

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

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2 No. 82740

3  
4 **JORGE MENDOZA,**

5  
6 Appellant,

7 vs.

8 **THE STATE OF NEVADA,**

9  
10 Respondent.

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11  
12 **Appeal from the Postconviction Denial of Relief for Writ of Habeas**  
13 **Corpus - Eighth Judicial District Court, Clark County**  
14 **The Honorable Judge Bita Yeager 8<sup>th</sup> Judicial District Court Judge**  
15 **Department 1, Presiding, Findings of Fact, Conclusions of Law and**  
16 **Order Issued April 2, 2021, District Court Case No. A-19-804157-W**

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17 **APPELLANT'S APPENDIX VOLUME XVI**

18  
19 DIANE C. LOWE, ESQ.  
20 Lowe Law, L.L.C.  
21 7350 West Centennial Pkwy #3085  
22 Las Vegas, Nevada 89113  
(725) 212-2451

23 Attorney for Appellant

ALEXANDER G. CHEN  
CLARK COUNTY DA.  
200 Lewis Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89155  
(702) 455-4711

AARON D. FORD  
Attorney General  
100 North Carson Street  
Carson City, Nevada 89701  
(775) 684-1265

Attorneys for Respondent

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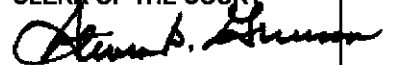
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Dated July 25, 2021  
BY /s/ DIANE C. LOWE  
 DIANE C. LOWE, ESQ  
 Nevada Bar #14573



1 **RSPN**  
STEVEN B. WOLFSON  
2 Clark County District Attorney  
Nevada Bar #001565  
3 TALEEN PANDUKHT  
Chief Deputy District Attorney  
4 Nevada Bar #005734  
200 Lewis Avenue  
5 Las Vegas, Nevada 89155-2212  
(702) 671-2500  
6 Attorney for Respondent

7  
8 DISTRICT COURT  
CLARK COUNTY, NEVADA

9 JORGE MENDOZA,  
#2586625

10  
11 Petitioner,

CASE NO: A-19-804157-W

12 -vs-

C-15-303991-1

13 THE STATE OF NEVADA,

DEPT NO: V

14 Respondent.

15 **STATE'S RESPONSE TO PETITIONER'S SUPPLEMENTAL BRIEF IN SUPPORT**  
16 **OF PETITIONER'S POSTCONVICTION PETITION FOR WRIT OF HABEAS**  
CORPUS

17 DATE OF HEARING: JANUARY 25, 2021  
18 TIME OF HEARING: 10:15 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
20 District Attorney, through TALEEN PANDUKHT, Chief Deputy District Attorney, and  
21 hereby submits the attached Points and Authorities in Response to Petitioner's Supplemental  
22 Brief in Support of Petitioner's Postconviction Petition for Writ of Habeas Corpus.

23 This response is made and based upon all the papers and pleadings on file herein, the  
24 attached points and authorities in support hereof, and oral argument at the time of hearing, if  
25 deemed necessary by this Honorable Court.

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27 //

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\\CLARKCOUNTYDA.NET\CRM\CASE2\2015\094\63\201509463C-RSPN-(MENDOZA, JORGE)-001.DOCX

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On February 27, 2015, Jorge Mendoza ("Petitioner") was charged by way of  
4 Superseding Indictment with: Count 1– Conspiracy to Commit Robbery (Category B Felony-  
5 NRS 199.480), Count 2– Burglary While in Possession of a Deadly Weapon (Category B  
6 Felony-NRS 205.060), Count 3– Home Invasion While in Possession of a Deadly Weapon  
7 (Category B Felony-NRS 205.060), Counts 4 and 5– Attempt Robbery With Use of a Deadly  
8 Weapon (Category B Felony-NRS 193.330, 200.38), Count 6– Murder with Use of a Deadly  
9 Weapon (Category A Felony-NRS 200.010), and Count 7– Attempt Murder With Use of a  
10 Deadly Weapon (Category B Felony- NRS 200.010).

11 On April 3, 2016, Petitioner's Co-Defendant, David Murphy ("Murphy"), filed a  
12 Motion to Sever. On May 2, 2016, Petitioner's counsel requested to join in Murphy's Motion  
13 to Sever. The Court denied the Motion on May 9, 2016. On September 8, 2016, Petitioner's  
14 Co-Defendant, David Murphy, filed a Motion to Exclude Summer Larsen. The Court denied  
15 this Motion on September 9, 2016.

16 On September 12, 2016, Petitioner's jury trial commenced. On October 7, 2016, the  
17 jury found Petitioner guilty of all counts.

18 On December 12, 2016, the Judgment of Conviction was filed and Petitioner was  
19 sentenced as follows: COUNT 1– maximum of seventy-two (72) months and a minimum of  
20 twenty-four (24) months in the Nevada Department of Corrections (NDC); COUNT 2–  
21 maximum of one-hundred eighty (180) months and a minimum of forty-eight (48) months,  
22 Count 2 to run concurrently with Count 1; COUNT 3– maximum of one-hundred eighty (180)  
23 months and a minimum of forty-eight (48) months, Count 3 to run concurrently with Count 2;  
24 Count 4– maximum of one-hundred twenty (120) months and a minimum of thirty-six (36)  
25 months, plus a consecutive term of one-hundred twenty (120) months and a minimum of thirty-  
26 six (36) months for the Use of a Deadly Weapon, Count 4 to run concurrently with Count 3;  
27 COUNT 5– maximum of one hundred twenty (120) months and a minimum of thirty-six (36)  
28 months, plus a consecutive term of one-hundred twenty (120) months and a minimum of thirty-



1 six (36) months for the Use of a Deadly Weapon, Count 5 to run concurrently with Count 4;  
2 COUNT 6– life with a possibility of parole after a term of twenty (20) years have been served,  
3 plus a consecutive terms two-hundred forty (240) months and a minimum of thirty-six (36)  
4 months for the Use of a Deadly Weapon, Count 6 to run concurrently with Count 5; COUNT  
5 7– maximum of two-hundred forty (240) months and a minimum of forty-eight (48) months,  
6 plus a consecutive term of two-hundred forty (240) months and a minimum of thirty-six (36)  
7 months for the Use of a Deadly Weapon, Count 7 to run concurrently with Count 6. Petitioner  
8 received eight hundred (800) days credit for time served. His aggregate total sentence is life  
9 with a minimum of twenty-three (23) years in the Nevada Department of Corrections. The  
10 Judgment of Conviction was filed on December 2, 2016.

11 On December 22, 2016, Petitioner filed a Notice of Appeal. The Nevada Supreme Court  
12 affirmed Petitioner’s conviction on October 30, 2018. Remittitur issued on November 27,  
13 2018.

14 On October 18, 2019, Petitioner filed a Petition for Writ of Habeas Corpus, a Motion  
15 to Amend, Motion for Appointment of Counsel, and Request for Evidentiary Hearing  
16 (“Petition”). On January 13, 2020 Petitioner’s Motion for Appointment of Counsel was  
17 granted. On September 20, 2020, the instant Supplemental Brief in Support of Petitioner’s  
18 Postconviction Petition for Writ of Habeas Corpus was filed (“Supplemental Petition”). The  
19 State’s Response follows.

#### 20 **STATEMENT OF THE FACTS**

21 On September 21, 2014, Petitioner invaded the house of Joseph Larsen (“Larsen”) and  
22 Monty Gibson (“Gibson”), shooting and killing Gibson. That evening, Steve Larsen, Larsen’s  
23 father, called Larsen and informed him that Larsen’s house was going to be robbed and that  
24 Summer Larsen (“Summer”), his estranged wife, was the reason why. Jury Trial Day 5 at 24-  
25 25.

26 On or around July 2014, Summer broke into Larsen’s house and stole \$12,000 as well  
27 as approximately twelve (12) pounds of marijuana. Jury Trial Day 6 at 98. She later told co-  
28 defendant, David Murphy (“Murphy”), that she had done so, and he asked her why she did not

1 bring him along. Jury Trial Day 6 at 99. Summer suggested that they could burglarize Larsen's  
2 supplier's house. Jury Trial Day 6 at 99. Summer also told Murphy that Larsen's supplier  
3 obtained between one hundred (100) and two hundred (200) pounds of marijuana weekly and  
4 described the procedure whereby Larsen's supplier obtained the marijuana and whereby  
5 Larsen later purchased marijuana from his supplier. Jury Trial Day 6 at 100-02. Summer then  
6 showed Murphy where Larsen's supplier's house was located. Jury Trial Day 6 at 103. After  
7 having several more conversations about robbing Larsen's supplier, Murphy told Petitioner  
8 that he knew of a place they could burglarize to help Petitioner get some money. Jury Trial  
9 Day 14 at 88.

10 At 4:00 AM on September 21, 2014, Murphy called Petitioner. Jury Trial Day 14 at 89-  
11 90. Petitioner then left his house to meet at Murphy's house in his Nissan Maxima. Jury Trial  
12 Day 14 at 89-90. He picked up Murphy, and the two (2) of them drove to co-defendant Joey  
13 Laguna's ("Laguna") house. Jury Trial Day 14 at 91. Petitioner then drove Laguna to Robert  
14 Figueroa's ("Figueroa") house, arriving around 7:30 AM. Jury Trial Day 14 at 91-92. Figueroa  
15 got into the car with a duffel bag. Jury Trial Day 14 at 92. Petitioner, Laguna, and Figueroa  
16 then drove to an AMPM gas station to meet back up with Murphy. Jury Trial Day 14 at 93.  
17 Murphy had an older white pick-up truck and was waiting with a Hispanic woman with tattoos.  
18 Jury Trial Day 14 at 95. The woman drove Petitioner's vehicle, and Murphy led in his pick-up  
19 truck. Jury Trial Day 14 at 96-97. The two cars drove to the neighborhood where Larsen's  
20 supplier lived, but a lawn maintenance crew was detailing a yard a few houses away. Jury Trial  
21 Day 14 at 99-100. Ultimately, no burglary occurred because the woman drove Petitioner's car  
22 out of the neighborhood. Jury Trial Day 14 at 103.

23 The group then proceeded back to Laguna's house, where they engaged in further  
24 discussions about attempting the robbery again or committing a robbery elsewhere. Jury Trial  
25 Day 14 at 103-04. Petitioner and Figueroa left shortly thereafter. Jury Trial Day 14 at 105.  
26 Around 6:00 PM, Murphy told Petitioner to pick up Figueroa. Jury Trial Day 14 at 158.  
27 Petitioner did so, then proceeded to Laguna's house, stopping on the way at Petitioner's house  
28 so that Petitioner could arm himself with a Hi-point rifle. Jury Trial Day 14 at 139-141. When

1 they arrived at Laguna's house, Laguna came outside. Jury Trial Day 14 at 142. Figueroa asked  
2 who they were going to rob, and Murphy answered. Jury Trial Day 14 at 141-42.

3 Eventually, the four of them left in Petitioner's car, with Murphy driving because he  
4 knew where they were going. Jury Trial Day 14 at 143-44. They drove to Laguna's house.  
5 Jury Trial Day 14 at 144-45. On the way, the group decided to break into Larsen's house. Jury  
6 Trial Day 14 at 145. Figueroa was to enter the house, get everyone under control, Petitioner  
7 was to enter the house and grab the marijuana from upstairs, and Laguna was to stay outside  
8 and provide cover in case someone unexpectedly appeared. Jury Trial Day 14 at 146.

9 When they arrived, Murphy dropped them off, drove a short distance up the street, and  
10 made a U-turn to face the house in order to prepare to drive them away. Jury Trial Day 14 at  
11 146-47. Figueroa broke through the front door and entered the home as Petitioner remained  
12 near the door with his rifle. Jury Trial Day 14 at 148. Shortly thereafter, gunfire erupted. Jury  
13 Trial Day 14 at 149. Figueroa was struck by a bullet in his face, dropped to the floor, and then  
14 was struck on his left side as he turned to flee out the door. Jury Trial Day 11 at 9. Figueroa  
15 ran down the street. Jury Trial Day 11 at 9. Petitioner began firing his rifle into the house  
16 before he was shot in the leg and fell into the street. Jury Trial Day 14 at 156-57. Laguna ran  
17 out into the street as well. Jury Trial Day 14 at 157. Petitioner could not walk, so he scooted  
18 away from the house with the rifle still in his hands. Jury Trial Day 14 at 160-62. Petitioner  
19 continued firing his rifle at the house, killing Gibson. Jury Trial Day 14 at 163-64; Jury Trial  
20 Day 6 at 41.

21 While the shooting was occurring, Murphy picked up Laguna and fled the scene,  
22 stranding Petitioner and Figueroa. Jury Trial Day 11 at 15, 28. Petitioner scooted to an  
23 abandoned car and crawled inside, where he waited until the police followed his blood trail  
24 and apprehended him. Jury Trial Day 14 at 167. Figueroa managed to escape down the street  
25 and hide in a neighbors' backyard for several hours. Jury Trial Day 11 at 15-17. Figueroa  
26 called Laguna, who did not answer; Murphy then called Figueroa and told him that he was not  
27 going to pick him up. Jury Trial Day 11 at 17-19, 31. Subsequently, Figueroa called  
28 "everybody in [his] phone" over the next eight (8) or nine (9) hours until his sister agreed to

1 pick him up. Jury Trial Day 11 at 31-35. By then, Petitioner had been apprehended and  
2 everyone else had escaped. Jury Trial Day 5 at 125-26; Jury Trial Day 10 at 245. Murphy later  
3 drove Petitioner's wife to Petitioner's car so that she could retrieve it. Jury Trial Day 10 at 40.  
4 Figueroa went to California and received medical care for his injuries. After he returned, he  
5 was apprehended by police on October 20, 2014. Jury Trial Day 12 at 107.

6 At trial, both Figueroa and Petitioner testified, generally consistently, as to the events  
7 described above. Jury Trial Day 14 at 79-230; Jury Trial Day 10 at 207-251; Jury Trial Day  
8 11 at 3-145; Jury Trial Day 12 at 3-90. Additionally, the jury was presented with cell phone  
9 records that demonstrated Murphy, Petitioner, Laguna, and Figueroa were talking to each  
10 other, and moving throughout the city together at the times, and to the locations, indicated by  
11 Petitioner and Figueroa. Jury Trial Day 8 at 21-86; Jury Trial Day 10 at 63-203.

#### 12 ARGUMENT

13 In the instant Supplemental Petition, Petitioner argues that trial counsel was ineffective  
14 for several reasons. Under Petitioner's first ground, he claims that counsel erroneously advised  
15 Petitioner to testify prior to the district court's ruling on his proposed self-defense jury  
16 instruction and, at the very least, should have filed a Motion in Limine or a pretrial motion  
17 beforehand. Supplemental Petition at 16-28. Under his second ground, he claims that counsel  
18 should have moved to suppress the statements he made to law enforcement while he was in  
19 the hospital because they were involuntary. Supplemental Petition at 28-29. Second, Petitioner  
20 complains that counsel was ineffective because he failed to ask certain questions at the jury  
21 trial and was silent "most of the time." Supplemental Petition at 29-30. Third, counsel  
22 allegedly failed to deliver Petitioner's Motion to Withdraw Counsel to the Court. Supplemental  
23 Petition at 30. Fourth, he asserts counsel failed to object based on the Confrontation Clause  
24 and failed to subpoena the living victim, "JL." Supplemental Petition at 30. However, each of  
25 Petitioner's claims fail.

26 The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal  
27 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his  
28 defense." The United States Supreme Court has long recognized that "the right to counsel is

1 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,  
2 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323  
3 (1993).

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

16 The court begins with the presumption of effectiveness and then must determine  
17 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
18 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel  
19 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of  
20 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,  
21 537 P.2d 473, 474 (1975).

22 Moreover, counsel cannot be ineffective for failing to make futile objections or  
23 arguments. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). To be effective,  
24 the constitution “does not require that counsel do what is impossible or unethical. If there is  
25 no bona fide defense to the charge, counsel cannot create one and may disserve the interests  
26 of his client by attempting a useless charade.” United States v. Cronin, 466 U.S. 648, 657 n.19,  
27 104 S. Ct. 2039, 2046 n.19 (1984).

1        “There are countless ways to provide effective assistance in any given case. Even the  
2 best criminal defense attorneys would not defend a particular client in the same way.”  
3 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after  
4 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,  
5 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
6 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's  
7 challenged conduct on the facts of the particular case, viewed as of the time of counsel's  
8 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

9        The decision not to call witnesses is within the discretion of trial counsel and will not  
10 be questioned unless it was a plainly unreasonable decision. See Rhyne v. State, 118 Nev. 1,  
11 38 P.3d 163 (2002); Dawson v. State, 108 Nev. 112, 825 P.2d 593 (1992). Strickland does not  
12 enact Newton's third law for the presentation of evidence, requiring for every prosecution  
13 expert an equal and opposite expert from the defense. In many instances cross-examination  
14 will be sufficient to expose defects in an expert's presentation. When defense counsel does not  
15 have a solid case, the best strategy can be to say that there is too much doubt about the State's  
16 theory for a jury to convict. Harrington v. Richter, 131 S.Ct. 770, 791, 578 F.3d. 944 (2011).

17        **I. TRIAL COUNSEL WAS NOT INEFFECTIVE WHEN ADVISING**  
18        **PETITIONER OF HIS RIGHT TO TESTIFY AND FAILING TO FILE A**  
19        **MOTION ON THE ISSUE**

20        Under Petitioner's first ground, he argues that counsel was ineffective for advising him  
21 to testify and confess to the charges against him when counsel should have known that  
22 Petitioner's proposed self-defense jury instruction would be denied. Supplemental Petition at  
23 16-28. However, Petitioner's claim fails.

24        As set forth in Davis, the district court may refuse a jury instruction on the defendant's  
25 theory of the case which is substantially covered by other instructions; further, district courts  
26 have “broad discretion” to settle jury instructions. Davis, 130 Nev. 136, 145, 321 P.3d at 874;  
27 Cortinas, 124 Nev. at 1019, 195 P.3d at 319.

1 The Nevada Supreme Court has concluded that to succeed on a claim that counsel was  
2 ineffective in preparing a witness to testify, a defendant must show that a witness's testimony  
3 is the result of counsel's poor performance. See Ford v. State, 105 Nev. 850, 853, 784 P.2d  
4 951, 953 (1989). Petitioner is unable to make such a showing. Indeed, only two (2) decisions  
5 are left entirely up to a defendant at trial: whether to represent himself or whether to testify at  
6 trial. Lara v. State, 120 Nev. 177, 182 87 P.3d 528, 531 (2004) ("The United States Supreme  
7 Court has recognized that an accused has the ultimate authority to make certain fundamental  
8 decisions regarding the case, including the decision to testify.").

9 In this case, after extensive canvassing by the Court regarding Petitioner's right not to  
10 testify, Petitioner elected to do so. Jury Trial Day 14 at 75-77. Counsel had no control over  
11 Petitioner's testimony and certainly could not suborn perjury or coach Petitioner during his  
12 testimony as witnesses are expected to testify to the truth. In other words, counsel could not  
13 control whether Petitioner would provide the necessary testimony for a theory of self-defense.  
14 He certainly did not have a crystal ball to see that Petitioner's testimony on the fourteenth day  
15 of trial would preclude the admission of self-defense jury instructions on the eighteenth day  
16 of the trial. Jury Trial Day 14 at 79; Jury Trial Day 18 at 9. Defendants like all other witnesses  
17 are expected to tell the truth and Petitioner was informed of his duty to tell the truth when he  
18 was sworn in. It also bears noting that Petitioner did not admit to the murder charge during his  
19 testimony. Jury Trial Day 14 at 163-64. Accordingly, counsel could not have been ineffective.

20 Petitioner's citation to U.S. v. Swanson, 943 F.2d 1070, 1072-73 (9th Cir. 1991), does  
21 not lead to a different conclusion. In Swanson, 943 F.2d at 1072, the defendant challenged his  
22 conviction from a bank robbery based on his counsel's ineffectiveness during his trial. The  
23 defendant complained that the ineffectiveness arose during counsel's closing argument:

24  
25 [Counsel] began his argument by stating that it is a defense attorney's "job"  
26 to make the Government prove its case beyond a reasonable doubt. [Counsel]  
27 told the jurors that in this country a person has a right to stand by his plea of  
28 not guilty. [Counsel] then stated that the evidence against Swanson was  
overwhelming and that he was not going to insult the jurors' intelligence.

1 Prior to discussing the inconsistencies in the testimony of the Government's  
2 identification witnesses, [Counsel] stated, "[a]gain in this case, I don't think  
3 it really overall comes to the level of raising reasonable doubt." After  
4 pointing out that the witnesses had varied in their recollection of the length  
5 of time the perpetrator was in the bank, [Counsel] told the jury, "the only  
6 reason I point this out, not because I am trying to raise reasonable doubt now,  
7 because again I don't want to insult your intelligence...." He concluded his  
8 argument by telling the jurors that if they found Swanson guilty they should  
9 not "ever look back" and agonize regarding whether they had done the right  
10 thing.

11 Id. at 1071. While examining whether such comments amounted to ineffective assistance of  
12 counsel, the Court relied upon the U.S. Supreme Court's rationale in U.S. v. Cronie, 466 U.S.  
13 648, 656-57, 104 S. Ct. 2039, 2045-46 (1984), that effective assistance of counsel requires that  
14 counsel act as an advocate for his client, which includes requiring that the prosecution's case  
15 survive "meaningful adversarial testing." Swanson, 943 F.2d at 1702-03. Further, "if the  
16 process loses its character as a confrontation between adversaries, the constitutional guarantee  
17 is violated." Id. at 1703 (citing Cronie, 466 U.S. at 656-57, 104 S. Ct. at 2045-46). With this  
18 rationale in mind, the Swanson Court concluded that counsel's comments resulted in a  
19 breakdown of the adversarial system. Swanson, 943 F. 2d at 1074. Indeed, the Court noted that  
20 counsel's comments did not amount to negligence, but instead constituted an abandonment of  
21 his client's defense. Id. Nevertheless, the Court highlighted that there could be certain  
22 situations in which defense counsel might determine it advantageous to concede elements on  
23 a defendant's behalf, such as by conceding guilt for the purposes of an insanity defense. In  
24 Swanson's case, however, there was no tactical explanation for defense counsel's concessions.  
25 Id. at 1075 (citing Duffy v. Foltz, 804 F.2d 50, 52 (6th Cir. 1986)).

26 Here, Petitioner cannot demonstrate that counsel was ineffective. As discussed *supra*,  
27 counsel had no control over Petitioner's testimony, but, even if he had, his decision to argue  
28 self-defense on Petitioner's behalf was a tactical, strategic decision, not an abandonment of  
his adversarial role as discussed in Swanson, 943 F. 2d at 1074. Dawson, 108 Nev. at 117, 825  
P.2d at 596 ("Strategic choices made by counsel after thoroughly investigating the plausible  
options are almost unchallengeable"). Likewise, counsel may have had a strategic reason for



1 not filing a pretrial motion regarding the theory of self-defense. Indeed, counsel stated that the  
2 crux of his theory of defense was that Petitioner withdrew from the crimes at the time he shot  
3 back at Joseph Larsen's home and self-defense was just one way to demonstrate that Petitioner  
4 was not guilty of first-degree murder:

5  
6 MR. WOLFBRANDT: Yes. I think these were required in this case. The way  
7 I elicited the testimony and the whole theory of my defense was that the  
8 killing in this case was not a product of the Felony Murder Rule, and that the  
9 underlying felonies qualified for the Felony Murder Rule, specifically the  
10 *burglary, the home invasion and the attempt robbery had been completed by*  
11 *the time Mr. Mendoza had turned from the door and was escaping the area.*

12 And that, you know, through his testimony, as he was leaving the area,  
13 in his mind, he was posing no threat to anybody. He was just trying to get  
14 away. He heard some other shots, and a lot of the lay witnesses, the neighbors  
15 that called 911, they call described two distinct sets of shots. There was the  
16 first set and then there was a time gap and then there was another set of shots.  
17 And it was our contention that the second set of shots occurred when Mr.  
18 Mendoza was -- was well into the street, you know, where his blood trail  
19 started. And that as he testified, he then saw -- he heard a shot, he looked  
20 back at the house, and then he saw Monty Gibson and Joey Larsen at that  
21 front doorway area leaning around that pillar that's in front of the doorway,  
22 and he saw Joey Larsen had a gun with him.

23 Having already heard a shot, he then in self-defense returned fire and  
24 that would be the time that Monty Gibson got shot in the head and died. And  
25 that that shooting was -- was -- at least to Mr. Mendoza, was in an act of self-  
26 defense. The State's argued that the -- I recognize that the instruction I don't  
27 know offhand which one it is the instruction on conspiracy is that the  
28 conspiracy's not complete until all of the perpetrators escape the area or just  
effectuate their escape.

My contention is that -- is that Mendoza had escaped because he was  
away from the house. He was no longer a threat to that house and he was on  
his way down the street and but for him not having a good leg, he would have  
been run -- gone out of the neighborhood just like the other individuals. So I  
think that we still should be entitled to our theory of defense and that the self-  
defense instruction should have been given.

25  
26 Jury Trial Day 18 at 5-7.

27 Moreover, Petitioner cannot demonstrate that the outcome of his trial would have been  
28 different because even if he had not testified, there was enough evidence that Petitioner was

1 guilty under a theory of felony murder. Indeed, a jury could have logically concluded that  
2 Petitioner's conspiracy with his co-defendants was not over at the time he shot Gibson and  
3 that he had the requisite intent to commit first-degree murder. Jackson v. Virginia, 443 U.S.  
4 307, 319, 99 S. Ct. 2781, 2789 (1979) (stating it is further the jury's role "[to fairly] resolve  
5 conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic  
6 facts to ultimate facts."); Wilkins, 96 Nev. at 374, 609 P.2d at 313 (concluding a jury is free  
7 to rely on circumstantial evidence); Hernandez v. State, 118 Nev. 513, 531, 50 P.3d 1100,  
8 1112 (2002) ("circumstantial evidence alone may support a conviction."); Adler v. State, 95  
9 Nev. 339, 344, 594 P.2d 725, 729 (1979) ("[t]he jury has the prerogative to make logical  
10 inferences which flow from the evidence."). Therefore, Petitioner's claim should be denied.

## 11 **II. TRIAL COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO TEST THE** 12 **STATE'S CASE**

13 Under Petitioner's second ground, Petitioner raises various ineffective assistance of  
14 counsel claims related to counsel's actions to test the State's case. Supplemental Petition at  
15 28-30. Not only are these claims meritless, but also they are not sufficiently pled pursuant to  
16 Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984), and Maresca v. State, 103  
17 Nev. 669, 673, 748 P.2d 3, 6 (1987). Indeed, a party seeking review bears the responsibility  
18 "to cogently argue, and present relevant authority" to support his assertions. Edwards v.  
19 Emperor's Garden Restaurant, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006);  
20 Dept. of Motor Vehicles and Public Safety v. Rowland, 107 Nev. 475, 479, 814 P.2d 80, 83  
21 (1991) (defendant's failure to present legal authority resulted in no reason for the district court  
22 to consider defendant's claim); Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (an  
23 arguing party must support his arguments with relevant authority and cogent argument; "issues  
24 not so presented need not be addressed"); Randall v. Salvation Army, 100 Nev. 466, 470-71,  
25 686 P.2d 241, 244 (1984) (court may decline consideration of issues lacking citation to  
26 relevant legal authority); Holland Livestock v. B & C Enterprises, 92 Nev. 473, 533 P.2d 950  
27 (1976) (issues lacking citation to relevant legal authority do not warrant review on the merits).  
28 Claims for relief devoid of specific factual allegations are "bare" and "naked," and are  
insufficient to warrant relief, as are those claims belied and repelled by the record. Hargrove

1 v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “[Petitioner] *must* allege specific facts  
2 supporting the claims in the petition[.]...Failure to allege specific facts rather than just  
3 conclusions may cause [the] petition to be dismissed.” NRS 34.735(6) (emphasis added).

4 **A. Trial Counsel was Not Ineffective for Failing to File a Motion to Suppress**  
5 **Petitioner’s Statements to Law Enforcement Officers**

6 Petitioner claims that counsel should have moved to suppress Petitioner’s statements to  
7 police at the hospital because they were involuntary. Supplemental Petition at 28-29. However,  
8 his claim is meritless.

9 As an initial matter, in order for a statement to be deemed voluntary, it must be the  
10 product of a “rational intellect and free will” as determined by the totality of the circumstances.  
11 Passama v. State, 103 Nev. 212, 213-214, 735 P.2d 934, 940 (1987); see also, Schneckloth v.  
12 Bustamonte, 412 U.S. 218, 226-27, 93 S.Ct. 2041, 2047-48 (1973). Factors to be considered  
13 in determining the voluntariness of a confession include: (1) youth of the accused, (2) lack of  
14 education or low intelligence, (3) lack of any advice of constitutional rights, (4) the length of  
15 detention, (5) the repeated and prolonged nature of the questioning, (5) and the use of physical  
16 punishment such as deprivation of food or sleep. Passama, 103 Nev. at 214, 735 P.2d at 323.

17 “The ultimate issue in the case of an alleged involuntary confession must be whether  
18 the will was overborne by government agents.” Chambers v. State, 113 Nev. 974, 981, 944  
19 P.2d 805, 809 (1997); Passama, 103 Nev. at 213-14, 735 P.2d at 323, citing Colorado v.  
20 Connelly, 479 U.S. 157 (1986). “The question of the admissibility of a confession is primarily  
21 a factual confession addressed to the district court: where that determination is supported by  
22 substantial evidence, it should not be disturbed on appeal.” Chambers, 113 Nev. at 981, 944  
23 P.2d at 809; Echavarria v. State, 108 Nev. 734, 743, 839 P.2d 589, 595.

24 A confession is admissible only if it is made freely and voluntarily, without compulsion  
25 or inducement. Passama, 103 Nev. at 213, 735 P.2d at 321, citing Franklin v. State, 96 Nev.  
26 417, 421, 610 P.2d 732, 734-735 (1980). In order to be voluntary, a confession must be the  
27 product of a “rational intellect and a free will.” Blackburn v. Alabama, 361 U.S. 199, 208, 80  
28 S. Ct. 274 (1960). Indeed, “[a] confession is involuntary whether coerced by physical

1 intimidation or psychological pressure.” Passama, 103 Nev. at 214, 735 P.2d at 322-23, citing  
2 Townsend v. Sain, 372 U.S. 293, 307, 83 S. Ct. 745 (1963). A confession may also be rendered  
3 inadmissible if it is the result of promises which impermissibly induce the confession.  
4 Passama, 103 Nev. at 215, 735 P.2d at 323; Franklin v. State, 96 Nev. 417, 421, 610 P.2d 732  
5 (1980).

6 In Passama, Sheriff Miller told Passama that he would tell the prosecutor if Passama  
7 cooperated. This can be a permissible tactic. United States v. Tingle, 658 F.2d 1332, 1336, n.  
8 4 (9th Cir.1981). He also told Passama he would go to the D.A. and see that Passama went to  
9 prison if he was not entirely truthful. It is not permissible to tell a defendant that his failure to  
10 cooperate will be communicated to the prosecutor. Tingle, 658 F.2d at 1336, n. 5. Specifically,  
11 Sheriff Miller told Passama, “...don’t sit there and lie to me, ‘cause if you’re lying to me I’ll  
12 push it and I’ll see that you go to prison.” He further told Passama: “...if you don’t lie to me,  
13 I’ll help you, but if you lie I’ll tell the D.A. to go all the way.” Passama 103 Nev. at 215, 735  
14 P.2d at 324.

15 On the other hand, in Franklin v. State, 96 Nev. 417, 610 P.2d 732 (1980), the Nevada  
16 Supreme Court held that promises by a detective to release a defendant on his own  
17 recognizance if he cooperated with authorities in another state and to recommend a lighter  
18 sentence did not render the defendant’s confession involuntary. Id.

19 Similarly, in Elvik v. State, 114 Nev. 883, 965 P.2d 281 (1998), the Nevada Supreme  
20 Court held that the defendant’s confession was not involuntary or coerced. Throughout the  
21 interrogation, Elvik claimed that he did not remember shooting the victim, and despite Elvik’s  
22 insistence, the officers repeatedly stated that Elvik did remember and attempted to persuade  
23 Elvik to discuss the incident. Id. at 892, 965 P.2d at 287. They even suggested that his girlfriend  
24 and his mother would want him to tell the truth and told him that things would be better for  
25 him in the future if he would tell the truth. Id.

26 A police officer may speculate as to whether cooperation will benefit a suspect or help  
27 in granting leniency, including leniency granted by a prosecutorial authority. However, a law  
28 enforcement agent may not threaten to inform a prosecutor of a suspect’s refusal to cooperate.

1 United States v. Harrison, 34 F.3d 886, 891 (1994); United States v. Leon Guerrero, 847 F.2d  
2 1363, 1366 (1988); Martin v. Wainwright, 770 F.2d 918, 924-27 (11th Cir. 1985). In United  
3 States v. Brandon, 633 F.2d 773, 777 (1980), the Court held that a law enforcement agent may  
4 bring attention to the United States Attorney of the Defendant's willingness to cooperate in  
5 hopes that leniency would be granted.

6 In Schneckloth, 412 U.S. at 224-25, 93 S.Ct. at 2046, the U.S. Supreme Court  
7 recognized that "if the test was whether a statement would not have been made but for the law  
8 enforcement conduct, virtually no statement would be deemed voluntary because few people  
9 give incriminating statements in the absence of some kind of official action."

10 In Chambers, 113 Nev. at 980, 944 P.2d at 809, the defendant filed a motion to suppress  
11 his post-Miranda statements to police, claiming that his statements were not voluntarily given  
12 in light of the fact that he was questioned for four hours after having been stabbed, that he was  
13 not well rested, and that he was intoxicated—a breathalyzer revealed a blood alcohol content  
14 of 0.27. The district court observed the videotape of the confession and heard testimony at a  
15 hearing on the matter. Id. The district court found that at the time the defendant made his  
16 statements to police, he did not appear to be under the influence of either alcohol or drugs to  
17 such a point that he was unable to understand the questions directed to him and unable to  
18 formulate intelligent, logical answers. Id. The district court further found that the defendant  
19 knowingly and voluntarily signed the Miranda waiver presented to him. Id. The Nevada  
20 Supreme Court held that the district court did not err in admitting the defendant's confession  
21 to police. Id.

22 Further, when a defendant is fully advised of his Miranda rights and makes a free,  
23 knowing, and voluntary statement to the police, such statements are admissible at trial. See  
24 Miranda v. Arizona, 384 U.S. 436, 478, 86 S.Ct. 1602, 1630 (1966); Stringer v. State, 108  
25 Nev. 413, 417, 836 P.2d 609, 611-612 (1992).

26 Miranda v. Arizona, 384 U.S. at 444-45, 86 S.Ct. at 1612, established requirements to  
27 assure protection of the Fifth Amendment right against self-incrimination under "inherently  
28 coercive" circumstances. Pursuant to Miranda, a suspect may not be subjected to an

1 interrogation in official custody unless that person has previously been advised of, and has  
2 knowingly and intelligently waived, the following: the right to silence, the right to the presence  
3 of an attorney, and the right to appointed counsel if that person is indigent. Id. at 444, 86 S.Ct.  
4 at 1612. Failure by law enforcement to make such an admonishment violates the subject's  
5 Fifth Amendment guarantee against compelled self-incrimination. Id. The validity of an  
6 accused's waiver of Miranda rights must be evaluated in each case "upon the particular facts  
7 and circumstances surrounding that case, including the background, experience, and conduct  
8 of the accused." Edwards v. Arizona, 451 U.S. 477, 481, 101 S.Ct. 1880, 1884 (1981), quoting  
9 Johnson v. Zerbst, 304 U.S. 458, 464, 58 S.Ct. 1019, 1023 (1938); See also Rowbottom v.  
10 State, 105 Nev. 472, 779 P.2d 934 (1989). "The voluntariness of a confession depends upon  
11 the facts that surround it, and the judge's decision regarding voluntariness is final unless such  
12 finding is plainly untenable." McRoy v. State, 92 Nev. 758, 759, 557 P.2d 1151, 1152 (1976).

13 The prosecutor has the burden to prove that the waiver of a suspect's Fifth Amendment  
14 Miranda rights was voluntarily, knowingly and intelligently made. This burden is on the  
15 prosecution by a preponderance of the evidence. Falcon v. State, 110 Nev. 530, 874 P.2d 772  
16 (1994). This is generally accomplished by demonstrating to the Court that the officer advised  
17 the defendant of his Miranda rights and at the conclusion of the advisement asked the suspect  
18 if he understood his rights. An affirmative response by the suspect normally satisfies the  
19 knowing and intelligent portion of the waiver.

20 The voluntariness prong is normally judged under a totality of the circumstances  
21 existing at the time that the rights were read to the defendant. A waiver of rights need not be  
22 expressed, *i.e.*, the suspect need not say "I waive my Miranda rights" nor need the officer ask  
23 the suspect "do you waive your Miranda rights". It is sufficient if the officer obtains an  
24 affirmative response to the question whether the suspect understands the rights that were just  
25 read to him. See generally Tomarchio v. State, 99 Nev. 572, 665 P.2d 804 (1983); North  
26 Carolina v. Butler, 441 U.S. 369, 99 S.Ct. 1755 (1979) (defendant refused to sign the waiver  
27 but agreed to talk to the officers. This was an adequate waiver according to the United States  
28 Supreme Court); See also Taque v. Louisiana, 444 U.S. 469, 100 S.Ct. 652 (1980); See also

1 Connecticut v. Barrett, 479 U.S. 523, 107 S.Ct. 828 (1987) (defendant agreed to make oral,  
2 but declines written statement).

3 Here, a review of the totality of the circumstances reveals that moving to suppress  
4 Petitioner's two (2) statements to Detectives while he was in the hospital would have been  
5 futile because his statements were voluntary. See Ennis, 122 Nev. at 706, 137 P.3d at 1103.  
6 Petitioner's reliance on a self-serving Affidavit does not negate that there was testimony  
7 presented at trial, including from Petitioner himself, that demonstrated the voluntariness of  
8 Petitioner's statements.

9 As a preliminary matter, despite Petitioner's argument, Petitioner's Miranda rights were  
10 not violated when he interviewed with Detective Williams and Detective Merrick at UMC  
11 because he was not in custody. Miranda, 384 U.S. at 444, 86 S.Ct. at 1612. Indeed, the  
12 detectives interviewed Petitioner while he was lying on a gurney inside the emergency room  
13 of UMC trauma. There was no testimony presented at trial to indicate that Petitioner was  
14 chained to his bed, as he now alleges, during this time period and the voluntary statement  
15 transcript reveals that Petitioner was not handcuffed. Recorder's Transcript of Hearing: Jury  
16 Trial Day 17 at 5, 11; Exhibit A at 16-17. Additionally, Detective Williams testified that  
17 Petitioner would have initially been free to stop the interview and reiterated to Petitioner  
18 throughout the interviews that he was not under arrest. Recorder's Transcript of Hearing: Jury  
19 Trial Day 17 at 19-20; State's Exhibit A at 14-15, 17. At no point during the interview or after  
20 the interview did Detective Williams or Detective Merrick arrest Petitioner. Recorder's  
21 Transcript of Hearing: Jury Trial Day 17 at 6. Accordingly, Petitioner was not in custody.

22 Additionally, although Petitioner has failed to argue the Passama factors, each were  
23 met. As for the first and second factors, Petitioner has not and cannot demonstrate that his age,  
24 education, or intelligence caused his statements to be involuntary. To the extent Petitioner  
25 claims that this factor was not met because Petitioner was in and out of consciousness, that is  
26 belied by record. Although Petitioner self-servingly testified that he believed he was given a  
27 shot of medication before he was transported to the hospital and was in and out of  
28 consciousness during the interviews with the detectives, he also admitted during trial that he

1 was cognitive enough to provide telephone numbers to the detectives. Recorder's Transcript  
2 of Hearing: Jury Trial Day 14 at 170-71, 210. In fact, Petitioner even recalled that during the  
3 interviews, he was trying to protect himself by lying to the detectives. Recorder's Transcript  
4 of Hearing: Jury Trial Day 14 at 215-16. Moreover, Detective Williams testified that at the  
5 time of the interviews, he had no idea if Petitioner was sedated, but Petitioner appeared to be  
6 conscious and knew that Petitioner had not been given anesthesia yet. Recorder's Transcript  
7 of Hearing: Jury Trial Day 17 at 6, 12. Most importantly, the voluntary transcript itself reveals  
8 that the detectives and Petitioner were able to have a full conversation for just under an hour  
9 without any indications that Petitioner was having any comprehension issues. Exhibit A. Thus,  
10 the fact that Petitioner did not have any apparent issues with comprehension, that he was not  
11 under anesthesia, and was able to provide telephone numbers as well as feign his culpability  
12 leads to a determination that his statements were voluntary.

13 Third, as discussed *supra*, it was unnecessary for the detectives to advise Petitioner of  
14 his constitutional rights as he was not in custody. It also bears noting that Petitioner was  
15 advised multiple times that he was not under arrest throughout the interviews.

16 Fourth, Petitioner does not and cannot demonstrate that Petitioner was subjected to a  
17 prolonged interview and subject to inappropriate tactics. Petitioner participated in two (2)  
18 interviews from his hospital bed for a total duration of just under one (1) hour. Recorder's  
19 Transcript of Hearing: Jury Trial Day 17 at 22-23. His first interview lasted about eighteen  
20 (18) minutes while his second interview spanned about thirty-seven (37) minutes. Id. Not only  
21 was this timing far less than the five (5) hours of detention the defendant in Passama  
22 experienced, but also, unlike in Passama as will be discussed *infra*, the one (1) hour was not  
23 coupled with any inappropriate coercion. 103 Nev. at 214-15, 735 P.2d at 323; Chambers, 113  
24 Nev. at 980, 944 P.2d at 809 (concluding that the defendant's statements to police were  
25 voluntary after a four-hour interview with police coupled with not appearing to be intoxicated  
26 and knowingly and intelligently waiving his Miranda rights).

27 Additionally, Detective Williams and Detective Merrick did not employ inappropriate  
28 questioning tactics. The Nevada Supreme Court has ruled that a defendant's statement is not



1 deemed involuntary when made as a result of police misrepresentations. In Sheriff v. Bessey,  
2 112 Nev. 322, 324, 914 P.2d 618, 619 (1996), the Supreme Court reversed a pre-trial petition  
3 for a writ of habeas corpus where the district court found that the Detective had improperly  
4 fabricated evidence and ruled that the defendant's inculpatory statements should have been  
5 suppressed and dismissed the information. The district court objected to the fact that during  
6 questioning, the defendant denied engaging in any sexual acts with the victim. Id. The police  
7 officer asked the defendant if he could explain why scientific testing determined that the  
8 defendant's semen was present on the couch of the apartment where the sexual acts allegedly  
9 occurred. Id. "The actual analysis was negative, but the officer presented Bessey with a false  
10 crime lab report, which the officer had prepared. Bessey then made a number of inculpatory  
11 statements." Id.

12 The Bessey Court recognized that under Passama it is a totality of the circumstances  
13 test to determine whether a confession was voluntary. Id. at 324-25, 914 P.2d at 619. Police  
14 deception was a relevant factor in determining whether the confession was voluntary;  
15 "however, an officer's lie about the strength of the evidence against the defendant, in itself, is  
16 insufficient to make the confession involuntary." Id. at 325, 914 P.2d at 619, citing Holland v.  
17 McGinnis, 963 F.2d 1044, 1051 (7th Cir. 1992), cert. denied, 113 S.Ct. 1053 (1993). Further,  
18 "cases throughout the country support the general rule that confessions obtained through the  
19 use of subterfuge are not vitiated so long as the methods used are not of a type reasonably  
20 likely to procure an untrue statement." Id. at 325, 914 P.2d at 620.

21 The Bessey Court noted that lying to a suspect about a co-defendant's statement is  
22 insufficient to render a suspect's subsequent statement involuntary. Id., citing Frazier v. Kupp,  
23 394 U.S. 731 (1969). Moreover, lying to a suspect regarding the suspect's connection to the  
24 crime is "the least likely to render a confession involuntary." Id., citing Holland, supra.

25 Such misrepresentations, of course, may cause a suspect to confess, but causation alone  
26 does not constitute coercion; if it did, all confessions following interrogations would be  
27 involuntary because "it can almost be said that the interrogation caused the confession." Miller  
28 v. Fenton, 796 F.2d 598, 605 (3rd Cir.), cert. denied, 107 S.Ct. 585 (1986). Thus, the issue is

1 not causation, but the degree of improper coercion, and in this instance the degree was slight.  
2 Id. The Bessey Court, 112 Nev. at 328, 914 P.2d at 621-22, recognized that many of the  
3 investigatory techniques designed to elicit incriminating statements often involve some degree  
4 of deception:

5  
6 Several techniques which involve deception include under-cover police officers,  
7 sting operations, and interrogation techniques such as offering false sympathy,  
8 blaming the victim, minimizing the seriousness of the charge, using a good  
9 cop/bad cop routine, or suggesting that there is sufficient evidence when there is  
10 not. As long as the techniques do not tend to produce inherently unreliable  
11 statements or revolt our sense of justice, they should not be declared violative of  
12 the United States or Nevada Constitutions.

13 In the instant case, Petitioner has not alleged and cannot demonstrate that Detective  
14 Williams and Detective Merrick employed investigative techniques that would transform  
15 Petitioner's voluntary statement into an involuntary one. At most Detective Williams may have  
16 feigned the weight of the evidence against Petitioner, an issue Petitioner did not raise, but that  
17 itself "is insufficient to make the confession involuntary." Bessey, at 325, 914 P.2d at 619.  
18 Moreover, it was not coercive for the detectives to continue to speak with Petitioner after he  
19 stated he was done speaking and then continued to speak with the detectives:

20 Q: Okay Jorge, we're not gonna listen to lies any longer, not gonna waste  
21 your time.

22 A: Okay then I'm done.

23 Q: You...

24 A: We're done.

25 Q: We're done?

26 A: Yep.

27 Q: Your buddy is bleeding out.

28 Q1: What's he gonna tell us when he comes in here?

A: Who?

Q1: Your buddy.

A: How...

Q1: He's also shot.

A: I don't know - I don't know what he - know what his problem was.

1 State's Exhibit A at 15-16. By voluntarily continuing to speak with the detectives, Petitioner  
2 made it clear he was not done speaking with them. Accordingly, the duration and nature of the  
3 interviews does not indicate that Petitioner's statements were involuntary.

4 As for the final factor, Petitioner did not suffer physical punishment during his  
5 interviews. In Falcon v. State, 110 Nev. at 533, 874 P.2d at 774, the defendant claimed that  
6 his statements were not voluntary because he was under the influence of a controlled substance  
7 at the time he gave his statement. The Nevada Supreme Court found that the defendant's  
8 statement was voluntary where he was interviewed eleven (11) hours after the crime was  
9 reported, the officers who came into contact with him observed that he was capable of  
10 understanding, the officers testified that the defendant did not exhibit the signs of a person  
11 under the influence of a controlled substance, and that the defendant willingly spoke to the  
12 officers. Id. at 534, 874 P.2d at 775.

13 Based on Petitioner's responses to the officers during his voluntary interview, it appears  
14 that he was able to understand the meaning of his statements and it does not appear that the  
15 officers thought that he was showing signs of impairment. Stewart, 92 Nev. at 170-71, 547  
16 P.2d at 321; Chambers, 113 Nev. at 980, 944 P.2d at 809. Additionally, to the extent Petitioner  
17 argues he was forced to participate in the interview in pain, his claim is belied by the record.  
18 Hargrove, 100 Nev. at 502, 686 P.2d at 225. While Petitioner now appears to self-servingly  
19 claim that he was in pain during the interviews, there is no indication that such fact would have  
20 made his statement involuntary. Indeed, Petitioner testified at trial that he was given pain  
21 medication prior to being transported to the hospital. Recorder's Transcript of Hearing: Jury  
22 Trial Day 14 at 170-71, 210. Moreover, he never once told the officers that he was in pain  
23 throughout the interview, let alone that he needed a break of any kind. State's Exhibit A.

24 In sum, trial counsel was not ineffective for failing to move to suppress Petitioner's  
25 statement to police after his arrest because, after an examination of a totality of the  
26 circumstances, Petitioner's statement to police was voluntary. See Ennis, 122 Nev. at 706, 137  
27 P.3d at 1103 (explaining that counsel cannot be ineffective for failing to make futile objections  
28

1 or arguments). It also bears noting that counsel filed significant meritorious motions in this  
2 case, such as the Motion to Sever.

3 Additionally, Petitioner has not and cannot demonstrate that he was prejudiced by these  
4 statements because the result of his trial would not have been different without these  
5 statements as there was overwhelming evidence of Petitioner's guilt, including: (1) Petitioner  
6 being found at the scene of the shooting after being shot by one of the occupants of the home;  
7 (1) a man wearing an orange ski mask was seen fleeing the scene and that same mask was  
8 found inside of the vehicle in which Petitioner was found; (2) although not definitively  
9 conclusive, the bullet recovered from Petitioner's leg had the general characteristics of the  
10 Glock .40 millimeter that Joseph Larsen was found holding shortly after the shooting and was  
11 determined to not have been fired by any of the other weapons examined; (3) Figueroa testified  
12 about the conspiracy, including that he, Montone, and Petitioner were dropped off at Joseph  
13 Larsen's home, Figueroa broke through the door, and gunfire erupted; (4) although the bullet  
14 found in Gibson could not conclusively be identified as coming from the rifle, it had general  
15 characteristics with the rifle and was not fired by any of the other weapons examined; (5)  
16 Petitioner claimed he used the rifle to shoot at the occupants of the home; and (6) Petitioner  
17 admitted to each of the charges, except for murder. Jury Trial Day 5 at 18, 74, 83; Jury Trial  
18 Day 7 at 169-170; Jury Trial Day 9 at 22-24; Jury Trial Day 10 at 236-247; Jury Trial Day 14  
19 at 139-154, 162-64, 179, 218. Therefore, Petitioner's claim fails.

20 **B. Trial Counsel was Not Ineffective for Failing to Ask Certain Questions at**  
21 **Petitioner's Jury Trial**

22 Petitioner claims counsel was also ineffective for "being silent most of the time" and  
23 failing to question the following matters further: (1) whether Murphy, Laguna, and Figueroa  
24 had firearms that matched the rifle Mendoza used, (2) bullets that were allegedly never retained  
25 as discussed by the investigators at trial, and (3) whether the other suspects could have caused  
26 the death of Gibson. Supplemental Petition at 19-20. Not only is this claim insufficiently pled,  
27 but it also does not demonstrate ineffective assistance of counsel under the Strickland standard.

1 Hargrove, 100 Nev. at 502, 686 P.2d at 225; Maresca, 103 Nev. at 673, 748 P.2d at 6; NRS  
2 34.735(6).

3 As a threshold matter, the questions counsel asked at Petitioner's jury trial was a  
4 virtually unchallengeable strategic decision. Vergara-Martinez v. State, 2016 WL 5399757,  
5 Docket No. 67837, unpublished disposition (September 2016) ("Counsel's decision regarding  
6 how to question witnesses is a strategic decision entitled to deference."). Regardless, Murphy  
7 and Figueroa's attorneys also asked questions at that trial, so there may have been no need for  
8 counsel to repeat questions.

9 Moreover, there would have been no need for counsel to ask further questions about the  
10 aforementioned three (3) subject matters. As far as asking further questions regarding whether  
11 Murphy, Laguna, and Figueroa had firearms that matched Petitioner's rifle, such questions  
12 would have been futile. See Ennis, 122 Nev. at 706, 137 P.3d at 1103. Figueroa as well as a  
13 resident of the neighborhood testified that Petitioner was the individual carrying the rifle that  
14 night. Jury Trial Day 8 at 98; Jury Trial Day 10 at 236. More importantly, Petitioner himself  
15 testified that he was the individual with such firearm. Jury Trial Day 14 at 150. Thus, there  
16 was no need to ask further questions about the firearms.

17 Likewise, Petitioner has not and cannot demonstrate that counsel was ineffective for  
18 failing to ask further questions about bullets that were never retained or how asking such  
19 questions would have led to a better outcome at trial. Petitioner has failed to cogently argue  
20 his point as he has failed to identify the bullets to which he is referring, let alone which  
21 investigator he believes should have been asked further questions for the State to meaningfully  
22 respond. Notwithstanding such failure, asking further questions would have been futile and  
23 the outcome of the trial would not have changed as Petitioner not only admitted to shooting at  
24 the home with the rifle containing the 9-millimeter bullets that were later recovered from  
25 Gibson's body, but also there was other evidence adduced that Petitioner was in possession of  
26 the rifle at the time the shooting erupted. Jury Trial Day 7 at 170; Jury Trial Day 10 at 236-  
27 247; See Ennis, 122 Nev. at 706, 137 P.3d at 1103.

1        Additionally, Petitioner's argument that counsel should have asked whether the other  
2 suspects could have been the cause of Gibson's death equally fails. The forensic evidence  
3 revealed that the cause of Gibson's death was being shot in the head and chest with a 9-  
4 millimeter bullet for which there was testimony that Petitioner was the individual in possession  
5 of the rifle that held such sized bullets. Jury Trial Day 6 at 15; Jury Trial Day 7 at 156, 169-  
6 170. Moreover, Petitioner and his co-defendants would have been guilty of the murder  
7 regardless of who shot the rifle based on a theory of felony murder. Therefore, Petitioner  
8 cannot demonstrate how he would have received a better outcome had additional questions  
9 been asked.

10            **C. Trial Counsel was Not Ineffective for Failing to Deliver Petitioner's Motion to**  
11            **Withdraw Counsel**

12        Petitioner argues that counsel was ineffective for failing to file a Motion to Withdraw  
13 Counsel on Petitioner's behalf. Supplemental Petition at 30. This claim also fails.

14        Not only is Petitioner's claim insufficiently pled, but the only support Petitioner has  
15 provided for his argument is a self-serving affidavit to which he failed to cite in his argument.  
16 Exhibit 1 Affidavit of Jorge Mendoza. In such affidavit, Petitioner claims that he gave counsel  
17 a Motion to Withdraw Counsel on day ten (10) of his trial and requested counsel file it with  
18 the Court. Exhibit 1 Affidavit of Jorge Mendoza at 2. Petitioner claims that the basis for his  
19 motion was that counsel was ineffective for failing to ask his questions as well as questions in  
20 general and test the State's case. Id. at 2. Moreover, he claims that counsel should have joined  
21 in motions and was not honest about his background. Id. Even if this Court were to overlook  
22 the insufficiencies in his pleading, the alleged facts in Petitioner's affidavit do not demonstrate  
23 that counsel was ineffective. Indeed, the record demonstrates that counsel objected and asked  
24 questions to test the State's case during trial. See e.g. Jury Trial Day 5 at 84; Jury Trial Day 9  
25 at 72-85, 109-113; Jury Trial Day 16 at 95, 99. Further, Petitioner's co-defendant's counsel  
26 made objections and asked questions. Regardless, if one is to assume that Petitioner did in fact  
27 ask counsel to file the Motion on the tenth day of trial, a point the State does not concede, it  
28 would have been futile to file the Motion because it likely would have been denied based on

1 the delay it would cause. EDCR 7.40(c) (“No application for withdrawal or substitution may  
2 be granted if a delay of the trial or of the hearing of any other matter in the case would result.”).  
3 For this same reason, Petitioner cannot demonstrate prejudice because even if this Motion had  
4 been field, it is unlikely the Court would have granted it on the tenth day of trial. Further,  
5 Petitioner cannot demonstrate that representing himself or having another attorney represent  
6 him would have led to a different outcome at trial. Therefore, Petitioner’s claim fails.

7 **D. Trial Counsel was Not Ineffective for Failing to Object on Confrontation**  
8 **Clause Grounds and to Subpoena the Living Victim**

9 Petitioner claims that counsel was ineffective for failing to “object on Confrontation  
10 grounds and failed to subpoena the living victim JL.” Supplemental Petition at 30. Just like his  
11 other claims, Petitioner has failed to sufficiently plead this claim to the point that the State  
12 cannot effectively respond. To the extent Petitioner is complaining about the admission of  
13 Joseph Larsen’s 911 call recording through his father’s testimony, Petitioner’s claim is  
14 meritless.

15 Generally, out of court statements offered for their truth are not permitted. NRS 51.065.  
16 However, NRS Chapter 51 also provides exceptions to the general rule. For example, NRS  
17 51.095 provides the excited utterance exception:

18  
19 A statement relating to a startling event or condition made while the declarant  
20 was under the stress of excitement caused by the event or condition is not  
21 inadmissible under the hearsay rule.

22 Additionally, the Sixth Amendment states that, “[i]n all criminal prosecutions, the  
23 accused shall enjoy the right to be confronted with the witnesses against him,” and gives the  
24 accused the opportunity to cross-examine all those who “bear testimony” against him.  
25 Crawford v. Washington, 541 U.S. 36, 51, 124 S. Ct. 1354, 1364 (2004); see also White v.  
26 Illinois, 502 U.S. 346, 359, 112 S. Ct. 736, 744 (1992) (Thomas, J., concurring in part and  
27 concurring in judgment) (“critical phrase within the Clause is ‘witnesses against him’”). Thus,  
28 testimonial hearsay—i.e. extrajudicial statements used as the “functional equivalent” of in-

1 court testimony—may only be admitted at trial if the declarant is “unavailable to testify, and  
2 the defendant had had a prior opportunity for cross-examination.” Crawford, 541 U.S. at 53-  
3 54, 124 S. Ct. at 1365. To run afoul of the Confrontation Clause, therefore, out-of-court  
4 statements introduced at trial must not only be “testimonial” but must also be hearsay, for the  
5 Clause does not bar the use of even “testimonial statements for purposes other than  
6 establishing the truth of the matter asserted.” Id. at 51-52, 60 n.9, 124 S.Ct. at 1369 n.9 (citing  
7 Tennessee v. Street, 471 U.S. 409, 414, 105 S. Ct. 2078, 2081-82 (1985)). Moreover, in Davis  
8 v. Washington, 547 U.S. 813, 822, 126 S. Ct. 2266, 2273-74 (2006), the U.S. Supreme Court  
9 clarified:

10  
11 Statements are nontestimonial when made in the course of police  
12 interrogation under circumstances objectively indicating that the primary  
13 purpose of the interrogation is to enable police assistance to meet an ongoing  
14 emergency. They are testimonial when the circumstances objectively  
15 indicate that there is no such ongoing emergency, and that the primary  
16 purpose of the interrogation is to establish or prove past events potentially  
17 relevant to later criminal prosecution.

18  
19 In this case, Joseph Larsen’s father, Steven Larsen, testified about receiving a phone  
20 call from Joseph the night of the robbery. Jury Trial Day 9 at 17-18. Joseph, sounding upset  
21 and distressed, told Steven that someone had kicked in the front door of his residence and a  
22 gunfight ensued. Jury Trial Day 9 at 18-19. After speaking with Joseph on the phone for about  
23 five (5) minutes, Steven instructed Joseph to call the police. Jury Trial Day 9 at 20. At this  
24 point, Steven proceeded to drive to Joseph’s residence. Jury Trial Day 9 at 20. Steven arrived  
25 at Joseph’s residence ten (10) minutes after the call. Jury Trial Day 9 at 21.

26  
27 Once Steven arrived at the residence, he parked his car in front of Joseph’s house and  
28 saw Joseph inside with Gibson lying by the front door. Jury Trial Day 9 at 22. Steven ran  
inside of the home where Joseph was standing still holding a firearm. Jury Trial Day 9 at 23.  
At that point, Joseph was talking to the 911 dispatcher on his phone. Jury Trial Day 9 at 23.  
After testifying about Joseph’s demeanor and what Joseph said during the 911 call, Steven  
explained that he was instructed by the 911 dispatcher to conduct chest compressions on



1 Gibson. Jury Trial Day 9 at 23-24. The State then moved to admit the 911 call recording and  
2 published it for the jury. Jury Trial Day 9 at 25-26. Subsequently, the State asked Steven to  
3 describe what Joseph told him occurred in the residence, to which Petitioner's co-defendant's  
4 counsel objected. Jury Trial Day 9 at 26-27. The Court overruled the objection and later placed  
5 on the record its rationale:

6  
7 THE COURT: And I did that because on the 911 call, it appeared that Larsen  
8 -- Joey Larsen -- was basically hysterical on the telephone when he was  
9 making the -- well, actually, he really lost it after his father arrived at the  
10 scene. He was fairly together when he was first on the phone with the police  
11 dispatch, you know, 911 operator, but then once his dad got there, he just  
12 completely fell apart and was screaming, crying, yelling, obviously, very  
13 distraught. And so it did seem to me that he was still -- would have still been  
14 operating under the excitement and thereby making his testimony reliable  
15 and that's why I allowed it.

16  
17 Jury Trial Day 9 at 87.

18 Although it does not appear that a Confrontation Clause objection was made, the 911  
19 recording would have been admissible under such grounds for similar reasons to why the  
20 contents of the call were properly admissible as excited utterances. Petitioner's statements to  
21 the 911 operator were nontestimonial as he was responding to an ongoing emergency. Indeed,  
22 Petitioner was shaking, still holding his firearm while he was on the call and Steven was even  
23 instructed at that time to begin chest compressions on the victim as first responders had not  
24 yet reached the residence. Jury Trial Day 9 at 23-24. Therefore, it would have been futile for  
25 counsel to have made an objection. See Ennis, 122 Nev. at 706, 137 P.3d at 1103. Additionally,  
26 counsel's decision regarding which witnesses to subpoena is a strategic decision that is  
27 virtually unchallengeable. See Rhyne, 118 Nev. 1, 38 P.3d 163; Dawson, 108 Nev. 112, 825  
28 P.2d 593. Regardless, Petitioner cannot and has not demonstrated he was prejudiced as there  
was other evidence of his culpability presented at trial as discussed *supra*.

### 29 **III. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

30 NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

- 1 1. The judge or justice, upon review of the return, answer and all supporting  
2 documents which are filed, shall determine whether an evidentiary hearing is  
3 required. A petitioner must not be discharged or committed to the custody of a  
4 person other than the respondent *unless an evidentiary hearing is held*.
- 5 2. If the judge or justice determines that the petitioner is not entitled to relief  
6 and an evidentiary hearing is not required, he shall dismiss the petition without  
7 a hearing.
- 8 3. If the judge or justice determines that an evidentiary hearing is required, he  
9 shall grant the writ and shall set a date for the hearing.

10 The Nevada Supreme Court has held that if a petition can be resolved without  
11 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.  
12 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A  
13 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual  
14 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled  
15 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100  
16 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that “[a] defendant seeking post-conviction  
17 relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the  
18 record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it  
19 existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It is  
20 improper to hold an evidentiary hearing simply to make a complete record. See State v. Eighth  
21 Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court  
22 considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make as  
23 complete a record as possible.’ This is an incorrect basis for an evidentiary hearing.”).

24 Further, the United States Supreme Court has held that an evidentiary hearing is not  
25 required simply because counsel’s actions are challenged as being unreasonable strategic  
26 decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge  
27 post hoc rationalization for counsel’s decision making that contradicts the available evidence  
28 of counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis  
for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain

1 issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Id. (citing  
2 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the  
3 *objective* reasonableness of counsel's performance, not counsel's *subjective* state of mind. 466  
4 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

5 Petitioner's Supplemental Petition does not require an evidentiary hearing. An  
6 expansion of the record is unnecessary because Petitioner has failed to assert any meritorious  
7 claims and the Petition can be disposed of with the existing record. Marshall, 110 Nev. at 1331,  
8 885 P.2d at 605; Mann, 118 Nev. at 356, 46 P.3d at 1231.

9 **CONCLUSION**

10 Based on the foregoing, the State respectfully requests that Petitioner's Supplemental  
11 Brief in Support of Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction) and  
12 Request for an Evidentiary Hearing be DENIED.

13 DATED this 19<sup>th</sup> day of November, 2020.

14 Respectfully submitted,

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

17 BY /s/TALEEN PANDUKHT  
18 TALEEN PANDUKHT  
19 Chief Deputy District Attorney  
Nevada Bar #05734

20  
21 **CERTIFICATE OF ELECTRONIC FILING**

22 I hereby certify that service of the above and foregoing, was made this 19th day of  
23 November, 2020, by Electronic Filing to:

24 DIANE LOWE, ESQ.  
25 E-mail: dianelowe@lowelawllc.com

26 BY: /s/Deana Daniels  
27 Secretary for the District Attorney's Office

28 TRP/bg/Appeals/dd-MVU

# EXHIBIT '1'

334

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**  
PAGE 1

EVENT #: 140921-3020

---

**SPECIFIC CRIME:** HOMICIDE

**DATE OCCURRED:** 09-21-14

**TIME OCCURRED:** 2010 HOURS

**LOCATION OF OCCURRENCE:** 10021 GARAMOUND AVENUE

CITY OF LAS VEGAS

CLARK COUNTY

---

**NAME OF PERSON GIVING STATEMENT:** JORGE MENDOZA

**DOB:**

**SOCIAL SECURITY #:**

**RACE:**

**SEX:**

**HEIGHT:**

**WEIGHT:**

**HAIR:**

**EYES:**

**HOME ADDRESS:**

**PHONE 1:**

**WORK ADDRESS:**

**PHONE 2:**

---

The following is the transcription of a tape-recorded interview conducted by DETECTIVE T. WILLIAMS, P#3811, LVMPD HOMICIDE SECTION, on 09-21-14 at \_\_\_\_\_ hours. Also present is Detective F. Merrick, P#7549.

Q: This is T. Detective Williams, P# 3811 along with Detective Fred Merrick...

Q1: 7549.

Q: ...7549 taking a recorded statement from Jose Mendoza under Event # 140921-3020. Location will be UMC Trauma. The date will be Sunday September 21, 2014. This will be a surreptitious recording. Jose - Jose.

Q1: Hey, buddy.

Q: You awake? Jose.

STATE'S PROPOSE

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Case No. C303991

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

**VOLUNTARY STATEMENT**

PAGE 2

EVENT #: 140921-3020

STATEMENT OF: MENDOZA, JORGE

Q1: Jorge.

Q: Can I talk to you for a minute. You wanna tell us what happened real quick?

A: I was gambling at the casino...

Q: What casino?

Q1: What casino?

A: Red Rock Casino.

Q: Which one?

A: The Red Rock.

Q: Gambling at the Red Rock. Then what happened?

A: Just turned around and I just - this car following me. I cut into neighborhood to see if they were following me and they lit me up with the lights.

Q: They lit you up? Where is your vehicle?

A: They took it.

Q: They took your car? Who were you with?

A: By myself.

Q: You was all by yourself? Did you have a weapon?

Q1: Is that a no?

A: No - no weapon. I didn't have a weapon.

Q: The police officer that we just talked to said he found you sittin' in a car.

A: Yes.

Q: What were you doing sittin' in that car?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**  
PAGE 3

EVENT #: 140921-3020  
STATEMENT OF: MENDOZA, JORGE

A: I was hiding, waiting for the gunfire to end. And then I woke up again - I woke up - when I woke in the car I just put my hands up so you guys can see me, that I'm not trying to do nothing. I was just trying to hide from the gunshot fire.

Q: Right.

A: And that was it. And then I got pulled out of the car and that was it.

Q: That's quite a ways down in that neighborhood to be. Where did they actually carjack you at?

A: Right about where you guys picked me up. It was just right there. And then they took off down the street.

Q: Tell me how it happened?

A: Ah - ah, right when I turned left onto that street by the last street, they hit me with a little side light, kind of, you know a spotlight? And I stopped and a guy came out and approached me and asked me to get out of my vehicle. He had a suite with a badge and a vest.

Q: A suit with a badge and a vest?

A: Right. So I thought he was legit, you know, I thought he...

Q: You thought he was a police officer?

A: Yes, sir. I thought - he told me to get out the car and stuff. I was cooperating with him and then I saw two other guys coming out and they ran to my car and took off. Then when I saw that happening then I knew, you know that something wasn't right. You know? And I knocked on a couple doors right there and

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT**  
**VOLUNTARY STATEMENT**  
**PAGE 4**

**EVENT #: 140921-3020**  
**STATEMENT OF: MENDOZA, JORGE**

nobody would answer the door for me. So then I saw my car at the end of the street go by again. And I walked just in that general direction you know, thinking I could get my car if they park it or something, you know? And I get about to the corner right where them shrubs were and I get run into by that guy that run into the car. And, ah, that's when I got shot. And I just remember trying to back off and I don't remember what happened from there for a second, you know?

Q: Where were you standing when you got shot?

A: Just about in the middle of the street.

Q: Okay, what's your car?

A: It's '95 Nissan Maxima.

Q: What color?

A: Gold.

Q: Gold? What's your license plate?

A: I don't know.

Q: You don't know your license plate?

A: No.

Q: Is the car registered to you?

A: Yes.

Q: Your name is Jose Mendoza?

A: Jorge Mendoza.

Q: Jorge Mendoza. And your date of birth is 09-03-82?



**LAS VEGAS METROPOLITAN POLICE DEPARTMENT**  
**VOLUNTARY STATEMENT**  
**PAGE 5**

**EVENT #: 140921-3020**  
**STATEMENT OF: MENDOZA, JORGE**

A: Yes, sir.

Q: What's your Social Security number?

A: 567-73-3644.

Q: 3644? And what's your address?

A: 1219 Westlund Drive.

Q: Western?

A: Westlund.

Q1: Westland?

A: Yes.

Q1: Where is that at? Give me a cross street

A: Oakley and Main.

Q1: Oakley and Main? Is that a house or apartment?

A: House.

Q1: House?

A: Yes.

Q1: Who you live there with?

A: My wife.

Q1: What's your wife's name?

A: Amanda.

Q1: Amanda? Amanda Mendoza?

A: Yes, sir.

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Q: What's your cell phone number Jorge?

A: 702-666-4948.

Q: 4948?

Q1: Where is your cell phone at right now?

A: They took everything.

Q1: It's in your car? Yes?

A: Yes.

Q: And you weren't in - in with anybody else?

A: No.

Q: All right that's not what other witnesses tell us happened out there. There's people out there watching that. Is there any reason they would tell us something different?

A: No I don't know.

Q: Did you have a weapon of any type?

A: Just - well, when I pulled away from the guy that I went into and I...

Q: You pulled the weapon away from him?

A: ...was wrestling - yes.

Q: What did you take away from him?

A: I don't know. It was longer like, a - a maybe a shotgun or something longer.

Q: What were you wearing?

A: I was just wearing this and my work shirt.

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Q: Your work shirt? What's your work look like?

A: It's a tan shirt.

Q: Tan shirt?

A: Uh-huh.

Q: Is it a Carhartt?

A: Yep.

Q: What?

A: Yes.

Q: It's a tan Carhartt?

A: Uh-huh.

Q: And what else?

Q1: Where do you work?

A: Energy Erectors.

Q1: At where?

A: Energy Erectors.

Q: Energy what?

A: Erectors Incorporated.

Q: Were you wearing gloves?

A: Uh-uh.

Q: No gloves? You sure?

A: Uh-huh.

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Q: There's a pair gloves sitting next to a brown Carhartt works shirt right there where they found you.

A: I think that stuff got tangled up in my shirt and stuff. I pulled my shirt off so that he couldn't have a hold of me no more and that's when the rifle handle strap got wrapped up in that. And that's how I pulled that away. But then I saw the car come shooting back up the street. I thought they were gonna try to run me over.

Q: Hey, Jorge, are you done?

A: Huh?

Q: Done lying? Okay you nodded your head. Do you wanna tell us what really happened now?

A: I'm telling you what happened.

Q: Well, we know that's not what happened. We got witnesses out there telling us completely otherwise. So why don't you tell us who you were with and what really happened?

A: I don't know.

Q: Now you get another chance to tell the truth.

Q1: Let's start at the beginning. What time were you at the Red Rock because I wanna check the video.

A: Um...

Q1: Was you even at the Red Rock?

A: I'm in there about 5:00. And I stayed for a while. I don't know what time it was

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when I left.

Q1: You got there about 5 o'clock tonight?

A: About.

Q1: Where'd you go?

A: Just to the Red Rock.

Q1: What?

A: Just to the Red Rock.

Q1: Okay in the casino, at the bar...?

A: Just wandered the casino, played the slots here and there.

Q1: Played slots?

A: Uh-huh.

Q1: Okay. What time did you leave? How long were you in there?

A: Ah, two hours maybe.

Q1: Two hours? Do you have a player's card?

A: No.

Q1: No? You don't - you don't use a player's card? How much money did you lose?

A: Probably about \$60.

Q1: You lost 60 bucks? So you were there for two hours and then, ah, what car did you get there in, yours?

A: No.

Q1: Okay, what car did you get there in?

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A: Ah, came there - it was a friend's pickup truck.

Q1: Friend's pickup truck, what's your friend's name?

A: Lewis.

Q1: Lewis? What's Lewis's last name?

A: I don't know his last name.

Q1: You don't? What color is his pickup truck?

A: It's a bluish newer GMC.

Q1: Okay. Was he driving or was you driving?

A: He was driving.

Q1: Okay. So it was just the two of you? Did he go into the Red Rock too?

A: Yes. But he dropped me off first and then he parked.

Q1: Okay. And then he came in and did he gamble?

A: No.

Q1: Was he with you when you were gambling?

A: No.

Q1: No? So what happens? Jorge, it's not making sense. You're gettin' there. Now we're knowing that you were there with your friend in his vehicle and not yours.

So where is your vehicle at?

A: Mine was at his house.

Q1: Okay, where is his house?

A: It's over by the - the - over by the South Point.

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Q1: Over by the South Point?

A: Uh-huh.

Q1: Do you know his address? Do you know the street he lives on?

A: No.

Q1: So you guys were a long way from your house and his house, right? So what made you go to the Red Rock when your - when he's right by the South Point and you're by downtown? Why the Red Rock?

A: We were gonna go meet up with a couple other friends but they never showed up.

Q1: Okay. You were gonna meet 'em where?

A: Just there and have a few drinks and stuff.

Q1: At where?

A: At the Red Rock.

Q1: Okay. So after you guys left the Red Rock who is driving?

A: Lew was driving.

Q1: He was driving, okay, where'd he go? What's the plan? What are you gonna do?

A: Took me to my car.

Q1: Where was your car parked at?

A: His house.

Q1: So down by South Point?

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A: Yes.

Q1: Okay, so you drive all the way back down to South Point, right?

A: Uh-huh.

Q1: Okay, so you get your car? Is that a yes?

A: Yes I got my car.

Q1: Did he, ah, go with you...

A: Um...

Q1: ...or did he stay at his house?

A: He left.

Q1: He left? So you drive all the way back up here. Is that right?

A: Uh-huh.

Q1: Okay. So why did you drive all the way back up to Red Rock area?

A: I was just driving on the 95 to the casino and I just happen to exit right up there.

Q1: What exit did you take?

A: I don't even know what exit it was. I just random exited when I (unintelligible).

Q1: Was you with anybody in your vehicle?

A: No.

Q1: I know you were with somebody. Who were you with?

A: I wasn't with no one in the car.

Q1: You was with nobody?

A: When I was in the car I was by myself.



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Q1: All right. Did you meet up with somebody?

A: No.

Q1: Did you meet up with Lewis? Did he follow you up there in his pickup? So if I go find Lewis down at his house at South Point he's gonna say he wasn't with you? Is that true?

A: Uh-huh.

Q1: What?

A: Yes.

Q1: What's Lewis's phone number?

A: I don't know. Everything I have is on my cell phone which they took everything.

Q1: Okay. Answer me this. What is Lewis listed under at - in your cell phone? Is it under Lewis? Or do you have him in there in your phone under a nickname?

A: I think Lew.

Q1: It's under Lou?

A: Yes Lew.

Q1: L-O-U?

A: L-E-W.

Q1: L-E-W, okay. Is that the only L-E-W or Lew in your phone?

A: Should be, yes.

Q1: Huh?

A: Yes.

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Q1: Okay.

Q: Is he a white guy or Mexican?

A: White.

Q: What's Amanda's phone number?

A: 702-750-8111.

Q: What?

A: 8111.

Q: If we call Amanda what is she gonna say you were out doing tonight?

A: I don't know.

Q: What will she tell us?

A: Ah, most likely to tell you I went to go see a friend.

Q1: Which friend?

A: She don't know. I don't really tell all that stuff.

Q1: You have any children in common?

A: Yeah we have two kids.

Q1: How old are they?

A: 7 and 5.

Q1: Is that the story you're gonna stick with? Because you know it's not the right story, right? It don't match up with the evidence we have at the scene.

Q: Jorge, this is your chance. You're not under arrest. You're not in handcuffs. You've not been placed in handcuffs. Here's your chance to give us your version

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of things. You get one more chance to tell the truth. Who were you with?

A: I was with nobody.

Q: Do you understand...

A: I understand what you're saying. I'm telling you I was with nobody. I was with nobody.

Q: You were all by yourself?

A: Yes.

Q: And you drove up into a neighborhood after you been playing down at the Red Rock with another guy, then you drove all the way back and then drove all the way back up to the Red Rock again.

A: I was gonna go back and play some more and then I saw...

Q: Okay Jorge, we're not gonna listen to lies any longer, not gonna waste your time.

A: Okay then I'm done.

Q: You...

A: We're done.

Q: We're done?

A: Yep.

Q: Your buddy is bleeding out.

Q1: What's he gonna tell us when he comes in here?

A: Who?

Q1: Your buddy.

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A: How...

Q1: He's also shot.

A: I don't know - I don't know what he - know what his problem was.

Q: Whose problem was?

A: Whoever you guys are talking about. I don't know him.

Q: Your buddy is also shot. When we go talk to him is he gonna give us the same story or is he gonna tell us the truth?

A: I don't know what he's gonna tell you. I don't know - I don't know him. I don't know if he...

Q1: Jorge, you're not a very good liar dude. We've been doing this way too long.

A: Uh-huh.

Q1: All we want is your version of the truth. We don't get a free toaster at the end of the month to solve this.

A: I know you guys don't. And I'm not trying to give you guys a hard time.

Q1: We're not giving you a hard time.

A: I know.

Q1: We just want the truth.

A: I'm telling you I don't know the guy.

Q: You're the second guy I've talked to tonight. You get to give me your version after this other guy. The other guy gives me a completely different story than you just gave me. So you get a chance now to tell us the truth. 'Cause if you don't

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give us the truth now we'll have to stick with your original story which is gonna make you look like a very bad man.

Q1: You don't want that.

Q: I'll tell you what just tell us the name of the guy you were with.

A: Don't know the guy's name. I swear to god I don't know the guy's name.

Q1: Where did you meet him?

A: I don't know the guy.

Q1: So why were you with him if you don't know him?

A: I was not with him.

Q: I'm gonna let you think about this for a while. And when we come back it's gonna be in your best interest to tell the truth not this big lie you've told us. All that makes is - makes you look like is a hardcore criminal. And if you wanna go down as a hardcore criminal that's your decision. And we're giving you the opportunity. You're not under arrest. You got no handcuffs on you. We're just asking you some simple questions. You have the chance to tell us the truth.

A: I don't...

Q: If you stick with the lies that's what you're gonna have to stick with forever. Do you understand that? You can't come back and come up with some other better story that you think of later, you or - or an attorney. That'll be what you stick with. Do you understand?

A: Uh-uh.

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Q: All right we'll come back in a few minutes. You think about it. That'll be the end of the statement 2324 hours. This is Detective - Detective Williams and Detective Fred Merrick again with Jorge Mendoza, again. Jorge, I just called Amanda. She gave me a different phone number for you. She said your phone number was 469-9868. Is that correct?

A: No.

Q: And that's not right? Why would she give me that cell phone for you?

A: Alexis is dyslexic. She's got learning disabilities.

Q: Okay. Ah, just so you're aware we're gonna take a DNA sample from you and we're gonna compare it to the blood we've got at another crime scene. And when your blood ends up on that crime scene your story is not gonna hold water. So I'm gonna give you another opportunity to tell us what happened and who you were with.

A: Wasn't with nobody.

Q1: So you did all - this all by yourself?

A: I didn't do nothing.

Q: Well, let me explain to you what we know. Okay? We know that you and - and another guy, at least one other guy, kicked a door and went into a house and got into a gun battle with the guys in the house, all right?

Q1: Yeah.

Q: You got shot and your buddy got shot. We followed your blood trail till we found

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you hiding in that car with your jacket and your gloves and your rifle. Your buddy kept running down the street and we're still tracking his blood trail. So when we find him, like I said earlier, we'll - we'll talk to him and see how much he wants to tell us. But we will find him. He'll probably be in here within the hour. And we're gonna have your blood...

A: Uh-huh.

Q: ...more than likely on the doorstep of that house because your blood trail goes right up to that house. So you're saying you got carjacked isn't gonna work. So do you wanna tell us what really happened?

A: I went - I told you I saw my car circle to the end of the street and I went to the end of the street. And like I said before...

Q: Jorge, I'm not listen anymore.

A: I know you're not.

Q: Jorge, listen.

A: You don't wanna hear anything, so then okay.

Q: Did you walk up to a house while you were bleeding?

A: Yeah a couple of 'em after I got shot and tried to get people to call the police. I did, yeah, a couple of 'em but they wouldn't...

Q: Not one...

Q1: How can you walk with your leg shot?

A: I wasn't walking but I did try and knock on a couple doors and stuff.

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Q: Jorge, not one person down there says that you knocked on any door. And let me make this very clear, that blood trail goes from the car you were hiding in right up to a doorstep.

A: The doorsteps I knocked on for help.

Q: No it's not going up and back. It's going one direction from the doorstep to the car you were hiding in. And we can even tell the direction you were moving in. So you didn't go up to a doorstep. You didn't go up to any place else after you were shot. You were shot and left the house.

A: That's not what happened.

Q: Well, tell us what happened.

A: You don't want to hear what happened.

Q: I absolutely wanna hear what happened and so does Detective Merrick.

A: I told you what happened and you tell me that's not what happened. So I just (unintelligible).

Q: Well, that not - what you tell us is not what the evidence tells us at the scene. What the evidence tells us at the scene is you were shot at the front yard of the house 'cause we followed the blood trail to where you were at. That's how they found you. That doesn't lie. There's nothing you can say that gonna make that go away.

A: Yeah, yes I - I understand it.

Q: So why don't you tell us what happened?



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A: I told you what happened.

Q: Jorge, we're not bad guys. We're not here to give you a hard time. We're here to find out what happened.

A: I understand it, sir - I understand.

Q: You've been shot.

A: Yes, sir.

Q: And there's another guy that's been shot.

A: Yeah, sure.

Q: And do you understand that?

A: I heard gunshots. I didn't know what was going on and I got hit at the end of the street about where I saw the car. And that's it. I don't really remember much.

Q: Jorge, your buddy is bleeding out right now.

A: I know.

Q: And we're gonna find him. They've got the dog tracking his blood. And he's - and if we didn't find him he'd end up in a hospital. Why don't you tell us who he is? Do you understand what that makes you look like when we do find him and we do get the entire story from him and the other witnesses that are coming forward? And the homeowners are gonna be able to identify you and your buddy. You've got this long black hair. There's no way they made a mistake.

Q1: Jorge, just tell us what happened. That's all we want.

A: I don't know what happened. I - I'm - I keep trying to tell you guys I have no idea

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what happened. I was not expecting to come to the end of the street and get shot.

Q1: Was - was your - was it all your friend's doing then? Was it his idea?

A: No. We had - this was not my plan for tonight.

Q1: He was like - okay, was it your friend's plan...

A: No I don't know.

Q1: ...and he - he didn't tell you? You don't know?

A: I was with nobody.

Q1: It was his idea? Okay.

Q: Jorge, like I said, we're not bad guys. We're not trying to trip you up. We simply came in and - and told you to tell us what happened. And you were the one that started telling things that weren't true right from the get go.

Q1: Then you changed your story.

A: You guys trying to change my story.

Q: No we're not trying to change anything. We're trying to get to the truth. We're telling you what we know to be facts.

A: And I'm telling you what I know I did.

Q: There's a blood trail from a house to where they found you.

A: Not my blood.

Q: And there's a...

A: My blood is, if anything, in the middle of the street where I ran into the fucking

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guy.

Q: Now there's two blood trails, yours and your buddy's.

A: Um.

Q: Like I said, you're not gonna be able to dispute that. We're gonna take a DNA sample from you and we're gonna compare it to the blood. And we'll be able to prove that you came outta there and your buddy is gonna tell us the same thing. So you get the chance before your buddy does. I've already talked to the guy that was in the house. When your buddy ends up here I'm gonna talk to him too. And if you're the one holding out and just telling lies to the police you're the one that's gonna look like a bad guy.

A: Um...

Q: You understand that?

A: Ah, yeah I guess so.

Q: And I keep trying to explain that to you. And you have - I'm giving you plenty of opportunities to tell us what happened. Now Jorge, everybody lies to cops. That's not a bad thing all the time. And I know you feel like you're in big trouble and I understand that. But now ain't the time to try and hold a lie together. There's too much evidence that tells us what happened. The best thing you could do now is simply tell us what happened 'cause it ain't gonna go away. There's no way you're gonna be able to hold on to this lie for much longer. You know what I'm telling you is true. You know where you got shot at. The blood is

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- is pretty obvious so there's no sense in doing that. We're just asking you best as we know how just to simply tell us what happened.

A: I told you what happened.

Q: And if your buddy is the greater blame here and he's the one that came up with this idea and you were just following along then tell us that.

Q1: We need to know it.

A: I don't know what happened. I would never go along with anything like - I mean, if you run my name I don't have this kind of a history.

Q: Let me tell you something Jorge. Let me tell you what you're facing right now. Okay? Your blood is gonna be on that doorstep from that gun battle. Your DNA is gonna be all over the gloves and the gun. Your gun, your gloves, and your shirt are all right there together.

A: No I...

Q: And then we found you right there. They followed the blood trail right to the car. And the bottom line is there's no way you're gonna be able to walk away from this or to say that you weren't there. Or, more importantly say that you were carjacked. Now I don't know where your car is right now but we'll have it before long. And it's not gonna hold up to this carjacking story, you know that. You know what you've told us is gonna unravel very quickly. The best thing you can do before all of that happens is to just simply tell us what happened. I know you don't trust us 'cause you don't know us.

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A: I don't know what happened. I don't know what happened. I don't even know why I got shot. I don't know what happened. If I knew...

Q: What...

A: ...the situation I was approaching I would have never headed that direction.

Q: Boy I believe that. That's the first truthful thing you've said all night. I believe that all day long. I know if you would have known what would have happened you wouldn't have got involved tonight. But the fact is you did.

A: I was knocking on several doors trying to help.

Q: Jorge.

Q1: You were doing more than knocking.

Q: Jorge, that's not true. There's nobody that witness - there's nobody that's gonna tell it - tell us that. There's not a blood trail up to a bunch of doors. Blood trail starts at one house.

A: Ah, did you - see you - you are right. There's not blood trails at a bunch of doors 'cause I was knocking on doors before I got shot and I was knocking on doors after I got shot.

Q: Jorge.

A: Okay - okay you could (unintelligible).

Q: I'm just asking you to tell the truth.

Q1: Jorge, your - understand that your leg is compound fractured, right?

A: I understand I probably don't have a leg. And I understand you just...

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Q1: You couldn't have walked up to houses after you got shot.

A: Uh-huh.

Q1: There's no way.

A: I wasn't necessarily walking. Do you know what I'm saying? I dragged myself to a couple of doors and then knocked, asked for help.

Q: Did you talk to anybody?

A: Nobody answered any doors. One car stopped in the street right seconds after it happened and then he just took off. He didn't wanna see - he asked - he saw me laying on the road and he saw...

Q: Right, all right let me ask you this Jorge. When the guy in that house identifies you as one of the guys that came up and kicked his door and start shooting, and we're able to take your blood and the blood trail from that house where the shooting took place and follow it right back to that car and match you to the gloves, and the jacket and the gun, then what?

A: That's my jacket.

Q: Then what?

Q1: Then what are you gonna tell us?

A: That's 'cause I just...

Q: There's gonna be a homeowner and he's done it already, identified you as the guy that tried to come in the house, you and your buddy. You can't get away from that Jorge. You gotta - all you gotta do now is just tell us how it happened,

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why it happened. It's not a matter of if it happened. That's easy to prove.

?: You guys have no idea what caliber that bullet is in his leg? It looks big. Do you know if it's like a magnum or have you been able to figure that out?

Q1: We - we haven't got that far yet, no.

?: All right (unintelligible). Thanks.

Q1: Well, that - that might be okay

Q: Jorge.

A: I don't know if I got shot from the gun that I was wrestling with the guy. I don't know when and how I got shot or who shot me.

Q: Well, I understand that's the truth too. But when the bullets from your gun are in that house or in that guy...

A: I don't own a gun.

Q: ...and the bullets from that guy's gun are in your leg -- do you understand the physical evidence on this case?

Q1: We know the bullet didn't come out of your leg. It's still in there.

A: And I'm sure, I mean, I don't...

Q: Okay, do you understand what that means? The homeowner is gonna say yep this is the gun I shot. We'll match that to the bullet in your leg, there's no - even if you - even if you tried to lie it's not gonna matter. The forensic evidence is rock solid.

A: So if he hit someone in the street that didn't know what the hell was going on just

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because he said yep that's the guy. I shot him?

Q1: But it's not your neighborhood Jorge. What the heck are you doing in that neighborhood?

A: Like I said I was just driving up...

Q1: Sure. Okay.

Q: Hey.

A: (Unintelligible) and you guys don't believe me.

Q1: You are a terrible liar Jorge.

A: You guys are trying to spin everything, man. You guys are supposed be...

Q1: We're not spinning anything.

A: ...here to help, to protect and serve. And everything I've run into an officer you guys play these word lip game even when guys are telling the fucking truth.

Q: All right let me just lay it out one more time. I want you to be clear on this. The bullet in your leg, as you know, will match the - the gun of the homeowner. I probably will have your footprints on his door. Maybe it'll be your buddy, maybe it'll be you. I don't know that yet. But yours - your evi- your physical evidence is gonna be all over the front door of that house, guy kicking in, and you know that. You know it better than I do. And then your blood is gonna start right there. And our techs are gonna be able to testify that your - you were shot on...

A: Good, good, good...

Q: ...that doorstep.



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- A: ...good. Go gather that evidence. That will tell you. Go do it.
- Q: Here is what we haven't told you Jorge. One of the two guys in that house is dead. This is a murder investigation. So this isn't some speeding ticket or assault with a deadly weapon. This is a murder investigation. If you look at the shirts both of them say Homicide. So this isn't going away. The only chance you have is to explain why it happened and maybe there's some reasonable explanation of what happened.
- A: I don't - I don't know why it happened. And like I said I - the shootout - I heard it was more than one. You know what I mean? I heard gunshot and then when I heard that is when I turned around and then the guy came flying, you know, around the - from the house or whatever. I don't know. I didn't even see where he came from.
- Q: Jorge, listen. Let me tell you what we're - I'm gonna - just listen to me for a minute. We're gonna talk to Amanda again. She's burning up my phone actually right now. We're gonna talk to everybody, everybody since the time you were, ah, 5 years old. The homeowner's bullet is gonna be in your leg. The blood trail from that house to where we found you is gonna be very rock solid in the courtroom. The gun and the gloves and the jacket, it's all gonna be very easy evidence.
- A: The jacket is mine. I admitted to that.
- Q: Okay.

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- A: When I bumped into the guy it come untangled, I took...
- Q: Okay, what -- okay, Jorge, what you need to understand is if we charge you for murder of that homeowner it's gonna be a very easy case to put together with you as a suspect -- very easy. And if your buddy dies you're the only guy -- you're it. Your - will go for the murder of that homeowner period. Do you understand that?
- A: (Unintelligible).
- Q: Now if your buddy lives do you want me to tell you what he's gonna tell us? You drove him up there. It was all your deal. That's what he gonna tell us. He's gonna tell us another big lie and story only you're gonna be the bad guy. And the fact that you've lied to us about where you were and all how it happened we're gonna have no choice but to believe him over you because you've lied repeatedly over this. I'm gonna give you another chance in just a few minutes and you can tell us what happened. But the bottom line is this is a murder investigation. This is...
- Q1: And not to mention your DNA is gonna be on the gun that we found.
- A: Because when he got in the car he gave it up when I said I seen off on the side when the car come charging up the street, you know, I was taking off my shirt to get out from the wrapped up...
- Q: Jorge, I know that sounds like a - a good idea for you to say that now. But I'm telling you that ain't gonna wash.

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- Q1: What about the gloves? DNA is gonna be in your - in the gloves too, right?
- Q: Are those your gloves? Were you wearing those gloves Jorge?
- A: Nope.
- Q: You weren't wearing gloves? I'm gonna match those gloves to you Jorge. You know I will and you'll have to explain why you were wearing gloves. You wanna explain now why you wearing gloves?
- A: I wasn't wearing gloves.
- Q: Those aren't your gloves?
- A: No.
- Q: All right.
- Q1: Okay.
- Q: Well, we'll check 'em through DNA and we'll find out.
- Q1: Is your DNA gonna be on those gloves?
- A: Uh-uh.
- Q1: Your DNA gonna be on that gun?
- A: After I got it I wrapped it up...
- Q1: Yes or no is your DNA gonna be on the gun, yes or no? Did you touch the gun?
- A: Yes I did.
- Q1: Okay your DNA is on the gun.
- A: Right.
- Q: And when the bullet and the homeowner is matched to that rifle then what?

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- A: I got that rifle from the guy over...
- Q: Do you understand what we're tell- telling you though? We're just trying to lay out the evidence. His bullet is gonna be in you. Your bullet is gonna be in him. And you're not gonna be able to say you were carjacked and just cruising through the neighborhood. There's no way.
- Q1: Let me get this straight. You're telling me that the bullet in your leg is from the gun that we found you with on the truck?
- A: I'm - I'm not - I'm not sure. I don't know 100%. You know what I mean? It all happened the moment of a struggle.
- Q1: With who? Let's start there. With who? Who were you struggling with?
- A: One of the guys that I saw enter the car when they drove off.
- Q: Okay we'll play. Describe him? Start out with the race.
- Q1: White, black, Hispanic?
- A: I think he was probably white.
- Q: 'Kay. How many were there?
- A: There was three of them totally.
- Q: Three.
- A: It could be...
- Q: All three white?
- A: Other - I didn't get a very good description of the other two, you know?
- Q: Okay, what was the white man wearing?

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A: He was wearing like khaki pants, a white tee shirt, bulletproof vest, a belt and a badge.

Q: A belt and a badge is that what you said, or I didn't hear that last part.

A: Yes...

Q: A belt...

A: ...belt.

Q: ...with a badge?

A: Yes.

Q: Just like this?

A: Yes, sir. I thought I was talking to some kind of, ah...

Q: Describe the badge?

A: It was like - it looked - it looked more like a - it was bigger.

Q: Bigger?

A: Yes.

Q: Was it started or was it a shield?

A: It wasn't a star.

Q: So it was a shield? More like a shield?

A: Yeah.

Q: 'Kay. And it was on the belt just like mine?

A: Uh-huh. And what...

Q: How tall was this guy? How tall are you? Let's start there?

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- A: 5'9".
- Q: Was he taller than you or shorter than you?
- A: Taller than me.
- Q: How much taller than you?
- A: Four to six inches taller than me.
- Q: Okay so he's about 6'1".
- A: I don't know, 6' probably.
- Q: Medium build, heavysset, skinny, muscular.
- A: And he seemed to have a muscular built. It's hard to tell under the vest though, you know?
- Q1: What color was the bulletproof vest? Excuse me.
- A: Like a bluish. Dark, dark blue.
- Q1: Okay, did he have anything over the bulletproof vest? No?
- Q: How old was he?
- A: Well, I'd say, you know, he's - from looks 35 or so.
- Q: Did he a hat?
- A: Nope, no hat.
- Q: What was his hair like?
- A: Like, ah, like military buzz cut, flat top.
- Q: What color?
- Q1: Like this?

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A: Almost, a very square flat cut.

Q1: 'Kay. What color?

A: Blond.

Q1: Like his?

A: Yep.

Q: Kinda weapon did he have?

A: Um, like a shotgun or...

Q1: A long gun?

A: Yeah.

Q: Is that the gun you took away from him?

A: Yes.

Q: And where'd you put that gun?

A: I put it in the bed of the truck on the first house I knocked on the door after I had been shot.

Q: Now again there're two gloves sittin' right next to that, ah, rifle.

A: I don't know where the guns come from, you know? I just - I had my shirt on and I was trying to take my shirt off, you know what mean, as we were fucking running around.

Q: Did you have a vest on?

A: Huh?

Q: Did you have a vest on?

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- A: Did I have a vest on? No. I was not expecting to...
- Q: Okay. Anything else about that first white guy that you wanna describe to us?
- Q1: Notice any tattoos? Did he talk to you?
- A: Yes he was talking to me?
- Q1: Okay, what'd he say?
- A: He - first he asked me if there was any guns in the car, if there was any drugs in the car, if there was any money in the car, if I had any history. He told me to come stand out to the side of the cars. And I was talking to him and then the two other guys jumped in my car and took off. And then he jumped in his car and took off and that's when I knew...
- Q: What kinda car is he driving?
- A: It was a - a white Crown Victoria.
- Q1: Okay whoa - whoa. He jumps in your car, two other guys jump in his car and they all drive off? At what point did you get the gun away from him?
- A: After I saw my car circling around the block and I walked up that way. I was just walking, you know, I - and then I heard gunshots and I stopped. And then he come running and I was running, you know what I mean? (Unintelligible).
- Q1: So he's out of your car at this time?
- A: Yes.
- Q1: And he's running towards you?
- A: He was running and I don't think he knew I was right there, you know what I



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mean?

Q1: Okay.

A: And that's - yeah we ran into each other. And, ah, I already heard the gunshots and stuff. I saw the gun so I tried to get the gun, you know, and we had a little bit of a wrestle with it, you know and...

Q: In the middle of the street?

A: Right.

Q: What street?

A: It's right there...

Q: The street you were found on?

A: Yeah but closer towards the end.

Q: Like towards the intersection of where that street starts?

A: About there, yeah.

Q: Okay.

A: Just about there, of course.

Q: 'Kay.

A: Then I saw the car coming.

Q: What car?

A: My car.

Q1: Your Nissan?

A: Yes.

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Q1: 'Kay.

A: Come flying back around the corner.

Q1: 'Kay.

A: And I got outta the way and he hopped in the car. And I let...

Q1: So what happened to Crown Vic?

A: I don't know where that car went after that.

Q1: Okay. So he gets back in your car?

A: Right.

Q1: So somebody else is driving it?

A: Two guys, right, got in my car and that guy got back in his car.

Q1: Okay the Crown Vic.

A: Right.

Q1: Okay. And they all leave after get shot?

A: Before I got shot.

Q1: Okay, and then what happened?

A: I saw my car circling around the block, you know?

Q1: Okay.

A: I saw it again so I'm like, "It's over there," you know, and like I said I knocked on a couple doors. Nobody answered. And I was just walking over there, I was like, "Maybe if they park it in the driveway or something, you know, I could go get my car," and I know I have a spare hide a key in the bumper. So I was like, "I'll go

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get my car if it's just some - something that simple," you know what I mean?  
Then I heard the gunshots and I stopped. I didn't wanna go all the way over there.

Q: Well, wait a minute you already heard the gunshots according to your story?

A: You told me to me to go back to when the guys, okay?

Q1: Keep going.

A: So then I didn't wanna keep going over that way, you know, and then that's when the guy come running back, you know? Come running away from there and that's when I run into him.

Q1: That's when you struggle over the gun?

A: Yes.

Q1: How many times the gun go off?

A: I don't know.

Q1: How many gunshots did you hear?

A: I don't know. I don't know - know, and I heard just - I did - I heard a lotta gunshots.

Q1: How many gunshots did you hear before you got shot while you're struggling with the gun?

A: Probably three.

Q1: And then the fourth one you get shot?

A: Third one I got shot.

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Q1: The third one you get shot? How many after you get shot do you hear, any? Or at - at that point do you have the gun away from him?

A: At that point I had the gun away from him but I still heard gunshots.

Q: So let me get this straight. He was standing right next to you when he shot you? You were wrestling with the gun?

A: Yeah. When I got shot I was wresting with him for a gun. So I don't know if it's...

Q: Is it the big gun that you put in the back of the truck? That's the gun that shot you?

A: I don't know.

Q: Well, you're fighting over the gun.

Q1: Did it go off?

A: Yeah - yes, yeah.

Q: So and right next - you guys were standing next to each other?

A: Right.

Q: So is the barrel like touching your leg?

A: It was all over 'cause it was - the strap was tied up in my sleeve.

Q: So you had a hold of the gun when it went off and shot you?

A: It really - no I didn't have a hold of it. It was tangled up in my sleeve. I was trying to take off my shirt.

Q: So the gun was tangled up with you...

A: Right.

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- Q: ...but he shot you?
- A: Yeah.
- Q: So how far do you think that distance would be from the barrel of that gun to your leg?
- A: I don't know, about my shirt stretched out.
- Q: You just - you just made a motion just a foot or two. Is that about accurate?
- A: I don't - I don't know exactly how far but yeah, you know, it's just - it wouldn't be very far, just the length of my sleeve and a little bit of material, you know?
- Q: Okay and so the gun went off, shot you in the leg, and you were able to take the gun away?
- A: He let go of everything when the car come.
- Q: Okay, so you end up with the gun, correct?
- A: Yes.
- Q: He gets in the car and leaves?
- A: Right.
- Q: So you end up with the gun shot. Did you shoot him?
- A: I didn't shoot nobody.
- Q: He's shooting...
- Q1: Did you shoot at him?
- A: No.
- Q1: To protect yourself? You have a right to defend yourself.

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A: Ye- yes I know. It all happened so fast and it's not like I had the gun in my hands.

Q1: Okay.

A: You know what I mean? Not like a usable...

Q: Okay. So basically though you got the strap, you guys are fighting with the gun and he lets it go, at some point in that little fight though you get shot in the leg with that rifle?

A: Ah, yeah. Yeah I - I believe so.

Q: And he leaves and now you got the rifle and what do you do?

A: I tried to flag down the first car that I saw.

Q: Then what did you do?

A: They wouldn't stop because I had a rifle.

Q: How far did you go - how far did you go...

A: I wouldn't stop either.

Q: ...after you got shot with the rifle?

A: How far did I go? I went to the first house right there where the shrubbery goes and I knocked on the door and nobody answered.

Q1: You still have the rifle at that point?

A: I was holding on to the rifle at this point because I didn't know what was going on. You know what I mean?

Q: Okay, and then what?

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A: And then after I saw the peoples' reaction, I couldn't get no help because I had rifle, you know, I put the rifle away, you know?

Q: Where'd you put the rifle?

A: I just put it in the bed, ah, sit - sit in the back of a truck.

Q: Bed of a truck?

A: Uh-huh.

Q: Whose truck is it?

A: I don't know. That's the house I knocked on the first...

Q: So basically...

A: ...time.

Q: ...you got shot right there where that truck is?

A: No - no I dragged myself back to there.

Q: How far away from the truck did you get shot?

Q1: How many houses away? Or how many driveways?

A: Three. Three or four driveways.

Q: Which direction?

A: Which direction...

Q: Yeah.

A: ...was I headed when I was coming back?

Q: Yeah.

A: I was heading north. I was back in - going back, you know what I mean, from

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which way I came.

Q: Jorge, you're - you're making it a little more difficult for me to understand. From where you put that rifle in the bed of that truck where did you get shot at? At the intersection just up the street?

A: Yeah at the intersection.

Q: That's about three houses away.

A: Up the street, yeah.

Q: Okay. So there should be a cartage case sittin' out in the middle of that intersection, right?

A: Uh-huh.

Q: Problem is there isn't. Casing - the cartage case from that rifle is sittin' over at that house where we told you the man was shot, where your blood is gonna be. Do you understand your story is not gonna hold up to the physical evidence we've already got out there.

Q1: Physical evidence don't lie Jorge.

A: That's not my gun.

Q1: We can't change that.

Q: Pardon me?

A: That's not my gun.

Q: Jorge, let me make this...

Q1: We didn't say it was your gun.



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Q: ...make this clear to you. There's no cartage case in the middle of the intersection where you claim you were shot. All right? The blood trail doesn't start where you claim you were shot. The cartage case for that rifle is over at that house where we believe you shot the homeowner. That's where the blood trail starts, your blood trail more than likely, we'll check it out with DNA. And that's where that cartage case is. And if that bullet in your leg comes out of your leg and it's not from that rifle, which I don't think it is, I bet you it's gonna be from the homeowner, then your story isn't - isn't gonna work. And all this is is gonna show everybody that you're a hardcore thug instead of trying to - a guy trying to rectify a problem that happened and tell the truth.

Q1: Which we don't believe you are Jorge.

Q: You don't seem like a bad guy.

A: Tell you the truth and you guys...

Q1: You're not a bad guy, just got hooked up in some bad crap.

A: I didn't. And I'm a good guy.

Q1: And right now is your time to clear yourself.

A: I'm a lineman electrician. Bro, I mean, I work. I have a career. I don't have just a job. You know what I mean?

Q1: All right.

A: I've got a wife and kids and this is not something I would ever...

Q1: Have you ever been arrested before?

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A: Yeah on...

Q1: Yeah?

A: ...traffic tickets...

Q1: Warrants? Traffic stuff?

A: ...and simple little stuff. Ah, you know what I mean?

Q1: What's the worst thing you ever been arrested for? And we're gonna check. We just haven't had a chance now.

A: Worse thing I've ever been arrested for was...

Q1: Uh-huh.

A: ...a DUI.

Q1: DUI is the worst thing?

Q: Any gang affiliation Jorge?

A: No, sir.

Q1: What does this tattoo say on your hand?

A: "In the beginning was the word and the word was with God and the word was God. John 1.1"

Q1: Okay.

Q: Do you believe that?

Q1: Any other tattoos?

A: Yes I believe that.

Q: You believe that stuff?

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A: Yes I do.

Q: Okay.

A: Just my wife's name.

Q1: Amanda, okay.

A: This is my name.

Q1: And those are - okay.

A: Only tattoos that I have.

Q1: Okay.

Q: Jorge, I'm gonna give you another chance. Your story has been completely around in circles. You've told us about five, if I'm counting right, to six versions of what happened in one form or another. And you know better than the two of us standing here the physical evidence is not gonna show what you said is true. It's gonna show just the opposite. You didn't get...

Q1: We've treated you nothing but with respect.

A: Yeah I guess you guys have, sir. I do - I am saying that. But I'm also telling you I didn't do nothing and I didn't have no involvement with this - I had no idea what was going on.

Q1: So what you're telling me right now is your - this whole incident, you're a 100% the victim?

A: I don't know why this happened. I didn't...

Q1: Are you a 100% the victim?

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A: Yes.

Q1: Okay.

Q: Why didn't you call the police?

A: I - they took my phone.

Q: Okay let - let me...

A: They took my phone.

Q: ...re-ask. That was a bad question. Let me ask it this way. When the police are driving up and down that street, up and down, up and down, up and down with their lights flashing, why are you hiding from them in a car instead of coming out and saying hey I've been shot, I've had my phone stolen, my car has been stolen. You didn't do that.

A: I was hiding from...

Q: Jorge.

A: I didn't wanna get shot.

Q: Jorge, hold on a minute.

A: Okay.

Q: You need - you need to be careful how you answer this question.

A: Uh-huh.

Q: I've talked to the officers that found you. They were out there for a long time driving forth back and forth. And then they were parked out there for quite some time with the red lights going. At any time you coulda come out and said hey I've

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been shot, help me, instead...

Q1: You didn't have a gun, right?

A: No.

Q1: So why didn't you come out?

A: When I like realize - come back to realizing what was going on I was scared to just pop out of the car, you know? So I - the best thing I could think to do was just to shake the car and show my hands.

Q: Come on, Jorge, we've been treating you with a lot of respect. Are you really gonna say that to us?

A: I honestly just raised both my hands. If you...

Q: Well, let me you this - something. If you - if we were to tell you that kinda story, that we were the victims of a crime but we were hiding from the police and we had to wait until the police found us and then we came forward, what would you think?

A: I wasn't hiding from the police, sir.

Q: The seats laid back in that car, you're putting a tourniquet on your leg, you're trying to already do first aid on yourself. At no point -- at no point do you try to contact the police and ask for help.

A: I was getting...

Q: No point.

A: ...dizzy and stuff was why I tried to...

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Q: That police officer right over there is gonna testify. He's already given a statement that as he's standing there he sees your head bob up and look, bob up and look like you're looking around to find out where the cops are. And when he comes over there he's gotta get you outta the car. At no point did you say you were a victim. At no point did you say you'd been hurt by a stranger that took your car. At no point did you say any of that to them.

A: I was - I was - I was hollering that the whole time as soon as they told me to open the door.

Q: I'm just telling you what his statement is.

A: I know - I know. But...

Q: So you - you do nothing to act like a victim. You do nothing to act like you were carjacked.

A: I was - that was the first words to come outta my mouth and I mean, I had - when - I had my hands up so that they could see me in the car.

Q1: What was the first word that came outta your mouth?

A: I sa- I told 'em - they told me to open the door and get out of the car and I told, "I couldn't get out of the car, I had been shot, that I had been carjacked."

Q: Jorge, I was there when they transported you outta there. Okay?

A: Uh-huh.

Q: I'm telling you the Officer is gonna testify that the way you acted was the way a suspect acts. The hother- the other guy in that house is gonna testify you were

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one of the guys he saw in the gun battle. Your blood trail is gonna come from the house. Your cartage case is gonna be on the front, ah, yard of that house. There's no cartage case where you say you got shot. Your story does not match the physical evidence. I don't have all night to sit here and try to get you to do the right thing or try to do something to help yourself. All you're doing is making yourself look like a coldblooded killer. And I don't think you are. But the longer you drag this out the longer you keep telling this story it makes you look like a coldblooded, calculated hit man style killer that ran up and killed a man for no reason. Now if there's a better story than that tell us now. 'Cause if not that's what we go back and tell our bosses -- he lied and came up with some big cock and bull story, that's what we're gonna have to tell him.

Q1: How long you think we've been doing this?

A: I'm sure you guys been doing this for 20, 30 years or so. I know you guys deal with...

Q1: If you were standing here and - and I came up with that story would you believe it?

A: Fuck no.

Q1: Thank you.

A: It is farfetched.

Q: And what we're gonna do is we're gonna go away again. We're gonna call the guys at the scene. They're gonna give us more of the information out there and

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we'll come back. And I really want you to think about what we've asked you to do. I don't need you to - to tell me exactly what happened because the physical evidence will do that. I'm giving you the opportunity - we are giving you the opportunity, Detective Merrick and I, to explain what happened. I can go look at the physical evidence and I can get a pretty good idea what happened out there and who was where. I'll be able to pinpoint where you were standing, where the other guy was standing, where your buddy was standing, if he survives. So you think about all that and you think about all the physical evidence 'cause you were there. I wasn't there. You know where you were when you pulled the trigger. You know where your buddy was. You know what happened.

Q1: We need you to tell us why. We know what happened. We just need you to tell us why. The physical evidence will tell us what happened. We just need to know why.

Q: All right?

A: I don't know why.

Q: We'll be right back. Turn off the recording again. The time is 0011 hours.

---

**THIS VOLUNTARY STATEMENT WAS COMPLETED ON THE 21<sup>st</sup> DAY OF  
SEPTEMBER 2014 AT 0011 HOURS.**

**TW: (NET TRANSCRIPTS)  
14V0921**



Las Vegas Metropolitan Police Department

**VOLUNTARY STATEMENT**

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**SPECIFIC CRIME:** HOMICIDE

**DATE OCCURRED:** 09-21-14

**TIME OCCURRED:** 2010 HOURS

**LOCATION OF OCCURRENCE:** 10021 GARAMOUND AVENUE

CITY OF LAS VEGAS

CLARK COUNTY

---

**NAME OF PERSON GIVING STATEMENT:** JOSEPH LARSEN

**DOB:**

**SOCIAL SECURITY #:**

**RACE:**

**SEX:** MALE

**HEIGHT:**

**WEIGHT:**

**HAIR:**

**EYES:**

**HOME ADDRESS:**

**PHONE 1:** 702-771-8391

**WORK ADDRESS:**

**PHONE 2:**

---

The following is the transcription of a tape-recorded interview conducted by DETECTIVE B. JENSEN, P# 3662, LVMPD HOMICIDE SECTION, on 12-10-14 at 1515 hours.

Q: Secretary, this is Detective Jensen (J-E-N-S-E-N), P# 3662, taking a Voluntary Statement under Event #140821-3020. Name of the person giving the statement is Joey Larsen, common spelling. Date and time of the interview is going to be 12-10 of 2014 at approximately 1515 hours. Joey, you and I have spoke before, or actually no, I hav, I, I didn't speak to you the night of the scene, did I \_\_\_\_\_?

A: No.

Q: Okay. Uh, what's your new phone number?

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A: 702.

Q: Hold on a minute. Yep.

A: 771-6391.

Q: Okay. And you and Amber have been together um, y-you had a room, you guys had a room at the Em-Emerald Suites uh, back when you had a Domestic Violence. Cops came, she got arrested.

A: Yeah.

Q: Right?

A: Yeah, Summer. We didn't have a room. She had a room there.

Q: Okay. Do you pay for a room?

A: No, I just went there.

Q: Okay, 'cause that's what she told us, wa-was that night was you, you were paying for the room.

A: No. I was...

Q: Okay.

A: ...went there like just to talk and we ended up getting into an argument.

Q: Okay. And then I heard through the grapevine that you bailed her out of jail.

A: Yeah I did.

Q: Go ahead.

A: Like I had three, \_\_\_\_\_ money when \_\_\_\_\_.

Q: You revoked the bail?

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**A: Yeah.**

**Q: And then she got picked up again or, or did she ever get out of custody?**

**A: She went to the bail bonds to check in and they put her back in custody.**

**Q: Okay. Okay. So you revoked the bail. How much bail was it?**

**A: I think it was...it was three thousand all together.**

**Q: How much did you have to pay?**

**A: Three, three thousand.**

**Q: You paid three grand?**

**A: Yeah.**

**Q: You got your money back?**

**A: Um, I'm supposed to yeah.**

**Q: Okay.**

**A: Talking to them right now.**

**Q: She's back in custody?**

**A: Yeah.**

**Q: Okay. Um, have you gotten phone calls, letters, or anything from her?**

**A: Uh, I talked to her the other day.**

**Q: 'Kay. What'd you talk to her about?**

**A: Just like how she was doing, how I'm doing.**

**Q: 'Kay. Now, I-like I said, we've talked to several people involved in this. You know the night of this incident that happened on September 21<sup>st</sup>, when, when**

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Monty got killed, we got a guy in custody that night. Hi-did you ever see him, see a picture of him?

A: I've never seen. I, no I never seen a picture of him. I seen a picture of the, the second dude who...

Q: Okay.

A: ...\_\_\_\_\_.

Q: The first guy that got, that we got that night, the Mexican guy with the long hair? They had a picture of him on the news and stuff. Did you see that?

A: Naw, I didn't watch none of the news...

Q: Okay.

A: ...not \_\_\_\_\_

Q: I want to show you a couple of pictures. Have you ever seen this guy before?

A: Never see that dude.

Q: A-a-and we-hear me out. I, I don't care if you've sold this guy a ton of weed in the past. I don't care.

A: Um-hmm.

Q: I don't care if you fucked his girlfriend. I don't care. I just need you to tell me the truth if, if you know the guy.

A: No.

Q: Okay.

A: Really, I never seen that dude before...

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**Q: Okay.**

**A: ...in my life.**

**Q: Now this, this is a picture of Jorge. This is the guy we caught that night. He had gunshot wound in the leg. Um, uh, it looks like it's a 40 caliber, so that's probably coming from your gun, right? And, and you're not in any trouble. You could protect your castle. Uh, I don't have any problem with any of this other than names are, names have come up now and I think you may know some of these folks. Now, the white guy that we caught several days later, this guy, he got shot in the mouth and he got shot in the side. Do you know him?**

**A: I, when I seen his picture I told everybody he looks familiar to me, but I couldn't tell you like if I know him. I never, I never dealt with him like personally.**

**Q: Okay.**

**A: But he does look familiar to me.**

**Q: Okay. so, he-he may or may not have been to your place on Broadmere and, and bought wee from you?**

**A: Never, he was never at my place to...**

**Q: Okay.**

**A: ...purchase nothing from me, never.**

**Q: Okay. So you may have seen him hanging around with other friends at a social setting?**

**A: Possibly.**

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Q: Okay. Now Amber has a, a black friend that she calls Twisted.

A: Yeah.

Q: You know Twisted?

A: Know of him.

Q: Okay.

A: Met him one time.

Q: Okay. Do you know a real name for Twisted?

A: No.

Q: Anything you could tell me about Twisted?

A: No, like I said I met him one time and that was recently, probably like...

Q: Okay, who else has Amber been hanging out with since you guys have been kind of on the outs?

A: Really, I don't know, like we, we both come from the same place.

Q: Um-hmm.

A: When we split up, she started messing with all different people, all new people that I never knew none of these dudes man, these girls she...

Q: Okay.

A: ...was hanging out with. Only person I know that, that she still talked to is Ashley.

Q: Okay. How 'bout Amber?

A: Summer?

Q: Yeah, Summer. Summer talk to Amber?

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A: Amber's her little sister.

Q: Amber's her little sister.

A: Yeah.

Q: Oh, hold on a minute. What, uh, does Amber work at a 7-Eleven or something?

A: I don't think so. She only like sixteen, seventeen years old.

Q: Okay. Okay. That could be two different Amber's I guess. Um...

A: Yeah that could, 'cause I don't know of any Amber that works at a, any store.

Q: Ashley, you know who Ashley is?

A: Yeah.

Q: Ashley says she picks up Amber and a black guy that she thought was named Wicked, which I think is gonna be Twisted, over off of like Torrey Pines and Lake Mead area, by a Munchies?

A: Yeah.

Q: Which I thought was a bar, but Munchies is not a bar. Do you know what Munchies is?

A: Yeah, it's a gas station right there.

Q: It's a gas station.

A: Yeah.

Q: Okay. And Ashley hears them talking about hitting this house on Sunday that's got a bunch of weed and money in it, and blah, blah, blah. And Ashley goes, "Fuck that. That's Joey's place." And so they drop the black guy off and, and

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Ashley says that she chews Amber's ass, or, or Summer's ass about, you know, Joey's done nothing but be good to you and blah, blah, blah, and how could you do this? And, and Summer says, "Okay. I'm gonna, I'm gonna call Joey." Did she ever call you and say, "Hey somebody's gonna be hittin' your house?"

A: No, I never talked to her.

Q: Okay. Now Amber said she tried to call you and she couldn't reach you.

A: Ashley?

Q: Ashley.

A: Yeah.

Q: Ashley said she tried to get a hold of you to warn you, but, but she didn't reach you. So then she told another Amber about what was going on, and that Amber couldn't reach you, so she reached out to your dad.

A: Yeah. That was Tracy.

Q: Tracy.

A: Yeah.

Q: Tracy, not Amber?

A: Yeah.

Q: Okay, Tracy. Okay, I, I, I was thinking her name was Amber. That's where Amber came up. Okay. Okay, so A-Amber Montoya is a different case, but Amber is Summer's sister?

A: Yeah.



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Q: Where's Amber live at?

A: Un, tell you the truth, I'm not sure any more. She did live with...

Q: Is she married?

A: ...naw, like I said, I think she's only sixteen years old.

Q: Okay. Would she have uh, boyfriends or anything living with her? Does she live alone, does she live with her folks?

A: I think she lives with her dad. She used to live with her mom right in the same neighborhood we all lived in, but then she moved out.

Q: Now when you say the same neighborhood, in the trailer park?

A: Yeah, in the trailer park.

Q: Okay. Your dad know Amber?

A: I don't think so.

Q: Okay. Who else does, who else does Summer hang out with?

A: Right now I really don't know. Recently I don't know who she's been hanging out with, like ever...

Q: How...

A: ...since we fell out...

Q: How about Snoop?

A: I hear that's like who she's, like her new fling or whatever, but I never met the dude, seen the dude, I, I'm \_\_\_\_\_dude really.

Q: But you know a Snoop from the neighborhood.

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**A: The trailer park?**

**Q: The trailer park.**

**A: No, there's no Snoop...**

**Q: I thought there was a white Snoop up there and a Mexican Snoop up there.**

**A: There's no Snoops at the trailer park like, I've heard both of those names, but they're not in the trailer park at all.**

**Q: Okay. Do you know this guy?**

**A: Uh, yeah, he lives in the trailer park.**

**Q: He does?**

**A: Yeah.**

**Q: What's his name?**

**A: Uh, Dough Boy.**

**Q: Dough Boy?**

**A: Yeah.**

**Q: Does he know Summer?**

**A: Yeah, they know each other I think.**

**Q: Did they grow up together?**

**A: I'm not really...**

**Q: Are they fucking?**

**A: Shit, I don't know. I don't really know him, I don't think, aw shit, I don't know on that one. I don't know, like, I hear she's like been with a whole bunch a dudes, but**

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I don't know.

Q: Does Dough Boy, did Dough Boy know where your house was on Broadmere?

Has he ever been there before?

A: He never been there, but to say he doesn't know where it's at, I'm not sure.

Q: Okay. But Summer knows Dough Boy?

A: Yeah.

Q: And you know Dough Boy?

A: Yeah.

Q: What's Dough Boy's real name?

A: I don't know his real name, tell you the truth.

Q: How do you...

A: Just know him from the trailer park, just...

Q: This is...

A: ..\_\_\_\_\_hanging out.

Q: These are pictures that I got off of Facebook. Okay?

A: Alright.

Q: Um, what can you tell me about Dough Boy? Is there anything that sticks out about him?

A: Like I said, all I know is from we, really he walks his dog around the neighborhood, smoking. I said, "Aw, that smells good." We smoke together...

Q: Um-hmm.

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A: You know what I mean, that's as far as our relationship was.

Q: Has he got any for-any deformities?

A: Yeah, like his arm's \_\_\_\_\_ fucked up. I don't know how thought.

Q: Which arm, do you know?

A: Um, so I guess his right arm?

Q: Has he got a brother?

A: Think he has several brothers, but I don't know them.

Q: You don't know them? Okay. So Summer knows Dough Boy. And he, Dough Boy lives in the trailer parks up there?

A: Yeah. He used to. I'm not sure if he still lives there but, yeah.

Q: Okay. Do you know that guy?

A: Naw, I never seen him before neither.

Q: Never seen him before? And, and this is a picture of another Joey, not you, but a different Joey. Um, and, and these people may or may not be involved in, in the murder of Monty and the home invasion of your house up there on Broadmere. This is just information that we're picking up off the street from talking to other people. Where you staying at now?

A: \_\_\_\_\_ Trailer Park on West \_\_\_\_\_.

Q: Okay. Um, don't have anything to do with these folks?

A: Naw, I don't see 'em no more. We, we used to see each other like when I lived there. Ever since I got back...

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Q: Um-hmm.

A: ...to my mom and dad's I haven't seen 'em.

Q: What kind of dogs he got?

A: He used to have a like a, a little dog, you know, \_\_\_\_\_ just some little dog.

Q: Did you ever hear him talking about carrying guns or anything?

A: Naw.

Q: Okay. \_\_\_\_\_ ever talk about being in prison?

A: No.

Q: Any kids?

A: I, I think so, but I don't know. I'm not sure.

Q: 'Kay. So out of all these people, these pictures that I showed you, you know  
Dough Boy. Do you know his real name?

A: Naw.

Q: You just know him as Dough Boy?

A: Yeah.

Q: You don't know this guy, but he, but you think he looks familiar to you?

A: He looks kind of familiar.

Q: You've never seen this guy before.

A: I'm sure.

Q: This is Jorge. And, and the guy that kinda looks familiar is Robert Figueroa. This  
is the guy who we arrested days later. You saw his picture on the news.

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A: Yeah, Facebook or something.

Q: On Facebook or something?

A: \_\_\_\_\_ saw it \_\_\_\_\_.

Q: This guys picture was on the news. Jorge...

A: Yeah.

Q: ...Mendoza, but you never saw him.

A: Naw, it was, I was only like watching \_\_\_\_\_ thinking about none of this stuff.

The next couple days I wasn't watching any of the news or nothin' like that.

Q: And this Joey, you've never seen him before?

A: No sir.

Q: Okay. Now, do you remember how many people came through your door that night?

A: So of only two that I seen.

Q: Just two that you seen?

A: Yeah.

Q: Okay. And how far in did they get before you started shooting?

A: I'd say probably about, somewhere from like six to ten feet, somethin' like that.

Q: So they came in your doorway, they're past that little hall, powder bathroom...

A: Yeah, they're past that.

Q: They're at, there's a, there was a weight bench over here in, in the front living room, and that's probably ten, fifteen feet in....

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A: Yeah, they was about right there.

Q: So that's about right there?

A: Yeah.

Q: Okay.

A: 'Cause then there's the was for the kitchen...

Q: Um-hmm.

A: ...where I was standing at.

Q: Okay. What gun do you start shooting with?

A: Uh, the 30, like it happened so fast, I think I coulda had a .38, but I know it only had two bullets in it, so I think I grabbed that first and fired those two bullets, and then grabbed the other gun, but, that's what I remember.

Q: Okay. Monty didn't fire any of the guns?

A: Monty didn't fire no guns.

Q: Okay. And after the shooting stopped, how long did you guys wait before you and Monty went to go close the front door?

A: I'd say probably about 30 seconds, somethin' like that.

Q: 'Kay, and how far out did Monty step before he got shot?

A: It was like, like he was walking towards the door and the door was open. He was walking towards it and I was behind him, and he like was gonna shut it, but he like, instead of just shuttin' it, he stepped out there and like look, and I just heard one shot and he fell.

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**Q: Did you look out to see anything?**

**A: No.**

**Q: I don't blame you there. Okay. Um, I need a good phone, when I call you at this number, you gonna be able to answer it...**

**A: Yeah.**

**Q: ...24/7?**

**A: It's right here, yeah.**

**Q: I'm gonna send you text messages. Um, and I'll s-I'll text you my phone number. If you hear from Amber, if you hear from any of these other folks, you call me and let me know what's going on.**

**A: Alright.**

**Q: I need to be kept in the loop o-over all of this stuff, because some of these people involved are, are probably near and dear to you, okay? That's what I'm looking for.**

**A: Alright.**

**Q: Secretary, this'll be the end of the of statement. Date and time of the statement is uh, 12-10 of 2014 at approximately 1530 hours. Same people present. Thank you.**

---

**THIS VOLUNTARY STATEMENT WAS COMPLETED AT XXXX, ON THE 10<sup>th</sup> DAY OF DECEMBER 2016, AT 1530 HOURS.**

**BJ:vs**



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**15V0080**



1 **RPLY**

2 **LOWE LAW, L.L.C.**

3 **DIANE C. LOWE, ESQ. Nevada Bar No. 14573**

4 **7350 West Centennial Pkwy #3085**

5 **Las Vegas, Nevada 89131**

6 **(725)212-2451 – F: (702)442-0321**

7 **Email: DianeLowe@LoweLawLLC.com**

8 **Attorney for Petitioner**

9 **JORGE MENDOZA**

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY NEVADA**

12 **JORGE MENDOZA,**

**Case No.: A-19-804157-W**

13 **Petitioner,**

**DEPT NO V**

14 **vs.**

15 **CALVIN JOHNSON, WARDEN OF**  
16 **HIGH DESERT STATE PRISON.**

**[Stemming from C-15-303991-1]**

17 **Respondent.**

**REPLY TO STATE'S RESPONSE TO  
PETITIONER'S POSTCONVICTION  
PETITION FOR WRIT OF HABEAS  
AND SUPPLEMENT**

20 **DATE OF HEARING: APRIL 24, 2020**

21 **TIME OF HEARING: 10 AM**

22 **COMES NOW, Petitioner, JORGE MENDOZA, by and through his**  
23 **counsel of record DIANE C. LOWE, ESQ., and hereby submits his Reply to the**  
24 **State's Response to the Writ of Habeas Corpus Petition and Supplemental brief.**

1 This Reply is made and based upon the pleadings and papers on file  
2 herein, and the Points and Authorities attached hereto, and any oral arguments  
3 adduced at the time of hearing/s on this matter.  
4

5 Dated this 14<sup>th</sup> day of December 2020.

6 Respectfully Submitted,

7 /s/ Diane C. Lowe

8 DIANE C. LOWE ESQ. Nevada Bar #14573  
9

10 **POINTS AND AUTHORITIES**

11 **I. THE STATE FAILS TO OVERCOME MR. MENDOZA'S**  
12 **ASSERTION THAT HE WAS IMPROPERLY ADVISED**  
13 **BY HIS TRIAL ATTORNEY ON WHETHER HE HAD**  
14 **FOUND OUT BEFORE HIS**  
15 **TESTIMONY WHETHER A SELF-DEFENSE JURY**  
16 **INSTRUCTION WOULD BE ALLOWED. TRIAL**  
17 **STRATEGY ON SELF-DEFENSE WAS CLEARLY**  
18 **WRONG. INEFFECTIVE ASSISTANCE PREJUDICED**  
19 **HIM AND WAS SO HARMFUL TO HIS**  
20 **CONSTITUTIONAL RIGHTS THAT PREJUDICE CAN BE**  
21 **PRESUMED.**

22 Mr. Mendoza's Attorney's Opening Argument was very short. About  
23 2 transcript pages ending with: "We're going to try to convince you that he died as  
24 a result of self-defense, Mr. Mendoza's self-defense. So I know you guys – you'll  
25 be paying good attention to it." 4AA000854 -6 / p. 54 Jury Trial Day 5.  
26  
27  
28

1                   Wolfbrandt's Closing for Mendoza comes dangerously close to an  
2 identical Swanson scenario 12AA002873 -AA002887 at 12AA002874 / p. 68 Jury  
3  
4 Trial day 18:...

5                   "Ms. Lexis was right, and I told you from the opening that Jorge was going  
6 to admit and he testified he admitted to certain of the crimes that did occur  
7 at that location. He did commit a burglary. He did commit a home  
8 invasion, and he did commit attempt robbery. ..But we are absolutely  
9 contesting here and the reason why we're here is that it's our position that  
10 no attempt murder happened, and that no murder happened...So let's take  
11 a look here. On that evening page 69... All right, let's talk first about the  
12 six shell casings.. Those are the ones that are associated with Jorge's rifle  
13 the Hi-Ppoint 9 millimeter....And those are the shots that Jorge made  
14 right after he was getting shot at you will. ...At no time were any of those  
15 shots fired at anybody nor were any of those shots fired with an intent to  
16 kill anybody..page 72. And it's important because attempt murder is a  
17 specific intent crime where the purpose – the shooter has to have the intent  
18 of actually killing somebody and just not accomplishing that. ... Now  
19 was it careless and reckless shooting? Absolutely. But there's a crime  
20 called shooting into an occupied residence. ..All right, so Ms. Lexis was  
21 right. It is my contention it is for you to decide based on the Jury  
22 instructions, is that the burglary was completed once that door was  
23 opened...page 73

19                   Jury Trial Day 14 when the court conducts a right to testify colloquy  
20  
21 with Mr. Mendoza: 10AA0023830-AA002386:

22                   The Court: So Mr. Mendoza, could you maybe step up beside your lawyer by  
23 the microphone?

24                   Prosecutor: Should we just do all three at one time so you don't have to read the  
25 admonishment three times?

26                   Court: Oh Have you decided yet or are you going to wait until

27                   Ms. McNeill: I don't think my client can make that decision until we know  
28 what Mr. Mendoza's going to say

29                   The Court: Right, that's why I was figuring I'm already hearing that Mr.  
30 Mendoza has made a decision. I think that they can reach their decision later.  
31 All right. So Mr. Mendoza, so under the Constitution of the United States and

1 under the Constitution of the State of Nevada you cannot be compelled to testify  
2 in a trial. Do you understand that?

3 Defendant Mendoza: Yes. Page 75 line 23

4 The Court Okay. Please keep your voice up so we can pick you up.

5 Defendant Mendoza: Yes

6 The Court: Okay thank you. But of course, you may at your own request give  
7 up this right and take the witness stand and testify. Now, if you do, you will be  
8 subject to cross-examination by the State's attorneys, and anything that you  
9 might say either on direct examination or cross examination is subject of fair  
10 comment to the jury in closing argument by the State. And do you understand  
11 that?

12 Defendant Mendoza: Yes.

13 The Court: Okay. Now, if you choose not to testify, the Court would not permit  
14 the district attorney to make any comment to the jury about you not testifying.  
15 In other words, they can't stand up there and say to a jury, well, he didn't testify,  
16 and therefore he must be guilty. That cannot – can't happen. You know, it's  
17 nothing like that can happen. Do you understand?

18 Defendant Mendoza: Yes.

19 THE COURT: Okay. Now, if you elected not to testify, then the Court would  
20 instruct the jury, but only if your lawyer specifically requests that, in fact, the  
21 law doesn't compel a defendant in a criminal case to take the stand and testify,  
22 and no presumption may be raised and no inference may be drawn of any kind  
23 from the failure of a defendant to testify. So, that kind of instruction would be  
24 given to the jury if you chose not to testify and your lawyer requested such an  
25 instruction. Do you understand these rights that I have just explained to you?

26 Defendant Mendoza: Yes.

27 THE COURT: Do you have any question about any of those rights?

28 DEFENDANT MENDOZA: No.

THE COURT: Okay. Does he have any felony convictions?

MR. WOLFBRANDT: No.

THE COURT: Okay.

Mr. DiGIACOMO: No, he does not.

THE COURT: All right. So, have you made a decision after speaking with  
your lawyer as to whether you would like to testify?

DEFENDANT MENDOZA: Yes.

THE COURT: What's the decision?

DEFENDANT MENDOZA: I will testify. Page 77 line 17

THE COURT: Very well. And are – is that how we're starting? So, Mr.  
Wolfbrandt –

MR WOLFBRANDT: We're going to start.

1 Jury Trial Day 14

2 With that Mr. Mendoza waived his constitutional right to remain silent, took the  
3 stand and confessed to first-degree murder and all the associated criminal charges  
4 against him as well as some crimes [drug use] that were not charged or mentioned  
5 anywhere in the record outside of his testimony. On the advice of counsel.  
6  
7

8 Mr. Mendoza was made promises and assurances by his attorney with respect to the  
9 law and self-defense grounds for his actions which were wrong and thereby took  
10 away the voluntary quality of his trial testimony and made it coercive and a violation  
11 of his constitutional rights:  
12

13  
14 Undue coercion occurs when a defendant is induced by promises or threats  
15 which deprive his plea of the nature of a voluntary act.... Stevenson v. State,  
16 131 Nev. 598, 599, 354 P.3d 1277, 1278 (2015);  
17 A confession is admissible as evidence only if it is made freely, voluntarily,  
18 and without compulsion or inducement. It must not be extracted by any direct  
or implied promises, however slight. Franklin v. State, 96 Nev. 417, 418, 610  
P.2d 732, 733 (1980)

19 The definition of confession online is 'a formal statement admitting  
20 that one is guilty of a crime.' Not all confessions involve admitting  
21 wrongdoing. Charles Emil Kany, *The Beginnings of the Epistolary Novel in*  
22 *France, Italy and Spain*(1937), Volume 21, Issues 1-6, p. 19.  
23

24 Mr. Mendoza's testimony and statement to police are confessions  
25 for legal purposes though his police statement did not involve an admission to  
26 the shooting it did include confessions to various aspects of where he was that  
27  
28

1 day and what he was doing. If Mr. Mendoza is granted a new trial, we believe  
2 both his statement to the police at the hospital and his trial testimony should be  
3 suppressed because they were nonvoluntary and coercive and taken and given in  
4 violation of his constitutional rights.  
5

6  
7 For the current Writ action Respondent argues:

8 “The Nevada Supreme Court has concluded that to succeed on a claim that  
9 counsel was ineffective in preparing a witness to testify, a defendant must  
10 show that a witness’s testimony is the result of counsel’s poor performance.  
11 See Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). Petitioner  
12 is unable to make such a showing. Indeed, only two (2) decisions are left  
13 entirely up to a defendant at trial: whether to represent himself or whether  
14 to testify at trial. Lara v. State, 120 Nev. 177, 182 87 P.3d 528, 531 (2004)  
15 (“The United States Supreme Court has recognized that an accused has the  
16 ultimate authority to make certain fundamental decisions regarding the  
17 case, including the decision to testify.”) In this case, after extensive  
18 canvassing by the Court regarding Petitioner’s right not to testify Petitioner  
19 elected to do so. Counsel had no control over Petitioner’s testimony and  
20 certainly could not suborn perjury or coach Petitioner during his testimony  
21 as witnesses are expected to testify to the truth. In other words counsel  
22 could not control whether Petitioner would provide the necessary testimony  
23 for a theory of self defense.....” Response Brief at 9.

20 This argument misses our point. We are NOT basing this point of ineffectiveness  
21 on the fact that he was not prepared to testify by his counsel by doing run throughs  
22 of what he was going to say and how to say it, although he did not<sup>1</sup>. We are not  
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26 <sup>1</sup> Attorney McNeill to Court in arguing her motion to sever: Mr. Mendoza clearly  
27 had no idea what the discovery said about his cell phone records with regard to the  
28 incident...Mr. Mendoza seemed to have no idea about those records and his testimony was very  
odd in light of – in light of that. Amended 11AA002546-7 ; P. 238-9 Jury Trial Day 14.

1 stating that it was his attorney's decision on whether he would testify and he had no  
2 say in the decision. We are claiming that he was made promises and assurances  
3 which were wrong by his counsel and thereby took away the voluntary quality of his  
4 testimony and made it coercive and a violation of his constitutional rights:  
5

6  
7 Undue coercion occurs when a defendant is induced by promises or threats which  
8 deprive his plea of the nature of a voluntary act, not where a court makes a ruling  
9 later determined to be incorrect. Stevenson v. State, 131 Nev. 598, 599, 354 P.3d  
10 1277, 1278 (2015).

11 He was promised that he had grounds for self-defense which would excuse any  
12 actions the jury might find him guilty of should they decide he was the shooter. He  
13 made his decision on this false promise. He never would have testified if he knew  
14 that he did not have self-defense grounds. The law is clear that the initial aggressor  
15 does not have self-defense grounds. He was convicted of first-degree murder and  
16 his 2 codefendants were convicted of second-degree murder. We believe this is  
17 largely because of his testimony. His testimony was given because of coercion. That  
18 coercion prejudiced him as can be seen by his harsher conviction. And even if one  
19 found that it did not prejudice him directly – we would assert that this is such a basic  
20 constitutional right that prejudice must be presumed. “There are... circumstances  
21 that are so likely to prejudice the accused that the cost of litigating their effect in a  
22 particular case is unjustified.” United States v. Cronin, 466 U.S. 648, 649, 104 S.  
23 Ct. 2039, 2041 (1984).  
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1 With the prior Mendoza appeal, the Respondent calls the Mendoza self-  
2 defense argument in their Answering Brief to the Nevada Supreme Court case  
3 72056 filed January 16, 2018 “entirely without merit.” Answering Brief 15PA  
4 389-420 at 416. And argues that Appellant’s appeal argument for a new trial due to  
5 the judge’s refusal to allow self-defense jury instructions “unavailing and  
6 nonsensical.” Respondent’s Answering Brief 15PA416. The Nevada Court of  
7 Appeals in their Order of Affirmance filed October 30, 2018 cites several self-  
8 defense cases showing common law has long held there is no self-defense claim  
9 for a defendant charged with felony murder: 15PA421-425  
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13  
14 See People v. Tabios, 78 Cal. Rptr. 2d 753, 756-57 )Ct. App. 1998),  
15 disapproved of on other grounds by People v. Chun, 203 P.3d 425 (Cal.  
16 2009); State v. Amado, 756 A.2d 274, 282-84(Conn. 2000)(concluding that  
17 a defendant found guilty of felony murder cannot claim self-defense). And  
18 a defendant is guilty of felony murder even after the felony is complete “if  
19 the killing and the felony are part of one continuous transaction.” Sanchez-  
20 Dominguez v. State, 130 Nev. 85, 94, 318 P.3d 1068, 1074(2014). We are  
21 unpersuaded by Mendoza’s argument that he was entitled to claim self-  
22 defense because Mendoza’s own trial testimony demonstrates that the  
23 felonies and the killing were one continuous transaction. Thus, the district  
24 court correctly ruled that Mendoza was not entitled to an instruction that he  
25 acted in self-defense. See Tabios, 78 Cal. Rptr. 2d at 757 (holding that in  
26 a prosecution for felony murder, “the defendant is not permitted to offer  
27 any proof at all that he acted without malice.”). Order of Affirmance at  
28 15PA423.

Mendoza admitted to committing conspiracy to commit robbery, burglary  
while in possession of a deadly weapon, home invasion while in possession  
of a deadly weapon, attempted robbery with use of a deadly weapon, and  
attempted murder with use of a deadly weapon during his testimony before  
the jury and that these felonies and the killing occurred as one continuous  
transaction. See Sanchez-Dominguez, 130 Nev. At 93-94, 318 P.3d at 1074.

1 Therefore, Mendoza's testimony that he committed the underlying felonies  
2 charged supplies the requisite malice for felony murder under these specific  
3 facts. See *Nay v. State*, 123 Nev. 326, 332, 167 P.3d 430, 434 (2007)(noting  
4 that "[w]ith respect to felony murder, malice is implied by the intent to  
5 commit the underlying felony"). Thus, the district court did not abuse its  
6 discretion by denying Mendoza's request to instruct the jury on self-defense.  
7 Cf. *Amado*, 756 A.2d at 283 (recognizing that "[o]ne who commits or  
8 attempts a robbery armed with deadly force, and kills the intended victim  
9 when the victim responds with fore to the robbery attempt, may not avail  
10 himself of the defense of self-defense" (alteration in original)(quoting  
11 *United States v. Thomas*, 34 P.3d 44, 48 (2d Cir. 1994). Accordingly, we  
12 ORDER the judgment of conviction AFFIRMED. Order of Affirmance at  
13 15PA424-425 / 4-5.

14 The recommendations made by Mr. Wolfbrandt were outside of the  
15 reasonable range of service and expectations of an attorney necessary to satisfy  
16 their constitutional duty of effectiveness for their client. There was no benefit for  
17 him to testify and it could only hurt him. The caselaw is clear under Runion that  
18 the initial aggressor to a crime has no self-defense claim. Runion v. State, 116  
19 Nev. 1041, 13 P.3d 52 (2000). See also NRS 200.120 (2015).

20 The jury had a question in deliberation: Page 59 Attorneys called  
21 back - the court says they have a juror question; "When does a person's involvement  
22 in the commission of a crime of attempt robbery or burglary or home invasion end?  
23 12AA002992 / Line 17 p. 59 Jury trial day 19 10/7/16

24 The court referred them to Jury Instruction 27 which was in their packet  
25 and had been given to them. "Burglary and home invasion end upon exit from the  
26 structure. Robbery can extend to acts taken to facilitate escape so long as the killing took  
27  
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1 place during the chain of events which constitute the robbery.” Line 18 page 67. He was  
2 charged with among other things conspiracy to commit robbery and attempted  
3 robbery. 12AA003000, 13AA003001.  
4

5 Attorney Wolfbrandt would have been aware of this instruction before the  
6 testimony of Mr. Mendoza. So even when faced directly with it, Attorney  
7 Wolfbrandt urged his client to testify saying he had grounds for self-defense.  
8

9 Counsel renders constitutionally ineffective assistance if it fails to  
10 investigate and pursue a reasonable defense because it incompetently interpreted  
11 the law. Carter v. Davis, 946 F.3d 489, 496 (9th Cir. 2019). In this case the  
12 reasonable defense would be to advise your client not to testify. We have been  
13 unable to reach Mr. Wolfbrandt for comment on this. His two WhitePage  
14 Premium numbers were called and both numbers are disconnected. The Nevada  
15 State Bar Website show his status as DISBARRED. 14AA20-26. “A criminal  
16 defense lawyer must have a firm command of the facts of the case as well as governing  
17 law before he can render reasonably effective assistance to his client—in or out of the  
18 courtroom. Lampkin v. State, 470 S.W.3d 876, 886 (Tex. App. 2015).  
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24 Mendoza Writ Respondent Counsel cites Lara v. State as supporting  
25 the proposition that the decision on whether to testify is in the hands of the  
26 defendant not his attorney. Lara v. State, 120 Nev. 177, 87 P.3d 528 (2004). In  
27  
28

1 that case Lara claimed his trial counsel was ineffective by advising him to testify  
2 and by failing to question him on his direct examination about his gang affiliation  
3 which led to a "devastating cross-examination by the State." Lara at 182, 531.

4 The distinguishing factors between Mr. Mendoza's case and those found in the  
5 Lara case are that in Lara the Nevada Supreme Court determined that "counsel's  
6 advice concerning the decision [on whether to testify] was not deficient: 'It was  
7 certainly reasonable to directly address all of the gang-related issues and to advise  
8 Lara that his best course was to testify.'" Lara at 182, 531-532. But in the  
9 Mendoza case the facts of the case were not supporting self-defense. And in fact  
10 were found by the Nevada Supreme Court to be entirely inconsistent with a self-  
11 defense argument based on longstanding Nevada caselaw. The Appeal  
12 Respondent's asserting grounds for self-defense was a 'nonsensical' argument.  
13 Lara is distinguishable from the case at hand and thus the finding that there was no  
14 ineffectiveness in advising Lara to testify is not controlling or applicable to Mr.  
15 Mendoza's case.

16 Like with Swanson there has been a failure to identify any strategy that can  
17 justify the coercion of his client:

18 "The Government has failed to identify any strategy that can justify Mr. Ochoa's  
19 betrayal of his client. " Even when no theory of defense is available, if the  
20 decision to stand trial has been made, counsel must hold the prosecution to its  
21 heavy burden of proof beyond reasonable doubt." Cronic, 466 U.S. at 656-57  
22 n.19. 'To be sure, under Strickland, courts must defer to trial counsel's strategic

1 decisions. A reasonable tactical choice based on an adequate inquiry is immune  
2 from attack under Strickland. However, to be considered a constitutionally  
3 adequate strategic choice, the decision must have been made after counsel has  
4 conducted reasonable investigations or made a reasonable decision that makes  
5 particular investigations unnecessary. In addition, even if a decision could be  
6 considered one of strategy, that does not render it immune from attack --it must  
7 be a reasonable strategy....An uninformed strategy is not a reason strategy. It is,  
8 in fact, no strategy at all. Strategic choices made after less than complete  
investigation are reasonable precisely to the extent that reasonable professional  
judgments support the limitations on investigation' Correll v. Ryan, 539 F.3d  
938, 941 (9th Cir. 2008).

9 It is true – the Defendant has the ultimate decision on whether to testify. By  
10 providing caselaw on reasonable strategy we are not overlooking that fact. But  
11 instead, arguing and analogizing counsel's actions of giving advice – a 'trial  
12 strategy'. He wrongly advised his client that he had self-defense grounds and  
13 urged him to testify. As seen above this is coercion and when there is coercion  
14 there is not voluntary testimony. 'Under Strickland, courts measure an attorney's  
15 performance against an "objective standard of reasonableness," calibrated by "prevailing  
16 professional norms."' Correll v. Ryan, 539 F.3d 938, 941 (9th Cir. 2008). No  
17 reasonable attorney would have advised Mr. Mendoza to testify under the  
18 circumstances. Again, it is ultimately the Defendant's decision on whether or not  
19 to testify. But the caveat is that there can be no coercion for it to be voluntary.  
20 Incorrect information and promises relied on are a form of coercion. And by  
21 providing Mr. Mendoza with blatantly incompetent incorrect advice on the law –  
22 his legal defense was constitutionally unreasonable.  
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1  
2 Mr. Mendoza did not commit to a plea agreement but the definition provided as  
3 to coercion is applicable to promises and inducements at police interviews and  
4 for trial testimony as well. 'It is not necessary that a defendant demonstrate that a  
5 deprivation of the assistance of counsel at a critical stage of a criminal proceeding  
6 resulted from governmental action.' United States v. Swanson, 943 F.2d 1070,  
7  
8 1074 (9th Cir. 1991).  
9

10 A confession is admissible as evidence only if it is made freely, voluntarily, and  
11 without compulsion or inducement. It must not be extracted by any direct or  
12 implied promises, however slight. Franklin v. State, 96 Nev. 417, 418, 610 P.2d  
13 732, 733 (1980). The introduction of an accused's involuntary confession requires  
14 reversal of the judgment of conviction, even though other evidence establishes  
15 guilt or corroborates the confession. Blackburn v. Alabama, 361 U.S. 199, 200,  
16 80 S. Ct. 274, 276 (1960). See also: Brown v. Mississippi, 297 U.S. 278, 56 S.  
17 Ct. 461 (1936) Townsend v. Sain, 372 U.S. 293, 295, 83 S. Ct. 745, 748 (1963).  
18 Passama v. State, 103 Nev. 212, 213, 735 P.2d 321, 322 (1987). Miller v. Fenton,  
19 474 U.S. 104, 106 S.Ct. 445, 449 (1985) Schneckloth v. Bustamonte, 412 U.S. 218,  
20 226-227, 93 S. Ct. 2041, 2049 (1973).  
21

22 "...deprivation of effective representation at a critical stage of an accused's trial as  
23 justifying a presumption of prejudice." Cronic at 659-60. Cited in United States v.  
24 Swanson, 943 F.2d 1070, 1073 (9th Cir. 1991). "...We are persuaded that Mr.  
25 Ochoa's conduct [conceding at closing there are case facts that don't create reasonable  
26 doubt] caused a breakdown in our adversarial system of justice in this case that  
27 compels an application of the Cronic exception to the *Strickland* requirement of a  
28 showing that the outcome of the trial would have been different without counsel's

1 errors or omissions.” See Cronic, 466 U.S. at 659-60. United States v. Swanson at  
2 1074.  
3

4 ‘In each of these cases prejudice was presumed, because of an actual or  
5 constructive denial of the assistance of counsel during a critical stage of the criminal  
6 proceedings. See Strickland, 466 U.S. at 692 (“Actual or constructive denial of the  
7 assistance of counsel altogether is legally presumed to result in prejudice.”). Swanson  
8 at 1070 discussing Osborn v. Shillinger, 861 F.2d 612, 625 (10th Cir.  
9 1988) (quoting Cronic, 466 U.S. at 666), Javor v. United States, 724 F.2d 831 (9th  
10 Cir. 1984), Green v. Arn, 809 F.2d 1257 (6th Cir.), *vacated on other grounds*, 484  
11 U.S. 806, 108 S. Ct. 52, 98 L. Ed. 2d 17 (1987), *reinstated*, 839 F.2d 300  
12 (1988), *cert. denied*, 488 U.S. 1034, 102 L. Ed. 2d 979, 109 S. Ct. 847 (1989),  
13 Siverson v. O’Leary, 764 F.2d 1208, 1217 (7th Cir. 1985), Harding v. Davis, 878  
14 F.2d 1341 (11th Cir. 1989).  
15

16 The Sixth Amendment to the United States Constitution, Gideon v. Wainright,  
17 Strickland, Cronic, Swanson guarantee a right to effective assistance of counsel  
18 to all defendants. Gideon v. Wainright, 372 U.S. 335 (1963), Strickland v.  
19 Washington, 466 U.S. 668, 684-685, 104 S. Ct. 2052, 2063, 80 L. Ed. 2d 674,  
20 691-692, 1984 U.S. LEXIS 79, \*31-32, 52 U.S.L.W. 4565 (U.S. May 14, 1984),  
21 United States v. Cronic, 466 U.S. 648 at 659-660, 2047, 104 S. Ct. 2039, 80 L.  
22 Ed. 2d 657, United States v. Swanson, 943 F.2d 1070 (9th Cir. 1991).  
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1  
2 There is a very laissez-faire attitude on the part of Mr. Mendoza's trial Attorney the  
3 disbarred Mr. Wolfbrandt as to his handling of the defense. To the point of Cronic  
4 entire absence of testing the State's case and providing representation, but at the very  
5 least 'deprivation of effective representation at a critical stage of an accused's trial  
6 as justifying a presumption of prejudice.' Cronic at 659. We argued in our initial  
7 brief that Swanson is the most analogous factually but really all three cases,  
8 Strickland, Cronic and Swanson apply as to their legal conclusions to Mr. Mendoza's  
9 favor. He didn't advise his client properly in a number of different ways including  
10 the law on self-defense as it pertains to the initial aggressor of a crime. Runion v.  
11 State, 116 Nev. 1041, 13 P.3d 52 (Nev. 2000). Either didn't advise or didn't  
12 participate in providing a defense at all.

13  
14 "Mr. Ochoa's concession in his argument to the jury that there was no  
15 reasonable doubt concerning the element of intimidation, and whether Swanson was the  
16 perpetrator of the bank robbery, **does not demonstrate mere negligence in the**  
17 **presentation of his client's case or a strategy to gain a favorable result that**  
18 **misfired.** Instead, Mr. Ochoa's statements lessened the Government's burden of  
19 persuading the jury that Swanson was the perpetrator of the bank robbery. **Mr. Ochoa's**  
20 **conduct tainted the integrity of the trial...**" United States v. Swanson, 943 F.2d  
21 1070, 1074 (9th Cir. 1991).



1                   **II. THE STATE FAILS TO OVERCOME MR. MENDOZA'S**  
2                   **ASSERTION THAT TRIAL COUNSEL WAS**  
3                   **INEFFECTIVE FOR FAILING TO FILE A MOTION TO**  
4                   **SUPPRESS HIS STATEMENT MADE TO POLICE AT**  
5                   **THE HOSPITAL. AND THAT INEFFECTIVE**  
6                   **ASSISTANCE PREJUDICED HIM AND WAS SO**  
7                   **HARMFUL TO HIS THAT PREJUDICE CAN BE**  
8                   **PRESSUMED.**

9 Respondent cites numerous cases outlining statement suppression law in Nevada and  
10 then concludes:

11           “Here, a review of the totality of the circumstances reveals that moving to  
12 suppress Petitioner’s two statements to Detectives while he was in the hospital  
13 would have been futile because his statements were voluntarily. See Ennis 122  
14 Nev. At 706, 137 P.3d at 1103. Petitioner’s reliance on a self-serving Affidavit  
15 does not negate that there was testimony presented at trial including from  
16 Petitioner himself, that demonstrated the voluntariness of Petitioner’s  
17 statements.” Response brief at 16.

18 Keep in mind, the police detective at the hospital, remarkably, states he did not  
19 have probable cause yet when they went to the hospital to talk to Mr. Mendoza. So  
20 they did not read him his Miranda rights and states he answered the questions they  
21 asked of his own free will. So a huge factor of this analysis has to be whether he  
22 can be seen as improperly ‘in custody.’ And to examine that you look at whether  
23 a reasonable person in that situation would have their wits about them and also  
24 would feel free to leave. A suspect has a Fifth and Fourteenth Amendment right to  
25 have an attorney present during a custodial interrogation. Edwards v. Arizona, 451  
26 U.S. 477, 101 S. Ct. 1880, 68 L.Ed2d 378(1981).  
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1 Mr. Mendoza did outline in the Supplemental brief - factors of police in conducting  
2 their hospital interview which necessitate suppression of his statements: While he  
3 was being interviewed, he was heavily sedated, going in and out of consciousness,  
4 slurring his words, his foot was chained to the bed. [See testimony of Second State  
5 witness Jury Trial Day 5: Patrol Officer Matthew Kovacich. His unit went to the black  
6 sedan Mr. Mendoza was in – he was pulled out of the vehicle and placed in handcuffs.  
7 4AA00896 at 918 lines 9-13 / Page 117. It was not a voluntary statement – he was  
8 not free to leave and the police took advantage of his extreme pain and sedation  
9 and detention by taking these statements with no Miranda warning. See Affidavit  
10 of Mr. Mendoza – he states he was treated like a suspect from the beginning and  
11 his attorney had promised to move to suppress his statements but never got around  
12 to it. ‘When law enforcement agents restrain the ability of the suspect to move--  
13 particularly through physical restraints, but also through threats or intimidation--a suspect  
14 may reasonably feel he is subject to police domination within his own home and thus not  
15 free to leave or terminate the interrogation.’ United States v. Craighead, 539 F.3d  
16 1073, 1077 (9th Cir. 2008) Likewise as to him being in his hospital room. See also  
17 the 5th, 6th, and 14th Amendments to the United States Constitution; Harris v. New  
18 York, 401 U.S. 222 (1971). The above addresses the testing factors noted in the  
19 cases cited by Respondent though not all the same cases were cited. But let’s take  
20 a look at the ones they lean on: The two cases they cite most in this section are  
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1 Passama v. State, 103 Nev. 212, 725 P.2d 321 (1987) cited on pages 13, 14, 17, 18  
2 and 19. And Chambers v. State, 113 Nev. 974, 944 P.2d 805 (1997) cited on pages  
3 13, 15, 18, 21. In Passama the Nevada Supreme Court found "The confession was  
4 involuntary because a sheriff had succeeded in overbearing defendant's will. Although  
5 defendant was not young or uneducated, his intelligence was low-average." Passama at  
6 213, 322. Passama had claimed that his confession was coerced and therefore  
7 involuntary and a violation of his due process rights to admit it at trial. He had  
8 voluntarily gone to the police department for a polygraph exam and then was  
9 interrogated afterwards for five hours at the end of which he signed a confession to  
10 the crimes he was accused of. Prior to the interrogation he had been advised of and  
11 waived his constitutional rights. But during the interview he was not provided with  
12 food or drink other than coffee and was not allowed to speak to his fiancé. Using  
13 the totality of circumstances analysis found in Schneckloth v. Bustamonte, 412 U.S.  
14 218, 226-227(1973) the court determined that defendant's will was overborne when  
15 he confessed. And cited the above factors as improper as well as the police  
16 statements to defendant that they would let the prosecutor know if he failed to  
17 cooperate.  
18

19 Of course, Mr. Mendoza did not fully confess to murder in his statement to police  
20 at the hospital, though he confessed to certain incriminating facts. Respondent's  
21 Appendix. But his statement was played to the jury to diminish his credibility in  
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1 their eyes and for that reason had a significant effect on his due process rights. And  
2 prejudiced him. Also, prejudice should be presumed for something so fundamental.  
3  
4 Cronic, Swanson. Unlike Passama, Mr. Mendoza was not read his Miranda rights.  
5 He was taken advantage of, in a vulnerable situation. Police make note in their  
6 recorded interview that he is not handcuffed in the hospital room - but do not state  
7 anything about the chain on his leg to the bed. Perhaps they were not aware of it if  
8 it was obscured by a sheet. But that does not lessen Mr. Mendoza's belief that he  
9 was unable to terminate the investigation and leave. The burden should fall on the  
10 police to inspect the extent of his detention before conducting an interview.  
11  
12

13  
14 It has long been recognized that criminal and penal statutes are to be strictly  
15 construed against the State. Where a statute is ambiguous, this court must  
16 construe its provisions to give meaning to all of the language and should read  
17 each sentence, phrase, and word to render it meaningful within the context of  
18 the purpose of the legislation. The intent of the legislature is the controlling  
19 factor in statutory interpretation. Runion v. State, 116 Nev. 1041, 1043, 13 P.3d  
20 52, 54 (2000).

21 State v. McKellips, 118 Nev. 465 (2002): "Determining whether custody exists is a  
22 two-step process. First is to determine whether the reasonable person under the  
23 circumstances would feel that she was free to terminate the interrogation and leave. ....  
24 The next step considers whether the relevant environment presents the same inherently  
25 coercive pressures as the type of station house questioning at issue in Miranda." The  
26 factors outlined by police in their interview of Mr. Mendoza clearly indicate – as  
27 Mr. Mendoza has asserted – that they considered him a suspect from the beginning.  
28

1 15PA2710273. At any time after the onset of the detention pursuant to NRS  
2 171.123, the person so detained shall be arrested if probable cause for an arrest  
3 appears. If, after inquiry into the circumstances which prompted the detention, no  
4 probable cause for arrest appears, such person shall be released.  
5

6  
7 In Chambers v. State the Nevada Supreme Court held that "A confession is  
8 inadmissible unless freely and voluntarily given. In order to be voluntary it must be the  
9 product of a rational intellect and free will." Chambers at 977, 807. Chambers was  
10 found to have given a voluntary statement even though he was questioned for four  
11 hours after being stabbed, was not well rested and was intoxicated. And he  
12 knowingly and voluntarily signed the Miranda waiver.  
13  
14

15 Mr. Mendoza's case is distinguishable. He was chained to a bed. 15PA272. He  
16 was waiting for surgery with a bullet still lodged in him. He was by the admission  
17 of one officer probably in significant pain. He was on pain medication. He was  
18 laying down. There were two officers. And he was never read his Miranda rights.  
19 And he was not at full capacity as to rational intellect and free will. No reasonable  
20 person would have been under the circumstances. 15PA273.  
21  
22

23 See Jury Trial Day 9 Testimony September 22, 2016 17<sup>th</sup> State Witness Homicide  
24 Detective Tod Williams  
25

26 I and Detective Merrick went to UMC University Medical Center to interview  
27 Jorge Mendoza the individual that had been taken from the scene by ambulance  
28 to the hospital page 116 – verified photos of him and his xray he had a bullet

1 wound on his left thigh we were there prior to surgery we went and talked with  
2 him. 7AA01562 / p. 113 Jury Trial Day 9.

3 See Jury Trial Day 9 Testimony September 22, 2016 page 116 Testimony of  
4 Mendoza:

5 Later when the police arrived... They grabbed my hands and they started pulling  
6 me. .... the ambulance arrived almost immediately they cut my clothes off and  
7 they wrapped my leg to stop the bleeding gave me a shot of morphine for the  
8 pain. I remember a detective coming and speaking to me at the hospital page  
171 End of cross by Mr Wolfbrandt page 172

9 Jury Trial Day 17 10/5/16 Additional Testimony of Detective Tod Williams

10 [portions omitted] Q After the first recording do you go back and then try to talk to Mr.

11 Mendoza again? A yes I do.

12  
13 Jorge Mendoza's Second interview is played page 4 Also  
14 see Respondent's Appendix.

15 Mr. Wolfbrandt cross page 5

16  
17 Q Detective Williams when you met with Jorge where exactly within the  
hospital were you?

18 A He was lying in one of a gurneys inside one of the rooms at UMC Trauma

19 Q were there tubes connect to his arms?

20 A I don't recall that but I would assume there was

21 Q would you agree that he was sedated with some pretty heavy pain  
medication?

22 A I have no idea if he was sedated page 6

23 Q well you knew pretty much the nature of that leg injury didn't you?

24 A I knew that his femur was broken, he had a bullet in his leg

25 Q Okay and would you expect that to be tremendously painful?

26 A I would yes line 10 page 6

27 Q When did you place or did you place Mr. Mendoza under arrest?

1 A I never arrested Mr. Mendoza<sup>2</sup>

2 Nothing further page 6

3 Atty McNeill cross

4 ...Q Would you agree with me that somebody who's under the influence  
5 of a controlled substance may not give as accurate information to you as  
6 someone who isn't under the influence?

7 A It is possible. It would entirely depend on that individual and their – their  
8 ability to function under that kind of environment. Page 9...

9 Q Okay. And you would agree with me that pain can sometimes be a cause of  
10 someone going into shock?

11 A Absolutely, yes. Page 10 line 18.

12 Q This interview that we just heard, was that a half hour long, a little bit more?

13 A I think the total was about an hour. Page 10

14 ...Q Okay. But he was – you said he was awaiting surgery?

15 A I believe so, yes. Page 12

16 Q Okay. So at some point someone was going to come get him and wheel him  
17 into an operating room?

18 A Yes....

19 Q Did you sk anybody what they had given to Mr Mendoza before you started  
20 talking to him?

21 A No, we're not allowed to know. HIPPA rules, we're not allowed to know  
22 what medications or what medical things are going on.

23 Q You could have asked Mr. Mendoza, correct?

24 A Yes, I could have.

25 Q Okay. You didn't do that?

26 A No I did not. Page 13.

27 Landis cross page 13

28 Q Landis: Somebody's in arrest or in custody meaning whatever they mean to  
you do you need to give Miranda warnings as an officer if you're going to talk  
to them?

A My understanding of Miranda is that if an individual is in my custody I'm  
asking interrogatory type questions I must read Miranda

Q And at a minimum would you view custody as meaning they're not free to  
leave?

---

<sup>2</sup> Police told Amanda (Mr. Mendoza's wife) it was illegal for her to go visit Jorge  
at the hospital since he was under arrest Testimony of Eighth State Witness Mother in law  
Michelle Estavillo Jury Trial Day 7 page 128.

1 A Well I made it very clear in my interview that he was not under arrest page  
2 19

3 Q Let me ask you this if he – could he have ended the interview halfway  
4 through that first one and left the hospital Would you have allowed that?

5 A Well I don't think he was going to get up and walk with a busted femur but  
6 he could have stopped the interview at any time he wanted

7 **III. THE STATE FAILS TO OVERCOME MR. MENDOZA'S**  
8 **ASSERTION THAT TRIAL COUNSEL WAS**  
9 **INEFFECTIVE FOR FAILING TO TEST THE STATE'S**  
10 **CASE. INCLUDING THE ABOVE AND ALSO FAILURE**  
11 **TO ASK ADDITIONAL QUESTIONS AT THE JURY**  
12 **TRIAL. SEVER FROM THE CODEFENDANTS.**  
13 **FAILURE TO CALL VICTIM WITNESS. JL. FAILURE**  
14 **TO FORWARD THE MOTION TO DISMISS COUNSEL**  
15 **TO THE JUDGE.**

16 Cases were cited in the initial brief to support these arguments  
17 contrary to the state's assertions: Davis v. Alaska, Cronic and Swanson.

18 Supplement at 11.

19 **1. Failure to effectively cross-examine**

20 No specific showing of prejudice was required in Davis v. Alaska,  
21 4156 U.S.308 (1974) because the petitioner had been "denied the right of effective  
22 cross-examination" which: 'would be constitutional error of the first magnitude  
23 and no amount of showing of want of prejudice would cure it." Id. at 318 (citing  
24 Smith v. Illinois, 390 U.S. 129, 131 (1968), and Brookhart v Janis, 384, 384 U.S.  
25 1, 3 (1966).  
26  
27  
28



1 Bolster testimony of State witness Roger Day who also states he did not see  
2 Mr. Mendoza shoot but instead saw the other fellow Figueroa shooting.  
3

4  
5 Grand Jury 2 January 29, 2015 14PA131-230 at 150 / 19 of Transcript.

6 **Second State Witness Roger Day page 19** Q: Where were you living on  
7 September 21 2014? A 10025 Long Cattle Avenue Las Vegas NV He lives in  
8 he home with his son. On September 21 2014 there was a home invasion in a  
9 house about 3-4 houses down from mine on the left on that street Broadmere. I  
10 heard shots that night ....I walked out to my front door and see where the shots  
11 were coming from – I saw a guy in a ski mask pointing a weapon towards those  
12 homes and he was shooting about 15 yards away (toward that home that had  
13 the home invasion) and then ran down the street. So at that point in time I  
14 grabbed my cell phone and called 911 – this particular person had a handgun  
15 and he had a mask over his face the first guy it was a black mask with gray a  
16 handkerchief over his now a bandana a male... after calling 911 I went to my  
17 closet and grabbed my handgun and I was standing there so I could make sure  
18 that I witnessed anything that was going down. And that's when I saw the other  
19 suspect the other guy I'm assuming he had been shot because he was scooting  
20 on his rear end down the street he had a bright orange ski mask on – in the  
21 middle of the street – the guy with the black bandana took off As soon as I saw  
22 him shoot, he shot two or three times and then ran down Long Cattle and I never  
23 saw him again – the guy with the orange on had an assault rifle dark black  
24 holding it in his hand as he was scooting backwards and then when he got in  
25 front of my house he stopped and put it across his lap and he pulled his ski mask  
26 off and he was yelling for help one of the guys whoever was with him – his left  
27 leg appeared to be injured – never heard gunshots again after he went back into  
28 the house prior to seeing the individual with the orange ski mask.

22 Likewise, the State's First witness on Jury Trial Day 5 page 66 never states he  
23 saw Mr. Mendoza firing shots. The Fourteenth State witness Renee Salgado testified she saw  
24 someone with an orange mask on one extended leg holding a long gun facing her neighbor's  
25 house. She ran to the phone to call 911 when she heard 6 more shots. Though she never states  
26 she saw Mr. Mendoza shooting. Jury Trial Day 8 page 114. Dr. Timothy Dutra page 9

1 14PA135 / Grand Jury 2 January 29, 2015 page 4 Jury Trial Day 8 Medical

2 Examiner at Clark County Office of the Coroner testifies but never directly links  
3  
4 the cause of death specifically to Mr. Mendoza:

5 Grand Jury: My primary job is to do death certification, to create death certificates  
6 with the cause and manner of death and part of that job is sometimes in some cases  
7 to do autopsies and other studies page 10 He was asked to perform an autopsy of  
8 Monty Gibson on September 23, 2014 at apx 12 o'clock. Found a gunshot wound  
9 injury of the head and of the chest -- toxicology reports showed he had a blood level  
10 of methamphetamine of 400 nanograms per mill and amphetamine of 130  
11 nanograms per milliliter and a couple of marijuana metabolites as well page 16 lines  
12 22-25 the drugs were not a contributing factor to his death. Lines 20-21 page 17  
13 The cause of death were the gunshot wounds of the head and chest. This was a  
14 homicide.

15 Jury Trial Day 8 page 3: 1:34 pm page 3 We determine cause of death and the  
16 manner of death and then create the Death Certificate and perform autopsies -- he  
17 performed the autopsy of Monty Gibson at apx 12 pm August 23. And it shows the  
18 bullet, the retained bullet in the back part of the cranial cavity.... Page 11 line  
19 18:....I recovered the bullet that was in the back part of the skull cap, skull cavity...  
20 Verifies photos of bullet page 13 -- turned over to crime scene analyst page 14 the  
21 gunshot wound to the head was fatal page 12 line7 the gunshot wound to the chest  
22 could have been fatal -- toxicology analysis of his bodily fluids showed  
23 methamphetamine 160 nanograms were ml. Amphetamine and marijuana  
24 metabolites -- the drugs did not contribute to his death. The manner of death was  
25 homicide. Page 15 line 11 Other manners of death not found here would be suicide.  
26 Accident natural and uncertain to reasonable degree of medical certainty page 15

27 No testimony is provided that the recovered bullet was proven to have  
28 come from the gun Mr. Mendoza had. No questioning or testimony that it was not  
possible that one or more of the suspects could have been armed with more than  
one gun.

1 Same as to the stateside defendant Figuero who testified over a 3-day  
2 trial period and at the grand jury. His day 11 Jury Trial testimony verifies he never  
3 saw Mr. Mendoza shooting at anyone:  
4

5 Q Okay. When you testified on Friday about running out of the 1661 Broadmere  
6 house, at some point you testified that you were standing and basically on the  
7 intersection of Broadmere and Long Cattle and you recalled looking back  
towards the house. Page 7.

8 A Yes, ma'am.

9 Q Okay. As you were looking bac, Mr. Figueroa, towards 1661 Broadmere, do  
you recall still hearing gunshots?

10 A Yes, ma'am.

11 Q As you looked back you indicated that you saw Mr. Laguna being picked up  
by Mr. -- or by Duboy, Mr. Murphy; is that right?

12 A Yes, ma-am.

13 Q Okay. Aas you looked back at 1661 Broadmere at any point did you see Mr.  
Mendoza outside of the home?

14 A My main focus was on the vehicle driving away, you know like yean,  
Mendoza I mean, I wasn't focused on him. I was looking a the vehicle just  
15 Montone hop in the vehicle and you know, him and Duboy drive off page 8 Jury  
Trial Day 11.

16 Q Where exactly was Montone when the car pulled up and picked him up?

17 A Basically, right at the end of the driveway where it meets the street.

18 ...page 9 Q At any time while that's happening, do you ever notice or do you  
have reason to believe that someone from your party, meaning either Mr.  
19 Laguna or Mr. Mendoza, had fired back at anyone in that home?

20 A Well, right as I was getting shot, O—I don't know what exactly was  
transpiring...--as I ran down the street and kind of looked back, I heard gunshots,  
21 but my main focus was on the car driving off...

22  
23 He never asks any of these witnesses directly whether they saw Mr.  
24 Mendoza actually shot the victim. He never asks any of the witnesses whether  
25 they could link the specific bullets that caused the death to Mr. Mendoza. He  
26  
27  
28

1 never asks any of them whether they knew for a fact that the others were not  
2 carrying two guns and or that they could have been the shooters.  
3

4           Maybe he considered the strategy of introducing Mr. Larsen as a  
5 conflict since he planned to convince his client to take the stand and confess to  
6 everything. But it was as we have shown ineffective prejudicial strategy and there  
7 would have been grounds for the jury to doubt that Mr. Mendoza was the shooter  
8 with the testimony of direct witness of events at his house that day Joey Larsen as  
9 well as the others such as the coroner and others including crime scene analysts.  
10

## 12           **2. Failure to Join Motion to Severe.**

13  
14 Argued several times by codefendants. Including Jury Trial Day 14. Pages 237-  
15 240. See also 14PA27-73. Codefendants based whether they testified on how Mr.  
16 Mendoza's testimony went and whether a motion to sever would be allowed. Had  
17 he joined in the motion it may have succeeded and he then might have been able to  
18 cross codefendants on the possibility of them as shooters in the driveway when the  
19 pickup occurred. Attorney Wolfbrandt states during the argument: "The co-  
20 defendants tried to sever the case. I didn't take a position on it. To be honest with you I  
21 think they should have been severed. From the beginning, they had a speculation as to one  
22 form of a defense which wasn't necessarily what – what direction I was going to go with  
23 it." page 253 Jury Trial Day 14. See NRS 173.135, NRS 174.165(1); Rodriguez v.  
24  
25  
26  
27  
28

1 State, 117 Nev. 800, 808, 32 P.3d 773, 778(2001), United States v Mayfield, 189  
2 F.3d 895, 899 (9<sup>th</sup> Cir. 1999).

3  
4 **3. Failure to call Victim Witness JL.**

5 In Doleman v State, the Supreme Court of Nevada reversed a death  
6 sentence order and remanded the case for a second penalty hearing after the Eighth  
7 Judicial District Court denied a petition for post-conviction relief. The defendant  
8 had been convicted of murder, attempted murder and 2 counts of robbery with use  
9 of a deadly weapon. In his writ he claimed his trial counsel was ineffective for  
10 among other things failing to call as witnesses at his jury trial two teachers from a  
11 school he attended, his mother and his oldest sister. Doleman v. State, 112 Nev,  
12 843, 847, 921 P.2d 278, 280. The Court found that the failure to call the witnesses  
13 from where he had attended school at the penalty phase of the trial, "who would  
14 have testified as to the convicted individual's ability to function in a structured  
15 environment and adhere to institutional rules, constituted a violation of the  
16 reasonable effective assistance standard." Doleman at 845, 279. Doleman's  
17 mother and sister were never called to testify at the penalty phase of the hearing  
18 either. His mother would have told the jury she was a prostitute and drug addict and  
19 that Doleman was physically abused and often abandoned. And his sister would  
20 have testified with similar testimony. Doleman at 848, 281. The court found these  
21 failures ineffective and prejudicial.  
22  
23  
24  
25  
26  
27  
28

1 Joey Larsen testified at the Grand jury hearing under protest. 14PA198 / Grand  
2 Jury 2 January 29, 2015 page 67. But was not called to testify at the jury trial.

3 Testifies he believes he shot the first burglar because he made a grunt  
4 sound page 78 "I moved behind the wall because they're shooting back." Not sure  
5 if both or just 1 was shooting at him – he had 2 bullets in his first gun the .38 and  
6 15 bullets in the Glock – had about 6-8 left after the gunfire. After awhile the firing  
7 stopped and Monty came out from behind the other wall about 30 seconds after the  
8 firing stopped and said he was going to close the door – he kind of like looked out  
there and I just heard one shot and then he fell page 80 Joey was about four feet  
behind him when he went to the front door

9 He never actually shut the door he put his hand on it like he was going  
10 to shut it and then he looked outside and that is when Joey Larsen heard the shot  
that killed Monty...

11 ...page 83 I look out the front door, I don't see nobody. I look at  
12 Monty and you could just tell he was dead.. I didn't call the police for awhile I  
13 thought they were already on the way I heard police sirens – I called my father Steve  
Larsen – I told him to come over – father got there before police – the police then.

14 He never testifies that he saw the man in the orange mask shoot his  
15 roommate and that testimony would have been useful for the jury to hear to plant  
16 reasonable doubt and bolster the testimony of State witness Roger Day who also states he  
17 did not see Mr. Mendoza shoot but instead saw the other fellow Figueroa shooting.

#### 18 19 **4. Failure to forward motion to Dismiss Counsel to Judge**

20 See Mr. Mendoza's Affidavit. He asked that his counsel forward a motion  
21 to dismiss him to the judge. But he would not. While a defendant is not entitled to  
22 have a particular attorney serve as counsel, if the complete collapse of the attorney-  
23 client relationship is evident, a refusal to substitute counsel violates a defendant's  
24 Sixth Amendment Rights. Young v. Nevada, 120 Nev. 963, 965, 102 P.3d 572,  
25 574 (2004).  
26  
27  
28

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3586

1 **CERTIFICATE OF SERVICE**


2  
3 **IT IS HEREBY CERTIFIED**, by the undersigned that on this 14<sup>th</sup> day  
4  
5 of December 2020, I served a true and correct copy of the foregoing **Reply**  
6 **with Appendix:**

7 **BY E-MAIL eFile Service:** by transmitting a copy of the document in the  
8 format to be used for attachments to the electronic-mail address designated by  
9 the attorney or the party who has filed a written consent for such manner of  
10 service: motions@clarkcountydac.com

11 Prosecutor Taleen Pandukht Taleen.Pandukht@clarkcountydac.com

12  
13  
14 By: /s/Diane C Lowe, Esq.  
15 **DIANE C. LOWE**  
16 **LOWE LAW, L.L.C.**  
17  
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1 **MOT**

2 **LOWE LAW, L.L.C.**

3 **DIANE C. LOWE, ESQ. Nevada Bar No. 14573**

4 **7350 West Centennial Pkwy #3085**

5 **Las Vegas, Nevada 89131**

6 **(725)212-2451 – F: (702)442-0321**

7 **Attorney for Petitioner Jorge Mendoza**

8 **EIGHTH JUDICIAL DISTRICT COURT**

9 **CLARK COUNTY NEVADA**

10 **JORGE MENDOZA,**

11 **Petitioner/Plaintiff,**

12 **vs.**

13 **WILLIAM GITTERE - Warden,**

14 **Respondent/Defendant**

Case No.: A-19-804157-W,

C-15-303991-1

DEPT NO: I

MOTION FOR LEAVE TO SUBMIT  
HOSPITAL RECORDS FOR  
CONSIDERATION

HEARING REQUESTED

DATE: \_\_\_\_\_

TIME: \_\_\_\_\_

18 COME NOW, Diane C. Lowe Attorney for Jorge Mendoza and requests that the  
19  
20 attached hospital records just received today be considered for the upcoming  
21 hearing on the briefings.  
22

23 BY /s/ DIANE C. LOWE

24 **DIANE C. LOWE, ESQ**

25 **Nevada Bar #14573**

1  
2  
3 **POINTS AND AUTHORITIES**  
4

- 5 1. One of the arguments presented in Mr. Mendoza's Supplement is that his  
6 interview at the hospital should have been suppressed instead of played to  
7 the jury.  
8
- 9 2. We believe we have more than sufficient evidence that was presented with  
10 what is currently on the record to conclusively establish to the Court that the  
11 interview was improper and should have and would have been suppressed  
12 but for the ineffectiveness of his trial counsel.  
13
- 14 3. Nevertheless, these records were ordered and have just arrived to this  
15 attorney today.  
16
- 17 4. The voluntary statement on page 18 submitted with Respondent's brief as an  
18 attachment shows that the first police interview of Mr. Mendoza at the  
19 hospital after being shot September 21, 2014 ended at 23:24 hours. Shortly  
20 thereafter there was a second interview by police. He was not read his  
21 Miranda rights at either interview.  
22
- 23 5. We were hoping that the hospital records would reflect that his ankle was  
24 chained to the bed but they do not state either way.  
25  
26  
27  
28

- 1 6. The records do show that he was brought into the hospital September 21,  
2 2014 at 2200 with a gunshot wound to leg and displaced left femur fracture.  
3  
4 7. Further that at or around 23:06 he was given an additional injection of  
5 morphine because of pain. And Ondansetron due to Nausea. Another  
6 portion of the records indicates extreme pain. PDF page 15 of this  
7 submission.  
8  
9 8. His insurance is listed in the medical records as Clark County Detention  
10 Center c/o Naphcare. PDF page 10 of this submission.  
11  
12 9. Despite their date of arrival, we would ask given the lack of prejudice to the  
13 State and the helpful illuminating nature for the Court - that these be  
14 considered as well, when the Court makes a decision on merits.  
15

16  
17  
18 BY /s/ DIANE C. LOWE  
19 DIANE C. LOWE, ESQ  
20 Nevada Bar #14573

**CERTIFICATE OF SERVICE**

21 **IT IS HEREBY CERTIFIED**, by the undersigned that on this 23<sup>rd</sup>  
22 day of January 21, 2021, I served a true and correct copy of the foregoing on  
23 **the parties listed on the attached service list via one or more** of the  
24 methods of service described below as indicated next to the name of the  
25 served individual or entity by the checked box:  
26  
27  
28

1  
2 **BY E-MAIL:** by transmitting a copy of the document in the format to  
3 be used for attachments to the electronic-mail address designated by the  
4 attorney or the party who has filed a written consent for such manner of  
5 service.

6 **By: /s/Diane C Lowe, Esq.**

7 **DIANE C. LOWE**

8 **LOWE LAW, L.L.C.**

9 **SERVICE LIST**

ATTORNEYS OF RECORD	PARTIES REPRESENTED	METHOD OF SERVICE
CLARK COUNTY DISTRICT ATTORNEY'S OFFICE 200 E. Lewis Ave Las Vegas, NV 89101  <a href="mailto:pdmotions@clarkcountynyda.com">pdmotions@clarkcountynyda.com</a> <a href="mailto:motions@clarkcountynyda.com">motions@clarkcountynyda.com</a> <a href="mailto:Taleen.Pandukht@clarkcountynyda.com">Taleen.Pandukht@clarkcountynyda.com</a>	STATE OF NEVADA	<input checked="" type="checkbox"/> Email Service <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

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EXHIBIT 1

MENDOZA MEDICAL RECORDS DIRECTLY AFTER BEING SHOT  
SEPTEMBER 21, 2014



**MRO**  
**1000 Madison Avenue**  
**Suite 100**  
**Norristown, PA 19403**  
**Ph: (610) 994-7500 Opt. 1**

## **Medical Records Transmittal**

---

Date: 1/19/2021  
Request Number: 39329148  
Page Count: 31

**Your requested medical records are attached.**

Patient Name: JORGE MENDOZA  
Medical Facility: UMC Southern Nevada  
Requester: Diane C. Lowe, Esq.  
Organization: Lowe Law LLC

Your reference number:

Thank you,

**MRO**  
**MROcorp.com**



## FACESHEET

ACCT: DOB: 09/82 MENDOZA

JORGE

32Y M

ADM: 09/21/14

MRU00499 Page 1 of 1 (09/12)

ACCT # EIN#	MR# 000	PT TYPE TRA	SVC TRA	ADMIT DATE 09/21/14	ADMIT TIME 2228	ROOM/BED -
PATIENT NAME: MENDOZA, JORGE		DOB 01/1982	AGE SEX 32Y M	M/S M	RACE O	REL NON
SS # XXX-XX-3844						
PATIENT INFORMATION		COUNTY: CLARK COUNTRY:		EMPLOYMENT		
LAS VEGAS, NV 89102		PLACE OF BIRTH:		OCCUP:		
HM: 1702						
WK: LAS VEGAS NV 89102		DATE OF BIRTH: 09/03/1982 SS #: XXX-XX-3844 REL TO PT: SELF HM: (702) 666-4948 WK:		EMPLOYMENT		
				OCCUP:		
SPOUSE/PARENT/OTHER MENDOZA, AMANDA MENDOZA, JORGE DR LAS VEGAS, NV 89102		SS #: XXX-XX- REL TO PT: *SPOUSE HM: (702) 750-8111 WK:		EMPLOYMENT		
				OCCUP:		
RELATIVE/FRIEND		REL TO PT:		HOME #: WORK PHONE #:		
INSURANCE		INS: REL: POL: GRP:		DATE OF BIRTH: BENEFIT/ELIG PH: NOTIFY PH: AUTH #:		
INSURANCE		INS: REL: POL: GRP:		DATE OF BIRTH: BENEFIT/ELIG PH: NOTIFY PH: AUTH #:		
INSURANCE		INS: POL:		DATE OF BIRTH: BENEFIT/ELIG PH: GRP:		
OCUR/DATE 06 09/21/14	OCUR/DATE	OCUR/DATE	CONDITION CODE(S)			
ACCIDENT INFORMATION		REASONS FOR VISIT / COMMENTS				
DATE 09/21/14 TIME 2200 CODE C		GSW				
ACC TYPE: RIME VICTIM LOCATION: HAULPI AND HOMESTRET DESC:						
PHYSICIANS						
ADMITTING: 22392 THOMAS, CASEY J				PCP:		
ATTENDING: 22392 THOMAS, CASEY J				CONSULT:		
ADMISSION / REGISTRATION						
ADM TYPE 5	POINT OF ORIGIN 1	FIN CLASS	DSCH DATE	DSCH TIME	REG ID ND	



## FACESHEET

ACCT: DOB: 09/03/1982

MENDOZA

JORGES

MRN 0001267978

32Y M

ADM: 09/21/14



MRU00498 Page 1 of 1 (08/12)

ACCT # MR# EIN# 00	PT TYPE TRI	SVC TRA	ADMIT DATE 09/21/14	ADMIT TIME 2300	ROOM/BD 02-01
PATIENT NAME: MENDOZA, JORGE		DOB /1982	AGE SEX 32Y M	M/S M	RACE O
REL NON		SS # XXX-XX-3644			
PATIENT INFORMATION 1219 WESTLUND DR LAS VEGAS, NV 89102 HM: (702)666-4948 WK:			COUNTY: CLARK COUNTRY: PLACE OF BIRTH: OCCUP:		
GUARANTOR MENDOZA, JORGE 1219 WESTLUND DR LAS VEGAS NV 89102			DATE OF BIRTH: 09/03/1982 SS #: XXX-XX-3644 REL TO PT: SELF OCCUP:		
SPOUSE/PARENT/OTHER MENDOZA, AMANDA 1219 WESTLUND DR LAS VEGAS NV 89102			HM: (702)666-4948 SS #: XXX-XX- REL TO PT: *SPOUSE HM: (702)75 WK OCCUP:		
RELATIVE/FRIEND			HOME #: WORK PHONE #:		
REL TO PT:					
INSURANCE			DATE OF BIRTH: BENEFIT/ELIG PH: NOTIFY PH: AUTH #:		
INSURANCE			DATE OF BIRTH: BENEFIT/ELIG PH: NOTIFY PH: AUTH #:		
INSURANCE			DATE OF BIRTH: BENEFIT/ELIG PH: NOTIFY PH: AUTH #:		
INSURANCE			DATE OF BIRTH: BENEFIT/ELIG PH: NOTIFY PH: AUTH #:		
OCCUR/DATE 06 09/21/14			OCCUR/DATE OCCUR/DATE CONDITION CODE(S)		
ACCIDENT INFORMATION DATE 09/21/14 TIME 2200 CODE C ACC TYPE: RIME VICTIM LOCATION: HAULPI AND HOMESTRET DESC:			REASONS FOR VISIT / COMMENTS GUN SHOT WOUND TO L DISPLACED LEFT FEMUR FRACTURE		
PHYSICIANS ADMITTING: 22392 THOMAS, CASEY J ATTENDING: 22392 THOMAS, CASEY J			PCP: CONSULT:		
ADM TYPE 5			POINT OF ORIGIN 1		
FIN CLASS			OSCH DATE		
DBSCH TIME			REG ID RSD		





## FACESHEET

ACCT: DOB: 09/03/1982

MENDOZA

JORGE

MR# 0001

32Y M

ADM: 09/21/14

MRU00489 Page 1 of 1 (09/12)

ACCT # EIN#	MR# 000	PT TYPE TRI	SVC TRA	ADMIT DATE 09/21/14	ADMIT TIME 2300	ROOM/BED 02-01
PATIENT NAME: MENDOZA, JORGE		DOB 09/1982	AGE SEX 32Y M	M/S M	RACE O	REL NON
SS # XXX-XX-3844						
PATIENT INFORMATION 1219 WESTLUND DR LAS VEGAS, NV 89102 HM: (702)666-4948 WK:		COUNTY: CLARK COUNTRY: PLACE OF BIRTH:	EMPLOYMENT  OCCUP:			
GUARANTOR MENDOZA, JORGE 1219 WESTLUND DR LAS VEGAS NV 89102		DATE OF BIRTH: 09/03/1982 SS #: XXX-XX-3844 REL TO PT: SELF HM: (702)666-4948 WK:	EMPLOYMENT  OCCUP:			
SPOUSE/PARENT/OTHER MENDOZA, AMANDA 1219 WESTLUND DR LAS VEGAS NV 89102		SS #: XXX-XX- REL TO PT: *SPOUSE HM: (702)75 WK:	EMPLOYMENT  OCCUP:			
RELATIVE/FRIEND		REL TO PT:	HOME #: WORK PHONE #:			
INSURANCE CLARK COUNTY DETENTION CE C/O NAPH CARE BIRMINGHAM AL 30801 MENDOZA, JORGE INSURANCE		INS: MENDOZA, JORGE REL: PATIENT IS INSURED GRP:	DATE OF BIRTH: 09/03/82 BENEFIT/ELIG PH: NOTIFY PH: AUTH #:			
INSURANCE		INS: REL: POL: GRP:	DATE OF BIRTH: BENEFIT/ELIG PH: NOTIFY PH: AUTH #:			
INSURANCE		INS: POL:	DATE OF BIRTH: BENEFIT/ELIG PH: GRP:			
OCUR/DATE 08 09/21/14	OCUR/DATE	OCUR/DATE	CONDITION CODE(S)			
ACCIDENT INFORMATION DATE 09/21/14 TIME 2200 CODE C ACC TYPE: RIME VICTIM LOCATION: HAULPI AND HOMESTRET DESC:		REASONS FOR VISIT / COMMENTS GUN SHOT WOUND TO L DISPLACED LEFT FEMUR FRACTURE				
PHYSICIANS ADMITTING: 22392 THOMAS, CASEY J PCP: ATTENDING: 22392 THOMAS, CASEY J CONSULT:						
ADMISSION / REGISTRATION ADM TYPE POINT OF ORIGIN FIN CLASS DSCH DATE DSCH TIME REG ID 5 1 220105 RSD						



## FACESHEET

DOB: 09/03/1982

MENDOZA

JORGE

MR S

32Y M  
ADM: 09/21/14

MRU00489 Page 1 of 1 (08/12)

ACCT # MR#	PT TYPE	SVC	ADMIT DATE	ADMIT TIME	ROOM/BED
PATIENT NAME: MENDOZA, JORGE	TRI	TRA	09/21/14	2300	313-01
	DOB	AGE SEX	M/S	RACE	REL SS #
	09/03/1982	32Y M	M	O	NON XXX-XX-3844
PATIENT INFORMATION			EMPLOYMENT		
ND					
COUNTY: CLARK					
COUNTRY:					
LAS VEGAS, NV 89102					
PLACE OF BIRTH:					
HM: (702)666-4			OCCUP:		
WK:					
GUARANTOR			EMPLOYMENT		
MENDOZA, JORGE					
1219 WESTLUND DR					
DATE OF BIRTH: 09/03/1982					
SS #: XXX-XX-3844					
REL TO PT: SELF					
HM: (702)666-4948					
WK:			OCCUP:		
LAS VEGAS NV 89102					
SPOUSE/PARENT/OTHER			EMPLOYMENT		
MENDOZA, AMANDA					
1219 WESTLUND DR					
LAS VEGAS NV 89102					
SS #: XXX-XX-					
REL TO PT: * SPOUSE					
HM: (702)750-8111					
WK:			OCCUP:		
RELATIVE/FRIEND					
REL TO PT:			HOME #:		
			WORK PHONE #:		
INSURANCE			DATE OF BIRTH: 09/03/82		
CLARK COUNTY DETENTION CE			BENEFIT/ELIG PH:		
C/O NAPH CARE			NOTIFY PH:		
BIRMINGHAM AL			AUTH #:		
MENDOZA, JORGE			DATE OF BIRTH:		
INSURANCE			BENEFIT/ELIG PH:		
			NOTIFY PH:		
			AUTH #:		
INSURANCE			DATE OF BIRTH:		
			BENEFIT/ELIG PH:		
			GRP:		
OCCUR/DATE			CONDITION CODE(S)		
06 09/21/14					
ACCIDENT INFORMATION			REASONS FOR VISIT / COMMENTS		
DATE 09/21/14 TIME 2200 CODE C			GUN SHOT WOUND TO L		
			DISPLACED LEFT FEMUR FRACTURE		
ACC TYPE: RIME VICTIM					
LOCATION: HAULPI AND HOMESTRET					
DESC:					
PHYSICIANS					
ADMITTING: 22392 THOMAS, CASEY J			PCP:		
ATTENDING: 22392 THOMAS, CASEY J			CONSULT:		
ADMISSION / REGISTRATION					
ADM TYPE	POINT OF ORIGIN	FIN CLASS	DSCH DATE	DSCH TIME	REG ID
5	1	220108			RSD

UNIVERSITY MEDICAL CENTER  
1800 West Charleston Boulevard  
Las Vegas, Nevada 89102

CONSULTANT: Brock Wentz, MD

REQUESTED BY: TRAUMA TEAM

DATE OF CONSULT:

REASON: Gunshot wound left femur.

HISTORY OF PRESENT ILLNESS: Jorge Mendoza is a 52-year-old male who presented to UMC Medical Center status post gunshot wound. He is denying any other trauma. The pain is located in his left thigh. He denies radiation of that pain. He denies noticing loss of sensation in that lower extremity.

PAST MEDICAL HISTORY: None.

PAST SURGICAL HISTORY: None.

MEDICATIONS: None.

FAMILY HISTORY: Negative and noncontributory.

ALLERGIES: NO KNOWN DRUG ALLERGIES.

SOCIAL HISTORY: Denies alcohol, tobacco, or illicit drug use.

REVIEW OF SYSTEMS:

GENERAL: No recent history of fevers.

HEENT: Denies visual problems.

CARDIOVASCULAR: No chest pain.

LUNGS: No issues with labored breathing.

GI: No nausea or vomiting.

MUSCULOSKELETAL: Please see HPI. No numbness or tingling in the lower extremities.

PSYCHIATRIC: Denies history of mental illness.

IMMUNOLOGIC: No history of anaphylaxis.

ENDOCRINE: Negative for thyroid problems or diabetes.

PHYSICAL EXAMINATION:

VITAL SIGNS: Heart rate is 96 beats per minute, blood pressure is 148/117 millimeters of mercury, O2 saturation 99%, respiratory rate 13 breaths per minute.

GENERAL: Patient alert.

HEAD: Normocephalic.

EYES: Extraocular muscles intact bilaterally.

EARS: Normal hearing.

NOSE: Patent.

NECK: Trachea is midline.

LUNGS: Nonlabored breathing.

CARDIOVASCULAR: 2+ dorsalis pedis pulse in the left lower extremity.

ABDOMEN: Soft.

PSYCHIATRIC: The patient is resting in bed, appears to be in normal mood.

NEURO: Neurovascularly intact distally in the left lower extremity.

MUSCULOSKELETAL: Left lower extremity gunshot wound anteriorly mid aspect of thigh. No exit wound. Compartments are soft. Hematoma present about the gunshot wound.

IMAGING: Hip views as well as views of the femur were obtained, show a midshaft femur fracture.

IMPRESSION: Left femur fracture status post gunshot wound anterior thigh.

PLAN: Findings and diagnosis were discussed with the patient. Recommendation will be for IV antibiotics to begin now. Will plan to take to the OR for irrigation and debridement and intramedullary nailing. The risks, complications, benefits, and different treatment options involving this were discussed with the patient. He understands and wishes to proceed. We will also obtain his written consent.

JK/MedQ

DD: 09/22/2014 06:43:08

DT: 09/22/2014 10:35:33

JAMES KESL, MD

BROCK WENTZ, MD

I saw and examined the patient. Agree with the above consultation. Left femoral shaft fracture after GSW. Will need surgical intervention (IM nail fixation) for optimal outcome.

brock wentz, MD

PATIENT: MENDOZA, JORGE

ACCOUNT#: 992xxxxx

MR#:

ADM DATE: 09/21/2014

JOB#:

PHYSICIAN: BROCK WENTZ, MD  
DICTATED BY: JAMES KESL, MD

CONSULTATION REPORT

Authenticated and Edited by Brock Wentz, MD On 9/25/14 2:24:38 PM  
Authenticated by James Kesi, DO On 09/30/2014 03:31:55 PM

UNIVERSITY MEDICAL CENTER  
1800 West Charleston Boulevard  
Las Vegas, Nevada 89102

ADMITTED: 09/21/2014

DISCHARGED: 09/26/2014

Please note, the patient will not be discharged until attending, Dr. Ingalls, has seen the patient.

ADMISSION DIAGNOSES:

1. Left femur fracture, status post open reduction and internal fixation on 09/22/2014.
2. Left thigh hematoma.

DISCHARGE DIAGNOSES:

1. Left femur fracture status post Buck's traction, status post open reduction and internal fixation on 09/22/2014.
2. Left thigh hematoma - improving.

DISCHARGE CONDITION: Stable.

CONSULTATIONS: Orthopedics, Dr. Wentz, for open reduction and internal fixation of a left femur fracture on 09/22/2014. Dr. Wentz recommended weightbearing as tolerated and walking with a walker.

PROCEDURES: An open reduction and internal fixation on 09/22/2014.

BRIEF HISTORY OF PRESENT ILLNESS: This is a 32-year-old male status post gunshot wound to the left thigh, status post open reduction and internal fixation of a left femur fracture on 09/22/2014. The patient was stable throughout hospital stay and received neurovascular checks in the left lower extremity q.2 hours during the first 2 days of hospital stay.

HOSPITAL COURSE: Vital signs were stable throughout hospital course. A CBC was noted for a drop in hemoglobin. Hemoglobin on 09/25 was 8.6, hemoglobin on 09/23 was 10.6. The patient, however, remained with a normal blood pressure and normal heart rate. Repeat Hgb 8.2. Pt developing a 4 cm circumferential hematoma over left lateral mid thigh.

DISCHARGE PHYSICAL EXAMINATION: GENERAL: The patient was in no acute distress.

HEENT: Pupils equal, round, and reactive to light.

CARDIOVASCULAR: Regular rate and rhythm. No appreciable murmurs. Normal S1, S2.

CHEST: Clear to auscultation bilaterally.

ABDOMEN: Nontender, nondistended.

EXTREMITIES: There were surgical incisions over left leg and were nonerythematous, no swelling, no warmth. They were covered in gauze with minimal leakage. Pulses were +2 in pedal bilaterally and +2 radial bilaterally. Pt developing a 4 cm circumferential hematoma over left lateral mid thigh.

**ACTIVITY:** The patient is to ambulate with a walker and assistance.

**DIET:** The patient is to resume a normal diet.

**MEDICATIONS:** The patient was not given a prescription due to the patient going back to booking after discharge from hospital. The patient is recommended to continue Robaxin 1000 milligrams 4 times daily. Bacitracin is to be applied to lacerations over the left flank and left leg. The patient is also to continue Percocet 5 milligrams/325 milligrams 4 times daily.

**FOLLOWUP:** The patient is to receive wound care followup and periodic wound checks after booking.

**DISCHARGE INSTRUCTIONS:** The patient has been instructed to return to the ED for worsening symptoms, including increased weakness in the left leg, fevers, redness over the surgical incisions, any warmth in the area or any swelling.

JRL/MedQ

DD: 09/26/2014 10:29:27

DT: 09/26/2014 16:38:33

JASON ROBERT LUNN, MD

CASEY J. THOMAS, DO

PATIENT: MENDOZA, JORGE

ACCOUNT#: 99xxxxxxx

MR#: 000xxxxxx

ADM DATE: 09/21/2014

JOB#: 339563/627308199

PHYSICIAN: CASEY J. THOMAS, DO

DICTATED BY: JASON ROBERT LUNN, MD

**DISCHARGE SUMMARY**

Authenticated and Edited by JASON LUNN, M.D. On 9/26/14 5:02:59 PM

Authenticated by Casey J. Thomas, DO On 09/29/2014 09:10:25 AM

MENDOZA, JORGE; MR#: xxxxxx000; Acct#: xxxxxxxx; Arrival Dt: 09/21/2014 22:28; Chart Status: Final

University Medical Center  
1800 W Charleston Blvd  
Las Vegas, NV 89102  
702-383-2000

## ED Chart View



Patient Name: MENDOZA, JORGE Sex: M  
Birthdate: 09/03/1982 Age: 34  
Acct No: 9929033257 Medical Rec No: 0001267978  
Arrival Dt: 09/21/2014 22:28 1st Chart Launch Dt: 09/21/2014 22:36  
Primary MD:

Chart Status: Final

NKA (A. External Data 09/21/2014 23:16:20)

albuterol soln for neb [ VENT- OLIN ] 2.5 MG NEB RT Q4H PRN ROUTINE Bronchodilator Protocol: No	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06		AG17 09/21 23:06		Indication: dys- pnea
sodium chloride 0.9% 1000 ML IV 125 ML/HR CONTINUOUS ROUTINE	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06		AG17 09/21 23:06		
morphine inj 2-5 MG IV Q4H PRN ROUTINE	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06		AG17 09/21 23:06		Indication: Pain
bisacodyl sup- pository [ DUL- COLAX ] 10 MG RECTAL Q12H PRN ROUTINE	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06		AG17 09/21 23:06		Indication: con- stipation
ondansetron inj [ ZOFTRAN ] 4 MG IV Q6H PRN ROUTINE	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06		AG17 09/21 23:06		Comment: PO preferred, IV if NPO or unable to tolerate PO Indication: naus- ea
acetaminophen [ TYLENOL ]	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06		AG17 09/21 23:06		Indication: temp ≥ 38.5 C

11/13/2016 20:00

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MENDOZA, JORGE; MR#:XXXXXXXX 000 Acct#:XXXXXXXX; Arrival Dt.: 09/21/2014 22:28; Chart Status: Final

650 MG RECTAL Q6H PRN ROUTINE						
acetaminophen [ TYLENOL ] 650 MG ORAL Q6H PRN ROUTINE	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06		AG17 09/21 23:06		Indication: temp >= 38.5 C
esomeprazole inj [ Nexium ] 40 MG IV QDAY ROUTINE("Can cel")	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06	09/25 07:56	AG17 09/21 23:06		
bacitracin oint 1 APP TOPL BID ROUTINE apply to abrasions and facial lacer- ations	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06		AG17 09/21 23:06		
REFRIGERAT- OR 1 EA MISC PRN ROUTINE	A1 09/22 00:41	CT23 DO 09/22 00:41		CT23 09/22 00:41		
PATIENT SPE- CIFIC MED CASSETTE 1 EA MISC PRN ROUTINE	A1 09/22 00:41	CT23 DO 09/22 00:41		CT23 09/22 00:41		

TR CHEST PORTABLE ONCE STAT Pain - Trauma Related	AM1 UNIT CLERK 09/21 22:36	CT23 DO 09/21 22:36	09/21 22:41	09/21 22:41	CT23 09/21 22:36		
TR PELVIS 1 VIEW ONCE STAT Pain - Trauma Re- lated	AM1 UNIT CLERK 09/21 22:36	CT23 DO 09/21 22:36	09/21 22:41	09/21 22:41	CT23 09/21 22:36		
TR ABDO- MEN 1 VIEW ONCE STAT Pain - Trauma Related	AM1 UNIT CLERK 09/21 22:36	CT23 DO 09/21 22:36	09/21 22:41	09/21 22:41	CT23 09/21 22:36		



MENDOZA, JORGE; MR#: 000xxxxxxx1; Acct#: xxxxxxxx; Arrival Dt.: 09/21/2014 22:28; Chart Status: Final

TR FEMUR (LEFT) ONCE STAT GSW	AM1 UNIT CLERK 09/21 22:36	CT23 DO 09/21 22:36	09/21 22:41	09/21 22:41	CT23 09/21 22:36		Comment:TR2
BASIC METABOLIC PANEL ONCE LIFE THREATENING	09/21 22:42	CT23 DO 09/21 22:42	09/21 23:00	09/21 23:00	CT23 09/21 22:42		
CBC/ AUTOMATED ONCE LIFE THREATENING	09/21 22:42	CT23 DO 09/21 22:42	09/21 22:47	09/21 22:47	CT23 09/21 22:42		
ANTIBODY SCREEN - GEL TECHNIQUE ONCE LIFE THREATENING	09/21 22:42	CT23 DO 09/21 22:42	09/21 23:34	09/21 23:34	CT23 09/21 22:42		
ABO RH TYPE ONCE LIFE THREATENING	09/21 22:42	CT23 DO 09/21 22:42	09/21 23:34	09/21 23:34	CT23 09/21 22:42		
TR FEMUR (LEFT) ONCE STAT POST TRACTION	AM1 UNIT CLERK 09/21 22:53	CT23 DO 09/21 22:53	09/21 23:04	09/21 23:04	CT23 09/21 22:53		Comment:TR9
Measure Height ONCE ROUTINE	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06			AG17 09/21 23:06		
Admission Order (basic requirements) ONCE ROUTINE Admit Inpatient IMC gunshot wound to left thigh, displaced left femur fracture THOMAS, CASEY J	AG17 RI 09/21 23:06	CT23 DO 09/21 23:06	AM1 09/21 23:31				

MENDOZA, JORGE; MR#: 000xxxxxxx; xxxxxxxx; Arrival DL: 09/21/2014 22:28; Chart Status: Final

[GENERAL SURGERY] (22392)							
Incentive Spirometry - NSG Q1H ROUTINE("Cancel")	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06	09/26 19:46		AG17 09/21 23:06		Comment: X 10 Breaths
Measure Weight EVERY DAY ROUTINE("Cancel")	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06	09/26 19:46		AG17 09/21 23:06		
Traction - Buck's CONTIN ROUTINE("Cancel")	AG17 RI 09/21 23:06	DMH1 RI 09/21 23:06			AG17 09/21 23:06		
Notify: CONTIN ROUTINE Urine Output < 0.5 ml/kg/hr Resident("Cancel")	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06	09/26 19:46		AG17 09/21 23:06		
Initiate Pneumococcal Vaccine Assessment: CONTIN ROUTINE("Cancel")	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06			AG17 09/21 23:06		Comment: Switch to pneumococcal vaccine order if indicated
Initiate Influenza Vaccine Assessment: CONTIN ROUTINE("Cancel")	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06			AG17 09/21 23:06		Comment: Switch to influenza vaccine order if indicated
Notify: CONTIN ROUTINE Temp > 38.5C Resident("Cancel")	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06	09/26 19:46		AG17 09/21 23:06		
Notify: CONTIN ROUTINE SaO2 < 90% Resident	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06	09/26 19:46		AG17 09/21 23:06		

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MENDOZA, JORGE; MR#: 0001xxxxxxxxx Acct#: xxxxxxxxx; Arrival Dt: 09/21/2014 22:28; Chart Status: Final

ent("Cancel")							
Notify: CONTIN ROUTINE RR<10 or >30 Resident("Cancel")	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06	09/26 19:46		AG17 09/21 23:06		
Notify: CONTIN ROUTINE HR<50 or >130 Resident("Cancel")	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06	09/26 19:46		AG17 09/21 23:06		
Admission Nasal MRSA Colonization Screen- ONCE ROUTINE	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06			AG17 09/21 23:06		
INCENTIVE SPIROMETER- RT to instruct ONCE ROUTINE	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06			AG17 09/21 23:06		
Neurovascular Checks Q2H ROUTINE("Cancel")	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06	09/26 19:46		AG17 09/21 23:06		Comment: Site for NV checks: L thigh, Left lower extremity, Left foot, Left thigh compartment (palpate and note for any increased tension)
RT Device ONCE ROUTINE	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06	09/21 23:25		AG17 09/21 23:06		Comment: albuterol soln for neb [ VENTOLIN ]
OXYGEN VIA NASAL CANNULA CONTIN ROUTINE at 2 L/min. Titrate for O2 Sats > 93 %("Cancel")	AG17 RI 09/21 23:06	DMH1 RI 09/21 23:06			AG17 09/21 23:06		

MENDOZA, JORGE; MR#: 000xxxxxxx; Acct#:xxxxxxx; Arrival Dt.: 09/21/2014 22:28; Chart Status: Final

Notify: CONTIN ROUTINE SBP <90 or >180 Resident(*Cancel*)	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06	09/26 18:48		AG17 09/21 23:06		
Notify: CONTIN ROUTINE DBP <80 or >110 Resident(*Cancel*)	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06	09/26 19:48		AG17 09/21 23:06		
RD May Modify / Clarify Diet Orders CONTIN ROUTINE(*Cancel*)	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06			AG17 09/21 23:06		
Activity CONTIN ROUTINE(*Cancel*)	AG17 RI 09/21 23:06	DMH1 RI 09/21 23:06	09/23 18:17		AG17 09/21 23:06		
NPO MEALS(*Cancel*)	AG17 RI 09/21 23:06	JK28 DO 09/21 23:06			AG17 09/21 23:06		
CBC/ AUTOMATED IN AM	AG17 RI 09/21 23:06	DMH1 RI 09/21 23:06	09/23 18:21	09/23 18:21	AG17 09/21 23:06		
MAGNESIUM LEVEL IN AM	AG17 RI 09/21 23:06	DMH1 RI 09/21 23:06	09/23 18:21	09/23 18:21	AG17 09/21 23:06		
RENAL PANEL IN AM	AG17 RI 09/21 23:06	DMH1 RI 09/21 23:06	09/23 18:21	09/23 18:21	AG17 09/21 23:06		
ABG LINE CONTIN ROUTINE(*Cancel*)	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06	DB5 09/28 19:48		AG17 09/21 23:06		Comment: Obtain ABG and call MD with results for sudden acute resp. distress
PT EVAL & TREAT TO INCLUDE: ONCE ROUTINE	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06	09/22 14:39		AG17 09/21 23:06		Comment: after operative management
Vital Signs Q4H ROUTINE(*Cancel*)	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06	09/26 19:48		AG17 09/21 23:06		

11/13/2016 20:00

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MENDOZA, JORGE; MR#: xxxxxxxx; xxxxxxxx; Arrival Dt: 09/21/2014 22:28; Chart Status: Final

ancel")							
Sequential Compression Device CON- TIN ROUTINE OFF 1H Q&H("Cancel" )	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06	09/26 19:48		AG17 09/21 23:06		
Intake & Out- put QSHIFT ROUTINE("C ancel")	AG17 RI 09/21 23:06	AG17 RI 09/21 23:06	09/26 19:48		AG17 09/21 23:06		

WHITE BLOOD CELL	20.60 K/MM3 H (NL = 3.40-10.30)	SODIUM	146 MMOL/L H (NL = 136-145)
RED BLOOD CELL	4.63 M/MM3 (NL = 4.08-6.70)	POTASSIUM	3.9 MMOL/L (NL = 3.5-5.1)
HEMATOCRIT	42.5 % (NL = 38.2-48.4)	CHLORIDE	111 MMOL/L H (NL = 98-110)
HGB	14.4 G/DL (NL = 13.1-16.8)	TOTAL CO2	28 MMOL/L (NL = 22-31)
MEAN CELL HEMOGLOBIN	31.2 pg (NL = 27.1-34.2)	BLOOD UREA NITROGEN	11 mg/dL (NL = 9-26)
MEAN CELL HEMOGLOBIN CONCENTRATION	34.0 % (NL = 33.0-35.8)	CREATININE	1.2 mg/dL (NL = 0.8-1.5)
PLATELET	217 K/MM3 (NL = 130-351)	GLUCOSE	214 mg/dL H (NL = 70-110)
Red Cell Diameter Width	13.9 % (NL = 11.8-15.1)	CALCIUM	9.7 mg/dL (NL = 8.4-10.2)
GRAN%	85.1 % H (NL = 40.6-75.3)	Anion Gap	9 MMOL/L (NL = 8-16)
LYMPH%	7.0 % L (NL = 16.1-45.7)	Glomerular Filtration Rate(GFR) Calc	>60 Comment: Estimated GLOMERULAR FILTRATION RATE (GFR) Reference Ranges: >59 mL/min/1.73 m2 GFR calculation requires an accurate age and gender of the patient. Ordered on pa- tients 18 years and older. For African Americans, multiply GFR value by 1.21 The es- timated GFR is to be used for screening purposes. For drug dosing, use the Cockcroft- Gault calculation.
MONO%	7.1 % (NL = 3.7-12.2)		
EOS%	0.3 % (NL = 0.0-8.3)		
BASO%	0.5 % (NL = 0.0-1.3)		
ABS GRAN	17.5		
ABS LYMPH	1.4		
ABS MONO	1.5		
ABS EOS	0.1		
ABS BASO	0.1		
MPV	8.1 FL (NL = 7.5-11.2)		
MCV	91.8 FL (NL = 80.1-98.5)		
		ANTIBODY SCREEN (Gel Method)	NEG ABS CRN

11/13/2016 20:00

Confidential Medical Record

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MENDOZA, JORGE; MR#: XXXXXXXX Acct#: XXXXXXXX Arrival Dt.: 09/21/2014 22:28; Chart Status: Final

ABO/RH TYPING	O POS
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**Tobacco**

**Smoking status:**

current every day smoker [Confirmed by: ExternalData on 09/22/2014 00:47:29]

**Cigarette use frequency:**

0 pack/day [ExternalData on 09/22/2014 00:47:29]

**Alcohol**

**Alcohol use:**

no [ExternalData on 09/22/2014 00:47:29]

**Recreational Drugs**

**Street drug use:**

denies [ExternalData on 09/22/2014 00:47:29]

**Bed Assignment:** 09/22/2014 00:28:37 Unassigned from bed TRM9 (ANN MOVITZ UNIT CLERK 09/22/2014 00:28:37) 09/21/2014 22:48:26 Assigned to bed TRM9 (ANN MOVITZ UNIT CLERK 09/21/2014 22:48:26) 09/21/2014 22:48:25 Unassigned from bed TRM2 (ANN MOVITZ UNIT CLERK 09/21/2014 22:48:25) 09/21/2014 22:38:31 Assigned to bed TRM2 (ANN MOVITZ UNIT CLERK 09/21/2014 22:38:31)

**Pain:** Horrible pain (Pain scale = 8/10). (ANTOINETTE MULLAN RN 09/22/2014 01:02:58)

**Mental:** 09/22/2014 01:02:42 Due to the increase in domestic violence, we ask all patients: Are you being hurt, hit, or frightened by anyone at home or in your life? (ANTOINETTE MULLAN RN 09/22/2014 01:02:42) 09/22/2014 01:02:46 Domestic violence survey shows NEGATIVE risk for this patient. (ANTOINETTE MULLAN RN 09/22/2014 01:02:46)

NOT SEEN BY ER ATTENDING (see RN chart). (ANTOINETTE MULLAN RN 09/22/2014 01:03:04)  
Electronically signed by ANTOINETTE MULLAN RN. (ANTOINETTE MULLAN RN 09/22/2014 01:02:41)  
Disposition status is Admit. (ANTOINETTE MULLAN RN 09/22/2014 01:03:00) Admitted to IMC unit. (ANTOINETTE MULLAN RN 09/22/2014 01:03:00) Transporter accompanied patient during transport. (ANTOINETTE MULLAN RN 09/22/2014 01:03:00) RN accompanied patient. (ANTOINETTE MULLAN RN 09/22/2014 01:03:00) Monitor used during transport. (ANTOINETTE MULLAN RN 09/22/2014 01:03:00) Patient physically left department and was removed from Tracking Board by ANTOINETTE MULLAN RN. (ANTOINETTE MULLAN RN 09/22/2014 01:03:00)

ANN MOVITZ UNIT CLERK printed UMC-EDView to Trauma RN 1 at 23:35 (ANN MOVITZ UNIT CLERK 09/21/2014 23:35:48) Print Jobs to ARCHIVE - 01:03 (ANTOINETTE MULLAN RN 09/22/2014 01:03:04)  
ANTOINETTE MULLAN RN printed Emergency Department Chart to Archive to HPF at 01:04 (ANTOINETTE MULLAN RN 09/22/2014 01:04:02)

**Chief Complaint:** NO DATA AVAILABLE.. **Primary Diagnosis:** NO DATA AVAILABLE.. **Disposition Notes:** NOT SEEN BY ER ATTENDING (see RN chart).. **Discharge Prescriptions:** NO DATA AVAILABLE.

MENDOZA, JORGE; MR#: 000xxxxxx; Acct#: xxxxxxx; Arrival Dt.: 09/21/2014 22:28; Chart Status: Final

[REDACTED]  
- External Data AM1 - ANN MOVITZ UNIT CLERK DB5 - DENISE BROWN-WETTERS RT

11/13/2016 20:00

Confidential Medical Record

Page 9 of 9

UNIVERSITY MEDICAL CENTER  
1800 West Charleston Boulevard  
Las Vegas, Nevada 89102

DATE OF SERVICE: 09/21/2014

Intermediate activation.

TIME SEEN: 2228 hours.

SENIOR RESIDENT: Cameron Shawn Jennings, MD (Resident).

JUNIOR RESIDENT: Arturo Guzman, M.D.

HISTORY: The patient is a 32-year-old male status post gunshot wound to the left thigh. Denies any other associated trauma.

REVIEW OF SYSTEMS:

A 10-point review of systems is positive for left thigh pain.

PAST MEDICAL HISTORY: None.

SURGICAL HISTORY: None.

MEDICATIONS: None.

FAMILY HISTORY: Noncontributory.

SOCIAL HISTORY: The patient denies any alcohol, drug or tobacco use.

ALLERGIES: NO KNOWN DRUG ALLERGIES.

PRIMARY SURVEY: AIRWAY: Patent, phonating.

BREATHING: Positive breath sounds bilaterally.

CIRCULATION: 2+ pedal, radial, femoral and carotid pulses. Capillary refill is brisk.

DISABILITY: GCS of 14. Eyes were 3. The patient was refusing to open his eyes. Verbal 5, motor 6.

EXPOSURE: Deformity of the left thigh with a gunshot wound to the left mid anterior thigh and deformity, a large associated hematoma.

No pulsatile bleeding. The hematoma does not appear to be expanding.

RESUSCITATION: Pulse oximetry measuring 99%. Peripheral IV access obtained in bilateral upper extremities. Telemetry and pulse oximetry monitoring were initiated.

SECONDARY SURVEY: VITAL SIGNS: Heart rate 96, blood pressure 148/117, respiratory rate 13, temp 99.0. HEENT: Pupils equal, round, reactive to light. Normocephalic, atraumatic. Tympanic membranes clear.

MAXILLOFACIAL: Stable, no deformities.

NECK/C-SPINE: Supple, full for range of motion.

CHEST/LUNGS: Positive breath sounds bilaterally. No deformities.

Symmetric expansion.

CARDIOVASCULAR: Regular rate and rhythm.



ABDOMEN: Soft, nondistended, nontender to palpation.

PELVIS: Stable.

BACK: T and L-spines, no step-offs, no deformities, no lesions, no wounds.

RECTAL: No injuries to the gluteal cleft or perineal area.

EXTREMITIES: Deformity and large hematoma of left thigh with a gunshot wound to the anterior left thigh. ABIs were performed and were normal 1:1.

NEUROLOGIC: The patient is alert and oriented in no apparent distress. Cranial nerves intact. Motor exam of the upper and lower extremities is intact. Sensory exam is intact.

RADIOLOGY: Portable chest x-ray is negative for any acute trauma. Portable abdominal x-ray negative for any acute trauma or retained foreign body. Portable x-ray femur shows a displaced midshaft, left femoral fracture with associated fragmented bullet. Portable pelvis shows no missile, no acute injury.

CONSULTS: Orthopedic surgery, Dr. Wentz. His recommendations are pending.

LABORATORY DATA: white blood cell count 20.6, hemoglobin 14.4, hematocrit 42.5, platelets 217. Sodium 146, potassium 3.9, chloride 111, bicarb 26, BUN 11, creatinine 1.2, glucose 212, calcium 9.7.

PROBLEM LIST AND MANAGEMENT: The patient is a 32-year-old male status post gunshot wound to the left thigh with:

1. Midshaft left femur fracture. We will follow up with Orthopedic Surgery's recommendations for repair.
2. Gunshot wound to the left thigh, soft tissue injury. We will monitor the patient overnight with q.2 h. neurovascular checks. He will also be monitored for any development of lateral thigh compartment syndrome. As of now, the patient will be admitted to IMC. He will undergo q.2 h. neurovascular checks. He will be given medications for pain control and his wounds will be monitored. We will follow up with Orthopedic Surgery's recommendations for surgery.

This patient was seen and evaluated by Dr. Casey Thomas, who directed this patient's plan of care.

CSJ/MedQ

DD: 09/21/2014 23:08:26

DT: 09/22/2014 01:12:31

CAMERON SHAWN JENNINGS, MD (RESIDENT)

CASEY J. THOMAS, DO

PATIENT: MENDOZA, JORGE  
MR#: 000xxxxxxx  
ADM DATE: 09/21/2014  
IOB#: 951175/626618341

ACCOUNT#: 9xxxxxxxxx

PHYSICIAN: CASEY J. THOMAS, DO  
DICTATED BY: CAMERON SHAWN JENNINGS, MD (RESIDENT)

TRAUMA CENTER HISTORY AND PHYSICAL  
Authenticated by Cameron Shawn Jennings, MD On 09/29/2014 08:02:40 PM  
Authenticated by Casey J. Thomas, DO On 09/30/2014 12:07:42 PM

UNIVERSITY MEDICAL CENTER  
1800 West Charleston Boulevard  
Las Vegas, Nevada 89102

DATE OF SERVICE: 09/22/2014

SURGEON: Brock Wentz, MD

ASSISTANT SURGEON:

PARTICIPATING SURGEON: James Kesl, MD

ANESTHESIOLOGIST:

PREOPERATIVE DIAGNOSIS: 1. Gunshot wound, left thigh.  
2. Left open femoral shaft fracture.

POSTOPERATIVE DIAGNOSIS: 1. Gunshot wound, left thigh.  
2. Left open femoral shaft fracture.

PROCEDURE PERFORMED:

1. Irrigation, debridement of open left femoral shaft fracture.  
2. Removal of bullet from the left thigh.  
3. Intramedullary nail fixation of left femoral shaft fracture.

ANESTHESIA: General.

ESTIMATED BLOOD LOSS: 250.

IMPLANTS: Synthes 10 x 380 femoral nail.

COMPLICATIONS: None.

CONDITION: Stable to recovery.

INDICATIONS FOR PROCEDURE: Patient is a 32-year-old male who was involved in a gunshot altercation sustaining an injury to his left thigh with a medial in bullet and wound entrance, and no lateral entrance or no lateral exit. He did sustain a midshaft femoral shaft fracture with a mild amount of comminution, as well as fragmentation of the bullet with bullet sitting just in the subcutaneous tissues of his lateral thigh outside of the IT band. There was some bruising and ecchymosis along his lateral thigh. He was neurologically intact with respect to gross motor function of his left ankle, and appeared to not have a vascular injury at the time of incident with an ABI of 1. Secondary to the poor natural history of an untreated femoral shaft fracture, it was recommended to the patient he undergo surgical intervention, specifically irrigation and debridement of the fracture, as well as fixation of the fracture. Risks and benefits were discussed. He did wish to proceed with surgical intervention.

DESCRIPTION OF PROCEDURE: After patient was correctly identified in the preoperative holding area, physical exam were updated, consent was obtained, and surgical site marked. Patient's and family's questions

were answered. Patient was taken to operating room #2 in the morning of 09/22/2014. After induction of general anesthesia, patient was transferred to the operating room table, placed in a supine position. A bump was placed under his left hemipelvis, slightly internally rotating the left lower extremity, and leg was placed on a bone foam ramp. The left leg was prepped and draped in a sterile surgical fashion. A time-out was performed verifying patient, surgery to be performed, laterality of surgery, patient's date of birth, medical record number, the fact the patient received weight appropriate dose of IV Ancef. All in the room were in agreement.

The starting position for a piriformis nail was identified utilizing a poke hole and guidewire technique. Once we did localize the starting position on both AP and lateral projections, an incision was made in line with the guidewire approximately 3 centimeters proximal to the greater trochanter which was carried down through skin and subcutaneous tissue sharply. The guidewire was then advanced to the piriformis fossa and parallel with the axis on both AP and lateral projections. Opening reamer was then used to open the femoral canal, the fracture was then reduced. Utilizing a counter incision at the site where the bullet was, a lateral incision was made over the lateral thigh, bullet was removed at this point. This did expose the IT band and, as well as the vastus lateralis. Once the bullet was removed it was passed off the field and sent through standard chain of command.

The fracture was palpated, irrigated and debrided at this time. With debridement of skin, subcutaneous tissues, muscle, fascia and bone removing some and scraping edges of the bone making sure there was no foreign material. As we are sure that there are no foreign material, the fracture was then reduced, held in reduced position, a ball-tipped guidewire was advanced down to the central aspect of the distal femur. Once it was in this position and anatomically reduced, the canal was reamed sequentially up to 11.5 millimeters. A 10 x 380 millimeter Synthes nail was then placed in standard fashion. Two proximal interlocking screws were placed through the jig, distally 2 interlocking screws were placed utilizing perfect circle technique after confirming our rotation was appropriate, based on global alignment of the leg, as well as based on internal-external rotation of the leg, as well as based on the cortical signs and fracture piece.

The 2 distal interlocks were then placed utilizing perfect circle technique.

The wound was then copiously irrigated with sterile saline, closed in a layered fashion with 0 vicryl, 2-0 vicryl, and 3-0 Monocryl followed by Dermabond and soft dressings. All sponge, instrument, and needle counts correct x2 at the end of the case. I was present throughout the entire procedure.

**POSTOPERATIVE COURSE:** Patient will be maintained in the hospital for 48 hours for treatment of his open fracture with IV Ancef. He will be weightbearing as tolerated, activity as tolerated. As we did close with Monocryl and Dermabond, he can follow up in 3-4 weeks' time. We will leave the medial gunshot wound open for daily dressing changes.

BW/MedQ  
DD: 09/22/2014 09:18:42

DT: 09/22/2014 11:45:18

BROCK WENTZ, MD

PATIENT: MENDOZA, JORGE  
MR#: 000  
ADM DATE: 09/21/2014  
JOB#: 327343/626666003

ACCOUNT#:

Dictated By: Brock Wentz, MD

OPERATIVE REPORT

Authenticated by Brock Wentz, MD On 09/25/2014 02:24:29 PM

UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA  
DEPARTMENT OF RADIOLOGY  
1800 W. CHARLESTON BLVD. LAS VEGAS, NV. 89102  
(702) 383-2241

Patient Name: MENDOZA, JORGE  
Sex: M  
Location:  
Encounter: 9929033257

Date of Birth: 09/03/1982  
MRN: 000

Ordering Physician: THOMAS, CASEY  
Order Number: 6807903

Order Date: 09/21/2014

Interpreting Radiologist: TISCHLER, HOWARD  
Dictated on: 09/21/2014 at 22:41  
Signed and Finalized by: TISCHLER, HOWARD on 09/21/2014

---

Exam Charge Date: Sep 21 2014 10:41PM  
PROCEDURE: TRD 0022 - TR CHEST PORTABLE -- 6807903

PORTABLE CHEST

CLINICAL HISTORY: Trauma.

FINDINGS: Single portable supine view of the chest was performed. Study limited from underlying backboard.  
Heart size and vasculature are grossly normal.  
No definite acute infiltrate or pleural effusion is seen.  
There is no pneumothorax.  
Osseous structures are unremarkable.

IMPRESSION:

Limited portable supine view of the chest. Follow up upright view strongly recommended.

UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA  
DEPARTMENT OF RADIOLOGY  
1800 W. CHARLESTON BLVD. LAS VEGAS, NV. 89102  
(702) 383-2241

Patient Name: MENDOZA, JORGE  
Sex: M  
Location:  
Encounter: 9929033257

Date of Birth: 09/1982  
MRN:

Ordering Physician: THOMAS, CASEY  
Order Number: 6807904

Order Date: 2014

Interpreting Radiologist: INGALLS, JERRELL  
Dictated on: 09/21/2014 at 22:41  
Signed and Finalized by: INGALLS, JERRELL on 09/21/2014

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Exam Charge Date: Sep 21 2014 10:41PM  
PROCEDURE: TRD 0103 - TR PELVIS 1 VIEW -- 6807904

XR PELVIS 1 VIEW

HISTORY: Trauma

COMPARISON: None.

TECHNIQUE: Pelvis, 1 view.

**FINDINGS:**

An overlying trauma board limits assessment. No metallic density bullet fragment identified.  
No acute fracture identified. No subluxation or dislocation. No significant degenerative changes. No osseous erosion identified. The overlying soft tissues are within normal limits. Osseous mineralization is unremarkable.

**IMPRESSION:**

1. No acute osseous abnormality.

UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA  
DEPARTMENT OF RADIOLOGY  
1800 W. CHARLESTON BLVD. LAS VEGAS, NV. 89102  
(702) 383-2241

Patient Name: MENDOZA, JORGE  
Sex: M  
Location:  
Encounter: 9929033257

Date of Birth: 1982  
MRN:

Ordering Physician: THOMAS, CASEY  
Order Number: 6807905

Order Date: 09/21/2014

Interpreting Radiologist: INGALLS, JERRELL  
Dictated on: 09/21/2014 at 22:41  
Signed and Finalized by: INGALLS, JERRELL on 09/21/2014

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Exam Charge Date: Sep 21 2014 10:41PM  
PROCEDURE: TRD 0001 - TR ABDOMEN 1 VIEW -- 6807905

XR ABDOMEN 1 VIEW

HISTORY: Trauma related abdominal pain

COMPARISON: None.

TECHNIQUE: Supine abdomen, 1 view.

**FINDINGS:**

An overlying trauma board degrades image quality.  
Lung bases are excluded.  
There are no radiopaque renal calculi. There are no pathological calcifications. Limited assessment for free air secondary to supine positioning is negative. There is a nonobstructive bowel gas pattern. Osseous structures are grossly unremarkable.

**IMPRESSION:**

1. No radiographic abnormality.



UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA  
DEPARTMENT OF RADIOLOGY  
1800 W. CHARLESTON BLVD. LAS VEGAS, NV. 89102  
(702) 383-2241

Patient Name: MENDOZA, JORGE  
Sex: M  
Location:  
Encounter: 9929033257

Date of Birth: /1982 MRN:

Ordering Physician: THOMAS, CASEY  
Order Number: 6807906

Order Date: 09/21/2014

Interpreting Radiologist: INGALLS, JERRELL  
Dictated on: 09/21/2014 at 22:41  
Signed and Finalized by: INGALLS, JERRELL on 09/21/2014

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Exam Charge Date: Sep 21 2014 10:41PM  
PROCEDURE: TRD 0037 - TR FEMUR (LEFT) -- 6807906

XR FEMUR

HISTORY: Gunshot wound

COMPARISON: None.

TECHNIQUE: Left femur, 2 views.

FINDINGS:

There is an obliquely oriented mid left femoral shaft fracture with 5.2 cm of medial displacement of the distal fracture fragment and 5.3 cm of proximal displacement compatible with overriding. Multiple metallic density fragments are demonstrated at the fracture site compatible with retained bullet fragments.

IMPRESSION:

1. Displaced mid left femoral shaft fracture related to gunshot wound.

UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA  
DEPARTMENT OF RADIOLOGY  
1800 W. CHARLESTON BLVD. LAS VEGAS, NV. 89102  
(702) 383-2241

Patient Name: MENDOZA, JORGE  
Sex: M  
Location: TRCH:0201  
Encounter: 9929033257

Date of Birth: 1982  
MRN: 000

Ordering Physician: THOMAS, CASEY  
Order Number: 6807916

Order Date: 09/21/2014

Interpreting Radiologist: POTSIC, BRADLEY  
Dictated on: 09/21/2014 at 23:04  
Signed and Finalized by: POTSIC, BRADLEY on 09/21/2014

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Exam Charge Date: Sep 21 2014 11:04PM  
PROCEDURE: TRD 0037 - TR FEMUR (LEFT) -- 6807916

XR FEMUR

HISTORY: Post traction and trauma

COMPARISON: Left femur radiographs September 21, 2014

TECHNIQUE: Left femur, 2 views.

FINDINGS:

Severely displaced fracture of the left mid femoral diaphysis. The distal fracture fragment is displaced approximately 6 cm posteriorly in the proximal femoral diaphysis and distal fracture fragment overlap in the craniocaudal direction by approximately 7 cm. Multiple metallic presumed bullet fragments projected over the left thigh. Normal mineralization. No knee dislocation. No hip dislocation. Joint spaces appear normal. Soft tissue swelling.

IMPRESSION:

Severely displaced fracture of the left femoral diaphysis.

UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA  
DEPARTMENT OF RADIOLOGY  
1800 W. CHARLESTON BLVD. LAS VEGAS, NV. 89102  
(702) 383-2241

Patient Name: MENDOZA, JORGE  
Sex: M  
Location: 3SO:3130-1  
Encounter: 9929033257

Date of Birth: 1982 MRN:  
00

Ordering Physician: WENTZ, BROCK  
Order Number: 6807997

Order Date: 09/22/2014

Interpreting Radiologist: MOYE, STEPHEN  
Dictated on: 09/22/2014 at 12:09  
Signed and Finalized by: MOYE, STEPHEN on 09/22/2014

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Exam Charge Date: Sep 22 2014 12:09PM  
PROCEDURE: SUG 0047 - OR FEMUR (LEFT) -- 6807997

Intraoperative fluoroscopy

HISTORY: IM rod left femur

FINDINGS:

Total fluoroscopy time is 129.6 seconds. Please see procedure report for details. Nondiagnostic intraoperative fluoroscopy.

IMPRESSION:

Nondiagnostic intraoperative fluoroscopy. Please see the procedure report for details.

UNIVERSITY MEDICAL CENTER  
1800 West Charleston Boulevard  
Las Vegas, Nevada 89102

**HISTORY:** This is an intermediate activation for a 32-year-old male with a gunshot wound to the left medial thigh. He was brought in by EMS.

**PAST MEDICAL HISTORY:** None.

**PAST SURGICAL HISTORY:** None.

**MEDICATIONS:** Lortab.

**FAMILY HISTORY:** None.

**SOCIAL HISTORY:** He denies tobacco, illicit drug or alcohol use.

**ALLERGIES:** NONE.

**REVIEW OF SYSTEMS:**  
Negative except for above.

**PHYSICAL EXAMINATION:**

**AIRWAY:** Reveals a patent airway with no stridor.

**BREATHING:** Breath sounds are clear bilaterally with no rales.

**CIRCULATION:** 2+ pulses bilateral lower extremities.

**HEART:** Regular rate and rhythm.

**DISABILITY:** Gunshot wound to left medial thigh. Good sensation and pulse intact distally.

**IMAGING:** X-ray studies were shown preliminarily. Chest x-ray looks normal. Pelvic x-ray shows no problems. Left femur is fractured with displacement and angulation.

**TRAUMA CENTER COURSE:** We have placed the patient in traction. We did venipuncture as well as IV medication administration for pain and sedation and placed him in traction to try to get \_\_\_\_\_ length. Repeating the left femur x-rays now.

**ASSESSMENT/PLAN:**

1. At this point patient is a 32-year-old male with a gunshot wound to the left thigh.
2. Left femur fracture.
3. Placement in traction.
4. Repeat x-ray.
5. Orthopedic evaluation.
6. IMC admit for neurological checks every 2 hours.

CJT/medq

DD: 09/21/2014 22:56:52

DT: 09/21/2014 23:30:04

CASEY J. THOMAS, DO

PATIENT: MENDOZA, JORGE  
MR#: 09/21/2014  
ADM DATE: 951171/626618108  
JOB#:

ACCOUNT#: 9

DICTATED BY: CASEY J. THOMAS, DO

TRAUMA CENTER ADMIT

Authenticated by Casey J. Thomas, DO On 09/30/2014 12:13:31 PM

**MRO**

1000 Madison Avenue, Suite 100  
Norristown, PA 19403



Phone: (610) 994-7500 Opt. 1  
Fax: (610) 962-8421

**Request ID: 393****Tracking #: UMSL**

**Diane C. Lowe, Esq.**  
Lowe Law LLC  
7350 W Centennial Pkwy  
#3085  
Las Vegas, NV 89131

**Track your request at [www.roilog.com](http://www.roilog.com)  
Enter your Tracking # and Request ID.**

Date: 12/10/2020  
Phone: 725-212-2451  
Fax: 702-442-0321

**Confirmation of Receipt of Medical Records Information Request**

The Medical Facility below is in the process of searching for and retrieving a copy of the requested records. You will be notified of any issues with your request. If there are no issues, you will receive a pre-payment invoice. The records will be mailed to you upon receipt of your payment.

MRO is processing your request in accordance with HIPAA regulations. Please notify the patient that the provision of treatment, payment, enrollment, or eligibility for benefits will not be conditioned on the elements of the authorization provided or your request for copies of the patient's records, unless permitted under 45 CFR 164.508(c)(2)(ii)(A)-(B).

Should you have any questions, please feel free to contact MRO directly regarding this request by dialing (610) 994-7500 Opt. 1 or by submitting an email to [Requestinformation@mrocorp.com](mailto:Requestinformation@mrocorp.com). To help us better assist you, please be sure to include your Request ID in the subject line of your email.

Thank you,  
**MRO**

**Patient Name: JORGE MENDOZA**

**Your Request Date: 12/8/2020**  
**Your Reference Number:**  
**Date Received at Facility: 12/10/2020**

Your request is being processed by MRO on behalf of the following facility:

**UMC Southern Nevada**  
1800 W Charleston Blvd  
Las Vegas, NV 89102

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

Electronically Filed  
1/26/2021 12:56 PM  
Steven D. Grierson  
CLERK OF THE COURT



Jorge Mendoza, Plaintiff(s)

vs.

State of Nevada, Defendant(s)

Case No.: A-19-804157-W

Department 1

**NOTICE OF HEARING**

Please be advised that the Motion for Leave to Add to Record Hospital Records in the above-entitled matter is set for hearing as follows:

**Date:** February 23, 2021

**Time:** 1:00 PM

**Location:** RJC Courtroom 16A  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

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

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Joshua Raak  
Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

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

By: /s/ Joshua Raak  
Deputy Clerk of the Court