

# IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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Elizabeth A. Brown  
Clerk of Supreme Court

CHRISTOPHER ROBERT KELLER,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Case No: A-19-800950-W

Docket No: 81988-COA

# RECORD ON APPEAL VOLUME 2

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**I N D E X**

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

8 CHRISTOPHER ROBERT  
9 KELLER,

10 Plaintiff,

11 vs.

12 THE STATE OF NEVADA,

13 Defendant.

CASE NO.: A-19-800950-W

DEPT. XIX

14 BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE

15 THURSDAY, OCTOBER 1, 2020

16 **RECORDER'S TRANSCRIPT OF HEARING RE:**  
17 **EVIDENTIARY HEARING; PETITION FOR WRIT OF HABEAS**  
**CORPUS; PLAINTIFF'S MOTION TO APPOINT COUNSEL**

18 APPEARANCES:

19 For the Plaintiff:

CHRISTOPHER R. KELLER, PRO SE  
(Via Bluejeans)

21 For the Defendant:

MICHAEL R. DICKERSON, ESQ.  
Deputy District Attorney

23  
24  
25 RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

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1 Las Vegas, Nevada; Thursday, October 1, 2020

2

3 [Hearing commenced at 8:54 a.m.]

4 THE COURT: Okay, we're on the record in the case of  
5 Christopher Keller versus State of Nevada in A800950. Mr. Keller is  
6 present. He's joining us via video from the Nevada Department of  
7 Corrections.

8 The State is represented by Mr. Dickerson. This is the time  
9 for an Evidentiary Hearing. Mr. Keller, it -- you had the opportunity at  
10 this time for an Evidentiary Hearing.

11 Mr. Keller, can you hear us?

12 MR. KELLER: Yes, sir.

13 THE COURT: Okay. You wish to call any witnesses, make  
14 any statements or anything at this point?

15 MR. KELLER: I mean, I don't really understand how -- what's  
16 going on or how to -- I put in a motion for appointment of counsel  
17 because I don't know -- understand how to represent myself in the  
18 hearing.

19 THE COURT: Mr. Keller, at this point in time, you're not  
20 entitled to representation by an attorney unless you hire your own. You  
21 had made representations in a written motion and I've given you an  
22 opportunity to present that. In regards to -- in your petition you made --  
23 you raised some issues regarding ineffective assistance of counsel by  
24 Mr. Frizzell. Your arguments are -- in with regards to that there's eight  
25 different positions that you've raised.

1           You indicated that he was ineffective for not raising issues  
2 relayed to him prior to the suppression hearing, for not appealing a  
3 suppression hearing issues, for not using another investigator because  
4 his investigator knew your parents, for never visiting you until after you  
5 paid a different lawyer, for failing to subpoena, return calls of certain  
6 unnamed witnesses, and failing to cross-examine about the passenger  
7 door being closed when officers first encountered you, failing to call  
8 family and witnesses to speak on your behalf, and -- never asking for  
9 testimony of the dog handler, and for never relying -- relaying your  
10 mental health history prior to, or during the pretrial process.

11           I'll address those right now and then I'm going to ask some  
12 questions because I need some clarification on some of those. With  
13 regards to your first -- first one for not -- claim of not -- that he was  
14 ineffective for not raising the issues, a petition relayed to him, you failed  
15 to identify in your motion what issues you're talking about and for that  
16 reason, you do not support -- you do not show how it's not supported or  
17 wasn't supported by the record. So I believe that that's a bare naked  
18 allegation, so I am denying it on that ground.

19           On the second ground, you have -- you say that he was  
20 ineffective for not appealing the suppression hearing issues. He did in  
21 fact appeal the suppression hearing issues. But you provide no  
22 evidence of how what he argued or what he didn't argue would prejudice  
23 you. So for that reason, I am denying your petition.

24           The concern I have on your fifth position, you claim that he  
25 was ineffective for failing to subpoena return calls of unnamed witnesses

1 to testify, that another female resided in the townhouse you owned and  
2 switched vehicles with you. You have failed to specify any name of any  
3 of these alleged witnesses. Matter of fact, there was a witness that was  
4 prepared to testify at the time of trial but was not notified -- was not put  
5 on a witness list. I allowed that to happen in the event that they had her.  
6 And you can't demonstrate how the -- how your attorney failed to -- fell  
7 below deficient performance, demonstrating a deficient performance on  
8 his behalf, as it's ultimately the responsibility of him to decide as to what  
9 witnesses and what to object to at the time. So, I'm denying it on that --  
10 ground.

11 Your sixth ground is you're claiming that you -- he failed to call  
12 family members or witnesses to speak on your behalf of penalty phase.  
13 There's no right at that stage for any of your family members or  
14 witnesses to testify in light of the fact that this was not a first degree  
15 murder charge. So, I'm denying it on that ground.

16 Okay, so the issues that I want you to address, Mr. Keller, is  
17 you made a claim that your -- your attorney was ineffective for not using  
18 another investigator because your investigator knew your parents. You  
19 made a claim that he was never visiting you in the detention center until  
20 he -- until you hired a paid lawyer. You need to explain to me how that  
21 affected your case.

22 You also made a claim that he was ineffective for not asking  
23 for the testimony of the dog handler and for not relaying your mental  
24 health history prior to your pretrial process, okay?

25 So, those are the four areas I want you to clarify to the Court.



1 I think I need to expand the record on that. So, what is it that you can  
2 tell me about -- or your concerns were with regards to the investigator?

3 MR. KELLER: Well, I never really had a chance to speak to  
4 him because of the problems that he had with my family and then he  
5 never visited me so I never got to tell the investigator -- I never had a  
6 chance for the investigator to speak with the witnesses and also, the  
7 investigator could have got the body camera footage, which -- that the  
8 officer testified that they did have the body camera footage. And  
9 because of that, I never got the body camera footage into my case, so  
10 that cost me the body camera footage, which that would have showed  
11 that the officer was lying.

12 It would have also showed for the jury, you know, that the --  
13 that he, you know -- like another officer testified to the female coming up  
14 to the car and asking for her purse out of the car and her -- the purse  
15 was a thing that had all the narcotics in it. So that --

16 THE COURT: Okay.

17 MR. KELLER: -- that would be one of them.

18 THE COURT: Okay, so you're saying --

19 MR. KELLER: And the reason that --

20 THE COURT: You're -- hold on, hold on. You're saying that  
21 because you -- didn't have a chance to speak to your investigator, is that  
22 -- your investigator didn't get this information because --

23 MR. KELLER: Well that --

24 THE COURT: Okay.

25 MR. KELLER: Well that's why I couldn't -- never got any

1 subpoena -- that's why I never got any subpoenas, that's why I never got  
2 the body camera footage, that's -- I mean, I never got -- I never got any,  
3 I mean, I never got any work on my case done because he wouldn't  
4 come visit me.

5           So, if I would have been able to speak to the investigator then  
6 I might have gotten something accomplished because my family told me  
7 that I was going to get another lawyer, so I wasn't really speaking to  
8 Frizzell. So then when it -- so that's the reason why we never even  
9 spoke about my trial or the fact that it would have been in my best  
10 interest to take a deal because we never even spoke about my case.

11           THE COURT: Okay, so you're saying because your family  
12 was telling you you're getting another attorney, you never spoke to your  
13 attorney?

14           MR. KELLER: Well that -- I mean, we had issues and stuff  
15 like that. But yeah, that's why I never spoke to him because they told  
16 me that they were getting me the attorney, which they ended up paying  
17 \$15,000 for but I never got to use her.

18           THE COURT: Okay. Then you have -- but you're also saying  
19 that you had issues -- you're telling me in your motion that there was  
20 issues between your parents and this investigator. What are you talking  
21 about?

22           MR. KELLER: Yeah, when I -- the first -- the investigator  
23 came and tried to see me and I told -- and he asked me who my mother  
24 was and then he told me, oh -- and then -- oh, he said, oh he's married  
25 to Graham, you know, the police officer? I said, yeah. He said, oh

1    yeah, she's a piece of work and stuff and I said, what does that mean?  
2    You know, like -- and then it got all hostile. I said, hey I'm not talking to  
3    you because, you know, he made that comment about my mother, you  
4    know, so --

5           THE COURT: Okay.

6           MR. KELLER: And then that just --

7           THE COURT: Did you tell Mr. Frizzell that?

8           MR. KELLER: Yeah, I told him in the --

9           THE COURT: Okay.

10          MR. KELLER: And I don't know -- then --

11          THE COURT: Okay. All right. Let's go to the next issue.

12          MR. KELLER: I was -- I made that -- I put in a -- I told that to  
13   the Court, I told that to Frizzell, and I put in a complaint to the Nevada  
14   Bar because no one would listen.

15          THE COURT: Okay. Turn to number four now. You said that  
16   trial counsel was ineffective for never visiting you until after you paid for  
17   a different lawyer. How did that affect your case?

18          MR. KELLER: Well because I never got to speak to him about  
19   it and I never got to -- I never -- I was offered deals but -- I never was -- I  
20   never -- we never spoke about the case so I didn't know what kind of  
21   evidence was against me really. So, I didn't -- we never spoke about  
22   any trial, like -- we never -- the only thing that we brought up was stuff  
23   that I brought up to him. He never went over any trial strategy with me  
24   or he never told me, you know, that it would be interest to take any deal  
25   because of the fact that, you know, that I -- I mean, with the stuff they

1 had, it would have been in my best interest to take a deal obviously,  
2 because the case they had against me, I just thought that I was going to  
3 be working with the other lawyer that my family had paid for.

4 THE COURT: Okay. Then you also said that he was  
5 ineffective for never asking for the testimony of the K-9 handler. So, tell  
6 me how that, you believe, would affect your case in light of the fact that  
7 he did cross-examine the other officers that did point out that they -- that  
8 there was a K-9 animal there. So, tell me how that would have -- how  
9 that affected your case.

10 MR. KELLER: Well because I would have the right -- because  
11 I had the right to cross-examine the dog handler and we never got to  
12 see the K-9 reliability records or the K-9 -- it's just some officer who's not  
13 -- that doesn't know anything about dog behavior. He's not trained in  
14 dog behavior, just the same officer that made several lies in my case  
15 claims that dog hit, but we had no evidence from a reliable source, no  
16 one that, you know, trained in this to say that a dog hit and the whole  
17 case is based off supposedly a dog hit, but if you look at the -- time, they  
18 say a dog hit at one hour and one minute, the K-9 left, they say that he  
19 hit.

20 Well how come if he hit supposedly, how come it took  
21 additional one hour and 59 minutes after the K-9 left for them to  
22 supposedly find the narcotic. That's a whole -- another two hours, two  
23 minutes less than two hours. If a K-9 hit, then you would be able to find  
24 something right then, so I see that there's a problem with this because,  
25 obviously, you know, the K-9 might have never hit on that. You know

1     what I mean?

2                 We have no -- we have nobody that's like, trained in this to  
3     make that statement.

4                 THE COURT: Okay. And then you also claim that he never  
5     relayed your mental health history or the fact that you were on and off  
6     different medications during the pretrial process. So, how is that  
7     affecting your case?

8                 MR. KELLER: Well, it was just -- I mean, I was on different  
9     medications, Zyprexa and then Remeron and stuff, and then -- and -- it's  
10    just -- I mean, looking back now, I know that my mind state was all over  
11    the place and I wasn't able to -- I wasn't even able to really comprehend  
12    what was going on.

13                So, you know, I mean, I'm sitting here with --

14                THE COURT: Did you inform your attorney of that?

15                MR. KELLER: -- 20 to life now.

16                THE COURT: Did you tell --

17                MR. KELLER: I told him.

18                THE COURT: -- Mr. Frizzell about that?

19                MR. KELLER: So, the only time I talked to Mr. Frizzell about  
20    my case was when the lawyer -- because she came at calendar call to  
21    sub in, which was a Friday, and then trial was starting on Monday. You  
22    told her that, you know, since we're going to trial on Monday, I'm not  
23    giving you a continuance. So, she wasn't ready. If she wasn't ready,  
24    then to not take my case, so she didn't take my case, you know? So  
25    then, that's the only time I really spoke to Frizzell about my case was

1 that Friday. And then the Monday that trial started, we never really  
2 spoke about my case because he didn't answer the phone and he never  
3 came to visit me.

4 So, you know, I sent -- I put as a part of my thing, the visiting  
5 log and stuff, so I never, you know, the only time I spoke with him about  
6 my case really was before the suppression hearing which was when I  
7 told him, if you told me that I didn't bring up the grounds that I -- that he  
8 should have brought -- well I was talking about grounds one through  
9 seven of my habeas. Those are the grounds that I brought up prior to  
10 and after the suppression hearing. Those were the grounds.

11 I thought I made it -- I thought I was, you know, I was talking  
12 about the grounds one through seven. Those are the grounds that I  
13 brought up to him. And, you know, in the State's response, they said I  
14 didn't name the grounds but I was speaking about those grounds. So,  
15 those were the grounds I was speaking about.

16 THE COURT: Okay. All right. So, do you have anything  
17 else, Mr. Keller?

18 MR. KELLER: Just that I never had a chance to go over my  
19 case with my lawyer because we -- because we were hiring another  
20 lawyer and I never got to use her so --

21 THE COURT: Okay. Well Mr. Keller, you understand that you  
22 had some dates set previously for trial and then at the last minute, you  
23 hired an attorney to come in and she was asking for --

24 MR. KELLER: Yeah, she hired her, like -- she hired her about  
25 two months before that and then she was having medical problems, but

1 she already had the money. She was having medical problems, so she  
2 could never see me, but it would have been two months prior to that  
3 date is when she testified that she was -- you know, so it was like --

4 THE COURT: Right.

5 MR. KELLER: It was just a bad, you know, it's a bad situation  
6 that happened.

7 THE COURT: Yeah. Well we were trying to go to trial on this.  
8 This was continued multiple times and -- because of issues you had with  
9 Counsel. A counsel was appointed to you. Counsel had an opportunity  
10 to be prepared on this matter and so it went forward on the date that we  
11 had scheduled. So, at this point in time, State, did you have any  
12 questions of Mr. Keller?

13 MR. DICKERSON: I do not, Your Honor.

14 THE COURT: All right. So, State? Do you have any further  
15 witnesses or anything, Mr. Keller?

16 MR. KELLER: I didn't know that I would be able to present  
17 any, you know?

18 THE COURT: Well, Mr. Keller, when you're asking the Court  
19 for an Evidentiary Hearing, what do you expect to happen? Okay.

20 MR. KELLER: Yeah, I didn't know. I didn't know what was  
21 going to happen, honestly. I just thought --

22 THE COURT: Okay, so -- so you just --

23 MR. KELLER: I thought that was part of it.

24 THE COURT: Okay. State?

25 MR. DICKERSON: The State has no witnesses, Your Honor.

1 THE COURT: You're not going to call Mr. Frizzell?

2 MR. DICKERSON: I think that based upon what we have in  
3 front of us, Your Honor, Your Honor can make this decision on the  
4 pleadings themselves. These allegations don't meet the level of  
5 *Strickland*. There's nothing here that the Defendant showing where  
6 anything about his case would be different, had any of his claims  
7 actually been true or supported.

8 THE COURT: Mr. Frizzell, I'm going to call you. I have some  
9 questions, okay?

10 MR. FRIZZELL: Yeah, that's fair.

11 THE MARSHAL: Face he clerk, and raise your right hand.

12 **KENNETH G. FRIZZELL, III**

13 [having been called as a witness and being first duly sworn, testified as  
14 follows:]

15 THE COURT CLERK: Please state your full name, spelling  
16 your first and last name for the record.

17 THE WITNESS: Kenneth G. Frizzell, III, K-E-N-N-E-T-H,  
18 middle initial G, last name F as in Frank, R-I-Z-Z-E-L-L, the third.

19 **QUESTIONS BY THE COURT**

20 BY THE COURT:

21 Q Mr. Frizzell, you had heard statements by Mr. Keller regarding  
22 allegations that his investigator -- because his investigator knew his  
23 mother and father that there seemed to be some kind of tension  
24 between the two and that his investigator didn't do anything with regards  
25 to this case. Are you familiar with that investigator?



1           A     I am.

2           Q     Can you tell me what your understanding is with regards to  
3 this and your --

4           A     Sure.

5           Q     -- the investigator's actions?

6           A     Sure. Well, it was quite the opposite. First off, my investigator  
7 went over to either deliver discovery and/or visit with Mr. Keller on at  
8 least a dozen occasions throughout the representation. Early on, my  
9 investigator is a retired Metro officer, and candidly, worked with Mr.  
10 Keller's father back when he was -- they were both on SWAT together  
11 and then -- my investigator informed me of that.

12                     However, he said -- he had told me and I understand that this  
13 could be --

14          Q     When he had told you, who is this?

15          A     My investigator.

16          Q     Okay.

17          A     Because he relayed --

18                     THE COURT: Mr. Keller, in this particular hearing --

19                     MR. KELLER: Yes, yeah.

20                     THE COURT: In this particular hearing, statements that you  
21 just represented and what you discussed with your attorney, and now  
22 your attorney is on the stand testifying, there's a privilege of self-  
23 incrimination here. Are you waiving that privilege -- so your attorney can  
24 -- so Mr. Frizzell can tell us what it was that he said and that you can tell  
25 us what you said to your attorney?

1 MR. KELLER: Yeah, I mean, I couldn't -- I submitted the  
2 visiting records from County Jail. I mean, I don't --  
3 THE COURT: Okay.  
4 MR. KELLER: Yeah.  
5 THE COURT: Well, what I'm getting at is the actual  
6 communication that you had with Mr. Frizzell. In order for me to  
7 consider this and in light of the fact that you just testified to that, I need  
8 to know --  
9 MR. KELLER: Well, he just lied --  
10 THE COURT: -- whether or not you're willing to waive those  
11 rights.  
12 MR. KELLER: -- anyways, so --  
13 THE COURT: You'll waive those?  
14 MR. KELLER: Yes, I'll waive it --  
15 THE COURT: Okay.  
16 MR. KELLER: -- and he just lied because I have the video. I  
17 have the -- I mean, Frizzell just lied about him. Maybe the dude told  
18 Frizzell --  
19 THE COURT: Okay. Mr. Keller?  
20 MR. KELLER: -- that he visited me, but he didn't.  
21 THE COURT: Mr. Keller --  
22 MR. KELLER: Yes, sir.  
23 THE COURT: You'll have an opportunity to ask Mr. Frizzell  
24 any question you'd like. That's why I have him here. So --  
25 MR. KELLER: All right, thank you.

1 THE COURT: Let me get -- done with this and then you can  
2 ask any question you'd like, okay?

3 MR. KELLER: All right.

4 BY THE COURT:

5 Q All right. So, Mr. Frizzell, are you satisfied with that waiver?

6 A I am.

7 Q Okay, go ahead. So --

8 A So essentially, my investigator had informed me that he didn't  
9 -- he said -- Mr. Keller's mother did work for Metro as well, but she was  
10 in the administrative side of things and he said that he did not know her  
11 other than know who she was by virtue of having worked with SWAT  
12 with her husband.

13 Quite the contrary to what Mr. Keller testified to, Mr. Mastin,  
14 my investigator, enjoyed his time working with Mr. Graham and said that  
15 he was a -- he was a fine lieutenant. At that time my -- investigator was  
16 a captain of SWAT and Mr. Graham, his father -- Mr. Keller's father, was  
17 a lieutenant with SWAT. And they worked together and he had nothing  
18 negative to say. And, you know, he had only said I know of his mother  
19 but I've not had any communication.

20 After I reviewed Mr. Keller's petition, I did ask him, did you  
21 ever say anything like, your mother's a piece of work or anything like  
22 that? And he vehemently informed me no. And so, that's what I have  
23 on that issue.

24 Q During the time that you were representing Mr. Keller, had he  
25 ever represented to you that there was a conflict between the

1 investigator and his parents?

2 A Never.

3 Q So, the first time you heard about it was in the petition?

4 A With reading his petition.

5 Q Okay.

6 MR. KELLER: I said it in open court, Your Honor -- in open  
7 court, several times. I put it in the motion to get a change of attorney. I  
8 put -- so there's record all throughout the court of it, Your Honor.

9 THE COURT: Okay.

10 MR. KELLER: Since the first day the investigator came --

11 THE COURT: Okay.

12 MR. KELLER: I have nothing to gain from making that up.

13 THE COURT: Mr. Keller, hold on. You'll have an opportunity  
14 to address that. I'm just trying to get through this, one at a time. We  
15 don't go in and out like that, okay?

16 MR. KELLER: All right.

17 THE COURT: All right.

18 MR. KELLER: Yes, Your Honor.

19 BY THE COURT:

20 Q So then, Mr. Keller has also represented that you were  
21 ineffective for never visiting him until after -- they paid for a different  
22 lawyer. Do you understand what that is?

23 A That's not true because I went over to the jail, I brought my  
24 billing records, and I don't have them in front of me, the State has them.  
25 But I know that -- I believe specifically throughout the representation, I

1 personally went over to the jail on, I believe, four occasions, possibly  
2 five. There might be five on there. In addition to that, when my  
3 investigator would go over at my direction, he went over either to go  
4 over some discovery with Mr. Keller or at least just deliver something or  
5 talk with him on the video, or something along that line.

6 In addition, every single hearing that we had on the case,  
7 which was when you were in the other courtroom downstairs, we were  
8 always talking about his case, always. And to -- just to reiterate  
9 something that he said is -- he said he didn't like the investigator, yes in  
10 open court on one of those motions to withdraw hearings. But he never  
11 relayed that there was a conflict or that might -- or that my investigator  
12 hated his parents or made any specific comments, derogatory or  
13 otherwise, regarding his mother. That's the part that I first -- that I first  
14 knew of -- that there was a conflict or that he was claiming a conflict,  
15 was in his petition, so --

16 Q Okay.

17 A So the record is clear.

18 Q So, you were actually appointed in this matter after a second  
19 continuance. Is that your understanding?

20 A Yes. I -- he had prior appointed counsel that he did not get  
21 along with and so, Your Honor appointed me.

22 Q Okay. And you're aware that this was continued multiple  
23 times -- actually to the point of, I believe, possibly five continuances?  
24 Let me see, fifth -- yeah. I believe five, and then you actually proceeded  
25 to trial after the fifth continuance?

1           A     Yeah.

2           Q     So, you had the case from the second continuance, so it  
3 would have been a third continuance, a fourth continuance, and a fifth  
4 continuance. Is that your understanding?

5           A     Yes, total. I mean, I was on for four settings.

6           Q     Okay.

7           A     And then the final one we went to trial on.

8           Q     Okay.

9           A     And I can relay to the Court that candidly, and despite --  
10 contrary to Mr. Keller's assertions, a couple of those were because he  
11 had informed me he didn't want to go trial and wanted me to try to get  
12 him a deal. There was at least, I believe, three different offers that were  
13 conveyed to him. And then, when Mr. Dickerson ultimately withdrew the  
14 last offer, then on the first day of trial, he re-extended that same offer  
15 which, candidly, had Mr. Keller accepted it, which he did not and  
16 vehemently said he was not going to accept it, he would be looking at  
17 getting parole probably within the next six months.

18          Q     Okay. So, because of that and understanding that the State  
19 had filed habitual notices -- in this matter, one of Mr. Keller's allegations  
20 is that you never discussed with him or investigated -- the words  
21 investigated is -- in my words, his mental health history. Did you have  
22 any concern with that in light of the fact that there was these offers made  
23 that were pretty favorable, and he was facing habitual notices here and  
24 he adamantly rejected them?

25          A     He had told me that throughout his life that he had had some

1 issues -- with bipolar or some other issues like that. I specifically --  
2 because early on in the representation when he relayed that information  
3 to me, I said, are you on a medication? He said, yes, I take medication.

4 I asked him similar to our canvasses on guilty plea  
5 agreements, is there anything about the medication that you take, that  
6 would render you unable to understand what's going on or to help me in  
7 your defense? And he said, no. And we actually talked about that  
8 issue, at least, on two separate occasions.

9 Q And even --

10 A And I told him I did not see a reason then, to bring that up.

11 Q Was there anything in the medications that stuck out to you  
12 based on what he represented to you that you think would have affected  
13 his ability to understand or comprehend or --

14 A No, because they were pretty standard for what he said his  
15 ailments were. I don't remember the specific names off the top of my  
16 head. But if he was not on them, there might have been a potential for  
17 that issue, but it could have -- it would have been remedied upon just  
18 reinitiating the medication.

19 Q Were you comfortable with his representations to you about  
20 what he was taking and what you viewed of him and his demeanor and  
21 ability to discuss with you the case?

22 A Absolutely. He was at all points. He could relay his version of  
23 events and he was not incoherent. The ideas were not -- were strung  
24 together appropriately. He never went off tangent as far as what he was  
25 claiming was the situation and how the whole incident went down.

1           Now candidly, as virtually every potential defendant -- every  
2 defendant asks their lawyers, but certainly asks me, file this motion, file  
3 that motion, redo this, redo that, and candidly, some of the things that he  
4 asked for, I did. Which was the bail motion, the suppression motion and  
5 the other things that he was asking me to do were not -- did not have a  
6 good face -- good faith basis in law or fact.

7           Q     Okay.

8           A     And so, I chose to not file the plethora of other motions he  
9 kept asking me to do.

10          Q     Okay, now I am -- why we -- you've been testifying, I've had  
11 an opportunity to go back through his motion to dismiss counsel and  
12 appoint alternative counsel. I will tell you that in his written motion -- and  
13 it's filed June 13, 2016, he doesn't say anything in there about an  
14 investigator.

15                However, on the hearing of July 21<sup>st</sup>, 2016, his pro per motion  
16 to dismiss counsel and appoint alternative counsel, after my questioning  
17 he advised that he cannot get any investigation done, that the  
18 investigator used by Mr. Frizzell is the same investigator Mr. Sanft used,  
19 and then he had filed a bar complaint against the investigator. Were you  
20 aware of anything like that?

21          A     He had mentioned something like that but there was never --  
22 my investigator never said that there was anything that came of that.

23          Q     Okay.

24          A     That he -- basically that he was told that but the State Bar  
25 never contacted him, never did any kind of formal grievance to Mr. Sanft



1 or anything. So, I don't know where that went, but it didn't -- I don't think  
2 it went anywhere.

3 Q That -- actually happened to be on the date of the -- date of  
4 Defendant's motion to suppress and there was a -- and calendar call  
5 and the calendar call date, everyone announced ready. So, you actually  
6 request a continuance as you'd been preparing for a motion to suppress  
7 and you had not been able to prepare for trial. And I granted a request  
8 to continue the trial date, vacate and I reset it. So, that would have been  
9 on the date of the calendar call. But then we went -- that was July 21<sup>st</sup>  
10 and it went to trial then in September.

11 So, now you had two additional months. Was there anything  
12 in that -- those two months that Mr. Keller represented to you, possibly  
13 dissatisfaction with the fact that the Court kept you on the case and that  
14 you still had the same investigator? Was there anything that he was --  
15 was he doing in those two months that you believe affected this case?

16 A When you say he, you mean my investigator?

17 Q No, Mr. Keller.

18 A He had mentioned, I think, at one point that he was not -- that  
19 he was not going to assist in his -- he was not going to talk to me. He  
20 was not going to help me with my defense --

21 Q Okay.

22 A -- because he was angry about you keeping me on --

23 Q Okay.

24 A -- and so --

25 Q I will note for the record, that on August 22<sup>nd</sup> 2016 that the

1 Defendant has chosen not assist counsel with the case as Defendant  
2 has refused to speak with counsel and his investigator. And Defendant  
3 stated Counsel refused to assist him and needs a new attorney. So, he  
4 made it a position on his own not to speak to you and that continued  
5 throughout, I mean, from that point until trial date?

6 A It did. I believe I -- I went over -- I think there was one other  
7 occasion, maybe two after that, where I physically went over to the jail to  
8 talk with him. One of the times, I took my investigator and Mr. Keller --  
9 we started out talking and then he got a little bit combative so I just  
10 pressed the button, had the officer come get me. And it was not long  
11 after that that I learned of his family hiring Ms. Feliciano because his  
12 mother called me --

13 Q Okay.

14 A -- to inform me of that. And so, it was probably February 2017  
15 when I was contacted by Ms. Feliciano. I took my entire files over to  
16 her, kept obviously what was my work product, but basically took all of  
17 Mr. Keller's file over to her and I did not get it back until that Friday of  
18 calendar call when she wanted to sub in but also continue the trial. So,  
19 that's when I got it back from her.

20 So, I had a weekend -- so that day, not only did I visit with Mr.  
21 Keller at the calendar call, but then later that afternoon after you had  
22 said this is going forward and Mr. Frizzell you're going to do it, yes, I  
23 went over to the jail that afternoon -- on that Friday afternoon to talk with  
24 him.

25 Q Okay.

1           A     And he was still combative about the whole thing. Just talking  
2 about how his parents wasted 15 grand on an attorney that can't come  
3 in as the -- can't come in as counsel.

4           Q     Okay, so as of the September 19<sup>th</sup> date, that was continued  
5 once again and it actually went to trial in March.

6           A     Yes.

7           Q     So, you were told in February of that year of 2017 that that's  
8 when you first learned that Ms. Feliciano was involved -- was --

9           A     Maybe it was the end of January but --

10          Q     Okay.

11          A     -- that's when I was told that she was actually hired.

12          Q     Okay.

13          A     I was told probably in October of 2016 that they were looking  
14 for new counsel.

15          Q     Okay.

16          A     And that was contact from his mother.

17          Q     Okay.

18          A     That was not Mr. Keller.

19          Q     And as of -- you were present though during the time frame  
20 when it was scheduled to go to trial in March when Ms. Feliciano made  
21 an appearance?

22          A     Yes.

23          Q     Okay. And you were here when the Court made the  
24 determination that it was going to trial?

25          A     Yes.

1 Q And I wasn't allowing them to substitute in that late?

2 A Yes.

3 Q Okay. Did Mr. Keller speak to you any further or other than he

4 was just upset because of the -- they had paid the attorney?

5 A Right.

6 Q And the attorney wasn't able to do it?

7 A Right. That's correct.

8 Q Okay. Now, Mr. Keller has also represented in his petition

9 and I had some questions about this as well, is what was your thoughts

10 with respect to -- he's saying he was upset because you never called the

11 K-9 handler and then there's some issues involving body camera

12 footage. Tell me about -- what's your recall of that?

13 A Well, regarding the K-9 handler, there wasn't an issue there.

14 If you'll recall at the suppression hearing --

15 Q Mm-hmm.

16 A -- the other officers were very clear about how they got a

17 warrant for the K-9. The dog came out and immediately led them to the

18 glove box because the way they got in the car was there were -- there

19 was marijuana in plain sight.

20 Q Mm-hmm.

21 A And so then they just kind of did a -- an inventory of the

22 vehicle there to see if there were more drugs, but they got the -- they got

23 the warrant for the K-9, K-9 came out, led him to a glove box that had a

24 hole cut in it and reaching back there, they found -- I think there was a

25 gun and drugs back there.

1 Q Mm-hmm.

2 A And so then they got a further warrant for the search of the  
3 entire vehicle, and of course, then opened the trunk and there was  
4 enough in there to choke a horse.

5 Q Okay. And with respect to his representation here today  
6 about the body camera?

7 A When I -- I know that I had spoke with Mr. Dickerson on that  
8 issue. I believe that the review of it that we did have was not -- and not  
9 that Mr. Dickerson can testify to it, but there was nothing in there that  
10 would -- in what we were able to see, that would have helped us.

11 Q I actually am getting the minutes on that because I made a  
12 record with regards to that so --

13 A That's fine. But when he's saying that he didn't --

14 MR. KELLER: They never -- they never go to review it, Your  
15 Honor.

16 THE COURT: No, no, I understand. And we had a hearing  
17 on that. So, I wanted to -- we had -- I made a record with regards to that  
18 -- what the parties did. So, I want to make sure that that's part of this so  
19 it's clear.

20 MR. KELLER: Thank you, Your Honor.

21 Well, he testified at the trial --

22 THE COURT: Mr. Keller, Mr. Keller --

23 MR. KELLER: -- we called him in specifically to testify.

24 THE COURT: All right. Hold on, hold on. You'll have an  
25 opportunity to ask Mr. Frizzell any further questions to clarify these

1 issues. But -- at the -- yeah, this was a -- Defendant's motion for  
2 production including potentially exculpatory evidence and the -- this took  
3 place on February 22<sup>nd</sup>, 2017. That Ms. Baraha [phonetic] advised  
4 when this event number is inputted into the database regarding  
5 bodycam information, there was nothing for this event number and the  
6 State has complied with their obligation.

7 So Mr. Keller, there was no body camera footage that they  
8 had access to because nothing was inputted into the database regarding  
9 bodycam footage. So --

10 MR. KELLER: But -- the thing was though is that they --  
11 because at that point, that it automatically erase -- that's why I showed  
12 in open court -- because at like 30 days I told -- I had a article from Las  
13 Vegas Review Journal how the bodycam footage automatically deletes  
14 after 45 days of not being marked.

15 So I had said in open court, at about 30 days, that we need to  
16 get this stuff and then they -- Frizzell and -- they never got it, so they  
17 ended up getting deleted. That's why there wasn't nothing in that event  
18 number for the bodycam for -- because they let it get deleted. But -- so  
19 we had -- you let me call back the officer that wore the body camera  
20 footage -- you let me call him back and he wasn't even in court. We  
21 waited until he came back and you let us talk to him and he said, yes, I  
22 was wearing a bodycam, yes I was running it, and yes I did download it  
23 to the thing, you know.

24 But then since the DA and Mr. Frizzell let it get -- they let it get  
25 deleted and I'm in open court, I was -- I was getting the court minutes -- I

1 was -- I'm in open court at 30 days, standing up in court saying that I  
2 need that because it's going to be deleted at 45 days, because that is a -  
3 - that's one of the most important things to my case, you know. And  
4 that's -- I mean, that's the whole point.

5 THE COURT: Mm-hmm.

6 MR. KELLER: You know, that's where this whole thing -- I got  
7 20 to life.

8 THE COURT: Yup.

9 MR. KELLER: This whole thing, you know, because I couldn't  
10 get -- it's just frustrating, you know?

11 THE COURT: Okay. Mr. Keller --

12 MR. KELLER: That's one of the things -- they had all these  
13 problems with Frizzell.

14 THE COURT: Mr. Keller, you hadn't even had Mr. Frizzell by  
15 that time. You were in -- by -- within 30 days, you were in a lower court  
16 dealing with this --

17 MR. KELLER: Yeah, I had to --

18 THE COURT: Okay, but --

19 MR. KELLER: Yeah, that was when I had that -- that's -- that  
20 attorney that I had had that same investigator and he wasn't -- and then  
21 -- yeah, I didn't get him, but I was in open court asking for it. I told  
22 Frizzell about that and stuff. So --

23 THE COURT: Okay, well I understand what you're saying that  
24 you didn't get, but there wasn't any to have. I don't see -- based on  
25 what was presented previously that there was a prejudice to you

1 because you had an opportunity to directly cross-examine the officer  
2 that was wearing the body camera, that they didn't have the footage, it's  
3 just something that happens.

4 So -- and I know you're saying that he's lying, but there's  
5 nothing that you've shown to establish that. So, the record's clear as to  
6 the argument with regarding body camera footage. So, do you have any  
7 further questions or any other questions that you may have of Mr.  
8 Frizzell at this time?

9 MR. KELLER: No, sir. Not necessarily, no.

10 THE COURT: Mr. Dickerson?

11 MR. DICKERSON: Thank you, Your Honor.

12 MR. KELLER: I mean, I -- I guess the -- yeah, the thing with  
13 mental health and stuff, when I talked to him, I mean, I was -- maybe at  
14 one point I was on a medication, another point I was off. But when -- the  
15 fact that I was using drugs at the time, you know, and then I come into  
16 jail and I've used on and off different medication, I just wasn't in the right  
17 -- you know what I mean? Like, my mind wasn't normal at the time and I  
18 look back, I wasn't nowhere near in the right state of mind but --  
19 [indiscernible].

20 THE COURT: You talking about at the time of trial? Are you  
21 talking about at the time of trial --

22 MR. KELLER: No, prior to that when I first--

23 THE COURT: -- or what point in time --

24 MR. KELLER: Yeah -- well, yeah that --

25 THE COURT: What point --



1 MR. KELLER: -- around that time, too, they had switched me  
2 medications and I wasn't even sleeping the whole week prior to trial, like  
3 -- and that's when I started talking to him, that Friday before the -- when  
4 I found out I couldn't -- when I found out I couldn't use the attorney,  
5 Feliciano.

6 THE COURT: Okay. All right. Okay. Mr. --

7 MR. DICKERSON: All right.

8 THE COURT: -- Dickerson?

9 MR. DICKERSON: Thank you, Your Honor. Just for a bit of  
10 background --

11 THE COURT RECORDER: Hey Mike, I can't hear you.

12 **DIRECT EXAMINATION**

13 BY MR. DICKERSON:

14 Q Just for a bit of background, Mr. Frizzell, how long have you  
15 been practicing law?

16 A Total of 26 years.

17 Q And how long have you been practicing, specifically, criminal  
18 law?

19 A About 20 years.

20 Q During that 20 years, what percentage has criminal law made  
21 up of your law practice?

22 A About 85 percent.

23 Q And during that whole time, generally?

24 A Yes.

25 Q And is that true, at the time in 2016, 2017 when you were

1 representing Mr. Keller as well?

2 A Yes.

3 Q As well as today?

4 A Yes.

5 Q And during that time, what sort of practice did you have as far  
6 as it applied in Clark County?

7 A I was on -- I've been on my own for 22 years, since August of  
8 1998, is when I opened my own practice.

9 Q And you've had a contract to represent criminal defendants  
10 with the County since 2005?

11 A Yes, there was a brief period of time of about two years when  
12 I did not have a contract.

13 Q That was approximately 2012 to 2014?

14 A Yes, however, I had a contract in North Las Vegas Municipal  
15 Court straight through from about '04 until today, so --

16 Q And you estimated to me when we spoke before, that you've  
17 got probably -- approximately four to five appointed criminal cases a  
18 month?

19 A Roughly, yes.

20 Q As well as three to four paid cases a month, is that right?

21 A On the average, yeah.

22 Q And throughout your 20 years of practicing criminal law, have  
23 you tried and defended criminal defendants in very serious cases?

24 A Yes.

25 Q Including murders?

1           A     Yes.

2           Q     What about cases involving drugs and guns?

3           A     Many.

4           Q     Many? And that's actually what Mr. Keller's case was, drugs  
5 and guns?

6           A     Yes.

7           Q     And so, you were -- by the time you received this case in  
8 2016, very familiar with the criminal law as it related to the crimes at  
9 hand, here in this case?

10          A     Yes.

11          Q     And specifically you ended up getting on this case, confirming  
12 on May 4<sup>th</sup>, 2016; is that right?

13          A     Yes.

14          Q     And that's -- was well after this case originated from Mr.  
15 Keller's arrest in approximately January -- January 28<sup>th</sup> of 2016; is that  
16 right?

17          A     Yes.

18          Q     As you were the second attorney to come onto it?

19          A     That I knew of, yes.

20          Q     Okay. Through that time, you had discussed previously filing  
21 several motions?

22          A     Yes.

23          Q     Including a suppression motion?

24          A     Yes.

25          Q     Regarding the evidence that was located within the vehicle --

1 within Mr. Keller's vehicle and his home?

2 A Yes.

3 Q A bail motion for Mr. Keller?

4 A Yes.

5 Q As well as a discovery motion?

6 A Yes.

7 Q And were those things that you had discussed with Mr. Keller?

8 A Absolutely.

9 Q Okay. And he wanted you to file those motions?

10 A Yes.

11 Q So you were in communication with Mr. Keller about how he

12 thought his case should be defended?

13 A Yes.

14 Q And you were making decisions as to what was appropriate; is

15 that right?

16 A That's correct.

17 Q And you found that those multiple motions that you filed were

18 appropriately raised?

19 A Yes.

20 Q Ultimately, there was some discussion about Mr. Keller -- his

21 issues with your investigator. Is that -- you remember that?

22 A Yes.

23 Q So, had Mr. Keller ever said to you that there was some issue

24 with his mother and your -- investigator?

25 A I don't know that he said mother, specifically. I think he said

1 my parents. I'm almost positive it was in regard to both of his parents.

2 Q And what did he say about that?

3 A Just that because my investigator knew his parents, that he  
4 had a conflict.

5 Q Did he ever tell you that your investigator had disparaged his  
6 mother?

7 A Never.

8 Q Okay. Did you ever get that indication at all from your  
9 investigator?

10 A No.

11 Q And when Mr. Keller had brought that issue up -- the issue of  
12 your investigator that is, what did it appear his grievance was with your  
13 investigator?

14 A That because he didn't get -- get along with private counsel,  
15 that there would be some level of animosity towards him that would  
16 come over if I used the same investigator.

17 Q Okay. And you're speaking about Mr. Sanft that previously  
18 represented the Defendant?

19 A Yes.

20 Q So, the Defendant had relayed to you that he felt that it was  
21 possible because the same investigator that worked for -- on his case  
22 under Mr. Sanft, and was now working under you, that somehow that  
23 could be an issue?

24 A Yes.

25 Q What about the actual communications that were occurring

1 between your investigator and the Defendant? Had he ever expressed  
2 any sort of feelings about what was occurring there? The Defendant,  
3 that is.

4 A He would relate to me if Mr. Keller was, for lack of a better  
5 term, a little more excitable on a particular occasion when he visited him.  
6 However, Mr. Keller's demeanor, as he's sitting here today, has been  
7 pretty much the same demeanor that he had with me, and at least with  
8 me and my investigator when I -- when we both went over to the jail  
9 together.

10 Q Okay.

11 A There was no high pitched yelling. There was no altercation  
12 that was escalated other than, I'm not going to talk to you anymore. But  
13 it was all basically how he's sitting here today.

14 Q And throughout that time, did Mr. Keller appear to understand  
15 the factual background of his case and discuss that with you?

16 A Absolutely.

17 Q And in fact, he discussed the filing of the suppression motion  
18 with you; is that right?

19 A Yes, and actually he told me why he felt that -- he felt that that  
20 motion was warranted.

21 Q So, what if anything, was it that was aggravating Mr. Keller in  
22 your conversations and your investigator's conversations with him?

23 A I think it's like a lot of the defendants that I have that want you  
24 to come over every week and just hold their hand even if there's nothing  
25 to talk about. I've always made my clients aware that because -- when

1 they call my office on a collect call, if I'm not available or I'm not there,  
2 that I'm not going to accept the call and they can -- but my office will let  
3 me know that, hey, this person or that person called.

4 And if there's something, I'll either go over or I'll send my  
5 investigator over to see what it is that that particular defendant, or in this  
6 case, Mr. Keller, wanted.

7 Q So, throughout that time, did you and your investigator discuss  
8 the potential consequences that Mr. Keller was facing due to these  
9 charges and his habitual criminal status?

10 A Yes.

11 Q And you discussed that with Mr. Keller?

12 A Yes, on multiple occasions, both at the jail and in court.

13 Q And did that appear to be something that made him feel any  
14 sort of way during those conversations?

15 A Just that he wanted to try -- he wanted me to try and get a  
16 deal.

17 Q Okay. And was he -- did Mr. Keller appreciate hearing about  
18 the consequences that he potentially faced?

19 A Yes -- he relayed to me that he understood that if he was  
20 convicted after a jury trial, that if he was habitualized, that yes, he could  
21 be facing even a lot more, potentially, a lot more years than what he  
22 ultimately got.

23 Q And having practiced criminal law for such a long time in  
24 cases that are similar in nature of charges as this, what was your  
25 assessment of the strength of the evidence of this case?

1           A     I thought it was pretty strong, especially after we filed our  
2 suppression motion and it was basically unsuccessful.

3           Q     And did you discuss that with your investigator?

4           A     Yes.

5           Q     And your investigator, did he share those same sentiments?

6           A     Based on his training as a police officer, yes.

7           Q     And did you and your investigator discuss that with Mr. Keller,  
8 the strength of the case?

9           A     I don't know if it necessarily was together that we did it.

10          Q     No, no, no.

11          A     I know that wasn't together, but I know that both of us --

12          Q     And did you discuss it with Mr. Keller?

13          A     Yes.

14          Q     And your investigator, are you aware of whether he discussed  
15 it with Mr. Keller?

16          A     Yes.

17          Q     Did Mr. Keller actually not like hearing the reality of how  
18 strong his -- how strong the case was against him?

19          A     No, he didn't like it.

20          Q     Okay. And did that become some sort of issue that had been  
21 going on between your investigator and him?

22          A     Yes. I'll admit that my investigator went over more than me.  
23 So every time my investigator would come back to my office to kind of  
24 download and debrief, that he would relay that Mr. Keller wasn't happy,  
25 that sort of thing, sure.



1 Q And specifically, are you saying Mr. Keller wasn't happy about  
2 hearing how strong the case was against him?

3 A That's correct, yes.

4 Q Okay. Not that -- nothing else of -- that Mr. Keller wasn't  
5 happy about?

6 A I mean, he wasn't happy that we lost the suppression motion.  
7 He -- while he was happy that we won the -- that the *Brady* motion was  
8 granted, he was angry about bodycam footage and all that type of thing.

9 Q And so, fair to say that most of his grievance towards you or  
10 your investigator in this case stemmed from his view of the facts -- the  
11 Defendant's view of the facts?

12 A Yes, and the fact that I was not -- I did not come into the case  
13 for over a year after it had happened.

14 Q And when -- so, the first time that you ever heard this  
15 allegation about there being some personal conflict between your  
16 investigator and Mr. Keller was when you became aware of this post-  
17 conviction petition for writ of habeas corpus?

18 A The specific statements that he put in there.

19 Q Okay.

20 A He had relayed that because Mr. Mastin had been Mr. Sanft's  
21 investigator, that because he didn't like Mr. Sanft, he didn't feel that Mr.  
22 Mastin was going to be fair with him either. And I relayed to him that  
23 simply is not the case. I've known Mark for a lot of years and he was  
24 good police officer and he's a fine investigator, and he's working for me  
25 now, not Mr. Sanft.

1           Q     You discussed that you had talked with the Defendant about  
2 his mental health and him being on medication; is that right?

3           A     Yes.

4           Q     At any time during your representation of him, did it seem like  
5 he didn't understand the charges against him?

6           A     Never.

7           Q     Did it seem that he didn't understand what the roles of the  
8 parties were in the courtroom?

9           A     I never had that feeling he didn't know that, no.

10          Q     Did it ever appear that he didn't understand the penalties that  
11 he would face after being convicted at trial?

12          A     No.

13          Q     Did it ever appear that he didn't understand what going to trial  
14 meant?

15          A     No.

16          Q     And you had indicated that the Defendant had decided that he  
17 wasn't going to cooperate with you anymore?

18          A     That's correct.

19          Q     And did that appear to be anything related to him -- his  
20 medication or his mental health? Or was that something he was just  
21 agitated with you and your investigator?

22          A     Yes and that his family was -- that he said his family was -- his  
23 mother was going to be looking for him another attorney and he didn't  
24 want to talk to me anymore.

25          Q     Okay.

1 THE COURT: Hold on, hold on. I need to clarify that.  
2 THE WITNESS: Sure.  
3 THE COURT: Did it have anything to do with -- that you could  
4 see, he was agitated because of his medication?  
5 THE WITNESS: No, no.  
6 THE COURT: Okay.  
7 THE WITNESS: Nothing because --  
8 THE COURT: The question was asked --  
9 THE WITNESS: I'm sorry.  
10 THE COURT: -- in a -- like a two part question, but your  
11 answer was yes. And I wanted to make sure that I understood whether  
12 or not that was correct with regards to his medication.  
13 THE WITNESS: Okay, I am sorry.  
14 THE COURT: Okay, so -- it's your opinion based on your  
15 discussion with him, it had nothing to do with any medication issue?  
16 THE WITNESS: No, no.  
17 THE COURT: It had to do with the investigator and the hiring  
18 of the new attorney not being allowed to come in the case?  
19 THE WITNESS: That's correct.  
20 THE COURT: Okay. Go ahead, Mr. --  
21 BY MR. DICKERSON:  
22 Q And during this time --  
23 A I think I need to clarify --  
24 THE COURT: Okay.  
25 THE WITNESS: -- your question.

1 THE COURT: All right.

2 THE WITNESS: Because it was before Amy ever tried to  
3 come into the case.

4 THE COURT: Okay.

5 THE WITNESS: Because I was informed before -- I think it  
6 was in November of 2016, by his mother --

7 THE COURT: Mm-hmm.

8 THE WITNESS: -- that they were not going to be using me  
9 and they were going to be hiring private counsel.

10 THE COURT: Okay.

11 THE WITNESS: But it wasn't until end of January, first of  
12 February that I learned that they -- his mother called me and said we  
13 hired Amy Feliciano, get her your files.

14 THE COURT: Okay.

15 THE WITNESS: So then I contacted Amy and got her my  
16 files.

17 THE COURT: Okay.

18 THE WITNESS: And we talked a little bit about the case and  
19 whatnot. But that was -- really I put the case out of my mind --

20 THE COURT: Okay.

21 THE WITNESS: -- at that time.

22 THE COURT: By the time you were ready to go to -- by the  
23 time you were going to trial though, were you prepared to go forward  
24 with the trial?

25 THE WITNESS: Yes, because I was prepared to go -- at least

1 at the -- setting before that, which was not the one where I said that I  
2 was fighting the suppression motion --

3 THE COURT: Mm-hmm.

4 THE WITNESS: -- that was early on.

5 THE COURT: Okay. All right. Go ahead, Mr. Dickerson.

6 BY MR. DICKERSON:

7 Q And during this time you've been actively negotiating this case  
8 with the District Attorney's office; is that right?

9 A Yes, at all points throughout the representation.

10 Q And the offers that you had received were being conveyed to  
11 the Defendant; is that right?

12 A Yes, every one of them.

13 Q And those offers originally were stipulated habitual criminal  
14 offers?

15 A Yes.

16 Q And the Defendant did not like that?

17 A No. And candidly, he asked my opinion and I said, you might  
18 as -- you know, you might as well go to trial with that kind of offer.

19 Q You -- it's -- did Defendant -- did he like the fact that that was  
20 the prospects, is go to trial?

21 A At the time of that -- at the time of that particular offer, yes.

22 Q Okay. And you continued to negotiate this case?

23 A Yes.

24 Q And you ultimately get negotiations that you considered  
25 favorable; is that right?

1       A     Very.

2       Q     And you relayed those to the Defendant?

3       A     Yes.

4       Q     Those were non habitual offers?

5       A     Non habitual offers. I think the last -- very last one that you  
6 gave to me was a three-year sentence on the bottom.

7       Q     And you conveyed those to the Defendant?

8       A     Yes.

9       Q     But he still wasn't happy with any of those?

10      A     No.

11      Q     Okay. And did that appear to be the source of much of his  
12 agitation towards you and you investigator?

13      A     Yes.

14      Q     That he didn't like the offers that were coming from the State  
15 that you had been able to negotiate?

16      A     Yes. That I wasn't doing my job and I should have been able  
17 to get him a gross misdemeanor.

18      Q     And that was never on the table. There was never a gross  
19 misdemeanor offer?

20      A     No.

21      Q     It was always felonies and prison?

22      A     Yes.

23      Q     And you relayed those offers that you considered favorable to  
24 the Defendant, you said?

25      A     Yes.

1 Q And did you relay to him that you believe that it would be in his  
2 best interest to take those offers?

3 A Yes, given what he was potentially facing.

4 Q And that there as well, was the source of his agitation with  
5 you, that you were recommending that he take these offers that he didn't  
6 like?

7 A Yes.

8 Q Okay. Because in your professional experience, it was in his  
9 best interest to accept one of those?

10 A At that point, when we were talking about three years on the  
11 bottom end on a high level trafficking case, yes.

12 Q You appeared month after month in this case; is that right?

13 A Yes.

14 Q And the Defendant was housed at the Clark County Detention  
15 Center at the time, right?

16 A Yes.

17 Q So he was always present in court?

18 A Yes.

19 Q And when you would come to court, you would meet with him  
20 every time; is that right?

21 A Yes.

22 Q And do you have a recollection of some of those dates?

23 A Off the top of my head, no.

24 Q Do you have a time sheet that you prepared in this case?

25 A Yes.

1 Q And is -- does that -- would looking at that help refresh your  
2 recollection as to exactly which dates those were?

3 A Yes.

4 MR. DICKERSON: Okay. May I approach, Your Honor?

5 THE COURT: Yes.

6 THE WITNESS: There were quite a few so I don't even know  
7 if after --

8 BY MR. DICKERSON:

9 Q That there that's in front of you, is that the time sheet that you  
10 were discussing that would help refresh your recollection?

11 A Yes.

12 Q So, what dates was it that you met with the Defendant in court  
13 and discussed the case with him?

14 A May 18<sup>th</sup>, 2016, which was basically two weeks after I was  
15 originally appointed. June 13<sup>th</sup>, 2016 and June 20<sup>th</sup>, 2016, July 20<sup>th</sup>,  
16 2016, July 21<sup>st</sup>, 2016, August 17<sup>th</sup>, 2016, August 22<sup>nd</sup>, 2016, September  
17 14<sup>th</sup>, 2016, two times on October 1<sup>st</sup>, 2016, once in court and then later  
18 that day with the -- with my investigator at the jail. February 1<sup>st</sup>, 2017,  
19 March 1<sup>st</sup>, 2017, and then that Friday before trial, which I believe was  
20 March 3<sup>rd</sup>, 2017, I think that was the Friday.

21 Q And you also visited him in jail on March 1<sup>st</sup>, 2019?

22 A Yes.

23 Q And that was -- or 2017, I'm sorry.

24 A Yes.

25 Q And that was when you were preparing for trial?



1           A     Yes.

2                     I'm sorry, I think 3/3 was a Sunday, 3/1 was the Friday and I  
3 used that weekend to reacquaint myself with the case.

4           Q     Okay. The trial lasted several days; is that right?

5           A     Yes.

6           Q     During the trial, you -- your client had full access to each  
7 other; is that right?

8           A     Yes.

9           Q     And throughout the trial, you met with him outside the  
10 presence of the Court and the State?

11          A     Yes. Every time before Judge Kephart would come out and  
12 then after he would leave for the day before the jail took him back over.

13          Q     And you and him would meet in private?

14          A     Yes.

15          Q     And discuss the case?

16          A     Yes.

17          Q     Jumping back real quickly to the mental health and medication  
18 stuff --

19          A     Sure.

20          Q     Fair to say you never saw any mental health related  
21 competency issues arising with the Defendant?

22          A     Never. He was just stubborn sometimes, but never -- never  
23 not lucid.

24          Q     Okay. So, nothing that you saw about his behavior appeared  
25 to you to be mental health issues?

1           A     No.

2           Q     Okay. And in being aware of his mental health history or  
3 medications he was on, did you see any viable defense that could have  
4 been raised in this case based upon that?

5           A     No. By his own admissions to me anyway, he wasn't on that  
6 medication at the time that this -- at the time of the alleged incident  
7 because he was self-medicating.

8           Q     Okay.

9           A     But, once he was arrested, he got on medications while he  
10 was on the inside.

11          Q     So, you made the determination that not only was Defendant  
12 competent to proceed, correct?

13          A     Yes.

14          Q     But that there was no other reason to raise his mental health  
15 issues as it may have related to any defense in this case?

16          A     That's correct.

17          Q     Okay.

18                THE WITNESS: And if I may add --

19                THE COURT: No, no.

20                MR. DICKERSON: The state has -- State will pass the  
21 witness, Your Honor.

22                THE COURT: Mr. Frizzell, before we move on with this, you  
23 had indicated from your records that you had seen him. I want to talk  
24 about -- in 2017, what dates were they that you saw him in 2017?

25                THE WITNESS: February 1<sup>st</sup> at -- that was a court

1 appearance.

2 THE COURT: Okay.

3 THE WITNESS: March 1<sup>st</sup> --

4 THE COURT: Okay.

5 THE WITNESS: -- that was a calendar call. I also -- we also

6 talked in court and he wanted me to come over with my investigator later

7 that afternoon, and so --

8 THE COURT: Did you do that?

9 THE WITNESS: -- we talked -- yes.

10 THE COURT: Okay. Now you -- you testified earlier that you

11 were told by the Defendant's mother that they had possibly hired

12 another attorney as early as January of 2017 and that you provided

13 them with a file.

14 THE WITNESS: I did.

15 THE COURT: Okay. Did you have a file that you could go to

16 trial on?

17 THE WITNESS: Yes. My investigator puts everything --

18 scans everything and puts it in Dropbox.

19 THE COURT: Okay, so --

20 THE WITNESS: So, I had a --

21 THE COURT: So, it's a duplicate?

22 THE WITNESS: -- I had an electronic copy of everything.

23 THE COURT: So, it's a duplicate?

24 THE WITNESS: Yes.

25 THE COURT: Okay. So, as of the record, the parties were

1 announcing ready on March 6<sup>th</sup>, 2017 -- the actual trial date. You were  
2 going to trial. And on that date, do you recall Ms. Feliciano appearing  
3 and asking to substitute?

4 THE WITNESS: Yes.

5 THE COURT: Okay. And that was denied, correct?

6 THE WITNESS: Yes.

7 THE COURT: All right. So, is there anything with regards to  
8 that that you think affected your ability to defend in this case?

9 THE WITNESS: No, because all that previous week I was  
10 prepping just in case and obviously that came to pass.

11 THE COURT: When you met with the Defendant the Friday  
12 before to discuss the case with him with your investigator, did you -- was  
13 it a meaningful -- did you have any discussion with him or what --  
14 happened?

15 THE WITNESS: I mean it started out that way. We were  
16 going over -- he kept asking about why is this coming in? Why is that  
17 coming in? We talked about the suppression motion and how --

18 THE COURT: Okay.

19 THE WITNESS: -- you know, we argued that. The Judge  
20 denied it and so, these issues are coming in. So, we've got to talk  
21 about, is there any way that you have that we're going to combat this, so  
22 --

23 THE COURT: Okay. All right.

24 Do you have any further questions from my questions?

25 MR. DICKERSON: I don't, Your Honor.

1 THE COURT: Mr. Keller, do you have any further questions  
2 of Mr. Frizzell?

3 MR. KELLER: Yes, I want to say that how is --

4 THE COURT: Do you have a -- but do you have a question,  
5 Mr. Keller?

6 MR. KELLER: Yes.

7 THE COURT: Okay. Ask the question.

8 **CROSS EXAMINATION**

9 BY MR. KELLER:

10 Q I would like to ask Frizzell that he had someone face -- with a  
11 case facing a life sentence and he's tried asking you for a gross  
12 misdemeanor, how you would think that there's not something wrong  
13 with this person, for one.

14 For two, you're saying you came to visit me and all these  
15 things but I provided the visiting logs with the Court through the  
16 Metropolitan Police Department visiting, and that's just not true. We  
17 never -- we never had any visits or discussions. I never once spoke to  
18 his investigator, so I provided proof that what he's saying is not true. So  
19 --

20 THE COURT: Mr. Keller, if you -- if you heard his testimony, a  
21 number of those dates he's talking about are dates that he met you  
22 actually in the courtroom. And then there was like a few dates, I guess,  
23 that he pointed out about --

24 MR. DICKERSON: Correct.

25 THE COURT: -- his investigator coming to talk to you and he

1 coming to talk to you. That would appear on your log. And there is  
2 consistent -- inconsistent dates with that.

3 But the dates he's talking about, precisely, were dates that  
4 you met with him in the courtroom. And that was on those different -- I  
5 mean, it seemed to me at least twice a month you were meeting with  
6 him. And often times, attorneys meet with people in the courtroom, so --

7 MR. KELLER: But he's saying --

8 THE COURT: Okay.

9 MR. KELLER: He's saying that -- excuse me -- he was saying  
10 that I was meeting with him, but then he said that I wouldn't speak with  
11 him. But how is he meeting with me and he's also saying that I wouldn't  
12 speak with him. I mean, it's contradictory.

13 MR. DICKERSON: I'm just going to object --

14 THE COURT: Okay.

15 MR. DICKERSON: -- Your Honor. I would ask that he frame it  
16 as a question.

17 THE COURT: No, I'm going that route. Mr. Keller, you need  
18 to ask a question. So, I guess the question would be, is there -- was  
19 there points in time, Mr. Frizzell, that you met with me and I did speak  
20 with you, okay? Is that --

21 MR. KELLER: All right.

22 THE COURT: -- is that fair? And then --

23 MR. KELLER: Sorry. It's hard to ask him a question -- I don't  
24 see -- I'm not even looking at him on the screen. Sorry about that.

25 THE COURT: Okay, well just -- just ask -- he's here, so ask

1 the question, okay? If you --

2 MR. KELLER: All right.

3 THE COURT: You can hear him can't you?

4 BY MR. KELLER:

5 Q Yeah. So, Mr. Frizzell, how do you say I wasn't speaking with  
6 you and you also say that we were speaking about the case? I don't  
7 understand that.

8 A You told me you were not going to assist me in your defense.  
9 That doesn't mean that I wasn't still on the case and obligated to  
10 represent you. And yes, we would talk. And yes, you would talk with  
11 me. You just said that you were not going to -- that you were not going  
12 to assist with your case anymore.

13 Q Well, what would we be speaking about if I'm not assisting you  
14 with the case, then what would we be speaking about, family life?

15 A No, we were speaking about the case because I was  
16 approaching you about it. You said that you would not help me with the  
17 defense of your case. But every time we were in court for something --

18 Q All right, so --

19 A -- you would tell me -- you would -- I would go over to talk to  
20 you, maybe based on something the Court said from the bench or that  
21 your mother called me, or something like that. I don't remember  
22 specifically every single thing we talked about. But yes, we did talk  
23 about -- we did talk about your case and I basically relayed things to  
24 you.

25 Q Okay, so -- so when I -- so when you -- how come you never

1 did the -- any of the -- how come you never appealed any of the  
2 suppression motions?

3 MR. DICKERSON: Objection.

4 BY MR. KELLER:

5 Q Any of the things that were put on the suppression motion,  
6 how come you only -- the only thing that you appealed about the  
7 suppression motion was why they searched the house, which there was  
8 really nothing of significance in the house.

9 A Because the remainder -- you have to have a reason to  
10 appeal. You can't just appeal for purposes of appeal. And based on the  
11 -- what occurred at the suppression motion, the only thing that I felt that  
12 there was any ground to pursue further was that issue regarding the  
13 house.

14 Q Why when the officer said -- testified that a female came up  
15 and asked for her purse out of the car, how come you never made that  
16 apparent to the -- in doing closing arguments or anything? You never  
17 put emphasis on that and you never put emphasis -- and you -- how  
18 come you never put emphasis on the fact that they never had any proof  
19 of any K-9 hit or anything like that occurring?

20 A Well, that's -- as far as the K-9, that's not true. As far as the  
21 girl with the purse, I determined that to not be relevant to what you were  
22 charged with and how we were going to defeat that. That, to me, was  
23 what I call a red herring.

24 Q We're going to repeat that, I mean -- all right, how come you  
25 never asked for any of the K-9 reliability records?



1           A     Because --

2           Q     You thought that wasn't going to be --

3           A     Because after speaking with the officer at the suppression  
4 hearing, I didn't determine that there was any reason that that would  
5 reveal anything relevant when the -- when it was testified to that the dog  
6 had a hit. And when they checked the glove box, they found illegal  
7 items.

8           Q     How come you never questioned them about the door being  
9 open and them allowing the K-9 to access the interior of the vehicle?

10          A     Well, because --

11          Q     How come you never questioned the K-9 handler?

12          A     Because at that point when they found it -- when they found  
13 the drugs in open plain view in your vehicle, that's when they -- that's  
14 when that gave them probable cause to go further and they actually got  
15 warrants and that's why --

16          Q     Do you not recall that the --

17          A     -- there was a time difference. That's why there was period of  
18 time in between.

19          Q     Do you not recall -- do you not recall that the 2<sup>nd</sup> officer on the  
20 scene testified he did not recall seeing any marijuana in open sight, and  
21 also, do you remember that during the suppression hearing that you,  
22 yourself, got him to admit that, no, that it might have not been marijuana,  
23 that it could have been any other green leafy substance, like a leaf from  
24 a tree?

25                   So, if they -- so, if they might not have seen any drugs in plain

1 sight, which you got the officer to admit that there might not -- that there  
2 wasn't any drugs in plain sight, why then would you not cross-examine  
3 the K-9 handler, or get any reliability records, or why would -- order the  
4 camera -- the -- the, you know, the body camera footage that would  
5 have showed all this? But since you couldn't have got the -- since you  
6 couldn't have got that footage, why would you not have cross-examined  
7 the K-9 handler or gotten the K-9 reliability records, or found out if the --  
8 why the door was left open, allow the K-9 access to the interior of the  
9 vehicle?

10 A Okay. You've asked me about 20 questions, so I'm going to  
11 do my best to try and answer what I can recall. But the bottom --

12 Q I'll just ask you the first one. Why did you not --

13 MR. DICKERSON: Objection. I'd ask that the witness -

14 THE COURT: Hold on -- he's --

15 MR. KELLER: Why didn't you question the K-9 handler?

16 THE COURT: All right. There you go.

17 MR. KELLER: I'll do one at a time.

18 THE COURT: All right.

19 THE WITNESS: Okay.

20 THE COURT: He's doing it one at a time.

21 BY MR. KELLER:

22 A Because I determined that there was not going to be any  
23 relevant evidence gleaned from that.

24 Q How did you determine that?

25 A By the facts in the case that the other officers testified to

1 regarding how all of these drugs and guns were found.

2 Q There's only one officer that testified during --

3 THE COURT: We're not --

4 MR. KELLER: -- the case, and that was the officer on the

5 scene.

6 THE COURT: Mr. Keller, Mr. Keller, we're not arguing now.

7 MR. KELLER: All right.

8 THE COURT: Ask a question.

9 BY MR. KELLER:

10 Q All right. So the question two would be why did you not get

11 the dog reliability records, which I would be entitled to?

12 A Because again, based on the --

13 Q The whole --

14 A Let me answer. Based on the other evidence that was

15 testified to, I felt that it would not lead to any -- anything that would assist

16 us in our case.

17 Q Well, what evidence is that? Can you be more specific

18 because I'm not following you?

19 A As I recall, after the officers pulled you over and they noticed

20 what appeared to be a green leafy substance, that was later ODV tested

21 and it was determined to be marijuana. That gave them --

22 Q No, it was never -- that -- all right. You can continue --

23 THE COURT: Mr. Keller --

24 MR. KELLER: -- but that was not even part of the case.

25 THE COURT: Mr. Keller --

1 MR. KELLER: Yes, Your Honor.

2 THE COURT: We're not here to argue. You asked a  
3 question, he's telling you what he believes, okay? Let him finish.

4 MR. KELLER: All right.

5 BY MR.KELLER:

6 A Then that gave the officers probable cause to look throughout  
7 the open compartments of the vehicle and when they came across --  
8 something that they knew to be drugs, that's when they stopped  
9 everything and got the appropriate warrants and the K-9 came out. The  
10 dog immediately went to the glove box first.

11 The officers reached into the glove box. You had a hole cut in  
12 the back of the glove box that went down into some other compartment  
13 area in the vehicle to which they reached in and I believe that's where  
14 they found a gun and some drugs.

15 And so, at that point, they just went further and so, to go get  
16 records regarding the dog based on that evidence, the dog did its job  
17 and found what he was trained to find. And whether or not he's had  
18 some -- the dog would have had some negative hits in the past, he  
19 obviously hit on your vehicle. And when it was looked at, there was -- it  
20 was a positive hit.

21 So, I determined that there was not -- there was no -- based  
22 on the other -- based on that evidence that going after the dog's records  
23 of past hits or misses was irrelevant.

24 THE COURT: Next question, Mr. Keller.

25 BY MR. KELLER:

1 Q So, how come -- so all right, so how come if you're -- if you  
2 admit that the case is based off of the dog's hits and that the warrant  
3 was given to search the vehicle because of the dog hit, how come you  
4 wouldn't, not only get the K-9 reliability record, but why wouldn't you  
5 check to see if the K-9 sniff was done properly? Why -- how come you  
6 never questioned whether it was done properly or whether the dog was  
7 allowed access to the interior of the vehicle which they testified to?

8 A Because the officers got a warrant for the K-9 and when the  
9 K-9 came out, the K-9 went directly to your glove box and it was a --  
10 when the officers looked and reached back into that hole, they -- I  
11 believe they got a gun and some drugs. And so then, that's probable --

12 Q Okay --

13 A -- cause for the rest of the car. So, there's no reason --

14 Q Okay. Do you recall --

15 A -- to go get the dog records.

16 Q Okay. Do you recall at the suppression hearing that the --  
17 when we were -- when we -- I asked you to do the NRS 171.123, was  
18 because they had me for more than a hour? Do you recall that they  
19 actually didn't apply for a warrant until 2 hours and 59 minutes? Do you  
20 recall that?

21 A I recall that there was a period of --

22 Q So they --

23 A I recall there was a period of time that passed in between your  
24 actual arrest and getting a warrant. But as you will recall, it's because  
25 your people on the other side of the apartment fired some shots to try

1 and distract the police officers. So that's when they put you in cuffs, put  
2 you in the back of the cruiser for your safety, and went to investigate  
3 what the shots were.

4 Q Okay. Do you recall --

5 A So, that was part of the reason --

6 Q Go ahead. Do you recall that the warrant came long after the  
7 dog sniff?

8 A Yes.

9 Q That in actuality -- yeah so -- so I'm saying, since the dog --  
10 since the warrant came long after the dog sniff, not prior to, I'm asking  
11 why would you -- why did you not think to question the K-9 -- search his  
12 records or the manner in which it was done?

13 A Okay. I've answered this already. But the bottom line is, is  
14 there was -- when there was probable cause, that's when they got a  
15 warrant for the K-9. You're talking about -- the second warrant,  
16 essentially --

17 Q Okay.

18 A -- that expanded things into your apartment or your condo or --

19 Q No --

20 A -- whatever it was.

21 Q I'm trying to get you to remember -- do you remember that the  
22 warrant was after the dog sniff, not prior to? Do you recall that the  
23 warrant was after the dog sniff, not prior to? That it was actually 2 hours  
24 and 50 minutes into the search that they called for the --

25 UNIDENTIFIED SPEAKER: The conference is about to end.

1 THE COURT: We're about ready to lose you, Mr. Keller. It's  
2 been going on for --  
3 MR. KELLER: Okay.  
4 THE COURT: Okay, so --  
5 THE WITNESS: Well, I believe I've --  
6 THE COURT: -- close it up.  
7 THE WITNESS: I believe I've answered that question three  
8 times now.  
9 THE COURT: Okay, Mr. Keller, anything further?  
10 MR. KELLER: No, I just -- I just think that he's confused as to  
11 the -- some of the events that happened. I didn't know what was going  
12 to happen here. There was a lot of things that he said, Your Honor, that  
13 I would have questioned at first, but when he got going, I don't have  
14 anything to take --- I don't have any pen or anything --  
15 THE COURT: Okay.  
16 MR. KELLER: -- to take notes with because I didn't know  
17 what was going to be going on --  
18 THE COURT: All right.  
19 MR. KELLER: -- so I lost track.  
20 THE COURT: Okay.  
21 MR. KELLER: I wasn't able to question him really properly.  
22 THE COURT: Okay, so you don't have any further questions?  
23 MR. KELLER: No.  
24 THE COURT: Okay. Anything further Mr. Dickerson?  
25 MR. DICKERSON: No, Your Honor.

1 THE COURT: All right. Thank you, Mr. Frizzell.  
2 THE WITNESS: Thank you, Your Honor.  
3 THE COURT: All right. Mr. Keller, did you want to say  
4 anything further?  
5 MR. KELLER: Your Honor, I would just like to appeal to you --  
6 that I -- there was obviously some misunderstandings in my case and  
7 that, I mean -- I don't know.  
8 THE COURT: Okay.  
9 MR. KELLER: That's all I have to say.  
10 THE COURT: All right. Anything?  
11 MR. DICKERSON: And Your Honor, just that he hasn't  
12 established that defense counsel's representations fell below the  
13 standard of reasonableness and definitely hasn't shown that any errors -  
14 - assuming that there were, would have changed anything here. So he  
15 hasn't met either prong. And with that, we'd submit it.  
16 THE COURT: Okay, with regards to his --  
17 MR. KELLER: Can I say one last thing, Your Honor?  
18 THE COURT: No, we're --  
19 MR. KELLER: One last thing real quick?  
20 THE COURT: Okay, go ahead, Mr. Keller.  
21 MR. KELLER: Did you receive my -- because I got a copy  
22 back of my answer to the State's response --  
23 THE COURT: I --  
24 MR. KELLER: -- in which I --  
25 THE COURT: I did, I did. Your supplemental response --



1 MR. KELLER: Okay.

2 THE COURT: -- I have it, yes.

3 MR. KELLER: Because that's why -- that's where I show that  
4 it would have been a different outcome if I would have been heard on  
5 my claims one through seven, which you denied --

6 THE COURT: Yup. Yeah, those --

7 MR. KELLER: I mean it would have been --

8 THE COURT: -- those were all --

9 MR. KELLER: If he would have --

10 THE COURT: One through seven --

11 MR. KELLER: I've been trying to get --

12 THE COURT: Mr. Keller --

13 MR. KELLER: I've been trying to get a way for my counsel  
14 being barred.

15 THE COURT: All right. Mr. Keller, one through seven are all  
16 matters that should have been raised in direct appeal. You could have  
17 raised them at that point and they weren't raised, so they are waived in  
18 the proceeding. So, that's why I addressed just the ineffective  
19 assistance claims.

20 For you to overcome your challenges of ineffective assistance,  
21 you must establish that -- that your counsel was -- his performance fell  
22 below that of a reasonable standard. And if you were able to do that,  
23 then you also must show that -- but for his errors, there would have been  
24 a different outcome of the proceeding, and I can't see specifically under  
25 the second standard.

1           The first standard, I do not believe that based on the  
2 discussion and the testimony here that his actions fell below a  
3 reasonable standard -- objective standard of reasonableness. And if the  
4 Court -- if another Court disagrees with me, I do not believe that but for  
5 those errors the -- under this totality of the circumstances and the totality  
6 of the evidence in this case, that the results would have been different.

7           So, for that reason, I'm denying the petition, Mr. Keller. Thank  
8 you so much, Mr. Keller. Good luck with this, okay? Thank you.

9           MR. KELLER: Will I get a --

10          THE COURT: Yeah, the --

11          MR. KELLER: Can I get a -- can you please have a copy of  
12 the denial sent to me, please?

13          THE COURT: Yes, the State's going to prepare an order  
14 consistent with my decision and we'll have one sent to you, okay?

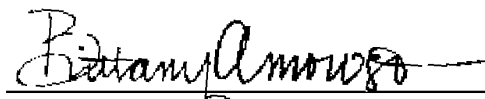
15          MR. KELLER: All right. Thank you.

16          THE COURT: All right. Thank you. You have a good day  
17 now.

18                       [Hearing concluded at 10:27 a.m.]

19                       \*\*\*\*\*

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

24                                 
25                               Brittany Amoroso  
                                  Court Recorder/Transcriber

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**January 27, 2021**

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A-19-800950-W	Christopher Keller, Plaintiff(s)
	vs.
	State of Nevada, Defendant(s)

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**January 27, 2021      8:30 AM      Motion**

**HEARD BY:** Trujillo, Monica **COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Kathryn Hansen-McDowell

**RECORDER:** Rebeca Gomez

**REPORTER:**

**PARTIES**

**PRESENT:**      Iscan, Ercan E Attorney

**JOURNAL ENTRIES**

- Defendant not present, in custody of the Nevada Department of Corrections.

COURT FINDS the minutes from the 10/1/2020 evidentiary hearing were sufficiently clear and ORDERED, Motion DENIED. State to prepare the order.

NDC

CLERK'S NOTE: The above minute order has been distributed to: Christopher Keller, #81840, HDSP, PO Box 650, Indian Springs, NV 89070. 2/3/21km

# Certification of Copy and Transmittal of Record

State of Nevada }  
County of Clark } SS:

Pursuant to the Court of Appeals order dated July 30, 2021, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the supplemental trial court record for the case referenced below. The record comprises volume two with pages numbered 203 through 266.

CHRISTOPHER R. KELLER,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

Case No: A-19-800950-W

Dept. No: III

now on file and of record in this office.

**IN WITNESS THEREOF**, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 31 day of August 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk