

# IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISOPHER ROBERT KELLER,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Electronically Filed  
May 09 2022 01:57 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No: A-19-800950-W

Docket No: 84643

# RECORD ON APPEAL VOLUME 1

**ATTORNEY FOR APPELLANT**  
CHRISTOPHER KELLER # 81840,  
PROPER PERSON  
1200 PRISON RD.  
LOVELOCK, NV 89419

**ATTORNEY FOR RESPONDENT**  
STEVEN B. WOLFSON,  
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LAS VEGAS, NV 89155-2212

A-19-800950-W Christopher Keller, Plaintiff(s) vs. State of Nevada, Defendant(s)

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PCR  
Christopher R. Keller #81840  
LOVELOCK CORRECTIONAL CENTER  
1200 PRISON RD.  
LOVELOCK, NV 89419  
PETITIONER IN PRO SE

**FILED**  
AUG 26 2019

*Shirley L. Williams*  
CLERK OF COURT

IN THE DISTRICT COURT  
CLARK COUNTY, NV  
• • • • •

Christopher R. Keller, }  
PETITIONER, }  
-VS- }  
STATE OF NEVADA, }  
RESPONDENT. }

CASE NO **A-19-800950-W**  
Dept. XIX

DEPT NO

DATE OF HEARING: \_\_\_\_\_  
TIME OF HEARING: \_\_\_\_\_

PETITION FOR WRIT OF HABEAS CORPUS  
(POST-CONVICTION RELIEF - NRS 34.735): FORM SUMMARY

### PETITION

1. Keller is presently IMPRISONED AT LOVELOCK CORRECTIONAL CENTER, PERSTLING COUNTY, NEVADA.
2. Eight JUDICIAL DISTRICT COURT IN AND FOR THE COUNTY OF CLARK ENTERED THE JUDGMENT UNDER ATTACK.
3. 08/10/17 IS THE DATE OF JUDGMENT OF CONVICTION
4. C-16-312717-1 IS THE CASE NUMBER.
5. LENGTH OF SENTENCE IS 20 TO LIFE.

RECEIVED  
AUG 26 2019  
CLERK OF THE COURT

6. KELLER IS NOT PRESENTLY SERVING A SENTENCE FOR A CONVICTION OTHER THEN THE CONVICTION UNDER ATTACK.
7. TRAFFICKING CONTROLLED SUBSTANCE & FELON IN POSSESSION OF A FIRE ARM ARE THE NATURE OF OFFENSES INVOLVED IN CONVICTION BEING CHALLENGED.
8. KELLER PLEAD NOT GUILTY.
9. N.A.
10. KELLER WAS FOUND GUILTY BY JURY.
11. DID NOT TESTIFY AT TRIAL.
12. KELLER'S APPOINTED COUNSEL DID APPEAL THE JUDGMENT OF CONVICTION.
13. KELLER DOES NOT KNOW WHAT COURT THE JUDGMENT WAS APPEALED IN OR ANY DETAILS OTHER THEN, THE NEVADA SUPREME COURT SHOWS "JUDGEMENT AFFIRMED". 10/15/18
14. EX-COURT APPOINTED COUNSEL FILED APPEAL AGAINST PETITIONERS EXPRESSED WISHES.
15. OTHER THAN THE DIRECT APPEAL, KELLER HAS NOT PREVIOUSLY FILED ANY PETITIONS, APPLICATIONS OR MOTIONS WITH RESPECT TO THIS JUDGEMENT IN ANY COURT, STATE OR FEDERAL.

16. N.A. ON (A) THROUGH (D)

(E) KELLER'S MAIN PLEADINGS TO COUNSEL WAS TO APPEAL THE SUPPRESSION HEARING HELD IN HIS CASE AND KELLER WAS COMPLETELY AGAINST GIVING UP THE RIGHT TO APPEAL THE SUPPRESSION HEARING, WHICH MADE CONSIDERING A PLEA BARGAIN OUT OF THE QUESTION. SO KELLER IS EXTREMELY SADDENED EX-COUNSEL FILED HIS APPEAL AND KELLER NEVER RECEIVED AN OPPORTUNITY TO APPEAL THE SUPPRESSION HEARING, WHICH WAS HIS MAIN FOCUS.

17. N.A.

18. THIS IS KELLER'S FIRST PRESENTATION OF HIS GROUNDS OTHER THAN TO EX-COUNSEL, BECAUSE THIS IS HIS FIRST OPPORTUNITY WITHOUT EX-COUNSEL'S STONE-WALKING.

19. N.A.

20. KELLER DOES NOT HAVE ANY PETITION OR APPEAL NOW PENDING IN ANY OTHER COURT, STATE OR FEDERAL, AS TO THE JUDGEMENT UNDER ATTACK.

21. KENNETH FRIZZELL IS THE ATTORNEY WHO REPRESENTED KELLER IN THE PROCEEDING RESULTING IN HIS CONVICTION AND ON DIRECT APPEAL.

22. KELLER DOES NOT HAVE ANY FUTURE SENTENCES TO SERVE AFTER HE COMPLETES THE SENTENCE<sup>3</sup> IMPOSED BY THE JUDGMENT UNDER ATTACK.

(B) GROUND NINE: CUMULATIVE ERROR

EVEN IF THE COURT BELIEVES AN INDIVIDUAL ERROR IS NOT ENOUGH TO REVERSE A CONVICTION, THE CUMULATIVE EFFECT OF ERROR MAY WARRANT REVERSAL. BIG POND VS. STATE, 101 NEV. 1, 3 (1985); DECHANT VS. STATE, 116 NEV. 918, 927-928 (2000); VALDEZ VS. STATE, 124 NEV. 1172, 1195-98 (2008) WHEN DECIDING CUMULATIVE ERROR, COURT EVALUATES: "(1) WHETHER THE ISSUE OF GUILT IS CLOSE, (2) THE QUANTITY AND CHARACTER OF THE ERRORS, (3) THE GRAVITY OF THE CRIME CHARGED," VALDEZ CITING HERNANDEZ VS STATE, 118 NEV. 513, 535 (2003). HERE THE MULTIPLE STRUCTURAL ERRORS 8 GROUNDS DEMAND REVERSE CONVICTION BASED ON KELLER'S FACTS (1) ILLEGAL SENTENCE. (2) NOT ALLOWED TO CROSS K-9 HANDLER (3) NO EXIGENCY (4) NO PROBABLE CAUSE EXISTED (5) EXTENDED STOP VIOLATION OF NRS 171.123 (6) DESTROYED OR LOST EVIDENCE (7) FALSE TESTIMONY (8) INEFFECTIVE ASSISTANCE OF COUNSEL ITS CLEAR THE AMOUNT OF CUMULATIVE ERROR IS EXTREME AND DENIED KELLER THE ABILITY TO OBTAIN A FAIR TRIAL.

ALL GROUNDS ARE BASED ON THE 5<sup>TH</sup>, 6<sup>TH</sup> OR 14<sup>TH</sup> AMENDMENTS OF THE U.S. CONSTITUTION.

(A) GROUND ONE: ILLEGAL SENTENCE

KELLER WAS SENTENCED TO A 10-LIFE FOR DRUG TRAFFICING WITH A CONSECUTIVE 10-LIFE FOR A HABITUAL CRIMINAL ENHANCEMENT, WHICH WAS CHARGED AS A SEPRATE COUNT OF THE INDICTMENT

(EXHIBIT #1) JAMES LISBY VS STATE OF NEVADA 88 NEV 183, 414 P.2d 592, 1966 NEV. LEXIS 212 NO 4987 THE COURT FOUND THE TRIAL COURT ERRED IN IMPOSING A 20-40 YEAR SENTENCE FOR SALES AND A 10-15 YEAR CONCURRENT HABITUAL CRIMINAL ENHANCEMENT, THE COURT HELD THAT THE PURPOSE OF THE HABITUAL CRIMINAL ACT WAS NOT TO CHARGE AND SEPERATE SUBSTANTIVE CRIME, BUT TO BE AN AVERMENT OF FACT THAT COULD AFFECT THE PUNISHMENT. CONSEQUENTLY THERE COULD ONLY BE ONE SENTENCE. THERE FOR THE CONSECUTIVE SENTENCE RESENDED AS IS UNIFORMLY HELD. STATE VS BARDMESS, 54 NEV. 84.7 P.2d 817 (1932) PEOPLE VS DUNLOP, 100 CAL, APP 2d 314, 227 P.2d 281 (1951) WILLIAMS VS SMITH, 25 WASH 2d 273, 171 P.2d 197 (1946)

UNDER THE CONSTITUTIONS 6<sup>TH</sup> AMENDMENT RIGHT TO A JURY TRIAL AND THE DUE PROCESS CLAUSE REQUIRES THAT ANY FACT THAT INCREASES STATE CRIME

BEYOND PRESCRIBED STATUTORY MAXIMUM SHOULD BE SUBMITTED TO A JURY AND PROVEN BEYOND A REASONABLE DOUBT, HABITUAL - APPEND VS NEW JERSEY 530 US 466, 120 5 CT 2348 147 LED 2d 435.

2000 US, LEXIS 4304 AS WAS NOT ALLOWED IN KELLER'S CASE, THIS WOULD OF ALSO GAVE KELLER THE CHANCE TO ARGUE, HIS FIRST TWO CONVICTIONS SHOULD OF FIT UNDER CRIME SPREE LAWS. BECAUSE THEY BOTH AROSE OUT OF THE SAME SITUATION, WHEN TWO OR MORE CONVICTIONS ARISE OUT OF A SINGLE ACT, TRANSGRESSION CONVICTIONS SHOULD BE COUNTED AS ONE CONVICTION, ROBIN VS NEVADA 95 NEV. 461, 596, P.2d 22d (1979) NEV. LEXIS 5.10 NO 10407, GRAY VS STATE 124 NEV 110 (2008)

THE STATE DID NOT HAVE JURISDICTION TO CHARGE KELLER AS A HABITUAL CRIMINAL PER NRS 173-095, AT NO POINT DID THE STATE FILE AN AMENDED INFORMATION CONTAINING A CHARGE OF HABITUAL CRIMINAL, CRUTCHER VS 8<sup>TH</sup> JUDICIAL DISTRICT 3 NEV, 1286 (1995) SHOWS THAT STATE MUST USE THE ORIGINAL INFORMATION USED AT THE TIME OF SENTENCING TO RESENTANCE.

THE NEVADA SUPREME COURT STATES THE DISTRICT COURT HAS THE RIGHT TO CORRECT AN ILLEGAL SENTENCE AT ANY TIME. PASSANISI VS STATE, 108 NEV. 318, 321, 831 P.2d, 1371, 1371 (1992) ALSO SEE NRS 176.535, NEVADA LAW CREATES AN INTEREST IN SENTENCING, PROTECTED BY THE DUE PROCESS CLAUSE OF THE 14<sup>TH</sup> AMENDMENT. WALKER VS DEEDS, 50 F.3d 670 9<sup>TH</sup> CIRCUIT (1995)

(B) GROUND TWO: NOT ALLOWED TO QUESTION K-9 ABOUT DOGS RELIABILITY. A DEFENDANT MUST BE AFFORDED THE OPPORTUNITY TO CHALLENGE THE EVIDENCE OF A DOGS RELIABILITY AND CROSS EXAMIN THE DOG HANDLER AND INTRODUCE HIS OWN FACTS AND EXPERT WITNESSES, FLORIDA VS HARRIS 568, 43 237, 133.5 CT 1050, 185 LED 2d 61, (2013) LEXIS 1121 LED DIGEST: EVIDENCE § 380 TRIAL § TRIAL 519, KELLER NEVER RECIEVED THAT OPPORTUNITY, THIS IS AN OBVIOUS MISTAKE THAT SHOULD ALLOW FOR OVERTURN OF SUPPRESSION.

IN KELLERS CASE THERE WAS NO TESTAMONY OF A DOG HANDLER, NO RECORD OF K9 HISTORY OR RELIABILITY AND OBVIOUSLY NO CHANCE TO CROSS EXAMINE. WHEN GOVERNMENT FAILS TO TURN OVER FULL COMPLIMENT OF DOG HISTORY, ERROR IS NOT HARMLESS! U.S. VS THOMAS 726 F. 3d 1086, 2013, U.S. APP LEXIS 16413 IN THE STATE OF OREGON VS HELZER 350 ORE, 153, 252 P 3d 288 (2011) ORE LEXIS 298 THE STATE AT LEAST ESTABLISHED THAT DOG AND OFFICER WERE CERTIFIED BUT EVEN THAT WAS NOT ENOUGH REQUIRED BY THE 4<sup>TH</sup> AMENDMENT TO BE SUFFICIENTLY RELIABLE TO PROVE PROBABLE CAUSE. (SEE TRIAL INDEX) NO OFFICER NEWTON, AT ANY HEARING

(C) GROUND THREE: NO EXIGENCY  
NEVADA LAW HOLDS THAT EVEN IF THERE WAS



ABUNDANT PROBABLE CAUSE, THE SEARCH IN KELLERS CASE VIOLATED HIS FOURTH AMENDMENT RIGHTS.

NEVADA LAW HOLDS THERE MUST ALSO BE A SEPERATE FINDING OF EXIGENCY, WHICH PRECLUDES THE POLICE OBTAINING A WARRANT PRIOR TO SEARCHING. IN KELLERS CASE THEY OBVIOUSLY HAD AMPLE TIME TO OBTAIN A WARRANT. BECAUSE HOURS AFTER SEARCHING THEY APPLIED FOR ONE, KELLER CONTENDS THAT AT THE VERY LEAST, ANYTHING FOUND PRIOR TO OBTAINING THE WARRANT SHOULD BE EXCLUDED, WHICH WOULD NOT GIVE THE MAGISTRATE ENOUGH TO ISSUE A SEARCH WARRANT.

BASED ON THE FACT THERE WASN'T ANY TESTIMONY OF A DOG HIT OR SNIFF OR ANY RECORD THAT ESTABLISHED THE RELIABILITY OF THE K9. IN KELLERS CASE PRIOR CASE LAW SHOWS THAT IT CANNOT BE ADDED INTO EVIDENCE AT A LATER DATE FOR A SUPPRESSION HEARING.

APPEAL AND ERROR § EVIDENCE. 681 UNCONSTITUTIONAL SEARCH A JUDGEMENT OF CONVICTION MUST BE REVERSED WHERE EVIDENCE OBTAINED IN THE COURSE OF AN UNCONSTITUTIONAL SEARCH WAS ADMITTED AT THE ACCUSED TRIAL. US VS BRADSHAW 490 F.2d 1097, U.S. APP LEXIS 10662, THE COURT HELD THAT BECAUSE TWO OF THE AGENTS COULD OF GUARDED THE TRUCK SMELLING OF MOONSHINE WHISKY WHILE ANOTHER OBTAINED A WARRANT WITHOUT A SIGNIFICANT LOSS OF EVIDENCE, THE SEARCH AND SEIZURE <sup>violated</sup> THE DEFENDANTS 4TH AMENDMENT RIGHTS OF THE U.S. CONSTITUTION AND THE FINDINGS SHOULD HAVE BEEN SUPPRESSED. AS IS TRUE IN THE KELLER CASE.

BARRIOS-LOMEL VS NV, 113 NEV 952, 944 P.2d 791 (1997) SHOW

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THAT ALTHOUGH PROBABLE CAUSE EXISTED TO SUPPORT A SEARCH WARRANT, NO EMERGENCY EXISTED TO JUSTIFY A WARRANTLESS SEARCH, BECAUSE KELLER'S CAR WAS BOXED IN BY THE POLICE CAR, WITH KELLER IN CUFFS IN THE BACK OF IT.

THE ONE HOUR STATUTORY PERIOD OF NEVADA REV STAT. § 171.123 (4) SHOULD OF PROVIDED POLICE OPPORTUNITY TO PROCURE A TELEPHONIC WARRANT PRIOR TO ANY SEARCH. (NOT AFTER)

FURTHERMORE THE SEARCH INCIDENT TO ARREST IS LIMITED AND DERIVES FROM THE NEED TO DISARM AND PREVENT THE DESTRUCTION OF EVIDENCE, WHICH COULD NOT HAVE BEEN POSSIBLE WITH KELLER'S CAR BOXED IN, KELLER WAS IMMEDIATELY PUT IN HANDCUFFS AND PLACED IN THE BACK SEAT OF A COP CAR. KELLER DID HAVE A LEGITIMATE EXPECTATION OF PRIVACY, BEING ON PRIVATE PROPERTY IN WHICH HE PAID AN H.O.A. FEE AND WAS PARKED DIRECTLY IN FRONT OF A TOWNHOUSE WHICH KELLER OWNED.

(D) GROUND FOUR: NO PROBABLE CAUSE EXISTED

NERVOUSNESS ALONE DOES NOT JUSTIFY PROBABLE CAUSE. US. VS SPINNER 475 F.3d 356, 374 US APP DC 347 (2007) US APP LEXIS 845. IN KELLER'S CASE PETITIONER CONTENDS HE DIDN'T FEEL HE WAS NERVOUS NOR KNEW HE HAD ANYTHING TO BE NERVOUS ABOUT. KELLER HAD BEEN PULLED OVER SEVERAL TIMES IN THE MONTH PRIOR TO HIS ARREST (BEFORE HE GOT THE TAILLIGHT REPLACED) FOR A

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BROKEN TAILLIGHT, AND ANOTHER TIME FOR AN UNSAFE LANE CHANGE TICKET. AND NEVER HAD ANY PROBLEMS WITH THOSE OFFICERS.

IN US VS WINNINGHAM, 104 F.3d 1328 (1998) US APP LEXIS 6753 (1998) COLO J. CAR 1623 DEFENDANTS CAR WAS STOPPED. AND IT WAS BELIEVED TO CONTAIN ILLEGAL ALIENS. IN KELLERS CASE, OFFICER CLAIMED TO BELIEVE IT CONTAINED MARIJUANA OR MARIJUANA PARAPHENALIA, IN WINNINGHAM AFTER A VISUAL SEARCH (WHICH REVEALED NOTHING) THEY PERFORMED A DOG SNIFF. THE COURT HELD THE SUPPRESSION OF EVIDENCE FOUND WAS PROPERLY SUPPRESSED, BECAUSE REASONABLE SUSPICION WAS EXHAUSTED FOLLOWING THE VISUAL SEARCH, (WHICH IN KELLERS CASE TOOK NEARLY AN HOUR OF SEARCHING PRIOR TO THE K-9 SNIFF) AND KELLER NEVER GAVE CONSENT TO ANY SEARCH OR DOG SNIFF.

IN NEVADA VS STEPHEN GREENWALD 109 NV 808, 808 P.2d 36 (1993) NEV. THERE ARE SIMILARITIES TO KELLERS CASE BECAUSE THE DEFENDANT WAS PULLED OVER BY AN OFFICER AND ADVISED HE WAS BEING ARRESTED FOR WRECKLESS DRIVING, THE OFFICER HANDCUFFED AND SEARCHED HIM BEFORE LOCKING HIM IN THE POLICE CAR SAME AS THE OFFICER DID WITH KELLER. (EXCEPT KELLER WAS SOMEHOW SUPPOSEDLY A FLIGHT RISK PARKED WITH HIS CAR BOXED IN BY THE OFFICER. . . . .)

PARAGRAPH CONTINUES

IN FRONT OF A HOME OWNED BY KELLER (WHICH WAS QUICKLY ESTABLISHED.) THEN THE OFFICER DID AN UNWARRENTED SEARCH OF KELLER'S CAR.

THE COURT IN GREENWALD ESTABLISHED THIS WAS A GUISE AND RUSE, THAT VIOLATED BOTH HIS US CONSTITUTIONAL 4<sup>TH</sup> AMENDMENT AND NEY CONST ART I § 18. KELLER CONTENDS THE SAME IN HIS CASE. KELLER JUST HAD THE BROKEN TAIL LIGHT REPLACED. (WHICH CAN BE SEE IN EVIDENCE PHOTO (EXHIBIT #2) <sup>EVIDENCE PHOTOS OR</sup> BY LOOKING AT THE GOOGLE MAP. AT THE PREUMINAR HEARING IT DOES'NT EVEN APPEAR, (THE TOTAL DISTANCE WAS AS LONG AS A FOOTBALL FIELD) BETWEEN WHERE THE OFFICER CLAIMED KELLER TURNED ONTO LAMB, GOT INTO THE TURNING LANE THEN TURNED INTO HIS HOUSING COMPLEX, THAT EXCLUDES TRAVELING 300 FEET IN A TURNING LANE

IT WOULD NOT BE POSSIBLE TO GO FROM STOPPED, TO TURN, THEN GO OVER 45 MPH SPEED LIMIT ON LAMB BEFORE HAVING TO SLOW TO TURN AGAIN (ALL IN THE SPAN OF ABOUT 225 FEET.) IN US VS SOWERS 690, F.3d 583 (2012). 45 APP LEXIS 13255.

SUPPRESSION WAS WARRENTED AND THE CASE OVERTURNED WHERE THE OFFICER ESTIMATED SPEED TO CLAIM PROBABLE CAUSE.

US VS. VASEY 834 F2d 782 (1987) US, SHOWS HOW THE UNWARRENTED SEARCH OF KELLER'S VEHICLE VIOLATES HIS 4<sup>TH</sup> AMENDMENT RIGHTS, AS IS TRUE

IN BOTH CASES, THE SEARCH OF THE VEHICLE INCIDENT TO ARREST WAS NOT LIMITED TO THE DEFENDANTS AREA OF IMMEDIATE CONTROL. (IN KELLERS CASE OFFICERS (EXHIBIT #6) TESTIFIED THEY HAD TO OPEN THE PASSANGER DOOR TO MAKE IT POSSIBLE TO REACH A PANEL ON THE VEHICLE WHICH THEY HAD TO REMOVE TO ACCESS PREPOTED BAG OF NARCOTICS)

THE EXTENDED LENGTH OF ARREST ALLOWING FOR A DOG SNIFF (55 MINUTES) AND THE SEARCH WARRANT BASED UPON EVIDENCE SIEZED SHOULD BE INVALID. CHIMEL VS CALIF 395 US 752, 23 LED 2d 685, 895 CT 2034 (EXHIBIT #3)

IT IS PROVEN THERE IS NO PROBABLE CAUSE IN KELLERS CASE, BECAUSE EVIDENCE PHOTOS DESTROYED AND BODY CAMERA FOOTAGE SHOWS THERE WAS NO "MARIJUANA CRUMBS OR RESIDUE" (NOTHING IN THE VEHICLE TO CREATE SMOKE.)

NEXT THERE WASNT ANY EXIGENT CIRCUMSTANCES WITH KELLER HANDCUFFED, HIS CAR BOXED IN BY THE POLICE CARS. THEN PUT IN THE BACK SEAT OF THE COP CAR. SO IN KELLERS CASE THERE WAS NO PLAIN VIEW EXCEPTION BECAUSE OF THE ABOVE MENTIONED CASE, ALSO THERE SHOULD HAVE BEEN NO SEARCH INCIDENT TO ARREST BECAUSE D.A. AND OFFICER CLAIMED KELLER WAS NOT UNDER ARREST FOR "SUPPOSED" TRAFFIC VIOLATIONS, BUT FOR DRUGS THAT WERE FOUND (3 HOURS AND 51 MINUTES) AFTER THE ARREST, WHICH SHOWS KELLER WAS ILLEGALLY DETAINED, WHICH IS AN UNREASONABLE SEIZURE AND IS A VIOLATION OF KELLERS 4TH, 5TH & 14TH CONSTITUTIONAL RIGHTS. ALSO DENIED DUE PROCESS BECAUSE THERE

~~ALSO~~ WASN'T ANY AUTOMOBILE EXCEPTION APPLICABLE. IN NEV VS JACOB HARNISCH 113 NEV. 214, 931 p.2d. 1359, (1997) NEV. THERE ARE TWO ARGUMENTS THAT CAN BE MADE FOR KELLER FROM THE ONE CASE (EITHER WHICH WOULD BE VIOLATIONS UNDER CURTILAGE PROTECTION HIS 4TH AMENDMENT RIGHT, BECAUSE EITHER THE VEHICLE IN KELLER'S CASE WAS UNDER THE CURTILAGE OF THE HOUSE AND THERE SHOULD HAVE BEEN A WARRANT PRIOR TO THE SEARCH INSTEAD OF AFTER THE SEARCH WHICH HAPPENED IN KELLER'S CASE. <sup>OR</sup> THE CAR WASN'T UNDER THE CURTILAGE OF THE HOUSE AND THE PIGGY BACK WARRANT, SHOULD NOT HAVE BEEN EXTENDED TO THE HOUSE.

IN KELLER'S CASE THE EVIDENCE CLEARLY SHOWS <sup>EXHIBIT 1 OR 11</sup> (PHOTOS) THE CAR DIRECTLY 15 FEET FROM THE FRONT DOOR OF THE TOWN HOUSE OWNED BY KELLER ON PRIVATE PROPERTY OF A COMPLEX WHERE HE PAYS A HOME OWNERS ASSOCIATION. (EXHIBIT #2) EVIDENCE PHOTOS CLEARLY SHOW THE CAR PARKED WITH THE KEYS ALREADY IN THE TRUNK OF THE CAR BY THE TIME COPS CONFRONTED KELLER.

THE D.A. IN KELLER'S CASE ALSO ARGUED THAT KELLER WAS TRYING TO GET INTO THE HOUSE, AS AN ARGUMENT FOR WHY THE PIGGY BACK WARRANT SHOULD BE ALLOWED. (EXHIBIT #4)

IN KELLERS CASE IT WAS PROVEN THERE WAS NO MARIJUANA SMOKE OR MARIJUANA, BY THE FACT THAT NONE WAS FOUND IN THE CAR, (NOR WAS ANY PARAPHENALIA OR ANY THING ELSE TO CREATE THE SMELL) WAS IN ANY OF THE EVIDENCE PHOTOS OR INVENTORY, (WHICH SHOWS THERE WAS NOTHING) (EXHIBIT #3)

THE 2ND OFFICER ON THE SCENE (HENRY #14753) (EXHIBIT #5), TESTIFIED THAT HE DIDN'T SEE ANY AND HE WAS ON THE SCENE A COUPLE MINUTES AFTER LOPEZ'S FIRST CONTACT WITH KELLER.

THERE IS NO WAY THAT IF MARIJUANA WAS SMOKED IN KELLER'S CAR PRIOR TO THE LAST TRAVEL THAT THE SMELL WOULD HAVE LINGERED LONG ENOUGH FOR THE FIRST OFFICER TO HAVE SMELLED IT STRONGLY AND COULD MAGICALLY DISAPPEAR IN THE NEXT 2 MINUTES WHEN THE SECOND OFFICER ARRIVED. (KELLER CONTENDS NO-ONE HAS EVER SMOKED MARIJUANA IN HIS CAR)

FACT IS ITS AN OBVIOUS LIE ON OFFICER LOPEZ'S PART. MARK ROBERT HOWE VS NEVADA 112 NEV 458, 916 P2d 153 (1996) SUCCESSFULLY ARGUES UNDER VIOLATION OF THE 4TH AMENDMENT, AS DOES KELLER, BECAUSE APPELLATE COURT HELD THE ODOR OF MARIJUANA IS INSUFFICIENT CIRCUMSTANCES TO AUTHORIZE A SEARCH WITHOUT A WARRANT AND THAT EVIDENCE SEIZED SHOULD BE SUPPRESSED.

OBVIOUSLY IN KELLER'S CASE WITH HIS CAR BOXED IN, AND HIM CUFFED IN THE BACK OF THE POLICE CAR. THERE IS NO CHANGE OF EXIGENCY, LIKE EVIDENCE BEING DESTROYED, SO AT THE VERY LEAST ANYTHING SUSPECT OR OF ANY EVIDENCE VALUE SUPPOSEDLY FOUND ON KELLER OR IN THE VEHICLE BEFORE THE

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WARRANT, SHOULD BE SUPPRESSED UNDER THE 4<sup>TH</sup> AMENDMENT  
ILLEGAL SEARCH AND SEIZURE CLAUSE.

KELLER NEVER GAVE OFFICERS PERMISSION TO GO  
THROUGH HIS WALLET EITHER. KELLER ONLY REQUESTED TO  
SPEAK TO HIS LAWYER, ONCE HE FELT HE WAS BEING  
HARRASSED BECAUSE OF THE IMMEDIATE PAT DOWN,  
NON ROUTINE QUESTIONING, HANDCUFFING AND THE RUMMAGING  
THROUGH KELLERS POCKETS AND WALLET. WITH THE SUPPRESSION  
OF ANYTHING USED TO GET THE WARRENT, (BECAUSE IT WAS  
OBTAINED WITH LIES) IT SHOULD BE INVALIDATED AND  
EVIDENCE SUPPOSEDLY FOUND AS A RESULT SHOULD BE  
SUPPRESSED.

EXHIBIT #13)

KELLER CONTENDS THAT THE OFFICERS CLAIM OF  
BURNT MARIJUANA DID NOT GIVE PROBABLE CAUSE TO  
SEARCH TO THE POINT OF BREAKING OFF HIS GLOVEBOX. IN US  
VS NEILSEN 9, F.3d 1487 (1993) US APP LEXIS 3033 AND US  
VS WALO 208 F.3d 902. NO PROBABLE CAUSE EXISTED EVEN TO  
SEARCH THE TRUNK, WHERE POLICE SMELLED BURNT NARC-  
-OTICS. NARCOTICS WERE CLAIMED TO BE FOUND RIGHT  
ABOUT 55-58 MINUTES BUT WASNT EXECUTED UNTIL 6:10  
(EXHIBIT #8) (ALMOST 3 hours)

KELLER ALSO SHOWS OFFICERS DID NOT HAVE A  
REASONABLE SUSPICION TO PERFORM A PAT DOWN  
BECAUSE OFFICERS CLAIM KELLER WORE BAGGIE CLOTHING.  
(THIS IS ANOTHER ONE OF OFFICER LOPEZ'S LONG LIST OF LIES)  
THE LARGE SHIRT AND 36x30 PANTS WERE ACTUALLY TIGHT  
FITTING AS THE ARREST PHOTO SHOWS AND THE OFFICER



WOULD NOT HAVE GONE IN KELLER'S POCKET AND FOUND MONEY HE USED AS PARTIAL FOUNDATION FOR THE ISSUANCE OF THE EVENTUAL SEARCH WARRANT. IF HE HAD NOT DONE THE PAT DOWN ON KELLER, WHICH KELLER NEVER GAVE THE OFFICER PERMISSION TO GO INTO HIS POCKET TO RETRIEVE HIS I.D., KELLER JUST STATED OBJECT FELT WAS HIS WALLET (AND YES HIS I.D. WAS IN IT) US VS GLENN 152 F.3d 1047 (1998) US APP LEXIS 20858 EVEN ~~IF~~ THERE WAS PROBABLE CAUSE FOR THE ARREST, KELLER'S 4TH AMENDMENT RIGHTS WERE VIOLATED BECAUSE THE OFFICER FAILED TO OBTAIN A WARRANT PRIOR TO THE SEARCH. US VS WATSON 423 US 411 416 1 ED 2d 598, 965 SCT 830

- (E) GROUND FIVE: EXTENDED STOP VIOLATION OF NRS 171.123<sup>(4)</sup>  
 IS THIS THE SCENARIO ACCEPTABLE, WHERE THE WHOLE HOUR MAX ALLOWED DETAINMENT TIME IS USED WITHOUT AN ARREST? KELLER ASSERTS THERE WAS NO PROBABLE CAUSE TO JUSTIFY ABANDONING OFFICERS CLAIMED "TRAFFIC STOP AND CREATE A NEW SEIZURE, BECAUSE THERE WAS NO SMELL OF MARIJUANA OR "MARIJUANA RESIDUE". EVIDENCE PHOTOS SHOW THERE IS NO (OFFICER CLAIMED "ERASER SIZE") MARIJUANA CRUMBS AND EVIDENCE LOG OF KELLER'S PERSON SHOWS THERE IS NOTHING TO CREATE A MARIJUANA SMELL OR SMOKE IN THE VEHICLE.....

PARAGRAPH CONTINU

KELLER WAS DETAINED AT 0225 AND HIS VEHICLE WAS SEARCHED UNTIL A WARRANT WAS APPLIED FOR AT 0556, THREE HOURS AND 31 MINUTES LATER. (MIND YOU KELLER HAD ASKED TO SPEAK TO A LAWYER MOMENTS INTO THE ENCOUNTER)

IN US VS STEPHEN DIGIOVANNI 650 F.3d 498 (2011) US APP LEXIS 15286 THE CASE SHOWS HOW IN KELLERS CASE THERE IS A 4<sup>TH</sup> AMENDMENT VIOLATION! THE OFFICER FAILED TO DILIGENTLY PERSUE THE PURPOSE OF THE TRAFFIC STOP AND EMBARKED ON A SUSTAINED COURSE OF INVESTIGATION INTO THE PRESENCE OF DRUGS IN THE CAR. WHICH CONSTITUTED THE BULK OF THE ENCOUNTER BETWEEN THE OFFICER<sup>§</sup> THE DEFENDANT AND THE DELAY WAS DEFFINATLY NOT DE MINIMUS.

IN KELLER'S CASE THE OFFICER NEVER ATTEMPTED THE PROSECUTION OF THE CLAIMED EXHIBIT #9 "TRAFFIC STOP". IN O'DOUGLE VS WYOMING 200 WY 83;117 P.3d 401, (2005) WYO LEXIS 97. THE - DEFENDANT WAS DETAINED AND SUBJECT TO PERSISTANT QUESTIONING, <sup>THAT UNPERSONABLY EXTENDED THE</sup> AWAITING K-9 <sup>§ op</sup> SNIFF, WITHOUT EVER ATTEMPTING TO ISSUE A TICKET AS IS IN KELLERS CASE. US VS BLAIR 524 F.3d, 740 (2008) OFFICER DID NOT HAVE REASONABLE SUSPICION, LIKE IN KELLERS CASE, (BECAUSE THERE WAS NO MARIJUANA SMELL

LIKE IN NEVADA VS BECKMAN 129 NEV 481, 305 P. 3d 912 (2013) NEV LEXIS 60 AS WELL AS LEWIS VS SPEARS 636 FED APP 893 (2011) US APP LEXIS 1032 DAVIS VS COMMONWEALTH (2016 KC) 484 SW 3d 288.

KELLER WAS CUFFED RIGHT AWAY BUT OFFICER SAID HE WAS NOT UNDER ARREST FOR TRAFFIC VIOLATIONS BUT FOR THE NARCOTICS WHICH THEY DIDN'T FIND UNTIL 3 HOURS AND 51 MINUTES LATER. THIS IS DEFINITELY NOT A DE MINIMUS DELAY AND IS AN ILLEGAL SEIZURE VIOLATION OF NRS 171.123.(4)

IN US VS DORTCH 199 F.3d 193, 199 US APP LEXIS 35820 AND ARIZONA VS JOHNSON 555 US 323, 330 129 S CT 781, 172 FED 2d 694 STOPS TOLERABLE DURATION BY SEIZURES "MISSION" THAT IS TO ADDRESS THE TRAFFIC VIOLATION THAT WARRANTED THE STOP.

IN KELLER'S CASE NO TRAFFIC VIOLATIONS WERE ISSUED, WHICH SHOULD INVALIDATE THE WHOLE ENCOUNTER. (AUTHORITY FOR THE SEIZURE ENDS WHEN TASKS TIED TO THE TRAFFIC INFRACTIONS ARE OR REASONABLY SHOULD HAVE BEEN COMPLETED.)

THE 4TH AMENDMENT MAY TOLERATE CERTAIN UNRELATED INVESTIGATIONS "THAT DO NOT" LENGTHEN THE DETENTION. CABELLES 543 US AT 406, 408, 125 2 CT. 834 160 LED. 842 A TRAFFIC STOP BECOMES UNLAWFUL IF IT IS PROLONGED BEYOND THE TIME REASONABLY REQUIRED TO COMPLETE THE MISSION OF ISSUING A TICKET. AT 407, 125 5 CT 834, 160 LED 2d 842

THE SCOPE OF ACTIVITIES DURING AN INVESTIGATORY DETENTION MUST REASONABLY BE RELATED TO THE CIRCUMSTANCES THAT INITIALLY JUSTIFIED THE STOP AND BE BRIEF.

(F) GROUND SIX: DESTROYED OR LOST EVIDENCE.

CAL CONST. ART. I § 2.89 "TRUTH IN EVIDENCE"

PROVISION AMENDMENT 4<sup>TH</sup> 61.2. RELEVANT EVIDENCE SHALL NOT BE EXCLUDED IN ANY CRIMINAL PROCEDURE. EVIDENCE ERROR SUCH AS THE LOST BODY CAMERA FOOTAGE, IN KELLER'S CASE, CREATES A FEDERAL CONSTITUTIONAL CLAIM, IN EITHER THE 6<sup>TH</sup> AMNDMT COMPULSORY/PROCESS + CONFRONTATION CLAUSES OR THE 14<sup>TH</sup> AMENDMENT DUE PROCESS CLAUSE. (DUE PROCESS VIOLATION EXCLUDING EVIDENCE)

SEE  
EXHIBIT #17)

KELLER MAINTAINS HE COULD NOT RECEIVE A FAIR TRIAL WITHOUT THE BODY CAMERA FOOTAGE THAT SHOWS THERE WAS NO MARIJUANA, THE FEMALE COMING AND ASKING FOR HER PURSE OUT OF THE CAR (EXHIBIT #10) (IMPLICATES HER NOT KELLER) AND ULTIMATLY PROVES A COMPLETE DIFFERENT SENARIO, THEN OFFICER LOPEZ TESTIFIED TOO. FRANKLIN vs HENRY (9<sup>TH</sup> CIR 1997) 122 F.3d 1270, 1273 IF BODY CAMERA FOOTAGE IS AVAILABLE IT WOULD SHOW SUPPRESSION IS WARRENTED AND THE FACT THAT A FEMALE ASKED FOR HER PURSE OUT OF THE CAR, AND THE ONLY PURSE WAS THE ONE

WITH ALL THE NARCOTICS FOUND IN IT, PROVES REASONABLE DOUBT. IT WAS NOT KELLERS, ONCE SHE ASKED TO GET HER PURSE OUT OF THE CAR, AND THE OFFICER SAID HE WOULD GET IT FOR HER, SHE WAS THEN UNWILLING TO TELL THE OFFICER WHAT COLOR HER PURSE WAS, BUT IT WAS THE ONLY PURSE IN THE VEHICLE (A SMALL CLUTCH TYPE) PURSE THAT CONTAINED ALL OF THE NARCOTICS.

THE FACT THAT KELLERS ATTORNEY FAILED TO EMPHASIZE THE ISSUE OF SOMEONE ELSE CLAIMING THE PURSE CLEARLY SHOWS COUNCELS INEFFECTIVENESS, THE BODY CAMERA FOOTAGE WOULD NOT ONLY DISCLOSE ALL OFFICER LOPEZ'S LIES, IT WOULD HAVE CLEARLY ~~OF~~ EXPOSED ALL THE OTHER PROCEDURE VIOLATIONS.

PERSUANT TO BRADY A STATE MUST PROVIDE ALL EVIDENCE FAVORABLE TO THE DEFENSE WHEN THE EVIDENCE IS MATERIAL OR IT PROVIDES GROUNDS FOR THE DEFENSE TO IMPEACH OR DISCREDIT THE CREDIBILITY OF A STATE WITNESS, OR BOLSTER THE DEFENSES CASE.

IN KELLER'S CASE THE BODY CAMERA FOOTAGE IS ALL OF THE ABOVE, EITHER INTENTIONALLY OR NOT (WHICH IS UNLIKELY WITH KELLERS REPEATED REQUEST FROM DAY ONE AT MY HEARINGS PRIOR TO 45 DAYS AND AFTER) THE BODY CAMERA FOOTAGE OF OFFICER HENRY P#<sup>71153</sup> (EXHIBIT #11<sup>15</sup>) IT SHOWS BAD FAITH AND THAT VIDEO EVIDENCE IS MATERIAL.

(G) GROUND SEVEN: FALSE TESTIMONY

IN KELLERS CASE THE OFFICER DECLARED ONE STORY

SEE ARREST REPORT  
(EXHIBIT #12) THAT WITH THE D.A.'S HELP EVOLVED THROUGH THE SUPPRESSION, HEARING AND ULTIMATLY TO ITS FIRMEST STATE WITH ESTABLISH LAWS AT THE TRIAL. IF YOU LOOK FROM THE POLICE REPORT TO THE TRIAL TESTIMONY, YOU CAN OBVIOUSLY SEE THE (NOT SO SUBTLE) CHANGES TO BEST FIT CASE LAW TO ALLOW FOR THE OFFICERS ILLEGAL SEARCH AND SEIZURE. THE CHANGES ARE SO OBVIOUS IN THE PROSECUTIONS FAVOR, THAT THERE IS NO WAY THE PERJURY WOULD NOT BE NOTICED BY THE D.A.. IT CHANGES TO DIRECTLY MEET THE STATES CRITERIA, IT LEADS ANY PERSON WITH NORMAL REASONING TO BELIEVE WITHOUT A DOUBT, THE OFFICERS TESTIMONY HAD BEEN COACHED BY THE PROSECUTING D.A TO ENSURE HIS EVIDENCE WOULD NOT BE SUPPRESSED, AND THE CASE BEING DISMISSED.

THE OBVIOUSNESS OF OFFICER LOPEZ'S LIES AND KELLER'S ATTORNEYS FAILURE TO OBJECT OR PUSH FOR IMPEACHMENT SHOWS BLATANT INEFFECTIVE COUNSEL IN BROWN VS WAINWRIGHT, DUGGER AND SMITH OF FLORIDA 785 F.2d 1457 (1989) US APP LEXIS 23103. THE COURT REVERSED THE DENIAL OF THE DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS AND DIRECTED THE WRIT BE GRANTED BECAUSE THE STATE KNOWINGLY ALLOWED MATERIAL FALSE TESTIMONY AND EXPLOITED FALSE TESTIMONY THAT WAS THE KEYSTONE OF THE STATES CASE, JUST LIKE IN KELLER'S CASE, NOT ONLY WAS THE OFFICERS TESTIMONY CHANGED TO PREVENT

SUPPRESSION OF FRUITS OF THE SEARCH, BUT ALSO THE D.A. TESTIFIED THAT INCONCLUSIVE DNA RESULTS ON A GUN FOUND WITH THE NARCOTICS HAD DNA FROM A MAN, AND IT HAD TO BE KELLERS BECAUSE HE WAS THE ONLY MAN THERE (LIKE IT WAS OBVIOUS?) DRAKE VS LA PORTONDO 533 F.3D 230 (2009) US APPEXIS 1156 BECAUSE THE STATE KNOWINGLY USED FALSE TESTIMONY THE COURT GRANTED PETITIONERS WRIT OF HABEUS CORPUS AND ORDERED THE INMATE RELEASED UNLESS THE STATE PROVIDED HIM A NEW TRIAL WITHIN 90 DAYS.

KELLER TOLD HIS COUNSEL AND CONFRONTED THE D.A ABOUT THE OFFICERS STORY CHANGES. DUE PROCESS IS VIOLATED IF THERE IS LIKLEYHOOD FALSE TESTIMONY COULD HAVE AFFECTED THE JUDGEMENT OF THE JURY, SUCH PURJERY WHEATHER ENCOURAGED BY THE PROSECUTOR OR OCCURING WITHOUT HIS KNOWLEDGE, DUE PROCESS IS IN- EVITABLEY DENIED THE ACCUSED. RILEY VS STATE 93 NEV. 461, 567 P.2D 478 (1977) NEV. LEXIS 593

#### (H) GROUND EIGHT: INAFFCTIVE ASSISTANCE OF COUNSEL.

ALL KELLERS PREVIOUS GROUNDS SHOWS COUNSEL FRIZELL'S INAFFECTIVNESS FOR NOT RAISING THE ISSUES WHICH KELLER HAD RELAYED TO HIM PRIOR TO THE SUPRESSION HEARING, THEN HE WAS EXTREMELY INAFFECTIVE FOR NOT APPEALING IT WHEN THAT WAS ALL THAT KELLER HAD ASKED HIM TO DO, HIS HANDLING OF THE SUPRESSION HEARING USING LOOSING CASE LAWS. AND TELLING KELLER "IF HE TESTIFIED AT THE SUPRESSION HEARING HIS PRIOR FELONIES WOULD BE USED AGAINST

HIM AT TRIAL" THIS CAUSED AN ISSUE BETWEEN KELLER AND FRIZELL ON TOP OF THE FACT FRIZELL WOULDN'T USE ANOTHER INVESTIGATOR. THE INVESTIGATOR TOLD KELLER HE KNEW HIS MOTHER AND STEPFATHER AND TOLD KELLER HIS MOTHER WAS "A REAL PIECE OF WORK" STARTING A BIG CONFLICT OF INTEREST AFTER FINDING OUT THE INVESTIGATOR USE TO WORK WITH KELLER'S PARENTS AND THERE WAS OBVIOUSLY SOME ISSUES ON THE INVESTIGATOR'S PART.

KELLER ALSO HAS A LONG LIST OF UNACCEPTABLE PRACTICES ON HIS COUNSEL'S PART. FRIZELL NEVER VISITED (EXHIBIT #14) EXCEPT FOR AFTER KELLER PAID FOR A DIFFERENT LAWYER, (AND THEN ONLY TO COMPLAIN ABOUT IT) HE NEVER SUBPOENAED ANY OF KELLER'S WITNESSES, NEVER ASKED FOR THE TESTIMONY OF THE DOG HANDLER OR K-9 RECORDS, NO QUESTIONING AS OF HOW IF IT SMELLED OF MARIJUANA WOULD THE K-9 BE ABLE TO SMELL OTHER NARCOTICS NOT DETECTIBLE BY THE HUMAN NOSE OVER "SUPPOSED" STRONG SMELL OF MARIJUANA THE FIRST OFFICER CLAIMED (SMELL OF MARIJUANA DOES NOT QUICKLY DISAPPEAR) FACT IS KELLER HAD NO SMOKING PARAPHENALIA IN THE CAR AND IF THE CAR WOULD OF SMELLED FROM SOMETIME PRIOR, IT WOULD STILL HAVE SMELLED TWO MINUTES LATER WHEN THE NEXT OFFICER ARRIVED, AND HE TESTIFIED HE NEVER SEEN OR SMELLED ANYTHING (EXHIBIT #5) FRIZELL NEVER REVEALED KELLER'S MENTAL HEALTH HISTORY OR THE FACT KELLER WAS ON AND OFF DIFFERENT MEDICATIONS DURING THE PRE-TRIAL PROCESS.



KELLER HAD HIRED A PRIVATE ATTORNEY UNDER THE IMPRESSION THE CONSTITUTION GAVE HIM THE RIGHT TO AN ATTORNEY OF HIS OWN CHOOSING FOR HIS TRIAL. BUT HIS FAMILY DIDN'T HAVE THE FUNDS TO PAY FOR ONE UNTIL APPROXIMATELY A MONTH BEFORE THE TRIAL DATE. BUT THE PROSECUTION CLAIMED IT WAS A STALL TACTIC, AND THE JUDGE DENIED ME THE ASSISTANCE OF ATTORNEY AMY FELICIANO. (EXHIBIT #15) BECAUSE SHE HAD JUST GOT MY FILE THAT DAY FROM FRIZELL, AND THE JUDGE SAID HE WOULD NOT ORDER A CONTINUANCE TO HER ~~AND~~ AND NOBODY COULD ACCEPT MY CASE AND BE READY FOR A TRIAL IN 2 DAYS, THIS WAS A FRIDAY AND THE TRIAL COMMENCED ON MONDAY.

KELLER IS ENTITLED TO AN EVIDENTIARY HEARING TO SHOW INEFFECTIVE COUNSEL. AT TRIAL COUNSEL DIDN'T OBJECT TO THE FACT KELLER'S PREVIOUS FELONIES WERE NOT TOLD TO THE JURY AND THAT THEY WERE GOING TO BE USED TO ADJUDICATE KELLER AS A HABITUAL AT SENTENCING, NOR WAS KELLER ALLOWED A HEARING TO ARGUE MITIGATING FACTORS, EVIDENCE OR WITNESS STATEMENTS IN DETERMINING WHETHER OR NOT TO DISMISS KELLER'S CASE.

IT WAS PAINFULLY OBVIOUS THAT FRIZELL DID NOT HAVE KELLER'S BEST INTEREST AT HEART AND DID THE BARE MINIMUM ON KELLER'S BEHALF, FRIZELL LIED TO KELLER BY TELLING HIM THAT IF HE TOOK A PLEA BARGAIN HE WOULD BE GIVING UP HIS RIGHT TO APPEAL HIS SUPPRESSION HEARING,

EXHIBIT #16)

COUNSEL FAILED TO SUBPOENA OR EVEN RETURN CALLS OF WITNESSES, HE EVEN TOLD ONE WITNESS THAT WAS AT THE TRIAL TO GO OUTSIDE AND NEVER TOLD HER SHE WOULD HAVE TO SIT OUTSIDE THE COURTROOM FOR SEVERAL HOURS AND SHE HAD TO LEAVE TO GO TO WORK BEFORE SHE EVER GOT THE CHANCE TO TESTIFY. FRIZELL ALSO FAILED TO CALL FAMILY AND WITNESSES TO SPEAK ON KELLERS BEHALF AT THE PENALTY PHASE, THEIR TESTIMONIES WOULD HAVE SHOWN THAT KELLER HAD STRONG FAMILY AND COMMUNITY SUPPORT IT WOULD HAVE PROVED THAT KELLER IS NOT THE MENACE THE STATE WANTED THE COURT TO BELIEVE, BUT DEEPLY LOVED BY HIS FAMILY, COMMUNITY AND FRIENDS, DISPELLING THE PROSECUTORS LIES AND HAD THE CHANCE TO CHANGE THE OUTCOME OF KELLERS SENTENCE. NEV VS KIRTRICH POWELL 102 NEV 751, 138 P.3d 453 (2006) NEV LEXIS 74, NEV, ADV, REP. 65 NO. 45263. REASONABLE PROBABILITY THAT THE JURY WOULD HAVE REACHED A DIFFERENT RESULT HAD THE WITNESSES TESTIFIED IS INAFFECTIVE COUNSEL, WHEN FRIZELL FAILED TO ADEQUATELY INVESTIGATE AND SUBPOENA TESTIMONY FROM WITNESSES THAT WOULD HAVE SUPPORTED KELLERS INNOCENCE IS A 6<sup>TH</sup> AMENDMENT VIOLATION. WHEN INAFFECTIVE COUNSEL FAILED TO MAKE PRETRIAL INVESTIGATION.

KELLERS WITNESSES WOULD OF TESTIFIED THAT ANOTHER FEMALE RESIDED IN THE TOWN HOUSE OWNED BY KELLER AND THAT PRIOR TO HIS LAST TRAVEL SHE HAD

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JUST SWITCHED VEHICLES WITH HIM. ANOTHER WITNESS WOULD OF TESTIFIED KELLER WAS LIVING WITH HER AT THE TIME OF THE ARREST, THIS SHOWS HOW INAFFECTIVE COUNSEL WAS FOR NOT EMPHASIZING THAT A FEMALE CAME UP TO THE OFFICERS AND ASKING FOR THE PURSE THE NARCOTICS WERE FOUND IN ALSO COUNSEL COULD HAVE QUESTIONED THE OFFICER USING A BOOKING PHOTO OF THE FEMALE TO ESTABLISH THAT THIS WAS THE WOMAN THAT ASKED TO GET HER PURSE OUT OF THE CAR. NOTE SHE WAS CHARGED WITH TRAFFICING METHAMPHETAMINE AND HEROIN LESS THAN A WEEK AFTER KELLER'S ARREST WHICH SHOWS THE STRONG PROBABILITY THE DRUGS IN THE PURSE IN KELLER'S CAR WAS NOT KELLER'S, HE HAD THREE WITNESSES WILLING TO ATTEST TO THE FACT.

COUNSEL ALSO FAILED TO CROSS ABOUT THE PASSENGER DOOR BEING CLOSED WHEN OFFICERS FIRST ENCOUNTERED KELLER, THE OFFICERS OPENED IT DURING THE SEARCH AND LEFT IT OPEN TO ALLOW THE K-9 ACCESS TO THE INTERIOR OF THE VEHICLE, WHICH ALERTED THE OFFICERS TO CHECK THE GLOVE BOX "SUPPOSEDLY"


PER CAP

THE K-9 ENTERING THE INTERIOR OF THE CAR IS A CONSTITUTIONAL VIOLATION ESTABLISHED IN MANY CASE LAWS. ALSO COUNSEL CONCEDED THAT DRUGS WERE FOUND IN ONE HOUR, BECAUSE THE K-9 WAS SUMMONED AT EXACTLY ONE HOUR, WHICH THE OFFICERS CLAIM KELLER WAS UNDER ARREST AT THAT POINT. UNDER THE 1 HOUR ALLOWED PER NRS 171.123 BUT NOTHING WAS FOUND UNTIL 5:56 WHEN THE OFFICERS APPLIED FOR THE SEARCH WARRENT, 3 HOURS AND 31 MINUTES AFTER KELLER WAS FIRST DETAINED (EXHIBIT #8) THE OFFICERS TESTIFIED TO THIS, BUT THERE IS NO QUALIFIED TESTIMONY AS TO THE K-9

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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.

  
Christopher R. Keller # 81640  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

Petitioner In Pro Se

CERTIFICATE OF SERVICE BY MAIL

I, Christopher R. Keller, hereby certify, pursuant to N.R.C.P. 5(b), that on this August day of the month of August of the year 2019, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:


Warden BAKER  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada

~~Gatherine Cortez Masto~~ AARON FORD  
Nevada Attorney General  
100 No. Carson Street  
Carson City, Nevada 89701-4717

~~David Roger~~ STEVEN B. WOLFSON  
Clark County District Attorney  
P.O. Box 552211  
Las Vegas, Nevada 89155-2211

MAILED Approximately  
2 WEEKS PRIOR DUE  
TO COURT NOT LISTED  
AS RECIPIENT OF  
HABEAS CORPUS

STEVEN GRIERSON (CLERK)  
200 LEWIS AVE. 3<sup>rd</sup> Floor  
LAS VEGAS, NV 89155-1166

  
Christopher R. Keller # 81640  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

Petitioner In Pro Se

EXHIBIT #1

Corrections (NDC); as to COUNT 2 - LIFE in the Nevada Department of Corrections (NDC) with a MINIMUM parole eligibility AFTER TEN (10) YEARS in the Nevada Department of Corrections (NDC); COUNT 2 CONCURRENT with COUNT 1 ; as to COUNT 3 - to a MINIMUM of TWELVE (12) MONTHS and a MAXIMUM of FORTY-EIGHT (48) MONTHS in the Nevada Department of Corrections (NDC); COUNT 3 CONCURRENT with COUNT 2; as to COUNT 4 - to a MINIMUM of TWELVE (12) MONTHS and a MAXIMUM of FORTY-EIGHT (48) MONTHS in the Nevada Department of Corrections (NDC); COUNT 3 CONCURRENT with COUNT 3; as to COUNT 5 - to a MINIMUM of TWELVE (12) MONTHS and a MAXIMUM of FORTY-EIGHT (48) MONTHS in the Nevada Department of Corrections (NDC); COUNT 5 CONCURRENT with COUNT 4; as to COUNT 6 - to a MINIMUM of TWELVE (12) MONTHS and a MAXIMUM of FORTY-EIGHT (48) MONTHS in the Nevada Department of Corrections (NDC); COUNT 6 CONCURRENT with COUNT 5; as to COUNT 7 - to a MINIMUM of TWELVE (12) MONTHS and a MAXIMUM of FORTY-EIGHT (48) MONTHS in the Nevada Department of Corrections (NDC); COUNT 7 CONCURRENT with COUNT 6; as to COUNT 8 - Defendant SENTENCED UNDER THE LARGE HABITUAL CRIMINAL STATUTE to LIFE in the Nevada Department of Corrections (NDC) with a MINIMUM parole eligibility AFTER TEN (10) YEARS in the Nevada Department of Corrections (NDC); COUNT 8 CONSECUTIVE to COUNTS 1, 2, 3, 4, 5, 6, and 7; COUNT 9 - Defendant SENTENCED UNDER THE LARGE HABITUAL CRIMINAL STATUTE to LIFE in the Nevada Department of Corrections (NDC) with a MINIMUM parole eligibility AFTER TEN (10) YEARS in the Nevada Department of Corrections (NDC); COUNT 9 CONCURRENT with COUNT 8; for a TOTAL AGGREGATE SENTENCE of LIFE in the Nevada Department of Corrections with a MINIMUM parole eligibility of TWENTY (20) YEARS in the Nevada Department of Corrections; with FIVE HUNDRED FIFTY-NINE (559) DAYS credit for time served. FURTHER ORDERED, \$150.00 DNA Analysis fee including testing to determine genetic markers, WAIVED as previously ordered.

NDC

CLERK'S NOTE: minutes corrected to reflect the correct credit for time served. te 8/16/2017

CLERK S NOTE: minutes corrected to reflect the correct concurrent counts. te 8/21/2017

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1 Q Okay. (Inaudible). Is it safe to say that at least  
2 what's in here is not clean?

3 A These are all the dirty.

4 Q These are all the dirty --

5 A These are used pipes.

6 Q But you did find clean ones?

7 A There were clean ones inside the apartment.

8 Q That's all I needed.

9 MR. FRIZZELL: Court's indulgence. I have one last  
10 question.

11 THE COURT: Okay.

12 MR. FRIZZELL: Okay. Actually, it's in a couple  
13 parts.

14 THE COURT: Okay.

15 BY MR. FRIZZELL:

16 Q So in the car, when you were searching the car, you  
17 didn't actually find any rolling papers, pipes, lighter,  
18 matches, and other than the little bit you may have seen on  
19 the floor, you didn't find any other marijuana?

20 A No.

21 Q Okay. And so what you're -- what you're basing the  
22 -- that you -- that you had a strong smell, it wasn't  
23 emanating from the car, correct?

24 A It was emanating from both the defendant's person  
25 and from inside the vehicle.

ROUGH DRAFT TRANSCRIPT

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1 Q Okay, but he had been sitting in the vehicle,  
2 correct?

3 A Yes.

4 Q Okay. And you didn't find any -- any drugs or  
5 anything other than the wallet and the money on his person,  
6 correct?

7 A There was drugs that were found on his person over  
8 the course of the investigation.

9 Q Okay, but there wasn't marijuana that was found on  
10 his person?

11 A No marijuana found on his person.

12 Q Okay.

13 MR. FRIZZELL: Court's indulgence.

14 BY MR. FRIZZELL:

15 Q So what little bit of marijuana that you say that  
16 you saw a green leafy substance, was that that you found on  
17 the floor ODV-tested?

18 A No, it was not.

19 Q Okay, so you never -- you never confirmed that what  
20 you thought was marijuana on the floor was not marijuana?

21 A Correct.

22 Q So it could have been just crushed leaves on the  
23 floor, and you wouldn't know any -- you wouldn't be able to  
24 say any different?

25 A Correct.

ROUGH DRAFT TRANSCRIPT

EXHIBIT #4

19

1 the house when it does not say what it was in the house or  
2 excuse me, in the car or any statement maybe, possibly made  
3 by Mr. Keller after he was Mirandized, which that didn't  
4 happen --

5 THE COURT: Okay.

6 MR. FRIZZELL: -- that leads the officers to say,  
7 oh, wow, we found this here so there must be something in the  
8 house because we found this.

9 THE COURT: Okay.

10 MR. FRIZZELL: There's --

11 THE COURT: Mr. Frizzell, I understand your  
12 argument.

13 MR. FRIZZELL: Okay, all right.

14 THE COURT: Notwithstanding the timing of when  
15 you've made this basically oral motion, I'm going to hear  
16 from the State on that.

17 MR. DICKERSON: Yes, Your Honor.

18 THE COURT: What, if anything, was provided to  
19 Judge Sciscento for additional information or probable cause  
20 in order to allow the officers to search his apartment?

21 MR. DICKERSON: The additional information or  
22 probable cause was that they identified the apartment as  
23 being belonging to Mr. Keller that he had pulled up in front  
24 of this apartment and was in the officer's affidavit  
25 attempting to enter that apartment, and that was then

ROUGH DRAFT TRANSCRIPT

20

1 preceding and after this point they find the large quantities  
2 of drugs indicative of drug dealing inside his vehicle that  
3 is also his vehicle.

4 So his vehicle, his apartment, same location, and  
5 it is based on the probable cause that a drug dealer is  
6 likely to have his supply inside his home. And so when they  
7 established there was that large quantity of drugs there in  
8 his vehicle, it established that he is a drug dealer. Those  
9 are without a doubt not drugs of personal use.

10 With that, Judge Sciscento found probable cause and  
11 that creates a presumption of validity. The officers relied  
12 on that and relied on that in good faith. So regardless of  
13 anything, the good faith exception that applies going back  
14 even to the probable cause in this case.

15 THE COURT: Okay. So the bottom line is, is that  
16 he gets stopped. Based on the stop, a search warrant was  
17 issued. They were able to search his vehicle. They found a  
18 large number of narcotics, multiple types of narcotics and  
19 the stop was, if not adjacent to, but in front of the  
20 apartment, and they were -- the apartment complex, they were  
21 able to identify him as living in one of those apartments,  
22 and based on the training and experience of the officer, they  
23 felt that as drug dealers, based on what they found in the  
24 vehicle, that he would have firearms, narcotics, money from  
25 drug proceeds in his residence.

ROUGH DRAFT TRANSCRIPT

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1 A Affirmative. One of my squadmates, Officer Lopez,  
2 had done a vehicle stop, and based on the circumstances of  
3 the stop, he requested additional units.  
4 Q And roughly, how long after that call would you say  
5 you responded to the scene?  
6 A I would say approximately, within five minutes. I  
7 was not too far away when he requested help.  
8 Q Okay. And when you arrived, what did you see?  
9 A I saw Officer Lopez had a vehicle stopped as well  
10 as he had a subject out of the vehicle in front of his -- his  
11 vehicle in handcuffs.  
12 Q Okay. And so at that point, what did you do? Were  
13 you assigned something to do or what did you do?  
14 A I was just there to assist him with anything that  
15 he needed. I wasn't necessarily assigned anything.  
16 Q Okay. So did he ask you to perform any particular  
17 tasks on that evening?  
18 A The only thing that he specifically asked me to do  
19 was to read Miranda to the individual he had stopped.  
20 Q Okay. Did you do that?  
21 A I did.  
22 Q Did you have occasion to do anything with the car  
23 that Officer Lopez had stopped?  
24 A Throughout the course of the investigation, I did  
25 assist in searching. I wasn't assigned that duty. I just

ROUGH DRAFT TRANSCRIPT

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1 helped out.  
2 Q Okay. And when you say searched, can you be a  
3 little bit more specific? What was it that you did or what  
4 job did you perform on the vehicle?  
5 A We were searching the vehicle for -- there was my  
6 understanding probable cause to believe that there was  
7 illegal narcotics inside the vehicle.  
8 Q Okay. And what led you to believe that?  
9 A I can't remember if it was specifically Officer  
10 Lopez that saw or smelled, but I believe there was a hint of  
11 marijuana that he smelled inside the vehicle.  
12 Q Okay. So what part of the vehicle do you recall  
13 searching?  
14 A I specifically remember searching the driver  
15 compartment, so the driver's seat and the passenger seat so  
16 the front of the vehicle.  
17 Q Okay. And did you have occasion to look into the  
18 glove box?  
19 A I did.  
20 Q Can you describe with a you -- what, if anything,  
21 you did to the glove box?  
22 A I opened the glove box.  
23 Q Okay. Did it open naturally? Did you have to pry  
24 it open? How did you have to open it?  
25 A Initially, it just opened naturally, from what I

ROUGH DRAFT TRANSCRIPT





53

1 A I guess I'll circle it.

2 Q And was there a door on this glove box?

3 A Yes. It's the -- the door and the sides -- there's

4 actual sides of the door when you pull it out, so it comes out

5 with it, and so that was actually in there and it was

6 obstructing the majority of the hole. You could only see

7 about the top -- about -- just the top little portion of the

8 hole that you could actually see.

9 Q You're indicating with your fingers about an inch,

10 maybe an inch-and-a-quarter?

11 A High, and then a couple inches long.

12 Q Okay. But you couldn't see that full hole?

13 A No, you couldn't see this full hole.

14 Q And so some steps were taken to remove the actual

15 door to the glove box?

16 A Yes. Officer Henry had removed the glove box.

17 Q Okay. Did that come off easily or did tools have to

18 be used?

19 A No, it came off easy enough. He didn't have to have

20 any special tools that I'm aware of.

21 Q So, now looking at State's Exhibit 20, is that the

22 hole as it appeared?

23 A Yes, it's just -- this is a closer up view of the

24 same hole.

25 Q So, once you have this door of the glove box open

ROUGH DRAFT TRANSCRIPT

54

1 and you can now see this hole, what do you guys do?

2 A Well, we tried to get the bag out. And we could

3 tell that there was a black bag inside the hole, the same bag

4 that I suspected had a firearm in it, and we -- you can't pull

5 the bag out through this hole.

6 And so while Officer Henry was trying to get the bag

7 out through this hole, I actually walked up, and if the

8 passenger door is open on the car, the side of the dash panel

9 that's closest to the door is basically just a simple little

10 plastic cover. I walked over to the plastic cover, and I

11 popped it off, and it just simply popped right off, and you

12 could get to the bag that way as well.

13 Q I'm going to show you what's been marked and

14 admitted here as State's Exhibit 17. Is that area that you're

15 talking about located in this exhibit?

16 A Yes. Basically, it's this whole plastic piece right

17 here. That all pops off, and I basically touched it right

18 about here, and just kind of got a little hold on it, and

19 popped it off.

20 Q And when you're indicating that you got a little

21 hold on it, you're just indicating with your thumb?

22 A Yeah. Basically, it was just -- you can grab it

23 with your finger, and just kind of grab onto it, and it pops

24 off, so.

25 Q Okay. So you didn't have to use any tools to take

ROUGH DRAFT TRANSCRIPT

EXHIBIT # 7

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
CONTINUATION

Event #: LLV160128000259

SECTION 2

CUSTODY PHASE:

KELLER, CHRISTOPHER ID# 1804258 was taken into custody during the initial vehicle stop and was later booked at CCDC on the firearm and narcotic related charges.

SECTION 3

SEARCH PHASE:

The search was executed by Officer J. Henry P# 14753, CSI S. Thi P#14373 and me, Officer D. Lopez P#9806. Officer Henry removed the glove box door. I removed a side panel on the right passenger side of the dashboard which revealed an alternate access point into the hidden compartment, which was proving difficult to access via the glove box. Inside the hidden compartment I located a black bag. CSI Thi photographed the black bag in place then removed the bag while donning latex gloves. CSI Thi carefully opened the black bag which had two large golden colored reseal able plastic bags inside. CSI Thi took digital photographs as she removed the contents of each reseal able bag. The recovered items are listed as follows:

- 1) ODV+METH 351.4GG W/CHECKLIST
- 2) ODV+HEROIN 36.4 GG W/ CHECKLIST
- 3) ODV+COCAINE .8 GG W/ CHECKLIST
- 4) SMALL BLUE PILLS 25,3 GG
- 5) BLUE DUST 1.1GG
- 6) OXYCODONE 30 MG
- 7) SILDENAFIL 100MG
- 8) MULTI COL PILLS
- 9) SMALL OVAL PILLS
- 10) SEMI AUTO HANDGUN USA BERETTA 22 SERIAL #C35418
- 11) BERETTA MAGAZINE
- 12) 22 SHORT AMMUNITION (7 ROUNDS)
- 13) US CURRENCY \$2187.00
- 14) NICE MENS WRIST WATCH
- 15) CRYSTAL SUBSTANCE .3GG
- 16) BAGGIES W/ BLACK POUCH

Officer J. Henry located in the glove box a Nevada DMV registration certificate for the 2002 DODGE STRATUS (SILVER) VIN 4B3AG42HX2E162394 BEARING NV PLATE 09B-ASW bearing the suspect's name Keller Christopher and his address 265 N. Lamb Apt F, Las Vegas NV 89110.

I also located approximately 75 small clear baggies commonly used to sell illegal narcotics beneath the front driver's seat, where Keller had previously been seated.

EXHIBIT # 8

30

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
CONTINUATION

Event #: 160128-0259

PCS with Intent to Sell-Marijuana  
PCS with Intent to Sell-Schedule 1-4  
Possession of Dangerous Drugs W/O RX-  
Sildenafil  
Destruction of Evidence

SECTION 1

SYNOPSIS/DETAILS: SEARCH WARRANT OF CAR

I executed a search warrant signed by Judge M. Andress-Tobiasson on 1/28/2016 at 0610 hours, during the execution of the warrant additional evidence was located and probable cause was developed to search the suspect's residence. At 0331 Officer J. Vance P#9004 contacted RMIN and logged the address with Liz, there were no conflicts. I drafted the second (piggy back) telephonic search warrant and contacted Sgt. Haas who approved the warrant. The warrant was also approved by Lt. G. Warner. Next I contacted DDA Liz Mercer who approved the search warrant. Finally I at 0935 hours on 1/28/2016 I contacted Judge Sciento and made application for my telephonic search warrant via a recorded conversation. Judge Sciento approved and signed the warrant.

SECTION 2

CUSTODY PHASE:

Keller, Christopher was already in custody for multiple felony charges which arose from the first search warrant.

SECTION 3

SEARCH PHASE:

The search warrant was executed by Officer LOPEZ 9806, SGT. HAAS 7420, DET EMBRY 6223, DET BELMONT 8240, DET MANCAO 6844 and Officer HOUGH 7814. During the warrant's service, Det Embry located a Ruger 9mm P89 serial number 804-86548 semi auto handgun with a magazine and live ammunition in from Keller's bedroom closet. Det Embry was wearing latex gloves during the search and recovered the firearm. No one else handled the firearm. Det Embry located 3 boxes of 22 short ammunition in the storage shed. I located 5 glass smoking pipes, 4 scales, and 1 box of 9mm ammunition containing 15 rounds in the bedroom. Det Belmont P#8240 located a glass jar in the freezer with 188.4 grams net weight of marijuana. Det Embry located a pay stub in the bedroom indicating Keller resides at the residence. Det Embry conducted a buccal swab kit according to the warrant. I located two bags in the bedroom containing 4.4 and 3.1 grams net weight of meth. I located a third clear plastic bag containing 1.1 grams net weight of heroin. All evidence was digitally photographed by Officer Hough prior to recovery and later impounding. There was no other personal items such as clothing, or bathroom supplies that suggested anyone else resided at residence other than Keller.

EXHIBIT #9 A → C

Electronically Filed  
03/02/2016 05:39:30 PM

*Alan D. Quinn*

CLERK OF THE COURT

1 CASE NO. C-16-312717-1

2 DEPT. NO. 5

3  
4 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP  
5 COUNTY OF CLARK, STATE OF NEVADA

6 THE STATE OF NEVADA, )

7 Plaintiff, )

8 vs. )

9 CHRISTOPHER ROBERT  
10 KELLER, )

11 Defendant. )

) PRELIMINARY HEARING

) Case No.

) 16F01430X

12  
13 REPORTER'S TRANSCRIPT OF PROCEEDINGS  
14 BEFORE THE HONORABLE CYNTHIA CRUZ  
15 JUSTICE OF THE PEACE

16  
17 TAKEN ON TUESDAY, FEBRUARY 16, 2016  
18 AT 9:00 A.M.

19 APPEARANCES:

20 For the State: Sarah Killer, Esq.  
21 Deputy District Attorney

22 For the Defendant: Michael Sanft, Esq.  
23 Las Vegas, Nevada

24  
25 REPORTED BY: ROBERT A. CANGEMI, CCR No. 888

1 Q. The charges that are filed in a case are  
2 determined by my office, the District Attorneys  
3 office, correct?

4 A. Correct.

5 MR. KILLER: No further questions

6 MR. SANFT: One more question.

7

8 FURTHER RE-CROSS-EXAMINATION

9

10 BY MR. SANFT:

11 Q. Just to make sure we are clear, did you ever  
12 recommend at any point ever recommend any of these  
13 traffic citations as charges to the DA's office for  
14 prosecution?

15 A. I did not recommend charges to the DA's  
16 office.

17 Q. Did you ever fill out any paperwork  
18 indicating you thought that there were potentially  
19 good charges for a broken tail light, or traveling  
20 at a high rate of speed, or travelling down the  
21 center lane of North Lamb; did you ever put that in  
22 any type of documentation here?

23 A. No. That was my decision out in the field.

24 Q. It was your decision to ignore everything  
25 leading up to the actual finding of drugs and a gun

1 vehicle was because my client smoked it?

2 A. I did not.

3 Q. Did you ever cite my client for any of these  
4 other traffic violations that you had mentioned, the  
5 continuing through a through lane, or the traveling  
6 at a high rate of speed, you didn't know how fast  
7 he was going?

8 A. I did not cite him on the traffic  
9 violations. I cite him for the felonies.

10 Q. Did you cite him for anything other than the  
11 fact that he possessed these drugs or so forth  
12 inside his vehicle?

13 A. I didn't cite him, I placed him under arrest  
14 for the narcotics.

15 Q. So in terms of anything leading up to the  
16 actual narcotics, your testimony here is that  
17 because of the fact that you are able to smell  
18 marijuana, you can't tell us how you smelled the  
19 marijuana, or where the marijuana was coming from,  
20 and based upon that is the reasons why you at that  
21 point arrested my client, and then had enough  
22 probable cause to go into the vehicle?

23 MS. KILLER: Objection, misstates the  
24 testimony as to the order of events.

25 THE COURT: Not really, but go on.

EXHIBIT #10

169

1 A Yes.  
2 Q Okay, both of those addresses being 265 North --  
3 North Lamb Boulevard, Unit F?  
4 A Yes.  
5 Q Now, you said there was some contact with a female  
6 on scene?  
7 A Yes.  
8 Q Who was this?  
9 A I -- I don't recall her name.  
10 Q You said that Officer Vance had spoken to her?  
11 A Yes.  
12 Q When did she come up to you?  
13 A During -- during the stop, she had come up, and she  
14 had told us she wanted to get her purse out of the car.  
15 Officer Vance had asked her what color the purse was, and she  
16 said she didn't know, and we said, well, how do you know if  
17 your purse is in the car if you don't even know what color the  
18 purse is?  
19 Q And --  
20 MR. FRIZZELL: I'm going to object, hearsay.  
21 That --  
22 MR. DICKERSON: And Your Honor, defense counsel  
23 opened the door on this one.  
24 THE COURT: Well, the -- it's still hearsay. The --  
25 MR. DICKERSON: It's still hearsay, but it's just

ROUGH DRAFT TRANSCRIPT

170

1 clarifying what he's already brought out.  
2 THE COURT: Well, he said purse. I'm going to  
3 sustain the objection as to her describing what the -- what  
4 the purse was and not saying -- or not being able to describe  
5 the purse.  
6 MR. DICKERSON: Okay.  
7 THE COURT: So, ladies and gentlemen, I'm going to  
8 instruct you you must disregard the statements regarding her  
9 stating that she couldn't give a description of the purse,  
10 okay? All right.  
11 BY MR. DICKERSON:  
12 Q You did -- or Officer Vance did request more  
13 information about the purse?  
14 A Yes.  
15 Q And did an officer on scene conduct a search of the  
16 vehicle for a purse?  
17 A Yes.  
18 Q Was a purse located?  
19 A No.  
20 Q Was that odd to you?  
21 A Yes.  
22 Q Now, just real quickly, we've gone over what was  
23 marked and admitted as part of State's Exhibit 85 the pipes in  
24 this case. Just for the jury's edification, you were  
25 describing a methamphetamine pipe earlier?

ROUGH DRAFT TRANSCRIPT

EXHIBIT #11 A → C

1 MOT

2 Christopher Keller # 81840  
3 Lovelock Correctional Center  
4 1200 Prison Road  
5 Lovelock, Nevada 89419

FILED

JUN 12 2019

6 petitioner In Pro Se

7  
8 Alvin L. Johnson  
9 CLERK OF COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \* \* \*

10 Christopher Keller, )

11 petitioner, )

12 -vs- )

13 STATE OF NEVADA, )

14 RESPONDENT. )

Case No. C-16-312717-1

Dept. No. XIX

DATE OF HEARING:

TIME OF HEARING: July 8, 2019  
8:30 AM

15 MOTION FOR PRODUCTION OF  
16 TRANSCRIPTS AT STATE EXPENSE

17 COMES NOW DEFENDANT, Christopher R. Keller, in pro se,  
18 and moves the Court for an order directing the Clerk of the  
19 Court to prepare or cause to be prepared, transcripts of the  
20 (list the hearing(s)/date(s) for which you request transcripts):  
21 02/17/2016, 02/18/2016, 03/02/2016, 03/04/2016, 03/16/2016,  
22 03/24/2016 (I DO NOT NEED my PRELIMINARY HEARING TRANSCRIPT),  
23 and to serve same upon him at his place of confinement.

24 This motion is made and based upon the requirements of NRS  
25 34.370(4); NRS 34.760(2); all papers, pleadings and documents on  
26 file herein; the instant (check applicable pending action to  
27 which this motion relates) ☒ petition for writ of habeas  
28 corpus ☐ motion to/for \_\_\_\_\_;

///  
RECEIVED

JUN 12 2019

CLERK OF THE COURT



1 and the following points and authorities.

2 POINTS AND AUTHORITIES

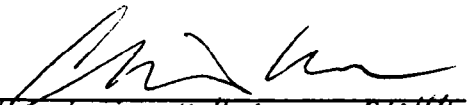
3 Petitioner/Defendant has filed a \_\_\_ petition for writ of  
4 habeas corpus \_\_\_ motion to/for \_\_\_\_\_  
5 \_\_\_\_\_, presenting ground(s)/claim(s) for relief. NRS  
6 34.730(4) and NRS 34.760(2) require that the presentation of  
7 habeas petitions be supported by affidavits, records,  
8 transcripts or other relevant evidence. Id. Petitions and  
9 motions which are not supported by such evidence render the  
10 claims therein to be bare and naked allegations, unsupported by  
11 the record and meriting dismissal. Hargrove v. State, 100 Nev.  
12 498, 686 P.2d 222 (1984). See also Griffin v. State, 122 Nev.  
13 737, 137 P.3d 1165, 1170 (2006) (defendant must support his  
14 claims with "specific facts" demonstrating entitlement to relief  
15 sought); Berjarano v. Warden, 112 Nev. 1466, 929 P.2d 922 (1996)  
16 (defendant bears burden of establishing factual allegations in  
17 support of his claims).

18 In order to obtain this Court's order to produce the  
19 requested transcripts, Petitioner/Defendant need show that they  
20 would serve a useful purpose and that he would be prejudiced  
21 without them. Peterson v. Warden, 87 Nev. 134, 483 P.2d 204,  
22 205 (1971). Petitioner/Defendant requires the transcripts at  
23 bar in order to support his ground(s)/claim(s), which have  
24 merit, as shown on the separate page(s) annexed hereto as page  
25 (s) <sup>TO PROVE I</sup> ~~asked for~~ <sup>Camera Footage</sup> (you must describe your grounds/claims and  
26 demonstrate how the requested transcripts are necessary to avoid  
27 a dismissal/denial of same), and as are incorporated as if set  
28 forth herein. Prejudice is demonstrated inasmuch as due to the

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing MOTION FOR PRODUCTION OF TRANSCRIPTS to the below address on this 4<sup>th</sup> day of JUNE, 2019, by placing same in the U.S. Mail via prison law library staff:

Attorney For Respondent

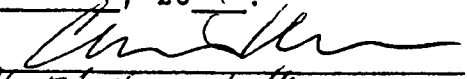
  
CHRISTOPHER KELLER # 81840  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

PETITIONER In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding MOTION FOR PRODUCTION OF TRANSCRIPTS AT STATE EXPENSE does not contain the social security number of any person.

Dated this 4<sup>th</sup> day of JUNE, 2019.

  
CHRISTOPHER KELLER  
PETITIONER In Pro Se

No. C-16-312717-1

Dept. No. XIX

IN THE 8th JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR  
THE COUNTY OF CLARK

FILED

JUN 12 2019

John L. Blum  
CLERK OF COURT

Christopher Keller

Petitioner/Plaintiff,

v.  
STATE OF  
NEVADA

Respondent/Defendant.

REQUEST FOR SUBMISSION OF MOTION

It is requested that the Motion entitled Motion To Compel  
(TO REVEAL EVIDENCE PHOTOS), which was submitted/filed on the  
4th day of JUNE, 2019, in the above-entitled matter, be submitted to the Court for  
it's consideration.

The undersigned Petitioner/Plaintiff, certifies that a copy of the motion noted above and this  
pleading, have been served upon the Respondent/Defendant.

Dated this 4th day of JUNE, 2019.

Chris Keller  
LOVELOCK, CA Petitioner/Plaintiff  
1200 PRISON RD  
LOVELOCK, NV 89419  
~~Elko, NV 89801-1989~~

RECEIVED

JUN 12 2019

CLERK OF THE COURT

# 11 A

FILED

JUN 12 2019

CLERK OF COURT

IN THE 8<sup>th</sup> JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR  
THE COUNTY OF CLARK

Christopher Keller

Petitioner,

vs.

STATE OF NEVADA

Respondent.

Case No. C-16-312717-1

Dept. No. XIX

Docket No.

REQUEST FOR RECORDS/COURT CASE DOCUMENTS  
(Specifically EVIDENCE PHOTOS)

COMES NOW, Petitioner, Christopher Keller, pro per, and respectfully moves this Honorable Court for an Order granting Petitioner a copy of any and all ~~records, transcripts, motions, and transcripts of any hearings on same, and all Writs of Habeas Corpus and Transcripts of any Hearings on same, and all Transcripts of same, and all Transcripts of any Post-Trial Petitions of Motions, and any and all Habeas Corpus or other Post-Conviction Petitions and Transcripts of same.~~ EVIDENCE PHOTOS.

POINTS AND AUTHORITIES

In Griffin v. Illinois, 351 U.S. 12, 76 :S. Ct. 585, 100 L.Ed. 891, the United States Supreme Court held that it violates the due process and equal protection clauses of the Fourteenth Amendment when a state denies an indigent defendant the transcripts necessary for his appeal. The Court held:

"There can be no equal justice where the kind of a trial a man gets depends upon the amount of money he has. Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts. \* \* \* Plainly the ability to pay costs in advance bears no rational relationship to the defendant's guilt or innocence and could not be used as an excuse to deprive a defendant of a fair trial."

This Griffin principle has been applied in other U.S. Supreme cases as well. See Burns v. Ohio, 360 U.S. 252, 79 :S. Ct. 1164, 3 L.Ed. 1209 (Applicable to state collateral proceedings). Also, Smith v. Bennett, 365 U.S. 708, 81 :S. Ct. 895, 6 L.Ed. 39 (No requirement of paying

RECEIVED  
JUN 12 2019  
CLERK OF THE COURT

statutory filing fees). The Nevada Supreme Court has also adopted the *Griffin* principle to Nevada. See State v. Eighth Judicial District Court, 396 P. 2d 680.

### CONCLUSION

Based upon the above stated points and authorities and arguments, Petitioner respectfully requests this Court to Grant this Request.

DATED this 4<sup>th</sup> day of JUNE, 2019.

Respectfully submitted,

Chris Keller  
Petitioner CHRISTOPHER KELLER

### CERTIFICATE OF SERVICE

I hereby certify pursuant to N.R.C.P. 5(b) that I am the Petitioner in the foregoing Notice of Motion and Request For Records/Court Case Documents on this 4<sup>th</sup> day of JUNE, 2019. I did serve a true and correct copy of the above mentioned document, by giving it to a prison official at the Ely State Prison to deposit in the U.S. Mail, sealed in an envelope, postage pre-paid, and addressed as follows:

STEVEN D. GRIFFIN  
200 LEWIS AVE 3<sup>rd</sup> floor  
LAS VEGAS NV 89155-1160

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATED this 4 day of JUNE, 2019.

Chris Keller  
Petitioner CHRISTOPHER KELLER

**AFFIRMATION PURSUANT TO NRS 239B.030**

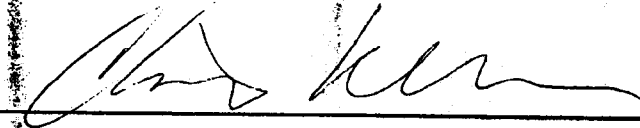
I, Christopher Keller, NDOC# 81840

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE  
ATTACHED DOCUMENT ENTITLED Request for  
Evidence photos & Motion to Compel

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY  
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 4<sup>th</sup> DAY OF JUNE, 20 19.

SIGNATURE:



INMATE PRINTED NAME:

Christopher Keller

INMATE NDOC #

81840

INMATE ADDRESS: ~~ELY STATE PRISON~~

~~P.O. BOX 1989~~

~~ELY, NV 89301~~

LOVELOCK CORRECTIONAL CENTER  
1200 PRISON RD.  
LOVELOCK, NV 89419

EXIB. # 11

KELLER FILED APPROXIMATELY 7 MOTIONS JUST  
TO PROCURE THE TRANSCRIPTS FROM THE DAY'S KELLER  
ASKED FOR THE BODY CAMERA FOOTAGE ON RECORD.  
\$ ALSO ~~TO~~ GET A COPY OF THE EVIDENCE PHOTOS  
ALL TO NO AVAIL.

EXHIBIT # 11 B

copy of letters

TO Whom IT MAY CONCERN,

SORRY for the inconvenience, BUT I NEED  
the ENTIRE court transcript for the  
~~HEARINGS~~ ~~30~~ 30 DAYS & prior to 45 DAYS  
- I BELIEVE it's the court hearings for  
03-04-16 & 03/02/2016 - I NEED EVERY  
WORD SPOKE from me, my LAWYER & the  
D.A. - It is ESSENTIAL for my HABEAS  
CORPUS APPEAL -

This WILL BE my LAST REQUEST -  
I JUST NEED this & my EVIDENCE photos.  
THANK you for your time & ASSISTANCE.

This IS A copy to RECORD my attempts  
to GET the ENTIRE court transcript from  
30 DAYS into the BEGGING of my case to 45  
DAYS INTO my case. I ALSO SEE A HEARING  
ON 02/18/2016 & ANOTHER ON 03/16/2016

I NEED the transcript of the  
DISCUSSION where I AM ASKING for  
the BODY CAMERA FOOTAGE. I BELIEVE IT  
is the first two hearings BUT I know  
it is just prior to 45 DAYS - so if  
you could please SEND me the transcripts  
between 30 & 45 DAYS it would be GREATLY  
APPRECIATE since I HAVE 20 to LIFE for  
A CASE where I AM the ONLY victim.



EXHIBIT # 11 C copy of letters

To Whom It may CONCERN:

I; Christopher Keller, WAS GIVEN A COURT DATE OF APRIL 24<sup>th</sup>, 2019 to try to obtain my EVIDENCE photos FROM my CASE, #C-16-312717-1 OUT OF DC #19 - I WAS MOVED FROM ELY TO LOVELOCK PRISON. I NEVER HAVE RECIEVED ANYTHING REGARDING the outcome of the APRIL 24<sup>th</sup> 2019 HEARING. I HAVE YET TO RECIEVE my EVIDENCE photos

ON top of this I HAVE TWICE PRIOR REQUESTED the COURT TRANSCRIPT FOR the HEARINGS FOR CASE # C-16-312717-1 ON the DATES 3-4-2016, 3-2-2016, 2-18-2016 & 3-16-2016 - I NEED the full court transcript please. I KEEP RECIEVING just the court minutes. I DONT NEED the court minutes.

THANK you for your time & assistance.

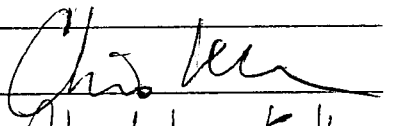
  
pro se Christopher Keller  
C.C.C 1200 PRISON RD  
LOVELOCK, NV 89419

EXHIBIT #12 A →

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

**DECLARATION OF ARREST**

"Click here to add/edit Event# and ID# on all pages"

Event #: 160128-0259

I.D. #: 1804258

"PRINT"

True Name: KELLER, CHRISTOPHER Date of Arrest: 01-28-16 Time of Arrest: 0244

OTHER CHARGES RECOMMENDED FOR CONSIDERATION:

Other Charges

THE UNDERSIGNED MAKES THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I am a peace officer with the Las Vegas Metropolitan Police Department, Clark County, Nevada, being so employed for a period of 9 years.

That I learned the following facts and circumstances which lead me to believe that the above named subject committed (or was committing) the offense(s) of POSS FIREARM BY PROHIBITED PERSON, TRAFF METH, PCS WITS, PCS HEROIN, PCS MJ MORE THAN 1OZ, at the location of 265 N LAMB, LV NV 89110, and that the offense(s) occurred at approximately 0225 hours on the 28th day of Jan, 2016, in the:

☒ County of Clark

☐ City of Las Vegas

**DETAILS FOR PROBABLE CAUSE:**

On 01-28-16, at 0225, I Officer Lopez, P#9806, while operating as marked patrol 1G24, observed a silver 2002 Dodge Stratus with NV plate 098ASW traveling northbound at 132 N Lamb in the center turn lane. The Dodge stratus had made an abrupt left turn from Sunrise Ave and had continued the entire time in the center turn lane while never entering the #1 northbound travel lane. The Dodge stratus was traveling at high rate of speed. I made a U-turn to conduct a records check on the vehicle and noticed the passenger tail lamp was broken. The driver continued to accelerate and made an abrupt left turn into the "Crossroads III" apartment complex. It was apparent the driver, who would later identify himself with a NV DL as Keller, Christopher, -84, was trying to avoid me. Keller had traveled well over 300ft while he was in the center turn lane. Keller pulled his Dodge Stratus into space #58 and jumped out of the driver's side door. I conducted a traffic stop by activating my lights and jumped out of my own patrol vehicle. I began giving verbal instructions to Keller who was still at the driver's side door. WHEN DEFENDING THE SEARCH

Keller had the strong odor of cannabis on his person and coming from inside the vehicle. Keller was very nervous and was upset about being stopped. Keller was wearing loose jeans and a baggy shirt that could easily conceal weapons so I informed Keller I was going to conduct a pat down for weapons. As I began my pat down, Keller tensed up and his talking became more nervous. I feared Keller was a flight risk so I placed Keller in handcuffs.

I asked Keller if he had a driver's license and he said "yes". I asked Keller if his license was in his wallet and if I could

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are misdemeanor).

Declarant must sign all page(s) with an original signature.

D. LOPEZ P#9806

Print Declarant's Name

D Lopez  
Declarant's Signature

9806  
P#

EXHIBIT #12 B  
TRIAL

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1 -- in the actual light that went into the socket area?  
2 A There was an opening in the lens cover that allowed  
3 the light to come out as clear white.  
4 Q Okay, but so -- but the light was working?  
5 A The light was working.  
6 Q And it was illuminated?  
7 A Yes.  
8 Q Okay. Could you notice, was there even a brake  
9 light on when he stopped?  
10 A Yes.  
11 Q All right. So then he -- you say at that point, he  
12 exits the vehicle?  
13 A Yes.  
14 Q And you say you immediately exit your vehicle?  
15 A Yes.  
16 Q But he didn't -- but he didn't run away?  
17 A He didn't get away.  
18 Q You say he walked to the front of his vehicle, was  
19 your testimony?  
20 A No. He didn't walk --  
21 Q Where did he --  
22 A He got out of his car and ran towards the back of  
23 his vehicle.  
24 Q Okay, so he went to the trunk?  
25 A Towards the trunk.

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1 Q Towards the trunk of his vehicle?  
2 A Yes.  
3 Q Okay. Okay, but it appeared to you that he was just  
4 going into his trunk, correct?  
5 A No. It appeared to me that he was trying to get  
6 away from me.  
7 Q But you -- but the keys were -- his keys were in his  
8 trunk -- in the -- in the trunk lock, correct?  
9 A No.  
10 Q All right. So after you secure Mr. Keller and  
11 you're standing outside the vehicle -- outside of his vehicle,  
12 okay, did you place him in -- did you place him in handcuffs,  
13 and then put him in your cruiser, and then go to the car, or  
14 how did -- what was the chronology there?  
15 A I walked him over to the front of my patrol vehicle,  
16 I placed him in handcuffs, and that was about the time Officer  
17 Henry was arriving. Then the gunshots took place. I secured  
18 him in the back of my patrol vehicle, I took cover by the side  
19 of the car, and then I walked over towards his door, which was  
20 still open.  
21 Q Okay. Now, at that point, the door was open. Was  
22 there -- there was no interior light illuminated in the  
23 vehicle, was there?  
24 A I don't recall.  
25 Q Okay. And this is at roughly 2:20 or so A.M. in the

ROUGH DRAFT TRANSCRIPT

ALSO there is may other CHANGES

ROUGH DRAFT TRANSCRIPT

EXHIBIT #12 C  
PRELIM

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1 coming from inside of the vehicle and what is coming  
2 off of my client?

3 A. While he was standing next to his door, and  
4 I was up there next to him, while he was near the  
5 driver's side door, and I was giving him  
6 instructions, standing there, I could smell it  
7 coming off of his clothes and from inside the  
8 vehicle, coming from -- it was coming from 2  
9 different directions.

10 Q. So you are able to differentiate between the  
11 smell coming off of a person versus what was coming  
12 from the vehicle, even though the 2 of them are in  
13 relatively close proximity.

14 He is not leaving the vicinity of the car  
15 door?

16 A. Correct.

17 Q. Then at that point you said that you for  
18 whatever reason decided to detain my client based  
19 upon the fact that you believed that he may have had  
20 a weapon on him?

21 A. I conducted a pat down, because he may have  
22 had weapons on him.

23 Q. And you based that upon the fact that he was  
24 driving at a high rate of speed?

25 A. No. I based --

# EXHIBIT #13

41

1 A Yes.  
2 Q And State's 16, what is this a photo of?  
3 A That's a photo of the interior as I'm standing at  
4 the open passenger side door.  
5 Q Now, was there a certain area of the vehicle that  
6 the search warrant that was about to proceed was focusing on?  
7 A Yes.  
8 Q And what area was that?  
9 A I was directed by the officers on scene that the  
10 area of concern was the glove compartment area.  
11 Q Okay. And do you see that area here in this photo  
12 of this State's Exhibit 16?  
13 A Yes.  
14 Q If you could please just point to that on the screen  
15 that there's there on your left. And what was the state of  
16 that area in particular when you arrived?  
17 A The glove compartment had been removed and is  
18 sitting on the floor board, and the glove compartment area is  
19 now exposed.  
20 Q So the focus of the search warrant that was about to  
21 proceed you said was in this area?  
22 A Yes.  
23 Q And was there any particular thing about that area  
24 that caused it to be the focus?  
25 A I was directed to a -- an area within the glove

ROUGH DRAFT TRANSCRIPT

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1 compartment that appeared to have access to a space behind  
2 the plastic paneling.  
3 Q Okay. First, showing you State's Exhibit 18. Is  
4 this that same general area just a frontal view of it?  
5 A Yes.  
6 Q And now showing you State's 19, do you recognize  
7 what's depicted here in this image?  
8 A Yes.  
9 Q And what is that?  
10 A This is a view of the glove compartment from around  
11 the area of the center console.  
12 Q And State's 20, just a closer of that?  
13 A Yes.  
14 Q So were you, as part of this search warrant, able to  
15 recover the items through that hole there?  
16 A No, I was not.  
17 Q What was done?  
18 A A separate piece of paneling was removed to gain  
19 access to that area.  
20 Q And where was that paneling?  
21 A The paneling was on the passenger side, the portion  
22 of the vehicle that is in contact with the door when it  
23 closes.  
24 Q Okay. I'm going to show you here State's Exhibit  
25 17. Do you recognize that area that you just spoke of in

ROUGH DRAFT TRANSCRIPT

Visitation

EX-131-14

A → B

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

INMATE REQUEST/GRIEVANCE

NT-9A-21

03-02-17 06:45 DSDRSU

Name: (last) KELLER, (first) CHRISTOPHER (middle initial) R		Floor 9	Date 2-26-2017
ID Number 1804258		Housing Unit A	Bed 21
<input checked="" type="checkbox"/> REQUEST <input type="checkbox"/> GRIEVANCE		Prop Number	

(All grievances must be submitted within 72 hours of incident.)

CAN I PLEASE GET A VISITATION LOG  
OF ALL MY ATTORNEY VISITS.

THANK YOU

Inmate's Signature *[Signature]* Date 2-26-17 Staff Person Receiving *A Hunter* Date/Time

Issue has been resolved as follows: Request attached

S10182M

Signature of employee who resolved the Request/Grievance Problem 03/02/17 @ Date/Time

ORIGINAL - INMATE

EXHIBIT #14 B

Visits With Visitor Attorney												
(Contact Only after May 2010, Non-Contact in Renovo)												
ID Number : '0001804258' , Start Date : '28-JAN-2017' , End Date : '02-MAR-2017'												

	Inmate Last Name	Inmate First Name	Offender ID	Booking Begin Date	Booking End Date	Start Date/Time	End Date/Time	Visit Type	Relation Type	Visitor Last name	Visitor First name	Visitor Middle name
1	KELLER	CHRISTOPHER	0001804258	28-JAN-2016	-	27-Feb-17 19:30:00	27-Feb-17 20:00:00	LEG	ATT	FELICIANO	AMY	-
2	KELLER	CHRISTOPHER	0001804258	28-JAN-2016	-	01-Mar-17 13:00:00	01-Mar-17 13:30:00	LEG	ATT	FRIZZELL	KENNETH	G

EXHIBIT #15 A → E



2421 Tech Center Ct., #100  
Las Vegas, NV 89128  
Phone: P | (702) 848-4869  
Fax: F | (702) 977-8262  
Email: amy@felicianolawoffice.com  
www.felicianolawoffice.com

Invoice # 1 Date:  
03/06/2017

Mr. Christopher Keller  
c/o Mrs. Nancy Graham  
244 Molly Court  
Las Vegas, NV 89183

### 06034-Keller

Type	Date	Notes	Quantity	Rate	Total
Service	02/27/2017	Flat Fee for legal representation	1.00	\$15,000.00	\$15,000.00
Expense	02/27/2017	Reimbursable expense: Fee expense for Investigator Al Fuentes	1.00	\$1,000.00	\$1,000.00
Total					\$16,000.00
Payment (02/27/2017)					-\$6,000.00
Credit Note					-\$10,000.00
Balance Owing					\$0.00

### Detailed Statement of Account

#### Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
1	02/27/2017	\$16,000.00	\$16,000.00	\$0.00

03/06/2017: Judge refused substitution of attorney. Full refund of partial Flat Fee payment of \$6000. Remaining \$10,000.00 written off.



1 retention. However, right after that I -- my husband and I  
2 had, unfortunately, involuntary commit our 16-year-old son to  
3 Spring Mountain Behavioral Center for mental illness.

4 At the same time, I started having seizures. I had  
5 two grand mal seizures in February and was hospitalized in

6 Valley Hospital for over a week. I'm up to ten seizures now.

7 It came out of nowhere. After the grand mals and when I left  
8 Valley, I suffered extreme aphasia, which I stutter, et

9 cetera. Long story short, by the time I was able to work

10 again and get back to normal, I contacted Mr. Keller's mother

11 again, as I was catching up with my contacts, my telephone

12 calls, et cetera, and his mother had graciously been waiting

13 for me to contact her.

14 And this was on about the -- sorry, Judge.

15 THE COURT: No, that's okay. Just relax. We're

16 fine.

17 MS. FELICIANO: This is part of it. 26th of

18 February --

19 THE COURT: Okay.

20 MS. FELICIANO: -- and was retained at that time and

21 prepared the documents to enter into with Mr. Keller and his

22 mother. And that, Your Honor, is -- and Mr. Keller's mother

23 when we had -- when we spoke, informed me that she and her

24 husband had always been going to let him on his own, not hire

25 counsel for him, but at this time, they wish to.

ROUGH DRAFT TRANSCRIPT

1 And so she used -- and we listened to jail calls,

2 her savings account to retain me and so that's -- it's my

3 fault that I was not retained at the beginning of February

4 when Mr. Keller's mother first contacted me. Just to let you

5 know, Your Honor, kind of where my position is at and why

6 everything was so last minute and, you know, let the parties

7 know as best I could, you know, once the payment clears and

8 things are firm. So thank you, Judge.

9 THE COURT: Ms. Feliciano, the concern I have here,

10 and it would play part in every case, is that when we have

11 certain dates that we put out there, everyone knows about

12 them, and I know that you probably researched this to find out

13 when a trial date was scheduled. You know that in the

14 beginning prior to actually having an evidentiary hearing your

15 client was invoking -- well, Mr. Keller was invoking his right

16 to a speedy trial.

17 It's been -- I've dealt with a number of changes

18 here. Full Frizzell has come in. He's not the first attorney

19 to handle this matter. And so the concern that I have is that

20 you would even do this, even probably as late as -- I mean as

21 early as February knowing when we have a trial date coming up.

22 And I appreciate you're trying to step in here to

23 assist Mr. -- I mean, Mr. Keller, but I set trial dates

24 because I'm trying to move these cases. I have an

25 availability to do this case now, and I think when you accept

ROUGH DRAFT TRANSCRIPT

EXHIBIT # 15 C

FELICIANO LAW OFFICE, LLC  
AMY A FELICIANO  
ATTORNEY AT LAW

March 6, 2017

**VIA US MAIL**

Christopher Keller, #0184258  
Clark County Detention Center  
330 South Casino Center  
Las Vegas, Nevada 89101

Re: State v. Keller  
Legal representation documents

Dear Mr. Keller:

It was a pleasure speaking with you on the phone over the past week and meeting you in person this morning. I am incredibly saddened that Judge Kephart would not allow me to substitute in as your attorney and grant our request for a short continuance to allow me to effectively represent you. I hope that you receive effective assistance of counsel, due process, and a fundamentally fair trial this week. I will be thinking of you and hoping for the best outcome.

The legal system is broken. That is why I fight. But regardless of how long I have been practicing and how many cases I have handled, it is always incredibly hard to watch legal injustices happen to a person accused of a crime. An accused's loss of constitutional rights is beyond tragic. I can only hope that this week our system redeems itself and you receive the constitutional rights you are entitled to.

I called your Mom after court and let her know what happened. I then refunded her payment. Enclosed, please find a copy of the legal representation documents that I prepared for your case.

Please do not hesitate to contact me if you have any questions or need additional information. I wish you all the very best. Thank you.

Best,

  
\_\_\_\_\_  
Amy A. Feliciano, Esq.  
FELICIANO LAW OFFICE, LLC

/aaf

Enclosure(s)  
cc: Mrs. Nancy Graham with enclosure(s)

## COUNSEL:

Upon Court's inquiry, Defendant advised he cannot get any investigation done and the investigator used by Mr. Frizzell is the same investigator Mr. Sanft used and he has filed a bar complaint against the investigator. Further, Defendant advised he does not believe Mr. Frizzell is representing him the way he wants. Further discussion regarding Defendant's issues with counsel and investigator. COURT FURTHER ORDERED, Motion DENIED.

## CALENDAR CALL:

State announced ready with 3 - 4 days for trial. Mr. Frizzell requested trial be continued as he has been preparing for the motion to suppress and has not been able to prepare for trial. Colloquy regarding scheduling. COURT ORDERED, request to continue GRANTED; trial date VACATED and RESET.

8/17/2016 8:30 AM PRE TRIAL CONFERENCE

9/14/2016 8:30 AM CALENDAR CALL

9/19/2016 10:00 AM JURY TRIAL

EXHIBIT #15E

STATE BAR OF NEVADA



3100 W. Charleston Blvd.  
Suite 100  
Las Vegas, NV 89102  
phone 702.382.2200  
toll free 800.254.2797  
fax 702.385.2878

9456 Double R Blvd., Ste. B  
Reno, NV 89521-5977  
phone 775.329.4100  
fax 775.329.0522

[www.nvbar.org](http://www.nvbar.org)

June 16, 2016

Christopher Keller, #1804285  
Clark County Detention Center  
330 S. Casino Center Boulevard  
Las Vegas, NV 89101

RE: Grievance / Kenneth Frizzell, Esq., and Michael Sanft, Esq.  
Reference No. OBC16-0711

Dear Mr. Keller:

Please allow this letter to acknowledge receipt of your correspondence to the State Bar of Nevada regarding attorneys Kenneth Frizzell and Michael Sanft in connection with your ongoing criminal case.

Court records show that *State of Nevada vs. Christopher Keller*, Case No. C287724, remains pending in the Eighth Judicial District Court. A review of court records and the information provided indicates that your grievance involves issues best addressed in the appropriate court settings.

The Office of Bar Counsel and the disciplinary boards of the State Bar are not substitutes for the court system. Accordingly, your allegations are, at this time, more appropriately handled in the proper judicial forums. Therefore, no further action shall be taken in this matter.

If a court makes any findings regarding this matter, please re-submit that information for our reconsideration.

Sincerely,

A handwritten signature in dark ink, appearing to read "PJP", is written over the word "Sincerely,".

Phillip J. Pattee  
Assistant Bar Counsel

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1 believe the defense had any witnesses besides maybe the  
 2 defendant himself.  
 3 THE COURT: Okay. So how -- I guess, it's the young  
 4 lady that's seated right there?  
 5 MR. FRIZZELL: Yes, Your Honor.  
 6 THE COURT: All right. How long -- was she  
 7 throughout the whole day of first day.  
 8 MR. DICKERSON: I believe she was here for two days,  
 9 Your Honor.  
 10 THE COURT: Was she here for the opening statements?  
 11 Here for any testimony?  
 12 MR. FRIZZELL: She was here for the -- no, she was  
 13 here for the first day of jury selection.  
 14 THE COURT: Okay.  
 15 MR. FRIZZELL: She was not here yesterday.  
 16 THE COURT: All right.  
 17 MR. FRIZZELL: My client's mother was here.  
 18 Obviously, she's not going to be a witness.  
 19 THE COURT: Okay. All right. Who is the witness?  
 20 MR. FRIZZELL: Mary Silva.  
 21 THE COURT: All right.  
 22 MR. FRIZZELL: Mary Silva.  
 23 THE COURT: Okay. Notwithstanding the fact that the  
 24 State was not put on notice of these witnesses, I'm going to  
 25 allow you to call her if you choose to. But you need to make

ROUGH DRAFT TRANSCRIPT

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1 her available to the State to give them an opportunity to  
 2 question her to see what, if anything, she's going to be  
 3 offering.  
 4 MR. FRIZZELL: And that is fine, Your Honor. I  
 5 actually just learned of her potential as a witness yesterday  
 6 evening from an e-mail, which I received.  
 7 THE COURT: Okay. So --  
 8 MR. FRIZZELL: And --  
 9 THE COURT: -- she wasn't even somebody that  
 10 defendant was telling you previously that we discussed before  
 11 we started the trial?  
 12 MR. FRIZZELL: No, Your Honor.  
 13 THE DEFENDANT: I didn't know. I thought the  
 14 witness --  
 15 THE COURT: Well, let me ask you this, I'm going to  
 16 have her exit the courtroom, okay? All right. Ma'am, go  
 17 ahead and go out.  
 18 (Witness exits the courtroom)  
 19 THE COURT: What's your proffer?  
 20 MR. FRIZZELL: That she can testify that there was a  
 21 woman that was living there because she cleaned -- it was --  
 22 cleaned the condominium unit. Cleaned -- had been cleaning --  
 23 like a cleaning lady for Unit F. And so that she was going to  
 24 be able to say that yes, a woman was living there, and she was  
 25 the -- this was the woman who hired me to come clean the house

ROUGH DRAFT TRANSCRIPT

1 THE COURT: Okay. Well, I mean, I'm going to leave  
2 it to Mr. Frizzell at this point in time to determine --  
3 because we still have a trial going. We're still in the  
4 middle of trial. There's still time. We're not done with it.  
5 You've made your record. You've made your record, Mr. Keller.  
6 Mr. Frizzell, you and he need to discuss that and determine  
7 whether or not you're going to be in a position where you want  
8 those witnesses to testify or not. So -- and then, Mr.  
9 Frizzell, I'd do what you can to see what you can get -- get  
10 -- see what you can find out.  
11 MR. FRIZZELL: And just so that you understand, he  
12 did just tell me all this; gave me this written down  
13 yesterday.  
14 THE DEFENDANT: This I gave you on Monday.  
15 MR. FRIZZELL: And Your Honor, I just --  
16 THE DEFENDANT: I gave him this on Monday, but I  
17 told him that I want --  
18 MR. FRIZZELL: Well, what he wanted from -- what he  
19 wanted from this list he gave me was some documentation that  
20 there wasn't going to be any way to get it in, and the  
21 documents at least themselves. All he wanted was like  
22 printouts of Registers of Actions on some other -- some other  
23 people and their case. And not only is that -- not only  
24 during our discussion did I say -- did I tell him that I  
25 thought that was -- that was irrelevant and there was other --

ROUGH DRAFT TRANSCRIPT

1 a better strategic way to handle that issue, I'm -- I'm  
2 hearing actually -- like I said, just yesterday afternoon,  
3 about I want to call all these people, some of which I have  
4 absolutely no contact information for. Yes, my investigator,  
5 Mr. Maston, I have certainly ways to contact him.  
6 THE COURT: Okay.  
7 THE DEFENDANT: I have numbers for the witnesses.  
8 MR. FRIZZELL: Okay. But if -- I mean, if he wants  
9 witnesses to be called, I'm just letting Your Honor know that  
10 I'm just -- I just learned of who -- that he wanted to call  
11 somebody yesterday, so there has been no notification to the  
12 -- to the State about that --  
13 THE COURT: Okay.  
14 MR. FRIZZELL: -- at all.  
15 THE COURT: All right, that's fine. All right, get  
16 the jury in.  
17 THE MARSHAL: All rise for the presence of the jury.  
18 (within the presence of the jury)  
19 THE COURT: Okay. We're back on the record in the  
20 case of State of Nevada vs. Christopher Keller in C-312717.  
21 Let the record reflect the presence of the defendant and his  
22 counsel, as well as State and their counsel.  
23 (COURT CALLS ROLL OF THE JURY)  
24 THE COURT: All members of the jury have answered  
25 the call. Do the parties stipulate to the presence of the

ROUGH DRAFT TRANSCRIPT

EXHIBIT #16 C

1 community that --  
2 THE COURT:  
3 THE DEFENDANT: Well, they're character witnesses,  
4 and then I --  
5 THE COURT: So you want -- you want to put your  
6 character into evidence?  
7 THE DEFENDANT: Yes. I'm going to go on the -- I'm  
8 going to go -- I was going to go on the stand anyway.  
9 THE COURT: Oh, okay.  
10 THE DEFENDANT: And then I had also wanted to -- a  
11 witness -- I wanted to call Mark Maston (phonetic), because he  
12 -- when he went to my house to investigate, I mean, the other  
13 -- the other person that was living there at the residence was  
14 there, and still had access to the vehicle and all this stuff,  
15 and he -- I mean, he's aware of that stuff, but I have no way  
16 of like putting that -- I have no way of presenting that to  
17 the Court without -- you know, I have no way of really  
18 presenting the -- this evidence to the Court.  
19 THE COURT: Okay, well that's something you need to  
20 discuss with your attorney. Your attorney's indicating that  
21 -- I mean, you got the information, Mr. Frizzell.  
22 MR. FRIZZELL: I -- I --  
23 THE COURT: And if in fact there's witnesses you  
24 believe will assist you in your trial, then I'd suggest that  
25 you probably try to do what you can to call them. But have

ROUGH DRAFT TRANSCRIPT

Frizzell talked me out of it at that was only way to get

1 you provided a witness list to the -- I mean, to the State?  
2 MR. BUNNETT: Your Honor, we have not --  
3 MR. FRIZZELL: No, I just --  
4 MR. BUNNETT: -- received a witness list. That -- I  
5 mean, just based on what we're hearing today, my thoughts are  
6 that, if these witnesses were to be presented, they sound  
7 mostly like -- I mean, he mentioned upstanding members of the  
8 community. If he puts on character evidence, Your Honor, I  
9 feel like it's going to be our position that we're going to be  
10 able to ask them about his character. And I think the  
11 procedure how that's done is asking them, you know, have you  
12 heard that the defendant has been convicted of a felony, or  
13 that he's been --  
14 THE COURT: Well, that's why I was asking whether or  
15 not -- that was his question, was he putting his character  
16 into issue.  
17 MR. BUNNETT: So, I mean, I don't at this point  
18 think -- if character witnesses are being presented, I don't  
19 think we've been noticed, but I don't think our requested  
20 remedy would be that he not be allowed to call those  
21 witnesses.  
22 THE COURT: Um-hum.  
23 MR. BUNNETT: I mean, it would also sort of depend  
24 on what evidence is proposed to be presented, but I mean, if  
25 it's merely character evidence --

ROUGH DRAFT TRANSCRIPT

Another story to this:

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1 (In the presence of the jury.)  
2 THE COURT: Okay. This is continuation of jury  
3 trial in case the State of Nevada versus Christopher Keller  
4 in C-312717. I'd like the record to reflect the presence of  
5 the defendant, his counsel, district attorney and their  
6 counsel and all members of the jury. Will the parties  
7 stipulate to the presence of the jury?  
8 MR. DICKERSON: State will stipulate, Your Honor.  
9 MR. FRIZZELL: Defense stipulates.  
10 THE COURT: Okay. As we took a break, State had  
11 rested their case. Mr. Frizzell, did you wish to present any  
12 evidence on behalf of the defendant?  
13 MR. FRIZZELL: Yes, Your Honor. Defense wishes to  
14 call Officer Jacob Henry to the stand.  
15 THE COURT: Okay.  
16 OFFICER JACOB HENRY, DEFENDANT'S WITNESS, SWORN.  
17 THE CLERK: Thank you. Please be seated. Please  
18 state your full name, spelling your first and last name for  
19 the record.  
20 THE WITNESS: Jacob Henry, J-a-c-o-b, H-e-n-r-y.  
21 THE COURT: Your witness.  
22 DIRECT EXAMINATION  
23 BY MR. FRIZZELL:  
24 Q Are you officer, detective? What is your title?  
25 A Officer.

ROUGH DRAFT TRANSCRIPT

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1 Q Officer Henry, what do you do for a living?  
2 A I'm a police officer with Las Vegas Metropolitan  
3 Police Department.  
4 Q And how long have you been so employed?  
5 A Today's date, approximately three years.  
6 Q And where were you -- were you -- where are you  
7 stationed now?  
8 A Northeast Area Command.  
9 Q Okay. And were you stationed that command on  
10 January 28th, 2016?  
11 A I was.  
12 Q On that date, were you called out for any reason?  
13 A I was.  
14 Q Okay. And what was that reason?  
15 THE COURT: Why don't you be a little bit more  
16 specific.  
17 THE WITNESS: Yeah, I was on multiple calls that  
18 night.  
19 THE COURT: Okay.  
20 BY MR. FRIZZELL:  
21 Q In the evening, were you called to 265 North Lamb  
22 Boulevard for any reason?  
23 A I was.  
24 Q And do you recall why you were called to that  
25 address?

ROUGH DRAFT TRANSCRIPT



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1 looking inside the glove box on the right side, there was a  
2 -- a little compartment that was right there.  
3 Q Okay. So can you describe what you -- you're  
4 calling a compartment?  
5 A Yeah. So there was a little bit of a space between  
6 the glove box and the actual like door and the frame of the  
7 car.  
8 Q Did you have to punch through something to get to  
9 wherever it was you were ultimately attempting to go to?  
10 A No.  
11 MR. FRIZZELL: Court's indulgence.  
12 BY MR. FRIZZELL:  
13 Q At what point was there a search warrant request  
14 made?  
15 A I was able to reach my hand in the -- the little  
16 compartment from inside the glove box, and I was able to feel  
17 a pouch inside that -- that glove box compartment. Based on  
18 my training and experience from manipulating the pouch, I  
19 could feel something hard inside that felt like a firearm.  
20 Q Okay.  
21 A So we -- we stopped at that point and obtained a  
22 search warrant.  
23 Q All right. Now, were you wearing a body cam at  
24 this juncture?  
25 A I was.

ROUGH DRAFT TRANSCRIPT

152

1 Q And was it operational?  
2 A It was.  
3 Q Was it operational during the time that you're  
4 describing to the jury?  
5 A From my recollection, it was turned on, yes.  
6 Q And was that body camera footage a recording, to  
7 the best of your knowledge?  
8 A To the best of my knowledge, it was.  
9 Q After this incident was concluded, what, if  
10 anything, did you do with the body camera?  
11 A I just did what we normally at the end of a shift,  
12 which is take it off and plug it into the docking system at  
13 our area command and so it can upload the videos on to the  
14 database.  
15 Q And did you -- prior to the end of the  
16 investigation, did you inform the suspect that you had the  
17 body cam on and it was running?  
18 A I do not recall specifically advising him that he  
19 was -- he was being recorded by the body camera.  
20 Q And so when you go back to the area command and you  
21 put it in the docking station, what is the purpose of that?  
22 A It uploads all the videos that were obtained  
23 throughout the night into the -- the massive database that we  
24 have that -- that saves and stores video.  
25 Q Okay. Where actually on your body do you recall

ROUGH DRAFT TRANSCRIPT

1 BY MR. FRIZZELL:  
2 Q Did you transfer the footage to the District  
3 Attorney's Office?  
4 A Physically, no. By me plugging it into the  
5 database that they have access to as well, it would have  
6 transferred to them being able to obtain it. So I did not  
7 physically walk it over here and hand the CD, no.  
8 Q Okay.  
9 MR. FRIZZELL: Court's indulgence. I'll pass the  
10 witness, Your Honor.  
11 THE COURT: Cross.  
12 CROSS-EXAMINATION  
13 BY MR. BUNNETT:  
14 Q So on direct examination, you kept referring to a  
15 suspect. Is that suspect here this court today?  
16 A He is.  
17 Q Could you please point to him and identify an  
18 article of clothing that he or she -- he's wearing?  
19 A It looks like he's sitting right beside the  
20 attorney who was just questioning me, and he's wearing a light  
21 blue shirt.  
22 MR. BUNNETT: And Your Honor, I'd ask that the  
23 record reflect that the witness has identified the defendant.  
24 THE COURT: It shall.  
25 BY MR. BUNNETT:

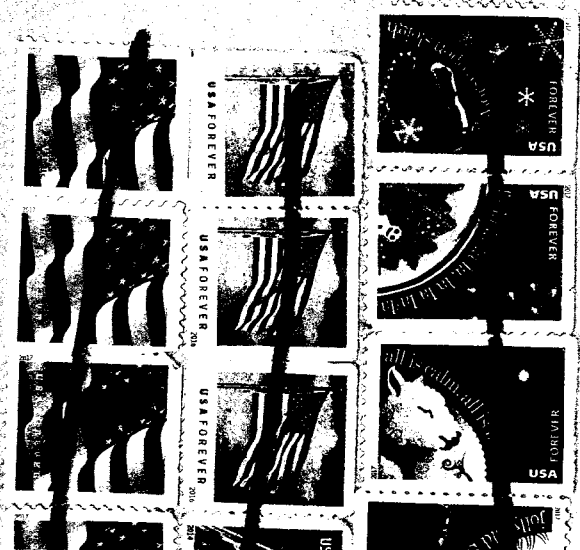
ROUGH DRAFT TRANSCRIPT

1 Q Okay. So you responded to help Officer Lopez?  
2 A Correct.  
3 Q And showing you --  
4 (Pause in the proceedings)  
5 BY MR. BUNNETT:  
6 Q So I'm going to show you State's 6. That's what  
7 the car looked like in the parking spot, right?  
8 A Yes.  
9 Q Okay. And I'm going to show you State's 8. That's  
10 that license plate that was on the car, right?  
11 A From what I could recall, yes.  
12 Q Okay. I'm going to show you State's 20. That's  
13 that hole that you were talking about, right?  
14 A Correct. There's actually a little like piece that  
15 was blocking that, so it wasn't as obvious when you first  
16 open it. But as I explained to the other attorney, once you  
17 kind of touched it or tapped it, then it just it give away.  
18 Q I mean, but you didn't punch a hole in the side of  
19 the glove box, did you?  
20 A No.  
21 Q So that was -- safe to assume that there was there  
22 before you guys started searching the vehicle?  
23 A Yes.  
24 Q And you found a lot of stuff in that car, didn't  
25 you?

ROUGH DRAFT TRANSCRIPT

Christopher Keller #81034b  
LCC 1200 Prison Rd.  
Coverack, NV 89419

Steven D. GRIERSON, Court Clerk (Sept. 19)  
200 Lewis Ave, 3rd floor  
Las Vegas, NV 89155-1160



INMATE LEGAL  
MAIL CONFIDENTIAL

27

FILED

SEP 05 2019

*John T. Blum*  
CLERK OF COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

Christopher R Keller,

Petitioner,

vs.

State of Nevada,

Respondent,

Case No: A-19-800950-W  
Department 19

ORDER FOR PETITION FOR  
WRIT OF HABEAS CORPUS

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on August 26, 2019. The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

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

**IT IS HEREBY FURTHER ORDERED** that this matter shall be placed on this Court's

Calendar on the 9<sup>th</sup> day of December, 2019, at the hour of

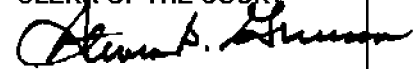
8:30 A.M. o'clock for further proceedings.

*Will Kyrst*  
District Court Judge

*AS*

A-19-800950-W  
OPWH  
Order for Petition for Writ of Habeas Corpus  
4860636





RSPN  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
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200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHRISTOPHER ROBERT KELLER,  
#1804258

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-19-800950-W

DEPT NO: XIX

**STATE'S RESPONSE TO DEFENDANT'S PRO PER PETITION FOR WRIT OF  
HABEAS CORPUS (POST-CONVICTION)**

DATE OF HEARING: April 16, 2018

TIME OF HEARING: 8:30 a.m.

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

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On February 17, 2016, Christopher Robert Keller (hereinafter "Petitioner") was  
4 charged by way of Information with Counts 1 and 2 - Trafficking In Controlled Substance  
5 (Category A Felony - NRS 453.3385.3 - NOC 51160); Count 3 - Possession Of Controlled  
6 Substance, Marijuana (Category E Felony - NRS 453.336 - NOC 51127); Counts 4, 5, 6, and  
7 7 - Possession Of Controlled Substance With Intent To Sell (Category D Felony - NRS  
8 453.337 - NOC 51141); and Counts 8 and 9 - Ownership Or Possession Of Firearm By  
9 Prohibited Person (Category B Felony - NRS 202.360 - NOC 51460). On February 18, 2016,  
10 Petitioner entered a plea of not guilty and invoked his constitutional right to a speedy trial.

11 On March 24, 2016, the State filed a Notice of Intent to Seek Punishment as a Habitual  
12 Criminal. At Calendar Call on April 13, 2016, Petitioner's counsel, Michael Sanft, Esq.,  
13 announced he had a conflict for the trial date due to the upcoming trial. Petitioner stated he  
14 wanted to go to trial on the original date, and due to counsel's conflict, the Court ordered the  
15 trial date reset. On this date, the State also extended a plea offer to Petitioner for one count of  
16 Low-Level Trafficking in a Controlled Substance and one count of Possession of a Firearm by  
17 a Prohibited Person, with Petitioner stipulating to small habitual treatment and a stipulated  
18 maximum sentence of twelve and a half (12.5) years. The trial date was reset to May 2, 2016  
19 ("First Continuance").

20 At Calendar Call on April 20, 2016, Petitioner stated he wanted to go to trial and was  
21 willing to represent himself if need be. On April 29, 2016, the State filed an Amended  
22 Information, charging Petitioner with the same charges as the original Information. On April  
23 29, 2016, Mr. Sanft requested to withdraw due to a conflict of interest. The Court granted the  
24 request and appointed Kenneth Frizzell, Esq. to represent Petitioner. On May 4, 2016, Mr.  
25 Frizzell confirmed as counsel. Due to the change in counsel, the trial date was vacated and  
26 reset to June 27, 2016 ("Second Continuance").

27 On June 10, 2016, Petitioner filed a Motion to Suppress. The State filed an Opposition  
28 on June 17, 2016. On June 20, 2016, Petitioner requested more time to file a Reply to the

1 State's Opposition, and the Court vacated the trial date of June 27, 2016, and ordered Calendar  
2 Call on July 20, 2016, and a Jackson v. Denno Hearing on July 21, 2016 ("Third  
3 Continuance"). On June 13, 2016, Petitioner filed a Pro Per Motion to Dismiss Counsel and  
4 Appoint Alternate Counsel. The District Court denied the Motion on July 21, 2016, after  
5 hearing from Petitioner.

6 On July 18, 2016, the State filed a Notice of Intent to Seek Habitual Treatment. On July  
7 21, 2016, the State also informed the Court that it had extended a new plea offer for one count  
8 of Mid-Level Trafficking and one count of Possession of a Firearm by a Prohibited Person,  
9 with the State retaining the right to argue at sentencing but having no opposition to the counts  
10 running concurrently. Petitioner rejected the State's offer. On July 21, 2016, the Court also  
11 denied Petitioner's Motion to Suppress after the Jackson v. Denno hearing. The Court denied  
12 Petitioner's Pro Per Motion to Dismiss Counsel and Appoint Alternate Counsel. The Order  
13 denying the motions was filed on August 18, 2016. On July 21, 2017, Defense counsel  
14 requested another continuance, stating that due to the Motion to Suppress, he had not been  
15 able to prepare for trial ("Fourth Continuance"). The Court granted the continuance and reset  
16 the trial date for September 19, 2016. At Calendar Call on September 14, 2016, Petitioner  
17 waived his speedy trial right and requested a continuance ("Fifth Continuance"). The Court  
18 granted the continuance and reset the trial to March 6, 2017.

19 Both Petitioner and the State announced ready for the March 6, 2017 trial date, which  
20 was the sixth trial setting in the case. On March 6, 2017, the day trial was due to begin, Amy  
21 Feliciano, Esq., appeared in Court and attempted to substitute in as trial counsel. Ms. Feliciano  
22 informed the Court that she had been retained by Petitioner's mother sometime in early  
23 February but had not moved to substitute in as counsel until March 6, 2017 due to multiple  
24 medical and personal problems. As Ms. Feliciano was unprepared for trial without a sixth  
25 continuance being granted, the Court denied Petitioner's request for a continuance and ordered  
26 trial to proceed with Mr. Frizzell as trial counsel.

27 On March 6, 2017, the State filed a Second Amended Information as the State chose to  
28 bifurcate Counts 8 and 9 from the first seven (7) counts. The Second Amended Information

1 was filed in open court on March 6, 2017, charging Petitioner with Counts 1 and 2 - Trafficking  
2 in Controlled Substance (Category A Felony - NRS 453.3385.3 - NOC 51160); Count 3 -  
3 Possession of Controlled Substance, Marijuana (Category E Felony - NRS 453.336 - NOC  
4 51127); and Counts 4-7 - Possession Of Controlled Substance With Intent To Sell (Category  
5 D Felony - NRS 453.337 - NOC 51141). Petitioner's jury trial commenced on March 7, 2017,  
6 and concluded on March 10, 2017, when the jury returned a verdict of guilty on all seven (7)  
7 counts. A Third Amended Information was subsequently filed in open court which added  
8 Counts 8 and 9 - Ownership or Possession of Firearm by Prohibited Person (Category B Felony  
9 - NRS 202.360 - NOC 51460). The jury also returned verdicts of guilty on Counts 8 and 9.

10 On April 29, 2017, Ms. Feliciano substituted as counsel of record, and Mr. Frizzell  
11 withdrew from his representation. Ms. Feliciano requested that sentencing be continued three  
12 (3) times: on May 8, 2017, June 5, 2017, and June 19, 2017. On July 24, 2017, Ms. Feliciano  
13 requested a fourth sentencing continuance, and Petitioner requested that she be dismissed as  
14 counsel of record. The District Court granted Petitioner's request, and re-appointed Mr.  
15 Frizzell as Petitioner's counsel. On July 31, 2017, the Court granted Mr. Frizzell a continuance  
16 to allow him to retrieve Petitioner's file from Ms. Feliciano.

17 On August 7, 2017, Petitioner was sentenced as follows: as to Count 1- LIFE in the  
18 Nevada Department of Corrections (NDC) with a minimum parole eligibility after ten (10)  
19 years in NDC; as to Count 2 – LIFE in the NDC with a minimum parole eligibility after ten  
20 (10) years in the NDC; Count 2 to run concurrent with Count 1; as to Count 3 – a minimum of  
21 twelve (12) months and a maximum of forty-eight (48) months in the NDC; Count 3 to run  
22 concurrent with Count 2; as to Count 4 – to a minimum of twelve (12) months and a maximum  
23 of forty-eight (48) months in the NDC; Count 4 to run concurrent with Count 3; as to Count 5  
24 – a minimum of twelve (12) month and a maximum of forty-eight (48) months in the NDC;  
25 Count 5 to run concurrent with county 4; as to Count 6 - to a minimum of twelve (12) months  
26 and a maximum of forty-eight (48) months in the NDC; Count 6 to run concurrent with Count  
27 5; as to Count 7 - to a minimum of twelve (12) months and a maximum of forty-eight (48)  
28 months in the NDC; Count 7 to run concurrent with Count 6; as to Count 8 – Petitioner



1 sentenced under the large habitual criminal statute to LIFE in the Nevada Department of  
2 Corrections (NDC) with a minimum parole eligibility after ten (10) years in the NDC; Count  
3 8 to run CONSECUTIVE to Counts 1, 2, 3, 4, 5, 6, and 7; and as to Count 9, Defendant  
4 sentenced under the large habitual criminal statute to LIFE in the Nevada Department of  
5 Corrections (NDC) with a minimum parole eligibility after ten (10) years in the NDC; Count  
6 9 to run concurrent with Count 8; for a total aggregate sentence of LIFE in the NDC with a  
7 minimum parole eligibility of TWENTY (20) years in the NDC, and five-hundred fifty-nine  
8 (559) days credit for time served.

9 Petitioner's Judgment of Conviction was filed on August 10, 2017. On August 24,  
10 2017, Petitioner filed a Notice of Appeal. On November 14, 2017, Petitioner filed a Motion  
11 for Appointment of Counsel and a Motion for Withdrawal of Attorney of Record. On  
12 December 6, 2017, this Court granted Defendant's Motion for Withdrawal of Counsel and  
13 denied Defendant's Motion for Appointment of Counsel.

14 An Amended Judgment of Conviction was filed on December 12, 2017, correcting the  
15 statute to NRS 435.337 for Possession of Controlled Substance with Intent to Sell for Counts  
16 4, 5, 6 and 7.

17 On March 22, 2018, Petitioner filed another Motion for Appointment of Counsel and a  
18 Motion to Dismiss Attorney of Record. On April 13, 2018, the State filed its Opposition to  
19 Petitioner's Motion to Appoint Counsel and Motion to Dismiss Attorney of Record. On April  
20 16, 2018, the Court denied the motion as Petitioner's appeal was still pending before the  
21 Nevada Supreme Court.

22 On October 15, 2018, the Nevada Supreme Court affirmed Petitioner's Judgment of  
23 Conviction. Remittitur issued on November 9, 2018.

24 On August 26, 2019, Petitioner filed the instant Pro Per Petition for Writ of Habeas  
25 Corpus. The State's Response now follows.

#### 26 **STATEMENT OF FACTS**

27 On January 28, 2016 at approximately 2:25 a.m., Officer D. Lopez P#9806 with the Las  
28 Vegas Metropolitan Police Department (hereinafter "LVMPD") conducted a vehicle stop on a

1 2002 silver Dodge Stratus later found to be driven by Petitioner. Officer Lopez observed the  
2 vehicle travelling over 300 feet in a double-yellow left-hand turn lane, making a U-turn,  
3 making an abrupt turn into a residential area, travelling at a high rate of speed, and having a  
4 broken taillight. Officer Lopez testified that it was obvious to him that the Dodge was trying  
5 to put distance between them. Once the vehicle entered the residential area, it parked and  
6 Petitioner quickly left the vehicle after Officer Lopez turned on his siren and lights. Officer  
7 Lopez observed Petitioner quickly jump out of the vehicle, appearing as though he wanted to  
8 avoid him. Officer Lopez was able to smell the odor of marijuana coming from Petitioner's  
9 person as well as from the inside of the vehicle. Officer Lopez initiated a traffic stop.

10 Petitioner consented to allow Officer Lopez to remove his wallet from his pocket to see  
11 Petitioner's identification. Upon removing the wallet, Officer Lopez noted that Petitioner was  
12 carrying what appeared to be a large amount of cash. The cash was right outside of Petitioner's  
13 wallet, with multiple denominations, among which sixty-eight \$20 bills separated in groups of  
14 five (5) bills and folded in alternating directions. The amount of cash was determined to be  
15 \$2,187.00. Based upon the manner in which the cash was situated, and the amount of cash  
16 that Petitioner carried, Officer Lopez determined that the cash was, in his training and  
17 experience, consistent with the sale of narcotics. Officer Lopez based this conclusion, in part,  
18 on the denominations of the cash, the way the cash was specifically folded, the fact that \$20  
19 bills were folded in increments of \$100, the direction the bills were facing, and the fact that a  
20 "wad of cash" was made up of mostly smaller denominations, such as \$20, \$5 and \$10 bills.

21 During the vehicle stop and pat down, there were approximately five (5) shots fired  
22 within the apartment complex, so Officer Lopez placed Petitioner in handcuffs and into the  
23 patrol vehicle not only for Petitioner's safety, but also so that Officer Lopez would be able to  
24 safely address any issues stemming from the shots fired. Additionally, Officer Lopez believed  
25 that Petitioner would be a flight risk based upon his attempts to avoid the officer, his  
26 nervousness, the fact that he was so upset about being stopped, and Defendant's behavior while  
27 Officer Lopez conducted the pat down for weapons. Afterward, while standing outside the  
28 driver's door, Officer Lopez noticed a green leafy residue on the floorboard of the driver's

1 side vehicle in plain view. Based upon the vehicle, the odor of marijuana emanating from  
2 Petitioner and the vehicle, and the green leafy residue in plain view, Officer Lopez conducted  
3 a probable cause search of Petitioner's vehicle. During the probable cause search, Officer  
4 Lopez located a clear sealable plastic bag containing multiple smaller clear plastic bags  
5 underneath the driver's seat, as well as another large sealable plastic bag between the driver's  
6 seat and the center console. At that point, based on the size of the bags found in Petitioner's  
7 car, as well as the amount of cash found on Petitioner's person, Officer Lopez called for a K-  
8 9 narcotics dog.

9 The K-9 narcotics dog alerted to the glove box, wherein Officer Lopez located a  
10 concealed compartment. Officer Lopez testified he put his hand inside the hole and could feel  
11 a bag with something solid inside. At that point in time, Officer Lopez stopped his search and  
12 obtained a search warrant. Pursuant to the search warrant, Officer Lopez located several items  
13 of evidence. Officer Lopez, Officer Henry, and Crime Scene Analyst Stephanie Thi searched  
14 the vehicle. In the secret compartment, they found a black mesh bag, within which they found  
15 two gold colored plastic bags. One of the gold bags contained a nylon drawstring bag within  
16 which a loaded Beretta model 950, .22 caliber handgun was found. Moreover, Officer Lopez  
17 also found several packages of a white crystal substance, plastic wrappers with a brown  
18 substance, and a plastic bag with an off white powdery substance. Officer Lopez believed  
19 these substances, based on his training and experience, to be various controlled substances,  
20 respectively. Forensic Scientist Jason Althnether tested the substances and determined that  
21 the white crystal substance was methamphetamine with a net weight of 344.29 grams, that the  
22 brown substance was indeed heroin with a net weight of 33.92 grams, and that the white  
23 powdery substance was indeed cocaine with a weight of 0.537 grams. Officer Lopez testified  
24 he also found a blue powdery substance in the secret compartment. Mr. Althnether tested the  
25 substance and determined it was a combination of methamphetamine, amphetamine, and  
26 cocaine with a weight of 0.795 grams.

27 Based on what was discovered in the car, Officer Lopez obtained a search warrant for  
28 Petitioner's house located at 265 North Lamb, Unit F, the unit in front of which Petitioner had

1 parked the car. Officer Lopez, Officer Steven Hough, Detective Chad Embry and Detective  
2 Michael Belmont searched Petitioner's residence. While searching the bedroom, Officer  
3 Lopez found used smoking pipes, four (4) scales, a box of 9mm ammunition, and two (2) bags  
4 containing a white crystalline substance. This substance was later tested by Mr. Althnether,  
5 who determined the substance was methamphetamine. The first bag weighed 3.818 grams and  
6 the second bag weighed 2.357 grams. Officer Lopez also found in the bedroom a brown  
7 substance he also believed was heroin. Upon testing, Mr. Althnether confirmed the substance  
8 was heroin, weighing .895 grams. In the storage closet, Detective Embry found .22 short  
9 ammunition. In the bedroom, police also discovered a Ruger 9mm handgun and a pay stub  
10 with Petitioner's name on it, which was impounded by Officer Lopez. Upon searching the  
11 kitchen, Detective Belmont also found a glass jar containing a green leafy substance believed  
12 to be marijuana, which was confirmed as such by Mr. Althnether, finding the marijuana to  
13 weigh 175 grams. Officers also found balloons, clean pipes, syringes and elastic bands in  
14 Petitioner's residence. Moreover, Crime Scene Analyst Thi testified that the Nevada DMV  
15 registration found in the car listed Petitioner as the owner of the Dodge.

16 During trial, the State introduced a jail call wherein Petitioner told a woman to move  
17 into his house and make it her home. Petitioner was placed under arrest and brought to  
18 Northeast Area Command. While there, Officer Hough, who was watching Petitioner in an  
19 interview room on a monitor, observed Petitioner pull out a small baggie from inside his pants,  
20 and by the time he and another officer arrived in the room, Petitioner had a white powdery  
21 substance on his nose and mouth. Upon searching Petitioner, Officer Hough found another  
22 small bag of white powder attached to the left side of Petitioner's scrotum.

### 23 ARGUMENT

#### 24 **I. PETITIONER WAIVED HIS SUBSTANTIVE GROUNDS ONE (1) THROUGH** 25 **SEVEN (7) BY FAILING TO RAISE THEM ON DIRECT APPEAL**

26 Pursuant to NRS 34.810:

27 1. The court shall dismiss a petition if the court determines that:

28 ...

1 (b) The petitioner's conviction was the result of a trial and the grounds for the  
petition could have been:

2 (1) Presented to the trial court;

3 (2) Raised in a direct appeal or a prior petition for a writ of habeas corpus  
or postconviction relief; or

4 (3) Raised in any other proceeding that the petitioner has taken to secure  
relief from the petitioner's conviction and sentence,

5 unless the court finds both good cause for the failure to present the  
6 grounds and actual prejudice to the petitioner.

7 ...

8 3. Pursuant to subsections 1 and 2, the petitioner has the burden of pleading and  
proving specific facts that demonstrate:

9 (a) Good cause for the petitioner's failure to present the claim or for presenting  
10 the claim again; and

11 (b) Actual prejudice to the petitioner.

12 The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and  
13 claims of ineffective assistance of trial and appellate counsel must first be pursued in post-  
14 conviction proceedings... [A]ll other claims that are appropriate for a direct appeal must be  
15 pursued on direct appeal, or they will be *considered waived in subsequent proceedings.*"  
16 Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added)  
17 (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). "A  
18 court *must* dismiss a habeas petition if it presents claims that either were or could have been  
19 presented in an earlier proceeding, unless the court finds both cause for failing to present the  
20 claims earlier or for raising them again and actual prejudice to the petitioner." Evans v. State,  
21 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001).

22 Furthermore, substantive claims are beyond the scope of habeas and waived. NRS  
23 34.724(2)(a); see also, Evans, 117 Nev. at 646-47, 29 P.3d at 523; Franklin, 110 Nev. at 752,  
24 877 P.2d at 1059. Under NRS 34.810(3), a defendant may only escape these procedural bars  
25 if they meet the burden of establishing good cause and prejudice. Where a defendant does not  
26 show good cause for failure to raise claims of error upon direct appeal, the district court is not  
27 obliged to consider them in post-conviction proceedings. Jones v. State, 91 Nev. 416, 536 P.2d  
28 1025 (1975).

3  
1 "To establish good cause, [a petitioner] must show that an impediment external to the  
2 defense prevented their compliance with the applicable procedural rule. A qualifying  
3 impediment might be shown where the factual or legal basis for a claim was not reasonably  
4 available at the time of default." Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003)  
5 (emphasis added). The Court continued, "appellants cannot attempt to manufacture good  
6 cause[.]" Id. at 621, 81 P.3d at 526. Examples of good cause include interference by State  
7 officials and the previous unavailability of a legal or factual basis. See State v. Huebler, 128  
8 Nev. 192, 275 P.3d 91 (2012).

9 In order to establish prejudice, the defendant must show "not merely that the errors of  
10 [the proceedings] created possibility of prejudice, but that they worked to his actual and  
11 substantial disadvantage, in affecting the state proceedings with error of constitutional  
12 dimensions." Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United  
13 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there  
14 must be a "substantial reason; one that affords a legal excuse." Hathaway v. State, 119 Nev.  
15 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229,  
16 1230 (1989)).

17 Moreover, a proper petition for post-conviction relief must set forth specific factual  
18 allegations that would entitle the petitioner to relief. NRS 34.735(6) states, in pertinent part,  
19 "[Petitioner] must allege specific facts supporting the claims in the petition [he] file[s] seeking  
20 relief from any conviction or sentence. Failure to raise specific facts rather than just  
21 conclusions may cause the petition to be dismissed." "Bare" and "naked" allegations are not  
22 sufficient to warrant post-conviction relief, nor are those belied and repelled by the record.  
23 Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "A claim is 'belied' when it  
24 is contradicted or proven to be false by the record as it existed at the time the claim was made."  
25 Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

26 In this case, Petitioner's first seven (7) grounds are all substantive claims that could and  
27 should have been raised on direct appeal: 1) Ground One: Illegal sentence; 2) Ground Two:  
28 Not allowed to question K-9 about dog's reliability; 3) Ground Three: No exigency to search

1 Petitioner's vehicle; 4) Ground Four: No probable cause existed to search Petitioner's vehicle;  
2 5) Ground Five: Extended stop violation of NRS 171.123(4); 6) Ground Six: Destroyed or lost  
3 body camera evidence; and 7) Ground Seven: False testimony of Officer D. Lopez. Each of  
4 these claims were available at the time Petitioner filed his direct appeal. Therefore, pursuant  
5 to Evans, these issues were substantively waived due to Petitioner's failure to raise them  
6 earlier. Furthermore, Petitioner's substantive claims are beyond the scope of habeas. NRS  
7 34.724(2)(a).

8 Petitioner does not argue good cause or prejudice to overcome these procedural bars.  
9 Indeed, Petitioner could not successfully do so, as all of the facts and information needed to  
10 raise these issues were available at the time Petitioner filed his direct appeal, and Petitioner  
11 does not allege that there was any external impediment to his raising of these issues at that  
12 time. In fact, Petitioner raised four (4) issues on direct appeal: 1) Whether the District Court  
13 abused its discretion in denying Appellant's sixth continuance request on the day trial was set  
14 to start; 2) Whether the District Court abused its discretion in denying Appellant's pretrial  
15 motion to suppress the evidence discovered in Appellant's residence pursuant to a search  
16 warrant; 3) Whether the District Court erred in admitting the jail calls introduced by the State;  
17 and 4) Whether there was cumulative error. Petitioner cannot demonstrate good cause to  
18 ignore his procedural defaults because all of the necessary facts and law were available for a  
19 timely appeal and he has not alleged an impediment external to the defense prevented raising  
20 these claims at the appropriate time. Therefore, these additional substantive claims are waived.

## 21 II. PETITIONER'S CLAIMS OF INEFFECTIVE ASSISTANCE OF 22 COUNSEL DO NOT ENTITLE HIM TO RELIEF

23 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove  
24 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of  
25 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865  
26 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's  
27 representation fell below an objective standard of reasonableness, and second, that but for  
28 counsel's errors, there is a reasonable probability that the result of the proceedings would have

2  
1 been different. 466 U.S. at 687–88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison  
2 v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).  
3 “[T]here is no reason for a court deciding an ineffective assistance claim to approach the  
4 inquiry in the same order or even to address<sup>8</sup> both components of the inquiry if the defendant  
5 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

6 The court begins with the presumption of effectiveness and then must determine  
7 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
8 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel  
9 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of  
10 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,  
11 537 P.2d 473, 474 (1975).

12 Counsel cannot be ineffective for failing to make futile objections or arguments. See  
13 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the  
14 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
15 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
16 (2002).

17 Based on the above law, the role of a court in considering allegations of ineffective  
18 assistance of counsel is “not to pass upon the merits of the action not taken but to determine  
19 whether, under the particular facts and circumstances of the case, trial counsel failed to render  
20 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
21 (1978). This analysis does not mean that the court should “second guess reasoned choices  
22 between trial tactics nor does it mean that defense counsel, to protect himself against  
23 allegations of inadequacy, must make every conceivable motion no matter how remote the  
24 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel  
25 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel  
26 cannot create one and may disserve the interests of his client by attempting a useless charade.”  
27 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

28 //



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

9        Even if a defendant can demonstrate that his counsel's representation fell below an  
10 objective standard of reasonableness, he must still demonstrate prejudice and show a  
11 reasonable probability that, but for counsel's errors, the result of the trial would have been  
12 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
13 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a probability  
14 sufficient to undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-89,  
15 694, 104 S. Ct. at 2064-65, 2068).

16        The Nevada Supreme Court has held "that a habeas corpus petitioner must prove the  
17 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of  
18 the evidence." Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,  
19 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must  
20 be supported with specific factual allegations, which if true, would entitle the petitioner to  
21 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked"  
22 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS  
23 34.735(6) states in relevant part, "[Petitioner] *must* allege specific facts supporting the claims  
24 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your  
25 petition to be dismissed." (emphasis added).

26        The decision not to call witnesses is within the discretion of trial counsel and will not  
27 be questioned unless it was a plainly unreasonable decision. See Rhyne v. State, 118 Nev. 1,  
28 38 P.3d 163 (2002); see also Dawson v. State, 108 Nev. 112, 825 P.2d 593 (1992). Strickland

does not enact Newton's third law for the presentation of evidence, requiring for every prosecution expert an equal and opposite expert from the defense. In many instances cross-examination will be sufficient to expose defects in an expert's presentation. When defense counsel does not have a solid case, the best strategy can be to say that there is too much doubt about the State's theory for a jury to convict. Harrington v. Richter, 131 S. Ct. 770, 791, 578 F.3d. 944 (2011). "Strategic choices made by counsel after thoroughly investigating the plausible options are almost unchallengeable." Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992).

Likewise, there is a strong presumption that appellate counsel's performance was reasonable and fell within "the wide range of reasonable professional assistance." See, United States v. Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990) (citing Strickland, 466 U.S. at 689, 104 S.Ct. at 2065). A claim of ineffective assistance of appellate counsel must satisfy the two-prong test set forth by Strickland. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). In order to satisfy Strickland's second prong, the defendant must show that the omitted issue would have had a reasonable probability of success on appeal. Id. The professional diligence and competence required on appeal involves "winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues." Jones v. Barnes, 463 U.S. 745, 751-52, 103 S.Ct. 3308, 3313 (1983). In particular, a "brief that raises every colorable issue runs the risk of burying good arguments... in a verbal mound made up of strong and weak contentions." Id. at 753, 103 S.Ct. at 3313. "For judges to second-guess reasonable professional judgments and impose on appointed counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy." Id. at 754, 103 S.Ct. at 3314.

In the instant Petition, Petitioner argues that his counsel, Kenneth Frizzell, Esq., was ineffective for the following reasons: (1) for not raising the issues Petitioner relayed to him prior to the suppression hearing; 2) for not appealing the suppression hearing issues; 3) for not using another investigator because his investigator knew Petitioner's mother and stepfather; 4) for never visiting him except after he paid for a different lawyer; 5) for failing to subpoena

1 or return calls of certain unnamed witnesses and failing to cross-examine about the passenger  
2 door being closed when officers first encountered him; 6) for failing to call family and  
3 witnesses to speak on his behalf at the penalty<sup>3</sup> phase; 7) for never asking for the testimony of  
4 the dog handler or K-9 records; and 8) for never relaying his mental health history or the fact  
5 that he was on and off different medications during the pre-trial process.

6 First, Petitioner claims that his counsel was ineffective for not raising the issues  
7 Petitioner relayed to him prior to the suppression hearing. Because Petitioner fails to identify  
8 which issues Petitioner relayed to him prior to the suppression hearing, or how those issues  
9 were supported by the record, Petitioner's argument is a bare and naked allegation pursuant to  
10 Hargrove and cannot entitle Petitioner to relief. In this case, trial counsel not only filed a  
11 Motion to Suppress evidence obtained during the vehicle stop, he conducted an evidentiary  
12 hearing on July 21, 2016 where Officer Daniel Lopez testified. Exhibits were presented as  
13 well as arguments by counsel. The Court denied the Motion to Suppress. Therefore, trial  
14 counsel appropriately raised the suppression issues and properly conducted the evidentiary  
15 hearing, rendering Petitioner's claim without merit.

16 Second, Petitioner alleges that counsel<sup>o</sup> was ineffective for not appealing the suppression  
17 hearing issues. However, Appellate counsel did raise several meritorious issues on appeal,  
18 including the denial of Petitioner's Motion to Suppress evidence from Petitioner's residence.  
19 The Nevada Supreme Court determined that the District Court did not abuse its discretion by  
20 denying Petitioner's motion to suppress evidence obtained from his condo through a search  
21 warrant. Order of Affirmance at page. 6. Further, Petitioner provides no evidence and only  
22 makes bare and naked allegations that he was prejudiced. Such bare and naked allegations are  
23 not sufficient to warrant relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Petitioner cannot  
24 demonstrate that the omitted issue would have had a reasonable probability of success on  
25 appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114. There is a strong presumption that  
26 appellate counsel's performance was reasonable and fell within "the wide range of reasonable  
27 professional assistance." See Aguirre, 912 F.2d at 560 (citing Strickland, 466 U.S. at 689, 104  
28 S. Ct. at 2065). As Petitioner has only made bare and naked allegations, he cannot overcome

1 the strong presumption of appellate counsel's reasonableness and, therefore, relief is not  
2 warranted. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

3 Third, Petitioner alleges that trial counsel was ineffective for not using another  
4 investigator because his investigator knew Petitioner's mother and stepfather. On July 21,  
5 2016, Defendant told the Court that he cannot get any investigation done and the investigator  
6 used by Mr. Frizzell is the same investigator Mr. Sanft used and he has filed a bar complaint  
7 against the investigator. Counsel is expected to conduct legal and factual investigations when  
8 developing a defense so they may make informed decisions on their client's behalf. Jackson,  
9 91 Nev. at 433, 537 P.2d at 474 (quoting In re Saunders, 2 Cal.3d 1033, 88 Cal.Rptr. 633, 638,  
10 472 P.2d 921, 926 (1970)). "[D]efense counsel has a duty 'to make reasonable investigations  
11 or to make a reasonable decision that makes particular investigations unnecessary.'" State v.  
12 Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993) (quoting Strickland, 466 U.S. at 691,  
13 104 S. Ct. at 2066). A defendant who contends his attorney was ineffective because he did not  
14 adequately investigate must show how a better investigation would have rendered a more  
15 favorable outcome. Molina, 120 Nev. at 192, 87 P.3d at 538.

16 Using investigators in trial preparation and investigation is both encouraged and common  
17 practice. Wilson v. State, 105 Nev. 110, 771 P.2d 583 (1989). Duties of investigators are  
18 "subject to the reasonable judgment of defense counsel in light of the facts of any particular  
19 case." Love, 109 Nev. at 1143-44, 865 P.2d at 327 (quoting U.S. v. Weaver, 882 F.2d 1128  
20 (7th Cir.), cert. denied, 493 U.S. 968, 110 S.Ct. 415, (1989)). A decision "not to investigate  
21 must be directly assessed for reasonableness in all the circumstances, applying a heavy  
22 measure of deference to counsel's judgment." Id. Moreover, "[a] decision not to call a witness  
23 will not generally constitute ineffective assistance of counsel" Id. at 1145, 865 P.2d at 328.  
24 For example, the Nevada Supreme Court in Love, 109 Nev. at 1145, 865 P.2d at 328, held that  
25 trial counsel was not ineffective simply because they sent their investigator to interview  
26 potential witnesses and did not to call certain alibi witnesses at trial after adequate  
27 investigations led to that conclusion.

28 //

1 In this case, trial counsel was not ineffective for not using another investigator because  
2 Petitioner was apparently dissatisfied with this one. A defendant is not entitled to a particular  
3 "relationship" with his attorney. Morris v. Slappy, 461 U.S. 1, 14, 103 S. Ct. 1610, 1617  
4 (1983). There is no requirement for any specific amount of communication as long as counsel  
5 is reasonably effective in his representation. See Id. It necessarily follows that Petitioner is  
6 not entitled to a particular relationship with his attorney's investigator, who is either also court  
7 appointed or who has a longstanding working relationship with that particular attorney. This  
8 was a reasonable decision to make and does not amount to deficient representation under  
9 Strickland.

10 Fourth, Petitioner contends that trial counsel was ineffective for never visiting him  
11 except after he paid for a different lawyer. There is no requirement for a specific number of  
12 visits every case necessitates, nor is that a basis for ineffective assistance of counsel.  
13 Defendant has provided no legal authority to support this claim. Counsel also communicates  
14 with defendants in the courtroom during routinely long court calendars. "There are countless  
15 ways to provide effective assistance in any given case. Even the best criminal defense attorneys  
16 would not defend a particular client in the same way." Strickland, 466 U.S. at 689, 104 S. Ct.  
17 at 689. Thus, this claim is without merit and should be denied.

18 Fifth, Petitioner claims that trial counsel was ineffective for failing to subpoena or  
19 return calls of unnamed witnesses to testify that another female resided in the townhouse he  
20 owned and switched vehicles with him, and that there was a strong probability the drugs in the  
21 purse in Petitioner's car belonged to the female. He further claims that trial counsel was  
22 ineffective for failing to cross-examine about the passenger door being closed when officers  
23 first encountered him and they opened the door to allow K-9 access to the interior of the  
24 vehicle. Trial counsel has the "immediate and ultimate responsibility of deciding if and when  
25 to object, which witnesses, if any, to call, and what defenses to develop." Rhyne, 118 Nev. at  
26 8, 38 P.3d at 167. Further, "Strategic choices made by counsel after thoroughly investigating  
27 the plausible options are almost unchallengeable." Dawson, 108 Nev. at 117, 825 P.2d at 596;  
28 see also Ford, 105 Nev. at 853, 784 P.2d at 953. Petitioner fails to specifically name any of

1 these alleged witnesses. It is unknown if trial counsel even had sufficient information to locate  
2 these unnamed witnesses. A review of the record demonstrates that trial counsel was in fact  
3 not given timely information about the witness Petitioner describes as having to wait so long  
4 she left the trial. This witness, a woman named Mary Silva who cleaned Petitioner's residence  
5 a few times, was discussed on the record on the fourth day of the trial:

6 MR. FRIZZELL: -- what happened here. While you were probably walking  
7 down the hallway to come in, I was on the phone with the witness that you said  
8 you would allow to testify, Mary Silva, who was on the road ostensibly heading  
9 home, she told me. I asked her -- I said, we're ready and it's now time and the  
judge isn't going to wait. How long was it going to take you to get back? And  
she said she could be back here by 3:00 o'clock, when I told her it was 1:55.

10 Transcript of Jury Trial - Day 4, p. 132. Earlier in the day, the Court graciously allowed her  
11 to testify despite the fact that she had not been properly noticed by Petitioner:

12 THE COURT: Okay. Notwithstanding the fact that the State was not put on  
13 notice of these witnesses, I'm going to allow you to call her if you choose to. But  
14 you need to make her available to the State to give them an opportunity to  
question her to see what, if anything, she's going to be offering.

15 MR. FRIZZELL: And that is fine, Your Honor. I actually just learned of her  
potential as a witness yesterday evening from an e-mail, which I received.

16 THE COURT: Okay. So --

17 MR. FRIZZELL: And --

18 THE COURT: -- she wasn't even somebody that defendant was telling you  
previously that we discussed before we started the trial?

19 MR. FRIZZELL: No, Your Honor.

20 THE DEFENDANT: I didn't know. I thought the witness --

21 Transcript of Jury Trial - Day 4, p. 7-8. Additionally, at Petitioner's insistence, trial counsel  
22 called Officer Jacob Henry with the Las Vegas Metropolitan Police Department to testify in  
23 the defense case-in-chief. See Transcript of Jury Trial - Day 4, p. 145-164. Moreover, trial  
24 counsel cross examined all of the State's witnesses, including Officer Daniel Lopez, who  
25 stopped Petitioner's vehicle. Transcript of Jury Trial - Day 3, p. 127-164. Trial counsel has  
26 the "immediate and ultimate responsibility of deciding if and when to object, and strategic  
27 decisions such as which witnesses to call or not call are virtually unchallengeable. As such,  
28 Petitioner cannot demonstrate deficient performance and Petitioner's claim therefore fails.

Sixth, Petitioner alleges that trial counsel was ineffective for failing to call family and  
witnesses to speak on his behalf at the penalty phase. Defendants have no right to call

witnesses during sentencing hearings unless they are convicted of First Degree Murder. The applicable statutes are provided below.

NRS 176.015 is the applicable statute for sentencing hearings, which provides:

1. Sentence must be imposed without unreasonable delay. Pending sentence, the court may commit the defendant or continue or alter the bail.

2. Before imposing sentence, the court shall:

(a) Afford counsel an opportunity to speak on behalf of the defendant; and

(b) Address the defendant personally and ask the defendant if:

(1) The defendant wishes to make a statement in his or her own behalf and to present any information in mitigation of punishment; and

(2) The defendant is a veteran or a member of the military. If the defendant meets the qualifications of subsection 1 of NRS 176A.280, the court may, if appropriate, assign the defendant to:

(I) A program of treatment established pursuant to NRS 176A.280; or

(II) If a program of treatment established pursuant to NRS 176A.280 is not available for the defendant, a program of treatment established pursuant to NRS 176A.250 or section 20 of this act.

3. After hearing any statements presented pursuant to subsection 2 and before imposing sentence, the court shall afford the victim an opportunity to:

(a) Appear personally, by counsel or by personal representative; and

(b) Reasonably express any views concerning the crime, the person responsible, the impact of the crime on the victim and the need for restitution.

NRS 175.552 is the applicable statute for First Degree Murder Penalty Hearings:

1. Except as otherwise provided in subsection 2, in every case in which there is a finding that a defendant is guilty or guilty but mentally ill of murder of the first degree, whether or not the death penalty is sought, the court shall conduct a separate penalty hearing. The separate penalty hearing must be conducted as follows:

(a) If the finding is made by a jury, the separate penalty hearing must be conducted in the trial court before the trial jury, as soon as practicable.

(b) If the finding is made upon a plea of guilty or guilty but mentally ill or a trial without a jury and the death penalty is sought, the separate penalty hearing must be conducted before a jury impaneled for that purpose, as soon as practicable.

(c) If the finding is made upon a plea of guilty or guilty but mentally ill or a trial without a jury and the death penalty is not sought, the separate penalty hearing must be conducted as soon as practicable before the judge who conducted the trial or who accepted the plea.

2. In a case in which the death penalty is not sought or in which a court has made a finding that the defendant is intellectually disabled and has stricken the notice of intent to seek the death penalty pursuant to NRS 174.098, the parties may by stipulation waive the separate penalty hearing required in subsection 1. When stipulating to such a waiver, the parties may also include an agreement to have

1 the sentence, if any, imposed by the trial judge. Any stipulation pursuant to this  
2 subsection must be in writing and signed by the defendant, the defendant's  
attorney, if any, and the prosecuting attorney.

3 3. During the hearing, evidence may be presented concerning aggravating and  
4 mitigating circumstances relative to the offense, defendant or victim and on any  
5 other matter which the court deems relevant to the sentence, whether or not the  
6 evidence is ordinarily admissible. Evidence may be offered to refute hearsay  
7 matters. No evidence which was secured in violation of the Constitution of the  
8 United States or the Constitution of the State of Nevada may be introduced. The  
9 State may introduce evidence of additional aggravating circumstances as set  
forth in NRS 200.033, other than the aggravated nature of the offense itself, only  
if it has been disclosed to the defendant before the commencement of the penalty  
hearing.

10 4. In a case in which the death penalty is not sought or in which a court has found  
11 the defendant to be intellectually disabled and has stricken the notice of intent to  
12 seek the death penalty pursuant to NRS 174.098, the jury or the trial judge shall  
determine whether the defendant should be sentenced to life with the possibility  
of parole or life without the possibility of parole.

13 Therefore, counsel cannot be deemed ineffective for failing to call family and witnesses to  
14 speak on his behalf at his sentencing as Petitioner was not entitled to this under Nevada law.

15 Seventh, Petitioner claims that trial counsel was ineffective for never asking for the  
16 testimony of the dog handler or K-9 records. The State has the burden of proving its case  
17 beyond a reasonable doubt and can call any witnesses it deems necessary to meet that burden  
18 of proof. Based on the evidence presented, the jury convicted Petitioner and his Judgment of  
19 Conviction was affirmed on appeal. As previously stated, the decision not to call witnesses is  
20 within the discretion of trial counsel and will not be questioned unless it was a plainly  
21 unreasonable decision. See Rhyne v. State, 118 Nev. 1, 38 P.3d 163 (2002); see also Dawson  
22 v. State, 108 Nev. 112, 825 P.2d 593 (1992). Strickland does not enact Newton's third law for  
23 the presentation of evidence, requiring for every prosecution expert an equal and opposite  
24 expert from the defense. In many instances cross-examination will be sufficient to expose  
25 defects in an expert's presentation. When defense counsel does not have a solid case, the best  
26 strategy can be to say that there is too much doubt about the State's theory for a jury to convict.  
27 Harrington v. Richter, 131 S. Ct. 770, 791, 578 F.3d. 944 (2011). Neither the State nor trial  
28 counsel was required to call the K-9 officer, as his participation was fully covered during the



1 direct and cross-examination of Officer Lopez' testimony. Transcript of Jury Trial - Day 3, p.  
2 44-147. Consequently, Petitioner's claim fails.

3 Finally, Petitioner alleges that trial counsel never relayed his mental health history or  
4 the fact that he was on and off different medications during the pre-trial process. However,  
5 Petitioner does not allege that trial counsel was aware of any mental health or medication  
6 issues. He does not even specify exactly what mental health history or medications he is  
7 referring to in the one sentence he includes on this issue. As such, his argument amounts to a  
8 bare and naked allegation under Hargrove. Petitioner does not point to any instances in the  
9 record that demonstrate evidence of insanity or incompetence. Further, Petitioner fails to argue  
10 how any mental health or medication issues would have ultimately changed the outcome of  
11 the instant case. Therefore, Petitioner fails to meet his burden under Strickland.

### 12 III. CUMULATIVE ERROR DOES NOT CONSTITUTE A COGNIZABLE 13 CLAIM FOR HABEAS RELIEF

14 The Nevada Supreme Court has never held that instances of ineffective assistance of  
15 counsel can be cumulated. McConnell v. State, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009).  
16 The State respectfully submits that cumulative error should not apply on post-conviction  
17 review. Middleton v. Roper, 455 F.3d 838, 851 (8th Cir. 2006), cert. denied, 549 U.S. 1134,  
18 1275 S. Ct. 980 (2007) ("a habeas petitioner cannot build a showing of prejudice on series of  
19 errors, none of which would by itself meet the prejudice test."). However, even if they could  
20 be, it would be of no moment as there was no single instance of ineffective assistance in  
21 Petitioner's case. See United States v. Rivera, 900 F.2d 1462, 1471 (10th Cir. 1990) ("[A]  
22 cumulative-error analysis should evaluate only the effect of matters determined to be error,  
23 not the cumulative effect of non-errors.").

24 Moreover, Petitioner's claim is without merit. "Relevant factors to consider in  
25 evaluating a claim of cumulative error are (1) whether the issue of guilt is close, (2) the quantity  
26 and character of the error, and (3) the gravity of the crime charged." Mulder v. State, 116 Nev.  
27 1, 17, 992 P.2d 845, 855 (2000).

28 //

1 As the Nevada Supreme Court found in affirming Petitioner's convictions:

2 The totality of the circumstances supports finding probable cause to search  
3 Keller's home. Inside Keller's car, officers found 344.29 grams of  
4 methamphetamine, 33.92 grams of heroin, .537 grams of cocaine, a mixture of  
5 the three controlled substances, and a gun. The quantity of methamphetamine  
6 and heroin exceed personal use levels, and the discovery of 1-inch by 1-inch  
7 baggies, a large amount of cash, as well as a gun, fairly indicated to the officers  
8 that Keller was trafficking in drugs. Further, when Officer Lopez initiated the  
9 traffic stop, Keller tried to exit the car parked in front of his condo, which in  
10 conjunction with Keller's evasive driving, Officer Lopez took as an attempt to  
11 escape. Taken as a whole, these circumstances supported a finding of probable  
12 cause that Keller was a drug dealer and that more drugs and guns would be found  
13 inside his condo.

14 Order of Affirmance at page 5.

15 The Nevada Supreme Court has also determined that the issue of guilt was not close in  
16 this case. In addressing Petitioner's claim of cumulative error on appeal, the Nevada Supreme  
17 Court further found that there was overwhelming evidence of guilt:

18 *There is no cumulative error*

19 Keller summarily argues that cumulative error requires reversal. But, Keller fails  
20 to establish any error on appeal, and the evidence presented at trial against him  
21 was overwhelming. *See Big Pond v. State*, 101 Nev. 1, 3, 692 P.2d 1288, 1289  
22 (1985) (considering "whether the issue of innocence or guilt is close, the quantity  
23 and character of the error, and the gravity of the crime charged" in determining  
24 cumulative error). We therefore, ORDER the judgment of the district court  
25 AFFIRMED.

26 Order of Affirmance at pages 8-9.

27 Finally, even if any of Petitioner's allegations had merit, Petitioner has failed to  
28 establish that, when aggregated, those errors deprived him of a reasonable likelihood of a better  
outcome at trial. Even if Petitioner had made such a showing, he has certainly failed to show  
that the cumulative effect of the supposed errors was so prejudicial as to undermine this  
Court's confidence in the outcome of Petitioner's case. Because the issue of guilt was not  
close, and because Petitioner failed to sufficiently undermine confidence in the outcome of his  
case, the State submits that Petitioner's claim of cumulative error is without merit and that this  
Court should deny the same.

29 **IV. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

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

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

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

26           Further, the United States Supreme Court has held that an evidentiary hearing is not  
27          required simply because counsel’s actions are challenged as being unreasonable strategic  
28          decisions. Harrington, 562 U.S. at 88, 131 S. Ct. at 788. Although courts may not indulge post  
hoc rationalization for counsel’s decision making that contradicts the available evidence of  
counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis  
for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain  
issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (citing  
Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the

1 *objective* reasonableness of counsel's performance, not counsel's *subjective* state of mind. 466  
2 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994) (emphasis added).

3 Here, there is no reason to expand the record because Petitioner fails to present specific  
4 factual allegations that would entitle him to relief. Marshall, 110 Nev. at 1331, 885 P.2d at  
5 605. Petitioner's claims are either waived as not having been properly raised on direct appeal,  
6 bare and naked allegations, or belied by the record. There is nothing else for an evidentiary  
7 hearing to determine, and Petitioner gives no specific reasons for why an evidentiary hearing  
8 would be needed. There is no need to expand the record because Petitioner's claims are  
9 meritless and can be disposed of on the existing record. Therefore, an evidentiary hearing is  
10 not warranted in this matter.

### 11 CONCLUSION

12 Based on the foregoing, the State respectfully requests that this Court order Defendant's  
13 Pro Per Petition for Writ of Habeas Corpus (Post-Conviction) be denied.

14 DATED this 16<sup>th</sup> day of January, 2020.

15 Respectfully submitted,

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

19 BY

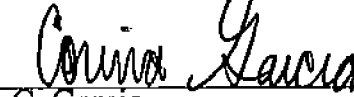
20 TALEEN R. PANDUKHT  
21 Chief Deputy District Attorney  
22 Nevada Bar #005734  
23  
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**CERTIFICATE OF MAILING**

I hereby certify that service of the above and foregoing was made this 7<sup>th</sup> day of January, 2020, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

CHRISTOPHER ROBERT KELLER, BAC #81840  
LOVELOCK CORRECTIONAL CENTER  
1200 Prison Rd.  
Lovelock, NV, 89419

BY



C. Garcia  
Secretary for the District Attorney's Office

TRP/cg/L2



**RSPN**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**TALEEN R. PANDUKHT**  
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200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

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

**CHRISTOPHER ROBERT KELLER,**  
#1804258

Petitioner,

-vs-

**THE STATE OF NEVADA,**

Respondent.

CASE NO: A-19-800950-W

DEPT NO: XIX

**STATE'S RESPONSE TO DEFENDANT'S PRO PER PETITION FOR WRIT OF  
HABEAS CORPUS (POST-CONVICTION)**

DATE OF HEARING: December 9, 2019

TIME OF HEARING: 8:30 a.m.

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

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On February 17, 2016, Christopher Robert Keller (hereinafter "Petitioner") was  
4 charged by way of Information with Counts<sup>s</sup> 1 and 2 - Trafficking In Controlled Substance  
5 (Category A Felony - NRS 453.3385.3 - NOC 51160); Count 3 - Possession Of Controlled  
6 Substance, Marijuana (Category E Felony - NRS 453.336 - NOC 51127); Counts 4, 5, 6, and  
7 7 - Possession Of Controlled Substance With Intent To Sell (Category D Felony - NRS  
8 453.337 - NOC 51141); and Counts 8 and 9 - Ownership Or Possession Of Firearm By  
9 Prohibited Person (Category B Felony - NRS 202.360 - NOC 51460). On February 18, 2016,  
10 Petitioner entered a plea of not guilty and invoked his constitutional right to a speedy trial.

11 On March 24, 2016, the State filed a Notice of Intent to Seek Punishment as a Habitual  
12 Criminal. At Calendar Call on April 13, 2016, Petitioner's counsel, Michael Sanft, Esq.,  
13 announced he had a conflict for the trial date due to the upcoming trial. Petitioner stated he  
14 wanted to go to trial on the original date, and due to counsel's conflict, the Court ordered the  
15 trial date reset. On this date, the State also extended a plea offer to Petitioner for one count of  
16 Low-Level Trafficking in a Controlled Substance and one count of Possession of a Firearm by  
17 a Prohibited Person, with Petitioner stipulating to small habitual treatment and a stipulated  
18 maximum sentence of twelve and a half (12.5) years. The trial date was reset to May 2, 2016  
19 ("First Continuance").

20 At Calendar Call on April 20, 2016, Petitioner stated he wanted to go to trial and was  
21 willing to represent himself if need be. On April 29, 2016, the State filed an Amended  
22 Information, charging Petitioner with the same charges as the original Information. On April  
23 29, 2016, Mr. Sanft requested to withdraw due to a conflict of interest. The Court granted the  
24 request and appointed Kenneth Frizzell, Esq. to represent Petitioner. On May 4, 2016, Mr.  
25 Frizzell confirmed as counsel. Due to the change in counsel, the trial date was vacated and  
26 reset to June 27, 2016 ("Second Continuance").

27 On June 10, 2016, Petitioner filed a Motion to Suppress. The State filed an Opposition  
28 on June 17, 2016. On June 20, 2016, Petitioner requested more time to file a Reply to the

1 State's Opposition, and the Court vacated the trial date of June 27, 2016, and ordered Calendar  
2 Call on July 20, 2016, and a Jackson v. Denno Hearing on July 21, 2016 ("Third  
3 Continuance"). On June 13, 2016, Petitioner filed a Pro Per Motion to Dismiss Counsel and  
4 Appoint Alternate Counsel. The District Court denied the Motion on July 21, 2016, after  
5 hearing from Petitioner.

6 On July 18, 2016, the State filed a Notice of Intent to Seek Habitual Treatment. On July  
7 21, 2016, the State also informed the Court that it had extended a new plea offer for one count  
8 of Mid-Level Trafficking and one count of Possession of a Firearm by a Prohibited Person,  
9 with the State retaining the right to argue at sentencing but having no opposition to the counts  
10 running concurrently. Petitioner rejected the State's offer. On July 21, 2016, the Court also  
11 denied Petitioner's Motion to Suppress after the Jackson v. Denno hearing. The Court denied  
12 Petitioner's Pro Per Motion to Dismiss Counsel and Appoint Alternate Counsel. The Order  
13 denying the motions was filed on August 18, 2016. On July 21, 2017, Defense counsel  
14 requested another continuance, stating that due to the Motion to Suppress, he had not been  
15 able to prepare for trial ("Fourth Continuance"). The Court granted the continuance and reset  
16 the trial date for September 19, 2016. At Calendar Call on September 14, 2016, Petitioner  
17 waived his speedy trial right and requested a continuance ("Fifth Continuance"). The Court  
18 granted the continuance and reset the trial to March 6, 2017.

19 Both Petitioner and the State announced ready for the March 6, 2017 trial date, which  
20 was the sixth trial setting in the case. On March 6, 2017, the day trial was due to begin, Amy  
21 Feliciano, Esq., appeared in Court and attempted to substitute in as trial counsel. Ms. Feliciano  
22 informed the Court that she had been retained by Petitioner's mother sometime in early  
23 February but had not moved to substitute in as counsel until March 6, 2017 due to multiple  
24 medical and personal problems. As Ms. Feliciano was unprepared for trial without a sixth  
25 continuance being granted, the Court denied Petitioner's request for a continuance and ordered  
26 trial to proceed with Mr. Frizzell as trial counsel.

27 On March 6, 2017, the State filed a Second Amended Information as the State chose to  
28 bifurcate Counts 8 and 9 from the first seven (7) counts. The Second Amended Information



1 was filed in open court on March 6, 2017, charging Petitioner with Counts 1 and 2 - Trafficking  
2 in Controlled Substance (Category A Felony - NRS 453.3385.3 - NOC 51160); Count 3 -  
3 Possession of Controlled Substance, Marijuana (Category E Felony - NRS 453.336 - NOC  
4 51127); and Counts 4-7 - Possession Of Controlled Substance With Intent To Sell (Category  
5 D Felony - NRS 453.337 - NOC 51141). Petitioner's jury trial commenced on March 7, 2017,  
6 and concluded on March 10, 2017, when the jury returned a verdict of guilty on all seven (7)  
7 counts. A Third Amended Information was subsequently filed in open court which added  
8 Counts 8 and 9 - Ownership or Possession of Firearm by Prohibited Person (Category B Felony  
9 - NRS 202.360 - NOC 51460). The jury also returned verdicts of guilty on Counts 8 and 9.

10 On April 29, 2017, Ms. Feliciano substituted as counsel of record, and Mr. Frizzell  
11 withdrew from his representation. Ms. Feliciano requested that sentencing be continued three  
12 (3) times: on May 8, 2017, June 5, 2017, and June 19, 2017. On July 24, 2017, Ms. Feliciano  
13 requested a fourth sentencing continuance, and Petitioner requested that she be dismissed as  
14 counsel of record. The District Court granted Petitioner's request, and re-appointed Mr.  
15 Frizzell as Petitioner's counsel. On July 31, 2017, the Court granted Mr. Frizzell a continuance  
16 to allow him to retrieve Petitioner's file from Ms. Feliciano.

17 On August 7, 2017, Petitioner was sentenced as follows: as to Count 1- LIFE in the  
18 Nevada Department of Corrections (NDC) with a minimum parole eligibility after ten (10)  
19 years in NDC; as to Count 2 - LIFE in the NDC with a minimum parole eligibility after ten  
20 (10) years in the NDC; Count 2 to run concurrent with Count 1; as to Count 3 - a minimum of  
21 twelve (12) months and a maximum of forty-eight (48) months in the NDC; Count 3 to run  
22 concurrent with Count 2; as to Count 4 - to a minimum of twelve (12) months and a maximum  
23 of forty-eight (48) months in the NDC; Count 4 to run concurrent with Count 3; as to Count 5  
24 - a minimum of twelve (12) month and a maximum of forty-eight (48) months in the NDC;  
25 Count 5 to run concurrent with county 4; as to Count 6 - to a minimum of twelve (12) months  
26 and a maximum of forty-eight (48) months in the NDC; Count 6 to run concurrent with Count  
27 5; as to Count 7 - to a minimum of twelve (12) months and a maximum of forty-eight (48)  
28 months in the NDC; Count 7 to run concurrent with Count 6; as to Count 8 - Petitioner

1 sentenced under the large habitual criminal statute to LIFE in the Nevada Department of  
2 Corrections (NDC) with a minimum parole eligibility after ten (10) years in the NDC; Count  
3 8 to run CONSECUTIVE to Counts 1, 2, 3, 4, 5, 6, and 7; and as to Count 9, Defendant  
4 sentenced under the large habitual criminal statute to LIFE in the Nevada Department of  
5 Corrections (NDC) with a minimum parole eligibility after ten (10) years in the NDC; Count  
6 9 to run concurrent with Count 8; for a total aggregate sentence of LIFE in the NDC with a  
7 minimum parole eligibility of TWENTY (20) years in the NDC, and five-hundred fifty-nine  
8 (559) days credit for time served.

9 Petitioner's Judgment of Conviction was filed on August 10, 2017. On August 24,  
10 2017, Petitioner filed a Notice of Appeal. On November 14, 2017, Petitioner filed a Motion  
11 for Appointment of Counsel and a Motion for Withdrawal of Attorney of Record. On  
12 December 6, 2017, this Court granted Defendant's Motion for Withdrawal of Counsel and  
13 denied Defendant's Motion for Appointment of Counsel.

14 An Amended Judgment of Conviction was filed on December 12, 2017, correcting the  
15 statute to NRS 435.337 for Possession of Controlled Substance with Intent to Sell for Counts  
16 4, 5, 6 and 7.

17 On March 22, 2018, Petitioner filed another Motion for Appointment of Counsel and a  
18 Motion to Dismiss Attorney of Record. On April 13, 2018, the State filed its Opposition to  
19 Petitioner's Motion to Appoint Counsel and Motion to Dismiss Attorney of Record. On April  
20 16, 2018, the Court denied the motion as Petitioner's appeal was still pending before the  
21 Nevada Supreme Court.

22 On October 15, 2018, the Nevada Supreme Court affirmed Petitioner's Judgment of  
23 Conviction. Remittitur issued on November 9, 2018.

24 On August 26, 2019, Petitioner filed the instant Pro Per Petition for Writ of Habeas  
25 Corpus. The State's Response now follows.

#### 26 **STATEMENT OF FACTS**

27 On January 28, 2016 at approximately 2:25 a.m., Officer D. Lopez P#9806 with the Las  
28 Vegas Metropolitan Police Department (hereinafter "LVMPD") conducted a vehicle stop on a

1 2002 silver Dodge Stratus later found to be driven by Petitioner. Officer Lopez observed the  
2 vehicle travelling over 300 feet in a double-yellow left-hand turn lane, making a U-turn,  
3 making an abrupt turn into a residential area, travelling at a high rate of speed, and having a  
4 broken taillight. Officer Lopez testified that it was obvious to him that the Dodge was trying  
5 to put distance between them. Once the vehicle entered the residential area, it parked and  
6 Petitioner quickly left the vehicle after Officer Lopez turned on his siren and lights. Officer  
7 Lopez observed Petitioner quickly jump out of the vehicle, appearing as though he wanted to  
8 avoid him. Officer Lopez was able to smell the odor of marijuana coming from Petitioner's  
9 person as well as from the inside of the vehicle. Officer Lopez initiated a traffic stop.

10 Petitioner consented to allow Officer Lopez to remove his wallet from his pocket to see  
11 Petitioner's identification. Upon removing the wallet, Officer Lopez noted that Petitioner was  
12 carrying what appeared to be a large amount of cash. The cash was right outside of Petitioner's  
13 wallet, with multiple denominations, among which sixty-eight \$20 bills separated in groups of  
14 five (5) bills and folded in alternating directions. The amount of cash was determined to be  
15 \$2,187.00. Based upon the manner in which the cash was situated, and the amount of cash  
16 that Petitioner carried, Officer Lopez determined that the cash was, in his training and  
17 experience, consistent with the sale of narcotics. Officer Lopez based this conclusion, in part,  
18 on the denominations of the cash, the way the cash was specifically folded, the fact that \$20  
19 bills were folded in increments of \$100, the direction the bills were facing, and the fact that a  
20 "wad of cash" was made up of mostly smaller denominations, such as \$20, \$5 and \$10 bills.

21 During the vehicle stop and pat down, there were approximately five (5) shots fired  
22 within the apartment complex, so Officer Lopez placed Petitioner in handcuffs and into the  
23 patrol vehicle not only for Petitioner's safety, but also so that Officer Lopez would be able to  
24 safely address any issues stemming from the shots fired. Additionally, Officer Lopez believed  
25 that Petitioner would be a flight risk based upon his attempts to avoid the officer, his  
26 nervousness, the fact that he was so upset about being stopped, and Defendant's behavior while  
27 Officer Lopez conducted the pat down for weapons. Afterward, while standing outside the  
28 driver's door, Officer Lopez noticed a green leafy residue on the floorboard of the driver's

1 side vehicle in plain view. Based upon the vehicle, the odor of marijuana emanating from  
2 Petitioner and the vehicle, and the green leafy residue in plain view, Officer Lopez conducted  
3 a probable cause search of Petitioner's vehicle. During the probable cause search, Officer  
4 Lopez located a clear sealable plastic bag containing multiple smaller clear plastic bags  
5 underneath the driver's seat, as well as another large sealable plastic bag between the driver's  
6 seat and the center console. At that point, based on the size of the bags found in Petitioner's  
7 car, as well as the amount of cash found on Petitioner's person, Officer Lopez called for a K-  
8 9 narcotics dog.

9 The K-9 narcotics dog alerted to the glove box, wherein Officer Lopez located a  
10 concealed compartment. Officer Lopez testified he put his hand inside the hole and could feel  
11 a bag with something solid inside. At that point in time, Officer Lopez stopped his search and  
12 obtained a search warrant. Pursuant to the search warrant, Officer Lopez located several items  
13 of evidence. Officer Lopez, Officer Henry, and Crime Scene Analyst Stephanie Thi searched  
14 the vehicle. In the secret compartment, they found a black mesh bag, within which they found  
15 two gold colored plastic bags. One of the gold bags contained a nylon drawstring bag within  
16 which a loaded Beretta model 950, .22 caliber handgun was found. Moreover, Officer Lopez  
17 also found several packages of a white crystal substance, plastic wrappers with a brown  
18 substance, and a plastic bag with an off white powdery substance. Officer Lopez believed  
19 these substances, based on his training and experience, to be various controlled substances,  
20 respectively. Forensic Scientist Jason Althnether tested the substances and determined that  
21 the white crystal substance was methamphetamine with a net weight of 344.29 grams, that the  
22 brown substance was indeed heroin with a net weight of 33.92 grams, and that the white  
23 powdery substance was indeed cocaine with a weight of 0.537 grams. Officer Lopez testified  
24 he also found a blue powdery substance in the secret compartment. Mr. Althnether tested the  
25 substance and determined it was a combination of methamphetamine, amphetamine, and  
26 cocaine with a weight of 0.795 grams.

27 Based on what was discovered in the car, Officer Lopez obtained a search warrant for  
28 Petitioner's house located at 265 North Lamb, Unit F, the unit in front of which Petitioner had

1 parked the car. Officer Lopez, Officer Steven Hough, Detective Chad Embry and Detective  
2 Michael Belmont searched Petitioner's residence. While searching the bedroom, Officer  
3 Lopez found used smoking pipes, four (4) scales, a box of 9mm ammunition, and two (2) bags  
4 containing a white crystalline substance. This substance was later tested by Mr. Althnether,  
5 who determined the substance was methamphetamine. The first bag weighed 3.818 grams and  
6 the second bag weighed 2.357 grams. Officer Lopez also found in the bedroom a brown  
7 substance he also believed was heroin. Upon testing, Mr. Althnether confirmed the substance  
8 was heroin, weighing .895 grams. In the storage closet, Detective Embry found .22 short  
9 ammunition. In the bedroom, police also discovered a Ruger 9mm handgun and a pay stub  
10 with Petitioner's name on it, which was impounded by Officer Lopez. Upon searching the  
11 kitchen, Detective Belmont also found a glass jar containing a green leafy substance believed  
12 to be marijuana, which was confirmed as such by Mr. Althnether, finding the marijuana to  
13 weigh 175 grams. Officers also found balloons, clean pipes, syringes and elastic bands in  
14 Petitioner's residence. Moreover, Crime Scene Analyst Thi testified that the Nevada DMV  
15 registration found in the car listed Petitioner as the owner of the Dodge.

16 During trial, the State introduced a jail call wherein Petitioner told a woman to move  
17 into his house and make it her home. Petitioner was placed under arrest and brought to  
18 Northeast Area Command. While there, Officer Hough, who was watching Petitioner in an  
19 interview room on a monitor, observed Petitioner pull out a small baggie from inside his pants,  
20 and by the time he and another officer arrived in the room, Petitioner had a white powdery  
21 substance on his nose and mouth. Upon searching Petitioner, Officer Hough found another  
22 small bag of white powder attached to the left side of Petitioner's scrotum.

### 23 ARGUMENT

#### 24 **I. PETITIONER WAIVED HIS SUBSTANTIVE GROUNDS ONE (1) THROUGH** 25 **SEVEN (7) BY FAILING TO RAISE THEM ON DIRECT APPEAL**

26 Pursuant to NRS 34.810:

27 1. The court shall dismiss a petition if the court determines that:

28 ...

1 (b) The petitioner's conviction was the result of a trial and the grounds for the  
petition could have been:

2 (1) Presented to the trial court;

3 (2) Raised in a direct appeal or a prior petition for a writ of habeas corpus  
or postconviction relief; or

4 (3) Raised in any other proceeding that the petitioner has taken to secure  
relief from the petitioner's conviction and sentence,

5 unless the court finds both good cause for the failure to present the  
6 grounds and actual prejudice to the petitioner.

7 ...

8 3. Pursuant to subsections 1 and 2, the petitioner has the burden of pleading and  
proving specific facts that demonstrate:

9 (a) Good cause for the petitioner's failure to present the claim or for presenting  
10 the claim again; and

11 (b) Actual prejudice to the petitioner.

12 The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and  
13 claims of ineffective assistance of trial and appellate counsel must first be pursued in post-  
14 conviction proceedings... [A]ll other claims that are appropriate for a direct appeal must be  
15 pursued on direct appeal, or they will be *considered waived in subsequent proceedings.*"  
16 Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added)  
17 (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). "A  
18 court *must* dismiss a habeas petition if it presents claims that either were or could have been  
19 presented in an earlier proceeding, unless the court finds both cause for failing to present the  
20 claims earlier or for raising them again and actual prejudice to the petitioner." Evans v. State,  
21 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001).

22 Furthermore, substantive claims are beyond the scope of habeas and waived. NRS  
23 34.724(2)(a); see also, Evans, 117 Nev. at 646-47, 29 P.3d at 523; Franklin, 110 Nev. at 752,  
24 877 P.2d at 1059. Under NRS 34.810(3), a defendant may only escape these procedural bars  
25 if they meet the burden of establishing good cause and prejudice. Where a defendant does not  
26 show good cause for failure to raise claims of error upon direct appeal, the district court is not  
27 obliged to consider them in post-conviction proceedings. Jones v. State, 91 Nev. 416, 536 P.2d  
28 1025 (1975).

1       “To establish good cause, [a petitioner] must show that an impediment external to the  
2 defense prevented their compliance with the applicable procedural rule. A qualifying  
3 impediment might be shown where the factual or legal basis for a claim was not reasonably  
4 available at the time of default.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003)  
5 (emphasis added). The Court continued, “appellants cannot attempt to manufacture good  
6 cause[.]” Id. at 621, 81 P.3d at 526. Examples of good cause include interference by State  
7 officials and the previous unavailability of a legal or factual basis. See State v. Huebler, 128  
8 Nev. 192, 275 P.3d 91 (2012).

9       In order to establish prejudice, the defendant must show “not merely that the errors of  
10 [the proceedings] created possibility of prejudice, but that they worked to his actual and  
11 substantial disadvantage, in affecting the state proceedings with error of constitutional  
12 dimensions.” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United  
13 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there  
14 must be a “substantial reason; one that affords a legal excuse.” Hathaway v. State, 119 Nev.  
15 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229,  
16 1230 (1989)).

17       Moreover, a proper petition for post-conviction relief must set forth specific factual  
18 allegations that would entitle the petitioner to relief. NRS 34.735(6) states, in pertinent part,  
19 “[Petitioner] must allege specific facts supporting the claims in the petition [he] file[s] seeking  
20 relief from any conviction or sentence. Failure to raise specific facts rather than just  
21 conclusions may cause the petition to be dismissed.” “Bare” and “naked” allegations are not  
22 sufficient to warrant post-conviction relief, nor are those belied and repelled by the record.  
23 Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “A claim is ‘belied’ when it  
24 is contradicted or proven to be false by the record as it existed at the time the claim was made.”  
25 Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

26       In this case, Petitioner’s first seven (7) grounds are all substantive claims that could and  
27 should have been raised on direct appeal: 1) Ground One: Illegal sentence; 2) Ground Two:  
28 Not allowed to question K-9 about dog’s reliability; 3) Ground Three: No exigency to search

1 Petitioner's vehicle; 4) Ground Four: No probable cause existed to search Petitioner's vehicle;  
2 5) Ground Five: Extended stop violation of NRS 171.123(4); 6) Ground Six: Destroyed or lost  
3 body camera evidence; and 7) Ground Seven: False testimony of Officer D. Lopez. Each of  
4 these claims were available at the time Petitioner filed his direct appeal. Therefore, pursuant  
5 to Evans, these issues were substantively waived due to Petitioner's failure to raise them  
6 earlier. Furthermore, Petitioner's substantive claims are beyond the scope of habeas. NRS  
7 34.724(2)(a).

8 Petitioner does not argue good cause or prejudice to overcome these procedural bars.  
9 Indeed, Petitioner could not successfully do so, as all of the facts and information needed to  
10 raise these issues were available at the time Petitioner filed his direct appeal, and Petitioner  
11 does not allege that there was any external impediment to his raising of these issues at that  
12 time. In fact, Petitioner raised four (4) issues on direct appeal: 1) Whether the District Court  
13 abused its discretion in denying Appellant's sixth continuance request on the day trial was set  
14 to start; 2) Whether the District Court abused its discretion in denying Appellant's pretrial  
15 motion to suppress the evidence discovered in Appellant's residence pursuant to a search  
16 warrant; 3) Whether the District Court erred in admitting the jail calls introduced by the State;  
17 and 4) Whether there was cumulative error. Petitioner cannot demonstrate good cause to  
18 ignore his procedural defaults because all of the necessary facts and law were available for a  
19 timely appeal and he has not alleged an impediment external to the defense prevented raising  
20 these claims at the appropriate time. Therefore, these additional substantive claims are waived.

## 21 **II. PETITIONER'S CLAIMS OF INEFFECTIVE ASSISTANCE OF** 22 **COUNSEL DO NOT ENTITLE HIM TO RELIEF**

23 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove  
24 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of  
25 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865  
26 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's  
27 representation fell below an objective standard of reasonableness, and second, that but for  
28 counsel's errors, there is a reasonable probability that the result of the proceedings would have



1 been different. 466 U.S. at 687–88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison  
2 v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).  
3 “[T]here is no reason for a court deciding an ineffective assistance claim to approach the  
4 inquiry in the same order or even to address both components of the inquiry if the defendant  
5 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

6 The court begins with the presumption of effectiveness and then must determine  
7 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
8 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel  
9 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of  
10 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,  
11 537 P.2d 473, 474 (1975).

12 Counsel cannot be ineffective for failing to make futile objections or arguments. See  
13 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the  
14 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
15 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
16 (2002).

17 Based on the above law, the role of a court in considering allegations of ineffective  
18 assistance of counsel is “not to pass upon the merits of the action not taken but to determine  
19 whether, under the particular facts and circumstances of the case, trial counsel failed to render  
20 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
21 (1978). This analysis does not mean that the court should “second guess reasoned choices  
22 between trial tactics nor does it mean that defense counsel, to protect himself against  
23 allegations of inadequacy, must make every conceivable motion no matter how remote the  
24 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel  
25 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel  
26 cannot create one and may disserve the interests of his client by attempting a useless charade.”  
27 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

28 //

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

9        Even if a defendant can demonstrate that his counsel’s representation fell below an  
10 objective standard of reasonableness, he must still demonstrate prejudice and show a  
11 reasonable probability that, but for counsel’s errors, the result of the trial would have been  
12 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
13 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability  
14 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,  
15 694, 104 S. Ct. at 2064-65, 2068).

16        The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the  
17 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of  
18 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,  
19 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must  
20 be supported with specific factual allegations, which if true, would entitle the petitioner to  
21 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”  
22 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS  
23 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims  
24 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your  
25 petition to be dismissed.” (emphasis added).

26        The decision not to call witnesses is within the discretion of trial counsel and will not  
27 be questioned unless it was a plainly unreasonable decision. See Rhyne v. State, 118 Nev. 1,  
28 38 P.3d 163 (2002); see also Dawson v. State, 108 Nev. 112, 825 P.2d 593 (1992). Strickland

1 does not enact Newton's third law for the presentation of evidence, requiring for every  
2 prosecution expert an equal and opposite expert from the defense. In many instances cross-  
3 examination will be sufficient to expose defects in an expert's presentation. When defense  
4 counsel does not have a solid case, the best strategy can be to say that there is too much doubt  
5 about the State's theory for a jury to convict." Harrington v. Richter, 131 S. Ct. 770, 791, 578  
6 F.3d. 944 (2011). "Strategic choices made by counsel after thoroughly investigating the  
7 plausible options are almost unchallengeable." Dawson v. State, 108 Nev. 112, 117, 825 P.2d  
8 593, 596 (1992).

9 Likewise, there is a strong presumption that appellate counsel's performance was  
10 reasonable and fell within "the wide range of reasonable professional assistance." See, United  
11 States v. Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990) (citing Strickland, 466 U.S. at 689, 104  
12 S.Ct. at 2065). A claim of ineffective assistance of appellate counsel must satisfy the two-  
13 prong test set forth by Strickland. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114  
14 (1996). In order to satisfy Strickland's second prong, the defendant must show that the omitted  
15 issue would have had a reasonable probability of success on appeal. Id. The professional  
16 diligence and competence required on appeal involves "winnowing out weaker arguments on  
17 appeal and focusing on one central issue if possible, or at most on a few key issues." Jones v.  
18 Barnes, 463 U.S. 745, 751-52, 103 S.Ct. 3308, 3313 (1983). In particular, a "brief that raises  
19 every colorable issue runs the risk of burying good arguments... in a verbal mound made up  
20 of strong and weak contentions." Id. at 753, 103 S.Ct. at 3313. "For judges to second-guess  
21 reasonable professional judgments and impose on appointed counsel a duty to raise every  
22 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective  
23 advocacy." Id. at 754, 103 S.Ct. at 3314.

24 In the instant Petition, Petitioner argues that his counsel, Kenneth Frizzell, Esq., was  
25 ineffective for the following reasons: (1) for not raising the issues Petitioner relayed to him  
26 prior to the suppression hearing; 2) for not appealing the suppression hearing issues; 3) for not  
27 using another investigator because his investigator knew Petitioner's mother and stepfather;  
28 4) for never visiting him except after he paid for a different lawyer; 5) for failing to subpoena

1 or return calls of certain unnamed witnesses and failing to cross-examine about the passenger  
2 door being closed when officers first encountered him; 6) for failing to call family and  
3 witnesses to speak on his behalf at the penalty phase; 7) for never asking for the testimony of  
4 the dog handler or K-9 records; and 8) for never relaying his mental health history or the fact  
5 that he was on and off different medications during the pre-trial process.

6 First, Petitioner claims that his counsel was ineffective for not raising the issues  
7 Petitioner relayed to him prior to the suppression hearing. Because Petitioner fails to identify  
8 which issues Petitioner relayed to him prior to the suppression hearing, or how those issues  
9 were supported by the record, Petitioner's argument is a bare and naked allegation pursuant to  
10 Hargrove and cannot entitle Petitioner to relief. In this case, trial counsel not only filed a  
11 Motion to Suppress evidence obtained during the vehicle stop, he conducted an evidentiary  
12 hearing on July 21, 2016 where Officer Daniel Lopez testified. Exhibits were presented as  
13 well as arguments by counsel. The Court denied the Motion to Suppress. Therefore, trial  
14 counsel appropriately raised the suppression issues and properly conducted the evidentiary  
15 hearing, rendering Petitioner's claim without merit.

16 Second, Petitioner alleges that counsel was ineffective for not appealing the suppression  
17 hearing issues. However, Appellate counsel did raise several meritorious issues on appeal,  
18 including the denial of Petitioner's Motion to Suppress evidence from Petitioner's residence.  
19 The Nevada Supreme Court determined that the District Court did not abuse its discretion by  
20 denying Petitioner's motion to suppress evidence obtained from his condo through a search  
21 warrant. Order of Affirmance at page. 6. Further, Petitioner provides no evidence and only  
22 makes bare and naked allegations that he was prejudiced. Such bare and naked allegations are  
23 not sufficient to warrant relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Petitioner cannot  
24 demonstrate that the omitted issue would have had a reasonable probability of success on  
25 appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114. There is a strong presumption that  
26 appellate counsel's performance was reasonable and fell within "the wide range of reasonable  
27 professional assistance." See Aguirre, 912 F.2d at 560 (citing Strickland, 466 U.S. at 689, 104  
28 S. Ct. at 2065). As Petitioner has only made bare and naked allegations, he cannot overcome

1 the strong presumption of appellate counsel's reasonableness and, therefore, relief is not  
2 warranted. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

3 Third, Petitioner alleges that trial counsel was ineffective for not using another  
4 investigator because his investigator knew Petitioner's mother and stepfather. On July 21,  
5 2016, Defendant told the Court that he cannot get any investigation done and the investigator  
6 used by Mr. Frizzell is the same investigator Mr. Sanft used and he has filed a bar complaint  
7 against the investigator. Counsel is expected<sup>s</sup> to conduct legal and factual investigations when  
8 developing a defense so they may make informed decisions on their client's behalf. Jackson,  
9 91 Nev. at 433, 537 P.2d at 474 (quoting In re Saunders, 2 Cal.3d 1033, 88 Cal.Rptr. 633, 638,  
10 472 P.2d 921, 926 (1970)). "[D]efense counsel has a duty 'to make reasonable investigations  
11 or to make a reasonable decision that makes particular investigations unnecessary.'" State v.  
12 Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993) (quoting Strickland, 466 U.S. at 691,  
13 104 S. Ct. at 2066). A defendant who contends his attorney was ineffective because he did not  
14 adequately investigate must show how a better investigation would have rendered a more  
15 favorable outcome. Molina, 120 Nev. at 192, 87 P.3d at 538.

16 Using investigators in trial preparation and investigation is both encouraged and common  
17 practice. Wilson v. State, 105 Nev. 110, 771 P.2d 583 (1989). Duties of investigators are  
18 "subject to the reasonable judgment of defense counsel in light of the facts of any particular  
19 case." Love, 109 Nev. at 1143-44, 865 P.2d at 327 (quoting U.S. v. Weaver, 882 F.2d 1128  
20 (7th Cir.), cert. denied, 493 U.S. 968, 110 S.Ct. 415, (1989)). A decision "not to investigate  
21 must be directly assessed for reasonableness in all the circumstances, applying a heavy  
22 measure of deference to counsel's judgment." Id. Moreover, "[a] decision not to call a witness  
23 will not generally constitute ineffective assistance of counsel" Id. at 1145, 865 P.2d at 328.  
24 For example, the Nevada Supreme Court in Love, 109 Nev. at 1145, 865 P.2d at 328, held that  
25 trial counsel was not ineffective simply because they sent their investigator to interview  
26 potential witnesses and did not to call certain alibi witnesses at trial after adequate  
27 investigations led to that conclusion.

28 //

1 In this case, trial counsel was not ineffective for not using another investigator because  
2 Petitioner was apparently dissatisfied with this one. A defendant is not entitled to a particular  
3 "relationship" with his attorney. Morris v. Slappy, 461 U.S. 1, 14, 103 S. Ct. 1610, 1617  
4 (1983). There is no requirement for any specific amount of communication as long as counsel  
5 is reasonably effective in his representation. See Id. It necessarily follows that Petitioner is  
6 not entitled to a particular relationship with his attorney's investigator, who is either also court  
7 appointed or who has a longstanding working relationship with that particular attorney. This  
8 was a reasonable decision to make and does not amount to deficient representation under  
9 Strickland.

10 Fourth, Petitioner contends that trial counsel was ineffective for never visiting him  
11 except after he paid for a different lawyer. There is no requirement for a specific number of  
12 visits every case necessitates, nor is that a basis for ineffective assistance of counsel.  
13 Defendant has provided no legal authority to support this claim. Counsel also communicates  
14 with defendants in the courtroom during routinely long court calendars. "There are countless  
15 ways to provide effective assistance in any given case. Even the best criminal defense attorneys  
16 would not defend a particular client in the same way." Strickland, 466 U.S. at 689, 104 S. Ct.  
17 at 689. Thus, this claim is without merit and should be denied.

18 Fifth, Petitioner claims that trial counsel was ineffective for failing to subpoena or  
19 return calls of unnamed witnesses to testify that another female resided in the townhouse he  
20 owned and switched vehicles with him, and that there was a strong probability the drugs in the  
21 purse in Petitioner's car belonged to the female. He further claims that trial counsel was  
22 ineffective for failing to cross-examine about the passenger door being closed when officers  
23 first encountered him and they opened the door to allow K-9 access to the interior of the  
24 vehicle. Trial counsel has the "immediate and ultimate responsibility of deciding if and when  
25 to object, which witnesses, if any, to call, and what defenses to develop." Rhyne, 118 Nev. at  
26 8, 38 P.3d at 167. Further, "Strategic choices made by counsel after thoroughly investigating  
27 the plausible options are almost unchallengeable." Dawson, 108 Nev. at 117, 825 P.2d at 596;  
28 see also Ford, 105 Nev. at 853, 784 P.2d at 953. Petitioner fails to specifically name any of

1 these alleged witnesses. It is unknown if trial counsel even had sufficient information to locate  
2 these unnamed witnesses. A review of the record demonstrates that trial counsel was in fact  
3 not given timely information about the witness Petitioner describes as having to wait so long  
4 she left the trial. This witness, a woman named Mary Silva who cleaned Petitioner's residence  
5 a few times, was discussed on the record on the fourth day of the trial:

6 MR. FRIZZELL: -- what happened here. While you were probably walking  
7 down the hallway to come in, I was on the phone with the witness that you said  
8 you would allow to testify, Mary Silva, who was on the road ostensibly heading  
9 home, she told me. I asked her -- I said, we're ready and it's now time and the  
judge isn't going to wait. How long was it going to take you to get back? And  
she said she could be back here by 3:00 o'clock, when I told her it was 1:55.

10 Transcript of Jury Trial - Day 4, p. 132. Earlier in the day, the Court graciously allowed her  
11 to testify despite the fact that she had not been properly noticed by Petitioner:

12 THE COURT: Okay. Notwithstanding the fact that the State was not put on  
13 notice of these witnesses, I'm going to allow you to call her if you choose to. But  
14 you need to make her available to the State to give them an opportunity to  
question her to see what, if anything, she's going to be offering.

15 MR. FRIZZELL: And that is fine, Your Honor. I actually just learned of her  
potential as a witness yesterday evening from an e-mail, which I received.

16 THE COURT: Okay. So --

17 MR. FRIZZELL: And --

18 THE COURT: -- she wasn't even somebody that defendant was telling you  
previously that we discussed before we started the trial?

19 MR. FRIZZELL: No, Your Honor.

20 THE DEFENDANT: I didn't know. I thought the witness --

21 Transcript of Jury Trial - Day 4, p. 7-8. Additionally, at Petitioner's insistence, trial counsel  
22 called Officer Jacob Henry with the Las Vegas Metropolitan Police Department to testify in  
23 the defense case-in-chief. See Transcript of Jury Trial - Day 4, p. 145-164. Moreover, trial  
24 counsel cross examined all of the State's witnesses, including Officer Daniel Lopez, who  
25 stopped Petitioner's vehicle. Transcript of Jury Trial - Day 3, p. 127-164. Trial counsel has  
26 the "immediate and ultimate responsibility of deciding if and when to object, and strategic  
27 decisions such as which witnesses to call or not call are virtually unchallengeable. As such,  
28 Petitioner cannot demonstrate deficient performance and Petitioner's claim therefore fails.

Sixth, Petitioner alleges that trial counsel was ineffective for failing to call family and  
witnesses to speak on his behalf at the penalty phase. Defendants have no right to call

witnesses during sentencing hearings unless they are convicted of First Degree Murder. The applicable statutes are provided below.

NRS 176.015 is the applicable statute for sentencing hearings, which provides:

1. Sentence must be imposed without unreasonable delay. Pending sentence, the court may commit the defendant or continue or alter the bail.

2. Before imposing sentence, the court shall:

(a) Afford counsel an opportunity to speak on behalf of the defendant; and

(b) Address the defendant personally and ask the defendant if:

(1) The defendant wishes to make a statement in his or her own behalf and to present any information in mitigation of punishment; and

(2) The defendant is a veteran or a member of the military. If the defendant meets the qualifications of subsection 1 of NRS 176A.280, the court may, if appropriate, assign the defendant to:

(I) A program of treatment established pursuant to NRS 176A.280; or

(II) If a program of treatment established pursuant to NRS 176A.280 is not available for the defendant, a program of treatment established pursuant to NRS 176A.250 or section 20 of this act.

3. After hearing any statements presented pursuant to subsection 2 and before imposing sentence, the court shall afford the victim an opportunity to:

(a) Appear personally, by counsel or by personal representative; and

(b) Reasonably express any views concerning the crime, the person responsible, the impact of the crime on the victim and the need for restitution.

NRS 175.552 is the applicable statute for First Degree Murder Penalty Hearings:

1. Except as otherwise provided in subsection 2, in every case in which there is a finding that a defendant is guilty or guilty but mentally ill of murder of the first degree, whether or not the death penalty is sought, the court shall conduct a separate penalty hearing. The separate penalty hearing must be conducted as follows:

(a) If the finding is made by a jury, the separate penalty hearing must be conducted in the trial court before the trial jury, as soon as practicable.

(b) If the finding is made upon a plea of guilty or guilty but mentally ill or a trial without a jury and the death penalty is sought, the separate penalty hearing must be conducted before a jury impaneled for that purpose, as soon as practicable.

(c) If the finding is made upon a plea of guilty or guilty but mentally ill or a trial without a jury and the death penalty is not sought, the separate penalty hearing must be conducted as soon as practicable before the judge who conducted the trial or who accepted the plea.

2. In a case in which the death penalty is not sought or in which a court has made a finding that the defendant is intellectually disabled and has stricken the notice of intent to seek the death penalty pursuant to NRS 174.098, the parties may by stipulation waive the separate penalty hearing required in subsection 1. When stipulating to such a waiver, the parties may also include an agreement to have



1 the sentence, if any, imposed by the trial judge. Any stipulation pursuant to this  
2 subsection must be in writing and signed by the defendant, the defendant's  
attorney, if any, and the prosecuting attorney.

3 3. During the hearing, evidence may be presented concerning aggravating and  
4 mitigating circumstances relative to the offense, defendant or victim and on any  
5 other matter which the court deems relevant to the sentence, whether or not the  
6 evidence is ordinarily admissible. Evidence may be offered to refute hearsay  
7 matters. No evidence which was secured in violation of the Constitution of the  
8 United States or the Constitution of the State of Nevada may be introduced. The  
9 State may introduce evidence of additional aggravating circumstances as set  
forth in NRS 200.033, other than the aggravated nature of the offense itself, only  
if it has been disclosed to the defendant before the commencement of the penalty  
hearing.

10 4. In a case in which the death penalty is not sought or in which a court has found  
11 the defendant to be intellectually disabled and has stricken the notice of intent to  
12 seek the death penalty pursuant to NRS 174.098, the jury or the trial judge shall  
determine whether the defendant should be sentenced to life with the possibility  
of parole or life without the possibility of parole.

13 Therefore, counsel cannot be deemed ineffective for failing to call family and witnesses to  
14 speak on his behalf at his sentencing as Petitioner was not entitled to this under Nevada law.

15 Seventh, Petitioner claims that trial counsel was ineffective for never asking for the  
16 testimony of the dog handler or K-9 records. The State has the burden of proving its case  
17 beyond a reasonable doubt and can call any witnesses it deems necessary to meet that burden  
18 of proof. Based on the evidence presented, the jury convicted Petitioner and his Judgment of  
19 Conviction was affirmed on appeal. As previously stated, the decision not to call witnesses is  
20 within the discretion of trial counsel and will not be questioned unless it was a plainly  
21 unreasonable decision. See Rhyne v. State, 118 Nev. 1, 38 P.3d 163 (2002); see also Dawson  
22 v. State, 108 Nev. 112, 825 P.2d 593 (1992). Strickland does not enact Newton's third law for  
23 the presentation of evidence, requiring for every prosecution expert an equal and opposite  
24 expert from the defense. In many instances cross-examination will be sufficient to expose  
25 defects in an expert's presentation. When defense counsel does not have a solid case, the best  
26 strategy can be to say that there is too much doubt about the State's theory for a jury to convict.  
27 Harrington v. Richter, 131 S. Ct. 770, 791, 578 F.3d. 944 (2011). Neither the State nor trial  
28 counsel was required to call the K-9 officer, as his participation was fully covered during the

1 direct and cross-examination of Officer Lopez' testimony. Transcript of Jury Trial - Day 3, p.  
2 44-147. Consequently, Petitioner's claim fails.

3 Finally, Petitioner alleges that trial counsel never relayed his mental health history or  
4 the fact that he was on and off different medications during the pre-trial process. However,  
5 Petitioner does not allege that trial counsel was aware of any mental health or medication  
6 issues. He does not even specify exactly what mental health history or medications he is  
7 referring to in the one sentence he includes on this issue. As such, his argument amounts to a  
8 bare and naked allegation under Hargrove. Petitioner does not point to any instances in the  
9 record that demonstrate evidence of insanity or incompetence. Further, Petitioner fails to argue  
10 how any mental health or medication issues would have ultimately changed the outcome of  
11 the instant case. Therefore, Petitioner fails to meet his burden under Strickland.

### 12 **III. CUMULATIVE ERROR DOES NOT CONSTITUTE A COGNIZABLE** 13 **CLAIM FOR HABEAS RELIEF**

14 The Nevada Supreme Court has never held that instances of ineffective assistance of  
15 counsel can be cumulated. McConnell v. State, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009).  
16 The State respectfully submits that cumulative error should not apply on post-conviction  
17 review. Middleton v. Roper, 455 F.3d 838, 851 (8th Cir. 2006), cert. denied, 549 U.S. 1134,  
18 1275 S. Ct. 980 (2007) ("a habeas petitioner cannot build a showing of prejudice on series of  
19 errors, none of which would by itself meet the prejudice test."). However, even if they could  
20 be, it would be of no moment as there was no single instance of ineffective assistance in  
21 Petitioner's case. See United States v. Rivera, 900 F.2d 1462, 1471 (10th Cir. 1990) ("[A]  
22 cumulative-error analysis should evaluate only the effect of matters determined to be error,  
23 not the cumulative effect of non-errors.").

24 Moreover, Petitioner's claim is without merit. "Relevant factors to consider in  
25 evaluating a claim of cumulative error are (1) whether the issue of guilt is close, (2) the quantity  
26 and character of the error, and (3) the gravity of the crime charged." Mulder v. State, 116 Nev.  
27 1, 17, 992 P.2d 845, 855 (2000).

28 //

1 As the Nevada Supreme Court found in affirming Petitioner's convictions:

2 The totality of the circumstances supports finding probable cause to search  
3 Keller's home. Inside Keller's car, officers found 344.29 grams of  
4 methamphetamine, 33.92 grams of heroin, .537 grams of cocaine, a mixture of  
5 the three controlled substances, and a gun. The quantity of methamphetamine  
6 and heroin exceed personal use levels, and the discovery of 1-inch by 1-inch  
7 baggies, a large amount of cash, as well as a gun, fairly indicated to the officers  
8 that Keller was trafficking in drugs. Further, when Officer Lopez initiated the  
9 traffic stop, Keller tried to exit the car parked in front of his condo, which in  
10 conjunction with Keller's evasive driving, Officer Lopez took as an attempt to  
11 escape. Taken as a whole, these circumstances supported a finding of probable  
12 cause that Keller was a drug dealer and that more drugs and guns would be found  
13 inside his condo.

9 Order of Affirmance at page 5.

10 The Nevada Supreme Court has also determined that the issue of guilt was not close in  
11 this case. In addressing Petitioner's claim of cumulative error on appeal, the Nevada Supreme  
12 Court further found that there was overwhelming evidence of guilt:

13 *There is no cumulative error*

14 Keller summarily argues that cumulative error requires reversal. But, Keller fails  
15 to establish any error on appeal, and the evidence presented at trial against him  
16 was overwhelming. *See Big Pond v. State*, 101 Nev. 1, 3, 692 P.2d 1288, 1289  
17 (1985) (considering "whether the issue of innocence or guilt is close, the quantity  
18 and character of the error, and the gravity of the crime charged" in determining  
19 cumulative error). We therefore, ORDER the judgment of the district court  
20 AFFIRMED.

18 Order of Affirmance at pages 8-9.

19 Finally, even if any of Petitioner's allegations had merit, Petitioner has failed to  
20 establish that, when aggregated, those errors deprived him of a reasonable likelihood of a better  
21 outcome at trial. Even if Petitioner had made such a showing, he has certainly failed to show  
22 that the cumulative effect of the supposed errors was so prejudicial as to undermine this  
23 Court's confidence in the outcome of Petitioner's case. Because the issue of guilt was not  
24 close, and because Petitioner failed to sufficiently undermine confidence in the outcome of his  
25 case, the State submits that Petitioner's claim of cumulative error is without merit and that this  
26 Court should deny the same.

27 **IV. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

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

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

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

26           Further, the United States Supreme Court has held that an evidentiary hearing is not  
27          required simply because counsel’s actions are challenged as being unreasonable strategic  
28          decisions. Harrington, 562 U.S. at 88, 131 S. Ct. at 788. Although courts may not indulge post  
hoc rationalization for counsel’s decision making that contradicts the available evidence of  
counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis  
for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain  
issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (citing  
Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the

1 *objective* reasonableness of counsel's performance, not counsel's *subjective* state of mind. 466  
2 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994) (emphasis added).

3 Here, there is no reason to expand the record because Petitioner fails to present specific  
4 factual allegations that would entitle him to relief. Marshall, 110 Nev. at 1331, 885 P.2d at  
5 605. Petitioner's claims are either waived as not having been properly raised on direct appeal,  
6 bare and naked allegations, or belied by the record. There is nothing else for an evidentiary  
7 hearing to determine, and Petitioner gives no specific reasons for why an evidentiary hearing  
8 would be needed. There is no need to expand the record because Petitioner's claims are  
9 meritless and can be disposed of on the existing record. Therefore, an evidentiary hearing is  
10 not warranted in this matter.

11 **CONCLUSION**

12 Based on the foregoing, the State respectfully requests that this Court order Defendant's  
13 Pro Per Petition for Writ of Habeas Corpus (Post-Conviction) be denied.

14 DATED this 21<sup>st</sup> day of January, 2020.

15 Respectfully submitted,

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

18  
19 BY

BB for  
TALEEN R. PANDUKHT  
Chief Deputy District Attorney  
Nevada Bar #005734

**CERTIFICATE OF MAILING**

I hereby certify that service of the above and foregoing was made this 21<sup>st</sup> day of January, 2020, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

CHRISTOPHER ROBERT KELLER, BAC #81840  
LOVELOCK CORRECTIONAL CENTER  
1200 Prison Rd.  
Lovelock, NV, 89419

BY

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

TRP/cg/L2

27

District Court  
Clark County, Nevada

FILED

FEB 12 2020

*Shirley*  
CLERK OF COURT

CHRISTOPHER ROBERT KELLER  
#81840

PETITIONER

-VS-

CASE # A-19-800950-W

THE STATE OF NEVADA

DEPT # XIX

RESPONDENT

DEFENDANTS SUPPLEMENTAL RESPONSE TO STATE'S RESPONSE  
TO DEFENDANTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS.

DATE OF HEARING: April 16, 2020  
TIME OF HEARING: 8:30 AM

Comes now, PETITIONER; Christopher Keller, and hereby  
submits the attached points & authorities in response to the  
STATE'S RESPONSE TO PETITIONERS PRO PER WRIT OF HABEAS CORPUS.

This response is made and based upon all papers and  
pleadings on file herein, the attached points and authorities  
~~and~~ previously submitted writ of habeas corpus (post conviction).

ARGUMENT

PETITIONER DID NOT WAIVE HIS SUBSTANTIVE GROUNDS IN  
HIS WRIT OF HABEAS CORPUS #<sup>s</sup> 1-7 BECAUSE HE WAS NEVER  
GIVEN THE OPPORTUNITY TO RAISE THEM ON DIRECT APPEAL.  
Keller HAD GOOD CAUSE FOR NOT RAISING GROUNDS ONE THROUGH  
SEVEN BECAUSE HE WAS IN THE PROCESS OF PREPARING THEM  
WITH THE INTENTION OF RAISING THEM PRO PER IF KELLER'S  
FEE DISPUTE (WITH THE NEVADA BAR OVER THE \$15,000 PAID  
TO RETAIN AMY FELICIANO TO REPRESENT KELLER IN APPEAL) <sup>attache</sup>

A-19-800950-W

SUPP

Supplemental

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CLERK OF THE COURT

WASN'T RESOLVED IN TIME TO RETAIN PRIVATE COUNSEL.

WHEN AGAINST KELLER'S REPEATEDLY EXPRESSED WISHES, FRIZZELL, WHO NEVER ONCE MADE CONTACT WITH OR RESPONDED TO KELLER, UNEXPECTEDLY FILED KELLER'S DIRECT APPEAL.

2. THE IMPEDIMENT EXTERNAL TO THE DEFENSE; IS THE FEE DISPUTE NOT BEING RESOLVED & KELLER'S EFFECTIVE COUNSEL HINDERED BY THE RETAINED APPELLANT COUNSEL STEALING THE \$15,000 RETAINER WHICH WAS THE ONLY FUND AVAILABLE TO KELLER, WHO ASSUMED THE NEVADA WOULD DO THE RIGHT THING AND RETURN THE MONEY OR APPOINT ACCEPTABLE ALTERNATE COUNSEL.
3. THE ACTUAL PREJUDICE IS DISPLAYED WHERE KELLER REPEATEDLY REQUESTED THAT THE SUPPRESSION HEARING FOR THE SEARCH BE APPEALED & UNDER THE OBVIOUS AND SOLID GROUNDS KELLER RAISED IN HIS HABEAS CORPUS, FOR COUNSEL FRIZZELL TO IGNORE THE REQUEST AND IMPEDE KELLER'S ATTEMPTS TO RAISE THEM PRIOR TO THE HABEAS CORPUS. COUNSEL'S ACTIONS IN KELLER'S CASE ALLOW THE GROUNDS FROM THOMAS V. STATE 115 NV. 148, 979 P.2D 222 (1998), U.S. V. STERNS, 68 F.3D 320 (9<sup>TH</sup> CIR, 1995), HARGROVE V. STATE, 100 NV 498 686 P.2D 222 (1984), FRANKLIN V. STATE, 110 NEV. 750, 877 P.2D 1058 (1994), LOZADA V. STATE, 110 NEV 349, 821 P.2D 944 (1994) & HARRIS V. STATE, 407 P.3D 348, 133 NEV (2017) TO BE APPLICABLE, BECAUSE KELLER WAS NEVER REPRESENTED IN HIS ATTEMPT TO APPEAL HIS SUPPRESSION HEARING & EVEN AGAINST REPEATED QUESTIONING BY KELLER; HOW HE COULD APPEAL HIS SUPPRESSION HEARING HIS COUNSEL EFFECTIVELY STONEWALLED HIS ATTEMPTS AND GROUNDS FROM EVER BEING PERSUED PRIOR TO KELLER'S ONLY OPPORTUNITY. (IN PRO PER HABEAS CORPUS WRIT - POST CONVICTION). THIS IS AN INEFFECTIVE



ASSISTANCE OF COUNSEL. COUNSEL FRIZZELL WAS ONLY EFFECTIVE IN ATTEMPTING TO BAR KELLER'S OBVIOUS GROUNDS OF APPEAL, ALONG WITH THE FOLLOWING LISTS OF PREJUDICES & INEFFECTIVENESS.

#### ADDITIONAL PREJUDICES & INEFFECTIVENESS.

THIS IS ACTUALLY KELLER'S FIRST CHANCE TO PRESENT HIS GROUNDS IN DOCUMENT (OTHERWISE THEY WOULD HAVE BEEN DENIED AS FUGITIVE DOCUMENTS, AS DONE PREVIOUSLY BY JUDGE KEPHART) & BECAUSE FAIZZELL'S STRONG ATTEMPTS AT PREVENTING KELLER FROM RAISING THE GROUNDS KELLER HAS BEEN ANNOUNCING IN OPEN COURT SINCE THE DAY COUNSEL FRIZZELL MISSED RAISING THEM AT THE SUPPRESSION HEARING.

STRANG is the FACT the "OWE SHEETS" THAT ARE PART OF EVIDENCE IN KELLER'S CASE, WERE BURIED NEVER TO BE PART OF THE RECORD IN OPEN COURT, EVEN THOUGH KELLER HAD BROUGHT THEIR IMPORTANCE UP TO FRIZZELL MORE THAN ONCE. THE ARRESTING OFFICER ORIGINALLY USED THE "OWE SHEETS" TO SHOW GUILT THAT KELLER WAS INVOLVED IN THE SALE OF NARCOTICS. UNTIL THEY REALIZED THE "OWE SHEETS" WERE IN FACT A FEMALE'S HANDWRITING & DON'T MATCH ANY OF KELLER'S WRITING (HIS CORRESPONDANCE WITH COURT, MOTIONS, LETTERS, ECT.) THE "OWE SHEETS" BEING A FEMALE'S AND FOUND ALONG WITH ALL THE NARCOTICS IS CLEARLY ONE OF THE TOP CREATORS OF DOUBT AVAILIBLE TO KELLER'S DEFENSE & YET AGAIN COUNSEL FRIZZELL DISREGARDED IT.

THE LAWYER PROBLEMS WORKED TO KELLER'S SUBSTANTIAL DISADVANTAGE BECAUSE OF THE ISSUE AT HAND. KELLER'S WELL

GOOD MERIT, SHOULD HAVE BEEN STANDARD &/OR OBVIOUS FOR THE TRANSPARENT PROCEDURAL PROBLEMS AND DISCREPANCIES IN KELLER'S CASE.) EVEN IF KELLER'S COURT APPOINTED COUNSEL TRIED TO CLAIM KELLER DIDN'T INFORM HIM OF THE ISSUES RAISED IN HIS HABEAS CORPUS, IE; GROUND ONE: THE FACT KELLER WAS SENTENCED CONSECUTIVELY FOR THE HABITUAL CRIMINAL ON TOP OF HIS OTHER ~~CRIMES~~ <sup>CHARGES</sup> (WHICH SEEMS IS COMMON KNOWLEDGE IS AN ILLEGAL SENTENCE) ALSO GROUND TWO: WHICH ANYONE DEFENDING A DRUG CASE THAT REVOLVES AROUND & STEMS FROM A DOG SNIFF WOULDN'T BE ABLE TO MISS. THE FACT THERE IS NO INFORMATION OR TESTIMONY, ABSOLUTELY ZERO PROOF THAT A DOG EVER "HIT" ON KELLER'S VEHICLE & IT IS AND WOULD SEEM EXTREMELY ODD TO ANY DEFENSE THAT THE STANDARD PROCEDURE WAS SKIPPED; OF ESTABLISHING THE K9 SNIFF WAS ACTUALLY CONDUCTED & BY A RELIABLE DOG AND HANDLER. WHICH IS ONLY POSSIBLE THROUGH THE DOG HANDLER'S TESTIMONY AND CROSS, ALONG WITH INTRODUCTION OF THE K9'S RECORDS, HISTORY & CREDENTIALS INTO EVIDENCE OR COURT RECORD. THE FACT NEITHER THE POLICE NOR THE STATE ATTEMPTED TO, WOULD INSTANTLY SEEM TO COMPETENT & EFFECTIVE DEFENSE COUNSEL; THAT EITHER THE DOG SNIFF NEVER HAPPENED OR THAT THE TESTIFYING OFFICER (LOPEZ) WAS CONFUSED BECAUSE OF HIS LACK OF KNOWLEDGE AND TRAINING & WRONGLY ASSUMED THE DOG HIT ON KELLER'S VEHICLE OR POSSIBLY FLAT OUT LIED ABOUT IT. ON TOP OF THE POSSIBILITY THE DOG WAS UNRELIABLE IN THE FIRST PLACE. BECAUSE THE ONLY FACT PART OF THE COURT RECORD IS THAT THE ONLY PERSON THAT CLAIMED A DOG HIT ON KELLER'S VEHICLE

WAS NOT QUALIFIED TO DETERMINE THE MEANING OF K9 BEHAVIOR AND AT BEST MADE AN ASSUMPTION & ANY TESTIMONY OFFICER LOPEZ MADE CONCERNING HIS GUESS OF THE DOG'S BEHAVIOR SHOULD BE REJECTED AND STRIKEN FROM COURT RECORD, NOT ONLY BECAUSE IT'S EXTREMELY PREJUDICIAL BUT BECAUSE HIS OBJECTIVE CLAIMS ARE UNSUBSTANTIATED BUT STAND AS THE KEY TO ESTABLISH JUSTIFICATION FOR CONTINUING THE SEARCH AND LONG PAST THE POINT OF BREAKING KELLER'S RIGHTS AND NRS 171.123.

IT IS EXTREME PREJUDICE THAT COURT APPOINTED COUNSEL WHOM THE DEFENDENT TRIED SEVERAL TIMES TO GET REMOVED FROM HIS CASE BY EVERYWAY POSSIBLE (ATTACHED: MOTIONS FOR CONFLICT OF INTEREST, APPOINTMENT OF ALTERNATE COUNSEL, MULTIPLE COMPLAINTS TO THE NEVADA BAR & ULTIMATELY THE LONG PROCESS OF FAMILY SAVING THE MONEY AND HIRING A DIFFERENT LAWYER) BECAUSE OF FRIZZELL'S UNSOLICITED DISRESPECT TOWARDS KELLER'S FAMILY JUST BECAUSE OF THE CONFLICT WITH KELLER OVER THE INVESTIGATOR. KELLER'S FAMILY WAS OPEN TO ACCEPTING KELLER WAS AT FAULT & SIDING WITH FRIZZELL TO GET KELLER IN LINE & ACCEPTING FRIZZELL'S ASSISTANCE BY ANY MEANS. JUST FOR THEM TO CALL FRIZZELL TO FIND OUT WHAT KELLER NEEDS TO DO OR UNDERSTAND TO RESOLVE ANY DIFFERENCES AND CREATE A LINE OF COMMUNICATION AND FRIZZELL RESPOND BY BELITTING KELLER'S MOTHER & TALKING TO HER LIKE SHE IS TRASH, IGNORANT & A CRIMINAL HERSELF. THIS IS THE REASON KELLER'S FAMILY (FOR THE FIRST TIME IN KELLER'S MANY LEGAL PROBLEMS) FELT FORCE TO HIRE A LAWYER TO REPRESENT HIM.

SO FINALLY EVERYTHING WAS SOLVED WITH NEW REPRESENTATION AND COULD MOVE ON AND ~~DEFEND~~ KELLER'S CASE WITH NEW

APPRECIATED COUNSEL WITH WHICH HE HAD ESTABLISHED A GOOD AND RESPECTFUL RELATIONSHIP WITH. JUST FOR THE DAY BEFORE TRIAL THE JUDGE TO DENY KELLER THE REPRESENTATION OF HIS CHOOSING BECAUSE HER SUBBING IN WOULD CAUSE A CONTINUANCE BECAUSE UNBEKNOWNST TO KELLER, HIS NEW COUNSEL (AMY FELICIANO) HAD UNEXPECTED MEDICAL ISSUES WHICH PREVENTED HER FROM TAKING THE STEPS TO BECOME KELLER'S COUNSEL OF RECORD A MONTH OR SO PRIOR WHEN SHE WAS RETAINED & BEGAN DISCUSSING THE CASE WITH KELLER. UNTIL THE LAST MINUTE, WHERE SHE THOUGHT THERE WOULD BE ABSOLUTLY NO PROBLEM WITH HER DOING THE DAY BEFORE TRIAL BECAUSE IT DIDN'T SEAM ANYONE EXPECTED TRIAL TO BE PUSHED FORWARD WITH NO DEFENSE PREPARED BY FRIZZELL (BECAUSE OF THE NON-EXISTENT COMMUNICATION BETWEEN KELLER AND FRIZZELL. THE FACT THE TRIAL DATE WAS SCHEDULED IN OVERFLOW COURT WAS ANOTHER THING LEADING US TO BELIEVE THE TRIAL DATE WOULD BE PUSHED BACK. UNEXPECTEDLY KELLER'S NORMAL JUDGE'S CALENDER OPENED UP & THE DAY BEFORE TRIAL WAS SCHEDULED WAS WHERE THE STATE ANNOUNCED READY AND AMY FELICIANO TRIED TO ANNOUNCE AS NEW ATTORNEY OF RECORD. THE JUDGE RESPONDED "NOT IF YOU NEED A CONTINUANCE, WE ARE STARTING TOMORROW." AMY FELICIANO PLEAD MANY LEGITAMATE REASONS WHY SHE HAD JUST RECIEVED KELLER'S FILE THAT DAY FROM FRIZZELL, TO NO AVAIL. AS SOON AS THE JUDGE DENIED FELICIANO, FRIZZELL (KELLER COURT APPOINTED COUNSEL) PROCEEDED TO INSULT KELLER AND TELL HIM "NOW I'M GONNA BEND YOU OVER AND YOUR GOING TO GET FXXED" WHICH STARTED A BACK AND FORTH BETWEEN THE TWO. ALL OF WHICH WAS

RIGHT AT THE DEFENSE DESK, IN FRONT OF AMY FELICIANO AND CLOSER THEN TEN FEET FROM THE FRONT ROW OF PUBLIC SEATING WHERE MARY SILVA SAT AND WILL TESTIFY TO REMEMBERING THE INCIDENT, AS WILL FRIZZELL, FELICIANO & KELLER. THAT WAS THE MUTUAL ATTORNEY-CLIENT CONFLICT SHARED UP TO & THROUGHOUT TRIAL.

ALLOWING AN ATTORNEY WHO OPENLY HATES AND HAS AN ILL WILL TOWARDS THE PERSON HE IS SUPPOSED TO DEFEND & REPRESENT IS EXTREMELY PREJUDICE FOR THE FACT IT MAKES THE DEFENDANT SUSCEPTIBLE AS A TARGET OF REVENGE FROM THE ATTORNEY IN COUNTLESS WAYS. LEAST OF WHICH; LACK OF EFFORT TOWARDS DEFENCE, IS A NATURAL REACTION FOR SOMEONE TO HAVE AT THE VERY LEAST IN THAT TYPE OF QUARRELSOME, FORCE INTERACTION. THERE IS ALSO THE STRONG POSSIBILITY THE FORCED COUNSEL (WHICH MADE MOTION TO WITHDRAW FROM) CREATED A FEELING OF NEED TO HARM KELLER &/OR HIS DEFENSE, BECAUSE OF THE BACK AND FORTH INSULTS. THE MOST EFFECTIVE WAY FOR HIM TO HARM KELLER IS BY WHAT HAPPENED; (ON PURPOSE OR NOT, BECAUSE OF FRIZZELL) THE FACT THAT KELLER, NANCY GRAHAM & BREEANNA HEMBRE ALL ATTEMPTED NUMEROUS TIMES (KELLER THROUGH LETTERS & CALLS & GRAHAM & HEMBRE BY PHONE) INFORMING FRIZZELL NOT TO DO ANY WORK ON KELLER'S DIRECT APPEAL, BECAUSE WE ARE IN THE PROCESS OF A FEE DISPUTE WITH THE NEVADA BAR & AMY FELICIANO WHO WAS RETAINED TO DO KELLER'S APPEAL AND WERE WAITING FOR THE OUTCOME OF THE DISPUTE SINCE AMY FELICIANO BECAME MEDICALLY UNABLE TO PERFORM AND PETITIONER INTENDED TO HIRE ANOTHER LAWYER TO REPRESENT KELLER FOR THE APPEAL. THE FACT ~~KELLER~~ FRIZZELL DID KELLER'S DIRECT APPEAL AGAINST KELLER'S EXPRESSED

Wishes AND ALSO THAT FRIZZELL DID THE DIRECT APPEAL SEEMING TO PURPOSELY AVOID THE BIG ISSUES AT THE HEART OF THE CASE AND THE OBVIOUS ISSUES, PREVIOUSLY MENTIONED IN THIS RESPONSE. INSTEAD FRIZZELL RAISED INSIGNIFICANT ISSUES.

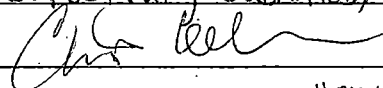
FRIZZELL NEVER ONCE MADE AN ATTEMPT TO CONTACT KELLER AFTER SENTENCING OR RESPOND TO LETTERS (PRISON LOGS SHOW) THIS ALL LENDS SUPPORT TO THE THEORY FRIZZELL ACTED INTENDING ILL WILL TOWARDS KELLER BECAUSE FRIZZELL'S ACTIONS ARE RESPONSIBLE FOR KELLER POSSIBLY LOSING HIS CHANCE TO RAISE HIS LEGITIMATELY APPEALABLE ISSUES.

### CONCLUSION

BASED ON THE FOREGOING, THE PETITIONER RESPECTFULLY REQUEST THAT THIS COURT ORDER DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) GROUNDS 1-7 BE ACCEPTED.

DATED THIS 1<sup>ST</sup> DAY OF FEBRUARY, 2020

Respectfully Submitted,

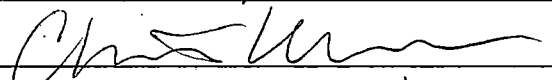
  
Christopher Keller #81840  
(LCC) 1200 PRISON RD.  
LOVELOCK, NV 89419

### CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT SERVICE OF THE ABOVE AND FOREGOING WAS MADE THIS 3<sup>RD</sup> DAY OF FEBRUARY, 2020, BY DEPOSITING A COPY IN THE U.S. MAIL, POSTAGE PREPAID, ADDRESSED TO:

STEVEN D. GRIERSON (CLERK  
DEPT. 19)  
200 LEWIS AVE. 3<sup>RD</sup> FLOOR  
LAS VEGAS, NV 89155-1160

TALEEN R. PANDUKHT BARE# 005734  
200 LEWIS AVE.  
LAS VEGAS, NV 89155-2212

By:   
Christopher Keller

# STATE BAR OF NEVADA

December 19, 2017

Christopher Keller, #81840  
Ely State Prison  
PO Box 1989  
Ely, NV 89301

Nancy Graham  
244 Molly Court  
Las Vegas, NV 89183

**Sent via email only:** [mrsnancygraham@cox.net](mailto:mrsnancygraham@cox.net)

**RE: Fee Dispute No. FD17-117: Keller/Graham v. Feliciano**

Dear Petitioners Keller/Graham:

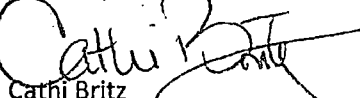
This letter acknowledges receipt of your completed Petitioner's Agreement for Arbitration of Fee Dispute. We have opened a file in this matter and assigned a case number (please refer to it in the future). Additionally, a copy of your Petition has been forwarded to the Respondent for a reply.

Pursuant to the Rules of Procedure for the Fee Dispute Arbitration Committee, the matter will automatically proceed to mediation. Once we are in receipt of the Respondent's reply, a copy will be provided to you and the matter will be assigned to a mediator to assist in resolving your claim. The process for obtaining a response and assigning a mediator can take up to a month to complete.

The Respondent will be provided with a Respondent's Agreement for Arbitration of Fee Dispute; however submission of this agreement is voluntary. If the Respondent's Agreement is received and the mediation attempt is unsuccessful, the matter will proceed onto binding arbitration. If the Respondent's Agreement is not submitted and mediation is not successful, the claim will then be closed.

The entire fee dispute procedure can take approximately 6 to 8 months to complete. For more information about the fee dispute process, please review the Rules of Procedure for Fee Dispute Arbitration and/or the Fee Dispute Committee webpage on [www.nvbar.org/feedispute](http://www.nvbar.org/feedispute).

Sincerely,

  
Cathi Britz  
Client Protection Coordinator




















3100 W. Charleston Blvd.  
Suite 100  
Las Vegas, NV 89102  
phone 702.382.2200  
toll free 800.254.2797  
fax 702.385.2878

9456 Double R Blvd., Ste. B  
Reno, NV 89521-5977  
phone 775.329.4100  
fax 775.329.0522

[www.nvbar.org](http://www.nvbar.org)

**CASE SUMMARY**  
**CASE NO. C-16-312717-1**















**EVENTS**

02/16/2016	 Criminal Bindover Packet Las Vegas Justice Court
02/17/2016	 Information <i>Information</i>
03/02/2016	 Reporters Transcript <i>Reporter's Transcript of Proceedings Preliminary Hearing - 2/16/2016</i>
03/04/2016	 Reporters Transcript <i>Reporter's Transcript of Proceedings Preliminary Hearing 2/16/16</i>
03/24/2016	 Notice <i>Notice of Intent to Seek Punishment as a Habitual Criminal</i>
03/24/2016	 Notice of Witnesses and/or Expert Witnesses <i>Notice of Witnesses</i>
03/29/2016	 Notice of Witnesses and/or Expert Witnesses <i>Notice of Expert Witnesses</i>
04/29/2016	 Amended Information <i>Amended Information</i>
06/01/2016	 Motion <i>Motion to Reduce Bail</i>
06/10/2016	 Motion to Suppress <i>Defendant's Motion to Supress</i>
06/13/2016	 Motion to Dismiss Counsel <i>Motion to Dismiss Counsel and Appoint Alternate Counsel</i>
06/16/2016	 Receipt of Copy <i>Receipt of Copy</i>
06/17/2016	 Opposition <i>State's Opposition to Defendant's Motion to Suppress</i>
07/18/2016	 Notice <i>Notice of Intent to Seek Punishment as a Habitual Criminal</i>
08/10/2016	 Motion <i>Motion to Withdraw as Counsel</i>
08/12/2016	 Certificate of Mailing <i>Certificate of Mailing</i>
08/18/2016	 Order <i>Order Denying Defendant's Motion to Suppress and Defendant's Pro Per Motion to Dismiss Counsel and Appoint Alternative Counsel</i>





# CASE SUMMARY

CASE NO. C-16-312717-1

08/24/2017	 Notice of Appeal (criminal) Party: Defendant Keller, Christopher Robert <i>Notice of Appeal</i>
08/25/2017	 Case Appeal Statement Filed By: Defendant Keller, Christopher Robert <i>Case Appeal Statement</i>
10/05/2017	 Recorders Transcript of Hearing Party: Defendant Keller, Christopher Robert <i>Recorders Rough Draft Transcript of Proceeding Sentencing</i>
11/13/2017	 Recorders Transcript of Hearing Party: Defendant Keller, Christopher Robert <i>Recorders Rough Draft Transcript of Hearing Re: 3/6/17 - Jury Trial - Day 1 - Partial Transcript (Excludes Jury Voir Dire)</i>
11/13/2017	 Recorders Transcript of Hearing Party: Defendant Keller, Christopher Robert <i>Recorders Rough Draft Transcript of Hearing Re: 3/7/17 - Jury Trial - Day 2 - Partial Transcript (Excludes Jury Voir Dire)</i>
11/13/2017	 Recorders Transcript of Hearing Party: Defendant Keller, Christopher Robert <i>Recorders Rough Draft Transcript of Hearing Re: 3/10/17 - Jury Trial - Day 5</i>
11/13/2017	 Recorders Transcript of Hearing <i>Transcript of Proceedings Rough Draft Transcript of Jury Trial- Day 4, 3/9/17</i>
11/13/2017	 Recorders Transcript of Hearing <i>Transcript of Proceedings Rough Draft Transcript of Jury Trial- Day 3, 3/8/17</i>
11/14/2017	 Notice of Motion Filed By: Defendant Keller, Christopher Robert <i>Notice of Motion</i>
11/14/2017	 Motion for Appointment of Attorney Filed By: Defendant Keller, Christopher Robert <i>Motion for Appointment of Counsel</i>
11/14/2017	 Motion to Withdraw As Counsel Filed By: Defendant Keller, Christopher Robert <i>Motion for Withdrawal of Attorney of Record or in the Alternative, Request for Records/ Court Case Documents</i>
11/29/2017	 Notice of Change of Hearing <i>Notice of Change of Hearing</i>
12/12/2017	 Amended Judgment of Conviction <b>AMENDED JUDGMENT OF CONVICTION (JURY TRIAL)</b>
03/22/2018	 Motion for Appointment Filed By: Defendant Keller, Christopher Robert

**CASE SUMMARY**  
**CASE NO. C-16-312717-1**

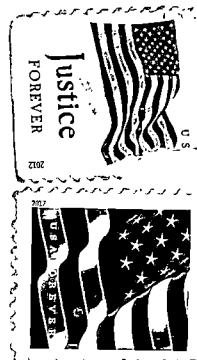
*Motion for the Appointment of Counsel and Motion to Dismiss Attorney on Record*

04/11/2018	 Order Filed By: Plaintiff State of Nevada <i>Order Granting Defendant's Motion for the Appointment of Counsel; Order Denying Defendant's Request for Evidentiary Hearing</i>
04/13/2018	 Opposition Filed By: Plaintiff State of Nevada <i>State's Opposition to Defendant's Motion to Appoint Counsel and Motion to Dismiss Attorney of Record</i>
05/10/2018	 Order Denying <i>Order Denying Defendant's Motion to Appoint Counsel and Motion to Dismiss Attorney of Record</i>
11/14/2018	 NV Supreme Court Clerks Certificate/Judgment - Affirmed <i>Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed</i>
12/31/2018	 Motion Filed By: Defendant Keller, Christopher Robert <i>Motion for Withdrawal of Counsel of Record or in the Alternative Request for Records/Court Case Document</i>
12/31/2018	 Notice of Motion Filed By: Defendant Keller, Christopher Robert
02/01/2019	 Order Granting Filed By: Plaintiff State of Nevada <i>Order Granting Petitioner's Pro Per Motion for Withdrawal of Counsel of Record. Or In the Alternative, Request for Records/Court Case Document</i>
04/03/2019	 Motion Filed By: Defendant Keller, Christopher Robert <i>Request for Records/Court Case Documents</i>
04/03/2019	 Notice of Motion Filed By: Defendant Keller, Christopher Robert
04/03/2019	 Motion to Compel Filed By: Defendant Keller, Christopher Robert

**DISPOSITIONS**

02/18/2016	<b>Plea</b> (Judicial Officer: Kephart, William D.) 1. TRAFFICKING IN CONTROLLED SUBSTANCE Not Guilty PCN: 0025604569 Sequence:  2. TRAFFICKING IN CONTROLLED SUBSTANCE Not Guilty PCN: Sequence:  3. POSSESSION OF CONTROLLED SUBSTANCE, MARIJUANA Not Guilty PCN: Sequence:  4. POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT TO SELL Not Guilty
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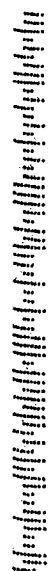
Dispositive Keller #219115  
1200 Prison RD  
Covelock, NV 89419



Steven D. Greason (Clerk #19)  
200 Lewis Ave. 3rd floor  
Las Vegas, NV 89155-1160

INMATE LEGAL  
MAIL CONFIDENTIAL

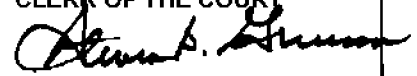
8510135300 0075



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FEB 7 2020

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OPI  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
PARKER BROOKS  
Deputy District Attorney  
Nevada Bar #011927  
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-

CHRISTOPHER ROBERT KELLER,  
#1804258

Defendant.

CASE NO. A-19-800950-W

DEPT NO. XIX

**ORDER FOR PRODUCTION OF INMATE  
CHRISTOPHER ROBERT KELLER, BAC #81840**

DATE OF HEARING: April 23, 2020  
TIME OF HEARING: 08:30 AM

TO: NEVADA DEPARTMENT OF CORRECTIONS; and

TO: JOSEPH LOMBARDO, Sheriff of Clark County, Nevada:

Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by STEVEN B. WOLFSON, District Attorney, through PARKER BROOKS, Deputy District Attorney, and good cause appearing therefor,

IT IS HEREBY ORDERED that NEVADA DEPARTMENT OF CORRECTIONS shall be, and is, hereby directed to produce CHRISTOPHER ROBERT KELLER, Defendant in Case Number A-19-800950-W, wherein THE STATE OF NEVADA is the Plaintiff, inasmuch as the said CHRISTOPHER ROBERT KELLER is currently incarcerated in the NEVADA DEPARTMENT OF CORRECTIONS located in Clark County, Nevada, and his presence will be required in Las Vegas, Nevada, commencing on April 23, 2020, at the hour

1 of 08:30 o'clock AM and continuing until completion of the prosecution's case against the said  
2 Defendant.

3 IT IS FURTHER ORDERED that JOSEPH LOMBARDO, Sheriff of Clark County,  
4 Nevada, shall accept and retain custody of the said CHRISTOPHER ROBERT KELLER in  
5 the Clark County Detention Center, Las Vegas, Nevada, pending completion of said matter in  
6 Clark County, or until the further Order of this Court; or in the alternative shall make all  
7 arrangements for the transportation of the said CHRISTOPHER ROBERT KELLER to and  
8 from the Nevada Department of Corrections facility which are necessary to insure the  
9 CHRISTOPHER ROBERT KELLER's appearance in Clark County pending completion of  
10 said matter, or until further Order of this Court.

11 DATED this 10<sup>th</sup> day of March, 2020.

12   
13 DISTRICT JUDGE 

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

18 BY 

19 PARKER BROOKS  
20 Deputy District Attorney  
21 Nevada Bar #011937

22  
23  
24  
25  
26  
27  
28 cg/L2

1 Christopher Keller #81840  
2 (CC) 1200 PRS 1130  
3 Lovelock, NV 89411

Electronically Filed  
05/20/2020

*Heather S. Shuman*  
CLERK OF THE COURT

4  
5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 NAME, Christopher Keller #81840

9 Plaintiff(s) PETITIONER

10 -vs-

11 NAME, STATE OF NEVADA

12 RESPONDENT Defendant(s).

CASE NO.

A-19-800450-W

DEPT NO.

XIX

13  
14  
15  
16  
17 COMES NOW, Christopher Keller in PRO PER and herein above respectfully

18 Moves this Honorable Court for all HEARINGS IN THE CASE ABOVE TO BE  
19 HELD OVER VIDEO & THAT ALL OTHER RULES PRESENCE BE WAIVED.

20  
21  
22  
23 The above is made and based on the following Memorandum of Points and Authorities.

24  
25  
26 RECEIVED

27 MAY 23 2020

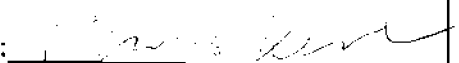
28 CLERK OF THE COURT  
1

MEMORANDUM OF POINTS AND ACTIVITIES

Keller is presently at Lovelock Correctional Center and besides the transfer causing Keller issues and possible exposure to the COVID-19 virus, it will create extra work for officers and expenses for the state, which are all unnecessary.

Dated this 20<sup>th</sup> day of April, 2020.

By:

  
Christopher R. Keller

CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP Rule 5 (b), I hereby certify that I am the Petitioner/Defendant named herein  
and that on this 30<sup>th</sup> day of April, 2020, I mailed a true and correct copy of this  
foregoing motion for summary judgment to the following:

STEVEN D. GRIERSON  
200 LEWIS AVE. 3rd fl.  
LAS VEGAS, NV 89155-100

BY: Christopher L. Reber



AFFIRMATION

Pursuant to NRS 239b.030

The undersigned does hereby affirm that the preceding document, \_\_\_\_\_

motion for ARGENTIA

(Title of Document)

Filed in case number: \_\_\_\_\_

☒ Document does not contain the social security number of any person

Or

☐ Document contains the social security number of a person as required by:

☐ A Specific state or federal law, to wit

\_\_\_\_\_

Or

☐ For the administration of a public program

Or

☐ For an application for a federal or state grant

Or

☐ Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230, and NRS 125b.055)

DATE: 4-29-2020

[Signature]  
(Signature)

Christopher S. Kellge  
(Print Name)

PRO SE  
(Attorney for)

*Heather L. Hume*

CLERK OF THE COURT

**OPI**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
MICHAEL R. DICKERSON  
Chief Deputy District Attorney  
Nevada Bar #013476  
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-

CHRISTOPHER ROBERT KELLER,  
#1804258

Defendant.

CASE NO. A-19-800950-W

DEPT NO. XIX

**ORDER FOR PRODUCTION VIA VIDEO CONFERENCE  
OF INMATE CHRISTOPHER ROBERT KELLER, BAC #81840**

DATE OF HEARING: October 1, 2020

TIME OF HEARING: 8:30 AM

TO: NEVADA DEPARTMENT OF CORRECTIONS; and

TO: JOSEPH LOMBARDO, Sheriff of Clark County, Nevada:

Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by STEVEN B. WOLFSON, District Attorney, through MICHAEL R. DICKERSON, Chief Deputy District Attorney, and good cause appearing therefor,

IT IS HEREBY ORDERED that NEVADA DEPARTMENT OF CORRECTIONS shall be, and is, hereby directed to produce CHRISTOPHER ROBERT KELLER for purposes of appearing via video conference, Defendant in Case Number A-19-800950-W, wherein THE STATE OF NEVADA is the Plaintiff, inasmuch as the said CHRISTOPHER ROBERT KELLER is currently incarcerated in the NEVADA DEPARTMENT OF CORRECTIONS located in Clark County, Nevada, and his presence via video conference will be required in

1 Las Vegas, Nevada, commencing on October 1, 2020, at the hour of 08:30 o'clock AM and  
2 continuing until completion of the prosecution's case against the said Defendant.

3 IT IS FURTHER ORDERED that JOSEPH LOMBARDO, Sheriff of Clark County,  
4 Nevada, and the NEVADA DEPARTMENT OF CORRECTIONS shall be, and is, hereby  
5 directed to produce CHRISTOPHER ROBERT KELLER for purposes of appearing via video  
6 conference on the above date and time, and until completion of said matter, or until further  
7 Order of this Court.

8 DATED this \_\_\_\_\_ day of September, 2020, <sup>Dated this 16th day of September, 2020</sup>

9 

10 DISTRICT JUDGE  
11 1A9 0B5 9ED6 FEC0  
William D. Kephart  
District Court Judge

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

14  
15 BY /s/ MICHAEL R. DICKERSON  
16 MICHAEL R. DICKERSON  
17 Chief Deputy District Attorney  
Nevada Bar #013476

18  
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28 Im/L-2

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Christopher Keller, Plaintiff(s)

CASE NO: A-19-800950-W

7 vs.

DEPT. NO. Department 19

8 State of Nevada, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's  
12 electronic filing system, but there were no registered users on the case. The filer has been  
13 notified to serve all parties by traditional means.  
14  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

Electronically Filed  
9/16/2020 12:05 PM  
Steven D. Grierson  
CLERK OF THE COURT



Christopher Keller, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

Case No.: A-19-800950-W  
Department 19

**NOTICE OF HEARING**

Please be advised that the Plaintiff's Motion to Appoint Counsel in the above-entitled matter is set for hearing as follows:

**Date:** October 22, 2020

**Time:** Chambers

**Location:**

Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

**NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.**

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Michelle McCarthy  
Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Michelle McCarthy  
Deputy Clerk of the Court

1 Christopher R. Keller #81840  
/ In Propria Personam  
2 Post Office Box 650 [HDSP]  
3 Indian Springs, Nevada 89018

FILED  
SEP 16 2020  
CLERK OF COURT

5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 Christopher R. Keller  
8 PLANTIFF  
9  
10 vs.  
11 STATE OF NEVADA  
12 DEFENDANT  
13

A-19-800950-W  
Case No. ~~E-16-312717-1~~  
Dept No. XIX  
Docket

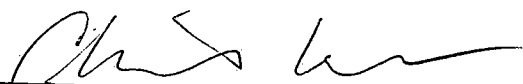
14 NOTICE OF MOTION

15 YOU WILL PLEASE TAKE NOTICE, that

16  
17 will come on for hearing before the above-entitled Court on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
18 at the hour of \_\_\_\_ o'clock \_\_\_\_ M. In Department \_\_\_\_, of said Court.

19  
20 CC:FILE

21  
22 DATED: this 2<sup>nd</sup> day of September, 2020.

23  
24 BY:   
25 Christopher R. Keller #81840  
26 /In Propria Personam  
27  
28

RECEIVED  
SEP 08 2020  
CLERK OF THE COURT

1 Christopher R. Keller #81840  
2 /In Propria Persona  
3 Post Office Box 650 (HDSP)  
4 Indian Springs, Nevada. 89018

27  
FILED

SEP 16 2020

CLERK OF COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

7  
8 Christopher R. Keller }  
9 PLANTIFF }  
10 vs. STATE of NEVADA }  
11 DEFENDANT }  
12

Case No. A-19-800950-W  
~~C-16-312717-1~~

Dept. No. XIX

Docket

HEARING  
REQUESTED

MOTION TO APPOINT COUNSEL

DATE OF HEARING: \_\_\_\_\_

TIME OF HEARING: \_\_\_\_\_

18 COMES NOW the Defendant Christopher Keller, in proper persona and moves  
19 this court for an Order granting him counsel in the proceeding action.

20 This motion is made and based upon all papers and pleadings on file herein and attached  
21 points and authorities.

22  
23 Dated this 2<sup>nd</sup> day of SEPTEMBER, 2020.

Respectfully Submitted,

Christopher R. Keller

RECEIVED

SEP - 8 2020

CLERK OF THE COURT

1  
2 **POINTS AND AUTHORITIES**

3 NRS 34.750 Appointment of Counsel for indigents; pleading supplemental to petition;  
4 response to dismiss.

5 "If the Court is satisfied that the allegation of indigency is true and the petition is not  
6 dismissed summarily, the Court may appoint counsel to represent the petitioner."

7 NRS 171.188 Procedure for appointment of attorney for indigent defendant.

8 "Any defendant charged with a public offense who is an indigent may, be oral statement to the  
9 District Judge, justice of peace, municipal judge or master, request the appointment of an attorney to  
10 represent him."

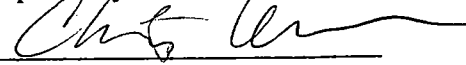
11 NRS 178.397 Assignment of counsel.

12 "Every defendant accused of a gross misdemeanor or felony who is financially unable  
13 to obtain counsel is entitled to have counsel assigned to represent him at every stage of the  
14 proceedings from his initial appearance before a magistrate or the court through appeal, unless he  
15 waives such appointment."

16 WHEREFORE, petitioner prays the Court will grant his motion for appointment of counsel to  
17 allow him the assistance that is needed to insure that justice is served, BECAUSE KELLER IS  
18 UNABLE TO REPRESENT HIMSELF IN ANY HEARING.

19 Dated this 2nd day of SEPTEMBER, 2020.

20  
21 Respectfully submitted,

22   
23 Christopher R. Keller  
24  
25  
26  
27  
28



**CERTIFICATE OF SERVICE BY MAILING**

I, Christopher R. Keller hereby certify, pursuant to NRCP 5(b) that on this 2<sup>ND</sup>  
day of SEPTEMBER, 2020, I mailed a true and correct copy of the foregoing “

MOTION TO APPOINT COUNSEL”

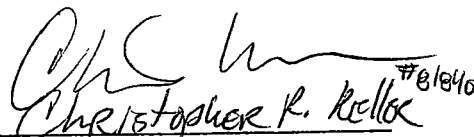
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, Fully prepaid,  
addressed as follows:

STEVEN D. GRIERSON

200 LEWIS AVE, 3<sup>rd</sup> floor

LAS VEGAS, NV 89155-1160

DATED: THIS 2<sup>nd</sup> day of SEPTEMBER, 2020

  
Christopher R. Keller #81846

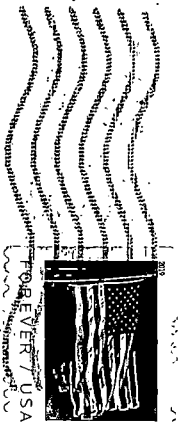
/In Propria Persona

High Desert State Prison  
P.O. Box 650  
Indian Springs, Nevada. 89018

Christopher Keller #81840  
(H.D.S.P.) P.O. Box #650  
Troy, NV 89470

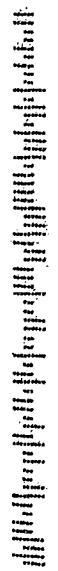
LAS VEGAS NV 890

03 SEP 2000 PM 5 L



STEVEN D. GRIFFIN (DEPT. 19)  
200 LEWIS AVE. 3rd floor  
LAS VEGAS, NV 89135-1160

89101-630000



HIGH DESERT STATE PRISON  
SEP 01 2020  
UNIT 10

1 PRO SE

2  
3  
4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6  
7 Christopher R. Keller

8 plaintiff

CASE NO. A-19-800950-W

DEPT NO. XIX

9 vs

10 STATE OF NEVADA

11 DEFENDANT

12  
13  
14 ORDER

15  
16 Upon reading the motion of the \_\_\_\_\_  
17 requesting appointment of counsel and good cause appearing;

18 IT IS HEREBY ORDERED that petitioner's motion for appointment  
19 of counsel is granted.

20 The following named attorney has taken the appointment:

21  
22 \_\_\_\_\_  
23 Attorney's Name

24 Dated this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

25  
26 \_\_\_\_\_  
27 DISTRICT JUDGE

28 Christopher Keller

IN PROPER PERSON

RECEIVED  
SEP 08 2020

CLERK OF THE COURT

*Steven D. Grierson*

1 Christopher R. Keller #81840

2 Plaintiff In Proper Person

3 P.O. Box 650 H.D.S.P.  
4 Indian Springs, Nevada 89018

5 8th DISTRICT COURT

6 CLARK COUNTY NEVADA

7  
8 Christopher Keller

9 Plaintiff

Case No. A-19-800950-W

Dept. No. XIX

Docket \_\_\_\_\_

10 -v-

11 STATE OF NEVADA

12 DEFENDANT

13  
14 NOTICE OF APPEAL

15 Notice is hereby given that the Plaintiff, Christopher

16 Keller, by and through himself in proper person, does now appeal

17 to the Supreme Court of the State of Nevada, the decision of the District

18 Court DENYING his Writ of Habeas Corpus

19 (post conviction)

20  
21 Dated this date, OCTOBER 8<sup>th</sup>, 2020.

22  
23 Respectfully Submitted,

24 *Chris Keller*  
25 Christopher R. Keller

26 In Proper Person

27 RECEIVED

28 OCT 13 2020

CLERK OF THE COURT  
147

**CERTIFICATE OF SERVICE BY MAILING**

I, Christopher Keller, hereby certify, pursuant to NRCF 5(b), that on this 8th  
day of October, 2020, I mailed a true and correct copy of the foregoing, "NOTICE  
of APPEAL"  
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,  
addressed as follows:

STEVEN D. GLEASON (clerk)  
200 LEWIS AVE 3rd Fl  
LAS VEGAS, NV 89155-1160

SUPREME COURT of NEVADA  
Office of the Clerk  
201 S. CARSON ST. SUITE 201  
CARSON CITY, NV 89701

DATED: this 8th day of October, 2020.

Christopher Keller # 81820  
Plaintiff /In Propria Persona  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding \_\_\_\_\_

NOTICE OF APPEAL  
(Title of Document)

filed in District Court Case number A-19-800950-W

☒ Does not contain the social security number of any person.

-OR-


☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-OR-

B. For the administration of a public program or for an application  
for a federal or state grant.

  
Signature

10-8-20  
Date

CHRISTOPHER KELLER  
Print Name

Plaintiff in proper person  
Title



1 ASTA

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

9 CHRISTOPHER R. KELLER,

10 Plaintiff(s),

11 vs.

12 STATE OF NEVADA,

13 Defendant(s),  
14

Case No: A-19-800950-W

Dept No: XIX

15  
16 **CASE APPEAL STATEMENT**

17  
18 1. Appellant(s): Christopher R. Keller

19 2. Judge: William D. Kephart

20 3. Appellant(s): Christopher R. Keller

21 Counsel:

22 Christopher R. Keller #81840  
23 P.O. Box 650  
24 Indian Springs, NV 89070

25 4. Respondent (s): State of Nevada

26 Counsel:

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

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

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

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

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

8. Appellant Granted Leave to Proceed in Forma Pauperis\*\*: N/A

*\*\*Expires 1 year from date filed*

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

9. Date Commenced in District Court: August 26, 2019

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

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

11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 21 day of October 2020.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk  
200 Lewis Ave  
PO Box 551601  
Las Vegas, Nevada 89155-1601  
(702) 671-0512

cc: Christopher R. Keller



**FFCO**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**TALEEN R. PANDUKHT**  
Chief Deputy District Attorney  
Nevada Bar #005734  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

**CHRISTOPHER ROBERT KELLER,**  
#1804258

Petitioner,

-vs-

**THE STATE OF NEVADA,**

Respondent.

CASE NO: A-19-800950-W

DEPT NO: XIX

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

DATE OF HEARING: October 1, 2020

TIME OF HEARING: 8:30 a.m.

THIS CAUSE having come before the Honorable WILLIAM D. KEPHART, District Court Judge, on the 1st day of October, 2020, Petitioner being present, not being represented by counsel, Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, through MICHAEL DICKERSON, Deputy District Attorney, and the Court having considered the matter, including the briefs, transcripts, testimony of Kenneth Frizzell, Esq. and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:.

**FINDINGS OF FACT, CONCLUSIONS OF LAW**

**STATEMENT OF THE CASE**

On February 17, 2016, Christopher Robert Keller (hereinafter "Petitioner") was charged by way of Information with Counts 1 and 2 - Trafficking In Controlled Substance

1 (Category A Felony - NRS 453.3385.3 - NOC 51160); Count 3 - Possession Of Controlled  
2 Substance, Marijuana (Category E Felony - NRS 453.336 - NOC 51127); Counts 4, 5, 6, and  
3 7 - Possession Of Controlled Substance With Intent To Sell (Category D Felony - NRS  
4 453.337 - NOC 51141); and Counts 8 and 9 - Ownership Or Possession Of Firearm By  
5 Prohibited Person (Category B Felony - NRS 202.360 - NOC 51460). On February 18, 2016,  
6 Petitioner entered a plea of not guilty and invoked his constitutional right to a speedy trial.

7 On March 24, 2016, the State filed a Notice of Intent to Seek Punishment as a Habitual  
8 Criminal. At Calendar Call on April 13, 2016, Petitioner's counsel, Michael Sanft, Esq.,  
9 announced he had a conflict for the trial date due to the upcoming trial. Petitioner stated he  
10 wanted to go to trial on the original date, and due to counsel's conflict, the Court ordered the  
11 trial date reset. On this date, the State also extended a plea offer to Petitioner for one count of  
12 Low-Level Trafficking in a Controlled Substance and one count of Possession of a Firearm by  
13 a Prohibited Person, with Petitioner stipulating to small habitual treatment and a stipulated  
14 maximum sentence of twelve and a half (12.5) years. The trial date was reset to May 2, 2016  
15 ("First Continuance").

16 At Calendar Call on April 20, 2016, Petitioner stated he wanted to go to trial and was  
17 willing to represent himself if need be. On April 29, 2016, the State filed an Amended  
18 Information, charging Petitioner with the same charges as the original Information. On April  
19 29, 2016, Mr. Sanft requested to withdraw due to a conflict of interest. The Court granted the  
20 request and appointed Kenneth Frizzell, Esq. to represent Petitioner. On May 4, 2016, Mr.  
21 Frizzell confirmed as counsel. Due to the change in counsel, the trial date was vacated and  
22 reset to June 27, 2016 ("Second Continuance").

23 On June 10, 2016, Petitioner filed a Motion to Suppress. The State filed an Opposition  
24 on June 17, 2016. On June 20, 2016, Petitioner requested more time to file a Reply to the  
25 State's Opposition, and the Court vacated the trial date of June 27, 2016, and ordered Calendar  
26 Call on July 20, 2016, and a Jackson v. Denno Hearing on July 21, 2016 ("Third  
27 Continuance"). On June 13, 2016, Petitioner filed a Pro Per Motion to Dismiss Counsel and  
28 //

1 Appoint Alternate Counsel. The District Court denied the Motion on July 21, 2016, after  
2 hearing from Petitioner.

3 On July 18, 2016, the State filed a Notice of Intent to Seek Habitual Treatment. On July  
4 21, 2016, the State also informed the Court that it had extended a new plea offer for one count  
5 of Mid-Level Trafficking and one count of Possession of a Firearm by a Prohibited Person,  
6 with the State retaining the right to argue at sentencing but having no opposition to the counts  
7 running concurrently. Petitioner rejected the State's offer. On July 21, 2016, the Court also  
8 denied Petitioner's Motion to Suppress after the Jackson v. Denno hearing. The Court denied  
9 Petitioner's Pro Per Motion to Dismiss Counsel and Appoint Alternate Counsel. The Order  
10 denying the motions was filed on August 18, 2016. On July 21, 2017, Defense counsel  
11 requested another continuance, stating that due to the Motion to Suppress, he had not been  
12 able to prepare for trial ("Fourth Continuance"). The Court granted the continuance and reset  
13 the trial date for September 19, 2016. At Calendar Call on September 14, 2016, Petitioner  
14 waived his speedy trial right and requested a continuance ("Fifth Continuance"). The Court  
15 granted the continuance and reset the trial to March 6, 2017.

16 Both Petitioner and the State announced ready for the March 6, 2017 trial date, which  
17 was the sixth trial setting in the case. On March 6, 2017, the day trial was due to begin, Amy  
18 Feliciano, Esq., appeared in Court and attempted to substitute in as trial counsel. Ms. Feliciano  
19 informed the Court that she had been retained by Petitioner's mother sometime in early  
20 February but had not moved to substitute in as counsel until March 6, 2017 due to multiple  
21 medical and personal problems. As Ms. Feliciano was unprepared for trial without a sixth  
22 continuance being granted, the Court denied Petitioner's request for a continuance and ordered  
23 trial to proceed with Mr. Frizzell as trial counsel.

24 On March 6, 2017, the State filed a Second Amended Information as the State chose to  
25 bifurcate Counts 8 and 9 from the first seven (7) counts. The Second Amended Information  
26 was filed in open court on March 6, 2017, charging Petitioner with Counts 1 and 2 - Trafficking  
27 in Controlled Substance (Category A Felony - NRS 453.3385.3 - NOC 51160); Count 3 -  
28 Possession of Controlled Substance, Marijuana (Category E Felony - NRS 453.336 - NOC

1 51127); and Counts 4-7 - Possession Of Controlled Substance With Intent To Sell (Category  
2 D Felony - NRS 453.337 - NOC 51141). Petitioner's jury trial commenced on March 7, 2017,  
3 and concluded on March 10, 2017, when the jury returned a verdict of guilty on all seven (7)  
4 counts. A Third Amended Information was subsequently filed in open court which added  
5 Counts 8 and 9 - Ownership or Possession of Firearm by Prohibited Person (Category B Felony  
6 - NRS 202.360 - NOC 51460). The jury also returned verdicts of guilty on Counts 8 and 9.

7 On April 29, 2017, Ms. Feliciano substituted as counsel of record, and Mr. Frizzell  
8 withdrew from his representation. Ms. Feliciano requested that sentencing be continued three  
9 (3) times: on May 8, 2017, June 5, 2017, and June 19, 2017. On July 24, 2017, Ms. Feliciano  
10 requested a fourth sentencing continuance, and Petitioner requested that she be dismissed as  
11 counsel of record. The District Court granted Petitioner's request, and re-appointed Mr.  
12 Frizzell as Petitioner's counsel. On July 31, 2017, the Court granted Mr. Frizzell a continuance  
13 to allow him to retrieve Petitioner's file from Ms. Feliciano.

14 On August 7, 2017, Petitioner was sentenced as follows: as to Count 1- LIFE in the  
15 Nevada Department of Corrections (NDC) with a minimum parole eligibility after ten (10)  
16 years in NDC; as to Count 2 – LIFE in the NDC with a minimum parole eligibility after ten  
17 (10) years in the NDC; Count 2 to run concurrent with Count 1; as to Count 3 – a minimum of  
18 twelve (12) months and a maximum of forty-eight (48) months in the NDC; Count 3 to run  
19 concurrent with Count 2; as to Count 4 – to a minimum of twelve (12) months and a maximum  
20 of forty-eight (48) months in the NDC; Count 4 to run concurrent with Count 3; as to Count 5  
21 – a minimum of twelve (12) month and a maximum of forty-eight (48) months in the NDC;  
22 Count 5 to run concurrent with county 4; as to Count 6 - to a minimum of twelve (12) months  
23 and a maximum of forty-eight (48) months in the NDC; Count 6 to run concurrent with Count  
24 5; as to Count 7 - to a minimum of twelve (12) months and a maximum of forty-eight (48)  
25 months in the NDC; Count 7 to run concurrent with Count 6; as to Count 8 – Petitioner  
26 sentenced under the large habitual criminal statute to LIFE in the Nevada Department of  
27 Corrections (NDC) with a minimum parole eligibility after ten (10) years in the NDC; Count  
28 8 to run CONSECUTIVE to Counts 1, 2, 3, 4, 5, 6, and 7; and as to Count 9, Defendant

1 sentenced under the large habitual criminal statute to LIFE in the Nevada Department of  
2 Corrections (NDC) with a minimum parole eligibility after ten (10) years in the NDC; Count  
3 9 to run concurrent with Count 8; for a total aggregate sentence of LIFE in the NDC with a  
4 minimum parole eligibility of TWENTY (20) years in the NDC, and five-hundred fifty-nine  
5 (559) days credit for time served.

6 Petitioner's Judgment of Conviction was filed on August 10, 2017. On August 24,  
7 2017, Petitioner filed a Notice of Appeal. On November 14, 2017, Petitioner filed a Motion  
8 for Appointment of Counsel and a Motion for Withdrawal of Attorney of Record. On  
9 December 6, 2017, this Court granted Defendant's Motion for Withdrawal of Counsel and  
10 denied Defendant's Motion for Appointment of Counsel.

11 An Amended Judgment of Conviction was filed on December 12, 2017, correcting the  
12 statute to NRS 435.337 for Possession of Controlled Substance with Intent to Sell for Counts  
13 4, 5, 6 and 7.

14 On March 22, 2018, Petitioner filed another Motion for Appointment of Counsel and a  
15 Motion to Dismiss Attorney of Record. On April 13, 2018, the State filed its Opposition to  
16 Petitioner's Motion to Appoint Counsel and Motion to Dismiss Attorney of Record. On April  
17 16, 2018, the Court denied the motion as Petitioner's appeal was still pending before the  
18 Nevada Supreme Court.

19 On October 15, 2018, the Nevada Supreme Court affirmed Petitioner's Judgment of  
20 Conviction. Remittitur issued on November 9, 2018.

21 On August 26, 2019, Petitioner filed the instant Pro Per Petition for Writ of Habeas  
22 Corpus. The State filed its Response on January 21, 2020. On February 12, 2020, Petitioner  
23 filed a "Supplemental Response to State's Response to Defendant's Pro Per Petition for Writ  
24 of Habeas Corpus." Thereafter, on September 16, 2020, Petitioner filed a Motion to Appoint  
25 Counsel.

26 Petitioner's Motions came on for evidentiary hearing before this Court on October 1,  
27 2020, with trial counsel Kenneth Frizzell, Esq. called to testify. After the hearing, this Court  
28 made the following findings and conclusions:

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Petitioner consented to allow Officer Lopez to remove his wallet from his pocket to see Petitioner's identification. Upon removing the wallet, Officer Lopez noted that Petitioner was carrying what appeared to be a large amount of cash. The cash was right outside of Petitioner's wallet, with multiple denominations, among which sixty-eight \$20 bills separated in groups of five (5) bills and folded in alternating directions. The amount of cash was determined to be \$2,187.00. Based upon the manner in which the cash was situated, and the amount of cash that Petitioner carried, Officer Lopez determined that the cash was, in his training and experience, consistent with the sale of narcotics. Officer Lopez based this conclusion, in part, on the denominations of the cash, the way the cash was specifically folded, the fact that \$20 bills were folded in increments of \$100, the direction the bills were facing, and the fact that a "wad of cash" was made up of mostly smaller denominations, such as \$20, \$5 and \$10 bills.

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1 nervousness, the fact that he was so upset about being stopped, and Defendant's behavior while  
2 Officer Lopez conducted the pat down for weapons. Afterward, while standing outside the  
3 driver's door, Officer Lopez noticed a green leafy residue on the floorboard of the driver's  
4 side vehicle in plain view. Based upon the vehicle, the odor of marijuana emanating from  
5 Petitioner and the vehicle, and the green leafy residue in plain view, Officer Lopez conducted  
6 a probable cause search of Petitioner's vehicle. During the probable cause search, Officer  
7 Lopez located a clear sealable plastic bag containing multiple smaller clear plastic bags  
8 underneath the driver's seat, as well as another large sealable plastic bag between the driver's  
9 seat and the center console. At that point, based on the size of the bags found in Petitioner's  
10 car, as well as the amount of cash found on Petitioner's person, Officer Lopez called for a K-  
11 9 narcotics dog.

12         The K-9 narcotics dog alerted to the glove box, wherein Officer Lopez located a  
13 concealed compartment. Officer Lopez testified he put his hand inside the hole and could feel  
14 a bag with something solid inside. At that point in time, Officer Lopez stopped his search and  
15 obtained a search warrant. Pursuant to the search warrant, Officer Lopez located several items  
16 of evidence. Officer Lopez, Officer Henry, and Crime Scene Analyst Stephanie Thi searched  
17 the vehicle. In the secret compartment, they found a black mesh bag, within which they found  
18 two gold colored plastic bags. One of the gold bags contained a nylon drawstring bag within  
19 which a loaded Beretta model 950, .22 caliber handgun was found. Moreover, Officer Lopez  
20 also found several packages of a white crystal substance, plastic wrappers with a brown  
21 substance, and a plastic bag with an off white powdery substance. Officer Lopez believed  
22 these substances, based on his training and experience, to be various controlled substances,  
23 respectively. Forensic Scientist Jason Althnether tested the substances and determined that  
24 the white crystal substance was methamphetamine with a net weight of 344.29 grams, that the  
25 brown substance was indeed heroin with a net weight of 33.92 grams, and that the white  
26 powdery substance was indeed cocaine with a weight of 0.537 grams. Officer Lopez testified  
27 he also found a blue powdery substance in the secret compartment. Mr. Althnether tested the

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1 substance and determined it was a combination of methamphetamine, amphetamine, and  
2 cocaine with a weight of 0.795 grams.

3       Based on what was discovered in the car, Officer Lopez obtained a search warrant for  
4 Petitioner's house located at 265 North Lamb, Unit F, the unit in front of which Petitioner had  
5 parked the car. Officer Lopez, Officer Steven Hough, Detective Chad Embry and Detective  
6 Michael Belmont searched Petitioner's residence. While searching the bedroom, Officer  
7 Lopez found used smoking pipes, four (4) scales, a box of 9mm ammunition, and two (2) bags  
8 containing a white crystalline substance. This substance was later tested by Mr. Althnether,  
9 who determined the substance was methamphetamine. The first bag weighed 3.818 grams and  
10 the second bag weighed 2.357 grams. Officer Lopez also found in the bedroom a brown  
11 substance he also believed was heroin. Upon testing, Mr. Althnether confirmed the substance  
12 was heroin, weighing .895 grams. In the storage closet, Detective Embry found .22 short  
13 ammunition. In the bedroom, police also discovered a Ruger 9mm handgun and a pay stub  
14 with Petitioner's name on it, which was impounded by Officer Lopez. Upon searching the  
15 kitchen, Detective Belmont also found a glass jar containing a green leafy substance believed  
16 to be marijuana, which was confirmed as such by Mr. Althnether, finding the marijuana to  
17 weigh 175 grams. Officers also found balloons, clean pipes, syringes and elastic bands in  
18 Petitioner's residence. Moreover, Crime Scene Analyst Thi testified that the Nevada DMV  
19 registration found in the car listed Petitioner as the owner of the Dodge.

20       During trial, the State introduced a jail call wherein Petitioner told a woman to move  
21 into his house and make it her home. Petitioner was placed under arrest and brought to  
22 Northeast Area Command. While there, Officer Hough, who was watching Petitioner in an  
23 interview room on a monitor, observed Petitioner pull out a small baggie from inside his pants,  
24 and by the time he and another officer arrived in the room, Petitioner had a white powdery  
25 substance on his nose and mouth. Upon searching Petitioner, Officer Hough found another  
26 small bag of white powder attached to the left side of Petitioner's scrotum.

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1 ANALYSIS

2 **I. PETITIONER WAIVED HIS SUBSTANTIVE GROUNDS ONE (1) THROUGH**  
3 **SEVEN (7) BY FAILING TO RAISE THEM ON DIRECT APPEAL**

4 Pursuant to NRS 34.810:

5 1. The court shall dismiss a petition if the court determines that:

6 ...

7 (b) The petitioner's conviction was the result of a trial and the grounds for the  
petition could have been:

8 (1) Presented to the trial court;

9 (2) Raised in a direct appeal or a prior petition for a writ of habeas corpus  
or postconviction relief; or

10 (3) Raised in any other proceeding that the petitioner has taken to secure  
relief from the petitioner's conviction and sentence,

11 unless the court finds both good cause for the failure to present the  
12 grounds and actual prejudice to the petitioner.

13 ...

14 3. Pursuant to subsections 1 and 2, the petitioner has the burden of pleading and  
proving specific facts that demonstrate:

15 (a) Good cause for the petitioner's failure to present the claim or for presenting  
16 the claim again; and

17 (b) Actual prejudice to the petitioner.

18 The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and  
19 claims of ineffective assistance of trial and appellate counsel must first be pursued in post-  
20 conviction proceedings... [A]ll other claims that are appropriate for a direct appeal must be  
21 pursued on direct appeal, or they will be *considered waived in subsequent proceedings.*"  
22 Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added)  
23 (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). "A  
24 court *must* dismiss a habeas petition if it presents claims that either were or could have been  
25 presented in an earlier proceeding, unless the court finds both cause for failing to present the  
26 claims earlier or for raising them again and actual prejudice to the petitioner." Evans v. State,  
27 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001).

28 //

1 Furthermore, substantive claims are beyond the scope of habeas and waived. NRS  
2 34.724(2)(a); see also, Evans, 117 Nev. at 646-47, 29 P.3d at 523; Franklin, 110 Nev. at 752,  
3 877 P.2d at 1059. Under NRS 34.810(3), a defendant may only escape these procedural bars  
4 if they meet the burden of establishing good cause and prejudice. Where a defendant does not  
5 show good cause for failure to raise claims of error upon direct appeal, the district court is not  
6 obliged to consider them in post-conviction proceedings. Jones v. State, 91 Nev. 416, 536 P.2d  
7 1025 (1975).

8 “To establish good cause, [a petitioner] must show that an impediment external to the  
9 defense prevented their compliance with the applicable procedural rule. A qualifying  
10 impediment might be shown where the factual or legal basis for a claim was not reasonably  
11 available at the time of default.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003)  
12 (emphasis added). The Court continued, “appellants cannot attempt to manufacture good  
13 cause[.]” Id. at 621, 81 P.3d at 526. Examples of good cause include interference by State  
14 officials and the previous unavailability of a legal or factual basis. See State v. Huebler, 128  
15 Nev. 192, 275 P.3d 91 (2012).

16 In order to establish prejudice, the defendant must show ““not merely that the errors of  
17 [the proceedings] created possibility of prejudice, but that they worked to his actual and  
18 substantial disadvantage, in affecting the state proceedings with error of constitutional  
19 dimensions.”” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United  
20 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there  
21 must be a “substantial reason; one that affords a legal excuse.” Hathaway v. State, 119 Nev.  
22 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229,  
23 1230 (1989)).

24 Moreover, a proper petition for post-conviction relief must set forth specific factual  
25 allegations that would entitle the petitioner to relief. NRS 34.735(6) states, in pertinent part,  
26 “[Petitioner] must allege specific facts supporting the claims in the petition [he] file[s] seeking  
27 relief from any conviction or sentence. Failure to raise specific facts rather than just  
28 conclusions may cause the petition to be dismissed.” “Bare” and “naked” allegations are not

1 sufficient to warrant post-conviction relief, nor are those belied and repelled by the record.  
2 Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “A claim is ‘belied’ when it  
3 is contradicted or proven to be false by the record as it existed at the time the claim was made.”  
4 Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

5 In this case, this Court finds that Petitioner’s first seven (7) grounds are all substantive  
6 claims that could and should have been raised on direct appeal: 1) Ground One: Illegal  
7 sentence; 2) Ground Two: Not allowed to question K-9 about dog’s reliability; 3) Ground  
8 Three: No exigency to search Petitioner’s vehicle; 4) Ground Four: No probable cause existed  
9 to search Petitioner’s vehicle; 5) Ground Five: Extended stop violation of NRS 171.123(4); 6)  
10 Ground Six: Destroyed or lost body camera evidence; and 7) Ground Seven: False testimony  
11 of Officer D. Lopez. Each of these claims were available at the time Petitioner filed his direct  
12 appeal. Therefore, this Court concludes, pursuant to Evans, these issues were substantively  
13 waived due to Petitioner’s failure to raise them earlier. This Court further concludes  
14 Petitioner’s substantive claims are beyond the scope of habeas. NRS 34.724(2)(a).

15 Petitioner does not argue good cause or prejudice to overcome these procedural bars.  
16 Indeed, this Court finds that Petitioner could not successfully do so, as all of the facts and  
17 information needed to raise these issues were available at the time Petitioner filed his direct  
18 appeal, and Petitioner does not allege that there was any external impediment to his raising of  
19 these issues at that time. In fact, Petitioner raised four (4) issues on direct appeal: 1) Whether  
20 the District Court abused its discretion in denying Appellant’s sixth continuance request on  
21 the day trial was set to start; 2) Whether the District Court abused its discretion in denying  
22 Appellant’s pretrial motion to suppress the evidence discovered in Appellant’s residence  
23 pursuant to a search warrant; 3) Whether the District Court erred in admitting the jail calls  
24 introduced by the State; and 4) Whether there was cumulative error. This Court concludes that  
25 Petitioner cannot demonstrate good cause to ignore his procedural defaults because all of the  
26 necessary facts and law were available for a timely appeal and he has not alleged an  
27 impediment external to the defense prevented raising these claims at the appropriate time.  
28 Therefore, these additional substantive claims are waived.

## II. PETITIONER'S CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL DO NOT ENTITLE HIM TO RELIEF

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

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

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

Based on the above law, the role of a court in considering allegations of ineffective assistance of counsel is “not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711

1 (1978). This analysis does not mean that the court should “second guess reasoned choices  
2 between trial tactics nor does it mean that defense counsel, to protect himself against  
3 allegations of inadequacy, must make every conceivable motion no matter how remote the  
4 possibilities are of success.” *Id.* To be effective, the constitution “does not require that counsel  
5 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel  
6 cannot create one and may disserve the interests of his client by attempting a useless charade.”  
7 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

8 “There are countless ways to provide effective assistance in any given case. Even the  
9 best criminal defense attorneys would not defend a particular client in the same way.”  
10 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after  
11 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,  
12 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
13 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's  
14 challenged conduct on the facts of the particular case, viewed as of the time of counsel's  
15 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

16 Even if a defendant can demonstrate that his counsel’s representation fell below an  
17 objective standard of reasonableness, he must still demonstrate prejudice and show a  
18 reasonable probability that, but for counsel’s errors, the result of the trial would have been  
19 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
20 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability  
21 sufficient to undermine confidence in the outcome.” *Id.* (citing Strickland, 466 U.S. at 687-89,  
22 694, 104 S. Ct. at 2064–65, 2068).

23 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the  
24 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of  
25 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,  
26 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must  
27 be supported with specific factual allegations, which if true, would entitle the petitioner to  
28 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”

1 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS  
2 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims  
3 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your  
4 petition to be dismissed.” (emphasis added).

5 The decision not to call witnesses is within the discretion of trial counsel and will not  
6 be questioned unless it was a plainly unreasonable decision. See Rhyne v. State, 118 Nev. 1,  
7 38 P.3d 163 (2002); see also Dawson v. State, 108 Nev. 112, 825 P.2d 593 (1992). Strickland  
8 does not enact Newton's third law for the presentation of evidence, requiring for every  
9 prosecution expert an equal and opposite expert from the defense. In many instances cross-  
10 examination will be sufficient to expose defects in an expert's presentation. When defense  
11 counsel does not have a solid case, the best strategy can be to say that there is too much doubt  
12 about the State’s theory for a jury to convict. Harrington v. Richter, 131 S. Ct. 770, 791, 578  
13 F.3d. 944 (2011). “Strategic choices made by counsel after thoroughly investigating the  
14 plausible options are almost unchallengeable.” Dawson v. State, 108 Nev. 112, 117, 825 P.2d  
15 593, 596 (1992).

16 Likewise, there is a strong presumption that appellate counsel’s performance was  
17 reasonable and fell within “the wide range of reasonable professional assistance.” See, United  
18 States v. Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990) (citing Strickland, 466 U.S. at 689, 104  
19 S.Ct. at 2065). A claim of ineffective assistance of appellate counsel must satisfy the two-  
20 prong test set forth by Strickland. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114  
21 (1996). In order to satisfy Strickland’s second prong, the defendant must show that the omitted  
22 issue would have had a reasonable probability of success on appeal. Id. The professional  
23 diligence and competence required on appeal involves “winnowing out weaker arguments on  
24 appeal and focusing on one central issue if possible, or at most on a few key issues.” Jones v.  
25 Barnes, 463 U.S. 745, 751-52, 103 S.Ct. 3308, 3313 (1983). In particular, a “brief that raises  
26 every colorable issue runs the risk of burying good arguments... in a verbal mound made up  
27 of strong and weak contentions.” Id. at 753, 103 S.Ct. at 3313. “For judges to second-guess  
28 reasonable professional judgments and impose on appointed counsel a duty to raise every

1 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective  
2 advocacy." Id. at 754, 103 S.Ct. at 3314.

3 In the instant Petition, Petitioner argues that his counsel, Kenneth Frizzell, Esq., was  
4 ineffective for the following reasons: (1) for not raising the issues Petitioner relayed to him  
5 prior to the suppression hearing; 2) for not appealing the suppression hearing issues; 3) for not  
6 using another investigator because his investigator knew Petitioner's mother and stepfather;  
7 4) for never visiting him except after he paid for a different lawyer; 5) for failing to subpoena  
8 or return calls of certain unnamed witnesses and failing to cross-examine about the passenger  
9 door being closed when officers first encountered him; 6) for failing to call family and  
10 witnesses to speak on his behalf at the penalty phase; 7) for never asking for the testimony of  
11 the dog handler or K-9 records; and 8) for never relaying his mental health history or the fact  
12 that he was on and off different medications during the pre-trial process.

13 First, Petitioner claims that his counsel was ineffective for not raising the issues  
14 Petitioner relayed to him prior to the suppression hearing. This Court finds that Petitioner has  
15 failed to demonstrate that trial counsel's representation fell below a reasonable standard, as  
16 trial counsel not only filed a Motion to Suppress evidence obtained during the vehicle stop, he  
17 conducted an evidentiary hearing on July 21, 2016 where Officer Daniel Lopez testified.  
18 Exhibits were presented as well as arguments by counsel. The Court denied the Motion to  
19 Suppress. Therefore, this Court finds that trial counsel appropriately raised the suppression  
20 issues and properly conducted the evidentiary hearing. Further, Petitioner fails to show how,  
21 but for counsel's errors, the outcome of the suppression proceedings would have been  
22 different. As such, this Court concludes that Petitioner's first claim of ineffective assistance  
23 does not entitle Petitioner to relief.

24 Second, Petitioner alleges that counsel was ineffective for not appealing the suppression  
25 hearing issues. This Court finds that this claim likewise fails to demonstrate how counsel's  
26 performance fell below a reasonable standard, as Appellate counsel did raise several  
27 meritorious issues on appeal, including the denial of Petitioner's Motion to Suppress evidence  
28 from Petitioner's residence. The Nevada Supreme Court determined that the District Court did

1 not abuse its discretion by denying Petitioner's motion to suppress evidence obtained from his  
2 condo through a search warrant. Order of Affirmance at page. 6. Further, Petitioner provides  
3 no evidence and only makes bare and naked allegations that he was prejudiced. Such bare and  
4 naked allegations are not sufficient to warrant relief. Hargrove, 100 Nev. at 502, 686 P.2d at  
5 225. This Court finds that Petitioner cannot demonstrate that the omitted issue would have had  
6 a reasonable probability of success on appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114.  
7 There is a strong presumption that appellate counsel's performance was reasonable and fell  
8 within "the wide range of reasonable professional assistance." See Aguirre, 912 F.2d at 560  
9 (citing Strickland, 466 U.S. at 689, 104 S. Ct. at 2065). As Petitioner has only made bare and  
10 naked allegations, this Court concludes he cannot overcome the strong presumption of  
11 counsel's reasonableness and, therefore, relief is not warranted. Hargrove, 100 Nev. at 502,  
12 686 P.2d at 225.

13 Third, Petitioner alleges that trial counsel was ineffective for not using another  
14 investigator because his investigator knew Petitioner's mother and stepfather. On July 21,  
15 2016, Defendant told the Court that he cannot get any investigation done and the investigator  
16 used by Mr. Frizzell is the same investigator Mr. Sanft used and he has filed a bar complaint  
17 against the investigator. Counsel is expected to conduct legal and factual investigations when  
18 developing a defense so they may make informed decisions on their client's behalf. Jackson,  
19 91 Nev. at 433, 537 P.2d at 474 (quoting In re Saunders, 2 Cal.3d 1033, 88 Cal.Rptr. 633, 638,  
20 472 P.2d 921, 926 (1970)). "[D]efense counsel has a duty 'to make reasonable investigations  
21 or to make a reasonable decision that makes particular investigations unnecessary.'" State v.  
22 Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993) (quoting Strickland, 466 U.S. at 691,  
23 104 S. Ct. at 2066). A defendant who contends his attorney was ineffective because he did not  
24 adequately investigate must show how a better investigation would have rendered a more  
25 favorable outcome. Molina, 120 Nev. at 192, 87 P.3d at 538.

26 Using investigators in trial preparation and investigation is both encouraged and  
27 common practice. Wilson v. State, 105 Nev. 110, 771 P.2d 583 (1989). Duties of investigators  
28 are "subject to the reasonable judgment of defense counsel in light of the facts of any particular



1 case.” Love, 109 Nev. at 1143-44, 865 P.2d at 327 (*quoting* U.S. v. Weaver, 882 F.2d 1128  
2 (7th Cir.), cert. denied, 493 U.S. 968, 110 S.Ct. 415, (1989)). A decision “not to investigate  
3 must be directly assessed for reasonableness in all the circumstances, applying a heavy  
4 measure of deference to counsel’s judgment.” Id. Moreover, “[a] decision not to call a witness  
5 will not generally constitute ineffective assistance of counsel” Id. at 1145, 865 P.2d at 328.  
6 For example, the Nevada Supreme Court in Love, 109 Nev. at 1145, 865 P.2d at 328, held that  
7 trial counsel was not ineffective simply because they sent their investigator to interview  
8 potential witnesses and did not to call certain alibi witnesses at trial after adequate  
9 investigations led to that conclusion.

10 In this case, this Court finds that Petitioner cannot show trial counsel fell below a  
11 reasonable standard for not using another investigator simply because Petitioner was  
12 apparently dissatisfied with this one. A defendant is not entitled to a particular “relationship”  
13 with his attorney. Morris v. Slappy, 461 U.S. 1, 14, 103 S. Ct. 1610, 1617 (1983). There is no  
14 requirement for any specific amount of communication as long as counsel is reasonably  
15 effective in his representation. See id. It necessarily follows that Petitioner is not entitled to a  
16 particular relationship with his attorney’s investigator, who is either also court appointed or  
17 who has a longstanding working relationship with that particular attorney. Therefore, this  
18 Court concludes that the choice of investigator was a reasonable decision to make and does  
19 not amount to deficient representation under Strickland. Further, this Court finds that  
20 Petitioner fails to demonstrate how the employment of a different investigator would have  
21 benefitted the outcome of Petitioner’s case. Therefore, this Court concludes that Petitioner is  
22 not entitled to relief.

23 Fourth, Petitioner contends that trial counsel was ineffective for never visiting him  
24 except after he paid for a different lawyer. This Court finds that there is no requirement for a  
25 specific number of visits every case necessitates, nor is that a basis for ineffective assistance  
26 of counsel. Further, Defendant has provided no legal authority to support this claim. Counsel  
27 also communicates with defendants in the courtroom during routinely long court calendars.  
28 “There are countless ways to provide effective assistance in any given case. Even the best

1 criminal defense attorneys would not defend a particular client in the same way.” Strickland,  
2 466 U.S. at 689, 104 S. Ct. at 689. Therefore, this Court concludes that Petitioner has failed  
3 to demonstrate trial counsel’s representation fell below a reasonable standard. Further, this  
4 Court finds that Petitioner fails to demonstrate how more jail visits would have changed the  
5 outcome at trial. Therefore, this Court concludes that Petitioner is not entitled to relief on this  
6 claim.

7 Fifth, Petitioner claims that trial counsel was ineffective for failing to subpoena or  
8 return calls of unnamed witnesses to testify that another female resided in the townhouse he  
9 owned and switched vehicles with him, and that there was a strong probability the drugs in the  
10 purse in Petitioner’s car belonged to the female. He further claims that trial counsel was  
11 ineffective for failing to cross-examine about the passenger door being closed when officers  
12 first encountered him and they opened the door to allow K-9 access to the interior of the  
13 vehicle. Trial counsel has the “immediate and ultimate responsibility of deciding if and when  
14 to object, which witnesses, if any, to call, and what defenses to develop.” Rhyne, 118 Nev. at  
15 8, 38 P.3d at 167. Further, “[s]trategic choices made by counsel after thoroughly investigating  
16 the plausible options are almost unchallengeable.” Dawson, 108 Nev. at 117, 825 P.2d at 596;  
17 see also Ford, 105 Nev. at 853, 784 P.2d at 953. Petitioner fails to specifically name any of  
18 these alleged witnesses. This Court finds that Petitioner fails to establish if trial counsel even  
19 had sufficient information to locate these unnamed witnesses. Moreover, a review of the record  
20 demonstrates that trial counsel was, in fact, not given timely information about the witness  
21 Petitioner describes as having to wait so long she left the trial. This witness, a woman named  
22 Mary Silva who cleaned Petitioner’s residence a few times, was discussed on the record on the  
23 fourth day of the trial:

24 MR. FRIZZELL: -- what happened here. While you were probably walking  
25 down the hallway to come in, I was on the phone with the witness that you said  
26 you would allow to testify, Mary Silva, who was on the road ostensibly heading  
home, she told me. I asked her -- I said, we’re ready and it’s now time and the  
judge isn’t going to wait. How long was it going to take you to get back? And  
she said she could be back here by 3:00 o’clock, when I told her it was 1:55.

27 //

28 //

1 Transcript of Jury Trial - Day 4, p. 132. Earlier in the day, the Court indicated it would allow  
2 her to testify despite the fact that she had not been properly noticed by Petitioner:

3 THE COURT: Okay. Notwithstanding the fact that the State was not put on  
4 notice of these witnesses, I'm going to allow you to call her if you choose to. But  
5 you need to make her available to the State to give them an opportunity to  
6 question her to see what, if anything, she's going to be offering.

7 MR. FRIZZELL: And that is fine, Your Honor. I actually just learned of her  
8 potential as a witness yesterday evening from an e-mail, which I received.

9 THE COURT: Okay. So --

10 MR. FRIZZELL: And --

11 THE COURT: -- she wasn't even somebody that defendant was telling you  
12 previously that we discussed before we started the trial?

13 MR. FRIZZELL: No, Your Honor.

14 THE DEFENDANT: I didn't know. I thought the witness --

15 Transcript of Jury Trial - Day 4, p. 7-8. Additionally, at Petitioner's insistence, trial counsel  
16 called Officer Jacob Henry with the Las Vegas Metropolitan Police Department to testify in  
17 the defense case-in-chief. See Transcript of Jury Trial - Day 4, p. 145-164. Moreover, trial  
18 counsel cross examined all of the State's witnesses, including Officer Daniel Lopez, who  
19 stopped Petitioner's vehicle. Transcript of Jury Trial - Day 3, p. 127-164. Trial counsel has  
20 the "immediate and ultimate responsibility of deciding if and when to object, and strategic  
21 decisions such as which witnesses to call or not call are virtually unchallengeable. As such,  
22 this Court concludes that Petitioner cannot demonstrate deficient performance and Petitioner's  
23 claim therefore fails.

24 Sixth, Petitioner alleges that trial counsel was ineffective for failing to call family and  
25 witnesses to speak on his behalf at the penalty phase. Defendants have no right to call  
26 witnesses during sentencing hearings unless they are convicted of First Degree Murder. NRS  
27 176.015; NRS 175.552. Therefore, this Court finds that counsel cannot be deemed ineffective  
28 for failing to call family and witnesses to speak on his behalf at his sentencing, as Petitioner  
was not entitled to this under Nevada law.

Seventh, Petitioner claims that trial counsel was ineffective for never asking for the  
testimony of the dog handler or K-9 records. The State has the burden of proving its case  
beyond a reasonable doubt and can call any witnesses it deems necessary to meet that burden  
of proof. Based on the evidence presented, the jury convicted Petitioner and his Judgment of

1 Conviction was affirmed on appeal. As previously stated, the decision not to call witnesses is  
2 within the discretion of trial counsel and will not be questioned unless it was a plainly  
3 unreasonable decision. See Rhyne v. State, 118 Nev. 1, 38 P.3d 163 (2002); see also Dawson  
4 v. State, 108 Nev. 112, 825 P.2d 593 (1992). Strickland does not enact Newton's third law for  
5 the presentation of evidence, requiring for every prosecution expert an equal and opposite  
6 expert from the defense. In many instances cross-examination will be sufficient to expose  
7 defects in an expert's presentation. When defense counsel does not have a solid case, the best  
8 strategy can be to say that there is too much doubt about the State's theory for a jury to convict.  
9 Harrington v. Richter, 131 S. Ct. 770, 791, 578 F.3d. 944 (2011). Thus, this Court finds that  
10 neither the State nor trial counsel was required to call the K-9 officer, as his participation was  
11 fully covered during the direct and cross-examination of Officer Lopez' testimony. Transcript  
12 of Jury Trial - Day 3, p. 44-147. Consequently, this Court concludes that Petitioner's claim  
13 fails.

14 Finally, Petitioner alleges that trial counsel never relayed his mental health history or  
15 the fact that he was on and off different medications during the pre-trial process. However,  
16 this Court finds that Petitioner does not properly allege that trial counsel was aware of any  
17 mental health or medication issues. Petitioner does not even specify exactly what mental  
18 health history or medications he is referring to in the one sentence he includes on this issue.  
19 As such, this Court finds Petitioner's argument amounts to a bare and naked allegation under  
20 Hargrove. Petitioner does not point to any instances in the record that demonstrate evidence  
21 of insanity or incompetence. Further, this Court finds that Petitioner fails to argue how any  
22 mental health or medication issues would have ultimately changed the outcome of the instant  
23 case. Therefore, this Court concludes that Petitioner fails to meet his burden under Strickland.

### 24 **III. CUMULATIVE ERROR DOES NOT CONSTITUTE A COGNIZABLE CLAIM** 25 **FOR HABEAS RELIEF**

26 The Nevada Supreme Court has never held that instances of ineffective assistance of  
27 counsel can be cumulated. McConnell v. State, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009).  
28 Further, Petitioner's claim is without merit. "Relevant factors to consider in evaluating a claim

1 of cumulative error are (1) whether the issue of guilt is close, (2) the quantity and character of  
2 the error, and (3) the gravity of the crime charged.” Mulder v. State, 116 Nev. 1, 17, 992 P.2d  
3 845, 855 (2000).

4 As the Nevada Supreme Court found in affirming Petitioner’s convictions:

5 The totality of the circumstances supports finding probable cause to search  
6 Keller’s home. Inside Keller’s car, officers found 344.29 grams of  
7 methamphetamine, 33.92 grams of heroin, .537 grams of cocaine, a mixture of  
8 the three controlled substances, and a gun. The quantity of methamphetamine  
9 and heroin exceed personal use levels, and the discovery of 1-inch by 1-inch  
10 baggies, a large amount of cash, as well as a gun, fairly indicated to the officers  
11 that Keller was trafficking in drugs. Further, when Officer Lopez initiated the  
12 traffic stop, Keller tried to exit the car parked in front of his condo, which in  
13 conjunction with Keller’s evasive driving, Officer Lopez took as an attempt to  
14 escape. Taken as a whole, these circumstances supported a finding of probable  
15 cause that Keller was a drug dealer and that more drugs and guns would be found  
16 inside his condo.

17 Order of Affirmance at page 5.

18 The Nevada Supreme Court has also determined that the issue of guilt was not close in  
19 this case. In addressing Petitioner’s claim of cumulative error on appeal, the Nevada Supreme  
20 Court further found that there was overwhelming evidence of guilt:

21 *There is no cumulative error*

22 Keller summarily argues that cumulative error requires reversal. But, Keller fails  
23 to establish any error on appeal, and the evidence presented at trial against him  
24 was overwhelming. *See Big Pond v. State*, 101 Nev. 1, 3, 692 P.2d 1288, 1289  
25 (1985) (considering “whether the issue of innocence or guilt is close, the quantity  
26 and character of the error, and the gravity of the crime charged” in determining  
27 cumulative error). We therefore, ORDER the judgment of the district court  
28 AFFIRMED.

Order of Affirmance at pages 8-9.

Finally, even if any of Petitioner’s allegations had merit, this Court finds that Petitioner  
has failed to establish that, when aggregated, those errors deprived him of a reasonable  
likelihood of a better outcome at trial. This Court further finds that, even if Petitioner had  
made such a showing, he has failed to show that the cumulative effect of the supposed errors  
was so prejudicial as to undermine this Court’s confidence in the outcome of Petitioner’s case.  
Because the issue of guilt was not close, and because Petitioner failed to sufficiently undermine  
confidence in the outcome of his case, this Court concludes that Petitioner’s claim of  
cumulative error is without merit.

//

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED, Petitioner Christopher Keller's Pro Per  
3 Petition for Writ of Habeas Corpus (Post-Conviction) shall be, and is, DENIED.

4 IT IS FURTHER ORDERED, Petitioner's Motion to Appoint Counsel shall be, and is,  
5 DENIED as Defendant is not entitled to counsel at this point.

6 DATED this \_\_\_\_\_ day of October, 2020.

7 Dated this 2nd day of November, 2020

8 

9 DISTRICT JUDGE  
10 12A EB1 1B70 A32A  
11 William D. Kephart  
12 District Court Judge

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

16 BY  for \_\_\_\_\_  
17 TALEEN PANDUKHT  
18 Chief Deputy District Attorney  
19 Nevada Bar #005734

20 **CERTIFICATE OF MAILING**

21 I hereby certify that service of the above and foregoing was made this \_\_\_\_\_ day of  
22 \_\_\_\_\_, 2020, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

23 CHRISTOPHER R. KELLER, BAC #81840  
24 LOVELOCK CORRECTIONAL CENTER  
25 1200 PRISON ROAD  
26 LOVELOCK, NV, 89419

27 BY \_\_\_\_\_  
28 C. Garcia  
Secretary for the District Attorney's Office

cg/L2

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Christopher Keller, Plaintiff(s)

CASE NO: A-19-800950-W

7 vs.

DEPT. NO. Department 19

8 State of Nevada, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's  
12 electronic filing system, but there were no registered users on the case. The filer has been  
13 notified to serve all parties by traditional means.  
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1 NEFF

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

4 CHRISTOPHER KELLER,

5  
6 Petitioner,

Case No: A-19-800950-W

Dept No: XIX

7 vs.

8 STATE OF NEVADA,

9 Respondent,

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

10  
11 **PLEASE TAKE NOTICE** that on November 2, 2020, the court entered a decision or order in this  
12 matter, a true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you  
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is  
15 mailed to you. This notice was mailed on November 5, 2020.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Amanda Hampton

18 Amanda Hampton, Deputy Clerk

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

20 I hereby certify that on this 5 day of November 2020, I served a copy of this Notice of Entry on the  
21 following:

22 ☒ By e-mail:

23 Clark County District Attorney's Office  
Attorney General's Office – Appellate Division-

24 ☒ The United States mail addressed as follows:

25 Christopher Keller # 81840  
P.O. Box 650  
26 Indian Springs, NV 89070

27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk



**FFCO**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
TALEEN R. PANDUKHT  
Chief Deputy District Attorney  
Nevada Bar #005734  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHRISTOPHER ROBERT KELLER,  
#1804258

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-19-800950-W

DEPT NO: XIX

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

DATE OF HEARING: October 1, 2020  
TIME OF HEARING: 8:30 a.m.

THIS CAUSE having come before the Honorable WILLIAM D. KEPHART, District Court Judge, on the 1st day of October, 2020, Petitioner being present, not being represented by counsel, Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, through MICHAEL DICKERSON, Deputy District Attorney, and the Court having considered the matter, including the briefs, transcripts, testimony of Kenneth Frizzell, Esq. and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:.

**FINDINGS OF FACT, CONCLUSIONS OF LAW**

**STATEMENT OF THE CASE**

On February 17, 2016, Christopher Robert Keller (hereinafter "Petitioner") was charged by way of Information with Counts 1 and 2 - Trafficking In Controlled Substance

1 (Category A Felony - NRS 453.3385.3 - NOC 51160); Count 3 - Possession Of Controlled  
2 Substance, Marijuana (Category E Felony - NRS 453.336 - NOC 51127); Counts 4, 5, 6, and  
3 7 - Possession Of Controlled Substance With Intent To Sell (Category D Felony - NRS  
4 453.337 - NOC 51141); and Counts 8 and 9 - Ownership Or Possession Of Firearm By  
5 Prohibited Person (Category B Felony - NRS 202.360 - NOC 51460). On February 18, 2016,  
6 Petitioner entered a plea of not guilty and invoked his constitutional right to a speedy trial.

7 On March 24, 2016, the State filed a Notice of Intent to Seek Punishment as a Habitual  
8 Criminal. At Calendar Call on April 13, 2016, Petitioner's counsel, Michael Sanft, Esq.,  
9 announced he had a conflict for the trial date due to the upcoming trial. Petitioner stated he  
10 wanted to go to trial on the original date, and due to counsel's conflict, the Court ordered the  
11 trial date reset. On this date, the State also extended a plea offer to Petitioner for one count of  
12 Low-Level Trafficking in a Controlled Substance and one count of Possession of a Firearm by  
13 a Prohibited Person, with Petitioner stipulating to small habitual treatment and a stipulated  
14 maximum sentence of twelve and a half (12.5) years. The trial date was reset to May 2, 2016  
15 ("First Continuance").

16 At Calendar Call on April 20, 2016, Petitioner stated he wanted to go to trial and was  
17 willing to represent himself if need be. On April 29, 2016, the State filed an Amended  
18 Information, charging Petitioner with the same charges as the original Information. On April  
19 29, 2016, Mr. Sanft requested to withdraw due to a conflict of interest. The Court granted the  
20 request and appointed Kenneth Frizzell, Esq. to represent Petitioner. On May 4, 2016, Mr.  
21 Frizzell confirmed as counsel. Due to the change in counsel, the trial date was vacated and  
22 reset to June 27, 2016 ("Second Continuance").

23 On June 10, 2016, Petitioner filed a Motion to Suppress. The State filed an Opposition  
24 on June 17, 2016. On June 20, 2016, Petitioner requested more time to file a Reply to the  
25 State's Opposition, and the Court vacated the trial date of June 27, 2016, and ordered Calendar  
26 Call on July 20, 2016, and a Jackson v. Denno Hearing on July 21, 2016 ("Third  
27 Continuance"). On June 13, 2016, Petitioner filed a Pro Per Motion to Dismiss Counsel and  
28 //

1 Appoint Alternate Counsel. The District Court denied the Motion on July 21, 2016, after  
2 hearing from Petitioner.

3 On July 18, 2016, the State filed a Notice of Intent to Seek Habitual Treatment. On July  
4 21, 2016, the State also informed the Court that it had extended a new plea offer for one count  
5 of Mid-Level Trafficking and one count of Possession of a Firearm by a Prohibited Person,  
6 with the State retaining the right to argue at sentencing but having no opposition to the counts  
7 running concurrently. Petitioner rejected the State's offer. On July 21, 2016, the Court also  
8 denied Petitioner's Motion to Suppress after the Jackson v. Denno hearing. The Court denied  
9 Petitioner's Pro Per Motion to Dismiss Counsel and Appoint Alternate Counsel. The Order  
10 denying the motions was filed on August 18, 2016. On July 21, 2017, Defense counsel  
11 requested another continuance, stating that due to the Motion to Suppress, he had not been  
12 able to prepare for trial ("Fourth Continuance"). The Court granted the continuance and reset  
13 the trial date for September 19, 2016. At Calendar Call on September 14, 2016, Petitioner  
14 waived his speedy trial right and requested a continuance ("Fifth Continuance"). The Court  
15 granted the continuance and reset the trial to March 6, 2017.

16 Both Petitioner and the State announced ready for the March 6, 2017 trial date, which  
17 was the sixth trial setting in the case. On March 6, 2017, the day trial was due to begin, Amy  
18 Feliciano, Esq., appeared in Court and attempted to substitute in as trial counsel. Ms. Feliciano  
19 informed the Court that she had been retained by Petitioner's mother sometime in early  
20 February but had not moved to substitute in as counsel until March 6, 2017 due to multiple  
21 medical and personal problems. As Ms. Feliciano was unprepared for trial without a sixth  
22 continuance being granted, the Court denied Petitioner's request for a continuance and ordered  
23 trial to proceed with Mr. Frizzell as trial counsel.

24 On March 6, 2017, the State filed a Second Amended Information as the State chose to  
25 bifurcate Counts 8 and 9 from the first seven (7) counts. The Second Amended Information  
26 was filed in open court on March 6, 2017, charging Petitioner with Counts 1 and 2 - Trafficking  
27 in Controlled Substance (Category A Felony - NRS 453.3385.3 - NOC 51160); Count 3 -  
28 Possession of Controlled Substance, Marijuana (Category E Felony - NRS 453.336 - NOC

1 51127); and Counts 4-7 - Possession Of Controlled Substance With Intent To Sell (Category  
2 D Felony - NRS 453.337 - NOC 51141). Petitioner's jury trial commenced on March 7, 2017,  
3 and concluded on March 10, 2017, when the jury returned a verdict of guilty on all seven (7)  
4 counts. A Third Amended Information was subsequently filed in open court which added  
5 Counts 8 and 9 - Ownership or Possession of Firearm by Prohibited Person (Category B Felony  
6 - NRS 202.360 - NOC 51460). The jury also returned verdicts of guilty on Counts 8 and 9.

7 On April 29, 2017, Ms. Feliciano substituted as counsel of record, and Mr. Frizzell  
8 withdrew from his representation. Ms. Feliciano requested that sentencing be continued three  
9 (3) times: on May 8, 2017, June 5, 2017, and June 19, 2017. On July 24, 2017, Ms. Feliciano  
10 requested a fourth sentencing continuance, and Petitioner requested that she be dismissed as  
11 counsel of record. The District Court granted Petitioner's request, and re-appointed Mr.  
12 Frizzell as Petitioner's counsel. On July 31, 2017, the Court granted Mr. Frizzell a continuance  
13 to allow him to retrieve Petitioner's file from Ms. Feliciano.

14 On August 7, 2017, Petitioner was sentenced as follows: as to Count 1- LIFE in the  
15 Nevada Department of Corrections (NDC) with a minimum parole eligibility after ten (10)  
16 years in NDC; as to Count 2 – LIFE in the NDC with a minimum parole eligibility after ten  
17 (10) years in the NDC; Count 2 to run concurrent with Count 1; as to Count 3 – a minimum of  
18 twelve (12) months and a maximum of forty-eight (48) months in the NDC; Count 3 to run  
19 concurrent with Count 2; as to Count 4 – to a minimum of twelve (12) months and a maximum  
20 of forty-eight (48) months in the NDC; Count 4 to run concurrent with Count 3; as to Count 5  
21 – a minimum of twelve (12) month and a maximum of forty-eight (48) months in the NDC;  
22 Count 5 to run concurrent with county 4; as to Count 6 - to a minimum of twelve (12) months  
23 and a maximum of forty-eight (48) months in the NDC; Count 6 to run concurrent with Count  
24 5; as to Count 7 - to a minimum of twelve (12) months and a maximum of forty-eight (48)  
25 months in the NDC; Count 7 to run concurrent with Count 6; as to Count 8 – Petitioner  
26 sentenced under the large habitual criminal statute to LIFE in the Nevada Department of  
27 Corrections (NDC) with a minimum parole eligibility after ten (10) years in the NDC; Count  
28 8 to run CONSECUTIVE to Counts 1, 2, 3, 4, 5, 6, and 7; and as to Count 9, Defendant

1 sentenced under the large habitual criminal statute to LIFE in the Nevada Department of  
2 Corrections (NDC) with a minimum parole eligibility after ten (10) years in the NDC; Count  
3 9 to run concurrent with Count 8; for a total aggregate sentence of LIFE in the NDC with a  
4 minimum parole eligibility of TWENTY (20) years in the NDC, and five-hundred fifty-nine  
5 (559) days credit for time served.

6 Petitioner's Judgment of Conviction was filed on August 10, 2017. On August 24,  
7 2017, Petitioner filed a Notice of Appeal. On November 14, 2017, Petitioner filed a Motion  
8 for Appointment of Counsel and a Motion for Withdrawal of Attorney of Record. On  
9 December 6, 2017, this Court granted Defendant's Motion for Withdrawal of Counsel and  
10 denied Defendant's Motion for Appointment of Counsel.

11 An Amended Judgment of Conviction was filed on December 12, 2017, correcting the  
12 statute to NRS 435.337 for Possession of Controlled Substance with Intent to Sell for Counts  
13 4, 5, 6 and 7.

14 On March 22, 2018, Petitioner filed another Motion for Appointment of Counsel and a  
15 Motion to Dismiss Attorney of Record. On April 13, 2018, the State filed its Opposition to  
16 Petitioner's Motion to Appoint Counsel and Motion to Dismiss Attorney of Record. On April  
17 16, 2018, the Court denied the motion as Petitioner's appeal was still pending before the  
18 Nevada Supreme Court.

19 On October 15, 2018, the Nevada Supreme Court affirmed Petitioner's Judgment of  
20 Conviction. Remittitur issued on November 9, 2018.

21 On August 26, 2019, Petitioner filed the instant Pro Per Petition for Writ of Habeas  
22 Corpus. The State filed its Response on January 21, 2020. On February 12, 2020, Petitioner  
23 filed a "Supplemental Response to State's Response to Defendant's Pro Per Petition for Writ  
24 of Habeas Corpus." Thereafter, on September 16, 2020, Petitioner filed a Motion to Appoint  
25 Counsel.

26 Petitioner's Motions came on for evidentiary hearing before this Court on October 1,  
27 2020, with trial counsel Kenneth Frizzell, Esq. called to testify. After the hearing, this Court  
28 made the following findings and conclusions:

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Petitioner consented to allow Officer Lopez to remove his wallet from his pocket to see Petitioner's identification. Upon removing the wallet, Officer Lopez noted that Petitioner was carrying what appeared to be a large amount of cash. The cash was right outside of Petitioner's wallet, with multiple denominations, among which sixty-eight \$20 bills separated in groups of five (5) bills and folded in alternating directions. The amount of cash was determined to be \$2,187.00. Based upon the manner in which the cash was situated, and the amount of cash that Petitioner carried, Officer Lopez determined that the cash was, in his training and experience, consistent with the sale of narcotics. Officer Lopez based this conclusion, in part, on the denominations of the cash, the way the cash was specifically folded, the fact that \$20 bills were folded in increments of \$100, the direction the bills were facing, and the fact that a "wad of cash" was made up of mostly smaller denominations, such as \$20, \$5 and \$10 bills.

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1 nervousness, the fact that he was so upset about being stopped, and Defendant's behavior while  
2 Officer Lopez conducted the pat down for weapons. Afterward, while standing outside the  
3 driver's door, Officer Lopez noticed a green leafy residue on the floorboard of the driver's  
4 side vehicle in plain view. Based upon the vehicle, the odor of marijuana emanating from  
5 Petitioner and the vehicle, and the green leafy residue in plain view, Officer Lopez conducted  
6 a probable cause search of Petitioner's vehicle. During the probable cause search, Officer  
7 Lopez located a clear sealable plastic bag containing multiple smaller clear plastic bags  
8 underneath the driver's seat, as well as another large sealable plastic bag between the driver's  
9 seat and the center console. At that point, based on the size of the bags found in Petitioner's  
10 car, as well as the amount of cash found on Petitioner's person, Officer Lopez called for a K-  
11 9 narcotics dog.

12         The K-9 narcotics dog alerted to the glove box, wherein Officer Lopez located a  
13 concealed compartment. Officer Lopez testified he put his hand inside the hole and could feel  
14 a bag with something solid inside. At that point in time, Officer Lopez stopped his search and  
15 obtained a search warrant. Pursuant to the search warrant, Officer Lopez located several items  
16 of evidence. Officer Lopez, Officer Henry, and Crime Scene Analyst Stephanie Thi searched  
17 the vehicle. In the secret compartment, they found a black mesh bag, within which they found  
18 two gold colored plastic bags. One of the gold bags contained a nylon drawstring bag within  
19 which a loaded Beretta model 950, .22 caliber handgun was found. Moreover, Officer Lopez  
20 also found several packages of a white crystal substance, plastic wrappers with a brown  
21 substance, and a plastic bag with an off white powdery substance. Officer Lopez believed  
22 these substances, based on his training and experience, to be various controlled substances,  
23 respectively. Forensic Scientist Jason Althnether tested the substances and determined that  
24 the white crystal substance was methamphetamine with a net weight of 344.29 grams, that the  
25 brown substance was indeed heroin with a net weight of 33.92 grams, and that the white  
26 powdery substance was indeed cocaine with a weight of 0.537 grams. Officer Lopez testified  
27 he also found a blue powdery substance in the secret compartment. Mr. Althnether tested the

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1 substance and determined it was a combination of methamphetamine, amphetamine, and  
2 cocaine with a weight of 0.795 grams.

3 Based on what was discovered in the car, Officer Lopez obtained a search warrant for  
4 Petitioner's house located at 265 North Lamb, Unit F, the unit in front of which Petitioner had  
5 parked the car. Officer Lopez, Officer Steven Hough, Detective Chad Embry and Detective  
6 Michael Belmont searched Petitioner's residence. While searching the bedroom, Officer  
7 Lopez found used smoking pipes, four (4) scales, a box of 9mm ammunition, and two (2) bags  
8 containing a white crystalline substance. This substance was later tested by Mr. Althnether,  
9 who determined the substance was methamphetamine. The first bag weighed 3.818 grams and  
10 the second bag weighed 2.357 grams. Officer Lopez also found in the bedroom a brown  
11 substance he also believed was heroin. Upon testing, Mr. Althnether confirmed the substance  
12 was heroin, weighing .895 grams. In the storage closet, Detective Embry found .22 short  
13 ammunition. In the bedroom, police also discovered a Ruger 9mm handgun and a pay stub  
14 with Petitioner's name on it, which was impounded by Officer Lopez. Upon searching the  
15 kitchen, Detective Belmont also found a glass jar containing a green leafy substance believed  
16 to be marijuana, which was confirmed as such by Mr. Althnether, finding the marijuana to  
17 weigh 175 grams. Officers also found balloons, clean pipes, syringes and elastic bands in  
18 Petitioner's residence. Moreover, Crime Scene Analyst Thi testified that the Nevada DMV  
19 registration found in the car listed Petitioner as the owner of the Dodge.

20 During trial, the State introduced a jail call wherein Petitioner told a woman to move  
21 into his house and make it her home. Petitioner was placed under arrest and brought to  
22 Northeast Area Command. While there, Officer Hough, who was watching Petitioner in an  
23 interview room on a monitor, observed Petitioner pull out a small baggie from inside his pants,  
24 and by the time he and another officer arrived in the room, Petitioner had a white powdery  
25 substance on his nose and mouth. Upon searching Petitioner, Officer Hough found another  
26 small bag of white powder attached to the left side of Petitioner's scrotum.

27 //

28 //



1 ANALYSIS

2 **I. PETITIONER WAIVED HIS SUBSTANTIVE GROUNDS ONE (1) THROUGH**  
3 **SEVEN (7) BY FAILING TO RAISE THEM ON DIRECT APPEAL**

4 Pursuant to NRS 34.810:

5 1. The court shall dismiss a petition if the court determines that:

6 ...

7 (b) The petitioner's conviction was the result of a trial and the grounds for the  
petition could have been:

8 (1) Presented to the trial court;

9 (2) Raised in a direct appeal or a prior petition for a writ of habeas corpus  
or postconviction relief; or

10 (3) Raised in any other proceeding that the petitioner has taken to secure  
relief from the petitioner's conviction and sentence,

11 unless the court finds both good cause for the failure to present the  
12 grounds and actual prejudice to the petitioner.

13 ...

14 3. Pursuant to subsections 1 and 2, the petitioner has the burden of pleading and  
proving specific facts that demonstrate:

15 (a) Good cause for the petitioner's failure to present the claim or for presenting  
16 the claim again; and

17 (b) Actual prejudice to the petitioner.

18 The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and  
19 claims of ineffective assistance of trial and appellate counsel must first be pursued in post-  
20 conviction proceedings... [A]ll other claims that are appropriate for a direct appeal must be  
21 pursued on direct appeal, or they will be *considered waived in subsequent proceedings.*"  
22 Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added)  
23 (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). "A  
24 court *must* dismiss a habeas petition if it presents claims that either were or could have been  
25 presented in an earlier proceeding, unless the court finds both cause for failing to present the  
26 claims earlier or for raising them again and actual prejudice to the petitioner." Evans v. State,  
27 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001).

28 //

1 Furthermore, substantive claims are beyond the scope of habeas and waived. NRS  
2 34.724(2)(a); see also, Evans, 117 Nev. at 646-47, 29 P.3d at 523; Franklin, 110 Nev. at 752,  
3 877 P.2d at 1059. Under NRS 34.810(3), a defendant may only escape these procedural bars  
4 if they meet the burden of establishing good cause and prejudice. Where a defendant does not  
5 show good cause for failure to raise claims of error upon direct appeal, the district court is not  
6 obliged to consider them in post-conviction proceedings. Jones v. State, 91 Nev. 416, 536 P.2d  
7 1025 (1975).

8 “To establish good cause, [a petitioner] must show that an impediment external to the  
9 defense prevented their compliance with the applicable procedural rule. A qualifying  
10 impediment might be shown where the factual or legal basis for a claim was not reasonably  
11 available at the time of default.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003)  
12 (emphasis added). The Court continued, “appellants cannot attempt to manufacture good  
13 cause[.]” Id. at 621, 81 P.3d at 526. Examples of good cause include interference by State  
14 officials and the previous unavailability of a legal or factual basis. See State v. Huebler, 128  
15 Nev. 192, 275 P.3d 91 (2012).

16 In order to establish prejudice, the defendant must show ““not merely that the errors of  
17 [the proceedings] created possibility of prejudice, but that they worked to his actual and  
18 substantial disadvantage, in affecting the state proceedings with error of constitutional  
19 dimensions.”” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United  
20 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there  
21 must be a “substantial reason; one that affords a legal excuse.” Hathaway v. State, 119 Nev.  
22 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229,  
23 1230 (1989)).

24 Moreover, a proper petition for post-conviction relief must set forth specific factual  
25 allegations that would entitle the petitioner to relief. NRS 34.735(6) states, in pertinent part,  
26 “[Petitioner] must allege specific facts supporting the claims in the petition [he] file[s] seeking  
27 relief from any conviction or sentence. Failure to raise specific facts rather than just  
28 conclusions may cause the petition to be dismissed.” “Bare” and “naked” allegations are not

1 sufficient to warrant post-conviction relief, nor are those belied and repelled by the record.  
2 Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “A claim is ‘belied’ when it  
3 is contradicted or proven to be false by the record as it existed at the time the claim was made.”  
4 Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

5 In this case, this Court finds that Petitioner’s first seven (7) grounds are all substantive  
6 claims that could and should have been raised on direct appeal: 1) Ground One: Illegal  
7 sentence; 2) Ground Two: Not allowed to question K-9 about dog’s reliability; 3) Ground  
8 Three: No exigency to search Petitioner’s vehicle; 4) Ground Four: No probable cause existed  
9 to search Petitioner’s vehicle; 5) Ground Five: Extended stop violation of NRS 171.123(4); 6)  
10 Ground Six: Destroyed or lost body camera evidence; and 7) Ground Seven: False testimony  
11 of Officer D. Lopez. Each of these claims were available at the time Petitioner filed his direct  
12 appeal. Therefore, this Court concludes, pursuant to Evans, these issues were substantively  
13 waived due to Petitioner’s failure to raise them earlier. This Court further concludes  
14 Petitioner’s substantive claims are beyond the scope of habeas. NRS 34.724(2)(a).

15 Petitioner does not argue good cause or prejudice to overcome these procedural bars.  
16 Indeed, this Court finds that Petitioner could not successfully do so, as all of the facts and  
17 information needed to raise these issues were available at the time Petitioner filed his direct  
18 appeal, and Petitioner does not allege that there was any external impediment to his raising of  
19 these issues at that time. In fact, Petitioner raised four (4) issues on direct appeal: 1) Whether  
20 the District Court abused its discretion in denying Appellant’s sixth continuance request on  
21 the day trial was set to start; 2) Whether the District Court abused its discretion in denying  
22 Appellant’s pretrial motion to suppress the evidence discovered in Appellant’s residence  
23 pursuant to a search warrant; 3) Whether the District Court erred in admitting the jail calls  
24 introduced by the State; and 4) Whether there was cumulative error. This Court concludes that  
25 Petitioner cannot demonstrate good cause to ignore his procedural defaults because all of the  
26 necessary facts and law were available for a timely appeal and he has not alleged an  
27 impediment external to the defense prevented raising these claims at the appropriate time.  
28 Therefore, these additional substantive claims are waived.

## II. PETITIONER'S CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL DO NOT ENTITLE HIM TO RELIEF

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

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

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

Based on the above law, the role of a court in considering allegations of ineffective assistance of counsel is “not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711

1 (1978). This analysis does not mean that the court should “second guess reasoned choices  
2 between trial tactics nor does it mean that defense counsel, to protect himself against  
3 allegations of inadequacy, must make every conceivable motion no matter how remote the  
4 possibilities are of success.” *Id.* To be effective, the constitution “does not require that counsel  
5 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel  
6 cannot create one and may disserve the interests of his client by attempting a useless charade.”  
7 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

8 “There are countless ways to provide effective assistance in any given case. Even the  
9 best criminal defense attorneys would not defend a particular client in the same way.”  
10 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after  
11 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,  
12 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
13 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's  
14 challenged conduct on the facts of the particular case, viewed as of the time of counsel's  
15 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

16 Even if a defendant can demonstrate that his counsel’s representation fell below an  
17 objective standard of reasonableness, he must still demonstrate prejudice and show a  
18 reasonable probability that, but for counsel’s errors, the result of the trial would have been  
19 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
20 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability  
21 sufficient to undermine confidence in the outcome.” *Id.* (citing Strickland, 466 U.S. at 687-89,  
22 694, 104 S. Ct. at 2064–65, 2068).

23 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the  
24 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of  
25 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,  
26 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must  
27 be supported with specific factual allegations, which if true, would entitle the petitioner to  
28 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”

1 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS  
2 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims  
3 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your  
4 petition to be dismissed.” (emphasis added).

5 The decision not to call witnesses is within the discretion of trial counsel and will not  
6 be questioned unless it was a plainly unreasonable decision. See Rhyne v. State, 118 Nev. 1,  
7 38 P.3d 163 (2002); see also Dawson v. State, 108 Nev. 112, 825 P.2d 593 (1992). Strickland  
8 does not enact Newton's third law for the presentation of evidence, requiring for every  
9 prosecution expert an equal and opposite expert from the defense. In many instances cross-  
10 examination will be sufficient to expose defects in an expert's presentation. When defense  
11 counsel does not have a solid case, the best strategy can be to say that there is too much doubt  
12 about the State’s theory for a jury to convict. Harrington v. Richter, 131 S. Ct. 770, 791, 578  
13 F.3d. 944 (2011). “Strategic choices made by counsel after thoroughly investigating the  
14 plausible options are almost unchallengeable.” Dawson v. State, 108 Nev. 112, 117, 825 P.2d  
15 593, 596 (1992).

16 Likewise, there is a strong presumption that appellate counsel’s performance was  
17 reasonable and fell within “the wide range of reasonable professional assistance.” See, United  
18 States v. Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990) (citing Strickland, 466 U.S. at 689, 104  
19 S.Ct. at 2065). A claim of ineffective assistance of appellate counsel must satisfy the two-  
20 prong test set forth by Strickland. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114  
21 (1996). In order to satisfy Strickland’s second prong, the defendant must show that the omitted  
22 issue would have had a reasonable probability of success on appeal. Id. The professional  
23 diligence and competence required on appeal involves “winnowing out weaker arguments on  
24 appeal and focusing on one central issue if possible, or at most on a few key issues.” Jones v.  
25 Barnes, 463 U.S. 745, 751-52, 103 S.Ct. 3308, 3313 (1983). In particular, a “brief that raises  
26 every colorable issue runs the risk of burying good arguments... in a verbal mound made up  
27 of strong and weak contentions.” Id. at 753, 103 S.Ct. at 3313. “For judges to second-guess  
28 reasonable professional judgments and impose on appointed counsel a duty to raise every

1 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective  
2 advocacy." Id. at 754, 103 S.Ct. at 3314.

3 In the instant Petition, Petitioner argues that his counsel, Kenneth Frizzell, Esq., was  
4 ineffective for the following reasons: (1) for not raising the issues Petitioner relayed to him  
5 prior to the suppression hearing; 2) for not appealing the suppression hearing issues; 3) for not  
6 using another investigator because his investigator knew Petitioner's mother and stepfather;  
7 4) for never visiting him except after he paid for a different lawyer; 5) for failing to subpoena  
8 or return calls of certain unnamed witnesses and failing to cross-examine about the passenger  
9 door being closed when officers first encountered him; 6) for failing to call family and  
10 witnesses to speak on his behalf at the penalty phase; 7) for never asking for the testimony of  
11 the dog handler or K-9 records; and 8) for never relaying his mental health history or the fact  
12 that he was on and off different medications during the pre-trial process.

13 First, Petitioner claims that his counsel was ineffective for not raising the issues  
14 Petitioner relayed to him prior to the suppression hearing. This Court finds that Petitioner has  
15 failed to demonstrate that trial counsel's representation fell below a reasonable standard, as  
16 trial counsel not only filed a Motion to Suppress evidence obtained during the vehicle stop, he  
17 conducted an evidentiary hearing on July 21, 2016 where Officer Daniel Lopez testified.  
18 Exhibits were presented as well as arguments by counsel. The Court denied the Motion to  
19 Suppress. Therefore, this Court finds that trial counsel appropriately raised the suppression  
20 issues and properly conducted the evidentiary hearing. Further, Petitioner fails to show how,  
21 but for counsel's errors, the outcome of the suppression proceedings would have been  
22 different. As such, this Court concludes that Petitioner's first claim of ineffective assistance  
23 does not entitle Petitioner to relief.

24 Second, Petitioner alleges that counsel was ineffective for not appealing the suppression  
25 hearing issues. This Court finds that this claim likewise fails to demonstrate how counsel's  
26 performance fell below a reasonable standard, as Appellate counsel did raise several  
27 meritorious issues on appeal, including the denial of Petitioner's Motion to Suppress evidence  
28 from Petitioner's residence. The Nevada Supreme Court determined that the District Court did

1 not abuse its discretion by denying Petitioner's motion to suppress evidence obtained from his  
2 condo through a search warrant. Order of Affirmance at page. 6. Further, Petitioner provides  
3 no evidence and only makes bare and naked allegations that he was prejudiced. Such bare and  
4 naked allegations are not sufficient to warrant relief. Hargrove, 100 Nev. at 502, 686 P.2d at  
5 225. This Court finds that Petitioner cannot demonstrate that the omitted issue would have had  
6 a reasonable probability of success on appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114.  
7 There is a strong presumption that appellate counsel's performance was reasonable and fell  
8 within "the wide range of reasonable professional assistance." See Aguirre, 912 F.2d at 560  
9 (citing Strickland, 466 U.S. at 689, 104 S. Ct. at 2065). As Petitioner has only made bare and  
10 naked allegations, this Court concludes he cannot overcome the strong presumption of  
11 counsel's reasonableness and, therefore, relief is not warranted. Hargrove, 100 Nev. at 502,  
12 686 P.2d at 225.

13 Third, Petitioner alleges that trial counsel was ineffective for not using another  
14 investigator because his investigator knew Petitioner's mother and stepfather. On July 21,  
15 2016, Defendant told the Court that he cannot get any investigation done and the investigator  
16 used by Mr. Frizzell is the same investigator Mr. Sanft used and he has filed a bar complaint  
17 against the investigator. Counsel is expected to conduct legal and factual investigations when  
18 developing a defense so they may make informed decisions on their client's behalf. Jackson,  
19 91 Nev. at 433, 537 P.2d at 474 (quoting In re Saunders, 2 Cal.3d 1033, 88 Cal.Rptr. 633, 638,  
20 472 P.2d 921, 926 (1970)). "[D]efense counsel has a duty 'to make reasonable investigations  
21 or to make a reasonable decision that makes particular investigations unnecessary.'" State v.  
22 Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993) (quoting Strickland, 466 U.S. at 691,  
23 104 S. Ct. at 2066). A defendant who contends his attorney was ineffective because he did not  
24 adequately investigate must show how a better investigation would have rendered a more  
25 favorable outcome. Molina, 120 Nev. at 192, 87 P.3d at 538.

26 Using investigators in trial preparation and investigation is both encouraged and  
27 common practice. Wilson v. State, 105 Nev. 110, 771 P.2d 583 (1989). Duties of investigators  
28 are "subject to the reasonable judgment of defense counsel in light of the facts of any particular



1 case.” Love, 109 Nev. at 1143-44, 865 P.2d at 327 (*quoting* U.S. v. Weaver, 882 F.2d 1128  
2 (7th Cir.), cert. denied, 493 U.S. 968, 110 S.Ct. 415, (1989)). A decision “not to investigate  
3 must be directly assessed for reasonableness in all the circumstances, applying a heavy  
4 measure of deference to counsel’s judgment.” Id. Moreover, “[a] decision not to call a witness  
5 will not generally constitute ineffective assistance of counsel” Id. at 1145, 865 P.2d at 328.  
6 For example, the Nevada Supreme Court in Love, 109 Nev. at 1145, 865 P.2d at 328, held that  
7 trial counsel was not ineffective simply because they sent their investigator to interview  
8 potential witnesses and did not to call certain alibi witnesses at trial after adequate  
9 investigations led to that conclusion.

10 In this case, this Court finds that Petitioner cannot show trial counsel fell below a  
11 reasonable standard for not using another investigator simply because Petitioner was  
12 apparently dissatisfied with this one. A defendant is not entitled to a particular “relationship”  
13 with his attorney. Morris v. Slappy, 461 U.S. 1, 14, 103 S. Ct. 1610, 1617 (1983). There is no  
14 requirement for any specific amount of communication as long as counsel is reasonably  
15 effective in his representation. See id. It necessarily follows that Petitioner is not entitled to a  
16 particular relationship with his attorney’s investigator, who is either also court appointed or  
17 who has a longstanding working relationship with that particular attorney. Therefore, this  
18 Court concludes that the choice of investigator was a reasonable decision to make and does  
19 not amount to deficient representation under Strickland. Further, this Court finds that  
20 Petitioner fails to demonstrate how the employment of a different investigator would have  
21 benefitted the outcome of Petitioner’s case. Therefore, this Court concludes that Petitioner is  
22 not entitled to relief.

23 Fourth, Petitioner contends that trial counsel was ineffective for never visiting him  
24 except after he paid for a different lawyer. This Court finds that there is no requirement for a  
25 specific number of visits every case necessitates, nor is that a basis for ineffective assistance  
26 of counsel. Further, Defendant has provided no legal authority to support this claim. Counsel  
27 also communicates with defendants in the courtroom during routinely long court calendars.  
28 “There are countless ways to provide effective assistance in any given case. Even the best

1 criminal defense attorneys would not defend a particular client in the same way.” Strickland,  
2 466 U.S. at 689, 104 S. Ct. at 689. Therefore, this Court concludes that Petitioner has failed  
3 to demonstrate trial counsel’s representation fell below a reasonable standard. Further, this  
4 Court finds that Petitioner fails to demonstrate how more jail visits would have changed the  
5 outcome at trial. Therefore, this Court concludes that Petitioner is not entitled to relief on this  
6 claim.

7 Fifth, Petitioner claims that trial counsel was ineffective for failing to subpoena or  
8 return calls of unnamed witnesses to testify that another female resided in the townhouse he  
9 owned and switched vehicles with him, and that there was a strong probability the drugs in the  
10 purse in Petitioner’s car belonged to the female. He further claims that trial counsel was  
11 ineffective for failing to cross-examine about the passenger door being closed when officers  
12 first encountered him and they opened the door to allow K-9 access to the interior of the  
13 vehicle. Trial counsel has the “immediate and ultimate responsibility of deciding if and when  
14 to object, which witnesses, if any, to call, and what defenses to develop.” Rhyne, 118 Nev. at  
15 8, 38 P.3d at 167. Further, “[s]trategic choices made by counsel after thoroughly investigating  
16 the plausible options are almost unchallengeable.” Dawson, 108 Nev. at 117, 825 P.2d at 596;  
17 see also Ford, 105 Nev. at 853, 784 P.2d at 953. Petitioner fails to specifically name any of  
18 these alleged witnesses. This Court finds that Petitioner fails to establish if trial counsel even  
19 had sufficient information to locate these unnamed witnesses. Moreover, a review of the record  
20 demonstrates that trial counsel was, in fact, not given timely information about the witness  
21 Petitioner describes as having to wait so long she left the trial. This witness, a woman named  
22 Mary Silva who cleaned Petitioner’s residence a few times, was discussed on the record on the  
23 fourth day of the trial:

24 MR. FRIZZELL: -- what happened here. While you were probably walking  
25 down the hallway to come in, I was on the phone with the witness that you said  
26 you would allow to testify, Mary Silva, who was on the road ostensibly heading  
home, she told me. I asked her -- I said, we’re ready and it’s now time and the  
judge isn’t going to wait. How long was it going to take you to get back? And  
she said she could be back here by 3:00 o’clock, when I told her it was 1:55.

27 //

28 //

1 Transcript of Jury Trial - Day 4, p. 132. Earlier in the day, the Court indicated it would allow  
2 her to testify despite the fact that she had not been properly noticed by Petitioner:

3 THE COURT: Okay. Notwithstanding the fact that the State was not put on  
4 notice of these witnesses, I'm going to allow you to call her if you choose to. But  
5 you need to make her available to the State to give them an opportunity to  
6 question her to see what, if anything, she's going to be offering.

7 MR. FRIZZELL: And that is fine, Your Honor. I actually just learned of her  
8 potential as a witness yesterday evening from an e-mail, which I received.

9 THE COURT: Okay. So --

10 MR. FRIZZELL: And --

11 THE COURT: -- she wasn't even somebody that defendant was telling you  
12 previously that we discussed before we started the trial?

13 MR. FRIZZELL: No, Your Honor.

14 THE DEFENDANT: I didn't know. I thought the witness --

15 Transcript of Jury Trial - Day 4, p. 7-8. Additionally, at Petitioner's insistence, trial counsel  
16 called Officer Jacob Henry with the Las Vegas Metropolitan Police Department to testify in  
17 the defense case-in-chief. See Transcript of Jury Trial - Day 4, p. 145-164. Moreover, trial  
18 counsel cross examined all of the State's witnesses, including Officer Daniel Lopez, who  
19 stopped Petitioner's vehicle. Transcript of Jury Trial - Day 3, p. 127-164. Trial counsel has  
20 the "immediate and ultimate responsibility of deciding if and when to object, and strategic  
21 decisions such as which witnesses to call or not call are virtually unchallengeable. As such,  
22 this Court concludes that Petitioner cannot demonstrate deficient performance and Petitioner's  
23 claim therefore fails.

24 Sixth, Petitioner alleges that trial counsel was ineffective for failing to call family and  
25 witnesses to speak on his behalf at the penalty phase. Defendants have no right to call  
26 witnesses during sentencing hearings unless they are convicted of First Degree Murder. NRS  
27 176.015; NRS 175.552. Therefore, this Court finds that counsel cannot be deemed ineffective  
28 for failing to call family and witnesses to speak on his behalf at his sentencing, as Petitioner  
was not entitled to this under Nevada law.

Seventh, Petitioner claims that trial counsel was ineffective for never asking for the  
testimony of the dog handler or K-9 records. The State has the burden of proving its case  
beyond a reasonable doubt and can call any witnesses it deems necessary to meet that burden  
of proof. Based on the evidence presented, the jury convicted Petitioner and his Judgment of

1 Conviction was affirmed on appeal. As previously stated, the decision not to call witnesses is  
2 within the discretion of trial counsel and will not be questioned unless it was a plainly  
3 unreasonable decision. See Rhyne v. State, 118 Nev. 1, 38 P.3d 163 (2002); see also Dawson  
4 v. State, 108 Nev. 112, 825 P.2d 593 (1992). Strickland does not enact Newton's third law for  
5 the presentation of evidence, requiring for every prosecution expert an equal and opposite  
6 expert from the defense. In many instances cross-examination will be sufficient to expose  
7 defects in an expert's presentation. When defense counsel does not have a solid case, the best  
8 strategy can be to say that there is too much doubt about the State's theory for a jury to convict.  
9 Harrington v. Richter, 131 S. Ct. 770, 791, 578 F.3d. 944 (2011). Thus, this Court finds that  
10 neither the State nor trial counsel was required to call the K-9 officer, as his participation was  
11 fully covered during the direct and cross-examination of Officer Lopez' testimony. Transcript  
12 of Jury Trial - Day 3, p. 44-147. Consequently, this Court concludes that Petitioner's claim  
13 fails.

14 Finally, Petitioner alleges that trial counsel never relayed his mental health history or  
15 the fact that he was on and off different medications during the pre-trial process. However,  
16 this Court finds that Petitioner does not properly allege that trial counsel was aware of any  
17 mental health or medication issues. Petitioner does not even specify exactly what mental  
18 health history or medications he is referring to in the one sentence he includes on this issue.  
19 As such, this Court finds Petitioner's argument amounts to a bare and naked allegation under  
20 Hargrove. Petitioner does not point to any instances in the record that demonstrate evidence  
21 of insanity or incompetence. Further, this Court finds that Petitioner fails to argue how any  
22 mental health or medication issues would have ultimately changed the outcome of the instant  
23 case. Therefore, this Court concludes that Petitioner fails to meet his burden under Strickland.

### 24 **III. CUMULATIVE ERROR DOES NOT CONSTITUTE A COGNIZABLE CLAIM** 25 **FOR HABEAS RELIEF**

26 The Nevada Supreme Court has never held that instances of ineffective assistance of  
27 counsel can be cumulated. McConnell v. State, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009).  
28 Further, Petitioner's claim is without merit. "Relevant factors to consider in evaluating a claim

1 of cumulative error are (1) whether the issue of guilt is close, (2) the quantity and character of  
2 the error, and (3) the gravity of the crime charged.” Mulder v. State, 116 Nev. 1, 17, 992 P.2d  
3 845, 855 (2000).

4 As the Nevada Supreme Court found in affirming Petitioner’s convictions:

5 The totality of the circumstances supports finding probable cause to search  
6 Keller’s home. Inside Keller’s car, officers found 344.29 grams of  
7 methamphetamine, 33.92 grams of heroin, .537 grams of cocaine, a mixture of  
8 the three controlled substances, and a gun. The quantity of methamphetamine  
9 and heroin exceed personal use levels, and the discovery of 1-inch by 1-inch  
10 baggies, a large amount of cash, as well as a gun, fairly indicated to the officers  
11 that Keller was trafficking in drugs. Further, when Officer Lopez initiated the  
12 traffic stop, Keller tried to exit the car parked in front of his condo, which in  
13 conjunction with Keller’s evasive driving, Officer Lopez took as an attempt to  
14 escape. Taken as a whole, these circumstances supported a finding of probable  
15 cause that Keller was a drug dealer and that more drugs and guns would be found  
16 inside his condo.

17 Order of Affirmance at page 5.

18 The Nevada Supreme Court has also determined that the issue of guilt was not close in  
19 this case. In addressing Petitioner’s claim of cumulative error on appeal, the Nevada Supreme  
20 Court further found that there was overwhelming evidence of guilt:

21 *There is no cumulative error*

22 Keller summarily argues that cumulative error requires reversal. But, Keller fails  
23 to establish any error on appeal, and the evidence presented at trial against him  
24 was overwhelming. *See Big Pond v. State*, 101 Nev. 1, 3, 692 P.2d 1288, 1289  
25 (1985) (considering “whether the issue of innocence or guilt is close, the quantity  
26 and character of the error, and the gravity of the crime charged” in determining  
27 cumulative error). We therefore, ORDER the judgment of the district court  
28 AFFIRMED.

Order of Affirmance at pages 8-9.

Finally, even if any of Petitioner’s allegations had merit, this Court finds that Petitioner  
has failed to establish that, when aggregated, those errors deprived him of a reasonable  
likelihood of a better outcome at trial. This Court further finds that, even if Petitioner had  
made such a showing, he has failed to show that the cumulative effect of the supposed errors  
was so prejudicial as to undermine this Court’s confidence in the outcome of Petitioner’s case.  
Because the issue of guilt was not close, and because Petitioner failed to sufficiently undermine  
confidence in the outcome of his case, this Court concludes that Petitioner’s claim of  
cumulative error is without merit.

//

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED, Petitioner Christopher Keller's Pro Per  
3 Petition for Writ of Habeas Corpus (Post-Conviction) shall be, and is, DENIED.

4 IT IS FURTHER ORDERED, Petitioner's Motion to Appoint Counsel shall be, and is,  
5 DENIED as Defendant is not entitled to counsel at this point.

6 DATED this \_\_\_\_\_ day of October, 2020.

7 Dated this 2nd day of November, 2020

8 

9 DISTRICT JUDGE  
10 12A EB1 1B70 A32A  
11 William D. Kephart  
12 District Court Judge

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

16 BY  for \_\_\_\_\_  
17 TALEEN PANDUKHT  
18 Chief Deputy District Attorney  
19 Nevada Bar #005734

20 **CERTIFICATE OF MAILING**

21 I hereby certify that service of the above and foregoing was made this \_\_\_\_\_ day of  
22 \_\_\_\_\_, 2020, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

23 CHRISTOPHER R. KELLER, BAC #81840  
24 LOVELOCK CORRECTIONAL CENTER  
25 1200 PRISON ROAD  
26 LOVELOCK, NV, 89419

27 BY \_\_\_\_\_  
28 C. Garcia  
Secretary for the District Attorney's Office

cg/L2

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Christopher Keller, Plaintiff(s)

CASE NO: A-19-800950-W

7 vs.

DEPT. NO. Department 19

8 State of Nevada, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's  
12 electronic filing system, but there were no registered users on the case. The filer has been  
13 notified to serve all parties by traditional means.  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

Electronically Filed  
11/19/2020 1:02 PM  
Steven D. Grierson  
CLERK OF THE COURT



Christopher Keller, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

Case No.: A-19-800950-W  
Department 19

**NOTICE OF HEARING**

Please be advised that the Plaintiff's Motion to produce in the above-entitled matter is set for hearing as follows:

**Date:** January 06, 2021  
**Time:** 8:30 AM  
**Location:** RJC Courtroom 16B  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

**NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.**

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Michelle McCarthy  
Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Michelle McCarthy  
Deputy Clerk of the Court



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NOV 19 2020

*Ch. Keller*  
CLERK OF COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

1  
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4 ~~STATE OF NEVADA~~ Christopher Keller ) Case No.: A-19-000956-W  
5 Plaintiff, ) Dept. No.: XIX <sup>IF NECESSARY</sup>  
6 vs. ) Docket No.: HEARING REQUESTED  
7 STATE OF NEVADA )  
8 Defendant )

Motion to produce

11  
12 PETITIONER, Christopher R. Keller, IN PRO SE.  
13 SUBMITS his motion to produce, for the transcripts  
14 of PETITIONER'S EVIDENTIARY HEARING ON 10-1-2020 IN  
15 THE ABOVE CASE. PETITIONER WAS UNABLE TO TAKE  
16 NOTES AND NEEDS THE TRANSCRIPTS IN PREPARATION OF  
17 HIS APPEAL.

18  
19 DATED this 30th DAY of October, 2020  
20 I, Christopher R. Keller, do solemnly swear, under  
21 the penalty of perjury, that the ABOVE MOTION TO  
22 PRODUCE IS ACCURATE, CORRECT, & TRUE TO THE BEST OF  
23 my knowledge. NRS. 171.162 AND NRS. 208.165.

24 Respectfully,  
*Ch. Keller*  
25 Christopher Keller

RECEIVED

NOV 16 2020

CLERK OF THE COURT

Christopher R. Keller #81244  
(H.D.S.P.) P.O. Box #650  
INDIAN SPRINGS, NV 89070

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LAS VEGAS NV 890  
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~~STEVEN D. GRIERSON~~

STEVEN D. GRIERSON  
OR  
HEATHER UNGERMAN, (D.C. #19 Deputy Clerk)  
200 Lewis Ave  
P.O. Box # 551601  
LAS VEGAS, NV 89155-1601

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HIGH DESERT STATE PRISON

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

5 \*\*\*\*\*

6 Christopher Keller, Plaintiff(s)

Case No.: A-19-800950-W

7 vs.

Department 1

8 State of Nevada, Defendant(s)

9  
10 **NOTICE OF CHANGE OF HEARING**

11 The hearing on the Motion, presently set for January 06, 2021, at 8:30 AM, has been moved  
12 to the 6th day of January, 2021, at 8:30 AM and will be heard by Judge Bitu Yeager.

13  
14 STEVEN D. GRIERSON, CEO/Clerk of the Court

15 By: /s/ Mary Anderson

16 Mary Anderson

17 Deputy Clerk of the Court

1 **CERTIFICATE OF SERVICE**

2  
3 I hereby certify that this 5th day of January, 2021

4 ☒ The foregoing Notice of Change of Hearing was electronically served to all registered  
5 parties for case number A-19-800950-W.

6 ☐ I mailed, via first-class, postage fully prepaid, the foregoing Clerk of the Court, Notice  
7 of Change of Hearing to:

8 Christopher R Keller  
9 #81840  
10 1200 Prison Road  
11 Lovelock NV 89419

12 ☐ I placed a copy of the foregoing Notice of Change of Hearing in the appropriate  
13 attorney folder located in the Clerk of the Court's Office:

14 Christopher R Keller  
15 Bernard B. Zadrowski  
16 Taleen R Pandukht  
17 Parker Brooks  
18 Steven B Wolfson  
19 Michael Dickerson

20  
21  
22  
23  
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26  
27  
28  
/s/ Mary Anderson

Mary Anderson  
Deputy Clerk of the Court

*Heather L. Hume*

CLERK OF THE COURT

NORH

DISTRICT COURT,  
CLARK COUNTY, NEVADA

CHRISTOPHER KELLER,	)	CASE NO. A-19-800950-W
	)	DEPT NO. III
Plaintiffs,	)	
vs.	)	
	)	
STATE OF NEVADA,	)	
	)	
Defendant(s).	)	

**NOTICE OF RESCHEDULING OF HEARING**

IT IS HEREBY ORDERED, that the Writ of Habeas Corpus in this matter has been  
rescheduled to January 27, 2021 at 8:30 a.m.

Dated this 14th day of January, 2021

*Monica Trujillo*

B39 286 7D6D 0BF0  
Monica Trujillo  
District Court Judge



1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Christopher Keller, Plaintiff(s) CASE NO: A-19-800950-W  
7 vs. DEPT. NO. Department 3  
8 State of Nevada, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's  
12 electronic filing system, but there were no registered users on the case.

13  
14 If indicated below, a copy of the above mentioned filings were also served by mail  
15 via United States Postal Service, postage prepaid, to the parties listed below at their last  
known addresses on 1/15/2021

16 Christopher Keller #81840  
17 1200 Prison Road  
Lovelock, NV, 89419

18 Steven Wolfson Clark County District Attorney  
19 200 Lewis Avenue, 3rd Floor  
20 Las Vegas, NV, 89155  
21  
22  
23  
24  
25  
26  
27  
28



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\*\*\*\*\*

Christopher Keller, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

Case No.: A-19-800950-W  
C-16-312717-1  
Department 3

**NOTICE OF DEPARTMENT REASSIGNMENT**

NOTICE IS HEREBY GIVEN that the above-entitled action has been reassigned to Judge Monica Trujillo.

☒ This reassignment is due to: Per Administrative Order 20-25.

ANY TRIAL DATE AND ASSOCIATED TRIAL HEARINGS STAND BUT MAY BE RESET BY THE NEW DEPARTMENT.

Any motions or hearings presently scheduled in the FORMER department will be heard by the NEW department as set forth below.

**Motion, on 01/27/2021, at 8:30 AM**

PLEASE INCLUDE THE NEW DEPARTMENT NUMBER ON ALL FUTURE FILINGS.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Heather Kordenbrock  
Heather Kordenbrock, Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that this 15th day of January, 2021

☒ The foregoing Notice of Department Reassignment was electronically served to all registered parties for case number A-19-800950-W.

/s/ Heather Kordenbrock  
Heather Kordenbrock, Deputy Clerk of the Court

*Heavenly*  
CLERK OF THE COURT

1 **ORDR**  
2 **STEVEN B. WOLFSON**  
3 **Clark County District Attorney**  
4 **Nevada Bar #001565**  
5 **ERCAN E. ISCAN**  
6 **Chief Deputy District Attorney**  
7 **Nevada Bar #009592**  
8 **200 Lewis Avenue**  
9 **Las Vegas, NV 89155-2212**  
10 **(702) 671-2500**  
11 **Attorney for Plaintiff**

8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 **THE STATE OF NEVADA,**  
11 **Plaintiff,**

12 **-vs-**

13 **CHRISTOPHER ROBERT KELLER,**  
14 **#1804258**

15 **Defendant.**

**CASE NO: A-19-800950-W**

**DEPT NO: III**

16 **ORDER DENYING DEFENDANT'S MOTION TO PRODUCE**

17 **DATE OF HEARING: January 27, 2021**  
18 **TIME OF HEARING: 08:30 A.M.**

19 **THIS MATTER** having come on for hearing before the above entitled Court on the  
20 **27th day of January, 2021,** the Defendant not being present, in proper person, the Plaintiff  
21 **being represented by STEVEN B. WOLFSON,** District Attorney, through ERCAN E.  
22 **ISCAN,** Chief Deputy District Attorney, without argument, based on the pleadings and good  
23 **cause appearing therefor,**

24 **//**

25 **//**

26 **//**

27 **//**

28 **//**

1 IT IS HEREBY ORDERED that the Defendant's Motion, shall be, and it is DENIED.

2 DATED this \_\_\_\_\_ day of February, 2021 <sup>Dated this 9th day of March, 2021</sup>

3  
4   
DISTRICT JUDGE

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

mg  
949 A18 35F5 4BC9  
Monica Trujillo  
District Court Judge

7  
8 BY  for

9 ERCANE E. ISCAN  
Chief Deputy District Attorney  
Nevada Bar #009592

10  
11  
12  
13  
14 CERTIFICATE OF SERVICE

15 I certify that on the 12<sup>th</sup> day of February, 2021, I mailed a copy of the foregoing Order

16 to:

17 CHRISTOPHER R. KELLER #81840  
18 HIGH DESERT STATE PRISON  
P.O. BOX 650  
19 LOVELOCK, NV 89419

20  
21 BY 

22 C. Garcia  
Secretary for the District Attorney's Office

23  
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27  
28 cg/L2

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Christopher Keller, Plaintiff(s)

CASE NO: A-19-800950-W

7 vs.

DEPT. NO. Department 3

8 State of Nevada, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's  
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13 notified to serve all parties by traditional means.  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

CHRISTOPHER ROBERT  
KELLER,

Plaintiff,

vs.

THE STATE OF NEVADA,

Defendant.

CASE NO.: A-19-800950-W

DEPT. XIX

BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE  
THURSDAY, OCTOBER 1, 2020

**RECORDER'S TRANSCRIPT OF HEARING RE:  
EVIDENTIARY HEARING; PETITION FOR WRIT OF HABEAS  
CORPUS; PLAINTIFF'S MOTION TO APPOINT COUNSEL**

APPEARANCES:

For the Plaintiff: CHRISTOPHER R. KELLER, PRO SE  
(Via Bluejeans)

For the Defendant: MICHAEL R. DICKERSON, ESQ.  
Deputy District Attorney

RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

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**INDEX OF WITNESSES**

<b><u>WITNESS:</u></b>	<b><u>PAGE</u></b>
<b>KENNETH G. FRIZZELL, III</b>	
Questions by the Court	13
Direct-Examination by Mr. Dickerson	30
Cross-Examination by Mr. Keller	50

1 Las Vegas, Nevada; Thursday, October 1, 2020

2  
3 [Hearing commenced at 8:54 a.m.]

4 THE COURT: Okay, we're on the record in the case of  
5 Christopher Keller versus State of Nevada in A800950. Mr. Keller is  
6 present. He's joining us via video from the Nevada Department of  
7 Corrections.

8 The State is represented by Mr. Dickerson. This is the time  
9 for an Evidentiary Hearing. Mr. Keller, it -- you had the opportunity at  
10 this time for an Evidentiary Hearing.

11 Mr. Keller, can you hear us?

12 MR. KELLER: Yes, sir.

13 THE COURT: Okay. You wish to call any witnesses, make  
14 any statements or anything at this point?

15 MR. KELLER: I mean, I don't really understand how -- what's  
16 going on or how to -- I put in a motion for appointment of counsel  
17 because I don't know -- understand how to represent myself in the  
18 hearing.

19 THE COURT: Mr. Keller, at this point in time, you're not  
20 entitled to representation by an attorney unless you hire your own. You  
21 had made representations in a written motion and I've given you an  
22 opportunity to present that. In regards to -- in your petition you made --  
23 you raised some issues regarding ineffective assistance of counsel by  
24 Mr. Frizzell. Your arguments are -- in with regards to that there's eight  
25 different positions that you've raised.



1           You indicated that he was ineffective for not raising issues  
2 relayed to him prior to the suppression hearing, for not appealing a  
3 suppression hearing issues, for not using another investigator because  
4 his investigator knew your parents, for never visiting you until after you  
5 paid a different lawyer, for failing to subpoena, return calls of certain  
6 unnamed witnesses, and failing to cross-examine about the passenger  
7 door being closed when officers first encountered you, failing to call  
8 family and witnesses to speak on your behalf, and -- never asking for  
9 testimony of the dog handler, and for never relying -- relaying your  
10 mental health history prior to, or during the pretrial process.

11           I'll address those right now and then I'm going to ask some  
12 questions because I need some clarification on some of those. With  
13 regards to your first -- first one for not -- claim of not -- that he was  
14 ineffective for not raising the issues, a petition relayed to him, you failed  
15 to identify in your motion what issues you're talking about and for that  
16 reason, you do not support -- you do not show how it's not supported or  
17 wasn't supported by the record. So I believe that that's a bare naked  
18 allegation, so I am denying it on that ground.

19           On the second ground, you have -- you say that he was  
20 ineffective for not appealing the suppression hearing issues. He did in  
21 fact appeal the suppression hearing issues. But you provide no  
22 evidence of how what he argued or what he didn't argue would prejudice  
23 you. So for that reason, I am denying your petition.

24           The concern I have on your fifth position, you claim that he  
25 was ineffective for failing to subpoena return calls of unnamed witnesses

1 to testify, that another female resided in the townhouse you owned and  
2 switched vehicles with you. You have failed to specify any name of any  
3 of these alleged witnesses. Matter of fact, there was a witness that was  
4 prepared to testify at the time of trial but was not notified -- was not put  
5 on a witness list. I allowed that to happen in the event that they had her.  
6 And you can't demonstrate how the -- how your attorney failed to -- fell  
7 below deficient performance, demonstrating a deficient performance on  
8 his behalf, as it's ultimately the responsibility of him to decide as to what  
9 witnesses and what to object to at the time. So, I'm denying it on that --  
10 ground.

11 Your sixth ground is you're claiming that you -- he failed to call  
12 family members or witnesses to speak on your behalf of penalty phase.  
13 There's no right at that stage for any of your family members or  
14 witnesses to testify in light of the fact that this was not a first degree  
15 murder charge. So, I'm denying it on that ground.

16 Okay, so the issues that I want you to address, Mr. Keller, is  
17 you made a claim that your -- your attorney was ineffective for not using  
18 another investigator because your investigator knew your parents. You  
19 made a claim that he was never visiting you in the detention center until  
20 he -- until you hired a paid lawyer. You need to explain to me how that  
21 affected your case.

22 You also made a claim that he was ineffective for not asking  
23 for the testimony of the dog handler and for not relaying your mental  
24 health history prior to your pretrial process, okay?

25 So, those are the four areas I want you to clarify to the Court.

1 I think I need to expand the record on that. So, what is it that you can  
2 tell me about -- or your concerns were with regards to the investigator?

3 MR. KELLER: Well, I never really had a chance to speak to  
4 him because of the problems that he had with my family and then he  
5 never visited me so I never got to tell the investigator -- I never had a  
6 chance for the investigator to speak with the witnesses and also, the  
7 investigator could have got the body camera footage, which -- that the  
8 officer testified that they did have the body camera footage. And  
9 because of that, I never got the body camera footage into my case, so  
10 that cost me the body camera footage, which that would have showed  
11 that the officer was lying.

12 It would have also showed for the jury, you know, that the --  
13 that he, you know -- like another officer testified to the female coming up  
14 to the car and asking for her purse out of the car and her -- the purse  
15 was a thing that had all the narcotics in it. So that --

16 THE COURT: Okay.

17 MR. KELLER: -- that would be one of them.

18 THE COURT: Okay, so you're saying --

19 MR. KELLER: And the reason that --

20 THE COURT: You're -- hold on, hold on. You're saying that  
21 because you -- didn't have a chance to speak to your investigator, is that  
22 -- your investigator didn't get this information because --

23 MR. KELLER: Well that --

24 THE COURT: Okay.

25 MR. KELLER: Well that's why I couldn't -- never got any

1 subpoena -- that's why I never got any subpoenas, that's why I never got  
2 the body camera footage, that's -- I mean, I never got -- I never got any,  
3 I mean, I never got any work on my case done because he wouldn't  
4 come visit me.

5           So, if I would have been able to speak to the investigator then  
6 I might have gotten something accomplished because my family told me  
7 that I was going to get another lawyer, so I wasn't really speaking to  
8 Frizzell. So then when it -- so that's the reason why we never even  
9 spoke about my trial or the fact that it would have been in my best  
10 interest to take a deal because we never even spoke about my case.

11           THE COURT: Okay, so you're saying because your family  
12 was telling you you're getting another attorney, you never spoke to your  
13 attorney?

14           MR. KELLER: Well that -- I mean, we had issues and stuff  
15 like that. But yeah, that's why I never spoke to him because they told  
16 me that they were getting me the attorney, which they ended up paying  
17 \$15,000 for but I never got to use her.

18           THE COURT: Okay. Then you have -- but you're also saying  
19 that you had issues -- you're telling me in your motion that there was  
20 issues between your parents and this investigator. What are you talking  
21 about?

22           MR. KELLER: Yeah, when I -- the first -- the investigator  
23 came and tried to see me and I told -- and he asked me who my mother  
24 was and then he told me, oh -- and then -- oh, he said, oh he's married  
25 to Graham, you know, the police officer? I said, yeah. He said, oh

1    yeah, she's a piece of work and stuff and I said, what does that mean?  
2    You know, like -- and then it got all hostile. I said, hey I'm not talking to  
3    you because, you know, he made that comment about my mother, you  
4    know, so --

5           THE COURT: Okay.

6           MR. KELLER: And then that just --

7           THE COURT: Did you tell Mr. Frizzell that?

8           MR. KELLER: Yeah, I told him in the --

9           THE COURT: Okay.

10          MR. KELLER: And I don't know -- then --

11          THE COURT: Okay. All right. Let's go to the next issue.

12          MR. KELLER: I was -- I made that -- I put in a -- I told that to  
13   the Court, I told that to Frizzell, and I put in a complaint to the Nevada  
14   Bar because no one would listen.

15          THE COURT: Okay. Turn to number four now. You said that  
16   trial counsel was ineffective for never visiting you until after you paid for  
17   a different lawyer. How did that affect your case?

18          MR. KELLER: Well because I never got to speak to him about  
19   it and I never got to -- I never -- I was offered deals but -- I never was -- I  
20   never -- we never spoke about the case so I didn't know what kind of  
21   evidence was against me really. So, I didn't -- we never spoke about  
22   any trial, like -- we never -- the only thing that we brought up was stuff  
23   that I brought up to him. He never went over any trial strategy with me  
24   or he never told me, you know, that it would be interest to take any deal  
25   because of the fact that, you know, that I -- I mean, with the stuff they

1 had, it would have been in my best interest to take a deal obviously,  
2 because the case they had against me, I just thought that I was going to  
3 be working with the other lawyer that my family had paid for.

4 THE COURT: Okay. Then you also said that he was  
5 ineffective for never asking for the testimony of the K-9 handler. So, tell  
6 me how that, you believe, would affect your case in light of the fact that  
7 he did cross-examine the other officers that did point out that they -- that  
8 there was a K-9 animal there. So, tell me how that would have -- how  
9 that affected your case.

10 MR. KELLER: Well because I would have the right -- because  
11 I had the right to cross-examine the dog handler and we never got to  
12 see the K-9 reliability records or the K-9 -- it's just some officer who's not  
13 -- that doesn't know anything about dog behavior. He's not trained in  
14 dog behavior, just the same officer that made several lies in my case  
15 claims that dog hit, but we had no evidence from a reliable source, no  
16 one that, you know, trained in this to say that a dog hit and the whole  
17 case is based off supposedly a dog hit, but if you look at the -- time, they  
18 say a dog hit at one hour and one minute, the K-9 left, they say that he  
19 hit.

20 Well how come if he hit supposedly, how come it took  
21 additional one hour and 59 minutes after the K-9 left for them to  
22 supposedly find the narcotic. That's a whole -- another two hours, two  
23 minutes less than two hours. If a K-9 hit, then you would be able to find  
24 something right then, so I see that there's a problem with this because,  
25 obviously, you know, the K-9 might have never hit on that. You know

1 what I mean?

2 We have no -- we have nobody that's like, trained in this to  
3 make that statement.

4 THE COURT: Okay. And then you also claim that he never  
5 relayed your mental health history or the fact that you were on and off  
6 different medications during the pretrial process. So, how is that  
7 affecting your case?

8 MR. KELLER: Well, it was just -- I mean, I was on different  
9 medications, Zyprexa and then Remeron and stuff, and then -- and -- it's  
10 just -- I mean, looking back now, I know that my mind state was all over  
11 the place and I wasn't able to -- I wasn't even able to really comprehend  
12 what was going on.

13 So, you know, I mean, I'm sitting here with --

14 THE COURT: Did you inform your attorney of that?

15 MR. KELLER: -- 20 to life now.

16 THE COURT: Did you tell --

17 MR. KELLER: I told him.

18 THE COURT: -- Mr. Frizzell about that?

19 MR. KELLER: So, the only time I talked to Mr. Frizzell about  
20 my case was when the lawyer -- because she came at calendar call to  
21 sub in, which was a Friday, and then trial was starting on Monday. You  
22 told her that, you know, since we're going to trial on Monday, I'm not  
23 giving you a continuance. So, she wasn't ready. If she wasn't ready,  
24 then to not take my case, so she didn't take my case, you know? So  
25 then, that's the only time I really spoke to Frizzell about my case was

1 that Friday. And then the Monday that trial started, we never really  
2 spoke about my case because he didn't answer the phone and he never  
3 came to visit me.

4 So, you know, I sent -- I put as a part of my thing, the visiting  
5 log and stuff, so I never, you know, the only time I spoke with him about  
6 my case really was before the suppression hearing which was when I  
7 told him, if you told me that I didn't bring up the grounds that I -- that he  
8 should have brought -- well I was talking about grounds one through  
9 seven of my habeas. Those are the grounds that I brought up prior to  
10 and after the suppression hearing. Those were the grounds.

11 I thought I made it -- I thought I was, you know, I was talking  
12 about the grounds one through seven. Those are the grounds that I  
13 brought up to him. And, you know, in the State's response, they said I  
14 didn't name the grounds but I was speaking about those grounds. So,  
15 those were the grounds I was speaking about.

16 THE COURT: Okay. All right. So, do you have anything  
17 else, Mr. Keller?

18 MR. KELLER: Just that I never had a chance to go over my  
19 case with my lawyer because we -- because we were hiring another  
20 lawyer and I never got to use her so --

21 THE COURT: Okay. Well Mr. Keller, you understand that you  
22 had some dates set previously for trial and then at the last minute, you  
23 hired an attorney to come in and she was asking for --

24 MR. KELLER: Yeah, she hired her, like -- she hired her about  
25 two months before that and then she was having medical problems, but



1 she already had the money. She was having medical problems, so she  
2 could never see me, but it would have been two months prior to that  
3 date is when she testified that she was -- you know, so it was like --

4 THE COURT: Right.

5 MR. KELLER: It was just a bad, you know, it's a bad situation  
6 that happened.

7 THE COURT: Yeah. Well we were trying to go to trial on this.  
8 This was continued multiple times and -- because of issues you had with  
9 Counsel. A counsel was appointed to you. Counsel had an opportunity  
10 to be prepared on this matter and so it went forward on the date that we  
11 had scheduled. So, at this point in time, State, did you have any  
12 questions of Mr. Keller?

13 MR. DICKERSON: I do not, Your Honor.

14 THE COURT: All right. So, State? Do you have any further  
15 witnesses or anything, Mr. Keller?

16 MR. KELLER: I didn't know that I would be able to present  
17 any, you know?

18 THE COURT: Well, Mr. Keller, when you're asking the Court  
19 for an Evidentiary Hearing, what do you expect to happen? Okay.

20 MR. KELLER: Yeah, I didn't know. I didn't know what was  
21 going to happen, honestly. I just thought --

22 THE COURT: Okay, so -- so you just --

23 MR. KELLER: I thought that was part of it.

24 THE COURT: Okay. State?

25 MR. DICKERSON: The State has no witnesses, Your Honor.

1 THE COURT: You're not going to call Mr. Frizzell?

2 MR. DICKERSON: I think that based upon what we have in  
3 front of us, Your Honor, Your Honor can make this decision on the  
4 pleadings themselves. These allegations don't meet the level of  
5 *Strickland*. There's nothing here that the Defendant showing where  
6 anything about his case would be different, had any of his claims  
7 actually been true or supported.

8 THE COURT: Mr. Frizzell, I'm going to call you. I have some  
9 questions, okay?

10 MR. FRIZZELL: Yeah, that's fair.

11 THE MARSHAL: Face he clerk, and raise your right hand.

12 **KENNETH G. FRIZZELL, III**

13 [having been called as a witness and being first duly sworn, testified as  
14 follows:]

15 THE COURT CLERK: Please state your full name, spelling  
16 your first and last name for the record.

17 THE WITNESS: Kenneth G. Frizzell, III, K-E-N-N-E-T-H,  
18 middle initial G, last name F as in Frank, R-I-Z-Z-E-L-L, the third.

19 **QUESTIONS BY THE COURT**

20 BY THE COURT:

21 Q Mr. Frizzell, you had heard statements by Mr. Keller regarding  
22 allegations that his investigator -- because his investigator knew his  
23 mother and father that there seemed to be some kind of tension  
24 between the two and that his investigator didn't do anything with regards  
25 to this case. Are you familiar with that investigator?

1           A     I am.

2           Q     Can you tell me what your understanding is with regards to  
3 this and your --

4           A     Sure.

5           Q     -- the investigator's actions?

6           A     Sure. Well, it was quite the opposite. First off, my investigator  
7 went over to either deliver discovery and/or visit with Mr. Keller on at  
8 least a dozen occasions throughout the representation. Early on, my  
9 investigator is a retired Metro officer, and candidly, worked with Mr.  
10 Keller's father back when he was -- they were both on SWAT together  
11 and then -- my investigator informed me of that.

12                   However, he said -- he had told me and I understand that this  
13 could be --

14          Q     When he had told you, who is this?

15          A     My investigator.

16          Q     Okay.

17          A     Because he relayed --

18                THE COURT: Mr. Keller, in this particular hearing --

19                MR. KELLER: Yes, yeah.

20                THE COURT: In this particular hearing, statements that you  
21 just represented and what you discussed with your attorney, and now  
22 your attorney is on the stand testifying, there's a privilege of self-  
23 incrimination here. Are you waiving that privilege -- so your attorney can  
24 -- so Mr. Frizzell can tell us what it was that he said and that you can tell  
25 us what you said to your attorney?

1 MR. KELLER: Yeah, I mean, I couldn't -- I submitted the  
2 visiting records from County Jail. I mean, I don't --

3 THE COURT: Okay.

4 MR. KELLER: Yeah.

5 THE COURT: Well, what I'm getting at is the actual  
6 communication that you had with Mr. Frizzell. In order for me to  
7 consider this and in light of the fact that you just testified to that, I need  
8 to know --

9 MR. KELLER: Well, he just lied --

10 THE COURT: -- whether or not you're willing to waive those  
11 rights.

12 MR. KELLER: -- anyways, so --

13 THE COURT: You'll waive those?

14 MR. KELLER: Yes, I'll waive it --

15 THE COURT: Okay.

16 MR. KELLER: -- and he just lied because I have the video. I  
17 have the -- I mean, Frizzell just lied about him. Maybe the dude told  
18 Frizzell --

19 THE COURT: Okay. Mr. Keller?

20 MR. KELLER: -- that he visited me, but he didn't.

21 THE COURT: Mr. Keller --

22 MR. KELLER: Yes, sir.

23 THE COURT: You'll have an opportunity to ask Mr. Frizzell  
24 any question you'd like. That's why I have him here. So --

25 MR. KELLER: All right, thank you.

1 THE COURT: Let me get -- done with this and then you can  
2 ask any question you'd like, okay?

3 MR. KELLER: All right.

4 BY THE COURT:

5 Q All right. So, Mr. Frizzell, are you satisfied with that waiver?

6 A I am.

7 Q Okay, go ahead. So --

8 A So essentially, my investigator had informed me that he didn't  
9 -- he said -- Mr. Keller's mother did work for Metro as well, but she was  
10 in the administrative side of things and he said that he did not know her  
11 other than know who she was by virtue of having worked with SWAT  
12 with her husband.

13 Quite the contrary to what Mr. Keller testified to, Mr. Mastin,  
14 my investigator, enjoyed his time working with Mr. Graham and said that  
15 he was a -- he was a fine lieutenant. At that time my -- investigator was  
16 a captain of SWAT and Mr. Graham, his father -- Mr. Keller's father, was  
17 a lieutenant with SWAT. And they worked together and he had nothing  
18 negative to say. And, you know, he had only said I know of his mother  
19 but I've not had any communication.

20 After I reviewed Mr. Keller's petition, I did ask him, did you  
21 ever say anything like, your mother's a piece of work or anything like  
22 that? And he vehemently informed me no. And so, that's what I have  
23 on that issue.

24 Q During the time that you were representing Mr. Keller, had he  
25 ever represented to you that there was a conflict between the

1 investigator and his parents?

2 A Never.

3 Q So, the first time you heard about it was in the petition?

4 A With reading his petition.

5 Q Okay.

6 MR. KELLER: I said it in open court, Your Honor -- in open  
7 court, several times. I put it in the motion to get a change of attorney. I  
8 put -- so there's record all throughout the court of it, Your Honor.

9 THE COURT: Okay.

10 MR. KELLER: Since the first day the investigator came --

11 THE COURT: Okay.

12 MR. KELLER: I have nothing to gain from making that up.

13 THE COURT: Mr. Keller, hold on. You'll have an opportunity  
14 to address that. I'm just trying to get through this, one at a time. We  
15 don't go in and out like that, okay?

16 MR. KELLER: All right.

17 THE COURT: All right.

18 MR. KELLER: Yes, Your Honor.

19 BY THE COURT:

20 Q So then, Mr. Keller has also represented that you were  
21 ineffective for never visiting him until after -- they paid for a different  
22 lawyer. Do you understand what that is?

23 A That's not true because I went over to the jail, I brought my  
24 billing records, and I don't have them in front of me, the State has them.  
25 But I know that -- I believe specifically throughout the representation, I

1 personally went over to the jail on, I believe, four occasions, possibly  
2 five. There might be five on there. In addition to that, when my  
3 investigator would go over at my direction, he went over either to go  
4 over some discovery with Mr. Keller or at least just deliver something or  
5 talk with him on the video, or something along that line.

6 In addition, every single hearing that we had on the case,  
7 which was when you were in the other courtroom downstairs, we were  
8 always talking about his case, always. And to -- just to reiterate  
9 something that he said is -- he said he didn't like the investigator, yes in  
10 open court on one of those motions to withdraw hearings. But he never  
11 relayed that there was a conflict or that might -- or that my investigator  
12 hated his parents or made any specific comments, derogatory or  
13 otherwise, regarding his mother. That's the part that I first -- that I first  
14 knew of -- that there was a conflict or that he was claiming a conflict,  
15 was in his petition, so --

16 Q Okay.

17 A So the record is clear.

18 Q So, you were actually appointed in this matter after a second  
19 continuance. Is that your understanding?

20 A Yes. I -- he had prior appointed counsel that he did not get  
21 along with and so, Your Honor appointed me.

22 Q Okay. And you're aware that this was continued multiple  
23 times -- actually to the point of, I believe, possibly five continuances?  
24 Let me see, fifth -- yeah. I believe five, and then you actually proceeded  
25 to trial after the fifth continuance?

1           A     Yeah.

2           Q     So, you had the case from the second continuance, so it  
3 would have been a third continuance, a fourth continuance, and a fifth  
4 continuance. Is that your understanding?

5           A     Yes, total. I mean, I was on for four settings.

6           Q     Okay.

7           A     And then the final one we went to trial on.

8           Q     Okay.

9           A     And I can relay to the Court that candidly, and despite --  
10 contrary to Mr. Keller's assertions, a couple of those were because he  
11 had informed me he didn't want to go trial and wanted me to try to get  
12 him a deal. There was at least, I believe, three different offers that were  
13 conveyed to him. And then, when Mr. Dickerson ultimately withdrew the  
14 last offer, then on the first day of trial, he re-extended that same offer  
15 which, candidly, had Mr. Keller accepted it, which he did not and  
16 vehemently said he was not going to accept it, he would be looking at  
17 getting parole probably within the next six months.

18          Q     Okay. So, because of that and understanding that the State  
19 had filed habitual notices -- in this matter, one of Mr. Keller's allegations  
20 is that you never discussed with him or investigated -- the words  
21 investigated is -- in my words, his mental health history. Did you have  
22 any concern with that in light of the fact that there was these offers made  
23 that were pretty favorable, and he was facing habitual notices here and  
24 he adamantly rejected them?

25          A     He had told me that throughout his life that he had had some



1 issues -- with bipolar or some other issues like that. I specifically --  
2 because early on in the representation when he relayed that information  
3 to me, I said, are you on a medication? He said, yes, I take medication.

4 I asked him similar to our canvasses on guilty plea  
5 agreements, is there anything about the medication that you take, that  
6 would render you unable to understand what's going on or to help me in  
7 your defense? And he said, no. And we actually talked about that  
8 issue, at least, on two separate occasions.

9 Q And even --

10 A And I told him I did not see a reason then, to bring that up.

11 Q Was there anything in the medications that stuck out to you  
12 based on what he represented to you that you think would have affected  
13 his ability to understand or comprehend or --

14 A No, because they were pretty standard for what he said his  
15 ailments were. I don't remember the specific names off the top of my  
16 head. But if he was not on them, there might have been a potential for  
17 that issue, but it could have -- it would have been remedied upon just  
18 reinitiating the medication.

19 Q Were you comfortable with his representations to you about  
20 what he was taking and what you viewed of him and his demeanor and  
21 ability to discuss with you the case?

22 A Absolutely. He was at all points. He could relay his version of  
23 events and he was not incoherent. The ideas were not -- were strung  
24 together appropriately. He never went off tangent as far as what he was  
25 claiming was the situation and how the whole incident went down.

1           Now candidly, as virtually every potential defendant -- every  
2 defendant asks their lawyers, but certainly asks me, file this motion, file  
3 that motion, redo this, redo that, and candidly, some of the things that he  
4 asked for, I did. Which was the bail motion, the suppression motion and  
5 the other things that he was asking me to do were not -- did not have a  
6 good face -- good faith basis in law or fact.

7           Q     Okay.

8           A     And so, I chose to not file the plethora of other motions he  
9 kept asking me to do.

10          Q     Okay, now I am -- why we -- you've been testifying, I've had  
11 an opportunity to go back through his motion to dismiss counsel and  
12 appoint alternative counsel. I will tell you that in his written motion -- and  
13 it's filed June 13, 2016, he doesn't say anything in there about an  
14 investigator.

15                However, on the hearing of July 21<sup>st</sup>, 2016, his pro per motion  
16 to dismiss counsel and appoint alternative counsel, after my questioning  
17 he advised that he cannot get any investigation done, that the  
18 investigator used by Mr. Frizzell is the same investigator Mr. Sanft used,  
19 and then he had filed a bar complaint against the investigator. Were you  
20 aware of anything like that?

21          A     He had mentioned something like that but there was never --  
22 my investigator never said that there was anything that came of that.

23          Q     Okay.

24          A     That he -- basically that he was told that but the State Bar  
25 never contacted him, never did any kind of formal grievance to Mr. Sanft

1 or anything. So, I don't know where that went, but it didn't -- I don't think  
2 it went anywhere.

3 Q That -- actually happened to be on the date of the -- date of  
4 Defendant's motion to suppress and there was a -- and calendar call  
5 and the calendar call date, everyone announced ready. So, you actually  
6 request a continuance as you'd been preparing for a motion to suppress  
7 and you had not been able to prepare for trial. And I granted a request  
8 to continue the trial date, vacate and I reset it. So, that would have been  
9 on the date of the calendar call. But then we went -- that was July 21<sup>st</sup>  
10 and it went to trial then in September.

11 So, now you had two additional months. Was there anything  
12 in that -- those two months that Mr. Keller represented to you, possibly  
13 dissatisfaction with the fact that the Court kept you on the case and that  
14 you still had the same investigator? Was there anything that he was --  
15 was he doing in those two months that you believe affected this case?

16 A When you say he, you mean my investigator?

17 Q No, Mr. Keller.

18 A He had mentioned, I think, at one point that he was not -- that  
19 he was not going to assist in his -- he was not going to talk to me. He  
20 was not going to help me with my defense --

21 Q Okay.

22 A -- because he was angry about you keeping me on --

23 Q Okay.

24 A -- and so --

25 Q I will note for the record, that on August 22<sup>nd</sup> 2016 that the

1 Defendant has chosen not assist counsel with the case as Defendant  
2 has refused to speak with counsel and his investigator. And Defendant  
3 stated Counsel refused to assist him and needs a new attorney. So, he  
4 made it a position on his own not to speak to you and that continued  
5 throughout, I mean, from that point until trial date?

6 A It did. I believe I -- I went over -- I think there was one other  
7 occasion, maybe two after that, where I physically went over to the jail to  
8 talk with him. One of the times, I took my investigator and Mr. Keller --  
9 we started out talking and then he got a little bit combative so I just  
10 pressed the button, had the officer come get me. And it was not long  
11 after that that I learned of his family hiring Ms. Feliciano because his  
12 mother called me --

13 Q Okay.

14 A -- to inform me of that. And so, it was probably February 2017  
15 when I was contacted by Ms. Feliciano. I took my entire files over to  
16 her, kept obviously what was my work product, but basically took all of  
17 Mr. Keller's file over to her and I did not get it back until that Friday of  
18 calendar call when she wanted to sub in but also continue the trial. So,  
19 that's when I got it back from her.

20 So, I had a weekend -- so that day, not only did I visit with Mr.  
21 Keller at the calendar call, but then later that afternoon after you had  
22 said this is going forward and Mr. Frizzell you're going to do it, yes, I  
23 went over to the jail that afternoon -- on that Friday afternoon to talk with  
24 him.

25 Q Okay.

1           A     And he was still combative about the whole thing. Just talking  
2 about how his parents wasted 15 grand on an attorney that can't come  
3 in as the -- can't come in as counsel.

4           Q     Okay, so as of the September 19<sup>th</sup> date, that was continued  
5 once again and it actually went to trial in March.

6           A     Yes.

7           Q     So, you were told in February of that year of 2017 that that's  
8 when you first learned that Ms. Feliciano was involved -- was --

9           A     Maybe it was the end of January but --

10          Q     Okay.

11          A     -- that's when I was told that she was actually hired.

12          Q     Okay.

13          A     I was told probably in October of 2016 that they were looking  
14 for new counsel.

15          Q     Okay.

16          A     And that was contact from his mother.

17          Q     Okay.

18          A     That was not Mr. Keller.

19          Q     And as of -- you were present though during the time frame  
20 when it was scheduled to go to trial in March when Ms. Feliciano made  
21 an appearance?

22          A     Yes.

23          Q     Okay. And you were here when the Court made the  
24 determination that it was going to trial?

25          A     Yes.

1 Q And I wasn't allowing them to substitute in that late?

2 A Yes.

3 Q Okay. Did Mr. Keller speak to you any further or other than he  
4 was just upset because of the -- they had paid the attorney?

5 A Right.

6 Q And the attorney wasn't able to do it?

7 A Right. That's correct.

8 Q Okay. Now, Mr. Keller has also represented in his petition  
9 and I had some questions about this as well, is what was your thoughts  
10 with respect to -- he's saying he was upset because you never called the  
11 K-9 handler and then there's some issues involving body camera  
12 footage. Tell me about -- what's your recall of that?

13 A Well, regarding the K-9 handler, there wasn't an issue there.  
14 If you'll recall at the suppression hearing --

15 Q Mm-hmm.

16 A -- the other officers were very clear about how they got a  
17 warrant for the K-9. The dog came out and immediately led them to the  
18 glove box because the way they got in the car was there were -- there  
19 was marijuana in plain sight.

20 Q Mm-hmm.

21 A And so then they just kind of did a -- an inventory of the  
22 vehicle there to see if there were more drugs, but they got the -- they got  
23 the warrant for the K-9, K-9 came out, led him to a glove box that had a  
24 hole cut in it and reaching back there, they found -- I think there was a  
25 gun and drugs back there.

1           Q     Mm-hmm.

2           A     And so then they got a further warrant for the search of the  
3     entire vehicle, and of course, then opened the trunk and there was  
4     enough in there to choke a horse.

5           Q     Okay. And with respect to his representation here today  
6     about the body camera?

7           A     When I -- I know that I had spoke with Mr. Dickerson on that  
8     issue. I believe that the review of it that we did have was not -- and not  
9     that Mr. Dickerson can testify to it, but there was nothing in there that  
10    would -- in what we were able to see, that would have helped us.

11          Q     I actually am getting the minutes on that because I made a  
12    record with regards to that so --

13          A     That's fine. But when he's saying that he didn't --

14               MR. KELLER: They never -- they never go to review it, Your  
15    Honor.

16               THE COURT: No, no, I understand. And we had a hearing  
17    on that. So, I wanted to -- we had -- I made a record with regards to that  
18    -- what the parties did. So, I want to make sure that that's part of this so  
19    it's clear.

20               MR. KELLER: Thank you, Your Honor.

21               Well, he testified at the trial --

22               THE COURT: Mr. Keller, Mr. Keller --

23               MR. KELLER: -- we called him in specifically to testify.

24               THE COURT: All right. Hold on, hold on. You'll have an  
25    opportunity to ask Mr. Frizzell any further questions to clarify these

1 issues. But -- at the -- yeah, this was a -- Defendant's motion for  
2 production including potentially exculpatory evidence and the -- this took  
3 place on February 22<sup>nd</sup>, 2017. That Ms. Baraha [phonetic] advised  
4 when this event number is inputted into the database regarding  
5 bodycam information, there was nothing for this event number and the  
6 State has complied with their obligation.

7           So Mr. Keller, there was no body camera footage that they  
8 had access to because nothing was inputted into the database regarding  
9 bodycam footage. So --

10           MR. KELLER: But -- the thing was though is that they --  
11 because at that point, that it automatically erase -- that's why I showed  
12 in open court -- because at like 30 days I told -- I had a article from Las  
13 Vegas Review Journal how the bodycam footage automatically deletes  
14 after 45 days of not being marked.

15           So I had said in open court, at about 30 days, that we need to  
16 get this stuff and then they -- Frizzell and -- they never got it, so they  
17 ended up getting deleted. That's why there wasn't nothing in that event  
18 number for the bodycam for -- because they let it get deleted. But -- so  
19 we had -- you let me call back the officer that wore the body camera  
20 footage -- you let me call him back and he wasn't even in court. We  
21 waited until he came back and you let us talk to him and he said, yes, I  
22 was wearing a bodycam, yes I was running it, and yes I did download it  
23 to the thing, you know.

24           But then since the DA and Mr. Frizzell let it get -- they let it get  
25 deleted and I'm in open court, I was -- I was getting the court minutes -- I



1 was -- I'm in open court at 30 days, standing up in court saying that I  
2 need that because it's going to be deleted at 45 days, because that is a -  
3 - that's one of the most important things to my case, you know. And  
4 that's -- I mean, that's the whole point.

5 THE COURT: Mm-hmm.

6 MR. KELLER: You know, that's where this whole thing -- I got  
7 20 to life.

8 THE COURT: Yup.

9 MR. KELLER: This whole thing, you know, because I couldn't  
10 get -- it's just frustrating, you know?

11 THE COURT: Okay. Mr. Keller --

12 MR. KELLER: That's one of the things -- they had all these  
13 problems with Frizzell.

14 THE COURT: Mr. Keller, you hadn't even had Mr. Frizzell by  
15 that time. You were in -- by -- within 30 days, you were in a lower court  
16 dealing with this --

17 MR. KELLER: Yeah, I had to --

18 THE COURT: Okay, but --

19 MR. KELLER: Yeah, that was when I had that -- that's -- that  
20 attorney that I had had that same investigator and he wasn't -- and then  
21 -- yeah, I didn't get him, but I was in open court asking for it. I told  
22 Frizzell about that and stuff. So --

23 THE COURT: Okay, well I understand what you're saying that  
24 you didn't get, but there wasn't any to have. I don't see -- based on  
25 what was presented previously that there was a prejudice to you

**PLEADING  
CONTINUES  
IN NEXT  
VOLUME**