

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 82886

Electronically Filed
Sep 20 2021 04:12 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

JOSHUA BACHARACH

Appellant,

v.

THE STATE OF NEVADA

Respondent.

Appeal from a Denial of Petition for Writ of Habeas Corpus (Post-Conviction)
Eighth Judicial District Court, Clark County
The Honorable Cristina D. Silva, District Court Judge
District Court Case No. C-14-299425-1

**APPELLANT'S APPENDIX
VOLUME V**

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on September 20, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD
Nevada Attorney General

STEVEN B. WOLFSON
Clark County District Attorney

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

INSTRUCTION NO. 17

When you retire to consider your verdict, you must select one of your member to act as foreperson who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

INSTRUCTION NO. 18

If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreperson. The officer will then return you to court where the information sought will be given you in the presence of, and after notice to, the district attorney and the Defendant and his counsel.

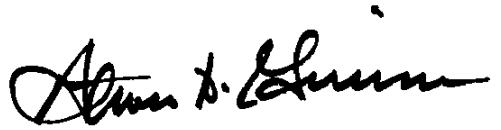
Playbacks of testimony are time-consuming and are not encouraged unless you deem it a necessity. Should you require a playback, you must carefully describe the testimony to be played back so that the court recorder can arrange her notes. Remember, the court is not at liberty to supplement the evidence.

INSTRUCTION NO. 19

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

GIVEN:


DISTRICT JUDGE



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

VS.

JOSHUA W. BACHARACH,

Defendant.

CASE NO. C299425

DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE

THURSDAY, NOVEMBER 5, 2015
TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - DAY 1 - VOLUME I
(BIFURCATED TRIAL)

APPEARANCES:

For the State:

JOHN FATTIG, ESQ.
MEGAN S. THOMSON, ESQ.
Chief Deputy District Attorneys

For the Defendant:

ROCHELLE T. NGUYEN, ESQ.

RECORDED BY: JILL JACOBY, COURT RECORDER

TRANSCRIBED BY: BRITTANY MANGELSON, INDEPENDENT TRANSCRIBER

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<u>EXHIBIT INDEX</u>		
<u>NUMBER</u>		<u>PAGE</u>
STATE'S EXHIBITS		
208 & 209	Judgments of conviction	4

1 THURSDAY, NOVEMBER 5, 2015 AT 4:15 P.M.

2
3 [In the presence of the jury]

4 THE COURT: You thought this was all, it's not. You can be seated. We
5 have a second part of the trial that you couldn't know about. There's three counts of
6 possession of firearm by an ex-felon.

7 State, are you ready on the possession of firearm by an ex-felon?

8 MR. FATTIG: Yes, Your Honor.

9 THE COURT: Do you want to make an opening statement?

10 MR. FATTIG: No, we would waive open.

11 THE COURT: Defense wish to make an opening statement?

12 MS. NGUYEN: We would waive.

13 THE COURT: You have documents to file or you have filed with the Court?

14 MR. FATTIG: I do, Your Honor. I have, in terms of the evidence in this part of
15 the trial, two certified judgments of conviction showing that Joshua Bacharach, ID
16 Number 1900105 in State's Proposed Exhibit 208. It shows that in Case Number
17 C256298, Joshua Bacharach was convicted of the felony offense of possession of
18 stolen vehicle on December 1st of 2009.

19 And on -- in State's Proposed Exhibit 209 is a certified judgment of
20 conviction showing that Joshua Bacharach was convicted in Case Number C293845
21 on May 13th of 2014 for the felony offense of attempt theft. And we would move to
22 admit these two certified judgments of conviction.

23 THE COURT: You've reviewed those?

24 MS. NGUYEN: I have reviewed those.

25 THE COURT: All right. They'll be admitted.

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[STATE'S EXHIBITS 208 & 209 ADMITTED]

MR. FATTIG: And we would rest our case.

THE COURT: All right. Would Counsel approach the bench a minute?

[Bench Conference Begins]

THE COURT: Do I have to canvas him about taking the stand?

MS. THOMSON: Ah, probably ought to.

MR. FATTIG: Yeah, I think so.

THE COURT: All right.

MS. NGUYEN: Can we take him in the --

THE COURT: I'm going to have --

[Bench Conference Concludes]

THE COURT: I'm going to have the jury just step out for a minute. Tom, take them out in the hall for just a -- if you'll just take them out in the hall for a minute. You'll be right back in.

[Outside the presence of the jury]

THE COURT: All right. The door is closed.

Mr. Bacharach, do you want -- wish to testify in this hearing?

THE DEFENDANT: No, sir.

THE COURT: All right. You've discussed that with your attorney, you believe that's in your best interest?

THE DEFENDANT: Yes, sir.

THE COURT: All right. So we can bring them back in?

MS. NGUYEN: Yes.

THE COURT: All right. And you're going to rest as well?

MS. NGUYEN: Yes.

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[In the presence of the jury]

THE MARSHAL: All rise, please.
And be seated.

THE COURT: All right. Stipulate to the presence of the jury.

MR. FATTIG: Yes.

MS. NGUYEN: Yes, Your Honor.

MS. THOMSON: Yes, Your Honor.

THE COURT: And Defense?

MS. NGUYEN: Your Honor, we'd rest.

THE COURT: I just would inform you that the jury instructions that were previously given to you and read to you and that you have copies of are still in force.

[The Court read the Indictment aloud]

THE COURT: A person who has been convicted of a felony in this or any other state, or in any political subdivision -- this is Jury Instruction 10 -- political subdivision thereof, or of a felony in violation of the laws of the United States of America, unless he has received a pardon and the pardon does not restrict his right to bear arms, shall not own or have in his possession or under his custody or control any firearm. Neither the concealment of the firearm, nor the carrying of a weapon are necessary elements of the offense.

Firearm includes any firearm that is loaded or unloaded; operable or inoperable.

Instruction Number 11: Firearm includes any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion.

Instruction 12: The law recognizes two kinds of possession: Actual

1 and constructive. A person who knowingly has direct physical control over a thing,
2 at a given time, is then in actual possession of it.

3 A person who, although not in actual possession, knowingly has both
4 the power and the intention, at a given time, to exercise dominion or control over a
5 thing, either directly or through another person or persons, is then in constructive
6 possession of it.

7 The law recognizes also that possession may be sole or joint. If one
8 person alone has actual or constructive possession of a thing, possession is sole. If
9 two or more persons share actual or constructive possession of a thing, possession
10 is joint.

11 You may find that the element of possession as that term is used in
12 these instructions is present if you find beyond a reasonable doubt that a defendant
13 had actual or constructive possession, either along or jointly with others.

14 An act or a failure to act is knowingly done, if done voluntarily and
15 intentionally, and not because of mistake or accident or other innocent reason.

16 Instruction 13: Mere presence at the scene of a crime or knowledge
17 that a crime is being committed is not sufficient to establish that a defendant is guilty
18 of an offense, unless you find beyond reasonable doubt that the defendant was a
19 participant and not merely a knowing spectator.

20 However, the presence of a person at the scene of a crime and
21 companionship with another person engaged in the commission of the crime and a
22 course of conduct before and after the offense are circumstances which may be
23 considered in determining whether such person aided and abetted the commission
24 of that crime.

25 And then the other jury instructions were previously given to you and

1 then signed by Douglas E. Smith, the District Court Judge.

2 You will also have a verdict form, the same. And it will -- your
3 foreperson can go over that with you when you get back in the jury room.

4 Before you do, do you have any argument, State?

5 MS. THOMSON: Just briefly, Your Honor.

6 THE COURT: Okay.

7 **CLOSING ARGUMENT BY THE STATE**

8 BY MS. THOMSON:

9 You all have already found that he possessed the .25 caliber, you found
10 that he possessed the .45 caliber. The question now is, is he a felon and did he
11 possess the rifle. The magazine associated to that rifle was found in the same bag
12 as the .25 caliber you heard. That is sufficient to show that he absolutely knew that
13 that rifle was in the vehicle.

14 You'll have both judgments of the conviction, certified court records with
15 you in the back as you're deliberating. We'd ask that you find him guilty of ex-felon
16 possession of a firearm as to each of those three guns that he had that day. Thank
17 you.

18 **CLOSING ARGUMENT BY THE DEFENSE**

19 BY MS. NGUYEN:

20 And I would ask you to look the information that you were presented
21 over the last week in regards to that rifle that was found in the back that was
22 wrapped in either a white shirt or a white sheet of some sort. I don't believe that the
23 State has proven beyond a reasonable doubt that he had possession of that. Thank
24 you.

25 THE COURT: Thank you. All right.

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Tom, take the jury to deliberation.

[The jury retired to deliberate at 4:24 p.m.]

[Trial resumed at 4:34 p.m.]

[In the presence of the jury]

THE MARSHAL: All rise, please.
And be seated.

THE COURT: The record will reflect the presence of the Defendant, his attorney and the Deputy District Attorneys for the State, and all 12 members of the jury. Has the jury reached a verdict?

THE FOREPERSON: Yes.

THE COURT: Will you hand that to -- was it unanimous?

THE FOREPERSON: Yes.

THE COURT: The Clerk will now read the verdict into the record.

THE CLERK: District Court, Clark County, Nevada. The State of Nevada, plaintiff, versus Joshua W. Bacharach, Defendant. Case Number C-14-299425, Department Number VIII.

Verdict: We, the jury, in the above titled case find the Defendant Joshua W. Bacharach, as follows:

Count 15, possession of a firearm by ex-felon, .25 caliber Colt; guilty of possession of a firearm by ex-felon.

Count 16, possession of a firearm by ex-felon, 7.62 Ebank rifle; guilty of possession of a firearm by ex-felon.

Count 17, possession of a firearm by ex-felon, .45 caliber Colt; guilty of possession of a firearm by ex-felon.

Dated this 15th day of November, 2015, Trevor Yanke, foreperson.

1 Ladies and gentlemen of the jury, are these your verdicts as read?
2 THE JURY: Yes.
3 THE COURT: Poll the jury, please?
4 THE CLERK: Juror Number 1, is this your verdict as read?
5 JUROR NUMBER 1: Yes.
6 THE CLERK: Juror Number 2, is this your verdict as read?
7 JUROR NUMBER 2: Yes.
8 THE CLERK: Juror Number 3, is this your verdict as read?
9 JUROR NUMBER 3: Yes.
10 THE CLERK: Juror Number 4, is this your verdict as read?
11 JUROR NUMBER 4: Yes.
12 THE CLERK: Juror Number 5, is this your verdict as read?
13 JUROR NUMBER 5: Yes.
14 THE CLERK: Juror Number 6, is this your verdict as read?
15 JUROR NUMBER 6: Yes.
16 THE CLERK: Juror Number 7, is this your verdict as read?
17 JUROR NUMBER 7: Yes.
18 THE CLERK: Juror Number 8, is this your verdict as read?
19 JUROR NUMBER 8: Yes.
20 THE CLERK: Juror Number 9, is this your verdict as read?
21 JUROR NUMBER 9: Yes.
22 THE CLERK: Juror Number 10, is this your verdict as read?
23 JUROR NUMBER 10: Yes.
24 THE CLERK: Juror Number 11, is this your verdict as read?
25 JUROR NUMBER 11: Yes.

1 THE CLERK: Juror Number 12, is this your verdict as read?

2 JUROR NUMBER 12: Yes.

3 THE COURT: The clerk will now record the verdict in the minutes of the
4 court.

5 Ladies and gentleman, as you know, the right to trial by jury is one of
6 the basic fundamental constitutional rights that I firmly believe in. And that is that
7 every person accused of a crime be judged by a fair and impartial jury. But to have
8 a fair and impartial jury panel you must have jurors and unfortunately, jury service is
9 something that many people shirk. They don't wish to become involved.

10 That is why I'm pleased that 12 men and women have been willing to
11 give of your valuable time. You've been most attentive and consciousness. On
12 behalf of Counsel, the parties, the Eighth Judicial District Court, I wish to thank you
13 for your careful deliberation in the case.

14 The question now may arise as to whether you may now talk to other
15 persons regarding this matter. I advise you that you may, if you wish, talk to other
16 persons and discuss your deliberation which you gave in this matter. You're not
17 required to do so, however, and if any person persists in discussing this case after
18 you have indicated that you don't wish to talk about it or raise an objection as to your
19 result as you deliberated, you'll report that directly to me through the marshal and I'll
20 take care of it.

21 The jury is now excused with the thanks of the Court and Counsel.
22 You'll follow Tom, please.

23 [Outside the presence of the jury]

24 THE COURT: All right. The jury's left. The door is pretty closed.

25 Thank you all. Good job everybody. Good job, Ms. Nguyen.

1 Defendant is remanded without bail pending a sentencing date of:
2 THE CLERK: December 30th, 8:00 a.m.
3 MS. NGUYEN: Your Honor, is it possible for him to not be remanded into the
4 Clark County Detention Center. I understand they're remanded without bail. He'd
5 like to go back up to High Desert.
6 THE DEFENDANT: I'm --
7 MS. NGUYEN: He's set to expire next week and then they'll bring him back
8 down after his expiration.
9 THE COURT: You know whatever the jail decides. I don't make that call.
10 THE CORRECTIONS OFFICER: They can bring him back.
11 MS. NGUYEN: They'll bring him back? Okay.
12 THE CORRECTION OFFICER: They're going to send him back to NSP.
13 THE COURT: If they want to send him up there they can. It's up to you guys.
14 But he's to be held without bail.
15 THE CORRECTION OFFICER: Yeah. They'll send him back and then if he's
16 expired there, they'll send him back.
17 THE COURT: All right. Thank you.
18 MS. THOMSON: And Your Honor, does the jury wait in the back to talk to us
19 or do they --
20 THE COURT: No. Third floor.
21 MS. THOMSON: Third floor.
22 THE COURT: If you want to talk to the jury go to the third floor.
23 MS. THOMSON: Okay.
24 MS. NGUYEN: Thanks.
25 MS. THOMSON: Thank you, Your Honor.

1 THE DEFENDANT: Thank you, Rochelle.
2 MS. NGUYEN: Thanks.
3 THE COURT: Thank you guys.
4 MR. FATTIG: Thank you.
5 THE DEFENDANT: You guys have a good weekend.
6 MS. THOMSON: Thank you. You too.

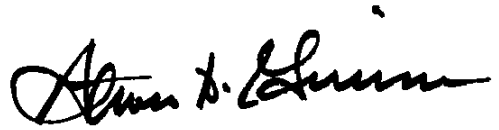
7 [Evening recess at 4:40 p.m.]
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21 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
22 acknowledge that this is a rough draft transcript, expeditiously prepared, not
23 proofread, corrected, or certified to be an accurate transcript.

24 

25

Brittany Mangelson
Independent Transcriber



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

VS.

JOSHUA W. BACHARACH,

Defendant.

CASE NO. C299425

DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE

THURSDAY, NOVEMBER 5, 2015
TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - DAY 4
VOLUME IV

APPEARANCES:

For the State:

JOHN FATTIG, ESQ.
MEGAN S. THOMSON, ESQ.
Chief Deputy District Attorneys

For the Defendant:

ROCHELLE T. NGUYEN, ESQ.

RECORDED BY: JILL JACOBY, COURT RECORDER

TRANSCRIBED BY: BRITTANY MANGELSON, INDEPENDENT TRANSCRIBER

1 THURSDAY, NOVEMBER 5, 2015 AT 4:05 P.M.

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3 [Outside the presence of the jury]

4 THE COURT: Just in case -- let's do jury instructions just in case.

5 1 is the introduction

6 2, If in these instructions.

7 3 is the indictment.

8 4 is to constitute the crime charged.

9 MS. NGUYEN: Is it the full indictment or just those additional three --

10 THE COURT: No, just three counts.

11 MS. THOMSON: Just the three counts.

12 THE COURT: 5, The Defendant is presumed innocent.

13 6, You are here to determine.

14 7, The evidence which you are to consider.

15 8, The credibility or believability.

16 You better get him a tie. The purple one that he's wearing that was my
17 tie.

18 MS. NGUYEN: Oh, it was?

19 THE COURT: I don't wear it anymore, obviously. I gave it to Defendants.

20 9, A witness who has special knowledge. Do we need that one?

21 MS. NGUYEN: We don't have any experts.

22 THE COURT: Do we need --

23 MS. THOMSON: Well, arguably, because it's the definition of the firearm.
24 We had the person testify. It's up to you guys I guess.

25 THE COURT: All right.

1 MS. THOMSON: Yeah, the finger -- yeah, we do.
2 THE COURT: 10, A person who has been convicted of a felony.
3 11 -- I don't know how that number got at the bottom.
4 MS. THOMSON: Because I am bad at stuff.
5 MS. NGUYEN: Do we have white-out?
6 THE COURT: 11, There --
7 MS. THOMSON: Is it an NRS or is the instruction number?
8 MS. NGUYEN: It's just an instruction number. There's some white-out tape
9 up there?
10 MS. THOMSON: Then it's missing on the next page.
11 MS. NGUYEN: Oh.
12 THE COURT: Yeah. That's 12 on the next page.
13 MS. NGUYEN: I bet that line is missing from the next page.
14 MS. THOMSON: It is if it's at the bottom.
15 THE COURT: I just --
16 MS. NGUYEN: No, it's not.
17 THE COURT: No.
18 MS. THOMSON: Really?
19 MS. NGUYEN: Oh, it is.
20 THE COURT: It is. I put the number 12 on there.
21 MS. NGUYEN: That works.
22 MS. THOMSON: Do you want me to go back and mess with and have them
23 reprint those two pages?
24 THE COURT: 13 is mere presence.
25 This is just cautionary.

1 14, It is a constitutional right.
2 15, Although you are to consider.
3 16, In your deliberation.
4 17, You are to consider.
5 18.
6 19 is you'll listen to Counsel.
7 State is familiar with Jury Instructions 1 through 19?
8 MS. THOMSON: Yes, Your Honor.
9 THE COURT: Satisfied with them?
10 MS. THOMSON: Yes, Your Honor.
11 THE COURT: You've had an op -- do you have any others you wish to
12 propose?
13 MS. THOMSON: No, Your Honor.
14 THE COURT: You've looked at the verdict form?
15 MS. THOMSON: Yes, Your Honor.
16 THE COURT: You're satisfied with it?
17 MS. THOMSON: Yes, Your Honor.
18 THE COURT: Ms. Nguyen you've -- you're familiar with the Jury Instructions
19 1 through 19?
20 MS. NGUYEN: That's correct.
21 THE COURT: You're satisfied with them?
22 MS. NGUYEN: Yes.
23 THE COURT: Do you have any more you wish to propose?
24 MS. NGUYEN: No. I submitted the mere presence and the alterations had
25 been made on these as well that I had requested.

1 THE COURT: All right. So you worked with the State and you're satisfied that
2 those alterations took place?

3 MS. NGUYEN: That's correct.

4 THE COURT: And you've looked at the verdict form?

5 MS. NGUYEN: Yes.

6 THE COURT: Satisfied with them?

7 MS. NGUYEN: Yes.

8 THE COURT: All right. Now we just have to -- oh, Fattig is -- where did -- oh,
9 there he is. Are you ready?

10 MR. FATTIG: I'm just doing the JOC's, Your Honor. There's going to be
11 exhibits [indiscernible].

12 THE COURT: Well we just did the jury instructions just in case. Why don't
13 you keep those?

14 MS. THOMSON: Are we on the record now or no?

15 THE COURT: Well I guess we're going with this ex-felon anyway.

16 MS. THOMSON: Yeah.

17 THE COURT: Yeah. Did you get that on -- oh, good.

18 MS. THOMSON: In which case, are we still on the record?

19 THE COURT: Yeah.

20 MS. THOMSON: Then I don't know that we were when we previously
21 discussed having you just read the specials and telling them that they're still bound
22 by all the prior instructions, instead of sitting here. That way we have on the record
23 that Ms. Nguyen agrees to --

24 THE COURT: Am I --

25 MS. THOMSON: -- just reading the specials?

1 THE COURT: Am I --
2 MS. NGUYEN: Yes.
3 THE COURT: -- reading 1 through 19?
4 MS. THOMSON: I think that there are like three that reasonably we need to
5 read and just admonish them that --
6 THE COURT: Tell which ones I --
7 MS. THOMSON: -- they're still bound by the prior instructions also.
8 THE COURT: you and Ms. Nguyen decided which ones --
9 MS. NGUYEN: You want to start --
10 THE COURT: -- you want me to read in case we have to read them.
11 MS. THOMSON: I think we give them the entire packet, but decide --
12 MS. NGUYEN: Yeah.
13 MS. THOMSON: -- what to read out loud.
14 THE COURT: I'm not giving them each one of those.
15 MS. THOMSON: That's fine.
16 THE COURT: They can have one.
17 MS. THOMSON: That's fine. I mean, assuming that's fine.
18 MS. NGUYEN: Yeah, that's fine.
19 [Colloquy between Counsel]
20 MS. THOMSON: 10 through 13 is what we're going to ask that you read.
21 THE COURT: All right.
22 MS. THOMSON: And also admonish that they're still bound by the prior
23 instructions.
24 [Colloquy between the Court and the Clerk]
25 THE COURT: You guys ready for the jury?

1 MS. NGUYEN: Yes.

2 [In the presence of the jury]

3 THE MARSHAL: All rise, please.

4 And be seated.

5 THE COURT: All right. Were you able to elect a jury foreperson? If so --

6 THE FOREPERSON: Yes.

7 THE COURT: -- who is --

8 THE FOREPERSON: Yes.

9 THE COURT: Okay. Did you reach a verdict?

10 THE FOREPERSON: Yes.

11 THE COURT: Is it unanimous?

12 THE FOREPERSON: Yes.

13 THE COURT: Would you hand that to the marshal, please?

14 The clerk will now read the verdict into the record.

15 THE CLERK: District Court, Clark County, Nevada. The State of Nevada,
16 plaintiff, versus Joshua W. Bacharach, Defendant. Case Number C-14-299425,
17 Department Number VIII.

18 Verdict: We, the jury, in the above titled case find the Defendant
19 Joshua W. Bacharach, as follows:

20 Count 1, attempt murder with use of a deadly weapon; guilty of attempt
21 murder with use of a deadly weapon.

22 Count 2, discharge of a firearm from or within a structure or vehicle,
23 Walnut; guilty of discharge of a firearm from or within a structure or vehicle.

24 Count 3, assault with a deadly weapon, Carey and North Gateway;
25 guilty assault with a deadly weapon.

1 Count 4, discharge of a firearm from or within a structure or vehicle,
2 Carey and North Gateway; guilty of discharge of a firearm from or within a structure
3 or vehicle.

4 Count 5, assault with a deadly weapon, Carey and North Gateway;
5 guilty of assault with a deadly weapon.

6 Count 6, discharge of a firearm from or within a structure or vehicle,
7 Carey and North Gateway; guilty of discharge of a firearm from or within a structure
8 or vehicle.

9 Count 7, assault with a deadly weapon, Carey and North Lamb; guilty of
10 assault with a deadly weapon.

11 Count 8, discharge of a firearm from or within a structure or vehicle,
12 Carey and North Lamb; guilty of discharge of a firearm from or within a structure or
13 vehicle.

14 Count 9, assault with a deadly weapon, Carey and North Lamb; not
15 guilty.

16 Count 10, discharge of a firearm from or within a structure or vehicle,
17 Carey and North Lamb; not guilty.

18 Count 11, assault with a deadly weapon, Carey and Dolly; guilty of
19 assault with a deadly weapon.

20 Count 12, stop required on signal of police officer; guilty of stop
21 required on signal of police officer.

22 Count 13, resisting public officer with use of a firearm; future of resisting
23 public officer with use of a firearm

24 Count 14, possession of firearm with altered or obliterated serial
25 number; guilty of possession of firearm with altered or obliterated serial number.

1 Dated this 5th day of November, 2015. I don't know the number of the
2 foreperson is.

3 THE COURT: The foreperson was number --

4 THE FOREPERSON: 13.

5 THE COURT: Number 13?

6 THE FOREPERSON: Yes.

7 THE COURT: No.

8 THE CLERK: Couldn't be.

9 THE FOREPERSON: 13.

10 THE COURT: Huh?

11 THE FOREPERSON: Number 13.

12 MR. FATTIG: He was the alternate.

13 THE FOREPERSON: 11 left.

14 THE COURT: Trevor. Is it Trevor?

15 THE FOREPERSON: Yes.

16 THE COURT: Trevor Yanke.

17 THE CLERK: Trevor Yanke, foreperson.

18 Are these your verdicts?

19 THE COURT: So you say you one, so say you all.

20 THE CLERK: So you say you one, so say you all?

21 THE JURY: Yes.

22 THE COURT: Would you poll the jury?

23 THE CLERK: Juror Number 1, is this your verdict as read?

24 JUROR NUMBER 1: Yes.

25 THE CLERK: Juror Number 2, is this your verdict as read?

1 JUROR NUMBER 2: Yes.
2 THE CLERK: Juror Number 3, is this your verdict as read?
3 JUROR NUMBER 3: Yes.
4 THE CLERK: Juror Number 4, is this your verdict as read?
5 JUROR NUMBER 4: Yes.
6 THE CLERK: Juror Number 5, is this your verdict as read?
7 JUROR NUMBER 5: Yes.
8 THE CLERK: Juror Number 6, is this your verdict as read?
9 JUROR NUMBER 6: Yes.
10 THE CLERK: Juror Number 7, is this your verdict as read?
11 JUROR NUMBER 7: Yes.
12 THE CLERK: Juror Number 8, is this your verdict as read?
13 JUROR NUMBER 8: Yes.
14 THE CLERK: Juror Number 9, is this your verdict as read?
15 JUROR NUMBER 9: Yes.
16 THE CLERK: Juror Number 10, is this your verdict as read?
17 JUROR NUMBER 10: Yes.
18 THE CLERK: Juror Number 11, is this your verdict as read?
19 JUROR NUMBER 11: Yes.
20 THE CLERK: Juror Number 12, is this your verdict as read?
21 JUROR NUMBER 12: Yes.

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1 THE COURT: All right. The clerk will now record the verdict in the minutes of
2 the court.

3 [Trial concluded at 4:15 p.m.]
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21 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
22 acknowledge that this is a rough draft transcript, expeditiously prepared, not
23 proofread, corrected, or certified to be an accurate transcript.

24 

25

Brittany Mangelson
Independent Transcriber

1 VER

2 ORIGINAL

3 FILED IN OPEN COURT
4 STEVEN D. GRIERSON
5 CLERK OF THE COURT

6 NOV - 5 2015 @ 4:15pm

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 BY Tena Jolley
10 TENA JOLLEY, DEPUTY

11 THE STATE OF NEVADA,

12 Plaintiff,

13 -vs-

14 JOSHUA W. BACHARACH,

15 Defendant.

CASE NO: C-14-299425

DEPT NO: VIII

16 VERDICT

17 We, the jury in the above entitled case, find the Defendant JOSHUA W.
18 BACHARACH, as follows:

19 COUNT 1 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

20 (Please check the appropriate box, select only one)

21 ☒ Guilty of ATTEMPT MURDER WITH USE OF A DEADLY
22 WEAPON

23 ☐ Guilty of ATTEMPT MURDER WITHOUT USE OF A DEADLY
24 WEAPON

25 ☐ Not Guilty

26 COUNT 2 - DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR
27 VEHICLE (Walnut)

28 (Please check the appropriate box, select only one)

☒ Guilty of DISCHARGE OF A FIREARM FROM OR WITHIN A
STRUCTURE OR VEHICLE

☐ Not Guilty

//

C-14-299425-1
VER
Verdict
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AA 0947

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2 **COUNT 3** – ASSAULT WITH A DEADLY WEAPON (Carey and N. Gateway)

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

- 4 ☒ Guilty of ASSAULT WITH A DEADLY WEAPON
5 ☐ Guilty of ASSAULT
6 ☐ Not Guilty

7 **COUNT 4** – DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR
8 VEHICLE (Carey and N. Gateway)

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

- 10 ☒ Guilty of DISCHARGE OF FIREARM FROM OR WITHIN A
11 STRUCTURE OR VEHICLE
12 ☐ Not Guilty

13 **COUNT 5** – ASSAULT WITH A DEADLY WEAPON (Carey and N. Gateway)

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

- 15 ☒ Guilty of ASSAULT WITH A DEADLY WEAPON
16 ☐ Guilty of ASSAULT
17 ☐ Not Guilty

18 **COUNT 6** – DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR
19 VEHICLE (Carey and N. Gateway)

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

- 21 ☒ Guilty of DISCHARGE OF FIREARM FROM OR WITHIN A
22 STRUCTURE OR VEHICLE
23 ☐ Not Guilty

24 **COUNT 7** – ASSAULT WITH A DEADLY WEAPON (Carey and N. Lamb)

25 *(please check the appropriate box, select only one)*

- 26 ☒ Guilty of ASSAULT WITH A DEADLY WEAPON
27 ☐ Guilty of ASSAULT
28 ☐ Not Guilty

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2 **COUNT 8** – DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR
3 VEHICLE (Carey and N. Lamb)

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

5 ☒ Guilty of DISCHARGE OF FIREARM FROM OR WITHIN A
6 STRUCTURE OR VEHICLE

7 ☐ Not Guilty

8 **COUNT 9** – ASSAULT WITH A DEADLY WEAPON (Carey and N. Lamb)

9 *(please check the appropriate box, select only one)*

10 ☐ Guilty of ASSAULT WITH A DEADLY WEAPON

11 ☐ Guilty of ASSAULT

12 ☒ Not Guilty

13 **COUNT 10** – DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR
14 VEHICLE (Carey and N. Lamb)

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

16 ☐ Guilty of DISCHARGE OF FIREARM FROM OR WITHIN A
17 STRUCTURE OR VEHICLE

18 ☒ Not Guilty

19 **COUNT 11** – ASSAULT WITH A DEADLY WEAPON (Carey and Dolly)

20 *(please check the appropriate box, select only one)*

21 ☒ Guilty of ASSAULT WITH A DEADLY WEAPON

22 ☐ Guilty of ASSAULT

23 ☐ Not Guilty

24 **COUNT 12** – STOP REQUIRED ON SIGNAL OF POLICE OFFICER

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

26 ☒ Guilty of STOP REQUIRED ON SIGNAL OF POLICE OFFICER

27 ☐ Not Guilty

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2 **COUNT 13** – RESISTING PUBLIC OFFICER WITH USE OF A FIREARM

3 *(please check the appropriate box, select only one)*

4 ☒ Guilty of RESISTING PUBLIC OFFICER WITH USE OF A
5 FIREARM

6 ☐ Not Guilty

7 **COUNT 14** – POSSESSION OF FIREARM WITH ALTERED OR OBLITERATED
8 SERIAL NUMBER

9 *(please check the appropriate box, select only one)*

10 ☒ Guilty of POSSESSION OF FIREARM WITH ALTERED OR
11 OBLITERATED SERIAL NUMBER

12 ☐ Not Guilty

13 DATED this 5 day of November, 2015

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FOREPERSON

1 VER

ORIGINAL

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

NOV -5 2015 @ 4:37pm

DISTRICT COURT
CLARK COUNTY, NEVADA

BY: Tena Jolley
TENA JOLLEY, DEPUTY

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 JOSHUA W. BACHARACH,

11 Defendant.

CASE NO: C-14-299425

DEPT NO: VIII

12 VERDICT

13 We, the jury in the above entitled case, find the Defendant JOSHUA W.
14 BACHARACH, as follows:

15 **COUNT 15** - POSSESSION OF FIREARM BY EX-FELON (.25 Caliber Colt)

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

17 ☒ Guilty of POSSESSION OF FIREARM BY EX-FELON

18 ☐ Not Guilty

19 **COUNT 16** - POSSESSION OF FIREARM BY EX-FELON (7.62 Ewbank rifle)

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

21 ☒ Guilty of POSSESSION OF FIREARM BY EX-FELON

22 ☐ Not Guilty

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C-14-299425-1
VER
Verdict
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COUNT 17 – POSSESSION OF FIREARM BY EX-FELON (.45 Caliber Colt)

(Please check the appropriate box, select only one)

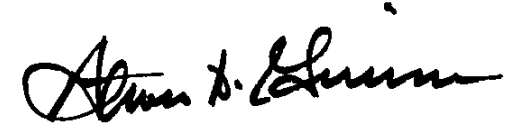
☒ Guilty of POSSESSION OF FIREARM BY EX-FELON

☐ Not Guilty

DATED this 5 day of November, 2015



FOREPERSON



CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

JOSHUA W. BACHARACH
JOSHUA WILLIAM BACHARACH,

Defendant.

CASE NO. C299425

DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE
WEDNESDAY, DECEMBER 30, 2015

**TRANSCRIPT OF PROCEEDINGS
SENTENCING**

APPEARANCES:

For the State:

JOHN FATTIG, ESQ.
Chief Deputy District Attorney

MEGAN S. THOMSON
Chief Deputy District Attorney

For the Defendant:

ROCHELLE T. NGUYEN, ESQ.

RECORDED BY: JILL JACOBY, COURT RECORDER

1 WEDNESDAY, DECEMBER 30, 2015 AT 8:25 A.M.

2
3 THE COURT: C299425, Joshua Bacharach. Time set for rendition of
4 sentence. Any cause or reason why sentencing should not proceed today?

5 MS. NGUYEN: No, Your Honor.

6 THE COURT: State wish to be heard?

7 MS. THOMSON: Yes, Your Honor. I would first note that Officer McNabb
8 wished to be present today however he has severe bronchitis and was not able to
9 make it today. So I just wanted to inform the Court that it was not -- that he's not
10 interested, it's just that he was not able to be present based on medical issues.

11 THE COURT: All right.

12 MS. THOMSON: In this case I'm going to ask Your Honor to sentence the
13 Defendant to a term of 28 to 70 years. This is an individual who has demonstrated
14 he is a danger to the community. Even at the point that we're in the middle of trial,
15 he was expressing to the CO as he's coming up for trial that he didn't understand
16 what everyone's being ruffled feathers was about --

17 MS. NGUYEN: Objection, Your Honor. This is kind of hearsay and I think it's
18 inappropriate the conversations that he's having potentially with an unnamed CO
19 during transport.

20 MS. THOMSON: And the statements he chooses to make are attributable to
21 him.

22 THE COURT: Yeah, you don't have to -- you don't have to say anything. You
23 don't have to use that.

24 MS. THOMSON: Yes, Your Honor.

25 Looking at through the PSI, he indicated to the examiner that he did not

1 have any mental health issues. He doesn't think drugs are an issue which tells us
2 that there is no underlying reason that he committed this offense, that he's
3 committed any of his previous offenses. He's a danger to our community.

4 Looking at this offense, we see not just that he was a danger to the
5 officer who attempted that simple traffic stop, but also to everyone else who's on the
6 roadways and to everyone who happened to be in their homes that night. As he
7 discharged his firearm from the moving vehicle, he did not have the ability to control
8 specifically where that fire -- bullet went when he projected it from the firearm. While
9 he was aiming at the officer, attempting to kill that officer, he risked the lives of
10 everyone in that community at the time he was doing it, as he discharged the firearm
11 over and over again.

12 Going through -- in addition to the possibility of harm to each of the
13 individuals in the community along with the officer, the harm that was actually
14 caused, while not physical, was extensive. In addition to the officer who wrote a
15 statement and you have attached to the PSI, who has had insomnia, who has been
16 afraid to do his job because of this, there's the harm to his family, who now every
17 time he goes to work has the real possibility not just the speculative possibility that
18 he may not come home that night. There's the harm to every other officer who that
19 night had to respond to a call where very possibly their partner, their friend, their
20 almost like family could have been dead on the roadway that night because they
21 were completing -- he was completing a traffic stop.

22 This isn't a situation where an officer expects to go in to a violent
23 situation. And that is what officers do, they respond to all kinds of situations. But
24 this was a simple traffic stop to say, hey, turn off your brights. And instead Officer
25 McNabb had the unfortunate opportunity to then have his life on the line and the

1 possibility of dying that night in the street alone as the Defendant fled away in the
2 vehicle.

3 In addition to this case, the Defendant's history of violence is extreme.
4 Looking through his priors, he started out with battery on a police officer, gross
5 misdemeanor. He has a history of domestic violence. He has a prior attempt
6 murder where he received a gross misdemeanor. That really highlights the fact that
7 he has had opportunity after opportunity after opportunity to change his life, to make
8 better decisions. And instead, he's continued to engage in his criminal behavior to
9 the extent that on the night of this offense, he not only gathered three firearms, he
10 put on a bullet-proof vest and went out seeking an altercation, seeking to cause
11 harm to other individuals.

12 In this case, the fact that we have such a simple start as a traffic stop
13 and it ended in his attempting to murder the police officer and putting hundreds of
14 lives in danger merits the term of 28 to 70 years. And ask the Court to give him a
15 term of 16 to 40 years on the attempt murder with use, obviously running the use
16 consecutively. A term of 2 to 5 years on the stop required on signal of a police
17 officer because it was danger to each person on the roadway as he fled, the officer
18 shooting at him. And that should run consecutively because of the excessive
19 danger. I'm going to ask the Court to add a term of 2 to 5 years for each of those
20 firearms. Being both a felon and on probation at the time he committed this offense,
21 each of those firearms should stand for themselves in a punishment running
22 consecutively to both the stop required and the attempt murder. And a 4- to 10-year
23 term on the discharging of firearm from the vehicle because he put the lives of those
24 people in their homes nearby in danger as he shot without being able to aim well.
25 And that's risking bullets flying through homes and taking people who are doing

1 nothing but staying in their homes lives.

2 Based upon his history, based upon the attitude he's demonstrated
3 throughout his criminal behaviors and the fact that he has no explanation that would
4 justify -- that's not a good word -- that would explain why he engaged in behavior
5 like this. He is a danger to the community, not just to the citizens, but to the police.
6 And frankly, in this behavior, a danger to himself. So a 28- to 70-year term is
7 appropriate in the State's eyes.

8 THE COURT: Before your attorney has an opportunity to speak, is there
9 anything you want to say?

10 THE DEFENDANT: Yes, Your Honor. I just want to put it on record that we
11 do plan to put in a notice for appeal and that you've seen the vid -- you were in trial
12 with me, you've seen the video and I wasn't on that video. And that body cam
13 showed what the officer seen and what happened that night and I wasn't on it. So
14 however you feel, I'm going to go with your judgment, sir.

15 MS. NGUYEN: Your Honor --

16 THE COURT: Counsel.

17 MS. NGUYEN: -- I am not going to belabor the facts of the case. I know the
18 Court was able to sit through this trial and witness the video that was presented by
19 the State.

20 I would like to point out a couple of things that are contained in the PSI
21 because I think the characterization by the State is a little misleading. They talked
22 about how he has, like, an extensive violent history. And I think when I look at it, I
23 do see, you know, two -- four gross misdemeanors and two felonies. The two
24 felonies are both for nonviolent felony acts, both theft charges including the attempt
25 theft that he was on probation for. But what I do see that's consistent, that is not

1 consistent with maybe the statements that he made to the PSI writer is that he does
2 have a long history of drug use and drug abuse. And you can see that from starting
3 in 2005 with an arrest for possession of narcotics paraphernalia.

4 This Court has -- and there's one in 2006 for possession of a controlled
5 substance, later, you know, reduced to a misdemeanor. We have another narcotics
6 paraphernalia in 2007. And while some of the other charges, the theft charges,
7 don't have drug charges specifically included in them, I think this Court has the
8 experience to know that a lot of theft and a lot of crime and a lot of impulse crime
9 occurs when people are under the influence. It wasn't a defense that we chose to
10 use because it wasn't a complete defense to the charges in this case, but I do know
11 that he was under the influence and that is an issue that he will have to continue to
12 address either when he's in prison or ultimately when he gets out, depend -- no
13 matter what the sentence is by this Court.

14 What I'm asking this Court to do is sentence him to 8 to 30 years,
15 amongst all the counts however you feel appropriate to distribute those counts. In
16 this case, he is lucky that there was no one injured and that no one was actually
17 shot. Obviously someone has experienced emotional trauma and I think that's
18 understandable. We are lucky that no one was physically hurt, including him.

19 With that, I would ask, again, the Court to sentence him to 8 to 30
20 years.

21 THE COURT: You know, I was waiting for an answer of why he was wearing
22 a bullet-proof vest. I didn't get it from you and I didn't get it from him. Interesting, I
23 don't know -- I've been in this business since 1982. I don't know any person that's
24 not a police officer that owns a bullet-proof vest. So here's this gentleman, I mean,
25 this poor officer was checking this car out, the bright lights and so the officer went to

1 stop him and the first thing you do is stick a .45 out and shoot at him. And --

2 THE DEFENDANT: You didn't see me on that video.

3 MS. NGUYEN: Sh. Sh.

4 THE DEFENDANT: You didn't see me on the video --

5 MS. NGUYEN: Sh. Sh.

6 THE DEFENDANT: -- or with a bullet-proof vest.

7 THE CORRECTIONS OFFICER: Sir.

8 MS. NGUYEN: Sh.

9 THE DEFENDANT: They didn't catch me with none of it.

10 THE COURT: And you hit your own car when you --

11 THE DEFENDANT: No, I didn't -- I didn't -- you didn't see, in that video, it
12 didn't show me shooting at nothing.

13 THE COURT: Tom, get the duct tape out because if he talks out again, I want
14 him duct taped.

15 THE DEFENDANT: Yes, Your Honor, my bad.

16 THE COURT: The only reason you would wear a bullet-proof vest is either
17 you're on your way to create mischief in this community or you had just created
18 mischief. But that's the only reason you would need that.

19 And then as I look at your record, well, it's interesting on page 3, your
20 social history, Defendant was interviewed via telephone, was uncooperative, and
21 declined to answer many of the questions. And then I look at your criminal record,
22 two prior felony convictions, been to prison twice; gross misdemeanor four times; jail
23 12 times; probation revoked, one.

24 It started out in -- your adult history started out in 2003 with resisting
25 and battery on an officer. And then you were arrested in 2004 for battery domestic

1 violence. And then you were arrested in 2005 for disorderly conduct. You got the
2 benefit of bootcamp. That didn't help, that was in I think 2006. Nope, that was
3 2005. And then in 2006, you were arrested for attempt murder with a deadly
4 weapon, convicted of attempt battery with substantial bodily harm. And then in
5 2009, resisting a public officer which you were convicted. Then 2009, battery
6 domestic violence which you were convicted. Then 2009, in June, resisting a public
7 officer, obstructing an officer, and you were convicted possession stolen vehicle.
8 Then in 2013, attempt robbery, that's the one where you were put on probation, you
9 violated and you were revoked.

10 Then we have this case. I did see the evidence, I did see the trial, I
11 listened to the witnesses, you were found guilty by the jury. You are adjudged guilty
12 of attempt murder with the use of a deadly weapon, a felony. You're sentenced to
13 the maximum 96 to 240 months on the attempt murder. Because you used a deadly
14 weapon in this, on the street, shooting randomly and at the officer, but other people
15 could have been hurt. You're sentenced to a consecutive 96 to 240 months for the
16 use of a deadly weapon.

17 Count 2, discharging a firearm from or within a structure or vehicle.
18 You're adjudged guilty, sentenced to a consecutive 72 to 180 months with \$5,000
19 fine.

20 Count 3, assault with a deadly weapon, a felony. You're sentenced to
21 the maximum, and I'm maxing you on everything.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: 28 to 72 months, \$5,000 fine, consecutive to Counts 1 and 2.

24 Count 4, discharging a firearm from or within a structure. You are
25 sentenced to 72 to 180 months, consecutive to the first three counts, with \$5,000

1 fine.

2 Count 5, you are senten -- assault with a deadly weapon, a felony.
3 You're sentenced to 28 to 72 months, consecutive with the first case with \$5,000
4 fine, first four counts.

5 Count 6, you are found guilty of discharging a firearm at or within a
6 structure or vehicle, felony. You're sentenced to 72 to 180 months consecutive to
7 the first five, with \$5,000 fine.

8 Count 7, assault with a deadly weapon, a felony. You're adjudged
9 guilty. Sentenced 28 to 72 months, consecutive to the first six counts, \$5,000 fine.

10 Count 8, discharging a firearm from or within a structure or vehicle, a
11 felony. You're sentenced to 72 to 180 months, Nevada Department of Corrections,
12 consecutive with the first seven with a \$5,000 fine.

13 Counts 9 and 10, the jury found you not guilty.

14 Count 11, assault with a deadly weapon, a felony. You're sentenced to
15 28 to 72 months, Nevada Department of Corrections, \$5,000 fine, that'll be
16 consecutive to the first eight counts.

17 Count 12, stop required on a police officer, a felony, you're sentenced
18 to 28 to 72 months, consecutive, with a \$5,000 fine to the first ten counts, or
19 whatever counts. The first --

20 MR. FATTIG: One through 8 and 11.

21 THE COURT: Yeah. Yes.

22 Count 13, resisting a public officer with use of a firearm, a felony, you're
23 sentenced to -- you're adjudged guilty, you're sentenced to 24 to 60 months in
24 Nevada Department of Corrections, consecutive to the other counts with a \$10,000
25 fine.

1 Count 14, possession of a firearm with altered or obliterated serial
2 number, you're sentenced to 19 to 48 months, Nevada Department of Corrections,
3 consecutive to the other counts, with \$5,000 fine.

4 Count 15, you are adjudged guilty of possession of a firearm by an ex-
5 felon, you're sentenced to 28 to 72 months in Nevada Department of Corrections,
6 with \$5,000 fine consecutive to the other counts.

7 Count 16, possession of a firearm by an ex-felon, you're adjudged
8 guilty. It's a felony. You're sentenced to 28 to 72 months, Nevada Department of
9 Corrections, with a \$5,000 fine consecutive to the other counts.

10 Count 17, possession of firearm by an ex-felon, felony. You're
11 adjudged guilty, you're sentenced to 28 to 72 months, Nevada Department of
12 Corrections, consecutive to the other counts, \$5,000 fine.

13 The total fine is \$75,000. The sentence aggregate is 747 days, if I
14 added it correctly to 1884 -- excuse me, months, 747 to 1884.

15 With credit for time served of?

16 MS. THOMSON: There's no days, he was on probation.

17 THE COURT: You're on probation, you get no credit. Thank you.

18 MS. THOMSON: Thank you, Your Honor.

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1 MR. FATTIG: Thank you.

2 MS. NGUYEN: And, Your Honor, I do have the intention to file a notice of
3 appeal, just for the record.

4 THE COURT: That's fine.

5 [Proceeding concluded at 8:41 a.m.]

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21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual
22 recording in the above-entitled case.

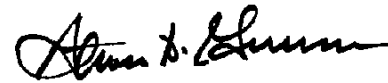
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Jill Jacoby
Court Recorder


CLERK OF THE COURT

JOC

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JOSHUA W. BACHARACH
aka Joshua William Bacharach
#1900105

Defendant.

CASE NO. C299425-1

DEPT. NO. VIII

JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of
COUNT 1 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B
Felony) in violation of NRS 200.010, 200.030, 193.330, 193.165; COUNTS 2, 4, 6, 8 &
10 – DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE
(Category B Felony) in violation of NRS 202.287; COUNTS 3, 5, 7, 9 & 11 – ASSAULT
WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; COUNT
12 – STOP REQUIRED ON SIGNAL OF POLICE OFFICER – (Category B Felony) in
violation of NRS 484B.550.3b; COUNT 13 – RESISTING PUBLIC OFFICER WITH
USE OF A FIREARM (Category C Felony) in violation of NRS 199.280; COUNT 14 –

//

1 POSSESSION OF FIREARM WITH ALTERED OR OBLITERATED SERIAL
2 NUMBER (Category D Felony) in violation of NRS 202.277; COUNTS 15, 16 & 17 –
3 POSSESSION OF FIREARM BY EX-FELON (Category B Felony) in violation of NRS
4 202.360; and the matter having been tried before a jury, and the Defendant having been
5 found **NOT GUILTY** of **COUNTS 9 & 10 ONLY**, and guilty of all remaining crimes;

6 thereafter, on the 30th day of December, 2015, the Defendant was present in court for
7 sentencing with his counsel, ROCHELLE NGUYEN, ESQ., and good cause appearing,
8

9 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in
10 addition to the \$25.00 Administrative Assessment Fee, \$250.00 Indigent Defense Civil
11 Assessment Fee, a Fine in the amount of \$75,000.00, and \$150.00 DNA Analysis Fee
12 including testing to determine genetic markers, plus a \$3.00 DNA Collection Fee, the
13 Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows:
14 AS TO **COUNT 1** - TO A MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a
15 MINIMUM Parole Eligibility of NINETY-SIX (96) MONTHS, plus a CONSECUTIVE term
16 of TWO HUNDRED FORTY (240) MONTHS MAXIMUM with a MINIMUM Parole
17 Eligibility of NINETY-SIX (96) MONTHS for use of a deadly weapon; AS TO **COUNT 2** -
18 TO A MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole
19 Eligibility of SEVENTY-TWO (72) MONTHS; AS TO **COUNT 3** - TO A MAXIMUM of
20 SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of TWENTY-EIGHT
21 (28) MONTHS; AS TO **COUNT 4** – TO A MAXIMUM of ONE HUNDRED EIGHTY (180)
22 MONTHS with a MINIMUM Parole Eligibility of SEVENTY-TWO (72) MONTHS; AS TO
23 **COUNT 5** - TO A MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole
24 Eligibility of TWENTY-EIGHT (28) MONTHS AS TO **COUNT 6** - TO A MAXIMUM of
25 ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of
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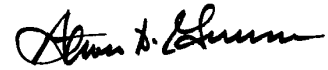
1 SEVENTY-TWO (72) MONTHS; AS TO **COUNT 7** - TO A MAXIMUM of SEVENTY-
2 TWO (72) MONTHS with a MINIMUM Parole Eligibility of TWENTY-EIGHT (28)
3 MONTHS; AS TO **COUNT 8** - TO A MAXIMUM of ONE HUNDRED EIGHTY (180)
4 MONTHS with a MINIMUM Parole Eligibility of SEVENTY-TWO (72) MONTHS; AS TO
5 **COUNT 11** – TO A MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM
6 Parole Eligibility of TWENTY-EIGHT (28) MONTHS; AS TO **COUNT 12** - TO A
7 MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of
8 TWENTY-EIGHT (28) MONTHS; AS TO **COUNT 13** – TO A MAXIMUM of SIXTY (60)
9 MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS; AS TO
10 **COUNT 14** – TO A MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM
11 Parole Eligibility of NINETEEN (19) MONTHS; AS TO **COUNT 15** – TO A MAXIMUM of
12 SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of TWENTY-EIGHT
13 (28) MONTHS; AS TO **COUNT 16** – TO A MAXIMUM of SEVENTY-TWO (72)
14 MONTHS with a MINIMUM Parole Eligibility of TWENTY-EIGHT (28) MONTHS; and
15 AS TO **COUNT 17** – TO A MAXIMUM of SEVENTY-TWO (72) MONTHS with a
16 MINIMUM Parole Eligibility of TWENTY-EIGHT (28) MONTHS, ALL COUNTS to run
17 CONSECUTIVE to each other; with ZERO (0) DAYS credit for time served. Defendant's
18 AGGREGATE TOTAL sentence is ONE THOUSAND EIGHT HUNDRED EIGHTY-
19 FOUR (1,884) MONTHS MAXIMUM with a MINIMUM of SEVEN HUNDRED FORTY-
20 SEVEN (747) MONTHS.

21 DATED this 6TH day of January, 2016.

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DOUG SMITH
DISTRICT COURT JUDGE *smj*

1 NOA
2 ROCHELLE T. NGUYEN
3 Nevada Bar No. 8205
4 732 S. 6th St., Ste. 102
5 Las Vegas, NV 89101
6 Phone: (702) 383-3200
7 Fax: (702) 675-8174
8 Email: rtn@lasvegasdefender.com
9 Attorney for Defendant
10 JOSHUA BACHARACH



CLERK OF THE COURT

Electronically Filed
Jan 29 2016 10:05 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

DISTRICT COURT
CLARK COUNTY, NEVADA

9 STATE OF NEVADA,)
10 Plaintiff,)
11 vs.)
12 JOSHUA BACHARACH,)
Defendant.)

Case No.: C-14-299425-1
Dept. No.: VIII

NOTICE OF APPEAL

15 NOTICE IS HEREBY GIVEN that Defendant, JOSHUA BACHARACH, appeals to the
16 Supreme Court of the State of Nevada from the JUDGMENT OF CONVICTION (JURY TRIAL)
17 entered against said Defendant on January 8, 2016.

18 DATED this 8th day of January, 2016.

19 Respectfully Submitted:

20 NGUYEN & LAY



23
24 ROCHELLE T. NGUYEN, ESQ.
25 Nevada Bar No. 008205
26 732 S. 6th St., Ste. 102
27 Las Vegas, Nevada 89101
28 Attorney for Defendant
JOSHUA BACHARACH

1
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3 **DECLARATION OF MAILING**

4 Rochelle T. Nguyen, attorney, hereby declares that she is, and was where the herein
5 described mailing took place a citizen of the United States, over 21 years of age, and not a party to,
6 nor interested in, the within action; that on the 8th day of January, 2016, declarant deposited in the
7 United States mail at Las Vegas, Nevada, a copy of the Notice of Appeal in the case of the State of
8 Nevada v. JOSHUA BACHARACH, case no. C-14-299425-1 enclosed in a sealed envelope upon
9 which first class postage was fully prepared addressed to JOSHUA BACHARACH (90607), High
10 Desert State Prison, P.O. Box 650, Indian Springs, NV 89070-0650. That there is a regular
11 communication by mail between the place of mailing and the place so addressed.
12

13 I declare under penalty of perjury that the foregoing is true and correct.
14

15 EXECUTED on this 8th day of January, 2016.
16

17 
18

19 By _____

20 ROCHELLE T. NGUYEN, ESQ.
21 Nevada Bar No.: 008205
22 Attorney for Defendant
23 JOSHUA BACHARACH
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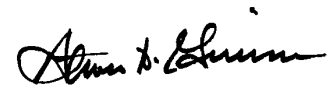
CERTIFICATE OF ELECTRONIC FILING

I hereby certify that electronic service of the foregoing Notice of Appeal was made on the
8th day of January, 2016 to:

District Attorney
Email: pdmotions@clarkcountyda.com



By _____
ROCHELLE T. NGUYEN, ESQ.
Nevada Bar No.: 008205
Attorney for Defendant



CLERK OF THE COURT

CAS
ROCHELLE T. NGUYEN
Nevada Bar No. 8205
732 S. 6th St., Ste. 102
Las Vegas, NV 89101
Phone: (702) 383-3200
Fax: (702) 675-8174
Email: rtn@lasvegasdefender.com
Attorney for Defendant
JOSHUA BACHARACH

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,
Plaintiff,
vs.
JOSHUA BACHARACH,
Defendant.

Case No.: C-14-299425-1
Dept. No.: VIII

CASE APPEAL STATEMENT

1. Name of appellant filing this appeal statement:

JOSHUA BACHARACH.

2. Identify the judge issuing the decision, judgment, or order appealed from:

The Honorable Douglas Smith, Eighth Judicial District Court, Department VIII.

3. Identify each appellant and the name and address of counsel for each appellant:

Appellant:
JOSHUA BACHARACH

Counsel for Appellant:
Rochelle T. Nguyen, Esq.
Nguyen & Lay
732 S. Sixth Street, Suite 102
Las Vegas, Nevada 89101

- 1 **4. Identify each respondent and the name and address of appellate counsel, if known, for**
2 **each respondent (if the name of a respondent's appellate counsel is unknown, indicate**
3 **as much and provide the name and address of that respondent's trial counsel):**

4 **Respondent:**

5 The State of Nevada

6 **Name of counsel for Respondent:**

7 Steven B. Wolfson
8 Clark County District Attorney
9 Regional Justice Center
10 200 Lewis Avenue
11 Las Vegas, Nevada 89101

Adam Paul Laxalt
Nevada Attorney General
100 North Carson Avenue
Carson City, Nevada 89701-4717

- 12 **5. Indicate whether any attorney identified above in response to question 3 or 4 is not**
13 **licensed to practice law in Nevada and, if so, whether the district court granted that**
14 **attorney permission to appear under SCR 42 (attach a copy of any district court**
15 **order granting such permission):**

16 N/A.

- 17 **6. Indicate whether appellant was represented by appointed or retained counsel in the**
18 **district court:**

19 The Appellant was represented by appointed counsel in the district court.

- 20 **7. Indicate whether appellant is represented by appointed or retained counsel on appeal:**

21 The Appellant is represented by appointed counsel on appeal.

- 22 **8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the**
23 **date of entry of the district court order granting such leave:**

24 N/A.

- 25 **9. Indicate the date the proceedings commenced in the district court (e.g., date**
26 **complaint, indictment, information, or petition was filed):**

1 The proceedings commenced in the district court on July 16, 2014, when the State of
2 Nevada filed an Indictment in the Eighth Judicial District Court.

3 **10. Provide a brief description of the nature of the action and result in the district court,**
4 **including the type of judgment or order being appealed and the relief granted by the**
5 **district court:**

6 Mr. Bacharach is appealing from the Judgment of Conviction (Jury Trial) (filed January 8,
7 2016) after sentencing in district court.

8 **11. Indicate whether the case has previously been the subject of an appeal to or original**
9 **writ proceeding in the Supreme Court and, if so, the caption and Supreme Court**
10 **docket number prior of the prior proceeding:**

11 This case has not previously been the subject of an appeal to the Nevada Supreme Court.

12 **12. Indicate whether this appeal involves child custody or visitation:**

13 N/A.

14 **13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:**

15 N/A.

16 DATED this 8th day of January, 2016.

17 Respectfully Submitted:

18 NGUYEN & LAY

19 

20 ROACHELLE T. NGUYEN, ESQ.

21 Nevada Bar No. 008205

22 732 S. 6th St., Ste. 102

23 Las Vegas, Nevada 89101

24 Attorney for Defendant

25 JOSHUA BACHARACH

1
2
3 **DECLARATION OF MAILING**

4 Rochelle T. Nguyen, attorney, hereby declares that she is, and was where the herein
5 described mailing took place a citizen of the United States, over 21 years of age, and not a party to,
6 nor interested in, the within action; that on the 7th day of June, 2015, declarant deposited in the
7 United States mail at Las Vegas, Nevada, a copy of the Case Appeal Statement in the case of the
8 State of Nevada v. JOSHUA BACHARACH, case no. C-14-299425-1 enclosed in a sealed
9 envelope upon which first class postage was fully prepared addressed to JOSHUA BACHARACH
10 (#90607), High Desert State Prison, P.O. Box 650, Indian Springs, NV 89070-0650. That there is a
11 regular communication by mail between the place of mailing and the place so addressed.
12

13 I declare under penalty of perjury that the foregoing is true and correct.
14

15 EXECUTED on this 8th day of January, 2016.
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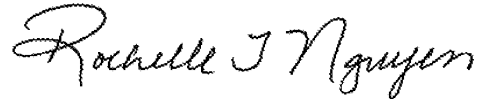
19 By _____
20

21 ROCHELLE T. NGUYEN, ESQ.
22 Nevada Bar No.: 008205
23 Attorney for Defendant
24 JOSHUA BACHARACH
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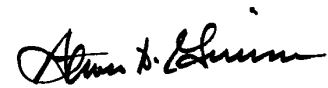
CERTIFICATE OF ELECTRONIC FILING

I hereby certify that electronic service of the foregoing Case Appeal Statement was made
on the 8th day of January, 2016 to:

Clark County District Attorney
Email: pdmotions@clarkcountyda.com



By _____
ROCHELLE T. NGUYEN, ESQ.
Nevada Bar No.: 008205
Attorney for Defendant



CLERK OF THE COURT

1 REQ
2 ROCHELLE T. NGUYEN
3 Nevada Bar No. 8205
4 732 S. 6th St., Ste. 102
5 Las Vegas, NV 89101
6 Phone: (702) 383-3200
7 Fax: (702) 675-8174
8 Email: rtn@lasvegasdefender.com
9 Attorney for Defendant
10 JOSHUA BACHARACH

DISTRICT COURT
CLARK COUNTY, NEVADA

9 STATE OF NEVADA,)
10 Plaintiff,)
11 vs.)
12 JOSHUA BACHARACH,)
13 Defendant.)

Case No.: C-14-299425-1
Dept. No.: VIII

REQUEST FOR ROUGH DRAFT TRANSCRIPTS

14 TO: JILL JACOBY, COURT RECORDER
15 District Court, Department No. VIII

16 JOSHUA BACHARACH, Defendant named above, requests a preparation of a
17 rough draft transcripts for the following dates:

- 18 • **Initial Arraignment: July 28, 2014**
- 19 • **Request: August 11, 2014**
- 20 • **Request: August 18, 2014**
- 21 • **Calendar Call: April 8, 2015**
- 22 • **Status Check: April 15, 2015**
- 23 • **Calendar Call: October 28, 2015**
- 24 • **Status Check: October 29, 2015**
- 25 • **Jury Trial (including Jury Selection and Opening): November 2, 2015**
- 26 • **Jury Trial: November 3, 2015**
- 27 • **Jury Trial: November 4, 2015 (including jury instructions, closing statements)**
- 28 • **Jury Trial: November 5, 2015**
- **Sentencing: December 30, 2015**

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

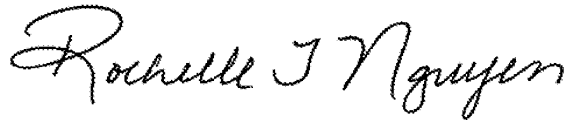
1 I recognize that I must personally serve a copy of this form on the above-named
2 court recorder and opposing counsel.

3 That the above-named court recorder shall have twenty (20) days from the date of
4 service of this document to prepare an original plus three copies at State expense and file with the
5 District Court Clerk the original rough draft transcript(s) requested herein.

6 Further, **the court reporter shall also deliver copies of the rough draft**
7 **transcript to appellant's counsel and respondent counsel** no more than twenty (20) days after
8 the date of the appellant's request.
9

10 DATED this 8th day of January, 2016.

11 NGUYEN & LAY

12 

13
14
15 ROACHELLE T. NGUYEN, ESQ.
16 Nevada Bar No. 008205
17 732 S. 6TH ST., STE. 102
18 Las Vegas, Nevada 89101
19 Attorney for Defendant
20 JOSHUA BACHARACH

21 **CERTIFICATE OF SERVICE**

22 I hereby certify that on the 8th day of January, 2016, I served a true and correct copy
23 of the foregoing Request for Rough Draft Transcripts on:

24 JILL JACOBY
25 Court Recorder
26 District Court Department VIII

27 NGUYEN & LAY

28 

ROACHELLE T. NGUYEN, ESQ.

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that electronic service of the foregoing Request for Rough Draft
Transcripts was made on the 8th day of January, 2016.

Clark County District Attorney
Email: pdmotions@clarkcountyda.com

NGUYEN & LAY



ROCHELLE T. NGUYEN, ESQ.
Nevada Bar No. 008205
732 S. 6th St., Ste. 102
Las Vegas, Nevada 89101
Attorney for Defendant
JOSHUA BACHARACH

DEPARTMENT 8
CASE SUMMARY
CASE NO. C-14-299425-1

State of Nevada
vs
Joshua Bacharach

§ Location: Department 8
§ Judicial Officer: Smith, Douglas E.
§ Filed on: 07/16/2014
§ Cross-Reference Case Number: C299425
§ Defendant's Scope ID #: 1900105
§ Grand Jury Case Number: 14AGJ025
§ ITAG Case ID: 1732747

CASE INFORMATION

Offense	Deg	Date	Case Type:	Felony/Gross Misdemeanor
1. ATTEMPT MURDER WITH USE OF A DEADLY WEAPON	F	06/26/2014	Case Flags:	Appealed to Supreme Court
2. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	F	06/26/2014		Custody Status - Nevada
3. ASSAULT WITH A DEADLY WEAPON	F	06/26/2014		Department of Corrections
4. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	F	06/26/2014		Charge Description Updated
5. ASSAULT WITH A DEADLY WEAPON	F	06/26/2014		Bifurcated Case
6. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	F	06/26/2014		
7. ASSAULT WITH A DEADLY WEAPON	F	06/26/2014		
8. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	F	06/26/2014		
9. ASSAULT WITH A DEADLY WEAPON	F	06/26/2014		
10. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	F	06/26/2014		
11. ASSAULT WITH A DEADLY WEAPON	F	06/26/2014		
12. STOP REQUIRED ON SIGNAL OF POLICE OFFICER	F	06/26/2014		
13. RESISTING PUBLIC OFFICER WITH USE OF A FIREARM	F	06/26/2014		
14. POSSESSION OF FIREARM WITH ALTERED OR OBLITERATED SERIAL NUMBER	F	06/26/2014		
15. POSSESSION OF FIREARM BY EX-FELON	F	06/26/2014		
16. POSSESSION OF FIREARM BY EX-FELON	F	06/26/2014		
17. POSSESSION OF FIREARM BY EX-FELON	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 8
Date Assigned	07/16/2014
Judicial Officer	Smith, Douglas E.

PARTY INFORMATION

Lead Attorneys






DEPARTMENT 8
CASE SUMMARY
CASE NO. C-14-299425-1

Defendant **Bacharach, Joshua W**

Nguyen, Rochelle T.
Retained
702-383-3200(W)







Plaintiff **State of Nevada**

Wolfson, Steven B
702-671-2700(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
07/16/2014	 Grand Jury Indictment (11:45 AM) (Judicial Officer: Bell, Linda Marie)	
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	
07/28/2014	Initial Arraignment (8:00 AM) (Judicial Officer: Smith, Douglas E.)	
07/28/2014	Indictment Warrant Return (8:00 AM) (Judicial Officer: Smith, Douglas E.)	
07/28/2014	 All Pending Motions (8:00 AM) (Judicial Officer: Smith, Douglas E.)	
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 OF 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:	

DEPARTMENT 8
CASE SUMMARY
CASE NO. C-14-299425-1









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
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:

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>
08/11/2014	 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>
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>
08/27/2014	

DEPARTMENT 8
CASE SUMMARY
CASE NO. C-14-299425-1

	<i>CANCELED</i> Calendar Call (8:00 AM) (Judicial Officer: Smith, Douglas E.) <i>Vacated</i>
09/02/2014	<i>CANCELED</i> Jury Trial (9:30 AM) (Judicial Officer: Smith, Douglas E.) <i>Vacated</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>
04/08/2015	 Calendar Call (8:00 AM) (Judicial Officer: Smith, Douglas E.)
04/13/2015	<i>CANCELED</i> 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>
07/01/2015	 Ex Parte Order <i>Ex Parte Order</i>
10/15/2015	 Notice of Witnesses and/or Expert Witnesses <i>Second Supplemental Notice of Witnesses and/or Expert Witnesses(NRS 174.234)</i>
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>
10/28/2015	 Calendar Call (8:00 AM) (Judicial Officer: Smith, Douglas E.)
10/29/2015	 Status Check (9:00 AM) (Judicial Officer: Smith, Douglas E.) <i>At the Request of the Court: Status Check: Negotiations</i>
11/02/2015	 Jury Trial (9:30 AM) (Judicial Officer: Smith, Douglas E.) 11/02/2015-11/05/2015
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>

DEPARTMENT 8
CASE SUMMARY
CASE NO. C-14-299425-1

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>
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:
12/03/2015	 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
12/30/2015	 Sentencing (8:00 AM) (Judicial Officer: Smith, Douglas E.)
12/30/2015	Disposition (Judicial Officer: Smith, Douglas E.) 1. ATTEMPT MURDER WITH USE OF A DEADLY WEAPON Guilty PCN: Sequence:
12/30/2015	Sentence (Judicial Officer: Smith, Douglas E.) 1. ATTEMPT MURDER WITH USE OF A DEADLY WEAPON Adult Adjudication 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:

DEPARTMENT 8

CASE No. C-14-299425-1

Guilty

Guilty

Guilty

Guilty

Adult Adjudication

Consecutive: Charge 1

Fee Totals \$	5,000.00
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Adult Adjudication

Concurrent: Charge 1 and 2

Fee Totals \$	5,000.00
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Adult Adjudication

Consecutive: Charge 1-3

Fee Totals \$	5,000.00
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Adult Adjudication

Consecutive: Charge 1-4

Fee Totals \$	5,000.00
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Adult Adjudication

Consecutive: Charge 1-5





DEPARTMENT 8
CASE SUMMARY
CASE NO. C-14-299425-1

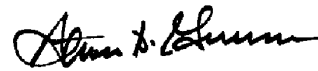
	Fee Totals:	
	Fine - ASK	5,000.00
	Fee Totals \$	5,000.00
12/30/2015	Sentence (Judicial Officer: Smith, Douglas E.)	
	7. ASSAULT WITH A DEADLY WEAPON	
	Adult Adjudication	
	Sentenced to Nevada Dept. of Corrections	
	Term: Minimum:28 Months, Maximum:72 Months	
	Consecutive: Charge 1-6	
	Fee Totals:	
	Fine - ASK	5,000.00
	Fee Totals \$	5,000.00
12/30/2015	Sentence (Judicial Officer: Smith, Douglas E.)	
	8. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	
	Adult Adjudication	
	Sentenced to Nevada Dept. of Corrections	
	Term: Minimum:72 Months, Maximum:180 Months	
	Consecutive: Charge 1-7	
	Fee Totals:	
	Fine - ASK	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	
	PCN: Sequence:	
	17. POSSESSION OF FIREARM BY EX-FELON	
	Guilty	
	PCN: Sequence:	
12/30/2015	Sentence (Judicial Officer: Smith, Douglas E.)	
	11. ASSAULT WITH A DEADLY WEAPON	
	Adult Adjudication	
	Sentenced to Nevada Dept. of Corrections	
	Term: Minimum:28 Months, Maximum:72 Months	
	Consecutive: Charge 1-8	
	Fee Totals:	
	Fine - ASK	5,000.00

DEPARTMENT 8
CASE SUMMARY
CASE NO. C-14-299425-1

	Fee Totals \$	5,000.00
12/30/2015	Sentence (Judicial Officer: Smith, Douglas E.) 12. STOP REQUIRED ON SIGNAL OF POLICE OFFICER Adult Adjudication Sentenced to Nevada Dept. of Corrections Term: Minimum:28 Months, Maximum:72 Months Consecutive: Charge 1-8 and 11 Fee Totals: Fine - ASK 5,000.00 Fee Totals \$ 5,000.00	
12/30/2015	Sentence (Judicial Officer: Smith, Douglas E.) 13. RESISTING PUBLIC OFFICER WITH USE OF A FIREARM Adult Adjudication Sentenced to Nevada Dept. of Corrections Term: Minimum:24 Months, Maximum:60 Months Consecutive: Charge 1-8 and 11-12 Fee Totals: Fine - ASK 10,000.00 Fee Totals \$ 10,000.00	
12/30/2015	Sentence (Judicial Officer: Smith, Douglas E.) 14. POSSESSION OF FIREARM WITH ALTERED OR OBLITERATED SERIAL NUMBER Adult Adjudication Sentenced to Nevada Dept. of Corrections Term: Minimum:19 Months, Maximum:48 Months Consecutive: Charge 1-8 and 11-13 Fee Totals: Fine - ASK 5,000.00 Fee Totals \$ 5,000.00	
12/30/2015	Sentence (Judicial Officer: Smith, Douglas E.) 15. POSSESSION OF FIREARM BY EX-FELON Adult Adjudication Sentenced to Nevada Dept. of Corrections Term: Minimum:28 Months, Maximum:72 Months Consecutive: Charge 1-8 and 11-14 Fee Totals: Fine - ASK 5,000.00 Fee Totals \$ 5,000.00	
12/30/2015	Sentence (Judicial Officer: Smith, Douglas E.) 16. POSSESSION OF FIREARM BY EX-FELON Adult Adjudication Sentenced to Nevada Dept. of Corrections Term: Minimum:28 Months, Maximum:72 Months Consecutive: Charge 1-8 and 11-15 Fee Totals: Fine - ASK 5,000.00 Fee Totals \$ 5,000.00	
12/30/2015	Sentence (Judicial Officer: Smith, Douglas E.) 17. POSSESSION OF FIREARM BY EX-FELON Adult Adjudication 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: Fine - ASK 5,000.00 Fee Totals \$ 5,000.00	

DEPARTMENT 8
CASE SUMMARY
CASE NO. C-14-299425-1

	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 Fee - ASK	250.00
	Fee Totals \$	428.00
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>	
DATE	FINANCIAL INFORMATION	
	Defendant Bacharach, Joshua W	
	Total Charges	75,428.00
	Total Payments and Credits	0.00
	Balance Due as of 1/27/2016	75,428.00



CLERK OF THE COURT

JOC

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JOSHUA W. BACHARACH
aka Joshua William Bacharach
#1900105

Defendant.

CASE NO. C299425-1

DEPT. NO. VIII

JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of
COUNT 1 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B
Felony) in violation of NRS 200.010, 200.030, 193.330, 193.165; COUNTS 2, 4, 6, 8 &
10 – DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE
(Category B Felony) in violation of NRS 202.287; COUNTS 3, 5, 7, 9 & 11 – ASSAULT
WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; COUNT
12 – STOP REQUIRED ON SIGNAL OF POLICE OFFICER – (Category B Felony) in
violation of NRS 484B.550.3b; COUNT 13 – RESISTING PUBLIC OFFICER WITH
USE OF A FIREARM (Category C Felony) in violation of NRS 199.280; COUNT 14 –

//

1 POSSESSION OF FIREARM WITH ALTERED OR OBLITERATED SERIAL
2 NUMBER (Category D Felony) in violation of NRS 202.277; COUNTS 15, 16 & 17 –
3 POSSESSION OF FIREARM BY EX-FELON (Category B Felony) in violation of NRS
4 202.360; and the matter having been tried before a jury, and the Defendant having been
5 found **NOT GUILTY** of **COUNTS 9 & 10 ONLY**, and guilty of all remaining crimes;
6 thereafter, on the 30th day of December, 2015, the Defendant was present in court for
7 sentencing with his counsel, ROCHELLE NGUYEN, ESQ., and good cause appearing,
8

9 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in
10 addition to the \$25.00 Administrative Assessment Fee, \$250.00 Indigent Defense Civil
11 Assessment Fee, a Fine in the amount of \$75,000.00, and \$150.00 DNA Analysis Fee
12 including testing to determine genetic markers, plus a \$3.00 DNA Collection Fee, the
13 Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows:
14 AS TO **COUNT 1** - TO A MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a
15 MINIMUM Parole Eligibility of NINETY-SIX (96) MONTHS, plus a CONSECUTIVE term
16 of TWO HUNDRED FORTY (240) MONTHS MAXIMUM with a MINIMUM Parole
17 Eligibility of NINETY-SIX (96) MONTHS for use of a deadly weapon; AS TO **COUNT 2** -
18 TO A MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole
19 Eligibility of SEVENTY-TWO (72) MONTHS; AS TO **COUNT 3** - TO A MAXIMUM of
20 SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of TWENTY-EIGHT
21 (28) MONTHS; AS TO **COUNT 4** – TO A MAXIMUM of ONE HUNDRED EIGHTY (180)
22 MONTHS with a MINIMUM Parole Eligibility of SEVENTY-TWO (72) MONTHS; AS TO
23 **COUNT 5** - TO A MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole
24 Eligibility of TWENTY-EIGHT (28) MONTHS AS TO **COUNT 6** - TO A MAXIMUM of
25 ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of
26
27
28

1 SEVENTY-TWO (72) MONTHS; AS TO **COUNT 7** - TO A MAXIMUM of SEVENTY-
2 TWO (72) MONTHS with a MINIMUM Parole Eligibility of TWENTY-EIGHT (28)
3 MONTHS; AS TO **COUNT 8** - TO A MAXIMUM of ONE HUNDRED EIGHTY (180)
4 MONTHS with a MINIMUM Parole Eligibility of SEVENTY-TWO (72) MONTHS; AS TO
5 **COUNT 11** - TO A MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM
6 Parole Eligibility of TWENTY-EIGHT (28) MONTHS; AS TO **COUNT 12** - TO A
7 MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of
8 TWENTY-EIGHT (28) MONTHS; AS TO **COUNT 13** - TO A MAXIMUM of SIXTY (60)
9 MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS; AS TO
10 **COUNT 14** - TO A MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM
11 Parole Eligibility of NINETEEN (19) MONTHS; AS TO **COUNT 15** - TO A MAXIMUM of
12 SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of TWENTY-EIGHT
13 (28) MONTHS; AS TO **COUNT 16** - TO A MAXIMUM of SEVENTY-TWO (72)
14 MONTHS with a MINIMUM Parole Eligibility of TWENTY-EIGHT (28) MONTHS; and
15 AS TO **COUNT 17** - TO A MAXIMUM of SEVENTY-TWO (72) MONTHS with a
16 MINIMUM Parole Eligibility of TWENTY-EIGHT (28) MONTHS, ALL COUNTS to run
17 CONSECUTIVE to each other; with ZERO (0) DAYS credit for time served. Defendant's
18 AGGREGATE TOTAL sentence is ONE THOUSAND EIGHT HUNDRED EIGHTY-
19 FOUR (1,884) MONTHS MAXIMUM with a MINIMUM of SEVEN HUNDRED FORTY-
20 SEVEN (747) MONTHS.

21 DATED this 6TH day of January, 2016.

22
23
24
25
26
27
28


DOUG SMITH
DISTRICT COURT JUDGE 

**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 Perez

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT: State of Nevada Plaintiff
 Thomson, Megan Attorney

JOURNAL ENTRIES

- Chris Datzer, 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

PRINT DATE: 01/27/2016

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Minutes Date: July 16, 2014

AA 0991

**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 Eufrazia Nazaroff to testify; that she had declined to meet with counsel prior to her testimony; and requested that the

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Minutes Date: July 16, 2014

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

**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. Nazarov 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. Nazarov 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: 01/27/2016

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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.

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C-14-299425-1

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

PRINT DATE: 01/27/2016

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Minutes Date: July 16, 2014

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.

CASE NO. C-14-299425-1
DEPT. NO. V111
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	11	11	11
55. Photo - Cartridge #12 (close-up "Speer 45 Auto")	11	11	11
56. Photo - Cartridge #11 by rear of car	11	11	11
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	11-3-15	STIP	11-3-15
60. Photo - Patrol car with evidence markers 1-4	11	11	11
61. Photo - McNabb's casing #1	11	11	11
62. Photo - McNabb's casing #1 (close-up)	11	11	11
63. Photo - Marker #2 by passenger side patrol car	11	11	11
64. Photo - McNabb's casing #2	11	11	11
65. Photo - McNabb's casing #2 (close-up)	11	11	11
66. Photo - McNabb's #3, #4 casings	11	11	11
67. Photo - McNabb's #3 casing (close-up)	11	11	11
68. Photo - McNabb's #4 casing (close-up)	11	11	11
69. Photo - McNabb's casing #5 (with marker)	11	11	11
70. Photo - McNabb's casing #5 (inside car)	11	11	11
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	11	11	11
74. Photo - McNabb's casing #6	11	11	11
75. Photo - McNabb's casing #6 (close-up)	11	11	11
76. Photo - McNabb's casing #7	11	11	11
77. Photo - McNabb's casing #7 (close-up)	11	11	11
78. Photo - McNabb's casing #8	11	11	11
79. Photo - McNabb's casing #8 (close-up)	11	11	11
80. Photo - Marker 9 in street	11	11	11
81. Photo - McNabb's magazine in street	11	11	11
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

• 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 - CCSP 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

Bifurcated phase of Trial

	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 dna swabs	11-3-15	NO	11-3-15
• 202 - DISK 911 Calls	11-4-15	OBS	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 Judgment of Conviction filed 10/10/09	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
ROUGH DRAFT TRANSCRIPTS; DISTRICT COURT DOCKET ENTRIES; JUDGMENT OF
CONVICTION (JURY TRIAL); DISTRICT COURT MINUTES; EXHIBITS LIST

STATE OF NEVADA,

Plaintiff(s),

vs.

JOSHUA W. BACHARACH aka JOSHUA
WILLIAM BACHARACH,

Defendant(s).

Case No: C299425

Dept No: VIII

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 27 day of January 2016.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSHUA BACHARACH

)

DOCKET NUMBER: 69677

)

Appellant,

)

Electronically Filed

Jun 09 2016 09:46 a.m.

)

Tracie K. Lindeman

vs.

)

Clerk of Supreme Court

)

THE STATE OF NEVADA,

)

)

Respondent.

)

)

FAST TRACK STATEMENT

1. Name of party filing this fast track statement:

Joshua Bacharach.

2. Name, law firm, address, and telephone number of attorney submitting this fast track statement:

Rochelle T. Nguyen, Esq.

Nguyen & Lay

732 S. Sixth Street, Suite 102

Las Vegas, Nevada 89101

Telephone: (702) 383-3200

3. Name, law firm, address, and telephone number of appellate counsel if different from trial counsel:

N/A.

4. Judicial district, county, and district court docket number of lower court proceedings:

Eighth Judicial District Court, Clark County, C-14-299425-1.

5. Name of judge issuing decision, judgment, or order appealed from:

The Honorable Douglas E. Smith.

6. Length of trial. If this action proceeded to trial in the district court, how many days did the trial last?

Four (4) days.

7. Conviction(s) appealed from:

Count 1 – Attempt Murder with Use of a Deadly Weapon (Category B felony, NRS 200.010, 200.030, 193.330, and 193.165); Counts 2, 4, 6, and 8 – Discharge of Firearm from or within a Structure or Vehicle (Category B felony, NRS 202.287); Counts 3, 5, 7, and 11 – Assault with a Deadly Weapon (Category B felony, NRS 200.471); Count 12 – Stop Required on Signal of Police Officer (Category B felony, NRS 484B.550.3b); Count 13 – Resisting Public Officer with Use of a Firearm (Category C felony, NRS 199.280); Count 14 – Possession of a Firearm with Altered or Obliterated Serial Number (Category D felony, NRS 202.277); and, Counts 15 and 16 – Possession of a Firearm by Ex-Felon (Category B felony, NRS 202.360). Appellant’s Fast Track Appendix, Volume I, pages 121-126 (hereinafter, “[Volume number] AA [Page number]”).

8. Sentence for each count:

The district court sentenced Mr. Bacharach as follows: As to Count 1 – to a maximum of two hundred forty (240) months with a minimum parole eligibility of ninety-six (96) months, plus a consecutive term of two hundred forty (240) months

maximum with a minimum parole eligibility of ninety-six (96) months for use of a deadly weapon; As to Count 2 – to a maximum of one hundred eighty (180) months with a minimum parole eligibility of seventy-two (72) months; As to Count 3 – to a maximum of seventy-two (72) months with a minimum parole eligibility of twenty-eight (28) months; As to Count 4 – to a maximum of one hundred eighty (180) months with a minimum parole eligibility of seventy-two (72) months with a minimum parole eligibility of twenty-eight (28) months; As to Count 6 – to a maximum of one hundred eighty (180) months with a minimum parole eligibility of seventy-two (72) months; As to Count 7 – to a maximum of seventy-two (72) months with a minimum parole eligibility of twenty-eight (28) months; As to Count 8 – to a maximum of one hundred eighty (180) months with a minimum parole eligibility of seventy-two (72) months; As to Count 11 – to a maximum of seventy-two (72) months with a minimum parole eligibility of twenty-eight (28) months; As to Count 12 – to a maximum of seventy-two (72) months with a minimum parole eligibility of twenty-eight (28) months; As to Count 13 – to a maximum of sixty (60) months with a minimum parole eligibility of twenty-four (24) months; As to Count 13 – to a maximum of sixty (6) months with a minimum parole eligibility of twenty-four (24) months; As to Count 14 – to a maximum of forty-eight (48) months with a minimum parole eligibility of nineteen (19) months; as to Count 15 – to a maximum of seventy-two (72) months with a minimum

parole eligibility of twenty-eight (28) months; As to Count 16 – to a maximum of seventy-two (72) months with a minimum parole eligibility of twenty-eight (28) month; As to Count 17 – to a maximum of seventy-two (72) months with a minimum parole eligibility of twenty-eight (27) months; all counts to runs consecutive with each other; with zero (0) days credit for time served. I AA 128-129.

9. Date district court announced decision, sentence, or order appealed from:

December 30, 2015. I AA 128, 145-147.

10. Date of entry of written judgment or order appealed from:

Judgment of Conviction: January 08, 2016. I AA 127-129.

(a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

N/A.

11. If this appeal is from an order granting or denying a petition for a writ of habeas corpus, indicate the date written notice of entry of judgment or order was served by the court:

N/A.

(a) Specify whether service was by delivery or by mail:

N/A.

12. If the time for filing the notice of appeal was tolled by a post-judgment motion,

(a) specify the type of motion, and the date of filing of the motion:

N/A.

(b) date of entry of written order resolving motion:

N/A.

13. Date notice of appeal filed:

Notice of Appeal filed by counsel: January 26, 2016. I AA 130-132.

14. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(b), NRS 34.560, NRS 34.575, NRS 177.015, or other:

NRAP 4(b).

15. Specify statute, rule or other authority which grants this court jurisdiction to review the judgment or order appealed from:

NRS 177.015(3).

16. Specify the nature of disposition below, e.g., judgment after bench trial, judgment after jury verdict, judgment upon guilty plea, etc.:

Judgment after jury verdict.

17. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal (e.g., separate appeals by co-defendants, appeal after post-conviction proceedings):

N/A.

18. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., habeas corpus proceedings in state or federal court, bifurcated proceedings against co-defendants):

N/A.

19. Proceedings raising same issues. List the case name and docket number of all appeals or original proceedings presently pending before this court, of

which you are aware, which raise the same issues you intend to raise in this appeal:

N/A.

20. Procedural history. Briefly describe the procedural history of the case (provide citations for every assertion of fact to the appendix, if any, or to the rough draft transcript):

The State of Nevada charged the Defendant, Joshua Bacharach, by way of Indictment, with the following: Count 1 – Attempt Murder with Use of a Deadly Weapon (Category B felony, NRS 200.010, 200.030, 193.330, and 193.165); Counts 2, 4, 6, 8, and 10 – Discharge of Firearm from or within a Structure or Vehicle (Category B felony, NRS 202.287); Counts 3, 5, 7, 9, and 11 – Assault with a Deadly Weapon (Category B felony, NRS 200.471); Count 12 – Stop Required on Signal of Police Officer (Category B felony, NRS 484B.550.3b); Count 13 – Resisting Public Officer with Use of a Firearm (Category C felony, NRS 199.280); Count 14 – Possession of a Firearm with Altered or Obliterated Serial Number (Category D felony, NRS 202.277); and, Counts 15, 16, and 17 – Possession of a Firearm by Ex-Felon (Category B felony, NRS 202.360). Appellant’s Fast Track Appendix, Volume I, pages 52-57 (hereinafter, “[Volume number] AA [Page number]”).

On May 22, 2015, a jury found Mr. Bacharach guilty of all but two charges following a four (4) day jury trial. I AA 121-126.

The district court sentenced Mr. Bacharach as described in paragraph 8, *supra*. I AA 127-129.

21. Issues on appeal. State concisely the principal issue(s) in this appeal:

- I. **THE DISTRICT COURT ERRED BY INSTRUCTING THE JURY ON FLIGHT, BECAUSE THERE WAS NO EVIDENCE TO SUPPORT THE CONCLUSION THAT MR. BACHARACH'S GOING AWAY WAS NOT JUST A MERE LEAVING.**
- II. **THE DISTRICT COURT ERRED BY NOT GRANTING A MISTRIAL AFTER STATE'S WITNESS EUFRASIA NAZAROFF INTRODUCED TESTIMONY THAT SHE SPOKE WITH THE GANG UNIT.**

22. Legal argument, including authorities:

- I. **THE DISTRICT COURT ERRED BY INSTRUCTING THE JURY ON FLIGHT, BECAUSE THERE WAS NO EVIDENCE TO SUPPORT THE CONCLUSION THAT MR. BACHARACH'S GOING AWAY WAS NOT JUST A MERE LEAVING.**

The giving of a flight instruction is reversible error where evidence of flight has been not admitted. Miles v. State, 97 Nev. 82, 85, 624 P.2d 494, 496 (1981) (citing Potter v. State, 96 Nev. 875, 619 P.2d 1222 (1980)). Additionally, “a flight instruction may give undue influence to one phase of evidence, therefore [this Court] will carefully scrutinize it to be certain that the record supports the conclusion that appellant’s going away was not just a mere leaving but was with a consciousness of guilt and for the purpose of avoiding arrest.” Id. The Nevada Supreme Court reviews a district court’s decision to give or refuse to give a

nonstatutory jury instruction for an abuse of discretion. Tavares v. State, 117 Nev. 725, 734, 30 P.3d 1128, 1133 (2001) (citing Castillo v. State, 114 Nev. 271, 282, 956 P.2d 103, 110 (1998)).

In the instant case, the State argued that “clearly here we have flight over and over and over again.” VI AA 711. Here the District Court gave the flight instruction over Mr. Bacharach’s objection. I AA 91. The State and the District Court miscomprehend flight. A flight instruction is given typically in a situation where an alleged crime is committed and the person flees the scene or the jurisdiction, and under circumstances that suggest consciousness of guilt. In this case, the State’s characterization of an on-going flight is incorrect. Essentially, the State argues that in this case the “flight” consisted of the actual commission of the charged acts. The State did not contend that there was some action independent of the acts giving rise to the charges at issue. There are no allegations that Mr. Bacharach’s going away was with a consciousness of guilt and for the purpose of avoiding arrest.

Therefore, the district court erred by instructing the jury on flight, because there was no evidence to support the conclusion that Mr. Bacharach’s going away was not just a mere leaving.

II. THE DISTRICT COURT ERRED BY NOT GRANTING A MISTRIAL AFTER STATE’S WITNESS EUFRASIA NAZAROFF INTRODUCED TESTIMONY THAT SHE SPOKE WITH THE GANG UNIT.

“A district court’s decision to admit or exclude [prior bad act] evidence under NRS 48.045(2) rests within its sound discretion and will not be reversed on appeal absent manifest error.” Fields v. State, 125 Nev. 785, 789, 220 P.3d 709, 712 (2009) (quoting Ledbetter v. State, 122 Nev. 252, 259, 129 P.3d 671, 676 (2006)).

NRS 48.045(2) prohibits the use of “other crimes, wrongs or acts ... to prove the character of a person in order to show that he acted in conformity therewith.” Such evidence “may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” NRS 48.045(2).

““To be deemed an admissible bad act, the trial court must determine, outside the presence of the jury, that: (1) the incident is relevant to the crime charged; (2) the act is proven by clear and convincing evidence; and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice.”” Fields, 125 Nev. at 790, 220 P.3d at 713 (quoting Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997)). In assessing “unfair prejudice,” the Nevada Supreme Court “reviews the use to which the evidence was actually put--whether, having been admitted for a permissible limited purpose, the

evidence was presented or argued at trial for its forbidden tendency to prove propensity.” Id. at 790, 220 P.3d at 713. “Also key is ‘the nature and quantity of the evidence supporting the defendant's conviction beyond the prior act evidence itself.’” Id. (quoting Ledbetter, 122 Nev. at 262 n.16, 129 P.3d at 678-79 n.16).

“[I]mproper reference to criminal history is a violation of due process since it affects the presumption of innocence; the reviewing court therefore must determine whether the error was harmless beyond a reasonable doubt.” Manning v. Warden, 99 Nev. 82, 87, 659 P.2d 847, 850 (1983) (citing Chapman v. California, 386 U.S. 18, 24 (1967)). The Nevada Supreme Court has determined that “‘the test for determining a reference to criminal history is whether a juror could reasonably infer from the facts presented that the accused had engaged in prior criminal activity.’” Homick v. State, 108 Nev. 127, 140, 825 P.2d 600, 608 (1992) (citing Manning, 99 Nev. at 86, 659 P.2d at 850).

Prior to the start of testimony in the State’s case in chief, the State indicated that it would be calling witness Eufrazia Nazaroff. II AA 296. She was described by the State as the mother of the defendant’s children. Id. The State further elaborated that Nazaroff had knowledge about things she was not allowed to talk about. Id. The State and Mr. Bacharach recognized that she had the potential to cause a mistrial by testifying to prior and/or uncharged bad acts on the part of Mr. Bacharach, which the State never sought to introduce. Id. The District Court agreed

and admonished Nazaroff prior to her testimony. The District Court specifically instructed Nazaroff not to talk about “any gang affiliation, any moniker, or nickname.” II AA 297-298. She was further instructed that if she violated the Court’s order that she would go to jail and someone would have to come and get her child. Id. The Court, the State and counsel for Mr. Bacharach, listed several topics that were not allowed. II AA 299. The Court again reminded Nazaroff that if she was to blurt out any of these topics she would be arrested. II AA 298.

While answering questions on direct examination by the State, Nazaroff, indicated that the gang unit police were showing her Facebook pictures of Mr. Bacharach. Mr. Bacharach immediately objected and moved for a mistrial. II AA 373. At the bench conference, the District Court indicated that it had not been paying attention. Id. Specifically, the District Court stated, “I’m sorry. I was putting my calendar for tomorrow together. So what was the question.” Id. At that point counsel for both parties had to summarize the testimony just presented for the district court. Id. Upon hearing counsel’s summary, the District Court indicated that it was not going to grant the Motion for mistrial. Id. Furthermore, the District Court did not remand the witness into custody as it had previously warned it would do.

23.Preservation of issues. State concisely how each enumerated issue on appeal was preserved during trial. If the issue was not preserved, explain why this court should review the issue:

The issues were preserved in a timely appeal and contemporaneous

objections to the errors. II AA 373.

24.Issues of first impression or of public interest. Does this appeal present a substantial legal issue of first impression in this jurisdiction or one affecting an important public interest: If so, explain:

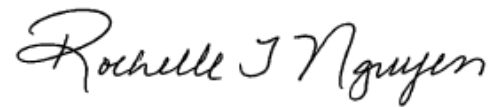
N/A.

VERIFICATION

1. I hereby certify that this fast track statement complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this fast track statement has been prepared in a proportionally spaced typeface using Microsoft Word for Mac 2011 in 14 point Times New Roman.
2. I further certify that this fast track statement complies with the page- or type-volume limitations of NRAP 3C(h)(2) because it is proportionately spaced, has a typeface of 14 points or more, and contains 2,504 words.
3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing a timely fast track statement and that the Supreme Court of Nevada may sanction an attorney for failing to file a timely fast track statement, or failing to raise material issues or arguments in the fast track statement, or failing to

cooperate fully with appellate counsel during the course of an appeal. I therefore certify that the information provided in this fast track statement is true and complete to the best of my knowledge, information and belief.

Dated this 08th day of June, 2016.

A handwritten signature in cursive script that reads "Rochelle T. Nguyen".

ROCHELLE T. NGUYEN, ESQ.
Nevada Bar Identification No. 8205
Nguyen & Lay
324 South Third Street, Suite 102
Las Vegas, Nevada 89101
Telephone: (702) 383-3200

ROUTING STATEMENT

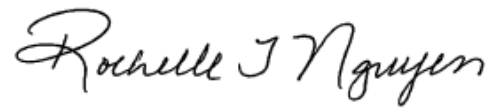
NRAP 3C(e)(1)(B) provides that a fast track statement “shall” include the following:

A statement setting forth whether the matter should be retained by the Supreme Court or assigned to the Court of Appeals, including reference to any appropriate provision in Rule 17.

NRAP 17(b)(1) provides that the Court of Appeals shall hear “any direct appeal from a judgment of conviction based on a jury verdict that does not involve a conviction for any offenses that are category A or category B felonies.”

This matter should be assigned to the Nevada Supreme Court, because the instant appeal challenges a judgment of a conviction based on jury verdict involving convictions for numerous category B felonies.

Dated this 08th day of June, 2016.



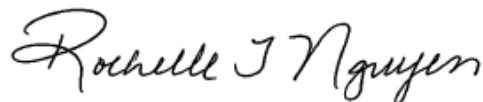
ROCHELLE T. NGUYEN, ESQ.
Nevada Bar Identification No. 8205
Nguyen & Lay
732 South Sixth Street, Suite 102
Las Vegas, Nevada 89101
Telephone: (702) 383-3200

CERTIFICATE OF ELECTRONIC TRANSMISSION

The undersigned hereby declares that on June 08, 2016, an electronic copy of the foregoing APPELLANT'S FAST TRACK STATEMENT was sent via the master transmission list with the Nevada Supreme Court to the following:

STEPHEN B. WOLFSON
Clark County District Attorney

ADAM PAUL LAXALT
Nevada Attorney General



ROCHELLE T. NGUYEN, ESQ.
Nevada Bar Identification No. 8205
Nguyen & Lay
732 South Sixth Street, Suite 102
Las Vegas, Nevada 89101
Telephone: (702) 383-3200

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSHUA WILLIAM BACHARACH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69677

FILED

OCT 19 2016

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of attempted murder with the use of a deadly weapon, four counts of discharge of a firearm from or within a structure or vehicle, four counts of assault with a deadly weapon, stop required upon signal of police officer, resisting a public officer with the use of a firearm, possession of a firearm with altered or obliterated serial number, and three counts of felon in possession of a firearm. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Appellant Joshua William Bacharach first argues the district court erred in instructing the jury regarding flight. Bacharach asserts there was no evidence to support a finding that he fled with a consciousness of guilt. "The district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for an abuse of that discretion or judicial error." *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). The evidence produced at trial demonstrated Bacharach shot out of his vehicle's window when an officer initiated a traffic stop and Bacharach then drove his vehicle away from the officer until it crashed. Bacharach then exited his vehicle, fired shots

at the officer, and then absconded on foot. Bacharach then placed his bullet-proof vest and firearm under a vehicle and hid in a resident's backyard until a police dog bit him, permitting officers to arrest him. Because the evidence demonstrated Bacharach fled with the consciousness of guilt and to avoid arrest, we conclude the district court did not abuse its discretion in instructing the jury on flight. See *Rosky v. State*, 121 Nev. 184, 199, 111 P.3d 690, 699-700 (2005); see also *McGuire v. State*, 86 Nev. 262, 266, 468 P.2d 12, 15 (1970) ("Where there is evidence . . . of flight as a deliberate attempt to avoid apprehension, a flight instruction is proper.").


Second, Bacharach argues the district court erred in denying his motion for mistrial following a witness' statement that she spoke with police officers in the gang unit. The denial of a motion for mistrial will not be disturbed on appeal absent a clear showing of an abuse of discretion. *Parker v. State*, 109 Nev. 383, 388-89, 849 P.2d 1062, 1066 (1993). During questioning of the mother of Bacharach's children, the State asked her if she had previously engaged in a discussion with police officers regarding Bacharach's firearms. She responded that she had looked at firearms on Bacharach's Facebook page with the "gang unit." Bacharach moved for a mistrial following this statement. The district court denied the motion, and explained during a discussion outside of the presence of the jury that it denied the motion because the statement was quick, the parties did not highlight it, and the parties did not talk about it further. Given these circumstances, Bacharach does not demonstrate the denial of his motion for mistrial amounted to an abuse of discretion.


Moreover, even assuming the district court committed error, the error was harmless beyond a reasonable doubt because there was strong evidence of his guilt presented at trial. The officer observed

Bacharach shooting and driving in a dangerous manner, multiple residents of the neighborhood observed a person matching Bacharach's physical characteristics shooting at the officer and hiding the vest and firearm, Bacharach was discovered hiding in a backyard and refused to follow verbal commands to surrender until bitten by a police dog. Bacharach's DNA could not be excluded from DNA discovered in the vehicle, and Bacharach's thumbprint was discovered on the firearm's magazine. Given the substantial amount of evidence demonstrating Bacharach's guilt and the brief nature of the improper statement regarding viewing Facebook with the gang unit, Bacharach fails to demonstrate he is entitled to relief. *See id.* at 389, 849 P.2d at 1066 (stating "denial of defendant's motion for a mistrial will be deemed harmless error where the prejudicial effect of the statement is not strong and where there is otherwise strong evidence of defendant's guilt.").

Having concluded Bacharach is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


Gibbons, C.J.


Tao, J.


Silver, J.

cc: Hon. Douglas Smith, District Judge
Nguyen & Lay
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSHUA WILLIAM BACHARACH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 69677
District Court Case No. C299425

FILED

NOV 29 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

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

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

DATE: November 15, 2016

Elizabeth A. Brown, Clerk of Court

By: Dana Richards
Deputy Clerk

cc (without enclosures):

Hon. Douglas Smith, District Judge
Nguyen & Lay
Clark County District Attorney
Attorney General/Carson City

RECEIPT FOR REMITTITUR

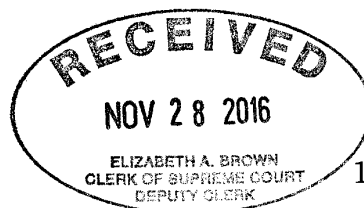
Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on NOV 18 2016.

[Signature]
Deputy District Court Clerk

RECEIVED

NOV 18 2016

CLERK OF THE COURT



1

16-35515

AA 1037

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSHUA WILLIAM BACHARACH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 69677
District Court Case No. C299425

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

“ORDER the judgment of conviction AFFIRMED.”

Judgment, as quoted above, entered this 19th day of October, 2016.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
November 15, 2016.

Elizabeth A. Brown, Supreme Court Clerk

By: Dana Richards
Deputy Clerk



56

NRS 34.735 Petition: Form. A petition must be in substantially the following form, with appropriate modifications if the petition is filed in the Court of Appeals or the Supreme Court:

Case No. C-14-2994251
Dept. No. VIII

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

Joshua Bacharach #90607
Petitioner,

WRIT
CORPUS
PETITION FOR
OF HABEAS
(POSTCONVICTIO

N) State of Nevada
Respondent.

INSTRUCTIONS:

(1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.

(2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.

(6) You must allege specific facts supporting the claims in the petition you

RECEIVED

NOV 08 2017

CLERK OF THE COURT

file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

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

Ely State Prison White Pine County
Nevada

2. Name and location of court which entered the judgment of conviction under attack:

District Court Clark County Nevada

3. Date of judgment of conviction: January 8th, 2010

4. Case number:
C-14-2994251

5. (a) Length of sentence:
17 counts consecutive with 60 days
credit for time served. Aggregate total sentence is Seven hundred
forty month Minimum to one thousand Eight hundred Eighty four (MAX)

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

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

If "yes," list crime, case number and sentence being served at this time:

.....

.....

.....

7. Nature of offense involved in conviction being challenged:

.....

.....

8. What was your plea? (check one)

- (a) Not guilty ☒
(b) Guilty
(c) Guilty but mentally ill
(d) Nolo contendere

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details:

.....

.....

.....

10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: (check one)

(a) Jury ☒

(b) Judge without a jury

11. Did you testify at the trial? Yes No ☒

12. Did you appeal from the judgment of conviction? Yes ☒ No

13. If you did appeal, answer the following:

(a) Name of court:
District Court Clark County Nevada

(b) Case number or citation:
C-14-299425-1 No. 69677

(c) Result:
Out of state No. 69677

(d) Date of result:
Oct 19, 2016

(Attach copy of order or decision, if available.)

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

.....

.....

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

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

(a) (1) Name of court:

(2) Nature of proceeding:

.....

.....

.....
Citation or date of decision:

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

.....
N/A
.....

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same: N/A

.....
(b) The proceedings in which these grounds were raised: N/A

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

.....
N/A
.....

18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

.....
N/A
.....

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

.....
NO
.....

(d) Grounds raised:
Ineffective Assistance

.....
SEE Ground VI

.....
(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No X.....

(5) Result:

.....
(6) Date of result:

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

N/A

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

(1) Name of court:

(2) Nature of proceeding:

(3) Grounds raised:

.....
(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No X.....

(5) Result:

.....
(6) Date of result:

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

N/A

.....
(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion? Yes No X.....

Citation or date of decision:

(2) Second petition, application or motion? Yes No

Citation or date of decision:

(3) Third or subsequent petitions, applications or motions? Yes No

I

Ground 1 In regards to counts

I allege that my state court conviction, an or, sentence are, unconstitutional in violation of my 4th, and/or 5th, and/or 6th, and/or 14th and/or 18th, Amendment Rights, to due Process and, a fair trial based on these facts:

The Courts Violated my 6th Amendment Right and the Courts error for not granting

My Attorneys Request for Mistrial, for letting state Witness EUFRASIA NAZAROFF

Introduce Testimony that she was

"interviewed" by the "Las Vegas Metro

Police, GANG Unit". After the Courts specific

instructions not to introduce Any "prior badacts"

do to the fact, the defendant chose not

to testify on his own behalf. After the

sitting Judge Douglas Smith, Told the prosecution's

Witness "Eufrasia Nazarov" what not to say

and what was ok, and after the witness

statement "Gang Unit's" Involvement. Defence

Defence Attorney Rachell Nygen esq. immediately

Requested for Mistrial, Was denied, deemed

Harmless error at side bar by the Court.

II

Grand 2 In regards to count I
allege that my state court conviction, and
or, sentence are unconstitutional in
violation of my 4th, and/or 5th, and/or 6th,
and/or 14th, and/or 8th Amendments Rights,
to Due Process and a fair trial based on
these facts: The Court violated my
6th Amendment right to a fair trial.
The court error in not letting Defence
Attorney Rochell Nugeyn cross examine
The Victims/Officer's body camera, after
the state examined and presented there
case to the jury. Defence Attorney asked
the sitting Judge Douglas Smith, an state
to use there computer to cross examine
the body camera, an was denied by both
Judge & State.

III

Ground 3 In regards to court — I allege that my state court conviction, and or, sentence are, unconstitutional in Violation of my 4th and/or 5th and / or 6th and/or 14th and/or 8th amendment rights, to due Process and, a fair trial based on these Facts: The Courts Violated My 6th and 14th Amendment rights on the Court Error by Allowing My Attorney Rochell Nugyen to provide me with an Ineffective Assistance of Counsel ~~with~~ which she failed to met the basic Standard of a defence by failing to suppress or impeach witness that had conflicting statements at the trial

All 3 witnesses were asked if they had seen the shooter or person who shot the gun. All under oath said that they could not see the shooters face cause it was dark on that they were too far but when asked by the prosecutor to point out the shooter they pointed at the defendant. All 3 witness statements should have been thrown out, as if they were, the jury would have found the Defendant Innocent because there would not have been any positive Identification.

V

Grand 4 In regards to Court

I allege that My state Conviction and/or Sentence, are Unconstitutional in Violation of my 4th, and/or 5th, and/or 6th, and/or 14th, and/or 8th Amendment rights to due Process and, A fair Trial based on these facts:

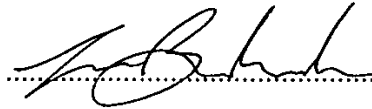
~~Defendant~~ The courts erroneous admission of tainted, Unreliable "Incourt Suggestive Identification presented to the jury in Violation of my 14th and 6th Amendments to the U.S. constitution.

.....
.....
(d) Ground four:

.....
.....
Supporting FACTS (Tell your story briefly without citing cases or law.):
.....
.....

.....
WHEREFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at 241..... on the 30 day of the month of Sep. of the year 2017

.....


.....
Signature of petitioner

PO BOX 1989
ELY NV, 89130

.....
Address

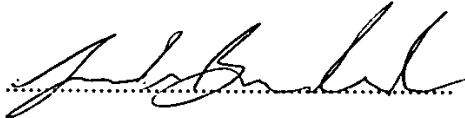
.....
Signature of attorney (if any)

.....
Attorney for petitioner

.....
Address

VERIFICATION

Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

.....


.....
Petitioner

.....
Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I, Joshua Bachwald, hereby certify, pursuant to N.R.C.P. 5(b), that on this 15 day of the month of 10 of the year 2017, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

.....
.....
Respondent prison or jail official
.....

.....
.....
Address
.....

.....
Attorney General
Heroes' Memorial Building
Capitol Complex
Carson City, Nevada 89710
.....

.....
.....
District Attorney of County of Conviction
.....

.....
.....
Address
.....

.....
.....
Signature of Petitioner

(Added to NRS by 1987, 1210; A 1989, 451; 1991, 79; 1993, 243; 1995, 2460;
2001, 21; 2001 Special Session, 207; 2003, 1473; 2007, 1429; 2013, 1736)

EXHIBIT
" A "

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSHUA WILLIAM BACHARACH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69677

FILED

OCT 19 2016

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of attempted murder with the use of a deadly weapon, four counts of discharge of a firearm from or within a structure or vehicle, four counts of assault with a deadly weapon, stop required upon signal of police officer, resisting a public officer with the use of a firearm, possession of a firearm with altered or obliterated serial number, and three counts of felon in possession of a firearm. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Appellant Joshua William Bacharach first argues the district court erred in instructing the jury regarding flight. Bacharach asserts there was no evidence to support a finding that he fled with a consciousness of guilt. "The district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for an abuse of that discretion or judicial error." *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). The evidence produced at trial demonstrated Bacharach shot out of his vehicle's window when an officer initiated a traffic stop and Bacharach then drove his vehicle away from the officer until it crashed. Bacharach then exited his vehicle, fired shots


at the officer, and then absconded on foot. Bacharach then placed his bullet-proof vest and firearm under a vehicle and hid in a resident's backyard until a police dog bit him, permitting officers to arrest him. Because the evidence demonstrated Bacharach fled with the consciousness of guilt and to avoid arrest, we conclude the district court did not abuse its discretion in instructing the jury on flight. See *Rosky v. State*, 121 Nev. 184, 199, 111 P.3d 690, 699-700 (2005); see also *McGuire v. State*, 86 Nev. 262, 266, 468 P.2d 12, 15 (1970) ("Where there is evidence . . . of flight as a deliberate attempt to avoid apprehension, a flight instruction is proper.").

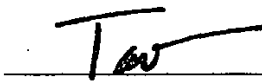
Second, Bacharach argues the district court erred in denying his motion for mistrial following a witness' statement that she spoke with police officers in the gang unit. The denial of a motion for mistrial will not be disturbed on appeal absent a clear showing of an abuse of discretion. *Parker v. State*, 109 Nev. 383, 388-89, 849 P.2d 1062, 1066 (1993). During questioning of the mother of Bacharach's children, the State asked her if she had previously engaged in a discussion with police officers regarding Bacharach's firearms. She responded that she had looked at firearms on Bacharach's Facebook page with the "gang unit." Bacharach moved for a mistrial following this statement. The district court denied the motion, and explained during a discussion outside of the presence of the jury that it denied the motion because the statement was quick, the parties did not highlight it, and the parties did not talk about it further. Given these circumstances, Bacharach does not demonstrate the denial of his motion for mistrial amounted to an abuse of discretion.

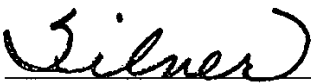
Moreover, even assuming the district court committed error, the error was harmless beyond a reasonable doubt because there was strong evidence of his guilt presented at trial. The officer observed

Bacharach shooting and driving in a dangerous manner, multiple residents of the neighborhood observed a person matching Bacharach's physical characteristics shooting at the officer and hiding the vest and firearm, Bacharach was discovered hiding in a backyard and refused to follow verbal commands to surrender until bitten by a police dog, Bacharach's DNA could not be excluded from DNA discovered in the vehicle, and Bacharach's thumbprint was discovered on the firearm's magazine. Given the substantial amount of evidence demonstrating Bacharach's guilt and the brief nature of the improper statement regarding viewing Facebook with the gang unit, Bacharach fails to demonstrate he is entitled to relief. *See id.* at 389, 849 P.2d at 1066 (stating "denial of defendant's motion for a mistrial will be deemed harmless error where the prejudicial effect of the statement is not strong and where there is otherwise strong evidence of defendant's guilt."):

Having concluded Bacharach is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


Gibbons, C.J.


Tao, J.


Silver, J.

cc: Hon. Douglas Smith, District Judge
Nguyen & Lay
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

CLERK, U.S. DISTRICT COURT
DISTRICT
LLOYD D. GEORGE
333 LAS VEGAS BLVD
LAS VEGAS, NV 89101

OFFICIAL BUSINESS

SEP 11 2017

SEP 11 2017

DISTRICT COURT
ADMINISTRATIVE

DISTRICT

Regional Justice Court
200 Lewis Ave
Las Vegas NV 89155

**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:

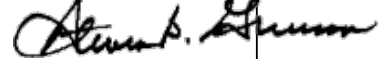
JOURNAL ENTRIES

- 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



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-14-299425-1

DEPT. VIII

10 vs.

11 JOSHUA W. BACHARACH,
12 Defendant.

13
14 BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE
15 WEDNESDAY, MARCH 14, 2018

16 **RECORDER'S TRANSCRIPT OF PROCEEDINGS:**
17 **STATUS CHECK: FILE/SET BRIEFING SCHEDULE (PETITION FOR**
18 **WRIT OF HABEAS CORPUS - INEFFECTIVE ASSISTANCE OF**
19 **COUNSEL)**

20 APPEARANCES:

21 For the State: JORY SCARBOROUGH, ESQ.
22 Deputy District Attorney

23 For the Defendant: RACHAEL E. STEWART, ESQ.

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25 RECORDED BY: GINA VILLANI, COURT RECORDER

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Las Vegas, Nevada, Wednesday, March 14, 2018

[Hearing began at 8:03 a.m.]

THE COURT: C299425, Joshua Bacharach.

MS. STEWART: Good morning, Your Honor, Rachael Stewart here for Joshua Bacharach, appearing for Mr. Oronoz.

We have this set for -- to set a briefing schedule today but we're still waiting for the file. Our client is coordinating -- he has to send it from Ely, so we're asking for 45 days to set another status on setting a briefing schedule.

THE COURT: Well, why don't we do this, we'll give you 90 days to file the brief, the writ, the State will have 90 days to file their return, you'll have 14 days to file a reply and we'll have an argument 30 days later.

90, 90, 14.

THE CLERK: That will be June 13th for your opening --

MS. STEWART: Your Honor, if I may, would we be able to extend that just a little bit. We're trying to get the file from Ely and we've reached --

THE COURT: You're going to be able to get it by then.

THE CLERK: State's opposition is September 13th.

THE COURT: And the State will be absolutely accommodating in getting you documents as well.

MS. STEWART: Thank you, Your Honor.

THE CLERK: Defendant's reply is due September 27th.

And your hearing will be October 10th at 8:00 a.m.

THE COURT: At the 90 days', if you do not have the complete file, put it back on and we'll address that.

MS. STEWART: Thank you, Your Honor.

May I just read that briefing schedule one more time?

THE COURT: Yes.

MS. STEWART: I have June 13th for our brief, September 13th for the response, September 27th for reply, and October 10th at 8:00 for the hearing.

THE CLERK: Correct.

MS. STEWART: Thank you.

THE COURT: Thanks.

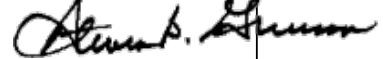
[Hearing concluded at 8:05 a.m.]

* * * * *

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

Mina Villoni

Gina Villani
Court Recorder/Transcriber



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-14-299425-1
DEPT. VIII

10 vs.

11 JOSHUA W. BACHARACH,
12 Defendant.

13
14 BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE
15 MONDAY, JUNE 25, 2018

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **DEFENDANT'S MOTION TO PLACE ON CALENDAR TO EXTEND**
18 **TIME FOR THE FILING OF PETITIONER'S SUPPLEMENTAL**
19 **PETITION FOR WRIT OF HABEAS**

20 APPEARANCES:

21 For the State: NICOLE J. CANNIZZARO, ESQ.
22 Chief Deputy District Attorney

23 For the Defendant: RACHAEL E. STEWART, ESQ.

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25 RECORDED BY: GINA VILLANI, COURT RECORDER

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Las Vegas, Nevada, Monday, June 25, 2018

[Hearing began at 8:05 a.m.]

THE COURT: C299425, Joshua Bacharach.

MS. STEWART: Good morning, Your Honor, Rachael Stewart
for Joshua Bacharach. I'm appearing for Mr. Oronoz.

We are asking for 120 days. We've recently received some
discovery from the State. So we're asking --

THE COURT: That's fine.

MS. STEWART: Thanks.

THE COURT: 120 days, the State will have 120 days to
respond, then you'll have seven days to reply, and we'll have the
argument right after that.

THE CLERK: 120 days will be October 22nd.

THE COURT: 120 days.

THE CLERK: That'll be January 21st.

THE COURT: 7 days.

THE CLERK: That'll be February 4th.

THE COURT: And the closest one after that for argument.

THE CLERK: I can do the -- we can do the 7th.

THE COURT: Okay.

THE CLERK: February 7th.

THE COURT: 8 o'clock.

THE CLERK: 8:00 a.m.

MS. STEWART: Okay, and the brief was -- the first brief was

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October 22nd; correct?

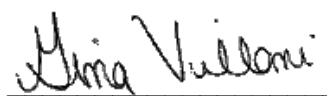
THE CLERK: Yes.

MS. STEWART: Thank you.

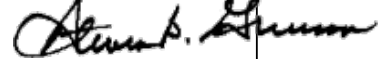
[Hearing concluded at 8:06 a.m.]

* * * * *

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



Gina Villani
Court Recorder/Transcriber
District Court Dept. IX



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-14-299425-1
DEPT. VIII

10 vs.

11 JOSHUA W. BACHARACH,
12 Defendant.

13
14 BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE
15 MONDAY, OCTOBER 29, 2018

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **DEFENDANT'S MOTION TO PLACE ON CALENDAR TO EXTEND**
18 **TIME FOR THE FILING OF PETITIONER'S SUPPLEMENTAL**
19 **PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**

20 APPEARANCES:

21 For the State: NICOLE J. CANNIZZARO, ESQ.
22 Chief Deputy District Attorney

23 For the Defendant: RACHAEL E. STEWART, ESQ.

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25 RECORDED BY: GINA VILLANI, COURT RECORDER

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Las Vegas, Nevada, Monday, October 29, 2018

[Hearing began at 8:01 a.m.]

THE COURT: C299425, Joshua Bacharach.

MS. STEWART: Good morning, Your Honor, Rachael Stewart here; appearing for Jim Oronoz on Joshua Bacharach.

THE COURT: All right. How much time does he need?

MS. STEWART: We're looking for 90 days. We've had to reconstruct the file, which we've done.

THE COURT: Okay.

MS. STEWART: And we are -- we've got some investigation and interviewing that we need to get done.

THE COURT: All right. 90 days to get any writs in, the State will have 60 days to file a return, you'll have one week then to file a reply, and then we'll have the argument a week later.

Make sure I get courtesy copies, please.

THE CLERK: 90 days is February 25th.

THE MARSHAL: Page 12.

THE CLERK: Wait a minute, Tom.

February 25th, and then 60 more days is April 29th, then May 6th for the reply, and May 13th for hearing.

THE COURT: All right. Thank you.

THE CLERK: And the old one is vacated then?

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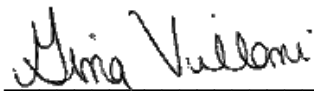
THE COURT: Yes.

THE CLERK: Okay.

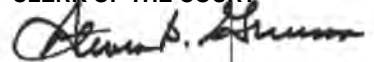
[Hearing concluded at 8:03 a.m.]

* * * * *

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



Gina Villani
Court Recorder/Transcriber
District Court Dept. IX



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**DISTRICT COURT
CLARK COUNTY, NEVADA**

JOSHUA BACHARACH,

Petitioner,

vs.

WILLIAM GITTERE, in his official capacity)
as the Warden of the Ely State Prison;)
CHARLES DANIELS, in his official capacity)
as Director of the Nevada Department of)
Corrections; and the STATE OF NEVADA,)

Respondents.

CASE NO. C-14-299425-1

DEPT. NO. IX

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

Petitioner, JOSHUA BACHARACH, by and through his counsel of record, JAMES A. ORONOZ, ESQ., and RACHAEL E. STEWART, ESQ., hereby files this Supplemental Post-Conviction Petition for Writ of Habeas Corpus Pursuant to NRS Chapter 34. This Petition, including the following Points and Authorities, is made upon the pleadings and papers already on file, and any evidentiary hearing and oral argument of counsel deemed necessary by the Court. Petitioner, JOSHUA BACHARACH, alleges that he is being held in custody in violation of the

1 Fifth, Sixth, and Fourteenth Amendments of the Constitution of the United States of America, as
2 well as Articles I and IV of the Nevada Constitution.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **STATEMENT OF FACTS**

5 This case arises from an incident that occurred on June 26, 2014. A shooting occurred
6 between a Las Vegas Metropolitan Police Department ("LVMPD") patrol officer and a suspect
7 driving a vehicle. The following summary of facts reflects the testimony elicited at trial in this
8 case.
9

10 On June 26, 2014, several residents living in the area of Carey Avenue and El Tovar
11 Avenue in Clark County, Nevada, heard loud noises and gunshots. Maureen Palmer testified
12 that she heard "pops" that she thought were fireworks, then she heard a car "speed off." Trial
13 Tr. 151-153, November 2, 2015. Another nearby resident, Norayma Gonzalez heard "a loud
14 crash." *Id.* at 164. Ms. Gonzalez then went outside and saw a man run toward El Tovar Avenue,
15 pull out his handgun, and shoot. *Id.* at 165-167. She saw the man bend down next to a white
16 truck. *Id.* at 168. Ms. Gonzalez then called 911. *Id.* at 169.

17
18 Jose Quezada Chavez also heard gunshots, saw a man shooting, and saw a man stand by
19 a white truck. *Id.* at 186-189. Mr. Chavez testified that he saw an officer on the corner of El
20 Tovar and Dolly. *Id.* at 192. Mr. Chavez believed the officer had been shot. *Id.* at 192. Ricardo
21 Quesada, Jose's son, also testified along the same lines. *Id.* at 219-222.
22

23 Marcia and Donald Wagner, nearby residents, confirmed the same facts and provided a
24 copy of their home surveillance video to the police. *Id.* at 228-246.
25
26
27
28

1 Ryan McNabb was a patrol officer with LVMPD on June 26, 2014. Trial Tr. 8-9,
2 November 3, 2015. Officer McNabb wore a body camera during the incident. *Id.* at 10.¹ The
3 incident begun because Officer McNabb saw a vehicle driving had the “high beams or brights
4 on.” *Id.* at 14, 52. Officer McNabb activated his emergency lights and began to conduct a traffic
5 stop. *Id.* at 14-15.

6
7 When Officer McNabb “caught up” to the Dodge Intrepid, he radioed to tell the
8 dispatcher about the vehicle stop. *Id.* at 16. Before he could read the license plate, the driver of
9 the vehicle “fired a gun up into the air.” *Id.* at 17. He knew it was a gunshot because he “saw
10 the muzzle flash.” *Id.* at 17. He informed dispatch that the person had fired a weapon. *Id.* at 18.

11 At that point, Officer McNabb turned on his body cam. *Id.* at 18. The driver fired more
12 shots. *Id.* at 20. The driver eventually stopped, and the driver exited the vehicle and pointed the
13 gun toward Officer McNabb. *Id.* at 23. Officer McNabb believed the driver fired the gun
14 toward McNabb. *Id.* at 23. Officer McNabb exited his own vehicle and fired rounds toward the
15 man. *Id.* at 25.

16
17 After the gunfire, Officer McNabb saw the man move near a truck. *Id.* at 30. Next,
18 additional officers—“backup”—arrived and took over the situation. *Id.* at 31.

19 After other officers took over the situation, Officer McNabb saw a K9 officer come out
20 from the area of a nearby house with an individual that Officer McNabb recognized as the
21 person he “had been chasing.” *Id.* at 32. Ernest Morgan was the K9 officer who responded, *Id.*
22 at 102. When Officer Morgan arrived at the scene, he assessed the situation and learned from a
23 resident that someone had “jumped her fence and was in her backyard at that current time.” *Id.*
24 at 106. Gloria Guillen was the resident who informed police about the man in her backyard. *Id.*
25
26

27
28 ¹ At trial, Sergeant Peter Ferranti testified and demonstrated how a body-worn camera works.
Trial Tr. 82-84, November 3, 2015.

1 at 126-131. Officer Morgan and other officers went through Ms. Guillen's house to the
2 backyard where they located an individual. *Id.* at 108, 112.² The K9 bit the individual in the leg.
3 *Id.* at 113-114. The officers then took the man into custody. *Id.* at 114. At trial, the State played
4 Officer McNabb's body cam video for the jury. *Id.* at 34.

5
6 Detective Ryan Jaeger testified that he is a detective with the Las Vegas Metropolitan
7 Police Department. Trial Tr. 95, November 4, 2015. At the time of the subject incident, he was
8 assigned to the "force investigation team" or the "FIT" unit. *Id.* at 95, 127. Detective Jaeger
9 was dispatched to the scene on June 26, 2014. *Id.* at 96. Detective Jaeger's role was that of a
10 "case agent" or "project manager." *Id.* at 97, 125. His job was "to manage the tasks that all need
11 to be done and then combined everything into one report." *Id.* at 97.

12
13 As part of his investigation, Detective Jaeger did a "walk-through" with Officer
14 McNabb. *Id.* at 97. Detective Jaeger also did a "walk-around" the crime scene "just to make
15 sure nothing gets missed." *Id.* at 98. Detective Jaeger and the crime scene analyst searched
16 around the patrol car for casings. *Id.* at 100. They also searched the surrounding areas for
17 "impacts from Officer McNabb." *Id.* at 100. Detective Jaeger testified that they located a
18 "bullet-proof vest and a handgun" underneath a white pickup truck. *Id.* at 101, 112. They also
19 found cartridge casings and unfired cartridges. *Id.* at 103.

20
21 During his testimony, Detective Jaeger identified aerial maps and diagrams of the scene.
22 *Id.* at 102. He also identified the yellow shirt allegedly worn by the suspect on June 26, 2014.
23 *Id.* at 104-105.

24 Detective Jaeger testified that there was no attempt to obtain gunshot residue from Mr.
25 Bacharach. *Id.* at 105. He explained that:

26
27
28 ² Officer Anthony Garbutt testified that he was a patrol officer who assisted with checking the
backyard. Trial Tr. 144, November 3, 2015.

1 Gunshot residue just isn't reliable. I've been a detective almost ten years now. I
2 don't think I've ever collected gunshot residue because it's just so erratic. It can
be transferred really easily and it's just not reliable. *Id.* at 105.

3 He then went on to explain the "false positives" with gunshot residue:

4 The way police officers qualify with their weapons they normally stand shoulder
5 to shoulder at a firing range and a bunch of them shoot at the same time and that
6 gunshot residue spreads in the air. It can get on their equipment, it can get on their
7 hands, it can get on their clothes, and as soon as someone's touched that residue,
it is passed. So it's just – it's just not reliable and it's just not something that's
used. *Id.* at 106.

8 Detective Jaeger also testified that Mr. Bacharach had been sent to the hospital for the
9 dog bite. *Id.* at 107.

10 Detective Jaeger testified about the locations of the cartridge casings. *Id.* at 107. The
11 State then asked Detective Jaeger about his experience with firearms and casings. *Id.* at 109.

12 Detective Jaeger testified:

13 Casings are really unpredictable. Just picture the way most people hold a
14 handgun. If they're holding a handgun perfectly straight up and down, the casing
15 should go up and to the right. But as soon as you throw a motion in there, if you
16 [indiscernible] the gun this way they're going straight back. If you're leaning this
17 way, the casings are going over there. If you throw movement in there, if you
throw different surfaces that the casings hit. *Id.* at 109.

18 After discussing the casings, Detective Jaeger discussed the type of bullet proof
19 vest recovered. *Id.* at 114. He explained:

20 Each vest is rated at different threat levels. The rating basically says what kind of round
21 that vest will stop. There's really no difference from this vest to a vest that any of the
22 officers working the street are wearing. Most of the officers that are working the streets,
their vests are also Threat Level II-A's. *Id.* at 114.

23 Detective Jaeger then explained how the Dodge Intrepid was transported back to the
24 forensics lab for inspection. *Id.* at 115. Detective Jaeger then testified about the damage to the
25 vehicle. *Id.* at 116.

26 In describing the damage, Detective Jaeger opined regarding the angles of the bullet
27 impacts. *Id.* at 117. He testified:
28

1 If you picture throwing a tennis ball or the way a tennis ball bounces, the greater
2 the angle the higher the bounce that you will get from the ball. These are coming at
an angle where they're just touch the car and then continued on. *Id.* at 117.

3 Detective Jaeger also testified regarding the paperwork found in the vehicle. *Id.* at 118.
4 He testified that they collected DNA from the vehicle. *Id.* at 119. Finally, Detective Jaeger
5 testified regarding Mr. Bacharach's jail calls. *Id.* at 121. He explained how the calling
6 procedures at Clark County Detention Center work. *Id.* at 121.
7

8 Additionally, Detective Jaeger opined as to why shell casings could not be found:

9 It's my theory that the casings that we couldn't find were stuck in the treads on
10 the tires of a patrol car or in someone's boots. They're kind of like rocks and
sometimes you get a rock stuck in the tread of your shoe. We sent out a message
11 to all the patrol guys that responded at Northeast Area Command to check their
tires to see if there was any casings in there and to check their boots when they
12 got back in to see if there was any shell casings stuck in them and we didn't
recover anymore. *Id.* at 123.

13 Eufrasia Nazaroff, the owner of the Dodge Intrepid in question and mother of Mr.
14 Bacharach's children, testified at trial. Trial Tr. 207, November 2, 2014. Ms. Nazaroff testified
15 that she owned a maroon Dodge Intrepid in June of 2014. *Id.* at 207. She explained that Mr.
16 Bacharach is the father of three of her children. *Id.* at 208. She further testified that Mr.
17 Bacharach had come to stay with her "just a few days before June 26th of 2014." *Id.* at 209.
18

19 Ms. Nazaroff testified that she did not own any firearms. *Id.* at 209. On June 26, 2019,
20 Mr. Bacharach went to Ms. Nazaroff's house. *Id.* at 210. Ms. Nazaroff testified that she allowed
21 him to use her car. *Id.* She also testified that he had been wearing a yellow shirt when he left
22 her house. *Id.* at 211.
23

24 Ms. Nazaroff testified that she had seen Mr. Bacharach with guns "a long, long, long
25 time ago." *Id.* at 211. Ms. Nazaroff further testified that the police from the gang unit had
26 shown her photographs of Mr. Bacharach from Facebook. *Id.* at 211-212. The officers used
27 their own phone to show Ms. Nazaroff the photographs. *Id.* at 217.
28

1 Ms. Nazaroff testified that she had described one of the guns to police as “being long
2 with a scope on it.” *Id.* at 213. She then testified that there were other guns on Mr. Bacharach’s
3 Facebook. *Id.* at 213-214.

4 Ms. Nazaroff testified that she did not remember telling police that she saw a bullet-
5 proof vest on the night of June 26th. *Id.* at 214. On cross-examination, she testified that she had
6 never seen Mr. Bacharach with a bullet proof vest. *Id.* at 216.

7 On cross-examination, Ms. Nazaroff testified that Mr. Bacharach had not sent her any
8 pictures of weapons and that she had not seen Mr. Bacharach with any weapons. *Id.* at 215. She
9 also testified that Mr. Bacharach only had access to her vehicle when she gave it to him. *Id.* at
10 216.

11 Before opening statements on the first day of trial, the Court called Eufasia Nazaroff to
12 the stand outside the presence of the jury. The Court admonished Ms. Nazaroff about her
13 testimony.

14 Court: They’re going to lead you through along, you wouldn’t come in
15 and pretrial with them and so they couldn’t tell you all this stuff.
16 But I can tell you I’ve had people violate my order and if you do
17 you’ll go to jail today and I’ll have somebody to come get your
18 child. Trial Tr. 137, November 2, 2015.

19 During the admonishment, the Court directed Ms. Nazaroff to answer the State’s
20 questions. *Id.* at 137. The Court also indicated:

21 Court: We’re going to have them lead her through. But if she blurts it out,
22 I got no alternative but to put you in custody, you understand? *Id.*
23 at 137.

24 Then, the Court admonished Ms. Nazaroff not to say anything exculpatory:

25 Court: **If you blurt out something about trying to get him off, say**
26 **something you’re not supposed to say—** *Id.* at 138 (emphasis added).

27 In essence, the Court admonished Ms. Nazaroff and prohibited her from giving
28 exculpatory testimony in front of the jury. The Court did this by threatening to put Ms.

1 Nazaroff into custody and take her children if she did not comply with the State's narrative. *Id.*
2 at 137-138.

3 At the end of the trial after the parties rested, the State made closing arguments. During
4 closing, the State explained that it had "the burden to prove the case beyond a reasonable
5 doubt." Trial Tr. 164, November 4, 2015. The State explained that it had to prove "Every
6 element of the offenses, not every fact that could be brought up." *Id.* at 164. She further
7 explained that "Reasonable doubt is not beyond all doubt. It is reasonable doubt, not based on
8 speculation, not based on mere possibility." *Id.*

10 The State also argued, "If he's guilty of one, he's guilty of all in the sense of proof that
11 it is him in identity; not saying that we have necessarily met all of the elements....But, if we've
12 proven beyond a reasonable doubt that he committed one of them then it must be his identity as
13 to all of them." *Id.* at 166.

14 PROCEDURAL HISTORY

15 On July 16, 2014, Mr. Bacharach was indicted on the following: Count 1: Attempt
16 Murder with Use of a Deadly Weapon; Count 2- Discharge of Firearm from or within a
17 Structure or Vehicle; Count 3- Assault with a Deadly Weapon; Count 4- Discharge of Firearm
18 from or within a Structure or Vehicle; Count 5- Assault with a Deadly Weapon; Count 6-
19 Discharge of Firearm from or within a Structure or Vehicle; Count 7- Assault with a Deadly
20 Weapon; Count 8- Discharge of Firearm from or within a Structure or Vehicle; Count 9-
21 Assault with a Deadly Weapon; Count 10- Discharge of Firearm from or within a Structure or
22 Vehicle; Count 11- Assault with a Deadly Weapon; Count 12- Stop Required on Signal of
23 Police Officer; Count 13- Resisting Public Officer with Use of a Firearm; Count 14- Possession
24 of Firearm with Altered or Obliterated Serial Number; Count 15- Possession of Firearm by Ex-
25
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1 Felon; Count 16- Possession of Firearm by Ex-Felon; Count 16- Possession of Firearm by Ex-
2 Felon; and Count 17- Possession of Firearm by Ex-Felon.

3 Mr. Bacharach proceeded to trial from November 2, 2015, through November 5, 2015.
4 The trial proceeded forward, and on November 5, 2015, the jury convicted Mr. Bacharach of
5 Count 1- Attempt Murder with Use of a Deadly Weapon; Count 2- Discharge of Firearm from
6 or within a Structure or Vehicle; Count 3- Assault with a Deadly Weapon; Count 4- Discharge
7 of Firearm from or within a Structure or Vehicle; Count 5- Assault with a Deadly Weapon;
8 Count 6- Discharge of Firearm from or within a Structure or Vehicle; Count 7- Assault with a
9 Deadly Weapon; Count 8- Discharge of Firearm from or within a Structure or Vehicle; Count
10 11- Assault with a Deadly Weapon; Count 12- Stop Required on Signal of Police Officer;
11 Count 13- Resisting Public Officer with Use of a Firearm; and Count 14- Possession of Firearm
12 with Altered or Obliterated Serial Number.
13

14 On November 5, 2015, the Court also held a bifurcated trial to address Counts 15
15 through 17. The jury convicted Mr. Bacharach on Counts 15-17 all for Possession of Firearm
16 by Ex-Felon.
17

18 The Court sentenced Mr. Bacharach on December 30, 2015, and filed the Judgment of
19 Conviction on January 8, 2016. The Court sentenced Mr. Bacharach to the Nevada Department
20 of Corrections as follows: Count 1- ninety-six (96) to two hundred and forty (240) months, plus
21 a consecutive term of ninety-six (96) to two hundred and forty (240) months for use of a deadly
22 weapon; Count 2- seventy-two (72) to one hundred and eighty (180) months; Count 3- twenty-
23 eight (28) to seventy-two (72) months; Count 4- seventy-two (72) to one hundred and eighty
24 (180) months; Count 5- twenty-eight (28) to seventy-two (72) months; Count 6- seventy-two
25 (72) to one hundred and eighty (180) months; Count 7- twenty-eight (28) to seventy-two (72)
26 months; Count 8- seventy-two (72) to one hundred and eighty (180) months; Count 11- twenty-
27
28

1 eight (28) to seventy-two (72) months; Count 12- twenty-eight (28) to seventy-two (72)
2 months; Count 13- twenty-four (24) to sixty (60) months; Count 14- nineteen (19) to forty-eight
3 (48) months; Count 15- twenty-eight (28) to seventy-two (72) months; Count 16- twenty-eight
4 (28) to seventy-two (72) months; and Count 17- twenty-eight (28) to seventy-two (72) months.
5 The Court ordered all counts to run consecutive to each other. Mr. Bacharach received zero (0)
6 days of credit for time served. The aggregate total sentence was seven hundred forty-seven
7 (747) months to one thousand eight hundred eighty-four (1,884) months.
8

9 Mr. Bacharach filed a timely Notice of Appeal on January 26, 2016. On June 9, 2016,
10 Mr. Bacharach filed a Fast Track Statement. Mr. Bacharach alleged the following issues on
11 appeal:

- 12 1. The District Court erred by instructing the jury on flight, because there was no evidence
13 to support the conclusion that Mr. Bacharach's going away was not just a mere leaving.
- 14 2. The District Court erred by not granting a mistrial after State's witness Eufrosia
15 Nazaroff introduced testimony that she spoke with the gang unit.

16 The Court of Appeals affirmed Mr. Bacharach's conviction on October 19, 2016. The
17 Nevada Supreme Court issued its Remittitur on November 15, 2016.

18 On November 8, 2017, Mr. Bacharach filed a timely Petition for Writ of Habeas Corpus
19 (Post Conviction). Mr. Bacharach now files the instant supplement to his Petition.
20

21 **GROUNDS FOR RELIEF**

- 22 **I. The Trial Court created a structural error because the Trial Court threatened**
23 **Eufrosia Nazaroff prior to her testimony in front of the jury. Trial Counsel was**
24 **ineffective for failing to object to the Trial Court's threats toward Ms. Nazaroff.**

25 The Sixth Amendment to the Constitution guarantees a criminal accused the right to a
26 fair trial. Likewise, the Fifth and Fourteenth Amendments guarantee a defendant due process of
27 law. It is well established that "Few rights are more fundamental than that of an accused to
28 present witnesses in his own defense." *Chambers v. Mississippi*, 410 U.S. 284, 302, 93 S.Ct.

1 1038, 35 L.Ed.2d 297 (1973), citing *Webb v. Texas*, 409 U.S. 95, 93 S.Ct. 351, 34 L.Ed.2d 330
2 (1972).

3 *Webb v. Texas* is the leading authority dealing with a trial court's discretion to admonish
4 a witness. In *Webb*, the trial court admonished the defense witness outside the presence of the
5 jury and made explicit threats of prosecution if the witness lied under oath. *Webb*, 409 U.S. at
6 95-96. Specifically, the trial court in *Webb* made threats to "personally see that your case goes
7 to the grand jury and you will be indicted for perjury and the likelihood (sic) is that you would
8 get convicted of perjury and that it would be stacked onto what you have already got..." *Id.* The
9 United States Supreme Court reversed the conviction. The *Webb* Court found that the trial
10 court's threats deprived the defendant of due process of law under the Fourteenth Amendment
11 by exerting "such duress on the witness' mind as to preclude him from making a free and
12 voluntary choice whether or not to testify." *Webb*, 409. U.S. at 98 (emphasis added).
13
14

15 It is a violation of due process for a trial court to make a threat towards a witness that is
16 meant to discourage the witness' true testimony. *United States v. Viera*, 819 F.2d 498, 502-503
17 (5th Cir. 1987). The *Viera* Court relied on *Webb* to point out that "But warnings of perjury
18 cannot be emphasized to the point where they threaten and intimidate the witness into refusing
19 to testify." *Viera*, 819 F.2d at 503. In *Viera*, the Court compared the prosecutor's "good faith
20 warning" to the *Webb* case wherein the United States Supreme Court found that the
21 "threatening remarks, directed only at the single witness for the defense, effectively drove that
22 witness off the stand." *Viera*, 819 F.2d at 503. In both *Viera* and *Webb*, the threat was to indict
23 the witness for perjury. The *Viera* Court found that the threat was egregious enough to dissuade
24 the witness from testifying. The *Viera* Court then relied on *Webb* and *United States v. Goodwin*,
25 625 F.2d 693, 703 (5th Cir. 1980) to reverse *Viera*'s conviction without a showing of prejudice.
26
27
28

1 The Eleventh Circuit dealt with a similar issue in *United States v. Heller*, 830 F.2d 150
2 (11th Cir. 1987), where an IRS agent intimidated a defense witness. In *Heller*, the IRS agent
3 made threats to Heller's accountant, which caused the accountant to testify untruthfully against
4 Heller. *Heller*, 830 F.2d at 153. The *Heller* Court relied on the holdings from *Webb* and other
5 appellate circuits to determine that Heller had been "deprived of an important defense witness
6 by substantial interference on the part of the government." *Id.* at 154. The Eleventh Circuit
7 reversed Heller's conviction.
8

9 A structural error means that an error was "so intrinsically harmful [to the concept of a
10 fair trial] as to require automatic reversal...without regard to their effect on the outcome [of the
11 proceeding.]" *Knipes v. State*, 124 Nev. 927, 934, 192 P.3d 1178 (2008). When a structural
12 error occurs, the "government is not entitled to deprive the defendant of a new trial by showing
13 that the error was 'harmless beyond a reasonable doubt.'" *Weaver v. Massachusetts*, 137 S.Ct.
14 1899, 1910, 198 L.Ed.2d 420 (2017), citing, *Chapman v. California*, 386 U.S. 18, 24, 87 S.Ct.
15 824, 17 L.Ed.2d 705 (1967). Thus, in the case of a structural error, the court must reverse the
16 outcome of the proceeding "regardless of the error's actual 'effect on the outcome.'" *Weaver*,
17 137 S.Ct. at 1910.
18

19 When raising a structural error for the first time under an ineffective-assistance claim,
20 the petitioner must show (1) the attorney's deficient performance, and (2) prejudice. *Weaver*,
21 137 S.Ct. at 1910. To establish deficient performance, the defendant must demonstrate that
22 counsel's representation "fell below an objective standard of reasonableness." *Wiggins v.*
23 *Smith*, 539 U.S. 510, 521, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003) (quoting *Strickland v.*
24 *Washington*, 466 U.S. 668, 688 (1984)). To show prejudice, "the ultimate inquiry must
25 concentrate on 'the fundamental fairness of the proceeding.'" *Weaver*, 137 S.Ct. at 1911, citing,
26 *Strickland v. Washington*, 466 U.S. 668, 694 (1984). The petitioner can show prejudice by
27
28

1 showing either that (1) there was a reasonable probability that but for counsel's errors, the
2 result of the proceeding would have been different; or (2) counsel's errors rendered the trial
3 fundamentally unfair. *Weaver*, 137 S.Ct. at 1911.

4 Here, both the Trial Court and Trial Counsel caused a structural error to occur. First, the
5 Trial Court caused a structural error by intimidating Eufasia Nazaroff—the mother of Mr.
6 Bacharach's children—and threatening to incarcerate her and take away her children for not
7 answering the State's questions properly. Trial Tr. 137, November 2, 2015. The Trial Court
8 also instructed Ms. Nazaroff against "blurt[ing] out something about trying to get him off..." *Id.*
9 at 138.
10

11 The Trial Court's admonishment was intimidating and undermined the integrity of the
12 trial. The Trial Court used its power to compel Ms. Nazaroff to answer according to the State's
13 narrative rather than answering honestly. The threatening admonishment went beyond a mere
14 admonishment against perjury. The Trial Court threatened Ms. Nazaroff with incarceration and
15 threatened to take away her children if she testified to any exculpatory evidence or did not
16 cooperate with the State's narrative.
17

18 In essence, the Trial Court prohibited Ms. Nazaroff from exercising her "free and
19 voluntary choice whether or not to testify." *See*, *Webb*, 409 U.S. at 98. There is no way to
20 ascertain how Ms. Nazaroff would have testified if the Trial Court had not threatened her or
21 prohibited her from testifying to exculpatory evidence. Thus, the Trial Court's threat violated
22 Mr. Bacharach's rights to a fair trial and due process. This Court must find that a structural
23 error existed and reverse the conviction.
24

25 Additionally, Trial Counsel caused a structural error by failing to object to and
26 challenge the Trial Court's threatening admonishment. Trial Counsel was deficient for failing
27 to object and protect Mr. Bacharach's right to due process. Trial Counsel did not recognize that
28

1 the Court was undermining Mr. Bacharach's rights to due process and a fair trial by threatening
2 a potentially exculpatory witness. Therefore, Counsel's actions were deficient.

3 Mr. Bacharach suffered the prejudice of going to trial with a witness who was
4 threatened by the Trial Court. There is no way to know what Ms. Nazaroff would have testified
5 to without the Court's coercive threats. Thus, Counsel's failure to object to the threatening
6 admonishment rendered the trial fundamentally unfair.
7

8 For these reasons, this Court should find that a structural error exists, reverse Mr.
9 Bacharach's conviction, and order a new trial.

10 **II. Trial Counsel was Ineffective.**

11 **a. Legal Standard- Ineffective Assistance of Counsel**

12 A defendant is entitled to effective assistance of counsel during critical stages of criminal
13 proceedings. U.S. Const. Amends. V, VI, & XIV; Nevada Constitution Art. I. Ineffective
14 assistance of counsel means that Counsel's performance was (1) deficient, such that counsel
15 made errors so serious he ceased to function as the "counsel" guaranteed by the Sixth
16 Amendment, and (2) Counsel's deficiency prejudiced the defendant such that the result of the
17 proceeding was rendered unreliable. *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S.Ct.
18 2052, 80 L.Ed.2d 674 (1984). The question of whether a defendant has received ineffective
19 assistance of counsel is a mixed question of law and fact that is subject to independent review.
20
21 *State v. Love*, 109 Nev. 1136, 1136-1138, 865 P.2d 322, 323 (1993).
22

23 Counsel's performance will be judged against the objective standard for reasonableness.
24 *State v. Powell*, 122 Nev. 751, 759, 138 P.3d 453, 458 (2006); *Means v. State*, 120 Nev. 1001,
25 103 P.3d 25 (2004). Where counsel might claim that an action was a strategic one, the reviewing
26 court must satisfy itself that the decisions were, indeed, reasonable. *Strickland*, 466 U.S. at 691.
27
28

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

5 Moreover, the right to counsel necessarily includes the right to *effective assistance of*
6 *counsel*. *Strickland*, 466 U.S. at 686, citing, *McMann v. Richardson*, 397 U.S. 759, 771, n. 14,
7 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970). "The benchmark for judging any claim of
8 ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the
9 adversarial process that the trial cannot be relied on as having produced a just result."
10 *Strickland*, 466 U.S. at 686.
11

12 The Nevada Supreme Court reviews claims of ineffective assistance of counsel under a
13 reasonably effective assistance standard. *Warden v. Lyons*, 100 Nev. 430, 432, 683 P.2d 504
14 (1984); see *Dawson v. State*, 108 Nev. 112, 115, 825 P.2d 593, 595 (1992). In post-conviction
15 habeas corpus proceedings, all factual allegations in support of an ineffective assistance of
16 counsel claim must only be proven by a preponderance of the evidence. *Powell*, 122 Nev. at
17 759.
18

19 **b. Trial Counsel was ineffective for failing to object to Detective Jaeger's**
20 **improper expert testimony.**

21 NRS 50.275 provides:

22 If scientific, technical or other specialized knowledge will assist the trier of fact to
23 understand the evidence or to determine a fact in issue, a witness qualified as an expert
24 by special knowledge, skill, experience, training or education may testify to matters
within the scope of such knowledge.

25 Moreover, NRS 50.285 governs opinions by expert witnesses:

- 26 1. The facts or data in the particular case upon which an expert bases an opinion or
27 inference may be those perceived by or made known to the expert at or before the
28 hearing.

- 1 2. If of a type reasonably relied upon by experts in forming opinions or inferences
2 upon the subject, the facts or data need not be admissible in evidence.

3 The Nevada Supreme Court has held that trial courts have discretion to decide “what
4 factors are to be considered on a case-by-case basis. *Higgs v. State*, 125 Nev. 1043, 222 P.3d
5 648 (2010). The *Higgs* Court also provided:

6 In Nevada, the qualification, assistance, and limited scope requirements are based
7 on legal principles. The requirements ensure reliability and relevance, while not
8 imposing upon a judge a mandate to determine scientific falsifiability and error
rate for each case.

9 *Higgs*, 222 P.3d at 659.

10 Here, Trial Counsel was ineffective for failing to object to Detective Jaeger’s improper
11 expert testimony. The State did not notice Detective Jaeger as an expert. Detective Jaeger was
12 not qualified to be an expert. However, at several points during his testimony, he offered
13 opinions that were scientific, technical, and specialized to assist the jury with understanding
14 facts in issue.

15 For example, Detective Jaeger testified regarding the reliability of gunshot residue. He
16 explained the technical aspects of gunshot residue for the jury. There was no gunshot residue
17 testing done in this case.

18 Detective Jaeger testified:

19 Gunshot residue just isn’t reliable. I’ve been a detective almost ten years now. I
20 don’t think I’ve ever collected gunshot residue because it’s just so erratic. It can
21 be transferred really easily and it’s just not reliable. Trial Tr. 105, November 4,
22 2015.

23 ...

24 The way police officers qualify with their weapons they normally stand shoulder
25 to shoulder at a firing range and a bunch of them shoot at the same time and that
26 gunshot residue spreads in the air. It can get on their equipment, it can get on their
27 hands, it can get on their clothes, and as soon as someone’s touched that residue,
28 it is passed. So it’s just – it’s just not reliable and it’s just not something that’s
used. *Id.* at 106.

1 Next, Detective Jaeger testified about the characteristics and behaviors of cartridge
2 casings:

3
4 Casings are really unpredictable. Just picture the way most people hold a
5 handgun. If they're holding a handgun perfectly straight up and down, the casing
6 should go up and to the right. But as soon as you throw a motion in there, if you
7 [indiscernible] the gun this way they're going straight back. If you're leaning this
8 way, the casings are going over there. If you throw movement in there, if you
9 throw different surfaces that the casings hit. *Id.* at 109.

10 ...

11 It's my theory that the casings that we couldn't find were stuck in the treads on
12 the tires of a patrol car or in someone's boots. They're kind of like rocks and
13 sometimes you get a rock stuck in the tread of your shoe. We sent out a message
14 to all the patrol guys that responded at Northeast Area Command to check their
15 tires to see if there was any casings in there and to check their boots when they
16 got back in to see if there was any shell casings stuck in them and we didn't
17 recover anymore. *Id.* at 123.

18 Detective Jaeger clearly explained the scientific aspects of how cartridge casings
19 are ejected and why the casings would not necessarily be found during the investigation.

20 During closing arguments, the State relied on Detective Jaeger's explanations to
21 argue that "common sense" dictates that the roads are busy so there were more shots fired
22 than cartridge casings found at the scene. Trial Tr. 186, November 4, 2015. The State also
23 relied on Detective Jaeger's assessment to argue that the missing shell casings could get
24 into tire treads or boots, and therefore, they would not be found. *Id.* at 175, 191.

25 Additionally, Detective Jaeger testified as an expert when he explained the ratings of
26 bullet proof vests.

27 Each vest is rated at different threat levels. The rating basically says what kind of
28 round that vest will stop. There's really no difference from this vest to a vest that
any of the officers working the street are wearing. Most of the officers that are
working the streets, their vests are also Threat Level II-A's. Trial Tr. 114,
November 4, 2015.

1
2 Finally, Detective Jaeger opined regarding the angles of bullet impacts:

3 If you picture throwing a tennis ball or the way a tennis ball bounces, the greater
4 the angle the higher the bounce that you will get from the ball. These are coming
5 at an angle where they're just touch the car and then continued on. *Id.* at 117.

6 Trial Counsel did not object to Detective Jaeger's scientific, technical, and specialized
7 testimony. Counsel continuously allowed Detective Jaeger to opine on issues as an expert. See,
8 NRS 50.285. Therefore, Trial Counsel was deficient for failing to challenge Detective Jaeger's
9 improper expert testimony.

10 Trial Counsel's deficiency caused prejudice to Mr. Bacharach. Had Counsel objected,
11 there is a reasonable probability that the result of the trial would have been different. Detective
12 Jaeger's improper expert testimony was essential to the State's case against Mr. Bacharach.
13 During closing arguments, the State argued multiple times that the circumstantial evidence
14 showed that Mr. Bacharach committed the crimes. Trial Tr. 167, 186, 187, November 4, 2015.
15 The State also argued that the jurors should use "common sense" when evaluating the evidence.
16 *Id.* at 196. Detective Jaeger's expert testimony and opinions provided the foundation for the
17 State's arguments to use "common sense" when evaluating the circumstantial evidence against
18 Mr. Bacharach.
19

20 For these reasons, Mr. Bacharach requests that the Court find that Trial Counsel was
21 ineffective and reverse Mr. Bacharach's conviction.
22

23 ///

24 ///

25 ///

26 ///

27 ///

c. Trial Counsel was ineffective for failing to object to DDA Thompson's improper argument regarding the definition of reasonable doubt.

NRS 175.211 provides Nevada's definition of reasonable doubt:

1. A reasonable doubt is one based on reason. It is not mere possible doubt, but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.
2. No other definition of reasonable doubt may be given by the court to juries in criminal actions in this State.

Nevada law expressly prohibits attorneys from attempting to "quantify, supplement, or clarify the statutorily prescribed standard." *Daniel v. State*, 119 Nev. 498, 521, 78 P.3d 890 (2003). Moreover, attorneys may not "explain, elaborate on, or offer analogies or examples based on the statutory definition of reasonable doubt. Counsel may argue that evidence and theories in the case before the jury either amount to or fall short of that definition—nothing more." *Id.* at 521-522.

Here, the Trial Court provided Jury Instruction No. 5 to the jury:

The Defendant is presumed innocent unless the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

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

Jury Instruction No. 5 gave Nevada's statutory definition of reasonable doubt.

During closing arguments, however, the State argued:

1 If he's guilty of one, he's guilty of all in the sense of proof that it is him in
2 identity; not saying that we have necessarily met all of the elements....But, if
3 we've proven beyond a reasonable doubt that he committed one of them then it
4 must be his identity as to all of them. Trial Tr. 166, November 4, 2015.

5 Here, the State attempted to "explain, elaborate on" the statutory definition of
6 reasonable doubt. See, *Daniel*, 119 Nev. at 521-522. This explanation, in and of itself, is
7 impermissible under Nevada law. NRS 175.211. In other words, the State's argument was not
8 about the evidence or theories in the case. It was strictly about the burden of proof, which the
9 State completely misrepresented.

10 Trial Counsel for Mr. Bacharach was ineffective for failing to challenge the State's
11 argument regarding its burden of proof. Trial Counsel was deficient for failing to object to the
12 improper argument. Counsel's failure allowed the State to misrepresent the statutory definition
13 of reasonable doubt while arguing a blanket presumption of guilt for all of the charged crimes.

14 Had Trial Counsel objected, the result of the trial would have been different. There is a
15 reasonable probability that Mr. Bacharach would not have been convicted on all of the charged
16 counts if Trial Counsel had challenged the State's misrepresentation that finding guilt on one
17 count applied to all other counts.

18 Thus, Trial Counsel was ineffective. For this reason, the Court should reverse Mr.
19 Bacharach's conviction and grant him a new trial.
20

21 **III. Counsel for Mr. Bacharach Adopts All Issues Raised by Mr. Bacharach in his Pro**
22 **Per Petition for Writ of Habeas Corpus and Respectfully Requests that this Court**
23 **Consider and Issue a Written Decision with Regard to each of these Arguments.**

24 Mr. Bacharach filed a *pro per* Petition for Writ of Habeas Corpus on November 8, 2017.
25 In his petition, Mr. Bacharach raised the following issues:
26
27
28

- 1 ***1. The District Court violated Mr. Bacharach's Sixth Amendment right to a fair trial for***
2 ***refusing to grant Defense Counsel's request for a mistrial when witness Eufrosia***
3 ***Nazaroff testified regarding the LVMPD Gang Unit.***

4 In his pro per petition, Mr. Bacharach contended that his rights were violated under the
5 Fourth, Fifth, Sixth, Fourteenth, and Eighth Amendments to the United States Constitution
6 because the Trial Court refused to grant a mistrial when Eufrosia Nazaroff commented that she
7 was interviewed by the LVMPD Gang Unit. Thus, Mr. Bacharach was prejudiced, and the
8 Court must reverse his conviction.

- 9 ***2. The District Court violated Mr. Bacharach's Sixth Amendment right to a fair trial***
10 ***because the Court did not allow Defense Counsel to cross examine the LVMPD***
11 ***officer about the body camera video.***

12 In his pro per petition, Mr. Bacharach contended that his rights were violated under the
13 Fourth, Fifth, Sixth, Fourteenth, and Eighth Amendments to the United States Constitution
14 because Defense Counsel was not allowed to cross examine the officer using the body camera.
15 For this reason, Mr. Bacharach was prejudiced, and the conviction must be reversed.

- 16 ***3. Defense Counsel was ineffective for failing to "suppress or impeach" a witness who***
17 ***presented conflicting statements at trial.***

18 In his pro per petition, Mr. Bacharach contended that his rights were violated under the
19 Fourth, Fifth, Sixth, Fourteenth, and Eighth Amendments to the United States Constitution
20 because Trial Counsel was ineffective for failing to impeach witnesses with available evidence
21 of conflicting statements. Therefore, Mr. Bacharach was prejudiced, and the conviction must
22 be reversed.

- 23 ***4. The District Court violated Mr. Bacharach's rights by admitting a "tainted" and***
24 ***"unreliable" in-court identification.***

25 In his pro per petition, Mr. Bacharach contended that his rights were violated under the
26 Fourth, Fifth, Sixth, Fourteenth, and Eighth Amendments to the United States Constitution
27 because the Trial Court allowed a witness to make an "in court suggestive identification" at
28

1 trial. For this reason, Mr. Bacharach contends that he was prejudiced. Therefore, the
2 conviction must be reversed.

3 **IV. Cumulative Error**

4 In *Dechant v. State*, 116 Nev. 918, 10 P.3d 108 (2000), the Nevada Supreme Court
5 reversed the murder conviction of Amy Dechant based upon the cumulative effect of the errors
6 at trial. In *Dechant*, the Nevada Supreme Court provided, “[W]e have stated that if the
7 cumulative effect of the errors committed at trial denies the appellant his right to a fair trial, this
8 Court will reverse the conviction.” *Id.* at 113, citing *Big Pond v. State*, 101 Nev. 1, 3, 692 P.2d
9 1288, 1289 (1985). The Nevada Supreme Court explained that there are certain factors in
10 deciding whether error is harmless or prejudicial, including whether (1) the issue of guilt or
11 innocence is close, (2) the quantity and character of the error, and (3) the gravity of the crime
12 charged. *Id.*

13 Here, reversal is mandated based upon the cumulative errors in this case. First, the
14 question of guilt or innocence is close in this case. Second, the errors in this case were
15 numerous. Third, the crimes charged are severe, and Mr. Bacharach has been sentenced to
16 severe sentences. Accordingly, the errors in this case were cumulative and require reversal.

17 **V. Evidentiary Hearing**

18 A petitioner is entitled to an evidentiary hearing where the petitioner raises a colorable
19 claim of ineffective assistance. *Smith v. McCormick*, 914 F.2d 1153, 1170 (9th Cir. 1990).
20 *Hendricks v. Vasquez*, 974 F.2d 1099, 1103, 1109-10 (9th Cir. 1992). See also, *Porter v.*
21 *Wainwright*, 805 F.2d 930 (11th Cir. 1986) (without the aid of an evidentiary hearing, the court
22 cannot conclude whether attorneys properly investigated a case or whether their decisions
23 concerning evidence were made for tactical reasons); *Harich v. Wainwright*, 813 F.2d 1082,
24 1090 (11th Cir. 1987) (“[W]here a petitioner raises a colorable claim of ineffective assistance,
25
26
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1 and where there has not been a state or federal hearing on this claim, we must remand to the
2 district court for an evidentiary hearing.”) *Morris v. California*, 966 F.2d 448, 454 (9th Cir.
3 1991) (remand for evidentiary hearing required where allegations in petitioner’s affidavit raise
4 inference of deficient performance).

5 Here, the Court must hold an evidentiary hearing to determine the extent of Counsel’s
6 ineffectiveness. As shown above, Mr. Bacharach’s trial counsel fell below an objective
7 standard of reasonableness. Additionally, Mr. Bacharach suffered prejudice pursuant to
8 *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 205 (1984).

9 An evidentiary hearing is necessary in this case to determine whether the Trial
10 Counsel’s performance was deficient, to determine the prejudicial impact of the errors and
11 omissions noted in the petition, and to ascertain the truth in this case. Accordingly, Mr.
12 Bacharach requests that this Court grant an evidentiary hearing to allow him to present
13 evidence of Counsel’s ineffectiveness.
14

15 CONCLUSION

16 For the reasons outlined in this Supplemental Petition, Mr. Bacharach requests that this
17 Court grant the instant petition and vacate his conviction and sentence. Alternatively, Mr.
18 Bacharach requests an evidentiary hearing to present evidence regarding the extent of defense
19 counsel’s deficient performance and the prejudice Mr. Bacharach suffered in order to create an
20 adequate record regarding the claims contained herein.
21

22 DATED this 24th day of February, 2020.

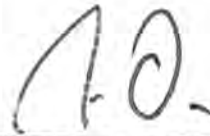
23
24 /s/ James A. Oronoz
25 JAMES A. ORONOV, ESQ.
26 Nevada Bar No. 6769
27 RACHAEL STEWART, ESQ.
28 Nevada Bar No. 14122
1050 Indigo Drive, Suite 120
Las Vegas, Nevada 89145
Attorneys for Petitioner

VERIFICATION

Under the penalty of perjury, the undersigned declares that he is the appointed counsel for the petitioner named in the foregoing Petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

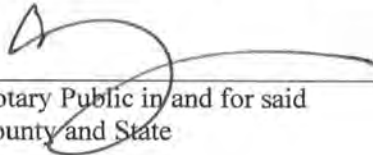
Under penalty of perjury, the undersigned declares that the Petitioner authorized him to commence this action.

Dated this 24th day of February, 2020



JAMES A. ORONOV

SUBSCRIBED AND SWORN to before me
this 24th day of February, 2020.



Notary Public in and for said
County and State

ALICIA M. ORONOV
Notary Public
State of Nevada
Appt. No. 10-2513-1
My Appt. Expires July 8, 2022

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada State District Court in Clark County, Nevada on February 24, 2020. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

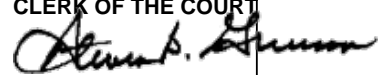
STEVEN WOLFSON,
Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89101
PDMotions@clarkcountyda.com
Respondent

I hereby certify and affirm that I mailed a copy of the foregoing document on February 24, 2020, postage prepaid and addressed to the following:

AARON FORD
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Carson City, Nevada 89701-4714

WILLIAM GITTERE
Warden
Ely State Prison
P.O. Box 1989
4569 North State Rt.
Ely, Nevada 89301

By: /s/ Rachael Stewart
An employee of Oronoz & Ericsson, LLC



1 RTRAN

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4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-14-299425-1
DEPT. IX

10 vs.

11 JOSHUA W. BACHARACH,
12 Defendant.

13
14 BEFORE THE HONORABLE CRISTINA D. SILVA, DISTRICT COURT JUDGE
15 MONDAY, APRIL 5, 2021

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **PETITION FOR WRIT OF HABEAS CORPUS**

18
19 APPEARANCES VIA VIDEOCONFERENCE:

20 For the State: MEGAN S. THOMSON, ESQ.
Chief Deputy District Attorney

21
22 For the Defendant: JAMES A. ORONOZ, ESQ.
23 RACHAEL E. STEWART, ESQ.

24
25 RECORDED BY: GINA VILLANI, COURT RECORDER

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Las Vegas, Nevada, Monday, April 5, 2021

[Hearing commenced at 11:16 a.m.]

THE COURT: Page 1, C299425, State of Nevada versus
Joshua -- is it Bacharach?

MS. THOMSON: Good morning, Megan Thomson for the
State.

THE COURT: Good morning.

MR. ORONOZ: Good morning, Your Honor, Jim Oronoz and
Rachael Stewart for the defense.

And with the Court's permission, Ms. Stewart will be handling
the argument today.

THE COURT: Oh, no problem. And good morning to both of
you.

And I'll waive mister -- is it -- am I saying his last name right?
Is it Bacharach?

MR. ORONOZ: It's Bacharach, yes.

THE COURT: Bacharach; all right. I'll waive his presence for
purposes of this hearing.

We're here on a post-conviction writ of habeas corpus. I've
read the original motion, the supplemental, the State's response, and
then the reply.

I have a question, and, I guess, since this is petitioner's petition
I want to talk about the testimony regarding Detective Jaeger and -- or
Jaeger. I'm not sure exactly how to pronounce that -- and why any

1 testimony regarding either a bulletproof vest -- why a bulletproof vest is
2 relevant to anything. I don't know the facts well enough to answer that
3 question. So if you could answer that question for me and I'll ask the
4 State the same question after you're done.

5 MS. STEWART: Of course, Your Honor.

6 So a bulletproof vest, Detective Jaeger's testimony about the
7 bulletproof vest was relevant because he was essentially acting as a
8 defacto expert and he was giving information to the jury. It wasn't his
9 bulletproof vest. It was the bulletproof vest found at the scene. And then
10 he was giving his opinion on the ratings of the bulletproof vest and the
11 ratings of that particular bulletproof vest when that wasn't a vest that the
12 police were wearing. So he was essentially just explaining the technical
13 aspects of the vest and what they meant to the jury without it being part
14 of his investigation.

15 THE COURT: So I understand that that's what he was doing,
16 my question is why was he talking about bulletproof vests in general?
17 Was somebody shot at wearing a bulletproof vest? I know that one was
18 recovered. But tell me how that would play into, if anything, a defense in
19 this matter?

20 MS. STEWART: So it plays into the defense because the
21 issue of the bulletproof vest, the bulletproof vest, if they find it with him,
22 makes him more -- appear more dangerous. And if he's, you know,
23 preparing for such a dangerous situation that he's got a bulletproof vest
24 on, that would -- that would enhance the jury's opinion against the
25 defendant.

1 So him testifying about the bulletproof vest and, you know,
2 the -- what the police use it for would essentially be putting the defendant
3 in the situation where he would need a bulletproof vest and would make
4 him more of a dangerous person than he would be if he were just anyone
5 on the street without a vest.

6 THE COURT: Well, let's -- we'll put that -- okay, I understand
7 your argument on that. But in terms of the elements of the offense, does
8 the testimony regarding the bulletproof vest prove or disprove any
9 particular element of the crimes charged?

10 MS. STEWART: The testimony of the bulletproof vest; no, it
11 doesn't go to one of the crimes charged because the crimes charged
12 weren't about the bulletproof vest; they were about the firearms and him
13 shooting out of the vehicle. But it was Detective Jaeger was allowed to
14 just go on and testify about the vest.

15 And, essentially, I mean, it doesn't really add to it other than
16 making the defendant more of a dangerous person 'cause he wasn't
17 charged with having a bulletproof vest.

18 THE COURT: Okay.

19 MS. STEWART: But Detective Jaeger was allowed to testify to
20 it and no one challenged the fact that he was just giving expert opinion
21 about it.

22 THE COURT: Mm-hmm; okay.

23 All right. And given that it's not fundamental to the proving or
24 disproving of any particular charge in this case, tell me how that would be
25 grounds for me granting relief on a post-conviction basis based on that

1 testimony?

2 MS. STEWART: Because trial counsel should have objected
3 and said that this is unnecessary expert testimony. It wasn't relevant to
4 the charges. So if it's not relevant to the charges, he shouldn't be
5 educating the jury why Mr. Bacharach is more of a dangerous person by
6 having the vest and giving his opinions about the threat levels and the
7 different variations of what the vest represent.

8 THE COURT: All right. Thank you for that, Ms. Stewart.

9 Let me turn to Ms. Thomson to answer the same questions, so
10 when you're ready.

11 MS. THOMSON: So from the State's perspective, the
12 admission of the fact of the vest was relevant to the defendant's intent
13 that day when he went out and ultimately engaged in the altercation with
14 the officer. So the fact that he left the child's mother's house wearing the
15 vest, with three firearms that were loaded, that all played into what his
16 intent was when he fired the first shot and then everything thereafter.

17 With regard to the levels of the vest, it's -- it was interesting
18 information but it's not -- levels of the vest had nothing to do with it. It
19 was simply the fact of the vest.

20 And so it's certainly the State's position that it was not expert
21 testimony. It was description the same way one could describe the
22 different 501 and 502 of Levi jeans but that doesn't make you an expert.
23 It makes it that you know the different numbers of jeans that Levi
24 releases.

25 THE COURT: All right. And is that the State's position

1 regarding the bullet casings, not so much where they land, but rather
2 the -- I lost it, one second here.

3 MS. THOMSON: The trajectory?

4 THE COURT: The trajectory; correct.

5 MS. THOMSON: It's -- that was the officer, I mean, in what, 17
6 years they have to qualify, I think it's like every six months. An officer
7 absolutely can testify that when the gun is tilted differently, the item
8 moves differently, that's common knowledge. I mean, we all know
9 physics are if you change one aspect of a moving object then it changes
10 the trajectory of that object.

11 It was his experience. It was not something that changed in
12 anyway the outcome of the jury's verdict.

13 THE COURT: All right. And let me turn back to Ms. Stewart
14 regarding the trajectory.

15 I'll tell you that I am -- I'm not going to grant any relief on the
16 argument about his testimony regarding where the casings could land. I
17 think that that is a common sense -- common sense testimony and also
18 something that an officer can testify to in their training and experience.

19 But in terms of trajectories, same question, Ms. Stewart, how is
20 that -- how does that impact how I should decide this particular petition?

21 MS. STEWART: So that impacts the particular [audio
22 distortion.] Your Honor, and the trial -- the transcript that's relevant is day
23 3 of the trial, it's November 4th, 2015, at page 117. It's actually quoted in
24 the supplemental petition. But Detective Jaeger gets into not just the
25 trajectory, he's giving examples of how shell casings work and

1 explaining, you know, if they bounce one way like a tennis ball, he said, if
2 you picture throwing a tennis ball or the way a tennis ball bounces, the
3 greater the angle, the higher the bounce.

4 I mean, any lay jury could potentially understand that bullets
5 and the trajectories change but that doesn't just give people free rein to
6 make examples like that. That doesn't, you know, the crime scene
7 analysts are the ones that pick up, you know, and recover everything.
8 He's not the one that's in charge. He's the one's that's managing the
9 case basically.

10 So the crime scene analyst would, you know, be able to tell
11 you where they found the casings. But for him to get up there and start
12 explaining it and I know that you and I might understand, you know, that
13 things bounce and they go one direction or the other, but for him to start
14 explaining the technical terms in a way that the jury can understand went
15 beyond just common sense, common knowledge. And it's -- it's not even
16 his [audio distortion] of this case because he was the case manager. He
17 wasn't the CSA.

18 So it was explaining the technical terms to the jury in a way
19 that the lay jurors could understand. And it wasn't just -- it wasn't just a
20 personal experience thing. It went beyond that to start giving examples.

21 And so -- those weren't related to this case, that we are
22 arguing crossed over into the purview of what an expert would be given
23 that an expert is supposed to explain the scientific and technical
24 knowledge to the jury.

25 THE COURT: All right. And even assuming -- let's assume

1 that to be true for argument purposes, how would that impact in anyway
2 the jury's findings of fact in this case -- as the finders of fact in this case,
3 in terms of the charged offenses how does it impact the elements,
4 whether it proves or disproves them one way or the other?

5 MS. STEWART: So the way it impacts it is that the jury is
6 obviously going to give more weight to a detective that's been a detective
7 for so many years. And if he's giving an example of how the evidence
8 works, the jury is going to think this guy knows what he's talking about,
9 this guy is the expert, we need to listen to the expert, rather than actually
10 seeing what the evidence was.

11 And considering, you know, it just -- he's basically painting the
12 client as somebody who's a maniac that shoots bullets everywhere. And
13 his testimony was -- just went beyond explaining the facts of the case
14 and its enhanced and makes it worse than what the case actually could
15 have been.

16 So with that, that's what -- how it impacts this case.

17 THE COURT: All right.

18 MS. STEWART: And it wasn't just one isolated issue with him
19 testifying as an expert, it was multiple, repeated instances where he was
20 giving his opinion and then a jury would have to take that and understand
21 it and then apply it to their deliberations.

22 THE COURT: So is it your position then because the -- his
23 attorney failed to object to that line of testimony, much like the previous
24 questions I asked, that that is ineffective?

25 MS. STEWART: Yes, the attorney should have said

1 something. The attorney should have objected and said this is expert
2 testimony, he's not qualified as an expert, he wasn't noticed as an expert,
3 keep this, you know, to your investigation of this case. And none of that
4 happened. It was never challenged.

5 THE COURT: And what evidence do we have to suggest that
6 this -- the decision not to object wasn't some sort of trial strategy, for
7 whatever reason?

8 MS. STEWART: Your Honor, if it was a trial strategy, that's
9 what we need an evidentiary hearing for. At this point we would need to
10 put counsel on the stand and ask.

11 THE COURT: All right. And let me ask the State their
12 perspective on that issue regarding whether or not it was some kind of
13 trial strategy for the attorney not to object?

14 MS. THOMSON: It's the State's position that the only -- of the
15 four that is even potentially viewed as arguably expert testimony is the
16 trajectory. And, quite frankly, even if we assumed that it was just an
17 oversight; the prejudice is not met because it doesn't affect any of the
18 outcome. And the argument that, oh, well, the jury just bit off on
19 everything the detective said fails because the jury found him not guilty of
20 two of the counts. So we know that they actually did look at and
21 deliberate about the specific facts. And when they didn't, we did -- did
22 not have casings to match the discharge, they found not guilty.

23 So I would suggest that given the fact that three of the four is --
24 are [audio distortion] expert testimony, there's no basis for an objection.
25 It would have been futile.

1 And the fourth is so irrelevant to the determination of guilt or
2 innocence that it would only put a attorney looking as though they're
3 trying to cover something up rather than actually addressing the real
4 merits, which the issue in this case was identity.

5 THE COURT: All right.

6 All right. Ms. Stewart, anything else you would like to add
7 outside the written pleadings before I render a decision here?

8 MS. STEWART: No, I don't have anything else to add at this
9 point.

10 THE COURT: All right. And, Ms. Thomson, same question for
11 you.

12 MS. THOMSON: No, Your Honor.

13 THE COURT: All right.

14 All right. Well, I'm going to make the following findings, I am
15 going to deny the petition for writ of habeas corpus, and I am going to
16 find first that they're -- that the petitioner did receive effective assistance
17 of counsel. I understand petitioner's perspective on -- and objections to
18 Detective Jaeger's testimony. I believe that the testimony regarding
19 bulletproof vests and the style, effectiveness, et cetera, would dance, if
20 you will, into the arena of expert testimony. It doesn't seem to have any
21 sort of prejudicial effect to the jury, other than it being interesting
22 testimony. Certainly it could have been objected to but it wasn't. And the
23 same thing with the -- really the same thing with the gunshot residue and
24 the trajectory.

25 I don't find that there was any expert testimony regarding the

1 placement or landings of any cartridge casing. I think that, again, is
2 common sense testimony that a lay person, or certainly an officer in their
3 training and experience can testify to, that if you discharge a firearm,
4 there's just no way where casings can later be recovered. That can be
5 impacted by any number of things, including the type of weapon, the
6 weather, the location, et cetera.

7 And finding that I don't believe that his testimony would have --
8 or even if we had removed that testimony, it would have changed the
9 jury's outcome ultimately. And as the Nevada Court of Appeals found,
10 there was substantial evidence of the defendant's guilt. And so I don't
11 find that there was any ineffective assistance of counsel in that regard.

12 I also am going to find that there was no structural error in
13 regards to the Court's admonition of Nazaroff's -- and I apologize if I
14 mispronounced that -- testimony. The admonition to the witness was in
15 front -- was outside the presence of the jury, and in contrast to the *Webb*
16 decision, there wasn't any pressure for the witness not to testify, rather
17 the judge rightfully informed the witness that if she perjured herself or
18 failed to follow the Court's instructions, that she could be held
19 accountable for that. So that's a truthful statement, perhaps it could have
20 been stated more artfully, but I don't believe that it rises to the level of
21 chilling the witness from testifying or having the witness change their
22 testimony. So I'm going to deny the petition on those grounds.

23 I'm also going to deny the claims that were included in the pro
24 per petition. I understand the State objects to the reference in the
25 supplemental petition as improper and the black letter law would agree

1 with that. But in an abundance of caution, I'm still going to make a
2 determination as to the issues raised therein.

3 The issue regarding the Sixth Amendment right to fair trial was
4 already addressed and the -- it was rejected by the Nevada Supreme
5 Court regarding reference to the Gang Unit and so that has been
6 addressed and I am not going to find that there was any reason to grant
7 relief on that ground.

8 The other issue is regarding the claim there was no fair trial
9 because counsel wasn't permitted to cross-examine about body camera
10 video. Well, there was -- really this is a argument that there was some
11 kind of judicial error and that was not raised on direct appeal and
12 therefore is waived. Moreover, there is nothing supporting the fact the
13 petitioner was prohibited from cross-examining regarding the video,
14 rather it seems to be just a bare and naked claim.

15 Conflicting testimony of different witnesses at trial, there's not
16 grounds to find or to grant relief in a post-conviction motion. That's the
17 purpose of trial for cross-examination and for the jury to ultimately weigh
18 the credibility of the various witnesses and to make a determination
19 regarding whether or not the State met its burden.

20 And in this case, as I noted previously, the Supreme Court
21 found that there was a strong evidence of the defendant's guilt and
22 therefore there's no grounds to grant relief in that regard.

23 There's also nothing to support the claim that there were
24 suggestive or tainted identifications and without more I simply cannot
25 grant any relief in that regards.

1 I also need to address the claim that -- oh, I think I missed one.
2 Actually, I think I got -- I got them all.

3 So let me ask Ms. Stewart, any questions about my ruling here
4 today in court?

5 MS. STEWART: No, Your Honor.

6 THE COURT: All right. And, State, anything I need to
7 address?

8 MS. THOMSON: Your Honor, I believe there was one other
9 claim, which was the ineffective assistance of counsel [audio distortion.]

10 THE COURT: Oh, okay, yes. Thank you. You're right. And I
11 also forgot to claim cumulative error. I knew I had missed one. Thank
12 you.

13 All right. So I don't find, based on the information before the
14 Court, that there was ineffective assistance of counsel. Certainly there
15 was testimony that could have been objected to, but it did not -- that
16 testimony did not weigh one way or the other regarding whether or not
17 the State proved the case beyond a reasonable doubt.

18 I also find that there was no error -- that was the other thing --
19 there was no error from the State regarding the reasonable doubt
20 statement in closing arguments. I believe that the proper instruction was
21 given to the jury and the argument made by the State and that argument
22 was also made on -- or should have been made at direct appeal and so
23 that has been established. And I don't believe that it's grounds to grant
24 relief.

25 I don't find that there's any cumulative error. And the Nevada

1 Supreme Court as this point hasn't found that there can be an application
2 of cumulative error argument in post-conviction situations such as this,
3 especially when we're talking about ineffective assistance of counsel.

4 And so because of that I don't find that that applies and that is
5 also -- I wouldn't find it applied anyway because I'm denying the petition
6 for the reasons I have stated here on the record.

7 All right. State, could you get me a draft order for me to take a
8 look at in the next 30 days.

9 MS. THOMSON: Yes.

10 THE COURT: Thank you.

11 And if you could please send it over to Ms. Stewart for review
12 prior to sending it to chambers, so then if there are any questions or
13 concerns or if they want to propose an alternative order, I can take a look
14 at that.

15 MS. THOMSON: I will notate the file for that to be done.

16 THE COURT: All right. Thank you.

17 Thank you both. Take care.

18 MS. THOMSON: Thank you.

19 MR. ORONOS: Thank you, Your Honor.

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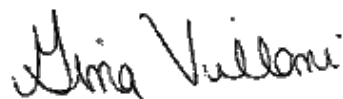
MS. STEWART: Thank you.

THE COURT: Thank you.

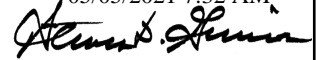
[Hearing concluded at 11:38 a.m.]

* * * * *

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



Gina Villani
Court Recorder/Transcriber
District Court Dept. IX


CLERK OF THE COURT

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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 **PROCEDRUAL 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.

1 ANALYSIS

2 In the instant Petition, Petitioner argues the following: (1) the Court committed
3 structural error by threatening Nazaroff and counsel was ineffective for failing to object to
4 such threats, (2) counsel was ineffective for failing to object to Detective Jaegar's testimony;
5 (3) counsel was ineffective for failing to object to the State's argument regarding the definition
6 of reasonable doubt, (4) Petitioner incorporates all issues raised in his pro per petition, and (5)
7 there was cumulative error. Petitioner also requests an evidentiary hearing. However, as will
8 be discussed *supra*, all of Petitioner's arguments are meritless. As such, Petitioner is not
9 entitled to an evidentiary hearing.

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

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

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

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

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

10 Based on the above law, the role of a court in considering allegations of ineffective
11 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
12 whether, under the particular facts and circumstances of the case, trial counsel failed to render
13 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
14 (1978). This analysis does not mean that the court should “second guess reasoned choices
15 between trial tactics nor does it mean that defense counsel, to protect himself against
16 allegations of inadequacy, must make every conceivable motion no matter how remote the
17 possibilities are of success.” Id. To be effective, the constitution “does not require that 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;
25 (b) To avoid needless consumption of time; and
26 (c) To protect witnesses from undue harassment or embarrassment.

27 In the instant case, outside the presence of the jury, defense counsel alerted the Court
28 of her and the State’s concern regarding Nazaroff causing a mistrial. Jury Trial Day 1 at 295.
Specifically, the State and defense counsel wanted to ensure that since Nazaroff refused to
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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A. The Court did not violate Petitioner’s Sixth Amendment right to a fair trial for refusing to grant counsel’s request for mistrial when Nazarov testified regarding the LVMPD Gang Unit

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

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

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

Petitioner argued in his direct appeal that the district court erred in denying his motion for mistrial following a witness’ statement that she spoke with police officers in the gang unit. 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 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).

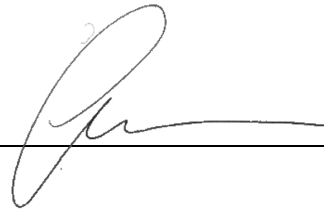
26 The instant Petition does not require an evidentiary hearing. An expansion of the record
27 is unnecessary because Petitioner has failed to assert any meritorious claims and the Petition
28

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
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jb 15 BY /s/ James Oronoz
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CERTIFICATE OF ELECTRONIC TRANSMISSION

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

JAMES ORONoz
jim@oronozlawyers.com

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

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](#)

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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)

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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
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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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17 Alicia Oronoz

alicia@oronozlawyers.com

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21 Jan Ellison

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