

Electronically Filed
May 12 2021 11:14 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

NOASC
JAMES A. ORONoz, ESQ.
Nevada Bar No. 6769
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1050 Indigo Drive, Suite 120
Las Vegas, Nevada 89145
Telephone: (702) 878-2889
Facsimile: (702) 522-1542
jim@oronozlawyers.com
Attorney for Appellant

DISTRICT COURT
CLARK COUNTY, NEVADA

JOSHUA BACHARACH,)	
)	
Appellant,)	CASE NO. C-14-299425-1
)	
v.)	DEPT. NO. IX
)	
THE STATE OF NEVADA,)	
)	NOTICE OF APPEAL
Respondent.)	

NOTICE is hereby given that Appellant JOSHUA BACHARACH hereby appeals to the Nevada Supreme Court from the Findings of Fact, Conclusion of Law and Order rendered in this action on the 5th day of May, 2021.

DATED this 6th day of May, 2021.

ORONoz & ERICSSON, LLC

/s/ James A. Oronoz, Esq.
JAMES A. ORONoz, ESQ.
Nevada Bar No. 6769
1050 Indigo Drive, Suite 120
Las Vegas, Nevada 89145
Telephone: (702) 878-2889
Attorney for Appellant

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CERTIFICATE OF ELECTRONIC SERVICE

The undersigned hereby certifies that electronic service was completed via the Odyssey E-File & Serve System and emailed to the following recipient(s) on this 6th day of May, 2021.

STEVEN B. WOLFSON
Clark County District Attorney
PDmotions@clarkcountyda.com

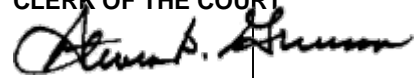
CERTIFICATE OF MAILING

The undersigned hereby certifies that service was completed by sending a copy of this Notice of Appeal via U.S. mail on this 6th day of May, 2021, to the following recipient pursuant to NRAP 3(d)(2).

JOSHUA BACHARACH, ID# 090607
c/o Ely State Prison
P. O. Box 1989
Ely, NV 89301

AARON FORD
Nevada Attorney General
100 N. Carson Street
Carson City, NV 89701

/s/ Jan Ellison
An Employee of Oronoz & Ericsson, LLC



ASTA
JAMES A. ORONoz, ESQ.
Nevada Bar No. 6769
Oronoz & Ericsson, LLC
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Telephone: (702) 878-2889
Facsimile: (702) 522-1542
jim@oronozlawyers.com
Attorney for Appellant

DISTRICT COURT
CLARK COUNTY, NEVADA

JOSHUA BACHARACH,
Appellant,

vs.

THE STATE OF NEVADA,
Respondent.

CASE NO.: C-14-299425-1

Supreme Court No: _____

DEPT. NO.: IX

CASE APPEAL STATEMENT

1. Appellant filing this case appeal statement: Joshua Bacharach

2. The name of the judge who entered the order or judgment that is being appealed:

The Honorable Cristina D. Silva.

3. All parties to the proceedings in the district court (the use of et al. to denote parties is prohibited): **Joshua Bacharach, Petitioner; The State of Nevada, Respondent.**

4. All parties involved in this appeal (the use of et. al. to denote parties is prohibited):
Joshua Bacharach, Appellant; The State of Nevada, Respondent.

5. Name, law firm, address, and telephone number of all counsel on appeal and party or parties whom they represent:

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JAMES A. ORONoz, ESQ.
Oronoz & Ericsson, LLC
1050 Indigo Drive, Suite 120
Las Vegas, Nevada 89145
(702) 878-2889
Attorney for Appellant

STEVEN B. WOLFSON
Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155
Attorney for Respondent

5 6. Whether an attorney identified in response to paragraph 5 is not licensed to
6 practice law in Nevada, and if so, whether the district court granted that attorney permission to
7 appear under SCR 42, including a copy of any district court order granting that permission: **N/A.**

8 7. Whether appellant was represented by appointed or retained counsel in the district
9 court: **Appointed.**

10 8. Whether appellant is represented by appointed or retained counsel on appeal:
11 **Appointed.**

12 9. Whether appellant was granted leave to proceed in forma pauperis, and the date of
13 entry of the district court order granting such leave: **N/A.**

14 10. Date proceedings commenced in the district court (e.g., date complaint,
15 indictment, information, or petition was filed): **Petition for Writ Of Habeas Corpus (Post**
16 **Conviction), Filed on July 16, 2014.**

17 11. A brief description of the nature of the action and result in the district court,
18 including the type of judgment or order being appealed and the relief granted by the district court:
19 **This is an appeal from the District Court's denial of Appellant's Petition For Writ of Habeas**
20 **Corpus (Post-Conviction).**

21 12. Whether the case has previously been the subject of an appeal to or original writ
22 proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the
23 prior proceeding:

24 **Bacharach v. State of Nevada – Docket No. 69677.**

13. Whether the appeal involves child custody or visitation: **N/A.**

14. In civil cases, whether the appeal involves the possibility of settlement. **N/A.**

DATED this 6th day of May 2021.

Respectfully submitted,

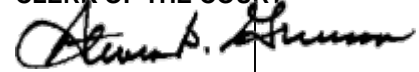
By: /s/ James A. Oronoz
JAMES A. ORONoz, ESQ.
Nevada Bar No. 6769
Oronoz & Ericsson, LLC
1050 Indigo Drive, Suite 120
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Attorney for Appellant

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AARON FORD
Nevada Attorney General

STEVEN WOLFSON
Clark County District Attorney

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REQT
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1050 Indigo Drive, Suite 120
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jim@oronozlawyers.com
Attorney for Appellant

DISTRICT COURT
CLARK COUNTY, NEVADA

JOSHUA BACHARACH,
Appellant,

vs.

THE STATE OF NEVADA,
Respondent.

CASE NO.: C-14-299425-1

DEPT. NO.: IX

REQUEST FOR TRANSCRIPTS

TO: Court Recorder: Gina Villani
District Court: Department No. IX
District Judge: Honorable Douglas E. Smith
Honorable Cristina D. Silva

Joshua Bacharach, Defendant named above, requests a preparation of a transcript of certain portions of the proceedings before the District Court, as follows:

1. Court Recorder Gina Villani: June 25, 2018 (Deft's Motion to Place on Calendar to Extend Time for the Filing of Petition's Supplemental Petition for Writ of Habeas Corpus); October 29, 2018 (Deft's Motion to Place on Calendar to Extend Time for the Filing of Petition's Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)); February 27, 2019 (Minute Order); August 22, 2019 (Minute Order); April 5, 2021 (Petition for Writ of Habeas Corpus).

1 Portion of the transcripts requested: Entire Hearing (including bench conferences and
2 sealed hearings), including word index

3 This Notice requests a transcript of only those portions of the District Court
4 proceedings that counsel reasonably and in good faith believes are necessary to determine
5 whether appellate issues are present.

6 I recognize that I must personally serve a copy of this form on the above-named court
7 recorder and opposing counsel.

8 That the above-named court recorder shall have thirty (30) days from the date of service
9 of this document to prepare an original plus three copies and file with the District Court Clerk
10 the original transcript(s) requested herein.

11 Further, pursuant to NRAP 3C(d)(3)(iii), the court recorder shall also deliver copies of
12 the transcript to the Supreme Court Clerk, to appellant's counsel and respondent's counsel no
13 more than thirty (30) days after the date of the appellant's request.

14 DATED this 6th day of May, 2021.

15 Respectfully submitted,

16 By: /s/ James A. Oronoz
17 James A. Oronoz, Esq.
18 Nevada Bar No. 6769
19 Oronoz & Ericsson, LLC
20 1050 Indigo Drive, Suite 120
21 Las Vegas, Nevada 89145
22 Telephone: (702) 878-2889
23 *Attorney for Appellant*
24 *Joshua Bacharach*

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of May, 2021, I served a true and correct copy of the foregoing Request for Transcripts on:

Gina Villani
Court Recorder
District Court, Dept. IX
200 Lewis Avenue
Las Vegas, Nevada 89155
VillaniG@clarkcountycourts.us

STEVEN B. WOLFSON, Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89101
PDMotions@clarkcountyda.com

/s/ Jan Ellison
An employee of Oronoz & Ericsson, LLC

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. C-14-299425-1

State of Nevada
vs
Joshua Bacharach

Location: **Department 9**
Judicial Officer: **Silva, Cristina D.**
Filed on: **07/16/2014**
Case Number History:
Cross-Reference Case Number: **C299425**
Defendant's Scope ID #: **1900105**
Grand Jury Case Number: **14AGJ025**
ITAG Case ID: **1732747**
Supreme Court No.: **69677**

CASE INFORMATION

Offense	Statute	Deg	Date	Case Type:	Felony/Gross Misdemeanor
1. ATTEMPT MURDER WITH USE OF A DEADLY WEAPON	200.010	F	06/26/2014	Case Status:	12/03/2015 Closed
2. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	202.287.1b	F	06/26/2014		
3. ASSAULT WITH A DEADLY WEAPON	200.471.2b	F	06/26/2014		
4. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	202.287.1b	F	06/26/2014		
5. ASSAULT WITH A DEADLY WEAPON	200.471.2b	F	06/26/2014		
6. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	202.287.1b	F	06/26/2014		
7. ASSAULT WITH A DEADLY WEAPON	200.471.2b	F	06/26/2014		
8. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	202.287.1b	F	06/26/2014		
9. ASSAULT WITH A DEADLY WEAPON	200.471.2b	F	06/26/2014		
10. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	202.287.1b	F	06/26/2014		
11. ASSAULT WITH A DEADLY WEAPON	200.471.2b	F	06/26/2014		
12. STOP REQUIRED ON SIGNAL OF POLICE OFFICER	484B.550.3b	F	06/26/2014		
13. RESISTING PUBLIC OFFICER WITH USE OF A FIREARM	199.280.1	F	06/26/2014		
14. POSSESSION OF FIREARM WITH ALTERED OR OBLITERATED SERIAL NUMBER	202.277.2	F	06/26/2014		
15. POSSESSION OF FIREARM BY EX-FELON	202.360.1	F	06/26/2014		
16. POSSESSION OF FIREARM BY EX-FELON	202.360.1	F	06/26/2014		
17. POSSESSION OF FIREARM BY EX-FELON	202.360.1	F	06/26/2014		

Statistical Closures

12/03/2015 Jury Trial - Conviction - Criminal

Warrants

Indictment Warrant - Bacharach, Joshua W (Judicial Officer: Bell, Linda Marie)

07/28/2014 2:51 PM Returned - Served

07/16/2014 11:45 AM Active

Hold Without Bond

DATE














CASE ASSIGNMENT

Current Case Assignment

Case Number C-14-299425-1
Court Department 9
Date Assigned 04/29/2019
Judicial Officer Silva, Cristina D.



















CASE SUMMARY**CASE NO. C-14-299425-1****PARTY INFORMATION**

Defendant	Bacharach, Joshua W	<i>Lead Attorneys</i> Oronoz, James A. <i>Retained</i> 702-878-2889(W)
Plaintiff	State of Nevada	Wolfson, Steven B 702-671-2700(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
	<u>EVENTS</u>	
07/16/2014	 Indictment <i>Indictment</i>	
07/16/2014	 Warrant <i>Indictment Warrant</i>	
07/16/2014	Bench Warrant <i>No Bail Bench Warrant Issued</i>	
07/17/2014	 Indictment Warrant Return	
07/30/2014	 Transcript of Proceedings <i>Reporter's Transcript of Proceedings, Grand Jury Hearing, July 15, 2014</i>	
07/30/2014	 Media Request and Order <i>Media Request And Order Allowing Camera Access To Court Proceedings</i>	
08/12/2014	 Media Request and Order <i>Media Request And Order Allowing Camera Access To Court Proceedings</i>	
08/19/2014	 Order for Production of Inmate <i>Order for Production of Inmate</i>	
08/25/2014	 Order for Production of Inmate <i>Order for Production of Inmates</i>	
02/23/2015	 Notice of Witnesses and/or Expert Witnesses <i>Notice of Witnesses and/or Expert Witnesses</i>	
02/23/2015	 Notice of Witnesses and/or Expert Witnesses <i>Notice of Witnesses and/or Expert Witnesses</i>	
02/25/2015	 Notice of Witnesses and/or Expert Witnesses <i>Supplemental Notice of Witnesses and/or Expert Witnesses [NRS 174.234]</i>	
07/01/2015	 Ex Parte Order <i>Ex Parte Order</i>	
10/15/2015	 Notice of Witnesses and/or Expert Witnesses	

CASE SUMMARY
CASE NO. C-14-299425-1

Second Supplemental Notice of Witnesses and/or Expert Witnesses(NRS 174.234)

10/20/2015	 Notice of Witnesses and/or Expert Witnesses <i>Third Supplemental Notice of Witnesses and/or Expert Witnesses</i>
10/22/2015	 Notice of Witnesses and/or Expert Witnesses <i>Fourth Supplemental Notice of Witnesses and/or Expert Witnesses</i>
11/02/2015	 Amended Indictment <i>Amended Indictment</i>
11/02/2015	 Jury List
11/03/2015	 Amended Jury List
11/04/2015	 Amended Jury List <i>Second Amended Jury List</i>
11/05/2015	 Instructions to the Jury
11/05/2015	 Instructions to the Jury
11/05/2015	 Verdict <i>Verdict Counts 1 - 14</i>
11/05/2015	 Verdict <i>Verdict Counts 15-17</i>
12/03/2015	 Criminal Order to Statistically Close Case <i>Criminal Order to Statistically Close Case</i>
12/14/2015	 PSI
12/15/2015	 PSI - Victim Impact Statements
01/08/2016	 Judgment of Conviction <i>JUDGMENT OF CONVICTION (JURY TRIAL)</i>
01/26/2016	 Notice of Appeal (Criminal) <i>Notice of Appeal</i>
01/26/2016	 Request <i>Request for Rough Draft Transcripts</i>
01/26/2016	 Case Appeal Statement <i>Case Appeal Statement</i>
02/23/2016	 Recorders Transcript of Hearing <i>Transcript of Proceedings Jury Trial - Day 1, Volume I, heard on November 2, 2015</i>
02/23/2016	

CASE SUMMARY

CASE NO. C-14-299425-1

	 Recorders Transcript of Hearing <i>Transcript of Proceedings Jury Trial - Day 2, Volume II, heard on November 3, 2015</i>
02/23/2016	 Recorders Transcript of Hearing <i>Transcript of Proceedings Jury Trial - Day 3, Volume III, heard on November 4, 2015</i>
02/23/2016	 Recorders Transcript of Hearing <i>Transcript of Proceedings Jury Trial - Day 1, Volume I (Bifurcated Trial), November 5, 2015</i>
02/24/2016	 Recorders Transcript of Hearing <i>Transcript of Proceedings Jury Trial - Day 4, Volume IV November 5, 2015</i>
02/25/2016	 Recorders Transcript of Hearing <i>Transcript of Proceedings Initial Arraignment Indictment Warrant Return, heard on July 28, 2014</i>
02/25/2016	 Recorders Transcript of Hearing <i>Transcript of Proceedings DA Request RE: Resetting Trial Date per Defense Request, heard on August 11, 2014</i>
02/25/2016	 Recorders Transcript of Hearing <i>Transcript of Proceedings DA Request RE: Resetting Trial Date Per Defense Request, heard on August 18, 2014</i>
02/25/2016	 Recorders Transcript of Hearing <i>Transcript of Proceedings Calendar Call, heard on April 8, 2015</i>
02/25/2016	 Recorders Transcript of Hearing <i>Transcript of Proceedings Status Check: Reset Trial Date, heard on April 15, 2015</i>
02/25/2016	 Recorders Transcript of Hearing <i>Transcript of Proceedings Calendar Call, heard on October 28, 2015</i>
02/25/2016	 Recorders Transcript of Hearing <i>Transcript of Proceedings At the Request of the Court: Status Check: Negotiations, heard on October 29, 2015</i>
02/25/2016	 Recorders Transcript of Hearing <i>Transcript of Proceedings Sentencing, heard on December 30, 2015</i>
11/18/2016	 NV Supreme Court Clerks Certificate/Judgment - Affirmed <i>Nevada Supreme Court Clerk's Certificate Judgment - Affirmed</i>
01/30/2017	 Certificate of Mailing <i>Certificate of Mailing</i>
11/08/2017	 Petition for Writ of Habeas Corpus Filed by: Defendant Bacharach, Joshua W <i>Petition for Writ of Habeas Corpus (Post Conviction)</i>
11/16/2017	 Order for Petition for Writ of Habeas Corpus
11/16/2017	 Notice of Hearing <i>Notice of Hearing</i>

CASE SUMMARY

CASE NO. C-14-299425-1

11/21/2017	 Response Filed by: Plaintiff State of Nevada <i>State's Response to Defendant's Motion to Appoint Counsel and Request for an Evidentiary Hearing</i>
12/29/2017	 Response <i>State's Response to Defendant's Petition for Writ of Habeas Corpus and Motion to Appoint Counsel</i>
04/02/2018	 Ex Parte Order <i>Ex Parte Order</i>
04/04/2018	 Recorders Transcript of Hearing <i>RECORDER'S TRANSCRIPT OF PROCEEDINGS: STATUS CHECK: FILE/SET BRIEFING SCHEDULE (PETITION FOR WRIT OF HABEAS CORPUS - INEFFECTIVE ASSISTANCE OF COUNSEL). HEARD ON MARCH 14, 2018</i>
06/12/2018	 Motion Filed By: Defendant Bacharach, Joshua W <i>Motion to Place on Calendar to Extend Time for the Filing of Petitioner's Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)</i>
10/19/2018	 Motion Filed By: Defendant Bacharach, Joshua W <i>Motion to Place on Calendar to Extend Time for the Filing of Petitioner's Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)</i>
02/21/2019	 Motion Filed By: Defendant Bacharach, Joshua W <i>Motion to Extend Time for the Filing of Petitioner's Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)</i>
04/29/2019	Case Reassigned to Department 9 <i>Judicial Reassignment to Department 9 - Judge Cristina Silva</i>
11/21/2019	 Notice of Briefing Schedule <i>Notice of Amended Briefing Schedule and Hearing</i>
02/24/2020	 Supplement Filed by: Defendant Bacharach, Joshua W <i>Supplemental Post-Conviction Petition for Writ of Habeas Corpus</i>
03/27/2020	 Response Filed by: Plaintiff State of Nevada <i>State's Response to Petitioner's Supplemental Post-Conviction Petition for Writ of Habeas Corpus and Request for Evidentiary Hearing</i>
04/07/2020	 Reply Filed by: Defendant Bacharach, Joshua W <i>Reply to State's Response to Petitioner's Supplemental Post-Conviction Petition for Writ of Habeas Corpus and Request for Evidentiary Hearing</i>
05/05/2021	 Findings of Fact, Conclusions of Law and Order
05/06/2021	 Notice of Appeal (Criminal) Party: Defendant Bacharach, Joshua W <i>Notice of Appeal</i>

CASE SUMMARY
CASE NO. C-14-299425-1

05/06/2021



Case Appeal Statement

Filed By: Defendant Bacharach, Joshua W
Case Appeal Statement

05/06/2021



Request

Filed by: Defendant Bacharach, Joshua W
Request for Transcripts

05/07/2021



Notice of Entry

Filed By: Plaintiff State of Nevada
Notice of Entry of Findings of Fact, Conclusions of Law and Order

DISPOSITIONS

07/28/2014

Plea (Judicial Officer: Smith, Douglas E.)

1. ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

Not Guilty

PCN: Sequence:

2. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE

Not Guilty

PCN: Sequence:

3. ASSAULT WITH A DEADLY WEAPON

Not Guilty

PCN: Sequence:

4. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE

Not Guilty

PCN: Sequence:

5. ASSAULT WITH A DEADLY WEAPON

Not Guilty

PCN: Sequence:

6. DISCHARGE OR FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE

Not Guilty

PCN: Sequence:

7. ASSAULT WITH A DEADLY WEAPON

Not Guilty

PCN: Sequence:

8. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE

Not Guilty

PCN: Sequence:

9. ASSAULT WITH A DEADLY WEAPON

Not Guilty

PCN: Sequence:

10. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE

Not Guilty

PCN: Sequence:

11. ASSAULT WITH A DEADLY WEAPON

Not Guilty

PCN: Sequence:

12. STOP REQUIRED ON SIGNAL OF POLICE OFFICER

CASE SUMMARY
CASE NO. C-14-299425-1

Not Guilty
PCN: Sequence:

13. RESISTING PUBLIC OFFICER WITH USE OF A FIREARM

Not Guilty
PCN: Sequence:

14. POSSESSION OF FIREARM WITH ALTERED OR OBLITERATED SERIAL NUMBER

Not Guilty
PCN: Sequence:

15. POSSESSION OF FIREARM BY EX-FELON

Not Guilty
PCN: Sequence:

16. POSSESSION OF FIREARM BY EX-FELON

Not Guilty
PCN: Sequence:

17. POSSESSION OF FIREARM BY EX-FELON

Not Guilty
PCN: Sequence:

11/05/2015 **Disposition** (Judicial Officer: Smith, Douglas E.)

9. ASSAULT WITH A DEADLY WEAPON

Not Guilty
PCN: Sequence:

10. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE

Not Guilty
PCN: Sequence:

12/30/2015 **Disposition** (Judicial Officer: Smith, Douglas E.)

1. ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

Guilty
PCN: Sequence:

12/30/2015 **Adult Adjudication** (Judicial Officer: Smith, Douglas E.)

1. ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

06/26/2014 (F) 200.010 (DC50031)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Minimum:96 Months, Maximum:240 Months

Consecutive Enhancement:Use of Deadly Weapon, Minimum:96 Months, Maximum:240 Months

12/30/2015 **Disposition** (Judicial Officer: Smith, Douglas E.)

2. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE

Guilty
PCN: Sequence:

3. ASSAULT WITH A DEADLY WEAPON

Guilty
PCN: Sequence:

4. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE

Guilty
PCN: Sequence:

CASE SUMMARY**CASE NO. C-14-299425-1**

5. ASSAULT WITH A DEADLY WEAPON

Guilty

PCN: Sequence:

6. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE

Guilty

PCN: Sequence:

7. ASSAULT WITH A DEADLY WEAPON

Guilty

PCN: Sequence:

8. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE

Guilty

PCN: Sequence:

12/30/2015 **Adult Adjudication** (Judicial Officer: Smith, Douglas E.)

2. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE

06/26/2014 (F) 202.287.1b (DC51445)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Minimum:72 Months, Maximum:180 Months

Consecutive: Charge 1

Fee Totals:

Criminal Fine 5,000.00

Fee Totals \$ 5,000.00

12/30/2015 **Adult Adjudication** (Judicial Officer: Smith, Douglas E.)

3. ASSAULT WITH A DEADLY WEAPON

06/26/2014 (F) 200.471.2b (DC50201)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Minimum:28 Months, Maximum:72 Months

Concurrent: Charge 1 and 2

Fee Totals:

Criminal Fine 5,000.00

Fee Totals \$ 5,000.00

12/30/2015 **Adult Adjudication** (Judicial Officer: Smith, Douglas E.)

4. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE

06/26/2014 (F) 202.287.1b (DC51445)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Minimum:72 Months, Maximum:180 Months

Consecutive: Charge 1-3

Fee Totals:

Criminal Fine 5,000.00

Fee Totals \$ 5,000.00

12/30/2015 **Adult Adjudication** (Judicial Officer: Smith, Douglas E.)

5. ASSAULT WITH A DEADLY WEAPON

06/26/2014 (F) 200.471.2b (DC50201)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Minimum:28 Months, Maximum:72 Months

Consecutive: Charge 1-4

Fee Totals:

CASE SUMMARY

CASE NO. C-14-299425-1

Criminal Fine	5,000.00
Fee Totals \$	5,000.00

12/30/2015 **Adult Adjudication** (Judicial Officer: Smith, Douglas E.)
 6. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE
 06/26/2014 (F) 202.287.1b (DC51445)
 PCN: Sequence:

Sentenced to Nevada Dept. of Corrections
 Term: Minimum:72 Months, Maximum:180 Months
 Consecutive: Charge 1-5
 Fee Totals:

Criminal Fine	5,000.00
Fee Totals \$	5,000.00

12/30/2015 **Adult Adjudication** (Judicial Officer: Smith, Douglas E.)
 7. ASSAULT WITH A DEADLY WEAPON
 06/26/2014 (F) 200.471.2b (DC50201)
 PCN: Sequence:

Sentenced to Nevada Dept. of Corrections
 Term: Minimum:28 Months, Maximum:72 Months
 Consecutive: Charge 1-6
 Fee Totals:

Criminal Fine	5,000.00
Fee Totals \$	5,000.00

12/30/2015 **Adult Adjudication** (Judicial Officer: Smith, Douglas E.)
 8. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE
 06/26/2014 (F) 202.287.1b (DC51445)
 PCN: Sequence:

Sentenced to Nevada Dept. of Corrections
 Term: Minimum:72 Months, Maximum:180 Months
 Consecutive: Charge 1-7
 Fee Totals:

Criminal Fine	5,000.00
Fee Totals \$	5,000.00

12/30/2015 **Disposition** (Judicial Officer: Smith, Douglas E.)
 11. ASSAULT WITH A DEADLY WEAPON
 Guilty
 PCN: Sequence:
 12. STOP REQUIRED ON SIGNAL OF POLICE OFFICER
 Guilty
 PCN: Sequence:
 13. RESISTING PUBLIC OFFICER WITH USE OF A FIREARM
 Guilty
 PCN: Sequence:
 14. POSSESSION OF FIREARM WITH ALTERED OR OBLITERATED SERIAL NUMBER
 Guilty
 PCN: Sequence:
 15. POSSESSION OF FIREARM BY EX-FELON
 Guilty
 PCN: Sequence:
 16. POSSESSION OF FIREARM BY EX-FELON
 Guilty

CASE SUMMARY
CASE NO. C-14-299425-1

PCN: Sequence:

17. POSSESSION OF FIREARM BY EX-FELON

Guilty

PCN: Sequence:

12/30/2015 **Adult Adjudication** (Judicial Officer: Smith, Douglas E.)

11. ASSAULT WITH A DEADLY WEAPON

06/26/2014 (F) 200.471.2b (DC50201)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Minimum:28 Months, Maximum:72 Months

Consecutive: Charge 1-8

Fee Totals:

Criminal Fine 5,000.00

Fee Totals \$ 5,000.00

12/30/2015 **Adult Adjudication** (Judicial Officer: Smith, Douglas E.)

12. STOP REQUIRED ON SIGNAL OF POLICE OFFICER

06/26/2014 (F) 484B.550.3b (DC53833)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Minimum:28 Months, Maximum:72 Months

Consecutive: Charge 1-8 and 11

Fee Totals:

Criminal Fine 5,000.00

Fee Totals \$ 5,000.00

12/30/2015 **Adult Adjudication** (Judicial Officer: Smith, Douglas E.)

13. RESISTING PUBLIC OFFICER WITH USE OF A FIREARM

06/26/2014 (F) 199.280.1 (DC55104)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Minimum:24 Months, Maximum:60 Months

Consecutive: Charge 1-8 and 11-12

Fee Totals:

Criminal Fine 10,000.00

Fee Totals \$ 10,000.00

12/30/2015 **Adult Adjudication** (Judicial Officer: Smith, Douglas E.)

14. POSSESSION OF FIREARM WITH ALTERED OR OBLITERATED SERIAL NUMBER

06/26/2014 (F) 202.277.2 (DC51438)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Minimum:19 Months, Maximum:48 Months

Consecutive: Charge 1-8 and 11-13

Fee Totals:

Criminal Fine 5,000.00

Fee Totals \$ 5,000.00

12/30/2015 **Adult Adjudication** (Judicial Officer: Smith, Douglas E.)

15. POSSESSION OF FIREARM BY EX-FELON

06/26/2014 (F) 202.360.1 (DC51460)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Minimum:28 Months, Maximum:72 Months

CASE SUMMARY**CASE NO. C-14-299425-1**

Consecutive: Charge 1-8 and 11-14

Fee Totals:

Criminal Fine	5,000.00
Fee Totals \$	5,000.00

12/30/2015 **Adult Adjudication** (Judicial Officer: Smith, Douglas E.)

16. POSSESSION OF FIREARM BY EX-FELON

06/26/2014 (F) 202.360.1 (DC51460)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Minimum:28 Months, Maximum:72 Months

Consecutive: Charge 1-8 and 11-15

Fee Totals:

Criminal Fine	5,000.00
Fee Totals \$	5,000.00

12/30/2015 **Adult Adjudication** (Judicial Officer: Smith, Douglas E.)

17. POSSESSION OF FIREARM BY EX-FELON

06/26/2014 (F) 202.360.1 (DC51460)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Minimum:28 Months, Maximum:72 Months

Consecutive: Charge 1-8 and 11-16


Credit for Time Served: 0 Day

Fee Totals:

Criminal Fine	5,000.00
Fee Totals \$	5,000.00

Fee Totals:

Administrative Assessment Fee	25.00
\$25	
DNA Analysis Fee	150.00
\$150	
Genetic Marker Analysis AA Fee	3.00
\$3	
Indigent Defense Civil Assessment	250.00
Fee - ASK	
Fee Totals \$	428.00

HEARINGS07/16/2014  **Grand Jury Indictment** (11:45 AM) (Judicial Officer: Bell, Linda Marie)**MINUTES****Warrant**

07/16/2014 Inactive Indictment Warrant

Matter Heard;






Journal Entry Details:

Chris Datzler, Grand Jury Foreperson, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. State presented Grand Jury Case Number 14AGJ025X to the Court. COURT ORDERED, the Indictment may be filed and is assigned Case Number C-14-299425-1, Department 8. Ms. Thomson requested a warrant and argued bail. COURT ORDERED, a NO BAIL BENCH WARRANT WILL ISSUE. FURTHER, exhibit(s) 1-25 lodged with the Clerk of District Court, exhibit 19 was withdrawn by the DA. Matter SET for Arraignment. B.W. 7/28/14 8:00 AM INITIAL ARRAIGNMENT (DEPT. 8);

SCHEDULED HEARINGS**Initial Arraignment** (07/28/2014 at 8:00 AM) (Judicial Officer: Smith, Douglas E.)07/28/2014 **Initial Arraignment** (8:00 AM) (Judicial Officer: Smith, Douglas E.)

Plea Entered;

CASE SUMMARY
CASE NO. C-14-299425-1

07/28/2014	Indictment Warrant Return (8:00 AM) (Judicial Officer: Smith, Douglas E.) Matter Heard;
07/28/2014	 All Pending Motions (8:00 AM) (Judicial Officer: Smith, Douglas E.) Matter Heard; Journal Entry Details: <i>State advised they filed an indictment and through their research they discovered the public defender represented two of their witnesses which were subpoenaed through the grand jury; therefore, the Court may have to appoint counsel in this case. DEFT. BACHARACH ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial. Matter trailed and recalled with Mr. Lay present on behalf of Ms. Nguyen. Court invoked on behalf of the Defendant with the understanding the matter may be waived after Defendant speaks with Ms. Nguyen. CUSTODY 8/27/14 8:00 AM CALENDAR CALL 9/2/14 9:30 AM JURY TRIAL ;</i>
08/11/2014	 Request (8:00 AM) (Judicial Officer: Smith, Douglas E.) 08/11/2014, 08/18/2014 <i>DA Request Re: Resetting Trial Date Per Defense Request</i> Continued; Granted; Journal Entry Details: <i>Ms. Nguyen advised Defendant originally invoked his right to a speedy trial; however, after speaking with him he was willing to waive that right as he understands she can't be ready in that timeframe. Upon Court's inquiry, Defendant WAIVED his right to speedy. COURT ORDERED, trial date VACATED and RESET. At the request of Ms. Nguyen, COURT ORDERED, counsel has 21 days from today's date to file a Writ. CUSTODY (COC-NDC) 4/8/15 8:00 AM CALENDAR CALL 4/13/15 9:30 AM JURY TRIAL ;</i> Continued; Granted; Journal Entry Details: <i>Megan Thomson, Deputy District Attorney, present for the State of Nevada. Rochelle Nguyen, Esq., present on behalf of Defendant Bacharach. Defendant Bacharach not present. Ms. Nguyen advised the Defendant was not transported and requested a continuance for the Defendant to be present. COURT ORDERED, matter CONTINUED. CUSTODY (COC - NDC) CONTINUED TO: 08/18/14 8:00 AM ;</i>
08/27/2014	CANCELED Calendar Call (8:00 AM) (Judicial Officer: Smith, Douglas E.) <i>Vacated</i>
09/02/2014	CANCELED Jury Trial (9:30 AM) (Judicial Officer: Smith, Douglas E.) <i>Vacated</i>
04/08/2015	 Calendar Call (8:00 AM) (Judicial Officer: Smith, Douglas E.) Matter Heard; Journal Entry Details: <i>Lance Maningo appeared for Ms. Nguyen on behalf of Defendant. Mr. Maningo requested a one-week continuance as counsel received new discovery. There being no opposition by State, COURT ORDERED, matter SET for status check to reset the trial date. CUSTODY (COC-NDC) 4/15/15 8:00 AM STATUS CHECK: RESET TRIAL ;</i>
04/13/2015	CANCELED Jury Trial (9:30 AM) (Judicial Officer: Smith, Douglas E.) <i>Vacated</i>
04/15/2015	 Status Check (8:00 AM) (Judicial Officer: Smith, Douglas E.) <i>STATUS CHECK: RESET TRIAL DATE</i> Trial Date Set; Journal Entry Details: <i>COURT ORDERED, trial date SET. Ms. Nguyen expressed concerns concerning visitation with Defendant at High Desert. Counsel has not been able to reach anyone to make arrangements. Ms. Nguyen will continue to make contact and further requested if the Court would entertain a motion to transport the Defendant to the Detention Center for review of video footage as High Desert does not allow it. Court advised counsel to submit an Order. CUSTODY (COC-NDC) 10/28/15 8:00 AM CALENDAR CALL 11/2/15 9:30 AM JURY TRIAL ;</i>
10/28/2015	 Calendar Call (8:00 AM) (Judicial Officer: Smith, Douglas E.)

CASE SUMMARY

CASE NO. C-14-299425-1

Matter Heard;

Journal Entry Details:

Follow a BENCH CONFERENCE, COURT ORDERED, Defendant to remain at the Clark County Detention Center (CCDC) and matter SET for Status Check re possible negotiations. Mr. Fattig stated all offers will be revoked if Defendant does not accept the plea negotiations tomorrow. CUSTODY (COC-NDC) 10/29/15 9:00 AM STATUS CHECK: NEGOTIATIONS;

10/29/2015



Status Check (9:00 AM) (Judicial Officer: Smith, Douglas E.)

At the Request of the Court: Status Check: Negotiations

Matter Heard; Status Check: Negotiations

Journal Entry Details:

Ms. Nguyen stated an offer was extended to Defendant and he was not inclined to accept and they are prepared to move forward with trial. Ms. Thomson stated at this point there is no more offer and will proceed to trial and anticipate one week. Court directed the parties to provide question counsel wishes the Court to ask the jury and be prepared to do their opening statements. COURT ORDERED, Trial to commence on Monday, November 2, 2015, at 9:30 a.m. CUSTODY (COC-NDC) 11/2/15 9:30 AM JURY TRIAL;

11/02/2015



Jury Trial (9:30 AM) (Judicial Officer: Smith, Douglas E.)

11/02/2015-11/05/2015

Trial Continues;

Trial Continues;

Jury Deliberating;

Verdict;

Journal Entry Details:

Jury began deliberation at the hour of 9:00 a.m. At the hour of 4:15 p.m., the Jury returned with the following Verdict: GUILTY of COUNT 1 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON, GUILTY of COUNTS 2, 4, 6 and 8 - DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE, GUILTY of COUNTS 3, 5, 7 and 11 - ASSAULT WITH A DEADLY WEAPON, GUILTY of COUNT 12 - STOP REQUIRED ON SIGNAL OF POLICE OFFICER, GUILTY of COUNT 13 - RESISTING PUBLIC OFFICER WITH USE OF A FIREARM, GUILTY of COUNT 14 - POSSESSION OF FIREARM WITH ALTERED OR OBLITERATED SERIAL NUMBER, and NOT GUILTY of COUNTS 9 and 10. Jury polled. BIFURCATED TRIAL PHASE OUTSIDE THE PRESENCE OF THE JURY: Instructions settled on the record. JURY PRESENT: Counsel WAIVED Opening Statements. Exhibits presented. (See Worksheet). State RESTED. OUTSIDE THE PRESENCE OF THE JURY: Defendant advised of his right not to testify. JURY PRESENT: Defendant RESTED. Jury instructed by the Court and retired to deliberate at the hour of 4:25 p.m. At the hour of 4:37 p.m., the Jury returned with the following Verdict: GUILTY of COUNTS 15, 16 and 17 - POSSESSION OF FIREARM BY EX-FELON. Jury polled. Court thanked and excused the Jury. COURT ORDERED, Defendant REMANDED WITHOUT BAIL and SET for Sentencing. CUSTODY 12/30/15 8:00 AM SENTENCING ;

Trial Continues;

Trial Continues;

Jury Deliberating;

Verdict;

Journal Entry Details:

OUTSIDE THE PRESENCE OF THE JURY: Jury Instructions settled on the record. Objections regarding jail calls put on the record and transcripts of the jail calls marked as Court's exhibits. JURY PRESENT: Testimony and exhibits presented. (See Worksheets). State RESTED. OUTSIDE THE PRESENCE OF THE JURY: Defendant advised of his right not to testify. JURY PRESENT: Defendant RESTED. Court instructed the Jury. Closing statements by Ms. Thomsen and Ms. Nguyen. Rebuttal by Mr. Fattig. Court thanked and excused the alternate juror. Jury ADMONISHED and EXCUSED for the evening recess, to begin their deliberations in the morning. Second Amended Jury List FILED IN OPEN COURT. CUSTODY 11/5/15 9:00 AM JURY DELIBERATION ;

Trial Continues;

Trial Continues;

Jury Deliberating;

Verdict;

Journal Entry Details:

OUTSIDE THE PRESENCE OF THE JURY: Counsel stipulated to release Juror #11, Dustin Krause, as he is a witness scheduled to testify this morning in a felony jury trial in Department 9; Juror #13, Trevor Yanke will take his spot as Juror #11. Mr. Nguyen stated that during the testimony of Ms. Nazaroff yesterday, she was admonished not to refer to gang or probation and she indicated she spoke with gang detectives during her testimony; therefore counsel made an oral Motion for Mistrial. Mr. Fattig objected stating it was an unsolicited response by her and her statement was factually inaccurate; that it was not gang detectives, it was firearms detectives. Court noted Ms. Nazaroff is an adverse witness to the State; that her comment was quick and not highlighted, therefore COURT ORDERED, Motion for Mistrial, DENIED. Amended Jury List FILED IN OPEN COURT. JURY PRESENT: Testimony and exhibits presented. (See Worksheets). OUTSIDE THE PRESENCE OF THE JURY: Mr. Fattig stated that during the lunch

CASE SUMMARY**CASE NO. C-14-299425-1**

recess, the Clerk and counsel went through and marked proposed exhibits from the police evidence; that there was one item of miscellaneous paperwork from State's Proposed Exhibit 195 (Clark County Detention Center Visitor Registration) that was removed and marked as Court's Exhibit 11. JURY PRESENT: Testimony and exhibits presented. (See Worksheets). Jury ADMONISHED and EXCUSED for the evening recess. OUTSIDE THE PRESENCE OF THE JURY: Court DIRECTED counsel to be prepared to settle Jury Instructions in the morning. CUSTODY CONTINUED TO: 11/4/15 9:00 AM ;

Trial Continues;

Trial Continues;

Jury Deliberating;

Verdict;

Journal Entry Details:

Amended Indictment FILED IN OPEN COURT. PROSPECTIVE JURORS PRESENT: Voir dire conducted. Twelve jurors and two alternates selected and the remaining jurors were thanked and excused. Jury List FILED IN OPEN COURT. LUNCH RECESS OUTSIDE THE PRESENCE OF THE JURY: Defendant advised of his right not to testify and that he would be asked, after the State rested their case, whether he wished to testify. Ms. Thomson advised she would be calling Eufrasia Nazaroff to testify; that she had declined to meet with counsel prior to her testimony; and requested that the Court admonish the witness. Ms. Nguyen also requested that the witness be admonished from referring to little locos gang, probation, parole or that Defendant was a prior convicted felon. Eufrasia Nazaroff sworn and questioned. COURT ADMONISHED Ms. Nazaroff that she was not to talk about any gang affiliation/moniker and if she violated that admonishment, she would go to jail. JURY PRESENT: Jury sworn. Amended Indictment read to the Jury and Defendant's pleas stated thereto. Opening Statements by Mr. Fattig on behalf of the State and Mr. Nguyen on behalf of Defendant. Testimony and exhibits presented. (See Worksheets). OUTSIDE THE PRESENCE OF THE JURY: Juror #8 questioned regarding her recognizing one of the witnesses, Maurine Palmer, as an employee of Walgreens where she has shopped and agree not to go to Walgreens during the duration of this trial. JURY PRESENT: Testimony and exhibits presented. (See Worksheets). Jury ADMONISHED and EXCUSED for the evening recess. CUSTODY CONTINUED TO: 11/3/15 9:00 AM ;

12/30/2015



Sentencing (8:00 AM) (Judicial Officer: Smith, Douglas E.)

Defendant Sentenced;

Journal Entry Details:

DEFT. BACHARACH ADJUDGED GUILTY as to COUNT 1 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), GUILTY of COUNTS 2, 4, 6 and 8 - DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE (F), GUILTY of COUNTS 3, 5, 7 and 11 - ASSAULT WITH A DEADLY WEAPON (F), GUILTY of COUNT 12 - STOP REQUIRED ON SIGNAL OF POLICE OFFICER, GUILTY of COUNT 13 - RESISTING PUBLIC OFFICER WITH USE OF A FIREARM, GUILTY of COUNT 14 - POSSESSION OF FIREARM WITH ALTERED OR OBLITERATED SERIAL NUMBER, and NOT GUILTY as to COUNTS 9 and 10. Matter argued and submitted. Statement by Defendant. COURT ORDERED, DEFENDANT SENTENCED to the Nevada Department of Corrections (NDC) as follows: As to COUNT 1 - to a MINIMUM of NINETY-SIX (96) MONTHS and a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS, plus a CONSECUTIVE term of a MINIMUM of NINETY-SIX (96) MONTHS and a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS for use of a deadly weapon; As to COUNT 2 - to a MINIMUM of SEVENTY-TWO (72) MONTHS and a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS, CONSECUTIVE to COUNT 1, and a \$5,000.00 FINE; As to COUNT 3 - to a MINIMUM of TWENTY-EIGHT (28) MONTHS and a MAXIMUM of SEVENTY-TWO (72) MONTHS, CONSECUTIVE to COUNTS 1 and 2, and a \$5,000.00 FINE; As to COUNT 4 - to a MINIMUM of SEVENTY-TWO (72) MONTHS and a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS, CONSECUTIVE to COUNTS 1-3, and a \$5,000.00 FINE; As to COUNT 5 - to a MINIMUM of TWENTY-EIGHT (28) MONTHS and a MAXIMUM of SEVENTY-TWO (72) MONTHS, CONSECUTIVE to COUNTS 1-4, and a \$5,000.00 FINE; As to COUNT 6 - to a MINIMUM of SEVENTY-TWO (72) MONTHS and a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS, CONSECUTIVE to COUNTS 1-5, and a \$5,000.00 FINE; As to COUNT 7 - to a MINIMUM of TWENTY-EIGHT (28) MONTHS and a MAXIMUM of SEVENTY-TWO (72) MONTHS, CONSECUTIVE to COUNTS 1-6, and a \$5,000.00 FINE; As to COUNT 8 - to a MINIMUM of SEVENTY-TWO (72) MONTHS and a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS, CONSECUTIVE to COUNTS 1-7, and a \$5,000.00 FINE; As to COUNT 11 - to a MINIMUM of TWENTY-EIGHT (28) MONTHS and a MAXIMUM of SEVENTY-TWO (72) MONTHS, CONSECUTIVE to COUNTS 1-8, and a \$5,000.00 FINE; As to COUNT 12 - to a MINIMUM of TWENTY-EIGHT (28) MONTHS and a MAXIMUM of SEVENTY-TWO (72) MONTHS, CONSECUTIVE to COUNTS 1-8 and 11, and a \$5,000.00 FINE; As to COUNT 13 - to a MINIMUM of TWENTY-FOUR (24) MONTHS and a MAXIMUM of SIXTY (60) MONTHS, CONSECUTIVE to COUNTS 1-8 and 11-12, and a \$10,000.00 FINE; As to COUNT 14 - to a MINIMUM of NINETEEN (19) MONTHS and a MAXIMUM of FORTY-EIGHT (48) MONTHS, CONSECUTIVE to COUNTS 1-8 and 11-13, and a \$5,000.00 FINE; As to COUNT 15 - to a MINIMUM of TWENTY-EIGHT (28) MONTHS and a MAXIMUM of SEVENTY-TWO (72) MONTHS, CONSECUTIVE to COUNTS 1-8 and 11-14, and a \$5,000.00 FINE; As to COUNT 16 - to a MINIMUM of TWENTY-EIGHT (28) MONTHS and a MAXIMUM of SEVENTY-TWO (72) MONTHS, CONSECUTIVE to COUNTS 1-8 and 11-15, and a \$5,000.00 FINE; As to COUNT 17 - to a MINIMUM of TWENTY-EIGHT (28) MONTHS and a MAXIMUM of SEVENTY-TWO (72) MONTHS, CONSECUTIVE to COUNTS 1-8 and 11-16, and a \$5,000.00 FINE; For an AGGREGATE TOTAL FINE of \$75,000.00, and SENTENCE of a MINIMUM of SEVEN HUNDRED FORTY-SEVEN (747) MONTHS and a MAXIMUM of ONE THOUSAND EIGHT HUNDRED EIGHTY-FOUR (1,884) MONTHS in the Nevada Department of

CASE SUMMARY

CASE NO. C-14-299425-1

Corrections (NDC), with ZERO (0) DAYS credit for time served. Ms. Nguyen advised Defendant intends to file a Notice of Appeal. BOND, if any, EXONERATED. NDC CLERK'S NOTE: Pursuant to statute, Defendant is also required to pay a \$25.00 Administrative Assessment fee, a \$150.00 DNA Analysis fee including testing to determine genetic markers, a \$3.00 DNA Collection fee, and a \$250.00 Indigent Defense Civil Assessment fee.;


01/03/2018 **Motion for Appointment of Attorney (8:00 AM)** (Judicial Officer: Smith, Douglas E.)

Deft.'s Motion for Appointment of Counsel

Granted;

01/03/2018 **Petition for Writ of Habeas Corpus (8:00 AM)** (Judicial Officer: Smith, Douglas E.)

Set Status Check;

01/03/2018  **All Pending Motions (8:00 AM)** (Judicial Officer: Smith, Douglas E.)

Petition for Writ of Habeas Corpus . . . Deft.'s Motion for Appointment of Counsel

Matter Heard;

Journal Entry Details:

PETITION FOR WRIT OF HABEAS CORPUS . . . DEFT.'S MOTION FOR APPOINTMENT OF COUNSEL Timothy Fattig, Chf Dep DA, present on behalf of the State and Rochelle Nguyen, Esq., present on behalf of Deft. Bacharach, who is not present. Deft. is incarcerated in the Nevada Department of Corrections (NDC). This is the time set for hearing on Deft.'s Motion and Petition, which he filed pro se; Ms. Nguyen orally requested to be withdraw from this case; she has already sent the Deft. his entire file and on January 30, 2017, she filed a Certificate of Mailing. COURT ORDERED, Motion GRANTED. Court noted that Deft. is claiming ineffective assistance of counsel; therefore, COURT ORDERED, the Motion for Appointment of Counsel is GRANTED; this Court will contact the Office of Appointed Counsel and set the matter for a status check. NDC 01/10/18 8:00 AM STATUS CHECK: APPOINTMENT OF COUNSEL CLERK'S NOTE: A copy of this minute order was mailed to Joshua Bacharach #090607, Ely State Prison, P.O. Box 1989, Ely, Nevada, 89130.;

01/10/2018  **Status Check (8:00 AM)** (Judicial Officer: Smith, Douglas E.)

Status Check: Appointment of Counsel

Matter Heard; Appointment of Counsel

Journal Entry Details:

Vivian Luong, Dep DA, present on behalf of the State; Thomas Ericsson, Esq., appearing on behalf of James Oronoz, Esq., for Deft. Bacharach, who is not present. Deft. is incarcerated in the Nevada Department of Corrections (NDC). This is the time set for the Status Check on Appointment of Counsel. Mr. Ericsson CONFIRMED as counsel of record for Mr. Oronoz; he requested that the matter be status checked for receipt of the file. COURT SO ORDERED. For the record, the Court noted that counsel represents the Deft. not the Court. If counsel has received the file, a briefing schedule will be set on Deft.'s Petition for Writ of Habeas Corpus regarding his ineffective of counsel claim next date. NDC 03/14/18 8:00 AM STATUS CHECK: FILE/SET BRIEFING SCHEDULE;


03/14/2018  **Status Check (8:00 AM)** (Judicial Officer: Smith, Douglas E.)

Status Check: File/Set Briefing Schedule (Petition for Writ of Habeas Corpus - Ineffective Assistance of Counsel)

Briefing Schedule Set; Status Check: File/Set Briefing Schedule (Petition for Writ of Habeas Corpus - Ineffective Assistance of Counsel)

Journal Entry Details:

Ms. Steward advised counsel is still waiting for file and requested forty-five (45) days. COURT ORDERED, the following briefing schedule set: Deft's opening brief due by June 13, 2018, State's Opposition due by September 13, 2018, Deft's reply due by September 27, 2018, and matter SET thereafter for argument. Further, Court stated if file is not received in ninety (90) days, counsel to place matter back on calendar. NDC 10/10/18 8:00 AM DEFT'S PETITION FOR WRIT OF HABEAS CORPUS...ARGUMENT;


06/25/2018  **Motion (8:00 AM)** (Judicial Officer: Smith, Douglas E.)

Deft.'s Motion to Place on Calendar to Extend Time for the Filing of Petitioner's Supplemental Petition for Writ of Habeas

Hearing Set; Deft's Motion to Place on Calendar to Extend Time for the Filing of Petitioner's Supplemental Petition for Writ of Habeas Corpus

Journal Entry Details:

DEFT NOT PRESENT. Ms. Stewart requested a continuance; advised she recently received discovery from the State. COURT SO ORDERED. The State will have 120 days to Respond which will be due 10/22, Defense Reply will be due 1/21, State's Opposition will be due 2/4. HEARING SET. NDC 2-07-19 8:00 AM HEARING (DEPT. VIII);

10/29/2018  **Motion (8:00 AM)** (Judicial Officer: Smith, Douglas E.)

CASE SUMMARY**CASE NO. C-14-299425-1**

Deft.'s Motion to Place on Calendar to Extend Time for the Filing of Petitioner's Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)

Granted; *Deft.'s Motion to Place on Calendar to Extend Time for the Filing of Petitioner's Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)*

Journal Entry Details:

Nicole Cannizzaro, Chf Dep DA, present on behalf of the State; Rachael Stewart, Esq., appearing on behalf of James Oronoz, Esq., for Deft. Bacharach, who is not present. Deft. is incarcerated in the Nevada Department of Corrections (NDC). This is the time set for hearing on Deft.'s Motion to Place on Calendar to Extend Time for the Filing of Petitioner's Supplemental Petition for Writ of Habeas Corpus (Post-Conviction). Upon Court's inquiry, Ms. Stewart advised that Mr. Oronoz is requesting an additional ninety (90) days; he was unable to get the file from prior counsel and had to reconstruct it. COURT ORDERED, the Motion is GRANTED. Court set the following briefing schedule: 02/25/19 - Supplemental Petition 04/29/19 - State's Response 05/06/19 - Reply COURT ORDERED, matter set for hearing. NDC 05/13/19 8:00 AM HEARING: DEFT.'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) ;

02/27/2019  **Minute Order (8:00 AM)** (Judicial Officer: Smith, Douglas E.)

Minute Order - No Hearing Held;

Journal Entry Details:

Pursuant to the agreement of the parties, the briefing schedule for Deft.'s Supplement to Petition for Writ of Habeas Corpus is now as follows: 05/27/19 - Supplement to Petition 07/11/19 - State's Return 07/25/19 - Deft.'s Reply COURT ORDERED, matter set for hearing. NDC 07/31/19 8:00 AM HEARING: DEFT.'S PETITION FOR WRIT OF HABEAS CORPUS. ;

04/08/2019 **CANCELED Motion (9:00 AM)** (Judicial Officer: Adair, Valerie)

Vacated

Defendant's Motion to Extend Time for the Filing of Petitioner's Supplemental Petition for Writ of Habeas Corpus (Post Conviction)

08/22/2019  **Minute Order (10:00 AM)** (Judicial Officer: Silva, Cristina D.)

Minute Order - No Hearing Held;

Journal Entry Details:

Pursuant to the amended agreement of the parties, the briefing schedule for Deft.'s Supplement to Petition for Writ of Habeas Corpus is now as follows: 11/25/19 - Supplement to Petition 1/9/20 - State's Return 1/23/20 - Deft.'s Reply Hearing: Deft's Petition for Writ of H.C, 1/29/20 8:30am. ;

01/29/2020 **CANCELED Hearing (8:30 AM)** (Judicial Officer: Smith, Douglas E.)

Vacated - per Stipulation

Hearing: Deft.'s Petition for Writ of Habeas Corpus (Post-Conviction)

04/05/2021  **Petition for Writ of Habeas Corpus (11:00 AM)** (Judicial Officer: Silva, Cristina D.)

Denied;

Journal Entry Details:

Deft. not present. Deft's presence WAIVED. Court requested information regarding Detective Jaeger and why the bullet proof vest was necessary. Argument by Ms. Stewart. Argument by the State. COURT FINDS, the petitioner did receive effective assistance of counsel; the testimony regarding bullet proof vests and style effectiveness would be in the arena of expert testimony and was not objected to, nor was the gunshot residue and trajectory; the Court did not find any expert testimony regarding the placement or landings of any cartridge casing as that is common sense testimony. FURTHER, the Court FINDS Detective Jaeger's testimony would not have changed the jury's outcome, as the Nevada Court of Appeals found there was substantial evidence of the Defendant's guilt. ADDITIONALLY, there was no structural error regarding the Court's admonition of Nazaroff testimony; the admonition to the witness was outside the presence of the jury and in contrast to the Webb decision, there was not any pressure for the witness not to testify; the Court rightfully informed the witness if she perjured herself or failed to follow the Court's instruction, she could be held accountable for that. FURTHER, the Court DENIES the claims included in the Pro Per petition. ADDITIONALLY, the Court DETERMINES the issue regarding the Sixth Amendment was already addressed and rejected by the Nevada Supreme Court. FURTHER, the Court FINDS, there was no judicial error and it was not raised in direct appeal, and therefore WAIVED. ADDITIONALLY, the Court FINDS, there is nothing supporting the fact the Petitioner was prohibited from cross-examination regarding the body camera footage. FURTHER, there is nothing to support the claim there were suggestive or tainted identifications, and without more, the Court would not grant any relief in that regard. ADDITIONALLY, there was no error from the State regarding the reasonable doubt statement in closing arguments. FURTHER, there was no cumulative error and the Nevada Supreme Court has not found there can be an application of cumulative error argument in post-conviction situations. Based on the Court's findings, COURT ORDERED, petition DENIED. State to draft the order within 30 days and to submit to Ms. Stewart for review. NDC;

CASE SUMMARY

CASE NO. C-14-299425-1

FINANCIAL INFORMATION

DATE

Defendant Bacharach, Joshua W

Total Charges

75,428.00

Total Payments and Credits

0.00

Balance Due as of 5/7/2021

75,428.00

Heather S. Smith

CLERK OF THE COURT

~~FFCO~~ FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
KAREN MISHLER
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200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Respondent

DISTRICT COURT
CLARK COUNTY, NEVADA

JOSHUA BACHARACH,
#1900105

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: C-14-299425-1

DEPT NO: IX

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

DATE OF HEARING: APRIL 5, 2021

TIME OF HEARING: 11:00 AM

CRISTINA

THIS CAUSE having come on for hearing before the Honorable ~~CHRISTINA D.~~ CRISTINA D. SILVA, District Judge, on the 5th day of April, 2021, the Petitioner not being present, represented by RACHAEL E. STEWART, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through MEGAN THOMSON, 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 **PROCEDURAL HISTORY**

3 On July 16, 2014, Joshua W. Bacharach, aka, Joshua William Bacharach,
4 (“Petitioner”) was charged by way of Indictment with the following: Count 1 – Attempt
5 Murder with Use of a Deadly Weapon (Category B Felony – NRS 200.010, 200.030, 193.330,
6 193.165); Counts 2, 4, 6, 8 and 10 – Discharge of Firearm from or within a Structure or Vehicle
7 (Category B Felony – NRS 202.287); Counts 3, 5, 7, 9 and 11 – Assault with a Deadly Weapon
8 (Category B Felony – NRS 200.471); Count 12 – Stop Required on Signal of Police Officer
9 (Category B Felony – NRS 484B.550.3b); Count 13 – Resisting Public Officer with Use of a
10 Firearm (Category C Felony – NRS 199.280); Count 14 – Possession of Firearm with Altered
11 or Obliterated Serial Number (Category D Felony – NRS 202.277); and Counts 15 through 17
12 – Possession of Firearm by Ex-Felon (Category B Felony – NRS 202.360). On October 28,
13 2015, Petitioner was arraigned and pled not guilty. An Amended Indictment was filed on
14 November 2, 2015, making clerical corrections.

15 On November 2, 2015, Petitioner’s jury trial commenced. On November 5, 2015, the
16 jury returned a verdict finding Petitioner guilty of Counts 1 through 8, and 11 through 17.

17 On December 30, 2015, Petitioner was adjudged guilty and sentenced to the Nevada
18 Department of Corrections as follows: Count 1 – a maximum of 240 months with a minimum
19 parole eligibility of 96 months, plus a consecutive term of 240 months maximum with a
20 minimum parole eligibility of 96 months for the deadly weapon enhancement; Count 2 – a
21 maximum of 180 months with a minimum parole eligibility of 72 months; Count 3 – a
22 maximum of 72 months with a minimum parole eligibility of 28 months; Count 4 – a maximum
23 of 180 months with a minimum parole eligibility of 72 months; Count 5 – a maximum of 72
24 months with a minimum parole eligibility of 28 months; Count 6 – a maximum of 180 months
25 with a minimum parole eligibility of 72 months; Count 7 – a maximum of 72 months with a
26 minimum parole eligibility of 28 months; Count 8 – a maximum of 180 months with a
27 minimum parole eligibility of 72 months; Count 11 – a maximum of 72 months with a
28 minimum parole eligibility of 28 months; Count 12 - a maximum of 72 months with a

1 minimum parole eligibility of 28 months; Count 13 - a maximum of 60 months with a
2 minimum parole eligibility of 24 months; Count 14 - a maximum of 48 months with a
3 minimum parole eligibility of 19 months; Count 15 - a maximum of 72 months with a
4 minimum parole eligibility of 28 months; Count 16 - a maximum of 72 months with a
5 minimum parole eligibility of 28 months; and Count 17 - a maximum of 72 months with a
6 minimum parole eligibility of 28 months; all counts to run consecutive to each other; with zero
7 days credit for time served. Petitioner's aggregate total sentence being 1,884 months maximum
8 with a minimum of 747 months. The Judgment of Conviction was filed on January 8, 2016.

9 On January 26, 2016, Petitioner filed a Notice of Appeal. On November 18, 2016, the
10 Nevada Court of Appeals filed an Order Affirming Defendant's Judgment of Conviction.
11 Remittitur issued on November 15, 2016.

12 On November 8, 2017, Petitioner filed a Motion for the Appointment of Counsel and
13 Request for an Evidentiary Hearing. The State filed a Response to Defendant's Motion to
14 Appoint Counsel and Request for an Evidentiary Hearing on November 21, 2017.

15 On November 8, 2017, Petitioner filed Petition for Writ of Habeas Corpus (Post-
16 Conviction) ("Petition"). The State filed a Response on December 29, 2017. On January 3,
17 2018, the Court granted Petitioner's Motion to Appoint Counsel. On January 10, 2018, James
18 A. Oronoz was confirmed as counsel. On March 14, 2018, the Court set a briefing schedule.

19 On February 24, 2020, Petitioner through counsel filed the instant Supplemental Post-
20 Conviction Petition for Writ of Habeas Corpus ("Supplemental Petition"). The State filed its
21 Response on March 27, 2020. On April 7, 2020, Petitioner filed his Reply. On April 5, 2021,
22 the Court denied the Petition finding as follows.

23 **FACTS**¹

24 On the evening of June 26, 2014, Bacharach arrived at Eufrasia Nazaroff's home and
25 asked to borrow her Maroon Dodge Intrepid. Eufrasia and Bacharach have three children in
26

27 ¹ The Statement of Facts were acquired from Respondent's Answering Brief in Bacharach v.
28 State, Nevada Court of Appeals Case No. 69677. An edit has been made to omit the record
citations.

1 common but were not cohabitating at that time. Bacharach was wearing a bright yellow shirt
2 and a white ballistic bullet-proof vest over his clothing when he left with her vehicle.

3 At about 10:45 p.m., Ryan McNabb, a Police Officer with the Las Vegas Metropolitan
4 Police Department, was at the corner of Walnut and Lake Mead when he noticed a Dodge
5 Intrepid, occupied by a male driver, with the high beams on. Officer McNabb went north on
6 Walnut, activated his emergency lights, got behind the vehicle, and radioed dispatch that he
7 was going to make a car stop. As he was getting ready to inform dispatch of the license plate
8 of the vehicle, the male driver, later identified as Bacharach, reached out of the driver door
9 and fired a gun up in the air. Officer McNabb heard the shot and saw the muzzle flash.

10 Officer McNabb, informed dispatch that Bacharach had discharged a weapon and
11 activated his body camera. The vehicle accelerated right after the shot and continued north on
12 Walnut, then turned right on Carey, running through a Stop sign. As soon as Officer McNabb
13 turned on Carey, Bacharach fired two shots at the patrol car. Officer McNabb had the patrol
14 car driver side window halfway open and heard a “zing” sound right by his left ear. Bacharach
15 accelerated to about 70 to 80 miles an hour and passed through a solid red light at the
16 intersection of Lamb and Carey. Then two more shots, deemed to be the fourth and fifth shots,
17 were fired by Bacharach in the direction of Officer McNabb’s patrol vehicle after the
18 intersection of Lamb and Carey.

19 The Dodge Intrepid being driven by Bacharach went over the curb at the corner of
20 Carey and Dolly and came to a stop. Bacharach jumped out of the driver door, ran around the
21 trunk, turned towards Officer McNabb, raised the gun at a parallel angle to the ground and
22 fired at him.

23 Officer McNabb stopped the patrol car in front of 4585 East Carey, got out of the
24 vehicle and saw Bacharach start to point the gun in his direction again. This time Bacharach
25 was unable to fire and seemed to be manipulating the gun as if reloading or clearing a
26 malfunction. Officer McNabb fired approximately five rounds to try to stop or incapacitate
27 Bacharach. Bacharach fell backwards, turned, and took off running southbound on Dolly.
28 Officer McNabb followed on foot and saw Bacharach near the intersection of Dolly and El

1 Tovar. As Officer McNabb went around the corner onto El Tovar he saw a shadow go to his
2 right across the sidewalk by a white truck. Officer McNabb heard sirens approaching and
3 waited for back-up.

4 K9 Officer Ernest Morgan arrived to the Dolly and El Tovar area and performed a scan
5 but could not locate Bacharach. Officer Morgan got his K9 out and went west on El Tovar
6 when a woman exited her residence, located at 4586 El Tovar. She stated an unknown male
7 was in her backyard. K9 Officer Morgan entered the home and as he exited to the back yard,
8 located Bacharach by the east side of the rear of the home. Bacharach was laying on the ground
9 and refused to comply with the commands to show his hands. The K9, Claymore, was released
10 and ran directly towards Bacharach and bit him in the lower part of his leg. Bacharach was
11 placed into handcuffs. Officer McNabb identified Bacharach as the person he had been
12 chasing, although he was no longer wearing what was believed to have been a white shirt.

13 A ballistic vest with a white cover and .45 caliber semi-automatic Colt handgun on top of it,
14 were located underneath the white pickup truck parked in front of 4586 El Tovar. Bacharach's
15 left thumb print was identified towards the base of the Colt .45 magazine. A cartridge case was
16 located on the northbound lane of North Walnut, by a church, a second cartridge case in the
17 eastbound travel lanes of Carey, and a third cartridge case in the north gutter just south of 4060
18 East Carey. All three cartridge cases had head stamps that read "Speer 45 Auto." Those three
19 cartridge cases were identified as having been fired from the Colt .45.

20 Two unfired .45 caliber cartridges with head stamps of "Speer 45 Auto" were located
21 on the ground by the maroon Dodge parked on the corner of the intersection of Carey and
22 Dolly. Another unfired .45 cartridge was located on the sidewalk west of Dolly with a head
23 stamp of "Winchester 45 Auto", which was still the same caliber but different manufacturer.

24 Crime Scene Analysts located an AK-style rifle, wrapped in a white shirt in the back
25 seat of the Dodge Intrepid. A Colt .25 caliber firearm, with an obliterated serial number, was
26 recovered from a black bag on the front driver's side floorboard of the Dodge. A rifle
27 magazine was also recovered from that black bag. Bacharach's DNA was located on the Dodge
28 Intrepid's steering wheel cover.

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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).

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

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 counsel
18 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
19 cannot create one and may disserve the interests of his client by attempting a useless charade.”
20 United States v. Cronin, 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 687-89,
7 694, 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 v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
11 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must
12 be supported with specific factual allegations, which if true, would entitle the petitioner to
13 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked"
14 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS
15 34.735(6) states in relevant part, "[Petitioner] *must* allege specific facts supporting the claims
16 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your
17 petition to be dismissed." (emphasis added).

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

25 The professional diligence and competence required on appeal involves "winnowing
26 out weaker arguments on appeal and focusing on one central issue if possible, or at most on a
27 few key issues." Jones v. Barnes, 463 U.S. 745, 751-52, 103 S. Ct. 3308, 3313 (1983). In
28 particular, a "brief that raises every colorable issue runs the risk of burying good arguments .

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

5 **I. THE COURT DID NOT CREATE STRUCTURAL ERROR REGARDING**
6 **NAZAROFF’S TESTIMONY AND COUNSEL WAS NOT INEFFECTIVE**

7 Petitioner complains that the Court inappropriately threatened a witness, Nazaroff, in
8 the jury’s presence and that counsel was ineffective for failing to object. Supplemental Petition
9 at 10-14. However, his claims are meritless.

10 As a preliminary matter, Petitioner has waived any allegation of judicial error by failing
11 to raise this claim on direct appeal. NRS 34.724(a); NRS 34.810(1)(b)(2); Evans v. State, 117
12 Nev. 609, 646-47, 29P.3d 498, 523 (2001); Franklin v. State, 110 Nev. 750, 752, 877 P.2d
13 1058, 1059 (1994), disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d
14 222 (1999). Petitioner cannot demonstrate good cause to ignore his default because all of the
15 facts and law necessary to raise his claim were available at the time he filed his direct appeal.
16 Further, Petitioner fails to demonstrate an impediment external to the defense that prevented
17 him from raising this complaint on direct appeal. Petitioner also cannot demonstrate prejudice
18 to rebut the bar to his judicial error claim or demonstrate ineffective assistance of counsel since
19 his underlying complaint is meritless.

20 NRS 50.115(1) provides,

- 21 1. The judge shall exercise reasonable control over the mode and order of
22 interrogating witnesses and presenting evidence:
23 (a) To make the interrogation and presentation effective for the
24 ascertainment of the truth;
(b) To avoid needless consumption of time; and
(c) To protect witnesses from undue harassment or embarrassment.

25 In the instant case, outside the presence of the jury, defense counsel alerted the Court
26 of her and the State’s concern regarding Nazaroff causing a mistrial. Jury Trial Day 1 at 295.
27 Specifically, the State and defense counsel wanted to ensure that since Nazaroff refused to
28 meet with both parties, she did not testify to inadmissible evidence in front of the jury:

1 MS. THOMSON: We have a witness, Eufrasia Nazaroff. She is the mother
2 of the Defendant's children. She obviously has knowledge about all kinds of
3 things that she's not allowed to talk about. She declined to come meet with
4 us for pretrial, so we have not had that conversation with her about all the
5 things she can't talk about. And because I expect that she probably won't be
6 what I would call cooperative, I'd ask that the Court admonish her because
7 my admonishing her is going to not have as much effect.

8 MS. NGUYEN: I would say –

9 MS. THOMSON: Please.

10 MS. NGUYEN: -- mostly my concerns are that have to do with actually my
11 client's rights. I don't know what she would have to say. She has -- she hasn't
12 been in contact with me and I know my investigators attempted to contact
13 her as well. But I know that there's references at some point to Little Locos
14 gang. I just want her to be admonished not to make reference to that, him
15 being on probation, parole –

16 THE COURT: Right. What –

17 MS. NGUYEN: -- prior convicted felon, his moniker. I think there were
18 admissions -- references to drugs or weed.

19 THE COURT: What do you have her coming in for?

20 MS. THOMSON: It is her car that he is driving on the night of the incident.
21 She'll identify the vehicle, she will indicate that he was wearing the bullet-
22 proof vest when he came to pick up the car from her. She will indicate that
23 he had -- she had seen him with the firearms that were ultimately recovered
24 in this case previously; that those were not firearms that she had in the vehicle
25 and did not allow in her house.

26 Jury Trial Day 1, 295-97.

27 Recognizing that both parties were not able to pretrial Nazaroff, and still outside the
28 presence of the jury, Nazaroff was brought into the courtroom. Jury Trial Day 1, 297. The
Court proceeded to instruct her to answer counsel's questions and admonished her from
discussing inadmissible evidence regarding the defendant including: "gang affiliation, any
moniker, or nickname... drug use, probation, drug possession, parole, smoke and dope, the
defendant was on probation or supervision." Jury Trial Day 1, 298-99. Further, the Court

1 added, “[but] I can tell you I’ve had people violate my order and if you do you’ll go to jail
2 today and I’ll have to get somebody to come get your child.” Jury Trial Day 1, 298.

3 Petitioner cites to Webb v. Texas, 409 U.S. 95, 93 S.Ct. 351 (1972), and its progeny to
4 support his argument that the Court acted inappropriately. However, Webb is distinguishable
5 from the instant case. In Webb, the trial court, on its own initiative, admonished the
6 defendant’s only witness by explaining that he would not have to testify, but if he did and lied,
7 the Court would “personally see that [his] case goes to the grand jury and [he would] be
8 indicted for perjury.” Id. at 95-96, 93 S.Ct. at 352-53. The trial court warned the witness that
9 the likelihood of the witness being convicted in such scenario would be great based on the
10 witness’s criminal record and that the witness should know the “hazard” he was taking by
11 testifying. Id. After defense counsel objected, defense counsel still asked the witness to take
12 the stand at which point the trial court interrupted and stated, “[c]ounsel, you can state the
13 facts, nobody is going to dispute it. Let him decline to testify.” Id. at 96, 93 S. Ct. at 353
14 (internal citations omitted). The witness then decided not to testify. Id. The U.S. Supreme
15 Court ultimately determined that the trial court’s actions were inappropriate. Id. at 97-98, 93
16 S.Ct. at 353. In reaching this conclusion, the Court explained that the trial court’s threats—
17 specifically, “that he expected [the witness] to lie, and went on to assure him that if he lied, he
18 would be prosecuted and probably convicted for perjury, that the sentence for that conviction
19 would be added on to his present sentence, and that the result would be to impair his chances
20 for parole”—were strong enough to cause duress to the witness regarding his voluntary choice
21 on whether to testify. Id. Further, the Court concluded that those specific threats ultimately
22 drove the witness off the stand, which “deprived the [defendant] of due process of law under
23 the Fourteenth Amendment.” Id.

24 Here, while the Court explained to Nazaroff that she would be incarcerated if she
25 perjured herself, the Court’s threats did not reach the level of the trial court in Webb. Indeed,
26 the Court did not show any indication that he believed Nazaroff was going to lie on the stand.
27 The Court merely explained that if Nazaroff violated its order she would be incarcerated.
28 Unlike the situation in Webb, such admonishment did not amount to threats which ultimately

1 coerced Nazaroff not to testify. Further, the record does not indicate that the Court was
2 attempting to convince Nazaroff not to testify.

3 Moreover, the Court's remarks in this case were within the authorized powers of NRS
4 50.115(1). Indeed, both defense counsel and the State alerted the Court that Nazaroff was
5 uncooperative and that there was a legitimate concern that she might testify to inadmissible
6 evidence in front of the jury. Contrary to Petitioner's argument, which was made out of
7 context, the Court did not instruct Nazaroff to testify untruthfully, but instead told her that she
8 could not bring up topics that were inadmissible evidence. Supplemental Petition at 13. Thus,
9 in order to protect Petitioner's rights to a fair trial, the Court appropriately admonished
10 Nazaroff who was proven to be an uncooperative witness to both parties. Garner v. State, 78
11 Nev. 366, 373, 374 P.2d 525, 529 (1962) ("An accused, whether guilty or innocent, is entitled
12 to a fair trial, and it is the duty of the court and prosecutor to see that he gets it") (citing State
13 v. Haney, 222 Minn. 124, 23 N.W.2d 369). Thus, the Court did not err.

14 Accordingly, counsel was not ineffective for failing to object to the Court's
15 admonishment as any objection would have been futile. See Ennis v. State, 122 Nev. at 706,
16 137 P.3d at 1103. Regardless, any error would not establish prejudice to waive the default or
17 ineffective assistance of counsel because the Nevada Court of Appeals found overwhelming
18 evidence of guilt on direct appeal. Bacharach v. State, Docket No. 69677 (Order of
19 Affirmance, November 15, 2016) at 2. Therefore, Petitioner's claim is denied.

20 **II. PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL**

21 **A. Counsel was not ineffective for failing to object to Detective Jaegar's testimony**

22 Petitioner argues that Detective Jaegar offered inappropriate and unnoticed expert
23 testimony regarding gunshot residue, cartridge casings, bulletproof vests, and bullet impacts.
24 Supplemental Petition at 15-18.

25 A lay witness may testify to opinions or inferences that are "[r]ationally based on the
26 perception of the witness; and . . . [h]elpful to a clear understanding of the testimony of the
27 witness or the determination of a fact in issue." NRS 50.265. A qualified expert may testify to
28 matters within their "special knowledge, skill, experience, training or education" when

1 “scientific, technical or other specialized knowledge will assist the trier of fact to understand
2 the evidence or to determine a fact in issue.” NRS 50.275. Indeed, “[t]he key to determining
3 whether testimony constitutes lay or expert testimony lies with a careful consideration of the
4 substance of the testimony—does the testimony concern information within the common
5 knowledge of or capable of perception by the average layperson or does it require some
6 specialized knowledge or skill beyond the realm of everyday experience?” Burnside v. State,
7 131 Nev. 371, 383, 352 P.3d 627, 636 (2015).

8 Here, Detective Jaegar’s testimony regarding bullet proof vests and style effectiveness
9 would be in the arena of expert testimony, and was not objected to at trial, nor was the gunshot
10 residue and trajectory. However, Detective Jaegar’s testimony regarding the characteristics
11 and behaviors of cartridge casings was lay testimony that was based on common sense.
12 Accordingly, counsel’s performance was not deficient.

13 Detective Jaegar testified that he had worked for the Las Vegas Metropolitan Police
14 Department (LVMPD) for seventeen years and was within the past two years appointed as a
15 Detective for the Force Investigation Team. Jury Trial Day 3, 95-96. His role in the
16 investigation of Petitioner’s case was the project manager of the crime scene. Jury Trial Day
17 3, 97. Accordingly, Jaegar described what he and the other investigating officers discovered
18 during their search of the scene. Jury Trial Day 3, 100-05. Thus, Jaegar was not testifying that
19 he received some specialized training or education that allowed him to testify, but instead was
20 relying on his observations and experience as a detective to explain his investigation.
21 Continuing to discuss his investigation, Jaegar was asked “in [his] experience, where can the
22 casings end up?” Jury Trial Day 3, 109. Relying on not only his experience, but also common
23 knowledge, he responded that “casings are really unpredictable” and proceeded to discuss what
24 happens when a person fires a gun a particular way. Jury Trial Day 3, 109-110. Similarly, his
25 testimony regarding his search for casings and how they can get stuck in particular places was
26 based not only on common knowledge but based also on his experience as an officer. Jury
27 Trial Day 3, 123. Accordingly, the State did not inappropriately rely on Jaegar’s testimony and
28

1 argue that “common sense” dictated the trajectory of the casings. Supplemental Petition at 17;
2 Jury Trial Day 3, 186-87.

3 Similarly, Petitioner complains about Jaegar’s testimony regarding bullet impacts.
4 Supplemental Petition at 18. Indeed, Jaegar used not only common knowledge, but also his
5 experience as an officer to use a tennis ball analogy to explain the trajectory of bullets. Jury
6 Trial Day 3, at 117. Such testimony therefore was also not “scientific, technical, and
7 specialized.” Supplemental Petition at 18.

8 In sum, some of Detective Jaegar’s testimony amounted to lay testimony based on not
9 only his many years of experience as an officer, but also common knowledge. As such, counsel
10 was not ineffective for failing to object to Detective Jaegar’s responses regarding the
11 placement and landings of the cartridge casings as well as the bullet impacts as any objection
12 would have been futile and unnecessary. See Ennis v. State, 122 Nev. at 706, 137 P.3d at 1103.
13 Regardless, Detective Jaegar’s testimony would not have changed the jury’s outcome.
14 Strickland, 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068. Indeed, any error could not
15 establish prejudice to waive the default or ineffective assistance of counsel since the Nevada
16 Court of Appeals found overwhelming evidence of guilt on direct appeal. Bacharach v. State,
17 Docket No. 69677 (Order of Affirmance, November 15, 2016) at 2. Therefore, Petitioner’s
18 claims are denied.

19 **B. Counsel was not ineffective for failing to object to the State’s discussion of**
20 **reasonable doubt**

21 Petitioner alleges that counsel failed to object to an inappropriate argument quantifying
22 reasonable doubt. Supplemental Petition at 19-20.

23 In resolving claims of prosecutorial misconduct, the Nevada Supreme Court has
24 provided a two-step analysis: (1) determining whether the comments were improper and (2)
25 deciding whether the comments were sufficient to deny the defendant a fair trial. Valdez v.
26 State, 124 Nev. 1172, 1188. The Court views the statements in context, and will not lightly
27 overturn a jury’s verdict based upon a prosecutor’s statements. Byars v. State, 130 Nev. 848,
28 865 (2014). Indeed, the Court considers a prosecutor’s comments in context, and will not

1 lightly overturn a criminal conviction “on the basis of a prosecutor's comments standing
2 alone.” Leonard v. State, 117 Nev. 53, 81, 17 P.3d 397, 414 (2001) (citing United States v.
3 Young, 470 U.S. 1, 11, 105 S. Ct. 1038 (1985)). Normally, the defendant must show that an
4 error was prejudicial in order to establish that it affected substantial rights. Gallego v. State,
5 117 Nev. 348, 365 (2001).

6 With respect to the second step, the Court will not reverse if the misconduct was
7 harmless error. Valdez, 124 Nev. at 1188. The proper standard of harmless-error review
8 depends on whether the prosecutorial misconduct is of a constitutional dimension. Id. at 1188-
9 89. Misconduct may be constitutional if a prosecutor comments on the exercise of a
10 constitutional right, or the misconduct “so infected the trial with unfairness as to make the
11 resulting conviction a denial of due process.” Id. 124 Nev. at 1189 (quoting Darden v.
12 Wainright, 477 U.S. 168, 181 (1986)). When the misconduct is of constitutional dimension,
13 the Court will reverse unless the State demonstrates that the error did not contribute to the
14 verdict. Id. 124 Nev. at 1189. When the misconduct is not of constitutional dimension, the
15 Court “will reverse only if the error substantially affects the jury’s verdict.” Id.

16 NRS 175.211(1) provides the definition of “reasonable doubt”:

17 A reasonable doubt is one based on reason. It is not mere possible doubt . . .

18 Doubt to be reasonable must be actual, not mere possibility or speculation.

19 “The concept of reasonable doubt is inherently qualitative. Any attempt to quantify it may
20 impermissibly lower the prosecution's burden of proof, and is likely to confuse rather than
21 clarify.” McCullough v. State, 99 Nev. 72, 75, 657 P.2d 1157, 1159 (1983). The Court further
22 cautioned against an attempt to quantify, supplement, or clarify the statutorily prescribed
23 reasonable doubt standard, explaining that when combined with the use of a disapproved
24 reasonable doubt instruction, this may constitute reversible error. Holmes v. State, 114 Nev.
25 1357, 1365-66, 972 P.2d 337, 342-43 (1998).

26 During the State’s Closing Argument, the State argued that

27 If [Petitioner’s] guilty of one, he’s guilty of all in the sense of proof
28 that it is him in identity; not saying that we have necessarily met all of the

1 elements. We're going to discuss that separately – consider each of the
2 charge separately.

3 But, if we've proven beyond a reasonable doubt that he committed
4 one of them then it must be his identity as to all of them.

5 Jury Trial Day 3, 166.

6 Despite Petitioner's argument to the contrary, the State's comment on reasonable doubt
7 was not improper or prejudicial. Indeed, the jury was properly instructed on reasonable doubt.
8 Jury Instructions filed Nov. 5, 2015, at 8; Jury Trial Day 3, at 154. It is presumed that jurors
9 follow these instructions. Newman v. State, 129 Nev. 222, 237, 298 P.3d 1171, 1182 (2013).
10 Further, the State was not quantifying reasonable doubt, but instead was using the evidence
11 presented to argue that the element of identification as to who committed the crimes was
12 established. In other words, the State did not modify the standard of reasonable doubt. Because
13 the comment was not improper, there would be no need to evaluate the second prong of the
14 prosecutorial misconduct analysis.

15 Accordingly, counsel was not ineffective as any objection would have been futile. See
16 Ennis v. State, 122 Nev. at 706, 137 P.3d at 1103. Regardless, any error cannot establish
17 prejudice to waive the default or ineffective assistance of counsel because the Nevada Court
18 of Appeals found overwhelming evidence of guilt on direct appeal. Bacharach v. State, Docket
19 No. 69677 (Order of Affirmance, November 15, 2016) at 2. Therefore, Petitioner's claim is
20 denied.

21 **III. PETITIONER'S PRO PER CLAIMS ARE DENIED**

22 Petitioner incorporates by reference the claims raised he raised in his *pro per* petition.
23 Petition at 20-22. Not only are his claims below meritless, but also any error could not establish
24 prejudice to waive the default or ineffective assistance of counsel because the Nevada Court
25 of Appeals found overwhelming evidence of guilt on direct appeal. Bacharach v. State, Docket
26 No. 69677 (Order of Affirmance, November 15, 2016) at 2.

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1 **A. The Court did not violate Petitioner’s Sixth Amendment right to a fair trial for**
2 **refusing to grant counsel’s request for mistrial when Nazaroff testified regarding**
3 **the LVMPD Gang Unit**

4 While Petitioner’s response to question twenty-three states he is pursuing an ineffective
5 assistance of counsel, the body of the claim is a substantive claim of judicial error for denying
6 the motion for a mistrial. This claim is governed by the res judicata and law of the case since
7 it was rejected on direct appeal.

8 “The law of a first appeal is law of the case on all subsequent appeals in which the facts
9 are substantially the same.” Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting
10 Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). “The doctrine of the law of the
11 case cannot be avoided by a more detailed and precisely focused argument subsequently made
12 after reflection upon the previous proceedings.” Id. at 316, 535 P.2d at 799. Under the law of
13 the case doctrine, issues previously decided on direct appeal may not be reargued in a habeas
14 petition. Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing McNelton v.
15 State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, this Court cannot
16 overrule the Nevada Supreme Court or Court of Appeals. NEV. CONST. Art. VI § 6.

17 This Court has already once considered and denied Petitioner’s claim of judicial error for
18 denying the motion for mistrial. Re-litigation of this issue is precluded by the doctrine of res
19 judicata. Exec. Mgmt. v. Ticor Titles Ins. Co., 114 Nev. 823, 834, 963 P.2d 465, 473 (1998)
20 (citing Univ. of Nev. v. Tarkanian, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994)). “The
21 doctrine is intended to prevent multiple litigation causing vexation and expense to the parties
22 and wasted judicial resources...” Id.; see also Mason v. State, 206 S.W.3d 869, 875 (Ark.
23 2005) (recognizing the doctrine’s availability in the criminal context); York v. State, 342 S.W.
24 3d 528, 553 (Tex. Crim. App. 2011); Bell v. City of Boise, 993 F.Supp.2d 1237 (D. Idaho
25 2014) (finding res judicata applies in both civil and criminal contexts).

26 Petitioner argued in his direct appeal that the district court erred in denying his motion
27 for mistrial following a witness’ statement that she spoke with police officers in the gang unit.
28 Bacharach v. State, Docket No. 69677 (Order of Affirmance, November 15, 2016) at 2. The

1 Nevada Supreme Court found that Petitioner failed to demonstrate the denial of his motion for
2 mistrial amounted to an abuse of discretion. Id. Furthermore, the Court explained even
3 assuming that the district court did commit error, the error was harmless beyond a reasonable
4 doubt because there was strong evidence of his guilt presented at trial. Id.

5 Just as he alleges now in his habeas petition, he alleged in his direct appeal that he was
6 denied a fair trial and his due process rights due to the district court's denial of his Motion for
7 Mistrial. *Compare* Petition at 8 with Bacharach, Docket No. 69677 (Order of Affirmance,
8 November 15, 2016) at 2. On the basis of this Court not granting his Motion for Mistrial,
9 Petitioner argued (and continues to argue) judicial error. Id. In its Order of Affirmance the
10 Nevada Supreme Court explained that although the State had asked the mother of Petitioner's
11 children if she had previously engaged in a discussion with police officers regarding Petitioner
12 with the "gang unit," the mistrial was properly denied because the "statement was quick, the
13 parties did not highlight it, and the parties did not talk about it further." Id. Because the Nevada
14 Supreme Court has already once considered Petitioner's mistrial claim, the Court finds that re-
15 litigation of the issue is barred under the doctrine of res judicata.

16 To the extent that the Court reviews for ineffectiveness, Petitioner cannot establish
17 prejudice because the Nevada Supreme Court found that even if the mistrial was
18 inappropriately denied Petitioner did not suffer prejudice. Id. at 3. This finding precludes a
19 finding of prejudice for ineffective assistance of counsel purposes. See Gordon v. United
20 States, 518 F.3d 1291, 1300 (11th Cir. 2008) ("It is true that the 'substantial rights' standard
21 of plain error review is identical to the 'prejudice' standard of an ineffective assistance
22 claim."). Therefore, Petitioner's claim is denied.

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1 **B. The Court did not violate Petitioner’s Sixth Amendment right to a fair trial by not**
2 **permitting counsel to cross-examine the LVMPD officer about the body camera**
3 **video**

4 Although Petitioner’s response to question twenty-three, ground two, states he is
5 pursuing ineffective assistance of counsel claim, the body of the claim is a claim of judicial
6 error for denying cross-examination of “the victims/officers body camera.” Petition at 9.

7 This claim of judicial error is waived due to Petitioner’s failure to raise it on direct appeal.
8 NRS 34.724(2)(a); NRS 34.810(1)(b)(2); Evans, 117 Nev. at 646-47, 29 P.3d at 523; Franklin,
9 110 Nev. at 752, 877 P.2d at 1059, disapproved on other grounds, Thomas v. State, 115 Nev.
10 148, 979 P.2d 222 (1999). Petitioner cannot demonstrate good cause and prejudice to ignore
11 his procedural default because his claim looks to be nothing more than a naked allegation
12 suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

13 Petitioner did not object to the introduction of Officer McNabb’s body camera footage at
14 trial. Jury Trial Day 2, at 34. Petitioner’s counsel cross-examined Officer McNabb whose body
15 camera video was shown to the jury. Jury Trial Day 2, at 71. During cross-examination the
16 following exchange occurred:

17 Q: Okay. With respect to the body camera, back in 2014 you had
18 indicated you had only had only had it for about seven or eight
19 months, is that correct?

20 A: Seven or eight weeks.

21 Q: Weeks, I’m sorry. Seven or eight weeks./ [sic] And you had
22 indicated on direct that you turned it on and turned it off as you
23 were making stops or you were approaching scenes. Were you
24 given any training as to when you should use that discretion?

25 A: I wasn’t actually provided any training, no.

26 Q: Okay. So you were just given a body camera?

27 A: Yes

28 ...

 Q: Okay. So at the time on this day, it was discretionary as to
 when you turned on the body camera, is that correct?

 A: No. It was still – it was clear from – if I recall correctly that
 you turn it on for calls for service – you know, as you’re arriving
 on a call of service or a vehicle stop, a person stop, you turn it on
 as you’re initiating those.

1 Q: When you were investigating the abandoned Honda, did you
2 turn on the body camera as part of that investigation?

3 A: I don't remember.

4 Jury Trial Day 2, at 71-72.

5 Petitioner also cross-examined David Wagner whose home surveillance system filmed the
6 civilian video presented to the jury. Jury Trial Day 1, at 253. Petitioner did not object to the
7 introduction of the civilian video. Jury Trial Day 1, at 248. Wagner explained that he gave law
8 enforcement the video his surveillance system had captured and that he had the system for the
9 sole purpose of catching the perpetrators that were committing crimes in the neighborhood.
10 Jury Trial Day 1, at 256-57. Therefore, Petitioner's claim that he was not permitted to cross-
11 examine the State's presentation of video is nothing more than a bare and naked claim.
12 Hargrove, 100 Nev. at 502, 686 P.2d at 225. Accordingly, this claim is denied because it lacks
13 support of the record.

14 **C. Counsel was not ineffective for failing to "suppress or impeach" a witness who
15 presented conflicting statements at trial**

16 Petitioner claims that counsel was ineffective due to her failure to move to suppress or
17 impeach witnesses offering conflicting statements identifying Petitioner at trial. Petition at 10.

18 "[T]he purpose of the effective assistance guarantee of the Sixth Amendment is not to
19 improve the quality of legal representation...[but] simply to ensure that criminal defendants
20 receive a fair trial." Cullen v. Pinholster, 563 U.S. 170, 189, 131 S.Ct. 1388, 1403 (2012)
21 (internal quotation marks and citation omitted); see also Jackson v. Warden, Nev. State Prison,
22 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) ("Effective counsel does not mean errorless
23 counsel."). Under this test, the defendant must show first, that his counsel's representation fell
24 below an objective standard of reasonableness, and second, but for counsel's errors, there is a
25 reasonable probability that the result of the proceedings would have been different. Strickland,
26 466 U.S. at 687-688, 694, 104 S.Ct. at 2065, 2068. This Court need not consider both prongs,
27 however if a defendant makes an insufficient showing on either one. Molina, 120 Nev. at 190,
28 87 P.3d at 537.

1 “The benchmark for judging any claim of ineffectiveness must be whether counsel’s
2 conduct so undermined the proper functioning of the adversarial process that the trial cannot
3 be relied on as having produced a just result.” Strickland, 466 U.S. at 686, 104 S.Ct. at 2052.
4 Indeed, the question is whether an attorney’s representations amounted to incompetence under
5 prevailing professional norms, “not whether it deviated from best practices or most common
6 custom.” Harrington v. Richter, 562 U.S. 86, 105, 131 S.Ct. 770, 788 (2011); see also
7 Strickland, 466 U.S. at 689, 104 S.Ct. at 2065 (“There are countless ways to provide effective
8 assistance in any given case. Even the best criminal defense attorneys would not defend a
9 particular client in the same way.”). Accordingly, the role of a court in considering alleged
10 ineffective assistance of counsel is “not to pass upon the merits of the action not taken but to
11 determine whether, under the particular facts and circumstances of the case, trial counsel failed
12 to render reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708,
13 711 (1978). In doing so, courts begin with the presumption of effectiveness and the defendant
14 bears the burden of proving, by a preponderance of the evidence, that counsel was ineffective.
15 Means v. State, 120 Nev. 1001, 1011-1012, 103 P.3d 25, 32-33 (2004) (holding “that a habeas
16 corpus petitioner must prove the disputed factual allegations underlying his ineffective-
17 assistance claim by a preponderance of the evidence.”). This analysis does not indicate that
18 the court should “second guess reasoned choices between trial tactics,” Donovan, 94 Nev. at
19 675, 584 P.2d at 711, but rather, the court must determine whether counsel made a “sufficient
20 inquiry into the information...pertinent to his client’s case.” Doleman v. State, 112 Nev. 843,
21 846, 921 P.2d 278, 280 (1996).

22 Further, even if counsel’s performance was deficient, “it is not enough to show that the
23 errors had some conceivable effect on the outcome of the proceeding.” Harrington, 562 U.S.
24 at 104, 131 S.Ct. at 787 (quotations and citations omitted). Instead, the defendant must
25 demonstrate that but for counsel’s incompetence the results of the proceeding would have been
26 different:

27 In assessing prejudice under Strickland, the question is not
28 whether a court can be certain counsel’s performance had no effect

1 on the outcome or whether it is possible a reasonable doubt might
2 have been established if counsel acted differently. Instead,
3 Strickland asks whether it is reasonably likely the results would
4 have been different. This does not require a showing that counsel's
5 actions more likely than not altered the outcome, but the difference
6 between Strickland's prejudice standard and a more-probable-
than-not standard is slight and matters only in the rarest case. The
likelihood of a different result must be substantial, not just
conceivable.

7 Id. at 111-112, 131 S.Ct. at 791-792 (internal quotation marks and citations omitted). All told,
8 "[s]urmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S.
9 356, 371, 130 S.Ct. 1473, 1485 (2010).

10 Petitioner cannot demonstrate deficient performance since conflicting statements are
11 insufficient to suppress. See, Origel-Candid v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380
12 (1998) ("it is the jury's function, not that of the court, to assess the weight of the evidence and
13 determine the credibility of the witnesses"); Culverson v. State, 95 Nev. 433, 435, 596 P.2d
14 220, 221 (1979) (it is the function of the jury to weigh the credibility of the identifying
15 witnesses); Azbill v. State, 88 Nev. 240, 252, 495 P.2d 1064, 1072 (1972), cert. denied, 429
16 U.S. 895, 97 S.Ct. 257 (1976) (In all criminal proceedings, the weight and sufficiency of the
17 evidence are questions for the jury; its verdict will not be disturbed if there is evidence to
18 support it and the evidence will not be weighed by an Appellate Court).

19 The record does not support the claim that Counsel failed to impeach. Counsel impeached
20 the witness's identification of Petitioner at trial. At trial, Jose Chavez, Norayma Gonzales, and
21 Officer Ryan McNabb all identified Petitioner as the gunman. Jury Trial Day 1, at 166, 193;
22 Jury Trial Day 2, at 49. Counsel cross-examined each of these witnesses. Jury Trial Day 1,
23 173, 195; Jury Trial Day 2, at 51.

24 During cross-examination of Norayma Gonzales the following questions were presented
25 to attack the credibility of her identification of Petitioner:

26 Q: Okay. And this was in the middle of the night or this is around
27 10:30 at night, is that correct?

28 A: Correct.

1 Q: And so this area is dark except for like this traffic light here and
this traffic light here, is that correct?

2 A: That is correct.

3 Q: Okay. Your apartment complex, it doesn't appear it's – has it's
[sic] own like street light, is that correct?

4 A: That is correct.

5 Q: Okay. So it's pretty dark in here as well?

6 A: Regardless of the light that's outside, yes.

6 Jury Trial Day 1, at 174.

7 During cross-examination of Jose Chavez counsel also asked questions to attack the
8 credibility of his observations of Petitioner:

9 Q: And you said it was dark out?

10 A: Dark.

11 Q: And you indicated that you couldn't see the person's face, you
could only see shadows?

12 A: Shadow.

13 Jury Trial Day 1, at 196.

14 When counsel cross-examined Officer McNabb she elicited the following testimony that
15 called into question his identification of Petitioner:

16 Q: Okay. And you recall that multiple times that you indicated that
17 you couldn't really get a good look at the individual. You just
18 knew they were heavy-set and wearing a white t-shirt, is that
correct?

19 A: No. I got a good look at him at the corner.

20 Q: Okay. Do you remember hearing on the body camera video that
you said that you didn't get a good look at him and that you just a
21 white shirt [sic]?

22 A: I remember giving out his – hearing that I gave out his
description and then a white shirt – I think I may have said I didn't
23 get a good look at him. That's like from beginning to end. But I
definitely saw him pointing a gun at me, at the corner under the
24 light, and I recognize him here today.

25 Jury Trial Day 2, at 67.

26 During closing argument counsel argued the flaws and inconsistencies with the
27 eyewitness testimony to create doubt:
28

1 I think that it's important to corroborate human testimony and
2 human observance. You saw right away that humans are human.
3 They are nervous, they are excited, there's adrenaline rushing, and
4 especially in a circumstance like this there is excitement, there's
5 lots of things that could cloud your member or your perception of
6 an event.

7 Jury Trial Day 3, at 188.

8 Counsel also attacked the eyewitness testimony identifying Petitioner as the gunman
9 during closing argument when she said:

10 But obviously that was the testimony and that was the perception
11 of those individuals that said they were watching that. Were they
12 lying? No, I don't think that they intentionally lying or
13 intentionally being misleading [sic]. But that's just the nature of
14 being human beings I think is that sometimes we're fallible to, you
15 know, the excitement, the adrenaline, the fear, the excitement of a
16 circumstance or a situation that we find our self in.

17 Id. at 189-90.

18 Finally, Petitioner cannot prove that he was prejudiced in any way. Based upon the
19 record presented it is clear that counsel zealously advocated for her client and called into
20 question the perceptions of the State's witnesses. Moreover, the Nevada Supreme Court
21 concluded that the State presented strong evidence to demonstrate Petitioner's guilt at trial.
22 Bacharach v. State, Docket No. 69677 (Order of Affirmance, November 15, 2016) at 2.
23 Therefore, Petitioner's claim is denied.

24 **D. The Court did not violate Petitioner's rights by admitting an alleged "tainted" and**
25 **"unreliable" in-court identification**

26 Although Petitioner's response to question twenty-three states he is pursuing ineffective
27 assistance of counsel claim, the body of the claim is a substantive claim of judicial error for
28 admitting suggestive and tainted identification testimony. Petition at 11.

This claim of judicial error is waived due to Petitioner's failure to raise it on direct
appeal. NRS 34.724(2)(a); NRS 34.810(1)(b)(2); Evans, 117 Nev. at 646-47, 29 P.3d at 523;

1 Franklin, 110 Nev. at 752, 877 P.2d at 1059. Petitioner cannot demonstrate good cause and
2 prejudice to ignore his procedural default because his claim looks to be nothing more than a
3 naked allegation suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at
4 225.

5 Petitioner does not indicate how the identifications were suggestive and tainted.
6 Further, Petitioner cannot demonstrate prejudice to ignore his procedural defaults because the
7 Nevada Supreme Court found that his conviction was supported by strong evidence.
8 Bacharach, Case No. 69677 (Order of Affirmance November 15, 2016) at 2-3.

9 An officer testified that he saw Petitioner shooting and driving in a dangerous manner.
10 Id. Multiple other eyewitnesses from the neighborhood observed a person matching
11 Petitioner's physical characteristic shooting at the officer and hiding his bulletproof vest and
12 firearm. Id. Moreover, DNA evidence was discovered in the vehicle Petitioner was driving
13 and his thumbprint was matched to the firearm he was carrying. Id. Therefore, because there
14 is nothing to support Petitioner's claim, his claim is denied.

15 **IV. CUMULATIVE ERROR DOES NOT APPLY**

16 The Nevada Supreme Court has not endorsed application of its direct appeal cumulative
17 error standard to the post-conviction Strickland context. McConnell v. State, 125 Nev. 243,
18 259, 212 P.3d 307, 318 (2009). Nor should cumulative error apply on post-conviction review.
19 Middleton v. Roper, 455 F.3d 838, 851 (8th Cir. 2006), cert. denied, 549 U.S. 1134, 1275 S.
20 Ct. 980 (2007) ("a habeas petitioner cannot build a showing of prejudice on series of errors,
21 none of which would by itself meet the prejudice test").

22 Nevertheless, even where available a cumulative error finding in the context of a
23 Strickland claim is extraordinarily rare and requires an extensive aggregation of errors. See,
24 e.g., Harris By and through Ramseyer v. Wood, 64 F.3d 1432, 1438 (9th Cir. 1995). In fact,
25 logic dictates that there can be no cumulative error where the defendant fails to demonstrate
26 any single violation of Strickland. See Turner v. Quarterman, 481 F.3d 292, 301 (5th Cir.
27 2007) ("where individual allegations of error are not of constitutional stature or are not errors,
28 there is 'nothing to cumulate.'") (quoting Yohey v. Collins, 985 F.2d 222, 229 (5th Cir. 1993));

1 Hughes v. Epps, 694 F.Supp.2d 533, 563 (N.D. Miss. 2010) (citing Leal v. Dretke, 428 F.3d
2 543, 552-53 (5th Cir. 2005)). Even if cumulative error was applicable, because Petitioner has
3 not demonstrated any claim that warrants relief under Strickland, there is nothing to cumulate.
4 Therefore, Petitioner's cumulative error claim is denied.

5 Petitioner fails to demonstrate cumulative error sufficient to warrant reversal. In
6 addressing a claim of cumulative error, the relevant factors are: 1) whether the issue of guilt
7 is close; 2) the quantity and character of the error; and 3) the gravity of the crime charged.
8 Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 854-5 (2000). The issue of guilt was not close
9 as the evidence against Petitioner was overwhelming. Indeed, there was sufficient evidence
10 presented at trial to connect him to the charges for which he was convicted, as the Nevada
11 Supreme Court indicated in its Order of Affirmance,

12 Moreover, even assuming the district court committed error, the error was
13 harmless beyond a reasonable doubt because there was strong evidence of
14 his guilty presented at trial.

15 Bacharach v. State, Docket No. 69677 (Order of Affirmance, November 15, 2016) at 2. In
16 other words, any error could not establish prejudice to waive the default or ineffective
17 assistance of counsel since the Nevada Court of Appeals found overwhelming evidence on
18 direct appeal. Therefore, his claim of cumulative error is denied.

19 **V. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

20 NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

- 21 1. The judge or justice, upon review of the return, answer and all
22 supporting documents which are filed, shall determine whether
23 an evidentiary hearing is required. A petitioner must not be
24 discharged or committed to the custody of a person other than the
25 respondent *unless an evidentiary hearing is held*.
- 26 2. If the judge or justice determines that the petitioner is not
27 entitled to relief and an evidentiary hearing is not required, he
28 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.

1 (emphasis added).

2 The Nevada Supreme Court has held that if a petition can be resolved without
3 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
4 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A
5 defendant is entitled to an evidentiary hearing if her petition is supported by specific factual
6 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled
7 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100
8 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that “[a] defendant seeking post-conviction
9 relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the
10 record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it
11 existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It
12 is improper to hold an evidentiary hearing simply to make a complete record. See State v.
13 Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district
14 court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make
15 as complete a record as possible.’ This is an incorrect basis for an evidentiary hearing.”).

16 Further, the United States Supreme Court has held that an evidentiary hearing is not
17 required simply because counsel’s actions are challenged as being unreasonable strategic
18 decisions. Harrington v. Richter, 131 S.Ct. 770, 788 (2011). Although courts may not indulge
19 post hoc rationalization for counsel’s decision-making that contradicts the available evidence
20 of counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis
21 for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain
22 issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (citing
23 Yarborough v. Gentry, 540 U.S. 1, 124 S.Ct. 1 (2003)). Strickland calls for an inquiry in the
24 *objective* reasonableness of counsel’s performance, not counsel’s *subjective* state of mind. 466
25 U.S. 668, 688, 104 S.Ct. 2052, 2065 (1994).

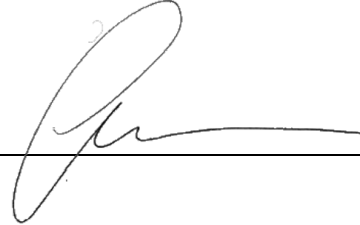
26 The instant Petition does not require an evidentiary hearing. An expansion of the record
27 is unnecessary because Petitioner has failed to assert any meritorious claims and the Petition
28

1 can be disposed of with the existing record. Marshall, 110 Nev. at 1331, 885 P.2d at 605;
2 Mann, 118 Nev. at 356, 46 P.3d at 1231. Therefore, Petitioner's request is denied.

3 **ORDER**

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

Dated this 5th day of May, 2021

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8 

EC

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

D89 E55 7311 4409
Cristina D. Silva
District Court Judge

11 BY /s/ KAREN MISHLER
12 KAREN MISHLER
13 Chief Deputy District Attorney
Nevada Bar #013730

14
jb 15 BY /s/ James Oronoz
16 JAMES ORONoz
17 Nevada Bar #006769
1050 Indigo Drive, Suite 120
18 Las Vegas, NV 89145
Attorney for Petitioner

1 CERTIFICATE OF ELECTRONIC TRANSMISSION

2 I hereby certify that service of the above and foregoing was made this ____ day of May,
3 2021, by electronic transmission to:

4 JAMES ORONoz
5 jim@oronozlawyers.com

6 BY /s/ E. Del Padre
7 E. DEL PADRE
8 Secretary for the District Attorney's Office

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28 KM/bg/ed/GCU

From: [Jim Oronoz](#)
To: [Brittni Griffith](#)
Cc: [Estee DelPadre](#); tom@oronozlawyers.com; [Jennifer Garcia](#); [Karen Mishler](#); [Alicia Oronoz](#)
Subject: Re: C299425- Joshua Bacharach FOF (Dept. 9 GCU)
Date: Thursday, April 29, 2021 2:27:23 PM
Attachments: [Bacharach, Joshua Minutes April 5, 2021.pdf](#)

CAUTION: This email originated from an **External Source**. Please **use caution** before opening attachments, clicking links, or responding to this email. **Do not sign-in with your DA account credentials.**

Go ahead and submit. It looks fine. Thanks.

Sent from my iPad

On Apr 26, 2021, at 4:03 PM, Brittni Griffith
<Brittni.Griffith@clarkcountyda.com> wrote:

Good afternoon,

We used the Court's Minutes from the 4/5/21 Hearing. I have attached a copy of the Minutes to this email.

Thank you,

Brittni Griffith

Law Clerk

Clark County District Attorney's Office

T: (702) 671-2746

E: brittni.griffith@clarkcountyda.com

From: Jim Oronoz <jim@oronozlawyers.com>

Sent: Monday, April 26, 2021 3:57 PM

To: Estee DelPadre <Estee.DelPadre@clarkcountyda.com>

Cc: Brittni Griffith <Brittni.Griffith@clarkcountyda.com>; tom@oronozlawyers.com;
Jennifer Garcia <Jennifer.Garcia@clarkcountyda.com>; Karen Mishler
<Karen.Mishler@clarkcountyda.com>; Alicia Oronoz <alicia@oronozlawyers.com>

Subject: Re: C299425- Joshua Bacharach FOF (Dept. 9 GCU)

CAUTION: This email originated from an **External Source**. Please **use caution** before opening attachments, clicking links, or responding to this email. **Do not sign-in with your DA account credentials.**

We need a copy of the transcript to review. Can you send us a copy of the transcript you used to put this together? Once, we get that it should be relatively fast.

On Fri, Apr 23, 2021 at 3:43 PM Estee DelPadre <Estee.DelPadre@clarkcountyda.com> wrote:

Hello,

Mr. Oronoz and Mr. Ericsson

Please see the attached Findings of Facts for your client Mr. Joshua Bacharach

Please review, after reviewing please sign and send back so I can send to the Judge for her signature.

Thank you

Estee Del Padre

**Legal Office Services Supervisor | Criminal Division |
GCU/HIDTA/GJ**

CLARK COUNTY DISTRICT ATTORNEY |

301 E. CLARK, Las Vegas, Nevada 89101

telephone (702) 671-2843 | facsimile (702) 383-8465

estee.delpadre@clarkcountyda.com



From: Brittnei Griffith <Brittnei.Griffith@clarkcountyda.com>

Sent: Friday, April 23, 2021 11:04 AM

To: Estee DelPadre <Estee.DelPadre@clarkcountyda.com>; Laura Mullinax <Laura.Mullinax@clarkcountyda.com>

Cc: Jennifer Garcia <Jennifer.Garcia@clarkcountyda.com>; Karen Mishler <Karen.Mishler@clarkcountyda.com>

Subject: C299425- Joshua Bacharach FOF (Dept. 9 GCU)

Good morning,

I have attached the State's FOF for the above case for final formatting and

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 State of Nevada

CASE NO: C-14-299425-1

7 vs

DEPT. NO. Department 9

8 Joshua Bacharach
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 Judgment 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: 5/5/2021

15 James Oronoz

jim@oronozlawyers.com

16 Thomas Ericsson

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20 District Attorney

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21 Jan Ellison

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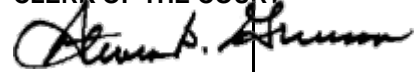
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NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JOSHUA BACHARACH,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: C-14-299425-1

Dept No: IX

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

PLEASE TAKE NOTICE that on May 5, 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 May 7, 2021.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 7 day of May 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-

☒ The United States mail addressed as follows:

Joshua Bacharach # 90607
P.O. Box 1989
Ely, NV 89301

James A. Oronoz, Esq.
1050 Indigo Dr., Suite 120
Las Vegas, NV 89145

Thomas A. Ericsson, Esq.
1050 Indigo Dr., Suite 120
Las Vegas, NV 89145

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk

Heather S. Smith

CLERK OF THE COURT

~~FFCO~~ FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #013730
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Respondent

DISTRICT COURT
CLARK COUNTY, NEVADA

JOSHUA BACHARACH,
#1900105

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: C-14-299425-1

DEPT NO: IX

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

DATE OF HEARING: APRIL 5, 2021

TIME OF HEARING: 11:00 AM

CRISTINA

THIS CAUSE having come on for hearing before the Honorable ~~CHRISTINA D.~~ CRISTINA D. SILVA, District Judge, on the 5th day of April, 2021, the Petitioner not being present, represented by RACHAEL E. STEWART, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through MEGAN THOMSON, 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 **PROCEDURAL HISTORY**

3 On July 16, 2014, Joshua W. Bacharach, aka, Joshua William Bacharach,
4 (“Petitioner”) was charged by way of Indictment with the following: Count 1 – Attempt
5 Murder with Use of a Deadly Weapon (Category B Felony – NRS 200.010, 200.030, 193.330,
6 193.165); Counts 2, 4, 6, 8 and 10 – Discharge of Firearm from or within a Structure or Vehicle
7 (Category B Felony – NRS 202.287); Counts 3, 5, 7, 9 and 11 – Assault with a Deadly Weapon
8 (Category B Felony – NRS 200.471); Count 12 – Stop Required on Signal of Police Officer
9 (Category B Felony – NRS 484B.550.3b); Count 13 – Resisting Public Officer with Use of a
10 Firearm (Category C Felony – NRS 199.280); Count 14 – Possession of Firearm with Altered
11 or Obliterated Serial Number (Category D Felony – NRS 202.277); and Counts 15 through 17
12 – Possession of Firearm by Ex-Felon (Category B Felony – NRS 202.360). On October 28,
13 2015, Petitioner was arraigned and pled not guilty. An Amended Indictment was filed on
14 November 2, 2015, making clerical corrections.

15 On November 2, 2015, Petitioner’s jury trial commenced. On November 5, 2015, the
16 jury returned a verdict finding Petitioner guilty of Counts 1 through 8, and 11 through 17.

17 On December 30, 2015, Petitioner was adjudged guilty and sentenced to the Nevada
18 Department of Corrections as follows: Count 1 – a maximum of 240 months with a minimum
19 parole eligibility of 96 months, plus a consecutive term of 240 months maximum with a
20 minimum parole eligibility of 96 months for the deadly weapon enhancement; Count 2 – a
21 maximum of 180 months with a minimum parole eligibility of 72 months; Count 3 – a
22 maximum of 72 months with a minimum parole eligibility of 28 months; Count 4 – a maximum
23 of 180 months with a minimum parole eligibility of 72 months; Count 5 – a maximum of 72
24 months with a minimum parole eligibility of 28 months; Count 6 – a maximum of 180 months
25 with a minimum parole eligibility of 72 months; Count 7 – a maximum of 72 months with a
26 minimum parole eligibility of 28 months; Count 8 – a maximum of 180 months with a
27 minimum parole eligibility of 72 months; Count 11 – a maximum of 72 months with a
28 minimum parole eligibility of 28 months; Count 12 - a maximum of 72 months with a

1 minimum parole eligibility of 28 months; Count 13 - a maximum of 60 months with a
2 minimum parole eligibility of 24 months; Count 14 - a maximum of 48 months with a
3 minimum parole eligibility of 19 months; Count 15 - a maximum of 72 months with a
4 minimum parole eligibility of 28 months; Count 16 - a maximum of 72 months with a
5 minimum parole eligibility of 28 months; and Count 17 - a maximum of 72 months with a
6 minimum parole eligibility of 28 months; all counts to run consecutive to each other; with zero
7 days credit for time served. Petitioner's aggregate total sentence being 1,884 months maximum
8 with a minimum of 747 months. The Judgment of Conviction was filed on January 8, 2016.

9 On January 26, 2016, Petitioner filed a Notice of Appeal. On November 18, 2016, the
10 Nevada Court of Appeals filed an Order Affirming Defendant's Judgment of Conviction.
11 Remittitur issued on November 15, 2016.

12 On November 8, 2017, Petitioner filed a Motion for the Appointment of Counsel and
13 Request for an Evidentiary Hearing. The State filed a Response to Defendant's Motion to
14 Appoint Counsel and Request for an Evidentiary Hearing on November 21, 2017.

15 On November 8, 2017, Petitioner filed Petition for Writ of Habeas Corpus (Post-
16 Conviction) ("Petition"). The State filed a Response on December 29, 2017. On January 3,
17 2018, the Court granted Petitioner's Motion to Appoint Counsel. On January 10, 2018, James
18 A. Oronoz was confirmed as counsel. On March 14, 2018, the Court set a briefing schedule.

19 On February 24, 2020, Petitioner through counsel filed the instant Supplemental Post-
20 Conviction Petition for Writ of Habeas Corpus ("Supplemental Petition"). The State filed its
21 Response on March 27, 2020. On April 7, 2020, Petitioner filed his Reply. On April 5, 2021,
22 the Court denied the Petition finding as follows.

23 **FACTS**¹

24 On the evening of June 26, 2014, Bacharach arrived at Eufrasia Nazaroff's home and
25 asked to borrow her Maroon Dodge Intrepid. Eufrasia and Bacharach have three children in
26

27 ¹ The Statement of Facts were acquired from Respondent's Answering Brief in Bacharach v.
28 State, Nevada Court of Appeals Case No. 69677. An edit has been made to omit the record
citations.

1 common but were not cohabitating at that time. Bacharach was wearing a bright yellow shirt
2 and a white ballistic bullet-proof vest over his clothing when he left with her vehicle.

3 At about 10:45 p.m., Ryan McNabb, a Police Officer with the Las Vegas Metropolitan
4 Police Department, was at the corner of Walnut and Lake Mead when he noticed a Dodge
5 Intrepid, occupied by a male driver, with the high beams on. Officer McNabb went north on
6 Walnut, activated his emergency lights, got behind the vehicle, and radioed dispatch that he
7 was going to make a car stop. As he was getting ready to inform dispatch of the license plate
8 of the vehicle, the male driver, later identified as Bacharach, reached out of the driver door
9 and fired a gun up in the air. Officer McNabb heard the shot and saw the muzzle flash.

10 Officer McNabb, informed dispatch that Bacharach had discharged a weapon and
11 activated his body camera. The vehicle accelerated right after the shot and continued north on
12 Walnut, then turned right on Carey, running through a Stop sign. As soon as Officer McNabb
13 turned on Carey, Bacharach fired two shots at the patrol car. Officer McNabb had the patrol
14 car driver side window halfway open and heard a “zing” sound right by his left ear. Bacharach
15 accelerated to about 70 to 80 miles an hour and passed through a solid red light at the
16 intersection of Lamb and Carey. Then two more shots, deemed to be the fourth and fifth shots,
17 were fired by Bacharach in the direction of Officer McNabb’s patrol vehicle after the
18 intersection of Lamb and Carey.

19 The Dodge Intrepid being driven by Bacharach went over the curb at the corner of
20 Carey and Dolly and came to a stop. Bacharach jumped out of the driver door, ran around the
21 trunk, turned towards Officer McNabb, raised the gun at a parallel angle to the ground and
22 fired at him.

23 Officer McNabb stopped the patrol car in front of 4585 East Carey, got out of the
24 vehicle and saw Bacharach start to point the gun in his direction again. This time Bacharach
25 was unable to fire and seemed to be manipulating the gun as if reloading or clearing a
26 malfunction. Officer McNabb fired approximately five rounds to try to stop or incapacitate
27 Bacharach. Bacharach fell backwards, turned, and took off running southbound on Dolly.
28 Officer McNabb followed on foot and saw Bacharach near the intersection of Dolly and El

1 Tovar. As Officer McNabb went around the corner onto El Tovar he saw a shadow go to his
2 right across the sidewalk by a white truck. Officer McNabb heard sirens approaching and
3 waited for back-up.

4 K9 Officer Ernest Morgan arrived to the Dolly and El Tovar area and performed a scan
5 but could not locate Bacharach. Officer Morgan got his K9 out and went west on El Tovar
6 when a woman exited her residence, located at 4586 El Tovar. She stated an unknown male
7 was in her backyard. K9 Officer Morgan entered the home and as he exited to the back yard,
8 located Bacharach by the east side of the rear of the home. Bacharach was laying on the ground
9 and refused to comply with the commands to show his hands. The K9, Claymore, was released
10 and ran directly towards Bacharach and bit him in the lower part of his leg. Bacharach was
11 placed into handcuffs. Officer McNabb identified Bacharach as the person he had been
12 chasing, although he was no longer wearing what was believed to have been a white shirt.

13 A ballistic vest with a white cover and .45 caliber semi-automatic Colt handgun on top of it,
14 were located underneath the white pickup truck parked in front of 4586 El Tovar. Bacharach's
15 left thumb print was identified towards the base of the Colt .45 magazine. A cartridge case was
16 located on the northbound lane of North Walnut, by a church, a second cartridge case in the
17 eastbound travel lanes of Carey, and a third cartridge case in the north gutter just south of 4060
18 East Carey. All three cartridge cases had head stamps that read "Speer 45 Auto." Those three
19 cartridge cases were identified as having been fired from the Colt .45.

20 Two unfired .45 caliber cartridges with head stamps of "Speer 45 Auto" were located
21 on the ground by the maroon Dodge parked on the corner of the intersection of Carey and
22 Dolly. Another unfired .45 cartridge was located on the sidewalk west of Dolly with a head
23 stamp of "Winchester 45 Auto", which was still the same caliber but different manufacturer.

24 Crime Scene Analysts located an AK-style rifle, wrapped in a white shirt in the back
25 seat of the Dodge Intrepid. A Colt .25 caliber firearm, with an obliterated serial number, was
26 recovered from a black bag on the front driver's side floorboard of the Dodge. A rifle
27 magazine was also recovered from that black bag. Bacharach's DNA was located on the Dodge
28 Intrepid's steering wheel cover.

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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).

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

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 counsel
18 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
19 cannot create one and may disserve the interests of his client by attempting a useless charade.”
20 United States v. Cronin, 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 687-89,
7 694, 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 v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
11 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must
12 be supported with specific factual allegations, which if true, would entitle the petitioner to
13 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked"
14 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS
15 34.735(6) states in relevant part, "[Petitioner] *must* allege specific facts supporting the claims
16 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your
17 petition to be dismissed." (emphasis added).

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

25 The professional diligence and competence required on appeal involves "winnowing
26 out weaker arguments on appeal and focusing on one central issue if possible, or at most on a
27 few key issues." Jones v. Barnes, 463 U.S. 745, 751-52, 103 S. Ct. 3308, 3313 (1983). In
28 particular, a "brief that raises every colorable issue runs the risk of burying good arguments .

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

5 **I. THE COURT DID NOT CREATE STRUCTURAL ERROR REGARDING**
6 **NAZAROFF’S TESTIMONY AND COUNSEL WAS NOT INEFFECTIVE**

7 Petitioner complains that the Court inappropriately threatened a witness, Nazaroff, in
8 the jury’s presence and that counsel was ineffective for failing to object. Supplemental Petition
9 at 10-14. However, his claims are meritless.

10 As a preliminary matter, Petitioner has waived any allegation of judicial error by failing
11 to raise this claim on direct appeal. NRS 34.724(a); NRS 34.810(1)(b)(2); Evans v. State, 117
12 Nev. 609, 646-47, 29P.3d 498, 523 (2001); Franklin v. State, 110 Nev. 750, 752, 877 P.2d
13 1058, 1059 (1994), disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d
14 222 (1999). Petitioner cannot demonstrate good cause to ignore his default because all of the
15 facts and law necessary to raise his claim were available at the time he filed his direct appeal.
16 Further, Petitioner fails to demonstrate an impediment external to the defense that prevented
17 him from raising this complaint on direct appeal. Petitioner also cannot demonstrate prejudice
18 to rebut the bar to his judicial error claim or demonstrate ineffective assistance of counsel since
19 his underlying complaint is meritless.

20 NRS 50.115(1) provides,

- 21 1. The judge shall exercise reasonable control over the mode and order of
22 interrogating witnesses and presenting evidence:
23 (a) To make the interrogation and presentation effective for the
24 ascertainment of the truth;
(b) To avoid needless consumption of time; and
(c) To protect witnesses from undue harassment or embarrassment.

25 In the instant case, outside the presence of the jury, defense counsel alerted the Court
26 of her and the State’s concern regarding Nazaroff causing a mistrial. Jury Trial Day 1 at 295.
27 Specifically, the State and defense counsel wanted to ensure that since Nazaroff refused to
28 meet with both parties, she did not testify to inadmissible evidence in front of the jury:

1 MS. THOMSON: We have a witness, Eufrasia Nazaroff. She is the mother
2 of the Defendant's children. She obviously has knowledge about all kinds of
3 things that she's not allowed to talk about. She declined to come meet with
4 us for pretrial, so we have not had that conversation with her about all the
5 things she can't talk about. And because I expect that she probably won't be
6 what I would call cooperative, I'd ask that the Court admonish her because
7 my admonishing her is going to not have as much effect.

8 MS. NGUYEN: I would say –

9 MS. THOMSON: Please.

10 MS. NGUYEN: -- mostly my concerns are that have to do with actually my
11 client's rights. I don't know what she would have to say. She has -- she hasn't
12 been in contact with me and I know my investigators attempted to contact
13 her as well. But I know that there's references at some point to Little Locos
14 gang. I just want her to be admonished not to make reference to that, him
15 being on probation, parole –

16 THE COURT: Right. What –

17 MS. NGUYEN: -- prior convicted felon, his moniker. I think there were
18 admissions -- references to drugs or weed.

19 THE COURT: What do you have her coming in for?

20 MS. THOMSON: It is her car that he is driving on the night of the incident.
21 She'll identify the vehicle, she will indicate that he was wearing the bullet-
22 proof vest when he came to pick up the car from her. She will indicate that
23 he had -- she had seen him with the firearms that were ultimately recovered
24 in this case previously; that those were not firearms that she had in the vehicle
25 and did not allow in her house.

26 Jury Trial Day 1, 295-97.

27 Recognizing that both parties were not able to pretrial Nazaroff, and still outside the
28 presence of the jury, Nazaroff was brought into the courtroom. Jury Trial Day 1, 297. The
Court proceeded to instruct her to answer counsel's questions and admonished her from
discussing inadmissible evidence regarding the defendant including: "gang affiliation, any
moniker, or nickname... drug use, probation, drug possession, parole, smoke and dope, the
defendant was on probation or supervision." Jury Trial Day 1, 298-99. Further, the Court

1 added, “[but] I can tell you I’ve had people violate my order and if you do you’ll go to jail
2 today and I’ll have to get somebody to come get your child.” Jury Trial Day 1, 298.

3 Petitioner cites to Webb v. Texas, 409 U.S. 95, 93 S.Ct. 351 (1972), and its progeny to
4 support his argument that the Court acted inappropriately. However, Webb is distinguishable
5 from the instant case. In Webb, the trial court, on its own initiative, admonished the
6 defendant’s only witness by explaining that he would not have to testify, but if he did and lied,
7 the Court would “personally see that [his] case goes to the grand jury and [he would] be
8 indicted for perjury.” Id. at 95-96, 93 S.Ct. at 352-53. The trial court warned the witness that
9 the likelihood of the witness being convicted in such scenario would be great based on the
10 witness’s criminal record and that the witness should know the “hazard” he was taking by
11 testifying. Id. After defense counsel objected, defense counsel still asked the witness to take
12 the stand at which point the trial court interrupted and stated, “[c]ounsel, you can state the
13 facts, nobody is going to dispute it. Let him decline to testify.” Id. at 96, 93 S. Ct. at 353
14 (internal citations omitted). The witness then decided not to testify. Id. The U.S. Supreme
15 Court ultimately determined that the trial court’s actions were inappropriate. Id. at 97-98, 93
16 S.Ct. at 353. In reaching this conclusion, the Court explained that the trial court’s threats—
17 specifically, “that he expected [the witness] to lie, and went on to assure him that if he lied, he
18 would be prosecuted and probably convicted for perjury, that the sentence for that conviction
19 would be added on to his present sentence, and that the result would be to impair his chances
20 for parole”—were strong enough to cause duress to the witness regarding his voluntary choice
21 on whether to testify. Id. Further, the Court concluded that those specific threats ultimately
22 drove the witness off the stand, which “deprived the [defendant] of due process of law under
23 the Fourteenth Amendment.” Id.

24 Here, while the Court explained to Nazaroff that she would be incarcerated if she
25 perjured herself, the Court’s threats did not reach the level of the trial court in Webb. Indeed,
26 the Court did not show any indication that he believed Nazaroff was going to lie on the stand.
27 The Court merely explained that if Nazaroff violated its order she would be incarcerated.
28 Unlike the situation in Webb, such admonishment did not amount to threats which ultimately

1 coerced Nazaroff not to testify. Further, the record does not indicate that the Court was
2 attempting to convince Nazaroff not to testify.

3 Moreover, the Court's remarks in this case were within the authorized powers of NRS
4 50.115(1). Indeed, both defense counsel and the State alerted the Court that Nazaroff was
5 uncooperative and that there was a legitimate concern that she might testify to inadmissible
6 evidence in front of the jury. Contrary to Petitioner's argument, which was made out of
7 context, the Court did not instruct Nazaroff to testify untruthfully, but instead told her that she
8 could not bring up topics that were inadmissible evidence. Supplemental Petition at 13. Thus,
9 in order to protect Petitioner's rights to a fair trial, the Court appropriately admonished
10 Nazaroff who was proven to be an uncooperative witness to both parties. Garner v. State, 78
11 Nev. 366, 373, 374 P.2d 525, 529 (1962) ("An accused, whether guilty or innocent, is entitled
12 to a fair trial, and it is the duty of the court and prosecutor to see that he gets it") (citing State
13 v. Haney, 222 Minn. 124, 23 N.W.2d 369). Thus, the Court did not err.

14 Accordingly, counsel was not ineffective for failing to object to the Court's
15 admonishment as any objection would have been futile. See Ennis v. State, 122 Nev. at 706,
16 137 P.3d at 1103. Regardless, any error would not establish prejudice to waive the default or
17 ineffective assistance of counsel because the Nevada Court of Appeals found overwhelming
18 evidence of guilt on direct appeal. Bacharach v. State, Docket No. 69677 (Order of
19 Affirmance, November 15, 2016) at 2. Therefore, Petitioner's claim is denied.

20 **II. PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL**

21 **A. Counsel was not ineffective for failing to object to Detective Jaegar's testimony**

22 Petitioner argues that Detective Jaegar offered inappropriate and unnoticed expert
23 testimony regarding gunshot residue, cartridge casings, bulletproof vests, and bullet impacts.
24 Supplemental Petition at 15-18.

25 A lay witness may testify to opinions or inferences that are "[r]ationally based on the
26 perception of the witness; and . . . [h]elpful to a clear understanding of the testimony of the
27 witness or the determination of a fact in issue." NRS 50.265. A qualified expert may testify to
28 matters within their "special knowledge, skill, experience, training or education" when

1 “scientific, technical or other specialized knowledge will assist the trier of fact to understand
2 the evidence or to determine a fact in issue.” NRS 50.275. Indeed, “[t]he key to determining
3 whether testimony constitutes lay or expert testimony lies with a careful consideration of the
4 substance of the testimony—does the testimony concern information within the common
5 knowledge of or capable of perception by the average layperson or does it require some
6 specialized knowledge or skill beyond the realm of everyday experience?” Burnside v. State,
7 131 Nev. 371, 383, 352 P.3d 627, 636 (2015).

8 Here, Detective Jaegar’s testimony regarding bullet proof vests and style effectiveness
9 would be in the arena of expert testimony, and was not objected to at trial, nor was the gunshot
10 residue and trajectory. However, Detective Jaegar’s testimony regarding the characteristics
11 and behaviors of cartridge casings was lay testimony that was based on common sense.
12 Accordingly, counsel’s performance was not deficient.

13 Detective Jaegar testified that he had worked for the Las Vegas Metropolitan Police
14 Department (LVMPD) for seventeen years and was within the past two years appointed as a
15 Detective for the Force Investigation Team. Jury Trial Day 3, 95-96. His role in the
16 investigation of Petitioner’s case was the project manager of the crime scene. Jury Trial Day
17 3, 97. Accordingly, Jaegar described what he and the other investigating officers discovered
18 during their search of the scene. Jury Trial Day 3, 100-05. Thus, Jaegar was not testifying that
19 he received some specialized training or education that allowed him to testify, but instead was
20 relying on his observations and experience as a detective to explain his investigation.
21 Continuing to discuss his investigation, Jaegar was asked “in [his] experience, where can the
22 casings end up?” Jury Trial Day 3, 109. Relying on not only his experience, but also common
23 knowledge, he responded that “casings are really unpredictable” and proceeded to discuss what
24 happens when a person fires a gun a particular way. Jury Trial Day 3, 109-110. Similarly, his
25 testimony regarding his search for casings and how they can get stuck in particular places was
26 based not only on common knowledge but based also on his experience as an officer. Jury
27 Trial Day 3, 123. Accordingly, the State did not inappropriately rely on Jaegar’s testimony and
28

1 argue that “common sense” dictated the trajectory of the casings. Supplemental Petition at 17;
2 Jury Trial Day 3, 186-87.

3 Similarly, Petitioner complains about Jaegar’s testimony regarding bullet impacts.
4 Supplemental Petition at 18. Indeed, Jaegar used not only common knowledge, but also his
5 experience as an officer to use a tennis ball analogy to explain the trajectory of bullets. Jury
6 Trial Day 3, at 117. Such testimony therefore was also not “scientific, technical, and
7 specialized.” Supplemental Petition at 18.

8 In sum, some of Detective Jaegar’s testimony amounted to lay testimony based on not
9 only his many years of experience as an officer, but also common knowledge. As such, counsel
10 was not ineffective for failing to object to Detective Jaegar’s responses regarding the
11 placement and landings of the cartridge casings as well as the bullet impacts as any objection
12 would have been futile and unnecessary. See Ennis v. State, 122 Nev. at 706, 137 P.3d at 1103.
13 Regardless, Detective Jaegar’s testimony would not have changed the jury’s outcome.
14 Strickland, 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068. Indeed, any error could not
15 establish prejudice to waive the default or ineffective assistance of counsel since the Nevada
16 Court of Appeals found overwhelming evidence of guilt on direct appeal. Bacharach v. State,
17 Docket No. 69677 (Order of Affirmance, November 15, 2016) at 2. Therefore, Petitioner’s
18 claims are denied.

19 **B. Counsel was not ineffective for failing to object to the State’s discussion of**
20 **reasonable doubt**

21 Petitioner alleges that counsel failed to object to an inappropriate argument quantifying
22 reasonable doubt. Supplemental Petition at 19-20.

23 In resolving claims of prosecutorial misconduct, the Nevada Supreme Court has
24 provided a two-step analysis: (1) determining whether the comments were improper and (2)
25 deciding whether the comments were sufficient to deny the defendant a fair trial. Valdez v.
26 State, 124 Nev. 1172, 1188. The Court views the statements in context, and will not lightly
27 overturn a jury’s verdict based upon a prosecutor’s statements. Byars v. State, 130 Nev. 848,
28 865 (2014). Indeed, the Court considers a prosecutor’s comments in context, and will not

1 lightly overturn a criminal conviction “on the basis of a prosecutor's comments standing
2 alone.” Leonard v. State, 117 Nev. 53, 81, 17 P.3d 397, 414 (2001) (citing United States v.
3 Young, 470 U.S. 1, 11, 105 S. Ct. 1038 (1985)). Normally, the defendant must show that an
4 error was prejudicial in order to establish that it affected substantial rights. Gallego v. State,
5 117 Nev. 348, 365 (2001).

6 With respect to the second step, the Court will not reverse if the misconduct was
7 harmless error. Valdez, 124 Nev. at 1188. The proper standard of harmless-error review
8 depends on whether the prosecutorial misconduct is of a constitutional dimension. Id. at 1188-
9 89. Misconduct may be constitutional if a prosecutor comments on the exercise of a
10 constitutional right, or the misconduct “so infected the trial with unfairness as to make the
11 resulting conviction a denial of due process.” Id. 124 Nev. at 1189 (quoting Darden v.
12 Wainright, 477 U.S. 168, 181 (1986)). When the misconduct is of constitutional dimension,
13 the Court will reverse unless the State demonstrates that the error did not contribute to the
14 verdict. Id. 124 Nev. at 1189. When the misconduct is not of constitutional dimension, the
15 Court “will reverse only if the error substantially affects the jury’s verdict.” Id.

16 NRS 175.211(1) provides the definition of “reasonable doubt”:

17 A reasonable doubt is one based on reason. It is not mere possible doubt . . .

18 Doubt to be reasonable must be actual, not mere possibility or speculation.

19 “The concept of reasonable doubt is inherently qualitative. Any attempt to quantify it may
20 impermissibly lower the prosecution's burden of proof, and is likely to confuse rather than
21 clarify.” McCullough v. State, 99 Nev. 72, 75, 657 P.2d 1157, 1159 (1983). The Court further
22 cautioned against an attempt to quantify, supplement, or clarify the statutorily prescribed
23 reasonable doubt standard, explaining that when combined with the use of a disapproved
24 reasonable doubt instruction, this may constitute reversible error. Holmes v. State, 114 Nev.
25 1357, 1365-66, 972 P.2d 337, 342-43 (1998).

26 During the State’s Closing Argument, the State argued that

27 If [Petitioner’s] guilty of one, he’s guilty of all in the sense of proof
28 that it is him in identity; not saying that we have necessarily met all of the

1 elements. We're going to discuss that separately – consider each of the
2 charge separately.

3 But, if we've proven beyond a reasonable doubt that he committed
4 one of them then it must be his identity as to all of them.

5 Jury Trial Day 3, 166.

6 Despite Petitioner's argument to the contrary, the State's comment on reasonable doubt
7 was not improper or prejudicial. Indeed, the jury was properly instructed on reasonable doubt.
8 Jury Instructions filed Nov. 5, 2015, at 8; Jury Trial Day 3, at 154. It is presumed that jurors
9 follow these instructions. Newman v. State, 129 Nev. 222, 237, 298 P.3d 1171, 1182 (2013).
10 Further, the State was not quantifying reasonable doubt, but instead was using the evidence
11 presented to argue that the element of identification as to who committed the crimes was
12 established. In other words, the State did not modify the standard of reasonable doubt. Because
13 the comment was not improper, there would be no need to evaluate the second prong of the
14 prosecutorial misconduct analysis.

15 Accordingly, counsel was not ineffective as any objection would have been futile. See
16 Ennis v. State, 122 Nev. at 706, 137 P.3d at 1103. Regardless, any error cannot establish
17 prejudice to waive the default or ineffective assistance of counsel because the Nevada Court
18 of Appeals found overwhelming evidence of guilt on direct appeal. Bacharach v. State, Docket
19 No. 69677 (Order of Affirmance, November 15, 2016) at 2. Therefore, Petitioner's claim is
20 denied.

21 **III. PETITIONER'S PRO PER CLAIMS ARE DENIED**

22 Petitioner incorporates by reference the claims raised he raised in his *pro per* petition.
23 Petition at 20-22. Not only are his claims below meritless, but also any error could not establish
24 prejudice to waive the default or ineffective assistance of counsel because the Nevada Court
25 of Appeals found overwhelming evidence of guilt on direct appeal. Bacharach v. State, Docket
26 No. 69677 (Order of Affirmance, November 15, 2016) at 2.

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1 **A. The Court did not violate Petitioner’s Sixth Amendment right to a fair trial for**
2 **refusing to grant counsel’s request for mistrial when Nazaroff testified regarding**
3 **the LVMPD Gang Unit**

4 While Petitioner’s response to question twenty-three states he is pursuing an ineffective
5 assistance of counsel, the body of the claim is a substantive claim of judicial error for denying
6 the motion for a mistrial. This claim is governed by the res judicata and law of the case since
7 it was rejected on direct appeal.

8 “The law of a first appeal is law of the case on all subsequent appeals in which the facts
9 are substantially the same.” Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting
10 Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). “The doctrine of the law of the
11 case cannot be avoided by a more detailed and precisely focused argument subsequently made
12 after reflection upon the previous proceedings.” Id. at 316, 535 P.2d at 799. Under the law of
13 the case doctrine, issues previously decided on direct appeal may not be reargued in a habeas
14 petition. Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing McNelton v.
15 State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, this Court cannot
16 overrule the Nevada Supreme Court or Court of Appeals. NEV. CONST. Art. VI § 6.

17 This Court has already once considered and denied Petitioner’s claim of judicial error for
18 denying the motion for mistrial. Re-litigation of this issue is precluded by the doctrine of res
19 judicata. Exec. Mgmt. v. Ticor Titles Ins. Co., 114 Nev. 823, 834, 963 P.2d 465, 473 (1998)
20 (citing Univ. of Nev. v. Tarkanian, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994)). “The
21 doctrine is intended to prevent multiple litigation causing vexation and expense to the parties
22 and wasted judicial resources...” Id.; see also Mason v. State, 206 S.W.3d 869, 875 (Ark.
23 2005) (recognizing the doctrine’s availability in the criminal context); York v. State, 342 S.W.
24 3d 528, 553 (Tex. Crim. App. 2011); Bell v. City of Boise, 993 F.Supp.2d 1237 (D. Idaho
25 2014) (finding res judicata applies in both civil and criminal contexts).

26 Petitioner argued in his direct appeal that the district court erred in denying his motion
27 for mistrial following a witness’ statement that she spoke with police officers in the gang unit.
28 Bacharach v. State, Docket No. 69677 (Order of Affirmance, November 15, 2016) at 2. The

1 Nevada Supreme Court found that Petitioner failed to demonstrate the denial of his motion for
2 mistrial amounted to an abuse of discretion. Id. Furthermore, the Court explained even
3 assuming that the district court did commit error, the error was harmless beyond a reasonable
4 doubt because there was strong evidence of his guilt presented at trial. Id.

5 Just as he alleges now in his habeas petition, he alleged in his direct appeal that he was
6 denied a fair trial and his due process rights due to the district court's denial of his Motion for
7 Mistrial. *Compare* Petition at 8 with Bacharach, Docket No. 69677 (Order of Affirmance,
8 November 15, 2016) at 2. On the basis of this Court not granting his Motion for Mistrial,
9 Petitioner argued (and continues to argue) judicial error. Id. In its Order of Affirmance the
10 Nevada Supreme Court explained that although the State had asked the mother of Petitioner's
11 children if she had previously engaged in a discussion with police officers regarding Petitioner
12 with the "gang unit," the mistrial was properly denied because the "statement was quick, the
13 parties did not highlight it, and the parties did not talk about it further." Id. Because the Nevada
14 Supreme Court has already once considered Petitioner's mistrial claim, the Court finds that re-
15 litigation of the issue is barred under the doctrine of res judicata.

16 To the extent that the Court reviews for ineffectiveness, Petitioner cannot establish
17 prejudice because the Nevada Supreme Court found that even if the mistrial was
18 inappropriately denied Petitioner did not suffer prejudice. Id. at 3. This finding precludes a
19 finding of prejudice for ineffective assistance of counsel purposes. See Gordon v. United
20 States, 518 F.3d 1291, 1300 (11th Cir. 2008) ("It is true that the 'substantial rights' standard
21 of plain error review is identical to the 'prejudice' standard of an ineffective assistance
22 claim."). Therefore, Petitioner's claim is denied.

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1 **B. The Court did not violate Petitioner’s Sixth Amendment right to a fair trial by not**
2 **permitting counsel to cross-examine the LVMPD officer about the body camera**
3 **video**

4 Although Petitioner’s response to question twenty-three, ground two, states he is
5 pursuing ineffective assistance of counsel claim, the body of the claim is a claim of judicial
6 error for denying cross-examination of “the victims/officers body camera.” Petition at 9.

7 This claim of judicial error is waived due to Petitioner’s failure to raise it on direct appeal.
8 NRS 34.724(2)(a); NRS 34.810(1)(b)(2); Evans, 117 Nev. at 646-47, 29 P.3d at 523; Franklin,
9 110 Nev. at 752, 877 P.2d at 1059, disapproved on other grounds, Thomas v. State, 115 Nev.
10 148, 979 P.2d 222 (1999). Petitioner cannot demonstrate good cause and prejudice to ignore
11 his procedural default because his claim looks to be nothing more than a naked allegation
12 suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

13 Petitioner did not object to the introduction of Officer McNabb’s body camera footage at
14 trial. Jury Trial Day 2, at 34. Petitioner’s counsel cross-examined Officer McNabb whose body
15 camera video was shown to the jury. Jury Trial Day 2, at 71. During cross-examination the
16 following exchange occurred:

17 Q: Okay. With respect to the body camera, back in 2014 you had
18 indicated you had only had only had it for about seven or eight
19 months, is that correct?

20 A: Seven or eight weeks.

21 Q: Weeks, I’m sorry. Seven or eight weeks./ [sic] And you had
22 indicated on direct that you turned it on and turned it off as you
23 were making stops or you were approaching scenes. Were you
24 given any training as to when you should use that discretion?

25 A: I wasn’t actually provided any training, no.

26 Q: Okay. So you were just given a body camera?

27 A: Yes

28 ...

 Q: Okay. So at the time on this day, it was discretionary as to
 when you turned on the body camera, is that correct?

 A: No. It was still – it was clear from – if I recall correctly that
 you turn it on for calls for service – you know, as you’re arriving
 on a call of service or a vehicle stop, a person stop, you turn it on
 as you’re initiating those.

1 Q: When you were investigating the abandoned Honda, did you
2 turn on the body camera as part of that investigation?

3 A: I don't remember.

4 Jury Trial Day 2, at 71-72.

5 Petitioner also cross-examined David Wagner whose home surveillance system filmed the
6 civilian video presented to the jury. Jury Trial Day 1, at 253. Petitioner did not object to the
7 introduction of the civilian video. Jury Trial Day 1, at 248. Wagner explained that he gave law
8 enforcement the video his surveillance system had captured and that he had the system for the
9 sole purpose of catching the perpetrators that were committing crimes in the neighborhood.
10 Jury Trial Day 1, at 256-57. Therefore, Petitioner's claim that he was not permitted to cross-
11 examine the State's presentation of video is nothing more than a bare and naked claim.
12 Hargrove, 100 Nev. at 502, 686 P.2d at 225. Accordingly, this claim is denied because it lacks
support of the record.

13 **C. Counsel was not ineffective for failing to "suppress or impeach" a witness who**
14 **presented conflicting statements at trial**

15 Petitioner claims that counsel was ineffective due to her failure to move to suppress or
16 impeach witnesses offering conflicting statements identifying Petitioner at trial. Petition at 10.

17 "[T]he purpose of the effective assistance guarantee of the Sixth Amendment is not to
18 improve the quality of legal representation...[but] simply to ensure that criminal defendants
19 receive a fair trial." Cullen v. Pinholster, 563 U.S. 170, 189, 131 S.Ct. 1388, 1403 (2012)
20 (internal quotation marks and citation omitted); see also Jackson v. Warden, Nev. State Prison,
21 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) ("Effective counsel does not mean errorless
22 counsel."). Under this test, the defendant must show first, that his counsel's representation fell
23 below an objective standard of reasonableness, and second, but for counsel's errors, there is a
24 reasonable probability that the result of the proceedings would have been different. Strickland,
25 466 U.S. at 687-688, 694, 104 S.Ct. at 2065, 2068. This Court need not consider both prongs,
26 however if a defendant makes an insufficient showing on either one. Molina, 120 Nev. at 190,
27 87 P.3d at 537.

1 “The benchmark for judging any claim of ineffectiveness must be whether counsel’s
2 conduct so undermined the proper functioning of the adversarial process that the trial cannot
3 be relied on as having produced a just result.” Strickland, 466 U.S. at 686, 104 S.Ct. at 2052.
4 Indeed, the question is whether an attorney’s representations amounted to incompetence under
5 prevailing professional norms, “not whether it deviated from best practices or most common
6 custom.” Harrington v. Richter, 562 U.S. 86, 105, 131 S.Ct. 770, 788 (2011); see also
7 Strickland, 466 U.S. at 689, 104 S.Ct. at 2065 (“There are countless ways to provide effective
8 assistance in any given case. Even the best criminal defense attorneys would not defend a
9 particular client in the same way.”). Accordingly, the role of a court in considering alleged
10 ineffective assistance of counsel is “not to pass upon the merits of the action not taken but to
11 determine whether, under the particular facts and circumstances of the case, trial counsel failed
12 to render reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708,
13 711 (1978). In doing so, courts begin with the presumption of effectiveness and the defendant
14 bears the burden of proving, by a preponderance of the evidence, that counsel was ineffective.
15 Means v. State, 120 Nev. 1001, 1011-1012, 103 P.3d 25, 32-33 (2004) (holding “that a habeas
16 corpus petitioner must prove the disputed factual allegations underlying his ineffective-
17 assistance claim by a preponderance of the evidence.”). This analysis does not indicate that
18 the court should “second guess reasoned choices between trial tactics,” Donovan, 94 Nev. at
19 675, 584 P.2d at 711, but rather, the court must determine whether counsel made a “sufficient
20 inquiry into the information...pertinent to his client’s case.” Doleman v. State, 112 Nev. 843,
21 846, 921 P.2d 278, 280 (1996).

22 Further, even if counsel’s performance was deficient, “it is not enough to show that the
23 errors had some conceivable effect on the outcome of the proceeding.” Harrington, 562 U.S.
24 at 104, 131 S.Ct. at 787 (quotations and citations omitted). Instead, the defendant must
25 demonstrate that but for counsel’s incompetence the results of the proceeding would have been
26 different:

27 In assessing prejudice under Strickland, the question is not
28 whether a court can be certain counsel’s performance had no effect

1 on the outcome or whether it is possible a reasonable doubt might
2 have been established if counsel acted differently. Instead,
3 Strickland asks whether it is reasonably likely the results would
4 have been different. This does not require a showing that counsel's
5 actions more likely than not altered the outcome, but the difference
6 between Strickland's prejudice standard and a more-probable-
than-not standard is slight and matters only in the rarest case. The
likelihood of a different result must be substantial, not just
conceivable.

7 Id. at 111-112, 131 S.Ct. at 791-792 (internal quotation marks and citations omitted). All told,
8 "[s]urmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S.
9 356, 371, 130 S.Ct. 1473, 1485 (2010).

10 Petitioner cannot demonstrate deficient performance since conflicting statements are
11 insufficient to suppress. See, Origel-Candid v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380
12 (1998) ("it is the jury's function, not that of the court, to assess the weight of the evidence and
13 determine the credibility of the witnesses"); Culverson v. State, 95 Nev. 433, 435, 596 P.2d
14 220, 221 (1979) (it is the function of the jury to weigh the credibility of the identifying
15 witnesses); Azbill v. State, 88 Nev. 240, 252, 495 P.2d 1064, 1072 (1972), cert. denied, 429
16 U.S. 895, 97 S.Ct. 257 (1976) (In all criminal proceedings, the weight and sufficiency of the
17 evidence are questions for the jury; its verdict will not be disturbed if there is evidence to
18 support it and the evidence will not be weighed by an Appellate Court).

19 The record does not support the claim that Counsel failed to impeach. Counsel impeached
20 the witness's identification of Petitioner at trial. At trial, Jose Chavez, Norayma Gonzales, and
21 Officer Ryan McNabb all identified Petitioner as the gunman. Jury Trial Day 1, at 166, 193;
22 Jury Trial Day 2, at 49. Counsel cross-examined each of these witnesses. Jury Trial Day 1,
23 173, 195; Jury Trial Day 2, at 51.

24 During cross-examination of Norayma Gonzales the following questions were presented
25 to attack the credibility of her identification of Petitioner:

26 Q: Okay. And this was in the middle of the night or this is around
27 10:30 at night, is that correct?

28 A: Correct.

1 Q: And so this area is dark except for like this traffic light here and
2 this traffic light here, is that correct?

3 A: That is correct.

4 Q: Okay. Your apartment complex, it doesn't appear it's – has it's
5 [sic] own like street light, is that correct?

6 A: That is correct.

7 Q: Okay. So it's pretty dark in here as well?

8 A: Regardless of the light that's outside, yes.

9 Jury Trial Day 1, at 174.

10 During cross-examination of Jose Chavez counsel also asked questions to attack the
11 credibility of his observations of Petitioner:

12 Q: And you said it was dark out?

13 A: Dark.

14 Q: And you indicated that you couldn't see the person's face, you
15 could only see shadows?

16 A: Shadow.

17 Jury Trial Day 1, at 196.

18 When counsel cross-examined Officer McNabb she elicited the following testimony that
19 called into question his identification of Petitioner:

20 Q: Okay. And you recall that multiple times that you indicated that
21 you couldn't really get a good look at the individual. You just
22 knew they were heavy-set and wearing a white t-shirt, is that
23 correct?

24 A: No. I got a good look at him at the corner.

25 Q: Okay. Do you remember hearing on the body camera video that
26 you said that you didn't get a good look at him and that you just a
27 white shirt [sic]?

28 A: I remember giving out his – hearing that I gave out his
description and then a white shirt – I think I may have said I didn't
get a good look at him. That's like from beginning to end. But I
definitely saw him pointing a gun at me, at the corner under the
light, and I recognize him here today.

Jury Trial Day 2, at 67.

During closing argument counsel argued the flaws and inconsistencies with the
eyewitness testimony to create doubt:

1 I think that it's important to corroborate human testimony and
2 human observance. You saw right away that humans are human.
3 They are nervous, they are excited, there's adrenaline rushing, and
4 especially in a circumstance like this there is excitement, there's
5 lots of things that could cloud your member or your perception of
6 an event.

7 Jury Trial Day 3, at 188.

8 Counsel also attacked the eyewitness testimony identifying Petitioner as the gunman
9 during closing argument when she said:

10 But obviously that was the testimony and that was the perception
11 of those individuals that said they were watching that. Were they
12 lying? No, I don't think that they intentionally lying or
13 intentionally being misleading [sic]. But that's just the nature of
14 being human beings I think is that sometimes we're fallible to, you
15 know, the excitement, the adrenaline, the fear, the excitement of a
16 circumstance or a situation that we find our self in.

17 Id. at 189-90.

18 Finally, Petitioner cannot prove that he was prejudiced in any way. Based upon the
19 record presented it is clear that counsel zealously advocated for her client and called into
20 question the perceptions of the State's witnesses. Moreover, the Nevada Supreme Court
21 concluded that the State presented strong evidence to demonstrate Petitioner's guilt at trial.
22 Bacharach v. State, Docket No. 69677 (Order of Affirmance, November 15, 2016) at 2.
23 Therefore, Petitioner's claim is denied.

24 **D. The Court did not violate Petitioner's rights by admitting an alleged "tainted" and**
25 **"unreliable" in-court identification**

26 Although Petitioner's response to question twenty-three states he is pursuing ineffective
27 assistance of counsel claim, the body of the claim is a substantive claim of judicial error for
28 admitting suggestive and tainted identification testimony. Petition at 11.

This claim of judicial error is waived due to Petitioner's failure to raise it on direct
appeal. NRS 34.724(2)(a); NRS 34.810(1)(b)(2); Evans, 117 Nev. at 646-47, 29 P.3d at 523;

1 Franklin, 110 Nev. at 752, 877 P.2d at 1059. Petitioner cannot demonstrate good cause and
2 prejudice to ignore his procedural default because his claim looks to be nothing more than a
3 naked allegation suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at
4 225.

5 Petitioner does not indicate how the identifications were suggestive and tainted.
6 Further, Petitioner cannot demonstrate prejudice to ignore his procedural defaults because the
7 Nevada Supreme Court found that his conviction was supported by strong evidence.
8 Bacharach, Case No. 69677 (Order of Affirmance November 15, 2016) at 2-3.

9 An officer testified that he saw Petitioner shooting and driving in a dangerous manner.
10 Id. Multiple other eyewitnesses from the neighborhood observed a person matching
11 Petitioner's physical characteristic shooting at the officer and hiding his bulletproof vest and
12 firearm. Id. Moreover, DNA evidence was discovered in the vehicle Petitioner was driving
13 and his thumbprint was matched to the firearm he was carrying. Id. Therefore, because there
14 is nothing to support Petitioner's claim, his claim is denied.

15 **IV. CUMULATIVE ERROR DOES NOT APPLY**

16 The Nevada Supreme Court has not endorsed application of its direct appeal cumulative
17 error standard to the post-conviction Strickland context. McConnell v. State, 125 Nev. 243,
18 259, 212 P.3d 307, 318 (2009). Nor should cumulative error apply on post-conviction review.
19 Middleton v. Roper, 455 F.3d 838, 851 (8th Cir. 2006), cert. denied, 549 U.S. 1134, 1275 S.
20 Ct. 980 (2007) ("a habeas petitioner cannot build a showing of prejudice on series of errors,
21 none of which would by itself meet the prejudice test").

22 Nevertheless, even where available a cumulative error finding in the context of a
23 Strickland claim is extraordinarily rare and requires an extensive aggregation of errors. See,
24 e.g., Harris By and through Ramseyer v. Wood, 64 F.3d 1432, 1438 (9th Cir. 1995). In fact,
25 logic dictates that there can be no cumulative error where the defendant fails to demonstrate
26 any single violation of Strickland. See Turner v. Quarterman, 481 F.3d 292, 301 (5th Cir.
27 2007) ("where individual allegations of error are not of constitutional stature or are not errors,
28 there is 'nothing to cumulate.'") (quoting Yohey v. Collins, 985 F.2d 222, 229 (5th Cir. 1993));

1 Hughes v. Epps, 694 F.Supp.2d 533, 563 (N.D. Miss. 2010) (citing Leal v. Dretke, 428 F.3d
2 543, 552-53 (5th Cir. 2005)). Even if cumulative error was applicable, because Petitioner has
3 not demonstrated any claim that warrants relief under Strickland, there is nothing to cumulate.
4 Therefore, Petitioner's cumulative error claim is denied.

5 Petitioner fails to demonstrate cumulative error sufficient to warrant reversal. In
6 addressing a claim of cumulative error, the relevant factors are: 1) whether the issue of guilt
7 is close; 2) the quantity and character of the error; and 3) the gravity of the crime charged.
8 Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 854-5 (2000). The issue of guilt was not close
9 as the evidence against Petitioner was overwhelming. Indeed, there was sufficient evidence
10 presented at trial to connect him to the charges for which he was convicted, as the Nevada
11 Supreme Court indicated in its Order of Affirmance,

12 Moreover, even assuming the district court committed error, the error was
13 harmless beyond a reasonable doubt because there was strong evidence of
14 his guilty presented at trial.

15 Bacharach v. State, Docket No. 69677 (Order of Affirmance, November 15, 2016) at 2. In
16 other words, any error could not establish prejudice to waive the default or ineffective
17 assistance of counsel since the Nevada Court of Appeals found overwhelming evidence on
18 direct appeal. Therefore, his claim of cumulative error is denied.

19 **V. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

20 NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

- 21 1. The judge or justice, upon review of the return, answer and all
22 supporting documents which are filed, shall determine whether
23 an evidentiary hearing is required. A petitioner must not be
24 discharged or committed to the custody of a person other than the
25 respondent *unless an evidentiary hearing is held*.
- 26 2. If the judge or justice determines that the petitioner is not
27 entitled to relief and an evidentiary hearing is not required, he
28 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.

1 (emphasis added).

2 The Nevada Supreme Court has held that if a petition can be resolved without
3 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
4 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A
5 defendant is entitled to an evidentiary hearing if her petition is supported by specific factual
6 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled
7 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100
8 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that “[a] defendant seeking post-conviction
9 relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the
10 record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it
11 existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It
12 is improper to hold an evidentiary hearing simply to make a complete record. See State v.
13 Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district
14 court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make
15 as complete a record as possible.’ This is an incorrect basis for an evidentiary hearing.”).

16 Further, the United States Supreme Court has held that an evidentiary hearing is not
17 required simply because counsel’s actions are challenged as being unreasonable strategic
18 decisions. Harrington v. Richter, 131 S.Ct. 770, 788 (2011). Although courts may not indulge
19 post hoc rationalization for counsel’s decision-making that contradicts the available evidence
20 of counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis
21 for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain
22 issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (citing
23 Yarborough v. Gentry, 540 U.S. 1, 124 S.Ct. 1 (2003)). Strickland calls for an inquiry in the
24 *objective* reasonableness of counsel’s performance, not counsel’s *subjective* state of mind. 466
25 U.S. 668, 688, 104 S.Ct. 2052, 2065 (1994).

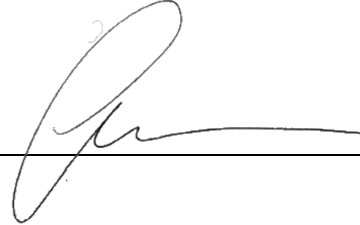
26 The instant Petition does not require an evidentiary hearing. An expansion of the record
27 is unnecessary because Petitioner has failed to assert any meritorious claims and the Petition
28

1 can be disposed of with the existing record. Marshall, 110 Nev. at 1331, 885 P.2d at 605;
2 Mann, 118 Nev. at 356, 46 P.3d at 1231. Therefore, Petitioner's request is denied.

3 **ORDER**

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

Dated this 5th day of May, 2021

6
7
8 

EC

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

D89 E55 7311 4409
Cristina D. Silva
District Court Judge

11 BY /s/ KAREN MISHLER
12 KAREN MISHLER
13 Chief Deputy District Attorney
Nevada Bar #013730

14
jb 15 BY /s/ James Oronoz
16 JAMES ORONoz
17 Nevada Bar #006769
1050 Indigo Drive, Suite 120
18 Las Vegas, NV 89145
Attorney for Petitioner

1 CERTIFICATE OF ELECTRONIC TRANSMISSION

2 I hereby certify that service of the above and foregoing was made this ____ day of May,
3 2021, by electronic transmission to:

4 JAMES ORONoz
5 jim@oronozlawyers.com

6 BY /s/ E. Del Padre
7 E. DEL PADRE
8 Secretary for the District Attorney's Office

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28 KM/bg/ed/GCU

From: [Jim Oronoz](#)
To: [Brittni Griffith](#)
Cc: [Estee DelPadre](#); tom@oronozlawyers.com; [Jennifer Garcia](#); [Karen Mishler](#); [Alicia Oronoz](#)
Subject: Re: C299425- Joshua Bacharach FOF (Dept. 9 GCU)
Date: Thursday, April 29, 2021 2:27:23 PM
Attachments: [Bacharach, Joshua Minutes April 5, 2021.pdf](#)

CAUTION: This email originated from an **External Source**. Please **use caution** before opening attachments, clicking links, or responding to this email. **Do not sign-in with your DA account credentials.**

Go ahead and submit. It looks fine. Thanks.

Sent from my iPad

On Apr 26, 2021, at 4:03 PM, Brittni Griffith
<Brittni.Griffith@clarkcountyda.com> wrote:

Good afternoon,

We used the Court's Minutes from the 4/5/21 Hearing. I have attached a copy of the Minutes to this email.

Thank you,

Brittni Griffith

Law Clerk

Clark County District Attorney's Office

T: (702) 671-2746

E: brittni.griffith@clarkcountyda.com

From: Jim Oronoz <jim@oronozlawyers.com>

Sent: Monday, April 26, 2021 3:57 PM

To: Estee DelPadre <Estee.DelPadre@clarkcountyda.com>

Cc: Brittni Griffith <Brittni.Griffith@clarkcountyda.com>; tom@oronozlawyers.com;
Jennifer Garcia <Jennifer.Garcia@clarkcountyda.com>; Karen Mishler
<Karen.Mishler@clarkcountyda.com>; Alicia Oronoz <alicia@oronozlawyers.com>

Subject: Re: C299425- Joshua Bacharach FOF (Dept. 9 GCU)

CAUTION: This email originated from an **External Source**. Please **use caution** before opening attachments, clicking links, or responding to this email. **Do not sign-in with your DA account credentials.**

We need a copy of the transcript to review. Can you send us a copy of the transcript you used to put this together? Once, we get that it should be relatively fast.

On Fri, Apr 23, 2021 at 3:43 PM Estee DelPadre <Estee.DelPadre@clarkcountyda.com> wrote:

Hello,

Mr. Oronoz and Mr. Ericsson

Please see the attached Findings of Facts for your client Mr. Joshua Bacharach

Please review, after reviewing please sign and send back so I can send to the Judge for her signature.

Thank you

Estee Del Padre
Legal Office Services Supervisor | Criminal Division |
GCU/HIDTA/GJ
CLARK COUNTY DISTRICT ATTORNEY |
301 E. CLARK, Las Vegas, Nevada 89101
telephone (702) 671-2843 | facsimile (702) 383-8465
estee.delpadre@clarkcountyda.com



From: Brittnei Griffith <Brittnei.Griffith@clarkcountyda.com>

Sent: Friday, April 23, 2021 11:04 AM

To: Estee DelPadre <Estee.DelPadre@clarkcountyda.com>; Laura Mullinax <Laura.Mullinax@clarkcountyda.com>

Cc: Jennifer Garcia <Jennifer.Garcia@clarkcountyda.com>; Karen Mishler <Karen.Mishler@clarkcountyda.com>

Subject: C299425- Joshua Bacharach FOF (Dept. 9 GCU)

Good morning,

I have attached the State's FOF for the above case for final formatting and

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 State of Nevada

CASE NO: C-14-299425-1

7 vs

DEPT. NO. Department 9

8 Joshua Bacharach
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 Judgment 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: 5/5/2021

15 James Oronoz

jim@oronozlawyers.com

16 Thomas Ericsson

tom@oronozlawyers.com

17 Alicia Oronoz

alicia@oronozlawyers.com

18 Alicia Oronoz

alicia@oronozlawyers.com

19 Jonathan Vanboskerck

jonathan.vanboskerck@clarkcountyda.com

20 District Attorney

pdmotions@clarkcountyda.com

21 Jan Ellison

jan@oronozlawyers.com

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 16, 2014

C-14-299425-1 State of Nevada
 vs
 Joshua Bacharach

July 16, 2014 11:45 AM Grand Jury Indictment

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 03F

COURT CLERK: Sylvia Perry

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT: State of Nevada Plaintiff
 Thomson, Megan Attorney

JOURNAL ENTRIES

- Chris Datzner, Grand Jury Foreperson, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. State presented Grand Jury Case Number 14AGJ025X to the Court. COURT ORDERED, the Indictment may be filed and is assigned Case Number C-14-299425-1, Department 8. Ms. Thomson requested a warrant and argued bail. COURT ORDERED, a NO BAIL BENCH WARRANT WILL ISSUE. FURTHER, exhibit(s) 1-25 lodged with the Clerk of District Court, exhibit 19 was withdrawn by the DA. Matter SET for Arraignment.

B.W.

7/28/14 8:00 AM INITIAL ARRAIGNMENT (DEPT. 8)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 28, 2014

C-14-299425-1 State of Nevada
vs
Joshua Bacharach

July 28, 2014 8:00 AM All Pending Motions

HEARD BY: Smith, Douglas E.

COURTROOM: RJC Courtroom 16D

COURT CLERK: Louisa Garcia

RECORDER: Sandra Pruchnic

REPORTER:

PARTIES

PRESENT:	Bacharach, Joshua W	Defendant
	Christensen, Nell E.	Attorney
		Attorney
	Lay, D. Matthew	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- State advised they filed an indictment and through their research they discovered the public defender represented two of their witnesses which were subpoenaed through the grand jury; therefore, the Court may have to appoint counsel in this case. DEFT. BACHARACH ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial. Matter trailed and recalled with Mr. Lay present on behalf of Ms. Nguyen. Court invoked on behalf of the Defendant with the understanding the matter may be waived after Defendant speaks with Ms. Nguyen.

CUSTODY

8/27/14 8:00 AM CALENDAR CALL

9/2/14 9:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 11, 2014

C-14-299425-1 State of Nevada
 vs
 Joshua Bacharach

August 11, 2014 8:00 AM Request

HEARD BY: Smith, Douglas E.

COURTROOM: RJC Courtroom 16D

COURT CLERK: Athena Trujillo

RECORDER: Jill Jacoby

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Megan Thomson, Deputy District Attorney, present for the State of Nevada.
Rochelle Nguyen, Esq., present on behalf of Defendant Bacharach.
Defendant Bacharach not present.

Ms. Nguyen advised the Defendant was not transported and requested a continuance for the Defendant to be present. COURT ORDERED, matter CONTINUED.

CUSTODY (COC - NDC)

CONTINUED TO: 08/18/14 8:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 18, 2014

C-14-299425-1 State of Nevada
vs
Joshua Bacharach

August 18, 2014 8:00 AM Request

HEARD BY: Smith, Douglas E.

COURTROOM: RJC Courtroom 16D

COURT CLERK: Louisa Garcia

RECORDER: Jill Jacoby

REPORTER:

PARTIES

PRESENT:	Bacharach, Joshua W	Defendant
	Nguyen, Rochelle T.	Attorney
	State of Nevada	Plaintiff
	Thomson, Megan	Attorney

JOURNAL ENTRIES

- Ms. Nguyen advised Defendant originally invoked his right to a speedy trial; however, after speaking with him he was willing to waive that right as he understands she can't be ready in that timeframe. Upon Court's inquiry, Defendant WAIVED his right to speedy. COURT ORDERED, trial date VACATED and RESET. At the request of Ms. Nguyen, COURT ORDERED, counsel has 21 days from today s date to file a Writ.

CUSTODY (COC-NDC)

4/8/15 8:00 AM CALENDAR CALL

4/13/15 9:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 08, 2015

C-14-299425-1 State of Nevada
 vs
 Joshua Bacharach

April 08, 2015 8:00 AM Calendar Call

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Louisa Garcia

RECORDER: Jill Jacoby

REPORTER:

PARTIES

PRESENT: Bacharach, Joshua W Defendant
 Fattig, John T Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Lance Maningo appeared for Ms. Nguyen on behalf of Defendant.

Mr. Maningo requested a one-week continuance as counsel received new discovery. There being no opposition by State, COURT ORDERED, matter SET for status check to reset the trial date.

CUSTODY (COC-NDC)

4/15/15 8:00 AM STATUS CHECK: RESET TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 15, 2015

C-14-299425-1 State of Nevada
 vs
 Joshua Bacharach

April 15, 2015 8:00 AM Status Check

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Louisa Garcia

RECORDER: Jill Jacoby

REPORTER:

PARTIES

PRESENT:	Bacharach, Joshua W	Defendant
	Fattig, John T	Attorney
	Nguyen, Rochelle T.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- COURT ORDERED, trial date SET. Ms. Nguyen expressed concerns concerning visitation with Defendant at High Desert. Counsel has not been able to reach anyone to make arrangements. Ms. Nguyen will continue to make contact and further requested if the Court would entertain a motion to transport the Defendant to the Detention Center for review of video footage as High Desert does not allow it. Court advised counsel to submit an Order.

CUSTODY (COC-NDC)

10/28/15 8:00 AM CALENDAR CALL

11/2/15 9:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 28, 2015

C-14-299425-1 State of Nevada
 vs
 Joshua Bacharach

October 28, 2015 8:00 AM Calendar Call

HEARD BY: Smith, Douglas E.

COURTROOM: RJC Courtroom 11B

COURT CLERK: Tena Jolley

RECORDER: Jill Jacoby

REPORTER:

PARTIES

PRESENT:	Bacharach, Joshua W	Defendant
	Fattig, John T	Attorney
	Nguyen, Rochelle T.	Attorney
	State of Nevada	Plaintiff
	Thomson, Megan	Attorney

JOURNAL ENTRIES

- Follow a BENCH CONFERENCE, COURT ORDERED, Defendant to remain at the Clark County Detention Center (CCDC) and matter SET for Status Check re possible negotiations. Mr. Fattig stated all offers will be revoked if Defendant does not accept the plea negotiations tomorrow.

CUSTODY (COC-NDC)

10/29/15 9:00 AM STATUS CHECK: NEGOTIATIONS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****October 29, 2015**

C-14-299425-1 State of Nevada
vs
Joshua Bacharach

October 29, 2015**9:00 AM****Status Check****Status Check:
Negotiations****HEARD BY:** Smith, Douglas E.**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** Tena Jolley**RECORDER:** Jill Jacoby**REPORTER:****PARTIES**

PRESENT:	Bacharach, Joshua W	Defendant
	Nguyen, Rochelle T.	Attorney
	State of Nevada	Plaintiff
	Thomson, Megan	Attorney

JOURNAL ENTRIES

- Ms. Nguyen stated an offer was extended to Defendant and he was not inclined to accept and they are prepared to move forward with trial. Ms. Thomson stated at this point there is no more offer and will proceed to trial and anticipate one week. Court directed the parties to provide question counsel wishes the Court to ask the jury and be prepared to do their opening statements. COURT ORDERED, Trial to commence on Monday, November 2, 2015, at 9:30 a.m.

CUSTODY (COC-NDC)

11/2/15 9:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 02, 2015

C-14-299425-1 State of Nevada
 vs
 Joshua Bacharach

November 02, 2015 9:30 AM Jury Trial

HEARD BY: Smith, Douglas E.

COURTROOM: RJC Courtroom 11B

COURT CLERK: Tena Jolley

RECORDER: Jill Jacoby

REPORTER:

PARTIES

PRESENT:	Bacharach, Joshua W	Defendant
	Fattig, John T	Attorney
	Nguyen, Rochelle T.	Attorney
	State of Nevada	Plaintiff
	Thomson, Megan	Attorney

JOURNAL ENTRIES

- Amended Indictment FILED IN OPEN COURT.

PROSPECTIVE JURORS PRESENT:

Voir dire conducted. Twelve jurors and two alternates selected and the remaining jurors were thanked and excused.

Jury List FILED IN OPEN COURT.

LUNCH RECESS

OUTSIDE THE PRESENCE OF THE JURY:

Defendant advised of his right not to testify and that he would be asked, after the State rested their case, whether he wished to testify. Ms. Thomson advised she would be calling Eufrosia Nazarov to testify; that she had declined to meet with counsel prior to her testimony; and requested that the

Court admonish the witness. Ms. Nguyen also requested that the witness be admonished from referring to little locos gang, probation, parole or that Defendant was a prior convicted felon. Eufrazia Nazaroff sworn and questioned. COURT ADMONISHED Ms. Nazaroff that she was not to talk about any gang affiliation/moniker and if she violated that admonishment, she would go to jail.

JURY PRESENT:

Jury sworn. Amended Indictment read to the Jury and Defendant's pleas stated thereto. Opening Statements by Mr. Fattig on behalf of the State and Mr. Nguyen on behalf of Defendant. Testimony and exhibits presented. (See Worksheets).

OUTSIDE THE PRESENCE OF THE JURY:

Juror #8 questioned regarding her recognizing one of the witnesses, Maurine Palmer, as an employee of Walgreens where she has shopped and agree not to go to Walgreens during the duration of this trial.

JURY PRESENT:

Testimony and exhibits presented. (See Worksheets). Jury ADMONISHED and EXCUSED for the evening recess.

CUSTODY

CONTINUED TO: 11/3/15 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 03, 2015

C-14-299425-1 State of Nevada
 vs
 Joshua Bacharach

November 03, 2015 9:00 AM Jury Trial

HEARD BY: Smith, Douglas E.

COURTROOM: RJC Courtroom 11B

COURT CLERK: Tena Jolley

RECORDER: Jill Jacoby

REPORTER:

PARTIES

PRESENT:	Bacharach, Joshua W	Defendant
	Fattig, John T	Attorney
	Nguyen, Rochelle T.	Attorney
	State of Nevada	Plaintiff
	Thomson, Megan	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY:

Counsel stipulated to release Juror #11, Dustin Krause, as he is a witness scheduled to testify this morning in a felony jury trial in Department 9; Juror #13, Trevor Yanke will take his spot as Juror #11. Mr. Nguyen stated that during the testimony of Ms. Nazaroff yesterday, she was admonished not to refer to gang or probation and she indicated she spoke with gang detectives during her testimony; therefore counsel made an oral Motion for Mistrial. Mr. Fattig objected stating it was an unsolicited response by her and her statement was factually inaccurate; that it was not gang detectives, it was firearms detectives. Court noted Ms. Nazaroff is an adverse witness to the State; that her comment was quick and not highlighted, therefore COURT ORDERED, Motion for Mistrial, DENIED.

Amended Jury List FILED IN OPEN COURT.

JURY PRESENT:

PRINT DATE: 05/07/2021

Page 11 of 30

Minutes Date: July 16, 2014

Testimony and exhibits presented. (See Worksheets).

OUTSIDE THE PRESENCE OF THE JURY:

Mr. Fattig stated that during the lunch recess, the Clerk and counsel went through and marked proposed exhibits from the police evidence; that there was one item of miscellaneous paperwork from State's Proposed Exhibit 195 (Clark County Detention Center Visitor Registration) that was removed and marked as Court's Exhibit 11.

JURY PRESENT:

Testimony and exhibits presented. (See Worksheets). Jury ADMONISHED and EXCUSED for the evening recess.

OUTSIDE THE PRESENCE OF THE JURY:

Court DIRECTED counsel to be prepared to settle Jury Instructions in the morning.

CUSTODY

CONTINUED TO: 11/4/15 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 04, 2015

C-14-299425-1 State of Nevada
 vs
 Joshua Bacharach

November 04, 2015 9:00 AM Jury Trial

HEARD BY: Smith, Douglas E.

COURTROOM: RJC Courtroom 11B

COURT CLERK: Tena Jolley

RECORDER: Jill Jacoby

REPORTER:

PARTIES

PRESENT:	Bacharach, Joshua W	Defendant
	Fattig, John T	Attorney
	Nguyen, Rochelle T.	Attorney
	State of Nevada	Plaintiff
	Thomson, Megan	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY:

Jury Instructions settled on the record. Objections regarding jail calls put on the record and transcripts of the jail calls marked as Court's exhibits.

JURY PRESENT:

Testimony and exhibits presented. (See Worksheets). State RESTED.

OUTSIDE THE PRESENCE OF THE JURY:

Defendant advised of his right not to testify.

JURY PRESENT:

Defendant RESTED. Court instructed the Jury. Closing statements by Ms. Thomsen and Ms. Nguyen. Rebuttal by Mr. Fattig. Court thanked and excused the alternate juror. Jury ADMONISHED and EXCUSED for the evening recess, to begin their deliberations in the morning.

Second Amended Jury List FILED IN OPEN COURT.

CUSTODY

11/5/15 9:00 AM JURY DELIBERATION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 05, 2015

C-14-299425-1 State of Nevada
 vs
 Joshua Bacharach

November 05, 2015 9:00 AM Jury Trial

HEARD BY: Smith, Douglas E.

COURTROOM: RJC Courtroom 11B

COURT CLERK: Tena Jolley

RECORDER: Jill Jacoby

REPORTER:

PARTIES

PRESENT:	Bacharach, Joshua W	Defendant
	Fattig, John T	Attorney
	Nguyen, Rochelle T.	Attorney
	State of Nevada	Plaintiff
	Thomson, Megan	Attorney

JOURNAL ENTRIES

- Jury began deliberation at the hour of 9:00 a.m.

At the hour of 4:15 p.m., the Jury returned with the following Verdict:

GUILTY of COUNT 1 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON, GUILTY of COUNTS 2, 4, 6 and 8 - DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE, GUILTY of COUNTS 3, 5, 7 and 11 - ASSAULT WITH A DEADLY WEAPON, GUILTY of COUNT 12 - STOP REQUIRED ON SIGNAL OF POLICE OFFICER, GUILTY of COUNT 13 - RESISTING PUBLIC OFFICER WITH USE OF A FIREARM, GUILTY of COUNT 14 - POSSESSION OF FIREARM WITH ALTERED OR OBLITERATED SERIAL NUMBER, and NOT GUILTY of COUNTS 9 and 10.

Jury polled.

BIFURCATED TRIAL PHASE

OUTSIDE THE PRESENCE OF THE JURY:
Instructions settled on the record.

JURY PRESENT:
Counsel WAIVED Opening Statements. Exhibits presented. (See Worksheet). State RESTED.

OUTSIDE THE PRESENCE OF THE JURY:
Defendant advised of his right not to testify.

JURY PRESENT:
Defendant RESTED. Jury instructed by the Court and retired to deliberate at the hour of 4:25 p.m.

At the hour of 4:37 p.m., the Jury returned with the following Verdict:

GUILTY of COUNTS 15, 16 and 17 - POSSESSION OF FIREARM BY EX-FELON.

Jury polled.
Court thanked and excused the Jury.

COURT ORDERED, Defendant REMANDED WITHOUT BAIL and SET for Sentencing.

CUSTODY

12/30/15 8:00 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****December 30, 2015**

C-14-299425-1 State of Nevada
vs
Joshua Bacharach

December 30, 2015 8:00 AM Sentencing

HEARD BY: Smith, Douglas E.**COURTROOM:** RJC Courtroom 11B

COURT CLERK: Tena Jolley
Jennifer Kimmel

RECORDER: Jill Jacoby**REPORTER:****PARTIES**

PRESENT:	Bacharach, Joshua W	Defendant
	Fattig, John T	Attorney
	Nguyen, Rochelle T.	Attorney
	State of Nevada	Plaintiff
	Thomson, Megan	Attorney

JOURNAL ENTRIES

- DEFT. BACHARACH ADJUDGED GUILTY as to COUNT 1 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), GUILTY of COUNTS 2, 4, 6 and 8 - DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE (F), GUILTY of COUNTS 3, 5, 7 and 11 - ASSAULT WITH A DEADLY WEAPON (F), GUILTY of COUNT 12 - STOP REQUIRED ON SIGNAL OF POLICE OFFICER, GUILTY of COUNT 13 - RESISTING PUBLIC OFFICER WITH USE OF A FIREARM, GUILTY of COUNT 14 - POSSESSION OF FIREARM WITH ALTERED OR OBLITERATED SERIAL NUMBER, and NOT GUILTY as to COUNTS 9 and 10. Matter argued and submitted. Statement by Defendant. COURT ORDERED, DEFENDANT SENTENCED to the Nevada Department of Corrections (NDC) as follows:

As to COUNT 1 - to a MINIMUM of NINETY-SIX (96) MONTHS and a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS, plus a CONSECUTIVE term of a MINIMUM of NINETY-SIX (96) MONTHS and a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS for use of a deadly

weapon;

As to COUNT 2 - to a MINIMUM of SEVENTY-TWO (72) MONTHS and a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS, CONSECUTIVE to COUNT 1, and a \$5,000.00 FINE;

As to COUNT 3 - to a MINIMUM of TWENTY-EIGHT (28) MONTHS and a MAXIMUM of SEVENTY-TWO (72) MONTHS, CONSECUTIVE to COUNTS 1 and 2, and a \$5,000.00 FINE;

As to COUNT 4 - to a MINIMUM of SEVENTY-TWO (72) MONTHS and a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS, CONSECUTIVE to COUNTS 1-3, and a \$5,000.00 FINE;

As to COUNT 5 - to a MINIMUM of TWENTY-EIGHT (28) MONTHS and a MAXIMUM of SEVENTY-TWO (72) MONTHS, CONSECUTIVE to COUNTS 1-4, and a \$5,000.00 FINE;

As to COUNT 6 - to a MINIMUM of SEVENTY-TWO (72) MONTHS and a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS, CONSECUTIVE to COUNTS 1-5, and a \$5,000.00 FINE;

As to COUNT 7 - to a MINIMUM of TWENTY-EIGHT (28) MONTHS and a MAXIMUM of SEVENTY-TWO (72) MONTHS, CONSECUTIVE to COUNTS 1-6, and a \$5,000.00 FINE;

As to COUNT 8 - to a MINIMUM of SEVENTY-TWO (72) MONTHS and a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS, CONSECUTIVE to COUNTS 1-7, and a \$5,000.00 FINE;

As to COUNT 11 - to a MINIMUM of TWENTY-EIGHT (28) MONTHS and a MAXIMUM of SEVENTY-TWO (72) MONTHS, CONSECUTIVE to COUNTS 1-8, and a \$5,000.00 FINE;

As to COUNT 12 - to a MINIMUM of TWENTY-EIGHT (28) MONTHS and a MAXIMUM of SEVENTY-TWO (72) MONTHS, CONSECUTIVE to COUNTS 1-8 and 11, and a \$5,000.00 FINE;

As to COUNT 13 - to a MINIMUM of TWENTY-FOUR (24) MONTHS and a MAXIMUM of SIXTY (60) MONTHS, CONSECUTIVE to COUNTS 1-8 and 11-12, and a \$10,000.00 FINE;

As to COUNT 14 - to a MINIMUM of NINETEEN (19) MONTHS and a MAXIMUM of FORTY-EIGHT (48) MONTHS, CONSECUTIVE to COUNTS 1-8 and 11-13, and a \$5,000.00 FINE;

As to COUNT 15 - to a MINIMUM of TWENTY-EIGHT (28) MONTHS and a MAXIMUM of SEVENTY-TWO (72) MONTHS, CONSECUTIVE to COUNTS 1-8 and 11-14, and a \$5,000.00 FINE;

As to COUNT 16 - to a MINIMUM of TWENTY-EIGHT (28) MONTHS and a MAXIMUM of SEVENTY-TWO (72) MONTHS, CONSECUTIVE to COUNTS 1-8 and 11-15, and a \$5,000.00 FINE;

As to COUNT 17 - to a MINIMUM of TWENTY-EIGHT (28) MONTHS and a MAXIMUM of SEVENTY-TWO (72) MONTHS, CONSECUTIVE to COUNTS 1-8 and 11-16, and a \$5,000.00 FINE;

For an AGGREGATE TOTAL FINE of \$75,000.00, and SENTENCE of a MINIMUM of SEVEN HUNDRED FORTY-SEVEN (747) MONTHS and a MAXIMUM of ONE THOUSAND EIGHT HUNDRED EIGHTY-FOUR (1,884) MONTHS in the Nevada Department of Corrections (NDC), with ZERO (0) DAYS credit for time served.

Ms. Nguyen advised Defendant intends to file a Notice of Appeal.

BOND, if any, EXONERATED.

NDC

CLERK'S NOTE: Pursuant to statute, Defendant is also required to pay a \$25.00 Administrative Assessment fee, a \$150.00 DNA Analysis fee including testing to determine genetic markers, a \$3.00 DNA Collection fee, and a \$250.00 Indigent Defense Civil Assessment fee.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 03, 2018

C-14-299425-1 State of Nevada
 vs
 Joshua Bacharach

January 03, 2018 8:00 AM All Pending Motions

HEARD BY: Smith, Douglas E.

COURTROOM: RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Gina Villani

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- PETITION FOR WRIT OF HABEAS CORPUS . . . DEFT.'S MOTION FOR APPOINTMENT OF COUNSEL

Timothy Fattig, Chf Dep DA, present on behalf of the State and Rochelle Nguyen, Esq., present on behalf of Deft. Bacharach, who is not present. Deft. is incarcerated in the Nevada Department of Corrections (NDC).

This is the time set for hearing on Deft.'s Motion and Petition, which he filed pro se; Ms. Nguyen orally requested to be withdraw from this case; she has already sent the Deft. his entire file and on January 30, 2017, she filed a Certificate of Mailing. COURT ORDERED, Motion GRANTED.

Court noted that Deft. is claiming ineffective assistance of counsel; therefore, COURT ORDERED, the Motion for Appointment of Counsel is GRANTED; this Court will contact the Office of Appointed Counsel and set the matter for a status check.

NDC

01/10/18 8:00 AM STATUS CHECK: APPOINTMENT OF COUNSEL

CLERK'S NOTE: A copy of this minute order was mailed to Joshua Bacharach #090607, Ely State Prison, P.O. Box 1989, Ely, Nevada, 89130.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 10, 2018**

C-14-299425-1 State of Nevada
vs
Joshua Bacharach

January 10, 2018**8:00 AM****Status Check****Appointment of
Counsel****HEARD BY:** Smith, Douglas E.**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** Carol Donahoo**RECORDER:** Gina Villani**REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Vivian Luong, Dep DA, present on behalf of the State; Thomas Ericsson, Esq., appearing on behalf of James Oronoz, Esq., for Deft. Bacharach, who is not present. Deft. is incarcerated in the Nevada Department of Corrections (NDC).

This is the time set for the Status Check on Appointment of Counsel. Mr. Ericsson CONFIRMED as counsel of record for Mr. Oronoz; he requested that the matter be status checked for receipt of the file. COURT SO ORDERED. For the record, the Court noted that counsel represents the Deft. not the Court. If counsel has received the file, a briefing schedule will be set on Deft.'s Petition for Writ of Habeas Corpus regarding his ineffective of counsel claim next date.

NDC

03/14/18 8:00 AM STATUS CHECK: FILE/SET BRIEFING SCHEDULE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 14, 2018**

C-14-299425-1 State of Nevada
vs
Joshua Bacharach

March 14, 2018	8:00 AM	Status Check	Status Check: File/Set Briefing Schedule (Petition for Writ of Habeas Corpus - Ineffective Assistance of Counsel)
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HEARD BY: Smith, Douglas E.**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** April Watkins**RECORDER:** Gina Villani**REPORTER:****PARTIES**

PRESENT:	Chen, Alexander G.	Attorney
	Scarborough, Michael J.	Attorney
	State of Nevada	Plaintiff
	Stewart, Rachael E.	Attorney

JOURNAL ENTRIES

- Ms. Steward advised counsel is still waiting for file and requested forty-five (45) days. COURT ORDERED, the following briefing schedule set: Deft's opening brief due by June 13, 2018, State's Opposition due by September 13, 2018, Deft's reply due by September 27, 2018, and matter SET thereafter for argument. Further, Court stated if file is not received in ninety (90) days, counsel to place matter back on calendar.

NDC

10/10/18 8:00 AM DEFT'S PETITION FOR WRIT OF HABEAS CORPUS...ARGUMENT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 25, 2018

C-14-299425-1 State of Nevada
vs
Joshua Bacharach

June 25, 2018

8:00 AM

Motion

**Deft's Motion to
Place on Calendar to
Extend Time for the
Filing of Petitioner's
Supplemental
Petition for Writ of
Habeas Corpus**

HEARD BY: Smith, Douglas E.

COURTROOM: RJC Courtroom 11B

COURT CLERK: Phyllis Irby

RECORDER: Gina Villani

REPORTER:

PARTIES

PRESENT: Cannizzaro, Nicole J. Attorney
State of Nevada Plaintiff
Stewart, Rachael E. Attorney

JOURNAL ENTRIES

- DEFT NOT PRESENT. Ms. Stewart requested a continuance; advised she recently received discovery from the State. COURT SO ORDERED. The State will have 120 days to Respond which will be due 10/22, Defense Reply will be due 1/21, State's Opposition will be due 2/4. HEARING SET.

NDC

2-07-19 8:00 AM HEARING (DEPT. VIII)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 29, 2018

C-14-299425-1 State of Nevada
 vs
 Joshua Bacharach

October 29, 2018	8:00 AM	Motion	Deft.'s Motion to Place on Calendar to Extend Time for the Filing of Petitioner's Supplemental Petition for Writ of Habeas Corpus (Post- Conviction)
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HEARD BY: Smith, Douglas E.

COURTROOM: RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Gina Villani

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Nicole Cannizzaro, Chf Dep DA, present on behalf of the State; Rachael Stewart, Esq., appearing on behalf of James Oronoz, Esq., for Deft. Bacharach, who is not present. Deft. is incarcerated in the Nevada Department of Corrections (NDC).

This is the time set for hearing on Deft.'s Motion to Place on Calendar to Extend Time for the Filing of Petitioner's Supplemental Petition for Writ of Habeas Corpus (Post-Conviction). Upon Court's inquiry, Ms. Stewart advised that Mr. Oronoz is requesting an additional ninety (90) days; he was unable to get the file from prior counsel and had to reconstruct it. COURT ORDERED, the Motion is GRANTED.

Court set the following briefing schedule:

PRINT DATE: 05/07/2021

Page 25 of 30

Minutes Date: July 16, 2014

02/25/19 - Supplemental Petition

04/29/19 - State's Response

05/06/19 - Reply

COURT ORDERED, matter set for hearing.

NDC

05/13/19 8:00 AM HEARING: DEFT.'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 27, 2019

C-14-299425-1 State of Nevada
 vs
 Joshua Bacharach

February 27, 2019 8:00 AM Minute Order

HEARD BY: Smith, Douglas E.

COURTROOM: RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Gina Villani

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Pursuant to the agreement of the parties, the briefing schedule for Deft.'s Supplement to Petition for Writ of Habeas Corpus is now as follows:

05/27/19 - Supplement to Petition

07/11/19 - State s Return

07/25/19 - Deft.'s Reply

COURT ORDERED, matter set for hearing.

NDC

07/31/19 8:00 AM HEARING: DEFT.'S PETITION FOR WRIT OF HAVEAS CORPUS.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 22, 2019

C-14-299425-1 State of Nevada
 vs
 Joshua Bacharach

August 22, 2019 10:00 AM Minute Order

HEARD BY: Silva, Cristina D. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Alice Jacobson

RECORDER: Gina Villani

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Pursuant to the amended agreement of the parties, the briefing schedule for Deft.'s Supplement to Petition for Writ of Habeas Corpus is now as follows:

11/25/19 - Supplement to Petition

1/9/20 - State s Return

1/23/20 - Deft.'s Reply

Hearing: Deft's Petition for Writ of H.C, 1/29/20 8:30am.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****April 05, 2021**

C-14-299425-1 State of Nevada
vs
Joshua Bacharach

**April 05, 2021 11:00 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Silva, Cristina D.**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** Michaela Tapia**RECORDER:** Gina Villani**REPORTER:****PARTIES**

PRESENT:	State of Nevada	Plaintiff
	Stewart, Rachael E.	Attorney
	Thomson, Megan	Attorney

JOURNAL ENTRIES

- Deft. not present.

Deft's presence WAIVED. Court requested information regarding Detective Jaeger and why the bullet proof vest was necessary. Argument by Ms. Stewart. Argument by the State. COURT FINDS, the petitioner did receive effective assistance of counsel; the testimony regarding bullet proof vests and style effectiveness would be in the arena of expert testimony and was not objected to, nor was the gunshot residue and trajectory; the Court did not find any expert testimony regarding the placement or landings of any cartridge casing as that is common sense testimony. FURTHER, the Court FINDS Detective Jaeger's testimony would not have changed the jury's outcome, as the Nevada Court of Appeals found there was substantial evidence of the Defendant's guilt. ADDITIONALLY, there was no structural error regarding the Court's admonition of Nazaroff testimony; the admonition to the witness was outside the presence of the jury and in contrast to the Webb decision, there was not any pressure for the witness not to testify; the Court rightfully informed the witness if she perjured herself or failed to follow the Court's instruction, she could be held accountable for that. FURTHER, the Court DENIES the claims included in the Pro Per petition. ADDITIONALLY, the Court

DETERMINES the issue regarding the Sixth Amendment was already addressed and rejected by the Nevada Supreme Court. FURTHER, the Court FINDS, there was no judicial error and it was not raised in direct appeal, and therefore WAIVED. ADDITIONALLY, the Court FINDS, there is nothing supporting the fact the Petitioner was prohibited from cross-examination regarding the body camera footage. FURTHER, there is nothing to support the claim there were suggestive or tainted identifications, and without more, the Court would not grant any relief in that regard. ADDITIONALLY, there was no error from the State regarding the reasonable doubt statement in closing arguments. FURTHER, there was no cumulative error and the Nevada Supreme Court has not found there can be an application of cumulative error argument in post-conviction situations. Based on the Court's findings, COURT ORDERED, petition DENIED. State to draft the order within 30 days and to submit to Ms. Stewart for review.

NDC

55

CASE NO. C-14-299425-1
DEPT. NO. VIII
CDDA MEGAN THOMSON (GCU)

Defendant(s): JOSHUA W. BACHARACH, aka, Joshua William Bacharach, #1900105

Case No(s): 14AGJ025X (RANDOMLY TRACKS TO DC III & VIII)

Charge(s): (1) CT - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165 - NOC 50031);
(5) CTS- DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE (Category B Felony - NRS 202.287 - NOC 51445);
(5) CTS - ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471 - NOC 50201);
(1) CTS - STOP REQUIRED ON SIGNAL OF POLICE OFFICER (Category B Felony - NRS 484B.550.3b - NOC 53833);
(1) CT - RESISTING PUBLIC OFFICER WITH USE OF A FIREARM (Category C Felony - NRS 199.280 - NOC 55104);
(1) CT - POSSESSION OF FIREARM WITH ALTERED OR OBLITERATED SERIAL NUMBER (Category D Felony - NRS 202.277 - NOC 51438)
(3) CTS - POSSESSION OF FIREARM BY EX-FELON (Category B Felony - NRS 202.360 - NOC 51460)

Def. Counsel(s): PUBLIC DEFENDER

WARRANT (1 WEEK):
DEFT IS IN CUSTODY @ CCDC (14F10180X - PH 7/17 IN JC 11)

Exhibits:

- | | |
|------------------------|-----------------------|
| 1. Proposed Indictment | 14. Photo |
| 2. Photo | 15. Photo |
| 3. Photo | 16. Photo |
| 4. Photo | 17. Photo |
| 5. Photo | 18. Photo |
| 6. Photo | 19. Withdrawn |
| 7. Photo | 20. Photo |
| 8. Photo | 21. Photo |
| 9. Photo | 22. Certified Docs |
| 10. Photo | 23. Certified Docs |
| 11. Photo | 24. Photos |
| 12. Photo | 25. Jury Instructions |
| 13. Photo | |

Exhibits 1 - 25 are to be lodged with the Clerk of the Court.
Exhibit 19 was withdrawn by the DA

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STATE'S EXHIBITS

CASE NO. C299425

	Date Offered	Objection	Date Admitted
1. Aerial Map (names only)	11-3-15	NO	11-3-15
2. Aerial Map (with locations)	11-3-15	STIP	11-3-15
3. Aerial (Walnut/Lake Mead)	11-4-15	STIP	11-4-15
4. Aerial (Walnut/Judson)	11-4-15	STIP	11-4-15
5. Aerial (Walnut/Carey)	11-2-15	NO	11-2-15
6. Aerial (Walnut/Eastbound Carey)	11-3-15	STIP	11-3-15
7. Aerial (Gateway/Carey)	11-3-15	STIP	11-3-15
8. Aerial (Lincoln/Carey)	11-4-15	STIP	11-4-15
9. Aerial (Lamb/Carey)	11-4-15	STIP	11-4-15
10. Aerial (East of Lamb on Carey)	11-4-15	STIP	11-4-15
11. Aerial (Dolly/Carey - far shot)	11-4-15	STIP	11-4-15
12. Aerial (Dolly/El Tovar/Carey)	11-2-15	STIP	11-2-15
13. Aerial (Dolly/Carey)	11-2-15	STIP	11-2-15
14. Aerial (Dolly/Carey)	11-4-15	STIP	11-4-15
15. Aerial (Dolly/El Tovar/Carey)	11-2-15	STIP	11-2-15
16. Aerial (Dolly/El Tovar)	11-3-15	STIP	11-3-15
17. Aerial (Dolly/El Tovar)	11-3-15	STIP	11-3-15
18. Photo - Walnut/Lake Mead	11-3-15	NO	11-3-15
19. Photo - Car on Walnut/Lake Mead	11-3-15	NO	11-3-15
20. Photo - 2354 North Walnut	11-3-15	STIP	11-3-15
21. Photo - North Walnut (cone in street)	11-3-15	STIP	11-3-15
22. Photo - Cone on Walnut by dumpster	11-3-15	STIP	11-3-15
23. Photo - Casing #1 on Walnut	11-3-15	STIP	11-3-15
24. Photo - Close-up of Casing on Walnut	11-3-15	STIP	11-3-15
25. Photo - Street by 3945 East Carey	11-3-15	STIP	11-3-15
26. Photo - Street by 3945 East Carey	11-3-15	STIP	11-3-15
27. Photo - Street by 3945 East Carey (looking to west)	11-3-15	STIP	11-3-15
28. Photo - Cone for shotgun shell	11-3-15	STIP	11-3-15
29. Photo - Shotgun shell	11-3-15	STIP	11-3-15
30. Photo - Shotgun shell (close-up)	11-3-15	STIP	11-3-15
31. Photo - 3945 East Carey	11-3-15	STIP	11-3-15
32. Photo - Cone in front of Wagon Wheel	11-3-15	STIP	11-3-15
33. Photo - Cone with casing by 3945 East Carey	11-3-15	STIP	11-3-15
34. Photo - Casing #2	11-3-15	STIP	11-3-15
35. Photo - Casing (close-up)	11-3-15	STIP	11-3-15
36. Photo - 4060 East Carey (looking northwest)	11-3-15	STIP	11-3-15
37. Photo - 4060 East Carey (looking at rear of car)	11-3-15	STIP	11-3-15
38. Photo - 4060 East Carey (mailbox)	11-3-15	STIP	11-3-15
39. Photo - 4060 East Carey (looking north at rear of car)	11-3-15	STIP	11-3-15
40. Photo - Cone with casing behind car	11-3-15	STIP	11-3-15
41. Photo - Casing #3	11-3-15	STIP	11-3-15
42. Photo - Casing (close-up)	11-3-15	STIP	11-3-15
43. Photo - Carey/Dolly	11-3-15	NO	11-3-15
44. Photo - Carey/Dolly	11-3-15	STIP	11-3-15
45. Photo - Carey looking south on Dolly	11-3-15	NO	11-3-15
46. Photo - Carey/Dolly	11-3-15	NO	11-3-15

47. Photo - Carey/Dolly (by lightpole)	11-3-15	STIP	11-3-15
48. Photo - Carey/Dolly (looking northwest)	11-3-15	STIP	11-3-15
49. Photo - Carey/Dolly (looking north)	11-3-15	STIP	11-3-15
50. Photo - Front/driver's side Dodge Intrepid	11-3-15	STIP	11-3-15
51. Photo - Rear Dodge Intrepid	11-3-15	STIP	11-3-15
52. Photo - Passenger side Dodge Intrepid	11-3-15	NO	11-3-15
53. Photo - Cartridge #12 by driver's side door	11/3/15	STIP	11/3/15
54. Photo - Cartridge #12	↓	↓	↓
55. Photo - Cartridge #12 (close-up "Speer 45 Auto")	11	11	11
56. Photo - Cartridge #11 by rear of car	↓	↓	↓
57. Photo - Cartridge #11	11/3/15	STIP	11/3/15
58. Photo - Cartridge #11 (close-up "Speer 45 Auto")	11-3-15	STIP	11-3-15
59. Photo - McNabb's Patrol Car	↓	↓	↓
60. Photo - Patrol car with evidence markers 1-4	↓	↓	↓
61. Photo - McNabb's casing #1	↓	↓	↓
62. Photo - McNabb's casing #1 (close-up)	↓	↓	↓
63. Photo - Marker #2 by passenger side patrol car	11	11	11
64. Photo - McNabb's casing #2	↓	↓	↓
65. Photo - McNabb's casing #2 (close-up)	↓	↓	↓
66. Photo - McNabb's #3, #4 casings	↓	↓	↓
67. Photo - McNabb's #3 casing (close-up)	↓	↓	↓
68. Photo - McNabb's #4 casing (close-up)	↓	↓	↓
69. Photo - McNabb's casing #5 (with marker)	↓	↓	↓
70. Photo - McNabb's casing #5 (inside car)	↓	↓	↓
71. Photo - McNabb's casing #5 (close-up)	11-3-15	STIP	11-3-15
72. Photo - Markers 6-9 in street	11-3-15	STIP	11-3-15
73. Photo - Markers 6-8 in street	↓	↓	↓
74. Photo - McNabb's casing #6	↓	↓	↓
75. Photo - McNabb's casing #6 (close-up)	↓	↓	↓
76. Photo - McNabb's casing #7	11	11	11
77. Photo - McNabb's casing #7 (close-up)	↓	↓	↓
78. Photo - McNabb's casing #8	↓	↓	↓
79. Photo - McNabb's casing #8 (close-up)	↓	↓	↓
80. Photo - Marker 9 in street	↓	↓	↓
81. Photo - McNabb's magazine in street	↓	↓	↓
82. Photo - McNabb's magazine (close-up)	11-3-15	STIP	11-3-15
83. Photo - Marker 10 on sidewalk	11-3-15	STIP	11-3-15
84. Photo - Cartridge #10	11-3-15	STIP	11-3-15
85. Photo - Cartridge #10 (close-up "Winchester 45 Auto")	11-3-15	STIP	11-3-15
86. Photo - Position #1 for McNabb	11-3-15	STIP	11-3-15
87. Photo - "Perspective View for McNabb Position 1"	11-3-15	STIP	11-3-15
88. Photo - McNabb's perspective position 1	11-3-15	STIP	11-3-15
89. Photo - McNabb's perspective position 1	11-3-15	NO	11-3-15
90. Photo - Position #2 for McNabb	11-3-15	STIP	11-3-15
91. Photo - McNabb's perspective position 2	11-3-15	STIP	11-3-15
92. Photo - McNabb's perspective position 2	11-3-15	STIP	11-3-15
93. Photo - Bacharach's position	11-3-15	STIP	11-3-15
94. Photo - "Perspective View of Joshua Bacharach"	11-3-15	OBS	11-3-15
95. Photo - Bacharach's perspective (crouched down)	11-3-15	OBS	11-3-15

96. Photo - El Tovar and Dolly	11.3.15	STIP	11.3.15
97. Photo - El Tovar (view to west)	11.3.15	NO	11.3.15
98. Photo - El Tovar (view to southeast)	11.2.15	NO	11.2.15
99. Photo - White truck on El Tovar	11.2.15	NO	11.2.15
100. Photo - Rear of white truck	11.2.15	NO	11.2.15
101. Photo - Front of white truck	11.2.15	NO	11.2.15
102. Photo - Front of truck with gun and vest	11.3.15	STIP	11.3.15
103. Photo - White truck with gun/vest	11.3.15	STIP	11.3.15
104. Photo - Truck with gun/vest	11.3.15	STIP	11.3.15
105. Photo - Close-up of gun/vest	11.3.15	STIP	11.3.15
106. Photo - Close-up of vest	11.3.15	STIP	11.3.15
107. Photo - Bacharach's gun "CP33432" (with magazine)	11.2.15	NO	11.2.15
108. Photo - Bacharach's gun "Colt M1991A1"	11.3.15	STIP	11.3.15
109. Photo - Bacharach's gun (no magazine)	11.3.15	STIP	11.3.15
110. Photo - Bacharach's gun (no magazine)	11.3.15	STIP	11.3.15
111. Photo - Front of 4586 El Tovar	11.3.15	STIP	11.3.15
112. Photo - Back West side 4586 El Tovar (with chair)	11.3.15	STIP	11.3.15
113. Photo - Backyard of 4586 El Tovar	11.3.15	STIP	11.3.15
114. Photo - Backyard patio of 4586 El Tovar	11.3.15	STIP	11.3.15
115. Photo - Backyard of 4586 El Tovar	11.3.15	STIP	11.3.15
116. Photo - Claymar	11.3.15	STIP	11.3.15
117. Photo - 4595 El Tovar	11.2.15	NO	11.2.15
118. Photo - "Citizen View out North wall of Northwest Bedroom"	11.2.15	NO	11.2.15
119. Photo - Perspective of Jose Quezada	11.2.15	NO	11.2.15
120. Photo - "Citizen View out of North wall of Living Room"	11.2.15	NO	11.2.15
121. Photo - Perspective of Ricardo Quezada	11.2.15	NO	11.2.15
122. Photo - 4585 East Carey	11.2.15	NO	11.2.15
123. Photo - Camera at 4585 East Carey	11.2.15	NO	11.2.15
124. Photo - Camera at 4585 East Carey	11.2.15	NO	11.2.15
125. Photo - Dodge with evidence seals	11.2.15	NO	11.2.15
126. Photo - Dodge with evidence seals (passenger side)	11.2.15	NO	11.2.15
127. Photo - Dodge with damage to driver's side (at scene)	11.2.15	NO	11.2.15
128. Photo - Dodge with flat rear passenger tire (at lab)	11.2.15	NO	11.2.15
129. Photo - Front driver seat area	11.3.15	STIP	11.3.15
130. Photo - Front driver floorboard	↓	↓	↓
131. Photo - Rear Seats	↓	↓	↓
132. Photo - Rear Seats	11.3.15	STIP	11.3.15
133. Photo - Rifle with white sheet	11.2.15	NO	11.2.15
134. Photo - Rifle serial #"1983 S-A S4608"	11.3.15	STIP	11.3.15
135. Photo - Rifle markings "Ewbank" "7.62X39"	11.3.15	STIP	11.3.15
136. Photo - Trunk	11.2.15	NO	11.2.15
137. Photo - Contents of trunk laid out	11.2.15	NO	11.2.15
138. Photo - Front passenger seat and floorboard	11.3.15	STIP	11.3.15
139. Photo - Close-up of black bag	11.3.15	STIP	11.3.15
140. Photo - Colt handgun in black bag	11.3.15	STIP	11.3.15
141. Photo - Close-up gun "Colt Automatic Calibre 25"	11.2.15	NO	11.2.15
142. Photo - Close-up of Colt gun with obliterated serial #	11.3.15	STIP	11.3.15
143. Photo - Magazine of Colt .25 with four cartridges	11.3.15	STIP	11.3.15
144. Photo - Magazine for Rifle with ammunition	11.3.15	STIP	11.3.15

145. Photo - Magazine with ammo in it	11-3-15	STIP	11-3-15
146. Photo - Contents of rear seat and rear seat floorboard	↓	↓	↓
147. Photo - Contents of driver's seat and floorboard	↓	↓	↓
148. Photo - Close-up of "US Bank" mail from driver's seat floorboard	»	»	»
149. Photo - Close-up "US Bank" bill in name of Joshua Bacharach	↓	↓	↓
150. Photo - Two cartridges from driver's seat floorboard "Speer 45 Auto"	↓	↓	↓
151. Photo - Contents of front seat floorboard	↓	↓	↓
152. Photo - Contents of glovebox	11-3-15	STIP	11-3-15
153. Photo - DMV registration in "Eufrasia Nazaroff"	11-2-15	NO	11-2-15
154. Photo - Mail in "Susanna Bacharach"	11-3-15	STIP	11-3-15
155. Photo - Mail in "Jordan Nazaroffbachara"	11-3-15	STIP	11-3-15
156. Photo - Driver's side damage with 6 yellow markers	11-3-15	STIP	11-3-15
157. Photo - A zero (close-up)	↓	↓	↓
158. Photo - B zero (close-up)	↓	↓	↓
159. Photo - C zero, C 1, B zero	↓	↓	↓
160. Photo - C 1, C 2, B zero	↓	↓	↓
161. Photo - C zero (close-up)	↓	↓	↓
162. Photo - C 1 (close-up)	»	»	»
163. Photo - C 2 (close-up)	↓	↓	↓
164. Photo - D zero (close-up)	↓	↓	↓
165. Photo - Driver's side damage with yellow rod	↓	↓	↓
166. Photo - Yellow rod (from below)	↓	↓	↓
167. Photo - Yellow rod (from above)	↓	↓	↓
168. Photo - Yellow rod	↓	↓	↓
169. Photo - Yellow rod (from driver's perspective)	↓	↓	↓
170. Photo - Yellow rod (from back to front)	↓	↓	↓
171. Photo - Yellow rod at C 2	11-3-15	STIP	11-3-15
172. Crime Scene Diagram	11-3-15	STIP	11-3-15
173. Crime Scene Diagram (close-up of Carey/Dolly)	11-3-15	STIP	11-3-15
174. Photo - Close-up Item #13 - Magazine from Colt .45	11-3-15	STIP	11-3-15
175. Photo - Fingerprint on Magazine	11-3-15	STIP	11-3-15
176. Photo - Fingerprint on Magazine (close-up)	11-3-15	STIP	11-3-15
177. Photo - Close-up on Item #28 Rifle	11-3-15	STIP	11-3-15
178. Photo - Fingerprint on Rifle	11-3-15	STIP	11-3-15
179. Photo of McNabb	11-3-15	NO	11-3-15
180. Photo of McNabb's gun	11-3-15	NO	11-3-15
181. Photo of McNabb's magazine from gun	11-3-15	NO	11-3-15
182. Photo - Ana Lester's Photos of Colt pistol (obliterated serial #)	11-4-15	STIP	11-4-15
183. Photo - Ana Lester's Photos of Ewbank Rifle	11-4-15	NO	11-4-15
184. DISK: 2 nd 911 Call Norayma Gonzalez	11-2-15	OBS	11-2-15
185. DISK: 1 st 911 Call Marcia Wagner	11-2-15	OBS	11-2-15
186. DISK: Citizen Video	11-2-15	NO	11-2-15
187. DISK: Body Cam	11-3-15	NO	11-3-15
188. evidence envelope containing Cartridge cases 1-8	11-3-15	NO	11-3-15
189. evidence envelope containing bag w/ 7 cartridges & gun magazine	11-3-15	NO	11-3-15
189a. bag containing 7 cartridges	11-3-15	NO	11-3-15
189b. gun magazine	11-3-15	NO	11-3-15
190. evidence envelope containing cartridge cases 10-12	11-3-15	Submit	11-3-15
190a. Ziplock bag containing cartridge cases labeled 10-12	11-3-15	Submit	11-3-15

188a. Ziplock bag containing cartridge cases labeled 1-8

11-3-15 NO 11-3-15

191 - evidence box containing handgun & magazine	11-3-15	NO	11-3-15
191a - handgun	11-3-15	NO	11-3-15
191b - magazine	11-3-15	NO	11-3-15
192 - box containing ballistic vest	11-3-15	NO	11-3-15
192a - ballistic vest	11-3-15	NO	11-3-15
193 - evidence envelope containing cartridges 15-18	11-3-15	NO	11-3-15
193a - ziplock bag containing cartridge cases 15-18	11-3-15	NO	11-3-15
194 - evidence envelope containing swabs	11-3-15	NO	11-3-15
195 - evidence envelope containing paperwork	11-3-15	NO	11-3-15
195a - U.S. bank	11-3-15	NO	11-3-15
195b - CCSO paperwork	11-3-15	NO	11-3-15
196 - evidence envelope containing cartridges 22A & 22B	11-3-15	NO	11-3-15
196a - ziplock bag containing cartridge cases 22A & 22B	11-3-15	NO	11-3-15
197 - evidence envelope	11-3-15	submit	11-3-15
197a - Magazine	11/3/15	submit	11/3/15

State's EXHIBITS

CASE NO. C299425

	Date Offered	Objection	Date Admitted
• 198 - Evidence box containing firearm + magazine	11-3-15	submit	11-3-15
• 198a. Firearm	11-3-15	submit	11-3-15
• 198b. Magazine	11-3-15	submit	11-3-15
• 199 - evidence bag containing 2 bags of cartridges	11-3-15	submit	11-3-15
• 199a. bag containing 30 cartridges	11-3-15	submit	11-3-15
• 199b. bag containing 6 cartridges	11-3-15	submit	11-3-15
• 200 - Evidence box containing rifle	11-3-15	NO	11-3-15
• 200a. Rifle	11-3-15	NO	11-3-15
• 201 - Evidence envelope containing drugs	11-3-15	NO	11-3-15
• 202 - DISK 911 Calls	11-4-15	OBJ	11-4-15
• 203 - Photo - gun on web page	11-4-15	submit	11-4-15
• 204 - Photo - green t-shirt	11-4-15	NO	11-4-15
• 205 - Photo - man's Face	11-4-15	NO	11-4-15
• 206 - Photo - Comprehensive Planning Title 12	11-4-15	STIP	11-4-15
• 207 - Photo - grid map	11-4-15	STIP	11-4-15
• 208 Certified Judgement of Conviction filed 12/10/09	11-5-15	NO	11-5-15
• 209 Certified Judgment of Conviction filed 6/3/14	11-5-15	NO	11-5-15

COURT'S EXHIBITS

CASE NO. C299425

		Date Offered	Objection	Date Admitted
1.	State's Opening Powerpoint			11-2-15
2.	Juror #10 Question			11-2-15
3.	Juror #8 Question			11-2-15
4.	Juror #2 Question			11-2-15
5.	Note from Juror #8			11-2-15
6.	Juror #8 Question			11-2-15
7.	Juror #2 Question			11-3-15
8.	Juror #2 Question			11-3-15
9.	Juror #8 Question			11-3-15
10.	Juror #9 Question			11-3-15
11.	Visitor Registration (withdrawn from State's Exh. 195 Evidence Envelope)			11-3-15
12.	Juror #2 Question			11-3-15
13.	Juror #9 Question			11-3-15
14.	Juror #10 Question			11-3-15
15.	Juror #8 Question			11-3-15
16.	Jail Call Transcript dated 7/1/14			11-4-15
17.	Jail Call Transcript dated 7/7/14			11-4-15
18.	Jail Call Transcript dated 7/12/14			11-4-15
19.	Juror #2 Question			11-4-15
20.	Juror #8 Question			11-4-15
21.	Juror #12 Question			11-4-15
22.	Juror #2 Question			11-4-15
23.	Juror #10 Question			11-4-15
24.	Jury Foreperson Question and Court's Response			11-5-15
25.	Jury Foreperson Question and Court's Response			11-5-15
26.	State's Closing Powerpoint			11-5-15

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; REQUEST FOR
TRANSCRIPTS; DISTRICT COURT DOCKET ENTRIES; FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST

STATE OF NEVADA,

Plaintiff(s),

vs.

JOSHUA W. BACHARACH
aka JOSHUA WILLIAM BACHARACH,

Defendant(s).

Case No: C-14-299425-1

Dept No: IX

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 7 day of May 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk