Electronically Filed
5/11/2021 12:04 PM
Steven D. Grierson
CLERK OF THE COURT

NOASC
WALEED ZAMAN, ESQ.
Nevada State Bar No. 13993
MICHAEL TRIPPIEDI, ESQ.
Nevada State Bar No. 13973
ZAMAN & TRIPPIEDI
6620 S. Tenaya Way, Suite 100
Las Vegas, NV 89113
Ph: 702-359-0157
F: (702) 920-8837
Attorneys for Appellant

Electronically Filed
May 17 2021 10:21 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

DARION MUHAMMAD-COLEMAN, Petitioner, vs. THE STATE OF NEVADA, Respondent.	Case No: A-19-806521-W Dept. No: X **NOTICE OF APPEAL**

TO: THE STATE OF NEVADA; *Respondent,*

TO: STEVEN B. WOLFSON, DISTRICT ATTORNEY, CLARK COUNTY, NEVADA, and

TO: DEPARTMENT X OF THE EIGHTH JUDICIAL DISTRICT COURT.

Notice is hereby given that DARION MUHAMMAD-COLEMAN, Petitioner in the above-entitled action, appeals to the Nevada Supreme Court from the Findings of Fact, Conclusions of Law and Order, filed on April 23, 2021.

DATED this 11h day of May 2021.

WALEED ZAMAN, ESQ.
Nevada State Bar No. 13993
MICHAEL TRIPPIEDI, ESQ.
Nevada State Bar No. 13973
ZAMAN & TRIPPIEDI
6620 S. Tenaya Way, Suite 100
Las Vegas, NV 89113
Ph: 702-359-0157
F: (702) 920-8837
Attorneys for Petitioner

Docket 82915 Document 2021-14110

Case Number: A-19-806521-W

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9 and EDCR 8.02, I hereby certify that I am an employee of ZAMAN & TRIPPIEDI, and on the 11th day of May 2021, I served the foregoing **NOTICE OF APPEAL** as follows:

Steven B. Wolfson, Esq.
Steven S. Owens, Esq.
Clark County District Attorney's Office
Via email: Motions@clarkcountyda.com

Darion Muhammad-Coleman, #1144228
Petitioner
Lovelock Correctional Center
1200 Prison Rd.
Lovelock, Nevada 89419
Via First Class Mail

/s/ Jonathan Sitsis
An Employee of Zaman & Trippiedi

ZAMAN & TRIPPIEDI
ATTORNEYS AT LAW

Electronically Filed
5/11/2021 12:04 PM
Steven D. Grierson
CLERK OF THE COURT

ASTA
WALEED ZAMAN, ESQ.
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MICHAEL TRIPPIEDI, ESQ.
Nevada State Bar No. 13973
ZAMAN & TRIPPIEDI
6620 S. Tenaya Way, Suite 100
Las Vegas, NV 89113
Ph: 702-359-0157
F: (702) 920-8837
Attorneys for Appellant

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

DARION MUHAMMAD-COLEMAN, Petitioner, vs. THE STATE OF NEVADA, Respondent.	Case No: A-19-806521-W Dept. No: X **CASE APPEAL STATEMENT**

1. **Appellant filing this case Docket Statement:** Darion Muhammad-Coleman

2. **Judge issuing the decision, judgment, or order appealed from:** Honorable Judge Tierra Jones.

3. **All parties to the proceedings in the district court:** The State of Nevada, Plaintiff (Clark County District Attorney's Office 200 Lewis Avenue, Las Vegas, NV 89101); and Darion Muhammad-Coleman, Defendant, represented by Waleed Zaman, Esq. at Zaman & Trippiedi, PLLC. (6620 S. Tenaya Way, Suite 100, Las Vegas, NV 89113).

4. **All parties involved in this appeal:** Darion Muhammad-Coleman, Appellant; The State of Nevada, Respondent.

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

WALEED ZAMAN, ESQ. Nevada Bar No. 13993 6620 S. Tenaya Way, Ste 100 Las Vegas, Nevada 891 Counsel for Petitioner	STEVEN B. WOLFSON Clark County, Nevada District Attorney 200 Lewis Avenue Las Vegas, Nevada 89101 Counsel for Respondent

6. **Whether appellant was represented by appointed or retained counsel in the district court:** Retained.

7. **Whether appellant was represented by appointed or retained counsel on appeal:** Retained.

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

9. **Date proceedings commenced in the district court (e.g. date complaint, indictment, information, or petition was filed):** Petition for Writ of Habeas Corpus filed on December 06, 2019.

10. **Brief Description and Relief Sought:** Appellant seeks reversal on the following grounds: Whether the District Court abused its discretion in not finding trial counsel ineffective for failing to properly cross-examine the lead detective or otherwise raise the issue of perjury; whether the District Court abused its discretion in not finding counsel ineffective for failing to obtain an expert concerning post-traumatic stress disorder; that the sentencing hearing relied on improper evidence; whether the State and/or its witnesses impermissibly commented on Appellant's post-arrest silence;

11. **Previous Appeals:** This matter has no current other appeals pending for this Petition. Appellant filed an unripe proper person notice of appeal for this matter in NSC 82103, which was dismissed as the District Court had not yet resolved all pending claims in the Petition. There was also a direct appeal of the same matter, in NSC 72867.

12. **Child Custody/Visitation:** Does not apply.

DATED this 11th day of May 2021.

WALEED ZAMAN, ESQ.
Nevada State Bar No. 13993
MICHAEL TRIPPIEDI, ESQ.
Nevada State Bar No. 13973
ZAMAN & TRIPPIEDI
6620 S. Tenaya Way, Suite 100
Las Vegas, NV 89113
Ph: 702-359-0157
F: (702) 920-8837
Attorneys for Petitioner

ZAMAN & TRIPPIEDI
ATTORNEYS AT LAW

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9 and EDCR 8.02, I hereby certify that I am an employee of ZAMAN & TRIPPIEDI, and on the 11th day of May 2021, I served the foregoing **CASE APPEAL STATEMENT** as follows:

Steven B. Wolfson, Esq.
Steven S. Owens, Esq.
Clark County District Attorney's Office
Via email: Motions@clarkcountyda.com

Darion Muhammad-Coleman, #1144228
Petitioner
Lovelock Correctional Center
1200 Prison Rd.
Lovelock, Nevada 89419
Via First Class Mail

/s/ Jonathan Sitsis
An Employee of Zaman & Trippiedi

ZAMAN & TRIPPIEDI
ATTORNEYS AT LAW

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-19-806521-W

Darion Coleman, Plaintiff(s)	§	Location:	**Department 10**
vs.	§	Judicial Officer:	**Jones, Tierra**
Renee Baker, Defendant(s)	§	Filed on:	**12/06/2019**
	§	Case Number History:	
	§	Cross-Reference Case Number:	**A806521**
	§	Supreme Court No.:	**82103**

CASE INFORMATION

Related Cases
C-13-293296-2 (Writ Related Case)

Statistical Closures
04/23/2021 Other Manner of Disposition

Case Type: **Writ of Habeas Corpus**

Case Status: **04/23/2021 Closed**

DATE — CASE ASSIGNMENT

Current Case Assignment

Case Number	A-19-806521-W
Court	Department 10
Date Assigned	09/08/2020
Judicial Officer	Jones, Tierra

PARTY INFORMATION

		Lead Attorneys
Plaintiff	**Coleman, Darion M**	**Zaman, Waleed** *Retained* 702-359-0157(W)
Defendant	**Baker, Renee**	**Wolfson, Steven B** *Retained* 702-671-2700(W)

DATE — EVENTS & ORDERS OF THE COURT — INDEX

EVENTS

12/06/2019
Petition for Writ of Habeas Corpus
Filed by: Plaintiff Coleman, Darion M
Petition for Writ of Habeas Corpus (post trial) - Muhammad-Coleman, Darion

12/09/2019
Notice of Department Reassignment
Notice of Department Reassignmnet

03/05/2020
Opposition
Filed By: Defendant Baker, Renee
State's Opposition to Defendant's Post-Conviction Petition for Writ of Habeas COrpus and Request for Evidentiary Hearing

04/17/2020
Reply to Opposition
Filed by: Plaintiff Coleman, Darion M
Reply to State's Opposition to Petition for Writ of Habeas Corpus (Post-Conviction)

09/08/2020
Case Reassigned to Department 10
Case Reassignment from Judge Douglas W. Herndon to Judge Tierra Jones

10/27/2020 Order for Production of Inmate
Order for Production of Via Video Conference of Inmate Darion Muhammad-Coleman, BAC #114428

11/10/2020 Notice of Appeal
Notice of Appeal

11/12/2020 Case Appeal Statement
Filed By: Plaintiff Coleman, Darion M
Case Appeal Statement

12/14/2020 Findings of Fact, Conclusions of Law and Order
Findings of Fact, Conclusions of Law and Order

12/16/2020 Notice of Entry of Findings of Fact, Conclusions of Law
Filed By: Defendant Baker, Renee
Notice of Entry of Findings of Fact, Conclusions of Law and Order

12/30/2020 NV Supreme Court Clerks Certificate/Judgment - Dismissed
Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Dismissed

12/31/2020 Subpoena Duces Tecum
Filed by: Plaintiff Coleman, Darion M
SUBP - HDSP - Muhammad-Coleman, Dation

02/11/2021 Order
Order for Production of Inmate

02/16/2021 Exhibits
Filed By: Plaintiff Coleman, Darion M
Appendix of Ehibits in Support of Petiiton for Writ of Habeas Corpus - Muhanmad-Coleman, Darion

03/12/2021 Order
Filed By: Plaintiff Coleman, Darion M
14-Day Expedited Order for Transcript

04/23/2021 Findings of Fact, Conclusions of Law and Order
Filed By: Defendant Baker, Renee
Findings of Fact, Conclusions of Law and Order

04/26/2021 Notice of Entry of Findings of Fact, Conclusions of Law
Filed By: Defendant Baker, Renee
Notice of Entry of Findings of Fact, Conclusions of Law and Order

05/10/2021 Transcript of Proceedings
Party: Plaintiff Coleman, Darion M
Recorder's Transcript of Proceedings re Supplement to Petition - February 22, 2021

05/11/2021 Notice of Appeal (Criminal)
Party: Plaintiff Coleman, Darion M
Notice of Appeal - Muhammad-Coleman, Darion

05/11/2021 Case Appeal Statement
Filed By: Plaintiff Coleman, Darion M
Case Appeal Statement - Muhammad-Coleman, Darion

DISPOSITIONS

12/30/2020 **Clerk's Certificate** (Judicial Officer: Jones, Tierra)
Debtors: Darion M Coleman (Plaintiff)
Creditors: Renee Baker (Defendant)
Judgment: 12/30/2020, Docketed: 01/14/2021
Comment: Supreme Court No. 82103 Appeal Dismissed

HEARINGS

01/23/2020 **Petition for Writ of Habeas Corpus** (9:00 AM) (Judicial Officer: Jones, Tierra)
01/23/2020, 06/04/2020, 08/06/2020, 09/30/2020, 10/12/2020
Matter Continued;
Matter Continued;
Matter Continued;
Continued;
Matter Heard;
Journal Entry Details:
Defendant Coleman NOT PRESENT in custody at NDC. Following arguments by counsel, Court INDICATED it would review the Woodstone case and issue a minute order. ;
Matter Continued;
Matter Continued;
Matter Continued;
Continued;
Matter Heard;
Journal Entry Details:
Darion Coleman not present and in the Nevada Department of Corrections. Court noted the Court is not ready to proceed today as it has not read the Reply and the State provided a Video yesterday, that's referred to in the pleadings, however, the Court needs additional time to prepared. COURT ORDERED, matter CONTINUED to the date given. Mr. Schwartzer advised as to the video provided to the Court and that counsel can provide it to defense counsel also. Mr. Zaman advised he has seen them. 10/12/20 8:30 A.M. PETITION FOR WRIT OF HABEAS CORPUS;
Matter Continued;
Matter Continued;
Matter Continued;
Continued;
Matter Heard;
Journal Entry Details:
Defendant not present and in custody in the Nevada Department of Corrections; Waleed Zaman Esq. not present. COURT STATED this matter was continued for Mr. Zaman to be present to argue the matter, adding the Courthouse is not allowing people in due to COVID and ORDERED, matter CONTINUED. NDC CONTINUED TO: 10/1/2020 9:00 A.M.;
Matter Continued;
Matter Continued;
Matter Continued;
Continued;
Matter Heard;
Journal Entry Details:
Defendant not present and in custody in the Nevada Department of Corrections. COURT STATED there is a limited amount of people able to enter the building due to COVID-19. Mr. Zaman stated no objection to continuing the matter for him to be present in person. Mr. Scarborough stated the appeals department was not served and they were requesting 45 days to prepare a response. Mr. Zaman informed the Court the State has responded. Mr. Scarborough stated the information must have been an old note. COURT ORDERED, matter CONTINUED and to the extent the State is wishing to file supplemental pleading, the State can. NDC /CONTINUED TO: 7/16/2020 9:00 A.M.;
Matter Continued;

Matter Continued;
Matter Continued;
Continued;
Matter Heard;
Journal Entry Details:
Defendant not present and in custody in the Nevada Department of Corrections. Mr. Zaman indicated he spoke with Mr. Chen and they are requesting forty-five days to respond. Mr. Osman confirmed the representations. COURT ORDERED, briefing schedule SET as follows: State's Opposition shall be due on or before March 5, 2020; Defendant's Reply shall be due on or before April 2, 2020; matter CONTINUED. NDC CONTINUED TO: 4/9/2020 9:00 A.M.;

10/13/2020 **Minute Order** (3:00 PM) (Judicial Officer: Jones, Tierra)
Minute Order - No Hearing Held;
Journal Entry Details:
Following review of the papers and pleadings on file herein, and considering the arguments of counsel, the COURT FINDS as follows. The Court finds that the Petition is not procedurally barred under NRS 34.726. The Court finds good cause for the delay. The COURT FURTHER FINDS that none of Petitioner s claims are waived pursuant to NRS 34.810. As for the claim regarding the sentencing court s reliance on improper evidence, the COURT FINDS that this claim lacks merit. The COURT FINDS that the sentencing court did not rely on improper evidence as there is no language in the sentencing transcript to indicate that the Court specifically relied on Detective Miller s testimony. The sentencing Court specifically stated that it had presided over the entire trial and that it was considering the evidence that was presented at trial to determine that the Petitioner was the first person to fire his weapon. The COURT FURTHER FINDS that the Detective Miller s testimony did not amount to comment on the Defendant s post-arrest silence. The COURT FURTHER FINDS that Petitioner did not receive ineffective assistance of counsel in counsel s cross examination and failure to object to the testimony of Detective Miller. Under Strickland v. Washington, the Petitioner must show that counsel s cross-examination of Detective Miller or failure to object to the Detective s testimony fell below an objective standard of reasonableness and that but for the errors, there is a reasonable probability that the result of the proceedings would have been different. Neither of those prongs are met here. The COURT FURTHER FINDS that Petitioner s PTSD self-defense theory claim warrants an evidentiary hearing. Accordingly, the Petition for Writ of Habeas Corpus is DENIED IN PART. The State is to prepare a Findings of Fact and Conclusions of Law consistent with this Order and submit it to the Court for signature within 10 days of the date of filing of this order. This case will be set for a status check hearing on October 21, 2020 at 8:30 to set a time and date for an evidentiary hearing. Clerk's Note: This Minute Order was electronically served by Courtroom Clerk, Teri Berkshire, to all registered parties for Odyssey File & Serve. /tb ;

10/21/2020 **Status Check** (8:30 AM) (Judicial Officer: Jones, Tierra)
Setting of Evidentiary Hearing
Hearing Set;
Journal Entry Details:
APPEARANCES CONTINUED: Mr. Schwartzer present on behalf of the State, via video, through bluejeans technology. Mr. Coleman not present and in the Nevada Department of Corrections. Court noted this matter is on for the limited PTSD issue. Colloquy regarding hearing times, counsel's availability, and coordinating with the Jail. Court directed Mr. Schwartzer to do an order to produce, so the deft. will be transferred from NDC to CCDC. Mr. Zaman requested to expand the record and get the evaluation done by an independent doctor. COURT ORDERED request DENIED. Court noted what the Court is interested in, is the limited issue as to what Mr. Schwarz knew at the time, so any evaluation that occurs at this point, Mr. Schwarz would have no knowledge of that, at the time he should have argued the PTSD. Court noted this Court's JEA will be in touch with counsel after she confirms with DC7, that we can do this. FURTHER ORDERED, matter set for Hearing on the date given. Mr. Schwartzer to prepare an order to transport. NDC 12/04/20 from 8:00 a.m. to 10:00 a.m. HEARING - LIMITED ISSUE;

12/18/2020 **Evidentiary Hearing** (9:00 AM) (Judicial Officer: Jones, Tierra)
Matter Heard;
Journal Entry Details:
Court inquired if parties were ready to proceed on the issue of ineffective assistance of counsel regarding investigation and utilization of information regarding Petitioner s PTSD at trial.

Counsel advised that he was made aware in the last 24 hours of a phone call between Darion and previous counsel in March of 2016. Further, previous counsel would not have been confirmed as his attorney at that time as he was substituted in and there is the possibility that there was a discussion regarding the PTSD during that phone call. Counsel attempted to confirm if that call would still have been retained and has not been able to confirm or deny if it was retained, but wanted to bring it to the Court's attention. Court advised with all parties present, this Court will go forward with testimony and allow Mr. Zaman to supplement the record after the hearing with whatever information he is able to obtain and Court will withhold its ruling until that has been accomplished. Testimony and exhibits presented. Stipulated exhibits A through G Stipulated ADMITTED. Court finds in light of the issuer presented regarding the conversation that may have contained information regarding PTSD that this Court is going to give Mr. Zaman the opportunity to follow up and matter is set for status check on what he uncovers. Further, next date Court will determine a time for closing arguments and submission of the matter. NDC 01/06/21 8:30 a.m. Status Check: 2016 Call (Supplement to Petition) CLERK'S NOTE: Minutes completed by Courtroom Clerk Alan Paul Castle using JAVS. ac/12/29/20.;

01/06/2021 **Status Check** (8:30 AM) (Judicial Officer: Jones, Tierra)
01/06/2021, 01/27/2021, 02/10/2021, 02/22/2021

Status Check: 2016 Call (Supplement to Petition)
Continued;
Continued;
Continued;
Denied;
Journal Entry Details:
Following arguments by counsel, Court stated its findings and ORDERED, petition DENIED. State to prepare findings of fact and conclusions of law.;
Continued;
Continued;
Continued;
Denied;
Journal Entry Details:
COURT ORDERED, matter CONTINUED for the call log to be submitted at the request of counsel. NDC CONTINUED....2/22/21 8:30AM.;
Continued;
Continued;
Continued;
Denied;
Journal Entry Details:
APPEARANCES CONTINUED: Mr. Schwartzer present via video, on behalf of the State. Mr. Zaman present via video, on behalf of deft. through bluejeans technology. Deft. not present and in the Nevada Department of Corrections. Upon Court's inquiry, Mr. Zaman advised he still doesn't have the Jail calls, as NDOC was not accepting subpoena. However, he did reach someone at Lovelock, who is handling it. Further, counsel requested to pass the matter. COURT ORDERED, matter CONTINUED to the date given. NDC 02/10/21 8:30 A.M. EVIDENTIARY HEARING;
Continued;
Continued;
Continued;
Denied;
Journal Entry Details:
Deft. not present and in the Nevada Department of Corrections. Ms. Conlin standing in for Mr. Schwartzer, on behalf of the State. Court noted there was a subpoena issued on High Desert, on 12-31-20, in regards to the phone record that was going to possibly supplement the Petition. Further, counsel requested the record by 1-21-21. COURT ORDERED, matter CONTINUED to the date given. NDC 01/27/21 8:30 A.M. STATUS CHECK: 2016 CALL (SUPPLEMENT TO PETITION);

Electronically Filed
04/23/2021 7:34 AM
CLERK OF THE COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

DARION MUHAMMAD-COLEMAN, #2880725 Petitioner, -vs- THE STATE OF NEVADA, Respondent.	CASE NO: A-19-806521-W (C-13-293296-2) DEPT NO: X

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: FEBRUARY 22, 2021
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable TIERRA JONES, District Judge, on the 22nd day of February, 2021, the Petitioner present, represented by WALEED ZAMAN, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through MICHAEL J. SCHWARTZER, 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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Statistically closed: USJR - CV - Other Manner of Disposition (USJROT)

FINDINGS OF FACT, CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On October 11, 2013 the State of Nevada filed an Indictment charging Darion Muhammad-Coleman (hereinafter "Petitioner") with the following: Count 1 – Conspiracy to Commit Robbery (Category B Felony – NRS 199.480, 200.380); Count 2 – Attempt Robbery with Use of a Deadly Weapon (Category B Felony – NRS 200.380, 193.330, 193.165); Count 3 – Murder with Use of a Deadly Weapon (Category A Felony NRS 200.010, 200.030, 193.165); Count 4 – Battery with Use of a Deadly Weapon (Category B Felony – NRS 200.481); Count 5 – Assault with Use of a Deadly Weapon (Category B Felony – NRS 200.471); Count 6 – Conspiracy to Violate the Uniform Controlled Substances Act (Category C Felony – NRS 453.401); and Count 7 – Attempt to Possess Controlled Substance (Category E Felony/Gross Misdemeanor – NRS 453.336, 193.330).

On October 18, 2013, Petitioner's initial arraignment was continued for a competency evaluation at defense counsel's request. Subsequently, Petitioner was found competent to stand trial on November 8, 2013.

Petitioner was then arraigned on November 18, 2013, and pled not guilty. On November 26, 2013, Petitioner filed a pre-trial Petition for Writ of Habeas Corpus. On March 18, 2014, the State filed its Return. On April 2, 2014, the district court denied Petitioner's pre-trial Petition for Writ of Habeas Corpus and set a trial date.

Petitioner then filed a Motion to Dismiss Counsel of Record, which was heard on May 12, 2014. The motion was denied.

On September 26, 2014, Petitioner filed a Motion to Allow the Use of Jury Questionnaire; this motion was denied and the trial date was re-set.

Defense counsel filed a motion seeking to withdraw from representation of Petitioner, and this motion was granted on December 1, 2014; as a result, the trial date was re-set.

On January 5, 2015, the district court was notified that Petitioner was in competency court in one of his other cases. Petitioner was once again found competent and the matter was referred back to district court.

On July 25, 2015, Petitioner advised the court that the possible plea negotiations had fallen through, and the trial date was re-set yet again.

Petitioner then filed a Motion to Withdraw Counsel and for a Faretta canvass, which was heard on March 2, 2016. On March 9, 2016, the court conducted a Faretta canvass and, at the conclusion, Petitioner advised the court that he wanted to remain with his attorney; the trial date was vacated and re-set.

On November 28, 2016, the State announced ready for trial, however, Petitioner again requested a continuance of the trial date orally; the court directed counsel to file a written motion. On December 19, 2016, Petitioner filed a Motion to Continue Trial Date. On December 28, 2016, the court denied Petitioner's Motion to Continue Trial Date and sealed copies of each of Petitioner's competency evaluations.

Trial was set to begin on January 3, 2017; however, the presiding judge fell ill and the trial was transferred to a different district court department and began the next day on January 4, 2017. The trial lasted six days and on January 11, 2017, the jury returned the following verdict: Count 1, Conspiracy to Commit Robbery, not guilty; Count 2, Attempt Robbery with Use of a Deadly Weapon, not guilty; Count 3, Murder with Use of a Deadly Weapon, guilty of First Degree Murder With Use of a Deadly Weapon; Count 4 Battery with Use of a Deadly Weapon, guilty of Battery with Use of a Deadly Weapon; Count 5 Assault with a Deadly Weapon, not guilty; Count 6, Conspiracy to Violate Uniform Control Substances Act, guilty of Conspiracy to Violate Uniform Substances Act; Count 7 Attempt to Possess Controlled Substance, guilty of Attempt to Possess Controlled Substance.

Petitioner was sentenced as follows: Count 3 – to Life with a Minimum parole eligibility of two hundred forty consecutive months in the Nevada Department of Corrections, plus a consecutive sentence of a minimum of sixty months and a maximum of two hundred and forty months for the Deadly Weapon Enhancement, for a total Aggregate sentence of Life with the possibility of parole after a minimum of three hundred months have been served; Count 4 – a minimum of forty-eight months and a maximum of one hundred twenty months in the Nevada Department of Corrections concurrent with Count 3; Count 6 – a minimum of

twenty-four months and a maximum of sixty months in the Nevada Department of Corrections, concurrent with Count 3; and Count 7 – Defendant is adjudicated guilty of the Felony and is sentenced to a minimum of nineteen months and a maximum of forty-eight months in the Nevada Department of Corrections to run concurrent with Count 3, and consecutive to Case C299066. Petitioner received seven hundred twenty days credit for time served.

The Judgment of Conviction was filed on March 29, 2017.

On April 14, 2017, Petitioner filed a Notice of Appeal. On July 3, 2018, the Supreme Court of Nevada affirmed Petitioner's conviction. Remittitur was issued on July 30, 2018.

An Amended Judgment of Conviction was filed on August 29, 2018. On August 1, 2019, Petitioner filed a Motion to Extend Time for Petition for Post-Conviction Writ of Habeas Corpus. Petitioner requested an additional sixty (60) days to file his Petition. On August 27, 2019, Petitioner and the State entered into a Stipulation and Order to Extend Time. Petitioner and the State stipulated to extend the time for filing Petitioner's Petition from August 2, 2019 to October 1, 2019.

On December 6, 2019, Petitioner filed his Petition for Writ of Habeas Corpus. On March 5, 2020, the State filed its Opposition to Petitioner's Petition for Writ of Habeas Corpus. On April 17, 2020, Petitioner filed his Reply. On October 12, 2020, the Court heard oral arguments on the briefings from both parties. On October 13, 2020, the Court filed a minute order denying Petitioner's Petition in part, but finding that an evidentiary hearing was needed prior to ruling on Petitioner's claim that counsel was ineffective in investigating Petitioner's PTSD prior to trial. On December 18, 2020, the Court held the evidentiary hearing on the limited issue of Petitioner's PTSD claim. The Court withheld its ruling on the matter so that counsel could investigate a possible phone call between Petitioner and his previous counsel in March of 2016 which may have contained information regarding the PTSD issue. On February 22, 2021, the Court denied Petitioner's Petition and found as follows.

FACTS

On April 19, 2013, in the area of the "Naked City," Petitioner met codefendant Dustin "Criminal" Bleak ("Bleak") and Bleak's brother, Travis "Ponytail" Costa ("Costa"). v

individually approached Richard "Mechanic" McCampbell ("McCampbell") and asked him for a ride. McCampbell was well-known throughout the area as a fixer of cars and a person who would give people rides to do errands. McCampbell was sitting in his blue Cadillac Coupe DeVille, having just finished a job and purchasing some alcoholic beverages. McCampbell knew Petitioner from prior encounters when McCampbell had given Petitioner rides to do errands.

Petitioner told McCampbell that he wanted to go to the area of Boulder Highway and that the trip would take ten minutes. McCampbell agreed to give Petitioner a ride and they agreed that McCampbell would receive ten dollars in gas money. As this agreement was struck, Bleak and Costa appeared and Petitioner explained that they would be going along for the ride too. Petitioner sat in the front passenger seat, Bleak sat in the rear passenger seat behind Petitioner, and Costa sat in the rear passenger seat behind McCampbell.

As McCampbell drove, he was directed to the area of Charleston and Eastern where there is a large shopping center containing a Lowe's and a 7-11. Costa told McCampbell to park around the side of the 7-11 building because he wanted to buy beers for himself and Bleak. McCampbell started to become nervous that the men might rob the 7-11. The three men told him everything was cool and not to worry. Id. Costa exited the car and entered the 7-11 while Bleak and Petitioner exited the car and engaged in conversation. Their discussion was not audible to McCampbell. Once they were back in the car, McCampbell told Bleak and Petitioner that he did not like the conversation outside the car or how the ride was turning into driving to several different places without any explanation. Petitioner and Bleak again reassured McCampbell.

McCampbell was then directed, primarily by Petitioner, to drive through the Lowe's parking lot and to the parking lot of the nearby Traveler's Inn. The Traveler's Inn had video surveillance in place, which recorded the events described below. Once in the parking lot, although numerous parking spots were open, the men directed McCampbell to back into a parking space directly adjacent to a set of stairs that led up to the second floor of the motel. Backing into the narrow parking spot proved difficult resulting in McCampbell scraping the

car against several surfaces; McCampbell became quite upset, repeatedly asking the men why he was being required to back into the parking spot and telling them he did not feel good about the situation.

Once parked, Petitioner and Bleak exited the vehicle while Costa stayed seated in the back of the vehicle. Video surveillance depicted Bleak on a cell phone appearing to call someone while Petitioner leaned against the rear of the parked Cadillac. After a short time, the victim, Dale "Spooky" Borero ("Borero"), walked down the stairs to meet Bleak.

Borero was a dealer of methamphetamine and was staying at the Traveler's Inn. Video surveillance showed Bleak engaged in conversation with Borero off to the side of the Cadillac. Eventually, Petitioner, who had been leaning against the rear of the vehicle, slowly walked over to the two men and casually pulled out a Ruger LC9 9mm pistol and pointed it in Borero's face. Petitioner reached toward Borero as if to grasp something. Petitioner then struck Borero in the face with the pistol.

After being held at gunpoint and struck in the face, Borero eventually produced his own pistol, however, Petitioner shot Borero in the abdomen; Petitioner moved toward the front of the Cadillac and continued to fire. In total, Petitioner fired four times, striking Borero twice, once in the upper abdomen (inflicting a fatal wound) and once in the leg. As the shooting began, McCampbell almost immediately began to drive out of the parking lot while Bleak and Petitioner struggled to get back into the car. Mortally wounded, Borero fell to the ground, firing and striking the Cadillac once in the rear post but missing Petitioner, Bleak, Costa, and McCampbell. As Bleak struggled to get back into the car, the magazine of the black Umarex BB gun pistol he was carrying fell to the ground. Petitioner and Bleak managed to get back into the Cadillac, and it drove off at great speed.

Once out of the Traveler's Inn parking lot, Petitioner directed McCampbell to drive away from the scene. McCampbell, who was distraught by being caught up in the shooting, told Petitioner that he would report what happened. Petitioner responded by gesturing toward his pistol and threatening McCampbell. McCampbell cooperated with Petitioner after being threatened and returned the men to "Naked City" where Petitioner, Bleak, and Costa went their

separate ways. Detectives and a Crime Scene Analyst responded to the crime scene at the Traveler's Inn and recovered a BB gun magazine, multiple cartridge casings from both Borero's and Petitioner's pistols, bullet fragments, a bag of methamphetamine, and U.S. currency. Borero was transported to UMC where he died from his injuries.

The following day, McCampbell learned that Borero died as a result of the shooting and he contacted the police to report the events leading to Borero's death. McCampbell drove the Cadillac to the Clark County Detention Center and surrendered himself to the first police officer he came into contact with. Homicide detectives responded, impounded the Cadillac, and conducted a recorded interview with McCampbell. McCampbell later positively identified Petitioner, Bleak, and Costa in photo-ID lineups.

Through McCampbell's statements and additional investigative work, detectives identified Petitioner and Bleak as suspects in Borero's death. On April 22, 2013, detectives eventually located Bleak and Costa during a vehicle stop and discovered a BB gun, which was missing its magazine and located partially wedged into the seat cushion where Bleak had been seated. Detectives took Bleak into custody and impounded the BB gun.

On April 29, 2013, detectives arrived at 1712 Fairfield, Apt. 7, in response to the discovery of a Ruger LC9 9mm pistol inside the property. The absentee-landlord/owner of the property had discovered a black handgun inside of a black holster, which had been placed in a toaster oven. Inside the residence, detectives discovered paperwork with Petitioner's name on it. A forensic tool-mark analysis would later positively match bullets test-fired form that Ruger LC9 pistol to the two bullets extracted from Borero's body during the autopsy. On July 3, 2013, detectives located Petitioner and took him into custody.

ANALYSIS

I. THE PETITION IS NOT PROCEDURALLY BARRED

Pursuant to NRS 34.726(1):

> Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year of the entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court issues its remittitur. For

> the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:
> (a) That the delay is not the fault of the petitioner; and
> (b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

The Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per the language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

The one-year time limit for preparing petitions for post-conviction relief under NRS 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002), the Nevada Supreme Court rejected a habeas petition that was filed two days late despite evidence presented by the defendant that he purchased postage through the prison and mailed the Notice within the one-year time limit.

Furthermore, the Nevada Supreme Court has held that the district court has a duty to consider whether a defendant's post-conviction petition claims are procedurally barred. State v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The Riker Court found that "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory," noting:

> Habeas corpus petitions that are filed many years after conviction are an unreasonable burden on the criminal justice system. The necessity for a workable system dictates that there must exist a time when a criminal conviction is final.

Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district court] when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court has granted no discretion to the district courts regarding whether to apply the statutory procedural bars; the rules must be applied.

In the instant case, the Judgment of Conviction was filed on March 29, 2017. Petitioner appealed his conviction, which was affirmed by the Supreme Court of Nevada. Remittitur was issued on July 30, 2018. An amended Judgment of Conviction was filed on August 29, 2018.

The State and Petitioner entered into a stipulation to extend the filing due date to October 1, 2019. Petitioner filed the instant Petition on December 6, 2019. While Petitioner's Petition was not filed within the one (1) year time period pursuant to NRS 34.726, the Court finds that good cause exists for the delay. A finding of good cause will allow for an otherwise untimely Petition to be considered on the merits, rather than having the procedural bar imposed. See NRS 34.726. As such, the Court finds that the instant Petition is not subject to the procedural bar articulated in NRS 34.726.

In addition, the Court finds that contrary to the State's pleadings, Petitioner's claims three (3) and four (4) were not waived pursuant to NRS 34.810. Therefore, the Court finds that the instant Petition is not procedurally barred, and Petitioner's claims must be considered on their merits.

II. ANALYSIS REGARDING PETITIONER'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS

Petitioner brings three (3) ineffective assistance of counsel claims in his Petition. The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." The United States Supreme Court has long recognized that "the right to counsel is the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

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

counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). "[T]here is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

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

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

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

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

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

The Nevada Supreme Court has held "that a habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence." Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS 34.735(6) states in relevant part, "[Petitioner] must allege specific facts supporting the claims in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed."

A. Counsel's Cross Examination of Detective Miller Was Not Ineffective

In Ground One, Petitioner alleges that trial counsel's cross-examination of Detective Miller established ineffective assistance of counsel. Pet. at 17. Specifically, Petitioner claims

that Detective Miller's reports were sufficiently ambiguous that they merited impeachment material in regards to Detective Miller's testimony that Petitioner fired the first shot. Pet. at 17-18. According to Petitioner, this deprived him of a self-defense affirmative defense. Pet. at 17-19.

At trial, during the State's rebuttal, the Court elicited the following testimony from Detective Miller following a juror question:

> THE COURT: Okay. And from your investigation were you able to determine who shot first?
>
> THE WITNESS: Technically, we have a fairly good idea. I can tell you from my experience and training that when – where the cartridge cases were located, the who .40 caliber that Boreo had was in stall 3 and 4. The 9 millimeter were spread in three behind Mr. Boreo's vehicle and out in the middle of the parking lot. On a Ruger, typically, they eject to the right. So I Would expect to find the .40s, if Dale Borero fired first because he was up against the wall with the shipping container behind them, it would eject to the right the casings should have been there.
>
> THE COURT: Okay.
>
> THE WITNESS: That's – the way I look at it.
>
> THE COURT: So all of which your determination of who shot who first was what?
>
> THE WITNESS: Is that it's – there's no way to be exactly sure, but based on the physical evidence I would say Mr. Coleman shot first.

Petitioner's Supplement ("PS") at 507. As a follow up question, Petitioner's counsel elicited the following testimony.

> Q: Detective Miller?
>
> A: Yes.
>
> Q: You did the declaration of warrant in this case, didn't you?
>
> A: Yes.

Q: Do you recall saying in there that it appeared that Dale Borero fired the first shot?

A: No.

Q: Can you look over on page 2, do you have a copy of it with you? And I am looking at about the middle of the –

….

Q: I'm looking at –

A: Okay.

Q: --like right there.

A: May I read that?

Q: Yeah.

A: At that point Borero pulled a handgun from his right pocket and fired at the black male suspect, Muhammad-Coleman. I don't see where it says fired first.

Q: Well, if you look at the chronology of the events, the black made pulled a handgun from his right and pointed it, Borero appeared to try to push the gun away, black male struck the upper left side of Borero's body with the butt of the gun, at that point Borero pulled a handgun from his right pocket side, and fired. Nobody else has fired at the point that you make that observation.

A: Well, I don't read it that way. And based on physical evidence of where those cartridge cases are and with the fact that most semi-automatic handguns, I'm no firearms expert, but most fire and eject, when they eject, they eject to the right. As you can see on the video where Mr. Borero was standing in which direction he was facing prior to him heading west and south to the fact of where Mr. Coleman was standing and where his cartridge casings were located.

Q: Does the video show who shot first?

A: No

PS at 508-510.

The declaration of warrant counsel used to impeach detective Miller read in relevant part:

> At one point the black male suspect (Muhammad-Coleman) moved from the left rear of the Cadillac to stand on the opposite side of the white male (Bleak). The black male (Muhammad-Coleman) pulled a handgun from his right side and pointed it at Borero. Borero appeared to try and push the gun away and the black male (Muhamed-Coleman) struck the upper left side of Borero's body with the butt of the gun. At that point, Borero pulled a handgun from his right pocket and fired at the black male suspect (Muhammad-Coleman).

PS at 595.

A review of the record shows that the Court elicited testimony from Detective Miller that she believed Petitioner shot first based on the physical evidence. Petitioner's counsel immediately attempted to impeach Detective Miller with the exact statement Petitioner now alleges counsel should have used. In fact, the relevant portion of the document was read almost word for word, by Detective Miller, into the record and in front of the jury. As such, any claim that counsel did not impeach Detective Miller is belied by the record. Pursuant to Hargrove, such an allegation is insufficient to succeed on an ineffective assistance of counsel claim.

Petitioner also seems to allege that it was ineffective for counsel not to identify that the above statement also appeared in Detective Miller's Application and Affidavit for search warrant. Pet. at 17. It is unclear how such a strategy would have made a more favorable outcome at trial probable. When Detective Miller was impeached on the stand, she testified that counsel was misreading the declaration of warrant. PS at 508-510. Detective Miller indicated that she did not intend the statement to be construed as Borero shot first. Detective Miller further reiterated that based on the physical evidence she believed Petitioner shot first. To the extent Petitioner wanted to draw attention to the alleged inconsistency in Miller's statements, his counsel accomplished that. However, given that Detective Miller offered an explanation for this alleged inconsistency, it is dubious that showing another instance where that exact same statement (which likely would have been explained the exact same way)

occurred would have had any additional effect. Given the dubious probative value of such a line of questioning, whether to engage in it was clearly a strategic decision reserved for counsel. See Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002)(stating: Trial counsel has the "immediate and ultimate responsibility of deciding if and when to object, which witnesses, if any, to call, and what defenses to develop."). Therefore, the Court finds that such a decision was neither unreasonable, nor did it prejudice Petitioner.

Petitioner argues in the alternative that "to the extent the previous and impeachment worthy statements were not identified at the time of trial, this amounted to IAC as a result of an insufficient investigation." A defendant who contends his attorney was ineffective because he did not adequately investigate must show how a better investigation would have rendered a more favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Given that counsel in fact impeached Detective Miller with the complained of statement, it cannot be seriously alleged that counsel's investigation was insufficient to the point that he did not discover the statement. As such, this claim is belied by the record and is suitable only for summary dismissal. See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

After consideration of this claim and the relevant portions of the record, the Court finds that counsel's cross-examination was not unreasonable, and that Petitioner has not demonstrated that he was prejudiced by counsel's cross-examination. As such, the Court finds that counsel cannot be found ineffective on this ground, and this claim is denied.

B. Counsel Was Not Ineffective for Not Objecting to Detective Miller's Testimony

Petitioner alleges in Ground Two that Detective Miller's testimony regarding whether Petitioner or Borero shot first was inappropriate expert testimony. Pet. at 23. Petitioner further alleges that counsel was ineffective for failing to object to such testimony. Pet. at 23.

NRS 50.265 states:

> If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are:

1. Rationally based on the perception of the witness; and
2. Helpful to a clear understanding of the testimony of the witness or the determination of a fact in issue.

A lay witness is not precluded from forming conclusions based on their perceptions. Duran v. Mueller, 79 Nev. 453, 457, 386 P.2d 733, 735-36 (1963). In the instant case, detective Miller was a detective who responded to the scene. She personally observed the locations of the various casings left in the parking lot as a result of the shooting. PS at 389-90. Further, Detective Miller viewed the surveillance video of the shooting. Therefore, her testimony as to the location of the casings and the location of the two men were proper lay witness testimony.

The only other factor Detective Miller relied on in coming to the conclusion was that Petitioner likely fired first was the fact that the model of gun used by Borero typically discharges cases to the right. As such, Detective Miller deduced that Borero was probably not the one to fire first, as there were no casings recovered from where the casings would be found if Borero had fired first. PS at 508-510. To the extent that information regarding how Borero's gun discharged casings required expert testimony, said testimony had already been admitted through ballistics expert Anya Lester. PS at 352. Therefore, there was no reason for counsel to object to Detective Miller's testimony, as it was either based on her personal observations, or merely restated evidence already properly admitted. As such, the Court finds that whether to object on this basis was clearly a strategic decision. See Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002) (stating: Trial counsel has the "immediate and ultimate responsibility of deciding if and when to object…).

Further, Detective Miller's conclusion was not expert testimony either. Detective Miller merely formed a conclusion based on observed phenomenon. Such a conclusion is not expert testimony pursuant to Duran, 79 Nev. at 457, 386 P.2d at 735-36 (finding that an investigator who had testified as to skid marks, point of impact, apparent car direction, and car damage could also testify to hot two automobiles collided). Given that Detective Miller's testimony was based on her own observations, it was properly admitted lay witness testimony. To the extent that Borero's firearm discharged casings required expert testimony, her testimony was

corroborated by expert witness Anya Lester. As such, any objection would not have kept any information from the jury, and Petitioner cannot successfully claim that counsel's decision was either unreasonable or prejudicial. The Court therefore finds that counsel decision to not object to this testimony was neither unreasonable, nor did it prejudice Petitioner. As such, the Court finds that counsel cannot be found ineffective on this ground.

C. Whether Counsel Was Ineffective in Investigating and Utilizing Information Regarding Petitioner's PTSD Requires an Evidentiary Hearing

In Ground One (c), Petitioner alleges his counsel "made a Motion to explore Darion's PTSD claims shortly before trial, and without sufficient investigation." As such, Petitioner is challenging whether trial counsel's investigation of his PTSD and use of information regarding his PTSD to support his self-defense theory at trial was effective.

After review of the pleadings, records provided, and hearing oral argument, the Court found that a limited evidentiary hearing was required to rule on this claim. The Court held an evidentiary hearing regarding this issue on December 18, 2021. Prior to the commencement of the evidentiary hearing, post-conviction counsel represented that he had recently learned of the existence of a phone call between Petitioner and his counsel, which may not have been recorded, wherein, post-conviction counsel represented, there may have been a discussion about PTSD during that phone call. Post-conviction counsel represented that he was unsure if that call would have been retained, but wanted to further investigate the because there may have been a possibility that PTSD was discussed during such call. The Court stated that because the parties were prepared to move forward with the evidentiary hearing that day, until this disclosure was made the night before, the hearing would proceed, but the Court would give post-conviction counsel the opportunity to see if he could obtain the phone call and supplement the briefing after the hearing.

Mr. Schwarz testified that as soon as he found out about Petitioner's claim that he suffered from PTSD he filed a Motion to Continue the Trial and did so on an Order Shortening Time, so it could be heard at the Calendar Call hearing prior to trial. Mr. Schwarz argued at the Calendar Call hearing using all six (6) of the competency evaluations and the Court denied

the Motion and set the matter for trial. Had the Motion been granted, Mr. Schwarz testified that he would have hired a Psychologist to evaluate Petitioner. It was Mr. Schwarz's recollection that Petitioner stated the reason he suffered from PTSD was due to being shot in the instant case.

During Petitioner's testimony, Petitioner testified that he received competency evaluations. On February 9, 2016, Petitioner testified that he filed a Motion to Withdraw Counsel, but did not include that it was because of the PTSD issue, which he claims started to bother him after he was shot in May 2012. Petitioner stated he spoke to Mr. Schwarz after that hearing but did not discuss his PTSD claim. Petitioner claimed that he spoke to his attorney about needing an evaluation for PTSD during a phone call the following March in 2016. This phone call was about one (1) week after the Motion to Withdraw Counsel hearing. Petitioner also testified that he was not suffering from PTSD prior to the age of 16. Additionally, Petitioner explained that he believed that, during his Pre-Sentence Investigation Report in his previous robbery case, he was asked about his mental health and the report makes no mention that he suffered from PTSD. Petitioner also testified that Mr. Schwarz mentioned that Petitioner was sensitive to guns because he had been shot in the past during his closing argument and during Petitioner's testimony at trial in the instant case. After the testimony, the Court continued the hearing for post-conviction counsel to obtain the call logs he mentioned and would also hear the parties' argument on that day.

At the subsequent hearing, on February 22, 2021, post-conviction counsel represented that he submitted call logs between defense counsel and Petitioner, but was not able to get a recording of those calls to submit to the Court. This Court reviewed the call logs and permitted the parties to argue. The Court finds that with the evidence in front of it, it is very clear that when Mr. Schwarz stated he was notified about Petitioner's PTSD claim, he filed a Motion to Continue the Trial on an Order Shortening Time. Indeed, there is no evidence that prior to that time Mr. Schwarz even attempted to file a motion or act in anyway regarding the PTSD claim. Ultimately, the evidence before the Court is insufficient to establish that Mr. Schwarz's performance fell below an objective standard of reasonableness. Accordingly, Petitioner has

not demonstrated the first prong of the analysis. Strickland, 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068. Moreover, even if this Court found that the first prong was satisfied, which it does not, the Court reviewed the video, and based on that review, Petitioner cannot establish that the result of the trial would have been different to establish the prejudice prong of the analysis. Id. Therefore, the claim is denied.

III. THE SENTENCING COURT DID NOT RELY ON IMPROPER EVIDENCE

Courts are given "wide discretion" in sentencing decisions, and these are not to be disturbed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence." Allred v. State, 120 Nev. 410, 92 P.2d 1246, 1253 (2004).

Petitioner alleges in Ground Three that the Court relied on improper evidence at sentencing. The only allegedly improper evidence Petitioner identifies is Detective Miller's testimony. However, as the Court articulated above, there was nothing improper about Detective Miller's testimony. Therefore, it was not error for the sentencing court to rely on it.

Further, the Court finds that contrary to Petitioner's assertions, there is no language in the sentencing transcript that indicates the sentencing court relied specifically on Detective Miller's testimony. The sentencing court stated:

> For the first degree murder charge, I have, under 193.165, considered the use of the weapon and the circumstances surrounding it, your criminal history, use of a weapon in the past, any mitigating factors for purposes of adjudging an appropriate enhancement. So for the murder charge, I'm going to sentence you to 20 to life, that's 240 months, that's --
>
> …
>
> This is life in prison with the minimum 240 months before parole eligibility. For the weapon enhancement, 240 months maximum, 60 months minimum. That runs consecutive to the murder portion. So it's a total of life -- aggregate of life in prison with a minimum 300 months before parole eligibility. For Count 4, 48 to 120 months concurrent; Count 6, 24 to 60 months concurrent; Count 7, 19 to 48 months concurrent; and this case will run consecutive to the sentence you're serving in 299066. I believe I had gone through and calculated the credit up and through June

> 22nd of 2015, which is when he was sentenced in the other case and that is 720 days.

PS at 650-51. The sentencing court made note of the circumstances of the shooting as playing a role in sentencing. In discussing the circumstances of the shooting, the sentencing court took issue with defense counsel's representation that Petitioner being the defendant instead of the victim in this case was "happenstance" by stating:

> But I -- I understand and I don't think the State was making the argument that 8-to-20 was too light in that case, it's how do you view the murder knowing that with a month prior to this case occurring those other things were occurring. And I agree that those are -- those are two separate events and they both deserve recognition from a -- from a punishment standpoint because we're dealing with horribly violent crimes. But I will also tell you that I sat through the same trial that you all did obviously and -- and it was -- and I agree with you, Mike, that you can't just watch a video and tell what it is that -- that happened in a vacuum. But I think watching the video, listening to the testimony, looking at what the forensic evidence was about w here shell casings were found, I am convinced that your client not only pulled the weapon first but he shot first as well before Mr. Borero had produced a handgun.
>
> And that's based in part on the conduct of the people in the video, the reaction to certain things occurring. I think Mr. Borero was shot and going down before he started firing his gun. And I think that's why the jury convicted your client of first degree murder regardless of whether they think a robbery actually occurred, I think there was evidence for them to say you produced a gun and shot the man and they -- they found him guilty on the premeditated and deliberate theory. So, in any event, I won't belabor it.

PS at 644, 649-50.

The Court notes that nowhere in the sentencing transcript is Detective Miller or her testimony specifically mentioned. The sentencing judge was clear that it relied on all of the facts proven beyond a reasonable doubt at trial, as well as Petitioner's violent history. Given that neither of these considerations are improper, the Court finds that the sentencing court did not rely on improper evidence at sentencing.

IV. DETECTIVE MILLER'S TESTIMONY DID NOT AMOUNT TO A COMMENT ON PETITIONER'S POST-ARREST SILENCE

In Ground Four, Petitioner alleges that Detective Miller "specifically acknowledged Darion's post-arrest silence regarding any self-defense theory."

"The prosecution is forbidden at trial to comment upon a defendant's election to remain silent following his arrest and after being advised of his rights as required by *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966)." Murray v. State, 113 Nev. 11, 17, 930 P.2d 121, 124 (1997) (citing Neal v. State, 106 Nev. 23, 25, 787 P.2d 764, 765 (1990). In Murray, the defendant did not make a statement to authorities until he testified before the grand jury. Id. at 15, 930 P.2d at 123. The State sought to impeach the defendant by stating that trial was the first time the defendant had explained his side of the story. Id. at 17-18, 930 P.2d at 124-25.

A statement in reference to a recorded statement made by a defendant to authorities is not a comment on the defendant's right to remain silent under plain error review. Houtz v. State, No. 60858, 2013 WL1092730, Mar. 14, 2013, 129 Nev. 1123 (2013) (unpublished disposition). Further, any cross-examination into inconsistencies between a defendant's testimony and defendant's voluntary statement to authorities after being read his rights under Miranda is not an impermissible comment on post-arrest silence. Morales v. State, No. 54216, 2010 WL3384992, Jul. 15, 2010, 126 Nev. 740, 367 P.3d 802 (2010) (unpublished disposition). Comments on a defendant's post-arrest silence are held to be harmless beyond a reasonable doubt if "(1) at trial there was only passing reference, without more, to an accused's post-arrest silence, or (2) there was overwhelming evidence of guilt." Morris v. State, 112 Nev. 260, 263, 913 P.2d 1264, 1267 (1996).

Petitioner alleges that Detective Miller inappropriately commented on his post-arrest silence when she claimed Petitioner never mentioned that he acted in self-defense. Pet. at 24. In context, the following exchange occurred between the State and Detective Miller:

> Q At this point, Mr. Muhammad-Coleman was arrested on an arrest w
> arrant; is that correct?

A Yes.

Q And you were going to charge him with homicide?

A Yes.

Q Or murder?

A Yes.

Q And did you read Mr. Coleman his rights?

A I did.

Q How did you read him his rights?

A Directly from an advisement of rights card.

Q Okay. Did he acknowledge that he understood his rights?

A Verbally and he signed the card.

Q Okay. So the actual card you read his rights from you had him sign it?

A I did.

Q And did Mr. Coleman actually decide to talk to you after being read his rights?

A Yes, he did.

Q Okay. And that includes, you know, you have the right to remain silent and the right to have an attorney during questioning?

A Yes.

Q Okay. And then you actually had a conversation with him about April 19th, 2013?

A I did.

….

> Q Okay. Additionally, do you say some things in order to try to get someone talking like maybe throw out self-defense, for example?
>
> A Yes.
>
> Q And you do that for the purposes to get an individual to talk about an incident?
>
> A Yes.
>
> Q In your experience do people find it hard to talk about being involved in a murder?
>
> A Absolutely.
>
> Q Okay. Did you do that in this case? Did you throw out self-defense, you had to do it? That type of situation?
>
> A Yes. Q And w ere -- during that period of time, and we'll get into it with the video, but did Mr. Coleman ever say that he had to do it, it was self-defense on April 19th, 2013?
>
> A No, he never mentioned that.

PS at 487-89.

The transcript reveals that Detective Miller's testimony regarded Petitioner's voluntary statement made after being informed of his rights under Miranda. As such, the Court finds that this was not an improper commentary on Petitioner's post-arrest silence. Morales v. State, 126 Nev. 740, 367 P.3d 802 (2010) (unpublished disposition). For Petitioner to claim otherwise is puzzling given that he does not appear to have remained silent or to have invoked his right to remain silent during this conversation. Instead, Detective Miller merely explained what information Petitioner did or did not disclose during a voluntary and legal interrogation.

The Court further finds that to the extent Detective Miller's testimony constituted a commentary on Petitioner's post-arrest silence, such a commentary was harmless. First, there was only passing reference made as to Petitioner not previously stating he acted in self-defense. The State brought out that Petitioner's story was inconsistent only twice: first during the testimony of Detective Miller, and then again during closing arguments. PS at 550. Second,

the evidence of guilt was overwhelming in the instant case. An eyewitness and surveillance video placed Petitioner as the individual who shot and killed the victim. Further, forensic evidence demonstrated that Petitioner fired first, thereby negating any self-defense claim.

V. SUMMATION OF FINDINGS

The Court finds that Petitioner's claims are not procedurally barred under either NRS 34.726 or NRS 34.810. The Court has therefore examined each of the claims on the merits.

The Court further finds that the sentencing court did not rely on improper evidence at sentencing. There is nothing in the record stating that the sentencing court specifically relied on Detective Miller's testimony. The sentencing court specifically stated that it had presided over the entire trial and was considering the evidence presented at trial. Therefore, the Court finds that any claim to the contrary is without merit, and this claim is denied.

The Court further finds that Detective Miller's testimony did not amount to a comment on Petitioner's post-arrest silence, and this claim is denied.

The Court further finds that Petitioner's trial counsel was not ineffective in cross-examining Detective Miller, nor was counsel ineffective for not objecting to the testimony of Detective Miller. Petitioner has failed to establish both that counsel's action were unreasonable, or that Petitioner was prejudiced as a result of counsel's actions. As such, both of these claims are denied.

Additionally, as discussed *infra*, the Court finds that Petitioner's claim regarding PTSD does not satisfy the Strickland standard and is also therefore denied.

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ORDER

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

Dated this 23rd day of April, 2021

2A8 CCD A462 0F81
Tierra Jones
District Court Judge

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

BY ***/s/ KAREN MISHLER***
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #013730

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:

WALEED ZAMAN
wally@zamanlegal.com

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

KM/bg/ed/GU

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Darion Coleman, Plaintiff(s)	CASE NO: A-19-806521-W
vs.	DEPT. NO. Department 10
Renee Baker, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 4/23/2021

Waleed Zaman	Wally@ZamanLegal.com
Waleed Zaman	Wally@ztlawgroup.com
Yanni Sitsis	Yanni@ztlawgroup.com
Dept 3 Law Clerk	dept03lc@clarkcountycourts.us

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4/26/2021 2:16 PM
Steven D. Grierson
CLERK OF THE COURT

NEFF

DISTRICT COURT
CLARK COUNTY, NEVADA

DARION COLEMAN, Petitioner, vs. RENEE BAKER, Respondent,	Case No: A-19-806521-W Dept No: X **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

PLEASE TAKE NOTICE that on April 23, 2021, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on April 26, 2021.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton
Amanda Hampton, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 26 day of April 2021, I served a copy of this Notice of Entry on the following:

☑ By e-mail:
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

☑ The United States mail addressed as follows:

Darion Coleman # 1144228 1200 Prison Rd. Lovelock, NV 89419	Waleed Zaman, Esq. 6620 S. Tenaya Way, Ste 100 Las Vegas, NV 89113

/s/ Amanda Hampton
Amanda Hampton, Deputy Clerk

Electronically Filed
04/23/2021 7:34 AM
CLERK OF THE COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

DARION MUHAMMAD-COLEMAN, #2880725 Petitioner, -vs- THE STATE OF NEVADA, Respondent.	CASE NO: A-19-806521-W (C-13-293296-2) DEPT NO: X

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: FEBRUARY 22, 2021
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable TIERRA JONES, District Judge, on the 22nd day of February, 2021, the Petitioner present, represented by WALEED ZAMAN, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through MICHAEL J. SCHWARTZER, 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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Statistically closed: USJR - CV - Other Manner of Disposition (USJROT)

FINDINGS OF FACT, CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On October 11, 2013 the State of Nevada filed an Indictment charging Darion Muhammad-Coleman (hereinafter "Petitioner") with the following: Count 1 – Conspiracy to Commit Robbery (Category B Felony – NRS 199.480, 200.380); Count 2 – Attempt Robbery with Use of a Deadly Weapon (Category B Felony – NRS 200.380, 193.330, 193.165); Count 3 – Murder with Use of a Deadly Weapon (Category A Felony NRS 200.010, 200.030, 193.165); Count 4 – Battery with Use of a Deadly Weapon (Category B Felony – NRS 200.481); Count 5 – Assault with Use of a Deadly Weapon (Category B Felony – NRS 200.471); Count 6 – Conspiracy to Violate the Uniform Controlled Substances Act (Category C Felony – NRS 453.401); and Count 7 – Attempt to Possess Controlled Substance (Category E Felony/Gross Misdemeanor – NRS 453.336, 193.330).

On October 18, 2013, Petitioner's initial arraignment was continued for a competency evaluation at defense counsel's request. Subsequently, Petitioner was found competent to stand trial on November 8, 2013.

Petitioner was then arraigned on November 18, 2013, and pled not guilty. On November 26, 2013, Petitioner filed a pre-trial Petition for Writ of Habeas Corpus. On March 18, 2014, the State filed its Return. On April 2, 2014, the district court denied Petitioner's pre-trial Petition for Writ of Habeas Corpus and set a trial date.

Petitioner then filed a Motion to Dismiss Counsel of Record, which was heard on May 12, 2014. The motion was denied.

On September 26, 2014, Petitioner filed a Motion to Allow the Use of Jury Questionnaire; this motion was denied and the trial date was re-set.

Defense counsel filed a motion seeking to withdraw from representation of Petitioner, and this motion was granted on December 1, 2014; as a result, the trial date was re-set.

On January 5, 2015, the district court was notified that Petitioner was in competency court in one of his other cases. Petitioner was once again found competent and the matter was referred back to district court.

On July 25, 2015, Petitioner advised the court that the possible plea negotiations had fallen through, and the trial date was re-set yet again.

Petitioner then filed a Motion to Withdraw Counsel and for a Faretta canvass, which was heard on March 2, 2016. On March 9, 2016, the court conducted a Faretta canvass and, at the conclusion, Petitioner advised the court that he wanted to remain with his attorney; the trial date was vacated and re-set.

On November 28, 2016, the State announced ready for trial, however, Petitioner again requested a continuance of the trial date orally; the court directed counsel to file a written motion. On December 19, 2016, Petitioner filed a Motion to Continue Trial Date. On December 28, 2016, the court denied Petitioner's Motion to Continue Trial Date and sealed copies of each of Petitioner's competency evaluations.

Trial was set to begin on January 3, 2017; however, the presiding judge fell ill and the trial was transferred to a different district court department and began the next day on January 4, 2017. The trial lasted six days and on January 11, 2017, the jury returned the following verdict: Count 1, Conspiracy to Commit Robbery, not guilty; Count 2, Attempt Robbery with Use of a Deadly Weapon, not guilty; Count 3, Murder with Use of a Deadly Weapon, guilty of First Degree Murder With Use of a Deadly Weapon; Count 4 Battery with Use of a Deadly Weapon, guilty of Battery with Use of a Deadly Weapon; Count 5 Assault with a Deadly Weapon, not guilty; Count 6, Conspiracy to Violate Uniform Control Substances Act, guilty of Conspiracy to Violate Uniform Substances Act; Count 7 Attempt to Possess Controlled Substance, guilty of Attempt to Possess Controlled Substance.

Petitioner was sentenced as follows: Count 3 – to Life with a Minimum parole eligibility of two hundred forty consecutive months in the Nevada Department of Corrections, plus a consecutive sentence of a minimum of sixty months and a maximum of two hundred and forty months for the Deadly Weapon Enhancement, for a total Aggregate sentence of Life with the possibility of parole after a minimum of three hundred months have been served; Count 4 – a minimum of forty-eight months and a maximum of one hundred twenty months in the Nevada Department of Corrections concurrent with Count 3; Count 6 – a minimum of

twenty-four months and a maximum of sixty months in the Nevada Department of Corrections, concurrent with Count 3; and Count 7 – Defendant is adjudicated guilty of the Felony and is sentenced to a minimum of nineteen months and a maximum of forty-eight months in the Nevada Department of Corrections to run concurrent with Count 3, and consecutive to Case C299066. Petitioner received seven hundred twenty days credit for time served.

The Judgment of Conviction was filed on March 29, 2017.

On April 14, 2017, Petitioner filed a Notice of Appeal. On July 3, 2018, the Supreme Court of Nevada affirmed Petitioner's conviction. Remittitur was issued on July 30, 2018.

An Amended Judgment of Conviction was filed on August 29, 2018. On August 1, 2019, Petitioner filed a Motion to Extend Time for Petition for Post-Conviction Writ of Habeas Corpus. Petitioner requested an additional sixty (60) days to file his Petition. On August 27, 2019, Petitioner and the State entered into a Stipulation and Order to Extend Time. Petitioner and the State stipulated to extend the time for filing Petitioner's Petition from August 2, 2019 to October 1, 2019.

On December 6, 2019, Petitioner filed his Petition for Writ of Habeas Corpus. On March 5, 2020, the State filed its Opposition to Petitioner's Petition for Writ of Habeas Corpus. On April 17, 2020, Petitioner filed his Reply. On October 12, 2020, the Court heard oral arguments on the briefings from both parties. On October 13, 2020, the Court filed a minute order denying Petitioner's Petition in part, but finding that an evidentiary hearing was needed prior to ruling on Petitioner's claim that counsel was ineffective in investigating Petitioner's PTSD prior to trial. On December 18, 2020, the Court held the evidentiary hearing on the limited issue of Petitioner's PTSD claim. The Court withheld its ruling on the matter so that counsel could investigate a possible phone call between Petitioner and his previous counsel in March of 2016 which may have contained information regarding the PTSD issue. On February 22, 2021, the Court denied Petitioner's Petition and found as follows.

FACTS

On April 19, 2013, in the area of the "Naked City," Petitioner met codefendant Dustin "Criminal" Bleak ("Bleak") and Bleak's brother, Travis "Ponytail" Costa ("Costa"). v

individually approached Richard "Mechanic" McCampbell ("McCampbell") and asked him for a ride. McCampbell was well-known throughout the area as a fixer of cars and a person who would give people rides to do errands. McCampbell was sitting in his blue Cadillac Coupe DeVille, having just finished a job and purchasing some alcoholic beverages. McCampbell knew Petitioner from prior encounters when McCampbell had given Petitioner rides to do errands.

Petitioner told McCampbell that he wanted to go to the area of Boulder Highway and that the trip would take ten minutes. McCampbell agreed to give Petitioner a ride and they agreed that McCampbell would receive ten dollars in gas money. As this agreement was struck, Bleak and Costa appeared and Petitioner explained that they would be going along for the ride too. Petitioner sat in the front passenger seat, Bleak sat in the rear passenger seat behind Petitioner, and Costa sat in the rear passenger seat behind McCampbell.

As McCampbell drove, he was directed to the area of Charleston and Eastern where there is a large shopping center containing a Lowe's and a 7-11. Costa told McCampbell to park around the side of the 7-11 building because he wanted to buy beers for himself and Bleak. McCampbell started to become nervous that the men might rob the 7-11. The three men told him everything was cool and not to worry. Id. Costa exited the car and entered the 7-11 while Bleak and Petitioner exited the car and engaged in conversation. Their discussion was not audible to McCampbell. Once they were back in the car, McCampbell told Bleak and Petitioner that he did not like the conversation outside the car or how the ride was turning into driving to several different places without any explanation. Petitioner and Bleak again reassured McCampbell.

McCampbell was then directed, primarily by Petitioner, to drive through the Lowe's parking lot and to the parking lot of the nearby Traveler's Inn. The Traveler's Inn had video surveillance in place, which recorded the events described below. Once in the parking lot, although numerous parking spots were open, the men directed McCampbell to back into a parking space directly adjacent to a set of stairs that led up to the second floor of the motel. Backing into the narrow parking spot proved difficult resulting in McCampbell scraping the

car against several surfaces; McCampbell became quite upset, repeatedly asking the men why he was being required to back into the parking spot and telling them he did not feel good about the situation.

Once parked, Petitioner and Bleak exited the vehicle while Costa stayed seated in the back of the vehicle. Video surveillance depicted Bleak on a cell phone appearing to call someone while Petitioner leaned against the rear of the parked Cadillac. After a short time, the victim, Dale "Spooky" Borero ("Borero"), walked down the stairs to meet Bleak.

Borero was a dealer of methamphetamine and was staying at the Traveler's Inn. Video surveillance showed Bleak engaged in conversation with Borero off to the side of the Cadillac. Eventually, Petitioner, who had been leaning against the rear of the vehicle, slowly walked over to the two men and casually pulled out a Ruger LC9 9mm pistol and pointed it in Borero's face. Petitioner reached toward Borero as if to grasp something. Petitioner then struck Borero in the face with the pistol.

After being held at gunpoint and struck in the face, Borero eventually produced his own pistol, however, Petitioner shot Borero in the abdomen; Petitioner moved toward the front of the Cadillac and continued to fire. In total, Petitioner fired four times, striking Borero twice, once in the upper abdomen (inflicting a fatal wound) and once in the leg. As the shooting began, McCampbell almost immediately began to drive out of the parking lot while Bleak and Petitioner struggled to get back into the car. Mortally wounded, Borero fell to the ground, firing and striking the Cadillac once in the rear post but missing Petitioner, Bleak, Costa, and McCampbell. As Bleak struggled to get back into the car, the magazine of the black Umarex BB gun pistol he was carrying fell to the ground. Petitioner and Bleak managed to get back into the Cadillac, and it drove off at great speed.

Once out of the Traveler's Inn parking lot, Petitioner directed McCampbell to drive away from the scene. McCampbell, who was distraught by being caught up in the shooting, told Petitioner that he would report what happened. Petitioner responded by gesturing toward his pistol and threatening McCampbell. McCampbell cooperated with Petitioner after being threatened and returned the men to "Naked City" where Petitioner, Bleak, and Costa went their

separate ways. Detectives and a Crime Scene Analyst responded to the crime scene at the Traveler's Inn and recovered a BB gun magazine, multiple cartridge casings from both Borero's and Petitioner's pistols, bullet fragments, a bag of methamphetamine, and U.S. currency. Borero was transported to UMC where he died from his injuries.

The following day, McCampbell learned that Borero died as a result of the shooting and he contacted the police to report the events leading to Borero's death. McCampbell drove the Cadillac to the Clark County Detention Center and surrendered himself to the first police officer he came into contact with. Homicide detectives responded, impounded the Cadillac, and conducted a recorded interview with McCampbell. McCampbell later positively identified Petitioner, Bleak, and Costa in photo-ID lineups.

Through McCampbell's statements and additional investigative work, detectives identified Petitioner and Bleak as suspects in Borero's death. On April 22, 2013, detectives eventually located Bleak and Costa during a vehicle stop and discovered a BB gun, which was missing its magazine and located partially wedged into the seat cushion where Bleak had been seated. Detectives took Bleak into custody and impounded the BB gun.

On April 29, 2013, detectives arrived at 1712 Fairfield, Apt. 7, in response to the discovery of a Ruger LC9 9mm pistol inside the property. The absentee-landlord/owner of the property had discovered a black handgun inside of a black holster, which had been placed in a toaster oven. Inside the residence, detectives discovered paperwork with Petitioner's name on it. A forensic tool-mark analysis would later positively match bullets test-fired form that Ruger LC9 pistol to the two bullets extracted from Borero's body during the autopsy. On July 3, 2013, detectives located Petitioner and took him into custody.

ANALYSIS

I. THE PETITION IS NOT PROCEDURALLY BARRED

Pursuant to NRS 34.726(1):

> Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year of the entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court issues its remittitur. For

> the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:
> (a) That the delay is not the fault of the petitioner; and
> (b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

The Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per the language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

The one-year time limit for preparing petitions for post-conviction relief under NRS 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002), the Nevada Supreme Court rejected a habeas petition that was filed two days late despite evidence presented by the defendant that he purchased postage through the prison and mailed the Notice within the one-year time limit.

Furthermore, the Nevada Supreme Court has held that the district court has a duty to consider whether a defendant's post-conviction petition claims are procedurally barred. State v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The Riker Court found that "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory," noting:

> Habeas corpus petitions that are filed many years after conviction are an unreasonable burden on the criminal justice system. The necessity for a workable system dictates that there must exist a time when a criminal conviction is final.

Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district court] when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court has granted no discretion to the district courts regarding whether to apply the statutory procedural bars; the rules must be applied.

In the instant case, the Judgment of Conviction was filed on March 29, 2017. Petitioner appealed his conviction, which was affirmed by the Supreme Court of Nevada. Remittitur was issued on July 30, 2018. An amended Judgment of Conviction was filed on August 29, 2018.

The State and Petitioner entered into a stipulation to extend the filing due date to October 1, 2019. Petitioner filed the instant Petition on December 6, 2019. While Petitioner's Petition was not filed within the one (1) year time period pursuant to NRS 34.726, the Court finds that good cause exists for the delay. A finding of good cause will allow for an otherwise untimely Petition to be considered on the merits, rather than having the procedural bar imposed. See NRS 34.726. As such, the Court finds that the instant Petition is not subject to the procedural bar articulated in NRS 34.726.

In addition, the Court finds that contrary to the State's pleadings, Petitioner's claims three (3) and four (4) were not waived pursuant to NRS 34.810. Therefore, the Court finds that the instant Petition is not procedurally barred, and Petitioner's claims must be considered on their merits.

II. ANALYSIS REGARDING PETITIONER'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS

Petitioner brings three (3) ineffective assistance of counsel claims in his Petition. The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." The United States Supreme Court has long recognized that "the right to counsel is the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

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

counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). "[T]here is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

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

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

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

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

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

The Nevada Supreme Court has held "that a habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence." Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS 34.735(6) states in relevant part, "[Petitioner] must allege specific facts supporting the claims in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed."

A. Counsel's Cross Examination of Detective Miller Was Not Ineffective

In Ground One, Petitioner alleges that trial counsel's cross-examination of Detective Miller established ineffective assistance of counsel. Pet. at 17. Specifically, Petitioner claims

that Detective Miller's reports were sufficiently ambiguous that they merited impeachment material in regards to Detective Miller's testimony that Petitioner fired the first shot. Pet. at 17-18. According to Petitioner, this deprived him of a self-defense affirmative defense. Pet. at 17-19.

At trial, during the State's rebuttal, the Court elicited the following testimony from Detective Miller following a juror question:

> THE COURT: Okay. And from your investigation were you able to determine who shot first?
>
> THE WITNESS: Technically, we have a fairly good idea. I can tell you from my experience and training that when – where the cartridge cases were located, the who .40 caliber that Boreo had was in stall 3 and 4. The 9 millimeter were spread in three behind Mr. Boreo's vehicle and out in the middle of the parking lot. On a Ruger, typically, they eject to the right. So I Would expect to find the .40s, if Dale Borero fired first because he was up against the wall with the shipping container behind them, it would eject to the right the casings should have been there.
>
> THE COURT: Okay.
>
> THE WITNESS: That's – the way I look at it.
>
> THE COURT: So all of which your determination of who shot who first was what?
>
> THE WITNESS: Is that it's – there's no way to be exactly sure, but based on the physical evidence I would say Mr. Coleman shot first.

Petitioner's Supplement ("PS") at 507. As a follow up question, Petitioner's counsel elicited the following testimony.

> Q: Detective Miller?
>
> A: Yes.
>
> Q: You did the declaration of warrant in this case, didn't you?
>
> A: Yes.

Q: Do you recall saying in there that it appeared that Dale Borero fired the first shot?

A: No.

Q: Can you look over on page 2, do you have a copy of it with you? And I am looking at about the middle of the –

….

Q: I'm looking at –

A: Okay.

Q: --like right there.

A: May I read that?

Q: Yeah.

A: At that point Borero pulled a handgun from his right pocket and fired at the black male suspect, Muhammad-Coleman. I don't see where it says fired first.

Q: Well, if you look at the chronology of the events, the black made pulled a handgun from his right and pointed it, Borero appeared to try to push the gun away, black male struck the upper left side of Borero's body with the butt of the gun, at that point Borero pulled a handgun from his right pocket side, and fired. Nobody else has fired at the point that you make that observation.

A: Well, I don't read it that way. And based on physical evidence of where those cartridge cases are and with the fact that most semi-automatic handguns, I'm no firearms expert, but most fire and eject, when they eject, they eject to the right. As you can see on the video where Mr. Borero was standing in which direction he was facing prior to him heading west and south to the fact of where Mr. Coleman was standing and where his cartridge casings were located.

Q: Does the video show who shot first?

A: No

PS at 508-510.

The declaration of warrant counsel used to impeach detective Miller read in relevant part:

> At one point the black male suspect (Muhammad-Coleman) moved from the left rear of the Cadillac to stand on the opposite side of the white male (Bleak). The black male (Muhammad-Coleman) pulled a handgun from his right side and pointed it at Borero. Borero appeared to try and push the gun away and the black male (Muhamed-Coleman) struck the upper left side of Borero's body with the butt of the gun. At that point, Borero pulled a handgun from his right pocket and fired at the black male suspect (Muhammad-Coleman).

PS at 595.

A review of the record shows that the Court elicited testimony from Detective Miller that she believed Petitioner shot first based on the physical evidence. Petitioner's counsel immediately attempted to impeach Detective Miller with the exact statement Petitioner now alleges counsel should have used. In fact, the relevant portion of the document was read almost word for word, by Detective Miller, into the record and in front of the jury. As such, any claim that counsel did not impeach Detective Miller is belied by the record. Pursuant to Hargrove, such an allegation is insufficient to succeed on an ineffective assistance of counsel claim.

Petitioner also seems to allege that it was ineffective for counsel not to identify that the above statement also appeared in Detective Miller's Application and Affidavit for search warrant. Pet. at 17. It is unclear how such a strategy would have made a more favorable outcome at trial probable. When Detective Miller was impeached on the stand, she testified that counsel was misreading the declaration of warrant. PS at 508-510. Detective Miller indicated that she did not intend the statement to be construed as Borero shot first. Detective Miller further reiterated that based on the physical evidence she believed Petitioner shot first. To the extent Petitioner wanted to draw attention to the alleged inconsistency in Miller's statements, his counsel accomplished that. However, given that Detective Miller offered an explanation for this alleged inconsistency, it is dubious that showing another instance where that exact same statement (which likely would have been explained the exact same way)

occurred would have had any additional effect. Given the dubious probative value of such a line of questioning, whether to engage in it was clearly a strategic decision reserved for counsel. See Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002)(stating: Trial counsel has the "immediate and ultimate responsibility of deciding if and when to object, which witnesses, if any, to call, and what defenses to develop."). Therefore, the Court finds that such a decision was neither unreasonable, nor did it prejudice Petitioner.

Petitioner argues in the alternative that "to the extent the previous and impeachment worthy statements were not identified at the time of trial, this amounted to IAC as a result of an insufficient investigation." A defendant who contends his attorney was ineffective because he did not adequately investigate must show how a better investigation would have rendered a more favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Given that counsel in fact impeached Detective Miller with the complained of statement, it cannot be seriously alleged that counsel's investigation was insufficient to the point that he did not discover the statement. As such, this claim is belied by the record and is suitable only for summary dismissal. See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

After consideration of this claim and the relevant portions of the record, the Court finds that counsel's cross-examination was not unreasonable, and that Petitioner has not demonstrated that he was prejudiced by counsel's cross-examination. As such, the Court finds that counsel cannot be found ineffective on this ground, and this claim is denied.

B. Counsel Was Not Ineffective for Not Objecting to Detective Miller's Testimony

Petitioner alleges in Ground Two that Detective Miller's testimony regarding whether Petitioner or Borero shot first was inappropriate expert testimony. Pet. at 23. Petitioner further alleges that counsel was ineffective for failing to object to such testimony. Pet. at 23.

NRS 50.265 states:

> If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are:

1. Rationally based on the perception of the witness; and
2. Helpful to a clear understanding of the testimony of the witness or the determination of a fact in issue.

A lay witness is not precluded from forming conclusions based on their perceptions. Duran v. Mueller, 79 Nev. 453, 457, 386 P.2d 733, 735-36 (1963). In the instant case, detective Miller was a detective who responded to the scene. She personally observed the locations of the various casings left in the parking lot as a result of the shooting. PS at 389-90. Further, Detective Miller viewed the surveillance video of the shooting. Therefore, her testimony as to the location of the casings and the location of the two men were proper lay witness testimony.

The only other factor Detective Miller relied on in coming to the conclusion was that Petitioner likely fired first was the fact that the model of gun used by Borero typically discharges cases to the right. As such, Detective Miller deduced that Borero was probably not the one to fire first, as there were no casings recovered from where the casings would be found if Borero had fired first. PS at 508-510. To the extent that information regarding how Borero's gun discharged casings required expert testimony, said testimony had already been admitted through ballistics expert Anya Lester. PS at 352. Therefore, there was no reason for counsel to object to Detective Miller's testimony, as it was either based on her personal observations, or merely restated evidence already properly admitted. As such, the Court finds that whether to object on this basis was clearly a strategic decision. See Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002) (stating: Trial counsel has the "immediate and ultimate responsibility of deciding if and when to object…).

Further, Detective Miller's conclusion was not expert testimony either. Detective Miller merely formed a conclusion based on observed phenomenon. Such a conclusion is not expert testimony pursuant to Duran, 79 Nev. at 457, 386 P.2d at 735-36 (finding that an investigator who had testified as to skid marks, point of impact, apparent car direction, and car damage could also testify to hot two automobiles collided). Given that Detective Miller's testimony was based on her own observations, it was properly admitted lay witness testimony. To the extent that Borero's firearm discharged casings required expert testimony, her testimony was

corroborated by expert witness Anya Lester. As such, any objection would not have kept any information from the jury, and Petitioner cannot successfully claim that counsel's decision was either unreasonable or prejudicial. The Court therefore finds that counsel decision to not object to this testimony was neither unreasonable, nor did it prejudice Petitioner. As such, the Court finds that counsel cannot be found ineffective on this ground.

C. Whether Counsel Was Ineffective in Investigating and Utilizing Information Regarding Petitioner's PTSD Requires an Evidentiary Hearing

In Ground One (c), Petitioner alleges his counsel "made a Motion to explore Darion's PTSD claims shortly before trial, and without sufficient investigation." As such, Petitioner is challenging whether trial counsel's investigation of his PTSD and use of information regarding his PTSD to support his self-defense theory at trial was effective.

After review of the pleadings, records provided, and hearing oral argument, the Court found that a limited evidentiary hearing was required to rule on this claim. The Court held an evidentiary hearing regarding this issue on December 18, 2021. Prior to the commencement of the evidentiary hearing, post-conviction counsel represented that he had recently learned of the existence of a phone call between Petitioner and his counsel, which may not have been recorded, wherein, post-conviction counsel represented, there may have been a discussion about PTSD during that phone call. Post-conviction counsel represented that he was unsure if that call would have been retained, but wanted to further investigate the because there may have been a possibility that PTSD was discussed during such call. The Court stated that because the parties were prepared to move forward with the evidentiary hearing that day, until this disclosure was made the night before, the hearing would proceed, but the Court would give post-conviction counsel the opportunity to see if he could obtain the phone call and supplement the briefing after the hearing.

Mr. Schwarz testified that as soon as he found out about Petitioner's claim that he suffered from PTSD he filed a Motion to Continue the Trial and did so on an Order Shortening Time, so it could be heard at the Calendar Call hearing prior to trial. Mr. Schwarz argued at the Calendar Call hearing using all six (6) of the competency evaluations and the Court denied

the Motion and set the matter for trial. Had the Motion been granted, Mr. Schwarz testified that he would have hired a Psychologist to evaluate Petitioner. It was Mr. Schwarz's recollection that Petitioner stated the reason he suffered from PTSD was due to being shot in the instant case.

During Petitioner's testimony, Petitioner testified that he received competency evaluations. On February 9, 2016, Petitioner testified that he filed a Motion to Withdraw Counsel, but did not include that it was because of the PTSD issue, which he claims started to bother him after he was shot in May 2012. Petitioner stated he spoke to Mr. Schwarz after that hearing but did not discuss his PTSD claim. Petitioner claimed that he spoke to his attorney about needing an evaluation for PTSD during a phone call the following March in 2016. This phone call was about one (1) week after the Motion to Withdraw Counsel hearing. Petitioner also testified that he was not suffering from PTSD prior to the age of 16. Additionally, Petitioner explained that he believed that, during his Pre-Sentence Investigation Report in his previous robbery case, he was asked about his mental health and the report makes no mention that he suffered from PTSD. Petitioner also testified that Mr. Schwarz mentioned that Petitioner was sensitive to guns because he had been shot in the past during his closing argument and during Petitioner's testimony at trial in the instant case. After the testimony, the Court continued the hearing for post-conviction counsel to obtain the call logs he mentioned and would also hear the parties' argument on that day.

At the subsequent hearing, on February 22, 2021, post-conviction counsel represented that he submitted call logs between defense counsel and Petitioner, but was not able to get a recording of those calls to submit to the Court. This Court reviewed the call logs and permitted the parties to argue. The Court finds that with the evidence in front of it, it is very clear that when Mr. Schwarz stated he was notified about Petitioner's PTSD claim, he filed a Motion to Continue the Trial on an Order Shortening Time. Indeed, there is no evidence that prior to that time Mr. Schwarz even attempted to file a motion or act in anyway regarding the PTSD claim. Ultimately, the evidence before the Court is insufficient to establish that Mr. Schwarz's performance fell below an objective standard of reasonableness. Accordingly, Petitioner has

not demonstrated the first prong of the analysis. Strickland, 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068. Moreover, even if this Court found that the first prong was satisfied, which it does not, the Court reviewed the video, and based on that review, Petitioner cannot establish that the result of the trial would have been different to establish the prejudice prong of the analysis. Id. Therefore, the claim is denied.

III. THE SENTENCING COURT DID NOT RELY ON IMPROPER EVIDENCE

Courts are given "wide discretion" in sentencing decisions, and these are not to be disturbed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence." Allred v. State, 120 Nev. 410, 92 P.2d 1246, 1253 (2004).

Petitioner alleges in Ground Three that the Court relied on improper evidence at sentencing. The only allegedly improper evidence Petitioner identifies is Detective Miller's testimony. However, as the Court articulated above, there was nothing improper about Detective Miller's testimony. Therefore, it was not error for the sentencing court to rely on it.

Further, the Court finds that contrary to Petitioner's assertions, there is no language in the sentencing transcript that indicates the sentencing court relied specifically on Detective Miller's testimony. The sentencing court stated:

> For the first degree murder charge, I have, under 193.165, considered the use of the weapon and the circumstances surrounding it, your criminal history, use of a weapon in the past, any mitigating factors for purposes of adjudging an appropriate enhancement. So for the murder charge, I'm going to sentence you to 20 to life, that's 240 months, that's --
>
> …
>
> This is life in prison with the minimum 240 months before parole eligibility. For the weapon enhancement, 240 months maximum, 60 months minimum. That runs consecutive to the murder portion. So it's a total of life -- aggregate of life in prison with a minimum 300 months before parole eligibility. For Count 4, 48 to 120 months concurrent; Count 6, 24 to 60 months concurrent; Count 7, 19 to 48 months concurrent; and this case will run consecutive to the sentence you're serving in 299066. I believe I had gone through and calculated the credit up and through June

> 22nd of 2015, which is when he was sentenced in the other case and that is 720 days.

PS at 650-51. The sentencing court made note of the circumstances of the shooting as playing a role in sentencing. In discussing the circumstances of the shooting, the sentencing court took issue with defense counsel's representation that Petitioner being the defendant instead of the victim in this case was "happenstance" by stating:

> But I -- I understand and I don't think the State was making the argument that 8-to-20 was too light in that case, it's how do you view the murder knowing that with a month prior to this case occurring those other things were occurring. And I agree that those are -- those are two separate events and they both deserve recognition from a -- from a punishment standpoint because we're dealing with horribly violent crimes. But I will also tell you that I sat through the same trial that you all did obviously and -- and it was -- and I agree with you, Mike, that you can't just watch a video and tell what it is that -- that happened in a vacuum. But I think watching the video, listening to the testimony, looking at what the forensic evidence was about w here shell casings were found, I am convinced that your client not only pulled the weapon first but he shot first as well before Mr. Borero had produced a handgun.
>
> And that's based in part on the conduct of the people in the video, the reaction to certain things occurring. I think Mr. Borero was shot and going down before he started firing his gun. And I think that's why the jury convicted your client of first degree murder regardless of whether they think a robbery actually occurred, I think there was evidence for them to say you produced a gun and shot the man and they -- they found him guilty on the premeditated and deliberate theory. So, in any event, I won't belabor it.

PS at 644, 649-50.

The Court notes that nowhere in the sentencing transcript is Detective Miller or her testimony specifically mentioned. The sentencing judge was clear that it relied on all of the facts proven beyond a reasonable doubt at trial, as well as Petitioner's violent history. Given that neither of these considerations are improper, the Court finds that the sentencing court did not rely on improper evidence at sentencing.

IV. DETECTIVE MILLER'S TESTIMONY DID NOT AMOUNT TO A COMMENT ON PETITIONER'S POST-ARREST SILENCE

In Ground Four, Petitioner alleges that Detective Miller "specifically acknowledged Darion's post-arrest silence regarding any self-defense theory."

"The prosecution is forbidden at trial to comment upon a defendant's election to remain silent following his arrest and after being advised of his rights as required by *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966)." Murray v. State, 113 Nev. 11, 17, 930 P.2d 121, 124 (1997) (citing Neal v. State, 106 Nev. 23, 25, 787 P.2d 764, 765 (1990). In Murray, the defendant did not make a statement to authorities until he testified before the grand jury. Id. at 15, 930 P.2d at 123. The State sought to impeach the defendant by stating that trial was the first time the defendant had explained his side of the story. Id. at 17-18, 930 P.2d at 124-25.

A statement in reference to a recorded statement made by a defendant to authorities is not a comment on the defendant's right to remain silent under plain error review. Houtz v. State, No. 60858, 2013 WL1092730, Mar. 14, 2013, 129 Nev. 1123 (2013) (unpublished disposition). Further, any cross-examination into inconsistencies between a defendant's testimony and defendant's voluntary statement to authorities after being read his rights under Miranda is not an impermissible comment on post-arrest silence. Morales v. State, No. 54216, 2010 WL3384992, Jul. 15, 2010, 126 Nev. 740, 367 P.3d 802 (2010) (unpublished disposition). Comments on a defendant's post-arrest silence are held to be harmless beyond a reasonable doubt if "(1) at trial there was only passing reference, without more, to an accused's post-arrest silence, or (2) there was overwhelming evidence of guilt." Morris v. State, 112 Nev. 260, 263, 913 P.2d 1264, 1267 (1996).

Petitioner alleges that Detective Miller inappropriately commented on his post-arrest silence when she claimed Petitioner never mentioned that he acted in self-defense. Pet. at 24. In context, the following exchange occurred between the State and Detective Miller:

> Q At this point, Mr. Muhammad-Coleman was arrested on an arrest w
> arrant; is that correct?

A Yes.

Q And you were going to charge him with homicide?

A Yes.

Q Or murder?

A Yes.

Q And did you read Mr. Coleman his rights?

A I did.

Q How did you read him his rights?

A Directly from an advisement of rights card.

Q Okay. Did he acknowledge that he understood his rights?

A Verbally and he signed the card.

Q Okay. So the actual card you read his rights from you had him sign it?

A I did.

Q And did Mr. Coleman actually decide to talk to you after being read his rights?

A Yes, he did.

Q Okay. And that includes, you know, you have the right to remain silent and the right to have an attorney during questioning?

A Yes.

Q Okay. And then you actually had a conversation with him about April 19th, 2013?

A I did.

….

> Q Okay. Additionally, do you say some things in order to try to get someone talking like maybe throw out self-defense, for example?
>
> A Yes.
>
> Q And you do that for the purposes to get an individual to talk about an incident?
>
> A Yes.
>
> Q In your experience do people find it hard to talk about being involved in a murder?
>
> A Absolutely.
>
> Q Okay. Did you do that in this case? Did you throw out self-defense, you had to do it? That type of situation?
>
> A Yes. Q And w ere -- during that period of time, and we'll get into it with the video, but did Mr. Coleman ever say that he had to do it, it was self-defense on April 19th, 2013?
>
> A No, he never mentioned that.

PS at 487-89.

The transcript reveals that Detective Miller's testimony regarded Petitioner's voluntary statement made after being informed of his rights under Miranda. As such, the Court finds that this was not an improper commentary on Petitioner's post-arrest silence. Morales v. State, 126 Nev. 740, 367 P.3d 802 (2010) (unpublished disposition). For Petitioner to claim otherwise is puzzling given that he does not appear to have remained silent or to have invoked his right to remain silent during this conversation. Instead, Detective Miller merely explained what information Petitioner did or did not disclose during a voluntary and legal interrogation.

The Court further finds that to the extent Detective Miller's testimony constituted a commentary on Petitioner's post-arrest silence, such a commentary was harmless. First, there was only passing reference made as to Petitioner not previously stating he acted in self-defense. The State brought out that Petitioner's story was inconsistent only twice: first during the testimony of Detective Miller, and then again during closing arguments. PS at 550. Second,

the evidence of guilt was overwhelming in the instant case. An eyewitness and surveillance video placed Petitioner as the individual who shot and killed the victim. Further, forensic evidence demonstrated that Petitioner fired first, thereby negating any self-defense claim.

V. SUMMATION OF FINDINGS

The Court finds that Petitioner's claims are not procedurally barred under either NRS 34.726 or NRS 34.810. The Court has therefore examined each of the claims on the merits.

The Court further finds that the sentencing court did not rely on improper evidence at sentencing. There is nothing in the record stating that the sentencing court specifically relied on Detective Miller's testimony. The sentencing court specifically stated that it had presided over the entire trial and was considering the evidence presented at trial. Therefore, the Court finds that any claim to the contrary is without merit, and this claim is denied.

The Court further finds that Detective Miller's testimony did not amount to a comment on Petitioner's post-arrest silence, and this claim is denied.

The Court further finds that Petitioner's trial counsel was not ineffective in cross-examining Detective Miller, nor was counsel ineffective for not objecting to the testimony of Detective Miller. Petitioner has failed to establish both that counsel's action were unreasonable, or that Petitioner was prejudiced as a result of counsel's actions. As such, both of these claims are denied.

Additionally, as discussed *infra*, the Court finds that Petitioner's claim regarding PTSD does not satisfy the Strickland standard and is also therefore denied.

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ORDER

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

Dated this 23rd day of April, 2021

2A8 CCD A462 0F81
Tierra Jones
District Court Judge

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

BY ***/s/ KAREN MISHLER***
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #013730

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:

WALEED ZAMAN
wally@zamanlegal.com

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

KM/bg/ed/GU

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Darion Coleman, Plaintiff(s)	CASE NO: A-19-806521-W
vs.	DEPT. NO. Department 10
Renee Baker, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 4/23/2021

Waleed Zaman	Wally@ZamanLegal.com
Waleed Zaman	Wally@ztlawgroup.com
Yanni Sitsis	Yanni@ztlawgroup.com
Dept 3 Law Clerk	dept03lc@clarkcountycourts.us

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus **COURT MINUTES** **January 23, 2020**

A-19-806521-W Darion Coleman, Plaintiff(s)
vs.
Renee Baker, Defendant(s)

January 23, 2020 **9:00 AM** **Petition for Writ of Habeas Corpus**

HEARD BY: Herndon, Douglas W. **COURTROOM:** RJC Courtroom 16C

COURT CLERK: Kory Schlitz

RECORDER: Jill Jacoby

REPORTER:

PARTIES PRESENT:
Osman, Adam B. Attorney
Zaman, Waleed Attorney

JOURNAL ENTRIES

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

Mr. Zaman indicated he spoke with Mr. Chen and they are requesting forty-five days to respond. Mr. Osman confirmed the representations. COURT ORDERED, briefing schedule SET as follows: State's Opposition shall be due on or before March 5, 2020; Defendant's Reply shall be due on or before April 2, 2020; matter CONTINUED.

NDC

CONTINUED TO: 4/9/2020 9:00 A.M.

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus	**COURT MINUTES**	**June 04, 2020**

A-19-806521-W Darion Coleman, Plaintiff(s)
vs.
Renee Baker, Defendant(s)

June 04, 2020 **3:30 PM** **Petition for Writ of Habeas Corpus**

HEARD BY: Herndon, Douglas W. **COURTROOM:** RJC Courtroom 16C

COURT CLERK: Kory Schlitz

RECORDER: Stacey Ray

REPORTER:

PARTIES PRESENT:
Scarborough, Michael J. Attorney
Zaman, Waleed Attorney

JOURNAL ENTRIES

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

COURT STATED there is a limited amount of people able to enter the building due to COVID-19. Mr. Zaman stated no objection to continuing the matter for him to be present in person. Mr. Scarborough stated the appeals department was not served and they were requesting 45 days to prepare a response. Mr. Zaman informed the Court the State has responded. Mr. Scarborough stated the information must have been an old note. COURT ORDERED, matter CONTINUED and to the extent the State is wishing to file supplemental pleading, the State can.

NDC

/CONTINUED TO: 7/16/2020 9:00 A.M.

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus	**COURT MINUTES**	**August 06, 2020**

A-19-806521-W Darion Coleman, Plaintiff(s)
vs.
Renee Baker, Defendant(s)

August 06, 2020 **3:30 PM** **Petition for Writ of Habeas Corpus**

HEARD BY: Herndon, Douglas W. **COURTROOM:** RJC Courtroom 16C

COURT CLERK: Kory Schlitz

RECORDER: Stacey Ray

REPORTER:

PARTIES PRESENT: Scarborough, Michael J. Attorney

JOURNAL ENTRIES

- Defendant not present and in custody in the Nevada Department of Corrections; Waleed Zaman Esq. not present.

COURT STATED this matter was continued for Mr. Zaman to be present to argue the matter, adding the Courthouse is not allowing people in due to COVID and ORDERED, matter CONTINUED.

NDC

CONTINUED TO: 10/1/2020 9:00 A.M.

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus	COURT MINUTES	September 30, 2020

A-19-806521-W Darion Coleman, Plaintiff(s)
vs.
Renee Baker, Defendant(s)

September 30, 2020 **8:30 AM** **Petition for Writ of Habeas Corpus**

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT:

Hamner, Christopher S.	Attorney
Schwartzer, Michael J.	Attorney
Zaman, Waleed	Attorney

JOURNAL ENTRIES

- Darion Coleman not present and in the Nevada Department of Corrections. Court noted the Court is not ready to proceed today as it has not read the Reply and the State provided a Video yesterday, that's referred to in the pleadings, however, the Court needs additional time to prepared. COURT ORDERED, matter CONTINUED to the date given. Mr. Schwartzer advised as to the video provided to the Court and that counsel can provide it to defense counsel also. Mr. Zaman advised he has seen them.

10/12/20 8:30 A.M. PETITION FOR WRIT OF HABEAS CORPUS

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus	**COURT MINUTES**	**October 12, 2020**

A-19-806521-W Darion Coleman, Plaintiff(s)
vs.
Renee Baker, Defendant(s)

October 12, 2020 **8:30 AM** **Petition for Writ of Habeas Corpus**

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Michele Tucker

RECORDER: Toshiana Pierson

REPORTER:

PARTIES PRESENT:
Schwartzer, Michael J. Attorney
Zaman, Waleed Attorney

JOURNAL ENTRIES

- Defendant Coleman NOT PRESENT in custody at NDC.

Following arguments by counsel, Court INDICATED it would review the Woodstone case and issue a minute order.

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus	COURT MINUTES	October 13, 2020

A-19-806521-W Darion Coleman, Plaintiff(s)
vs.
Renee Baker, Defendant(s)

October 13, 2020 **3:00 PM** **Minute Order**

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Following review of the papers and pleadings on file herein, and considering the arguments of counsel, the COURT FINDS as follows. The Court finds that the Petition is not procedurally barred under NRS 34.726. The Court finds good cause for the delay. The COURT FURTHER FINDS that none of Petitioner s claims are waived pursuant to NRS 34.810. As for the claim regarding the sentencing court s reliance on improper evidence, the COURT FINDS that this claim lacks merit. The COURT FINDS that the sentencing court did not rely on improper evidence as there is no language in the sentencing transcript to indicate that the Court specifically relied on Detective Miller s testimony. The sentencing Court specifically stated that it had presided over the entire trial and that it was considering the evidence that was presented at trial to determine that the Petitioner was the first person to fire his weapon. The COURT FURTHER FINDS that the Detective Miller s testimony did not amount to comment on the Defendant s post-arrest silence. The COURT FURTHER FINDS that Petitioner did not receive ineffective assistance of counsel in counsel s cross examination and failure to object to the testimony of Detective Miller. Under Strickland v. Washington, the Petitioner must show that counsel s cross-examination of Detective Miller or failure to object to the Detective s testimony fell below an objective standard of reasonableness and that but for the errors, there is a reasonable probability that the result of the proceedings would have been different. Neither of those prongs are met here. The COURT FURTHER FINDS that Petitioner s PTSD self-defense theory claim warrants an evidentiary hearing. Accordingly, the Petition for Writ of Habeas Corpus is DENIED IN

PART.

The State is to prepare a Findings of Fact and Conclusions of Law consistent with this Order and submit it to the Court for signature within 10 days of the date of filing of this order. This case will be set for a status check hearing on October 21, 2020 at 8:30 to set a time and date for an evidentiary hearing.

Clerk's Note: This Minute Order was electronically served by Courtroom Clerk, Teri Berkshire, to all registered parties for Odyssey File & Serve. /tb

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus	COURT MINUTES	October 21, 2020

A-19-806521-W Darion Coleman, Plaintiff(s)
vs.
Renee Baker, Defendant(s)

October 21, 2020 **8:30 AM** **Status Check**

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT:
Schwartzer, Michael J. Attorney
Zaman, Waleed Attorney

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Mr. Schwartzer present on behalf of the State, via video, through bluejeans technology.

Mr. Coleman not present and in the Nevada Department of Corrections. Court noted this matter is on for the limited PTSD issue. Colloquy regarding hearing times, counsel's availability, and coordinating with the Jail. Court directed Mr. Schwartzer to do an order to produce, so the deft. will be transferred from NDC to CCDC. Mr. Zaman requested to expand the record and get the evaluation done by an independent doctor. COURT ORDERED request DENIED. Court noted what the Court is interested in, is the limited issue as to what Mr. Schwarz knew at the time, so any evaluation that occurs at this point, Mr. Schwarz would have no knowledge of that, at the time he should have argued the PTSD. Court noted this Court's JEA will be in touch with counsel after she confirms with DC7, that we can do this. FURTHER ORDERED, matter set for Hearing on the date given. Mr. Schwartzer to prepare an order to transport.

NDC

12/04/20 from 8:00 a.m. to 10:00 a.m. HEARING - LIMITED ISSUE

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus	**COURT MINUTES**	**December 18, 2020**

A-19-806521-W Darion Coleman, Plaintiff(s)
vs.
Renee Baker, Defendant(s)

December 18, 2020 **9:00 AM** **Evidentiary Hearing**

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT:

Coleman, Darion M	Plaintiff
Schwartzer, Michael J.	Attorney
Zaman, Waleed	Attorney

JOURNAL ENTRIES

- Court inquired if parties were ready to proceed on the issue of ineffective assistance of counsel regarding investigation and utilization of information regarding Petitioner s PTSD at trial. Counsel advised that he was made aware in the last 24 hours of a phone call between Darion and previous counsel in March of 2016. Further, previous counsel would not have been confirmed as his attorney at that time as he was substituted in and there is the possibility that there was a discussion regarding the PTSD during that phone call. Counsel attempted to confirm if that call would still have been retained and has not been able to confirm or deny if it was retained, but wanted to bring it to the Court's attention. Court advised with all parties present, this Court will go forward with testimony and allow Mr. Zaman to supplement the record after the hearing with whatever information he is able to obtain and Court will withhold its ruling until that has been accomplished. Testimony and exhibits presented. Stipulated exhibits A through G Stipulated ADMITTED. Court finds in light of the issuer presented regarding the conversation that may have contained information regarding PTSD that this Court is going to give Mr. Zaman the opportunity to follow up and matter is set for status check on what he uncovers. Further, next date Court will determine a time for closing arguments and submission of the matter.

NDC

01/06/21 8:30 a.m. Status Check: 2016 Call (Supplement to Petition)

CLERK'S NOTE: Minutes completed by Courtroom Clerk Alan Paul Castle using JAVS. ac/12/29/20.

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus	**COURT MINUTES**	**January 06, 2021**

A-19-806521-W Darion Coleman, Plaintiff(s)
vs.
Renee Baker, Defendant(s)

January 06, 2021 **8:30 AM** **Status Check**

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT:

Conlin, Elise M	Attorney
Zaman, Waleed	Attorney

JOURNAL ENTRIES

- Deft. not present and in the Nevada Department of Corrections. Ms. Conlin standing in for Mr. Schwartzer, on behalf of the State. Court noted there was a subpoena issued on High Desert, on 12-31-20, in regards to the phone record that was going to possibly supplement the Petition. Further, counsel requested the record by 1-21-21. COURT ORDERED, matter CONTINUED to the date given.

NDC

01/27/21 8:30 A.M. STATUS CHECK: 2016 CALL (SUPPLEMENT TO PETITION)

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus	COURT MINUTES	January 27, 2021

A-19-806521-W Darion Coleman, Plaintiff(s)
vs.
Renee Baker, Defendant(s)

January 27, 2021 **8:30 AM** **Status Check**

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT:
Schwartzer, Michael J. Attorney
Zaman, Waleed Attorney

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Mr. Schwartzer present via video, on behalf of the State. Mr. Zaman present via video, on behalf of deft. through bluejeans technology.

Deft. not present and in the Nevada Department of Corrections. Upon Court's inquiry, Mr. Zaman advised he still doesn't have the Jail calls, as NDOC was not accepting subpoena. However, he did reach someone at Lovelock, who is handling it.
Further, counsel requested to pass the matter. COURT ORDERED, matter CONTINUED to the date given.

NDC

02/10/21 8:30 A.M. EVIDENTIARY HEARING

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus	**COURT MINUTES**	**February 10, 2021**

A-19-806521-W Darion Coleman, Plaintiff(s)
vs.
Renee Baker, Defendant(s)

February 10, 2021 **8:30 AM** **Status Check**

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Alice Jacobson

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT:

Schwartzer, Michael J.	Attorney
Zaman, Waleed	Attorney

JOURNAL ENTRIES

- COURT ORDERED, matter CONTINUED for the call log to be submitted at the request of counsel.

NDC

CONTINUED....2/22/21 8:30AM.

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus	**COURT MINUTES**	**February 22, 2021**

A-19-806521-W Darion Coleman, Plaintiff(s)
vs.
Renee Baker, Defendant(s)

February 22, 2021 **8:30 AM** **Status Check**

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Nylasia Packer

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT:

Coleman, Darion M	Plaintiff
Schwartzer, Michael J.	Attorney
Zaman, Waleed	Attorney

JOURNAL ENTRIES

- Following arguments by counsel, Court stated its findings and ORDERED, petition DENIED. State to prepare findings of fact and conclusions of law.

EXHIBIT(S) LIST

Case No.: A806521-W

Date: 12-18-20

Dept. No.: X

Judge: TIERRA JONES

Court Clerk: Tori Berkshire

Recorder: Victoria Boyd

Plaintiff: Dwion Coleman

Counsel for Plaintiff: Michael Schwartzer

vs.

Defendant: Renee

Counsel for Defendant: W. Zaman

TRIAL BEFORE THE COURT

EXHIBITS

Ex. #	Exhibit Description	Date Offered	Objection	Date Admitted	
A	Competency Evals	12/18/20	N	12/18/20	WA
B	"				WA
C	"				WA
D	"				WA
E	"				WA
F	"				WA
G	PSI				WA

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):

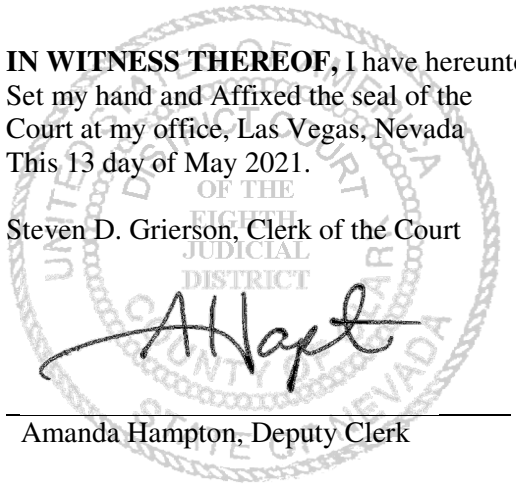
NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST

DARION MUHAMMAD-COLEMAN, Plaintiff(s), vs. RENEE BAKER, WARDEN, Defendant(s),	Case No: A-19-806521-W Dept No: X

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 13 day of May 2021.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk