

# IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed  
Nov 15 2021 03:55 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

DENZEL DORSEY,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Case No: C-17-323324-1  
*Related Case A-21-839313-W*  
Docket No: 83644

# RECORD ON APPEAL VOLUME 3

**ATTORNEY FOR APPELLANT**  
DENZEL DORSEY # 1099468,  
PROPER PERSON  
P.O. BOX 650  
INDIAN SPRINGS, NV 89070

**ATTORNEY FOR RESPONDENT**  
STEVEN B. WOLFSON,  
DISTRICT ATTORNEY  
200 LEWIS AVE.  
LAS VEGAS, NV 89155-2212

**I N D E X**

<b><u>VOLUME:</u></b>	<b><u>PAGE NUMBER:</u></b>
1	1 - 240
2	241 - 480
3	481 - 714

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
3	11/27/2019	AMENDED ORDER FOR PRODUCTION OF INMATE DENZEL DORSEY, BAC #1099468	493 - 494
3	05/14/2020	AMENDED REQUEST FOR TRANSCRIPT	495 - 497
1	07/25/2018	BENCH WARRANT	183 - 184
3	10/17/2019	CASE APPEAL STATEMENT	489 - 490
3	10/13/2021	CASE APPEAL STATEMENT	614 - 615
3	11/15/2021	CERTIFICATION OF COPY AND TRANSMITTAL OF RECORD	
2	10/07/2019	CLERK'S NOTICE OF NONCONFORMING DOCUMENT	479 - 480
1	05/05/2017	CRIMINAL BINDOVER (CONFIDENTIAL)	1 - 28
1	05/05/2017	CRIMINAL BINDOVER (REDACTED VERSION)	29 - 56
1	02/15/2019	DEFENDANT DENZEL DORSEY'S MOTION TO WITHDRAW GUILTY PLEA (CONTINUED)	205 - 240
2	02/15/2019	DEFENDANT DENZEL DORSEY'S MOTION TO WITHDRAW GUILTY PLEA (CONTINUATION)	241 - 273
2	09/23/2019	DEFENDANT DENZEL DORSEY'S SENTENCING MEMORANDUM	436 - 453
3	11/15/2021	DISTRICT COURT MINUTES	676 - 714
3	11/15/2021	DOCUMENTARY EXHIBITS (UNFILED)	669 - 675
1	01/19/2018	EX-PARTE ORDER TO APPOINT COUNSEL AND TO WAIVE COURT FILING FEES	122 - 122
3	10/20/2021	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER	616 - 641
1	03/09/2018	GUILTY PLEA AGREEMENT	123 - 132
1	05/09/2017	INFORMATION	57 - 60
3	10/09/2019	JUDGMENT OF CONVICTION (PLEA OF GUILTY)	486 - 486

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
1	12/05/2018	MOTION FOR EXPERT SERVICES (INVESTIGATOR) PURSUANT TO WIDDIS	185 - 203
1	06/06/2018	MOTION TO DISMISS COUNSEL	149 - 152
1	04/26/2018	MOTION TO PLACE ON CALENDAR TO ADDRESS CUSTODY STATUS AND HOLD	145 - 148
1	07/24/2018	MOTION TO QUASH BENCH WARRANT	179 - 182
2	10/04/2019	MOTION TO WITHDRAW AS COUNSEL	475 - 478
3	10/08/2019	MOTION TO WITHDRAW AS COUNSEL	481 - 484
3	03/25/2021	MOTION TO WITHDRAW AS COUNSEL	609 - 610
1	11/29/2017	MOTION TO WITHDRAW DUE TO CONFLICT	119 - 121
1	06/06/2018	MOTION TO WITHDRAW PLEA	153 - 158
3	02/03/2021	NEVADA SUPREME COURT CLERK'S CERTIFICATE/REMITTITUR JUDGMENT - AFFIRMED	593 - 599
3	10/11/2021	NOTICE OF APPEAL	612 - 613
3	10/15/2019	NOTICE OF APPEAL	487 - 488
3	10/25/2021	NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER	642 - 668
2	08/07/2019	NOTICE OF ENTRY OF ORDER	421 - 435
2	06/11/2019	NOTICE OF HEARING	370 - 370
3	10/08/2019	NOTICE OF HEARING	485 - 485
3	03/25/2021	NOTICE OF HEARING	611 - 611
2	08/06/2019	ORDER DENYING DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA	408 - 420
3	11/22/2019	ORDER FOR PRODUCTION OF INMATE DENZEL DORSEY, BAC #1099468	491 - 492



I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
1	01/09/2019	ORDER GRANTING MOTION FOR EXPERT SERVICES (INVESTIGATOR) PURSUANT TO WIDDIS	204 - 204
1	08/31/2017	ORDER RE: DISCOVERY	117 - 118
1	04/23/2018	PRESENTENCE INVESTIGATION REPORT (UNFILED) CONFIDENTIAL	133 - 144
2	03/28/2019	REPLY TO STATE'S OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA	349 - 364
2	02/21/2019	STATE'S NOTICE OF INTENT TO SEEK PUNISHMENT AS A HABITUAL CRIMINAL AND NOTICE OF PRIOR BURGLARY AND/OR HOME INVASION CONVICTIONS	274 - 276
2	06/11/2019	STATE'S NOTICE OF MOTION AND MOTION TO REMAND DEFENDANT	365 - 369
1	08/21/2017	STATE'S NOTICE OF WITNESSES AND/OR EXPERT WITNESSES [NRS 174.234]	106 - 116
2	03/19/2019	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA	283 - 348
1	07/03/2018	STATE'S OPPOSITION TO DEFENDANT'S PRO PER MOTION TO WITHDRAW PLEA	169 - 178
2	10/01/2019	STATE'S RESPONSE TO DEFENDANT DENZEL DORSEY'S SENTENCING MEMORANDUM	467 - 474
2	02/21/2019	SUPPLEMENTAL EXHIBIT IN SUPPORT OF DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA	277 - 282
2	09/23/2019	SUPPLEMENTAL PRESENTENCE INVESTIGATION REPORT (UNFILED) CONFIDENTIAL)	454 - 466
2	07/26/2019	TRANSCRIPT OF HEARING HELD ON JULY 11, 2019	371 - 407
1	06/14/2018	TRANSCRIPT OF HEARING HELD ON MARCH 13, 2018	159 - 168
1	05/25/2017	TRANSCRIPT OF HEARING HELD ON MAY 2, 2017	61 - 105

C-17-323324-1

State of Nevada  
vs  
Denzel Dorsey

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
3	06/09/2020	TRANSCRIPT OF HEARING HELD ON MAY 28, 2019	498 - 592
3	03/16/2021	UNFILED DOCUMENT(S) - ATTORNEY LETTER W/COPY OF UNFILED MOTION FOR PRODUCTION OF DOCUMENTS, PAPERS, PLEADINGS AND TANGIBLE PROPERTY OF DEFENDANT AND W/COPY OF UNSIGNED ORDER	600 - 608



1 **MOT**  
2 GARY A. MODAFFERI, ESQ.  
3 Nevada Bar No. 12450  
4 Law Offices of Gary A. Modafferi, LLC  
5 612 S. 3<sup>rd</sup> Street, Suite A  
6 Las Vegas, Nevada 89101  
7 (702) 327-3033  
8 Attorney for Defendant

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 THE STATE OF NEVADA,

12 Plaintiff,

13 vs.

14 DENZEL DORSEY,

15 Defendant.

16 CASE NO. C-17-323324-1

17 DEPT. NO. XV

18 **MOTION TO WITHDRAW AS COUNSEL**

19 GARY A. MODAFFERI, attorney of record for the above-named Defendant, hereby  
20 moves this Court for an Order allowing him to withdraw as counsel for said Defendant in this  
21 matter. This Motion is made and based upon the papers and pleadings on file herein.

22 DATED this 3<sup>rd</sup> day of October, 2019.

23 /s/ Gary A. Modafferi

24 GARY A. MODAFFERI, ESQ.  
25 Nevada Bar No. 12450  
26 Attorney for Defendant

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, at the  
hour of \_\_\_\_\_ a.m., or as soon thereafter as counsel may be heard, the undersigned will  
bring the foregoing Motion to Withdraw as Counsel on for hearing.

DATED this 3<sup>rd</sup> day of October, 2019.

/s/ Gary A. Modafferi  
\_\_\_\_\_  
GARY A. MODAFFERI, ESQ.  
Nevada Bar No. 12450  
Attorney for Defendant

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**POINTS AND AUTHORITIES**

Counsel had previously informed the Court that he had not been retained to draft a appeal in this matter. Accordingly, Counsel respectfully requests permission to withdraw.

**CONCLUSION**

Based upon the foregoing, Gary A. Modafferi should be permitted to withdraw as retained counsel for the Defendant in this action.

DATED this 3<sup>rd</sup> day of October, 2019.

/s/ Gary A. Modafferi  
\_\_\_\_\_  
GARY A. MODAFFERI, ESQ.  
Nevada Bar No. 12450  
Attorney for Defendant

1 **CERT**  
2 GARY A. MODAFFERI, ESQ.  
3 Nevada Bar No. 12450  
4 Law Offices of Gary A. Modafferi, LLC  
5 612 S. 3<sup>rd</sup> Street, Suite A  
6 Las Vegas, Nevada 89101  
7 (702) 327-3033  
8 Attorney for Defendant

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

vs.

DENZEL DORSEY,

Defendant.

CASE NO. C-17-323324-1  
DEPT. NO. XV

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee of Gary A. Modafferi, LLC, and that on the 8<sup>th</sup> day of October, 2019, I served a copy of the foregoing **MOTION TO WITHDRAW AS COUNSEL** upon the following:

Sandra Digiacomio, Esq.  
Chief Deputy District Attorney  
[sandra.digiacomio@clarkcountynvda.com](mailto:sandra.digiacomio@clarkcountynvda.com)

/s/ Erika W. Magana

Erika W. Magana, An Employee of  
Gary A. Modafferi, LLC

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

Electronically Filed  
10/8/2019 2:29 PM  
Steven D. Grierson  
CLERK OF THE COURT



State of Nevada  
vs  
Denzel Dorsey

Case No.: C-17-323324-1  
Department 15

**NOTICE OF HEARING**

Please be advised that the Defendant's Motion to Withdraw as Counsel in the above-entitled matter is set for hearing as follows:

**Date:** October 22, 2019  
**Time:** 8:30 AM  
**Location:** RJC Courtroom 11D  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

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

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Patricia Azucena-Preza  
Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

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

By: /s/ Patricia Azucena-Preza  
Deputy Clerk of the Court

*Steven D. Grierson*

1 JOC

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4 THE STATE OF NEVADA,

5 *Plaintiff,*

6 -vs-

7 DENZEL DORSEY  
8 #2845569

9 *Defendant.*

CASE NO: C-17-323324-1

DEPT NO: XV

10 JUDGMENT OF CONVICTION  
11 (PLEA OF GUILTY)

12 The Defendant previously appeared before the Court with counsel and entered a plea of  
13 guilty to the crime of COUNT 1 - INVASION OF THE HOME (Category B Felony) in violation of  
14 NRS 205.067; thereafter, on the 3<sup>rd</sup> day of October, 2019, the Defendant was present in court for  
15 sentencing with counsel GARY P. MODAFFERI, ESQ., and good cause appearing,

16 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense under the SMALL  
17 HABITUAL Criminal Statute and, in addition to \$25.00 Administrative Assessment Fee, \$1,200.00  
18 Restitution to VC2252568 and \$130.00 to VC2191137 plus the \$3.00 DNA Collection Fee, the  
19 Defendant is sentenced to COUNT 1 - a MAXIMUM of ONE HUNDRED FIFTY (150) MONTHS  
20 and a MINIMUM of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC); with  
21 FOUR HUNDRED TWENTY-THREE (423) DAYS credit for time served. As the \$150.00 DNA  
22 Analysis Fee and Genetic Testing have been previously imposed, the Fee and Testing in the current  
23 case are WAIVED. COUNT 2 - DISMISSED.

24 DATED this 8<sup>th</sup> day of October, 2019.

25 *Joe Hardy*  
26 JOE HARDY  
27 DISTRICT COURT JUDGE  
28 *100*

<input type="checkbox"/> Nolle Prosequi (before trial)	<input type="checkbox"/> Bench (Non-Jury) Trial
<input type="checkbox"/> Dismissed (after diversion)	<input type="checkbox"/> Dismissed (during trial)
<input type="checkbox"/> Dismissed (before trial)	<input type="checkbox"/> Acquittal
<input checked="" type="checkbox"/> Guilty Plea with Sent. (before trial)	<input type="checkbox"/> Guilty Plea with Sent. (during trial)
<input type="checkbox"/> Transferred (before/during trial)	<input type="checkbox"/> Conviction
<input type="checkbox"/> Other Manner of Disposition	



*Steven D. Grierson*

1 NOAS  
2 Name: Denzel Dorsey  
3 Address: 330 S. Casino Center Blvd  
4 City/State/Zip: Las Vegas, NV 89101  
5 Phone: 253 617 8700

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

9 State of Nevada

10 Plaintiff,

11 v.

CASE NO. C-17-323324-1

DEPT. NO. XV (15)

12 Denzel Dorsey

13 Defendant.

14  
15 NOTICE OF APPEAL

16 Notice is hereby given that Denzel R. Dorsey, Defendant above-named,  
17 hereby appeals to the Supreme Court of Nevada from the denial of defendants  
18 pre-sentence motion to withdraw plea and then sentencing  
19 defendant to a small habitual criminal (60-150 months).

20 entered in this action on the 9<sup>th</sup> day of October, 2019.

21  
22 DATED this 9<sup>th</sup> day of October, 2019.

23 *Denzel Dorsey*  
24 Defendant's Signature

25  
26  
27  
28 NOTE: list either the Final Judgment or an Order (describe it) on the lines above.

CLERK OF THE COURT

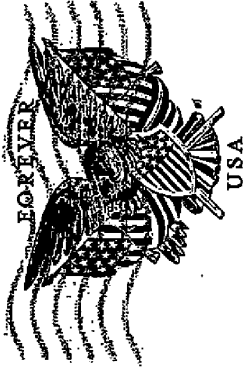
OCT 15 2019

RECEIVED

Danzel R. Dorsey #2845569  
C.C.D.C.  
330 S. Casino Center Blvd  
Las Vegas, NV 89101

LAS VEGAS, NV 8900

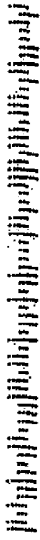
15 OCT 2013 PM 4:1



Steven D. Grierson  
200 Lewis Avenue, 3rd floor  
Las Vegas, NV 89155-1160

SENT FROM CCDC

000000-10158



© USPS 2013

THIS ENVELOPE IS RECYCLABLE AND MADE WITH 30% POST CONSUMER CONTENT





1 ASTA

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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

STATE OF NEVADA,

Plaintiff(s),

vs.

DENZEL DORSEY,

Defendant(s),

Case No: C-17-323324-1

Dept No: XV

**CASE APPEAL STATEMENT**

1. Appellant(s): Denzel Dorsey

2. Judge: Joe Hardy

3. Appellant(s): Denzel Dorsey

Counsel:

Denzel Dorsey #1099468  
P.O. Box 650  
Indian Springs, NV 89070

4. Respondent: The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney  
200 Lewis Ave.  
Las Vegas, NV 89101

(702) 671-2700

5. Appellant(s)'s Attorney Licensed in Nevada: N/A  
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes  
Permission Granted: N/A

6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: Yes

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

9. Date Commenced in District Court: May 5, 2017

10. Brief Description of the Nature of the Action: Criminal

Type of Judgment or Order Being Appealed: Judgment of Conviction

11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

Dated This 17 day of October 2019.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk  
200 Lewis Ave  
PO Box 551601  
Las Vegas, Nevada 89155-1601  
(702) 671-0512

cc: Denzel Dorsey



1 **OPI**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 VICTORIA A. VILLEGAS  
6 Chief Deputy District Attorney  
7 Nevada Bar #002804  
8 200 Lewis Avenue  
9 Las Vegas, Nevada, 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 DENZEL DORSEY,  
13 #2845569

14 Defendant.

CASE NO. C-17-323324-1

DEPT NO. XV

15 **ORDER FOR PRODUCTION OF INMATE**  
16 **DENZEL DORSEY, BAC #1099468**

17 DATE OF HEARING: DECEMBER 3, 2018  
18 TIME OF HEARING: 8:30 A.M.

19 TO: NEVADA DEPARTMENT OF CORRECTIONS; and

20 TO: JOSEPH LOMBARDO, Sheriff of Clark County, Nevada:

21 Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by STEVEN  
22 B. WOLFSON, District Attorney, through VICTORIA A. VILLEGAS, Chief Deputy District  
23 Attorney, and good cause appearing therefor,

24 IT IS HEREBY ORDERED that NEVADA DEPARTMENT OF CORRECTIONS  
25 shall be, and is, hereby directed to produce DENZEL DORSEY, Defendant in Case Number  
26 C-17-323324-1, wherein THE STATE OF NEVADA is the Plaintiff, inasmuch as the said  
27 DENZEL DORSEY is currently incarcerated in the NEVADA DEPARTMENT OF

28 ///

///

1 CORRECTIONS located in Clark County, Nevada, and his presence will be required in Las  
2 Vegas, Nevada, commencing on DECEMBER 3, 2019, at the hour of 8:30 o'clock A.M. and  
3 continuing until completion of the prosecution's case against the said Defendant.

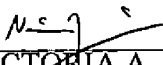
4 IT IS FURTHER ORDERED that JOSEPH LOMBARDO, Sheriff of Clark County,  
5 Nevada, shall accept and retain custody of the said DENZEL DORSEY in the Clark County  
6 Detention Center, Las Vegas, Nevada, pending completion of said matter in Clark County, or  
7 until the further Order of this Court; or in the alternative shall make all arrangements for the  
8 transportation of the said DENZEL DORSEY to and from the Nevada Department of  
9 Corrections facility which are necessary to insure the DENZEL DORSEY'S appearance in  
10 Clark County pending completion of said matter, or until further Order of this Court.

11 DATED this 21<sup>st</sup> day of November, 2019.

12   
13 DISTRICT JUDGE  
14

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

17 BY

18   
VICTORIA A. VILLEGAS  
19 Chief Deputy District Attorney  
Nevada Bar #002804  
20  
21  
22  
23  
24  
25  
26

27 16FH2022X/erg/L-5  
28



OPI  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
VICTORIA A. VILLEGAS  
Chief Deputy District Attorney  
Nevada Bar #002804  
200 Lewis Avenue  
Las Vegas, Nevada, 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

DENZEL DORSEY,  
#2845569

Defendant.

CASE NO. C-17-323324-1

DEPT NO. XV

**AMENDED ORDER FOR PRODUCTION OF INMATE  
DENZEL DORSEY, BAC #1099468**

DATE OF HEARING: DECEMBER 3, 2019  
TIME OF HEARING: 8:30 A.M.

TO: NEVADA DEPARTMENT OF CORRECTIONS; and

TO: JOSEPH LOMBARDO, Sheriff of Clark County, Nevada:

Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by STEVEN B. WOLFSON, District Attorney, through VICTORIA A. VILLEGAS, Chief Deputy District Attorney, and good cause appearing therefor,

IT IS HEREBY ORDERED that NEVADA DEPARTMENT OF CORRECTIONS shall be, and is, hereby directed to produce DENZEL DORSEY, Defendant in Case Number C-17-323324-1, wherein THE STATE OF NEVADA is the Plaintiff, inasmuch as the said DENZEL DORSEY is currently incarcerated in the NEVADA DEPARTMENT OF

///

///

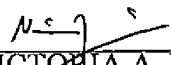
1 CORRECTIONS located in Clark County, Nevada, and his presence will be required in Las  
2 Vegas, Nevada, commencing on DECEMBER 3, 2019, at the hour of 8:30 o'clock A.M. and  
3 continuing until completion of the prosecution's case against the said Defendant.

4 IT IS FURTHER ORDERED that JOSEPH LOMBARDO, Sheriff of Clark County,  
5 Nevada, shall accept and retain custody of the said DENZEL DORSEY in the Clark County  
6 Detention Center, Las Vegas, Nevada, pending completion of said matter in Clark County, or  
7 until the further Order of this Court; or in the alternative shall make all arrangements for the  
8 transportation of the said DENZEL DORSEY to and from the Nevada Department of  
9 Corrections facility which are necessary to insure the DENZEL DORSEY'S appearance in  
10 Clark County pending completion of said matter, or until further Order of this Court.

11 DATED this 21<sup>st</sup> day of November, 2019.

12   
13 DISTRICT JUDGE  
14

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

17 BY   
18 VICTORIA A. VILLEGAS  
19 Chief Deputy District Attorney  
Nevada Bar #002804  
20  
21  
22  
23  
24  
25  
26

27 16FH2022X/erg/L-5  
28





1 **REQT**

2 **TERRENCE M. JACKSON, ESQ.**  
3 Nevada Bar No. 00854  
4 Law Office of Terrence M. Jackson  
5 624 South Ninth Street  
6 Las Vegas, NV 89101  
7 T: 702-386-0001 / F: 702-386-0085  
8 Terry.jackson.esq@gmail.com  
9 *Counsel for Denzel Dorsey*

10 **IN THE EIGHTH JUDICIAL DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 **THE STATE OF NEVADA,**

13 **Plaintiff,**

14 **v.**

15 **DENZEL DORSEY,**  
16 **scope #2845569,**

17 **Defendant.**

District Case No.: C-17-323324-1

Dept.: XV

**AMENDED REQUEST FOR TRANSCRIPT**

18 **TO: Matt Yarbrough, Court Recorder**  
19 **District Court, Department No.: XV**  
20 **Courtroom: 11D**

21 **DENZEL DORSEY, Defendant named above, requests preparation of the transcript entered**  
22 **below, before the Eighth Judicial District Court, Department XV, Judge Joe Hardy, as follows:**

23 **5/28/2019**

24 **Evidentiary Hearing, Defendant Denzel Dorsey's Motion to Withdraw Guilty Plea, held on May 28,**  
25 **2019.**

26 **Matt Yarbrough - Please prepare transcript of any and all proceedings including word index and any**  
27 **exhibits presented that day.**

28 **This Notice requests a transcript of only those portions of the District Court proceedings**  
**which Counsel reasonably and in good faith believes are necessary to determine whether Appellate**  
**issues are present. Voir dire examination of jurors, opening statements and closing arguments of trial**  
**counsel and reading of jury instructions shall not be transcribed unless specifically requested above.**

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

1 That the above-named court recorder shall have thirty (30) days from the date of service of  
2 this document to prepare an original plus two copies at State expense and file with the District Court  
3 Clerk the original transcript(s) requested herein.

4 Further, pursuant to NRAP 9(a)(3)(iii), the court recorder shall also deliver copies of the  
5 transcript to Appellate's counsel and Respondent counsel no more than thirty (30) days after the date  
6 of the Appellate's request.

7 Dated this 14th day of May, 2020.

8 /s/ Terrence M. Jackson  
9 Terrence M. Jackson, Esquire  
10 Nevada Bar No. 00854  
Terry.jackson.esq@gmail.com  
Counsel for Denzel Dorsey

11 **CERTIFICATE OF SERVICE**

12 I hereby certify that on the 14th of May, 2020, I served a true and correct copy of the  
13 foregoing Request for Transcripts on:

14  
15 TO: Matt Yarbrough, Court Recorder  
16 District Court, Department No.: XV  
200 Lewis Avenue  
17 Las Vegas, Nevada 89101

18 By: /s/ Ila C. Wills  
19 Assistant to Terrence M. Jackson, Esq.

20 **CERTIFICATE OF ELECTRONIC FILING**

21  
22 The undersigned hereby certifies that she is an assistant in the office of Terrence M. Jackson,  
23 Esquire, and a person of such age and discretion as to be competent to serve papers and that on this  
24 14th day of May, 2020, she served the Amended Transcript Request upon the parties to this action:

25 [X] Via Electronic Service (*Odyssey* eFile and Serve) to the Eighth Judicial District Court;  
26 [X] Via the United States Postal Service to the Nevada Court of Appeals , located at 408 E.  
27 Clark Avenue in Las Vegas, Nevada;  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

STEVEN B. WOLFSON  
Clark County District Attorney  
[steven.wolfson@clarkcounttyda.com](mailto:steven.wolfson@clarkcounttyda.com)

SANDRA DIGIACOMO  
Chief Deputy D. A. - Criminal Appeals  
[Sandra.digiacomo@clarkcounttyda.com](mailto:Sandra.digiacomo@clarkcounttyda.com)  
APPELLATE DIVISION

Matt Yarbrough  
Certified Court Recorder  
[yarbroughm@clarkcountycourts.us](mailto:yarbroughm@clarkcountycourts.us)  
(702) 671-4408

By: /s/ Ila C. Wills  
Assistant to T. M. Jackson, Esq.

...  
...



1 RTRAN

2  
3  
4  
5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA  
7

8 THE STATE OF NEVADA,  
9 Plaintiff,  
10 vs.  
11 DENZEL DORSEY,  
12 Defendant.

CASE#: C-17-323324-1  
DEPT. XV

13  
14 BEFORE THE HONORABLE JOE HARDY, DISTRICT COURT JUDGE

15 **RECORDER'S TRANSCRIPT OF PROCEEDINGS:**  
16 **EVIDENTIARY HEARING; DEFENDANT DENZEL DORSEY'S**  
17 **MOTION TO WITHDRAW GUILTY PLEA**

18 APPEARANCES

19 For the State: SANDRA DIGIACOMO, ESQ.  
Chief Deputy District Attorney

20 For the Defendant: GARY MODAFFERI, ESQ.  
21  
22  
23  
24

25 RECORDED BY: MATTHEW YARBROUGH, COURT RECORDER

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**LIST OF WITNESSES**

**PAGE**

**DAVEY DORSEY**

Direct Examination by Mr. Modafieri	8
Cross-Examination by Ms. DiGiacomo	16

**TAKIYA CLEMSON**

Direct Examination by Mr. Modafferi	60
Cross-Examination by Ms. DiGiacomo	64

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

TUESDAY, MAY 28, 2019 AT 10:37 A.M.

MS. DIGIACOMO: Good morning, Sandra DiGiacomo on behalf of the State.

MR. MODAFFERI: Good morning, Judge. Gary Modafferi on behalf of Mr. Dorsey. He's present in custody.

THE COURT: Okay. Good morning. So, are we ready to go forward?

MR. MODAFFERI: Yes, Judge.

MS. DIGIACOMO: The only issue that State sees if he is going to call the brother, Davey Dorsey. He's going to need independent counsel, Your Honor, because he will be taking the stand according to the affidavit and admitting to a crime.

THE COURT: Comment, response.

MR. MODAFFERI: Judge, Mr. Dorsey is present in the courtroom. I have not personally discussed that matter although my investigator has. And I'm not trying to put him in more jeopardy or other jeopardy than the declaration itself does, but he's willing at this point to take the stand and discuss what was written in the declaration and make himself available to us.

MS. DIGIACOMO: I understand he may be willing, Your Honor, but he has rights and he'll need to have independent counsel not Mr. Modafferi advise him of his rights.

MR. MODAFFERI: Well, Judge, I think the Court could do that. The Court could advise him and if he wants independent counsel

1 then he can get it. But I don't believe that the State -- I'm sure the  
2 State's not looking out for Mr. Dorsey at this point. I think that their  
3 interests are -- in having the Court canvass him and if he's not willing to  
4 waive he shouldn't testify. He wants counsel he should have counsel.

5 MS. DIGIACOMO: And, Your Honor, no. The State's interest  
6 here is protecting a potential Defendant who has a right to remain silent  
7 and has a right to the advice by counsel and it's not this Court's duty to  
8 do that.

9 THE COURT: Okay.

10 MS. DIGIACOMO: And I would ask that the witness be  
11 excluded from the courtroom at this time.

12 THE COURT: So, I will do a witness exclusion rule, but bear  
13 with me one moment.

14 MS. DIGIACOMO: Your Honor, if the Court has any questions  
15 I believe it would be Drew Christensen that the Court would need to  
16 contact regarding this issue to get him independent counsel.

17 THE COURT: So, I wish -- I'll state on the record I wish this  
18 had been raised at some other earlier point in time other than the  
19 morning of the continued hearing.

20 MS. DIGIACOMO: Well, I understand, but I don't know who  
21 they are actually calling until the morning of the hearing. When we were  
22 here last Thursday there was nobody outside.

23 THE COURT: I'm going to take a break, I'm going to take a  
24 break.

25 [Recess taken at 10:40 a.m.]

1 [Proceedings resumed at 10:53 a.m.]

2 THE COURT: Well, I'm going to go forward today. Again, it's  
3 hard for me to deal with things sometimes when they're not timely  
4 brought before me. But his younger brother hasn't been arrested, he's  
5 not been charged; is that right?

6 MS. DIGIACOMO: That's correct. But based upon what he  
7 testifies today that could change.

8 THE COURT: Oh, sure. Okay. So, I'm thinking because  
9 Defendant has the burden here they go first, but I don't know if you all  
10 have discussed anything like that.

11 MR. MODAFFERI: I was prepared to present the two  
12 witnesses, Judge.

13 MS. DIGIACOMO: And, Your Honor, my -- I did email the  
14 Court. My investigator -- my detective is out of the state on vacation this  
15 week. So, we would need to bifurcate the hearing.

16 THE COURT: I know we got an email and what else? There  
17 was no response from Defendant's side.

18 MR. MODAFFERI: Judge, whatever the Court deems  
19 appropriate I'm willing. I have no objection to whatever the Court thinks  
20 is the proper course of action.

21 THE COURT: So, we'll go forward with who's here, and we'll  
22 see if we need to hear more. Okay. All right. So, Defendant -- well,  
23 here's the other question then, I guess, Given that it's an evidentiary  
24 hearing and essentially a mini-trial, if you will, does either side want to  
25 make an opening statement or go right into the evidence and then do



1 closing arguments?

2 MR. MODAFFERI: I'm willing just to head into the arguments  
3 if that's okay --

4 THE COURT: Okay. That's fine.

5 MR. MODAFFERI: -- with the Court. I think the oppositions --

6 THE COURT: -- that's fine with me.

7 MR. MODAFFERI: -- are well outlined in our brief.

8 MS. DIGIACOMO: And that's fine with the State.

9 THE COURT: Okay.

10 MS. DIGIACOMO: We'll submit on the pleadings.

11 THE COURT: No; thank you both. And to be clear I have  
12 read on more than one occasion the parties' briefs. So, okay. And so  
13 closings may be today, maybe at the follow-up if we have one. All right.  
14 So, our first witness.

15 MR. MODAFFERI: Thank you, Judge. We call Davey Dorsey  
16 to the stand.

17 THE COURT MARSHAL: Davey Dorsey.

18 MR. MODAFFERI: Davey Dorsey, yeah.

19 THE COURT: And the exclusion of witness rule still in place.

20 MR. MODAFFERI: Thank you. Judge, just for record  
21 keeping, I have Mr. Dorsey's declaration that was appended to the  
22 motion and marked as Exhibit A -- excuse me -- David's is marked as B  
23 and Takiya's is marked as A.

24 MS. DIGIACOMO: And, Your Honor, I object to the admission  
25 of those as hearsay.

1 THE COURT: So, when and if they're requested to be  
2 admitted and we'll deal with that --

3 DAVEY DORSEY

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

6 THE COURT CLERK: For the record, please state and spell  
7 your first and last name.

8 THE WITNESS: Davey Dorsey, D-A-V-E-Y D-O-R-S-E-Y.

9 THE COURT: Have a seat, Mr. Dorsey. So, before we get  
10 into questions, Mr. Dorsey, you understand you're not required to make  
11 any statements today; right?

12 THE WITNESS: Yes.

13 THE COURT: You're here testifying voluntarily?

14 THE WITNESS: Yes.

15 THE COURT: You understand you're not under arrest?

16 THE WITNESS: Yes.

17 THE COURT: You've not been charged with any crime?

18 THE WITNESS: Yes.

19 THE COURT: You also understand, however, that what you  
20 say here may be used against you in a criminal proceeding; do you  
21 understand that?

22 THE WITNESS: Yes.

23 THE COURT: Okay. He's not under arrest. He hasn't been  
24 charged. You can go forward.

25 MR. MODAFFERI: Thank you.

**DIRECT EXAMINATION**

BY MR. MODAFFERI:

Q Good morning, Mr. Dorsey.

A Good morning.

Q Mr. Dorsey, do you recognize the person sitting at counsel table?

A Yes.

Q And who do you recognize him to be?

A That's my big brother, Denzel Dorsey.

Q And is he wearing the blue jump?

A Yes.

Q And he's seated next to me?

A Yes.

MR. MODAFFERI: Your Honor, the record reflect the identification by the witness?

THE COURT: Yes, it will.

BY MR. MODAFFERI:

Q On or about -- on or about November 28<sup>th</sup> of 2016, were you 17 years old at the time?

A Yes.

Q Are you the younger biological brother of the Defendant?

A Yes.

Q And on or about the 25<sup>th</sup>, did you ask Denzel Dorsey if you could borrow his car, a rental car?

MS. DIGIACOMO: Objection to leading, Your Honor.

1 THE COURT: Sustained.

2 BY MR. MODAFFERI:

3 Q On that day did you ask whether or not you could borrow a  
4 car?

5 A Yes.

6 Q And what did he say?

7 A Yes.

8 Q And what kind of car was it?

9 A A blue Suzuki.

10 Q Okay. And did you actually take the keys from him?

11 A Yes.

12 Q And did you receive the rental car keys in the afternoon hours  
13 of November 27<sup>th</sup>?

14 MS. DIGIACOMO: Objection; leading.

15 MR. MODAFFERI: Well, it's foundational, Judge.

16 THE COURT: And I apologize. I -- repeat the question  
17 because I didn't --

18 BY MR. MODAFFERI:

19 Q Did you take or receive the keys from Mr. Dorsey on  
20 November 27<sup>th</sup>, 2016 in the afternoon hours?

21 A Yes.

22 Q Do you -- to the best of your knowledge did Mr. Dorsey, your  
23 brother, have any knowledge about whether or not you were going to  
24 involve yourself in robbing or burglarizing a home?

25 MS. DIGIACOMO: Objection; leading and speculation.

1 THE COURT: Yeah. So, sustained as to leading the way the  
2 question was phrased; denied or overruled as to speculation.  
3 BY MR. MODAFFERI:  
4 Q Was it your intention at that point that you were going to  
5 burglarize a house?  
6 MS. DIGIACOMO: Objection, Your Honor, leading.  
7 THE COURT: That's also leading the witness.  
8 BY MR. MODAFFERI:  
9 Q What were you going to do with the car?  
10 A [Indiscernible] and try and get some money.  
11 Q Did you --  
12 MS. DIGIACOMO: I'm sorry. I can't understand the witness.  
13 THE COURT: Yeah, of course. I got the last part do  
14 something.  
15 THE WITNESS: Try and get some money.  
16 BY MR. MODAFFERI:  
17 Q And how were you going to do that, Davey -- Mr. Dorsey?  
18 A I was planning on -- I was going to rob something. I don't  
19 know.  
20 Q Okay. Did you on November 28<sup>th</sup> actually try to break into a  
21 house?  
22 A Yes.  
23 Q And was that house located at 27 --  
24 MS. DIGIACOMO: Objection; leading.  
25 MR. MODAFFERI: It's foundational, Judge.

1 MS. DIGIACOMO: It's not foundational when he's claiming --

2 THE COURT: So, counsel, there's -- I understand objections,  
3 but what I don't understand is being combative unnecessarily and  
4 raising voices. I mean there -- for one, there's no jury in here. It's just  
5 me. So, let's maintain our composure and go forward as reasonable  
6 attorneys.

7 MS. DIGIACOMO: Yes, Your Honor.

8 THE COURT: So, rephrase the question because now I don't  
9 even remember what it is.

10 MR. MODAFFERI: Okay, Judge. I'll do that.

11 MS. DIGIACOMO: Actually, may I be heard, Your Honor,  
12 before he rephrases?

13 THE COURT: Sure.

14 MS. DIGIACOMO: All right. What my objection is, is he is  
15 putting the address in Mr. Dorsey's mouth, so to speak. He called it  
16 laying foundation, however, this is the core issue what Mr. Dorsey is  
17 going to be able to give, you know, detailed as to what he did when he  
18 borrowed the car. It's -- I'm just objecting to Mr. Modafferi putting  
19 everything in his mouth for him. If he really did commit this crime, he  
20 should be able to say where he went, describe it, what he did.

21 THE COURT: Okay. So, the objection is now noted and  
22 rephrase or re-ask and let's see if there's still an objection. All right.

23 BY MR. MODAFFERI:

24 Q On November 28<sup>th</sup> of 2016, did you -- did you do anything with  
25 regard to breaking into someone else's house?

1 A Yes.

2 Q And was that -- do you recall the address?

3 A No, I don't but --

4 Q Not at this time?

5 A No, I don't, yeah.

6 Q If I were to show you the declaration that you gave to my  
7 investigator in this matter, would it refresh your memory as to the  
8 address?

9 A Yes.

10 MR. MODAFFERI: May I approach the witness, Judge?

11 THE COURT: Sure.

12 MR. MODAFFERI: And I'll show counsel page two of the  
13 declaration that's been marked for identification as Exhibit B.

14 MS. DIGIACOMO: Thank you.

15 BY MR. MODAFFERI:

16 Q Having looked at that is your memory refreshed as to the  
17 address involved?

18 A Yes.

19 Q And what is that address?

20 MS. DIGIACOMO: And, Your Honor, he's looking down. I'd  
21 ask that it be removed now.

22 THE COURT: Yeah, that's fair.

23 BY MR. MODAFFERI:

24 Q Do you remember the address, sir?

25 A 2731.

1 Q And do you remember the street?  
2 A No, but I can tell you it's in Henderson.  
3 Q Okay.  
4 A I can tell you that.  
5 Q That's fine, Mr. Dorsey. If I were to show you the exhibit  
6 again, would you be able to recall the street?  
7 A Yes.  
8 MR. MODAFFERI: May I approach, Judge?  
9 THE COURT: Sure.  
10 MR. MODAFFERI: And show counsel again.  
11 MS. DIGIACOMO: Mm-hmm.  
12 MR. MODAFFERI: Thank you.  
13 BY MR. MODAFFERI:  
14 Q Having looked at State's Exhibit B by identification, is your  
15 memory refreshed as to the actual street name?  
16 A Yes.  
17 Q And what is that?  
18 A 2741 Warm Rays Ave.  
19 Q Warm Rays Avenue did you said?  
20 A Yes.  
21 Q Okay. Now, once you were approximately what time did you  
22 get there, if you recall?  
23 A Approximately, like, one, two, like, afternoon -- like noon.  
24 Q It was in the afternoon --  
25 A It was in the afternoon.



1 Q -- about one or two o'clock?

2 A Yes.

3 Q And who was with you, if anyone?

4 A Nobody.

5 Q And can you explain to me what happened?

6 A I tried to break the door and when I did it somebody locked the

7 door. I broke a hole when I tried to unlock the door, and when I did it

8 somebody locked the door so I left.

9 Q And where did you go after that?

10 A I went to take -- drop the car back off to my brother.

11 Q And where did you drop it off to?

12 A Tenaya, at my sister's house.

13 Q What did Mr. Dorsey, your brother, have to do with planning

14 this attempted home invasion?

15 A Nothing.

16 Q Did he know about the attempted home invasion before it

17 happened?

18 MS. DIGIACOMO: Objection; speculation.

19 THE COURT: That's sustained.

20 BY MR. MODAFFERI:

21 Q Based upon your interactions with him, did he know about it?

22 A No, I told him I was going to a girl house.

23 Q So, nothing that you said would have informed him about what

24 you were about to do?

25 A No.

1 Q Did your brother, Denzel, have anything to do with assisting  
2 you after the attempted break-in, in hiding or disposing of any evidence?

3 A No.

4 Q I'm sorry?

5 A No.

6 Q Given what you've just told the Court, are you of the opinion  
7 that your brother was not involved in this matter?

8 MS. DIGIACOMO: Objection; relevance. It's his opinion.

9 THE COURT: You can rephrase.

10 BY MR. MODAFFERI:

11 Q Given what you've -- given what happened in this case, was  
12 your brother involved in this crime?

13 A No.

14 Q I'm sorry?

15 A No.

16 Q After your brother was arrested, did you try and tell people or  
17 anyone that it was in fact you that had done this crime and not your  
18 brother?

19 A Yes. I actually came to his first court date and I tried to talk to  
20 his attorney, but she, like, brushed me off, like, I don't got time. I  
21 actually came to Court -- this courtroom, actually.

22 Q And what were you trying to tell her?

23 A I was trying to confess and say it was me. I had the -- a  
24 affidavit. I had everything. I was trying to confess.

25 MR. MODAFFERI: All right, Judge. I have nothing further for

1 the witness, Judge.

2 THE COURT: Okay.

3 MS. DIGIACOMO: May I, Your Honor?

4 THE COURT: Sure. Thank you.

5 **CROSS-EXAMINATION**

6 BY MS. DIGIACOMO:

7 Q Thank you. All right. So, back in November of 2016, where  
8 were you living?

9 A I was living in California.

10 Q Okay. So, what were you doing here in Las Vegas on  
11 November --

12 A I was visiting.

13 Q You were visiting. So, when did you come and when did you  
14 leave?

15 A I can't tell you the exact dates, but I could tell you it was along  
16 October, like Halloween, then I left a little bit, like, December for  
17 Christmas and stuff.

18 Q And you were 17 at the time?

19 A Yeah, I just turned 17.

20 Q Were you in school?

21 A No, I graduated with [indiscernible]; I graduated early.

22 Q When did you graduate, in what year?

23 A 2016, Class of 2016.

24 Q What high school?

25 A Cal City High.

1 Q Where -- so you're visiting. Where were you staying while you  
2 were here in the fall of 2016?

3 A I was at my sister's house.

4 Q And who is your sister?

5 A Romeka Dorsey.

6 Q What is her address?

7 A I can't tell the exact address because she don't live over there,  
8 but I know it was on Tenaya Street or Tenaya, something like that.

9 Q So, she lives on Tenaya you just don't know the number??

10 A She don't live over there no more. She did.

11 Q No, but that's what I'm saying.

12 A Yes.

13 Q In fall of 2016 she lived on Tenaya?

14 A Yes.

15 Q Okay. And after you committed this attempted home invasion  
16 you went to Romeka's address on Tenaya?

17 A Yes.

18 Q And your brother was there?

19 A Yes. I dropped off the car.

20 Q Okay. So, let's go back. What day was it that you borrowed  
21 the car from him?

22 A It was -- this was the 28<sup>th</sup> so the 27<sup>th</sup>.

23 Q Okay. And where were you when you borrowed the car?

24 A I was at my sister's house, but I have to go get the car off  
25 Viking Street.

1 Q Okay. You were at which sister's house?

2 A Romeka.

3 Q Romeka. Okay. So, you had to go over to the Viking

4 residence to get it?

5 A Yes.

6 Q And how did you get to that Viking residence?

7 A I called Uber.

8 Q Okay. And whose residence was on Viking?

9 A It was -- I don't know. I'd say a friend of a friend, Aisha, I don't

10 know, somebody.

11 Q So, you go over to a residence on Viking you don't know who

12 owns it?

13 A Well, my brother is there so it's like it doesn't really matter.

14 Q Okay. And how did you know that your brother had a rental

15 car?

16 A I called him. I was on the phone and talked to him.

17 Q And you borrowed -- you planned to borrow the car over

18 night?

19 A Yeah. I actually called up to a girl house and I see a girl pull

20 up and I'm trying to be cool.

21 Q All right. So, you were asking to borrow the car to go see a

22 girl?

23 A Yes.

24 Q But you knew you were going to go rob something?

25 A No, but it just happened like that.

1 Q Okay. Well, previously when counsel was asking you why you  
2 borrowed the car you said you were going to go rob something?  
3 A Correct, but -- I don't know.  
4 Q Okay. So, when you took the car from your brother were you  
5 going to see a girl or were you going to go rob something?  
6 A I hit a few corners, you know.  
7 Q No. What does that mean hit a few corners?  
8 A Like I hit a few corners, that I made a few stops, and then I  
9 seen -- I see a chance. I thought it was, you know, opening so I took it.  
10 I wasn't, like -- I don't know.  
11 Q Okay. So, let me ask you this. Let's go back. When you  
12 went to borrow the car to go to a girl's house, is that what you were  
13 going to do?  
14 A Yes.  
15 Q So, does this girl live that you went to her house?  
16 A I didn't go to her house. That's what I'm saying.  
17 Q Okay.  
18 A I made a few stops.  
19 Q You made some stops. What time was it you borrowed the  
20 car?  
21 A It was around 12 and 1.  
22 Q Twelve or more. So, midnight?  
23 A Yeah, like the prior day.  
24 Q Okay. What does that mean midnight the prior day?  
25 A Like, the day the crime happened, the 27<sup>th</sup>. So, it was

1 basically still the 28<sup>th</sup> because it's 12, one o'clock.

2 Q Okay. So, you borrowed the car midnight between the 27<sup>th</sup>  
3 and the 28<sup>th</sup>?

4 A Yes.

5 Q Okay. And you made a few stops; where did you go?

6 A I stopped at a gas station, a smoke store.

7 Q Well, tell me this. Where was the gas station located?

8 A I can't -- I don't really know Vegas. I'm from California so I  
9 can't tell you, and it was three years ago. I can't just be, like, oh, it was  
10 --

11 Q Well, can you tell me which side of town it was on?

12 A On the east.

13 Q It was on the east side?

14 A Yes.

15 Q Okay. Now, where your sister lived on Tenaya that was on  
16 the west side?

17 A Yes, so I was driving.

18 Q So, you drove all the way to the east side to get gas?

19 A I was making stops.

20 Q I know. And I want to know what stops you made. So, what  
21 was your first stop?

22 A Gas station.

23 Q And that's all the way on the east side?

24 A Yes.

25 Q So, why were you driving over to the east side of town?

1           A     No reason.

2           Q     You don't know your way --

3           THE COURT: Pause, pause a moment, please. Do you know  
4 who that is?

5           MR. MODAFFERI: No one related to my side, Judge.

6           THE COURT: Go check. Okay. You can continue.

7           MS. DIGIACOMO: Thank you.

8 BY MS. DIGIACOMO:

9           Q     Okay. So, you go to the east side of town and you end up  
10 over there --

11          A     Yes.

12          Q     -- getting gas?

13          A     Yes.

14          Q     But you had no specific reason why you were driving to the  
15 east side?

16          A     Yes, but no.

17          Q     What was it? What's the yes but no mean?

18          A     I have to go pick somebody up.

19          Q     You had to go pick --

20          A     I had to go pick somebody up to get gas and put gas in the  
21 car.

22          Q     Okay. So, where did you go get the money?

23          A     Off of -- where was that. So, I can't -- I don't really know, from  
24 a friend.

25          Q     So, you went to go get money first from a friend to get gas?



1 A Yes.

2 Q Okay. And then where did that friend live?

3 A I don't recall, but it was on the east side of town.

4 Q Okay. What's his name or her name?

5 A I call him Dada.

6 Q Excuse me?

7 A We call him Dada.

8 Q Dada?

9 A Yeah, like D-A-D-A

10 Q What's his real name?

11 A Darnell, Daynell, something like that. I don't know.

12 Q Do you know his last name?

13 A No.

14 Q How did you meet him if you're not from Vegas?

15 A In California.

16 Q So, he's from California?

17 A Yes.

18 Q So, you drove all the way to the east side of town to pick up

19 money from Darnell to get gas for the car?

20 A Yes.

21 Q And what did you do next?

22 A I went to the -- to the smoke shop.

23 Q And where was that located?

24 A I don't know. You can't -- it was three years ago, ma'am. I

25 don't recall everything and specific dates and places, you know. I used

1 to be -- like Xanax. I used to be high, like, off Xanax. So, my memory is  
2 kind of bad.

3 Q So, bad back in or the fall of 2016 you were high on Xanax?

4 A High on Xanax, yes.

5 Q So, were you high on Xanax when you borrowed the car?

6 A No.

7 Q Okay. So, you went to a smoke store or shop and you don't  
8 know where it was?

9 A It was on the east.

10 Q On the east side?

11 A Because I go over there any way to go get the gas money.

12 Q And what did you go in and buy?

13 A Some [Indiscernible] and a soda.

14 Q Okay. Was there anyone else with you --

15 A No.

16 Q -- when you went to the smoke store?

17 A No.

18 Q All right. From the smoke store, where did you go?

19 A I basically just waited till the next day.

20 Q So, you just sat in the car waiting?

21 A Not sat in the car, but where did I go? Smoke shop. Yeah,  
22 basically, yeah, I did sit in the car waiting, actually, I actually did, I  
23 actually did.

24 Q So, what time was it when you hit the smoke shop?

25 A I don't recall.

1 Q Was it dark out or light out?

2 A Yes, it was no -- yeah, it was light. I don't know. Yes, it was  
3 dark, yes.

4 Q So, it's fair to say it would be somewhere between like  
5 midnight and five in the morning if it's dark out?

6 A Yes.

7 Q All right. And then after the smoke store shop, where did you  
8 go?

9 A I drove toward the Henderson area.

10 Q Okay. You drive towards Henderson; what do you do?

11 A I'm sitting in the car smoking and pop a Xanax.

12 Q Did you have a license at the time?

13 A No.

14 Q So, your brother allowed you to take a car and he knew you  
15 didn't have a license?

16 A Well, I told him I was going around the corner to a girl's house  
17 so you know.

18 Q Well, did he call you and ask you where you were with the  
19 car?

20 A I actually turned my phone off.

21 Q Okay. Why would you turn your phone off?

22 A Because I didn't want people to be calling me and stuff.

23 Q So, what, do you get a lot of calls between midnight and five  
24 or six in the morning?

25 A Yes.

1 Q And who normally calls you at that time?

2 A Drug people, Xanax people on drugs.

3 Q Were you selling drugs at the time or were you just buying  
4 drugs?

5 MR. MODAFFERI: I'm going to object, Judge. That goes  
6 beyond the scope.

7 MS. DIGIACOMO: It does not. It goes to his --

8 THE COURT: No, it doesn't. So, that's overruled.

9 MS. DIGIACOMO: Thank you, Your Honor.

10 BY MS. DIGIACOMO:

11 Q I'm sorry. You just said that you were just buying drugs?

12 A Buying and selling, yes.

13 Q Were you buying and selling in Vegas or in California?

14 A Both.

15 Q So, when you were staying here in Las Vegas for that month  
16 to six weeks, you said that you were staying at your sister's house?

17 A Yes.

18 Q And what was your phone number back then?

19 A 661-350-2850.

20 Q Is the 661 area code, where is that?

21 A Lancaster, California.

22 Q Okay. And what was your brother's phone number?

23 A I don't recall.

24 Q Okay. But if I was to pull your records it would show calls  
25 between you and your brother and then your phone off from 12 to five in

1 the morning; correct?

2 A Yes.

3 Q Okay. So, you sat in the car. How long did you sit in the car  
4 for?

5 A Until the morning.

6 Q Where did you sit in the car?

7 A What do you mean where?

8 Q Where was the car parked that you were sitting in it for a  
9 couple hours or until the next morning?

10 A I was at a park.

11 Q Did you ever go to sleep?

12 A Yes.

13 Q Where did you sleep?

14 A I was in the car.

15 Q Now, you know that your brother is a convicted felon; correct?

16 A Correct.

17 Q And you know he's a convicted felon for doing residential  
18 burglaries?

19 A Correct.

20 Q Right. Have you ever talked to him about doing residential  
21 burglary?

22 A No.

23 Q Have you ever talked to him about committing any crimes?

24 A No.

25 Q So, have you ever previous to November 2016 committed any

1 sort of robbery or residential burglary?

2 MR. MODAFFERI: Again, I'm going to object to the  
3 relevance, Judge.

4 THE COURT: In response?

5 MS. DIGIACOMO: Your Honor, it just goes to his credibility.

6 THE COURT: Well, credibility --

7 MS. DIGIACOMO: It also acknowledges what he did.

8 THE COURT: But also the -- let's see -- the declaration and  
9 the motus operandi or however you want to say it. So, that's all. It's  
10 overruled.

11 MS. DIGIACOMO: Thank you, Your Honor. You can answer  
12 the question.

13 THE WITNESS: Not no home invasion, but petty theft.

14 BY MS. DIGIACOMO:

15 Q You've done petty thefts before. And when you did those  
16 petty thefts, was it -- like, can you describe what -- what you do?

17 A I took a phone from the -- you know.

18 Q Like, from a store or from another person?

19 A From a store, from another person.

20 Q Okay. So, you're in a store and you see a phone and you just  
21 took it?

22 A I was at school.

23 Q Oh, you were at school. Okay. What else have you done?

24 A Actually, yeah, that's pretty much -- I had a -- no, that's pretty  
25 much it.

1           Q     Okay. So, you -- prior to this residential burglary you had  
2 done one petty theft where you stole somebody's phone at school?

3           A     I had -- I have some other charges but they were dropped and  
4 it doesn't even --

5           Q     Well, tell me what other charges you have, please?

6           A     What's that called, armed burglary.

7           Q     Okay. So, where you -- what was the burglary of, a business  
8 or a house?

9           A     Business.

10          Q     And what happened?

11          A     I was found not guilty; I beat the case.

12          Q     No, that's not what I'm asking you. What happened, like,  
13 where -- what business --

14                THE COURT: Like factually speaking, is that what --

15                BY MS. DIGIACOMO:

16          Q     Yeah, factually speaking. Not what happened with your case.  
17 Sorry.

18          A     Well, I was with some friends and we was pretty much up to  
19 no good, and then they went into the store. I had a chain on and I had  
20 my friend wear the chain. So -- and I put my chain back on and I was  
21 walking down the street; I got pulled over by the police --

22          Q     So, you had a match --

23          A     -- because my chain matched the description.

24          Q     Okay. So, your friends went in and did an armed robbery of a  
25 store?

1 A Yes.

2 Q But you found not guilty --

3 A Yes.

4 Q -- because you were outside?

5 A Yes.

6 Q Were you the lookout?

7 A No.

8 Q Okay. Anything else that you've been involved in prior to

9 November of 2016?

10 A No, that's -- that's it.

11 Q Okay.

12 A Because I got violated. I was on probation and I got violated

13 and I went to jail.

14 Q You were on probation for which?

15 A For petty theft.

16 Q For the phone?

17 A Yes.

18 Q And then after the armed robbery then you went to jail?

19 A Yes.

20 Q And then after you got out of jail you hadn't done anything

21 else in California?

22 A No.

23 Q Okay. And then you're here, you're in the car. You said you

24 slept some, and then what happened?

25 A The next day I was riding around then --



1 Q Okay. So, you're riding around where?

2 A In the Henderson area.

3 Q Okay. Describe the area that you're riding around in?

4 A I can't do that, ma'am.

5 Q You can't tell me a store you passed, a gas station you saw --

6 A No.

7 Q -- a neighborhood, a street sign?

8 A No.

9 Q You can't tell me any specifics about where you were driving  
10 in Henderson?

11 A Ma'am, I was high on Xanax. If you are aware, Xanax, you  
12 kind of lose your memory. I was high on Xanax.

13 Q Okay. So, if you were high on Xanax and you have no  
14 memory of any street or --

15 A I didn't say no memory.

16 THE COURT: Whoa, whoa, hold on. We have to take turns.  
17 So, she's in the middle of --

18 THE WITNESS: Okay.

19 THE COURT: -- asking her question. When she's done you  
20 can answer if you can or your brother's attorney can object if he thinks  
21 it's inappropriate, but wait until she's done with her question. So, you  
22 can restart it.

23 BY MS. DIGIACOMO:

24 Q Thank you. I'm sorry. So, this morning of November 28<sup>th</sup>  
25 you're so high on Xanax you can't remember any buildings you saw, any

1 street signs you saw, any landmarks you saw; correct?

2 A I don't recall.

3 Q You don't recall.

4 A I don't recall.

5 Q You don't recall what?

6 A Seeing any of that, but I -- that I passed it by and I can't say,  
7 oh, so this, this. I'm not really familiar with Vegas.

8 Q Okay. But -- so, it's fair to say as you sit here today three  
9 years or whatever it's been, two and a half years later, you can't  
10 remember any street signs you saw, any landmarks, businesses, Jack-  
11 in-the-Box, anything?

12 A Yes.

13 Q Okay. So, then how is it that you know that you were at the  
14 Warm Springs Street?

15 A There's paperwork -- I didn't --

16 Q So, what was the name of the street where you did this  
17 burglary?

18 A Warm -- Warm Rays Ave.

19 Q Okay. And so -- and you said it was paperwork that told you  
20 that; correct?

21 A No, it was paperwork that recalled my memory. Not in my  
22 memory, but I know it was something; but I have to look at the  
23 paperwork.

24 Q Okay. What paperwork did you see that jogged your memory,  
25 sir?

1           A     My affidavit.

2           Q     Okay. So, when you saw your affidavit that jogged your  
3 memory as to where you were?

4           A     Right now, yes.

5           Q     Okay.

6           A     When I wrote it this was like -- like, when did I write my  
7 affidavit, like --

8           Q     How long ago did you do it?

9           A     I want to say last year around -- when we first -- when we first  
10 got arrested.

11          Q     Okay. So, if your affidavit is dated of February of this year  
12 that would be wrong?

13          A     That's when I got it notarized and everything. It was already  
14 wrote, if that makes sense.

15          Q     Okay. So -- but you -- you said it was last year that you spoke  
16 to somebody?

17          A     As soon as my brother was arrested for this case that I did, I  
18 know -- took -- wanted to take responsibility.

19          Q     Okay. So, you went to court?

20          A     I went to court.

21          Q     And you said it was this Court?

22          A     The same exact Court.

23          Q     The same exact Court. So, it was in this same exact location?

24          A     Yes.

25          Q     Okay. So, if I told you that his Court date, his first one, was in

1 Henderson not down here, does that change your memory?

2 A Well, I came here. I don't -- I was at this Court.

3 Q You were --

4 A I don't know if it was his first Court. It was probably like the

5 second or third, but I came to this courtroom. I could tell that's a fact.

6 Q When was the first time you told your brother?

7 A About what?

8 Q About doing -- you were the one that did the residential

9 burglary?

10 A When I found out he was in jail for it.

11 Q Okay. When did you find out he was in jail for it?

12 A Like, a couple days after he was arrested.

13 Q And who did you find out that from?

14 A My mom.

15 Q Where does your mom live?

16 A In California City.

17 Q What's her name?

18 A Keisha [phonetic].

19 Q Keisha what?

20 A Jones.

21 Q So, you found out your brother was arrested a couple days

22 after his arrest. What did you do? Did you go see him?

23 A No. I actually was thinking to myself what should I do and

24 then my brother he got recently just got out of jail. So, I didn't want him

25 to go back to jail so I'm, like, I'll take responsibility for my actions.

1 Q But you didn't take -- you weren't able to take responsibility?  
2 A I wasn't able to, yes.  
3 Q Okay. So, when was it back in 2016 in November did you go  
4 the police and say, hey, I'm the one that did this?  
5 A No, I came to Court.  
6 Q I'm asking you. Did you go to the police?  
7 A I said no I came to Court.  
8 Q Okay. Did you tell your brother?  
9 A After the fact.  
10 Q Okay. When was after the fact?  
11 A A couple days he was -- when he was arrested I told him it  
12 was me.  
13 Q Okay. How did you tell him that?  
14 A Over the phone.  
15 Q Okay. So, he called you from jail?  
16 A My mom.  
17 Q He called your mom from jail.  
18 A Yes. And I just happened to be at my mom's house and I said  
19 can I talk to him.  
20 Q Okay.  
21 A And I told him.  
22 Q So, there would be a jail call that you're recorded on you  
23 telling your brother I'm the one that did this; correct?  
24 A Yes.  
25 Q Okay. So, let's go back to you're driving around Henderson,

1 you don't remember any landmarks. Describe the street where you did  
2 this burglary?

3 A I can't describe the street. I can tell you there was a big glass  
4 door --

5 Q I'm not asking about the house yet. I want to know the street.  
6 Describe the street, describe the neighborhood.

7 A Suburbs. I don't know how to describe it. I don't get what  
8 you're asking me.

9 Q You can't -- I couldn't understand.

10 A I don't understand what you're asking me, like describe the  
11 streets.

12 Q I'm asking you to describe the neighborhood, describe the  
13 streets. What did the houses look like? What did the streets look like?

14 A I don't really recall all that. I wasn't really -- like, I was looking  
15 but I really wasn't looking, like, I don't --

16 Q All right. So, why -- let's go back then. At what point did you  
17 decide you're going to try to commit a crime?

18 A Well, I was high on Xanax and just thinking and it just came  
19 into my head.

20 Q Okay. So, it came to your head at what point?

21 A I don't get what you asking me.

22 Q At what point in the morning, like, before you went to sleep,  
23 after you woke up?

24 A After I was --

25 Q After you were asleep you woke up?

1           A     Yes.

2           Q     You decided I'm going to commit a crime?

3           A     Yes.

4           Q     Why were you going to commit a crime?

5           A     I needed some cash. I wanted to go -- I don't -- I don't get

6           what you're asking me [indiscernible].

7           Q     I'm asking you why you decided to commit a crime, what was

8           your motivation. Why did you -- as you're driving around --

9           A     Money, I needed some money.

10          Q     Okay. So, you needed some money?

11          A     Yes.

12          Q     Okay. So, why didn't you just go back to your friend to get

13          some more money?

14          A     Because I -- because my friend is not like my friend. I can't go

15          get 500 to \$1,000 from him.

16          Q     Okay. So, what did you need 500 to \$1,000 for?

17          A     Just for myself. I want -- I like my stuff.

18          Q     So, you like nice stuff?

19          A     Yes.

20          Q     But you weren't working at the time?

21          A     No.

22          Q     Other than you were selling or buying drugs?

23          A     Yes.

24          Q     How much were you making selling drugs?

25          A     It wasn't really a primary thing. So, I can't give you no

1 numbers, you know. It's just here and there.

2 Q Well, let me ask you this. Why did you decide to commit a  
3 crime to get money instead of just go and sell drugs?

4 A Because I got to buy -- you got to spend money to make  
5 money.

6 Q Okay.

7 A I needed to get more -- you know, I wanted to go get some  
8 stuff.

9 Q Who did you buy your drugs from in Vegas?

10 A I don't recall.

11 Q You don't recall a name, nothing?

12 A No, no.

13 Q Okay. Was his phone number in your phone?

14 A No. I would meet up with him.

15 Q How did you know to meet up with him if you don't have a  
16 contact number?

17 A On Messenger, Facebook.

18 Q Okay.

19 A It was like a group chat.

20 Q Okay. Was there here in Vegas or in California?

21 A Both, it was like a international thing.

22 Q Okay. So, you decide I need some money, I going to commit  
23 a crime; correct?

24 A Correct.

25 Q What crime did you decide -- like, did you think about many



1 different crimes to commit or did you just decide you were going to do a  
2 burglary?

3 A You asked how I decided really trying to make cash besides  
4 burglary.

5 Q I'm sorry. I can't hear you.

6 A I said what other way is there the way to make cash besides  
7 burglary, you know.

8 Q What other ways?

9 A Like you said, I was planning on doing, like, committing a  
10 crime, what other crimes can you commit to get money besides burglary.

11 THE COURT: Well, she gets to ask you the questions.

12 BY MS. DIGIACOMO:

13 Q Okay. Well, armed robbery of a store would get you money;  
14 correct?

15 A It's still burglary though. Robbery, burglary is still the same  
16 kind of a--

17 Q What about mugging somebody on the street?

18 A No, I don't [indiscernible].

19 Q Okay. So, you just decided I'm going to do a burglary?

20 A Correct.

21 Q Okay. How many houses did you look at before you decided  
22 on the house you were going to burglarize?

23 A Probably two or three.

24 Q Okay. And what did you do to decide? What made your  
25 decision for you?

1           A     Cars in the driveway, cameras, and stuff like that.

2           Q     Okay. So, let's talk about the first house you were looking at.

3     What kept you from doing the burglary of that house?

4           A     I seen a camera across the street.

5           Q     Okay. The next one. What kept you from doing that one?

6           A     Somebody came outside.

7           Q     Okay. And then what about the next one?

8           A     Nothing stopped me. I actually tried to.

9           Q     Oh, so the third house was the one that you tried?

10          A     Yes.

11          Q     All right. So, you pull up in your car. Where do you park?

12          A     Kind of like the house next to it but like in the front.

13          Q     Okay. So, like, if I'm seeing looking at the house that you

14     decided to burglarize, where did you park your car?

15          A     I was towards the left, the house to the left in the front of it.

16          Q     To the next neighbor?

17          A     Yes.

18          Q     Okay. And you were in front of that house?

19          A     Yes.

20          Q     All right. What are you wearing?

21          A     I had like a sweater vest, like a sweater and a vest.

22          Q     Okay. So, you're now making a motion with your hand all

23     over your chest and down your front.

24          A     A sweater with a vest on it.

25          Q     Okay. So, long sleeved was my point.

1           A     A sweater with a vest on it.

2           Q     Okay. So, you're wearing a long sleeved sweater; correct?

3           A     Correct; yes.

4           Q     Okay. When you get out of your car, what's the first thing that

5     you do?

6           A     I looked around.

7           Q     Okay. What's the next thing you do?

8           A     I proceeded towards the door.

9           Q     Then what did you do?

10          A     I looked, went around back. I was looking. Then I -- that's

11     when I did the [indiscernible].

12          Q     All right. When you went around back, did you get all the way

13     in the backyard?

14          A     Yeah.

15          Q     How did you get into the back yard?

16          A     The side door or the gate.

17          Q     Okay. You go through the gate. And you said you were

18     looking, are you looking in the windows?

19          A     Yeah, just looking around, yeah.

20          Q     All right. Did you see what you liked?

21          A     I wasn't really looking for nothing like that. I was looking to

22     see if the people was home.

23          Q     Okay. Was anybody at home that you could see?

24          A     Well, I didn't see nothing so I attempt.

25          Q     Okay. So, what did you do?

1           A     I went back around the front and I punched a hole in like the  
2 glass door and I tried to unlock the door and when I tried to unlock it  
3 somebody locked it back.

4           Q     Okay. So, let's break that down. So, you were in the back  
5 yard; correct?

6           A     Correct.

7           Q     And you go back to the front door?

8           A     Right.

9           Q     All right. And the back yard, there's a sliding glass door;  
10 correct?

11          A     Correct.

12          Q     Okay. And there's also windows in the back of the house;  
13 correct?

14          A     Correct.

15          Q     All right. So, you go back around to the front of the house and  
16 you said you punched your hole -- a hole through the door?

17          A     Correct.

18          Q     All right. As you're looking at --

19          A     It's -- it's a glass door. I don't mean to cut you off. So, the  
20 front, I could see through the back yard, if it makes sense.

21          Q     Okay.

22          A     I could see straight through the house.

23          Q     Okay. Perfect. So, now you're standing at the front door?

24          A     Correct.

25          Q     Describe what the door looks like.

1           A     It was like glass, like -- kind of like the corridor right there, like  
2 a glass two-door.

3           Q     I'm sorry. Did you say -- I'm having a hard time hearing you.

4           A     It was like glass two door, like kind of like similar to the  
5 courtroom door.

6           Q     Okay. So, it was two doors next to each other?

7           A     Yeah.

8           Q     And they were both glass?

9           A     Yeah.

10          Q     Okay. Was it just clear glass that you could see through to  
11 the back?

12          A     Yes.

13          Q     Okay. So, no design or --

14          A     It was designs but you could still see through.

15          Q     What was the design?

16          A     I don't recall.

17          Q     Okay. What do you mean it was a design?

18          A     It was like -- you know -- I don't know, I don't know.

19          Q     Well -- I. Okay. You, as you're sitting here, said you that  
20 remember a design. I'm asking you what you mean by that?

21          A     It was like -- I don't know. It was nice doors, a design. I don't  
22 know.

23          Q     Okay. Was it clear, was it -- so it was frosted? Was it -- what  
24 was it? You said before it was a clear door --

25          A     It was a clear and you could see straight through the house,

1 ma'am.

2 Q So, as you're standing at the front door you could see straight  
3 through to the back?

4 A Straight through to the back.

5 Q Okay. Was it a one story or two-story house?

6 A It was a two-story.

7 Q All right. And so when you walked up to the front door you  
8 immediately punched a hole through the glass door?

9 A Correct.

10 Q As you're standing there looking at the glass doors, did you do  
11 the one on the left or the right?

12 A I can't recall if it was left or right just like that, but whatever  
13 side the lock was on 'cause I unlocked the door.

14 Q So, the door that would open and walk that's the one that you  
15 did?

16 A Correct.

17 Q What did you use to make the hole?

18 A My fist.

19 Q Which fist?

20 A My right.

21 Q Your right -- your right fist?

22 A Correct.

23 Q And you said you were wearing a sweater so you just had  
24 bare knuckles as you --

25 A I had a glove.

1 Q You had a glove?

2 A Yes.

3 Q Okay. What did the glove look like?

4 A It was like a biker glove.

5 Q A biker glove. So, what color was it?

6 A I can't recall, but it was a glove.

7 Q Well, was it like a light colored glove, a dark colored glove?

8 A Light colored -- no, dark colored. It was bluish colors.

9 Q What did you get that glove from?

10 A I always have it.

11 Q Do you always carry one glove with you?

12 A No, but I just did that day.

13 Q Okay. So, you had one glove with you?

14 A No, I have two gloves.

15 Q Okay. Where was the other glove?

16 A What do you mean?

17 Q Well, one's on your right hand when you punched the door.

18 Where's the left-handed glove?

19 A In the car.

20 Q So, you didn't put two gloves on to do this burglary?

21 A No.

22 Q Okay. So, you used your right hand to punch the door. What

23 do you next?

24 A I tried to unlock it and when I did that somebody locked it so I

25 left.

1 Q Okay. When you left, did you see the person who locked the  
2 door?

3 A No, I ran.

4 Q You ran. To where?

5 A Back to the car.

6 Q Okay. And you didn't see whether or not anybody else was in  
7 the street when you ran back to the car?

8 A No.

9 Q And if I have this correct, you go from the back yard to the  
10 front door and immediately punch a hole?

11 A Something like that, yes.

12 Q Well, you tell me.

13 A I don't recall, ma'am. You're like trying to make me remember  
14 stuff that I don't know. You got me second guessing things because I  
15 don't recall things.

16 Q Well, I'm just asking if anybody --

17 A You're kind of like antagonizing me.

18 Q No, sir. I'm just trying to ask you details about this burglary  
19 you say you committed.

20 A All right.

21 Q When you looked through the window you said you could see  
22 to the back; did you see anything else?

23 A No.

24 Q Did you see anyone around?

25 A No.



1 Q Do you remember what rooms you were looking at?  
2 A Kitchen, living room, yeah.  
3 Q Okay. When you punched your -- the hole through the  
4 window, did you immediately reach in to try to unlock the door?  
5 A Yes.  
6 Q Which hand did you use to try to unlock the door?  
7 A My right.  
8 Q So, the same hand that had the glove?  
9 A Yes.  
10 Q And it was at that time somebody was there and locked the  
11 door as you were trying to open it?  
12 A I seen somebody coming down the stairs and they locked it.  
13 Q At what point was it that you saw somebody coming down the  
14 stairs?  
15 A After I broke the hole and tried to unlock it. It was all in one  
16 motion. It was too fast to even --  
17 Q And before you put your hand through the window, you didn't  
18 like ring the doorbell or anything?  
19 A No -- well, yes -- no, actually no. I actually knocked on the  
20 door.  
21 Q Okay.  
22 A I actually knocked on the door.  
23 Q Okay. You knocked on the door to see if somebody was  
24 home?  
25 A Yes.

1 Q And nobody answered?

2 A And that's why I went around back to double check.

3 Q Okay. So, you went up and knocked on the front door and

4 then went around back, then came back and immediately punched a

5 hole in the window to the door?

6 A Yeah.

7 Q Okay. And the address that was in your affidavit, what made

8 you remember that part of your Xanax induced morning?

9 A Actually -- can you say that again?

10 Q Well, you told me before you don't remember any street signs,

11 or any restaurants, buildings that you had passed that morning.

12 A Correct.

13 Q But you said at the time that you gave your statement to the

14 Defense --

15 A Correct.

16 Q -- to your brother's attorney, you knew that the address was

17 the 2731 Warm Rays?

18 A Well, actually, I went to Court for my brother and they was

19 talking about it and they kind of like -- oh, then when I talked to the

20 attorney, he kind of like -- he, like, refreshed my memory, like, this, this

21 and that, and I'm like, yeah, that was.

22 Q Okay. Now, do you have a moniker or anything?

23 A Nickname, no.

24 Q Okay. So, you don't go by anything like your buddy goes by

25 Dada?

1 A I'm Davey.

2 Q I'm sorry. You just go by Davey?

3 A Yes.

4 Q Who's Slick?

5 A Slick. I don't know.

6 Q You don't know anybody named Slick?

7 THE COURT: Is that a no?

8 THE WITNESS: No.

9 BY MS. DIGIACOMO:

10 Q All right. So, when you leave to leave this residence, where  
11 do you go?

12 A I tried -- I was going back to my sister house.

13 Q Okay. And how did you get there?

14 A I drove.

15 Q Okay. What streets did you take to get there?

16 A I don't know, ma'am.

17 Q Did you take freeways or did you take streets?

18 A I took the freeway; I GPS'd it.

19 Q You GPS'd it?

20 A Yes.

21 Q And where does your sister live?

22 A On Tenaya.

23 Q On Tenaya. Okay. Did you go anywhere else in between this  
24 residential burglary house and your sister's house on Tenaya?

25 A I probably did but I don't know if I did.

1 Q You say probably, like, where would you have gone?  
2 A Actually, no I didn't, no I didn't.  
3 Q You went straight there?  
4 A Yeah, went straight there.  
5 Q Okay. And then when you got to your sister's house what  
6 happened?  
7 A I had my brother drop me off.  
8 Q I'm sorry?  
9 A My brother was over there -- no, yeah, no, I picked him on  
10 Lindell. I went to Lindell first to drop the car back off to my brother.  
11 Q Okay. What's Lindell?  
12 A I don't recall, but I just know it was a street, Lindell Street.  
13 Q Well, who's house was it?  
14 A I don't recall but my brother was there.  
15 Q How did you find out that your brother was there?  
16 A Because I called him and he was calling me asking for his car  
17 back.  
18 Q Okay. And that's the first time he had asked you for his car  
19 back?  
20 A Yes. Well, my phone was off. So, when I finally turned it on  
21 he was calling.  
22 Q At what point did you finally turn on your phone?  
23 A The next morning.  
24 Q Okay. Before or after you did the residential burg?  
25 A Before. But my phone was off all night, if that makes sense.

1 Q Okay. So, you went -- the next place you went was to pick up  
2 your brother at Lindell?  
3 A Yeah, and I got dropped off.  
4 Q Got dropped off where?  
5 A To my sister house.  
6 Q On Tenaya?  
7 A On Tenaya.  
8 Q Okay. So, where did you get dropped off? You said your  
9 sister's and that's on Tenaya; correct?  
10 A Correct.  
11 Q All right. Now, in your statement, your affidavit, you put that  
12 you drove to where your brother was and then your brother dropped you  
13 off at Lindell?  
14 A Well, I got the streets mixed up. I know it was one of the two.  
15 Q Okay. But do you know where your sister lives?  
16 A On Tenaya.  
17 Q So, she doesn't live on Lindell?  
18 A No.  
19 Q So, who lives in Lindell that you get dropped off there?  
20 A Where I'd get dropped to? I went to a female friend house.  
21 Q So, who is this female that lives at Lindell?  
22 A Antoinette [phonetic].  
23 Q Antoinette what?  
24 A I don't know her last name.  
25 Q Do you still know her?

1           A     No -- yeah, but I don't talk to her.

2           Q     Okay. So, after you guys went to Lindell that's where you got  
3 dropped off?

4           A     Correct.

5           Q     Okay. So, then in your statement it says that after you picked  
6 up your brother at some residence he and you drove to Lindell and that's  
7 -- you were referring to that as Romeka's house, but that wasn't  
8 Romeka's house it was a female, Antoinette's house?

9           Q     Correct. So, your affidavit is incorrect; correct?

10          A     Correct. No, my affidavit is correct. That's correct; that's  
11 facts.

12          Q     So, when it says that you got out of the car at your sister's  
13 house on Lindell at Romeka's that's correct?

14          A     Correct.

15          Q     So, she lives on Lindell not Tenaya?

16          A     That's I don't -- I don't know.

17          Q     You don't know?

18          A     She don't live there no more.

19          Q     But you were you staying there for above five or six weeks in  
20 the fall of 2016?

21          A     I wasn't just at her house, correct.

22          Q     Okay. But you said previously that you knew she lived on  
23 Tenaya, but now you're saying that it's Lindell?

24          A     I guess.

25          Q     You guess. You don't know?

1           A     Ma'am, it was three years ago. I was on Xanax. I don't know  
2     you're trying to make me remember stuff.

3           Q     Okay. So, what you're saying is you were high on Xanax and  
4     you just can't remember what happened back in November 28, 2016?

5           A     Pretty much, yes.

6           Q     Pretty much. Okay. So, do you even know if you did this  
7     residential burglary?

8           A     I know for a fact I did.

9           Q     Okay. So, you're not just coming in to help your brother out  
10    since he's looking at habitual criminal treatment?

11          A     I wouldn't even do that. I wouldn't jeopardize my life for  
12    nobody.

13          Q     Did you go to an address on Viking?

14          A     That's where I picked the car up if I'm not mistaken.

15          Q     Okay. So, let me go back. You don't know where you picked  
16    up the car; you think it's Viking?

17          A     If I'm not mistaken.

18          Q     Okay. Do you -- and you said that when you got the car at  
19    midnight you went straight over to the east side of town to Henderson;  
20    correct?

21          A     Somewhat.

22          Q     Okay. What does somewhat mean, sir?

23          A     'Cause I didn't go straight to Henderson. I went to the east  
24    side first to go get the gas and then drove toward the Henderson area.

25          Q     Okay. So, define what you mean by east side?

1           A     Like the eastside of Las Vegas.

2           Q     Okay. So, where?

3           A     Where was that? I don't even know so I can't even say. I'm

4     not familiar with --

5           Q     Okay.

6           A     If this was California I would be telling you.

7           Q     Okay. So, you just went to the generic eastside and then you

8     ended up in Henderson?

9           A     Correct.

10          Q     Do you remember how you got to Henderson?

11          A     What do you mean how I got there? I drove, ma'am.

12          Q     I know you drove. But did you take the street, did you take the

13     freeway?

14          A     I took the freeway.

15          Q     What freeway did you take?

16          A     Whatever freeway it is on GPS.

17          Q     Okay. So, why did you GPS to go to Henderson?

18          A     Because there's big houses.

19          Q     In Henderson?

20          A     In Henderson.

21          Q     And who told you there were big houses in Henderson?

22          A     I actually been over there and I seen houses.

23          Q     Well, there's big houses on the westside too; correct?

24          A     Correct.

25          Q     But you wanted to go to the big houses in Henderson?



1           A     I was trying to go out of my -- you know, I wasn't trying to do  
2 where I be at.

3           Q     Okay. So, after you did the residential burg you then went to  
4 your sister's house and it's now on Lindell; correct?

5           A     Correct.

6           Q     And when you went to get the car the night before from your  
7 brother it was on Viking?

8           A     If I'm not mistaken, correct.

9           Q     After you got dropped off at your sister's house on Lindell, you  
10 were done with the car and you didn't go anywhere else with your  
11 brother?

12          A     Correct.

13          Q     But he left?

14          A     Yes.

15               MS. DIGIACOMO: Court's indulgence.

16               THE COURT: Sure.

17               BY MS. DIGIACOMO:

18          Q     You said you tried to report to the female attorney. Your  
19 brother's had multiple attorneys. Did you ever try and talk to any of the  
20 other attorneys?

21          A     Just this one and the first one I tried to.

22          Q     Okay. Did you -- so -- but it's fair to say though a few days  
23 after the crime your brother knew you were the one that did it because  
24 you told him that on the phone; correct?

25          A     Correct.

1 Q And you were never subpoenaed to come to Court in May of  
2 2017; correct?

3 A Correct. I tried to come to Court, but the attorney didn't -- she  
4 didn't want to listen to what I have to say.

5 Q And when was it that you first met with an investigator before  
6 your brother's attorney?

7 A I don't recall, but I know it was this year.

8 Q I'm sorry, this year?

9 A This year.

10 Q So, it wasn't last year like you said before, it was this year?

11 A I know with his people?

12 Q Yes.

13 A Yes. And I think the affidavit was last year.

14 Q Who did you write the affidavit with?

15 A I actually, like, typed it up, like, you know, I typed it up, and I  
16 had like the original agreement I wrote by myself and I went to get it  
17 notarized.

18 MS. DIGIACOMO: Your Honor, may I approach?

19 THE COURT: Sure.

20 MS. DIGIACOMO: Thank you. And may I also approach the  
21 witness?

22 THE COURT: Sure.

23 BY MS. DIGIACOMO:

24 Q All right. So, I'm going to show you, sir, what's been marked  
25 as State's Exhibit -- excuse me -- Defendant's proposed Exhibit B. It is

1 a three page document. I'll show you page three first.

2 A Correct.

3 Q Is that your signature?

4 A Yes.

5 Q Okay. And page two that's your --

6 A Yes.

7 Q You got to let me finish. Sorry. This is being recorded so we

8 can't talk on top of each other. So, the bottom of page two, are these

9 your initials?

10 A Yes.

11 Q And the bottom of page one this is your initials?

12 A Yes.

13 Q And looking at this document, this is the one that you typed

14 up?

15 A No.

16 Q Okay. What -- are these -- it might be in the form, but are

17 these the words that you typed up?

18 A Yeah, but no. I have wrote, like, I typed -- on the screen I

19 typed it.

20 Q So, where is that original typed statement you made?

21 A I have no clue now.

22 Q Who did you give it to you?

23 A I don't know, I don't know.

24 Q So, you typed it up but you don't know who you gave it to?

25 So, it wasn't your brother's counsel that's sitting in the courtroom here

1 today?

2 A Yes, I think -- yeah, that's what happened, yeah, oh, yeah.

3 Q Okay. So, you typed something up and gave it to this attorney  
4 that's in Court?

5 A Probably still got it as a matter of fact.

6 Q Okay. Where would it be?

7 A At my mom's house or something like that or something.  
8 Probably still got it.

9 Q Okay. But that statement you typed up, is what this was made  
10 from?

11 A Correct, correct.

12 Q So, you would have had to have given that statement to  
13 whoever typed this up?

14 A Actually when -- I don't know about when this was typed up,  
15 but I actually went to his office and talked to him about it, talked to his  
16 investigators about it.

17 Q Mm-hmm.

18 A And that's probably where all this -- this came from.

19 Q So, that's where Defendant's proposed Exhibit B came from.  
20 They took your words and wrote it down?

21 A Yeah.

22 Q Okay. And were you the one that crossed out your address?

23 A No, the investigator did.

24 Q Okay.

25 A He did that.

1 Q Okay. Because you told him that that --

2 A That's not my address no more. This is where I was living --

3 Q Mm-hmm.

4 A -- at the time, but then this is where I was at when I was  
5 talking to the investigator. That's where we pulled up to. That's where I  
6 was at.

7 Q Now, is it fair to say you didn't remember dates of the crime,  
8 that they would have filled that in for you? You just knew when your  
9 brother got arrested?

10 A Yeah.

11 Q Okay. Is it also fair to say that you didn't remember the exact  
12 address; they filled that in for you?

13 A No, I knew the, like, not the area but Henderson I knew that.

14 Q You knew it was in Henderson. And who's your cell phone  
15 provider that you had back in 2016?

16 A Metro.

17 Q You said the house was a two-story; what color was it?

18 A I don't recall.

19 MS. DIGIACOMO: I have nothing further.

20 MR. MODAFFERI: Nothing further. Thank you, Mr. Dorsey.

21 THE COURT: Thank you, sir.

22 MR. MODAFFERI: Judge, I do have one more witness, but  
23 I'm not sure how the Court is --

24 THE COURT: Of course. So, if it's estimated about the same  
25 length, I assume, probably?

1 MS. DIGIACOMO: Yes, Your Honor.  
2 THE COURT: Okay. Let's take our lunch break and come  
3 back at 1:14.  
4 MR. MODAFFERI: Judge, I have a -- yes, that should be fine.  
5 I have a 1 o'clock before Judge Brown. It'll be in and out.  
6 THE COURT: Well, let's say 1:30 then.  
7 MR. MODAFFERI: Thank you.  
8 MS. DIGIACOMO: Okay. I have -- I'm starting trial so I have  
9 pre-trials this afternoon. All right.  
10 MR. MODAFFERI: I can be here as soon as, you know  
11 probably like 1:15 probably and get her on the stand. I'm not going to  
12 take -- with the other witness, I'm just going to take approximately five or  
13 ten minutes with him.  
14 MS. DIGIACOMO: Right.  
15 THE COURT: Okay.  
16 MS. DIGIACOMO: I'm not going to be longer, Your Honor.  
17 Can we leave our stuff here then, Your Honor?  
18 THE COURT: Yeah, yeah.  
19 MS. DIGIACOMO: Thank you.  
20 MR. MODAFFERI: Thank you, Judge.  
21 [Recess taken at 12:01 p.m.]  
22 [Proceedings resumed at 1:40 p.m.]  
23 THE COURT: Okay. Are we ready for the next witness?  
24 MR. MODAFFERI: Yes, Judge.  
25 **TAKIYA CLEMONS**

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

3 THE COURT CLERK: For the record, please state and spell  
4 your first and last name.

5 THE WITNESS: Takiya Clemons, T-A-K-I-Y-A, Clemons is  
6 C-L-E-M-O-N-S.

7 THE COURT CLERK: Thank you.

8 THE COURT: Please be seated.

9 **DIRECT EXAMINATION**

10 BY MR. MODAFFERI:

11 Q Good afternoon, Ms. Clemons. Do you know a person by the  
12 name of Denzel Dorsey?

13 A Yes.

14 Q Do you see him in Court today?

15 A Yes.

16 Q Can you tell me where he is and what he's wearing?

17 A Next to you and he's wearing blue.

18 Q Okay. I can tell you're a little soft spoken. Could you please  
19 raise your voice so the judge and everyone can hear you. It's being  
20 recorded as well. Thank you.

21 A Okay.

22 Q Ms. Clemons, how do you know -- how do you know Denzel  
23 Dorsey?

24 A He's my child's father.

25 Q Okay. And how long have you known him?

1           A     Since I was 17.

2           Q     And at one point during the time that you've known him, were  
3 you approach by my investigator to give a statement about some of the  
4 events that occurred during November of 2016?

5           A     No.

6           Q     Do you remember filing out a declaration by the investigator?

7           A     Oh, yes, yes.

8           Q     And the events that you described in that declaration they  
9 revolved around November 27<sup>th</sup> and 28<sup>th</sup> of 2016?

10          A     Yes.

11          Q     Do you recall during that time whether -- where you were  
12 living?

13          A     On Viking with a friend.

14                MS. DIGIACOMO: I can't hear her, Your Honor.

15                THE WITNESS: On Viking with a friend.

16          BY MR. MODAFFERI:

17          Q     Okay. And who were you living there with?

18          A     Aisha Jones [phonetic].

19          Q     Okay. And is that an apartment complex there?

20          A     Yes.

21          Q     And you were dating Denzel Dorsey at that time?

22          A     Yes.

23          Q     And had you been dating him or had you been -- you've  
24 known him since the time you were 17. Had you been dating him since  
25 that time, on and off?



1           A     Yeah, on and off.

2           Q     I want to bring your attention to November 27<sup>th</sup> of 2016; were  
3 you working that day or were you off from work?

4           A     I was off.

5           Q     And can you just describe for me where you were and what  
6 you were doing?

7           A     I was at Aisha Jones' apartment and -- on my phone.

8           Q     Do you recall being with Denzel Dorsey that day?

9           A     Yes.

10          Q     And was he with you on the evening of November 27<sup>th</sup>, 2016?

11          A     Yes.

12          Q     Do you recall during that evening Davey Dorsey coming to the  
13 Viking Street address where you were?

14          A     Yes.

15          Q     And what happened?

16          A     Denzel, he went out and --

17                MS. DIGIACOMO: I can't hear her.

18                THE COURT: Yeah, you really got to speak up because  
19 we've said this three times.

20                MR. MODAFFERI: Can you speak into that microphone  
21 there? It might project your voice a little.

22                BY MR. MODAFFERI:

23           Q     What do you recall happening when Mr. -- who is Davey  
24 Dorsey, by the way? Let me ask you that.

25           A     He's Denzel Dorsey's brother -- little brother.

1 Q And did you see him on the night of November 27<sup>th</sup>?  
2 A Yes.  
3 Q Tell me what happened when you saw him?  
4 A Denzel Dorsey had gave him the keys to the car he was  
5 driving at the time.  
6 Q The car that he was driving at the time, was that a rental car?  
7 A Yes.  
8 Q And did Denzel -- besides taking the keys, did he actually take  
9 the car?  
10 A Yes.  
11 Q Davey Jones -- Davey Dorsey.  
12 A Yes.  
13 Q Davey Jones is a Monkee. All right. Did Mr. Denzel Dorsey  
14 stay with you that night?  
15 A Yes.  
16 Q Did he stay with you throughout the entire evening?  
17 A Yes.  
18 Q When was the next time that he actually left your presence or  
19 company?  
20 A The next day, the following day, maybe the afternoon around  
21 one or two.  
22 Q And how did he leave? Did his brother bring back his car, did  
23 he walk? How did he actually leave the car?  
24 A No. Davey Dorsey, he did bring back the car and Denzel  
25 Dorsey left with him.

1 MS. DIGIACOMO: I'm sorry. I can't understand -- hear that  
2 last part.

3 THE COURT: Yeah, could you repeat that for us?

4 THE WITNESS: Yes.

5 THE COURT MARSHAL: I have a lapel mic if she wants --

6 THE COURT: Yes, please.

7 BY MR. MODAFFERI:

8 Q So, tell me what you recall happening when they left? Did  
9 they leave together, did they leave in separate cars?

10 A Yes, they did leave together. Davey came and Denzel walked  
11 out. I gave him a hug and he left with Davey Dorsey.

12 Q At 11:55 a.m. on the 28<sup>th</sup>, do you recall whether or not Denzel  
13 was with you?

14 A Yes, he was with me. We didn't wake up until a little after  
15 that.

16 MR. MODAFFERI: At some point did Denzel -- well, I'll  
17 withdraw that. I have nothing further, Judge.

18 THE COURT: Okay.

19 MS. DIGIACOMO: Thank you.

20 MR. MODAFFERI: Judge, may the record reflect I'm returning  
21 what's been marked as Exhibit A to the clerk.

22 THE COURT: Yeah.

23 MR. MODAFFERI: Thank you.

24 THE COURT: Thank you.

25 **CROSS-EXAMINATION**

1 BY MS. DIGIACOMO:

2 Q All right, Ms. Clemons, you said that the Defendant is your  
3 child's father?

4 A Yes.

5 Q And how old is your child?

6 A She's one.

7 Q So, when was she born?

8 A February 20 -- I'm sorry -- February 15, 2018.

9 Q And so it's a girl?

10 A Yes.

11 Q And when is your -- what is your date of birth?

12 A February 25<sup>th</sup>, 1995.

13 Q So, you are 24?

14 A Yes.

15 Q Okay. And you've know Denzel since you were 17 -- you  
16 were 17? Sorry.

17 A Yes.

18 Q Is he older or younger than you?

19 A Older.

20 Q How much older?

21 A Two years.

22 Q Okay. Now, are you still together?

23 A Yes.

24 Q And you been consistently together since about 2012?

25 A Not consistent; on and off.

1 Q Okay. How long have you been consistently together this  
2 time?  
3 A Maybe 19, when I turned 19 to now.  
4 Q So, five years?  
5 A Yes.  
6 Q So, the last five years. So, since 2012?  
7 A When I was --  
8 THE COURT: No, you said five years and then 2012 so that's  
9 --  
10 MS. DIGIACOMO: Wait, what year is.  
11 THE COURT: 2019.  
12 BY MS. DIGIACOMO:  
13 Q I'm sorry. So, 2014?  
14 A Yes.  
15 Q Okay. Where -- did you meet him in California or here in Las  
16 Vegas?  
17 A Las Vegas.  
18 Q Okay. And so did you grow up here?  
19 A No. I'm from California. I moved out here back in 2012.  
20 Q Okay. And you met him when?  
21 A Around the time I moved out here, 2012.  
22 Q You met him right after you got here?  
23 A Yes.  
24 Q Okay. Now, in 2016 you were dating; correct?  
25 A Yes.

1 Q And he came over to your house. And why were you living  
2 with Aisha Jones [phonetic]?

3 A Because I didn't have nowhere else to go at the moment.

4 Q How long had you been living with her?

5 A Maybe about six months.

6 Q You said it was on Viking?

7 A Yes.

8 Q Where on Viking?

9 A Wynn -- like Wynn and Viking.

10 Q Wynn and Viking, W-Y-N-N?

11 A Yes.

12 Q So, on the west side of town.

13 A Yes.

14 Q Okay. What were you doing for work back in November of  
15 2016?

16 A I was working for Sutherland Global. It's like a call center.

17 Q I'm sorry. I'm still having a hard time hearing you.

18 A Sutherland Global.

19 Q Southern and Global?

20 A Sutherland Global Call Center.

21 Q Can you spell that?

22 A S-U-T-H-E-R-L-A-N-D Global.

23 Q Now, what kind of business is that?

24 A It's a call center, customer service, and it's with Direct TV.

25 Q Oh, Direct TV. Okay. How long had you worked there in

1 November of 2016?

2 A Maybe four months.

3 Q And how long did you work there total?

4 A About a year.

5 Q What were your days that you worked in shifts?

6 A It was changed a lot but didn't have like a set schedule. It  
7 changed after July when I worked there.

8 Q Did you work full time there?

9 A Yes, it was full time.

10 Q And I'm sorry, if I already asked you this, I don't recall it, but  
11 how long had you been living on the Viking address with Aisha in  
12 November of 2016?

13 A For about six months.

14 Q And how long did you live with her total?

15 A About nine months.

16 Q Did you have your own room or did you sleep on the couch?

17 A I slept on the couch, but she had a two bedroom and her  
18 daughter slept with her a lot of times, but sometimes I'd sleep on the  
19 couch --

20 Q But you didn't have your own --

21 THE COURT: So, hold on. Is the microphone turned off or  
22 something?

23 MS. DIGIACOMO: Yeah, it sounds like it is off.

24 THE COURT: It was coming in crystal loud and now --

25 MS. DIGIACOMO: She adjusted it and then it stopped.

1 THE WITNESS: Yeah, I tried to fix it but it was already off  
2 when I tried to fix it.

3 MS. DIGIACOMO: Oh, okay.

4 THE COURT MARSHAL: Could the batteries be dead? Is  
5 that light supposed to be on?

6 MS. DIGIACOMO: Wait, now the sound is one.

7 THE WITNESS: [Indiscernible].

8 MS. DIGIACOMO: Yeah, that sound's on.

9 THE COURT: Yeah, it's on again.

10 MS. DIGIACOMO: May I, Your Honor?

11 THE COURT: Yes. Thank you.

12 BY MS. DIGIACOMO:

13 Q Okay. Previous to November of 2016, what kind of jobs did  
14 you do? Did you ever go to school? Did you --

15 A No, I worked for -- I worked for Wal-Mart and I worked for  
16 United Health Care, and then I think that's it.

17 THE COURT: We going to try the new batteries.

18 THE WITNESS: Oh, Wal-Mart and then United Health Care  
19 prior to Sutherland Global.

20 BY MS. DIGIACOMO:

21 Q And you said you worked at Sutherland Global for about nine  
22 months?

23 A Mm-hmm.

24 Q And what jobs have you had since?

25 A After that?



1 Q Yes.

2 A After that I don't think I worked for a like two years, maybe a  
3 year and a half.

4 Q Okay. So, 2017 you didn't work?

5 A No.

6 Q And that's when you got pregnant?

7 A Yes.

8 Q Okay. So, you didn't work while you were pregnant?

9 A No.

10 Q And then 2018 you had your girl?

11 A Yeah.

12 Q And when -- so you weren't working at the beginning of 2018?

13 A No.

14 Q And when did you start working again in -- or did you in 2018  
15 start working again?

16 A No, I did not work in 2018 at all. So, 2000 this year is when I  
17 got my -- this job that I have now.

18 Q Okay. And what are you doing now?

19 A DTA Security?

20 Q I'm sorry, UTA?

21 A DTA.

22 Q Oh, I'm sorry, DTA Security. How long have you been there?

23 A Maybe three months.

24 Q All right. Now, in the time that you have known Denzel, just  
25 say from 2014 until 2018, did he ever work?

1           A     Yes.

2           Q     What did he do?

3           A     He did the Herbal Life, it's like a gym thing that he did, and he

4     cut hair. He was like an in-house barber.

5           Q     In-house barber where?

6           A     Wherever he was staying at on Viking.

7           Q     So, people would just come over and --

8           A     Get their haircut.

9           Q     -- cut hair on Viking?

10          A     Yes, on the patio.

11          Q     Did he go to school for hair?

12          A     No.

13          Q     How long did he work for Herbal Life?

14          A     Probably like a year, under a year.

15          Q     And when was that?

16          A     Back in 2016 to '17.

17          Q     And that's here in Las Vegas?

18          A     Yes.

19          Q     And so cutting hair out of the Viking apartment you said where

20     we lived. Did Denzel live with you on Viking?

21          A     It was there often.

22          Q     And he would cut hair there?

23          A     Yes.

24          Q     Where was he living at the time?

25          A     He was there often, like, a lot so --

1 Q Okay. If he's there often, it's not every night; correct?

2 A Yes, it's often, like, almost like every night, yeah.

3 Q Almost every night. So, if he wasn't with you, where was he

4 living?

5 A I don't know. He wasn't with me.

6 Q I'm sorry.

7 A I don't know.

8 Q So, you never went over to the place where he lived?

9 A His sister house. He would go to his sister house or come to

10 where I'm at.

11 Q And who's his sister?

12 A Romeka Dorsey.

13 Q Romeka Dorsey?

14 A Yes.

15 Q And so is that the entire time you've known him since 2014 he

16 stayed with his sister or did he ever have his own place?

17 A He stayed with his -- yeah, with his sister.

18 Q Had you ever been to Romeka's house?

19 A Yes.

20 Q Where did she live back in 2016 in November?

21 A On Tenaya.

22 Q Where on Tenaya; do you know?

23 A No.

24 Q But it was on Tenaya Street?

25 A Yes.

1 Q Now, do you know a person by the name of Marquisha  
2 Powell? And for the record that's M-A-R-Q-U-I-S-H-A.  
3 A Yes.  
4 Q Who is that?  
5 A A friend of Denzel's.  
6 Q Have you met her before?  
7 A Yeah -- yes.  
8 Q And so they were just friends?  
9 A Yes.  
10 Q Were they pretty close friends?  
11 A Yes.  
12 Q Did you ever know her to do things for Denzel?  
13 A Yes.  
14 Q Like what?  
15 A Anything he asked her to do she'll do.  
16 Q And so what kind of favors would he ask?  
17 A Rides, that he was going to go somewhere or I don't know.  
18 Q Okay.  
19 A A small favor.  
20 Q Okay. Where was Marquisha living back in November of  
21 2016?  
22 A I don't know.  
23 Q Was she in Las Vegas or California?  
24 A I don't know.  
25 Q Did you ever meet her?

1           A     Yes.

2           Q     When you met her where was she?

3           A     Vegas.

4           Q     Okay. So, it's fair to say back in November of 2016 you never  
5 saw Marquisha?

6           A     I seen her in November 2016, yes, I did.

7           Q     You saw her where?

8           A     In 2016, I did, I seen her.

9           Q     In November?

10          A     November, I don't know.

11          Q     Okay. When you saw her was it in Las Vegas?

12          A     Yes, it was in Las Vegas.

13          Q     And where was it physically?

14          A     Her house.

15          Q     Okay. Where did she live? I thought you said you didn't know  
16 where she lived? Where did she live then?

17          A     She lived in Vegas, but I don't -- I don't know.

18          Q     But she lived at a house and you had been to the house?

19          A     Yes.

20          Q     Where was that?

21          A     I don't remember.

22          Q     Now, from 2014 until 2016 or actually till 2018, did Denzel  
23 ever have his own vehicle?

24          A     Yes.

25          Q     When?

1           A     2017 he had his vehicle.

2           Q     I'm sorry?

3           A     In 2017 he had a vehicle.

4           Q     Okay. What kind of vehicle was it?

5           A     It was a Benz.

6           Q     A Mercedes Benz?

7           A     Yes.

8           Q     And where did that come from?

9           A     Craig's List.

10          Q     Were you with him when he bought it?

11          A     No.

12          Q     So, he told you he bought on Craig's List?

13          A     Yes.

14          Q     And how long did he have that car for?

15          A     Not long, maybe a month, two months.

16          Q     Was that -- is this the same car he was arrested in in

17   California?

18          A     No.

19          Q     It was a different Mercedes --

20          A     Yes.

21          Q     -- he was arrested in?

22          A     Arrested in California. I don't remember that, him being

23   arrested in California.

24          Q     Do you remember being in a Mercedes with him when he was

25   arrested -- hold on, let me get to the day -- it was July, I think, 11<sup>th</sup> of

1 2000 -- Court's indulgence.

2 THE COURT: Sure.

3 BY MS. DIGIACOMO:

4 Q -- 2000 -- oh, I'm sorry, 2016?

5 A No.

6 Q Okay. So, the only Mercedes you know he owned was in  
7 2017?

8 A Yes.

9 Q What color was it?

10 A Gray.

11 Q Had you ever seen him in a silver Mercedes?

12 A Yes.

13 Q Okay. When was that?

14 A 2017.

15 Q 2017?

16 A Yes.

17 Q Okay. Well, in 2016, July 11, 2016, were you with him in a  
18 silver Mercedes when he was stopped by the police?

19 A No.

20 Q You weren't?

21 A I'm sorry, can you repeat it?

22 Q Sure. In 2016, specifically July 11<sup>th</sup>, were you with Denzel  
23 when he was in a silver Mercedes and arrested in California for stolen  
24 property?

25 A What year was it?

1 Q 2016.

2 A No.

3 Q Okay. So, if he was with a person by the name of Takiya,  
4 TA-K-I-Y-A Clemons, date of birth, 2/25/1995, wouldn't that be you?

5 A Yes.

6 Q Okay. You just don't remember it?

7 A No, I don't.

8 Q Do you remember the police asking you about some stolen --  
9 or excuse me -- stolen jewelry that was found in the car?

10 A I don't even remember that day as far as being pulled over,  
11 no.

12 Q You don't remember the \$22,000 cash that was found in the  
13 car and being asked about that?

14 A Back in 2016, no ma'am.

15 Q Okay. Have you been with Denzel more than once when he's  
16 been arrested?

17 A Maybe twice.

18 Q Okay. What -- let's see -- do you know anybody by the name  
19 of Slick or moniker nicknamed Slick?

20 A No.

21 Q You don't -- never heard of Slick?

22 A No.

23 Q Have you ever heard Denzel refer to somebody as Slick?

24 A No.

25 Q All right. When was it in November of 2016 that you found out



1 that Denzel had been arrested for residential burglary?

2 A It was the 28<sup>th</sup>, maybe that night. He called me.

3 Q So, he called you from the jail?

4 A Yes.

5 Q Okay. Did he tell you what happened?

6 A No.

7 Q Did you ever talk to his brother, Davey, about what had

8 happened?

9 A No.

10 Q Did you ever talk to his mom about what had happened?

11 A No.

12 Q Okay. Did you continue to talk to Denzel on the jail call or jail

13 phones for the remainder of his time in custody after his arrest on

14 November 28<sup>th</sup>?

15 A Yes.

16 Q And you weren't pregnant yet; right?

17 A No.

18 Q Okay. Do you know anyone that lives on Lindell Street in Las

19 Vegas back then in November of 2016?

20 A I don't recall.

21 Q But it wasn't a place if you had been there you didn't frequent

22 it?

23 A No.

24 Q Where -- what homes would you go to with Denzel?

25 A His sister house.

1 Q And that's the one on Tenaya?

2 A Yes, that's the one on Tenaya.

3 Q Okay.

4 A I wouldn't even go to people houses like that with him.

5 Q Okay. So, you don't know who lived on Lindell?

6 A No.

7 Q What about Remuda?

8 A What is that? Say that again.

9 Q Remuda, R-E-M-U-D-A, you anyone who lived on Remuda

10 back in November of 2016?

11 A No.

12 Q The car that he was driving, that rental car, do you know how

13 he obtained it?

14 A No.

15 Q Did he have a driver's license back in November of 2016?

16 A No.

17 Q Did he have a credit card back in November of 2016?

18 A I don't know.

19 Q Okay. But had he had rental cars previous to November

20 2016?

21 A I'm trying to think.

22 Q That's okay.

23 A No.

24 Q Okay. Now -- and I'm sorry, I was giving you the wrong date.

25 So, back in -- I wanted to ask you about, did you ever see him with a

1 silver Mercedes on July 11<sup>th</sup> of 2018?

2 A I don't remember now.

3 Q Okay. So, the only one you remember is from 2017?

4 A Yes.

5 Q And you don't recall being in a car where he was arrested in  
6 2018?

7 A I don't remember, ma'am.

8 Q Did you ever have a large amount of cash at one time?

9 MR. MODAFFERI: I'm going to object to relevance, Judge.

10 THE COURT: That -- well --

11 MS. DIGIACOMO: All right. I --

12 THE COURT: So, that's vague too. So, I don't -- sustained.

13 MS. DIGIACOMO: Thank you, Your Honor. Let me ask you a  
14 better question.

15 BY MS. DIGIACOMO:

16 Q I know you don't remember being -- with Defendant when he  
17 was arrested in 2018, but you do remember having \$15,000 cash that  
18 you claimed belonged to you at that time that police asked you about?

19 A Yes.

20 Q Okay. And what were -- how did you get \$15,000 in cash?

21 What were you -- do you remember telling the police that you were  
22 selling hair and dancing?

23 A I don't remember.

24 Q Okay. But you agree with me you must paid his --

25 A Yeah, yeah, I don't know, that there's 15, yes.

1 Q Oh, wait. You remember having \$15,000?

2 A Yes, I do.

3 Q But you also did not work in 2017 and 2018; correct?

4 A Correct.

5 Q So, if you said that you got it from selling hair and dancing that

6 wouldn't be correct?

7 A That would be correct.

8 Q You were selling hair and dancing --

9 A Yeah, and selling hair.

10 Q When?

11 A The dancing --

12 Q So, you made \$15,000 from selling hair?

13 A That's -- really just from selling hair. I mean, I did save up

14 from the jobs that I did have.

15 Q Okay. What jobs did have in 2000 and --

16 A United Health Care.

17 Q No, no. But you told me specifically 2017 and 2018 you didn't

18 work; correct?

19 A Yeah, I didn't.

20 Q So, you had \$15,000 saved up?

21 A Prior to that and my taxes, yes.

22 Q Okay. Did the police keep that \$15,000?

23 A Yes, they did.

24 Q Okay. So, do you now remember being in the car when

25 Denzel got arrested and your \$15,000 got taken?

1           A     I don't remember the exact date, but something occurred and  
2 they did take it.

3           Q     Okay. So, well tell me what you remember occurred?

4           A     I remember going to talk to the detective, I believe, and I  
5 spoke to them about the money situation and I told him where I got it  
6 from.

7           Q     Okay. Do you remember also being asked about jewelry that  
8 was found?

9           A     No.

10          Q     Okay. So, on the night of November 27<sup>th</sup>, 2016, you were not  
11 working on that date; correct?

12          A     Say the date one more time.

13          Q     November 27<sup>th</sup>, 2016.

14          A     Yes.

15          Q     What about November 28<sup>th</sup>, 2016; did you go to work on that  
16 date?

17          A     No.

18          Q     What was the next date that you went to work?

19          A     The following day after that.

20          Q     Okay. And when Denzel came over you said that he was  
21 there with the rental car initially; correct?

22          A     Yes.

23          Q     And then Davey come over?

24          A     Yes.

25          Q     Do you remember if Denzel got a call from Davey before?

1           A     I can't remember the conversation on the phone.

2           Q     Okay. But did you know before Davey got there that Davey

3           was coming?

4           A     Yes.

5           Q     And that's because Denzel told you?

6           A     Yes.

7           Q     What time did Davey get there?

8           A     Maybe -- it was late, it was, like, night time but it was late.

9           Q     Okay.

10          A     I can't tell you the exact time but I know it was dark outside.

11          Q     Okay. So, it was dark outside. And then Davey leaves with

12          the car?

13          A     Mm-hmm.

14          Q     Is that a yes for the record?

15          A     Yes, sorry.

16          Q     Okay. Did Davey or Denzel tell you why Davey was

17          borrowing the car?

18          A     No. During that night -- well, after Davey left, how late did you

19          and Denzel stay up?

20          A     It be like, I don't know, maybe an hour or two.

21          Q     And then you slept past noon the next day?

22          A     Yes.

23          Q     So, before going to asleep and after getting up, was Denzel

24          ever worried about the car and where Davey was?

25          A     I don't remember if he was worried about the car.

1           Q     So, when the -- when Denzel got arrested you said he called  
2 you from the jail; what was your reaction?

3           A     I was in shock because I didn't know why he would be calling  
4 me from jail.

5           Q     Okay. And did he tell you what happened, what he was  
6 arrested for?

7           A     I don't remember.

8           Q     Okay. Did he tell you when the crime occurred for what he  
9 was arrested?

10          A     I don't remember.

11          Q     Did you talk about the fact that he couldn't have done it  
12 because he was with you all night?

13          A     I don't remember -- I don't remember the conversation.  
14 I just know I was shocked that he was in jail.

15          Q     Okay. So, that first conversation you're in shock. What about  
16 the conversations you had that next week?

17          A     I don't know.

18          Q     Okay. So, you don't recall ever talking to Denzel about the  
19 fact that he couldn't have been the one to have committed this crime?

20          A     I don't remember.

21          Q     You don't --

22          A     I just know the conversation was about that I needed to bail  
23 him out because I don't understand what was going on.

24          Q     All right. So, you knew you wanted to bail him out but you  
25 don't recall ever discussing the fact that he was with you at the time the

1 crime occurred; correct?

2 A I don't remember.

3 Q Okay. When was the first time you do remember discussing  
4 with Denzel when the crime occurred?

5 A I don't know. When he got out, I don't know.

6 Q Okay.

7 A I don't remember having that conversation when he was in jail.

8 Q All right. Well, what about after he got out of jail. Did you ever  
9 have a discussion about the fact he couldn't have done the crime  
10 because he was with you?

11 A Right.

12 Q I'm sorry?

13 A Right.

14 THE COURT: I think she said right. So, I don't know that she  
15 heard your question.

16 MS. DIGIACOMO: Answered my question. Okay.

17 BY MS. DIGIACOMO:

18 Q My question is, is when was the first time that you remember  
19 you and Denzel discussing the fact that he could not have committed  
20 this crime because he was with you?

21 A When he got out of jail.

22 Q When he got out of jail which time?

23 A When I bailed him out.

24 Q Okay. Bailed him out right after his arrest?

25 A Yes.



1 Q Did you ever speak to his attorney about the fact of this?

2 A Yes, when I did my statement.

3 Q Not this attorney --

4 A Oh.

5 Q -- his original attorney or one of his original attorneys? Did

6 you ever talk to them about it?

7 A No.

8 Q Did you ever talk to Denzel about the deal that he took?

9 A Yes.

10 Q And what was your discussion?

11 A I was asking him -- I know I was pregnant around the time.

12 So, I was telling him he needed to make it -- I know he needed to make

13 it to my birth. I just wanted him to be there for my birth. So, I asked him

14 if he was going to be there. He said he was going to talk to his attorney

15 and then I did three ways for him a lot of times. So, we were doing a lot

16 of three ways been in contact with her.

17 Q Okay. So, he was out of custody for the birth?

18 A No, he was not.

19 Q He was not.

20 A No.

21 Q Okay. Do you remember about when it was you got pregnant

22 or found out you were pregnant, I should say?

23 A 2017 in May, like, May 15<sup>th</sup>, sometime in May 2017.

24 Q Okay. But you had bailed him out in -- shortly after he got

25 arrested, correct, in November of 2016?

1           A     Yes.

2           Q     He was out of custody until 2018; correct?

3           A     I'm not sure -- yeah, I believe so.

4           Q     He went -- is it fair to say he went back into custody right after  
5 or right before your baby was born, maybe the month before?

6           A     Yes, we went to the court date and went to jail.

7           Q     I'm sorry, say that again.

8           A     Yes, he went to court date -- I'm sorry -- a court date in  
9 January and he ended up going to jail.

10          Q     Okay. Were you ever subpoenaed to come to Court as a  
11 witness back in 2017?

12          A     No.

13          Q     When he went back into custody right before your baby was  
14 born, did you still talk on the phone with him?

15          A     Yes.

16          Q     Did you ever talk about him taking a deal in the case or  
17 pleading guilty?

18          A     I talked to him about -- just, I don't know, being there. I don't  
19 know.

20          Q     Oh, sorry. So, you talked to him about being there for you and  
21 the baby; correct?

22          A     Yes.

23          Q     Okay. So, did you remember having conversations about  
24 trying to get him to get out of custody?

25          A     Yes.

1 Q Do you remember if he -- if he actually told you or you talked  
2 about the fact he took this deal because he could get out of custody?

3 A Yes. He said something about he just needed to get in  
4 contact with his attorney that was on the case and talk to her about  
5 getting out so he can make it for my birth. So, I told him do what he  
6 have to do as far as to talk to the attorney; get in contact with her so he  
7 can be out before I have her.

8 Q Okay. But he did make it out before you had her?

9 A No, he did not.

10 Q But he did make it out shortly thereafter?

11 A Maybe a few months so she was three or four months.

12 Q Okay. And then he stayed out of custody until he was  
13 arrested in California; is that correct?

14 A Yeah -- yes.

15 Q Did you ever after he was arrested November 28<sup>th</sup>, 2016, did  
16 you ever speak with Davey Dorsey about what Denzel was arrested for?

17 A No.

18 Q Did you ever speak to Denzel's mom about what he was  
19 arrested for?

20 A No.

21 Q Did Denzel ever tell you that Davey is the one that did this?

22 A No.

23 Q How old -- you said your daughter is just over a year?

24 A Yes.

25 Q And how many months of that year or 14 months has or 16

1 months almost has Denzel been out of custody?

2 A Can you repeat that?

3 Q Sure. Sorry, that was a bad question. So, your daughter was

4 born February 15, 2018. She's now about, what, 15 months?

5 A Mm-hmm.

6 Q Yes?

7 A Yes. I'm sorry.

8 Q Okay. So, how many months of her life has Denzel been out

9 of custody able to spend with her?

10 A How many months has he been, like, out of custody?

11 Q Yeah, since she's been born.

12 A Let's see, she turned, like, eight months, since she was eight

13 months, I think, he went back.

14 Q Okay. So, a couple of months he was out of custody and then

15 he went right back in?

16 A Wait. I'm sorry. Maybe nine months. I'm not sure.

17 Q Okay. And it's fair to say you'd like him back out of custody so

18 he can be with you and your daughter?

19 A Yes.

20 MS. DIGIACOMO: Court's indulgence.

21 THE COURT: Sure.

22 BY MS. DIGIACOMO:

23 Q And it's fair to say that you had not spoken to any of Denzel's

24 attorneys until Mr. Modafferi about him being with you that night;

25 correct?

1           A     Yeah, I didn't speak with her, but Denzel spoke with her.  
2     I did three ways for him.  
3           Q     I'm sorry. Say that again.  
4           A     I'm sorry. I didn't speak with her, but Denzel I did with a lot of  
5     three ways -- three ways on the jail call for him for us to speak -- I'm  
6     sorry -- for him to speak to his attorney. I did three ways.  
7           Q     So, Denzel would call you and then you would three way his  
8     attorney?  
9           A     Call, yes.  
10          Q     So, you were listening in on what he was talking about with his  
11     attorney?  
12          A     Sometimes. A lot of times she wasn't in the office so I couldn't  
13     reach her so --  
14          Q     But you never told her, hey, I was with him that whole night;  
15     correct?  
16          A     I never spoke with her.  
17          Q     Okay.  
18                MS. DIGIACOMO: I have nothing further, Your Honor.  
19                THE COURT: Okay.  
20                MR. MODAFFERI: Nothing further, Judge. Thank you.  
21                THE COURT: Thank you.  
22                MR. MODAFFERI: Judge, I have three things I'd like to have  
23     the Court consider as part of the record of the Defense's presentation in  
24     this matter; one, is the grand jury transcript in this case that was filed on  
25     May 25<sup>th</sup> of 2017. I have a copy for the Court to have it marked. And

1 I'm not sure of how the Court might want to have it. I don't know if I  
2 attached it. I just want to be, out of an abundance of caution, make sure  
3 that I can reference it.

4 MS. DIGIACOMO: It's actually -- excuse me, Your Honor --

5 THE COURT: Okay.

6 MS. DIGIACOMO: -- it's actually a preliminary hearing  
7 transcript and it's already part of the record.

8 THE COURT: If you want to mark it as an exhibit for the  
9 evidentiary hearing separate, that's fine.

10 MR. MODAFFERI: That's fine, Judge. I'll do that. And then it  
11 will be next in order which I believe --

12 THE COURT: And it is --

13 MR. MODAFFERI: It is. I've looked through it and I think  
14 everything's there.

15 MS. DIGIACOMO: It is attached as Exhibit --

16 THE COURT: C.

17 MS. DIGIACOMO: C, correct.

18 [Colloquy between the Court and the Court Clerk]

19 THE COURT: Thank you. So, the Court gives -- rightfully  
20 telling me -- would like to mark it as an evidentiary

21 MR. MODAFFERI: Okay.

22 THE COURT: -- hearing exhibit and that it is certainly part of  
23 the record already attached as Exhibit C to the actual motion being filed  
24 on February 15<sup>th</sup> of 2019.

25 MR. MODAFFERI: And, finally, Judge, there were two

1 handwritten motions that were attached as Exhibits A and B to my reply  
2 brief in this matter.

3 A is the motion to withdraw plea and even though it's not file  
4 stamped, it was dated May of 2018. And I believe I obtained this from  
5 printing it off of the record. So, I'm not sure why it wasn't filed stamped.  
6 And the other one is a motion to dismiss counsel which was stamped on  
7 June 6<sup>th</sup> and it's attached as Exhibit B to the reply brief in this matter.

8 THE COURT: Okay.

9 MR. MODAFFERI: I think both are relevant for the Court's  
10 consideration of this matter.

11 MS. DIGIACOMO: The State does believe it was file stamped  
12 or filed because I believe we did initially an opposition to the pro per  
13 motion to withdraw the guilt plea.

14 THE COURT: So, bear with me just for a moment.

15 So, Exhibit D, at least on my paper copy of the motion to  
16 withdraw filed February 15<sup>th</sup> as Exhibit D to that is a handwritten motion  
17 to withdraw plea that's not filed stamped but is dated blank day of May  
18 2018. So, that's probably the one you're referring to first.

19 MR. MODAFFERI: Yes, Judge.

20 THE COURT: Okay.

21 MR. MODAFFERI: And I reattached it as Exhibit B to the  
22 reply, but neither one of them I could get was filed stamped. If Ms.  
23 DiGiacomo has one I would prefer, obviously, to have that before the  
24 Court than my unfiled copy.

25 MS. DIGIACOMO: Court's indulgence.

1 THE COURT: Sure.

2 MS. DIGIACOMO: I do have one. It was filed June 6<sup>th</sup>, 2018  
3 at 2:52 p.m.

4 MR. MODAFFERI: So, that would be the same date as the  
5 motion to dismiss counsel, Judge.

6 THE COURT: Bear with me a second. Yeah, B to the reply to  
7 the motion to dismiss counsel was filed June 6<sup>th</sup>, 2018.

8 MR. MODAFFERI: Yes, Judge.

9 THE COURT: Okay.

10 MR. MODAFFERI: And the motion to withdraw that I had  
11 submitted unfiled copies to both the opening motion and the reply brief  
12 are unfiled, but Ms. DiGiacomo has shown me a file stamped

13 --

14 THE COURT: Okay.

15 MR. MODAFFERI: -- which is on the same day.

16 THE COURT: Okay.

17 MR. MODAFFERI: So, if the Court would simply take notice  
18 that it was file stamped the same day.

19 THE COURT: Sure.

20 MR. MODAFFERI: And that concludes our evidence, Judge.

21 THE COURT: Okay. Does the State -- go ahead. Sorry.

22 MR. MODAFFERI: And I have no objection, Judge, if the  
23 Court wants to continue this matter to accommodate Ms. DiGiacomo for  
24 the witness.

25 THE COURT: Do you want --



1 MS. DIGIACOMO: Thank you, Your Honor. But my June is  
2 booked.

3 As I stated, I'm starting trial next Monday and I'm doing two  
4 back to back week and a half, two week trials so -- and I also have a  
5 Supreme Court argument right in the middle. So, I'm not sure I won't --  
6 I'll be able to do this hearing until the beginning of July if that works for  
7 the Court and counsel.

8 [Colloquy between the Court and the Court Clerk]

9 THE COURT: So, we can put you in the week of July 8<sup>th</sup> or  
10 July 15.

11 MR. MODAFFERI: The sooner the better for us, Judge, so  
12 we're ready.

13 MS. DIGIACOMO: July 8<sup>th</sup>. I only have one calendar call that  
14 day so far.

15 THE COURT: Well, I have four trials set for that week. That's  
16 actually not a good week.

17 MS. DIGIACOMO: My portion of the evidence should be  
18 smaller.

19 THE COURT: Okay. Well, why don't we set you -- so we  
20 could probably do you the remainder, I guess, at 10:30 and be done by  
21 lunch time?

22 MS. DIGIACOMO: Yes.

23 MR. MODAFFERI: Yes, Judge.

24 THE COURT: Okay. Can we put them on July 8<sup>th</sup> at 10:30?  
25 So, how about firm evidentiary hearing. So, make sure that whomever

1 we need is available that date.

2 MS. DIGIACOMO: Your Honor, I actually texted him and if he  
3 is not, I will email the Court so that we can -- or I can put it back on  
4 calendar if that's easier.

5 THE COURT: Yeah, probably put it back on.

6 MS. DIGIACOMO: Okay. I'll put it back on calendar --

7 THE COURT: Yeah.

8 MS. DIGIACOMO: -- to change the date if it's not, but it's my  
9 understanding he was good in July.

10 THE COURT: Okay. And then just make sure that Mr.  
11 Dorsey gets transported too like we did today.

12 MS. DIGIACOMO: Yes, Your Honor.

13 THE COURT: Okay. Anything else?

14 MR. MODAFFERI: No, Judge. Thank you.

15 MS. DIGIACOMO: Not by the State.

16 THE COURT: Thank you all.

17

18 [Proceedings concluded at 2:32 p.m.]

19

20

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

23

24

25

  
PATRICIA SLATTERY  
Court Transcriber

IN THE SUPREME COURT OF THE STATE OF NEVADA

DENZEL DORSEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 79845  
District Court Case No. C323324

**FILED**

FEB - 3 2021

*Elizabeth A. Brown*  
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

"ORDER the judgment of conviction AFFIRMED."

Judgment, as quoted above, entered this 08 day of January, 2021.

IN WITNESS WHEREOF, I have subscribed  
my name and affixed the seal of the Supreme  
Court at my Office in Carson City, Nevada this  
February 02, 2021.

Elizabeth A. Brown, Supreme Court Clerk

By: Kaitlin Meetze  
Administrative Assistant

C-17-323324-1  
CCJA  
NV Supreme Court Clerks Certificate/Judgm  
4942736



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DENZEL DORSEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 79845-COA

FILED

JAN 08 2021

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

ORDER OF AFFIRMANCE

Denzel Dorsey appeals from a judgment of conviction, entered pursuant to a guilty plea, of home invasion. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

First, Dorsey argues the district court erred by denying his presentence motion to withdraw his guilty plea. A defendant may move to withdraw a guilty plea before sentencing, NRS 176.165, and "a district court may grant a defendant's motion to withdraw his guilty plea before sentencing for any reason where permitting withdrawal would be fair and just," *Stevenson v. State*, 131 Nev. 598, 604, 354 P.3d 1277, 1281 (2015). In considering the motion, "the district court must consider the totality of the circumstances to determine whether permitting withdrawal of a guilty plea before sentencing would be fair and just." *Id.* at 603, 354 P.3d at 1281. The district court's ruling on a presentence motion to withdraw a guilty plea "is discretionary and will not be reversed unless there has been a clear abuse of discretion." *State v. Second Judicial Dist. Court (Bernardelli)*, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969).

Dorsey claimed he should be allowed to withdraw his guilty plea because he was innocent of the crime charged. The district court held an

evidentiary hearing. After hearing testimony from Dorsey's and the State's witnesses, the district court found Dorsey's witnesses were not credible, considered the totality of the circumstances, and found there was no fair and just reason to permit the withdrawal of Dorsey's guilty plea. The record supports the district court's findings. See *Howard v. State*, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990) ("On matters of credibility this court will not reverse a trial court's finding absent a clear showing that the court reached the wrong conclusion."), *abrogated on other grounds by Harte v. State*, 116 Nev. 1054, 1072, 13 P.3d 420, 432 (2000). Therefore, we conclude the district court did not abuse its discretion by denying this claim.<sup>1</sup>

Next, Dorsey argues he should either be allowed to withdraw his guilty plea or have his sentence modified because the written plea agreement "understated the possible punishment" and "incorrectly" stated he was "facing" a sentence of 60 to 120 months. Dorsey misstates the underlying facts. The written plea agreement stated that, if he failed to appear for any court dates or was arrested for any new offenses, Dorsey *stipulated* to a sentence of 60 to 120 months. The written plea agreement went on to correctly state the range of possible sentences under NRS 207.010 in the event Dorsey was adjudicated a habitual criminal. Therefore, we conclude Dorsey is not entitled to relief on this claim.<sup>2</sup>

---

<sup>1</sup>Dorsey argues for the first time on appeal that he may not have been competent when he entered his guilty plea and counsel was ineffective for not investigating his competency. Because these arguments were not raised in the court below, we decline to consider them on appeal. See *Rimer v. State*, 131 Nev. 307, 328 n.3, 351 P.3d 697, 713 n.3 (2015).

<sup>2</sup>To the extent Dorsey challenged the legality of the stipulated sentence, we note that parties may negotiate for an infirm sentence. See *Breault v. State*, 116 Nev. 311, 314, 996 P.2d 888, 889 (2000). And Dorsey

Next, Dorsey argues the stipulated terms in his guilty plea agreement agreeing to "habitual criminal treatment" and the existence of the requisite prior convictions were unconstitutional. Dorsey's stipulation to the existence of the prior convictions necessary for habitual criminal adjudication was permissible. See *Hodges v. State*, 119 Nev. 479, 484, 78 P.3d 67, 70 (2003). Dorsey's reliance on *McAnulty v. State*, 108 Nev. 179, 826 P.2d 567 (1992), and *Stanley v. State*, 106 Nev. 75, 787 P.2d 396 (1990), is misplaced as they have been explicitly overruled. See *Hodges*, 119 Nev. at 484, 78 P.3d at 70. Therefore, we conclude Dorsey is not entitled to relief on this claim.

Next, Dorsey argues the district court erred by sentencing him to an overly harsh and disproportionate sentence. The district court has wide discretion in its sentencing decision. See *Houk v. State*, 108 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). We will refrain from interfering with the sentence imposed by the district court "[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." *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). And, regardless of its severity, "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d

---

does not allege the district court's deviation from the stipulated sentence was improper. See NRS 174.035(4); *Sandy v. Fifth Judicial Dist. Court*, 113 Nev. 435, 440 n.1, 935 P.2d 1148, 1151 n.1 (1997) ("[T]rial judges need not accept sentence bargains.").


220, 221-22 (1979)); *see also Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining the Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).


The 60-to-150-month prison sentence imposed is within the parameters provided by the relevant statute. *See* NRS 207.010(1)(a). Dorsey does not allege that this statute is unconstitutional. Dorsey also does not allege that the district court relied on impalpable or highly suspect evidence. Having considered the sentence and the crime, we conclude the sentence imposed is not grossly disproportionate to the crime, it does not constitute cruel and unusual punishment, and the district court did not abuse its discretion when imposing sentence.

Finally, Dorsey argues the cumulative effect of the errors in this case warrants reversal. As Dorsey has identified no errors, we conclude there are no errors to cumulate. *See Morgan v. State*, 134 Nev. 200, 201 n.1, 416 P.3d 212, 217 n.1 (2018). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

 C.J.  
Gibbons

 J.  
Tao

 J.  
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge  
Terrence M. Jackson  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk



**IN THE SUPREME COURT OF THE STATE OF NEVADA**

DENZEL DORSEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 79845**  
District Court Case No. C323324

**REMITTITUR**

TO: Steven D. Grierson, Eighth District Court Clerk

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

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

DATE: February 02, 2021

Elizabeth A. Brown, Clerk of Court

By: Kaitlin Meetze  
Administrative Assistant

cc (without enclosures):  
Hon. Joseph Hardy, Jr., District Judge  
Denzel Dorsey  
Clark County District Attorney  
Terrence M. Jackson

**RECEIPT FOR REMITTITUR**

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the  
REMITTITUR issued in the above-entitled cause, on FEB - 3 2021.

**HEATHER UNGERMANN**

**Deputy** \_\_\_\_\_  
District Court Clerk

**RECEIVED  
APPEALS**

**FEB - 3 2021**

**CLERK OF THE COURT**

1

21-03118



**EIGHTH JUDICIAL DISTRICT COURT  
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER  
200 LEWIS AVENUE, 3<sup>rd</sup> FL.  
LAS VEGAS, NEVADA 89155-1160  
(702) 671-4554

Steven D. Grierson  
Clerk of the Court

Anntoinette Naumec-Miller  
Court Division Administrator

---

March 16, 2021

**Attorney:** Terrence Michael Jackson  
Law Offices of Terrence M  
Jackson  
Attn Terrence M Jackson  
624 S Ninth Street  
Las Vegas NV 89101

**Case Number:** C-17-323324-1  
**Department:** Department 18

**Defendant:** Denzel Dorsey

Attached are pleadings received by the Office of the District Court Clerk which are being forwarded to your office pursuant to Rule 3.70.

**Pleadings: Motion For Production Of Documents**

**Rule 3.70. Papers which May Not be Filed**

Except as may be required by the provisions of NRS 34.730 to 34.830, inclusive, all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed but must be marked with the date received and a copy forwarded to the attorney for such consideration as counsel deems appropriate. This rule does not apply to applications made pursuant to Rule 7.40(b)(2)(ii).

Cordially yours,

DC Criminal Desk # 7

Deputy Clerk of the Court

1 Denzel Dorsey #1099468

2 Defendant/ In Propria Personam

3 Post Office Box 208, S.D.C.C. PO BOX 650, H.D.S.P.  
Indian Springs, Nevada 89018 89070

4  
5 IN THE Eighth JUDICIAL DISTRICT COURT OF  
6 THE STATE OF NEVADA IN AND FOR THE  
7 COUNTY OF CLARK

8  
9 Plaintiff,

10 vs.

11  
12 Defendant.

Case No. C-17-323324-1

Dept No. 15

Docket \_\_\_\_\_

13  
14 **MOTION FOR PRODUCTION OF DOCUMENTS,**  
15 **PAPERS, PLEADINGS AND TANGIBLE PROPERTY OF DEFENDANT**

16 Date of Hearing: \_\_\_\_\_

17 Time of Hearing: \_\_\_\_\_

18 "ORAL ARGUMENT REQUESTED, Yes ☒ No ☐

19 COMES NOW, Defendant, Denzel Dorsey, proceeding in proper person,

20 hereby moves this Honorable Court for its ORDER for the production of all documents, papers,

21 pleadings and tangible property in the possession of: TERRENCE M. JACKSON,

22 ESQ - Appointed appeals Attorney

23 This Motion is made and based upon all papers and pleadings on file with the Clerk of the Court

24 which are hereby incorporated by this reference, the Points and Authorities herein, and attached

25 Affidavit of Defendant.

26 DATED: this 4<sup>th</sup> day of March, 2021.

27 BY: Denzel Dorsey #1099468  
28 [Signature] #  
Defendant/In Propria Personam

4/23 - 3 2021

1 **POINTS AND AUTHORITIES**

2 The Nevada Revised Statute 7.055(1), which deals with the duty of a discharged attorney, states:

3 "An attorney who has been discharged by his client shall, upon demand and payment of the fee due from  
4 the client, immediately deliver to the client all papers, documents, pleadings and items of tangible property  
which belong to or were prepared for that client."

5 As can be seen in this case, the defendant does not owe any fees, in fact, they, meaning counsel(s)  
6 of record, were appointed by the Court to represent the defendant, who was an indigent, in Case  
7 Number, 7-323329, in Department No. 15.

8 N.R.S. 7.055(2) gives this Court the power to Order the Attorney(s) of record to produce and  
9 deliver to the defendant in his/her possession, which states:

10 "A client who, after demand therefore and payment of the fee due from him, does not receive from his  
11 discharged attorney all papers, documents, pleadings and items of tangible personal property may, by  
12 a motion filed after at least 5 days' notice to the attorney, obtain an order for the production of his papers,  
Documents, pleadings and other property."

13 In numerous cases throughout this great land, the courts have held attorneys to a high degree of  
14 professional responsibility and integrity. This carried from the time of hiring to and through the  
15 attorney's termination of employment.

16 Supreme Court Rule 173 states quite clear that a withdrawn attorney owes his former client a  
17 prompt accounting of all his client's . . . property in his possession." This is echoed in Canon 2 of  
18 the Code of Professional Responsibility of the American Bar Association, which states in pertinent  
19 part EC 2-32: "A lawyer should protect the welfare of his client by . . . delivering to the client all  
20 papers and property to which the client is entitled." Again in Disciplinary Rule 2-110(A)(2) of the  
21 ABA, this is brought out that a withdrawn attorney must deliver to the client all papers and comply with  
22 applicable laws on the subject.

23 In the cases of In Re Yount, 93 Ariz. 322, 380 P.2d 780 (1963) and State v. Alvey, 215 Kan. 460,  
24 324 P.2d 747 (1974), both of which dealt with a factual situation involving a withdrawn attorney  
25 refusing to deliver to a former client his documents after being requested to do so by the client. The  
26 court in Yount, supra, ordered the attorney disbarred while in Alvey, supra, the court had the attorney  
27 censured.

1 While not the intention of the Defendant in this case to have the attorney disbarred, these cases do  
2 show a pattern in the court in considering the refusal to deliver to a former client all his documents  
3 and property after being requested to do so, a serious infraction of the law and of professional ethics.  
4 See, In Re Sullivan, 212 Kan. 233, 510 P.2d 1199 (1973).

5 In summary, this court has jurisdiction through NRS 7.055 to Order the attorney(s) to produce and  
6 deliver to the Defendant all documents and personal property in his/their possession belonging to him  
7 or prepared for him. The Defendant has fulfilled his obligations in trying to obtain the papers. The  
8 attorney(s) is in discord with Cannon 2 of the Code of Professional responsibility and the Nevada  
9 Supreme Court Rules 173, 176 and 203.

10

11 DATED: this 4<sup>th</sup> day of March, 2021.

12

13

BY: Denzel Dorsey #1099468  
D.D.  
Defendant/In Propria Personam

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

ITEMS TO BE PRODUCED

- Full Discovery
- Preliminary hearing transcripts (5/2/17)
- Motion to withdraw plea ~~0000~~ (02/15/19)
- Order denying motion to withdraw plea
- Evidentiary transcripts (5/28/19, 07/11/19)
- Motion to Dismiss Counsel (06/06/18)
- All Other Documents ...

Denzel Dorsey #1099468

Defendant/ In Propria Personam

~~Post Office Box 208, S.D.C.C.~~

Indian Springs, Nevada 89018

PO box 650, H.D.S.P  
89070

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

Plaintiff, )

vs. )

Defendant. )

Case No. 17-323324.1

Dept. No. 15

Docket \_\_\_\_\_

ORDER

Upon reading the Motion of the Defendant, \_\_\_\_\_  
requesting production of all documents, papers, pleadings and  
tangible property, and having determined that the movant has  
demonstrated Good Cause Appearing,

IT IS HEREBY ORDERED that Defendant's Attorney named \_\_\_\_\_  
\_\_\_\_\_ will produce Documents, Papers, Pleadings  
and Tangible Property is GRANTED.

IT IS HEREBY FURTHER ORDERED That the Clerk of the Court  
shall direct to the Attorney of Record \_\_\_\_\_  
to prepare all Documents, Papers, Pleadings, and Tangible Property  
to the Defendant at the following address.

DATED and DONE This \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
DISTRICT COURT JUDGE

**AFFIRMATION**  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion for  
production of Documents, papers, pleadings and  
(Title of Document)

filed in District Court Case number 0-17-323324-1

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

-OR-

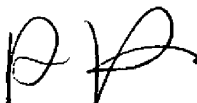
☐ Contains the social security number of a person as required by:

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

(State specific law)

-or-

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

  
Signature

3/4/21  
Date

Demzel Dorsey  
Print Name

Motion  
Title



**CERTIFICATE OF SERVICE BY MAILING**

I, Denzel Dorsey, hereby certify, pursuant to NRCP 5(b), that on this 4<sup>th</sup>  
day of MARCH, 2021, I mailed a true and correct copy of the foregoing, "MOTION  
for production of documents, paper, pleadings and -"  
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

Clerk of the Clerk  
200 LEWIS AVE. 3rd Floor  
LAS VEGAS, NV 89155

District Attorney  
200 LEWIS AVE  
LAS VEGAS, NV 89155

Terrence L. Jackson  
624 South Ninth Street  
LAS VEGAS, NV 89101

CC:FILE

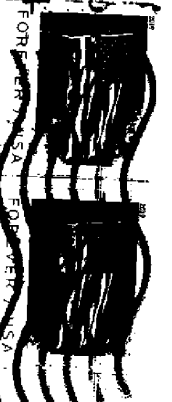
DATED: this 4<sup>th</sup> day of MARCH, 2021.

Denzel Dorsey #1699468

DP #  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

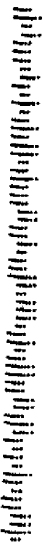
Denzel R. Darsey #1099468  
H.D.S.P.  
P.O. Box # 650  
Indian Springs, NV 89070

LAS VEGAS NV 890  
4 MAR 2021 PM 5



Clerk of the Court  
200 Lewis Ave, 3rd floor  
Las Vegas, NV 89155

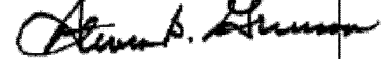
69101-690000



High Desert State Prison

MAR 03 2021

Unit 6 A/B



1 **MWCN**  
2 **TERRENCE M. JACKSON, ESQ.**  
3 Nevada Bar No. 00854  
4 Law Office of Terrence M. Jackson  
5 624 South Ninth Street  
6 Las Vegas, NV 89101  
7 T: (702) 386-0001 / Fax: (702) 386-0085  
8 [terry.jackson.esq@gmail.com](mailto:terry.jackson.esq@gmail.com)  
9 Counsel for Defendant, *Denzel Dorsey*

6 **EIGHTH JUDICIAL DISTRICT COURT**  
7 **CLARK COUNTY, NEVADA**

8 STATE OF NEVADA,  
9 Plaintiff,  
10 -vs-  
11 DENZEL DORSEY,  
12 #1099468,  
13 Defendant.

Case No.: **C-17-323324-1**

Dept. No.: **XVIII**

NSC Case No.: **79845**

**MOTION TO WITHDRAW**

**AS COUNSEL**

14  
15 COMES NOW, Terrence M. Jackson, Esquire, prior appointed appellate counsel for the  
16 Defendant, Denzel Dorsey, in case number C-17-323324-1 in the Eighth Judicial District  
17 Court, and case number 79845 in the Nevada Supreme Court, and moves this Court to  
18 withdraw as counsel of record for Defendant Denzel Dorsey.

19 As grounds for this Motion, Counsel states that he was appointed to represent  
20 Defendant on December 03, 2019.

21 Counsel filed Appellant's Opening Brief on June 10, 2020, and then filed a Reply  
22 Brief on July 17, 2020 in Supreme Court case number 79845. On January 8, 2021, the  
23 Supreme Court entered an Order of Affirmance. On February 3, 2021, Remittitur was  
24 issued. Counsel advised Defendant of the Supreme Court's Order of Affirmance and  
25 Remittitur and also advised Defendant this concluded counsel's representation of Defendant  
26 in case number 79845/79845-COA.

27 Defendant has requested his file and as counsel knows of no pending legal matters  
28 in Defendant's case in the District Court or Nevada Supreme Court which now exist  
therefore Counsel respectfully requests leave of the Court to Withdraw as Counsel.

1 Dated this 25th day of March, 2021.

2 Respectfully submitted,  
3 // s // Terrence M. Jackson  
4 TERRENCE M. JACKSON, ESQ.  
5 Nevada Bar No. 00854  
6 Law Office of Terrence M. Jackson  
7 624 South Ninth Street  
8 Las Vegas, NV 89101  
9 T: (702) 386-0001/Fax: (702) 386-0085  
10 terry.jackson.esq@gmail.com  
11 Counsel for Defendant, *Denzel Dorsey*

12 **CERTIFICATE OF SERVICE**

13 I hereby certify I am an assistant to Terrence M. Jackson, Esquire, a person  
14 competent to serve papers and not a party to the above-entitled action and on the 25th day  
15 of March, 2021, I served a copy of the foregoing: Motion to Withdraw as Counsel as  
16 follows:

17 [X] Via Electronic Service (*Odyssey File & Serve*) to the Eighth Judicial District Court,  
18 and by U.S. mail with first class postage affixed to the Defendant and Attorney  
19 General as follows:

20 STEVEN B. WOLFSON  
21 Clark County District Attorney  
22 steven.wolfson@clarkcountynvda.com

23 AARON D. FORD  
24 Nevada Attorney General  
25 100 North Carson Street  
26 Carson City, NV 89701

27 KAREN MISHLER  
28 Chief Deputy District Attorney - Criminal  
29 karen.mishler@clarkcountynvda.com

30 DENZEL DORSEY  
31 ID# 1099468  
32 H.D.S.P. - P.O. BOX 650  
33 Indian Springs, NV 89070-0650

34 By: /s/ Ila Wills

35 An assistant to T. M. Jackson, Esq.

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



State of Nevada  
vs  
Denzel Dorsey

Case No.: C-17-323324-1  
Department 18

**NOTICE OF HEARING**

Please be advised that the Defendant's Motion to Withdraw as Counsel in the above-entitled matter is set for hearing as follows:

**Date:** April 06, 2021  
**Time:** 11:00 AM  
**Location:** RJC Courtroom 03F  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

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

STEVEN D. GRIERSON, CEO/Clerk of the Court

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

**CERTIFICATE OF SERVICE**

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

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

Denzel Dorsey #1099468  
H.D.S.P.  
P.O. Box 650  
Indian Springs, NV 89070

Electronically Filed  
10/11/2021 2:49 PM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

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

State of Nevada,  
Plaintiff,

C-17-323324-1  
CASE NO. A-21-839313-W  
DEPT NO. 18

v.

Denzel Dorsey,  
Defendant,

NOTICE OF APPEAL

Notice is hereby given that Denzel R. Dorsey,  
Defendant above-named, hereby appeals to the  
Supreme Court of Nevada from the denial of defendants  
Writ of HABEAS CORPUS (post-conviction), entered  
in this action on the 2<sup>nd</sup> day of October, 2021.

Dated this 2<sup>nd</sup> day of October, 2021.

RECEIVED  
OCT 11 2021  
CLERK OF THE COURT  
RECEIVED  
OCT 11 2021  
CLERK OF THE COURT

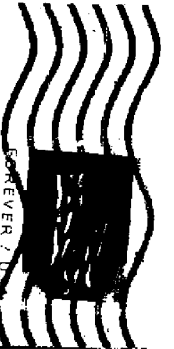
*[Signature]*

Defendants Signature

DANIEL R. DORSEY #1099468  
H.D.S.P.  
P.O. Box # 650  
Indian Springs, NV 89070

RECEIVED  
OCT 07 2021  
DISTRICT COURT  
ADMINISTRATION

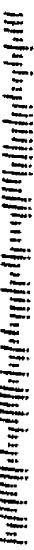
LAS VEGAS NV 890  
4 OCT 2021 PM 3 L



RECEIVED  
OCT 11 2021  
CLERK OF THE COURT

Court Administration  
FIFTH Judicial District Court  
200 Lewis Avenue  
Las Vegas, NV 89155

89101-630000



CID 9 1207

OCT 08 2021

HIGH DESERT STATE PRISON



1 ASTA

2

3

4

5

6

7

8

9

10 STATE OF NEVADA,

11 Plaintiff(s),

12 vs.

13 DENZEL DORSEY,

14 Defendant(s),

Case No: C-17-323324-1

Dept No: ~~IV~~ VI

16

17

## CASE APPEAL STATEMENT

18

19

20

21

22

23

24

25

26

27

28

1. Appellant(s): Denzel Dorsey

2. Judge: Jacqueline M. Bluth

3. Appellant(s): Denzel Dorsey

Counsel:

Denzel Dorsey #1099468  
P.O. Box 650  
Indian Springs, NV 89070

4. Respondent: The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney  
200 Lewis Ave.  
Las Vegas, NV 89101



(702) 671-2700

5. Appellant(s)'s Attorney Licensed in Nevada: N/A  
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes  
Permission Granted: N/A

6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: Yes

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

9. Date Commenced in District Court: May 5, 2017

10. Brief Description of the Nature of the Action: Criminal

Type of Judgment or Order Being Appealed: Writ of Habeas Corpus

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 79845

12. Child Custody or Visitation: N/A

Dated This 13 day of October 2021.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk  
200 Lewis Ave  
PO Box 551601  
Las Vegas, Nevada 89155-1601  
(702) 671-0512

cc: Denzel Dorsey

**FFCO**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**JOHN NIMAN**  
Deputy District Attorney  
Nevada Bar #14408  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**THE STATE OF NEVADA,**

**Plaintiff,**

**-vs-**

**DENZEL DORSEY,**  
**#2845569**

**Defendant.**

**CASE NO: A-21-839313-W  
C-17-323324-1  
DEPT NO: VI**

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

**DATE OF HEARING: September 23, 2021  
TIME OF HEARING: 11:00 AM**

THIS CAUSE having come on for hearing before the Honorable JOE HARDY, District Judge, on the 23rd day of September 2021, the Petitioner not present, and representing himself, the Respondent being represented by STEVEN B. WOLFSON, District Attorney, by and through ALICIA ALBRITTON, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and/or documents on file herein, now, therefore, the Court makes the following findings of fact, conclusions of law and order

//

//

//

//

//

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

On January 16, 2018, Caitlyn McAmis (“McAmis”) confirmed as counsel. District court reset trial to April 23, 2018. On March 13, 2018, Petitioner entered a guilty plea to count one (1) Invasion of the Home (Category B Felony – NRS 205.067 – NOC 50435). Defendant signed the guilty plea agreement, which stated *inter alia* :

2

1 Nevada Department of Corrections. Additionally, I agree to pay  
2 full restitution including for cases and counts dismissed.

3 On March 13, 2018, pursuant to the terms of the agreement, district court released  
4 Petitioner on standard bail. District Court set sentencing for July 17, 2018. On April 26, 2018,  
5 Petitioner filed a Motion to Place on Calendar to Address Custody Status and Hold. On May  
6 8, 2018, district court reset sentencing to June 5, 2018; district court did not remand Petitioner.

7 On June 5, 2018, at the time of sentencing, Petitioner notified district court that he  
8 wished to withdraw his guilty plea and dismiss McAmis as counsel. On June 6, 2018,  
9 Petitioner filed a *pro per* Motion to Dismiss Counsel and a Motion to Withdraw Plea. On June  
10 12, 2018, district court granted Petitioner's Motion to Dismiss Counsel. On June 28, 2018,  
11 district court continued all matters to July 17, 2018. On July 3, 2018, State filed an Opposition  
12 to Petitioner's Motion to Withdraw Plea.

13 On July 17, 2018, district court issued a bench warrant. Petitioner failed to appear  
14 because Petitioner had been arrested in California for Receiving Stolen Property. On July 24,  
15 2018, Petitioner's newly retained counsel — Carl Arnold — filed a Motion to Quash Bench  
16 Warrant. On July 31, 2018, district court denied Petitioner's motion.

17 On November 8, 2018, Petitioner appeared in custody on the bench warrant return.  
18 District court reset the sentencing hearing on November 27, 2018. On November 27, 2018,  
19 newly retained counsel — Gary Modafferi — appear for Petitioner. District Court reset the  
20 sentencing hearing on December 13, 2018.

21 On December 5, 2018, Petitioner filed Motion for Expert Services (Investigator)  
22 pursuant to *Widdis*. On January 9, 2019, district court granted the motion. On January 17,  
23 2019, district court confirmed the investigator would only be working on information related  
24 to a Motion to Withdraw Guilty Plea. District court reset the sentencing hearing to February  
25 19, 2019.

26 On February 15, 2019, Petitioner filed a Motion to Withdraw Guilty Plea. On February  
27 19, 2019, district court reset sentencing to March 26, 2019, so that State could file an  
28 opposition to Petitioner's Motion to Withdraw Guilty Plea. On February 21, 2019, State filed

1 a Notice of Intent to Seek Punishment as a Habitual Criminal. On March 19, 2019, State filed  
2 an Opposition to Petitioner's Motion to Withdraw Guilty Plea. On March 28, 2019, Petitioner  
3 filed a Reply to State's Opposition to Motion to Withdraw Guilty Plea.

4 On May 28, 2019, and July 11, 2019, district court held an evidentiary hearing on  
5 Petitioner's Motion to Withdraw his Plea. On August 6, 2019, district court denied Petitioner's  
6 Motion to Withdraw Plea. On August 7, 2019, district court issued Notice of Entry of Order.

7 On October 3, 2019, district court sentenced Petitioner pursuant to small habitual status.  
8 District court sentenced Petitioner to count one (1) sixty (60) to one-hundred-fifty (150)  
9 months in the Nevada Department of Corrections. Petitioner received four-hundred-twenty-  
10 three (423) days for credit time served. District court further ordered count two (2) dismissed.  
11 On October 9, 2019, district court filed the Judgement of Conviction ("JOC").

12 On October 15, 2019, Petitioner filed Notice of Appeal — through Terrance Jackson.  
13 On January 8, 2021, the Nevada Court of Appeals Affirmed Petitioner's conviction. On  
14 February 3, 2021, the Nevada Supreme Court issued the Remittitur. On August 11, 2021,  
15 Petitioner filed the instant *pro per* Petition for Writ of Habeas Corpus.

#### 16 **STATEMENT OF FACTS**

17 Defendant's Supplemental Pre-Sentence Investigation Report ("PSI") filed September  
18 23, 2019, provided a recitation of the facts of the subject offenses:

19  
20 On November 28, 2016, an officer responded to a local  
21 residence in reference to a *home invasion*. Upon arrival, the officer  
22 met the one of the residents of the house, who advised the officer  
23 that a male, later identified as the defendant, Denzel Dorsey,  
24 punched a hole in the glass door window. Mr. Dorsey proceeded  
25 to place his hand through the hole and unlock the deadbolt on the  
26 door. The resident then ran to the door and locked the deadbolt  
back. Mr. Dorsey, realized someone was home, fled the scene in a  
vehicle parked in front of the residence. The officer spoke made  
contact with the owner of the residence, the victim, who advised  
that she would like to press charges against Mr. Dorsey.

27 A records of the vehicle revealed that it had been rented  
28 from a local car rental agency. A detective responded to the rental  
agency and was advised that the vehicle was equipped with a GPS

1 Tracker. The travel history of the vehicle confirmed that [the]  
2 vehicle was present at the time of the aforementioned incident.  
3 Detectives located the vehicle and made contact with Mr. Dorsey,  
4 the driver, and another male as they exited the vehicle. The  
5 detective attempted to speak with Mr. Dorsey and the male. Both  
6 were uncooperative, denied being in the vehicle, and provided  
7 fictitious names. When Mr. Dorsey was advised that he was being  
8 charged with home invasion, Mr. Dorsey looked down and  
9 stated[,] "Ah shit." Mr. Dorsey was observed to be wearing a coat  
10 with fresh tears on it, and he had fresh cuts on his right hand. A  
11 search incident to arrest located the key to the vehicle in Mr.  
12 Dorsey's right pocket along with a glove with fresh blood on it. A  
13 search of the vehicle located three prescription muscle relaxers, a  
14 package of ziplock baggies, a prescription bottle for Oxycodone  
15 with another individual's name imprinted on it, [] several pieces of  
16 miscellaneous jewelry, and a glove matching the one retrieved  
17 from Mr. Dorsey's pocket.

12 Based on the above facts, Mr. Dorsey was arrested,  
13 transported to the Henderson Detention Center [,]and booked  
14 accordingly.

### 14 **DECISION**

#### 15 **I. Petitioner Claims are Outside the Scope of Writ, and Petitioner Failed to** 16 **Establish Good Cause and a Showing of Prejudice**

17 Petitioner makes a series of claims, listed in his petition, that are outside the scope of  
18 habeas review. *See Petition*, at 6-12. Additionally, Petitioner failed to establish good cause and  
19 a showing of prejudice to overcome the mandatory procedural bars.

20 Pursuant to NRS 34.810, "[t]he court shall dismiss a petition if the court determines  
21 that [the] *conviction was upon a plea of guilty* . . . and the petition is not based upon an  
22 allegation that the plea was involuntarily or unknowingly entered or that the plea was entered  
23 without effective assistance of counsel." NRS 34.810(1)(a). Petitioner may only escape these  
24 procedural bars if he meets the burden of establishing good cause and prejudice. *See* NRS  
25 34.810(3). Where a petitioner does not show good cause for failure to raise claims of error  
26 upon direct appeal, the district court is not obliged to consider them in post-conviction  
27 proceedings. *Jones v. State*, 91 Nev. 416, 536 P.2d 1025 (1975).

28 Additionally, "challenges to the validity of a guilty plea and claims of ineffective  
assistance of trial and appellate counsel must first be pursued in post-conviction

1 proceedings.... [A]ll other claims that are appropriate for a direct appeal must be pursued on  
2 direct appeal, or they will be considered waived in subsequent proceedings.” Franklin v. State,  
3 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other  
4 grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). “A court *must dismiss* a  
5 habeas petition if it presents claims that either were or could have been presented in an earlier  
6 proceeding, unless the court finds both cause for failing to present the claims earlier or for  
7 raising them again and actual prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646-  
8 47, 29 P.3d 498, 523 (2001).

9 To avoid procedural default, under NRS 34.810(3)(a), Petitioner has the burden of  
10 pleading and proving specific facts that demonstrate good cause for his failure to present his  
11 claim in an earlier proceedings or to otherwise comply with the statutory requirements, and  
12 that Petitioner will be unduly prejudiced if the petition is dismissed. *See Hogan v. Warden*,  
13 109 Nev. 952, 959-60, 860 P.2d 710, 715-16 (1993); Phelps v. Nevada Dep't of Prisons, 104  
14 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). “A court *must* dismiss a habeas petition if it  
15 presents claims that either were or could have been presented in an earlier proceeding, unless  
16 the court finds both cause for failing to present the claims earlier or for raising them again and  
17 actual prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523  
18 (2001) (emphasis added).

19 “To establish good cause, appellants must show that an impediment external to the  
20 defense prevented their compliance with the applicable procedural rule.” Clem v. State, 119  
21 Nev. 615,621, 81 P.3d 521,525 (2003) (emphasis added); *See also Hathaway v. State*, 119  
22 Nev. 248, 25 I, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. “A  
23 qualifying impediment might be shown where the factual or legal basis for a claim was not  
24 reasonably available at the time of default.” Clem, 119 Nev. at 621, 81 P.3d at 525. The Court  
25 continued, “appellants cannot attempt to manufacture good cause.” *Id.* at 621, 81 P.3d at 526.  
26 Examples of good cause include interference by State officials and the previous unavailability  
27 of a legal or factual basis. *See State v. Huebler*, 128 Nev. Adv. Op. 19,275 P.3d 91, 95 (2012).  
28 Any delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

1 To establish prejudice, a Petitioner must show "not merely that the errors of [the  
2 proceedings] created [the] possibility of prejudice, but that they worked to his actual and  
3 substantial disadvantage, in affecting the State's proceedings with [an] error of constitutional  
4 dimensions.'" Hogan v. Warden, 109 Nev. 952,960, 860 P.2d 710,716 (1993) (quoting United  
5 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. I 584, I 596 (1982)). Bare and naked allegations  
6 are insufficient to warrant post-conviction relief, nor are those belied and repelled by the  
7 record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "A claim is 'belied'  
8 when it is contradicted or proven to be false by the record as it existed at the time the claim  
9 was made." Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

10 Petitioner failed to address good cause to overcome the mandatory procedural bar.  
11 Indeed, Petitioner cannot, since the applicable law and facts were all available when he pled  
12 guilty. Additionally, Petitioner failed to show that an impediment external to the defense  
13 prevented him from raising these claims in an earlier proceeding and offers no excuse for his  
14 failure to raise said issues there. As such, Petitioner does not show good cause, or show any  
15 prejudice to overcome the procedural bars. Therefore, the instant Petition is DENIED.

16 **a. Petitioner's In-Court Identification Claim is Outside the Scope of Habeas**  
17 **Review**

18 Petitioner claims the justice court erred in allowing the Kevin Narazeno ("Victim") of  
19 the home invasion to make an in-court identification of Petitioner — during the preliminary  
20 hearing — after State allegedly engaged in witness tampering by suggesting to Victim that  
21 Petitioner was the suspect of the home invasion. *See Petition*, at 6-6A. However, pursuant to  
22 NRS 34.810, Petitioner's claim is outside the scope of habeas review.

23 On March 13, 2018, Petitioner plead guilty pursuant to a guilty plea agreement. On  
24 August 6, 2019, district court held the guilty plea agreement to be valid.

25 Petitioner raised various claims on direct appeal. None of which was the claim that  
26 State improperly suggested to Victim that the home invasion suspect was the Petitioner.  
27 Petitioner's claim that without the allegedly improper in-court identification, there would not  
28 have been enough evidence to establish probable cause to bind Petitioner over to district court



1 should have been raised in a pre-trial petition of writ of habeas corpus. However, Petitioner  
2 did not file a pre-trial writ.

3 In any event, Petitioner misconstrues the facts surrounding the alleged witness  
4 tampering. During the preliminary hearing, State asked several times if the Victim noticed  
5 anyone in court like the description given of the suspect. Preliminary Hearing (“PH”), at 11-  
6 13. Victim was not sure. PH, at 12. Only after Petitioner removed his glasses and the State  
7 direct the witness if "he look[ed] familiar," did Victim respond, "Yes, I think so . . . Yes.  
8 Without the glasses." PH, at 12-13. At no time did State inform Victim to answer in the  
9 affirmative or informed Victim that the Petitioner was the suspect from the home invasion.

10 Additionally, all the facts were available to Petitioner at the time of appeal. Petitioner  
11 failed to raise said claim and does not explain why. Therefore, Petitioner's claim is outside the  
12 scope of habeas review and is DENIED.

13 **b. Petitioner’s Brady Claim is Outside the Scope of Habeas Review**

14 Petitioner claims State failed to hand over the clothing apparel described in the incident  
15 report. *See* Petition, at 7. According to Petitioner, this failure amounts to a Brady violation.  
16 Petitioner’s claim is outside the scope of habeas review.

17 Brady and its progeny require a prosecutor to disclose evidence favorable to the defense  
18 when that evidence is material either to guilt or to punishment. *See* Mazzan v. Warden, 116  
19 Nev. 48, 66, 993 P.2d 25 (2000); *See also* Jimenez v. State, 112 Nev. 610, 618-19, 918 P.2d  
20 687 (1996). “[T]here are three components to a Brady violation: (1) the evidence at issue is  
21 favorable to the accused; (2) the evidence was withheld by the state, either intentionally or  
22 inadvertently; and (3) prejudice ensued, i.e., the evidence was material.” Mazzan 116 Nev. at  
23 67. “Where the state fails to provide evidence which the defense did not request or requested  
24 generally, it is constitutional error if the omitted evidence creates a reasonable doubt which  
25 did not otherwise exist. In other words, evidence is material if there is a reasonable probability  
26 that the result would have been different if the evidence had been disclosed.” *Id.* at 66 (internal  
27 citations omitted). “In Nevada, after a specific request for evidence, a Brady violation is  
28 material if there is a reasonable *possibility* that the omitted evidence would have affected the

1 outcome. Id. (citing Jimenez v. State, 112 Nev. 610, 618-19, 918 P.2d 687, 692 (1996)); *See*  
2 *also* Roberts v. State, 110 Nev. 1121, 1132, 881 P.2d 1, 8 (1994).

3 “The mere possibility that an item of undisclosed information might have helped the  
4 defense, or might have affected the outcome of the trial, does not establish ‘materiality’ in the  
5 constitutional sense.” United States v. Agurs, 427 U.S. 97, 108, 96 S.Ct. 2392, 2399-400  
6 (1976). Favorable evidence is material, and constitutional error results, “if there is a  
7 reasonable probability that the result of the proceeding would have been different.” Kyles v.  
8 Whitley, 514 U.S. 419, 433-34, 115 S.Ct. 1555, 1565 (1995) (citing U.S. v. Bagley, 473 U.S.  
9 667, 682, 105 S.Ct. 3375, 3383 (1985)). A reasonable probability is shown when the  
10 nondisclosure undermines confidence in the outcome of the trial. Kyles at 434, 115 S.Ct. at  
11 1565.

12 Due Process does not require simply the disclosure of “exculpatory” evidence.  
13 Evidence must also be disclosed if it provides grounds for the defense to attack the reliability,  
14 thoroughness, and good faith of the police investigation or to impeach the credibility of the  
15 State’s witnesses. *See* Kyles 514 U.S. at 442, 445-51, 115 S. Ct. 1555 n. 13. Evidence cannot  
16 be regarded as “suppressed” by the government when the defendant has access to the evidence  
17 before trial by the exercise of reasonable diligence. United States v. White, 970 F.2d 328, 337  
18 (7<sup>th</sup> Cir. 1992). “Regardless of whether the evidence was material or even exculpatory, when  
19 information is fully available to a defendant at the time of trial and his only reason for not  
20 obtaining and presenting the evidence to the Court is his lack of reasonable diligence, the  
21 defendant has no Brady claim.” United States v. Brown, 628 F.2d 471, 473 (5<sup>th</sup> Cir. 1980).

22 “While the [United States] Supreme Court in Brady held that the [g]overnment may not  
23 properly conceal exculpatory evidence from a defendant, it does not place any burden upon  
24 the [g]overnment to conduct a defendant’s investigation or assist in the presentation of the  
25 defense’s case.” United States v. Marinero, 904 F.2d 251, 261 (5<sup>th</sup> Cir. 1990); *accord* United  
26 States v. Pandozzi, 878 F.2d 1526, 1529 (1<sup>st</sup> Cir. 1989); United States v. Meros, 866 F.2d 1304,  
27 1309 (11<sup>th</sup> Cir. 1989). When defendants miss the exculpatory nature of documents in their  
28

1 possession or to which they have access, they cannot miraculously resuscitate their defense  
2 after conviction by invoking Brady. White 970 F.2d at 337.

3 The Nevada Supreme Court has followed the federal line of cases in holding that Brady  
4 does not require the State to disclose evidence available to the defendant from other sources  
5 or defense counsel could have independently obtained through a diligent investigation. *See*  
6 Steese v. State, 114 Nev. 479, 495, 960 P.2d 321, 331 (1998). In Steese, the undisclosed  
7 information stemmed from collect calls that the defendant made.

8 Here, on March 13, 2018, Petitioner plead guilty pursuant to a guilty plea agreement.  
9 On August 6, 2019, district court held the guilty plea agreement to be valid. Petitioner raised  
10 various claims on direct appeal. None of which was the claim State allegedly withheld Brady  
11 material. All of the alleged facts were available to Petitioner at the time of appeal. However,  
12 Petitioner failed to raise said claim and does not explain why.

13 Additionally, the apparel worn by the suspect — a torn dress coat — described in the  
14 incident report is not Brady material. There is nothing regarding the dress coat that would  
15 explain away the charge of a home invasion. Additionally, Petitioner does not explain how the  
16 dress coat is exculpatory or how it would have affected the negotiations. If anything, the lack of  
17 the dress coat would hamper State's presentation of the case — if that.

18 In any event, Victim identified Petitioner as the person who tried to gain entrance to his  
19 residence, and State could place Petitioner at the crime scene via GPS. Thus, the dress coat is  
20 an insignificant piece of identification evidence.

21 Lastly, when Petitioner entered the guilty plea agreement, he knew what he was wearing  
22 during the home invasion; thus, Petitioner's claim is irrelevant. Therefore, Petitioner's claim is  
23 outside the scope of habeas review and is DENIED.

24 **c. Petitioner's Claim of Ineffective Assistance of Counsel Claims is Outside**  
25 **the Scope of Habeas Review and are Meritless**

26 Petitioner claims (i) Keith Brower ("Brower") provided ineffective assistance counsel  
27 by failing to object to State's alleged witness tampering of Victim and failure to obtain  
28 inculpatory photos and physical evidence during the preliminary hearing, (ii) McAmis

1 provided ineffective assistance of counsel by failing to investigate Petitioner's case properly,  
2 and (iii) Terrence Jackson ("Jackson") provided ineffective assistance of counsel on appeal by  
3 failing to raise a series of claims. *See* Petition, at 8D.

4 The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal  
5 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his  
6 defense." The United States Supreme Court has long recognized that "the right to counsel is  
7 the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686,  
8 104 S. Ct. 2052, 2063 (1984); *See also* State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323  
9 (1993).

10 To prevail on a claim of ineffective assistance of trial counsel, a petitioner must prove  
11 they were denied "reasonably effective assistance" of counsel by satisfying the two-prong test  
12 of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. *See also* Love, 109 Nev. at 1138,  
13 865 P.2d at 323. Under the Strickland test, a petitioner must show first that his counsel's  
14 representation fell below an objective standard of reasonableness and second, that, but for  
15 counsel's errors, there is a reasonable probability that the result of the proceedings would have  
16 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison  
17 v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).  
18 "[T]here is no reason for a court deciding an ineffective assistance claim to approach the  
19 inquiry in the same order or even to address both components of the inquiry if the [petitioner]  
20 makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

21 The court begins with the presumption of effectiveness and then must determine  
22 whether the petitioner has demonstrated by a preponderance of the evidence that counsel was  
23 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel  
24 does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of  
25 competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432,  
26 537 P.2d 473, 474 (1975).

27 Moreover, the role of the court is "not to pass upon the merits of the action[s] not taken  
28 [by trial counsel] but to determine whether, under the particular facts and circumstances of the

1 case, trial counsel failed to render reasonably effective assistance.” Donovan v. State, 94 Nev.  
2 671, 675, 584 P.2d 708, 711 (1978). Further, the court should not “second guess reasoned  
3 choices between trial tactics *nor does it mean that defense counsel, to protect himself against*  
4 *allegations of inadequacy, must make every conceivable motion no matter how remote the*  
5 *possibilities are of success.*” Donovan, 94 Nev. at 675 (emphasis added) (quoting Cooper v.  
6 Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)). To be effective, the Constitution “does not  
7 require that [trial] counsel do what is impossible or unethical. If there is no bona fide defense  
8 to the charge, counsel cannot create one and may disserve the interests of his client by  
9 attempting a useless charade.” U.S. v. Cronin, 466 U.S. 648, 657, 104 S. Ct. 2039, 2046 (1984).  
10 Additionally, counsel cannot be ineffective for failing to make futile objections or arguments.  
11 *See Ennis v. State*, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

12 “There are countless ways to provide effective assistance in any given case. Even the  
13 best criminal defense attorneys would not defend a particular client in the same way.”  
14 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by [trial] counsel after  
15 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,  
16 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); *See also Ford v. State*, 105 Nev. 850, 853, 784  
17 P.2d 951, 953 (1989). Therefore, the court must “judge the reasonableness of [trial] counsel’s  
18 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s  
19 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

20 When a conviction is the result of a guilty plea, a defendant must show that there is a  
21 “*reasonable probability* that, but for counsel’s errors, he would not have pleaded guilty and  
22 would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370  
23 (1985) (emphasis added); *See also Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107  
24 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004). Additionally, a  
25 petitioner who contends his attorney was ineffective because he did not *investigate adequately*  
26 must show how a better investigation would have resulted in a more favorable outcome.  
27 Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Moreover, bare and naked  
28

1 allegations are insufficient to warrant post-conviction relief, nor are those belied and repelled  
2 by the record. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

3 Additionally, “[P]etitioner must prove the disputed factual allegations underlying his  
4 ineffective-assistance claim by a preponderance of the evidence.” Means v. State, 120 Nev.  
5 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, claims of ineffective assistance of counsel  
6 asserted in a petition for post-conviction relief must be supported with specific factual  
7 allegations, which would entitle the petitioner to relief if true. *See Hargrove v. State*, 100 Nev.  
8 498, 502, 686 P.2d 222, 225 (1984). Bare and naked allegations are not sufficient, nor are  
9 those belied and repelled by the record. Id. NRS 34.735(6) states in relevant part, “[petitioner]  
10 *must* allege specific facts supporting the claims in the petition[.] . . . Failure to allege specific  
11 facts rather than just conclusions may cause your petition to be dismissed.” (emphasis added).  
12 “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it existed at  
13 the time the claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

14 **i. Petitioner’s Claim of Ineffective Assistance of Counsel regarding**  
15 **Keith Brower is Outside the Scope of Habeas Review and is Meritless**

16 Petitioner claims Brower failed to object at the preliminary hearing when State  
17 allegedly directing Victim to identify Petitioner as the suspect of the home invasion.  
18 Additionally, Petitioner claims Brower failed to obtain “any of the inculpatory evidence” used  
19 during the preliminary hearing. Petitioner’s claims are outside the scope of habeas review and  
20 are meritless.

21 Petitioner fails to demonstrate how counsel’s failure to object during the preliminary  
22 hearing shows with a reasonable probability that Petitioner would not have plead guilty  
23 pursuant to his guilty plea agreement. Additionally, in so far as Petitioner’s inculpatory  
24 evidence claims. Petitioner does not explain how having the physical *inculpatory* evidence  
25 would have shown with a reasonable probability that Petitioner would have asserted his right  
26 to trial.

27 Also, Petitioner — without meaningful delineation — fails to describe what *inculpatory*  
28 evidence he is referencing. Petitioner makes a meritless — and convoluted — assertion that

1 somehow the *inculpatory* evidence could have been used to Petitioner's benefit during cross-  
2 examination. Thus, it would have acted as exculpatory evidence that somehow shows with a  
3 *reasonable probability* that Petitioner would not have plead guilty.

4 However, such a claim is meritless and counterintuitive. *Inculpatory* evidence does not  
5 act on mathematic principles of multiplication where multiple pieces of *inculpatory* evidence  
6 multiplied by each other somehow converts to exculpatory evidence, which then demonstrates  
7 with a *reasonable probability* that Petitioner would have asserted his right to trial. If anything,  
8 it supports the conclusion that Petitioner would have been incentivized to enter negotiations  
9 and ultimately enter into a guilty plea agreement — which is what occurred here.

10 Petitioner's claim is outside the scope of habeas review and is meritless. Therefore,  
11 Petitioner's claim is DENIED.

12 ii. **Petitioner's Claim of Ineffective Assistance of Counsel regarding**  
13 **Caitlyn McAmis is Outside the Scope of Habeas Review and is**  
14 **Meritless**

15 Petitioner claims McAmis failed to investigate Petitioner's case properly. Petitioner's  
16 claim is outside the scope of habeas review and is meritless.

17 Here, Petitioner does not provide sufficient facts to support his claims that counsel  
18 failed to investigate the case adequately. If anything, Petitioner provides sufficient facts  
19 showing McAmis effectively investigated Petitioner's case via working on a global resolution  
20 for Petitioner — which was ultimately successful. *See Petition*, at 8C.

21 In any event, Petitioner does not show what the investigation could have discovered  
22 that would have prevented him, with a *reasonable probability*, from entering into the GPA,  
23 nor what an investigation would have produced. *See Molina v. State*, 120 Nev. 185, 192, 87  
24 P.3d 533, 538 (2004).

25 As indicated above, Petitioner cannot demonstrate he would have plead not guilty but  
26 for McAmis failing to conduct a proper pre-trial investigation. Here the district court  
27 thoroughly canvassed Petitioner. At no point during the canvass did Petitioner claim Counsel  
28 was coercing Petitioner into accepting the GPA. Additionally, McAmis withdrew from  
Petitioner's case before Petitioner plead guilty — Gary Modafferi was the attorney on record

1 when Petitioner plead guilty. Moreover, the GPA — signed by Petitioner — indicated that he  
2 was "satisfied with the services provided by my attorney." GPA, at 5.

3 Petitioner's claim is outside the scope of habeas review and is meritless. Therefore,  
4 Petitioner's claim is DENIED.

5 **iii. Petitioner's Claim of Ineffective Assistance of Appellate Counsel is**  
6 **outside the Scope of Habeas Review**

7 Petitioner claims Jackson failed to raise the above claims on appeal, including "the  
8 courts abuse of discretion in denying [Petitioner's] motion to withdraw plea, and excluding . .  
9 . statement given by [Petitioner's] witnesses," and counsel not properly investigating  
10 Petitioner's case. *See Petition*, at 8D, 11. However, Petitioner claims are meritless and belied  
11 by the record.

12 There is a strong presumption that appellate counsel's performance was reasonable and  
13 fell within "the wide range of reasonable professional assistance." *United States v. Aguirre*,  
14 912 F.2d 555, 560 (2<sup>nd</sup> Cir. 1990) (citing *Strickland v. Washington*, 466 U.S. 668, 686, 689,  
15 104 S. Ct. 2052, 2065 (1984)). A claim of ineffective assistance of appellate counsel must  
16 satisfy the two-prong test set forth by *Strickland*. *Kirksey v. State*, 112 Nev. 980, 998, 923  
17 P.2d 1102, 1114 (1996). In order to satisfy *Strickland*'s second prong, the petitioner must show  
18 that the omitted issue would have had a reasonable probability of success on appeal. *Id.*

19 The professional diligence and competence required on appeal involve "winnowing out  
20 weaker arguments on appeal and focusing on one central issue if possible, or at most on a few  
21 key issues." *Jones v. Barnes*, 463 U.S. 745, 751-52, 103 S. Ct. 3308, 3313 (1983). In particular,  
22 a "brief that raises every colorable issue runs the risk of burying good arguments . . . in a verbal  
23 mound made up of strong and weak contentions." *Jones*, 463 U.S. at 753. Additionally,  
24 appointed counsel does not have a duty to "raise every "colorable" claim suggested by a  
25 client." *Jones*, 463 U.S. at 754.

26 Appellate lawyers are not ineffective when they refuse to follow a "kitchen sink"  
27 approach to the issues on appeals. *Howard v. Gramley*, 225 F.3d 784, 791 (7th Cir. 2000). On  
28 the contrary, one of the most critical parts of appellate advocacy is selecting the proper claims  
to argue on appeal. *Schaff v. Snyder*, 190 F.3d 513, 526-27 (7th Cir. 1999). Arguing every



1 conceivable point is distracting to appellate judges, consumes space that should be devoted to  
2 developing the arguments with some promise, inevitably clutters the brief with issues that have  
3 no chance because of doctrines like harmless error or the standard of review of jury verdicts,  
4 and is overall bad appellate advocacy. Howard, 225 F.3d at 791.

5 An appellate counsel deciding not to *raise a meritless issue* on appeal is not ineffective.  
6 Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). To establish prejudice based  
7 on the deficient assistance of appellate counsel, the petitioner must show that the omitted issue  
8 would have had a reasonable probability of success on appeal. *See Duhamel v. Collins*, 955  
9 F.2d 962, 967 (5th Cir.1992); *See also Heath v. Jones*, 941 F.2d 1126, 1132 (11th Cir.1991).  
10 In making this determination, a court must review the merits of the omitted claim. Heath, 941  
11 F.2d at 1132.

12 Appellate counsel may not simply raise appeal issues that have *no support in the record*;  
13 unsupported arguments and baseless assertions are suitable for summary dismissal. Maresca  
14 v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (“It is appellant’s responsibility to present relevant  
15 authority and cogent argument; issues not so presented need not be addressed by this court.”);  
16 *See also* NRAP 28(e). Further, claims of ineffective assistance of counsel asserted in a petition  
17 for post-conviction relief must be supported with specific factual allegations, which, if true,  
18 would entitle the petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. “Bare” and  
19 “naked” allegations are not sufficient, nor are those belied and repelled by the record. Id.

20 Petitioner was informed of his limited right to appeal in his Guilty Plea Agreement. In  
21 relevant part, the Petitioner's guilty plea agreement stated:

22 WAIVER OF RIGHTS

23 By entering my plea of guilty, I understand that I am waiving  
24 and forever giving up the following rights and privileges:

25 . . .

26 6. The right to appeal the conviction with the assistance of an attorney,  
27 either appointed or retained, unless specifically reserved in writing  
28 and agreed upon as provided in NRS 174.035(3). I understand this  
means I am unconditionally waiving my right to a direct appeal of this  
conviction, including any challenge based upon reasonable  
constitutional, jurisdictional, or other grounds that challenge the  
legality of the proceedings as stated in NRS 177.015(4). However, I

1 remain free to challenge my conviction through other post-conviction  
2 remedies including a habeas corpus petition pursuant to RNS Chapter  
3 34.

...

#### 4 VOLUNTARINESS OF PLEA

5 All of the foregoing elements, consequences, rights, and  
6 waiver of rights have been thoroughly explained to me by my  
7 attorney.

8 Guilty Plea Agreement ("GPA"), at 4-5

9 Petitioner knew of his limited rights to appeal. The guilty plea agreement demonstrates  
10 said rights were articulated to Petitioner. Petitioner acknowledged that the waiver of rights was  
11 adequately explained to him by counsel. Additionally, Petitioner fails to show that the claims  
12 he sought to appeal even had a reasonable likelihood of success on appeal. In fact, the  
13 ineffective assistance of counsel claims Petitioner argues should have been raised on appeal  
14 are explicitly not permitted to be raised on appeal. "[C]hallenges to the validity of a guilty plea  
15 and claims of ineffective assistance of trial and appellate counsel must first be pursued in post-  
16 conviction proceedings." Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994)  
17 (emphasis added) (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d  
18 222 (1999)). Therefore, Petitioner's claims are outside the scope of habeas review.

19 In any event, Petitioner claims appellate counsel was ineffective because appellate  
20 counsel failed to raise the issue on appeal that district court abused its discretion in not allowing  
21 Petitioner to withdraw his plea. However, appellate counsel did raise this issue on appeal. On  
22 appeal, the Nevada Court of Appeals held the district court "did not abuse its discretion by  
23 denying this claim." Dorsey v. State, Docket No. 79845-COA (Order of Affirmance, January  
24 8, 2021). Therefore, Petitioner's claim is belied by the record.

25 Moreover, Petitioner claims regarding the alleged Brady violation and State allegedly  
26 engaging in witness tampering. See Petition, at 8D. Appellate counsel is not required to *raise*  
27 *a meritless issue* on appeal. See Kirksey, 112 Nev. at 998, 923 P.2d at 1114. Additionally,  
28 Petitioner does not show the probability of success on appeal. Petitioner only asserts that such  
claims would have shown he was innocent without providing any facts to support such a claim.

1 As discussed above, the chance of these claims being brought successfully on appeal is  
2 unlikely. First, the Petitioner does not provide what evidence State allegedly withheld.  
3 However, Petitioner claims that a torn dress coat he was wearing while being taken into  
4 custody is somehow exculpatory. As discussed above, the dress coat Petitioner wore at the  
5 time of the home invasion is not exculpatory — there is no rational analysis to be made  
6 showing Petitioner’s dress coat explains away the charges. Therefore, this claim is without  
7 merit.

8 Additionally, Petitioner's claim of witness tampering is not supported by the record. *See*  
9 PH, at 11-13. The State only asked open-ended questions. Id. At no point did State direct the  
10 witness to respond in a particular way. Id. In any event, it was only after Petitioner removed  
11 his glasses that Victim could make a positive identification. Id. at 12-13. Therefore, this claim  
12 is without merit.

13 Lastly, Petitioner does not show what an investigation could have discovered, or the  
14 investigation would have prevented him, with a *reasonable probability*, from entering into the  
15 GPA. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Neither has Petitioner  
16 shown what an investigation would have produced. Id. As shown above, Petitioner’s claim is  
17 meritless and belied by the record. Therefore, Petitioner’s claim is DENIED.

18 **d. Petitioner’s Claim Counsel Coerced Him into Entering a Guilty Plea**  
19 **Agreement is Belied by Record**

20 Petitioner claims Yi Zheng coerced Petitioner into entering a GPA. However,  
21 Petitioner's claim is belied by the record. Bare and naked allegations are insufficient to warrant  
22 post-conviction relief, nor are those belied and repelled by the record. Hargrove v. State, 100  
23 Nev. 498, 502, 686 P.2d 222, 225 (1984). “A claim is ‘belied’ when it is contradicted or proven  
24 to be false by the record as it existed at the time the claim was made.” Mann v. State, 118 Nev.  
25 351, 354, 46 P.3d 1228, 1230 (2002).

26 Under NRS 176.165, after sentencing, a defendant’s guilty plea can only be withdrawn  
27 to correct “manifest injustice.” *See also Baal v. State*, 106 Nev. 69, 72, 787 P.2d 391, 394  
28 (1990). Manifest injustice does not exist if the defendant entered his plea voluntarily. Baal,

1 106 Nev. at 72, 787 P.2d at 394. Additionally, a plea of guilty is presumptively valid, and the  
2 burden is on the defendant to show defendant did not voluntarily enter into the plea. Bryant v.  
3 State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citation omitted). A district court may  
4 grant a presentence motion to withdraw a guilty plea for any “substantial reason” if it is “fair  
5 and just.” Molina v. State, 120 Nev. 185, 191, 87 P.3d 533, 537 (2004); *See also* NRS 176.165.

6 To determine whether a guilty plea was voluntarily entered, the court will review the  
7 totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721  
8 P.2d at 367. Under Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983), a proper plea  
9 canvass should reflect that:

10  
11 [T]he defendant knowingly waived his privilege against self-  
12 incrimination, the right to trial by jury, and the right to confront  
13 his accusers; (2) the plea was voluntary, was not coerced, and was  
14 not the result of a promise of leniency; (3) the defendant  
15 understood the consequences of his plea and the range of  
punishments; and (4) the defendant understood the nature of the  
charge, i.e., the elements of the crime.

16 Additionally, the presence and advice of counsel is a significant factor in determining the  
17 voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d 107, 107 (1975).

18 This standard requires the court accepting the plea to personally address the defendant  
19 when he enters his plea to determine whether he understands the nature of the charges to which  
20 he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not rely simply on a  
21 written plea agreement without some verbal interaction with a defendant. Id. Thus, a  
22 “colloquy” is constitutionally mandated, and a “colloquy” is but a conversation in a formal  
23 setting, such as that occurring between an official sitting in judgment of an accused at plea.  
24 *See Id.* However, the court need not conduct a ritualistic oral canvass. State v. Freese, 116  
25 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of guilty pleas “do not require  
26 the articulation of talismanic phrases,” but only that the record demonstrates a defendant  
27 entered his guilty plea understandingly and voluntarily. Heffley v. Warden, 89 Nev. 573, 575,  
28

1 516 P.2d 1403, 1404 (1973); *See also* Brady v. United States, 397 U.S. 742, 747-48, 90 S. Ct.  
2 1463, 1470 (1970).

3 Here, Petitioner fails to provide sufficient factual support to show that Yi Zheng  
4 coerced him into entering the GPA. Petitioner only makes the naked assertion that Yi Zheng  
5 manipulated him into entering the GPA. *See* Petition, at 9.

6 However, the record belies Petitioner's claim. On November 9, 2020, Petitioner was  
7 canvassed and entered a guilty plea. At no time did Petitioner raise his allegation that counsel  
8 was supposedly coercing him into entering a guilty plea.

9 Moreover, on November 17, 2020, the district court thoroughly canvassed Petitioner:

10  
11 THE COURT: Okay. I do have a guilty plea agreement which was  
12 filed in open court just a few seconds ago indicating that you had  
13 agreed to plead guilty to committing the crime of Count 1,  
14 Invasion of the Home, a Category B Felony in violation of NRS  
205.061. Sir, did you sign this agreement?

15 DEFENDANT: Yes, Your Honor.

16 THE COURT: Prior to signing the agreement, did you have an  
17 opportunity to review the agreement? Did you review it and  
18 understand the terms?

19 DEFENDANT: Yes, Your Honor.

20 THE COURT: *Is anyone forcing you to plead guilty?*

21 DEFENDANT: *No, Your Honor.*

22 THE COURT: *You're pleading guilty of your own free will?*

23 DEFENDANT: *Yes, Your Honor.*

24 . . .

25 THE COURT: Okay. And just so that I am clear because we  
26 couldn't hear that well, sir, did you have an opportunity to review  
27 the guilty plea agreement? Did you review it and understand the  
28 terms?

DEFENDANT: Yes, Your Honor.

THE COURT: *All right. Is anyone forcing you to plead guilty?*

DEFENDANT: *No, Your Honor.*

THE COURT: *You're pleading guilty of your own free will?*

DEFENDANT: *Yes, Your Honor.*

Hearing Transcript March 13, 2018, at 3-5.

1 As indicated above, the district court specifically inquired if Petitioner was giving his  
2 plea freely and voluntarily. Petitioner replied in the affirmative and failed to claim Yi Zheng  
3 manipulated Petitioner into accepting the GPA. District court specifically inquired *if anyone*  
4 made any threats to force him into entering the GPA. Petitioner replied in the negative and  
5 again failed to claim Yi Zheng manipulated Petitioner into accepting the GPA.

6 Additionally, at no time did Yi Zheng represent Petitioner. Petitioner's claim stems  
7 from his justice court case — 17F21598X — where John Momot, not Yi Zheng, represented  
8 Petitioner. The only time Yi Zheng interacted with Petitioner regarded his justice court case,  
9 is on January 10, 2018, when Yi Zheng appeared for John Momot to confirm John Momot as  
10 attorney of record and appeared for initial appearance. *See Memorandum*, at 86.

11 Also, McAmis represented Petitioner during entry of plea in the instant case. McAmis  
12 was the attorney on record that engaged in negotiations and helped form the plea agreement, not  
13 Yi Zheng. Petitioner admits this in his petition. *See Petition*, at 8A-8B.

14 Lastly, on March 13, 2018, Petitioner plead guilty pursuant to a guilty plea agreement.  
15 On August 6, 2019, district court held the guilty plea agreement to be valid. Petitioner raised  
16 various claims on direct appeal. None of which was the claim Petitioner did not enter into the  
17 GPA freely, knowingly, and voluntarily. All the alleged facts were available to Petitioner at  
18 the time of appeal. However, Petitioner failed to raise said claim and does not explain why.  
19 Petitioner's claim is belied by the record. Therefore, Petitioner's claim is DENIED.

20 **e. Petitioner's Claim that District Court Abused its Discretion by Denying**  
21 **Petitioner's Motion to Withdraw Plea is Barred Under Law of the Case**  
22 **Doctrine**

23 Petitioner claims district court abused its discretion when the court denied Petitioner's  
24 motion to withdraw plea. However, Petitioner's claim is barred under the Law of the Case  
25 Doctrine.

26 Under the doctrine of the law of the case, issues previously decided by an appellate  
27 court may not be reargued in a habeas petition. *See George v. State*, 125 Nev. 1038, 281 P.3d  
28 1175 (2009) (citing *Hall v. State*, 91 Nev. 314, 535 P.2d 797 (1975)). When the appellate court  
rules on the merits of a matter, the ruling becomes the law of the case, and the issue will not

1 be revisited. *See Hall v. State*, 91 Nev. 314, 315–16, 535 P.2d 797, 798–99 (1975); *See also*  
2 *Valerio v. State*, 112 Nev. 383, 386, 915 P.2d 874, 876 (1996); *Hogan v. Warden*, 109 Nev.  
3 952, 860 P.2d 710 (1993).

4 A petitioner cannot avoid the doctrine of the law of the case by a more detailed and  
5 precisely focused argument. *Hall*, 91 Nev. at 316, 535 P.2d at 798–99. *See also Pertgen v.*  
6 *State*, 110 Nev. 557, 557–58, 875 P.2d 316, 362 (1994). However, the "doctrine of the law of  
7 the case is not absolute," and the appellate court has the discretion to revisit the wisdom of its  
8 legal conclusions if the court "determines that such action is warranted." *Bejarano v. State*,  
9 122 Nev. 1066, 1074, 146 P.3d 265, 271 (2006).

10 Petitioner brought this same claim on direct appeal. Here, the Nevada Court of Appeals  
11 held that district court "did not abuse its discretion by denying this claim." *Dorsey v. State*,  
12 Docket No. 79845-COA (Order of Affirmance, January 8, 2021). The above ruling is the law  
13 of the case and Petitioner may not reargue this claim in his habeas petition. Therefore,  
14 Petitioner's claim is DENIED.

## 15 **II. PETITIONER FAILED TO ESTABLISH CUMULATIVE ERROR**

16 Petitioner argues that the cumulative effect of all the errors entitles Petitioner to  
17 reversal. *See Petition*, at 12. Petitioner's claim fails.

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

24 Even if applicable, a finding of cumulative error in the context of a *Strickland* claim is  
25 extraordinarily rare and requires an extensive aggregation of errors. *See, e.g., Harris By and*  
26 *through Ramseyer v. Wood*, 64 F.3d 1432, 1438 (9th Cir. 1995). In fact, logic dictates that  
27 there can be no cumulative error where the petitioner fails to demonstrate any single violation  
28 of *Strickland*. *See Turner v. Quarterman*, 481 F.3d 292, 301 (5th Cir. 2007) ("where individual

1 allegations of error are not of constitutional stature or are not errors, there is ‘nothing to  
2 cumulate.’”) (quoting Yohey v. Collins, 985 F.2d 222, 229 (5th Cir. 1993)); Hughes v. Epps,  
3 694 F.Supp.2d 533, 563 (N.D. Miss. 2010) (citing Leal v. Dretke, 428 F.3d 543, 552-53 (5th  
4 Cir. 2005)). Since Petitioner has not demonstrated any claim warranting relief under  
5 Strickland, there are no errors to cumulate.

6 Under the doctrine of cumulative error, “although individual errors may be harmless,  
7 the cumulative effect of multiple errors may deprive a defendant of the constitutional right to  
8 a fair trial.” Pertgen v. State, 110 Nev. 554, 566, 875 P.2d 361, 368 (1994) (citing Sipsas v.  
9 State, 102 Nev. 119, 716 P.2d 231 (1986)); *See also* Big Pond v. State, 101 Nev. 1, 3, 692 P.2d  
10 1288, 1289 (1985). The relevant factors to consider in determining “whether error is harmless  
11 or prejudicial include whether ‘the issue of innocence or guilt is close, the quantity and  
12 character of the error, and the gravity of the crime charged.’” Id., 101 Nev. at 3, 692 P.2d at  
13 1289.

14 Here, Petitioner failed to show cumulative error because there were no errors to  
15 cumulate. Petitioner failed to show how any of the above claims constituted ineffective  
16 assistance of counsel. Instead, all of Petitioner’s claims are either belied by the record,  
17 meritless, or otherwise outside the scope of habeas review. Additionally, given the evidence  
18 of Petitioner’s guilt, any claim that he would have been acquitted had these “errors” not  
19 occurred fails. Therefore, Petitioner’s claim is DENIED.

### 20 **III. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

21 Petitioner requests an evidentiary hearing in his memorandum of point and authorities.  
22 *See memorandum*, at 37-38. However, Petitioner is not entitled to an evidentiary hearing.

23 Under NRS 34.770, a petitioner is entitled to an evidentiary hearing when a judge  
24 reviews all supporting documents filed and determines that a hearing is necessary to explore  
25 the specific facts alleged in the petition. An evidentiary hearing is unnecessary if a petition can  
26 be resolved without expanding the record. Marshall v. State, 110 Nev. 1328, 885 P.2d 603  
27 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A petitioner is entitled  
28 to an evidentiary hearing if his petition is supported by specific factual allegations, which if



1 true, would entitle him to relief unless the factual allegations are repelled by the record. *See*  
2 Marshall, 110 Nev. at 1331, 885 P.2d at 605; *See also Hargrove*, 100 Nev. at 503, 686 P.2d at  
3 225 (holding that “[a] defendant seeking post-conviction relief is not entitled to an evidentiary  
4 hearing on factual allegations belied or repelled by the record”). It is improper to hold an  
5 evidentiary hearing simply to make a complete record. *See State v. Eighth Judicial Dist. Court*,  
6 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court considered itself the  
7 ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make as complete a record as  
8 possible.’ This is an incorrect basis for an evidentiary hearing.”).

9 Further, the United States Supreme Court has held that an evidentiary hearing is not  
10 required simply because counsel’s actions are challenged as being unreasonable strategic  
11 decisions. Harrington v. Richter, 562, U.S. 86, 105, 131 S. Ct. 770, 788 (2011). Although  
12 courts may not indulge post hoc rationalization for counsel’s decision-making that contradicts  
13 the available evidence of counsel’s actions, neither may they insist counsel confirm every  
14 aspect of the strategic basis for his or her actions. Id. There is a “strong presumption” that  
15 counsel’s attention to specific issues to the exclusion of others reflects trial tactics rather than  
16 “sheer neglect.” Id. (citing Yarborough, 540 U.S. 1, 124 S. Ct. 1). Strickland calls for an  
17 inquiry into the objective reasonableness of counsel’s performance, not counsel’s subjective  
18 state of mind. 466 U.S. at 688, 104 S. Ct. at 2065.

19 Here, Petitioner is not entitled to an evidentiary hearing. Petitioner’s claims are belied  
20 by the record, meritless, or capable of being addressed by the current record. There is no need  
21 to expand the record, and an evidentiary hearing is not warranted in the instant case. Therefore,  
22 Petitioner’s request for an evidentiary hearing is DENIED

23 //

24 //

25 //

26 //

27 //

28 //

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ORDER**

Therefore, it is HEREBY ORDERED that Petitioner's Petition for Post-conviction Relief shall be, and it is, hereby DENIED.

~~DATED this \_\_\_\_\_ day of October, 2021.~~

Dated this 20th day of October, 2021

  
\_\_\_\_\_  
DISTRICT JUDGE  
NH

**DB8 25B D072 98FB  
Jacqueline M. Bluth  
District Court Judge**

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

BY

/s/ John Niman  
\_\_\_\_\_  
JOHN NIMAN  
Deputy District Attorney  
Nevada Bar #14408

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 State of Nevada

CASE NO: C-17-323324-1

7 vs

DEPT. NO. Department 6

8 Denzel Dorsey

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 10/20/2021

15 Steve Wolfson

PDMotions@clarkcountyda.com

16 Keith Brower

BrowerLawOffice@aol.com

17 Carl Arnold, Esq.

carl@jharmonlaw.com

18 Noemy Marroquin

noemy@jharmonlaw.com

19 Gary Modafferi

modafferilaw@gmail.com



1 NEO

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

5 DENZEL DORSEY,

6 Petitioner,

Case No: C-17-323324-1

Dept No: VI

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

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

11 PLEASE TAKE NOTICE that on October 20, 2021, the court entered a decision or order in this matter,  
12 a true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you  
14 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 October 25, 2021.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Ingrid Ramos

Ingrid Ramos, Deputy Clerk

18  
19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 25 day of October 2021, I served a copy of this Notice of Entry on the  
21 following:

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

24 ☒ The United States mail addressed as follows:  
25 Denzel Dorsey # 1099468  
P.O. BOX 650  
26 Indian Springs, NV 89070

27 /s/ Ingrid Ramos

28 Ingrid Ramos, Deputy Clerk

**FFCO**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**JOHN NIMAN**  
Deputy District Attorney  
Nevada Bar #14408  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**THE STATE OF NEVADA,**

**Plaintiff,**

**-vs-**

**DENZEL DORSEY,**  
**#2845569**

**Defendant.**

**CASE NO: A-21-839313-W  
C-17-323324-1  
DEPT NO: VI**

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

**DATE OF HEARING: September 23, 2021  
TIME OF HEARING: 11:00 AM**

THIS CAUSE having come on for hearing before the Honorable JOE HARDY, District Judge, on the 23rd day of September 2021, the Petitioner not present, and representing himself, the Respondent being represented by STEVEN B. WOLFSON, District Attorney, by and through ALICIA ALBRITTON, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and/or documents on file herein, now, therefore, the Court makes the following findings of fact, conclusions of law and order

//

//

//

//

//

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

On January 16, 2018, Caitlyn McAmis (“McAmis”) confirmed as counsel. District court reset trial to April 23, 2018. On March 13, 2018, Petitioner entered a guilty plea to count one (1) Invasion of the Home (Category B Felony – NRS 205.067 – NOC 50435). Defendant signed the guilty plea agreement, which stated *inter alia* :

644

1 Nevada Department of Corrections. Additionally, I agree to pay  
2 full restitution including for cases and counts dismissed.

3 On March 13, 2018, pursuant to the terms of the agreement, district court released  
4 Petitioner on standard bail. District Court set sentencing for July 17, 2018. On April 26, 2018,  
5 Petitioner filed a Motion to Place on Calendar to Address Custody Status and Hold. On May  
6 8, 2018, district court reset sentencing to June 5, 2018; district court did not remand Petitioner.

7 On June 5, 2018, at the time of sentencing, Petitioner notified district court that he  
8 wished to withdraw his guilty plea and dismiss McAmis as counsel. On June 6, 2018,  
9 Petitioner filed a *pro per* Motion to Dismiss Counsel and a Motion to Withdraw Plea. On June  
10 12, 2018, district court granted Petitioner's Motion to Dismiss Counsel. On June 28, 2018,  
11 district court continued all matters to July 17, 2018. On July 3, 2018, State filed an Opposition  
12 to Petitioner's Motion to Withdraw Plea.

13 On July 17, 2018, district court issued a bench warrant. Petitioner failed to appear  
14 because Petitioner had been arrested in California for Receiving Stolen Property. On July 24,  
15 2018, Petitioner's newly retained counsel — Carl Arnold — filed a Motion to Quash Bench  
16 Warrant. On July 31, 2018, district court denied Petitioner's motion.

17 On November 8, 2018, Petitioner appeared in custody on the bench warrant return.  
18 District court reset the sentencing hearing on November 27, 2018. On November 27, 2018,  
19 newly retained counsel — Gary Modafferi — appear for Petitioner. District Court reset the  
20 sentencing hearing on December 13, 2018.

21 On December 5, 2018, Petitioner filed Motion for Expert Services (Investigator)  
22 pursuant to *Widdis*. On January 9, 2019, district court granted the motion. On January 17,  
23 2019, district court confirmed the investigator would only be working on information related  
24 to a Motion to Withdraw Guilty Plea. District court reset the sentencing hearing to February  
25 19, 2019.

26 On February 15, 2019, Petitioner filed a Motion to Withdraw Guilty Plea. On February  
27 19, 2019, district court reset sentencing to March 26, 2019, so that State could file an  
28 opposition to Petitioner's Motion to Withdraw Guilty Plea. On February 21, 2019, State filed

1 a Notice of Intent to Seek Punishment as a Habitual Criminal. On March 19, 2019, State filed  
2 an Opposition to Petitioner's Motion to Withdraw Guilty Plea. On March 28, 2019, Petitioner  
3 filed a Reply to State's Opposition to Motion to Withdraw Guilty Plea.

4 On May 28, 2019, and July 11, 2019, district court held an evidentiary hearing on  
5 Petitioner's Motion to Withdraw his Plea. On August 6, 2019, district court denied Petitioner's  
6 Motion to Withdraw Plea. On August 7, 2019, district court issued Notice of Entry of Order.

7 On October 3, 2019, district court sentenced Petitioner pursuant to small habitual status.  
8 District court sentenced Petitioner to count one (1) sixty (60) to one-hundred-fifty (150)  
9 months in the Nevada Department of Corrections. Petitioner received four-hundred-twenty-  
10 three (423) days for credit time served. District court further ordered count two (2) dismissed.  
11 On October 9, 2019, district court filed the Judgement of Conviction ("JOC").

12 On October 15, 2019, Petitioner filed Notice of Appeal — through Terrance Jackson.  
13 On January 8, 2021, the Nevada Court of Appeals Affirmed Petitioner's conviction. On  
14 February 3, 2021, the Nevada Supreme Court issued the Remittitur. On August 11, 2021,  
15 Petitioner filed the instant *pro per* Petition for Writ of Habeas Corpus.

#### 16 **STATEMENT OF FACTS**

17 Defendant's Supplemental Pre-Sentence Investigation Report ("PSI") filed September  
18 23, 2019, provided a recitation of the facts of the subject offenses:

19  
20 On November 28, 2016, an officer responded to a local  
21 residence in reference to a *home invasion*. Upon arrival, the officer  
22 met the one of the residents of the house, who advised the officer  
23 that a male, later identified as the defendant, Denzel Dorsey,  
24 punched a hole in the glass door window. Mr. Dorsey proceeded  
25 to place his hand through the hole and unlock the deadbolt on the  
26 door. The resident then ran to the door and locked the deadbolt  
back. Mr. Dorsey, realized someone was home, fled the scene in a  
vehicle parked in front of the residence. The officer spoke made  
contact with the owner of the residence, the victim, who advised  
that she would like to press charges against Mr. Dorsey.

27 A records of the vehicle revealed that it had been rented  
28 from a local car rental agency. A detective responded to the rental  
agency and was advised that the vehicle was equipped with a GPS



1 Tracker. The travel history of the vehicle confirmed that [the]  
2 vehicle was present at the time of the aforementioned incident.  
3 Detectives located the vehicle and made contact with Mr. Dorsey,  
4 the driver, and another male as they exited the vehicle. The  
5 detective attempted to speak with Mr. Dorsey and the male. Both  
6 were uncooperative, denied being in the vehicle, and provided  
7 fictitious names. When Mr. Dorsey was advised that he was being  
8 charged with home invasion, Mr. Dorsey looked down and  
9 stated[,] "Ah shit." Mr. Dorsey was observed to be wearing a coat  
10 with fresh tears on it, and he had fresh cuts on his right hand. A  
11 search incident to arrest located the key to the vehicle in Mr.  
12 Dorsey's right pocket along with a glove with fresh blood on it. A  
13 search of the vehicle located three prescription muscle relaxers, a  
14 package of ziplock baggies, a prescription bottle for Oxycodone  
15 with another individual's name imprinted on it, [] several pieces of  
16 miscellaneous jewelry, and a glove matching the one retrieved  
17 from Mr. Dorsey's pocket.

12 Based on the above facts, Mr. Dorsey was arrested,  
13 transported to the Henderson Detention Center [,]and booked  
14 accordingly.

### 14 **DECISION**

#### 15 **I. Petitioner Claims are Outside the Scope of Writ, and Petitioner Failed to** 16 **Establish Good Cause and a Showing of Prejudice**

17 Petitioner makes a series of claims, listed in his petition, that are outside the scope of  
18 habeas review. *See Petition*, at 6-12. Additionally, Petitioner failed to establish good cause and  
19 a showing of prejudice to overcome the mandatory procedural bars.

20 Pursuant to NRS 34.810, "[t]he court shall dismiss a petition if the court determines  
21 that [the] *conviction was upon a plea of guilty* . . . and the petition is not based upon an  
22 allegation that the plea was involuntarily or unknowingly entered or that the plea was entered  
23 without effective assistance of counsel." NRS 34.810(1)(a). Petitioner may only escape these  
24 procedural bars if he meets the burden of establishing good cause and prejudice. *See* NRS  
25 34.810(3). Where a petitioner does not show good cause for failure to raise claims of error  
26 upon direct appeal, the district court is not obliged to consider them in post-conviction  
27 proceedings. *Jones v. State*, 91 Nev. 416, 536 P.2d 1025 (1975).

28 Additionally, "challenges to the validity of a guilty plea and claims of ineffective  
assistance of trial and appellate counsel must first be pursued in post-conviction

1 proceedings.... [A]ll other claims that are appropriate for a direct appeal must be pursued on  
2 direct appeal, or they will be considered waived in subsequent proceedings.” Franklin v. State,  
3 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other  
4 grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). “A court *must dismiss* a  
5 habeas petition if it presents claims that either were or could have been presented in an earlier  
6 proceeding, unless the court finds both cause for failing to present the claims earlier or for  
7 raising them again and actual prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646-  
8 47, 29 P.3d 498, 523 (2001).

9 To avoid procedural default, under NRS 34.810(3)(a), Petitioner has the burden of  
10 pleading and proving specific facts that demonstrate good cause for his failure to present his  
11 claim in an earlier proceedings or to otherwise comply with the statutory requirements, and  
12 that Petitioner will be unduly prejudiced if the petition is dismissed. *See* Hogan v. Warden,  
13 109 Nev. 952, 959-60, 860 P.2d 710, 715-16 (1993); Phelps v. Nevada Dep't of Prisons, 104  
14 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). “A court *must* dismiss a habeas petition if it  
15 presents claims that either were or could have been presented in an earlier proceeding, unless  
16 the court finds both cause for failing to present the claims earlier or for raising them again and  
17 actual prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523  
18 (2001) (emphasis added).

19 “To establish good cause, appellants must show that an impediment external to the  
20 defense prevented their compliance with the applicable procedural rule.” Clem v. State, 119  
21 Nev. 615,621, 81 P.3d 521,525 (2003) (emphasis added); *See also* Hathaway v. State, 119  
22 Nev. 248, 25 I, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. “A  
23 qualifying impediment might be shown where the factual or legal basis for a claim was not  
24 reasonably available at the time of default.” Clem, 119 Nev. at 621, 81 P.3d at 525. The Court  
25 continued, “appellants cannot attempt to manufacture good cause.” *Id.* at 621, 81 P.3d at 526.  
26 Examples of good cause include interference by State officials and the previous unavailability  
27 of a legal or factual basis. *See* State v. Huebler, 128 Nev. Adv. Op. 19,275 P.3d 91, 95 (2012).  
28 Any delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

1 To establish prejudice, a Petitioner must show "not merely that the errors of [the  
2 proceedings] created [the] possibility of prejudice, but that they worked to his actual and  
3 substantial disadvantage, in affecting the State's proceedings with [an] error of constitutional  
4 dimensions.'" Hogan v. Warden, 109 Nev. 952,960, 860 P.2d 710,716 (1993) (quoting United  
5 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. I 584, I 596 (1982)). Bare and naked allegations  
6 are insufficient to warrant post-conviction relief, nor are those belied and repelled by the  
7 record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "A claim is 'belied'  
8 when it is contradicted or proven to be false by the record as it existed at the time the claim  
9 was made." Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

10 Petitioner failed to address good cause to overcome the mandatory procedural bar.  
11 Indeed, Petitioner cannot, since the applicable law and facts were all available when he pled  
12 guilty. Additionally, Petitioner failed to show that an impediment external to the defense  
13 prevented him from raising these claims in an earlier proceeding and offers no excuse for his  
14 failure to raise said issues there. As such, Petitioner does not show good cause, or show any  
15 prejudice to overcome the procedural bars. Therefore, the instant Petition is DENIED.

16 **a. Petitioner's In-Court Identification Claim is Outside the Scope of Habeas**  
17 **Review**

18 Petitioner claims the justice court erred in allowing the Kevin Narazeno ("Victim") of  
19 the home invasion to make an in-court identification of Petitioner — during the preliminary  
20 hearing — after State allegedly engaged in witness tampering by suggesting to Victim that  
21 Petitioner was the suspect of the home invasion. *See Petition*, at 6-6A. However, pursuant to  
22 NRS 34.810, Petitioner's claim is outside the scope of habeas review.

23 On March 13, 2018, Petitioner plead guilty pursuant to a guilty plea agreement. On  
24 August 6, 2019, district court held the guilty plea agreement to be valid.

25 Petitioner raised various claims on direct appeal. None of which was the claim that  
26 State improperly suggested to Victim that the home invasion suspect was the Petitioner.  
27 Petitioner's claim that without the allegedly improper in-court identification, there would not  
28 have been enough evidence to establish probable cause to bind Petitioner over to district court

1 should have been raised in a pre-trial petition of writ of habeas corpus. However, Petitioner  
2 did not file a pre-trial writ.

3 In any event, Petitioner misconstrues the facts surrounding the alleged witness  
4 tampering. During the preliminary hearing, State asked several times if the Victim noticed  
5 anyone in court like the description given of the suspect. Preliminary Hearing (“PH”), at 11-  
6 13. Victim was not sure. PH, at 12. Only after Petitioner removed his glasses and the State  
7 direct the witness if "he look[ed] familiar," did Victim respond, "Yes, I think so . . . Yes.  
8 Without the glasses." PH, at 12-13. At no time did State inform Victim to answer in the  
9 affirmative or informed Victim that the Petitioner was the suspect from the home invasion.

10 Additionally, all the facts were available to Petitioner at the time of appeal. Petitioner  
11 failed to raise said claim and does not explain why. Therefore, Petitioner's claim is outside the  
12 scope of habeas review and is DENIED.

13 **b. Petitioner’s Brady Claim is Outside the Scope of Habeas Review**

14 Petitioner claims State failed to hand over the clothing apparel described in the incident  
15 report. *See* Petition, at 7. According to Petitioner, this failure amounts to a Brady violation.  
16 Petitioner’s claim is outside the scope of habeas review.

17 Brady and its progeny require a prosecutor to disclose evidence favorable to the defense  
18 when that evidence is material either to guilt or to punishment. *See* Mazzan v. Warden, 116  
19 Nev. 48, 66, 993 P.2d 25 (2000); *See also* Jimenez v. State, 112 Nev. 610, 618-19, 918 P.2d  
20 687 (1996). “[T]here are three components to a Brady violation: (1) the evidence at issue is  
21 favorable to the accused; (2) the evidence was withheld by the state, either intentionally or  
22 inadvertently; and (3) prejudice ensued, i.e., the evidence was material.” Mazzan 116 Nev. at  
23 67. “Where the state fails to provide evidence which the defense did not request or requested  
24 generally, it is constitutional error if the omitted evidence creates a reasonable doubt which  
25 did not otherwise exist. In other words, evidence is material if there is a reasonable probability  
26 that the result would have been different if the evidence had been disclosed.” *Id.* at 66 (internal  
27 citations omitted). “In Nevada, after a specific request for evidence, a Brady violation is  
28 material if there is a reasonable *possibility* that the omitted evidence would have affected the

1 outcome. Id. (citing Jimenez v. State, 112 Nev. 610, 618-19, 918 P.2d 687, 692 (1996)); *See*  
2 *also* Roberts v. State, 110 Nev. 1121, 1132, 881 P.2d 1, 8 (1994).

3 “The mere possibility that an item of undisclosed information might have helped the  
4 defense, or might have affected the outcome of the trial, does not establish ‘materiality’ in the  
5 constitutional sense.” United States v. Agurs, 427 U.S. 97, 108, 96 S.Ct. 2392, 2399-400  
6 (1976). Favorable evidence is material, and constitutional error results, “if there is a  
7 reasonable probability that the result of the proceeding would have been different.” Kyles v.  
8 Whitley, 514 U.S. 419, 433-34, 115 S.Ct. 1555, 1565 (1995) (citing U.S. v. Bagley, 473 U.S.  
9 667, 682, 105 S.Ct. 3375, 3383 (1985)). A reasonable probability is shown when the  
10 nondisclosure undermines confidence in the outcome of the trial. Kyles at 434, 115 S.Ct. at  
11 1565.

12 Due Process does not require simply the disclosure of “exculpatory” evidence.  
13 Evidence must also be disclosed if it provides grounds for the defense to attack the reliability,  
14 thoroughness, and good faith of the police investigation or to impeach the credibility of the  
15 State’s witnesses. *See* Kyles 514 U.S. at 442, 445-51, 115 S. Ct. 1555 n. 13. Evidence cannot  
16 be regarded as “suppressed” by the government when the defendant has access to the evidence  
17 before trial by the exercise of reasonable diligence. United States v. White, 970 F.2d 328, 337  
18 (7<sup>th</sup> Cir. 1992). “Regardless of whether the evidence was material or even exculpatory, when  
19 information is fully available to a defendant at the time of trial and his only reason for not  
20 obtaining and presenting the evidence to the Court is his lack of reasonable diligence, the  
21 defendant has no Brady claim.” United States v. Brown, 628 F.2d 471, 473 (5<sup>th</sup> Cir. 1980).

22 “While the [United States] Supreme Court in Brady held that the [g]overnment may not  
23 properly conceal exculpatory evidence from a defendant, it does not place any burden upon  
24 the [g]overnment to conduct a defendant’s investigation or assist in the presentation of the  
25 defense’s case.” United States v. Marinero, 904 F.2d 251, 261 (5<sup>th</sup> Cir. 1990); *accord* United  
26 States v. Pandozzi, 878 F.2d 1526, 1529 (1<sup>st</sup> Cir. 1989); United States v. Meros, 866 F.2d 1304,  
27 1309 (11<sup>th</sup> Cir. 1989). When defendants miss the exculpatory nature of documents in their  
28

1 possession or to which they have access, they cannot miraculously resuscitate their defense  
2 after conviction by invoking Brady. White 970 F.2d at 337.

3 The Nevada Supreme Court has followed the federal line of cases in holding that Brady  
4 does not require the State to disclose evidence available to the defendant from other sources  
5 or defense counsel could have independently obtained through a diligent investigation. *See*  
6 Steese v. State, 114 Nev. 479, 495, 960 P.2d 321, 331 (1998). In Steese, the undisclosed  
7 information stemmed from collect calls that the defendant made.

8 Here, on March 13, 2018, Petitioner plead guilty pursuant to a guilty plea agreement.  
9 On August 6, 2019, district court held the guilty plea agreement to be valid. Petitioner raised  
10 various claims on direct appeal. None of which was the claim State allegedly withheld Brady  
11 material. All of the alleged facts were available to Petitioner at the time of appeal. However,  
12 Petitioner failed to raise said claim and does not explain why.

13 Additionally, the apparel worn by the suspect — a torn dress coat — described in the  
14 incident report is not Brady material. There is nothing regarding the dress coat that would  
15 explain away the charge of a home invasion. Additionally, Petitioner does not explain how the  
16 dress coat is exculpatory or how it would have affected the negotiations. If anything, the lack of  
17 the dress coat would hamper State's presentation of the case — if that.

18 In any event, Victim identified Petitioner as the person who tried to gain entrance to his  
19 residence, and State could place Petitioner at the crime scene via GPS. Thus, the dress coat is  
20 an insignificant piece of identification evidence.

21 Lastly, when Petitioner entered the guilty plea agreement, he knew what he was wearing  
22 during the home invasion; thus, Petitioner's claim is irrelevant. Therefore, Petitioner's claim is  
23 outside the scope of habeas review and is DENIED.

24 **c. Petitioner's Claim of Ineffective Assistance of Counsel Claims is Outside**  
25 **the Scope of Habeas Review and are Meritless**

26 Petitioner claims (i) Keith Brower ("Brower") provided ineffective assistance counsel  
27 by failing to object to State's alleged witness tampering of Victim and failure to obtain  
28 inculpatory photos and physical evidence during the preliminary hearing, (ii) McAmis

1 provided ineffective assistance of counsel by failing to investigate Petitioner's case properly,  
2 and (iii) Terrence Jackson ("Jackson") provided ineffective assistance of counsel on appeal by  
3 failing to raise a series of claims. *See* Petition, at 8D.

4 The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal  
5 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his  
6 defense." The United States Supreme Court has long recognized that "the right to counsel is  
7 the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686,  
8 104 S. Ct. 2052, 2063 (1984); *See also* State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323  
9 (1993).

10 To prevail on a claim of ineffective assistance of trial counsel, a petitioner must prove  
11 they were denied "reasonably effective assistance" of counsel by satisfying the two-prong test  
12 of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. *See also* Love, 109 Nev. at 1138,  
13 865 P.2d at 323. Under the Strickland test, a petitioner must show first that his counsel's  
14 representation fell below an objective standard of reasonableness and second, that, but for  
15 counsel's errors, there is a reasonable probability that the result of the proceedings would have  
16 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison  
17 v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).  
18 "[T]here is no reason for a court deciding an ineffective assistance claim to approach the  
19 inquiry in the same order or even to address both components of the inquiry if the [petitioner]  
20 makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

21 The court begins with the presumption of effectiveness and then must determine  
22 whether the petitioner has demonstrated by a preponderance of the evidence that counsel was  
23 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel  
24 does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of  
25 competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432,  
26 537 P.2d 473, 474 (1975).

27 Moreover, the role of the court is "not to pass upon the merits of the action[s] not taken  
28 [by trial counsel] but to determine whether, under the particular facts and circumstances of the

1 case, trial counsel failed to render reasonably effective assistance.” Donovan v. State, 94 Nev.  
2 671, 675, 584 P.2d 708, 711 (1978). Further, the court should not “second guess reasoned  
3 choices between trial tactics *nor does it mean that defense counsel, to protect himself against*  
4 *allegations of inadequacy, must make every conceivable motion no matter how remote the*  
5 *possibilities are of success.*” Donovan, 94 Nev. at 675 (emphasis added) (quoting Cooper v.  
6 Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)). To be effective, the Constitution “does not  
7 require that [trial] counsel do what is impossible or unethical. If there is no bona fide defense  
8 to the charge, counsel cannot create one and may disserve the interests of his client by  
9 attempting a useless charade.” U.S. v. Cronin, 466 U.S. 648, 657, 104 S. Ct. 2039, 2046 (1984).  
10 Additionally, counsel cannot be ineffective for failing to make futile objections or arguments.  
11 *See Ennis v. State*, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

12 “There are countless ways to provide effective assistance in any given case. Even the  
13 best criminal defense attorneys would not defend a particular client in the same way.”  
14 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by [trial] counsel after  
15 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,  
16 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); *See also Ford v. State*, 105 Nev. 850, 853, 784  
17 P.2d 951, 953 (1989). Therefore, the court must “judge the reasonableness of [trial] counsel’s  
18 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s  
19 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

20 When a conviction is the result of a guilty plea, a defendant must show that there is a  
21 “*reasonable probability* that, but for counsel’s errors, he would not have pleaded guilty and  
22 would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370  
23 (1985) (emphasis added); *See also Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107  
24 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004). Additionally, a  
25 petitioner who contends his attorney was ineffective because he did not *investigate adequately*  
26 must show how a better investigation would have resulted in a more favorable outcome.  
27 Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Moreover, bare and naked  
28



1 allegations are insufficient to warrant post-conviction relief, nor are those belied and repelled  
2 by the record. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

3 Additionally, “[P]etitioner must prove the disputed factual allegations underlying his  
4 ineffective-assistance claim by a preponderance of the evidence.” Means v. State, 120 Nev.  
5 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, claims of ineffective assistance of counsel  
6 asserted in a petition for post-conviction relief must be supported with specific factual  
7 allegations, which would entitle the petitioner to relief if true. *See Hargrove v. State*, 100 Nev.  
8 498, 502, 686 P.2d 222, 225 (1984). Bare and naked allegations are not sufficient, nor are  
9 those belied and repelled by the record. *Id.* NRS 34.735(6) states in relevant part, “[petitioner]  
10 *must* allege specific facts supporting the claims in the petition[.] . . . Failure to allege specific  
11 facts rather than just conclusions may cause your petition to be dismissed.” (emphasis added).  
12 “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it existed at  
13 the time the claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

14 **i. Petitioner’s Claim of Ineffective Assistance of Counsel regarding**  
15 **Keith Brower is Outside the Scope of Habeas Review and is Meritless**

16 Petitioner claims Brower failed to object at the preliminary hearing when State  
17 allegedly directing Victim to identify Petitioner as the suspect of the home invasion.  
18 Additionally, Petitioner claims Brower failed to obtain “any of the inculpatory evidence” used  
19 during the preliminary hearing. Petitioner’s claims are outside the scope of habeas review and  
20 are meritless.

21 Petitioner fails to demonstrate how counsel’s failure to object during the preliminary  
22 hearing shows with a reasonable probability that Petitioner would not have plead guilty  
23 pursuant to his guilty plea agreement. Additionally, in so far as Petitioner’s inculpatory  
24 evidence claims. Petitioner does not explain how having the physical *inculpatory* evidence  
25 would have shown with a reasonable probability that Petitioner would have asserted his right  
26 to trial.

27 Also, Petitioner — without meaningful delineation — fails to describe what *inculpatory*  
28 evidence he is referencing. Petitioner makes a meritless — and convoluted — assertion that

1 somehow the *inculpatory* evidence could have been used to Petitioner's benefit during cross-  
2 examination. Thus, it would have acted as exculpatory evidence that somehow shows with a  
3 *reasonable probability* that Petitioner would not have plead guilty.

4 However, such a claim is meritless and counterintuitive. *Inculpatory* evidence does not  
5 act on mathematic principles of multiplication where multiple pieces of *inculpatory* evidence  
6 multiplied by each other somehow converts to exculpatory evidence, which then demonstrates  
7 with a *reasonable probability* that Petitioner would have asserted his right to trial. If anything,  
8 it supports the conclusion that Petitioner would have been incentivized to enter negotiations  
9 and ultimately enter into a guilty plea agreement — which is what occurred here.

10 Petitioner's claim is outside the scope of habeas review and is meritless. Therefore,  
11 Petitioner's claim is DENIED.

12 ii. **Petitioner's Claim of Ineffective Assistance of Counsel regarding**  
13 **Caitlyn McAmis is Outside the Scope of Habeas Review and is**  
14 **Meritless**

15 Petitioner claims McAmis failed to investigate Petitioner's case properly. Petitioner's  
16 claim is outside the scope of habeas review and is meritless.

17 Here, Petitioner does not provide sufficient facts to support his claims that counsel  
18 failed to investigate the case adequately. If anything, Petitioner provides sufficient facts  
19 showing McAmis effectively investigated Petitioner's case via working on a global resolution  
20 for Petitioner — which was ultimately successful. See Petition, at 8C.

21 In any event, Petitioner does not show what the investigation could have discovered  
22 that would have prevented him, with a *reasonable probability*, from entering into the GPA,  
23 nor what an investigation would have produced. See Molina v. State, 120 Nev. 185, 192, 87  
24 P.3d 533, 538 (2004).

25 As indicated above, Petitioner cannot demonstrate he would have plead not guilty but  
26 for McAmis failing to conduct a proper pre-trial investigation. Here the district court  
27 thoroughly canvassed Petitioner. At no point during the canvass did Petitioner claim Counsel  
28 was coercing Petitioner into accepting the GPA. Additionally, McAmis withdrew from  
Petitioner's case before Petitioner plead guilty — Gary Modafferi was the attorney on record

1 when Petitioner plead guilty. Moreover, the GPA — signed by Petitioner — indicated that he  
2 was "satisfied with the services provided by my attorney." GPA, at 5.

3 Petitioner's claim is outside the scope of habeas review and is meritless. Therefore,  
4 Petitioner's claim is DENIED.

5 **iii. Petitioner's Claim of Ineffective Assistance of Appellate Counsel is**  
6 **outside the Scope of Habeas Review**

7 Petitioner claims Jackson failed to raise the above claims on appeal, including "the  
8 courts abuse of discretion in denying [Petitioner's] motion to withdraw plea, and excluding . .  
9 . statement given by [Petitioner's] witnesses," and counsel not properly investigating  
10 Petitioner's case. *See Petition*, at 8D, 11. However, Petitioner claims are meritless and belied  
11 by the record.

12 There is a strong presumption that appellate counsel's performance was reasonable and  
13 fell within "the wide range of reasonable professional assistance." *United States v. Aguirre*,  
14 912 F.2d 555, 560 (2<sup>nd</sup> Cir. 1990) (citing *Strickland v. Washington*, 466 U.S. 668, 686, 689,  
15 104 S. Ct. 2052, 2065 (1984)). A claim of ineffective assistance of appellate counsel must  
16 satisfy the two-prong test set forth by *Strickland*. *Kirksey v. State*, 112 Nev. 980, 998, 923  
17 P.2d 1102, 1114 (1996). In order to satisfy *Strickland*'s second prong, the petitioner must show  
18 that the omitted issue would have had a reasonable probability of success on appeal. *Id.*

19 The professional diligence and competence required on appeal involve "winnowing out  
20 weaker arguments on appeal and focusing on one central issue if possible, or at most on a few  
21 key issues." *Jones v. Barnes*, 463 U.S. 745, 751-52, 103 S. Ct. 3308, 3313 (1983). In particular,  
22 a "brief that raises every colorable issue runs the risk of burying good arguments . . . in a verbal  
23 mound made up of strong and weak contentions." *Jones*, 463 U.S. at 753. Additionally,  
24 appointed counsel does not have a duty to "raise every "colorable" claim suggested by a  
25 client." *Jones*, 463 U.S. at 754.

26 Appellate lawyers are not ineffective when they refuse to follow a "kitchen sink"  
27 approach to the issues on appeals. *Howard v. Gramley*, 225 F.3d 784, 791 (7th Cir. 2000). On  
28 the contrary, one of the most critical parts of appellate advocacy is selecting the proper claims  
to argue on appeal. *Schaff v. Snyder*, 190 F.3d 513, 526-27 (7th Cir. 1999). Arguing every

1 conceivable point is distracting to appellate judges, consumes space that should be devoted to  
2 developing the arguments with some promise, inevitably clutters the brief with issues that have  
3 no chance because of doctrines like harmless error or the standard of review of jury verdicts,  
4 and is overall bad appellate advocacy. Howard, 225 F.3d at 791.

5 An appellate counsel deciding not to *raise a meritless issue* on appeal is not ineffective.  
6 Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). To establish prejudice based  
7 on the deficient assistance of appellate counsel, the petitioner must show that the omitted issue  
8 would have had a reasonable probability of success on appeal. *See Duhamel v. Collins*, 955  
9 F.2d 962, 967 (5th Cir.1992); *See also Heath v. Jones*, 941 F.2d 1126, 1132 (11th Cir.1991).  
10 In making this determination, a court must review the merits of the omitted claim. Heath, 941  
11 F.2d at 1132.

12 Appellate counsel may not simply raise appeal issues that have *no support in the record*;  
13 unsupported arguments and baseless assertions are suitable for summary dismissal. Maresca  
14 v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (“It is appellant’s responsibility to present relevant  
15 authority and cogent argument; issues not so presented need not be addressed by this court.”);  
16 *See also* NRAP 28(e). Further, claims of ineffective assistance of counsel asserted in a petition  
17 for post-conviction relief must be supported with specific factual allegations, which, if true,  
18 would entitle the petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. “Bare” and  
19 “naked” allegations are not sufficient, nor are those belied and repelled by the record. Id.

20 Petitioner was informed of his limited right to appeal in his Guilty Plea Agreement. In  
21 relevant part, the Petitioner's guilty plea agreement stated:

22 WAIVER OF RIGHTS

23 By entering my plea of guilty, I understand that I am waiving  
24 and forever giving up the following rights and privileges:

25 . . .

26 6. The right to appeal the conviction with the assistance of an attorney,  
27 either appointed or retained, unless specifically reserved in writing  
28 and agreed upon as provided in NRS 174.035(3). I understand this  
means I am unconditionally waiving my right to a direct appeal of this  
conviction, including any challenge based upon reasonable  
constitutional, jurisdictional, or other grounds that challenge the  
legality of the proceedings as stated in NRS 177.015(4). However, I

1 remain free to challenge my conviction through other post-conviction  
2 remedies including a habeas corpus petition pursuant to RNS Chapter  
3 34.

...

#### 4 VOLUNTARINESS OF PLEA

5 All of the foregoing elements, consequences, rights, and  
6 waiver of rights have been thoroughly explained to me by my  
7 attorney.

8 Guilty Plea Agreement ("GPA"), at 4-5

9 Petitioner knew of his limited rights to appeal. The guilty plea agreement demonstrates  
10 said rights were articulated to Petitioner. Petitioner acknowledged that the waiver of rights was  
11 adequately explained to him by counsel. Additionally, Petitioner fails to show that the claims  
12 he sought to appeal even had a reasonable likelihood of success on appeal. In fact, the  
13 ineffective assistance of counsel claims Petitioner argues should have been raised on appeal  
14 are explicitly not permitted to be raised on appeal. "[C]hallenges to the validity of a guilty plea  
15 and claims of ineffective assistance of trial and appellate counsel must first be pursued in post-  
16 conviction proceedings." Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994)  
17 (emphasis added) (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d  
18 222 (1999)). Therefore, Petitioner's claims are outside the scope of habeas review.

19 In any event, Petitioner claims appellate counsel was ineffective because appellate  
20 counsel failed to raise the issue on appeal that district court abused its discretion in not allowing  
21 Petitioner to withdraw his plea. However, appellate counsel did raise this issue on appeal. On  
22 appeal, the Nevada Court of Appeals held the district court "did not abuse its discretion by  
23 denying this claim." Dorsey v. State, Docket No. 79845-COA (Order of Affirmance, January  
24 8, 2021). Therefore, Petitioner's claim is belied by the record.

25 Moreover, Petitioner claims regarding the alleged Brady violation and State allegedly  
26 engaging in witness tampering. See Petition, at 8D. Appellate counsel is not required to *raise*  
27 *a meritless issue* on appeal. See Kirksey, 112 Nev. at 998, 923 P.2d at 1114. Additionally,  
28 Petitioner does not show the probability of success on appeal. Petitioner only asserts that such  
claims would have shown he was innocent without providing any facts to support such a claim.

1 As discussed above, the chance of these claims being brought successfully on appeal is  
2 unlikely. First, the Petitioner does not provide what evidence State allegedly withheld.  
3 However, Petitioner claims that a torn dress coat he was wearing while being taken into  
4 custody is somehow exculpatory. As discussed above, the dress coat Petitioner wore at the  
5 time of the home invasion is not exculpatory — there is no rational analysis to be made  
6 showing Petitioner’s dress coat explains away the charges. Therefore, this claim is without  
7 merit.

8 Additionally, Petitioner's claim of witness tampering is not supported by the record. *See*  
9 PH, at 11-13. The State only asked open-ended questions. Id. At no point did State direct the  
10 witness to respond in a particular way. Id. In any event, it was only after Petitioner removed  
11 his glasses that Victim could make a positive identification. Id. at 12-13. Therefore, this claim  
12 is without merit.

13 Lastly, Petitioner does not show what an investigation could have discovered, or the  
14 investigation would have prevented him, with a *reasonable probability*, from entering into the  
15 GPA. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Neither has Petitioner  
16 shown what an investigation would have produced. Id. As shown above, Petitioner’s claim is  
17 meritless and belied by the record. Therefore, Petitioner’s claim is DENIED.

18 **d. Petitioner’s Claim Counsel Coerced Him into Entering a Guilty Plea**  
19 **Agreement is Belied by Record**

20 Petitioner claims Yi Zheng coerced Petitioner into entering a GPA. However,  
21 Petitioner's claim is belied by the record. Bare and naked allegations are insufficient to warrant  
22 post-conviction relief, nor are those belied and repelled by the record. Hargrove v. State, 100  
23 Nev. 498, 502, 686 P.2d 222, 225 (1984). “A claim is ‘belied’ when it is contradicted or proven  
24 to be false by the record as it existed at the time the claim was made.” Mann v. State, 118 Nev.  
25 351, 354, 46 P.3d 1228, 1230 (2002).

26 Under NRS 176.165, after sentencing, a defendant’s guilty plea can only be withdrawn  
27 to correct “manifest injustice.” *See also Baal v. State*, 106 Nev. 69, 72, 787 P.2d 391, 394  
28 (1990). Manifest injustice does not exist if the defendant entered his plea voluntarily. Baal,

1 106 Nev. at 72, 787 P.2d at 394. Additionally, a plea of guilty is presumptively valid, and the  
2 burden is on the defendant to show defendant did not voluntarily enter into the plea. Bryant v.  
3 State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citation omitted). A district court may  
4 grant a presentence motion to withdraw a guilty plea for any “substantial reason” if it is “fair  
5 and just.” Molina v. State, 120 Nev. 185, 191, 87 P.3d 533, 537 (2004); *See also* NRS 176.165.

6 To determine whether a guilty plea was voluntarily entered, the court will review the  
7 totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721  
8 P.2d at 367. Under Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983), a proper plea  
9 canvass should reflect that:

10  
11 [T]he defendant knowingly waived his privilege against self-  
12 incrimination, the right to trial by jury, and the right to confront  
13 his accusers; (2) the plea was voluntary, was not coerced, and was  
14 not the result of a promise of leniency; (3) the defendant  
15 understood the consequences of his plea and the range of  
punishments; and (4) the defendant understood the nature of the  
charge, i.e., the elements of the crime.

16 Additionally, the presence and advice of counsel is a significant factor in determining the  
17 voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d 107, 107 (1975).

18 This standard requires the court accepting the plea to personally address the defendant  
19 when he enters his plea to determine whether he understands the nature of the charges to which  
20 he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not rely simply on a  
21 written plea agreement without some verbal interaction with a defendant. Id. Thus, a  
22 “colloquy” is constitutionally mandated, and a “colloquy” is but a conversation in a formal  
23 setting, such as that occurring between an official sitting in judgment of an accused at plea.  
24 *See Id.* However, the court need not conduct a ritualistic oral canvass. State v. Freese, 116  
25 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of guilty pleas “do not require  
26 the articulation of talismanic phrases,” but only that the record demonstrates a defendant  
27 entered his guilty plea understandingly and voluntarily. Hefley v. Warden, 89 Nev. 573, 575,  
28

1 516 P.2d 1403, 1404 (1973); *See also* Brady v. United States, 397 U.S. 742, 747-48, 90 S. Ct.  
2 1463, 1470 (1970).

3 Here, Petitioner fails to provide sufficient factual support to show that Yi Zheng  
4 coerced him into entering the GPA. Petitioner only makes the naked assertion that Yi Zheng  
5 manipulated him into entering the GPA. *See* Petition, at 9.

6 However, the record belies Petitioner's claim. On November 9, 2020, Petitioner was  
7 canvassed and entered a guilty plea. At no time did Petitioner raise his allegation that counsel  
8 was supposedly coercing him into entering a guilty plea.

9 Moreover, on November 17, 2020, the district court thoroughly canvassed Petitioner:

10  
11 THE COURT: Okay. I do have a guilty plea agreement which was  
12 filed in open court just a few seconds ago indicating that you had  
13 agreed to plead guilty to committing the crime of Count 1,  
14 Invasion of the Home, a Category B Felony in violation of NRS  
205.061. Sir, did you sign this agreement?

15 DEFENDANT: Yes, Your Honor.

16 THE COURT: Prior to signing the agreement, did you have an  
17 opportunity to review the agreement? Did you review it and  
18 understand the terms?

19 DEFENDANT: Yes, Your Honor.

20 THE COURT: *Is anyone forcing you to plead guilty?*

21 DEFENDANT: *No, Your Honor.*

22 THE COURT: *You're pleading guilty of your own free will?*

23 DEFENDANT: *Yes, Your Honor.*

24 . . .

25 THE COURT: Okay. And just so that I am clear because we  
26 couldn't hear that well, sir, did you have an opportunity to review  
27 the guilty plea agreement? Did you review it and understand the  
28 terms?

DEFENDANT: Yes, Your Honor.

THE COURT: *All right. Is anyone forcing you to plead guilty?*

DEFENDANT: *No, Your Honor.*

THE COURT: *You're pleading guilty of your own free will?*

DEFENDANT: *Yes, Your Honor.*

Hearing Transcript March 13, 2018, at 3-5.



1 As indicated above, the district court specifically inquired if Petitioner was giving his  
2 plea freely and voluntarily. Petitioner replied in the affirmative and failed to claim Yi Zheng  
3 manipulated Petitioner into accepting the GPA. District court specifically inquired *if anyone*  
4 made any threats to force him into entering the GPA. Petitioner replied in the negative and  
5 again failed to claim Yi Zheng manipulated Petitioner into accepting the GPA.

6 Additionally, at no time did Yi Zheng represent Petitioner. Petitioner's claim stems  
7 from his justice court case — 17F21598X — where John Momot, not Yi Zheng, represented  
8 Petitioner. The only time Yi Zheng interacted with Petitioner regarded his justice court case,  
9 is on January 10, 2018, when Yi Zheng appeared for John Momot to confirm John Momot as  
10 attorney of record and appeared for initial appearance. *See Memorandum*, at 86.

11 Also, McAmis represented Petitioner during entry of plea in the instant case. McAmis  
12 was the attorney on record that engaged in negotiations and helped form the plea agreement, not  
13 Yi Zheng. Petitioner admits this in his petition. *See Petition*, at 8A-8B.

14 Lastly, on March 13, 2018, Petitioner plead guilty pursuant to a guilty plea agreement.  
15 On August 6, 2019, district court held the guilty plea agreement to be valid. Petitioner raised  
16 various claims on direct appeal. None of which was the claim Petitioner did not enter into the  
17 GPA freely, knowingly, and voluntarily. All the alleged facts were available to Petitioner at  
18 the time of appeal. However, Petitioner failed to raise said claim and does not explain why.  
19 Petitioner's claim is belied by the record. Therefore, Petitioner's claim is DENIED.

20 **e. Petitioner's Claim that District Court Abused its Discretion by Denying**  
21 **Petitioner's Motion to Withdraw Plea is Barred Under Law of the Case**  
22 **Doctrine**

23 Petitioner claims district court abused its discretion when the court denied Petitioner's  
24 motion to withdraw plea. However, Petitioner's claim is barred under the Law of the Case  
25 Doctrine.

26 Under the doctrine of the law of the case, issues previously decided by an appellate  
27 court may not be reargued in a habeas petition. *See George v. State*, 125 Nev. 1038, 281 P.3d  
28 1175 (2009) (citing *Hall v. State*, 91 Nev. 314, 535 P.2d 797 (1975)). When the appellate court  
rules on the merits of a matter, the ruling becomes the law of the case, and the issue will not

1 be revisited. *See Hall v. State*, 91 Nev. 314, 315–16, 535 P.2d 797, 798–99 (1975); *See also*  
2 *Valerio v. State*, 112 Nev. 383, 386, 915 P.2d 874, 876 (1996); *Hogan v. Warden*, 109 Nev.  
3 952, 860 P.2d 710 (1993).

4 A petitioner cannot avoid the doctrine of the law of the case by a more detailed and  
5 precisely focused argument. *Hall*, 91 Nev. at 316, 535 P.2d at 798–99. *See also Pertgen v.*  
6 *State*, 110 Nev. 557, 557–58, 875 P.2d 316, 362 (1994). However, the "doctrine of the law of  
7 the case is not absolute," and the appellate court has the discretion to revisit the wisdom of its  
8 legal conclusions if the court "determines that such action is warranted." *Bejarano v. State*,  
9 122 Nev. 1066, 1074, 146 P.3d 265, 271 (2006).

10 Petitioner brought this same claim on direct appeal. Here, the Nevada Court of Appeals  
11 held that district court "did not abuse its discretion by denying this claim." *Dorsey v. State*,  
12 Docket No. 79845-COA (Order of Affirmance, January 8, 2021). The above ruling is the law  
13 of the case and Petitioner may not reargue this claim in his habeas petition. Therefore,  
14 Petitioner's claim is DENIED.

## 15 **II. PETITIONER FAILED TO ESTABLISH CUMULATIVE ERROR**

16 Petitioner argues that the cumulative effect of all the errors entitles Petitioner to  
17 reversal. *See Petition*, at 12. Petitioner's claim fails.

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

24 Even if applicable, a finding of cumulative error in the context of a *Strickland* claim is  
25 extraordinarily rare and requires an extensive aggregation of errors. *See, e.g., Harris By and*  
26 *through Ramseyer v. Wood*, 64 F.3d 1432, 1438 (9th Cir. 1995). In fact, logic dictates that  
27 there can be no cumulative error where the petitioner fails to demonstrate any single violation  
28 of *Strickland*. *See Turner v. Quarterman*, 481 F.3d 292, 301 (5th Cir. 2007) ("where individual

1 allegations of error are not of constitutional stature or are not errors, there is ‘nothing to  
2 cumulate.’”) (quoting Yohey v. Collins, 985 F.2d 222, 229 (5th Cir. 1993)); Hughes v. Epps,  
3 694 F.Supp.2d 533, 563 (N.D. Miss. 2010) (citing Leal v. Dretke, 428 F.3d 543, 552-53 (5th  
4 Cir. 2005)). Since Petitioner has not demonstrated any claim warranting relief under  
5 Strickland, there are no errors to cumulate.

6 Under the doctrine of cumulative error, “although individual errors may be harmless,  
7 the cumulative effect of multiple errors may deprive a defendant of the constitutional right to  
8 a fair trial.” Pertgen v. State, 110 Nev. 554, 566, 875 P.2d 361, 368 (1994) (citing Sipsas v.  
9 State, 102 Nev. 119, 716 P.2d 231 (1986)); *See also* Big Pond v. State, 101 Nev. 1, 3, 692 P.2d  
10 1288, 1289 (1985). The relevant factors to consider in determining “whether error is harmless  
11 or prejudicial include whether ‘the issue of innocence or guilt is close, the quantity and  
12 character of the error, and the gravity of the crime charged.’” Id., 101 Nev. at 3, 692 P.2d at  
13 1289.

14 Here, Petitioner failed to show cumulative error because there were no errors to  
15 cumulate. Petitioner failed to show how any of the above claims constituted ineffective  
16 assistance of counsel. Instead, all of Petitioner’s claims are either belied by the record,  
17 meritless, or otherwise outside the scope of habeas review. Additionally, given the evidence  
18 of Petitioner’s guilt, any claim that he would have been acquitted had these “errors” not  
19 occurred fails. Therefore, Petitioner’s claim is DENIED.

### 20 **III. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

21 Petitioner requests an evidentiary hearing in his memorandum of point and authorities.  
22 *See memorandum*, at 37-38. However, Petitioner is not entitled to an evidentiary hearing.

23 Under NRS 34.770, a petitioner is entitled to an evidentiary hearing when a judge  
24 reviews all supporting documents filed and determines that a hearing is necessary to explore  
25 the specific facts alleged in the petition. An evidentiary hearing is unnecessary if a petition can  
26 be resolved without expanding the record. Marshall v. State, 110 Nev. 1328, 885 P.2d 603  
27 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A petitioner is entitled  
28 to an evidentiary hearing if his petition is supported by specific factual allegations, which if

1 true, would entitle him to relief unless the factual allegations are repelled by the record. *See*  
2 Marshall, 110 Nev. at 1331, 885 P.2d at 605; *See also* Hargrove, 100 Nev. at 503, 686 P.2d at  
3 225 (holding that “[a] defendant seeking post-conviction relief is not entitled to an evidentiary  
4 hearing on factual allegations belied or repelled by the record”). It is improper to hold an  
5 evidentiary hearing simply to make a complete record. *See* State v. Eighth Judicial Dist. Court,  
6 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court considered itself the  
7 ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make as complete a record as  
8 possible.’ This is an incorrect basis for an evidentiary hearing.”).

9 Further, the United States Supreme Court has held that an evidentiary hearing is not  
10 required simply because counsel’s actions are challenged as being unreasonable strategic  
11 decisions. Harrington v. Richter, 562, U.S. 86, 105, 131 S. Ct. 770, 788 (2011). Although  
12 courts may not indulge post hoc rationalization for counsel’s decision-making that contradicts  
13 the available evidence of counsel’s actions, neither may they insist counsel confirm every  
14 aspect of the strategic basis for his or her actions. Id. There is a “strong presumption” that  
15 counsel’s attention to specific issues to the exclusion of others reflects trial tactics rather than  
16 “sheer neglect.” Id. (citing Yarborough, 540 U.S. 1, 124 S. Ct. 1). Strickland calls for an  
17 inquiry into the objective reasonableness of counsel’s performance, not counsel’s subjective  
18 state of mind. 466 U.S. at 688, 104 S. Ct. at 2065.

19 Here, Petitioner is not entitled to an evidentiary hearing. Petitioner’s claims are belied  
20 by the record, meritless, or capable of being addressed by the current record. There is no need  
21 to expand the record, and an evidentiary hearing is not warranted in the instant case. Therefore,  
22 Petitioner’s request for an evidentiary hearing is DENIED

23 //

24 //

25 //

26 //

27 //

28 //

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ORDER**

Therefore, it is HEREBY ORDERED that Petitioner's Petition for Post-conviction Relief shall be, and it is, hereby DENIED.

~~DATED this \_\_\_\_\_ day of October, 2021.~~

Dated this 20th day of October, 2021

  
\_\_\_\_\_  
DISTRICT JUDGE  
NH

**DB8 25B D072 98FB  
Jacqueline M. Bluth  
District Court Judge**

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

BY

/s/ John Niman  
\_\_\_\_\_  
JOHN NIMAN  
Deputy District Attorney  
Nevada Bar #14408

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 State of Nevada

CASE NO: C-17-323324-1

7 vs

DEPT. NO. Department 6

8 Denzel Dorsey

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 10/20/2021

15 Steve Wolfson

PDMotions@clarkcountyda.com

16 Keith Brower

BrowerLawOffice@aol.com

17 Carl Arnold, Esq.

carl@jharmonlaw.com

18 Noemy Marroquin

noemy@jharmonlaw.com

19 Gary Modafferi

modafferilaw@gmail.com

# DOCUMENTARY EXHIBITS

1 **GARY MODAFFERI, ESQ.**  
2 Nevada Bar No. 012450  
3 **LAW OFFICE OF GARY MODAFFERI**  
4 815 S. Casino Center Blvd.,  
5 Las Vegas, Nevada 89101  
6 (702) 474-4222  
7 **Attorney for Defendant**  
8 **DENZEL DORSEY**

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 **THE STATE OF NEVADA,** )  
10 **Plaintiff,** )

11 **-vs-** )

**CASE NO.: C-17-323324-1**

12 **DENZEL DORSEY,** )  
13 **ID# 02845569** )  
14 **Defendant.** )

**DEPT. NO.: 22**

14 **DECLARATION**

15 **TAKIYA KEYSHA CLEMONS** makes the following declaration:

- 16 1. That I have full knowledge of all matters contained  
17 herein and am competent to testify thereto.  
18  
19 2. That my date of birth is: 2/25/1995  
20  
21 3. That my current address is 2645 Donna Street, Apt. D  
22 North Las Vegas, Nevada 89030  
23  
24 4. That, on or about 11/27/2016, I was living with a female friend by the  
25 name of Aisha Jones.  
26  
27 5. That Aisha Jones used to live on Viking Street, Las Vegas, Nevada.  
28  
6. That Aisha Jones lived in an apartment complex on Viking Street.

-1-  
T.C.

DEFT'S PROPOSED EXHIBIT

# A  
Case No. C3233-24

3



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

7. That, on 11/27/2016, I was at Aisha Jones's apartment.

8. That, on or about both 11/27/2016 and 11/28/2016, I was dating Denzel Dorsey.

9. That I had been dating Denzel Dorsey for four (4) years prior to 11/27/2016.

10. That, on 11/27/2016, I was OFF from work.

11. That, due to the fact that I was OFF from work, Denzel Dorsey drove to my apartment and decided to stay the night to be with me.

12. That, at some point during the evening PM hours on 11/27/2016, Davey Dorsey came over to my apartment to borrow the car rental.

13. That, on 11/27/2016, I physically saw and witnessed Denzel Dorsey hand over the keys to his car rental to his younger brother, Davey Dorsey.

14. That Denzel Dorsey stayed the night at my apartment.

15. That Denzel and I, hung out, watched Netflix, and had some drinks.

16. That Denzel Dorsey fell asleep with me in the living room on a sofa.

17. That Denzel Dorsey was with me the entire night.

18. That, on 11/28/2016, Denzel and I woke up late.

19. That Denzel Dorsey and I were looking for an apartment to rent on my iPhone.

20. That sometime between 1:00 PM and 2:00 PM, Davey Dorsey came back to my apartment.

21. That Denzel Dorsey left with Davey Dorsey.

1  
2 22. That Denzel Dorsey was with me all night long on 11/27/2016 through  
3 11/28/2016 at 1:00 PM.

4 23. That, at some point after 1:00 PM on 11/28/2016, Denzel Dorsey left with  
5 Davey Dorsey.

6 24. That I fully understand what an alibi witness is.

7 25. That Denzel Dorsey was with me on 11/28/2016 at 11:55 AM.

8 26. That the above is the honest-to-God truth.

9 27. That I have no problem testifying to the above information before a  
10 Judge and jury.  
11

12 **I DECLARE UNDER PENALTY OF PERJURY THAT THE**  
13 **FOREGOING IS TRUE AND CORRECT. (NRS 53.045).**  
14  
15

16 EXECUTED this 12 day of FEBRUARY, 2019.  
17  
18  
19

20   
21 **TAKIYA KEYSHA CLEMONS**  
22 2645 Donna Street, Apartment #D  
23 North Las Vegas, Nevada 89030  
24 (702) 684-3063  
25 Takiya225clemons@gmail.com  
26  
27  
28

1 GARY MODAFFERI, ESQ.  
2 Nevada Bar No. 012450  
3 LAW OFFICE OF GARY MODAFFERI  
4 815 S. Casino Center Blvd.,  
5 Las Vegas, Nevada 89101  
6 (702) 474-4222  
7 Attorney for Defendant  
8 DENZEL DORSEY

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, )  
Plaintiff, )

-vs-

CASE NO.: C-17-323324-1

DENZEL DORSEY, )  
ID# 02845569 )  
Defendant. )

DEPT. NO.: 22

DECLARATION

DAVEY DORSEY makes the following declaration:

1. That I have full knowledge of all matters contained  
herein and am competent to testify thereto.

2. That my date of birth is: 06/27/1999

3. That I reside at *5325 E. Tropicana Ave # 2082* *8/1/22*  
*DD* *DD*  
~~2137 East St. Louis, Las Vegas, Nevada 89104~~

4. That I will make myself available to the lawyer of Denzel Dorsey  
and the prosecutor.

5. That, on or about 11/28/2016, I was 17 years old.

6. That I am the younger biological brother of Denzel Dorsey.

7. That, on or about 11/25/2016, I asked Denzel Dorsey if I could

-1-

DEFT'S PROPOSED EXHIBIT

# *B*  
Case No. *C323324*

1 please borrow Denzel Dorsey's car rental.

2  
3 8. That I received the keys to the car rental on 11/27/2016 in the  
4 afternoon hours.

5 9. That I was supposed to have the vehicle to go hangout with a female  
6 friend.

7 10. That my brother, Denzel Dorsey, had no knowledge about me  
8 planning to rob a house.

9 11. That, on 11/28/2016, I did drive to the 2731 Warm Rays Ave. and  
10 tried to break into the house.

11 12. That I was the one who broke the window and tried to OPEN the front  
12 door of the house.

13 13. That, after the incident, I ended up driving to where my brother,  
14 Denzel Dorsey, was at.

15 14. That I never told my brother, Denzel Dorsey, that I had just  
16 tried to rob a house.

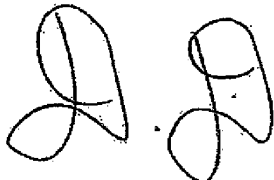
17 15. That, after I picked up Denzel Dorsey, Denzel Dorsey and I  
18 drove to Lindell Street.

19 16. That I got out of the car at my sister's house.

20 17. That I am referring to Ramika's house.

21 18. That Ramika's house was somewhere on Teneya.

22 19. That I am more than willing to take responsibility for this attempt  
23 home invasion.



1           20.    That I am more than willing to sign a legal document if necessary to  
2 clear Denzel Dorsey's name of this crime.

3           21.    That Denzel Dorsey had NOTHING to do with both the preplanning and  
4 the actual attempted home invasion.

5           22.    That I am specifically talking about the house located at 2731 Warm  
6 Rays Ave., Henderson, Nevada 89052.

7           23.    That I am very sorry for what I did.

8           24.    That I am coming forward to report the truth regarding 11/28/2016  
9 under HNPD Police Event #16-21448-001.

10          25.    That Denzel Dorsey is innocent of these criminal charges.

11          26.    That I tried to reach out to Denzel Dorsey's female attorney.

12          27.    That I actually went to the courthouse.

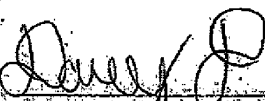
13          28.    That Denzel Dorsey's female attorney was very rude to me and she  
14 kept telling me that she did not have time for me.

15          29.    That I wanted to inform the female lawyer that I was the one  
16 that committed the attempt home invasion on 11/28/2016.

17          30.    That the female attorney would not give me 2 minutes of her time.

18                **I DECLARE UNDER PENALTY OF PERJURY THAT THE**  
19 **FOREGOING IS TRUE AND CORRECT. (NRS 53.045).**

20                               EXECUTED this 2-10-19 day of FEBRUARY, 2019.

21   
22 \_\_\_\_\_  
23 **DAVEY DORSEY**  
24 **Tel. #(323) 915-3638**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**May 15, 2017**

---

C-17-323324-1      State of Nevada  
   vs  
   Denzel Dorsey

---

**May 15, 2017      10:00 AM      Initial Arraignment**

**HEARD BY:** Hillman, Ralph R.      **COURTROOM:** RJC Lower Level Arraignment

**COURT CLERK:** Elizabeth Vargas

**RECORDER:** Kiara Schmidt

**REPORTER:**

**PARTIES**

**PRESENT:**      Brower, Keith      Attorney  
   Dorsey, Denzel      Defendant

**JOURNAL ENTRIES**

- Deputized Law Clerk, Alexander Vail, present on behalf of the State.

DEFT. DORSEY ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. COURT ORDERED, matter set for trial. COURT FURTHER ORDERED, pursuant to Statute, Counsel has 21 days from today for the filing of any Writs; if the Preliminary Hearing Transcript has not been filed as of today, Counsel has 21 days from the filing of the Transcript.

BOND

9/7/17 9:00 AM CALENDAR CALL (DEPT 22)

9/11/17 8:30 AM JURY TRIAL (DEPT 22)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**September 07, 2017**

---

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

---

**September 07, 2017    9:00 AM      Calendar Call**

**HEARD BY:** Johnson, Susan

**COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Keri Cromer

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Brower, Keith	Attorney
	Dorsey, Denzel	Defendant
	State of Nevada	Plaintiff
	Villegas, Victoria A.	Attorney

**JOURNAL ENTRIES**

- Mr. Brower requested a continuance. Bench conference. Colloquy regarding discovery. No opposition by State to continue trial. Colloquy regarding scheduling conflicts. Counsel anticipated 3-4 days to try. COURT ORDERED, jury trial VACATED and RESET.

**BOND**

11/30/2017 - 9:00 AM - CALENDAR CALL

12/04/2017 - 8:30 AM - JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**November 30, 2017**

---

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

---

**November 30, 2017      9:00 AM      All Pending Motions**

**HEARD BY:** Johnson, Susan

**COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Keri Cromer

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

**PRESENT:**      Brower, Keith      Attorney  
                                 Dorsey, Denzel      Defendant  
                                 Moreo, Thomas Joseph      Attorney  
                                 State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- CALENDAR CALL...DEFENDANT'S MOTION TO WITHDRAW DUE TO CONFLICT

Yi Zheng, Esq., also present. Mr. Brower requested to withdraw due to conflict. COURT ORDERED, Motion GRANTED. Ms. Zheng requested two weeks for a conflicts check and to confirm. COURT ORDERED, jury trial VACATED; matter SET for status check. Counsel anticipated one week to try.

**BOND**

12/12/2017 - 8:30 AM - STATUS CHECK: TRIAL SETTING/CONFIRMATION OF COUNSEL





**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**January 09, 2018**

---

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

---

**January 09, 2018      8:30 AM      Status Check**

**HEARD BY:** Johnson, Susan

**COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Keri Cromer

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Brower, Keith	Attorney
	Digiacomio, Sandra K.	Attorney
	Dorsey, Denzel	Defendant
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Yi Zheng, Esq., also present. Ms. Zheng advised she could not confirm as counsel due to conflict and requested appointment. State requested Deft. be remanded into custody and to revoke bail. Colloquy regarding outstanding warrants and the procedural history of the case. COURT ORDERED, matter CONTINUED; Deft. REMANDED into custody, NO BAIL. Colloquy regarding contract attorneys and conflict.

**CUSTODY (BOND)**

**CONTINUED TO 1/16/2018 - 8:30 AM**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**January 16, 2018**

---

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

---

**January 16, 2018      8:30 AM      Status Check**

**HEARD BY:** Johnson, Susan

**COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Keri Cromer

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Dorsey, Denzel	Defendant
	McAmis, Caitlyn	Attorney
	Scow, Richard H.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Ms. McAmis CONFIRMED AS COUNSEL; advised she received discovery today; requested a custody status hearing. Court directed Ms. McAmis to file a motion and then a hearing could be set. Colloquy regarding scheduling conflicts. COURT ORDERED, matter SET for trial. Counsel anticipated 5 days to try. Court advised it would issue a Discovery Order.

**CUSTODY (COC)/BOND**

4/18/2018 - 8:30 AM - CALENDAR CALL

4/23/2018 - 8:30 AM - JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**March 13, 2018**

---

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

---

**March 13, 2018      8:30 AM      Request**

**HEARD BY:** Johnson, Susan

**COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Keri Cromer  
                         Lauren Kidd

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Dorsey, Denzel	Defendant
	McAmis, Caitlyn	Attorney
	State of Nevada	Plaintiff
	Villegas, Victoria A.	Attorney

**JOURNAL ENTRIES**

- Guilty Plea Agreement FILED IN OPEN COURT

NEGOTIATIONS are as contained in the Guilty Plea Agreement. DEFT. DORSEY ARRAIGNED AND PLED GUILTY TO INVASION OF THE HOME (F). Court ACCEPTED plea and ORDERED, matter referred to the Division of Parole and Probation (P & P); trial dates VACATED; matter SET for sentencing. Ms. McAmis advised Deft. had previously posted bail and requested an own recognizance release. No objection by State. COURT FURTHER ORDERED, own recognizance release GRANTED. Court advised Deft. if he failed to appear for his future court date he would serve a minimum of 60 months to 120 months.

O.R.

7/17/18 8:30 AM SENTENCING

PRINT DATE: 11/15/2021

Page 7 of 39

Minutes Date: May 15, 2017

**C-17-323324-1**

CLERK'S NOTE: Bond was neither addressed at the 1/9/18 hearing, nor was it addressed at the hearing when counsel confirmed on 1/16/18. Bond exonerated on 4/18/2018. kc//4-18-18

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**May 08, 2018**

---

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

---

**May 08, 2018      8:30 AM      Motion**

**HEARD BY:** Johnson, Susan

**COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Keri Cromer

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Dorsey, Denzel	Defendant
	McAmis, Caitlyn	Attorney
	Niman, John T.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Colloquy regarding Presentence Investigation Report. Ms. McAmis advised Deft. had a California hold, so his Nevada cases needed to be resolved; requested Deft. be remanded on this case and to set sentencing in 30 days. Statement by Deft. COURT ORDERED, sentencing RESCHEDULED.

O.R.

6/05/2018 - 8:30 AM - SENTENCING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**June 05, 2018**

---

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

---

**June 05, 2018      8:30 AM      Sentencing**

**HEARD BY:** Johnson, Susan

**COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Keri Cromer

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Dorsey, Denzel	Defendant
	McAmis, Caitlyn	Attorney
	Niman, John T.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Ms. McAmis advised they could not proceed today as the Deft. wanted to withdraw his plea and dismiss her as counsel of record. Deft. advised the Motions were filed approximately 10 days ago. Court advised it needed to see the Motion before rendering a decision and ORDERED, matter CONTINUED and SET for status check.

O.R. (COC)

6/12/2018 - 8:30 AM - SENTENCING/STATUS CHECK: STATUS OF MOTIONS

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**June 12, 2018**

---

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

---

**June 12, 2018      8:30 AM      All Pending Motions**

**HEARD BY:** Johnson, Susan

**COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Keri Cromer

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

**PRESENT:**      McAmis, Caitlyn      Attorney  
                                 Niman, John T.      Attorney  
                                 State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- SENTENCING...STATUS CHECK: STATUS OF MOTION FILING...DEFENDANT'S PRO PER  
MOTION TO DISMISS COUNSEL

COURT ORDERED, Motion to Dismiss Counsel GRANTED; Mr. Hughes APPOINTED; matter SET  
for confirmation of counsel; sentencing CONTINUED. Court advised it wanted to see the transcript  
of the arraignment canvas.

O.R. (COC)

6/28/2018 - 9:00 AM - SENTENCING/CONFIRMATION OF COUNSEL (ED HUGHES, ESQ.)



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**June 28, 2018**

---

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

---

**June 28, 2018      9:00 AM      All Pending Motions**

**HEARD BY:** Johnson, Susan

**COURTROOM:** RJC Courtroom 15D

**COURT CLERK:**

Keri Cromer

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Dorsey, Denzel	Defendant
	State of Nevada	Plaintiff
	Villegas, Victoria A.	Attorney

**JOURNAL ENTRIES**

- CONFIRMATION OF COUNSEL...DEFENDANT'S PRO PER MOTION TO WITHDRAW PLEA...SENTENCING

Keith Brower, Esq. present. Mr. Brower advised he was notified about this matter yesterday, Mr. Hughes was out of the country, and he could not make any representations at this time due to preexisting conflicts; requested a continuance. COURT ORDERED, matters CONTINUED; matter SET for status check.

O.R.

7/17/2018 - 8:30 AM - CONFIRMATION OF COUNSEL/DEFENDANT'S PRO PER MOTION TO WITHDRAW PLEA/STATUS CHECK: SENTENCING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**July 17, 2018**

---

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

---

**July 17, 2018                      8:30 AM                      All Pending Motions**

**HEARD BY:** Hardy, Joe

**COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Kristin Duncan

**RECORDER:** Matt Yarbrough

**REPORTER:**

**PARTIES**

**PRESENT:**      Pandelis, Christopher P.                      Attorney  
                                 State of Nevada                                      Plaintiff

**JOURNAL ENTRIES**

- CONFIRMATION OF COUNSEL (HUGHES, E)...DEFENDANT'S MOTION TO WITHDRAW PLEA...STATUS CHECK: SENTENCING

E. Hughes, Esq. present.

Defendant having failed to appear, State requested the issuance of a bench warrant. Mr. Hughes appeared and stated that he did not have the Pre-Sentence Investigation Report (PSI), and had had no contact with the Defendant; therefore, he would be unable to proceed with sentencing, even if the Defendant happened to be present. Pursuant to the State's request, COURT ORDERED, BENCH WARRANT WILL ISSUE, NO BAIL.

COURT FURTHER ORDERED Defendant's Motion to Withdraw Plea was hereby OFF CALENDAR.

B.W. (O.R.)

PRINT DATE: 11/15/2021

Page 13 of 39

Minutes Date: May 15, 2017

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****July 31, 2018**

C-17-323324-1      State of Nevada  
vs  
Denzel Dorsey

**July 31, 2018      8:30 AM      Motion to Quash Bench  
Warrant**

**HEARD BY:** Hardy, Joe**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Kristin Duncan**RECORDER:** Matt Yarbrough**REPORTER:****PARTIES**

**PRESENT:**      Arnold, Carl E.      Attorney  
Pandelis, Christopher P.      Attorney  
State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- Carl Arnold, Esq. CONFIRMED as counsel of record for the Defendant. Mr. Arnold advised that Defendant was currently in custody in California, and requested the bench warrant be quashed in the instant case, in order to allow the Defendant to post bail in the California case. The State submitted on the pleadings. Mr. Arnold stated that the Defendant would be unable to post bail in California, with the bench warrant pending in the instant case. COURT ORDERED Defendant's Motion to Quash Bench Warrant was hereby DENIED WITHOUT PREJUDICE, FINDING that the bench warrant remaining in place, would ensure the Defendant's appearance in court subsequent to the resolution of his California case.

B.W. (O.R.)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**November 08, 2018**

---

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

---

**November 08, 2018      8:30 AM      Request**

**HEARD BY:** Hardy, Joe

**COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Kristin Duncan

**RECORDER:** Matt Yarbrough

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Arnold, Carl E.	Attorney
	Digiacomio, Sandra K.	Attorney
	Dorsey, Denzel	Defendant
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- The State noted that Defendant had a fugitive hold out of California, and there was the possibility of additional charges being filed. Mr. Arnold requested thirty days to determine what was going on in the case. The State objected to a thirty day continuance, noting that the negotiations in this case called for the dismissal of Defendant's other case, which was set for a Preliminary Hearing. COURT ORDERED the sentencing date was hereby SET in two weeks.

CUSTODY

11/27/18 8:30 AM SENTENCING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**November 27, 2018**

---

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

---

**November 27, 2018      8:30 AM      Sentencing**

**HEARD BY:** Hardy, Joe

**COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Phyllis Irby

**RECORDER:** Matt Yarbrough

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Dorsey, Denzel	Defendant
	Modafferi, Gary	Attorney
	Scow, Richard H.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Mr. Modafferi requested a continuance; advised the parties would like to get up to speed on this matter. COURT ORDERED, MATTER CONTINUED.

CUSTODY

12-13-18 8:30 AM SENTENCING (DEPT. XV)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**December 13, 2018**

---

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

---

**December 13, 2018      8:30 AM      Sentencing**

**HEARD BY:** Hardy, Joe

**COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Kristin Duncan

**RECORDER:** Matt Yarbrough

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Dorsey, Denzel	Defendant
	Modafferi, Gary	Attorney
	State of Nevada	Plaintiff
	Waters, Steven L	Attorney

**JOURNAL ENTRIES**

- Mr. Modafferi requested the sentencing date be continued to a date subsequent to the pending Motion for Expert Services, noting that the State did not object to the continuance. Additionally, Mr. Modafferi requested the Court make a ruling on the Motion for Expert Services during the instant hearing, so that an investigator could begin looking into the factual concerns. The Court noted that it would be unable to make a ruling on the Motion for Expert Services, as it had not yet reviewed the Motion. COURT ORDERED the sentencing date was hereby CONTINUED.

CUSTODY

CONTINUED TO: 2/5/19 8:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 03, 2019

C-17-323324-1      State of Nevada  
vs  
Denzel Dorsey

**January 03, 2019      8:30 AM      Motion**

HEARD BY: Hardy, Joe

COURTROOM: RJC Courtroom 11D

COURT CLERK: Kristin Duncan

RECORDER: Matt Yarbrough

REPORTER:

**PARTIES**

<b>PRESENT:</b>	Dorsey, Denzel	Defendant
	Modafferi, Gary	Attorney
	State of Nevada	Plaintiff
	Villegas, Victoria A.	Attorney

**JOURNAL ENTRIES**

- Upon Court's inquiry, Mr. Modafferi indicated that the investigator was needed, to determine whether there were facts and circumstances that would warrant the withdrawal of Defendant's guilty plea. Upon further inquiry by the Court, Mr. Modafferi advised that the investigator would be interviewing the Defendant, as well as other witnesses. Regarding the cost of the investigator, Mr. Modafferi stated that an ROC would be submitted to Drew Christensen, which would allow the County Administrator to determine the amount of hours needed, and to supervise the payments. The State argued that, if the investigator was investigating based upon a potential withdrawal of plea, then the investigator would be limited to the plea canvass. COURT ORDERED the Defendant's Motion for Expert Services (Investigator) Pursuant to Widdis, was hereby GRANTED, FINDING that the Defendant was INDIGENT. Due to the Court's continuing reservations regarding the need for an investigator, as well as its questions regarding scope, COURT ORDERED a status check was hereby SET regarding the retention of the investigator, and the scope of the investigation. COURT FURTHER ORDERED the sentencing date would STAND.

**C-17-323324-1**

1/17/19 8:30 AM STATUS CHECK: INVESTIGATOR

PRINT DATE: 11/15/2021

Page 19 of 39

Minutes Date: May 15, 2017



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**January 17, 2019**

---

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

---

**January 17, 2019      8:30 AM      Status Check**

**HEARD BY:** Hardy, Joe

**COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Kristin Duncan

**RECORDER:** Matt Yarbrough

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Dorsey, Denzel	Defendant
	Modafferi, Gary	Attorney
	State of Nevada	Plaintiff
	Stephens, Robert	Attorney

**JOURNAL ENTRIES**

- Mr. Modafferi advised that an application for appropriate investigator funds had been submitted to the Office of the County Manager, and provided the Court with a copy of said application. The Court noted that the application had been approved for \$500.00. Upon the Court's inquiry, Mr. Modafferi stated that the Court did not have to take any action at this time, and requested the pending sentencing date be reset to a date two weeks later than its current date. The State clarified that the investigator was being used solely to determine whether it would be appropriate for Defendant to withdraw his plea. Mr. Modafferi affirmed the State's representation. COURT ORDERED the sentencing date was hereby RESET.

**CUSTODY**

**2/19/19 8:30 AM SENTENCING**

PRINT DATE: 11/15/2021

Page 20 of 39

Minutes Date: May 15, 2017

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**February 19, 2019**

---

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

---

**February 19, 2019      8:30 AM      Sentencing**

**HEARD BY:** Hardy, Joe

**COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Kristin Duncan

**RECORDER:** Matt Yarbrough

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Dorsey, Denzel	Defendant
	Modafferi, Gary	Attorney
	Scow, Richard H.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Mr. Modafferi indicated that he had spoken to Sandra DiGiacomo, DDA, and both parties agreed to continue the sentencing date, to allow the State to file a response to the Motion to Withdraw Guilty Plea. Upon Court's inquiry, Mr. Modafferi requested a thirty-day continuance. There being no opposition, COURT ORDERED the sentencing date was hereby CONTINUED.

**CUSTODY**

**CONTINUED TO:** 3/28/19 8:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**February 26, 2019**

---

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

---

**February 26, 2019      8:30 AM      Motion**

**HEARD BY:** Hardy, Joe

**COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Kristin Duncan  
Dara Yorke

**RECORDER:** Matt Yarbrough

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Dorsey, Denzel	Defendant
	Kern, Samuel R.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- The instant Motion having previously been reset, but not rescheduled on the Court's docket, and the parties having agreed to a continuance date, COURT ORDERED Defendant Denzel Dorsey's Motion to Withdraw Guilty Plea, was hereby CONTINUED. COURT FURTHER ORDERED, Defendant's sentencing date, was hereby RESET to be heard on the same date as the Motion to Withdraw Guilty Plea.

CUSTODY

3/26/19 8:30 AM DEFENDANT DENZEL DORSEY'S MOTION TO WITHDRAW GUILTY PLEA...SENTENCING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**March 26, 2019**

---

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

---

**March 26, 2019      8:30 AM      All Pending Motions**

**HEARD BY:** Hardy, Joe

**COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Kristin Duncan

**RECORDER:** Matt Yarbrough

**REPORTER:**

**PARTIES**

**PRESENT:**      Digiacomo, Sandra K.      Attorney  
                                 Dorsey, Denzel      Defendant  
                                 State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- DEFENDANT DENZEL DORSEY'S MOTION TO WITHDRAW GUILTY PLEA...SENTENCING

Mr. Modafferi not present when the case was called. The State noted that the instant hearings were originally set to be heard on March 28, 2019, and they were moved to accommodate the State, which may account for Mr. Modafferi's absence. COURT ORDERED the instant hearings were hereby CONTINUED.

CUSTODY

CONTINUED TO: 4/4/19 8:30 AM

CLERK'S NOTE: Mr. Modafferi was notified of the continuance date via e-mail. (KD 3/26/19)

PRINT DATE: 11/15/2021

Page 23 of 39

Minutes Date: May 15, 2017

**C-17-323324-1**

PRINT DATE: 11/15/2021

Page 24 of 39

Minutes Date: May 15, 2017

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**April 04, 2019**

---

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

---

**April 04, 2019      8:30 AM      All Pending Motions**

**HEARD BY:** Hardy, Joe

**COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Kristin Duncan

**RECORDER:** Matt Yarbrough

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Digiacomo, Sandra K.	Attorney
	Dorsey, Denzel	Defendant
	Modafferi, Gary	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- The Court noted that an Evidentiary Hearing would be necessary. Mr. Modafferi indicated he would be bringing in Daniel Dorsey, who would be willing to testify that he was the individual who committed the crime. The State advised that, out of an abundance of caution, it felt that an Evidentiary Hearing should be held. Upon Court's inquiry, the State represented that two hours would be needed for the hearing. COURT ORDERED and Evidentiary Hearing was hereby SET, and the Motion to Withdraw Guilty Plea, was hereby CONTINUED to the date of the Evidentiary Hearing.

**CUSTODY**

5/13/19 8:30 AM DEFENDANT DENZEL DORSEY'S MOTION TO WITHDRAW GUILTY PLEA...EVIDENTIARY HEARING

PRINT DATE: 11/15/2021

Page 25 of 39

Minutes Date: May 15, 2017

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**May 23, 2019**

---

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

---

**May 23, 2019      10:30 AM      All Pending Motions**

**HEARD BY:** Hardy, Joe

**COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Kristin Duncan

**RECORDER:** Matt Yarbrough

**REPORTER:**

**PARTIES**

**PRESENT:**      Digiacomo, Sandra K.      Attorney  
                                 Modafferi, Gary      Attorney  
                                 State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- EVIDENTIARY HEARING...DEFENDANT DENZEL DORSEY'S MOTION TO WITHDRAW  
GUILTY PLEA

The Defendant not having been transported, COURT ORDERED the Motion and Evidentiary  
Hearing were hereby CONTINUED.

CUSTODY

CONTINUED TO: 5/28/19 10:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****May 28, 2019**

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

**May 28, 2019      10:30 AM      All Pending Motions**

**HEARD BY:** Hardy, Joe**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Kristin Duncan**RECORDER:** Matt Yarbrough**REPORTER:****PARTIES**

<b>PRESENT:</b>	Digiacomio, Sandra K.	Attorney
	Dorsey, Denzel	Defendant
	Modafferi, Gary	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- EVIDENTIARY HEARING...DEFENDANT DENZEL DORSEY'S MOTION TO WITHDRAW  
GUILTY PLEA

The State advised that Defendant's brother, Davey Dorsey, who would allegedly be admitting to the subject crimes through testimony, would require independent counsel. Mr. Modafferi suggested the Court canvass Davey Dorsey, to determine whether he wished to retain counsel. EXCLUSIONARY RULE INVOKED by the State. The Court expressed its frustration with the State's failure to raise the independent counsel issue prior to the instant hearing. Matter trailed.

Matter recalled. Having reviewed the law applicable to the issue raised by the State, COURT ORDERED that the Evidentiary Hearing would proceed as scheduled. The State noted that its investigator was currently out of the jurisdiction; therefore, the hearing may have to be bifurcated, to allow for the investigator to appear and testify. Testimony and exhibits presented (see worksheets). At Mr. Modafferi's request, the COURT ORDERED that it would consider the Preliminary Hearing

PRINT DATE: 11/15/2021

Page 27 of 39

Minutes Date: May 15, 2017



transcripts, as they were already part of the record in the instant case. Additionally, the COURT TOOK JUDICIAL NOTICE of the handwritten briefs attached to the Motion to Withdraw Guilty Plea as exhibits A and B. Colloquy regarding scheduling. Mr. Modafferi indicated there was no objection to the hearing being continued to accommodate the State's investigator. COURT ORDERED the Evidentiary Hearing, as well as the Motion to Withdraw Guilty Plea, were hereby CONTINUED.

CUSTODY

CONTINUED TO: 7/8/19 8:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**June 25, 2019**

---

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

---

**June 25, 2019      8:30 AM      Motion to Remand**

**HEARD BY:** Hardy, Joe

**COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Kristin Duncan

**RECORDER:** Rubina Feda

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Digiacomio, Sandra K.	Attorney
	Dorsey, Denzel	Defendant
	Modafferi, Gary	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- There being no Opposition, COURT ORDERED the State's Notice of Motion and Motion to Remand Defendant, was hereby GRANTED, RETROACTIVE to October 17, 2018.

CUSTODY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**July 08, 2019**

---

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

---

**July 08, 2019      10:30 AM      All Pending Motions**

**HEARD BY:** Hardy, Joe

**COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Haly Pannullo  
Christopher Darling

**RECORDER:** Matt Yarbrough

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Dorsey, Denzel	Defendant
	Modafferi, Gary	Attorney
	Rowles, William C.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- EVIDENTIARY HEARING...DEFENDANT DENZEL DORSEY'S MOTION TO WITHDRAW GUILTY PLEA

Mr. Modafferi advised he and Ms. Digiacomio agreed to continuance for later this week due to circumstances with other matters. COURT ORDERED, matters CONTINUED to 7/11/19. Upon Court's inquiry, Mr. Modafferi advised State has a testifying investigator. Mr. Rowles advised if there is problem with witness availability, he will notify opposing counsel and Chambers.

IN CUSTODY

CONTINUED TO: 7/11/19 10:30 AM EVIDENTIARY HEARING...DEFENDANT DENZEL DORSEY'S MOTION TO WITHDRAW GUILTY PLEA

CLERK'S NOTE: Minutes completed upon review of JAVS recording. /cd 8-13-19/

PRINT DATE: 11/15/2021

Page 30 of 39

Minutes Date: May 15, 2017

**C-17-323324-1**

PRINT DATE: 11/15/2021

Page 31 of 39

Minutes Date: May 15, 2017

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****July 11, 2019**

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

**July 11, 2019      10:30 AM      All Pending Motions**

**HEARD BY:** Hardy, Joe**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Kristin Duncan**RECORDER:** Matt Yarbrough**REPORTER:****PARTIES**

<b>PRESENT:</b>	Digiacomio, Sandra K.	Attorney
	Dorsey, Denzel	Defendant
	Modafferri, Gary	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- EVIDENTIARY HEARING...DEFENDANT DENZEL DORSEY'S MOTION TO WITHDRAW  
GUILTY PLEA

Testimony and exhibits presented (see worksheets). State RESTED. Due to the need to review the State's exhibit, which consisted of multiple telephone calls made by the Defendant from jail, the Court noted that it would hear arguments on this date, and would issue its decision via minute order. Mr. Modafferri argued in support of the Motion to Withdraw Guilty Plea, stating that the Court must look at the case under the permissive standard; Stevenson case cited. The State argued in opposition, stating that the Defendant had a long history of breaking and entering, and there was no information presented regarding the Defendant's brother possibly being the perpetrator, until the Defendant wished to withdraw his guilty plea. COURT ORDERED the ruling on the Evidentiary Hearing and the Motion to Withdraw Plea were hereby DEFERRED, and a status check regarding the Court's decision, and the setting of a sentencing date, or a trial date, was hereby SET.

PRINT DATE: 11/15/2021

Page 32 of 39

Minutes Date: May 15, 2017

**C-17-323324-1**

CUSTODY

8/8/19 8:30 AM STATUS CHECK: COURT'S DECISION ON THE MOTION TO WITHDRAW PLEA  
/ SENTENCING DATE / TRIAL DATE

PRINT DATE: 11/15/2021

Page 33 of 39

Minutes Date: May 15, 2017

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**August 08, 2019**

---

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

---

**August 08, 2019      8:30 AM      Status Check**

**HEARD BY:** Hardy, Joe

**COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Kristin Duncan

**RECORDER:** Matt Yarbrough

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Digiacomio, Sandra K.	Attorney
	Dorsey, Denzel	Defendant
	Modafferi, Gary	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- The Court noted that a trial date needed to be set, as the Motion to Withdraw Plea had been denied via a written Order. COURT ORDERED a sentencing date was hereby SET. COURT FURTHER ORDERED the preparation of a new Pre-Sentence Investigation Report (PSI).

Mr. Modafferi advised that he was retained only through sentencing, and requested that appellate counsel be appointed for the Defendant prior to the preparation of the Judgment of Conviction. The State noted that, procedurally, Mr. Modafferi would need to complete sentencing prior to any other counsel being appointed. The Court directed counsel to raise the issue again when appropriate.

**CUSTODY**

**10/3/19 8:30 AM SENTENCING**

PRINT DATE: 11/15/2021

Page 34 of 39

Minutes Date: May 15, 2017

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 03, 2019

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

**October 03, 2019      8:30 AM      Sentencing**

HEARD BY: Hardy, Joe

COURTROOM: RJC Courtroom 11D

COURT CLERK: Kristin Duncan

RECORDER: Matt Yarbrough

REPORTER:

**PARTIES**

<b>PRESENT:</b>	Digiacomio, Sandra K.	Attorney
	Dorsey, Denzel	Defendant
	Modafferi, Gary	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Mr. Modafferi requested the Court appoint appellant counsel for the Defendant post-sentencing. The State noted that it regained the right to argue, but would submit on the negotiations. Mr. Modafferi requested the maximum end of the potential sentence be reduced. Arguments regarding credit time served. Statements by the Defendant. DEFT DORSEY ADJUDGED GUILTY of COUNT 1 - INVASION OF THE HOME (F). COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, \$150.00 DNA Analysis fee, WAIVED as previously taken, \$3.00 DNA Collection fee, \$130.00 Restitution, payable to VC2191137, and \$1,200.00 Restitution, payable to VC2252568, Deft. SENTENCED under the SMALL HABITUAL CRIMINAL STATUTE to a MAXIMUM of ONE HUNDRED FIFTY (150) MONTHS and MINIMUM of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC), with FOUR HUNDRED TWENTY-THREE (423) DAYS credit time served. COURT FURTHER ORDERED COUNT 2 was hereby DISMISSED.

Regarding the request for appointment of appellate counsel, COURT ORDERED that said request was DENIED at this time, as it was unsure whether the request was appropriate.

PRINT DATE: 11/15/2021

Page 35 of 39

Minutes Date: May 15, 2017



**C-17-323324-1**

BOND, if any, EXONERATED.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**October 22, 2019**

---

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

---

**October 22, 2019      8:30 AM      Motion to Withdraw as  
Counsel**

**HEARD BY:** Hardy, Joe

**COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Kristin Duncan

**RECORDER:** Matt Yarbrough

**REPORTER:**

**PARTIES**

**PRESENT:**      Modafferi, Gary      Attorney  
                         State of Nevada      Plaintiff  
                         Villegas, Victoria A.      Attorney

**JOURNAL ENTRIES**

- There being no opposition, COURT ORDERED Defendant's Motion to Withdraw as Counsel, was hereby GRANTED; Gary Modafferi, Esq. WITHDRAWN.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**December 03, 2019**

---

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

---

**December 03, 2019      8:30 AM      Status Check**

**HEARD BY:** Hardy, Joe

**COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Kristin Duncan

**RECORDER:** Matt Yarbrough

**REPORTER:**

**PARTIES**

**PRESENT:**      Dorsey, Denzel      Defendant  
                         Jackson, Terrence Michael      Attorney  
                         Kern, Samuel R.      Attorney  
                         State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- Terrence Jackson, Esq. CONFIRMED as appellate counsel for the Defendant. COURT ORDERED Terrence Jackson, Esq., was hereby APPOINTED as appellate counsel for the Defendant. Mr. Jackson advised that he would contact the Defendant's former counsel, and obtain the Defendant's file.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

### Felony/Gross Misdemeanor

## COURT MINUTES

**April 06, 2021**

C-17-323324-1      State of Nevada  
vs  
Denzel Dorsey

**April 06, 2021                      11:00 AM                      Motion to Withdraw as Counsel**

**HEARD BY:** Holthus, Mary Kay

**COURTROOM:** RJC Courtroom 03E

**COURT CLERK:** Dara Yorke

**RECORDER:** Yvette G. Sison

**REPORTER:**

## PARTIES

**PRESENT:** Luzaich, Elissa Attorney  
State of Nevada Plaintiff

## JOURNAL ENTRIES

- Elissa Luzaich, Esq. present via Bluejeans video conference.

Mr. Jackson and Deft. not present. Court indicated Mr. Jackson filed Motion to Withdraw, noting he was appointed for appeal and the Supreme Court affirmed findings. Court noted Deft. requested his filed. COURT ORDERED, Defendant's Motion to Withdraw as Counsel was hereby GRANTED.

NDC

# Certification of Copy and Transmittal of Record

State of Nevada }  
County of Clark } SS:

Pursuant to the Supreme Court order dated November 3, 2021, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises three volumes with pages numbered 1 through 714.

STATE OF NEVADA,

Plaintiff(s),

vs.

DENZEL DORSEY,

Defendant(s),

Case No: C-17-323324-1

*Related Case A-21-839313-W*

Dept. No: VI

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 15 day of November 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk