

Steven D. Grierson

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

Electronically Filed
May 06 2021 11:49 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

DISTRICT COURT
CLARK COUNTY, NEVADA

—

JAVAR KETCHUM,
PETITIONER,

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

VS.

NOTICE OF APPEAL

THE STATE OF NEVADA,
RESPONDENT. /

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

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

1.

RECEIVED

APR 29 2021

CLERK OF THE COURT

CORPUS TO THE NEVADA SUPREME COURT.

DATE: THE 25TH DAY OF APRIL, 2021.

RESPECTFULLY SUBMITTED:

Javar Ketum

JAVAR KETUM #1192727

P.O. BOX 650 / H.D.S.P.

INDIAN SPRINGS, NEVADA
89070

IN PROPER PERSON

CERTIFICATE OF SERVICE

I, JAVAR KETUM, DO HEREBY SWEAR AND
DEPOSE, UNDER PENALTY OF PERJURY, PURSUANT
TO NRS ~~208~~ 8.165; THAT I DID MAIL THE ORIGINAL
COPY OF THIS NOTICE OF APPEAL TO THE COURT
CLERK; POSTAGE PREPAID AT HIGH DESERT STATE
PRISON MAILROOM; DATE: APRIL 25TH, 2021

SIGNED BY:

Javar Ketum

JAVAR KETUM #1192727

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

DISTRICT COURT
CLARK COUNTY, NEVADA

JAVAR KETCHUM,
PETITIONER,

CASE No.: A-21-821316-W

DEPT. No.: 17

VS.

STATE OF NEVADA,

JUDICIAL NOTICE

RESPONSE.

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

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

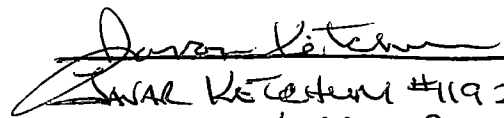
ADDITIONAL MOTIONS, DOCUMENTS, AFFIDAVITS, AND PAPERS; INCLUDING A MOTION TO CONTINUE THE MAY 4TH, 2021 HEARING, IN ORDER FOR THIS COURT TO HEAR SAID PLEADINGS. IN.

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

NOTICE OF APPEAL HAS BEEN GIVEN.

DATE: APRIL 25TH, 2021.

SIGNED BY:

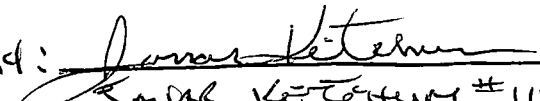

JAMAR KETCHEM #1192727
H.D.S.P. / TB-19
P.O. BOX 650
INDIAN SPRINGS, NEVADA

89070

IN PROPER PERSON

CERTIFICATE OF SERVICE:

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

BY: 
JAMAR KETCHEM #1192727

Javar Ketchum
H.D.S.P #1192727

P.O.Box 650
Indian Springs, NV 89070

LAS VEGAS NV 890

26 APR 2021 PM 3 L



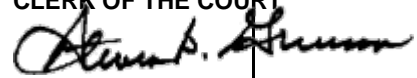
April



FOREVER / USA

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

000000-10100



1 ASTA

2
3
4
5
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**

9 JAVAR KETCHUM,

10 Plaintiff(s),

11 vs.

12 THE STATE OF NEVADA,

13 Defendant(s),
14

Case No: A-20-821316-W

Dept No: XVII

15
16 **CASE APPEAL STATEMENT**
17

18 1. Appellant(s): Javar Ketchum

19 2. Judge: Michael Villani

20 3. Appellant(s): Javar Ketchum

21 Counsel:

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

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

26 Counsel:

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

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

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

5 6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No

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

7 8. Appellant Granted Leave to Proceed in Forma Pauperis**: N/A
8 **Expires 1 year from date filed

9 Appellant Filed Application to Proceed in Forma Pauperis: No
10 Date Application(s) filed: N/A

11 9. Date Commenced in District Court: September 11, 2020

12 10. Brief Description of the Nature of the Action: Civil Writ

13 Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus

14 11. Previous Appeal: No

15 Supreme Court Docket Number(s): N/A

16 12. Child Custody or Visitation: N/A

17 13. Possibility of Settlement: Unknown

18 Dated This 30 day of April 2021.

19 Steven D. Grierson, Clerk of the Court

20 /s/ Amanda Hampton

21 Amanda Hampton, Deputy Clerk
22 200 Lewis Ave
23 PO Box 551601
24 Las Vegas, Nevada 89155-1601
25 (702) 671-0512

26 cc: Javar Ketchum
27
28

CASE SUMMARY

CASE NO. A-20-821316-W

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

§
§
§
§
§
§

Location: **Department 17**
 Judicial Officer: **Villani, Michael**
 Filed on: **09/11/2020**
 Cross-Reference Case Number: **A821316**
 Defendant's Scope ID #: **1836597**

CASE INFORMATION

Related Cases

C-16-319714-1 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Statistical Closures

03/31/2021 Other Manner of Disposition

Case Status: **03/31/2021 Closed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-20-821316-W
 Court Department 17
 Date Assigned 09/11/2020
 Judicial Officer Villani, Michael

PARTY INFORMATION

Plaintiff

Ketchum, Javar

Lead Attorneys

Pro Se

Defendant

Nevada State of

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

DATE

EVENTS & ORDERS OF THE COURT

INDEX

EVENTS

09/11/2020



Petition for Writ of Habeas Corpus

Filed by: Plaintiff Ketchum, Javar

Petition for Post Conviction Writ of Habeas Corpus

09/16/2020



Notice of Change

Notice of Change of Case Number and Hearing

12/16/2020



Response

Filed by: Defendant Nevada State of

State's Response to Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction)

01/11/2021



Motion

Filed By: Plaintiff Ketchum, Javar

Notice of Motion and Motion to Continue Reply Brief Deadline and Hearing Date

01/13/2021



Clerk's Notice of Hearing

Clerk's Notice of Hearing

02/09/2021



Reply


Filed by: Plaintiff Ketchum, Javar

CASE SUMMARY
CASE NO. A-20-821316-W

Reply to State's Response to Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction)

03/31/2021	 Motion to Reconsider Filed By: Plaintiff Ketchum, Javar <i>Motion for Reconsideration, or in the Alternative Motion for Rehearing of Petitioner's NRS Chapter 34 Petition</i>
03/31/2021	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
03/31/2021	 Findings of Fact, Conclusions of Law and Order Filed By: Defendant Nevada State of <i>Finding of Fact, conclusion of Law and Order</i>
04/05/2021	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Defendant Nevada State of <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
04/23/2021	 Motion Filed By: Plaintiff Ketchum, Javar <i>Counsel's Notice of Motion and Motion to Withdraw as Attorney of Record</i>
04/23/2021	 Clerk's Notice of Hearing <i>Clerk's Notice of Hearing</i>
04/27/2021	 Opposition to Motion Filed By: Defendant Nevada State of <i>State's Opposition to Petitioner's Motion for Reconsideration or in the Alternative Motion for Rehearing of Petitioner's NRS Chapter 34 Petition</i>
04/29/2021	 Notice of Appeal <i>Notice of Appeal</i>
04/30/2021	 Case Appeal Statement Filed By: Plaintiff Ketchum, Javar <i>Case Appeal Statement</i>

HEARINGS

11/06/2020	 Petition for Writ of Habeas Corpus (10:15 AM) (Judicial Officer: Villani, Michael) 11/06/2020, 03/12/2021 Matter Heard; Denied; Journal Entry Details: <i>Defendant not present. Court noted it had reviewed all of the pleadings filed. Mr. Pallares stated he was requesting an Evidentiary Hearing on the issue that trial counsel should have called a psychologist to testify as to his state of my mind as a robbery victim, as the Defendant claimed to be a robbery victim by the victim of the shooting. Court noted it can only address the Petition in front of it and further noted the Petition brought up the issues of trial counsel failing to view the video, failing to object to the admission of the video, and ineffective cross-examination of Mr. Bernard. Upon Court's inquiry, Mr. Pallares stated trial counsel had no access to the video and the inculpatory parts were not presented during trial. Upon Court's inquiry, Mr. Pallares indicated there was a lack of foundation and a violation of Brady that trial counsel was not shown the video, however trial counsel failed to view the video once it was given to him in its entirety. Mr. Pallares stated the ineffective cross-examination claim occurred when trial counsel failed to bring up the differences in Mr. Bernard's statements to police and his testimony at trial. Mr. Giordani stated the Strickland standard is very clear and</i>
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CASE SUMMARY

CASE NO. A-20-821316-W

noted Mr. Woolridge was very effective and worked with what he had. Mr. Giordani further stated bringing up a Brady claim was inappropriate and advised Mr. Woolridge had full access to the video prior to trial, therefore there would have been no legal basis to object to the video. Mr. Giordani noted Mr. Ketchum testified and gave a claim of self defense. Court noted it had reviewed the Appellant's Opening Brief and it was asserted trial counsel watched the entire video. Court FINDS no legal basis establishing a valid objection to the admission of the video, proper foundation was established, there was no argument during trial or in the Petition stating the video was inadmissible evidence, the cross-examination of Mr. Bernard brought up his statements to the police were incomplete or had omissions and he was confronted with the differences in his trial testimony and his statements to the police, therefore neither prong of Strickland has been established. COURT ADOPTED the Procedural History as set forth by the State. Court noted it was difficult to confirm the allegations as there were no citations in the Petition or Reply Brief. COURT ORDERED, Petition DENIED and DIRECTED the State to prepare the Findings of Facts and Conclusions of Law; Status Check SET. Court stated the Status Check date would be vacated once that document was filed. NDC 4/1/2021 10:00 AM STATUS CHECK: FINDINGS OF FACTS AND CONCLUSIONS OF LAW;

Matter Heard;

Denied;

Journal Entry Details:

Court noted it had received the Petition and stated a briefing schedule needed to be set. COURT ORDERED, Briefing Schedule SET as follows: State's Return due by December 18, 2020; Petitioner's Reply due by January 15, 2021; and hearing SET. NDC 2/3/2021 9:00 AM PETITION FOR WRIT OF HABEAS CORPUS;

01/26/2021



Motion (8:30 AM) (Judicial Officer: Villani, Michael)

Defendant's Motion to Continue Reply Brief Deadline and Hearing Date

Granted;

Journal Entry Details:

Defendant not present. Mr. Mueller stated a previous appointment to meet with the Defendant was canceled and a new appointment has been scheduled for February 8th, therefore he requested the reply brief be due on that date and the hearing be continued. COURT ORDERED, Motion GRANTED, Reply Brief due 2/8/2021 and Hearing on Petition VACATED and RESET. NDC 3/12/21 8:30 AM PETITION FOR WRIT OF HABEAS CORPUS;

04/01/2021



Status Check: Status of Case (10:00 AM) (Judicial Officer: Villani, Michael)

Status Check: Findings of Facts, Conclusions of Law and Order

Off Calendar;

Journal Entry Details:

Court noted the Findings of Facts and Conclusions of Law were filed on March 31, 2021. COURT ORDERED status check OFF CALENDAR.;

05/04/2021

Motion (8:30 AM) (Judicial Officer: Villani, Michael)

Plaintiff's - Motion for Reconsideration, or in the Alternative Motion for Rehearing of Petitioner's NRS Chapter 34 Petition

05/04/2021

Motion to Withdraw as Counsel (8:30 AM) (Judicial Officer: Villani, Michael)

Counsel's Notice of Motion and Motion to Withdraw as Attorney of Record

05/25/2021

Status Check: Status of Case (10:00 AM) (Judicial Officer: Villani, Michael)

Status Check: Order

A-20-821316-W
Dept. XVII

DISTRICT COURT CIVIL COVER SHEET

County, Nevada

Case No.

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

Javar Ketchum #1836597

Defendant(s) (name/address/phone):

Nevada State of

Attorney (name/address/phone):

Craig A. Mueller Esq.

Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)

Civil Case Filing Types

<p style="text-align: center;">Real Property</p> <p>Landlord/Tenant</p> <p><input type="checkbox"/> Unlawful Detainer</p> <p><input type="checkbox"/> Other Landlord/Tenant</p> <p>Title to Property</p> <p><input type="checkbox"/> Judicial Foreclosure</p> <p><input type="checkbox"/> Other Title to Property</p> <p>Other Real Property</p> <p><input type="checkbox"/> Condemnation/Eminent Domain</p> <p><input type="checkbox"/> Other Real Property</p>	<p style="text-align: center;">Negligence</p> <p><input type="checkbox"/> Auto</p> <p><input type="checkbox"/> Premises Liability</p> <p><input type="checkbox"/> Other Negligence</p> <p style="text-align: center;">Malpractice</p> <p><input type="checkbox"/> Medical/Dental</p> <p><input type="checkbox"/> Legal</p> <p><input type="checkbox"/> Accounting</p> <p><input type="checkbox"/> Other Malpractice</p>	<p style="text-align: center;">Torts</p> <p>Other Torts</p> <p><input type="checkbox"/> Product Liability</p> <p><input type="checkbox"/> Intentional Misconduct</p> <p><input type="checkbox"/> Employment Tort</p> <p><input type="checkbox"/> Insurance Tort</p> <p><input type="checkbox"/> Other Tort</p>
<p style="text-align: center;">Probate</p> <p>Probate (select case type and estate value)</p> <p><input type="checkbox"/> Summary Administration</p> <p><input type="checkbox"/> General Administration</p> <p><input type="checkbox"/> Special Administration</p> <p><input type="checkbox"/> Set Aside</p> <p><input type="checkbox"/> Trust/Conservatorship</p> <p><input type="checkbox"/> Other Probate</p> <p>Estate Value</p> <p><input type="checkbox"/> Over \$200,000</p> <p><input type="checkbox"/> Between \$100,000 and \$200,000</p> <p><input type="checkbox"/> Under \$100,000 or Unknown</p> <p><input type="checkbox"/> Under \$2,500</p>	<p style="text-align: center;">Construction Defect & Contract</p> <p>Construction Defect</p> <p><input type="checkbox"/> Chapter 40</p> <p><input type="checkbox"/> Other Construction Defect</p> <p style="text-align: center;">Contract Case</p> <p><input type="checkbox"/> Uniform Commercial Code</p> <p><input type="checkbox"/> Building and Construction</p> <p><input type="checkbox"/> Insurance Carrier</p> <p><input type="checkbox"/> Commercial Instrument</p> <p><input type="checkbox"/> Collection of Accounts</p> <p><input type="checkbox"/> Employment Contract</p> <p><input type="checkbox"/> Other Contract</p>	<p style="text-align: center;">Judicial Review/Appeal</p> <p>Judicial Review</p> <p><input type="checkbox"/> Foreclosure Mediation Case</p> <p><input type="checkbox"/> Petition to Seal Records</p> <p><input type="checkbox"/> Mental Competency</p> <p style="text-align: center;">Nevada State Agency Appeal</p> <p><input type="checkbox"/> Department of Motor Vehicle</p> <p><input type="checkbox"/> Worker's Compensation</p> <p><input type="checkbox"/> Other Nevada State Agency</p> <p style="text-align: center;">Appeal Other</p> <p><input type="checkbox"/> Appeal from Lower Court</p> <p><input type="checkbox"/> Other Judicial Review/Appeal</p>
<p style="text-align: center;">Civil Writ</p> <p>Civil Writ</p> <p><input checked="" type="checkbox"/> Writ of Habeas Corpus</p> <p><input type="checkbox"/> Writ of Mandamus</p> <p><input type="checkbox"/> Writ of Quo Warrant</p> <p><input type="checkbox"/> Writ of Prohibition</p> <p><input type="checkbox"/> Other Civil Writ</p>		<p style="text-align: center;">Other Civil Filing</p> <p>Other Civil Filing</p> <p><input type="checkbox"/> Compromise of Minor's Claim</p> <p><input type="checkbox"/> Foreign Judgment</p> <p><input type="checkbox"/> Other Civil Matters</p>

Business Court filings should be filed using the Business Court civil coversheet.

9-11-20

Date

Prepared by Clerk

Signature of initiating party or representative

See other side for family-related case filings.

FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN NIMAN
Deputy District Attorney
Nevada Bar #14408
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Respondent

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JAVAR KETCHUM,
#1836597

Petitioner,

-vs-

THE STATE OF NEVADA,
Respondent.

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

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

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

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

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///

///

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

2 **STATEMENT OF THE CASE**

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

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

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

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

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

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

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

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

10 **STATEMENT OF THE FACTS**

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

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

28 ///

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

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

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

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

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

3 AUTHORITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 ///

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

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

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

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

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

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

ORDER

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

Dated this 31st day of March, 2021



E28 0E3 17F9 EEF2
Michael Villani
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

CERTIFICATE OF ELECTRONIC FILING

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

CRAIG MULLER, ESQ.

Email: receptionist@craigmullerlaw.com

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

16F16375A/JN/bs/jh/MVU

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Javar Ketchum, Plaintiff(s)

CASE NO: A-20-821316-W

7 vs.

DEPT. NO. Department 17

8 Nevada State of, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

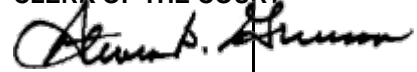
14 Service Date: 3/31/2021

15 Craig Mueller craig@craigmuellerlaw.com

16 Craig Mueller receptionist@craigmuellerlaw.com

17 District Attorney motions@clarkcountyda.com

18 John Niman JOHN.NIMAN@CLARKCOUNTYDA.COM
19
20
21
22
23
24
25
26
27
28



1 NEFF

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4 JAVAR KETCHUM,

5
6 Petitioner,

Case No: A-20-821316-W

Dept No: XVII

7 vs.

8 STATE OF NEVADA,

9 Respondent,

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

10
11 **PLEASE TAKE NOTICE** that on March 31, 2021, the court entered a decision or order in this matter, a
12 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
15 mailed to you. This notice was mailed on April 5, 2021.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Amanda Hampton

18 Amanda Hampton, Deputy Clerk

19 **CERTIFICATE OF E-SERVICE / MAILING**

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

21 ☒ By e-mail:

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

25 ☒ The United States mail addressed as follows:

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

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

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

29 /s/ Amanda Hampton

Amanda Hampton, 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
Attorney for Respondent

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JAVAR KETCHUM,
#1836597

Petitioner,

-vs-

THE STATE OF NEVADA,
Respondent.

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

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

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

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

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

2 **STATEMENT OF THE CASE**

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

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

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

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

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

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

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

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

10 **STATEMENT OF THE FACTS**

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

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

28 ///

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

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

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

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

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

3 AUTHORITY

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

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

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

16 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
17 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of
18 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865
19 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel’s
20 representation fell below an objective standard of reasonableness, and second, that but for
21 counsel’s errors, there is a reasonable probability that the result of the proceedings would have
22 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State
23 Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-
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25 the inquiry in the same order or even to address both components of the inquiry if the defendant
26 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

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

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

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

10 Based on the above law, the role of a court in considering allegations of ineffective
11 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
12 whether, under the particular facts and circumstances of the case, trial counsel failed to render
13 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
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18 counsel do what is impossible or unethical. If there is no bona fide defense to the charge,
19 counsel cannot create one and may disserve the interests of his client by attempting a useless
20 charade.” United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 ///

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

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

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

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

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

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

ORDER

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

Dated this 31st day of March, 2021



E28 0E3 17F9 EEF2
Michael Villani
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

CERTIFICATE OF ELECTRONIC FILING

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

CRAIG MULLER, ESQ.

Email: receptionist@craigmullerlaw.com

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

16F16375A/JN/bs/jh/MVU

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Javar Ketchum, Plaintiff(s)

CASE NO: A-20-821316-W

7 vs.

DEPT. NO. Department 17

8 Nevada State of, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 3/31/2021

15 Craig Mueller craig@craigmuellerlaw.com

16 Craig Mueller receptionist@craigmuellerlaw.com

17 District Attorney motions@clarkcountyda.com

18 John Niman JOHN.NIMAN@CLARKCOUNTYDA.COM
19
20
21
22
23
24
25
26
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28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

November 06, 2020

A-20-821316-W Javar Ketchum, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

**November 06, 2020 10:15 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Johnson, Eric

COURTROOM: RJC Courtroom 11A

COURT CLERK: Samantha Albrecht

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT:	Giordani, John	Attorney
	Maynard, Jay	Attorney
	Nevada State of	Defendant

JOURNAL ENTRIES

- Court noted it had received the Petition and stated a briefing schedule needed to be set. COURT ORDERED, Briefing Schedule SET as follows: State's Return due by December 18, 2020; Petitioner's Reply due by January 15, 2021; and hearing SET.

NDC

2/3/2021 9:00 AM PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

January 26, 2021

A-20-821316-W Javar Ketchum, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

January 26, 2021 8:30 AM Motion

HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Samantha Albrecht

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT:	Luong, Vivian	Attorney
	Mueller, Craig A	Attorney
	Nevada State of	Defendant

JOURNAL ENTRIES

- Defendant not present. Mr. Mueller stated a previous appointment to meet with the Defendant was canceled and a new appointment has been scheduled for February 8th, therefore he requested the reply brief be due on that date and the hearing be continued. COURT ORDERED, Motion GRANTED, Reply Brief due 2/8/2021 and Hearing on Petition VACATED and RESET.

NDC

3/12/21 8:30 AM PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

March 12, 2021

A-20-821316-W	Javar Ketchum, Plaintiff(s) vs. Nevada State of, Defendant(s)
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March 12, 2021	8:30 AM	Petition for Writ of Habeas Corpus
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HEARD BY: Villani, Michael	COURTROOM: RJC Courtroom 11A
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COURT CLERK: Samantha Albrecht

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT:	Giordani, John Nevada State of Pallares, Jose Carlos	Attorney Defendant Attorney
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JOURNAL ENTRIES

- Defendant not present. Court noted it had reviewed all of the pleadings filed. Mr. Pallares stated he was requesting an Evidentiary Hearing on the issue that trial counsel should have called a psychologist to testify as to his state of my mind as a robbery victim, as the Defendant claimed to be a robbery victim by the victim of the shooting. Court noted it can only address the Petition in front of it and further noted the Petition brought up the issues of trial counsel failing to view the video, failing to object to the admission of the video, and ineffective cross-examination of Mr. Bernard. Upon Court's inquiry, Mr. Pallares stated trial counsel had no access to the video and the inculpatory parts were not presented during trial. Upon Court's inquiry, Mr. Pallares indicated there was a lack of foundation and a violation of Brady that trial counsel was not shown the video, however trial counsel failed to view the video once it was given to him in its entirety. Mr. Pallares stated the ineffective cross-examination claim occurred when trial counsel failed to bring up the differences in Mr. Bernard's statements to police and his testimony at trial.

Mr. Giordani stated the Strickland standard is very clear and noted Mr. Woolridge was very effective and worked with what he had. Mr. Giordani further stated bringing up a Brady claim was

inappropriate and advised Mr. Woolridge had full access to the video prior to trial, therefore there would have been no legal basis to object to the video. Mr. Giordani noted Mr. Ketchum testified and gave a claim of self defense.

Court noted it had reviewed the Appellant's Opening Brief and it was asserted trial counsel watched the entire video. Court FINDS no legal basis establishing a valid objection to the admission of the video, proper foundation was established, there was no argument during trial or in the Petition stating the video was inadmissible evidence, the cross-examination of Mr. Bernard brought up his statements to the police were incomplete or had omissions and he was confronted with the differences in his trial testimony and his statements to the police, therefore neither prong of Strickland has been established. COURT ADOPTED the Procedural History as set forth by the State. Court noted it was difficult to confirm the allegations as there were no citations in the Petition or Reply Brief. COURT ORDERED, Petition DENIED and DIRECTED the State to prepare the Findings of Facts and Conclusions of Law; Status Check SET. Court stated the Status Check date would be vacated once that document was filed.

NDC

4/1/2021 10:00 AM STATUS CHECK: FINDINGS OF FACTS AND CONCLUSIONS OF LAW

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

April 01, 2021

A-20-821316-W Javar Ketchum, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

**April 01, 2021 10:00 AM Status Check: Status of
Case**

HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Nicole McDevitt

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Court noted the Findings of Facts and Conclusions of Law were filed on March 31, 2021. COURT ORDERED status check OFF CALENDAR.

Certification of Copy

State of Nevada }
County of Clark } SS:

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER;
DISTRICT COURT MINUTES

JAVAR KETCHUM,

Plaintiff(s),

vs.

THE STATE OF NEVADA,

Defendant(s),

Case No: A-20-821316-W

Dept No: XVII

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 30 day of April 2021.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk

