**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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**No. 83917**



**EDWARD MICHAEL ADAMS**

Appellant,

v.

**THE STATE OF NEVADA**

Respondent.

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Appeal from a Denial of Petition for Writ of Habeas Corpus (Post-Conviction)
Eighth Judicial District Court, Clark County
The Honorable Nancy A. Becker, District Court Judge
District Court Case No. 08C241003

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# APPELLANT'S APPENDIX
# VOLUME V

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# INDEX

## CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on April 20th, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD
Nevada Attorney General

STEVEN B. WOLFSON
Clark County District Attorney

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

original copy

(a) **Ground Five:** Right to fair trial denied - Violation of 5th, 6th, and 14th Amendment Rights to the US Constitution

**Supporting FACTS (Tell your story briefly without citing cases or law.):** Judge David Barker allowed a Juror to remain on the panel even though she admitted knowing the Judge and his wife for the past twenty years. As well as later on in trial the same juror was allowed to remain on the panel after admitting she personally knew one of the investigating Detectives, I believe this was a huge Conflict and denied my right to a fair & just trial. The Judge dismissed another Potential Juror just minutes before mrs Clayton admitting knowing Ellen after Secrets of "Possible Familiarity" and "Just in Case" why not Dismiss mrs Clayton for the same reason?

(b) **Ground Six:** False testimony - Violation of 5th, 6th and 14th Amendment Rights to the US Constitution

**Supporting FACTS (Tell your story briefly without citing cases or law.):** States Witness Angela Alanis Changed Statement after Speaking to the Victim, made Statement To Detectives Prior To Speaking With her Stating that Amber was Chasing after me, Trying hard To Keep up With me, Love I was Walking at a fast pace. To Trial Angela States that Detectives were "wrong" and She "Never said that". The detective in trial did state that Angela did initially State that Amber was Chasing me.

(c) **Ground Seven:** Double Jeopardy & Cruel and Unusual Punishment - Violation of 5th, 8th and 14th Amendments To the US Constitution

**Supporting FACTS (Tell your story briefly without citing cases or law.):** I was Convicted Multiple Times for the Exact Same Crime (As listed in L.V.M.P.D CAD Notes a total of Abort Two minutes and Forty Five Seconds Warranted 3 Separate Sexual Assault Convictions) As well As the Kidnapping & Battery Charge, The battery Charge is listed As placing my hand on her Shoulder To turn her and lead her away, I believe that Charge is one & the same As the Kidnapping and Are redundant convictions

(d) **Ground Eight:** Prosecutorial Misconduct

**Supporting FACTS (Tell your story briefly without citing cases or law.):** During trial the district Attorney several times Switched the burden of Proof on to me, in Closing Arguments, misstating the Evidence, Commenting about my failure To Produce Evidence (when Witnesses did not have back up evidence what I said happened) and injecting his personal feelings about me and my defense. He did this several times and the district Court Sustained my objections but the D.A. Continued To do this

Original Copy

(a) **Ground Nine:** Right to an impartial jury - Violation of 5th, 6th, and 14th Amendment rights to the US constitution

**Supporting FACTS (Tell your story briefly without citing cases or law.):** The court allowed prosecutors to show pictures of me in jail clothing giving the jury a biased opinion and allowing a juror to stay on the jury after admitting to knowing the judge and a investigator in this case.

(b) **Ground Ten:** Violation of body Rights, Violation of 5th, 6th And 14th Amendment Rights to the US Constitution

**Supporting FACTS (Tell your story briefly without citing cases or law.):** The prosecution and the lead detective in this case with held A statement that would have been favorable to my Defense, it is the prosecutors job to disclose to the defense, not hide it or withhold it

(c) **Ground Eleven:** Cruel and unusual punishment - Violation of 5th, 8th, and 14th Amendments to the US Constitution

**Supporting FACTS (Tell your story briefly without citing cases or law.):** I was convicted multiple times for the exact same crime, According to case reports of a Sexual Assault lasting 2 min and 45 seconds, I was convicted for seven counts of Sexual Assault for one incident lasting 2 min and 45 seconds

(d) **Ground Twelve:** Right To an Impartial Jury - Violation of 5th, 6th, and 14th Amendment Rights to the US Constitution

**Supporting FACTS (Tell your story briefly without citing cases or law.):** A juror was Admitted to the jury After stating that she knew the judge and officer Shayla Joseph of LVMPD giving the Prosecutor a unfair and Prejudicial Advantage since the juror would side with the judge and Shayla Joseph of LVMPD

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WHEREFORE, Edward Adams, prays that the court grant Petitioner relief to which he may be entitled in this proceeding.

EXECUTED at High Desert State Prison on the 29th day of August, 2012.

Signature of Petitioner

## VERIFICATION

Under penalty of perjury, pursuant to N.R.S. 208.165 et seq., the undersigned declares that he is the Petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true and correct of his own personal knowledge, except as to those matters based on information and belief, and to those matters, he believes them to be true.

Signature of Petitioner

Atttorney for Petitioner

ORIGINAL COPY

## CERTIFICATE OF SERVICE BY MAILING

I, EDWARD Michael Adams, hereby certify, pursuant to NRCP 5(b), that on this 29th day of August, 2012 I mailed a true and correct copy of the foregoing, "Petition for Writ of Habeas Corpus (Post-Conviction)" by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155-2212

Nevada Attorney General's Office
100 North Carson Street
Carson City, Nevada 89701

Warden D.W. Neven - Respondent
P.O. Box 650
Indian Springs, Nevada 89070

8th Judicial District Court
3rd Floor - Clerks office
200 Lewis Avenue
Las Vegas, NV. 89101

CC:FILE

DATED: this 29th day of August, 2012.

EDWARD MICHAEL ADAMS #1046735
Petitioner /In Propria Persona
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018

Original copy

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Petition for Writ of Habeas Corpus (Post-Conviction)

(Title of Document)

filed in District Court Case number 08C241003

☒ 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

9-28-12
Date

EDWARD Michael Adams
Print Name

N/A
Title

EDWARD Adams - 1046775
H.D.S.P
P.O. Box 0650
INDIAN SPRINGS, NV
89070-0650

Legal MAIL

3763

230
164552G

PPOW

FILED

2012 SEP 17 P 3:46

CLERK OF THE COURT

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

EDWARD M. ADAMS,

Petitioner,

vs.

D. NEVEN-WARDEN
HIGH DESERT STATE PRISON
STATE OF NEVADA,

Respondent,

Case No: 08C241003
Dept No: 18

**ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS**

HEARING DATE ALREADY ENTERED IN ODYSSEY

Petitioner filed a petition for writ of habeas corpus (Post-Conviction Relief) on September 11, 2012. The Court has reviewed the petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

**IT IS HEREBY ORDERED** that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

**IT IS HEREBY FURTHER ORDERED** that this matter shall be placed on this Court's Calendar on the 31st day of November, 2012, at the hour of 8:15 a.m. o'clock for further proceedings.

Dated: SEP 13 2012

District Court Judge

RECEIVED
SEP 17 2012
CLERK OF THE COURT

08C241003
OPWH
Order for Petition for Writ of Habeas Corpu
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Electronically Filed
12/28/2021 9:45 AM
Steven D. Grierson
CLERK OF THE COURT

**RTRAN**

DISTRICT COURT

CLARK COUNTY, NEVADA

| | |
|---|---|
| STATE OF NEVADA,<br>Plaintiff,<br>vs.<br>EDWARD M. ADAMS,<br>Defendant. | CASE NO.: 08C241003<br>DEPT. XIX |

BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE

MONDAY, MAY 16, 2016

***RECORDER'S TRANSCRIPT OF HEARING RE: DEFENDANT'S MOTION TO PLACE ON CALENDAR FOR THE PURPOSE OF OBTAINING SANE EXAM PHOTOGRAPHS FROM THE DISTRICT ATTORNEY'S OFFICE***

APPEARANCES:

For the Plaintiff: NOREEN C. DEMONTE, ESQ.
Deputy District Attorney

For the Defendant: LUCAS J. GAFFNEY, ESQ.

RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER



Case Number: 08C241003

Las Vegas, Nevada; Monday, May 16, 2016

[Hearing commenced at 8:59 a.m.]

THE COURT: State of Nevada versus Edward Adams. This is Defendant's motion to place on calendar for the purpose of obtaining SANE exam photographs from the District Attorney's office.

Defendant is not present -- in Nevada Department of Corrections. And for the record, can you state your name?

MR. GAFFNEY: Good morning, Your Honor. Lucas Gaffney for James Oronoz on behalf of Mr. Adams who's not present. I believe he's up in Lovelock.

THE COURT: Yeah. In order for me to grant your motion, I believe I have to be satisfied that there's a good cause explanation other than just a simple, I needed to review it.

So, I'm going to deny your motion. I don't believe that -- that based on what's been explained to the Court that just -- I needed to review it is not good cause. So --

MR. GAFFNEY: Judge, if I could, there were -- we didn't get a -- an opportunity to reply to this opposition. You know, first of all, this is not a fishing expedition. This was -- the same photos were turned over to trial counsel at trial. They weren't in the folder when we got it from previous counsel. I believe it's because it would be considered child porn.

The only way we'd be able to get this material is to go through the DA's office. And I don't know -- even though it's characterized in the

State's opposition as discovery, I don't know if it's even truly discovery. These are exhibits that were presented to the jury; they were testified about at trial.

THE COURT: Well, if they're in -- if they're actually in the exhibits, were they admitted?

MR. GAFFNEY: There were -- some of them were admitted, but we believe that there's more photos out there that exist. I mean, this isn't necessarily a fishing expedition. We got a expert appointed.

THE COURT: Well then you need to tell me exactly what it is you're looking for. Explain to me why you need that particular photo beyond what's already been admitted into evidence.

MR. GAFFNEY: Sure. What I could tell you is that we had our expert appointed and what we wanted to do here was to get the same photos to see whether or not the injuries that were sustained by the victim could be consistent with consensual sex.

At trial, the same nurse said, no these are -- these tears and lacerations are consistent with the trauma of a sexual assault.

THE COURT: Okay. So, that's what your expert would be reviewing.

MR. GAFFNEY: Exactly.

THE COURT: The ones that's in evidence, right?

MR. GAFFNEY: Well, the ones that are in evidence, but also if there are other photos that may counter --

THE COURT: Well that's the issue --

MR. GAFFNEY: -- what --

THE COURT: That's the very issue I'm talking about.

MR. GAFFNEY: Okay. So, we're not -- we can't have our expert look at the photos?

THE COURT: Is it -- the ones that they -- the ones they make an opinion on was -- was in evidence, right? So, you start with that. If your expert looks at them and then gives me an understanding why they need to look at something additional, then I'll address it. But right now, the way the motion is written, it doesn't satisfy that.

MR. GAFFNEY: Okay. Well -- I just -- I'm trying to explain why we need the photos, but my explanation is insufficient I suppose. I mean, all we want is to have our expert look at the photos.

THE COURT: But it doesn't even -- your motion doesn't even explain that you even looked at the ones that were in evidence. You understand what I'm saying?

You start with that. Your expert looks at them, and says, you know what, yeah, the Court's right, no, or the Court's wrong. I need to look at them more, or no. I can make my determination based on what's in evidence now.

MR. GAFFNEY: Okay.

THE COURT: If he can do that, then you don't need this additional.

MR. GAFFNEY: Okay.

THE COURT: And you -- and then, if he -- can't, he needs to explain, okay, Judge, I'm looking at this exhibit but -- it's unclear as to what this actually is. Now, the expert that testified said this, this, this,

and this. But when I look at it, it doesn't satisfy that. So, the other ones will probably explain it better. Do you see what I mean?

MR. GAFFNEY: Okay. Okay, Judge.

THE COURT: All right. So --

MR. GAFFNEY: Thank you.

THE COURT: Okay. It's denied.

[Hearing concluded at 9:02 a.m.]

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

Brittany Amoroso
Court Recorder/Transcriber

Electronically Filed
12/28/2021 9:45 AM
Steven D. Grierson
CLERK OF THE COURT

**RTRAN**

DISTRICT COURT

CLARK COUNTY, NEVADA

| | |
|---|---|
| STATE OF NEVADA,<br>Plaintiff,<br>vs.<br>EDWARD M. ADAMS,<br>Defendant. | CASE NO.: 08C241003<br>DEPT. XIX |

BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE

MONDAY, SEPTEMBER 12, 2016

***RECORDER'S TRANSCRIPT OF HEARING RE: DEFENDANT'S SECOND MOTION TO PLACE ON CALENDAR FOR THE PURPOSE OF OBTAINING SANE EXAM PHOTOGRAPHS FROM THE DISTRICT ATTORNEY'S OFFICE***

APPEARANCES:

| | |
|---|---|
| For the Plaintiff: | MICHAEL R. DICKERSON, ESQ.<br>Deputy District Attorney |
| For the Defendant: | LUCAS J. GAFFNEY, ESQ. |

RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER



Case Number: 08C241003

Las Vegas, Nevada; Monday, September 12, 2016

[Hearing commenced at 10:25 a.m.]

THE COURT: On page 2, State of Nevada versus Edward Adams. This is C241003. This is Defendant's second motion to place on calendar for the purpose of obtaining SANE exam photographs from the District Attorney's office. I've --

MR. GAFFNEY: Good morning, Your Honor. Lucas Gaffney appearing.

If you recall, this is an issue where we had asked for the State to provide us the digital copies of the SANE photos. And it was my mistake the first time. I thought that they were used as exhibits in the trial.

THE COURT: Mm-hmm.

MR. GAFFNEY: It's a little confusing because they talk about the photos and then they refer to other exhibits and the exhibit they were referring to was the actual sex assault kit itself and not the photographs.

So essentially, we're -- we still don't have the photographs and we're requesting that the Court order the State to provide them to us. And we're not asking for anything that's new or novel. We just want to be put on the same footing as his trial attorney so we can ensure that he received a fair trial.

THE COURT: So, were these something that was released previously to the trial attorney, Mr. Dickerson?

MR. DICKERSON: I don't have any information on that,

unfortunately, Your Honor.

THE COURT: Do you know?

MR. GAFFNEY: I can tell you they were. We had black and white copies of the photographs in the file that we got from trial counsel.

THE COURT: Okay. So, you want colored ones though?

MR. GAFFNEY: We need color digital photos and that's usually what UMC or Sunset -- wherever they went, they'll usually provide those in the nurses report or it's part of the SANE exam.

THE COURT: And this is from a jury trial that happened in 2009?

MR. GAFFNEY: Correct.

THE COURT: So, I don't even know if the State would even have any still.

MR. DICKERSON: It's the State's position that they're not even entitled to them at this point in time, Your Honor, until a petition has been granted.

MR. GAFFNEY: Well -- and, Your Honor, if I might, just -- I don't want to --

THE COURT: It's a discovery issue. It really is. But you're argument is is that you need it to be able to make a determination of whether or not the previous attorney was ineffective. But -- as you have -- I guess you may have an expert or something looking at him --

MR. GAFFNEY: We already have an expert appointed and he has told us that just copies of the images or the black and white image will not work. We need the digital photos so we can zoom in on them.

When you zoom in on just a regular picture it becomes pixelated; you can't see the details. And, you know, I've been in this situation before.

THE COURT: Is there anything in the record that indicates that the previous attorney had investigated it and contemplated it? Not just the fact that you guys found a different examiner to look at it -- that they actually did that and they got a response that said it's not going to help or --

MR. GAFFNEY: There are no notes about any kind of consultation with experts or anything along those lines, but I can tell you that his defense at trial was one of consent -- the Defendant's defense.

THE COURT: Okay.

MR. GAFFNEY: He was saying this was not a -- this wasn't a sex assault; this was consensual sex.

THE COURT: Okay. So, he agreed that there was sexual -- sex.

MR. GAFFNEY: Right. And so, we --

THE COURT: And that -- and the argument -- was actually to the parties that, even though there may be injuries, those are something that would be consistent with giving consensual sex and -- and probably -- the nurse probably agreed to that. So how -- what -- I'm having a hard time here. You're just trying to find a possibility.

MR. GAFFNEY: Well -- absolutely.

THE COURT: You're saying that he needed to investigate that further to determine whether or not he had an expert that would say opposite, that it wasn't consensual?

MR. GAFFNEY: We -- the reason we got the expert appointed was to take a look at the photographs and see if he could have provided additional support for the defense that this was consensual sex.

THE COURT: Yeah, but what --

MR. GAFFNEY: And that the injuries that were sustained could have been the result of consensual sex and were not necessarily only indicative of a sex assault.

THE COURT: Okay.

MR. GAFFNEY: And that was something that was missing -- in our opinion that was something that was missing for the trial -- from the trial, excuse me.

MR. DICKERSON: And I think that could all be addressed with a petition, Your Honor. And then you could order discovery if you find good cause at that time.

MR. GAFFNEY: Well -- and Your Honor, the statute the State sites to, I've come up against this before, we do a lot of PCR work and I'll tell you right now it makes zero sense for us to get the information we need after the petition is granted. If the petition's granted, we're not going to need the photographs.

THE COURT: Well, the reality is is once the petition is even argued, that's a position you'd take and say without this we don't know this. And you lay it out better so I understand the arguments because what I'm doing right now, factually, without knowing the case that's what I've been asking.

If they took a position -- if your client -- if your client took a position with his attorney that this was consensual and that there was no reason for us to go any further and look at anything additional, then there would be no reason for them -- I mean, if he had the answers from the very -- the nurse that testified, he'd be satisfied with that.

That's what I'm saying is I -- that's the argument that they're making and I tend to agree with it because I can't -- you're just asking me to rule on this thing almost as a discovery issue and there's statutes that prevent that, otherwise you'd be going back through and retrying the whole doggone thing, without any particular argument or just cause for it.

MR. GAFFNEY: It would be my position that that statute contemplates we are getting the original discovery the trial attorney had.

THE COURT: Well, you have it.

MR. GAFFNEY: We don't. We -- I mean, if -- unless they provided black and white copies to his previous attorney -- which would be another potential --

THE COURT: Well see -- that's why I was kind of trying to lead you down the road here. I can't handle your case, but wouldn't it be consistent with saying, you know what, Judge? In a petition, he was ineffective because he didn't get the colored copies because we couldn't use the -- I mean, because if he had the color copies, he could have had an expert look at them and we know that every expert says that you have to have colored copies, and he's ineffective because he didn't do that.

MR. GAFFNEY: But that --

THE COURT: Wouldn't you kind of think that's where he could --

MR. GAFFNEY: That could be a claim in addition to what we're trying to do with the expert witness.

THE COURT: I know, but --

MR. GAFFNEY: And so, we're trying to --

THE COURT: -- you're trying to put the cart before the horse though.

MR. GAFFNEY: We're trying to develop our claims and put everything upfront so we don't have to piecemeal the litigation out and keep coming back and making requests like this.

THE COURT: Well, what I'll do is I'll give the State an opportunity to look and see whether or not they even have them.

MR. DICKERSON: Okay.

THE COURT: You know, and if you have them, then I'm going to order that you turn them over. Okay? Then we'll go from there. But I'm just telling you --

MR. GAFFNEY: I understand your concerns, Judge.

THE COURT: Okay. All right. If you have them, State, turn them over. If you don't, then let the defense know and the defense can start their petition based on that then.

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MR. GAFFNEY: Thank you so much, Judge.

THE COURT: Okay. All right. Okay. Okay.

[Hearing concluded at 10:31 a.m.]

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

Brittany Amoroso
Court Recorder/Transcriber

**SUPP**

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*Attorneys for Petitioner*

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

| | | |
|---|---|---|
| EDWARD ADAMS,<br><br>Petitioner,<br><br>vs.<br><br>RENEE BAKER, in her official capacity as the Warden of the LOVELOCK CORRECTIONAL CENTER; JAMES DZURENDA, in his official capacity as Director of the Nevada Department of Corrections; and the STATE OF NEVADA<br><br>Respondents. | ) | CASE NO. 08C241003<br><br>DEPT. NO. XIX |

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

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

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

## MEMORANDUM OF POINTS AND AUTHORITIES

## STATEMENT OF RELEVANT FACTS

The facts presented here reflect a summary of the facts elicited from the State's witnesses at trial in this case.

Amber Valles, the alleged victim, was 15 years of age when she testified at trial. Tr. November 3, 2009, at 3. At the time of the events that occurred in this case, Valles was 13 years of age, and she attended Johnson Junior High School. Id. at 3-4.

On December 14, 2007, the date of the subject events, Valles attended school and was released from school at 2:15 p.m. Id. at 4. After school, Valles called her mom to ask if she could spend the night with her friend, Cierra, whom Valles had known for "A couple weeks, maybe." Id. at 5. Valles did not know Cierra very well. Id. at 5. However, Valles did not go to Cierra's house because Cierra's mom said "No." Id. at 6. Valles testified that the call took place around 2:20 p.m. Id. at 6.

After the calls to Valles' and Cierra's respective mothers, Valles planned to walk home, which she did not do very often because her mother usually picked her up from school. Id. at 7-8. Valles began walking home around 2:30 p.m., after visiting with Cierra for about ten minutes. Id. at 8. By the time Valles began walking home, most of the kids had already left the school. Id. at 8. Valles' house was about three or four blocks away from the school. Id. at 8.

Valles testified that she started by walking through a field that was part of the school. Id. at 9. After exiting the school gate, she walked toward the stoplight on the corner of Alta and Buffalo, and then, she crossed Buffalo and continued walking down Alta. Id. at 9. While she

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was walking, she spoke with her father on the phone and told him she was walking home. Id. at 10.

Valles testified that as she walked down the street, she first saw Mr. Adams sitting on a wall across the street from her and smoking a cigarette. Id. at 12-13. Valles testified that she never walked towards Mr. Adams, but she explained that once she approached a stoplight, he got off the wall and crossed over to her side of the street. Id. at 13. Valles claimed that she became scared as he approached her. Id. at 13.

According to Valles, Mr. Adams approached her, put his arm around her shoulder, and turned her around. Id. at 15. She testified that he said, "Don't scream, not to yell, that he had a gun." Id. at 15. She further testified that he threatened to kill her and that she believed him. Id. at 16. Valles never saw a gun, but she believed he had a gun because his left hand stayed in his pocket the entire time. Id. at 17. Valles alleged that Mr. Adams grabbed her left hand, turned her around, and started walking back towards her school. Id. at 18. Valles claimed that Mr. Adams also told her that he needed Valles to come help him babysit his "son or niece or something." Id. at 57.

As they walked down the street, Valles saw her classmate, Jonathan. Id. at 18. She saw someone with Jonathan, but she did not know who it was. Id. at 18. Jonathan testified that he had left school that day with their mutual friend, Angela, and another friend, Aaron. Id. at 98-99. Valles testified that she was crying and trying to "mouth" to Jonathan "a bunch of times" to help her. Id. at 19. She testified that Mr. Adams walked her away from Jonathan's direction. Id. at 20.

At trial, Jonathan testified that he saw Valles walking with "a guy," and he saw Valles "being held by the right wrist, being sort of dragged, pulled, led up the street." Id. at 101. He testified that "Amber had a scared look on her face, and that's pretty much it." Id. at 102.

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Jonathan did not call 911 or attempt to intervene or help Valles. Id. at 105, 107-108. Jonathan did not see or hear Valles saying anything to him. Id. at 107. Jonathan testified that he "forgot" about the situation after it happened. Id. at 108-109.

Angela, Valles' friend, also testified that she saw Valles with "a guy." Id. at 129. Angela believed that Valles and "the guy" were trying to "avoid" them. Id. at 129. Angela did not testify that she saw Valles crying or asking for help. Angela asked Jonathan if the man was Valles' father, but Jonathan said "No." Id. at 130. Then, they joked that the guy "could be a rapist or something." Id. at 130-131. Despite having a cellular phone, neither Angela nor Jonathan decided to call for help. Id. at 101, 139. When Angela initially spoke to the detective, she said that Valles was "chasing after this man trying to keep up with him because he was walking too fast." Id. at 138. At trial, she denied making that statement to the detective. Id. at 138.

Valles testified that Mr. Adams took Valles to a vacant apartment near Charleston and Buffalo. Id. at 22. At trial, Andre Randall, a resident in the apartment complex, testified that he saw Valles and Mr. Adams walking into the vacant apartment. Tr. November 4, 2009, at 27. Randle had known the apartment was vacant because it had recently been cleared out after a fire. Id. at 27. Randle testified that he thought it was strange that they were going into the abandoned apartment, but he did not call the police. Id. at 29. Randle also testified that the "little girl did not look mad." Id. at 29. Randle remembered telling the police that the man and the girl were not touching each other and were walking side by side. Id. at 32. Randall testified that the girl did not look mad and was not crying, screaming, shaking, or anything at all. Id. at 32. Randall would have called the police if he "had seen a man dragging a girl up those stairs who was crying and shaking." Id. at 33. However, that was not the situation as Randall did not perceive the girl to be upset. Id. at 33.

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Detective Gabriel Lebario was the lead detective assigned to the case. During the course of his investigation, he interviewed an individual named Andre Randall. Tr. November 3, 2009, at 246. At trial, Det. Lebario testified regarding the interview with Randall:

Q: Did you ask him about what he saw?

A: Yes.

Q: Did you have him fill out a report?

A: No, I did not.

Q: So would you be able to recall exactly what he had told you?

A: Not exactly word for word, no.

Q: Now, had he spoken with you about possibly seeing some people that may have matched that description?

A: Yes, he did.

Q: Okay. And did he say he actually made contact with him?

A: I believe he said he saw two people matching the description. And I believe he said what's up or hello or something like that. Something to that effect.

Q: But nothing else noteworthy in regards to his description of what happened?

A: No.

Q: And there wasn't a report prepared in regards to what he would eventually testify to?

A: No.

Q: Why not?

A: Well, I mean, at that point, you know, I didn't see any need to – to get a report from him.

Tr. November 3, 2009, at 246-247.

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Mr. Adams and Valles allegedly entered the apartment through the unlocked door. Tr. November 3, 2009, at 28. The apartment did not have running water or electricity. Id. at 28, 266. Candles lit the apartment. Id. at 28. Valles testified that Mr. Adams took the battery out of Valles' phone and told her to sit on the couch and then take off her clothes. Id. at 26-27.

Valles claimed that Mr. Adams took off his clothes, lubricated his penis, and directed Valles to lie down on the floor. Id. at 29, 55-56. She further testified that Mr. Adams first inserted his fingers into Valles' vagina, and then, inserted his penis. Id. at 29-20. She claimed that he then told her to get onto the couch, and again, inserted his fingers and his penis into her vagina. Id. at 30-31. According to Valles, she "told him to stop, that it hurt," but he did not stop. Id. at 31. She testified that he then bent her over the couch and inserted something into her anus, but she did not know what it was. Id. at 32-33.

Valles also testified that after he finished, Mr. Adams told Valles to get dressed and gave her a towel to "wipe" herself down. Id. at 34-36. Mr. Adams then returned her phone battery and told her not to call the police. Id. at 42-43.

Valles claimed that she then left the apartment, went to McDonalds on the corner of Charleston and Buffalo, and then, her mom called her. Id. at 43.[1] When her mother arrived, Valles told her that "He—he put his thing in me." Id. at 44. Her mother then called the police. Id. at 44.

The police took Valles and her mother to the hospital for an examination. Id. at 46. Amy Coe, the SANE nurse, performed the examination on Valles. Tr. November 4, 2009, at 53-54. The samples taken during the examination later tested positive for the presence of Mr. Adams' semen. Id. at 8-10. Amy Coe testified that a person having consensual sex who had never had

[1] Notably, Valles did not attempt to call her mother or the police.

sexual intercourse before would also be susceptible to the same injuries as the injuries found on Valles. Tr. November 4, 2009, at 68, 84.

At the close of trial, Defense Counsel argued that the State's evidence supported the conclusion that any encounter between Mr. Adams and Valles was consensual, and therefore, Mr. Adams was not guilty of the charged crimes of multiple counts of sexual assault, kidnapping, and battery, but rather, that he was guilty of statutory sexual seduction.

## PROCEDURAL HISTORY

***TRIAL***

On January 31, 2008, the State of Nevada charged the Petitioner, Edward Adams, by way of Information with the following charges: Count 1- First Degree Kidnapping with Use of a Deadly Weapon; Count 2- Battery with Intent to Commit a Crime with Use of a Deadly Weapon; Count 3- Sexual Assault with a Minor Under Fourteen Years of Age with Use of a Deadly Weapon; Count 4- Sexual Assault with a Minor Under Fourteen Years of Age with Use of a Deadly Weapon; Count 5- Sexual Assault with a Minor Under Fourteen Years of Age with Use of a Deadly Weapon; Count 6- Sexual Assault with a Minor Under Fourteen Years of Age with Use of a Deadly Weapon; Count 7- Sexual Assault with a Minor Under Fourteen Years of Age with Use of a Deadly Weapon; Count 8- Sexual Assault with a Minor Under Fourteen Years of Age with Use of a Deadly Weapon; Count 9- Sexual Assault with a Minor Under Fourteen Years of Age with Use of a Deadly Weapon; Count 10- Sexual Assault with a Minor Under Fourteen Years of Age with Use of a Deadly Weapon; Count 11- Sexual Assault with a Minor Under Fourteen Years of Age with Use of a Deadly Weapon; and Count 12- Open or Gross Lewdness.

On October 21, 2009, Mr. Adams filed the Defendant's Motion to Dismiss Based upon the State's Failure to Preserve Exculpatory Evidence, and Motion to Dismiss Due to the State's

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Failure to Provide Brady Material. The substance of the motion stemmed from the State's failure to preserve evidence because the detective interviewed a potentially exculpatory witness and failed to provide the defense with the name or contact information of the witness. The motion was ultimately withdrawn because defense counsel and the State reached an agreement to allow leeway during cross-examination of the detective about the missing witness.

On October 28, 2009, the State filed an Amended Information charging Mr. Adams as follows: Count 1- First Degree Kidnapping with Use of a Deadly Weapon; Count 2- Battery with Intent to Commit a Crime with Use of a Deadly Weapon; Count 3- Sexual Assault with a Minor under Fourteen Years of Age with Use of a Deadly Weapon; Count 4- Sexual Assault with a Minor under Fourteen Years of Age with Use of a Deadly Weapon; Count 5- Sexual Assault with a Minor under Fourteen Years of Age with Use of a Deadly Weapon; Count 6- Sexual Assault with a Minor under Fourteen Years of Age with Use of a Deadly Weapon; Count 7- Sexual Assault with a Minor under Fourteen Years of Age with Use of a Deadly Weapon; Count 8- Sexual Assault with a Minor under Fourteen Years of Age with Use of a Deadly Weapon; Count 9- Sexual Assault with a Minor under Fourteen Years of Age with Use of a Deadly Weapon; Count 10- Sexual Assault with a Minor under Fourteen Years of Age with Use of a Deadly Weapon; Count 11- Sexual Assault with a Minor under Fourteen Years of Age with Use of a Deadly Weapon; and Count 12- Open or Gross Lewdness.

The case proceeded to trial from November 2, 2009 to November 4, 2009. During jury selection on November 2, 2009, one issue arose in which Prospective Juror 156 addressed the court and informed the court that she had known the judge socially for twenty (20) years, worked with the judge's wife at the Office of the Attorney General, and knew the State's witness, Crime Scene Analyst Shayla Joseph. Tr. November 2, 2009, at 17. Ultimately, Prospective Juror 156 remained on the jury.

On November 3, 2009, the State notified the Court and Defense Counsel that the State located an additional witness, Andre Randall. Tr. November 3, 2009, at 276. The State requested that it be allowed to call Randall as a witness even though the State had not included Randall on the witness list. Id. Defense Counsel did not object to the State producing Randall as a witness at trial. Id. at 277.

On November 4, 2009, the jury rendered a verdict of guilty on Counts 1, 2, 3, 4, 5, 6, 7, 8, 11, and 12. The jury rendered verdicts of not guilty on Counts 9 and 10. The Court sentenced Mr. Adams on January 13, 2010 to the following sentence: Count 1- 60 months to Life in prison, and to pay restitution in the amount of $2,932.00; Count 2- 60 months to Life, Count 2 to run consecutive to Count 1; Count 3- 120 months to Life, Count 3 to run consecutive to Count 2; Count 4- 120 months to Life, Count 4 to run consecutive to Count 3; Count 5- 120 months to Life, Count 5 to run consecutive to Count 4; Count 6- 120 months to Life, Count 6 to run consecutive to Count 5; Count 7- 120 months to Life, Count 7 to run consecutive to Count 6; Count 8- 120 months to Life, Count 8 to run consecutive to Count 7; Count 11- 120 months to Life, Count 11 to run consecutive to Count 8; Count 12- 12 months in the Clark County Detention Center, Count 12 to run concurrent with the balance of counts. Mr. Adams received 731 days of credit for time served. The Judgment of Conviction was filed on February 2, 2010, and Mr. Adams filed a timely Notice of Appeal on February 22, 2010.

***APPEAL***

On appeal, Mr. Adams raised the following issues:

1. Double jeopardy and redundancy principles preclude Appellant's multiple convictions for sexual assault, battery with intent to commit sexual assault, and open or gross lewdness.

2. The prosecutor committed repeated acts of misconduct in closing argument, thereby depriving Appellant of a fair trial and violating his rights under the Fifth, Sixth, and Fourteenth Amendments and the Nevada Constitution

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The Nevada Supreme Court affirmed the Judgment of Conviction on July 26, 2012.

***POST-CONVICTION***

On September 11, 2012, Mr. Adams filed a timely Petition for Writ of Habeas Corpus (Post-Conviction). In his Petition, Mr. Adams raised the following issues:

1. **Ineffective Assistance of Counsel:** Mr. Adams' right to effective assistance of counsel was violated because Counsel failed to remove Juror No. 7 from the jury panel after Juror No. 7 disclosed that she knew the presiding judge and knew one of the investigating officers in the case.

2. **Failure to Gather or Preserve Exculpatory Evidence:** Mr. Adams' rights were violated because the State failed to preserve a recorded interview with an eyewitness, Andre Randall, that would have provided exculpatory evidence for Mr. Adams.

3. **Ineffective Assistance of Counsel:** Mr. Adams' right to effective assistance of counsel was violated because Counsel failed to investigate the case and failed to prepare the case for trial.

4. **Right to an Impartial Jury:** Mr. Adams' right to an impartial jury was violated because the Court allowed the State to show pictures of Mr. Adams in jail clothes.

5. **Right to a Fair Trial:** Mr. Adams' right to a fair trial was violated because the Court allowed Juror No. 7 to remain on the jury panel after she disclosed that she knew the judge and one of the investigating officers.

6. **False Testimony:** Mr. Adams' rights were violated because the State's witness, Angela Abarzua perjured herself and fundamentally changed her testimony from her initial statement. In other words, her trial testimony was diametrically different than her initial statement to police.

7. **Double Jeopardy and Cruel and Unusual Punishment:** Mr. Adams' rights were violated because he was convicted of redundant and multiplicitous counts for the same conduct.

8. **Prosecutorial Misconduct:** Mr. Adams' rights were violated because the State improperly shifted the burden of proof to the defense and impermissibly injected the prosecution's personal feelings about Mr. Adams into the arguments. Although the Court sustained Mr. Adams' objections, the prosecutor ignored the Court's admonishments and continued to inject his own opinion.

9. **Right to an Impartial Jury:** Mr. Adams' right to an impartial jury was violated because the Court improperly allowed the prosecutors to show pictures of Mr. Adams in jail clothes, which ultimately biased the jury as to Mr. Adams' dangerousness. Mr. Adams' right to an impartial jury was violated because the Court impermissibly allowed a juror who knew the judge and his wife on a social level and knew a detective involved

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in the case to remain on the jury. Additionally, the juror should have been disqualified given her prior relationship with LVMPD Crime Scene Analyst Shayla Joseph.

10. **Brady Claim:** Mr. Adams' rights were violated because the State withheld a statement that was material and exculpatory.

11. **Cruel and Unusual Punishment:** Mr. Adams' rights were violated because he was convicted of redundant and multiplicitous counts for the same conduct.

12. **Right to an Impartial Jury:** Mr. Adams' right to an impartial jury was violated because the Court improperly allowed the prosecutors to show pictures of Mr. Adams in jail clothes, which ultimately biased the jury as to Mr. Adams' dangerousness. Mr. Adams' right to an impartial jury was violated because the Court impermissibly allowed a juror who knew the judge and his wife on a social level and knew a detective involved in the case to remain on the jury. Additionally, the juror should have been disqualified given her prior relationship with LVMPD Crime Scene Analyst Shayla Joseph.

On October 22, 2012, this Court appointed Mr. James A. Oronoz, Esq., as counsel for Mr. Adams. Mr. Adams now submits this supplemental petition in support of his Petition for Writ of Habeas Corpus (Post-Conviction).

## GROUNDS FOR RELIEF

**I. Trial Counsel was Ineffective for Failing to Investigate and Challenge the State's Late Disclosure of a Material and Exculpatory Witness – Andre Randall – Whose Testimony Would Have Been Extraordinarily Powerful Evidence in Undermining the State's Case. Trial Counsel was ineffective for not Objecting to the Last-Minute Revelation of the Identity of Said Key Witness, who Provided the Exculpatory Testimony to Detectives almost a full two-years prior to trial.**

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

A defendant is entitled to effective assistance of counsel during a critical stage of criminal proceedings. U.S. Const. Amends. V, VI, & XIV; Nevada Constitution Art. I. Ineffective assistance of counsel means that Counsel's performance was (1) deficient, such that counsel made errors so serious he ceased to function as the "counsel" guaranteed by the Sixth Amendment, and (2) Counsel's deficiency prejudiced the defendant such that the result of the proceeding was rendered unreliable. Strickland, 466 U.S. at 687-88. The question of whether a defendant has received ineffective assistance of counsel is a mixed question of law and fact that

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is subject to independent review. State v. Love, 109 Nev. 1136, 1136-1138, 865 P.2d 322, 323 (1993).

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

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

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

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

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***b. Legal Standard: Counsel's Duty to Investigate***

A defense attorney's failure to conduct an adequate investigation denies his client the Sixth Amendment right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *see also*, Warner v. State, 102 Nev. 635, 638, 729 P.2d 1359, 1361 (1986). Under Strickland, counsel has a duty "to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691, 104 S.Ct. at 2066; *see also*, State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). "Strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690-91, 104 S.Ct. at 2066; see, Kirksey v. State, 112 Nev. 980, 993, 923 P.2d 1102, 1110 (1996).[2]

The law does not require counsel to exhaust all available public or private resources if counsel and the client clearly understand the evidence and the permutations of proof and the outcome. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). In Nevada, effective counsel must "conduct careful factual and legal investigations and inquiries with a view to developing matters of defense in order that he may make informed decisions on the client's behalf." Jackson v. Warden, 91 Nev. 430, 433, 537 P.2d 473 (1975), *citing*, In re Saunders, 2

[2] The Third Circuit has held that "[i]neffectiveness is generally clear in the context of complete failure to investigate because counsel can hardly be said to have made a strategic choice when s/he [sic] has not yet obtained the facts on which such a decision could be made." United States v. Gray, 878 F.2d 702, 711 (3rd Cir.1989). Additionally, counsel has a duty to "investigate what information...potential eye-witnesses possess[], even if he later decide[s] not to put them on the stand." Id. at 712. *See also*, Hoots v. Allsbrook, 785 F.2d 1214, 1220 (4th Cir. 1986) ("Neglect even to interview available witnesses to a crime simply cannot be ascribed to trial strategy and tactics."); Birt v. Montgomery, 709 F.2d 690, 701 (11th Cir.1983) ("Essential to effective representation...is the independent duty to investigate and prepare.").

Cal.3d 1033, 88 Cal. Rptr. 633, 638, 472 P.2d 921, 926 (1970).[3] For trial, counsel has a duty to prepare in a thorough manner and to formulate a viable defense strategy. *See generally*, Buffalo v. State, 111 Nev. 1139, 1149, 901 P.2d 647 (1995).[4]

Moreover, counsel has an inherent duty to present an adequate defense at trial. Warner v. State, 102 Nev. 635, 637, 729 P.2d. 1359 (1986). In Warner, the Nevada Supreme Court found trial counsel ineffective for failing to investigate the case before trial and failing to present witnesses on the defendant's behalf when it would have been appropriate to do so. *See generally*, Warner, 102 Nev. 635.[5] The Warner Court found that counsel's errors left the defendant without a defense at trial. Id. at 638. Accordingly, the Warner Court found that counsel's errors deprived the defendant of his Sixth Amendment right to the effective assistance of counsel. Id., *Ref*. Strickland, 466 U.S. 668 (1984).

Although defendants are not required to present evidence at trial, a defense attorney is required to prepare the case and to challenge the State's evidence in the most effective way possible. Buffalo, 111 Nev. at 1147-1149. In State v. Love, 109 Nev. 1136, 865 P.2d 322 (1993), the Court reversed Love's murder conviction because trial counsel failed to call potential witnesses and failed to interview potential witnesses before making an alleged tactical decision about trial strategy based upon misrepresentations of other witnesses' testimony. Love, 109 Nev. at 1137.

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[3] If counsel's failure to undertake these careful investigations and inquiries results in omitting a crucial defense from the case, the defendant has not had that assistance to which he is entitled." Jackson, 91 Nev. at 433.

[4] The Ninth Circuit has articulated that "[t]he label of 'trial strategy' does not automatically immunize an attorney's performance from sixth amendment challenges." United States v. Span, 75 F.3d 1383, 1389 (9th Cir. 1996); see also, Reynoso v. Guirbino, 462 F.3d 1099, 1112 (9th Cir.2006) ("Although trial counsel is typically afforded leeway in making tactical decisions regarding trial strategy, counsel cannot be said to have made a tactical decision without first procuring the information necessary to make such a decision.")

[5] *See also*, Sanborn v. State, 107 Nev. 399, 812 P.2d 1279 (1991).

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***c. Analysis: Ineffective Assistance of Counsel***

**i. Deficient Performance**

Counsel's performance was deficient because Counsel failed to investigate and interview a key witness, Andre Randall, prior to trial. The discovery provided by the State included a Case Notes report regarding a material witness who saw Mr. Adams and Valles together on the date of the incident. Exh. A. The investigating officers entered the Case Notes on December 20, 2017, six days after the incident. The Case Notes did not provide the name of the witness but indicated the following:

> A canvas of the other condos revealed an eye witness who saw the victim and suspect walk towards this abandoned condo. The witness is a physically fit and tall BMA who passed so close to the suspect (they crossed paths) he recalls greeting the suspect with "What's up?" The girl's description matches the victim's description. This witness stated the two were not touching and the girl didn't appear to be in distress nor emotional. When we interviewed the victim previously she told us the only person she saw while with the suspect was her friend Jonathon. It is unknown why the victim doesn't recall this witness or failed to tell us about him. It is unknown why she didn't ask him for help.

*See*, Exh. A at 9.

Although the Case Notes were part of the discovery, the State did not produce the name of the witness in the discovery. Moreover, Defense Counsel knew about this potentially exculpatory report during his trial preparations but did not seek the identity of the witness until nearly two years after the incident. On October 21, 2009, Counsel filed "Defendant's Motion to Dismiss Based Upon the State's Failure to Preserve Exculpatory Evidence, and Motion to Dismiss Due to the State's Failure to Provide Brady Material." The very next day, October 22, 2009, Counsel sent the defense investigator an email indicating that the State believed it had found the missing witness and provided the name, Andre Randall. The handwritten notes on the email (possibly notes from either Counsel or the investigator) indicated that the address

provided was "no good." *See*, Exh. B. Five days later, at calendar call on October 27, 2009, Counsel withdrew the Motion to Dismiss and stated:

> Oh, Judge, the defense is actually withdrawing that motion. I spoke with Mr. Hendricks and we have come to an agreement regarding the witness at issue and getting some leeway during the cross-examination regarding that witness—during the cross-examination of the detective.

*See*, Exh C.

Despite learning the name of the material witness on October 22, 2009, the case file is devoid of any indication that Defense Counsel attempted to locate or interview Andre Randall beyond checking the validity of the address provided by the State. According to the Motion to Dismiss filed on October 21, 2009, Counsel knew that the investigating detectives spoke to a witness who "described the demeanor of the young girl as normal, unemotional, and unafraid." *See*, Exh. D. In other words, the Motion to Dismiss makes clear that Counsel knew the materiality and the exculpatory value of Randall's statement.

Instead of taking measures to locate and interview Andre Randall, Counsel simply made an agreement with the State to allow "leeway" when questioning the detective at trial. In light of the potentially exculpatory value of Randall's testimony, Counsel should have taken additional measures to locate Randall. It is inexplicable that Counsel would make an agreement for "leeway" while cross-examining the detective before first attempting to locate Randall. By withdrawing the Motion to Dismiss, Counsel withdrew a significant Brady issue in exchange for an illusory promise of "leeway."

On November 3, 2009, at the end of the second day of trial, the State announced that they found Andre Randall and intended to produce him as a witness on the third and final day of trial. Tr. November 3, 2009, at 276-277. The State noted for the record that the "black male"

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was not on the witness list, but that they "found him so that he's available to defense counsel." Id. at 276. The State further elaborated:

> Mr. Hendricks: He's going to be here tomorrow morning at 10:00 a.m. My concern is this, is he's not on our witness list, but we would still like to call him. And I want to make sure that defense counsel doesn't have an objection because they're actually the ones who wanted him and made a motion to – to dismiss the whole case because they didn't have him. Id. at 276.

At that point, Defense Counsel agreed to allow the State to produce Randall as a witness.

> Mr. Maningo: Yeah, that's fine. I don't have an objection. I'm not worried about – **I know that the reason he wasn't on the witness list at the time is because neither one with of knew who this person was**. Id at 276.

The Court agreed to allow Randall to testify. The State then indicated that it would make Randall available to speak with Defense Counsel the next morning before testifying.

Randall's testimony proved valuable to the defense. He testified that the girl "didn't even look mad." Tr. November 4, 2009, at 29, 32. He also agreed that the man (Adams) "wasn't dragging the girl or pulling her along or anything like that." Id. at 32. In fact, he testified that the girl was "Just walking—walking along. I thought it was normal day, you know, coming home from school." Id. at 32. He testified that he would have "called the cops" if he had seen "a man dragging a girl up those stairs who was crying and shaking." Id. at 33.

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Knowing that Randall's testimony would be material and exculpatory, Counsel should have objected to the State's late disclosure and requested a continuance of the trial to have adequate time to interview Randall and develop the defense strategy. Under Brady v. Maryland, "[s]uppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). Furthermore, "Brady has no good faith or inadvertence defense." Gantt v. Roe, 389 F.3d 908, 912 (9th Cir. 2004). The Ninth Circuit has consistently held that this type of due process violation may be cured by a "belated disclosure" of the evidence "***so long as the disclosure occurs 'at a time when disclosure would be of value to the accused***." United States v. Gamez-Orduno, 235 F.3d 453, 461 (9th Cir. 2000) (emphasis added).

In Gamez-Orduno, the district court granted the defendant a two-month continuance to afford the defendant "ample time to prepare" for his hearing. Id. at 462. On appeal, the Ninth Circuit found that "Because of the continuance, disclosure ultimately 'occurred at a time when it [was] of value to the accused.'" Id. at 462, *citing* United States v. Span, 970 F.2d 573, 583 (9th Cir. 1992).

Additionally, in Tennison v. City and County of San Francisco, the Ninth Circuit relied on Gamez-Orduno to find that a Brady violation may be cured by late disclosure "so long as the disclosure occurs at a time *when disclosure would be of value to the accused*." 570 F.3d 1078, 1093 (9th Cir. 2009), *citing* Gamez-Orduno, 235 F.3d at 461. The Tennison Court reasoned that Tennison had been prejudiced because he learned about a tape of a material statement on the second to last day of a hearing, which was "much too late for the disclosure to be of value to him." Tennison, 570 F.3d at 1093.

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The instant case is similar to Tennison in that the State produced Randall, a material and exculpatory witness, on the last day of trial. Randall's testimony was material because he testified regarding Mr. Adams and Valles' demeanor leading up to the incident in question, which differed substantially from Valles' allegations that Mr. Adams forced her and dragged her to the apartment. Additionally, Randall's testimony constituted exculpatory evidence because Randall explained that Valles was not in duress, which supported the defense theory of consent. Because Randall was such a valuable witness, Counsel would have needed sufficient time to interview Randall and prepare the defense strategy. Accordingly, the State's production of Randall as a witness on the last day of trial did not allow Randall to be a valuable witness for the defense. Therefore, Counsel should have requested a continuance of the trial to allow time to interview Randall and adequately assess the exculpatory value of his testimony before proceeding further with the trial.

Had Counsel located and interviewed Randall at the outset of the case or requested a continuance once the State located Randall, Counsel could have done a more thorough investigation, fleshed out the defense narrative, and used Randall's testimony effectively. The detectives interviewed Randall on December 20, 2007, which was 685 days (1 year, 10 months, and 15 days) before he testified at trial. Counsel should have taken measures to locate Randall or compel the State to produce him as a witness long before trial.

When the State produced Randall as a witness on the third day of trial, Counsel did not have time to prepare to examine Randall. Although Randall's testimony was ultimately favorable for the defense, Counsel was not in a position to use that testimony effectively. Had Counsel interviewed Randall at the outset or sought a continuance that allowed him sufficient time for preparation, there is a high probability that Counsel would have been in a position to corroborate Randall's powerfully exculpatory testimony.

To reiterate, Mr. Adams was charged by way of Information on January 31, 2008. The record does not show that Counsel made any attempts to locate Randall until October 22, 2009, which was only eleven (11) days before trial. *See*, Exh. B. In other words Counsel did not adhere to his duty to "conduct careful factual and legal investigations and inquiries with a view to developing matters of defense" because he waited until eleven (11) days before trial to search for a material and potentially exculpatory witness. *See*, Jackson, 91 Nev. at 433.

In sum, had Randall's identity been conveyed to the defense early on, as required by Brady and progeny, Counsel would have been in a position to properly develop the defense theme and locate additional evidence to corroborate the exculpatory statement. Absent this critical step, Counsel was not in a position to make the strategic decision to withdraw the Motion to Dismiss or to negotiate "leeway" for cross-examining the detective. Counsel's decisions to withdraw his Motion, not seek a continuance, and bargain for the illusory result of "leeway," were fundamentally unreasonable choices not within the ambit of acceptable trial strategy and undeniably detrimental to Mr. Adams' right to a fair trial.

**ii. Prejudice**

The result of the trial would have been different if Counsel had interviewed Randall before trial and used Randall's testimony to develop the defense narrative. Counsel could have used Randall's testimony to discredit the State's witnesses who testified that Valles was in distress and being dragged by Mr. Adams. Although the jury heard from Randall at trial, Mr. Adams did not have the benefit of preparing his defense knowing that Randall would be available to testify. Accordingly, the outcome of the trial would have been different if Counsel had developed the defense narrative around Randall's testimony. Counsel would have been able to cross-examine the State's witnesses and set up the defense knowing that Randall's testimony would corroborate the narrative.

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Therefore, Mr. Adams suffered prejudice because the result of the trial would have been different had Counsel interviewed Randall prior to trial because Counsel would have been able to give the jury evidence to support the defense narrative while effectively undermining the credibility of the State's witnesses. Consequently, Mr. Adams' conviction must be overturned.

## II. Counsel for Mr. Adams Adopts All Issues Raised by Mr. Adams in his Pro Per Petition for Writ of Habeas Corpus and Respectfully Requests that this Court Consider and Issue a Written Decision with Regard to each of these Arguments.

Mr. Adams filed a *pro per* Petition for Writ of Habeas Corpus on September 11, 2012. In his petition, Mr. Adams raised the following issues:

1. ***The conviction against Mr. Adams must be reversed because Counsel caused a structural error by failing to remove Juror No. 7 (Prospective Juror No. 156) from the jury panel after Juror No. 7 disclosed that she knew the presiding judge socially and knew one of the investigating officers.***

In his *pro per* petition, Mr. Adams contended that he received ineffective assistance of counsel for counsel's failure to remove Juror No. 7 from the jury panel.

Counsel for Mr. Adams supplements the *pro per* Petition with the following case law regarding structural error, ineffective assistance of counsel, and the right to an impartial jury.

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

When a structural error is raised for the first time under an ineffective-assistance claim, the petitioner bears the burden to show (1) the attorney's deficient performance, and (2) prejudice. Weaver, 137 S.Ct. at 1910. To establish deficient performance, the defendant must demonstrate that counsel's representation "fell below an objective standard of reasonableness." Wiggins v. Smith, 539 U.S. 510, 521 (2003) (*quoting* Strickland v. Washington, 466 U.S. 668, 688 (1984)). To show prejudice, "the ultimate inquiry must concentrate on 'the fundamental fairness of the proceeding.'" Weaver, 137 S.Ct. at 1911, *citing*, Strickland v. Washington, 466 U.S. 668, 694 (1984). The petitioner can show prejudice by showing either that (1) there was a reasonable probability that but for counsel's errors, the result of the proceeding would have been different; or (2) counsel's errors rendered the trial fundamentally unfair. Weaver, 137 S.Ct. at 1911.

The trial in this case was fundamentally unfair because Counsel's errors caused a violation of Mr. Adam's constitutional right to an impartial jury. The Sixth Amendment to the Constitution guarantees an accused the right to be judged by an impartial jury, which means that juror can "lay aside his impression or opinion and render a verdict based on the evidence presented in court." Irvin v. Dowd, 366 U.S. 717, 723, 81 S.Ct. 1639, 6 L.Ed.2d 751 (1961). Moreover, a prospective juror should be removed for cause when the prospective juror's views "would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath." Preciado v. State, 130 Nev. 40, 44, 318 P.3d 176 (2014).

In this case, Counsel caused a structural error by failing to challenge Juror No. 7 remaining on the jury panel after she disclosed that she had known the judge socially and knew one of the State's witnesses. Specifically, trial counsel was deficient for failing to challenge Juror No. 7, Mrs. Clayton's, suitability to sit on the jury when she admitted that she had known the trial judge socially for twenty (20) years, that she had worked with the judge's wife as a

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deputy attorney general, and that she admitted that she knew LVMPD Crime Scene Analyst Shayla Joseph. Given her relationship with the judge, her knowing one of the State's witnesses, and her having worked as a prosecutor for the State of Nevada, Trial Counsel should have challenged Juror No. 7's ability to be unbiased and should have sought her removal from the jury panel.

Accordingly, Juror No. 7, Mrs. Clayton, was a biased juror. Her presence on the jury panel undermined the integrity of the proceeding and rendered the trial fundamentally unfair. Mr. Adams had the unequivocal constitutional right to be judged by unbiased triers of fact. The Constitution does not provide that any jurors can be biased because one biased juror will taint the entire group. In this case, Juror No. 7 could not have been impartial, and her presence on the jury rendered the trial fundamentally unfair. Therefore, a structural error exists, and the judgment against Mr. Adams should be reversed. Mr. Adams must receive a new trial.

***2. Mr. Adams' rights were violated because the State failed to preserve a recording of an interview with an eyewitness, Andre Randall, that would have provided exculpatory evidence for Mr. Adams.***

In the *pro per* Petition, Mr. Adams asserted that that his Fifth, Sixth, and Fourteenth Amendment rights were violated because law enforcement failed to preserve an interview of an eyewitness, Andre Randall, whose testimony at trial proved to be exculpatory for Mr. Adams.

Counsel for Mr. Adams supplements the *pro per* Petition with the following case law concerning law enforcement's duties to preserve exculpatory evidence.

Law enforcement officers have a duty to preserve material exculpatory evidence. Daniels v. State, 114 Nev. 261, 266-267, 956 P.2d 111 (1998). "Evidence is material when there is a reasonable probability that, had the evidence been available to the defense, the result of the proceedings would have been different." Jackson v. State, 128 Nev. 598, 613, 291 P.3d 1274, 1284 (2012).

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After showing that the evidence was material, the defendant must show that "the failure to gather evidence was the result of negligence or bad faith." Id.

> When mere negligence is involved, no sanctions are imposed, but the defendant can still examine the prosecution's witnesses about the investigative deficiencies. When gross negligence is involved, the defense is entitled to a presumption that the evidence would have been unfavorable to the State. In cases of bad faith, we conclude that dismissal of the charges may be an available remedy based upon the evaluation of the case as a whole. Daniels v. State, 114 Nev. at 267.

Moreover, under Brady v. Maryland, the United States Supreme Court held that "[s]uppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

**a. Andre Randall's Statement was Material Evidence**

As part of the investigation into Valles' allegations, the LVMPD detectives interviewed Andre Randall, a resident of the apartment complex. The detectives made an entry in their Case Notes about this interview on December 20, 2007, just six days after the alleged incident between Mr. Adams and Valles.

The Case Notes show that Randall told the detectives that he had walked closely to Mr. Adams and Valles and that "the two were not touching and the girl didn't appear to be in distress nor emotional." *See*, Exh. A. At trial, Det. Lebario, the lead detective, testified that he did not have Randall fill out a report, did not prepare a report himself, and did not record the interview. Tr. November 3, 2009, at 246-247. To the contrary, Randall testified at trial that the detectives knocked on his door with "A little recorder" and conducted a taped interview. Tr. November 4, 2009, at 27.

At trial, Randall explained that Valles was walking freely with Mr. Adams. Randall testified at trial that he saw Valles walking with Mr. Adams, and that she did not look "mad."

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Tr. November 4, 2009, at 29. Randall even testified that he recalled telling the police that Valles and Mr. Adams were walking side by side and not touching each other. Id. at 32.

Randall's testimony was material and favorable for the defense. Additionally, Randall clearly testified at trial that the detectives arrived at his house with a recorder and conducted a taped interview. That recording was never provided to the defense. The investigating detectives should have preserved the recording and given it to the State to turn over to the defense. Had the defense been provided this evidence, the result of the trial would have been different because Counsel could have used Randall's recorded statement to develop a more comprehensive theory of defense.

Although the State produced Randall as a witness for trial, confronting Randall only at trial was not enough. Had the defense been provided the recording of the interview, Defense Counsel could have done a more thorough investigation prior to trial. Moreover, the defense could have used the recorded interview to flesh out the defense theory and develop the trial strategy. Although Defense Counsel knew the basic premises of Randall's interview because of the Case Notes entry, Defense Counsel was not privy to the details of the interview. The Case Notes do not indicate how long the detectives spoke with Randall or what other information Randall may have provided to the detectives. Additionally, Defense Counsel could not have known whether Randall forgot or omitted any details during the nearly two-year span between the time of the incident and trial. Had the recording been preserved and provided to the defense, there is a reasonable probability that the outcome of the trial would have been different because Counsel could have used the recording to structure the theory of defense.

**b. The Officers Chose not to Preserve the Recording of Randall's Statement in Bad Faith**

The investigating detectives chose not to preserve Randall's statement in bad faith. The detectives knew that the evidence was material, favorable for the defense, and would affect the

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outcome of the proceedings because the detectives noted inconsistencies between Valles' allegations and Randall's statement in their Case Notes. *See*, Jackson, 128 Nev. at 613. In the Case Notes, the detectives wrote:

> When we interviewed the victim previously she told us the only person she saw while with the suspect was her friend Jonathon. It is unknown why the victim doesn't recall this witness or failed to tell us about him. It is unknown why she didn't ask him for help. *See*, Exh. A.

At trial, Detective Lebario, the lead detective assigned to the case testified that Randall did not say anything "noteworthy" and that "I didn't see any need to—to get a report from him." Tr. November 3, 2009, at 247. However, Randall specifically testified that the detectives went to his house with a recorder and took a recorded statement. Tr. November 4, 2009, at 27.

Given the materiality of Randall's statement, the detectives should have preserved the recording and provided it to the State to turn over to the defense. Because the detectives knew the statement was material, made a recording, and did not preserve the recording, they acted in bad faith, and the charges against Mr. Adams should have been dismissed. At this stage in the proceedings, this issue must be explored in an evidentiary hearing to determine the extent of the detectives' bad faith.

Even if the court does not find that the detectives acted in bad faith, the court should find that the detectives' failure amounted to gross negligence. The detectives knew that the evidence would be favorable for Mr. Adams, but they chose not to preserve a recorded statement. Consequently, Mr. Adams should have been entitled to an instruction at trial that the evidence would have been unfavorable to the State.

Although the State produced Mr. Randall as a witness on the last day of trial, Mr. Adams was prejudiced because his Counsel did not have the recording of Randall's statement to use in preparing for trial. *See*, Daniels, 114 Nev. at 267, *citing* Howard v. State, 95 Nev. 580, 582, 600 P.2d. 214, 215-216 (1979). Having a material witness appear on the last day of

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trial does not satisfy the mandates of due process. The detectives knew Randall's testimony was material, and they should have given the recording to the State to turn over to the defense. Due process could have only been satisfied by the defense receiving this material evidence in a timely fashion so that the defense could have used the information in fashioning the defense strategy. Consequently, this Court should reverse the conviction against Mr. Adams and grant Mr. Adams a new trial.

***3. Mr. Adams' right to effective assistance of counsel was violated because Counsel failed to investigate the case and failed to prepare the case for trial.***

In his *pro per* Petition, Mr. Adams argued that his Sixth and Fourteenth Amendment rights to the U.S. Constitution were violated due to ineffective assistance of counsel. Mr. Adams contends that trial counsel was not properly prepared for trial because he did not have a second chair to assist him at trial, which forced trial counsel to "juggle" his duties.

Counsel for Mr. Adams supplements the *pro per* Petition with the following case law regarding ineffective assistance of counsel and counsel's duties to investigate and present a defense.

A defense attorney's failure to conduct an adequate investigation denies his client the Sixth Amendment right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Under Strickland, defense counsel has a duty "to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691; *see also*, State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). "Strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Id. at 690-91; Kirksey v. State, 112 Nev. 980, 993, 923 P.2d 1102, 1110 (1996).

In a criminal case, counsel is not required to exhaust all available public or private resources if counsel and the client clearly understand the evidence and the permutations of

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proof and outcome. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). A primary requirement of effective counsel is to "conduct careful factual and legal investigations and inquiries with a view to developing matters of defense in order that he may make informed decisions on the client's behalf." Jackson v. Warden, 91 Nev. 430, 433, 537 P.2d 473 (1975). At trial, this means that counsel has a duty to prepare for trial in a thorough manner and to formulate a viable defense strategy. *See generally*, Buffalo v. State, 111 Nev. 1139, 1149, 901 P.2d 647 (1995).

Here, Counsel failed to prepare for trial properly. Mr. Adams submits that Defense Counsel told Mr. Adams that he was not prepared for trial because he did not have a second chair attorney and had to "juggle" during the trial. Counsel's performance was deficient because he did not prepare for trial adequately. Counsel's deficient performance caused Mr. Adams to suffer prejudice because the result of the trial would have been different had Counsel prepared for trial. Therefore, Mr. Adams' conviction must be reversed.

***4. Mr. Adams' right to an impartial jury was violated because the Court allowed the State to show pictures of Mr. Adams in jail clothes.***

In the *pro per* Petition, Mr. Adams asserted that his Fifth, Sixth, and Fourteenth Amendment rights under the U.S. Constitution were violated because he did not receive an impartial jury.

Counsel for Mr. Adams supplements the *pro per* Petition with the following case law concerning a defendant's right to be judged by an impartial jury.

The Sixth Amendment to the Constitution guarantees an accused the right to be judged by an impartial jury, which means that a juror can "lay aside his impression or opinion and render a verdict based on the evidence presented in court." Irvin v. Dowd, 366 U.S. 717, 723, 81 S.Ct. 1639, 6 L.Ed.2d 751 (1961). Accordingly, a prospective juror should be removed for cause when the prospective juror's views "would prevent or substantially impair the

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performance of his duties as a juror in accordance with his instructions and his oath." Preciado v. State, 130 Nev. 40, 44, 318 P.3d 176 (2014).

Mr. Adams contends that his right to an impartial jury was violated because the State showed a photograph of Mr. Adams in jail clothes to the jury. Although Mr. Adams objected at trial, he raises this issue as a habeas issue because there were attorneys on the jury panel who would have known that he wore jail clothes in the photograph. Accordingly, Mr. Adams submits that the trial court allowed his rights to be violated because the attorneys on the jury panel would have explained to the other jurors that Mr. Adams was incarcerated during the photograph, and this discussion would have prejudiced the jury. Therefore, this Court should reverse Mr. Adams' conviction and grant him a new trial.

***5. Mr. Adams' rights were violated because he was convicted on multiple counts for the same conduct.***

In his *pro per* Petition, Mr. Adams argued that his Fifth, Eighth, and Fourteenth Amendment rights under the U.S. Constitution were violated because he was convicted on multiple counts for the same conduct.

Counsel for Mr. Adams supplements the *pro per* Petition with the following case law concerning double jeopardy and the redundancy principles.

Although the Nevada Supreme Court reviewed this issue on direct appeal, Nevada's legislature has shown that it does not intend "to separately punish multiple acts that occur close in time and make up one course of criminal conduct." Wilson v. State, 121 Nev. 345, 356, 114 P.3d 285, 293 (2005). Moreover, the courts have declared convictions redundant when "the facts forming the basis for two crimes overlap, when the statutory language indicates one rather than multiple criminal violations was contemplated, and when legislative history shows that an ambiguous statute was intended to assess one punishment." Id.

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The distinction turns on whether the defendant committed a single act or separate, individual acts. Id. at 356. In Wilson, the Nevada Supreme Court relied on Crowley v. State, 120 Nev. 30, 83 P.3d 282 (2004) and reversed Wilson's conviction by determining that the four pictures of child pornography were taken in a short period of time and that they constituted one single violation. Wilson, 121 Nev. at 357-358.

In Crowley v. State, the Nevada Supreme Court found that Crowley's convictions were redundant because "Crowley's act of rubbing the male victim's penis on the outside of his pants was a prelude to touching the victim's penis inside his underwear and the fellatio." 120 Nev. 30, 34, 83 P.3d 282, 285 (2004).

Here, the Nevada Supreme Court relied upon Crowley and Wright v. State, 106 Nev. 647, 650, 799 P.2d 548, 549-550 (1990), to uphold Mr. Adams' conviction. However, the Nevada Supreme Court erred in finding that the facts of the case supported convictions on separate charges. The facts of the case do not support this finding.

Nevada law has shown that the Double Jeopardy clause extends to redundant convictions. Salazar v. State, 119 Nev. 224, 227, 70 P.3d 749 (2003) (*overruled on other grounds by* Jackson v. State, 128 Nev. 598, 291 P.3d 1274 (2012)). Given these principles, Mr. Adams' case is most like Crowley because the act of inserting a finger before the penis was not a separate act, but rather, a prelude to the sexual act as a whole. Mr. Adams' actions were not interrupted. *See*, Wright, 106 Nev. at 650 (The Court affirmed convictions for both attempted sexual assault and sexual assault because the accused stopped his actions during the time that a car passed the area). *See also*, Crowley, 120 Nev. at 33-34.

Likewise, the battery and kidnapping charges are also redundant because they stemmed from the same act of Mr. Adams allegedly grabbing Valles' arm and forcing her to go with him. The State charged Mr. Adams with both battery with intent to commit a crime and first-degree

kidnapping for the same conduct. As discussed on direct appeal, the battery with intent to commit a crime was a lesser-included offense of the first-degree kidnapping. Although the Nevada Supreme Court held that Mr. Adams' claim on appeal was without merit, Mr. Adams suffered from being convicted twice for the same conduct, thus violating the Double Jeopardy Clause.

Accordingly, the Nevada Supreme Court upheld Mr. Adams' conviction in violation of the Double Jeopardy clause and redundancy principles of the Fifth Amendment to the U.S. Constitution. For these reasons, Mr. Adams' convictions must be reversed because the redundant convictions violate Mr. Adams' constitutional right against double jeopardy.

***6. Mr. Adams' rights were violated because the prosecutor shifted the burden of proof to the defense and injected his personal feelings about Mr. Adams into the arguments. Although the Court sustained Mr. Adams' objections, the prosecutor continued to interject his own opinion into the trial.***

In his *pro per* petition, Mr. Adams asserted that his rights were violated because the prosecutor continuously shifted the burden of proof to the defense during the closing arguments, misstated evidence, commented on Mr. Adams' failure to produce evidence, and injected his personal feelings into the argument. On direct review, the Nevada Supreme Court found that Mr. Adams had not demonstrated prejudice such that the improper comments would "infect the proceedings with unfairness as to make the results a denial of due process." Browning v. State, 124 Nev. 517, 533, 188 P.3d 60, 72 (2008). Mr. Adams contends that the prosecutor's improper comments during trial shifted the burden of proof, misstated the evidence, and injected his personal feelings into the proceedings. For these reasons, Mr. Adams was prejudiced and did not receive a fair trial. Therefore, the conviction must be reversed.

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***7. Mr. Adams' rights to an impartial jury and a fair trial were violated because the Court allowed a juror to remain on the jury after the juror disclosed that she knew the judge socially and knew the crime scene analyst involved in the case.***

In his *pro per* Petition, Mr. Adams contended that his Fifth, Sixth, and Fourteenth Amendment rights under the U.S. Constitution were violated because he did not receive an impartial jury.

Counsel for Mr. Adams supplements the *pro per* Petition with the following case law concerning the right to an impartial jury.

The Sixth Amendment to the Constitution guarantees an accused the right to be judged by an impartial jury, which means that a juror can "lay aside his impression or opinion and render a verdict based on the evidence presented in court." Irvin v. Dowd, 366 U.S. 717, 723, 81 S.Ct. 1639, 6 L.Ed.2d 751 (1961). Likewise, a prospective juror should be removed for cause when the prospective juror's views "would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath." Preciado v. State, 130 Nev. 40, 44, 318 P.3d 176 (2014).

Here, Mr. Adams submits that his right to an impartial jury was violated because the Court allowed Ms. Clayton, Juror No. 7 (Prospective Juror No. 156), to remain on the jury even after she disclosed that she knew the Judge socially and knew LVMPD Crime Scene Analyst Shayla Joseph.

On the first day of trial, Ms. Clayton, Prospective Juror No. 156 (Later Juror No. 7) disclosed that she knew the trial judge personally.

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Prospective Juror No. 156: "Your Honor, I'm juror number 156. You and I have met socially several times over the past 20 years. I worked with your wife at the Attorney General's office back in the 1990s."

Tr. November 2, 2009, at 17.

Ms. Clayton made the record clear that she knew the judge socially, was a former prosecutor for the state of Nevada, and knew the crime scene analyst in the case. These personal relationships would cause Ms. Clayton to give more credence to the State's evidence, and ultimately would have influenced the remainder of the jury. As a former prosecutor, the other jurors would have looked to Ms. Clayton for guidance, and her guidance would not have been impartial. This would have impacted the other jurors to the extent that they could not have been able to lay aside their opinions to render a verdict based on the evidence. Consequently, the jury was not impartial. For this reason, the conviction must be reversed, and Mr. Adams must receive a new trial.

***8. Mr. Adams suffered cruel and unusual punishment because he was convicted and punished for multiple counts for the same conduct.***

In his *pro per Petition*, Mr. Adams contended that his Fifth, Eighth, and Fourteenth Amendment rights under the U.S. Constitution were violated because he was convicted on multiple counts of sexual assault that occurred out of the same incident.

Counsel for Mr. Adams supplements the *pro per* Petition with the following case law concerning cruel and unusual punishment.

The Eighth Amendment requires the district court to consider the individual to be sentenced, as well as the charged crime. Martinez v. State, 114 Nev. 735, 737, 961 P.2d 143 (1998); U.S. Const. Amend. VIII. The Eighth Amendment mandates that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

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"The final clause prohibits not only barbaric punishments, but also sentences that are disproportionate to the crime committed." Solem v. Helm, 463 U.S. 277, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983).

The Nevada Supreme Court has explained "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." Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246 (2004), *quoting*, Blume v. State, 112 Nev. 472, 475, 915 P.2d 282 (1996).

Here, Mr. Adams was convicted of redundant counts of sexual assault, in violation of the Double Jeopardy Clause of the Fifth Amendment. *Supra*, at 26. Because the charges against Mr. Adams were redundant, he sustained multiple convictions for the same conduct. As a result, the sentencing court imposed consecutive sentences for each count.

As explained in Wilson, the Nevada legislature has shown that it does not intend to "separately punish multiple acts that occur close in time and make up one course of criminal conduct." 121 Nev. at 345. However, this is precisely what happened in this case. The jury convicted Mr. Adams on multiple counts for the same conduct, and the court imposed consecutive sentences on each count.

Consequently, Mr. Adams' consecutive sentences are disproportionate because he is serving multiple sentences for the same conduct. Therefore, Mr. Adams has been subjected to cruel and unusual punishment, and his conviction must be reversed.

## III. Cumulative Error

In Dechant v. State, 116 Nev. 918, 10 P.3d 108 (2000), the Nevada Supreme Court reversed the murder conviction of Amy Dechant based upon the cumulative effect of the errors at trial. In Dechant, the Nevada Supreme Court provided, "[W]e have stated that if the

cumulative effect of the errors committed at trial denies the appellant his right to a fair trial, this Court will reverse the conviction." Id. at 113, *citing* Big Pond v. State, 101 Nev. 1, 3, 692 P.2d 1288, 1289 (1985). The Nevada Supreme Court explained that there are certain factors in deciding whether error is harmless or prejudicial, including whether (1) the issue of guilt or innocence is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged. Id.

Based on the foregoing, reversal is mandated based upon the cumulative errors of trial counsel. First, the question of guilt or innocence is close because the evidence shows that the sexual contact could have been consensual. Second, the errors in this case were numerous. Third, the crimes charged are severe, and Mr. Adams has been sentenced to severe sentences. Accordingly, the errors in this case were cumulative and require reversal.

## IV. Evidentiary Hearing

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

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In the instant case, an evidentiary hearing is necessary to determine the extent of Counsel's ineffectiveness. As shown above, Mr. Adams' counsel fell below an objective standard of reasonableness. More importantly, based upon the failures of trial and appellate counsel, Mr. Adams suffered prejudice pursuant to Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 205 (1984).

Under the facts presented here, an evidentiary hearing is mandated to determine whether the Trial Counsel's performance was deficient, to determine the prejudicial impact of the errors and omissions noted in the petition, and to ascertain the truth in this case. Accordingly, Mr. Adams requests that this Court grant an evidentiary hearing to allow him to present evidence of Counsel's ineffectiveness.

## CONCLUSION

For the reasons stated above, Mr. Adams received ineffective assistance of counsel. Accordingly, Mr. Adams requests this Court grant the instant petition and vacate his conviction and sentence. In the alternative, Mr. Adams requests that this Court grant an evidentiary hearing to present evidence regarding the extent of defense counsel's deficient performance and the prejudice Mr. Adams suffered in order to create an adequate record regarding the claims contained herein.

DATED this 28th day of June, 2019.

*/s/ James A. Oronoz*
JAMES A. ORONOZ, ESQ.
Nevada Bar No. 6769
RACHAEL STEWART, ESQ.
Nevada Bar No. 14122
1050 Indigo Drive, Suite 120
Las Vegas, Nevada 89145
*Attorneys for Petitioner*

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## VERIFICATION

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

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

Dated this 28th day of June, 2019

JAMES A. ORONOZ

SUBSCRIBED AND SWORN to before me
this 28TH day of June, 2019.

Notary Public in and for said
County and State

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

ORONOZ & ERICSSON LLC
1050 Indigo Drive, Suite 120 • Las Vegas, Nevada 89145
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## CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada State District Court in Clark County, Nevada on June 28, 2019. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

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

I hereby certify and affirm that I mailed a copy of the foregoing document on June 28, 2019, postage prepaid and addressed to the following:

AARON FORD
Nevada Attorney General
100 N. Carson Street
Carson City, Nevada 89701-4714

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

ORONOZ & ERICSSON LLC
1050 Indigo Drive, Suite 120 • Las Vegas, Nevada 89145
Telephone (702) 878-2889 Facsimile (702) 522-1542

# EXHIBIT A

**Entered Date:** 01/12/2008 **Subject:** ARREST MADE **Entered By:** LEBARIO, G 5849

**Case Note:**

That on December 14th , 2007 at approximately 1556 hours, LVMPD dispatch received a call from a , Louise Valles. Valles was reporting that her thirteen year old daughter, Amber Valles had just been kidnaped and sexually assaulted while coming home from school. Valles described that Amber was walking home from school and was approached by a White Male Adult who told her he had a gun.

LVMPD Officers arrived at 7221 Roe Court Las Vegas, NV 89145 and made contact with thirteen year old Amber Valles, DOB: 10/12/1994 and her mother Louise Valles, DOB: 01/20/1972. Officer J. Riddle P#9306 then learned the following information from Amber:

ON 12/14/07 AMBER VALLES; DOB: 10/12/94 STATED THAT SHE BECAME THE VICTIM OF A SEXUAL ASSAULT WHEN AN UNKNOWN MALE FORCED HER TO HIS APARTMENT AND FORCED HER TO DIGITAL AND VAGINAL INTERCOURSE.

AMBER STATED SHE HAD CALLED HER MOTHER FROM SCHOOL, JOHNSON MIDDLE SCHOOL LOCATED AT 7701 DUCHARME AND ASKED IF SHE COULD WALK HOME TODAY. AMBER STATED THAT SHE INTENDED TO WALK TO A FRIEND'S HOUSE. PLAY BASKETBALL AND STAY THE NIGHT. THE FRIEND'S PARENTS TOLD AMBER THAT TONIGHT WAS NOT A GOOD NIGHT. SCHOOL LETS OUT AT 1415 HRS AND AT APPROXIMATELY 1430 HRS AMBER BEGAN TO WALK HOME. WHILE ON ALTA EAST OF BUFFALO SHE WAS APPROACHED BY WMA WHO GRABBED AMBER BY THE HAND AND STATED, "DON'T SCREAM, DON'T RUN. I HAVE A GUN." THE SUSPECT THEN TOLD AMBER THAT HE NEEDED HELP CARING FOR A BABY BECAUSE HIS NIECE JUST YELLS AT IT. THEY BOTH THEN WALKED APPROXIMATELY 20 MINUTES TO AN UNKNOWN APARTMENT EAST OF CIMARRON ON THE SOUTH SIDE OF CHARLESTON. AMBER STATED THAT WHEN THEY ARRIVED AT THE, WHAT APPEARED TO BE VACANT APARTMENT, THE SUSPECT USED NO KEY AND WALKED RIGHT IN. IN THE APARTMENT, AMBER ONLY SAW A COUCH AND CANDLES. THE SUSPECT THEN LIT ONE CANDLE AND FORCED AMBER TO THE GROUND AND BEGAN PENETRATING HER VAGINA WITH HIS FINGERS. THE SUSPECT THEN ATTEMPTED SEVERAL TIMES TO PENETRATE AMBER'S VAGINA WITH HIS PENIS AND AMBER STATED, "BUT IT WASN'T WORKING". AMBER STATED THE SUSPECT TOOK HER PHONE BATTERY OUT AND THREW IT ON THE COUCH. THE SUSPECT MADE AMBER BEND OVER AND ATTEMPTED TO INSERT HIS PENIS AGAIN. AMBER STATED THAT SHE WAS NOT SURE IF HE EVER MADE PENETRATION WITH HIS PENIS BUT MADE A STATEMENT THAT INSINUATED HE HAD. THE SUSPECT THEN WET A TOWEL AND TOLD AMBER TO WIPE HER VAGINA. THE SUSPECT TOLD AMBER TO CALL HIM "FRED." THE SUSPECT THEN TOLD AMBER TO LEAVE AND NOT TO CALL ANYONE UNTIL SHE GOT TO MCDONALD'S (LOCATED AT 7851 W. CHARLESTON). AMBER COMPLIED CALLING HER MOTHER WHO THEN CALLED THE POLICE.

Officer J. Riddle transported Amber to UMC ( 1800 W. Charleston) to conduct a S.A.N.E. exam.

Patrol Officers made contact with Jonathan Cerbani; DOB: 09/07/1995 who stated that he recalls seeing Amber walking with a white male , who was holding Amber by the right arm, "one hand in his pocket like he had a gun." Jonathan described that the guy was wearing a gray sweatshirt, light blue pants and he had something hanging from the top of his left eye. He described him as bald but had some hair around his head. Jonathan described that Amber had a scared look on her face.

That I, Detective G. Lebario P#5849 along with Sgt. B. Smith P#4991 responded to UMC and conducted the follow-up interview with Amber and her mother, Louise Valles.

That we first conducted a recorded interview with Amber who stated the following; which is not verbatim:

That on December 14th , 2007 she got out of school at 1415 hours. She was talking with her friend Sierra and they were talking about her possibly spending the night at Sierra's house. Amber states she called her mother and asked for permission to walk home from school, Amber states her mom told her that it would be fine. Amber states Sierra's mom then told them "no" because they had other plans that evening. Amber then states she walked home and was walking east bound on Alta from Buffalo when she was approached by a white male adult who had also crossed Alta from Buffalo with her. Amber stated the male followed her, then came up from behind her and told her that "he has a gun and if she did not do everything he told her, he would kill her." Amber states that he then grabbed her hand and turned around and walked back up to Alta and crossed over to Buffalo. Amber states that they walked to Charleston and Buffalo on the left side of the street ( east side of Buffalo walking southbound). Amber states she saw her friend Jonathan and attempted to whisper to him for "help". Amber states she then asked the suspect, "what are you doing with me?" and he told her that he was just taking her to his house with his niece and his 1 year old son so that she could help him with his son because his niece just yells at him. Amber states she asked if she could just go home and he told her to stop asking him because that was just making him mad. Amber states they walked to an apartment complex called the "Eleven/Eleven". She states they

walked to an unknown building and went up to the second floor.

Amber states the suspect just opened the door without a key. She states as she walked in she saw a black leather couch along with candles. She states he lit the candles with matches he removed from his pockets. He then told her to take off her clothes and stand up, he then put her on the floor and got on top of her. He then tried to put his "private" in hers . His clothes were on the floor and she noticed that he had a bruise on the side of his stomach. She states she was laying on her back and she said he took his "private" and "tried to stick it in hers" with his hands. She kept telling him to "stop" and he would not say anything he just laid on top of her and made "like bouncing motions." The suspect then told her to sit on the couch, got on top of her and tried the same thing. She states he got on top of her and again was putting his "private" into her "private." She states during this time he just kept his hands on the couch and lasted about three minutes. She states she continued to ask him to "stop" but he would tell her to "shut up" and he threatened to tape her mouth shut, which he did with blue tape that was on the counter. She states this happened while she was on the couch. She states after he was done he grabbed a white towel from the floor and told her to wipe herself and put her clothes on. She states she put her underwear and bra in her back pack and walked out of the apartment. She states the suspect told her to call him , "Fred." She stated that the suspect actually took her cell phone from her and took the battery out when they walked into the apartment. Amber states she was missing for one hour and was finally able to call her mom when she left the apartment.

Amber described the male as a white adult ; 5' 7" between 25-45 years of age , bald with a band aid across the left side of his forehead. She said he had crooked teeth and a red goatee. He was wearing a black hooded sweatshirt and blue "silky pants." She described that he was wearing a black string around his neck. She described his shoes to be "crappy", "dirty" , black and white in color and possibly Nike's. She noticed that the male had a bruise and hair on his stomach.

She states when she was leaving he told her that he would go to jail so she better not call the cops or anybody. She then left and called her mom around 1536 hours and told her to pick her up at McDonald's.

After the interview with Amber a SANE exam was performed by Amy Coe, NP, SANE-A, at UMC. The following comes from the Nurse Notes:

Amber is a 13 year old female who states she was sexually assaulted by an unknown white adult male at approximately 1510 hours , 12/14/07.

She was walking home from school when she was approached and led by the suspect to his apartment. He ordered her to take off her clothes. She denies struggling or physical assault.

He grabbed her by the neck to restrain her. He digitally penetrated her vagina for approximately 30 seconds. Then he vaginally penetrated her with his penis for 30 seconds. Then he digitally penetrated her again for 15 seconds and vaginally penetrated her with his penis for 25 seconds. The whole time she is telling him "to stop," "it hurts," and "get off of me."

He removes his penis from inside the vagina for approximately 15 seconds. He masturbates himself. She continued to tell him "No." He told her to shut up. He taped her mouth and hands close. After less than a minute she tears off the tape.

Then he digitally penetrates her anus and penetrates her anally with his penis for approximately 10 seconds. He gets up off of her and he tells her to put her clothes on and leave. He told her "not to tell anybody."

Amber also disclosed to Coe that the suspect had tied her wrist with blue tape and used lotion for lubrication with digital and penile penetration.

( Please see Rose Heart Report Case # 071214-1983) Coe noted that Amber did have an abrasion at 6 o'clock posterior fourchette; she noted oozing from abrasion. Used toluidine dye; she used balloon method to visualize hymenal laceration at 6 o'clock with bleeding; anal laceration at 6 o'clock.

That I then conducted a recorded interview with Amber's mom, Louise Valles. Valles stated that she picked Amber up at McDonald's and she told her that a man had forced her into an apartment and had done "sexual acts" and "raped" her. She states she had been continually been trying to call her on her cell phone and it would just ring or go to voice mail. She stated that on today's date Amber had called her after school and asked for permission to walk home from school with her friend. She sates amber shoul;d have been home by 1445 hours and when she did not return home by 1520 hours she started to worry. She states she just started calling and calling her cell phone. She states that she finally got a hold of her around 1540 hours and Amber sounded upset and told her that she was scared to just pick her up at the McDonald's. She said she finally picked her up at the Sinclair Gas Station, located at Buffalo and Charleston.
She said after she picked up Amber she disclosed that she was approached by an unknown male who told her that he had a gun and walked her over to an unknown apartment. Amber told Valles, "he put his thing in me, mom." She states

that when she picked Amber up she did not have all her clothes on. She said Amber was just crying and sobbing when she picked her up.

That after we left UMC hospital Amber along with her mother, Valles directed Detectives to 1111 Warbonnet Way, Las Vegas, NV, 89117 ( Eleven/Eleven Condos). Amber described that she walked into a building that was right off of Charleston Blvd.. She remembered the complex was not gated and remembered walking through some rocks. Amber pointed out a certain building but could not confirm it was the building or apartment where the sexual assault had taken place.

On 12/15/07 Detectives returned to 1111 Warbonnet and made contact with the property manager. The Property manager remembered a vacant apartment on the complex that she distinctly remembered had a black leather couch and candles. She stated the building was had sustained fire a few months prior and was uninhabited. Property Manager then directed us to Building #1 / Apartment #204 and gave written consent to process the apartment for evidence.

That on 12/15/ 07 at approximately 1730 hours , Crime Scene Analyst J. Fried P# 8174 and R. McPhail P#3326 arrived to process the apartment. The following is a summary of the Crime Scene Report prepared by CSI R. McPhail P# 3326:

THE SCENE: The scene was located inside apartment #204, on the second floor of building #1 , in the southwest corner of the building. The building had sustained fire damage at some point in time and appeared to be uninhabited. There was no obvious electricity inside the building and apartment #204 had no lights, heating, or water service. The lock to the front ( south facing ) entry door to the residence was disabled with paper wedge inside the receiver for the lock tongue of the doorknob, making entry possible by simply pushing the door inward. When entry was made a lit candle was observed in a glass jar, on the floor of the living room in front of the couch. There was very little fire damage inside apartment# 204 but there was water damage to the ceiling in the northwest (master) bedroom.

The residence was void of all furnishings except for a black leather couch which was located on the south side of the living room, a set of drawers located on the north side of the south bedroom, and there was a dining table with blue colored masking tape around it, securing the leafs of the table, located inside the patio area on the west side of the living room.

THE LIVING ROOM:

In addition to the couch on the south side of the living room other items of interest included a dirty, white colored bath towel located on the floor at the east end of the couch; a pair of white colored Nike sports shoes, with spider webs inside of them, located on the floor near the candle in front of the couch; a black colored nylon pouch with a white colored stain on it, located on the couch (east end) ; and a pair of white colored house slippers and a wad of blue colored masking tape located on the floor in front of the couch.

PHOTOGRAPHY:

Digital photos were exposed showing the scene location and overall condition of the apartment. The locations of the recovered items of evidence and the locations of the recovered latent prints.

FINGERPRINT PROCESSING:

The scene was processed for latent prints with positive results in the following areas: the large sized prescription medication bottle, located on the breakfast bar. The glass jar/candle located on the breakfast bar. The glass vase/candle located on the sink counter on the west side of the kitchen ; the glass jar located on the floor in the south bedroom; the glass jar/candle ( Still Lit) located on the floor of the living room; the medium sized (non-lit) glass jar/candle located on the floor at the east end of the couch in the living room. ; the "Fantasy" calender located on the floor behind the couch in the living room ; the "Wynn" magazine and a small packet of lotion, located on the floor under the couch in the living room; the sliding glass door ( interior and exterior sides) on the west side of the living room; the lotion bottle located on the side of the tub, on the south side of the common bathroom.

EVIDENCE RECOVERED:

Sections from the black leather couch were recovered and impounded as evidence including all three seat and back cushions as well as both of the arms.

Also recovered and impounded as evidence was the following items: the dirty, white colored ,towel, located on the floor of the couch, the white washcloth, located in the closet inside the south bedroom; the purple towel and the gray plaid shirt hanging from the window on the west side of the master bedroom; the two notebooks and the loose papers, located on the floor inside the south bedroom; the baseball cap with VON? on the front, located on the floor in the south bedroom; the wad of blue masking tape, located on the floor in front of the couch; and the black nylon pouch with the white stain on it ,

located on the couch.

That on 12/20/07 we conducted an interview with Angela Abarzua . Angela stated that she was with Jonathan when she saw Amber. She recalls seeing Amber walking on Buffalo with WMA. Angela described that the male was walking at a fast pace in front of Amber and that Amber was trying hard to keep up with him. She did not recall seeing the WMA holding or grabbing Amber by the arm or hand. Angela did say that the male had hair on his head and that he was not really bald but his hair was short.

That on 01/10/08 I received an initial report from Vicki Farnham P# 7836, Forensic Scientist, Latent Print Examiner. Farnham obtained an AFIS hit on the latent print that was submitted to Laboratory by CSI. Fried. The prints returned to a Edward Adams ID# 1969904 and were from the glass jar on the floor near the northwest corner of the south bedroom and the small open lotion packet located on top of the Wynn magazine under the couch.

Based on the above AFIS return I was able to identify a Edward Adams ; DOB: 11-19-1982; SS# 608-46-1716.

On 01/11/08 I then put together a photo-line involving Adams, Adams photo was positioned in the #5 spot of a six person photo line-up.

On 01/11/08 I had Amber come into the interview room where I then instructed her on the Photo Line-UP, per LVMPD form 104.

After viewing the photos for approximately 30 seconds, Amber stated, "I know now for a fact who did it, I'm positive." Amber then pointed to the number 5 person (Adams). Amber stated that "on a scale of 1-10 I am a 10 completely positive that this is the picture. I have viewed these pictures and it is picture #5."

That on 01/12/08 Detectives located Edward Adams; ID# 1969904 at 3150 Meade Las Vegas, NV 89102, under event# 080112-1887.

That Adams was taken into custody and brought back to the ISD office located 4750 W. Oakey Las Vegas, NV 89102.

That I Detective Lebario P#5849 along with Detective R. Jaeger P# 5587 conducted a recorded interview with Adams. Adams initially was under the impression that we were investigating a Domestic Dispute that was reported by his wife under event# 080108-1828. While being transported by Detectives Jaeger P#5587 and Davis P#5163 Adams was asked to consent to a Buccal Swab to collect DNA. Adams replied, "DNA, do you think I raped someone." Adams was advised that we needed the DNA to compare with DNA found on a door that had been punched in. Adams stated he would consent to the collection of a Buccal Swab. Prior to the interview Adams was advised of his Miranda rights and he stated that he wanted to clear things up reference the allegations his wife had made.

I then informed Adams that we not really there to investigate the Domestic Dispute but rather a sexual assault involving a young girl. Adams did not deny the allegations but rather said I did not hurt no little girl. Adams stated, "I am invoking my rights to an Attorney." At which point we terminated the interview and advised Adams that he was under arrest.

Adams was charged with one count of Kidnaping/ First Degree due to the fact that he did willfully seize, confine, entice, decoy, abduct, conceal or carry away , thirteen year old Amber Valles for the purpose of sexually assaulting her. By threatening that he had a gun and coercing her to go with by threats to her life if she should run or try to get away.

Six counts of Sexual Assault Victim Under 14 Years due to the fact that he sexually assaulted thirteen year old Amber Valles against her will. By digitally penetrated her vagina for approximately 30 seconds (1 ct. ) ; Vaginally penetrated her with his penis for 30 seconds (1ct.) ; digitally penetrated her vagina again for 15 seconds (1ct.) ; vaginally penetrated her with his penis for 25 seconds (1ct); digitally penetrates her anus (1ct); penetrates her anally with his penis for approximately 10 seconds ( 1ct).

One count of Battery with The Intent to Commit Sexual Assault due to the fact that he grabbed her by the neck to restrain her and after sexually assault her.

Open and Gross Lewdness due to the fact that he did masturbate himself in front of Amber.

**Entered Date:** 01/10/2008 **Subject:** PHOTO LINE UPS **Entered By:** LEBARIO, G 5849
**Case Note:**
Photo Line-up put together and will show to victim on 1/11/08.....Photo Line-up under Name: Edward Adams ID# 1969904.....produced 1/10/08.

01/11/08 Victim, Amber positively identified Edward Adams as the person who sexually assaulted her on 12/14/07.

**Entered Date:** 01/04/2008 **Subject:** INITIAL AFIS RESULTS **Entered By:** LEBARIO, G 5849
**Case Note:**
AFIS results~ report to follow through the normal channels.

Latent Prints Submitted to Laboratory
Recovered By? P#□Date□Address
CSA Fried □8174□12/15/07□1111 Warbonnet Way #1/204

Comparison Results
Exemplarsi ID #SLocation(s) Identified
Edward ADAMS□1969904z Glass candle jar on the floor near the northwest corner of the south bedroom and the small open lotion packet located on top of the Wynn magazine under the couch

Comparison to the above listed individual was limited to the AFIS eligible latent prints.

Vicki Farnham, P# 7836
Forensic Scientist, Latent Print Examiner
LVMPD Forensic Laboratory
5605 W. Badura Ave. Suite 120B
Las Vegas NV 89118-4705
702-828-4211

**Entered Date:** 01/03/2008 **Subject:** LAB REQUEST **Entered By:** LEBARIO, G 5849
**Case Note:**
Under Event # 080103-2551, the McDonald's Assistant Manager, Kimberly Webb (360-3595 store, 351-7676 cell) called LVMPD Patrol Units and the Sex Crimes Detectives to respond to the McDonald located on 7851 W. Charleston Las Vegas, Nevada reference a possible subject that matched the description of the person of interest under event# 071214-1983.

Upon arrival, we made contact with subject Seth Goldberg who identified himself with a Nevada ID. Goldberg consented to a buccal swab. Patrol filled out a FI card and took a picture of Goldberg which is down loaded to dims. Goldberg stated he is transient and likes to hang out around Charleston/Durango area. Goldberg's physical description was close, but not an exact match to the person of interest.□□

Detectives completed a Forensic Request Form to have the buccal swab obtained from Goldberg to be compared to the DNA evidence collected under event# 071214-1983. □

Webb is advised to contact the Sex Crimes Detectives if she comes across any subjects that match the description of the person of interest.

Forensic Lab Request Desk Forensic Lab Request Desk 01/04/08 8:22 AM >>>
Your request has been received and entered into the Forensic Laboratory Case Management Database.

Latent Prints & DNA - Tamara Hill, LEST 702-828-5666
Firearms & Question Documents - Michelle Coburn, LEST 702-828-0233
Chemistry - Margaret Metten, LEST 702-828-4596

Entered Date: 01/03/2008 Subject: Entered By: LEBARIO, G 5849

Case Note:

CRIME SCENE REPORT:

THE SCENE: The scene was located inside apartment #204, on the second floor of building #1 , in the southwest corner of the building. The building had sustained fire damage at some point in time and appeared to be uninhabited. There was no obvious electricity inside the building and apartment #204 had no lights, heating, or water service. The laock to the front ( south facing ) entry door to the residence was disabled with paper wedge inside the receiver for the lock tongue of the doorknob, making entry possible by simply pushing the door inward. When entry was made a lit candle was observed in a glass jar, on the floor of the living room in front of the couch. There was very little fire damage inside apartment# 204 but there was water damage to the ceiling in the northwest (master) bedroom.

The residence was void of all furnishings except for a black leather couch which was located on the southside of the living room, a set of drawers located on the northside of the south bedroom, and there was a dining table with blue colored masking tape around it, securing the leafs of the table, located inside the patio area on the west side of the living room.

THE LIVING ROOM:

In addition to the couch on the southside of the living room other items of interest included a dirty, white colored bath towel located on the floor at the east end of the couch; a pair of white colored Nike sports shoes, with spider webs inside of them, located on the floor near the candle in front of the couch; a black colored nylon pouch with a white colored stain on it, loacted on the couch (east end) ; and a pair of white colored house slippers and a wad of blue colored masking tape ,loacted on the floor in front of the couch.

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**Entered Date:** 12/21/2007 **Subject:** SKETCH DONE/WAITING ON LAB RESULTS **Entered By:** LEBARIO, G 5849
**Case Note:**
12/21/07: Victim came in with mom and did a sketch. Victim rated the sketch on a scale of 1-10 , an 8 on accuracy.

Sketch is now available and the original has been placed on IS Gorsky's desk.

CD was picked up from the Sinclair Gas Station.

Myself and Sgt. Smith went back to the school in attempt to interview Anthony Hansen. Hansen was again absent from school.

Spoke with mom, Louise Valles who informed me that they will be out of town for the Holidays but she left me a number where she could be reached. ( 702) 448-4971 this is her dad's telephone number.

Mom also gave a new number of 506-7744.

**Entered Date:** 12/20/2007 **Subject:** **Entered By:** LEBARIO, G 5849
**Case Note:**
12/20/07: Detectives came in to conduct follow-up at 1200 hours.

I contacted Sgt. Gelber from CCSD and asked for assistance to view the cameras at the school for 12/14/07. I advised Sgt. Geleber that although the incident did not happen on campus we wanted to cover all our grounds. Sgt. Gelber responded to the school and assisted us with attempting to locate video. We learned that the video system only retains video on the hard drive for three days. We viewed the camera angles and they did not appear to be focused towards the areas in question.

While at the school we conducted an interview with Angela Abarzua . Angela stated that she recalls seeing Amber walking on Buffalo with WMA. Angela described that that the male was walking at a fast pace in front of Amber and that Amber was trying hard to keep up with him. She did not recall seeing the WMA holding or grabbing Amber by the arm or hand. Angela did say that the male had hair on his head and that he was not really bald but his hair was short.

Detective Prichard and I then went to the Sinclair Gas Station located at the S/W corner of Buffalo and Charleston. With the assistance of the manager we were able to obtain a possible time frame of when Amber was walking westbound on Charleston from Buffalo. Due to the camera angle and distance the video is of poor quality and will not work to make an identification of either Amber or the suspect. Amber is observed on video as she walks across the parking lot at 1546 hours. We established that at 1445 hours Amber was walking w/b on Charleston and at 1546 hours she got picked up by mom. The video will be available for pick up on 12/21/07.

We contacted the McDonld's located west of the Sinclair. The manager advised us that they do have cameras that face towards Charleston. The manager did advise us of constant problems with vagrants in the area and mentioned that most hang out towards the back of the busineses.

We canvassed the area and busineses making contact with managers and employees. I left my business card with contact numbers.

We checked the 7-11 located on the N/E corner of Charleston and Buffalo along with the Kilroys Bar and Grill. Neither had working cameras that face towards the streets.

We left are business cards with all the persons we made contact with and advised them to call if they should learn of any information that would be helpful to us.

All the persons we contacted advised us that they have had a problem with transients in the area due to the Social Security Office being down the street.

We have scheduled the victim to come in on 12/21/07 to do a sketch.

Forensic Lab request faxed.

Entered Date: 12/20/2007 Subject: Entered By: LEBARIO, G 5849

Case Note:

12/19/07: 0830 Called School District Police Dispatcher reference this event. She referred me to Lt. Young at 799-7830. Called and left message for him to call me.

0835 Called Johnson Middle School at 799-4497 to get copy of letter that was sent home on Monday. No answer at the school.

0836 Called Betty in School District Police Dispatch. She stated she would call Lt. Young and have him call me back.

0849 Received a call from Lt. Young. He stated that he has no knowledge of any incident that occurred this past weekend or any incident in the past week in the area of Johnson Middle School. Stated he would look into it and call me back. Reference the letter that was sent home he stated anytime there is an incident reported at the school they send home a standard letter to advise the parents.

0855 Called Clark County School District Police records and spoke with Neva. She stated that she is not aware of any incidents that occurred over the past weekend but she referred me to Sgt. Gelber because he is assigned to the district where Johnson Middle School is located.
Sgt. Gelber's cell # is 491-4477.

0927 Called Sgt. Gelber who stated that he is aware of an incident that occurred ½ mile away from Johnson Middle School. He stated it occurred in the area of Alta and Buffalo. He stated that he faxed Lt. Young the letter that was being sent home to parents from the school administrators.

0935 Called Sgt. Gelber again, he advised me the victim's name was Amber Zalles and that Dean Torres at Johnson Middle School would have any information reference this event. He also stated that he did not have a copy of the letter that was sent home.

0940 Called Johnson Middle School and spoke with Heidi (799-4480 ext. 4100)who is the office administrator for the Dean of Students. She stated that she would fax me a copy of the letter that was sent home to parents. She also stated that she would try to find out the students names that were with Amber prior to her being kidnaped.

1000 Called Heidi back (799-4480 ext. 4100) when asked about the letter that was sent home to parents, specifically the portion that stated a couple of female students were approached by a stranger she stated that she is aware of a few incidents that have occurred in the past few days/week

1. A parent called yesterday 12/17/07 and advised that she witnessed 2 females that were approached by an unknown person driving a white Ford Escort. The parent advised that the girls walked up to the vehicle like they knew the occupant and started to get in the vehicle but then changed their minds. The parent advised that the unknown girls then left the area on foot. It is unknown if this information was forwarded to School District PD or LVMPD.

2. Last week a student came in and reported a similar incident. She did not know for sure if this was reported to CCSD PD but believed it was. She had no information about the student that made this report.

1005 Lt. Young called again and stated that he had no information reference any incident I was talking about.

1006 Received message from Neva of CCSD PD. She stated that she researched events and could find no incidents that were similar to those I described to her.

1016 Received message from Heidi at Johnson Middle School, returned her call. She stated that the two students names that were possible witnesses to Amber's incident were Anthony Hansen and Sierra Cipriano.

1018 Notified Sgt. Bobby Smith LVMPD of the names of students.

1020 Called Heidi at Johnson Middle School again and asked her to send me a copy of Anthony Hansen and Sierra Cipriano's 703's.

Entered Date: 12/20/2007 Subject: Entered By: LEBARIO, G 5849

Case Note:

We located the condo where the alleged 426 and 427 occurred under event #071214-1983. It was NOT where the victim had described it and it would have been difficult not to observe it when we did our drive-by the night before. CSI responded and processed the scene.

There are discrepancies between the versions told to us by the victim and what we discovered.

There were some blue tape found in the abandoned apt but it was the paper kind used for painting. It had very poor adhesive quality and tore very easily. The "dirty white, scummy Nike-type" shoes described by the victim were discovered at the scene. The suspect couldn't have been wearing them though as one shoe's interior had a black widow spider web covering the entrance. We did find several candles there which the victim had described and found one lit. A check for biological evidence on the couch revealed very little fluids. The amount observed was not consistent with the volume of sexually related bodily fluids, vaginal secretions, semen and blood there should have been per the description of the victim. A towel was located as described by the victim. The towel revealed bodily fluids but did so weakly. The victim had told one version where the suspect had taken the towel into the kitchen and dampened it in the kitchen sink prior to giving it to the victim to wipe herself off. This condo building had a fire in May 07. Both the water and electricity had been turned off due to smoke and fire damage. They have not been turned on since then per FD requirements. The towel could not have been dampened with water from the kitchen sink. A canvas of the other condos revealed an eye witness who saw the victim and suspect walk towards this abandoned condo. The witness is a physically fit and tall BMA who passed so close to the suspect (they crossed paths) he recalls greeting the suspect with "What's up?" The girl's description matches the victim's description. This witness stated the two were not touching and the girl didn't appear to be in distress nor emotional. When we interviewed the victim previously she told us the only person she saw while with the suspect was her friend Jonathon. It is unknown why the victim doesn't recall this witness or failed to tell us about him. It is unknown why she didn't ask him for help.

One of the male friends the victim told us about is Anthony but she insisted he is not her boyfriend. The victim told us he didn't have anything to do with this incident and stated she doesn't know his last name or phone number. She also said she just knows him in school to say "Hi." When we checked her cell phone, there is photo of Anthony as her screen saver and with the caption, I Love Anthony Forever.

There are a few other minor details which differ from the victim's versions.

Finally, we advised the mother not to try and locate the suspect herself and allow us to conduct a complete investigation. During our canvas, we discovered the victim's father was also searching for the condo and the suspect. Det. Lebario called the victim's mother and asked her to remind her family members and friends to allow us to investigate the crime. He also explained they could easily compromise the case and allow the suspect to get off because of tainted evidence. She promised she would stop and would tell her husband the same thing.

# EXHIBIT B

**Jane Everitt**

---

**From:** Jeffrey Maningo
**Sent:** Thursday, October 22, 2009 1:37 PM
**To:** Jane Everitt
**Subject:** RE: witness list

una Joy Williams

Jane: DA finally looked at detective notes and thinks they found our unidentified black male. See if you can contact him, however, the information is two years old.

Andre Randle
D.O.B. 8-16-91
508-7218
1111 Warbonnet Way #162 89117

10/22
1403 Ws. N.Gr.

-----Original Message-----
From: Jane Everitt
Sent: Tue 10/20/2009 4:47 PM
To: Anita Harrold; Jeffrey Maningo
Subject: witness list

una Joy Williams
lives there w/husband
same px - No good. No kids @ apt.

Anita,

Jeff asked me to send you a witness list for the Edward Adams case (C241003). The names are as follows:

Lori Galloway 2630 Wyandotte St. Apt #6, LVN 89102
Tom Galloway same address
Jamie Galloway same address
Breanna Galloway same address
Daneil Irish same address
Mark Alberti 6753 Carrera Dr., LVN 89103

Thank you,

Jane

# EXHIBIT C

TRAN

FILED
MAR 25 1 35 PM '10
CLERK OF THE COURT

ORIGINAL

DISTRICT COURT

CLARK COUNTY, NEVADA

| | |
|---|---|
| THE STATE OF NEVADA,<br>Plaintiff,<br>vs.<br>EDWARD MICHAEL ADAMS,<br>Defendant. | CASE NO. C241003<br>DEPT. XVII |

BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

**TUESDAY, OCTOBER 27, 2009**

***RECORDER'S TRANSCRIPT OF HEARING RE:***
***ALL PENDING MOTIONS***

APPEARANCES:

For the State: CRAIG L. HENDRICKS, ESQ.,
RICHARD H. SCOW, ESQ.,
Deputy District Attorneys

For the Defendant: JEFFREY S. MANINGO, ESQ.,
Deputy Public Defender

RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

RECEIVED
MAR 25 2010
CLERK OF THE COURT

**LAS VEGAS, NEVADA; TUESDAY, OCTOBER 27, 2009**

[Proceeding commenced at 8:55 a.m.]

THE COURT: 241003, Edward Adams. Mr. Adams is present in custody.

MR. MANINGO: Jeff Maningo on behalf of Mr. Adams' behalf.

MR. HENDRICKS: Good morning, Judge. Craig Hendricks and Richard Scow on behalf of the State.

THE COURT: Time set for Calendar Call; is this matter ready to go to trial?

MR. HENDRICKS: It is, Judge.

MR. MANINGO: We are ready, Judge.

THE COURT: How many days?

MR. HENDRICKS: At least four. I anticipate approximately 15 State witnesses with several out-of-state witnesses.

MR. MANINGO: And we also have probably 4 to 5 witnesses.

THE COURT: If I send it to overflow, it's got to be completed in 1 week.

MR. HENDRICKS: I think we can.

MR. MANINGO: I don't know. I mean --

MR. HENDRICKS: If it's a fast Judge. If it was in here, yeah we'd be done with it, but if it's --

MR. MANINGO: I don't know that we can guarantee a week, so -- and especially if we have out-of-state witnesses.

THE COURT: Well, that's no longer an issue on overflow, but we'll send you over there and we'll have Kristen make a note that we need to have it completed in 5 days. So someone's going to have to give you -- a Judge that picks up the case is going to have full trial days.

THE CLERK: That'll be October 29th, 9 a.m., Department 18. What about the motions to dismiss?

MR. MANINGO: Oh, Judge, the defense is actually withdrawing that motion. I spoke with Mr. Hendricks and we have come to an agreement regarding the witness at issue and getting some leeway during the cross-examination regarding that witness -- during the cross-examination of the detective.

MR. HENDRICKS: We'll come up with an agreement on what the detectives can state in regards to what that witness would have stated because he hasn't been located yet.

THE COURT: All right.

MR. HENDRICKS: So we'll work around it.

THE COURT: Okay.

MR. HENDRICKS: We'll be fine.

MR. MANINGO: That's correct.

THE COURT: All right. Thank you.

MR. HENDRICKS: Thanks, Judge.

THE COURT: You're welcome.

THE CLERK: Thursday at 9 a.m. in Department 18 for overflow.

[Proceeding concluded at 8:57 a.m.]

* * * * *

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

Michelle Ramsey
Court Recorder/Transcriber

# EXHIBIT D

ORIGINAL

PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

FILED
OCT 21 2009
CLERK OF COURT

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| THE STATE OF NEVADA,<br><br>Plaintiff,<br><br>v.<br><br>EDWARD MICHAEL ADAMS,<br><br>Defendant. | CASE NO. C241003<br><br>DEPT. NO. XVII<br><br>DATE: October 27, 2009<br>TIME: ~~8:00~~ 8:15 a.m. |

**DEFENDANT'S MOTION TO DISMISS BASED UPON THE STATE'S FAILURE TO PRESERVE EXCULPATORY EVIDENCE, AND MOTION TO DISMISS DUE TO THE STATE'S FAILURE TO PROVIDE BRADY MATERIAL**

COMES NOW, the Defendant, EDWARD ADAMS, by and through JEFF MANINGO, Deputy Public Defender and hereby moves the court to dismiss the case based upon the State's failure to preserve material evidence, and provide, pursuant to law, Brady material.

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

DATED this 20 day of October, 2009.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
JEFFREY S MANINGO, #8845
Deputy Public Defender

DEPARTMENT XVII
NOTICE OF HEARING
DATE 10/27/09 TIME 8:15 am
APPROVED BY EP

RECEIVED
OCT 21 2009
CLERK OF THE COURT

**DECLARATION**

JEFFREY S MANINGO makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and the Defendant has represented the following facts and circumstances of this case.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 12 day of October, 2009.

JEFFREY S MANINGO

## FACTS

Mr. Adams has been charged, by way of criminal complaint, with Multiple counts of Sexual Assault with a Minor Under 14 years of age, Lewdness with a Minor Under 14 years of age, First Degree Kidnapping, Use of a Deadly Weapon. According to the police reports on file, as well as the alleged victim's testimony at preliminary hearing, Mr. Adams abducted the alleged victim in broad daylight near her school, and forcibly escorted her across the street, with the use of a handgun, to an abandoned building where he sexually assaulted her. It is also alleged that during the kidnap, the accuser was highly emotional and frightened.

During the ensuing investigation, Metropolitan Police detective Gabriel Lebario located an eye witness who saw Mr. Adams and the alleged victim crossing the street together. The witness described the demeanor of the young girl as normal, unemotional, and unafraid. He stated that Mr. Adams was also acting normal, and that he exchanged greetings with Mr. Adams. This contradicts the accuser's testimony and lays the foundation for a defense based on consent.

This information was provided by the detective in his report, however, the only information about the witness himself is "tall, physically fit, adult black male". No name, address, phone number, or any other potential means of contacting this witness was provided. This witness' name and information appear nowhere in the discovery, nor on any witness lists. No follow up investigation was ever done by the Detective in this case regarding this unidentified witness.

## ARGUMENT

### I. The State failed to preserve evidence because the detective who elicited exculpatory evidence from a witness failed to identify the witness or obtain any contact information for the witness.

A district attorney shall permit a defendant to "inspect and to copy or photograph any...[b]ooks, papers, documents, tangible objects...which the prosecuting attorney intends to introduce during the case in chief of the state and are within the possession, custody, or control of the state, the existence of which is known, or by the exercise of due diligence may become known to the prosecuting attorney." NRS 174.235(1)(c). Additionally, "a conviction may be reversed when the state loses evidence if the defendant is prejudiced by the loss." Sanborn v. State, 107

Nev. 399, 407, 812 P.2d 1279, 1287 (1991); citing Sparks v. State, 104 Nev. 316, 759 P.2d 180 (1988).

A defendant can establish a due process violation when the state loses or destroys evidence by demonstrating either "(1) that the state lost or destroyed the evidence in bad faith, or (2) that the loss unduly prejudiced the defendant's case and the evidence possessed an exculpatory value that was apparent before the evidence was destroyed." Sheriff v. Warner, 112 Nev. 1234, 1239-40, 926 P.2d 775, 778 (1996); citing State v. Hall, 105 Nev. 7, 9, 768 P.2d 349, 350 (1989).

**a. The State's failure to provide access to this exculpatory witness was a result of bad faith because the police have an affirmative duty to properly preserve and document evidence as a result of their investigation.**

"Bad faith" can either be intentional deception or dishonesty, or an intentional failure to meet an obligation or duty. Here, the police who responded to the alleged crime scene and who retrieved the lap-top computer had a duty to impound the computer as it was evidence of the alleged crime of robbery. The police turned over the lap-top to the alleged victim immediately after it was recovered. As such, any forensic evidence, or lack thereof, that was on the computer is now forever lost.

Additionally, a defendant has a right, pursuant to Nevada statute, to inspect evidence of a crime. See NRS 174.235. It is axiomatic that the right to inspect evidence means nothing if the State intentionally fails to meet its obligation to secure the evidence. Due to the elapsed time since this crime was alleged, locating a witness, even if given information now, is much more difficult if not impossible.

**b. Even if the loss or destruction of evidence was not due to bad faith, the defendant has nevertheless suffered prejudice because the exculpatory statements made by the witness are arguably hearsay, and the defense cannot locate an unidentified witness to testify at trial.**

To establish prejudice, a defendant "must show that it could be reasonably anticipated that the evidence would have been exculpatory and material to the defense." Mortensen v. State, 115 Nev. 273, 284, 986 P.2d 1105, 1112 (1999); quoting Leonard v. State, 114 Nev. 639, 654, 958 P.2d 1220, 1232 (1998)(citing Boggs v. State, 95 Nev. 911, 913, 604 P.2d 107,

108 (1970)). "Mere assertions by defense counsel that an examination of the evidence will potentially reveal exculpatory evidence does not constitute a sufficient showing of prejudice." Warner, 112 Nev. at 1242, 926 P.2d at 779.

Here, it is undisputed that Detective Lebario was first aware of the alleged victim's story regarding the forcible kidnap, and later found out from the unidentified witness that the accuser's story was being contradicted. The mystery witness was obviously beneficial to the defense in this case, showing that the accuser was inconsistent, and that the contact between Mr. Adams and the alleged victim was consensual.

II. **The State continues to violate Brady, and its progeny, by not providing the defense with information concerning the identification or whereabouts of this essential defense witness.**

"[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Brady v. Maryland, 373 U.S. 83, 87 (1963). The Nevada Supreme Court has held, "Brady and its progeny require a prosecutor to disclose evidence favorable to the defense when the evidence is material to either guilt or punishment." Mazzan v. Warden, 116 Nev. 48, 66, 993 P.2d 25, 34 (2000). Additionally, "[e]vidence must also be disclosed if it provides grounds for the defense to attack the reliability, thoroughness, and good faith of the police investigation, to impeach the credibility of the state's witness, or to bolster the defense case against prosecutorial attacks." Id. at 67, 993 P.2d at 37 (citing Kyles v. Whitley, 514 U.S. 419, 439-40 (1995)). Lastly, evidence need not be independently admissible to be material. Mazzan, 116 Nev. at 67, 993 P.2d at 37 (quoting Carriger v. Stewart, 132 F.3d 463, 481 (9th Cir. 1997)).

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**CONCLUSION**

Based upon the foregoing, Mr. Adams respectfully requests that this court dismiss the case based upon the State's failure to preserve evidence, or based upon the State's refusal to provide Brady material. In the alternative, Mr. Adams requests this court admit evidence of the hearsay statements and provide the defense with a specific jury instruction regarding spoliation of the evidence.

DATED this 20 day of October, 2009.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
JEFFREY S. MANINGO, #8845
Deputy Public Defender

**NOTICE OF MOTION**

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 27th day of October, 2009, at 8:00 a.m.

DATED this 20 day of October, 2009.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
JEFFREY S MANINGO, #8845
Deputy Public Defender

**RECEIPT OF COPY**

RECEIPT OF COPY of the above and foregoing DEFENDANT'S MOTION TO DISMISS BASED UPON THE STATE'S FAILURE TO PRESERVE EXCULPATORY EVIDENCE, AND MOTION TO DISMISS DUE TO is hereby acknowledged this 21 day of October, 2009.

CLARK COUNTY DISTRICT ATTORNEY

By: _____

Electronically Filed
12/28/2021 9:45 AM
Steven D. Grierson
CLERK OF THE COURT

**RTRAN**

DISTRICT COURT

CLARK COUNTY, NEVADA

| | |
|---|---|
| STATE OF NEVADA,<br>Plaintiff,<br>vs.<br>EDWARD M. ADAMS,<br>Defendant. | CASE NO.: 08C241003<br>DEPT. XIX |

BEFORE THE HONORABLE WILLIAM D. KEPHART DISTRICT COURT JUDGE

WEDNESDAY, JULY 24, 2019

***RECORDER'S TRANSCRIPT OF HEARING RE:***
***STATUS CHECK: BRIEFING SCHEDULE***

APPEARANCES:

For the Plaintiff: CHARLES W. THOMAN, ESQ.
Chief Deputy District Attorney

For the Defendant: RACHAEL E. STEWART, ESQ.

RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER



Case Number: 08C241003

Las Vegas, Nevada; Wednesday, July 24, 2019

[Hearing commenced at 8:50 a.m.]

THE COURT: State of Nevada versus Edward Adams. This is C241003.

MS. STEWART: Rachael Stewart for Mr. Adams.

MR. THOMAN: Cal Thoman for the State.

THE COURT: This was last on calendar in 2016. And now we have a supplemental that's been filed on June 28th, 2019. Did you want some time to respond to it, Mr. --

MR. THOMAN: If I could have 60 days, Your Honor. I think there's an August 27th date right now. But once the Court put this on calendar, I hadn't looked at it.

So, I'd respectfully request 60 days from today.

THE COURT: Okay. 60 days and then give counsel for the Petitioner 30 days to file a reply.

THE COURT CLERK: Okay.

THE COURT: And then set it for hearing two weeks after that.

THE COURT CLERK: So, the response will be September 25th, the reply will be October 30th, and the hearing will be November 13th at 8:30.

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MR. THOMAN: Thank you.

MS. STEWART: Thank you.

[Hearing concluded at 8:51 a.m.]

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

Brittany Amoroso
Court Recorder/Transcriber

Electronically Filed
12/28/2021 9:45 AM
Steven D. Grierson
CLERK OF THE COURT

**RTRAN**

DISTRICT COURT

CLARK COUNTY, NEVADA

| | |
|---|---|
| STATE OF NEVADA,<br>Plaintiff,<br>vs.<br>EDWARD M. ADAMS,<br>Defendant. | CASE NO.: 08C241003<br>DEPT. XIX |

BEFORE THE HONORABLE WILLIAM D. KEPHART DISTRICT COURT JUDGE

WEDNESDAY, NOVEMBER 13, 2019

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

APPEARANCES:

For the Plaintiff: CHARLES W. THOMAN, ESQ.
Chief Deputy District Attorney

For the Defendant: RACHAEL E. STEWART, ESQ.

RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER



Case Number: 08C241003

Las Vegas, Nevada; Wednesday, November 13, 2019

[Hearing commenced at 8:38 a.m.]

THE COURT: All right. This is the State of Nevada versus Edward Adams. This is 08C241003.

Mr. Adams is not present. He's in Nevada Department of Corrections. And who's here on his behalf?

MS. STEWART: Rachael Stewart, here.

THE COURT: Okay. All right. So, I've had an opportunity to review the petition, the supplemental to the petition, the State's opposition, and then the reply of the State's opposition. Did you want to add anything to the --

MS. STEWART: We don't. We're actually asking to continue the argument --

THE COURT: Okay.

MS. STEWART: -- for at least a few weeks. Probably to the first of the year.

THE COURT: So you want to go into 2020?

MS. STEWART: If we can.

THE COURT: Any objection?

MR. THOMAN: No objection, Your Honor.

THE COURT: All right. Okay.

THE COURT CLERK: I'm sorry. After the first of the year, Judge?

THE COURT: Yeah.

THE COURT CLERK: How's January 13th at 8:30?

MR. THOMAN: Works for the State.

THE COURT: Does that work for you?

MS. STEWART: Let me just double check because I know that we have something that day.

Can we not do the 13th? I apologize.

THE COURT CLERK: The 15th, that same week?

MS. STEWART: Perfect.

THE COURT CLERK: Okay, so it'll be January 15th at 8:30.

THE COURT: Anything else?

MR. THOMAN: No, Your Honor.

MS. STEWART: No, that's it. Thank you.

THE COURT: All right. Thank you.

[Hearing concluded at 8:39 a.m.]

******

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

Brittany Amoroso
Court Recorder/Transcriber

Electronically Filed
12/27/2021 1:57 PM
Steven D. Grierson
CLERK OF THE COURT

**RTRAN**

DISTRICT COURT

CLARK COUNTY, NEVADA

| | |
|---|---|
| THE STATE OF NEVADA,<br>Plaintiff,<br>vs.<br>EDWARD M. ADAMS,<br>Defendant. | CASE#: 08C241003<br>DEPT. III |

BEFORE THE HONORABLE MONICA TRUJILLO,
DISTRICT COURT JUDGE
MONDAY, JANUARY 11, 2021

***RECORDER'S TRANSCRIPT OF HEARING:***
***PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)***

ALL APPEARANCES VIA BLUEJEANS:

| | |
|---|---|
| For the Plaintiff: | RICHARD SCOW, ESQ.<br>Chief Deputy District Attorney |
| For the Defendant: | JAMES A. ORONOZ, ESQ. |

RECORDED BY: REBECA GOMEZ, COURT RECORDER

Las Vegas, Nevada, Monday, January 11, 2021

[Case called at 9:31 a.m.]

THE COURT: Okay, calling page 8, 08C241003, State of Nevada versus Edward Adams. He is in the custody of Nevada Department of Corrections.

This case was continued by stipulation order of the parties to April 21st at 8:30 a.m.

[Hearing concluded at 9:32 a.m.]

* * * * * *

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

Rebeca Gomez
Court Recorder/Transcriber

Electronically Filed
12/27/2021 1:57 PM
Steven D. Grierson
CLERK OF THE COURT

**RTRAN**

DISTRICT COURT

CLARK COUNTY, NEVADA

| | |
|---|---|
| THE STATE OF NEVADA,<br>Plaintiff,<br>vs.<br>EDWARD M. ADAMS,<br>Defendant. | CASE#: 08C241003<br>DEPT. III |

BEFORE THE HONORABLE JOSEPH BONAVENTURE,
DISTRICT COURT JUDGE
WEDNESDAY, APRIL 21, 2021

***RECORDER'S TRANSCRIPT OF HEARING:***
***PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)***

ALL APPEARANCES VIA BLUEJEANS:

| | |
|---|---|
| For the Plaintiff: | RICHARD SCOW, ESQ.<br>Chief Deputy District Attorney |
| For the Defendant: | JAMES A. ORONOZ, ESQ. |

RECORDED BY: GAIL REIGER, COURT RECORDER

Las Vegas, Nevada, Wednesday, April 21, 2021

[Case called at 8:42 a.m.]

THE COURT: 08C241003, Edward Adams.

Who's here on Edward Adams?

MR. SCOW: Richard Scow for the State.

MR. ORONOZ: James Oronoz for defense, Your Honor.

THE COURT: All right. What's the situation on this writ?

MR. ORONOZ: Your Honor, with your permission, we would both ask to pass this a couple weeks if the Court would do that for us.

THE COURT: So ordered. Couple weeks.

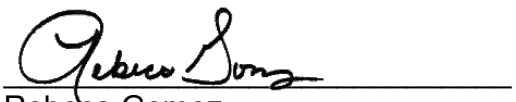
MR. ORONOZ: Thank you.

THE CLERK: May 12th, at 8:30.

[Hearing concluded at 8:43 a.m.]

* * * * * *

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



Rebeca Gomez
Court Recorder/Transcriber

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

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|---|---|
| THE STATE OF NEVADA,<br><br>Plaintiff,<br>vs.<br><br>EDWARD M. ADAMS,<br><br>Defendant. | CASE NO. 08C241003<br><br>DEPT. NO. III |

BEFORE THE HONORABLE MONICA TRUJILLO, DISTRICT COURT JUDGE

WEDNESDAY, MAY 12, 2021

***RECORDER'S TRANSCRIPT OF PROCEEDINGS***
***PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)***

APPEARANCES:

For the State: RICHARD H. SCOW
Chief Deputy District Attorney
(*via teleconference)*

For the Defendant: JAMES A. ORONOZ, ESQ.
(*via teleconference)*

RECORDED BY: REBECA GOMEZ, COURT RECORDER



Case Number: 08C241003

LAS VEGAS, NEVADA, WEDNESDAY, MAY 12, 2021, 9:02 A.M.

* * * * * *

THE COURT: Case number 08C241003, State of Nevada versus Edward Adams.

Who's here on behalf of the State? On behalf --

MR. SCOW: Richard Scow for the State.

THE COURT: Thank you.

On behalf of defendant?

MR. ORONOZ: Jim Oronoz on behalf of the defendant, Your Honor.

THE COURT: Thank you.

And Mr. Adams is not present. He's in the custody of the Nevada Department of Corrections. This is on for a post-conviction petition for writ of habeas corpus. I've reviewed the petition, the supplemental petition, and the State's response, as well the reply to the State's response.

The Court would really like to focus on the juror issue, Mr. Oronoz. Obviously, you know, the stuff you laid out is concerning but my -- the Court's issue or concern is what exactly is the prejudice and how are you establishing that there would be a different outcome? Because other than saying that she could not be fair impartial, there's no other indication that she wasn't.

MR. ORONOZ: Well, Your Honor, I'm happy to answer that question. Mr. Scow and I had agreed earlier just to submit this, but if the Court has specific questions, I can certainly answer them. Okay?

THE COURT: That's my specific question. So go ahead.

MR. ORONOZ: Okay. Your Honor, I mean, the fact of the matter is is we -- the juror -- we simply can't be sure whether or not, you know, that person's bias

affected things. Okay? And our concern is is that when you have a juror issue like that, you know, sometimes it might be difficult to prove prejudice, but, you know, the very fact that the issue was present, I think somehow should persuade the Court to perhaps give us an evidentiary hearing and perhaps develop this a little more.

THE COURT: Okay. Mr. Scow, any response to that?

MR. SCOW: I think our brief lays it out pretty clearly our position. The juror was canvassed as to her knowing both the judge and one, maybe two social, brief social contacts with the C.S.A. witness. She mentioned as to both issues that she would be fair, would not give any different treatment as to the C.S.A. witness versus any other witnesses. She indicated that she would be fair in all aspects and that's sufficient. There's no reason to second-guess what happened at this point in time and everything was done properly.

THE COURT: Okay. Thank you.

Anything further, Mr. Oronoz?

MR. ORONOZ: No, Your Honor. I would just submit it on the briefs.

THE COURT: All right. Thank you.

So after reviewing the briefs the Court will adopt the State's response and the request for evidentiary hearing and the post-conviction petition is denied for the reasons set forth in the State's response.

State, please prepare the findings of facts and conclusions of law and submit it to the Court.

MR. SCOW: Yes, Your Honor.

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THE COURT: Thank you.

MR. ORONOZ: Thank you, Your Honor.

PROCEEDING CONCLUDED AT 9:06 A.M.

* * * * * * * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-video recording of this proceeding in the above-entitled case.

Sara Richardson

SARA RICHARDSON
Court Recorder/Transcriber

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**FCL**
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Las Vegas, Nevada 89155-2212
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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

EDWARD MICHAEL ADAMS,
#1969904

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: 08C241003

DEPT NO: III

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

DATE OF HEARING: May 12, 2021
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable TRUJILLO, District Judge, on the 12th day of May, 2021, the Petitioner not being present, proceeding in proper person, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through RICHARD SCOW, 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:

## STATEMENT OF THE CASE

On February 12, 2008, the State filed an Information charging Edward Adams (hereinafter "Petitioner") as follows: Count 1 – First Degree Kidnapping with Use of a Deadly

Weapon (Felony – NRS 200.310, 200.320, 193.165), Count 2 – Battery with Intent to Commit a Crime with Use of a Deadly Weapon (Felony – NRS 200.400, 193.165), Counts 3 through 11 – Sexual Assault with a Minor Under Fourteen Years of Age with Use of a Deadly Weapon (Felony – NRS 200.364, 200.366, 193.165), and Count 12 – Open or Gross Lewdness (Gross Misdemeanor – NRS 201.210). On October 28, 2009, the State filed an Amended Information with the same charges.

On November 2, 2009, Petitioner's jury trial commenced. On November 4, 2009, the jury found Petitioner guilty of Count 1 – First Degree Kidnapping, Count 2 – Battery with Intent to Commit Sexual Assault, Counts 3, 4, 5, 6, 7, 8 and 11 – Sexual Assault, and Count 12 – Open or Gross Lewdness. The jury found Petitioner not guilty of Counts 9 and 10.

On January 13, 2010, the district court sentenced Petitioner as follows: Count 1 – to 60 months to life and $2932.00 in restitution; Count 2 – to 60 months to life, consecutive to Count 1; Count 3 – to 120 months to life, consecutive to Count 2; Count 4 – to 120 months to life, consecutive to Count 3; Count 5 – to 120 months to life, consecutive to Count 4; Count 6 – to 120 months to life, consecutive to Count 5; Count 7 – to 120 months to life, consecutive to Count 6; Count 8 – to 120 months to life, consecutive to Count 7; Count 11 – to 120 months to life, consecutive to Count 8; and Count 12 – to 12 months, concurrent with all other counts.

The court also imposed a special sentence of Lifetime Supervision to commence upon release from any term of imprisonment, probation, or parole. The court also ordered Petitioner to register as a sex offender after any release from custody. The court entered the Judgment of Conviction on February 2, 2010.

Petitioner filed his Notice of Appeal on February 22, 2010. The Nevada Supreme Court affirmed Petitioner's Judgment of Conviction on July 26, 2012. Remittitur issued on August 21, 2012.

On September 11, 2012, Petitioner filed a Post-Conviction Petition for Writ of Habeas Corpus. On October 15, 2012, the court appointed counsel for Petitioner. On September 4, 2015, the Court entered an Ex Parte Order of Appointment to appoint Dr. Hariton to "review medical records and investigate issues." On May 5, 2016, Petitioner filed a Motion

to Place on Calendar for the Purpose of Obtaining SANE Exam Photographs from the District Attorney's Office ("Motion"). The State filed an opposition to the motion on May 10, 2016. The Court denied Petitioner's motion on May 16, 2016. The order denying the motion was filed on June 1, 2016.

On August 31, 2016, Petitioner filed a second Motion to Place on Calendar for the Purpose of Obtaining SANE Exam Photographs from the District Attorney's Office ("Second Motion"). The State filed an opposition to the second motion on May 10, 2016. The Court denied Petitioner's motion on September 6, 2016. The order denying the motion was filed on June 1, 2016. On September 12, 2016, the Court granted the motion in part and ordered the State to provide the photographs in their possession.

On June 28, 2019 Petitioner filed a Supplemental Post-Conviction Petition for Writ of Habeas Corpus. The State filed its Response to Petitioner's pleadings on September 26, 2019. On May 12, 2021, this matter came before this Court, at which time this Court heard arguments. The Court stated its Findings, Conclusions, and Order based on the written pleadings, as follows:

## ANALYSIS

### I. PETITIONER RECEIVED EFFECTIVE ASSITANCE OF COUNSEL

#### A. Standard Of Review

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

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

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

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

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

Based on the above law, the role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). This analysis does not mean that the court should "second guess reasoned choices between trial tactics nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success." Id. To be effective, the constitution "does not require that counsel do what is impossible or unethical. If there is no bona fide defense to the charge, counsel

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cannot create one and may disserve the interests of his client by attempting a useless charade." United States v. Cronic, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

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

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

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

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**B. Petitioner's Counsel Was Not Ineffective For Allowing A Juror To Remain On The Panel Who Knew The Judge And One Witness Because The Juror Was Able To Remain Fair And Impartial.**

The Nevada Supreme Court has held that it is improper for Petitioner to make factual assertions without "adequately cit[ing] to the record in his briefs or provide this court with an adequate record." Thomas v. State, 120 Nev. 37, 43, 83 P.3d 818, 822 (2004). Here, Petitioner has failed to cite to any record in support of his claim of ineffective assistance of counsel. Instead of supporting his assertions with the record, Petitioner just makes these assertions that because Juror 7 remained on the jury, it resulted in his conviction. This is not supported with any evidence from the record, and thus, is rejected.

Moreover, Petitioner has failed to demonstrate that the juror was not fair and impartial. During voir dire, the juror acknowledges to the judge that she can be fair and impartial despite knowing him:

> PROSPECTIVE JUROR NO. 156: Your Honor, I'm juror number 156. You and I have met socially several times over the past 20 years. I worked with your wife at the Attorney General's office back in the 1990s.
>
> THE COURT: Okay. Anything about that association or relation that might cause you to –
>
> PROSPECTIVE JUROR NO. 156: No, sir.
>
> THE COURT: -- judge this case unfairly or be – you wouldn't
>
> PROSPECTIVE JUROR NO. 156: No.
>
> THE COURT: -- affect your ability to be fair and impartial?
>
> PROSPECTIVE JUROR NO. 156: No.
>
> THE COURT: All right. Thank you very much.

Jury Trial Transcript Day 1, November 2, 2009, at 17-18.

The juror then affirms again to the State that she can still remain fair and impartial despite knowing the judge:

> MR. HENDRICKS: One last question. You said that you were familiar with Judge Barker and his wife.
>
> PROSPECTIVE JUROR NO. 156: Yes, yes.

//

MR. HENDRICKS: Is that going to affect you in any way in being able to make a just decision in regards to both defense and the State?

PROSPECTIVE JUROR NO. 156: No.

Jury Trial Transcript Day 1, November 2, 2009, at 96-87.

Additionally, the juror acknowledges that she can be fair and impartial despite knowing the State's witness, Shayla Joseph:

MR. HENDRICKS: Thank you, Judge. State calls Shayla Joseph.

JUROR NO. 7: Excuse me, your Honor. I realize I know Shayla Joseph. Just met her one time socially.

THE COURT: Okay.

JUROR NO. 7: I'm recognizing the name now.

THE COURT: Parties approach.

(Off-record bench conference).

. . .

THE COURT: Record should reflect we're outside the presence of the jury. Record should further reflect that parties approached after Juror No. 7, Ms. Clayton, indicated that she had knowledge, independent familiarity with the previous witness, Ms. Joseph, that was just called. And parties agreed to address this issue out – well, after the witness had completed her testimony.

It would be my inclination to call Ms. Clayton back in to – inquire as to her – the base of her knowledge. I'll give each side an opportunity to inquire and make decisions on whether or not you want to challenge her as consequence of this disclosure.

MR. HENDRICKS: No, I think that's a great idea just to – just to have that on the record. Just to make sure Mr. Maningo and the defendant's rights are preserved just in case.

MR. MANINGO: Agreed.

THE COURT: That's exactly what I want to do. Could you go ask Danny to bring in Juror No. 7, please.

(Juror No. 7 present)

THE COURT: Thank you. Record will reflect Ms. Clayton's returned to the courtroom, Juror No. 7.

Ms. Clayton, you indicated that you had some previous knowledge or you know Ms. Joseph, the previous witness called, so we've taken you outside the presence of the rest the jury to inquire about

how you know Ms. Joseph. Could you tell us a little bit about that relationship?

JUROR NO. 7: When I – since we're having crime scene examiners here, and I heard her name and I thought oh, my God, I've met – we have a – Shayla and I have a mutual friend named Tim Speese (phonetic), who's a police officer. And I met Shalya once, perhaps twice, over the summer socially at – I mean, at a bar, you know, just because we have mutual friends. And she and I spoke a few minutes.

I don't even think she probably would have even recognized me, honestly. But she has a distinctive name. And again, when (indiscernible) and again, she's not somebody that I consider to be – you know, she is somebody that I met once, possibly twice and we have a very good mutual friend.

THE COURT: All right. State, any inquiry of Ms. Clayton as a consequence of that disclosure?

MR. HENDRICKS: No. Thanks, Judge.

THE COURT: Ms. Clayton, anything about that contact, as you described with Ms. Joseph, that might affect your ability to be fair and impartial in this case?

JUROR NO. 7: No, not at all.

THE COURT: Mr. Maningo, any questions?

**MR. MANINGO: Ms. Clayton, just because you have – you've met that witness in your social life, would you give her testimony more weight than you would any other witnesses?**

**JUROR NO. 7: No, sir.**

MR. MANINGO: Okay, then – I have no problem.

JUROR NO. 7: I apologize, Judge.

THE COURT: It's all right. That's what it's all about. Thank you. We'll be with you in just a few minutes.

Jury Trial Transcript Day 2, November 3, 2009, at 199-200, 212-214 (emphasis added).

There is nothing in the record that Petitioner cites to that demonstrates the juror could not remain fair and impartial despite knowing Judge Barker and the State's witness. Instead, the issue of knowing Judge Barker is brought to the Court's attention many times, and each time, the juror explains that she can remain fair and impartial to Petitioner. Moreover, when the juror realized that she had briefly met the State's witness only one time, she brought it to

the Court's attention and again, affirmed that she could remain fair and impartial. Petitioner does not give any reason to indicate why she was not fair and impartial or why she would have been unable to remain fair and impartial. Therefore, this claim is denied.

**C. There Is No Support From The Record That Petitioner's Counsel Failed To Investigate The Case Or Was Not Prepared For Trial.**

Petitioner contends that trial counsel failed to conduct adequate pretrial discovery, including but not limited to failing to fully, competently, investigate the facts, circumstances, and legal issues surrounding the offense. A defendant who contends that his attorney was ineffective because he did not adequately investigate must show how a better investigation would have rendered a more favorable outcome probable. Molina v. State, 120 Nev. 185, 87 P.3d 533 (2004). Such a defendant must allege with specificity what the investigation would have revealed and how it would have altered the outcome of the trial. United States v. Porter, 924 F.2d 395, 397 (1st Cir. 1991) (quoting United States v. Green, 882 F.2d 999, 1003 (5th Cir. 1989)).

Here, Petitioner's claim fails as he has not alleged with adequate specificity what further investigation or additional facts would have come to light and how this would have changed the outcome of the trial. He alleges that his counsel told him he was not properly prepared because he did not have a second chair and had to juggle" during trial. Supplemental Petition, at 27. This claim is not supported by the record, and there is no mention of any specific facts suggesting counsel was not prepared for trial. In fact, the record in this case demonstrates how prepared trial counsel was by filing many pre-trial motions, thoroughly cross-examining each of the State's witnesses, and even calling three (3) character witnesses to testify on behalf of Petitioner.

Petitioner argues the fact that counsel did not find Mr. Randall through a preliminary investigation while the District Attorney found him on the first day of trial. Petition for Writ of Habeas Corpus (Post-Conviction), at 9. This is a bare and naked allegation as Randle still testified at trial, and counsel even had the opportunity to meet with Randle the morning before his trial testimony. In fact, trial counsel even conducted a thorough cross-examination of

Detective Gabriel Lebario emphasizing that the detective did not do a report of his interview with Randle or provide his name in his report:

> Q (MR. MANINGO): Okay. And making reports is an important part of your job –
>
> A (DETECTIVE LEBARIO): Yes.
>
> Q: -- is that fair to say?
>
> A: Yes, sir.
>
> Q: Okay. You have to document when you do certain things or when you speak to people, correct?
>
> A: Yes.
>
> …
>
> Q: You spoke to another individual who – who lived in a nearby apartment building, correct?
>
> A: Yes.
>
> Q: Okay. And this is the person that – that you described as the adult black male, correct?
>
> A: Yes.
>
> Q: And the reason we refer to this gentleman that way, in your report you don't list his name, correct?
>
> A: Right.
>
> Q: And that's because you had taken notes and kept those notes separate, correct?
>
> A: Well, written, yes.
>
> Q: Okay. When you spoke to Mr. Randall, he gave a description of seeing two people together that matched the description of Mr. Adams and Amber?
>
> A: Yes.
>
> Q: Okay. He also noted that the two individuals he saw were not touching one another, correct?
>
> A: Right.
>
> Q: And he noted that they were not emotional, and that the girl was not emotional?

//

A: Correct.

Q: He also noted that the girl did not appear to be in any distress.

A: Correct.

. . .

Q: You just spoke to him about the two individuals that he saw that day?

A: Yes.

Q: Okay. I think you said earlier that there was no need to get a report from him at that time.

A: At the time, yes.

Q: Okay. You did, however, none of the details of what he told you in your – in your report, correct?

A: Yes.

Q: Okay.

A: My case notes.

Jury Trial Transcript Day 2, November 3, 2009, at 259-262.

Therefore, counsel took the time to prepare by fully cross-examining the detective about not providing Randle's name or details of his interview with him, and counsel was able to meet with Randle before his testimony before cross-examining him at trial. Therefore, Petitioner's bare allegations do not and cannot demonstrate prejudice and, therefore, this claim is absolutely without merit. See Hargrove, 100 Nev. at 502, 686 P.2d at 225. As such, this claim is denied.

**D. Petitioner's Counsel Was Not Ineffective For Failing To Investigate Or Challenge The State's Late Disclosure Of Witness Andre Randle Because, In Fact, Counsel Did Challenge The Late Disclosure In His Motion To Dismiss, And Cross-Examined Randle At Trial.**

"Bare" and "naked" allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "A claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made." Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

In order to satisfy the Strickland standard and establish ineffectiveness for failure to investigate, a defendant must allege *in the pleadings* what information would have resulted from a better investigation or the substance of the missing witness' testimony. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004); State v. Haberstroh, 119 Nev. 173, 185, 69 P.3d 676, 684 (2003). It must be clear from the "record what it was about the defense case that a more adequate investigation would have uncovered." Id. A defendant must also show how a better investigation probably would have rendered a more favorable outcome. Id.

Here, Petitioner claims that trial counsel should have objected to the late disclosure of State's witness Andre Randle. In fact, counsel filed a Motion to Dismiss on October 20, 2009, (Petitioner's own Exhibit D) arguing that the State should turn over the "tall, physically fit, adult black male." Motion to Dismiss, at 3-4. Counsel argued in the Motion that the detectives did not follow up with the mystery witness, and that the state should produce the witness to testify at trial. Id. at 4. By counsel filing this motion prior to trial, he was objecting and challenging the fact that the State had not produced Mr. Randle.

Then, during trial, when the State did produce the witness, the State allowed counsel to not only cross-examine Mr. Randle, but also speak with him beforehand:

> MR. HENDRICKS: Okay. Now, I don't think either one of us, I'm not sure though, has this – this black male adult listed on our witness list. But as you know, he was not interviewed at the time other than just what was reflected in his case notes. We've now contacted him. We tracked him down. We found him so he's available to defense counsel.
>
> He's going to be here tomorrow morning at 10:00 a.m. My concern is this, is he's not on our witness list, but we would still like to call him. And I want to make sure that defense counsel doesn't have an objection because they're actually the ones who wanted him and made a motion to – to dismiss the whole case because they didn't have him. Now we have him. I want to make sure it's okay we can call him.
>
> THE COURT: Defense position.
>
> MR. MANINGO: Yeah, that's fine. I don't have an objection. I'm not worried about – I know that the reason he wasn't on the witness list at the time is because neither one with of us knew who this person was.

> THE COURT: Well, hearing no objection from the defense, the State calling the witness, even though the witness wasn't identified on their witness list, so –
>
> MR. HENDRICKS: **And I'll make him available in the morning so Jeff can speak with him also beforehand** just -- just to know what we're getting.

Jury Trial Transcript Day 2, November 3, 2009, at 276-77 (emphasis added).

Now, Petitioner is arguing that counsel should have expended all resources to find this unidentified witness. But then Petitioner argues that when the witness is actually produced at trial, counsel should have challenged the late disclosure of the witness and not agreed to let him testify. Petitioner's argument as to why counsel was ineffective at trial is based on the fact that he should have found this witness before trial, and the witness would have produced exculpatory evidence during his trial testimony. It is a roundabout argument to claim that counsel should have found him, then when the State actually did find him, counsel should have objected and not let him testify because he would testify to exculpatory evidence.

Moreover, it is utter speculation that Randle's testimony would have somehow been different at trial had counsel conducted a more in-depth pre-trial interview of the witness, when Petitioner admits that Randle's testimony was favorable to the defense. Trial counsel had time before Randle's testimony to discuss his testimony with him and essentially have a pre-trial interview. Counsel also had the opportunity to cross-examine Randle and question him in-depth about how difficult it is to remember an event from two (2) years ago, that the witness did not write anything down or take any notes after the event, about his interactions with Petitioner and the victim, and about the Petitioner and the victim's demeanor entering the vacant apartment. See Jury Trial Transcript Day 3, November 4, 2009, at 31-33. Even on direct-examination, Randle testified that, "She didn't even look mad or nothing." Id. at 29. On cross-examination, he says. "They was just walking normal." Id. at 33. Therefore, there was no prejudice to Petitioner because, as Petitioner admits, Randle's testimony was favorable to the defense.

By the end of trial, counsel had the opportunity to present the exculpatory evidence through cross-examination because Randle ultimately testified during trial. Moreover, on

direct-examination, Randle's testimony confirmed the victim's classmates, Jonathan and Angela's, testimony that they saw the two walking together. Even though counsel was unable to locate Randle prior to trial, counsel filed the Motion to Dismiss contesting the fact the State had not produced the witness, was still allowed the opportunity to cross-examine him during his trial testimony, and even discuss his testimony with him the morning before he testified. Therefore, there was no prejudice to Petitioner by Randle's testimony.

It simply cannot be said that trial counsel did not make sufficient inquiries into information about Randle and his testimony after having the opportunity to speak with him before his testimony and cross-examine him at trial. The record belies Petitioner's claim of failure to investigate and shows that counsel did everything Petitioner claims should have been done. Therefore, this claim is without merit and is denied.

**E. Claims 2 And 4-12 Are Waived Because They Should Have Been Raised On Direct Appeal.**

NRS 34.810(1) reads:

> The court shall dismiss a petition if the court determines that:
>
> > (a) The petitioner's conviction was upon a plea of guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel.
> >
> > (b) The petitioner's conviction was the result of a trial and the grounds for the petition could have been:
> >
> > . . .
> >
> > > (2) Raised in a direct appeal or a prior petition for a writ of habeas corpus or postconviction relief.
>
> unless the court finds both cause for the failure to present the grounds and actual prejudice to the petitioner.

The Nevada Supreme Court has held that "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 proceedings…. [A]ll other claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be *considered waived in subsequent proceedings*."

Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). "A court must dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner." Evans v. State, 117 Nev. 609, 646–47, 29 P.3d 498, 523 (2001).

Here, Petitioner's Claims 2 and 4-12 should have been raised on a direct appeal because they do not challenge the validity of a guilty plea or allege ineffective assistance of counsel. NRS 34.810(1); Franklin, 110 Nev. at 752, 877 P.2d at 1059. Petitioner does not allege good cause or prejudice for not bringing these claims on direct appeal and raising them for the first time in these habeas proceedings. Therefore, as these claims are all waived, they are dismissed.

**F. Petitioner's Pro Per Claims Fail Because They Should Have Been Raised On Appeal As Discussed Above**

As discussed above, the Petitioner's Pro Per claims fail because they should have been raised on appeal and are therefore waived. Petitioner now raises these claims again in his Supplemental Petition, however, they are still waived for the exact reason stated above. Therefore, these claims are dismissed.

**G. Cumulative Error Does Not Apply to Ineffective Assistance Of Counsel**

Petitioner asserts a claim of cumulative error in the context of ineffective assistance of counsel. The Nevada Supreme Court has never held that instances of ineffective assistance of counsel can be cumulated; it is the State's position that they cannot. However, even if they could be, it would be of no consequence as there was no single instance of ineffective assistance in Petitioner's case. See United States v. Rivera, 900 F.2d 1462, 1471 (10th Cir. 1990) ("[A] cumulative-error analysis should evaluate only the effect of matters determined to be error, not the cumulative effect of non-errors."). Furthermore, Petitioner's claim is without merit. "Relevant factors to consider in evaluating a claim of cumulative error are (1) whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged." Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 855 (2000). Furthermore,

any errors that occurred at trial were minimal in quantity and character, and a defendant "is not entitled to a perfect trial, but only a fair trial." Ennis v. State, 91 Nev. 530, 533, 539 P.2d 114, 115 (1975). There was no error in this case let alone cumulative error. Therefore, this claim is denied.

**H. Petitioner Is Not Entitled to An Evidentiary Hearing**

A defendant is entitled to an evidentiary hearing only if his petition is supported by specific factual allegations, which, if true, would entitle her to relief. Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605 (1994). "The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required." NRS 34.770(1). Further, "[i]f the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, the judge or justice shall dismiss the petition without a hearing." NRS 34.770(2).

Here, there is no reason to expand the record because Petitioner's claims are not cognizable in a post-conviction petition and Petitioner fails to present specific factual allegations that would entitle him to relief. Marshall, 110 Nev. at 1331, 885 P.2d at 605. As such, Petitioner's request for an evidentiary hearing is denied.

**ORDER**

THEREFORE, IT IS HEREBY ORDERED that the Supplemental Petition for Writ of Habeas Corpus shall be, and it is, hereby denied.

DATED this _____ day of December, 2021.

**Dated this 7th day of December, 2021**

Nancy A. Becker

DISTRICT JUDGE

**2BB C4B 269D DD3D**
**Nancy Becker**
**District Court Judge**

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

BY BB for
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #0010539

**CERTIFICATE OF SERVICE**

I certify that on the _____ day of _____, 2021, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

EDWARD MICHAEL ADAMS, BAC #1046775
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89018

BY _____
C. Garcia
Secretary for the District Attorney's Office

AC/et/cg/L2

**CSERV**

DISTRICT COURT
CLARK COUNTY, NEVADA

| | |
|---|---|
| The State of Nevada vs Edward M Adams | CASE NO: 08C241003<br>DEPT. NO. Department 3 |

**AUTOMATED CERTIFICATE OF SERVICE**

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

Service Date: 12/7/2021

| | |
|---|---|
| James Oronoz | jim@oronozlawyers.com |
| Thomas Ericsson | tom@oronozlawyers.com |
| Alicia Oronoz | alicia@oronozlawyers.com |
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| Department Law Clerk | dept19lc@clarkcountycourts.us |
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*Attorney for Appellant*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| EDWARD MICHAEL ADAMS,<br>Appellant,<br>vs.<br>THE STATE OF NEVADA,<br>Respondent. | CASE NO.: 08C241003<br>Supreme Court No: _____<br>DEPT. NO.: III<br>**CASE APPEAL STATEMENT** |

1. Appellant filing this case appeal statement: **Edward Adams.**

2. The name of the judge who entered the order or judgment that is being appealed: **The Honorable Nancy A. Becker.**

3. All parties to the proceedings in the district court (the use of et al. to denote parties is prohibited): **The State of Nevada, Plaintiff; Edward Michael Adams, Defendant.**

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

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

| | |
|---|---|
| **JAMES A. ORONOZ, ESQ.**<br>**Oronoz & Ericsson, LLC**<br>**1050 Indigo Drive, Suite 120**<br>**Las Vegas, Nevada 89145**<br>**(702) 878-2889**<br>***Attorney for Appellant*** | **STEVEN B. WOLFSON**<br>**Clark County District Attorney**<br>**200 Lewis Avenue**<br>**Las Vegas, Nevada 89155**<br>***Attorney for Respondent*** |

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

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

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

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

10. Date proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed): **Information, filed February 12, 2008.**

11. A brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court: **This is an appeal from the District Court's Findings of Fact, Conclusions of Law and Order.**

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

**N/A**

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

/ / /

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

DATED this 8th day of December 2021.

Respectfully submitted,

By: */s/ James A. Oronoz*

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*Attorney for Appellant*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that electronic service was completed via the Odyssey E-File & Serve System and emailed to the following recipient(s) on this 8th day of December 2021.

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

ALEXANDER CHEN, ESQ.
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By: */s/ Jan Ellison*
An employee of Oronoz & Ericsson, LLC

**NOASC**

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*Attorney for Appellant*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| EDWARD M. ADAMS,<br><br>Appellant,<br><br>v.<br><br>THE STATE OF NEVADA,<br><br>Respondent. | CASE NO. 08C241003<br><br>DEPT. NO. III<br><br>**NOTICE OF APPEAL** |

NOTICE is hereby given that EDWARD ADAMS, defendant named above, hereby appeals to the Nevada Supreme Court from the Findings of Fact, Conclusions of Law and Order rendered in this action on the 8th day of December, 2021.

DATED this 8th day of December, 2021.

ORONOZ & ERICSSON, LLC

*/s/ James A. Oronoz, Esq.*
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Telephone: (702) 878-2889
*Attorney for Appellant*

**CERTIFICATE OF ELECTRONIC SERVICE**

The undersigned hereby certifies that electronic service was completed via the Odyssey E-File & Serve System and emailed to the following recipient(s) on this 8th day of December 2021.

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

ALEXANDER CHEN
Chief Deputy District Attorney
Alexander.chen@clarkcountyda.com

**CERTIFICATE OF MAILING**

The undersigned hereby certifies that service was completed by sending a copy of this Notice of Appeal via U.S. mail on this 8th day of December, 2021, to the following recipient pursuant to NRAP 3(d)(2).

EDWARD ADAMS, ID# 1046775
c/o Lovelock Correctional Center
1200 Prison Rd.
Lovelock, Nevada 89419

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