

# IN THE SUPREME COURT OF THE STATE OF NEVADA

JAVAR ERIS KETCHUM,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Electronically Filed  
May 27 2021 10:26 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No: A-20-821316-W

Docket No: 82863

# RECORD ON APPEAL VOLUME 1

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LAS VEGAS, NV 89155-2212

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PETN  
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DISTRICT COURT

CLARK COUNTY, NEVADA

**A-20-821316-W**

**Dept. XVII**

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C-16-319714-1
	)	
VS.	)	DEPT. NO. XVII
	)	
JAVAR KETCHUM,	)	
#1836597	)	
	)	
Defendant.	)	

**PETITION FOR POST-CONVICTION WRIT OF HABEAS CORPUS**

TO: THE HONORABLE JUDGE OF THE EIGHTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK

The Petition of Defendant JAVAR KETCHUM respectfully shows:

1. Petitioner is the Defendant in Case Number C-16-319714-1 before the Eighth Judicial District Court in and for the County of Clark, State of Nevada;
2. Petitioner makes application herein for a Writ Of Habeas Corpus;
3. Petitioner waives the 60-day limitation for bringing an accused to trial;
4. If this Petition is not decided within fifteen (15) days before the date set for trial, the Petitioner consents that the Court may, without notice or hearing, continue the

1 trial indefinitely, or to a date designated by the Court.

2         5. This Petition is founded on the grounds stated herein, the pleadings and records  
3 on file herein, the Points and Authorities in support of said Writ, the Affidavit of  
4 Petitioner's counsel, and upon such other evidence and grounds as will be brought  
5 forth at a hearing on the Writ.  
6

7         WHEREFORE, Petitioner prays that this Honorable Court make and Order directing the  
8 County Clerk to issue an Order directed to Calvin Johnson, Warden of High Desert State Prison,  
9 Nevada Department of Corrections, commanding him to appear before your Honor and return the  
10 cause for restraint of your Petitioner.  
11

12 DATED this 11<sup>th</sup> Day Of September, 2020.

13         /s/Craig Mueller, Esq.  
14 CRAIG A. MUELLER, ESQ.  
15 Nevada Bar No. 4703  
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1 12, 2019. Current counsel was recently retained and files the instant Petition For Writ Of Habeas  
2 Corpus (Postconviction).

3  
4 II.

5 ISSUE PRESENTED

6 Was trial counsel (who was also appellate counsel) ineffective in his representation of  
7 Petitioner?

8  
9 III.

10 SUMMARY OF RELEVANT FACTS

11 During the discovery phase of the case, trial counsel informed Chief Deputy District  
12 Attorney Marc DiGiacomo that he wanted to view the original SWAN video from the incident in  
13 question. On or about February 16, 2017, trial counsel viewed the original SWAN video  
14 surveillance in possession of LVMPD. The original surveillance video was in evidence at the  
15 evidence vault and could only be accessed by law enforcement. At the time and date set for the  
16 review, LVMPD Det. Bunn and Chief Deputy DA DiGiacomo presented the video to trial  
17 counsel in the Grand Jury room. Trial counsel had no control of the video while it was played,  
18 and law enforcement personnel controlled the surveillance video. Trial counsel was only shown  
19 parts of the video.  
20  
21

22 During the trial, and when the video was placed into evidence, portions of the video that  
23 were played for the jury appeared to be the same portions trial counsel had reviewed with law  
24 enforcement and the State in the Grand Jury room. Crucially, in the State's Rebuttal, the State  
25 presented two alleged segments of surveillance that trial counsel admittedly did not view prior to  
26 the closing argument and that were not presented during the trial. This included video  
27 surveillance of Petitioner purportedly having a lengthy "rap battle" outside the Top Notch with  
28

1 the victim and another video of Petitioner showing off his handgun in the presence of the victim.  
2 These two never-before seen portions of video substantially undercut the defense theory that the  
3 victim was unaware that Petitioner was carrying a firearm the night of the shooting.  
4

5 On direct appeal trial counsel argued that the State's conduct in presenting evidence during  
6 closing arguments that was not previously identified to the defense undermined trial counsel's  
7 opening statement, trial strategy, credibility and rendered the trial fundamentally unfair. In  
8 denying his direct appeal, the Nevada Supreme Court held:  
9

10 ...Ketchum contends for the first time on appeal that the State ambushed him  
11 during closing argument with inculpatory video surveillance evidence that was  
12 neither provided in discovery nor presented in the State's case-in-chief. But the  
13 State did not withhold the evidence because the record shows that Ketchum had  
14 pretrial access to the entire DVR system memorializing the night's events.  
15 Further, the State playing video segments from those DVR systems during its  
16 rebuttal closing argument was not plain warranting reversal because it appears  
17 from the record that the entire video was admitted into evidence as a State exhibit  
18 without objection, giving the jury access to view the segments Ketchum complains  
19 of. *See Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008) (providing for  
20 plain-error review for unpreserved errors).

21 *Ketchum v. State*, 2019 Nev. Unpub. Lexis 998, 448 P.3d 574, 2019 WL 4392486.

#### 22 IV.

#### 23 STATEMENT OF APPLICABLE LAW

24 An accused has the right to effective assistance of counsel pursuant to the Sixth  
25 Amendment to the United States Constitution, as well as the of the constitution of the State of  
26 Nevada. The right to effective assistance of counsel attaches prior to a defendant's decision to  
27 plead guilty. *McMann v. Richardson*, 397 U.S. 759, 771, 90 S.Ct. 1441, 1449, 25 L.Ed.2d 763  
28 (1970). The standard of review for "effective assistance of counsel" was enunciated by the U.S.  
Supreme Court in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674  
(1984), and requires the court to determine whether 1) counsel's representation fell below an

1 objective standard of reasonableness, and 2) whether there is a reasonable probability that, but  
2 for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* at  
3 688-694. "Establishment of deficient performance requires a showing that counsel's  
4 performance fell below an objective standard of reasonableness." *Lara v. State*, 120 Nev. 177,  
5 180, 87 P.3d 528, 530 (2004), citing *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107  
6 (1996). To satisfy the second element, a defendant must demonstrate prejudice by showing "a  
7 reasonable probability that, but for counsel's errors, the result of the trial would have been  
8 different." *Id.*, citing *Kirksey*, 112 Nev. at 988, 923 P.2d at 1107.

11 "The constitutional right to effective assistance of counsel extends to a direct appeal." *Id.*,  
12 citing *Kirksey*, 112 Nev. at 987, 923 P.2d at 1107. This court reviews a claim of ineffective  
13 assistance of appellate counsel under the Strickland test. *Id.*, citing *Kirksey*, 112 Nev. at 998,  
14 923 P.2d at 1113. "To establish prejudice based on the deficient assistance of appellate counsel,  
15 the defendant must show that the omitted issue would have a reasonable probability of success  
16 on appeal." *Id.*, citing *Kirksey*, 112 Nev. at 998, 923 P.2d at 1114.

17 V.

## 18 ARGUMENT

### 19 A. Trial Counsel Was Ineffective In Multiple Ways In The Way 20 He Handled The Surveillance Video.

#### 21 1. The Initial Viewing.

22 Trial counsel went to the Grand Jury room with Det. Bunn and Chief Deputy DA  
23 DiGiacomo on or about February 16, 2017, to view the original surveillance video of the  
24 incident. Trial counsel later reported that he was only shown parts of the video. This begs the  
25 obvious question: why didn't he insist on viewing the original, unaltered video in its entirety?  
26 This video was obviously the single most important piece of evidence in the State's arsenal. Yet  
27 trial counsel left it to the *bona fides* of law enforcement and the chief prosecutor to be honest  
28

1 with him? Surely, trial counsel could have subpoenaed a whole and complete copy of the video.  
2 Trial counsel could have filed a motion for discovery pursuant to NRS 174.235 and/or *Brady v.*  
3 *Maryland*, 373 U.S. 83, 86-88 (1963)? It appears trial counsel did neither. Trial counsel's  
4 performance thus fell below an objective standard of reasonableness. *Strickland v. Washington*,  
5 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), *Lara v. State*, 120 Nev. 177, 180, 87 P.3d  
6 528, 530 (2004), citing *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996).

## 8 2. Failure To Review The Video In Preparation For Trial.

9  
10 Eventually, the State did provide trial counsel with a copy of the entire video before trial.  
11 The problem is that trial counsel apparently did not bother to watch it. Petitioner's defense  
12 consisted entirely of self-defense: Petitioner shot the victim in self-defense when the victim tried  
13 to rob him at gunpoint. Petitioner then immediately fled the scene because the Top Notch was  
14 filled with the victim's friends and associates; he fled because he feared retribution from these  
15 people. The defense's whole argument became completely thwarted by two unviewed portions  
16 of video. In one portion of the video, Petitioner is seen showing off his handgun to a group of  
17 men, including the victim, thus undercutting the defense's argument that the victim did not know  
18 Petitioner was armed. In another portion, Petitioner is seen laughing with, and greeting others at  
19 the gathering at Top Notch, including participating in a rap contest with the victim. This gutted  
20 the defense theory that Petitioner was among strangers, many of whom were friends or associates  
21 of the victim, so Petitioner fled the scene in order to avoid possible retribution.

24 Trial counsel admitted to being caught completely by surprise by these videos. Yet trial  
25 counsel constructed Petitioner's entire defense on grounds that were completely discredited by a  
26 few seconds of videotape. Surely a reasonably prudent attorney would have watched the video  
27 in its entirety. Having discovered the incriminating evidence, a reasonably prudent attorney  
28

1 would have altered or abandoned this defense before presenting it to a jury. Instead, due to trial  
2 counsel's failure to properly review the video while preparing for trial, trial counsel prepared and  
3 presented a defense theory that was doomed to fail from its inception. Thus, Petitioner has  
4 demonstrated actual prejudice by showing "a reasonable probability that, but for counsel's errors,  
5 the result of the trial would have been different." *Lara, Supra*, citing *Kirksey*, 112 Nev. at 988,  
6 923 P.2d at 1107.

### 8 3. Failure To Object To Admittance Of Video Into Evidence And To Its Use In Rebuttal.

9  
10 Trial counsel committed two critical errors in handling the State's presentation of the  
11 surveillance video. The first error was not objecting to the State's motion to admit the  
12 surveillance video. This was the State's most critical piece of evidence. It was critical for trial  
13 counsel to attempt to keep it out and preserve the issue for appeal. Yet trial counsel allowed it in  
14 without objection. The reason for this might very well be that since he didn't watch the whole  
15 video prior to trial, he didn't realize just how damning it was to his defense. The Supreme Court  
16 noted trial counsel's failure to object at trial, thus allowing the entire video into evidence, when it  
17 affirmed Petitioner's conviction. *Ketchum, Supra*.

19 The second error occurred when trial counsel failed to object to the "surprise" portion of  
20 the video played by the State in its Rebuttal. These two videos were not played in the State's  
21 case-in-chief. Trial counsel could have objected that they were not in evidence and therefore  
22 could not be used in Rebuttal. Trial counsel failed to preserve the issue on appeal. Of course,  
23 had counsel objected, the State could have replied that the entire video, including the two  
24 "surprise" segments, had already been admitted without objection from trial counsel. The two  
25 "surprise" segments obviously destroyed Petitioner's defense, yet trial counsel made absolutely  
26 no effort to keep them from the jury. Again, the Supreme Court noted this in its order affirming  
27  
28



1 Petitioner's conviction.

2 Finally, trial counsel's failures to object placed Petitioner in a worse position for his  
3 appeal. Failure to object at trial is generally considered a waiver of the issue on appeal and then  
4 is reviewable only for plain error. *Valdez, Supra; Davis v. City of Reno*, 113 Nev. 207, 931 P.2d  
5 207 (1997); *Guy v. State*, 108 Nev. 770, 839 P.2d 578 (1992); *Davis v. State*, 107 Nev. 600, 817  
6 P.2d 1169 (1991). Again, Petitioner has demonstrated actual prejudice by showing "a reasonable  
7 probability that, but for counsel's errors, the result of the trial would have been different." *Id.*,  
8 citing *Kirksey*, 112 Nev. at 988, 923 P.2d at 1107.

9  
10  
11 B. Trial Counsel Was Ineffective In His Preparation And  
12 Execution Of The Cross-Examination Of Antoine Bernard.

13 Antoine Bernard was an acquaintance of Petitioner. On the night in question, Petitioner  
14 was dropped off at the Top Notch by a friend. He saw Antoine Bernard at the club, and Antoine  
15 Bernard offered to give him a ride home after they were done. He drove Petitioner away from  
16 the scene after the shooting. Later, Antoine Bernard was arrested and charged as an accessory in  
17 the killing of Ezekial Davis. At the start of the trial Antoine Bernard took a plea deal in  
18 exchange for his testimony.

19  
20 Antoine Bernard had given an interview to Det. Bunn during the investigation of the  
21 shooting. He told Det. Bunn that he didn't hear or see anything. At trial he testified that he was  
22 fiddling with the auxiliary cable to his car stereo when the shooting occurred and didn't see  
23 anything. He did, however, say that he heard Petitioner something to the effect of "Give me my  
24 shit" or "Give me your shit" right before the gunshot. Antoine Bernard told Det. Bunn that  
25 Petitioner had no ill will or animosity that night towards the victim. At trial, however, Antoine  
26 Bernard testified that he knew something was about to go down when he saw Petitioner and the  
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1 victim walk out of the club together. Trial counsel also appeared to be unprepared when during  
2 rebuttal the State presented a clip of the video surveillance wherein a man in a white shirt walks  
3 up to Antoine Bernard as he waited in his car immediately before the shooting. The man leans in  
4 and tells Bernard something. Bernard immediately moves the car closer to where Petitioner and  
5 the victim were located, apparently driving up onto the curb. The shot is fired and Petitioner is  
6 seen jumping into the car and they drive away. This video is suggestive of planning or  
7 coordination. A reasonably prudent attorney would have anticipated this testimony and evidence  
8 and prepared for it. Trial counsel did not.

### 11 CONCLUSION

12 Based on the foregoing, Petitioner Javar Ketchum respectfully request that his Petition For  
13 Writ Of Habeas Corpus be granted, that his conviction be reversed, and a new trial ordered.

14 Respectfully SUBMITTED this 11<sup>th</sup> day of September, 2020.

15 /s/Craig Mueller, Esq.  
16 CRAIG A. MUELLER, ESQ.  
17 Nevada Bar No. 4703  
18 CRAIG A. MUELLER & ASSOCIATES  
19 723 S. Seventh Street  
20 Las Vegas, NV 89101  
21 702.382.1200  
22 Facsimile: (702) 637-4817  
23 receptionist@craigmuellerlaw.com  
24 Attorney For Petitioner Ketchum

### 22 CERTIFICATE OF ELECTRONIC TRANSMISSION

23 I hereby certify that service of the above and foregoing was made on the 11<sup>th</sup> day of  
24 September, 2020, by electronic transmission through the District Court's Odyssey efile system  
25 to:

26 STEVE WOLFSON  
27 Clark County District Attorney

28 By: /s/ Rosa Ramos  
Office Manager, Craig A. Mueller & Associates

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DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

Javar Ketchum, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

Case No.: A-20-821316-W  
Department 17

**NOTICE OF CHANGE OF CASE NUMBER**

NOTICE IS HEREBY GIVEN that pursuant to NRS 34.730 the Petition for Writ of Habeas Corpus filed into C-16-319714-1 has been filed into the Petitioner's existing case number A-20-821316-W currently assigned to Judge Michael Villani. Please include the new case number on all future filings. The Petition for Writ of Habeas Corpus in the above entitled matter is set for hearing as follows:

Date: 11-6-20 at 10:15am

Location: RJC Courtroom 11A

200 Lewis Ave

Las Vegas, NV 89155

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Allison Behrhorst  
Allison Behrhorst  
Deputy Clerk of the Court

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**CERTIFICATE OF SERVICE**

I hereby certify that this 16th day of September, 2020

☒ The foregoing Notice of Change of Case Designation was electronically served to all registered parties for case number A-20-821316-W.

/s/Allison Behrhorst  
Allison Behrhorst  
Deputy Clerk of the Court



1 **RSPN**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JOHN NIMAN  
6 Deputy District Attorney  
7 Nevada Bar #14408  
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9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Respondent

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 JAVAR KETCHUM,  
10 #1836597

Petitioner,

-vs-

12 THE STATE OF NEVADA,

13 Respondent.

CASE NO: A-20-821316-W

C-16-319714-1

DEPT NO: XVII

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

17 DATE OF HEARING: FEBRUARY 3, 2021  
18 TIME OF HEARING: 9:00AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
20 District Attorney, through JOHN NIMAN, Deputy District Attorney, and hereby submits the  
21 attached Points and Authorities in Response to Petitioner's Petition for Writ of Habeas Corpus  
22 (Post-Conviction).

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

26 //

27 //

28 //

\\CLARKCOUNTYDA.NET\CRM\CASE2\2016\589\88\201658988C-RSPN-(KETCHUM, JAVAR)-001.DOCX

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On November 30, 2016, the State charged Javar Ketchum (hereinafter "Petitioner") by  
4 way of Indictment with one count each of Murder with a Deadly Weapon and Robbery with a  
5 Deadly Weapon. On December 30, 2016, Petitioner filed a pre-trial Petition for Writ of Habeas  
6 Corpus and Motion to Dismiss. The State filed its Return on January 4, 2017. Petitioner filed  
7 a Reply on January 9, 2017. The district court denied the Petition on February 17, 2017.

8 On March 8, 2017, Petitioner filed a Motion in Limine, seeking to admit character  
9 evidence of the victim, Ezekiel Davis. On May 9, 2017, the State filed a Motion in Limine,  
10 asking that the district court preclude prior specific acts of violence by the murder victim. On  
11 May 18, 2017, the State filed a Supplement to its Motion in Limine. The district court held a  
12 Petrocelli Hearing on May 19, 2017, determining that Petitioner could only bring in opinion  
13 testimony regarding the victim's character and that witnesses were not to elaborate on that  
14 opinion.

15 On May 22, 2017, Petitioner's five-day jury trial commenced. At the end of the fifth  
16 day of trial, the jury found Petitioner guilty of both charges. Following the verdict, Petitioner  
17 entered into a stipulation and order, waiving the penalty phase and agreeing to a sentence of  
18 life in prison with parole eligibility after twenty years, with the sentences for the deadly  
19 weapon enhancement and the count of robbery with use of a deadly weapon to be argued by  
20 both parties.

21 On June 2, 2017, Petitioner filed a Motion for New Trial pursuant to NRS 176.515 (4).  
22 The State filed its Opposition on September 9, 2017. Petitioner filed a Reply on September 27,  
23 2017 and a Supplement thereto on September 28, 2017. The district court, finding that  
24 Petitioner's disagreement with the court's evidentiary rulings was not a basis for a new trial,  
25 denied the Motion on October 17, 2017. Petitioner was adjudicated that same day. However,  
26 the defense requested additional time to handle sentencing matters.

27 According to the stipulation, on February 1, 2018, the district court sentenced Petitioner  
28 to an aggregate of life in the Nevada Department of Corrections with minimum parole

1 eligibility after twenty-eight (28) years, with four hundred seventy- five (475) days credit for  
2 time served. The Judgment of Conviction was filed on February 5, 2018.

3 Petitioner filed a Notice of Appeal on February 6, 2018. On September 12, 2019, the  
4 Nevada Supreme Court affirmed Petitioner's conviction. Remittitur issued on October 11,  
5 2019.

6 On September 11, 2020, Petitioner filed the instant Petition for Writ of Habeas Corpus  
7 (Post-Conviction) (hereinafter "Petition"). The State responds as follows.

### 8 **STATEMENT OF THE FACTS**

9 At 6:22 a.m. on September 25, 2016, Officers Brennan Childers and Jacquelyn Torres  
10 were dispatched to a shooting at 4230 S. Decatur Blvd, a strip mall with several businesses  
11 including a clothing store. Jury Trial Transcript, Day 2, ("JTT Day 2") May 23, 2017, at 20-  
12 23, 29-32. When police arrived, they found a man—later identified as Ezekiel Davis  
13 ("Ezekiel" or "the victim")—upon whom another man was performing chest compressions.  
14 Id. at 22-23, 32. Ezekiel was not wearing pants. Id. at 32. Several other people were in the  
15 parking lot, and none of the businesses appeared opened. Id. at 22-23. Ezekiel was transported  
16 to the hospital but did not survive a single gunshot wound to the abdomen. Id. at 66. Trial  
17 testimony from Ezekiel's fiancé, Bianca Hicks, and from Detective Christopher Bunn revealed  
18 that missing from Ezekiel's person was a belt which had a gold "M" buckle and a gold watch.  
19 Jury Trial, Day 3, ("JTT Day 3") May 24, 2017, at 17, 122; Jury Trial Transcript, Day 4, ("JTT  
20 Day 4") May 25, 2017, at 86, 90-92.

21 Top Knotch, the clothing store in front of which Ezekiel was shot, doubles as an after-  
22 hours club. JTT Day 2, at 9. Ezekiel's friend Deshawn Byrd—the one who had given him CPR  
23 in an attempt to save his life—testified at trial that sometime after approximately 3:00 a.m.,  
24 Ezekiel arrived at the club. Id. at 10-11. Byrd testified there was no indication that anything  
25 had happened in the club which led to any sort of confrontation. Id. at 10-14.

26 Detective Bunn testified at trial that the day of the murder, as detectives and crime scene  
27 analysts were documenting the scene, three individuals—later identified as Marlo Chiles,  
28 Roderick Vincent, and Samantha Cordero—exited Top Knotch. JTT Day 3, at 42-67. Chiles



1 was the owner of Top Knotch, and Vincent owned a studio inside of Top Knotch. Id. at 68.  
2 Vincent denied that there were any DVRs of the surveillance video for Top Knotch or the  
3 recording studio. Id. at 73. Detective Bunn had noted a camera, however. Id. at 69. A  
4 subsequent search warrant on the vehicles in the parking lot located two (2) DVR's of the  
5 surveillance footage from Top Knotch and the studio in Vincent's car. Id. at 58-59, 63-64.

6 A review of the video footage, extensive portions of which were played at trial,  
7 demonstrated that Petitioner entered the club at about 2:00 a.m. Id. at 91-92. At 3:25 a.m.,  
8 Chiles, Vincent, Antoine Bernard, and several other people were in the back area of the  
9 business when a person in a number 3 jersey, later identified as Petitioner, produced a semi-  
10 automatic handgun from his pants and showed it to the group. Id. at 93-94.

11 The video also showed that at about 6:14 a.m., Petitioner and Ezekiel exited arm-in-  
12 arm out the front of Top Knotch. Id. at 97. At that point, there was still a watch on Ezekiel's  
13 wrist. Id. at 98. The two walked to the front of Bernard's black vehicle and appeared to  
14 converse for a short time, then walked by the driver's side of Bernard's vehicle, where they  
15 left camera view. Id. at 99-102. At about 6:16 a.m., the people on video all appeared to have  
16 their attention drawn to the area where Petitioner and Ezekiel were. Id. at 99. Petitioner then  
17 entered the view of the camera, removing Ezekiel's belt from his body while holding the gun  
18 in his other hand. Id. at 101-102. Bernard also testified at trial that he saw Petitioner take  
19 Ezekiel's belt. Id. at 20. The video showed that Petitioner approached Bernard's car, opened  
20 the passenger door, placed the belt on the front seat, and returned to the area of Ezekiel's body.  
21 Id. at 102. Petitioner returned to Bernard's vehicle, entered the passenger seat of the vehicle  
22 and the vehicle fled the area. Id. at 102.

23 Despite contact with several witnesses in the parking lot including Chiles and Vincent,  
24 the police had no information regarding the identity of the shooter. Id. at 107. After further  
25 investigation, the shooter was identified as Petitioner and a warrant for his arrest was issued.  
26 Id. at 107. Petitioner was apprehended at a border control station in Sierra Blanca, Texas,  
27 whereupon he was brought back to Nevada to face charges. Id. at 108.

28 //  
//

## ARGUMENT

### **I. PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL**

Petitioner claims that counsel was ineffective “in multiple ways in the way he handled the surveillance video.” Petition, at 6. Specifically, Petitioner claims that counsel was ineffective in three ways: 1) the initial viewing, 2) failing to review the video in preparation for trial, and 3) failing to object to the State admitting the video and using it in rebuttal. Petition, at 6-9.

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

The court begins with the presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of

1 competence demanded of attorneys in criminal cases.” Jackson v. Warden, 91 Nev. 430, 432,  
2 537 P.2d 473, 474 (1975).

3 Counsel cannot be ineffective for failing to make futile objections or arguments. See  
4 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the  
5 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
6 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
7 (2002).

8 Based on the above law, the role of a court in considering allegations of ineffective  
9 assistance of counsel is “not to pass upon the merits of the action not taken but to determine  
10 whether, under the particular facts and circumstances of the case, trial counsel failed to render  
11 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
12 (1978). This analysis does not mean that the court should “second guess reasoned choices  
13 between trial tactics nor does it mean that defense counsel, to protect himself against  
14 allegations of inadequacy, must make every conceivable motion no matter how remote the  
15 possibilities are of success.” Id. To be effective, the constitution “does not require that  
16 counsel do what is impossible or unethical. If there is no bona fide defense to the charge,  
17 counsel cannot create one and may disserve the interests of his client by attempting a useless  
18 charade.” United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

19 “There are countless ways to provide effective assistance in any given case. Even the  
20 best criminal defense attorneys would not defend a particular client in the same way.”  
21 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after  
22 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,  
23 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
24 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel’s  
25 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s  
26 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

27 Even if a defendant can demonstrate that his counsel’s representation fell below an  
28 objective standard of reasonableness, he must still demonstrate prejudice and show a

1 reasonable probability that, but for counsel's errors, the result of the trial would have been  
2 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
3 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a probability  
4 sufficient to undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-  
5 89, 694, 104 S. Ct. at 2064-65, 2068).

6 The Nevada Supreme Court has held "that a habeas corpus petitioner must prove the  
7 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of  
8 the evidence." Means, 120 Nev. at 1012, 103 P.3d at 33. Furthermore, claims of ineffective  
9 assistance of counsel asserted in a petition for post-conviction relief must be supported with  
10 specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v.  
11 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked" allegations are not  
12 sufficient, nor are those belied and repelled by the record. Id. NRS 34.735(6) states in relevant  
13 part, "[Petitioner] *must* allege specific facts supporting the claims in the petition[.] . . . Failure  
14 to allege specific facts rather than just conclusions may cause your petition to be dismissed."  
15 (emphasis added).

16 **A. Counsel was not ineffective in the initial viewing of the surveillance video**

17 First, Petitioner alleges that counsel was ineffective in his initial viewing of the  
18 surveillance video because counsel allegedly "reported he was only shown parts of the video."  
19 Petition, at 6. It must be noted that Petitioner has utterly failed to cite anything in the record  
20 or otherwise present any evidence supporting this claim. Thus, this is a bare and naked claim.  
21 Hargrove, 100 Nev. at 502, 686 P.2d at 225. Petitioner is simply complaining that counsel did  
22 not view the video in its entirety without support. Additionally, the Nevada Supreme Court  
23 already found that counsel had access to the entire surveillance video. Order of Affirmance,  
24 No. 75097, at 3. The State cannot meaningfully respond to such a bare and naked claim, and  
25 to the extent Petitioner is claiming that counsel did not have access to the entire surveillance  
26 video, that claim is barred by law of the case. Therefore, this claim is without merit.

27 **B. Counsel was not ineffective for failing to review the surveillance video**  
28

1 Second, Petitioner similarly alleges that counsel failed to review the surveillance video  
2 in preparation of trial. Petition, at 7-8. Petitioner claims that trial counsel “admitted to being  
3 completely caught by surprise by these videos.” Petition, at 7. Petitioner’s claim that counsel  
4 “admitted to being completely caught by surprise by these videos” is wholly unsupported, and  
5 counsel’s supposed “admission” appears nowhere in the record. Petitioner simply assumes that  
6 counsel “did not bother to watch” the surveillance videos. But, once again, Petitioner has failed  
7 to cite anything in the record supporting this claim. Hargrove, 100 Nev. at 502, 686 P.2d at  
8 225. Petitioner provides no reason to think that counsel failed to view the entire videotape  
9 when it is an established fact that counsel had access to that tape. More importantly, in his  
10 Opening Brief for Petitioner’s direct appeal, trial counsel admitted that he viewed the  
11 surveillance video. Appellant’s Opening Brief, August 29, 2018, No. 75097, at 46. Therefore,  
12 this claim is without merit.

13 Even if counsel did not review the portions of the surveillance video that the State  
14 played in rebuttal, he cannot demonstrate how this prejudiced. There was overwhelming  
15 evidence of Petitioner’s guilt in the surveillance video—portions of the surveillance video that  
16 counsel clearly knew about as he cross-examined witnesses regarding it. The surveillance  
17 video showed that Petitioner and the victim were seen on video walking through the club arm-  
18 in-arm mere minutes before Petitioner murdered and robbed the victim. Jury Trial Transcript,  
19 Day 3, May 24, 2017, at 97. Petitioner robbing the victim was literally caught on the  
20 surveillance video. Id. at 17, 100-102. Petitioner could be seen very clearly ripping the  
21 expensive belt from the victim while the victim lay dying. Id. The victim’s property—  
22 including his watch—was also missing from his body. Id. at 17, 122; Jury Trial Transcript,  
23 Day 4, May 25, 2017, at 86, 90-92. Bernard also testified at trial that he saw Petitioner take  
24 Ezekiel’s belt. Jury Trial Transcript, Day 3, May 24, 2017, at 20. The surveillance video  
25 showed that Petitioner approached Bernard’s car, opened the passenger door, placed the belt  
26 on the front seat, and returned to the area of the victim’s body. Id. at 102. Petitioner returned  
27 to Bernard’s vehicle, entered the passenger seat of the vehicle and the vehicle fled the area. Id.  
28 Petitioner does not present any alternative defense that would have worked better, or otherwise

1 explain what counsel could have done differently. Therefore, Petitioner cannot demonstrate  
2 how counsel was ineffective.

3 **C. Counsel was not ineffective for failing to object to the surveillance video**

4 Third, Petitioner argues that counsel was ineffective for failing to object to the State  
5 admitting portions of the surveillance video in the State's rebuttal. Petition, at 8-9. However,  
6 Petitioner fails to explain on what basis counsel should have moved to exclude the portions of  
7 the video. The surveillance video in its entirety was admitted into evidence, so any objection  
8 to playing portions of the surveillance video in rebuttal would have been overruled. Because  
9 counsel cannot be ineffective for failing to make frivolous objections, counsel here cannot be  
10 ineffective for failing to object to the surveillance video in rebuttal. See Ennis, 122 Nev. at  
11 706, 137 P.3d at 1103. Therefore, this claim is without merit.

12 **D. Counsel was not ineffective for failing to object to the surveillance video**

13 Lastly, Petitioner alleges counsel was ineffective because it put Petitioner in a worse  
14 position for his appeal. Petition, at 9. Petitioner complains about appellate counsel's deficient  
15 performance on appeal. Id.

16 There is a strong presumption that appellate counsel's performance was reasonable and  
17 fell within "the wide range of reasonable professional assistance." See United States v.  
18 Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990); citing Strickland, 466 U.S. at 689, 104 S. Ct. at  
19 2065. A claim of ineffective assistance of appellate counsel must satisfy the two-prong test set  
20 forth by Strickland. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). In order  
21 to satisfy Strickland's second prong, the defendant must show that the omitted issue would  
22 have had a reasonable probability of success on appeal. Id.

23 The professional diligence and competence required on appeal involves "winnowing  
24 out weaker arguments on appeal and focusing on one central issue if possible, or at most on a  
25 few key issues." Jones v. Barnes, 463 U.S. 745, 751-52, 103 S. Ct. 3308, 3313 (1983). In  
26 particular, a "brief that raises every colorable issue runs the risk of burying good arguments  
27 ... in a verbal mound made up of strong and weak contentions." Id. at 753, 103 S. Ct. at 3313.  
28 "For judges to second-guess reasonable professional judgments and impose on appointed

1 counsel a duty to raise every ‘colorable’ claim suggested by a client would disserve the very  
2 goal of vigorous and effective advocacy.” Id. at 754, 103 S. Ct. at 3314.

3 Here, objecting to the surveillance video in rebuttal would not have changed the  
4 outcome of Petitioner’s appeal because there was no basis to exclude the surveillance video or  
5 prevent the State from playing portions in rebuttal. As discussed supra, Section I.C., the  
6 surveillance video was admitted at trial, and it would have been futile for counsel to object to  
7 it in rebuttal. Counsel cannot be ineffective for failing to object to the surveillance video in  
8 rebuttal. See Ennis, 122 Nev. at 706, 137 P.3d at 1103. Because trial counsel did not have any  
9 reason to object, there is no indication that an objection would have put appellate counsel in  
10 any better position.

11 In his Opening Brief for Petitioner’s direct appeal, appellate counsel raised the issue  
12 that he could not “control the video” when he viewed it at the evidence vault with law  
13 enforcement. Appellant’s Opening Brief, August 29, 2018, No. 75097, at 46. However, the he  
14 was given a copy during discovery and admitted to viewing the surveillance video on appeal.  
15 Id. Furthermore, the Nevada Supreme Court found that counsel had access to the entire  
16 surveillance video. Order of Affirmance, No. 75097, at 3. Therefore, there was not any basis  
17 for trial counsel to object to the surveillance video being played during rebuttal, and appellate  
18 counsel found not have raised any stronger argument on appeal. As such, this claim is without  
19 merit, and Petitioner cannot demonstrate how counsel was ineffective.

## 20 **II. COUNSEL WAS NOT INEFFECTIVE IN HIS PREPARATION AND** 21 **CROSS-EXAMINATION OF ANTOINE BERNARD**

22 Petitioner alleges that counsel was ineffective in his preparation and execution of the  
23 cross-examination of Antoine Bernard. Petition, at 9-10. Petitioner raises this claim without  
24 any citations to the record and fails to explain what counsel should have done differently that  
25 would have changed the outcome at trial. As such, this claim is belied by the record and  
26 suitable for only summary denial under Hargrove, 100 Nev. at 502, 686 P.2d at 225.

27 Although Petitioner chose not to cite to any lawful authority, construed liberally, the  
28 State assumes he is arguing that there are discrepancies with Bernard’s initial police statement

1 and what he testified to at trial. It is important to note that Bernard was originally charged as  
2 a co-defendant in the instant case. Indictment, November 30, 2016, at 1-5. Thus, the State is  
3 assuming that Petitioner is complaining regarding his initial police statement when he was a  
4 suspect, and his testimony in front of the jury against Petitioner when his case was resolved.

5 Petitioner does not articulate how counsel was ineffective in his cross-examination, or  
6 explain to this Court what counsel should have done differently that would have changed the  
7 outcome of the trial. Petitioner slightly discusses the discrepancies in Bernard's testimony,  
8 then, once again, argues that counsel was unprepared for the surveillance video being  
9 introduced during rebuttal. Petition, at 9-10. As discussed supra, Section I., Petitioner's claims  
10 that counsel was ineffective for not being prepared for the surveillance video in rebuttal is  
11 without merit.

12 Additionally, because Petitioner does not even cite to counsel's cross-examination of  
13 Bernard at trial, he overlooks counsel questioning him regarding his initial statement to police.  
14 Jury Trial Transcript, Day 3, May 24, 2017, at 26-31. In fact, counsel even got Bernard to  
15 admit that he had omitted information from the police in his original statement to them. Id. at  
16 31. Then on recross-examination, counsel again got Bernard to admit that his testimony at trial  
17 was different than his initial statement to the police. Id. at 36-37. As such, counsel was not  
18 ineffective in his cross-examination of Antoine Bernard and this Petition must be dismissed.

### 19 CONCLUSION

20 Based on the foregoing, Petitioner's Petition for Writ of Habeas Corpus (Post-  
21 Conviction) should be DENIED.

22 DATED this 16th day of December, 2020.

23 Respectfully submitted,

24 STEVEN B. WOLFSON  
25 Clark County District Attorney  
26 Nevada Bar #001565

27 BY /s/JOHN NIMAN  
28 JOHN NIMAN  
Deputy District Attorney  
Nevada Bar #14408



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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing, was made this 16th day of  
December, 2020, by Electronic Filing to:

CRAIG MUELLER, ESQ.  
E-mail: [receptionist@craigmuellerlaw.com](mailto:receptionist@craigmuellerlaw.com)  
BY: /s/Deana Daniels  
Secretary for the District Attorney's Office

JN/BS-Appeals/dd-MVU



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Attorney For Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

JAVAR KETCHUM,  
#1836597

Petitioner,

VS.

THE STATE OF NEVADA,

Respondent.

CASE NO. A-20-821316-W  
C-16319714-1

DEPT. NO. XVII

NOTICE OF MOTION AND MOTION TO CONTINUE REPLY BRIEF DEADLINE  
AND HEARING DATE

COMES NOW, Defendant Javar Ketchum, by and through his attorney Craig A. Mueller, Esq., of the law firm of Craig Mueller & Associates and hereby moves this Honorable Court to continue the due date of his Reply Brief and the date for the hearing on his Petition For Writ Of Habeas Corpus. This Motion is supported by the attached Declaration Of Craig A. Mueller, Esq., and is made in good faith.

DATED this 11<sup>th</sup> day of January, 2021.

/s/Craig A. Mueller  
CRAIG A. MUELLER, ESQ.

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NOTICE OF MOTION

TO: Plaintiff STATE OF NEVADA, and to

TO: THE OFFICE OF THE CLARK COUNTY DISTRICT ATTORNEY, it's counsel;

YOU ARE HEREBY NOTIFIED that Defendant's Motion To Continue Reply Brief  
Deadline And Hearing Date will be heard in District Court Department XVII on the \_\_\_\_ day of  
January, 2021, at the hour of \_\_\_\_\_ a.m./p.m.  
DATED this 11<sup>th</sup> day of January, 2021.

/s/ Craig Mueller  
CRAIG A. MUELLER, ESQ.

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**DECLARATION OF CRAIG A. MUELLER, ESQ.**

COMES NOW, Craig A. Mueller, Esq, and hereby states that:

1. I am an attorney duly licensed to practice before all courts in the state of Nevada.

2. I am the attorney of record for Petitioner Javar Ketchum in case number A-20-821316-W currently pending in District Court Dept. XVII.

3. Respondent State of Nevada filed its Response to Petitioner's Petition For Writ Of Habeas Corpus (Post-Conviction) on December 16, 2020.

4. Defense counsel contacted High Desert State Prison (HDSP) to schedule a telephonic meeting with Petitioner on December 17 and 24. Both times he was told that the facility was in lock down and no telephonic meetings were being scheduled until further notice.

5. Defense counsel has been in regular contact with Petitioner's mother, who has expressed his desire to discuss his case with counsel prior to filing a Reply Brief. Petitioner's Reply Brief is currently due January 15, 2021.

6. Defense counsel was able to make contact with HDSP on January 11, 2021, and scheduled a meeting with Petitioner on the facility's next available date: January 19, 2021.

7. Defense counsel hereby requests a continuance of the due date for filing the Reply Brief until January 29, 2021.

8. Defense counsel hereby requests a continuance of the February 3 hearing until February 17, 2021.

9. This request to continue is made in good faith and not for purposes of delay.

DATED This 11<sup>th</sup> Day Of January, 2021.

/s/ Craig A. Mueller  
CRAIG A. MUELLER, ESQ.

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**CERTIFICATE OF ELECTRONIC TRANSMISSION**

I hereby certify that service of the above and foregoing was made on the 11<sup>th</sup> day of  
January 2021, by electronic transmission through the District Court's Odyssey efile system to:

STEVE WOLFSON  
Nevada Bar No. 01565  
Clark County District Attorney

JOHN NIMAN  
Nevada Bar No. 14408  
Deputy District Attorney

By: /s/ Rosa Ramos  
Legal Assistant  
Craig A. Mueller & Associates



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

Javar Ketchum, Plaintiff(s)

vs.

Nevada State of, Defendant(s)

Case No.: A-20-821316-W

Department 17

**NOTICE OF HEARING**

Please be advised that the Defendant's Motion to Continue Reply Brief Deadline and Hearing Date in the above-entitled matter is set for hearing as follows:

**Date:** January 26, 2021

**Time:** 8:30 AM

**Location:** RJC Courtroom 11A  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

**NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.**

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Allison Behrhorst  
Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Allison Behrhorst  
Deputy Clerk of the Court



RPLY  
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Office 702.382.1200  
receptionist@craigmuellerlaw.com  
Attorney For Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

JAVAR KETCHUM,	)	
#1836597	)	
	)	
Petitioner,	)	
	)	CASE NO. A-20-821316-W
	)	
VS.	)	C-16319714-1
	)	
	)	DEPT. NO. XVII
THE STATE OF NEVADA,	)	
	)	
Respondent.	)	

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

COMES NOW, Defendant Javar Ketchum, by and through his attorney Craig A. Mueller, Esq., of the law firm of Craig Mueller & Associates and submits the attached Memorandum Of Points And Authorities as and for his Reply to the State's Response To Petitioner's Petition For Writ Of Habeas Corpus (Post-Conviction).

DATED this 8<sup>th</sup> day of February, 2021.

/s/ Craig Mueller  
CRAIG A. MUELLER, ESQ.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**STATEMENT OF THE CASE**

On November 30, 2016, the State charged Petitioner Javar Ketchum by way of Indictment with one count each of Murder with a Deadly Weapon and Robbery. Petitioner was convicted of both counts after a five-day jury trial. He filed his Notice Of Appeal on February 6, 2018. The Nevada Supreme Court affirmed Petitioner's conviction on September 12, 2019. Petitioner timely filed his Petition for Writ of Habeas Corpus (Post-Conviction) on September 11, 2020. The State timely filed its Response on December 16, 2020. Petitioner replies as follows.

**II.**

**ARGUMENT**

**A. Trial counsel was ineffective in the initial viewing of the surveillance video.**

The State responds that Petitioner's representations that trial counsel was initially shown only portions of the surveillance video are unsupported by anything in the record. The State alleges that it cannot respond in a meaningful way to such a "bare and naked" claim. Response, p. 7. Because the initial viewing of the surveillance video was an extra-judicial event, there is no record to cite. Petitioner is relying on what trial counsel told him. Present counsel is taking his client at his word. Moreover, trial counsel stated in his Corrected Opening Brief to the Nevada Supreme Court that: 1) the original SWAN Video surveillance was booked into evidence at the LVMPD evidence vault, accessible only to law enforcement; 2) on or about February 16, 2017, Detective Bunn and Chief Deputy District Attorney DiGiacomo presented the video to trial counsel in the Grand Jury room; and 3) trial counsel was only shown parts of the video. Appellant's Opening Brief, August 29, 2018, No. 75097, at 46. Present counsel has no reason to



1 believe that trial counsel would be anything but truthful to the Supreme Court, or any other court  
2  
3 for that matter. Petitioner requests an evidentiary hearing in this matter so that the individuals  
4 present at the initial viewing can testify as to how much of the video was actually presented.

5 B. Trial counsel was ineffective for failing to review the surveillance video.

6  
7 Petitioner submits that a reasonable attorney would have reviewed the entire video,  
8 including the inculpatory segments that trial counsel was not shown in the initial presentation, in  
9 preparation for trial. Trial counsel's failure to review the entire video in preparation of trial had a  
10 serious detrimental effect on trial counsel's defense strategy. By failing to view the inculpatory  
11 segments of the video, trial counsel failed to prepare for and address this evidence at trial.  
12  
13 Instead, by his own admission, trial counsel was taken by surprise and unprepared when the two  
14 inculpatory video segments were presented during the trial. *See, Bubak v. State*, No. 69096,  
15 Court of Appeals of Nevada, Slip Copy 2017 WL570931 at \*5 (Feb. 8, 2017) (citing *Land Baron*  
16 *Inv., Inc. v. Bonnie Springs Family Ltd. Partnership*, 131 Nev. 686, 701, n. 14, 356 P.3d 511,  
17 522, n.14 (2015). In one segment Petitioner is seen showing off a firearm to a group of people,  
18 including the victim, outside the club. One of trial counsel's defense theories was that the victim  
19 was unaware that Petitioner was armed. This theory was woven into the defense from opening  
20 statement on. Because he was surprised and unprepared, the introduction of the unreviewed  
21 video segments directly undermined trial counsel's opening statement, trial strategy, and  
22 credibility, all to Petitioner's detriment.  
23  
24

25 “[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision  
26 that makes particular investigations unnecessary. In any ineffectiveness case, a particular  
27 decision not to investigate must be directly assessed for reasonableness in all the circumstances,  
28 applying a heavy measure of deference to counsel's judgments.” *Strickland v. Washington*, 466

1 U.S. 668, 691, 104 S.Ct. 2052, 2066, 80 L.Ed.2d 674 (1984). Any competent attorney would  
2 agree that reviewing a surveillance video of the crime is a necessary part of investigating a  
3 case, and is essential to preparing a defense. Trial counsel's failure to review the video for  
4 inculpatory evidence cannot be dismissed as strategic or tactical decision worthy of deference.  
5  
6 *Id.*; *See, Lara v. State*, 120 Nev. 177, 180, 87 P.3d 528, 530 (2004), citing *Doleman v. State*, 112  
7 Nev. 843 848, 921 P.2d 278, 280 (1996), (quoting *Howard v. State*, 106 Nev. 713, 722, 800 P.2d  
8 175, 180 (1990). This is especially true where the unreviewed, unanticipated evidence  
9 completely undercut trial counsel's theory of the defense.  
10

11 C. Trial counsel was ineffective for failing to object to the surveillance video.  
12

13 Trial counsel's failures to object placed Petitioner in a worse position for his appeal.  
14 Failure to object at trial is generally considered a waiver of the issue on appeal and then  
15 is reviewable only for plain error. *Valdez, Supra*; *Davis v. City of Reno*, 113 Nev. 207, 931 P.2d  
16 207 (1997); *Guy v. State*, 108 Nev. 770, 839 P.2d 578 (1992); *Davis v. State*, 107 Nev. 600, 817  
17 P.2d 1169 (1991). Again, Petitioner has demonstrated actual prejudice by showing "a reasonable  
18 probability that, but for counsel's errors, the result of the trial would have been different." *Id.*,  
19 citing *Kirksey*, 112 Nev. at 988, 923 P.2d at 1107. In this case trial counsel's failure to object to  
20 the State's use of the unreviewed segments of video adversely effected Petitioner's appeal. "The  
21 constitutional right to effective assistance of counsel extends to a direct appeal. This court  
22 reviews a claim of ineffective assistance of appellate counsel under the *Strickland* test. To  
23 establish prejudice based on the deficient assistance of appellate counsel, the defendant must  
24 show that the omitted issue would have a reasonable probability of success on appeal."  
25  
26 *Lara v. State*, 120 Nev. 177, 184, 87 P.3d 528, 532 (2004), quoting *Kirksey v. State*, 112 Nev.  
27 980, 998, 923 P.2d 1102, 1114 (1996).  
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**CONCLUSION**

Based on the foregoing, Petitioner Javar Ketchum respectfully request that his Petition For Writ Of Habeas Corpus be granted, that his conviction be reversed, and a new trial ordered.

Respectfully SUBMITTED this 8<sup>th</sup> day of February, 2021.

/s/Craig Mueller, Esq.  
CRAIG A. MUELLER, ESQ.  
Nevada Bar No. 4703  
CRAIG A. MUELLER & ASSOCIATES  
723 S. Seventh Street  
Las Vegas, NV 89101  
702.382.1200  
Facsimile: (702) 637-4817  
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Attorney For Petitioner Ketchum

**CERTIFICATE OF ELECTRONIC TRANSMISSION**

I hereby certify that service of the above and foregoing was made on the 8<sup>th</sup> day of February, 2021, by electronic transmission through the District Court's Odyssey efile system to:

STEVE WOLFSON  
Nevada Bar No. 01565  
Clark County District Attorney

JOHN NIMAN  
Nevada Bar No. 14408  
Deputy District Attorney

By: /s/ Rosa Ramos  
Senior Paralegal  
Craig A. Mueller & Associates

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*Heather Shinn*  
CLERK OF THE COURT

JAVAR KETCHUM #1192727  
WITH COUNSEL:  
CRAIG A. MUELLER, ESQ.  
BAR NO. 4703  
CRAIG A. MUELLER &  
ASSOCIATES  
723 S. SEVENTH STREET  
LAS VEGAS, NEVADA 89101

DISTRICT COURT  
CLARK COUNTY, NEVADA

JAVAR KETCHUM,  
PETITIONER,  
VS.

CASE NO.: A-20-821316-W  
C-16319714-1

DEPT. NO.: XVII

THE STATE OF NEVADA,  
RESPONDENT.

Hearing Requested

MOTION FOR RECONSIDERATION, OR  
IN THE ALTERNATIVE MOTION FOR  
REHEARING OF PETITIONER'S NRS  
CHAPTER 34 PETITION

DATE OF HEARING: \_\_\_\_\_

TIME OF HEARING: \_\_\_\_\_

COMES NOW, DEFENDANT JAVAR KETCHUM, BY AND  
THROUGH HIS ATTORNEY CRAIG A. MUELLER, ESQ., OF THE  
LAW FIRM OF CRAIG MUELLER & ASSOCIATES AND SUBMITS  
THE ATTACHED MEMORANDUM OF POINTS AND AUTHORITIES.  
AS AND FOR THE INSTANT: MOTION FOR RECONSIDERATION,

1.

RECEIVED  
MAR 29 2021  
CLERK OF THE COURT

OR, IN THE ALTERNATIVE MOTION FOR REHEARING OF PETITIONER'S NRS CHAPTER 34 PETITION.

THIS MOTION IS MADE AND BASED UPON ALL OF THE PAPERS, AND LEGAL DOCUMENTS ON FILE OF THE INSTANT CASE; AS WELL AS THE ATTACHED EXHIBITS; AND AFFIDAVITS IN SUPPORT HEREOF; AS WELL AS ANY LEGAL, OR FACTUAL ARGUMENTS AT THE TIME OF HEARING; IF REQUIRED BY THIS COURT, DEEMED NECESSARY AT THE TIME OF IN-COURT PROCEEDINGS. \*

DATED: THIS 16<sup>TH</sup> DAY OF MARCH, 2021.

SIGNED BY:

Jamal Ketchum  
JAMAL KETCHUM #1192727  
H.D.S.P. / 7B-19  
P.O. BOX 650  
INDEPENDENCE SPRINGS, NEVADA  
89070

WITH COUNSEL OF RECORD:

CRAIG A. MUEHLER, ESQ.  
BAR NO. : 4703

2.

\* THIS MOTION IS DRAFTED IN GOOD FAITH.

MEMORANDUM OF POINTS AND AUTHORITIES:

1.

STATEMENT OF THE CASE:

ON NOVEMBER 30, 2016, THE STATE CHARGED PETITIONER-MOVANT JAVAN KETCHUM BY WAY OF INDICTMENT, WITH ONE COUNT EACH OF MURDER WITH A DEADLY WEAPON AND ROBBERY. PETITIONER, THE MOVANT WAS CONVICTED OF BOTH COUNTS AFTER A FIVE-DAY TRIAL. PETITIONER FILED A TIMELY NOTICE OF APPEAL ON FEBRUARY 6, 2018. THE NEVADA SUPREME COURT AFFIRMED PETITIONER'S CONVICTION: SEPTEMBER 12, 2019. PETITIONER TIMELY FILED HIS PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) ON SEPTEMBER 11, 2020. THE STATE FILED ITS RESPONSE ON DECEMBER 16, 2020. THEREAFTER, PETITIONER FILED HIS REPLY, AS WELL AS ABOUT: FEBRUARY 8<sup>th</sup>, 2021. THE NRS CHAPTER 34 PETITION WAS DENIED BY THE DISTRICT COURT JUDGE, AT THE DATE OF: FRIDAY, MARCH 12, 2021.

PETITIONER-MOVANT NOW FILES: MOTION FOR RECONSIDERATION, OR IN THE ALTERNATIVE MOTION FOR REHEARING OF PETITIONER'S NRS CHAPTER 34 PETITION.

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3.

## II.

### ARGUMENT

PRIOR TO THE DISTRICT COURT JUDGE'S DENIAL OF PETITIONER'S NRS CHAPTER 34 PETITION; PETITIONER, THE MOVANT HEREIN, THROUGH THE AID OF AN INMATE WRIT-WRITER AND HIS MOTHER DRAFTED:

(1) MOTION FOR EVIDENTIARY HEARING;

AND:

(2) SUPPLEMENTAL PETITION

IA.: PETITIONER'S SUPPLEMENTAL BRIEF IN SUPPORT OF PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION).<sup>1</sup>

BOTH THE INMATE WRIT-WRITER AND MOVANT'S MOTHER PROVIDED AFFIDAVITS. IA.: SEE: (AFFIDAVIT OF MAUREN A. SINGER; ~~AND~~ AFFIDAVIT OF SHERYL KETCHUM) IN SUPPORT, INCORPORATED HEREIN).

THE FACTS REVEAL, ONCE SHERYL KETCHUM RECEIVED BOTH DOCUMENTS NAMED ABOVE FROM PETITIONER, THE MOVANT JANAR KETCHUM, SAID SHERYL KETCHUM [WHO PAID COUNSEL OF RECORD];

---

1. IA.: SEE WHAT IS MARKED AS EXHIBIT # 1: MOTION FOR EVIDENTIARY HEARING; AND EXHIBIT # 2: SUPPLEMENTAL PETITION; IN SUPPORT, INCORPORATED HEREIN.



DID DELIVER TO COUNSEL CRAIG A. MUELLER, ESQ.'S, OFFICE. ID. AFFIDAVIT.

SHERYL KETCHUM DID REQUEST THAT COUNSEL FILE BOTH DOCUMENTS BEFORE THE DISTRICT COURT. ID. AFFIDAVIT.

PETITIONER, YOUR MOVANT, JANAL KETCHUM SPOKE WITH COUNSEL; AND ALSO REQUESTED COUNSEL FILE BOTH THE MOTION/EXHIBIT #1; AND THE SUPPLEMENTAL PETITION/EXHIBIT #2; BEFORE THE DISTRICT COURT IN A TIMELY MANNER -- SO THAT THE DISTRICT COURT COULD REVIEW THE DOCUMENTS IN A TIMELY MANNER, BEFORE RULING ON THE NRS CHAPTER 34 PETITION: MARCH 12<sup>TH</sup>, 2021. ID. AFFIDAVIT: JANAL KETCHUM.

HOWEVER, SUBSTITUTE COUNSEL, OF THE LAW FIRM OF: CRAIG A. MUELLER ESQ. & ASSOCIATES DID NOT ATTEMPT TO FILE THE DOCUMENT(S) UNTIL: ~~THURSDAY~~, MARCH 12, 2021; THE VERY DATE THE COURT DENIED THE NRS CHAPTER 34 PETITION; ASSENT CONSIDERATION OF THE NAMED MOTION AND SUPPLEMENTAL PETITION; AND REFUSED TO CONSIDER THE DOCUMENTS. SEE: (TRANSCRIPT OF PROCEEDINGS, HELD: FRIDAY, MARCH 12, 2021; IN SUPPORT; INCORPORATES HERED).

PETITIONER NOW, HAS FILED THE INSTANT:

## MOTION FOR RECONSIDERATION.

### LEGAL DISCUSSION:

THE INSTANT MOTION FOR RECONSIDERATION IS NOT AND SHOULD NOT BE COUNTED AS ANYTHING BUT A MOTION FOR RECONSIDERATION.

FIRST, MOVANT IS NOT RAISING A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL, AND DOES NOT USE THE TWO PRONG TEST OF STARKINS (WASHINGTON), 104 S. CT. 2052 (1984).

SECOND, MOVANT DOES NOT USE THE LEGAL STANDARD SET FORTH IN RYAN V. MARTINEZ AS GOOD CAUSE TO FILE A SECOND, OR SUCCESSIVE, PETITION. SEE: RYAN V. MARTINEZ, 132 S. CT. 1309 (2012).

THIRD, INSTEAD, PETITIONER SEEKS RECONSIDERATION OF THE NRS CHAPTER 34 PETITION; BECAUSE OF HIS GOOD FAITH EFFORT TO RAISE 'SPECIFIC FACTUAL ALLEGATIONS' AS SET FORTH WITHIN THE NAMED: MOTION FOR EVIDENTIARY HEARING; AND SUPPLEMENTAL PETITION; DELIVERED TO POST-CONVICTION COUNSEL, LONG BEFORE: FRIDAY, MARCH 12, 2021. SEE (AFFIDAVITS OF: JAVAR KETCHUM; SHERYL KETCHUM; AND MAURIL A. SINGER; IN SUPPORT, INCORPORATED HEREIN).

WITHIN BOTH THE: MOTION FOR EVIDENTIARY HEARING; AND: SUPPLEMENTAL PETITION; PETITIONER SET FORTH 'SPECIFIC FACTUAL ALLEGATIONS' ALLEGATIONS WHICH ARE NEITHER "BARE" NOR "NAILED"; IF TRUE, 'ENTITLE PETITIONER TO RELIEF'. SEE: HARGREAVE V. STATE, 686 P.2d 222 (1984); AND MEANS V. STATE, 120 NEV. 1001, 103 P.3d 25 (2004).

\* ——— \*

A REVIEW OF BOTH THE MOTION FOR EVIDENTIARY HEARING AND SUPPLEMENTAL PETITION, PROVIDES 'SPECIFIC FACTUAL ALLEGATIONS' RELATING TO:

1. PETITIONER HAVING BEEN BURN-SHOOT BY THE PRODUCTION OF PARTS OF THE SURVEILLANCE VIDEO NOT PREVIOUSLY SEEN.
2. PETITIONER'S COUNSEL HAVING STATED AT THAT VERY MOMENT DURING THE CLOSING; THAT HE HAD NEVER SAW THE FOOTAGE.
3. PETITIONER REQUESTED HIS COUNSEL, PRIOR TO TRIAL, TO FILE A FORMAL MOTION FOR DISCOVERY.
4. PETITIONER WOULD HAVE BEEN BETTER PREPARED TO INVESTIGATE, PLAN, PREPARE, AND PRESENT HIS DEFENSE THEORY; OR TO MEET THE CASE OF THE PROSECUTION.
5. PETITIONER WAS THE VICTIM AND THE DECEASED WAS THE PERPETRATOR; WHO SET THE ENTIRE INCIDENT IN MOTION.

7.

IN.: SEE: (MOTION FOR EVIDENTIARY HEARING AND SUPPLEMENTAL PETITION; WHAT IS MARKED AS: EXHIBIT # 1 AND EXHIBIT # 2; IN SUPPORT, INCORPORATE HEREIN).

IT IS PETITIONER'S POSITION THAT AN EVIDENTIARY HEARING IS APPROPRIATE, WHERE 'FUNDAMENTAL FAIRNESS' SEEMS TO HAVE BEEN VACATED, ABSENT THE PROPER AND TIMELY FILING OF THE NAMED MOTION AND SUPPLEMENTAL BRIEF-PETITION.

PETITIONER FURTHER POSITIONS, DURING THE ATTEMPTED ROBBERY AND POSSIBLE KILLER OF PETITIONER; PETITIONER YOUR MOVANT WAS PLACED UNDER CONSIDERABLE EMOTIONAL STRESS. AND ALTHOUGH PETITIONER'S ACTIONS, AFTER HE WENT INTO 'DEFENSE MODE' or 'SURVIVAL MODE' MAY HAVE BEEN EXTREMELY DISTURBING; HIS ACTIONS WERE NOT THE PRODUCT OF INSANITY; HIS ACTIONS WERE THE PRODUCT OF CONSIDERABLE EMOTIONAL STRESS; A POINT THAT PETITIONER EXPRESS TO POST-CONVICTION COUNSEL-- AND THAT, HAD PETITIONER KNOWN DEAR TO THE TRIAL, THAT THERE WAS VIDEO SURVEILLANCE OF HIS TAKING ITEMS FROM THE PERPETRATOR; PETITIONER WOULD HAVE CALLED INTO THE TRIAL, A PSYCHIATRIST AND/OR A PSYCHOLOGIST TO EXPLAIN THAT WHEN A PERSON'S LIFE IS PLACED IN JEOPARDY, HE,

OR SHE, GOES INTO DEFENSE MODE, OR SURVIVAL MODE; AND THE ACTIONS TAKEN AFTER THE FACT OF BEING VICTIMIZED, IS IN FACT, THE PRODUCT OF CONSIDERABLE EMOTIONAL STRESS; AND THAT STATE OF MIND, FALLING SHORT OF INSANITY IS A EQUAL AND OPPOSITE REACTION OF THE PERPETRATOR'S INITIAL ACTIONS. THUS, WHERE THE SURVEILLANCE VIDEO APPEARS TO SHOW A MAN IN A RATIONAL STATE OF MIND; IS DECEPTIVE TO THE VIEWER; AMSENT A SPECIALIST TO COME-FORTH AND EXPLAIN: PETITIONER'S ACTIONS WERE THE PRODUCT OF WHAT -- OR RESPONSE TO WHAT COULD HAVE HAPPENED TO HIM, MIXING FEAR, ADRENALINE, ANGER, AND STRESS, PLACING PETITIONER IN A POSITION TO USE THE OTHER SIDE OF HIS BRAIN. CONSEQUENTLY, BECAUSE PETITIONER'S AND THE DEFENSE WAS 'ALREADY SAVED' WITH THE VIDEO DURING CLOSING ARGUMENTS; THIS ENTIRE DEFENSE THEORY WAS NEVER EXPLORED.

THE POINT BEING, WITHOUT AN EVIDENTIARY HEARING; IT WILL NEVER BE KNOWN: 1) IF COUNSEL HIMSELF FAILED TO REVIEW THE VIDEO SURVEILLANCE TAPE OUT OF HIS OWN FAILURES; OR 2) WAS THE FAILURE TO REVIEW THE ENTIRE SURVEILLANCE THE RESULT OF THE STATE LOT HANTAR DISCLOSED THE ENTIRE VIDEO?

THIS QUESTION CAN ONLY BE ANSWERED AT

AN APPROPRIATE EVIDENTIARY HEARING. AND THIS QUESTION ALONE IS ENOUGH TO WARRANT AN EVIDENTIARY HEARING; SINCE THE ISSUE OF INEFFECTIVE ASSISTANCE OF COUNSEL RAISED IN THE MRS CHARLES 34 PETITION, FILED: SEPTEMBER 11, 2020, IS A QUESTION OF LAW AND FACT. SO THAT THE QUESTION BEFORE THE COURT STILL REMAINS:

(1) DID COUNSEL FAIL TO REVIEW THE SURVEILLANCE TAPE AS A RESULT OF INEFFECTIVE ASSISTANCE OF COUNSEL?

OR

(2) DID THE PROSECUTION FAIL TO DISCLOSE THE ENTIRE SURVEILLANCE TAPE, IN VIOLATION OF BRADY V. MARYLAND? [CREATING A BRADY VIOLATION].

THE QUESTIONS OF FACT ARE GLARING, AND IT WOULD BE QUITE MURKY TO ALLOW THE QUESTIONS TO STAND UNANSWERED!

THEREFORE RECONSIDERATION IS APPROPRIATE EVEN THOUGH THE POST-CONVICTION CLAIM, MIGHT APPEAR 'SUB-STANDARD' BY PETITIONER, WHO ACTIVELY SOUGHT TO SUPPLEMENT THE CLAIM; AND MOVE FOR AN EVIDENTIARY HEARING; AND EVEN REQUESTED THE PETITION BE AMENDED TO INCLUDE THE POSSIBILITY OF A BRADY VIOLATION.

BECAUSE IT STANDS TO REASON, THAT IF  
TRIAL COUNSEL WAS NOT INEFFECTIVE FOR  
FAILURE TO REVIEW A SURVEILLANCE VIDEO  
BECAUSE IT WAS INCOMPLETE AT THE TIME  
OF VIEWING [?]

THE PROSECUTION VIOLATES BRANDY V. MARYLAND  
FOR FAILURE TO DISCLOSE THE ENTIRE VIDEO  
SURVEILLANCE TAPES [?]

WHICH WAS IT?

(1) INEFFECTIVE ASSISTANCE OF COUNSEL? 2.

OR:

(2) A BRANDY VIOLATION BY THE PROSECUTION? 3.

THE ANSWER TO ONE, OR BOTH OF THESE  
QUESTIONS ARE CRITICAL TO 'DUE PROCESS OF LAW'  
IN THIS CASE. AND THE HABEAS CORPUS PROCEEDINGS  
IS APPROPRIATE FOR DOING WHAT IS REQUIRED WITH  
QUESTIONS OF LAW AND FACT, FOR RESOLUTION OF

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2. STRICKLAND V. WASHINGTON, 466 U.S. 668, 686,  
104 S.Ct. 2052, 2063 (1984); WADEN, NEVADA STATE  
PERSONAL V. LYONS, 100 NEV. 430, 432, 683 P.2d 504, 505  
(1984) (DEFICIENT PERFORMANCE AND PREJUDICE);

OR

3. BRANDY V. MARYLAND, 373 U.S. 83, 83 S.Ct. 1194,  
10 L.Ed.2d 215 (1963); KUHLER V. WHITTIER, 514 U.S. 419,  
115 S.Ct. 1555, 131 L.Ed.2d 290 (1995); STRICKLAND V.  
GREENE, 527 U.S. 263, 119 S.Ct. 1936, 144 L.Ed.2d 286  
(1999); AND: MAZZA V. WADEN, 116 NEV. 48, 67, 992 P.2d  
25, 37 (2000) (DISCLOSURE OF EXCULPATORY EVIDENCE).

INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS, LIKE THE ONE RAISED IN THE PETITIONER: PETITIONER WALT OF HABEAS CORPUS, IA. (NRS CHAPTER 34 PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION); FILED: 11 SEPTEMBER 2020; GROUNDS, IN SUPPORT, INCORPORATED HEREIN).

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PETITIONER SUBMITS, THE BENEFIT OF CONDUCTING AN APPROPRIATE EVIDENTIARY HEARING AT THIS POINT MAKES SENSE, AND WOULD SAVE THE COURT(S) ON THE FILING OF A 'SECOND, OR SUCCESSIVE PETITION'; TO ANSWER THE QUESTIONS OF FACT ON THE WRIT OF HABEAS CORPUS, SUBJUDICE.

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ADDITIONALLY, THE QUESTION TURNS TO THE PETITIONER'S ABILITY TO DEMONSTRATE HE IS ENTITLED TO RELIEF. A KEY COMPONENT OF THE BUDDEN TO DEMONSTRATE, IS THE DEVELOPMENT OF FACTS. AND AT THIS POINT, ONLY AN EVIDENTIARY HEARING CAN DO THE SAME.

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THE NEVADA SUPREME COURT HAS HELD "THAT A HABEAS CORPUS PETITIONER MUST PROVE THE ALLEGED FACTUAL ALLEGATIONS UNDERLYING HIS INEFFECTIVE-ASSISTANCE CLAIM BY A PREPONDERANCE OF THE EVIDENCE." MOLINA V. STATE, 120 NEV. 185, 192, 87 P.3d 533, 538 (2004); IA.; MEANS, SUPRA, 120 NEV. AT 1012, 1013 P.2d AT 23. FURTHERMORE, CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL ASSERTED IN A PETITION FOR POST-CONVICTION RELIEF MUST BE



SUPPORTED WITH SPECIFIC FACTUAL ALLEGATIONS, WHICH, IF TRUE, WOULD ENTITLE THE PETITIONER TO RELIEF. MARLOWE v. STATE, 100 NEV. 498, 502, 686 P.2d 222, 225 (1984): "MADE" AND "NAKED" ALLEGATIONS ARE NOT SUFFICIENT, NOR ARE THOSE BELIED AND REPELLED BY THE RECORD. ID. NEV 34, 735 (b) STATES IN RELEVANT PART: "[PETITIONER] MUST ALLEG SPECIFIC FACTS SUPPORTING THE CLAIMS IN THE PETITION [I...FAILURE TO ALLEG SPECIFIC FACTS RATHER THAN JUST CONCLUSIONS MAY CAUSE YOUR PETITION TO BE DISMISSED]." (EMPHASIS ADDED).

PETITIONER CONTENDS, THIS IS EXACTLY [WHY] HE REQUESTED HIS POST-CONVICTION LAWYER(S), IN BOTH DECEMBER 2020 AND JANUARY 2021; AND FORWARD -- WITH THE DRAFTING OF THE NAMED: MOTION FOR EVIDENTIARY HEARING AND SUPPLEMENTAL PETITION -- TO FILE THEM PROR TO THE: FRIDAY, MARCH 12, 2021 PROCEEDING ON THE NRS CHAPTER 34 PETITION, SO THAT THE COURT CAN HAVE PLENTY OF TIME TO CONSIDER THE MERITS OF THE 'SPECIFIC FACTUAL ALLEGATIONS' IN REGARD TO CONDUCTING AN EVIDENTIARY HEARING. SEE (AFFIDAVITS OF JAVAR KETCHUM; MAURY A. SINGER; AND SHERY KETCHUM; IN SUPPORT, INCORPORATED HEREIN).

COUNSEL(S) DID NOT.

AND DIDN'T EVEN ATTEMPT TO DO SO TILL THE VERY DATE OF THE HEARING ON THE WRIT: FRIDAY, MARCH 12, 2021. ID. (HEARING TRANSCRIPT, DATED: MARCH 12, 2021; IN SUPPORT, INCORPORATED HEREIN).

CONCLUSION:

PETITIONER, THE MOVANT IS ENTITLED TO GO FORWARD ON THE INSTANT MOTION FOR RECONSIDERATION; AND AN APPROPRIATE EVIDENTIARY HEARING SHOULD BE GRANTED, BASED ON THE QUESTION OF FACT, AS SETFORTH WITHIN THE NRS CHAPTER 34 PETITION, REGARDING THE VIDEO SURVEILLANCE TAPE; AND OR, BASED ON THE 'SPECIFIC FACTUAL ALLEGATIONS' AS ALLEGED AND RECONSIDERATION/REHEARING AND SETFORTH WITHIN THE MOTION FOR EVIDENTIARY HEARING; AND/OR THE SUPPLEMENTAL PETITION.

RELIEF IS WARRANTED.

DAVED: THIS 16<sup>TH</sup> DAY OF MARCH 2021.

RESPECTFULLY SUBMITTED:

Jamar Ketchum

JAMAR KETCHUM #1192727

H.D.S.P. / 7B-19

P.O. BOX 650

INDIAN SPRINGS, NEVADA

89070

WITH COUNSEL OF RECORDS:

CAROL A. MUELLER, ESQ.

BAR NO. 4703

CERTIFICATE OF SERVICE:

I, JAVAR KETCHUM, DO HEREBY SWEAR,  
AND DEPOSE, UNDER PENALTY OF PERJURY, THROUGH  
THE ASSISTANCE OF COUNSEL, I DID MAIL A TRUE  
COPY OF THE MOTION FOR RECONSIDERATION TO THE  
RESPONDENTS.

DATED: ON, OR ABOUT: MARCH 16<sup>TH</sup> 2021.

RESPECTFULLY SUBMITTED:

Javar Ketchum  
JAVAR KETCHUM #1192727  
H.D.S.P. / TB-19  
P.O. BOX 650  
INDIAN SPRINGS, NEVADA  
89070

WITH COUNSEL OF RECORD:

CRAIG A. MUELLER, ESQ.  
- NEVADA BAR NO.: 4703

DECLARATION Pursuant to:  
NRS 239B.030

I, DO HEREBY SWEAR AND DEPOSE NO OTHER  
SOCIAL SECURITY NUMBER IS IN THIS MOTION.

BY: Javar Ketchum  
JAVAR KETCHUM #1192727

AFFIDAVIT OF: JAVAR KETCHUM  
#1192727

STATE OF NEVADA )  
COUNTY OF CLARK ) SS.

I, JAVAR KETCHUM, THE ABOVE NAMED AFFIANT, DO HEREBY SWEAR AND DEPOSE, UNDER PENALTY OF PERJURY, PURSUANT TO NRS 208.165, THE FOREGOING STATEMENTS ARE TRUE AND CORRECT OF MY OWN PERSONAL KNOWLEDGE AND INFORMATION, AS FOLLOWS:

1. I AM THE ABOVE NAMED AFFIANT, ABOVE THE AGE OF TWENTY-ONE; AND OF SOUND MIND.

2. I AM PRESENTLY INCARCERATED AT HIGH DESERT STATE PRISON (H.D.S.P.); INDIAN SPRINGS, NEVADA.

3. I HAVE BEEN INCARCERATED AT H.D.S.P. PRIOR TO; AND SINCE SEPTEMBER OF 2020 THRU MARCH 12, 2021; AND TILL THIS VERY DATE, AND DO ANTICIPATE I WILL REMAIN HERE AT H.D.S.P. UNTIL OTHERWISE TRANSFERRED BY THE NEVADA DEPARTMENT OF CORRECTIONS (N.D.O.C.).

4. ON, OR AFTER THE DATE OF: SEPTEMBER 10, 2021; I WAS INFORMED BY MY MOTHER: SHERYL KETCHUM; THAT MY LAWYER OF RECORD: CRAIG A. AMMERL, ESQ.; OF THE LAW OFFICES OF CRAIG A. AMMERL & ASSOCIATES; WERE PREPARED AND PUNDED,

1.

AFTER FULL-PAYMENT (UNDISCUSSED AT THIS TIME) --  
TO FILE A TIMELY NRS CHAPTER 34 PETITION FOR  
WRIT OF HABEAS CORPUS (POST-CONVICTION); ON MY  
BEHALF.

5. I DID THEREAFTER RECEIVE NOTICE THAT  
THE NRS CHAPTER 34 PETITION WAS FILED IN A  
TIMELY MANNER; AND DID RECEIVE A COPY OF  
THE PETITION.

6. AFTER REVIEWING THE CONTENT OF THE  
PETITION, I SUBSEQUENTLY CONTACTED COUNSEL,  
MR. CRAIG A. MUELLER, ESQ., AND ASSOCIATES; AND  
EXPRESSED THAT I WAS NOT SATISFIED WITH THE  
NRS CHAPTER 34 PETITION, CONSIDERING THE  
FACT THAT I WAS 'ACTUALLY INNOCENT' OF THE  
CHARGES OF WHICH I WAS CONVICTED; SINCE I  
WAS THE PERSON ATTACKED.

7. I FURTHER EXPRESSED THAT I FELT  
BLIND-SIDED DURING THE 'CLOSING ARGUMENT'  
FOR: A) MY LAWYER'S FAILURE, OR REFUSAL  
TO REVIEW THE ENTIRE VIDEO HE RECEIVED FROM  
THE PROSECUTION; AND/OR B) THE PROSECUTION  
FAILED, OR REFUSED TO DISCLOSE THE ENTIRE  
VIDEO -- WHICH, AT ANY RATE -- MY LAWYER DID  
NOT SEE THE ENTIRE VIDEO AND THOSE KEY PARTS  
UNTIL PRESENTED DURING THE CLOSING ARGUMENTS.

8. I INFORMED MY LAWYER THAT I WOULD BE

DRAFTING, WITH THE ASSISTANCE OF LAW CLERKS AT HIGH DESERT STATE PRISON, A: MOTION FOR EVIDENTIARY; SETTING FORTH 'SPECIFIC FACTUAL ALLEGATIONS'; IN SUPPORT OF THE NRS CHAPTER 34 PETITION, PURSUANT TO NRS 34.770. ID. SEE: (WHAT IS MARKED AS EXHIBIT # 1, IN SUPPORT, INCORPORATED HEREIN; ATTACHED HERETO).

9. THE REASON I DRAFTED AND WAS ADDED IN DRAFTING THE NRS 34.770 MOTION FOR AN EVIDENTIARY HEARING, WAS BECAUSE AT THE H.D.S.P. LAW LIBRARY, I READ THE CASES OF: HARGROVE V. STATE, 686 P.2d 222 (1984); AND: MEANS V. STATE, 120 NEV. 1001, 103 P.3d 25 (2004). 1.

10. SUBSEQUENT TO THE DRAFTING OF THE: MOTION FOR EVIDENTIARY HEARING; I MAILED THE NAMED DOCUMENT TO MY MOTHER, SHERYL KETCHUM, TO HAND DELIVER THE DOCUMENT TO COUNSEL FOR FILING IN THE CASE OF: KETCHUM V. STATE, ID. CASE NUMBER: A-20-821316-W / ALSO: C-16319714-1.

11. MY MOTHER, SHERYL KETCHUM INFORMED ME THAT SHE WOULD DELIVER THIS DOCUMENT

---

1. ID. HARGROVE AND MEANS: 'SPECIFIC FACTUAL ALLEGATIONS' 'IF TRUE' ENTITLE PETITIONER TO RELIEF, SUPRA.

to: MR. CRAIG A. MUELLER, ESQ., AND THE LAW OFFICES OF CRAIG A. MUELLER AND ASSOCIATES.

12. SUBSEQUENTLY, I CONTACTED MY LAWYER, MR. CRAIG A. MUELLER, ESQ.; TO REQUEST THAT HE FILE AN AMENDED NRS CHAPTER 34 PETITION; OR THAT HE FILE A SUPPLEMENTAL PETITION ON MY BEHALF, NAMING 'SPECIFIC FACTUAL ALLEGATIONS'; AND ARGUMENTS, IN SUPPORT OF THE PETITION FILED: NRS CHAPTER 34 PETITION. ID.

13. COUNSEL INFORMED ME THAT HE WAS DEALING WITH AN ISSUE SURROUNDING THE 'CORONA-VIRUS' OR 'COVID-19'; AND THAT HE WOULD BE ABSENT FROM HIS LAW OFFICE.

14. I THEN INFORMED COUNSEL, THAT I WOULD BE DRAFTING, WITH THE ASSISTANCE OF AN IN-HOUSE LAW CLERK, A 'SUPPLEMENTAL PETITION'. ID. SEE: (WHAT IS MARKED AS EXHIBIT # 2; SUPPLEMENTAL PETITION [FIRST]; IN SUPPORT, INCORPORATED HEREIN, ATTACHED HERETO).

15. SUBSEQUENT TO THE DRAFTING OF THE 'SUPPLEMENTAL PETITION'; I MAILED THE NAMED DOCUMENT, TO MY MOTHER, SHERYL KETCHUM. ONCE RECEIVED, MY MOTHER STATED THAT SHE WOULD; THEN HAD DELIVERED THE NAMED DOCUMENT TO COUNSEL(S) OF RECORD.

4.

16. IT WAS MY BELIEF, AFTER SPEAKING WITH MY LAWYERS OF RECORD THAT THE: MOTION FOR EVIDENTIARY HEARING; AND: SUPPLEMENTAL PETITION; WOULD BE FILED BEFORE THE DISTRICT COURT JUDGE PRIOR TO THE HEARING DATE OF: 12 MARCH 2021; SO THAT THE JUDGE WOULD HAVE PLENTY OF TIME TO CONSIDER THE DOCUMENTS ALONG WITH THE MERITS OF THE: NRS CHAPTER 34 PETITION.

17. HOWEVER, MY COUNSELL(S) OF RECORD DID NOT PRESENT THE DOCUMENTS; OR ATTEMPT TO PRESENT THE DOCUMENTS UNTIL THE DATE OF: 12 MARCH 2021; THE DATE OF THE HEARING ON THE NRS CHAPTER 34 PETITION.

18. ON THE DATE OF: 12 MARCH 2021; THE JUDGE DENIED THE NRS CHAPTER 34 PETITION; AND COUNSEL'S ATTEMPTS TO FILE THE NAMED DOCUMENT(S), WAS DENIED AS WELL. IN. SEE: (HEARING OF PROCEEDINGS, DATED: FRIEDAY, MARCH 12, 2021, IN SUPPORT, INCORPORATED HEREIN).

19. I AM NOT RAISING A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL UNDER STACKLAND V. 2.

2. IN: STACKLAND V. WASHINGTON, 104 S. CT. 2052 (1984); AND RYAN V. MALTMAN, 132 S. CT. 1309 (2012); INEFFECTIVE COUNSEL IS GOOD CAUSE TO FILE A 3<sup>RD</sup>, OR SUCCESSIVE PETITION. IN. SUPRA.



WASHINGTON; AM RYAN V. MARTINEZ; AT THIS POINT; AS THIS IS NOT A SECOND, OR SUCCESSIVE NRS CHAPTER 34 PETITION; NOR GOOD CAUSE. IN

20. PETITIONER IS INSTEAD, PROVIDING FACTS TO THIS COURT; AND THE NEVADA SUPREME COURT; THAT PETITIONER; AND HIS MOTHER SHERAM KETCHUM NOT ONLY PAID COUNSEL; BUT WERE ACTIVELY WORKING WITH COUNSEL TO ENSURE THAT PETITIONER RECEIVE A FUNDAMENTALLY FAIR PROCEEDING FORTH; ON THE NRS CHAPTER 34 PETITION, IN ACCORD WITH 'DUE PROCESS OF LAW'; AND THAT PETITIONER SOUGHT TO TIMELY ADDRESS THE 'SPECIFIC FACTUAL ALLEGATIONS'; THIS, THE FIRST TIME AROUND, TO AVOID HAVING TO RAISE A 'SECOND, OR SUCCESSIVE' NRS CHAPTER 34 PETITION--ONLY TO FACE PROCEDURAL DEFAULTS AND PROCEDURAL BARS OF: NRS 34.720; NRS 34.800; AND: NRS 34.810.

21. FURTHERMORE, PETITIONER, MR. KETCHUM HAS INFORMED HIS LAWYER, THE REASON(S) HE WANTED THE DOCUMENTS FILED IN A TIMELY MANNER, WITHIN A TIMELY NRS CHAPTER 34 PETITION; IS BECAUSE YOUR AGENT HAS EVERY INTENTION TO PERSUE FEDERAL CONSTITUTIONAL REVIEW; ONCE THE STATE COURT PROCEEDINGS OF CONSTITUTIONAL CLAIMS WERE PROPERLY EXHAUSTED BEFORE THE NEVADA SUPREME COURT.

4.

22. AFFIANT MAKES THIS AFFIDAVIT IN GOOD FAITH; AND NOT FOR THE PURPOSE OF MISGUIDING.

23. THE CAUSE OF PETITIONER'S 'SPECIFIC FACTUAL ALLEGATIONS', AS SET FORTH WITHIN THE: MOTION FOR EVIDENTIARY HEARING AND THE SUPPLEMENTAL PETITION; IS THAT PETITIONER WAS BLIND-SIDED DURING THE TRIAL, WHEN THE PROSECUTION PRESENTED THE VIDEO WITH SCENES THAT HIS TRIAL LAWYER SAID THAT HE DID NOT SEE; OR THAT HE WAS UNAWARE OF.

24. AFFIANT STATES THAT THIS NOT KNOWING, WHETHER COUNSEL DID NOT VIEW THE ENTIRE VIDEO; OR WHETHER, OR THE PROSECUTION DID NOT PROVIDE THE ENTIRE VIDEO; IMPACTED AND ADVERSELY EFFECTED THE ENTIRE DEFENSE THEORY OF THE CASE -- FROM INVESTIGATION, TO PLANNING, TO PREPARING, AND PRESENTATION OF ENTIRE DEFENSE THEORY.

25. AFFIANT STATES HAD HE KNOWN THERE WAS ADDITIONAL VIDEO FOOTAGE INCULCATING HIS ACTIONS; AFTER THE FACT THAT HE WAS ATTACKED FIRST -- AFFIANT WOULD HAVE REQUESTED AN EXPERT, SPECIALIST BE BROUGHT INTO THE COURTROOM TO EXPLAIN THAT WHEN A VICTIM LIKE AFFIANT IS ATTACKED; AND IS FORCED TO DEFEND HIS LIFE, OR IS FORCED INTO SURVIVAL MODE; THE VICTIM THEN USES A DIFFERENT SIDE OF THE BRAIN.

26. AFFIANT HAS NEVER STATED THAT HE WAS INSANE AT THE TIME OF THE KILLING; NOT HAS AFFIANT ATTEMPTED TO PUT FORTH AN INSANITY DEFENSE THEORY; INSTEAD, AFFIANT HAS STATED AND SPECIFICALLY ALLEGES HERE IN, ONCE HE WAS FORCED TO FIGHT FOR HIS LIFE; WAS IN FEAR OF DYING AND BEING KILLED BY THIS MAN, THIS ATTACKER; THIS KNOWN PERPETRATOR WITH PRIOR ATTACKS HE WAS FORCED INTO DEFENSE MODE; INTO SURVIVAL MODE; AND THAT EVERYTHING THAT TOOK PLACE AFTER THE DECEASED ATTACKED HIM; WAS AN EQUAL AND OPPOSITE REACTION.

27. AFFIANT STATES FURTHER, INSANITY IS A STATE OF MIND THAT IS EVIDENT THROUGH PROCESS AND OVER A PERIOD OF TIME. WHERE AS, WHAT OCCURED WITH AFFIANT TOOK PLACE ONLY IN ONE MOMENT IN TIME. AND THAT HAD AFFIANT NOT BEEN THE VICTIM OF AN ATTACK, AFFIANT WOULD NEVER HAVE BEEN FORCED INTO SURVIVAL MODE OR DEFENSE MODE.

28. AFFIANT STATES HE WAS THE VICTIM AND THE DECEASED PUT THIS ENTIRE SITUATION IN MOTION; AS HE HAD NO PRIOR DECISIONS -- WHICH AFFIANT EXPRESSED TO HIS TRIAL LAWYER; AND HABETS CORPUS COUNSELLS MOST RECENTLY.

29. AFFIANT FURTHER EXPRESSED TO HIS LAWYER, THE REASON HE WANTED THE MOTION FOR EVIDENTIARY

HEARING FILED, IS BECAUSE THE 'SPECIFIC FACTUAL ALLEGATIONS' WERE SET FORTH IN WAIVER OF THE ATTORNEY CLIENT PRIVILEGE; WHEREAS PETITIONER SPECIFICALLY ALLEGES 'HE REQUESTED HIS LAWYER FILE: A MOTION FOR DISCOVERY PRIOR TO TRIAL; REQUESTING THE ENTIRE SCOPE OF DISCOVERY IN THE POSSESSION OF THE PROSECUTION -- SO THAT, IF THE PROSECUTION DID NOT GIVE DEFENSE COUNSEL AND THE DEFENSE THE ENTIRE VIDEO / SURVEILLANCE VIDEO; THIS FAILURE MIGHT HAVE CONSTITUTED A CONSTITUTIONAL VIOLATION UNDER BRANCH MARYLAND, 373 U.S. 83 (1963); IF, NOT A CONSTITUTIONAL VIOLATION FOR INEFFECTIVE ASSISTANCE OF COUNSEL, UNDER: STICKLAND V. WASHINGTON, 104 S.Ct. 2052 (1984).

30. AFFIDAVIT STATES HE IS AWARE HE HAS ONLY ONE OPPORTUNITY TO FILE A TIMELY: NRS CHAPTER NRS CHAPTER 34 PETITION; AND THAT HE AND HIS MOTHER, AND THE INMATE LAW CLERK ACTIVELY GOT INVOLVED IN THE CASE TO ENSURE THAT THE HABEAS CORPUS PROCEEDING WAS A MEANINGFUL ONE; SINCE PETITIONER WAS MADE AWARE THAT HE WAS NOT ENTITLED TO THE 'REASONABLE EFFECTIVE ASSISTANCE OF COUNSEL'; DURING HABEAS CORPUS PROCEEDINGS. 3.

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3. IN. COLEMAN V. THOMPSON

9.

31. AFFIANT NEVER ACQUIESCED, OR AGREED FOR HIS POST-CONVICTION COUNSEL NOT TO FILE THE MOTION FOR EVIDENTIARY HEARING; OR TO FOREGO THE FILING IN OPEN COURT OF THE SUPPLEMENTAL PETITION, AND IN FACT URGED, AND DELIVERED HIS LAWYER(S) WOULD DO SO PRIOR TO THE HEARING DATE OF: FRIDAY, MARCH 12<sup>TH</sup>, 2021.

32. AFFIANT FURTHER BELIEVES, INDEPENDENT OF THE MOTION FOR EVIDENTIARY HEARING AND THE SUPPLEMENTAL PETITION BEING FILED; THE CHANCE OF THE EVIDENTIARY HEARING BEING GRANTED WAS LESS-LIKELY, AND IT IS FOR THIS REASON, PETITIONER/AFFIANT AND HIS MOTHER DELIVERED THE NAMED DOCUMENTS TO COUNSEL; TO BE FILED BEFORE THE COURT IN A TIMELY MANNER, TO BE PROPERLY REVIEWED.

33. AFFIANT'S POSITION IS THAT HE SENT THE NAMED DOCUMENTS TO HIS MOTHER; TO GIVE TO HIS LAWYER; TO FILE BEFORE THE COURT, LONG BEFORE THE ATTEMPT MADE: MARCH, 12, 2021; AND IT IS FOR THIS REASON HE HAS ATTACHED THE MOTION AND SUPPLEMENT AS EXHIBITS #1 AND 2; IN A MOTION FOR RECONSIDERATION/OR IN THE ALTERNATIVE A MOTION FOR REHEARING; BEFORE THE SAME IS PASSED ON TO THE NEVADA SUPREME COURT FOR REVIEW. OR, BEFORE HIS HAVING TO FILE A 'SECOND, OR SUCCESSIVE PETITION, UNDER NRS 34.810.

34. AFFIANT FURTHER STATES THE FILING OF THE INSTANT MOTION FOR RECONSIDERATION/REHEARING IS NOT FOR PURPOSES OF DELAY; WHEN IN FACT, HAD POST-CONVICTION COUNSEL FILED THE NAMED DOCUMENTS IN A TIMELY MANNER, AS REQUESTED BY AFFIANT; AND SHERYL KETCHUM THERE WOULD NOW, BE NO NEED TO DO SO.

35. THE MOTION FOR RECONSIDERATION/REHEARING IS MADE IN GOOD FAITH.

36. AFFIANT IS WILLING TO ENTER A COURT OF LAW; AND TAKE THE WITNESS STAND AND TESTIFY TO THE TRUTH OF THIS AFFIDAVIT UNDER SWORN OATH.

37. FURTHER AFFIANT SAYS NOT.

DATED: THIS 16<sup>TH</sup> DAY OF MARCH, 2021.

SIGNED BY:

Sheryl Ketchum  
SAVAL KETCHUM #1192727

H.D.S.P. / T.D-19

P.O. BOX 850

INADAN SPRINGS, NEVADA  
89070

PURSUANT TO: NRS 239B.030

AFFIDAVIT OF: SHERRI KETCHUM-ALBY

STATE OF NEVADA )  
COUNTY OF CLARK ) ss

I, SHERRI KETCHUM, THE ABOVE NAMED AFFIANT, DO HEREBY SWEAR, AND DEPOSE UNDER PENALTY OF PERJURY, THE FOREGOING STATEMENTS ARE TRUE AND CORRECT, OF MY OWN PERSONAL KNOWLEDGE AND INFORMATION, AS FOLLOWS:

1. I AM THE ABOVE NAMED AFFIANT, ABOVE THE AGE OF TWENTY-ONE (21); AND OF SOUND MIND.

2. I MAKE THIS AFFIDAVIT IN GOOD FAITH; AND NOT FOR THE PURPOSE OF MISGUIDING THIS COURT.

3. I AM THE BIOLOGICAL MOTHER OF JAVAR KETCHUM; WHO IS PRESENTLY INCARCERATED AT HIGH DESERT STATE PRISON (H.D.S.P.); UNDER INMATE NUMBER: 1192727.

4. I DID HERE, AT THE AMOUNT UNDISCLOSED AT THIS TIME; THE LAW OFFICE OF CRAIG MUELLER AND ASSOCIATES -- COUNSEL IN PARTICULAR: MR. CRAIG MUELLER, ESQ. TO REPRESENT MY SON, JAVAR KETCHUM IN POST-CONVICTION PROCEEDINGS; AND THE FILING OF A NRS CHAPTER 34 PETITION FOR WRIT OF HABEAS CORPUS; AND THE APPEAL THEREOF.

5. ONCE THE NRS CHAPTER 34 PETITION WAS DRAFTED; I WAS NOT SATISFIED WITH THE DOCUMENT -- CONSIDERING THE FACT THAT IT DID

1.

NOT SET FORTH THE TYPES OF 'SPECIFIC FACTUAL ALLEGATIONS' REQUIRED TO ESTABLISH THE RELIEF PRESCRIBED BY LAW; AS I AM A LEGAL ASSISTANT; AND I AM AWARE OF THE NEED FOR 'SPECIFIC FACTUAL ALLEGATIONS' IN POST-CONVICTION RELIEF PROCEEDINGS. <sup>1</sup>

6. THEREAFTER, I DID SPEAK WITH MY SON ("JAVAR"), ON THE MATTER; AND HE DID STATE THAT HE WOULD CONTACT HIS LAWYER, MR. CRAIG MUELLER, ESQ., ON THE MATTER.

7. SUBSEQUENTLY, MY SON/JAVAR DID INFORM ME THAT HE SPOKE WITH LAW CLERKS AT HIGH DESERT STATE PRISON, AND THERE WERE A FEW WILLING TO ASSIST HIM IN DRAFTING DOCUMENTS TO PRESENT TO HIS LAWYER/MR. MUELLER.

8. I INFORMED JAVAR THAT, ONCE THE DOCUMENTS WERE DRAFTED, TO MAIL THEM TO ME; AND I WOULD TAKE A PRO-ACTIVE APPROACH AND DELIVER THE DOCUMENTS TO COUNSEL AT HIS OFFICE.

9. SUBSEQUENTLY, I DID DELIVER PERSONALLY TO MR. CRAIG MUELLER THE FOLLOWING:

(1) MOTION FOR EVIDENTIARY HEARING  
PURSUANT TO: NRS 34.770

AND:

1. ID. HARGROVE V. STATE, 686 P.2d 222 (1984); AND:  
MEANS V. STATE, 120 NEV. 1001, 103 P.3d 25 (2004).

2.



IS A REASONABLE PROBABILITY THE JUDGE MAY HAVE GRANTED THAT AN APPROPRIATE EVIDENTIARY HEARING BE CONDUCTED.

14. I AM NOT ATTACKING MR. MUELLER AS BEING ~~INTELLIGENT~~ AS A RESULT OF THIS AFFIDAVIT. I AM EXPLAINING TO THIS COURT, ON BEHALF OF MY SON'S INTERESTS, THE ACTIONS I ACTIVELY TOOK TO ENSURE HE/COUNSEL RECEIVED THE NAMED DOCUMENTS IN A TIMELY MANNER.

15. I AM WILLING TO ENTER A COURT OF LAW'S AND TESTIFY THAT THE ABOVE IS TRUE AND CORRECT OF MY OWN PERSONAL KNOWLEDGE.

16. FURTHER AFFIANT SATH NOT.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021.

SIGNED BY:

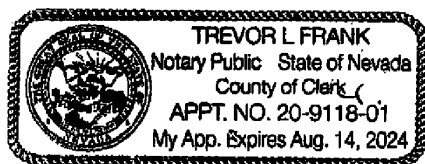
Sheryl Ketchum-Acey  
SHERYL KETCHUM-ACEY

NOTARY PUBLIC

I, Trevor Frank, A NOTARY PUBLIC,  
NOTARY PUBLIC

IN AND FOR THE STATE OF NEVADA ; COUNTY OF CLARK LAS VEGAS, NEVADA ; DO HEREBY AFFIX AND PLACE MY SIGNATURE AND SEAL UPON THIS DOCUMENT AS WITNESS OF SIGNATURE ABOVE.  
SEAL:

DATED: 3-28-21



(2) SUPPLEMENTAL PETITION  
(FIRST)

1A. PETITIONER'S SUPPLEMENTAL BRIEF IN SUPPORT OF PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION).

10. WHEN I DELIVERED THESE NAMED DOCUMENTS, IT WAS MY UNDERSTANDING THAT COUNSEL(S) WOULD FILE THESE NAMED DOCUMENTS IN A TIMELY MANNER, SO THAT THE DISTRICT COURT JUDGE COULD IN FACT, REVIEW THEM, PROR TO THE RULING ON THE MERITS OF THE "RICKET" NRS CHAPTER 34 PETITION.

11. I FELT COMPLETELY DAMAGED, HOOBUNKED, AND DISAPPOINTED, WHEN THE REPRESENTING LAWYER ON THE DATE OF: MARCH, 12<sup>TH</sup>, 2021 ATTEMPTED TO THEN FILE THE NAMED DOCUMENTS ON BEHALF OF MY SON; WHEN HE COULD HAVE FILED THE NAMED DOCUMENTS MONTHS IN ADVANCE.

12. I BELIEVE THAT THE DELAY IN FILING THE DOCUMENTS CONTRIBUTED TO THE JUDGE HAVING DENIED THE NRS CHAPTER 34 PETITION; ABSENT AN APPROPRIATE EVIDENTIARY HEARING.

13. I BELIEVE THAT HAD THE JUDGE RECEIVED THE NAMED DOCUMENTS PROR TO THE DATE OF THE HEARING OF THE NRS CHAPTER 34 PETITION; THERE

AFFIDAVIT OF: MAURY A. SINGER  
#26443

STATE OF NEVADA )  
COUNTY OF CLARK ) SS.

I, MAURY A. SINGER, DO HEREBY SWEAR AND DEPOSE, UNDER PENALTY OF PERJURY, PURSUANT TO: NRS 208.165, THAT I AM AWARE OF THE STATEMENTS SET FORTH WITHIN THIS AFFIDAVIT, OF MY OWN PERSONAL KNOWLEDGE AND INFORMATION, AS FOLLOWS:

1. I AM PRESENTLY INCARCERATED AT HIGH DESERT STATE PRISON (H.D.S.P.); OF SOUND MIND; ABOVE THE AGE OF TWENTY-ONE (21).

2. I WAS INCARCERATED AT H.D.S.P. FROM THE DATES OF: 1 SEPTEMBER 2020; THRU MARCH 15, 2021; AND TILL THIS VERY DATE, I REMAIN INCARCERATED AT HIGH DESERT STATE PRISON.

3. I AM INCARCERATED IN UNIT-7AB WITH INMATE: JAVAR KETCHUM #1192727; DEFENDANT IN CASE NUMBER: A-20-821316-W/C-163197141; AND DID SPEAK WITH JAVAR KETCHUM ON ASSISTING HIM IN DRAFTING DOCUMENTS - TO PROVIDE TO HIS LAWYER.

4. I DID SPEAK WITH JAVAR KETCHUM'S MOTHER: SHERAY KETCHUM - SUBSEQUENT TO HAVING SPOKE WITH JAVAR KETCHUM. AND INFORMED "SHERAY" THAT I WOULD ASSIST HER ~~SON~~ WITH DRAFTING DOCUMENTS TO AID WITH THE CASE; SINCE COUNSEL OF RECORD DID NOT, OR WAS NOT WILLING TO DRAFT AND FILE THESE DOCUMENTS.

5. SUBSEQUENTLY, I AIDED AND ASSISTED JAVAR KETCHUM, IN DRAFTING:

A. MOTION FOR EVIDENTIARY  
HEARING

PURSUANT TO: NRS 34.770

AND:

B. SUPPLEMENTAL PETITION  
(FIRST)

ID. PETITIONER'S SUPPLEMENTAL BRIEF IN SUPPORT OF PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) [FIRST SUPPLEMENTAL.

6. THE REASON THAT I ASSISTED MR. KETCHUM'S IN DRAFTING THE NAMED "MOTION" AND "SUPPLEMENT"; IS BECAUSE MR. KETCHUM EXPRESSED THAT HE WAS DISSATISFIED WITH THE PETITION FOR WRIT OF HABEAS CORPUS, WHICH WAS DRAFTED BY COUNSEL(S) OF RECORD; INCLUDING,

BUT NOT LIMITED TO: CRAIG A. MUELLER, ESQ.,  
NEVADA BAR NO. 4703; ~~DE~~: CRAIG MUELLER &  
ASSOCIATES, 723 S. SEVENTH STREET, LAS VEGAS,  
NV 89101 / OFFICE 702.382-1200.

7. DEFENDANT / MR. KETCHUM EXPRESSED THAT  
HIS LAWYER FAILED, OR REFUSED, OR OTHERWISE  
WOULD NOT ASSIST HIM IN MAKING, OR DRAFTING:  
SPECIFIC FACTUAL ALLEGATIONS 'IF TRUE' WOULD  
ENTITLE PETITIONER "MR. KETCHUM" TO RELIEF  
AND A NEW TRIAL.

8. AS A RESULT: PETITIONER / MR. KETCHUM,  
WITH MY ASSISTANCE DRAFTED A: MOTION FOR  
EVIDENTIARY HEARING; SETTING FOR THE TYPES OF:  
SPECIFIC FACTUAL ALLEGATIONS REQUIRED BY LAW  
TO RECEIVE AN EVIDENTIARY HEARING. ID. (MOTION FOR  
EVIDENTIARY HEARING; MARKED AS EXHIBIT # 1;  
IN SUPPORT, INCORPORATED HEREIN). 1.

9. FURTHERMORE, PETITIONER KETCHUM'S EXPRESSIONS  
THAT COUNSEL(S) OF RECORD WAS POSSIBLY SICK  
WITH COVID; AND THAT HE WAS UNABLE TO AID  
IN FURTHER PREPARATION OF THE CASE; WHICH PROMPTED  
PROMPTED MR. KETCHUM TO REQUEST THE ASSISTANCE  
OF NAMED ATTORNEY TO ALSO ASSIST PETITIONER IN  
DRAFTING A SUPPLEMENTAL PETITION, IN ORDER TO  
SET FORTH 'SPECIFIC FACTUAL ALLEGATIONS'; AND

SEE: HARGROVE V. STATE, 686 P.2d 222 (1984); AND:  
MEANS V. STATE, 120 NEV. 1001, 103 P.2d 25 (2004).

ARGUMENTS RELATIVE TO PETITIONER'S PERSPECTIVE OF HOW TO LEGALLY AND FACTUALLY DEFEND AGAINST THE CASE OF THE PROSECUTION.

10. SUBSEQUENT TO THE DRAFTING OF BOTH THE NAMES: "MOTION" AND "SUPPLEMENTAL PETITION" I SPOKE WITH SHERAH KETCHUM, WHO STATED SHE WOULD BE DELIVERING THE DOCUMENTS TO COUNSEL FOR FILING IN THE DISTRICT COURT.

11. BOTH THE NAMES: "MOTION" AND "SUPPLEMENTAL" WERE DRAFTED MONTHS BEFORE THE HEARING DATE OF THE NRS CHAPTER 34 PETITION; HELD: FRIDAY, MARCH 12, 2021.

12. I MAKE THIS AFFIDAVIT IN GOOD FAITH; AND NOT FOR THE PURPOSE OF MISGUIDING THE COURT -- AS I AM WILLING TO BE DEPOSED BY DEPOSITION; OR TO ENTER THE COURTROOM TO TESTIFY THAT THE SAME IS TRUE.

13. FURTHER AFFIANT SATH NOT.

DATED: THIS 15 DAY OF MARCH, 2021.

SIGNED BY:

MAURICE A. SINGER #26443

H.D.S.P. / 7A-16

P.O. BOX 650

INDIAN SPRINGS, NEVADA

89070

PURSUANT TO: NRS 239A.030

EXHIBIT # 1  
[ MOTION FOR EVIDENTIARY HEARING ]

SAVAR E. KETCHUM #1192727  
H.D.S.D. / 7B-19  
P.O. Box 650  
INDIAN SPRINGS, NEVADA  
89070

DISTRICT COURT  
CLARK COUNTY, NEVADA

SAVAR E. KETCHUM,  
PETITIONER,

CASE No.: C-16-319714-1  
DEPT. No.: XVII

v.

STATE OF NEVADA,  
RESPONDENT.

MOTION FOR EVIDENTIARY  
HEARING  
PURSUANT TO: NRS 34.770

COMES NOW, PETITIONER, SAVAR E. KETCHUM  
IN HIS PROPER PERSON; AND FILES THE INSTANT:  
MOTION FOR EVIDENTIARY HEARING, PURSUANT TO:  
NRS 34.770.

THIS MOTION IS MADE IN GOOD FAITH; AND  
IS FURTHER MADE AND BASED UPON ALL THE CLAIMS  
OF INEFFECTIVE ASSISTANCE OF COUNSEL, AS SET  
FORTH IN THE POST-CONVICTION PETITION FOR WRIT OF  
HABEAS CORPUS; AS WELL AS THE SPECIFIC FACTUAL



ALLEGATIONS AS SET FORTH HEREIN; AS WELL AS ALL AND  
ALL ORAL ARGUMENTS AT THE TIME OF HEARING, AS  
DEEMED NECESSARY BY THIS HONORABLE COURT.

DATED: THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2020.

RESPECTFULLY SUBMITTED:

JAVAR E. KETCHUM #1192727  
H.D.S.P. / TB-19  
P.O. BOX 650  
INDEPENDENCE, NEVADA  
89070

2.

# 1. STATEMENT OF THE CASE:

PETITIONER WAS INDICTED SEPTEMBER 25, 2016; ON CHARGES OF SHOOTING: EZEKIEL F. DAVIS; WHILE AT TOP NOTCH APPAREL (STORE); LOCATED AT THE 4200 BLOCK OF SOUTH DECATUR BOULEVARD.

PETITIONER WAS CHARGED BY THE STATE OF NEVADA OF FIVE COUNTS IN THE INDICTMENT; TOGETHER WITH CO-DEFENDANTS AISHINE BERNARD, RODERICK VINCENT AND MARLO CHILES AS FOLLOWS: ONE COUNT OF MURDER WITH USE OF A DEADLY WEAPON; ONE COUNT OF ROBBERY WITH USE OF A DEADLY WEAPON; AND THREE COUNTS OF ACCESSORY TO MURDER. PETITIONER WAS ONLY CHARGED IN THE FIRST TWO COUNTS OF THE INDICTMENT.

PETITIONER'S JURY TRIAL BEGAN ON: MAY 23, 2017.

THE JURY RETURNED A VERDICT OF GUILTY AS TO BOTH COUNTS OF: MAY 24, 2017.

PETITIONER'S JUDGEMENT OF CONVICTION WAS FILED: MAY 5, 2018.

PETITIONER WAS SENTENCED TO: TO LIFE WITH THE POSSIBILITY OF PAROLE AFTER TWENTY (20) YEARS; AS TO COUNT-I: MURDER.

PETITIONER WAS SENTENCED TO: A MAXIMUM OF TWO HUNDRED AND FORTY (240) MONTHS; WITH A MAXIMUM OF ONE HUNDRED AND TWENTY (120) MONTHS\*, WITH A MINIMUM PAROLE ELIGIBILITY OF FORTY-EIGHT (48) MONTHS FOR THE \* COUNT II CONSECUTIVE TO COUNT I.

DEADLY WEAPON ENHANCEMENT -- CONCURRENT TO WEST-I.  
A TIMELY NOTICE OF APPEAL WAS FILED: FEBRUARY 6,  
2018.

APPELLATE'S TRIAL COUNSEL CONTINUED HIS REPRESENTATION ON DIRECT APPEAL.

PETITIONER'S DIRECT APPEAL WAS DENIED: SEPTEMBER  
12, 2019.

PETITIONER FILED A TIMELY: NRS CHAPTER 34  
PETITION FOR WRIT OF HABEAS CORPUS; WITH THE  
ASSISTANCE OF RETAINED COUNSEL: SEPTEMBER 11, 2020.

2. STATEMENT OF THE FACTS:  
[RELEVANT FACTS HEREIN]

TRIAL COUNSEL SOUGHT DISCOVERY, AND INFORMED CHIEF DEPUTY DISTRICT ATTORNEY MARC DIGIACOMO THAT HE WANTED TO VIEW THE ORIGINAL SURV VIDEO FROM THE INCIDENT IN QUESTION.

TRIAL COUNSEL VIEWED THE ORIGINAL SURV VIDEO; SURVEILLANCE IN POSSESSION OF THE LUMPA: FEBRUARY 16, 2017.

THE ORIGINAL SURVEILLANCE VIDEO WAS IN EVIDENCE IN THE EVIDENCE VAULT, ONLY ACCESSIBLE BY LAW ENFORCEMENT.

TRIAL COUNSEL WAS PRESENTED THE VIDEO FOR REVIEW BY: LUMPA DETECTIVE BURN AND CHIEF DEPUTY D.A. DIGIACOMO -- IN THE GRAND JURY ROOM.

TRIAL COUNSEL HAD CONTROL OF THE VIDEO WHILE IT WAS PLAYED; AND LAW ENFORCEMENT PERSONNEL CONTROLLED THE SURVEILLANCE VIDEO.

TRIAL COUNSEL WAS ONLY SHOWN PARTS OF THE VIDEO.

DURING THE TRIAL, THE VIDEO WAS PLACED INTO EVIDENCE: THAT WHICH WAS REVIEWED BY COUNSEL IN THE GRAND JURY ROOM.

HOWEVER, TWO ADDITIONAL SEGMENTS, WHICH COUNSEL ADMITTED HE HAD NOT SEEN WERE PRESENTED DURING THE STATE'S REBUTTAL -- TWO SEGMENTS WHICH WERE ONLY KNOWN TO COUNSEL DURING CLOSING ARGUMENTS. IN DETAIL FOR LIST OF TABS - POST-CONVERTED; FILES: SEPTEMBER 11, 2020 (IN SUPPORT, IN CORPUS HONORIS).

3. SPECIFIC FACTUAL ALLEGATIONS  
IN SUPPORT OF  
MOTION FOR EVIDENTIARY HEARING

1. PETITIONER SPECIFICALLY ALLEGES HE WENT TO TRIAL IN THE INSTANT CASE.

2. PETITIONER SPECIFICALLY ALLEGES HE WAS REPRESENTED DURING THE TRIAL PROCEEDINGS BY COUNSEL OF RECORD: NICHOLAS M. WOOLDRIDGE.

3. PETITIONER SPECIFICALLY ALLEGES HE INFORMED HIS LAWYER NICHOLAS M. WOOLDRIDGE, ESQ. THAT HE WAS 'ACTUALLY INNOCENT' OF ALL THE CHARGES STEMMING FROM THE KILLING OF: MR. EZEKIEL F. DAVIS.

4. PETITIONER SPECIFICALLY ALLEGES HE INFORMED HIS LAWYER NICHOLAS M. WOOLDRIDGE ("WOOLDRIDGE"); THAT HE WAS 'ACTUALLY INNOCENT' OF: MURDER WITH A DEADLY WEAPON AND ROBBERY WITH A DEADLY WEAPON.

5. PETITIONER SPECIFICALLY ALLEGES HE REQUESTED HIS COUNSEL OF RECORD TO FILE A: MOTION FOR DISCOVERY, PRIOR TO THE TRIAL PROCEEDINGS, IN ORDER TO ATTAIN AND HAS ALL EXCULPATORY EVIDENCE IN POSSESSION OF THE PROSECUTION; IN ACCORD WITH: MADAM V. MADAM, 373 U.S. 83, 87 (1963).

6. PETITIONER SPECIFICALLY ALLEGES, THE REASON HE REQUESTED COUNSEL FILE A: MOTION FOR

DISCOVERY, UNDER BRADY V. MARYLAND, WAS TO OBTAIN ANY AND ALL VIDEO EVIDENCE; WHICH THE PROSECUTION MAY HAVE ACQUIRED FROM THE/ OR ANY SURVEILLANCE CAMERAS WHICH MIGHT HAVE BEEN COLLECTED BY THE LAW ENFORCEMENT INVESTIGATORS; IN PREPARATION FOR THE UPCOMING TRIAL.

7. PETITIONER SPECIFICALLY ALLEGES HIS LAWYER ASKED: "HOW DO YOU KNOW ABOUT BRADY V. MARYLAND?" TO WHICH PETITIONER SPECIFICALLY ALLEGES HE INFORMED HIS COUNSEL AS I MENTIONED IN THE COUNTY JAIL TOLD PETITIONER TO MAKE SURE IF HE DIDN'T ASK HIS LAWYER FOR ANYTHING ELSE; THAT HE ASK FOR DISCOVERY; AND THE WAY TO GET DISCOVERY WAS BY A 'MOTION FOR DISCOVERY' UNDER BRADY V. MARYLAND, ET AL.

8. PETITIONER SPECIFICALLY ALLEGES HIS COUNSEL OF RECORD SAID THAT HE WOULD DEFEND SEEK DISCOVERY AS REQUESTED. AND FURTHER STATED THAT HE (COUNSEL), WOULD BE STEADY ASK ANY AND ALL VIDEO OF THE INCIDENT, IF ANY VIDEO EXISTED.

9. PETITIONER SPECIFICALLY ALLEGES, SUBSEQUENT TO THE CONVERSATION ABOUT THE DISCOVERY; HIS COUNSEL OF RECORD INFORMED PETITIONER, ON, OR ABOUT THE DATE OF: 2/16/

2017; HE (COUNSEL), HAD IN FACT REVIEWED THE ORIGINAL SWAN VIDEO FROM THE INCIDENT IN QUESTION; AND THAT HE (COUNSEL) DID NOT SEE ANY EVIDENCE OF THE SHOOTING.

10. PETITIONER SPECIFICALLY ALLEGES HE ASKED COUNSEL DID THERE EXIST ANYMORE VIDEO FOOTAGE OF THE INCIDENT. TO WH: PETITIONER SPECIFICALLY ALLEGES HIS COUNSEL OF RECORD ANSWERED: NO. AND FURTHER STATES: NOT THAT I SAW.

11. PETITIONER SPECIFICALLY ALLEGES HE ASKED HIS LAW ARE YOU SURE? TO WH: COUNSEL EXPRESSED, AS YOU ARE AWARE. UNDER BRADY V. RAYMOND, YOU ARE ENTITLED TO SUCH RELEVANT MATERIAL; I MADE THE SPECIFIC REQUEST FOR THE VIDEO FOOTAGE AND THAT IS WHAT I WAS GIVEN.

12. PETITIONER SPECIFICALLY ALLEGES HIS COUNSEL, MR. WOODBRIDGE NEVER INFORMED HIM THAT HE DID NOT FILE: THE MOTION FOR DISCOVERY.

13. PETITIONER SPECIFICALLY ALLEGES, AT ALL TIMES RELEVANT PRIMA FACIE TO TOTAL; DURING THE TOTAL; AND AT THE CLOSING ARGUMENTS STAGE OF THE PROCEEDINGS; HE WAS UNDER

THE IMPRESSION THAT HIS LAWYER HAD IN FACT  
FILED THE MOTION FOR DISCOVERY.

14. PETITIONER SPECIFICALLY ALLEGES, HE  
WAS TAILED BY COMPUCE AND ABSOLUTE  
SURPRISE, WHEN THE PROSECUTOR, DURING  
THE CLOSING ARGUMENT PRESENTED THE JURY  
WITH: 'TWO (2) ALLEGED SEGMENTS OF SUR-  
VILLANCE' THAT TRAIL COUNSEL ADMITTED  
TO PETITIONER THAT HE DID NOT SEE. ID.

15. PETITIONER SPECIFICALLY ALLEGES  
THAT HE ASKED HIS LAWYER: "WHERE DID THAT  
FOOTAGE COME FROM?" TO WHICH COUNSEL SEEMED  
'CONFUSED' AND 'DISCOURAGED'. ID.

16. PETITIONER SPECIFICALLY ALLEGES, HE  
REQUESTED HIS LAWYER TO ASK AN OBJECTION  
TO THE TWO (2) SEGMENTS BEING GIVEN TO THE  
JURY AND ARGUE THAT THE TWO SEGMENTS HAD  
BEEN WITHHELD IN VIOLATION OF THE MOTION  
FOR DISCOVERY.

HOWEVER, TRAIL COUNSEL, MR. WOOLARD  
FAILED: OR REFUSED TO OBJECT.

17. PETITIONER SPECIFICALLY ALLEGES HE  
ASKED HIS LAWYER, WHY? DIDN'T YOU DO A  
PROPER AND ADEQUATE PRE TRIAL INVESTIGATION  
TO THE DEGREE OF VIEWING THE ENTIRE / OR  
ALL SEGMENTS OF THE SWAN VIDEO OR VIDEOS



IF THERE WAS MORE THAN ONE. TO WIT: PETITIONER SPECIFICALLY ALLEGES TRIAL COUNSEL STATES: THE VIDEO WAS IN EVIDENCE AT THE EVIDENCE VAULT AND COULD ONLY BE ACCESSSED BY LAW ENFORCEMENT.

18. PETITIONER SPECIFICALLY ALLEGES, AT THIS POINT HE HAD NOW BECOME CONFUSED, AND DIDN'T KNOW WHETHER THE TWO(2) SEGMENTS OF THE VIDEO HAD BEEN UNKNOWN TO COUNSEL: 1) BECAUSE THE PROSECUTOR WITHHELD THE SPECIFIC RAAC MATERIAL; 2) COUNSEL FAILED, OR REFUSED TO REVIEW THE ENTIRE VIDEO; 3) COUNSEL FAILED, OR REFUSED TO PERFORM PROPER AND ADEQUATE PRETRIAL INVESTIGATION, TO THE DEGREE OF DETERMINING THERE WAS / WERE TWO(2) ADDITIONAL SEGMENTS OF THE VIDEO TO BE SEEN; OR 4) IF THE LAW ENFORCEMENT PERSONNEL IN CHARGE OF THE SURVEILLANCE VIDEO INTENTIONALLY OR INADVERTENTLY ~~OR~~ OTHERWISE WITHHELD THE TWO(2) SEGMENTS OF THE VIDEO TAPE RECORDING SPECIFICALLY FOR THE PURPOSE OF GAINING AN ADVANTAGE OVER THE DEFENSE DURING THE TRIAL PROCEEDINGS

19. PETITIONER SPECIFICALLY ALLEGES, HE STILL IS UNCERTAIN WHAT EXACTLY OCCURRED

DURING THE PRE-TRIAL AND TRIAL STAGE, WHICH LEAD TO THE TWO (2) SEGMENTS OF THE VIDEO BEING WITH HELD TELL CLOSING ARGUMENT; AND THAT AN EVIDENTIARY HEARING IS APPROPRIATE, SO THAT COUNSEL CAN TAKE THE WITNESS STAND AND EXPLAIN: 1) WHY HE DIDN'T FILE THE MOTION FOR DISCOVERY AS REQUESTED 2) EXPLAIN WHY HE DIDN'T REVIEW THE ENTIRE VIDEO; 3) EXPLAIN WHY HE DIDN'T PERFORM A PROPER AND ADEQUATE PRE-TRIAL INVESTIGATION TO THE DEGREE THAT HE WOULD DISCOVER THE TWO (2) SEGMENTS; 4) WHAT HAPPENED DURING THE VIEWING OF THE VIDEO WITH LAW ENFORCEMENT; 5) WHAT, IF ANYTHING HE COULD HAVE DONE TO DISCOVER THE TWO SEGMENTS PRIOR TO THE CLOSING ARGUMENTS; 6) IF COUNSEL BELIEVES THE STATE ACTIVELY UNDERMINED TRIAL COUNSEL'S OPENING STATEMENT, TRIAL STRATEGY, CREDIBILITY AND RENDERED THE TRIAL FUNDAMENTALLY UNFAIR.

20. PETITIONER SPECIFICALLY ALLEGES HE IS UNCERTAIN WHY HIS LAWYER DID NOT FILE THE MOTION FOR DISCOVERY.

21. PETITIONER SPECIFICALLY ALLEGES HE REQUESTED HIS COUNSEL TO ASK THE PROSECUTION IF THERE EXISTED ANY MORE DVRS, OR VIDEOS; 0

INCULCATOR (i.e. EXCULPATORY EVIDENCE IN THE POSSESSION OF THE FILES OF THE PROSECUTION, OR LAW ENFORCEMENT)?

TO WIT: COUNSEL OF RECORD, MR. WOOL-  
BRIDGE REPLIED: I'M DATING MY T.A.... LET ME  
DO THIS.

22. PETITIONER SPECIFICALLY ALLEGES THAT HE  
ASKED HIS LAWYER DID YOU REQUEST THAT THE  
PROSECUTION AND/OR LAW ENFORCEMENT HAND THE  
DVR, OR VIDEO EVIDENCE OVER? BECAUSE PETITIONER  
REQUEST THAT HE BE ABLE TO VIEW THE FOOTAGE:  
SINCE THE COUNTY JAIL LAW LIBRARY HAS A  
MEANS BY WHICH PETITIONER COULD VIEW THE  
VIDEO.

TO WIT: COUNSEL DID NOT REPLY.

23. PETITIONER SPECIFICALLY ALLEGES, HAS  
HE BEEN ALLOWED TO REVIEW THE VIDEO OF THE  
INCIDENT, INCLUDING THE TWO SEGMENTS NOT  
REVIEWED BY COUNSEL; HE WOULD HAVE BEEN  
IN A BETTER POSITION TO ASSIST COUNSEL WITH  
WHAT ~~DEFENSE THEORY~~ TO PROTECT FORWARD  
WITH DURING THE TRIAL PROCEEDINGS.

24. PETITIONER SPECIFICALLY ALLEGES THE  
ERROR OF COUNSEL, ADVERSELY AFFECTED THE  
ENTIRE EVIDENTIARY PICTURE; WHERE COUNSEL  
FAILED, OR REFUSED TO REVIEW THE ENTIRE A

VIDEO.

25. PETITIONER SPECIFICALLY ALLEGES HE IS NOT ATTRAKING COUNSEL FEES BASED UPON THE DISTORTIONS OF HILLISZENT.

26. PETITIONER SPECIFICALLY ALLEGES COUNSEL FAILURE, OR REFUSAL TO REVIEW THE ENTIRE VIDEO IS A 'EXTRAORDINARY CIRCUMSTANCE' WHICH ALLOWS PETITIONER TO CHALLENGE THE DEFICIENT PERFORMANCE.

27. PETITIONER SPECIFICALLY ALLEGES, EVEN WITH THE 'DEFERENCE' STANDARD; NO OTHER LAWYER ACTING IN THE ROLE OF A DILIGENT, CONSCIENTIOUS ADVOCATE, WOULD HAVE FAILED OR REFUSED TO REVIEW THE ENTIRE VIDEO; SINCE FORESIGHT REQUIRES THAT SUCH EVIDENCE BE REVIEWED, IF COUNSEL IS TO RENDER THE 'REASONABLY EFFECTIVE ASSISTANCE OF COUNSEL' ENVISIONED BY THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

28. PETITIONER SPECIFICALLY ALLEGES HE SUFFERED PREJUDICE; BE CAUSE OF COUNSEL DEFICIENT PERFORMANCE; SINCE THERE IS

A 'REASONABLE PROBABILITY' THE OUTCOME OF THE TRIAL WOULD HAVE BEEN DIFFERENT'; HAS COUNSEL REVIEWED THE ENTIRE VIDEO; INCLUDING THE TWO (2) SEGMENTS WHICH WERE REVEALED BY THE PROSECUTION DURING THE CLOSING ARGUMENTS. ID.

29. PETITIONER SPECIFICALLY ALLEGES HIS TRIAL COUNSEL INFORMED HIM THAT HE DID NOT SEE THE TWO SEGMENTS IN THE STATE'S DEBUTAL PERIOD IN THE CLOSING ARGUMENTS.

30. PETITIONER SPECIFICALLY ALLEGES THE PROSECUTION: DEPUTY DISTRICT ATTORNEY DIGIACOMO [CHIEF] IS KNOW, OR SHOULD HAVE KNOWN THAT THE PETITIONER AND TRIAL COUNSEL WERE ENTITLED TO ALL DISCOVERED MATERIAL TO THE DEFENSE; BOTH EX CULPATORE (AND IN CULPATOR); ONCE TRIAL COUNSEL MADE A WRITTEN OR SPOKEN REQUEST FOR BRADY MATERIAL. ID

31. PETITIONER SPECIFICALLY ALLEGES THE PROSECUTION: CHIEF DEPUTY DISTRICT ATTORNEY - DIGIACOMO KNOW, OR SHOULD HAVE KNOWN ON THE DATE OF: FEBRUARY 16, 2017; TRIAL COUNSEL WAS ENTITLED TO VIEW THE ENTIRE VIDEO/ORIGINAL SWAN VIDEO; AND ALL SEGMENTS OF THE VIDEO IN THE LUMAS VAULT; ONCE TRIAL COUNSEL MADE A WRITTEN OR SPOKEN REQUEST FOR BRADY MATERIAL. ID.

32. PETITIONER SPECIFICALLY ALLEGES THE PROSECUTION: CHIEF DEPUTY D.A. ALCANTARA KNOWS, OR SHOULD HAVE KNOWN THAT IF THE DISTRICT ATTORNEY'S OFFICE DID NOT DISCLOSE EVERY VIDEO, OR ALL SEGMENTS OF THE VIDEO TO TRIAL COUNSEL ON THE DATE OF: FEBRUARY 16, 2017; OR AT SOME POINT SUBSEQUENT THERE TO; ONCE TRIAL COUNSEL MADE A WRITTEN, OR SPOKEN REQUEST FOR BRASSY MATERIAL; THIS CHIEF D.A. AND THE OFFICE OF THE DISTRICT ATTORNEY WOULD BE IN VIOLATION OF THE DISCOVERY RULES ESTABLISHED BY THE LOCAL RULES OF THE EIGHTH JUDICIAL DISTRICT COURT; THE NEVADA REVISED STATUTES WHICH GOVERN DISCOVERY; AS WELL AS UNITED STATES SUPREME COURT LAW. IS.

33. PETITIONER SPECIFICALLY ALLEGES THE PROSECUTION: CHIEF DEPUTY D.A. ALCANTARA KNOWS, OR SHOULD HAVE KNOWN THAT IF THE DISTRICT ATTORNEY'S OFFICE AND THE LVMPD'S DET. BUNN DID NOT DISCLOSE EVERY VIDEO; OR ALL SEGMENTS OF THE VIDEO TO TRIAL COUNSEL, ON THE DATE OF: FEBRUARY 16, 2017; OR AT SOME POINT SUBSEQUENT THERE TO AND OR SPOKEN REQUEST FOR BRASSY MATERIAL; THIS CHIEF D.A., THE OFFICE OF THE DISTRICT ATTORNEY; AND DETECTIVE BUNN AND THE LVMPD; UNDER THE AUTHORITY OF THE D.A.'S OFFICE, WOULD BE IN VIOLATION OF

15.

DISCOVERY RULES [LOCAL RULES] OF THE EIGHTH JUDICIAL DISTRICT COURT; THE NEVADA REVISED STATUTES WHICH GOVERN DISCOVERY; AS WELL AS UNITED STATES SUPREME COURT LAW, I.A.

34. PETITIONER SPECIFICALLY ALLEGES THE PROSECUTION KNEW, OR SHOULD HAVE KNOWN THAT IF CHIEF DEPUTY DISTRICT ATTORNEY NIGIA COMO; AND THE OFFICE OF THE DISTRICT ATTORNEY DID NOT DISCLOSE EVERY VIDEO; OR ALL SEGMENTS OF THE VIDEO IN QUESTION, TO TRIAL COUNSEL, ON THE DATE OF: 16 FEBRUARY 2021; OR AT SOME POINT SUBSEQUENT THERE TO AND PRIOR TO TRIAL; ONCE A SPECIFIC REQUEST WAS MADE BY TRIAL COUNSEL, EITHER SPOKEN, OR WRITTEN IN REQUEST; THIS FAILURE, OR REFUSAL TO DISCLOSE, EITHER INTENTIONALLY, OR INADVERTENTLY, WOULD ADVERSELY AFFECT ALL OF TRIAL COUNSEL'S: STRATEGIC AND TACTICAL DECISIONS; COUNSEL'S ABILITY TO PLAN, PREPARE, AND PRESENT THE DEFENSE THEORY; COUNSEL'S ABILITY TO DEFEND DURING THE 'ADVERSARY PROCESS' OF TRIAL; COUNSEL'S ABILITY TO EXAMINE AND CROSS-EXAMINE WITNESSES; COUNSEL'S ABILITY TO MEET THE CASE OF THE PROSECUTION; COUNSEL'S ABILITY TO ADDRESS THE JURY IN OPENING STATEMENTS AND CLOSING ARGUMENTS; COUNSEL'S ABILITY TO VIEW THE ENTIRE EVIDENTIARY PICTURE OF THE CASE-IN-CHIEF PUT FORTH AN ARGUMENT FOR LESSER DEGREE AT ANY SENTENCING; COUNSEL'S ABILITY TO PREFECT A DIRECT

'APPEAL; COUNSEL'S ABILITY TO BE EFFECTIVE AT EVERY 'CRITICAL STAGE' OF THE PROCEEDINGS; COUNSEL'S ABILITY TO RENDER THE 'REASONABLY EFFECTIVE ASSISTANCE' OF COUNSEL, AS GUARANTEED BY THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION; AND THE LAWS WHICH GOVERN THE 'REASONABLY EFFECTIVE ASSISTANCE' OF COUNSEL, AS ESTABLISHED BY THE CONSTITUTION OF THE STATE OF NEVADA.

35. PETITIONER SPECIFICALLY ALLEGES, IF IN FACT, IT WAS THE DISTRICT ATTORNEY / CHIEF DEPUTY DISTRICT ATTORNEY DIGIACOMO AND DEL BUNN WHO, ACTING UNDER THE AUTHORITY OF THE OFFICE OF THE DISTRICT ATTORNEY; DID NOT DISCLOSE BRADY MATERIAL; AFTER A SPECIFIC REQUEST HAD BEEN MADE BY TRIAL COUNSEL, EITHER SPOKEN, OR WRITTEN IN REQUEST; THE OFFICE OF THE DISTRICT ATTORNEY AND DISTRICT ATTORNEY DIGIACOMO ARE IN FACT RESPONSIBLE FOR THE FACT THAT PETITIONER WAS DENIED THE 'REASONABLY EFFECTIVE ASSISTANCE' OF COUNSEL; AND PETITIONER WAS DENIED HIS SIXTH AMENDMENT RIGHT TO A 'FAIR TRIAL', IN VIOLATION OF THE UNITED STATES CONSTITUTION; AS WELL AS IN VIOLATION OF THE CONSTITUTION OF THE STATE OF NEVADA. \*

\* HEREIN, UPON THE CONDUCTING OF AN EVIDENTIARY HEARING PETITIONER RESERVES THE RIGHT TO AMEND OR SUPPLEMENT THE INSTANT: WRIT OF HABEAS CORPUS, BASED ON EVIDENTIARY FINDINGS RELEVANT TO ADDITIONAL CHARGES.



4. LEGAL ANALYSIS:

NRS 34.770 JUDICIAL DETERMINATION OF NEED FOR EVIDENTIARY HEARING; DISMISSAL OF PETITION OR GRANTING OF WRIT.

1. THE JUDGE OR JUSTICE, UPON REVIEW OF THE RETURN, ANSWER AND ALL SUPPORTING DOCUMENTS WHICH ARE FILED, SHALL DETERMINE WHETHER AN EVIDENTIARY HEARING IS REQUIRED. A PETITIONER MUST NOT BE DISCHARGED OR COMMITTED TO THE CUSTODY OF A PERSON OTHER THAN THE RESPONDENT UNLESS AN EVIDENTIARY HEARING IS HELD.

2. IF THE JUDGE OR JUSTICE DETERMINES THAT THE PETITIONER IS NOT ENTITLED TO RELIEF AND AN EVIDENTIARY HEARING IS NOT REQUIRED, HE SHALL DISMISS THE PETITION WITHOUT HEARING.

3. IF THE JUDGE OR JUSTICE DETERMINES THAT AN EVIDENTIARY HEARING IS REQUIRED, HE SHALL GRANT THE WRIT AND SHALL SET A DATE FOR THE HEARING. Id.  
NRS 34.770; SUB. SEC. 1, 2, AND 3.

IN THE CASE SUB JUDICE, AND AS SET FORTH HEREIN, WITH SPECIFIC FACTUAL ALLEGATIONS, PETITIONER IS ENTITLED TO AN EVIDENTIARY HEARING. Id., SUPRA.

THE NEVADA SUPREME COURT HAS HELD "THAT A HADERS CORPUS PETITIONER MUST PROVE THE DISPUTED FACTUAL ALLEGATIONS UNDERLYING HIS INEFFECTIVE ASSISTANCE CLAIM BY A PREPONDERANCE OF THE EVIDENCE." SEE: MEANS V. STATE, 120 NEV. 1001, 1011, 103 P.3D 25, 32 (2004); FURTHERMORE, CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL

ASSERTED IN A PETITION FOR POST-CONVICTION RELIEF MUST BE SUPPORTED WITH SPECIFIC FACTUAL ALLEGATIONS, WHICH IF TRUE, WOULD ENTITLE THE PETITIONER TO RELIEF. SEE: HARGRAVE V. STATE, 100 N.W. 498, 502, 686 P.2d 222, 225 (1984). "BARE" AND "NAKED" ALLEGATIONS ARE NOT SUFFICIENT, NOR ARE THOSE BELIEVED AND REPELLED BY THE RECORD. ID. NRS 34.735(6) STATES IN RELEVANT PART: "[PETITIONER] MUST ALLEGES SPECIFIC FACTS SUPPORTING THE CLAIMS IN THE PETITION [I.E., FAILURE TO ALLEGES SPECIFIC FACTS RATHER THAN JUST CONCLUSIONS MAY CAUSE [THE] PETITION TO BE DISMISSED." (EMPHASIS ADDED).

IN THIS INSTANCE, PETITIONER HAS SET FORTH CLAIMS; AND MADE SPECIFIC FACTUAL ALLEGATIONS, WHICH ARE NOT: "NAKED", "BARE", NOR "REPELLED BY THE RECORD." SO THAT, ACCORDING TO THE NEVADA SUPREME COURT, IN HARGRAVE V. STATE, PETITIONER IS ENTITLED TO AN APPROPRIATE EVIDENTIARY HEARING. ID. AND ACCORDING TO STARKMAN V. WASHINGTON, 104 S.Ct. 2052 (1984); PETITIONER IS ENTITLED TO "DEMONSTRATE" THAT: 1) HIS COUNSEL RENDERED "DEFICIENT PERFORMANCE"; AND THAT 2) PETITIONER SUFFERED PREJUDICE BECAUSE OF DEFICIENT PERFORMANCE.

CERTAINLY HEARD, AND BASED ON THE: SEPTEMBER 11, 2020 PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION); AN EVIDENTIARY HEARING IS REQUIRED UNDER: NRS 34.770, et seq.

5.

CONCLUSION:

BASE UPON THE CONTENTS OF THE WRIT OF HABEAS CORPUS AND THE SPECIFIC FACTUAL ALLEGATIONS PRO-  
POUNDED HEREIN; PETITIONER IS ENTITLED TO AN  
APPROPRIATE EVIDENTIARY HEARING; AND FOR WHATEVER  
OTHER RELIEF THIS COURT DEEMS JUST AND APPROPRIATE.

DATED THIS 6<sup>TH</sup> DAY OF DECEMBER, 2020.

RESPECTFULLY SUBMITTED:

Javar E. Ketchum  
JAVAR E. KETCHUM #1192727  
H.D.S.P. / 7B-19  
P.O. BOX 650  
INDIAN SPRINGS, NEVADA  
89070

WITH COUNSEL OF RECORD:  
CRAIG A. MUELLER, ESQ.

CERTIFICATE OF SERVICE BY MAIL:

I, JAVAR E. KETCHUM, DO HEREBY SWORN AND  
DEPOSE, UNDER PENALTY OF PERJURY, I DID MAIL A  
TRUE AND CORRECT COPY OF THIS DOCUMENT TO THE:  
OFFICE OF THE ATTORNEY GENERAL.

DATED: DECEMBER 6<sup>TH</sup>, 2020.

SIGNED BY:

Javar E. Ketchum  
JAVAR E. KETCHUM #1192727

DECLARATION Pursuant to: SES 239.5030:

I, JAVAR E. KETCHUM, DO HEREBY SWEAR AND  
DEPOSE THERE IS NO SOCIAL SECURITY NUMBER OF ANY  
PERSON WITHIN THIS DOCUMENT.

DATED: DECEMBER 6<sup>TH</sup> 2020.

24:

Javar E. Ketchum  
JAVAR E. KETCHUM #1192229

25.

EXHIBIT #2  
[SUPPLEMENTAL PETITION]

GRAIG A. MUELLER, ESQ.  
NEVADA BAR NO. 4702

GRAIG A. MUELLER &  
ASSOCIATES

713 S. SEVENTH STREET  
LAS VEGAS, NEVADA 89101

DISTRICT COURT  
CLARK COUNTY, NEVADA

SAVAR KETCHUM,  
PETITIONER,  
vs.

CASE No.: A-20-821316-W  
DEPT. No.: XVII

THE STATE OF NEVADA,  
RESPONDENT.

SUPPLEMENTAL PETITION  
(FIRST)

DATE OF HEARING: \_\_\_\_\_

TIME OF HEARING: \_\_\_\_\_

PETITIONER'S SUPPLEMENTAL BRIEF IN  
SUPPORT OF PETITIONER'S PETITION FOR  
WRIT OF HABEAS CORPUS (POST-CONVICTION)  
[FIRST SUPPLEMENTAL]

COMES NOW, PETITIONER, SAVAR KETCHUM, BY  
AND THROUGH HIS COUNSEL OF RECORD, GRAIG A.  
MUELLER, ESQ., OF THE LAW OFFICE OF GRAIG A.  
MUELLER & ASSOCIATES, AND HEREBY SUBMITS  
THIS FIRST SUPPLEMENTAL BRIEF IN SUPPORT OF  
PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS.

1.

THIS SUPPLEMENT IS MADE AND BASED UPON THE  
PLEADINGS AND PAPERS ON FILE HEREIN, THE POINTS  
AND AUTHORITIES ATTACHED HERETO; AND ANY AND  
ALL ORAL ARGUMENTS ADDUCED AT THE TIME OF  
HEARING THIS MATTER.

DATED: THIS 19<sup>TH</sup> DAY OF JANUARY, 2021.

RESPECTFULLY SUBMITTED:

JAVAR KETCHUM

JAVAR KETCHUM #1192727

H.D.S.P. / TB-19

P.O. BOX 650

INDIAN SPRINGS, NEVADA

89070

THROUGH COUNSEL:

GRAIG A. MUELLER, ESQ.

NEVADA BAR NO.: 4703

723 S. SEVENTH STREET

LV, NEV.

89101

### PROCEDURAL HISTORY

PETITIONER, JAVAR KETCHUM, THROUGH COUNSEL OF RECORD FILED A TIMELY PETITION FOR WRIT OF HABEAS CORPUS ON, OR ABOUT THE DATE OF:

11 SEPTEMBER, 2020.

THE RESPONDENTS FILED THEIR STATE'S RESPONSE TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION): ON THE DATE OF: 12/16/2020.

PETITIONER NOW FILES THE INSTANT: SUPPLEMENTAL BRIEF IN SUPPORT OF PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION).

### STATEMENT OF THE FACTS:

SEE STATEMENT OF FACTS, AS ENUNCIATED IN THE PETITION FOR WRIT OF HABEAS CORPUS, FILED: 11 SEPTEMBER 2020. ID. PAGE 4 AND 5 IN SUPPORT, INCORPORATED HEREIN.

...

...

...

3.



## POINTS AND AUTHORITIES :

### I. PETITIONER DID NOT RECEIVE EFFECTIVE ASSISTANCE OF COUNSEL

MR. JAVAR KETCHUM'S CONVICTION IS INVALID UNDER THE FEDERAL AND STATE CONSTITUTIONAL GUARANTEES OF DUE PROCESS OF LAW, EQUAL PROTECTION OF LAW, RIGHT TO A FAIR TRIAL, AND THE EFFECTIVE ASSISTANCE OF COUNSEL; DUE TO THE FAILURE OF DEFENSE COUNSEL TO PROPERLY AND ADEQUATELY REVIEW THE SURVEILLANCE VIDEO; AND/OR MOVE FOR FULL DISCLOSURE OF THE ENTIRE SURVEILLANCE VIDEO; AND/OR TO CONDUCT AN ADEQUATE INVESTIGATION; WHICH RESULTED IN THE PROSECUTION'S "BLIND-SIDING" PETITIONER DURING THE CLOSING ARGUMENTS; WHEN THE PROSECUTION PRODUCED THE ENTIRE VIDEO DURING THE CLOSING ARGUMENTS; OR PORTIONS THEREOF, THAT COUNSEL NEVER SAW; OR ALLEGES TO HAVE NEVER SEEN; WHICH WAS IN FACT SEEN BY THE JURY; AND ULTIMATELY, THIS CRITICAL ERROR BY DEFENSE COUNSEL WORKED TO UNDERMINE THE ENTIRE DEFENSE THEORY OF THE CASE; IN VIOLATION OF PETITIONER'S SIXTH AMENDMENT RIGHT TO A 'FAIR TRIAL' SEE: CONSTITUTIONAL AMENDMENTS V, VI, AND XIV. IN. SEE ALSO: MOTION FOR EVIDENTIARY HEARING, IN SUPPORT; INCORPORATES HEREIN.

IN THE INSTANT CASE, SOMETHING WENT  
GROVELY WRONG, WHERE DEFENSE COUNSEL WAS  
"BLIND SIDED" BY USE OF THE SURVEILLANCE  
VIDEO DURING CLOSING ARGUMENTS. IT IS COUNSEL'S  
POSITION THAT HE DID NOT SEE THE ENTIRE SUR-  
VEILLANCE VIDEO; ADIDAL THE JURY SAW PORTIONS  
OF THE VIDEO (SURVEILLANCE), DURING CLOSING ARGU-  
MENTS THAT HE DID NOT SEE; AND BECAUSE OF  
THIS FACT, AT A 'CRITICAL STAGE' OF THE  
PROCEEDINGS, THE ENTIRE DEFENSE THEORY WAS  
UNDERMINED BY THE PLAYING OF PORTIONS OF  
THE SURVEILLANCE VIDEO HE DID NOT SEE.

BECAUSE MOST CERTAINLY, HAD COUNSEL SEEN  
THE ENTIRE VIDEO OF THE INCIDENT; AND DID NOT  
SET FORTH A COMPETENT DEFENSE THEORY DURING  
THE TRIAL; AND ALLOWED [KNOWINGLY], THE  
PROSECUTION TO "BLIND-SIDE" THE DEFENSE THEORY  
AS AN ACT OF BETRAYAL AGAINST PETITIONER;  
THIS ACT, CONSIDERABLE ARGUMENT UNDERMINES  
THE DEFENSE; AND COUNSEL IN FACT BREACHED HIS  
'DUTY OF LOYALTY' A 'DUTY TO AVOID CONFLICTS  
OF INTEREST.' SEE: SPICKARD V. WASHINGTON,  
466 U.S. 668, 104 S.Ct. 2052 (1984); AND: WARDEN V.  
LEONIS, 100 NEV. 430, 683 P.2d 504 (1984):

5.

IN STRICKLAND V. WASHINGTON, SUPRA, IT IS HELD:

"REPRESENTATION OF A CRIMINAL DEFENDANT ENTAILS CERTAIN BASIC DUTIES. COUNSEL'S FUNCTION IS TO ASSIST THE DEFENDANT, AND HENCE COUNSEL OWES THE CLIENT A DUTY OF LOYALTY, A DUTY TO AVOID CONFLICTS OF INTEREST. SEE OLIVER V. SULLIVAN, SUPRA, 446 U.S. AT 346, 90 S. CT. AT 1717. FROM COUNSEL'S FUNCTION AS ASSISTANT TO THE DEFENDANT, DERIVE THE OVERARCHING DUTY OF ADVOCATE THE DEFENDANT'S CAUSE AND THE MORE PARTICULAR DUTIES TO CONSULT WITH THE DEFENDANT ON IMPORTANT DECISIONS AND TO KEEP THE DEFENDANT INFORMED OF IMPORTANT DEVELOPMENTS IN THE COURSE OF THE PROSECUTION. COUNSEL ALSO HAS A DUTY TO BRING TO BEAR SUCH SKILL AND KNOWLEDGE AS WILL RENDER THE TRIAL A RELIABLE ADVERSARIAL TESTING PROCESS." Id., STRICKLAND, SUPRA, 2065.

SOMETHING WENT WRONG.

COUNSEL FAILED TO REVIEW ALL OF THE SURVEILLANCE TAPES.

COUNSEL FAILED TO REQUEST SPECIFIC DISCOVERY OF BRACE MATERIAL NOT PREVIOUSLY DISCLOSED.

COUNSEL FAILED TO PERFORM PROPER AND ADEQUATE PRETRIAL INVESTIGATION.

THERE WAS OBVIOUSLY MORE TO THE SURVEILLANCE

6.

VIDEO; WHICH WAS PRESENTED TO THE JURY DURING CLOSING ARGUMENT.

THE RESULT, WAS COUNSEL'S LACK OF KNOWLEDGE; ~~AND~~ IF COUNSEL LACKED KNOWLEDGE, HE WAS UNABLE TO PLAN; IF HE WAS UNABLE TO PLAN, HE WAS UNABLE TO PREPARE; IF HE WAS UNABLE TO PREPARE, HE WAS UNABLE TO PRESENT 'THE DEFENSE THEORY'; IF HE WAS UNABLE TO PRESENT THE DEFENSE THEORY; HIS STRATEGIC AND TACTICAL DECISIONS ARE QUESTIONABLE; IF HIS STRATEGIC AND TACTICAL DECISIONS ARE QUESTIONABLE, HIS PERFORMANCE WAS DEFICIENT; IF HIS PERFORMANCE IS DEFICIENT, PETITIONER HAS SUFFERED PREJUDICE; AND IF PETITIONER SUFFERED PREJUDICE BECAUSE OF COUNSEL'S DEFICIENT PERFORMANCE, COUNSEL DID NOT RENDER THE 'REASONABLY EFFECTIVE ASSISTANCE OF COUNSEL' AS SET FORTH BY THE UNITED STATES SUPREME COURT, IN STRICKLAND V. WASHINGTON; IF PETITIONER DID NOT RECEIVE THE 'REASONABLY EFFECTIVE ASSISTANCE OF COUNSEL'; PETITIONER WAS IN FACT DENIED HIS SIXTH AMENDMENT RIGHT TO A FAIR TRIAL; IF PETITIONER WAS DENIED HIS SIXTH AMENDMENT RIGHT TO A 'FAIR TRIAL', PETITIONER WAS DENIED HIS FOURTEENTH AMENDMENT

RIGHT TO 'DUE PROCESS OF LAW' AND THE  
'EQUAL PROTECTION OF LAW' AND IF PETITIONER  
DID NOT RECEIVE 'DUE PROCESS OF LAW' AND THE  
'EQUAL PROTECTION OF LAW' DURING THE TRIAL  
PROCEEDINGS; PETITIONER IS NOW ENTITLED  
TO A NEW TRIAL AND A LAWYER WHO IS A  
'DILIGENT, CONSCIENTIOUS ADVOCATE.' SEE:  
STANISLAW V. WASHARZEL, SUPRA:

"THE SIXTH AMENDMENT RECOGNIZES THE  
RIGHT TO THE ASSISTANCE OF COUNSEL  
BECAUSE IT ENVISIONS COUNSEL'S PLAYING  
A ROLE THAT IS CRITICAL TO THE ABILITY  
OF THE ADVERSARIAL SYSTEM TO PRODUCE  
JUST RESULTS. AN ACCUSED IS ENTITLED  
TO BE ASSISTED BY AN ATTORNEY, WHETHER  
RETAINED OR APPOINTED, WHO PLAYS THE  
ROLE NECESSARY TO ENSURE THAT THE TRIAL  
IS FAIR. IN, STANISLAW, SUPRA AT: 2063;  
AND WINGOLD V. LOUIS, SUPRA IS ENUNCIATED.

THE CLOSING ARGUMENT WAS A CRITICAL STAGE  
OF THE TRIAL PROCEEDINGS. THE KNOWLEDGE OF WHAT  
EXISTED ON THE SURVEILLANCE VIDEO WAS CRITICAL. TO  
NOT KNOW WHAT WAS ON THE SURVEILLANCE VIDEO  
WAS CRITICAL. AS SUCH, AT THE MOST CRITICAL  
TIME OF THE PROCEEDINGS, WITH THE MOST  
CRITICAL EVIDENCE IN THE CASE; COUNSEL WAS  
UNABLE TO PLAY A ROLE THAT IS CRITICAL TO THE

§:

ABILITY OF THE ADVERSARIAL SYSTEM TO PRODUCE JUST RESULTS." Id. SUPRA. <sup>1</sup>.

COUNSEL KNEW, OR SHOULD HAVE KNOWN EXACTLY WHAT EXISTED IN THE SURVEILLANCE VIDEO. IT WAS IN FACT HIS 'DUTY' TO KNOW; "... SINCE A FAIR TRIAL IS ONE IN WHICH EVIDENCE SUBJECT TO ADVERSARIAL TESTING IS PRESENTED TO AN IMPARTIAL TRIBUNAL FOR RESOLUTION OF ISSUES DEFINED IN ADVANCE OF THE PROCEEDINGS. THE RIGHT TO COUNSEL PLAYS A CRUCIAL ROLE IN THE ADVERSARIAL SYSTEM EMBODIED IN THE SIXTH AMENDMENT, SINCE ACCESS TO COUNSEL'S SKILL AND KNOWLEDGE IS NECESSARY TO RECORD DEFENDANTS THE "AMPLE OPPORTUNITY TO MEET THE CASE OF THE PROSECUTION" TO WHICH THEY ARE ENTITLED. ADAMS V. UNITED STATES EX REL., MCCANN, 317 U.S. 269, 275, 276, 63 S. CT. 236, 240, 87 L. ED. 268 (1942); SEE POWELL V. ALABAMA, SUPRA, 287 U.S. AT 68-69, 53 S. CT. 63-64." Id. SEE: STERCKMAN, AT 2063, <sup>1</sup>.

- \* 1. IN THE MOTION FOR EVIDENT GROSS HEARING, PETITIONER SPECIFICALLY ALLEGED THAT HE REQUESTED HIS LAWYER TO FILE A MOTION FOR DISCOVERY. Id., AS SHOWN, IF THE PROSECUTION WITHHELD 'ADAM'S MATERIAL'; THE STARKMAN COURT HELD: "GOVERNMENT VIOLATES THE RIGHT TO EFFECTIVE ASSISTANCE WHEN IT INTERFERES IN CERTAIN WAYS WITH THE ABILITY OF COUNSEL TO MAKE INDEPENDENT DECISIONS ABOUT HOW TO CONDUCT THE DEFENSE. Id. STERCKMAN, 2063.

THE UNITED STATES SUPREME COURT STATES:

"THE BENCHMARK FOR JUDGING ANY CLAIM OF INEFFECTIVENESS MUST BE WHETHER COUNSEL'S CONDUCT SO UNDERMINED THE PROPER FUNCTIONING OF THE ADVERSARIAL PROCESS THAT THE TRIAL CANNOT BE RELIED ON AS HAVING PRODUCED A JUST RESULT." IDA. STENZELMAN, SUPRA, AT 2064.

CLEARLY, COUNSEL HAVING FAILED TO REVIEW THE SURVEILLANCE VIDEO IN ITS ENTIRETY; OR HAVING FORGOT WHAT THE ENTIRE VIDEO ENTAILS; OR OTHERWISE, OF HIS OWN ACCORD AND WILL INVESTIGATE, OR DO NOT REQUEST FULL DISCLOSURE UNDER BRADY V. MARYLAND, 373 U.S. 83, 83 S. CT. 1194 (1963); IT CAN BE STATED: "... THAT COUNSEL'S REPRESENTATION FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS." IDA. STENZELMAN AT 2064.

AND THAT BECAUSE COUNSEL'S 'REPRESENTATION FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS'; AND COUNSEL WAS INCAPABLE OF PROVIDING PETITIONER WITH THE SIXTH AMENDMENT RIGHT TO THE 'REASONABLY EFFECTIVE ASSISTANCE OF COUNSEL'; PREJUDICE EXISTS SINCE: "... THERE IS A REASONABLE PROBABILITY THAT BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS, THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT. A REASONABLE PROBABILITY IS A PROBABILITY SUFFICIENT TO UNDERMINE CONFIDENCE IN THE OUTCOME." STENZELMAN AT 2068.

#### A. JUDICIAL SCRUTINY:

THE STRICKLAND COURT SET FORTH AS FOLLOWS:

"JUDICIAL SCRUTINY OF COUNSEL'S PERFORMANCE MUST BE HIGHLY DEFERENTIAL." IN. STRICKLAND AT 2065.

PETITIONER HEREIN ARGUES, EVEN WITH THE COURT'S PROVISION OF DEFERENCE, NO OTHER LAWYER ACTING IN THE ROLE OF A DILIGENT, CONSCIENTIOUS ADVOCATE, WOULD HAVE FAILED, OR REFUSED TO REVIEW THE ENTIRE SURVEILLANCE VIDEO FEATURING HIS CLIENT IN THE MIDDLE OF ACTS, WHICH LEAD TO HIS CLIENT HAVING TO TAKE THE LIFE OF A MAN WHO WAS WILLING TO ROB, OR EVEN KILL HIS CLIENT.

A FULL REVIEW OF EVERY PORTION OF THE VIDEO WAS CRITICAL.

1. PETITIONER SPECIFICALLY ALLEGES, HAD HIS LAWYER REVIEWED THE ENTIRE VIDEO; EVEN TO THE DEGREE OF SEEING HIS CLIENT SHOOTING THE PERPETRATOR; AND TAKING ITEMS FROM THE PERPETRATOR; PETITIONER AND COUNSEL COULD HAVE ESTABLISHED A LINE OF QUESTIONS AND ANSWERS TO 'EXPLAIN AWAY' THE DEEDS OF, OR THE MURDERS OF PETITIONER AFTER THE FACT OF THE SHOOTING.



2. PETITIONER SPECIFICALLY ALLEGES HE WOULD HAVE EXPLAINED TO THE JURY EXACTLY WHAT 'STREET MENTALITY' HAD BEEN AT PLAY, OR HAD BEEN ENGAGED. IN THAT THE PERPETRATOR HELD A GUN ON HIM AND TRIED TO ROB, OR EVEN KILL HIM. HOWEVER, WHEN THE TABLE WAS TURNED, PETITIONER ACTED OUT IN THE SAME WAY, BECAUSE HIS ABILITY TO THINK RATIONALLY HAD BEEN DEMINISHED IN THAT VERY MOMENT; AND THAT HE WAS NOT IN HIS 'RIGHT MIND' WHEN HE DID THE ACTS; OR THAT HE WASN'T THINKING STRAIGHT. ID. (PETITIONER IS NOT A PSYCHOLOGIST AND DOES NOT KNOW THE CORRECT TERMS THAT A PROFESSIONAL WOULD USE).

3. PETITIONER SPECIFICALLY ALLEGES, HE WOULD HAVE REQUESTED HIS LAWYER TO BRING FORTH A 'SPECIALIST' OR 'PSYCHOLOGIST', OR 'SOME ONE PROFESSIONAL'; TO INFORM THE JURY OF WHAT TRAUMA, AN ANGER, OR IRRATIONAL MENTAL STATE HE HAD FALLEN UNDER. AFTER BEING VIRTUALLY 'LED TO THE SLAUGHTER'; ONLY TO END THE PERPETRATOR'S LIFE INSTANTLY.

4. PETITIONER SPECIFICALLY ALLEGES, HE NEVER INTENDED TO ROB, OR EVEN KILL THE PERPETRATOR; EXCEPT THAT WHEN THE TIME CAME, IT WAS BY MIRACLE OR FAKE, HE ENDED

UP ON THE OTHER SIDE OF THE GUN IS FORCED TO KILL, ABSENT THE CLEAR KNOWLEDGE OF 'USE OF FORCE'; WHICH MAY HAVE RESULTED IN 'EXCESSIVE FORCE' BECAUSE OF WHATEVER HAD TAKEN PLACE IN HIS MIND.

AS SUCH, THIS IS NOT AN ISSUE OF 'SECOND GUESSING COUNSEL'S ASSISTANCE AFTER CONDI-  
TION' [I.E. STICKLAND, 2065]; IT IS AN ISSUE THAT, WITH DEFERENCE; THIS LAWYER'S TRIAL, PRETRIAL CONDUCT FAILS, BECAUSE HE DID NOT PROPERLY ASSESS THE SURVEILLANCE VIDEO, THERE-  
FORE, THIS COURT SHOULD CONCLUDE THAT ON THIS INSTANCE COUNSEL'S PARTICULAR ACT OF OMISSION WAS UNREASONABLE. I.E. STICKLAND AT 2065.

B. DISTORTING EFFECTS OF HINDSIGHT:

THE STICKLAND COURT SET FORTH AS FOLLOWS:

"A FAIR ASSESSMENT OF ATTORNEY PERFORMANCE REQUIRES THAT EVERY EFFORT BE MADE TO ELIMINATE THE DISTORTING EFFECTS OF HINDSIGHT, TO RE-CONSTRUCT THE CIRCUMSTANCES OF COUNSEL'S CHALLENGED CONDUCT, AND TO EVALUATE THE CONDUCT FROM COUNSEL'S PERSPECTIVE AT THE TIME." I.E. STICKLAND AT 2065.

PETITIONER ARGUES, THIS IS NOT AN ISSUE WHICH REQUIRES THE COURT TO USE THE 'DISTORTING

EFFECTS OF HADSONNT. IDA. INSTEAD, THIS IS AN ISSUE OF 'FORESIGHT'; BECAUSE COUNSEL, AS A PROFESSIONAL LAWYER KNOW, OR SHOULD HAVE KNOWN, IF IN FACT HE FAILED, OR REFUSED TO REVIEW THE ENTIRE SURVEILLANCE VIDEO; THAT NOT ALONE, COULD COME BACK AND HAUNT THE ENTIRE DEFENSE.

AND IT DID.

AS SUCH, THIS COURT DOES NOT SEEM TO 'RECONSTRUCT THE CIRCUMSTANCES OF COUNSEL'S CHALLENGED CONDUCT' [IDA, STOCKMANT 2065], INSTEAD, BRING FORTH COUNSEL TO AN EVIDENTIARY HEARING AND ALLOW COUNSEL TO GIVE HIS 'PERSPECTIVE AT TIME.' IDA, STOCKMANT 2065

1. PETITIONER SPECIFICALLY ALLEGES HE REQUESTED HIS LAWYER TO ACQUIRE ANY AND ALL SURVEILLANCE VIDEO OF THE INCIDENT, IF THE SAME EXISTED.

2. PETITIONER SPECIFICALLY ALLEGES HE REQUESTED HIS LAWYER TO REVIEW THE SURVEILLANCE VIDEO IN ORDER TO ESTABLISH THE DEFENSE THEORY THAT HE WAS IN FACT: THE VICTIM AND THE DECEASED WAS THE PERPETRATOR. NO MATTER HOW THINGS PLAYED OUT IN THE FINAL ANALYSIS.

3. PETITIONER SPECIFICALLY ALLEGES HE REQUESTED THAT HIS LAWYER ALLOW HIM TO REVIEW

AND ALL SURVEILLANCE VIDEO, IN ORDER TO AID WITH HIS DEFENSE THEORY; BECAUSE HE PLANNED TO TAKE THE WITNESS STAND; AND THAT COUNSEL COULD MAKE ARRANGEMENTS WITH THE CLARK COUNTY DETENTION CENTER, TO USE LAW LIBRARY EQUIPMENT TO REVIEW THE SURVEILLANCE VIDEO.

4. PETITIONER SPECIFICALLY ALLEGES, HE REQUESTED HIS LAWYER TO FILE A: MOTION FOR DISCOVERY; IN ORDER TO SECURE ANY AND ALL BRADY MATERIAL, OR EVIDENCE IN THE POSSESSION OF THE PROSECUTOR -- BOTH INCULPATORY AND EXCULPATORY.

5. PETITIONER SPECIFICALLY ALLEGES THAT HE REQUESTED COUNSEL ATTAIN DISCOVERY BECAUSE HE WANTED TO ASSIST WITH THE DEFENSE THEORY; THAT THE PERPETRATOR WAS THE DECEASED; AND THAT HIS ACTIONS WERE BASED ON FEAR, UNCERTAINTY, OR AN ALTERED STATE OF MIND, WHICH RESULTED FROM THE PERPETRATOR'S ACTIONS AND NOT SIMPLY HIS OWN.

AS SUCH 'HINDSIGHT' IS NOT AT PLAY HERE, AND THIS COURT SHOULD RULE COUNSEL'S CHALLENGED ACTIONS, WERE NOT THE PRODUCT OF AND CAN NOT BE 'CONSIDERED SOUND TRIAL STRATEGY.' IDA, STATUTORY AT 2065.

...

## C. THE ENTIRE EVIDENTIARY PICTURE:

THE UNITED STATES SUPREME COURT SAYS AS FOLLOWS: "IN MAKING THIS DETERMINATION, A COURT HEARING AN INEFFECTIVENESS CLAIM MUST CONSIDER THE TOTALITY OF THE EVIDENCE BEFORE THE JUDGE OR JURY. SOME OF THE FACTUAL FINDINGS WILL HAVE BEEN UNAFFECTED BY THE ERRORS, AND FACTUAL FINDINGS THAT WERE AFFECTED WILL HAVE BEEN AFFECTED IN DIFFERENT WAYS. SOME ERRORS WILL HAVE HAD A PERVASIVE EFFECT, ON THE INFERENCES TO BE DRAWN FROM THE EVIDENCE, ALTERING THE ENTIRE EVIDENTIARY PICTURE, AND SOME WILL HAVE HAD AN ISOLATED, TRIVIAL EFFECT." IN STANLEY AT 2069.

PETITIONER ARGUES, THE FACT THAT TRIAL COUNSEL FAILED, OR REFUSED, 'INADVERTENTLY, OR INTENTIONALLY TO REVIEW THE ENTIRE SURVEILLANCE VIDEO, ALTERED 'THE ENTIRE EVIDENTIARY PICTURE.' CONSIDERING ARGUED, THE ADVERSE EFFECT OF THIS FAILURE BY COUNSEL, IS COMPARABLE TO: A FAMILY LOADING THEMSELVES INTO THE CAR OF A BRANT SATURDAY MORNING, HEADED TO THE PARK. THE FATHER AND MOTHER NAVIGATING THE WAY SAFELY THROUGH TRAFFIC, FOLLOWING ALL RULES OF THE ROAD. THE CAR STOPS AT A RED LIGHT ~~AT~~ THE INTER-SECTION. THEN THE LIGHT TURNS GREEN 'TO GO!' THE CAR ENTERS THE INTER-SECTION; AND IS 'BLIND-SIDED' BY A MARK-TRUCK. AT THIS POINT, NOTHING THE PARENTS DID TO GET THEM SAFELY TO THE INTER-SECTION MATTERS

Now; BECAUSE THE 'ALIAS SENSE' BY THE 'MAGIC-TRUCK DESTROYED' ALL STRATEGIC AND TACTICAL ROAD DECISIONS.

IN THE SAME SENSE OF THE 'MAGIC-TRUCK' DESTROYING 'THE ENTIRE EVIDENTIARY PICTURE' IS COUNSEL'S FAILURE, OR REFUSAL TO REVIEW THE SURVEILLANCE VIDEO DESTROYED 'THE ENTIRE EVIDENTIARY PICTURE' IN THIS CASE, AT THE MOST 'CRITICAL STAGE' OF THE PROCEEDINGS, DURING THE CLOSING ARGUMENT; WHEN THE PROSECUTOR PRESENTED THE 'FULL SURVEILLANCE TAPE' TO THE JURY; AND COUNSEL ADMITTEDLY AFFIRMED THAT HE DID NOT SEE THE FULL FOOTAGE.

1. PETITIONER SPECIFICALLY ALLEGES, ALTHOUGH HE REQUESTED HIS LAWYER ALLOW HIM TO REVIEW THE VIDEO SURVEILLANCE, PRIOR TO TRIAL; TRIAL COUNSEL MADE NO ARRANGEMENTS TO ALLOW HIM TO DO SO.

2. PETITIONER SPECIFICALLY ALLEGES, HAD HE REVIEWED THE SURVEILLANCE VIDEO; HE WOULD HAVE REVIEWED THE ENTIRE SURVEILLANCE VIDEO, IN ORDER TO ASSIST HIS LAWYER IN PREPARING THE DEFENSE THEORY THAT THE PERPETRATOR / THE DECEASED ATTACKER, OR ATTEMPTED TO ROB, OR POSSIBLY SHOOT HIM FIRST; AND THAT HIS ACTIONS AFTER THE FACT, WERE THE PRODUCT OF AN ALTERED STATE OF MIND, RESULTING FROM HIS BEING ATTACKED AT GUN POINT UNDER A VERY STRESSFUL SITUATION. (PETITIONER IS NOT A PSYCHOLOGIST OR PSYCHIATRIST, OR MENTAL SPECIALIST; AND CANNOT ALONE PROPERLY ASSESS HIS MENTAL STATE UNDER THAT SITUATION).

3. PETITIONER SPECIFICALLY ALLEGES, HIS DEFENSE COUNSEL INFORMED HIM THAT HE HAD REVIEWED THE VIDEO SURVEILLANCE TAPE; AND SAW HIM SHOOTING THE DECEASED / PERPETRATOR; PETITIONER WOULD HAVE REQUESTED HIS LAWYER TO BRING FORTH A 'PSYCHOLOGIST' OR 'PSYCHIATRIST' OR AN 'EXPERT WITNESS' WHO UNDERSTOOD STRESS AND WHAT OCCURS IN THE MINDS OF PEOPLE IN LIFE OR DEATH SITUATIONS; TO EXPLAIN TO THE JURY THAT PETITIONER'S STATE OF MIND WAS NOT THE SAME; AS HAD HE NOT BEEN UNDER-SEIGE BY THE PERPETRATOR / THE DECEASED. [PETITIONER IS NOT AN EXPERT, NOR SPECIALIST; AND THEREFORE LACKS THE TERMINOLOGY OF THE PROFESSIONAL PSYCHOLOGIST].

AS SUCH, BECAUSE COUNSEL'S GLARING ERROR ADVERSELY EFFECTED 'THE ENTIRE EVIDENTIARY PICTURE'; THIS COURT SHOULD RULE COUNSEL DID NOT 'BRING TO BEAR SUCH SKILL AND KNOWLEDGE AS WILL RENDER THE TRIAL A RELIABLE ADVERSARIAL TESTING PROCESS.' IN. STANISLAUS AT 2065.

#### D. PURPOSE OF THE WRIT OF HABEAS CORPUS:

THE STANISLAUS COURT SET FORTH AS FOLLOWS:

"AN INEFFECTIVENESS CLAIM, HOWEVER, AS OUR ARTICULATION OF THE STANDARDS THAT GOVERN DECISION OF SUCH CLAIMS MAKES CLEAR, IS AN ATTACK ON THE FUNDAMENTAL FAIRNESS OF THE PROCEEDING WHOSE RESULT IS CHALLENGED. SINCE FUNDAMENTAL FAIRNESS IS THE CENTRAL CONCERN OF THE WRIT OF HABEAS

CORPUS." SEE STRICKLAND AT 2070.

PETITIONER ARGUES, NOT ONLY DID COUNSEL'S REPRESENTATION 'FALL BELOW AND OBJECTIVE STANDARD OF REASONABLENESS' RENDERING DEFICIENT PERFORMANCE! AND THAT PETITIONER SUFFERED PREJUDICE UNDER THE 'REASONABLE PROBABILITY' THAT THE OUTCOME OF THE TRIAL WOULD HAVE BEEN DIFFERENT; BUT BECAUSE COUNSEL'S ACTS OR OMISSIONS UNDERMINED THE TRIAL PROCEDURE; BUT THAT, BECAUSE OF THE INEFFECTIVE ASSISTANCE OF COUNSEL; THE TRIAL WAS NOT FUNDAMENTALLY FAIR, ETC.

PETITIONER IS NOT RAISING A CLAIM ON GROUNDS OF INSUFFICIENCY <sup>OF EVIDENCE</sup> HEREIN.

PETITIONER IS RAISING THAT: "THE RESULT OF A PROCEEDING CAN BE RENDERED UNRELIABLE, AND HENCE THE PROCEEDING ITSELF UNFAIR, EVEN IF THE ERRORS OF COUNSEL CANNOT BE SHOWN BY A PREPONDERANCE OF THE EVIDENCE TO HAVE DETERMINED THE OUTCOME." IA. STRICKLAND AT 2068.

IT IS PETITIONER'S POSITION HEREIN, THAT THERE WAS A 'BREAKDOWN IN THE ADVERSARIAL PROCESS' AND THAT: "...THE COURT SHOULD BE CONCERNED WITH WHETHER, DESPITE THE STRONG PRESUMPTION OF RELIABILITY, THE RESULT OF THE PARTICULAR PROCEEDING IS UNRELIABLE BECAUSE OF A BREAKDOWN IN THE ADVERSARIAL PROCESS THAT OUR SYSTEM COUNTS ON TO PRODUCE JUST RESULTS." IA. STRICKLAND AT 2069. THE STRICKLAND COURT WENT ON TO SAY: "...THE ULTIMATE FORM OF INQUIRY MUST BE ON THE FUNDA-



MENTAL FAIRNESS OF THE PROCEEDING WHOSE RESULT IS BEING CHALLENGED." STRICKLAND AT 2269.

THEREFORE, THIS COURT SHOULD RULE, PETITIONER HAS SUFFERED PREJUDICE DURING THE PROCEEDING, WHICH HAS REACHED A CONSTITUTIONAL MAGNITUDE; AND THAT PETITIONER IS ENTITLED TO A NEW TRIAL, WITH A SIXTH AMENDMENT GUARANTEE OF COUNSEL FOR THE PROCEEDING; AND IN ACCORD WITH 'DUE PROCESS OF LAW.'

E. CONSTRUCTIVE DENIAL OF COUNSEL:

THE UNITED STATES SUPREME COURT SETS FORTH:

"IN CERTAIN SIXTH AMENDMENT CONTEXTS, PREJUDICE IS PRESUMED. ACTUAL OR CONSTRUCTIVE DENIAL OF THE ASSISTANCE OF COUNSEL ALTOGETHER IS LEGALLY PRESUMED TO RESULT IN PREJUDICE." ID. STRICKLAND AT 2267

HERE, PETITIONER RESERVES THE RIGHT TO FURTHER ARGUE THE FUNDAMENTAL FAIRNESS ISSUE THAT THE TRIAL WAS NOT FAIR; IF THIS COURT DETERMINES COUNSEL DID NOT RECEIVE THE ENTIRE SURVEILLANCE VIDEO; OR THAT A BRAND VIOLATION OCCURRED WITH REGARD TO THE SURVEILLANCE VIDEO; OR THAT THE PROSECUTION'S FAILURE TO DISCLOSE ALL OF THE FOOTAGE RESULTED IN A 'CONSTRUCTIVE' DENIAL OF THE ASSISTANCE OF COUNSEL. ID. SUPRA. REFER ALSO:

PETITIONER'S: MOTION FOR EVIDENTIARY HEARING; IN  
SUPPORT, INCORPORATED HEREIN. IS.

\* — \* — \*

## II. AN EVIDENTIARY HEARING IS REQUIRED:

BASED UPON THE ABOVE, PETITIONER IS  
ENTITLED TO AN EVIDENTIARY HEARING TO QUESTION  
COUNSEL AS TO HIS FAILURE TO VIEW THE ENTIRE  
VIDEO OF THE INCIDENT; AND/OR WHAT CAUSED THE  
'ALARM-SOUND' DURING THE CLOSING ARGUMENT. FURTHER,  
PETITIONER HAS MADE SPECIFIC FACTUAL ALLEGATIONS  
THAT ARE NEITHER REPELLED, NOR BELIEVED BY THE  
RECORD; AND THAT THEY ARE NOT 'JOKED' ALLEGATIONS;  
WHICH, IF TRUE, ENTITLE PETITIONER TO RELIEF.  
SEE: HARGRAVE V. STATE, 686 P.2d 222 (1984); JONES V.  
WADA, 114 F.3d 1002-1010 (9th Cir. 1997); AND ALSO:  
TOWNSEND V. SACHS, 372 U.S. 293, 83 S.Ct. 745 (1963);  
AND: DEJABARD V. WARDEN, 112 Nev. 1466, 1471 (1996) (A  
PETITIONER HAS THE BURDEN OF ESTABLISHING THE  
FACTUAL ALLEGATIONS IN SUPPORT OF THE PETITION).

ONCE AN EVIDENTIARY HEARING IS GRANTED PETITIONER  
IS ALSO ENTITLED TO EXPAND THE RECORD. WHEN AN  
EVIDENTIARY HEARING IS GRANTED, THE RECORD MAY BE  
EXPANDED BY INCLUSION OF ADDITIONAL MATERIALS  
RELEVANT TO THE DETERMINATION OF THE MERITS OF THE  
PETITION INCLUDING:

... WITHOUT LIMITATIONS, LETTERS  
WHICH PREDATE THE FILING OF THE PETITION  
IN THE DISTRICT COURT, DOCUMENTS, EXHIBITS  
AND ANSWERS UNDER OATH TO WRITTEN INTER-  
ROGATORIES PROPOUNDED BY THE JUDGE,  
AFFIDAVITS MAY BE SUBMITTED AND CONSIDERED  
AS PART OF THE RECORD. NRS 34.770 & NRS  
34.790.

PETITIONER RESPECTFULLY REQUESTS THAT THE  
COURT GRANT AN EVIDENTIARY HEARING AND AN EXPANSION  
OF THE RECORD AFTER AN EVIDENTIARY HEARING IS SET.

III.

CONCLUSION:

WHEREFORE, PETITIONER PRAYS THAT THE COURT  
GRANT HIM ALL SUCH RELIEF TO WHICH HE MAY BE  
ENTITLED TO IN THIS PROCEEDING, INCLUDING AN  
APPROPRIATELY CONDUCTED EVIDENTIARY HEARING.

RESPECTFULLY SUBMITTED: 1/20/2021.

\* Jamal Ketchum  
JAMAL KETCHUM #1192727

WITH COUNSEL:

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CRALL A. MUELLER, ESQ.  
NEVADA BAR NO.: 4703  
723 S. SEVENTH STREET  
LAS VEGAS, NEVADA 89101

CERTIFICATE OF SERVICE:

I HEREBY CERTIFY THAT ON THE 20TH DAY OF JANUARY, 2021, I SERVED A TRUE AND CORRECT COPY OF THE FOREGOING DOCUMENT ENTITLED: PETITIONER'S SUPPLEMENTAL BRIEF IN SUPPORT OF PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION); TO THE CLARK COUNTY DISTRICT ATTORNEY'S OFFICE BY SERVING A COPY BY MAIL VIA ELECTRONIC MAIL TO:

CLARK COUNTY DISTRICT ATTORNEY  
REGIONAL JUSTICE CENTER  
200 LEWIS AVENUE  
LAS VEGAS, NEVADA 89155

BY:

\* Javar Ketchum  
JAVAR KETCHUM #1192727

DECLARATION UNDER JRS 239B.030:

I, JAVAR KETCHUM, DO HEREBY DECLARE THAT I HAVE NO ONE'S SOCIAL SECURITY NUMBER HEREIN.

\* Javar Ketchum  
JAVAR KETCHUM #1192727

23.

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



Javar Ketchum, Plaintiff(s)

Case No.: A-20-821316-W

vs.

Nevada State of, Defendant(s)

Department 17

**NOTICE OF HEARING**

Please be advised that the Plaintiff's - Motion for Reconsideration, or in the Alternative Motion for Rehearing of Petitioner's NRS Chapter 34 Petition in the above-entitled matter is set for hearing as follows:

**Date:** May 04, 2021

**Time:** 8:30 AM

**Location:** RJC Courtroom 11A  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

**NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.**

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Michelle McCarthy  
Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Michelle McCarthy  
Deputy Clerk of the Court

**FFCO**  
**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 Respondent

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**JAVAR KETCHUM,**  
#1836597

Petitioner,

-vs-

**THE STATE OF NEVADA,**  
Respondent.

CASE NO: A-20-821316-W  
C-16-319714-1  
DEPT NO: XVII

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

DATE OF HEARING: MARCH 12, 2021  
TIME OF HEARING: 9:00AM

THIS CAUSE having come on for hearing before the Honorable MICHAEL VILLANI, District Judge, on the 12th day of March, 2021, the Petitioner not being present, REPRESENTED BY JOSE CARLOS PALLARES, ESQ., the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through JOHN GIORDANI, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **STATEMENT OF THE CASE**

3 On November 30, 2016, the State charged Javar Ketchum (hereinafter "Petitioner") by  
4 way of Indictment with one count each of Murder with a Deadly Weapon and Robbery with a  
5 Deadly Weapon. On December 30, 2016, Petitioner filed a pre-trial Petition for Writ of Habeas  
6 Corpus and Motion to Dismiss. The State filed its Return on January 4, 2017. Petitioner filed  
7 a Reply on January 9, 2017. The district court denied the Petition on February 17, 2017.

8 On March 8, 2017, Petitioner filed a Motion in Limine, seeking to admit character  
9 evidence of the victim, Ezekiel Davis. On May 9, 2017, the State filed a Motion in Limine,  
10 asking that the district court preclude prior specific acts of violence by the murder victim. On  
11 May 18, 2017, the State filed a Supplement to its Motion in Limine. The district court held a  
12 Petrocelli Hearing on May 19, 2017, determining that Petitioner could only bring in opinion  
13 testimony regarding the victim's character and that witnesses were not to elaborate on that  
14 opinion.

15 On May 22, 2017, Petitioner's five-day jury trial commenced. At the end of the fifth  
16 day of trial, the jury found Petitioner guilty of both charges. Following the verdict, Petitioner  
17 entered into a stipulation and order, waiving the penalty phase and agreeing to a sentence of  
18 life in prison with parole eligibility after twenty years, with the sentences for the deadly  
19 weapon enhancement and the count of robbery with use of a deadly weapon to be argued by  
20 both parties.

21 On June 2, 2017, Petitioner filed a Motion for New Trial pursuant to NRS 176.515 (4).  
22 The State filed its Opposition on September 9, 2017. Petitioner filed a Reply on September 27,  
23 2017 and a Supplement thereto on September 28, 2017. The district court, finding that  
24 Petitioner's disagreement with the court's evidentiary rulings was not a basis for a new trial,  
25 denied the Motion on October 17, 2017. Petitioner was adjudicated that same day. However,  
26 the defense requested additional time to handle sentencing matters.

27 According to the stipulation, on February 1, 2018, the district court sentenced Petitioner  
28 to an aggregate of life in the Nevada Department of Corrections with minimum parole

1 eligibility after twenty-eight (28) years, with four hundred seventy- five (475) days credit for  
2 time served. The Judgment of Conviction was filed on February 5, 2018.

3 Petitioner filed a Notice of Appeal on February 6, 2018. On September 12, 2019, the  
4 Nevada Supreme Court affirmed Petitioner's conviction. Remittitur issued on October 11,  
5 2019.

6 On September 11, 2020, Petitioner filed the instant Petition for Writ of Habeas Corpus  
7 (Post-Conviction) (hereinafter "Petition"). The State filed its Response on December 16, 2020.  
8 Petitioner filed his Reply on February 9, 2021. Following a hearing on March 12, 2021, this  
9 Court finds and concludes as follows:

### 10 **STATEMENT OF THE FACTS**

11 At 6:22 a.m. on September 25, 2016, Officers Brennan Childers and Jacquelyn Torres  
12 were dispatched to a shooting at 4230 S. Decatur Blvd, a strip mall with several businesses  
13 including a clothing store. Jury Trial Transcript, Day 2, ("JTT Day 2") May 23, 2017, at 20-  
14 23, 29-32. When police arrived, they found a man—later identified as Ezekiel Davis  
15 ("Ezekiel" or "the victim")—upon whom another man was performing chest compressions.  
16 Id. at 22-23, 32. Ezekiel was not wearing pants. Id. at 32. Several other people were in the  
17 parking lot, and none of the businesses appeared opened. Id. at 22-23. Ezekiel was transported  
18 to the hospital but did not survive a single gunshot wound to the abdomen. Id. at 66. Trial  
19 testimony from Ezekiel's fiancé, Bianca Hicks, and from Detective Christopher Bunn revealed  
20 that missing from Ezekiel's person was a belt which had a gold "M" buckle and a gold watch.  
21 Jury Trial, Day 3, ("JTT Day 3") May 24, 2017, at 17, 122; Jury Trial Transcript, Day 4, ("JTT  
22 Day 4") May 25, 2017, at 86, 90-92.

23 Top Knotch, the clothing store in front of which Ezekiel was shot, doubles as an after-  
24 hours club. JTT Day 2, at 9. Ezekiel's friend Deshawn Byrd—the one who had given him CPR  
25 in an attempt to save his life—testified at trial that sometime after approximately 3:00 a.m.,  
26 Ezekiel arrived at the club. Id. at 10-11. Byrd testified there was no indication that anything  
27 had happened in the club which led to any sort of confrontation. Id. at 10-14.

28 ///



1 Detective Bunn testified at trial that the day of the murder, as detectives and crime scene  
2 analysts were documenting the scene, three individuals—later identified as Marlo Chiles,  
3 Roderick Vincent, and Samantha Cordero—exited Top Knotch. JTT Day 3, at 42-67. Chiles  
4 was the owner of Top Knotch, and Vincent owned a studio inside of Top Knotch. Id. at 68.  
5 Vincent denied that there were any DVRs of the surveillance video for Top Knotch or the  
6 recording studio. Id. at 73. Detective Bunn had noted a camera, however. Id. at 69. A  
7 subsequent search warrant on the vehicles in the parking lot located two (2) DVR's of the  
8 surveillance footage from Top Knotch and the studio in Vincent's car. Id. at 58-59, 63-64.

9 A review of the video footage, extensive portions of which were played at trial,  
10 demonstrated that Petitioner entered the club at about 2:00 a.m. Id. at 91-92. At 3:25 a.m.,  
11 Chiles, Vincent, Antoine Bernard, and several other people were in the back area of the  
12 business when a person in a number 3 jersey, later identified as Petitioner, produced a semi-  
13 automatic handgun from his pants and showed it to the group. Id. at 93-94.

14 The video also showed that at about 6:14 a.m., Petitioner and Ezekiel exited arm-in-  
15 arm out the front of Top Knotch. Id. at 97. At that point, there was still a watch on Ezekiel's  
16 wrist. Id. at 98. The two walked to the front of Bernard's black vehicle and appeared to  
17 converse for a short time, then walked by the driver's side of Bernard's vehicle, where they  
18 left camera view. Id. at 99-102. At about 6:16 a.m., the people on video all appeared to have  
19 their attention drawn to the area where Petitioner and Ezekiel were. Id. at 99. Petitioner then  
20 entered the view of the camera, removing Ezekiel's belt from his body while holding the gun  
21 in his other hand. Id. at 101-102. Bernard also testified at trial that he saw Petitioner take  
22 Ezekiel's belt. Id. at 20. The video showed that Petitioner approached Bernard's car, opened  
23 the passenger door, placed the belt on the front seat, and returned to the area of Ezekiel's body.  
24 Id. at 102. Petitioner returned to Bernard's vehicle, entered the passenger seat of the vehicle  
25 and the vehicle fled the area. Id. at 102.

26 Despite contact with several witnesses in the parking lot including Chiles and Vincent,  
27 the police had no information regarding the identity of the shooter. Id. at 107. After further  
28 investigation, the shooter was identified as Petitioner and a warrant for his arrest was issued.

1 Id. at 107. Petitioner was apprehended at a border control station in Sierra Blanca, Texas,  
2 whereupon he was brought back to Nevada to face charges. Id. at 108.

### 3 AUTHORITY

#### 4 **I. PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL**

5 Petitioner claims that counsel was ineffective “in multiple ways in the way he handled  
6 the surveillance video.” Petition, at 6. Specifically, Petitioner claims that counsel was  
7 ineffective in three ways: 1) the initial viewing, 2) failing to review the video in preparation  
8 for trial, and 3) failing to object to the State admitting the video and using it in rebuttal.  
9 Petition, at 6-9.

10 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal  
11 prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his  
12 defense.” The United States Supreme Court has long recognized that “the right to counsel is  
13 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,  
14 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323  
15 (1993).

16 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove  
17 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of  
18 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865  
19 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel’s  
20 representation fell below an objective standard of reasonableness, and second, that but for  
21 counsel’s errors, there is a reasonable probability that the result of the proceedings would have  
22 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State  
23 Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-  
24 part test). “[T]here is no reason for a court deciding an ineffective assistance claim to approach  
25 the inquiry in the same order or even to address both components of the inquiry if the defendant  
26 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

27 The court begins with the presumption of effectiveness and then must determine  
28 whether the defendant has demonstrated by a preponderance of the evidence that counsel was

1 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel  
2 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of  
3 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,  
4 537 P.2d 473, 474 (1975).

5 Counsel cannot be ineffective for failing to make futile objections or arguments. See  
6 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the  
7 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
8 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
9 (2002).

10 Based on the above law, the role of a court in considering allegations of ineffective  
11 assistance of counsel is “not to pass upon the merits of the action not taken but to determine  
12 whether, under the particular facts and circumstances of the case, trial counsel failed to render  
13 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
14 (1978). This analysis does not mean that the court should “second guess reasoned choices  
15 between trial tactics nor does it mean that defense counsel, to protect himself against  
16 allegations of inadequacy, must make every conceivable motion no matter how remote the  
17 possibilities are of success.” Id. To be effective, the constitution “does not require that  
18 counsel do what is impossible or unethical. If there is no bona fide defense to the charge,  
19 counsel cannot create one and may disserve the interests of his client by attempting a useless  
20 charade.” United States v. Cronie, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

21 “There are countless ways to provide effective assistance in any given case. Even the  
22 best criminal defense attorneys would not defend a particular client in the same way.”  
23 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after  
24 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,  
25 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
26 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel’s  
27 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s  
28 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

1 Even if a defendant can demonstrate that his counsel's representation fell below an  
2 objective standard of reasonableness, he must still demonstrate prejudice and show a  
3 reasonable probability that, but for counsel's errors, the result of the trial would have been  
4 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
5 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a probability  
6 sufficient to undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-  
7 89, 694, 104 S. Ct. at 2064-65, 2068).

8 The Nevada Supreme Court has held "that a habeas corpus petitioner must prove the  
9 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of  
10 the evidence." Means, 120 Nev. at 1012, 103 P.3d at 33. Furthermore, claims of ineffective  
11 assistance of counsel asserted in a petition for post-conviction relief must be supported with  
12 specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v.  
13 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked" allegations are not  
14 sufficient, nor are those belied and repelled by the record. Id. NRS 34.735(6) states in relevant  
15 part, "[Petitioner] *must* allege specific facts supporting the claims in the petition[.] . . . Failure  
16 to allege specific facts rather than just conclusions may cause your petition to be dismissed."  
17 (emphasis added).

18 **A. Counsel was not ineffective in the initial viewing of the surveillance video**

19 First, Petitioner alleges that counsel was ineffective in his initial viewing of the  
20 surveillance video because counsel allegedly "reported he was only shown parts of the video."  
21 Petition, at 6. It must be noted that Petitioner has utterly failed to cite anything in the record  
22 or otherwise present any evidence supporting this claim. Thus, this is a bare and naked claim.  
23 Hargrove, 100 Nev. at 502, 686 P.2d at 225. Petitioner is simply complaining that counsel did  
24 not view the video in its entirety without support. Additionally, the Nevada Supreme Court  
25 already found that counsel had access to the entire surveillance video. Order of Affirmance,  
26 No. 75097, at 3. The State cannot meaningfully respond to such a bare and naked claim, and  
27 to the extent Petitioner is claiming that counsel did not have access to the entire surveillance  
28 video, that claim is barred by law of the case. Therefore, this claim is without merit.

1           **B. Counsel was not ineffective for failing to review the surveillance video**

2           Second, Petitioner similarly alleges that counsel failed to review the surveillance video  
3 in preparation of trial. Petition, at 7-8. Petitioner claims that trial counsel “admitted to being  
4 completely caught by surprise by these videos.” Petition, at 7. Petitioner’s claim that counsel  
5 “admitted to being completely caught by surprise by these videos” is wholly unsupported, and  
6 counsel’s supposed “admission” appears nowhere in the record. Petitioner simply assumes that  
7 counsel “did not bother to watch” the surveillance videos. But, once again, Petitioner has failed  
8 to cite anything in the record supporting this claim. Hargrove, 100 Nev. at 502, 686 P.2d at  
9 225. Petitioner provides no reason to think that counsel failed to view the entire videotape  
10 when it is an established fact that counsel had access to that tape. More importantly, in his  
11 Opening Brief for Petitioner’s direct appeal, trial counsel admitted that he viewed the  
12 surveillance video. Appellant’s Opening Brief, August 29, 2018, No. 75097, at 46. Therefore,  
13 this claim is without merit.

14           Even if counsel did not review the portions of the surveillance video that the State  
15 played in rebuttal, he cannot demonstrate how this prejudiced. There was overwhelming  
16 evidence of Petitioner’s guilt in the surveillance video—portions of the surveillance video that  
17 counsel clearly knew about as he cross-examined witnesses regarding it. The surveillance  
18 video showed that Petitioner and the victim were seen on video walking through the club arm-  
19 in-arm mere minutes before Petitioner murdered and robbed the victim. Jury Trial Transcript,  
20 Day 3, May 24, 2017, at 97. Petitioner robbing the victim was literally caught on the  
21 surveillance video. Id. at 17, 100-102. Petitioner could be seen very clearly ripping the  
22 expensive belt from the victim while the victim lay dying. Id. The victim’s property—  
23 including his watch—was also missing from his body. Id. at 17, 122; Jury Trial Transcript,  
24 Day 4, May 25, 2017, at 86, 90-92. Bernard also testified at trial that he saw Petitioner take  
25 Ezekiel’s belt. Jury Trial Transcript, Day 3, May 24, 2017, at 20. The surveillance video  
26 showed that Petitioner approached Bernard’s car, opened the passenger door, placed the belt  
27 on the front seat, and returned to the area of the victim’s body. Id. at 102. Petitioner returned  
28 to Bernard’s vehicle, entered the passenger seat of the vehicle and the vehicle fled the area. Id.

1 Petitioner does not present any alternative defense that would have worked better, or otherwise  
2 explain what counsel could have done differently. Therefore, Petitioner cannot demonstrate  
3 how counsel was ineffective.

4 **C. Counsel was not ineffective for failing to object to the surveillance video**

5 Third, Petitioner argues that counsel was ineffective for failing to object to the State  
6 admitting portions of the surveillance video in the State's rebuttal. Petition, at 8-9. However,  
7 Petitioner fails to explain on what basis counsel should have moved to exclude the portions of  
8 the video. The surveillance video in its entirety was admitted into evidence, so any objection  
9 to playing portions of the surveillance video in rebuttal would have been overruled. There is  
10 no legal basis establishing a valid objection to the admission of the video, proper foundation  
11 was established, and there was no argument during trial or in the Petition stating the video was  
12 inadmissible evidence. Because counsel cannot be ineffective for failing to make frivolous  
13 objections, counsel here cannot be ineffective for failing to object to the surveillance video in  
14 rebuttal. See Ennis, 122 Nev. at 706, 137 P.3d at 1103. Therefore, this claim is without merit.

15 **D. Counsel was not ineffective for failing to object to the surveillance video**

16 Lastly, Petitioner alleges counsel was ineffective because it put Petitioner in a worse  
17 position for his appeal. Petition, at 9. Petitioner complains about appellate counsel's deficient  
18 performance on appeal. Id.

19 There is a strong presumption that appellate counsel's performance was reasonable and  
20 fell within "the wide range of reasonable professional assistance." See United States v.  
21 Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990); citing Strickland, 466 U.S. at 689, 104 S. Ct. at  
22 2065. A claim of ineffective assistance of appellate counsel must satisfy the two-prong test set  
23 forth by Strickland. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). In order  
24 to satisfy Strickland's second prong, the defendant must show that the omitted issue would  
25 have had a reasonable probability of success on appeal. Id.

26 The professional diligence and competence required on appeal involves "winnowing  
27 out weaker arguments on appeal and focusing on one central issue if possible, or at most on a  
28 few key issues." Jones v. Barnes, 463 U.S. 745, 751-52, 103 S. Ct. 3308, 3313 (1983). In

1 particular, a “brief that raises every colorable issue runs the risk of burying good arguments  
2 ... in a verbal mound made up of strong and weak contentions.” Id. at 753, 103 S. Ct. at 3313.  
3 “For judges to second-guess reasonable professional judgments and impose on appointed  
4 counsel a duty to raise every ‘colorable’ claim suggested by a client would disserve the very  
5 goal of vigorous and effective advocacy.” Id. at 754, 103 S. Ct. at 3314.

6 Here, objecting to the surveillance video in rebuttal would not have changed the  
7 outcome of Petitioner’s appeal because there was no basis to exclude the surveillance video or  
8 prevent the State from playing portions in rebuttal. As discussed supra, Section I.C., the  
9 surveillance video was admitted at trial, and it would have been futile for counsel to object to  
10 it in rebuttal. Counsel cannot be ineffective for failing to object to the surveillance video in  
11 rebuttal. See Ennis, 122 Nev. at 706, 137 P.3d at 1103. Because trial counsel did not have any  
12 reason to object, there is no indication that an objection would have put appellate counsel in  
13 any better position.

14 In his Opening Brief for Petitioner’s direct appeal, appellate counsel raised the issue  
15 that he could not “control the video” when he viewed it at the evidence vault with law  
16 enforcement. Appellant’s Opening Brief, August 29, 2018, No. 75097, at 46. However, he was  
17 given a copy during discovery and admitted to viewing the surveillance video on appeal. Id.  
18 Furthermore, the Nevada Supreme Court found that counsel had access to the entire  
19 surveillance video. Order of Affirmance, No. 75097, at 3. Therefore, there was not any basis  
20 for trial counsel to object to the surveillance video being played during rebuttal, and appellate  
21 counsel found not have raised any stronger argument on appeal. As such, this claim is without  
22 merit, and Petitioner cannot demonstrate how counsel was ineffective.

## 23 **II. COUNSEL WAS NOT INEFFECTIVE IN HIS PREPARATION AND** 24 **CROSS-EXAMINATION OF ANTOINE BERNARD**

25 Petitioner alleges that counsel was ineffective in his preparation and execution of the  
26 cross-examination of Antoine Bernard. Petition, at 9-10. Petitioner raises this claim without  
27 any citations to the record and fails to explain what counsel should have done differently that  
28 ///

1 would have changed the outcome at trial. As such, this claim is belied by the record and  
2 suitable for only summary denial under Hargrove, 100 Nev. at 502, 686 P.2d at 225.

3 Although Petitioner chose not to cite to any lawful authority, construed liberally, the  
4 State assumes he is arguing that there are discrepancies with Bernard's initial police statement  
5 and what he testified to at trial. It is important to note that Bernard was originally charged as  
6 a co-defendant in the instant case. Indictment, November 30, 2016, at 1-5. Thus, the State is  
7 assuming that Petitioner is complaining regarding his initial police statement when he was a  
8 suspect, and his testimony in front of the jury against Petitioner when his case was resolved.

9 Petitioner does not articulate how counsel was ineffective in his cross-examination, or  
10 explain to this Court what counsel should have done differently that would have changed the  
11 outcome of the trial. Petitioner slightly discusses the discrepancies in Bernard's testimony,  
12 then, once again, argues that counsel was unprepared for the surveillance video being  
13 introduced during rebuttal. Petition, at 9-10. As discussed supra, Section I., Petitioner's claims  
14 that counsel was ineffective for not being prepared for the surveillance video in rebuttal is  
15 without merit.

16 Additionally, because Petitioner does not even cite to counsel's cross-examination of  
17 Bernard at trial, he overlooks counsel questioning him regarding his initial statement to police.  
18 Jury Trial Transcript, Day 3, May 24, 2017, at 26-31. In fact, counsel even got Bernard to  
19 admit that he had omitted information from the police in his original statement to them. Id. at  
20 31. Then on recross-examination, counsel again got Bernard to admit that his testimony at trial  
21 was different than his initial statement to the police. Id. at 36-37. The cross-examination of  
22 Bernard brought up his statements to the police were incomplete or had omissions and he was  
23 confronted with the differences in his trial testimony and his statements to the police, therefore  
24 neither prong of Strickland has been established. As such, counsel was not ineffective in his  
25 cross-examination of Antoine Bernard and this Petition is denied.

26 Lastly, Petitioner raised a new claim for the first time at the oral argument on the  
27 Petition that trial counsel should have called a psychologist to testify as to his state of mind as  
28 a robbery victim. He also requested an evidentiary hearing on this new claim. This Court



1 declined to consider the claim or have an evidentiary hearing on the claim because it was not  
2 raised in the underlying instant Petition. As such, an evidentiary hearing on this new claim  
3 was not warranted.

4 **ORDER**

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

Dated this 31st day of March, 2021



E28 0E3 17F9 EEF2  
Michael Villani  
District Court Judge

11 STEVEN B. WOLFSON  
12 Clark County District Attorney  
Nevada Bar #001565

13 /s/ JOHN NIMAN  
14 BY \_\_\_\_\_  
15 JOHN NIMAN  
16 Deputy District Attorney  
Nevada Bar #14408

17  
18 CERTIFICATE OF ELECTRONIC FILING

19 I hereby certify that service of the above and foregoing, was made this 31<sup>st</sup> day of  
20 March, 2021, by Electronic Filing to:

21 CRAIG MULLER, ESQ.

22 Email: [receptionist@craigmullerlaw.com](mailto:receptionist@craigmullerlaw.com)

23  
24 By: /s/ Janet Hayes  
Secretary for the District Attorney's Office

25  
26  
27  
28 16F16375A/JN/bs/jh/MVU

1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5		
6	Javar Ketchum, Plaintiff(s)	CASE NO: A-20-821316-W
7	vs.	DEPT. NO. Department 17
8	Nevada State of, Defendant(s)	
9		

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the  
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
case as listed below:

14 Service Date: 3/31/2021

15	Craig Mueller	craig@craigmuellerlaw.com
16	Craig Mueller	receptionist@craigmuellerlaw.com
17	District Attorney	motions@clarkcountyda.com
18		
19	John Niman	JOHN.NIMAN@CLARKCOUNTYDA.COM
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JAVAR KETCHUM,

Petitioner,

vs.

STATE OF NEVADA,

Respondent,

Case No: A-20-821316-W

Dept No: XVII

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

**PLEASE TAKE NOTICE** that on March 31, 2021, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on April 5, 2021.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

**CERTIFICATE OF E-SERVICE / MAILING**

I hereby certify that on this 5 day of April 2021, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

Clark County District Attorney's Office  
Attorney General's Office – Appellate Division-  
Public Defender's Office

☒ The United States mail addressed as follows:

Javar Ketchum # 1192727  
P.O. Box 650  
Indian Springs, NV 89070

Craig A. Mueller, Esq.  
723 S. Seventh St.  
Las Vegas, NV 89101

Jose Pallares, Esq.  
808 S. Seventh St.,  
Las Vegas, NV 89101

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

DISTRICT COURT  
CLARK COUNTY, NEVADA

Respondent.

DATE OF HEARING: MARCH 12, 2021  
TIME OF HEARING: 9:00AM

THIS CAUSE having come on for hearing before the Honorable MICHAEL VILLANI, District Judge, on the 12th day of March, 2021, the Petitioner not being present, REPRESENTED BY JOSE CARLOS PALLARES, ESQ., the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through JOHN GIORDANI, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

///

1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **STATEMENT OF THE CASE**

3 On November 30, 2016, the State charged Javar Ketchum (hereinafter "Petitioner") by  
4 way of Indictment with one count each of Murder with a Deadly Weapon and Robbery with a  
5 Deadly Weapon. On December 30, 2016, Petitioner filed a pre-trial Petition for Writ of Habeas  
6 Corpus and Motion to Dismiss. The State filed its Return on January 4, 2017. Petitioner filed  
7 a Reply on January 9, 2017. The district court denied the Petition on February 17, 2017.

8 On March 8, 2017, Petitioner filed a Motion in Limine, seeking to admit character  
9 evidence of the victim, Ezekiel Davis. On May 9, 2017, the State filed a Motion in Limine,  
10 asking that the district court preclude prior specific acts of violence by the murder victim. On  
11 May 18, 2017, the State filed a Supplement to its Motion in Limine. The district court held a  
12 Petrocelli Hearing on May 19, 2017, determining that Petitioner could only bring in opinion  
13 testimony regarding the victim's character and that witnesses were not to elaborate on that  
14 opinion.

15 On May 22, 2017, Petitioner's five-day jury trial commenced. At the end of the fifth  
16 day of trial, the jury found Petitioner guilty of both charges. Following the verdict, Petitioner  
17 entered into a stipulation and order, waiving the penalty phase and agreeing to a sentence of  
18 life in prison with parole eligibility after twenty years, with the sentences for the deadly  
19 weapon enhancement and the count of robbery with use of a deadly weapon to be argued by  
20 both parties.

21 On June 2, 2017, Petitioner filed a Motion for New Trial pursuant to NRS 176.515 (4).  
22 The State filed its Opposition on September 9, 2017. Petitioner filed a Reply on September 27,  
23 2017 and a Supplement thereto on September 28, 2017. The district court, finding that  
24 Petitioner's disagreement with the court's evidentiary rulings was not a basis for a new trial,  
25 denied the Motion on October 17, 2017. Petitioner was adjudicated that same day. However,  
26 the defense requested additional time to handle sentencing matters.

27 According to the stipulation, on February 1, 2018, the district court sentenced Petitioner  
28 to an aggregate of life in the Nevada Department of Corrections with minimum parole

1 eligibility after twenty-eight (28) years, with four hundred seventy- five (475) days credit for  
2 time served. The Judgment of Conviction was filed on February 5, 2018.

3 Petitioner filed a Notice of Appeal on February 6, 2018. On September 12, 2019, the  
4 Nevada Supreme Court affirmed Petitioner's conviction. Remittitur issued on October 11,  
5 2019.

6 On September 11, 2020, Petitioner filed the instant Petition for Writ of Habeas Corpus  
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8 Petitioner filed his Reply on February 9, 2021. Following a hearing on March 12, 2021, this  
9 Court finds and concludes as follows:

### 10 **STATEMENT OF THE FACTS**

11 At 6:22 a.m. on September 25, 2016, Officers Brennan Childers and Jacquelyn Torres  
12 were dispatched to a shooting at 4230 S. Decatur Blvd, a strip mall with several businesses  
13 including a clothing store. Jury Trial Transcript, Day 2, ("JTT Day 2") May 23, 2017, at 20-  
14 23, 29-32. When police arrived, they found a man—later identified as Ezekiel Davis  
15 ("Ezekiel" or "the victim")—upon whom another man was performing chest compressions.  
16 Id. at 22-23, 32. Ezekiel was not wearing pants. Id. at 32. Several other people were in the  
17 parking lot, and none of the businesses appeared opened. Id. at 22-23. Ezekiel was transported  
18 to the hospital but did not survive a single gunshot wound to the abdomen. Id. at 66. Trial  
19 testimony from Ezekiel's fiancé, Bianca Hicks, and from Detective Christopher Bunn revealed  
20 that missing from Ezekiel's person was a belt which had a gold "M" buckle and a gold watch.  
21 Jury Trial, Day 3, ("JTT Day 3") May 24, 2017, at 17, 122; Jury Trial Transcript, Day 4, ("JTT  
22 Day 4") May 25, 2017, at 86, 90-92.

23 Top Knotch, the clothing store in front of which Ezekiel was shot, doubles as an after-  
24 hours club. JTT Day 2, at 9. Ezekiel's friend Deshawn Byrd—the one who had given him CPR  
25 in an attempt to save his life—testified at trial that sometime after approximately 3:00 a.m.,  
26 Ezekiel arrived at the club. Id. at 10-11. Byrd testified there was no indication that anything  
27 had happened in the club which led to any sort of confrontation. Id. at 10-14.

28 ///

1 Detective Bunn testified at trial that the day of the murder, as detectives and crime scene  
2 analysts were documenting the scene, three individuals—later identified as Marlo Chiles,  
3 Roderick Vincent, and Samantha Cordero—exited Top Knotch. JTT Day 3, at 42-67. Chiles  
4 was the owner of Top Knotch, and Vincent owned a studio inside of Top Knotch. Id. at 68.  
5 Vincent denied that there were any DVRs of the surveillance video for Top Knotch or the  
6 recording studio. Id. at 73. Detective Bunn had noted a camera, however. Id. at 69. A  
7 subsequent search warrant on the vehicles in the parking lot located two (2) DVR's of the  
8 surveillance footage from Top Knotch and the studio in Vincent's car. Id. at 58-59, 63-64.

9 A review of the video footage, extensive portions of which were played at trial,  
10 demonstrated that Petitioner entered the club at about 2:00 a.m. Id. at 91-92. At 3:25 a.m.,  
11 Chiles, Vincent, Antoine Bernard, and several other people were in the back area of the  
12 business when a person in a number 3 jersey, later identified as Petitioner, produced a semi-  
13 automatic handgun from his pants and showed it to the group. Id. at 93-94.

14 The video also showed that at about 6:14 a.m., Petitioner and Ezekiel exited arm-in-  
15 arm out the front of Top Knotch. Id. at 97. At that point, there was still a watch on Ezekiel's  
16 wrist. Id. at 98. The two walked to the front of Bernard's black vehicle and appeared to  
17 converse for a short time, then walked by the driver's side of Bernard's vehicle, where they  
18 left camera view. Id. at 99-102. At about 6:16 a.m., the people on video all appeared to have  
19 their attention drawn to the area where Petitioner and Ezekiel were. Id. at 99. Petitioner then  
20 entered the view of the camera, removing Ezekiel's belt from his body while holding the gun  
21 in his other hand. Id. at 101-102. Bernard also testified at trial that he saw Petitioner take  
22 Ezekiel's belt. Id. at 20. The video showed that Petitioner approached Bernard's car, opened  
23 the passenger door, placed the belt on the front seat, and returned to the area of Ezekiel's body.  
24 Id. at 102. Petitioner returned to Bernard's vehicle, entered the passenger seat of the vehicle  
25 and the vehicle fled the area. Id. at 102.

26 Despite contact with several witnesses in the parking lot including Chiles and Vincent,  
27 the police had no information regarding the identity of the shooter. Id. at 107. After further  
28 investigation, the shooter was identified as Petitioner and a warrant for his arrest was issued.

1 Id. at 107. Petitioner was apprehended at a border control station in Sierra Blanca, Texas,  
2 whereupon he was brought back to Nevada to face charges. Id. at 108.

### 3 AUTHORITY

#### 4 **I. PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL**

5 Petitioner claims that counsel was ineffective “in multiple ways in the way he handled  
6 the surveillance video.” Petition, at 6. Specifically, Petitioner claims that counsel was  
7 ineffective in three ways: 1) the initial viewing, 2) failing to review the video in preparation  
8 for trial, and 3) failing to object to the State admitting the video and using it in rebuttal.  
9 Petition, at 6-9.

10 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal  
11 prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his  
12 defense.” The United States Supreme Court has long recognized that “the right to counsel is  
13 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,  
14 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323  
15 (1993).

16 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove  
17 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of  
18 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865  
19 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel’s  
20 representation fell below an objective standard of reasonableness, and second, that but for  
21 counsel’s errors, there is a reasonable probability that the result of the proceedings would have  
22 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State  
23 Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-  
24 part test). “[T]here is no reason for a court deciding an ineffective assistance claim to approach  
25 the inquiry in the same order or even to address both components of the inquiry if the defendant  
26 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

27 The court begins with the presumption of effectiveness and then must determine  
28 whether the defendant has demonstrated by a preponderance of the evidence that counsel was



1 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel  
2 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of  
3 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,  
4 537 P.2d 473, 474 (1975).

5 Counsel cannot be ineffective for failing to make futile objections or arguments. See  
6 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the  
7 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
8 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
9 (2002).

10 Based on the above law, the role of a court in considering allegations of ineffective  
11 assistance of counsel is “not to pass upon the merits of the action not taken but to determine  
12 whether, under the particular facts and circumstances of the case, trial counsel failed to render  
13 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
14 (1978). This analysis does not mean that the court should “second guess reasoned choices  
15 between trial tactics nor does it mean that defense counsel, to protect himself against  
16 allegations of inadequacy, must make every conceivable motion no matter how remote the  
17 possibilities are of success.” Id. To be effective, the constitution “does not require that  
18 counsel do what is impossible or unethical. If there is no bona fide defense to the charge,  
19 counsel cannot create one and may disserve the interests of his client by attempting a useless  
20 charade.” United States v. Cronie, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

21 “There are countless ways to provide effective assistance in any given case. Even the  
22 best criminal defense attorneys would not defend a particular client in the same way.”  
23 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after  
24 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,  
25 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
26 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel’s  
27 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s  
28 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

1 Even if a defendant can demonstrate that his counsel's representation fell below an  
2 objective standard of reasonableness, he must still demonstrate prejudice and show a  
3 reasonable probability that, but for counsel's errors, the result of the trial would have been  
4 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
5 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a probability  
6 sufficient to undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-  
7 89, 694, 104 S. Ct. at 2064-65, 2068).

8 The Nevada Supreme Court has held "that a habeas corpus petitioner must prove the  
9 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of  
10 the evidence." Means, 120 Nev. at 1012, 103 P.3d at 33. Furthermore, claims of ineffective  
11 assistance of counsel asserted in a petition for post-conviction relief must be supported with  
12 specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v.  
13 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked" allegations are not  
14 sufficient, nor are those belied and repelled by the record. Id. NRS 34.735(6) states in relevant  
15 part, "[Petitioner] *must* allege specific facts supporting the claims in the petition[.] . . . Failure  
16 to allege specific facts rather than just conclusions may cause your petition to be dismissed."  
17 (emphasis added).

18 **A. Counsel was not ineffective in the initial viewing of the surveillance video**

19 First, Petitioner alleges that counsel was ineffective in his initial viewing of the  
20 surveillance video because counsel allegedly "reported he was only shown parts of the video."  
21 Petition, at 6. It must be noted that Petitioner has utterly failed to cite anything in the record  
22 or otherwise present any evidence supporting this claim. Thus, this is a bare and naked claim.  
23 Hargrove, 100 Nev. at 502, 686 P.2d at 225. Petitioner is simply complaining that counsel did  
24 not view the video in its entirety without support. Additionally, the Nevada Supreme Court  
25 already found that counsel had access to the entire surveillance video. Order of Affirmance,  
26 No. 75097, at 3. The State cannot meaningfully respond to such a bare and naked claim, and  
27 to the extent Petitioner is claiming that counsel did not have access to the entire surveillance  
28 video, that claim is barred by law of the case. Therefore, this claim is without merit.

1           **B. Counsel was not ineffective for failing to review the surveillance video**

2           Second, Petitioner similarly alleges that counsel failed to review the surveillance video  
3 in preparation of trial. Petition, at 7-8. Petitioner claims that trial counsel “admitted to being  
4 completely caught by surprise by these videos.” Petition, at 7. Petitioner’s claim that counsel  
5 “admitted to being completely caught by surprise by these videos” is wholly unsupported, and  
6 counsel’s supposed “admission” appears nowhere in the record. Petitioner simply assumes that  
7 counsel “did not bother to watch” the surveillance videos. But, once again, Petitioner has failed  
8 to cite anything in the record supporting this claim. Hargrove, 100 Nev. at 502, 686 P.2d at  
9 225. Petitioner provides no reason to think that counsel failed to view the entire videotape  
10 when it is an established fact that counsel had access to that tape. More importantly, in his  
11 Opening Brief for Petitioner’s direct appeal, trial counsel admitted that he viewed the  
12 surveillance video. Appellant’s Opening Brief, August 29, 2018, No. 75097, at 46. Therefore,  
13 this claim is without merit.

14           Even if counsel did not review the portions of the surveillance video that the State  
15 played in rebuttal, he cannot demonstrate how this prejudiced. There was overwhelming  
16 evidence of Petitioner’s guilt in the surveillance video—portions of the surveillance video that  
17 counsel clearly knew about as he cross-examined witnesses regarding it. The surveillance  
18 video showed that Petitioner and the victim were seen on video walking through the club arm-  
19 in-arm mere minutes before Petitioner murdered and robbed the victim. Jury Trial Transcript,  
20 Day 3, May 24, 2017, at 97. Petitioner robbing the victim was literally caught on the  
21 surveillance video. Id. at 17, 100-102. Petitioner could be seen very clearly ripping the  
22 expensive belt from the victim while the victim lay dying. Id. The victim’s property—  
23 including his watch—was also missing from his body. Id. at 17, 122; Jury Trial Transcript,  
24 Day 4, May 25, 2017, at 86, 90-92. Bernard also testified at trial that he saw Petitioner take  
25 Ezekiel’s belt. Jury Trial Transcript, Day 3, May 24, 2017, at 20. The surveillance video  
26 showed that Petitioner approached Bernard’s car, opened the passenger door, placed the belt  
27 on the front seat, and returned to the area of the victim’s body. Id. at 102. Petitioner returned  
28 to Bernard’s vehicle, entered the passenger seat of the vehicle and the vehicle fled the area. Id.

1 Petitioner does not present any alternative defense that would have worked better, or otherwise  
2 explain what counsel could have done differently. Therefore, Petitioner cannot demonstrate  
3 how counsel was ineffective.

4 **C. Counsel was not ineffective for failing to object to the surveillance video**

5 Third, Petitioner argues that counsel was ineffective for failing to object to the State  
6 admitting portions of the surveillance video in the State's rebuttal. Petition, at 8-9. However,  
7 Petitioner fails to explain on what basis counsel should have moved to exclude the portions of  
8 the video. The surveillance video in its entirety was admitted into evidence, so any objection  
9 to playing portions of the surveillance video in rebuttal would have been overruled. There is  
10 no legal basis establishing a valid objection to the admission of the video, proper foundation  
11 was established, and there was no argument during trial or in the Petition stating the video was  
12 inadmissible evidence. Because counsel cannot be ineffective for failing to make frivolous  
13 objections, counsel here cannot be ineffective for failing to object to the surveillance video in  
14 rebuttal. See Ennis, 122 Nev. at 706, 137 P.3d at 1103. Therefore, this claim is without merit.

15 **D. Counsel was not ineffective for failing to object to the surveillance video**

16 Lastly, Petitioner alleges counsel was ineffective because it put Petitioner in a worse  
17 position for his appeal. Petition, at 9. Petitioner complains about appellate counsel's deficient  
18 performance on appeal. Id.

19 There is a strong presumption that appellate counsel's performance was reasonable and  
20 fell within "the wide range of reasonable professional assistance." See United States v.  
21 Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990); citing Strickland, 466 U.S. at 689, 104 S. Ct. at  
22 2065. A claim of ineffective assistance of appellate counsel must satisfy the two-prong test set  
23 forth by Strickland. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). In order  
24 to satisfy Strickland's second prong, the defendant must show that the omitted issue would  
25 have had a reasonable probability of success on appeal. Id.

26 The professional diligence and competence required on appeal involves "winnowing  
27 out weaker arguments on appeal and focusing on one central issue if possible, or at most on a  
28 few key issues." Jones v. Barnes, 463 U.S. 745, 751-52, 103 S. Ct. 3308, 3313 (1983). In

1 particular, a “brief that raises every colorable issue runs the risk of burying good arguments  
2 ... in a verbal mound made up of strong and weak contentions.” Id. at 753, 103 S. Ct. at 3313.  
3 “For judges to second-guess reasonable professional judgments and impose on appointed  
4 counsel a duty to raise every ‘colorable’ claim suggested by a client would disserve the very  
5 goal of vigorous and effective advocacy.” Id. at 754, 103 S. Ct. at 3314.

6 Here, objecting to the surveillance video in rebuttal would not have changed the  
7 outcome of Petitioner’s appeal because there was no basis to exclude the surveillance video or  
8 prevent the State from playing portions in rebuttal. As discussed supra, Section I.C., the  
9 surveillance video was admitted at trial, and it would have been futile for counsel to object to  
10 it in rebuttal. Counsel cannot be ineffective for failing to object to the surveillance video in  
11 rebuttal. See Ennis, 122 Nev. at 706, 137 P.3d at 1103. Because trial counsel did not have any  
12 reason to object, there is no indication that an objection would have put appellate counsel in  
13 any better position.

14 In his Opening Brief for Petitioner’s direct appeal, appellate counsel raised the issue  
15 that he could not “control the video” when he viewed it at the evidence vault with law  
16 enforcement. Appellant’s Opening Brief, August 29, 2018, No. 75097, at 46. However, he was  
17 given a copy during discovery and admitted to viewing the surveillance video on appeal. Id.  
18 Furthermore, the Nevada Supreme Court found that counsel had access to the entire  
19 surveillance video. Order of Affirmance, No. 75097, at 3. Therefore, there was not any basis  
20 for trial counsel to object to the surveillance video being played during rebuttal, and appellate  
21 counsel found not have raised any stronger argument on appeal. As such, this claim is without  
22 merit, and Petitioner cannot demonstrate how counsel was ineffective.

## 23 **II. COUNSEL WAS NOT INEFFECTIVE IN HIS PREPARATION AND** 24 **CROSS-EXAMINATION OF ANTOINE BERNARD**

25 Petitioner alleges that counsel was ineffective in his preparation and execution of the  
26 cross-examination of Antoine Bernard. Petition, at 9-10. Petitioner raises this claim without  
27 any citations to the record and fails to explain what counsel should have done differently that  
28 ///

1 would have changed the outcome at trial. As such, this claim is belied by the record and  
2 suitable for only summary denial under Hargrove, 100 Nev. at 502, 686 P.2d at 225.

3 Although Petitioner chose not to cite to any lawful authority, construed liberally, the  
4 State assumes he is arguing that there are discrepancies with Bernard's initial police statement  
5 and what he testified to at trial. It is important to note that Bernard was originally charged as  
6 a co-defendant in the instant case. Indictment, November 30, 2016, at 1-5. Thus, the State is  
7 assuming that Petitioner is complaining regarding his initial police statement when he was a  
8 suspect, and his testimony in front of the jury against Petitioner when his case was resolved.

9 Petitioner does not articulate how counsel was ineffective in his cross-examination, or  
10 explain to this Court what counsel should have done differently that would have changed the  
11 outcome of the trial. Petitioner slightly discusses the discrepancies in Bernard's testimony,  
12 then, once again, argues that counsel was unprepared for the surveillance video being  
13 introduced during rebuttal. Petition, at 9-10. As discussed supra, Section I., Petitioner's claims  
14 that counsel was ineffective for not being prepared for the surveillance video in rebuttal is  
15 without merit.

16 Additionally, because Petitioner does not even cite to counsel's cross-examination of  
17 Bernard at trial, he overlooks counsel questioning him regarding his initial statement to police.  
18 Jury Trial Transcript, Day 3, May 24, 2017, at 26-31. In fact, counsel even got Bernard to  
19 admit that he had omitted information from the police in his original statement to them. Id. at  
20 31. Then on recross-examination, counsel again got Bernard to admit that his testimony at trial  
21 was different than his initial statement to the police. Id. at 36-37. The cross-examination of  
22 Bernard brought up his statements to the police were incomplete or had omissions and he was  
23 confronted with the differences in his trial testimony and his statements to the police, therefore  
24 neither prong of Strickland has been established. As such, counsel was not ineffective in his  
25 cross-examination of Antoine Bernard and this Petition is denied.

26 Lastly, Petitioner raised a new claim for the first time at the oral argument on the  
27 Petition that trial counsel should have called a psychologist to testify as to his state of mind as  
28 a robbery victim. He also requested an evidentiary hearing on this new claim. This Court

1 declined to consider the claim or have an evidentiary hearing on the claim because it was not  
2 raised in the underlying instant Petition. As such, an evidentiary hearing on this new claim  
3 was not warranted.

4 **ORDER**

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

Dated this 31st day of March, 2021

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10 E28 0E3 17F9 EE2  
Michael Villani  
District Court Judge

11 STEVEN B. WOLFSON  
12 Clark County District Attorney  
Nevada Bar #001565

13 /s/ JOHN NIMAN  
14 BY \_\_\_\_\_  
15 JOHN NIMAN  
16 Deputy District Attorney  
Nevada Bar #14408

17  
18 CERTIFICATE OF ELECTRONIC FILING

19 I hereby certify that service of the above and foregoing, was made this 31<sup>st</sup> day of  
20 March, 2021, by Electronic Filing to:

21 CRAIG MULLER, ESQ.

22 Email: [receptionist@craigmullerlaw.com](mailto:receptionist@craigmullerlaw.com)

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24 By: /s/ Janet Hayes  
Secretary for the District Attorney's Office

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28 16F16375A/JN/bs/jh/MVU

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Javar Ketchum, Plaintiff(s) CASE NO: A-20-821316-W  
7 vs. DEPT. NO. Department 17  
8 Nevada State of, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the  
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
14 case as listed below:

15 Service Date: 3/31/2021

16 Craig Mueller craig@craigmuellerlaw.com  
17 Craig Mueller receptionist@craigmuellerlaw.com  
18 District Attorney motions@clarkcountyda.com  
19 John Niman JOHN.NIMAN@CLARKCOUNTYDA.COM  
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MWCN  
CRAIG A. MUELLER, ESQ.  
Nevada Bar No. 4703  
CRAIG MUELLER & ASSOCIATES  
808 S. Seventh Street  
Las Vegas, NV 89101  
Office 702.382.1200  
receptionist@craigmuelllaw.com  
Attorney For Defendant

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JAVAR KETCHUM,	)	
#1836597	)	
	)	
Petitioner,	)	CASE NO: A-20-821316-W
VS.	)	
	)	C-16-319714-1
THE STATE OF NEVADA,	)	
	)	DEPT NO: XVII
Respondent.	)	

**COUNSEL'S NOTICE OF MOTION AND MOTION TO  
WITHDRAW AS ATTORNEY OF RECORD**

COMES NOW, Craig A. Mueller, Esq., attorney of record for Petitioner Javar  
Ketchum, by and through his attorney and hereby moves this Honorable Court for an Order  
allowing counsel to withdraw as attorney of record. This Motion is supported by the attached  
Declaration of Craig A. Mueller, Esq., and is made in good faith and not for the purpose of delay.

DATED This 21<sup>ST</sup> Day Of April 2021.

/s/ Craig A. Mueller  
CRAIG A. MUELLER, ESQ.

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**NOTICE OF MOTION**

TO: Plaintiff The State Of Nevada, and  
TO: The Office Of The Clark County District Attorney, its counsel.

YOU ARE HEREBY NOTIFIED that Counsel’s Motion To Withdraw As Attorney Of  
record will be heard in District Court Department 17 on April \_\_\_\_\_, 2021, at the hour of  
\_\_\_\_\_ a.m.

DATED this 21<sup>ST</sup> day of April, 2021.

/s/ Craig A. Mueller  
CRAIG A. MUELLER, ESQ.

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**DECLARATION OF CRAIG A. MUELLER, ESQ.**

COMES NOW, Craig A. Mueller, Esq, and hereby deposes and states that:

1. I am an attorney duly licensed to practice before all courts in the state of Nevada;
2. I am the attorney of record for Petitioner Javar Ketchum in case number A-20-821316-W currently pending in District Court Dept. 17;
3. I was retained to represent Petitioner Ketchum regarding a petition for post-conviction relief;
4. On March 12, 2021, the Court denied Petitioner Ketchum's petition;
5. On March 31, 2021, Petitioner Ketchum filed with the clerk of the court a hand-written document entitled "Motion For Reconsideration Or In The Alternative Motion For Rehearing Of Petitioner's NRS Chapter 34 Petition" signed by him and listing myself as "With Counsel Of Record";
6. At no time did I or anyone at my firm consult with Petitioner Ketchum regarding preparing this motion;
7. At no time did I, or anyone at my firm, authorize Petitioner Ketchum to sign my name to this motion;
8. On April 14, 2021, after conversations between myself, attorney Jose C. Pallares, Petitioner Ketchum and his mother, Petitioner Ketchum requested that my office move to withdraw from his case;
9. I hereby move to withdraw as attorney of record in order to allow Petitioner Ketchum to proceed in proper person with his motion;
10. Granting of this Motion To Withdraw will not result in the continuance of a trial or other hearing.

DATED This 21<sup>ST</sup> Day Of April, 2021.

/s/ Craig A. Mueller  
CRAIG A. MUELLER, ESQ.

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STEVEN B. WOLFSON  
Clark County District Attorney

By: /s/ Rosa Ramos  
Office Manager  
Craig A. Mueller & Associates

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Javar Ketchum  
Inmate No. 1192727  
H.D.S.P  
P.O. Box 650  
Indian Springs, NV 89070

/s/ Jose C. Pallares  
JOSE C. PALLARES, ESQ.



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

Javar Ketchum, Plaintiff(s)

vs.

Nevada State of, Defendant(s)

Case No.: A-20-821316-W

Department 17

**NOTICE OF HEARING**

Please be advised that the Counsel's Notice of Motion and Motion to Withdraw as Attorney of Record in the above-entitled matter is set for hearing as follows:

**Date:** May 04, 2021

**Time:** 8:30 AM

**Location:** RJC Courtroom 11A  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

**NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.**

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Allison Behrhorst  
Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Allison Behrhorst  
Deputy Clerk of the Court



**OPPS**

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 Respondent

DISTRICT COURT  
CLARK COUNTY, NEVADA

JAVAR KETCHUM,  
#1836597

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-20-821316-W

C-16-319714-1

DEPT NO: XVII

**STATE'S OPPOSITION TO PETITIONER'S MOTION FOR RECONSIDERATION  
OR IN THE ALTERNATIVE MOTION FOR REHEARING OF PETITIONER'S  
NRS CHAPTER 34 PETITION**

DATE OF HEARING: MAY 4, 2021

TIME OF HEARING: 8:30AM

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 Opposition to Petitioner's Motion for Reconsideration or in the Alternative Motion for Rehearing of Petitioner's NRS Chapter 34 Petition.

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On November 30, 2016, the State charged Javar Ketchum (hereinafter "Petitioner") by  
4 way of Indictment with one count each of Murder with a Deadly Weapon and Robbery with a  
5 Deadly Weapon. On December 30, 2016, Petitioner filed a pre-trial Petition for Writ of Habeas  
6 Corpus and Motion to Dismiss. The State filed its Return on January 4, 2017. Petitioner filed  
7 a Reply on January 9, 2017. The district court denied the Petition on February 17, 2017.

8 On March 8, 2017, Petitioner filed a Motion in Limine, seeking to admit character  
9 evidence of the victim, Ezekiel Davis. On May 9, 2017, the State filed a Motion in Limine,  
10 asking that the district court preclude prior specific acts of violence by the murder victim. On  
11 May 18, 2017, the State filed a Supplement to its Motion in Limine. The district court held a  
12 Petrocelli Hearing on May 19, 2017, determining that Petitioner could only bring in opinion  
13 testimony regarding the victim's character and that witnesses were not to elaborate on that  
14 opinion.

15 On May 22, 2017, Petitioner's five-day jury trial commenced. At the end of the fifth  
16 day of trial, the jury found Petitioner guilty of both charges. Following the verdict, Petitioner  
17 entered into a stipulation and order, waiving the penalty phase and agreeing to a sentence of  
18 life in prison with parole eligibility after twenty years, with the sentences for the deadly  
19 weapon enhancement and the count of robbery with use of a deadly weapon to be argued by  
20 both parties.

21 On June 2, 2017, Petitioner filed a Motion for New Trial pursuant to NRS 176.515 (4).  
22 The State filed its Opposition on September 9, 2017. Petitioner filed a Reply on September 27,  
23 2017 and a Supplement thereto on September 28, 2017. The district court, finding that  
24 Petitioner's disagreement with the court's evidentiary rulings was not a basis for a new trial,  
25 denied the Motion on October 17, 2017. Petitioner was adjudicated that same day. However,  
26 the defense requested additional time to handle sentencing matters.

27 According to the stipulation, on February 1, 2018, the district court sentenced Petitioner  
28 to an aggregate of life in the Nevada Department of Corrections with minimum parole

1 eligibility after twenty-eight (28) years, with four hundred seventy- five (475) days credit for  
2 time served. The Judgment of Conviction was filed on February 5, 2018.

3 Petitioner filed a Notice of Appeal on February 6, 2018. On September 12, 2019, the  
4 Nevada Supreme Court affirmed Petitioner's conviction. Remittitur issued on October 11,  
5 2019.

6 On September 11, 2020, Petitioner filed a Petition for Writ of Habeas Corpus (Post-  
7 Conviction) (hereinafter "Petition"). The State filed its Response on December 16, 2020.  
8 Petitioner filed his Reply on February 9, 2021. Following a hearing on March 12, 2021, this  
9 Court denied Petitioner's post-conviction Petition. The Findings of Fact, Conclusions of Law  
10 and Order was filed on March 31, 2021.

11 On March 31, 2021, Petitioner filed the instant Motion for Reconsideration or in the  
12 Alternative Motion for Rehearing of Petitioner's NRS Chapter 34 Petition (hereinafter  
13 "Motion"). The State responds as follows.

#### 14 **STATEMENT OF THE FACTS**

15 At 6:22 a.m. on September 25, 2016, Officers Brennan Childers and Jacquelyn Torres  
16 were dispatched to a shooting at 4230 S. Decatur Blvd, a strip mall with several businesses  
17 including a clothing store. Jury Trial Transcript, Day 2, ("JTT Day 2") May 23, 2017, at 20-  
18 23, 29-32. When police arrived, they found a man—later identified as Ezekiel Davis  
19 ("Ezekiel" or "the victim")—upon whom another man was performing chest compressions.  
20 Id. at 22-23, 32. Ezekiel was not wearing pants. Id. at 32. Several other people were in the  
21 parking lot, and none of the businesses appeared opened. Id. at 22-23. Ezekiel was transported  
22 to the hospital but did not survive a single gunshot wound to the abdomen. Id. at 66. Trial  
23 testimony from Ezekiel's fiancé, Bianca Hicks, and from Detective Christopher Bunn revealed  
24 that missing from Ezekiel's person was a belt which had a gold "M" buckle and a gold watch.  
25 Jury Trial, Day 3, ("JTT Day 3") May 24, 2017, at 17, 122; Jury Trial Transcript, Day 4, ("JTT  
26 Day 4") May 25, 2017, at 86, 90-92.

27 Top Knotch, the clothing store in front of which Ezekiel was shot, doubles as an after-  
28 hours club. JTT Day 2, at 9. Ezekiel's friend Deshawn Byrd—the one who had given him CPR



1 in an attempt to save his life—testified at trial that sometime after approximately 3:00 a.m.,  
2 Ezekiel arrived at the club. Id. at 10-11. Byrd testified there was no indication that anything  
3 had happened in the club which led to any sort of confrontation. Id. at 10-14.

4 Detective Bunn testified at trial that the day of the murder, as detectives and crime scene  
5 analysts were documenting the scene, three individuals—later identified as Marlo Chiles,  
6 Roderick Vincent, and Samantha Cordero—exited Top Knotch. JTT Day 3, at 42-67. Chiles  
7 was the owner of Top Knotch, and Vincent owned a studio inside of Top Knotch. Id. at 68.  
8 Vincent denied that there were any DVRs of the surveillance video for Top Knotch or the  
9 recording studio. Id. at 73. Detective Bunn had noted a camera, however. Id. at 69. A  
10 subsequent search warrant on the vehicles in the parking lot located two (2) DVR's of the  
11 surveillance footage from Top Knotch and the studio in Vincent's car. Id. at 58-59, 63-64.

12 A review of the video footage, extensive portions of which were played at trial,  
13 demonstrated that Petitioner entered the club at about 2:00 a.m. Id. at 91-92. At 3:25 a.m.,  
14 Chiles, Vincent, Antoine Bernard, and several other people were in the back area of the  
15 business when a person in a number 3 jersey, later identified as Petitioner, produced a semi-  
16 automatic handgun from his pants and showed it to the group. Id. at 93-94.

17 The video also showed that at about 6:14 a.m., Petitioner and Ezekiel exited arm-in-  
18 arm out the front of Top Knotch. Id. at 97. At that point, there was still a watch on Ezekiel's  
19 wrist. Id. at 98. The two walked to the front of Bernard's black vehicle and appeared to  
20 converse for a short time, then walked by the driver's side of Bernard's vehicle, where they  
21 left camera view. Id. at 99-102. At about 6:16 a.m., the people on video all appeared to have  
22 their attention drawn to the area where Petitioner and Ezekiel were. Id. at 99. Petitioner then  
23 entered the view of the camera, removing Ezekiel's belt from his body while holding the gun  
24 in his other hand. Id. at 101-102. Bernard also testified at trial that he saw Petitioner take  
25 Ezekiel's belt. Id. at 20. The video showed that Petitioner approached Bernard's car, opened  
26 the passenger door, placed the belt on the front seat, and returned to the area of Ezekiel's body.  
27 Id. at 102. Petitioner returned to Bernard's vehicle, entered the passenger seat of the vehicle  
28 and the vehicle fled the area. Id. at 102.

1 Despite contact with several witnesses in the parking lot including Chiles and Vincent,  
2 the police had no information regarding the identity of the shooter. Id. at 107. After further  
3 investigation, the shooter was identified as Petitioner and a warrant for his arrest was issued.  
4 Id. at 107. Petitioner was apprehended at a border control station in Sierra Blanca, Texas,  
5 whereupon he was brought back to Nevada to face charges. Id. at 108.

#### 6 ARGUMENT

#### 7 **PETITIONER IS NOT ENTITLED TO RECONSIDERATION**

8 Petitioner requests this Court reconsider the denial of his post-conviction Petition and  
9 grant him an Evidentiary Hearing. Motion, at 4-14. Petitioner cites to no authority to establish  
10 why this Court should reconsider his Petition. NRS Chapter 34 does not provide for a Motion  
11 for Reconsideration. NRS 34.750(5) specifically states, “No further pleadings may be filed  
12 except as ordered by the court.” Petitioner has not requested, nor has this Court permitted, any  
13 further pleadings. Additionally, Petitioner is still and was at the time of filing, represented by  
14 counsel. That makes this pro per Motion a fugitive document which should be stricken. EDCR  
15 3.70. Therefore, this Motion is procedurally improper under NRS Chapter 34.

16 This Motion is essentially a complaint that Petitioner’s counsel preformed deficiently.  
17 Motion, at 4-14. Any complaints Petitioner has regarding his counsel and what counsel filed  
18 is not a basis for reconsideration. Even if true, counsel has the decision to make the best  
19 strategic choices as to what pleadings to file. Dawson v. State, 108 Nev. 112, 117, 825 P.2d  
20 593, 596 (1992) (“Strategic choices made by counsel after thoroughly investigating the  
21 plausible options are almost unchallengeable.”); see also Ford v. State, 105 Nev. 850, 853, 784  
22 P.2d 951, 953 (1989). Counsel is presumed to be effective; but even if he were not, this is not  
23 a capital case and Petitioner is not entitled to the effective assistance of post-conviction  
24 counsel. Even assuming all of Petitioner’s allegations are true, they entitle him to neither  
25 reconsideration nor relief. McKague v. Whitley, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996).  
26 As well as being procedurally improper, this Motion is also without merit.

27 Petitioner’s Motion is simply a lengthy complaint regarding counsel’s filing of his post-  
28 conviction Petition. Petitioner’s remedy is not a “Motion for Reconsideration.” Instead,

1 Petitioner's remedy is to file a timely appeal, appealing the denial of the post-conviction  
2 Petition. Therefore, this Court should deny the Motion for Reconsideration.

3 **CONCLUSION**

4 Based on the foregoing, Petitioner's Motion for Reconsideration or in the Alternative  
5 Motion for Rehearing of Petitioner's NRS Chapter 34 Petition should be DENIED.

6 DATED this 27th day of April, 2021.

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

15 **CERTIFICATE OF MAILING**

16 I hereby certify that service of the above and foregoing was made this 27th day  
17 of April, 2021 by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

18 Javar Ketchum # 1192727  
19 HIGH DESERT STATE PRISON  
20 P.O. BOX 650  
INDIAN SPRINGS, NV 89070-0650

21 BY: /s/ Stephanie Johnson  
22 Secretary for the District Attorney's Office  
23  
24  
25  
26  
27

28 16F16375A/BS/APPEALS/saj/MVU

*Steven D. Grierson*

JAVAR KETCHUM #1192727  
H.D.S.P. / TB-19  
P.O. BOX 650  
INDEPENDENCE, NEVADA  
89070  
IN PROPER PERSON

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*—\*

JAVAR KETCHUM,  
PETITIONER,

CASE No.: A-20-821316-W

DEPT. No.: 17

VS.

NOTICE OF APPEAL

THE STATE OF NEVADA,  
RESPONDENT. /

COMES NOW, PETITIONER, JAVAR KETCHUM, IN  
HIS PROPER PERSON AND FILES THE INSTANT: NOTICE  
OF APPEAL. THIS NOTICE OF APPEAL IS MADE  
IN GOOD FAITH; FROM THE DISTRICT COURT'S  
SUMMARY DENIAL OF PETITIONER'S: NRS CHAPTER 34  
PETITION FOR WRIT OF HABEAS CORPUS, ON THE  
DATE OF: MARCH 12, 2021.

THEREFORE, PETITIONER SEEKS TO APPEAL THE  
DENIAL OF THE PETITION FOR WRIT OF HABEAS

1.

RECEIVED

APR 19 2021

CLERK OF THE COURT

CORPUS TO THE NEVADA SUPREME COURT.

DATE: THIS 25<sup>TH</sup> DAY OF APRIL, 2021.

RESPECTFULLY SUBMITTED:

Javar Ketchum  
JAVAR KETCHUM #1192727  
P.O. BOX 650 / H.D.S.P.  
INDIAN SPRINGS, NEVADA  
89070  
TO PROPER PERSON

CERTIFICATE OF SERVICE

I, JAVAR KETCHUM, DO HEREBY SWEAR AND  
DEPOSE, UNDER PENALTY OF PERJURY, PURSUANT  
TO NRS ~~20~~ 8.165; THAT I DID MAIL THE ORIGINAL  
COPY OF THIS NOTICE OF APPEAL TO THE COURT  
CLERK'S POSTAGE PREPAID AT HIGH DESERT STATE  
PRISON MAILROOM; DATE: APRIL 25<sup>TH</sup>, 2021

SIGNED BY:

Javar Ketchum  
JAVAR KETCHUM #1192727

JAVAR KETCHUM #1192727  
H.D.S.P./TB-19  
P.O. Box 650  
INDIAN SPRINGS, NEVADA  
89070

IN PROPER PERSON

DISTRICT COURT  
CLARK COUNTY, NEVADA

JAVAR KETCHUM,  
PETITIONER,

VS.

STATE OF NEVADA,

RESPONDENT.

CASE No.: A-22-821316-W

DEPT. No.: 17

JUDICIAL NOTICE

COMES NOW PETITIONER, JAVAR KETCHUM, IN HIS PROPER PERSON; AND GIVES: JUDICIAL NOTICE TO THIS COURT, THAT PETITIONER HAS FILED HEREWITH, AN APPROPRIATE: NOTICE OF APPEAL; TO APPEAL THE COURTS: MARCH 12, 2021; DENIAL OF PETITIONER'S: NRS CHAPTER 34 PETITION.

PETITIONER ALSO BRINGS JUDICIAL NOTICE, TO INFORM THIS COURT THAT PETITIONER FILED A: MOTION FOR RECONSIDERATION; TO BE HEARD BY THIS COURT ON THE DATE OF: MAY 4<sup>TH</sup>, 2021. IN SUPPORT OF THE MOTION FOR RECONSIDERATION; PETITIONER HAS FILED:

1.

ADDITIONAL MOTIONS, DOCUMENTS, AFFIDAVITS, AND PAPERS; INCLUDING A MOTION TO CONTINUE THE MAY 4TH, 2021 HEARING, IN ORDER FOR THE COURT TO HEAR SAID PLEADINGS. IN.

AND THAT, IF THE COURT DENIES THE MOTION FOR RECONSIDERATION, PETITIONER SEEKS TO APPEAL ALL DOCUMENTS RELEVANT TO THE NEVADA SUPREME COURT.

NOTICE OF APPEAL HAS BEEN GIVEN.

DATED: APRIL 25TH, 2021.

SIGNED BY:

James Ketchem  
JAMES KETCHEM #1192727  
H.D.S.P. / TB-19  
P.O. BOX 650  
INDIAN SPRINGS, NEVADA  
89070  
IN PROPER PERSON

CERTIFICATE OF SERVICE:

I, JAMES KETCHEM, DO HEREBY SWEAR AND DEPOSE, UNDER PENALTY OF PERJURY, THAT I DID MAIL A TRUE AND CORRECT COPY OF THE DISCOUNT: JUDICIAL NOTICE TO THE COURT CLERK; POSTAGE PREPAID AT H.D.S.P. MAIL ROOM; DATED: THE 25TH DAY OF APRIL, 2021.

BY: James Ketchem  
JAMES KETCHEM #1192727

2.

Javar Ketchum

H.D.S.P #1192727

P.O.Box 650

Indian Springs, NV 89070

LAS VEGAS NV 890

26 APR 2021 PM 3 L

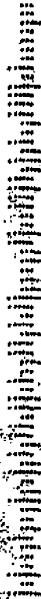


E2



clerk of court  
Regional Justice Center  
200 Lewis Ave  
Las Vegas, NV 89101

89101-530000







1 ASTA

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6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**  
7 **STATE OF NEVADA IN AND FOR**  
8 **THE COUNTY OF CLARK**

9 JAVAR KETCHUM,

10 Plaintiff(s),

11 vs.

12 THE STATE OF NEVADA,

13 Defendant(s),  
14  
15

Case No: A-20-821316-W

Dept No: XVII

16  
17 **CASE APPEAL STATEMENT**

18 1. Appellant(s): Javar Ketchum

19 2. Judge: Michael Villani

20 3. Appellant(s): Javar Ketchum

21 Counsel:

22 Javar Ketchum #1192727  
23 P.O. Box 650  
24 Indian Springs, NV 89070

25 4. Respondent (s): The State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney  
28 200 Lewis Ave.  
Las Vegas, NV 89155-2212

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5. Appellant(s)'s Attorney Licensed in Nevada: N/A  
Permission Granted: N/A
- Respondent(s)'s Attorney Licensed in Nevada: Yes  
Permission Granted: N/A
6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No
7. Appellant Represented by Appointed Counsel On Appeal: N/A
8. Appellant Granted Leave to Proceed in Forma Pauperis\*\*: N/A  
*\*\*Expires 1 year from date filed*  
Appellant Filed Application to Proceed in Forma Pauperis: No  
Date Application(s) filed: N/A
9. Date Commenced in District Court: September 11, 2020
10. Brief Description of the Nature of the Action: Civil Writ  
Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus
11. Previous Appeal: No  
Supreme Court Docket Number(s): N/A
12. Child Custody or Visitation: N/A
13. Possibility of Settlement: Unknown

Dated This 30 day of April 2021.

Steven D. Grierson, Clerk of the Court

/s/ Amanda Hampton  
Amanda Hampton, Deputy Clerk  
200 Lewis Ave  
PO Box 551601  
Las Vegas, Nevada 89155-1601  
(702) 671-0512

cc: Javar Ketchum

THIS SEALED  
DOCUMENT,  
NUMBERED PAGE(S)  
163 - 168  
WILL FOLLOW VIA  
U.S. MAIL

Electronically Filed  
05/10/2021

*Heather Shuman*  
CLERK OF THE COURT

JAVAR KETCHUM #1192727  
H.O.S.P. / TB-19  
P.O. BOX 650  
INDIAN SPRINGS, NEVADA  
89070  
IN PROPER PERSON

DISTRICT COURT  
CLARK COUNTY, NEVADA

JAVAR KETCHUM,  
PETITIONER,

CASE NO.: A-20-821316-W  
DEPT.: 17

vs.

THE STATE OF NEVADA,  
RESPONDENT.

CLERK OF THE COURT

APR 26 2021

RECEIVED

JUDICIAL NOTICE

DATE OF HEARING: \_\_\_\_\_

TIME OF HEARING: \_\_\_\_\_

COMES NOW, PETITIONER JAVAR KETCHUM, IN  
HIS PROPER PERSON, AND GIVES JUDICIAL NOTICE TO  
THIS HONORABLE COURT, THAT PETITIONER IS  
SEEKING FIRST, TO CONTINUE THE HEARING DATE  
OF: MAY 4TH, 2021; ON THE MOTION FOR RECON-  
SIDERATION, OR IN THE ALTERNATIVE MOTION FOR

1.

REHEARING OF PETITIONER'S NRS CHAPTER 34  
PETITION; UNTIL SUCH TIME AS THIS COURT HAS  
HEARD THE:

- \* MOTION FOR APPOINTMENT OF COUNSEL
- \* MOTION FOR EVIDENTIARY HEARING
- \* MOTION TO WITHDRAW PCR COUNSEL
- \* MOTION TO PROCEED IN FORMA PAUPERIS

AND THE INSTANT:

- \* MOTION FOR CONTINUANCE

WITHIN THE CONTENTS OF PETITIONER'S:  
AFFIDAVITS OF: JAVAR KETCHUM

AND

SHERYL KETCHUM ACEY

PETITIONER HAS SET FORTH SPECIFIC FACTUAL  
ALLEGATIONS; CONCERNING PAID POST-CONVICTION  
COUNSEL'S FAILURE, OR REFUSAL TO AID AND ASSIST  
PETITIONER WITH PROVIDING SPECIFIC FACTUAL  
ALLEGATIONS; IF TRUE WOULD ENTITLE PETITIONER TO  
RELIEF, I.A.

DATED: THIS 14<sup>TH</sup> DAY OF APRIL, 2021.

RESPECTFULLY SUBMITTED:

Javar Ketchum

JAVAR KETCHUM #1192727

H.D.S.P. / 7A-19

P.O. BOX 650

INDIAN SPRINGS, NEVADA  
89070

IN PROPER PERSON

2.

Electronically Filed  
05/10/2021

*Heather Shinn*  
CLERK OF THE COURT

1 JANAL KOTCHUM #1192727  
2 H.D.S.P./In Propria Personam  
3 Post Office Box 650 [HDSP]  
4 Indian Springs, Nevada 89018

5 IN THE 8th JUDICIAL DISTRICT COURT OF THE  
6  
7 STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

8 JANAL KOTCHUM

9 Plaintiff

10 vs.

11 State of Nevada

12 Defendant

Case No. A-20-821316-W

Dept. No. 17

Docket \_\_\_\_\_

14 **MOTION TO WITHDRAW COUNSEL**

15 Date of Hearing: \_\_\_\_\_

16 Time of Hearing: \_\_\_\_\_

17 'ORAL ARGUMENT REQUESTED, Yes \_\_\_\_\_ No X "

18 COMES NOW, Defendant, JANAL KOTCHUM, proceeding in proper person,  
19 moves this Honorable Court for an ORDER Granting him permission to withdraw his present counsel  
20 of record in the proceeding action, namely,

21 CRIST A. MUELLER, ESQ.; NO. 4703

22 This Motion is made and based on all papers and pleadings on file with the Clerk of the Court  
23 which are hereby incorporated by this reference, the Points and Authorities herein, and attached  
24 Affidavit of Defendant.

25 DATED: this 14th day of APRIL, 2021.

26 BY: JANAL KOTCHUM  
27 JANAL KOTCHUM #119  
28 2727/In Propria Personam

CLERK OF THE COURT

APR 26 2021

RECEIVED

1 **POINTS AND AUTHORITIES**

2 NRS 7.055 states in pertinent part:

- 3 1. An attorney who has been discharged by his client shall upon demand and payment of the fee  
4 due from the client, immediately deliver to the client all papers, documents, pleadings and items  
5 of tangible personal property which belong to or were prepared for that client.  
6 2. If the court finds that an attorney has, without just cause, refused or neglected to obey its  
7 order given under this section, the court may, after notice and fine or imprison him until the  
8 contempt purged. If the court finds that the attorney has, without just cause, withheld the  
9 client's papers, documents, pleadings, or other property, the attorney is liable for costs and  
10 attorney's fees.

11 Counsel in the above-entitled case was court-appointed due to Defendant's indigence. Defendant  
12 does not owe counsel any fees.

13 **WHEREFORE**, Defendant prays this Honorable Court, Grant his Motion to Withdraw Counsel  
14 and that counsel deliver to Defendant all papers, documents, pleadings, discovery and any other  
15 tangible property which belong to or were prepared for the Defendant to allow Defendant the proper  
16 assistance that is needed to insure that justice is served.

17 **DATED:** this 4<sup>th</sup> day of April, 2021

18 Respectfully submitted,

19 BY: [Signature]  
20 [Signature] # 1152727  
21 H. D. S. A / In Propria Personam  
22 Post Office Box 650 [HDSP]  
23 Indian Springs, Nevada 89018  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE BY MAILING**

I, TAMAR KOTCHUM, hereby certify, pursuant to NRCP 5(b), that on this 40<sup>th</sup>  
day of APRIL, 2021 I mailed a true and correct copy of the foregoing, "

NOTICE TO WITHDRAW COUNSEL"

by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,  
addressed as follows:

Regional Justice  
Center  
20020 W 13 AVENUE  
LAS VEGAS, NEVADA  
89135

District Attorney  
20020 W 13 AVENUE  
LAS VEGAS, NEVADA  
89135

CC:FILE

DATED: this 14<sup>th</sup> day of APRIL, 2021.

Tamar Kotchum  
TAMAR KOTCHUM #  
H.D.S.P. /In Propria Personam 1192727  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS



AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding \_\_\_\_\_

Motion to withdraw counsel

(Title of Document)

filed in District Court Case number A-20-821316-W

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

-OR-

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

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

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

-or-

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

  
Signature

4/19/2021  
Date

Sarah Kötter  
Print Name

# 1192727  
Title

*Heather Shinn*  
CLERK OF THE COURT

*JAMES KETERUM #1192727*  
H.D.S.P./ In Propria Personam  
Post Office Box 650 [HDSP]  
Indian Springs, Nevada 89018  
IN PROPER PERSON

DISTRICT COURT  
CLARK COUNTY, NEVADA

*JAMES KETERUM*

*PETITIONER*

vs.

*STATE OF NEVADA*

*RESPONDENT*

Case No. *A-20-821316-KS*

Dept No. *17*

Docket

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE, that

*Motion to Withdraw Counsel*

will come on for hearing before the above-entitled Court on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
at the hour of \_\_\_\_ o'clock \_\_\_\_ M. In Department \_\_\_\_, of said Court.

CC:FILE

DATED: this *4th* day of *April*, 20*21*.

BY:

*James Keterum*  
*James Keterum* #*1192727*  
H.D.S.P. /In Propria Personam

CLERK OF THE COURT

APR 26 2021

RECEIVED

JAVAX KETCHUM #1192727  
H.D.S.P.  
P.O. BOX 650  
TWIN SPRINGS, NEVADA  
89070  
IN PROPER PERSON

SAGAR KETCHUM,  
PETTICOR,  
v.

CASE NO.: A-22-821316-W  
DEPARTMENT: 17

State of NEVADA,

RESPONDENT.

## MOTION FOR APPOINTMENT OF COUNSEL

[Neg 34.750]

DATE OF HEARING: \_\_\_\_\_

TIME OF HEALING: \_\_\_\_\_

COMES NOW, PETITIONER, JAVAR KETCHUM, IN  
413 PROPER PERSON, AND FILES THE INSTANT: MOTION  
FOR APPOINTMENT OF COUNSEL; PURSUANT TO W.S.  
750, et seq.

THIS MOTION IS MADE IN GOOD FAITH.

1

**CLERK OF THE COURT**

RECEIVED

APR 26 2021

THIS MOTION IS MADE AND BASED ON THE  
PENDING: MOTION FOR RECONSIDERATION; FILED:  
3/31/2021.

THIS MOTION IS FURTHER MADE AND BASED ON  
ALL OF THE PAPERS, PLEADINGS, FILES, DOCUMENTS,  
AND NRS CHAPTER 34 PETITION THAT WAS FILED BY  
MOST CONSTITUTIONAL COUNSEL: SEPTEMBER 11<sup>TH</sup>, 2021.  
AND ALL OF THE AFFIDAVITS AND MOTIONS FILED ALONG  
WITH THIS MOTION, BY PETITIONER IN HIS PROPER  
PERSON; AS WELL AS ANY ORAL ARGUMENTS AT THE  
TIME OF HEARING; IF DEEMED APPROPRIATE BY  
THIS COURT.

DATED: THIS 14<sup>TH</sup> DAY OF APRIL, 2021.

RESPECTFULLY SUBMITTED:

Javar Ketum

JAVAR KETUM #1192727

H.D.S.P./17B-19

P.O. BOX 650

INDIAN SPRINGS, NEVADA

89870

IN PROPER PERSON

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THIS MOTION IS DRAFTED PURSUANT TO: HARRIS V. KERRER,  
92 S.Ct. 594 (1972).

### POINTS AND AUTHORITIES:

NRS 34.750 APPOINTMENT OF COUNSEL FOR  
INDIGENTS; FEES; SUPPLEMENTAL TO  
PETITION; RESPONSE TO NOTICE TO ADMIT

1. A PETITIONER MAY ALLEGE THAT THE PETITIONER IS UNABLE TO PAY THE COSTS OF THE PROCEEDINGS OR TO EMPLOY COUNSEL. IF THE COURT IS SATISFIED THAT THE ALLEGATION OF INDIGENCY IS TRUE AND THE PETITIONERS NOT DISMISSED SUMMARILY, THE COURT MAY APPOINT COUNSEL TO REPRESENT THE PETITIONER. IN MAKING ITS DETERMINATION, THE COURT MAY CONSIDER, AMONG OTHER THINGS, THE SEVERITY OF THE CONSEQUENCES FACING THE PETITIONER AND WHETHER:

- (a) THE ISSUES PRESENTED ARE DIFFICULT;
- (b) THE PETITIONER IS UNABLE TO COMPREHEND THE PROCEEDINGS; OR
- (c) COUNSEL IS NECESSARY TO PROCEED WITH DISCOVERY.

2. IF THE COURT DETERMINES THAT THE PETITIONER IS UNABLE TO PAY ALL NECESSARY COSTS AND EXPENSES INCIDENT TO THE PROCEEDINGS OF THE TRIAL COURT AND THE REVIEWING COURT, INCLUDING COURT COSTS, STENOGRAPHIC SERVICES, PRINTING AND REASONABLE COMPENSATION FOR LEGAL SERVICES, ALL COSTS MUST BE PAID FROM THE MONEY APPROPRIATED TO THE ~~OFFICE~~ OF THE PUBLIC DEFENDER FOR THAT PURPOSE. AFTER APPROPRIATIONS FOR THAT

3.

PURPOSE ARE EXHAUSTED, MONEY MUST BE ALLOCATED TO THE OFFICE OF THE STATE PUBLIC DEFENDER FROM THE RESERVE FOR STATUTORY CONTINGENCY FUND FOR THE PAYMENT OF THE COSTS, EXPENSES, AND COMPENSATION.

3. AFTER APPOINTMENT BY THE COURT, COUNSEL FOR THE PETITIONER MAY FILE AND SERVE SUPPLEMENTAL PLEADINGS, EXHIBITS, TRANSCRIPTS, AND DOCUMENTS WITHIN 30 DAYS AFTER:

(a) THE DATE THE COURT ORDERS THE FILING OF AN ANSWER AND A RETURN; OR

(b) THE DATE OF HIS APPOINTMENT, WHICHEVER IS LATER. IF IT HAS NOT PREVIOUSLY BEEN FILED, THE ANSWER BY THE RESPONDENT MUST BE FILED WITHIN 15 DAYS AFTER RECEIPT OF THE SUPPLEMENTAL PLEADINGS AND INCLUDE ANY RESPONSE TO THE SUPPLEMENTAL PLEADINGS.

4. THE PETITIONER SHALL RESPOND WITHIN 15 DAYS AFTER SERVICE TO A MOTION BY THE STATE TO DISMISS THE ACTION.

5. NO FURTHER PLEADINGS MAY BE FILED EXCEPT AS ORDERED BY THE COURT.

(a) THE ISSUES PRESENTED ARE  
DIFFICULT:

IN THE CASE SUB JUDICE, PETITIONER SPECIFICALLY ALLEGES ~~THE~~ ISSUES PRESENTED ARE DIFFICULT. PETITIONER FILED THE INSTANT NRS CHAPTER 34

PETITION / PETITION FOR WRIT OF HABEAS CORPUS ON THE  
DATE OF: SEPTEMBER 11, 2020. ID.

THE SINGLE GROUNDS RAISED WITHIN THE  
PETITION FOR WRIT OF HABEAS CORPUS WAS FOLLOWED:

A. TRIAL COUNSEL WAS INEFFECTIVE  
IN MULTIPLE WAYS IN THE WAY HE  
HANDLED THE SURVEILLANCE VIDEO.

THE CRUX OF THE ISSUE WAS THE FACT THAT  
COUNSEL DID NOT VIEW THE ENTIRE VIDEO AT THE  
INITIAL VIEWING. ID. (PETITION FOR WRIT OF HABEAS  
CORPUS; FILED: 11 SEPTEMBER 2020, IN SUPPORT,  
INCORPORATED HEREIN).

IN COUNSEL'S ARGUMENT, HE POSED ONE  
QUESTION WHICH WAS CRITICAL TO THE ENTIRE  
DETERMINATION OF THE SIXTH AMENDMENT VIOLATIONS  
TO PETITIONER'S RIGHT TO A 'FAIR TRIAL' AND THE  
'REASONABLY EFFECTIVE ASSISTANCE OF COUNSEL':

WHY DIDN'T HE INSIST ON VIEWING THE  
ORIGINAL, UNALTERED VIDEO IN ITS ENTIRETY? ID.

AND THIS SINGLE QUESTION IS THE BASES  
FOR ALL OF ALL OF PETITIONER'S EFFORTS, IN HAVING  
HIS POST-CONVICTION COUNSEL(S): MR. CRAIG A.  
MUELLER AND ASSOCIATES, ASSIST PETITIONER IN  
DEVELOPING HIS SPECIFIC FACTUAL ALLEGATIONS, IN  
ORDER TO CONDUCT AN APPROPRIATE EVIDENTIARY  
HEARING; TO GET THE ANSWER TO THE ABOVE  
NAMED [WHY?]. ID, SUPRA.

5.

MOREOVER, THE ISSUE PRESENTED IS 'DIFFICULT', BECAUSE COUNSEL ON POST-CONVICTION SEEMS TO HAVE PUT FORTH NO EFFORT IN ESTABLISHING THE FACTUAL BASIS TO ANSWER [WHY?]; AND AT EVERY TURN, REJECTED PETITIONER'S EFFORTS TO ESTABLISH THE FACTUAL BASIS TO ANSWER [WHY?]. AS SUCH, THE RESULT WAS A SUMMARY DISMISSAL OF THE WRIT, BY THE DISTRICT COURT, IN.

FURTHERMORE, ON THE FACE OF POST-CONVICTION COUNSEL'S ARGUMENTS, WHEN IT COMES TO LAW, OR A LEGAL ANALYSIS, POST-CONVICTION COUNSEL'S EFFORTS WERE SUB PAR TO WHAT STRICKLAND V. WASHINGTON, SUPRA; REQUIRES.<sup>1</sup>

FIRST: THE DIFFICULTY IN THE LAW AND THE STRICKLAND STANDARD, SEEMS TO BE THAT POST-CONVICTION COUNSEL DID NOT PUT FORTH THE EFFORT TO ESTABLISH 'DEFICIENT PERFORMANCE' AND 'PRESUMED'. BECAUSE HE FAILED TO ANSWER [WHY] TRIAL COUNSEL DID NOT REVIEW THE ENTIRE SURVEILLANCE VIDEO, BECAUSE HE DID NOT ADD WITH ESTABLISHING SPECIFIC FACTUAL ALLEGATIONS.

SECOND: THE DIFFICULTY IN THE LAW AND THE STRICKLAND STANDARD, SEEMS TO BE THAT POST-CONVICTION COUNSEL DID NOT PUT FORTH THE EFFORT TO ESTABLISH PETITIONER'S 'BURDEN OF DEMONSTRATION'

1. STRICKLAND V. WASHINGTON, 104 S. CT. 2052 (1984); WARDEN V. LLOYD, 100 REV. 430, 683 P.2D 304 (1984).



THE DEFICIENT PERFORMANCE AND PREJUDICE SUFFERED FROM TRIAL COUNSEL'S ERRORS, OMISSIONS, AND FAILURES, BECAUSE HE FAILED TO ANSWER [WHY?] TRIAL COUNSEL DID NOT REVIEW THE ENTIRE SURVEILLANCE VIDEO, BECAUSE HE DID NOT AID WITH ESTABLISHING SPECIFIC FACTUAL ALLEGATIONS.

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THIRD: THE DIFFICULTY IN THE LAW AND THE STRICKLAND STANDARD, SEEMS TO BE THAT POST-CONVICTION COUNSEL DID NOT PUT FORTH THE EFFORT TO ESTABLISH THAT AN 'EXTRAORDINARY CIRCUMSTANCE' EXISTS IN THIS CASE, TO CHALLENGE COUNSEL'S TRIAL ACTIONS, BECAUSE HE DID NOT ANSWER [WHY?] TRIAL COUNSEL DID NOT REVIEW THE ENTIRE SURVEILLANCE VIDEO, BECAUSE HE DID NOT AID WITH ESTABLISHING SPECIFIC FACTUAL ALLEGATIONS.

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FOURTH: THE DIFFICULTY IN THE LAW AND THE STRICKLAND STANDARD, SEEMS TO BE THAT POST-CONVICTION COUNSEL DID NOT PUT FORTH THE EFFORT TO ESTABLISH THAT COUNSEL'S FAILURE TO REVIEW THE SURVEILLANCE VIDEO ADVERSELY EFFECTED THE 'ENTIRE EVIDENTIARY PICTURE' OF THE TRIAL, BECAUSE HE DID NOT ANSWER THE QUESTION [WHY?] TRIAL COUNSEL DID NOT REVIEW THE ENTIRE SURVEILLANCE VIDEO, BECAUSE HE DID NOT AID WITH ESTABLISHING SPECIFIC FACTUAL ALLEGATIONS.

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FIFTH: THE DIFFICULTY IN THE LAW AND THE ~~STRIKLAND~~ STANDARD, SEEMS TO BE THAT POST-CONVICTION COUNSEL DID NOT PUT FORTH THE EFFORT TO ESTABLISH THAT COUNSEL'S FAILURE TO REVIEW THE ENTIRE SURVEILLANCE VIDEO, WAS A FAILURE WHICH NO OTHER LAWYER WOULD HAVE MADE, AND AS A RESULT, THE STANDARD OF 'DEFERENCE' AFFORDED LAWYERS IN THESE CASES, DOES NOT APPLY; BUT THAT, BECAUSE HE DID NOT ANSWER THE QUESTION [WHY] TRIAL COUNSEL DID NOT REVIEW THE ENTIRE VIDEO / SURVEILLANCE VIDEO; BECAUSE HE DID NOT AID WITH ESTABLISHING SPECIFIC FACTUAL ALLEGATIONS.

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SIXTH: THE DIFFICULTY IN THE LAW AND THE ~~STRIKLAND~~ STANDARD, SEEMS TO BE THAT POST-CONVICTION COUNSEL DID NOT PUT FORTH THE EFFORT TO ESTABLISH THAT COUNSEL'S FAILURE TO REVIEW THE ENTIRE SURVEILLANCE VIDEO, HAD AN ADVERSE AND FORESEEABLE EFFECT ON PETITIONER'S TRIAL, ABSENT THE 'DISTORTIONS OF HADAMANT' / THE 'DISTORTION EFFECTS' OF 'HADAMANT', BECAUSE HE DID NOT ANSWER THE QUESTION [WHY] TRIAL COUNSEL DID NOT REVIEW THE ENTIRE SURVEILLANCE VIDEO, BECAUSE HE DID NOT AID WITH ESTABLISHING SPECIFIC FACTUAL ALLEGATIONS.

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SEVENTH: THE DIFFICULTY IN THE LAW AND THE STRICTLY STANDARD, SEEMS TO BE THAT POST-CONVICTION COUNSEL DID NOT PUT FORTH THE EFFORT TO ESTABLISH THAT COUNSEL'S FAILURE TO REVIEW THE ENTIRE SURVEILLANCE VIDEO, HAD AN ADVERSE EFFECT ON THE 'TOTALITY OF CIRCUMSTANCES' OF PETITIONER'S TRIAL, FROM INVESTIGATION, PLANNING AND PREPARATION, AND PRESENTATION OF THE DEFENSE, BEFORE THE JURY, RESULTING IN A 'BOTTOM-SIDING' OF PETITIONER'S CASE DURING A 'CRITICAL STAGE' OF THE PROCEEDING -- CLOSING ARGUMENT, BECAUSE HE DID NOT REVIEW THE ENTIRE SURVEILLANCE VIDEO; BECAUSE HE DID NOT AID IN ESTABLISHING SPECIFIC FACTUAL ALLEGATIONS.

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PETITIONER EXPRESSES THE ISSUES PRESENTED ARE DIFFICULT, NOT SIMPLE BECAUSE OF THE LAW AND STRICTLY STANDARD, WHICH ALONE PRESENTS A 'HIGH HURDLE' TO GET OVER; BUT BECAUSE A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL IS 'A MIXED QUESTION OF LAW AND FACT'; WITHOUT THE DEVELOPMENT OF THE FACTS; OR AN OPPORTUNITY TO DEVELOPE THE FACTS; A PETITIONER CAN NEVER ESTABLISH THE TWO-PART STANDARD THE UNITED STATES SUPREME COURT AND THE NEVADA SUPREME COURT ENUNCIATED IN: STRICKLAND WASHINGTON, INFRA; AND WADSWORTH INFRA, CO. 1.

SO THAT, BECAUSE POST-CONVICTION COUNSEL, CRAIG A. MUELLER AND ASSOCIATES FAILED, OR REFUSED TO ASSIST PETITIONER WITH ESTABLISHING HIS SPECIFIC FACTUAL ALLEGATIONS, 'IF TRUE' WOULD HAVE 'ENTITLED' HIM TO 'RELIEF'; PETITIONER WAS DENIED THE OPPORTUNITY TO RECEIVE AN APPROPRIATE EVIDENTIARY HEARING. SEE: HARRISON V. STATE, 686 P.2D 224 (1984).

CONSEQUENTLY, BECAUSE THE ISSUES PRESENTED ARE DIFFICULT, APPOINTMENT OF COUNSEL FOR THE MOTION FOR RECONSIDERATION AT THIS COURT'S DISCRETION WOULD BE APPROPRIATE; AND FOR PURPOSES OF APPEAL OF THE WRS CHAPTER 34 PETITION AND PROCEEDINGS TO THE NEVADA SUPREME COURT. SEE WRS 34.750.

(B) PETITIONER IS UNABLE TO COMPREHEND THE PROCEEDINGS

IN THE DRAFTING OF THE MOTION FOR RECONSIDERATION; THE DRAFTING OF THE MOTION FOR EVIDENTIARY HEARING (EXHIBIT # 1); THE DRAFTING OF THE SUPPLEMENTAL MOTION (EXHIBIT # 2); AND: ALL MOTIONS, AFFIDAVITS, PAPERS, PLEADINGS AND OTHER DOCUMENTS FILED OUTSIDE OF THOSE FILED BY: CRAIG A. MUELLER AND ASSOCIATES; PETITIONER HAS RECEIVED THE AID AND ASSISTANCE OF INMATE LAW CLERKS AND WALL-WRITERS; AND PEL WIZARDS WITHIN HIRON DESERT STATE PRISON; SO THAT

PETITIONER DID NOT DRAFT THE DOCUMENTS AND SET FORTH HEREIN THAT HE IS UNABLE TO COMPREHEND THE PROCEEDINGS. SEE: (AFFIDAVIT OF JAVAR KETCHUM, IN SUPPORT, FILED HEREWITH, INCORPORATED HEREIN).

(C) COUNSEL IS NECESSARY TO  
PROCEED WITH DISCOVERY

IN THE CASE SUBJUDICE, TRIAL COUNSEL HAS SET FORTH: "WHEN THE INITIAL SURVEILLANCE FOOTAGE WAS SHOWN TO COUNSEL, COUNSEL WAS ONLY SHOWN PARTS OF THE VIDEO. COUNSEL HAD NO CONTROL OF THE VIDEO WHILE IT WAS PLAYED, AND LAW ENFORCEMENT CONTROLLED THE SURVEILLANCE." IN. SEE: (APPELLANT'S OPENING BRIEF, PAGE 16, LINES: 5-8, IN SUPPORT, INCORPORATED HEREIN).

IN THE PETITION FOR WRIT OF HABEAS CORPUS, IT WAS SET FORTH THEREIN:

"TRIAL COUNSEL WENT TO THE GRAND JURY ROOM WITH DET. BUNN AND CHIEF DEPUTY DA DI GIACOMO ON OR ABOUT FEBRUARY 16, 2017, TO REVIEW THE ORIGINAL SURVEILLANCE VIDEO OF THE INCIDENT. TRIAL COUNSEL LATER REPORTED THAT HE WAS ONLY SHOWN PARTS OF THE VIDEO. THIS BEGS THE OBVIOUS QUESTION: WHY DIDN'T HE INSIST ON VIEWING THE ORIGINAL, UNALTERED VIDEO IN ITS ENTIRETY?"

IN. (PETITION FOR WRIT OF HABEAS CORPUS, FILED: 10 SEPTEMBER 2020, PAGE 6, LINES 22 THRU 26, IN SUPPORT, INCORPORATED HEREIN).

HERE, IN BOTH DOCUMENTS, THERE IS THE ASSUMPTION, A PRESUMPTION, OR EVEN AN ALLEGATION THAT WHEN TRAIL COUNSEL REVIEWED THE INITIAL SUICIDE SURVEILLANCE VIDEO, HE DIDN'T SEE IT ALL. AND THE QUESTION: WHY? WAS EVEN ELUDED TOO. THIS QUESTION COULD ONLY BE ANSWERED BY COUNSEL, THE PROSECUTION AND LAW ENFORCEMENT.

THE ANSWERING OF THIS QUESTION WOULD REQUIRE FURTHER DISCOVERY. DISCOVERY IN HABEAS CORPUS PROCEEDINGS IS APPLICABLE PURSUANT TO: NRS 34.770 AT AN EVIDENTIARY HEARING; AND: NRS 34.780 APPLICABILITY OF NEVADA RULES OF CIVIL PROCEDURE; DISCOVERY.

NRS 34.780 STATES:

1. THE NEVADA RULES OF CIVIL PROCEDURE, TO THE EXTENT THAT THEY ARE NOT INCONSISTENT WITH NRS 34.360 TO NRS 34.830, INCLUSIVE, APPLY TO PROCEEDINGS PURSUANT TO NRS 34.720 TO 34.830, INCLUSIVE.

2. AFTER THE WRIT HAS BEEN GRANTED AND A DATE SET FOR THE HEARING, A PARTY MAY INVOKER ANY METHOD OF DISCOVERY AVAILABLE UNDER THE NEVADA RULES OF CIVIL PROCEDURE IF, AND TO THE EXTENT THAT, THE JUDGE OR JUSTICE FOR GOOD CAUSE SHOULD GRANT LEAVE TO DO SO. (EMPHASIS ADDED).

3. A REQUEST FOR DISCOVERY WHICH IS AVAILABLE UNDER THE NEVADA RULES OF CIVIL PROCEDURE MUST BE ACCOMPANIED BY A STATEMENT OF THE INTERROGATORIES OR REQUESTS FOR ADMISSION AND A LIST OF ANY DOCUMENTS SOUGHT TO BE PRODUCED. IN

THEREFORE: IF THIS COURT CHOOSES TO  
RIGHTLY ANSWER THE QUESTION: WHY DIDN'T HE  
INSIST ON VIEWING THE ORIGINAL, UNALTERED  
VIDEO IN ITS ENTIRETY? PETITIONER SUBMITS,  
APPOINTMENT OF COUNSEL IS NECESSARY TO PROCEED  
WITH DISCOVERY. IN. NKS 34.750.

CONCLUSION:

HEREIN, PETITIONER HAS SET FORTH THAT APPOINTMENT  
OF COUNSEL IS APPROPRIATE ON MOTION FOR RECON-  
SIDERATION.

DATED: THE 14<sup>TH</sup> DAY OF APRIL 2021.

RESPECTFULLY SUBMITTED:

JAVAR KETCHUM

JAVAR KETCHUM #1192727

H.D.S.P. / TB-19

P.O. BOX 650

INVER SPRINGS, NEVADA

89070

IN PROPER PERSON

13.

13.

CERTIFICATE OF SERVICE BY MAIL:

I, JAVAR KETCHUM, DO HEREBY SWEAR AND DEPOSE,  
UNDER PENALTY OF PERJURY, I DID MAIL A TRUE AND  
CORRECT COPY OF THE: MOTION FOR APPOINTMENT OF  
COUNSEL TO THE RESPONDENT; POSTAGE PREPAID  
AT H.D.B.P. MAIL ROOM; DATED THE 31<sup>ST</sup> APRIL 2021.

RESPECTFULLY SUBMITTED:



JAVAR KETCHUM #1192727

H.D.B.P. / 7B-19

P.O. BOX 650

INDIAN SPRINGS, NEVADA

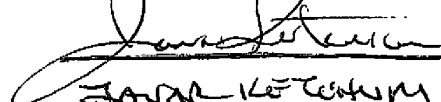
89070

IN PROPER PERSON

DECLARATION Pursuant to: NRS 239B.030:

I, JAVAR KETCHUM, DO HEREBY SWEAR AND  
DEPOSE UNDER NRS 239B.030, THERE IS NO SOCIAL  
SECURITY NUMBER OF ANYONE IN THIS DOCUMENT.

BY:



JAVAR KETCHUM #1192727



*Heather B. Shinn*  
CLERK OF THE COURT

29

JAVAR KETCHUM #1192727  
H.D.S.P.  
P.O. BOX 650  
INDIAN SPRINGS, NEVADA  
89070  
IN PROPER PERSON

DISTRICT COURT  
CLARK COUNTY, NEVADA

JAVAR KETCHUM,  
PETITIONER,  
vs.  
STATE OF NEVADA,  
RESPONDENT.

CASE NO.: A-20-821316-W  
DEPARTMENT: 17

CLERK OF THE COURT

APR 26 2021

RECEIVED

MOTION FOR EVIDENTIARY  
HEARING

[NRS 34.770]

DATE OF HEARING: \_\_\_\_\_

TIME OF HEARING: \_\_\_\_\_

COMES NOW, PETITIONER, JAVAR KETCHUM, IN  
HIS PROPER PERSON, AND FILES THE INSTANT: MOTION  
FOR EVIDENTIARY HEARING, PURSUANT TO NRS 34.770.

THIS MOTION FOR EVIDENTIARY HEARING IS MADE  
IN GOOD FAITH; AND NOT FOR THE PURPOSE OF DELAY,  
NOR TO MISGUIDE THIS COURT.

THIS MOTION IS MADE AND BASED ON THE  
1.

PETITION FOR WRIT OF HABEAS CORPUS, FILED BY  
COUNSEL: SEPTEMBER 11<sup>TH</sup>, 2021.

THIS MOTION IS FURTHER MADE AND BASED ON  
THE PENDING: MOTION FOR RECONSIDERATION IS NOW  
PENDING BEFORE THE COURT; SCHEDULED FOR HEARING:  
MAY 4<sup>TH</sup>, 2021. AS WELL AS ALL OF THE MOTIONS,  
AFFIDAVITS, PAPERS, DOCUMENTS ON FILE IN THIS  
CASE, AND FILED HEREWITH INFORMAL PAUPER'S AND  
IN PROPER PERSON BY PETITIONER; AND ANY ORAL  
ARGUMENTS AT THE TIME OF HEARING, IF DEEMED  
NECESSARY BY THIS COURT.

DATED: THIS 14<sup>TH</sup> DAY OF APRIL, 2021.

RESPECTFULLY SUBMITTED:

Jane Ketchum  
JANE KETCHUM #1192727  
H.D.S.P. MB-19  
P.O. BOX 650  
INDIAN SPRINGS, NEVADA  
89370  
IN PROPER PERSON

\* THIS MOTION IS DRAFTED PURSUANT TO: HARRIS V. KILMER,  
92 S.Ct. 594 (1972).

### POINTS AND AUTHORITIES:

#### NRS 34.770 INITIAL DETERMINATION OF NEED FOR EVIDENTIARY HEARING; DISMISSAL OF PETITION OR GRANTING OF WRIT

1. THE JUDGE OR JUSTICE, UPON REVIEW OF THE RETURN, ANSWER AND ALL SUPPORTING DOCUMENTS WHICH ARE FILED, SHALL DETERMINE WHETHER AN EVIDENTIARY HEARING IS REQUIRED. A PETITIONER MUST NOT BE DISCHARGED OR COMMITTED TO THE CUSTODY OF A PERSON OTHER THAN THE RESPONDENT ~~UNLESS~~ AN EVIDENTIARY HEARING IS HELD. (EMPHASIS ADDED: 'SUPPORTING DOCUMENTS').
2. IF THE JUDGE OR JUSTICE DETERMINES THAT THE PETITIONER IS NOT ENTITLED TO RELIEF AND AN EVIDENTIARY HEARING IS NOT REQUIRED, HE SHALL DISMISS THE PETITION WITHOUT A HEARING.
3. IF THE JUDGE OR JUSTICE DETERMINES THAT AN EVIDENTIARY HEARING IS REQUIRED, HE SHALL GRANT THE WRIT AND SHALL SET A DATE FOR THE HEARING.

IN THE CASE SUBJUDICE, PETITIONER FILED A: MOTION FOR RECONSIDERATION, OR IN THE MOTION FOR REHEARING OF PETITIONER'S NRS CHAPTER 34 PETITION; ON THE DATE OF: 3/31/2021. I.A.

THIS 'SUPPORTING DOCUMENT' WAS FILED IN A

TIMELY MANNER, AND HAS TABLED PETITIONER'S DESIRE TO FILE A NOTICE OF APPEAL, ID.

IN THE SUPPORTING DOCUMENT ("MOTION FOR RECONSIDERATION/REHEARING"); PETITIONER HAS SET FORTH SPECIFIC FACTUAL ALLEGATIONS, 'IF TRUE' ENTITLING PETITIONER TO RELIEF. SEE: HAGGROVE V. STATE, 686 P.2d 222 (1984).

MOST PARTICULARLY, PETITIONER MADE SPECIFIC FACTUAL ALLEGATIONS AGAINST HIS PAID LAWYER / HIS POST-CONVICTION COUNSEL, ID. (MOTION FOR RECONSIDERATION/REHEARING, FILED: 3/31/2021; IN SUPPORT, INCORPORATED HEREIN).\*

THE CRUX OF PETITIONER'S CLAIMS STEM FROM THE FACT, THAT PETITIONER REQUESTED HIS POST-CONVICTION COUNSEL TO FILE A:

MOTION FOR EVIDENTIARY HEARING ID.

AND:

PETITIONER'S SUPPLEMENTAL BRIEF IN SUPPORT OF PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) ID.

SEE: (WHAT IS MARKED AS EXHIBITS # 1 AND 2; FILED: 3/31/2021; IN SUPPORT OF MOTION FOR RECONSIDERATION/REHEARING; IN SUPPORT, INCORPORATED HEREIN).

SPECIFIC FACTUAL ALLEGATIONS HEREIN:

\* THIS DOCUMENT IS DRAFTED PURSUANT TO: HARRIS V. KERR, 92 S. CT. 594 (1972).

SPECIFIC FACTUAL ALLEGATIONS (CONTINUED):

1. PETITIONER'S MOTHER (SHERY KETCHUM-ACEY, HIRED CRAIG A. MUELLER, ESQUIRE; OF THE LAW OFFICE OF: CRAIG A MUELLER AND ASSOC., 723 S. SEVENTH STREET, LAS VEGAS, NEVADA 89101) TO REPRESENT PETITIONER, IN A MATTER OF POST-CONVICTION RELIEF.
2. CRAIG A. MUELLER, ESQ. FILED A: PETITION FOR WRIT OF HABEAS CORPUS ON BEHALF OF PETITIONER, ON THE DATE OF: SEPTEMBER 11, 2020. THE SUBJECT OF THE INSTANT MATTER. IA.
3. THE PETITION FOR WRIT OF HABEAS CORPUS WAS FILED IN A TIMELY MANNER.
4. SUBSEQUENTLY, PETITIONER RECEIVED A COPY OF THE WRIT OF HABEAS CORPUS THAT WAS FILED ON HIS BEHALF.
5. UPON READING THE WRIT OF HABEAS CORPUS, PETITIONER EXPRESSED TO COUNSEL, CRAIG A MUELLER, ESQ. ("MR. MUELLER" "COUNSEL"); THAT HE WAS NOT SATISFIED WITH THE NRS CHAPTER 34 PETITION; OR WRIT OF HABEAS CORPUS, BECAUSE THERE WAS ONLY ONE GROUND RAISED; AND ASKED COUNSEL TO FILE AN AMENDED PETITION RAISING OTHER GROUNDS.
6. COUNSEL EXPLAINED THAT HE FELT THAT SOME GROUNDS 'COULD GET THE CASE OVERTURNED'

BECAUSE IN HIS PROFESSIONAL OPINION: "THE TRAIL LAWYER FAILED TO INVESTIGATE, PLAN, PREPARE, AND PROPERLY PRESENT THE 'DEFENSE THEORY'; SAYS HE DID NOT REVIEW THE ENTIRE SURVEILLANCE VIDEO OF THE INCIDENT."

7. ALTHOUGH PETITIONER WAS NOT SATISFIED WITH THE SOCIAL ISSUE; PETITIONER WAS UNDER THE IMPRESSION THAT COUNSEL WAS NOT PLANNING TO RAISE ANY OTHER ISSUES.

8. PETITIONER THEN INFORMED HIS COUNSEL, THAT HE WANTED TO EXTEND THE CONTENT OF PETITION WITH SPECIFIC FACTUAL ALLEGATIONS IN SUPPORT OF THE CLAIM RAISED; AND IN-FACT, MAILED TO COUNSEL A: MOTION FOR EVIDENTIARY HEARING (ON, or ABOUT THE DATE OF: DECEMBER 16, 2020. ID. (EXHIBIT # 1, IN SUPPORT OF MOTION FOR RECONSIDERATION, FILED: 3/31/2021, IN SUPPORT, INCORPORATED HEREIN).

9. ONCE THE MOTION FOR EVIDENTIARY HEARING WAS RECEIVED BY COUNSEL; PETITIONER WAS INFORMED THAT HIS LAWYER HAD BECOME ILL; AND THAT ONE OF THE ASSOCIATES WOULD BE TAKING HIS PLACE ON THE CASE.

10. PETITIONER INFORMED ASSOCIATE COUNSEL 1

ABOUT THE MOTION FOR EVIDENTIARY HEARING;  
AND THAT HE WANTED ASSOCIATE COUNSEL TO FILE  
THE SAID MOTION.

11. PETITIONER ALSO INFORMED ASSOCIATE COUNSEL, THAT HE WANTED THIS LAWYER TO FILE ON HIS BEHALF ANOTHER DOCUMENT TITLED: PETITIONER'S SUPPLEMENTAL BRIEF IN SUPPORT OF PETITIONER'S PETITION FOR WRIT OF HABEAS (POST-CONVICTION). IN. (EXHIBIT #2, IN SUPPORT OF MOTION FOR RECALL/REGRATIFICATION, FILED MARCH 31, 2021; IN SUPPORT, IS INCORPORATED HEREIN).

12. IN BOTH INSTANCES, AFTER NUMEROUS REQUESTS TO DO SO; NEITHER: CRAIG A. MUELLER, ESQ., NOR ASSOCIATE COUNSEL FILED: THE MOTION FOR EVIDENTIARY HEARING, OR THE SUPPLEMENTAL PETITION. IN. SUPRA.

13. PETITIONER ALSO MAILED TO THE LAW OFFICES OF MUELLER AND ASSOCIATES A LETTER EXPRESSING THAT THE FIRM APPEARED TO BE NOTHING, OR LITTLE TO ENSURE THAT THE HABEAS CORPUS PROCEEDING WAS MEANINGFUL, IN ACCORD WITH 'DUE PROCESS OF LAW'.

14. THIS IS BECAUSE MUELLER AND ASSOCIATES WOULD NOT ASSIST PETITIONER IN ESTABLISHING HIS 'SPECIFIC FACTUAL ALLEGATIONS'. IN.

15. FURTHERMORE, PETITIONER SPECIFICALLY REQUESTED: MUELLER AND ASSOCIATES TO MAKE CONTACT WITH HIS TRIAL LAWYER AND FINDOUT:

A) IF TRIAL COUNSEL FAILED, OR REFUSED TO REVIEW THE ENTIRE SURVEILLANCE VIDEO;

OR

B) IF THE PROSECUTOR FAILED, OR REFUSED TO GIVE THE DEFENSE THE ENTIRE SURVEILLANCE VIDEO.

16. PETITIONER EXPLAINED TO HIS POST-CONVICTION LAWYERS, THE ABOVE JAMES ANSWER (S), WAS 'CRITICAL' TO A DETERMINATION, IF COUNSEL WAS AT FAULT FOR THE "MISLEADING-SIDE" DURING 'CLOSING ARGUMENT' OF THE PROSECUTOR.

17. PETITIONER SPECIFICALLY ALLEGES HE INFORMED HIS LAWYERS: a) IF TRIAL COUNSEL RECEIVED THE ENTIRE SURVEILLANCE VIDEO; AND FAILED, OR REFUSED TO REVIEW THE ENTIRE VIDEO HIS ASSISTANCE 'FELL BELOW AN OBVIOUS STANDARD OF REASONABLENESS' SINCE NO OTHER LAWYER, ACTING AS A DILIGENT, CONSCIENTIOUS ADVOCATE, WOULD HAVE FAILED OR REFUSED TO REVIEW THE SURVEILLANCE VIDEO IN ORDER TO PREPARE, PLAN, AND PRESENT THE DEFENSE THEORY. AND, BECAUSE OF THIS FAILURE TO REVIEW



COUNSEL RENDERED: DEFICIENT PERFORMANCE  
UNDER THE TWO PRONG TEST OF THE STICKLAND  
STANDARD.

18. PETITIONER SPECIFICALLY ALLEGES HE  
INFORMED HIS LAWYERS: b) IF COUNSEL FAILED, OR  
REFUSED TO REVIEW THE ENTIRE SURVEILLANCE  
VIDEO, PETITIONER WAS PREJUDICED BY THIS  
DEFICIENT PERFORMANCE, SINCE SUCH A FAILURE  
ALLOWED PETITIONER AND THE DEFENSE TO BE  
ONE-SIDED AT A 'CRUCIAL STAGE' OF THE  
PROCEEDING, CLOSING ARGUMENT, WHEN THE  
PROSECUTOR USED PORTIONS OF THE VIDEO THAT  
COUNSEL ADMITTED HE'D NEVER SEEN. IN.<sup>2</sup>

CONSEQUENTLY, IF COUNSEL DID NOT REVIEW  
THE ENTIRE SURVEILLANCE VIDEO, COUNSEL PLACED  
THE ENTIRE DEFENSE IN JEOPARDY; WHICH  
PREJUDICED PETITIONER IN MANY WAYS:

(1) WHETHER OR NOT TO TAKE THE  
WITNESS STAND;

AND:

(2) WHETHER OR NOT TO BRING FORTH  
A MEDICAL EXPERT, OR PSYCHOLOGIST  
TO EXPLAIN WHAT TAKES PLACE WHEN  
A VICTIM'S MIND GOES INTO  
DEFENSE OR SURVIVAL MODE.

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2. STICKLAND V. WASHINGTON, 104 S. CT. 2052 (1984);  
(STICKLAND: TWO PRONG TEST).

19. PETITIONER SPECIFICALLY ALLEGES HE INFORMED HIS POST-CONVICTION COUNSEL, IN THE ALTERNATIVE, IF THE PROSECUTION INTENTIONALLY WITHHELD PORTIONS OF THE SURVEILLANCE VIDEO, THIS ACT WOULD CONSTITUTE A BRADY VIOLATION.<sup>3</sup>

20. PETITIONER SPECIFICALLY ALLEGES HE INFORMED HIS POST-CONVICTION COUNSEL, IT WAS CRITICAL TO A FUNDAMENTALLY FAIR HABEAS CORPUS PROCEEDING, THAT THE JUDGE BE MADE AWARE: WHETHER TRIAL COUNSEL FAILED TO REVIEW THE ENTIRE VIDEO; OR WHETHER THE PROSECUTOR INTENTIONALLY WITHHELD PORTIONS OF THE VIDEO TO BENEFIT THE STATE'S CASE.

21. PETITIONER SPECIFICALLY ALLEGES HE INFORMED HIS POST-CONVICTION COUNSEL, THAT PETITIONER WAS NOT THE INSTIGATOR; WAS NOT THE PERPETRATOR OF THE CRIME; THE DECEASED WAS THE PERPETRATOR; AND HE WAS THE VICTIM UNTIL HE WENT INTO 'SURVIVAL MODE' OR 'DEFENSE MODE'.

22. PETITIONER SPECIFICALLY ALLEGES THAT HE INFORMED HIS POST-CONVICTION COUNSEL THAT HE NEVER INTENDED TO KILL, NOR ROB THE DECEASED; BUT THAT HIS INTENTION WAS TO GO OUT AND HAVE FUN THAT NIGHT -- AND THAT HE WAS HAVING FUN. HOWEVER, WHEN THE DECEASED

---

<sup>3</sup> BRADY V. MARYLAND, 373 U.S. 83, 83 S.Ct. 1194 (1963) (A FAILURE TO DISCLOSE LOCATES CONSTITUTION).

TRIED TO ROB, AND OR KILL PETITIONER; PETITIONER WENT INTO 'DEFENSE MODE' OR 'SURVIVAL MODE' AND ENDED UP DOING TO THE PERPETRATOR, EXACTLY WHAT HE BELIEVED THE PERPETRATOR PLANNED TO DO TO HIM. ID.

23. PETITIONER SPECIFICALLY ALLEGES HE INFORMED HIS POST-CONVICTION COUNSEL, HE HAD NEVER BEEN PLACED IN A SITUATION WHERE HIS LIFE WAS IN EXTREME DANGER AND HAD NO IDEA HE WOULD END UP SHOOTING A MAN AND TAKING THINGS OUT OF ANGER, FEAR, FRUSTRATION, OR WHATEVER THE STATE OF MIND THE PERPETRATOR CAUSED HIM TO BE UNDER. ID. (PETITIONER IS NO EXPERT, SO HE DOES NOT KNOW THE CORRECT TERMINOLOGY FOR 'DEFENSE MODE' OR 'SURVIVAL MODE'; LIKE A PSYCHOLOGIST MIGHT, OR A PROFESSIONAL OR EXPERT MIGHT).

24. PETITIONER SPECIFICALLY ALLEGES HE INFORMED HIS POST-CONVICTION LAWYERS, IT WAS IMPORTANT THAT THEY UNDERSTAND THESE FACTS ABOUT HIM AND THE SITUATION HE WAS PUT IN BY THE PERPETRATOR, SO THAT COUNSELLS) COULD BETTER EXPLAIN TO THE COURT, IN THE WHEEL OF HABEAS CORPUS; THAT HIS TRIAL COUNSEL-- HAD HE REVIEWED THE ENTIRE SURVEILLANCE TAPE/VIDEO; TRIAL COUNSEL COULD HAVE BROUGHT AN EXPERT, OR A PSYCHOLOGIST,

OR AN EXPERT IN SELF-DEFENSE INTO THE COURT-ROOM AND THE SAME: EITHER/OR COULD HAVE EXPLAINED TO THE JURY THAT THE ACTION(S) OF THE DEFENDANT/ THE ACCUSED, MIGHT HAVE BEEN THE PRODUCT OF ACTIONS COMING FROM THE MIND OF SOMEONE UNDER EXTREME CIRCUMSTANCES DUE TO MOST PARTICULARLY THE CHANGE OF MIND-SET, FROM ACTUAL VICTIM, TO SURVIVAL MODE, OR DEFENSE MODE RESULTING IN AN UNPLANNED, OR UNINTENTIONAL KILLING OF ONE'S (DEFENDANT'S) PERPETRATOR.

25. PETITIONER SPECIFICALLY ALLEGES HE INFORMED HIS POST-CONVICTION COUNSEL THAT HE INFORMED HIS LAWYER OF THE SAME, YET TRIAL COUNSEL FAILED, OR REFUSED TO BRING-FORTH ANY EXPERT, OR PSYCHOLOGIST, OR DEFENSE EXPERT INTO THE COURTROOM. AND THAT TRIAL COUNSEL SAID IT WAS UNNECESSARY BECAUSE WHAT TRIAL COUNSEL REVIEWED OF THE VIDEO, THERE WAS NO SCENES OF PETITIONER HAVING KILLED THE DECEASED/ THE INITIAL PERPETRATOR.

HOWEVER, BECAUSE OF DEFICIENT PERFORMANCE AND THE RESULTING PREJUDICE, FROM TRIAL COUNSEL HAVING FAILED TO REVIEW THE VIDEO'S FULL CONTENT, PETITIONER WAS BIASED-SIDED AT THE TRIAL, DURING CLOSING ARGUMENTS, BY SEGMENTS OF THE VIDEO WHICH HAD ALWAYS BEEN

AVAILABLE TO THE DEFENSE, BUT FOR THE FACT THAT TRIAL COUNSEL DID NOT REPRESENT PETITIONER IN ACCORD WITH HIS SIXTH AMENDMENT RIGHT TO THE 'REASONABLY EFFECTIVE ASSISTANCE OF COUNSEL'; IN VIOLATION OF THE 'DUE PROCESS CLAUSE' OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION; AND ARTICLE 1, SECTION 8, OF THE CONSTITUTION OF THE STATE OF NEVADA.

26. PETITIONER SPECIFICALLY ALLEGES, BOTH VERBALLY (TELEPHONICALLY) AND ON PAPER (EXHIBITS # 1 AND # 2); AND THROUGH FACE-TO-FACE -- POST-CONVICTION COUNSEL'S MEETINGS WITH HIS MOTHER (SHERAH ACEY / SHERAH KETCHUM); PETITIONER MADE EVERY EFFORT TO BRING FORTH HIS SPECIFIC FACTUAL ALLEGATIONS, BUT POST-CONVICTION COUNSEL FAILED, OR REFUSED TO ASSIST PETITIONER IN ACCORD WITH THE 'FUNDAMENTAL FAIRNESS'; THE BASIS OF HABEAS CORPUS PROCEEDINGS, IN.

WHEREFORE:

BASED ON THE SPECIFIC FACTUAL ALLEGATIONS, AS SET FORTH HEREIN, PETITIONER IS ENTITLED TO AN: EVIDENTIARY HEARING, UNDER MOTION FOR RECONSIDERATION PROCEEDINGS, TO DETERMINE WHY CRAIG A. MUELLER AND ASSOCIATES FAILED OR REFUSED TO AID PETITIONER IN DEVELOPMENT OF EVIDENCE TO SUPPORT SPECIFIC FACTUAL ALLEGATIONS.

LEGAL ANALYSIS:

THE NEVADA SUPREME COURT HAS RULED IN THE CASE OF: HARGROVE V. STATE, 100 NEV. 498, 502, 686 P.2d 222, 225 (1984); WHEN AN EVIDENTIARY HEARING IS WARRANTED, IN.

PETITIONER HAS MET THAT STANDARD HEREIN, WITH SPECIFIC FACTUAL ALLEGATIONS, IF TRUE, ENTITLE RECONSIDERATION OF THE DENIAL OF THE PETITION FOR WRIT OF HABEAS CORPUS. SEE: HARGROVE, SUPRA; AND NRS 34.770.

CONCLUSION:

AN EVIDENTIARY HEARING IS REQUIRED PRIOR TO ANY DISMISSAL OF THE MOTION FOR RECONSIDERATION; BASED ON THE SPECIFIC FACTUAL ALLEGATIONS SET-  
FOORTH HEREIN.

RELIEF IS WARRANTED.

DATED: THIS 14<sup>TH</sup> DAY OF APRIL, 2021.

RESPECTFULLY SUBMITTED:

Jovan Vetchum  
JAVAN VETCHUM #1192727  
HDS/P1/TA-19

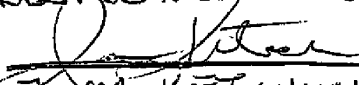
P.O. BOX 650  
INDIAN SPRINGS, NEVADA  
89070

IN PROPER PERSON

CERTIFICATE OF SERVICE BY MAIL:

I, JAVAR KETUM, DO HEREBY SWEAR AND DEPOSE,  
UNDER PENALTY OF PERJURY, I DID MAIL A TRUE AND  
CORRECT COPY OF THE: MOTION FOR EXEMPTION TO  
THE RESPONDENTS; POSTAGE PREPAID AT THE H.D.S.P.  
MAIL ROOM; DATED: THIS 14TH OF APRIL 2021

RESPECTFULLY SUBMITTED:

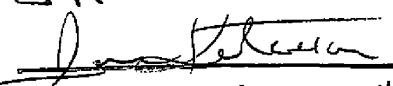
  
JAVAR KETUM #1192727  
H.D.S.P. / 7B-19  
P.O. BOX 650  
INDIAN SPRINGS, NEVADA  
89070

IN PROPER PERSON

DECLARATION PURSUANT TO: NRS 239B.030:

I, JAVAR KETUM DO HEREBY DECLARE, UNDER  
NRS 239B.030, THERE IS NO SOCIAL SECURITY  
NUMBER OF ANYONE IN THIS DOCUMENT.

BY:

  
JAVAR KETUM #1192727  
IN PROPER PERSON

*Heidi Stein*  
CLERK OF THE COURT

JAVAR KETCHUM #1192727  
H.O.S.D./TB-19  
P.O. Box 650  
INATA SPRINGS, NEVADA  
89070  
IN PROPER PERSON

DISTRICT COURT  
CLARK COUNTY, NEVADA

JAVAR KETCHUM,  
PETITIONER,  
v.  
STATE OF NEVADA,  
RESPONDENT.

CASE NO.: A-20-821316-W  
LA-20-821316-WJ  
DEPT.: 17

MEMORANDUM OF AFFIDAVITS:

CONTEXT:

AFFIDAVIT OF: JAVAR KETCHUM #1192727  
AFFIDAVIT OF: SHERRY KETCHUM ACEY

RECEIVED  
APR 26 2021  
CLERK OF THE COURT



AFFIDAVIT of: JAVAR KETCHUM  
JAVAR KETCHUM #1192727

STATE OF NEVADA )  
COUNTY OF CLARK ) ss.

I, JAVAR KETCHUM, DO HEREBY SWEAR AND DO DEPOSE, UNDER PENALTY OF PERJURY, THE NAMED: NRS 208.165; THE FOREGOING STATEMENTS ARE TRUE AND CORRECT, OF MY OWN PERSONAL KNOWLEDGE AND INFORMATION AS FOLLOWS:

1. I AM THE ABOVE NAMED AFFDANT, ABOVE THE AGE OF 21; AND OF SOUND MIND.
2. I AM PRESENTLY INCARCERATED AT HIGHT DESERT STATE PRISON (H.D.S.P.); WITHIN THE NEVADA DEPARTMENT OF CORRECTIONS (N.D.O.C.); AND THAT, AT ALL TIMES RELEVANT HEREIN, I WAS HOUSED AT H.D.S.P.
3. I MAKE THIS AFFIDAVIT IN GOOD FAITH AND NOT FOR THE PURPOSE OF MISLEADING THIS COURT.
4. SHERY KETCHUM-ACEY (SHERY KETCHUM) IS MY BIOLOGICAL MOTHER.
5. ON, OR ABOUT THE DATE OF: 10 SEPTEMBER 2020, SHERY KETCHUM DID HIRE: CRAIG A. MUELLER, ESQ., BAR NO. 4703; OF THE LAW OFFICE OF: CRAIG A. MUELLER & ASSOCIATES: 723 S. SEVENTH STREET, LAS VEGAS, NEVADA 89101; TO FILE A PETITION, WRIT OF HABEAS CORPUS, ON MY BEHALF.

1.

6. MR. CRAIG A. MUELLER (COUNSEL, P.C.R. COUNSEL) DID FILE A WRIT: PETITION FOR WRIT OF HABEAS CORPUS, on my behalf: SEPTEMBER 11, 2020.

7. SUBSEQUENTLY, I RECEIVED A COPY OF THE PETITION FOR WRIT OF HABEAS CORPUS, FROM COUNSEL OF RECORD: CRAIG A. MUELLER, ESQ. AND ASSOCIATES.

8. THEREAFTER, I SPOKE WITH CRAIG A. MUELLER ("COUNSEL", "COUNSEL OF RECORD", "PCR COUNSEL"); AND SPECIFICALLY INFORMED COUNSEL THAT I WAS DISSATISFIED WITH PETITION, BECAUSE IT DID NOT EXPRESSLY STATE: PETITIONER WAS DENIED HIS SIXTH AMENDMENT RIGHT TO THE 'REASONABLE EFFECTIVE ASSISTANCE OF COUNSEL', IN VIOLATION OF THE UNITED STATES CONSTITUTION.

9. I INFORMED COUNSEL THAT I WANTED THE CLAIM RAISED IN VIOLATION OF THE UNITED STATES CONSTITUTION; BECAUSE I WANTED TO APPEAL THE CLAIM BEYOND THE NEVADA SUPREME COURT, TO THE FEDERAL DISTRICT COURT AS A FEDERAL CONSTITUTIONAL VIOLATION.

10. I FURTHER INFORMED COUNSEL THAT I WAS DISSATISFIED WITH THE WRIT, BECAUSE THE ARGUMENTS SET FORTH NO SUBSTANCE AS TO HOW COUNSEL'S/TRIAL COUNSEL'S FAILURE TO REVIEW THE ENTIRE SWAN SURVEILLANCE VIDEO VIOLATED MY RIGHT TO A 'FAIR TRIAL'.

11. I INFORMED COUNSEL THAT I WAS PREPARED TO ENHANCE THE CLAIM RAISED, WITH A: MOTION FOR EVIDENTIARY HEARING; SETTING FORTH SPECIFIC FACTUAL ALLEGATIONS, IF TRUE WOULD ENTITLE ME TO AN EVIDENTIARY HEARING, WHICH I DID MAIL TO COUNSEL, ON, OR ABOUT THE DATE OF: 16 DECEMBER 2020. ID.

12. I INFORMED COUNSEL THAT I WAS PREPARED TO ENHANCE THE CLAIM RAISED, WITH A: SUPPLEMENTAL PETITION / BRIEF IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS, WHICH I DID MAIL: SEE: JANUARY / FEBRUARY 2020. ID.

13. I EXPRESSED TO MY PER COUNSEL(S) ON NUMEROUS OCCASIONS THAT I DID NOT BELIEVE THAT HE HAD MY BEST INTEREST IN MIND, BECAUSE COUNSEL(S) WERE NOT FILING, OR MAKING IT KNOW OF THE DOCUMENTS I REQUESTED BE FILED TO ESTABLISH: SPECIFIC FACTUAL ALLEGATIONS, IF TRUE WOULD ENTITLE ME TO RELIEF.

14. I SPOKE WITH MY MOTHER, SHERRY KETCHUM-ACEY ON THE MATTER, ON NUMEROUS OCCASIONS. AND MY MOTHER INFORMED ME THAT SHE WOULD SIT DOWN WITH MY LAWYER FOR A FACE-TO-FACE MEETING WITH COUNSEL, SINCE SHE HAD PAID COUNSEL: \$10,000.00 FOR HIS REPRESENTATION. ID. AGDAINT OF SHERRY ACEY.

15. I INFORMED MY POST-CONVICTION COUNSEL THAT I WAS THE INITIAL VICTIM IN THIS CASE; AND THAT THE DECEASED: EZEKIEL F. DAVIS ("DECEASED") WAS THE ORIGINAL PERPETRATOR OF THE CRIME.

16. I INFORMED COUNSEL THAT I NEVER HAD ANY INTENT TO HARM, OR KILL THE DECEASED UNTIL HE PULLED HIS GUN ON ME.

17. I INFORMED COUNSEL THAT ONCE THE DECEASED PULLED HIS GUN ON ME, MY MIND WENT INTO 'DEFENSE MODE' OR 'SURVIVAL MODE', OR WHATEVER MODE OR SURVIVAL OR DEFENSIVE MODE, OR CHANGE OF MIND IT IS WHEN YOUR LIFE IS ON THE LINE; UNDER A LIFE OR DEATH SITUATION.

18. I INFORMED PER COUNSEL THAT WHEN MY MIND WAS CHANGED, I DID DEFEND MY LIFE, WHICH RESULTED IN THE ULTIMATE KILLING OF EZEKIEL F. DAVIS.

19. I INFORMED MY PER COUNSEL THAT I NEVER WOULD HAVE BEEN FORCED TO TAKE THE LIFE OF EZEKIEL F. DAVIS; HAD HE NEVER ATTEMPTED TO ROB, OR KILL ME.

20. I INFORMED MY PER COUNSEL THAT I WANTED HIM TO AMEND, OR SUPPLEMENT THE PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS TO EXPLAIN TO THE COURT THAT HAD MY TRIAL LAWYER BROUGHT-FORTH A MEDICAL DOCTOR, OR A PSYCHOLOGIST, TO EXPLAIN TO THE JURY AS I

REQUESTED HE DO), SAYD EXPERT / PROFESSIONAL COULD HAVE EXPLAINED TO THE JURY THAT ONCE I WAS ATTACKED BY THE PERPETRATOR EZEKIAL F. DAVIS, MY MIND CHANGED, AND WENT INTO 'SURVIVAL MODE' OR 'DEFENSE MODE'; OR AN ALTERED CHANGE IN RATIONALITY, BUT SUBJECT OF INSULT; WHICH CAUSED ME TO ACT IN A MANNER THAT I WOULD NOT HAVE ACTED, HAD I NOT BEEN PLACED IN A POSITION TO FIGHT FOR MY LIFE AGAINST THE DECEASED.

21. I INFORMED POST-CONVICTION COUNSEL, WITHOUT THE DEVELOPMENT OF SPECIFIC FACTUAL ALLEGATIONS FOR THE JUDGE TO CONSIDER I WOULD NOT BE ENTITLED TO AN EVIDENTIARY HEARING UNDER HARGROVE V. STATE, 686 P.2d 224 (1984). IN (MOTION FOR EVIDENTIARY HEARING AND SUPPLEMENTAL PETITION / BRIEF IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS; AS: EXHIBITS # 1 AND 2 IN SUPPORT OF: MOTION FOR RECONSIDERATION, IN SUPPORT, INCORPORATED HEREIN).

22. I INFORMED MY LAWYER IN A HEATED OR PASSIONATE DISCUSSION THAT, HE FILE THE: MOTION FOR EVIDENTIARY HEARING; BUT THE LAWYER FAILED, OR REFUSED TO DO SO; AND FAILED OR REFUSED IN ANYWAY TO ASSIST ME IN ESTABLISHING THE SPECIFIC FACTUAL ALLEGATIONS REQUIRED TO SUPPORT THE CLAIM RAISED WITHIN THE PETITION FOR WRIT OF HABEAS CORPUS.

23. IT IS MY POSITION THAT I WAS FORCED TO FILE A: MOTION FOR RECONSIDERATION, IN-ORDER TO ESTABLISH BEFORE THIS COURT THAT MY POST-CONVICTION LAWYER WOULD NOT ASSIST ME THE WAY I FELT I SHOULD BE REPRESENTED ON THE PETITION FOR WRIT OF HABEAS CORPUS IN ORDER TO RECEIVE 'FUNDAMENTAL FAIRNESS' DURING HABEAS CORPUS PROCEEDINGS.

24. I BELIEVE IN ORDER FOR ME TO RECEIVE 'FUNDAMENTAL FAIRNESS'; DURING THE HABEAS CORPUS PROCESS, POST-CONVICTION COUNSEL SHOULD HAVE:

1. CONSTITUTIONALIZED THE CLAIM I'VE RAISED IN VIOLATION OF THE UNITED STATES CONSTITUTION AS REQUESTED.

2. ASSISTED ME IN ESTABLISHING SPECIFIC FACTUAL ALLEGATIONS AS REQUESTED.

3. FILED THE MOTION FOR EVIDENTIARY HEARING, DETAILING SPECIFIC FACTUAL ALLEGATIONS AS REQUESTED.

4. FILED THE SUPPLEMENTAL BRIEF IN SUPPORT OF THE PETITION FOR WRIT OF HABEAS CORPUS AS REQUESTED. OR SOME OTHER DOCUMENT AS REQUESTED.

5. MOVED THE COURT FOR AN EXPERT TO EXPLAIN THE MIND-SET OF PETITIONER AT THE TIME OF THE KILLING AS REQUESTED.

25. PRIOR TO THE FILING OF THE MOTION FOR RECONSIDERATION, I INFORMED MY POST-CONVICTION LAWYER TO PROPERLY PROTECT MY RIGHTS.

26. PRIOR TO THE FILING OF THE MOTION FOR RECONSIDERATION, I REQUESTED POST-CONVICTION COUNSEL TO CONTACT MY TRIAL LAWYER, AND TO GET TRIAL COUNSEL'S STATEMENT ON THE MATTER OF WHY? HE DID NOT REVIEW THE ENTIRE SWAN SURVEILLANCE VIDEO, IN ORDER TO SUPPORT MY SPECIFIC FACTUAL ALLEGATIONS; BUT HE FAILED OR REFUSED TO BACKUP WITH ANYTHING TO ASSIST ME IN ESTABLISHING: SPECIFIC FACTUAL ALLEGATIONS, WHICH MAY HAVE CONVINCED THE COURT THAT I AM ENTITLED TO AN EVIDENTIARY HEARING.

27. I ENLISTED MY MOTHER, SHERRY KETCHUM AGEN TO CONTACT MY LAWYER BY TELEPHONE, E-MAIL AND FACE TO FACE TO ASSIST ME. SEE: (EXHIBIT #1, AS ATTACHED TO THIS AFFIDAVIT, IN SUPPORT, INCORPORATED HEREIN) ID.

28. IN THE PETITION FOR WRIT OF HABEAS CORPUS, POST-CONVICTION COUNSEL ASKED THE QUESTION: "WHY DIDN'T HE INSIST ON VIEWING THE ORIGINAL, UNALTERED VIDEO IN ITS ENTIRETY?" ID. (PETITION FOR WRIT OF HABEAS CORPUS, PAGE 6, LINE 26, IN SUPPORT, INCORPORATED HEREIN).

29. EVEN THOUGH COUNSEL POINTED OUT THIS 'CRITICAL POINT' OF FACT, COUNSEL FAILED, OR REFUSED TO ASSIST ME IN SUPPORTING THE SPECIFIC

FACTUAL ALLEGATIONS NEEDED AND NECESSARY TO  
SUPPORT THE [WHY?] - ID.

30. THE REASON I FILED THE MOTION FOR RECONSIDERATION, on the date of: 3/31/2022; IS BECAUSE POST-CONVICTION COUNSEL DID NOT APPEAR TO BE INTERESTED IN REPRESENTING ON THE WRIT OF HABEAS CORPUS IN ACCORD WITH 'FUNDAMENTAL FAIRNESS' AND ONLY MADE MENTION OF THE MOTION FOR EVIDENTIARY HEARING THE DATE OF: 1/1/2021; THE VERY DATE THE JUDGE HAD SET TO RULE ON THE MERITS OF THE PETITION-- SO THAT THE JUDGE NEVER HAD AN OPPORTUNITY TO CONSIDER THE SPECIFIC FACTUAL ALLEGATIONS BEFORE IN-FACT, SUMMARILY DISMISSING THE NRS CHAPTER 34 PETITION.

31. I BELIEVE THAT HAD THE JUDGE BEEN IN A POSITION TO CONSIDER THE: MOTION FOR EVIDENTIARY HEARING; AND THE SPECIFIC FACTUAL ALLEGATIONS SET FORTH THEREIN, I MAY HAVE BEEN ENTITLED TO AN EVIDENTIARY HEARING UNDER THE NEVADA SUPREME COURT CASE: HARGROVE V. STATE, 686 P.2d 224 (1984).

32. I BELIEVE I AM ENTITLED TO THE APPPOINTMENT OF COUNSEL, IF THIS COURT DECIDES TO CONDUCT A HEARING / EVIDENTIARY HEARING ON THE MATTER OF MOTION FOR RECONSIDERATION, BASED ON THE SPECIFIC FACTUAL ALLEGATIONS THEORETICAL.

33. I AM INDIGENT AND CANNOT AFFORD COURT COSTS. ID. MOTION FOR APPPOINTMENT OF



34. THE ISSUES PRESENTED ARE DIFFICULT. IN.  
MOTION FOR APPOINTMENT OF COUNSEL.

35. THE PETITIONER IS INCABLE TO COMPREHEND  
THE PROCEEDINGS; AND HAS ENLISTED THE ASSISTANCE  
OF INMATE LAW CLERKS IN THIS MATTER, SINCE I  
HAVE FILED A SERIES OF SPECIFIC FACTUAL ALLE-  
GOATIONS WITH REGARD TO POST-CONVICTION COUNSEL'S  
ACTIONS, INADVERTS, AND OMISSIONS. IN: MOTION  
FOR APPOINTMENT OF COUNSEL.

36. IF THIS COURT DECIDES DISCOVERY IS  
NECESSARY, COUNSEL IS NECESSARY TO PROCEED  
WITH DISCOVERY. IN. MOTION FOR APPOINTMENT OF  
COUNSEL.

37. I MAKE THIS AFFIDAVIT IN GOOD FAITH AND  
NOT FOR THE PURPOSE OF MISGUIDING THIS COURT;  
AS I AM WILLING TO ENTER A COURT OF LAW AND  
TESTIFY UNDER OATH THAT THE FACTS HEREIN ARE  
TRUE AND CORRECT; AS ARE THE DOCUMENTS FILED  
HEREWITH.

38. FURTHER AFFIRMED SAYING NOT.

DATED: THIS 14<sup>TH</sup> DAY OF APRIL, 2021.

RESPECTFULLY SUBMITTED:

*Jason Ketchum*

JASON KETCHUM #1192727

H.D.S.P./ 715-19

P.O. BOX 650

INDEPENDENT SPRINGS, NEVADA

89070

EXHIBIT # 1

[TEXT MESSAGES OF: SHERYL ABBY]

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC				
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	

12/23/20 - Reached Pallas - Regarding my sons HARPER CRISP respond from the PA he was out of the office.

1/17/2021 - Reached out to his boss Muller about my concern about lack of time spend on my own case and that Chuck was not prepared.

1/11/2021 Chuck requested an extension because I advised him to get call had and filed the Motion for Expedient Hearing as we requested quoted in the email I informed him that my son wanted this Motion filed.

1/21/21 - I dropped off a copy to his office - he said he never received the mailed or email copy.

1/23/2021 - Again email explaining that Jaron is requesting him to file the Motion for Expedient Hearing attached another copy to email.

2/25/2021 - Email requesting he file the Expedient Hearing.

See all documents attached.

7:33



**Sherry Acey** 12/23/2020

to Chuck ▾



Hi Chuck did you receive the response from the District Attorney Office? The response was due December 18, 2020. Can you forward me a copy so I can send to my son?

Thank you

Sherry Acey



**Chuck Pallares** 12/23/2020

to me ▾



I am out of the office this week. I have not reviewed the State's response. I'll get back to you both.

Get Outlook for iOS

---

**From:** Sherry Acey <aceysherry@gmail.com>

**Sent:** Wednesday, December 23, 2020

9:27:26 AM

**To:** Chuck Pallares

<chuck@craigmuellerlaw.com>

**Subject:** Javar Ketchum Appeal

Show quoted text

[View entire message](#)



7:33



## Javar Ketchum Appeal

Add label



**Sherry Acey** Jan 7  
to craig ▾



Hi Mr. Mueller,

I am concerned about my son Javar Ketchum's Appeal due January 15, 2020. Chuck is working on it. He has been out of the office for several weeks. I want to make sure he has enough time to respond. I have requested copies of the answer but I have not received it. At this point an extension may be necessary so he can speak with my son and have sufficient time to respond.

Thank you for your time.

Sherry Acey  
702-980-2401

← Reply

↩ Reply all

→ Forward



7:34



Javar Ketchum  Inbox



Sherry Acey Jan 11  
to Chuck ▾



Dear Chuck

Per our conversation this morning you will request an extension to answer my sons appeal so that you can have time to speak with him. Please also email a copy of the response and sent my son a copy at High Desert State Prison.

We also discussed filing a Motion for Evidentiary Hearing my son mailed you that information 3 weeks ago he wants to discuss it with you.

Thank you

Sherry Acey



Chuck Pallares Jan 11  
to me ▾



That is all correct.

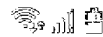
Get Outlook for iOS

---

**From:** Sherry Acey <aceysherry@gmail.com>  
**Sent:** Monday, January 11, 2021 10:09:27 AM  
**To:** Chuck Pallares  
<chuck@craigmuellelaw.com>




7:34



## Javar Ketchum Evidentiary



Appeal  Inbox



Sherry Acey Jan 12  
to Chuck ✓



Hi Chuck, the document 20 pages was mailed from  
usps confirm when you receive it.

Regards

Sherry



Chuck Pallares Jan 21  
Sherry I check my email multiple times a day,  
even from my phone. Nothing has come to my



Sherry Acey Jan 21  
to Chuck ✓



I will drop of a copy this morning to your office.

Show quoted text

 Reply

 Reply all

 Forward



7:35



**Sherry Acey** Jan 23  
to Chuck ▾



Hi Chuck,

Javar is requesting you to view the attached document in regards to his answer to the District Attorney and discuss with him next week during the telephone call.

Thank you  
Sherry Acey

----- Forwarded message -----

From: **Karla Moncayo**  
<karlamoncayo.114@gmail.com>  
Date: Sat, Jan 23, 2021, 2:05 PM  
Subject:  
To: <aceysherry@gmail.com>

GREGG A. MUELLER, ESQ.  
NEVADA BAR NO. 4702  
GREGG A. MUELLER &  
ASSOCIATES  
723 S. SEVENTH STREET  
LAS VEGAS, NEVADA 89101



202101231...18727.pdf



2





7:36



## Evidentiary Hearing Motion



Add label



**Sherry Acey** Feb 25

to Chuck ▾



Chuck per my son Javar Ketchum he is requesting you to separately file the information he sent you in case his appeal is denied. He wants to have this paperwork on file he says for his best interest at the Supreme Court.

I wanted you to schedule a call with him so he could explain you did not response to that email. I try to communicate for him.

If there is a separate charge for this filing let me know he wrote it up all you have to do is transfer to the legal paper and file.

Thank you

Sherry Acey

← Reply

↩ Reply all

→ Forward



AFFIDAVIT OF: SHERAL KETCHUM ACEY  
SHERAL KETCHUM-ACEY

STATE OF NEVADA )  
COUNTY OF CLARK ) ss.

I, SHERAL ACEY-KETCHUM-ACEY, DO HEREBY  
SWEAR AND DEPOSE, UNDER PENALTY OF PERJURY,  
THE FOREGOING STATEMENTS ARE TRUE AND CORRECT,  
OF MY OWN PERSONAL KNOWLEDGE AND INFORMATION,  
AS FOLLOWS:

1. I AM THE ABOVE NAMED AFFIANT, ABOVE  
THE AGE OF (21); AND OF SOUND MIND.
2. I DO PRESENTLY RESIDE IN CLARK COUNTY,  
NEVADA -- LAS VEGAS, NEVADA.
3. JAVAR KETCHUM IS MY BIOLOGICAL SON.
4. I DID HIRE: CRAIG A. MUEHLER, ESQ., OF  
THE LAW OFFICES OF CRAIG A. MUEHLER, AND ASSOCIATES;  
LOCATED AT: 723 S. SEVENTH STREET, LAS VEGAS, NEVADA,  
89101; AT THE COST OF: \$ 10,000.00 TO REPRESENT  
MY SON ON A PETITION FOR WRIT OF HABEAS CORPUS.
5. CRAIG A. MUEHLER, ESQ., DID FILE THAT WRIT OF  
HABEAS CORPUS: 11 SEPTEMBER 2020.
6. SUBSEQUENT TO THE FILING OF THE WRIT  
OF HABEAS CORPUS; I REQUESTED (COUNSEL, MR.  
MUEHLER) TO MAIL A COPY OF THE WRIT OF HABEAS  
CORPUS TO MY SON, HIS CLIENT: JAVAR KETCHUM--  
AND HE DID SO.

7. UPON RECEIVING THE WRIT OF HABEAS CORPUS, MY SON EXPLAINED TO ME THAT HE WAS DIS-SATISFIED WITH THE WRIT, BECAUSE IT LACKED A CLEAR EXPLANATION OF THE STRICTLY STANDED OF: 1) DEFICIENT PERFORMANCE AND 2) PREJUDICE; AND NO SPECIFIC ALLEGATIONS OF AFFIDAVIT.

8. I INFORMED MY SON THAT I WOULD SPEAK WITH THE LAWYER ABOUT IT; AND I DID SO; BECAUSE I HAD NO IDEA WHAT HE WAS TALKING ABOUT.

9. AFTER SPEAKING WITH MR. MUELLER, I INFORMED MY SON THAT MR. MUELLER SAID THAT IF MY SON COULD DRAFT UP THE DOCUMENTS, HE WOULD FILE THEM.

10. MY SON DRAFTED UP A: SUPPLEMENTAL BRIEF AND A: MOTION FOR EVIDENTIARY HEARING; BOTH OF WHICH I HAD DELIVERED TO MR. MUELLER'S OFFICE, WITH THE UNDERSTANDING THE DOCUMENTS WOULD BE FILED IN COURT, FOR THE CONSIDERATION OF THE JUDGE, BEFORE TO HIS RULING ON THE PETITION FOR WRIT OF HABEAS CORPUS.

11. SUBSEQUENTLY, I INFORMED MY SON THAT I HAD DELIVERED BOTH DOCUMENTS TO MR. MUELLER'S LAW OFFICE, BEFORE TO THE RULING ON THE PETITION FOR WRIT OF HABEAS CORPUS.

12. DURING THE PROCESS OF GETTING THE DOCUMENTS TO MR. MUELLER; AT SOME POINT IN

DECEMBER 2020; I WAS INFORMED THAT MR. MUELLER HAD BECOME ILL (PERHAPS FROM COVID-19); AND THAT HE WAS NOT IN THE OFFICE.

13. SUBSEQUENTLY, I INFORMED MY SON, WHO INFORMED ME TO HAVE HIS LAWYER POSTPONE, OR CONTINUE THE CASE, UNTIL MR. MUELLER WAS ~~WORKING~~ WELLER STILL AND TO ENSURE THE REQUESTED DOCUMENTS WERE FILED.

14. THEREAFTER, I SPOKE WITH MR. MUELLER'S OFFICE, TO SET UP A PHONE CONFERENCE WITH MY SON, SO THAT MY SON, JAVAR KETCHUM COULD EXPLAIN THE IMPORTANCE OF WHY THE: (1) SUPPLEMENTAL MOTION; AND (2) THE MOTION FOR EVIDENTIARY HEARING SHOULD BE FILED BEFORE THE COURT'S RULING ON THE HABEAS CORPUS, BECAUSE THE SPECIFIC FACTUAL ALLEGATIONS WERE 'CRITICAL' TO THE CONDUCTING OF AN EVIDENTIARY HEARING, AND THE PETITION FOR WRIT OF HABEAS CORPUS.

15. PRIOR TO THE RULING BY THE COURT, ON THE PETITION, I ALSO HAD A FACE-TO-FACE MEETING WITH CRAIG A. MUELLER'S ASSOCIATES, WITH REGARD TO THE FILING OF THE DOCUMENTS.

16. THE LAWYER ONLY STATED THAT HE WOULD [TRY] TO DO SO ON THE DATE OF: 3/12/2021; AT THE TIME OF THE JUDGE'S RULING ON THE WRIT OF HABEAS CORPUS.

17. I TRIED TO REASON WITH THE LAWYER, THAT IT WOULD BE TOO LATE THEN, BECAUSE THE JUDGE WOULD NOT HAVE THE PROPER AMOUNT OF TIME TO CONSIDER THE MOTION AND THE SUPPLEMENTAL BRIEF; AND THE SPECIFIC ALLEGATIONS BEFORE THE RULING.

18. SUBSEQUENTLY, ON THE DATE OF: 3/12/2021; THE JUDGE DENIED THE PETITION FOR WRIT OF HABEAS CORPUS. AND WHEN COUNSEL THEN ATTEMPTED TO FILE THE SUPPLEMENTAL BRIEF AND/OR THE: MOTION FOR IMMEDIATE HEARING; THE JUDGE DENIED THAT REQUEST AS WELL.

19. I THEN SPOKE WITH MY SON ABOUT IT; AND MY SON REQUESTED THAT I PERSONALLY FILE A: MOTION FOR RECONSIDERATION, OR IN THE ALTERNATIVE MOTION FOR REHEARING OF PETITIONER'S PREVIOUS 34 PETITION. I AGREED TO DO SO, BECAUSE I WAS NOT CONFIDENT THAT MR. CRAIG MUELLER AND ASSOCIATES HAD MY SON'S BEST LEGAL INTERESTS IN MIND.

20. ON THE DATE OF: MARCH 29, 2021, I FILED THE 'MOTION FOR RECONSIDERATION' AND THE COURT CLERK FORMALLY FILED IT: 03/31/2021.

21. THEREAFTER, I HAD A FACE-TO-FACE MEETING WITH MR. CRAIG A. MUELLER, ESQ., ON THE DATE OF: 4/8/2021. AT THIS MEETING, MYSELF AND MR. MUELLER, WHO I'D PROVIDED WITH A COPY OF THE 'MOTION FOR RECONSIDERATION' ON: 3/29/2021;

discussed his further representation of the case. I requested that he file the 'notice of appeal' and the appeal of my son. He then informed me that because the 'motion for reconsideration' was pending he could not do so, because it had 'factual allegations' against his representation.

22. I informed him that my son was willing to withdraw the motion, if the \$10,000.00 post-conviction contract included an appeal.

23. Mr. Mueller and I discussed the same contract; and Mr. Mueller, Esq., informed me that the \$10,000.00 only covered the petition for writ of habeas corpus; and not the appeal of the writ of habeas corpus; and that if I wanted him to file an appeal to the Nevada Supreme Court, it would cost me another: \$10,000.00 to \$20,000.00.

24. Upon further discussion, Mr. Mueller informed me that he really couldn't do a good job on the case, because of the 'surveillance video'. I then told him that he told me this at the very beginning of his representation. I could have used the initial \$10,000.00 to hire another lawyer who was willing to assist my son with the lack of confidence, because of the 'surveillance video', since my son was not the perpetrator -- he was to be the victim -- but for a change in fate.

25. AFTER THE WRIT CHAPTER 34 PETITION FOR WRIT OF HABEAS CORPUS WAS FILED, I SPOKE WITH COUNSEL: CRAIG A. MUELLER AND ASSOCIATES, WHO THEN TOLD ME THEY DID NOT HAVE CONFIDENCE IN THE CASE BECAUSE OF THE CONTENT OF THE SWAN SURVEILLANCE VIDEO.

26. I TOLD THE COUNSEL(S) THAT HAD I KNOWN THIS FACT, I WOULD HAVE SOUGHT COUNSEL WHO WAS QUALIFIED TO BRING IN TRIAL COUNSEL AND HAVE HIM EXPLAIN WHETHER: 1) HE FAILED TO REVIEW THE ENTIRE VIDEO OR 2) WHETHER THE STATE/PROSECUTION WITHHELD CERTAIN PORTIONS OF THE SWAN SURVEILLANCE VIDEO.

27. I HAVE PROVIDED WITH THIS AFFIDAVIT A SERIES OF TEXTS, REQUESTING MY SON'S LAWYER, POST-CONVICTION COUNSEL, CRAIG A. MUELLER AND ASSOCIATES TO FILE THE: MOTION FOR EVIDENTIARY HEARING. (A SEE WHAT'S EXHIBIT #1, IN SUPPORT TEXTS, INCORPORATED HEREIN).

28. IT IS MY POSITION THAT POST-CONVICTION COUNSEL WAS WELL AWARE, MONTHS BEFORE THE JUDGE MADE IT'S RULING ON THE PETITION FOR WRIT OF HABEAS CORPUS, ON THE DATE OF: AP 3/12/2021; THAT MY SON WANTED HIM TO FILE THE: MOTION FOR EVIDENTIARY HEARING AND THE: SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS; BECAUSE I MADE NUMEROUS PHONE CALLS, WROTE A SERIES OF TEXTS, AND EVEN SPOKE WITH CRAIG A. MUELLER ESQ. AND ASSOCIATES PERSONALLY ABOUT THE MATTER.

6.

29. I MAKE THIS AFFIDAVIT IN GOOD FAITH; AND I AM WILLING TO ENTER A COURT OF LAW AND TAKE THE WITNESS STAND AND TESTIFY TO THE TRUTH OF THIS MATTER.

30. FURTHER AFFIRMETH SAITH NOT.

DATED: THIS 24 DAY OF April 2021.

SIGNED BY:

X Mary Acuy

SHERIFF KETCHUM AREA

NOTARY PUBLIC

SWORN TO:

BEFORE Job Vergara, A NOTARY  
(NOTARY PUBLIC)

PUBLIC FOR THE STATE OF: Nevada, IN THE  
(STATE)

COUNTY OF: CLARK; DATED ON THIS:  
(COUNTY)

4-24-21 2021.  
(DATE)

Job Vergara

SEAL:





EXHIBIT # 1  
[TEXTS OF SHEPPARD]

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC				
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	

Contacted Pallas - 12/23/20 - Regarding my sons Harper's Gross record from the PA he was out of the office.

1/17/2021 - Reached out to his boss Muller about my concern about lack of time spend on my own case and that Chuck was not prepared.

1/11/2021 Chuck requested an extension because I advised him to get a call had and filed the Motion for Expedient Hearing as we requested quoted in the email. I informed him that my son wanted this Motion filed.

1/21/21 - I dropped off a copy to his office - he said he never received the mailed or email copy.

1/23/2021 - Again email explaining that Javis is requesting him to file the Motion for Expedient Hearing attached another copy to e-mail.

2/25/2021 - Email requesting the filed the Expedient Hearing.

See all documents attached.

7:33



**Sherry Acey** 12/23/2020

to Chuck ▾



Hi Chuck, did you receive the response from the District Attorney Office? The response was due December 18, 2020. Can you forward me a copy so I can send to my son?

Thank you

Sherry Acey



**Chuck Pallares** 12/23/2020

to me ▾



I am out of the office this week. I have not reviewed the State's response. I'll get back to you both.

Get Outlook for iOS

---

**From:** Sherry Acey <aceysherry@gmail.com>

**Sent:** Wednesday, December 23, 2020

9:27:26 AM

**To:** Chuck Pallares

<chuck@craigmuellerlaw.com>

**Subject:** Javar Ketchum Appeal

Show quoted text

[View entire message](#)



7:33



## Javar Ketchum Appeal

Add label



**Sherry Acey** Jan 7

to craig ▾



Hi Mr. Mueller,

I am concerned about my son Javar Ketchum's Appeal due January 15, 2020. Chuck is working on it. He has been out of the office for several weeks. I want to make sure he has enough time to respond. I have requested copies of the answer but I have not received it. At this point an extension may be necessary so he can speak with my son and have sufficient time to respond.

Thank you for your time.

Sherry Acey  
702-980-2401

↩ Reply

↩↩ Reply all

➦ Forward



7:34



Javar Ketchum  Inbox



Sherry Acey Jan 11  
to Chuck ▾



Dear Chuck

Per our conversation this morning you will request an extension to answer my sons appeal so that you can have time to speak with him. Please also email a copy of the response and sent my son a copy at High Desert State Prison.

We also discussed filing a Motion for Evidentiary Hearing my son mailed you that information 3 weeks ago he wants to discuss it with you.

Thank you

Sherry Acey



Chuck Pallares Jan 11  
to me ▾



That is all correct.

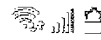
Get Outlook for iOS

---

**From:** Sherry Acey <aceysherry@gmail.com>  
**Sent:** Monday, January 11, 2021 10:09:27 AM  
**To:** Chuck Pallares  
<chuck@craigmuellerlaw.com>



7:34



## Javar Ketchum Evidentiary



Appeal  Inbox



Sherry Acey Jan 12  
to Chuck 



Hi Chuck the document 20 pages was mailed from  
usps confirm when you receive it.

Regards


Sherry



Chuck Pallares Jan 21

Sherry I check my email multiple times a day,  
even from my phone. Nothing has come to my



Sherry Acey Jan 21  
to Chuck 



I will drop of a copy this morning to your office.

Show quoted text

 Reply

 Reply all

 Forward



7:35



Sherry Acey Jan 23  
to Chuck ▾



Hi Chuck,

Javar is requesting you to view the attached document in regards to his answer to the District Attorney and discuss with him next week during the telephone call.

Thank you  
Sherry Acey

----- Forwarded message -----

From: **Karla Moncayo**  
<karlamoncayo.114@gmail.com>  
Date: Sat, Jan 23, 2021, 2:05 PM  
Subject:  
To: <aceysherry@gmail.com>

/

CHRISTOPHER A. MUELLER, ESQ.  
NEVADA BAR NO. 4103  
CHRISTOPHER A. MUELLER &  
ASSOCIATES  
713 S. SEVENTH STREET  
LAS VEGAS, NEVADA 89101



202101231...18727.pdf



2



7:36



## Evidentiary Hearing Motion



Add label



**Sherry Acey** Feb 25  
to Chuck ▾



Chuck per my son Javar Ketchum he is requesting you to separately file the information he sent you in case his appeal is denied. He wants to have this paperwork on file he says for his best interest at the Supreme Court.

I wanted you to schedule a call with him so he could explain you did not response to that email. I try to communicate for him.

If there is a separate charge for this filing let me know he wrote it up all you have to do is transfer to the legal paper and file.

Thank you

Sherry Acey

← Reply

↩ Reply all

→ Forward





Electronically Filed  
05/10/2021

*Heather J. Smith*  
CLERK OF THE COURT

JAVAR KETCHUM #1192727  
H.D.S.P.  
P.O. BOX 650  
TWIN SPRINGS, NEVADA  
89070  
IN PROPER PERSON

DISTRICT COURT  
CLARK COUNTY, NEVADA  
—

JAVAR KETCHUM,                      CASE NO.: A-20-821316-W  
PETITIONER,                      DEPARTMENT: 17  
vs.  
THE STATE OF NEVADA,  
RESPONDENT.

MOTION FOR CONTINUANCE OF:  
MAY 04, 2021 HEARING DATE,  
OF:  
MOTION FOR RECONSIDERATION, OR IN  
THE ALTERNATIVE, MOTION FOR  
REHEARING OF PETITIONER'S NRS CHAPTER  
34 PETITION

DATE OF HEARING: \_\_\_\_\_  
TIME OF HEARING: \_\_\_\_\_

COMES NOW, PETITIONER, JAVAR KETCHUM, IN HIS  
PROPER PERSON AND MOVES THIS HONORABLE COURT ON A:

RECEIVED

APR 26 2021

CLERK OF THE COURT

1.

MOTION FOR CONTINUANCE OF: MAY 04, 2021 HEARING DATE, OF: MOTION FOR RECONSIDERATION, OR IN THE ALTERNATIVE, MOTION FOR REHEARING OF PETITIONER'S JRS CHAPTER 34 PETITION. ID.

THIS MOTION TO CONTINUE THE JAMES PROCEEDINGS IS MADE IN GOOD FAITH AND NOT FOR THE PURPOSE OF DELAY; BUT FOR PETITIONER TO EXPLAIN TO THE COURT THAT PETITIONER DID NOT RECEIVE THE FUNDAMENTAL FAIRNESS IN THE INSTANT: HABEAS CORPUS PROCEEDINGS, BECAUSE HIS JRS CHAPTER 34 POST-CONVICTION COUNSEL, DID NOT, OR WOULD NOT ASSIST PETITIONER IN ESTABLISHING HIS: SPECIFIC FACTUAL ALLEGATIONS, WHICH ARE A FUNDAMENTAL COMPONENT TO ANY CLAIM OF: INEFFECTIVE ASSISTANCE OF COUNSEL; WHICH UNDER STRICKLAND V. WASHINGTON, ID., AND WALSH V. LYONS, ID.; IS A QUESTION OF LAW AND FACT.<sup>1</sup>

GOOD CAUSE TO CONTINUE HEARING:

PETITION SETFORTH THAT GOOD CAUSE EXISTS TO CONTINUE THE HEARING DATE OF: MAY 4<sup>TH</sup>, 2021, SINCE PETITIONER HAS FILED HERE WITH: 1) MOTION FOR APPOINTMENT OF COUNSEL; 2) MOTION FOR EVIDENTIARY HEARING; 3) MOTION TO WITHDRAW COUNSEL; 4) MOTION TO PROCEED IN FORMA PAUPERIS. ID. HEREWITH, INCORPORATED AND IN SUPPORT.

\* STRICKLAND AT: 104 S. CT. 2052 (1984); AND LYONS AT:

THEREFORE:

PETITIONER SEEKS FORTH-FIVE TO SIXTH DAY(S) CONTINUANCE OF MOTION FOR RECONSIDERATION, UNDER THIS EXTRA-ORDINARY CIRCUMSTANCE; FOR THIS COURT TO DETERMINE IS 'FUNDAMENTAL FAIRNESS' WAS BREACHED, WHERE POST-CONVICTION COUNSEL DID NOT ADVISE PETITIONER IN ESTABLISHING HIS SPECIFIC FACTUAL ALLEGATIONS; SINCE 'DUE PROCESS' ATTACHES TO POST-CONVICTION PROCEEDINGS, EVEN THOUGH THE 'SIXTH AMENDMENT RIGHT TO COUNSEL' DOES NOT. IN.

WHEREFORE:

CONCLUSION:

PETITIONER PRAYS THIS COURT USE ITS DISCRETION TO CONTINUE THE PROCEEDING MOTION FOR RECONSIDERATION.

DATE: THIS 14TH DAY OF APRIL 2021

RESPECTFULLY SUBMITTED:

ANAR KETUM  
ANAR KETUM #192727  
H.D.S.P. / TB-19  
P.O. BOX 650  
INDIAN SPRINGS, NEVADA  
89070  
IN PROPER PERSON

3.

**PLEADING  
CONTINUES  
IN NEXT  
VOLUME**