

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

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RICHARD A. NEWSOME, JR.,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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Electronically Filed  
Feb 22 2022 01:24 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No. 83475

**RESPONDENT'S APPENDIX  
Volume 1**

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## **CERTIFICATE OF SERVICE**

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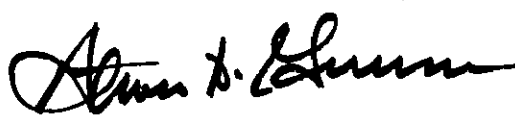
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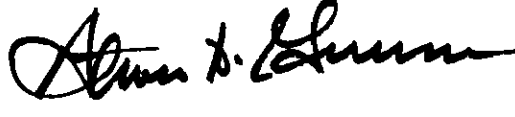
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EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

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02/08/2017 12:46:33 AM  
  
CLERK OF THE COURT

THE STATE OF NEVADA, )  
)  
Plaintiff, )  
)  
vs. )  
)  
RICHARD ALLAN NEWSOME, JR., aka )  
Richard Newsome, )  
)  
Defendant. )  
===== )

GJ No. 16E33333 )  
DC No. C321043 )

Taken at Las Vegas, Nevada  
Wednesday, February 1, 2017  
8:27 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Reported by: Danette L. Antonacci, C.C.R. No. 222

12:00 1 GRAND JURORS PRESENT ON FEBRUARY 1, 2017

2

3 JOHN BLACKWELL, Foreperson

4 SUZETTE LEMONT, Deputy Foreperson

12:00 5 STACEY EARL, Secretary

6 MARGARET FREE, Assistant Secretary

7 MAYRA ALMONTE

8 ISABEL DARENSBOURG

9 BLANCA FISSELLA

12:00 10 PHILLIP HOLGUIN

11 GREGORY KRAMER

12 REGLA MEGRET

13 ADOLPH PEBELSKE, JR.

14 JANE REYLING

12:00 15 ELIZABETH ROMOFF

16 DERRICK SIMMONS

17 FRANCES STOLDAD

18

19 Also present at the request of the Grand Jury:

12:00 20 Giancarlo Pesci, Chief Deputy District Attorney

21 Tierra Jones, Deputy District Attorney

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12:00 1 LAS VEGAS, NEVADA, FEBRUARY 1, 2017

2 \* \* \* \* \*

3

4 DANETTE L. ANTONACCI,

12:00 5 having been first duly sworn to faithfully  
6 and accurately transcribe the following  
7 proceedings to the best of her ability.

8

9 THE FOREPERSON: Let the record reflect

08:00 10 that I have canvassed the waiting area and no one has  
11 appeared in response to Notice of Intent to Seek  
12 Indictment.

13 MS. JONES: Good morning ladies and  
14 gentlemen of the Grand Jury. My name is Tierra Jones

08:27 15 and this is Giancarlo Pesci and we are the deputy  
16 district attorneys presenting to you Grand Jury case  
17 number 16BGJ059X, the State of Nevada versus Richard  
18 Newsome. The record will reflect we have marked a copy  
19 of the proposed Indictment as Exhibit Number 1. Do all  
08:27 20 the ladies and gentlemen of the jury Grand Jury have a  
21 copy of that?

22 A JUROR: Yes.

23 MS. JONES: In this case the defendant is  
24 charged with murder with use of a deadly weapon and  
08:28 25 assault with a deadly weapon. I'm required to advise



08:28 1 you of the elements of these charges. We have marked a  
2 copy of Grand Jury instructions as Grand Jury Exhibit  
3 Number 2. Are there any questions with regards to these  
4 elements?

08:28 5 The State's first witness will be Dr.  
6 Jennifer Corneal.

7 THE FOREPERSON: Please raise your right  
8 hand.

9 You do solemnly swear the testimony you are  
08:28 10 about to give upon the investigation now pending before  
11 this Grand Jury shall be the truth, the whole truth, and  
12 nothing but the truth, so help you God?

13 THE WITNESS: I do.

14 THE FOREPERSON: Please be seated.

08:28 15 You are advised that you are here today to  
16 give testimony in the investigation pertaining to the  
17 offenses of murder with use of a deadly weapon and  
18 assault with a deadly weapon, involving Richard Allan  
19 Newsome.

08:29 20 Do you understand this advisement?

21 THE WITNESS: I do.

22 THE FOREPERSON: Please state your first  
23 and last name and spell both for the record.

24 THE WITNESS: Jennifer Corneal.

08:29 25 J-E-N-N-I-F-E-R, C-O-R-N-E-A-L.

08:29 1                                JENNIFER CORNEAL,  
2       having been first duly sworn by the Foreperson of the  
3       Grand Jury to testify to the truth, the whole truth,  
4       and nothing but the truth, testified as follows:  
08:29 5  
6                                EXAMINATION  
7  
8       BY MS. JONES:  
9                        Q.       Good morning, Dr. Corneal.  
08:29 10                      A.       Good morning.  
11                      Q.       Can you tell the ladies and gentlemen of  
12       the Grand Jury how you're employed?  
13                      A.       I'm a medical examiner employed at the  
14       Clark County Office of the Coroner Medical Examiner.  
08:29 15                      Q.       And is there more than one medical examiner  
16       employed at the coroner's office?  
17                      A.       Yes.  
18                      Q.       And today you are here to discuss an  
19       autopsy that was conducted on someone by the name of  
08:29 20       Richard Nelson. You did not actually conduct that  
21       autopsy; is that correct?  
22                      A.       Correct.  
23                      Q.       Who actually conducted that autopsy?  
24                      A.       Dr. Olson.  
08:29 25                      Q.       Dr. Olson. Is Dr. Olson unavailable to be

08:29 1 here today?

2 A. Yes.

3 Q. In preparation for your testimony today,  
4 did you review the report that was prepared by Dr. Olson  
08:29 5 in regards to the autopsy on Richard Nelson?

6 A. I did.

7 Q. Okay. And are you familiar with her  
8 findings in that report?

9 A. I am.

08:29 10 Q. And Dr. Corneal, I'm going to show you a  
11 series of photos. When someone is, an autopsy is  
12 conducted on someone at the coroner's office, is there a  
13 way that they're identified?

14 A. Yes. There is a tag on the body bag and  
08:30 15 then placed on the decedent as well and with homicides  
16 or suspicious cases there's also a seal placed on the  
17 body bag.

18 Q. Okay. And Dr. Corneal, I'm going to show  
19 you Grand Jury Exhibit Number 4. What do we see in  
08:30 20 Grand Jury Exhibit Number 4?

21 A. That is the seal and case identification  
22 tag including the case number and the decedent's name.

23 Q. And in this case does that read Richard J.  
24 Nelson?

08:30 25 A. It does.

08:30 1 Q. Does that appear to you to be the seal from  
2 this particular case which is coroner's case 17-00579?

3 A. It does.

4 Q. And in conducting an autopsy are there also  
08:30 5 photographs that are taken?

6 A. Yes.

7 Q. Have you reviewed the photographs in this  
8 particular case?

9 A. I have.

08:31 10 Q. And Dr. Corneal, I'm going to show you  
11 Grand Jury Exhibit Number 5. What do we see in this  
12 photograph?

13 A. That is a photograph of Mr. Nelson's face.

14 Q. How do you know that's actually Mr. Nelson?

08:31 15 A. It's identified by his case number.

16 Q. Which is 17-00579?

17 A. Yes.

18 Q. And in this case did Dr. Olson make  
19 particular findings as to whether or not Mr. Nelson  
08:31 20 sustained wounds?

21 A. She did.

22 Q. And what type of wounds did he sustain?

23 A. He had multiple gunshot wounds as well as  
24 multiple abrasions.

08:31 25 Q. Okay. And let's talk about the gunshot

08:31 1 wounds. Were those wounds labeled just for  
2 identification?

3 A. They were.

4 Q. And how many wounds were there?

08:31 5 A. Five.

6 Q. And let's talk about the first one. Where  
7 was the first gunshot wound?

8 A. In his left upper chest.

9 Q. And was that an entry wound or an exit  
08:31 10 wound?

11 A. That was the entrance wound.

12 Q. That was an entry wound. Was there any  
13 particular stippling or any type of soot that was  
14 present on that wound?

08:32 15 A. There was stippling.

16 Q. Okay. And can you explain to the ladies  
17 and gentlemen of the Grand Jury what is stippling?

18 A. Stippling is punctate abrasions caused by  
19 unburned gunpowder hitting the skin. It's seen in  
08:32 20 intermediate range gunshot wounds, so somewhere between  
21 inches and feet away from the body.

22 Q. And do you know the direction of travel of  
23 that wound?

24 A. Yes.

08:32 25 Q. What was the direction of travel?

08:32 1 A. Front to back, left to right and slightly  
2 downward.

3 Q. And Dr. Olson, I'm sorry, Dr. Corneal, I'm  
4 going to show you Grand Jury Exhibit Number 6. What are  
08:32 5 we seeing in that photograph?

6 A. In that photograph you see the entrance  
7 wound I was just describing and those small red dots  
8 around it are the stippling.

9 Q. Okay.

08:32 10 A. You also see an exit wound in his left  
11 upper arm.

12 Q. And is that where this actual wound exited  
13 is in his left upper arm?

14 A. No.

08:32 15 Q. Is that from a different wound?

16 A. It is.

17 Q. Okay. And wound number 2, where was  
18 that -- where was actually the exit wound on the left  
19 upper chest wound?

08:33 20 A. His right back.

21 Q. Okay. And Dr. Corneal, I'm going to show  
22 you Grand Jury Exhibit Number 7. What can we see in  
23 that photograph?

24 A. The exit wound in the right back as well as  
08:33 25 another exit wound in his mid back.

08:33 1 Q. And that's an exit wound from a different  
2 wound?

3 A. Yes.

4 Q. And then gunshot wound number 2, where was  
08:33 5 that wound located?

6 A. May I refer to her sheet for her numbering?

7 Q. Please.

8 A. That one was his left back.

9 Q. Okay. And was that an entry wound one or  
08:33 10 an exit wound?

11 A. That was an entrance wound.

12 Q. And was there any soot or powder present on  
13 that wound?

14 A. No.

08:33 15 Q. What was the path of travel on that wound?

16 A. Back to front, left to right and upward.

17 Q. Okay. And Dr. Corneal, I'm going to show  
18 you Grand Jury Exhibit Number 9. What are we seeing in  
19 that photograph?

08:34 20 A. The entrance wound in his left back.

21 Q. That is the entrance wound we were  
22 referring to in his left back?

23 A. Yes.

24 Q. Did that wound have an exit?

08:34 25 A. It did.

08:34 1 Q. Where did that wound exit?

2 A. The right upper shoulder.

3 Q. And I'm going to show you Grand Jury  
4 Exhibit Number 8. What can we see in that photograph?

08:34 5 A. You can see the exit wound in his right  
6 upper shoulder.

7 Q. And that's for the left back wound?

8 A. Yes.

9 Q. And then what was wound number 3?

08:34 10 A. That wound entered his left upper arm.

11 Q. And was it an entrance wound or a exit  
12 wound?

13 A. Entrance.

14 Q. Was there any soot or powder present on  
08:34 15 that wound?

16 A. There was a small amount of stippling.

17 Q. Okay. And was there any soot present?

18 A. Faint soot.

19 Q. And Dr. Corneal, I'm going to show you

08:35 20 Grand Jury Exhibit Number 10. Do you recognize what  
21 that is?

22 A. That is the entrance wound.

23 Q. That's the entrance wound we're referring  
24 to?

08:35 25 A. Yes.



08:35 1 Q. What was the path of that wound?

2 A. Front to back, left to right and downward.

3 Q. And where did that wound exit?

4 A. Well, this wound actually exits his upper

08:35 5 arm, enters his chest again and then exits his mid back.

6 Q. Okay. And I'm going to show you Grand Jury

7 Exhibit Number 11. What can we see in that photograph?

8 A. That will be the entrance wound in the left

9 back, the exit wound from the arm in the mid back and

08:35 10 then the other exit wound from the chest wound on the

11 right back.

12 Q. And the one that we're talking about right

13 now from the left upper arm, where is the exit wound on

14 that?

08:35 15 A. The middle of the picture.

16 Q. That's the one in the middle of the back.

17 Okay.

18 And gunshot wound number 4, where was that

19 located?

08:35 20 A. That was on his lower abdomen.

21 Q. What type of wound was that?

22 A. That was a graze wound.

23 Q. And so when you say a graze wound, what

24 does that mean?

08:36 25 A. It means that it injures the skin and does

08:36 1 not actually enter the body. It's more of an abrasion  
2 caused by a gunshot wound.

3 Q. And I'm going to show you Grand Jury  
4 Exhibit Number 12. What can we see in that photograph?

08:36 5 A. The graze wound right underneath the  
6 external defibrillator pad that they're pulling up.

7 Q. And that's the graze wound that we're  
8 referring to?

9 A. Yes.

08:36 10 Q. And so that, the bullet actually never  
11 entered the body on that wound?

12 A. Correct.

13 Q. And what was wound number 5?

14 A. Wound number 5 went through his right  
08:36 15 forearm.

16 Q. And did it perforate his right forearm?

17 A. It did.

18 Q. Was there any soot or any gunpowder present  
19 on this wound?

08:36 20 A. No.

21 Q. Where did it exit?

22 A. The back of his forearm.

23 Q. And what was the path of this wound?

24 A. Front to back, right to left, without

08:36 25 significant up or down deviation.

08:36 1 Q. Was it right to left or left to right?

2 A. Left to right. Sorry.

3 Q. It's okay. I'm going to show you Grand  
4 Jury Exhibit Number 13. What can we see in this photo?

08:37 5 A. That's both the entrance and the exit  
6 wounds.

7 Q. Can you actually stand up for the ladies  
8 and gentlemen of the Grand Jury and show them which one  
9 is the entrance and which one is the exit.

08:37 10 A. This one here is the entrance wound and  
11 this is the exit. When I say back of arm, I'm talking  
12 about anatomic position and so that would be with the  
13 hand this way, so it entered here and exited back here.

14 Q. And just for the record you were pointing  
08:37 15 to your hand being palm side up?

16 A. Yes.

17 Q. Okay. And Dr. Corneal, can you tell the  
18 ladies and gentlemen of the Grand Jury which one of  
19 these wounds was fatal?

08:37 20 A. The chest wound as well as the back wound  
21 both struck the heart. All of them together would be  
22 fatal.

23 Q. But both of those wounds actually struck  
24 the heart?

08:37 25 A. Yes.

08:37 1 Q. Okay. And did Dr. Olson actually make a  
2 determination on the cause of death of Mr. Nelson?

3 A. Yes.

4 Q. And were you able to review Dr. Olson's  
08:38 5 records and make your own determination?

6 A. Yes.

7 Q. And on your, based on your determination,  
8 what was the cause of death to Mr. Nelson?

9 A. Multiple gunshot wounds.

08:38 10 Q. What was the manner of death?

11 A. Homicide.

12 BY MR. PESCI:

13 Q. Doctor, if I could just ask. Dr. Olson,  
14 she's at jury duty today, right?

08:38 15 A. Yes.

16 Q. That's why she couldn't be here, right?

17 A. Exactly.

18 BY MS. JONES:

19 Q. And so the findings that you had just gave  
08:38 20 to us are your findings after your review of the records  
21 in this case?

22 A. Correct.

23 MS. JONES: Okay. I have no further  
24 questions for this witness. Do the ladies and gentlemen  
08:38 25 of the Grand Jury have any questions for this witness?

08:39 1 THE FOREPERSON: By law, these proceedings  
2 are secret and you are prohibited from disclosing to  
3 anyone anything that has transpired before us, including  
4 evidence and statements presented to the Grand Jury, any  
08:39 5 event occurring or statement made in the presence of the  
6 Grand Jury, and information obtained by the Grand Jury.

7 Failure to comply with this admonition is a  
8 gross misdemeanor punishable up to 364 days in the Clark  
9 County Detention Center and a \$2,000 fine. In addition,  
08:39 10 you may be held in contempt of court punishable by an  
11 additional \$500 fine and 25 days in the Clark County  
12 Detention Center.

13 Do you understand this admonition?

14 THE WITNESS: I do.

08:39 15 THE FOREPERSON: Thank you. You may be  
16 excused.

17 MS. JONES: The State's next witness will  
18 be Oniesha Coleman.

19 THE FOREPERSON: Please raise your right  
08:39 20 hand.

21 You do solemnly swear the testimony you are  
22 about to give upon the investigation now pending before  
23 this Grand Jury shall be the truth, the whole truth, and  
24 nothing but the truth, so help you God?

08:40 25 THE WITNESS: I do.

08:40 1 THE FOREPERSON: Please be seated.  
2 You are advised that you are here today to  
3 give testimony in the investigation pertaining to the  
4 offenses of murder with use of a deadly weapon and  
08:40 5 assault with a deadly weapon, involving Richard Allan  
6 Newsome.

7 Do you understand this advisement?

8 THE WITNESS: Yes.

9 THE FOREPERSON: Please state your first  
08:40 10 and last name and spell both for the record.

11 THE WITNESS: Oniesha Coleman.

12 O-N-I-E-S-H-A, C-O-L-E-M-A-N.

13 ONIESHA COLEMAN,

14 having been first duly sworn by the Foreperson of the  
08:40 15 Grand Jury to testify to the truth, the whole truth,  
16 and nothing but the truth, testified as follows:

17

18 EXAMINATION

19

08:40 20 BY MS. JONES:

21 Q. Good morning, Miss Coleman. How are you?

22 A. Uh, I'm awake.

23 Q. It's a little hard for you to be here  
24 today?

08:40 25 A. Very actually. I didn't know there were so

08:40 1 many people.

2 Q. It's okay. We're going to take our time.

3 Okay?

4 A. Okay.

08:40 5 Q. Miss Coleman, we're here to talk about the  
6 events that transpired on January 14, 2017. Do you  
7 remember those events?

8 A. Yes, ma'am.

9 Q. Miss Coleman, on that day were you involved  
08:40 10 in a group that goes by the name of Squad? Do you have  
11 a squad?

12 A. Yes. Yes, ma'am.

13 Q. Can you explain for the ladies and  
14 gentlemen of the Grand Jury what's your squad?

08:41 15 A. Well, my squad, the name is exclusive  
16 association. Basically we're just a group of young  
17 people who said that together we're going to work to  
18 obtain more than what our parents have. So we're trying  
19 to, you know, do better than whatever, wherever our mom  
08:41 20 and dad ended up in life we decided that that wasn't  
21 enough and we want more than that.

22 Q. Is there someone by the name of Alicia  
23 Agudo in your squad?

24 A. No, not really. That was my ex-girl

08:41 25 friend.

08:41 1 Q. So on January 14th of 2017 you were no  
2 longer dating her?

3 A. No.

4 Q. When did you date her?

08:41 5 A. Probably it would have been like a few  
6 days, a few days before that probably, so like the 14th,  
7 13th, 12th, like the 11th around my mom's birthday.

8 Q. You guys had broken up for a few days?

9 A. Yeah.

08:42 10 Q. But previously how long did you date her?

11 A. A few months, probably like six months,  
12 seven months.

13 Q. Was there somebody named Imunique Newsome  
14 who was in your squad?

08:42 15 A. Yes, ma'am, she was.

16 Q. What did she do in your squad?

17 A. Basically she does hair and makeup. The  
18 squad is just like a bunch of people that do a bunch of  
19 different things like make music or dance or, you know,  
08:42 20 you do hair or maybe you want to be a business person,  
21 maybe you want to be a lawyer. It's just, we're all  
22 just young, you know.

23 Q. Was there some sort of issue going on with  
24 the squad on January 14th of 2017?

08:42 25 A. No, ma'am, there wasn't.



08:42 1 Q. Did there come a point in time where you  
2 guys were having, you and Alicia were having a chat,  
3 like a group chat?

4 A. No.

08:42 5 Q. So what happened with you and Imunique on  
6 January 14th?

7 A. Nothing. I never spoke to her.

8 Q. You never talked to her?

9 A. Never talked to her that day.

08:42 10 Q. Did there come a point in time where you  
11 said Imunique was not going to be in the squad anymore?

12 A. Yes.

13 Q. Why was that?

14 A. Well, obviously I take my squad very  
08:43 15 seriously because I care about everybody in my squad and  
16 I told her from the beginning we're all family so you're  
17 in this squad, you're my brother or you're my sister.

18 And I guess what she had been doing is taking screen  
19 shots of conversations that we were having in this,

08:43 20 because I have a group chat in this group but it's  
21 strictly for my squad and in that group chat I guess she  
22 had been screen shooting messages and sending them to my  
23 ex-girl friend basically saying like oh, it looks weird  
24 how she's talking to certain members in the squad. So

08:43 25 it caused friction between me and Alicia and she was

08:43 1 constantly like, you know, texting my phone like 30, 30  
2 threads and 29 missed calls, asking me like oh, so you  
3 just want to ignore me for your squad, you just want to  
4 flirt with particular members in your squad, you just  
08:44 5 want to do that. I'm like that's not the case.

6 Q. So who is texting you; Alicia?

7 A. Yes.

8 Q. So there was friction between you and  
9 Alicia based on Imunique sharing these messages?

08:44 10 A. Yes.

11 Q. Did there come a time where you were going  
12 to call a meeting of the squad that day?

13 A. Yeah. The 14th was a Saturday cause prior  
14 to this I had spoke to everybody in the squad because I

08:44 15 felt like we were lacking a bit of motivation so I  
16 created a challenge for everybody and I said we're going  
17 to prove to each other, we have to be on a better  
18 healthy, well, a healthier mind, body and soul type of  
19 thing. So I started with the body. So I created a

08:44 20 challenge for us to work out and drink water, nothing  
21 other than water for 30 days, no sugary liquids or  
22 nothing, just water, and I said that we were also going  
23 to have some team bonding once a week where everybody's  
24 required to come because I had did a performance and I

08:45 25 noticed that after my performance a lot of people were

08:45 1 coming to me like oh my goodness, like you're good, I  
2 like your music, I want to work with you more. So I was  
3 like well, I have a whole squad of people who are just  
4 as talented so we have to move differently. So I felt  
08:45 5 that if we had team bonding and we could get closer to  
6 each other then that would make us move better when  
7 we're in public. People would be able to see our  
8 chemistry and be able to feed off of that and I felt  
9 like that was very important for us to get closer. So  
08:45 10 we all, they all voted, everybody picked a day and I was  
11 like I'm cool, whatever you're all with, and they said  
12 Saturday. Saturday was supposed to be the first  
13 Saturday for our team bonding.

14 Q. Where was this team bonding going to be  
08:45 15 held?

16 A. It was going to be held at my house but I  
17 had got paid that same day so we were all still debating  
18 on whether or not we wanted to go bowling or out to a  
19 buffet. And it was also, this day was also the same day  
08:46 20 that my younger brother was supposed to get on a plane  
21 to go back to Missouri so I was like we might as well  
22 chill with him and his girlfriend before they get on a  
23 plane as well. So we were trying to figure out  
24 something that we all could do together instead of just  
08:46 25 like being in the house cause that's where we usually

08:46 1 are.

2 Q. You refer to your younger brother. Who's  
3 your younger brother?

4 A. Richard Nelson.

08:46 5 Q. Richard Nelson?

6 A. Yes.

7 Q. So you guys were planning on meeting up at  
8 your house in order to have this team bonding?

9 A. Yes.

08:46 10 Q. Who was supposed to meet at your house?

11 A. Well, Terrence Thomas and he goes by Poppa  
12 T. James Dukes, he goes by Bubba or J Mula, M-U-L-A.  
13 And Brooke, her, she goes by Medusa. And Carlos Young  
14 Bass Hernandez. And then it was supposed to be Imunique  
08:47 15 Newsome as well.

16 Q. Alicia was not going to come?

17 A. Well, we had a discussion where it was  
18 like, cause she wanted to talk to me, so I told her, you  
19 know, it's fine for you to come, if you come and talk,  
08:47 20 no drama. It wasn't until she started like, she sent me  
21 like a long text message telling me that I'm pathetic  
22 and a bunch of other stuff and it got me mad so I said  
23 don't come.

24 Q. So you told Alicia not to come to your  
08:47 25 house?

08:47 1 A. Yeah, I told her not to come. And after  
2 she had told me that Imunique was screen shooting the  
3 messages, I started thinking, you know, back to all the  
4 times, cause we had been fighting for like a month, and  
08:47 5 it's like almost every other day she had been like  
6 messaging my phone just with a bunch of like off the  
7 wall messages and just off the wall things, just very  
8 disrespectful. And like I didn't, I didn't understand  
9 why because I hadn't been doing anything until she told  
08:47 10 me Imunique had been screen shoting and I felt like they  
11 were using my squad as a playground. So I then said I  
12 don't want to see you and I don't want to see Imunique  
13 either, just go home.

14 Q. Did you say anything, did you call them any  
08:48 15 names?

16 A. No, I did not.

17 Q. Did you ever use the word bitch when you  
18 were referring to either of them?

19 A. No, I did not.

08:48 20 Q. So you never did that?

21 A. No, I did not.

22 Q. So you said that basically neither of them  
23 could come over?

24 A. Yes.

08:48 25 Q. So did you immediately go home after that?

08:48 1 A. Oh, I was at home.

2 Q. And then did you leave?

3 A. Yeah. Cause like I said I got paid through  
4 Walmart, from Walmart to Walmart, but I had lost my ID,

08:48 5 I didn't know where my ID was. So I had Terrence who is  
6 Poppa T, I asked him, because obviously I trust him, I  
7 said I'm going to tell him to send the money in your  
8 name since you have your ID and if you could pick it up  
9 for me on your way here. He said okay, cool. So Medusa  
08:48 10 got to my house first.

11 Q. So Medusa is Brooke?

12 A. Yes.

13 Q. So Medusa comes to your house?

14 A. Yeah, she got there first. And it's like

08:49 15 right as she got there, she had came in for like  
16 literally two seconds and T had called me and he was  
17 basically, he played a prank on me telling me that  
18 somebody jacked my money but he was just telling me that  
19 it was ready and if I could pick him up from Walmart  
08:49 20 basically. Because I was going to ask my step dad  
21 Keenan.

22 Q. So did you and Medusa go to Walmart to get  
23 Poppa T?

24 A. Yes. But he wasn't at Walmart, he was at

08:49 25 Circle K on Tropicana and Nellis.

08:49 1 Q. So then do you end up at the Circle K on  
2 Tropicana and Nellis?

3 A. Yes, ma'am. And we're in the parking lot,  
4 but T was with Bubba, I mean, yeah, T was with Bubba and  
08:49 5 we picked them up from the Circle K. We was just  
6 sitting there and while we were sitting there my phone  
7 was getting blown up and blown up and blown up again.  
8 Cause so my phone had died so I barely had a little bit  
9 of charge on it. And she was basically calling me like  
08:49 10 oh, so I can't come over, like why are you so mad, I  
11 don't understand why you're upset.

12 Q. I'm going to stop you. Who is she?

13 A. Alicia. I'm so sorry. I'm sorry.

14 Q. So Alicia is blowing up your phone?

08:50 15 A. Yes.

16 Q. Does there come a point in time where you  
17 are made aware that Alicia is going to your house?

18 A. Yes, because she tells me, she said that  
19 she's close anyway so she was like she's just going to  
08:50 20 come. She was like, she told me, she was like can you  
21 just talk to me and then I'll leave. And I told her,  
22 you know, I was like your best bet is just to go home,  
23 I'm upset right now, I just want to have a stress free  
24 day, I'll come to you tomorrow basically.

08:50 25 Q. And based on you believing she's going to

08:50 1 go to your house, what did you do?

2 A. Well, we drove to the Albertsons instead of  
3 going like past my house. So I told Medusa, I was like  
4 just drive to Albertsons. When we got to Albertsons I  
08:50 5 called my mom and I said mom, Alicia's on her way, can  
6 you make sure she leaves, that she doesn't stay, just  
7 tell her that you and Keenan, which is her husband, are  
8 going to have your married couple time and you didn't  
9 want anybody in the house.

08:51 10 Q. And were you later notified that Alicia had  
11 actually come to your house?

12 A. Yes. My mom had called me back like within  
13 15 minutes, 10 or 15 minutes, because we were sitting in  
14 Albertsons for awhile just to see, because she was still  
08:51 15 texting my phone and I kept telling her to go home and  
16 she wasn't like listening to me and then she started  
17 calling all of my friends. And as she was calling my  
18 friends, my mom had called me and was like oh, she was  
19 laughing, she was like oh yeah, girl, she came and I  
08:51 20 told her I kicked you out, you was disrespectful, I did  
21 the works, like, that's what she was saying. And I hear  
22 my brother laughing in the background. I was like all  
23 right, cool, and then, uhm, we was just basically  
24 waiting for her to leave type of thing. My mom said  
08:52 25 that she was sitting outside the house waiting and she



08:52 1 told me, her words were don't trust, don't trust that  
2 bitch ass nigger Bass, he's sitting there showing Alicia  
3 every message that you sent. Because I messaged Bass  
4 and I told Bass, I said, my exact words were where are  
08:52 5 you was the first message I believe, I could be  
6 mistaken, it's been a minute. The second was tell me  
7 now if you're going to be a bitch ass nigger or not.  
8 Basically referring to him because he was showing her  
9 the text messages and I was messaging him basically  
08:52 10 telling him, I was messaging him basically telling him  
11 to get away from her, like avoid her and go hide in my  
12 backyard or something because we're at Albertsons.

13 Q. Okay. And then did there come a point in  
14 time where you were notified Alicia had left your house?

08:52 15 A. Yes. My brother actually called me, he  
16 said they're gone, because I was supposed to, like I got  
17 paid so I was going to give my little brother money for  
18 his trip to Missouri. So he called me, he's like did  
19 you get the money, I was like yeah, he's like okay,  
08:53 20 they're gone now, I was for real, he's like yeah, and  
21 basically we just called each other ugly. That's how  
22 the conversation ended.

23 Q. Okay. And then did there come a time where  
24 you came into contact with Carlos at the Albertsons?

08:53 25 A. Yes.

08:53 1 Q. Did he just show up?

2 A. Yeah. Cause I called him and then I told  
3 him, I was like dude, I don't know what's going on or  
4 what you're doing but I'm not liking what I'm hearing so  
08:53 5 you need to like come to, come up to the Albertsons. I  
6 said you need to be here in five minutes. That's all  
7 you got is five minutes. And he got there within, it  
8 took him like three minutes.

9 Q. And then after Carlos comes to the  
08:53 10 Albertsons, do you then go to your house?

11 A. Yes. Well, not exactly. First we go to  
12 the I Liquor because T and Bubba, they wanted to get a  
13 Black.

14 Q. Can you explain for the ladies and  
08:53 15 gentlemen of the Grand Jury what a black is?

16 A. A Black is a Black and Mild. It's  
17 basically like a cigar but with like a wooden tip or a  
18 plastic tip at the end basically.

19 Q. So you go to the I Liquor. Where do you go  
08:54 20 from there?

21 A. At the I liquor, T and Bubba get out and  
22 they're like, they're big, they're both over 6'3" and  
23 over 300 pounds. So they're huge. So they're all like  
24 squished in the back so they told me, they're like yeah,  
08:54 25 we're just going to walk cause we're not feeling it in

08:54 1 the backseat. So we was like all right, cool. So we  
2 sat there for a second. I'm like wait, why are we  
3 sitting here.

4 Q. Slow down just a little.

08:54 5 A. Okay. I told Medusa why are we still  
6 sitting here, because it was her car that we were in.  
7 I said why are we still sitting here waiting, I just  
8 said that. She was like I don't know. So we drove to  
9 my house.

08:54 10 Q. What is your address?

11 A. My address is 4804 Sacks, S-A-C-K-S, Drive.

12 Q. Did you guys stop at your house?

13 A. Yes, we did.

14 Q. Was there anybody at your house?

08:54 15 A. Yes. I'm nearsighted like so everything's  
16 kind of fuzzy, and we pull up and all I know is I see  
17 like a silver car, it liked blocked out my driveway and  
18 I'm like wait, who is that. And I see some extra like  
19 heads, I can only make out my mom, my brother and his  
08:55 20 girlfriend. They're out there having a conversation  
21 with some people. I couldn't tell, I know I seen a  
22 couple males and a couple females. I couldn't tell  
23 exactly who it was. Medusa made a statement like is  
24 that --

08:55 25 Q. Don't tell us anything that Medusa told

08:55 1 you.

2 So based on seeing these people at your  
3 house, did you and Medusa leave your house?

4 A. Yes.

08:55 5 Q. Where did you guys go?

6 A. We just drove around the block cause I was  
7 trying to avoid all friction, I didn't want to like have  
8 anything, I just wanted to have a good day.

9 Q. Does there come a point in time when you  
08:55 10 come back home?

11 A. Yeah.

12 Q. When you come back home, describe for us  
13 what happened when you and Medusa -- are you with Medusa  
14 still?

08:55 15 A. Uh-huh.

16 Q. Describe for us what happened when Medusa  
17 gets you to your house?

18 A. We pull up and this time, and there's like  
19 a bunch of noise behind the car and there's some people  
08:56 20 in the street.

21 Q. Do you know these people?

22 A. I didn't know if I knew them at the time.

23 Q. Okay.

24 A. I just heard a bunch of like yelling and  
08:56 25 stuff and I didn't see. And then Medusa is like, oh,

08:56 1 she said oh shit, I think that's Alicia. And Alicia,  
2 she comes and she opens my door and she tries to pull me  
3 out the car by my hair and I get up and I push her and I  
4 get and she starts swinging on me and I told her, I was  
08:56 5 like I'm not your ex, I will fight you, like you need to  
6 stop, like quit swinging on me. I kept trying to give  
7 her the opportunity to stop trying to put her hands on  
8 me but she wasn't listening. And then she like grabbed  
9 my hair, and at the front of my house we like have a  
08:56 10 stone kind of like wall thing, but it's not very high so  
11 it's kind of like this and then it goes up and then it  
12 comes back down like that. So we're at this part. So  
13 it's kind of like shin high. We trip over that cause as  
14 she's pulling my hair I'm trying to push her off of me  
08:56 15 so I can get up, but we fall over, and then all of a  
16 sudden I hear Imunique's mother screaming get off of  
17 her, get off of her, and she comes up and just bam,  
18 right in my jaw, and it throws me. And I'm like --

19 Q. We're going to stop there. Do you know  
08:57 20 Imunique's mother?

21 A. I never met her before. I've only seen  
22 pictures.

23 Q. Do you know her name?

24 A. No, I do not.

08:57 25 Q. Do you know her name is Tianna Thomas?

08:57 1 A. Oh yeah, yeah.

2 Q. And this is the woman who hit you?

3 A. Yeah, the first one who hit me.

4 Q. Where did she hit you?

08:57 5 A. Right here in my jaw.

6 Q. And then what happened after she hit you?

7 A. She tossed me. And then her son was coming

8 up and he, he's like squaring up with me and then he

9 swings but then he missed and as he misses his other

08:57 10 friend comes up behind and pops me in the back of my

11 head and I fall into the car. And they're just, they

12 just jump on me. I don't know exactly how many because

13 like my hair's in my face, I can't see all the way, plus

14 I'm nearsighted as well, so I'm just trying to cover up

08:57 15 and like trying to find a little gap so I could run but

16 I couldn't.

17 Q. I'm going to stop you. When you said it

18 was her son, do you know which son it was who swung at

19 you?

08:58 20 A. Yes, ma'am, it was the same son that shot

21 my brother.

22 Q. Do you know his name?

23 A. I believe his name is Richard as well.

24 Q. And after you're just trying to cover

08:58 25 yourself up and stop from being hit, what's happening?

08:58 1 A. They just punching me, and punching me and  
2 kicking me and it felt like for hours. And I fell and I  
3 hit my head on the curb and then I heard him saying  
4 something like don't call my sister a bitch, you called  
08:58 5 my sister a bitch, and then bitch, bitch this and just  
6 like just hitting me and punching me. And all of a  
7 sudden I didn't feel anything. It was gone. And I look  
8 up and I see somebody walking towards me. Like I said  
9 I'm nearsighted so I'm not sure if he was trying to kick  
08:58 10 me in my face or not because, I cover up and then I'm  
11 just like, he's like, it was one of my friends who had  
12 got to the house and I didn't know he was at the house  
13 yet, but another member, well, he was trying to be in my  
14 squad, he was like looking for a spot kind of thing, and  
08:59 15 he picked me up, he's like no, no, no, it's okay, and as  
16 he's picking me up, there was somebody still swinging on  
17 me, so then he pushes them, he's still pushing on them,  
18 and my brother, all I see is my brother's pants going  
19 this way trying to keep him from, you know, hitting me  
08:59 20 still. And I didn't see anybody else and then I'm like,  
21 if we're this way, I'm like on this part of the sidewalk  
22 and my brother and I guess the little dude, he's on,  
23 they're like right here on the sidewalk.

24 Q. Who is the little dude that you're  
08:59 25 referring to?

08:59 1 A. Richard Newsome.

2 Q. Okay.

3 A. Yeah. And before my brother could even  
4 like do anything, like swing or anything, it's like he

08:59 5 just pulls out a gun and starts shooting. And then I  
6 hop up in the garage but then I hop back cause I see

7 that it's my brother and I'm like what, and all I hear  
8 is pop pop, pop pop pop, and I'm just like wait, whoa,

9 cause I see my brother, and he turns and he's gripping

08:59 10 his chest like this and he's running, and the other

11 dude, he just kept -- I'm sorry, I don't feel

12 comfortable calling that boy Richard. I just don't. So

13 little dude --

14 Q. But you're referring to Richard?

09:00 15 A. Yeah, I'm referring to him. And he just

16 kept shooting, like he just kept shooting, and then

17 we're screaming, I was like no. I thought I got shot.

18 I felt, I felt --

19 Q. It's okay. Take your time.

09:00 20 A. I thought it was me cause every, every shot

21 that I heard I felt like it hit my body and I felt the

22 pain that, the heat from it so I thought it was me. And

23 I standing there just shocked, like what, and then he

24 was like, he was like oh shit, and then he fell. And

09:00 25 when he fell he was like come on. And then I was just



09:01 1 holding his hand and then my mom, she got on top of him  
2 trying to hold his wound and I was trying to feel his  
3 pulse because that's what I learned in health class.

4 And I thought everything was going to be okay cause I  
09:01 5 felt it, it was still faint by the time the paramedics  
6 arrived. They were there within three to five minutes.  
7 And I thought, I thought everything was going to be  
8 okay.

9 Q. Oniesha, did you see the person who shot  
09:01 10 your brother?

11 A. Yeah.

12 Q. Did you see him that day?

13 A. What do you mean?

14 Q. When he shot your brother, did you see the  
09:01 15 person who shot your brother?

16 A. Yeah.

17 Q. Okay. Oniesha, I'm going to show you a  
18 photo. I'm going to ask you if you recognize this  
19 person. Okay? And I'm going to put it on the screen so  
09:01 20 the Grand Jury can see it too.

21 I'm going to show you Grand Jury Exhibit  
22 Number 3. Do you recognize that person? Who is that?

23 A. It's the coward that shot my brother.

24 Q. And when you were talking about you were  
09:02 25 being hit, you said that it was his mom that was hitting

09:02 1 you?

2 A. She hit me first and then he started  
3 swinging off on me. I don't know if she was still  
4 hitting me while I was being jumped or anything. I

09:02 5 just, just know I kept, I know it was multiple people.

6 And I just know it felt like it was going on for hours.

7 And I was just waiting for it to be over. That's what I  
8 was thinking in my head, like I guess this is what they

9 wanted to do, they're going to get their little licks

09:02 10 and then talk their shit on Facebook and it's going to

11 be over. Like I wasn't expecting, I didn't know anybody

12 had a gun. I didn't know.

13 Q. And I know your brother went to the

14 hospital. Did you also go to Sunrise?

09:02 15 A. No, the cops wouldn't let me go.

16 Q. Were you treated at Sunrise Hospital

17 eventually?

18 A. Yes, eventually.

19 Q. When were you treated?

09:03 20 A. It was probably on the 17th. I believe it

21 was the 17th.

22 Q. And why did you go to the hospital that

23 day?

24 A. Cause my mom and my sisters were telling me

09:03 25 that if my head was still hurting, cause like I said

09:03 1 when I fell I hit like this part of my head on the curb  
2 and I was bleeding pretty bad. So they said that if I,  
3 if my head keeps hurting and I have headaches then  
4 they're just going to take me to the doctor. And my  
09:03 5 head was hurting so.

6 Q. So you went later?

7 A. Yes, ma'am.

8 Q. Do you still have those headaches?

9 A. Yes, ma'am.

09:03 10 Q. Did you have these constant headaches  
11 before this happened?

12 A. No, ma'am.

13 Q. How often are you having these headaches?

14 A. It's like right when I wake up and it last

09:03 15 throughout the day. It's like a cycle I want to say,  
16 like in cycle of pain. Like it starts here and then it  
17 just kind of builds up and then I have to lay down in  
18 order for it to stop and drink a bunch of, a bunch of, a  
19 bunch of water, and then it will cease for a little bit  
09:04 20 and then it comes back, and just like in a cycle.

21 Q. And did the doctor give you any medicine  
22 for these headaches that you're having?

23 A. Yes, they prescribed me medicine but I  
24 don't really like taking medicine.

09:04 25 Q. If I could have the brief indulgence of the

09:04 1 Grand Jury.

2 A. I just don't like the popping pills part.

3 I'm very uncomfortable with that.

4 Q. Okay. Oniesha, when you were talking about

09:04 5 somebody that you refer to as Young Bass, is Young Bass

6 and Carlos Hernandez the same person?

7 A. Yes, ma'am.

8 Q. Young Bass is just what you guys call him?

9 A. Yes, ma'am.

09:04 10 Q. And you told us you reside at 4804 Sacks

11 Drive?

12 A. Yes, ma'am.

13 Q. Is that here in Las Vegas, Clark County?

14 A. Yes, ma'am.

09:04 15 Q. And you briefly talked about the injuries

16 you had. Did you sustain any other injuries from this?

17 A. Yes, ma'am, I had a bunch of bruises. That

18 was pretty much it.

19 Q. How long did those last?

09:05 20 A. I mean I still got one that hasn't went

21 away yet.

22 Q. And you were just for the record pointing

23 to underneath your left arm?

24 A. Yeah, underneath my --

09:05 25 Q. Where else did you have bruises?

09:05 1 A. On my forearms because like I said I was  
2 covering my face. I'm pretty sure they were trying to  
3 like hit me in my face. It was all on my hands and a  
4 lot on my legs from them kicking me.

09:05 5 Q. Was it both hands that you had injuries?

6 A. Yes, ma'am.

7 Q. Did you have injuries on both of your legs?

8 A. Yes, ma'am.

9 Q. And both of your forearms?

09:05 10 A. Yes, ma'am.

11 Q. And did you sustain any other injuries?

12 A. My neck was bruised and like this part  
13 behind my ear.

14 Q. And just for the record you're pointing to  
09:05 15 your right ear?

16 A. Yes, ma'am.

17 Q. You had a bruise behind your right ear?

18 A. Yes, ma'am.

19 Q. Anything else that you had?

09:05 20 A. No, ma'am, that was it.

21 Q. You did not --

22 A. Just a bruise. It was like a little knot  
23 right here on my jaw but it wasn't much of nothing.

24 Q. And that's on the right side of your face?

09:05 25 A. Yes, ma'am.

09:05 1 Q. The right side of your mouth?

2 A. Yes, ma'am.

3 Q. You didn't have any of these injuries prior  
4 to this fight that occurred on January 14th outside your

09:06 5 house?

6 A. No, ma'am, not at all.

7 MS. JONES: I have no further questions of  
8 this witness. Do the ladies and gentlemen of the Grand  
9 Jury have any questions of this witness?

09:06 10 BY A JUROR:

11 Q. You mentioned a squad. This is unfamiliar  
12 to me. But it seems like you are leader of this group.

13 A. Yes, ma'am.

14 Q. Did you form it?

09:06 15 A. Yes, ma'am, I'm the founder.

16 Q. Thank you.

17 BY A JUROR:

18 Q. I just have a question just to clarify  
19 something. When you came back around the house the  
09:06 20 second time when you guys got out of the car, was it  
21 Alicia that pulled you out by your hair?

22 A. Yes, ma'am.

23 Q. And then it was Imunique's mother that said  
24 get off of Alicia. Is there a relationship between

09:06 25 Alicia and Imunique's mother?

09:06 1 A. There's a relationship between Alicia and  
2 Imunique. They're best friends. So she spent nights at  
3 their house and stuff so I'm sure they're close or  
4 whatever.

09:06 5 Q. And you think this was all retaliation just  
6 because she kept calling you, blowing up your phone and  
7 you weren't responding?

8 A. Honestly I don't believe that. In my  
9 opinion how I feel about it, I feel like --

09:07 10 MS. JONES: I'm going to object at this  
11 point. She's not going to be allowed to speculate as to  
12 why all this happened and speculate about things she  
13 doesn't actually know about.

14 THE FOREPERSON: Okay. By law, these  
09:07 15 proceedings are secret and you are prohibited from  
16 disclosing to anyone anything that has transpired before  
17 us, including evidence and statements presented to the  
18 Grand Jury, any event occurring or statement made in the  
19 presence of the Grand Jury, and information obtained by  
09:07 20 the Grand Jury.

21 Failure to comply with this admonition is a  
22 gross misdemeanor punishable up to 364 days in the Clark  
23 County Detention Center and a \$2,000 fine. In addition,  
24 you may be held in contempt of court punishable by an  
09:07 25 additional \$500 fine and 25 days in the Clark County

09:07 1 Detention Center.

2 Do you understand this admonition?

3 THE WITNESS: Yes.

4 THE FOREPERSON: Thank you. You may be

09:07 5 excused.

6 MR. PESCI: State calls Roxanne Wade.

7 MS. JONES: Roxanne Bruce.

8 MR. PESCI: Bruce. Sorry.

9 THE FOREPERSON: Please raise your right

09:08 10 hand.

11 You do solemnly swear the testimony you are

12 about to give upon the investigation now pending before

13 this Grand Jury shall be the truth, the whole truth, and

14 nothing but the truth, so help you God?

09:09 15 THE WITNESS: Yes.

16 THE FOREPERSON: You may be seated.

17 You are advised that you are here today to

18 give testimony in the investigation pertaining to the

19 offenses of murder with use of a deadly weapon and

09:09 20 assault with use of a deadly weapon, involving Richard

21 Allan Newsome, Jr.

22 Do you understand this advisement?

23 THE WITNESS: Yes.

24 THE FOREPERSON: Please state your first

09:09 25 and last name and spell both for the record.



09:09 1 THE WITNESS: Roxanne Bruce.

2 R-O-X-A-N-N-E, B-R-U-C-E.

3 ROXANNE BRUCE,

4 having been first duly sworn by the Foreperson of the

09:09 5 Grand Jury to testify to the truth, the whole truth,

6 and nothing but the truth, testified as follows:

7

8 EXAMINATION

9

09:09 10 BY MS. JONES:

11 Q. Good morning, Miss Bruce.

12 A. Good morning.

13 Q. Miss Bruce, I know it's hard for you to be  
14 here with us today.

09:09 15 Miss Bruce, do you have any children?

16 A. Yes.

17 Q. How many children do you have?

18 A. I have four.

19 Q. What are their names?

09:09 20 A. Uhm -- I'm sorry.

21 Q. It's okay.

22 A. Richard Nelson, Oniesha Coleman, Leticia  
23 Nelson and Racion Nelson.

24 Q. And Miss Bruce, on January 14th of 2017,

09:09 25 were you residing at 4804 Sacks Drive?

09:10 1 A. Yes.

2 Q. And is that here in Clark County?

3 A. Yes.

4 Q. Did there come a point in time where you

09:10 5 received a call from Oniesha your daughter?

6 A. Yes.

7 Q. Was Oniesha telling you if Alicia came by

8 to tell her she wasn't there?

9 A. Yes.

09:10 10 Q. And then did Alicia actually show up to

11 your house?

12 A. Yes.

13 Q. What did you say to her?

14 A. I told her me and my daughter had an

09:10 15 argument and I put her out and she needs to leave.

16 Q. Was that true?

17 A. It wasn't true that I put my daughter out,

18 no, I just made that excuse up so that she would leave.

19 Q. Who was Alicia with when she came over to

09:10 20 your house?

21 A. She was with another young man they called

22 Bass.

23 Q. Does he go by Carlos Hernandez, is that his

24 name?

09:10 25 A. I believe so.

09:10 1 Q. And they were together?

2 A. Yes.

3 Q. And once you told them that Alicia was not  
4 home, what did they do?

09:10 5 A. They sat on the ledge and they waited and  
6 then I went inside and when I went back outside Alicia  
7 said that she was waiting for her ride.

8 Q. And did somebody come pick her up?

9 A. A white truck came and picked her up.

09:11 10 Q. Did you know who was in that truck?

11 A. Her brother Tito.

12 Q. And then after she left, what did you do?

13 A. I went inside, I was fine, and I seen the  
14 Bass, the Carlos boy walk down the street.

09:11 15 Q. Did you call Oniesha?

16 A. Yeah, and I told her that they were gone.

17 Q. Okay. And then later on does something  
18 else happen?

19 A. Yeah. Three gentlemen was banging on my  
09:11 20 door and I thought it was the police and I was like why  
21 are you banging on the door. Because usually my  
22 daughter knocks on the door when she forgets her key,  
23 Oniesha. And I opened the door and they said yeah,  
24 where's Bass at, where's Oniesha at, it's all F'd up

09:11 25 because they left my sister stranded. And I said wait a

09:11 1 minute, what's going on. And then I heard a lady  
2 yelling in the background so I went outside and it was  
3 the mother of them, Tianna, and she explained to me what  
4 was going on. I guess her daughter got off the bus  
09:12 5 cause they were all coming over to my house for a  
6 meeting because my daughter has a group, so she just  
7 explained to me that it wasn't my daughter that stranded  
8 her, it was the young gentleman that got off the bus  
9 and, well, did not get off the bus with her daughter --  
09:12 10 I forgot her daughter, Imunique, which is the daughter  
11 so.

12 Q. Let me just back up. How long after Alicia  
13 had left do you hear these knocks on your door?

14 A. It was just like heavy, like two or three  
09:12 15 minutes after that. It wasn't that long to me.

16 Q. When you opened your door how many people  
17 are outside?

18 A. It was three gentlemen. Three little boys.

19 Q. So there was three little boys and then you  
09:12 20 said this lady?

21 A. Yeah. And when I walked down my driveway  
22 there was a lady and then Imunique was in the car cause  
23 I wanted to know what was going on. So Imunique got out  
24 and explained to me, she wasn't rude, she wasn't nasty,  
09:12 25 neither was the mom, they were very polite. It was just

09:12 1 the young men were like oh, you know the F she is and da  
2 da da da, they were very rude so.

3 Q. So it was the boys who were being rude --

4 A. Yes.

09:13 5 Q. -- Imunique and her mom were not?

6 A. They weren't being rude at all, no.

7 Q. And you referred to her mom as Tatianna  
8 (sic). Do you know her as Tatianna Thomas?

9 A. I just know her from the papers. This was  
09:13 10 the first time I met her or the boys. I've known the  
11 daughter because she came to my house before for  
12 luncheons.

13 Q. Imunique?

14 A. Yes.

09:13 15 Q. So you go out there and they explain to you  
16 what's going on. What do you do?

17 A. I told them nobody is going to be fighting  
18 here and they said they don't want to fight Oniesha,  
19 they just want to fight the boy Bass because he  
09:13 20 disrespected their sister and left their sister  
21 stranded. I guess he was supposed to get off the bus  
22 with her so.

23 Q. And so just for the record they just told  
24 you, you said there's not going to be any fighting here?

09:13 25 A. Yeah, I did.

09:13 1 Q. Did they end up leaving?

2 A. Yes, they did.

3 Q. How long before they returned?

4 A. Maybe five, ten minutes after that.

09:13 5 Q. So when they come back, tell us what

6 happened.

7 A. When they came back, my daughter called my

8 phone and I thought she just pocket dialed me and I

9 heard a lot of screaming and yelling. That's when my

09:14 10 son came to me and said mom, someone's out there

11 fighting with him and his girlfriend.

12 Q. Who's your son?

13 A. Richard Nelson. So we ran out there.

14 Q. Who went out there?

09:14 15 A. Me, my son and his girlfriend. And there

16 was another gentleman that was waiting to do the club

17 thing and the, you know, the music thing for my

18 daughter, and we went out there, I seen my daughter

19 laying on the ground being kicked by three boys.

09:14 20 Q. When you say your daughter, you're

21 referring to Oniesha?

22 A. Oniesha, yeah. So she's being kicked by

23 three individuals and the mom was on this side and the

24 daughter was on that side just laughing, smiling,

09:14 25 thinking everything was funny. And her girlfriend was

09:14 1 on my side of the sidewalk which is where my home is.

2 Q. Who's her girlfriend?

3 A. Well, her ex-girl friend, Alicia.

4 Q. So Alicia's by the house?

09:15 5 A. So I'm not going to lie, I went for Alicia  
6 and I beat her up.

7 Q. Okay.

8 A. Okay. Whatever happens happens to me, I  
9 don't really care. But I beat her up. I'm like why are  
09:15 10 you watching this being done to my daughter. And then I  
11 seen my son pull two of the boys off and then the other  
12 guy that was there pulled the other boy off of my  
13 daughter.

14 Q. Let's slow down just a little. So you see  
09:15 15 your son Richard Newsome --

16 A. That's not my son.

17 Q. I'm sorry. Your son is Richard Nelson. I  
18 apologize.

19 A. Yes.

09:15 20 Q. You see your son Richard Nelson pull two of  
21 the boys off of Oniesha?

22 A. Yes.

23 Q. Do you know which two boys those were?

24 A. I know Richard Newsome was and I don't know  
09:15 25 who the other boy was. I've never seen him before.

09:15 1 Q. And you said somebody else pulled somebody  
2 back?

3 A. Yeah. It was another tall gentleman that  
4 was there. I don't know his name. My daughter knows  
09:15 5 their names. I don't.

6 Q. And he pulled who?

7 A. He pulled the other little boy off.

8 Q. The other -- do you know the little boy's  
9 name?

09:15 10 A. I don't know. He was a really young, young  
11 kid.

12 Q. So he pulled him off --

13 A. Yes.

14 Q. Of Oniesha?

09:15 15 A. Yes.

16 Q. And then what happened?

17 A. And then after they, my son pulled them off  
18 and I knocked the girl to the ground, I was, I was going  
19 towards Richard Newsome cause he kind of like jumped  
09:16 20 back, you know, and he just started shooting my son.

21 When my son turned around, because my son had a bullet  
22 right there, and my son turns around to run and he kept  
23 shooting my son as he was running. Why would you keep  
24 shooting him as he was running? And after that my son

09:16 25 came to me and he said oh shit, I'm shot, and he just



09:16 1 fell on the ground and there was nothing else. I seen  
2 my son take his last breath and my son died in front of  
3 my house. My son didn't deserve to die. He was on his  
4 way back to college. He didn't deserve to die like  
09:16 5 that. He didn't deserve to die at all. And I hope and  
6 I pray that they put him in jail for the rest of his  
7 life. He doesn't deserve freedom. I'm sorry. I don't  
8 mean to cry but I don't think that it's right. And the  
9 mom shouldn't get away with it either because before  
09:17 10 this incident I heard that they --

11 Q. You can't tell us --

12 A. Okay. I'm sorry.

13 Q. It's okay. It's okay. So you were out  
14 there and you saw Richard Newsome shooting your son?

09:17 15 A. Yes, I seen him with my own eyes. I was  
16 right there.

17 Q. Did you see your son when he came out of  
18 your house?

19 A. Yes, he was right behind me. He was right  
09:17 20 with me.

21 Q. Did your son have anything in his hand when  
22 he came out of the house?

23 A. No. He had his shirt off. He had nothing.  
24 He just had his cell phone in his pocket and his wallet,  
09:17 25 that's it.

09:17 1 Q. He wasn't even wearing a shirt?

2 A. No.

3 Q. Okay. And then when he came outside and  
4 pulled the guys off of Oniesha, that's when you saw

09:17 5 Richard Newsome shoot him?

6 A. Yeah. My son didn't even have a chance to  
7 do anything. I wish he would of but he didn't.

8 Q. And then he turned around and Richard shot  
9 him again?

09:18 10 A. Yes, he kept shooting my son.

11 Q. Do you know how many times he shot him?

12 A. I just heard five shots so I don't know  
13 exactly how many and where they went to be honest with  
14 you.

09:18 15 Q. Okay.

16 A. I just seen the first one which was in his  
17 chest and I took my shirt off to apply pressure on him,  
18 but it went through his heart and threw his lungs so  
19 that killed him.

09:18 20 Q. And you said that Richard, your son Richard  
21 Nelson was with his girlfriend?

22 A. Yes.

23 Q. Do you know her name?

24 A. Christina Martinez.

09:18 25 Q. So she was there with you guys?

09:18 1 A. Yes, she was there comforting and crying  
2 and over me and my daughter had my son's hand. And I  
3 was just over my son and just praying and praying.  
4 People don't understand, my son was a good kid, he was  
09:18 5 never, he don't like fights. He was never  
6 disrespectful. Any time I asked him to do something he  
7 would do it.

8 Q. I understand. And the paramedics responded  
9 and took your son to the hospital?

09:18 10 A. Yes, and they were working on him. I was  
11 in the car behind them and they did try but I mean at  
12 that time I knew that he was gone but I was trying not  
13 to believe it.

14 Q. I understand.

09:19 15 Did there come any point in time when you  
16 met with some detectives and they showed you a photo  
17 line-up?

18 A. Yes.

19 Q. Okay. Roxanne, I'm going to show you what  
09:19 20 has been marked as Grand Jury Exhibit Number 14. I'm  
21 going to put it on the screen up here.

22 Do you recognize what this is?

23 A. I don't. I need my glasses.

24 Q. Okay. Go ahead and get them.

09:19 25 I'll show it to you here and then I'll put

09:19 1 it up for them to see. Do you recognize this?

2 A. Yes.

3 Q. Is this the photo line-up that was shown to  
4 you by Detective Grimmiett?

09:19 5 A. Yes.

6 Q. And he showed you a photo line-up and you  
7 were able to identify the person who shot your son in  
8 this photo line-up?

9 A. Yes. And I don't really remember the other  
09:19 10 guys' faces because I didn't, I seen the boy who shot  
11 because I seen his face.

12 Q. And you were able to identify him?

13 A. Yes.

14 Q. And then Detective Grimmiett showed you a  
09:20 15 second photo line-up but you were not able to identify a  
16 second person who was there?

17 A. No. Huh-uh.

18 Q. I'm going to show this to the ladies and  
19 gentlemen of the Grand Jury. Grand Jury Exhibit  
09:20 20 Number 14. Does this document bear your signature right  
21 here?

22 A. Yes.

23 Q. And showing you page 2 of this document.

24 Is this the photo line-up that was shown to you by

09:20 25 Detective Grimmiett?

09:20 1 A. Yes.

2 Q. And did you identify the person in position  
3 number 3 as the person who shot your son?

4 A. Yes.

09:20 5 Q. And are you 100 percent certain he's the  
6 person --

7 A. I'm a hundred and ten percent sure.

8 Q. And then there was a second page and you  
9 were not able to identify anyone?

09:20 10 A. No, because I looked at the shooter  
11 straight in the face. I didn't pay no mind to the other  
12 guys.

13 Q. So your focus was on the shooter?

14 A. On the shooter, yes.

09:20 15 MS. JONES: And I have no further questions  
16 for this witness. Do the ladies and gentlemen of the  
17 Grand Jury have any questions?

18 THE FOREPERSON: By law, these proceedings  
19 are secret and you are prohibited from disclosing to  
09:20 20 anyone anything that has transpired before us, including  
21 evidence and statements presented to the Grand Jury, any  
22 event occurring or statement made in the presence of the  
23 Grand Jury, and information obtained by the Grand Jury.

24 Failure to comply with this admonition is a  
09:20 25 gross misdemeanor punishable up to 364 days in the Clark

09:20 1 County Detention Center and a \$2,000 fine. In addition,  
2 you may be held in contempt of court punishable by an  
3 additional \$500 fine and 25 days in the Clark County  
4 Detention Center.

09:20 5 Do you understand this admonition?

6 THE WITNESS: Yes, sir.

7 THE FOREPERSON: Thank you. You may be  
8 excused.

9 MR. PESCI: State calls Wade Bruce.

09:22 10 THE FOREPERSON: Please raise your right  
11 hand.

12 You do solemnly swear the testimony you are  
13 about to give upon the investigation now pending before  
14 this Grand Jury shall be the truth, the whole truth, and  
09:22 15 nothing but the truth, so help you God?

16 THE WITNESS: Yes.

17 THE FOREPERSON: Please be seated.

18 You are advised that you are here today to  
19 give testimony in the investigation pertaining to the  
09:22 20 offenses of murder with use of a deadly weapon and  
21 assault with a deadly weapon, involving Richard Allan  
22 Newsome, Jr.

23 Do you understand this advisement?

24 THE WITNESS: Yes.

09:22 25 THE FOREPERSON: Please state your first

09:22 1 and last name and spell both for the record.

2 THE WITNESS: Wade Keenan Bruce. W-A-D-E,  
3 K-E-E-N-A-N, B-R-U-C-E.

4 WADE KEENAN BRUCE,

09:23 5 having been first duly sworn by the Foreperson of the  
6 Grand Jury to testify to the truth, the whole truth,  
7 and nothing but the truth, testified as follows:

8

9 EXAMINATION

09:23 10

11 BY MR. PESCI:

12 Q. Sir, I want to direct your attention to  
13 January the 14th of 2017. On that day were you at your  
14 home?

09:23 15 A. Yes.

16 Q. And was that here in Clark County, Las  
17 Vegas?

18 A. Yes.

19 Q. And who is your wife?

09:23 20 A. Roxanne Bruce.

21 Q. Is that the woman that just stepped out of  
22 the Grand Jury room?

23 A. Yes.

24 Q. Were you in fact watching a football game?

09:23 25 A. Yes, I was.

09:23 1 Q. And during the football game did something  
2 happen that brings you here to the Grand Jury?

3 A. Yes, it did.

4 Q. Please tell the grand jurors what happened.

09:23 5 A. I was watching -- there was a fight that  
6 took place outside where Oniesha, my stepdaughter, was  
7 being jumped by some teenage boys and I guess a whole,  
8 there was a whole family as I walked out that were  
9 fighting and I saw this commotion going on. And as soon  
09:23 10 as I came out I saw Richard Newsome shoot my stepson  
11 five times. He ran, my stepson ran, he continued to  
12 fire, and my stepson leaned and laid down and I saw him  
13 die right there as the mother and the rest of the  
14 entourage got in the car and took off up the street.

09:24 15 Q. Okay. Who is your stepson?

16 A. My stepson is Richard James Nelson.

17 Q. You spoke of a mother. Who are you  
18 referring to that got into a car?

19 A. The mother of the gunman or the boy that  
09:24 20 shot the gun. Cause previously they had come to the  
21 front door while I was watching the football game.  
22 There was a hard bang at the door. My wife said we hope  
23 that it's somebody who lives here because whoever it is  
24 knocking on the door is knocking with authority and  
09:25 25 we're the only ones that's paying to live here. So we



09:25 1 opened up the door and it's the mother and these three  
2 boys and they're saying that there was a incident where  
3 Oniesha and this Imunique girl who had been left  
4 somewhere and there was a B name that was called and  
09:25 5 they wanted to work out these differences and settle  
6 these differences with this girl. So that's why they  
7 were there because Oniesha and her friend had left them  
8 somewhere and called her a bad name and they wanted to  
9 talk to her. They looked like they were upset, but my  
09:25 10 wife, she said that don't get too upset, we don't want  
11 no violence, we don't want violence, not with my  
12 daughter, it may have been someone else. And their  
13 demeanor seemed to be rather down and they weren't  
14 upset. And then that's when --

09:26 15 Q. So that interaction you just described  
16 occurred before the shooting?

17 A. Before the shooting, yes.

18 Q. So the knock on your door and this  
19 conversation, were you present for that conversation?

09:26 20 A. I was right there. I stood in front of all  
21 four of them. And then we asked well, who is this  
22 about. They said it's Imunique, she's in the car,  
23 Imunique. They said come on out the car cause you know  
24 who she is and she came and she stood, we recognized  
09:26 25 her, she had been in our house a few weeks before, she

09:26 1 spent the night a couple of nights and she'd been --

2 Q. And you're referring to Imunique, she's the  
3 one that's been to your house before?

4 A. Yes. Yes.

09:26 5 Q. So Imunique comes out, there's a mom and  
6 then there are some, is there young men?

7 A. There were three young men and the mom and  
8 Imunique standing right before us. We settled it at  
9 that time. They got up and they got in the car and we  
09:26 10 thought that they had left.

11 Q. Okay. After that did you go back to the  
12 football game?

13 A. I went right back to the football game.

14 Q. Did you notice at all if your wife got a  
09:27 15 phone call after that?

16 A. I didn't notice the phone call. She had  
17 went to the back room back in our house and I was in the  
18 living room watching football. I think Richard and  
19 Christina were at the dining room table.

09:27 20 Q. Who is Christina?

21 A. Christina is Richard's girlfriend or  
22 fiancée.

23 Q. And so the game continues, you're watching.

24 And then the shooting that you spoke of, how did that

09:27 25 transpire? How did that get your attention? What

09:27 1 happened?

2 A. Well, at that point I'm watching the game  
3 and then I hear a lot of screaming or something going,  
4 commotion going on outside. I'm kind of into the game,  
09:27 5 it looks like they're going to get a first and ten and I  
6 didn't want to get up and so I just, I kind of stayed at  
7 the game. But it continued on. I didn't think it was  
8 anything that was quite that serious. So I got up and  
9 at that time Richard and Christina and Roxanne had run  
09:28 10 outside already and I guess as soon as they went outside  
11 they got quickly involved in this because --

12 Q. Let me stop you for a second. Did you see  
13 that first part yourself?

14 A. The first part I didn't see as they came  
09:28 15 engaged with them fighting, no.

16 Q. You saw them go out of your house?

17 A. I saw them go out.

18 Q. And then the first part of it you weren't  
19 present to see?

09:28 20 A. No, the first part I was not present to  
21 see.

22 Q. But you did eventually go to your door?

23 A. I did go to my door and I did go out and  
24 when I got out there I saw Richard throw the boy off of  
09:28 25 Oniesha and then that's when he stood back and the guy

09:28 1 shot him, that's the part that I saw, and as he came  
2 running cause the gunfire was right in front of me.

3 Q. So when you say Richard pulled the boy off  
4 of Oniesha, you're talking about your stepson Richard  
09:28 5 Nelson?

6 A. My stepson Richard Nelson pulled one of  
7 these, the 14 to 15, younger kids, off of Oniesha. She  
8 was down at the curb. He pulled him off of her.

9 Q. And then you said you saw the other  
09:29 10 individual then shoot your stepson?

11 A. Right. He wasn't fighting. He was  
12 standing off from the, he was off from the fight. He  
13 wasn't involved in the fight. He was standing about  
14 three feet or four or five feet away.

09:29 15 Q. So that's great, we want to focus on that.  
16 At that moment when you saw your stepson take a person  
17 off of your stepdaughter, at that point the person who  
18 shot was not engaged in the fight?

19 A. No.

09:29 20 Q. And then was your stepson hitting anybody  
21 at that time?

22 A. No, he didn't hit no one. He didn't hit  
23 the person he pulled off.

24 Q. Did your stepson have a gun, a knife?

09:29 25 A. He don't own a gun. He didn't have a gun,

09:29 1 no.

2 Q. Did your stepson make a move or charge at  
3 the person?

4 A. No, he didn't charge. He didn't have a  
09:29 5 chance to. He barely stood up and threw the boy off and  
6 stood up and then that's when he shot him.

7 Q. Okay. So he was just protecting his  
8 sister?

9 A. He just pulled him off, yeah, he was just  
09:30 10 protecting his sister, trying to break it up. He just  
11 broke it up is all he was doing.

12 Q. And then eventually the paramedics arrived?

13 A. Yes, they arrived and cleared the scene,  
14 told us all to go up to the end of the block. And I  
09:30 15 looked at Richard and I saw that it looked like he was  
16 dead. His eyes were, looked half open. He laid there.  
17 But they kept us away from the scene so that way we  
18 wouldn't contaminate the scene.

19 Q. So they processed that scene. Eventually  
09:30 20 though did some detectives come and meet with you?

21 A. Yes, they did.

22 Q. Did they show you some photographs and ask  
23 you if you recognized anybody in the photographs?

24 A. Yes, they did.

09:30 25 Q. I'm going to show you what has been marked

09:30 1 as Grand Jury Exhibit 15 and ask you if you recognize  
2 the handwriting on Grand Jury Exhibit 15. Well, at  
3 least the signature.

4 A. Yes. Yes.

09:30 5 Q. Whose signature is that?

6 A. That's my signature.

7 Q. Do you recognize this photographic line-up?

8 A. Yes, I do.

9 Q. And were you able to indicate that you  
09:31 10 recognized the person who was the shooter?

11 A. Yes, I did.

12 Q. And on page 2 of that exhibit did you do  
13 anything to show which of the six photographs was the  
14 person who shot your stepson?

09:31 15 A. Yes, I did. I circled it and wrote my  
16 name.

17 Q. And then are you sure as to the fact that  
18 this person you circled in position 2 on Grand Jury  
19 Exhibit 15 is the shooter?

09:31 20 A. Yes, I'm sure.

21 Q. Okay. Were you also asked to see if you  
22 could identify somebody else who was involved but was  
23 not a shooter?

24 A. Yes, I was.

09:31 25 Q. And were you able to indicate anybody that

09:31 1 looked familiar?

2 A. Yeah. I said I was kind of 50/50 on that  
3 one because he didn't stand directly in front of me and  
4 the shooter was directly in front of me. The, little  
09:31 5 the 14, he must have been 14, maybe 15 years old, I  
6 didn't, I thought that might have looked like him so I  
7 did say it was maybe 50 percent.

8 Q. You weren't sure but that looked familiar  
9 as the --

09:32 10 A. Uh-huh.

11 Q. -- as to the person that was not the  
12 shooter, the other person?

13 A. Exactly.

14 Q. All right. Sir, I apologize for doing this  
09:32 15 but I need to ask you.

16 A. No problem.

17 Q. If you can recognize the individual in  
18 Grand Jury Exhibit Number 5.

19 A. Yes, I do recognize him.

09:32 20 Q. Who is that?

21 A. That's Richard Nelson. That's my stepson.

22 MR. PESCI: No further questions.

23 THE FOREPERSON: By law, these proceedings  
24 are secret and you are prohibited from disclosing to  
09:32 25 anyone anything that has transpired before us, including

09:32 1 evidence and statements presented to the Grand Jury, any  
2 event occurring or statement made in the presence of the  
3 Grand Jury, and information obtained by the Grand Jury.

4 Failure to comply with this admonition is a  
09:32 5 gross misdemeanor punishable up to 364 days in the Clark  
6 County Detention Center and a \$2,000 fine. In addition,  
7 you may be held in contempt of court punishable by an  
8 additional \$500 fine and 25 days in the Clark County  
9 Detention Center.

09:32 10 Do you understand this admonition?

11 THE WITNESS: Yes.

12 THE FOREPERSON: Thank you. You may be  
13 excused.

14 THE WITNESS: Thank you.

09:33 15 MS. JONES: The State's next witness is  
16 Detective Grimmett.

17 THE FOREPERSON: Please raise your right  
18 hand.

19 You do solemnly swear the testimony you are  
09:33 20 about to give upon the investigation now pending before  
21 this Grand Jury shall be the truth, the whole truth, and  
22 nothing but the truth, so help you God?

23 THE WITNESS: Yes, I do.

24 THE FOREPERSON: Please be seated.

09:33 25 You are advised that you are here today to



09:33 1 give testimony in the investigation pertaining to the  
2 offenses of murder with use of a deadly weapon, assault  
3 with a deadly weapon, involving Richard Allan Newsome,  
4 Jr.

09:34 5 Do you understand this advisement?

6 THE WITNESS: Yes, I do.

7 THE FOREPERSON: Please state your first  
8 and last name and spell both for the record.

9 THE WITNESS: First name Jarrod,

09:34 10 J-A-R-R-O-D, last name Grimmett, G-R-I-M-M-E-T-T.

11 JARROD GRIMMETT,

12 having been first duly sworn by the Foreperson of the  
13 Grand Jury to testify to the truth, the whole truth,  
14 and nothing but the truth, testified as follows:

09:34 15

16 EXAMINATION

17

18 BY MS. JONES:

19 Q. Good afternoon, Detective Grimmett. I

09:34 20 guess it's still morning.

21 A. Good morning.

22 Q. Detective Grimmett, how are you employed?

23 A. As a detective with the Las Vegas

24 Metropolitan Police Department currently assigned to the

09:34 25 homicide section.

09:34 1 Q. How long have you been in homicide?

2 A. Approximately four months.

3 Q. And how long have you been a detective?

4 A. I've been a detective for 11 years. I've

09:34 5 got over 22 years of law enforcement experience. The

6 last 16 or 17 have been spent with the Las Vegas

7 Metropolitan Police Department.

8 Q. And Detective Grimmett, were you assigned

9 to the case of the investigation of the shooting

09:34 10 involving Richard Nelson?

11 A. Yes, ma'am.

12 Q. The shooting of Richard Nelson?

13 A. Correct.

14 Q. And in your investigation of that case, did

09:34 15 you actually go out to the scene at 4804 Sacks Drive?

16 A. Yes, ma'am.

17 Q. When did you go out there?

18 A. I went out there the night of.

19 Q. The night of the shooting?

09:35 20 A. Correct.

21 Q. Would that be January 14th of 2017?

22 A. Yes, it would.

23 Q. And Detective, are you the lead detective

24 in this case?

09:35 25 A. Yes, ma'am.

09:35 1 Q. And based on being the lead detective in  
2 this case, would any other investigation done in this  
3 case be reported to you?

4 A. Yes, ma'am.

09:35 5 Q. Would you made aware of all investigation  
6 in this case?

7 A. Yes, ma'am.

8 Q. And Detective Grimmett, are you aware of  
9 whether any weapons were recovered from the scene of  
09:35 10 this crime?

11 A. There were no weapons recovered from the  
12 scene.

13 Q. Were there any weapons recovered from the  
14 body of Richard Nelson?

09:35 15 A. No, ma'am, there were no weapons recovered  
16 from the body of Richard Nelson.

17 Q. Were you present when he was transported to  
18 the hospital?

19 A. No, he was already transported prior to my  
09:35 20 arrival by medical personnel.

21 Q. But you had secured the scene?

22 A. Correct.

23 Q. And you're not aware of any weapons being  
24 recovered?

09:35 25 A. No, ma'am.

09:35 1 Q. Detective, in your investigation of this  
2 case did you also conduct interviews with witnesses?

3 A. Yes.

4 Q. And did you speak with someone by the name  
09:35 5 of Imunique Newsome?

6 A. Yes, I did.

7 Q. And how is Imunique Newsome related to  
8 Richard Newsome?

9 A. Imunique Newsome is Richard Newsome's  
09:36 10 sister.

11 Q. Okay. And when you were speaking with  
12 Imunique Newsome, were you speaking with her in regards  
13 to the events of January 14, 2017?

14 A. That's correct.

09:36 15 Q. What did she tell you about her brother in  
16 relation to someone named Carlos?

17 A. She explained that her brother was very  
18 upset because Carlos left her alone. There was an  
19 incident that took place on the bus while she was  
09:36 20 enroute to Smiley, that's her aka, her true name is  
21 Oniesha Coleman. While she was enroute to Oniesha's  
22 residence, there was an incident that took place where  
23 Oniesha basically referred to her as a bitch, she got  
24 off the bus alone and Carlos did not accompany her as  
09:36 25 she got off the bus near the intersection of Tropicana

09:36 1 and Eastern. Imunique explained that her brother  
2 Richard Newsome was very upset because Carlos was  
3 supposed to be her significant other or new boyfriend if  
4 you will and he did not get off the bus at Tropicana and  
09:37 5 Eastern when she was upset to stand by her side and  
6 protect her and be there for her.

7 Q. Did she tell you that there came a point in  
8 time where she went over to Richard Nelson's house, the  
9 Sacks Drive address, on that night?

09:37 10 A. Correct. She, when she got off the bus at  
11 Tropicana and Eastern, she called her mother Tianna  
12 Douglas for a ride. She explained that she was upset  
13 over the issue that she had been called a bitch and  
14 disrespected and her mother Tianna Douglas, Richard  
09:37 15 Newsome, his best friend Stephan Washington, her other  
16 little brother Ascension or Ascension, I'm not sure of  
17 the pronunciation of his name, A-S-C-E-N-S-I-O-N, he  
18 goes by the name of Ace, all loaded up in the car to  
19 come pick Imunique up and take her over to Oniesha's  
09:38 20 residence, the Sacks address, to confront Oniesha about  
21 calling her a bitch. So they all loaded up in the car  
22 and they went toward the intersection of Tropicana and  
23 Eastern to the Sacks residence. Do you want me to  
24 continue?

09:38 25 Q. We can stop it there. And then did she

09:38 1 tell you there came a point in time where they  
2 encountered Oniesha Coleman at that residence.

3 A. Eventually, yes, they did encounter Oniesha  
4 Coleman at the Sacks address.

09:38 5 Q. Did she describe to you what happened after  
6 they encountered Oniesha Coleman at that residence?

7 A. Yes, she did. Imunique explained they  
8 encountered Oniesha Coleman at the Sacks address while  
9 she was in a physical altercation with Alicia, and I  
09:38 10 believe that's A-L-I-C-I-A, Agudo, A-G-U-D-O. She was  
11 in a physical confrontation with her and Imunique and  
12 her mother, along with Richard Newsome and Stephan  
13 Washington, all participated in the physical  
14 altercation, at which time Imunique's version is her  
09:39 15 mother tried to remove Oniesha off of Alicia and that's  
16 when her, her speaking of Imunique and Tianna Douglas,  
17 according to Imunique, retreated back to the vehicle  
18 while Richard Newsome and Stephan Washington proceeded  
19 to strike and hit on Oniesha Coleman who was on the  
09:39 20 ground.

21 Q. Did she tell you when Richard Nelson  
22 appears?

23 A. Richard Nelson appears when, according to,  
24 this is Imunique's version, Richard Newsome comes out of  
09:39 25 the residence, no shirt, all he had was pants on.

09:40 1 Q. Is this Richard Newsome or Richard Nelson?

2 A. I'm sorry. Richard Nelson comes out of the  
3 Sacks address with no shirt, just a pair of pants on, no  
4 shoes, and he approaches Richard Newsome and Stephan  
09:40 5 Washington who are engaged in the physical altercation  
6 with Oniesha. They're allegedly hitting and punching  
7 and kicking on Oniesha who was on the ground. Richard  
8 Nelson the victim comes out to confront them and remove  
9 these men off of his sister and he tells them and  
09:40 10 physically tells them, pulls them off and says get away,  
11 get away, get away from my sister, get off of my sister.  
12 The story's different as far as the verbal confrontation  
13 that was taking place.

14 Q. Just in regards to what Imunique told you,  
09:40 15 did she tell you that Richard Nelson ran past her?

16 A. Correct.

17 Q. And did she tell you that there was  
18 something in his hand but she doesn't know what it was?

19 A. Correct.

09:40 20 Q. And then did she tell you right after that  
21 is when she heard the shots?

22 A. That is correct.

23 Q. And that was all when you interviewed her,  
24 is that what she referred to?

09:41 25 A. That is correct.

09:41 1 Q. But no weapons were recovered at the Sacks  
2 Drive scene?

3 A. There were no records recovered at the  
4 scene itself.

09:41 5 Q. And Detective Grimmett, did there come a  
6 point in time that you met with Roxanne Wade and, I'm  
7 sorry, Roxanne Bruce and Wade Bruce and showed them  
8 photo line-ups?

9 A. Yes, ma'am, I believe that was on  
09:41 10 January 15th, the day after the incident.

11 Q. And you personally did this?

12 A. Yes, I did.

13 Q. And Detective, I'm going to show you Grand  
14 Jury Exhibit Number 15. Do you recognize what that is?

09:41 15 A. Yes, the Las Vegas Metropolitan Police  
16 Department photo line-up and witness instructions that I  
17 put together along with my partner to administer to  
18 Roxanne Bruce and Wade Bruce.

19 Q. And is Grand Jury Exhibit Number 15 the one  
09:41 20 that you administered to Wade Bruce?

21 A. Yes, this one was administered to Wade  
22 Bruce.

23 Q. Okay. And Detective Grimmett, I'm going to  
24 put this up on the overhead and I'm showing you page 2  
09:42 25 of this photo line-up. Was Wade Bruce able to identify



09:42 1 someone in that photo line-up?

2 A. Yes, he was. The person up in the number 2  
3 position.

4 Q. And who is the person that's in the number  
09:42 5 2 position?

6 A. The person in the number 2 position is in  
7 fact our suspect Richard Newsome.

8 Q. Okay. And you put this line-up together?

9 A. Yes, I did.

09:42 10 Q. And there's a third page of the photo  
11 line-up that has another six photos?

12 A. When I say I put the line-up together, it  
13 was put together with the assistance of the Clark County  
14 Juvenile Detention Hall personnel who had access to the  
09:42 15 juvenile related photos.

16 Q. And when you, the third page of this, was  
17 Wade Bruce able to identify anyone in this line-up?

18 A. Yes, the person in the number 5 position  
19 and that is --

09:42 20 Q. Who is that?

21 A. That is Richard Newsome's younger brother  
22 Ascension.

23 Q. Okay. And that's Ascension Newsome?

24 A. Correct.

09:43 25 Q. And then I'm showing you Grand Jury Exhibit

09:43 1 Number 14. And is that the line-up you showed to  
2 Roxanne Bruce?

3 A. Yes, it is.

4 Q. Was she able to identify anyone in the  
09:43 5 first line-up?

6 A. Yes, she was.

7 Q. And who did she identify?

8 A. The person in the number 3 position which  
9 is in fact Richard Newsome.

09:43 10 Q. And was she unable to identify anyone in  
11 the second line-up?

12 A. She wasn't 100 percent sure in the second  
13 line-up. She wasn't comfortable with identifying anyone  
14 in the second line-up.

09:43 15 MS. JONES: Okay. I have no further  
16 questions for this witness. Do the ladies and gentlemen  
17 of the Grand Jury have any questions for this witness?  
18 BY A JUROR:

19 Q. You have the line-up of these young men.  
09:43 20 Where do these pictures come from? They're not old  
21 enough --

22 MS. JONES: I'm going to object. He cannot  
23 testify as to where he actually obtained the  
24 photographs.

09:43 25 A JUROR: Okay.

09:43 1 A JUROR: Same question.

2 THE FOREPERSON: By law, these proceedings  
3 are secret and you are prohibited from disclosing to  
4 anyone anything that has transpired before us, including  
09:43 5 evidence and statements presented to the Grand Jury, any  
6 event occurring or statement made in the presence of the  
7 Grand Jury, and information obtained by the Grand Jury.

8 Failure to comply with this admonition is a  
9 gross misdemeanor punishable up to 364 days in the Clark  
09:43 10 County Detention Center and a \$2,000 fine. In addition,  
11 you may be held in contempt of court punishable by an  
12 additional \$500 fine and 25 days in the Clark County  
13 Detention Center.

14 Do you understand this admonition?

09:44 15 THE WITNESS: Yes, sir.

16 THE FOREPERSON: Thank you. You may be  
17 excused.

18 MS. JONES: If we could just have the grand  
19 jurors' brief indulgence to see if our next witness is  
09:44 20 here.

21 MR. PESCI: State calls Carlos Hernandez.

22 THE FOREPERSON: Please raise your right  
23 hand.

24 You do solemnly swear the testimony you are  
09:45 25 about to give upon the investigation now pending before

09:45 1 this Grand Jury shall be the truth, the whole truth, and  
2 nothing but the truth, so help you God?

3 THE WITNESS: Yes.

4 THE FOREPERSON: Please be seated.

09:45 5 You are advised that you are here today to  
6 give testimony in the investigation pertaining to the  
7 offenses of murder with use of a deadly weapon and  
8 assault with a deadly weapon, involving Richard Allan  
9 Newsome, Jr.

09:45 10 Do you understand this advisement?

11 THE WITNESS: Yes, sir.

12 THE FOREPERSON: Please state your first  
13 and last name and spell both for the record.

14 THE WITNESS: Carlos Hernandez.

09:46 15 C-A-R-L-O-S, H-E-R-N-A-N-D-E-Z.

16 CARLOS HERNANDEZ,  
17 having been first duly sworn by the Foreperson of the  
18 Grand Jury to testify to the truth, the whole truth,  
19 and nothing but the truth, testified as follows:

09:46 20

21 EXAMINATION

22

23 BY MR. PESCI:

24 Q. Carlos, I want to direct your attention to

09:46 25 January the 14th of 2017. Were you supposed to head

09:46 1 over to Oniesha's house for a squad meeting?

2 A. Yes.

3 Q. And Oniesha, does she also go by the  
4 nickname of Smiley?

09:46 5 A. Yes.

6 Q. Do you have a nickname within the squad?

7 A. Yes.

8 Q. What's that?

9 A. Young Bass.

09:46 10 Q. On that particular day were you traveling  
11 to Oniesha's house by way of bus?

12 A. Yes.

13 Q. Who was on the bus with you?

14 A. Imunique and Alicia.

09:46 15 Q. Do you know Imunique's last name?

16 A. I'm pretty sure it's Newsome.

17 Q. Do you know Alicia's last name?

18 A. Agudo.

19 Q. The three of you, were you all supposed to

09:46 20 be going to Oniesha's house for the meeting?

21 A. Yes, sir.

22 Q. Along the way what happened?

23 A. Well, along the way of all three buses,

24 throughout the whole time pretty much Alicia was on the

09:47 25 phone with Smiley, they were talking back and forth, you

09:47 1 know, Alicia kept making assumptions of Smiley, you  
2 know, doing her wrong in a way I suppose, and this  
3 lasted throughout the whole three buses. And since  
4 Imunique is Alicia's best friend she ended up having the  
09:47 5 same feelings as well.

6 Q. Okay. So let me stop you so we can put it  
7 in context for the ladies and gentlemen of the Grand  
8 Jury.

9 A. Yes.

09:47 10 Q. You talked about the phone. Are these  
11 actual phone conversations where people are talking or  
12 is this a whole bunch of texting?

13 A. Actual phone conversations and texting.

14 Q. I ask that to say, you were able to hear  
09:47 15 some of the actual conversation?

16 A. Well, I was able to hear some of it but  
17 most of the time I really didn't want to hear anybody  
18 else's drama so I just put my headphones in.

19 Q. Were you able to see any of the texts? Was  
09:47 20 this like a group text?

21 A. No, I wasn't able to see a text. The one  
22 text I did see in the group text was on Facebook  
23 messaging and Imunique was saying why did you take my  
24 friend out of the squad messenger.

09:48 25 Q. So you put the headphones on. Were you

09:48 1 able to hear some of the actual conversation?

2 A. I only heard very little, none that I could  
3 really comprehend.

4 Q. But the part that you heard and the text  
09:48 5 that you saw, did you get the sense that there was  
6 friction or tension between those three women?

7 A. Yes.

8 Q. And so when this is going on, what happens,  
9 what decision is made by Imunique?

09:48 10 A. Well, the decision that is made by Imunique  
11 by the time we get to the third bus stop, and from what  
12 I, well actually from what I know is that Smiley or  
13 Oniesha for that matter called Imunique the B word and  
14 Imunique got mad about it. I tried talking to her and I  
09:48 15 tried to explain to her, hey, you know, if you're not  
16 going, I'm not going, out of respect for her, because I  
17 also promised her brothers that I would keep her safe.  
18 And she pretty much said don't talk to me right now and  
19 then she just walked off.

09:49 20 Q. So you just mentioned Imunique's brothers.  
21 Who are Imunique's brothers?

22 A. Imunique's brothers, well, the only name I  
23 actually really know is Richard and I don't really know  
24 the other people's names.

09:49 25 Q. Okay. But you said that you heard that the

09:49 1 B word was used. Did you actually hear it used or did  
2 you hear Imunique talking about it after it had been  
3 used?

4 A. Pretty much after the fact once everything  
09:49 5 happened.

6 Q. But you had the context from those  
7 conversations with Imunique as to somebody calling her  
8 to use the word a bitch?

9 A. Yes, sir.

09:49 10 Q. Now Imunique tells you to leave her alone  
11 and she gets off the bus?

12 A. Well, at this point we're off the bus and  
13 after I say if you're not going, I'm not going, she said  
14 don't talk to me right now, she's getting on the phone  
09:49 15 and she walks off. So I stayed with Alicia and hop on  
16 the next bus.

17 Q. So you and Alicia hop on the next bus and  
18 head towards Oniesha's house?

19 A. Yes.

09:50 20 Q. Did you arrive at Oniesha's house?

21 A. We did.

22 Q. Did Alicia have a conversation with  
23 Oniesha?

24 A. At that point, yes.

09:50 25 Q. Tell us about that.



09:50 1 A. Well, throughout that conversation, this is  
2 at that point where I had my headphones unplugged.

3 Q. Hold on a second. That woman right there  
4 is writing everything down. If we go too fast she's  
09:50 5 going to yell at probably me.

6 A. Right.

7 Q. So slow down.

8 A. My apologies. I'm a rapper so me being in  
9 front of the mic, this is my first stage fright.

09:50 10 Q. It's okay. Just slow it down a little bit.

11 A. All right. So like I was saying, by the  
12 time my headphones were unplugged and I'm hearing the  
13 conversation, Smiley or Oniesha for that matter, excuse  
14 me.

09:50 15 Q. Okay.

16 A. She's pretty much talking back and forth  
17 with Alicia talking about oh, are you with Medusa or  
18 Brooke.

19 Q. Let me stop you. Is this conversation  
09:51 20 you're hearing, is this on the bus or is this at  
21 Oniesha's house?

22 A. It is on the bus.

23 Q. Okay.

24 A. And so then from there -- God, I'm so  
09:51 25 nervous.

09:51 1                   Okay. So we're on the bus and we're  
2                   hearing the conversation. Well, I'm hearing the  
3                   conversation. It's not on speaker or anything. And I'm  
4                   just hearing a lot of oh, are you with Medusa, are you  
09:51 5                   with, you know, T and Bubba, and you know, this, that  
6                   and the other.

7                   Q.       So the part you were hearing was Imunique  
8                   speaking into the phone?

9                   A.       No. At that point on the bus I was just  
09:51 10                  hearing Alicia and Smiley talking back and forth.

11                  Q.       Okay. All right. Sorry.

12                  A.       No problem.

13                         And from there I started getting frustrated  
14                   because, you know, this was supposed to be a squad hang  
09:51 15                  out, meet up, you know, I didn't want no drama, no BS,  
16                   you know, I mean who wants any of that. So I started  
17                   getting frustrated. I'm thinking about getting ready to  
18                   leave and then I'm like, you know what, this is  
19                   mandatory, trying to see if we can make big things  
09:52 20                  happen, so I stay on the bus. And that's pretty much  
21                   where the conversation ends like I'm getting off the  
22                   bus.

23                  Q.       What happens when you get off the bus and  
24                   you're at or near Oniesha's house?

09:52 25                  A.       Well, when we get off the bus, it's me and

09:52 1 Alicia, we're walking, and she's walking like a bat out  
2 of hell and I'm trying to keep up with her. And then  
3 we're on the way to Oniesha's house and by the time we  
4 hit the corner and we go into Sacks Drive, me and her  
09:52 5 were still walking and then we end up reaching Oniesha's  
6 house.

7 Q. And then at Oniesha's house what happens?

8 A. At Oniesha's house, Alicia pretty much goes  
9 to the front door and, well, actually not even that.

09:52 10 Smiley's mom, she's outside and she sees me and Alicia  
11 and she's saying oh, Smiley's not here so, you know,  
12 she's not coming back tonight. That's what I heard when  
13 she was talking to Alicia. And then Alicia asked if she  
14 could use the restroom and at that point when she

09:53 15 decides to go into the restroom, Oniesha's mom, she  
16 comes to me and says, and I quote, "Me and Smiley aren't  
17 fighting. Don't say shit to Alicia."

18 Q. Okay. So at that point, I mean for the  
19 ladies and gentlemen of the jury, Grand Jury's

09:53 20 knowledge, did you know Oniesha's mom before this?

21 A. Before this fact, yes.

22 Q. So you know who she is and she comes up and  
23 talks to you that way privately?

24 A. Uh-huh.

09:53 25 Q. Is that a yes?

09:53 1 A. Yes.

2 Q. Okay. So after she tells you that, do you  
3 and Alicia leave after she's done with the bathroom?

4 A. No. From there me and Alicia, we pretty  
09:53 5 much sit outside in the front, and I'm just sitting with  
6 Alicia keeping her company and she says that she's  
7 waiting for a ride. And then at that point I'm also  
8 getting text messages from Oniesha saying to meet her at  
9 the Albertsons.

09:54 10 Q. What do you do based on that --

11 A. Sorry. Go ahead.

12 Q. What do you do based on receiving that  
13 information from Oniesha?

14 A. What I do based on receiving that message  
09:54 15 from Oniesha is that, also in the messages she was  
16 asking, no, she was saying act like you're leaving,  
17 don't let Alicia see you. So I act like I'm leaving and  
18 from there I go to the Albertsons.

19 Q. Okay.

09:54 20 A. And then once I go to the Albertsons I see  
21 T, Bubba and Medusa.

22 Q. Stop. Everybody doesn't know who that is.  
23 Who's T?

24 A. T is Terrence.

09:54 25 Q. Who is Bubba?

09:54 1 A. Bubba, I never got his actual name.

2 Q. And the third person?

3 A. And the third person was Brooke.

4 Q. She's goes by --

09:54 5 A. Medusa.

6 Q. Okay. So you see those three. What

7 happens?

8 A. I see those three. I'm talking with them.

9 I'm chopping it up with them for a second.

09:54 10 Q. Chopping it up, what's that mean?

11 A. Oh. Just speaking with them.

12 Q. Okay. Go ahead.

13 A. And from there they say Smiley's in the

14 car, she wants to talk to you. And I'm like okay, cool.

09:55 15 So I go in the car while they go get some food. I'm not

16 sure where they went. And from there that's pretty much

17 the point when me and Smiley are talking. She's saying

18 that I'm trying to fit in and I'm trying too hard to fit

19 in, like I'm trying to have some type of toughness I

09:55 20 suppose and she's explaining to me all the types of

21 people that she has been speaking to, you know, music

22 wise, trying to see if we could get things going, get

23 things moving.

24 Q. So she's talking about the squad?

09:55 25 A. Yes.

09:55 1 Q. Do you leave Oniesha?

2 A. No, I actually stay. And at that point  
3 after the conversation, that's when Brooke, Terrence and  
4 Bubba, that's when at that point we all get in the car,  
09:55 5 and then once we get in the car, Brooke and Oniesha,  
6 they, excuse me, they drop us off over at the I Liquor  
7 that's right across the street from Sacks and Tropicana.  
8 And me, Terrence and Bubba were in the I Liquor and  
9 we're just getting snacks, you know, we're getting black  
09:56 10 and Milds, you know, usual kick it stuff, and then once  
11 we leave the store, we cross the street going into Sacks  
12 and then at that point that is when Alicia and her  
13 brother pull up, but Alicia gets out of the car.

14 Q. Alicia gets out of the car and what  
09:56 15 happens?

16 A. Once Alicia gets out of car, she's on the  
17 phone, she's on the phone with Imunique, and while she's  
18 on the phone with Imunique she steps out of the car and  
19 says yeah, I see T, Bass and Bubba. And then from there  
09:56 20 the four of us are walking and she's walking backwards  
21 saying is Smiley with, is Smiley with Brooke or Medusa  
22 for that matter, and we just kept saying we're not in  
23 it, we're not in it.

24 Q. So this kind of back and forth trying to  
09:57 25 get information?

09:57 1 A. Yes.

2 Q. Do you head back towards Oniesha's house?

3 A. Well, the initial point after leaving the I

4 Liquor was to go to Oniesha's, but we, we pretty much

09:57 5 ended up stopping at the apartments that was a few

6 hundred feet down the way.

7 Q. Okay. So like the major cross streets are

8 what?

9 A. Sacks and Tropicana.

09:57 10 Q. So that's here in Las Vegas?

11 A. Uh-huh.

12 Q. Is that yes?

13 A. Yes, sir.

14 Q. So you're at that area now. And what

09:57 15 happens?

16 A. While we were in that area, that is the

17 point where Alicia passes me the phone and instead of it

18 being Imunique, it's a gentleman who I am to believe was

19 the brother Richard.

09:57 20 Q. But you, at that moment you didn't know who

21 it was?

22 A. At that moment I did not know who it was.

23 Q. But you knew you were speaking to a male?

24 A. Yes.

09:57 25 Q. What did that person say?

09:57 1 A. They were saying, they were saying hey  
2 Bass, what's good, you were supposed to keep my sister  
3 safe, you left her on the east side. And I tried  
4 explaining to them everything but, you know, tensions  
09:58 5 and tempers were high and, you know, I can understand  
6 why they were upset, that's their sister.

7 Q. But that's a phone conversation, right?

8 A. Yes.

9 Q. Does that conversation end?

09:58 10 A. It goes in a little bit deeper and he's  
11 still, and then he starts talking about I want your  
12 fade, I want your hands, I want all of that, pretty much  
13 meaning that he wants to fight me in pretty much every  
14 way, shape and form possible.

09:58 15 Q. That's what you understood what he was  
16 saying to you?

17 A. Yes.

18 Q. And what did you say to him?

19 A. I kept trying to explain to him what was  
09:58 20 going on. I was trying to explain to him how my family  
21 pretty much does things because when a woman wants her  
22 space we just back up and we give them their space, but  
23 they wasn't trying to hear any of that.

24 Q. So did that phone conversation end?

09:58 25 A. Well, pretty much after trying to talk to



09:58 1 him wasn't getting anywhere, that's pretty much when I  
2 passed the phone back to Alicia and at that point I'm  
3 just beyond angry, I'm beyond frustrated. It's  
4 beginning of the year and I'm already getting so much  
09:59 5 drama for something so little.

6 Q. Okay. So you passed the phone off and then  
7 do you start heading towards Oniesha, what happens?

8 A. No. That's the point when I start getting  
9 very upset. I kind of get loud and very angry for that  
09:59 10 matter and I'm screaming to the top of my lungs, I'm  
11 swearing, "I didn't want no drama this year. I'm trying  
12 to have peace, love and happiness this year."

13 Q. Okay. At some point though did you come in  
14 contact with someone you understood to be the brother of  
09:59 15 Imunique?

16 A. Yes.

17 Q. How did that happen? Where did that  
18 happen?

19 A. It happened at the apartments that me, T,  
09:59 20 Bubba and Alicia were stationed at where we were pretty  
21 much standing and here comes a white car, four door, it  
22 is Imunique's mother, her brother, and two other males  
23 that I believe are her brothers but not exactly sure.  
24 I'm still a little fuzzy on that.

10:00 25 Q. So after you had been outside kind of

10:00 1 venting, the car shows up and these people get out?

2 A. Yes.

3 Q. What happens when they get out?

4 A. When they get out, one of the males says

10:00 5 hey Bass, and before I hear that her brother cocks the  
6 gun back and at this point I'm terrified for my life.

7 Q. Did you see a gun?

8 A. Yes.

9 Q. When the person said hey Bass, did you

10:00 10 recognize this as the voice of the person who had been  
11 on the phone with you earlier?

12 A. Yes.

13 Q. And then I want to show you Grand Jury  
14 Exhibit Number 3. Do you recognize who is in Grand Jury  
10:00 15 Exhibit 3?

16 A. That's him.

17 Q. When you say him, is that the person who  
18 had the gun?

19 A. Yes.

10:00 20 Q. Okay. And what did he do with the gun?  
21 Tell them.

22 A. He was, he was waving it back and forth and  
23 he was pretty much staring at me with pretty much blood  
24 red eyes. I can't even look at that. It's haunting for  
10:01 25 me right now.

10:01 1 Q. Did he point the gun at you?

2 A. He did. And when he said that, he said,  
3 and I quote, "give me two reasons why I shouldn't put  
4 two in you, nigger."

10:01 5 Q. And when he said that were you afraid?

6 A. In all --

7 Q. Silly question but we need it for the  
8 record.

9 A. In all honesty, yes, I was terrified. I  
10 almost pissed myself in all honesty.

11 Q. You had a gun pointed at you?

12 A. Of course.

13 Q. And someone telling you why shouldn't he  
14 shoot you?

10:01 15 A. Uh-huh.

16 Q. Is that a yes?

17 A. Yes.

18 Q. But you talked about his mother being  
19 there; is that correct?

10:01 20 A. Yes.

21 Q. Showing you Grand Jury Exhibit 16. Do you  
22 recognize who that is?

23 A. Imunique's mother.

24 Q. Is that the woman that was standing next to  
10:01 25 the guy with the gun?

10:01 1 A. She was actually standing about 10, 15 feet  
2 to my left as Richard was on my upper left.

3 Q. Okay. So as Richard's got the gun and he's  
4 threatening you, the mom is there as well?

10:02 5 A. Yes.

6 Q. And she didn't do anything to stop her son  
7 from threatening you with a gun?

8 A. She was just watching.

9 Q. She didn't say anything to him?

10:02 10 A. No.

11 Q. And then how did that end? How did you get  
12 away? What happened?

13 A. Well, from there, pretty much that's when  
14 Imunique starts running over to Oniesha's house and that  
10:02 15 is when Alicia is walking behind her and that's when T  
16 and Bubba, they grab me, we end up going into these  
17 apartments. We didn't go into an actual apartment but  
18 we was just inside the facility.

19 Q. Where did the person with the gun go?

10:02 20 A. Well, they all pretty much followed  
21 Imunique. One of them said Nika running, Nika running.

22 Q. Is Nika a nickname for Imunique?

23 A. Yes. And then from there they all hop in  
24 the car and they're starting to pull off and while  
10:03 25 they're pulling off, me, T and Bubba, we were slowly

10:03 1 walking like in a, I don't know what's the word,  
2 stealthy, we were moving stealthy with it.

3 Q. Trying to be careful so you're not seen?

4 A. Yes.

10:03 5 Q. When you say they took off, did the person  
6 with the gun get in the car?

7 A. Yes.

8 Q. Did his mom who was there get in the car?

9 A. She was driving, yes.

10:03 10 Q. So she drove the young man with the gun to  
11 Oniesha's house?

12 A. Yes.

13 MR. PESCI: Okay. No more questions.

14 THE FOREPERSON: By law, these proceedings  
10:03 15 are secret and you are prohibited from disclosing to  
16 anyone anything that has transpired before us, including  
17 evidence and statements presented to the Grand Jury, any  
18 event occurring or statement made in the presence of the  
19 Grand Jury, and information obtained by the Grand Jury.

10:03 20 Failure to comply with this admonition is a  
21 gross misdemeanor punishable up to 364 days in the Clark  
22 County Detention Center and a \$2,000 fine. In addition,  
23 you may be held in contempt of court punishable by an  
24 additional \$500 fine and 25 days in the Clark County  
10:03 25 Detention Center.

10:03 1 Do you understand this admonition?

2 THE WITNESS: I do.

3 THE FOREPERSON: Thank you. You may be

4 excused.

10:04 5 THE WITNESS: Thank you.

6 MS. JONES: The State's next witness is

7 Alicia Agudo.

8 THE FOREPERSON: Let's take a ten minute

9 break.

10:04 10 (Recess.)

11 MR. PESCI: State calls Alicia Agudo.

12 THE FOREPERSON: Please raise your right

13 hand.

14 You do solemnly swear the testimony you are

10:16 15 about to give upon the investigation now pending before

16 this Grand Jury shall be the truth, the whole truth, and

17 nothing but the truth, so help you God?

18 THE WITNESS: Yes.

19 THE FOREPERSON: Please be seated.

10:16 20 You are advised that you are here today to

21 give testimony in the investigation pertaining to the

22 offenses of murder with use of a deadly weapon, assault

23 with a deadly weapon, involving Richard Allan Newsome,

24 Jr.

10:16 25 Do you understand this advisement?

10:16 1 THE WITNESS: Yes.

2 THE FOREPERSON: Please state your first  
3 and last name and spell both for the record.

4 THE WITNESS: Alicia Agudo. A-L-I-C-I-A,  
10:16 5 A-G-U-D-O.

6 ALICIA AGUDO,  
7 having been first duly sworn by the Foreperson of the  
8 Grand Jury to testify to the truth, the whole truth,  
9 and nothing but the truth, testified as follows:

10:16 10  
11 EXAMINATION

12  
13 BY MS. JONES:

14 Q. Good afternoon, Alicia.

10:16 15 A. Hello.

16 Q. Alicia, are you familiar with someone by  
17 the name of Oniesha Coleman?

18 A. Yes.

19 Q. How do you know her?

10:17 20 A. She is my ex-girl friend.

21 Q. When did you break up with her?

22 A. The day of the incident, January 14th.

23 Q. And Alicia, I'd like to draw your attention  
24 back to that day of January 14, 2017. You and Oniesha  
10:17 25 had broken up that day?

10:17 1 A. Yes.

2 Q. But were you guys still communicating via  
3 text messages and Facebook?

4 A. Uhm, after or during?

10:17 5 Q. During the day of that day.

6 A. Yes. Yes.

7 Q. So you were communicating with her?

8 A. Yes.

9 Q. And is it fair to say that you and Oniesha

10:17 10 had a disagreement?

11 A. Yes.

12 Q. Did there come a point in time where she  
13 said she didn't want you coming to her house?

14 A. Yes.

10:17 15 Q. Who were you with when you were speaking  
16 with Oniesha?

17 A. Imunique and Carlos.

18 Q. And where were you guys?

19 A. On the bus.

10:17 20 Q. I'm sorry?

21 A. On the bus.

22 Q. Okay. And where were you guys headed?

23 A. To her house.

24 Q. So you guys had already got on the bus to

10:18 25 go to her house when she said she didn't want you coming



10:18 1 over?

2 A. Right. Yes.

3 Q. And during that time did Oniesha say  
4 anything to you in regards to Imunique?

10:18 5 A. Yes, she did.

6 Q. What did she say?

7 A. She called her the B word.

8 Q. And if you could speak directly into the  
9 microphone.

10:18 10 A. She said -- I don't know if I'm allowed to  
11 say it.

12 Q. You're allowed to say it.

13 A. She called her a bitch and, yeah.

14 Q. Was Imunique aware that Oniesha had called  
10:18 15 her a bitch?

16 A. Yes.

17 Q. How did Imunique react to that?

18 A. She didn't react at all from my  
19 understanding. I didn't even know she knew but.

10:18 20 Q. And did Imunique end up getting off the  
21 bus?

22 A. Yes.

23 Q. And so when Imunique got off the bus, who  
24 was left on the bus?

10:18 25 A. Me and Carlos.

10:18 1 Q. And did you and Carlos actually take that  
2 bus over to Oniesha's house?

3 A. Yes, we did.

4 Q. Was Oniesha residing at 4804 Sacks Drive?

10:19 5 A. Yes.

6 Q. Is that here in Clark County?

7 A. Yes.

8 Q. Did you and Carlos actually go to Oniesha's  
9 house?

10:19 10 A. Yes, we did.

11 Q. Was she there?

12 A. No.

13 Q. Who did you speak with when you were there?

14 A. Oniesha's mother.

10:19 15 Q. What's her name?

16 A. Roxanne.

17 Q. And did Roxanne tell you that Oniesha  
18 wasn't home?

19 A. Yes.

10:19 20 Q. So what did you do when she told you that?

21 A. I went, I called my brother and my brother  
22 picked me up about five minutes later.

23 Q. Where did your brother pick you up from?

24 A. Right in front of her house.

10:19 25 Q. What's your brother's name?

10:19 1 A. Tito. Well, his real name is Fidel Agudo.

2 Q. Does he go by the name of Tito?

3 A. Yes, Tito.

4 Q. What kind of vehicle did he pick you up in?

10:19 5 A. A big white truck. I don't know. I don't  
6 know cars.

7 Q. And when your brother picked you up, where  
8 did you and your brother go?

9 A. We were going home and as we exited the  
10:19 10 neighborhood I see T and Bubba, Terrence and James, and  
11 that's when I get out the car and I tell my brother to  
12 just go, I'm going to find Smiley. And that's when I  
13 get out the car and I'm asking them where's Smiley at.  
14 Yeah, that's how that happened.

10:20 15 Q. Just for the record, when you're talking  
16 about Smiley, are you talking about Oniesha?

17 A. Yes, Oniesha.

18 Q. But do you call her Smiley?

19 A. Yes.

10:20 20 Q. So you want to ask Bubba and T where Smiley  
21 is. Are you wanting to talk to Smiley?

22 A. Yes.

23 Q. What do you want to talk to her about?

24 A. Our relationship.

10:20 25 Q. So in your quest to speak to Smiley, had

10:20 1 you called her?

2 A. Yes.

3 Q. Had you texted her?

4 A. Yes.

10:20 5 Q. About how many times?

6 A. About a million times.

7 Q. So fair to say you were blowing up her  
8 phone?

9 A. Yes.

10:20 10 Q. So you're blowing up her phone because you  
11 want to talk to her about your relationship?

12 A. Right.

13 Q. So when you see T and Bubba, you ask them  
14 where she is?

10:20 15 A. Yes.

16 Q. Do they know where she is?

17 A. Of course, they just did not tell me.

18 Q. So you believe they knew but they didn't  
19 tell you where she was?

10:20 20 A. Yes.

21 Q. So what did you do?

22 A. I continued to ask them and they continued  
23 to not tell me and that, when this is happening, that's  
24 when Imunique is blowing up my phone. I answer the

10:21 25 phone. She asks me where I was at. I said the

10:21 1 apartment complex. She asked me if Carlos was with me,  
2 I said, yes, she hung up.

3 Q. Which apartment complex were you at?

4 A. The one that's down the street from her  
10:21 5 house.

6 Q. From whose house; Oniesha's?

7 A. Oniesha's house.

8 Q. Do you know the major cross streets of  
9 those apartments?

10:21 10 A. Nellis and Tropicana.

11 Q. Okay. And so after Imunique, you tell her  
12 Carlos is with you, she hangs up?

13 A. Yes.

14 Q. What do you do after that?

10:21 15 A. I'm still walking with them, talking with  
16 them, and she comes, not even, probably less than a  
17 minute later into the apartment complex with her mother,  
18 herself and Richard the shooter, and then the other guy,  
19 I'm thinking that's the friend. I thought they were  
10:21 20 brothers but they're not.

21 Q. And this is Imunique who shows up?

22 A. Yes.

23 Q. Does she show up in a car?

24 A. Yes.

10:22 25 Q. What kind of car was it?

10:22 1 A. Uhm --

2 Q. What color was it?

3 A. Gray. Silver.

4 Q. And who is the driver of the car?

10:22 5 A. Her mother.

6 Q. So she's with her mother and she's with one

7 of her brothers and a friend of theirs?

8 A. Right. Yes.

9 Q. Do you know her brother's name that she's

10:22 10 with?

11 A. Now I do since this happened. It's

12 Richard.

13 Q. But did you know his name that day?

14 A. No.

10:22 15 Q. Do you know her mother's name?

16 A. No. I still don't know her name.

17 Q. I'm going to show you Grand Jury Exhibit

18 Number 16. Do you recognize the person depicted in that

19 photo?

10:22 20 A. Yes.

21 Q. Who is that?

22 A. That is her mother.

23 Q. That's Imunique's mother?

24 A. Imunique's mom, yes.

10:22 25 Q. They show up. And what happens after they

10:22 1 show up at the apartment?

2 A. The two brothers, well, the two guys get  
3 out the car, go straight to Carlos and start cussing him  
4 out, why you leave my sister out stranded and saying all  
10:22 5 this stuff. And I'm standing right there in shock, like  
6 I'm confused. They have a gun, they pull it out to  
7 Carlos's chest.

8 Q. And can you see all of this happening?

9 A. Yes, I was there. I was there. I was  
10:23 10 there.

11 Q. Who has the gun?

12 A. Richard, the shooter.

13 Q. And I'm going to show you Grand Jury  
14 Exhibit Number 3.

10:23 15 A. Him.

16 Q. Do you recognize the person in that photo?

17 A. Yes, that's the guy.

18 Q. And this is the guy who had the gun at  
19 Carlos's chest?

10:23 20 A. Yes.

21 Q. And he points the gun at Carlos's chest and  
22 then what happens?

23 A. Well, Carlos starts crying and he's like  
24 look man, I didn't, I didn't leave her, she cussed me  
10:23 25 out. Because Imunique cussed him out and told him to

10:23 1 leave her alone and that's what Carlos did, he left her  
2 alone. And so I'm confused at the fact that she even  
3 said anything and I'm confused about what's going on. I  
4 actually tell him, Richard, that his sister cussed him  
10:24 5 out to leave her alone and that's what he did, like put  
6 the gun down. He's like oh, I don't want to hear none  
7 of that, I don't want to hear none of that, whatever.  
8 And he eventually puts the gun down and at this point  
9 it's just them arguing back and forth with each other.

10:24 10 Q. Who's arguing?

11 A. Carlos and Richard.

12 Q. Where is Richard's mother when he has the  
13 gun to Carlos's chest?

14 A. She's still in the car. Imunique is still  
10:24 15 in the car. They're both still in the vehicle. They're  
16 not even out. I don't know, the way I was thinking when  
17 this was happening was it wasn't my, this had nothing to  
18 do with me. Like I said I was on a quest to look for  
19 Oniesha, I wanted to talk to Oniesha. To be honest I  
10:24 20 didn't care about what was going on.

21 Q. So do you leave?

22 A. I actually go to the passenger side of the  
23 car where Imunique was and I'm like what's going on,  
24 like what's, and she's, she's all hysterical, she's  
10:25 25 crying, she's emotional, I don't know why, but she's



10:25 1 like Alicia, why are they calling me a bitch and da da  
2 da, and I called my brothers. I can't even tell you  
3 what she was saying. It was mumbo jumbo. I don't know.

4 Q. Does there come a point where this ends and  
10:25 5 you guys leave?

6 A. After she was telling me that, I called, I  
7 was blowing up Smiley's phone again to tell her that  
8 these people are looking for you, like they're looking  
9 for you so --

10:25 10 Q. Why did you want to tell Smiley they were  
11 looking for her?

12 A. Because they have a gun, I'm worried about  
13 her safety, I don't want anything bad to happen. She  
14 declined all my calls and it was understandable because  
10:25 15 of the argument that we were having. I mean she told me  
16 not to come. I'm not going to blame her for that. But  
17 as they're still arguing I leave. I look out the corner  
18 of the street and I see that Medusa's car is parked  
19 out --

10:26 20 Q. What's Medusa's real name?

21 A. Honestly I don't know her real name. But  
22 that's her nickname. I see her car parked out in front.  
23 I know it wasn't there before and I'm curious, you know.  
24 I walk over there by myself to the car. As I --

10:26 25 Q. Where is the car parked?

10:26 1 A. Right in front of Oniesha's home.

2 Q. Okay.

3 A. I approach the vehicle and I see Medusa and

4 Oniesha in the passenger seat. I open the car door, I

10:26 5 go off on both of them. I cuss them out. As me and

6 Oniesha are arguing and cussing each other out or

7 whatever, she's getting out of the car, she's getting

8 out of the car, I grab her by her hair, I pull her out.

9 After that it was pulling, tugging, pushing. It was no,

10:26 10 not a fistfight. We fall to the floor.

11 Q. You and Oniesha?

12 A. Yes, me and Oniesha, we fall to the floor.

13 As we're on the floor Richard and, well, the car pulls

14 up and they, I don't know, Richard and the other guy

10:27 15 push her off of me.

16 Q. Push who off of you?

17 A. Oniesha. And they just start beating her

18 up and the mom gets out the car and starts doing it too.

19 Q. What is the mom doing?

10:27 20 A. Hitting her, kicking her. All of them are

21 beating her up in front of me. And I'm standing there

22 as this is happening, I'm standing there in front of it

23 and I'm, I don't know what to do. I grab him.

24 Q. Him is who?

10:27 25 A. I still don't know. I still don't even

10:27 1 know who it was, him or the other guy, I don't know.  
2 But I grab, I just know that the guy I grabbed had a gun  
3 and I grabbed him by the shoulder and tried to remove  
4 him off of Smiley, but he reached back, punched my chest  
10:27 5 and told me to back up. I backed up and I'm just, I  
6 don't know what to do. I don't know what to do. As I'm  
7 standing there Oniesha's mom comes outside and she's  
8 like you're just going to let my daughter get beat up  
9 right in front of you and she goes off on me and before  
10:28 10 I even get a chance to say anything like look, I just  
11 tried to help, you know, she actually runs to me and  
12 socks me in my face. I fall to the floor. After that  
13 she's just stomping me out, beating me up. I'm covering  
14 my face. After that I can't really tell you what  
10:28 15 happened. After that I, my vision was bad, I hear  
16 gunshots, I don't know what's going on. I mean she was  
17 beating me up the whole time so.

18 Q. How many gunshots did you hear?

19 A. I don't -- a lot. Like maybe five I heard.

10:28 20 Q. Do you know who Oniesha's brother is?

21 A. Yes.

22 Q. Who is her brother?

23 A. Richard.

24 Q. Do you know Richard's last name?

10:29 25 A. Richard, Richard, uhm --

10:29 1 Q. You don't know his last name?

2 A. No. Because I know they go by two  
3 different -- I'm not sure.

4 Q. And did you see Oniesha's brother come out  
10:29 5 of the house?

6 A. Yes, I did.

7 Q. And when he came out of the house was he  
8 dressed?

9 A. He didn't have, he didn't have a shirt on.  
10:29 10 He just had basketball shorts I think.

11 Q. When he came out of the house did he have  
12 anything in his hand?

13 A. No.

14 Q. Did you ever see anything in his hand?

10:29 15 A. No.

16 Q. But you did not actually see the shooting?

17 A. No.

18 Q. You heard the gunshots?

19 A. Yes.

10:29 20 Q. And after you hear the gunshots, do you see  
21 where Richard Newsome and his mother went?

22 A. Where the shooter and the mom went?

23 Q. Yeah.

24 A. Yeah, they left.

10:29 25 Q. Did they leave in the car?

10:29 1 A. Yes.

2 Q. And did you see Richard, Oniesha's brother,  
3 pull somebody off of her?

4 A. Yeah.

10:30 5 Q. Okay. Who did he pull off of her?

6 A. Actually no. No, I didn't.

7 Q. You didn't see that?

8 A. I didn't, no.

9 MS. JONES: I have no further questions for  
10 this witness. Do the ladies and gentlemen of the Grand  
11 Jury have any questions for this witness?

12 BY A JUROR:

13 Q. I do. You said that Tatiania the mom and  
14 Richard the brother of Imunique left, but there was  
10:30 15 another brother Ascension. Did he go with them?

16 A. No.

17 Q. Okay. Let's see. I think I had another  
18 one.

19 A. From my understanding the other guy that  
10:30 20 was there, that's not related to her, that was a close  
21 friend.

22 Q. Okay. And when you called or texted to  
23 Oniesha before you all went to her home, did you tell  
24 her that Richard or anybody had a gun?

10:31 25 A. No.

10:31 1 Q. Okay. Thank you.

2 THE FOREPERSON: Okay. By law, these  
3 proceedings are secret and you are prohibited from  
4 disclosing to anyone anything that has transpired before  
10:31 5 us, including evidence and statements presented to the  
6 Grand Jury, any event occurring or statement made in the  
7 presence of the Grand Jury, and information obtained by  
8 the Grand Jury.

9 Failure to comply with this admonition is a  
10:31 10 gross misdemeanor punishable up to 364 days in the Clark  
11 County Detention Center and a \$2,000 fine. In addition,  
12 you may be held in contempt of court punishable by an  
13 additional \$500 fine and 25 days in the Clark County  
14 Detention Center.

10:31 15 Do you understand this admonition?

16 THE WITNESS: Yes.

17 THE FOREPERSON: Thank you. You may be  
18 excused.

19 THE WITNESS: Do I just walk out or --

10:31 20 A JUROR: Uh-huh.

21 MS. JONES: Yes. And ladies and gentlemen,  
22 the State has concluded its presentation of evidence in  
23 this matter. Are there any questions regarding the  
24 evidence or the elements of the offenses?

10:31 25 A JUROR: I have a question. Since she

10:32 1 knew that they had a gun, you know, the witness, and she  
2 didn't warn anybody, can she be charged for that?

3 MR. PESCI: We're here just now for the  
4 person that we have charged.

10:32 5 A JUROR: Okay.

6 MR. PESCI: I'm sorry, I can't answer that.

7 A JUROR: Thank you.

8 MS. JONES: This matter is submitted for  
9 your deliberation.

10:32 10 A JUROR: Thank you.

11 (At this time, all persons, other than  
12 members of the Grand Jury, exit the room at 10:32 a.m.  
13 and return at 10:34 a.m.)

14 THE FOREPERSON: Madame District Attorney,  
10:34 15 by a vote of 12 or more jurors a true bill has been  
16 returned against defendant Richard Allan Newsome, Jr.  
17 charging the crimes of murder with use of a deadly  
18 weapon, assault with a deadly weapon, in case number  
19 16BGJ059X. We instruct you to prepare an Indictment in  
10:34 20 conformance with the proposed Indictment previously  
21 submitted to us.

22 MS. JONES: Thank you.

23 MR. PESCI: Thank you.

24 (Proceedings concluded.)

10:34 25 --oo0oo--

**REPORTER'S CERTIFICATE**

**STATE OF NEVADA**       )  
                              :   SS  
**COUNTY OF CLARK**       )

I, Danette L. Antonacci, C.C.R. 222, do  
hereby certify that I took down in Shorthand (Stenotype)  
all of the proceedings had in the before-entitled matter  
at the time and place indicated and thereafter said  
shorthand notes were transcribed at and under my  
direction and supervision and that the foregoing  
transcript constitutes a full, true, and accurate record  
of the proceedings had.

Dated at Las Vegas, Nevada,  
February 7, 2017.

/s/ Danette L. Antonacci

\_\_\_\_\_  
Danette L. Antonacci, C.C.R. 222



10:34

1

## AFFIRMATION

2

Pursuant to NRS 239B.030

3

4

The undersigned does hereby affirm that the  
preceding TRANSCRIPT filed in GRAND JURY CASE NUMBER  
16BGJ059X:

10:34

5

6

7

8

X Does not contain the social security number of any  
person,

9

10:34

10

-OR-

11

     Contains the social security number of a person as  
required by:

12

13

A. A specific state or federal law, to-  
wit: NRS 656.250.

14

-OR-

10:34

15

16

B. For the administration of a public program  
or for an application for a federal or  
state grant.

17

18

/s/ Danette L. Antonacci

19

\_\_\_\_\_  
Signature

2-7-17

\_\_\_\_\_  
Date

10:34

20

21

Danette L. Antonacci

\_\_\_\_\_  
Print Name

22

23

Official Court Reporter

\_\_\_\_\_  
Title

24

25

<p><b>A JUROR: [8]</b>  5/21 79/24 79/25  115/19 115/24  116/4 116/6 116/9</p> <p><b>BY A JUROR: [4]</b>  43/9 43/16 79/17  114/11</p> <p><b>BY MR. PESCI: [3]</b>  17/11 60/9 81/21</p> <p><b>BY MS. JONES: [6]</b>  7/6 17/17 19/18  46/8 70/16 100/11</p> <p><b>MR. PESCI: [10]</b>  45/5 45/7 59/8  68/21 80/20 98/12  99/10 116/2 116/5  116/22</p> <p><b>MS. JONES: [17]</b>  5/12 5/22 17/22  18/16 43/6 44/9  45/6 58/14 69/14  79/14 79/21 80/17  99/5 114/8 115/20  116/7 116/21</p> <p><b>THE FOREPERSON: [38]</b>  5/7 6/6  6/13 6/21 17/25  18/14 18/18 18/25  19/8 44/13 45/3  45/8 45/15 45/23  58/17 59/6 59/9  59/16 59/24 68/22  69/11 69/16 69/23  70/6 80/1 80/15  80/21 81/3 81/11  98/13 99/2 99/7  99/11 99/18 100/1  115/1 115/16  116/13</p> <p><b>THE WITNESS: [31]</b>  6/12 6/20 6/23</p>	<p>18/13 18/24 19/7  19/10 45/2 45/14  45/22 45/25 59/5  59/15 59/23 60/1  69/10 69/13 69/22  70/5 70/8 80/14  81/2 81/10 81/13  99/1 99/4 99/17  99/25 100/3  115/15 115/18</p> <hr/> <p><b>\$</b></p> <p><b>\$2,000 [7]</b> 18/9  44/23 59/1 69/6  80/10 98/22  115/11</p> <p><b>\$500 [7]</b> 18/11  44/25 59/3 69/8  80/12 98/24  115/13</p> <hr/> <p><b>-</b></p> <hr/> <p><b>--oo0oo [1]</b>  116/25</p> <p><b>-OR [2]</b> 118/10  118/14</p> <hr/> <p><b>/</b></p> <hr/> <p><b>/s [2]</b> 117/17  118/18</p> <hr/> <p><b>0</b></p> <hr/> <p><b>00579 [2]</b> 9/2  9/16</p> <hr/> <p><b>1</b></p> <hr/> <p><b>10 [3]</b> 13/20  29/13 97/1</p> <p><b>100 percent [2]</b>  58/5 79/12</p> <p><b>10:32 [1]</b> 116/12</p> <p><b>10:34 [1]</b> 116/13</p> <p><b>11 [2]</b> 14/7 71/4</p>	<p><b>11th [1]</b> 21/7</p> <p><b>12 [2]</b> 15/4  116/15</p> <p><b>12th [1]</b> 21/7</p> <p><b>13 [1]</b> 16/4</p> <p><b>13th [1]</b> 21/7</p> <p><b>14 [9]</b> 20/6 56/20  57/20 65/7 68/5  68/5 73/13 79/1  100/24</p> <p><b>14th [11]</b> 21/1  21/6 21/24 22/6  23/13 43/4 46/24  60/13 71/21 81/25  100/22</p> <p><b>15 [9]</b> 29/13  29/13 65/7 67/1  67/2 67/19 68/5  77/14 77/19</p> <p><b>15 feet [1]</b> 97/1</p> <p><b>15th [1]</b> 77/10</p> <p><b>16 [3]</b> 71/6 96/21  107/18</p> <p><b>16BGJ059X [4]</b> 1/7  5/17 116/19 118/5</p> <p><b>17 [2]</b> 71/6  118/18</p> <p><b>17-00579 [2]</b> 9/2  9/16</p> <p><b>17th [2]</b> 39/20  39/21</p> <hr/> <p><b>2</b></p> <hr/> <p><b>2-7-17 [1]</b> 118/18</p> <p><b>2017 [13]</b> 1/14  2/1 5/1 20/6 21/1  21/24 46/24 60/13  71/21 73/13 81/25  100/24 117/15</p> <p><b>22 [1]</b> 71/5</p> <p><b>222 [3]</b> 1/25</p>
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<b>been [34]</b> 5/5 7/2	47/25 56/13 75/10	44/6 105/7 105/10
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<p><b>Y</b></p> <hr/> <p><b>yes [218]</b></p> <p><b>yet [2]</b> 36/13 41/21</p> <p><b>you [584]</b></p> <p><b>you're [30]</b> 7/12 22/16 22/17 22/17 24/1 24/11 28/11 30/7 31/4 35/24 36/24 37/14 40/22 42/14 51/20 63/2 63/23 65/4 72/23 84/15 85/13 86/20 87/24 89/16 92/14 98/3 102/12 104/15 105/10 112/8</p> <p><b>young [16]</b> 20/16 21/22 25/13 41/5 41/5 41/8 47/21 49/8 50/1 53/10 53/10 63/6 63/7 79/19 82/9 98/10</p> <p><b>younger [5]</b> 24/20 25/2 25/3 65/7 78/21</p> <p><b>your [118]</b></p> <p><b>yourself [2]</b> 35/25 64/13</p>		
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IN THE EIGHT JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

CASE NO C-17-321043-1

DEPT NO 21

FILED

FEB 01 2019

*Ann L. Johnson*  
CLERK OF COURT

Richard Newsome Jr.  
Petitioner

PETITION FOR WRIT  
OF HABEAS CORPUS  
(Past conviction)

VS

THE STATE OF NEVADA, Warden  
Brian William  
Respondent

A-19-788618-W  
Dept. XXI

PETITION

1. I am presently restrained of my liberty, at High Desert State Prison
2. Conviction under attack was entered judgement, in 8th Judicial District Court, Las Vegas NV
3. Date of conviction February 8th 2018 ?
4. Case Number C-17-321043-1
5. Length of sentence 18 to life
6. I am not serving any other sentence under attack in this motion? No
7. Nature of offense being challenged, I was charged with 2nd Degree Murder with use of a deadly weapon.
8. I signed a Plea of Guilty
9. I did not appeal because I was not told that I could, and the counsel knew I was dissatisfied with my sentence, because I was promise to be sentence to a 12 to 35 YEARS
10. First Petition, No Direct Appeal.

A-19-788618-W  
PWHC  
Petition for Writ of Habeas Corpus  
4813032



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FEB 11 2019  
CLERK OF THE COURT



CASE NO C-17-321043-1

DEPT. NO 21

IN The EIGHT Judicial District Court  
OF the State of Nevada IN AND FOR the County of Clark

Richard Newsome Jr.  
Petitioner

VS

STATE OF NEVADA, BRIAN WILLIAMS  
Respondent

PETITION FOR WRIT OF  
Habeas corpus Post conviction

PETITION

Now comes the Petitioner in pro se and says for his Petition for writ of Habeas corpus Post conviction as follows.

1. This Petition is to challenge Due Process of law, equal protection under the 6th, 14th and 5th Amendment for the failure to file Notice of Appeal as to Petitioner's harsh sentence, and the promise sentence of 12 to 35 years.
2. Petitioner is requesting leave to attach a memorandum of points of authorities to support Petitioner's Petition for writ of Habeas corpus Post conviction.

Prepared By Brick P. Houston

5th and 14th Amend. Ground 1. Violation of Due Process, Equal Protection, 6th and 14th Amend. Counsel Failure to file Notice of Appeal when he knew Petitioner was dissatisfied with sentence, and using coercion, trickery and a promise of a sentence of 12 to 35 years to get Petitioner to sign plea.

Supporting Facts. Requesting LEAVE to attach memorandum of law, points/authorities in support of Petition, counsel being ineffective assistance of counsel failure to file notice of appeal to petitioner harsh sentence, and counsel's breach of plea agreement using coercion, trickery and a promise of 12 to 35 years and using threat of a 25 to life if petitioner don't sign deal and judge allowing deal to go thru when the record reflect that a promise was made by counsel prior to signing the deal and before sentencing, dissatisfied with harsh sentence.

### Memorandum of Law in support of Petition

To state a claim of ineffective assistance of counsel that is sufficient to invalidate a judgment of conviction, a defendant must demonstrate that counsel's performance fell below the objective standard of reasonableness, and that counsel error were so severe they rendered the jury verdict unreliable. see *Strickland v. Washington* 466 US 680 (1985). Also see *Warden v. Lyons* 100 Nev 430, 683 P2d 504 (1984) cert denied, 471 US 1004, 85 LEd 159, (1985). Defendant Richard contends that his counsel acted unreasonable in failing to perfect an appeal without petitioner consent. Defendant Petitioner ask that for purpose of this petition that counsel failed to perfect an appeal without petitioner consent. Also guilty plea was obtain, thru coercion, trickery, threats, and by the promise of receiving a sentence of 12 to 35 years, told to mother and petitioner to convince the signing of the plea agreement, no appeal was file without my consent.

1 The reasonableness of petitioner's counsel conduct

2 The failure to obtain petitioner consent not to pursue an appeal  
3 would amount to unreasonable conduct. Courts have ruled that an  
4 attorney has a duty to perfect an appeal when a convicted defendant  
5 expresses a desire to appeal or indicates dissatisfaction with a conviction.  
6 See Fawaz v. State, 105 Nev. 812, 787 P.2d 425 (1989) Downs v. Walden  
7 93 Nev. 475, 568 P.2d 575 (1977). In Fawaz, for example, ...  
8 the appellant expressed a desire to challenge his conviction by  
9 filing a motion for new trial. Fawaz, 105 Nev. at 812, 787 P.2d  
10 at 425. We ruled that counsel was ineffective for failing to  
11 file a notice of appeal from the district court's denial of the  
12 motion for new trial. Id. because Fawaz demonstrated a  
13 desire to challenge his conviction by filing a motion for  
14 new trial. Fawaz, 105 Nev. at 812, 787 P.2d at 425. We ruled  
15 that counsel was ineffective for failing to file a notice of ...  
16 appeal from the district court's denial of the motion for new trial. Id.  
17 because Fawaz demonstrated a desire to challenge his conviction  
18 by filing a motion for new trial. Counsel had a duty to perfect  
19 an appeal.

20 Similarly, in Downs, we noted that Downs never expressed a desire  
21 to appeal from his judgment of conviction and he seemed satis-  
22 fied with the outcome of his case. We also ruled that Downs  
23 had waited well over a year before asserting his alleged right  
24 to appeal. Downs, 93 Nev. at 478, 568 P.2d at 576, 577. We  
25 concluded. In this factual setting, a trial attorney has no  
26 obligation to represent his client at appeal. Id. at 478, 568  
27 P.2d at 577.

Downs implies that we would have reached the opposite conclusion had Downs expressed dissatisfaction with his conviction or expressed a desire to appeal within the reasonable time we did not. ... directly address in Downs the question of whether Downs knew of his right to appeal or whether counsel must inform his client of that right. Instead we noted that the record was silent on the issue of whether Downs was informed of his right to appeal. And we concluded that under the peculiar circumstances of that case, Downs had failed to demonstrate that his attorney had been ineffective. Id. 4

The federal courts have indicated that trial counsel has an affirmative duty to instruct a convicted client of the right to appeal regardless of whether the client expresses a desire to appeal. The United States Supreme Court has never directly ... (110 A2 355) addressed this issue. The court's opinion remanding LOZADA's petition to the Ninth Circuit, however, appears to assume that an attorney must inform a client of the client's appeal rights. Petitioner Richard Nassone Turf like LOZADA claim that trial counsel either had a duty to inform him of his appeal rights or to ensure that he retained appointed counsel who would perfect an appeal. LOZADA v. DEEDS 498 U.S. 430, 431, 112 L.Ed2d 956, 111 S.Ct. 860 (1991) (per curiam). The Supreme Court only addressing the Ninth Circuit's failure to consider whether prejudice may be presumed under the circumstances LOZADA AND Petitioner Richard alleged

requiring counsel to inform a convicted client of the right to appeal is consistent with the Supreme Court prior precedent.

1 IN DAUGHERTY v. CALIFORNIA, 372 U.S. 353, 9 L. Ed. 2d 811, 83 S.Ct.  
2 814 (1963) The court held that criminal defendants have a  
3 right to counsel on appeal when a state affords a right to  
4 appeal. The court has ruled further that the right to counsel on  
5 appeal -- like the promise of Gideon v. Wainwright 372  
6 U.S. 335 [871 P.2d 948] 9 L. Ed. 2d 799, 83 S.Ct. 792  
7 (1963) that a criminal defendant has a right to counsel  
8 at trial -- would be a futile gesture unless it com-  
9 pended the right to effective assistance of counsel.  
10 Evitts v. Lucey 469 U.S. 387, 397, 83 L. Ed. 2d 821, 105  
11 S.Ct. 830 (1985) The right to effective counsel on appeal would  
12 also be a futile gesture if a criminal defendant does  
13 not make an informed decision whether to appeal.  
14 Several federal circuit courts have ruled that due  
15 process clause of the federal constitution imposes a  
16 duty on attorneys to inform clients of the right to  
17 appeal. IN BAKER v. KAISER, 929 F.2d 1495, 1499 (1991)  
18 for example, the court of appeals for the Tenth circuit  
19 ruled that, IN Evitts, the supreme court implicitly  
20 determined that the right to counsel applies to the period  
21 for perfecting an appeal. According to the tenth circuit,  
22 counsel must explain the advantages and disadvantages  
23 of an appeal, explain the merits of an appeal and then  
24 ask the client whether to pursue and appeal. Id. see also  
25 Childs v. Collins 995 F.2d 69 (1993) Nelson v. Perston  
26 415 F.2d 1154 (1969) cert. denied, 397 U.S. 971  
27 1007, 251 F.2d 420, 90 S.Ct. 1235 (1970)

1 The Ninth Circuit's opinion in Lazada v. Deeds, 964 F.2d  
2 956 (9th Cir. 1992) also indicates that counsel has a duty  
3 to inform a client of the right to appeal a conviction.  
4 The Ninth Circuit ruled that counsel may not fail  
5 to perfect an appeal of a conviction "without the  
6 petitioner's consent." Id. at 958. Logically, a criminal  
7 defendant cannot consent to forgo an appeal  
8 unless the defendant knows of the right to appeal.  
9 The 9th Circuit thus implicitly held that counsel  
10 has a duty to discuss a client's appeal right with  
11 the client.

12 (110 Nev. 356) we find these cases persuasive.  
13 Convicted defendants likely lack the expertise  
14 necessary to perfect an appeal. The absence of the  
15 assistant of counsel during the time  
16 period for filing an appeal may also render the  
17 right to counsel on appeal meaningless. Accordingly,  
18 trial counsel must inform a convicted client of the  
19 right to appeal. This duty includes informing the  
20 client of the procedures for filing an appeal as well  
21 as the advantages and disadvantages of filing an appeal.  
22 Counsel did fail to inform petitioner of his  
23 right to appeal and his counsel did know that the  
24 petitioner was not satisfied with his sentence  
25 because it was a breach of the agreement and the  
26 promise made by counsel. Petitioner has demonstrated  
27 that his counsel acted unreasonably under strict and

1 whether counsel's conduct prejudiced petitioner.  
2 Assuming the truth of petitioner's allegations petitioner  
3 can demonstrate prejudice under STRICKLAND. IN  
4 FAWAZ we implicitly ruled that prejudice may be  
5 presumed on claim based on the ineffective assistance  
6 of counsel when a petitioner has been deprived of the  
7 right to appeal. After concluding that counsel failed to  
8 provide effective assistance of counsel, we ruled that  
9 FAWAZ was prejudiced by the ineffective conduct  
10 of his attorney because he lost his right to review  
11 by this court. FAWAZ V. STATE. 105 Nev. 682 683  
12 783 P2d 425, 426 (1989)

13 The United States Supreme Court has similarly presumed  
14 (in this) prejudice when an attorney fails to inform a  
15 criminal defendant about the right to appeal. In the  
16 case, Rodriguez V. United States 395 US 327 23 LEd2d  
17 340, 89 Sct 1715 (1969). An attorney failed to file a notice  
18 of appeal against his client's wishes. Id. At 328.  
19 The federal district court and the circuit court of  
20 appeals rejected the petitioner's request for post-  
21 conviction relief because he failed to establish pre-  
22 Judice by setting forth any meritorious issues for  
23 appeal. Id. At 329.

24 The Supreme Court reversed and ruled that pre-  
25 Judice must be presumed in this instance  
26 because an unrepresented defendant likely lacks  
27 the expertise necessary to formulate arguments

1 for Appeal. Id. at 330. Rodriguez also did  
2 not speak English and thus he lacked the skills  
3 necessary to articulate issues for appeal.

4 Accordingly, the Supreme Court presumed that  
5 Rodriguez had suffered prejudice.

6 In *Strickland v. Washington*, 466 U.S. 688 (1984),  
7 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984), the United  
8 States Supreme Court reaffirmed without citing  
9 its holding in *Rodriguez*. Specifically, the Court  
10 ruled actual or constructive denial of the assistance  
11 of [871 P.2d 949] counsel altogether is legally  
12 presumed to result in prejudice. The Supreme  
13 Court further reaffirmed this rule in *Penon v.*  
14 *Ohio*, 488 U.S. 75, 101 L.Ed.2d 300 (1988).

15 In that case, the Supreme Court considered the  
16 procedures to be (110 Nev. 357) followed when  
17 appointed counsel files a Notice of (Appeal) AND  
18 merit Appeal.

19 The Court rejected a harmless error analysis  
20 and a prejudice requirement because, in the Court's  
21 view, the right to (Appeal) counsel on Appeal is  
22 essential to ensure justice and fairness. 488  
23 U.S. at 84-85. The Court explained that prejudice  
24 need not be shown where the denial of counsel  
25 leaves a defendant completely without representation.  
26 Id. at 88. Instead, the Court ruled that *Strickland*  
27 requires a showing of prejudice only where counsel



1 fails to press a particular argument to appeal  
2 or fail to argue an issue as effectively as he  
3 or she might. Id. (citation omitted)

4 The 9th Circuit adopted similar reasoning in  
5 reviewing LAZADA petition for post conviction  
6 relief. Relying on Rodriguez and Strickland,  
7 9th Circuit ruled that prejudice must be presumed  
8 when a defendant is denied the right to counsel on  
9 appeal. LAZADA v. Deeds 964 F.2d 956, 957, 958  
10 (9th Cir. 1992)

11 The 9th Cir. held: Because applicants must  
12 if indigent prepare their petition without counsel  
13 to the right to counsel that a state or federal prisoner  
14 would have direct appeal. Id. at 958, the 9th Circuit  
15 thus concluded that "prejudice" is presumed under  
16 Strickland if it is established that counsel's failure  
17 to file a notice of appeal without petitioner's consent  
18 Id. see also US v. Tredding 945 F.2d 458 (1991)  
19 cert. denied 120 L.Ed.2d 883, 505 U.S. 1211, 112 S.Ct. 3004  
20 (1992) ABET v. KAISER 903 F.2d 821 (1990) ESTER v. US  
21 883 F.2d 645 (8th Cir. 1989)

22 Based on these federal cases and our opinion in Fawn  
23 we conclude that prejudice may be presumed for  
24 purposes of establishing the ineffective assistance of  
25 counsel when counsel's conduct completely denies a  
26 convicted defendant an appeal. Consequently, we ~~are~~  
27 ~~not~~ required (required) petitioner to establish prejudice

1 in his Appeal from the denial of his Petition for Post  
2 conviction Relief. Assuming Petitioner counsel failed to  
3 perfect an Appeal without his consent. Petitioner  
4 presumably suffered PreJudice because he was deprived  
5 of his right to Appeal.

6 B. Although Petitioner has establish good cause for  
7 filing a (Petitioner) Petition, he can show actual  
8 PreJudice. Petitioner can establish PreJudice if his  
9 counsel's conduct deprived him of his right to Appeal.  
10 As in FAWAZ it indicated that the denial of the  
11 right to Appeal deprives a person of a basic right  
12 that presumably PreJudices the person, FAWAZ -V-  
13 State 105 Nev 682, 783 P2d 425 (1989) Petitioner can  
14 thus demonstrate that he has suffered sufficient  
15 PreJudice to excuse the filing of a successive  
16 petition for writ of Habeas corpus.

17 The required showing of PreJudice to establish  
18 a claim of Ineffective assistance of [871 P2d 950]  
19 counsel is separate and distinct from the showing  
20 of PreJudice required to overcome a procedural  
21 default. The Legislature requires a showing of PreJudice  
22 to excuse procedural defaults to prevent the filing  
23 of successive petition and to avoid abuse of Post  
24 conviction remedies. In addition, requiring PreJudice  
25 to excuse the filing of untimely petitions helps to  
26 ensure that claims are raised before evidence is lost  
27 or memories fade.

1 Without such Limitation on the Availability of post  
2 Conviction remedies, prisoners could petition for Relief  
3 in perpetuity and thus Abuse post-Conviction remedies.  
4 In addition, meritless, successive and untimely  
5 petitions clog the court system and undermine the  
6 finality of convictions. A Showing of PreJudice is  
7 thus essential to prevent the filing of successive and  
8 meritless petitions for post-Conviction Relief.

9 These concerns do not arise However, in the context  
10 of Claims based on the ineffective assistance of  
11 counsel. PreJudice in that context addresses the effects  
12 of the unreasonable conduct of counsel on a defendant's  
13 trial. In this case, however, both PreJudice require-  
14 ments have to address the same concern: namely, the complete  
15 denial of counsel. Petitioner counsel's conduct may have  
16 deprived petitioner of the fundamental right of counsel  
17 on appeal. This denial of this result in PreJudice for  
18 purposes of both establishing the ineffective assist-  
19 ance of counsel and for excusing the filing of a  
20 successive petition for post-conviction relief.

21 (3) Petitioner has an Adequate remedy in the district court.  
22 Because petitioner can establish good cause and PreJudice  
23 if he substantiates his Allegations, he has an Adequate  
24 remedy in this District court through this petition. If  
25 petitioner can establish his claim that he was denied  
26 his right to effective assistance of counsel on appeal,  
27 which had the effect of denying petitioner his right

1 to appeal. The appropriate remedy would be to allow  
2 petitioner an opportunity to raise in his appeal  
3 any issue which he could have raised on direct  
4 appeal. If this district court denies petitioner  
5 relief, he may appeal denial to supreme court of  
6 Nevada or the appeals court, which he will raise  
7 the breach of plea agreement, and the fact that  
8 a amount of 12 to 35 years was promise by  
9 counsel if he pleaded guilty. Also this was the  
10 promise that was given to (my) petitioners mother.  
11 Also the sentencing transcript also verify that  
12 a promise was made and the judge had the  
13 knowledge of such promise and he overlooked  
14 the promise, and allowed the 18 to life sentence,  
15 ignoring the promise that persuaded petitioner  
16 to sign the plea agreement in the first place.  
17 And promise was also made to defendants mother.  
18 A complete remedy will exist, if this district  
19 court grants petitioner ~~and~~ independent counsel  
20 other than public defenders office, because convicted  
21 persons have the right to counsel on direct appeal.  
22 Thus if petitioner rights are granted this court  
23 should appoint counsel to assist petitioner.

#### 24 Conclusion

25 The argument discussed herein provides a complete  
26 remedy for the alleged denial of petitioner right to  
27 appeal.

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

Richard Newsome Jr.  
Petitioner

vs

A-19-788618-W  
Dept. XXI

STATE OF NEVADA, WARDEN BRIAN  
Williams  
Respondents

FILED

FEB 01 2019

John D. Johnson  
CLERK OF COURT

A-19-788618-W  
IPWHC  
Inmate Filed - Petition for Writ of Habeas  
4813031



SUPPLEMENTAL PETITION FOR WRIT OF HABEAS  
CORPUS POST CONVICTION, AND MOTION FOR APPOINTMENT OF  
COUNSEL ALONG WITH, REQUEST FOR EVIDENTIARY HEARING

Comes Now, The Petitioner Richard Newsome Jr. proceeding in Pro se ...  
within the above entitled cause, and respectfully request that this Honorable court  
GRANT

CLERK OF THE COURT  
FEB 01 2019  
RECEIVED

- 1, motion For Appointment of Counsel and  
Request For Evidentiary  
And Supplemental Petition For WRIT OF HABEAS CORPUS POST CONVICTION

STATEMENT OF THE CASE

Counsel was ineffective for failing to file notice of Appeal, when he knew  
Defendant was dissatisfied with his harsh sentence, and a direct Breach of Plea  
Agreement because The state offered a sentence of 12 to 35 years and then  
using counsel to make a promise to assure the plea was sign and/or using  
A threat of 25 to life, and also using coercion, and trickery to have the  
defendants mother convince him to sign the plea agreement of 12 to 35  
years. And then when signing plea, Judge had personal knowledge that  
A promise was made to defendant to get him to sign deal. and this ...  
court should allow the specific performance of the Plea Agreement  
in front of A different sentencing Judge, because the defendant  
would not of sign the plea if he knew he would be sentence to  
18 to Life. and defendant had already given up his right to

RA170

remain silent and tendered his best bargaining chip, the knowledge of his criminal activity. And the state did not inform the Judge that he offered a 12 to 35 year sentence to defendant counsel who had defendant sign deal by promising such 12 to 35 years

To support the Petitioner's need for appointment of counsel in this action he states the following

1. The merits of claims for relief in this action are of constitutional dimension, and Petitioner is likely to succeed in this case

2. Petitioner is confined at High Desert state prison and is unable to the ability, as an attorney would or could to investigate crucial facts involved with in this petition for writ of habeas corpus

3. The issues presented in this petition involve a complexity that Petitioner is unable to argue effectively.

3. Petitioner has no current legal knowledge and abilities, as an attorney would have, to properly present the case to this court coupled with the fact that appointed counsel would have servicing the court, Petitioner and the respondents as well, by sharpening the issues in this case, shaping the examination of potential witnesses and ultimately shortening the time of the prosecution of this case.

4. Petitioner has made an effort to obtain counsel, but does not have the funds necessary or available to pay for the cost of counsel. therefore he have had a Jail house lawyer he me out

5. The prison severely limit the hours for law library.

6. While Petitioner do have the assistant of Rick P. Houston who is not in same level, and only contact is thru mother.

7. The ends of Justice will be served in this case by the appointment of counsel.

Argument in support of motion  
For the appointment of counsel

This Argument motion is made and based upon the matters set forth here. NRS 34.750 (1) (2) and verification attached hereto

Motions for the appointment of Counsel are addressed to the sound... discretion of the court. The court may refuse an attorney to represent any such person unable to employ counsel. On a motion for appointment of counsel the District court (and) should consider whether appointment would be of service to indigent Petitioner, the court, and respondents as well, by sharpening the issues in the case, examination of witnesses and... ultimately shortening trial and assisting in just determination.

In order for the appointment of counsel to be granted, the court must consider several factors to be met in order the appointment of... counsel to be granted. (1) The merit of Claim for relief (2) The ability to investigate crucial factors (3) whether evidence consists of conflicting testimony effectively treated only by counsel (4) The ability to present the case, and (5) The complexity of the legal issues raised in the petition.

Argument in support supplemental  
Petition for writ of Habeas corpus post conviction

Petitioner Reallege herein by reference there to the original writ filed in this case, dealing with counsel's failure to file appeal.

Defendant should be entitled to the sentence that was the Promise. The state went to defense counsel and presented the Plea Agreement of 12 to 35 Years which defendant agreed, which he was threatened with 25 to Life, so he took the deal that was a promise made to defendant and his mother. The state and defense counsel allow the breach of the Plea Agreement knowing that a promise was what made the Plea to be sign, such was coercion and by trickery,

It is obvious that the state prosecution, told defense counsel to offer the plea deal of 12 to 35 years. in which counsel promise such plea deal. Did the state conspire and agree with defense counsel to convince the defendant to sign the plea agreement, what this court should ask itself, why... would a plea be offered, and then not be kept? Did defense counsel lie, did he use false promise of a plea agreement to have defendant sign plea? Also this court should ask itself how and why was the plea agreement breached, and who is person who assured that a breach would take place, do this... court believe that counsel for defendant would commit legal malpractice, and commit a miscarriage of Justice and use... coercion, and on threats along with trickery to have the defendant sign a plea agreement, and promise the mother if she have her son sign the deal, he would only receive 12 to 35 years, this shows that counsel was ineffective and that the plea agreement was not signed voluntarily and knowingly. This also shows that defendant had the understanding that he would receive a 12 to 35 years sentence, and not a 18 to life.

The determination of whether or not an agreement has been breached is governed by the law of contracts, with some exceptions. see US v. Hamdi 432 F3d 115, 122-23 (2d Cir 2005) stated: Although plea agreements are generally analyzed under contract law, they are unique contracts with special due process concerns for fairness and adequacy of procedural safeguards.



And also in McKeeven v. Warden SCI-Gaterford 486 F3d 81, 86. (3rd Cir 2007) stated: Although plea agreements are generally analyzed... under contract law, defendant must first be afforded the protections of due process. And in US v. Wood 378 F.3d 342, 348 (4th Cir 2004). says... Although plea agreements are generally analyzed under contract law, the state is held to higher standard than defendant because agreements... implicate integrity of criminal justice system. And in Peavy v. US 31 F3d 1341, 1346 (6th Cir 1994) stated: Although plea agreements are generally analyzed under contract law, analogy to contract law not complete because guilty plea involves waiver of fundamental constitutional rights, and although plea agreements are generally analyzed under contract law, plea agreements are tempered by limits that constitution places on criminal process. US v. Bowens 405 F3d 634, 636 (7th Cir 2005) And the 9th... circuit clearly state in US v. Transfiguration, 442 F3d 1222, 1229-30 (2006) Although plea agreements are generally analyzed under contract law, contract law principle of mutual mistake... cannot be asserted to invalidate agreement because, unlike commercial exchanges, plea bargains implicate liberty.

Once defendant sign the plea agreement, he expected the state, the government and his defense counsel to assure that the... promise of 12 to 35 years was kept, which was defendant reasonable understanding of the agreement. Defendant reasonably understood the plea agreement to prohibit misconduct rather than arrest based on Judge's ambiguous statement of youthful defendant.

The defendant in case at bar, reasonably understood he was eligible for the 12 to 35 years when he made plea, to hold him ineligible would bind defendant (defendant to unknowing and involuntary plea see McIntosh v. US 484 F3d 832, 836 (6th Cir 2007))

since Defendant is alleging that the state Breach the Plea Agreement, I must Prove the breach by a Preponderance of evidence. see US v. Cruz-Mercade, 360 F3d 30, 37 (2004) Also US v. Packwood, 848 F2d 1009, 1011 (9th Cir 1988)

And since defendant alleges that the state breached a Plea Agreement he should be entitled to an evidentiary hearing. At the courts discretion, discovery or expansion of the record, unless... defendants allegations are palpably "incredible" or patently frivolous or false. see Blackledge v. Allison 431 US 63, 67, 80-82 (1977)

or To determine whether defendant provided assistance... Substantial enough to require state to move for downward... departure under Plea Agreement. US v. Floyd 428 F3d 513, 518 (2005) And defendant is entitled to evidentiary hearing to determine... whether state breached Promise not contain in Plea Agreement when Rule 11 colloquy fails to ensure voluntariness of Plea if Rule 11 colloquy inquired about additional promises made by state. see US v. White 366 F3d 291, 297, 298 (2004)

The Judge in the herein case had personal knowledge that a Promise was made in regards to a particular sentence, but he fail in his duty and did not address such issue and/or allow defendant to withdraw his Plea.

The Remedy for a state breach of a Plea Agreement depends on the case. see e.g. US v. Riggs 287 F3d 221, 226 (2006)

Defendant believe that he should have been inform by counsel that there would be problems after Plea was sign and

The Judge did not halt to except the plea. However once the Judge found out there was a promise made by counsel on behalf of the state, he should of given Defendant the opportunity to withdraw plea, if he was not going to go along with it. This court may alter the sentence and/or order specific performance of Agreement. see US -V- Hodge 412 F3d 479, 487 (2005) where as the defendant was entitled to remand for determination to whether to grant specific performance or withdrawal of plea when state breached plea agreement by implying that defendant should not be release back to community. In the case at bar the state prosecutor stated at sentencing/ Plea Hearing,

At the Plea Hearing the Judge Ask? Did anyone make you any promises or something similar. see Hearing transcript to Plea Agreement the Judge said:

Based on the actions of the state, and the Judge's sentencing, and the promise made by counsel on behalf of the state, defendant should be entitled to specific performance of oral plea agreement when prosecution breached plea agreement by failing to argue for a reduction of sentence, claiming failure was unintentional. see US - V - McQueen, 108 F3d 64, 66-67 (1997)

The state should inform the Judge that he presented a plea deal to counsel for defendant, and the offer and promise was a sentence of 12 to 35 years, and counsel did convince the defendant to sign deal and that counsel even use defendant's own mother, TIANNA Thomas to tell her son Richard to sign the deal, because if you don't, they will give a sentence of 25 to life, not a 12 to 35 years. Based on these circumstances, defendant should be entitled to specific performance of agreement before a different sentencing Judge. see US - V - MUNOZ 408 F3d 222, 229 (2005) Also see US - V - LACHUCHA 484 F3d 1266, 1271 (2007)

In US - V - TAYLOR 77 F3d 368, 372 (1996) The defendant entitled to withdraw his plea because state breached agreement to recommend 10 year sentence.

In Petitioner case a promise of 12 to 35 years was breached and his understanding was that he would receive what was promise and introduce by the state to counsel for defendant. This Honorable Court has a duty to determine whether defendant's choice of plea was prejudice by counsel error regarding possible sentencing warranted Remand US - V - McMulken 86 F3d 135, 137 (1996)

Courts will set a plea of guilty on collateral attack to correct a miscarriage of Justice. see US - V - Fowler 445 F3d 1035, 1038 (2006) US - V - CAMARILLO Tello 236 F3d 1024, 1027 (9th Cir 2000) Also see Meyer - V - Warden, 603 P2d 1066 (Nev 1979) Little - V - Warden 34 P3d 540 (Nev 2001)

The Petitioner main argument herein is that... If he had known that when he sign the Plea Agreement, He would recieve a 18 to Life sentence instead of a 12 to 35 year. he would not of sign the plea and he would (of) have taken the case to trial. the circumstances of the promise, one could believe that there was reasonable probability that petitioner would not of plead guilty if he knew that he would get 18 to Life.

He was not facing the death penalty. He could not recieve Life without a deal is design to give the person a opportunity of less time than the statute mandate. and/or 18 to Life is Just like 25 to life. the only deal that was reasonable was the 12 to 35 years. as promise.

In the case of (more) Moore v. Bryant 348 342, 343 (7th Cir 2003) The defendant was prejudiced when he was told he would face 27 years in prison if convicted at trial, reasonable probability defendant would not of plead guilty if he knew the actual maximum was 18 years to Life.

As in the case of BARI, if he would of not been threaten of 25 to life he would with... reasonable probability not sign deal if he would get 18 to Life.

Wherefore this Honorable Court should grant the Appointment of Counsel and Request for Evidentiary Hearings, And the Relief sought in Petition.

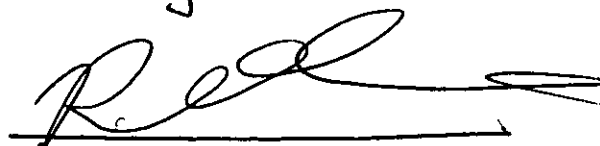
Dated January 27<sup>th</sup> 2019



VERIFICATION

I declare, Affirm and swear under PENALTY of Perjury that All of the herein facts, statements and assertions are true and correct of my own knowledge as to any such matters stated upon information or belief. I swear that I believe them all to be true and correct.

Dated this 27<sup>th</sup> day of January 2019

  
Petitioner, Pro Per

1 AFFIDAVIT OF TIANNA THOMAS

2 STATE OF NEVADA )  
3 ) SS:  
4 COUNTY OF CLARK )

5 TO WHOM IT MAY CONCERN:

6 I, TIANNA THOMAS, the undersigned, do hereby swear that all the  
7 following statements and description of events, are true and correct, of my own  
8 knowledge, information, and belief, and to those I believe to be true and  
9 correct. Signed under penalty of perjury pursuant to NRS 208.165.

10 (1) THAT Prior to my son Richard Newsome Jr. signing his  
11 Plea Agreement counsel told myself and Richard that if he  
12 do not sign the Plea Agreement he would be given a 12 to  
13 35 year sentence. This was the counsels promise he would  
14 get Richard. This is the reason the deal was signed by my  
15 son. Richard and I both wanted to get our sides out of  
16 what happened the night of January 14, 2017. Richard and I  
17 both never got our sides of story to the Judge, court, or  
18 public at all through the case because our counsel instructed  
19 us not which he stated on court record at sentencing  
20 explaining to Judge they (Attorney) instructed us to not give  
21 any statements because it could hurt or interfere with our  
22 open case. Which I feel is unfair it was judged and  
23 sentencing on a one sided story. My best friend Tracy Phillips  
24 is the one who referred us to John Momot from her own  
25 personal past cases and she was one who contacted Momot  
26 office on Saturday January 15<sup>th</sup> 2017 and instructed us to  
27 lay low to come into his office Tuesday January 17, 2017  
28 because Monday was a Holiday Martin Luther King and office  
was closed. When we arrived at Momots office on January 17<sup>th</sup>

RA180

1 2017. After discussing what happened at incident on  
2 January 14th 2017 we told Momot we wanted to be turned  
3 in right then and there to authorities so thats what we did.  
4 When Detectives came in Momot asked the detectives  
5 to not question us so they told Richard and I both  
6 together they would not question us. I also told our  
7 ~~the~~ counsel in beginning I had never been in trouble before  
8 and I am clueless about any legal criminal process and I  
9 was putting my full trust in him, I never even been to jail  
10 I was taken advantage of and so was my son because we  
11 both knew nothing. Richard was only 17 years old at the  
12 time. We both didnt know or understand anything that  
13 was going to happen or when we got to say our sides of  
14 story. Richard and I asked our counsel about going to  
15 trial with the case so we could tell our sides and court/  
16 Judge would have both parties sides to make a judgement.  
17 We were told that would put 10 plus more years on  
18 Richards life and I would be chancing going to Prison  
19 for a long time and get a felony on my record and because  
20 I do work that would stop me from working to take care  
21 of my other children. This is why Momot informed  
22 me to convince my son to sign the deal to look out  
23 for me and get sentenced to a 12 to 35. Momot said  
24 because he was only 17 years old when it happened and he  
25 turned himself in peacefully he would not get life. he  
26 would get a 12 to 35 that bring 2 to 10 for gun he  
27 said and a 10 to 25 for the Murder because if we



1 go to trial he could get 25 to life and 1<sup>st</sup> degree  
2 murder. When the court asked my son was there any  
3 kind of promises made my son Richard Newsome Jr.  
4 said Yes to the Judge. on the court record clearly a  
5 promise was made to him and he was confused. When the  
6 Judge sentence Richard 18 to life. this was a breach  
7 of the Plea Agreement because counsel, persuaded my  
8 son and myself by promising a 12 to 35 and this was  
9 a trick, and coercion to make my son sign the Plea Agreement  
10 to hurry and get case over with. I was told by counsel  
11 to tell my son to sign the Plea. The court had personal  
12 knowledge that counsel promise a sentence in order to have  
13 the plea signed. This court should not of allowed  
14 the Plea to stand once he found out that counsel use  
15 a promise, trickery to have my son sign deal and me  
16 agreeing to it, and telling my son to sign deal. Counsel did  
17 violate his duty by coercing my son to sign a Plea that  
18 would not hold up. But counsel did not care. Also John  
19 Monot was incompetent to care or even take our case  
20 in first place. due to being ill and falling asleep on me  
21 ~~during~~ during office meetings regarding counsel and going  
22 over case. I had to go out to get his secretary to come  
23 wake him up and try to keep him up. Monot would just  
24 stare at documents for long periods of time without saying  
25 nothing his secretary would have to help him to respond or  
26 say "Hey John". My counsel appointments were very poor.  
27 This would happen on several office meetings. Towards end and

1 almost sentencing I took in our Character letters and I  
2 turned them into John he fell asleep after he asked me to  
3 separate Character letters from mine and Richard again  
4 had to get secretary to help she took letters. But when  
5 we got to court for sentencing Judge Valerie Adir said  
6 she never received them counsel said she turned them in  
7 Judge took recess for 5 mins and said she found them  
8 but had no time to read them so we must proceed.  
9 We had letters from our family, friends, Deacon and Pastor  
10 of our church. Our Character letters didn't even get  
11 read not one. Momot only came to a few of our hearings  
12 and after that Lin Zheng who we did not retain to be  
13 our counsel in first place and I meet with Momot most of  
14 time in office meetings. We would ask Lin Zheng where John  
15 was at she would say his allergies were bothering him, he  
16 was out of town etc. My mother and I asked was he  
17 sick once Lin Zheng said No he was actually going  
18 to become a Judge soon. My son and I didn't get a  
19 fair chance and poor counsel from an incompetent man  
20 John who really was sick and too sick to even take our  
21 case we would of choose a different counsel if John  
22 just said he couldn't do it not just send someone else  
23 without even talking it over or asking Richard and I what  
24 we wanted to do just didn't care. We didn't get proper counsel  
25 and it caused my son a very harsh sentence that Plea  
26 Agreement was not the deal counsel promised. Counsel just  
27 wanted case to get over with and after the harsh sentence

1 was given, he said nothing to Richard nor me after sentencing  
2 hearing or after at all like we didn't exist at all. They  
3 didn't even say anything about appealing case or that we  
4 could appeal case and he knew my son was dissatisfied  
5 with his harsh sentence and only being 17 years old Richard  
6 knew nothing to do about it because counsel was poor  
7 and incompetent to even give knowledge that he could  
8 appeal. We were never contacted ever at all by John or  
9 Lin Zheng because he knew he promised a sentence  
10 of 12 to 35, My son did not consent to not  
11 appealing his case, again we were never contacted  
12 or even talked to about anything we could do. We also  
13 never still till this day got our side of story out  
14 and that just doesn't seem fair.

15  
16  
17  
18  
19  
20  
21  
22 FURTHER, AFFLIANT SAYETH NAUGHT.

23 EXECUTED AT \_\_\_\_\_ this 21 day of June 2018

24 IN FRONT OF:

BY 

NDOC #1194269  
My son

25  
26  
27  
28  
RA184

Richard Newsome Jr.  
Petitioner

V

STATE OF NEVADA, ET AL  
Respondant

FILED

FEB 01 2019 7

*Ann L. Blum*  
CLERK OF COURT

A-19-788618-W  
Dept. XXI

MOTION REQUESTING  
APPOINTMENT OF COUNSEL

Petitioner Richard Newsome Jr. Request that he is  
appointed counsel for the motion for Evidentiary  
Hearing. To assure that he have a even chance and  
present issue in Evidentiary Hearing correctly, and  
to prevent a manifest of injustice.

This motion is pursuant too NRS 34.750 AND  
NRS 34.820

Dated January 27th 2019

*Reed*

CLERK OF THE COURT

FEB 01 2019

RECEIVED

A-19-788618-W  
MAPA  
Motion for Appointment of Attorney  
4813037



RA185

#  
Richard Newsome ID NO. 1194269

FILED

FEB 01 2019

Alvin L. Johnson  
CLERK OF COURT

HIGH DESERT STATE PRISON  
22010 COLD CREEK ROAD  
P.O. BOX 650  
INDIAN SPRINGS, NEVADA 89018

DISTRICT COURT  
CLARK COUNTY NEVADA

Richard Newsome, Jr.  
Petitioner

v.

A-19-788618-W  
Dept. XXI

STATE OF NEVADA  
Respondent

MOTION REQUESTING A EVIDENTIARY  
HEARING ON COUNSEL'S BREACH OF PLEA AGREEMENT

COMES NOW, Petitioner Richard Newsome Jr., herein above respectfully  
moves this Honorable Court for an Order For And Evidentiary  
HEARING ON Breach of Plea Agreement of Counsel.

This Motion is made and based upon the accompanying Memorandum of Points and  
Authorities.

DATED: this 27 day of January, 2019

BY: [Signature]

#1194269

Defendant/In Proper Personam

RECEIVED  
FEB 01 2019

CLERK OF THE COURT

A-19-788618-W  
MOT  
Motion  
4813043



RA186

Richard Newsome Jr.  
Petitioner

VS

CASE NO.  
DEPT NO.

A-19-788618-W  
Dept. XXI

STATE OF NEVADA AND GUARDIAN  
BRIAN WILLIAMS  
Respondant

FILED

FEB 01 2019

*Ann L. Sullivan*  
CLERK OF COURT

MOTION REQUESTING A  
EVIDENTIARY HEARING ON  
COUNSEL'S BREACH OF PLEA AGREEMENT PROMISE

1. Defendant Reallege herein by reference to original Petition for writ of Habeas Corpus Post Conviction, and says for his motion requesting Evidentiary hearing on Counsel's Breach of Promise of Plea Agreement.

2. Defendant alleges that counsel did breach the Promise in regards to Plea Agreement, and should have right to Prove by the Preponderance of the Evidence.

3. Defendant is requesting a evidentiary hearing, and on at the court discretion, discovery or expansion of the record.

Defendant can demonstrate that counsel did breach the Plea Agreement, by promising Defendant a particular sentence and that he did use threats, coercion and/or trickery, toward the defendant and the influence of defendant's mother, who also was use to have son sign Plea by a promise of a certain sentence. Counsel did not object After Judge sentence Defendant outside, and more of promise, of 12 to 35 years

RA187

A-19-788618-W

MOT

Motion

4813042



CLERK OF THE COURT

RECEIVED  
FEB 01 2019

5. This Honorable court have the Authority to Alter the sentence, or order specific performance of promise, that made defendant sign the plea in the first place. Statements made by counsel should be admissible as evidence in Plea Bargaining, Counsel made No objections After the 11th sentence by the court.

MEMORANDUM OF POINTS OF AUTHORITIES

Defendant claiming breach must prove the breach by a preponderance of the evidence. US v. Cruz Mercado, 360 F3d 30, 37 (2004) US v. Byrd 413 F3d 249, 251 (2005), US v. Snow, 234 F3d 187, 189 (2000). Also US v. Packwood, 848 F2d 1009, 1011 (9th Cir 1988)

A defendant who alleges a breach of plea agreement may be entitled to an evidentiary. see Blackledge v. Allison 431 US, 63, 76, 80-82 (1977) Allegation of breach entitles defendants to a evidentiary hearing unless defendants allegations are palpably or patently frivolous or false. see e.g. US v. Floyd 428 F3d 513, 518 (2005)

Defendants allegations are not frivolous or false, such is supported by the record at sentencing, as far as a promise being made. Also see Affidavit of Mother Attached to Petition for writ of Habeas corpus (post conviction)

Also see US v. White 366 F3d 291, 297-98 (2004)

A breach promise to recommend a sentence and then explicitly ask for more is a breach, see US v. Gonczy 357 F3d 50, 54 (2004)

Counsel had to discuss a sentence plea with the state. in order for such plea to be agree to, this is reason to hold a evidentiary hearing to find out who told counsel that if he sign plea, he would receive 12 to 35 years. And if he do not

sign Plea, he will receive 25 to life. This Honorable court CAN assure evidentiary hearing to allow defendant to prove by preponderance of evidence that there was a breach of Plea Agreement.

This court CAN Alter the sentence and/or order specific performance of the Agreement, or allow withdrawal of the Plea.

The remedy for a breach of a Plea Agreement depends on the specific case, see e.g. US v. Rigg, 287 F3d 221, 226 (2002)

A defendant is entitled to remand for determination whether specific performance or opportunity to withdraw Plea when breach of Plea Agreement. Also see US v. Vaval 404 F3d 144, 156 (2005)

(Also see) defendant entitled to remedy because breach of Plea Agreement. Also see US v. Hodge 412 F3d 479, 487 (3d Cir 2005)

defendant entitled to remand for determination of whether to grant specific performance or withdrawal of Plea when breach of Plea Agreement. Also see US v. McDuen, 108 F3d 64, 66-67 (1997)

defendant entitled to specific performance on Plea Agreement, by prosecutor failure to mention the promise between counsel and himself. This should be reason for this Honorable to allow the specific performance of the promise of a 12 to 35 years. This was the understanding that defendant receive by signing the Plea, because a promise that I believed and then such promise was not kept.

Defendant is entitled to specific performance of Agreement before a different sentencing Judge by breach of Agreement, see Id McDuen At 64, 66-67. Also see US v. Munoz 408 F3d 222, 229 (5th Cir 2009) Also US v. Cachucha 485 F3d 1266, 1271 (2007) the defendant entitled to withdraw Plea or to specific performance of Agreement before (different) different sentencing Judge when a Plea is Breached. Also in US v. TAYLOR, 77 F3d 368, 372

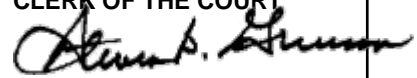


(11<sup>th</sup> Jan 1996) defendant entitled to withdraw guilty Plea because breached agreement to recommend 10 year sentence. This Honorable court had personal knowledge that a promise was made, and such promise was the understanding that was a particular sentence that defendant would receive, also using defendant mother to convince defendant sign Plea, or he would receive a 25 to life.

Wherefore this Honorable court should grant the request for an evidentiary hearing, to prove by the preponderance of evidence that the Plea was Breach, and the promise was not kept; see Affidavit of mother TIANNA THOMAS and sentencing transcript, that verify, that a promise was made in order to get the Plea signed.

Dated January 27<sup>th</sup> 2019

α R e



RSPN  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
JONATHAN E. VANBOSKERCK  
Chief Deputy District Attorney  
Nevada Bar #6528  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
  
Plaintiff,

-vs-

RICHARD NEWSOME, JR., aka  
Richard Newsome #5437116  
  
Defendant.

CASE NO: A-19-788618-W  
(C321043)

DEPT NO: XXI

**STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS  
CORPUS (POST-CONVICTION), SUPPLEMENTAL PETITION FOR WRIT OF  
HABEAS CORPUS, MOTION TO APPOINT COUNSEL, AND REQUEST FOR  
EVIDENTIARY HEARING**

DATE OF HEARING: May 14, 2019  
TIME OF HEARING: 09:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JONATHAN E. VANBOSKERCK, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Petition For Writ Of Habeas Corpus (Post-Conviction), Supplemental Petition for Writ of Habeas Corpus, Motion to Appoint Counsel, and Request for Evidentiary Hearing.

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.

///

///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3  
4 On February 2, 2017, Richard Newsome Jr. (Hereinafter "Petitioner") was charged by  
5 way of Indictment with one count MURDER WITH USE OF A DEADLY WEAPON  
6 (Category A Felony – NRS 200.010, 200.030, 193.165 – NOC 50001) and one count  
7 ASSAULT WITH A DEADLY WEAPON (Category B Felony – NRS 200.471 – NOC 5021)  
8 for acts committed on or about January 14, 2017. On February 9, 2017, a Superseding  
9 Indictment was filed charging Petitioner with one count MURDER WITH USE OF A  
10 DEADLY WEAPON (Category A Felony – NRS 200.010, 200.030, 193.165 – NOC 50001);  
11 one count ASSAULT WITH A DEADLY WEAPON (Category B Felony – NRS 200.471 –  
12 NOC 5021); one count ACCESSORY TO MURDER WITH USE OF A DEADLY WEAPON  
13 (Category C Felony – NRS 195.030, 195.040, 200.010 – NOC 53090); and BATTERY WITH  
14 SUBSTANTIAL BODILY HARM (Category C Felony – NRS 200.481 – NOC 50214). On  
15 February 16, 2017, Petitioner plead not guilty to the charges and waived his right to a speedy  
16 trial.

17 On December 14, 2017, the State filed a Second Amended Superseding Indictment and  
18 Petitioner entered a Guilty Plea Agreement to MURDER (SECOND-DEGREE) WITH USE  
19 OF A DEADLY WEAPON (Category A Felony – NRS 200.010, 200.030.2, 193.165 – NOC  
20 5011) in which the State retained the right to argue at sentencing.

21 On February 8, 2018, Petitioner was sentenced to LIFE with the possibility of parole  
22 after ten (10) years in the Nevada Department of Corrections ("NDC") with a consecutive term  
23 of a minimum of ninety-six (96) months and a maximum of two-hundred forty (240) months  
24 in NDC with three-hundred ninety-four (394) days credit for time served. The Judgment of  
25 Conviction was filed March 5, 2018.

26 On February 1, 2019, Petitioner filed a Petition for Writ of Habeas Corpus (Hereinafter  
27 "Petition"), Supplemental Petition for Writ of Habeas Corpus (Hereinafter "Supplement"),  
28

1 Motion for Appointment of Counsel (Hereinafter “Motion”), and Request for an Evidentiary  
2 Hearing (Hereinafter “Request”).

### 3 ARGUMENT

#### 4 **I. PETITIONER WAIVED HIS APPELLATE RIGHTS**

5 In his Petition, Petitioner claims that counsel failed to file a notice of appeal although  
6 Petitioner expressed dissatisfaction with his sentence. Petition at 3. Petitioner also alleges that  
7 counsel failed to acquire his consent not to file a notice of appeal. Id.

8 Counsel is only obligated to file a notice of appeal or to consult with a defendant  
9 regarding filing a notice of appeal in certain circumstances. Toston v. State, 127 Nev. 971, 267  
10 P.3d 795 (2011). “[T]rial counsel has a constitutional duty to file a direct appeal in two  
11 circumstances: when requested to do so and when the defendant expresses dissatisfaction with  
12 his conviction, and that the failure to do so in those circumstances is deficient for purposes of  
13 proving ineffective assistance of counsel.” Id. at 977, 267 P.3d at 800. Moreover, trial counsel  
14 has no constitutional obligation to always inform or consult with a defendant regarding his  
15 right to a direct appeal when the defendant is convicted pursuant to a guilty plea. Id. Rather,

16 [t]hat duty arises in the guilty-plea context only when the defendant inquires  
17 about the right to appeal or in circumstances where the defendant may benefit  
18 from receiving advice about the right to a direct appeal, ‘such as the existence  
19 of a direct appeal claim that has reasonable likelihood of success.’

20 Id. (quoting Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999)).

21 Courts should consider “all the information counsel knew or should have known” and  
22 focus on the totality of the circumstances. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct.  
23 1029, 1036 (2000). Importantly, whether the defendant’s conviction followed a guilty plea is  
24 highly relevant to the inquiry “both because a guilty plea reduces the scope of potentially  
25 appealable issues and because such a plea may indicate that the defendant seeks an end to  
26 judicial proceedings.” Id. Thus, when a defendant who pleaded guilty claims that he was  
27 deprived of the right to appeal, “the court must consider such factors as whether the defendant  
28

1 received the sentence bargained for as part of the plea and whether the plea expressly reserved  
2 or waived some or all appeal rights.” Id.

3 Petitioner has not alleged, and there is no indication in the record, that he reserved his  
4 appeal rights, asked counsel to file an appeal on his behalf, or otherwise wished to challenge  
5 his conviction or sentence. Petitioner states that he was dissatisfied with his sentence, but  
6 provides no context as to whether he informed counsel of this dissatisfaction. Petitioner’s  
7 conclusory statement that counsel “failed” to file an appeal ignores the fact that “the burden is  
8 on the client to indicate to his attorney that he wishes to pursue an appeal.” Toston, 127 Nev.  
9 at 979, 267 P.3d at 801 (internal citation, quotation marks and brackets omitted). Indeed,  
10 Petitioner expressly waived his appeal rights in his Guilty Plea Agreement:

11 WAIVER OF RIGHTS

12 By entering my plea of guilty, I understand that I am waving and forever  
13 giving up the following rights and privileges:

14 ...

15 6. The right to appeal the conviction with the assistance of an attorney either  
16 appointed or retained, unless specifically reserved in writing and agreed upon as  
17 provided in NRS 174.035(3). I understand this mean I am unconditionally  
18 waiving my right to a direct appeal of this conviction, including any challenge  
19 based upon reasonable constitutional, jurisdictional or other grounds that  
20 challenge the legality of the proceedings as stated in NRS 177.015(4). However,  
I remain free to challenge my conviction through other post-conviction remedies  
including a habeas corpus petition pursuant to NRS Chapter 34.

21 Guilty Plea Agreement (“GPA”)(12/14/17), at 4. Counsel was fully aware of this waiver.

22 Petitioner fails to demonstrate that counsel was ineffective for allegedly failing to  
23 consult with him about an appeal. Toston, 127 Nev. at 977, 267 P.3d at 800. He has provided  
24 no evidence of his request or dissatisfaction, as required. Ford v. Warden, 111 Nev. 872, 882,  
25 901 P.2d 123, 129 (1995) (“The burden of production lies with the petitioner in petitions for  
26 writ of habeas corpus”) (citing NRS 34.370(4)). As such, his claim is a bare allegation suitable  
only for summary dismissal. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

27 Accordingly, this Court should find that Petitioner waived his appellate rights and deny  
28 the Petition for Writ of Habeas Corpus.

## II. PETITIONER ENTERED HIS GUILTY PLEA FREELY AND VOLUNTARILY

Petitioner claims in his Supplemental Petition that he was coerced into entering his plea agreement and did not received the deal he bargained for, which was twelve (12) to thirty-five (35) years. Supplement at 3-4. This claim is belied by the record and suitable for only summary denial under Hargrove, 100 Nev. at 502, 686 P.2d at 225.

Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only be withdrawn to correct "manifest injustice." See also Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively valid, and the burden is on a defendant to show that the plea was not voluntarily entered. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)). Manifest injustice does not exist if the defendant entered his plea voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

A court shall look to the totality of the circumstances to determine whether the plea was made freely, knowingly and voluntarily, and whether the defendant understood the nature of the offense and the consequences of the plea. State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). The "totality of the circumstances" test includes a review of the plea agreement, the canvass conducted by the district court, and the record as a whole. Id.; Woods, 114 Nev. at 475, 958 P.2d at 95. Further, there is "[n]o specific formula for making this determination," thus each case is evaluated on a case-by-case basis. Freese, 116 Nev. at 1106, 13 P.3d at 448. Even though there is no specific formula, the Nevada Supreme Court has concluded that "[a] thorough plea canvass coupled with a detailed, consistent, written plea agreement supports a finding that the defendant entered the plea voluntarily, knowingly, and intelligently." Molina, 120 Nev. at 191, 87 P.3d at 537-38.

First, there is no indication in Petitioner's guilty plea agreement that he would be receiving a sentence of twelve (12) to thirty-five (35) years. Petitioner's guilty plea agreement specifically states that the State would retain the right to argue for any sentence, and that the consequence of Petitioner's plea would be Life in the Nevada Department of Corrections with

1 the possibility of parole eligibility beginning at ten (10) years or a definite term of twenty-five  
2 (25) years with parole eligibility beginning at ten (10) years, plus a consecutive one (1) to  
3 twenty (20) years for use of a deadly weapon. GPA at 2. Furthermore, at sentencing counsel  
4 for Petitioner argued for a sentence of twelve (12) to life. See Reporter's Transcript:  
5 Sentencing (4/5/19), at 13.

6 Second, by signing the guilty plea agreement, Petitioner acknowledged that no specific  
7 sentence could be promised to him as the ultimate decision was up to the court. Therefore,  
8 Petitioner's claim that the sentencing judge overlooked the promised sentence and imposed a  
9 different sentence instead is immaterial. Petition at 13. This provision was outlined in the  
10 "Consequences of Plea" section of Petitioner's agreement:

11 CONSEQUENCES OF PLEA

12 I have not been promised or guaranteed any particular sentence by anyone. I  
13 know that my sentence is to be determined by the Court within the limits  
14 provided by statute.

15 I understand that if my attorney or the state of Nevada or both recommend  
16 any specific punishment to the Court, the Court is not obligated to accept the  
17 recommendation.

18 GPA, at 2. Petitioner also attested that his plea was voluntarily entered:

19 VOLUNTARINESS OF PLEA

20 I have discussed the elements of all of the original charge(s) against me  
21 with my attorney and I understand the nature of the charge(s) against me.

22 I understand that the State would have to prove each element of the  
23 charge(s) against me at trial.

24 I have discussed with my attorney any possible defenses, defense  
25 strategies and circumstances which might be in my favor.

26 All of the foregoing elements, consequences, rights, and waiver of rights  
27 have been thoroughly explained to me by my attorney.

28 I believe that pleading guilty and accepting this plea bargain is in my best  
interest, and that a trial would be contrary to my best interest.

*I am signing this agreement voluntarily, after consultation with my  
attorney, and I am not acting under duress or coercion or by virtue of any  
promises of leniency, except for those set forth in this agreement.*

I am not now under the influence of any intoxicating liquor, a controlled  
substance or other drug which would in any manner impair my ability to

1 comprehend or understand this agreement or the proceedings surrounding my  
2 entry of this plea.

3 My attorney has answered all my questions regarding this guilty plea  
4 agreement and its consequences to my satisfaction and I am satisfied with the  
5 services provided by my attorney.

6 GPA, at 4 (emphasis added). Moreover, at no point during sentencing did Petitioner inform  
7 the court that he was promised a certain sentence, and Petitioner never objected at any point  
8 when his counsel argued for twelve (12) years to life. Therefore, Petitioner's reliance on a  
9 promise of twelve (12) to thirty-five (35) years is expressly contradicted by the agreement he  
10 signed, and the sentencing transcript.

11 As such, Petitioner fails to provide any indication of coercion or any evidence to show  
12 that he did not enter his plea freely and voluntarily. Accordingly, this Court should find that  
13 Petitioner freely and voluntarily entered his plea.

### 14 **III. PETITIONER IS NOT ENTITLED TO APPOINTMENT OF COUNSEL**

15 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-  
16 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546 (1991). In  
17 McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada Supreme Court similarly  
18 observed that "[t]he Nevada Constitution...does not guarantee a right to counsel in post-  
19 conviction proceedings, as we interpret the Nevada Constitution's right to counsel provision  
20 as being coextensive with the Sixth Amendment to the United States Constitution." McKague  
21 specifically held that with the exception of NRS 34.820(1)(a) (entitling appointed counsel  
22 when petitioner is under a sentence of death), one does not have "[a]ny constitutional or  
23 statutory right to counsel at all" in post-conviction proceedings. Id. at 164, 912 P.2d at 258.

24 However, the Nevada Legislature has given courts the discretion to appoint post-  
25 conviction counsel so long as "the court is satisfied that the allegation of indigency is true and  
26 the petition is not dismissed summarily." NRS 34.750. NRS 34.750(1) reads:

27 [a] petition may allege that the Defendant is unable to pay the costs  
28 of the proceedings or employ counsel. If the court is satisfied that the  
allegation of indigency is true and the petition is not dismissed  
summarily, the court may appoint counsel at the time the court orders



the filing of an answer and a return. In making its determination, the court may consider whether:

- (a) The issues are difficult;
- (b) The Defendant is unable to comprehend the proceedings;
- or
- (c) Counsel is necessary to proceed with discovery.

All three factors support the denial of Petitioner's request for appointment of counsel. First, the issues are not difficult. Petitioner's claims that counsel failed to file an appeal and that he did not freely and voluntarily enter his plea are both belied by the record and suitable for only summary denial under Hargrove, 100 Nev. at 502, 686 P.2d at 225. Second, Petitioner is able to comprehend the proceedings before him. Petitioner is very litigious as he drafted his own Supplemental Petition for Writ of Habeas Corpus, Motion for Appointment of Counsel, and Request for an Evidentiary Hearing. Last, counsel is not necessary to proceed with discovery. All of the facts and law necessary to resolve Petitioner's claims are already available.

As such, this Court should find that appointment of counsel is not necessary and deny the Petition for Writ of Habeas Corpus.

#### **IV. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

NRS 34.770 provides the manner in which the district court decides whether an evidentiary hearing is required. It reads:

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.

(Emphasis added).

The Nevada Supreme Court has held that if a petition can be resolved without expanding the record, then no evidentiary hearing is necessary. Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002); Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605

1 (1994). A defendant is entitled to an evidentiary hearing if his petition is supported by specific  
2 factual allegations, which, if true, would entitle him to relief unless the factual allegations are  
3 repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; Hargrove, 100 Nev. at  
4 502, 686 P.2d at 225 ("[a] defendant seeking post-conviction relief is not entitled to an  
5 evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is  
6 'belied' when it is contradicted or proven to be false by the record as it existed at the time the  
7 claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

8 In this instance, Petitioner is not entitled to an evidentiary hearing because there is no  
9 need to expand the record. All of the law and facts necessary to dispose of Petitioner's claims  
10 are already available.

11 As such, this Court should find that an evidentiary hearing is not necessary, and deny  
12 Petitioner's request for an evidentiary hearing.

13 **CONCLUSION**

14 For all the foregoing, the State respectfully requests that Petitioner's Petition for Writ  
15 of Habeas Corpus, be DENIED.

16 DATED this 1st day of May, 2019.

17 Respectfully submitted,

18 STEVEN B. WOLFSON  
19 Clark County District Attorney  
Nevada Bar #01565

20 BY /s/JONATHAN E. VANBOSKERCK  
21 JONATHAN E. VANBOSKERCK  
22 Chief Deputy District Attorney  
23 Nevada Bar #6528  
24  
25  
26  
27  
28

1 CERTIFICATE OF MAILING

2 I hereby certify that service of the above and foregoing was made this 1st day of May,  
3 2019, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

4 RICHARD NEWSOME JR., #1194269  
5 HIGH DESERT STATE PRISON  
6 P.O. BOX 650  
7 INDIAN SPRINGS, NV 89070-0650

8 BY /s/D. Daniels  
9 Secretary for the District Attorney's Office  
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28 17F00876/JEV/a/appellate/dd-MVU

**Writ of Habeas Corpus**

**COURT MINUTES**

**May 28, 2019**

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A-19-788618-W      Richard Newsome, Plaintiff(s)  
                                 vs.  
                                 State of Nevada, Defendant(s)

---

**May 28, 2019                      09:30 AM      Petition for Writ of Habeas Corpus**

**HEARD BY:**      Adair, Valerie                      **COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Trujillo, Athena

**RECORDER:**      Page, Robin

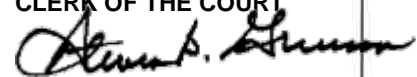
**REPORTER:**

**PARTIES PRESENT:**

**Adam B. Osman                                      Attorney for Defendant**

**JOURNAL ENTRIES**

Court noted it is clear from the plea canvass that the range of punishment was discussed and ORDERED, motion DENIED; State to prepare the order.



**FCL**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**JONATHAN E. VANBOSKERCK**  
Chief Deputy District Attorney  
Nevada Bar #6528  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,  
Plaintiff,

-vs-

RICHARD NEWSOME JR.,  
aka Richard Newsome, #5437116  
Defendant.

CASE NO: A-19-788618-W  
DEPT NO: XXI

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

DATE OF HEARING: May 28, 2019  
TIME OF HEARING: 9:30 AM

THIS CAUSE having come on for hearing before the Honorable VALERIE ADAIR,  
District Judge, on the 28th day of May, 2019, the Petitioner not being present, PROCEEDING  
IN PROPER PERSON, the Respondent being represented by STEVEN B. WOLFSON, Clark  
County District Attorney, by and through ADAM S. OSMAN, Deputy District Attorney, and  
the Court having considered the matter, including briefs, transcripts, and documents on file  
herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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## **PROCEDURAL BACKGROUND**

On February 2, 2017, Richard Newsome Jr. (Hereinafter "Petitioner") was charged by way of Indictment with one count MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 50001) and one count ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471 - NOC 5021) for acts committed on or about January 14, 2017. On February 9, 2017, a Superseding Indictment was filed charging Petitioner with one count MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 50001); one count ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471 - NOC 5021); one count ACCESSORY TO MURDER WITH USE OF A DEADLY WEAPON (Category C Felony - NRS 195.030, 195.040, 200.010 - NOC 53090); and BATTERY WITH SUBSTANTIAL BODILY HARM (Category C Felony - NRS 200.481 - NOC 50214). On February 16, 2017, Petitioner plead not guilty to the charges and waived his right to a speedy trial.

On December 14, 2017, the State filed a Second Amended Superseding Indictment and Petitioner entered a Guilty Plea Agreement to MURDER (SECOND-DEGREE) WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030.2, 193.165 - NOC 5011) in which the State retained the right to argue at sentencing.

On February 8, 2018, Petitioner was sentenced to LIFE with the possibility of parole after ten (10) years in the Nevada Department of Corrections ("NDC") with a consecutive term of a minimum of ninety-six (96) months and a maximum of two-hundred forty (240) months in NDC with three-hundred ninety-four (394) days credit for time served. The Judgment of Conviction was filed March 5, 2018.

On February 1, 2019, Petitioner filed a Petition for Writ of Habeas Corpus (Hereinafter "Petition"), Supplemental Petition for Writ of Habeas Corpus (Hereinafter "Supplement"), Motion for Appointment of Counsel (Hereinafter "Motion"), and Request for an Evidentiary Hearing (Hereinafter "Request"). The State responded on May 1, 2019. The court held a hearing on May 14, 2019, and set the matter for decision on May 28, 2019.

## ANALYSIS

### **I. PETITIONER WAIVED HIS APPELLATE RIGHTS**

In his Petition, Petitioner claims that counsel failed to file a notice of appeal although Petitioner expressed dissatisfaction with his sentence. Petition at 3. Petitioner also alleges that counsel failed to acquire his consent not to file a notice of appeal. Id.

Counsel is only obligated to file a notice of appeal or to consult with a defendant regarding filing a notice of appeal in certain circumstances. Toston v. State, 127 Nev. 971, 267 P.3d 795 (2011). "[T]rial counsel has a constitutional duty to file a direct appeal in two circumstances: when requested to do so and when the defendant expresses dissatisfaction with his conviction, and that the failure to do so in those circumstances is deficient for purposes of proving ineffective assistance of counsel." Id. at 977, 267 P.3d at 800. Moreover, trial counsel has no constitutional obligation to always inform or consult with a defendant regarding his right to a direct appeal when the defendant is convicted pursuant to a guilty plea. Id. Rather,

[t]hat duty arises in the guilty-plea context only when the defendant inquires about the right to appeal or in circumstances where the defendant may benefit from receiving advice about the right to a direct appeal, 'such as the existence of a direct appeal claim that has reasonable likelihood of success.

Id. (quoting Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999)).

Courts should consider "all the information counsel knew or should have known" and focus on the totality of the circumstances. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). Importantly, whether the defendant's conviction followed a guilty plea is highly relevant to the inquiry "both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." Id. Thus, when a defendant who pleaded guilty claims that he was deprived of the right to appeal, "the court must consider such factors as whether the defendant received the sentence bargained for as part of the plea and whether the plea expressly reserved or waived some or all appeal rights." Id.

Petitioner has not alleged, and there is no indication in the record, that he reserved his appeal rights, asked counsel to file an appeal on his behalf, or otherwise wished to challenge

1 his conviction or sentence. Petitioner states that he was dissatisfied with his sentence, but  
2 provides no context as to whether he informed counsel of this dissatisfaction. Petitioner's  
3 conclusory statement that counsel "failed" to file an appeal ignores the fact that "the burden is  
4 on the client to indicate to his attorney that he wishes to pursue an appeal." Toston, 127 Nev.  
5 at 979, 267 P.3d at 801 (internal citation, quotation marks and brackets omitted). Indeed,  
6 Petitioner expressly waived his appeal rights in his Guilty Plea Agreement:

7 WAIVER OF RIGHTS

8 By entering my plea of guilty, I understand that I am waving and forever  
9 giving up the following rights and privileges:

10 ...

11 6. The right to appeal the conviction with the assistance of an attorney  
12 either appointed or retained, unless specifically reserved in writing and agreed  
13 upon as provided in NRS 174.035(3). I understand this mean I am  
14 unconditionally waiving my right to a direct appeal of this conviction, including  
15 any challenge based upon reasonable constitutional, jurisdictional or other  
16 grounds that challenge the legality of the proceedings as stated in NRS  
17 177.015(4). However, I remain free to challenge my conviction through other  
18 post-conviction remedies including a habeas corpus petition pursuant to NRS  
19 Chapter 34.

20 Guilty Plea Agreement ("GPA")(12/14/17), at 4. Counsel was fully aware of this waiver.

21 Petitioner fails to demonstrate that counsel was ineffective for allegedly failing to  
22 consult with him about an appeal. Toston, 127 Nev. at 977, 267 P.3d at 800. He has provided  
23 no evidence of his request or dissatisfaction, as required. Ford v. Warden, 111 Nev. 872, 882,  
24 901 P.2d 123, 129 (1995) ("The burden of production lies with the petitioner in petitions for  
25 writ of habeas corpus") (citing NRS 34.370(4)). As such, his claim is a bare allegation suitable  
26 only for summary dismissal. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

27 Accordingly, this Court finds Petitioner waived his appellate rights and the Petition for  
28 Writ of Habeas Corpus must be denied.

29 **II. PETITIONER ENTERED HIS GUILTY PLEA FREELY AND**  
30 **VOLUNTARILY**

31 Petitioner claims in his Supplemental Petition that he was coerced into entering his plea  
32 agreement and did not received the deal he bargained for, which was twelve (12) to thirty-five



1 (35) years. Supplement at 3-4. This claim is belied by the record and suitable for only summary  
2 denial under Hargrove, 100 Nev. at 502, 686 P.2d at 225.

3 Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only be  
4 withdrawn to correct "manifest injustice." See also Baal v. State, 106 Nev. 69, 72, 787 P.2d  
5 391, 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively valid,  
6 and the burden is on a defendant to show that the plea was not voluntarily entered. Bryant v.  
7 State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336,  
8 337, 535 P.2d 1295, 1295 (1975)). Manifest injustice does not exist if the defendant entered  
9 his plea voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

10 A court shall look to the totality of the circumstances to determine whether the plea  
11 was made freely, knowingly and voluntarily, and whether the defendant understood the nature  
12 of the offense and the consequences of the plea. State v. Freese, 116 Nev. 1097, 1105, 13 P.3d  
13 442, 448 (2000). The "totality of the circumstances" test includes a review of the plea  
14 agreement, the canvass conducted by the district court, and the record as a whole. Id.; Woods,  
15 114 Nev. at 475, 958 P.2d at 95. Further, there is "[n]o specific formula for making this  
16 determination," thus each case is evaluated on a case-by-case basis. Freese, 116 Nev. at 1106,  
17 13 P.3d at 448. Even though there is no specific formula, the Nevada Supreme Court has  
18 concluded that "[a] thorough plea canvass coupled with a detailed, consistent, written plea  
19 agreement supports a finding that the defendant entered the plea voluntarily, knowingly, and  
20 intelligently." Molina, 120 Nev. at 191, 87 P.3d at 537-38.

21 First, there is no indication in Petitioner's guilty plea agreement that he would be  
22 receiving a sentence of twelve (12) to thirty-five (35) years. Petitioner's guilty plea agreement  
23 specifically states that the State would retain the right to argue for any sentence, and that the  
24 consequence of Petitioner's plea would be Life in the Nevada Department of Corrections with  
25 the possibility of parole eligibility beginning at ten (10) years or a definite term of twenty-five  
26 (25) years with parole eligibility beginning at ten (10) years, plus a consecutive one (1) to  
27 twenty (20) years for use of a deadly weapon. GPA at 2. Furthermore, at sentencing counsel  
28

1 for Petitioner argued for a sentence of twelve (12) to life. See Reporter's Transcript: Sentencing  
2 (4/5/19), at 13.

3 Second, by signing the guilty plea agreement, Petitioner acknowledged that no specific  
4 sentence could be promised to him as the ultimate decision was up to the court. Therefore,  
5 Petitioner's claim that the sentencing judge overlooked the promised sentence and imposed a  
6 different sentence instead is immaterial. Petition at 13. This provision was outlined in the  
7 "Consequences of Plea" section of Petitioner's agreement:

8 CONSEQUENCES OF PLEA

9 I have not been promised or guaranteed any particular sentence by  
10 anyone. I know that my sentence is to be determined by the Court within the  
11 limits provided by statute.

12 I understand that if my attorney or the state of Nevada or both recommend  
13 any specific punishment to the Court, the Court is not obligated to accept the  
14 recommendation.

15 GPA, at 2. Petitioner also attested that his plea was voluntarily entered:

16 VOLUNTARINESS OF PLEA

17 I have discussed the elements of all of the original charge(s) against me  
18 with my attorney and I understand the nature of the charge(s) against me.

19 I understand that the State would have to prove each element of the  
20 charge(s) against me at trial.

21 I have discussed with my attorney any possible defenses, defense  
22 strategies and circumstances which might be in my favor.

23 All of the foregoing elements, consequences, rights, and waiver of rights  
24 have been thoroughly explained to me by my attorney.

25 I believe that pleading guilty and accepting this plea bargain is in my best  
26 interest, and that a trial would be contrary to my best interest.

27 I am signing this agreement voluntarily, after consultation with my  
28 attorney, and I am not acting under duress or coercion or by virtue of any  
promises of leniency, except for those set forth in this agreement.

I am not now under the influence of any intoxicating liquor, a controlled  
substance or other drug which would in any manner impair my ability to  
comprehend or understand this agreement or the proceedings surrounding my  
entry of this plea.

My attorney has answered all my questions regarding this guilty plea  
agreement and its consequences to my satisfaction and I am satisfied with the  
services provided by my attorney.

1 GPA, at 4 (emphasis added). Moreover, at no point during sentencing did Petitioner inform  
2 the court that he was promised a certain sentence, and Petitioner never objected at any point  
3 when his counsel argued for twelve (12) years to life. Therefore, Petitioner's reliance on a  
4 promise of twelve (12) to thirty-five (35) years is expressly contradicted by the agreement he  
5 signed, and the sentencing transcript.

6 As such, Petitioner fails to provide any indication of coercion or any evidence to show  
7 that he did not enter his plea freely and voluntarily. Accordingly, this Court finds that  
8 Petitioner freely and voluntarily entered his plea, and the Supplemental Petition for Writ of  
9 Habeas Corpus must be denied.

### 10 **III. PETITIONER IS NOT ENTITLED TO APPOINTMENT OF COUNSEL**

11 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-  
12 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546 (1991). In  
13 McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada Supreme Court similarly  
14 observed that "[t]he Nevada Constitution...does not guarantee a right to counsel in post-  
15 conviction proceedings, as we interpret the Nevada Constitution's right to counsel provision  
16 as being coextensive with the Sixth Amendment to the United States Constitution." McKague  
17 specifically held that with the exception of NRS 34.820(1)(a) (entitling appointed counsel  
18 when petitioner is under a sentence of death), one does not have "[a]ny constitutional or  
19 statutory right to counsel at all" in post-conviction proceedings. Id. at 164, 912 P.2d at 258.

20 However, the Nevada Legislature has given courts the discretion to appoint post-  
21 conviction counsel so long as "the court is satisfied that the allegation of indigency is true and  
22 the petition is not dismissed summarily." NRS 34.750. NRS 34.750(1) reads:

23 [a] petition may allege that the Defendant is unable to pay the costs of the  
24 proceedings or employ counsel. If the court is satisfied that the allegation of  
25 indigency is true and the petition is not dismissed summarily, the court may  
26 appoint counsel at the time the court orders the filing of an answer and a return.  
In making its determination, the court may consider whether:

- 27 (a) The issues are difficult;
- (b) The Defendant is unable to comprehend the proceedings; or
- 28 (c) Counsel is necessary to proceed with discovery.

1 All three factors support the denial of Petitioner's request for appointment of counsel.  
2 First, the issues are not difficult. Petitioner's claims that counsel failed to file an appeal and  
3 that he did not freely and voluntarily enter his plea are both belied by the record and suitable  
4 for only summary denial under Hargrove, 100 Nev. at 502, 686 P.2d at 225. Second, Petitioner  
5 is able to comprehend the proceedings before him. Petitioner is very litigious as he drafted his  
6 own Supplemental Petition for Writ of Habeas Corpus, Motion for Appointment of Counsel,  
7 and Request for an Evidentiary Hearing. Last, counsel is not necessary to proceed with  
8 discovery. All of the facts and law necessary to resolve Petitioner's claims are already  
9 available.

10 As such, this Court finds that appointment of counsel is not necessary.

11 **IV. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

12 NRS 34.770 provides the manner in which the district court decides whether an  
13 evidentiary hearing is required. It reads:

14 1. The judge or justice, upon review of the return, answer and all  
15 supporting documents which are filed, shall determine whether an evidentiary  
16 hearing is required. A petitioner must not be discharged or committed to the  
17 custody of a person other than the respondent unless an evidentiary hearing is  
held.

18 2. If the judge or justice determines that the petitioner is not entitled to  
19 relief and an evidentiary hearing is not required, he shall dismiss the petition  
without a hearing.

20 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.

21 (Emphasis added).

22 The Nevada Supreme Court has held that if a petition can be resolved without  
23 expanding the record, then no evidentiary hearing is necessary. Mann v. State, 118 Nev. 351,  
24 356, 46 P.3d 1228, 1231 (2002); Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605  
25 (1994). A defendant is entitled to an evidentiary hearing if his petition is supported by specific  
26 factual allegations, which, if true, would entitle him to relief unless the factual allegations are  
27 repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; Hargrove, 100 Nev. at  
28 502, 686 P.2d at 225 ("[a] defendant seeking post-conviction relief is not entitled to an

1 evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is  
2 'belied' when it is contradicted or proven to be false by the record as it existed at the time the  
3 claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

4 In this instance, Petitioner is not entitled to an evidentiary hearing because there is no  
5 need to expand the record. All of the law and facts necessary to dispose of Petitioner's claims  
6 are already available.

7 As such, this Court finds that an evidentiary hearing is not necessary, and Petitioner's  
8 request for an evidentiary hearing must be denied.

9 **ORDER**

10 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus  
11 (Post-Conviction), shall be, and it is, hereby denied.

12 IT IS FURTHER ORDERED that the Supplemental Petition for Writ of Habeas Corpus  
13 is denied.

14 IT IS FURTHER ORDERED that the Motion to Appoint Counsel is denied

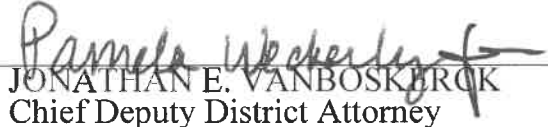
15 IT IS FURTHER ORDERED that the Request for Evidentiary Hearing is denied.

16 DATED this 21 day of June, 2019.

17  
18   
DISTRICT JUDGE

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

21  
22 BY

  
JONATHAN E. VANBOSKERCK  
Chief Deputy District Attorney  
Nevada Bar #6528

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 18th day of June, 2019, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

RICHARD NEWSOME #1194269  
HIGH DESERT STATE PRISON  
P.O. BOX 650  
INDIAN SPRINGS, NV 89070-0650

BY /s/D. Daniels  
Secretary for the District Attorney's Office

17F00876/qh/appellate/dd/MVU

FILED

OCT - 9 2020

CLERK OF COURT

Case No. A-19-788618-W  
Dept. No. Dept: XXI

IN THE Eighth JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR THE COUNTY OF Clark.

Richard Newsome, Jr.  
Petitioner,

v.

State of Nevada  
Respondent.

2d  
PETITION FOR WRIT  
OF HABEAS CORPUS  
(POSTCONVICTION)

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you're not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

RECEIVED

OCT 05 2020

CLERK OF THE COURT

(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

### PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: High Desert State Prison, Clark Cnty., Nev.

2. Name and location of court which entered the judgment of conviction under attack: Eighth Jud. Dist. Ct., Las Vegas, Nev.

3. Date of judgment of conviction: 05 Mar. 2018  
14 Dec. 2017 / Sentenced 08 Feb. 2018.

4. Case number: A-19-788618-W, Dept. 21.

5. (a) Length of sentence: 10 x Life w/p of parole. Consecutive 8 to 20 yrs.

(b) If sentence is death, state any date upon which execution is scheduled: \_\_\_\_\_

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes \_\_\_\_\_ No ☒

If "yes", list crime, case number and sentence being served at this time: \_\_\_\_\_

7. Nature of offense involved in conviction being challenged: 1st degree murder w/ua of deadly weapon - pled to 2d degree w/ua. / - / Assault w/ deadly weapon.

8. What was your plea? (check one):

(a) Not guilty ☒ (b) Guilty \_\_\_\_\_ (c) Nolo contendere \_\_\_\_\_

9. If you entered a plea of guilty to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty was negotiated, give details:

Counsel promised 10 to 35 yrs. if I'd take a negotiated plea rather than go to trial, citing I'd get more time if I didn't take the deal - and that my mother would go to prison for most of her life, so I had to take the deal. The court then breached it.

10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

(a) Jury \_\_\_\_\_ (b) Judge without a jury \_\_\_\_\_

11. Did you testify at the trial? Yes \_\_\_\_\_ No ☒

12. Did you appeal from the judgment of conviction? Yes \_\_\_\_\_ No ☒

13. If you did appeal, answer the following:

(a) Name of Court: \_\_\_\_\_

(b) Case number or citation: \_\_\_\_\_

(c) Result: \_\_\_\_\_



(d) Date of result: \_\_\_\_\_

(Attach copy of order or decision, if available.)

14. If you did not appeal, explain briefly why you did not: I was 17 at the time, then  
18, didn't know nothing about the law nor appellate procedure. My attorney was  
supposed to do all that. Evidently he didn't. And, anyway, stipulation 6 of the plea -  
agreement waived my right to direct appeal as a stipulation of its operation. Id.

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

16. If your answer to No. 15 was "yes", give the following information:

(a)(1) Name of court: 8th Jud. Dist. Ct.

(2) Nature of proceeding: Collateral Attack Post Conviction Relief Petition.  
A-19-788618-W. (C321043) Dept. 21.

(3) Grounds raised: Ineffective assistance of counsel denied right to app-  
eal. Breach of plea agreement.

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result: Habeas Petition denied.

(6) Date of result: 21 June 2019.

(7) If known, citations of any written opinion or date of orders entered pursuant to such result:  
Nevada Supreme Court denied appeal in July of 2020 I believe. NOA and  
request for COA Issuance went in in September 2020 to appeal to 9th Cir. Dist. Ct.

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: See next page.

(2) Nature of proceeding: \_\_\_\_\_

(3) Grounds raised: \_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result: \_\_\_\_\_

(6) Date of result: \_\_\_\_\_

(7) If known, citations of any written opinion or date of orders entered pursuant to such a result: \_\_\_\_\_

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion? Yes ☐ No ☐

Citation or date of decision: \_\_\_\_\_

(2) Second petition, application or motion? Yes ☐ No ☐

Citation or date of decision: \_\_\_\_\_

(3) Third or subsequent petitions, applications or motions? Yes ☐ No ☐

Citation or date of decision: \_\_\_\_\_

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same: Relatively, in pertinent part, grounds 5 through 8 of this 2d PCR Petition.

(b) The proceedings in which these grounds were raised: District Court, Nev. COA and Nev. Supreme Court.

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) I'm 20 yrs - old now. I have learning disabilities. I'm trying to finish high school by GED while at KDCP. I'd never any interaction with the law to this - (Continued)

18. If any of the grounds listed in No.'s 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) As stated in 17, sub Sec. (C) above, those, including my former cellie who was a law clerk once, evidently had been unfamiliar with indictment. - (Continued)

19. Are you filing this petition more than one year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) No. Last decision by Nev. Supreme Court was in July 2020.

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes ☒ No ☒

If yes, state what court and case number: NOA w/m for COA issued in September 2020 but may be denied as being late. In any event, voluntary dismissal can be filed to exhaust unexhausted claims and remedy procedural errors if granted appeal.

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: John Joseph Momot and his assistant Yi Lin Zheng for the negotiated plea being challenged for Constitutional and Procedural infirmity grounds.

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes ☒ No ☐

If yes, specify where and when it is to be served, if you know: Count 2 is an 8 to 20 that's consecutive the 10 to life for Count 1. An 18 to 35 base minimum. Not part of the original plea negotiated as the condition of my accepting it to begin with.

23. State concisely every ground on which you claim that you are being held unlawfully. summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

## Section 17 (C).

1 current extent. I've no idea as to the law nor procedure nor requirements thence. Ever -  
2 since imprisoned, other people have been doing my case. Now its all over the place. In Fact, -  
3 Mr. Hooper, 31993, had did this Petition for me. He asked me alot of questions. More than my -  
4 attorney nor Mis Yi Lin Zheng ever did. He read the indictment, court minutes, everything.  
5 Told me my lawyer was a dump truck. State never proved a murder in the indictment. -  
6 Couldn't prove one. Couldn't even prove a 2d degree murder. Manslaughter, he said, that -  
7 they proved. And that he should have known that. Said Momot should have filed a post- -  
8 indictment habeas corpus to challenge the sufficiency of the indictment for first degree mur-  
9 der because they couldn't ever prove a murder to begin with. Explaining they had to prove -  
10 that I had intent to kill Mr. Nelson specifically, by preponderant malice and aforethought, -  
11 which they couldn't. My lawyer explained manslaughter before we hired him, my Mom and I.  
12 But never murder - the elements they had to prove at trial. Valerie Alder never told me  
13 what they had to prove either. Nor did Ms. Zheng. I'd have never known that until Mr. Hooper  
14 told me. Theres nothing in the discovery, he said, specifically showing what they had to prove  
15 in order for a jury to convict for murder. He also said, because theres no elements in the -  
16 discovery, he couldn't tell whether the Grand Jury had the current elements that had to be -  
17 proven sufficient to ~~to~~ indict to begin with. He also said the plea agreement was no good -  
18 because the indictment had to have evidence sufficient to prove each and every element of  
19 the state's burden for murder beyond a reasonable doubt before the court could even -  
20 entertain any plea for anything else to begin with. Even then, they had to meet the same  
21 burden for any lesser degree of murder before the same state could accept any plea -  
22 because they can't shift the burden of proof on me as the condition of the plea's operation,  
23 and thats exactly what the negotiated plea did. Saying that the state didn't have to prove  
24 anything - if I agreed to or had been coerced into accepting the plea. Telling me that it  
25 was just as illegal for my lawyer to tell me that if I took the case to trial, not only -  
26 would I get more time if I lost, my Mom would go to prison for a long time as well.  
27 All I been trying to do is protect my mom, they no one else to do that.  
28 Hooper also told me, not only should my lawyer have known that. Even if he didn't

1 challenge the indictment result sufficiency. He should never waived my speedy trial  
2 right because its an affirmative defense. Said if you look at the record: on February  
3 16, 2017, I waived my right after pleading not guilty; and 10 months later, on December -  
4 14th, 2017, state filed a 2d Superseding Indictment. He said, had I not done that, not -  
5 only could they not have filed that 2d Superseding Indictment. But if the state wasn't  
6 ready to prosecute the case in 60 days, after a jury was impaneled, I could have -  
7 requested it dismissed with prejudice and the court would have had no choice but  
8 to grant that, and I'd have walked. And that in itself is both a malpractice of law  
9 and ipso facto evidence of ineffective assistance of counsel.

10 He also said that it looked like Momot had never tried a murder case before because  
11 a paralegal or first year law student could have done a better job of my defense  
12 than Momot. Told me the only reason he knows that, not only has he aided other -  
13 prisoners in walking out of prison on murder cases, one out of ADSP from Ely on  
14 Transferred Intent by the state itself - that Mr. Wolfson didn't appeal, was because he'd  
15 a few of those on his NCIC. So he has to be death penalty certified because there's  
16 no one out there anymore who could ever competently defend him. Saying, - Their -  
17 all dead now.

18 Then he told me I had the right to two (2) attorneys, just as they'd the use of 2  
19 attorneys to prosecute the murder had I taken the case to trial. I didn't know that until  
20 then. My mom didn't either. And neither Momot nor Ms. Zheng had ever told us that either.

21 Another thing that Hooper said. He told me that my former cellie, he da guy that did -  
22 my last petition; its supplement; request for counsel appointment and; request for eviden -  
23 tary hearing, had the right idea. He just didn't read the Indictment Proceedings, Plea -  
24 Agreement, nor Affidavit of my Mother, - given that for some reason the state had -  
25 conveniently lost my sentencing Transcripts, relative burden, procedure, and Contract law.  
26 So he didn't see the obvious constitutional and procedural deficits and other infirmities  
27 that would have resulted the Plea Agreement being invalidated as Unconstitutional -  
28 by a competent court of jurisdiction. He also pointed out, because the court omitted

Section 17 (c).

1 a procedure, there's insufficient evidence to support the indicted murder much less the  
2 2d degree one: Construed an acquittal by the U.S. Supreme Court; because the plea are  
3 itself conditioned the indicted first degree Murder. I hadn't been indicted for a 2d degree  
4 murder from the outset. Therefore the burden shifting 2d Superseding Indictment are -  
5 itself conditioned upon the negotiated plea being accepted by the court: rather as -  
6 represented the onus of negotiations that led up to that precise moment in time, In -  
7 other words, the 2d Superseding Indictment are the plea agreement itself, and that  
8 is plainly and clearly unethical and therefore unconstitutional in omnibus.

9 That very fact alone, he said, - if my former law clerk cellie as much the court had it  
10 and themselves read my Mother's Affidavit of June 21, 2018, pg. 4, lines 16 to 18, of to wit: "

11 "My mother and I asked was he sick once Lin Zheng said No he was actually -  
12 going to become a judge soon - - -", in aggregate, are Ipso Facto evidence of ineffective  
13 assistance of counsel. Said my cellie, 'former cellie', had the right idea, 'He just did it -  
14 wrong'. In any event, if the state Supreme Court does grant COA or denies the NOA and  
15 COA as untimely - I'd still have to go back to the district court anyway, to adjudicate  
16 those unexhausted issues. Plus I, my former cellie, didn't explicitly identify whether those -  
17 claims were state and Federal 6th and 11th as much 4th and 5th Amdt. claims: precluding -  
18 their being heard by the Federal courts from their outset.

19 Either way, until the matters of this petition are exhausted relative how the claims had  
20 been identified, the Federal Courts are without jurisdiction to even entertain those causes.

21 Had they been asserted as currently shown, he said, not only would the Federal Courts -  
22 have jurisdiction. Nevada's district courts to its supreme court are legally bound by Feder-  
23 al Constitutional law to rule my convictions not only invalid, but acquittal on the murder  
24 without more.

25 He said, not only was it clear that Momot had been currying favor with the court toward  
26 himself becoming a judge, not only did he act in capacity as a friend of the court, he  
27 also acted as though the prosecution's 2d chair when it already had a 2d chair. And by  
28 not objecting to stipulations enwoven the negotiated plea, allowing the court to -

## Section 17 (c).

1 breach the represented plea, that that had been the reason why the court had conveniently  
2 lost the sentencing Transcripts: allowing the court to both breach the plea then later use it  
3 to enforce the conviction as the quid pro quo toward saving him from suit for malpractice  
4 as an operation of concerted Gate-keeping oppression and system thence. Said it was a-  
5 pretty slick operation - how both Momot and the court had Bent me over the table  
6 and laid the pipe - - - - -

7 As Hooper explained it, had they not done that, and had my former law Clerk Cellie -  
8 paid attention to what he was suppose to have done, the court would have had to grant an  
9 evidentiary hearing on my ineffective assistance of counsel claim. And because of their -  
10 nature, counsel would have had to be appointed to try the IAC claims manifest principl-  
11 es of law and appellate procedure as established Martinez V. Ryan, 566 U.S.1, 132 S.Ct.1309  
12 (2012). Evidence of which, though available at time filed the First petition. Had been unavailable  
13 by the court denying IAC and counsel appointment claim and motion as preclusive bar to  
14 discovery that clearly, only appointed counsel can conduct because of the indentured -  
15 servitude that my Mother had been sold into by Mr. Momot's clearly evident ineffective-  
16 ness to my defence against the Indicted murder one charge, foreclosing on my mom  
17 from obtaining an attorney or private investigator for me toward developing how or -  
18 whether Momot's endeavor toward becoming himself a judge may have affected my -  
19 defense for the indicted murder one. As its equally clear, I'm in prison and can't -  
20 myself investigate and define that claim myself, see, e.g., De Shaney V. Winnabago Cnty.  
21 DSC, supra, 489 U.S.189, 195-200, 109 S.Ct. 998, 1003-06 (1989) (judicial encumbrance to prisoner  
22 rights arises from affirmative limitations imposed by government officials upon their Freedom  
23 and ability to lawfully act in their own behalf resulting incarceration). Keeping in mind,  
24 as Hooper told me, without the First degree murder - since she, my mom, had not her-  
25 self been indicted, that's why Momot did not try the unprovable murder. With no -  
26 murder, there's no accessory. Absent that - - - - -, and that's why Momot gifted the -  
27 prosecution a conviction without it ever having to prove anything ~~at~~ beyond a reasona-  
28 ble doubt, so she'd have no money to help me.

Section 17 (c).

1 Conspiracy, he said, is to do a lawful act by unlawful means. And that the evi-  
2 ence that he'd seen in this case, clearly shows that - by Momot, the court and pros-  
3 ecution's concerted acts and omissions conjunctively.

4 Mr. Hooper had also told me, had the first petition been done like this one has, the  
5 court had no choice but to recuse. A new judge appointed to hear the case, grant -  
6 relief on the IAC claim, appoint counsel and then, following an interlude of discov-  
7 ery, issue habeas on the IAC claim. As it is, he noted, I walk on the murder one -  
8 charge - For unconstitutional procedure, rendering the IAC claim moot.

9 Also, he noted, counsel can LEXIS NEXIS Circuit precedents holding that district  
10 courts are procedurally required to query whether the prosecution had first satisfied  
11 their burden elements beyond a reasonable doubt as to a charged or indicted offense  
12 before they can ethically accept a negotiated plea: if not, their bound as a matter of  
13 law to refuse the plea; admonish counsel, appoint new counsel, and order trial to  
14 protect defendant rights. Without my Mother culpable for accessory to murder, he  
15 said, there's no one else but me to pay the court ordered aggregate sum of \$21,655.  
16 08: in that, since I'm essentially a church an state hostage, prisons cannot be used  
17 as an illegal collection agency by fiat, by transferred intent of Momot and the -  
18 district court nee prosecution. So in effect, as it stands, - currently or former-  
19 ly, no one would ever be able to collect anything from me alone.

20 Lastly, relative my documented learning disabilities, ante., coupled with my -  
21 illiteracy and inability to spell, etc.: the foregoing are done at both my behest  
22 and direction from my case files and answers to questions I'd provided to Mr.  
23 Hooper, #31893, which he'd asked me, as summarized above. That's why the  
24 issues of Grounds 5 through 8 are being reiterated in a different way for -  
25 their adjudication qua exhaustion in addition to the new grounds of 1 -  
26 through Four (4) as thereby presented for their own adjudication.

27 ...

28 Mr.  : #5437116, Petitioner.

## Section 18.

1 evidentiary burden requirements, indictment procedural processes itself, -  
2 result, challenges for sufficiency, and in the event of direct result plea -  
3 negotiations. Necessity of procedural catalytic burden requirement -  
4 satisfaction beyond the standard of reasonable doubt in that its patently  
5 unconstitutional for courts to allow the prosecution to shirk its burden  
6 or shift its burden by permitting an accused to plea to an offense that  
7 had not been proven from its outset. Nor can a negotiated plea be -  
8 itself conditioned upon admission to unproven prosecutorial burdens.

9 The guy that's helping me now, he explained to me that current law  
10 requires, in cases of indictment for murder in any degree, from -  
11 which a plea are negotiated. That the constitutional imperative first -  
12 mandates the prosecution prove each and every element of its burden  
13 beyond a reasonable doubt. Second, because doubt or omission of a -  
14 key or critical burden element can result in acquittal in a jury trial,  
15 a court must itself assess whether those burdens had been met as  
16 precursor to accepting any proposed negotiated plea. If they don't,  
17 he said, the courts are ethically obligated to protect and preserve -  
18 my right to acquittal, refuse the plea, and order trial after -  
19 admonishing and appointing new counsel after discharging the -  
20 first one for conflict of interest. He said that a court cannot second  
21 guess what could occur at trial relative, for example, what he -  
22 called the Staying Hand, e.g., Lessor included crime instruction, and  
23 the Hand of Objection as bar to such instruction. Explained as -  
24 follows:

- 25 1. Specifically. We don't ask for this instruction.
- 26 2. Its contrary to statute (as) charged.
- 27 3. Its contrary to N.B.S. § 173.075 (1) Notice Requirement,
- 28 thus indefensible.



## Section 18.

4. As such, its at variance with both the original substantive charge offence and the notice requirement unitarily.

5. lastly. It unconstitutionally Amends the Complaint post-jury-trial to extent the defence was unaware that we needed to defend for anything other than what originally charged to begin with.

Because thats predetermination against my right to acquittal for insufficient evidence to support a verdict for First degree murder. He told me that objection, though little known, is bullet proof.

He also told me. Any time a court accepts a plea without inquiring first whether the prosecution had satisfied all of its burdens. Not only is that an insufficient burden, because it was accepted, sentence imposed, etc. Diametrically, thats construed an acquittal.

The one thing he did note, though a plain error, i.e., structural error, the U.S. Supreme Court was silent on whether an adequately proven count within the plea from indictment are preserved, or is it equally vitiated? A question, he said, never addressed and answered. 'Not specifically anyway.'

In principle, he said, until these specific grounds are exhausted, I cannot claim it were denied my fundamental right to meaningful access to the courts for a unitary fundamentally fair trial. By the same token, he explained to me that, these unexhausted issues explicitly and overwhelmingly demonstrate prejudice manifest an IAC claim beyond even the most strenuous of court requirements.

Put another way, Nevada's I.D.S. qua Great White Way Assembly Courts of church an state organized religion, as Zionists, Hooper said. Their not known for doing anything thats legal. And that my case clearly proves the point. No one but Hooper had known about any of this.

(a) **Ground One:** Negotiated plea cannot be (used as a) surrogate to exclusive prosecutorial burdens as a condition to their operation in cases where incurmountable from their outset. State / Federal 14th and 6th Amdt. Claim. (4th and 5th reserved)

**Supporting FACTS** (Tell your story briefly without citing cases or law.): Prosecution bears exclusive burden of proof beyond a reasonable doubt - that can never be shifted, In re Winship, 397 U.S. 358, 364 (1970), nor diminished. See pg. 2, lines 9 & 10 of guilty plea agreement. Stipulation shifts burden upon defendant while diminishing the state's in a case from which their burden for indicted First degree murder were itself incurmountable. And ineffective assistance of counsel (IAC) during period carrying court favor toward counsel himself becoming a judge, resulted failure to defend and object to burden shifting.

(b) **Ground Two:** Insufficient evidence to support negotiated plea for First degree murder from indictment, for 2d degree murder by use of deadly weapon by plea; violating the double jeopardy clause prohibition unitarily; due distinguishing ambiguity. State / Federal 14th and 6th Amdt. claim. (4th and 5th reserved)

**Supporting FACTS** (Tell your story briefly without citing cases or law.): Elucidations of indictment proceedings clearly showed prosecution could not prove key elements of 1st degree murder by any legal nor foul means beyond a reasonable doubt. Plea otherwise required that - proof before a downward departure for 2d degree murder could accrue in that accused had not been charged with 2d degree murder from its outset. And plea did not distinguish the logic nor reason of its operation outside the indictment charge that, at trial, could be objected to as a means of advancing defendant interest of acquittal for murder in toto.

(c) **Ground Three:** Trial / Sentencing court abdicated its procedural encumbancy to - defendant rights in murder case by failing to first adjudicate whether prosecution satisfied its in toto burdens for first degree murder beyond a reasonable doubt prior accepting a - negotiated plea for 2d degree murder before sentencing for the latter. State / Federal claim.

**Supporting FACTS** (Tell your story briefly without citing cases or law.): Absent are any record of - court hearing as a procedural matter to determine whether prosecution had first satisfied each and every element of its first degree murder burden beyond a reasonable doubt: prior its accepting a negotiated plea; in that any insufficient procedural burden deficits mandate jury trial to protect defendant rights and that to acquittal. Operation of which - clearly demonstrates IAC for failure to try the murder from its outset; failing to object to - the plea and various stipulations, nor challenge its sufficiency and constitutionality, i.e., - prejudicial conflict of interest: aware that murder could not be proven from its outset.

(d) **Ground Four:** Abridged and disparaged state and federal 14th and 6th Amdt. right to acquittal for First degree murder by indictment through coupled "Friend of the court" - ineffective assistance of counsel and burden shifting negotiated plea for 2d degree - murder as condition of the plea's application and operation in omnibus, claim.

**Supporting FACTS** (Tell your story briefly without citing cases or law.): First degree murder are a - "specific intent crime." Indictment proceedings and evidence lack that element which - the state's exclusive burden. Counsel was too thzy to try the case and acquit defendant - for lack of provable burden beyond a "reasonable" doubt. Instead, he negotiated a plea apart from the indictment charge, otherwise objectionable as a lesser included crime, for 2d degree murder. Relying stipulation at page 2, lines 9 & 10, be thus the basis and condition of the plea's operation in effect of burden shifting as surrogate to unprovable murder one burdens.

(e) Ground Five: Ineffective assistance of counsel From indictment for murder in the first degree: as denied defense. State/ Federal 14th and 6th Amdt. claim.

Supporting FACTS (Tell your story briefly without citing cases or law.): He instructed for manslaughter. Never murder. There's no murder elements from indictment discovery to assess whether Grand Jury had correct elements for indictment purposes. None for 2d degree murder either. First degree murder is a "specific intent" crime. Element absent indictment proceedings. At point in time retained counsel, he was engaged himself becoming a judge. See pg. 4, at 16 to 18, Affidavit of defendant's Mother. Counsel waived Speedy Trial right knowing said an Affirmative defense against Murder One. And he waived trial as bar to acquittal for unprovable Murder.

(f) Ground Six: Breach of Plea Agreement From indictment for First degree murder by trial/ Sentencing court. State/ Federal 14th and 6th Amdt. claim.


Supporting FACTS (Tell your story briefly without citing cases or law.): In currying favor with the court toward himself becoming a judge, rather than try an unprovable murder one, as a "Friend of the court", counsel arraigned a negotiated plea for 2d degree murder in capacity as though the prosecution's 2d chair. Omnipotent, after arranging plea for a specific sentence as its condition of defendant agreement, he did not object to stipulations incorporated within the plea agreement, see pgs. 2, 3, 5, and 4, lines 11 to 15, 1 to 9, 1 to 10, and #6 of Waiver, which allowed the court its breach as the nexus of its in toto operation. Id.

(g) Ground Seven: Ineffective assistance of counsel postconviction. State/ Federal 6th & 14th Amdt. claim.

Supporting FACTS (Tell your story briefly without citing cases or law.): Malpractice or incompetence accrued Failure to try murder charge where prosecution could not prove defendant had prior intent to kill defendant specifically: w/ malice and aforethought. Aware the state did not bear its murder one burden within indictment proceedings beyond a reasonable doubt. Arranging instead, plea allowing state to shirk its murder one burden to favor of an unindicted Murder 2 charge. Not appealing conviction's infirmity to acquit for murder one. Nor appealing for breach of plea. Unless, indeed, prosecutor and Friend of the court.

(h) Ground Eight: Disparaged or abrogated right to appeal constitutionally defective conviction for indicted murder in the first degree and unitary plea agreement for 2d degree murder, devoid any specific intent to prove the first degree murder from its outset. State/ Federal 6th and 14th Amdt. claim.

Supporting FACTS (Tell your story briefly without citing cases or law.): Omnipotent, its unknown whether counsel had ever himself tried a murder case before. State obviously could not prove a murder at trial. Did not prove one at indictment. Nor did counsel Habeas indictment for insufficient evidence on Murder One court. Waived both speedy trial and trial to gift prosecution conviction for murder in 2d degree by plea without state ever having to prove the Murder one charge. Failing to appeal the malfeasance/ malpractice by trial court. And trial court denying prior habeas petition to conceal said.

The Fore are done by Mr. David O. Hooper: #31893, Formerly of Ely state prison since 1990, made at Petitioner behest to vindicate his rights. 

**WHEREFORE**, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

**EXECUTED** at Ely State Prison, on the 28 day of the month of SEPTEMBER of the year 2020.



Signature of petitioner

~~Ely State Prison~~

~~Post Office Box 1989~~

~~Ely, Nevada 89301-1989~~

High Desert State Prison.  
Box 650.

Indian Springs, Nevada.  
89070.

\_\_\_\_\_  
Signature of Attorney (if any)

\_\_\_\_\_  
Attorney for petitioner

\_\_\_\_\_  
Address


**VERIFICATION**

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

  
Petitioner

\_\_\_\_\_  
Attorney for petitioner

**CERTIFICATE OF SERVICE BY MAIL**


I, RICHARD A. NEWSOME , hereby certify pursuant to N.R.C.P. 5(b), that on this 28 day of the month of SEPTEMBER, of the year 2020 I mailed a true and correct copy of the foregoing **PETITION FOR WRIT OF HABEAS CORPUS** addressed to:

~~Respondent prison or jail official~~  
~~Address~~

CLK: 8th Jud. Dist. Ct.  
200 Lewis Ave.  
3d Floor.  
Las Vegas, Nevada.  
89155-1601.

~~Attorney General  
Heroes' Memorial Building  
100 North Carson Street  
Carson City, Nevada 89710-4717~~

~~District Attorney of County of Conviction~~  
~~Address~~

  
Signature of Petitioner

**AFFIRMATION PURSUANT TO NRS 239B.030**

I, RICHARD A. NEWSOME, NDOC# 1194269,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE  
ATTACHED DOCUMENT ENTITLED Petition For Writ of Habeas  
Corpus. (Postconviction). 2d Petition.

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY  
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 28 DAY OF SEPTEMBER, 2020.

SIGNATURE: 

INMATE PRINTED NAME: RICHARD A. NEWSOME

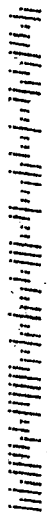
INMATE NDOC # 1194269

INMATE ADDRESS: ~~ELY STATE PRISON~~  
~~P. O. BOX 1989~~  
~~ELY, NV 89301~~

High Desert State Prison.  
Box 650.  
Indian Springs, Nevada.  
89070.

Richard Newsome, Jr. #1194269.  
High Desert State Prison.  
P.O. Box 650.  
Indian Springs, Nevada.

89070-0650.



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LEGAL MAIL N~~2~~ 2536565

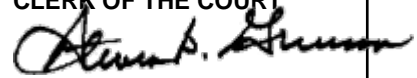
CLK:  
8th Jud. Dist. Ct.  
200 Lewis Ave.  
3d Floor.  
Las Vegas, Nevada.  
89155-1601.

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0115126505  
RA228

HIGH DESERT STATE PRISON  
SEP 28 2020  
UNIT 6 A/B

RA229





RSPN  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
JONATHON VANBOSKERCK  
Chief Deputy District Attorney  
Nevada Bar #6528  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

RICHARD NEWSOME, JR., aka  
Richard Newsome #5437116  
Defendant.

CASE NO: A-19-788618-W  
(C-17-321043-1)

DEPT NO: XXI

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

DATE OF HEARING: DECEMBER 17, 2020  
TIME OF HEARING: 1:45 PM

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

This opposition/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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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On February 2, 2017, Richard Newsome, Jr. (“Petitioner”) was charged with Count 1 –  
4 Murder With Use of a Deadly Weapon (Category A Felony – NRS 200.010, 200.030,  
5 193.165); and Count 2 – Assault With Use of a Deadly Weapon (Category B Felony – NRS  
6 200.471).

7 On December 14, 2017, Petitioner pled guilty to one count of Second-Degree Murder  
8 With Use of a Deadly Weapon. Pursuant to the negotiations as contained in the Guilty Plea  
9 Agreement (“GPA”), the State would retain the right to argue at sentencing.

10 On February 8, 2018, Petitioner was sentenced to 10 years to life in the Nevada  
11 Department of Prisons. Petitioner’s Judgment of Conviction was filed on March 5, 2018.  
12 Petitioner did not file a direct appeal.

13 On February 1, 2019, Petitioner filed a Petition for Writ of Habeas Corpus (“First  
14 Petition”), Supplemental Petition for Writ of Habeas Corpus (“Supplement”), Motion for  
15 Appointment of Counsel (“Motion”), and Request for an Evidentiary Hearing (“Request”). On  
16 May 1, 2019, the State filed a response to Petitioner’s First Petition, Supplement, Motion, and  
17 Request. On May 28, 2019, the district court denied Petitioner’s First Petition, Supplement,  
18 Motion, and Request. Findings of Fact, Conclusions of Law were filed on June 26, 2019. On  
19 July 13, 2020, the Nevada Court of Appeals affirmed the district court’s denial of Petitioner’s  
20 First Petition. Remittitur issued on August 10, 2020.

21 On October 9, 2020, Petitioner filed the instant Petition for Writ of Habeas Corpus  
22 (“Second Petition”)

23 **ARGUMENT**

24 **I. PETITIONER’S SECOND PETITION IS PROCEDURALLY BARRED**

25 A petitioner must raise all grounds challenging the validity of his guilty plea or claiming  
26 ineffective assistance of counsel in a timely filed first post-conviction Petition for Writ of  
27 Habeas Corpus. Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001). Petitioner’s  
28

1 Second Petition is procedurally barred, without a showing of good cause and prejudice, and  
2 should be dismissed.

3 **A. Petitioner’s challenge to the evidence is waived.**

4 Claims other than challenges to the validity of a guilty plea and ineffective assistance  
5 of trial and appellate counsel must be raised on direct appeal “or they will be *considered*  
6 *waived in subsequent proceedings.*” Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059  
7 (1994) (emphasis added) (disapproved on other grounds by Thomas v. State, 115 Nev. 148,  
8 979 P.2d 222 (1999)). “A court must dismiss a habeas petition if it presents claims that either  
9 were or could have been presented in an earlier proceeding, unless the court finds both cause  
10 for failing to present the claims earlier or for raising them again and actual prejudice to the  
11 petitioner.” Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001). Where a petitioner  
12 does not show good cause for failure to raise claims of error upon direct appeal, the district  
13 court is not obliged to consider their merits in post-conviction proceedings. Jones v. State, 91  
14 Nev. 416, 536 P.2d 1025 (1975). Courts must dismiss a petition if a petitioner plead guilty and  
15 the petitioner is not alleging “that the plea was involuntarily or unknowingly entered, or that  
16 the plea was entered without effective assistance of counsel.” NRS 34.810(1)(a). Further,  
17 substantive claims—even those disguised as ineffective assistance of counsel claims—are  
18 beyond the scope of habeas and waived. NRS 34.724(2)(a); Evans, 117 Nev. at 646–47, 29  
19 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d at 1059.

20 While Petitioner raises eight grounds for relief in the instant Second Petition, all eight  
21 claims revolve around one complaint: that the State should have been required to prove that  
22 Petitioner was guilty of first-degree murder before Petitioner could have been permitted to  
23 plead guilty. This claim is not an allegation of ineffective assistance of counsel or challenges  
24 to the voluntariness of Petitioner’s plea. Accordingly, any claim challenging the sufficiency of  
25 the evidence of Petitioner’s plea should have been raised on direct appeal. As Petitioner did  
26 not file a direct appeal, he has waived his ability to raise these claims now.

27 **B. Petitioner’s Second Petition is time-barred pursuant to NRS 34.726.**  
28

1 A petitioner must challenge the validity of their judgment or sentence within one year  
2 from the entry of judgment of conviction or after the Supreme Court issues remittitur pursuant  
3 to NRS 34.726(1). NRS 34.726(1). This one-year time limit is strictly applied and begins to  
4 run from the date the judgment of conviction is filed or remittitur issues from a timely filed  
5 direct appeal. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001); Dickerson  
6 v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998). “Application of the statutory  
7 procedural default rules to post-conviction habeas petitions is mandatory,” and “cannot be  
8 ignored [by the district court] when properly raised by the State.” State v. Eighth Judicial Dist.  
9 Court (Riker), 121 Nev. 225, 231 & 233, 112 P.3d 1070, 1074–75 (2005). For example, in  
10 Gonzales v. State, the Nevada Supreme Court rejected a habeas petition filed two days late  
11 despite evidence presented by the defendant that he purchased postage through the prison and  
12 mailed the Notice within the one-year time limit. 118 Nev. 590, 596, 53 P.3d 901, 904 (2002).  
13 Absent a showing of good cause and prejudice, courts have no discretion regarding whether to  
14 apply the statutory procedural bars.

15 Here, Petitioner’s Judgment of Conviction was filed on March 5, 2018, and Petitioner  
16 did not file a direct appeal. Petitioner then had until March 5, 2019, to timely file a petition for  
17 writ of habeas corpus. The instant Second Petition was not filed until October 9, 2020, after  
18 the one-year deadline. Absent a showing of good cause and prejudice, Petitioner’s claim must  
19 be dismissed as untimely.

20 **C. Petitioner’s Second Petition is barred as successive pursuant to NRS 34.810.**

21 The second procedural bar requires courts to dismiss successive post-conviction  
22 petitions if a prior petition was decided on the merits and a petitioner fails to raise new grounds  
23 for relief, or if a petitioner does raise new grounds for relief but failure to assert those grounds  
24 in any prior petition was an abuse of the writ. NRS 34.810(2); See Riker, 121 Nev. at 231, 112  
25 P.3d at 1074. In other words, if the claim or allegation was previously available with  
26 reasonable diligence, it is an abuse of the writ to wait to assert it in a later petition. McClesky  
27 v. Zant, 499 U.S. 467, 497-98, 111 S.Ct. 1454, 1472 (1991). “Successive petitions may be  
28 dismissed based solely on the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901

1 P.2d 123, 129 (1995). Successive petitions will only be decided on the merits if the petitioner  
2 can show good cause and prejudice for failing to raise the new grounds in their first petition.  
3 NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

4 This Second Petition must also be denied as successive. Petitioner raises eight new  
5 grounds for relief, none of which were raised in his First Petition, which was decided and  
6 denied on the merits on May 28, 2019. Petitioner is abusing the writ by raising new substantive  
7 claims here and this Court may only consider their merits if Petitioner can establish good cause  
8 and prejudice.

9 **D. Application of the procedural bars is mandatory.**

10 The Nevada Supreme Court has specifically found that the district court has a duty to  
11 consider whether the procedural bars apply to a post-conviction petition and not arbitrarily  
12 disregard them. In Riker, the Court held that “[a]pplication of the statutory procedural default  
13 rules to post-conviction habeas petitions is mandatory,” and “cannot be ignored when properly  
14 raised by the State.” 121 Nev. at 231–33, 112 P.3d at 1074–75. Ignoring these procedural bars  
15 is considered an arbitrary and unreasonable exercise of discretion. Id. at 234, 112 P.3d at 1076.  
16 Riker justified this holding by noting that “[t]he necessity for a workable system dictates that  
17 there must exist a time when a criminal conviction is final.” Id. at 231, 112 P.3d 1074 (citation  
18 omitted); see also State v. Haberstroh, 119 Nev. 173, 180-81, 69 P.3d 676, 681-82 (2003)  
19 (holding that parties cannot stipulate to waive, ignore or disregard the mandatory procedural  
20 default rules nor can they empower a court to disregard them). In State v. Greene, the Nevada  
21 Supreme Court reaffirmed its prior holdings that the procedural default rules are mandatory  
22 when it reversed the district court’s grant of a postconviction petition for writ of habeas corpus.  
23 129 Nev. 559, 566, 307 P.3d 322, 326 (2013). There, the Court ruled that the defendant’s  
24 petition was untimely and successive, and that the defendant failed to show good cause and  
25 actual prejudice. Id. Accordingly, the Court reversed the district court and ordered the  
26 defendant’s petition dismissed pursuant to the procedural bars. Id. at 567, 307 P.3d at 327.

27 **II. PETITIONER HAS NOT SHOWN GOOD CAUSE TO OVERCOME**  
28 **PROCEDURAL BARS**

1 Courts may consider the merits of procedurally barred petitions only when petitioners  
2 establish good cause for the delay in filing and prejudice should the courts not consider the  
3 merits. NRS 34.726(1)(a)-(b); NRS 34.810(3). Simply put, good cause is a “substantial reason;  
4 one that affords a legal excuse.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506  
5 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). To establish  
6 good cause, a petitioner must demonstrate that “an impediment external to the defense  
7 prevented their compliance with the applicable procedural rule.” Clem v. State, 119 Nev. 615,  
8 621, 81 P.3d 521, 525-26 (2003). Good cause exists if a Petitioner can establish that the factual  
9 or legal basis of a claim was not available to him or his counsel within the statutory time frame.  
10 Hathaway, 119 Nev. at 252-53, 71 P.3d at 506-07. Once the factual or legal basis becomes  
11 known to a petitioner, they must bring the additional claims within a reasonable amount of  
12 time after the basis for the good cause arises. See Pellegrini, 117 Nev. at 869-70, 34 P.3d at  
13 525-26 (holding that the time bar in NRS 34.726 applies to successive petitions). A claim that  
14 is itself procedurally barred cannot constitute good cause. Riker, 121 Nev. at 235, 112 P.3d at  
15 1077; See also Edwards v. Carpenter, 529 U.S. 446, 453 120 S. Ct. 1587, 1592 (2000).

16 Petitioner has failed to establish good cause. As good cause, Petitioner includes within  
17 his Second Petition seven pages explaining that he has spoken to another inmate, specifically  
18 Mr. David Hopper, who has been incarcerated since 1990, who allegedly reviewed his case  
19 file and helped him file the instant Second Petition. Second Petition at 17(c)-18. According to  
20 Petitioner’s advice from Mr. Hopper, his former cellmate helped him file his First Petition but  
21 failed to review the indictment for its legal sufficiency. Id. As a result, Petitioner did not raise  
22 these claims in his First Petition. Id. Petitioner filed the instant Second Petition based on Mr.  
23 Hopper’s belief that the indictment charging Petitioner with murder was legally insufficient  
24 because it did not include evidence establishing his guilt. Id. Unfortunately, Petitioner’s  
25 reliance on another inmate’s advice is not good cause to overcome the mandatory procedural  
26 bars. All these claims were available to Petitioner with a year of his Judgment of Conviction  
27 being filed. This failure is fatal. District Court Rules 13; Eighth Judicial District Court Rule  
28 13(2). As such, this Court must dismiss this Petition as successive.

1 **III. PETITIONER HAS NOT SHOWN PREJUDICE TO OVERCOME THE**  
2 **PROCEDURAL BARS**

3 Because there is no good cause, this Court need not even consider prejudice. In the  
4 event this Court chooses to examine Petitioner's claims further, Petitioner cannot demonstrate  
5 prejudice because his underlying claims are meritless.

6 To establish prejudice, petitioners must show “not merely that the errors of [the  
7 proceedings] created possibility of prejudice, but that they worked to his actual and substantial  
8 disadvantage, in affecting the state proceedings with error of constitutional dimensions.”  
9 Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v.  
10 Fraday, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)).

11 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal  
12 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his  
13 defense.” The United States Supreme Court has long recognized that “the right to counsel is  
14 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,  
15 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323  
16 (1993).

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

1 The court begins with the presumption of effectiveness and then must determine  
2 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
3 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel  
4 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of  
5 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,  
6 537 P.2d 473, 474 (1975). Counsel cannot be ineffective for failing to make futile objections  
7 or arguments. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

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

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

27 Indeed, to establish a claim of ineffective assistance of counsel for advice regarding a  
28 guilty plea, a defendant must show “gross error on the part of counsel.” Turner v. Calderon,



1 281 F.3d 851, 880 (9th Cir. 2002). When a conviction is the result of a guilty plea, a defendant  
2 must show that there is a “reasonable probability that, but for counsel’s errors, he would not  
3 have pleaded guilty and would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52,  
4 59, 106 S.Ct. 366, 370 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988,  
5 923 P.2d 1102, 1107 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).  
6 Ultimately, while it is counsel’s duty to candidly advise a defendant regarding a plea offer, the  
7 decision of whether or not to accept a plea offer is the defendant’s. Rhyne v. State, 118 Nev.  
8 1, 8, 38 P.3d 163, 163 (2002).

9 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the  
10 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of  
11 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,  
12 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must  
13 be supported with specific factual allegations, which if true, would entitle the petitioner to  
14 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”  
15 allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled  
16 by the record. Id. “A claim is ‘belied’ when it is contradicted or proven to be false by the record  
17 as it existed at the time the claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228,  
18 1230 (2002). A proper petition for post-conviction relief must set forth specific factual  
19 allegations supporting the claims made and cannot rely on conclusory claims for relief. N.R.S.  
20 34.735(6). Failure to do so will result in a dismissal of the petition. Id.

21 **A. Petitioner’s Ground One claim fails.**

22 Petitioner complains that a negotiated plea amounts to burden shifting as to proof  
23 beyond a reasonable doubt. Second Petition at 5. Petitioner does so without providing any  
24 authority supporting his claim that a defendant’s guilty plea is the equivalent of inappropriate  
25 burden shifting. As such this is nothing but a bare and naked assertion suitable only for  
26 summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225 (1984). Given the total absence  
27 of legal authority supporting Petitioner’s claim, this Court should summarily reject Petitioner’s  
28 argument. See, Edwards v. Emperor’s Garden Restaurant, 122 Nev. 317, 330 n.38, 130 P.3d

1 1280, 1288 n.38 (2006); see also NRAP 28(a)(10)(A); Dept. of Motor Vehicles and Public  
2 Safety v. Rowland, 107 Nev. 475, 479, 814 P.2d 80, 83 (1991) (unsupported arguments are  
3 summarily rejected on appeal); Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (“It  
4 is appellant’s responsibility to present relevant authority and cogent argument; issues not so  
5 presented need not be addressed by this court.”); Randall v. Salvation Army, 100 Nev. 466,  
6 470-71, 686 P.2d 241, 244 (1984) (court may decline consideration of issues lacking citation  
7 to relevant legal authority); Holland Livestock v. B & C Enterprises, 92 Nev. 473, 533 P.2d  
8 950 (1976) (failure to offer citation to relevant legal precedent justifies affirmation of the  
9 judgment below).

10         Petitioner’s claim is further belied by United States Supreme Court jurisprudence. A  
11 plea of guilty “serves as a conviction and relieves the state of its burden of proof in a criminal  
12 case” so long as the plea is validly made. Von Moltke v. Gillies, 332 U.S. 708, 719, 68 S.Ct.  
13 316, 321 (1948). Because Petitioner pled guilty to second-degree murder, the State was  
14 relieved of the burden of proof as to Petitioner’s guilty of first-degree murder so long as his  
15 plea was validly entered into. As the Nevada Court of Appeals affirmed the district court’s  
16 denial of Petitioner’s First Petition which challenged the validity of his plea, the issue of  
17 whether Petitioner’s plea was valid has already been decided. Order of Affirmance, No. 79044-  
18 COA (filed July 13, 2020).

19         Accordingly, any claim that Petitioner’s plea was in valid is barred by both res judicata  
20 and the doctrine of law of the case. “The law of a first appeal is law of the case on all  
21 subsequent appeals in which the facts are substantially the same.” Hall v. State, 91 Nev. 314,  
22 315, 535 P.2d 797, 798 (1975) (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38  
23 (1969)). “The doctrine of the law of the case cannot be avoided by a more detailed and  
24 precisely focused argument subsequently made after reflection upon the previous  
25 proceedings.” Id. at 316, 535 P.2d at 799. Furthermore, this Court cannot overrule the Nevada  
26 Supreme Court. Nev. Const. Art. VI § 6. See Mason v. State, 206 S.W.3d 869, 875 (Ark.  
27 2005) (recognizing the doctrine’s applicability in the criminal context); see also York v. State,  
28 342 S.W. 528, 553 (Tex. Crim. Appl. 2011). Accordingly, by simply continuing to file

1 motions with the same arguments, his motion is barred by the doctrines of the law of the case  
2 and res judicata. Id.; Hall, 91 Nev. at 316, 535 P.2d at 799. Therefore, Petitioner's claim in  
3 Ground One fails.

4 **B. Petitioner's Ground Two claim fails.**

5 Petitioner argues that the State did not provide sufficient evidence of Petitioner's guilt  
6 of first-degree murder prior to Petitioner's plea to second-degree murder which amounts to a  
7 violation of double jeopardy. Second Petition at 5. Again, Petitioner's failure to provide case  
8 authority supporting this claim makes it nothing but a bare and naked claim suitable only for  
9 summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225 (1984).

10 The Double Jeopardy Clause of the Fifth Amendment to the U.S. Constitution provides  
11 that no person shall "be subject for the same offense to be twice put in jeopardy of life or  
12 limb." Jackson v. State, 128 Nev. 598, 612, 291 P.3d 1274, 1283 (2012) (citing Benton v.  
13 Maryland, 395 U.S. 784, 794, 89 S.Ct. 2056, 2062 (1969)). The Double Jeopardy Clause  
14 protects against three abuses: (1) a second prosecution for the same offense after acquittal, (2)  
15 a second prosecution for the same offense after conviction, and (3) multiple punishments for  
16 the same offense. North Carolina v. Pearce, 395 U.S. 711, 717, 89 S.Ct. 2072, 2077 (1969).  
17 Here, Petitioner fails to allege or explain how he was sentenced twice for the same offense.  
18 While Petitioner was first charged with Murder, he subsequently pled guilty to and was  
19 convicted of second-degree murder. His first-degree murder charge did not remain. Therefore,  
20 any claim that Petitioner's double jeopardy rights were violated fails.

21 Further, the State did not have to prove that Petitioner was guilty of first-degree murder  
22 before Petitioner could plead guilty to second-degree murder and Petitioner plea relieved the  
23 State of their burden of proof. Von Moltke, 332 U.S. at 719, 68 S.Ct. at 321

24 **C. Petitioner's Ground Three claim fails.**

25 Petitioner claims that the district court erred in accepting his guilty plea to second-  
26 degree murder without first concluding that the State established Petitioner's guilt of first-  
27 degree murder. Second Petition at 5. Petitioner also accuses defense counsel of ineffectiveness  
28 for obtaining a plea negotiation instead of proceeding to trial. Id. Again, Petitioner's failure to

1 provide case authority supporting this claim makes it nothing but a bare and naked claim  
2 suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225 (1984).

3 Moreover, as explained *supra* III.A, Petitioner's guilty plea relieved the State of their  
4 burden of proof. Von Moltke, 332 U.S. at 719, 68 S.Ct. at 321. Instead, all that mattered when  
5 Petitioner pled guilty to second-degree murder was that there were sufficient facts to support  
6 the conviction. This occurred when Petitioner admitted that he was guilty of second-degree  
7 murder and explained the course of conduct that led to that conviction:

8 THE COURT: All right. Let's turn to the charging document. Tell me in  
9 your own words what you did, on or about January 14th, 2017, here in Clark  
10 County Nevada, that causes you to plead guilty to second degree murder  
with use of a deadly weapon.

11 DEFENDANT NEWSOME: Yeah, I had a gun and I shot Richard Nelson.

12 THE COURT: All right. And you shot into his body; is that correct?

13 DEFENDANT NEWSOME: Yes.

14 THE COURT: And you acknowledge that as a result of you shooting Mr.  
Nelson, he died as a result of those -- that gunshot injury; is that true?

15 DEFENDANT NEWSOME: Yes. THE COURT: All right. And you  
acknowledge that you did this willfully, unlawfully, feloniously, and with  
malice aforethought? DEFENDANT NEWSOME: Yes.

16 Recorder's Transcript of Proceedings: RE: Status Check Trial Readiness, at 6-7 (December  
17 14, 2017).

18 Finally, counsel's ability to secure a plea negotiation on behalf of Petitioner does not  
19 make counsel ineffective. While counsel may have secured a negotiation, it was Petitioner's  
20 decision to accept it and plead guilty in lieu of trial. Rhyne, 118 Nev. at 8, 38 P.3d at 163.  
21 Counsel cannot be deemed ineffective simply because Petitioner now regrets pleading guilty.  
22 Accordingly, Petitioner's Ground Three claim fails.

#### 23 **D. Petitioner's Ground Four claim fails.**

24 Petitioner complains that counsel's ability to secure a plea negotiation amounted to  
25 ineffective assistance of counsel and improper burden shifting which now requires Petitioner  
26 to be acquitted of all charges. Second Petition at 5. Petitioner is simply re-arguing the claims  
27 he made in Grounds One and Three. Therefore, the State incorporates its responses to those  
28 claims made *supra* III.A and III.C. Primarily, Petitioner continues to forget that his guilty plea

1 released the State from their burden of proof. Von Moltke, 332 U.S. at 719, 68 S.Ct. at 321.  
2 As such, Petitioner's Ground Four claim fails.

3 **E. Petitioner's Ground Five claim fails.**

4 Petitioner argues that counsel was ineffective for failing to challenge the indictment for  
5 failure to include the elements required to prove first-degree murder, and for waiving his right  
6 to a speedy trial which he believes is an affirmative defense. Second Petition at 6. Specifically,  
7 Petitioner claims that because the indictment charging him with murder did not include the  
8 element that first-degree murder is a specific intent crime, counsel should have moved to  
9 dismiss the indictment and his failure to do so makes him deficient. Id. As an initial matter, as  
10 neither of these claims pertain to his plea, Petitioner's plea waived his ability to raise this  
11 claim. Woods v. State, 114 Nev. 468, 477, 958 P.2d 91, 97 (1998); Reuben C. v. State, 99 Nev.  
12 845, 845-46, 673 P.2d 493, 493 (1983); Powell v. Sheriff, 85 Nev. 684, 687, 462 P.2d 756,  
13 758 (1969).

14 Next, counsel cannot be deemed ineffective for failing to challenge the indictment  
15 charging Petitioner with murder. On February 2, 2017, Petitioner was charged with:

16 Count 1 – Murder With Use of a Deadly Weapon  
17 did willfully, unlawfully, feloniously and with malice aforethought, kill  
18 RICHARD NELSON, a human being, with use of a deadly weapon, to wit:  
19 a firearm, by shooting into the body of said RICHARD NELSON, the said  
killing having been willful, deliberate and premeditated.

20 INDICTMENT, at 1 (filed February 2, 2017).

21 Petitioner was charged with Count 1 pursuant to NRS 200.010 and NRS 200.030. NRS  
22 200.010 defines murder as "the unlawful killing of a human being: 1. With malice  
23 aforethought, either express or implied" while NRS 200.030 defines the different degrees of  
24 murder. As such, Petitioner was not charged specifically with first-degree murder, and the  
25 State therefore did not have to include in the indictment that Petitioner acted with the specific  
26 intent of taking a life. As such, any challenge to the legality of Petitioner's indictment would  
27 have failed and counsel cannot be deemed deficient for failing to move to dismiss Petitioner's  
28 indictment. Therefore, Petitioner's Ground Five claim fails.

1           **F. Petitioner’s Ground Six claim fails.**

2           Petitioner claims that his GPA was breached through counsel’s ineffectiveness because  
3 counsel acted as a second prosecutor in obtaining a plea negotiation all in an attempt to curry  
4 favor with the district court. Second Petition at 6. This is simply a re-argument of Ground  
5 Three and the State hereby incorporates its response to Ground Three made *supra* III.C here.  
6 Notably, while counsel obtained a plea negotiation, it was Petitioner’s decision to accept it and  
7 plead guilty in lieu of trial. Rhyne, 118 Nev. at 8, 38 P.3d at 163. Petitioner has not asserted  
8 that he told counsel he did not want to entertain any offer of negotiations.

9           Petitioner already claimed in his First Petition that counsel was ineffective in the plea-  
10 bargaining process. The district court rejected that claim, and the Nevada Court of Appeals  
11 affirmed the court’s decision. Therefore, any claim now that counsel was ineffective the plea-  
12 bargaining process fails and is barred by res judicata and the law of the case. “The law of a  
13 first appeal is law of the case on all subsequent appeals in which the facts are substantially the  
14 same.” Hall, 91 Nev. at, 315, 535 P.2d at 798. “The doctrine of the law of the case cannot be  
15 avoided by a more detailed and precisely focused argument subsequently made after reflection  
16 upon the previous proceedings.” Id. at 316, 535 P.2d at 799. Accordingly, by simply  
17 continuing to file motions with the same arguments, his motion is barred by the doctrines of  
18 the law of the case and res judicata. Id.; Hall, 91 Nev. at 316, 535 P.2d at 799.

19           Regardless, the record is clear that Petitioner was aware of the consequences of his plea  
20 and that he discussed his plea thoroughly with counsel:

21           THE COURT: Okay. Before you signed the written plea of guilty, did you  
22 read it?

23           DEFENDANT NEWSOME: Yeah.

24           THE COURT: Okay. And did you understand everything contained in the  
25 written plea of guilty?

26           DEFENDANT NEWSOME: Yeah.

27           THE COURT: Okay. Did you also read the second amended superseding  
28 indictment charging you with the felony crime of second degree murder  
with use of a deadly weapon?

            DEFENDANT NEWSOME: Yes.

            THE COURT: It’s the exhibit here. And did you understand everything  
contained in that –

1 DEFENDANT NEWSOME: Yes.

2 THE COURT: -- what you'll be pleading to?

3 DEFENDANT NEWSOME: Yes.

4 THE COURT: Okay. And did you have a full and sufficient opportunity to  
5 discuss your plea of guilty as well as the charge to which you're pleading  
6 guilty with your lawyer, Ms. Zheng?

7 DEFENDANT NEWSOME: Yes.

8 THE COURT: Okay. And did Ms. Zheng answer all your questions and  
9 concerns to your satisfaction?

10 DEFENDANT NEWSOME: Yes.

11 THE COURT: Do you feel like your lawyer has spent enough time with  
12 you explaining everything to you?

13 DEFENDANT NEWSOME: Yes.

14 THE COURT: Okay. And do you feel like she spent enough time with you  
15 going over all of the discovery and the evidence and everything in this case?

16 DEFENDANT NEWSOME: Yes.

17 THE COURT: Okay. Before you proceed with your plea of guilty, do you  
18 have any questions you would like to ask me?

19 DEFENDANT NEWSOME: No.

20 THE COURT: Okay. Let's turn to the charging document. All right. And  
21 you understand that the range of punishment on the murder is life without  
22 the possibility of parole -- I'm sorry -- the possibility of -- a definite terms,  
23 in term of years, of 10 to 25 years with your possibility of parole, beginning  
24 after 10 years has been served.

25 DEFENDANT NEWSOME: Yes.

26 THE COURT: Or with the weapons enhancement of a minimum of 12 to  
27 30 months, but it can run all the way to 20 years with a minimum of 96  
28 months or 8 years.

DEFENDANT NEWSOME: Yes.

THE COURT: Consecutively. Do you understand all that?

DEFENDANT NEWSOME: Yes.

THE COURT: Okay. Let's -- any questions about that?

DEFENDANT NEWSOME: No.

THE COURT: Did I cover that correctly, Mr. Pesci? MR. PESCI: I think  
just so it's clear, it's either a 10 to life or a 10 to 25.

THE COURT: Right.

THE COURT: Do you understand that?

DEFENDANT NEWSOME: Yeah.

THE COURT: Either way, your minimum parole eligibility under either  
scenario is 11 years; correct, Mr. Pesci?

MR. PESCI: Yes, Your Honor.

THE COURT: And that's under either scenario.

DEFENDANT NEWSOME: Okay.

1 Recorder's Transcript of Proceedings: RE: Status Check Trial Readiness, at 4-6 (December  
2 14, 2017).

3 Accordingly, the record is clear that Petitioner understood what he was pleading guilty  
4 to and the possible sentence that would be imposed. Therefore, any claim that counsel was  
5 ineffective in the plea negotiation process fails.

6 **G. Petitioner's Ground Seven claim fails.**

7 Petitioner complains that post-conviction counsel was ineffective but then appears to  
8 reassert his claim that his plea-counsel was ineffective for failing to establish that the State  
9 could not prove that Petitioner had the specific intent to kill, which was necessary to sustain a  
10 first-degree murder conviction. Second Petition, at 6. Petitioner next complains that counsel  
11 was ineffective for failing to appeal his conviction and argue that his plea agreement was  
12 breached, and that Petitioner was entitled to an acquittal of his first-degree murder charge. Id.

13 First, Petitioner was not entitled to post-conviction counsel, and he did not have post-  
14 conviction counsel. Instead, it appears that Petitioner is attempting to accuse his cell mate who  
15 helped him write and file his First Petition of ineffectiveness. However, because Petitioner's  
16 cell mate is not an attorney, Petitioner cannot accuse him of violating any duty owed.  
17 Moreover, Petitioner did not have the right the effective assistance of counsel during post-  
18 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S.Ct. 3546, 2566  
19 (1991); McKague v. Whitley, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996).

20 To the extent Petitioner is again accusing his plea counsel of ineffectiveness, that claim  
21 also fails. As explained *supra* III.E, the State had no duty to prove that Petitioner had the  
22 specific intent to kill when Petitioner was charged with open murder pursuant to NRS 200.010  
23 and 200.030, or when Petitioner pled guilty to second-degree murder.

24 Further, Petitioner cannot establish that counsel was ineffective for failing to appeal his  
25 conviction. Petitioner has already raised his claim in his First Petition, and both the district  
26 court and Nevada Court of Appeals have rejected that claim. In rejecting this claim, the Nevada  
27 Court of Appeals specifically noted that there was no evidence that Petitioner asked counsel  
28 to appeal his conviction and that Petitioner waived his right to appeal his conviction by



1 pleading guilty. Order of Affirmance, No. 79044-COA, at 2 (filed July 12, 2020). Therefore,  
2 any claim now that counsel was ineffective the plea-bargaining process fails and is barred by  
3 res judicata and the law of the case. “The law of a first appeal is law of the case on all  
4 subsequent appeals in which the facts are substantially the same.” Hall, 91 Nev. at, 315, 535  
5 P.2d at 798. “The doctrine of the law of the case cannot be avoided by a more detailed and  
6 precisely focused argument subsequently made after reflection upon the previous  
7 proceedings.” Id. at 316, 535 P.2d at 799. Accordingly, by simply continuing to file motions  
8 with the same arguments, his motion is barred by the doctrines of the law of the case and res  
9 judicata. Id.; Hall, 91 Nev. at 316, 535 P.2d at 799. Finally, any belief that these claims entitle  
10 Petitioner to an acquittal fails. Even if, this Court or the Nevada Supreme Court concluded that  
11 Petitioner’s claim has merit and that his plea should be unwound, that does not preclude the  
12 State from refiling charges against Petitioner. Therefore, Petitioner’s Ground Seven claims  
13 fail.

#### 14 **H. Petitioner’s Ground Eight claim fails.**

15 Petitioner complains that he was denied his right to appeal his Judgment of Conviction  
16 and that counsel was ineffective again for obtaining a plea negotiation, for failing to argue that  
17 the State’s indictment lacked sufficient evidence of first-degree murder, for waiving  
18 Petitioner’s right to a speedy trial, and for failing to argue on appeal that the district court  
19 committed malpractice by adjudicating Petitioner guilty of second-degree murder and for  
20 denying his First Petition. Second Petition at 6. Again, this is nothing but a bare and naked  
21 claim suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225 (1984).  
22 Petitioner provides no case law or specific facts establishing that he had any claim that would  
23 entitle him to relief on appeal.

24 Regardless, Petitioner has already alleged that counsel was ineffective for failing to file  
25 an appeal in his First Petition. That claim was considered and rejected by this Court and the  
26 Nevada Court of Appeals affirms the court’s decision. Therefore, this claim is barred by both  
27 the law of the case and res judicata. “The law of a first appeal is law of the case on all  
28 subsequent appeals in which the facts are substantially the same.” Hall, 91 Nev. at, 315, 535

1 P.2d at 798. “The doctrine of the law of the case cannot be avoided by a more detailed and  
2 precisely focused argument subsequently made after reflection upon the previous  
3 proceedings.” Id. at 316, 535 P.2d at 799. Accordingly, by simply continuing to file motions  
4 with the same arguments, his motion is barred by the doctrines of the law of the case and res  
5 judicata. Id.; Hall, 91 Nev. at 316, 535 P.2d at 799.

6 Further, as explained *supra* III.A-G, Petitioner cannot establish that counsel was  
7 ineffective for failing to challenge the sufficiency of the Indictment because such a claim  
8 would have failed and Petitioner’s guilty plea waived his ability to raise any claim regarding  
9 what happened pre-plea. Therefore, Petitioner’s Ground Eight claim fails.

### 10 CONCLUSION

11 For the foregoing reasons, the State respectfully requests this Court deny Petitioner’s  
12 Petition for Writ of Habeas Corpus (Post-Conviction).

13 DATED this 23rd day of November, 2020.

14 Respectfully submitted,

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

17 BY /s/JONATHON VANBOSKERCK  
18 JONATHON VANBOSKERCK  
19 Chief Deputy District Attorney  
Nevada Bar #6528

### 20 CERTIFICATE OF MAILING

21 I hereby certify that service of the above and foregoing was made this 23rd day  
22 of November, 2020, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

23 RICHARD NEWSOME #1194269  
24 HIGH DESERT STATE PRISON  
25 P.O. BOX 650  
26 INDIAN SPRINGS, NV 89070-0650

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

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**December 17, 2020**

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A-19-788618-W      Richard Newsome, Jr., Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

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**December 17, 2020      1:45 PM      Petition for Writ of Habeas Corpus**

**HEARD BY:** Adair, Valerie

**COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** April Watkins

**RECORDER:** Robin Page

**PARTIES**

**PRESENT:** Rinetti, Dena I.

Attorney for Deft. appearing by  
Blue Jeans

**JOURNAL ENTRIES**

- COURT ORDERED, petition DENIED based on reasons set forth by the State. State to prepare detailed order.

NDC

CLERK'S NOTE: The above minute order has been distributed to: Richard Newsome #1194269, HDSP, P.O. Box 650, Indian Springs, NV 89070. aw