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

JOSE MONAY-PINA,

Appellant,

v.
STATE OF NEVADA,

Respondent.

Docket No. 84321

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# APPELLANT'S APPENDIX VOL. IV

Monique McNeill, Esq.
Nevada Bar No. 9862
P.O. Box 2451
Las Vegas, Nevada 89125
Phone: (702) 497-9734
Email: Monique.mcneill@yahoo.com
**Attorney for Appellant Monay-Pina**



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## CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the1st day of July, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM LAXALT MONIQUE MCNEILL

STEVEN WOLFSON

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

Jose Monay-Pina
c/o Southern Desert Correctional Center
P.O. Box 208
Indian Springs, NV 89070-0650

By:____/S/ Monique McNeill _____
MONIQUE MCNEILL
State Bar # 9862

area of the bushes, Aguirre found a black ski mask, the wallet of resident of 504 Brush Street, two knives, a phone and a set of keys. AA205. Aguirre recognized Monay-Pina as the suspect from the bushes. AA206. From under the shed, officers found a few knives in sheaths, another ski mask and two handguns, or replica guns. AA209.

**JAVIER COLON:**

On January 12, 2016, Javier Colon ("Colon") was living with his sister in a house on Brush Street. AA232. Colon's room was the garage. AA233. Colon's sister and three children lived inside the house. AA233. The family had been living at the address for approximately three months. AA233. Colon was asleep when two men came into the garage and attacked him. AA235.

Colon was asleep in his bed, but was woken up when the first man opened the door. AA235. The man screamed, "Javier, get up, get up." AA235. There was another man present, but he said nothing. AA236. Colon knew one of the men, Casimiro Venegas ("Venegas"). AA235. Colon had seen the other man before, however, he did not know if it was him inside the house, as he had his face covered. AA237. Venegas did not have his face covered. AA238. After Venegas yelled at him to get up, Venegas began to hit Colon in the head with a gun. AA239. The other man pointed a gun at a window in the garage that looked into the house where the rest of the family was. AA239. Colon could see his family through the window. AA239. The man was not saying anything. AA240.

After Venegas hit Colon in the head with the gun, he picked up at axe and started hitting Colon with the axe. AA240. First, Venegas hit Colon in the leg, then the ribs, then the head.

AA241. Colon put his hands up, so the axe cut his hands, not his head. AA241. When the police came, their lights were visible inside the garage, and the men ran away. AA242-243. Officers arrived, and got Colon to the hospital. AA245. Doctors put stitches and staples in his head and his hand. AA245. Colon testified that he cannot move his fingers like he used to. AA245. Colon said that Venegas took his wallet, a camera, his MP3 player, and two collectors' knives. AA246. Venegas also screamed at Colon's sister inside the house "don't do anything, we're going to kill you, too." AA246. During the attack, Venegas was saying that Colon did something to Venegas's sister's car, possibly deflating her tires. AA253.

**ADRIANA COLON:**

Adriana Colon ("Adriana") was living at 504 Brush Street in January of 2016. AA278. She had been living there for about six months. AA278. Around 4:00 a.m., Adriana heard Colon scream that someone was threatening him, so she went to the window, and someone told her to shutup. AA280. There was two men in the room the with Colon, and both had guns pointing at the window. AA280. Adriana did not think the men could actually see her, because of the lighting, but she kept telling the men to leave, as her children were inside. AA281. Adriana said she could "hear" the hitting of Colon. AA282. Adriana's daughter, Lizbeth told Adriana that they needed to call the police. AA282. Lizbeth called the police, and they arrived within five minutes. AA284. Adriana could not see one man, because his face was covered, but she thought that the other man inside was Venegas. AA284-85.

**LIZBETH AVINA:**

Lizbeth Avina ("Avina") was living with her mother, uncle, and siblings at 504 Brush

Street, on January 12, 2016. AA306. On that day, she woke up to her mom yelling. AA307. Her mom was yelling out the window, "Stop, stop" and "my kids are here." AA307. Lizbeth went to her mother's room and askes what was going on. AA308. Lizbeth told her mother they should call the police, but her mother said no because the men might shoot. AA310. Lizbeth told her siblings, who had come out of their rooms, to stay where they were, and she called the police. AA311. Lizbeth never looked out the window. AA311.

**SAMANTHA AVINA:**

Samantha Avina ("Samantha") was also living at 504 Brush Street with her family in January of 2016. AA318. On January 12, Samantha woke up to her mom screaming, and she noticed her brother was not in their room. AA320. Samantha went to her mother's room, and told her sister what was happening. AA320. Samantha heard her mother saying "stop" and heard her sister say "they have guns." AA320. Samantha and her brother went to their room, and Lizbeth called the police. AA325.

**CESAR AVINA:**

Cesar Avina ("Cesar") was living at 504 Brush Street in January 2016. AA332. Cesar woke up at some point because he heard his uncle knocking on the window, calling his mother's name. AA332. His mother told him to go into the room with his sister. AA333. Cesar could hear his uncle yelling, and two men telling his uncle to be quiet. AA334. The police eventually came. AA334.

**JUSTING SPURLING:**

Justin Spurling ("Spurling") was working for LVMPD in January of 2016, and was

working in patrol. AA337. Spurling responded to 504 Brush Street on January 12. AA338. A call came out that a man was being beaten by two men with guns. AA338. Spurling and his partner, Ivan Duron, responded. AA338. When the arrived, Spurling could hear screaming coming from the side of the house. AA338. Spurling followed the sound and entered a room where a man was on a bed, bleeding. AA340. Spurling then went outside and jumped a wall trying to find anyone who might be involved. AA341. As he was looking around, he saw a man standing in the middle of a backyard two houses down from 504 Brush. AA342. He man had a black stocking cap. AA342. Spurling made eye contact with the man, who then ducked down. AA342. Spurling got on his radio and notified other officers he had a potential suspect. AA343. Spurling them walked down and jumped into a yard that was just north of the potential suspect. AA343. He then jumped into the yard near the suspects. AA343. He drew his weapon and began to give commands. AA343. Spurling got back on his radio to alert other officers to set up a perimeter, and continued to give commands. AA344. The man ran and tried to hide behind a very small tree. AA345. Spurling then jumped into the yard with the suspect, and eventually the man got down on the ground, as ordered. AA346. As Spurling took the man into custody, he noticed another man lying underneath the shed. AA347.

With his knee on the back of one man, Spurling began giving verbal commands to the man under the shed. AA348. The man did not appear to be complying, so Spurling pointed his gun at the man, and shined a flashlight on him. AA349. Two additional officers made their way into the yard, and Spurling told them there was a man under the shed. AA349. The men told the suspect to come out, and the man reached to his waist, making the officers

nervous. AA350. Eventually the man came out from under the shed. AA350. Spurling then handcuffed the man under his knee. AA351. The man told Spurling that the police did not understand, and that he and the other man were victims of a tire slashing, and that the police would not listen to them. AA351. Spurling identified Monay-Pina as being the man he arrested. AA353. Spurling identified Venegas as the man who was under the shed. AA358. Spurling testified that the guns the police found were "replicas" or pneumatic guns. AA360.

**ADAM FELABOM:**

Adam Felabom ("Felabom") was a crime scene analyst with LVMPD. AA397. On January 12, 2016, Felabom responded to 510 Brush Street around 5:05 a.m. AA398. When he arrived, he found two scenes, but he focused on 510 Brush Street. AA398. Felabom photographed the scene first, then began taking notes of the layout, documenting any items he found. AA398. He then photographed items he found, and collected evidence. AA399. Inside the wallet he found in a bush he found a driver's license for Javier Colon. AA403. Felabom also collected $138 in various bills. AA404. Felabom also collected fingerprints from a magazine to one of the pneumatic guns. AA415. Felabom testified that the red gloves he found near the man in the shed had blood on them. AA426. The black gloves found in the bush did not. AA426.

**TRACY SMITH:**

Tracy Smith ("Smith") was a detective with LVMPD. AA428. A patrol officer called Smith on January 12, 2016, to assist with a robbery at 7-11, and learned that police thought it was related to an incident that had occurred about twenty minutes later. AA430-31. Initially

Smith responded to the Brush Street address, where patrol officers briefed her. AA432. Smith also submitted fingerprints for processing, but the print recovered was not suitable for processing. AA437.

**KIMBERLY DANNENBERGER:**

Kimberly Dannenberger ("Dannenberger") was an employee of the LVMPD forensic laboratory in the DNA detail. AA444. Many items tested by Dannenberger either did not have enough DNA to process or were inconclusive. AA457. However, DNA from the blood on the pneumatic gun contained belonged to Javier Colon. AA458. DNA from the inside of the black knit hat contained three contributors, one of which was Venegas. AA463-64. The blue ski mask contained a mixture of DNA, and Dannenberger was able to find one of the sources was Monay-Pina. AA466. A swab from the axe contained DNA from Colon. AA467.

## ARGUMENT

The court granted leave for Monay-Pina to present additional evidence regarding Grounds Two, Four, Six, Seven, Eight, and Eleven. The court further ordered that Monay-Pina can present additional evidence on Ground Ten regarding the cumulative error and the failure to visit Monay-Pina in jail, or to develop a defense prior to trial.

**GROUND TWO:** Trial counsel was ineffective for failing to hire an investigator.

**GROUND FOUR:** Trial counsel was ineffective for failing to file a motion to sever defendants.

**GROUND SIX:** Monay-Pina's Sixth Amendment rights and his Fourteeenth Amendment rights were violated because trial counsel failed to complete any investigation.

**GROUND SEVEN**: Monay-Pina's Sixth Amendment rights and Fourteenth Amendment rights were violated when trial counsel failed to have Monay-Pina examined by a psychiatrist to ensure he was competent to stand trial.

**GROUND EIGHT:** Monay-Pina's Sixth Amendment rights and Fourteenth Amendment rights were violated when trial counsel failed to review the video surveillance prior to trial.

**GROUND TEN (in part):** Monay-Pina's Sixth Amendment rights and Fourteenth Amendment rights were violated because the errors made by trial counsel were cumulative; trial counsel failed to visit Monay-Pina in jail, and failed to work with him to develop a defense.

**GROUND ELEVEN:** Monay-Pina's Sixth Amendment rights and Fourteenth Amendment rights were violated when trial counsel admitted Monay-Pina's guilt at trial, without discussing such tactic with Monay-Pina.

## ARGUMENT

### I. MONAY-PINA WAS DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL

To state a claim of ineffective assistance of counsel that is sufficient to invalidate a judgment of conviction, the petition must demonstrate that: (1) counsel's performance fell below an objective standard of reasonableness; and (2) counsel's errors were so severe that they rendered the verdict unreliable. *Lozada v. State,* 110 Nev. 349, 353, 871 P.2d 944, 946 (1994) *citing Strickland v. Washington,* 466 U.S. 668. 104 S.Ct. 205 (1984).

Once the defendant establishes that counsel's performance was deficient, the defendant must next show that, but for counsel's errors, the result of the trial would probably have been different. *Strickland,* 266 U.S. at 694, 104 S.Ct. 2068; *Davis v. State,* 107 Nev. 600, 601, 602, 817 P.2d 1169, 1170 (1991). The defendant must also demonstrate errors were so egregious as to render the result of the trial unreliable or the proceedings fundamentally unfair. *State v. Love,* 109 Nev. 1136, 1145, 865 P.2d 322, 328 (1993) *citing Lockhart v. Fretwell*, 506 U.S. 364, 113 S.Ct. 838, 122 L.Ed.2d 180 (1993); *Strickland,* 466 U.S. at 687, 104 S.Ct. at 2064.

In *Strickland*, the United States Supreme Court established the standards for a court to determine when counsel's assistance is so ineffective that it violates the Sixth Amendment of the U.S. Constitution. 466 U.S. 668, 104 S.Ct. 2052. *Strickland* laid out a two-pronged test to determine the merits of a defendant's claim of ineffective assistance of counsel.

First, the defendant must show that counsel's performance was deficient. This requires a showing that counsel made errors so serious that counsel was not functioning as the counsel guaranteed by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction resulted from a breakdown in the adversary process that renders the result unreliable. The Nevada Supreme Court has held, "claims of ineffective assistance of counsel must be reviewed under the reasonably effective assistance standard articulated by the U.S. Supreme Court in *Strickland*, thus requiring the petitioner to show that counsel's assistance was deficient and that the deficiency prejudiced

the defense." *Bennet v. State,* 111 Nev. 1099, 1108, 901 P.2d 676, 682 (1995); *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996).

In meeting the prejudice requirement of an ineffective assistance of counsel claim, Monay-Pina must show a reasonable probability that, but for counsel's errors, the result of the proceedings (trial, appeal, post-conviction proceedings) would have been different. Reasonable probability is probability sufficient to undermine the confidence in the outcome. *Kirksey,* 112 Nev. at 980, 923 P.2d at 1102. "Strategy or decisions regarding the conduct of a defendant's case are virtually unchallengeable, absent extraordinary circumstances." *Mazzan v. State*, 105 Nev. 745, 783 P.2d 430 (1989); *Olausen v. State,* 105 Nev. 110, 771 P.2d 583 (1989). However, counsel is still required to be effective in his or her strategic decisions. *Strickland*, *supra*.

In the instant case, the proceedings were fundamentally unfair and Monay-Pina received ineffective assistance of counsel at trial.

**GROUNDS TWO AND SIX: Trial counsel was ineffective for failing to hire an investigator and Monay-Pina's Sixth Amendment rights and his Fourteeenth Amendment rights were violated because trial counsel failed to complete any investigation.**

The question of whether a defendant has received ineffective assistance of counsel at trial in violation of the Sixth Amendment is a "mixed question of law and fact and is thus subject to independent review." *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, at 2070, 80 L. Ed.2d 674 (1984). Under *Strickland,* defense counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular

investigations unnecessary. *Id.* at 691, 104 S. Ct. at 2066. (Quotations omitted). Deficient assistance requires a showing that trial counsel's representation of the defendant fell below an objective standard of reasonableness. *Id.* at 688, 104 S. Ct. at 2064. If the defendant establishes that counsel's performance was deficient, the defendant must next show that, but for counsel's errors, the result of the trial probably would have been different. Id. at 694, 104 S. Ct. at 2068.

The Third Circuit has held that "[i]neffectiveness is generally clear in the context of complete failure to investigate because counsel can hardly be said to have made a strategic choice when s/he [sic] has not yet obtained the facts on which such a decision could be made." *See U.S. v. Gray,* 878 F.2d 702, 711 (3d Cir.1989). A lawyer has a duty to "investigate what information ... potential eye-witnesses possess[ ], even if he later decide[s] not to put them on the stand." *Id.* at 712. *See also Hoots v. Allsbrook*, 785 F.2d 1214, 1220 (4th Cir.1986) ("Neglect even to interview available witnesses to a crime simply cannot be ascribed to trial strategy and tactics."); *Birt v. Montgomery.* 709 F.2d 690, 701 (7th Cir.1983) ... ("Essential to effective representation ... is the independent duty to investigate and prepare.").

In *State v. Love,* 865 P.2d 322, 109 Nev. 1136, (1993), the Nevada Supreme Court considered the issue of ineffective assistance of counsel for failure of trial counsel to properly investigate and interview prospective witnesses. In *Love*, trial counsel failed to interview alibi witnesses in a case based largely on circumstantial evidence and a jailhouse informant. *Id.* That court upheld a District Court decision reversing a conviction on post-conviction because trial counsel did not call witnesses, and did not speak to all potential witnesses. *Id.*

Legal and factual judgments erroneously made because of inadequate investigation may

be deemed ineffective assistance of counsel. *See Davis v. State*, 107 Nev. 600, 601-02, 817 P.2d 1169, 1170 (1991). Further, defense counsel failing to investigate facts, research legal issues, and prepare for trial leaves a defendant without any defense at trial. *See Buffalo v. State*, 111 Nev. 1139, 901 P.2d 647 (1995) and *Warner v. State*, 1032 Nev. 635, 729 P.2d 1359 (1986). In *Warner,* trial counsel failed to investigate, and failed to adequately prepare for trial, leaving the defendant with no defense, and the *Warner* court felt that such performance was so deficient that the trial was rendered unreliable. *Warner*, at 636.

In this case, there is no evidence trial counsel hired an investigator. When turning over his file, after counsel asked for everything, including investigator notes and/or reports, trial counsel attached an itemized list of documents given to current counsel, as well as to appellate counsel. Further, when counsel inquired further about other items of discovery that were missing, trial counsel indicated he had given everything he had to current counsel and to appellate counsel. (See Exhibit A, emails between counsel and itemized lists). Additionally, Monay-Pina was never told that there was an investigator, nor was his family. (These allegations can be testified to at an evidentiary hearing. Additionally, this brief will be supplemented with additional information from Monay-Pina's family once that information is received).

Monay-Pina asserts that an investigator would have learned that Colon did in fact know Monay-Pina beyond simply working with him a few times. Colon gave a few odd versions of whether or not he recognized Monay-Pina, how he recognized him, and how well he knew Monay-Pina. The police did mention in their testimony that Monay-Pina did indicate that

Colon had victimized him in some way, and Colon admitted that Venegas was angry over Colon committing some crime against Venegas' family. However, Colon denied any such incident. However, Monay-Pina's girlfriend, Angelica Venegas, sister of Venegas, indicated in the attached Exhibit F, investigator's report, that she dated Monay-Pina, and that the two socialized with Colon. Further, she indicated that Colon committed a crime on her car, and harassed her for a time after.

This information directly impeached Colon's testimony that he did not really know Monay-Pina, but only knew him from work. Further, it provided corroboration that Colon had done something potentially violent to Venegas' sister. Angelica's potential testimony also provide an area of potential defense, that Colon and Venegas potentially had a more in depth conversation and altercation prior to Venegas hitting Colon with the gun. [1] Angelica's statement provides no motive for Monay-Pina to have been involved in an altercation with Colon, as Angelica is clear that Venegas was angry with Colon, not Monay-Pina, which comports with Colon's sister testifying that she heard one man yelling at Colon. Angelica's statement does cast doubt on the veracity of exactly what happened in the room.

Counsel was ineffective for failing to investigate the case. This is not a case where counsel made a tactical decision to leave Angelica out of the trial, but rather one where counsel had no

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[11] Further, it is of note that Angelica indicates it was she who told Monay-Pina's family to hire Boley, and that she had met with Boley and wanted to hire Boley for Venegas. A potential conflict of interest in Boley's representation exists if Boley consulted with Venegas prior to representing Monay-Pina. This brief will be supplemented with information upon further investigation of this potential conflict.

idea what anyone else could possibly testify to if called as a witness.

**GROUND FOUR: Trial counsel was ineffective for failing to file a motion to sever defendants.**

"The decision to sever a joint trial is vested in the sound discretion of the district court and will not be reversed on appeal unless the appellant 'carr[ies] the heavy burden' of showing that the trial judge abused his discretion." *Buff v. State,* 114 Nev. 1237 1245, 970 P.2d 564, 569 (1998) (quoting *Amen v. State*, 106 Nev. 749, 756, 801 P.2d 1354, 1359 (1990)). Reversal is only justified if refusal to sever a joint trial had "a substantial and injurious effect on the verdict." *Marshall v. State,* 118 Nev, 642, 647, 56 P.3d 376, 379 (2002)).

A joint trial must be severed " 'if there is a serious risk that [it] would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence.' " *Marshall v. State,* 118 Nev. 642, 647, 56 P.3d 376, 379 (2002) (quoting *Zafiro,* 506 U.S. at 539, 113 S.Ct. 933 ). Here, Rimer informed the district court that there were no Bruton -type problems, see *Bruton v. United States,*391 U.S. 123, 126, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968) (holding that a defendant's constitutional right to confront his accusers is violated when a nontestifying codefendant's statement incriminates him and is used at their joint trial).

In this case, the State charged Monay-Pina and Venegas for acts constituting two separate events. The evidence in the second event, where Javier Colon testified he was attacked, was more damaging against Venegas, as Colon testified that Monay-Pina did not say anything, and that he did not harm Colon in anyway. Colon did not testify as to who actually took his

property, and his statements about Monay-Pina's identity and how he knew who it was were sometimes disjointed and confusing. This discrepancy, as well as a deeper dive into the discovery regarding what actually occurred in the ax incident is the area where a defense to some of the charges can be found.

At preliminary hearing, Colon testified that "the guy told me I supposed to punch [sic] his sister's tires. . .] (see exhibit B, Preliminary Hearing Transcript, "PHT," p. 35). When asked if Colon knew the men, his response was "for [sic] his mom" and "his sister." PHT, p. 35. Per Colon, it was Venegas who was hitting him with the gun. He testified at the preliminary hearing, ". . .he start [sic] hitting me with the gun, with the pistol, cussing at me with the pistol." PHT, p. 37. The district attorney clarified, "Venegas was hitting you with the pistol in the head?" PHT, p. 27. The answer was affirmative. *Id.* Further, it was Venegas who hit Colon with the ax. PHT, p. 39. Monay-Pina said nothing during this incident. PHT, p. 38. While Colon testified that Monay-Pina pointed a gun at the window leading into the house, he also testified that Monay-Pina said nothing. PHT, p. 39.

When asked if he recognized Monay-Pina, Colon testified "I just recognize him because I have a friend tell me [sic] that that was him." PHT, p. 54. Colon admitted that he never saw Monay-Pina's face, and that he knew afterwards when his friend Cynthia[2] told him it was Monay-Pina. PHT, pp. 56-57. He further admitted that someone showed him a picture later, and he asked who the other person in the picture was, and was told it was Monay-Pina. PHT,

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[2] Cynthia is Cynthia Coraro, Colon's girlfriend at the time. VS, p. 14-15.

p. 57. Later, on redirect, Colon testified that he could see Monay-Pina's eyes, and recognize him, despite not being able to describe anything unique or distinctive about Monay-Pina's eyes. PHT, pp. 57, 60. In his statement to the police, Colon stated that he did not know the other person in the room. See Exhibit C, Voluntary Statement, Javier Colon, p. 5:

> Colon: And he—when he take my wallet…
> Officer: Okay, when did he, uh, because there was somebody else there too, was there not?
> Colon: Yeah, but I don't know the other guy.
> Officer: You don't know the other guy?
> Colon: No.
> Officer: Ok.
> Colon: I don't know that other guy.

In his statement to the police, Colon was also clear that it was Venegas who mentioned to him that Colon had done something to Venegas' family. Exhibit C, Voluntary Statement, Javier Colon, p. 2. Colon indicated that he knows Venegas' family, including his mother, and all of his sisters, and was friends with his family. VS, p. 2. Further, it was Venegas who took Colon's wallet, and MP3 player. VS, pp. 5, 17. Officer's never asked who specifically took the other items. According to Colon's statement to the police, the other person in the room did nothing, but when Colon's family started looking through the window, that person pointed a gun at the window. VS, p. 7.

Colon's sister, in her statement to the police, attached as Exhibit D, spoke about both men having a gun pointed at her, and that one of them seemed to be telling Colon to shut up. Voluntary Statement of Adriana ("VSA"), p. 4. According to Adriana, one of the men was telling her not to look at his face. VSA, p. 4. Logic would dictate that this would be Venegas,

who did not have his face covered. Further, Adriana did not believe the men actually saw her through the window. VSA, p. 9.

To assert a defense to these charges would require implicating Venegas solely. So that counsel would have the ability to present a full defense, counsel should have moved to sever the defendants. A joint trial was prejudicial because it affected Monay-Pina's right to effective assistance of counsel, his right to a fair trial, and his right to present a defense.

The decision to sever a trial is within the discretion of the court. NRS 174.165(1) provides that a trial judge may sever a joint trial if "it appears that a defendant is …prejudiced by a joinder of … defendants…for trial together." The Nevada Supreme Court has further clarified that a judge should grant a severance "if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about the guilt or innocence." *Chartier v. State*, 191 P.3d 1182, 1185 (2008). If the defendants have conflicting defenses this may cause prejudice warranting severance. *Id.*

More specifically, the Nevada Supreme Court specifically held that:

> We hold that the cumulative effect of the joint trial in this case was not harmless because the joinder had an injurious effect on the verdict as demonstrated by the conflicting and irreconcilable defenses in this case. Chartier defended on the basis that he was not involved in the crimes at any stage of planning or execution and that Wilcox committed the murders of his own volition out of a misguided desire to "help" Chartier. In contrast, Wilcox defended on the theory that Chartier was not only the mastermind but that he was present at the scene and Wilcox acted at Chartier's direction. Additionally, because of the joinder, Chartier was precluded from questioning Wilcox as to the reasons why he kept a suicide note that was several years old. Finally,

> during cross-examination of witnesses called by the State against Chartier, Wilcox was able to emphasize to the jury the highly contentious nature of Chartier's custody dispute with Bernat, which likely improperly influenced the jury and highlighted the conflict between Chartier's and Wilcox's defenses. While standing alone these instances are not enough to warrant a severance, we conclude that the cumulative effect resulted in an injurious impact on the jury's verdict. Therefore, the district court abused its discretion by failing to sever the trials, and a reversal of Chartier's convictions is warranted.

*Chartier v. State*, 191 P.3d 1182, 1186, 124 Nev. 760, 765-766, 2008 Nev. LEXIS 73, 9-10, 124 Nev. Adv. Rep. 66 (Nev. 2008); *see also, Marshall v. State,* 118 Nev. 642, 646, 56 P.3d 376, 378 (2002).

Here, the antagonistic defenses warranted severance. In the seminal case on severance in Nevada, one defendant claimed he was just helping another defendant, and not the mastermind of the offense, and that Nevada Supreme Court held it was not harmless for the court to not sever the cases. *See Chartier v. State*, 191 P.3d 1182, 1186, 124 Nev. 760, 765-766, 2008 Nev. LEXIS 73, 9-10, 124 Nev. Adv. Rep. 66 (Nev. 2008), where defendant Wilcox's defense was that he was merely assisting defendant Chartier.

Here, severance is required, because a failure to sever hindered Monay-Pina's ability to present and prove his theory of the case. *Chartier v. State*, 191 P.3d 1182, 1187, 124 Nev. 760, 767, 2008 Nev. LEXIS 73, 13, 124 Nev. Adv. Rep. 66 (Nev. 2008). In this case, Monay-Pina's defense to the ax incident was that he was had no idea what Venegas was going to do in the room. Further, the pistol whipping and ax attack was not a foreseeable consequence of the series of events that occurred that evening.

Monay-Pina's defense would require him to implicate his co-defendant by possibly conceding crimes Venegas committed. Mr. Venegas' right to a fair trial would be infringed,

however, and therefore the court may have to put restraints on what Monay-Pina could allege. This would then hamper Monay-Pina's right to present his defense. Limitation to one defendant's defense to preserve another defendant's rights affects the trial rights of both defendants.

Monay-Pina has the right to present a defense, the right to effective assistance of counsel and the right to a fair trial. He should not be forced to limit his defense because his defense prejudices the co-defendant. The defenses in this case are similar to those in the *Chartier* case, where one defendant asserted the other defendant did it on his own accord, and the other defendant asserted he did it to assist the other defendant. Here, one defendant will assert he did not know what the other had planned, and had no meaningful part of the attack, while Venegas asserted at trial that there were identity issues, and by inference, that it was not him who committed the crimes. This fact pattern is similar enough to *Chartier* that counsel should have filed a motion to sever defendants.

In this case, the State charged Monay-Pina in count 5 as a principal in the Robbery count of Count 5. AA58. For counts 6 through 13, Monay-Pina is charged under multiple theories of liability. AA58-62. Based on the descriptions of the events related to the ax attack, given to the police, at the preliminary hearing, and at trial, Monay-Pina's defense was to attack each of those theories of liability. To do so would be to separate his actions from that of Venegas, and to compare and contrast them, to demonstrate to the jury that Monay-Pina did not directly commit those counts, and that he neither aided and abetted, with the intent the crimes be committed, nor that he conspired with Venegas, with the intent the

crimes be committed. So that counsel could effectively present Monay-Pina's defense, counsel should have filed a motion to sever.

**GROUND SEVEN: Monay-Pina's Sixth Amendment rights and Fourteenth Amendment rights were violated when trial counsel failed to have Monay-Pina examined by a psychiatrist to ensure he was competent to stand trial.**

Monay-Pina reasserts the ground as alleged in his first petition.

**GROUND EIGHT: Monay-Pina's Sixth Amendment rights and Fourteenth Amendment rights were violated when trial counsel failed to review the video surveillance prior to trial.**

Monay-Pina is unaware if counsel had the surveillance prior to trial; but his counsel did not review the surveillance with him prior to trial. However, counsel did not have the surveillance in his possession when asked for his file. See exhibit A, emails between counsel. Counsel never reviewed the surveillance videos from the 7-11 with Monay-Pina prior to the start of trial. An attorney must have an idea what he or she is defending against when stepping into a courtroom and defending a client against criminal charges. The crux of the caselaw on the State providing discovery, such as *Brady v. Maryland,* 373 US 83, 83 S. Ct. 1194 1963) is that the State must provide discovery so that an attorney can be prepared, and effective, and avoid trial by ambush. Certainly, that line of cases holds the State to its burden to disclose information, which makes it then axiomatic that if it is so crucial for the State to provide the information, it is equally crucial that defense counsel review the discovery with a defendant prior to trial.

In this case, Monay-Pina went into trial without any idea of what the surveillance

footage showed, and how that could then be used against him at trial. Monay-Pina asserts that when he or his family would inquire with counsel about what was going to happen at trial, he was told not to worry, that it would be fine. Monay-Pina went into his multiple felony jury trial with no idea how the State's evidence was going to be used against him, and with no opportunity to discuss with his counsel his defenses. The video surveillance did not show Monay-Pina's face, and from the *pro per* petition, it is clear that Monay-Pina did not have an understanding how the State can prove identity through a means other than an eyewitness identification. Counsel had a duty to not only go through the surveillance with his client prior to trial, but to also explain to the client how the video could be used against the client, and to obtain any information from the client that may aid in the defense. Counsel did not meet the minimum requirements for preparing for a jury trial.

**GROUND TEN (in part): Monay-Pina's Sixth Amendment rights and Fourteenth Amendment rights were violated because the errors made by trial counsel were cumulative; trial counsel failed to visit Monay-Pina in jail, and failed to work with him to develop a defense.**

The contentions in this Ground will be addressed separately, and in an order different than that laid out in the first petition. Firstly, this supplement will address the failure to visit Monay-Pina in jail, along with the failure to work with him to develop a defense, and thirdly, the cumulative nature of the errors made by counsel.

First, Monay-Pina contends that counsel failed to visit him in jail. Monay-Pina's jail records indicate that trial counsel visited Monay-Pina one time. The records from Clark County Detention Center, attached at Exhibit E, show one legal visit from trial counsel. That

visit took place February 4, 2017, or approximately one month prior to the start of trial. During that visit, Monay-Pina contends that counsel did not review discovery with him, nor did he ask Monay-Pina anything about what his defense to the charges was. Monay-Pina, who will testify to these facts at the time of the evidentiary hearing, had been drinking all day and using methamphetamine prior to the allegations occurred. He had no idea that Venegas was going to Colon's house, or what Venegas planned to do once inside. He had no idea that Venegas was planning to beat Colon, or to steal his property. Had counsel spoken with Monay-Pina, counsel could have presented a defense to the charges that entailed 1) Monay-Pina did not have the requisite intent, and 2) Monay-Pina did not directly commit the crimes at the ax scene, nor did he intentionally aid or abet or conspire with Venegas.

By not having more than a cursory one time visit with his client prior to trial, counsel came into the trial with no defense. As is clear from the record, counsel did not conduct much, if any, cross-examination of the witnesses. Counsel did not retain an investigator, nor did counsel go through the discovery to glean the facts that he could use to present a defense.

Monay-Pina was left with no defense at trial. To quote the Nevada Supreme Court in *Buffalo v. State*, 901 P.2d 647 (1995), "He was not provided with what could be fairly called a 'defense,' and this rendered his convictions unreliable." *Id.* at 648. In that case, the court held that Buffalo was denied his right to effective assistance of counsel as guaranteed by the Sixth Amendment of the United States Constitution and article 1, section 8 of the Nevada Constitution. Buffalo went to trial on what the court noted seemed an "uncomplicated" and "easy to dispose of" case. *Id.* However, after a review of the post-conviction record, that court

found that there was in fact a defense to the charges, but that defense was never presented to the jury. *Id.* The *Buffalo* court noted that counsel spent very little time with her client preparing prior to trial, did not investigate, and presented no defense to one set of charges, and the "wrong defense" to another allegation. *Id.* at 650. The State's argument in *Buffalo* was that there was "no bona fide defense" to the charges, but the Supreme Court found that indeed there were defenses to the crimes charged. *Id.* at 652. The court opined:

> Based upon the mentioned factors, we held in *Warner* that lack of preparation for trial left appellant without a defense at trial. Under the circumstances of the present case, we conclude that trial counsel's performance was so deficient as to render the trial result unreliable. Accordingly, we conclude that appellant was denied his Sixth Amendment right to the effective assistance of counsel. *Id.* at 653-54.

Based on the fact that there was a defense to the charges (with the court noting that it would/could not opine about the strength of the defense), and the fact that counsel had not prepared her case, or her client, the court reversed the convictions and remanded for a new trial. *Id.* at 654.

The instant case is similar to *Buffalo*. Counsel visited Monay-Pina one time. He did not discuss the discovery at length, did not discuss what the defense to the charges were, did not discuss valid defenses to the charges, gleaned from a review of the evidence. Further, counsel did not investigate. Monay-Pina did not know what was going to happen at trial, having never been through the system before. He only knew that his lawyer had told him that it was not a complicated case, and that all would be well. Monay-Pina went to trial with no defense, and therefore the outcome is unreliable.

While it is always hard to look back and ask what a jury may have done with other facts or defenses presented, had the jury been presented with arguments and cross-examination, and Monay-Pina's version of how he came to be at Colon's house, and what happened once inside the room, the jury certainly could have rendered a different outcome on some of the charges. Counsel argued the facts regarding the identification, but that was simply not a viable defense based on the surveillance videos and the clothing, and the clothing Monay-Pina was wearing at the time of the arrest. Had counsel met with Monay-Pina, or spoken to potential witnesses, he would known that the defense was that Colon was not necessarily truthful, that Colon could be impeached regarding his version of events, and that Monay-Pina did not directly commit the crimes, nor did he possess the requisite intent, based on his intoxication and his lack of knowledge about the trip to Colon's house.

The errors were cumulative to deprive Monay-Pina of his Constitutional rights to due process, a fair trial, to present a defense and to effective assistance of counsel. Counsel not investigate any of the defendant's claims, did not spend time with client to develop his defense, did not find information to impeach the State's main witness, did not review discovery with Monay-Pina. The relevant factors to consider in determining whether error is harmless or prejudicial include whether (1) the issue of innocence or guilt is close, (2) the quantity and character of the error (3) and the gravity of the crime charged." *Mulder v. State*, 116 Nev. 1, 17, 992 P.2d 845, 854-55 (2000). As discussed *supra*, several instances of ineffective assistance of counsel occurred in this case, and,

as such, there is cumulative error worthy of reversal.

Monay-Pina was convicted of grave crimes such robbery with a deadly weapon and attempt murder. The errors on the part of trial counsel were harmful, discussed *supra*. Defense counsel presented no defense to the charges, and left Monay-Pina at trial in front of a jury with no defense. Therefore, the *Mulder* factors weigh in favor of finding there is cumulative error warranting reversal of Monay-Pina's conviction.

**GROUND ELEVEN: Monay-Pina's Sixth Amendment rights and Fourteenth Amendment rights were violated when trial counsel admitted Monay-Pina's guilt at trial, without discussing such tactic with Monay-Pina.**

Monay-Pina reasserts this ground as alleged in his first petition.

## II. MONAY-PINA IS ENTITLED TO AN EVIDENTIARY HEARING PURSUANT TO NRS 34.770

NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. NRS 34.770 provides:

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

The Nevada Supreme Court has held that if a petition can be resolved without expanding the record, then no evidentiary hearing is necessary. *Marshall v. State*, 110 Nev.

1328, 885 P.2d 603 (1994); *Mann v. State*, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A defendant is entitled to an evidentiary hearing if his petition is supported by specific factual allegations, which, if true, would entitle him to relief unless the factual allegations are repelled by the record. *Marshall,* 110 Nev. at 1331, 885 P.2d at 605; *See also Hargrove v. State,* 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (1984) (holding that "[a] defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made." *Mann,* 118 Nev. at 354, 46 P.3d at 1230 (2002). The district court cannot rely on affidavits submitted with a response or answer in determining whether the factual allegations are belied by the record. *Id.* at 354-56, 46 P.3d at 1230-31. Additionally, the district court cannot make credibility decisions without an evidentiary hearing. *See Id*. at 356, 46 P.3d at 1231 (rejecting suggestion that district court can resolve factual dispute without an evidentiary hearing and noting that "by observing the witnesses' demeanors during an evidentiary hearing, the district court will be better able to judge credibility").

Here, Monay-Pina has alleged numerous instances of ineffective assistance of trial counsel and of previous counsel who did not convey an offer. These are issues of both credibility and fact and may not be determined by the district court without an evidentiary hearing. *Mann*, 118 Nev. at 354-56, 46 P.3d at 1230-31. Counsel's actions are often based upon the defendant's strategic choices and upon information supplied by the defendant. Therefore, inquiry into both trial counsel's conversations with Monay-Pina, as well as his

general preparation for trial, his research, his thought processes, are critical in assessing counsels' actions. *Strickland,* U.S. at 691.

While the State may claim that all decisions made by counsel were strategic in nature and therefore virtually unquestionable, that is unclear from the record before the Court at this time. Monay-Pina has alleged specific factual allegations, which if true, would entitle him to relief and these allegations are not belied by the record. Therefore, Monay-Pina is entitled to an evidentiary hearing under NRS 34.770.

## CONCLUSION

Based on the foregoing arguments, Monay-Pina respectfully requests that the Court reverse his conviction, grant him a new trial or, in the alternative, set an evidentiary hearing to determine all claims raised in his Petition for Writ of Habeas Corpus and the instant Supplemental Memorandum of Points and Authorities in Support of Defendant's Petition for Writ of Habeas Corpus (Post-Conviction).

DATED this 29th day of March, 2021.

Respectfully submitted,

*/s/ Monique McNeill*
MONIQUE MCNEILL, ESQ.
Nevada Bar No. 9862

**VERIFICATION**

State of Nevada )
)ss.
County of Clark )

MONIQUE MCNEILL, ESQ., being first duly sworn, deposes and says:

That I am the attorney for JOSE MONAY-PINA, the Defendant in the above entitled action; that I have read the foregoing Defendant's Supplemental Memorandum of Points and Authorities in Support of Defendant's Petition for Writ of Habeas Corpus and know the contents thereof; and that the same is true of my own knowledge except for those matters therein stated on information and belief, and as to those matters, I believe them to be true.

*/s/ Monique McNeill*
Monique McNeill, Esq.

## CERTIFICATE OF SERVICE

**IT IS HEREBY CERTIFIED** by the undersigned that on 30th day of March, 2021, I served a true and correct copy of the foregoing **SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)** on the parties listed on the attached service list via one or more of the methods of service described below as indicated next to the name of the served individual or entity by a checked box:

**VIA U.S. MAIL:** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada.

**VIA FACSIMILE:** by transmitting to a facsimile machine maintained by the attorney or the party who has filed a written consent for such manner of service.

**BY PERSONAL SERVICE:** by personally hand-delivering or causing to be hand delivered by such designated individual whose particular duties include delivery of such on behalf of the firm, addressed to the individual(s) listed, signed by such individual or his/her representative accepting on his/her behalf. A receipt of copy signed and dated by such an individual confirming delivery of the document will be maintained with the document and is attached.

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

By: */s/ Monique McNeill*

**SERVICE LIST**

| ATTORNEYS OF RECORD | PARTIES REPRESENTED | METHOD OF SERVICE |
|---|---|---|
| CLARK COUNTY DISTRICT ATTORNEY'S OFFICE<br>200 E. Lewis Ave<br>Las Vegas, NV 89101<br><br>pdmotions@clarkcountyda.com | State of Nevada | ☐ Personal service<br>☒ Email service<br>☐ Fax service<br>☐ Mail service |

EXHIBIT A

# Re: Monay-Pina

From: Thomas Boley (t.boley@bandafirm.com)

To: monique.mcneill@yahoo.com

Date: Monday, November 2, 2020, 10:33 AM PST

Hey.

I gave you and Matt Lay everything in my file.

Sent from my iPhone

> On Nov 2, 2020, at 6:33 AM, Monique McNeill <mamcvoy@yahoo.com> wrote:
>
> Good morning,
>
> After reviewing the file, I notice I am missing the following and thought I'd inquire if you perhaps have them:
>
> forensic reports (dna/fingerprints)
> CSA reports
> photos
> video surveillance
> incident report from the home invasion
> witness statements, written and audio/video
> medical records from home invasion
> 911 calls
> report from the tire slashing incident
>
> Thanks!
>
> Monique A. McNeill, Esq.
> 324 S. Fourth Street
> Ste. 200
> Las Vegas, NV 89101
> (702) 497- 9734

On Fri, Jun 12, 2020 at 10:28 AM Monique McNeill <mamcvoy@yahoo.com> wrote:

I was appointed to handle the post-conviction proceedings in Mr. Monay-Pina's case. I need to obtain your entire file from you, including notes, letters, investigators notes/memos, etc. Please advise when I can come pick up your file.

Thank you.

Monique A. McNeill, Esq.
324 S. Fourth Street
Ste. 200
Las Vegas, NV 89101
(702) 497- 9734

--
Thomas D. Boley, Esq.
Partner
Boley & AlDabbagh
1900 E. Bonanza Rd.
Las Vegas, NV 89101
Ph: (702) 435-3333
Fx: (702) 475-6567

DISCLAIMER: This communication does not create an attorney-client relationship and is NOT legal advice unless you have entered into a fee agreement with the sender and have paid the required fees. If you are not the intended recipient, please delete the message and associated attachments from your system.

--
Thomas D. Boley, Esq.
Partner
Boley & AlDabbagh
1900 E. Bonanza Rd.
Las Vegas, NV 89101
Ph: (702) 435-3333
Fx: (702) 475-6567

DISCLAIMER: This communication does not create an attorney-client relationship and is NOT legal advice unless you have entered into a fee agreement with the sender and have paid the required fees. If you are not the intended recipient, please delete the message and associated attachments from your system.

Thomas D. Boley, Esq.
Joshua U. AlDabbagh, Esq.*

t.boley@bandafirm.com

*Also Admitted in Washington

THE LAW OFFICES OF
BOLEY & ALDABBAGH

1900 E. Bonanza Rd.
Las Vegas, Nevada 89101
Phone: 702-435-3333
Fax: 702-475- 6567

June 16, 2020

Re: State of Nevada v Casimiro Venegas, Jose Monay-Pina; Case No. C-16-313118-2

Received from the firm of Boley & AlDabbagh a copy of the following:

1. Arrest Report
2. Amended Notice of Expert Witnesses
3. Criminal Complaint
4. Pretrial Services
5. Request for Discovery
6. Criminal Complaint, Temporary Custody Records, Incident Report and Major Incident Report.
7. Information
8. Correspondence to Client
9. Jury Chart
10. Jury Instructions
11. Handwritten Notes
12. Defendants' Notification of Oral Statement
13. Certificate of Mailing
14. Order to File Documents
15. Notice of Deficiency
16. Notice of Electronic Filing
17. Transcript Order Form
18. Notice of Electronic Filing, and Case Appeal Statement
19. Transcript Order Form
20. Client's Correspondence
21. Order Conditionally Imposing Sanctions
22. Order Removing Counsel
23. Criminal Order to Statistically Close Case
24. **RECEIPT OF LIST OF DOCUMENTS DELIVERED TO ATTORNEY MATT LAY (currently in his possession).**

Dated: _____, 2020.

_____
Monique A. McNeill, Esq.

Thomas D. Boley, Esq.
Joshua U. AlDabbagh, Esq.

joshua@bandafirm.com
t.boley@bandafirm.com

THE LAW OFFICES OF
BOLEY & ALDABBAGH

1900 E. Bonanza Rd.
Las Vegas, Nevada 89101
Phone: 702-435-3333
Fax: 702-475- 6567

Re: Case No. C313118-1 –and- C C313118-2
State of Nevada v. Casimiro Venegas, Josey Fernando Monay-Pina;

Received from the firm of Boley & AlDabbagh the following:

1. Motion for Extension of Time to File Opening Brief [submitted by Thomas Boley]
2. Notice to File Case Appeal Statement – Criminal
3. Motion for Extension of Time to File Transcripts [submitted by Renee Vincent, Recorder]
4. Recorder's Transcript Jury Trial Day 1 Monday, March 13, 2017
5. Recorder's Transcript Jury Trial Day 2, Tuesday, March 14, 2017
6. Recorder's Transcript Jury Trial Day 3, Wednesday, March 15, 2017
7. Docketing Statement Criminal Appeals filed 2/6/18
8. Docketing Statement Criminal appeals filed 2/7/18
9. Receipt of Copy filed 1/20/17
10. Amended Information
11. Second Amended Information filed 3/13/17
12. Third Amended Information filed 3/15/17
13. Instruction to the Jury (Instruction No. 1)
14. Verdict
15. Stipulation to Continue Sentencing Hearing (June 2017)
16. Correspondence to Defendant dated 09/27/16
17. Order Conditionally Imposing Sanctions filed 1/26/18
18. Notice of Appeal filed 10/03/17
19. Case Appeal Statement filed 10/18/17
20. Order to File Documents filed 12/21/17
21. Order to Reschedule Haring Date filed 5/4/17
22. Amended Notice of Expert Witnesses filed 12/22/16
23. Criminal Complaint
24. Information filed 3/4/16
25. Reporter's Transcript of Preliminary Hearing filed 4/29/16
26. Order Removing Counsel, Referring Counsel to State Bar for Investigation, Remanding to Secure Appellate Counsel, and Suspending Briefing filed 4/30/18

pt-Vin
trans

Dated: 6/26, 2018.

Signature

Matt Lay
Printed Name

EXHIBIT B

CASE NO: C313118-2
DEPT NO: 14

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

| | | |
|---|---|---|
| THE STATE OF NEVADA, | ) | |
| Plaintiff, | ) | |
| vs. | ) | CASE NOS. 16F00568A |
| CASIMIRO VENEGAS and JOSE | ) | 16F00568B |
| FERNANDO MONAY-PINA, | ) | |
| Defendants. | ) | |
| | ) | |

REPORTER'S TRANSCRIPT
OF
PRELIMINARY HEARING

BEFORE THE HONORABLE CONRAD HAFEN
JUSTICE OF THE PEACE

Thursday, March 3, 2016
9:00 a.m.

APPEARANCES:

For the State: MARY KAY HOLTHUS, ESQ.
DEPUTY DISTRICT ATTORNEY

For the Defendant: MIKE AISEN, ESQ.
(Venegas)
AUGUSTUS CLAUS, ESQ.
(Monay-Pina)

Reported by: KRISTINE A. FLUKER, CCR NO. 403



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EXHIBITS


| STATE'S EXHIBITS: | MARKED | OFFERED | ADMITTED |
|---|---|---|---|
| 1 Disk | 14 | 15 | 17 |
| 2 Still Photo | | 18 | 20 |
| 3 Still Photo | | 20 | 20 |
| 4 Still Photo | | 70 | 70 |
| 5 Still Photo | | 70 | 70 |
| 6 Still Photo | | 70 | 70 |
| 7 Still Photo | | 70 | 70 |
| 8 Still Photo | | 70 | 70 |
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| 14 Still Photo | | 70 | 70 |




LAS VEGAS, CLARK COUNTY, NEVADA, THURS, MARCH 3, 2016
9:00 A.M.

PROCEEDINGS

THE COURT: This is time and place set for preliminary hearing in Case No. 16F00568A and B, State of Nevada vs. Casimiro Venegas and Jose Monay-Pina. They're both present in custody.

Mr. Venegas is represented by Mike Aisen, and Mr. Monay is being represented by Augustus Claus. The State is being represented by the Clark County District Attorney's Office. The record should reflect that the court reporter has been duly sworn.

How many witnesses does the State have?

MS. HOLTHUS: Three or four.

THE COURT: Okay. Does the Defense invoke the Rule of Exclusion?

MR. CLAUS: Please, Your Honor.

THE COURT: All witnesses in the courtroom on this case, please go out in the hall. Do not talk to anybody about your testimony.

MS. HOLTHUS: Could I ask you to indulge me and just take a five-minute break?

THE COURT: Sure. We'll be in recess for about 10 minutes.

MS. HOLTHUS: Thank you.

(Pause in the proceedings.)

Electronically Filed
04/29/2016 10:00:18 AM
CLERK OF THE COURT



THE COURT: We're back on the record in Case No. 16F00568A and B, State of Nevada vs. Casimiro Venegas and Jose Monay-Pina. I already set the record for the preliminary hearing.

Before we get started, two questions. Defense, are you invoking the Rule of Exclusion?

MR. CLAUS: Yes, Your Honor.

MR. AISEN: Yes, Your Honor.

THE COURT: Okay. All witnesses in the courtroom, please go out in the hall. Do not talk to anybody about your testimony. Wait until you're called to testify.

The second question before we get started with the first witness, does the State or Defense have anything to put on the record before we get started?

MR. CLAUS: There was no offer in this case, Your Honor, to put on the record, at least not for Mr. Monay-Pina.

MR. AISEN: Same with Mr. Venegas.

THE COURT: Okay.

MS. HOLTHUS: And neither was the State approached. Well, I actually was approached on behalf of Mr. Venegas, but nothing was --

MR. CLAUS: Venegas? You mean Pina.

MS. HOLTHUS: You didn't say he wanted to --

1 there's not an offer. Quite frankly, it's got to be a
2 package negotiation. And there is no offer for
3 Mr. Venegas, so at this point there is no offer.
4 They're correct.
5 THE COURT: Okay. Call your first witness.
6 MS. HOLTHUS: Richard DeCamp.
7 MR. CLAUS: Your Honor, before we get going
8 forward on this, in terms of the materials produced by
9 the State, I had a brief conversation with them
10 yesterday. I had gotten the DVD, but in the discovery
11 materials I haven't gotten any voluntary statements, any
12 sixpack lineup. What I've been given is basically the
13 police report, the arrest report associated with this.
14 So to the extent that there's anything else we need to
15 go into beyond that, that's all I received.
16 THE COURT: Okay.
17 MS. HOLTHUS: You should have the disk of
18 pictures.
19 Whereupon,
20 RICHARD DECAMP,
21 having been first duly sworn to testify to the truth,
22 the whole truth and nothing but the truth, was examined
23 and testified as follows:
24 THE CLERK: Please be seated. State your
25 name and spell your full name for the record.



1 THE WITNESS: Richard DeCamp, R-i-c-h-a-r-d,
2 D-e-C-a-m-p.
3 THE COURT: Mr. Claus, before we get started
4 with the witness, Mr. Claus raised a discovery issue.
5 Is there anything we want to put on the record regarding
6 that before we get started?
7 MS. HOLTHUS: Other than my understanding is
8 Defense both had the photo DVDs. I am using some of the
9 pictures so I provided then the video. The photos they
10 generally get themselves from Metro. I assumed they
11 have those. They're responsible for getting that so --
12 THE COURT: So under Nevada case Law I
13 cannot order the State to produce discovery, but there
14 is a statutory requirement that they provide discovery.
15 And I can certainly continue the preliminary hearing if
16 I believe that there's good cause for that.
17 Is there anything Defense Counsel wants to
18 make in regard to that issue?
19 MR. CLAUS: The State hasn't shown me what
20 they're intending on introducing right now or what they
21 thought we should have been given as part of this photo
22 CD. That shouldn't be relevant for these proceedings.
23 All I was doing was just making a record that I don't
24 have it.
25 MS. HOLTHUS: That's fine. And I apologize.



1 I fully assumed that it had been provided to them or
2 that they had received it themselves. We have the
3 thumbnails here of all of the pictures, if they want to
4 take a few minutes and look at those.
5 THE COURT: Okay. Mike?
6 MR. AISEN: I didn't receive the pictures.
7 I was shown some of them earlier today. So I'll look
8 forward to seeing the thumbnails.
9 THE COURT: Very good. All right.
10 Mr. Claus, you've had the chance to look at
11 some photos; is that correct?
12 MR. CLAUS: The thumbnails of the photos,
13 yes, Your Honor. And then I've looked through some of
14 those that the State is intending on introducing.
15 They're photos. I understand their evidentiary value.
16 I don't think there's anything that would require me to
17 do a tremendous amount of investigation right now.
18 THE COURT: Very good. Mr Aisen?
19 MR. AISEN: I'll concur.
20 THE COURT: Okay. So let's start with the
21 first witness. Mary Kay, go ahead with direct
22 examination.
23 MR. CLAUS: Your Honor, I would request that
24 the Court order that I do get a copy of those at the
25 conclusion of the preliminary hearing. I do believe it



1 is within your purview.
2 THE COURT: I can't under Nevada case law.
3 I don't have the jurisdiction.
4 MR. CLAUS: If for no other reason then,
5 Your Honor, the State is going to be producing them at
6 the preliminary hearing, I should be able to get a copy
7 under the Court's plenary power of those exhibits that
8 it's going to be introduced to the Court.
9 MS. HOLTHUS: They can get a copy, Judge. I
10 just don't think that I'm required to -- my
11 understanding of the current state of the discovery
12 policy in the DA's office is that photographs are one of
13 the things that they directly get from Metro. Not from
14 the State. They just put in a request and it's made for
15 them.
16 THE COURT: Okay. Well, I do know that
17 there's a recent Nevada Supreme Court opinion on the
18 discovery issue stemming from the DA's office. And
19 actually they cited my case years ago when I was up in
20 Humboldt County. And at that time, just to kind of give
21 you some background, we had an open-file policy in the
22 Humboldt County DA's office. But when I cross-examined
23 the defendant on the stand, I used pictures that I
24 hadn't disclosed to the defense attorney.
25 And my rationale was that this was not any

1 evidence that I was going to produce on direct
2 examination or in my case in chief. I was going to use
3 it for impeachment purposes only. The Nevada0 Supreme
4 Court disagreed with my position and said if you have an
5 open-file policy, that means everything. And I believe
6 they applied that rationale to a recent case relating to
7 the Clark County District Attorney's office, and found
8 that if you have an open-file policy, then you have to
9 produce everything. That's my understanding of the
10 recent discovery ruling in this state.
11 MS. HOLTHUS: And just for your information,
12 we do not have an open-file policy. We have not had an
13 open-file policy for some time. And we are appealing
14 that particular decision. Having said that, even under
15 the discovery statute, they have a right to inspect
16 photographs. Not necessarily receive them.
17 THE CLERK: Correct.
18 MS. HOLTHUS: They've been allowed to
19 inspect them. So --
20 THE COURT: All right. We've made a record.
21 So let's go on with the first witness then, State.
22 MS. HOLTHUS: Could you give us your name
23 and spell --
24 Was he sworn?
25 THE COURT: Yes. He's ready to go.



1 DIRECT EXAMINATION
2 BY MS. HOLTHUS:
3 **Q.** What is your name?
4 **A. Richard DeCamp.**
5 **Q.** Mr. DeCamp, directing your attention to January
6 12th, 2015, were you working at the 7-Eleven at 5700
7 West Charleston Boulevard in Clark County, Nevada 89108
8 at approximately 3:00 in the morning?
9 **A. Yes.**
10 **Q.** Were you the sole clerk?
11 **A. Yeah.**
12 **Q.** At approximately 3:45, did something happen?
13 **A. I went back to the cooler and got some stock, and**
14 **I was putting it in the back cooler. Then I went up**
15 **front and looked up and there were two guns pointing at**
16 **me. One was tall and one was short. And had a brown**
17 **coat on, and they both had their scarves over their**
18 **face.**
19 **Q.** And what happened when they came in?
20 **A. They -- they pointed the guns at me. I didn't**
21 **never actually saw them come in. Like I said, I was**
22 **putting the stuff away in the cooler. But when I looked**
23 **up, all I saw was two guns and two guys. One was short**
24 **and one was tall. And all I saw was the guns.**
25 The taller guy said, "Give me your money."



1 And I gave him my money. I gave him the money out of
2 the first drawer. And then he -- then he turned around
3 and said, "Give me -- I want the money out of the second
4 drawer. And don't throw it at me this time."
5 Apparently I threw it at him or shoved it at him. But
6 either way --
7 **Q.** Is it safe to say you were scared?
8 **A. Yeah.**
9 **Q.** Did they take the money when they left?
10 **A. They took all the money but what they dropped on**
11 **the floor.**
12 **Q.** How much?
13 **A. They dropped a couple dollars on the floor.**
14 **Q.** About how much money did you figure?
15 **A. I figured it was only about a hundred. But I**
16 **read in the newspaper the next day or couple days later**
17 **that it was 130. I have no idea really exactly how much**
18 **it was.**
19 **Q.** Did you tell the police how much money they took?
20 **A. No. I told them -- I told the police that it was**
21 **about $100. That's what I figured because I don't never**
22 **keep that much money in there.**
23 **Q.** And then what happened after you gave them the
24 money? What happened?
25 **A. Then they told me to get on the floor. And I --**



1 **and then right after that I called the cops.**
2 **Q.** Did the police eventually respond?
3 **A. Yes.**
4 **Q.** Did you show them the video -- well, let me --
5 there's security cameras.
6 **A. We didn't have video at the time so I called the**
7 **manager.**
8 **Q.** 7-Eleven does have cameras running all the time,
9 correct?
10 **A. Yeah.**
11 **Q.** So at some point you notified the manager to
12 record it?
13 **A. Yeah.**
14 **Q.** Did Metro eventually respond?
15 **A. Yeah. And then marked -- they taped everything**
16 **off. And then we closed the store until they got the**
17 **investigation over with.**
18 **Q.** Did your manager come down?
19 **A. Eventually he did come down, but it was about an**
20 **hour later.**
21 **Q.** But it was that night?
22 **A. Yeah. Well, that morning.**
23 **Q.** And he would have been the one that would have
24 assisted in getting the video?
25 **A. Yeah.**

1 **Q.** At some point after were you shown two
2 individuals?
3 **A. Yeah.**
4 **Q.** When and where? How did that happen?
5 **A. It was down the street.**
6 **Q.** Approximately --
7 **A. About a mile down the street, I guess. It was in**
8 **the same area.**
9 **Q.** Okay. And how did you happen to go down there?
10 **A. The cop took me down there in his car.**
11 **Q.** And what did they tell you?
12 **A. They said, "Can you point anything out, can you**
13 **tell me what the guy is wearing?" I said it looked like**
14 **the same brown coat. I'm not sure if it's the same**
15 **brown coat because anybody can wear a brown coat. But**
16 **it looked like the size of the guy.**
17 **Q.** Did you see one guy or two guys?
18 **A. Just one guy. Like I said, the little short guy**
19 **was -- he just wasn't -- he was just short.**
20 **Q.** Okay. But at some point you were taken to do
21 a --
22 **A. Yeah.**
23 **Q.** To see if it was consistent with the person that
24 had come in?
25 **A. Yeah.**



1 **Q.** You said you only saw one a mile down the road.
2 You only saw one of them when you were with the police?
3 Not two?
4 **A. Yeah.**
5 MS. HOLTHUS: And I don't know how to work
6 this. Is it okay if my associate assists?
7 THE COURT: Sure. Just come on up here.
8 MS. HOLTHUS: I'm going to have this disk
9 marked as State's Proposed Exhibit 1 for identification.
10 THE COURT: Are you going to lay some
11 foundation before you move to admit it?
12 MS. HOLTHUS: I'm going to ask him to look
13 at it and time see if he recognizes it. I'm not moving
14 it in yet.
15 (Whereupon, State's Exhibit 1.
16 was marked for identification.)
17 THE WITNESS: No, I've never seen the video.
18 THE COURT: All right.
19 MS. HOLTHUS:
20 **Q.** If you would, take a second and see if this looks
21 familiar to you.
22 **A. That's the front door. That's where the**
23 **registers are. I was back here.**
24 MR. SCHWARTZ: And for the record, he's
25 pointing to the top, the top image that's shown here.



1 To top left.
2 THE WITNESS: Yes. What about the top
3 right?
4 MS. HOLTHUS: Let's just have him watch it
5 through and he can identify them, and then we can move
6 it slowly.
7 **Q.** Just let me know if you see yourself and if you
8 recognize this as a true and accurate video of the event
9 that occurred that night.
10 **A. That's when he got --**
11 THE COURT: Sir, you're going to have to
12 talk a little louder so the court reporter can hear you.
13 THE WITNESS: The other guy cocked it. They
14 both cocked their guns at the same time. Right now he's
15 asking for the money.
16 THE COURT: Okay. The prosecutor asked you
17 a question.
18 You want to repeat the question, Mary Kay,
19 so he can answer it?
20 MS. HOLTHUS: All I'm asking him to.
21 **Q.** Does this appear to be a true and correct video
22 of the events that you described before?
23 **A. Yes.**
24 MS. HOLTHUS: More for admission.
25 THE COURT: Any objection, Mr. Claus?



1 MR. CLAUS: Just by way of clarification, if
2 I might, Your Honor?
3 You don't know how this video was taken,
4 correct?
5 THE WITNESS: No, I have no idea.
6 MR. CLAUS: And you don't know the frame
7 rate of this?
8 THE WITNESS: No.
9 MR. CLAUS: You don't know what the time
10 stamp was on it, correct?
11 THE WITNESS: No.
12 MR. CLAUS: Have you watched the entire
13 video?
14 THE WITNESS: No.
15 MR. CLAUS: So just the part that you've
16 watched you recognize?
17 THE WITNESS: Yes.
18 MR. CLAUS: You didn't have any hand in
19 supplying it?
20 THE WITNESS: No.
21 MR. CLAUS: I don't think we need to go
22 through the entirety of it, Your Honor. I think the
23 State only wants to introduce that portion. But he can
24 authenticate, if he wants.
25 MS. HOLTHUS: That's fine.

1 THE COURT: Very good. Mike, anything?
2 MR. AISEN: That's fine. Thank you.
3 THE COURT: Okay. So to the extent that
4 this witness can authenticate the video, that portion
5 only, that part will be admitted into evidence.
6 MS. HOLTHUS: We're talking about from 346
7 until -- it's still going. 347 now.
8 **Q.** Is that you lying behind the counter there on the
9 floor?
10 **A. Yeah.**
11 MS. HOLTHUS: And actually we can have him
12 watch it or -- you guys have watched it -- up until at
13 least Metro comes in. You want to watch it again? I
14 mean, I provided these for these purposes. It doesn't
15 matter. Whatever you want. If you want to cut it when
16 they walk out the door --
17 THE COURT: Well, it's admitted to that
18 extent. So --
19 MS. HOLTHUS: He can lay the foundation for
20 the entirety. We'd just end up watching an empty store,
21 which is somewhat tedious.
22 THE COURT: Well, let me now review it, now
23 that it's been admitted, specifically that portion. Let
24 me watch that portion that this witness has identified.
25 MS. HOLTHUS: May I approach?



1 THE COURT: Yes.
2 MR. CLAUS: Solely for the purposes of the
3 preliminary hearing, Your Honor.
4 THE COURT: Okay. Brian, Mary Kay,
5 continue.
6 MS. HOLTHUS:
7 **Q.** Now, Mr. DeCamp, showing you what's been marked
8 as State's Proposed Exhibit 2 for identification. Does
9 that look familiar?
10 **A. I never saw them coming in the door. I was --**
11 **Q.** Does that appear to be, from what you saw in the
12 video, a still shot of them coming in the door?
13 **A. Yes.**
14 MS. HOLTHUS: Move to admit State's 2.
15 THE COURT: Any objection?
16 MR. CLAUS: I'm sorry, I thought -- did I
17 hear you say Nathaniel saw them?
18 MS. HOLTHUS: He said he didn't see them.
19 THE CLERK: I didn't see who come through
20 the door. I was --
21 MR. CLAUS: So you have no way of knowing
22 whether or not that's an accurate representation of what
23 occurred?
24 THE WITNESS: I just didn't see them come
25 through the door. You're right.



1 MR. CLAUS: I would object, Your Honor.
2 THE COURT: Mike?
3 MR. AISEN: Yeah, I mean, I join in the
4 objection, if he didn't see that happen.
5 THE COURT: I'm sorry?
6 MR. AISEN: If he didn't see it happen --
7 how would he know the video would show the same thing
8 that he didn't see happen? I don't think he would be
9 the appropriate witness for that.
10 THE COURT: Well, is this a still picture
11 from the video?
12 MS. HOLTHUS: Yes.
13 THE COURT: It's a still picture from the
14 video. He's already authenticated a certain portion of
15 the video. He's just now being shown a still picture
16 from that same video.
17 MR. CLAUS: This is a portion of the video
18 that he didn't authenticate, Your Honor. If you
19 remember, that's what I said. To the extent that he can
20 authenticate the video, then I think it comes in. But
21 to the extent that he couldn't, outside of those
22 portions, then I would object.
23 MS. HOLTHUS: He authenticated from where
24 the robbery occurred. At 3:46 he saw himself. He was
25 walking around. He authenticated the entirety of it.



1 MR. AISEN: It's my understanding that he
2 authenticated the portion where he saw himself in the
3 video. I think that seems right. So this, I believe,
4 is a portion prior to that moment. I don't think he'd
5 be the right person to authenticate that portion of the
6 video.
7 MS. HOLTHUS: It's in already. We may have
8 to go back in and look an at it.
9 THE COURT: Let me take a look at Exhibit 2.
10 MS. HOLTHUS:
11 **Q.** And I'll want to do the same thing for 3. Do you
12 recognize that?
13 **A. No.**
14 **Q.** Does that appear to be a still from the video?
15 **A. Yeah.**
16 MS. HOLTHUS: I can ask the Court to take
17 judicial notice that you've viewed the video.
18 THE COURT: Okay. These appear to be
19 accurate still photos from the video that I have
20 reviewed. So based on that, I'm going to admit State's
21 Exhibits 2 and 3 into evidence.
22 MS. HOLTHUS: I'll pass the witness, Your
23 Honor.
24 THE COURT: Okay. Cross-examination?
25 Mr. Claus, let's start with you.

1 CROSS-EXAMINATION
2 BY MR. CLAUS:
3 **Q.** Mr. DeCamp, you and I had a brief moment to speak
4 outside the courtroom today, correct, but we didn't talk
5 about the case at all?
6 **A. Correct.**
7 **Q.** Okay. But let's talk about the case a little bit
8 today. When you had this occur, this incident, and you
9 had occasion to talk with police, do you remember giving
10 them any sort of voluntary statement?
11 **A. Yes.**
12 **Q.** Was it a written voluntary statement?
13 **A. Yes.**
14 **Q.** Or was it verbal voluntary statement?
15 **A. No, it was written.**
16 **Q.** It was written. Okay. Do you remember if it was
17 a lengthy voluntary statement or short?
18 **A. No. Short.**
19 **Q.** Okay. Was it for the purposes of the show-up
20 only, when they took you in the police car to that other
21 place to identify --
22 **A. No.**
23 **Q.** No? You did something before that?
24 **A. Yeah.**
25 **Q.** Okay. Do you remember what you wrote on your



1 show-up form?
2 **A. Not exactly. All I remember is I wrote down that**
3 **I saw these guys. I didn't see them -- like I said, I**
4 **didn't see them come through the door. I didn't see**
5 **them until I looked up, and there they were.**
6 **Q.** When you say there they were --
7 **A. They both had their guns out at that time.**
8 **Q.** And when you say there they were, where they
9 standing at the counter?
10 **A. They both were there at the counter, yes.**
11 **Q.** Okay. So that's the very first time you saw
12 these people?
13 **A. Yes.**
14 **Q.** And that's the first time that you can
15 authenticate what happened on the video?
16 **A. Yes.**
17 **Q.** Now, after they pulled out guns and you started
18 giving them cash, they told you to get down on the
19 ground; is that correct?
20 **A. Yes.**
21 **Q.** So you did get down on the ground?
22 **A. Yes.**
23 **Q.** Did you see them leave?
24 **A. I never even looked.**
25 **Q.** You never saw them leave; is that correct?



1 **A. I looked down. It takes, what, a minute or two**
2 **to get out of the store? Considering they probably had**
3 **a car -- I don't even know if they had a car. They were**
4 **gone two minutes.**
5 **Q.** Okay. Now, your show-up. You said you didn't
6 remember exactly what you said. Would it help to
7 refresh your recollection if I showed you a copy of
8 your --
9 **A. Sure.**
10 MR. CLAUS: Your Honor, may I approach
11 please?
12 THE COURT: Yes.
13 THE WITNESS: That's pretty much it. Like I
14 said, I didn't see nothing. I saw a mask and the guns,
15 and that's it.
16 MR. CLAUS:
17 **Q.** Okay. Does that refresh your recollection,
18 Mr. DeCamp?
19 **A. Yeah.**
20 **Q.** Now, did you write this yourself or did an
21 officer write it for you?
22 **A. No, I wrote it.**
23 **Q.** Did you write anything else for the officer aside
24 from this show-up witness instruction statement?
25 **A. I can't recall anything.**



1 **Q.** Okay. Do you recall if after you -- and did you
2 call 911?
3 **A. Yeah.**
4 **Q.** Okay. After you called 911 and the officers
5 responded to the scene, do you remember if you had any
6 conversations with the officers?
7 **A. Just the young one that was out there.**
8 **Q.** Okay. Did he ask you what had happened and did
9 you tell him?
10 **A. Yes.**
11 **Q.** Did he take notes of that? Was he writing notes
12 down as you talked?
13 **A. I wasn't watching to see if he took notes or not,**
14 **no.**
15 **Q.** Okay. Did he ask you to sign any sheet of paper,
16 formalizing your statement?
17 **A. Yes.**
18 **Q.** And it wasn't this sheet of paper?
19 **A. No.**
20 **Q.** And beyond that, did he tape-record your
21 statement?
22 **A. No.**
23 **Q.** Now, is that something that you say you don't
24 know if he tape-recorded your statement or --
25 **A. No, I know that he didn't. I never saw no**

25

1 **tape-recorder. I never saw it.**
2 **Q.** Now, when you went out to do the show-up from the
3 7-Eleve to wherever it is they took you, I think you
4 said it was over a mile away?
5 **A. It was close to a mile, give or take.**
6 **Q.** Close to a mile. Okay. Were there one or two
7 people there when you conducted the show-up?
8 **A. I only saw the one.**
9 **Q.** You only saw one person?
10 **A. Yeah, the only one that they showed me, I said**
11 **the brown coat looks like the guy. I remembered the**
12 **brown coat.**
13 **Q.** Okay. Now, was the guy wearing the brown coat
14 when they asked you to identify him?
15 **A. When I went out there, yes, he was still -- he**
16 **still had it on.**
17 **Q.** Okay. Before the officer had you do this
18 identification with the person wearing the brown coat,
19 did he read you anything or tell you any instructions?
20 **A. No. He just told me to see what you -- just tell**
21 **him what -- just tell them what you saw. He said to**
22 **tell him what the guy looked like. I said, well, all --**
23 **I kept telling them that all I saw is the brown coat and**
24 **the guy. And it looks like his build. That's it.**
25 **Q.** I understand.

26

1 **A. That's all I saw.**
2 **Q.** "In a moment I'm going to show you a person who's
3 being detained. This person may or may not be a person
4 who committed the crime now being investigated." Do you
5 remember anything of this being told to you?
6 **A. Yeah.**
7 **Q.** Okay. "The fact that this person is detained
8 should not cause you to believe or guess that he or she
9 is guilty." Does this start to -- do you remember this
10 being told to you now?
11 **A. Yeah, while we were driving over there.**
12 **Q.** Okay. He read that to you while you were driving
13 over there?
14 **A. Yeah.**
15 **Q.** Okay. Were there two police officers in this car
16 or just one?
17 **A. One.**
18 **Q.** And when you got there you said you could
19 identify just the coat; is that correct?
20 **A. Or the body and the coat. It looked pretty much**
21 **similar to what came in the store. I can't tell you**
22 **exactly the same person that came in the store, no.**
23 **Q.** Okay. But nothing else was distinctive about
24 this person; is that correct?
25 **A. Well, you couldn't see because, like I said, they**

27

1 **had a black thing over them and all I could see was eyes**
2 **and the guns.**
3 **Q.** Okay. So no sneaker? No pants? Just a jacket?
4 **A. They both had dark clothes on.**
5 **Q.** Okay. But nothing distinctive on them?
6 **A. No.**
7 **Q.** That said, you know --
8 **A. No.**
9 **Q.** Like this one said Green Pay Packers fan or
10 something on the jacket?
11 **A. No. No tattoos. No nothing.**
12 **Q.** Okay. Once you were done with the show-up, the
13 officer took you back to 7-Eleven?
14 **A. Yes.**
15 **Q.** And it was after that point that your manager
16 came?
17 **A. Showed up, yes.**
18 **Q.** And you don't know exactly what happened between
19 the manager and the police?
20 **A. No. I have no idea.**
21 **Q.** Okay. I want to be very clear. You did write --
22 did you sign your name and some other document on the
23 witness show up that I showed you previously; is that
24 correct?
25 **A. Yes.**

28

1 **Q.** There's something else out there?
2 **A. Yeah.**
3 **Q.** Okay. And did you hand write that statement?
4 **A. Yes.**
5 MR. CLAUS: Okay. Thank you very much.
6 I'll pass the witness, Your Honor?
7 THE COURT: Mike?
8 CROSS-EXAMINATION
9 BY MR. AISEN: Thank you.
10 **Q.** Good afternoon. You mentioned that you
11 recognized the color of the coat as well as the build of
12 the body?
13 **A. Yeah.**
14 **Q.** Can you describe the coat a little bit more for
15 me?
16 **A. It looked like -- back in Nebraska we used to**
17 **call them Eskimo coats because it's got the big fluff on**
18 **it and stuff like that. They don't call them Eskimo**
19 **coats out here because -- I don't know what the heck the**
20 **fashion is or anything like that.**
21 **Q.** Okay. And is seemed like you were gesturing your
22 hands that the coats extend far beyond the body?
23 **A. Yeah.**
24 **Q.** And the coat extends far beyond the body at the
25 torso?

1 **A. Yeah.**
2 **Q.** The shoulders?
3 **A. Yeah.**
4 **Q.** All the way down to the end of the arms?
5 **A. Yeah.**
6 **Q.** So it's the type of coat that if a skinny person
7 was wearing it -- if a larger person was wearing it,
8 they would look like they were --
9 **A. Yeah, I see where you're going with this. Yeah,**
10 **you're right.**
11 **Q.** So when you said that you recognized the build of
12 the person, do you want to clarify your remarks from
13 before that?
14 **A. No. Just that they don't go out as far that it's**
15 **going to extend a skinny guy, no. You're wrong.**
16 **Q.** Okay. So you're saying it was a puffy jacket?
17 **A. Yeah. It was a puffy jacket, but not that much**
18 **puffy.**
19 **Q.** Do you recall if either or both of the people
20 that came into the store spoke to you?
21 **A. The big tall guy did. He was the only one that**
22 **was speaking. The other guy didn't say nothing.**
23 **Q.** Do you recall what he said?
24 **A. He just said, "Give me the money."**
25 **Q.** That's the only thing he said? I think you also



1 said that he said, "And don't throw it at me."
2 **A. Yeah, well, I got to the second register he said,**
3 **"Don't throw it at me like you did the first one."**
4 **Q.** Okay.
5 **A. Apparently I threw the money at him.**
6 **Q.** And then after that, when he asked you to get on
7 the ground --
8 **A. He asked me to get down on the ground, and that**
9 **was it. I didn't see them no more.**
10 **Q.** And those are the only things that he said to
11 you?
12 **A. Yes.**
13 **Q.** Very good. How many pictures were you shown when
14 you did the show-up later on that morning? No pictures?
15 **A. They didn't show me no pictures. I didn't care**
16 **to look at no pictures.**
17 **Q.** Okay. What were you shown? Just a person?
18 **A. That night?**
19 **Q.** Correct. When you did you the show-up later on,
20 what exactly were you shown?
21 **A. Nobody showed me anything. That night nobody**
22 **showed me nothing.**
23 **Q.** When did you do the show-up?
24 **A. Nobody showed me nothing, period. I didn't see**
25 **no pictures.**



1 **Q.** You signed a statement at 5:19 in the morning. I
2 believe that's the one that Mr. Claus showed to you.
3 "Clothing matches suspects, but could not identify them
4 by their face because suspect's face were covered during
5 robbery."
6 **A. Yes.**
7 **Q.** That was a person that you saw or what were you
8 -- when you said the clothing matches --
9 **A. It matches. That's when I was talking to the**
10 **police officer.**
11 **Q.** So you were looking at a person when you said yes
12 it matches? Was it a video? Was it a picture?
13 **A. I never saw no videos.**
14 **Q.** Am I -- you were looking at a person at the time
15 you went to the scene?
16 **A. Yes.**
17 **Q.** And it was just the one person?
18 **A. Yes.**
19 **Q.** And it was which one, the taller or the shorter
20 individual?
21 **A. The they showed me the pictures? No, I'm not --**
22 **when he took me out there, all I saw was the tall one**
23 **with the brown coat on.**
24 **Q.** Okay. And that was it. You saw nothing else --
25 **A. That was it. No pictures.**



1 MR. AISEN: Nothing further. Thank you.
2 THE COURT: Any redirect?
3 MS. HOLTHUS: No. Thank you.
4 THE COURT: Thanks for coming in, sir.
5 You're excused for the day.
6 Mary Kay, call your next witness.
7 MS. HOLTHUS: Javier Colon.
8 Judge, I'm going to go ahead -- I didn't
9 realize that we didn't have an ex-felon in possession of
10 a firearm. We actually have allegations of Mr. Venegas
11 being in possession of a firearm at the time of the
12 robbery. So I have his three prior felony convictions
13 to mark, and I'd move to admit. They're certified.
14 THE COURT: Mr. Claus, have you reviewed
15 these?
16 MR. CLAUS: No, I have not, Your Honor. I
17 haven't received them either.
18 MS. HOLTHUS: He's the one --
19 MR. AISEN: Can I take a look?
20 THE COURT: Mary Kay, are you adding this to
21 the charge?
22 MS. HOLTHUS: I'm adding felon in possession
23 of a firearm, yes.
24 THE COURT: What we can do is wait until --
25 Mary Kay, if you want to wait until after you put on all

1 the evidence and then add that count?
2 MS. HOLTHUS: Sure.
3 THE COURT: And then we can address those.
4 In the meantime, you guys will have a chance to review
5 the priors.
6 MR. AISEN: Right.
7 THE COURT: Let's do that.
8 MS. HOLTHUS: Okay.
9 THE COURT: So let's swear this witness in.
10 Whereupon,
11 JAVIER COLON,
12 having been first duly sworn to testify to the truth,
13 the whole truth and nothing but the truth, was examined
14 and testified as follows:
15 THE CLERK: Please be seated. State your
16 name and spell your full name for the record.
17 THE WITNESS: Javier Colon, J-a-v-i-e-r,
18 C-o-l-o-n.
19 THE COURT: Mary Kay, go ahead.
20 DIRECT EXAMINATION
21 BY MS. HOLTHUS:
22 Q. I'm sorry, did you spell your name and give your
23 name?
24 A. **Javier, J-a-v-i-e-r.**
25 Q. Your last name?



1 A. **Colon, C-o-l-o-n.**
2 Q. Mr. Colon, directing your attention to January
3 12th, 2015.
4 A. **Yes.**
5 Q. Were you at home in your bed at approximately
6 4:00 in the morning?
7 A. **Yes.**
8 Q. And do you live at 504 Brush Street, Las Vegas,
9 Clark County, Nevada?
10 A. **Yes.**
11 Q. Can you just describe the setup of your home for
12 me?
13 A. **What do you mean setup?**
14 Q. Meaning you -- you live with your sister?
15 A. **Both my sisters.**
16 Q. And she has the house and you have the garage?
17 A. **Yes, and I have the garage.**
18 Q. Is the garage your entire apartment or is it just
19 your bedroom?
20 A. **Just like a room. Not even. Yes, not even an**
21 **apartment. Just garage.**
22 Q. Okay. That's where you sleep?
23 A. **I sleep there.**
24 Q. And then do you go into the house to use the
25 bathroom and the kitchen?



1 A. **Yes, I use it. I go into the house.**
2 Q. And did something happen on January 12th that
3 brings you here today?
4 A. **Yes.**
5 Q. About what time was it?
6 A. **Like around 12:00 or 1:00. I don't remember.**
7 **I'm sleeping. I was sleeping. Just two persons break**
8 **into the house to rob, and then they -- to kill me right**
9 **there.**
10 Q. And what did they do that made you think they
11 wanted to kill you?
12 A. **They told me -- the guy told me I supposed to**
13 **punch his sister's tires. But I never did it. I never**
14 **did it. I never break that. I never get in trouble**
15 **with nobody, you know? I never did punch his sister's**
16 **tires, no.**
17 Q. Let me just back up a little bit. Did you know
18 the two individuals?
19 A. **Yes.**
20 Q. How did you know them?
21 A. **For his mom.**
22 Q. Do you see --
23 A. **And his sister.**
24 Q. Do you see either of them here in court today?
25 A. **Yes.**



1 Q. How many of them do you see?
2 A. **Two.**
3 Q. Can you point to -- is one taller and one
4 shorter?
5 A. **Yes.**
6 Q. Who's the taller one? Who do you know him as?
7 A. **Casimiro. Casimiro Venegas.**
8 Q. Do you see Casimiro Venegas here in court?
9 A. **Yes.**
10 Q. Can you point to him and tell me where he's
11 sitting and what he's wearing?
12 A. **He's in the blue. The blue.**
13 Q. There's two guys in the middle. Which one?
14 A. **The bald head.**
15 MS. HOLTHUS: Let the record reflect the
16 identification of the Defendant Venegas.
17 THE COURT: The record will so reflect.
18 MS. HOLTHUS:
19 Q. And then the shorter of the two, where is he
20 seated in the courtroom?
21 A. **He's right there too. Jose Antonio Pina.**
22 MS. HOLTHUS: Let the record reflect the
23 identification of Defendant Pina.
24 THE COURT: The record will so reflect.
25 Q. So did they come in through the house? How did

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1 they get into your garage room?
2 A. **From the door. They jumped the fence, over the**
3 **wall. Something like that. From the backyard.**
4 Q. So you're sleeping in your bed?
5 A. **Yes.**
6 Q. And they come in not the big garage door that
7 lets the cars in and out, but a side garage door?
8 A. **From the side door, yes.**
9 Q. And are you -- do you know how they got in that
10 door?
11 A. **I don't know. They opened it. I don't know how.**
12 Q. Was it locked?
13 A. **No. I don't remember.**
14 Q. So what happened when they got in? You're still
15 in your bed?
16 A. **Yeah, I'm still in the bed. And he start hitting**
17 **me with the gun, with the pistol, cussing at me with the**
18 **pistol.**
19 Q. Venegas was hitting you with the pistol in the
20 head?
21 A. **Yes. He hit me like probably around eight to ten**
22 **times in the head.**
23 Q. Was he --
24 A. **With the pistol.**
25 Q. Was he saying anything?

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1 A. **Yes.**
2 Q. What was he saying?
3 A. **Just give me the money. That I go to his sister,**
4 **do something about his tires, and he's going to kill me**
5 **right there, the he's going to kill me right.**
6 Q. That's what he said?
7 A. **Yes.**
8 Q. And then what happened? What was Defendant Pina
9 doing at that point?
10 A. **He just was -- he point with the gun to my**
11 **family. That's it. He don't do nothing.**
12 Q. Okay. Pointed the gun to your family? Where was
13 your family?
14 A. **That was inside of the house.**
15 Q. Could they see what was going on?
16 A. **Yes, because they -- there was two windows**
17 **through to that direction.**
18 Q. So could you see your family watching this happen
19 in the window?
20 A. **Yes, I did.**
21 Q. And that's when you said Pina aimed the gun at
22 them?
23 A. **Yes, pointed with the gun.**
24 Q. Did he say anything to them as he was pointing
25 it?

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1 A. **No, he don't say anything. He never say nothing.**
2 **He don't say a word, nothing.**
3 Q. So with him pointing the gun at your family, did
4 anybody come to your aid from your family?
5 A. **No.**
6 Q. There was a gun on you, right?
7 A. **Yes.**
8 Q. And then what happened?
9 A. **Then the cops show up, but they run away.**
10 Q. Before the cops showed up did Venegas, Casimiro
11 Venegas, hit you with anything else?
12 A. **Oh, he finally -- he saw my ax, and he hit me**
13 **three times with the ax. One in the leg. One in the**
14 **rib. And he tried to hit me one in the head. Excuse**
15 **me, my hand. That's why I have open right here. And he**
16 **opened right here too.**
17 Q. Okay. You have scarring still on your --
18 A. **Yes.**
19 Q. On your hand?
20 A. **Yes, I have the scars.**
21 Q. So he opened your hand. So you put your hand up
22 to protect your head when the ax was coming at your
23 head?
24 A. **Yes.**
25 Q. If you could, just show the cars to the Judge.

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1 THE COURT: Okay.
2 MS. HOLTHUS:
3 Q. You're also indicating a scar on your ear?
4 A. **And my front. My front head and my ear.**
5 Q. What is the forehead from?
6 A. **From the gun. From the pistol.**
7 Q. From being pistol whipped?
8 A. **Yes.**
9 Q. You said your ear was opened up. You have a scar
10 across that?
11 A. **Yes, from the ax.**
12 Q. That's from the ax?
13 A. **Yes.**
14 Q. And your leg?
15 A. **My leg just with the head. That's it. Just with**
16 **the head. Nothing else. Only the hard part.**
17 Q. It didn't cut open?
18 A. **No.**
19 Q. So he hit the leg?
20 A. **My leg and the side of the ribs too.**
21 Q. Did you have injuries there?
22 A. **No, it just hurt. That's it.**
23 Q. It just hurt?
24 A. **Yeah. Yes. I think he hit me with the side of**
25 **the ax.**

1 Q. Okay. You think it was the side on your leg as
2 well?
3 A. **Yes.**
4 Q. But up here, when he went to go at your head,
5 that was with the blade?
6 A. **Yes, with --**
7 Q. Did you end up getting stitches in your hand?
8 A. **Yes. It was like 13 stitches in my hand. It was**
9 **six inches. That big.**
10 Q. Were you at the hospital for that?
11 A. **Yes.**
12 Q. Did you stay in the hospital or just go get
13 stitched up?
14 A. **I just got the stitches, and I get out the next**
15 **day.**
16 Q. What happened then?
17 A. **What do you mean?**
18 Q. Okay. After he hit you three times with the ax,
19 did they -- did he hit you again with the gun or was
20 that it?
21 A. **No. No, they saw the lights of the police and**
22 **they run away. They run away.**
23 Q. Did you see the lights of the police?
24 A. **I never seen it.**
25 Q. Then why did you think it was the lights of the



1 police?
2 A. **Because I think somebody called it. I don't know**
3 **who did it. Probably my family. I don't know.**
4 Q. But at some point they ran away?
5 A. **Yes, they run away.**
6 Q. And then were you transported to the hospital?
7 A. **Yes.**
8 Q. Were you gave statements?
9 A. **Yes.**
10 MS. HOLTHUS: Court's indulgence.
11 Q. After he left, did they take anything?
12 A. **Yeah, they take my wallet. They took my wallet,**
13 **two big knives and the ax, and my MP-3. And I don't**
14 **know what else.**
15 Q. Did you say a camera?
16 A. **Yes, I think.**
17 Q. What kind of camera?
18 A. **It was red one. I think it was a Polaroid.**
19 Q. What kind of knives were they?
20 A. **That was two big knives. Collection knives.**
21 Q. In sheaths?
22 A. **Yeah, in sheaths.**
23 Q. What are the names of the family members that
24 were inside the house?
25 A. **My sister, Aderana.**



1 Q. Can you spell it?
2 A. **A-d-e --**
3 Q. Wait. A-d?
4 A. **E-r-a-n-a.**
5 Q. Aderana?
6 A. **Yes.**
7 Q. What's her last name?
8 A. **Colon, C-o-l-o-n.**
9 Q. Okay. Just like you?
10 A. **Yes.**
11 Q. Who else was in there?
12 A. **My two nieces and my nephew. My little nephew.**
13 Q. Are they all Colons?
14 A. **No, they're Avana.**
15 Q. Can you spell that?
16 A. **A-v-a-n-a.**
17 Q. So that's their last name. And what are the
18 names of the children?
19 A. **Lizbeth, Samantha and Cesar.**
20 Q. How old are they? Lizbeth is how old?
21 A. **Lizbeth, she's going to be 16.**
22 Q. Okay.
23 A. **And Samantha, 14.**
24 Q. Okay.
25 A. **And Cesar, 8.**



1 Q. Did you actually see your sister and the three
2 children in the window, all of them?
3 A. **Yes.**
4 Q. And that was when the gun was aimed at them?
5 A. **Yes.**
6 Q. By Defendant Pina?
7 A. **Um-hum, yes, Jose.**
8 MS. HOLTHUS: Okay. Other than some
9 proposed amendments, Judge, I'll pass the witness.
10 THE COURT: Okay. Mr. Aisen, go ahead.
11 CROSS-EXAMINATION
12 BY MR. AISEN: Thank you.
13 Q. You testified earlier that you were asleep when
14 the two men arrived at your place?
15 A. **Yes.**
16 Q. And you awoke to being struck by, you said, a
17 pistol or --
18 A. **Yeah, they hit me with a pistol.**
19 Q. And this is what awoke you, the fact that you
20 were being struck?
21 A. **No. He wake me up, calling my name, and was**
22 **cussing me and calling my name.**
23 Q. Okay. How long from when you were woken up until
24 you were struck for the first time?
25 A. **Probably two, three minutes, maybe, because he's**

1 **talking to me.**
2 **Q.** Two to three minutes? So a long conversation?
3 **A. Yeah, when he came in. Because he don't want to**
4 **go through all the way straight to the house. I don't**
5 **know why he did it. He tried to get in the first time.**
6 **Q.** Okay. So for two to three minutes you're
7 speaking?
8 **A. No, I never speak.**
9 **Q.** So --
10 **A. He only wanted -- he wanted to talk to me. He**
11 **told me I go by his sister and blow her tires, but I**
12 **never did.**
13 **Q.** Okay. I'm going to go backwards a little bit
14 because I want to be clear exactly on what happened from
15 when they got there until the first time that you claim
16 you were struck. Okay?
17 **A. Yes.**
18 **Q.** So you're asleep in bed?
19 **A. Yes.**
20 **Q.** At what moment do you wake up? What do you wake
21 up to?
22 **A. When he calls me by my name.**
23 **Q.** Okay. And where was he -- how far away from you
24 was he?
25 **A. Maybe like from her to like where you are, and**



1 **pointing to me with the pistol.**
2 **Q.** So 15 feet?
3 **A. 15. Probably 10, 15.**
4 **Q.** So you wake up and he's 10 to 15 feet away from
5 you?
6 **A. Yes.**
7 **Q.** And he's saying your name?
8 **A. Yes.**
9 **Q.** And then for how long after that point until you
10 were struck the first time?
11 **A. He pointed like for two minutes to three minutes**
12 **with the gun. He pointed.**
13 **Q.** And during that time what is being discussed?
14 **A. What do you mean?**
15 **Q.** So two to three minutes he's standing there?
16 **A. Yes, he's just standing right there, pointing**
17 **with the gun.**
18 **Q.** Okay. And what is happening in those two to
19 three minutes? He's just standing there?
20 **A. Yeah. He's standing right there. And when he**
21 **got through to my room, he's straight -- he's straight**
22 **to the bed and he starts to hitting me in the head.**
23 **Q.** Okay. I'm just trying to figure out though
24 what's happening from the two minutes or three minutes
25 where you were awoken by him saying your name until he



1 came to the bed.
2 **A. Nothing. I just had -- nothing happens. I was**
3 **just lying down in the bed because he's pointing to me**
4 **with a gun.**
5 **Q.** I hate to keep asking the same question, but it
6 seems somewhat implausible to me that for two to three
7 minutes he was just standing there pointing a gun at you
8 and not saying anything.
9 **A. He wasn't saying anything.**
10 **Q.** Do you remember what he said as he came to the
11 bed, as he came closer? Did he come quickly? I'm
12 sorry, that was two questions. How quickly did he come
13 to the bed once he started to come towards the bed?
14 **A. Not too quickly because I don't know if he is**
15 **think about it, if I got something, but he started**
16 **walking slowly.**
17 **Q.** You testified earlier that he hit you in the head
18 8 to 12 times?
19 **A. 8 to 10.**
20 **Q.** 8 to 10 times. At any point did you lose
21 consciousness?
22 **A. No, I never did. I never left.**
23 **Q.** When you went to the hospital did they run any
24 tests on the head injuries? A Ct scan? MRI? Anything
25 like that?



1 **A. Yes, they made everything.**
2 **Q.** Okay. Did you see them actually leave the
3 garage?
4 **A. Yeah, I saw him run away.**
5 **Q.** Okay. You saw them run away. What position were
6 you in at that time?
7 **A. In the bed.**
8 **Q.** You were still in the bed?
9 **A. Yes.**
10 **Q.** On your back?
11 **A. Yeah, I was on my back. Yes.**
12 **Q.** So you were on your back and your head was turned
13 towards --
14 **A. Yes, and they run to the right, and then jumped**
15 **the fence or the wall behind my house.**
16 **Q.** Okay. So you were looking out towards the
17 garage, and as you're looking out towards the garage
18 they turned right?
19 **A. Right. Yes.**
20 MR. AISEN: Very good. I'll pass the
21 witness.
22 THE COURT: Mr. Claus, cross-examination?
23 CROSS-EXAMINATION
24 BY MR. CLAUS: Thank you, Your Honor.
25 **Q.** Colon? Am I saying that correct?

1 **A. Yes.**
2 **Q.** C-o-l-o-n?
3 **A. Yes.**
4 **Q.** Now, the area that you were sleeping in, that's
5 your bedroom; is that correct?
6 **A. Yes.**
7 **Q.** And that's your normal bedroom in that house; is
8 that correct?
9 **A. Yes.**
10 **Q.** You mentioned that there were some windows in
11 this area?
12 **A. Okay.**
13 **Q.** Is that correct?
14 **A. That's not windows. To the side is the only**
15 **window they got that was inside the house.**
16 **Q.** To inside the house?
17 **A. To inside the house.**
18 **Q.** So these windows are normally covered up,
19 correct?
20 **A. Yes.**
21 **Q.** So when the people looked through the windows,
22 did they stay at the windows? Did they look quickly and
23 then go? How exactly did that happen?
24 **A. I don't know how they wake up. They wake up when**
25 **they hear the hitting me, you know. I don't know. And**



1 **then they wake up when he started screaming my name too.**
2 **Q.** Okay.
3 **A. I don't know how they wake up.**
4 **Q.** But how did they look through the window? I
5 mean, the windows were covered, right?
6 **A. No. No, not inside the garage. That was normal**
7 **windows.**
8 **Q.** Okay. But the windows were covered? There were
9 drapes over them, right?
10 **A. No.**
11 **Q.** There's no drapes over the windows?
12 **A. No.**
13 **Q.** So the windows to your bedroom are open? You can
14 see through them from the house?
15 **A. To inside the house, yes. Just to inside the**
16 **house. Not to outside. Like for the yard to the**
17 **street, they look through the windows. And one is**
18 **covered.**
19 **Q.** One is covered?
20 **A. Yeah, one is covered.**
21 **Q.** What about the other one?
22 **A. The other one -- that one is a normal window.**
23 **That one is still open.**
24 **Q.** So one of the windows was covered and the other
25 one wasn't?



1 **A. Yes.**
2 **Q.** Which window were these people looking through?
3 **A. From the left. From the left window. The left.**
4 **Q.** Let's go by size and make that a little easier.
5 Is there one window that's bigger -- there are two
6 windows, right?
7 **A. Yes.**
8 **Q.** Is one bigger than the other?
9 **A. Yes. The big one, that was open.**
10 **Q.** Okay. So how big is the big one?
11 **A. About like 36 inches by probably 42.**
12 **Q.** Okay. Now, that window normally has a covering
13 on it, correct?
14 **A. Yes, uncovered.**
15 **Q.** So how did that get uncovered? Did they open the
16 blinds?
17 **A. They opened the blinds. They opened the blinds.**
18 **Q.** And did they stay there or did they leave?
19 **A. No, they stayed right there.**
20 **Q.** They stayed right there?
21 **A. Yes.**
22 **Q.** Okay. No commands were given to them to stay
23 there?
24 **A. No.**
25 **Q.** And the gun, was it pointed squarely at them?



1 Was it slightly raised? Was it down at his -- was it
2 down at his leg? How was the gun pointed at them?
3 **A. Just pointed straight to them, like this.**
4 **Q.** And that happened when they opened up the window?
5 **A. Yes.**
6 **Q.** But no commands were given? Nothing was done or
7 said? They just stayed there looking?
8 **A. Yes.**
9 **Q.** Okay. And then how does it end?
10 **A. To my room, they opened the door.**
11 **Q.** They opened the door to leave and that's the end
12 of it?
13 **A. Yes.**
14 **Q.** What does your family do at that point?
15 **A. That was inside of the house. I mean, they don't**
16 **do nothing.**
17 **Q.** So they just stood there, even after they left?
18 **A. Yes.**
19 **Q.** How long did they stand there?
20 **A. I don't know. I don't know how high or low.**
21 **Q.** I take it then at some point you lost track of
22 them?
23 **A. I don't get it.**
24 **Q.** Did they ever come into your bedroom?
25 **A. No. The cops, they came.**

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1 Q. So throughout this entire ordeal, from the time
2 that these people broke in your bedroom until the time
3 they left it until the time that the police came, your
4 family never came inside your bedroom?
5 A. **No, I never let them do it. I am full of blood,**
6 **all over on my body.**
7 Q. Okay. So you're telling them to stay out?
8 A. **Yes.**
9 Q. Okay. Did you tell them to stay out when this
10 was happening?
11 A. **Yes.**
12 Q. So when the actual fighting is going on, you're
13 telling your family to stay out?
14 A. **Stay out.**
15 Q. Okay. So that's why they didn't come in?
16 A. **Yes.**
17 Q. And did you end up calling the police?
18 A. **No, that was not me.**
19 Q. Okay.
20 A. **That was not me. It was one of my nieces.**
21 Q. Okay. Were you born in this country?
22 A. **Yes.**
23 Q. Okay. How sure are you that it was Mr. Pina that
24 night?
25 A. **What do you mean?**

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1 Q. How sure are you that it was Mr. Pina? Are you
2 100 percent sure? 50 percent sure?
3 A. **I just recognize him because I have a friend tell**
4 **me that that was him.**
5 Q. Your friends told you that it was Mr. Pina?
6 A. **Yes.**
7 Q. Okay. So that's how you know it's Mr. Pina?
8 A. **Yes.**
9 Q. Let me ask you some other things. When the
10 police came to talk to you, did they ever ask you to
11 fill out any statements?
12 A. **No.**
13 Q. Did they ever record you giving them a statement?
14 A. **Yes.**
15 Q. Yes, they did?
16 A. **Yes.**
17 Q. Okay. About how long was that statement? How
18 many minutes was it? Do you remember?
19 A. **Probably about five minutes, ten minutes.**
20 Q. Did that happen before or after you were at the
21 hospital?
22 A. **That was before.**
23 Q. It was before you went to the hospital?
24 A. **Yes.**
25 Q. Did you also give them a statement after you left

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1 the hospital?
2 A. **Yes.**
3 Q. Were both of those recorded then?
4 A. **Yes.**
5 Q. Okay. Tape-recorded?
6 A. **No, I never am. I don't know how -- I don't know**
7 **about taping me or not. But I think it would be.**
8 Q. Do you think it was written or did you think it
9 was recorded?
10 A. **Recorded.**
11 Q. You think it was recorded?
12 A. **Yes.**
13 Q. Both of te statements, you think they were
14 recorded?
15 A. **Yes, both of them.**
16 Q. Before the police asked you to identify anyone
17 did they give you a set of photographs with people's
18 names and faces on them?
19 A. **No. No.**
20 Q. How did they have you identify the people who had
21 attacked you?
22 A. **Because I recognize him because he was with --**
23 **always with his face uncovered.**
24 Q. Are you talking about Mr. Venegas now?
25 A. **Casimiro.**

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1 Q. The guy sitting on the left-hand side?
2 A. **Yes.**
3 Q. As you sit here. All right. What about the
4 other guy? How did they have you identify him?
5 A. **I don't know. He always got the face covered. I**
6 **don't know. I recognized him right away that that was**
7 **him.**
8 Q. So let me ask you. So that night the guy that
9 was not hitting you, he had his face covered?
10 A. **Yes.**
11 Q. So you never saw the guy's face who wasn't
12 hitting you?
13 A. **No, I never seen it.**
14 Q. Okay. But you saw the guy's face who was hitting
15 you?
16 A. **Yes.**
17 Q. And the way you know that it was Mr. Pina is
18 someone told you that it was Mr. Pina afterwards; is
19 that correct?
20 A. **Yes.**
21 Q. And that's how you found out Mr. Pina's middle
22 name, correct?
23 A. **Yes.**
24 Q. Who told you that?
25 A. **That was my friend, Cynthia.**

1 Q. Your friend Cynthia?
2 A. **Told me.**
3 Q. Okay. Your friend Cynthia doesn't live at the
4 house?
5 A. **No, she doesn't live there.**
6 Q. All right. And she didn't see any of this that
7 night, so she found out from somebody else?
8 A. **Yes.**
9 Q. So in terms of Mr. Monay-Pina, you don't know it
10 was him that night; his face was covered, correct?
11 A. **Yes.**
12 Q. That person's face was covered?
13 A. **Yes. But I recognize him. From the picture, I**
14 **ask him who was the other person, and then they tell me**
15 **that was him.**
16 Q. Okay. So you know who the person was who was
17 beating you; that was Mr. Venegas?
18 A. **Yes.**
19 Q. You knew him and you saw his face?
20 A. **Yes.**
21 Q. Okay. But you don't know who the other person
22 was who was there holding the gun; you only know that
23 because you were told that by someone else after the
24 fact?
25 A. **Yes.**



1 MR. CLAUS: Okay. I'll pass the witness,
2 Your Honor.
3 THE COURT: Any redirect?
4 REDIRECT EXAMINATION
5 BY MS. HOLTHUS:
6 Q. Okay. You were saying something about that you
7 saw him and you recognized him. We're talking about
8 Mr. Pina?
9 A. **Um-hum.**
10 Q. You said his face was covered. How much of his
11 face was covered?
12 A. **Both. The whole -- the whole thing. The whole**
13 **face. He's got only the eyes.**
14 Q. Just the eyes?
15 A. **Um-hum.**
16 Q. Did you recognize the eyes?
17 A. **Yes.**
18 Q. And whose eyes did you recognize those to be?
19 A. **Him.**
20 Q. By "him" you're saying --
21 A. **Jose.**
22 Q. Mr. Pina?
23 A. **Yes.**
24 Q. So you did say earlier that you recognized it was
25 him, as well as being told, correct?



1 A. **Yes.**
2 MS. HOLTHUS: That's all.
3 THE COURT: Any redirect on that, Mr. Claus,
4 then Mr. Aisen? Or recross, I'm sorry.
5 RECROSS-EXAMINATION
6 BY MR. AISEN:
7 Q. Can you explain the lighting is like in your
8 garage?
9 A. **No, there's no lighting.**
10 Q. There's no lighting?
11 A. **There's no light at all. The light came from the**
12 **office. That was where I see his face the whole time.**
13 **You can see to inside. From outside to inside you don't**
14 **see anything. From inside to outside you can see**
15 **everything.**
16 Q. And how far away are you from the window again
17 that looks outside?
18 A. **That was not in the window. That was a door.**
19 Q. Okay.
20 A. **Yeah, from the door, like 12 feet. Probably a**
21 **little farther.**
22 Q. With no light?
23 A. **With no light.**
24 MR. AISEN: Okay. Thank you.
25 THE COURT: Okay. Mr. Claus, recross?



1 RECROSS-EXAMINATION
2 BY MR. CLAUS:
3 Q. You said the face was covered?
4 A. **Jose.**
5 Q. And you could see the eyes?
6 A. **For Mr. Jose Pina, yes.**
7 Q. Yes, for Mr. Pina you could see the eyes?
8 A. **Yes.**
9 Q. What was distinctive about his eyes?
10 A. **What do you mean?**
11 Q. What was unique? What made you remember his
12 eyes?
13 A. **Oh, because he was work with me before.**
14 Q. Pardon?
15 A. **He worked with me before.**
16 Q. Okay. Well, what was distinctive about his eyes?
17 A. **You can see to outside. You can see to outside.**
18 **You can see to inside the garage because the lights of**
19 **the office -- it's next to the office -- they come all**
20 **the way through to inside. So you can see to outside.**
21 Q. Okay. But the person, the masked person, who was
22 not beating you --
23 A. **No, he never beat me. He never did.**
24 Q. He never beat you?
25 A. **He never did.**

1 Q. How far away was he from you this entire time?
2 A. **Probably like 10 feet.**
3 Q. He never got closer than 10 feet to you?
4 A. **No, he never did.**
5 Q. And obviously when -- I'm sorry, maybe not
6 obviously. When he's pointing the gun at the people in
7 the window, is he faced towards you while he's doing
8 that or is he facing away from you?
9 A. **Sometimes he turns to me, but most of it was**
10 **turned to the window to my family.**
11 Q. And you're certain that it was Mr. Pina because
12 someone told you it was Mr. Pina?
13 A. **Yes. I'm sure because somebody told me.**
14 Q. Okay. But if somebody hadn't told you that it
15 was Mr. Pina, would you know it was Mr. Pina that --
16 A. **Yeah, I already know it was him.**
17 Q. Okay. How do you know it was him?
18 A. **Because I recognize him because he works with me**
19 **before.**
20 Q. Okay. Did he have any tattoos or distinctive --
21 A. **No, no, not at all. I recognize him no matter he**
22 **has a mask or not.**
23 MR. CLAUS: Okay. Pass the witness, Your
24 Honor.
25 THE COURT: Thanks for coming in. You're



1 excused for the day.
2 THE WITNESS: Thank you so much.
3 THE COURT: State, any more witnesses?
4 MS. HOLTHUS: Officer Spurling.
5 THE COURT: Okay.
6 Whereupon,
7 OFFICER JUSTIN SPURLING,
8 having first duly sworn to testify to the truth,
9 the whole truth and nothing but the truth, was examined
10 and testified as follows:
11 THE CLERK: Please be seated. State your
12 name and spell your full name for the record.
13 THE WITNESS: My name is Justin Spurling,
14 J-u-s-t-i-n, S-p-u-r-l-i-n-g.
15 DIRECT EXAMINATION
16 BY MS. HOLTHUS:
17 Q. You're an officer with the Las Vegas Metropolitan
18 Police Department; is that correct?
19 A. **Yes, ma'am.**
20 Q. Specifically assigned to what detail?
21 A. **Bolden Graveyard Patrol.**
22 THE COURT: Mary Kay, let me interrupt you
23 real quick.
24 Counsel, can I have you guys approach?
25 (Discussion at the bench.)



1 THE COURT: Okay. Go ahead, Mary Kay.
2 MS. HOLTHUS:
3 Q. Bolden Area Command, you said, right?
4 A. **Yes, ma'am.**
5 Q. What is Bolden Area? What is that?
6 A. **It's like Smoke Ranch down to Desert Inn and**
7 **Jones to the 15. Everywhere in there.**
8 Q. Do you have a landmark? What would I know that's
9 there?
10 A. **The FBI building is right in there, MLK and Lake**
11 **Mead.**
12 Q. Okay.
13 A. **That's where my building is.**
14 Q. At some point in the early morning hours of
15 January 12th, 2016, did you respond to 504 Brush Street
16 here in Las Vegas, Clark County, Nevada?
17 A. **Yes, ma'am.**
18 Q. And what was the nature of the call?
19 A. **We received a call that somebody had been beaten**
20 **with a handgun. Somebody had broken into their house.**
21 Q. And were you the first to arrive?
22 A. **Yes, ma'am.**
23 Q. And what did you find when you got there?
24 A. **When I rolled up and exited my patrol car I could**
25 **still hear screaming.**



1 Q. Were you in a marked car?
2 A. **Yes, ma'am.**
3 Q. Uniform?
4 A. **Yes, ma'am.**
5 Q. Was it a male or a female screaming?
6 A. **Male.**
7 Q. I'm sorry?
8 A. **Male.**
9 Q. Could you male out words or just screaming?
10 A. **Just screaming.**
11 Q. What happened then?
12 A. **I was actually a two-man patrol officer at that**
13 **time so I notified my partner that I heard screaming.**
14 Q. What does that mean, a two-man patrol?
15 A. **It means that I had a partner in the car with me**
16 **at the time.**
17 Q. Oh, so you got out?
18 A. **Correct. I heard it, then I notified him.**
19 Q. Did he stay in the car or --
20 A. **No, he comes with me, but I didn't know if he**
21 **heard.**
22 Q. Got you. Okay.
23 A. **There's a gate that blocks the driveway to this**
24 **house. We couldn't open it so we had to jump the fence.**
25 As we jumped the fence, I looked to the

1 left, and it's almost like an addition to the house.
2 You see an open door and male on the bed with a bloody
3 face.
4 Considering I heard screaming still, I
5 thought the suspects might still be in the area. So I
6 told my partner I was going to look in the backyard.
7 There was no way to get into the backyard so I had to
8 jump the adjacent fence right next to it. There was a
9 block wall.
10 As I did that, I looked around to make sure
11 that there was police coming in the area so we could set
12 up a perimeter. I looked towards the south of my
13 direction and I saw a Hispanic male in dark clothing.
14 We make eye contact and he immediately ducks. So I call
15 out on the radio that I have the suspects two yards
16 south of my location.
17 **Q.** Is this in the immediate adjacent yard?
18 **A. When you go to that backyard, to the north of**
19 **them is a building complex that has a block wall that**
20 **runs their entire backyard. So I had to jump the wall**
21 **that was just north of their backyard in order to jump**
22 **back over that same north wall to get into their 504**
23 **Brush backyard.**
24 Does that make sense?
25 **Q.** I'm sure it does. I'm just not able to visualize



1 it. Would the yard in which you found the suspects be
2 the neighbor's?
3 **A. Oh, I'm sorry, yes. Not the immediate neighbor,**
4 **but the second one over.**
5 **Q.** Okay. So you went over two walls to get to where
6 you found them?
7 **A. Yes.**
8 **Q.** Is there any reason that you went this way
9 instead of this way?
10 **A. Just by chance.**
11 **Q.** Okay. And they obviously couldn't have come out
12 the front of the house without you seeing them?
13 **A. Correct.**
14 **Q.** So they couldn't get out the back because of the
15 other wall?
16 **A. Correct.**
17 **Q.** So what did you do then?
18 **A. I got on the radio and told the other units and**
19 **my sergeant where to meet me so that we could contain**
20 **them in a certain area.**
21 **Q.** You're staying "them." Did you actually see two
22 or one?
23 **A. One at the time. But we were told two suspects**
24 **so I automatically assumed that there was going to be at**
25 **least two.**



1 **Q.** Okay.
2 **A. I started giving verbal commands from the block**
3 **wall in between me and them as I watched the subject or**
4 **subjects at the time. But he wasn't following my**
5 **directions and it looked like he was about to jump a**
6 **wall. So I jumped the same backyard that they were in,**
7 **at which point he immediately gave up. I started**
8 **fanning out to see if I could find a second subject,**
9 **which I did.**
10 At the same time my sergeant and another
11 officer made entry into the backyard with me. We gave
12 verbal commands to both subjects and took them both into
13 custody.
14 **Q.** And where did you find the -- you said the first
15 suspect ducked down?
16 **A. Correct.**
17 **Q.** Where did you find the second suspect?
18 **A. Underneath a -- I want to say it was a shed, but**
19 **it's a shed that stood about two to three feet off the**
20 **ground with stairs that lead up to a doorway.**
21 **Q.** And did you identify those individuals?
22 **A. They were identified, but not by me.**
23 **Q.** Do you see either of them here in court?
24 **A. Yes, ma'am.**
25 **Q.** Point to them and tell me where they're sitting.



1 **A. The first gentleman is sitting right there**
2 **wearing blue. He's got a moustache and facial hair.**
3 **The second subject is sitting right next to him. He has**
4 **less hair on his head and a blue shirt.**
5 MS. HOLTHUS: Let the record reflect the
6 first guy as being Defendant Pina, the second one as
7 being Defendant Venegas.
8 THE COURT: The record will so reflect.
9 MS. HOLTHUS:
10 **Q.** Where was Venegas, the bald one?
11 **A. Underneath the shed.**
12 **Q.** But the other one was the first one that you
13 found? Pina was the first one you found that just
14 ducked down?
15 **A. Correct.**
16 **Q.** What happened then?
17 **A. Pina, right here with the hair, when I jumped in**
18 **the backyard, he was hiding behind what I want to**
19 **describe as like a Charlie Brown tree. Just hiding**
20 **behind it. So I gave verbal commands to him. When he**
21 **realized that I was right there, he proned out, and I**
22 **was able to take him into custody.**
23 The second individual was hesitant to
24 comply. He ultimately almost got shot for reaching
25 around and not listening to our commands, and was taken

1 into custody.
2 Q. Did either one of them say anything?
3 A. **Yeah, when I took Pina into custody, he**
4 **spontaneously uttered, "You don't understand. We tried**
5 **to make a complaint," about some sort of tire being**
6 **flattened, "but you guys didn't do anything about it."**
7 **At which point I passed him on to someone else.**
8 Q. Did you then survey and take inventory of the
9 yard?
10 A. **Yes, ma'am.**
11 Q. And what specifically did you see?
12 A. **I found the victim's wallet and a wad of cash, a**
13 **ski mask and gloves, along with a replica firearm and**
14 **two knives next to Pina. Then the second subject had**
15 **two replica firearms, a ski mask and gloves located next**
16 **to him by the shed.**
17 Q. And by "replica firearms" we're talking about?
18 A. **BB guns.**
19 Q. Did you ever see an ax?
20 A. **Yes.**
21 Q. Where was that?
22 A. **There's a carport that had a doorway that leads**
23 **to the addition. It was in between the addition and the**
24 **carport doorway.**
25 Q. Back in the initial victim's property?



1 A. **Correct.**
2 Q. Showing you what's been marked as State's 4
3 through 14. Flip through them and see if you recognize
4 those as photographs that accurately represent what they
5 appear to represent from that evening.
6 A. **Yes, ma'am.**
7 MS. HOLTHUS: Move to admit.
8 THE COURT: Any objection, Mr. Claus?
9 MR. CLAUS: Nothing other than what's been
10 stated already, Your Honor, no.
11 THE COURT: Mr. Aisen?
12 MR. AISEN: No.
13 THE COURT: Okay. Without objection,
14 State's Exhibits 4 through 14 are hereby admitted into
15 evidence.
16 MS. HOLTHUS:
17 Q. And 4 is -- what's that a picture of?
18 A. **I don't remember the.**
19 Q. Actually 4 and 5.
20 A. **It's going to be Pina.**
21 Q. Okay.
22 MR. CLAUS: Your Honor, may I approach while
23 the witness is going through these exhibits?
24 THE COURT: You want to come up.
25 MR. CLAUS: Thank you.



1 MR. AISEN: Me as well.
2 THE COURT: Yes.
3 MS. HOLTHUS: Can I publish them to you as
4 we --
5 THE COURT: Yes. They're already admitted.
6 I'll just sit here while you go through his testimony.
7 MS. HOLTHUS:
8 Q. And State's Exhibits 6 and 7?
9 A. **This is going to be the second subject. I don't**
10 **remember how to say his name.**
11 Q. Defendant Venegas.
12 A. **Venegas. Thank you.**
13 Q. And Exhibits 8 and 9?
14 A. **These are going to be the gloves and masks that**
15 **we found next to Venegas under the shed.**
16 Q. In Exhibit 9, is that the shed?
17 A. **Yes.**
18 Q. That he was hiding under?
19 A. **Yes.**
20 Q. And Exhibit 10?
21 A. **This is going to be the bush that Pina -- this is**
22 **the bush that Pina tried to hide behind.**
23 Q. That's the wad of money and ID in the name of the
24 victim?
25 A. **Yes.**



1 Q. The second -- your victim?
2 A. **The one that I showed up on, yes.**
3 Q. And Exhibit 11?
4 A. **This is going to be a little pit in the grass**
5 **just next to where Pina was located.**
6 Q. And that's a knife and a sheath a BB gun?
7 A. **Yes, ma'am.**
8 Q. And 12?
9 A. **This is going to be directly northeast of the**
10 **shed. So the gloves and the masks are going to be right**
11 **here by the shed. This is going to be the two firearms,**
12 **replica firearms, and the knife and the sheath.**
13 Q. When you say replica, they're actually
14 functioning BB guns? They're not --
15 A. **Correct. Well, we call them replicas simply**
16 **because you wouldn't be able to tell what they were, if**
17 **they were real or fake at the time that we made contact.**
18 **So we call them --**
19 Q. But they were, in fact, BB guns?
20 A. **Correct.**
21 Q. And this is?
22 A. **This is a knife and a sheath.**
23 Q. And 15 is just another shot of the guns?
24 A. **Correct. A closer-up version.**
25 Q. And 14?

1 **A. This is going to be the ski mask.**
2 **Q.** Is that blue?
3 **A. Yes, like a navy or dark blue. This is going to**
4 **be items that I pulled out of his pockets while doing a**
5 **pat-down because I felt the knife. When the knife came**
6 **out, all that junk came out too.**
7 **Q.** Specifically looking at a red camera, a phone and
8 other items?
9 **A. Yes.**
10 **Q.** What is this?
11 **A. Good question. I don't know what that is. Trash**
12 **maybe.**
13 MS. HOLTHUS: Okay. Pass the witness.
14 THE COURT: Okay. Cross-examination. Who
15 wants to go first? Mr. Claus. Okay.
16 CROSS-EXAMINATION
17 BY MR. CLAUS:
18 **Q.** Officer Spurling, when you first arrived at the
19 scene, which was at 504 Brush Street, you arrived there
20 alone, correct?
21 **A. No, I had my partner in the car with me.**
22 **Q.** What was your partner's name?
23 **A. Ivan Duron.**
24 **Q.** Can you spell that for the record, please?
25 **A. Yes, first is I-v-a-n. Last name is D-u-r-o-n.**



1 **Q.** Do you happen to know his P number?
2 **A. 14809, I believe.**
3 **Q.** Thank you. So when you and your partner arrived
4 there, you go around the back and you tell him to go
5 inside the garage?
6 **A. No, I didn't tell him to do anything, sir.**
7 **Q.** Okay. What happened then?
8 **A. We observed the victim inside the room.**
9 **Q.** When you say "we" --
10 **A. My partner and I, correct.**
11 **Q.** Were both standing --
12 **A. Right next to each other.**
13 **Q.** Okay.
14 **A. So he goes inside. We both clear the apartment**
15 **real quick. It's like a little garage room. We make**
16 **sure there's nobody still in the room. At which point I**
17 **exit because I know there's nothing I can do medically**
18 **for this man until medical arrives. My primary function**
19 **is to apprehend any criminals that might be on the spot.**
20 **So I jump the fence and assumed my partner was with me,**
21 **but he wasn't.**
22 **Q.** Okay. What indications did you have to justify
23 pursuit at that point?
24 **A. Instinct.**
25 **Q.** No other justifications were necessary?



1 **A. I don't need justifications, sir.**
2 **Q.** I'm not asking whether you needed the, Officer.
3 I'm not trying to be argumentative.
4 **A. I'm just here explaining why I do what I do.**
5 **Instincts tell me that if I hear screaming when I**
6 **arrive, chances are that I've arrived on an in-progress**
7 **event. When I no longer hear screaming, it's probably**
8 **because when I roll by the house they saw my patrol car.**
9 **Q.** Okay. And based on your training then and solely
10 upon your instincts, you felt justified in entering
11 other people's private property rather than conducting a
12 street search first?
13 **A. Well, when I originally jumped the back portion**
14 **of the wall, it was on private property, until I made**
15 **contact visually with Pina. Then at which point he**
16 **tried to hide from me, and I knew it was a Hispanic**
17 **male according to the detail. I instantly knew it was**
18 **the subject, so now I gave chase.**
19 **Q.** Okay. But you didn't see him before you hopped
20 the wall, correct?
21 **A. Correct.**
22 **Q.** Okay. Now, spontaneously uttered, that's a lot
23 of big words for somebody like me. What exactly were
24 the circumstances which Mr. Pina made that statement?
25 **A. Well, as I'm handcuffing him, he said, without**



1 **any direct questioning from me or any response from me,**
2 **exactly what I said. I didn't elicit any information**
3 **from him nor did I ask him any questions. He felt the**
4 **need to tell me.**
5 **Q.** Before you took him into custody were you giving
6 him directions?
7 **A. Don't move.**
8 **Q.** Were you asking him whether he was armed?
9 **A. No.**
10 **Q.** So at no point during that time when you're
11 approaching him you're not telling him -- you're telling
12 him not to move?
13 **A. Correct.**
14 **Q.** And you're not telling him to get down on the
15 grounds?
16 **A. No, I am telling him to get down on the ground.**
17 **Q.** Oh, I'm sorry. So you are telling him to move?
18 You're telling him get down on the ground?
19 **A. Correct.**
20 **Q.** And at this point when he makes the utterance,
21 he's on his feet?
22 **A. No.**
23 **Q.** No? He's on the ground?
24 **A. Correct.**
25 **Q.** So while he's on the ground, he yells out -- what

1 exactly was it again, Officer?
2 **A. It's not while he's on the ground. It's after**
3 **he's handcuffed and being lifted up and transported to**
4 **the front yard. At that same exact time that he's**
5 **getting off the ground he stated, "You don't understand.**
6 **We tried to make a complaint," something about tires**
7 **being punctured, "and you guys did nothing about it."**
8 **Q.** Okay. So from the time that you are telling him
9 to get down on the ground and you're handcuffing him and
10 you're transporting him to the front yard, your not
11 giving him any commands whatsoever or any directions on
12 what to do?
13 **A. After he's being placed in custody, for my**
14 **safety, no, I don't talk to him whatsoever.**
15 **Q.** Okay. So you're not telling him to stand up;
16 you're just lifting him up and --
17 **A. That's a given. He knows that he's going to be**
18 **standing up because he's not going to stay in that guy's**
19 **backyard on his own for hours. He knows he's going to**
20 **the front yard.**
21 **Q.** So all during this time period you're not giving
22 him any commands whatsoever?
23 **A. No.**
24 **Q.** Okay. Was there anyone other than yourself that
25 witnessed this statement?



1 **A. Yeah, there was Sergeant Abe Aguirre. Would you**
2 **like me to spell that for you?**
3 **Q.** Pardon?
4 **A. Would you like me to spell that on the record?**
5 **Q.** Please.
6 **A. A-g-u-i-r-r-e. I don't know his P number or call**
7 **sign, to be honest. It just changed. And Officer Matt**
8 **Carter, C-a-r-t-e-r, P number 14048, I believe.**
9 **Q.** So both of these individuals then were helping
10 you transport Mr. Pina at that point?
11 **A. And the other gentleman, Venegas. I don't know**
12 **how to say it. They were both there while we were**
13 **bringing both subjects to the front yard.**
14 **Q.** Okay. Let me understand this. You weren't
15 transporting Mr. Pina by himself. You had gathered up
16 at this point Mr. Venegas and Mr. Pina and were moving
17 them to the front yard?
18 **A. They were already gathered. They were in the**
19 **same backyard, maybe 20 feet from each other. So I**
20 **moved one, passed him off to somebody else. They picked**
21 **him up and passed him on to somebody else.**
22 **Q.** Okay. What makes you believe that either the
23 sergeant or Officer Carter would have heard this
24 utterance?
25 **A. Well, I'm speculating. But they were in the**



1 **backyard, no further than me and you away. So if he**
2 **talked in a normal voice, I'm just assuming that they**
3 **heard. I don't know for sure.**
4 **Q.** Do you have a body camera?
5 **A. Nope.**
6 **Q.** Was your channel to -- was your radio channel
7 open? Was there any other way of verifying what he said
8 or when he said it?
9 **A. Are you asking me if I keyed my mike while he**
10 **said that request?**
11 **Q.** Yes.
12 **A. No, I did not.**
13 **Q.** And from your testimony it appears that you don't
14 remember exactly what he said, but you remember the gist
15 of it; is that correct?
16 **A. Correct.**
17 **Q.** And did you have a chance to determine if there
18 had actually been a call or some prior disturbance
19 between the putative victim here and -- was it Mr. Pina
20 or was it someone else that had the issue?
21 **A. It was just Mr. Pina that said that to me. And,**
22 **no, I didn't get into that. That's above my pay grade.**
23 MR. CLAUS: Court's indulgence just a
24 moment.
25 **Q.** So all through this process you never read



1 Mr. Pina his Miranda rights, correct?
2 **A. I didn't ask him any questions, so no.**
3 **Q.** So you never read him his Miranda rights,
4 correct?
5 **A. I didn't talk to him, so no. Somebody else might**
6 **have, but I never at any point interrogated either one**
7 **of these guys. I caught them. Somebody else talked to**
8 **him.**
9 **Q.** So you never read Mr. Pina his Miranda rights,
10 correct?
11 **A. Correct.**
12 **Q.** And you're not aware of anyone else reading
13 Mr. Pina his Miranda rights, correct?
14 **A. Not that I'm aware of, no.**
15 MR. CLAUS: Thank you very much. Pass the
16 witness.
17 THE COURT: Okay. Mike, cross-examination?
18 CROSS-EXAMINATION
19 BY MR. AISEN: Thank you.
20 **Q.** So from the time that you hopped over the fence
21 and noticed Mr. Pina until he was, I guess, laying in a
22 prone position, how long did that take?
23 **A. A few minutes.**
24 **Q.** A few minutes. So you hop the fence and then it
25 took a few minutes before he was obeying the orders?

1 **A. Yes, sir.**
2 **Q.** And you testified earlier that as soon as you --
3 and this is just me clarifying. I don't want to put
4 words in your mouth. I'm just trying to clear this up.
5 It's my understanding that you testified that as soon as
6 you hopped the fence, that's when he seemed to give up?
7 **A. Absolutely. But I was giving him verbal commands**
8 **from this side of the block wall because we were told**
9 **that they had guns. So I wanted that cover while I was**
10 **issuing verbal commands.**
11 It look me several minutes before I was
12 hearing other sirens in the area before I was willing to
13 jump in the backyard with somebody if I didn't know they
14 had a gun. But as soon as I jumped that backyard, he
15 complied.
16 **Q.** Okay. I just want to be clear here. You
17 testified earlier that you hopped the fence when it
18 seemed like one of the suspects was going to hop the
19 next fence?
20 **A. Correct.**
21 **Q.** And it was at that point that cover had arrived?
22 **A. Correct.**
23 **Q.** So cover arrived, but it was his effort to hop
24 the next fence that actually led you to go over the
25 fence?



1 **A. Correct.**
2 **Q.** And at that point is when he was proned?
3 **A. Yes.**
4 **Q.** So now you are in the same backyard as the two
5 suspects?
6 **A. Yes.**
7 **Q.** How many other officers were in that backyard at
8 that time?
9 **A. Originally just me.**
10 **Q.** Okay. And how long before the next officer got
11 into that backyard?
12 **A. 15 seconds, 20 seconds.**
13 **Q.** Which officer was it?
14 **A. I don't know. I was watching the suspects so I'm**
15 **not sure which of the two got in there first.**
16 **Q.** Did they announce themselves, like, "Hey, I'm
17 here too?"
18 **A. Yeah, they said, "We're coming back."**
19 **Q.** Do you recognize their voice?
20 **A. I was too focused on their hands and their**
21 **movements.**
22 **Q.** Okay. How many officers were you aware of
23 entering into that backyard during the apprehension
24 stage?
25 **A. Two other officers.**



1 **Q.** And it was, as you mentioned, Aguirre and Carter?
2 **A. Yes, sir.**
3 **Q.** Okay. And how many officers were in that
4 backyard at the very end, after both suspects had been
5 apprehended?
6 **A. I don't know.**
7 **Q.** More than five?
8 **A. No, I don't think so. Because there was a fence**
9 **that was locked and we had to get a hold of the**
10 **homeowner. So they originally had to jump a -- I don't**
11 **know how to explain -- like a decorative fence that**
12 **comes up because there's a cover that goes over the top**
13 **of the fence. It was a real pain to get over. So I**
14 **think that's only why there was two. And then**
15 **eventually somebody met us at the fence to take the**
16 **suspects.**
17 **Q.** So that was after Mr. Venegas had been taken into
18 custody?
19 **A. Correct.**
20 **Q.** And how long did it take for you to, I guess,
21 have Mr. Pina in cuffs before you could start to engage
22 with Mr. Venegas?
23 **A. A couple minutes.**
24 **Q.** A couple minutes. Okay. So it was five minutes
25 waiting outside the perimeter of the backyard and five



1 minutes to apprehend Mr. Pina?
2 **A. I don't think it was quite that long at the wall.**
3 **Maybe a minute or two at the wall. And then he proned**
4 **himself out. I found the second suspect, you know,**
5 **under the fence. And then maybe a total of another**
6 **three minutes. So you're talking maybe five to six**
7 **minutes overall.**
8 **Q.** Total. Okay. So once Mr. Pina has been
9 apprehended, you go to engage with Mr. Venegas. Can you
10 give a little bit more detail? You mentioned that he
11 almost got shot. What commands were you giving to him?
12 **A. To move out from the shed slowly with his hands**
13 **out in front of him.**
14 **Q.** Okay.
15 **A. At one point he reaches his right hand down to**
16 **his waist, after I repeatedly told him not to. I don't**
17 **know what he was doing or what he was thinking or if he**
18 **was readjusting his pants. I don't know what it was.**
19 **Q.** You testified that he was underneath a shed?
20 **A. Correct.**
21 **Q.** How high was the clearance from the ground to the
22 bottom of the shed?
23 **A. A couple feet at least.**
24 **Q.** A couple feet?
25 **A. Yes.**

1 Q. Three feet?
2 A. **Sure.**
3 Q. Enough room for him to be on his knees?
4 A. **I don't know.**
5 Q. Or was he laying down flat?
6 A. **He was flat, proned out.**
7 Q. So you wanted his hands up while he was
8 underneath the shed?
9 A. **No, we wanted them out in front of him and --**
10 Q. Up?
11 A. **Correct, and he could scoot like this.**
12 Q. Okay. You said he nearly got shot?
13 A. **Correct.**
14 Q. So at what point did the situation go from nearly
15 shooting him to him being apprehended?
16 A. **When he reached for his waistband, and then he**
17 **stopped reaching for his waistband and put his hand back**
18 **out where we told him to.**
19 Q. And that's when he stopped?
20 A. **And then we were able to have him follow exactly**
21 **what we wanted him to do. And then we took him into**
22 **custody.**
23 MR. AISEN: Court's indulgence.
24 Q. During the apprehension of Mr. Venegas was
25 anything found on his person?



1 A. **Not that I'm aware of.**
2 Q. After you handed off Mr. Venegas to the next
3 officer, did you see him again that night?
4 A. **I never handed Venegas off. I only handed off --**
5 **how do you say it -- Pina. Sorry.**
6 Q. And did you have any more involvement with these
7 two after the apprehension?
8 A. **The only thing that I assisted with after that**
9 **was to do the show-up.**
10 Q. Okay. So the show-up, where did that take place?
11 A. **It took place, I think, roughly -- I don't know**
12 **the address -- maybe two houses south of 510. At the**
13 **end of our perimeter where it was taped off and where we**
14 **had some spotlights set up.**
15 Q. Okay. And what was your role in conducting the
16 show-up? What exactly did you do?
17 A. **Just stand next to them and make sure they didn't**
18 **try to run or do anything. That was it.**
19 Q. Did you have any interaction whatsoever with the
20 individual who was there to identify Mr. Venegas?
21 A. **No.**
22 Q. Did you hear the conversations between him and
23 the officers that he was dealing with?
24 A. **I'm sorry? Say that one more time.**
25 Q. Did you hear any conversations between the



1 gentleman who showed up to do the show-up, the alleged
2 victim, and the officers that he was working with? Did
3 you hear any of their conversations?
4 A. **The only conversation I heard from that was the**
5 **driver of that vehicle telling me that the victim, if**
6 **you will, recognized the clothes 100 percent. And that**
7 **was it.**
8 Q. And the clothes were on Mr. Venegas's person?
9 A. **On both of them, yeah.**
10 Q. Very good. Okay. Nothing further. Thank you.
11 THE COURT: Okay. Any redirect?
12 MS. HOLTHUS: No.
13 THE COURT: Okay. Thanks for coming in.
14 All right. Mary Kay, you indicated that you
15 had another witness, but there's a death in the family?
16 MS. HOLTHUS: Correct. But that was just to
17 get the video in. So I think --
18 THE COURT: So does the State have any more
19 witnesses to call at this point?
20 MS. HOLTHUS: No, we do not. We're done.
21 THE COURT: Okay. So do you have any
22 proposed amendments now to the Criminal Complaint?
23 MS. HOLTHUS: We do. And we're not going to
24 go on the ex-felon. I can't use that at trial. So
25 we're not --



1 THE COURT: Very good.
2 MS. HOLTHUS: But we're going to go ahead
3 with -- what I am moving to add is in the same
4 conspiracy, to breakdown Count 6 into two counts,
5 battery with substantial for beating him with the gun
6 and battery with substantial for beating him with the
7 ax.
8 THE COURT: Okay. This would be easier.
9 Just start with brand new Counts 8, 9, 10. Can we do
10 that?
11 MS. HOLTHUS: Yeah.
12 THE COURT: Okay. What would Count 8 be?
13 MS. HOLTHUS: Count 8 would be -- does
14 anybody object to me re-numbering them when we bind it
15 up though? That's better? All right. Count 8 will be
16 -- first of all, Count 6 will be amended to take out the
17 ax.
18 THE COURT: Okay.
19 MS. HOLTHUS: Count 8 will be battery with
20 use of a deadly weapon, resulting in substantial bodily
21 harm, to-wit: the ax.
22 THE COURT: Okay.
23 MS. HOLTHUS: And then two more counts of
24 battery with a deadly weapon for the ax that were not
25 substantial.

1 THE COURT: All right.
2 MS. HOLTHUS: And then -- I lost my count.
3 You asked me the count and I already didn't --
4 THE COURT: So Count 8 and Count 9 and Count
5 10. Do you have a Count 11?
6 MS. HOLTHUS: I do. Count 11 would be
7 assault with a deadly weapon. And I'm going to
8 summaries these. Count 12, aiming a firearm. Count 3
9 would be a coercion with use of a deadly weapon. This
10 is against Aderana Colon and/or Lizbeth Colon and/or
11 Samantha Avana and/or Cesar Avana. Is that three kids?
12 Yeah. Okay. For aiming the firearm at them through the
13 window, that's the assault with a deadly weapon, as well
14 as the aiming the firearm under the same conspiracy
15 theory, and coercion with a deadly weapon for preventing
16 them from coming into the room, coming to the aid of the
17 victim or anything else by aiming the firearm at them.
18 THE COURT: Okay. So to recap then, Count 8
19 is battery with substantial bodily harm with the ax.
20 MS. HOLTHUS: With a deadly weapon with
21 substantial bodily harm.
22 THE COURT: Okay. A deadly weapon with
23 substantial bodily harm. That's the ax.
24 MS. HOLTHUS: Right.
25 THE COURT: Count 9 is battery with a deadly



1 weapon, ax.
2 MS. HOLTHUS: Right.
3 THE COURT: Count 10 is battery with use of
4 a deadly weapon, ax.
5 MS. HOLTHUS: Right.
6 THE COURT: Count 11 is assault with a
7 deadly weapon. Count 12 is aiming a firearm or a deadly
8 weapon?
9 MS. HOLTHUS: Correct.
10 THE COURT: Count 13 is coercion with use of
11 a deadly weapon.
12 MS. HOLTHUS: Correct.
13 THE COURT: All right. So with those
14 proposed amendments, does the State now rest its case in
15 chief at this time?
16 MS. HOLTHUS: You know what? Judge, I
17 apologize. I'm also moving to amend two more counts of
18 battery with intent to commit robbery, one for each
19 scene.
20 THE COURT: So 14 and 15 battery, battery
21 with intent, robbery. And the same with Count 15?
22 MS. HOLTHUS: Not the first scene. I'm
23 sorry.
24 MR. CLAUS: I was going to say, Your Honor.
25 MS. HOLTHUS: That's just battery with



1 intent with substantial bodily harm.
2 MR. CLAUS: On the first scene.
3 MS. HOLTHUS: No, the second. I lost my
4 mind.
5 THE COURT: So, again, Count 14 would be
6 battery?
7 MS. HOLTHUS: With substantial bodily harm
8 with intent to -- I think it goes battery with intent to
9 commit a crime with substantial bodily harm. That would
10 be the same count.
11 THE COURT: And Count 15 would be the same
12 count?
13 MS. HOLTHUS: There is no Count 15.
14 THE COURT: Okay. So just Count 14. Did
15 you get that?
16 THE CLERK: Battery with intent to commit a
17 crime with substantial bodily harm.
18 MS. HOLTHUS: Correct.
19 THE COURT: Okay. With that, does the State
20 rest?
21 MS. HOLTHUS: Yes.
22 THE COURT: Okay. The State rests.
23 Defense, let's start with Mr. Claus. Any
24 evidence or witnesses you're going to present?
25 MR. CLAUS: No, Your Honor. I've spoken



1 with Mr. Pena about his ability to testify. He is not
2 going to be exercising that right at this time.
3 THE COURT: Okay. Mike?
4 MR. AISEN: Thank you, Your Honor. I spoke
5 to Mr. Venegas. He understands his right to testify,
6 and he's opting not to.
7 THE COURT: Okay. Let's go to closing
8 argument. The State goes first. Then Defense. The
9 State has rebuttal.
10 In your closing argument I want you to
11 address Counts 2 and 3, specifically what evidence there
12 was to identify these two defendants committing those
13 two crimes in Counts 2 and 3. Okay?
14 MS. HOLTHUS: Okay.
15 THE COURT: So go ahead. And make sure you
16 include that with your closing.
17 So State goes first, if you'd like. Then
18 Defense. Or you can reserve.
19 MS. HOLTHUS: The evidence, Judge, is the
20 video itself and the stills of the individuals that were
21 recovered later with the was of money, about a $138. A
22 hundred bucks had been taken in the initial robbery.
23 This is about a mile away. It's approximately 20
24 minutes after. They're wearing the identical clothing.
25 They've been described by the store clerk.

1 The most telling piece of evidence, if you
2 will, is the gloves. You see the stills from the video.
3 This isn't just a red glove being worn in January with a
4 puffy brown vest and a hoodie that you can see real
5 clear in both the video as well as in the still. I
6 mean, it's a hundred percent those are the clothes.
7 This isn't a close one, Judge. This is not there's an
8 inference. It's not just -- it's consistent. Those are
9 the clothes.
10 You look at that glove. I've never seen a
11 red glove like that that coincidentally has those
12 markings. Those are extremely unique. I mean, the odds
13 after finding those two different guys committing two
14 different crimes a mile apart, 20 minutes apart, in the
15 same area having the same items?
16 The codefendant, if you look at the video,
17 not only does he have the brown puffy vest, but he's got
18 the same hoodie. You even see a smidgen of red in one
19 of the stills. On the front, if look at his shirt when
20 he's taking his jacket off, you can see the red
21 lettering. It's completely consistent with what he's
22 wearing at that point.
23 The codefendant is -- you can't actually see
24 his eyes. You can see this much of his face.
25 MR. CLAUS: Can we at least have the



1 identification of who we're talking about?
2 MS. HOLTHUS: The guy without the red
3 gloves. The guy with the red gloves is definitely
4 Venegas. The clothing is completely consistent. The
5 red gloved guy, the red gloves are recovered right
6 outside of where he's hiding under the shed. The same
7 consistency.
8 As to the codefendant, Mr. Pina, his
9 coloring is also the same. You see a navy blue mask,
10 which is found near him. You see the darker puffy
11 clothing. Exactly the same. The more telling item for
12 him, I think, is the video. If you look when they're
13 first coming in in the still that you have there, he's
14 got kind of like bluish-purply shoes. That's kind of an
15 unusual color shoe. If you look at the picture in which
16 he's arrested, it's the same color shoe.
17 Both of those, I submit, are beyond a
18 reasonable doubt that those are the same two guys that
19 did the robbery and as to the attempt murder and all of
20 the other charges at the other end. Timing, location,
21 identification, they had a wad of money, close to the
22 amount of money that was taken from the scene of the
23 robbery. I'm not sure what more -- I don't know if you
24 want more.
25 THE COURT: It's up to you. Anything else?



1 Is that it?
2 MS. HOLTHUS: Well, with respect to those
3 two counts.
4 THE COURT: Okay.
5 MS. HOLTHUS: You just wanted the
6 identification?
7 THE COURT: Well, that was one of the things
8 that I wanted you to talk about in your closing.
9 MS. HOLTHUS: The remainder, I'll reserve
10 that, if that's all right.
11 THE COURT: Okay. Mike?
12 MR. AISEN: Well, I'll dispute the
13 suggestion that the guy with the red gloves was 100
14 percent Venegas.
15 We have Mr. Venegas being apprehended near
16 the red gloves, but we also have no identification from
17 the video that the person with the red gloves was
18 Mr. Venegas. The defendant who -- I'm sorry, the
19 witness who testified that the bigger guy was wearing
20 the puffy coat did not identify Mr. Venegas.
21 The money that was found at the scene of the
22 apprehension was not found on Mr. Venegas. Clearly
23 things could have changed hands at any point in time.
24 Mr. Venegas could have been given any number of these
25 items by another person following the events at the



1 7-Eleven, up until the time of his apprehension.
2 I don't think there's been any sufficient
3 evidence to link him to what happened at the 7-Eleven.
4 And fact that money was found on another person, and yet
5 the individual who was given the money at the 7-Eleven
6 was the taller of the two, which suggests that there was
7 a sufficient passing off of items in that time. So I
8 don't believe that sufficient evidence was shown to link
9 Mr. Venegas to that scene.
10 I would argue that the battery that took
11 place at the second scene was done well before the
12 actual theft took place. I would say that that is
13 arguably two separate incidents. The actual battery and
14 then the removal the other items. The camera -- I think
15 a few items were taken. So I would say that the battery
16 was not demonstratively committed with the intent to
17 commit theft.
18 THE COURT: Okay.
19 MR. AISEN: I'll submit it with that.
20 THE COURT: Mr. Claus?
21 MR. CLAUS: Well, Your Honor, at least as
22 far as the State's theory goes, it's that Mr. Venegas
23 was wearing the puffy brown coat. Mr. Pina here doesn't
24 even come in until you get to the very end where he's
25 around these things that are found, which presumably

1 then links him in to a 7-Eleven. There is no eye
2 witness testimony linking him to the 7-Eleven. There's
3 in distinctiveness given by any of the witnesses to say,
4 "If you look at the clothing here, those are the same
5 shoes that were found later on."
6 Indeed the witness from the 7-Eleven,
7 Mr. DeCamp, said that he was never even called on to
8 identify Mr. Pina. So there is frankly nothing. What
9 the State has given you is a couple of photographs from
10 the video, which, by the way, Your Honor, I objected to,
11 saying Mr. DeCamp could not authenticate the beginning
12 of that video. So the parts that he could authenticate
13 were what came in. Not what the State handed you.
14 And I understand that that's inconvenient
15 for them and that the Court accepted that. But, Your
16 Honor, as a matter of the record, I stood on my
17 objection there for this reason. The photos that the
18 State gives you, which are from the video, and then
19 links back to the photographs that were taken by the
20 officer, there's a breakdown there, a fundamental
21 evidentiary breakdown, at least to where Mr. DeCamp is
22 concerned and where Mr. Pina is concerned.
23 In regards to the amendments for the
24 incident that occurred at 504 Brush Street, Your Honor,
25 I'm going to direct my comments really to Counts 11, 12



1 and 13. That's the assault with the deadly weapon
2 counts, the aiming a firearm, and the coercion with
3 deadly weapon. In point of fact, I don't think the
4 assault with a deadly weapon count should stand. You
5 have to have somebody come in there and say it put me
6 immediate fear or apprehension of my life. There's no
7 testimony of that whatsoever. You've got Mr. --
8 THE COURT: Or that would cause a reasonable
9 person.
10 MR. CLAUS: Well, that becomes an
11 interesting question here, Your Honor, because here
12 we're dealing --
13 THE COURT: Isn't it a reasonable person
14 standard?
15 MR. CLAUS: Well, we're dealing with BB
16 guns. And so the question becomes would a reasonable
17 person be worried about a BB gun being pointed at them
18 through glass because is a BB gun going to go through a
19 plate of glass? It's like pointing a handgun at --
20 THE COURT: But would he know it was a BB
21 gun at the time?
22 MR. CLAUS: Well, Your Honor, that's the
23 problem. We don't know what any of the those victims
24 thought. They weren't brought in here. And that's
25 where I say the AWDW falls. There's just not simply any



1 apprehension to build from that.
2 Indeed, if you go back to Mr. Colon's
3 testimony, what he told the Court is that the reason
4 those people didn't move -- there were no commands given
5 to those people not no move. There was no threatening
6 motions made to those people. Simply put, Mr. Colon is
7 the one who told them to don't move, don't go anywhere,
8 don't call the police.
9 Mr. Colon's testimony was one hundred
10 percent spot on on that. There was no commands being
11 given by the person holding that gun. But obviously
12 theres's a problem here. Mr. Colon testified that he
13 one hundred percent knew it was Mr. Pina, even though we
14 find out on cross-examination that the person who did
15 this was actually wearing a mask, and that he couldn't
16 see him but for the eyes. And that the reason why he's
17 one hundred percent certain is he was told by somebody
18 else after the fact that it was Mr. Pina.
19 THE COURT: And he works with him.
20 MR. CLAUS: He worked with him for a
21 significant period and he would recognize him
22 immediately, which begs the question of why would he
23 have to be told by someone that it was Mr. Pina?
24 There's no in doubt that there's witness
25 contamination, Your Honor. The only question now is how



1 much does that affect the identification. I think you
2 might have -- Court's indulgence just a moment. While I
3 think the aiming a firearm at the victims stands a
4 better chance here of holding up, Your Honor, the
5 coercion with deadly weapon is also questionable.
6 What exactly was this person aiming a
7 firearm at that would prevent these people from doing
8 what they had a legal right to do? And again, we don't
9 have any evidence on that. None of these people who
10 were supposedly threatened with this firearm came in.
11 You've got to make a guess from Mr. Colon's testimony.
12 But Mr. Colon's testimony is one hundred percent spot
13 on. He is the one who told them not to move. He is the
14 one who told them not to call police.
15 Your Honor, I'll submit it thereon.
16 THE COURT: Mary Kay, again on No. 14, it's
17 battery with use of a deadly weapon causing substantial
18 bodily harm, correct?
19 MS. HOLTHUS: No, 14 is battery with the
20 intent to commit robbery with substantial bodily harm.
21 THE COURT: Okay. And that's in the garage,
22 correct?
23 MS. HOLTHUS: Correct.
24 THE COURT: Okay. I want to be clear. So
25 go ahead.

1 MS. HOLTHUS: Well, first of all, if you
2 have any doubt as to the identification, I would ask
3 that you review the video. And I would ask that you
4 review maybe a better video because my video screen
5 couldn't be more clear. The laptop that we looked at,
6 the coloring wasn't quite as clear. But if you have any
7 doubt, I would ask you to look at that.
8 I disagree in terms of the admissibility of
9 the video. The witness identified himself and the
10 accuracy of the video from himself in one of these three
11 screens. So while he didn't necessarily see them come
12 in the front door, he still authenticated the video in
13 its entirety because he saw himself in another part of
14 the store in the video. So at least it's a weight
15 versus admissibility issue. For our purposes it's
16 admissible.
17 They can obviously argue later that, well,
18 maybe this was a different video and different place and
19 this was coming in some other time. I don't even know
20 what the argument would be. But he said that 7-Eleven
21 videotaped them, that the manager came in and furnished
22 Metro with the videotape of the robbery. He identified
23 himself cleaning around the store, doing his thing, and
24 then he identified the robber.
25 And it's clear from the beginning, he said



1 that they came in with their guns, and both of them each
2 had a gun drawn from the door. And, again, you can see
3 all of the clothing. What else did you raise?
4 MR. CLAUS: The AWDW with coercion.
5 MS. HOLTHUS: Oh, the AWDW. All we're here
6 for is probable cause, an inference that a crime was
7 committed and that these folks committed that.
8 At trial we'll bring in the victims. I
9 would suggest to you that this poor guy being beat to
10 death with an ax, that somebody might have come to his
11 aid, but one of the factors that stopped them was not
12 the bleeding guy saying don't come in, but one of the
13 reasons is Pina holding the gun on the family. There
14 can be no other reason for it. You're holding it there
15 to say stop, stay, this is none of your business. And
16 that's clearly what they did. The best case scenario
17 for them is it would be a question for the jury.
18 Same with the AWDW. There's an inference if
19 you're watching your loved one get beaten with an ax and
20 pistol whipped and the cohort stands there and aims a
21 gun at you, are you going to be in reasonable
22 apprehension or fear of getting shot? I think that's
23 over obvious as well.
24 THE COURT: All right. Let me address the
25 photos first, which was State's Exhibits 2 and 3, the



1 still photos from the video.
2 Mr. Claus is accurate that in regard to the
3 video there was a certain period of time that the
4 parties stipulated that I understood the first witness
5 would authenticate. However, I looked at that
6 particular period and I was able to determine what the
7 inside of the store looked like. Even the front door.
8 Okay? Just from the video that was stipulated to, that
9 portion of it.
10 Additionally in that portion you do see the
11 two individuals inside the store. And I looked at that
12 and the store as well as the two individuals and their
13 clothing are the same as depicted in State's Exhibits 2
14 and 3. The individuals are just at two different
15 locations.
16 So these two pictures, State's Exhibits 2
17 and 3, accurately reflect the store and the individuals
18 that were in the store at the time. So that's why I'm
19 admitting State's Exhibits 2 and 3. Even assuming the
20 fact that only part of the video was authenticated. Do
21 you understand that? So that's my rationale in
22 admitting State's 2 and 3.
23 There's no doubt in my mind that these are
24 fair and accurate depictions of what happened inside
25 that store, based on looking at the video.



1 Now, in regard to the identification of the
2 two defendants, I focus on -- and, again, I'm looking at
3 Count 2 and 3 relating to Mr. DeCamp. As I look at
4 State's Exhibits 2 and 3 and then State's Exhibits 6 and
5 7, which are the pictures at the time of the arrest of
6 Mr. Venegas, and State's Exhibits 4 and 5, and those are
7 the pictures of the arrest of Mr. Pina, looking at the
8 coats and just looking at the coats alone, it is clear
9 that these are the same individuals. You look at the
10 coats and you compare that to the coats that they're
11 wearing, the two people are wearing in State's 3, it's
12 the same coats, clearly.
13 Then in addition to that, circumstantially,
14 given the time period and the location, as well as the
15 evidence -- the gloves and everything else that's found
16 at the scene at the time of their arrest -- there's no
17 doubt in my mind that the individuals here today,
18 Mr. Pina and Mr. Venegas, are the two individuals that
19 the State claims committed Counts 2 and 3.
20 And in addition to that, it's a slight or
21 marginal evidence standard for identification at this
22 point. At the time of trial it's beyond a reasonable
23 doubt.
24 Now, in regard to the proposed amendments,
25 Counts 8, 9 and 10, I believe that the State has shown

by slight or marginal evidence. Count 11, I agree with Mr. Claus because that's assault with a deadly weapon as it relates to those family members. I think you have to bring them in to show that they were in reasonable apprehension or you can show that a reasonable person, and even based on the evidence that I heard, I don't think I can conclude by slight or marginal evidence that a reasonable person would be in apprehension of fear of bodily injury. So I'm going to dismiss Count 11.

Count 12, aiming a deadly weapon, this officer testified that the weapons, the two guns were BB guns, but they're called replicas because you cannot tell at all if they're a BB gun or a real gun.

Count 3, coercion, I believe that they've met their burden. And Count 14 as well.

So to recap, it appears to me from the Complaint on file herein and from the testimony presented at this preliminary hearing that Counts 1 through 10 and Counts 12 through 14 have been committed, and that there's sufficient evidence to believe that the defendants, Casimiro Venegas and Jose Pina, may have committed the crimes set forth in the Criminal Complaint.

I'll bind the case over to the Eighth Judicial District Court to be arraigned on those



charges.

MS. HOLTHUS: I would like to address bail.

THE COURT: Well, there's no bail right now. After the status with the attempt murder and everything else, there's no bail.

THE CLERK: March 7th, 10:00 a.m.

-oOo-

ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS.

/S/Kristine Fluker

KRISTINE A. FLUKER, CCR NO. 403



AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding bind over filed in District Court Case No. C313118-2 does not contain the Social Security Number of any person.

Dated this 20th day of April, 2016.

/S/Kristine Fluker

KRISTINE A. FLUKER, CCR NO. 403

## $

**$100** [1] - 11:21
**$138** [1] - 92:21

## /

**/S/Kristine** [2] - 106:12, 107:18

## 1

**1** [4] - 2:16, 14:9, 14:15, 105:18
**10** [15] - 2:4, 2:21, 3:23, 46:3, 46:4, 47:19, 47:20, 61:2, 61:3, 71:20, 88:9, 89:5, 90:3, 104:25, 105:19
**100** [3] - 54:2, 87:6, 95:13
**10:00** [1] - 106:6
**11** [8] - 2:21, 72:3, 89:5, 89:6, 90:6, 97:25, 105:1, 105:9
**12** [9] - 2:22, 47:18, 59:20, 72:8, 89:8, 90:7, 97:25, 105:10, 105:19
**12:00** [1] - 35:6
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EXHIBIT C

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

# VOLUNTARY STATEMENT



**EVENT #: 160112-0494**
STATEMENT OF: JAVIER COLON

**SPECIFIC CRIME:**

**DATE OCCURRED:** **TIME OCCURRED:**

**LOCATION OF OCCURRENCE:**

**CITY OF LAS VEGAS** **CLARK COUNTY**

**NAME OF PERSON GIVING STATEMENT:** Javier Colon

**DOB:** [redacted] **SOCIAL SECURITY #:** [redacted]

**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 Tracy Smith P# 5267 LVMPD Bolden Area Command Patrol Investigations on 01.20.16 at 0810 hours.

Q: Operator this is Detective T. Smith, P# 5267, conducting a taped interview under Event # 60112-0494. Today's date is 01-20 of2016. I'm currently at Bolden Are- Area Command. The time now is 0810 hours. I am conducting a tapes interview with Mr. Javier Colon. Last name is C-O-L-O-N. First name is Javier -- John, Adam, Victor, Ida, Easy, Robert. He has a date of birth of [redacted] and a social of [redacted] And, um, Mr. Colon I'm going to set this right here. I've already given you your, um, your, uh, wallet, so you have that. Um, I'm gonna talk to you

about the early morning hours of the 12th. Uh, can you tell me, uh, in your words, uh, I know you were transported to the hospital, um, because of your injuries on your face, and you ear, and your hands. Uh, but tell me what happened, um, in the early morning hours of the 12th of January.

A: Yeah, he came to my house. He opened the door.

Q: Now who is he?

A: Uh - uh, that was, uh - uh, I think his name is - yeah Casemero Alejandro. I don't know his last name. And he came to my house and he tell me something about I be something with his family.

Q: You - he - you what his family?

A: Like - like - like his family can - I - I don't know. He told me like, uh, I - you, uh, I fucked his family, something like that.

Q: Oh like, "You fucked with my family."

A: Yeah - yeah.

Q: Okay, and then what happened?

A: And then - then he told me - and that he and nobody play with his family. But I never did it. He knows - he knows that. Because I know his mom, his - his sisters, all his sisters. And - and then, you know...

Q: Now how do - now let - let me stop you right there. How do you know Casemero? How do you know him? Do you know - are you family friends?

A: Uh, yeah I'm - I'm a - I'm a his, uh, his family's friend - his family. And, uh, and

his mom, when he gets out from jail, his mom told me to find a job for him. And I did.

Q: You found a job for Casemero?

A: Yeah for Casemero.

Q: Okay.

A: So after the three - three days he quit because he don't like 'em.

Q: After three days he quit?

A: He quit, yeah.

Q: Okay.

A: Because he say that was too - too hard for him, you know. 'Cause I - I find him in a - in a landscaping.

Q: You found - you got him a job.

A: A - a job in, uh, landscaping.

Q: Oh landscaping.

A: Landscaping.

Q: Landscaping, okay.

A: Landscaping, yeah.

Q: I know that you have a - a - a little bit of an accent. So I might repeat...

A: Okay.

Q: What you're saying just so I understand it. And if I repeat the wrong thing just let me know.

A: Okay.

Q: Just because you have a very thick accent.

A: Okay.

Q: And I want to make sure that I understand you okay.

A: Okay, yeah.

Q: Okay great.

A: Cool.

Q: So you got him a job in landscaping and after three days he quit?

A: He quit, yes.

Q: Okay, and then what happened?

A: So I'm not - I never see again him. I never see him.

Q: You never saw him again?

A: I not - I never saw him. So, and he came that day to me like that. And - and he asked me for my money.

Q: He asked you for money?

A: For money, yeah. "Give me your money. So give me your money. Give me your money." And when he hitted - when he hit me in the head with the - with the pistol.

Q: Okay, that's when he hit you in the head with the pistol?

A: Yeah.

Q: Okay.

A: And he started hitting me and hitting me, “Give me your money. Give me your money. Give me your money.” And I said, “I don’t have any money.” And he told me, “Where’s your wallet?” I had my wallet right there.

Q: Okay, so he took - he said, “Where’s your wallet?”

A: And he - yeah.

Q: And he took your wallet.

A: And he - when he take my wallet...

Q: Okay, when did he, uh, because there was somebody else there too was there not?

A: Yeah, but I don’t know the other guy.

Q: You didn’t know the other guy?

A: No.

Q: Okay.

A: I don’t know that other guy.

Q: So where - who actually hit - struck you with the axe?

A: Uh, him -- Casemero.

Q: Casemero.

A: Casemero.

Q: Now was the axe just something that was outside the front door? Or where - where did that...

A: No that was in my room.

Q: Oh the axe was in your room.

A: Yeah, be - yeah because I - I using it for - for my jobs.

Q: You use it for your jobs.

A: Yeah.

Q: Okay, so the axe just happened to be there when they came into your bedroom.

A: Mm-hm.

Q: Okay, and that's a yes.

A: Yes.

Q: Yes, okay.

A: Yes.

Q: So you didn't know the other guy. D- did the other guy do anything to you?

A: No, he only point to my family, to the kids. He pointed with - with the gun to the kids.

Q: So there were kids that wat- that saw this?

A: Uh, yeah they - well everybody saw it, yeah.

Q: Okay, does some - 'cause I know - there's not an ent- 'cause I know you were sleeping in kinda like - that's, uh, a converted garage right.

A: Mm-hm, yes.

Q: Okay, so did they come around out the front door into the bedroom while they were there or is there an entrance?

A: No - no because that was, uh, two windows to the garage. So...

Q: Were they - are they covered up?

A: Um, no - no.

Q: How did they see through the windows?

A: Uh, because the - my - my sister and the kids, they heard when - when they came. So - and everybody started looking through the window. And there was - when him start pointing with the gun to the kids.

Q: Okay, so the other guy was the one pointing the gun to the kids?

A: Mm-hm.

Q: Okay, so let me ask you this.

A: Yes.

Q: Because I've been in your room.

A: Yes - yes.

Q: Okay, we went there, you know, after you were transported. I saw, you know, it was very dark and there's no lights in there.

A: Yeah it's - yeah exactly.

Q: So how are they able to see who was in the room?

A: Because they turned the lights on.

Q: I - where - okay, 'cause we looked for lights. We couldn't find them.

A: Yeah, no - no, but the - the - the kids - the kids had turned the lights on for the room.

Q: From - from...

A: Yes.

Q: ...inside the house?

A: Yes, from inside the house.

Q: Got it, okay. Okay, so, uh, let's get back to Casemero was asking you for money.

A: Mm-hm.

Q: And you told him you didn't have any.

A: Mm-hm.

Q: And then he said, "Where's your wallet?" The wallet was sitting there and he took your wallet. Wh- wh- why did - he was - did he say anything about, "You messed with my sister?" Or, tell me about that.

A: Mmm, he - he told me about his family. I don't know. Just about his family.

Q: Okay, was there anything about, uh, having tires slashed or anything like that?

A: Oh yeah - yeah. He told me th- he told me that, yeah (unintelligible). Hell I never did it. But I don't...

Q: So he - did he - he blamed you for pun- or for flattening four tires or something?

A: Mmm, yes.

Q: Okay.

A: Yes.

Q: But you're saying that you didn't?

A: And I don't - I never did.

Q: Okay.

A: Because I'm not even know where - where they're living right now.

Q: Okay. Okay, so, um, Casemero went and then he picked up the axe. And how many times do you think he hit you with the axe?

A: He hit me three times.

Q: Three times with the axe.

A: Yeah he hit me one time in the leg, and on time in the ribs.

Q: Okay, but he actually - did he hit you with the handle or with the actually axe?

A: And - and - no. And - and then tried to hit me the third time - he tried to him me in - in the head.

Q: Is that how you got your head split open?

A: Uh, no. He tried to hit me in the head, but I skip it.

Q: And that's how you got...

A: I skipped it, yeah.

Q: Okay.

A: And I got it on my hand.

Q: Okay, I don't want to keep talking over you, I apologize. Um...

A: No - no - no.

Q: So when he struck you the third time with the axe, he was going towards you head.

A: Mm-hm, yes.

Q: And that's when you put your hand up.

A: Yes.

Q: And got the injury with your hand being cut open.

A: Yes.

Q: Got it, okay.

A: Yes.

Q: So the injuries to your head and your ear, did that happen from the axe or the pistol?

A: From the pistol.

Q: From the pistol.

A: From the pistol.

Q: Okay. Okay, but the third time he did go for you head with the axe.

A: Yes.

Q: Yes sir, okay. Okay, uh, what happened, um, who called the police?

A: Uh, I don't know. That was - that was, I think that was my - my niece.

Q: Your niece called.

A: My niece.

Q: Your niece.

A: Yeah, that's why you guys got her - her number.

Q: She called 911?

A: Yes.

Q: Okay, from inside the house or from a cell phone?

A: Inside - in- from a cell phone.

Q: Okay, and how old is your niece?

A: She's, uh, 16.

Q: She's 16.

A: Yes.

Q: And what is her name?

A: Uh, Lizabeth.

Q: Elizabeth?

A: Lizabeth.

Q: Lizabeth.

A: Yes.

Q: L-I-Z.

A: Yes - yes, Lizabeth.

Q: Is that your sister that's here's daughter?

A: Uh, yes her daughter.

Q: Lizabeth, and what is her last name?

A: Co- uh, Abinia.

Q: Spell that please.

A: A-B...

Q: B as in boy?

A: Mmm, yeah. I-N...

Q: A?

A: I-A.

Q: Abinia?

A: Uh-huh.

Q: A-B-I-A?

A: N, N right here - N.

Q: A-B-I-N-A?

A: Yeah, oh I - I in the middle and at the end then the A.

Q: Okay, A-B-I-N-I-A.

A: Yeah.

Q: Abinia.

A: Abinia, yeah.

Q: Okay, and Liz - Lizabeth Abinia.

A: Abinia, yeah.

Q: And she's 16 years old.

A: Yeah, she's 16 years old.

Q: Did she see the people that were in, uh, did she see Casemero and the other guy that was hitting you also?

A: Yes.

Q: Okay, and your sister that's here?

A: Yeah.

Q: She also saw?

A: She saw too.

Q: Okay, does she know - does you sister know Casemero?

A: No - no. She don't know. She don't know him.

Q: But would he be able to identify him?

A: Um...

Q: 'Cause it was dark, I know it was very dark...

A: Yeah - yeah.

Q: ...in the room.

A: Because - because I - I - I spoke his name. W- when - when he came through the house I...

Q: You were sleeping right in bed?

A: Yes - yes.

Q: Yes.

A: And when he hit me, and he told me that was him.

Q: He said his name?

A: Yeah he says - yeah he says his name.

Q: Okay, but you knew him anyway by identifying him.

A: Yeah - yeah.

Q: Did he have on any ski mask?

A: Not him - not him. Only - only the other guy.

Q: Oh the other guy had a, uh, the black mask on?

A: Yes.

Q: Okay.

A: Yes.

Q: So that's why you didn't know him?

A: Yeah, and, uh, this boy, I don't know.

((Crosstalk))

Q: Do you know, um, now how long have you known Casemero and his family?

A: Um, his family - I know him for, uh, I - his family for 9 months.

Q: Nine month, now how do you know them from?

A: Um...

Q: So not a long time.

A: Yeah, for - because my - my girl - my girlfriend I...

Q: Who's your girlfriend?

A: Uh, my - my girlfriend is, uh - uh, Cynthia - Cynthia Coraro. Like...

Q: Cyn - Cynthia?

A: Cynthia, yeah.

Q: Coraro?

A: Coraro, yeah. She live in San Diego.

Q: She lives in San Diego?

A: Yeah, she lives in San Diego.

Q: So is Cynthia and Casemero brother and sister?

A: No, they - they're only friends. They're only - just friends from - since kids.

Q: Since kids.

A: Yeah.

Q: Okay, are you still with Cynthia?

A: Uh, not right now.

Q: Not right now.

A: Not right now, no.

Q: 'Cause she lives in San Diego.

A: Yeah, she's in San Diego.

Q: So she's the one that introduced you to the Vango - Casemero?

A: Um, yes.

Q: And his family?

A: And his family.

Q: Got it okay. Okay.

A: Yeah, and I now him just - just, um, he get out from jail.

Q: He got out of jail?

A: Yeah he got out like just - so probably like a couple months ago.

Q: Okay, so it was his mother that asked you to find him a job?

A: Yeah.

Q: Got it.

A: Yes.

Q: Okay.

A: Yes.

Q: Okay, and what is his mother's name?

A: Um, uh, that was, um, M- Maria - Maria Esperonza.

Q: And this is - Maria Esperonza is...

A: Casemero's mom.

Q: Casemero's mom.

A: Yes.

Q: Okay, do you - let me find the name. Do you know Angelica?

A: Yes.

Q: Who's Angelica?

A: Uh - uh, that's, uh, his sister. Uh, Casemero's sister.

Q: Okay, and who is she to you? Is she your girlfriend?

A: No, she's my - she's my - she's a friend.

Q: Just a friend, okay.

A: Yeah, just a friend. Just a friend.

Q: Okay, now was it her tires that were flattened?

A: I don't know. Does - the other one - he said it.

Q: The other guy?

A: No, Angelica, uh, Casemero - Casemero's sister. That's Angelica's...

((Crosstalk))

Q: Oh, Angelica is Casemero's sister?

A: Yes.

Q: Okay, and was it her tires that were flattened?

A: This - this is what he told me. I - I never see it.

Q: Okay.

A: I never saw it, I mean...

Q: Why would he think that you would flatten her tires?

A: I don't know. I don't know.

Q: Okay.

A: I don't know.

Q: Okay, um, was there anything else that you saw Casemero take from - besides your wallet?

A: Um, I - I think he take my MP3 and I don't know what else.

Q: Your MP3?

A: Yeah my MP3.

Q: Like the game?

A: Mmm, now that was her...

Q: Oh like a...

A: Yeah like a - I had...

Q: Okay. Okay, what about - did you have any knives or anything in the room?

A: Yeah, I got three knives. Two collection knives.

((Crosstalk))

Q: They're collection knives?

A: Yeah, that one - big - big knives.

Q: Big knives.

A: Yeah, that was...

Q: We did - we did recover those in the backyard when the police officers got them in custody.

A: Okay.

Q: The two knives were, you know, they were in leather.

A: Yes.

Q: And stuff like that.

A: Yes - yeah.

Q: We did recover those.

A: Okay.

Q: And those we impounded as evidence.

A: Oh, okay.

Q: Okay?

A: Yeah, okay.

Q: Okay, just - just so you know. After this is all over, and if it goes to trial or

anything, you'll be able to get those back.

A: Okay.

Q: Okay, um, but right now we did - I did include those as evidence.

A: Yes, okay. Okay.

Q: Okay? What did he do with the axe after he struck you the last time in the hand?

A: Uh, he take it to outside and...

Q: You saw him take it outside?

A: Yeah, he take it to outside and I think he take 'em. You know he leave it - he leave it in the backyard.

Q: Okay, what made him leave finally?

A: Uh, because he saw the - the lights cops. This is why he run - run away.

Q: Oh he saw the - the - the lights on the cop cars?

A: Yes.

Q: Okay.

A: That's why he run away.

Q: Did he say anything when...

A: No - no. Just - just run away.

Q: He just ran away.

A: Yes.

Q: Okay, um, and you never saw him after that?

A: No.

Q: No, okay.

A: No I didn't.

Q: Okay, is there anything else that, um, I'm forgetting to ask you? What did you think he was gonna do when he hit you with the axe?

A: Kill me.

Q: Kill you, okay. Okay, did he ever - I know you said that he hit you tw- t- t- two or three times in the head with the pistol.

A: With the pistol yeah. He - yeah he hit me, one, two, three, four, five times.

Q: Five times in the face?

A: Five times.

Q: 'Cause you have five injuries all over your face.

A: Yeah - yes.

Q: Okay, did the other guy wearing a ski mask, did he ever hit you?

A: No - no he never did.

Q: No, he was just pointing the gun?

A: Yes.

Q: At your family?

A: Yes.

Q: Okay, did you believe, uh, what kind of guns do you think they were?

A: Probably 9mm, I don't know.

Q: Probably 9mm.

A: Yes.

Q: Okay. Okay, um, is there anything else that you can think of that I'm forgetting to ask you?

A: No, I think that's it.

Q: Do you have any question for me sir?

A: Mmm, no - nope.

Q: Not at this time, okay. You have my number and I'm going to give you my business card also.

A: Sure, thank you so much.

Q: Make sure you have this.

A: Um...

Q: Operator this is gonna be the end of the interview. Same people are present.

A: Sure, no problem.

Q: The time now is 0825 hours.

A: Thank you so much.

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**THIS VOLUNTARY STATEMENT WAS COMPLETED AT ON THE DAY OF , AT HOURS.**

EXHIBIT D

**EVENT #: 160112-0494**
STATEMENT OF: ADRIANA COLON-ESPITIA

**SPECIFIC CRIME:**

**DATE OCCURRED:** **TIME OCCURRED:**

**LOCATION OF OCCURRENCE:**

**CITY OF LAS VEGAS** **CLARK COUNTY**

**NAME OF PERSON GIVING STATEMENT:** Adriana Colon-Espitia

**DOB:** [redacted] **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 Tracy Smith P# 5267 LVMPD Bolden Area Command Patrol Investigations on 01.20.16 at 0845 hours.

Q: Operator this is Detective T. Smith, P# 5267, conducting a taped interview under Event # 160112-0494. Today's date is 01-20-2016. I'm currently at Bolden Area Command conducting a taped interview. Last name I'm going to spell -- C-O-L-O-N, E-S as in Sam, P-I-T-I-A. First name Adriana -- A-D-R-I-A-N-A. She has a date of birth of [redacted]. And she is also going to be a victim in, um, in, uh, in this event number. Okay, I'm going to set this - the time now is 8:45. Okay, I'm going to stick this right here. Okay, we talked a little bit before I turned on the

tape recorder. And, um, we - your - your brother -- is this your brother that I spoke with earlier?

A: Yes, that's my brother.

Q: He's your brother, okay. And he was living at your house kinda like in a side garage, is that what you call it?

A: Yes, uh, it's supposed to be a garage.

Q: Okay.

A: So, uh, I live, uh, I - I live right there because no have work. And, uh, I help for get a - find a w- job. And, uh, I give him only food. And I don't give him anything. So I stay in there. Uh, and, uh, I go to work every day - every day.

Q: Okay, now you have, uh, I know you live inside the house with your children.

A: Yeah - yeah.

Q: Now how many children do you have?

A: I have three kids.

Q: Three kids. Okay, what are their ages?

A: Uh, the big one is 16.

Q: Okay.

A: The other is, uh, 13.

Q: 13.

A: Almost, uh, 12, uh, 14. And, uh, the smallest is 10.

Q: He's 10, okay. And that's the boy outside that I met?

A: Yes.

Q: Okay, and tell me about what happened on the early morning hours of January 12th. I know that it was like 4:30-5:00 in the morning.

A: Uh, yeah, four o'clock - four - four something.

Q: Okay.

A: Uh, um, my - I wake up because my brother told me, "Adriana - Adriana." And I wake up. And, uh, I - because I hear the guys and say, "Come on wake up, go outside." And say, "No - no I don't got anything. I don't got anything." My brother said that. And...

Q: So you - wait okay. I'm - I'm gonna stop you. I just want to make sure, 'cause I know you have a very thick accent. But I can understand you. But just so that I understand what you're saying, I may have to repeat it okay.

A: Yeah.

Q: So when you say he was yelling...

A: Yes.

Q: ...was he saying or yelling, "Adriana - Adriana?"

A: Um - um, it's yelling. Uh, um, (unintelligible). Um, "Adriana - Adriana." And I - I wake up and, uh, I see for the window.

Q: You saw through the window?

A: Yeah.

Q: What did you see through the window?

A: Uh, I see the two guys in the - in the door.

Q: When you say in the door, do you mean inside Javier's room?

A: In - inside. In - yes. Inside in the Javier's room.

Q: Okay, so you heard him yelling. You got up, you looked into his room.

A: Yes.

Q: And you saw two guys.

A: Yes.

Q: Okay, th- go on.

A: And one have a covered the - the face.

Q: He - he - he had a cover over his face?

A: Yes.

Q: Like a mask?

A: Yes, one. And on the other, no have a - a - a mask.

Q: Okay, he did not - the other one did not have a mask?

A: Yes.

Q: Okay.

A: And - and the two guys have a gun. And, uh, because he heard me, "Don't see my face. Don't -" the - the guys, "Don't look at my face." But, uh, is hear - hear me, and say, "You shut - shut up because I broke you." Uh, in Spanish, uh, say, ((Spanish Spoken 0:04:00)).

Q: What does that mean?

A: It mean to, uh, "You shut up because I broke you too." And put it in the window and the two windows.

Q: Okay, so I - I just want to slow down a minute 'cause you said something in Spanish okay.

A: Yes.

Q: But then you held your hand up kind of like looking like a gun.

A: Yeah.

Q: So somebody pointed their gun at you?

A: Yes.

Q: Okay, which one, the small one or the big one?

A: Uh, the two - the two.

Q: Both of them did?

A: Yes.

Q: Both of them pointed their gun at you?

A: Yes.

((Crosstalk))

Q: Through the window?

A: And I scared, and my kids are scared too.

Q: Did they see the pers- the two people with the gun?

A: Uh, yes. I see the, uh, two people with the gun have two guns.

Q: Did - did your children see the men with the gun?

A: I'm not sure.

Q: Okay. Okay, that - that's - but you saw them with the guns?

A: Yes.

Q: Okay.

A: Yes.

Q: Did they know that you were there?

A: Yes, and so I understand - I stay in the - in the living room because my daughter say, "Don't go outside. Don't go outside." I know - I know, I don't go outside. Say my - my daughter - "I call the police." Okay, so I stay in the living room. Only hear the, hear them and hit my brother. And my brother said, "Stop. Stop." So I don't - I don't know what hap...

Q: It's okay, take your time sweetie. Take your time.

A: So when the police is coming and go outside.

Q: So when the police came did you go outside then?

A: Yeah - yeah.

Q: Okay.

A: And the police is coming so fast. And the guys (unintelligible) anymore. Maybe when hear the police and go around.

Q: Did you see them run away?

A: No.

Q: Okay, but the - but you didn't hear anymore - your - your brother yelling...

A: Yeah.

Q: "Stop - stop?"

A: Yeah.

Q: Okay, did you hear your brother say anything else?

A: No, only said, uh, "Don't - I don't push the tire for." Because the guy say - supposed to be, uh, my brother, uh, punched the tires somebody else in - in the family.

Q: Okay, I'm gonna stop you right there. I just want to make sure I understand. You heard one of the guys yelling at your brother that your brother...

A: Yes.

Q: ...punctured somebody's tires in their family.

A: Yes - yes.

Q: Okay, and your brother was saying, "I didn't do it. I didn't puncture nobody's tires."

A: Yes - yes.

Q: Got it, okay. Okay, so you didn't see that, you heard it?

A: Uh, I hear only.

Q: You heard that only?

A: Yes.

Q: Okay, but you did - did you see them, uh, you saw them with the guns.

A: Yes I saw.

Q: With your own eyes.

A: Yes.

Q: Okay, and that was when - were they doing anything with those guns? What were they doing? Were they pointing, were they hitting?

A: Uh, only pointing in the window and I know with the hitting my brother with the - the gun. Because I said - when I saw...

Q: I'm sorry, you saw them hitting your brother with the gun?

A: Uh, no. I don't hear, uh...

Q: You didn't know that they were hitting him with the gun.

A: No - no, uh-huh.

Q: Okay.

((Crosstalk))

Q: But you saw them pointing the gun at you?

A: Yes - yes.

Q: Okay, both of them?

A: One - yes, and one - my brother and say, "Shut up." And you say shut up. Told you my brother, "You shut up." Uh...

Q: He was telling you to shut up.

A: Yes.

Q: Okay.

((Crosstalk))

A: And also...

Q: As he was pointing the...

A: Yes, and said my, uh, that - the guy, “Don’t do anything. Don’t - don’t yell, don’t anything. Because I broke you. And I broke you.” And point -- the two guys with the gun. So this - I got scared because it’s point the two windows. So - so my - my daughters is in the other room. And me in the other room. So...

Q: They were pointing at the window.

A: Yes - yes.

Q: Even though they couldn’t see somebody.

A: Uh-huh, yes.

Q: Okay, but you could see them?

A: Yeah I see you, there are two guys.

Q: Did they see you?

A: Yes, uh, no. Uh, the guys don’t see me. Me and...

Q: But they knew you were there?

A: Yes - yes. I was in there.

Q: Okay.

A: And, uh, and, uh, the door - in the door - in the guy’s don’t move and only point with the gun.

Q: They only pointed at you with the gun.

A: Yes - yes.

Q: Okay, but they said something like, “Shut up. Shut up.”

A: Yeah, only shut up. And, “Because I, uh, broke you.”

Q: What - what does that mean, “Because I broke you?”

A: I don’t know, maybe kill me. I don’t know.

Q: Oh okay. So you - they said - did they say something - could you say it in Spanish?

A: Uh, in Spanish say the ((Spanish Spoken 0:08:54)).

Q: That’s what they said to you?

A: Yes.

Q: Okay, I’ll have that transcribed. Okay, I don’t know what that means.

A: Uh-huh.

Q: But I think it’s easier for you to - because you’re re-living it...

A: Yeah.

Q: ...I can tell you’re very scared here.

A: Yeah.

Q: And I know it’s probably easier for you to just say it in Spanish...

A: Uh-huh.

Q: ...what he said to you when he pointed the gun.

A: Yeah.

Q: Okay. Okay, um, but your children -- the 16, the 13, and the 10-year-old -- they did not see them?

A: No.

Q: But they knew something was going on in your brother's room?

A: Yes.

Q: Okay, um, now let me ask you this. You said one had a mask.

A: Uh-huh.

Q: And the other one didn't.

A: No.

Q: Okay, so you saw his face?

A: Yes.

Q: Okay, let me ask you this. If there were six Hispanic men...

A: Uh-huh.

Q: ...standing right here.

A: Yeah.

Q: And one of them was our suspect that didn't have the mask. Would you be able to pick him out?

A: Okay.

Q: No, I'm just - would you be able to? If - is his face - were you able to see his face well enough in the dark to be able to identify him again if you saw him?

A: Yeah, I think, uh, I, uh, remember.

Q: You think you would remember...

A: Yes.

Q: ...his face?

A: Yes.

Q: Okay.

A: And when, uh, especially with talk and, uh, I remember the voice.

Q: Okay, say you di- say - because if I had all - I - if I had five or six guys standing right up here. And one of them was the guy with the no mask.

A: Uh-huh.

Q: That pointed the gun at you.

A: Yeah.

Q: You wouldn't be able to hear his voice.

A: Uh-huh.

Q: Would you be able to go, "That's not him. That's not him. Yep that's him?"

A: Yeah.

Q: 100% you'd be able to identify what he looks like?

A: Yeah - yes. Yeah, 100%.

Q: Okay.

A: I...

Q: Okay, that's what I want to make sure 'cause you'll be able to do that maybe in court.

A: Okay.

Q: Okay?

A: Okay, but I no want to, uh, the guys seeing me. I - I don't - I'm just - I'm just scared 'cause...

Q: I know you're afraid. I know you're afraid. And, um, is there anything else that you can think of? Did you ever see him with - you saw them with the gun.

A: Yeah.

Q: Did you ever see anything else in their hands?

A: No.

Q: No other weapons?

A: No. I don't see anything. Only the - the gun and the hands, and point.

Q: Pointing, okay. So did you - after you saw that, did you like take cover somewhere and leave so you wouldn't see the gun anymore?

A: No, I don't know. I don't see any more because I don't go over there. So I don't see anymore.

Q: So - so you saw them with the gun.

A: Yeah.

Q: Okay, and they were pointing the gun at you.

A: Yeah - yeah.

Q: Through the window.

A: Yeah.

Q: But they could not see you?

A: Yes, not see me. Because it's hard with the blinds.

Q: How were you able to see them then?

A: Uh, pardon me?

Q: How were you - if the blinds were down how were you able to see them?

A: Because it's, uh, it's a - it not open, but I see with the - the blinds, it's a - it - it's closed, but I see because I stayed, uh, I stepped in the - my bed, uh, on my bed so...

Q: You stepped on you bed?

A: Yeah, and so I see like the - you see?

Q: So you were able to see down in the room?

A: Yes - yes.

Q: But they weren't able to see you?

A: Yeah, and, uh, I come in the other room - the other room is more big - the - the window. And I - I open, like the - the win- the blind and...

Q: You put the blind down?

A: Yeah, but is...

Q: So they probably saw something was going on with the windows.

A: Yes - yes - yes, with the windows.

Q: And saw that somebody was there.

A: So that's - that's why I point and two windows and, "Shut up." And, "You better stop or I - I broke you." Say, and...

Q: Okay. Okay - so, um, did you have lights on when you were fiddling with the -

with the blinds?

A: Yeah.

Q: Or did you leave the lights off?

A: Uh, I leave light out.

((Crosstalk))

Q: You left the lights out?

A: Yeah, but I leave the corner closed because have, uh, blinds in the cor- corner cor- cortina.

Q: Okay.

A: The - they were closed. You see the - the...

Q: You had the closed?

A: Yes.

Q: Okay, but you - when you stepped on the bed you were able to look down into the room.

A: Yeah, and, uh, I see, yeah.

Q: But it was dark in there, that's why I'm confused...

A: It's dark...

Q: ...how you were able to see their face.

A: Yeah, because the light -- the office -- I see with the - with the door.

Q: So there was a light on?

A: So I see...

Q: Hold on, I don't want to - we can't talk over each other. So there was some kind of light...

A: Yes.

Q: ...on in another room.

A: Yeah, and, um, the guys have the phone - the light because I - I see the light...

Q: Okay

A: ...with the phone.

Q: Who had the phone?

A: I don't - the no mask.

Q: The guy with no mask?

A: Yeah.

Q: Had a phone?

A: Yes, because put the, uh, see, uh, my brother because - and no have light over there. And put like the, uh...

Q: Oh see it - okay so hold on. The guy with no mask...

A: Mm-hm.

Q: ...had a cell phone in one hand.

A: Yeah.

Q: And a gun in the other.

A: Yeah.

Q: And he was using his call phone light to see into the room?

A: Yes - yeah.

Q: Got it, okay. That's where I wanted to make sure that we got. Okay, I get that. So that's how...

A: I say my brother, uh, "Junior I don't do that. I don't do that. I - I don't punch the tires."

Q: Okay, that's what...

A: So I...

Q: Hold on. That's what your bother was saying to the guy with no mask?

A: Yes.

Q: Okay, and - but that's how you were able to see his face is because he had the cell phone light...

A: Yes - yes.

Q: ...and - in one hand and a gun in the other.

A: Yes.

Q: Okay, can you recall - I want you to kinda close your eyes and try and think. What hand did the suspect with no mask - what hand did he have the gun in?

A: In the right the gun.

Q: In the right hand?

A: Yes, and the cell phone is, uh, in the left.

Q: In the left, got it.

A: Yeah.

Q: Okay - okay. And the other guy with the mask.

A: Mm-hm.

Q: What hand did he have the gun in?

A: In the, uh, right too.

Q: He also had the...

A: Yes.

Q: ...gun in the right hand. Did he have anything else in the left?

A: No I don't see anything in the other hand.

Q: Okay. Okay, um, is there anything that I'm not asking you? Is there anything that you can add that maybe I'm forgetting to ask you?

A: No, anything...

Q: What did you think? Wh- were, uh - uh, were you afraid that night?

A: No.

Q: You...

A: Be - because I closed my gate and put the, um - um, with key. So it's coming up and, uh, I don't hear anything with - that's coming inside.

Q: No, I'm asking you when - when this was happening to your brother. And these two men had guns, and they pointed them at you. Were you afraid?

A: No, I only see two.

Q: No I know, were you scared?

A: Yeah I went out - when I see the gun, I get scared because I don't know what

happened. I called you -- the police -- or no call the police, because I no really sure. And, uh, get it shooting.

Q: ‘Cause you thought he was gonna shoot?

A: Yes. So I - I come in because I have a lot of bag. Because supposed to be - have the - the big room for the storage.

Q: Okay.

A: So I have a lot of bags. So don’t come - come so quickly, jump it in the - in the window.

Q: Okay.

A: So I don’t know, it in my daughter, “Mom, what I did, I called the police.” “Okay, go ahead.” And I don’t know. I just stay on the floor - everybody stay on the floor and don’t move - don’t move. Because so...

Q: ‘Cause - because you thought they might shoot.

A: Yes.

Q: Okay, that’s what I was trying to - you did get down on the floor.

A: Yes.

Q: ‘Cause you thought they were gonna hurt you...

A: Yes.

Q: ...and your children.

A: Yes.

Q: Okay, operator this is gonna be the end of the interview. Same people present.

**THIS VOLUNTARY STATEMENT WAS COMPLETED AT ON THE DAY OF , AT HOURS.**

EXHIBIT E

# Visit History Inmate

1/12/2016 to 9/28/2017

## Contact (Post May 2010)

| LAST NAME | FIRST NAME | OFFENDER ID | BOOKING BEGIN DATE | START TIME | VISITOR LAST NAME | VISITOR FIRST NAME | VISITOR MIDDLE NAME | VISITOR BIRTH DATE | VISIT TYPE | REL |
|---|---|---|---|---|---|---|---|---|---|---|
| MONAY-PINA | JOSE | 0007028317 | 01/12/2016 | 2/4/2017 14:30 | BOLEY | THOMAS | DAVID | 07/22/1983 | LEG | ATT |
| MONAY-PINA | JOSE | 0007028317 | 01/12/2016 | 3/2/2016 15:30 | CLAUS | THOMAS | A | 10/10/1977 | LEG | ATT |
| MONAY-PINA | JOSE | 0007028317 | 01/12/2016 | 2/16/2016 14:30 | HART | MARTIN | | 08/27/1963 | LEG | ATT |

## Video

| LAST NAME | FIRST NAME | OFFENDER ID | BOOKING BEGIN DATE | START TIME | STATUS | VISITOR LAST NAME | VISITOR FIRST NAME | VISITOR MIDDLE NAME | VISITOR BIRTH DATE | RELATION |
|---|---|---|---|---|---|---|---|---|---|---|
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 9/19/2017 18:00 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 9/19/2017 18:00 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 9/19/2017 18:00 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 9/19/2017 18:00 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 9/9/2017 19:00 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 9/9/2017 19:00 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 9/9/2017 19:00 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 9/9/2017 19:00 | COMPLETED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 9/9/2017 19:00 | COMPLETED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 9/9/2017 19:00 | COMPLETED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 9/9/2017 19:00 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 9/9/2017 19:00 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 9/9/2017 19:00 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Child: |





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| LAST NAME | FIRST NAME | OFFENDER ID | BOOKING BEGIN DATE | START TIME | STATUS | VISITOR LAST NAME | VISITOR FIRST NAME | VISITOR MIDDLE NAME | VISITOR BIRTH DATE | RELATION |
|---|---|---|---|---|---|---|---|---|---|---|
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/20/2017 7:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/20/2017 7:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/20/2017 7:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/20/2017 7:30 | COMPLETED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/20/2017 7:30 | COMPLETED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/20/2017 7:30 | COMPLETED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/20/2017 7:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/20/2017 7:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/20/2017 7:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/15/2017 8:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/15/2017 8:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Uncle: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/15/2017 8:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/15/2017 8:30 | COMPLETED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/15/2017 8:30 | COMPLETED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Uncle: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/15/2017 8:30 | COMPLETED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/15/2017 8:30 | COMPLETED | MONAY | VANESSA | | 01/18/2014 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/15/2017 8:30 | COMPLETED | MONAY | VANESSA | | 01/18/2014 | :Uncle: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/15/2017 8:30 | COMPLETED | MONAY | VANESSA | | 01/18/2014 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/12/2017 13:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/12/2017 13:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/12/2017 13:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |



AA000870

| LAST NAME | FIRST NAME | OFFENDER ID | BOOKING BEGIN DATE | START TIME | STATUS | VISITOR LAST NAME | VISITOR FIRST NAME | VISITOR MIDDLE NAME | VISITOR BIRTH DATE | RELATION |
|---|---|---|---|---|---|---|---|---|---|---|
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/12/2017 13:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/12/2017 13:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/12/2017 13:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/12/2017 13:30 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/12/2017 13:30 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/12/2017 13:30 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/8/2017 18:00 | CANCELLED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/8/2017 18:00 | CANCELLED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/8/2017 18:00 | CANCELLED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/8/2017 18:00 | CANCELLED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/8/2017 18:00 | CANCELLED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/8/2017 18:00 | CANCELLED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/8/2017 18:00 | CANCELLED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/8/2017 18:00 | CANCELLED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/8/2017 18:00 | CANCELLED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 7/22/2017 18:00 | CANCELLED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 7/22/2017 18:00 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 7/22/2017 18:00 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 7/22/2017 18:00 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 7/22/2017 18:00 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 7/22/2017 18:00 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 7/22/2017 18:00 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 7/22/2017 18:00 | COMPLETED | CURIEL | ALONSO | FERMIN | 11/02/1977 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 7/22/2017 18:00 | COMPLETED | CURIEL | ALONSO | FERMIN | 11/02/1977 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 7/22/2017 18:00 | COMPLETED | CURIEL | ALONSO | FERMIN | 11/02/1977 | :Nephew: |

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| LAST NAME | FIRST NAME | OFFENDER ID | BOOKING BEGIN DATE | START TIME | STATUS | VISITOR LAST NAME | VISITOR FIRST NAME | VISITOR MIDDLE NAME | VISITOR BIRTH DATE | RELATION |
|---|---|---|---|---|---|---|---|---|---|---|
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 7/7/2017 19:00 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 7/7/2017 19:00 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 7/7/2017 19:00 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 7/7/2017 19:00 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 6/22/2017 20:00 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 6/22/2017 20:00 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 6/22/2017 20:00 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 6/22/2017 20:00 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 6/11/2017 21:00 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 6/11/2017 21:00 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 6/11/2017 21:00 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 6/11/2017 21:00 | COMPLETED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 6/11/2017 21:00 | COMPLETED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 6/11/2017 21:00 | COMPLETED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 6/11/2017 21:00 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 6/11/2017 21:00 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 6/11/2017 21:00 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/25/2017 20:00 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/25/2017 20:00 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/25/2017 20:00 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/25/2017 20:00 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/25/2017 20:00 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |

AA000872

| LAST NAME | FIRST NAME | OFFENDER ID | BOOKING BEGIN DATE | START TIME | STATUS | VISITOR LAST NAME | VISITOR FIRST NAME | VISITOR MIDDLE NAME | VISITOR BIRTH DATE | RELATION |
|---|---|---|---|---|---|---|---|---|---|---|
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/25/2017 20:00 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/25/2017 20:00 | COMPLETED | CURIEL | ALONSO | FERMIN | 11/02/1977 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/25/2017 20:00 | COMPLETED | CURIEL | ALONSO | FERMIN | 11/02/1977 | :Nephew: |
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| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/11/2017 20:00 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
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| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/11/2017 20:00 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/11/2017 20:00 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/11/2017 20:00 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/11/2017 20:00 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/11/2017 20:00 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/11/2017 20:00 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/3/2017 19:00 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/3/2017 19:00 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/3/2017 19:00 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/3/2017 19:00 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/3/2017 19:00 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/3/2017 19:00 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/3/2017 19:00 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/3/2017 19:00 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/3/2017 19:00 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/2/2017 12:43 | COMPLETED | CARPENTER | MAYRA | | 12/06/1961 | :Professional: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 4/15/2017 7:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 4/15/2017 7:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |





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| LAST NAME | FIRST NAME | OFFENDER ID | BOOKING BEGIN DATE | START TIME | STATUS | VISITOR LAST NAME | VISITOR FIRST NAME | VISITOR MIDDLE NAME | VISITOR BIRTH DATE | RELATION |
|---|---|---|---|---|---|---|---|---|---|---|
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 4/15/2017 7:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 4/15/2017 7:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 4/15/2017 7:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 4/15/2017 7:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 4/15/2017 7:30 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 4/15/2017 7:30 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 4/15/2017 7:30 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 4/4/2017 18:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 4/4/2017 18:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 4/4/2017 18:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 4/4/2017 18:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 4/4/2017 18:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 4/4/2017 18:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 4/4/2017 18:30 | COMPLETED | CURIEL | ALONSO | FERMIN | 11/02/1977 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 4/4/2017 18:30 | COMPLETED | CURIEL | ALONSO | FERMIN | 11/02/1977 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 4/4/2017 18:30 | COMPLETED | CURIEL | ALONSO | FERMIN | 11/02/1977 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/26/2017 13:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/26/2017 13:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/26/2017 13:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/26/2017 13:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/26/2017 13:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/26/2017 13:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/26/2017 13:30 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/26/2017 13:30 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/26/2017 13:30 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |

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| LAST NAME | FIRST NAME | OFFENDER ID | BOOKING BEGIN DATE | START TIME | STATUS | VISITOR LAST NAME | VISITOR FIRST NAME | VISITOR MIDDLE NAME | VISITOR BIRTH DATE | RELATION |
|---|---|---|---|---|---|---|---|---|---|---|
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/26/2017 7:30 | CANCELLED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/26/2017 7:30 | CANCELLED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/26/2017 7:30 | CANCELLED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/26/2017 7:30 | CANCELLED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/26/2017 7:30 | CANCELLED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/26/2017 7:30 | CANCELLED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/26/2017 7:30 | CANCELLED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/26/2017 7:30 | CANCELLED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/26/2017 7:30 | CANCELLED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/19/2017 6:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/19/2017 6:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/19/2017 6:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/19/2017 6:30 | COMPLETED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/19/2017 6:30 | COMPLETED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/19/2017 6:30 | COMPLETED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/19/2017 6:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/19/2017 6:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/19/2017 6:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/17/2017 18:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/17/2017 18:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/17/2017 18:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/17/2017 18:30 | COMPLETED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Nephew: |



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| LAST NAME | FIRST NAME | OFFENDER ID | BOOKING BEGIN DATE | START TIME | STATUS | VISITOR LAST NAME | VISITOR FIRST NAME | VISITOR MIDDLE NAME | VISITOR BIRTH DATE | RELATION |
|---|---|---|---|---|---|---|---|---|---|---|
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/17/2017 18:30 | COMPLETED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/17/2017 18:30 | COMPLETED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/17/2017 18:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/17/2017 18:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/17/2017 18:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/14/2017 18:30 | CANCELLED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/14/2017 18:30 | CANCELLED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/14/2017 18:30 | CANCELLED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/14/2017 18:30 | CANCELLED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/14/2017 18:30 | CANCELLED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/14/2017 18:30 | CANCELLED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/14/2017 18:30 | CANCELLED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/14/2017 18:30 | CANCELLED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/14/2017 18:30 | CANCELLED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/8/2017 19:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/8/2017 19:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/8/2017 19:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/8/2017 19:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/8/2017 19:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/8/2017 19:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/8/2017 19:30 | COMPLETED | CURIEL | ALONSO | FERMIN | 11/02/1977 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/8/2017 19:30 | COMPLETED | CURIEL | ALONSO | FERMIN | 11/02/1977 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/8/2017 19:30 | COMPLETED | CURIEL | ALONSO | FERMIN | 11/02/1977 | :Nephew: |



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| LAST NAME | FIRST NAME | OFFENDER ID | BOOKING BEGIN DATE | START TIME | STATUS | VISITOR LAST NAME | VISITOR FIRST NAME | VISITOR MIDDLE NAME | VISITOR BIRTH DATE | RELATION |
|---|---|---|---|---|---|---|---|---|---|---|
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/7/2017 18:30 | CANCELLED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/7/2017 18:30 | CANCELLED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/7/2017 18:30 | CANCELLED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/7/2017 18:30 | CANCELLED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/28/2017 18:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/28/2017 18:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/28/2017 18:30 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/28/2017 18:30 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/19/2017 18:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/19/2017 18:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/19/2017 18:30 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/19/2017 18:30 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/14/2017 18:30 | CANCELLED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/14/2017 18:30 | CANCELLED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/14/2017 18:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/14/2017 18:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/14/2017 18:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/14/2017 18:30 | CANCELLED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/14/2017 18:30 | CANCELLED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/14/2017 18:30 | CANCELLED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/14/2017 18:30 | CANCELLED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Child: |

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| LAST NAME | FIRST NAME | OFFENDER ID | BOOKING BEGIN DATE | START TIME | STATUS | VISITOR LAST NAME | VISITOR FIRST NAME | VISITOR MIDDLE NAME | VISITOR BIRTH DATE | RELATION |
|---|---|---|---|---|---|---|---|---|---|---|
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/14/2017 18:30 | CANCELLED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/14/2017 18:30 | CANCELLED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/14/2017 18:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/14/2017 18:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/14/2017 18:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/14/2017 18:30 | CANCELLED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/14/2017 18:30 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/14/2017 18:30 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/14/2017 18:30 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/8/2017 18:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/8/2017 18:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/8/2017 18:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/8/2017 18:30 | COMPLETED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/8/2017 18:30 | COMPLETED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/8/2017 18:30 | COMPLETED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/8/2017 18:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/8/2017 18:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/8/2017 18:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/29/2017 14:30 | CANCELLED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/29/2017 14:30 | CANCELLED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/29/2017 14:30 | CANCELLED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/29/2017 14:30 | CANCELLED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/29/2017 14:30 | CANCELLED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/29/2017 14:30 | CANCELLED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |

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| LAST NAME | FIRST NAME | OFFENDER ID | BOOKING BEGIN DATE | START TIME | STATUS | VISITOR LAST NAME | VISITOR FIRST NAME | VISITOR MIDDLE NAME | VISITOR BIRTH DATE | RELATION |
|---|---|---|---|---|---|---|---|---|---|---|
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/29/2017 14:30 | CANCELLED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/29/2017 14:30 | CANCELLED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/29/2017 14:30 | CANCELLED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/29/2017 8:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/29/2017 8:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/29/2017 8:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/29/2017 8:30 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/29/2017 8:30 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/29/2017 8:30 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/29/2017 8:30 | COMPLETED | PINAHERNANDEZ | JOSE | NONE | 01/29/1975 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/29/2017 8:30 | COMPLETED | PINAHERNANDEZ | JOSE | NONE | 01/29/1975 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/29/2017 8:30 | COMPLETED | PINAHERNANDEZ | JOSE | NONE | 01/29/1975 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/22/2017 18:30 | CANCELLED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/22/2017 18:30 | CANCELLED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/22/2017 18:30 | CANCELLED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/22/2017 18:30 | CANCELLED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/22/2017 18:30 | CANCELLED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/22/2017 18:30 | CANCELLED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/22/2017 18:30 | CANCELLED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/22/2017 18:30 | CANCELLED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/22/2017 18:30 | CANCELLED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/22/2017 8:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/22/2017 8:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |

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| LAST NAME | FIRST NAME | OFFENDER ID | BOOKING BEGIN DATE | START TIME | STATUS | VISITOR LAST NAME | VISITOR FIRST NAME | VISITOR MIDDLE NAME | VISITOR BIRTH DATE | RELATION |
|---|---|---|---|---|---|---|---|---|---|---|
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/22/2017 8:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/22/2017 8:30 | COMPLETED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/22/2017 8:30 | COMPLETED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/22/2017 8:30 | COMPLETED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/22/2017 8:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/22/2017 8:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/22/2017 8:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/15/2017 14:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/15/2017 14:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/15/2017 14:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/15/2017 14:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/15/2017 14:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/15/2017 14:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/15/2017 14:30 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/15/2017 14:30 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/15/2017 14:30 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/8/2017 14:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/8/2017 14:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/8/2017 14:30 | COMPLETED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/8/2017 14:30 | COMPLETED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/1/2017 7:30 | COMPLETED | MCNAIR | MARIAMA | KATHERINE | 12/01/1994 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 12/25/2016 8:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |



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| LAST NAME | FIRST NAME | OFFENDER ID | BOOKING BEGIN DATE | START TIME | STATUS | VISITOR LAST NAME | VISITOR FIRST NAME | VISITOR MIDDLE NAME | VISITOR BIRTH DATE | RELATION |
|---|---|---|---|---|---|---|---|---|---|---|
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 12/25/2016 8:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 12/25/2016 8:30 | COMPLETED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 12/25/2016 8:30 | COMPLETED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 12/18/2016 9:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 12/18/2016 9:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 12/18/2016 9:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 12/18/2016 9:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 12/18/2016 9:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 12/18/2016 9:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 12/18/2016 9:30 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 12/18/2016 9:30 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 12/18/2016 9:30 | COMPLETED | JEWELL | JAMES | COLLINS | 02/07/1967 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 12/11/2016 19:30 | COMPLETED | MCNAIR | MARIAMA | KATHERINE | 12/01/1994 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 12/6/2016 18:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 11/29/2016 18:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 11/29/2016 18:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 11/29/2016 18:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 11/29/2016 18:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 11/21/2016 19:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 11/14/2016 19:30 | COMPLETED | CURIEL | OBDULIA | NONE | 09/04/1973 | :Nephew: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 11/9/2016 18:30 | COMPLETED | PINA-HERNANDEZ | EFRAIN | | 11/25/1980 | :Nephew: |

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| LAST NAME | FIRST NAME | OFFENDER ID | BOOKING BEGIN DATE | START TIME | STATUS | VISITOR LAST NAME | VISITOR FIRST NAME | VISITOR MIDDLE NAME | VISITOR BIRTH DATE | RELATION |
|---|---|---|---|---|---|---|---|---|---|---|
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 9/4/2016 8:30 | COMPLETED | PINAHERNANDEZ | CATALINA | | 04/30/1971 | :Child: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/20/2016 12:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/14/2016 19:30 | CANCELLED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/14/2016 19:30 | CANCELLED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/14/2016 19:30 | CANCELLED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/14/2016 19:30 | CANCELLED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/9/2016 17:30 | CANCELLED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/9/2016 17:30 | CANCELLED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/9/2016 17:30 | CANCELLED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/9/2016 17:30 | CANCELLED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/7/2016 19:30 | CANCELLED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/7/2016 19:30 | CANCELLED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/7/2016 19:30 | CANCELLED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 8/7/2016 19:30 | CANCELLED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 7/31/2016 19:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 7/26/2016 8:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 7/20/2016 8:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 7/15/2016 8:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 7/3/2016 18:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |



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| LAST NAME | FIRST NAME | OFFENDER ID | BOOKING BEGIN DATE | START TIME | STATUS | VISITOR LAST NAME | VISITOR FIRST NAME | VISITOR MIDDLE NAME | VISITOR BIRTH DATE | RELATION |
|---|---|---|---|---|---|---|---|---|---|---|
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 6/20/2016 19:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 6/20/2016 19:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 6/20/2016 19:30 | COMPLETED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 6/20/2016 19:30 | COMPLETED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 6/12/2016 19:30 | CANCELLED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 6/12/2016 19:30 | CANCELLED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 6/12/2016 19:30 | CANCELLED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 6/12/2016 19:30 | CANCELLED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 6/6/2016 8:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 6/6/2016 8:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 6/6/2016 8:30 | COMPLETED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 6/6/2016 8:30 | COMPLETED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/23/2016 8:30 | CANCELLED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/22/2016 11:30 | CANCELLED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/15/2016 19:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/15/2016 19:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/15/2016 19:30 | COMPLETED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/15/2016 19:30 | COMPLETED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/8/2016 19:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |



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| LAST NAME | FIRST NAME | OFFENDER ID | BOOKING BEGIN DATE | START TIME | STATUS | VISITOR LAST NAME | VISITOR FIRST NAME | VISITOR MIDDLE NAME | VISITOR BIRTH DATE | RELATION |
|---|---|---|---|---|---|---|---|---|---|---|
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/8/2016 19:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/8/2016 19:30 | COMPLETED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/8/2016 19:30 | COMPLETED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/1/2016 18:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/1/2016 18:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/1/2016 18:30 | COMPLETED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 5/1/2016 18:30 | COMPLETED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 4/17/2016 19:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 4/17/2016 19:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 4/17/2016 19:30 | COMPLETED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 4/17/2016 19:30 | COMPLETED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 4/15/2016 13:54 | COMPLETED | HART | MARTIN | | 08/27/1963 | :Attorney: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 4/10/2016 19:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 4/5/2016 8:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/28/2016 8:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/27/2016 12:30 | CANCELLED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/27/2016 12:30 | CANCELLED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/27/2016 12:30 | CANCELLED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/27/2016 12:30 | CANCELLED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/20/2016 19:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |



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| LAST NAME | FIRST NAME | OFFENDER ID | BOOKING BEGIN DATE | START TIME | STATUS | VISITOR LAST NAME | VISITOR FIRST NAME | VISITOR MIDDLE NAME | VISITOR BIRTH DATE | RELATION |
|---|---|---|---|---|---|---|---|---|---|---|
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/20/2016 19:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/20/2016 19:30 | COMPLETED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/20/2016 19:30 | COMPLETED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/13/2016 18:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/13/2016 18:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/13/2016 18:30 | COMPLETED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/13/2016 18:30 | COMPLETED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/6/2016 20:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/6/2016 20:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/6/2016 20:30 | COMPLETED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/6/2016 20:30 | COMPLETED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/1/2016 9:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/1/2016 9:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/1/2016 9:30 | COMPLETED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 3/1/2016 9:30 | COMPLETED | PEREZ-DELUNA | MARIA | E | 05/22/1950 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/21/2016 13:30 | CANCELLED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/14/2016 13:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/11/2016 9:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 2/7/2016 13:30 | CANCELLED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |

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| LAST NAME | FIRST NAME | OFFENDER ID | BOOKING BEGIN DATE | START TIME | STATUS | VISITOR LAST NAME | VISITOR FIRST NAME | VISITOR MIDDLE NAME | VISITOR BIRTH DATE | RELATION |
|---|---|---|---|---|---|---|---|---|---|---|
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/31/2016 12:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/31/2016 12:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/31/2016 12:30 | COMPLETED | ROSAS | CASSANDRA | GUADALUPE | 06/19/1995 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/31/2016 12:30 | COMPLETED | ROSAS | CASSANDRA | GUADALUPE | 06/19/1995 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/24/2016 19:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/23/2016 9:30 | CANCELLED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |
| MONAY-PINA | JOSE | 0007028317 | 1/12/2016 | 1/23/2016 9:30 | COMPLETED | VENEGAS-PEREZ | ANGELICA | | 11/10/1988 | :Friend: |

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EXHIBIT F

**Report of Interview**

On March 25, 2021, the undersigned investigator telephonically interviewed Angelica Venegas, at cellular telephone number 702-936-2118, who resided at 517 North 28th Street, Las Vegas, Nevada 89101; regarding the investigation related to Jose Fernando Monay-Pina; appellate case number A-20-810899-W. After being advised of the identity of the investigator and the nature of the interview, Venegas voluntarily provided the following information:

Venegas was the sister of co-defendant Casimiro Venegas. She dated client for about six months prior to the 2016 incident. They lived together for part of that time, but she believed client was living with his aunt at the time of the incident. Venegas met client through Casimiro. After client was incarcerated, Venegas would visit him at CCDC. However, he ultimately told Venegas not to wait for him and to move on with her life once he learned how much prison time he was facing.

Venegas stated that her sister referred them to attorney Boley's office. She believed her sister had used Boley for a personal injury case. She gave client's mother Boley's contact information. Venegas stated that her family did not have money to hire Boley to represent Casimiro, but they wanted to hire Boley. She believed that Casimiro had two different public defenders on his case. Venegas was not aware that it was a conflict of interest for the same attorney to represent two defendants on the same criminal case. Venegas stated that she had not previously been contacted by an investigator, and the attorney would not give Venegas information about client's case.

Venegas never dated victim Javier Colon. She met Colon through a friend, Cynthia Carrillo. Carrillo had come up for a visit from San Diego, California, in 2015 and met Colon out at a casino. Carrillo introduced Venegas to Colon. Carrillo and Colon developed a dating relationship and Carrillo would bring Colon to group activities that included Venegas, Casimiro and client.

Venegas, Casimiro, client, and Colon, all traveled together to San Diego during 2015 to see Carrillo. During the trip, Colon borrowed $100 from Casimiro. Sometime after the trip, Colon got into an argument with Casimiro because Colon had not paid back the money to Casimiro. Venegas stated that client had been there during the argument in late 2015. Venegas was no longer in contact with Carrillo and could not provide contact information for her.

Near the end of November 2015, or early December, Colon showed up at Venegas' apartment close to 10:30 p.m. Colon began kicking the front door of her apartment. Venegas was home with her mother. Neither of them opened the

door and eventually Colon left. When Venegas left for work, less than fifteen minutes later, she discovered that two of her car tires had been slashed. She then had to call in late for work.

About two weeks later, Venegas went out to her car to discover that two more of her car tires had been slashed. Venegas could not remember the address of the apartment. She stated that it was near Washington and Jones. In a subsequent text message exchange with the investigator, Venegas was able to identify a Google Earth photograph of the apartment complex. She returned that photo to the investigator after circling the apartment complex (copy attached). The complex she identified was located at 908 North Jones Boulevard, Las Vegas, Nevada 89108. However, Venegas could not remember the apartment number.

Venegas advised that Colon began to harass her because of the argument with Casimiro. She reported the tire slashing incidents to the police, but was told that there was nothing the police could do. Venegas stated that Colon would make comments that he would “fuck her up,” but she never felt seriously threatened by Colon.

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Steven D. Grierson
CLERK OF THE COURT

**RSPN**
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #13730
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Respondent

DISTRICT COURT
CLARK COUNTY, NEVADA

| | |
|---|---|
| JOSE FERNANDO MONAY-PINA, #7028317<br><br>Petitioner,<br><br>-vs-<br><br>THE STATE OF NEVADA,<br><br>Respondent. | CASE NO: A-20-810899-W<br>C-16-313118-2<br><br>DEPT NO: VII |

**STATE'S RESPONSE TO PETITIONER'S SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**

DATE OF HEARING: JUNE 24, 2021
TIME OF HEARING: 10:30AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through KAREN MISHLER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Petitioner's Supplemental Petition for Writ of Habeas Corpus (Post-Conviction).

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

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## POINTS AND AUTHORITIES

## STATEMENT OF THE CASE

On March 4, 2016, the State charged Jose Fernando Monay-Pina (hereinafter "Petitioner") by way of Information with the following: Count 1 – Conspiracy to Commit Robbery (Category B Felony – NRS 200.380, 199.480); Counts 2 and 4 – Burglary While in Possession of a Firearm (Category B Felony – NRS 205.060); Counts 3 and 5 – Robbery With Use of a Deadly Weapon (Category B Felony – NRS 200.380, 193.165); Counts 6, and 8 through 10 – Battery With Use of a Deadly Weapon Resulting in Substantial Bodily Harm (Category B Felony – NRS 200.481); Count 7 – Attempt Murder With Use of a Deadly Weapon (Category B Felony – NRS 200.010, 200.030, 193.330, 193.165); Count 11 – Aiming a Firearm at a Human Being (Gross Misdemeanor – NRS 202.290); Count 12 Coercion With Use of a Deadly Weapon (Category B Felony – NRS 207.190, 193.165); and Count 13 – Battery With Intent to Commit a Crime (Category B Felony – NRS 200.400.2).

On March 13, 2017, trial began. On March 15, 2017, the jury found Petitioner guilty of Count 1 – Conspiracy to Commit Robbery; Counts 2 and 4 – Burglary While in Possession of a Firearm; Counts 3 and 5 – Robbery With Use of a Deadly Weapon; Counts 6 and 8 – Battery With Use of a Deadly Weapon Resulting in Substantial Bodily Harm; Count 7 – Attempt Murder With Use of a Deadly Weapon ; Counts 9 and 10 – Battery With Use of a Deadly Weapon; Count 11 – Aiming a Firearm at a Human Being; Count 12 – Coercion With Use of a Deadly Weapon; and Count 13 – Battery With Intent to Commit a Crime.

On September 7, 2017 Petitioner was sentenced to Count 1 – 24 to 60 months; Count 2 – 24 to 120 months, to run concurrent to Count 1; Count 3 – 24 to 120 months, plus a consecutive 24 to 60 months for the Deadly Weapon Enhancement, to run concurrent to Count 2; Count 3 – 24 to 120 months, plus a consecutive 12 to 60 months for the Deadly Weapon Enhancement, to run concurrent to Counts 1 and 2; Count 4 – 24 to 120 months, to run concurrent to Counts 1 through 3; Count 5 – 24 to 120 months, plus a consecutive 24 to 60 months for the Deadly Weapon Enhancement, to run consecutive to Counts 1 through 3; Count 6 – 24 to 120 months, to run concurrent with Counts 1 through 5; Count 7 – 24 to 120 months,

plus a consecutive 24 to 60 months for the Deadly Weapon Enhancement, to run consecutive to Counts 1 through 3; Count 8 – 24 to 120 months, to run concurrent to Counts 1 through 7; Count 9 - 24 to 90 months, to run concurrent to Counts 1 through 8; Count 10 - 24 to 60 months, to run concurrent to Counts 1 through 9; Count 11 – 364 days, concurrent to Counts 1 through 10; Count 12 – 12 to 60 months, to run consecutive to Counts 1 through 3, 5 and 7; and Count 13 - 24 to 60 months, to run concurrent to Counts 1 through 12. Petitioner's aggregate sentence was 94 to 420 months in the Nevada Department of Corrections, with 604 days credit for time served. The Judgment of Conviction was filed on September 21, 2017.

The Nevada Supreme Court affirmed Petitioner's Judgment of Conviction on March 28, 2019. Remittitur issued on April 23, 2019.

On February 18, 2020, Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction) (hereinafter "Petition"). The State filed its Response on April 14, 2020. On April 28, 2020, this Court denied the Petition in part, and determined the remaining grounds shall be set for an evidentiary hearing. The Decision and Order was filed on April 30, 2020. On May 26, 2020, Ms. Monique A. McNeill, Esq., confirmed as counsel.

On March 29, 2021, Petitioner filed the instant Supplemental Memorandum in Support of Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction) (hereinafter "Supplement").

## STATEMENT OF FACTS

On January 12, 2016, Richard DeCamp ("DeCamp"), was working the graveyard shift alone at a local 7-Eleven convenience store. Recorder's Transcript, Jury Trial: Day 3 ("JT Day 3"), at 15-17. At approximately 3:00 AM, two men, one later identified as Petitioner, entered the store. Id. at 47-49; 142-43; 146. DeCamp described the men as a "tall guy and a [] short guy," wearing masks and carrying guns. Id. at 17. The men pointed their guns at DeCamp and ordered him to empty the cash register. Id. at 20. Seeing a second cash register, the taller man, while continuing to point his gun at DeCamp, demanded that DeCamp empty the second cash register. Id. The men then ordered a frightened DeCamp to lay on the floor while the men fled with the money from both cash registers. Id. at 22. DeCamp laid on the floor for a few minutes,

got up, and called 911. Id. Approximately ten minutes later, officers from the Las Vegas Metropolitan Police Department ("Metro") responded. Id.

Officer Isaiah Simmons ("Officer Simmons") and Metro Sergeant Abraham Aguirre ("Sergeant Aguirre") responded to the robbery call. Id. at 44-45; 61. Officer Simmons testified that DeCamp was visibly shaking and frightened. Id. at 45. Officer Simmons secured the scene, reviewed the store's surveillance video, and documented that $139.00 had been taken from the store. Id. After DeCamp calmed down, he described the suspects to Officer Simmons as, "two Hispanic males . . . brandishing large firearms, dark clothing, gloves, masks . . . [and] [o]ne had a puffy jacket." Id. at 45-46.

Less than a mile away, Javier Colon ("Javier"), a former landscape worker, was sleeping in his sister's garage when he was suddenly awakened when two men opened the garage door and one screamed "Javier, get up, get up." Id. at 103-06. One of the men rushed Javier and began hitting him repeatedly over the head with a firearm. Id. at 108-09. During the attack, Javier noticed Petitioner was pointing his firearm at his family through the garage windows. Id. at 108. Javier pleaded with the men to stop, but they ignored him. Id. at 109. That morning, Javier planned on doing a "side job" so he had sharpened an axe and kept it near his bed. Id. at 110. While Javier was lying on his back in the bed, Petitioner's co-defendant picked up the axe and swung the blade at Javier three times: hitting his leg, ribs, and attempting to hit his head. Id. at 107-111. Luckily, prior to the blade hitting Javier's head, Javier raised his right hand and intercepted the blade which cut his hand open. Id. at 111-12.

Adriana Colon ("Adriana"), Javier's sister, heard Javier screaming that someone was threatening him. Id. at 150. She made her way toward the windows facing the garage and saw two men who told her to "shut up" or they were going to "break [her] too." Id. Adriana observed that the men had firearms and were pointing them at the windows where she was standing. Id. at 150-51. Adriana heard the men hitting Javier "really hard." Id. at 152. She begged them to leave, but they did not. Id. at 151. Eventually, Adriana's daughter called Metro who responded within minutes. Id. at 153.

When the men noticed police lights approaching, they escaped. Id. at 113. When Officer Justin Spurling ("Officer Spurling") arrived, he noticed a man screaming and crying inside a garage port. Id. at 209-10. The man was also bleeding "pretty badly from his face." Id. Officer Spurling focused on finding anyone else who might have been involved. Id. at 211. He surveilled the area and jumped over a wall. Id. at 211-12; 222-23. Once on the other side of the wall, Officer Spurling noticed a man, later identified as Petitioner, standing in the middle of a backyard. Id. After Officer Spurling and Petitioner made eye contact, Petitioner, who was wearing a stocking cap on his head, immediately ducked down. Id. Officer Spurling placed a call on his radio that he potentially located a suspect and continued to give Petitioner commands until he was taken into custody along with the other assailant. Id. at 213. Officer Spurling testified the following items were recovered from the backyard where Petitioner was apprehended: a "wad of cash," Javier's wallet, a "replica firearm," and a knife and sheath. Id. at 224-26.

A bloodied Javier was transported to the hospital where he received multiple stiches and staples on his head and hand. Id. at 115-20. They took his camera, an MP3 player, and two collection knives. Id. at 116.

Meanwhile, at approximately 4:22 AM, while Sergeant Aguirre was putting up crime scene tape at the 7-Eleven he heard a "high priority call" coming through the radio. Id. at 63-64. The call described "two Hispanic males wearing dark clothing had forced their way into [a] home and were pistol whipping [a man]." Id. Sergeant Aguirre responded to that call as it was "right around the corner." Id. On arrival Sergeant Aguirre contacted Officer Ivan Duron ("Officer Duron"), and Officer Spurling. Id. at 67. Sergeant Aguirre immediately noticed Officer Duron was rendering aid to Javier in the garage and observed a large "amount of blood on the bedding, walls, and floor." Id. Sergeant Aguirre also observed an axe by the entryway to the garage. Id. at 68. Sergeant Aguirre then received a radio call from Officer Spurling indicating he apprehended two suspects in a backyard. Id. Sergeant Aguirre left to assist Officer Spurling. Id.

Once Petitioner was arrested, Officer Simmons took Decamp to the arrest scene where a show-up was conducted and Decamp identified Petitioner and the other suspect as the ones who had robbed him at gunpoint at the 7-Eleven. Id. at 47-49.

Adam Felabom ("Felabom"), a Crime Scene Analyst with Metro, arrived on scene and examined the wad of cash totaling $138.00. Recorders Transcript, Jury Trial: Day 3, ("JT Day 3") at 18. Felabom also photographed, collected, and impounded a blue ski mask from the backyard. Id. at 14-15. A DNA swab was taken from the blue ski mask. Id. at 79. After the sample was analyzed, it was determined that the DNA found on the blue ski mask was at least 298 million times more likely to belong to Petitioner and one other individual compared to any other person. Id. at 79-80.

At trial, Javier recognized one of the men as a former landscaping colleague who he worked with in the past. JT Day 2, at 106. Javier also identified Petitioner as one of the assailants because he remembered seeing Petitioner's eyes while Petitioner stood in the garage, recognized Petitioner's eyes in court, and, in the past, had worked with Petitioner in landscaping. Id. at 142-45; 146. Further, Javier observed Petitioner wore gloves. Id. at 143-45. Javier recognized the gloves worn by Petitioner as the same black and red gloves that the landscaping company had given them while they worked there. Id. at 145-46.

## ARGUMENT

### I. PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL

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

To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063–64. See also Love, 109 Nev. at 1138, 865

P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's representation fell below an objective standard of reasonableness, and second, that but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. 466 U.S. at 687–88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). "[T]here is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

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

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

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

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

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

When a conviction is the result of a guilty plea, a defendant must show that there is a "reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

Indeed, to establish a claim of ineffective assistance of counsel for advice regarding a guilty plea, a defendant must show "gross error on the part of counsel." Turner v. Calderon, 281 F.3d 851, 880 (9th Cir. 2002). A plea of guilty is presumptively valid, particularly where it is entered into on the advice of counsel, and the burden is on a defendant to show that the plea was not voluntarily entered. Bryant, 102 Nev. at 272, 721 P.2d at 368 (citing Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)); Jezierski v. State, 107 Nev. 395, 397, 812 P.2d 355, 356 (1991). Ultimately, while it is counsel's duty to candidly advise a defendant regarding a plea offer, the decision of whether or not to accept a plea offer is the defendant's. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 163 (2002).

The Nevada Court of Appeals recently considered the types of ineffective assistance of counsel claims that are permissible pursuant to this statute, and concluded that NRS 34.810 *only* permits claims of ineffective assistance of counsel that challenge the validity of the guilty plea. Gonzales v. State, 136 Nev. Adv. Op. 60 (Nev. App. 2020). "[A] petitioner must allege

specific facts demonstrating both that counsel's advice (or failure to give advice) regarding the guilty plea was objectively unreasonable and that the deficiency affected the outcome of the plea negotiation process." Id.

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

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

**A. Counsel was not ineffective for failing to hire an investigator (Ground #2) and conduct a pre-trial investigation (Ground #6).**

Petitioner claims that counsel was ineffective for failing to hire an investigator for trial and investigate that Javier knew Petitioner "beyond simply working with him a few times." Supplement, at 20-21.

A defendant who contends his attorney was ineffective because he did not adequately investigate must show how a better investigation would have changed the outcome of trial. Strickland, 466 U.S. at 687, 104 S. Ct. at 2064. Such a defendant must allege with specificity

what the investigation would have revealed and how it would have altered the outcome of the trial. See State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Further, it is well established that a claim of ineffective assistance of counsel alleging a failure to properly investigate will fail where the evidence or testimony sought does not exonerate or exculpate the defendant. See Ford v. State, 105 Nev. 850, 784 P.2d 951 (1989).

Counsel is expected to conduct legal and factual investigations when developing a defense so they may make informed decisions on their client's behalf. Jackson, 91 Nev. at 433, 537 P.2d at 474 (quoting In re Saunders, 2 Cal.3d 1033, 88 Cal.Rptr. 633, 638, 472 P.2d 921, 926 (1970)). "[D]efense counsel has a duty 'to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Love, 109 Nev. at 1138, 865 P.2d at 323 (quoting Strickland, 466 U.S. at 691, 104 S. Ct. at 2066). A defendant who contends his attorney was ineffective because he did not adequately investigate must show how a better investigation would have rendered a more favorable outcome. Molina, 120 Nev. at 192, 87 P.3d at 538.

"Where counsel and the client in a criminal case clearly understand the evidence and the permutations of proof and outcome, counsel is not required to unnecessarily exhaust all available public or private resources." Id. Further, there is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Id. (citing Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003).

Petitioner cites to Love to support his assertion that counsel should have hired an investigator. Supplement, at 19. In Love, the defendant provided a list of alibi witnesses to his counsel and asked him to investigate them. 109 Nev. at 1138. There were no eyewitnesses to the murder, no physical evidence linking the defendant, no murder weapon was found, and there was no apparent motive for defendant to kill the victim. Id. at 1140. Because of the lack of motive and evidence tying defendant to the crime, the Nevada Supreme Court found that counsel was ineffective and prejudiced the defendant by failing to investigate his potential alibi witnesses. Id.

Here, counsel cannot be ineffective for failing to hire an investigator to investigate this apparent "conversation and altercation" between Petitioner and Javier. Supplement, at 21. The instant case is unlike Love, because Petitioner cannot demonstrate how failing to hire an investigator prejudiced him to substantially effect the outcome of trial. At trial, both DeCamp and Javier identified Petitioner as the individual who committed the crimes. DeCamp identified the person wearing the brown puffy jacket and red gloves as the man present during the robbery, and Javier testified that he recognized Petitioner's eyes and that he had worked with Petitioner in the past. JT Day 2, at 32-33, 142-145, 146. Thus, this case is unlike Love where there was no evidence tying the defendant to the crime.

Petitioner is simply assuming that not hiring an investigator is per se unreasonable, without providing any legal support to suggest this is the case. He specifically claims that "an investigator would have learned that Javier did in fact know Monay-Pina beyond simply working with him a few times." Supplement, at 20. If this were true, Petitioner could have provided this information to counsel directly.

Petitioner provides an investigator's report of an interview with Angelica Venegas to support his claim that counsel should have hired an investigator. See Petitioner's "Exhibit F." Petitioner claims that "Angelica's statement provides no motive for Monay-Pina to have been involved in an altercation with Colon." Supplement, at 21. However, simply because Angelica—Petitioner's girlfriend and the co-defendant's sister—stated that Petitioner had no motive to commit this crime does not mean that Petitioner did not commit this crime. As discussed, both DeCamp and Javier identified Petitioner as the individual who committed the crimes against them. Angelica's opinion that Petitioner had no motive to commit these crimes does not mean that Petitioner did not commit these crimes considering all the evidence against him.

None of the information in Angelica's report is helpful, and it is doubtful that if Angelica had testified to this information at trial, it would have changed the result. It is doubtful the jury would have given Angelica's testimony much weight, considering she was Petitioner's girlfriend and the co-defendant's sister. It is also unlikely that Angelica would

have been allowed to testify to the information provided in the report, because it lacks any relevance to the case at hand. NRS 48.015. Therefore, counsel cannot be ineffective for failing to hire an investigator to investigate the extent of the conflict between Petitioner and Javier because Petitioner cannot demonstrate that his would have produced a more favorable result at trial.

**B. Counsel was not ineffective for failing to file a motion to sever (Ground #4).**

Petitioner claims that counsel was ineffective for failing to file a motion to sever because the evidence of the second event was "more damaging against Venegas [co-defendant]" and the victim Javier testified that "[Petitioner] did not say anything, and that he did not harm [Javier] in any way." Supplement, at 22-28. Petitioner's claim is baseless and belied by the record.

Counsel cannot be ineffective for failing to make futile motions or for failing to make objections or arguments. See Ennis, 122 Nev. at 706, 137 P.3d at 1103. NRS 173.135 allows for co-defendants to be charged under the same information if they participated in the same criminal conduct. As a general rule, defendants indicted together shall be tried together, absent a compelling reason to the contrary. Rowland v. State, 118 Nev. 31, 44 (2002). Joint trials are overwhelmingly favored in order to promote efficiency and equitable outcomes. Jones v. State, 111 Nev. 848, 853 (1995).

Courts should sever defendants only after a defendant establishes "a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." Chartier v. State, 124 Nev. 760, 765 (2008) (quoting Marshall, 118 Nev. at 646); see also Bruton v. United States, 391 US 123 (1968); NRS 174.165. Generally speaking, severance is proper only when: (1) the codefendants' theories of defense are so antagonistic that they are "mutually exclusive" and so irreconcilable with one another that the acceptance of the one co-defendant's theory by the jury precludes acquittal of the other; and (2) there is "a serious risk that a joint trial would compromise a specific trial right . . . or prevent the jury from making a reliable judgment about guilt or innocence." Chartier, 124 Nev. at 765 (internal citations omitted). Broad allegations

of prejudice are not enough to mandate severance. United States v. Baker, 10 F.3d 1374, 1389 (9th Cir.1993), cert. denied, 513 U.S. 934 (1994), overruled on other grounds by United States v. Nordby, 225 F.3d 1053 (9th Cir. 2000).

Here, Petitioner does not establish that counsel would have been successful had he filed a motion to sever. Petitioner claims that he should have been severed because his co-defendant was identified as the individual who hit Javier with the axe, and Petitioner was identified as the individual who pointed a gun at the window leading into the house where Javier's family was inside. Supplement, at 23. However, Petitioner argues that he should have been severed because he "said nothing." Id. Just because Petitioner "said nothing" while pointing a gun towards Javier's family while his co-defendant hit him with an axe does not mean they had antagonistic defenses.

Petitioner also claims that his co-defendant was identified as the individual who took Javier's wallet and MP3 player, and thus, he should have been severed. Again, it is unclear how he should have been severed from the co-defendant when he was identified as pointing a firearm at the victim's family through a window while his co-defendant stole the wallet and MP3 player. Petitioner only addresses the second incident with Javier and fails to address the first incident where Petitioner and his co-defendant robbed DeCamp at the 7-11 less than a mile away before attacking Javier in the second incident that night.

Petitioner has not and cannot establish that his co-defendant's identification had a substantial or injurious effect on the verdict, because the evidence against Petitioner was overwhelming. DeCamp described the two men who robbed his 7-11 and those same men were identified by him a mere mile away and less than 30 minutes later wearing the same clothes and masks. JT Day 2, at 128. The jury had pictures from both the 7-11 robbery and the description of Petitioner clothes when police stopped him. Id. at 128-29. Both matched. Id. Moreover, DeCamp testified that the robbers took about $138 from him. Id. at 45. When Metro stopped Petitioner less than 30 minutes after that robbery and less than one mile away, they found $139. JT Day 3, at 48. Finally, Petitioner's DNA was found on the mask DeCamp described the suspect wearing and hidden under the shed near where the suspects beat Javier.

Id. at 79-80. Therefore, Petitioner cannot demonstrate that his counsel was ineffective because any motion to sever would have been futile and counsel cannot be deemed ineffective for failing to file futile motions.

**C. Counsel was not ineffective in not determining whether Petitioner was competent prior to standing trial (Ground #7).**

Because Petitioner is reasserting this claim as alleged in his first Petition, the State also incorporates by reference its response to this claim in the Response filed April 14, 2020.

**D. Counsel was not ineffective for allegedly failing to review the video surveillance prior to trial (Ground #8).**

Petitioner claims that counsel was ineffective for failing to review the video surveillance with him prior to trial, but concedes that he is "unaware if counsel had the surveillance prior to trial." Supplement, at 28-29. Petitioner states that he went into his "multiple felony jury trial with no idea how the State's evidence was going to be used against him." Id. at 29. However, Petitioner cannot demonstrate that not reviewing the surveillance video with counsel before trial falls below an objective standard of reasonable competence. More importantly, Petitioner cannot demonstrate how this prejudiced him and would have produced a more favorable result at trial. Therefore, this claim is without merit.

**E. Petitioner has no right to a specific relationship with counsel, and cumulative error is not available in a habeas petition (Ground #10).**

Petitioner claims that: (1) counsel failed to visit him in jail, (2) failed to work with him to develop a defense, and (3) asserts a claim of cumulative error. Supplement, at 29. A defendant is not entitled to a particular "relationship" with his attorney. Morris v. Slappy, 461 U.S. 1, 14, 103 S. Ct. 1610, 1617 (1983). There is no requirement for any specific amount of communication as long as counsel is reasonably effective in his representation. See Id.

Petitioner claims that had counsel visited more often, they could have developed a defense that: "1) [Petitioner] did not have the requisite intent, and 2) [Petitioner] did not directly commit the crimes at the ax scene, nor did he intentionally aid or conspire with [his co-defendant]." Supplement, at 30. Petitioner claims that he was left with "no defense at trial"

because he was unable to prepare this defense with counsel. Id. However, during his closing argument at trial, Petitioner's counsel argued that Petitioner did not attack Javier with the axe, none of Javier's family could identify Petitioner, and that Petitioner was entitled to separate consideration apart from his co-defendant. JT Day 3, at 143-145. Therefore, these claims are belied by the record.

Lastly, Petitioner cannot assert a claim of cumulative error because it is not available in a habeas petition. The Nevada Supreme Court has never held that instances of ineffective assistance of counsel can be cumulated; it is the State's position that they cannot. However, even if they could be, it would be of no moment as there was no single instance of ineffective assistance in Petitioner's case. See United States v. Rivera, 900 F.2d 1462, 1471 (10th Cir. 1990) ("[A] cumulative-error analysis should evaluate only the effect of matters determined to be error, not the cumulative effect of non-errors."). Furthermore, Petitioner's claim is without merit. "Relevant factors to consider in evaluating a claim of cumulative error are (1) whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged." Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 855 (2000). Furthermore, any errors that occurred at trial were minimal in quantity and character, and a defendant "is not entitled to a perfect trial, but only a fair trial." Ennis v. State, 91 Nev. 530, 533, 539 P.2d 114, 115 (1975).

Petitioner has not asserted any meritorious claims of error, and, thus, there is no error to cumulate. United States v. Rivera, 900 F.2d 1462, 1471 (10th Cir. 1990) ("...cumulative-error analysis should evaluate only the effect of matters determined to be error, not the cumulative effect of non-errors."). Second, while Petitioner alleges ineffective assistance of counsel, as discussed supra, Section I., there is clearly no error and counsel was not ineffective. Lastly, Petitioner's crimes were grave indeed, and thus, the third Mulder factor is the only one that applies to Petitioner's cumulative error argument. However, without any error to cumulate, Petitioner's argument is meritless. As such, this claim is without merit.

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**F. Counsel was not ineffective in his pre- trial discussions with Petitioner and did not violate McCoy v. Louisiana (Ground #11).**

Because Petitioner is reasserting this claim as alleged in his first Petition, the State also incorporates by reference its response to this claim in the Response filed April 14, 2020.

## II. PETITIONER'S REQUEST FOR AN EVIDENTIARY HEARING IS MOOT

Lastly, Petitioner requests an evidentiary hearing on the issues set forth in his Supplemental Petition. Supplement, at 33-35. However, this Court already determined that it would hold an evidentiary hearing on the issues raised in the Supplemental Petition in its Decision and Order on April 30, 2020. Therefore, this request is moot as this Court has already determined it will hold an evidentiary hearing.

## CONCLUSION

Based on the foregoing, Petitioner's Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) should be DENIED.

DATED this 23 day of June, 2021.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #

BY
~~KAREN~~ MISHLER
Chief Deputy District Attorney
Nevada Bar #13730

Yu Meng #14741

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## CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 24th day of June, 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

JOSE MONAY-PINA #1185276
SDCC
PO BOX 208
INDIAN SPRINGS, NV 89070

BY_____

Secretary for the District Attorney's Office

KM/mah/L3

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Steven D. Grierson
CLERK OF THE COURT

**RTRAN**

DISTRICT COURT

CLARK COUNTY, NEVADA

| | |
|---|---|
| JOSE MONAY-PINA,<br>Plaintiff,<br>vs.<br>THE STATE OF NEVADA,<br>Defendant. | CASE#: A-20-810899-W<br>DEPT. VII |

BEFORE THE HONORABLE LINDA MARIE BELL,

DISTRICT COURT JUDGE

TUESDAY, DECEMBER 21, 2021

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

APPEARANCES:

For the Plaintiff: MONIQUE MCNEILL, ESQ.

For the Defendant : MADELINE COLE, ESQ.
Deputy District Attorney

RECORDED BY: KIMBERLY ESTALA, COURT RECORDER

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Las Vegas, Nevada, Thursday, October 14, 2021

[Case called at 2:44 p.m.]

THE COURT: Jose Monay-Pina versus the State of Nevada. This is on for an Evidentiary Hearing on Mr. Monay-Pina's *Petition for Writ of Habeas Corpus*.

Is there anything that we need to take care of before calling witnesses?

MS. McNeill: Judge, I just wanted to put on the record that I have discussed with Mr. Pina that he's waived his attorney client privilege with Mr. Boley, you know, as is the rule in a post-conviction hearing. So I just wanted to put that one the record that I did discuss that with him, he is aware of that.

THE COURT: I should get everybody's appearance for the record too. We've been here so long I just forgot.

MS. COLE: Good Morning, Your Honor, Madilyne Cole for the State, bar number 14693.

MS. MCNEILL: And Monique McNeill on behalf of Mr. Monay-Pina who is present with us in custody bar number 9862.

THE COURT: Great, thank you. And he's appearing by video from the jail. Sir, you can go ahead and have a seat if you'd like.

THE DEFENDANT: Me?

THE COURT: Yes. It's going to be awhile so I don’t want you to stand the whole time. All right, Ms. McNeill if you will call your first witness, please.

MS. MCNEILL: Yes, Judge at this time I would call Thomas Boley.

THE COURT: Can we check and see if Mr. Boley's outside?

MR. BOLEY: Hello.

MS. MCNEILL: He's on video.

THE COURT: Oh he's on video. All right. Good Afternoon, Mr. Boley how are you?

MR. BOLEY: Great Judge, how are you doing?

THE COURT: Good, why is he not I don't know --

MS. COLE: Right yeah, that's weird.

THE COURT: All right Mr. Boley, if you could please stand and raise your right hand the clerk will swear you in.

**THOMAS BOLEY**

[having been called as a witness and first duly sworn testified as follows:]

THE COURT: All right and if you could state your name and spell it for the record.

THE WITNESS: Thomas Boley B-O-L-E-Y.

THE COURT: Thank you, Ms. McNeill whenever you're ready.

**DIRECT EXAMINATION OF THOMAS BOLEY**

BY MS. MCNEILL:

Q Thank you, Judge. Good Afternoon, Mr. Boley.

A Hey.

Q So I just want to talk to you, I'm going to start first with your initial representations of Mr. Monay-Pina. Do you remember when you

1 were retained to handle his case?
2 A I don't remember an exact date.
3 Q Okay if I --
4 A But it was after preliminary hearing.
5 Q Okay and just for the record the preliminary hearing was
6 March 3rd, 2016. Do you remember appearing at Calendar Call on April
7 25th, 2016 where you substituted in as his attorney?
8 A I don't specifically remember but I did review the record and
9 that appears to be the case, yeah.
10 Q Okay, can you tell us the scope of your retainer?
11 A I mean we use the same retainer agreement with every client,
12 you know, it would have been post preliminary hearing to try to either
13 negotiate a deal or possibly put on a trial.
14 Q Okay, do you remember who actually retained you?
15 A I think it was Mr. Monay-Pina's parents.
16 Q Okay, and prior to being retained by Mr. Monay-Pina, do you
17 remember if you ever met with the co-defendant's family for a possible
18 retainer?
19 A No, I never did that.
20 Q Okay, I want to go just through some general practice
21 questions for you. Back in this time, back in April 2016 how many years
22 had you been practicing?
23 A It would have been -- so I passed my bar in October 2008, so
24 it would have been 7 almost 8 years.
25 Q Okay, how many felony jury trials had you done prior to Mr.

1 Monay-Pina's?
2 A I don’t remember honestly. But probably, I would say, I don’t
3 know 10 or so.
4 Q I'm sorry was that 10 or so you said?
5 A Yeah, I couldn’t promise you that though I just don’t
6 remember.
7 Q Okay, when you have a client that’s in custody what's your
8 customary practice for how generally how often you visit them leading up
9 to a trial.
10 A You know, it depends on the complexity of the trial but usually
11 2 to 3 times if there is a lot of stuff to go over even more than that.
12 Q Okay do you usually provide discovery to clients?
13 A Yes. That’s our customary practice every single time. If
14 somebody's in custody we mail paper discovery to them.
15 Q Okay, do you go over and go through the discovery with a
16 client?
17 A Yes.
18 Q Would you show a client video surveillance if there was any in
19 your case?
20 A It depends on the video surveillance. I can speak to this one if
21 you want?
22 Q Sure.
23 A I mean this one Mr. Monay-Pina told me exactly what
24 happened and the video echoed what he said. You know, I did not bring
25 a laptop and actually go over that video with him.

1 Q Okay, do you remember what discovery specifically in this
2 case you provided to him prior to trial?
3 A I don't specifically remember.
4 Q Do you remember how many times you discussed trial
5 strategy with Mr. Monay-Pina?
6 A I don't specifically remember. There were several phone calls
7 and then, you know, I read in your brief that I visited him once and we
8 talked about trial strategy. But I don't specifically remember how many
9 times.
10 Q Okay, what's your usual practice for sort of broaching the
11 conversation with the client about what the defense is for trial?
12 A Well usually, I mean this one was very specific, but usually
13 when I get that like final offer from the State is where I really want to
14 have a meeting with the client and say here's your offer, here's what
15 we're going to do at trial, you know, what do you think, let's talk about it.
16 Here, there was never an offer and I was kind of hoping especially there
17 towards the end that the prosecutor would make some kind of offer. I
18 think that's what Mr. Monay-Pina wanted but it just never happened
19 unfortunately.
20 Q Okay so in this case specifically once you realized there was
21 no offer what did you discuss with Mr. Monay-Pina about coming up with
22 a trial strategy?
23 A So one of the original things that Mr. Monay-Pina said to me
24 was that they won't be able to identify us we were wearing masks. I
25 remember that very clearly -- I can't remember exactly when he told me

1 that but clearly, you know, that kind of outlined a trial strategy where we
2 had to face the trial strategy on identification. I'm sorry did I answer your
3 question?
4 Q Yeah you did sorry I'm just making notes. Okay so you said
5 you discussed with him that the trial strategy would be based on
6 identification.
7 A We did, we talked about it.
8 Q Okay, did you hire an investigator?
9 A I did not.
10 Q Is it your usual practice to hire an investigator on a case that is
11 going to trial?
12 A It depends, if there's something out there to find or if there's a
13 bunch of people to interview. When -- I'm more likely to do it when I am
14 appointed because I know there's kind of a practice of using
15 investigators. I know when funds are limited, when we're retained, you
16 know, sometimes, you know, if there's nothing to investigate we don't
17 necessarily ask the family to come up with that money.
18 Q Okay, and in this case why did you not hire an investigator?
19 A There were no, you know, I didn't see any particular reason to.
20 I know that there was a girlfriend and there was -- an issue where
21 supposedly the alleged victim here slashed her tires. I had known about
22 that, like they had told me about that pretty early in this case.
23 Q Okay, so he did give you information that he potentially had
24 witnesses?
25 A Not witnesses necessarily but there was this issue where

1 Javier Colon might have slashed his girlfriend's tires.
2 Q Okay, and did you -- and so you didn’t do any follow up into
3 that in the end?
4 A I don’t remember and I'll tell you why. Because there was a
5 young women that came into my office and I remember talking about
6 that issue. I can't swear through that it was the girlfriend.
7 Q Okay, but you didn’t make a decision to try to follow up on the
8 tire slashing incident as far as interviewing witnesses to potentially
9 present to the jury?
10 A Well, unfortunately, that would weaken his identification
11 defense, if Javier Colon knew him better than just what he said on the
12 record.
13 Q Okay, so following up on that a little bit. Did you think that the
14 identification was a valid defense after reviewing the preliminary hearing
15 transcripts and the police reports?
16 A Yes, yes.
17 Q Did you -- after reviewing the video surveillance and the
18 photos were you aware that Mr. Monay-Pina was photographed in the
19 clothing that he was wearing on the video during the time of the robbery
20 incident?
21 A Yes I was aware of that.
22 Q Okay. Did you feel that, that might have hindered the
23 identification defense?
24 A Did it hinder it? Yeah absolutely it did but unfortunately it's
25 what we had.

1 Q Okay, and so knowing that that defense was hindered did you
2 then try to follow up with any other potential witnesses to revamp your
3 defense?
4 A There were no other witnesses.
5 Q Did you review the preliminary hearing transcripts prior to
6 trial?
7 A Yes.
8 Q Were you aware that Javier Colon testified that a woman
9 named Cynthia told him that it was Mr. Monay-Pina who committed the
10 crime?
11 A Committed what crime?
12 Q The crime at Mr. Colon's home.
13 A I don’t specifically remember that but --
14 Q Do you --
15 A -- I mean I'm sure.
16 Q If you had seen that in the preliminary hearing transcript do
17 you think that she might have been someone you might have wanted to
18 talk to?
19 A Cynthia?
20 Q Yes.
21 A I mean I read the preliminary hearing transcript but I don’t
22 know.
23 Q You were aware after reviewing the transcripts that Mr.
24 Colon's testimony about how he knew Mr. Monay-Pina was a little
25 inconsistent, correct?

1 A Yes.
2 Q And knowing that he testified that he only knew that it was Mr.
3 Monay-Pina because someone told him, did you think it was important to
4 track down the person that may have told Mr. Colon that it was Monay-
5 Pina?
6 A Did I think it was important? I mean I talked to -- I honestly
7 don't remember. I do remember what Javier Colon testified to at trial
8 which is he identified Mr. Monay-Pina by his eyes.
9 Q Right, and so do you think it would have been important to
10 potentially track down potential impeachment information of that
11 identification?
12 A I don't think so in this case. Given what he testified to at trial.
13 Q Okay, do you think that it's important to impeach a trial witness
14 with testimony from preliminary hearing?
15 A Yeah sure if it's appropriate.
16 Q Okay, and in this case you didn't believe it was appropriate?
17 A Yeah because of what he said on the -- at trial no.
18 Q Okay what specifically that he said at trial lead you to feel that
19 it wasn't important to impeach him?
20 A Well, and I'm paraphrasing because I don't remember exactly
21 what he said but, what he said was that, you know, this whole incident is
22 happening in his home and we go into it a little bit but he remembered
23 Jose Monay-Pina because he saw his eyes.
24 Q Right.
25 A And so then I went to argue that hey, you know, he couldn't

1 have fully identified this guy because he only saw his eyes.
2 Q Okay and so but he also testified to that at preliminary hearing
3 and so --
4 A Yes.
5 Q -- if he gave inconsistent statements about that he only knew
6 him because of his eyes but then someone else had told him that it was
7 Mr. Monay-Pina do you think that that information might have been
8 important to flush out as a trial strategy?
9 A I don’t remember honestly.
10 Q Okay, and you would agree with me that your testifying today
11 that based on what Mr. Colon testified to at trial you don’t think it would
12 have been important but without having talked to the witnesses you can't
13 really say that it was or wasn’t, correct?
14 A I think he was consistent because he said the same thing that
15 he saw Monay-Pina's eyes and that’s how he identified him.
16 Q Right, but if you had information other than what he said at
17 preliminary hearing you could use that to impeach him, correct?
18 A If I did yeah.
19 Q And that would require you to talk to witnesses?
20 A Sure.
21 Q I'm going to move to pretrial motion practice. What's your
22 usual practice for pretrial motions?
23 A Usual practice is we file them if we see something that stands
24 out that would be the subject of a pretrial motion.
25 Q Okay, in this case did Mr. Monay-Pina ask you to file a motion

1 to sever his case from the co-defendants?
2 A I do not remember him asking me but it was discussed at one
3 point.
4 Q Okay, and what was that discussion?
5 A I don't fully remember but we decided not to.
6 Q When you say we was that -- who are you referring to?
7 A I think it was a conversation with him but I don't fully
8 remember how we came to that decision. But we did.
9 Q Okay, and why did you decide not to file a motion to sever?
10 A I think that, I mean, you had two starkly different defendants in
11 this case. You had Casimiro Venegas who had, you know, a long
12 criminal record, did these monstrous things by, you know, assaulting a
13 guy with an axe, and my guy who was squeaky clean before his trial,
14 you know, good guy, you know, a lot of things going for him. And I
15 thought it would be effective to have them standing next to each other to
16 draw that contrast.
17 Q Okay, and how would you present that contrast to the jury? If
18 you're --
19 A How would I?
20 Q If what you're saying is you kept them together because one
21 had a worse criminal history, how does that become important in front of
22 a jury?
23 A I think the fact that Casimiro Venegas was the primary actor
24 was really what resonated with the jury. But, you know, I'm kind of
25 speaking broadly like his criminal record would come up later at

1 sentencing of course.
2 Q Right, which isn't a trial issue.
3 A Yeah.
4 Q Okay, so did you have any concerns that keeping the cases
5 together would limit what you would be able to argue as far as the co-
6 defendant's culpability versus your clients?
7 A Did I consider that I would be limited?
8 Q Right.
9 A I don't think I was limited.
10 Q Okay, did you -- so you didn't think they had inconsistent
11 defenses?
12 A I guess as far as Casimiro Venegas was also wearing a mask,
13 not particularly.
14 Q Would you agree with me that if part of your defense was that
15 the other guy is the one who is the bad actor that might be inconsistent
16 with his defense, the other guy?
17 A I guess, I don't know.
18 Q Prior to the start of the trial did you believe that you had a
19 complete set of discovery from the State?
20 A Yeah in fact I had a file review meeting with Ms. Holthus and
21 Mr. Schwartz.
22 Q Now you had provided me with a itemized list of the discovery
23 that you had. Is that the complete discovery that you had at the time of
24 trial?
25 A I'm not a hundred percent sure because I did break down the

1 file and give it to appellate counsel at one time. Also there's likely a
2 video.
3 Q Okay, you -- so in the one time that you visited Mr. Monay-
4 Pina at the jail is that when you went over trial strategy?
5 A I believe so, but there were several phone conversations too
6 as the case developed especially there towards the end. And I think
7 there was some discussion about trial strategy there too.
8 Q You mention that there was no offer in this case. Did you ever
9 discuss with Mr. Monay-Pina the option of pleading -- just pleading
10 straight up to the charges and not going to trial?
11 A I don’t remember if I had that conversation but I would
12 normally have that conversation.
13 Q What was your assessment of the case against Mr. Monay-
14 Pina? Do you believe --
15 A I think that --
16 Q Sorry I'll ask --
17 A Oh sorry go ahead --
18 Q -- a better question that was kind of a vague question.
19 A Okay.
20 Q Did you believe that he had a chance to prevail at trial?
21 A I think that there was some there was some -- there was some
22 argument to be had when it comes to identification because, you know,
23 yeah, and I think I argued this in closing that, yeah of course they can
24 put pictures of his clothing on the screen as much as they wanted but
25 there's not a good identification here, you know, and of course Mr. Colon

1 got up there and said, oh I recognize his eyes, but that's not necessarily
2 his face.
3 Q Okay so when you say identification are you talking about eye
4 witness identification?
5 A I'm talking about Mr. Colon identifying. And of course the 7-11
6 clerk.
7 Q Okay, but there are other ways that the State can prove
8 identity, correct?
9 A Oh yeah of course.
10 Q And did you explain those other methods of proving identity to
11 Mr. Monay-Pina?
12 A I do not remember. Honestly that's, you know, it's been 6
13 years.
14 Q Did you ever discuss with Mr. Monay-Pina that you may
15 concede his guilt at some point during closing?
16 A Did I discuss it with him?
17 Q Yes.
18 A I don't remember.
19 Q Is that something that you would normally discuss with a client
20 if that was part of your trial strategy?
21 A Of course, yeah.
22 Q Judge, I'll pass the witness.
23 THE COURT: All right, Ms. Cole.
24 **CROSS EXAMINATION OF THOMAS BOLEY**
25 BY MS. COLE:

1 Q Yes, Your Honor. Good Afternoon, Mr. Boley.
2 A Hello.
3 Q So you, just to clarify, you came on this case after the
4 preliminary hearing, is that correct?
5 A Yes, that's correct.
6 Q And the prior attorney was Mr. Hart, is that also correct?
7 A I believe so, yeah.
8 Q So when you took the case was there any outstanding offer
9 that you were aware of?
10 A It's my understanding, because I talked to the prosecutors
11 significantly on this case, that there was never an offer. That's my
12 understanding. If there was an offer if was given to Mr. Hart and not me.
13 Q Okay, and based upon your practice as a defense attorney are
14 you aware that sometimes offers expire after the preliminary hearing is
15 put on?
16 A Yeah, of course.
17 Q So when you were retained on the case, the case was in
18 District Court?
19 A Yes.
20 Q And your first appearance on the record was a calendar call?
21 A I don't remember specifically but it sounds right.
22 Q Okay, but to your knowledge there wasn't an offer at that
23 time?
24 A There was not.
25 Q Did you ask Ms. Holthus and Mr. Schwartz about an offer?

1 A Absolutely.
2 Q Okay, and what did they indicate to you?
3 A Well and it started because Mr. Monay-Pina wanted an offer.
4 He made that very clear and, you know, I approached the State several
5 times and said hey what's going on, like you got this guy who has no
6 previous record, he's a good kid, why are you not giving this guy an
7 offer? That question was never really answered to me.
8 Q So, you asked the State and they essentially told you there is
9 no offer?
10 A Yes, that's what they said.
11 Q Okay, now going to when you first were retained and met with
12 Mr. Pina. Did you also meet with several of his family members
13 throughout the course of your representation?
14 A Yeah, there were several family members [Indiscernible] you
15 know you have to be careful from the defense perspective like you can't
16 just talk to anybody. But mom and dad were involved, I know that. And
17 then there was a young woman that I -- the girl friend.
18 Q Okay, and these individuals would come to your office and
19 speak to you?
20 A Occasionally yeah during -- I think I represented him about a
21 year. But yeah there were several conversations.
22 Q Okay and approximately how many times did they actually
23 come into your office and meet with you?
24 A It had to been 4 or 5 times. I don't remember exactly though.
25 Q Okay, and in speaking about how many times you spoke with

1 Mr. Pina, he was in custody for the entire period of your representation
2 with him is that correct?
3 A Yeah I think so, I'm pretty sure he was.
4 Q Okay, and you recall visiting him at CCDC one time?
5 A Yeah I read, you know, defense attorneys brief here and that's
6 what it said and I have no reason to doubt it.
7 Q Okay, and when you met with him that time is it your custom
8 and practice to bring over the case file?
9 A Yeah I did.
10 Q Okay, and is it also your custom and practice to review
11 anything that's in your case file with your client?
12 A Of course, yeah, you know, we would go over what I would
13 normally do is talk about whatever offer there was and then hey here's
14 your potential defenses, you know, here's your options basically. And
15 here's where it's derived from and I would show discovery and would say
16 hey here you go.
17 Q Okay, and so you reviewed every, I guess, written piece of
18 discovery or paper discovery that you had in your file with him when you
19 met with him at CCDC?
20 A I think so, that would be normally what I would do. But I don't
21 specifically remember the contents of that conversation.
22 Q Now there was discussion about some video surveillance. You
23 had reviewed this video surveillance prior to trial, is that fair to say?
24 A Yes.
25 Q Okay, now you didn't review that video surveillance with your

1 client at CCDC?
2 A I did not.
3 Q Okay and was that because you believed that you had already
4 discussed the contents of the video surveillance with your client?
5 A So the video surveillance is from 7-11 when they went in and,
6 you know, the two guys basically robbed the 7-11. He had told me
7 before, you know, a lot of the, you know, before we got deep into the
8 case that, you know, they were wearing masks and they couldn't be
9 recognized. And the video showed exactly what he said, two men
10 wearing masks robbing a 7-11.
11 Q All right so ultimately one of your very first conversations when
12 you first were retained was he was pretty frank with you and told you hey
13 they can't identify us we were just wearing masks.
14 A I don't remember where it was in the case where he said that
15 but he did tell me that.
16 Q Okay and what did you take that sentiment to mean?
17 A I mean exactly what he said, you know, a couple things
18 actually, one that he was there and that he, you know, participated in the
19 robbery at the 7-11 at least and then, you know, identity was going to be
20 an issue because he was wearing a mask.
21 Q Okay, so ultimately him telling you that information which you
22 lead -- lead you to believe he was ultimately admitting he was there but
23 that, you know, the jury wouldn't be able to identify him because he was
24 wearing mask correct?
25 A I think well further discussion was had and, you know, he did

1 wear the mask not only through the first part of the incident but through
2 the second part of the incident. And I mean I think that's was very
3 important hey he had his face covered the whole time.
4 Q Okay, and you obviously talked about identification being a
5 defense with your client?
6 A Yes.
7 Q And was that in fact a defense that he wanted you to go with?
8 A I think so.
9 Q You talked about it on more than one occasion, correct?
10 A Yeah.
11 Q Now based off this information that he told you about him
12 essentially saying we were wearing masks when we did it, did you feel
13 like that precluded you from making certain defense arguments at trial
14 based upon your ethical and legal obligations?
15 A I mean hypothetically if he were to get on the stand and say
16 he didn't do it at that point then, you know, there's clearly an ethical
17 problem.
18 Q Right did that also limit other potential defenses that you could
19 have gone with?
20 A I don't really know what you mean. I guess you'd have to be
21 more specific.
22 Q Okay, Mr. Boley did you ever have a conversation with your
23 client where he told you that he was using drugs or drinking alcohol the
24 day of the incident?
25 A I don't -- remember honestly.

1 Q Okay but there's nothing about that, that sparks your memory?
2 A About him drinking -- alcohol and taking drugs? I read that in
3 the briefs I know but I don't specifically remember talking about that.
4 Q Okay, so you have no independent recollection of him
5 essentially wanting to go forward with a voluntary intoxication defense?
6 A No.
7 Q Okay, and did you feel even if there was evidence of that or he
8 did talk to you about that would that have been a defense that you would
9 have used at trial?
10 A I mean it wouldn't be a very good one because he -- you're
11 only dealing with specific intent crimes as opposed to general intent
12 crimes. And he was charged with, you know, a bunch of different stuff.
13 Q Okay, isn't it also true that it's your belief that to introduce that
14 into evidence he would have to take the stand?
15 A Yeah definitely.
16 Q Okay, were you aware of any other means of ways you could
17 have introduced any sort of voluntary intoxication other than him getting
18 on the stand and testifying to such?
19 A The only other way would be if somebody was drinking with
20 him and I was not aware of that. Maybe the co-defendant I don't know
21 but he -- clearly did not testify.
22 Q Okay, and was it your advice to him that you didn't think that
23 he should testify?
24 A I did not think he should testify given what he told me, no.
25 Q Okay. Now going back again to investigation and your

1 decision not to hire an investigator. Was there a conversation that you
2 had with some family members about a tire incident?
3 A Yes I was -- that so the fact that the girlfriends tires were
4 slashed possibly by Javier Colon was brought to my attention.
5 Q Okay, did you talk to your client about whether or not he knew
6 Mr. Colon?
7 A Yes.
8 Q Okay, and what did he indicate to you?
9 A I don’t remember exactly but I know that one of the things was
10 they there was this in conversation that occurred after the 7-11 robbery
11 where the two co-defendant's said lets go, you know, do this other thing,
12 where they went to Mr. Colon's house. I don’t know a hundred percent
13 how they came to that decision or maybe I don’t remember honestly I --
14 Q Okay but based upon --
15 A -- it’s a long -- it's been a long time.
16 Q It's true that you had a conversation with family members and
17 there was a female there, is that correct?
18 A I believe that there was a young female that accompanied the
19 parents.
20 Q Okay.
21 A Couple different occasions.
22 Q You don’t recall her name, is that fair to say?
23 A I don’t for sure.
24 Q But she is the one that kind of explained that her tires were
25 slashed is that correct?

1 A Yeah.
2 Q And that she believed that it was Mr. Colon that did that?
3 A Yeah there were I mean honestly there were a lot of stories
4 that were thrown around and, you know, sometimes from the defense
5 perspective it's hard to pull fact from fiction you know what I mean. So
6 but Mr. Monay-Pina told me also about the tire incident so I knew that
7 that was a theory. But you know it would go against the identification
8 defense.
9 Q Okay, so obviously it was clear to you that your client and
10 Javier Colon knew each other?
11 A How well does one know each other I guess. They knew of
12 this guy and they wanted to rob him. I knew that.
13 Q Okay, so you knew there was some sort of prior relationship or
14 beef for lack of a better word between the two of them.
15 A Yeah and it was better for Mr. Monay-Pina if it looked like Mr.
16 Venegas's beef.
17 Q Okay, now in -- your position as his attorney and the defense
18 that you were going with did you think it was appropriate to get into this
19 tire situation?
20 A I think it worked against his identity defense, you know,
21 because if hey Javier Colon says I could recognize his eyes which is
22 kind of strange because you wouldn't recognize somebody's -- you
23 probably wouldn’t recognize somebody, you know, if they hadn’t met at
24 all but to strengthen that defense you don’t want to sort of beef up their
25 relationship between the two. You know what I mean.

1 Q Absolutely. So it was your strategic decision to essentially not
2 get into any of their prior associations with each other?
3 A Yes and I think if there was a beef it's more likely that this
4 incident happened and it was Jose Monay-Pina. If he would say I did
5 think because this guy slashed my girlfriend's tires it makes it more likely
6 to have happened, you know what I mean.
7 Q Right and in your opinion that would have made Javier's
8 identification of your client stronger if you were to introduce that
9 evidence?
10 A Yes.
11 Q And so you made a decision not to do that so the identification
12 would only be the fact that he had recognized their eyes?
13 A Yes.
14 Q Now in hiring -- in making the decision to hire or not hire an
15 investigator was there any specific investigation that you felt like you
16 needed to conduct that would require you to have an investigator?
17 A No.
18 Q And in other cases that you have tried and worked on do you
19 sometimes have an investigator and sometimes not have an
20 investigator?
21 A That’s true, yes. Sometimes yes, sometimes no.
22 Q Okay, and based upon the communications that you had, had
23 with your client you were both on the same page with the identification
24 defense?
25 A That was my understanding at the time. I don’t, there again 5

1 years have past, 5 or 6 years whatever it is. And I don't remember the
2 exact conversation where we said oh you know this identification
3 defense. But that was my understanding going to trial is that hey this is
4 what we're going to do this is we're on the same page.
5 Q Okay, and Mr. Boley is it your practice to take notes during
6 trial?
7 A I'm a very auditory person so I don't take a lot of notes while
8 I'm sitting there putting on trials.
9 Q Okay, and sir you were also aware when you became on --
10 when you took over the case from Mr. Hart did you get the discovery that
11 he had?
12 A Yes.
13 Q Okay, was there also a receipt of copy that was filed by the
14 State of Nevada?
15 A I believe so yeah.
16 Q Okay, and did you have an opportunity to review that prior to
17 your testimony today?
18 A You emailed it to me so yes.
19 Q Okay, perfect. And from what you recall being listed on there
20 did you recognize your signature that was on that?
21 A Yes, that was my signature.
22 Q Okay, and that was essentially your affirmation that all of
23 those items had been given to you?
24 A Yeah sure.
25 Q Okay, and Mr. Boley I don't know if you can see me, can you

see me?

A Yeah I can see you.

Q Okay, I'm just trying to see where the camera picks up.

MS. MCNEILL: Are you just wanting to admit it?

MS. COLE: Yeah.

MS. MCNEILL: I'll just stipulate to the admission.

MS. COLE: Your Honor, I was just going to move to admit this receipt of copy that's electronically filed on January 20th of 2017 as State's proposed Exhibit Number 1. Ms. McNeill has indicated that she has no objection.

MS. MCNEILL: Yeah I'll just stipulate.

THE COURT: Exhibit 1 will be admitted then by stipulation.

MS. COLE: Okay thank you, Your Honor.

BY MS COLE:

Q And so Mr. Boley that would also have included everything on that receipt of copy would have included things that you were in possession of?

A I think what happened was I physically went to Mr. Hart's office and he had me sign that and he filed it, when he physically handed me the file.

Q Okay, now in regards to jumping around just a little bit, the *Motion to Sever*. Did you feel like you had a adequate legal basis to file a *Motion to Sever*?

A I did not.

Q It's true that there was no co-defendant statements in this

1 case, correct?
2 A Correct.
3 Q Okay, and it's also correct that both defendants were identified
4 by the victims separately?
5 A As far as, you know, Javier Colon said he could identify Jose
6 Monay-Pina's eyes. I still don't think that's a full identification but, you
7 know, the jury disagreed with me.
8 Q Okay was there forensic evidence against both co-
9 defendants?
10 A I don't remember exactly but I think that there was a swab of
11 the gun that they used or something like that.
12 Q Okay, isn't it true that there were ski masks that were
13 recovered, two separate ski masks that your clients DNA was on and
14 then a separate ski mask that Venegas's DNA was on?
15 A I think that that was the case, yeah.
16 Q Okay, and these two events happened at the same day,
17 correct?
18 A Yeah, yeah.
19 Q And I apologize --
20 THE COURT: I'm sorry Ms. Cole, two events?
21 Q The events I'm referring to I'm talking about the 7-11 robbery
22 and then the attempt murder with Javier.
23 A Yeah it's my understanding one happened right after the
24 other.
25 Q Okay, it's true that they occurred approximately 30 minutes

1 apart, correct?
2 A I don’t remember the timeline but that sounds right.
3 Q Okay, and were they investigated ultimately as one case?
4 A I think so yeah.
5 Q Was it your understanding that essentially a lot of the
6 identification of your client and Mr. Venegas was using evidence from
7 both the 7-11 event and the attempt murder event involving Javier?
8 A I don’t really understand your question sorry.
9 Q Were both -- were there pieces of evidence used in each
10 separate event that were used to identify your client?
11 A Yeah sure, yeah I mean they would -- they used the, you
12 know, I guess the circumstantial that they were caught near the guys
13 house so Javier Colon's residence. You know, the ski masks that were
14 found with them. The things that, you know, they supposedly stole, you
15 know they used all of it of course.
16 Q Okay and --
17 A So it wasn’t the perfect defense.
18 Q And Javier Colon's residence was particularly close to the 7-
19 11 that was robbed, correct?
20 A Yeah.
21 Q And I think you spoke briefly about this, but ultimately there
22 was clothing that your client was depicted in from the surveillance video
23 at the 7-11?
24 A There was.
25 Q Okay, and then there was a photograph of your client taken

1 when he was apprehended after the Javier attempt murder situation?
2 A So yeah they -- so the cops did a show up where they brought
3 both defendant's, I think if I remember correctly, back to the 7-11 and
4 said hey is this the guy. And then they took a photo.
5 Q Okay, and that was present at trial?
6 A Yes.
7 Q Okay, so it's fair to say that based upon how intertwined the
8 two events were with the co-defendants did you believe your *Motion to*
9 *Sever* would be granted?
10 A I do not.
11 Q Okay, did you feel like there was a specific trial right that
12 would be compromised for your specific client by not filing the *Motion to*
13 *Sever*?
14 A I did not, no.
15 Q Was there any piece of evidence or a specific item of evidence
16 that you were not able to introduce because of the co-defendant?
17 A Oh no.
18 Q And you believe there to be evidence essentially that was
19 separate and apart for each your client and his co-defendant?
20 A Separate and apart, I mean -- it was virtually the same
21 investigation so they had, you know, they were using the same people to
22 identify both the two guys. The same search show up identification with
23 photos, you know, ski masks so I mean it's essentially very, very similar I
24 would say case against both of them.
25 Q Okay, and let me ask this more clearly, were there any

statements from Mr. Venegas that the State was attempting to use to inculpate your client?

A No.

Q Okay, and the State's case was it dependent on either your client or Mr. Venegas testifying?

A No, in fact that was discussed with the State and I would assume both defendant's but I definitely discussed it with Mr. Monay-Pina whether one person might be willing to testify against the other and that would change everything of course. But that was never offered, you know, maybe in exchange for a plea bargain or something but that was never offered by the State. And then eventually Mr. Monay-Pina indicated that he did not want to do that.

Q Okay, and is it normally your practice when speaking with clients that you explain to them that you essentially have an ethical obligation to not file futile motions?

A Do I tell, I mean I don’t know if I tell everybody that but if somebody says hey were going -- they want me to file a motion that would be futile I would have that conversation.

Q Okay, do you specifically remember in this case talking about your hesitations with filing a *Motion to Sever* with your client?

A I do actually. I believe it was that, well never mind I don’t exactly remember when it was but I think it was discussed hey, you know, I think its -- there's at least some advantage to you sitting next to Casimiro Venegas.

Q Okay, and when you're saying some advantage in the eyes of

1 the jury you thought it would be more effective because Javier
2 essentially identified Venegas as hitting him with the axe?
3 A Yeah so he, you know, well that's not exactly where I was
4 going with it. But my argument was that Mr. Monay-Pina should be
5 considered separately, you know, for what, you know, they could -- the
6 State could prove that he did as opposed to Casimiro Venegas. Which
7 was just a little bit different, he you know, what they were basically
8 saying was he was there but he didn't actually pick up the axe and start
9 chopping away with it.
10 Q Okay, so essentially that the jury would be able to weigh the
11 two against each other in regards of level of culpability and your client
12 would, you know, be shown some lenience comparative to Mr.
13 Venegas?
14 A That was the thought, yeah.
15 Q And that was a strategic -- decision you made?
16 A Yeah.
17 Q Mr. Boley, did you ever in fact admit or concede Mr. Moya's
18 [sic] guilt?
19 A No.
20 Q If you would have done that would you have spoken with him
21 about it?
22 A Oh yeah of course.
23 Q And you maintain that your argument particularly in regards to
24 your closing argument was that essentially it was not your client that was
25 there.

1 A My -- if I remember correctly, and I have not reviewed the
2 transcripts so I don't want to speak out of turn here, but if I remember
3 correctly my closing argument was essentially they have not positively
4 identified Mr. Monay-Pina and even if they did he's entitled to separate
5 consideration from Casimiro Venegas specifically when it comes to that
6 axe issue.
7 Q Okay, so there was never a time where you made some
8 concessions regarding his guilt?
9 A I don't think so, that's a very specific thing to do. And I
10 remember because there was a case I had later on where we used that
11 tactic and it was also a 7-11 robbery. But this was very different.
12 Q Now sir, in regards to your representation of Mr. Monay-Pina
13 did you ever have any concerns about his mental health or competency?
14 A Not at all.
15 Q Have you had cases where you have referred a client to
16 competency?
17 A Yeah, several.
18 Q Okay, and was there anything, was there any signs that Mr.
19 Monay-Pina didn't understand the nature of the proceedings?
20 A No, not at all.
21 Q He understood that you were his attorney and his advocate?
22 A Yes.
23 Q He understood that the State of Nevada was prosecuting him?
24 A Yes.
25 Q He understood the charging document and the charges

against him and their potential consequences?

A I don’t know how specific his understanding was but yes he understood that he was a criminal defendant.

Q Okay so there was -- never a time throughout your entire representation where you had concerns about his mental competency?

A No.

MS. COLE: Courts brief indulgence. And Your Honor, at this time I'll pass the witness.

THE COURT: All right, Ms. McNeill.

MS. MCNEILL: Thanks Judge.

**REDIRECT EXAMINATION OF THOMAS BOLEY**

BY MS. MCNEILL:

Q Mr. Boley, just to follow up on a few areas. You indicated to --

A Sorry about that. I just turned down my volume, hopefully that solved the problem.

Q You indicated that you had 4 to 5 meetings with Mr. Monay-Pina's family members, correct?

A I don’t remember the exact number but that’s sort of a guess.

Q Okay, and what was the substance of those meetings?

A I mean if I remember correctly Mr. Monay-Pina authorized me to talk to his parents. And then at some point they brought in a youngish female that, you know, would have been age appropriate and they told me the story about the tires. Because I wasn’t authorized to talk to her about the case I didn’t go too deep into it. But he had told me, I can't remember if they told me the story first or he told me the story but we

1 talked about it at some point.
2 Q Okay, so --
3 A The family would come in and, you know, just they always
4 wanted like everybody involved in this situation wanted him to get an
5 offer. He wanted an offer. His parents wanted him to get an offer. I
6 wanted him to get an offer. But unfortunately that just wasn't on the
7 table.
8 Q Okay and you would agree with me that discussing a case
9 with family members is not the same as discussing the case with the
10 client?
11 A It's not, that's true.
12 Q And you indicated that it was a young woman who came into
13 your office, you believed it was Mr. Monay-Pina's girlfriend?
14 A I don't remember specifically.
15 Q Okay and you indicated that she explained about the tire
16 slashing incident?
17 A I don't have -- I'm really sorry I don't have a clear memory of
18 that. When, you know, in retrospect I think that's who that was but at the
19 time like -- I was told about the tire situation but I don't know a hundred
20 percent who that was.
21 Q Okay.
22 A And I just have a memory of her, this woman, coming in.
23 Q And she believed or someone believed that, that incident
24 might be important to the case which is why they were having her tell it
25 to you?

1 A I assume so yeah.
2 Q Do you take notes when you have meetings with clients?
3 A Sometimes if there's, you know, specific points I want to
4 remember or something like that.
5 Q Did you take notes during your meetings with the family
6 members?
7 A I don’t remember.
8 Q Were you aware that Mr. Monay-Pina girlfriend was the co-
9 defendant's sister?
10 A I knew there was a connection.
11 Q If you knew that would you have had some concerns about
12 potentially having case discussions with her?
13 A I didn’t discuss the case with her.'
14 Q Okay, but if she was the one who came in to talk about the tire
15 slashing would that have caused you some concerns about having a
16 conversation with her?
17 A Sure, yeah, I mean I don’t remember specifically but.
18 Q Okay.
19 A I did not discuss the case with her.
20 Q Okay, when you meet with third parties to discuss a case do
21 you ever have a witness present with you?
22 A Yes, especially in this case. My paralegal was the translator
23 for most of the parties here.
24 Q Okay did the paralegal take notes about your meetings with
25 the family members or this young woman?

1 A I don’t remember.
2 Q Is it her standard practice to take notes about meetings?
3 A I don’t know, you'd have to ask her I guess but, you know, I
4 know there's a specific way translators take notes.
5 Q Going back to the investigation of the case and the defense.
6 So you’ve testified numerous times that you wanted to present an
7 identification defense, based on Colon's testimony that he recognized
8 him through the eyes, correct?
9 A Yes.
10 Q Okay but you’ve testified on cross examination today that you
11 were aware that the State had collected a ski mask with Mr. Monay-
12 Pina's DNA, correct.
13 A Yes I was aware.
14 Q And you were aware that he was arrested at Colon's house,
15 well close to -- in close proximity to Colon's house, correct?
16 A Yes.
17 Q And you were aware that he was arrested near property that
18 was reported to have been taken from Colon?
19 A Yes.
20 Q And you were aware that he was wearing the clothing that the
21 -- would be shown in the 7-11 video?
22 A Yes.
23 Q And did any of those give you concerns that the State
24 probably had a decent identification of Mr. Monay-Pina?
25 A Concerns, yes but at the time it seemed like the best strategy

1 to go with.
2 Q Would you agree with me that if you realized your defense
3 might be problematic it could be best to investigate the case to perhaps
4 flush out a different defense?
5 A I mean I don't think that would have done any good in this
6 case but in general yes.
7 Q Well let me ask you this, in this case you were aware that Mr.
8 Colon potentially lied about how well he knew Mr. Monay-Pina, correct?
9 A Potentially.
10 Q Okay and so you were aware from the preliminary hearing
11 transcript that he had potentially been given outside information about
12 who was in his home, other than Casimiro?
13 A Yes.
14 Q And you knew that your client was telling you that he had a
15 lengthier relationship with Mr. Colon then what Mr. Colon's testifying to,
16 correct?
17 A As far as what I was told, yes.
18 Q And you were aware that there was some kind of, as you put
19 it, beef between potentially your -- Mr. Monay-Pina but definitely
20 between Mr. Venegas and Mr. Colon, correct?
21 A Yeah I believe that, that was the case, yeah.
22 Q Would you agree with me that those things might be
23 presented to a jury as evidence of bias or motive to testify in a certain
24 way on the -- part of Mr. Colon?
25 A Could it be presented, yes. But it would sort of belay our

1 identification defense.
2 Q Right but what I'm asking you is if you realized that your
3 identification defense was not viable you could have shifted to a different
4 defense perhaps making certain arguments about what may have
5 happened in Mr. Colon's home, correct?
6 A I could have, yeah.
7 Q Okay, did you ever consider that?
8 A I don’t remember honestly like to say did we consider other
9 defenses, when I look at a file and hopefully consider everything but this
10 seemed like the best strategy.
11 Q Okay, what about this identification defense, knowing that the
12 State had multiple other methods of proving your clients identification,
13 what made you think this was the best defense?
14 A Because they were wearing masks.
15 Q Okay, but I guess my question is the masks are sort of
16 meaningless if the State has other methods of proving identification,
17 would you agree?
18 A I don’t think they’re meaningless because if you can't say you
19 saw somebody's face, like that’s not a positive identification.
20 Q But DNA is a positive identification, right?
21 A Yeah.
22 Q Okay, wearing the same clothing that you're photographed
23 and seen in a video in is a positive identification, right?
24 A I don’t think by itself. But yeah it is evidence.
25 Q Okay, and then those things sort of cumulate during the

course of a trial and make an identification defense fairly difficult, right?

A I guess that's what happened here.

Q And did you ever explain to Mr. Monay-Pina, hey the way this evidence is coming together makes this identification defense difficult to sell to a jury?

A I don't remember having that conversation. We talked significantly so there was a lot of communication that occurred while the trial was going on because we were able to slip into a break out room. I don't remember exactly what I talked to him about but, you know, it could have -- that conversation could have happened.

Q Well I'm talking about before trial. Because going into trial you would have reviewed all of the State's evidence, right?

A Yeah of course.

Q And you would have been aware that they had DNA?

A Yeah of course.

Q And you would have been aware of the photographs and the video surveillance, right?

A Yes.

Q And so you don't -- at any time you can shift your defense, right?

A Yeah, of course.

Q Okay, and at no time did you say to Mr. Monay-Pina we really have to discuss the fact that this identity defense is sort of problematic?

A I don't remember having that conversation, no.

Q Courts indulgence. How did you -- you indicated that Mr.

1 Monay-Pina told you that he was wearing a mask during the robbery and
2 that's how you came to your identify defense, correct?
3 A Yeah at some point reasonably early in the case that was said
4 to me.
5 Q When you are preparing a case for trial how do you decide
6 what your defense is going to be?
7 A I think it's the totality of the circumstances, just look at what
8 the State has and what they don't have and, you know, try to go down
9 the path that's the least likely, you know, have your client end up with a
10 conviction.
11 Q Okay, did you ever think about potentially arguing that Mr.
12 Monay-Pina was merely present during the Colon incident?
13 A Merely present?
14 Q Yes.
15 A I mean I think I kind of made that argument.
16 Q Okay, and would you agree with me that that argument could
17 have bolstered by potentially impeaching Colon's version of events?
18 A That Monay-Pina was just standing there? I don't think
19 whether or not Javier Colon identified Monay-Pina or not through
20 actually seeing his face would make a difference in that case.
21 Q Well I'm not talking about his identification. I'm talking about
22 that fact that Mr. Colon gave some versions specifically at the
23 preliminary hearing that didn't really make sense about the timing of the
24 incident and what happened during the incident. So if you --
25 A Okay.

1 Q -- potentially could have impeached that version of events or
2 his credibility would that have been important?
3 A Maybe, I mean that's a lot of if's but maybe.
4 Q Okay, and would you agree with me that going into a jury trial
5 it's probably best to chase down all of those potential if's?
6 A I don't know.
7 Q Courts indulgence. You testified that Mr. -- you didn't believe
8 that Mr. Monay-Pina had any significant trial rights that were affected by
9 him going to trial with Mr. Venegas, correct?
10 A I didn't think so, no.
11 Q Okay, did you present to the jury and was it part of your case
12 that Mr. Monay-Pina was less culpable than Mr. Venegas?
13 A If I remember correctly I said something to the effect of he
14 deserves to be considered separately from Mr. Venegas.
15 Q Okay.
16 A Specifically with what he's being excused of actually like
17 physically doing.
18 Q Okay, and did you ever try to through testimony cross
19 examination or your own witnesses present any evidence that would
20 help bolster that defense?
21 A I believe I did yeah. So when Mr. Colon was on the stand I
22 think we talked about what Mr. -- to not identify Mr. Monay-Pina at the
23 time but the smaller man, you know, what he actually did versus what he
24 didn't do.
25 Q And if Mr. Colon had some kind of personal, as you put it beef,

1 with Mr. Venegas do you think that would have been potentially
2 important to point out as your clients defense as to what his motives or
3 lack of motive to hurt Mr. Colon could have been?
4 A Maybe.
5 Q And do you think that your clients ability to point the finger at a
6 co-defendant to present his defense is a significant trial right?
7 A I mean in general I guess but in this case no.
8 Q And why not in this case?
9 A Because they had almost identical defenses.
10 Q Okay --
11 A And there was no finger pointed, if there was going to be
12 finger pointing it might, you know, it might have benefited him but there
13 was no incentive for him to point a finger.
14 Q But if you had talked to potential witnesses to sort of flush out
15 the beef between Venegas and Colon that could have made a difference
16 in whether or not you would have moved to sever, if you had evidence to
17 present.
18 A I don’t think so no, I don’t think I would have done it any
19 differently.
20 Q Okay and why is that?
21 A It's still an identical defense, you know.
22 Q Well if the defense is that --
23 A The same set of facts.
24 Q -- if the defense is that it was Mr. Venegas and your client just
25 happened to find himself in that room you would agree that is not an

identical defense to Mr. Venegas's defense?

A Okay yeah if that were the case.

Q Okay, so there was potential if you had adjusted your defense there may have been grounds to move to sever?

A I don’t think so, I just wasn’t presented with that situation. And in fact the way it was presented to me is that Mr. Monay-Pina had the beef with this guy.

Q Well and that came from your client. But would you agree with me that the things your client tells you aren’t always the way that the investigation plays out?

A I guess.

Q And would you agree with me that sometimes you learn things through people other than your client that turn out to be very helpful to present to a jury?

A Sure.

MS. MCNEILL: I'll pass the witness, Judge.

THE COURT: All right anything else, Ms. Cole?

MS. COLE: Just briefly, Your Honor.

**RECROSS- EXAMINATION OF THOMAS BOLEY**

BY MS. COLE:

Q Mr. Boley, it's fair to say that there was overwhelming evidence against your client in this case, correct?

A I think the State had a solid case unfortunately.

Q There was eye witness identifications, correct?

A Yeah there were.

1 Q And specifically referring to the 7-11 clerk who did a show up
2 and identified your client, correct?
3 A Yes.
4 Q Okay.
5 A Well he didn't do a show up they brought the guys back to the
6 7-11 just to be accurate.
7 Q Correct. There was also his DNA found on a mask that
8 matched what the suspect in the video surveillance was wearing,
9 correct?
10 A Yes.
11 Q Okay, and he was ultimately apprehended near where almost
12 the exact amount of cash that was taken from the 7-11 was found,
13 correct?
14 A Yes.
15 Q And in preparing for trial you had all the available discovery
16 and everything that the State was planning to present to the jury,
17 correct?
18 A I did.
19 Q And specifically in regards to Javier Colon, there was other
20 individuals that were present at that home, correct?
21 A Yeah there were several other family members of Mr. Colon,
22 that's my understanding.
23 Q Okay, and your client was identified by those other people as
24 essentially the gun man?
25 A Yeah so basically I think there were two women that were

1 called to testify and they both said yeah that guy was pointing a gun.
2 Well the thinner man was pointing a gun, you know, at them or basically
3 waiving it around saying everybody shut up.
4 Q Okay, and again you were aware of the charging document
5 and the way the State had pleaded the case and that your client could
6 be held liable directly, under an aider and abider, or a co-conspirator,
7 correct?
8 A Of course, yeah.
9 Q Okay, and did that knowledge of all of the evidence and the
10 way the charging document was presented in effecting your decision in
11 coming up with a defense?
12 A Everything factors in I guess so yeah.
13 Q Okay, do you believe a mere presence defense would have
14 been successful?
15 A No.
16 Q Is that based upon all the overwhelming evidence that was
17 presented against your client?
18 A I think that what sort of destroys that defense is the family
19 members testifying that they saw him basically holding this gun, you
20 know, telling them not to scream and such. So I mean you've got direct
21 testimony that he wasn't just standing there, you know.
22 Q Right although he wasn't, you know, holding the axe he was
23 potentially aiding Mr. Venegas in making sure no one else interfered,
24 correct?
25 A You could say that.

1 Q I'm sorry?
2 A You could say that.
3 Q Okay, that essentially it was the State theory that your client
4 was essentially the look out and to prevent anyone from calling 911 or
5 preventing anybody else from interfering in the attack on Javier, correct?
6 A Can you say that again I didn't quite catch the first part there?
7 Q So you could say that it was the State's theory through the
8 evidence and the closing argument that was presented that your client
9 was essentially the look out and the aider in helping Mr. Venegas
10 complete the attack on Javier and not letting anybody interfere with that
11 attack by brandishing the firearm?
12 A Yes. I think that was the State's theory but I don't want to jump
13 in their head, you know.
14 Q And that would affect your thoughts on the likelihood of
15 success of a mere presence defense?
16 A The trial strategy of the State, yeah I mean it just -- that wasn't
17 -- like his mere presence just wasn't in the cards because there was
18 direct testimony that he was doing more than just standing there.
19 Q Okay, and throughout your investigation of the case based on
20 the discovery you received you did learn information about a potential
21 association or relationship with your client and Javier?
22 A An association? I think they were buddy's before this whole
23 thing went down but.
24 Q Right, that's exactly what I'm getting at. You were aware of
25 that fact?

1 A Are you talking about Casimiro Venegas and Jose Monay-
2 Pina or are you talking about Javier Colon?
3 Q I'm talking about your client with Javier Colon.
4 A Yeah there was some -- they knew of each other. I think, I
5 mean the idea was you don't just go rob somebody's house randomly I
6 don't think you just say hey lets go rob this particular guy. His house is
7 around the corner.
8 Q That's exactly what I'm getting at, so you were aware that this
9 wasn't a stranger on stranger crime?
10 A Yeah I was aware of that.
11 Q Okay and you were aware that there could have been
12 potential cross examination exposing the bias of Javier Colon based on
13 the fact that he knew your client more than he was letting on?
14 A Yes.
15 Q Okay these were all things that you were aware of and you
16 considered correct, before going with your identification defense?
17 A Absolutely.
18 Q Okay, this was all information you were privy to and thought
19 about before committing to your trial strategy?
20 A Yes.
21 Q And that was based upon all of the evidence that the State
22 had shown you and that you were aware of that they were going to be
23 introducing during their case in chief?
24 A Was my trial strategy based on that, yes.
25 Q And you can only work with what you have, correct?

1 A Yes.
2 Q It's fair to say that, you know, in different cases that are
3 brought to trial some cases have more evidence then others?
4 A That's true.
5 Q Okay, and based upon the overwhelming evidence in this
6 case did you make the best strategic decision that you could based upon
7 what evidence existed?
8 A I think that I would probably make the same call today even
9 after appeal and post-conviction relief has been filed. I still think that
10 identity was probably the best way to go. That's what we had.
11 MS COLE: No further questions, Your Honor.
12 A And maybe somebody else would say something differently
13 but you know hey.
14 THE COURT: All right, thank you Mr. Boley have a good
15 afternoon.
16 MS. MCNEILL: Judge, I'm sorry could I just reopen, I missed
17 one area? It's brief. It's fine, I can argue it Judge it's okay. I'm good. I
18 think I have enough to argue it.
19 THE COURT: Are you sure? Ms. McNeill go ahead if you
20 want to ask a question.
21 **REDIRECT EXAMINATION OF THOMAS BOLEY**
22 BY MS. MCNEILL:
23 Q I just want to ask Mr. Boley, you indicated that it would be hard
24 to prove that Mr. Monay-Pina was intoxicated but are you aware that the
25 jail records sometimes your client will admit when they're booked in that

they're under the influence of something?

A Yeah.

Q Did you get Mr. Monay-Pina's jail records?

A I got jail records, I don’t remember any of them indicating he was intoxicated.

Q Okay did you those records weren't provided to me do you know where those records are?

A I don’t I'm sorry.

Q Okay. All right nothing further Judge.

THE COURT: Thank you. Thank you, Mr. Boley, have a good afternoon. Ms. McNeill, please call your next witness.

MR. BOLEY: You too, thank you.

MS. MCNEILL: Yes, Judge I would call Mr. Monay-Pina's mother Catalina and I'm sorry I'm spacing her last name I think its Monay-Pina. So we can get the interpreter out of here.

THE COURT: Great, thank you.

THE INTERPRETER: Is it okay if I stay here?

MS. MCNEILL: Yeah I think so.

THE MARSHAL: Yeah, the mic will pick you up.

THE INTERPRETER: Yeah, okay.

THE COURT: Yeah, wherever you are comfortable. Is she outside?

MS. MCNEILL: She's on Bluejean's I'm hoping that’s her.

THE RECORDER: I believe she's guest 1.

THE COURT: Oh, all right. Does she have video?

MS. MCNEILL: Can we ask her with the interpreter if she can? Okay well, let me try calling her Judge.

[COLLOQUY BETWEEN COUNSEL AND INTERPRETER]

MS. MCNEILL: Judge, I hate to do this to the interpreter but I'll resend the link and maybe we can move on to Mr. Monay-Pina while we do that. So I would call Mr. Monay-Pina at this point.

THE COURT: All right, sir if you would just please stand and raise your right hand the Clerk will swear you in.

**JOSE MONAY-PINA**

[having been called as a witness and first duly sworn testified as follows:]

MS. MCNEILL: Thanks Judge. Okay.

THE COURT: And sir, if you could just state your name and then spell it for the record please.

MR. MONAY-PINA: Spell my name?

THE COURT: Yes, sir.

MR. MONAY-PINA: Jose J-O-S-E Monay M-O-N-A-Y.

THE COURT: Thank you.

MS. MCNEILL: Am I okay to proceed, Judge?

THE COURT: I'm sorry, go ahead.

**DIRECT EXAMINATION OF JOSE MONAY-PINA**

BY MS. MCNEILL:

Q Okay thank you. Mr. Monay-Pina, I'm going to ask you some questions about your representation by Mr. Boley, okay?

A Okay.

Q How many times did Mr. Boley come to see you at the jail prior

1 to your trial?
2 A He only came once.
3 Q Okay, and during that time that he came what was your
4 discussion with him?
5 A He just showed me all the prelim files that I had going on and
6 some other stuff that I can't remember. And a set of clothes that I could
7 pick out during my trial.
8 Q Okay, so I'm having a little trouble understanding you. Did you
9 say that he talked about clothing for trial?
10 A Yeah.
11 Q Okay, you said he showed you some -- the preliminary
12 hearing file, do you mean the preliminary hearing transcript?
13 A Yeah that and at the time he said he had a video but he didn't
14 show me the video.
15 Q Okay, did he talk to you about the video?
16 A He just told me that they had a video of me and my co-
17 defendant at the time going in to rob the 7-11. That's all he said.
18 Q Did you have any discussions with him about your trial
19 strategy or your defense?
20 A All he ask that when we went over -- he just went over the
21 prelim transcripts and if I needed anything to add on of what happened.
22 But other than that we didn't talk about no strategy.
23 Q Did you -- when you went into your trial did you know what
24 defense he was going to present?
25 A I did not.

1 Q How many times did you talk to him on the phone, before trial?
2 A Before trial, I think it was around 1 time and then all the other
3 times I had to call and have my mom. Because he never -- he hadn't
4 answered my phone calls. So I just have my mom call from now on since
5 she was getting answered more than I was.
6 Q So you would ask your mom to call and then your mom would
7 call him?
8 A Yes.
9 Q And then did your mom relay to you the conversation that she
10 had with Mr. Boley?
11 A Yes, well she did -- she told me she never talk to Mr. Boley
12 directly but to the interpreter or assistance Clarissa [sic].
13 Q Did your --
14 A Since my mom only speaks Spanish.
15 Q Okay, so she told you she never actually talked to Mr. Boley?
16 A Yeah she never talked to Mr. Boley.
17 Q Okay, did she tell you if she'd gone to his office to talk to him?
18 A She told me she had been there a few times but during this
19 whole thing. She had to come out from California so.
20 Q Did you --
21 A [Indiscernible]
22 Q Did you ask Mr. Boley to talk to any of your witnesses?
23 A I told him about that Cynthia. And that he should look into that
24 and see what happened in that part. But other than that that's all I had at
25 the time.

1 Q Did you ask him about getting an investigator?
2 A He mentioned it during one of the things and I didn't
3 specifically ask him to get an -- but I thought since he mentioned it --
4 you know, going along with that with the detective or.
5 Q Investigator?
6 A Investigator yes my bad.
7 Q You said that he mentioned it. What did he say to you about
8 it?
9 A That he was tell me how past trials or past whatever courts he
10 had and how he has an investigator follow up on all that stuff but him get
11 a better idea.
12 Q So he told you --
13 A And --
14 Q Sorry I'm going to cut you off there. So he told you that he --
15 thought he should have an investigator follow up on some things?
16 A That's how I took it, I don't know if that's what he meant. Since
17 he was the one that brought up the investigator.
18 Q Did you tell him to talk to your girlfriend Angelica?
19 A Yes, about the part of what was being said about the tires
20 being slashed. And she said he was going to check it -- check on it to
21 see if she called the cops or something.
22 Q Did you think the tire slashing incident was important to your
23 case?
24 A I mean I don't know how important it would have been but at
25 least they would have -- I honestly don't remember what I thought if it

1 was important or not.
2 Q Okay, well let me ask you this did you understand how the
3 State was going to identify you at trial?
4 A No.
5 Q Did Mr. Boley explain to you the evidence that the State would
6 use to identify you at trial?
7 A No. The only thing I remember too is after they apprehended
8 me and my co-defendant they took pictures and they showed our faces
9 outside on the street where they caught us.
10 Q Right, but did he, did you, did he explain to you how that
11 would be used to identify you?
12 A No.
13 Q Did you talk to him about presenting a defense of identity?
14 A I didn't ask him for -- I honestly [Indiscernible] all this was to
15 go about since we already talked so I didn't know he was going to use
16 that. But I had mentioned the mask but not like in those ways. Like oh I
17 was wearing a mask I don't think they can identify me.
18 Q Okay, had you ever been arrested before?
19 A No.
20 Q You've never gone to trial before, right?
21 A Right, never have.
22 Q And how many years did you attend school?
23 A Kindergarten through 12th grade.
24 Q Courts indulgence. Did Mr. Boley ever discuss with you that
25 you had the option to plead to the charges instead of going to trial?

A No, there was no mention of that.

Q Did you feel that you understood what was happening at trial when the trial started?

A All I knew is I was going to trial I mean there was a -- and when I was going for but I didn't know like a lot of terms and stuff that they talked. So I wasn't really paying -- like I was -- trying to pay attention to what was going on but and I knew what I was going for.

Q And I guess what I'm asking you is were you -- were you ever surprised during trial by some of the evidence?

A By -- yes by some of the things they were saying from the prelim to when they went on the stand again on the trial there's a lot of that I thought was inconsistencies.

Q Well and had you seen all of the discovery prior to going to trial?

A No the only thing I had was the transcripts, the prelim transcripts.

Q When the State played the video were you surprised what was on the video?

A Yes.

Q When you asked Mr. Boley --

A I --

Q -- sorry when you asked Mr. Boley questions on the phone about preparation for the trial what did he tell you he was doing?

A He pretty much -- he didn't talk to me he talk mostly to my mom. So the only one -- the one time that I talked to him was when he --

1 they appointed me him as my lawyer and I just wanted to see if there
2 was any updates since I haven't heard from him. Ever since seeing him
3 from the prelim.
4 Q Did he ever --
5 A I mean from the --
6 Q I'm sorry go ahead.
7 A Oh yeah when he came in and we had court I don't know they
8 call it calendar call or whatever since then. So I called him.
9 Q Sorry I keep cutting you off. Did Mr. Boley explain how
10 conspiracy laws work?
11 A I believe so but it was so long ago I don't remember now.
12 Q Right did he explain how the State charged you as a
13 potentially as a conspirator?
14 A Did he explain to me?
15 Q Yes.
16 A About what?
17 Q Explain what that meant? Sorry I don't --
18 A I don't --
19 Q Did you answer?
20 A I don't think I remember.
21 Q Okay, so you don't remember or you don't think he did?
22 A I don't think he did because yeah I don't think he did because
23 all he -- yeah he didn't.
24 Q And what's your understanding of conspiracy law on how you
25 could be charged as a conspirator?

A If you actually planned this whole thing or you and the co-defendant get together and plan to do something. And commit the crime together.

Q Okay, what does that mean?

A That you and your co-defendant conspire to do this act together, or this crime together.

Q All right and where did you learn that?

A I learn I have a law books and stuff.

Q Okay.

A From where -- stuff like that and through other people's information not information but past criminal activities and stuff --

Q Okay.

A -- like that.

Q Did you have a conversation with Mr. Boley about testifying at trial?

A Briefly. He told me that when we were going to court one -- or about -- to go testify and he told me that it's not a good idea and I told him the same thing, I agree with him.

Q Okay, did he say why it wasn’t a good idea?

A No he did not tell me why.

Q When you asked him if you thought the case was good for trial, that it would be a good trial, what did he say?

A He just -- he told me that everything was going to be all right. That everything was in his hands that he had it under control pretty much.

1 Q What did you -- what did that mean to you when he said it
2 would be all right?
3 A What he said -- it would have been all right.
4 Q Did you take that to mean that he thought he could win the
5 trial?
6 A Yes, I did.
7 Q Did you talk to him about separating or severing your case
8 from your co-defendant's?
9 A Yes I did.
10 Q And what did he tell you?
11 A He told me that he that part I do remember hearing him -- he
12 did tell me that he thought that it would have better to stay together
13 because they have all the guilt on him. On my co-defendant.
14 Q Did he explain to you what evidence they had against you?
15 A No.
16 Q Judge, Court's indulgence. Judge I will pass the witness at this
17 point.
18 THE COURT: All right, Ms. Cole.
19 **CROSS EXAMINATION OF JOSE MONAY-PINA**
20 BY MS. COLE:
21 Q Thank you, Your Honor. Mr. Monay-Pina, do you recall who
22 represented you at your preliminary hearing?
23 A Like the person that represented me?
24 Q Who was your attorney --
25 A The first -- court appointed I don’t remember his name.

1 Q Okay, was it somebody different then Mr. Boley?
2 A Yes.
3 Q Okay, when did Mr. Boley come onto your case?
4 A I think he came right after -- that right after the preliminary
5 hearing. When I went to court on calendar call I believe. I heard
6 somebody say that when he came in to stand -- he was my new lawyer.
7 Q Okay. and you recall speaking with him?
8 A Yeah, I try to call him after that court date.
9 Q Okay, how many times did you speak with Mr. Boley?
10 A On the phone? I would say like twice and like him visiting me,
11 once.
12 Q Okay, so you testified on direct that it was one time on the
13 phone now you're saying you spoke to him twice on the phone.
14 A It could have been -- I remember I tried to call him so many
15 times I know I only spoke to him once and then I had mom call all the
16 other times.
17 Q Okay, and during one of those conversations you recall saying
18 that they wouldn't be able to identify you because you were wearing
19 masks?
20 A I didn't tell him -- the reason why I told him something like the
21 mask part was when it was at -- when we were talking about Colon and
22 him saying after the preliminary thing saying that he recognized my
23 eyes. Then he switched his answer to he remember -- he knew who I
24 was because of my eyes and I told him -- and that's when I told him
25 about the mask. And -- yeah.

1 Q Did you tell Mr. Boley that you knew Colon?
2 A Yes after Colon had brought that up as well.
3 Q Okay, so you discussed with Mr. Boley that you had a prior
4 association with Javier Colon?
5 A Yes.
6 Q Did you tell him that he had slashed your girlfriend's tires?
7 A I did.
8 Q Okay, and he was aware of that information, you told him
9 that?
10 A Yes.
11 Q And was that on the phone?
12 A No.
13 Q When did you tell him that?
14 A When he came to visit.
15 Q When he came to visit you in the jail?
16 A Yes.
17 Q Okay, so you don't recall having a conversation with Mr. Boley
18 where you were talking about the jury or not the jury excuse me, about
19 the victim's not being able to identify you because we were just wearing
20 masks?
21 A Yes, because when I took my transcripts with me and I was
22 telling him about the things that I found in there and the transcripts of
23 being inconsistent that didn't make sense. But I didn't know he was
24 going to use anything -- I didn't know what strategy he was going to go
25 for he just told me that everything was fine.

1 Q Okay, sir I just missed that last part you said. You said you
2 didn't know what he was going to go for?
3 A No, he didn't tell me he just told me that everything was going
4 to be fine.
5 Q Okay, so you didn't talk about identity potentially being an
6 issue?
7 A No.
8 Q Okay, but didn't you say you talked about the inconsistencies
9 in the preliminary hearing transcript with Mr. Colon?
10 A Right.
11 Q And you told Mr. Boley that you were wearing a mask but he
12 testified to being able to see your eye color, correct?
13 A Right.
14 Q And you just said that was an inconsistency because you were
15 wearing a mask, correct?
16 A Yes.
17 Q Okay, so you did talk about issues with identification?
18 A Yes we did but we didn't say that he was going to use that in
19 trial.
20 Q Okay, what did you ask Mr. Boley to do that he did not do in
21 regards to investigating your case?
22 A Other than to have that -- interview Cynthia the one that told
23 Colon that it was me who was -- a part of the -- crime being committed.
24 Q Okay, but you had also told Mr. Boley that you knew Colon,
25 correct?

A I did tell him after Mr. Colon had already said it on the transcripts.

Q Okay sir, I'm not talking about what you read from transcripts. I'm asking you --

MS. MCNEILL: Well objection, he answered that he said it, he told him after he read it in the transcripts. So he's answered the question.

MS. COLE: Well and I'm clarifying that's not what I'm asking.

THE COURT: All right so I'm going to sustain -- you can just rephrase the question Ms. Cole.

BY MS COLE:

Q What did you specifically tell Mr. Boley about Javier Colon? I'm not talking about what you read in transcripts, what did you tell Mr. Boley?

A I told him yes that I know that guy we used to work at a landscaping place but briefly. That's where I met him.

Q So you worked with him at a landscaping place?

A Yes, I only seen him twice.

Q Okay.

A After that I didn't see him after that.

Q What landscaping place was this at?

A It used to be [Indiscernible] Landscaping.

Q Okay, and so you told Mr. Boley that he was a co-worker of yours?

A Yeah a brief one.

1 Q Okay.
2 A Brief.
3 Q So for all intents and purposes Mr. Boley knew that this wasn't
4 a stranger to you?
5 A Yes.
6 Q So I guess why did you want him to speak to Cynthia?
7 A Well I just wanted -- to I mean -- I don't know if the -- he Mr. --
8 I just wanted to know if it was her that told Mr. Colon or if it was --
9 because he really recognized me because my eyes. I just wanted to see
10 if he was lying during his whole trial on his testimony.
11 Q Okay, but you told Mr. Boley that you knew Javier Colon.
12 A Yes.
13 Q Okay, so I guess I'm trying to get at what -- would be the
14 purpose of any conversation with Cynthia?
15 A I don't know to be honest.
16 Q Okay you don't know?
17 A No.
18 Q What else did you ask Mr. Boley to do that he did not do
19 specifically?
20 A Besides severing my -- have my -- separate from my co-
21 defendant.
22 Q Can you repeat that -- sir I did hear what you said?
23 A Other than to separate my trials with my co-defendant. That's
24 all I asked him and he didn't do.
25 Q Okay, so you asked him to speak to an individual by the name

1 of Cynthia?
2 A Yeah.
3 Q And did you have --
4 A Uhh
5 Q Excuse me sir, did you know anybody by the name of
6 Cynthia? Is this somebody that you knew?
7 A I didn't know her. I just I didn't even know who she was.
8 Q Okay, and then you can also recall asking him to separate
9 your trial from your co-defendant?
10 A Yes.
11 Q Did you recall why you asked him to do that?
12 A I asked him to separate because I thought I would have a
13 better chance if I went alone.
14 Q Okay, what specifically made you think you would have a
15 better chance if you went alone?
16 A Well I thought the reason why I thought it would have been
17 better is that they had Javier Colon's case that everything was pointed at
18 my co-defendant and I thought if I separated that at least part of my
19 involvement in that wouldn't be as -- big. Which, you know, I didn't do
20 anything that.
21 Q Are you, I'm sorry sir I didn't hear that last part. Can you
22 repeat that last part?
23 A I said that I didn't have to do much in that part at the end.
24 Q Okay you didn't have to do much in that part at the end. I'm
25 confused about what you're referring to.

A No, that I didn’t have a big part in Javier Colon when the crime was being committed.

Q Okay, so you wanted him to sever the trial based upon the fact that you didn’t feel like you played as big of a part, or you didn’t have a part in the Javier Colon?

A Yes.

Q Okay, just the Javier Colon not the 7-11?

A I would just a small part on everything yeah. I thought if, if I got -- to show that I had little participations in all the crimes.

Q Okay, but I'm specifically asking what you spoke to Mr. Boley about in regards to why you wanted the trial severed? Did you specifically talk about the Javier Colon situation?

A Okay so no. No we didn’t -- I asked him when we were going to court and after that he said oh I don’t think it’s a good idea because then they will show that -- that everything was being pointed at Mr. -- the co-defendant Mr. Javier Venegas [sic]. That was the last time I ever talked about him about that.

Q Okay, and you said that you asked him that when you were going to court.

A Yes, when we were -- we had sometimes where he came in when I was alone and we'll talk.

Q Okay, so this was an in person conversation?

A Yes.

Q Okay, and it was during court?

A Yes. When we had that little small chance to talk before the

1 Judge comes in and everybody else.
2 Q Okay, would you usually talk to Mr. Boley before the Judge
3 would come in?
4 A Yes.
5 Q Okay.
6 A That's the only time -- where I could actually talk to him
7 myself.
8 Q Okay so --
9 A And it was brief.
10 Q I'm sorry what did you say?
11 A And they were brief.
12 Q Okay, but when you said that you only spoke to him twice on
13 the phone, you're not including the times that you would speak to him
14 before court?
15 A No, like on the phone was just when I remember calling him
16 when -- first saw my court. And then I called him to see if he had any
17 more information.
18 Q Okay sir --
19 A And that was it.
20 Q So it's true that when you said you only talked to him on the
21 phone twice you were not including the times that he would talk to you
22 before court?
23 MS. MCNEILL: Well objection, because in court isn't on the
24 phone so.
25 A Yeah.

1 MS. COLE: I'm just making sure I understand.
2 THE COURT: Okay.
3 MS. MCNEILL: I guess my objection is I think it's confusing.
4 THE COURT: I got it.
5 Q So sir how many times would you say that you talked to Mr.
6 Boley before court? Meaning not on the phone, you're in person
7 together.
8 A Well every time I see him we talked.
9 Q Okay, so every court appearance you had?
10 A Yeah.
11 Q Okay, fair to say that you had over 10 maybe even 15 court
12 appearances through the duration of his representation with you?
13 A Yeah sure, I mean I don’t know how many times I seen him.
14 But yeah.
15 Q Okay, and you're saying that it was normal for you to talk to
16 him before the Judge would come onto the bench?
17 A Yes.
18 Q Now sir, you've been in custody throughout the duration of Mr.
19 Boley's representation with you, is that correct?
20 A Yes.
21 Q Now can you speak on the phone whenever you want at
22 CCDC?
23 A No.
24 Q Do you have limited time on the phone?
25 A Yes we do.

1 Q Okay, and is that time always the same or does it change?
2 A It's always the same but sometimes it changes depending on
3 what facility you're on or which wing or whatever they call it here.
4 Q Okay, and do you always have access to the phone or are
5 there other inmates that need to use the phone as well?
6 A Yeah there's other inmates that need to use the phone as
7 well.
8 Q Okay, now as far as your conversation regarding getting an
9 investigator. What specifically did you ask Mr. Boley to get an
10 investigator for?
11 A Oh I didn’t tell him to get an investigator. I said that he brought
12 up the investigator so I thought he was going to go along with it and
13 bring the investigator since he said that he needed some follow up.
14 Q Okay, but you didn’t specifically ask him to investigate
15 anything other Cynthia?
16 A Right, after he mentioned that investigator. And oh -- and to
17 follow on the slashing's.
18 Q Okay, and the slashing's you're referring of the slashing's of
19 the tire?
20 A Right.
21 Q Okay, and what specifically did you want him to follow up
22 regarding that?
23 A I guess that there was like no mention of it so I just wanted to
24 put it out there that, you know like, I just want to see what he could find.
25 What happened.

1 Q Okay. did Mr. Boley explain to you what the pros and cons of
2 potentially bringing that up at trial would be?
3 A No.
4 Q Okay, you guys didn't speak at all about the fact that Javier
5 only identified you by your eyes?
6 A I asked him during -- the end of the trial we were going to get
7 sentenced and I asked him can he really do that, like he could recognize
8 me by my eyes like that. And he told me yeah. That's all - that was the
9 end of it that was really brief.
10 Q Okay, prior to trial did you talk about the fact that Javier only
11 recognized you by your eyes?
12 A I remember when I -- yeah I think when he came and visit me
13 that one time now I remember telling him because I had a lot of that stuff
14 marked where -- to be honest yeah -- I had something there where he --
15 I remember telling him something about me when during the pre-trials
16 when he came to visit me that one time but I don't remember what it
17 was.
18 Q Well isn't it true that you read the preliminary hearing
19 transcript and you talked about some of the things that were in that
20 transcript?
21 A Right.
22 Q Okay, and isn't it true that one of those things is that he
23 recalled his identification of you was through your eyes?
24 A Right but then it also says that somebody told him that it was
25 me.

1 Q Okay, and so you were essentially telling Mr. Boley that his
2 identification was weak, correct?
3 A Right.
4 Q Okay.
5 A I think he said at first -- he said the first time he said that the
6 thing that really got me like it didn't that Mr. Colon said that somebody
7 told him that it was me. And then he changed it up and he's like oh no,
8 no I recognized him because of his eyes. So I mean which one was first.
9 Is somebody telling you or did you really recognize me because of my
10 eyes?
11 Q Absolutely. So that was something you discussed with Mr.
12 Boley?
13 A Yes.
14 Q Okay, and essentially right which one is it. Did somebody tell
15 you or did you only recognize me from my eyes.
16 A Right.
17 Q And you felt that, that was a weak identification, correct?
18 A Yes.
19 Q Okay but you at the same time wanted Mr. Boley to
20 investigate the fact that Mr. Colon had potentially slashed your girlfriends
21 tires?
22 A I believe so.
23 Q Okay and did you think that that would produce better
24 evidence for you or worse evidence for you?
25 A Well at the time I was just -- I was just throwing things out

there to see what would help me or what wouldn't help me. So I just told him and if he could do that but I never got anything back from him about that.

Q Okay, do you believe that the jury understanding that you had known Javier prior to the attempt murder at his home that, that would have helped you or hurt you in front of the jury, in regards to his identification?

MS. MCNEILL: Well and I'm going to object. I don't think he has any foundation to testify about what he thinks a jury might do. He's never gone to trial before.

MS. COLE: Well, Your Honor, I think it's absolutely appropriate because the entire basis is that he asked Mr. Boley to do certain things and investigate certain things and I'm wondering -- I think its relevant to show what he thought that information would reveal to show the basis of what Mr. Boley should or shouldn't have investigated.

THE COURT: I think we have enough on that Ms. Cole, unless you don't think so.

A But yeah --

MS. MCNEILL: Okay wait Mr. Monay-Pina. Hang on.

THE COURT: Yeah just hang on.

MS. COLE: I'm sorry, Your Honor, are you.

THE COURT: Unless you feel like you need to make a more complete record I feel like I understand what he was asking and.

MS. COLE: Okay absolutely.

THE COURT: What may or may not have -- how he may or

may not have benefited from that.

MS. COLE: Let me just review my notes briefly. And Your Honor, I'll pass the witness.

THE COURT: All right.

MS. MCNEILL: Judge, I'm going to rest. I have no further questions for Mr. Monay-Pina. And I'm not going to call his mother because I got what I needed through him.

THE COURT: Okay.

MS. MCNEILL: So I would rest at this point.

THE COURT: Okay. All right, Ms. Cole do you have any witnesses?

MS. COLE: No, Your Honor, the State doesn’t have any witnesses.

THE COURT: Okay, then argument.

MS. MCNEILL: Thank you, Judge. I'm going to start with -- I guess grounds 2, 6, 8, and 10 are kind of, they're really kind of connected. So I have some concerns, Judge, I think that when you look at representation of a defendant before a felony jury trial I think I'm just going to say that it patently ineffective that you meet with your client one time in person. I know, Your Honor, did my job before you were a Judge. Talking to a client in the courtroom is absolutely not the same thing as talking to a client in person alone in a room at the jail. One, because there's frequently other people around, including your clients co-defendant. And you just can't have the kind of substantive conversations. A few phone calls and one meeting in the jail is

1 absolutely not enough time to discuss with your client the ins and outs of
2 going to a criminal jury trial.
3 Mr. Monay-Pina it was clear that he, you know, he has a
4 limited education. He's never been arrested before, never gone to trial
5 before. Really does not understand how the pieces of evidence come
6 together. And I think what's troubling to me the most is that he kept
7 testifying that he didn't really understand how these pieces of
8 information worked. Even if you take Mr. Boley's testimony that Mr.
9 Monay-Pina told him well we were wearing masks they couldn't identify
10 me that then leads you to a whole other series of problems. Because if a
11 client tells me that, that -- doesn't where my inquiry stops, I mean great
12 but does that mean the State can not prove their identity. They
13 absolutely could in this case. They had his DNA, they had I mean
14 identity just was not an issue in this case. So what that means is you
15 have to explain to your client great you were wearing a mask on the
16 video but here's the other ways that the State's going to say it was you.
17 And if your client doesn't understand that your client is then walking into
18 his jury trial without any understanding of how these things are going to
19 be used against him. Without any understanding of how he's going to
20 potentially defend himself.
21 Mr. Monay-Pina said that all Mr. Boley ever told him was that
22 everything was going to be okay and that all of the evidence was against
23 the co-defendant. And Mr. Boley kept -- saying that but then he never
24 explained how he was going to then use that. The fact that Mr. Boley
25 seemed to be married to this identify defense is concerning because it

1 just wasn't a valid defense which then leads you to -- then you have to
2 get an investigator and you have to talk to this person. you have to
3 wonder why Mr. Colon who it would seem from what Mr. Monay-Pina
4 said, from what this witness at preliminary hearing said did actually know
5 him beyond just being able to recognize him by the eyes. That's an area
6 of investigation that could potentially lead you to exculpatory evidence to
7 present to a defense beyond the ID defense. I don't think you can simply
8 say its strategic that he developed this ID defense. It's not strategic to
9 develop a bad defense or to know that your defense is completely
10 crumbled and still go with it. He didn't seem to have any explanation
11 beyond that he sort of disagreed with me that the identity wasn't a valid
12 defense but then he says to the State oh yeah you know it wasn't a great
13 case against my client. He testified that he didn't think that it was the
14 greatest case against his client but he never explained that to his client.
15 He never told the client like look you're not in a great position here
16 because of what the evidence is. Mr. Monay-Pina did ask him to talk to
17 this Cynthia. It's not Mr. Monay-Pina's job to understand what that
18 witness might say if he doesn't know this witness. That's why the
19 attorney has to go investigate what these people might say.
20 Mr. Monay-Pina said he never talked to him about you have
21 the option of pleading to the charges instead of going to trial. He didn't
22 talk to him about what was actually on the video surveillance. He says
23 he only had his preliminary hearing transcript prior to going to trial and
24 that some of the evidence was a surprise to him. So I think when you
25 look at should he have had an investigator, absolutely. And his

1 testimony about well it's easier to do on an appointed case, that's not
2 really how it works. I mean you don't get to make those calls when
3 you're representing somebody that it's easier to do on an appointed case
4 because the County's paying versus talking to the clients family about
5 paying for it. Because if the family can't pay for it you get a Widdis. I
6 mean you just don't stop there by saying it's easier to do on an
7 appointed case.
8 I think that the amount of contact and preparation that Mr.
9 Boley had with his client was absolutely in effective. I don't think that he
10 worked with his client to develop a defense. I don't think that he
11 explained to Mr. Monay-Pina any of the trial tactics and what they
12 meant. I think that he frankly just didn't spend a lot of time on this case.
13 So I think that I've met the prong of his performance failed below an
14 objective standard of reasonableness.
15 So I would move to second prong of did it render the verdict
16 unreliable. And I will admit that the State did have a lot of -- evidence
17 tying Mr. Monay-Pina to the crimes. But we heard a few different
18 avenues. Mr. Monay-Pina at one point had mentioned that he was
19 intoxicated. We have several specific intent crimes, burglary while in
20 possession of a fire arm, robbery, attempt murder, battery with intent to
21 commit a crime. So we do have some specific intent crimes that, that
22 absolutely could negated. And again an investigator would have helped
23 flush that out. The fact that Mr. Colon for some reason wouldn't admit
24 that he knew Mr. Monay-Pina. That Mr. Monay-Pina asked him to
25 investigate this tire slashing incident. There were all kinds of areas to

1 cross examine Mr. Colon's credibility. And so on those counts I think that
2 we can't say for certain that the verdict would have been the same if Mr.
3 Monay -- if sorry Mr. Boley had investigated the case and presented
4 some of these issues to the jury. So sorry, Judge, I can't talk in this
5 mask.
6 THE COURT: You're doing fine.
7 MS. MCNEILL: So I would submit, Your Honor, that Mr. Boley
8 was ineffective and that it does render the verdict unreliable and I would
9 ask the Court to grant Mr. Monay-Pina a new trial.
10 THE COURT: Thank you, Ms. Cole.
11 MS. COLE: And, Your Honor, just to kind of go through the
12 specific grounds I'm going to kind of jump around. Starting with the
13 investigation or the lack of an investigator, how many times he met with
14 his client that all kind of is encapsulated under the same umbrella. I
15 mean we don’t really have any bright line rules in regards to how many
16 times a defense attorney needs to visit his client. How many times he
17 needs to speak to him. Mr. Boley testified today that early on in his
18 representation when speaking with his client he told him, which
19 essentially he took as an admission, is that there's not -- they're not
20 going to be able to identify us because we were wearing masks.
21 Obviously he has certain ethical and legal obligations when he's been
22 given that confidential information and how he's going to prepare and
23 what ways he's going to -- go down. Obviously his client is going to be in
24 the best position to try to help him craft the best defense. And when he
25 ultimately tells him essentially I was there but they're not going to be

able to identify me because of the mask Mr. Boley in looking at the evidence determined that there was overwhelming evidence in this case. A lot of times defense attorneys are limited in what they can argue to a jury based upon the overwhelming amount of evidence in the case. By the time Mr. Boley got on the case, there wasn't an offer. There was nothing he could do in that regard but to prepare and go forward to trial to the best of his ability. The information that's indicated in the petition that he should have investigated and would have been able to investigate if he had an investigator, I mean he was aware of Cynthia, that witness based upon the preliminary transcript. He was aware of that tire incident regarding the slashing of the tires and the fact that his client knew Mr. Javier Colon. That was information that he was already privy to. And based upon the amount of evidence in the case still proceeded with the defense of identification. There was nothing really specifically that he felt and investigator could help him prepare for. He had all of the information and was aware of all of the facts that Ms. McNeill brings up in her supplemental petition. He was aware of all of those. So it's not like giving an investigator his testimony today shows that there wasn't things that she brought up that he did not know about. He knew about all of those things.

Furthermore, in regards to the *Motion to Sever*. It appears from the evidence elicited today that Mr. Boley talked about that with his client. That he talked about the strength and weaknesses and again going through how intertwined the two incidents were he did not feel that that would have been a righteous motion. But honestly what he would

have to prove is if he would have filed it that would have been granted and it would have changed the outcome of the trial. Again there was evidence separate and apart for each specific defendant. They both had masks with their separate DNA. They were both identified separately. And so but for that motion I'm not really sure that he has proved that but for that the change -- the outcome of the trial would have been different. And that's certainly what he would have to prove on the second prong of the Strickland analysis. I mean the fact that he reviewed the surveillance video but didn't review it with his client again show per sea ineffectiveness. I mean I think a lot of times defense attorneys as long as they have the discovery, they review it, their client isn't necessarily entitled to see everything that he had. He talked about his custom and practice is to mail the written or the paper discovery to his client but he absolutely reviewed the video surveillance. He testified that he discussed the video surveillance with him and that it absolutely corroborated what his client had discussed with him. I think it was pretty clear that Mr. Boley did not admit or concede to Mr. Pina's guilty at any point in the trial.

But ultimately, You Honor, what this comes down to is even if this Court finds that there were certain things that Mr. Boley could, should, would have done it ultimately comes down to the prejudice. There has been nothing that has been shown that if he would have done X, Y, or Z the result of the proceedings would have been different. Again the evidence in this case was overwhelming. We didn't have a situation where there was a lot of argument to be made that it was more so one

1 person over the other. In looking at the evidence a lot of the evidence
2 was equal in regards to culpability of both of them. Again we're not
3 dealing with any statements or anything of that nature. So the State
4 would submit even if this Court does find that there was things that Mr.
5 Boley could have done to be more prepared ultimately the defendant
6 fails to show that there was any prejudice and that the results of the
7 proceeding would have been different if Mr. Boley would have done
8 certain things that that would have produced different evidence and
9 different facts. So based upon that, Your Honor, I'd ask the Court to
10 deny this petition.
11 MS. MCNEILL: Just briefly, Judge. The State said that Mr.
12 Boley was aware of this woman Cynthia and what some of the witnesses
13 were going to say and that because he knew that there was nothing an
14 investigator could do. It doesn’t matter what I know. It matters what I can
15 present to the jury. And I can't do that if I don’t talk to the witnesses. And
16 I can't do that if I don’t subpoena the witnesses. So I don’t know that it
17 matters what he knew it matters what he did. And as far as again the
18 prejudice separating the Colon incident from the robbery incident, the
19 Supreme Court and a lot of our case laws clear that when what's really
20 tying the crime is one person's testimony and I'm talking about he was
21 tied to being in the room but as far as what happened in the room was
22 all based on Mr. Colons credibility. And when you have a situation like
23 that it is of the upmost -- importance that as counsel you do your job to
24 fully explore that persons credibility. And I think if you have not done that
25 you cannot say that the verdict is reliable.

THE COURT: All right anything else Ms. Cole.

MS. COLE: Your Honor, I would just quickly in regards to that second issue. I know that he keep harping on Mr. Colon -- identification. But just to remind the Court there was also other family members that identified the defendant as being the one that brandished the firearm. So I think that again elevates a lot of that concern in regards to the severance. And I'll submit it on that Your Honor.

THE COURT: Okay, well I will issue a written decision. I do want to thank you both for your level of preparation today. I really appreciate your effort. I know, Ms. McNeill these post-conviction cases are very challenging and they take a lot of time and I can tell that you put a lot of effort into it. So I just thank both of you.

MS. MCNEILL: Thank you.

MS. COLE: Thank you Judge.

MS. MCNEILL: I appreciate it.

THE COURT: I will issue a decision shortly.

MS. COLE: All right thank you.

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MS. MCNEIL: Thank you Judge, you guys have a nice holiday.

THE COURT: You too.

[Proceedings concluded at 4:06 p.m.]

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability. Please note: Technical glitches which resulted in distortion in the Bluejeans audio/video and/or audio cutting out completely were experienced and are reflected in the transcript.

Kimberly Estala
Court Recorder/Transcriber

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02/15/2022 9:20 AM
CLERK OF THE COURT

**DAO**

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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|---|---|
| JOSE FERNANDO MONAY-PINA,<br>Petitioner,<br>*vs.*<br>THE STATE OF NEVADA, et al.,<br>Respondents. | Case No. A-20-810899-W<br>Dept. No. VII |

**DECISION AND ORDER**

A jury convicted Mr. Monay-Pina of conspiracy to commit robbery; burglary while in possession of a firearm; robbery with use of a deadly weapon; battery with use of a deadly weapon resulting in substantial bodily harm; attempt murder with use of a deadly weapon; battery with use of a deadly weapon; aiming a firearm at a human being; coercion with use of a deadly weapon; and battery with intent to commit a crime. Following the conviction, the Nevada Supreme Court denied Mr. Monay-Pina's direct appeal. Thereafter, he filed a post-conviction Petition for Writ of Habeas Corpus. On April 30, 2020, this Court denied Grounds One, Three, Five, Nine, and Ten (in part) of the Petition. On December 21, 2021, the Court held an evidentiary hearing on the remaining claims, Two, Four, Six, Seven, Eight and Eleven. After review of the petition, the State's response, and oral argument, the Court denies the remaining claims.

Grounds Two and Six claim that counsel was ineffective for failing to hire an investigator, and failing to investigate the case, and for not being prepared to cross examine witnesses. Ground Four claims that trial counsel was ineffective for failing to file a motion to sever the trial from the co-defendant. Ground Seven claims that trial counsel was ineffective for failing to determine if Mr. Monay-Pina was mentally fit to understand the charges against him. Ground Eight claims that trial counsel was ineffective for failing to review video evidence and failing to make the State prove its case beyond a reasonable doubt. Ground Eleven claims that Mr. Monay-Pina's Sixth and Fourteenth



Statistically closed: USJR - CV - Other Manner of Disposition (USJROT)

Amendment rights were violated when trial counsel admitted Mr. Monay-Pina's guilt at trial. Ground Ten asserts cumulative error.

Mr. Monay-Pina presented evidence regarding these remaining grounds at the December 21, 2021 evidentiary hearing. The Court now finds as follows.

## I. Factual and Procedural Background

On January 12, 2016 at 3:00 a.m., two masked men carrying guns entered a local 7-Eleven convenience store. Both masked men were dressed in dark clothing and wore dark puffy-style jackets. The masked men pointed their guns at the sole employee, Richard DeCamp, and ordered Mr. DeCamp to empty two cash registers. After taking $139.00 from the registers, the masked men fled the store.

At the time of the 7-Eleven robbery, Javier Colon was sleeping in his sister's converted garage less than a mile away from the 7-Eleven. Minutes later, two armed men opened the garage door and began attacking Mr. Colon. The attackers beat Mr. Colon with their guns. One of the attackers grabbed an axe from inside the garage. The attacker swung at Mr. Colon's head with the axe, but Mr. Colon deflected the axe with his hand. Mr. Colon's family woke because of the commotion. After seeing the two attackers, Mr. Colon's family called the police. When police cars neared the house, the attackers fled.

A responding officer found two men in the middle of a nearby backyard. Both men attempted to hide but were taken into custody. The men were later identified as Mr. Monay-Pina and Casimiro Venegas. In the backyard, police recovered: $138.00 in cash; Mr. Colon's wallet; a replica firearm; and a knife with sheath. When the men were apprehended, Mr. Monay-Pina was wearing a stocking cap on his head and a dark puffy jacket, and Mr. Venegas was wearing a black ski mask and a black puffy jacket. The men matched the description of the men who robbed the 7-Eleven.

Mr. Monay-Pina and Mr. Venegas were charged with multiple felony and gross misdemeanor counts related to the 7-Eleven robbery and the attack on Mr. Colon. Mr. Monay-Pina and Mr. Venegas were tried together in March of 2017. Thomas D. Boley, Esq. represented Mr. Monay-Pina. On March 15, 2017, the jury returned a verdict finding both men guilty on all counts. Mr. Monay-Pina subsequently appealed, asserting that the State's arguments during rebuttal closing

denied Mr. Monay-Pina the right to a fair trial. On March 28, 2019, the Nevada Supreme Court affirmed Mr. Monay-Pina's conviction.

On February 18, 2020, Mr. Monay-Pina filed his Petition for Writ of Habeas Corpus in pro per. On April 14, 2020, the State filed its Response. On April 30, 2020, this Court granted Mr. Monay-Pina's motion to appoint counsel, and denied Grounds One, Three, Five, Nine, and Ten of the Petition. The Court set the remaining claims for an evidentiary hearing.

On March 29, 2021, Mr. Monay-Pina's counsel filed a Supplemental Memorandum of Points and Authorities in Support of the Petition. On June 24, 2021, the State filed its Response. On December 21, 2021, parties appeared for the stated evidentiary hearing on the remaining claims.

## II. Discussion

### A. Legal Standard

A claim of ineffective assistance of counsel is analyzed under the two-part test laid out in Strickland v. Washington, 466 U.S. 668 (1984). Under Strickland, a defendant alleging ineffective assistance of counsel must show (1) that their counsel's performance was deficient, and (2) that the deficient performance prejudiced the defense. Id. at 687. The Court may consider the two test elements in any order and need not consider both prongs if the defendant makes an insufficient showing on either one. Id. at 697.

Counsel's performance is deficient when their representation amounted to incompetence under prevailing professional norms, "not whether it deviated from best practices or most common custom." Harrington v. Richter, 563 U.S. 86, 88 (2011). To find prejudice to the defense in the second half of the Strickland test, the defendant must show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

Effectiveness is presumed. The defendant must demonstrate by a preponderance of the evidence that counsel was ineffective. Means v. State, 103 P.3d 25, 32-33 (Nev. 2004). A post-conviction petition's claims of ineffective assistance of counsel must be supported with specific factual allegations which would entitle a petitioner to relief if true; "bare" or "naked" allegations are

not sufficient to show ineffectiveness of counsel. Hargrove v. State, 686 P.2d 222, 225 (Nev. 1984).

**B. Mr. Monay-Pina is not entitled to relief on Grounds Two and Six (failure to hire an investigator or conduct a pre-trial investigation), Ground Four (failure to move to sever trial), Ground Seven (failure to determine competency), Ground Eight (failure to review video evidence and make the State prove its case beyond a reasonable doubt), and Ground Eleven (counsel allegedly admitting Mr. Monay-Pina's guilt at trial).**

Mr. Monay-Pina argued that trial counsel was ineffective on eleven grounds. This Court previously denied five grounds, leaving six remaining grounds for determination. The Court finds that Mr. Monay-Pina is not entitled to relief on Grounds Two, Four, Six, Seven, Eight, and Eleven of the petition. Further, this Court reviews the remainder of Ground Ten (previously denied in part), and finds no error to accumulate.

**1. Grounds Two and Six: Failure to hire investigator or conduct pre-trial investigation**

In both Grounds Two and Six, Mr. Monay-Pina alleges trial counsel failed to hire an investigator, and failed to conduct a pre-trial investigation. Mr. Monay-Pina alleges that trial counsel did not hire an investigator, did not sufficiently investigate the matter, and that such investigation would have shown Mr. Monay-Pina had no motive to commit the crimes in question. The State asserts that evidence presented at trial identified Mr. Monay-Pina as the person who committed the crimes as alleged, and thus investigation into motive as suggested would not have changed the outcome.

The Court finds that trial counsel's performance was not deficient on these grounds because Mr. Monay-Pina has not established that hiring an investigator or otherwise investigating the suggested witness statements would have altered the outcome of the trial. Mr. Monay-Pina alleges that an investigation as suggested would have revealed "no motive for Monay-Pina," however, no sufficient facts or arguments are alleged to show the outcome of the trial would have been different here. The Court therefore denies Grounds Two and Six of Mr. Monay-Pina's petition.

**2. Ground Four: Failure to move to sever the trial from co-defendant**

In Ground Four, Mr. Monay-Pina argues that trial counsel was ineffective because counsel should have moved to sever from his co-defendant, and severance was warranted. The State responds that such a motion would have been futile.

A motion to sever is at a court's discretion, and should be granted "only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." Marshall v. State, 118 Nev. 642, 647 (2002). Further, an argument of antagonistic defenses is not, alone, "sufficient grounds for concluding that joinder of defendants is prejudicial." Id. at 648.

Petitioner's reliance on Chartier does not prove that severance would have been necessary here. In Chartier, the Court distinguished those facts from Marshall v. State, wherein, "because the prosecution presented ample evidence against both defendants and the State's case was not dependent upon testimony from either defendant, there was 'no indication that anything in this joint trial undermined the jury's ability to render a reliable judgment'" as to the defendant's guilt. Chartier, 124 Nev. 760, 766 (2008) (quoting Marshall v. State, 118 Nev. 642, 648 (2002)). Here, like Marshall and unlike Chartier, the State presented ample evidence against both defendants and did not rely upon testimony from either defendant. Mr. Monay-Pina's trial counsel testified at the evidentiary hearing that he believed a motion to sever would have been futile, and this Court does not find that a motion to sever would have necessarily been granted based on the standards for such a motion, in addition to the ample evidence presented against both defendants at trial.

The Court finds that Mr. Monay-Pina's trial counsel was not deficient in failing to file a motion to sever. Trial counsel cannot be deemed ineffective for failing to make futile objections, file futile motions, or for failing to make futile arguments. Ennis v. State, 137 P.3d 1095, 1103 (Nev. 2006). The Court denies Ground Four of Mr. Monay-Pina's petition.

**3. Ground Seven: Failure to determine competency**

In Ground Seven, Mr. Monay-Pina alleges that trial counsel failed to have Mr. Monay-Pina tested by a psychiatrist as to whether he was mentally fit to understand trial and the charges against him. Mr. Monay-Pina argues that because he was potentially facing the rest of his life in prison, a competency assessment was necessary. The State responds that no specific factual allegations pertaining to doubts of Mr. Monay-Pina's competency are alleged, nor appear in the record.

No doubts as to Mr. Monay-Pina's competency were raised at any time, and trial counsel testified that he did not have doubts as to Mr. Monay-Pina's competency. No specific facts are

alleged in support of this claim, and as such, the allegations are insufficient to show ineffectiveness of counsel. The Court denies Ground Seven of Mr. Monay-Pina's petition.

**4. Ground Eight: Failure to review video evidence with Petitioner**

In Ground Eight, Mr. Monay-Pina argues that trial counsel was ineffective for not reviewing video evidence prior to trial. Petitioner's Supplement states that while Mr. Monay-Pina is unaware if counsel reviewed the video, he did not review the video with Petitioner. The State responds that Mr. Monay-Pina fails to show how counsel reviewing the video evidence with him prior to trial would have changed the outcome of trial.

At the evidentiary hearing, trial counsel testified that Mr. Monay-Pina's description of events were echoed by the video evidence, and as a result, he did not review the video with Petitioner. Failing to review video surveillance which comported with the client's version of events does not meet the high burden in showing a reasonable probability that the result of the trial would have changed. The Court denies Ground Eight of Mr. Monay-Pina's petition.

**5. Ground Ten Remaining Claims: Cumulative error**

This Court previously denied Ground Ten in part, as it related to Mr. Monay-Pina's claim that he was entitled to two attorneys at trial. The Court now addresses the remaining claims. In Ground Ten, Mr. Monay-Pina makes several arguments. Mr. Monay-Pina argues that there was cumulative error by trial counsel, that trial counsel failed to visit Mr. Monay-Pina at the jail, and that trial counsel failed to work on a defense with Petitioner.

The Nevada Supreme Court has held that factors to consider in a cumulative error analysis are: 1) whether the issue of guilt is close; 2) the quantity and character of the error; and 3) the gravity of the crime charged. Mulder v. State, 116 Nev. 1, 17 (2000). However, for cumulative error to apply, there must be error to accumulate. Pascua v. State, 122 Nev. 1001, 1008 n.16 (2006) (rejecting the argument of cumulative error where the "errors were insignificant or nonexistent"); Talley v. State, 496 P.3d 970, 2021 WL 4853419 (Nev. 2021) (unpublished disposition). Moreover, the issue of guilt here was not close due to the evidence presented against him, and the jury quickly returned its guilty verdict against Mr. Monay-Pina; further, this Court has not found error of trial counsel to accumulate. Therefore, the Court denies the remainder of Ground Ten.

**6. Ground Eleven: Counsel admitting Petitioner's guilt at trial**

In Ground Eleven, Mr. Monay-Pina argues that trial counsel was ineffective because he conceded Petitioner's guilt at trial. The State argues that Mr. Monay-Pina's claim is belied by the record, as no such concession was made, and no specific facts are alleged as to where Petitioner believes such a concession was made.

A review of the record does not show that trial counsel conceded or admitted Petitioner's guilt. The allegation appears to be naked and insufficient as it pertains to showing ineffectiveness of trial counsel. The Court denies Ground Eleven of Mr. Monay-Pina's petition.

## III. Conclusion

Mr. Monay-Pina's petition is denied as to all remaining Grounds. Grounds Two and Six are denied because no sufficient facts are alleged to show how an investigation as suggested would have changed the outcome here. Ground Four is denied because trial counsel cannot be deemed ineffective for failing to make futile objections, file futile motions, or for failing to make futile arguments, including a motion to sever in this matter. Ground Seven is denied because no concerns relating to Mr. Monay-Pina's competency were ever raised, and therefore his mental fitness was not in question. Ground Eight is denied because Mr. Monay-Pina fails to assert how reviewing video surveillance would have a reasonable probability of changing the outcome, as the video evidence echoed Mr. Monay-Pina's version of events to trial counsel. Ground Ten is denied because no meritorious errors are alleged. Finally, Ground Eleven is denied because the record belies that trial counsel conceded Mr. Monay-Pina's guilt.

As a result of this Order, the Status Check set for February 17 at 10:30 a.m. is VACATED.

**Dated this 15th day of February, 2022**

**04A 13F AA85 C19D**
**Linda Marie Bell**
**District Court Judge**

**CSERV**

DISTRICT COURT
CLARK COUNTY, NEVADA

| | |
|---|---|
| Jose Monay-Pina, Plaintiff(s) | CASE NO: A-20-810899-W |
| vs. | DEPT. NO. Department 7 |
| State of Nevada, Defendant(s) | |

**AUTOMATED CERTIFICATE OF SERVICE**

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

Service Date: 2/15/2022

| | |
|---|---|
| Wesley Su | dept07lc@clarkcountycourts.us |
| John Niman | John.Niman@clarkcountyda.com |
| Karen Mishler | karen.mishler@clarkcountyda.com |
| Monique McNeill | monique.mcneill@yahoo.com |

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 2/16/2022

Steven Wolfson — Juvenile Division - District Attorney's Office
601 N Pecos Road
Las Vegas, NV, 89101

Electronically Filed
2/16/2022 1:17 PM
Steven D. Grierson
CLERK OF THE COURT

**NEOJ**

# DISTRICT COURT
# CLARK COUNTY, NEVADA

| | |
|---|---|
| JOSE MONAY-PINA,<br><br>Petitioner,<br><br>vs.<br><br>STATE OF NEVADA; ET,AL.,<br><br>Respondent, | Case No: A-20-810899-W<br><br>Dept. No: VII<br><br>**NOTICE OF ENTRY OF ORDER** |

**PLEASE TAKE NOTICE** that on February 15, 2022, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on February 16, 2022.

STEVEN D. GRIERSON, CLERK OF THE COURT

*/s/ Amanda Hampton*
Amanda Hampton, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 16 day of February 2022, I served a copy of this Notice of Entry on the following:

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

☑ The United States mail addressed as follows:

| | |
|---|---|
| Jose Monay-Pina # 1185276<br>P.O. Box 208<br>Indian Springs, NV 89070 | Monique McNeill, Esq.<br>P.O. Box 2451<br>Las Vegas, NV 89125 |

*/s/ Amanda Hampton*
Amanda Hampton, Deputy Clerk

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02/15/2022 9:20 AM
CLERK OF THE COURT

**DAO**

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| JOSE FERNANDO MONAY-PINA,<br>Petitioner,<br>*vs.*<br>THE STATE OF NEVADA, et al.,<br>Respondents. | Case No. A-20-810899-W<br>Dept. No. VII |

**DECISION AND ORDER**

A jury convicted Mr. Monay-Pina of conspiracy to commit robbery; burglary while in possession of a firearm; robbery with use of a deadly weapon; battery with use of a deadly weapon resulting in substantial bodily harm; attempt murder with use of a deadly weapon; battery with use of a deadly weapon; aiming a firearm at a human being; coercion with use of a deadly weapon; and battery with intent to commit a crime. Following the conviction, the Nevada Supreme Court denied Mr. Monay-Pina's direct appeal. Thereafter, he filed a post-conviction Petition for Writ of Habeas Corpus. On April 30, 2020, this Court denied Grounds One, Three, Five, Nine, and Ten (in part) of the Petition. On December 21, 2021, the Court held an evidentiary hearing on the remaining claims, Two, Four, Six, Seven, Eight and Eleven. After review of the petition, the State's response, and oral argument, the Court denies the remaining claims.

Grounds Two and Six claim that counsel was ineffective for failing to hire an investigator, and failing to investigate the case, and for not being prepared to cross examine witnesses. Ground Four claims that trial counsel was ineffective for failing to file a motion to sever the trial from the co-defendant. Ground Seven claims that trial counsel was ineffective for failing to determine if Mr. Monay-Pina was mentally fit to understand the charges against him. Ground Eight claims that trial counsel was ineffective for failing to review video evidence and failing to make the State prove its case beyond a reasonable doubt. Ground Eleven claims that Mr. Monay-Pina's Sixth and Fourteenth



Statistically closed: USJR - CV - Other Manner of Disposition (USJROT)

Amendment rights were violated when trial counsel admitted Mr. Monay-Pina's guilt at trial. Ground Ten asserts cumulative error.

Mr. Monay-Pina presented evidence regarding these remaining grounds at the December 21, 2021 evidentiary hearing. The Court now finds as follows.

## I. Factual and Procedural Background

On January 12, 2016 at 3:00 a.m., two masked men carrying guns entered a local 7-Eleven convenience store. Both masked men were dressed in dark clothing and wore dark puffy-style jackets. The masked men pointed their guns at the sole employee, Richard DeCamp, and ordered Mr. DeCamp to empty two cash registers. After taking $139.00 from the registers, the masked men fled the store.

At the time of the 7-Eleven robbery, Javier Colon was sleeping in his sister's converted garage less than a mile away from the 7-Eleven. Minutes later, two armed men opened the garage door and began attacking Mr. Colon. The attackers beat Mr. Colon with their guns. One of the attackers grabbed an axe from inside the garage. The attacker swung at Mr. Colon's head with the axe, but Mr. Colon deflected the axe with his hand. Mr. Colon's family woke because of the commotion. After seeing the two attackers, Mr. Colon's family called the police. When police cars neared the house, the attackers fled.

A responding officer found two men in the middle of a nearby backyard. Both men attempted to hide but were taken into custody. The men were later identified as Mr. Monay-Pina and Casimiro Venegas. In the backyard, police recovered: $138.00 in cash; Mr. Colon's wallet; a replica firearm; and a knife with sheath. When the men were apprehended, Mr. Monay-Pina was wearing a stocking cap on his head and a dark puffy jacket, and Mr. Venegas was wearing a black ski mask and a black puffy jacket. The men matched the description of the men who robbed the 7-Eleven.

Mr. Monay-Pina and Mr. Venegas were charged with multiple felony and gross misdemeanor counts related to the 7-Eleven robbery and the attack on Mr. Colon. Mr. Monay-Pina and Mr. Venegas were tried together in March of 2017. Thomas D. Boley, Esq. represented Mr. Monay-Pina. On March 15, 2017, the jury returned a verdict finding both men guilty on all counts. Mr. Monay-Pina subsequently appealed, asserting that the State's arguments during rebuttal closing

denied Mr. Monay-Pina the right to a fair trial. On March 28, 2019, the Nevada Supreme Court affirmed Mr. Monay-Pina's conviction.

On February 18, 2020, Mr. Monay-Pina filed his Petition for Writ of Habeas Corpus in pro per. On April 14, 2020, the State filed its Response. On April 30, 2020, this Court granted Mr. Monay-Pina's motion to appoint counsel, and denied Grounds One, Three, Five, Nine, and Ten of the Petition. The Court set the remaining claims for an evidentiary hearing.

On March 29, 2021, Mr. Monay-Pina's counsel filed a Supplemental Memorandum of Points and Authorities in Support of the Petition. On June 24, 2021, the State filed its Response. On December 21, 2021, parties appeared for the stated evidentiary hearing on the remaining claims.

## II. Discussion

### A. Legal Standard

A claim of ineffective assistance of counsel is analyzed under the two-part test laid out in Strickland v. Washington, 466 U.S. 668 (1984). Under Strickland, a defendant alleging ineffective assistance of counsel must show (1) that their counsel's performance was deficient, and (2) that the deficient performance prejudiced the defense. Id. at 687. The Court may consider the two test elements in any order and need not consider both prongs if the defendant makes an insufficient showing on either one. Id. at 697.

Counsel's performance is deficient when their representation amounted to incompetence under prevailing professional norms, "not whether it deviated from best practices or most common custom." Harrington v. Richter, 563 U.S. 86, 88 (2011). To find prejudice to the defense in the second half of the Strickland test, the defendant must show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

Effectiveness is presumed. The defendant must demonstrate by a preponderance of the evidence that counsel was ineffective. Means v. State, 103 P.3d 25, 32-33 (Nev. 2004). A post-conviction petition's claims of ineffective assistance of counsel must be supported with specific factual allegations which would entitle a petitioner to relief if true; "bare" or "naked" allegations are