same.

This Response and Motion 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.

///

///

///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On February 4, 2016, SHAWN GLOVER, aka Shawn Lynn Glover, Jr. (hereinafter  
4 “Petitioner”) was charged by way of Indictment with MURDER WITH USE OF A DEADLY  
5 WEAPON (Category A Felony – NRS 200.010, 200.030, 193.165); ASSAULT WITH A  
6 DEADLY WEAPON (Category B Felony – NRS 200.471); OWNERSHIP OR POSSESSION  
7 OF A FIREARM BY PROHIBITED PERSON (Category B Felony – NRS 202.360); and  
8 DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE  
9 (Category B Felony – NRS 202.287) for his actions on or about January 1, 2016. Petitioner  
10 was arraigned on the Indictment on February 8, 2016, with Deputy Public Defender Ryan  
11 Bashor (“Bashor”) representing him.

12 On March 4, 2016, Jess Marchese, Esq. substituted in as counsel for Petitioner in place  
13 of the Public Defender’s Office. However, on April 7, 2016, Mr. Marchese filed a Motion to  
14 Withdraw as Counsel on the grounds that Petitioner was not fulfilling his contractual  
15 obligations. The Court granted Mr. Marchese’s Motion on April 18, 2016, and the Public  
16 Defender’s Office accepted appointment as Petitioner’s counsel once again.

17 On July 30, 2018, Petitioner’s case proceeded to jury trial. On August 3, 2018, after  
18 five (5) days of trial, the jury returned its Verdict of Guilty of First Degree Murder with use  
19 of a Deadly Weapon, Guilty of Assault with use of a Deadly Weapon, and Guilty of Discharge  
20 of Firearm from or Within a Structure or Vehicle. The parties stipulated to waive sentencing  
21 by the jury for the First Degree Murder charge.

22 On October 10, 2018, Petitioner was sentenced, as follows: Count 1 – LIFE in the  
23 Nevada Department of Corrections (NDC) without the possibility of parole, plus a consecutive  
24 forty-eight (48) to one hundred eighty (180) months for the use of a deadly weapon; Count 2  
25 – twenty-eight (28) to seventy-two (72) months in NDC, concurrent with Count 1; Count 3 –  
26 sixty (60) to one hundred eighty (180) months in NDC, concurrent with Counts 1 and 2.  
27 Petitioner was given one thousand eleven (1011) days credit for time served. Petitioner’s  
28 Judgment of Conviction was filed on October 15, 2018.

1 On November 8, 2018, Petitioner filed a Notice of Appeal. On October 24, 2019, the  
2 Nevada Supreme Court affirmed Petitioner's judgment of conviction. Remittitur issued on  
3 November 23, 2019.

4 On March 5, 2020, Petitioner filed an omnibus Motion, which included a request for  
5 post-conviction counsel. Despite there being no post-conviction matter pending, the Court  
6 granted Petitioner's request for post-conviction counsel on April 30, 2020. Lucas Gaffney,  
7 Esq. confirmed as counsel for Petitioner on May 21, 2020.

8 On September 14, 2020, Petitioner filed the instant Petition for Writ of Habeas Corpus  
9 (Post-Conviction) (his "instant Petition"). On September 17, 2020, the Deputy Clerk of the  
10 Court filed a Notice of Nonconforming Document regarding Petitioner's instant Petition. As  
11 of the time of the instant Response, no conforming document has been filed pursuant to  
12 Nevada Electronic Filing and Conversion Rule 8(b)(2).

### 13 **STATEMENT OF FACTS**

14 On January 1, 2016, Miranda Sutton ("Miranda") lived in a townhome in North Las  
15 Vegas with her husband, Patrick Fleming ("Patrick"), her 21-year-old daughter Akira Veasley  
16 ("Akira"), her goddaughter Angela, and Angela's two boys. Jury Trial Transcript, Day 3, dated  
17 August 1, 2018 ("JT3") at 42-43, 90-91. Approximately, one week prior to Miranda and her  
18 family moving into the townhome, Glover, also temporarily moved in. Id. at 45-46. Glover  
19 started staying with Miranda and her family because he had a daughter with Angela. Id.

20 On the morning of New Year's Day, 2016, Patrick woke up, drove Angela to work, and  
21 stopped by his office to retrieve his paycheck. JT3 at 46-47. When he returned, Patrick  
22 confronted his step-daughter, Akira, about having a young man in his vehicle on New Year's  
23 Eve when he asked her not to. Id. at 47-48. Akira then started to argue with Patrick in the  
24 garage. Id. at 92. Hearing the argument, Miranda headed downstairs and into the garage. Id. at  
25 47-48. There, she observed her husband, Patrick, and her daughter, Akira, engaged in a  
26 "typical argument." Id.

27 At some point, Glover interrupted the argument when he came downstairs and handed  
28 Miranda the phone. JT3 at 93. Miranda spoke to Angela on the phone and observed Glover



1 head back up the stairway of the townhome. Id. at 49. After the argument ended and Patrick  
2 apologized, Glover came downstairs a second time and asked to speak with Miranda. Id. at 49-  
3 50, 94. Miranda followed Glover upstairs. Id. at 50. Upstairs, Glover headed towards Angela's  
4 bedroom and asked to speak with Miranda in the bedroom. Id. Once in the bedroom, Glover  
5 asked Miranda: "do you want me to handle this, do you want me to take care of it?" Confused,  
6 Miranda asked for clarification. Id. Glover explained that he heard Patrick "down there  
7 fighting you guys." Id. Miranda admitted to Glover that there was an argument, however, she  
8 assured him that "everything [was] okay . . . [and that there was] no problem." Id.

9 During the conversation between Miranda and Glover, Akira testified that "[e]verything  
10 was done [and] [e]verything [was] fine at this point." JT3 at 94. Miranda and Glover exited  
11 Angela's bedroom and Patrick confronted Glover as to why he was talking to Miranda. Id. at  
12 52. Miranda and Akira testified that they observed the confrontation between Glover and  
13 Patrick. Id. at 52, 94. They further testified that they heard Glover accuse Patrick of fighting  
14 with both women in the garage. Id. Patrick denied Glover's allegation and explained that they  
15 were "just having a conversation." Id. at 94. Akira observed that Patrick's denial made Glover  
16 "even more mad." Id. When Patrick attempted to touch Glover, Miranda and Akira, testified  
17 that Glover said, "get off me." Id. at 52, 95. Patrick then told Glover that they should go  
18 downstairs to talk. Id. at 52.

19 Miranda and Akira then testified that they observed Patrick walking down the stairs and  
20 Glover following right behind him. JT3 at 52, 95. At this point, Miranda headed towards  
21 Angela's room to retrieve some baby items and then heard three gunshots. Id. at 53. Similarly,  
22 Akira who was sitting on the couch upstairs, testified that approximately 10 to 15 seconds after  
23 she saw Glover following Patrick down the stairs, she heard three gunshots. Id. at 96. Miranda  
24 hurried out of Angela's room, looked at Akira, and they both ran towards the stairs. Id. at 53-  
25 54, 96. Miranda reached the stairs first and started to make her way down the stairs as Akira  
26 stayed behind her mom. Id. Miranda and Akira looked down and saw Patrick's body lying on  
27 the landing. Id. at 54, 96. Terrified, Akira ran back up the stairs and called 911. Id. at 55.  
28 Miranda observed Glover holding a gun as he stood over Patrick's motionless body. Id. at 54.

1 Glover then raised his gun, pointed it at Miranda, and said something like: “don’t tell on me,  
2 don’t say anything.” Id. Miranda thought Glover was going to shoot her. Id. Miranda then saw  
3 Glover go through the garage door, heard the garage door opening, and attempted to give  
4 Patrick CPR until officers arrived. Id. at 56.

5 Fearful because Glover had, at gunpoint, threatened her and her family if she said  
6 anything, Miranda chose to initially tell police that Patrick had been shot by some unknown  
7 person. JT3 at 68-71. Similarly, Akira initially told police that her step-father had been shot  
8 by a person named Hatch, who had come to the townhome to buy marijuana from Patrick. Id.  
9 at 103-04. In addition to Glover’s threat, Miranda and Akira both chose to lie to police because  
10 they testified that they knew Glover had committed other acts of violence against other people  
11 in the past. Id. at 89, 109. Miranda testified that once she went back upstairs to check on the  
12 children in the house, she noticed they were in a room with the door shut. Id. at 57. The children  
13 told Miranda that Glover had ushered them into the room, closed the door, and told them to  
14 stay in the room. Id.

15 Upon arrival, Homicide Detective Benjamin Owens (“Det. Owens”) began to protect  
16 the integrity of the crime scene after he determined that Patrick had been murdered. JT4 at 14-  
17 15. During his investigation, Det. Owens discovered that Patrick had a Glock 19 tucked into a  
18 waistband holder. Id. at 16, 18. Det. Owens testified that he later determined that the gun found  
19 on Patrick was loaded, however, its chamber was empty. Id. Therefore, the gun would not fire  
20 if the trigger was pulled. Id. Indeed, for the gun to fire it needed to be racked back in order for  
21 a round to enter its chamber. JT3 at 148. Det. Owens’s investigation also revealed that the  
22 townhome had no signs of forced entry and that there was no property loss within the  
23 townhome. JT4 at 21.

24 Finally, the medical examiner testified that Patrick was shot three times. JT3 at 123.  
25 The first shot entered the back of Patrick’s head at a downward angle, went through his brain,  
26 cut his brain stem, and lodged in his fractured jaw. Id. at 126. The second shot entered and  
27 exited through Patrick’s inner right upper arm causing a broken humerus. Id. at 129. The third  
28 shot entered Patrick’s upper right thigh. Id. at 130. The medical examiner concluded that

wounds had a downward trajectory and the cause of Patrick's death was the gunshot wound to the back of his head. Id. at 131.

## **ARGUMENT**

### **I. THE INSTANT PETITION SHOULD BE STRICKEN TO ALLOW PETITIONER TO FILE A CONFORMING DOCUMENT**

Pursuant to the Nevada Electronic Filing and Conversion Rules ("NEFCR"), Rule 8(2)(A), a notification was filed that Petitioner's instant Petition was a nonconforming document on September 17, 2020. Thus, pursuant to that same Rule, Petitioner has had nearly two (2) months in which to cure the nonconformity. As of the time of this filing, Petitioner has failed to cure the nonconformity pursuant to Rule 8(2)(A).

Pursuant to Rule 8(2)(B), this Court may, upon motion or on its own order to show cause, strike Petitioner's nonconforming document. The State hereby respectfully requests that this Court strike Petitioner's instant Petition, to allow for Petitioner to file a conforming document consistent with NEFCR.

### **II. PETITIONER FAILS TO DEMONSTRATE INEFFECTIVE ASSISTANCE OF COUNSEL**

The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." The United States Supreme Court has long recognized that "the right to counsel is the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland, 466 U.S. at 686-87, 104 S.Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's representation fell below an objective standard of reasonableness, and second, that but for counsel's errors, there is a reasonable probability that the result of the proceedings would have

1 been different. 466 U.S. at 687–88, 694, 104 S.Ct. at 2065, 2068; Warden, Nevada State Prison  
2 v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).  
3 “[T]here is no reason for a court deciding an ineffective assistance claim to approach the  
4 inquiry in the same order or even to address both components of the inquiry if the defendant  
5 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S.Ct. at 2069.

6 The court begins with the presumption of effectiveness and then must determine  
7 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
8 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel  
9 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of  
10 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,  
11 537 P.2d 473, 474 (1975).

12 Counsel cannot be ineffective for failing to make futile objections or arguments. See  
13 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the  
14 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
15 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
16 (2002).

17 Based on the above law, the role of a court in considering allegations of ineffective  
18 assistance of counsel is “not to pass upon the merits of the action not taken but to determine  
19 whether, under the particular facts and circumstances of the case, trial counsel failed to render  
20 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
21 (1978). This analysis does not mean that the court should “second guess reasoned choices  
22 between trial tactics nor does it mean that defense counsel, to protect himself against  
23 allegations of inadequacy, must make every conceivable motion no matter how remote the  
24 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel  
25 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel  
26 cannot create one and may disserve the interests of his client by attempting a useless charade.”  
27 United States v. Cronic, 466 U.S. 648, 657 n.19, 104 S.Ct. 2039, 2046 n.19 (1984).

1 “There are countless ways to provide effective assistance in any given case. Even the  
2 best criminal defense attorneys would not defend a particular client in the same way.”  
3 Strickland, 466 U.S. at 689, 104 S.Ct. at 689. “Strategic choices made by counsel after  
4 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,  
5 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
6 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's  
7 challenged conduct on the facts of the particular case, viewed as of the time of counsel's  
8 conduct.” Strickland, 466 U.S. at 690, 104 S.Ct. at 2066.

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

16 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the disputed  
17 factual allegations underlying his ineffective-assistance claim by a preponderance of the  
18 evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, claims  
19 of ineffective assistance of counsel asserted in a petition for post-conviction relief must be  
20 supported with specific factual allegations, which if true, would entitle the petitioner to relief.  
21 Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”  
22 allegations are not sufficient, nor are those belied and repelled by the record. Id. “A claim is  
23 ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the  
24 claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002). NRS  
25 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims  
26 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your  
27 petition to be dismissed.” (emphasis added).  
28

1 In the instant Petition, Petitioner alleges that trial counsel was ineffective in two (2)  
2 ways: first, he argues that trial counsel failed to object to testimonial hearsay; second, he  
3 argues that trial counsel had a conflict of interest that rendered counsel ineffective. See,  
4 Petition at 16, 22. Petitioner is not entitled to relief on these claims, however, as each  
5 respective argument lacks merit.

6 **A. Dr. Corneal's testimony did not implicate the confrontation clause**

7 Petitioner first claims that trial counsel was ineffective for failing to object to Coroner  
8 Medical Examiner Jennifer Corneal ("Corneal")'s testimony, which included a review of an  
9 autopsy report and accompanying photographs prepared by one Dr. Dutra (retired). JT3 at 118,  
10 121. Specifically, Petitioner relies on Melendez-Diaz v. Massachusetts, 557 U.S. 305, 129  
11 S.Ct. 2527 (2009) (erroneously cited as "Commonwealth v. Melendez-Diaz"), and Crawford  
12 v. Washington, 541 U.S. 36, 124 S.Ct. 1354 (2004), to argue that Corneal's testimony  
13 amounted to "testimonial hearsay evidence" that violated Petitioner's constitutional rights to  
14 confrontation. See, Petition at 16-21. Petitioner's argument is based on a misapplication of  
15 these cases, and overlooks relevant Nevada case law that contradicts his position.

16 The Nevada Supreme Court has explained that "the Confrontation Clause bars the use  
17 of a testimonial statement made by a witness who is unavailable for trial unless the defendant  
18 had an opportunity to previously cross-examine the witness regarding the witness's  
19 statement." Medina v. State, 122 Nev. 346, 353, 143 P.3d 471, 476 (2006) (citing Crawford,  
20 541 U.S. at 68). While this constitutional restriction applies to forensic laboratory results (see,  
21 Melendez-Diaz, 557 U.S. at 329), the Nevada Supreme Court has determined that a surrogate  
22 may provide her "independent opinion as an expert witness" regarding the laboratory results.  
23 Vega v. State, 126 Nev. 332, 340, 236 P.3d 632, 638 (2010). Accord. State v. Navarrette, 294  
24 P.3d 435, 443 (N.M. 2013) ("[A]n expert witness may express an independent opinion  
25 regarding his or her interpretation of raw data without offending the Confrontation Clause.").  
26 The admissibility of the surrogate's testimony, relying on a third party's laboratory report, was  
27 explained by the U.S. Supreme Court:  
28

1 When an expert testifies for the prosecution in a criminal case, the defendant has  
2 the opportunity to cross-examine the expert about any statements that are offered  
3 for their truth. Out-of-court statements that are related by the expert solely for  
4 the purpose of explaining the assumptions on which that opinion rests *are not*  
5 *offered for their truth* and thus fall outside the scope of the Confrontation Clause.

6 Williams v. Illinois, 567 U.S. 50, 58, 132 S.Ct. 2221, 2228 (2012) (emphasis added).

7 In the instant case, Corneal testified as to her qualifications as an expert in autopsies  
8 and pathology. JT3 at 118-20. She testified that she had reviewed an autopsy report and  
9 associated photographs of Fleming. Id. at 121. Corneal also acknowledged that she did not  
10 prepare the report, but that she was able to make her own opinions as to “the cause, and  
11 manner, and findings as a result of that autopsy.” Id. Indeed, a review of Corneal’s testimony  
12 reflects that the State did not ask about Dr. Dutra’s conclusions in the report – the State asked  
13 Corneal, “how do *you* determine...” then clarified, “through x-rays *you* determined...” and  
14 asked her for “*your* assessment...” Id. at 124:1, 126:10, 127:7 (emphases added). In fact, the  
15 State specifically asked, “...is that the conclusion that *you* draw...?” Id. at 128:22 (emphasis  
16 added). Therefore, contrary to Petitioner’s representation that the State “present[ed] the  
17 findings of an expert witness without requiring those experts testify at trial,” it is clear that the  
18 State sought to introduce Corneal’s own findings and conclusions as an expert. See Petition at  
19 19. Because Petitioner had the opportunity to cross-examine Corneal on her findings and  
20 conclusions, pursuant to Williams, 567 U.S. at 58, 132 S.Ct. at 2228, Corneal’s testimony falls  
21 outside the scope of the Confrontation Clause. See, JT3 at 131-33.

22 Petitioner relies extensively from Melendez-Diaz and Crawford to support his assertion  
23 that Corneal’s testimony was improper. Petition at 16-21. However, those cases are easily  
24 distinguishable from Petitioner’s case. In Crawford, the prosecution played a witness’s (the  
25 defendant’s wife’s) tape-recorded statement to the police describing a stabbing, though the  
26 witness did not testify at trial due to marital privilege. 541 U.S. at 40, 124 S.Ct. at 1357-58.  
27 The State conceded that the statement amounted to hearsay, but sought to admit the statement  
28 under a hearsay exception. Id. In Melendez-Diaz, the State sought to introduce affidavits of  
laboratory analysts for the truth of the results of certain drug tests, rather than having the  
analysts testify in person. 567 U.S. at 308-09, 129 S.Ct. at 2530-31. In both cases, the U.S.

1 Supreme Court determined that the evidence was testimonial hearsay, and was therefore  
2 subject to Confrontation Clause restrictions. See, Crawford, 541 U.S. at 52-53, 124 S.Ct. at  
3 1364-65; see also, Melendez-Diaz, 567 U.S. at 310-11, 129 S.Ct. at 2532. On the contrary,  
4 pursuant to Vega, Corneal's testimony did not include testimonial hearsay; instead, it was  
5 Corneal's independent opinion as an expert witness. 126 Nev. at 340, 236 P.3d at 638; see  
6 also, Williams, 567 U.S. at 58, 132 S.Ct. at 2228 (such testimony does not implicate the  
7 Confrontation Clause).

8 The clear Nevada and U.S. Supreme Court rulings that exclude testimony such as  
9 Corneal's from Confrontation Clause restrictions would render Petitioner's proposed  
10 objections futile. See, Petition at 19 (suggesting counsel should have objected to Corneal's  
11 testimony). Therefore, Petitioner's claim must fail, as counsel cannot be deemed ineffective  
12 for failing to make futile objections. Ennis, 122 Nev. at 706, 137 P.3d at 1103.

13 Petitioner does not formally allege that counsel should have challenged Corneal's  
14 ability to testify as an expert. See, Petition at 18 (contending insufficient notice, and making a  
15 passive reference to whether the State provided documentation of Corneal's qualifications to  
16 testify as an expert). The State respectfully submits that any challenge to Corneal's ability to  
17 testify as an expert is waived for Petitioner's failure to raise it on direct appeal. See, Franklin  
18 v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994). Regardless, Petitioner's stated  
19 ground for relief contests trial counsel's effectiveness regarding the admission of the autopsy  
20 report. Petition at 16.

21 Because the testimony challenged by Petitioner is clearly not testimonial hearsay, and  
22 therefore falls outside the scope of the Confrontation Clause, Petitioner's first claim does not  
23 entitle Petitioner to relief.<sup>1</sup>

---

24  
25  
26 <sup>1</sup> Petitioner includes, in his conclusion for this claim, a single-sentence entreaty for an  
27 evidentiary hearing "[i]n the alternative." Petition at 21. Petitioner fails to properly support his  
28 request for an evidentiary hearing under NRS 34.770. Likewise, the issue in Petitioner's first  
claim is a purely legal question, i.e. whether Corneal's testimony was testimonial hearsay;  
therefore, no evidentiary hearing is merited, as this question can be answered without  
expanding the record. See, Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994). As such,



1       **B.     Petitioner fails to demonstrate an “actual conflict”**

2           Petitioner’s second claim alleges that trial counsel was ineffective due to a conflict of  
3 interest. Petition at 22-26. Petitioner fails to demonstrate an actual conflict existed; therefore,  
4 Petitioner is not entitled to relief.

5           The U.S. Supreme Court explained in Mickens v. Taylor when a conflict of interest  
6 may violate a defendant’s Sixth Amendment right to effective assistance of counsel. 535 U.S.  
7 162, 122 S.Ct. 1237 (2002). The Mickens Court specifically rejected the notion that a  
8 defendant “need only show that his lawyer was subject to a conflict of interest.” Id. at 170-71,  
9 122 S.Ct. at 1243. Instead, that court determined that “an actual conflict of interest” was  
10 necessary, meaning “precisely a conflict *that affected counsel’s performance*—as opposed to  
11 a mere theoretical division of loyalties.” Id. at 171, 122 S.Ct. at 1243 (citing Cuyler v. Sullivan,  
12 446 U.S. 335, 349-50, 100 S.Ct. 1708 (1980)) (emphasis in original).

13           While Petitioner cites to two (2) former cases in which trial counsel’s office represented  
14 Fleming, Petitioner admits “[t]he precise scope of Fleming’s former representation is  
15 unknown, as is whether any information disclosed to the Public Defender’s Office would be  
16 relevant to the issues presented in the instant post-conviction Petition.” Petition at 23-24.  
17 Therefore, Petitioner does not assert that any “actual conflict” existed; instead, Petitioner relies  
18 on the theoretical division of loyalties that has previously been rejected by the U.S. Supreme  
19 Court. Mickens, 535 U.S. at 170-71, 122 S.Ct. at 1273. As such, Petitioner asks this Court to  
20 allow him to base his claim on mere speculation derived from two (2) prior misdemeanor  
21 cases, rather than any specific and substantiated factual basis. Such a request is contrary to  
22 express Nevada statutes and case law on point. See, NRS 34.735(6) (“[Petitioner] *must* allege  
23 specific facts supporting the claims in the petition[.] . . . Failure to allege specific facts rather  
24 than just conclusions may cause your petition to be dismissed.” (emphasis added)); see also,  
25 Means 120 Nev. at 1012, 103 P.3d at 33 (“... a habeas corpus petitioner *must prove* the  
26 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of  
27

28           Petitioner’s request for an evidentiary hearing “[i]n the alternative” should be summarily  
denied.

1 the evidence.” (emphasis added)); see also, Hargrove, 100 Nev. at 502, 686 P.2d at 225 (it is  
2 a petitioner’s responsibility to provide specific facts in support of his allegations, otherwise  
3 those allegations are bare and naked and insufficient to warrant relief).

4 Petitioner asks this Court to make “reasonable...infer[ences]” in support of his claims  
5 that a conflict existed. Petition at 24. He then asks this Court to apply those inferences to the  
6 possibility of a self-defense theory at trial. Id. This request is belied by the record. Specifically,  
7 Petitioner did not raise a theory of self-defense at trial. See, JT4 at 28 (the defense resting  
8 without presenting any witnesses); see also, JT5 at 26-36 (defense’s closing argument that  
9 Petitioner was not the shooter). It was within trial counsel’s purview to determine which  
10 defense theories to pursue. Rhyne, 118 Nev. at 8, 38 P.3d at 167. Therefore, more likely than  
11 a conflict of interest, it is likely that trial counsel determined that Petitioner’s best chance was  
12 to undermine the amount of evidence presented to link Petitioner to the murder. Cronic, 466  
13 U.S. at 657 n.19, 104 S.Ct. at 2046 n.19 (“If there is no bona fide defense to the charge, counsel  
14 cannot create one and may disserve the interests of his client by attempting a useless  
15 charade.”). This determination is supported by the State’s evidence at trial, as the autopsy  
16 report would appear to undermine any potential for a “self-defense” theory of defense at trial.  
17 See, JT3 at 131 (the medical examiner testifying that Fleming was shot in the back of the head,  
18 at a downward angle).

19 Because the choice of a specific defense theory was within trial counsel’s purview, and  
20 because Petitioner fails to meet his burden for demonstrating specific facts to show that an  
21 “actual conflict” existed, Petitioner fails to demonstrate that he is entitled to relief.<sup>2</sup>

---

22 <sup>2</sup> Petitioner, again, asks this Court to grant him an evidentiary hearing “[i]n the alternative.”  
23 Petition at 26. Petitioner fails to appreciate that an evidentiary hearing is not meant for a  
24 petitioner’s fishing expedition, nor to cure deficiencies in Petitioner’s pleadings. Marshall, 110  
25 Nev. at 1331, 885 P.2d at 605 (holding that an evidentiary hearing is necessary if a petition is  
26 supported by specific factual allegations, not belied by the record, that, if true, would entitled  
27 a petitioner to relief); see also, Harrington v. Richter, 131 S.Ct. 770, 788 (2011) (an evidentiary  
28 hearing is not required simply because counsel’s actions are challenged as being unreasonable  
strategic decisions). Further, the Nevada Supreme Court has expressly declared that it is  
improper to hold an evidentiary hearing simply to make a complete record. State v. Eighth  
Judicial District Court (“Riker”), 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district  
court considered itself the ‘equivalent of...the trial judge’ and consequently wanted ‘to make

1 CONCLUSION

2 For the foregoing reasons, the State respectfully requests that this Court STRIKE  
3 Petitioner Shawn Glover's Petition for Writ of Habeas Corpus (Post-Conviction) to allow for  
4 Petitioner to file a conforming document or, in the alternative, that this Court summarily  
5 DENY Petitioner's instant Petition in its entirety.

6 DATED this 13th day of November, 2020.

7 Respectfully submitted,

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

10 BY /s/ John Niman  
11 JOHN NIMAN  
12 Deputy District Attorney  
13 Nevada Bar #14408

14 CERTIFICATE OF ELECTRONIC SERVICE

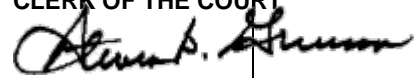
15 I hereby certify that service of the above and foregoing, was made this 13th day of  
16 November 2020, by email to:

17 LUCAS GAFFNEY, ESQ.  
18 [lucas@gaffneylawlv.com](mailto:lucas@gaffneylawlv.com)

19  
20 BY: /s/ Stephanie Johnson  
21 Employee of the District Attorney's Office

22  
23  
24 16FN0004X/JN/APPEALS/saj/MVU  
25

26 as complete a record as possible.' This is an incorrect basis for an evidentiary hearing.”).  
27 Therefore, Petitioner fails to demonstrate he is entitled to an evidentiary hearing, and the State  
28 respectfully submits that any evidentiary hearing on the instant Petition would be precisely the  
type of hearing the Nevada Supreme Court has deemed “improper.” Riker, 121 Nev. at 234,  
112 P.3d at 1076.



**APET**  
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*Attorney for Petitioner*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

SHAWN GLOVER,

Petitioner,

vs.

WILLIAM GITTERE in his official capacity  
as the Warden of the ELY STATE PRISON;  
CHARLES DANIELS, in his official  
capacity as Director of the Nevada  
Department of Corrections; and the STATE  
OF NEVADA

Respondents.

CASE NO. A-20-821176-W

DEPT. NO. XVII

Date of Hearing: January 8, 2021.

Time of Hearing: 8:30 a.m.

**AMENDED PETITION FOR WRIT OF HABEAS CORPUS**  
**(POST-CONVICTION)**

1. Name of the institution and county in which you are presently imprisoned or  
where and how you are presently restrained of your liberty: **Ely State Prison**

2. Name and location of court that entered the judgment of conviction under attack:  
**Eighth Judicial District Court, Clark County, Nevada.**

3. Date of Judgment of Conviction: **Judgment of Conviction filed October 15, 2018.**

4. Case number: **C-16-312448-1**

5. Length of sentence:

- **Count 1 –LIFE, without the possibility of parole, plus a consecutive term of One Hundred Eighty (180) Months with a Minimum parole eligibility of Forty-Eight (48 months) for the Use of a Deadly Weapon.**

- **Count 2 – Maximum of Seventy-Two (72) Months with a Minimum parole eligibility of Twenty-Eight (28) months; concurrent with Count 1.**

- **Count 3 – Maximum One Hundred Eighty (180) Months with a Minimum parole eligibility of Sixty (60 months), Concurrent with Counts 1 and 2**

- **One Thousand Eleven (1,011) Days credit for time served.**

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

**N/A**

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

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

7. Nature of offense involved in conviction being challenged: **Count 1 – Murder With Use of a Deadly Weapon. Count 2 – Assault With A Deadly Weapon; Count 3 – Discharge of Firearm From Or Within A Structure or Vehicle; Count 4 – Ownership or Possession of Firearm By Prohibited Person.**

8. What was your plea? (Check one)

(a) **Not guilty** **X**

(b) Guilty \_\_\_\_

(c) Guilty but mentally ill \_\_\_\_

(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: **N/A**

10. If you were found guilty after a plea of not guilty, was the finding made by: **N/A**

11. Did you testify at the trial? **Yes.**

12. Did you appeal from the judgment of conviction? **Yes.**

13. If you did appeal, answer the following:

(a) Name of Court: **Supreme Court of Nevada**

(b) Case number or citation: **77425**

(c) Result: **Order of Affirmance.**

(d) Date of result: **October 24, 2019.**

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

1           15.     Other than on direct appeal from the judgment of conviction and sentence, have  
2 you previously filed any petitions, applications, or motions with respect to this judgment in any  
3 court, state, or federal? **No.**

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

5                   (a)     (1)     Name of court: **N/A.**

6                           (2)     Nature of proceeding: **N/A.**

7                           (3)     Grounds raised: **N/A.**

8                           (4)     Did you receive an evidentiary hearing on your petition,  
9 application or motion: **N/A.**

10                          (5)     Result: **N/A.**

11                          (6)     Date of result: **N/A.**

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

14                   (c)     As to any second or subsequent additional applications or motions, give  
15 the same information as above, list them on a separate sheet and attach. **N/A**

16                   (d)     Did you appeal to the highest state or federal court having jurisdiction,  
17 the result or action taken on any petition, application or motion? **N/A.**

18                          (1)     First petition, application or motion?           **N/A.**

19                                   Citation or date of decision:   **N/A.**

20                          (2)     Second petition, application or motion?       **N/A.**

21                                   Citation or date of decision:   **N/A.**

22                          (3)     Third petition, application or motion?       **N/A.**

23                                   Citation or date of decision:   **N/A.**

1 (e) If you did not appeal from the adverse action on any petition, application  
2 or motion, explain briefly why you did not. (You must relate specific facts in response to this  
3 question. Your response may be included on paper which is 8 ½ by 11 inches attached to this  
4 petition. Your response may not exceed five handwritten or typewritten pages in length.):

5 **N/A.**

6 17. Has any ground being raised in this petition been previously presented to this or  
7 any other court by way of a petition for writ of habeas corpus, motion, application, or any other  
8 post-conviction proceeding? If so, identify: **No.**

9 18. Any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any  
10 additional pages you have attached, were not previously presented in any other court, state or  
11 federal, list briefly what grounds were not so presented, and give your reasons for not  
12 presenting them. (You must relate specific facts in response to this question. Your response may  
13 be included on paper which is 8 ½ by 11 inches attached to this petition. Your response may not  
14 exceed five handwritten or typewritten pages in length.): **See Exhibit A for a list of the**  
15 **grounds being raised in the instant petition. The grounds being raised are claims of**  
16 **ineffective assistance of counsel, which are properly presented for the first time during**  
17 **post-conviction relief proceedings.**

18 19. Are you filing this petition more than one year following the filing of the  
19 judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the  
20 reasons for the delay. (You must relate specific facts in response to this question. Your response  
21 may be included on paper which is 8 ½ by 11 inches attached to this petition. Your response  
22 may not exceed five handwritten or typewritten pages in length.): **No.**



20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? **No.**

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: **Trial Counsel: Clark County Public Defender, Ryan Bashor, Esq.; Appellate Counsel: Clark County Public Defender, Kedric A. Bassett, Esq.**

22. Did you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? **No.**

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

Supporting FACTS (Tell your story briefly without citing cases or law.): **See Exhibit A.**

(a) Petitioner would respectfully raise issues as they become necessary.

Petitioner would respectfully request this Court allow the undersigned to supplement this Petition.

WHEREFORE, Petitioner prays that this Honorable Court allow Lucas Gaffney, Esq., to Supplement this Petition.

DATED this 4<sup>th</sup> day of January, 2021.

GAFFNEY LAW

/s/ Lucas Gaffney

LUCAS J. GAFFNEY, Esq.

Nevada Bar No. 12373

1050 Indigo Drive, Suite 120

Las Vegas, Nevada 89145

Attorney for Petitioner

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Under penalty of perjury, the undersigned declares that the Petitioner authorized him to commence this action.

/s/ Lucas Gaffney  
LUCAS J. GAFFNEY, ESQ.

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**EXHIBIT A**

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

The Petitioner, Shawn Glover (“Glover”), by and through appointed counsel hereby files this petition for writ of habeas corpus pursuant to NRS 34.724. Earley alleges that, upon information and belief, he is being held in custody in violation of the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the Constitution of the United States of America, and Articles I and IV of the Nevada Constitution. This timely post-conviction petition for a writ of habeas corpus now follows. Earley requests full discovery rights and an evidentiary hearing.

**I. RELEVANT PROCEDURAL HISTORY**

An Indictment, filed on February 4, 2016, charged Glover with the crimes of: Count 1 - Murder with use of a Deadly Weapon; Count 2 - Assault with a Deadly Weapon; Count 3 - Ownership or Possession of a Firearm by a Prohibited Person; and Count 4 - Discharge of Firearm. On February 8, 2016, Glover was arraigned in District Court. He pled Not Guilty and waived his right to a trial within sixty (60) days.<sup>1</sup> On April, 25, 2016, after Glover's previous attorney withdrew, the Public Defender reconfirmed on the case, and the trial date was reset. On June 28, 2018, Glover's motion to bifurcate Count 3 (Ownership or Possession of a Firearm by a Prohibited Person) was granted as unopposed.

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<sup>1</sup> On January 6, 2016, the North Las Vegas Justice Court appointed the Public Defender to represent Glover in case number 16CRN000001. On February 9, 2016, the State dismissed the North Las Vegas Justice Court case due to filing of the Indictment.

1 An Amended Indictment was filed with the court on July 21, 2018. The Amended  
2 Indictment charged Glover with the crimes of: Count 1 - Murder with use of a Deadly Weapon;  
3 Count 2 - Assault with a Deadly Weapon; Count 3 - Discharge of Firearm from or within a  
4 Structure or Vehicle; and Count 4 - Ownership or Possession of a Firearm by a Prohibited  
5 Person.

6 A five-day trial, beginning on July 30, and concluding on August 3, 2018, was  
7 conducted in District Court, Department IX, before the Honorable Jennifer Togliatti. After the  
8 presentation of evidence, and deliberation, the jury returned a verdict of: Count 1 - Guilty of  
9 First Degree Murder with use of a Deadly Weapon; Count; Count 2 - Guilty of Assault with use  
10 of a Deadly Weapon; and Count 3 - Guilty of Discharge of Firearm from or within a Structure  
11 or Vehicle. The State dismissed Count 4 after receiving the verdict.

12 The Court sentenced Glover to: Count 1 - Life without the possibility of Parole plus a  
13 consecutive term of 180 months with a minimum parole eligibility of 48 months for the use of a  
14 deadly weapon; Count 2 - a maximum of 72 months with a minimum parole eligibility of 28  
15 months, concurrent with Count 1; and Count 3 - a maximum of 180 months with a minimum  
16 parole eligibility of 60 months, concurrent with Counts 1 and 2. (Count 4 was dismissed. The  
17 court imposed 1,011 days credit for time served.

18 On November 8, 2018, Glover filed a Notice of Appeal in Nevada Supreme Court Case  
19 77425. On April 17, 2019, Glover filed his Appellant's Opening Brief, which raised the  
20 following issues:

- 21 1. There was insufficient evidence presented at trial to overcome the presumption  
22 of innocence and thereby to sustain the convictions against Shawn Glover.  
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1           2. Mr. Glover was denied his constitutionally guaranteed right to a fair trial when  
2           the State attempted to shift the burden of proof to him.

3           3. Glover was denied his constitutionally guaranteed right to a fair trial when the  
4           court allowed the state to solicit from Miranda Sutton and Akira Veasley  
5           Improper Character Evidence.

6           On May 16, 2019, the State filed its Respondent's Answering Brief. Glover did not file a  
7           Reply Brief. On November 23, 2019, the Nevada Supreme Court filed its Order of Affirmance.  
8           On November 18, 2019, the Nevada Supreme Court filed its Remittitur.

9           **II. STATEMENT OF FACTS**

10           In December of 2015, about two weeks before the death of the victim, Patrick Fleming  
11           (Fleming), his wife Miranda Sutton (Sutton), their 21-year old daughter Akira Veasley  
12           (Veasley), and 12-year old twins, moved into a townhouse with their goddaughter Angela. Trial  
13           Transcript (TT), Day 3 (III), pages 42-45. Shortly after that, around Christmas Eve, Shawn  
14           Glover (Glover) also moved into the townhouse. TT III 45-46. Glover has a daughter in  
15           common with Angela. TT III 46. On January 1, 2016, five adults, along with several children  
16           were living in Angela's townhouse on 4032 Smokey Fog Avenue, in N011h Las Vegas. TT III  
17           46-47.

18           On the morning of January 1, 2016, after he returned from taking Angela to work,  
19           Fleming got into an argument with his stepdaughter Veasley over her behavior the night before.  
20           TT III 47-48. The night before, Fleming had a friend follow and videotape Veasley while she  
21           drove Fleming's vehicle and picked up a boy for a date. TT III 74. The argument took place  
22           downstairs in the garage and Sutton was present. TT III 47-48. According to Sutton's testimony,  
23           "it was an argument. It was a loud argument. It was a lot of shouting and that's primarily why  
24

1 we went to the garage. There was a lot of handclapping, you know, when you talk with your  
2 hands. But other than that... it was a typical argument that we were having.” TT III 48. Sutton  
3 testified that she and Veasley were screaming during the argument. TT III 74-75.

4 At some point during the argument, according to Sutton, Glover came downstairs and  
5 told Sutton that Angela was on the phone and wanted to speak to her. TT III 49. After Sutton  
6 told Angela that everything was okay, Glover went back upstairs. TT III 49. Later, as the  
7 argument in the garage was winding down, Glover returned downstairs to the garage. TT II 49.  
8 Sutton testified that Glover asked her to come upstairs with him, which she did. TT III 50.  
9 Sutton testified that Glover asked her if she wanted him to handle the situation. TT III 50-51.  
10 Sutton told Glover that everything was fine and not to worry. TT III 50-51.

11 Sutton testified that shortly after Fleming and Veasley had come back upstairs Fleming  
12 confronted Glover about wanting to talk to his wife, Sutton. TT III 52. Glover indicated he was  
13 concerned because of the heated argument that occurred in the garage. TT II 52. According to  
14 Sutton, when Fleming attempted to touch Glover on his shoulder, Glover pulled away “like  
15 man, get off me, you’re too close to me.” TT III 52. Fleming then looked at Glover and said “do  
16 we have a problem, do we need to talk?” TT III 52. Fleming suggested he and Glover go  
17 downstairs to talk. TT III 52.

18 Sutton told Fleming that he did not need to talk to Glover, but Fleming pushed Sutton to  
19 the side and walked downstairs. TT III 52. Sutton testified that Mr. Glover followed Fleming.  
20 TT III 53. Sutton then went towards Angela’s bedroom when she heard three gunshots. TT III  
21 53. Sutton and Veasley ran to the landing at the top of the stairs and saw Fleming lying on the  
22 floor and Glover standing over him holding a gun. TT III 54. Sutton testified that Glover  
23 pointed the gun at her and said something to the effect of “don’t tell on me.” TT III 54, 62-63.

1 Sutton later testified that Glover told her “if you and your kids want to live, you’ll shut the fuck  
2 up.” TT II 64. In response, Sutton raised her hands and said “Okay.” TT III 54. At that point,  
3 Glover left and Veasley called 911. TT III 55.

4 Sutton testified that she moved Fleming’s body in an attempt to perform  
5 cardiopulmonary resuscitation (CPR). TT III 55-56. Sutton further testified that at some point  
6 during the argument, Glover took the five children into a bedroom to play, he told them to stay  
7 in the bedroom and closed the door. TT III 57.

8 On cross examination, Sutton testified that she told the 911 operator Fleming was shot  
9 after he answered the front door, and that she did not know who shot Fleming. TT III 67-68.  
10 Sutton also testified that she told the 911 operator that she knew Fleming had talked to someone  
11 on the phone that was supposed to come over to the house, but she did not see anything. TT III  
12 68. After the police arrived, Sutton gave a statement to detectives where she indicated that  
13 Fleming was selling marijuana and was looking to “re-up.” TT III 70-71. As such, Sutton left  
14 the police with the initial impression that a potential customer had shot Fleming during a drug  
15 deal.

16 Veasley testified to substantially the same version of events with a few exceptions.  
17 Veasley testified that when Glover and Fleming were arguing at the top of the stairs, Glover  
18 confronted Patrick for trying to physically harm Veasley and Sutton. TT III 94-95. Glover also  
19 indicated to Veasley that he heard her and Sutton crying. TT III 94. Veasley testified that  
20 Fleming grabbed Glover by his elbows but Glover pulled away. TT III 95. One of them  
21 suggested going downstairs to talk, and shortly after they went downstairs Veasley heard three  
22 gunshots. TT III 95. After she and Sutton ran over to the stairs she believed Glover warned  
23 them “about not snitching on him.” TT III 97.



1           Veasley further testified that immediately following the shooting, she told the detectives  
2 that there was a man named Hatch in the house who was a customer of Fleming's. TT III 103.  
3 And that Fleming would average two to three customers a day selling marijuana. TT III 103.  
4 Veasley told the detectives that Hatch waited upstairs during the argument, but at some point  
5 came down stairs to speak to Sutton. TT III 104. Fleming became upset with Hatch for speaking  
6 to Sutton and told Hatch to mind his own business. TT III 104. Veasley testified that she told  
7 the detectives she had never seen Hatch before, and as far as she knew Sutton did not know  
8 Hatch. TT III 104. Veasley also testified that she told the detectives that she did know if Hatch  
9 went by any other names or had any tattoos. TT III 105. Veasley then testified that the next day  
10 she told the detectives that Hatch is Glover, and she lied because she was afraid of him. TT III  
11 106. Veasley also testified that Fleming owned a Dodge Durango which he let other people  
12 drive. TT III 105. But Veasley noticed after the shooting that the keys to the Durango, which  
13 Fleming normally left on the kitchen counter were gone, and the Durango was missing. TT III  
14 105, 108.

15           Dr. Jennifer Corneal (Dr. Corneal) testified that Dr. Timothy Dutra (Dr. Dutra)  
16 performed the autopsy of Fleming. TT III 121. Dr. Corneal had merely reviewed the autopsy  
17 report and investigative files, including photographs, as it related to the autopsy performed on  
18 Fleming on January 2, 2016. TT III 121.

19           Dr. Corneal testified that Fleming was shot in the back of his head on the left side. TT  
20 III 123. The entrance wound was located in the back of Fleming's head. TT III 123, 124. The  
21 trajectory of the projectile was left to right, and downward. TT III 126. The projectile passed  
22 through Fleming's brain, which transected his brain stem and immediately incapacitated him.  
23 TT III 127. Dr. Corneal testified that she did not observe any soot or stippling that would  
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1 indicate the gun was fired at close range. TT III 128. She further testified she could not  
2 determine the range at which the gun was fired possibly due to Fleming's thick hair, which may  
3 have absorbed the soot—the gray material deposited around the wound edges—and/or the  
4 stippling—the unburnt gun powder that strikes the skin during a shooting at close range. TT III  
5 128.

6 Patrick was also shot in his inner, right upper arm, and in the right groin area. TT III  
7 129-130. The trajectory of the projectile in the groin area was right to left, front to back and  
8 downward. TT III 131. Dr. Corneal testified that the gunshot wound to the head was the cause  
9 of Patrick's death, and the manner of death was homicide. TT III 131.

### 10 **III. GROUND FOR RELIEF**

#### 11 **LEGAL AUTHORITY RELEVANT TO ALL CLAIMS**

12 A conviction cannot stand when defense counsel fails to provide effective assistance  
13 during a critical stage of criminal proceedings. U.S. Const. Amends. V, VI, & XIV; Nevada  
14 Constitution Art. I. Counsel is ineffective, thereby depriving a defendant of his rights, when (1)  
15 it is deficient, such that counsel made errors so serious it ceased to function as the "counsel"  
16 guaranteed by the Sixth Amendment, and (2) when that deficiency prejudicial to the defendant,  
17 such that the result of the proceeding is rendered unreliable. Strickland v. Washington, 466 U.S.  
18 668, 687-88 (1984). The question of whether a defendant has received ineffective assistance is a  
19 mixed question of law and fact and is subject to independent review. State v. Love, 109 Nev.  
20 1136-38, 865 P.2d 322, 323 (Nev. 1993).

21 Performance of counsel will be judged against the objective standard for reasonableness,  
22 and is deficient when it falls below that standard. State v. Powell, 122 Nev. 751, 759, 138 P.3d  
23 453, 458 (Nev. 2006); Means v. State, 120 Nev. 1001, 103 P.3d 25 (Nev. 2004). Where counsel  
24

1 might claim that an action was a strategic one, the reviewing court must satisfy itself that the  
2 decisions were, indeed, reasonable. Strickland, 466 U.S. at 691.

3 Prejudice to the defendant occurs where there is a reasonable probability that, but for  
4 counsel's errors, the result of the proceeding would have been different." Kirksey v. State, 112  
5 Nev. 980, 988, 923 P.2d 1102, 1107 (Nev. 1996). A "reasonable probability" is one sufficient to  
6 undermine confidence in the outcome. Id.

7 With respect to post-conviction habeas corpus petitions, all factual allegations in support  
8 of an ineffective assistance of counsel claim must only be proven by a preponderance of the  
9 evidence. Powell, 122 Nev. at 759.

10  
11 **A. TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE TO THE**  
12 **PETITIONER BY FAILING TO OBJECT TO TESTIMONIAL HEARSAY**  
**INTRODUCED IN VIOLATION OF CRAWFORD V. WASHINGTON.**

13 Glover's state and federal constitutional rights to due process, confrontation and cross-  
14 examination were violated because trial counsel failed to object to the introduction of  
15 testimonial hearsay evidence in the form of Dr. Dutra's autopsy report and related findings.  
16 U.S. Const. amend. V, VI, XIV; Nevada Const. Art. I, Sec. 3, 6 and 8; Art. IV, Sec. 21.

17 This issue was considered by the United States Supreme Court. In Commonwealth v.  
18 Melendez-Diaz, 129 S.Ct. 2527 (2009), the Supreme Court found that admission of a laboratory  
19 analysts' affidavits violated the defendant's right of confrontation:

20 In short, under our decision in Crawford the analysts' affidavits were  
21 testimonial statements, and the analysts were "witnesses" for purposes of  
22 the Sixth Amendment. Absent a showing that the analysts were  
23 unavailable to testify at trial and that petitioner had a prior opportunity to  
24 cross-examine them, petitioner was entitled to "be confronted with" the  
analysts at trial.

Id. at 2532 (alteration in original) (quoting Crawford, 541 U.S. at 54).

1 As in Melendez-Diaz, evidence of the autopsy were admitted, even though the expert  
2 who performed the examinations did not testify at trial. Glover was denied the opportunity to  
3 question Dr. Dutra about his methodology, competence as an expert, and other factors relevant  
4 to the weight and admissibility of the testimony provided via Dr. Corneal. As set forth at length  
5 in Melendez-Diaz, findings by expert witnesses must be subject to confrontation:  
6

7 Nor is it evident that what respondent calls "neutral scientific testing" is as  
8 neutral or as reliable as respondent suggests. Forensic evidence is not  
9 uniquely immune from the risk of manipulation. According to a recent  
10 study conducted under the auspices of the National Academy of Sciences,  
11 "[t]he majority of [laboratories producing forensic evidence] are  
12 administered by law enforcement agencies, such as police departments,  
13 where the laboratory administrator reports to the head of the agency."  
14 National Research Council of the National Academies, Strengthening  
15 Forensic Science in the United States: A Path Forward 6-1 (Prepublication  
16 Copy Feb. 2009) (hereinafter National Academy Report). And "[b]ecause  
17 forensic scientists often are driven in their work by a need to answer a  
18 particular question related to the issues of a particular case, they  
19 sometimes face pressure to sacrifice appropriate methodology for the sake  
20 of expediency." *Id.*, at S-17. A forensic analyst responding to a request  
21 from a law enforcement official may feel pressure --or have an incentive --  
22 to alter the evidence in a manner favorable to the prosecution.

23 Confrontation is one means of assuring accurate forensic analysis. While  
24 it is true, as the dissent notes, that an honest analyst will not alter his  
testimony when forced to confront the defendant, post, at 10, the same  
cannot be said of the fraudulent analyst. See Brief for National Innocence  
Network as Amicus Curiae 15-17 (discussing cases of documented  
"drylabbing" where forensic analysts report results of tests that were never  
performed); National Academy Report 1-8 to 1-10 (discussing  
documented cases of fraud and error involving the use of forensic  
evidence). Like the eyewitness who has fabricated his account to the  
police, the analyst who provides false results may, under oath in open  
court, reconsider his false testimony. See Coy v. Iowa, 487 U.S. 1012,  
1019 (1988). And, of course, the prospect of confrontation will deter  
fraudulent analysis in the first place.

Confrontation is designed to weed out not only the fraudulent analyst, but  
the incompetent one as well. Serious deficiencies have been found in the  
forensic evidence used in criminal trials. One commentator asserts that

1 "[t]he legal community now concedes, with varying degrees of urgency,  
2 that our system produces erroneous convictions based on discredited  
3 forensics." Metzger, *Cheating the Constitution*, 59 Vand. L. Rev. 475, 491  
4 (2006). One study of cases in which exonerating evidence resulted in the  
5 overturning of criminal convictions concluded that invalid forensic  
6 testimony contributed to the convictions in 60% of the cases. Garrett &  
7 Neufeld, *Invalid Forensic Science Testimony and Wrongful Convictions*,  
8 95 Va. L. Rev. 1, 14 (2009). And the National Academy Report  
concluded: "The forensic science system, encompassing both research and  
practice, has serious problems that can only be addressed by a national  
commitment to overhaul the current structure that supports the forensic  
science community in this country." National Academy Report P-1  
(emphasis in original). Like expert witnesses generally, an analyst's lack  
of proper training or deficiency in judgment may be disclosed in cross-  
examination.

9 Melendez-Diaz, 129 S. Ct. at 2537 (footnote omitted).

10  
11 Glover's constitutional rights were violated as trial counsel failed to object to the State  
12 presenting the findings of an expert witnesses who did not testify at trial. Specifically, Dr.  
13 Dutra, the medical examiner who performed the autopsy and authored the autopsy report on  
14 Fleming did not testify at trial.<sup>2</sup> Instead, Dr. Dutra's findings were presented by Dr. Corneal. TT  
15 III 118-113. The State did not file formal notice that Dr. Corneal would testify as an expert  
16 witness pursuant to NRS 174.234(2).<sup>3</sup> Although the State indicated that Dr. Dutra had retired, it  
17 did not provide an explanation for why Dr. Dutra was unavailable to testify at Glover's trial.<sup>4</sup>  
18 TT III 121.

19  
20  
21 <sup>2</sup> The State included Dr. Dutra (and/or designee) on its State's Notice of Expert Witnesses filed  
November 9, 2017. The Notice indicated that Dr. Dutra would "testify to all aspect [sic] of the  
coroner's investigation and conclusions in the death of Patrick Fleming. *See* Exhibit B.

22  
23 <sup>3</sup> It is currently unknown if the State provided trial counsel with Dr. Corneal's CV, or some  
other documentation that listed Dr. Corneal's qualifications to testify as an expert.

24 <sup>4</sup> The defense never had an opportunity to cross examine Dr. Dutra.

1 Trial counsel also erred by not objecting to the district court allowing the State to  
2 present the findings of an expert witness without requiring those experts testify at trial. In doing  
3 so, trial counsel and the district court violated Glover's rights under Crawford v. Washington,  
4 541 U.S. 36 (2004), as Dr. Dutra's autopsy findings constituted testimonial hearsay evidence  
5 and was inadmissible under these circumstances. *See also* Bullcoming v. New Mexico, 564 U  
6 S. 647, 664, 131 S.Ct. 2705, 180 L.Ed.2d 610 (2011) ("A document created *solely* for an  
7 'evidentiary purpose,' ... made in aid of a police investigation, ranks as testimonial.") (emphasis  
8 added) (*quoting* Melendez-Diaz, 557 U.S. at 311, 129 S.Ct. 2527).

9 The Nevada Supreme Court has not decided in a published opinion whether autopsy  
10 reports constitute 'testimonial evidence' so as to trigger the protections of the Confrontation  
11 Clause. And courts elsewhere have been almost evenly divided in their opinions on this issue.  
12 *See* Rosario v. State, 175 So. 3d 843, 858 (Fla. Dist. Ct. App. 2015) ("In sum, we conclude that  
13 an autopsy report prepared pursuant to chapter 406 is testimonial hearsay under the  
14 Confrontation Clause."); Commonwealth v. Brown, 2016 PA Super 98, 139 A.3d 208, 216  
15 (2016), *aff'd sub nom.* Commonwealth v. Brown, 646 Pa. 396, 185 A.3d 316 (2018); State v.  
16 Kennedy, 229 W. Va. 756, 768, 735 S.E.2d 905, 917 (2012) ([F]or purposes of use in criminal  
17 prosecutions, autopsy reports are under all circumstances testimonial.); United States v.  
18 Ignasiak, 667 F.3d 1217, 1233 (11th Cir. 2012) ([A]utopsy reports in this case are testimonial.);  
19 Wood v. State, 299 S.W.3d 200, 210 (Tex. App. 2009) (Holding that an autopsy report was a  
20 testimonial statement and that medical examiner was a witness within the meaning of the  
21 Confrontation Clause); United States v. Williams, 740 F. Supp. 2d 4, 10 (D.D.C. 2010) (Ruling  
22 the autopsy report and death certificate were excluded from evidence as testimonial hearsay.);  
23 Martinez v. State, 311 S.W.3d 104, 111 (Tex. App. 2010) (Holding that autopsy report was a  
24

1 testimonial statement and that medical examiner was a witness within the meaning of the  
2 Confrontation Clause of the Sixth Amendment.); State v. Navarette, 294 P.3d 435, 444  
3 (Defendant's confrontation rights were violated by forensic pathologist's testimonial hearsay to  
4 the jury); State v. Jaramillo, 2012-NMCA-029, ¶ 16, 272 P.3d 682, 687 (In the absence of the  
5 cross-examination requirement in satisfaction of the Confrontation Clause admission of autopsy  
6 report resulted in the violation of Defendant's right to confrontation.); United States v. Moore,  
7 651 F.3d 30, 72 (D.C. Cir. 2011), aff'd sub nom. Smith v. United States, 568 U.S. 106, 133 S.  
8 Ct. 714, 184 L. Ed. 2d 570 (2013)( [G]overnment's attempts to avoid the Confrontation Clause,  
9 on the grounds that the autopsy reports rank as non-testimonial and that the DEA reports  
10 contain raw data, rather than statements, are foreclosed by Bullcoming.); Garlick v. Lee, No.  
11 18CV11038CMSLC, 2020 WL 2854268, at 7 (S.D.N.Y. June 2, 2020) (Autopsy Report was  
12 testimonial and surrogate testimony from a qualified expert in medical examination was not a  
13 sufficient substitute for cross examination)

14       Indeed, an autopsy report is testimonial if "it would lead an objective witness to  
15 reasonably believe that the statement would be available for use at a later trial." Vega v. State,  
16 236 P.3d 632. It is also incriminating on its face. Under Crawford, 541 U.S. 36 (2004), the  
17 testimonial statement of an otherwise unavailable witness is inadmissible "unless the defendant  
18 had an opportunity to previously cross-examine the witness regarding the witness's statement.  
19 Id., Medina v. State, 122 Nev. 346, 353, 143 P.3d 471, 476 (2006); *see also* Polk v. State, 126  
20 Nev. 180; 233 P.3d 357 (2010) (Gunshot residue test results were inadmissible under Crawford  
21 where the witness was unavailable and had not been cross examined by the defense.

22       Under this authority, there can be no question that Glover was entitled to cross-examine  
23 Dr. Dutra and it was constitutional error to admit hearsay statements of Dr. Dutra's examination  
24

1 and his findings related to the autopsy of Fleming. Accordingly, there is no feasible strategic  
2 reason for trial counsel's failure to object to the admission of testimonial hearsay through Dr.  
3 Corneal's testimony at trial. As such, trial counsel was ineffective for failing to object to Dr.  
4 Corneal's testimony as including testimonial hearsay in violation of Glover's right to confront  
5 Dr. Dutra, thereby resulting in a violation of Glover's constitutional right to effective assistance  
6 of counsel, due process of law, and equal protection of laws. U.S. Const. Amends VI, VIII,  
7 XIV; Nev. Const. Art. 1 Sec. 6, 8.

8 Moreover, potential prejudice from a Crawford error is reviewed for harmless error.  
9 Medina, 122 Nev. at 346. Therefore, the state must show beyond a reasonable doubt that the  
10 error complained of did not contribute to the verdict. Polle v. State, 126 Nev. 180, 233 P.2d 257  
11 (2010); Idaho v. Wright, 497 U.S. 805, 827, 110 S.Ct. 3139, 3152 (1990). The State cannot  
12 meet its burden.

13 Based on the foregoing, Glover submits that he received ineffective assistance of  
14 counsel as provided herein. Glover requests this Court grant the instant petition and vacate his  
15 conviction and sentence. In the alternative, Glover requests that this Court grant an evidentiary  
16 hearing to determine the extent of counsel's deficient performance and create an adequate  
17 record regarding this claim as it is not belied by the record, and if true, would entitle him to  
18 relief. *See* Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

19 ///

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21 ///

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23 ///



1       **B. TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE TO THE**  
2       **PETITIONER BY POSSESSING A CONFLICT OF INTEREST**  
3       **RESULTING FROM THE PUBLIC DEFENDER’S OFFICE PREVIOUS**  
4       **REPRESENTATION OF FLEMING IN A CRIMINAL CASE.**

5       The adversarial process protected by the Sixth Amendment compelled trial counsel to  
6       act as Glover’s advocate. United States v. Cronic, 466 U.S. 648, 656 (1984). As such, trial  
7       counsel’s role required him to represent Glover fully and vigorously. Young v. Ninth Judicial  
8       Dist. Court, In & For City of Douglas, 107 Nev. 642, 649, 818 P.2d 844, 848 (1991), (1991)  
9       (internal quotations, citation omitted).<sup>5</sup> However, trial counsel was constitutionally ineffective  
10      in his representation of Glover due to conflicting loyalties. *See* Clark v. State, 108 Nev. 324,  
11      326, 831 P.2d 1374, 1376 (1992) (In general, a conflict exists when an attorney is placed in a  
12      situation conducive to divided loyalties.)

13      If a defendant shows counsel actively represented conflicting interests and that an actual  
14      conflict of interest adversely affected his lawyer’s performance prejudice is presumed. *See*  
15      Strickland, *supra*, 466 U.S. at 692 (internal quotations, citation omitted); *see also*, Clark, *supra*,  
16      108 Nev. at 326; Cuyler v. Sullivan, 446 U.S. 335, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980);  
17      Mannon v. State, 98 Nev. 224, 226, 645 P.2d 433, 434 (1982). This exception is based, in part,  
18      on the difficulty in measuring the effect of representation tainted by conflicting interests.  
19      Strickland, 466 U.S. at 692, 104 S.Ct. at 2067.

20      ///

21      ///

22      

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<sup>5</sup> *See also, e.g.,* Greenberg Taurig v. Frias Holding Co., 331 P.3d 901, 904 (Nev. 2014)  
23      (“[a]ttorneys must zealously pursue the[ir] [clients’] interests ....”). This is “particularly true in  
24      criminal cases ....” Young, *supra* 107 Nev. at 649. (internal quotations, citation omitted).

1 Rule 2.1 of Nevada's Rules of Professional Conduct (NRPC) states:

2 (a) Except as provided in paragraph (b), a lawyer shall not represent a client if  
3 the representation involves a concurrent conflict of interest. A concurrent  
4 conflict of interest exists if:

5 (1) The representation of one client will be directly adverse to another  
6 client; or

7 (2) There is a significant risk that the representation of one or more  
8 clients will be materially limited by the lawyer's responsibilities to  
9 another client, a former client or a third person or by a personal interest  
10 of the lawyer.

11 (b) Notwithstanding the existence of a concurrent conflict of interest under  
12 paragraph (a), a lawyer may represent a client if:

13 (1) The lawyer reasonably believes that the lawyer will be able to provide  
14 competent and diligent representation to each affected client;

15 (2) The representation is not prohibited by law;

16 (3) The representation does not involve the assertion of a claim by one  
17 client against another client represented by the lawyer in the same  
18 litigation or other proceeding before a tribunal; and

19 (4) Each affected client gives informed consent, confirmed in writing.

20 In Waid, the Nevada Supreme Court adopted the Seventh Circuit's three-part test for  
21 analyzing former client conflicts of interest. Waid v. Eighth Judicial Dist. Court ex rel. Cty. of  
22 Clark, 121 Nev. 605, 610, 119 P.3d 1219, 1223 (2005). Pursuant to Waid, the Court must: (1)  
23 make a factual determination concerning the scope of the former representation, (2) evaluate  
24 whether it is reasonable to infer that the confidential information allegedly given would have  
been given to a lawyer representing a client in those matters, and (3) determine whether that  
information is relevant to the issues raised in the present litigation. Id.

Here, trial counsel failed to disclose the Public Defender's former representation of  
Fleming in two cases. The Public Defender represented Fleming in Las Vegas Justice Court

1 case number 01M20858X, that resulted in the court convicting Fleming of Battery Domestic  
2 Violence following a bench trial. *See* Exhibit C. The Public Defender also represented Fleming  
3 in Las Vegas Justice Court case number 10F15357X, where Fleming pleaded Nolo Contendere to  
4 a charge of Disorderly Conduct.

5 The precise scope of Fleming’s former representation is unknown, as is whether any  
6 information disclosed to the Public Defender’s Office would be relevant to the issues presented  
7 in the instant post-conviction Petition. As discussed below, Glover submits that both matters  
8 warrant an evidentiary hearing.

9 Glover further submits that given the nature of the conviction for battery domestic  
10 violence, it is reasonable to infer that Fleming would have provided confidential and/or  
11 sensitive information about his violent conduct to his public defender.<sup>6</sup> That information could  
12 have potentially been used to support a self-defense claim during Glover’s trial. Such a defense  
13 would have been bolstered by trial testimony that revealed: 1) Fleming initiated a confrontation  
14 with Glover following a heated argument with Sutton and Veasley; 2) Fleming pushed Sutton to  
15 the side when she attempted to deescalate the confrontation between Fleming and Glover; and  
16 3) that Fleming was in physical possession of a firearm at the time of his death. However, the  
17 Public Defender’s Office would have been precluded from utilizing any information Fleming  
18 disclosed about his history of violence in order to remain in compliance with NRPC 1.6, which  
19 governs the confidentiality of attorney-client communications.<sup>7</sup> Thus, there was a significant  
20

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21 <sup>6</sup> Presently, Glover does not know the identity of the victim in case 10F15357X. Nor does he  
22 know the factual basis underlying the disorderly conduct charge.

23 <sup>7</sup> NRPC 1.6<sup>7</sup>—Confidentiality of Information—provides:

24 (a) *A lawyer shall not reveal information relating to representation of a client  
unless the client gives informed consent*, the disclosure is impliedly authorized in

1 risk that the representation of Fleming materially limited trial counsel's responsibilities to  
2 Glover. As such, a conflict of interest existed and trial counsel should have withdrawn or  
3 obtained informed consent from Glover to continue the representation.

4 Because trial counsel did not disclose the conflict, the district court never had an  
5 opportunity to determine if the public defender should be disqualified due to its former  
6

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7 order to carry out the representation, or the disclosure is permitted by paragraphs  
8 (b) and (d).

9 (b) A lawyer may reveal information relating to the representation of a client to the  
10 extent the lawyer reasonably believes necessary:

- 11 (1) To prevent reasonably certain death or substantial bodily harm;
- 12 (2) To prevent the client from committing a criminal or fraudulent act in  
13 furtherance of which the client has used or is using the lawyer's  
14 services, but the lawyer shall, where practicable, first make reasonable  
15 effort to persuade the client to take suitable action;
- 16 (3) To prevent, mitigate, or rectify the consequences of a client's criminal  
17 or fraudulent act in the commission of which the lawyer's services have  
18 been or are being used, but the lawyer shall, where practicable, first  
19 make reasonable effort to persuade the client to take corrective action;
- 20 (4) To secure legal advice about the lawyer's compliance with these Rules;
- 21 (5) To establish a claim or defense on behalf of the lawyer in a controversy  
22 between the lawyer and the client, to establish a defense to a criminal  
23 charge or civil claim against the lawyer based upon conduct in which  
24 the client was involved, or to respond to allegations in any proceeding  
concerning the lawyer's representation of the client; or
- (6) To comply with other law or a court order.
- (7) To detect and resolve conflicts of interest arising from the lawyer's  
change of employment or from changes in the composition or  
ownership of a firm, but only if the revealed information would not  
compromise the attorney-client privilege or otherwise prejudice the  
client.

(emphasis added)

1 representation of Fleming. Additionally, Glover never had an opportunity to give informed  
2 consent in order to potentially waive the conflict.

3 Based on the foregoing, Glover submits that he received ineffective assistance of  
4 counsel due to trial counsel's conflict of interest as provided herein. Because an actual conflict  
5 of interest which adversely affects a lawyer's performance will result in a presumption of  
6 prejudice to the defendant, prejudice to Glover is presumed. Glover requests this Court grant the  
7 instant petition and vacate his conviction and sentence. In the alternative, Glover requests that  
8 this Court grant an evidentiary hearing to develop the facts that will assist this Court in  
9 conducting the Waid analysis and determine the extent of counsel's deficient performance. An  
10 evidentiary hearing is warrant as this claim is not belied by the current record, and if true, would  
11 entitle Glover to relief. *See Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

#### 12 **IV. CONCLUSION**

13 Glover submits that he received ineffective assistance of counsel as discussed above.  
14 Accordingly, Glover respectfully requests this Honorable Court grant the instant petition, vacate  
15 his conviction and sentence, and schedule his case for trial. In the alternative, Glover requests  
16 that this Court grant an evidentiary hearing to determine the extent of counsel's deficient  
17 performance to create an adequate record regarding the claims contained herein.

18 DATED this 4<sup>th</sup> day of January, 2021.

19 GAFFNEY LAW

20 /s/ Lucas Gaffney

21 LUCAS J. GAFFNEY, Esq.

22 Nevada Bar No. 12373

23 1050 Indigo Drive, Suite 120

24 Las Vegas, Nevada 89145

*Attorney for Petitioner*

# **EXHIBIT B**

**REGISTER OF ACTIONS****CASE No. 01M20858X****State of Nevada vs Fleming, Patrick Ramon**§  
§  
§  
§  
§Case Type: **Misdemeanor**  
Date Filed: **09/24/2001**  
Location: **JC Department 4****PARTY INFORMATION****Defendant** **Fleming, Patrick Ramon AKA Flemming, Patrick****Lead Attorneys**  
**Mark D. Cichoski**  
*Public Defender*  
7024554685(W)**State of Nevada** **State of Nevada****CHARGE INFORMATION**

Charges: Fleming, Patrick Ramon	Statute	Level	Date
1. BATTERY (DOMESTIC VIOLENCE)	200.481	Misdemeanor	09/11/2001

**EVENTS & ORDERS OF THE COURT**

DISPOSITIONS	
10/29/2002	<b>Disposition</b> (Judicial Officer: Bixler, James M.) 1. BATTERY (DOMESTIC VIOLENCE) PLEA NOLO/FOUND GUILTY
10/29/2002	<b>Plea</b> (Judicial Officer: Bixler, James M.) 1. BATTERY (DOMESTIC VIOLENCE) Guilty
10/29/2002	<b>Conversion Sentence Event Type</b> (Judicial Officer: Bixler, James M.) 1. BATTERY (DOMESTIC VIOLENCE) Condition - Adult: 1. COUNSELING, 10/29/2002, Active 10/29/2002 Comment (DATE: 10/29/2002 JC FINE: 0200 AA FINE: 115 JC TOTAL: 0315 JC EXCUSED: 0315) Comment (COMM SERV (DAYS): (HRS):002 (MINS):) Comment (MAY DO 48 HRS COMM/SRVC IN LIUE OF FINE; ATTEND DO;MESTIC VIOLENCE PROGRAM.) Comment (CTS (MOS): 00 CTS (DAYS): 000 CTS (HRS): )
OTHER EVENTS AND HEARINGS	
09/11/2001	<b>ARREST WARRANT REQUEST</b> <i>ARREST WARRANT REQUEST</i>
09/24/2001	<b>TRANSFERRED TO JC</b> <i>TRANSFERRED TO JC</i>
09/24/2001	<b>CTRACK Track Assignment JC04</b>
09/25/2001	<b>RECEIVED FROM DA</b> <i>RECEIVED FROM DA</i>
09/28/2001	<b>SUMMONS ISSUED</b> (Judicial Officer: Bixler, James M. ) <i>MISD ARRGN</i>
09/28/2001	<b>Arraignment</b> (8:00 AM) (Judicial Officer Bixler, James M.) Result: COMPLETED
10/31/2001	<b>BENCH WARRANT ISSUED</b> (Judicial Officer: Bixler, James M. ) <i>MISD ARRGN</i>
10/31/2001	<b>Arraignment</b> (8:00 AM) (Judicial Officer Bixler, James M.) Result: COMPLETED
09/16/2002	<b>ARRAIGNMENT COMPLETED</b> (Judicial Officer: Bixler, James M. ) <i>MOTIONS</i>
09/16/2002	<b>BENCH WARRANT QUASHED</b> (Judicial Officer: Bixler, James M. ) <i>BENCH WARRANT</i>
09/16/2002	<b>Motion</b> (8:00 AM) (Judicial Officer Bixler, James M.) Result: COMPLETED
10/29/2002	<b>SEE CHARGE/DISPOSITION/SENT RECORDS</b> (Judicial Officer: Bixler, James M. ) <i>NONJURY TRIAL</i>
10/29/2002	<b>COURTESY NOTICE OF DISPOSITION GENERATED</b> <i>MinuteCode1: COURTESY NOTICE OF DISPOSITION GENERATED MinuteCode3: COURTESY NOTICE OF DISPOSITION GENERATED</i>
10/29/2002	<b>Bench Trial</b> (8:00 AM) (Judicial Officer Bixler, James M.) Result: GUILTY/SENT

05/28/2003	<b>REQUIREMENTS COMPLETED</b> (Judicial Officer: Bixler, James M. ) <i>OTHER</i>
05/28/2003	<b>OTHER</b> (8:00 AM) (Judicial Officer Bixler, James M.) Result: COMPLETED



**REGISTER OF ACTIONS****CASE No. 10F15357X****State of Nevada vs Fleming, Patrick Ramon**§  
§  
§  
§  
§Case Type: **Felony**  
Date Filed: **10/26/2010**  
Location: **JC Department 2****PARTY INFORMATION****Defendant Fleming, Patrick Ramon****Lead Attorneys**  
**G. Darren Cox**  
*Public Defender*  
7024554685(W)**State of Nevada****CHARGE INFORMATION****Charges: Fleming, Patrick Ramon**  
1. DISORDERLY CONDUCT**Statute**  
12.33.010**Level**  
Misdemeanor**Date**  
08/10/2010**EVENTS & ORDERS OF THE COURT****DISPOSITIONS**

04/07/2011 **Disposition** (Judicial Officer: Sciscento, Joseph S.)  
1. DISORDERLY CONDUCT  
PLEA NOLO/FOUND GUILTY

04/07/2011 **Plea** (Judicial Officer: Sciscento, Joseph S.)  
1. DISORDERLY CONDUCT  
GUILTY

04/07/2011 **Conversion Sentence Event Type** (Judicial Officer: Sciscento, Joseph S.)  
1. DISORDERLY CONDUCT  
Condition - Adult:  
1. Impulse Control Counseling, 04/07/2011, Active 04/07/2011  
Comment (DATE: 04/07/2011 JC FINE: 0233 AA FINE: 102 JC TOTAL: 0335 JC EXCUSED: )  
Comment (NONE;MAY DO 23 HRS COMM/SERV & PAY \$102 AA FEES IN LIEU; OF FINE)

**OTHER EVENTS AND HEARINGS**

08/10/2010 **ARREST WARRANT REQUEST**  
ARREST WARRANT REQUEST

08/10/2010 **COMPLETED BY CL**  
MinuteCode1: COMPLETED BY CL MinuteCode3: COMPLETED BY CL

10/26/2010 **TRANSFERRED TO JC**  
TRANSFERRED TO JC

10/26/2010 **COMPLETED BY JI**  
MinuteCode1: COMPLETED BY JI MinuteCode3: COMPLETED BY JI

10/26/2010 **CTRACK Track Assignment JC02**

11/03/2010 **RECEIVED FROM DA**  
RECEIVED FROM DA

11/03/2010 **Criminal Complaint**

11/03/2010 **Request for Arrest Warrant Filed**

11/03/2010 **Filed Under Seal**

11/03/2010 **Declaration of Warrant Summons (Affidavit)**

11/03/2010 **Minute Order**

11/05/2010 **ARREST WARRANT ISSUED** (Judicial Officer: Oesterle, Nancy C. )  
WARRANT REQUEST

11/05/2010 **Arrest Warrant Request** (8:00 AM) (Judicial Officer Oesterle, Nancy C.)  
Result: COMPLETED

11/05/2010 **Arrest Warrant - Face Sheet**

11/05/2010 **Arrest Warrant Confidential**

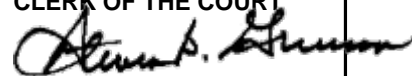
12/10/2010 **JCON Accounting Detail**  
Rcpt #: 09964759 Deft Name: FLEMING, PATRICK RAMON Payer Name: 1 STOP BAIL BONDS Deft ID: 00978383 Fund: 660 Payment  
Type: CHK Location: ITK Case #: 10F15357X

12/10/2010 **BAILED/BONDED**  
BAILED/BONDED

12/10/2010 **NJCIS - CLEAR/SERVE**  
NJCIS - CLEAR/SERVE

12/10/2010 **Surety Bond**  
 12/10/2010 **Bail Receipt**  
 12/10/2010 **Bail Receipt**  
 12/10/2010 **Temporary Custody Record**  
 12/11/2010 **Waiver of Extradition After Admission to Bail**  
 12/13/2010 **Warrant Arrest Documents**  
 12/14/2010 **P/H DATE SET** (Judicial Officer: Oesterle, Nancy C. )  
     *WARRANT HEARING*  
 12/14/2010 **Bench Warrant Return Hearing** (8:00 AM) (Judicial Officer Oesterle, Nancy C.)  
     Result: COMPLETED  
 12/14/2010 **Financial Affidavit**  
 04/07/2011 **SEE CHARGE/DISPOSITION/SENT RECORDS** (Judicial Officer: Sciscento, Joseph S. )  
     *PRELIM HEARING*  
 04/07/2011 **COURTESY NOTICE OF DISPOSITION GENERATED**  
     *MinuteCode1: COURTESY NOTICE OF DISPOSITION GENERATED MinuteCode3: COURTESY NOTICE OF DISPOSITION GENERATED*  
 04/07/2011 **Preliminary Hearing** (8:00 AM) (Judicial Officer Sciscento, Joseph S.)  
     Result: GUILTY/SENT  
 04/07/2011 **Bond Exoneration**  
 04/07/2011 **Notice of Disposition and Judgment**  
 04/19/2011 **Ex Parte Order**  
     *FOR TRANSCRIPT*  
 04/20/2011 **Transcript of Proceedings**  
 10/04/2011 **Counseling Report**  
 10/04/2011 **Counseling Report**  
 10/11/2011 **REQUIREMENTS COMPLETED** (Judicial Officer: Sciscento, Joseph S. )  
     *OTHER*  
 10/11/2011 **OTHER** (8:00 AM) (Judicial Officer Sciscento, Joseph S.)  
     Result: COMPLETED

# EXHIBIT C



NWEW  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
DAVID L. STANTON  
Chief Deputy District Attorney  
Nevada Bar #003202  
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-

CASE NO: C-16-312448-1

SHAWN GLOVER, aka,  
Shawn Lynn Glover, Jr.,  
#1950305

DEPT NO: IX

Defendant.

STATE'S NOTICE OF EXPERT WITNESSES  
[NRS 174.234(2)]

TO: SHAWN GLOVER, aka, Shawn Lynn Glover, Jr., Defendant; and

TO: RYAN BASHOR, Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF NEVADA intends to call the following expert witnesses in its case in chief:

**DR. DUTRA**, and/or designee; A medical doctor employed by the Clark County Coroner Medical Examiner. He will testify to all aspect of the coroner's investigation and conclusions in the death of Patrick Fleming. This will include identification, cause and manner of death. This witness will testify that the examination by the coroner's office and the autopsy in particular, evidence a clear case of homicide and not any other medical/legal means of death. Testimony will include that the injury was instantaneously incapacitating and the directionality of the projectile inside the body of Mr. Fleming. All aspects of the autopsy report and the photographs will be discussed in detail through this witness.

1 DETECTIVES BEN OWENS, NLVPD #1173 and SAYOKO WILSON-FAY,  
2 NLVPD #1437, They will testify to all aspects of crime scene investigation from initial  
3 observations to the memorialization process of the crime scene. Further, these witnesses will  
4 testify to the crime scene and interpreting this as a homicide and no other explanation of the  
5 cause/manner of death. Their testimony will include that no evidence of self-defense exists  
6 and evidence directly showing a murder.

7 These witnesses are in addition to those witnesses endorsed on the Information or  
8 Indictment and any other witnesses for which a separate Notice of Witnesses and/or Expert  
9 Witnesses has been filed

10 The substance of each expert witness' testimony and a copy of all reports made by or  
11 at the direction of the expert witness has been provided in discovery.

12 A copy of each expert witness' curriculum vitae, if available, is attached hereto.

13 STEVEN B. WOLFSON  
14 DISTRICT ATTORNEY  
Nevada Bar #001565

15 BY   
16

17 DAVID L. STANTON  
Chief Deputy District Attorney  
Nevada Bar #003202

18  
19 CERTIFICATE OF SERVICE

20 I certify that on the 9th day of November, 2017, I e-mailed a copy of the foregoing  
21 State's Notice of Expert Witnesses, to:

22 Ryan Bashor, Public Defender  
23 [bashorj@clarkcountynv.gov](mailto:bashorj@clarkcountynv.gov)

24 /s/ Stephanie Johnson

25 Employee of the District Attorney's Office  
26  
27

28 16FN0004X/saj/MVU

## Curriculum Vitae

**Timothy Franklin Dutra, M.D., M.S., Ph.D.**

### **Current Occupation:**

Medical Examiner (Forensic Pathologist)  
Clark County Coroner's Office  
1704 Pinto Lane  
Las Vegas, NV 89106  
Tel. (702) 455-3210  
E-mail: tdutra@co.clark.nv.us

### **Personal Data:**

Languages: English & Spanish

### **Board Certifications:**

Forensic Pathology  
ABP Diplomate and certified, September 9, 2009.

Blood Banking and Transfusion Medicine  
ABP Diplomate and certified, September 9, 2005

Anatomic and Clinical Pathology  
ABP Diplomate and certified, November 11, 1998

### **Most Recent Fellowship:**

Fellowship, Forensic Pathology  
St. Louis University  
(A.C.G.M.E. accredited: 10/01/08 – 9/30/09)  
St. Louis City Medical Examiner's Office

### **Recent Colleague:**

Visiting Colleague, Forensic Pathology  
(10/05/09 – 10/31/09)  
Servicio Medico Forense  
Mexico, D.F. 06720

**Recent Teaching:**

Instructor: Physiology Laboratory  
Monterey Peninsula College  
Monterey, CA 93940

**Recent Research:**

Co-Investigator: "Marrow Tissue Cultivation ex vivo  
in vitro for Blood Cell Collection (animal cell model)"  
LABioMed Research Institute  
Torrance, CA 90502

**Previous Fellowship:**

Fellowship, Blood Bank and Transfusion Medicine  
University of Wisconsin  
(A.C.G.M.E. accredited: 08/01/04 – 07/31/05)  
University of Wisconsin Hospital  
Madison, WI 53792-2472

**Previous Pathology Practice:**

Post-Certification Pathology Practice (1999 – 2003)  
Physician Specialist, Anatomic and Clinical Pathology,  
including gross and microscopic surgical pathology,  
aspiration cytopathology and bone marrow pathology.  
Section Chief of Clinical and Special Chemistry.  
Blood Bank and Transfusion Medicine acting Chief,  
during absences of BB & TM Section Chief.  
Pathology Department  
Martin Luther King, Jr. Hospital  
Los Angeles, CA 90059

**Locum Tenens Practice:**

Locum tenens Pathology Practice (9/00, 9/01, 9/02, & 9/03)  
One month locum tenens for each of four years, as Acting Director  
for a solo practice Pathology Department, including coverage  
of surgical pathology and clinical laboratory.  
Pathology Department  
Orthopaedic Hospital  
Los Angeles, CA 90007

**Current Licensure:**

Active Status Medical Doctor, Nevada, renewal 7/1/2011  
Physician and Surgeon, California, renewal 3/2011  
Practitioner, D.E.A., U.S., renewal 7/2011

**Educational Degrees:**

University:	University of California at Berkeley, B.A. in Chemistry and Zoology, 1968
Medical School:	University of Southern California, M.D., 1972
Graduate School:	University of Southern California, M.S. in Anatomy and Cell Biology, 1986
Graduate School:	University of California at Los Angeles, Ph.D. in Anatomy and Cell Biology, 1993

**Professional Societies:**

Fellow, National Association of Medical Examiners, 2009 –  
Fellow, College of American Pathologists, 1999 –  
Fellow, American Society of Clinical Pathologists, 1999 –  
Member, American Association for the Advancement of Science, 1994 –

**Recent Meetings and Courses:**

Annual Meeting, American Society for Clinical Pathology  
San Francisco, CA, 10/27 – 10/31/10  
Interim Meeting, National Association of Medical Examiners  
Seattle, WA, 2/23/10  
Segunda Conferencia Internacional de la Medicina Forense  
Mexico City, 4/28 – 4/30/10  
Annual Meeting, National Association of Medical Examiners  
San Francisco, CA, 10/11 – 10/15/09  
Osler Anatomic Pathology Review Course  
Los Angeles, CA, 3/9 – 3/12/09  
Medicolegal Death Investigator Training Course  
St. Louis, MO, 4/17 – 4/21/09



**Professional Training/Practice Chronology:**

Internship: Cottage Hospital (Santa Barbara, CA),  
rotating internship, 1972-73

Residency: Cottage Hospital (Santa Barbara, CA),  
first year, Pathology, 1973-74

General Practice: Santa Barbara, CA, 1974-77. General admission privileges  
for Cottage and Goleta Valley Hospitals.

General Practice: King City, CA, 1977-78. General admission privileges  
for George L. Mee Memorial Hospital.

Residency: Highland/Alameda County Hospital (Oakland, CA),  
second and third years, General Surgery, 1978-80

Residency: Duke University Medical Center (Durham, NC),  
first and second years, Orthopaedics, 1980-82

Residency: Los Angeles County/U.S.C. Medical Center,  
third year, Orthopaedics, 1982-83

Graduate School: University of Southern California School of Medicine,  
Department of Anatomy and Cell Biology, 1984-86

Graduate School: University of California at Los Angeles School of Medicine,  
Department of Anatomy and Cell Biology, 1987-93

Residency: Harbor-U.C.L.A. Medical Center (Torrance, CA), second through  
fifth years, Anatomic and Clinical Pathology, 1994-9

Fellowship: Orthopaedic Hospital (Los Angeles, CA), six months of  
Fellowship, Bone and Soft Tissue Pathology, 1998-99

Pathology Practice: Los Angeles, CA, 1999-2003. Anatomic and Clinical  
Pathology privileges at King-Drew Medical Center

Fellowship: University of Wisconsin (Madison, WI), one year Fellowship,  
Blood Banking and Transfusion Medicine, 2004-05

Research Scientist: LABioMed Research Institute, 2005-07. Co-investigator:  
"Marrow stromal fibroblastic cell cultivation *in vitro* on  
de-cellularized bone marrow extracellular matrix"

Instructor: Physiology Laboratory, Fall and Spring semesters, 2007-08  
Monterey Peninsula College (Monterey, CA)

Fellowship: St. Louis City Medical Examiner's Office (St. Louis, MO),  
one year Fellowship, Forensic Pathology, 2008-09

**Teaching Experience:**

Teaching Assistant: Anatomy Dissection Laboratory, Fall semester, 1985  
University of Southern California School of Medicine

Teaching Assistant: Anatomy Dissection Laboratory, Fall semesters. 1987-88  
University of California at Los Angeles School of Medicine

Assistant Lecturer: "Head, Neck, & Dental Embryology", Fall semesters, 1990-91  
University of California at Los Angeles School of Medicine

### Teaching Experience (continued):

Staff Pathologist: Routinely presented histopathology of cases for review  
at the weekly hospital Tumor Board Conferences  
Martin Luther King, Jr. Hospital, Los Angeles, CA 1999-03

Staff Pathologist: Routinely presented histopathology case reviews at  
subspecialty surgical Resident training conferences  
King-Drew Medical Center, Los Angeles, CA 1999-2003

Lecturer: "Blood Banking and Transfusion Medicine", Winter, 2005  
University of Wisconsin School of Medical Technology

Instructor: Physiology Laboratory, Fall and Spring semesters, 2007-08  
Monterey Peninsula College

### Publications:

Dutra, T.F. and Bernard, G.W.: "Size-selective Comparison of Fetal Calvarial  
versus Adult Marrow Osteogenic Colony-forming Entities"; *Anatomical Record*;  
239: 1 – 8; 1994

Dutra, T.F. and Bernard, G.W.: "Post-fracture stimulation of in vitro osteogenesis  
is not systemic"; *International Journal of Oral Biology*; 23: 213 – 217; 1998

Dutra, T. and French, S.: "Marrow stromal fibroblastic cell cultivation in vitro on de-  
cellularized bone marrow extracellular matrix"; manuscript published in *Experimental  
and Molecular Pathology* on 9/22/2009

### Presentations:

Dutra, T.F.: "Cultured Human Circulating Fibrocytes Express CD34 and Endothelial  
Markers"; Hematopoietic Stem Cell Transplantation (Sixth International Symposium);  
San Diego, CA; 4/16-4/18/98

Dutra, T.F.: "Flow Cytogenetics"; Clinical Cytogenetics Program, California State  
University at Dominguez Hills; 4/25/01

Dutra, T.F. and Graham, M.A.: Poster presentation: "Big People, Big Hearts:  
histochemical and immunohistochemical stain comparisons of hypertrophic heart  
sections from morbidly obese decedents, compared with heart sections from age  
matched controls"; 43<sup>rd</sup> Annual Meeting of the National Association of Medical  
Examiners; 9/11-9/16/09

Dutra, T.F.: "Marrow stromal fibroblastic cell cultivation in vitro on de-cellularized bone  
marrow extracellular matrix", Pathology Grand Rounds, Harbor-UCLA Medical Center,  
1/22/10

Dutra, T.F.: "La Muerte Subita", Segunda Conferencia Internacional de la Medicina  
Forense, Mexico City, 4/28/10



RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

SHAWN GLOVER,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

CASE: C-16-312448-1  
A-20-821176-W

DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE  
FRIDAY, JANUARY 8, 2021

**RECORDER'S TRANSCRIPT OF HEARING:  
PETITION FOR WRIT OF HABEAS CORPUS**

APPEARANCES via Bluejeans:

For the Respondent:

WILLIAM W. FLINN, ESQ.  
Chief Deputy District Attorney

For the Petitioner:

LUCAS GAFFNEY, ESQ.

Recorded by: CYNTHIA GEORGILAS, COURT RECORDER

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Las Vegas, Nevada, Friday, January 8, 2021

[Hearing begins at 9:29 a.m.]

THE COURT: Page 26. That is Glover. Mr. Glover is in the Nevada Department of Corrections. This – actually, this is on calendar for 10:00 with Mr. Gaffney.

THE MARSHAL: Oh.

THE COURT: All right, so we'll recall that at 10:00 a.m.

THE MARSHAL: All right, let's re --

THE COURT: Although it says it's on 8:30 and the 10:00 a.m. --

THE RECORDER: Yeah, it does.

THE COURT: Mr. Flinn, --

MR. FLINN: Yeah, it said 8:30.

THE COURT: And then -- but we also have a calendar at 10:00 a.m. and it's on the 10:00 a.m. calendar so I don't know which calendar Mr. Gaffney is showing up on. Since he hasn't checked in and he's pretty diligent on showing up, I'm assuming he thinks it's at 10:00 a.m. Are you available at 10:00, Mr. Flinn?

MR. FLINN: Yes, Your Honor. Is it the -- is it just still the same Bluejeans conference, though, or is there a different ID?

[Colloquy between Court and Court Recorder]

THE COURT: We'll check into that. I think it would be the same. I hope it's the same.

[Colloquy between State and Court Recorder]

THE COURT: Okay. All right, thank you.

1 THE MARSHAL: Recall page 14 again.

2 MR. FLINN: Thank you.

3 [Matter trailed at 9:30 a.m.]

4 [Matter recalled at 10:01 a.m.]

5 THE MARSHAL: Judge Michael Villani presiding. Please  
6 come to order. We'll start with page number 1.

7 THE COURT: That's our only page.

8 THE MARSHAL: Our only page for our 10:00 o'clock session.

9 THE COURT: All right. I see Mr. Flinn. And do we have  
10 Mr. Gaffney?

11 MR. GAFFNEY: Yes, Your Honor.

12 THE COURT: Are you just on audio because I don't see a  
13 video of you?

14 MR. GAFFNEY: I am.

15 THE COURT: That's fine. I just want to make sure we're not  
16 losing you.

17 All right, this is your post-conviction relief matter. Go ahead,  
18 Mr. Gaffney.

19 MR. GAFFNEY: Thank you, Judge. The first matter I wanted  
20 to address was the State's request to strike the petition as a non-  
21 conforming document. The reason the Clerk's Office declared it a non-  
22 conforming document was because I had filed the cover sheet and the  
23 petition together as a single document. They needed to be filed as  
24 separate documents. So, I went ahead and filed an amended petition on  
25 January 4<sup>th</sup>. I sent a copy to the Court and the State to make sure they

1 had it today and that should remedy the non-conforming document  
2 issue. So, I wanted to do that before today's hearing to make sure we  
3 could move forward and we didn't have to put a pause on the  
4 proceedings so I could do that.

5 THE COURT: Mr. Flinn, did you receive the amended  
6 petition?

7 MR. FLINN: I did, Your Honor. I, of course, didn't have time to  
8 go through it, you know, sort of a line-by-line comparison, but if the only  
9 change is that cover sheet issue, then certainly that's fine. The State's  
10 happy with it. No problem. If there were changes to content that I'm  
11 aware of, I'd want time -- I'd like some direction as to what was changed  
12 and I could address -- you know, review that, but I'm assuming it's just a  
13 cover sheet issue.

14 THE COURT: Mr. Gaffney, is this -- is there any --

15 MR. GAFFNEY: And that's correct.

16 THE COURT: -- changes to it besides the cover page?

17 MR. GAFFNEY: No, Your Honor. There were no substantive  
18 changes.

19 THE COURT: Okay. Go -- so, we'll proceed with the petition or  
20 on the amended petition, so go ahead Mr. Gaffney.

21 MR. GAFFNEY: Okay. So, there's only two issues in the  
22 petition, and the first one was that -- the argument is that trial counsel  
23 was ineffective by allowing testimonial hearsay. And specifically, what  
24 I'm referring to is that a Dr. Dutra had performed the autopsy and  
25 authored the autopsy report on the victim in this case. He was noticed as

1 a witness. It was either him or a designee. And then at trial there was a  
2 surrogate, Dr. Corneal. Dr. Corneal didn't examine the victim's body.  
3 She didn't produce any of her own reports. She essentially reviewed Dr.  
4 Dutra's report, the investigative file that contained photographs, and then  
5 testified as to the cause and manner of death.

6 One of the sort of sub issues that I indicated in the petition  
7 was that I didn't see any notice that Dr. Corneal was going to testify as a  
8 replacement for Dr. Dutra. I don't know if her CV was provided to the  
9 Defense, if there was some kind of agreement or stipulation that Dr.  
10 Corneal would testify in Dr. Dutra's stead. And there's also no indication  
11 why Dr. Dutra was unavailable to testify. I know that the record indicated  
12 that he was retired, but that doesn't mean that he was unavailable to  
13 testify.

14 Mr. Glover didn't have a prior opportunity to cross-examine Dr.  
15 Dutra because the State proceeded by way of indictment. They didn't  
16 have a preliminary hearing that would allow for the cross-examination of  
17 the coroner. And so, because Dr. Dutra's autopsy findings and reports  
18 was brought into evidence through Dr. Corneal, Dr. – or Mr. Glover was  
19 entitled to confront Dr. Dutra. And I understand that what the State's  
20 argument is here is that Dr. Corneal had authored an independent  
21 opinion as an expert witness. However, it's not entirely clear that that's  
22 what happened, that her testimony was based on her own independent  
23 examination of the evidence and were entirely exclusive of Dr. Dutra's  
24 findings. No where in her testimony does she say these are my own  
25 opinions that I reached through my own independent evaluation of the

1 evidence. She didn't say these are my independent opinions regarding  
2 cause and manner of death. I know that's what the State is trying to  
3 argue here and convey by providing certain sort of passages from the  
4 witness' testimony which you see on, I believe its page 10 of the State's  
5 response. But I would submit to the Court that it's not entirely clear that  
6 these are completely her own independent opinions.

7           If you look at the trial transcripts from day three, page 121,  
8 you've got Mr. Stanton during his direct examination of Dr. Corneal,  
9 says, and doctor – this – I'm quoting from the transcript – and doctor, did  
10 I ask you to review an autopsy report and the investigative file to include  
11 photographs contained within the Clark County Coroner's Office as it  
12 relates to an ultimate autopsy report of Patrick Fleming, dated January  
13 2<sup>nd</sup>, 2016; that's the report by Dr. Dutra. Dr. Corneal answers, you did.  
14 Mr. Stanton says, and based upon your review, were you asked by me  
15 and your office to come in and testify to the cause and manner and  
16 findings as a result of that autopsy, correct? So, you know, during that  
17 exchange, he doesn't say I reviewed all the evidence and I've reached  
18 my own independent conclusions and opinions as to the cause and  
19 manner of death.

20           And so, it's our position that Dr. Corneal's testimony  
21 constitutes testimonial hearsay that Counsel should have objected to.  
22 And we don't know if there was some strategic decision why there was  
23 no objection to the lack of notice of Dr. Corneal, why there was a lack of  
24 an objection to the testimonial hearsay presented by Dr. Corneal.

25           The State, in its response, cited to the Vega case. And



1 essentially, they cite to it for the proposition that a surrogate can come in  
2 and express an independent opinion on their own independent review of  
3 the evidence. However, if you take a look at that case, what the court  
4 found was that the testimony from the surrogate in the Vega case that  
5 came – that drew from another person’s written report was testimonial  
6 and it was inadmissible. The testimony that the court allowed in the  
7 Vega case was testimony that related to a video recording. The expert  
8 watched and then rendered their own opinions and I think part of that is  
9 because the video did not already have any kind of conclusions  
10 [indiscernible] in. They watched the video and they could render their  
11 own opinion about what they saw in the video. And that’s not the  
12 situation here where you’ve got Dr. Corneal reading these reports,  
13 looking at the investigative file, looking at the photos, and then basically  
14 using those things to talk – to give testimony about the cause and  
15 manner of death.

16           So, Judge, I would submit that, you know, Counsel should  
17 have objected to the testimonial hearsay. There was no objection and its  
18 not clear why. I can’t see a strategic decision that makes sense as to  
19 why they wouldn’t have done that. And so, that would be my argument  
20 as to the first issue.

21           And I don’t know if you want to go issue by issue here or if you  
22 want me to just go into the next argument as well.

23           THE COURT: No, just go ahead to the next argument and Mr.  
24 Flinn will respond in turn.

25           MR. GAFFNEY: Okay and this is a rather short argument.

1 Essentially, Mr. Glover was represented by the Public Defender's Office.  
2 The Public Defender's Office also represented the victim in this matter  
3 and represented the victim on a battery/domestic violence case. And so,  
4 its our contention that because of that, the Public Defender's Office  
5 would have had information about the victim, potentially about the  
6 victim's violent nature that could have supported a self-defense claim.

7 I don't know if – if you recall in the facts, the situation was that  
8 – well, the circumstances of the victim's death was that he was found at  
9 the bottom of the stairs shot but there was also a gun that was on his  
10 person. So, potentially, Mr. Glover could have had a self-defense claim  
11 that would have been supported by any information regarding the  
12 victim's violent nature, but because the PD's office had represented the  
13 victim in that case, they may have been prevented under the Nevada  
14 Rule of Professional Conduct, 1.6, the confidentiality between attorneys  
15 and their clients not to disclose information that could have been helpful  
16 to Mr. Glover. And I understand the State's argument in that they're  
17 saying essentially, look, even though there's this dual representation  
18 between the victim and Mr. Glover, that doesn't necessarily amount to  
19 an actual conflict, and that's one of the areas I would want to explore  
20 during an evidentiary hearing. Mr. Glover's informed me that he had told  
21 his Counsel repeatedly that they had a conflict, that he wanted them to  
22 address the conflict, and for some reason they did not address that.  
23 They didn't raise it with the Court. They didn't get Mr. Glover's  
24 permission to waive the conflict. And so, I would request an evidentiary  
25 hearing to explore that – well, the scope of the actual conflict I guess

1 would be the reason why I think an evidentiary hearing would be  
2 warranted on that issue.

3 And I would submit it on that, Your Honor.

4 THE COURT: Wasn't the Defense theory that Mr. Glover was  
5 not the shooter, it was someone else as opposed to a self-defense  
6 theory?

7 MR. GAFFNEY: Yeah, I believe that that was the theory at  
8 trial. However, I think that, you know, prior to trial, had this conflict issue  
9 been resolved, that may have opened up a different line of defense for  
10 Mr. Glover, potentially.

11 THE COURT: All right, thank you.

12 Mr. Flinn.

13 MR. FLINN: Thank you, Your Honor,

14 So, I'll just -- if the Court doesn't mind, I'll just deal with the last  
15 matter there first. It was, in fact, -- of course, I tried this case with Mr.  
16 Stanton and this was a clear defense presentation of I didn't do this, it  
17 was somebody else. And they based that in part off of information one of  
18 the witnesses had provided to the police initially and then later changed  
19 their determination. And they presented that throughout all of the  
20 questioning, all of the defense, all of the argument was based on that  
21 concept. So, its quite contradictory to now say, well, gosh, I would have  
22 said I did it in self-defense had I known that the Public Defender -- if I  
23 wasn't prevented by the Public Defender who had represented the victim  
24 some six-plus years earlier in a misdemeanor case, what information  
25 they might have had and not been able to tell me about the victim. And

1 mind you, for a self-defense case, this victim indeed had a firearm on  
2 him tucked in his waistband, loaded, not a round in chamber in his  
3 waistband, and he was found at the bottom of a stairwell shot in the back  
4 of the head. So, his firearm had not been taken out of his waistband.  
5 Nothing had been done. He was shot in the back of his head at an angle  
6 where the Defendant was above him on the stairway as they went down  
7 the stairway. So, this is really quite a reach to get to that point.

8           Second, to even justify this evidentiary hearing -- so they want  
9 an evidentiary hearing to ask the Public Defender about other cases and  
10 the information in those cases, whereas they presented -- did no work to  
11 determine -- subpoena records from those misdemeanor cases to say  
12 what is the nature of these things that even would be relevant  
13 whatsoever to how this went on, how did Mr. Bashor or anyone else that  
14 was involved with the trial of Mr. Glover have an impact on that. Also,  
15 you know, you'd have Mr. Glover if he testifies to present some self-  
16 defense theory, then the jury learns of his voluntary manslaughter  
17 conviction. I believe it was some -- you know, some years ago. So, its  
18 really quite a stretch and there's no information whatsoever presented  
19 that there was conflict or even a potential conflict. It's just a mere  
20 speculative statement in the petition and speculation is not -- does not  
21 justify an evidentiary hearing. Grounded claims that warrant additional  
22 materials that the Defense can't possess would be appropriate for that.  
23 That's not one of them.

24           Now, as to the -- Dr. Corneal's testimony. At trial there's  
25 nothing unclear about her testimony. She never once testifies that she is

1     testifying as to Dr. Dutra's opinion. And this is very commonly done and  
2     throughout frankly trials and various legal areas, not just criminal law,  
3     but doctors can review other doctors' reports and then form their own  
4     opinion and testify. I mean that is standard practice. Doctors do it every  
5     day. They review – I'm a physician and I reviewed the radiologist report  
6     and then I make a determination, etcetera, etcetera. Dr. Corneal, the  
7     foundation was laid in the testimony that she's qualified because, of  
8     course, she's a forensic pathologist for the Medical Examiner's Office  
9     here and done thousands of her own autopsies and she reviewed all –  
10    not just Dr. Dutra's report, but all of the photographs for – within their  
11    possession which is many, many, photographs so that he can look at  
12    everything. She put the photographs up in front of the jury, or we did,  
13    and she explained what they were looking at in fine detail as a medical  
14    doctor about what those photographs were showing. She elaborated  
15    extensively on areas not really covered in detail in any normal autopsy  
16    report and [indiscernible] in this case about the proximity of the firearm,  
17    when the gunshot was fired, what she was looking for, what her  
18    viewpoint is, what her opinion on the gun range, etcetera, and she  
19    testifies. This is her opinion. This is the cause and manner of death.  
20    Nobody says are you testifying what Dr. Dutra said, because she's not  
21    and there's no question about that. Mr. Bashor is an experienced and  
22    very skilled homicide defense attorney for the Public Defender's Office  
23    and these things were – you know, he had specific questions, very  
24    limited, because again, the victim is shot in the back of the head and  
25    found dead at the bottom of the stairway where he was shot. There's no

1 question about how he died. So, you know, that's not really an issue.

2 And this claim that its Melendez-Diaz based is not accurate as  
3 well because that of course was a case where affidavits were attempted  
4 to be used in lieu of the scientist testimony. In this case, the doctor, the  
5 expert, testified. So, there is no confrontation problem here. The doctor  
6 giving the opinion testified. If they wanted to – you know Defense keeps  
7 saying he had no opportunity to cross-examine Dr. Dutra. Well, we didn't  
8 need to have that because, of course, Dr. Corneal testified as to her  
9 opinion. If they wanted to examine Dr. Dutra, they could have  
10 subpoenaed him. You know, that's their prerogative. But they didn't do  
11 that because, again, it's very clear you have a man shot in the back of  
12 the head at close range in an apartment, or townhouse if you will, in a  
13 stairway that just leads down to the entryway at the garage level. So,  
14 there was absolutely nothing inappropriate. Mr. Bashor had no obligation  
15 to make a, you know, meaningless objection about Dr. Corneal, her  
16 qualifications, or her opinion or do any of that.

17 And they keep bringing up this notice issue. But that's not an  
18 issue for post-conviction. If there was any kind of a notice issue, that  
19 could have been raised on appeal and dealt with, but of course the  
20 communication between State's Counsel, myself, or more likely Mr.  
21 Stanton and Mr. Bashor was, you know, whether its part of the record or  
22 not. Mr. Bashor, from the record, clearly was not surprised at Dr.  
23 Corneal's testimony and we had some lengthy argument outside the  
24 presence of the jury before she testified because Counsel wanted to ask  
25 – or Defense Counsel wanted to ask her about a previous injury in Mr.

1 Fleming's body and so we talked at length about that. So, Mr. Bashor  
2 was well prepared and obviously saw no fit to object to this nor would  
3 there be a reason to because it would be unsuccessful.

4 THE COURT: All right, thank you. Anything further,  
5 Mr. Gaffney?

6 MR. GAFFNEY: No, Your Honor, I'll submit it.

7 THE COURT: And on the issue of the conflict, what were the –  
8 what was it again? Refresh my recollection as to the nature of the  
9 previous charges of the victim.

10 MR. GAFFNEY: He – so, in – let's see. There was case  
11 number 01M20858X. He was charged with battery/domestic violence,  
12 misdemeanor. That was in JC4 and it looks like the date of the – they  
13 filed the Complaint was September 24<sup>th</sup>, 2001. And then the second  
14 case was case number 10F15357X, Public Defender case. It looks like  
15 the Complaint was filed October 26<sup>th</sup>, 2010 and that was a disorderly  
16 conduct offense, another misdemeanor.

17 THE COURT: And –

18 MR. GAFFNEY: And those are attached to my – well, I've got  
19 the dockets from those cases attached to the petition as Exhibit B.

20 THE COURT: And is there any information that Mr. Glover  
21 was aware of the battery/domestic violence?

22 MR. GAFFNEY: Well, only – I can – he's informed me that he  
23 was aware of these two cases because of his relationship with the family  
24 and with the victim, and that he had actively told his attorneys  
25 repeatedly, hey, you have a conflict, you represented the victim in a

1 couple of other cases. And despite his raising the issue nothing  
2 happened. He said, you know, I didn't – I never waived the conflict and I  
3 kept telling them that they had a conflict.

4 THE COURT: All right. But wasn't – if you're alleging a self-  
5 defense claim, how do you get around the fact that a firearm was in the  
6 victim's waistband and the issue of trajectory of the bullet?

7 MR. GAFFNEY: Well, as far as the firearm being in the  
8 waistband, in the petition I submitted there were indications that the  
9 victim was acting aggressively toward Mr. Glover. And if Mr. Glover was  
10 aware that the victim had violent tendencies or a violent past, he could  
11 have potentially been in fear that when the victim offered to take him  
12 downstairs and talk to him that there was going to be some kind of  
13 violence that was about to occur. And – so, you know, essentially, I  
14 guess the claim is that had – you know this was a potential defense that  
15 he could have used but the fact that the Public Defender's Office didn't  
16 want to address the conflict had prevented him from potentially exploring  
17 that defense and using that defense. And then as far as the trajectory,  
18 you know its hard to say exactly what happened in that stairwell and you  
19 know how the victim came to be shot if there were – there were no  
20 witnesses to what had actually happened in the stairwell. The witnesses  
21 that were there heard the shots. But we don't know exactly what went  
22 down and how the victim was killed and were there any words or  
23 gestures or looks were exchanged that would potentially put Mr. Glover  
24 in fear that the victim was about to attack him.

25 THE COURT: And then if your client testified, wouldn't his



1 manslaughter or his other conviction come in before the jury?

2 MR. GAFFNEY: That's – yup – yes. Yeah, potentially, yes.

3 MR. FLINN: And, Judge, I'm sorry to interrupt. I just want to  
4 add, because I did mention, it's not just the trajectory but literally the  
5 bullet entering wound is squarely in the back of the victim's head. It's not  
6 like, oh, it shot him in the front of the head and the bullet came down.  
7 And what they're suggesting is that they had maybe an imperfect self-  
8 defense claim because I preemptively shot someone in case 'cause he  
9 was maybe going to attack me when we got outside. And that's not even  
10 a self-defense claim.

11 THE COURT: Anything further, Mr. Gaffney?

12 MR. GAFFNEY: No, Your Honor.

13 THE COURT: All right. On the two issues – and I'll deal with  
14 issue number one as far as the conflict. Under the circumstances of this  
15 case, it was a reasonable tactical decision by Counsel not to pursue a  
16 self-defense claim under these facts. There wasn't any witnesses to the  
17 shooting. The Defendant, to allege self-defense, would have had to be  
18 aware of his prior violent tendency, albeit 15 years prior on the  
19 battery/DV. I'm not sure if the disorderly conduct dealt with violence or if  
20 it was just acting inappropriately at a particular location. So, it would  
21 appear to be a reasonable decision on Defense Counsel, again, in light  
22 of all the factors of this particular case.

23 Now, the issue of the doctor testifying. I just want to look at  
24 the doctor's testimony again just to confirm how the doctor couched their  
25 opinions as to cause and manner of death. And so, I'm going to have my

1 law clerk pull that testimony again so I can just review that. And I will  
2 actually have my clerk give that to me today so I can have that reviewed  
3 over the weekend and you should have a decision first part of next  
4 week.

5 MR. GAFFNEY: Okay. And, Judge, its day three and the  
6 testimony starts on page 118.

7 THE COURT: Would you agree Mr. Flinn about that area or do  
8 – I'll probably pull –

9 MR. FLINN: Yes, that's the transcript. It's day three of jury  
10 trial, page 118, Dr. Corneal. For your clerk's reference the filed copy was  
11 December 31<sup>st</sup>, 2018 is when the transcript was filed for [indiscernible] –  
12 to find it.

13 THE COURT: Okay. We'll have that pulled and reviewed this  
14 weekend.

15 Thank you very much, Counsel.


16 MR. FLINN: Thank you, Your Honor.

17 MR. GAFFNEY: Thank you.

18 [Hearing concludes at 10:29 a.m.]

19 \* \* \* \* \*

20 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
21 audio/video recording in the above-entitled case to the best of my ability.

22   
23 CYNTHIA GEORGILAS  
24 Court Recorder/Transcriber  
25 District Court Dept. XVII

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**February 05, 2021**

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A-20-821176-W	Shawn Glover, Plaintiff(s)
	vs.
	The State of Nevada, Defendant(s)

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**February 05, 2021      3:00 AM      Minute Order**

**HEARD BY:** Villani, Michael      **COURTROOM:** Chambers

**COURT CLERK:** Samantha Albrecht

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Petitioner's Amended Petition for Writ of Habeas Corpus (Post-Conviction) came before the Court, whereupon the Court took the matter under further advisement. The Court adopts the procedural history as set forth in the State's Response to Petitioner's PCR. After considering all pleadings and arguments, the Court renders its decision as follows:

Petitioner's request for relief is based upon two issues:

(1) Failure to object to testimonial hearsay:

Dr. Corneal did not perform the autopsy on the decedent, but she did testify at trial about the manner and cause of death. After setting forth her qualifications, Dr. Corneal testified that she had reviewed the autopsy report and photographs. Dr. Corneal testified she had made her own opinions as to the cause and manner of death. Nothing contained in Dr. Corneal's testimony referred to the opinions and conclusions of Dr. Dutra. See JT day 3, at 118 - 133. **THIS COURT FINDS** Dr. Corneal's testimony is not testimonial hearsay in violation of the Confrontation Clause.

(2) Conflict of interest:

PRINT DATE: 02/05/2021

Page 1 of 2

Minutes Date: February 05, 2021

Petitioner does not set forth any specific conflict of interest. Petitioner engages in mere conjecture. See Petition at 24 ("scope of Flemings former representation is unknown," "it is reasonable to infer that Mr. Fleming would have provided confidential and/or sensitive information about his violent conduct to his Public Defender.").

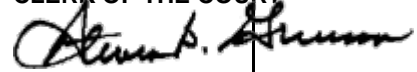
Petitioner claims the Public Defenders' office represented Mr. Fleming in a misdemeanor battery domestic case in 2001 and a disorderly conduct case in 2010. However, Petitioner does not allege an actual conflict involving Mr. O'Brien and Mr. Bashor or how the representation of the two misdemeanor cases 14 and 4 years prior by the Public Defenders' office created a conflict. Nowhere in the record or the Petition establishes a conflict affecting Counsels' performance. See *Mickens v Taylor*, 535 U.S. 162, 122 S.Ct. 1237 (2002).

Here, Evidence established that Mr. Fleming was shot in the back of the head at a downward angle, which would undermine a self-defense theory. See JT day 3, at 126. Petitioner s theory at trial was that he was not the shooter. This was a tactical decision by defense counsel, and the record does not support a claim that Petitioner objected to such said strategy.

Thus, COURT FINDS Petitioner failed to satisfy both prongs of Strickland. Additionally, an evidentiary is unwarranted as the record does not need to be expanded.

Therefore, COURT ORDERD, Petition for Writ of Habeas Corpus (Post-Conviction), DENIED. COURT ORDERS State to submit a proposed order consistent with the foregoing and is approved by the State regarding its form and content within twenty-one (21) days after Counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such order should set forth a synopsis of the supporting reasons proffered to the Court in briefing. Status check for February 23, 2021 at 8:30 am, regarding the filing of the order. That date to be vacated if the Court receives the order prior to February 23, 2021.

CLERK'S NOTE: A copy of this Minute Order was provided to counsel by e-mail. 2/5/2021 sa



1 NEFF

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

4 SHAWN GLOVER,

5  
6 Petitioner,

Case No: A-20-821176-W

Dept No: XVII

7 vs.

8 STATE OF NEVADA,

9 Respondent,

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

10  
11 **PLEASE TAKE NOTICE** that on February 25, 2021, the court entered a decision or order in this  
12 matter, a true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you  
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is  
15 mailed to you. This notice was mailed on March 1, 2021.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Amanda Hampton

18 Amanda Hampton, Deputy Clerk

19 **CERTIFICATE OF E-SERVICE / MAILING**

20 I hereby certify that on this 1 day of March 2021, I served a copy of this Notice of Entry on the following:

21 ☒ By e-mail:

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

23 ☒ The United States mail addressed as follows:

24 Shawn Glover # 1085475 Lucas J. Gaffney, Esq.  
25 P.O. Box 1989 1050 Indigo Dr., Ste 120  
Ely, NV 89301 Las Vegas, NV 89145

26  
27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk

Statistically closed: USJR - CV - Other Manner of Disposition (USJR-OT)

1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **STATEMENT OF THE CASE**

3 On February 4, 2016, SHAWN GLOVER, aka Shawn Lynn Glover, Jr. (hereinafter  
4 “Petitioner”) was charged by way of Indictment with MURDER WITH USE OF A DEADLY  
5 WEAPON (Category A Felony – NRS 200.010, 200.030, 193.165); ASSAULT WITH A  
6 DEADLY WEAPON (Category B Felony – NRS 200.471); OWNERSHIP OR POSSESSION  
7 OF A FIREARM BY PROHIBITED PERSON (Category B Felony – NRS 202.360); and  
8 DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE  
9 (Category B Felony – NRS 202.287) for his actions on or about January 1, 2016. Petitioner  
10 was arraigned on the Indictment on February 8, 2016, with Deputy Public Defender Ryan  
11 Bashor (“Bashor”) representing him.

12 On March 4, 2016, Jess Marchese, Esq. substituted in as counsel for Petitioner in place  
13 of the Public Defender’s Office. However, on April 7, 2016, Mr. Marchese filed a Motion to  
14 Withdraw as Counsel on the grounds that Petitioner was not fulfilling his contractual  
15 obligations. The Court granted Mr. Marchese’s Motion on April 18, 2016, and the Public  
16 Defender’s Office accepted appointment as Petitioner’s counsel once again.

17 On July 30, 2018, Petitioner’s case proceeded to jury trial. On August 3, 2018, after  
18 five (5) days of trial, the jury returned its Verdict of Guilty of First Degree Murder with use  
19 of a Deadly Weapon, Guilty of Assault with use of a Deadly Weapon, and Guilty of Discharge  
20 of Firearm from or Within a Structure or Vehicle. The parties stipulated to waive sentencing  
21 by the jury for the First Degree Murder charge.

22 On October 10, 2018, Petitioner was sentenced, as follows: Count 1 – LIFE in the  
23 Nevada Department of Corrections (NDC) without the possibility of parole, plus a consecutive  
24 forty-eight (48) to one hundred eighty (180) months for the use of a deadly weapon; Count 2  
25 – twenty-eight (28) to seventy-two (72) months in NDC, concurrent with Count 1; Count 3 –  
26 sixty (60) to one hundred eighty (180) months in NDC, concurrent with Counts 1 and 2.  
27 Petitioner was given one thousand eleven (1011) days credit for time served. Petitioner’s  
28 Judgment of Conviction was filed on October 15, 2018.

1 On November 8, 2018, Petitioner filed a Notice of Appeal. On October 24, 2019, the  
2 Nevada Supreme Court affirmed Petitioner's judgment of conviction. Remittitur issued on  
3 November 23, 2019.

4 On March 5, 2020, Petitioner filed an omnibus Motion, which included a request for  
5 post-conviction counsel. Despite there being no post-conviction matter pending, the Court  
6 granted Petitioner's request for post-conviction counsel on April 30, 2020. Lucas Gaffney,  
7 Esq. confirmed as counsel for Petitioner on May 21, 2020.

8 On September 14, 2020, Petitioner filed the instant Petition for Writ of Habeas Corpus  
9 (Post-Conviction) (his "instant Petition"). On September 17, 2020, the Deputy Clerk of the  
10 Court filed a Notice of Nonconforming Document regarding Petitioner's instant Petition. As  
11 of the time of the instant Response, no conforming document has been filed pursuant to  
12 Nevada Electronic Filing and Conversion Rule 8(b)(2). The State filed its Response and  
13 Motion to Strike Petitioner's instant Petition on November 13, 2020. On January 4, 2021,  
14 Petitioner filed an Amended Petition, making no substantive changes but conforming to the  
15 Court rules.

16 On January 8, 2021, this matter came before the Court for hearing. After arguments of  
17 the parties, the Court took the matter under advisement. On February 5, 2021, the Court issued  
18 a Minute Order making the following findings and conclusions:

19 **STATEMENT OF FACTS**

20 On January 1, 2016, Miranda Sutton ("Miranda") lived in a townhome in North Las  
21 Vegas with her husband, Patrick Fleming ("Patrick"), her 21-year-old daughter Akira Veasley  
22 ("Akira"), her goddaughter Angela, and Angela's two boys. Jury Trial Transcript, Day 3, dated  
23 August 1, 2018 ("JT3") at 42-43, 90-91. Approximately, one week prior to Miranda and her  
24 family moving into the townhome, Glover, also temporarily moved in. Id. at 45-46. Glover  
25 started staying with Miranda and her family because he had a daughter with Angela. Id.

26 On the morning of New Year's Day, 2016, Patrick woke up, drove Angela to work, and  
27 stopped by his office to retrieve his paycheck. JT3 at 46-47. When he returned, Patrick  
28 confronted his step-daughter, Akira, about having a young man in his vehicle on New Year's



1 Eve when he asked her not to. Id. at 47-48. Akira then started to argue with Patrick in the  
2 garage. Id. at 92. Hearing the argument, Miranda headed downstairs and into the garage. Id. at  
3 47-48. There, she observed her husband, Patrick, and her daughter, Akira, engaged in a  
4 “typical argument.” Id.

5 At some point, Glover interrupted the argument when he came downstairs and handed  
6 Miranda the phone. JT3 at 93. Miranda spoke to Angela on the phone and observed Glover  
7 head back up the stairway of the townhome. Id. at 49. After the argument ended and Patrick  
8 apologized, Glover came downstairs a second time and asked to speak with Miranda. Id. at 49-  
9 50, 94. Miranda followed Glover upstairs. Id. at 50. Upstairs, Glover headed towards Angela’s  
10 bedroom and asked to speak with Miranda in the bedroom. Id. Once in the bedroom, Glover  
11 asked Miranda: “do you want me to handle this, do you want me to take care of it?” Confused,  
12 Miranda asked for clarification. Id. Glover explained that he heard Patrick “down there  
13 fighting you guys.” Id. Miranda admitted to Glover that there was an argument, however, she  
14 assured him that “everything [was] okay . . . [and that there was] no problem.” Id.

15 During the conversation between Miranda and Glover, Akira testified that “[e]verything  
16 was done [and] [e]verything [was] fine at this point.” JT3 at 94. Miranda and Glover exited  
17 Angela’s bedroom and Patrick confronted Glover as to why he was talking to Miranda. Id. at  
18 52. Miranda and Akira testified that they observed the confrontation between Glover and  
19 Patrick. Id. at 52, 94. They further testified that they heard Glover accuse Patrick of fighting  
20 with both women in the garage. Id. Patrick denied Glover’s allegation and explained that they  
21 were “just having a conversation.” Id. at 94. Akira observed that Patrick’s denial made Glover  
22 “even more mad.” Id. When Patrick attempted to touch Glover, Miranda and Akira, testified  
23 that Glover said, “get off me.” Id. at 52, 95. Patrick then told Glover that they should go  
24 downstairs to talk. Id. at 52.

25 Miranda and Akira then testified that they observed Patrick walking down the stairs and  
26 Glover following right behind him. JT3 at 52, 95. At this point, Miranda headed towards  
27 Angela’s room to retrieve some baby items and then heard three gunshots. Id. at 53. Similarly,  
28 Akira who was sitting on the couch upstairs, testified that approximately 10 to 15 seconds after

1 she saw Glover following Patrick down the stairs, she heard three gunshots. Id. at 96. Miranda  
2 hurried out of Angela's room, looked at Akira, and they both ran towards the stairs. Id. at 53-  
3 54, 96. Miranda reached the stairs first and started to make her way down the stairs as Akira  
4 stayed behind her mom. Id. Miranda and Akira looked down and saw Patrick's body lying on  
5 the landing. Id. at 54, 96. Terrified, Akira ran back up the stairs and called 911. Id. at 55.  
6 Miranda observed Glover holding a gun as he stood over Patrick's motionless body. Id. at 54.  
7 Glover then raised his gun, pointed it at Miranda, and said something like: "don't tell on me,  
8 don't say anything." Id. Miranda thought Glover was going to shoot her. Id. Miranda then saw  
9 Glover go through the garage door, heard the garage door opening, and attempted to give  
10 Patrick CPR until officers arrived. Id. at 56.

11 Fearful because Glover had, at gunpoint, threatened her and her family if she said  
12 anything, Miranda chose to initially tell police that Patrick had been shot by some unknown  
13 person. JT3 at 68-71. Similarly, Akira initially told police that her step-father had been shot  
14 by a person named Hatch, who had come to the townhome to buy marijuana from Patrick. Id.  
15 at 103-04. In addition to Glover's threat, Miranda and Akira both chose to lie to police because  
16 they testified that they knew Glover had committed other acts of violence against other people  
17 in the past. Id. at 89, 109. Miranda testified that once she went back upstairs to check on the  
18 children in the house, she noticed they were in a room with the door shut. Id. at 57. The children  
19 told Miranda that Glover had ushered them into the room, closed the door, and told them to  
20 stay in the room. Id.

21 Upon arrival, Homicide Detective Benjamin Owens ("Det. Owens") began to protect  
22 the integrity of the crime scene after he determined that Patrick had been murdered. JT4 at 14-  
23 15. During his investigation, Det. Owens discovered that Patrick had a Glock 19 tucked into a  
24 waistband holder. Id. at 16, 18. Det. Owens testified that he later determined that the gun found  
25 on Patrick was loaded, however, its chamber was empty. Id. Therefore, the gun would not fire  
26 if the trigger was pulled. Id. Indeed, for the gun to fire it needed to be racked back in order for  
27 a round to enter its chamber. JT3 at 148. Det. Owens's investigation also revealed that the  
28

1 townhome had no signs of forced entry and that there was no property loss within the  
2 townhome. JT4 at 21.

3 Finally, the medical examiner testified that Patrick was shot three times. JT3 at 123.  
4 The first shot entered the back of Patrick's head at a downward angle, went through his brain,  
5 cut his brain stem, and lodged in his fractured jaw. Id. at 126. The second shot entered and  
6 exited through Patrick's inner right upper arm causing a broken humerus. Id. at 129. The third  
7 shot entered Patrick's upper right thigh. Id. at 130. The medical examiner concluded that  
8 wounds had a downward trajectory and the cause of Patrick's death was the gunshot wound to  
9 the back of his head. Id. at 131.

## 10 ANALYSIS

### 11 I. PETITIONER FAILED TO SATISFY STRICKLAND

12 The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal  
13 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his  
14 defense." The United States Supreme Court has long recognized that "the right to counsel is  
15 the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686,  
16 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323  
17 (1993).

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

1 The court begins with the presumption of effectiveness and then must determine  
2 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
3 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel  
4 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of  
5 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,  
6 537 P.2d 473, 474 (1975).

7 Counsel cannot be ineffective for failing to make futile objections or arguments. See  
8 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the  
9 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
10 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
11 (2002).

12 Based on the above law, the role of a court in considering allegations of ineffective  
13 assistance of counsel is “not to pass upon the merits of the action not taken but to determine  
14 whether, under the particular facts and circumstances of the case, trial counsel failed to render  
15 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
16 (1978). This analysis does not mean that the court should “second guess reasoned choices  
17 between trial tactics nor does it mean that defense counsel, to protect himself against  
18 allegations of inadequacy, must make every conceivable motion no matter how remote the  
19 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel  
20 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel  
21 cannot create one and may disserve the interests of his client by attempting a useless charade.”  
22 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S.Ct. 2039, 2046 n.19 (1984).

23 “There are countless ways to provide effective assistance in any given case. Even the  
24 best criminal defense attorneys would not defend a particular client in the same way.”  
25 Strickland, 466 U.S. at 689, 104 S.Ct. at 689. “Strategic choices made by counsel after  
26 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,  
27 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
28 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's

1 challenged conduct on the facts of the particular case, viewed as of the time of counsel's  
2 conduct.” Strickland, 466 U.S. at 690, 104 S.Ct. at 2066.

3 Even if a defendant can demonstrate that his counsel's representation fell below an  
4 objective standard of reasonableness, he must still demonstrate prejudice and show a  
5 reasonable probability that, but for counsel’s errors, the result of the trial would have been  
6 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
7 Strickland, 466 U.S. at 687, 104 S.Ct. at 2064). “A reasonable probability is a probability  
8 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,  
9 694, 104 S.Ct. at 2064–65, 2068).

10 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the  
11 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of  
12 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,  
13 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must  
14 be supported with specific factual allegations, which if true, would entitle the petitioner to  
15 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”  
16 allegations are not sufficient, nor are those belied and repelled by the record. Id. “A claim is  
17 ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the  
18 claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002). NRS  
19 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims  
20 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your  
21 petition to be dismissed.” (emphasis added).

22 In the instant Petition, Petitioner alleges that trial counsel was ineffective in two (2)  
23 ways: first, he argues that trial counsel failed to object to testimonial hearsay; second, he  
24 argues that trial counsel had a conflict of interest that rendered counsel ineffective. See,  
25 Petition at 16, 22. This Court concludes that Petitioner is not entitled to relief on these claims:

26 **A. Failure to object to testimonial hearsay**

27 Petitioner first claims that trial counsel was ineffective for failing to object to Coroner  
28 Medical Examiner Jennifer Corneal (“Dr. Corneal”)’s testimony, which included a review of

1 an autopsy report and accompanying photographs prepared by one Dr. Dutra (retired). JT3 at  
2 118, 121. Specifically, Petitioner relies on Melendez-Diaz v. Massachusetts, 557 U.S. 305,  
3 129 S.Ct. 2527 (2009) (erroneously cited as “Commonwealth v. Melendez-Diaz”), and  
4 Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354 (2004), to argue that Corneal’s  
5 testimony amounted to “testimonial hearsay evidence” that violated Petitioner’s constitutional  
6 rights to confrontation. See, Petition at 16-21.

7 The Nevada Supreme Court has explained that “the Confrontation Clause bars the use  
8 of a testimonial statement made by a witness who is unavailable for trial unless the defendant  
9 had an opportunity to previously cross-examine the witness regarding the witness’s  
10 statement.” Medina v. State, 122 Nev. 346, 353, 143 P.3d 471, 476 (2006) (citing Crawford,  
11 541 U.S. at 68). While this constitutional restriction applies to forensic laboratory results (see,  
12 Melendez-Diaz, 557 U.S. at 329), the Nevada Supreme Court has determined that a surrogate  
13 may provide her “independent opinion as an expert witness” regarding the laboratory results.  
14 Vega v. State, 126 Nev. 332, 340, 236 P.3d 632, 638 (2010). Accord, State v. Navarrette, 294  
15 P.3d 435, 443 (N.M. 2013) (“[A]n expert witness may express an independent opinion  
16 regarding his or her interpretation of raw data without offending the Confrontation Clause.”).  
17 The admissibility of the surrogate’s testimony, relying on a third party’s laboratory report, was  
18 explained by the U.S. Supreme Court:

19 When an expert testifies for the prosecution in a criminal case, the defendant has  
20 the opportunity to cross-examine the expert about any statements that are offered  
21 for their truth. Out-of-court statements that are related by the expert solely for  
22 the purpose of explaining the assumptions on which that opinion rests *are not*  
*offered for their truth* and thus fall outside the scope of the Confrontation Clause.

23 Williams v. Illinois, 567 U.S. 50, 58, 132 S.Ct. 2221, 2228 (2012) (emphasis added).

24 Dr. Corneal did not perform the autopsy on the decedent, but she did testify at trial  
25 about the manner and cause of death. After setting forth her qualifications, Dr. Corneal  
26 testified that she had reviewed the autopsy report and photographs. Dr. Corneal testified she  
27 had made her own opinions as to the cause and manner of death. Nothing contained in Dr.  
28 Corneal's testimony referred to the opinions and conclusions of Dr. Dutra. See JT3, at 118-

1 133. THIS COURT FINDS Dr. Corneal's testimony is not testimonial hearsay in violation of  
2 the Confrontation Clause.

3 **B. Conflict of interest**

4 Petitioner's second claim alleges that trial counsel was ineffective due to a conflict of  
5 interest. Petition at 22-26.

6 The U.S. Supreme Court explained in Mickens v. Taylor when a conflict of interest  
7 may violate a defendant's Sixth Amendment right to effective assistance of counsel. 535 U.S.  
8 162, 122 S.Ct. 1237 (2002). The Mickens Court specifically rejected the notion that a  
9 defendant "need only show that his lawyer was subject to a conflict of interest." Id. at 170-71,  
10 122 S.Ct. at 1243. Instead, that court determined that "an actual conflict of interest" was  
11 necessary, meaning "precisely a conflict *that affected counsel's performance*—as opposed to  
12 a mere theoretical division of loyalties." Id. at 171, 122 S.Ct. at 1243 (citing Cuyler v. Sullivan,  
13 446 U.S. 335, 349-50, 100 S.Ct. 1708 (1980)) (emphasis in original).

14 Petitioner does not set forth any specific conflict of interest. Petitioner engages in mere  
15 conjecture. See Petition at 24 ("scope of Flemings former representation is unknown," "it is  
16 reasonable to infer that Mr. Fleming would have provided confidential and/or sensitive  
17 information about his violent conduct to his Public Defender.").

18 Petitioner claims the Public Defenders' office represented Mr. Fleming in a  
19 misdemeanor battery domestic case in 2001 and a disorderly conduct case in 2010. However,  
20 Petitioner does not allege an actual conflict involving Mr. O'Brien and Mr. Bashor or how the  
21 representation of the two misdemeanor cases 14 and 4 years prior by the Public Defenders'  
22 office created a conflict. Nowhere in the record or the Petition establishes a conflict affecting  
23 Counsels' performance. See Mickens, 535 U.S. 162, 122 S.Ct. 1237.

24 Here, evidence established that Mr. Fleming was shot in the back of the head at a  
25 downward angle, which would undermine a self-defense theory. See JT3 at 126. Petitioner's  
26 theory at trial was that he was not the shooter. This was a tactical decision by defense counsel,  
27 and the record does not support a claim that Petitioner objected to such said strategy.

28 Thus, THE COURT FINDS Petitioner failed to satisfy both prongs of Strickland.

1 Additionally, the Court notes that an evidentiary hearing is unwarranted, as the record does  
2 not need to be expanded.

3 **CONCLUSION**

4 Therefore, COURT ORDERED, Petitioner Shawn Glover's Petition for Writ of Habeas  
5 Corpus (Post-Conviction) shall be and is, DENIED.

6 DATED this \_\_\_\_\_ day of February, 2021.

Dated this 25th day of February, 2021

7 

8  
9 DISTRICT COURT JUDGE

5D8 F98 7C0C 4126

Michael Villani

District Court Judge

10 Respectfully submitted,

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

13 BY /s/JOHN NIMAN  
14 JOHN NIMAN  
15 Deputy District Attorney  
Nevada Bar #14408

16 **CERTIFICATE OF ELECTRONIC FILING**

17 I hereby certify that service of the above and foregoing, was made this 22nd day of  
18 February, 2021, by Electronic Filing to:

19  
20 LUCAS GAFFNEY, ESQ.  
21 Email: [lucas@gaffneylawlv.com](mailto:lucas@gaffneylawlv.com)

22 BY: /s/Deana Daniels  
23 Secretary for the District Attorney's Office  
24  
25  
26  
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28



1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Shawn Glover, Plaintiff(s)

CASE NO: A-20-821176-W

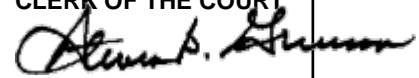
7 vs.

DEPT. NO. Department 17

8 The State of Nevada,  
9 Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 Electronic service was attempted through the Eighth Judicial District Court's  
13 electronic filing system, but there were no registered users on the case. The filer has been  
14 notified to serve all parties by traditional means.



NOASC  
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*Attorney for Appellant*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

SHAWN GLOVER ,  
  
Appellant,  
v.  
  
THE STATE OF NEVADA,  
  
Respondent.

CASE NO. A-20-821176-W  
(C-16-312448-1)

DEPT. NO. XVII

**NOTICE OF APPEAL**

NOTICE is hereby given that SHAWN GLOVER, Appellant above named, hereby appeals to the Nevada Supreme Court from District Court's decision rendered in this action, the 25<sup>th</sup> day of February, 2021.

DATED this 26<sup>th</sup> day of March 2021.

GAFFNEY LAW

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Respondent

By: /s/ Lucas Gaffney  
An employee of GAFFNEY LAW.