

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GERMAINE HAMPTON,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Electronically Filed  
Aug 01 2022 12:03 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No. 84360

**RESPONDENT'S APPENDIX**

GERMAIN HAMPTON #1221724  
1200 Prison Rd.  
Lovelock, NV 89419

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

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In Proper Person

Counsel for Respondent

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## **CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 1<sup>st</sup> day of August, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD  
Nevada Attorney General

JOHN T. AFSHAR  
Deputy District Attorney

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

GERMAINE HAMPTON #1221724  
1200 Prison Rd.  
Lovelock, NV 89419

*/s/ J. Hall*

---

Employee, Clark County  
District Attorney's Office

JA/John Taylor/jh

Germaine Hampton 1221724  
Petitioner/In Propria Persona  
Post Office Box 208, SDCC  
Indian Springs, Nevada 89070

FILED  
NOV 22 2021

*Alvin L. Williams*  
CLERK OF COURT

PP DA  
IN THE EIGHTH JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF CLARK

Jermaine Hampton  
Petitioner,  
vs.  
STATE OF NEVADA, et al.  
Eighth Judicial District Court  
Respondent(s).

Case No. **A-21-844463-W**  
Dept. No. **Dept. 21**  
Docket \_\_\_\_\_

PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of corrections, name the warden or head of the institution. If you are not in a specific institution of the department within its custody, name the director of the department of corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction and sentence.

RECEIVED

NOV 22 2021

CLERK OF THE COURT

001

1 Failure to raise all grounds I this petition may preclude you from filing future petitions  
2 challenging your conviction and sentence.

3 (6) You must allege specific facts supporting the claims in the petition you file seeking relief  
4 from any conviction or sentence. Failure to allege specific facts rather than just conclusions may  
5 cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of  
6 counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which  
7 you claim your counsel was ineffective.

8 (7) If your petition challenges the validity of your conviction or sentence, the original and one  
9 copy must be filed with the clerk of the district court for the county in which the conviction  
10 occurred. Petitions raising any other claim must be filed with the clerk of the district court for the  
11 county in which you are incarcerated. One copy must be mailed to the respondent, one copy to the  
12 attorney general's office, and one copy to the district attorney of the county in which you were  
13 convicted or to the original prosecutor if you are challenging your original conviction or sentence.  
14 Copies must conform in all particulars to the original submitted for filing.

### 15 PETITION

16 1. Name of institution and county in which you are presently imprisoned or where and who you  
17 are presently restrained of your liberty: Southern Desert Correctional Complex / CLARK.

18 2. Name the location of court which entered the judgment of conviction under attack: \_\_\_\_\_  
19 Eighth Judicial District Court - Dept XVIII

20 3. Date of judgment of conviction: August 19th, 2019

21 4. Case number: C-17-320368-1

22 5. (a) Length of sentence: Twenty One (21) Years Maximum with a Minimum Parole (3) Yr

23 (b) If sentence is death, state any date upon which execution is scheduled: \_\_\_\_\_

24 6. Are you presently serving a sentence for a conviction other than the conviction under attack in  
25 this motion:

26 Yes \_\_\_\_\_ No ☒ If "Yes", list crime, case number and sentence being served at this time: \_\_\_\_\_

27 7. Nature of offense involved in conviction being challenged: Robbery w/o Deadly

28 Weapon - Conspiracy To Commit Robbery - Stop Required On Signal Of  
Police Officer

- 1 8. What was your plea? (Check one)  
2 (a) Not guilty ☒  
3 (b) Guilty \_\_\_\_\_  
4 (c) Nolo contendere \_\_\_\_\_  
5 9. If you entered a guilty plea to one count of an indictment or information, and a not guilty plea  
6 to another count of an indictment or information, or if a guilty plea was negotiated, give details: \_\_\_\_\_  
7 \_\_\_\_\_  
8 \_\_\_\_\_  
9 10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)  
10 (a) Jury ☒  
11 (b) Judge without a jury \_\_\_\_\_  
12 11. Did you testify at trial? Yes ☒ No \_\_\_\_\_  
13 12. Did you appeal from the judgment of conviction?  
14 Yes ☒ No \_\_\_\_\_  
15 13. If you did appeal, answer the following:  
16 (a) Name of court: Supreme Court Of Nevada  
17 (b) Case number or citation: #79683  
18 (c) Result: Denied  
19 (d) Date of appeal:  
20 (Attach copy of order or decision, if available).  
21 14.) If you did not appeal, explain briefly why you did not: \_\_\_\_\_  
22 \_\_\_\_\_  
23 \_\_\_\_\_  
24 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously  
25 filed any petitions, applications or motions with respect to this judgment in any court, state or  
26 federal? Yes ☒ No ☒  
27  
28

16. If your answer to No 15 was "Yes", give the following information:

(a) (1) Name of court: ~~N/A~~ - Supreme Court Of Nevada

(2) Nature of proceedings: ~~N/A~~ - Motion To Withdraw Counsel and  
Appoint Appellate Counsel

(3) Grounds raised: ~~N/A~~ - Ineffective Assistance Of Counsel

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes \_\_\_ No ☒

(5) Result: ~~N/A~~ - Denied

(6) Date of result: ~~N/A~~ - January 3, 2020

(7) If known, citations of any written opinion or date of orders entered pursuant to each  
result: N/A

(b) As to any second petition, application or motion, give the same information:

(1) Name of Court: ~~N/A~~ District Court

(2) Nature of proceeding: ~~N/A~~ Motion To Reconsider Sentence

(3) Grounds raised: ~~N/A~~ Inaccurate Sentence Info

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes \_\_\_ No ☒

(5) Result: ~~N/A~~ Denied

(6) Date of result: ~~N/A~~ March 30, 2021

(7) If known, citations or any written opinion or date of orders entered pursuant to each  
result: N/A

(c) As to any third or subsequent additional application or motions, give the same  
information as above, list them on a separate sheet and attach.

1 (d) Did you appeal to the highest state or federal court having jurisdiction, the result or action  
2 taken on any petition, application or motion?

3 (1) First petition, application or motion?

4 Yes ☒ No ☒

5 Citation or date of decision: \_\_\_\_\_

6 (2) Second petition, application or motion?

7 Yes ☒ No ☐

8 Citation or date of decision: Active

9 (e) If you did not appeal from the adverse action on any petition, application or motion,  
10 explain briefly why you did not. (You may relate specific facts in response to this question. Your  
11 response may be included on paper which is 8 1/2 x 11 inches attached to the petition. Your response  
12 may not exceed five handwritten or typewritten pages in length). \_\_\_\_\_

13 \_\_\_\_\_  
14 \_\_\_\_\_  
15 17. Has any ground being raised in this petition been previously presented to this or any other  
16 court by way of petition for habeas corpus, motion or application or any other post-conviction  
17 proceeding? If so, identify: NO

18 (a) Which of the grounds is the same: \_\_\_\_\_

19 \_\_\_\_\_  
20 (b) The proceedings in which these grounds were raised: \_\_\_\_\_

21 \_\_\_\_\_  
22 (c) Briefly explain why you are again raising these grounds. (You must relate specific facts  
23 in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches  
24 attached to the petition. Your response may not exceed five handwritten or typewritten pages in  
25 length). \_\_\_\_\_



1 18. If any of the grounds listed in Nos. 23(a), (b), (c), and (d), or listed on any additional pages  
2 you have attached, were not previously presented in any other court, state or federal, list briefly what  
3 grounds were not so presented, and give your reasons for not presenting them. (You must relate  
4 specific facts in response to this question. Your response may be included on paper which is 8 1/2 x  
5 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten  
6 pages in length). \_\_\_\_\_  
7 \_\_\_\_\_

8 19. Are you filing this petition more than one (1) year following the filing of the judgment of  
9 conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay.  
10 (You must relate specific facts in response to this question. Your response may be included on  
11 paper which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five  
12 handwritten or typewritten pages in length). NO  
13 \_\_\_\_\_  
14 \_\_\_\_\_

15 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the  
16 judgment under attack?

17 Yes ☒ No ☒

18 If "Yes", state what court and the case number: Nebraska - Supreme Court - # 82847  
19 \_\_\_\_\_

20 21. Give the name of each attorney who represented you in the proceeding resulting in your  
21 conviction and on direct appeal: Roy Nelson - Carl Arnold - Jennifer Walden -  
22 Amanda Gregory  
23 \_\_\_\_\_

24 22. Do you have any future sentences to serve after you complete the sentence imposed by the  
25 judgment under attack?

26 Yes \_\_\_\_\_ No ☒ If "Yes", specify where and when it is to be served, if you know: \_\_\_\_\_  
27 \_\_\_\_\_  
28 \_\_\_\_\_

Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

Petitioner's United States Six Amendment

Constitutional Right to effective assistance of Counsel was violated  
As well As Nevada's Constitution Article 1 § 8

(a) SUPPORTING FACTS (Tell your story briefly without citing cases or law): On  
January 4th 2017 Germaine Hampton (AKA Jermaine Hampton)  
was charged by way of information as follows: Count 1- Robbery  
Category B Felony - NRS 200.380) and Count 2 - Conspiracy to Commit  
Robbery (Category B Felony - NRS 200.380, 199.480). On January 10<sup>th</sup>  
2017 the state filed an Amended Information Defendant was charged  
as follows: Count 1 - Conspiracy To Commit Robbery (Category B  
Felony - NRS 200.380 199. 480); Count 2 - Robbery With The Use  
Of A Deadly Weapon (Category B Felony - NRS 200.380. 193.165);  
and Count 3- Stop Required On Signal Of Police Officer (Category  
B Felony - NRS 484B.550. 3b) In December of 2016 Counselor  
Amanda Gregory was initially appointed petitioner's Counsel. In  
January of 2017, Counselor Gregory was dismissed as petitioner's  
Counselor and Roy L. Nelson III was retained by petitioner.  
Due to Counselor Gregory's ill- advising petitioner to discuss mat-  
ters (Concerning the case) over the phone while petitioner was in  
the common area of North Vegas Correctional Center (NVC)  
rather than sending an investigator to the jail or visiting pet-  
itioner at the jail herself to discuss his side of the story.  
On March 23<sup>rd</sup> 2017 Carl E. Arnold was retained as petition-  
er's Attorney. He remained on the case until September 25<sup>th</sup>

2018.

## ARGUMENT

In reviewing ineffective assistance of Counsel Claims, Courts review de novo whether Counsel's performance was legally deficient and whether any deficiencies prejudiced the defendant. *United States Of America v. Cook*, 45 F.3d 388.

Petitioner Hampton contends that he was denied the effective assistance of Counsel before and during trial. The question of whether a defendant has received ineffective assistance of Counsel at trial in violation of U.S. Const. amend. VI is a mixed question of law and fact and is thus subject to independent review. *State of Nevada v. RICHARD EDWARD LOVE* 865 P.2d 322. The Sixth Amendment right to Counsel is the right to effective assistance of Counsel. This right is driven by the rationale that the effective assistance of Counsel is necessary to safeguard the right to a fair trial: The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by Counsel. *Fisher v. Gibson*, 282 F.3d 1283 (10th Cir. 2002) In representing a Criminal defendant Counsel owes the client a duty of loyalty a duty to avoid conflicts of interest, a duty to advocate the defendant's cause, a duty to consult with the defendant on important decisions, a duty to keep defendant informed of important developments in the course of the prosecution and a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process. *Strickland v. Washington* 466 U.S. 668. The right to effective assistance of Counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial and absent some effect of challenged conduct on the reliability of the trial process

INEFFECTIVE ASSISTANCE OF COUNSEL DENIED  
PETITIONER OF A FAIR TRIAL:

Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

(a) GROUND ONE: PETITIONER'S UNITED STATES SIXTH  
AMENDMENT CONSTITUTIONAL RIGHT TO EFFECTIVE  
ASSISTANCE OF COUNSEL WAS VIOLATED AS WELL AS NEVADA'S  
CONSTITUTION ARTICLE 1 § 8

ONE: (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law): ONE:  
TRIAL COUNSEL NEVER VISITED WITH PETITIONER BEFORE, DURING OR  
AFTER TRIAL:

Petitioner's appointed Counsel Amanda Gregory and Jennifer Waldo  
never visited with petitioner they never answered petitioner's calls  
or responded to his letters. Petitioner Complained of Counsel's  
failure to Communicate with him. They failed to file any mot-  
ions, refused to speak with petitioner's family and failed to  
return any phone calls made by petitioner or his family. They  
failed to respond to multiple letters petitioner mailed to them  
which petitioner have copies of many letters that he mailed. Pet-  
itioner deemed that Counselors Gregory and Waldo were not  
assisting him mainly because he was unable to speak with them  
about possible defenses.

TWO: DURING DAY TWO OF TRIAL COUNSEL PROVIDED PETITIONER  
WITH A FABRICATED TESTIMONY TO PRESENT AS HIS DEFENSE  
MINUTES BEFORE HE WAS TO TAKE THE STAND IN HIS DEFENSE:

Petitioner's Counsel advised him to lie under oath, testifying  
that his Co-Defendant held him at gunpoint forcing him to  
participate in the alleged crimes. The Co-Defendant's

1 Pled of guilt moved Trial Counsel to present petitioner with a  
2 fraudulent untimely defense. Although Counsel must take all  
3 reasonable lawful means to attain the objectives of the client.  
4 Counselor is precluded from taking steps or in any way assist-  
5 ing the client in presenting false evidence or other wise violate  
6 the law.

7 NEVADA RULES OF PROFESSIONAL CONDUCT - RULE 2 SUBSECTION (d)

8 STATES:

9 A Lawyer Shall Not Counsel a client to engage, or assist a client  
10 in conduct that the Lawyer knows is Criminal or fraudulent  
11 but a Lawyer may discuss the legal consequences of any pro-  
12 posed course of conduct with a client and may counsel or ass-  
13 ist a client to make a good faith effort to determine the va-  
14 lidity, scope, meaning or application of the law.

15  
16 Three: COUNSEL GAVE CO-DEFENDANT'S ATTORNEY PETITIONER'S  
TELEPHONE NUMBER WITHOUT PETITIONER'S CONSENT:

17 Petitioner's Counsel gave his personal telephone number to petition-  
18 er's Co-Defendant's Attorney ostensibly for him to attempt to  
19 Coerce petitioner to accept the prosecutor's plea offer.

20 NEVADA RULES OF PROFESSIONAL CONDUCT RULE 6 SUBSECTION (a) states:

21 A Lawyer Shall not reveal information relating to representation of  
22 a client gives informed consent.

23  
24 Four: COUNSELOR'S FAILED TO OBJECT TO PROSECUTOR'S DISPARA-  
GING REMARKS ABOUT PETITIONER:

25  
26 Counsel for petitioner failed to object the disparaging remarks  
27 made by the prosecutor; in fact Counsel asked the trial judge  
28 if she could participate in disparaging petitioner. SEE EXHIBIT [B]  
pg. three lines 3-4

1 Counselor asked the trial judge Could she make facial expressions  
2 and gestures in support of the Prosecutor's disparaging remarks  
3 towards Petitioner, Trial Judge responded, "It's not Video. So  
4 yes you're good." SEE EXHIBIT [A] pg. two lines 20-21 SEE  
5 ALSO EXHIBIT [H] pg. Eight lines 20-23.-CALENDAR CALL TRANS. FROM MAY  
6 21ST 2019.

7 Mr. Hampton need not make a Showing that his request for replace-  
8 ment Counsel was inadequate in order to establish prejudice.  
9 Prejudice Can result from Government influence which destr-  
10 oys the Confidence in his Attorney.

11  
12 Five: DURING TRIAL COUNSEL FAILED TO TIMELY OBJECT TO THE  
13 PROSECUTIONS IMPROPER ACCUSATIONS AND MISCONDUCT:

14 During Trial Counsel failed to timely object to the Prosecutor's  
15 assertion that Russell was Petitioner's Co-Conspirator.  
16 The first instance where this occurred was during the Prosecu-  
17 tor's Opening Statement. SEE EXHIBIT [K] pg. Eighteen line 21 and  
18 pg. Nineteen line 18. The Second instance was during the Prosecu-  
19 tor's ~~An~~ Cross- Examination of Quintanar SEE EXHIBIT [L] pg.  
20 Twenty-Nine line 8. And the third instance was during Prosecutor's  
21 Cross-Examination of Detective Morton SEE EXHIBIT [M] pg.  
22 One Hundred-Twenty four line 3. SEE EXHIBIT [V] LINES 1-8

23  
24 Six: COUNSEL FAILED TO OBJECT TO TRIAL JUDGE'S MISCONDUCT  
25 AND FAILURE TO ABIDE BY NEUTRALITY REQUIREMENT:

26 Petitioner contends that he was denied effective Assistance  
27 of Counsel in that Counsel tolerated without comment nor  
28 objection to the improper and prejudicial remarks and Mannerisms

1 on the part of the trial judge. Petitioner alleges under pen-  
2 alty of perjury that during trial. "The Trial Judge would look  
3 at the jury and make faces, Shake her head in disbelief,  
4 look at the ceiling... use obvious gestures and mannerisms  
5 while Petitioner was testifying, Conveying the impression to  
6 the jury that petitioner should not be believed. SEE JAVS  
7 from DAY TWO of Trial. [PETITIONER'S TESTIMONY]

8  
9 Seven: APPOINTED COUNSEL GREGORY AND WALDO FAILED TO INVESTIGATE ANY REASONABLE LINES OF DEFENSE:

10  
11 Counsel repeatedly Subjected Petitioner to Coerce Language in  
12 they're attempt to persuade Petitioner to accept the State's Plea  
13 Deal, instead of preparing for trial. They abandoned their loyalty  
14 to petitioner and appeared to join the Prosecutor in his effort to  
15 obtain a Conviction. Coupled with their attempt to Coerce Petitioner  
16 to accept the Plea Deal. Counsel failed to Conduct a adequate  
17 Pre-Trial Investigation or to take any action to develop  
18 mitigating evidence, e.g. Counsel for Petitioner failed to bring to  
19 the trial and Sentencing Court's attention that petitioner had ~~only~~  
20 been accused of a NON-VIOLENT CRIME (Trafficking Marijuana)  
21 in the past ten years. Counsel for Petitioner failed to  
22 Conduct a thorough pre-trial investigation when they did not  
23 employ an investigator to prepare a defense for trial, nor  
24 did they meet or Confer with Petitioner about any Pre-Trial  
25 Strategy. Instead Petitioner's Counsel answered ready for trial  
26 without utilizing any of these Common methods.

1 EIGHT: TRIAL COUNSEL FAILED TO INVESTIGATE ALIBI WITNESS:

2 Petitioner advised Counsel to Call and/or visit a Client that  
3 Petitioner was installing Camera's for the night of the allege  
4 incident. Had this witness been Contacted his testimony wo-  
5 uld have established that Petitioner had no reason to go out  
6 and rob anyone. This witness was prepared to testify that  
7 Petitioner had been at his establishment [A RESTAURANT] for three  
8 (3) days and upon completion of this installment of the  
9 Camera's Petitioner stood to receive \$3,500 ~~xx~~. This Witness'  
10 testimony would have also established that Petitioner was allowed  
11 direct access to the owners office where bundles of Cash  
12 was accessible. Petitioner also advised his Counsel of another  
13 witness who is the owner of a Jewelry Store and had this  
14 witness been Called to testify as Petitioner's alibi witness  
15 jury would have learned that if Petitioner wanted to Commit  
16 a robbery he had easy access to much more than he was acc-  
17 used of taking.

18 It was unreasonable of Counsel for Petitioner not to make  
19 some effort to interview all these potential alibi witness-  
20 es to ascertain whether their testimony would aid Petitioner's  
21 alibi defense. Lawrence v. Armontrout 900 F.2d 127 (CA3  
22 1990).

23  
24 NINE: DURING TRIAL COUNSEL FAILED TO OBJECT TO THE PROSECUTOR'S  
25 INTRODUCTION OF MISINFORMATION CONCERNING EVIDENCE:

26  
27 Prosecutor repeatedly argued before the jury that there were  
28 two (2) guns used during the Commission of the alleged



1 Crime. Evidence had already established that there was only  
2 one gun. The Prosecutor argued this misleading fact during  
3 opening as well as Closing argument, and Counsel failed to object  
4 at either instance this occurred. During Sentencing Phase, the  
5 Prosecutor argued that the victim was robbed at two gun points  
6 and if the Defendant cared for his family then he would not have  
7 been out robbing people with guns. As the jury rendered a verdict  
8 of robbery without the use of a Deadly Weapon Counsel failed to  
9 object to the Prosecutor's arguing her Personal Beliefs. The  
10 Judge stated at Sentencing "You and your Co-Defendant are  
11 pulling guns and threatening to shoot him." SEE EXHIBIT [C] <sup>[D]</sup>  
12 pg. five lines 13-21, also SEE EXHIBIT <sup>[D]</sup> page fifteen lines 17-18.  
13 SENTENCING TRANSCRIPTS AUGUST 15<sup>th</sup> 2019. Counsel failed to object  
14 to the Prosecutor as well as the judge injecting their Personal  
15 beliefs before they requested and imposed the Maximum Sent-  
16 ence on all Counts to run Consecutive, based on Speculation  
17 and unfounded allegations. Petitioner asserts that his Counsel was  
18 ineffective for failing to object to the untrue allegations.

19  
20 ~~LEN:~~ ATTORNEY-CLIENT CONFLICT DENIED PETITIONER A FAIR TRIAL:

21  
22 In January 2017, Petitioner moved to dismiss Counselor's  
23 Amanda Gregory and Jennifer Waldo from his Case, because  
24 Petitioner felt that their performance was deficient e.g. they  
25 failed to investigate, lack of Communication and Constantly  
26 pressuring Petitioner to take a Plea Deal. In September 2013  
27 Prosecutor Hetty Wong elected to assign Ms. Gregory and Ms.  
28 Waldo back to the Case when Conflict between these two

Counselors and Petitioner had already displayed. Petitioner alleges that Counselor Gregory used verbally abusive language telling Petitioner to "Shut The Fuck Up. All this because Petitioner stated to her that he was going to represent himself at trial. Petitioner has filed Several Motions alleging Counsel's Conduct and performance was unprofessional as well as deficient to the American Bar Association. District Court as well as the Nevada Supreme Court. However the American Bar Association and both the Lower District Court and Nevada's Supreme Court found that there was no Conflict eventhough Counsel for Petitioner stated within the record that Ms. Gregory and Ms. Waldo (both Counselors for Petitioner) had a very Contentious relationship. SEE EXHIBIT [G] pg. Three lines 21-22 Counsel also stated " I Think Part of It, The Big Conflict That Happened." SEE EXHIBIT [G] pg. Four lines 7-8 of The Foretta Convass Held On May 30<sup>th</sup> 2019. So basically Petitioner's Counselor Confirmed that her and Petitioner had "Big" Conflict. Ms. Gregory and Ms Waldo were assigned Petitioner's case January 2016 and was removed from the case in February and then reassigned on September 30<sup>th</sup> 2018. Petitioner would specifically like to note that the entire period of pro forma representation was rife with conflict and very Contentious and if not found upon petitioner's allegations, it should be proven by Counsel's own admissions.

Eleven: APPELLATE COUNSEL WAS INEFFECTIVE THE SAME AS TRIAL COUNSEL:

Petitioner Germaine Hampton Claims an Actual Conflict of interest

1 in that the Counselor's who represented him at trial also represent-  
2 ed him on Direct Appeal. Being that trial Counsel was ineffective  
3 and there was a Contentious relationship with a total breakdown in  
4 Communication, Appellate Counsel Cannot be anything else but in  
5 Conflict with Petitioner and render ineffective assistance of  
6 Appellate Counselor because an Appellate Attorney Cannot or Will not  
7 effectively or even properly argue that they were ineffective  
8 or had a Conflict with their Client at trial.

11 Twelve: FAILURE TO SUBPOENA DASHCAM FOOTAGE ON FAILURE TO STOP  
12 REQUIRED BY AN OFFICER: WAS INEFFECTIVE ASSISTANT

14 Trial Counsel's failure to subpoena Dash-Cam Video was prejudicial  
15 and an inadequate investigation that could not have been seen as a  
16 Trial Strategy. The failure to develop strategy of said consequence  
17 and absenting themselves from this crucial portion of the trial. Had  
18 Counsel subpoenaed the Dash-Cam footage it would have revealed  
19 that Petitioner stopped at all red-lights and was not in a hot pursuit,  
20 proving to jurors that this alleged crime was not committed as charged.  
21 The Sentencing Judge even imposed a harsher sentence based on  
22 the statement of detectives rather than the physical evidence  
23 that was available. Here it is evident that Ms. Gregory and Ms Wal-  
24 do did not have a strategy of pointing to holes in the evidence  
25 or trying to create reasonable doubt in the jurors minds.

27 Thirteen: COUNSEL FOR PETITIONER FAILURE TO SUBPOENA DASH-CAM  
28 VIDEO ASSISTED PROSECUTOR IN COMMITTING A BRADY VIOLATION

1 BY WITHHOLDING EVIDENCE PERTINENT TO ESTABLISHING PETITIONER'S  
2 INNOCENCE:

3 A Brady violation occurs when: (1) Evidence is favorable  
4 to the accused because it is exculpatory or impeaching; (2) Evi-  
5 dence was suppressed by the State, either willfully or inadver-  
6 tently; and (3) Prejudice ensued. In U.S. V. Bagley the Court  
7 held that the Government's duty under Brady arises regardless  
8 of whether the Petitioner specifically requests material or favor-  
9 able evidence.

10  
11 FOURTEEN: APPELLATE COUNSEL FAILED TO INCLUDE COPIES OF  
12 TRANSCRIPTS FOR THE COURT'S REVIEW:

13  
14 Appellate Counsel failed to include a transcript of the sealed hearing  
15 for the Court's review. When Counsel for the Appellate Appellant  
16 fails to include necessary documentation in the record the Court  
17 will necessarily presume that the missing portion supports the District  
18 Court's decision..." Under Greene v. State 612 P.2d 636 "Copies of  
19 all transcripts that are necessary to the ... review of the issues  
20 presented on Appeal shall be included in the Appendix. Therefore,  
21 Appellate Counsel not including the sealed transcripts for review,  
22 Counsel's choice of issues for appeal fell below an objective stand-  
23 ard of reasonableness. SEE EXHIBIT [J] pg. 24 SEE EXHIBIT [V] LINES 2-6

24  
25 FIFTEEN: MULTIPLE CUMULATIVE ERRORS CONSTITUTED INEFFECTIVE  
26 ASSISTANCE:

27  
28 Although Petitioner has addressed the above errors individually

1 it is of the utmost importance that the Court considers them  
2 within the context of Counsel's overall performance and in view  
3 of all the facts contained in the record. Cumulative prejudice  
4 from trial Counsel's deviances may amount to sufficient grounds  
5 for a finding of ineffectiveness of Counsel... See e.g. Harris v.  
6 Wood 64 F.3d 1432 (9th Cir 1992) Petitioner contends further that  
7 even if none of his Attorney's errors were sufficiently prejud-  
8 icial to require habeas relief, the cumulative impact of these errors  
9 requires a finding of ineffective assistance of Counsel. SEE Harris v.  
10 Housewright. 697 F.2d 202 (8th Cir 1982)

11  
12 Sixteen: Trial Counsel failed to timely object to the Prosecutor's  
13 Misconduct

14  
15 Trial Counsel failure to object to the multiple references the  
16 petitioner was the Co-conspirator in the alleged crime, moved  
17 the Court of Appeals to oppose the claim of prosecutorial mis-  
18 conduct and from overturning the jury's verdict based on cumula-  
19 tive errors. Had Counsel been effective and attentive during trial  
20 the ruling of the Court of Appeals would have been different  
21 on Direct Appeal. Petitioner submits that due to the Client/Attor-  
22 new Conflict, that his Counsel conspired with the State, allowing  
23 the Co-conspirator reference to be embedded in the minds of  
24 the jurors wherefore there are no instructions that could poss-  
25 ibly remove the Co-conspirator allegations from the jurors minds.  
26 Petitioner submits that his appeal would have been overturned had  
27 his Counsel made timely objections to the prosecutor's misconduct.  
28 The Court of Appeals has made note in their affirmation that

1 was clearly ineffective for failing to timely object during petit-  
2 ioner's trial [SEE EXHIBIT U lines 1-15]

3  
4 Seventeen: APPELLATE COUNSEL FAILED TO ARGUE THE IMPALPABLE  
5 IMPALPABLE SENTENCE IMPOSED ON PETITIONER  
6 ON DIRECT APPEAL

7  
8 Petitioner submits that the verdict of robbery without a deadly  
9 weapon, clearly states that petitioner "DID NOT" POSSESS "a firearm  
10 or any weapon during this alleged robbery. However on direct  
11 appeal, appellate Counsel failed to argue that petitioner was  
12 sentenced on inaccurate information and impalpable evidence,  
13 due to the sentencing judge and state prosecutor positioning a fire-  
14 arm in petitioner's hand collectively in the recommendation and  
15 imposition of the maximum-consecutive sentence. [SEE EXHIBIT  
16 C lines 12-21 and EXHIBIT D lines 17-19]

17  
18 Eighteen: TRIAL COUNSEL FAILED TO OBJECT DURING THE STATE'S  
19 REBUTTAL CLOSING ARGUMENT TO THE PROSECUTOR'S  
20 MISCONDUCT

21  
22 Trial Counsel's performance fell extremely below the standards,  
23 for there is no strategy that warrants a lack of objections.  
24 Due to Counsel's failure to object to the state's rebuttal clos-  
25 ing argument, the Court of Appeals review of the record did  
26 not reveal plain error. See [EXHIBIT:U] LINES 1-8, SEE EXHIBIT [T] FOOTNOTES

1 Nineteen: TRIAL COUNSEL FAILED TO OBJECT TO JUDICIAL  
2 MISCONDUCT DURING PETITIONER'S SENTENCING  
3

4 On August 15<sup>th</sup> 2019 at petitioner's sentencing judge Holthus  
5 collectively with the imposition of sentencing petitioner stated,  
6 "You and Your Co-Defendant are pulling guns and threatening to  
7 shoot him." However, petitioner suffered through a four (4) day  
8 trial in which the twelve (12) triers of fact rendered a verdict  
9 of Robbery "WITHOUT" a deadly weapon. Unwarrantingly the judge  
10 clearly sentenced petitioner based on personal beliefs, untrue allegations  
11 as well as inaccurate information. Had petitioner's Counsel objected  
12 to this line of verbiage and conduct, the results of the sentence  
13 may have been different. Therefore petitioner submits that Counsel  
14 was ineffective for failing to object to the judicial misconduct.  
15 [SEE EXHIBIT D] lines 17 thru 19

16 Twenty: APPELLATE COUNSEL FAILED TO ARGUE ON DIRECT APPEAL  
17 THE NOT GUILTY VERDICT OF THE SUBSEQUENT CHARGE THE  
18 SENTENCING JUDGE CONSIDERED AT PETITIONER'S SENTENCE  
19

20 Petitioner submits that on June 8<sup>th</sup> 2019, he was unlawfully charged  
21 with ex-felon in possession of a fire-arm. Petitioner proceeded  
22 to trial in proper person on November 12<sup>th</sup> thru the 14<sup>th</sup> 2019, in  
23 which the 12 triers of facts rendered a verdict of "NOT GUILTY."  
24 At sentencing August 15<sup>th</sup> 2019 judge Holthus stated, "I will consider  
25 that he picked up an ex-felon in possession of a fire-arm  
26 charge," in the rendering of her sentence. Petitioner advised Counsel  
27 via letter to argue the above claim on Direct Appeal. However Counsel  
28 failed to raise said argument on Direct Appeal. Counsel also

1 failed to file a Motion to correct the palpable sentence. Petitioner  
2 submits that Counsel was completely ineffective during this phase  
3 of representation. SEE EXHIBIT

4  
5 Twenty One: PETITIONER HAS MET THE TWO PRONG TEST REQUIRED  
6 IN STRICKLAND

7  
8 Petitioner Hampton has prevailed on his claim of ineffective assistance  
9 of Counsel and has proven in the above arguments that he clearly  
10 was denied "Reasonable Effective Assistance" of Counsel. Petitioner has  
11 shown unequivocally that his Counsel's representation fell below an  
12 objective standard of reasonableness and secondly that but for Coun-  
13 sel's errors there is a reasonable possibility that the results of the  
14 proceeding would have been different. STRICKLAND. Petitioner has  
15 demonstrated by a preponderance of the evidence that Counsel  
16 was ineffective. It is clear that trial Counselor has not demon-  
17 strated immediate and ultimate responsibility when charged with de-  
18 ciding when to object, which witnesses if (and in this case  
19 was available to call) and what defenses to develop. It is evi-  
20 dent that petitioner's Counsel failed in their responsibility to utilize any  
21 of these vital methods. Based on Strickland, the role of the Court in  
22 considering allegations of ineffective assistance of Counsel is "not to pass  
23 upon the merits of the action not taken, but to determine whether  
24 under the particular facts and circumstances of the case Trial Coun-  
25 sel failed to render reasonable effective assistance." Petitioner sub-  
26 mits that had Counsel conducted an adequate investigation, prepared  
27 a legal and sufficient defense for trial, communicated with petitioner  
28 about trial strategies, made reasonable and timely objections to the



1 prosecutor's misconduct, made an objection to the trial judge's  
2 misconduct, produced the Sealed hearing for Appellate Court to review  
3 objected to the palpable sentencing information that the results  
4 of the sentence, Direct Appeal and verdict at trial would have been different.  
5 In essence, the Court must judge the reasonableness of Counsel's  
6 challenged conduct on the facts of the particular case viewed as of  
7 the time of Counsel's conduct. Furthermore petitioner's claims of  
8 ineffective assistance of Counsel asserted in this petition for PDST  
9 CONVICTION RELIEF has been supported with specific factual allegations  
10 and if true shall entitle the petitioner to relief. Petitioner has clear-  
11 ly demonstrated in the above factual allegations that but for Counsel's  
12 errors, the result of the trial would have been different Strickland  
13 has been satisfied.

#### 14 15 Twenty-Two: INADEQUATE TIME SPENT CONSULTING WITH 16 DEFENDANT / PETITIONER

17  
18 Trial Counsel failed to consult or meet with petitioner be-  
19 fore, during and after trial, with the exception of the judge  
20 ordering Counsel to meet with petitioner because they answered  
21 ready for trial without once meeting or consulting with petition-  
22 er about strategies or defenses. The time spent with Counsel  
23 was coerced and intimidated petitioner not to proceed to trial  
24 pro'se because most defendants receive the maximum sentence  
25 and the meetings did not consist of any strategies or defense.  
26 therefore the two (2) meetings one week before trial was to start  
27 was in fact inadequate. Because of the brief consultation and  
28 limited subjects covered Counsels Gregory and Waldo was inade-

1 quotely prepared and unable to make a reasonable decision in petition-  
2 er testifying and/or which alibi witnesses to call.

3 The Sixth Amendment guarantees more than a pro forma encounter  
4 (done as a matter of form) between the accused and his Counsel,  
5 and six minutes of consultations spread over several brief meetings  
6 do not satisfy its requirements.

7  
8 Twenty-Three: COUNSEL FAILED TO FILE A MERITORIOUS MOTION  
9 TO SUPPRESS PETITIONER'S STATEMENT

10  
11 During interrogation the police officers told Mr. Hampton... that they  
12 "would go to bat for him and try to get him home with his family as  
13 long as he told the truth," to which Mr. Hampton responded: "Who  
14 makes the decision to relieve me," and officers said "The Prosecutor."  
15 Mr. Hampton proceeded to give a statement on how he gave co-  
16 defendant a ride and had absolutely no idea that there was a robb-  
17 ery being committed. Counsel's failure to file a meritorious Mot-  
18 ion To Suppress Mr. Hampton's statement fell below an objective st-  
19 andard of reasonableness and thus constituted deficient Performance.  
20 this error was of great magnitude that it should be concluded that  
21 Counsel's performance was Constitutionally deficient within the  
22 meaning of "Strickland."

23  
24 Twenty-Four: COUNSEL FAILED TO OBJECT TO THE STATE SHOWING REARRANGED  
25 PHOTOS OF MISPLACED ITEMS

26  
27 Petitioner submits that during the State's argument, trial Counsel failed  
28 to object to the re-arranged photos that the State showed the jury.

1 The victim's items were placed directly behind petitioner or on or  
2 around the drivers seat. Petitioner advised Counsel during trial  
3 that these are not the photos from the actual stop, but the photos  
4 that were moved by the detectives for review. Counsel disregarded  
5 petitioner's request and allowed the state to proceed with the show-  
6 ing of the misrepresented photos. Counselor's Failure to object  
7 fell below an objective standard of reasonableness.

#### 8 9 Twenty-Five: TRIAL ATTORNEY ACCEPTED STATE'S VERSION OF 10 THE FACTS

11  
12 Trial attorney's (Gregory and Waldo) provided profunatory  
13 representation appearing in court by petitioner Hampton's side.  
14 Beyond that, they ignored their duty as Mr. Hampton's advocate.  
15 Counselors investigation of the case consisted of reviewing  
16 the investigative file of the prosecuting attorney.  
17 The file included a statement purportedly made by peti-  
18 tioner Hampton in which he conceded he had absolutely  
19 no knowledge that a robbery had occurred. Here Counselors  
20 for Mr. Hampton did not interview the victim to assess his  
21 version of the facts, nor did these Counselors interview the po-  
22 lice officers that documented these statements of petitioner.  
23 Trial Counselors also stated to petitioner that his testimony is  
24 their only defense, after petitioner refused this unlawful defense  
25 these Counselors proposed (advising petitioner to lie under oath).  
26 Counselors apparent willingness, to accept the Government's  
27 version of the fact at least cause into question the adequacy  
28 of their representation. Petitioner submits that there is rea-

sonable probability that Counselors failure to object to the prosecutor's Misconduct. improper Statements and misrepresentation of evidence was in fact based on their acceptance of the state's version of the facts.

#### Twenty-Six: Counselor's Represented Conflicting Interest

Petitioner submits that on February 8th 2017, Petitioner withdrew both Gregory and Waldo as his Counselors by reason of Conflict, lack of Communication and pressuring petitioner to accept an unacceptable deal. The District Attorney Ms. Hetty Wong reappointed these Conflicting Counselors to proceed to trial with Mr. Hampton. Counselors Gregory and Waldo failed to advise the trial Court that there was a Conflict of interest which prejudiced petitioner Hampton and denied him a fair trial. Petitioner submits that the conflict of interest adversely affected his Counselors performance. Petitioner is entitled to a presumption of if he can prove that his lawyer actively represented conflicting interest. Herein, petitioner has succeeded on his claim of ineffective Assistance due to conflict and should not be waived, because petitioner did not willfully proceed to trial instead he was coerced through fear and intimidation to proceed to trial with Conflicting Counselors. Conflict between Mr. Hampton's interest and trial Counselors allegations that Counsel chose a course of action which furthered their interest and diminished petitioner's Counselors Gregory and Waldo announced ready for trial without meeting or ever consulting with petitioner about any trial strategies or defenses. Therefore, proving that Conflicting interest

1 was not to abide by the Sixth Amendment to be loyal, to ad-  
2 vocate the defendant's cause, to consult with defendant  
3 on important decisions and to bring to bear such skill and know-  
4 ledge that would render the trial a reliable adversarial test-  
5 ing process.

1 (b) GROUND TWO: JUDICIAL MISCONDUCT IN VIOLATION OF  
2 THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED  
3 STATES CONSTITUTION:

4  
5 ONE: (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): THE  
6 TRIAL COURT FAILED TO ADEQUATELY INQUIRE INTO ATTORNEY -  
7 CLIENT CONFLICT:

8  
9 Petitioner raised a Substantial Complaint before trial regard-  
10 ing defense attorney's conflict of interest and divided Loy-  
11 alties.

12 On May 30th 2019 Defense Counsel Waldo announced on  
13 record "Your Honor is fully aware that we've had a very  
14 Contentious relationship with this Client (Hampton) up until bas-  
15 ically the end of last week... SEE EXHIBIT [G] pg. 3 lines 21-22  
16 And also, defense Counselor Waldo stated further into the record,  
17 "Okay, it's just -- I think part of it, the big Conflict that happened  
18 ... SEE EXHIBIT [G] pg. Four lines 7-8).

19 The trial judge failed to adequately inquire into the conflict, in-  
20 stead, she had an ex-parte hearing, off the record pressuring  
21 Petitioner through Coercion and fear to proceed to trial with  
22 conflicting Counsel.

23 The Supreme Court has been absolutely clear that the Court  
24 must make a thorough inquiry into the factual basis for the Pet-  
25 ititioner's complaint. Hollyway v. Arkansas, 435 U.S. 475  
26 98 S.Ct. 1173. (1978) That inquiry should be on record and  
27 must be of the kind to ease the Petitioner's dissatisfaction  
28 distrust or concern. SEE Smith, 923 F.3d at 1320). If the

## ADDITIONAL FACTS OF THE CASE:

1 trial Court fails to make a sufficient inquiry prejudice is  
2 presumed and reversal is automatic.

3  
4 TWO: THE JUDGE'S BEHAVIOR WAS PARTIAL AND PREJUDICED  
5 AND DENIED PETITIONER A FAIR TRIAL AND DUE PROCESS:

6  
7 Petitioner alleges under penalties of perjury, that during trial  
8 the trial judge would look at the jury and make faces, shake  
9 her head in disbelief, deliberately displaying emotions for effect.  
10 Looking at the ceiling... Use obvious gestures and mannerisms  
11 whenever defense witnesses testified conveying the impression to  
12 the jury that the Defense witness should not be believed, SEE  
13 Porcara v. United States 784 F.2d 38 (1986) also SEE: JAVS DAY

14 TWO- DEFENDANT'S TESTIMONY:

15 The Due Process Clause entitles a person to an impartial and  
16 disinterested tribunal in both Civil and Criminal Cases.

17  
18 THREE: SENTENCING JUDGE VIOLATED HAMPTON'S DUE PROCESS  
19 RIGHTS SENTENCING HIM USING INACCURATE INFORMATION:

20  
21 Petitioner suffered through a Four (4) day trial where the  
22 triers-of-facts rendered a verdict of Guilty of Robbery but With-  
23 out A Deadly Weapon. However at the Sentencing phase  
24 Judge Holthus Stated: "And how scary it is, you and your  
25 Co-Defendant are pulling guns and threatening to shoot him  
26 and threatening to shoot him and taking his stuff. SEE EXHIB.

27 [D] pg. Fifteen, lines 17-19

28 The triers of fact deliberated and ruled, that there was no

1 Weapon in the Commission of the alleged offenses against  
2 the victim. So for the Judge to state: "The Petitioner  
3 was pulling guns, threatening to shoot the victim, undoubtedly  
4 reveals that the Sentencing judge acted in the capacity as  
5 both an advocate and Witness for the Prosecution instead of  
6 an impartial and disinterested arbiter Sentencing the Petitioner  
7 based on her personal beliefs rather than the facts and evidence.  
8 A Defendant has a Due Process Right to be sentenced based on  
9 Accurate information and the threshold for Accuracy is whether  
10 the information has sufficient indicia of reliability to support  
11 it's probable accuracy. U.S. v. Pulley, 601 F.3d 660-65 (7th Cir 2012)  
12 In the instant case, the District Court did not Satisfy this RULE  
13 32 Obligation (SEE FEDERAL RULES CRIMINAL PROCEDURE RULE 32)  
14 Instead, She relied on her own Personal Beliefs and untrue inform-  
15 ation in her imposition of Sentencing the Petitioner.  
16 When rendering a sentence the District Court must make an  
17 individualized assessment based on the facts presented Id. at  
18 Gall 128 S.Ct. at 597  
19  
20 Four: JUDGE SHOWED PARTIAL AND INTERESTED TRIBUNAL  
21 WHICH VIOLATED DEFENDANT'S DUE PROCESS:  
22  
23 During Calendar Call May 21st 2019 Petitioner alleges that the  
24 court was predisposed and bias displaying her Personal  
25 Views against or towards petitioner. The Court stated  
26 "I don't like ~~your~~ or his attitude necessarily but okay let's  
27 -- let's push it to Thursday." SEE EXHIBIT [E] pg. 10 lines 21-  
28 22. The Court also stated ~~Page~~ -- "Excuse me, nobody interrupted



1 you when you talked. "I can see your attitude right now,  
2 and I can see why you're not getting along with any of your  
3 attorneys." SEE EXHIBIT [F] pg. fourteen lines 5-7

4 The neutrality requirement helps preserves both the appearance and  
5 reality of fairness "generating the feeling, so important to a  
6 popular government, that justice has been done ... by ensuring  
7 that no person will be deprived of his interests in the absence of  
8 a proceeding in which he may present his case with assurance  
9 that the orbiter is not predisposed to find against him.

10 Marshall v. Jerico, Inc. 446 U.S. 238, 64 L.Ed.2d 182, 100 S.Ct. 1610  
11 (1980). The Court was predisposed towards Petitioner due to  
12 her injecting her personal beliefs and or opinions pre-trial  
13 during trial and post-trial, denying Petitioner his fourteenth  
14 Amendment Due Process Rights and a fair trial and sent-  
15 encing.

16  
17 Five: PETITIONER WAS PREJUDICED DURING TRIAL AND SENTEN-  
18 CING DUE TO TRIAL COURT'S UNSUITABLE PREPAREDNESS FOR A  
19 CRIMINAL TRIAL:

20 During jury selection Trial judge stating during the sel-  
21 ecting of the jury "Yes. I will do that. I'll do these. I  
22 forgot. My last trial was civil. so I.. I'm rusty."

23 This statement corroborates with any and all allegations  
24 that petitioner has made against the trial judge. Petitioner  
25 believes that it is clear, that had this judge been suitably  
26 prepared for a criminal trial beforehand, it would have been  
27 less likely that petitioner would have been prejudiced by  
28 this Court. Petitioner has ~~been~~ proven disqualifying bias

1 and prejudice through the direct evidence and factual allegations pre-  
2 sented herein. There is a rigid due process requirement regard-  
3 ing the neutrality for judges in an adjudicative proceeding, whose  
4 duty it is to make the final decision and whose impartiality serves  
5 as the ultimate guarantee of a fair and meaningful proceeding in the  
6 United State's Constitutional regime. SEE EXHIBIT [5] pg. 60 LINES 10-11

### 7 DUE TO: TRIAL COURT'S:

8 1. Deep Seated favoritism:

9 2. Failing To Be Neutral:

10 3. Impropriety:

11 4. Lack of Impartiality:

12 5. Displaying Fallacious Conduct During Trial:

13 6. Sentencing Based on Inaccurate Information:

14 All These assertions occurred due to trial judge's unprepared-  
15 ness and "Rustiness" in presiding over Criminal trials.

16 Petitioner was prejudiced and denied Due Process due to  
17 trial Court's conduct and unsuitability to preside over a  
18 Criminal trial.

(c) GROUND THREE: PROSECUTORIAL MISCONDUCT AND VINDICTIVENESS DENIED PETITIONER A FAIR TRIAL: MAKING THE RESULTING CONVICTION A DENIAL OF PETITIONER'S FOURTEENTH AMENDMENT DUE PROCESS RIGHTS:

ONE: (c) SUPPORTING FACTS (Tell your story briefly without citing cases or law): State's Prosecutor failed to avoid making unfair and improper remarks about Defendant:

During Calendar Call, prosecutor Chad Lexus repeatedly referred to petitioner as a dick and ass-hole. These disparaging remarks encouraged petitioner's Counsel as well as the judge to participate and act in the same exact manner as the prosecution all the way through trial as well as Sentencing.

SEE EXHIBIT [A] pg. two lines 20-21/[B] pg. three lines 10-11/[C] pg. eight lines 20-23

TWO: Prosecutor accused Petitioner ~~accused~~ Petitioner of falsely testifying and that he should not be believed:

During the Prosecutions closing Argument Prosecutor Chad Lexus argued before the jury that Petitioner was giving self-serving statements and that none of Petitioner's statements should be believed. Stating to the Jury "He Told You that he had no idea what his co-conspirator was up to." "He Told you that he was there just to give him a ride for a hundred bucks." "Are we to believe this"? "Who pays a hundred dollars just to give a simple ride to someone"? Prosecutor's egregiously improper closing argument was objectively unreasonable. SEE EXHIBIT [N] pg. twenty-five lines 10-13.

1 THREE: STATE PROSECUTOR'S INJECTING HER PERSONAL BELIEF  
2 AT PETITIONER'S SENTENCING: DENIED DUE PROCESS

3 Prosecutor argued that petitioner had a gun on two oc-  
4 assions, Moments before recommending the Maximum sentence  
5 to run Consecutive. Eventhough the triers of facts Concl-  
6 uded that No weapon was used in the alleged Crime again-  
7 st petitioner, the prosecutor offered her perssnal opinion to  
8 bolster the government's case. The Prosecutor stated "Your  
9 Honor. is well aware of the facts of this case because you  
10 presided over the trial. I'd just like to point out that Defendant  
11 and his Co- conspirator did rob the victim who is a hardworking  
12 man who is present here, who has a family. They robbed him  
13 at two gun-points." Prosecutor Malkova also stated "He's trying  
14 to - He tried to say that; oh, I was trying to be with my  
15 family- which is ridiculous, Clearly." If he cared for his  
16 family, he wouldn't be out robbing people at gun-point."  
17 Defendant has a due process right to be sentenced based on acc-  
18 urate information information. Due Process requires that Sentenc-  
19 ing determinations be based on reliable evidence, not speculation or  
20 unfounded allegations. SEE EXHIBIT [C] pg. five lines 9-21.

21  
22  
23 FOUR: PROSECUTOR'S CHALLENGE FOR CAUSE WAS RACE-BASED IN JURY  
24 SELECTION:

25 Petitioner contends that during Voir Dire three potential jurors  
26 stated that they would need more than a single witness to find a  
27 person guilty. Of the three potential jurors one was African  
28 American male who stated that he did not believe in the Criminal

1 justice System. However he did state that he could be fair during  
2 deliberation. Of the three potential jurors the African American  
3 male was virulently questioned by the Prosecutor. Challenges For  
4 Cause are the means by which partial or bias jurors should  
5 be eliminated. To disqualify a juror for Cause requires a show-  
6 ing of either actual or implied bias i.e.... bias in fact or bias  
7 conclusively presumed as a matter of law. 47 Am. Jur.2d Jury  
8 § 266 (1995). The Prosecutor had three potential jurors all stating  
9 that they needed more evidence ~~to~~ than a single witness to find  
10 guilt. Petitioner argues that based upon his Attorney Ms. Gregory  
11 advised petitioner that Deputy District Attorney Chad Lexus was  
12 a "Big Time Racist" this lead the petitioner to believe that the  
13 Challenge for Cause against the African-American male was bas-  
14 ed on Race Discrimination. For more than a Century [the Supreme]  
15 Court consistently and repeatedly has reaffirmed that racial discr-  
16 imination by the State in jury selection offends the Equal Protect-  
17 ion Clause." Georgia v. McCollum 505 U.S. 42 44 112 S.Ct. 2348  
18 also SEE EXHIBIT [O] pg. one fifteen-lines 1-25 and pg. one sixteen  
19 lines 1-25

20  
21 Five: STATE PROSECUTOR HETTY WONG ILLEGALLY  
22 ELECTED TRIAL COUNSELORS GREGORY AND WALDO  
23 FOR PETITIONER:  
24

25 On September 25<sup>th</sup> 2018 Status Check: After petitioner's ~~case~~  
26 Carl Arnold withdrew from petitioner's case due to lack of funds.  
27 Prosecutor Hetty Wong chose to replace Carl Arnold with Gregory/  
28 Waldo when prosecutor Hetty Wong was aware that petitioner had

1 A very Contentious relationship with these two Counselors and  
2 had them removed from his case for this reason. It's was lega-  
3 lly unfair for the opposing party to hand pick Counsel for defen-  
4 se. Once the right to Counsel has attached and been asserted,  
5 the State must of Course honor it. This means more than simply that  
6 the State cannot prevent the accused from obtaining the assistance  
7 of Counsel. The Sixth Amendment also imposes on the State an  
8 affirmative obligation to respect and preserve the accused's Choice  
9 to seek this assistance. At the very least, the prosecutor and pol-  
10 ice have an affirmative obligation not to act in a manner that cir-  
11 cumvents and thereby dilutes the protection afforded by the right  
12 to Counsel. [I]t is Clear that the State violated Petitioner's Sixth  
13 Amendment right when Hetty Wong acting on behalf of the State  
14 hand picked Counsel for petitioner. Although Criminal defendants  
15 Sometimes Switch Counsel, a responsible lawyer will not resign — the  
16 Court will not let him resign — until new Counsel is appointed. Petition-  
17 er argues that the Prosecutor not only chose the defense's Counsel  
18 but they also failed to assign "NEW COUNSEL". Petitioner was prejudiced  
19 and denied a Fair trial based on prosecutor handpicking Counsel  
20 and unwanted Counsel being forced on petitioner. The reasoning  
21 in Chamberlain is persuasive Whether at trial or appeal a defend-  
22 ant is not required to accept unwanted Counsel.

(d) GROUND FOUR: NEVADA'S SUPREME COURT ERRED WHEN  
THEY DENIED PETITIONER HIS RIGHT TO APPEAL PRO'SE;  
DENYING HIM HIS SIXTH AMENDMENT CONSTITUTIONAL RIGHTS

(d) SUPPORTING FACTS (Tell your story briefly without citing cases or law):  
In December 2019 petitioner filed a Motion in the Nevada  
Supreme Court to dismiss his Court appointed Counsel  
Amanda S. Greary and Jennifer M. Waldo and to be appointed  
new appellate Counsel or continue pro'se. Petitioner argued  
that trial Counsel had not communicated with him, had acted  
against his interests, and was ineffective at trial. All these  
were serious allegations. On January 3rd, 2020 the Nevada  
Supreme Court filed an Order Denying Petitioner's Motion, stat-  
ing, It is Counsel's responsibility, rather than his client's to  
identify the issues to be raised on appeal, but in Faretta v.  
California the Supreme Court held that an accused has a Sixth  
Amendment Right to Conduct his own defense in a Criminal  
Case. As to presenting oral arguments the Chamberlain Court  
found that the above-quoted language from Price v. Johnston  
334 U.S. 266, 68 S.Ct. 1049 92 L.Ed 1356 (1948) foreclosed any  
right of defendant to act pro'se [to present oral arguments].  
But, this did not foreclose a right of a defendant to present  
pro'se Briefs. In light of this, the Court argued that, whe-  
ther at trial or on appeal, a defendant should not be required to  
have Counsel forced upon him. Id. thus, the Chamberlain  
Court found that a Criminal defendant "DOES" have a right  
under the Constitution to present pro'se Briefs or Motion.  
on appeal. Id. The Nevada supreme Court also stated that

[SEE EXHIBIT (P-Q)]

appellant has no right to proceed without Counsel on direct appeal from a judgment of Conviction. In *Myers v. Johnson* 76 F.3d 1330 (CA 5 1996) that Court held that a criminal defendant who clearly and unequivocally asserts this right to present pro'se briefs on the first direct appeal must be allowed to "preserve actual control over the case he chooses to present" to the appellate court- i.e., he must be allowed to determine the content of his appellate brief.

In Counsel's response to petitioner's motion to dismiss Counsel, appellate Counsel stated, "However, Counsel does not oppose Hampton's request to represent himself," clearly indicative that appellant has or had a Sixth amendment right to proceed pro'se on Direct appeal. The reasoning of the Eighth Circuit in *Chamberlain* is persuasive. Whether at trial or appeal a defendant is not required to accept unwanted Counsel.



# EXHIBITS A-V

1  
2 A: Calendar Call - Transcripts (May 21, 2019)

3 B: Calendar Call - Transcripts (May 21, 2019)

4 C: Sentencing - Transcripts (August 15, 2019)

5 D: Sentencing - Transcripts (August 15, 2019)

6 E: Calendar Call - Transcripts (May 21, 2019)

7 F: Calendar Call - Transcripts (May 21, 2019)

8 G: Faretta Hearing (May 29, 2019)

9 H: Calendar Call - Transcripts (May 21, 2019)

10 I: Trial Transcripts -

11 J: Prosecutors' Reply to Direct Appeal

12 K: Trial Transcripts

13 L: Trial Transcripts

14 M: Trial Transcripts

15 N: Trial Transcripts

16 O: Trial Transcripts

17 P: Supreme Court Denying Motion To Discharge Counsel

18 Q: Supreme Court Denying Motion To Discharge Counsel

19 R: Counsel's Response To Motion To Dismiss Counsel

20 S: Trial Transcripts

21 T: Court Of Appeals Affirmation

22 U: Court Of Appeals Affirmation

23 V: Court Of Appeals Affirmation

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10/17/2019 10:30 AM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

1 RTRAN

2  
3  
4 DISTRICT COURT  
5 CLARK COUNTY, NEVADA

6  
7  
8 THE STATE OF NEVADA,  
9 Plaintiff,

CASE#: C-17-320368-1  
C-17-320368-2

DEPT. XVIII

10 vs.

11 GERMAINE HAMPTON  
12 ROBERT RUSSELL,

13 Defendant.

14 BEFORE THE HONORABLE MARY KAY HOLTHUS,  
15 DISTRICT COURT JUDGE  
16 TUESDAY, MAY 21, 2019

17 **RECORDER'S TRANSCRIPT OF HEARING:**  
18 **CALENDAR CALL**

19 **APPEARANCES:**

20 For the State:

CHAD LEXIS, ESQ  
MARIYA MALKOVA, ESQ.  
Deputy District Attorneys

22 For the Defendants:

AMANDA GREGORY, ESQ.  
ANTHONY GOLDSTEIN, ESQ.

24  
25 RECORDED BY: YVETTE SISON, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, May 21, 2019

2  
3 [Hearing began at 9:53 a.m.]

4 THE COURT CLERK: State of Nevada versus Germaine  
5 Hampton, C320368-1, and page 2, State of Nevada versus Robert  
6 Russell, C320368-2.

7 THE COURT: Good Morning.

8 MR. LEXIS: Judge, can we approach?

9 THE COURT: Yes.

10 [Bench Conference]

11 MR. GOLDSTEIN: Good Morning.

12 THE COURT: Good Morning.

13 MR. LEXIS: Judge, Mr. Goldstein's client is not here today.

14 THE COURT: Okay, the white noise is almost so loud, I can't  
15 hear.

16 MR. LEXIS: I'll speak up, Judge. Mr. Goldstein's client is not  
17 here, but he's showed up every time, and he's always willing to take the  
18 deal. The guy that --

19 THE COURT: Got it.

20 MR. LEXIS: -- the guy that's -- so I don't have no problem  
21 with him. The guy that's always been an asshole is Ms. Gregory's client

22 --  
23 THE COURT: Obviously, we're all recorded here.

24 MR. LEXIS: -- that's fine.

25 THE COURT: I know you're fine. I just -- I like to throw that

Exhibit B

1 out there so everybody knows.

2 MR. LEXIS: Okay.

3 MS. GREGORY: Can I make gestures -- can I make facial  
4 expressions.

5 THE COURT: It's not video, so yes you're good.

6 MR. LEXIS: Waldo and Gregory were initially appointed, and  
7 he had a problem with them. He went and hired Roy Nelson. He had a  
8 problem with him. He hired Carl Arnold; he had a problem with him. In  
9 the meantime, there's been six trial settings. He went to bench warrant  
10 at calendar call, and Waldo and Gregory got back on it, and now he's  
11 continuing to act like a dick. So, I'm pushing this case to go to trial. You  
12 said last time this isn't going to be continued anymore.

13 THE COURT: Can you go to overflow?

14 MR. LEXIS: Yes.

15 MS. GREGORY: Well the only thing is just some scheduling.  
16 I'm going to make record about my client's refusal to work with me,  
17 making it very hard for me to do this trial; but we would be starting  
18 Tuesday because Monday is a holiday, and then I'm leaving town  
19 Thursday, Chad's leaving town Friday, so we'd have to go dark  
20 Thursday, Friday; but the trial should be done by Wednesday I think.

21 MR. LEXIS: We're going to push it for two days because Mr.  
22 Goldstein's client is going to plead out, because he's always wanted a  
23 deal, so we said we'd let him plead out.

24 This is going to be two to three days, and like Ms. Gregory  
25 said I'll push it for two days, but when you send it to overflow, it might go

1 into Monday.

2 THE COURT: It might go into Monday?

3 MR. LEXIS: Because -- yes because we're dark -- Monday is  
4 a holiday --

5 THE COURT: Oh I see because you only have a couple days.

6 MR. LEXIS: -- yeah Monday is a holiday, and we're gone  
7 Thursday morning.

8 MR. GOLDSTEIN: [unintelligible] there's the victim and  
9 officers -- [unintelligible] --

10 THE COURT: You're both -- you're gone Thursday and  
11 Friday?

12 MR. LEXIS: Ms. Gregory is gone Thursday.

13 MS. GREGORY: I'm gone Thursday --

14 THE COURT: You're gone Thursday, you're gone Friday?

15 MS. GREGORY: -- well I'm gone both Thursday and Friday.

16 THE COURT: I was going to say we might -- if we finished  
17 ours early -- because I've got another one, but it's an in custody with  
18 Sweetin, that I told could trail -- we're in civil trial, and they're bleeding  
19 over into my first criminal week, because it takes long. So, do you want  
20 to come back on Thursday?

21 MR. LEXIS: No, I want it set.

22 MS. GREGORY: Well I mean nothing's going to change. And  
23 I do need to talk to you ex parte, but -- about situations that have  
24 occurred between me and my client.

25 THE COURT: Hate these things.

Conflict

Exhibit C

1 THE COURT: At this point then, I won't consider anything  
2 beyond the fact that he was arrested on charges of an ex-felon in  
3 possession, but none of the surrounding facts of that arrest.

4 MS. WALDO: Thank you, Your Honor.

5 THE COURT: Unless you want to continue it for that --

6 MS. MALKOVA: No that's fine, Your Honor.

7 THE COURT: -- but then the victim has to come back.

8 MS. MALKOVA: So it's bad enough that he was on probation  
9 and waiting for a trial in this case, he picks up a new case. Your Honor,  
10 is well aware of the facts of this case because you presided over the  
11 trial. I'd just like to point out that Defendant and his co-conspirator did  
12 rob the victim who is a hardworking man, who is present here, who has  
13 a family. They robbed him at two gun points. They took everything.  
14 They wiped his car clean. They took even a bag of recyclables out of  
15 the car. The victim was completely terrified and was begging for his life.

16 When the robbery was done, he fled from the police. This is  
17 not his first rodeo. He had contact with the police before. He knows  
18 very well that when the police is behind him with lights and sirens, he  
19 has to pull over; and yet he ran. He's trying to -- he tried to say that; oh,  
20 I was trying to be with my family, which is ridiculous clearly. If he cared  
21 for his family, he wouldn't be out robbing people at gunpoint. He  
22 would've pulled over when the police in fact was behind him and  
23 attempted to pull him over.

24 He took the stand and he testified that he had absolutely no  
25 idea that a robbery was going on despite he being just a couple feet

1 away from the car, according to him.

2 Your Honor, we also have a victim here, and we ask that he  
3 speaks last. The restitution in this case is \$973.65 to Antonio Quintanar.

4 Your Honor, we ask that on Count 1, you follow P&P's  
5 recommendation and sentence the Defendant to 72 to 180 in the  
6 Nevada Department of Corrections and that you also --

7 THE COURT: I'm sorry, which count are you looking at?

8 MS. MALKOVA: What was that Your Honor?

9 THE COURT: Count 1 says 24 to 72.

10 MS. MALKOVA: Oh I apologize. I would ask that you  
11 sentence him to 72 to 180 and on Count 2 also 72 to 180, and the State  
12 will ask that you sentence the Defendant on Count 3, 24 to 72 months in  
13 Nevada Department of Corrections; and because Count 3 -- it was stop  
14 required, it was essentially done after the robbery was completed; we  
15 ask that you run Count 3 consecutive to Count 1.

16 THE COURT: Thank you.

17 MS. WALDO: And Your Honor, I know my client provided a  
18 letter, but I believe he would like to make a statement as well.

19 THE DEFENDANT: Good Morning.

20 THE COURT: Good Morning.

21 THE DEFENDANT: I'm glad the victim is here today so that  
22 he can see my sentencing. I hope that it brings him peace after today.

23 I've served 271 days as you know, and I've spent over  
24 \$18,000 fighting this matter for a bag of recyclables. I pretty much lost  
25 everything, my marriage, my children, my business. I know this doesn't

## Exhibit D

1 when I come home from work too, when I get out late, we always -- If I'm  
2 with another co-worker, we watch out. We make sure, you know, what  
3 cars are surrounding us, if there's people around; and we all leave at the  
4 same time. I just don't wish this on anybody else, and I hope and I wish  
5 that you can just give him the max sentencing because he does not  
6 deserve to be out there doing this to other people.

7 THE COURT: Thank you. Mr. Hampton, this is not just about  
8 a bag of recyclables.

9 THE DEFENDANT: I understand.

10 THE COURT: You -- I don't -- I see you sat here, but you  
11 know you don't understand. You don't get what it's about. You don't  
12 understand what you did to that poor guy who's just out there working  
13 trying to take care of his two kids and how scared --

14 THE DEFENDANT: I understand I --

15 THE COURT: -- it's my turn.

16 THE DEFENDANT: -- okay.

17 THE COURT: And how scary it is when you and your Co-  
18 Defendant are pulling guns and threatening to shoot him and taking his  
19 stuff. You just have no idea what you did; and the reason for the  
20 consecutive on the run-away is because when he blew threw a red light,  
21 there's another victim out there; that doesn't punish him for what he did  
22 to him. That punishes him for putting the community at risk, blowing  
23 through lights, and running around when he knows he should've  
24 stopped; just my take on it, to let you know.

25 So, I do believe you got a break from the jury in dropping the

1 weapon, and I believe you had a break in not seeking habitual.

2 In addition to the administrative assessment of \$25, DNA was  
3 previously taken, DNA administrative assessment of \$3, in accordance  
4 to the law of the State of Nevada, this Court does not sentence you as to  
5 Count 1, 72 to 180 months in the Nevada Department of Corrections.  
6 Count 2, 72 to 180 months in Nevada Department of Corrections, to run  
7 concurrent to Count 1; and Count 3, 24 to 72 months in the Nevada  
8 Department of Corrections, to run consecutive to Counts 2 and 1.  
9 Restitution in the amount of \$973.65. Credit?

10 MS. WALDO: Its 271 days, Your Honor. Your Honor, Count  
11 1 is conspiracy to commit robbery, so it's a one to six, so it can be 72 to  
12 180 months.

13 THE COURT: Oh, then it's 24 to 72.

14 MS. WALDO: Okay.

15 THE COURT: I mean it doesn't effectively change it but --  
16 sorry about that.

17 MS. WALDO: That's okay.

18 THE COURT: So the aggregate sentence is -- math  
19 somebody?

20 UNIDENTIFIED SPEAKER: It's 8 to 21 years.

21 THE COURT: Thank you. Aggregate sentence of 8 to 21.

22 MS. MALKOVA: Thank you, Your Honor.

23 MS. WALDO: Thank you, Your Honor.

24 THE COURT: Good luck.

25 THE DEFENDANT: So what's my sentence ma'am? Eight

# Exhibit E

1 MR. GOLDSTEIN: Judge Togliatti used to clear the  
2 courtroom, wait until the end of the calendar call and then have the  
3 Defendant make whatever representations to the Judge -- to her with the  
4 Defense present, everybody is not in the courtroom --

5 MS. GREGORY: There's just certain, you know, name calling  
6 and

7 MR. GOLDSTEIN: -- including the gallery [unintelligible]  
8 everybody except for court staff, the Defendant, and the lawyer.  
9 Everybody else is in the hallway or -- that's what she used to do, I'm not  
10 saying you should do that, Judge --

11 THE COURT: I'm asking what -- how we do it, because I don't  
12 -- I never liked ex parte; to me --

13 MR. GOLDSTEIN: [unintelligible] that's what she used to do,  
14 and I think other people do as well but --

15 THE COURT: -- I always thought that they should go to a  
16 different Judge, not the Trial Judge, that's my own opinion; but I know  
17 we don't do it that way.

18 MR. GOLDSTEIN: I agree.

19 MR. LEXIS: I'll leave if you want, Judge. I just think he needs  
20 more of a yelling from the Judge on you can't talk to your attorneys the  
21 way you're talking to your attorney.

22 THE COURT: Okay. I really don't want to --

23 MR. LEXIS: But yes, you want to be back Thursday?

24 THE COURT: -- I really don't want to trail it to the end of the  
25 calendar.

1 MR. LEXIS: Whatever you guys want to do.

2 THE COURT: We'll deal with it on Thursday because I got  
3 another hearing today so, I'll talk to him right now too.

4 MR. GOLDSTEIN: When do you want my guy here? He lives  
5 in Kentucky. There was an airport issue yesterday. When do you want  
6 my guy here? I told him to come here Thursday, but he hasn't bought a  
7 ticket yet. If you want him to come Thursday --

8 MR. LEXIS: As long as this -- as long we didn't set for trial --  
9 once we get set for trial, I'll let him plead, but I'm not --

10 MR. GOLDSTEIN: -- okay.

11 MR. LEXIS: -- until I know we're going to have a trial date, I'm  
12 not letting him plead.

13 MR. GOLDSTEIN: I gotcha, I gotcha. I just wanted to know  
14 you wanted me to get him on a flight.

15 THE COURT: So you find out on Thursday, because then  
16 we'll have a trial date. Okay. Is there an actual motion for a new  
17 attorney that he filed?

18 MS. GREGORY: I don't know.

19 MR. GOLDSTEIN: He seems to be holding some paper in his  
20 hand. It carefully looks like he might have -- he may have [unintelligible]

21 THE COURT: I don't like his attitude necessarily but okay let's  
22 -- let's push it to Thursday.

23 [Colloquy the Court and the law clerk]

24 THE COURT: Did you guys say Tuesday and Wednesday  
25 you'd be available next week?

1 crammed is to just find someone that could start us the 4<sup>th</sup> if you're okay  
2 with that.

3 MR. LEXIS: Or if somebody would allow us to bleed into  
4 Monday --

5 MS. GREGORY: Tuesday.

6 MR. LEXIS: And it would -- yeah -- no, no it would be the  
7 following Monday.

8 MS. GREGORY: I get back --

9 MR. LEXIS: Tuesday, Tuesday, maybe the following  
10 Tuesday.

11 [Colloquy - the Court and the law clerk]

12 THE COURT: I'll find out --

13 MR. LEXIS: Judge, if it bleeds over into the following  
14 Tuesday, we would be -- guaranteed we'd be done by noon because this  
15 is going to be two -- two and a half day max.

16 THE COURT: I'm just trying to figure out how much control I  
17 have. Once it goes to overflow, I don't; but it would seem -- we'll figure it  
18 out.

19 MR. GOLDSTEIN: You can snatch it back from overflow  
20 unless things have changed.

21 THE COURT: Yeah I can. You can just tell the overflow --

22 MR. GOLDSTEIN: I mean I'm not saying you should, you --  
23 we'd have that option, should you open it up.

24 THE COURT: -- you tell the Overflow Judge what's going on.  
25 Now sometimes the Overflow Judge isn't particularly accommodating

1 and they'll tell you to go the Department Judge; some of the Department  
2 Judges are accommodating, some of them are not.

3 (4) MS. GREGORY: And I need -- he is going to be asking for a  
4 new attorney today, but I have some ex parte representations to make  
5 regarding that.

6 THE COURT: You know, I haven't done those yet, and I  
7 never liked those as a DA. So what -- how does that work?

8 MR. GOLDSTEIN: Whether or not he should get a new  
9 lawyer?

10 THE COURT: No, making ex parte communications. I'm not  
11 going to go visit with him or anything so --

12 MS. GREGORY: Me making ex parte communications.

13 THE COURT: -- huh?

14 MS. GREGORY: I want to make ex parte communications.

15 THE COURT: Okay so do you just --

16 MS. GREGORY: About what's going on.

17 MR. LEXIS: I'll leave.

18 THE COURT: So is this -- are you agreeing to this?

19 MR. LEXIS: And Judge, that's fine I'll leave -- I mean Tog  
20 probably -- my position is going to be he's being a dick and I can't  
21 support having a new attorney every time, and he's done that every  
22 time. He's even hired attorneys, and they got off because he was an  
23 asshole.

24 MS. GREGORY: Well that's true. There's certain things that I  
25 think an attorney shouldn't have to accept and deal with.

## Exhibit G

1 I wasn't here for it. I talked to Ms. Gregory; she said it wasn't revoked to  
2 her knowledge.

3 THE COURT: I mean technically, you can revoke it anytime  
4 up to its accepted right?

5 MS. WALDO: Well he called to accept it, and that's when he  
6 told us it was a no offer.

7 MR. LEXIS: I revoked it several times, as recently yesterday  
8 when she reached out. Her exact wording is; can you call me, I think we  
9 might be able to deal the case. My first response at the meeting was, I  
10 can't deal this case at this point. I'm -- you worked with me, you know  
11 when I announce ready at calendar call, zero chance of me dealing a  
12 case after that, zero.

13 MS. WALDO: Technically, today is calendar call.

14 MR. LEXIS: No, we're talking about calendar call two, three  
15 weeks ago. There's no offer Judge. I'm ready to go.

16 THE COURT: Okay, here's the deal. I'm in another trial, so  
17 you're going to go to overflow --

18 MR. LEXIS: No problem.

19 THE COURT: -- and I don't know --

20 MS. WALDO: Well that's going to be our secondary request is  
21 -- Your Honor is fully aware that we've had a very contentious  
22 relationship with this client up until basically end of last week. I think him  
23 talking to you and having you kind of tell him that our frustration is when  
24 we see someone making a mistake helped. The reality is we want to  
25 resolve the case. It's not going to resolve. I understand there's no offer,

1 but at this point, he's been meeting -- he met with us twice. He has  
2 information, so now we're not ready for trial.

3 MR. LEXIS: [unintelligible] --

4 THE COURT: Didn't you announce ready last week?

5 MS. WALDO: I don't know -- I wasn't here.

6 THE COURT: She did.

7 MS. WALDO: Okay. It's just -- I think part of it, the big conflict  
8 that happened. He came in, like I said, there was information that he  
9 discussed with me, and there was information he discussed with her  
10 yesterday when he met with her, and she said based on that, she'd have  
11 to do some additional investigation, and unfortunately, this is the first  
12 time that we'd really had any kind of working relationship, and this is --  
13 the reality is I know Your Honor was concerned because in the past it's  
14 been --

15 THE COURT: How many times has it been continued?

16 MR. LEXIS: It has been at least six, with a bench warrant,  
17 and four attorneys, and a victim who is highly pissed that the  
18 [unintelligible] -- I'll just -- [unintelligible] --

19 MS. WALDO: And I totally understand all that Your Honor, the  
20 problem is that we're just in a completely different position with him right  
21 now; and now to now say that we're ready after the information that he  
22 was able to provide to us and stuff, we need to look into, would be --

23 THE COURT: Like what kind of -- like realistically, how long  
24 would it take you to be ready?

25 MS. WALDO: -- I mean it would be a very -- it would be a



## Exhibit F

1 case that I have, and I asked them not to tell her.

2 Hetty is a fraud and corrupt. She wants to distance my minor  
3 cases by taking 15 years. Hetty chose Amanda to represent me after I  
4 fired her.

5 The attorneys I've met all work for the State of Nevada, and  
6 have no desire to work vigorously for me or honesty.

7 I would like to kindly ask the Court to dismiss this case, and if  
8 not so, I will be representing myself on this manner, and I need some  
9 time to do so because I wasn't planning to do that. She will not be  
10 standing beside me in the Court of Law, in trial, it's impossible.

11 THE COURT: Okay, here's your options. The parties have  
12 announced ready --

13 THE DEFENDANT: Okay.

14 THE COURT: -- so you do have the opportunity to represent  
15 yourself. I will do a Faretta Canvas, but you do not have the opportunity  
16 if it's going to frustrate a trial date. We're not frustrating any more trial  
17 dates on this case.

18 THE COURT: So, if you think you can get up to speed and be  
19 ready to go to trial -- it wouldn't go next week -- well it may go next week,  
20 then I'll do a Faretta Canvass. Nothing in there -- her telling you to take  
21 a deal doesn't entail you to a new conflict -- attorney.

22 THE DEFENDANT: Not even her giving my phone number to  
23 the opposition is not a problem?

24 THE COURT: Nope. Nope.

25 THE DEFENDANT: Okay.

1 MS. GREGORY: Your Honor, Mr. Goldstein is not the  
2 opposition. There was a --

3 THE DEFENDANT: He is the opposition.

4 MS. GREGORY: -- he's on our side.

5 THE COURT: Excuse me; nobody interrupted you when you  
6 talked. I can see your attitude right now, and I can see why you're not  
7 getting along with any of your attorneys.

8 THE DEFENDANT: Right.

9 THE COURT: Yeah so --

10 THE DEFENDANT: Because they want me to take a deal that  
11 I'm not taking.

12 THE COURT: -- don't -- you know what --

13 THE DEFENDANT: That's why we don't get along.

14 THE COURT: Look it -- somebody else is talking. Go ahead.

15 MS. GREGORY: Your Honor, with regard to Mr. Goldstein  
16 speaking to him, that was us as a joint defense trying to have what's in  
17 the best interest of the Defense going on. There was no -- he's not the  
18 opposition.

19 As far as Ms. Wong, she actually is who told me about his  
20 other case. I was not aware that he had this other case. She told me  
21 about it and told me that she would dismiss it if he took this deal.

22 THE COURT: Okay.

23 MS. GREGORY: I did not tell her that he had another case,  
24 but Your Honor if he is going to be representing himself, I imagine trial is  
25 going to take longer than two days, so I would ask that we'd start trial on

Exhibit 1

1 She also told you that she found a bag, a shopping bag,  
2 from AutoZone which contained the receipt and on the receipt she  
3 told you -- according to the receipt there was a candy and a pack  
4 of nitrile black gloves that were purchased a few hours before the  
5 crime was committed. These gloves were inside the Ford Explorer.  
6 You've heard from numerous officers who testified here  
7 and they told you that it's not uncommon that criminals ditch  
8 evidence when they know that police is onto them.

9 Let's talk about defendant's version of the events. He  
10 took the stand and testified. He told you that he had no idea what  
11 his co-conspirator was up to. He told you that he was there just  
12 to give him a ride for a hundred bucks. Are we to believe this?  
13 Who pays a hundred dollars just to give a simple ride to someone?

14 He told you that he was two feet away from Tony's car and  
15 that he had no idea that his buddy was robbing someone at a gun  
16 point right there. He did admit though that he took that bag of  
17 recyclables and that he put it in his car.

18 And as you just saw when detective took the stand again,  
19 that bag was located on the driver's side of the car along with the  
20 backpack which was also found on the driver's side of the car.

21 He's telling you that it was all his co-conspirator's  
22 idea. It might have been, but he wasn't just a mere bystander  
23 there. He actively participated in robbing Tony Quintanar.

24 I submit to you ladies and gentlemen that he conspired  
25 with Robert Russell who robbed Tony Quintanar and in fact they did

25

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1 rob him at two-gun points.

2 Ladies and gentlemen, you heard the facts. The Judge  
3 just gave you instructions on the law and all of those instructions  
4 are important. But I'd like to talk to about some of them.

5 Conspiracy. Conspiracy is an agreement or mutual  
6 understanding between two or more persons to commit a crime. To be  
7 guilty of conspiracy, a defendant must intend to commit or to aid  
8 in the commission of the crime. A person who knowingly does any  
9 act to further the object of a conspiracy or otherwise participates  
10 therein is criminally liable as a conspirator.

11 Was defendant involved in this? We know that he was.  
12 And the facts show that he was. He was a get away driver. He just  
13 like his co-conspirator got out of the car and also pointed a gun  
14 at Tony. We know that he actually participated in this.

15 Conspiracy is seldom susceptible of direct proof and is  
16 usually established by inference by the conduct of the parties. Do  
17 we have that conduct here? Yes, we do. We know that they -- and  
18 you've heard from Tony. He told you that not only co-conspirator  
19 was telling him what to do, he was telling co-conspirator to keep  
20 an eye on Tony. He was taking items from Tony's car.

21 And conspiracy maybe inferred from all circumstances  
22 tending to show the common intent and maybe proved in the same way  
23 as the other fact maybe proved either by direct testimony of the  
24 fact or by circumstantial evidence. And I submit to you we have  
25 plenty of this evidence in this case.

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1 Robbery. Robbery is the unlawful taking of personal  
2 property from the person of another in his presence against his  
3 will by means of force or violence or fear of injury. Did  
4 defendant and his co-conspirator took Tony's property? Absolutely.  
5 And it was recovered in his car. Did they use threats or violence?  
6 Yes. They pointed two guns at Tony.

7 A deadly weapon means any instrument which if used in an  
8 ordinary manner contemplated by its design and construction will or  
9 is likely to cause substantial bodily harm or death. Two guns were  
10 involved in this case. Is gun a deadly weapon? There's no  
11 question about it.

12 It is very important that the State by law is not  
13 required to recovered the deadly weapon used in this crime or to  
14 produce the deadly weapon in court, at trial to establish that a  
15 deadly weapon was used in a commission of the crime.

16 In order to use a deadly weapon, there need not be  
17 conduct which actually produces harm. But only conduct which  
18 produces a fear of harm or force by means of display of the deadly  
19 weapon he made in the commission of the crime. We know that the  
20 gun was displayed when defendant and his co-conspirator robbing  
21 Tony. One of the guns was recovered. And you saw the pictures of  
22 it.

23 The driver of a motor vehicle willfully fails or refuses  
24 to bring his or her vehicle to a stop or who otherwise flees or  
25 attempts to elude a police officer in a readily identifiable

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1 vehicle of any police department or regulatory agency when given a  
2 signal by flashing the red lamps and siren, to bring his or her  
3 vehicle to a stop or authorize the motor vehicle in a manner which  
4 endangers or is likely to endanger any other person or the property  
5 of any other person is guilty of stop required of signal of police  
6 officer.

7 We know and Sergeant Walker testified that he attempted  
8 to pull defendant over by engaging his lights -- lights and sirens.  
9 He was in the ready -- in a marked patrol unit. Defendant didn't  
10 stop. He sped off. He ran a red light. He committed a crime of  
11 stop required on signal of police officer.

12 Mere presence at the scene of the crime acknowledge that  
13 a crime is being committed is not sufficient to establish that  
14 defendant is guilty of an offense. Unless you find beyond a  
15 reasonable doubt that the defendant was a participant and not  
16 merely a knowing spectator.

17 The presence of a person at the scene of the crime and  
18 companionship with another person engaged in a commission of a  
19 crime and course of conduct before and after the offense are  
20 circumstances which maybe considered in determining whether such  
21 person directly committed the crime or aided and abetted in the  
22 commission of that crime.

23 What do we know here? He drove to the crime scene and  
24 then he was a get away driver when they were fleeing from the  
25 police. We also know that when police was onto them and Sergeant

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On May 23, 2019, the parties appeared for the continued calendar call and Fareta canvass hearing. IAA26. During the Court's bench conference, the Court indicated that Hampton was playing "lawyer games" so the Court intended to keep the trial date, but would conduct the Fareta canvass to determine whether Hampton could represent himself or would proceed with counsel. IAA28. The Court then addressed Hampton:

⑤ THE COURT: All right, Mr. Hampton, I know we talked about this the other day. Your counsel is ready to go to trial but you're not getting along with your counsel --  
 THE DEFENDANT: Not at all.  
 THE COURT: -- so it's your desire to represent yourself?  
 THE DEFENDANT: It's a forced move, it's not a desire.  
 THE COURT: Okay.  
 THE DEFENDANT: I have to, it's not a desire.  
 THE COURT: You have counsel that's prepared to proceed to trial; do you prefer to go to trial with counsel or without?  
 THE DEFENDANT: Without.  
 THE COURT: Are you prepared to represent yourself to go forward to trial next week or the week after?  
 THE DEFENDANT: Well actually, I wasn't -- I wasn't expecting to have to represent myself, so no I'm not prepared, but I have been working diligently every day since Tuesday trying to get ready.  
 THE COURT: Okay, well the only way you're allowed to represent yourself under the laws, if you can come in and do that and not necessitate a continuance. You can't come in last minute and represent yourself and get another continuance.  
 THE DEFENDANT: Well.  
 THE COURT: How many times has this been set for trial?  
 MS. GREGORY: I think it was six, Your Honor.  
 THE COURT: How many?  
 MS. GREGORY: I think six.  
 THE COURT: Six?  
 THE DEFENDANT: But those was not because of me. They wasn't ready, other things happened. They all wasn't because of me.

⑥ MS. GREGORY: There were continuances because he hired an attorney, then fired an attorney, then retained an attorney, then complained about that attorney, and then got me back, and then I asked for a continuance based on the fact that we were still trying to negotiate the case, but at this point, I'm ready to go to trial.  
 MR. LEXIS: We even issued a bench warrant one time.  
 MS. GREGORY: That I don't know about.  
 THE COURT: I'm going to -- and I -- I'm going to put this over, calendar call, one more time because I need to figure out what the best -- my inclination is to deny the Fareta at this point, because he's making a record that I'm concerned about. So I need to figure out how to best maintain my record.

IIAA31-33. Hampton's counsel then attempted to explain to Hampton his options.

IIAA33. Hampton then explained his ongoing troubles with his counsel. IAA33. The

⑥ district court trailed the matter and conducted a sealed hearing to discuss Hampton's grievances with his counsel.<sup>1</sup> IAA35-36.

On May 30, 2019, the parties appeared again for the continued calendar call and Fareta canvass hearing. IAA37. Hampton's counsel explained that she and Hampton now had a working relationship and requested another short continuance as a result of information he provided. IAA40. The district court discussed with

①A <sup>1</sup> Because Hampton failed to include a transcript of this sealed hearing for this Court's review, such transcript should be presumed to support the district court's comments on the record. See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) ("When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision."); Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant."); NRAP 30(b)(1) ("Copies of all transcripts that are necessary to the ... review of the issues presented on appeal shall be included in the appendix.").

Counsel didn't include sealed hearing because it shows how the Judge coerced me to keeping counsel through fear and how I told the Judges counsel told me to shut the fuck up!

Exhibit K

1 MS. GREGORY: The victim says that he saw two guns, but  
2 all the evidence is that there was one gun.  
3 THE COURT: Well, that's your argument, but that's all --  
4 that's all argument.  
5 MS. GREGORY: Got to try.  
6 MR. LEXIS: And --  
7 THE COURT: Huh?  
8 MS. GREGORY: Got to try.  
9 THE COURT: All right [indiscernible] --  
10 MR. LEXIS: -- [indiscernible] as far as your argument  
11 regarding the ex-felon, we didn't have the JOC's in time that's why  
12 we didn't have it. But on a side note, his new charge that was  
13 picked up, I do have the JOC's for that, so he will be -- that will  
14 be filed soon.  
15 MS. GREGORY: That's fine. We never thought that wasn't  
16 getting filed. Do you think --  
17 THE COURT: It's all good.  
18 MS. GREGORY: Okay.  
19 THE COURT: Okay.  
20 [Bench conference concluded]  
21 THE COURT: Overruled.  
22 MS. MALKOVA: Thank you, Your Honor.  
23 BY MS. MALKOVA:  
24 Tony is terrified. They're asking him where's the good  
25 stuff at. He's ready to comply. He's ready to give them

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1 everything. He's begging them, please don't shoot me, I have my  
2 wife and a son.  
3 Defendant and his co-conspirator took everything. They  
4 took Tony's wallet with credit cards, gift card, player's card in  
5 it and his I.D. They took his wife's cellphone that was cracked  
6 and his cellphone. They took keys, Tony's backpack and even a bag  
7 of recyclables that was in the trunk of a rental car.  
8 Before they were leaving, they told him not to look at  
9 them. They looked into his glove box, pulled out a pouch where  
10 Tony kept his insurance and registration and they told him, we know  
11 your address. That terrified Tony even more. And then defendant  
12 and his co-conspirator sped off with their lights off in a white  
13 Ford Explorer without state plates.  
14 Around the same time, Sergeant Walker was driving down  
15 Desert Inn Road when he saw a white Ford Explorer that was matching  
16 the description of a car that was involved in a robbery. He  
17 attempted to pull the car over by engaging his lights and sirens.  
18 But defendant who was driving didn't stop. He sped off. He ran a  
19 red light. The pursuit finally ended at 7950 West Flamingo Road.  
20 It's a Rain Tree Apartment complex.  
21 Defendant's co-conspirator ran and Sergeant Walker will  
22 tell you as he was running away, he was holding onto his waste as  
23 he had a gun tucked in there. Defendant stayed in the car and was  
24 apprehended by police.  
25 Officer Carral arrived at the scene and he was able to

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1 arrest defendant's co-conspirator who was walking around the  
2 apartment complex. When approached by Officer Carral, he appeared  
3 nervous and swayed.  
4 Officer Smith also responded to the scene. He was able  
5 to recover the gun which was laying on the ground on a path where  
6 defendant's co-conspirator was running away.  
7 CSA, Amanda Wright, also responded to the scene. She  
8 processed the white Ford Explorer for fingerprints and DNA. They  
9 were later submitted for analysis with negative results. She took  
10 photographs. Victim's items were found inside the car. His phone,  
11 his wife's cracked phone, his I.D., credit card, his backpack and a  
12 bag of recyclables that defendant and his co-conspirator -- co-  
13 conspirator took from him.  
14 Defendant's wallet was also found inside the white Ford  
15 Explorer with his I.D. and Social Security in it. Along with the  
16 wallet there was a registration found to the white Ford Explorer.  
17 The Ford was registered to the defendant, Germaine Hampton.  
18 Because Defendant and his co-conspirator were apprehended  
19 short time after the incident, instead of line up, a show up was  
20 conducted. And Tony will tell you that he immediately recognized  
21 defendant and -- and his co-conspirator as the two people who  
22 robbed at a gun point that night and prevented him from going home  
23 to his family.  
24 Upon conclusion of this State's case, the State of Nevada  
25 will ask you to find defendant, Germaine Hampton, guilty on

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1 conspiracy to commit robbery, robbery with use of a deadly weapon  
2 and stop required on signal of police officer. Thank you.  
3 THE COURT: Defense, are you --  
4 MS. GREGORY: Yes, Your Honor.  
5 OPENING STATEMENT BY DEFENSE  
6 BY MS. WALDO:  
7 Good afternoon, ladies and gentlemen. I'm sure you've  
8 heard the old adage more than once in your life that there are two  
9 sides to every story. And what you're going to hear throughout  
10 this case is that this is case is no reception.  
11 Yesterday you took an oath and you took an oath and we  
12 talked about it a lot during voir dire, during jury selection about  
13 waiting 'til the conclusions of all the evidence has been presented  
14 to form any opinion as to what actually occurred in this case. And  
15 I'm going to ask you to stand by that oath and wait until the  
16 conclusion of this case before you make any determination as to  
17 what actually occurred because you're going to hear evidence that's  
18 going to directly contradict the State's theory of what actually  
19 occurred in this case.  
20 And I'm going to ask you at the conclusion of this case  
21 that when you hold the State to its burden of proof beyond a  
22 reasonable doubt, you'll agree that the only possible verdict in  
23 this case, the only fair and just verdict will be not guilty on all  
24 counts. Thank you.  
25 THE COURT: Okay. State, ready to proceed? Call your

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1 A They were -- the defendant was -- had opened it and I  
2 don't know if he was trying to disconnect the battery or what he  
3 was trying to do, but he was doing something under the hood and he  
4 didn't close it all the way back.  
5 Q And when did he do that?  
6 A Right before they left when they had took my keys and all  
7 that.  
8 Q And initially when defendant's co-conspirator got out of  
9 the car when you getting ready to go home, did he say anything to  
10 you?  
11 A He just told me to stop, turn off the car. The lights of  
12 my vehicle were on, so I'm guessing he thought the car was on, but  
13 it was off. So he did tell me to turn off the car and then open  
14 the door and I couldn't open it at first.  
15 Q Did he say anything else to you?  
16 A Just told me open the door motherfucker.  
17 Q Okay.  
18 A That was the main thing he was saying.  
19 Q Antonio, some time after you call the police, did -- did  
20 they arrive at the scene?  
21 A The police?  
22 Q Yes.  
23 A Yes. Like maybe a minute or two after that they arrived.  
24 Q Okay. And after you talked to them, did they tell you  
25 that they were able to find any suspects?

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1 A They did tell me that they pulled over a vehicle that fit  
2 the description and that they were going to go take me over there  
3 to see if they were the suspects or not. And --  
4 Q Did they tell you that in fact the people that they were  
5 about to show you were the ones who attacked you?  
6 A No. They didn't.  
7 Q Did they tell you if they recovered any of your items  
8 that were stolen?  
9 A No. They didn't.  
10 MS. MALKOVA: Your Honor, may I approach the witness?  
11 THE COURT: You may.  
12 BY MS. MALKOVA:  
13 Q I'm showing the witness State's Exhibit 160; do you  
14 recognize this, Tony?  
15 A Yes, I do.  
16 Q What is it?  
17 A This is my show-up witness instructions. They read it to  
18 me and --  
19 Q When did they read it to you?  
20 A Before they showed me the suspects.  
21 Q Okay. And did they read you the admonishment?  
22 A Yes, they did.  
23 Q And they read it to you before they showed you any  
24 suspects?  
25 A Yes, they did.

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1 Q Do you mind reading it for the ladies and gentlemen of  
2 the jury?  
3 A In a moment, I am going to show you a person who is being  
4 detained. This person may or may not be the person who committed  
5 the crime now being investigated. The fact that this person is  
6 detained should not cause you to believe or guess that he or she is  
7 guilty. You do not have to identify anyone. It is just as  
8 important to free innocent person from suspicious as it is to  
9 identify those who are guilty. Please keep in mind that clothing  
10 can be easily changed. Please do not talk to anyone other than  
11 police officers while viewing this person. You must make up your  
12 own mind and not be influenced by other witnesses if any. When you  
13 have viewed the person, please tell me whether or not you can make  
14 identification if you can. Tell me in your own words how sure are  
15 you -- are you or of your identification. Please do not indicate  
16 any way to other witnesses what you have or have not made and  
17 identification. Thank you.  
18 MS. MALKOVA: Your Honor, permission to publish?  
19 THE COURT: That's from the stipulated; right?  
20 MS. GREGORY: We're stipulating.  
21 THE COURT: Okay.

22 BY MS. MALKOVA:  
23 Q And I'm showing the jury State's Exhibit 160. Antonio, I  
24 see that one line is crossed off over there.  
25 A Yes.

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1 Q Can you tell us why is that?  
2 A 'Cause the officer at the moment only had one sheet, so  
3 after I read this and he shown me the defendant, I wrote there yes,  
4 that's the driver, that's the vehicle. And then after they showed  
5 me the passenger guy and that's what I wrote at the bottom. At the  
6 time I remember the hair. And then after that they found another  
7 detective or officer had another sheet of paper and that's why I  
8 filled out the second one.  
9 MS. MALKOVA: May I approach the witness, Your Honor?  
10 THE COURT: You may.  
11 BY MS. MALKOVA:  
12 Q And, Tony, is that the second form that you filled out  
13 that day?  
14 A Yes, that is.  
15 Q Okay.  
16 Permission to publish, Your Honor?  
17 THE COURT: And what's the exhibit number?  
18 MS. MALKOVA: It's State's Exhibit 161.  
19 THE COURT: Okay.  
20 MS. MALKOVA: Thank you.  
21 And is that the second form that you filled out, Tony?  
22 THE WITNESS: Yes.  
23 BY MS. MALKOVA:  
24 Q And who is this show-up?  
25 A That's the passenger guy.

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Exhibit M

1 Q Can you please point to him and identify for me what  
2 color shirt he's wearing?  
3 A A orange -- burnt orange shirt.  
4 MR. LEXIS: Your Honor, let the record reflect the  
5 officer's identified the defendant?  
6 THE COURT: It will.  
7 BY MR. LEXIS:  
8 Q Now, Detective, were you also able to figure out that the  
9 defendant's residence was at the location where he was initially  
10 stopped as far as the gate outside the complex?  
11 A Yes. We -- I actually located his apartment and verified  
12 that that was his address.  
13 Q Okay. Now would it surprise you that a suspect would  
14 flee to his residence?  
15 A No. In -- in my training and experience, it's actually  
16 very common. When fleeing, they tend to go back to places that  
17 they know to help aid their escape.  
18 Q Okay. They're familiar with the area?  
19 A Yes. Because they're familiar with the area.  
20 Q Okay. So seeing what is marked here as State's 159; do  
21 you see the basically a general map quest type thing sees a direct  
22 route as -- I'm not saying this is the route they took, but the  
23 direct route be it 12 minutes from the crime scene to the location  
24 where they're caught?  
25 A Yes. I see.

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1 Q Now as far as seven minutes past the robbery is when a  
2 sergeant calls it in that he's in pursuit; does that match up with  
3 pretty much a timeframe of him spotting them right as they're  
4 fleeing from the robbery?  
5 A Yes. It matches with the timeframe and the physical  
6 distance from the crime.  
7 Q Did you also take into your consideration that they fled  
8 from the police?  
9 A Yes. That was taken into consideration with the entirety  
10 of the case.  
11 Q And did you know the manner of when -- how they were  
12 apprehended as far as when the car was stopped?  
13 A Yes. When the car was stopped, I was made aware of that  
14 the passenger had fled and that the driver was uncooperative with  
15 officers.  
16 Q Okay. As far as the defendant, did that car come back  
17 registered to him?  
18 A It did, yes.  
19 Q Did you also see evidence inside the car pertaining the  
20 belongings of the defendant?  
21 A To the defendant, yes, we did.  
22 Q Okay. Was a probable cause search done?  
23 A It was, yes --  
24 Q And --  
25 A -- 'cause of the timeframe.

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1 Q -- and was victim's items found in that car?  
2 A Yes. During the search, we found several items belonging  
3 to the victim, wallets, vehicle jack that was taken from the car as  
4 well as some unusual items like a bag of recycling that the victim  
5 had pulled that was taken.  
6 Q And was -- there's some items of his missing too?  
7 A Of the victims?  
8 Q The victims.  
9 A Yes. So we couldn't find his -- his car keys. They ---  
10 they were missing from the scene. We also searched the scenes  
11 trying to find them there. Couldn't find them there. Couldn't  
12 find them in the vehicle as well.  
13 Q And you're aware that the initial call came out as all  
14 suspects have firearms?  
15 A Yes.  
16 Q And were you surprised that what was moved to -- the one  
17 that was found -- were you surprised that the one that was found  
18 was ditched?  
19 A No. I'm not surprised.  
20 Q Okay. And were you surprised that the other one wasn't  
21 found at all?  
22 A I'm not surprised given the -- the timeframe between the  
23 crime as well as the -- the pursuit of the officers.  
24 Q Were you aware that one of the suspects was reported to  
25 have a hoodie on -- as far as both of them were suspected initially

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1 described as having a hoodie; correct?  
2 A Yes.  
3 Q And when the co-conspirator was caught, he didn't have a  
4 hoodie on; correct?  
5 A That is correct.  
6 Q Okay. Even though he was described by Sergeant Walker  
7 who gave pursuit and the victim having a hoodie; is that correct?  
8 A That is correct.  
9 Q Does that surprise you that he was eventually found  
10 without a hood?  
11 A No. It doesn't surprise me given the ditching of the  
12 firearm as well as the -- the chase of him and containing him  
13 within the apartment complex. He had ample time to ditch the  
14 clothing.  
15 Q Okay. Was it your understanding as lead detective that a  
16 cursory search was done of these items, the hoodie and firearm?  
17 A Yes. We -- we searched the scene. We had searched the  
18 apartment complex and from my knowledge any area that they thought  
19 that might have been ditched.  
20 Q Okay. Again, are you surprised that you weren't able to  
21 find those items?  
22 A I'm not surprised, no.  
23 Q Was standard police procedure followed in this case?  
24 A Yes, it was.  
25 Q As far as forensic testing, is this a type of case you

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EXHIBIT 2

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1 Robbery is the unlawful taking of personal property from the person or another in his presence against his will by means of force or violence or fear of injury. Did defendant and his co-conspirator take Tony's property? Absolutely. And it was recovered in his car. Did they use threats or violence? Yes. They pointed two guns at Tony.

2 A deadly weapon means any instrument which is used in an ordinary manner contemplated by its design and construction will or is likely to cause substantial bodily harm or death. Two guns were involved in this case. Is gun a deadly weapon? There's no question about it.

3 It is very important that the State by law is not required to recover the deadly weapon used in this crime or to produce the deadly weapon in court, at trial to establish that a deadly weapon was used in a commission of the crime.

4 In order to use a deadly weapon, there need not be conduct which actually produces harm. But only conduct which produces a fear of harm or force by means of display of the deadly weapon he made in the commission of the crime. We know that the gun was displayed when defendant and his co-conspirator robbing Tony. One of the guns was recovered. And you saw the pictures of the driver of a motor vehicle willfully fails or refuses to bring his or her vehicle to a stop or who otherwise flees or attempts to elude a police officer in a readily identifiable

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1 She also told you that she found a bag, a shopping bag, from Autozone which contained the receipt and on the receipt she told you -- according to the receipt there was a candy and a pack of nitrite black gloves that were purchased a few hours before the crime was committed. These gloves were inside the Ford Explorer. You've heard from numerous officers who testified here and they told you that it's not uncommon that criminals ditch evidence when they know that police is onto them.

2 Let's talk about defendant's version of the events. He took the stand and testified. He told you that he had no idea what his co-conspirator was up to. He told you that he was there just to give him a ride for a hundred bucks. Are we to believe this? Who pays a hundred dollars just to give a simple ride to someone? He told you that he was two feet away from Tony's car and that he had no idea that his buddy was robbing someone at a gun point right there. He did admit though that he took that bag of recyclables and that he put it in his car.

3 And as you just saw when detective took the stand again, that bag was located on the driver's side of the car along with the backpack which was also found on the driver's side of the car.

4 He's telling you that it was all his co-conspirator's idea. It might have been, but he wasn't just a mere bystander there. He actively participated in robbing Tony Quintanar. I submit to you ladies and gentlemen that he conspired with Robert Russell who robbed Tony Quintanar and in fact they did

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1 vehicle of any police department or regulatory agency when given a signal by flashing the red lamps and siren, to bring his or her vehicle to a stop or authorize the motor vehicle in a manner which endangers or is likely to endanger any other person or the property of any other person is guilty of stop required of signal of police officer.

2 We know and Sergeant Walker testified that he attempted to pull defendant over by engaging his lights -- lights and sirens. He was in the ready -- in a marked patrol unit. Defendant didn't stop. He sped off. He ran a red light. He committed a crime of stop required on signal of police officer.

3 Here presence at the scene of the crime acknowledges that a crime is being committed is not sufficient to establish that defendant is guilty of an offense. Unless you find beyond a reasonable doubt that the defendant was a participant and not merely a knowing spectator.

4 The presence of a person at the scene of the crime and companionship with another person engaged in a commission of a crime and course of conduct before and after the offense are circumstances which may be considered in determining whether such person directly committed the crime or aided and abetted in the commission of that crime.

5 What do we know here? He drove to the crime scene and then he was a get away driver when they were fleeing from the police. We also know that when police was onto them and Sergeant

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1 Ladies and gentlemen, you heard the facts. The Judge told him at two-gun points.

2 Just gave you instructions on the law and all of those instructions are important. But I'd like to talk to about some of them.

3 Conspiracy is an agreement or mutual understanding between two or more persons to commit a crime. To be guilty of conspiracy, a defendant must intend to commit or to aid in the commission of the crime. A person who knowingly does any act to further the object of a conspiracy or otherwise participates therein is criminally liable as a conspirator.

4 Was defendant involved in this? We know that he was. And the facts show that he was. He was a get away driver. He just like his co-conspirator got out of the car and also pointed a gun at Tony. We know that he actually participated in this.

5 Conspiracy is seldom susceptible of direct proof and is usually established by inference by the conduct of the parties. Do we have that conduct here? Yes, we do. We know that they -- and you've heard from Tony. He told you that not only co-conspirator was telling him what to do, he was telling co-conspirator to keep an eye on Tony. He was taking items from Tony's car.

6 And conspiracy may be inferred from all circumstances tending to show the common intent and maybe proved in the same way as the other fact maybe proved either by direct testimony of the fact or by circumstantial evidence. And I submit to you we have plenty of this evidence in this case.

EXHIBIT O

1 based on the evidence and the testimony that you heard. If Mr.  
2 Feaster is sitting next to you said, no, you're wrong and I want to  
3 go home. Listen, I'm tired of this. I want to go home. I want to  
4 -- I want to get to my weekend. I want to go hang out with my  
5 family or any of your fellow jurors said that to you, but you  
6 believe strongly that you were correct in your position, would you  
7 cave? Would you give up on that position just because you -- you  
8 didn't want to disappoint any of your other jurors and you wanted  
9 to go home?  
10 PROSPECTIVE JUROR NO. 831: If I felt strongly, I don't  
11 often have strong opinion in one way or another, but if I felt  
12 strongly, I don't think I would cave.  
13 MS. WALDO: Okay.  
14 And, Mr. Feaster, do you agree with that? I mean do you  
15 -- do you agree that if you feel strongly in your position  
16 regardless how late it is at night or if you want to go home or you  
17 want to get to the weekend, but this is an important job: right?  
18 We're asking you to do something -- it's an important thing that  
19 we're asking you to do: right?  
20 PROSPECTIVE JUROR NO. 831: Of course.  
21 MS. WALDO: And so you'd understand that if you felt very  
22 strongly in that position and just because everyone's pressuring  
23 saying, no, no, no, you got to vote this way 'cause we want to go  
24 home, that wouldn't necessarily be persuasive to you, would it?  
25 PROSPECTIVE JUROR NO. 831: No.

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1 MS. WALDO: And you'd be able to stand strong in your --  
2 in your position; right?  
3 PROSPECTIVE JUROR NO. 831: Yes.  
4 MS. WALDO: And it's because if you were sitting in Mr.  
5 Hampton's shoes, you'd want someone to stand up and do that very  
6 same thing; right?  
7 PROSPECTIVE JUROR NO. 831: Correct.  
8 MS. WALDO: And does everybody agree that that is an  
9 important process here? And no one has a problem with that? Okay.  
10 All right. Well thank you for your honesty. Thank everyone for  
11 taking the time to answer our questions and hopefully we'll get  
12 this process wrapped up.  
13 Your Honor, I'll pass.  
14 MR. LEXIS: Can we approach, Judge?  
15 THE COURT: You guys want to approach?  
16 [Bench conference commenced]  
17 THE COURT: Does anyone have any challenges for cause?  
18 MR. LEXIS: I do, O31. A man that doesn't believe in the  
19 criminal justice system [indiscernible] witness on the stand even  
20 if he finds that person beyond -- guilty beyond a reasonable  
21 [indiscernible] he cannot find guilt beyond a reasonable doubt.  
22 MS. GREGORY: I don't [indiscernible] he said --  
23 MR. LEXIS: Sure.  
24 MS. GREGORY: He said that he can be fair and impartial --  
25 -

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1 MR. LEXIS: What about the one witness?  
2 THE COURT: I think he started there, but then I think he  
3 --  
4 MS. GREGORY: Yeah.  
5 THE COURT: -- Kind of came back.  
6 MS. WALDO: Yeah. He did.  
7 MS. GREGORY: We object to that. Like he very clearly  
8 said that he's going to give everybody the -- listen and it's  
9 proven beyond a reasonable doubt I'll find him guilty.  
10 THE COURT: Okay.  
11 MR. LEXIS: But he also said if you put one witness on  
12 the stand even if I find him credible, he ain't find him guilty.  
13 THE COURT: Okay.  
14 MS. GREGORY: Or actually other people said that too, but  
15 this guy afterwards was rehabilitated and did not state the fact he  
16 could not find guilty.  
17 MR. LEXIS: The other person that said that, Jennifer got  
18 him to say that even if he found the witness credible he would give  
19 [indiscernible] guilty that was 22 [indiscernible] --  
20 MS. GREGORY: [indiscernible] back and forth. We object.  
21 I think [indiscernible] --  
22 THE COURT: Yeah. That was my recollection. I think --  
23 I think all three of them said that, but I think all three of them  
24 came back around. If you want to ask some more questions or -- I'm  
25 going -- I'll ask them one more time, but my recollection was he

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1 did say that he would be fair.  
2 MS. MALKOVA: He said that he will be fine.  
3 MR. LEXIS: [indiscernible]  
4 THE COURT: Or he would listen.  
5 MS. MALKOVA: What I remember.  
6 MR. LEXIS: That's what I [indiscernible] --  
7 THE COURT: 'Cause what?  
8 MR. LEXIS: -- I'll used to -- [indiscernible] --  
9 THE COURT: Okay. Any other ones?  
10 MS. GREGORY: I don't think we have anyone that's  
11 [indiscernible] --  
12 THE COURT: That's the only challenge for cause?  
13 MS. WALDO: Yeah.  
14 MS. GREGORY: We don't have anybody.  
15 THE COURT: Okay. So here's my question, do you want me  
16 to ask him a couple more questions or do you want to withdraw your  
17 challenge for cause?  
18 MR. LEXIS: I take that regarding the one -- the one  
19 witness aspect [indiscernible] --  
20 THE COURT: Is what?  
21 MR. LEXIS: I want you to ask.  
22 THE COURT: Okay.  
23 MR. LEXIS: Okay.  
24 THE COURT: All right. And then once that's done we'll  
25 start: okay?

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IN THE SUPREME COURT OF THE STATE OF NEVADA

GERMAINE HAMPTON, A/K/A  
JERMAINE HAMPTON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 79683

**FILED**

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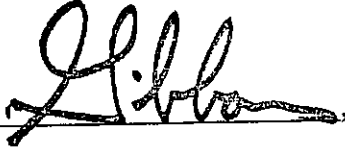
ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER DENYING MOTION

This is a direct appeal from a judgment of conviction. Appellant has filed a pro se motion that requests the discharge of his appointed counsel and the appointment of new appellate counsel or to continue in pro se. Appellant contends that counsel has not communicated with him, has acted against appellant's interests, and was ineffective at trial. Appellant is not entitled to reject court-appointed counsel absent a showing of good cause. *See Thomas v. State*, 115 Nev. 148, 979 P.2d 222 (1999). Appellant has failed to demonstrate any cause for the discharge of his appointed counsel. *See Thomas v. Wainwright*, 767 F.2d 738, 742 (11th Cir. 1985) (appellant's general loss of confidence or trust in counsel is not adequate cause for appointment of new counsel). Appellant further fails to demonstrate a conflict of interest sufficient to discharge and replace counsel. A conflict of interest arises when counsel's loyalty to or efforts on behalf of a client are threatened by his or her responsibilities to another client or a third person or by his or her own interests. It is counsel's responsibility, rather than his client's, to identify the issues to be raised on appeal. *See generally Jones v. Barnes*, 463 U.S. 745, 751-54 (1983) (the decision as to what issues to raise on appeal resides within counsel's professional judgment). This court trusts that counsel will communicate with appellant as necessary. Finally, appellant has no right to proceed

without counsel on direct appeal from a judgment of conviction. *Blandino v. State*, 112 Nev. 352, 914 P.2d 624 (1996); see also *Martinez v. Court of Appeal of Cal.*, 538 U.S. 152 (2000). The motion is denied.

It is so ORDERED.

 C.J.

cc: Gregory & Waldo, LLC  
Germaine Hampton  
Attorney General/Carson City  
Clark County District Attorney

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Attorneys for Appellant  
GERMAINE HAMPTON

Electronically Filed  
Dec 29 2019 01:50 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

GERMAINE HAMPTON,

Case No.: 79683

Appellant,

vs.

**COUNSEL'S RESPONSE TO  
MOTION TO DISMISS COUNSEL**

THE STATE OF NEVADA,

Respondent.

While counsel does not concede to any of the allegations made in Mr. Hampton's Motion to Dismiss Counsel, counsel cannot adequately respond to any allegations due to attorney/client privilege. If this Court requires additional information counsel will provide it upon request. However, counsel does not oppose Mr. Hampton's request to represent himself. Additionally, due to Mr. Hampton raising serious allegations against counsel, counsel also does not oppose this Court appointing alternate counsel if this Court deems the relationship is irreparable.

COUNSEL'S RESPONSE TO MOTION TO DISMISS COUNSEL - 1

EXHIBIT S

1 THE COURT: Just a couple more, do you understand what  
2 I'm saying to you? No?  
3 PROSPECTIVE JUROR NO. 974: A little bit.  
4 THE COURT: You're switching languages on me. Okay.  
5 We're going to thank and excuse you. I appreciate you coming down,  
6 but you're excused, okay.  
7 PROSPECTIVE JUROR NO. 974: Oh, thank you.  
8 THE COURT: You're welcome.  
9 PROSPECTIVE JUROR NO. 974: [indiscernible]  
10 THE COURT: Right.  
11 PROSPECTIVE JUROR NO. 974: Thank you very much.  
12 THE COURT: All right. Have a good day.  
13 PROSPECTIVE JUROR NO. 974: You too. Thank you.  
14 THE CLERK: Virginia Williams, badge number --  
15 THE COURT: Look at that.  
16 THE CLERK: -- 984, move to seat 23.  
17 THE COURT: Very efficient.  
18 PROSPECTIVE JUROR NO. 984: That's me, 984, Virginia  
19 Williams. I've lived in Clark County for about 20 years. I have  
20 some college with the focus on court reporting. I'm employed at NV  
21 Energy as a customer service representative. I'm not married. No  
22 children. I've never been a juror. And I believe I could be fair  
23 and impartial.  
24 THE COURT: Great. Thank you.  
25 PROSPECTIVE JUROR NO. 909: My name is Jared Woodin,

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1 badge 909. I have an MBA in finance. I work in Economic and  
2 Litigation Consulting. I'm married. No kids. I've never served  
3 as a juror before. I have an older brother that spent ten years in  
4 prison for similar crimes, so I might be a little bit impartial.  
5 THE COURT: Similar to a robbery?  
6 PROSPECTIVE JUROR NO. 909: Yeah. Similar. Drugs and  
7 robbery, so.  
8 THE COURT: Obviously, you understand that that's a  
9 different case than this is?  
10 PROSPECTIVE JUROR NO. 909: Yes. It's -- there are some  
11 similarities and I understand some, but I'm a little bit impartial  
12 'cause, you know [indiscernible] and spent time visiting.  
13 THE COURT: Do you --  
14 PROSPECTIVE JUROR NO. 909: I thought he was punished too  
15 harshly, so.  
16 THE COURT: But you understand that that isn't this --  
17 PROSPECTIVE JUROR NO. 909: No. I understand.  
18 THE COURT: -- and your job here is just going to follow  
19 the law --  
20 PROSPECTIVE JUROR NO. 909: I understand.  
21 THE COURT: -- did the State prove their case or not; can  
22 you do that?  
23 PROSPECTIVE JUROR NO. 909: Yes.  
24 THE COURT: Did you say -- did your spouse work?  
25 PROSPECTIVE JUROR NO. 909: Yeah. She works in a

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1 nightclub industry.  
2 THE COURT: Where were we then? Is that everything? Did  
3 you answer everything?  
4 PROSPECTIVE JUROR NO. 909: I think that's it, yeah.  
5 THE COURT: Okay. Never served as a juror?  
6 PROSPECTIVE JUROR NO. 909: Never.  
7 THE COURT: Okay. And other than your concerns where  
8 your brother was charged with a similar offense --  
9 PROSPECTIVE JUROR NO. 909: Uh-huh.  
10 THE COURT: -- any other reason why you couldn't be fair  
11 and impartial?  
12 PROSPECTIVE JUROR NO. 909: No.  
13 THE COURT: Counsel approach.  
14 [Bench conference commenced]  
15 THE COURT: The white noise over there. Is this a good --  
16 -- I'm going to turn it over to you all now; do you want to go for  
17 a little bit and then take a break? What's your pleasure?  
18 MS. GREGORY: I say the only thing that should probably  
19 be asked to everybody though unless you want us to do it is if they  
20 were victims of crimes.  
21 MS. WALDO: [indiscernible]  
22 MS. GREGORY: Yeah.  
23 THE COURT: I don't usually do that 'cause --  
24 MS. GREGORY: You don't that, okay.  
25 THE COURT: -- I mean --

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1 MS. GREGORY: [indiscernible]  
2 THE COURT: -- it's not in my -- let me see.  
3 MR. LEXIS: I'll do it, Judge. I'll do it.  
4 THE COURT: Well, I can do it actually if you want me to  
5 do it.  
6 MS. GREGORY: Yeah. I mean --  
7 THE COURT: That's the individual. These are my group  
8 ones.  
9 MS. GREGORY: -- [indiscernible] --  
10 THE COURT: Yes. I will do that. I'll do these. I  
11 forgot. ~~My last trial was civil, so I -- I'm rusty. Well no~~  
12 actually I think we did away with that when we started with this,  
13 but if you'd like me to do it, I think that it's --  
14 MS. GREGORY: I think I know all of us are going to want  
15 to know the answers, so -- or you can get it out or --  
16 THE COURT: How about just these two then, yes?  
17 MR. LEXIS: I would think --  
18 MS. GREGORY: Yeah.  
19 MR. LEXIS: Sounds good.  
20 THE COURT: We'll do it as a panel. We'll do these four.  
21 You and -- actually I'm going to combine them, you and/or anyone  
22 close to you. And then after that, do you want to take a break or  
23 you want to keep going? What's your pleasure?  
24 MR. LEXIS: Whatever you want to do.  
25 MS. WALDO: That makes sense to take --

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However, Counsel is prepared to file an opening brief, and has filed all required documents necessary to the appeal as of this date. Counsel will proceed however this Court deems appropriate.

DATED this 29<sup>th</sup> day of December, 2019.

GREGORY & WALDO, LLC

By: /s/ Jennifer Waldo  
JENNIFER M. WALDO, ESQ.  
Nevada Bar No. 11900  
324 S. 3<sup>rd</sup> Street, Suite 1  
Las Vegas, Nevada 89101  
*Attorney for Appellant*

## CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on December 29, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

STEVEN WOLFSON  
District Attorney

GERMAINE HAMPTON  
HIGH DESERT STATE PRISON  
Via US Mail

/s/ Amanda Gregory

An Employee of Gregory & Waldo

pursuit. Police found the victim's stolen property in Hampton's car, a gun nearby, and during the trial Hampton admitted that, at Russell's request, he took items from the victim's car and put them into his car. Thus, while we conclude the State's line of questioning constituted prosecutorial misconduct, the comments were harmless beyond a reasonable doubt and the jury would have reached the same verdict even without the misconduct.<sup>5</sup> *Valdez*, 124 Nev. at 1188-89, 196 P.3d at 476.

*Consideration of subsequent arrest at sentencing*

Hampton argues the district court abused its discretion when it considered at sentencing that Hampton was arrested for a subsequent offense. We review a district court's sentencing determination for an abuse of discretion. *Parrish v. State*, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000). "[T]his court generally will not disturb a district court's sentencing determination so long as it does not rest upon impalpable or highly suspect evidence." *Martinez v. State*, 115 Nev. 9, 12-13, 974 P.2d 133, 135 (1999).

Here, the district court could have considered the fact that Hampton was later arrested for another crime. See *United States v. Weston*, 448 F.2d 626, 633 (9th Cir. 1971) (noting the "general proposition that evidence of other criminal conduct not resulting in a conviction may be considered in imposing sentence"). Also, the district court stated on the record that it was not taking into consideration the facts surrounding the subsequent arrest. There is no evidence that the district court relied on improper evidence at sentencing, and thus we conclude the district court did not abuse its discretion.

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<sup>5</sup>Hampton did not object during the State's rebuttal closing argument to the alleged misconduct. Our review of the record does not reveal plain error. See *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018).

any additional questioning of any witnesses. However, during its closing argument, the State again referred to Russell as Hampton's "co-conspirator" multiple times. Hampton failed to object to most of these, but did object after one such usage, and the district court overruled the objection. Thus, Hampton only objected to some, but not all, instances of the alleged misconduct that he now cites.

When assessing a claim of prosecutorial misconduct to which no objection was made, we review only for plain error. *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). Under plain error review, this court does not reverse unless the error caused actual prejudice or a miscarriage of justice. *Id.* As such, this court determines whether there was prosecutorial misconduct, whether the misconduct was plain from the record, and whether the misconduct affected the defendant's substantial rights, *id.* at 1190, 196 P.3d at 478, or "so infected the proceedings with unfairness as to result in a denial of due process." *Byars v. State*, 130 Nev. 848, 865, 336 P.3d 939, 950 (2014).

When assessing a claim of prosecutorial misconduct to which a timely objection was made, we determine whether the prosecutor's conduct was improper and, if so, whether the conduct warrants reversal under a harmless error analysis. *Valdez*, 124 Nev. at 1188, 196 P.3d at 476.

Here, we conclude that the State did not commit prosecutorial misconduct. Hampton argues that the State was not allowed to call Russell his "co-conspirator" to this crime because he was innocent, but that was the very question that the trial was intended to answer. The State is permitted to base its examination of witnesses and make statements during closing arguments that are reasonably based upon evidence introduced at trial. *Domingues v. State*, 112 Nev. 683, 696, 917 P.2d 1364, 1373 (1996). "The

he demonstrated reasonable cause, yet there is no evidence in the record of such justification. While Hampton did participate in a sealed hearing with counsel that related to his request for self-representation, Hampton failed to provide a transcript of that hearing on appeal. When parts of the record are missing, we presume that the missing portions favor the district court's conclusion. See *Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980). There is also evidence in the record that Hampton had on-going issues with a parade of rotating trial counsels, and his issues were not new. Thus, Hampton has failed to demonstrate that there was reasonable cause to justify his late request, and the district court did not abuse its discretion in denying the motion to represent himself.

*Prior conviction evidence*

Hampton argues that the district court abused its discretion in admitting evidence of Hampton's prior conviction.<sup>2</sup> At trial, Hampton chose to testify and counsel asked him if he had a marijuana conviction, to which Hampton responded affirmatively. After the State concluded its cross-examination of Hampton and the district court excused Hampton, the State sought leave to recall Hampton to ask an additional clarifying question about the exact nature of his prior conviction. After both parties discussed the matter with the district court, the parties stipulated to the district court

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<sup>2</sup>In addition, Hampton advances the argument that the State failed to provide discovery of Hampton's judgment of conviction. However, the State is not required to provide a judgment of conviction to the defense before questioning a witness. *Corbin v. State*, 111 Nev. 378, 382, 892 P.2d 580, 583 (1995) ("NRS 50.095 does not require that the judgment of conviction be presented before questioning a witness about prior felony convictions."). Therefore, we conclude there was no error.



**CERTIFICATE OF SERVICE BY MAILING**

I, Jermaine Hampton, hereby certify, pursuant to NRCP 5(b), that on this 18  
day of November, 2021, I mailed a true and correct copy of the foregoing, “

Writ Of Habeas”

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

Clerk Of Court

200 Lewis Ave. 3rd Fl  
Las Vegas, NV 89155

Warden William Hitchings

P.O. Box 208  
Indian Springs, NV. 89020

Office Of District Attorney

200 Lewis Ave.  
Las Vegas, NV. 89155

CC:FILE

DATED: this 18 day of November, 2021.

Jermaine Hampton  
Jermaine Hampton # 1202104  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
**IN FORMA PAUPERIS:**

Germaine, Hamantas - 1221724  
P.O. Box 268  
Indian Springs, NV. 89070



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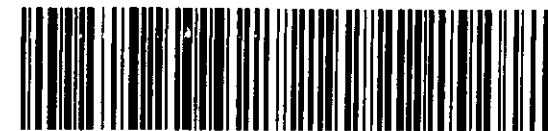
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Steven D. Grierson  
Clerk Of the Court  
200 Lewis Ave. 3<sup>rd</sup> Floor  
Las Vegas, NV. 89155

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**NOV 22 2021**

**CLERK OF THE COURT**

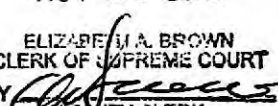
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GERMAINE HAMPTON, A/K/A  
JERMAINE HAMPTON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 79683-COA

FILED

NOV 25 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Germaine Hampton appeals from a judgment of conviction, pursuant to a jury verdict, of robbery, conspiracy to commit robbery, and stop required on signal of a police officer. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

Hampton and accomplice Robert Russell blocked a car with their car, allegedly pointed a gun at the driver, and stole several items from him.<sup>1</sup> After Hampton drove off with Russell as the passenger, the victim called 9-1-1 from the nearest business. A police officer quickly located the car matching the description of the vehicle Hampton was seen driving leaving the general area of the crime. After the police officer activated his lights and siren, Hampton and Russell evaded arrest by leading the officer on a high-speed pursuit, during which Hampton ran at least one red light. The chase ended when Hampton stopped at his apartment complex and Russell fled from the car on foot. Although Hampton did not run, police officers had to forcefully remove him from the car. The police searched the car and located several items of the victim's property. While the search did

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<sup>1</sup>We do not recount the facts except as necessary to our disposition.

not uncover a gun in Hampton's car or on his person, police officers located a gun near the path Russell had used to flee the scene.

Russell agreed to plead guilty pursuant to a plea agreement just before trial was to commence, so Hampton proceeded to trial alone. The jury found him guilty of robbery, conspiracy to commit robbery, and stop required on signal of a police officer, but found him not guilty of using a weapon during the robbery. The district court sentenced Hampton to an aggregate total sentence of 8-21 years in prison.

On appeal, Hampton argues (1) the district court abused its discretion by denying his motion to withdraw counsel and proceed pro se, (2) the district court impermissibly admitted evidence of his prior conviction, (3) the State engaged in prosecutorial misconduct when it referred to Russell as his co-conspirator, (4) the State engaged in prosecutorial misconduct when it referred to his post-arrest silence, (5) the district court impermissibly considered his subsequent arrest at sentencing, (6) the sentence imposed by the district court constituted cruel and unusual punishment, and (7) cumulative error warrants reversal.

*Motion to proceed in pro se*

Hampton first argues that the district court abused its discretion when it denied his oral motion to represent himself. Hampton belatedly made his request after both parties had announced ready for trial. He maintains that the district court did not give him an opportunity to demonstrate that reasonable cause existed for his untimely motion.

We review the district court's order denying Hampton the right to represent himself for an abuse of discretion. *Guerrina v. State*, 134 Nev. 338, 341, 419 P.3d 705, 709 (2018). The Sixth Amendment of the United States Constitution, made applicable to the states by the Fourteenth

Amendment, guarantees a criminal defendant the right to self-representation. See *Faretta v. California*, 422 U.S. 806, 819-20 (1975). Yet, the right to self-representation is not absolute because it compels abandonment of another constitutional right—the right to counsel. See *id.* at 835. A district court must determine if a defendant is competent to waive his or her right to counsel and that he or she has made a knowing and voluntary waiver of this right. *Godinez v. Moran*, 509 U.S. 389, 400-01 (1993). A district court nonetheless may deny a request for self-representation if it is untimely, equivocal, or made for the purpose of delay. *O'Neill v. State*, 123 Nev. 9, 17, 153 P.3d 38, 44 (2007).

The Nevada Supreme Court created a two-part test to determine whether a request for self-representation is untimely. *Lyons v. State*, 106 Nev. 438, 445-46, 796 P.2d 210, 214 (1990), *abrogated in part on other grounds by Vanisi v. State*, 117 Nev. 330, 341, 22 P.3d 1164, 1172 (2001). Under *Lyons*, if the request for self-representation can be granted “without need for a continuance, the request should be deemed timely.” *Id.* at 446, 796 P.2d at 214. However, if granting the request would require a continuance, the district court may deny the request as untimely if there is no “reasonable cause to justify [the] late request.” *Id.*

The district court did not abuse its discretion by denying Hampton’s motion to represent himself. Hampton made his request after multiple calendar call dates during which both parties had repeatedly announced ready for trial, and finally made his request only days before trial was scheduled to commence. He expressly told the district court that he would need more time to prepare if he were to represent himself. Hampton’s motion thus fails the first prong of *Lyons*. As for the second prong, Hampton could have justified the late request for a continuance had



he demonstrated reasonable cause, yet there is no evidence in the record of such justification. While Hampton did participate in a sealed hearing with counsel that related to his request for self-representation, Hampton failed to provide a transcript of that hearing on appeal. When parts of the record are missing, we presume that the missing portions favor the district court's conclusion. See *Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980). There is also evidence in the record that Hampton had on-going issues with a parade of rotating trial counsels, and his issues were not new. Thus, Hampton has failed to demonstrate that there was reasonable cause to justify his late request, and the district court did not abuse its discretion in denying the motion to represent himself.

*Prior conviction evidence*

Hampton argues that the district court abused its discretion in admitting evidence of Hampton's prior conviction.<sup>2</sup> At trial, Hampton chose to testify and counsel asked him if he had a marijuana conviction, to which Hampton responded affirmatively. After the State concluded its cross-examination of Hampton and the district court excused Hampton, the State sought leave to recall Hampton to ask an additional clarifying question about the exact nature of his prior conviction. After both parties discussed the matter with the district court, the parties stipulated to the district court

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<sup>2</sup>In addition, Hampton advances the argument that the State failed to provide discovery of Hampton's judgment of conviction. However, the State is not required to provide a judgment of conviction to the defense before questioning a witness. *Corbin v. State*, 111 Nev. 378, 382, 892 P.2d 580, 583 (1995) ("NRS 50.095 does not require that the judgment of conviction be presented before questioning a witness about prior felony convictions."). Therefore, we conclude there was no error.

informing the jury of the correct conviction, which was marijuana trafficking.

“We review a district court’s decision to admit or exclude evidence for an abuse of discretion.” *McLellan v. State*, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008). Under NRS 50.095(1), a party may impeach a witness by proving that he or she was previously convicted of a felony. Further, once a defendant opens the door to an issue that the State may otherwise not address, the State may provide evidence in response. See *Wesley v. State*, 112 Nev. 503, 513, 916 P.2d 793, 800 (1996).

Hampton argues that once he stepped off the witness stand he was no longer subject to impeachment. NRS 50.095 puts no express requirements on *when* the State can impeach a witness. Further, impeachment aside, Hampton voluntarily opened the door to his prior conviction by testifying and stipulating to it during direct examination and, moreover, his counsel stipulated to allowing the district court to further explain the nature of the conviction to the jury in lieu of further questioning. Under these circumstances, Hampton cannot show on appeal that the district court abused its discretion by admitting evidence of the prior conviction that he volunteered into evidence.

*The State’s reference to a “co-conspirator”*

Hampton argues the State engaged in prosecutorial misconduct when it referred to Russell as his “co-conspirator” during arguments and witness examinations.

While questioning witnesses, the State referred to Russell as Hampton’s “co-conspirator.” After the State referred to Russell as Hampton’s “co-conspirator” a few times, Hampton objected, and the district court sustained the objection. The State thereafter did not use this term in

any additional questioning of any witnesses. However, during its closing argument, the State again referred to Russell as Hampton's "co-conspirator" multiple times. Hampton failed to object to most of these, but did object after one such usage, and the district court overruled the objection. Thus, Hampton only objected to some, but not all, instances of the alleged misconduct that he now cites.

When assessing a claim of prosecutorial misconduct to which no objection was made, we review only for plain error. *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). Under plain error review, this court does not reverse unless the error caused actual prejudice or a miscarriage of justice. *Id.* As such, this court determines whether there was prosecutorial misconduct, whether the misconduct was plain from the record, and whether the misconduct affected the defendant's substantial rights, *id.* at 1190, 196 P.3d at 478, or "so infected the proceedings with unfairness as to result in a denial of due process." *Byars v. State*, 130 Nev. 848, 865, 336 P.3d 939, 950 (2014).

When assessing a claim of prosecutorial misconduct to which a timely objection was made, we determine whether the prosecutor's conduct was improper and, if so, whether the conduct warrants reversal under a harmless error analysis. *Valdez*, 124 Nev. at 1188, 196 P.3d at 476.

Here, we conclude that the State did not commit prosecutorial misconduct. Hampton argues that the State was not allowed to call Russell his "co-conspirator" to this crime because he was innocent, but that was the very question that the trial was intended to answer. The State is permitted to base its examination of witnesses and make statements during closing arguments that are reasonably based upon evidence introduced at trial. *Domingues v. State*, 112 Nev. 683, 696, 917 P.2d 1364, 1373 (1996). "The



statements should be considered in context, and 'a criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone.'" *Thomas v. State*, 120 Nev. 37, 47, 83 P.3d 818, 825 (2004) (quoting *United States v. Young*, 470 U.S. 1, 11 (1985)). Further, there is a "high bar for overturning a jury verdict due to a prosecutor's statements at closing argument." *Byars*, 130 Nev. at 866, 336 P.3d at 951.

The State's assertion that Russell and Hampton conspired to commit the crime together was logically based upon the evidence introduced at trial. Further, the district court correctly instructed the jury that closing arguments by counsel are not evidence, and that questions asked of a witness are also not evidence but only give meaning to the witness's answers.<sup>3</sup> The victim testified that it appeared the two were working together as they arrived and left the scene together in the same car and acted in concert during the crime itself, and Hampton himself admitted he took items out of the victim's car and put them in his car pursuant to Russell's direct request to do so. The victim also testified that during the crime, Hampton told Russell to keep an eye on the victim. Hampton was also charged with aiding, abetting or conspiring with Russell, and if believed by the jury, Hampton was legally responsible for all of Russell's acts in furtherance of the conspiracy. When stopped, the police found the victim's property in the car with Hampton and found a gun dropped along the path where Russell had fled on foot. Thus, the State's references to Russell as a "co-conspirator" were reasonably based upon evidence and do

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<sup>3</sup>Jury instruction 20 stated, in part, that "[s]tatements, arguments and opinions of counsel are not evidence in this case. . . . You must not speculate to be true any insinuations suggested by a question asked [of] a witness. A question is not evidence and may be considered only as it supplies meaning to the answer."

not amount to prosecutorial misconduct under any circumstances because of the way the case was charged.

*Post-arrest silence*

Hampton argues that the State improperly commented on his post-arrest silence during Hampton's cross-examination and the State's rebuttal closing argument. "It is well settled that the prosecution is forbidden at trial to comment upon an accused's election to remain silent following his arrest and after he has been advised of his rights as required by *Miranda v. Arizona*."<sup>4</sup> *Morris v. State*, 112 Nev. 260, 263, 913 P.2d 1264, 1267 (1996) (internal quotation marks omitted). The Nevada Supreme Court "expanded this doctrine by concluding that a prosecutor also cannot use post-arrest, pre-*Miranda* silence to impeach a defendant." *Id.* The Nevada Supreme Court has held reversal is not

required if the prosecutor's references to the defendant's post-arrest silence are harmless beyond a reasonable doubt. Comments on the defendant's post-arrest silence will be harmless beyond a reasonable doubt if (1) at trial there was only a mere passing reference, without more, to an accused's post-arrest silence, or (2) there is overwhelming evidence of guilt.

*Id.* at 264, 913 P.2d at 1267-68 (citations omitted).

The following dialogue occurred when the State conducted its cross-examination of Hampton:

[State:] Okay. At no point in time when you were apprehended by the police did you say, hey man, this guy — this is the guy that did everything or you know what, I took no part in this as far as when you were apprehended; correct?

---

<sup>4</sup>384 U.S. 436 (1966).

[Hampton:] Yes. I remain not guilty the whole time.

[State:] No, sir. That's not my question. When you were stopped by multiple officers<sup>[1]</sup> lights and sirens and they cornered you, you never at any point in time during that point said you know what, you got the wrong guy, he's the one that's going over there or you know what, I took no part of this; correct? You chose instead to be uncooperative and have to be forcefully removed from that car?

[Hampton:] Not correct.

[State:] Okay. Did you ever tell the police anything at that point in time?

[Hampton:] No.

[State:] No. Okay. So you had some time to think about it; right?

[Defense Counsel:] Objection Your Honor. Can we approach?

....

The Court: - I'm going to sustain this.

The State committed prosecutorial misconduct by improperly commenting on Hampton's right to remain silent and insinuating that Hampton's exercise of his right to remain silent indicated guilt. However, we conclude that the State's comments were harmless beyond a reasonable doubt for two reasons. First, Hampton objected to this questioning, and the district court sustained the objection, thereby mitigating the impact. Second, the evidence of Hampton's guilt was overwhelming. The victim testified that Hampton and Russell, who appeared to be working together, approached him and threatened him, and stole several items from his car. Police officers located Hampton and Russell driving away from the scene moments after the crime in a car that matched the victim's description and, when the police tried to stop the car, Hampton led them on a high-speed

pursuit. Police found the victim's stolen property in Hampton's car, a gun nearby, and during the trial Hampton admitted that, at Russell's request, he took items from the victim's car and put them into his car. Thus, while we conclude the State's line of questioning constituted prosecutorial misconduct, the comments were harmless beyond a reasonable doubt and the jury would have reached the same verdict even without the misconduct.<sup>5</sup> *Valdez*, 124 Nev. at 1188-89, 196 P.3d at 476.

*Consideration of subsequent arrest at sentencing*

Hampton argues the district court abused its discretion when it considered at sentencing that Hampton was arrested for a subsequent offense. We review a district court's sentencing determination for an abuse of discretion. *Parrish v. State*, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000). "[T]his court generally will not disturb a district court's sentencing determination so long as it does not rest upon impalpable or highly suspect evidence." *Martinez v. State*, 115 Nev. 9, 12-13, 974 P.2d 133, 135 (1999).

Here, the district court could have considered the fact that Hampton was later arrested for another crime. See *United States v. Weston*, 448 F.2d 626, 633 (9th Cir. 1971) (noting the "general proposition that evidence of other criminal conduct not resulting in a conviction may be considered in imposing sentence"). Also, the district court stated on the record that it was not taking into consideration the facts surrounding the subsequent arrest. There is no evidence that the district court relied on improper evidence at sentencing, and thus we conclude the district court did not abuse its discretion.

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<sup>5</sup>Hampton did not object during the State's rebuttal closing argument to the alleged misconduct. Our review of the record does not reveal plain error. See *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018).



### *Cruel and unusual punishment*

Hampton argues the district court's sentence constituted cruel and unusual punishment because it was disproportionate to his wrongdoing compared to Russell's involvement. Courts have wide discretion in imposing criminal sentences. *Pitmon v. State*, 131 Nev. 123, 126, 352 P.3d 655, 657 (Ct. App. 2015). "[R]egardless of its severity, a sentence that is within the statutory limits is not considered to violate the Eighth Amendment's proscription against cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience." *Id.* (internal quotation marks omitted).

We conclude the district court did not abuse its discretion in imposing this sentence because the sentence was within the statutory limits and the sentence does not shock the conscience. In addition, Hampton's argument that the district court abused its discretion by failing to adequately balance his actions in the crimes with Russell's is meritless given the overwhelming evidence of Hampton's involvement with robbing the victim and his dangerous evasion of arrest. *See Nobles v. Warden*, 106 Nev. 67, 68, 787 P.2d 390, 391 (1990) (co-defendants are not constitutionally entitled to receive the exact same sentence). Accordingly, the district court did not abuse its discretion in sentencing Hampton.

### *Cumulative error*

Finally, Hampton argues the cumulative effect of the errors below made it impossible for him to receive a fair trial, and this court should reverse his conviction. Cumulative error warrants reversal where the effect of the errors, viewed collectively, violates the defendant's right to a fair trial, even if each individual error was harmless. *Valdez*, 124 Nev. at 1195, 196

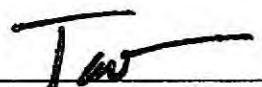
P.3d at 481. In reviewing a claim of cumulative error, this court considers “(1) whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged.” *Id.* (quoting *Mulder v. State*, 116 Nev. 1, 17, 992 P.2d 845, 854-55 (2000)).

Here, we conclude that the State committed prosecutorial misconduct in suggesting that Hampton’s post-arrest silence reflected guilt. However, as there is only one error, there can be no cumulative error. *Carroll v. State*, 132 Nev. 269, 287, 371 P.3d 1023, 1035 (2016).

Based on the foregoing, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Mary Kay Holthus, District Judge  
Gregory & Waldo, LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

1 NOAS

2 Germaine Hampton # 1221724  
3 Lovelock Correctional Center  
4 1200 Prison Road  
5 Lovelock, Nevada 89419

6 Petitioner In Pro Se

FILED

MAR - 7 2022

Sharon A. Hoffman  
CLERK OF COURT

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 \* \* \* \* \*

10 Germaine Hampton, )  
11 )  
12 Petitioner, )  
13 )  
14 -vs- )  
15 )  
16 THE STATE OF NEVADA, )  
17 )  
18 Respondent. )  
19 )

Case No. A-21-844463-W

Dept. No. 21

20 NOTICE OF APPEAL

21 NOTICE IS GIVEN that Petitioner, Germaine Hampton,  
22 in pro se, hereby appeals to the Nevada Supreme Court the  
23 Findings of Fact, Conclusions of Law and Order Denying /  
24 Dismissing Petition for Writ of Habeas Corpus, as filed/entered  
25 on or about the 3rd day of February, 2022, in the above-  
26 entitled Court.

27 Dated this 2nd day of March, 2022.

28 Germaine Hampton  
Germaine Hampton # 1221724  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419  
Petitioner In Pro Se

RECEIVED  
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FORM 24.064

1  
2 CERTIFICATE OF SERVICE

3 I do certify that I mailed a true and correct copy of the  
4 foregoing NOTICE OF APPEAL to the below address(es) on this  
5 2nd day of March, 2022, by placing same in the  
6 U.S. Mail via prison law library staff:

7 Clark County D.A. Office  
8 200 Lewis Ave.  
9 Las Vegas, NV. 89155

Clerk Of Court  
200 Lewis Ave.  
Las Vegas, NV. 89155

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17 Germaine Hampton #1221724  
18 Lovelock Correctional Center  
19 1200 Prison Road  
20 Lovelock, Nevada 89419  
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27  
28  
Petitioner In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

23 The undersigned does hereby affirm that the preceding  
24 NOTICE OF APPEAL filed in District Court Case No. A-21-844463-W  
25 does not contain the social security number of any person.

26 Dated this 2nd day of March, 2022.

27 Germaine Hampton - 1221724  
28

Petitioner In Pro Se



Germaine Hammonds-1921724  
1200 Prison Rd,  
Lovelock, NV. 89149

RENO NV 893  
04 MAR 2022 PM 3 1



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