

IN THE SUPREME COURT OF THE STATE OF NEVADA

SALLY DORIAN VILLAVERDE,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Electronically Filed
Aug 19 2022 02:17 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No: A-18-780041-W
Related Case 03C191012-2
Docket No: 85028

RECORD ON APPEAL VOLUME 1

ATTORNEY FOR APPELLANT
SALLY VILLAVERDE #81701,
PROPER PERSON
P.O. BOX 208
INDIAN SPRINGS, NV 89070

ATTORNEY FOR RESPONDENT
STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NV 89155-2212

A-18-780041-W Sally Villaverde, Plaintiff(s) vs. Brian Williams Warden,
Defendant(s)

I N D E X

<u>VOLUME:</u>	<u>PAGE NUMBER:</u>
1	1 - 243
2	244 - 486
3	487 - 511

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
1	8/28/2018	Application to Proceed Informa Pauperis (Confidential)	1 - 6
2	10/4/2021	Application to Proceed Informa Pauperis (Confidential)	280 - 283
2	5/12/2022	Application to Proceed Informa Pauperis (Confidential)	437 - 440
1	11/28/2018	Case Appeal Statement	177 - 178
2	12/29/2021	Case Appeal Statement	406 - 407
3	8/4/2022	Case Appeal Statement	495 - 496
3	8/19/2022	Certification of Copy and Transmittal of Record	
1	10/21/2019	Civil Order to Statistically Close Case	210 - 210
2	12/27/2021	Designation of Record on Appeal	405 - 405
3	8/3/2022	Designation of Record on Appeal	492 - 494
3	8/19/2022	District Court Minutes	506 - 511
1	10/12/2018	Financial Certificate (Sealed)	144 - 144
2	12/21/2021	Findings of Fact, Conclusion of Law, and Order	340 - 369
1	12/5/2018	Findings of Fact, Conclusions of Law and Order	189 - 197
2	11/30/2021	Judicial Notice	334 - 339
1	11/29/2018	Memorandum of Points and Authorities in Support of Request for Transcripts at State Expense	179 - 184
1	11/26/2018	Motion for Reconsideration	169 - 175
1	8/28/2018	Motion for the Appointment of Counsel; Request for Evidentiary Hearing	8 - 13

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
2	11/12/2021	Motion for Transcripts at State Expense	290 - 299
2	10/4/2021	Motion to Appoint Counsel	274 - 279
2	5/12/2022	Motion to Appoint Counsel; Hearing Requested	432 - 436
1	10/22/2018	Motion to Extend the Hearing 15 Days Beyond Proof of Receive the Answer	146 - 150
1	2/25/2020	Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed	211 - 218
2	7/11/2022	Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed (Continued)	483 - 486
3	7/11/2022	Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed (Continuation)	487 - 489
1	5/21/2020	Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed; Petition Denied	219 - 227
1	11/26/2018	Notice of Appeal	165 - 168
2	12/27/2021	Notice of Appeal	401 - 404
3	8/3/2022	Notice of Appeal	490 - 491
1	12/12/2018	Notice of Entry of Findings of Fact, Conclusions of Law and Order	198 - 207
2	12/23/2021	Notice of Entry of Findings of Fact, Conclusions of Law and Order	370 - 400
2	10/6/2021	Notice of Hearing	289 - 289
2	5/13/2022	Notice of Hearing	456 - 456
1	10/22/2018	Notice of Motion	145 - 145
1	11/26/2018	Notice of Motion	176 - 176

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
1	11/29/2018	Notice of Motion	185 - 185
1	11/29/2018	Notice of Motion and Motion for Transcripts at State Expense	186 - 188
1	4/24/2019	Order Denying Defendant's Pro Per Motion for Transcripts at State's Expense	208 - 209
1	8/31/2018	Order for Petition for Writ of Habeas Corpus	140 - 140
2	10/5/2021	Order for Petition for Writ of Habeas Corpus	287 - 288
2	5/12/2022	Order for Petition for Writ of Habeas Corpus	441 - 442
2	10/5/2021	Order to Proceed in Forma Pauperis (Confidential)	284 - 286
2	5/12/2022	Order to Proceed in Forma Pauperis (Confidential)	443 - 444
1	10/24/2018	Order to Proceed In Forma Pauperis (Confidential)	151 - 152
2	11/17/2021	Order to Transcribe Records	302 - 303
1	8/28/2018	Petition for Writ of Habeas Corpus (Postconviction)	14 - 139
1	10/4/2021	Petition for Writ of Habeas Corpus (Postconviction) (Continued)	228 - 243
2	10/4/2021	Petition for Writ of Habeas Corpus (Postconviction) (Continuation)	244 - 273
2	5/12/2022	Petition for Writ of Habeas Corpus (Post- Conviction)	408 - 431
2	5/13/2022	Petitioner's Exhibits in Support of Petition for Writ of Habeas Corpus (Post- Conviction)	445 - 455

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
3	8/4/2022	Petitioner's Reply to the State's Response to Petition for Writ of Habeas Corpus (Post-Conviction) and Petitioner's Motion for Production of Documents.	497 - 505
1	10/29/2018	State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) Filed August 28, 2018 and Motion for the Appointment of Counsel	153 - 164
2	11/18/2021	State's Response to Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction) and Motion to Appoint Counsel	304 - 333
2	6/24/2022	State's Response to Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction) and Motion to Appoint Counsel and State's Motion to Dismiss Pursuant to Laches	457 - 482
1	8/31/2018	Unsigned Document(s) - Default Rejection Letter w/Copy of Unfiled Order to Proceed in Forma Pauperis (Confidential)	141 - 143
2	11/12/2021	Unsigned Document(s) - Order (Forwarded to Department for Review)	300 - 300
1	8/28/2018	Unsigned Document(s) - Order Appointing Counsel	7 - 7
2	11/12/2021	Unsigned Document(s) - Order to Transcribe Records (Forwarded to Department for Review)	301 - 301

**THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
1 - 6
WILL FOLLOW VIA
U.S. MAIL**

Case No. C191012B

Dept. No. XVII

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

SALLY D. VILLAVERDE
Petitioner,

-vs-

Brian Williams (warden)
Respondents.

A-18-780041-W
II

ORDER APPOINTING COUNSEL

Petitioner, SALLY D. VILLAVERDE, has filed a proper person REQUEST FOR APPOINTMENT OF COUNSEL, to represent him on his Petition for Writ of Habeas Corpus (Post-Conviction), in the above-entitled action.

The Court has reviewed Petitioner's Request and the entire file in this action, and Good Cause Appearing, IT IS HEREBY ORDERED, that petitioner's Request for Appointment of Counsel is GRANTED.

IT IS FURTHER ORDERED that _____, Esq., is appointed to represent Petitioner on his Post-Conviction for Writ of Habeas Corpus.

Dated this _____ day of _____, 20____.

Submitted by:

DISTRICT COURT JUDGE

Sally D Villaverde 81701
Petitioner, In Proper Person

A-18-780041-W
LSF
Left Side Filing
4774758



A-18-780041-W
Case No. C191012B
Dept. No. XVII

A-18-780041-W
MAPA
Molton for Appointment of Attorney
4774755



FILED
AUG 28 2018

Alma L. Johnson
CLERK OF COURT

IN THE EIGHT JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK.

SALLY D. VILLAVERDE
Petitioner,

MOTION FOR THE APPOINTMENT
OF COUNSEL

-VS-

BRIAN WILLIAMS (WARDEN)
Respondents.

REQUEST FOR EVIDENTIARY HEARING

COMES NOW, the Petitioner, SALLY D. VILLAVERDE, proceeding pro se, within the
above entitled cause of action and respectfully requests this Court to consider the appointment of counsel
for Petitioner for the prosecution of this action.

This motion is made and based upon the matters set forth here, N.R.S. 34.750(1)(2), affidavit of
Petitioner, the attached Memorandum of Points and Authorities, as well as all other pleadings and
documents on file within this case.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

This action commenced by Petitioner SALLY D. VILLAVERDE, in state custody,
pursuant to Chapter 34, et seq., petition for Writ of Habeas Corpus (Post-Conviction).

II. STATEMENT OF THE FACTS

To support the Petitioner's need for the appointment of counsel in this action, he states the
following:

1. The merits of claims for relief in this action are of Constitutional dimension, and
Petitioner is likely to succeed in this case.

RECEIVED
AUG 28 2018
CLERK OF THE COURT
RECEIVED
AUG 27 2018
CLERK OF THE COURT

6

2. Petitioner is incarcerated at the _____ Petitioner is unable to undertake the ability, as an attorney would or could, to investigate crucial facts involved within the Petition for Writ of Habeas Corpus.
3. The issues presented in the Petition involves a complexity that Petitioner is unable to argue effectively.
4. Petitioner does not have the current legal knowledge and abilities, as an attorney would have, to properly present the case to this Court coupled with the fact that appointed counsel would be of service to the Court, Petitioner, and the Respondents as well, by sharpening the issues in this case, shaping the examination of potential witnesses and ultimately shortening the time of the prosecution of this case.
5. Petitioner has made an effort to obtain counsel, but does not have the funds necessary or available to pay for the costs of counsel, see Declaration of Petitioner.
6. Petitioner would need to have an attorney appointed to assist in the determination of whether he should agree to sign consent for a psychological examination.
7. The prison severely limits the hours that Petitioner may have access to the Law Library, and as well, the facility has very limited legal research materials and sources.
8. While the Petitioner does have the assistance of a prison law clerk, he is not an attorney and not allowed to plead before the Courts and like Petitioner, the legal assistants have limited knowledge and expertise.
9. The Petitioner and his assisting law clerks, by reason of their imprisonment, have a severely limited ability to investigate, or take depositions, expand the record or otherwise litigate this action.
10. The ends of justice will be served in this case by the appointment of professional and competent counsel to represent Petitioner.

II. ARGUMENT

Motions for the appointment of counsel are made pursuant to N.R.S. 34.750, and are addressed to the sound discretion of the Court. Under Chapter 34.750 the Court may request an attorney to represent any

MEMORANDUM
POINTS AND Authorities

Petitioner SALLY D. Villaverde - Pursuant to NRS 34.750 request this Honorable Court to Appoint Counsel to Represent him in this Petition Writ of Habeas Corpus (Post Conviction) for the following Reasons:

- 1) Petitioner is unable to Retain or Afford Counsel, See Application to Proceed in forma Pauperis and Affidavit
- 2) THE ISSUES involved in this matter are Complex, and Newly discovered evidences that will require Investigation which Petitioner Cannot do while Confined in Prison.
- 3) Petitioner has very limited Knowledge of the Law of the American Judicial System and Process thereof.
- 4) ENGLISH Language is a Barrier. Petitioner is SPANISH Descent
- 5) Petitioner has been before, represented by Attorneys through out all Priors APPEALS. Justice would be best Served in this case if an Attorney is Appointed to Represent Petitioner.

such person unable to employ counsel. On a Motion for Appointment of Counsel pursuant to N.R.S. 34.750, the District Court should consider whether appointment of counsel would be of service to the indigent petitioner, the Court, and respondents as well, by sharpening the issues in the case, shaping examination of witnesses, and ultimately shortening trial and assisting in the just determination.

In order for the appointment of counsel to be granted, the Court must consider several factors to be met in order for the appointment of counsel to be granted; (1) The merits of the claim for relief; (2) The ability to investigate crucial factors; (3) whether evidence consists of conflicting testimony effectively treated only by counsel; (4) The ability to present the case; and (5) The complexity of the legal issues raised in the petition.

III. CONCLUSION

Based upon the facts and law presented herein, Petitioner would respectfully request this Court to weigh the factors involved within this case, and appoint counsel for Petitioner to assist this Court in the just determination of this action

Dated this 8 day of August, 2018.

Sally D. Villaverde #81701
Petitioner.

VERIFICATION

I declare, affirm and swear under the penalty of perjury that all of the above facts, statements and assertions are true and correct of my own knowledge. As to any such matters stated upon information or belief, I swear that I believe them all to be true and correct.

Dated this 20 day of August, 2018.

Sally D. Villaverde #81701
Petitioner, pro per.

CERTIFICATE OF SERVICE BY MAIL

I, Sally D Villaverde, hereby certify pursuant to N.R.C.P.
5(b), that on this 20 day of August, of the year 2018, I mailed a true and
correct copy of the foregoing Motion for Leave to Proceed in Forma Pauperis; Affidavit in Support of
Motion for Leave to Proceed in Forma Pauperis; Motion for the Appointment of Counsel; and Request for
Evidentiary Hearing, addressed to:

CLARK COUNTY
DISTRICT ATTORNEY
Name

Name

Name

200 Lewis Ave
LV, NV 89155
Address

Address

Address

Sally D Villaverde #87701
Petitioner

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Motion for Appointment of Counsel
(Title of Document)

filed in District Court Case No. C-1910128

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

-OR-

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

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

(State specific law)

-OR-

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

Adlyn D Villaverde #81701
(Signature)

August, 20, 2018
(Date)

FILED

AUG 28 2018

John J. Williams
CLERK OF COURT

A-18-780041-W

Case No. C191012B

Dept. No. XVII

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

SALLY D. VILLAVERDE

Petitioner,

v.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

A-18-780041-W
PWHC
Petition for Writ of Habeas Corpus
4774766

BRIAN Williams, Warden

Respondent.



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 but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
- (7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: HIGH DESERT STATE PRISON PO BOX 650 Indian Spring, NV 89070

2. Name and location of court which entered the judgment of conviction under attack: EIGHT JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA 200 Lewis Ave LV NV 89115

3. Date of judgment of conviction: JUNE 10 2004

4. Case number: C191012B

5. (a) Length of sentence: TWO CONSECUTIVE TERMS OF LIFE WITHOUT THE POSSIBILITY OF PAROLE PLUS CONCURRENT SENTENCES OF 22 TO 96 MONTHS AND TWO CONSECUTIVE SENTENCES OF 35 TO 156 MONTHS.

RECEIVED
AUG 28 2018
CLERK OF THE COURT

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

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

Yes No ☒

If "yes," list crime, case number and sentence being served at this time: N/A.....

7. Nature of offense involved in conviction being challenged: First Degree Murder w/ use of a deadly
WEAPON, ROBBERY w/ use of a deadly weapon and burglary

8. What was your plea? (check one)

(a) Not guilty ☒

(b) Guilty

(c) Guilty but mentally ill

(d) Nolo contendere

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details: N/A.....

10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: (check one)

(a) Jury ☒

(b) Judge without a jury

11. Did you testify at the trial? Yes No ☒

12. Did you appeal from the judgment of conviction? Yes ☒ No

13. If you did appeal, answer the following:

(a) Name of court: SUPREME COURT OF NEVADA.....

(b) Case number or citation: # 43443.....

(c) Result: Conviction Affirmed.....

(d) Date of result: February 15, 2006.....

(Attach copy of order or decision, if available.)

1 14. If you did not appeal, explain briefly why you did not: N/A

2
3
4 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any
5 petitions, applications or motions with respect to this judgment in any court, state or federal? Yes No

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

7 (a) (1) Name of court: DISTRICT COURT CLACK COUNTY, NV., U.S. DISTRICT COURT OF NV., U.S. COURT OF
8 APPEALS FOR THE NINTH CIRCUIT, AND U.S. SUPREME COURT.

(2) Nature of proceeding: WRIT OF HABEAS CORPUS (POST-CONVICTION) AND WRIT OF CERTIORARI.

9
10 (3) Grounds raised: See Additional Pages Attached

11
12
13 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No X...

14 (5) Result: Denied

15 (6) Date of result: N/A

16 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:

17 N/A

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

19 (1) Name of court: U.S. COURT OF APPEAL FOR THE NINTH CIRCUIT

20 (2) Nature of proceeding: APPLICATION FOR 2ND SUCCESSIVE PETITION

21 (3) Grounds raised: N/A

22 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No X...

23 (5) Result: Denied

24 (6) Date of result: N/A

25 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:

26 N/A

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

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

(1) First petition, application or motion? Yes X... No

Citation or date of decision: DENIED ON MARCH 28, 2016.....

(2) Second petition, application or motion? Yes X... No

Citation or date of decision: N/A.....

(3) Third or subsequent petitions, applications or motions? Yes No X....

Citation or date of decision: N/A.....

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

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same: NO.....

(b) The proceedings in which these grounds were raised: NO.....

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

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

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

INNOCENT OF FIRST DEGREE MURDER W/IN OF A DEADLY WEAPON ROBBERY W/IN OF A DEADLY WEAPON AND VIOLATION OF FUNDAMENTAL MISFEASANCE OF JUSTICE (CIVIL) RESULTING IN PETITIONER'S CONVICTION.

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes No *X*...

If yes, state what court and the case number: *N/A*

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: *RANDALL H. PIKE AND MATTHEW WENTWORTH*

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes No *X*...

If yes, specify where and when it is to be served, if you know: *N/A*

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same. *(See Additional Pages Attached Starting in pg 1)*

Answer to Question (15) of pg 3

1- VILLAVERDE WAS DENIED HIS FEDERAL CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION BY VARIOUS ACTS AND DECISIONS MADE BY TRIAL COUNSEL DURING THE COURSE OF HIS TRIAL IN THIS CASE.

1.1. Trial Counsel was Ineffective When he Failed to Locate and Interview the State's Key Witness in the Case and Subpoena her for the Trial.

1.2. Trial Counsel's Cross-Examination of Gamboa at the Preliminary Hearing was Ineffective for the Purposes of Trial and Resulted in Villaverde Receiving Ineffective Assistance of Counsel at the Trial.

1.3. Trial Counsel was Ineffective When he Conceded Villaverde's Participation in a "Conspiracy".

1.4. Defense Counsel's Failure to Object to Eight Jury Instructions Relating to a Crime of Conspiracy When the Crime was Not Charged Constituted Ineffective Assistance of Counsel.

1.5. Defense Counsel was Ineffective for Failing to Object to Additional Instructions that Diluted the Reasonable Doubt Instruction.

1.6. Trial Counsel was Ineffective for Failing to Request a Redaction of Gamboa's Testimony to Remove Prior Uncharged Bad Acts.

1.7. Trial Counsel was Ineffective for Failing to Object to the Prosecutor's Inference in Closing Argument that Villaverde was Guilty for Failing to Testify.

1.8. PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL FOR FAILING TO OBJECT TO JURY INSTRUCTION NUMBER 14.

2. VILLAVERDE'S FEDERAL CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW WAS VIOLATED BY THE DISTRICT COURT'S FAILURE TO CONDUCT AN EVIDENTIARY HEARING AS REQUESTED.

3. VILLAVERDE'S SIXTH AMENDMENT RIGHT OF CONFRONTATION WAS VIOLATED WHEN THE DISTRICT COURT ADMITTED THE PRIOR PRELIMINARY HEARING TESTIMONY OF TERESA GAMBOA.

4. VILLAVERDE'S FEDERAL CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW, AS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS, WAS VIOLATED BY THE ACTIONS AND INACTIONS OF THE DISTRICT COURT AND DEFENSE COUNSEL DURING THE HABEAS LITIGATION OF HIS CONVICTIONS.

5. The admission of the transcribed testimony of Teresa Gamboa constituted error in violation of the Defendant's rights under the Confrontation clause of the State and Federal Constitutions. Concomitantly, this error was caused by the States failure to secure the witness's presence at the trial by allowing her release from custody

Answer to question (15) of pg 3

6 The prosecution in this case committed prosecutorial conduct by altering the status of the non-present witness post preliminary hearing and prior to the trial which knowingly or recklessly prejudiced Defendants right to a fair trial when combined with the prosecution actually causing the witnesses absence at trial.

7 The Court erred in allowing admission of testimony regarding a pre-existent conspiracy by the co-defendants.

8 The Court erred in allowing evidence of the co-defendants hearsay statements regarding a pre-existing conspiracy.

9 It was impermissibly prejudicial to allow the Victim's mother to testify at trial.

10 The intent of the sentencing Court is unclear and the matter must be remanded for clarification

11 There was insufficient evidence presented at trial to support the robbery, burglary or "use of a deadly weapon enhancement verdicts in the present case

12 The Court erred in denying the Defendants motion for a mistrial based upon the Detective's prejudicial volunteered statement regarding a "gang shooting".

13 The Court erred in denying Defendants motion for an advisory verdict regarding the burglary and the "use of a deadly weapon" enhancement.

14 The Court erred in denying the Defendants motion in limine regarding the palm print and by the State allowing Officer Matvey to refer to the fingerprint evidence as a bloody palm print.

ANSWER TO QUESTION (18) pg 14

- 1 I) Petitioner is presenting newly discovered evidences in support
2 of his claims of "Actual Innocence" of the crimes of first degree
3 murder w/u of a deadly weapon, Robbery with the use of a deadly
4 weapon and burglary. A fundamental miscarriage of Justice
5 occurred during petitioner's trial that violated petitioner's fourteenth,
6 eight, and Sixth Amendment Right of the US Constitution to due
7 process and equal Justice against cruel and unusual punishment.
- 8 II) Petitioner contend that he is actually innocent of first degree murder
9 with the use of a deadly weapon and a fundamental miscarriage of
10 Justice occurred in the proceedings when the state conceded that Petitioner
11 did not committed first degree murder beyond a reasonable Doubt. And erred
12 by instructing the jury in violation of his fourteenth Amendment Right to
13 Due Process to receive a fair trial.
- 14 II-a) VILLAMERDE CONTENDS that there is no basis in record to support his enhan
15 ced sentences for the use of a deadly weapon in the commission of the
16 crimes, and he is actually innocent of the use of a deadly weapon by
17 one of his co-defendant in this case (Robert Casteo) and the instruction
18 given by the state violated his 14th Amendment right of due process.
- 19 III- PETITIONER'S FEDERAL CONSTITUTIONAL RIGHTS WERE VIOLATED AS A RESULT
20 OF PROSECUTORIAL MISCONDUCT which infected the trial with unfairness
21 as to make the resulting conviction a denial of due process.
- 22 IV- PETITIONER ALLEGES THAT HIS ACTUAL INNOCENT OF THE CRIME OF BURGLARY,
23 newly discovered evidence and information showed that a fundamental
24 miscarriage of Justice occurred resulting in his conviction, in violation
25 of his 14th Amendment Right to due process, to receive a fair trial.
- 26 V- PETITIONER CONTEND THAT HE IS ACTUALLY INNOCENT OF ROBBERY WITH
27 USE OF A DEADLY WEAPON, and a fundamental miscarriage of Justice
28 occurred when the state misled the jury by instructing that:

ANSWER TO QUESTION (18) PG 14 - CONTINUATION

"The defendant in this case should be held accountable for the robbery of ENRIQUE CAMINERO. even if he didn't take the property from him"

VII- PETITIONER CONTEND THAT HIS TRIAL/APPELLATE ATTORNEY WAS INEFFECTIVE by failing to raise in DIRECT APPEAL A CLAIM THAT THE STATE FAILED TO DISCLOSE EXCULPATORY EVIDENCES FAVORABLE TO THE PETITIONER POST TRIAL and that Counsel also failed to file a motion for a new trial based on the confession of murder made by Petitioner's Co-defendant at the guilty plea sentencing hearing. therefore in violation of Petitioner's Sixth Amendment right to receive effective assistance of Counsel

VII- TRIAL ATTORNEY WAS INEFFECTIVE by failing to raise on DIRECT APPEAL THE ISSUE REGARDING THE VERDICT FORM. THE JURY DELIVERED A GENERAL VERDICT OF FIRST DEGREE MURDER AND THERE WAS NOTHING ON THE VERDICT FORM THAT ALLOWED THE JURY TO DISTINGUISH THE DIFFERENT THEORIES OF THE CASE IN VIOLATION OF HIS SIXTH AMENDMENT RIGHTS TO RECEIVE EFFECTIVE ASSISTANCE OF COUNSEL AND HIS DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT RIGHTS.

VIII- THE USE OF THE KAZALYN INSTRUCTIONS VIOLATED DUE PROCESS AND THE U.S SUPREME COURT RECENTLY RULED THAT A NEW SUBSTANTIVE CHANGE IN LAW AS ANNOUNCED IN BYFORD V STATE. ACCORDING TO NIKA V STATE SHOULD HAVE BEEN APPLIED RETROACTIVELY SEE WELCH V UNITED STATES, 136 S.Ct 1257 (2016)

WHEREFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at High Desert State Prison on the 20 day of the month of August, 2018.

Sally D. Villaverde #0081701

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

VERIFICATION

Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

Sally D. Villaverde

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceeding PETITION FOR WRIT OF HABEAS CORPUS filed in District Court Case Number N/A Does not contain the social security number of any person.

Sally D. Villaverde

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

CERTIFICATE OF SERVICE BY MAIL

I, SALLY D. VILLAVERDE, hereby certify pursuant to N.R.C.P. 5(b), that on this 20 day of the month of August, 2018, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

Warden High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070

Attorney General of Nevada
100 North Carson Street
Carson City, Nevada 89701

Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155

Sally D. Villaverde

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

* Print your name and NDOC back number and sign

SALLY D. VILLAVERDE #0081701

BACKGROUND

On March 21 2003, a Preliminary Hearing was held for Sally Villaverde. At that hearing, the testimony of Teresa Gamboa helped provide enough evidence to proceed with a jury trial.

On March 25, 2003 Villaverde, and co-defendants Rene Gato and Roberto Castro, were reach charged by way of information with Burglary (Felony-NRS 205-060); murder with use of a DEADLY WEAPON (OPEN MURDER) (Felony-NRS 20 0.010, 200.030, 193.165) and ROBBERY with USE A DEADLY weapon (felony-NRS200, 380, 193, 165)

On the same date, the Defendants appeared IN DISRICT court and entered pleas of not guilty (03-19 1012-C), the court gr anted the Defendant's Motion to sever the trials, and Villaverde was the first of the three codefendants to proceed to trial.

At the time of the trial, on March 29, 2004, Villaverde was re Presented by two lawyers, Randall Pike and Andrew Went worth although Teresa Gamboa presented testimony at the Preliminary Hearing, she was unavailable at the jury trial over objection, and the trial court admitted her prior testimony.

The trial ended on April 8, 2004, wherein the jury returned verdicts of guilty as to all three courts. Villaverde was sentenced to the following: 1-Burglary to a maximum sentence of 96 months and a minimum of 22 months, count II-murder with a deadly weapon, a tern of life without possibility of parole plus on equal and consecutive term for the deadly weapon enhancement, and finally as to count III-Robbery with Use of a Deadly weapon, a maximum of 156 months and a minimum of 35 months with an equal and consecutive term for the deadly weapon enhancement. Count iii was ordered to be served consecutive to count II on June 10, 2004, Villaverde filed a timely notice of appeal and the Nevada Court Filed an Order of affirmance on February 15, 2006.

there after, Villaverde filed a petition for writ of Habeas Corpus on April 3, 2006 and the district court made Findings of Fact, conclusions of law and judgment denying the petition for writ of habeas corpus (post conviction) on February 26, 2008

On June 4, 2008, the district court appointed counsel to represent Villaverde on an appeal, which resulted in an Order of Affirmance on May 2010.

On June 10th 2010, Petitioner filed his original 28 2254 Petition with this court. A motion for the appolntment of Counsel was attached.

On May 12th 2011, the Court granted the motion for Counsel and issued an order for such this order would state "Counsel was to file an Amended Petition for writ of Habeas Corpus, and act" as a mere scrivener to restate and restate and reassert each and every Allegation and claim presented by petitioner Pro-Se (DKT #6).

1 On June 7th 2011, The Federal Public defender was allowed to withdrawal and a
2 "Panel Attorney" was appointed, Ms. Mary Lou Wilson.

3 On May, 4th 2012, (After several Requests for time extensions) Counsel Ms. Wilson
4 Filed an Amended Petition, "Unverified or agreed" to by Petitioner. (ECF DK# 29)

5 The Court filed an Order (ECF No. 31) on April 15, 2013, which directed counsel for
6 petitioner to file a verification for the amended petition filed on May 4, 2012.

7 On April 22, 2013, counsel for petitioner filed a verification on behalf of petitioner (ECF No.
8 34).

9 Petitioner filed a second amended petition on May 15, 2013 (ECF No. 37) in which he
10 denounced the verification and the amended petition filed on his behalf.

11 On May 13th 2013, the Petitioner sent a letter (DK #36) to Ms. Wilson. (Copies were
12 sent the Court and Attorney General) This letter Contained Petitioners request to
13 "Perfect and File" his 2nd Amended petition, as counsel left out his exhausted grounds in
14 her unverified petition (DKT: #29). After no response, Petitioner filed his Amended
15 Petition (DKT #37)

16 On July 15th 2013, Counsel filed another Amended Habeas Petition, a 3rd Petition
17 (DKT: #41)

18 The district court filed an Order on March 14, 2014 (ECF No 47), ruling that a part of ground 1
19 and all of ground 3 and 4 were unexhausted and directing Villaverde to file Some type of motion
20 wherein he could move to dismiss either the entire petition without prejudice or more to dismiss
21 the unexhausted grounds only.

22 On April 8, 2014, Villaverde filed a Motion for Reconsideration (ECF No 55), which the court
23 denied on March 30, 2015 ECF No, 61

24 Villaverde filed a Motion to dismiss the unexhausted grounds on April 24, 2015, ECF No. 62

25 On June 2, 2015 , the district court granted that motion (ECF No 64) and denied the remaining
26 grounds in the amended petition, as well as a certificate of appalibility, on March 28, 2016 ECF No
27 70.

28 A timely notice of appeal was filed on April 13, 2016. The court of appeals for the Ninth
Circuit entered an order August 26, 2016 denying CERTIFICATE OF APPEALIBILITY (COA).

On September, 13, 2016 counsel for petitioner filed a motion for leave to file a motion for
extension of time to file a Motion for Reconsideration.

1 On September 22, 2016 THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
2 GRANTED the motion for extension of time.

3 On October 21, 2016 counsel for petitioner filed a Motion for reconsideration which was denied by
4 the United State Court of Appeal for the Ninth Circuit on October 28, 2016 and the case was
5 closed.

6 on the 27th day of November, 2016, court appointed counsel, MARY LOU WILSON,
7 withdraw from her representation of petitioner.

8 Case: 16-15660, 11/27/2016, ID: 10211092, DktEntry: 11;

9 A WRIT OF CERTIORARI WAS FILED AND DENIED ON MAY 2 2017

10 ON MARCH 22, 2017 PETITIONER FILED AN APPLICATION FOR PERMISSION
11 TO FILE A SECOND OR SUCCESSIVE HABEAS CORPUS PETITION. AND THE SAME
12 WAS DENIED ON AUG 11 2017.

13 A PETITION FOR REHEARING AT THE U.S SUPREME COURT DENIED ON
14 OCTOBER, 5, 2017

15 Rule 60(b) MOTION OR MOTION FOR RECONSIDERATION FILED ON THE U.S
16 DISTRICT COURT FOR THE DISTRICT OF NEVADA ON DEC/14/2017
17 REVIEW AND DENIED ON APRIL/20/2018.

18 CERTIFICATE OF APPEALABILITY (COA) DENIED ON MAY/30/2018
19
20
21
22
23
24
25
26
27
28

I- PETITIONER REQUEST LEAVE TO FILE AN ATTACHED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITIONER PETITION FOR WRIT OF HABEAS CORPUS (POSTCONVICTION) THAT IS INCORPORATED BY THE ATTACHED:

B- COURSE OF PROCEEDINGS.

A criminal complaint was filed against petitioner, SALLY VILLAVARDE and his co-defendants, Rene Gato and Robert Castro in the Las Vegas Justice Court (03F02357) At the time of the preliminary hearing petitioner and co-defendants were held to answer on the charges of murder, Robbery with the use of deadly weapon, and burglary, Teresa Gamboa was the "principal witness" who testified at the preliminary hearing.

On March 25, 2003, petitioner and co-defendants appeared in DISTRICT COURT and entered pleas of not Guilty. The court granted petitioner's motion to sever the trials, and he was the first of the three codefendants to proceed to trial. The co-defendants had pending trial date in 2005.

At the time of the trial, petitioner was represented by co-COUNSEL RANDALL H. PIKE and ANDREW WENTWORTH. TERESA GAMBOA was not present at the time of trial, the state declared her an absent co-conspirator, and placed a material witness warrant, and over the opposition of petitioner, the state introduced the Redacted Testimony of TERESA GAMBOA of the preliminary hearing at the conclusion of the trial, petitioner was convicted by the JURY as to all counts, subsequently petitioner appealed his conviction and sentence. His last appeal of his post-conviction Habeas Corpus, was denied on a writ of certiorari filed at the U.S SUPREME COURT.

PETITIONER'S FEDERAL COURT APPOINTED COUNSEL (MARYLOU WILSON) advised that he should file a claim of "Actual Innocent" in a successive petition. Counsel since withdraw from representation, and petitioner is proceeding pro se With the assistance of fellow prisoner assigned to work at the prison legal library as a law clerk. Petitioner is Spanish descent, and do

not have any legal understanding of the law in the American Judicial System, and the understanding of the English language is limited, as to understand the legal lingo, and Judicial proceedings, therefore petitioner pray that this Honorable Court, afford him or grant him the possibility for obtain and appoint counsel to represent him. in his successive petition which contain newly discovered facts, that prove petitioner's claim of "Actual Innocence".

Petitioner, upon request of the law clerk assisting him with this case, sought to receive and purchases copies of his co-defendant "Robert Castro's" plea agreement, arrangement hearing transcripts and sentencing Hearing Transcripts. Documents, that took nearly four months for petitioner to obtain. After Reviewing the documentation, petitioner found newly discovered evidences and material facts that show colorable factual allegations, probative and supportive of petitioner's claims of "ACTUAL INNOCENCE".

II- LEGAL ARGUMENTS:

Petitioner is presenting newly discovered evidences in support of his claims of "ACTUAL INNOCENCE" OF THE CRIMES OF FIRST DEGREE MURDER W/U OF a DEADLY WEAPON, Robbery with the use of a deadly weapon and burglary. A fundamental miscarriage of Justice occurred during petitioner's trial that violated petitioner's fourteenth, eight, and sixth amendment right of the U.S CONSTITUTION to due process, and equal Justice, against cruel and unusual punishment.

1-Nevada's post-conviction habeas statute permits a petitioner to challenge a conviction that was obtained in violation of the UNITED STATE OR NEVADA CONSTITUTION OR STATE LAW. NEV. Rev. Stat 34.724.

NEVADA has long recognized a petitioner's right to a post-conviction evidentiary hearing when the petitioner asserts claims supported by specified factual allegations not belied by the record that, if true, would entitle him to relief.

1a- In the present case petitioner is presenting government documentation

and confessions, which contain colorable factual allegations that came into light after petitioner was tried, convicted and sentenced.

8 months after petitioner trial, in January, 31, 2005, THE STATE ENTERED AN AGREEMENT WITH PETITIONER'S CO-DEFENDANT "ROBERTO CASTRO". An arrangement hearing was held, and a plea agreement was filed and heard in open court. Attached to the plea agreement document, was a charging document marked as exhibit 1, "AMENDED INFORMATION, "which contain the following information:

"DAVID ROGER, DISTRICT ATTORNEY WITHIN AND FOR THE COUNTY OF CLARK, STATE OF NEVADA, IN THE NAME AND BY THE AUTHORITY OF THE STATE OF NEVADA, INFORMS THE COURT:

THAT ROBERTO CASTRO, ROBERT RANCE CASTRO MONTALVO, THE DEFENDANT ABOVE NAMED, having committed the crime of Voluntary Manslaughter (FELONY NRS 200.040, 200.050, 200.080), on or about the 6th day of March, 2002 within the county of Clark, state of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the state of Nevada, did together with SALLY VILLAYERDE and/or RENE GATO, then and there without Authority of law, Willfully, un law fully, and feloniously, without malice and without deliberation Kill ENRIQUE CAMINERO, JR, a human being, by MANUAL STRANGULATION. (SEE Exhibit 1 HEREIN)

"CAUSE AND PREJUDICE"

1-In this newly discovered information, the state conceded that "Roberto Castro" committed the crime of the lesser offense of murder, voluntary manslaughter, a crucial and significant piece of information, because petitioner was found guilty of first degree murder with the use of a deadly weapon, and not of his own doing, but he was accused by the state, that he should be criminal liable for the actions of his co-defendant "Robert Castro", it's also significant that the state conceded (2) That the crime was committed without malice and deliberation. A significant new information, which rebut the THEORIES OF FIRST DEGREE MURDER, THAT THE STATE ARGUED AT VILLAYERDE'S TRIAL. (3) The charging also indicate that

"Robert Castro" killed Enrique Caminero by MANUAL STRANGULATION. Also a very valuable new information, Just for the simple fact, that petitioner was prejudiced at the time of the trial when the state, orally instructed the Jury. That "Roberto Castro" used a ligature or cord to strangle the victim, thus petitioner should be held accountable and be found guilty of the use of a deadly weapon.

The following is an excerpt from petitioner's trial, plaintiff closing argument and oral instructions:

"If you look at the AMENDED INFORMATION in count 3 the state has alleged that either a gun and/or a ligature was the deadly weapon in this case. And I would note that there is no requirement under the law that we prove or we recover the deadly weapon in order for you to find a deadly weapon. Was used, so can a ligature be a deadly weapon? INSTRUCTION NUMBER 60 defines for you deadly weapon. And I would submit to you that the second part is relevant in this particular case. "Deadly weapon means," and in the second section "Any weapon, device, instrument, material, or substance which under the circumstances in which it is used, attempted to be used, or threatened to be used is readily capable of causing substantial bodily harm or death".

Now, clearly a ligature, whether it was the cord from the space heater that you remember in the picture sitting on the dresser with the blood on it on the back, with the cord laying on the ground unplugged, or whether it was a belt or whether it was a piece of cloth, all of those qualify under this statute and all of them are either a material, a device, an instrument, are they readily capable of causing death? Well, this isn't Rocket Science. This is a murder case, it caused the death. Enrique Caminero died from ligature strangulation so clearly under the law the ligature was a deadly weapon.

"And the next question in turn actually follows, can the defendant be held responsible for the use of that ligature by "Robert Castro". Clearly under the law the defendant is equally accountable, equally responsible for the use of that ligature by one of his co-conspirators. (SEE T.T Closing Arg. Pg20)

EXHIBIT #5

19-20) This prejudicial statements, along with the erroneous instructions, were given orally to the Jury at petitioner's trial. A clear indication of a constitutional violation which influenced the Jury to find VILLAVERDE guilty of first degree murder with the use of a deadly weapon. Hence the new information described in the charging document is vital, along with the second document that was filed in the same day, (disposition 2. USE of a deadly weapon or tear gas in commission of a crime) charges amended/dropped. This are material, new exculpatory facts, that petitioner is entitle for a Jury to hear, since he was deprived of that opportunity, because this agreement and theory came afterward. The third document presented as a newly discovered evidence is the (disposition 3, Robbery, charges amended/dropped). A crucial and fundamental key evidence, because Robbery is the charge or the theory that the state argued at VILLAVERDE'S trial, the prosecution alleged that "Roberto Castro and Rene Gato" Rob the victim or conspired to Rob the victim, and that petitioner aided and abetted in the commission of the crime. In fact the state, again erroneously instructed the Jury the following:

"And instruction number 47 particularly defines it, and simply lays that a Robbery is taking property from another person by force or by threat of force". And just as in count 2, murder with use of a deadly weapon, when it comes to count 3, Robbery with use of a deadly weapon, the same theories apply. The defendant in this case should be held accountable for the Robbery of Enrique Caminero, even if he didn't take the property from him.

This costly error, clearly influenced the Jury's verdict at petitioner's trial, causing to be convicted of a non-existent Robbery. In the disposition 3. The prosecution's assertion that the Robbery should be dropped or dismiss is also new and material exculpatory evidence favorable to petitioner's claim that he did not committed the Robbery, petitioner was never notified of this new development, and he should be entitled to have this specific factual allegations heard and review. A district court must make its determination concerning a habeas petitioner's innocence in light of all the evidence. It must review both the reliability of new evidence and its materiality the

conviction being challenged, which in turn requires an examination of the quality of the evidence that produced the original conviction.

(4) THE CRIME OF BURGLARY: As far as the record shows, there is no indication in the system, whether the crime was dismissed, dropped or amended. There is no mention in the charging document, or in the arraignment hearing about the state's decision regarding this crime, a clearly and reasonable probability, that the charge was also dropped. So it is fair to consider as a matter of Justice, and to preserve petitioner's rights established in the 14th amendment of the constitution to due process and equal protection. That petitioner's conviction for burglary shall be also stricken.

(5) Robert Castro's admission of Guilt, and confession of murder, is an essential and significant new finding of facts, an admission in a lesser offense, that was not available at petitioner's trial, an admission heard and accepted in open court. As sincere assertions that the alleged crime was indeed voluntary manslaughter and not first degree murder, as the state falsely indicated at VILLAVERDE'S trial. In landmark case like Brady v state of Maryland. The U.S Supreme Court states that, "in the matter of confessions a HYBRID SITUATION exists, it is the duty of the court to determine from the proof, usually taken out of the presence of the Jury if they were freely and voluntarily made etc. and admissible, if admitted, the Jury is entitled to hear and consider proof of the circumstances surrounding their confession, the better to determine their weight and sufficiency.

Surely the confession of Castro of murder was freely and voluntarily, according to the stipulations described in the plea agreement, this admission of Guilt and confession, like in Brady's case, is material either to guilt or to punishment. The due process clause of the 14th amendment, and 8th amendment rights against cruel and unusual punishment. Are in jeopardy of violation, if petitioner's claims of fundamental miscarriage of Justice, are not heard.

A prosecutor's role transcends that of an adversary. He is the representative not of an ordinary party to a controversy, but of a sovereignty

whose interest in a criminal prosecution is not that it shall win a case, but that Justice shall be done.

The information provided in the charging document of the amended information (marked as exhibit 1), contains a specific allegations, no belied by the record, and should be noteworthy that this MATERIAL INFORMATION, came from the district attorney's office, the same prosecutor that was assigned to litigate against petitioner at his trial, the facts enclosed in the document were argued and accepted in open court, petitioner's trial Judge accepted the facts and stipulations, as truthful and convincing evidences of Castro's actions, role and conduct in the commission of the crime of "VOLUNTARY MANSLAUGHTER" and also accepted that the crime was committed without malice and deliberation, did together, with SALLY VILLAYERDE AND RENE GATO. This is an important fact, because "A criminal defendant does not have an absolute right under the constitution to have his guilty plea accepted by the court". See Lynch v Oberholser, 369 US, at 719, 8 LED 2d 220. Also Fed. Rule CRIM proc 11 preserves this distinction in its requirement that a Court Cannot accept a Guilty plea "UNLESS IT IS SATISFID THAT THERE IS FACTUAL BASIS FOR THE PLEA" in other words, if the court accepted Castro's Guilty plea, is because, it knows that the state evidences of the case weren't strong enough to support a Verdict of FIRST DEGREE MURDER. Against Robert Castro in a trial. The court acknowledged that, the state Risked greatly in the first, against VILLAYERDE, if is not for the state, that overran petitioner's trial with numerous errors, there was a good possibility, that VILLAYERDE would have obtained an Acquittal. When the Jury first deliberated, they brought up a split decision, five JURORS found petitioner not guilty and seven found him guilty but the court instructed that the verdict must be unanimous, and in the second deliberation, the Jury brought a unanimous decision of Guilty. The court knew this, hence accepted the terms of the amended information in "open court" as true statements of the facts. the theory : disclosed in Robert Castro's plea agreement charging document might well help to convince any Jury of petitioner's innocence of the crime of first degree murder with the

use of a deadly weapon, Robbery with the use of a deadly weapon and the burglary conviction. SALLY VILLAVARDE'S convictions were wrongfully obtained, the government adjudication of the crime is that he should be criminal liable, for aiding and abetting Castro in the commission of the crime, yet after his was tried, convicted and sentenced to the Harshes sentences 8 months later, the state changed the theory of the case, a clear and convincing fundamental miscarriage of Justice. Which could be easily contemplated as a good case of vindictive prosecution misconduct. Evidence matter, closing arguments matters, statements from the prosecutor matter a great deal. And petitioner was extensively prejudice by the prosecutor's misleading arguments, false information, erroneous instructions and statements, which clearly influenced the verdict of petitioner's trial it is therefore particularly important that the government discharge its responsibilities fairly, consistent with due process. The overwhelming majority of prosecutors are decent, ethical, honorable lawyers who understand the awesome power they wield, and the responsibility that goes with it. But the temptation is always there, it's the easiest thing in the world for people trained in the adversarial ethic to think a prosecutor's job is simply to win.

One of the most important responsibilities of the UNITED STATES attorney and his senior deputies is ensuring that line attorneys are aware of the special ethical responsibilities of prosecutors, and that they resist the temptation to overreach. "Training to import awareness of constitutional rights is an essential function of an office whose administration of Justice the public relies on."

The second circuit case, walker v city of NEW YORK, 974 F. 2d 293 (2d. CIR 1992) illustrates the disastrous consequences that can follow when this responsibility is not met. The prosecutors in Walker persisted in prosecuting a defendant and lied and concealed evidence in the process even though they were aware of his probable innocence. It took Mr. Walker nearly two decades to win his freedom. The Walker Court found that the District Attorney's failure to train or supervise her employer as to "Such basic

norms of human conduct as the duty not to lie or persecute the innocent" could be the basis of liability the same could be say about VILLAVARDE'S case, which had taken nearly fifteen years of incarceration, to prove that he has been convicted in an erroneous theory of criminal liability or charge of murder in the first degree, with the use of a deadly weapon, Robbery with the use of a deadly weapon and burglary.

THE UNITED STATES SUPREME COURT HAS recognized that a prisoner otherwise subject to defenses of abusive or successive use of the writ of habeas corpus may have his federal CONSTITUTIONAL claim considered on the merits if he makes a proper showing of actual innocence. In other words, a credible showing of actual innocence may allow a prisoner to pursue his Constitutional claims on the merits notwithstanding the existence of a procedural bar to relief. This Rule, or fundamental miscarriage of Justice exception, is grounded in the equitable discretion of habeas courts to see that federal CONSTITUTIONAL errors do not result in the incarceration of innocent persons.

DUE DILIGENCE.

According to the Rule mentioned above, petitioner do not have to show unjustifiable delay, unless actual innocence is not reliably shown.

Nevertheless, petitioner can show due diligence on his part, as follow:

1- In May 01, 2017, PETITIONER'S WRIT OF CERTIORARI IN SUPPORT OF HIS FIRST POST-CONVICTION petition was denied. Subsequently in May 17, 2017, a petition for rehearing was filed and denied by the U.S SUPREME COURT.

Petitioner's court appointed Federal Counsel, withdrew from the case, and advised petitioner to seek relief, through a second successive petition, and to claim actual innocence.

Petitioner being Spanish descent, lack any understanding of English and the law of the American Judicial System, Hence, He sought help at the prison legal library, from an inmate law clerk, that upon reviewing petitioner's case

advised to file a motion, to obtain his co-defendants, plea agreements copies, Arrangement Hearing Transcripts and sentencing transcripts.

In, June 09, 2017, petitioner filed a second successive petition to the district court pending review. In, October 16, 2017, VILLAVERDE filed a "NOTICE OF MOTION AND MOTION FOR TRANSCRIPTS AT STATE EXPENSE". Which was denied a month later in November, 20, 2017.

Petitioner's dire need to obtain the documentation, filed a second notice of motion and motion for transcripts at state expense dated Nov, 20, 2017 which was also denied in January, 08, 2018 despite being unopposed, in December 29, 2017, petitioner received a letter from the clerk of the court "Steven D Grierson" stating that, he only could provide the plea agreement/amended information, no the transcripts, thus a check # 304354 for \$4.00 was sent back to petitioner. See EXHIBITS HERE IN #12)

Petitioner has shown due diligence in pursuit of this documentation meeting the second prong, set forth, as a factor for a, grant of a new trial based on newly discovered evidence.

Petitioner's newly discovered information is material to the issues at trial, THE STATE NEW THEORY OF THE CASE, plus co-defendant's admission of guilt and confession of murder to a lesser offense of voluntary manslaughter. Are material exculpatory facts, that petitioner's Jury were not capable to hear and are entitle to hear basically, because the state's theory of the case at VILLAVERDE'S trial was totally different than the one described in the charging document of the "Amended Information" Exhibit No 1, petitioner believe that no reasonable juror would have convicted him in the light of the new evidence. The trial was plagued with numerous constitutional errors that influenced the verdict. The standard the UNITED STATE SUPREME COURT adapted in schlup v Delos is demanding. The gateway should open only when a petition presents evidence of innocence so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of no harmless constitutional error.

The document in question, THE AMENDED INFORMATION", as the title announce, is new information, of factual findings, facts that petitioner did not know, or could not know, because (1) was part of a UN disclosed agreement between the state and co-defendant. (2) The prosecution failed its constitutional duties to notify, that a change in the theory of the case was made, which include exculpatory information favorable to petitioner's issues of guilt and punishment. (3) Trial/Appellate counsel failed his constitutional duty, to effectively raise a direct appeal Issue, regarding co-defendant Castro's CONFESSION AND ADMISSION OF GUILT to the murder, in the lesser offense of VOLUNTARY MANSLAUGHTER; Counsel knew that the state had extensively adjudged VILLAYERDE during trial, criminal liable for "Robert Castro's Actions," thus 'Castro's" confession and admission of guilt, is debatable among Jurist of Reason.

In Perkins v MCQUIGGIN 1335 CT 1924 L.E.D. 2d 1019. 2003 US. The Supreme Court rejected the state's argument that habeas petitioners who asserted convincing actual innocence claims had to prove diligence to cross a federal court's threshold. And also held that the miscarriage of Justice exception applies to state procedural rules, including filing deadlines. A federal court may invoke the miscarriage of Justice exception to Justify consideration of claims defaulted in state court under state timeliness rules.

Petitioner's case, suffered an extraordinary and overwhelming miscarriage of Justice, involving several and damaging constitutional violations, that shall be review it, and rule properly on its merits. Therefore petitioner pray to this honorable court to grant relief and overturn petitioner's convictions, and reverse for a new trial.

II-PETITIONER CONTEND THAT HE IS ACTUALLY INNOCENT OF FIRST DEGREE MURDER WITH THE USE OF DEADLY WEAPON, AND A FUNDAMENTAL MISCARRIAGE OF JUSTICE OCCURRED IN THE PROCEEDINGS, WHEN THE STATE CONCEDED THAT PETITIONER DID NOT COMMITTED FIRST DEGREE MURDER BEYOND A REASONABLE DOUBT. AND ERRED BY INSTRUCTING THE JURY IN AN INVALID THEORY OF PREMEDITATION WILLFUL AND DELIBERATE, IN VIOLATION OF HIS FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS TO RECEIVE A FAIR TRIAL

At the close of the state case, during closing arguments the state gave the following instructions, Regarding Count 2 Murder with the use of a deadly weapon. The state explained as follow:

"What about count 2, going back to the Amended Information, murder with use of a deadly weapon? Initially in court 2 it lays out what murder is, willfully, with malice aforethought..... Which is another way of saying that it was deliberate out, and those are covered in the instructions..... Willfully, with malice aforethought kill....to kill another human being, it then lays out two ways in which this can be first degree murder, if the Killing was either, one, Willful, premeditated and deliberate. First, Willful, premeditated, and deliberate is pretty self-explanatory, if there's proof that someone killed another person by their own actions, such as shooting them or strangling them or Hitting them over the head and there's proof that their actions were willful, premeditated and deliberate, and again, the instructions talk about what that means, then they're clearly guilty of first degree murder.

"I would submit in this particular case that PROOF DOES NOT EXIST BEYOND A REASONABLE DOUBT THAT SALLY VILLAVERDE COMMITTED THIS TYPE MURDER. We do not have beyond a reasonable doubt that Sally Villaverde was the person that actually strangled Enrique Caminero by using a ligature or was the person that actually hit him over the head with a hard object, such as a gun, Does this mean that you should declare Sally Villaverde to be not guilty of first degree murder because we didn't actually prove that

he was the person that strangled or bludgeoned Mr. Caminero?

SEE T.T APRIL 7, 2004 pg. 10-11
EXHIBIT # 5

"The due process clause protects accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged."

In a first degree murder prosecution, The State bear the burden of establishing beyond a reasonable doubt that the killing was the result of premeditation and deliberation, it's clearly establish from the statute that all three elements, Willfulness, deliberation, and premeditation, must be proven beyond a reasonable doubt for an accused can be convicted of first degree murder.

The type of evidence sufficient to sustain a finding of premeditation or deliberation falls into three basic categories:

- (1) Facts about how and what defendant did prior to the actual killing which show that defendant was engaged in activity directed toward, and explicable as intended to result in, the killing characterized as "Planning activity".

THE STATE, from the very beginning knew and acknowledged that petitioner was never involved in any "planning activity," or conspiracy to have the victim kill, the declaration of warrants signed under oath by THE LEAD DETECTIVE IN charge of the murder investigation, Mr. ROBERT WILSON declared that petitioner and his girlfriend were just approached by co-defendants Roberto Castro and Rene Gato to rent a room, for a drug transaction to occur. Further at trial DETECTIVE (ROBERT WILSON) testified under oath at to the same theory. There was not testimony offered at trial that involved petitioner into any conspiracy to rob or kill Mr. Caminero.

- (2) Facts about defendant's prior relationship and/or conduct with the victim from which the jury could reasonably infer a motive to kill the

victim which inference, together with the facts of type.

Testimonies offered at trial by the victim's best friend, witness for the prosecution (Lionel Garcia) testified under oath that there was not relationship between the victims AND. Villaverde.

The following is some excerpt from the trial, testimony by "Lionel Garcia." Garcia-Direct T.T pg.30 (EXHIBIT #7)

BY MR. FATTIG:

Q Did Enrique Caminero have a relationship with the defendant Sally Villaverde?

A No. He met him, too, back in 98.

Q Do you know what kind of relationship they had, or do you not know?

A No. I don't think had a relationship.

Q That you knew of?

A That I wouldn't know, no.

Q Do you know a person named Teresa Gamboa?

A No. Not by the name. I don't know her.

MR. FATTIG: Court's indulgence

(Pause in the proceeding)

In which way, can the petitioner have a motive to murder the victim, when there was no relationship? It should be noted that this was a person that not only knew the victim, but was his best friend, so if Villaverde would've had any type of friendship or relationship with the victim, surely he would HAVE KNOWN AND TESTIFIED ABOUT IT.

(3) The nature of the killing from which the jury could infer that the

manner of killing was so particular and exacting that defendant must have intentionally killed according to a preconceived design to take his victim's life in a particular way for a reason reasonably inferable from facts.

Evidently the state failed to prove any of the categories fit Villaverde's case, when the prosecutor conceded and stated on record. "We do not have beyond a reasonable doubt that Sally Villaverde was the person that actually strangled Enrique Caminero by using a ligature or was the person that actually hit him over the head with a hard object, such as a gun."

A boldly admission indicative that the state's evidences were not strong against Villaverde to sustain a verdict of first degree murder. But we are not talking about evidences only. The prosecution also conceded, that petitioner's co-defendant Roberto Castro was the one responsible for the death of Caminero. The prosecutor state the following:

And the next question in turn actually follows, can the defendant be held responsible for the use of that ligature by "Roberto Castro". Clearly under the law the defendant is equally accountable, equally responsible for the use of that ligature by one of his coconspirators. (T.T closing Arguments pg. 20)

A STATEMENT THAT RAISE CONSTITUTIONAL CONCERN, because Roberto Castro pleaded Guilty of Voluntary Manslaughter and served 4 YRS to 10 YRS at high desert state prison. Showing once again that the state's THEORY OF FIRST DEGREE MURDER WAS UNRELIABLE beyond a reasonable doubt.

The relevant inquiry in reviewing the sufficiency of the evidence supporting a jury's verdict is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential of the crime beyond a reasonable doubt.

Testimonies offered at trial through: The state's witness (Teresa Gamboa); described that Villaverde tried to save the victim's life, by applying CPR or mouth to mouth resuscitation, the following is an excerpt of the redacted

preliminary transcript testimony used at trial.

Q Okay. Thank you. When Sally said he gave him mouth-to-mouth resuscitation, did you know if he knew how to give mouth-to-mouth resuscitation?

A Yes. His mother is a doctor in Cuba, and they, he grew up in clinic. So, he knew how to take blood and give blood and, you know, do shots and CPR. He knew how to do all that.

See exhibit #6 PH (pg. 150-151)

Even more relevant is the testimony offered by the state's witness (Doctor Worrell) expert and forensic Doctor, in charge of the autopsy performed on the victim, the following is a statement offered at trial by the Doctor UNDER "OATH".

WORRELL-CROSS

136

Isn't it a fact you found some body mucous in and around the nose?

A I did not notice that. I believe our investigator saw some fluid coming out of the nose at scene, but I did not note that in my report.

Q Okay, if someone were trying to revive someone, such as doing CPR, wouldn't there be mucous coming from the nose? Isn't that consistent with CPR?

A It's consistent with a dead body. I can't say it's just consistent with CPR.

MR. WENTWORTH: I'm basically referring to testimony, counsel, on page 35 of the preliminary hearing, lines 1 through 6.

BY MR. WENTWORTH:

Q And, doctor, I'm doing this not from the standpoint of trying to impeach your testimony. I just want to make it clear and maybe clarify.

The question was, "if someone were trying to revive a body, would mucous come from their nose," and I believe your answer was, "I'm trying to think, in all of my CPR's, if I ever had fluid. Yes, it very well can. I mean, we always have fluid in the back of our mouth. That's connected with the nasal pharynx, so yes."

Would you agree with that question and answer?

A Yes.

(See exhibit here in) t.t

The testimony, clearly corroborate the statement offered by the state's principal witness (Teresa Gamboa), enhancing petitioner's lack of intent to conspires with co-defendants, and lack of intent to have the victim murdered.

Instructing the jury on premeditation and deliberation after the prosecution admitted that they did not had any proof beyond reasonable doubt that Villaverde committed first Degree Murder, violates the federal Constitution if there is a "Reasonable likelihood that the jury has applied the challenged instruction in a way that prevents the consideration of constitutionally relevant evidence."

In the instant case, the state completely disregarded the theory of premeditation and deliberation and willfulness and devoted themselves to absolutely focus in the different theories of criminal liability.

Maybe Assuming that their different theories could predict a verdict of first degree murder and not calculating that petitioner perhaps was found guilty in an invalid ground. The jury reached a general verdict of first degree murder with the use of a DEADLY weapon and the question is upon which ground or theory they reached such a verdict?

Maybe the jury could not agree upon the theories of criminal liability thus the state offered a DEAL OF VOLUNTARY MANSLAUGHTER to the alleged MURDERER (ROBERTO CASTRO) or is likely that the jury did not followed the

Instruction correctly leaving open the possibility that VILLAVERDE was convicted on a legally impermissible theory. IN BABB V LOZOWSKY THE ~~US DISTRICT~~ COURT OF NEVADA declared that "A general verdict must be set aside if the jury was instructed that it could rely on any of two or more independent grounds, and one of those grounds is insufficient, because the verdict may have rested exclusively on the insufficient ground. Additionally pursuant to NEV. Rev. stat 200.030 (1) (a), a conviction of first degree murder requires the Jury to conclude that the defendant committed a WILLFUL, deliberate and premeditated killing. A theory which the state conceded, could not be prove beyond a reasonable doubt against petitioner. Accordingly in light of the newly discovered theory, asserted by the state's charging document of the amended information, stating that Robert Castro committed (voluntary manslaughter), without malice and deliberation shall be strong evidence, showing that SALLY VILLAVERDE could not have committed first degree murder, deeming his current conviction INVALID, by the facts stated here in , which show clear and convincing evidences that is factual INNOCENT OF FIRST DEGREE MURDER WITH THE USE OF A DEADLY WEAPON.

II-a) VILLAVERDE CONTENDS THAT THERE IS NO basis in record to support his enhanced SENTENCES FOR THE USE OF A DEADLY WEAPON IN THE COMMISSION OF THE CRIMES. And he is actually innocent of the use of a deadly weapon by one of his co-defendant in this case (Robert Castro) and the instruction given by the state violated his 14th amendment right of due process.

In the instant case, the state instructed the Jury to the following:

"So can ligature be a deadly weapon? Instruction NUMBER 60 defines for you a deadly weapon. And I would submit to you that the second part is relevant in this particular case. "Deadly weapon means," and in the second section, "any weapon, device, instrument, material, or substance which under the circumstances in which it is used, attempted to be used, or threatened to be used is readily capable of causing substantial bodily harm of death".

Now, clearly a ligature, whether it was the cord from the space heater that you remember in the picture sitting on the dresser with the blood on it on the back, with the cord laying on the ground unplugged, or whether it was a belt or whether it was a piece of cloth, all of those things qualify under this statute, and all of them are either a material, a device, an instrument. Are they readily capable of causing death? Well, this isn't Rocket science. This is a murder case. This isn't an attempted murder case. It caused the death. ENRIQUE CAMINERO died from ligature strangulation. So clearly under the law the ligature was a deadly weapon. (SEE T. Transcripts closing Arg. Pg. 19-20). EXHIBIT #5

A very erroneous way, to mislead the jury with an incomplete information; according to the Supreme Court of Nevada, that overruled the "Functional" test and applied the "inherently dangerous weapon" test for determining whether an instrumentality is a deadly weapon for purposes of NRS 193.165.6 {908 P. 2d 689} the "inherently {111NEV 1495} dangerous weapon "test means" That the instrumentality itself, if used in the ordinary manner completed by its design and construction. Will or is likely to, cause a life threatening injury or death".

Obviously, the state forgot to instruct in that important "test" so to the Jury's mind, a dangerous weapon could be anything, from a Rubber band to a shoe lace, anything that could bind or tie. The trial court also failed to cure the damaging instructions, by denying trial counsel the use of an advisory verdict regarding the use of a deadly weapon a further indication of petitioner's constitutional rights to due process being violated beyond reasonable doubt.

IIb) THE PROSECUTOR'S COMMENTS MANIPULATED OR MISSTATED THE EVIDENCE.

And the end of petitioner's trial, the prosecutor falsely indicated that the use of a ligature, by Robert Castro caused the death of the victim, a totally prejudicial remarks, that contradicted the forensic testimony given by the state expert witness "DR Worrell", which clearly testified under oath, that the victim death was caused, due to asphyxia by strangulation, there was not one part of her testimony, indicating the use of a ligature. Yet the prosecutor did not restrain from using the onerous term, repeatedly throughout closing arguments. For example: The following are some excerpts from the trial transcripts at closing arguments.

-) "and you" remember DR. REXENE WORRELL, who testified just two days ago that she reached a conclusion after the Autopsy that MR. ENRIQUE CAMINERO died due to strangulation that MR. CAMINERO had marks on his neck that was consistent with ligature strangulation (false statement,) DOCTOR WORRELL, never mentioned anything about ligature strangulation, She specifically testified that the neck are presented MARKS, ABRATIONS, CONSISTENT WITH 0.6 INCH ligature mark, more or less half of inch mark . (See T.T DIRECT EXAMINATION BY "DR WORRELL" At pg.

At trial the forensic examiner testified and state the following

Q And those observations, coupled with what you had seen on the outside of the Body in the area of the neck, did they lead to a conclusion that you made about the cause of death in this case?

A Yes. This was the cause of death

Q You would say strangulation or how did you term it?

A I termed it strangulation.

Q And the injuries to the face and to the head end the gunshot wound you did not determine to be the primary cause of death?

A NO.

Al though, the prosecution implied count less times during direct examination about the use of a ligature, Doctor Worrell never determined, whether the use of a ligature was the cause of death, she testified that the neck area presented MARKS, ABRATIONS, consistent with 0.6 inch ligature mark, more or less half of inch mark.

It's well known, that A Strangulation can be done with the HANDS (MANUAL STRANGULATION), and hands can leave abrasions marks, consistent with a ligature mark. In the instant case, the state did not presented or possessed, any cord, belt, scarf as an evidence that was used on the victim to strangle to death. Additionally as previously discussed the use of the deadly weapon was never established

(DOCTOR WORRELL) state the following comments during direct examination.

Q. AND THE FACT THAT HE HAD BEEN SHOT AND A BULLET HAD GONE THROUGH HIS RIGHT BUTTOCKS AREA, WHY IS THAT NOT AS SIGNIFICANT?

A. THAT WAS AN IRRITATION INJURY IS WHAT I'D CALL IT, JUST-IT IRRITATED HIM, IT WOULD HAVE ANGERED HIM TERRIBLY, BUT IT DIDN'T DO ANYTHING. IN AND OF ITSELF, EVEN UNTREATED, THAT WOULD NOT HAVE BEEN A SIGNIFICANT INJURY, ALTHOUGH, AGAIN, I'M SURE HE WOULD THINK SO, BUT IT'S NOT SIGNIFICANT.

Q Would it bleed and awful lot?

A Fat has vessels, but it would have stopped with a bandage.

Q Okay, so the bullet was traveling through a fatty area that doesn't cause a lot of blood loss, is that right?

A Correct.

Q And doesn't endanger Any Vital organs in that area, correct?

A NO. EXHIBIT 9 (TT pg. 125, 126)

- The testimony of the forensic examiner clearly described that the use of the deadly weapon by co-defendant was not the cause of death in fact, she stated that was nothing but a "bandage type of wound". The cause of death, according to the expert forensic "DOCTOR WORRELL" was "asphyxia due to strangulation."

III- PETITIONER'S FEDERAL CONSTITUTIONAL RIGHTS WERE VIOLATED AS A RESULT OF PROSECUTORIAL MISCONDUCT WHICH INFECTED THE TRIAL WITH UNFAIRNESS AS TO MAKE THE RESULTING CONVICTION A DENIAL OF DUE PROCESS.

In the instant case the prosecution misconduct, rose to the level of violating petitioner's due process, when the prosecutor orally, instructed the Jury in the use of a deadly weapon, and in the Robbery instructions. Stating the following:

d-) "Enrique Caminero died from ligature strangulation, so clearly under the law the ligature was a deadly weapon.

And the next question in turn actually follows, can the defendant be held responsible for the use of the ligature by Robert Castro? Clearly under the law the defendant is equally accountable, equally responsible for the use of that ligature by one of his coconspirators. (T.T Closing ARG pg. 20).

e-) "Now, tape is attempted to be used by the defendant because ENRIQUE CAMINERO is struggling so much. And at that point the evidence showed that Robertico Takes matters into his own hands and attempts to find something to strangle him the cable cord of the television, which is number 1.

f-) "Robertico then has to look for something else perhaps that was the cord from the space heater, which is number 21, which was lying unplugged with blood on the back of it. Robertico the uses some sort of ligature to strangle the life out of Enrique Caminero. (T.T Closing ARG pg.27) **EXHIBIT 45**

It's obvious, and fair to say, that the prosecutor could not make up his mind, upon which the instrument was that "Allegedly" Robert Castro used. (A ligature, tv cord or cable cord, cord from the space heater, etc.), inflammatory statements, that was injected into the mind of the Jury, causing VILLAVERDE'S convictions, enhanced sentences for the use of a deadly weapon. And the most significant fact is that this Remarks, and prejudicial comments was made, by the same prosecutor, who conceded 8 months after VILLAVERDE was tried, convicted and sentenced. That "Robert Castro" committed the murder by MANUAL STRANGULATION, and further stipulated, that the use of a deadly weapon shall be dropped. (SEE disposition 1. Use of a deadly weapon, dropped JAN, 31, 2005).

It has been legally established, that a prosecutor may not blatantly inflame the Jury with evidences, and he doesn't have. A prosecutor should be unprejudiced, impartial, and nonpartisan, and he should not inject his personal opinion or beliefs into the proceedings or attempt to inflame the Jury's fears or passions in the pursuit of a conviction.

Further A conviction obtained through use of false evidence, known to be such by representatives of the state, must fall under the due PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT. If it is in anyway relevant to the case, the district Attorney has the responsibility and duty to correct what he knows to be false and elicit the truth.....that the district attorney's silence was not the result of guile or a desire to prejudice matters LITTLE, for its impact was the same, preventing, as it did, a trial that could in Any Real Sense be termed fair.

"It is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of LIBERTY THROUGH a deliberate deception of COURT AND JURY by the presentation of testimony Known to be perjured. Such a contrivance by a state to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of JUSTICE as is the obtaining of a like result by intimidation.

IV. PETITIONER ALLEGE THAT HIS ACTUAL INNOCENT OF THE CRIME OF BURGLARY, newly discovered evidence and information, showed that a fundamental miscarriage of Justice occurred resulting in his conviction, in violation of his 14th amendment RIGHT TO DUE PROCESS. To receive a fair trial. In the instant case, petitioner argue that he could not be convicted of the crime of burglary, and he is factual innocent of burglary based on the following facts:

- 1- The room was rented legally, by petitioner's girl-friend whom he maintained a romantic relationship at the time, therefore he had an unconditional and absolute right to enter the room.
- 2- Was the victim that came into the motel room with the purpose of making a "DRUG TRANSACTION".
- 3- Petitioner was no present at the time that the crime occurred.
- 4- The newly discovered evidence revealed that the state dropped the Burglary Charge, against co-defendant ROBERTO CASTRO, whom the state asserted committed the murder, and pleaded guilty of voluntary manslaughter, the amended information, also show that neither defendant committed the crime of burglary. Therefore petitioner contend that the facts stated herein plus the newly discovered evidences are strong showing that the evidence at trial was insufficient to authorize his conviction for burglary.

Burglary is a specific intent crime, and petitioner was held accountable or liable, for his co-defendant Robert Castro's Actions, the prosecution adopted the natural and probable consequences doctrine, when made comments like the following:

"And under the law we commonly use the term the act of one is the act of all." (T.T pag.14 closing Arg), further declared, "And also, as the charging document says, if we prove that he ---that Enrique Caminero was killed

because a Robbery was taking place and as a result of that felony, the Robbery or the burglary, the act of going into the room with-excuse-me felonious intent, as a natural result of either one of either one of those two crimes the killing took place, that is a theory of criminal liability that covers MR. VILLAVERDE (T.T pg. 106 closing Arg). exhibit # 5

During the closing Arguments, the prosecution instructed extensively in the theory of criminal liability, one of the four different theories that the state used to prove their case was the theory of vicarious coconspirator liability.

"Now, going back to instruction Number 3, page 2 it spills over into two pages here-- similar to an aiding and abetting theory is Number 3, "by conspiring with others to commit the offense of robbery and/or murder whereby each conspirator is Vicariously liable for the foreseeable acts of the other made in furtherance of the conspiracy. "Similar concept to number 2, aiding and abetting.

This theory of criminal liability state that if you conspire or agree to commit a crime with others you are held equally accountable under the law for the, quote, "foreseeable acts of the other made in furtherance of the conspiracy"

exhibit # 5 (tt closing Arguments pg. 16)

To hold a defendant criminally liable for a specific intent crime, Nevada requires proof that possessed the state of mind required by the statutory definition of the crime.

The power to define crimes and penalties lies exclusively within the power and authority of the legislator no statutory underpinning for the pinker ton rule exists in Nevada in the absence of statutory authority

providing other wise, a defendant may not be held criminally liable for the specifies intent crime committed by a Co-Conspirator Simply because that crime was a natural and probable consequence of the object of the conspiracy, to prove a specific intent crime. The state must show that the defendant actually possessed the requisite statutory intent.

ALTHOUGH THE PROSECUTION PRESSED HARD AND EXTENSIVELY IN THE THEORY OF CRIMINAL LIABILITY, THE STATE FAILED TO PROVIDE ANY SINGLE STRAND OF EVIDENCE, To prove or tie MR VILLAVERDE to the state's conspiracy theory involving his codefendants, in fact the prosecution DID nothing but to provide Ample evidences of exculpatory statements offered by their own witnesses, for example the Lead Detective in charge of the murder investigation testified under oath that petitioner's girlfriend and petitioner were only involved in renting a Room, and received cash for a drug transaction to occur.

The following is some excerpt from the Direct and Cross-examination OF LEAD DETECTIVE ROBERT WILSON at petitioner's trial. (t.t pg. 19) EXHIBIT #8

Q Okay. Now did she tell you what was in it for her to rent a room other people?

A Yes.

Q And what did she initially tell you?

A She told us that she the defendant were going to receive a thousand dollar (1,000) for renting the room.

Q Okay. And did she explain why she would receive she and the defendant would receive a thousand dollars (1,000)?

A Not satisfactorily. She said that they were supposed to watch a female friend of Gatos and eventually she conceded that it was likely that a drug deal was going to take place.

FURTHER, IN AND DURING CROSS-EXAMINATION, THE DETECTIVE TESTIFIED

AND ADMITTED THAT HE SIGNED A DECLARATION OR AFFIDAVIT STATING THE SAME (SEE EXHIBIT HEREIN) THE FOLLOWING IS ANOTHER EXCERPT OF THE CROSS EXAMINATION OF DETECTIVE WILSON AT TRIAL T.T PG 90-91.

Let me ask you this question then. Taking her statements----- You then took her statements and you used that as the basis to obtain search warrants in this case, didn't you?

A Yes, part of wat she said and other things

Q Now, in explaining how you obtain a search warrant, isn't it true you go through and do an affidavit to a judge? And an affidavit is a document that is signed, that you signed under oath.

And you signed a couple of those, isn't that correct?

A Do you recall, in those affidavits, which are sworn testimony similar to the testimony that's sworn to in here, that you identified MR. VILLAVERDE and MS. Gamboa as being two individuals that were just going to receive money for renting a room for a drug deal to occur? Do you remember putting that in the affidavits?

A Yes. (SEE EXHIBIT # 8 HEREIN)

No once, no twice, but multiple times, the testimonies offered by the state's own witnesses contradicted the state's theory of VICARIOUS CO-CONSPIRATOR LIABILITY. Throughout the entire proceedings at trial, there were not one testimony that tie MR VILLAVERDE to the theory of Robbery/Murder offered by the prosecution.

The Supreme Court of Nevada refuses to adopt the NATURAL AND PROBABLE CONSEQUENCES DOCTRINE. In general, the decision is limited to vicarious coconspirator liability based on that doctrine for specific intent crimes only. In further, explained that to hold a defendant criminally liable for a specific intent crime, Nevada requires PROOF that he possessed the state of mind required by the statutory definition of the crime

Others have criticized the role as well. "Under the better view, one is not an accomplice to a crime merely because that crime was committed in furtherance of which he is a member, or because that crime was a NATURAL AND PROBABLE CONSEQUENCE {121 Nev 919} another offense as to which he is an accomplice the drafter of the model penal code have Similarly rejected the pinkerton view, commenting that the "law would lose all sense of just proportion if by virtue of his crime of conspiracy a defendant was" held accountable for thousands of additional offenses of which he was completely unaware and which he did not influence at all.

Accordingly, the prosecution's comments not only prejudiced petitioner, but the state also instructed, in the erroneous instruction of vicarious coconspirator, that it has been harshly criticized in Nevada, and was clarified in 2002 in controlling cases like (Sharma v state) where the Supreme Court, announced that Sharma overruled Mitchell not to announce a new rule, but to expressly disavow Mitchell's "CLARIFICATION" of the law. The supreme court abandons the doctrine it is not only inconsistent with more fundamental principles of our System of Criminal law, but it also inconsistent with those Nevada Statutes that require proof of a specific intent to commit the crime alleged.

Villaverde was tried and convicted two years, after the Supreme Court made this Announcement of "CLARIFICATION", yet the state proceed to instruct the Jury in this DOCTRINE, which clearly violates NRS 195.020 where a defendant may not be held criminally liable for the specific intent crime committed by a coconspirator simply because that crime was a natural and probable consequence of the object of the conspiracy. To prove a specific intent crime, the State must show that the defendant actually possessed the requisite statutory intent. A principle that was also applied in 2005 a year after petitioner's conviction. In "Bolden v State of Nevada 121 Nev. 908, 124 P.3d 191, 2005, where the Supreme Court again, held that the district Court understandably but erroneously instructed the Jury that Bolden could be found guilty of the specific intent crimes of burglary and first and second

degree Kidnapping as long as the commission of those offenses was a natural and probable consequence of the conspiracy, and even if Bolden never intended the Commission of those Crimes, and concluded that the error is applicable only with respect to Bolden's conviction of the specific intent crimes of Burglary and kidnapping.

The instruction on co-conspirator liability improperly allowed the Jury to find Bolden criminally liable for the specific intent crimes of burglary and kidnapping under a theory of vicarious liability that erased the statutory men's rea element required for those specific intent offenses.

As in Bolden's case, petitioner was also affected by this improper DOCTRINE and was convicted for the specific intent crime of burglary. A crime that substantially affected his constitutional rights, to receive a fair trial, especially, because months later after petitioner was tried, convicted and sentenced. The state conceded to drop the charge against co-defendant "Robert Castro", admitted and confessed murderer. Therefore by legal standard, petitioner is actual innocent of the crime of burglary, which is one way where he can show that in light of previous case law that he cannot, as a legal matter, have committed the alleged crime. A constitutional violation and a fundamental miscarriage of Justice is sufficient to overcome the prisoner's procedural default in filing an untimely habeas corpus petition and allowed consideration of constitutional claims with regard to that conviction. VILLAVARDE'S claim of Innocence is based on NEVADA CASE LAW clarifying that the specific intent crime of burglary, based on vicarious liability, erased the statutory men's rea element required. Therefore his conviction Shall be reverse and dismissed.

V. PETITIONER CONTEND THAT HE IS ACTUALLY INNOCENT OF ROBBERY WITH USE OF DEADLY WEAPON, AND A FUNDAMENTAL MISCARRIAGE OF JUSTICE OCCURRED WHEN THE STATE MISLED THE JURY BY INSTRUCTING THAT

"The defendant in this case should be held accountable for the Robbery of Enrique Caminero, even if he didn't take the property from him."

A miscarriage of Justice occurred during that proceedings and a Violation of petitioner's due process clause of the Fourteenth Amendment Rendering his Current Conviction Invalid.

2-) subsequently, the state instructed the Jury in Count 3, Robbery with use of a deadly weapon, asserting the following:

"And Instruction Number 47 Particularly defines it, and simply lays out that a robbery is "Taking property from another person by force or by threat of force." And just as in Count 2, murder with use of a deadly weapon, when it comes to Count 3, robbery with use of a deadly weapon, the same theories apply. The defendant in this case should be held accountable for the robbery of Enrique Caminero, even if HE didn't take the property from him."

(see exhibit #5)

Defendant alleges that the evidence produced at trial was insufficient to sustain the verdicts against him as to the Robbery Count as well as Failure to establish that a deadly weapon was used in the commission of the homicide. The statute is clear in the DEFINITION OF ROBBERY which is The Unlawful taking of Personal Property from the person of another, or in the person's presence, against his or her will by means of force or Violence or fear of injury; immediate or future, to his or her person or property, or the Person or property of a member of his or her family, or of anyone in his as her Company at the time of the robbery. A taking is by means of force or fear if force fear is used to:

- (a) Obtain or possession of the Property.
- (b) Prevent or overcome resistance to the taking, or
- (c) Facilitate escape.

As it's described on the NRS 200.380 For a crime of robbery to occur a personal property must be taken. There is no one part in the statute that state that a defendant should be found guilty even "he did not take the property." To instruct the Jury in a "false INFORMATION" extremely prejudiced petitioner to the point that the Jury were capable to convict Villaverde in an invalid theory. That it's completely contrary at to the NRS 200.380 States.

In the Present case the victim's Wallet : Credit Cards and his drugs (28 grams of cocaine; an ounce) street value 500—600 \$ ~~were~~ found on his ~~bel-~~ ~~ong~~le\$. There was no independent evidence of a robbery, only the Specter that was raised by the state that the Petitioner's co-defendants conspired to Rob/Kill MR CAMINERO. Petitioner further allege that he could not committed any Robbery, because he was not present at the scene when the crime happened.

Where record is barren of any evidence that would have supports an inference that defendant either committed the alleged Robbery or participated in a Scheme to do so habeas corpus challenge to robbery charge should have been granted. Archie V Sherriff. Clark Country, 95 NEV 182, 591 P2d 245. '979 NEV LEXIS 557 (1979).

As the statute require the Phrase "in his presence" the section prohibiting the unlawful taking of personal property from the person of another or in his presence, was added to increase the area in which a taking by force or fear Constituted the crime of robbery, but the element of possession must still be satisfied. Phillips V State, 99nev, 693, 669 P2d 706. 1983.

Another prejudicial and hard to grasp instruction, that it may have created a confusion to the jury, first, the NRS in Robbery is clear and specific, and explain that is "The taken of personal property" what it constituted the crime, yet in another hand the prosecutor instructed, that defendant should be accountable even he did not take the personal property. So which one it is? Because there was not any indication or evidence at trial that neither

Robert Castro nor Rene Gato, took anything or robbed anything in fact, the state's theory of the Robbery, was proved to be false, when they dropped the Robbery Charge against co-defendant Robert Castro. At his plea arrangement hearing held in (January, 31, 2005)

A patently prejudicial instruction error triggers a trial court's sue sponge duty. Absent objection, an appellate court reviews instruction errors for plain error. Determining whether a particular instance of prosecutorial misconduct is constitutional error, depends on the nature of the misconduct. For example, misconduct that involves impermissible comment on the exercise of a specific constitutional right has been addressed as constitutional error. Prosecutorial misconduct may also be of a constitutional dimension if, in light of the proceedings as a whole, the misconduct so infected the trial with unfairness as to make the resulting conviction a denial of due process.

As previously mentioned, the state concession that nothing was taken, should deemed the crime of Robbery invalid. Therefore Petitioner's Conviction of Robbery with the use of deadly weapon should be dismissed

Additionally to orally instruct the Jury during closing argument, infringed the requirement provided by NEV. REV, Stat 175.161 (1), which state that in any trial, requires the district court to instruct the Jury at the close of argument with written instructions. The same preclude the district court from giving oral instructions to the Jury unless the parties mutually agree to the oral instruction. If there is no record of the parties' affirmative mutual consent to an oral instruction, this court presumes objection to an oral Jury instruction even absent an actual objection.

In VILLAVERDE'S case, there is nothing on record that indicate of a mutual consent to an oral instruction, and his trial counsel was ineffective by failing to object to the prosecutions erroneous remarks through the reading of the Jury instructions. A clear violation of petitioner XIV AMENDMENT RIGHT of due process to receive a fair trial, THEREFORE HIS CONVICTION SHALL BE REVERSE OR dismiss by this HONORABLE COURT.

There is no reason for petitioner, to have been found guilty unless the Jury was misled by state's inferences that Villaverde should be held accountable of the crime of Robbery even he did not take any property from the victim, the prosecution's comments were improper and in violation of petitioner's Fourteenth Amendment right to Due Process of law. Petitioner is Actual Innocent and can excuse operation of the statute of limitations if he can present Such a Claim "if all the evidence including new evidence, makes it more likely than not than no reasonable Juror Would have found petitioner guilty beyond a reasonable doubt, Petitioner does have new evidence to present in conjunction with the evidence presented at trial.

The third document

presented as a newly discovered evidence is the (disposition 3, Robbery, charges amended/dropped). (See exhibit marked No.)4

The failed theory of Robbery was prejudicial, and it was convenient for the state to push hard in this theory, to prove and press on the felony murder and the different theories of criminal liability. A misleading alternative to confuse the jury and obtain an illegal conviction of first degree Murder in violation of Villaverde's FOURTEENTH AMENDMENT RIGHTS TO DUE PROCESS.

VI.) Petitioner contend that his trial/appellate attorney was ineffective by failing to RAISE IN DIRECT APPEAL, an ISSUE about the state failing to notify, that a change was made in the theory of the case post-trial.

And that counsel also failed to file a motion for a new trial based on the confession of murder made by petitioner's co-defendant at the guilty plea sentencing hearing. Therefore in violation of petitioner's sixth amendment right to receive effective assistance of counsel.

At the end of PETITIONER'S TRIAL, THE TRIAL COURT requested that trial counsel, represent petitioner in his DIRECT APPEAL. And was appointed to do so through proceedings. The prosecution announced or arranged to offer a plea Agreement, to petitioner's co-defendant "Roberto Castro", the alleged and confessed MURDERER by the state prosecutor during petitioner's trial. The sentencing penalty hearing was held on MARCH, 25, 2005, where co-defendant pleaded and confessed to "VOLUNTARY MANSLAUGHTER", confession and evidence that were unavailable at petitioner's trial. This Hearing was held ten months after petitioner was tried and convicted. Petitioner's direct appeal was affirmed and decided on February 15, 2006. Almost a year after the newly discovered evidence surface or came into light. Giving petitioner's trial/appellate counsel ample time to raise or Amend a Claim in direct appeal based on the state's failure to notify of a crucial exculpatory theory post-trial, or also to file a motion for a new trial based in newly discovered evidences, of petitioner's codefendant confession of Voluntary Manslaughter.

ARGUMENTS:

Petitioner Allege that he was prejudiced by attorney's neglected actions when he failed to raise this important claim of great constitutional magnitude, a claim favorable to petitioner which proved that he was wrongfully convicted of first degree Murder. Counsel for petitioner Knew,

that the state only Argument during trial was that petitioner should be held accountable due to his co-defendant's Actions, that the state relentlessly argued throughout the proceedings about petitioner's Criminal liability, yet trial/appellate counsel failed to use this opportunity to present to the Higher Court, that the prosecution's theories, were unfounded, false and misleading; and that a CONSTITUTIONAL VIOLATION occurred during proceedings ending on petitioner to be wrongfully convicted of FIRST DEGREE MURDER, ROBBERY AND BURGLARY.

THE UNITED STATE COURT OF APPEALS FOR THE NINTH CIRCUIT HELD THAT:

There is nothing in the Jurisprudence to suggest that SIXTH Amendment right to effective counsels is weaker or less important for appellate Counsel than for trial counsel. The dividing line between cases in which state-court procedural default should, or should not, be forgiven was the line between CONSTITUTIONALLY ineffective and merely negligent counsel; where a petitioner defaults a claim as a result of the denial of the right to effective assistance of counsel, the state, which is responsible for the denial as a constitutional matter, must bear the cost of any resulting default and the harm to state interests that federal habeas review entails. The court in Coleman did not distinguish between ineffective assistance by trial and appellate counsel. As Coleman recognized, an attorney's errors during an appeal on direct review may provide cause to excuse a procedural default, for if the attorney appointed by the state to pursue the direct appeal is ineffective the prisoner has been denied fair process and the opportunity to comply with the state's procedures and obtain an adjudication on the merits of his claims the decision of the state to plea out "Roberto Castro" in voluntary manslaughter plus the admission by Castro of "Guilt" was a MATERIAL EXCUIPATORY EVIDENCE that counsel should have not ignore; by counsel omitting this important claim.

"THE ISSUE was lost for purposes of direct and COLLATERAL REVIEW"

VII.) TRIAL ATTORNEY WAS INEFFECTIVE BY FAILING TO RAISE ON DIRECT APPEAL THE ISSUE REGARDING THE VERDICT FORM, THE JURY DELIVERED A GENERAL VERDICT OF FIRST DEGREE MURDER AND THERE WAS NOTHING ON THE VEREDICT FORM THAT ALLOWED THE JURY TO DISTINGUISH THE DIFFERENT THEORIES OF THE CASE.

..... THEREFORE IN VIOLATION OF HIS SIXTH AMENDMENT RIGHTS TO RECEIVE EFFECTIVE ASSISTANT OF CONSEL AND HIS DUE PROCESS CLAUSE OF THE FOURTEENTH AMEMDMENT RIGHTS.

The right to the effective assistance of counsel at trial is a bedrock principle in the American Justice System. It is deemed as an "obvious truth" the idea that any person hauled into court who is too poor to hire a lawyer, Cannot be assured a fair trial unless Counsels provided for him, indeed, the right to Counsel is the Foundation for the adversary System.

Defense Counsel tests the prosecution's case to ensure that the proceedings serve the function of adjudicating guilt or innocence while protecting the rights of the person charged. Effective trial counsel preserves claims to be considered on Appeal, and In Federal habeas proceedings.

In the present case Counsel failed to challenge the conviction based on the fact that the Jury was instructed on alternatives theories of guilt, the Jury Delivered a general verdict of first Degree murder, and one or two THEORIES deemed invalid.

An experience and effective trial Attorney Should be Aware of this fundamental rule; a Rule that applies when a Jury delivers a general verdict that may rest either on a Legally Valid or legally Invalid ground, is clear the Verdict may not stand when there is no way to determine its basis, 'it has long been Settled that when a case is submitted to the Jury on Alternative theories the unconstitutionally of any of the theories Requires that the conviction be set aside.

The trial attorney for petitioner knew and acknowledged this fact;

The theory of vicarious coconspirator liability was inconsistent and illegally erroneous

he also knew that the ;

state failed to prove the theory of first degree murder on premeditation, deliberate, willfulness. When and during the state closing Arguments; the prosecution admitted that "in this particular case proof does not exist beyond a reasonable doubt that Sally Villaverde committed this type of murder.

No one theory, but two theories were proved invalid by the prosecution own Admissions, For an Experience trial attorney to overlook this important claim, is unheard of, and goes beyond the standard set forth in Strickland a significant claim that a Jurist Of Reason would find it debatable, a valid claim of denial of a Constitutional Right. Attorney's conduct fell short of the effectiveness standard set forth in Strickland.

Petitioner contend that this claim of ineffective Assistance of trial counsel is "Substantial" and satisfy the prong set under Martinez, the Supreme Court defined "Substantial" as a claim that "has some merit."

Villaverde presents an Arguable claim that his counsel performed below constitutional standards in failing to raise this issue in direct appeal as require when the verdict Against Petitioner was a general one. And did not specify the ground upon which it rested. As there were different theories of the case, And the Jury were instructed that their verdict might be given with respect to any one of them, independently considered; it is impossible to say under which theory of the state the conviction was obtained. If any one of these theories which the state has held to be separable, was invalid, it cannot be determined upon the record that the petitioner was convicted under the invalid ground.

"The Supreme Court has determined that a verdict must be set Aside in Case Such as this where the verdict is legally insupportable on one ground, yet supportable on Another, And it is impossible to tell on which ground the Jury Relied". United States V Fulbright, 105 F3d 443, 451 (9th CIR). This Court had applied the Same Reasoning in Habeas case, holding that, even when the evidence supporting the legally correct theory was "Very strong" And the state did not argue the legally erroneous theory to the Jury, the conviction must be reversed when it is not possible to determine whether the Jury Relied upon the erroneous to convict the defendant

"Jurors are not generally equipped to determine whether a Particular theory of Conviction Submitted to them is contrary to law," a conviction must be overturned if one of The Theories that was Submitted to the Jury was legally erroneous.

Further instructing the Jury on a legally erroneous theory in a case in which it is Also instructed on a legally correct theory is particularly damaging when the Jurors are not Required to Agree unanimously on the theory of Conviction, in such case, the possibility that even one Juror might have Relied upon the legally erroneous theory requires INVALIDATION OF THE CONVICTION.

In Addition, Petitioner believed that, on the record of the case, there was an "UNACCEPTABLE DANGER THAT THE TRIER OF FACT REGARDED THE TWO ACTS AS "intertwined" and rested the conviction on both together. In Short, when an element of a crime is defined to include constitutionally protected actions, and when the state alleges, Argues, and offers proof that defendant's protected conduct satisfied the element, then a general verdict of guilty must be set Aside, even if the state Also Alleged and proved Another course of conduct that could have Satisfied the element.

A competent and effective, experienced trial Attorney, wouldn't never overlooked this Significant Rule, A claim that by Rule is Always Challenged as requirement of GENERAL VERDICTS, Especially when Any of the clauses in question is INVALID under the Federal Constitution, the conviction cannot be upheld.

CAUSE AND PREJUDICE

Trial attorney's ignorance or inadvertence qualify as cause to excuse a procedural default. Counsel's failure to challenge the verdict, when a Jury delivers a general verdict plus failure to challenge the veracity and unconstitutionality of an official documentation fell below of the standards Seth for in Strickland, Defendants are generally ill equipped to represent themselves" Where they have no brief from counsel and court opinion addressing their claim, Halberd V, Michigan, 545 U.S 605, 617, 125 S.Ct 2582, 162 LEd. 2d 552. An Attorney's errors during an appeal on direct Review may provide cause to excuse a procedural default. For if the Attorney appointed by the state is ineffective, the prisoner has been denied fair process and the opportunity to comply with the state's procedures and obtain adjudication on the merits of his claim without Adequate Representation in an initial-review collateral proceeding a prisoner will have similar difficulties vindicating a substantial ineffective Assistant at trial claim.

The defendant requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. Effective trial counsel preserves claims to be considered on appeal, See, E.g. Fed. Rule crim. Proc 52(b) (132 S.Ct 1318) And in Federal Habeas proceeding therefore petitioner contend that trial counsel was ineffective by failing to challenge the verdict delivered by the Jury in general (IAC), It Also extends to SIXTH AMENDMENT claims of appellate-counsel IAC.

PETITIONER REQUEST THAT THIS HONORABLE COURT, GRANT HIM RELIEF OR AT THE LEAST GRANT AN EVIDENTIARY HEARING, TO REVIEW PETITIONER'S MERITORIOUS AND CONSTITUTIONAL CLAIMS ARGUED HEREIN.

TABLE OF EXHIBITS

- 1....PLEA AGREEMENT/AMENDED INFORMATION
- 2... SENTENCING HEARING TRANSCRIPTS OR COURT MINUTES
OF ROBERT CASTRO'S CONFESSION
- 3.... STATE'S DISPOSITION #2 CHARGES AMENDED/DROPPED
- 4.... STATE'S DISPOSITION #3 CHARGES AMENDED/DROPPED
- 5..... PORTION OF JURY TRIAL- "CLOSING ARGUMENTS"
- 6.... TRIAL PORTION OF REDACTED TRANSCRIPTS TESTIMONY OF
"TERESA GAMBOA"
- 7.... TRIAL EXCERPT OF "LIONEL GARCIA"
- 8.... TRIAL EXCERPT OF LEAD DETECTIVE "ROBERT WILSON"
- 9..... TRIAL EXCERPT OF MEDICAL FORENSIC "DOCTOR WORRELL"
- 10.... DECLARATION OF WARRANT
- 11.... VERDICT FORMS
- 12..... DUE DILIGENCE DOCUMENTS (MOTIONS, letters, etc)

EXHIBIT

#1

Roberto Castro's plea agreement/AMENDED INFORMATION

Castro's Judgment of Conviction (J.O.C)

* CASTRO'S ARRANGEMENT HEARING COURT MINUTES

NOTE: PETITIONER had previously requested the above hearing transcripts and the court denied twice, and the clerk of the court claim that the document is not in the system, despite petitioner's attempt to purchase this document to not avail.

1 GMEM
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 J. TIMOTHY FATTIG
6 Deputy District Attorney
7 Nevada Bar #006639
8 200 South Third Street
9 Las Vegas, NV 89155-2212
10 (702) 455-4711
11 Attorney for Plaintiff

FILED IN OPEN COURT
JAN 31 2005

SHIRLEY B. PARRAGUIRRE, CLERK

BY *Jenny Kissel*

DEPUTY

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 ROBERT CASTRO, aka Robert Rance
13 Castromontalvo, #1161921

14 Defendant.

CASE NO: C191012C
DEPT NO: XVII

14 GUILTY PLEA AGREEMENT

15 I hereby agree to plead guilty, pursuant to North Carolina v. Alford, 400 U.S. 25
16 (1970), to: VOLUNTARY MANSLAUGHTER (Felony/Category B), as more fully alleged
17 in the charging document attached hereto as Exhibit "1".

18 My decision to plead guilty by way of the Alford decision is based upon the plea
19 agreement in this case which is as follows:

20 The State retains the right to argue.

21 CONSEQUENCES OF THE PLEA

22 By pleading guilty pursuant to the Alford decision, it is my desire to avoid the
23 possibility of being convicted of more offenses or of a greater offense if I were to proceed to
24 trial on the original charge(s) and of also receiving a greater penalty. I understand that my
25 decision to plead guilty by way of the Alford decision does not require me to admit guilt, but
26 is based upon my belief that the State would present sufficient evidence at trial that a jury
27 would return a verdict of guilty of a greater offense or of more offenses than that to which I

28 ~~RECEIVED~~ guilty to.

JAN 31 2005

COUNTY CLERK

P:\WPDOCS\UNF\302\302357405.doc

1 I understand that as a consequence of my plea of guilty by way of the Alford decision
2 the Court must sentence me to imprisonment in the Nevada Department of Corrections for a
3 minimum term of not less than one year and a maximum term of not more than ten years.
4 The minimum term of imprisonment may not exceed forty percent (40%) of the maximum
5 term of imprisonment. I understand that I may also be fined up to \$10,000.00. I understand
6 that the law requires me to pay an Administrative Assessment Fee.

7 I understand that, if appropriate, I will be ordered to make restitution to the victim of
8 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
9 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
10 reimburse the State of Nevada for any expenses related to my extradition, if any.

11 I understand that I am eligible for probation for the offense to which I am pleading
12 guilty. I understand that, except as otherwise provided by statute, the question of whether I
13 receive probation is in the discretion of the sentencing judge.

14 I understand that if more than one sentence of imprisonment is imposed and I am
15 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
16 the sentences served concurrently or consecutively.

17 I also understand that information regarding charges not filed, dismissed charges, or
18 charges to be dismissed pursuant to this agreement may be considered by the judge at
19 sentencing.

20 I have not been promised or guaranteed any particular sentence by anyone. I know
21 that my sentence is to be determined by the Court within the limits prescribed by statute.

22 I understand that if my attorney or the State of Nevada or both recommend any
23 specific punishment to the Court, the Court is not obligated to accept the recommendation.

24 I understand that if the State of Nevada has agreed to recommend or stipulate a
25 particular sentence or has agreed not to present argument regarding the sentence, or agreed
26 not to oppose a particular sentence, or has agreed to disposition as a gross misdemeanor
27 when the offense could have been treated as a felony, such agreement is contingent upon my
28 appearance in court on the initial sentencing date (and any subsequent dates if the sentencing

1 is continued). I understand that if I fail to appear for the scheduled sentencing date or I
2 commit a new criminal offense prior to sentencing the State of Nevada would regain the full
3 right to argue for any lawful sentence.

4 I understand if the offense(s) to which I am pleading guilty to was committed while I
5 was incarcerated on another charge or while I was on probation or parole that I am not
6 eligible for credit for time served toward the instant offense(s).

7 I understand that as a consequence of my plea of guilty, if I am not a citizen of the
8 United States, I may, in addition to other consequences provided for by federal law, be
9 removed, deported, excluded from entry into the United States or denied naturalization.

10 I understand that the Division of Parole and Probation will prepare a report for the
11 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
12 sentencing, including my criminal history. This report may contain hearsay information
13 regarding my background and criminal history. My attorney and I will each have the
14 opportunity to comment on the information contained in the report at the time of sentencing.
15 Unless the District Attorney has specifically agreed otherwise, then the District Attorney
16 may also comment on this report.

17 WAIVER OF RIGHTS

18 By entering my plea of guilty, I understand that I am waiving and forever giving up
19 the following rights and privileges:

20 1. The constitutional privilege against self-incrimination, including the right to refuse
21 to testify at trial, in which event the prosecution would not be allowed to comment to the
22 jury about my refusal to testify.

23 2. The constitutional right to a speedy and public trial by an impartial jury, free of
24 excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the
25 assistance of an attorney, either appointed or retained. At trial the State would bear the
26 burden of proving beyond a reasonable doubt each element of the offense charged.

27 3. The constitutional right to confront and cross-examine any witnesses who would
28 testify against me.

- 1 4. The constitutional right to subpoena witnesses to testify on my behalf.
2 5. The constitutional right to testify in my own defense.
3 6. The right to appeal the conviction, with the assistance of an attorney, either
4 appointed or retained, unless the appeal is based upon reasonable constitutional jurisdictional
5 or other grounds that challenge the legality of the proceedings and except as otherwise
6 provided in subsection 3 of NRS 174.035.

7 VOLUNTARINESS OF PLEA

8 I have discussed the elements of all of the original charge(s) against me with my
9 attorney and I understand the nature of the charge(s) against me.

10 I understand that the State would have to prove each element of the charge(s) against
11 me at trial.

12 I have discussed with my attorney any possible defenses, defense strategies and
13 circumstances which might be in my favor.

14 All of the foregoing elements, consequences, rights, and waiver of rights have been
15 thoroughly explained to me by my attorney.

16 I believe that pleading guilty and accepting this plea bargain is in my best interest,
17 and that a trial would be contrary to my best interest.

18 I am signing this agreement voluntarily, after consultation with my attorney, and I am
19 not acting under duress or coercion or by virtue of any promises of leniency, except for those
20 set forth in this agreement.

21 I am not now under the influence of any intoxicating liquor, a controlled substance or
22 other drug which would in any manner impair my ability to comprehend or understand this
23 agreement or the proceedings surrounding my entry of this plea.

24 //

25 //

26 //

27 //

28 //

1 My attorney has answered all my questions regarding this guilty plea agreement and
2 its consequences to my satisfaction and I am satisfied with the services provided by my
3 attorney.

4 DATED this 31st day of January, 2005.



ROBERT CASTRO, AKA ROBERT
RANCE CASTROMONTALVO
Defendant

8 AGREED TO BY:

9 

J. TIMOTHY FATTIG
Deputy District Attorney
Nevada Bar #006639

1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of
3 the court hereby certify that:

4 1. I have fully explained to the Defendant the allegations contained in the charge(s)
to which Alford pleas are being entered.

5 2. I have advised the Defendant of the penalties for each charge and the restitution
6 that the Defendant may be ordered to pay.

7 3. All pleas of Alford offered by the Defendant pursuant to this agreement are
consistent with the facts known to me and are made with my advice to the Defendant.

8 4. To the best of my knowledge and belief, the Defendant:

9 a. Is competent and understands the charges and the consequences of pleading
10 Alford as provided in this agreement.

11 b. Executed this agreement and will enter all Alford pleas pursuant hereto
voluntarily.

12 c. Was not under the influence of intoxicating liquor, a controlled substance or
13 other drug at the time I consulted with the Defendant as certified in paragraphs
1 and 2 above.

14 Dated: This 31st day of January, 2005.

15 
16 ATTORNEY FOR DEFENDANT

17
18
19
20
21
22
23
24
25
26
27
28 lg

1 INFO
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 J. TIMOTHY FATTIG
6 Deputy District Attorney
7 Nevada Bar #006639
8 200 South Third Street
9 Las Vegas, Nevada 89155-2211
10 (702) 455-4711
11 Attorney for Plaintiff

12
13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

15 THE STATE OF NEVADA,

16 Plaintiff,

17 -vs-

18 ROBERT CASTRO, aka Robert Rance
19 Castromontalvo, ID #1161921

20 Defendant.

Case No: C191012C
Dept No: XVII

21 AMENDED
22 INFORMATION

23 STATE OF NEVADA }
24 COUNTY OF CLARK } ss.

25 DAVID ROGER, District Attorney within and for the County of Clark, State of
26 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

27 That ROBERT CASTRO, Robert Rance Castromontalvo, the Defendant above
28 named, having committed the crime of VOLUNTARY MANSLAUGHTER (Felony -
NRS 200.040, 200.050, 200.080), on or about the 6th day of March, 2002, within the County
of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases
made and provided, and against the peace and dignity of the State of Nevada, did, together
with SALLY VILLAVERDE and/or RENE GATO, then and there without authority of
law, wilfully, unlawfully, and feloniously, without malice and without deliberation kill
ENRIQUE CAMINERO, JR., a human being, by manual strangulation and/or by inflicting
multiple blunt force trauma upon his body, said defendant being liable under one or more of

EXHIBIT 1

P:\WPDOCS\UNF\302330235704.DOC

1 the following principles of criminal liability, to-wit: (1) by Defendant and/or SALLY
2 VILLAVERDE and/or RENE GATO directly committing the acts constituting the offense;
3 and/or (2) by said Defendant and/or SALLY VILLAVERDE and/or RENE GATO aiding or
4 abetting each other in its commission by directly or indirectly counseling, encouraging,
5 commanding or procuring the other to commit the offense, as evidenced by the conduct of
6 the Defendant and/or SALLY VILLAVERDE and/or RENE GATO before, during and after
7 the offense and/or (3) by conspiring with SALLY VILLAVERDE and/or RENE GATO to
8 commit the offense of robbery and/or murder whereby each is vicariously liable for the
9 foreseeable acts of the other made in furtherance of the conspiracy.

10 DAVID ROGER
11 DISTRICT ATTORNEY
12 Nevada Bar #002781

13 BY


14 J. TIMOTHY FATTIG
15 Deputy District Attorney
16 Nevada Bar #006639
17
18
19
20
21
22
23
24
25

26 DA#03F02357c/lg
27 LVMPD EV#0203060996;0208312148;
28 0008180061;009082352
VOL MANSLTR- F
(TK1)

ORIGINAL

7

JOC
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
200 South Third Street
Las Vegas, Nevada 89155-2212
(702) 455-4711
Attorney for Plaintiff

FILED

2005 MAR 29 P 2:28

DISTRICT COURT
CLARK COUNTY, NEVADA

Stacy Shuman
CLERK

THE STATE OF NEVADA,

Plaintiff,

-vs-

ROBERT CASTRO, aka
Robert Ranch Castromontalvo,
#1161921

Defendant.

Case No: C191012C

Dept No: XVII

JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime(s) of VOLUNTARY MANSLAUGHTER (Category B Felony), in violation of NRS 200.040, 200.050, 200.080; thereafter, on the 22nd day of March, 2005, the Defendant was present in court for sentencing with his counsel, STANLEY A. WALTON, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, COURT ORDERED: in addition to the \$25.00 Administrative Assessment Fee, the Defendant is SENTENCED to a MAXIMUM term of ONE HUNDRED TWENTY (120) MONTHS with

//

//

//

//

//

RECEIVED

MAR 24 2005

COUNTY CLERK

P:\WPDOCS\JUDG\302130235702.doc

RECEIVED

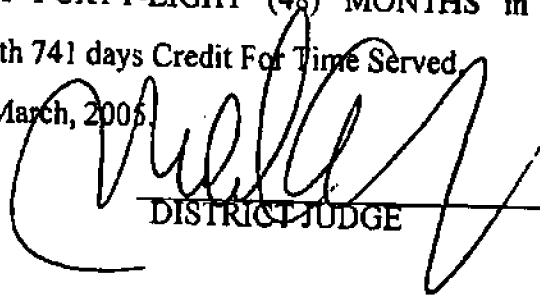
MAR 29 2005

COUNTY CLERK

me

1 a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS in the Nevada
2 Department of Corrections (NDC) with 741 days Credit For Time Served.

3 DATED this 28 day of March, 2005.

4 
5 DISTRICT JUDGE
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

jr

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

January 31, 2005

03C191012-2

The State of Nevada vs Sally Villaverde

January 31, 2005

1:30 PM

Jury Trial

TRIAL BY JURY

Court Clerk: Penny
Wisner

Reporter/Recorder:

Janie Olsen Court

Interpreter: JEFFREY

HANKS Heard By:

Michael Cherry

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:

Fattig, John T
Mitchell, Scott S.Attorney
Attorney

JOURNAL ENTRIES

- Amended Information and Guilty Plea Agreement FILED IN OPEN COURT. NEGOTIATIONS are as contained in Guilty Plea Agreement. DEFT. CASTRO ARRAIGNED AND PLED GUILTY PURSUANT TO ALFORD TO VOLUNTARY MANSLAUGHTER (F). Mr. Fattig made a factual statement as to what the State could prove should this matter go to trial. Mr. Walton informed the Court the Deft. was assisted by the Court Interpreter in reading and explaining the Guilty Plea Agreement in this matter. COURT ACCEPTED plea and ORDERED, matter referred to the Division of Parole and Probation (P & P) and set for sentencing.

CUSTODY

3-8-05 8:30 AM SENTENCING

PRINT DATE: 11/15/2017

Page 143 of 205

Minutes Date: April 08, 2003

EXHIBIT

2

* ROBERTO CASTRO'S penalty hearing or sentencing

COURT MINUTES

CASTRO'S CONFESSION/STATEMENT

Note: Petitioner had previously requested Castro's transcripts and was denied twice by the court, and the clerk of the court claim that the documents are not recorded or not in the system. Therefore Petitioner is presenting as exhibits Castro's court minutes.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 22, 2005

03C191012-2

The State of Nevada vs Sally Villaverde

March 22, 2005

8:30 AM

Sentencing

SENTENCINGCourt Clerk: Penny
WisnerReporter/Recorder:
Janie Olsen Court
Interpreter: Anita
D'Angelo Heard By:
Michael Cherry**HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Mitchell, Scott S.

Attorney

JOURNAL ENTRIES

- DEFT. CASTRO ADJUDGED GUILTY OF VOLUNTARY MANSLAUGHTER (F). Argument by the State. Statement by the Deft. Argument by Mr. Walton. COURT ORDERED, in addition to the \$25 Administrative Assessment Fee, the Deft. is SENTENCED to a MAXIMUM term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS in the Nevada Department of Corrections (NDC) with 741 days Credit For Time Served.

PRINT DATE: 11/15/2017

Page 164 of 205

Minutes Date: April 08, 2003

EXHIBIT 3

* STATE'S DISPOSITION #2 (use of a deadly weapon
or tear gas in commission of a crime)

EXHIBIT 3

NOTE: Petitioner, requested the purchasing of this document, and the
Deputy clerk of the Court sent the wrongful documentation. therefore
petitioner is submitting the base summary copy with the date when
the Above document was filed.

DEPARTMENT 3

CASE SUMMARY

CASE NO. 03C191012-3

CALENDAR CALL Heard By: Michael Cherry

01/27/2005

Calendar Call (8:30 AM)
CALENDAR CALL

01/28/2005

 Writ
WRIT OF HABEAS CORPUS AD TESTIFICANDUM

03C191012-30228.tif pages

01/31/2005

Jury Trial (1:30 PM)
TRIAL BY JURY Court Clerk: Penny Wisner Reporter/Recorder: Janie Olsen Court Interpreter: JEFFREY HANKS Heard By: Cherry, Michael A

01/31/2005

Jury Trial (1:30 PM)
TRIAL BY JURY Court Clerk: Penny Wisner Reporter/Recorder: Janie Olsen Court Interpreter: JEFFREY HANKS Heard By: Michael Cherry

01/31/2005

Conversion Case Event Type
SENTENCING

03C191012-30227.tif pages

01/31/2005

 Expert Witness List
NOTICE OF WITNESSES - RELATED PARTYID: 03C191012_0001

03C191012-30230.tif pages

01/31/2005

 Information
AMENDED INFORMATION

03C191012-30231.tif pages

01/31/2005

 Memorandum
GUILTY PLEA MEMORANDUM/AGREEMENT

03C191012-30232.tif pages

01/31/2005

 Information
AMENDED INFORMATION

03C191012-30234.tif pages

01/31/2005

Disposition (Judicial Officer: User, Conversion)
2. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.
Charges Amended/Dropped
PCN: Sequence:

01/31/2005

Disposition (Judicial Officer: User, Conversion)
3. ROBBERY
Charges Amended/Dropped
PCN: Sequence:

01/31/2005

Disposition (Judicial Officer: User, Conversion)
3. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.
Charges Amended/Dropped
PCN: Sequence:

02/01/2005

Jury Trial (10:00 AM)
TRIAL BY JURY Court Clerk: Penny Wisner Reporter/Recorder: Janie Olsen Court Interpreter: Maria Peralta De Gomez Heard By: Cherry, Michael A

02/02/2005

Jury Trial (10:30 AM)
TRIAL BY JURY Court Clerk: Penny Wisner Reporter/Recorder: Janie Olsen Court Interpreter: ALEXANDRA ANDRADE Heard By: Cherry, Michael A

EXHIBIT

4

* STATE'S DISPOSITION #3 (Robbery)

Note: Petitioner requested the purchasing of this document and the Deputy clerk of the Court sent the wrongful documentation, therefore Petitioner is submitting the "case summary" copy with the date when the above document was filed

CASE SUMMARY

CASE NO. 03C191012-3

CALENDAR CALL Heard By: Michael Cherry

01/27/2005	Calendar Call (8:30 AM) CALENDAR CALL
01/28/2005	☒ Writ WRIT OF HABEAS CORPUS AD TESTIFICANDUM
01/31/2005	Jury Trial (1:30 PM) TRIAL BY JURY Court Clerk: Penny Wisner Reporter/Recorder: Janie Olsen Court Interpreter: JEFFREY HANKS Heard By: Cherry, Michael A
01/31/2005	Jury Trial (1:30 PM) TRIAL BY JURY Court Clerk: Penny Wisner Reporter/Recorder: Janie Olsen Court Interpreter: JEFFREY HANKS Heard By: Michael Cherry
01/31/2005	Conversion Case Event Type SENTENCING
01/31/2005	☒ Expert Witness List NOTICE OF WITNESSES - RELATED PARTYID: 03C191012_0001
01/31/2005	☒ Information AMENDED INFORMATION
01/31/2005	☒ Memorandum GUILTY PLEA MEMORANDUM/AGREEMENT
01/31/2005	☒ Information AMENDED INFORMATION
01/31/2005	Disposition (Judicial Officer: User, Conversion) 2. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Charges Amended/Dropped PCN: Sequence:
01/31/2005	Disposition (Judicial Officer: User, Conversion) 3. ROBBERY Charges Amended/Dropped PCN: Sequence:
01/31/2005	Disposition (Judicial Officer: User, Conversion) 3. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Charges Amended/Dropped PCN: Sequence:
02/01/2005	Jury Trial (10:00 AM) TRIAL BY JURY Court Clerk: Penny Wisner Reporter/Recorder: Janie Olsen Court Interpreter: Maria Peralta De Gomez Heard By: Cherry, Michael A
02/02/2005	Jury Trial (10:30 AM) TRIAL BY JURY Court Clerk: Penny Wisner Reporter/Recorder: Janie Olsen Court Interpreter: ALEXANDRA ANDRADE Heard By: Cherry, Michael A

03C191012-
30228.tif pages

03C191012-
30227.tif pages

03C191012-
30230.tif pages

03C191012-
30231.tif pages

03C191012-
30232.tif pages

03C191012-
30234.tif pages

EXHIBIT

5

WEDNESDAY, APRIL 7, 2004

PORTION OF JURY TRIAL - DAY 8
CLOSING ARGUMENTS (Excluding Jury Instructions)

1 occur in numerous places that do not require the kind of
2 privacy that was required in this case.

3 And remember Teresa Gamboa, what she testified to
4 regarding the defendant's prior dealings with Enrique
5 Caminero. She testified that the defendant and Enrique were
6 drug dealers and that she had witnessed prior transactions
7 between them. And she testified that nothing like renting --
8 the renting of a room had ever happened before and that on
9 previous occasions the defendant would meet Enrique Caminero
10 at a bar and it would take five minutes or so. She testified,
11 quote, "It would never take long," unquote. Use your common
12 sense. This transaction was different. This one was a setup.

13 So we know that whomever rented that room and later
14 entered it prior to meeting Mr. Caminero committed a burglary.

15 What about Count 2, going back to the amended
16 information, murder with use of a deadly weapon? Initially in
17 Count 2 it lays out what murder is, wilfully, with malice
18 aforethought -- which is another way of saying that it was a
19 deliberate act, and those are covered in the instructions --
20 wilfully, with malice aforethought kill -- to kill another
21 human being. It then lays out two ways in which this can be
22 first degree murder, if the killing was either, one, wilful,
23 premeditated and deliberate. First, wilful, premeditated, and
24 deliberate is pretty self explanatory. If there's proof that
25 someone killed another person by their own actions, such as

1 shooting them or strangling them or hitting them over the head
2 and there's proof that their actions were wilful, premeditated
3 and deliberate, and again, the instructions talk about what
4 that means, then they're clearly guilty of first degree
5 murder.

6 I would submit in this particular case that proof
7 does not exist beyond a reasonable doubt that Sally Villaverde
8 committed this type of murder. We do not have proof beyond a
9 reasonable doubt that Sally Villaverde was the person that
10 actually strangled Enrique Caminero by using a ligature or was
11 the person that actually hit him over the head with a hard
12 object, such as a gun. Does this mean that you should declare
13 Sally Villaverde to be not guilty of first degree murder
14 because we didn't actually prove that he was the person that
15 strangled or bludgeoned Mr. Caminero? Not if you follow the
16 law.

17 And that's because the second way to find someone
18 guilty of first degree murder is called the felony murder
19 rule. And Instruction Number 16 explains the second part of
20 Count 2, that being "and/or committed during the perpetration
21 or attempted perpetration of a burglary and/or a robbery."

22 Count [sic] 16 defines for you the felony murder
23 rule. Our society has decided that there should be a policy
24 that holds people who willingly commit felonies, such as a
25 burglary or a robbery that are dangerous inherently, to a

1 assist, or strengthen. Abet means to encourage, counsel,
2 induce, or assist. So if you knowingly and wilfully assist
3 someone else in committing a crime, you are held equally
4 accountable for that crime as if you were the person that
5 directly committed it.

6 And under the law we commonly use the term the act
7 of one is the act of all. And Instruction Number 27 also
8 explains this particular concept. It tells you that every
9 person concerned in the commission of a crime, whether
10 directly committing it or conspiring with others or aiding and
11 abetting, in other words, or assisting the others in the
12 commission of the crime, even if the person is not actually
13 present at the crime scene at the time the crime is committed,
14 is treated as a principal or equal as the person that actually
15 physically and directly committed the crime.

16 Now, this concept of aiding and abetting is again a
17 policy of holding someone accountable for joining others and
18 helping with an effort to commit a crime. And it's been
19 around for a long time. And again, it's a policy of
20 discouraging people from committing crimes. And we all
21 support it, because we all are against crime. No one in their
22 right mind is for crime. And everyone wants to live in a
23 society where Mr. Mitchell and myself don't have to do this
24 job. And this particular policy tries to discourage people
25 from committing crimes, because it states that someone who

1 endeavor, maybe the crime wouldn't have happened.

2 Now, going back to Instruction Number 3, page 2 --
3 it spills over into two pages here -- similar to an aiding and
4 abetting theory is Number 3, "by conspiring with others to
5 commit the offense of robbery and/or murder whereby each
6 conspirator is vicariously liable for the foreseeable acts of
7 the other made in furtherance of the conspiracy." Similar
8 concept to Number 2, aiding and abetting.

9 This theory of criminal liability states that if you
10 conspire or agree to commit a crime with others you are held
11 equally accountable under the law for the, quote, "foreseeable
12 acts of the other made in furtherance of the conspiracy,"
13 unquote. And Instruction Number 28 helps to define this a
14 little more. It tells you that this conspiracy or agreement
15 does not have to be formalized in the sense that we're not
16 talking about a contract where everyone signs it and
17 everyone's notarized. The law recognizes that conspiracies
18 are done in secret and are not the types of things that can
19 easily be proven through documentation. They are the types of
20 agreements that are proven through circumstantial evidence of
21 the parties involved, and the law recognizes this.

22 Now, the conspiracy principle of criminal liability
23 is similar to aiding and abetting because it once again deals
24 with the concept of holding not only the person that directly
25 does the crime responsible and accountable for the death of

1 commission, and we discourage that by holding all of them that
2 conspire or assist equally accountable under the law.

3 Now, Count 3, on the second page of Instruction
4 Number 3, deals with the final charge, which is robbery with
5 use of a deadly weapon. And this is a pretty self-explanatory
6 charge. And Instruction Number 47 particularly defines it,
7 and it simply lays out that a robbery is taking property from
8 another person by force or by threat of force. And just as in
9 Count 2, murder with use of a deadly weapon, when it comes to
10 Count 3, robbery with use of a deadly weapon, the same
11 theories apply. [The defendant in this case should be held
12 accountable for the robbery of Enrique Caminero, even if he
13 didn't take the property from him, as long as he either aided
14 and abetted in its commission or if he entered into a
15 conspiracy to rob him. And you'll find that the robbery was
16 carried out.]

17 One thing that I feel compelled to talk about during
18 this portion of the closing argument is the deadly weapon
19 aspect of this case. And you'll remember Dr. Rexene Worrell,
20 who testified just two days ago that she reached a conclusion
21 after the autopsy that Mr. Enrique Caminero died due to
22 strangulation and more specifically ligature strangulation.
23 She testified that Mr. Caminero had marks on his neck that was
24 consistent with ligature strangulation, as well as when she --
25 when she opened him up and looked inside, she testified about

1 hemorrhaging in the muscles and tissues in the neck that was
2 consistent with a ligature strangulation. She also told you
3 that Enrique Caminero's cartilage in his Adam's apple had been
4 fractured and that it takes a significant amount of force to
5 do that when the cartilage is within the confines of the neck.

6 If you look at the amended information, in Count 3
7 the State has alleged that either a gun and/or a ligature was
8 the deadly weapon in this case. And I would note that there
9 is no requirement under the law that we prove or we recover
10 the deadly weapon in order for you to find a deadly weapon was
11 used.

12 So can a ligature be a deadly weapon? Instruction
13 Number 60 defines for you a deadly weapon. And I would submit
14 to you that the second part is relevant in this particular
15 case. "Deadly weapon means," and in the second section, "any
16 weapon, device, instrument, material, or substance which under
17 the circumstances in which it is used, attempted to be used,
18 or threatened to be used is readily capable of causing
19 substantial bodily harm or death."

20 Now, clearly a ligature, whether it was the cord
21 from the space heater that you remember in the picture sitting
22 on the dresser with the blood on it on the back, with the cord
23 laying on the ground unplugged, or whether it was a belt or
24 whether it was a piece of cloth, all of those things qualify
25 under this statute, and all of them are either a material, a

1 device, an instrument. Are they readily capable of causing
2 death? Well, this isn't rocket science. This is a murder
3 case. This isn't an attempted murder case. It caused the
4 death. Enrique Caminero died from ligature strangulation. So
5 clearly under the law the ligature was a deadly weapon.

6 And the next question in turn actually follows, can
7 the defendant be held responsible for the use of that ligature
8 by Robert Castro. Clearly under the law the defendant is
9 equally accountable, equally responsible for the use of that
10 ligature by one of his coconspirators.

11 Now, having gone over the instructions dealing with
12 what crimes, if any, were committed, I must address the second
13 question that you must answer when you go back and deliberate,
14 who committed these crimes.

15 Again, use your common sense. What is reasonable
16 and what is not reasonable? What did the evidence show us?
17 The evidence showed you over the last ten days or so a side of
18 life and a side of the city that perhaps you and I don't
19 necessarily agree with, but it is a reality to many people.
20 And it's a life of buying and selling narcotics, specifically
21 cocaine, it's a life of committing crimes, and it's a life of
22 doing time for those crimes. And there's a very appropriate
23 saying that goes around the courthouse. It's appropriate in
24 this case. A play written in hell does not have angels as
25 actors. And this certainly was a scene straight out of hell.

1 The cable cord of the television, which is Number 1 on the
2 diagram, gets ripped out, and the face plate -- with such
3 violent force that half the face plate flies across the room
4 and lands in the middle of the room. But the cable cord
5 doesn't dislodge from the wall.

6 Robertico then has to look for something else.
7 Perhaps that was the cord from the space heater, which is
8 Number 21, which was lying unplugged with blood on the back of
9 it. Robertico then uses some sort of ligature to strangle the
10 life out of Enrique Caminero.

11 Rene Gato then orders Sally Villaverde, just as
12 Teresa Gamboa told you, to clean up the scene and make sure
13 there are no fingerprints. Now, the defendant, having never
14 done this before, does a pretty good job of cleaning up the
15 blood. But in wiping things down and in cleaning up he leaves
16 his prints on the "Hot" handle of the bathtub and on the
17 middle handle that turns on and off the water. He also leaves
18 a palm print on the sink, which is found the next morning by
19 Crime Scene Analyst Joe Matvay.

20 If you remember, Mr. Matvay testified last week. He
21 testified that he has over 25 years of experience and that he
22 has been recognized as an expert numerous times in several
23 courts in the fields of bloodstain analysis and fingerprint
24 examinations. And he told you that he had responded himself
25 to hundreds of homicide scenes over -- over his 25 years and

EXHIBIT

6

Redacted TRANSCRIPTS PORTION: (TESTIMONY OF TERESA GAMBON)

1 CASE NO.

2 TRAN

3 Dept. No. 1

RECEIVED

MAR 31 2003

BY

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

6
7 STATE OF NEVADA,)

8 Plaintiff,)

9 vs.)

10 RENE GATO, SALLY VILLAVERDE,)
11 ROBERT CASTRO,)

12 Defendants.)

COPY

CASE NO. 03F02375A
03F02375B
03F02375C

13 REPORTER'S TRANSCRIPT

14 OF

15 PRELIMINARY HEARING

16
17 BEFORE THE HONORABLE DEBORAH LIPPIS
18 JUSTICE OF THE PEACE
FRIDAY, MARCH 21, 2003

19 APPEARANCES:

20 For the State: ROBERT J. DASKAS, ESQ.
21 CHRISTOPHER LALLI, ESQ.
Deputy District Attorney

22 For Dft. Gato: DAVID M. SCHIECK, ESQ.
23 For Dft. Villaverde: KRISTINA WILDEVELD, ESQ.
For Dft. Castro: STANLEY WALTON, ESQ.

24 Court Interpreters Present.

25 REPORTED BY: JANICE DAVID, CCR NO. 405, RPR

1 leave.

2 Q "Okay. When Sally said he gave -- he had given
3 Enrique --

4 A "I mean, don't get me wrong. I loved him. I loved
5 him, you know. I'm sorry. I don't want to just make it seem
6 like he's a bad person, but, I mean --

7 Q "Okay. Thank you. When Sally said he gave him
8 mouth-to-mouth resuscitation, did you know if he knew how to
9 give mouth-to-mouth resuscitation?

10 A "Yes. His mother is a doctor in Cuba, and they --
11 he grew up in a clinic, so he knew how to take blood and give
12 blood and, you know, do shots and CPR. He knew how to do all
13 that. He was like a little rich kid, from the stories all
14 Cubans that say, yeah, how he grew up.

15 Q "When he was trying to resuscitate him, he also was
16 trying to throw water on him and dunk his head in water trying
17 to wake him up, wasn't he?

18 A "I have no -- that was never even said, never.

19 Q "When you went to Victorville and you asked what
20 happened in the room and Robertico said 'we killed him,' he
21 meant him and Gato, not Sally?

22 A "That's what it looked like.

23 MR. MITCHELL: "Calls for speculation as to what Mr.
24 Castro meant when he said those words. How could she possibly
25 know?

EXHIBIT

7

TRIAL EXCERPT OF "LIONEL GARCIA"

1 LEONEL GARCIA, PLAINTIFF'S WITNESS, SWORN

2 THE CLERK: Thank you. Please be seated. Please
3 state your full name spelling your last name for the record.

4 THE WITNESS: Leonel Garcia, L-E-O-N-E-L
5 G-A-R-C-I-A.

6 DIRECT EXAMINATION

7 BY MR. FATTIG:

8 Q Sir, where are you from?

9 A I'm Cuban.

10 Q When did you come to the United States?

11 A In 1994.

12 Q Do you know an individual by the name of Rene Gato?

13 A Yes.

14 Q Do you know an individual by the name of Sally
15 Villaverde?

16 A Yes.

17 Q Do you see Mr. Villaverde here in court today?

18 A Yes.

19 Q Could you please point to him and identify a piece
20 of clothing that he's wearing today?

21 A It's the guy who's sitting over there in the corner
22 with a tie and a jacket.

23 MR. PIKE: We'll stipulate to identification of
24 Sally Villaverde.

25 THE COURT: The record will so show the

1 and every exhibit that's been admitted and each picture,
2 everything that's been admitted.

3 MR. FATTIG: And there's an additional document, a
4 letter from the Assistant U.S. Attorney concerning this matter
5 that we are stipulating to admit as well.

6 THE COURT: It'll be admitted.

7 (Plaintiff's Exhibit No. 126 admitted)

8 BY MR. FATTIG:

9 Q Did Enrique Caminero have a relationship with the
10 defendant Sally Villaverde?

11 A No. He met him, too, back in '98.

12 Q Do you know what kind of relationship they had, or
13 do you not know?

14 A No. I don't think they had a relationship.

15 Q That you knew of?

16 A That I wouldn't know, no.

17 Q Do you know a person named Teresa Gamboa?

18 A No. Not by the name. I don't know her.

19 MR. FATTIG: Court's indulgence.

20 (Pause in the proceedings)

21 BY MR. FATTIG:

22 Q What kind of vehicle did Enrique Caminero drive?

23 A The last time that I saw him that he went to my
24 house, it was a Lexus.

25 Q Was it a SUV type of vehicle or more of a sedan?

EXHIBIT

8

TRIAL EXCERPT OF LEAD DETECTIVE "ROBERT WILSON"

COPY

FILED

1

DISTRICT COURT
CLARK COUNTY, NEVADA

Shirley B. Langione
CLERK

THE STATE OF NEVADA,

Plaintiff,

vs.

SALLY VILLAVERDE, aka Sally
Dorian Villaverde,

Defendant.

Case No. C191012B
Department No. XVII

Transcript of
Proceedings

PORTION OF JURY TRIAL - DAY 7
(TESTIMONY OF DETECTIVE ROBERT WILSON)

TUESDAY, APRIL 6, 2004

THE HONORABLE MICHAEL A. CHERRY PRESIDING
STATE OF NEVADA DISTRICT COURT JUDGE

COURT RECORDER:

JANIE OLSEN
District Court

TRANSCRIPTION BY:

NORTHWEST TRANSCRIPTS, INC.
Las Vegas Division
1027 S. Rainbow Blvd., #148
Las Vegas, Nevada 89145-6232
(702) 395-2742

Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

1 A During our conversation, yes.

2 Q Okay. Did she link him to anybody among the three
3 that she had already named as being involved in renting the
4 room?

5 A Not in this incident, no.

6 Q Okay. She mentioned his name, but she did not say
7 he had anything to do with this incident?

8 A To her knowledge he had nothing to do with it is
9 what she told us.

10 Q Okay. Now did she tell you what was in it for her
11 to rent a room for other people?

12 A Yes.

13 Q And what did she initially tell you?

14 A She told us that she and the defendant were going to
15 receive a thousand dollars (\$1,000) for renting the room.

16 Q Okay. And did she explain why she would receive --
17 she and the defendant would receive a thousand dollars
18 (\$1,000)?

19 A Not satisfactorily. She said that they were
20 supposed to watch a female friend of Gato's and eventually she
21 conceded that it was likely that a drug deal was going to take
22 place.

23 Q Okay. Did you believe her explanation about the
24 thousand dollars (\$1,000) that she was supposed to receive for
25 that purpose?

1 So is it safe to say and would you agree with me
2 that you've had training in how to examine a crime scene to
3 try to get and ascertain -- or try to get a flavor of what you
4 believe may have been happening there at that time?

5 A Yes.

6 Q And, based upon what you observed when you went into
7 that room on Fremont Street, it was consistent with a location
8 where there was a drug transaction that may have occurred or
9 may have been occurring during the time of the homicide?

10 A Yes.

11 Q When you walked into the scene before there was any
12 processing, other than the cable and the piece of plastic that
13 was on the floor, was there anything else that gave you any
14 indication that there had been a struggle at that scene?

15 A The amount of blood that was on the carpet and the
16 bullet hole in the wall.

17 Q There was nothing, no broken lamps, the bed wasn't
18 disturbed or upset and -- except for that one portion of the
19 broken cable, there was nothing to indicate that there had
20 been a fight at that scene, isn't that correct?

21 A Right. There wasn't a lot of furniture in that
22 room, yeah.

23 Q And in going through you were -- when you were
24 there, was a wallet presented to you at the scene?

25 A No, I never took custody of the wallet. I saw the

1 identify them as anything else?

2 A That's correct.

3 Q Okay.

4 A I don't usually, once they're charged, I don't
5 usually get a shot at them.

6 Q Okay. Now, in reference to this case then, you've
7 always identified Teresa as a witness and that's all you've
8 ever identified her as, isn't that correct?

9 A Yes, in the statements, yes.

10 Q In the statements, yes.

11 Do you believe her to be something other than just
12 merely a witness?

13 A There is a possibility she had more to do with this
14 than has been said so far, yes.

15 Q Okay, there's a possibility. Well, anything could
16 be a possibility, I guess. Excuse me.

17 Let me ask you this question then. Taking her
18 statements -- You then took her statements and you used that
19 as the basis to obtain search warrants in this case, didn't
20 you?

21 A Yes, part of what she said and other things.

22 Q Now, in explaining how you obtain a search warrant,
23 isn't it true that you go through and do an affidavit to a
24 judge? And an affidavit is a document that is signed, that
25 you signed under oath.

1 And you signed a couple of those, isn't that
2 correct?

3 A Yes.

4 Q Do you recall, in those affidavits, which are sworn
5 testimony similar to the testimony that's sworn to in here,
6 that you identified Mr. Villaverde and Ms. Gamboa as being two
7 individuals that were just going to receive money for renting
8 a room for a drug deal to occur? Do you remember putting that
9 in the affidavits?

10 A ~~A~~ Yes.

11 Q Okay. And then, having stated that under oath in
12 order to get the search warrants, you went in and continued on
13 with your investigation.

14 During your investigation and your interviews with
15 Teresa Gamboa, did you ever tell her that you were going to
16 charge her for any criminal offense?

17 A No.

18 Q Have you charged her with any criminal offense?

19 A No.

20 Q Have you submitted her -- Have you submitted your
21 reports in reference to her to the District Attorney's Office
22 to have her charged with any criminal offense?

23 A No.

24 Q You have not made any promises to her as far as any
25 money or any payments by way of a secret witness payment?

EXHIBIT

9

TRIAL EXCERPT OF MEDICAL FORENSIC "DOCTOR WORREN"

1 deepest muscles you can get in the neck, there was hemorrhage
2 there. There was hemorrhage around the superior horn of the
3 left thyroid, but there wasn't a fracture. At the tip of the
4 right hyoid there was fracture, that's a bone very deep in the
5 neck, and in the thyrohyoid membrane, which is a membrane,
6 it's very deep. And those were the areas that I note, as well
7 as the posterior.

8 So there's only two itty-bitty tiny muscles, and
9 those are the muscles to the vocal cords, that are really any
10 deeper than these, so we're way into the structures of the
11 neck where the hemorrhaging and fractures were.

12 Q And those observations, coupled with what you had
13 seen on the outside of the body in the area of the neck, did
14 they lead to a conclusion that you made about the cause of
15 death in this case?

16 A Yes. This was the cause of death.

17 Q You would say strangulation or how did you term it?

18 A I termed it strangulation.

19 Q And the injuries to the face and to the head and the
20 gunshot wound you did not determine to be the primary cause of
21 death?

22 A No.

23 Q Did you believe that any of those had contributed to
24 the cause of death?

25 A I believe I listed on the front -- I did, not that I

LEAD FORENSIC DOCTOR (Testimony at trial)

WORRELL - CROSS

136

1 Isn't it a fact that you found some body mucous in
2 and around the nose?

3 A I did not notice that. I believe our investigator
4 saw some fluid coming out of the nose at the scene, but I did
5 not note that in my report.

6 Q Okay, if someone were trying to revive someone, such
7 as doing CPR, wouldn't there be mucous coming from the nose?
8 Isn't that consistent with CPR?

9 A It's consistent with a dead body. I can't say it's
10 just consistent with CPR.

11 MR. WENTWORTH: I'm basically referring to
12 testimony, counsel, on page 35 of the preliminary hearing,
13 lines 1 through 6.

14 BY MR. WENTWORTH:

15 Q And, doctor, I'm doing this not from the standpoint
16 of trying to impeach your testimony. I just want to make it
17 clear and maybe clarify.

18 The question was, "If someone were trying to revive
19 a body, would mucous come from their nose," and I believe your
20 answer was, "I'm trying to think, in all of my CPR's, if I
21 ever had fluid. Yes, it very well can. I mean, we always
22 have fluid in the back of our mouth. That's connected with
23 the nasal pharynx, so yes."

24 Would you agree with that question and answer?

25 A Yes.

EXHIBIT

10

DECLARATION OF WARRANT

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS
(N.R.S. 171.106)
(N.R.S. 53 amended 07/13/93)

EVENT: 020306-0996

STATE OF NEVADA)
) ss: SALLY VILLAVERDE ID#1433466
COUNTY OF CLARK)

Detective Robert Wilson, being first duly sworn, deposes and says:

That he is a police officer with the Las Vegas Metropolitan Police Department, being so employed for a period of 13 ½ years, assigned to investigate the crime(s) of Murder wdw NRS 200.030, Kidnap wdw NRS 200.320, Robbery wdw NRS 200380 and Grand Larceny Auto NRS 205.228 committed on or about 03/06/2002, which investigation has developed SALLY VILLAVERDE ID#1433466 as the perpetrator thereof.

THAT DECLARANT DEVELOPED THE FOLLOWING FACTS IN THE COURSE OF THE INVESTIGATION OF SAID CRIME TO WIT:

Rogelia Lopez was the manager of the Capri Motel, located at 3245 E. Fremont Las Vegas, NV 89104, and was working at the front desk on the evening of 03/05/2002. At approximately 1700 hours a Hispanic woman came and rented a room using identification for Kimberlie Manarina. The female was accompanied by three Hispanic men in a white 4 door car with gold trim on the wheels. Two of the men were light complected and the other was very dark. The light complected males were 20 to 25 years old and the dark complected male was approximately 30 years old. The female rented room number 10 and she and the three males went to the room. One by one they entered the room and approximately 10 to 15 minutes later they all left in the white car.

Andris Luevano was working as the maintenance man for the Capri Motel on 03/05 and 03/06/2002. Luevano lived on property in room number eleven which is located next to room number ten. Luevano came home at approximately 2100 hours and saw someone peaking out the blinds of room ten. He noticed a big white car and a gray/pinkish newer model SUV parked in front of the room. Luevano saw that the white car was gone at approximately 0000 hours and he heard the SUV leave at approximately 0400 hours.

On 03/06/2002 the body of Enrique Caminero Jr. was located in room ten of the Capri Motel on the north side of the bed near the floor lamp. A large quantity of blood was located in various places in the main room and in the bathroom. The victim appeared to be wet and the blood on his body looked diluted. The area around his injuries appeared to have been cleaned.

There were marks on his fingers that indicated that items of jewelry were missing. Detectives later spoke to Enrique Caminero's mother, Digna Caminero who stated that Enrique always wore a large quantity of gold jewelry. Some of this jewelry included a large

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS CONTINUATION
Page 2

EVENT: 020306-0996

gold chain, a chain with a crucifix, a bracelet and several rings which included two pinky rings. All of the jewelry was gold. Digna went to his apartment and cleaned it out and did not find the jewelry he normally wears.

Inside the room it appeared that attempts had been made by the suspects to clean the body and the room after the murder. All the towels, toilet paper and trash had been removed from the room.

On 03/07/2002 at approximately 1000 hours an autopsy was conducted at the Clark County Coroner's Office on the body of Enrique L. Caminero. At the conclusion of the autopsy, Dr. Rexene Worrell determined that the cause of death was asphyxia due to strangulation. Multiple blunt force injuries are considered a significant contributing factor to his death. The manner of death was homicide.

Investigators contacted Kimberlie Manarina and were able to identify the female who rented the room as Teresa Gamboa. Investigators were able to locate Gamboa in the computer system and on 05/21/2002 obtained a taped statement from her.

Gamboa stated she and her boyfriend, Sally Villaverde, were hired by Rene Gato to rent a room and look after a female friend of his. Gato stated that he would pay them a thousand dollars to do this. Gamboa thought that this likely had something to do with a drug deal but because she and Villaverde needed the money they agreed to do it. Gamboa was picked up in a pearl white 4 door car that she described as a Chrysler New Yorker that belonged to Gato at her residence. Gato was driving, Robertico was in the front passenger seat, Villaverde was in the right rear seat and Gamboa was seated in the left rear seat. The description of this vehicle matches the description given by the motel manager and the maintenance man.

When they arrived at the Capri motel Gamboa got out and went into the office. She used the NV drivers license of Kimberlie Manarina and rented a room with a hundred dollar bill given to her by Gato. When she got back to the car she gave the key and the change to Gato and they drove to the room, room ten. They all entered the room to check it out because there was a Jacuzzi in the room. They were there for approximately 10 or 15 minutes and they all got back into the car and they dropped Gamboa off back at her home.

Gamboa went to rent movies from the Blockbuster store located at Charleston and Lamb. Investigators checked with the store and Teresa did rent several movies on the fifth of March at 1805 hours.

Gamboa was shown a photo of Rene Gato ID# 1204592 and identified him as the subject she knows as Rene Gato. She was also shown photos of Robert Castro ID# 1161921 who she identified as the subject she knows as Robertico. Gamboa was also shown photos of Sally Villaverde ID# 1433466 and reconfirmed her verbal identification of him. Gamboa

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS CONTINUATION

Page 3

EVENT: 020306-0996

also identified a photo of Frank Samora ID# 1198589 as the subject that she knows as Jose Terazon. Frank Samora had an a.k.a. listed as Jose Francisco Terazon. Gamboa indicated that Samora is a known associate of Rene Gato and that they are know to be involved in robberies of drug dealers in the area.

The above listed subjects prints were compared to those recovered from the crime scene. A latent print recovered from the floor lamp next to the bed near the body was identified as belonging to Rene Gato. A latent print was recovered from the bathtub and identified as belonging to Sally Villaverde. The print of Rene Gato was located on the lamp next where the body was left. The print of Sally Villaverde located in the tub would be consistent with the evidence indicating that the victim and the room had been cleaned after the murder.

The victim's vehicle was a Lexus RX300 SUV, light gold in color, bearing NV plate 601-KUY. It was located by patrol officers in the Saratoga Palms apartment complex located at 3850 Mountain Vista. The vehicle is registered to Enrique L. Caminero who is the victim's father. His son always drove the vehicle and used it for his personnel use. Investigators spoke to Lisa Harrison, who resides in the same complex. Harrison stated that she saw a white female with a brown pony tail, who was thin and in her mid 20's get out of the Lexus on the morning of 03/17/2002. The female walked toward building E but it is unknown what if any apartment she entered.

Robert Castro at one time had an address through the Nevada Department of Motor Vehicles as 3850 Mountain Vista Apt. 220. Detectives contacted the occupants of apartment 220 who stated that they had lived there for several years but had no knowledge of a subject identified as Robert Castro. A photo was shown to the tenant which she did not recognize.

On 07/18/2002 at approximately 0904 hours Detectives Wilson and Mikolainis interviewed a subject identified as Leonel Garcia. At the time of the interview Garcia was an inmate at the High Desert State Prison located near Indian Springs, Nevada. Garcia stated that he was a friend of a subject he knows as "Tito" a.k.a. Enrique. Garcia said he used to buy drugs from Enrique. Garcia indicated that Enrique always had quality drugs and that this caused problems with other drug dealers.

Garcia stated that while he was in prison sometime in the year 2000 he was first approached by a subject he identified as Franciquito. Franciquito was also involved in the sales of cocaine with another subject identified as Gato. Franciquito asked Garcia to set Enrique up so that they could kidnap him.

The last time Franciquito and Gato approached Garcia about setting up Enrique was toward the end of January or the middle of February of 2002. All of them were out of prison and living in the Las Vegas area. They said that they wanted to kidnap and rob him

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS CONTINUATION

Page 4

EVENT: 020306-0996

of his drugs and his money. They implied that they might kill him but did not come right out and say it. They told Garcia that they would give him drugs, money and some of whatever they got off of Enrique. They wanted Garcia to call Enrique and have him come to his house or a motel to deliver some drugs. They would be hiding somewhere inside when he came and would pull a gun and go from there.

Garcia was shown a photo of Rene Gato ID# 1204592 and positively identified him as the person he knows as Gato. He also identified a photo of Frank Samora A.K.A. Jose Francisco Terazon ID# 1198589 as being the subject he knows as Franciquito. Garcia also mentioned a subject he knows as Robertico, who was with them the last time when they asked him to set up Enrique. Garcia did not identify any of the photos shown him as being Robertico. Robertico had just gotten out of jail when he met him. Robertico was later identified by others as Robert Castro ID#1161921.

Detectives identified Carlos Coello A.K.A. Carlos Cuello ID# 1162079 as an associate of Rene Gato. Carlos is in prison at this time at the High Desert State Prison and all of his phone conversations are recorded. Detectives pulled the recordings of these conversations and Officer Eric Ravelo listened to them. Officer Ravelo is of Cuban decent.

On 06/26/2002 at approximately 2125 hours Carlos Cuello had over an 11 minute phone conversation with his wife Amber. Amber was identified when in another conversation she provided Cuello with her social security number, 530-02-2415. This social security number returns to a Amber Rodriguez ID# 1387346. During the conversation they discussed the murder of Enrique. Amber was saying that it was not right what they did to him. They did not say the names but called one of the ones involved "the Feline". Gato in English means cat. Amber indicated that she felt sorry for his mom because he was her only child.

Detectives spoke to Amber via telephone and she denied any knowledge of the incident. She stated that she would not give a statement unless she was subpoenaed to court.

On 06/02/2002 at approximately 1429 hours Cuello had a conversation with an unknown female stating that he heard a rumor about "Feline and Pinochio". The female said she thought it was true.

On 05/29/2002 at approximately 0812 hours Cuello spoke to his father-in-law and asked him if Robertico and Gato were in trouble. The father-in-law said "yeah".

On 05/23/2002 at approximately 1337 hours Cuello calls for Gato and was told by a female that "they had to leave because they had some problems". The female said "they had problems just like Roland", they had to fly. Cuello told the female to tell them not to get stupid. The female said "That's why they flew away".

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS CONTINUATION

Page 5

EVENT: 020306-0996

On 05/03/2002 at approximately 1338 hours Cuello spoke with Gato. Most of the call was in reference to narcotics. Cuello then said that they told his roommate about something that happened. Gato acknowledges before too much is said. Cuello tells him to be careful. Gato said "I had nothing to do with that".

The victim, Enrique Caminero Jr., is a registered ex-felon for the charge of trafficking controlled substance from 1996. He has prior arrests for trafficking controlled substance, possession of dangerous drugs, under the influence controlled substance, possession of narcotics paraphernalia and possession of a controlled substance in 1995. In 1996 he was arrested and convicted for trafficking controlled substance and received a 72 month prison term. He was released on parole in July of 1998. In the year 2000 he was again arrested for 3 counts of trafficking controlled substance and one count of sales of a controlled substance. He was released on his own recognizance on these charges when he was murdered.

Rene Gato also has priors for trafficking in controlled substance, sales of controlled substance and possession of controlled substance for sale as well as two counts of battery with substantial bodily harm, possession of an unregistered firearm and carrying a concealed weapon as well as other various charges.

Robert Castro is a registered ex-felon for possession of a controlled substance and conspiracy to sell a controlled substance. He also has prior arrests for robbery with a deadly weapon, coercion, burglary with a deadly weapon and battery on an officer as well as other various charges.

Both Castro and Gato have an address in SCOPE of 4980 E. Owens 10F Las Vegas Nevada.

Sally Villaverde is a registered ex-felon for possession of a controlled substance. He also has prior arrests for coercion, possession controlled substance for sale, trafficking control substance and possession of narcotics paraphernalia as well as other various charges.

Jose Sarria a.k.a. Jose Berenguel contacted detectives and stated he was a friend of Enrique Caminero. Jose admitted to being involved in buying and selling drugs with Enrique. Jose also stated that he knew a gang of 5 or 6 Cuban males, some of which he identified as Francisco, Gato and Roberto. Jose stated that this gang would break into homes, kill people and take there money and drugs. He stated that he heard that this happened on one or two other occasions.

Jose stated that on 03/05/2002 Enrique went over to Jose's apartment. After a short time they left and went over to the Golden Eagle Bar. They had been there for approximately one half hour when Enrique received a call on his cell phone at about 2130 hours. Enrique had a conversation with someone in Spanish and told them that he would be there in

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS CONTINUATION
Page 6

EVENT: 020306-0996

twenty-five or thirty minutes. Enrique told his to finish his drink and he would take him home, then come back for him later around eleven or twelve. Enrique dropped Jose off and he never came back.

A check of Enrique Caminero's cell phone records showed that the last incoming call to his phone was from 702 241-0524 on 03/05/2002 at 6:19 pm. The call only lasted for one minute. There was one other one minute call from that number on 03/05/2002 at 5:58 pm. There were two calls made from Caminero's phone to that number on 03/05/2002. One was at 6:00 pm and lasted for 3 minutes and the other was at 6:14 pm and lasted for one minute.

Teresa Gamboa was given money by Rene Gato and rented room number 10 at the Capri Motel. She was with Rene Gato, Robert Castro and Sally Villaverde when she did this. She claims that she knew nothing about a murder and was dropped off at her home prior to the murder. She identified each of these subjects by names and photographs.

Inmate Leonel Garcia was approached by Frank Samora on one occasion in prison reference setting up Enrique Caminero to get robbed. On another occasion in late January or mid February, after he was out of custody, Garcia was approached by Rene Gato, Robert Castro and Frank Samora and again asked to set up Caminero so they could rob him of drugs and money.

Caminero was robbed and killed at the Capri Motel in room number ten. When his body was located there was no money or jewelry found on the body. A large amount of crack cocaine was located during the autopsy in the left front pants pocket of the victim.

The body of Caminero had been cleaned at the scene and the attempts had also been made to clean the scene. There was evidence in the bathroom that it had been cleaned and that blood was present. The evidence at the scene and the position and condition of the body lead investigators to conclude that the victims body had been cleaned up in the bathroom and moved to the location where it was found by investigators, next to the bed. Latent prints identified as belonging to Sally Villaverde were located in the bathtub area of the bathroom in room ten. Latent prints identified as belonging to Rene Gato were located on the lamp in the living area located next to the body of the victim.

Rene Gato is the registered owner of a white 1994 Chrysler New Yorker 4 door with tinted windows with Nevada plate 057-PAA. Also listed as the registered owner is Niurka Baro. Both have a listed address of 4980 E. Owens in Nevada DMV. The vehicle was involved in a shooting which occurred on 08/31/2002 at 1908 Linden Ave in Las Vegas. Photos of the vehicle were taken at that scene. A police report was completed under event 020831-2148. The photos of the vehicle were shown to Rogelia Lopez, the manager of the Capri Motel. She stated that it did look like the vehicle that the subjects that had rented room ten

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS CONTINUATION
Page 7

EVENT: 020306-0996

on 03/05/2002 had arrived in. She was also shown photos of Teresa Gamboa, Rene Gato, Robert Castro and Sally Villaverde and could not identify any of them.

The photos of the white Chrysler New Yorker vehicle registered to Rene Gato were shown to Teresa Gamboa and she positively identified the vehicle as the car that belongs to Rene Gato that he used to drive her to the Capri Motel.

Wherefore, declarant prays that a Warrant of Arrest be issued for suspect SALLY VILLAVARDE on a charge(s) of Murder wdw NRS 200.030, Kidnap wdw NRS 200.320, Robbery wdw NRS 200.380 and Grand Larceny Auto NRS 205.228.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on this 6th day of February, 2003.

DECLARANT: _____

WITNESS: _____

DATE: _____

EXHIBIT

11

VERDICT FORMS

1 VER

2
3 FILED IN OPEN COURT

4 APR 08 2004 10:48 AM

5 SHIRLEY B. PARRAGUIRRE, CLERK

6 DISTRICT COURT

7 CLARK COUNTY, NEVADA

8 DEPUTY

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -VS-

12 SALLY VILLAVERDE

13 Defendant.

CASE NO: C191012B

DEPT NO: XVII

14 VERDICT

15 We, the jury in the above entitled case, find the Defendant SALLY VILLAVERDE,
16 as follows:

17 COUNT 1 - BURGLARY

18 (please check the appropriate box, select only one)

19 ☒ Guilty of Burglary

20 ☐ Not Guilty

21 //

22 //

23 //

24 //

25 //

26
27
28

1 **COUNT 2 – MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)**

2 *(please check the appropriate box, select only one)*

- 3 ☒ Guilty of First Degree Murder With Use of a Deadly Weapon
4 ☐ Guilty of First Degree Murder Without Use of a Deadly Weapon
5 ☐ Guilty of Second Degree Murder With Use of a Deadly Weapon
6 ☐ Guilty of Second Degree Murder Without Use of a Deadly Weapon
7 ☐ Guilty of Accessory to a felony
8 ☐ Not Guilty
9

10 **COUNT 3 – ROBBERY WITH USE OF A DEADLY WEAPON**

11 *(please check the appropriate box, select only one)*

- 12 ☒ Guilty of Robbery With Use of a Deadly Weapon
13 ☐ Guilty of Robbery Without Use of a Deadly Weapon
14 ☐ Not Guilty
15
16

17 DATED this 8th day of April, 2004

18
19 
20 FOREPERSON
21
22
23
24
25
26
27
28

EXHIBIT

12

Due Diligence Documents (Motions/Letters)

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus

COURT MINUTES

October 16, 2017

A-17-756671-W Sally Villaverde, Plaintiff(s)
vs.
Brian Williams, Defendant(s)

October 16, 2017 3:00 AM Plaintiff's Motion for Transcripts at State Expense

HEARD BY: Smith, Douglas E. COURTROOM: Chambers

COURT CLERK:

RECORDER:

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- The Plaintiff's Motion for Transcripts at State Expense came before the Court on the October 16, 2017, Chamber Calendar. Having reviewed the Motion and citing the term "transcripts" as overboard, thereto, COURT ORDERED, the Motion is DENIED.

CLERK'S NOTE: A copy of this minute order was mailed to Sally Villaverde #0081701, High Desert State Prison, P.O. Box 650, Indian Springs, Nevada, 89070-0650.

PRINT DATE: 10/23/2017

Page 1 of 1

Minutes Date: October 16, 2017

CASE NO. A-17-756671-W

DEPT. NO. VIII

2017 OCT 16 P 2:39

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

Sally Villaverde

(defendant)

-vs-

Brian Williams (WARDEN)

(plaintiff)

NOTICE OF MOTION AND MOTION
FOR TRANSCRIPTS AT STATE
EXPENSE

PLEASE TAKE NOTICE that Sally Villaverde, Defendant
who is appearing in the above-entitled matter in propria per-
sona, will move this Honorable Court on a time and date to be
determined by the clerk of the Court, or as soon thereafter,
that petitioner can be heard, for an order to provide tran-
scripts, any and all pleadings in the above-entitled case.
That these are to be sent to the petitioner at the expense of
the State of Nevada, due to petitioner's poverty.

Defendant can demonstrate a prima facie need for the tran-
scripts, pleadings, and any and all other transcribed material
with regards to the above-entitled case. That this motion is
made and based upon all of the records, files, and pleadings
which are on file with the clerk of the court, the attached
affidavit of the petitioner, and on the attached memorandum

RECEIVED

OCT 13 2017

CLERK OF THE COURT

1 SALLY VILLAVARDE #1701
2 / In Propria Personam
3 Post Office Box 650 (HDSF)
4 Indian Springs, Nevada 89018

SEP 16 P 2:30

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 SALLY VILLAVARDE
9 (Defendant)
10 vs.
11 BRIAN WILLIAMS (WARDEN)
12 (Plaintiff)
13

Case No. 013-756671-W

Dept No. VMI

Docket _____

14 NOTICE OF MOTION

15 YOU WILL PLEASE TAKE NOTICE, that NOTICE OF MOTION AND
16 MOTION FOR TRANSCRIPTS AT STATE EXPENSE
17 will come on for hearing before the above-entitled Court on the 20 day of Nov., 2017
18 at the hour of 10 o'clock AM in Department VIII, of said Court.

19
20 CC:FILE

21
22 DATED: this 20 day of September, 2017.

23
24 BY: SALLY D. VILLAVARDE
25 SALLY D. Villaverde #1701
26 /In Propria Personam
27
28

1 SALLY VILLAVERDE #8701
2 / In Propria Personam
3 Post Office Box 650 (HDSP)
4 Indian Springs, Nevada 89018

FILED

2817 NOV 14 A 10:55

Allen L. Johnson
CLERK OF THE COURT

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 BRIAN WILLIAMS (WARDEN)

9 PLAINTIFF

10 vs.

11 SALLY VILLAVERDE

12 (DEFENDANT)

Case No. A-17-756571-W

Dept No. WIM

Docket _____

14 NOTICE OF MOTION

15 YOU WILL PLEASE TAKE NOTICE, that NOTICE OF MOTION AND MOTION FOR
16 TRANSCRIPTS AT STATE EXPENSE

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

20 CC:FILE

A-17-756571-W
NOTM
Notice of Motion
6697317



22 DATED: this 26 day of OCTOBER, 2013.

25 BY: Sally Villa Verde
26 SALLY VILLAVERDE # 8701
27 /In Propria Personam
28

1 CASE NO. A-17-756671-W

2 DEPT. NO. VIII

FILED

2011 NOV 14 A 10:55

John J. Quinn
CLERK OF THE COURT

3 IN THE EIGHT JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
4
5
6 IN AND FOR THE COUNTY OF CLARK
7

8
9 BRIAN WILLIAMS

10 Plaintiff

11 -vs-

12 SALLY VILLAVARDE

13 (Defendant)
14

A-17-756671-W
MOT
McDon
4697326



NOTICE OF MOTION AND MOTION
FOR TRANSCRIPTS AT STATE
EXPENSE

15 PLEASE TAKE NOTICE that SALLY VILLAVARDE, Defendant
16 who is appearing in the above-entitled matter in propria per-
17 sona, will move this Honorable Court on a time and date to be
18 determined by the clerk of the Court, or as soon thereafter,
19 that petitioner can be heard, for an order to provide tran-
20 scripts, any and all pleadings in the above-entitled case.
21 That these are to be sent to the petitioner at the expense of
22 the State of Nevada, due to petitioner's poverty.

23 Defendant can demonstrate a prima facie need for the tran-
24 scripts, pleadings, and any and all other transcribed material
25 with regards to the above-entitled case. That this motion is
26 made and based upon all of the records, files, and pleadings
27 which are on file with the clerk of the court, the attached
28 affidavit of the petitioner, and on the attached memorandum

1 of Points and Authorities.

2 WHEREFORE, SALLY VILLAVERDE, Defendant, prays that
3 this Court will issue an order granting petitioner's motion.

4 DATED this 26 day of OCTOBER, 2017

6 Respectfully Submitted

8 Sally D Villaverde
9 SALLY D VILLAVERDE
10 (~~RECEIVED~~ In Proper Person)

11 ///
12 ///
13 ///
14 ///
15 ///
16 ///
17 ///
18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

November 20, 2017

A-17-756671-W Sally Villaverde, Plaintiff(s)
 vs.
 Brian Williams, Defendant(s)

November 20, 2017 3:00 AM Plaintiff's Motion for Transcripts at State Expense

HEARD BY: Smith, Douglas E. **COURTROOM:** Chambers

COURT CLERK:

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Plaintiff's Motion for Transcripts at State Expense came before the Court on the November 20, 2017, Chamber Calendar. Having reviewed the Motion, COURT ORDERED, the Motion is DENIED. Court directed the Attorney General to prepare Findings of Fact and Conclusions of Law.

CLERK'S NOTE: A copy of this minute order was mailed to Sally Villaverde #0081701, High Desert State Prison, P.O. Box 650, Indian Springs, Nevada, 89070-0650 and placed in the attorney folder of the Attorney General.



**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3RD FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Brandi J. Wendel
Court Division Administrator

INMATE CORRESPONDENCE

December 01, 2017

Re: 03C191012-3 / Department 3

The State of Nevada vs Robert Castro, Defendant

- ☐ A court order is required to complete the request.
- ☐ Documents are sealed. Court order is required to reproduce. (PSI)
- ☐ Documents requested are not in court file at this time.
- ☐ Transcripts have not been filed. Court order required.
- ☒ Copies are \$.50 per page or by court order. Guilty Plea Agreement Filed 1/31/05 is 8 pages (\$0.50 x 8 = \$4.00).
- ☐ Consult your law library for this information.
- ☐ District Court does/does not show any outstanding warrants under the above referenced defendant name.
- ☒ Other: Enclosed please find a Case Summary. If you would like any other documents from this case, please review the Case Summary and specify the title & file date of the document & remit a payment of \$0.50 per page made payable to Clerk of the Court.

Cordially yours,

DC Criminal Desk #24

Deputy Clerk of the Court



**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3RD FL.
LAS VEGAS, NEVADA 89155-1180
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Brandi J. Wendel
Court Division Administrator

INMATE CORRESPONDENCE

December 29, 2017

Re: 03C191012-2 / Department 3

The State of Nevada vs Sally Villaverde, Defendant

- ☐ A court order is required to complete the request.
- ☐ Documents are sealed. Court order is required to reproduce. (PSI)
- ☐ Documents requested are not in court file at this time.
- ☐ Transcripts have not been filed. Court order required.
- ☐ Copies are \$.50 per page or by court order.
- ☐ Consult your law library for this information.
- ☐ District Court does/does not show any outstanding warrants under the above referenced defendant name.

☒ Other: The Guilty Plea Agreement has 8 pages for \$0.50 cent per page. The only Transcript we do have on file regarding the sentencing is from 04/07/2005 with 7 pages and was filed on 08/30/2005.

Cordially yours,
DC Criminal Desk #60
Deputy Clerk of the Court

Reporter's TRANSCRIPT

PLEASE, SR THIS IS WHAT I NEED
ROBERT CASTRO AKA ROBERT RANCE CASTROMENTAL
CASE # 03C191012-3
"Only the TRANSCRIPT, NOT the Guilty
Plea Agreement. I've already received
this
NO COURT MINUTES, NO CASE SUMMARY

Thanks very much
for your time.

FROM: SALLY D. VILLAUVERDE

#0081701

HDSP. P.O. BOX 650

INDIAN SPRINGS, NV. 89070

JAN. 02, 18

TO: STEVEN D. GRIERSON

CLERK OF THE COURT

Hello, SR I Hereby Submitting the following
letter, Requesting copies of the following
documents to pay at my own expenses,
NDOC, will endorse two checks, one for
the amount of four dollars, and another
one for an amount of six dollars,
- I need 1 copies of:

1- GUILTY PLEA Agreement Filed 1/31/05 is 8
pages ($\$0.50 \times 8 = \4.00) CASE NO 03C191012-3
ROBERTO CASTRO

2- SENTENCE HEARING Held ON 03/22/2005
(TRANSCRIPTS) CASE NO 03C191012-3 ^{DEPT 3} ROBERTO CASTRO
($\$0.50 \times 12 = \6.00) (IT should be 12 pgs if not, I'll
pay even if it is less than 12 pgs
the 6.00\$ should cover it)

I Am attaching a copy of the letter sent by your office
dated Dec, 01, 2017, where you instructed to obtain the
guilty plea Agreement document and any other document
desire to be payable to clerk of the court

Thanks for your time Respectfully Submitted

SALLY D. VILLAUVERDE #0081701

RECEIVED

CHECK IS VOID IF ANY OF THE FOLLOWING SECURITY FEATURES ARE ABSENT: ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER

Nevada Department of Corrections

Personal Property Account
P.O. Box 7011
Carson City, NV 89702

Well's Fargo

11-24

1210

CHECK NO.
304355

CHECK VOID IF AMOUNT
\$6.00
DIFFERENT THAN ABOVE

PAY: Six and 00/100*****

0081701

DATE
1/11/2018

AMOUNT
\$6.00

VOID AFTER 180 DAYS

PAY
TO THE
ORDER
OF
CLERK OF THE COURT
EIGHTH JUDICIAL COURT
200 LEWIS AVE 3RD FLOOR
LAS VEGAS, NV 89155-1160

AUTHORIZED SIGNATURE(S)

RUBBED IMAGE - DISAPPEARS WITH HEAT - SEE BACK FOR TRUE WATERMARK

⑈304355⑈ ⑆121000248⑆

4000100628⑈

USED

Security Features Included Details on back

NEVADA DEPARTMENT OF CORRECTIONS
PERSONAL PROPERTY ACCOUNT

VILLARDE, SALLY
CLERK OF THE COURT
EIGHTH JUDICIAL COURT
200 LEWIS AVE 3RD FLOOR
LAS VEGAS, NV 89155-1160

Call # 03C191012-3

1/11/2018

0081701-

1669411

CHECK NO.
304354

\$4.00

CHECKS VOID IF ANY OF THE FOLLOWING SECURITY FEATURES ARE ABSENT: ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER

Nevada Department of Corrections

Personal Property Account
P.O. Box 7011
Carson City, NV 89702

Wells Fargo

11-24

CHECK VOID IF AMOUNT

\$4.00

DIFFERENT THAN ABOVE

1210

CHECK NO.
304354

PAY: Four and 00/100*****

0061701

DATE

1/11/2018

AMOUNT

\$4.00

VOID AFTER 180 DAYS

PAY
TO THE
ORDER
OF

CLERK OF THE COURT
EIGHTH JUDICIAL COURT
200 LEWIS AVE 3RD FLOOR
LAS VEGAS, NV 89155-1160

AUTHORIZED SIGNATURE(S)

James E. ...
Al Bowman

IF RUB RED IMAGE, DISAPPEARS WITH HEAT

SEE BACK FOR TRUE WATERMARK

⑈ 304354⑈ ⑆ 121000248⑆

4000100628⑈

Security Features Included  Details on back.

From: Sally D Villaverde #0081701
HDSP PO BOX 650
Indian Springs, NV 89070

MARCH 11, 2018

TO: MR STEVEN D. GRIERSON, CLERK OF THE COURT.

Hello, SR I would like to purchase the copies of the following documentations:

^{Document #1}
1-) I need specifically "the transcripts" OF CASE NO 03C191012-3
The State of Nevada vs Robert CASTRO, OF THE "PLEA Arrangement
Hearing" that was heard by MICHAEL CHERRY and was reported
Recorded by Janie Olsen on January, 31, 2005, in this plea
Arrangement hearing THE DISTRICT ATTORNEY "MR. Fallig" made
factual statements regarding my case, and I need to supply the
Appellant Court with these transcripts. I am attaching as an
exhibit the court minutes copy of Jan, 31, 2005, where the
High light portion identify specifically the transcript that I
need.

^{Document #2}
2-) I need Also "the transcripts" on the same CASE NO 03C191012-3
(Robert CASTRO) OF THE Sentencing Heard by MICHAEL CHERRY And was
Reported / Recorder: Janie Olsen on MARCH, 22, 2005, in this hearing
there it was Argument by the State, Statement by the Deft. Argument
by Mr Walton, I am also Attaching a Court minute page or Copy with
the Highlighted portion of "the transcripts" that I need.

^{Document #3}
3-) I need Also, the Disposition 2. USE OF A DEADLY WEAPON
OR TEAR GAS IN COMMISSION OF A CRIME. CHARGES Amended/dropped
And Disposition 3. Robbery CHARGES Amended/Dropped, of the
CASE NO 03C191012-3 (ROBERT CASTRO) ON January/31/2005, I am
Also Attaching the Case Summary page, as an exhibit with a high
lighted portion of the specific documents I required.

^{Document #4}
4-) And last I would like to obtain or pay for my (Tury Verdict

RECEIVED
APR 09 2018
COUNTY CLERK

RECEIVED
APR 05 2018
CLERK OF THE COURT

1 form) of Sally D. Villaverde CASE No. C191012-B OR C191012-2

2 Dept XVII

3 I Am enclosing a check, endorse to the clerk of the court
4 for an Amount of \$ 15.00 To Cover All the expenses. I am
5 praying that your office understand all the information requested and
6 that no further confusion and misunderstanding happen
7 Thanks for your time

8 Respectfully And Sincerely
9 Submitted

10 Sally D Villaverde, #0081701

11 March, 11, 2018

From: Sally D. Villaverde ID #0081701

HDSP P.O. Box 650

Indian Springs, NV 89070

APRIL, 4, 2018

TO: MR. STEVEN D. GRIERSON, Clerk of the Court

1 HELLO, SR, Today April, 19, 2018. I Received a letter from your
2 office dated April, 19, 2018. Informing that the transcripts of
3 Case No C191012-3 dated January, 31, 2005 And March, 22, 2005.
4 are not in file in Eight Judicial Court. Deputy Clerk Ms. Cella G.
5 request, for me to contact department reporter recorder (see exhibit
6 herein). This letter was enclosed with several documents that
7 I never intended to buy. I sent a check on March on the amount
8 of \$15.00, to obtain the transcripts above and other documents
9 * Disposition (2) - Use of a deadly weapon or tear gas, AND Disposition
10 * (3) ROBBERY charges Amended/dropped. of the same case No. and
11 filed in the same date. Along with the checks was a letter enclosed
12 explaining specifically, the copies of documents that I require
13 to buy. yet for the third time, your office sent me the wrong
14 documentation. therefore I am again returning the documents sent
15 by Deputy Clerk Cella G. And request to have my money refund
16 , unless the proper documents are send. I am again enclosing
17 copy of the letter dated March, 11, 2018 as (exhibit) which explain
18 in details, what was the documents I intended to buy.
19 THANKS for your time.

Respectfully Submitted

Sally D. Villaverde #0081701

Date April, 19, 2018

RECEIVED

APR 25 2018

Page 1

CLERK OF THE COURT

136



**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D Grierson
Clerk of the Court

April 13, 2018

Dear Sir or Madam:

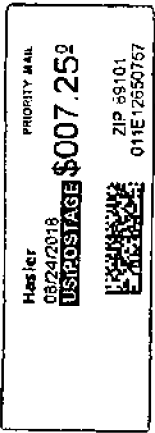
Your copy request cannot be completed for the following reason(s):

- ☐ Case file is not available at this time.
- ☐ Incorrect case number was provided.
- ☐ Copy requests must be paid for in advance. See attached price list.
- ☐ Document(s) requested are not available.
- ☐ Request is not legible.
- ☐ Insufficient information was provided.
- ☒ Other: Transcripts for case Number C191012-3 dated January 31, 2005 and March 22, 2005 have not been filed in Eight Judicial Court. Please contact department reporter recorder.

Thank you,

Cela G, Deputy Clerk

SALLY D. VILLAVARDE #0081701
HDSP P.O. BOX 650
INDIAN SPRINGS, NV 89070



TO: CLERK OF THE COURT
200 LEWIS AVE, 3rd Floor
LAS VEGAS, NV 89155-1160

3762
LEGAL MAIL
CONFIDENTIAL

RECEIVED

AUG 22 2018

HIGH DESERT STATE PRISON
LAW LIBRARY

1 PPOW

FILED

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

2018 AUG 31 P 3:16

5 Sally D Villaverde,

6 Petitioner,

7 vs.

8 Brian Williams Warden,

9 Respondent,

Case No: A-18-780041-W
Department 3

ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS

11 Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on
12 August 28, 2018. The Court has reviewed the Petition and has determined that a response would assist
13 the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and
14 good cause appearing therefore,

15 IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order,
16 answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS
17 34.360 to 34.830, inclusive.

18 IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's
19 Calendar on the 15th day of November, 20 18, at the hour of

21 9:00 o'clock for further proceedings.

22
23
24
25 District Court Judge

26 A-18-780041-W
OPWH
Order for Petition for Writ of Habeas Corpus
4776164



**THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
141 - 143
WILL FOLLOW VIA
U.S. MAIL**

**THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
144 - 144
WILL FOLLOW VIA
U.S. MAIL**

27

FILED
OCT 22 2018
CLERK OF COURT

1 Case No. A-18-780041-W
2
3 Dept. No. III
4

5 IN THE EIGHT JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6
7 IN AND FOR THE COUNTY OF CLARK

8 SALLY D. VILLAVARDE
9 PETITIONER
10 vs.
11 BRIAN WILLIAMS (WARDEN)
12 RESPONDENT
13

Case No. A-18-780041-W
Dept No. III
Docket _____

14 **NOTICE OF MOTION**

15 YOU WILL PLEASE TAKE NOTICE, that MOTION TO EXTEND THE HEARING 15 DAYS
16 BEYOND PROBE OF RECEIVE THE ANSWER
17 will come on for hearing before the above-entitled Court on the 27th day of November 20 18
18 at the hour of 9 o'clock A. M. In Department III of said Court.

19
20 CC:FILE

21
22 DATED: this 15 day of October, 2018.

23
24 BY: SALLY D. Villaverde #81701
SALLY D. VILLAVARDE #81701
/In Propria Personam

RECEIVED
OCT 22 2018

CLERK OF THE COURT

A-18-780041-W
NOTM
Notice of Motion
4781210



27
FILED
OCT 22 2018
CLERK OF COURT

1 Sally D. Villaverde #81701
2 Petitioner / In Propria Personam
3 Post Office Box 650 [HDSP]
4 Indian Springs, Nevada 89018

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

8 SALLY D. VILLAVERDE
9 Petitioner
10 vs.
11 BRIAN WILLIAMS (Warden)
12 Respondent

Case No. A-18-780041-W
Dept. No. III
Docket _____

14 MOTION TO EXTEND THE HEARING 15 DAYS BEYOND PROOF OF
15 RECEIVE THE ANSWER

19 COMES NOW, SALLY D. VILLAVERDE pro, per, herein above respectfully
20 moves this Honorable Court for an APPROVAL or Grant OF THE MOTION ON the above
21 Title Pursuant the respondent failure to meet the deadline and Answer
22 Per NRS 3A.360 to 3A.830 inclusive.

23 This Motion is made and based upon the accompanying Memorandum of Points and Authorities.

25 DATED: this 15 day of OCTOBER, 2018.

26 BY: Sally D. Villaverde #0081701
27 SALLY D. VILLAVERDE #0081701
28 Defendant/In Propria Personam

RECEIVED
OCT 22 2018
CLERK OF THE COURT

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE:

8 PETITIONER filed a Petition for Writ of Habeas Corpus (Post-Conviction
4 Relief) on August 28, 2018. The court reviewed the Petition and determined
5 that a response would assist the court in determining whether Petitioner
6 is illegally imprisoned and restrained of his liberty and good cause
7 appearing. and ordered that respondent shall, within 45 days after the
8 date of the order (August 31, 2018) Answer or otherwise respond to the Petition
9 and file a return in accordance with the provisions of NRS 34.360 to 34.830,
10 inclusive. Petitioner inform this honorable court, that more than 45
11 days passed, and respondent has not complied with the stipulations
12 of the court's order. And he does not want to take a chance by
13 receiving a respond within days of this court's calendar on the 1st
14 day of November 2018. therefore petitioner request that this Honorable
15 Court grant this motion for petitioner have enough time to reply
16 Respondent's Answer if ANY. This is not done for a purpose of delay,
17 but to have a fair opportunity to present a very meritorious
18 and complex claims involving Petitioner's innocence.

19 RESPECTFULLY Submitted

20 Sally D. Villaverde #A0081701

21 PETITIONER PRO, SE

Dated this 15 day of October, 2018.

CERTIFICATE OF SERVICE BY MAILING

I, SALLY D. VILLAVARDE PRO. PER, hereby certify, pursuant to NRCP 5(b), that on this 15
day of October, 2018, I mailed a true and correct copy of the foregoing, "MOTION TO
EXTEND THE HEARING 15 DAYS BEYOND PRIDE OF RECEIVE THE ANSWER."
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

DISTRICT ATTORNEY
200. LEWIS AVE
LAS VEGAS, NV 89155-1160

CC:FILE

DATED: this 15 day of October, 2018.

Sally D Villaverde 81701
SALLY D. VILLAVARDE # 81701
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding MOTION TO

EXTEND THE HEARING 15 DAYS BEYOND PROOF OF RECEIVE THE ANSWER
(Title of Document)

filed in District Court Case number A-18-780091-W

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

-OR-

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

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

(State specific law)

-OR-

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

Sally D Villaverde
Signature

10/15/18
Date

SALLY D. VILLAVERDE
Print Name

PETITIONER PRO, PER
Title

SALLY D. VILLAVARDE
HDSP PO BOX 650
Indian Springs, NV 89070

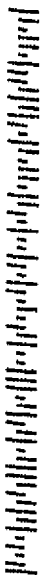
LAS VEGAS
NV 890
18 OCT '18
PM 3 L

Master
10/18/2018
FIRST-CLASS MAIL
US POSTAGE \$000.47
ZIP 89101
011E12650516

3762

LEGAL MAIL

69101-630000



TO: STEVEN D. GRIERSON
CLERK OF THE COURT
200 Lewis Ave, 3rd Floor
LAS Vegas, NV 89155-1160

RECEIVED

OCT 16 2018

HIGH DESERT STATE PRISON
LAW LIBRARY

**THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
151 - 152
WILL FOLLOW VIA
U.S. MAIL**



RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
KRISTA D. BARRIE
Chief Deputy District Attorney
Nevada Bar #10310
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

SALL VILLAVERDE, #1433466,
Defendant.

CASE NO: A-18-780041-W
(03C191012-2)
DEPT NO: III

**STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT
OF HABEAS CORPUS (POST-CONVICTION) FILED AUGUST 28, 2018
AND MOTION FOR THE APPOINTMENT OF COUNSEL**

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through KRISTA D. BARRIE, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) and Motion for the Appointment of Counsel.

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

POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On March 23, 2003, Sally Villaverde ("Defendant") and co-defendants Rene Gato and Robert Castro were charged by way of Amended Criminal Complaint with BURGLARY (Felony – NRS 205.060); MURDER WITH USE OF A DEADLY WEAPON (OPEN

1 MURDER) (Felony – NRS 200.010, 200.030, 193.165) and ROBBERY WITH USE OF A
2 DEADLY WEAPON (Felony – NRS 200.380, 193.165).

3 On March 21, 2003, a preliminary hearing was held. Following the preliminary
4 hearing, the district court held all three defendants to answer to the charges in district court.

5 On March 25, 2003, Defendant and the co-defendants were charged by way of
6 Information with BURGLARY (Felony – NRS 205.060); MURDER WITH USE OF A
7 DEADLY WEAPON (OPEN MURDER) (Felony – NRS 200.010, 200.030, 193.165) and
8 ROBBERY WITH USE OF A DEADLY WEAPON (Felony – NRS 200.380, 193.165). An
9 Amended Information, charging only Defendant, was filed on March 29, 2004, following the
10 district court's granting of the motion to sever their trials.¹

11 Defendant's jury trial commenced on March 31, 2004. On April 8, 2004, the jury found
12 Defendant guilty of all counts.

13 On June 3, 2004, Defendant was sentenced as follows: Count 1 – to a maximum of
14 ninety-six (96) months with a minimum of twenty-two (22) months in the Nevada Department
15 of Corrections; Count 2 – to a term of Life imprisonment without the possibility of parole in
16 the Nevada Department of Corrections (NDC), plus an equal and consecutive term for Use of
17 a Deadly Weapon; Count 3 – to a maximum on one hundred fifty-six (156) months and a
18 minimum of thirty-five (35) months in the NDC, plus an equal and consecutive term for the
19 Use of a Deadly Weapon, Count 3 consecutive to Count 3. The Judgment of Conviction was
20 filed on June 10, 2004.

21 Defendant filed a direct appeal. All convictions were subsequently affirmed by the
22 Nevada Supreme Court on February 15, 2006. Remittitur issued March 14, 2006.

23 On April 3, 2006, Defendant filed a Petition for Writ of Habeas Corpus. On April 20,
24 2006, he filed a Motion to Withdraw his Petition Without Prejudice. The State filed its
25 Response on April 25, 2006. Defendant filed a Reply on May 3, 2006. On May 31, 2006,
26

27
28 ¹ The district court issued an Order granting Defendants Gato and Villaverde's Motion
to Sever Trial on February 25, 2004.

1 Defendant filed a Supplemental Petition for Writ of Habeas Corpus, Memorandum of Points
2 and Authorities In Support of the Petition, and Appendix of Exhibits.

3 On April 12, 2007, counsel was appointed to represent Defendant. On August 27, 2007,
4 appointed counsel filed a Supplement to Defendant's Petition for Writ of Habeas Corpus. The
5 State filed its Response to the Supplemental Petition on November 6, 2007, addressing the
6 merits of the Petition. The district court held an evidentiary hearing on Defendant's ineffective
7 assistance of counsel claims on January 10, 2008. Following the evidentiary hearing, the court
8 denied Defendant's Petition on the merits. The Findings of Facts, Conclusions of Law, and
9 Order was filed on February 26, 2008.

10 On January 28, 2008, Defendant filed a Notice of Appeal regarding of the denial of his
11 Petition on the merits. The Nevada Supreme Court subsequently affirmed this Court's denial
12 of Defendant's Petition. Remittitur issued June 4, 2010.

13 On August 28, 2018 – over eight years later – Defendant filed the instant Petition for
14 Writ of Habeas Corpus (Post-Conviction). The State responds herein.

15 FACTS

16 In November of 2002, Defendant began showing up at several businesses near the
17 intersection of Tropicana and Eastern Avenue. Defendant would show up at these businesses,
18 at night, four or five times per week. Defendant would expose his penis, make vulgar gestures,
19 and scare the employees, all young females. These events involving Defendant started in
20 November, 2002, and continued for several months.

21 During this time, Defendant exposed his penis on two separate occasions to Cassie
22 Leffner. On several different occasions Defendant masturbated, put his hands in his pants, and
23 exposed his penis to Ruth Garn. Defendant held his genitalia in the presence of Michelle
24 Delavigne. On two separate occasions, Defendant masturbated and exposed his penis to Brandi
25 Nilson. Defendant also touched himself in the presence of April Gagen.

26 In addition, Defendant would call the businesses and pretend to be a woman named
27 "Paula." Defendant told the young girls that "Paula" was with the neighborhood watch, that
28 there was a dangerous sex offender lurking outside the business, and he would describe what

1 that person was wearing. After the phone calls, Defendant would appear outside the business
2 he called wearing the same clothes that "Paula" described the sex offender was wearing.
3 Defendant usually carried a backpack and wore a hooded sweatshirt. Sometimes, "Paula"
4 would describe how this sex offender had kidnapped two females and made one watch while
5 he raped the other.

6 When Defendant was contacted by Detective Boucher, he admitted making the phone
7 calls, pretending to be "Paula" from neighborhood watch. Defendant also admitted to telling
8 the girls the story about how the sex offender had kidnapped two females. Defendant told
9 Detective Boucher that he created this "scary guy" persona for the girls. He also admitted
10 being present outside the businesses at night. When Defendant would show up at their place
11 of employment, the girls would yell at him to leave and Defendant would tell them things like,
12 "fuck you bitch," "I will kick your ass," "I am going to fuck you bitch," or "I'm going to fuck
13 you up the ass."

14 During the trial, April Gagen testified and was subjected to vigorous cross-examination
15 by the defense. April testified that she received phone calls from Defendant on three different
16 occasions. Defendant, pretending to be a woman named "Paula," would tell April that a white
17 male wearing white pants and a blue sweatshirt had kidnapped girls and locked them in an
18 apartment. Defendant would then show up, on the same day, at April's work, wearing those
19 same clothes. On several different occasions Defendant grabbed himself in April's presence
20 and repeatedly yelled obscenities at her. April stated that she felt uncomfortable, threatened,
21 and scared by Defendant's presence and his constant yelling and swearing at her. Moreover,
22 Defendant told April that he was going to "Fuck you up the ass."

23 One night, Defendant confronted April in front of an alley. April tried to get away from
24 him but Defendant followed her and said "I'm going to fucking hurt you." April was alone
25 and thought that Defendant was going to inflict bodily harm on her. April also testified that
26 she thought Defendant was going to rape and kill her. Defendant's intent to cause harm to
27 April is shown from his actions of exposing himself to April and the other victims, from his
28

1 language of telling April that he was going to hurt her and ‘fuck her in the ass,’ and from his
2 actions of following her as she walked home from work.

3 **ARGUMENT**

4 **I. DEFENDANT’S PETITION IS PROCEDURALLY BARRED**

5 The Nevada Supreme Court has held that “[a]pplication of the statutory procedural
6 default rules to post-conviction habeas petitions is mandatory, noting:
7

8 Habeas corpus petitions that are filed many years after conviction
9 are an unreasonable burden on the criminal justice system. The
10 necessity for a workable system dictates that there must exist a
time when a criminal conviction is final.

11 State v. District Court (Riker), 121 Nev. 225, 231 331 112 P.3d 1070, 1074 (2005).
12 Additionally, the Court noted that procedural bars “cannot be ignored [by the district court]
13 when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
14 has granted no discretion to the district courts regarding whether to apply the statutory
15 procedural bars; this Court must apply them. Since the Supplemental Fourth Petition is
16 procedurally barred, it must be denied.

17 **A. THE PETITION IS TIME-BARRED.**

18 Defendant’s Petition is time-barred. Pursuant to NRS 34.726(1):

19 Unless there is good cause shown for delay, a petition that
20 challenges the validity of a judgment or sentence must be filed
21 within 1 year of the entry of the judgment of conviction or, if
22 an appeal has been taken from the judgment, within 1 year after
23 the Supreme Court issues its remittitur. For the purposes of
24 this subsection, good cause for delay exists if the petitioner
demonstrates to the satisfaction of the court:

- 25 (a) That the delay is not the fault of the petitioner; and
26 (b) That dismissal of the petition as untimely will unduly
prejudice the petitioner.

27 NRS 34.726(1) (emphasis added).
28

1 The Supreme Court of Nevada has held that NRS 34.726 should be construed by its
2 plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). The one-
3 year time bar proscribed by NRS 34.726 begins to run from the date the Judgment of
4 Conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114
5 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

6 The one-year time limit for filing petitions for post-conviction relief under NRS 34.726
7 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002), the
8 Nevada Supreme Court rejected a habeas petition that was filed two (2) days late despite
9 evidence presented by the defendant that he purchased postage through the prison and mailed
10 the Notice within the one-year time limit. Gonzales reiterated the importance of filing the
11 petition within the mandatory deadline, absent a showing of “good cause” for the delay in
12 filing. 118 Nev. at 590, 53 P.3d at 902.

13 In this case, Defendant’s Judgment of Conviction was filed on June 10, 2004.
14 Defendant pursued a direct appeal, his convictions were all affirmed, and Remittitur issued
15 March 14, 2006. As such, Defendant had until March 14, 2007 to file a timely post-conviction
16 petition. The instant Petition was filed on August 28, 2018, over eleven years after this
17 mandatory time bar. Thus, the Petition is time-barred and must be denied.

18 **B. THE PETITION IS BARRED BY LACHES.**
19

20 When a period exceeding five years has passed “between the filing of a judgment of
21 conviction...and the filing of a petition challenging” its validity, there is a “rebuttable
22 presumption of prejudice to the State.” NRS 34.800(2). In Groesbeck v. Warden, the Nevada
23 Supreme Court noted that petitions filed so long after a conviction create an “unreasonable
24 burden on the criminal justice system.” Groesbeck, 100 Nev. 259, 679 P.2d 1268 (1984). It
25 continued that the “necessity for a workable system dictates that there must exist a time when
26 a criminal conviction is final.” Id. To invoke the presumption, the statute requires the State
27 plead laches in its motion to dismiss the petition. NRS 34.800(2).
28

1 The State affirmatively pleads laches here – Defendant’s Judgment of Conviction was
2 filed on June 10, 2004. Defendant pursued a direct appeal, his convictions were all affirmed,
3 and Remittitur issued March 14, 2006. As such, more than fourteen years have passed since
4 the Judgment of Conviction was filed (and more than twelve years have passed since
5 Remittitur on direct appeal). This time lapse, which is significantly longer than the statutory
6 five year period, presumptively prejudices both the State’s ability to respond to the merits of
7 any claims and, should relief be granted, to retry the case. Further still, Defendant has failed
8 to rebut this presumption. Therefore, the Petition is barred by laches and must be denied.

9
10 **C. THE PETITION IS SUCCESSIVE.**

11 Defendant’s Petition is procedurally barred because it is successive. NRS 34.810(2)
12 reads:

13 A second or successive petition must be dismissed if the judge or
14 justice determines that it fails to allege new or different grounds
15 for relief and that the prior determination was on the merits or, if
16 new and different grounds are alleged, the judge or justice finds
that the failure of the petitioner to assert those grounds in a prior
petition constituted an abuse of the writ.

17 NRS 34.810(2) (emphasis added). Second or successive petitions are petitions that either: 1)
18 fail to allege new or different grounds for relief and the grounds have already been decided on
19 the merits or 2) that allege new or different grounds but a judge or justice finds that the
20 petitioner’s failure to assert those grounds in a prior petition would constitute an abuse of the
21 writ. Second or successive petitions will only be decided on the merits if the petitioner can
22 show good cause and prejudice. NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871
23 P.2d 944, 950 (1994).

24 The Nevada Supreme Court has stated that “[w]ithout [] limitations on the availability
25 of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse
26 post-conviction remedies. In addition, meritless, successive and untimely petitions clog the
27 court system and undermine the finality of convictions.” Lozada, 110 Nev. at 358, 871 P.2d at
28 950. The Nevada Supreme Court recognizes that “[u]nlike initial petitions which certainly

1 require a careful review of the record, successive petitions may be dismissed based solely on
2 the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In
3 other words, if the claim or allegation was previously available with reasonable diligence, it
4 is an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467,
5 497-498 (1991).

6 In this case, Defendant’s first Petition – through appointed counsel – was considered
7 on the merits. An evidentiary hearing was held on the first Petition. Following the evidentiary
8 hearing, the Court denied Defendant’s first Petition on the merits. The Findings of Facts,
9 Conclusions of Law, and Order was filed on February 26, 2008. Defendant appealed the denial
10 of his first Petition on the merits, and the Nevada Supreme Court affirmed this Court’s denial.
11 Remittitur issued June 4, 2010. Defendant filed this subsequent Petition on August 28, 2018.
12 As such, this subsequent Petition is successive and an abuse of the writ. Accordingly, it must
13 be denied.

14 **II. DEFENDANT FAILS TO SHOW GOOD CAUSE AND PREJUDICE**
15 **NECESSARY TO OVERCOME THE MULTIPLE MANDATORY**
16 **PROCEDURAL DEFAULTS.**

17 A showing of good cause and prejudice may overcome procedural bars.² To show good
18 cause for delay under NRS 34.726(1), a petitioner must demonstrate the following: (1) “[t]hat
19 the delay is not the fault of the petitioner” and (2) that the petitioner will be “unduly
20 prejudice[d]” if the petition is dismissed as untimely.

21 “To establish good cause, appellants must show that an impediment external to the
22 defense prevented their compliance with the applicable procedural rule. A qualifying
23 impediment might be shown where the factual or legal basis for a claim was not reasonably
24 available at the time of default.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003)

25
26
27 ² In order to conserve judicial resources, the State will only address whether Defendant
28 has established good cause. However, if this Court finds Defendant has established good
cause, the State respectfully requests an opportunity to address whether Defendant has also
established prejudice.

1 (emphasis added). The Court continued, “appellants cannot attempt to manufacture good
2 cause[.]” Id. at 621, 81 P.3d at 526.

3 Once a petitioner has established good cause, he must also show actual prejudice
4 resulting from the errors of which he complains. In other words, in order to establish prejudice,
5 the defendant must show “not merely that the errors of [the proceedings] created possibility
6 of prejudice, but that they worked to his actual and substantial disadvantage, in affecting the
7 state proceedings with error of constitutional dimensions.” Hogan v. Warden, 109 Nev. 952,
8 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152, 170, 102 S. Ct.
9 1584, 1596 (1982)). To find good cause there must be a “substantial reason; one that affords
10 a legal excuse.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting
11 Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Claims asserted in a petition
12 for post-conviction relief must be supported with specific factual allegations, which if true,
13 would entitle the petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. “Bare” and
14 “naked” allegations are not sufficient, nor are those belied and repelled by the record. Id.

15 As alleged good cause, Defendant claims that he is innocent of the charges. However,
16 to support this allegation of actual innocence, Defendant challenges the jury instructions,
17 claims that the State committed prosecutorial misconduct during closing argument, and other
18 aspects of his trial. Not only is this not a claim of actual innocence, it is insufficient and
19 completely without merit.

20 Actual innocence means factual innocence, not mere legal insufficiency. Bousley v.
21 United States, 523 U.S. 614, 623, 118 S. Ct. 1604, 1611 (1998) (emphasis added); Sawyer v.
22 Whitley, 505 U.S. 333, 338-39, 112 S. Ct. 2514, 2518-19 (1992). Actual innocence is a
23 stringent standard designed to be applied only in the most extraordinary situations. Pellegrini,
24 117 Nev. at 876, 34 P.3d at 530.

25 To establish actual innocence of a crime, a Defendant “must show that it is more likely
26 than not that no reasonable juror would have convicted him absent a constitutional violation.”
27 Pellegrini, 117 Nev. at 887, 34 P.3d at 537.

1 “Without any new evidence of innocence, even the existence of a concededly
2 meritorious constitutional violation is not itself sufficient to establish a miscarriage of justice
3 that would allow a habeas court to reach the merits of the barred claim.” Schlup v. Delo, 513
4 U.S. 298, 316, 115 S. Ct. 851, 861 (1995). Furthermore, any alleged newly discovered
5 evidence suggesting a defendant’s innocence must be “so strong that a court cannot have
6 confidence in the outcome of the trial.” Id. at 316, 115 S. Ct. at 861.

7 Moreover, actual innocence is not a free-standing claim. The United States Court of
8 Appeals for the Eighth Circuit has “rejected free-standing claims of actual innocence as a basis
9 for habeas review, stating, ‘[c]laims of actual innocence based on newly discovered evidence
10 have never been held to state a ground for federal habeas relief absent an independent
11 constitutional violation occurring in the underlying state criminal proceeding.’” Meadows v.
12 Delo, 99 F.3d 280, 283 (8th Cir. 1996) (emphasis added) (citing Herrera v. Collins, 506 U.S.
13 390, 400, 113 S. Ct. 853, 860 (1993)). Once a defendant has made such a showing, he may
14 then use the claim of actual innocence as a “gateway” to present his constitutional challenges
15 to the court and require the court to decide them on the merits. Schlup, 513 U.S. at 315, 115
16 S. Ct. at 861.

17 In this case, Defendant does not actually claim that he is innocent. Rather, he again
18 challenges aspects of the trial – jury instructions, closing arguments, and the like. This is not
19 sufficient. Bousley v. United States, 523 U.S. 614, 623, 118 S. Ct. 1604, 1611 (1998)
20 (emphasis added) (actual innocence means factual innocence, not mere legal insufficiency);
21 see also Sawyer v. Whitley, 505 U.S. 333, 338-39, 112 S. Ct. 2514, 2518-19 (1992).
22 Moreover, Defendant has presented no new evidence in support of this claim. In addition,
23 Defendant’s claims of ineffective assistance of appellate counsel and others raised in the
24 instant Petition were readily available to him at the time he filed his initial, timely Petition that
25 was considered (and denied) on the merits. Thus, for all these reasons, Defendant has failed to
26 overcome the multiple mandatory procedural bars to the instant Petition and it must be denied.

27 //

28 //

1 **III. DEFENDANT IS NOT ENTITLED TO APPOINTED POST-CONVICTION**
2 **COUNSEL.**

3 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-
4 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566
5 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada
6 Supreme Court similarly observed that “[t]he Nevada Constitution...does not guarantee a right
7 to counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s right to
8 counsel provision as being coextensive with the Sixth Amendment to the United States
9 Constitution.” McKague specifically held that with the exception of NRS 34.820(1)(a)
10 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
11 “any constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at
12 164, 912 P.2d at 258.

13 However, the Nevada Legislature has given courts the discretion to appoint post-
14 conviction counsel so long as “the court is satisfied that the allegation of indigency is true and
15 the petition is not dismissed summarily” as follows:

16 A petition may allege that the Defendant is unable to pay the costs of
17 the proceedings or employ counsel. If the court is satisfied that the
18 allegation of indigency is true and the petition is not dismissed
19 summarily, the court may appoint counsel at the time the court orders
the filing of an answer and a return. In making its determination, the
court may consider whether:

- 20 (a) The issues are difficult;
21 (b) The Defendant is unable to comprehend the proceedings;
 or
22 (c) Counsel is necessary to proceed with discovery.

23 NRS 34.750; see also Peterson v. Warden, Nevada State Prison, 87 Nev. 134, 136, 483 P.2d
24 204, 205 (1971) (citing former statute NRS 177.345(2)).

25 //

26 //

27 //

28 //

1 As discussed supra, Defendant's Petition is barred by multiple mandatory bars and his
2 alleged actual innocence claim is without merit. Therefore, Defendant's request for appointed
3 post-conviction counsel should be denied.

4 DATED this 29th day of October, 2018.

5 Respectfully submitted,

6 STEVEN B. WOLFSON
7 Clark County District Attorney
8 Nevada Bar #001565

9 BY /s// KRISTA D. BARRIE
10 KRISTA D. BARRIE
11 Chief Deputy District Attorney
12 Nevada Bar #10310

13 CERTIFICATE OF MAILING

14 I hereby certify that service of the above and foregoing was made this 29th day of
15 October, 2018, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

16 SALLY VILLAVERDE, #1187297
17 HIGH DESERT STATE PRISON
18 PO BOX 650
19 INDIAN SPRINGS, NV 89070

20 BY /s// E. DEL PADRE
21 E. DEL PADRE
22 Secretary for the District Attorney's Office
23
24
25
26
27
28

Steven D. Grierson

1 SALLY D. VILLAVARDE #0081701
2 PETITIONER In Proper Person
3 P.O. Box 650 H.D.S.P.
4 Indian Springs, Nevada 89070

5 EIGHT JUDICIAL DISTRICT COURT

6 CLARK COUNTY NEVADA

7
8 SALLY D. VILLAVARDE

9 PETITIONER

Case No. A-18-780041-W

10 -v-

Dept.No. III

11 BRIAN Williams, (Warden)

Docket _____

12 Respondent

13
14 NOTICE OF APPEAL

15 Notice is hereby given that the PETITIONER, SALLY VILLAVARDE

16 _____, by and through himself in proper person, does now appeal
17 to the Supreme Court of the State of Nevada, the decision of the District
18 Court's Order of November 1, 2018 Denying His Proper Person Petition
19 For writ of Habeas Corpus (Post-conviction) without findings of facts and
20 Conclusion of Law in Violation of NRS 34.360 to 34.820 inclusive

21 Dated this date, November 18, 2018

22
23 Respectfully Submitted,

24 Sally D. Villaverde #0081701

In Proper Person

25
26
27
28
33
RECEIVED
NOV 26 2018
CLERK OF THE COURT

4

CERTIFICATE OF SERVICE BY MAILING

I, SALLY D. VILLAYERDE, hereby certify, pursuant to NRCP 5(b), that on this 18
day of November, 2018, I mailed a true and correct copy of the foregoing, "

NOTICE OF APPEAL

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

DISTRICT ATTORNEY OFFICE
300 LEWIS AVE
LAS VEGAS, NV 89155-1160

DATED: this 18 day of November, 2018.

SALLY D. VILLAYERDE #0081701
SALLY D. VILLAYERDE #81701
Petitioner /In Propria Persona
Post Office box 650 (HDSP)
Indian Springs Nevada 89018

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

NOTICE OF APPEAL
(Title of Document)

filed In District Court Case number A-18-780041-W

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

-OR-

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

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

(State specific law)

-or-

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

Sally D. Villaverde
Signature

Nov, 18, 2018
Date

SALLY D. VILLAVERDE
Print Name

PETITIONER
Title

SMITH D. VILLAVENDE #0081701
HDSP 20 BOX 650
INDIAN SPRINGS NV 89070

LAS VEGAS NV 890
NOV 10 1970



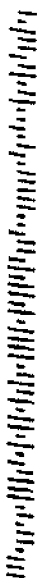
To: STEVEN D. GRIERSON, Clerk of the
Court

200 Lewis Ave. 3rd floor
Las Vegas NV 89155-1160

LEGAL MAIL

CONFIDENTIAL

BS101-630000



HIGH DESERT STATE PRISON
NOV 10 201
UNIT 7 AB

1 SALLY D. VILLAUERDE ID NO. 81701

2 HIGH DESERT STATE PRISON
3 22010 COLD CREEK ROAD
4 P.O. BOX 650
5 INDIAN SPRINGS, NEVADA 89070

27
FILED
NOV 26 2018
CLERK OF COURT

6 EIGHT JUDICIAL DISTRICT COURT

7 CLARK COUNTY NEVADA

8 SALLY D. VILLAUERDE

9 PETITIONER

10 v.

11 BRIAN WILLIAMS (WARDEN)

12 RESPONDENT

CASE NO.: A-18-780041-W

DEPT. NO.: III

DOCKET: _____

13 MOTION FOR RECONSIDERATION

14
15
16
17 COMES NOW, Petitioner, SALLY D. VILLAUERDE, herein above respectfully
18 moves this Honorable Court for an Reconsideration of the Ruling of His Habeas
19 Corpus Petition (Post-Conviction) of a Hearing held on November 1st, 2018
20 where this matter was heard and denied based on the Pleadings stated therein.

21 This Motion is made and based upon the accompanying Memorandum of Points and
22 Authorities.

23 DATED: this 20 day of November, 2018.

24 BY: SALLY D. VILLAUERDE #0081701

Sally D. Villaverde #0081701
PETITIONER In Proper Personam

A-18-780041-W
MRCN
Motion to Reconsider
4799287



1 MEMORANDUM OF POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE:

3 PETITIONER FILED A WRIT OF HABEAS CORPUS (POST-CONVICTION) RELIEF, ON AUGUST 28
4 2018. THE COURT REVIEWED THE PETITION AND DETERMINE THAT A RESPONSE WOULD
5 ASSIST THE COURT IN DETERMINING WHETHER PETITIONER IS ILLEGALLY IMPRISONED AND
6 RESTRAINED OF HIS LIBERTY.

7 IN OCTOBER 22 2018 PETITIONER FILED A MOTION TO EXTEND THE HEARING 15 DAYS
8 BEYOND PROOF OF RECEIVE THE ANSWER OR RESPONSE, AND IT WAS SCHEDULED TO BE
9 HEARD IN NOVEMBER 27, 2018.

10 IN OCTOBER 24-2018 AN ORDER TO PROCEED IN FORMA PAUPERIS WAS FILED AND GRANTED.

11 IN OCTOBER 29 2018 THE STATE FILED AN UNTIMELY RESPONSE TO PETITIONER'S WRIT OF
12 HABEAS CORPUS (POST-CONVICTION) FILED ON THE ABOVE DATE AUGUST 28, 2018.

13 IN NOVEMBER, 1ST, 2018 A HEARING WAS HELD BY THIS HONORABLE COURT DENYING PETITIONER'S
14 WRIT OF HABEAS CORPUS WITHOUT HIS PRESENCE. MOTION FOR APPOINTMENT OF COUNSEL
15 WAS DENIED AND THE COURT ORDERED THE STATE TO FILE FINDINGS OF FACTS AND CONCLUSIONS
16 OF LAW.

17 STATEMENT OF FACTS:

18 AS TO WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION BY DENYING THE PETITION WITHOUT ARGUMENT
19 STATING THAT THE SAME WAS TIME BAR, SUCCESSIVE AND NOT STOWED GOOD CAUSE AND
20 DID NOT RULE IN THE MERITS.

21 TO THE ABOVE FINDINGS PETITIONER DISAGREES: PETITIONER IS STATING A VALID CLAIM OF
22 FACTUAL INNOCENCE THAT UNDER AEDPA MISCARRIAGE OF JUSTICE EXCEPTION CAN SURVIVE
23 THE STATUTE LIMITATION. ON PAGE 12 OF PETITIONER'S WRIT ARGUMENTS. SPECIFICALLY EX-
24 PLAINED THE REASONS FOR DELAY AND STOWED CAUSE.

25 FIRST: THE NEWLY DISCOVERED EVIDENCES IN DISPUTE IS A DOCUMENT THAT WAS ATTACHED
26 TO PETITIONER'S CO-DEFENDANT PLEA AGREEMENT AS EXHIBIT #1. PETITIONER EXPLAINED
27 THAT THIS DOCUMENT WAS FOUND BY MERE COINCIDENCES WHILE REQUESTING

1 the transcripts of his Co-defendant ARRANGEMENT Hearing, the Clerk of the Court
2 ERRONEOUSLY sent his Co-defendant's Plea Agreement upon which Petitioner stumbled
3 into this newly discovered evidence or information. There is no way that Petitioner
4 knew about this new development his Co-DEFENDANT'S CASE WAS SEVERED FOR
5 trial purposes. And all this information or "NEW THEORY" OF THE CASE CAME
6 ABOUT AFTER Petitioner was tried, convicted and sentenced THE PLEA Agree-
7 ment ARRANGEMENT Hearing is a completely separated event where neither
8 Petitioner /or Counsel for Petitioner was "NOTIFIED" Therefore the findings
9 of facts stipulations and conclusions of law discussed in the same are particu-
10 larly pertaining to his Co-defendant whose case was separated and tried
11 individually If the state would it notified Petitioner as it supposed to, there is a
12 great possibility that the new theory/or development would have been raised in
13 his first petition, it is hard to believe that Petitioner intentionally waited
14 for NEARLY 16 YRS OF INCARCERATION to bring this claim of Actual Innocent,
15 so to deny his petition based on the fact that this newly discovered evidence
16 could have been brought up in an early petition is FAR FETTER AND UNREASON-
17 ABLE and this Honorable court should reconsider its previous ruling and
18 grant an evidentiary hearing as it's required under the standard review of
19 claims of miscarriage of justice UNDER (SCHUPP.)

20 2-) WHETHER THE DISTRICT COURT FAILED TO ADDRESS THE FACT THAT THE STATE
21 FILED AN UNTIMELY RESPONSE AND HELD THE HEARING WITHOUT PETITIONER BEING
22 PRESENT.

23 PETITIONER ALLEGE THAT HIS DUE PROCESS WAS VIOLATED BY THE STATE CONDUCT DURING
24 PROCEEDINGS. IN AUGUST 31 2018 THIS HONORABLE COURT FILED AN ORDER SPECIFICALLY
25 DEMANDING THE FOLLOWING "THE COURT HAS REVIEWED THE PETITION AND HAS DETERMINED
26 THAT A RESPONSE WOULD ASSIST THE COURT IN DETERMINING WHETHER PETITIONER IS ILLE-
27 GALLY IMPRISONED AND RESTRAINED OF HIS/HER LIBERTY AND GOOD CAUSE APPEARING

1 therefore IT IS HEREBY ORDERED that respondent shall within 45 days
2 After the date of this order Answer or otherwise respond to the Petition and
3 file a return in accordance with the provisions of NRS 34.360 to 34.830
4 inclusive." Evidently the state overlooked and disregard the Order. Not only
5 filed an untimely response, it also failed to serve Petitioner with a copy, not
6 giving him any opportunity to reply their Arguments. Their response was
7 filed two days before the hearing. Petitioner Addressed this by notifying
8 the Court in a motion to extend the hearing 15 days beyond Proof of
9 Receive the Answer and informed that the state has not filed a response
10 as ordered. Instead the motion was scheduled to be heard on November
11 27, 2018 which does not make any sense because the main purpose
12 of the motion was to extend the hearing date for 15 days until Petitioner
13 obtain the state's response. Additionally by Petitioner not being present
14 at the hearing, he could not refute any of the state's Arguments brought
15 to the Court. Therefore Petitioner PRAY THAT THIS COURT Reconsider its ruling
16 and give him an opportunity to reply to the state's Allegations or Arguments.
17 Petitioner's claim of Actual Innocent are meritorious and are
18 debatable among Jurist reasons and it will be a miscarriage of Justice
19 if his federal Constitutional claims are not considered on the merits. IN
20 Violation of his XIV AND VI AMENDMENTS RIGHTS TO DUE PROCESS AND
21 Equal Protection Againsts Cruel And Unusual Punishment.

22
23 Respectfully Submitted

24 Sally D. Villaverde #0081701

25 Petitioner / Pro se

26 Dated this 20 day of November 2018.

CERTIFICATE OF SERVICE BY MAILING

I, SALLY D. VILLABERDE, hereby certify, pursuant to NRCP 5(b), that on this 20
day of November, 2018, I mailed a true and correct copy of the foregoing, "

MOTION FOR RECONSIDERATION"

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

DISTRICT ATTORNEY
700 LEWIS AV
LAS VEGAS NV 89155-1160

CC:FILE

DATED: this 20 day of November, 2018.

Sally D. Villaverde #0081701
SALLY D. VILLABERDE #0081701
PETITIONER /In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

MOTION FOR RECONSIDERATION
(Title of Document)

filed in District Court Case number A-18-780041-W

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

-OR-

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

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

(State specific law)

-or-

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

Sally D. Villaverde
Signature

Nov, 20, 2018
Date

SALLY D. VILLAUVERDE
Print Name

PETITIONER
Title

SAITH D. WILLIAMS #81701
PO Box 650
Indian Springs, NV 89070

LAS VEGAS NV 890
21 NOV 2018 PM 3 L



HIGH DESERT STATE PRISON

NOV 20 2018

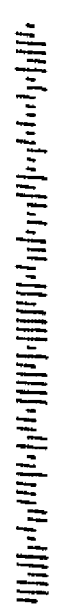
UNIT 7 AB

LEGAL MAIL

CONFIDENTIAL

To: Clerk of the Court
STEVEN D. GRIERSON
200 Lewis Ave, 3rd floor
LAS VEGAS NV 89155-1160

89101-630000



1 SALLY D. Villaverde #0081701
2 Petitioner / In Propria Personam
3 Post Office Box 650 [HDSP]
4 Indian Springs, Nevada 89018

FILED
NOV 26 2018
CLERK OF COURT

5 EIGHT JUDICIAL DISTRICT COURT

6 CLARK COUNTY NEVADA

7
8 SALLY D. VILLADERDE

9 PETITIONER

10 vs.

11 BRIAN WILLIAMS (WARDEN)

12 Respondent

Case No. A-18-78041-W

Dept No. III

Docket _____

13
14 **NOTICE OF MOTION**

15 **YOU WILL PLEASE TAKE NOTICE, that** THE MOTION FOR RECONSIDERATION

16
17 will come on for hearing before the above-entitled Court on the 8th day of January 2019
18 at the hour of 9 o'clock A. M. In Department III of said Court.

19
20 CC:FILE

21
22 **DATED:** this 20 day of November, 2018.

23
24 BY: Sally D. Villaverde #0081701

25 SALLY D. VILLADERDE #0081701
Petitioner / In Propria Personam

RECEIVED

NOV 26 2018

CLERK OF THE COURT

A-18-780041-W
NOTM
Notice of Motion
4799289





1 ASTA

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

9
10 SALLY D. VILLAVERDE,

11 Plaintiff(s),

12 vs.

13 BRIAN WILLIAMS, WARDEN,

14 Defendant(s),

Case No: A-18-780041-W

Dept No: III

15
16
17 **CASE APPEAL STATEMENT**

18 1. Appellant(s): Sally D. Villaverde

19 2. Judge: Douglas W. Herndon

20 3. Appellant(s): Sally D. Villaverde

21 Counsel:

22 Sally D. Villaverde #81701
23 P.O. Box 650
24 Indian Springs, NV 89070

25 4. Respondent (s): Brian Williams, Warden

26 Counsel:

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

- 1 5. Appellant(s)'s Attorney Licensed in Nevada: N/A
2 Permission Granted: N/A
3 Respondent(s)'s Attorney Licensed in Nevada: Yes
4 Permission Granted: N/A
5 6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No
6 7. Appellant Represented by Appointed Counsel On Appeal: N/A
7 8. Appellant Granted Leave to Proceed in Forma Pauperis**: Yes, October 24, 2018
8 **Expires 1 year from date filed
9 Appellant Filed Application to Proceed in Forma Pauperis: N/A
10 Date Application(s) filed: N/A
11 9. Date Commenced in District Court: August 28, 2018
12 10. Brief Description of the Nature of the Action: Civil Writ
13 Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus
14 11. Previous Appeal: No
15 Supreme Court Docket Number(s): N/A
16 12. Child Custody or Visitation: N/A
17 13. Possibility of Settlement: Unknown

18 Dated This 28 day of November 2018.

19 Steven D. Grierson, Clerk of the Court

20 /s/ Heather Ungermann

21 Heather Ungermann, Deputy Clerk
22 200 Lewis Ave
23 PO Box 551601
24 Las Vegas, Nevada 89155-1601
25 (702) 671-0512

26 cc: Sally D. Villaverde
27
28

27

FILED
NOV 29 2018
CLERK OF COURT

CASE NO. A-18-780041-W

DEPT. NO. III

SALLY D. VILLAVARDE

PETITIONER (pro se)

vs.

BRIAN WILLIAMS (WARDEN)

RESPONDENT

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
REQUEST FOR TRANSCRIPTS AT
STATE EXPENSE

The PETITIONER respectfully request that this Court order the production of the transcripts, papers, pleadings, and any other documents with regard to the above-entitled case. That these documents are to be furnished to the petitioner at State Expense, due to his poverty.

That only with proper review of those documents of the above-entitled case will the petitioner be able to adequately prepare a post-conviction petition, or a discrep appeal, that would allege all issues and grounds for relief that he is seeking. PETERSON vs. WARDEN, 87 Nev. 134, 483 P.2d 204 (1971), holds that:

RECEIVED

NOV 29 2018

CLERK OF THE COURT

" . . . does not contemplate that a record will be furnished at State Expense upon mere unsupported request of a petitioner who is unable to pay for them. 179

A-18-780041-W
MPA
Memorandum of Points and Authorities
4799934



1 points raise merit and such merit
2 will be supported by review of the
record. . . "

3 Moreover, the Petitioner would be prejudiced absent the Court's
4 granting of the within motion. Petitioner would not have means
5 necessary to file a proper person petition for writ of habeas
6 corpus, post-conviction or direct appeal to the Nevada Supreme
7 Court, that would allow the petitioner to allege all available
8 issues.

9 WHEREFORE, Petitioner, SALLY VILLAVARDE prays that this Court
10 enter an order directing the reporter to prepare the foregoing
11 requested transcripts.

12 DATED this 21 day of NOVEMBER, 2018.

13 Sally D. Villaverde #0081701
14
15
16

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

AFFIDAVIT OF SALLY D VILLABERDE

STATE OF NEVADA)

) ss:

COUNTY OF CLARK)

TO WHOM IT MAY CONCERN:

I, SALLY D. VILLABERDE, the undersigned, do hereby swear that all the following statements and description of events, are true and correct, of my own knowledge, information, and belief, and to those I believe to be true and correct. Signed under penalty of perjury pursuant to NRS 208.165.

(1) THAT THE TRANSCRIPTS OF A HEARING HELD BY THIS HONORABLE COURT ON NOVEMBER, 1ST, 2018 ARE NEEDED AND REQUIRE FOR PETITIONER'S APPEAL OF THE DENIAL OF HIS HABEAS CORPUS (POST-CONVICTION), THE COURT HELD THE HEARING WITHOUT PETITIONER BEING PRESENT. THE STATE FILED AN UNTIMELY RESPONSE, TWO DAYS BEFORE THE HEARING, PETITIONER NEVER RECEIVED ANY COPY OF THE STATE RESPONSE FOR ARGUMENTS. ONLY THROUGH THE REDACTED TRANSCRIPTS PETITIONER WILL BE ABLE TO KNOW THE RESPONDENT ALLEGATIONS, PLEADINGS, FINDINGS OF FACTS AND CONCLUSION OF LAW. THAT HE COULD NOT REFUTE BECAUSE HE WASN'T TRANSPORTED TO BE AT THE HEARING, THEREFORE PETITIONER I PRAY THAT THIS HONORABLE COURT GRANT THIS MOTION FOR HIM TO APPEAL HIS CASE PROPERLY.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FURTHER, AFFLIANT SAYETH NAUGHT.

EXECUTED AT HIGH DESERT STATE PRISON this 21 day of November 2018

IN FRONT OF:

BY Amly D. Villaverde

NDOC # 0081701

CERTIFICATE OF SERVICE BY MAILING

I, SALLY D VILLAVEARDE, hereby certify, pursuant to NRCP 5(b), that on this 21
day of November, 2018, I mailed a true and correct copy of the foregoing, "NOTICE OF MOTION AND MOTION FOR TRANSCRIPTS AT STATE EXPENSE"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

DISTRICT ATTORNEY
200 LEWIS AVE
LAS VEGAS NV 89155-1160

CC:FILE

DATED: this 21 day of November, 2018.

Sally D. Villaverde #0081701
SALLY D. VILLAVEARDE #0081701
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Notice of Motion AND Motion to obtain transcripts at state expense
(Title of Document)

filed in District Court Case number A.18-780041-W

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

-OR-

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

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

(State specific law)

-or-

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

Sally D Villaverde
Signature

NOV. 21. 2018
Date

SALLY D. VILLAUVERDE
Print Name

PETITIONER
Title

28

FILED
NOV 29 2018
CLERK OF COURT

SALLY D. VILLAVERDE #0081701
Petitioner In Propria Personam
Post Office Box 650 [HDSP]
Indian Springs, Nevada 89018

DISTRICT COURT
CLARK COUNTY, NEVADA

SALLY D. VILLAVERDE
Petitioner (PRO, SE)
vs.
BRIAN WILLIAMS (WARDEN)
Respondent

Case No. A-18-780041-W
Dept No. III
Docket

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE, that THE NOTICE OF MOTION AND MOTION FOR
TRANSCRIPTS AT STATE EXPENSE
will come on for hearing before the above-entitled Court on the 8th day of January, 2019
at the hour of 9 o'clock A. M. In Department III, of said Court.

CC:FILE

DATED: this 21 day of November, 2018.

BY: Sally D. Villaverde #0081701
SALLY D. VILLAVERDE #0081701
/In Propria Personam

RECEIVED
NOV 29 2018
CLERK OF THE COURT

A-18-780041-W
NOTM
Notice of Motion
4799933



FILED
NOV 29 2018
CLERK OF COURT

CASE NO. A-18-780041-W

DEPT. NO. III

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

SALLY D. VILLABERDE

PETITIONER (PRO SE)

-VS-

BRIAN WILLIAMS (WARDEN)

RESPONDENT

NOTICE OF MOTION AND MOTION
FOR TRANSCRIPTS AT STATE
EXPENSE

PLEASE TAKE NOTICE that SALLY D. VILLABERDE, PETITIONER
who is appearing in the above-entitled matter in propria per-
sona, will move this Honorable Court on a time and date to be
determined by the clerk of the Court, or as soon thereafter,
that petitioner can be heard, for an order to provide tran-
scripts, any and all pleadings in the above-entitled case.
That these are to be sent to the petitioner at the expense of
the State of Nevada, due to petitioner's proverty.
PETITIONER can demonstrate a prima facie need for the tran-
scripts, pleadings, and any and all other transcribed material
with regards to the above-entitled case. That this motion is
made and based upon all of the records, files, and pleadings
which are on file with the clerk of the court, the attached
affidavit of the petitioner, and on the attached memorandum

A-18-780041-W
NOTM
Notice of Motion
4789932

CLERK OF THE COURT

NOV 29 2018

RECEIVED

1 of Points and Authorities.

2 WHEREFORE, Petitioner, SALLY D. VILLARDE, prays that
3 this Court will issue an order granting petitioner's motion.

4 DATED this 21 day of NOVEMBER, 2018

5

6

Respectfully Submitted

7

8

Sally D. Villarde #0081701

9

(Petitioner In Proper Person)

10 ///

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

SAMY D. WILLAVEADE #0081701
HDSP PO Box 650
Indian Springs, NV 89070

Master FIRST-CLASS MAIL
11/26/2018
US POSTAGE \$000.68
ZIP 89101
01E12650516

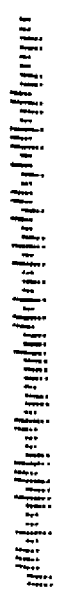
CONFIDENTIAL

LEGAL MAIL

3762

TO: CLERK OF THE COURT
STEVEN D. GRIERSON
200 LEWIS AVE 3rd floor
LAS VEGAS NV 89155-1160

2010135300 0075



RECEIVED
NOV 21 2018
HIG
LAS VEGAS
PRISON

Steven B. Wolfson

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
KRISTA D. BARRIE
Chief Deputy District Attorney
Nevada Bar #010301
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

SALLY VILLAVERDE,
#1433466

Defendant.

CASE NO: A-18-780041-W

DEPT NO: III

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

DATE OF HEARING: NOVEMBER 1, 2018
TIME OF HEARING: 9:00 AM

THIS CAUSE having come on for hearing before the Honorable DOUGLAS W. HERNDON, District Judge, on the 1st day of November, 2018, the Petitioner not being present, PROCEEDING IN PROPER PERSON, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through DENA RINETTI, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

On March 23, 2003, Sally Villaverde ("Defendant") and co-defendants Rene Gato and Robert Castro were charged by way of Amended Criminal Complaint with BURGLARY (Felony - NRS 205.060); MURDER WITH USE OF A DEADLY WEAPON (OPEN

1 MURDER) (Felony - NRS 200.010, 200.030, 193.165) and ROBBERY WITH USE OF A
2 DEADLY WEAPON (Felony - NRS 200.380, 193.165).

3 On March 21, 2003, a preliminary hearing was held. Following the preliminary
4 hearing, the district court held all three defendants to answer to the charges in district court.

5 On March 25, 2003, Defendant and the co-defendants were charged by way of
6 Information with BURGLARY (Felony - NRS 205.060); MURDER WITH USE OF A
7 DEADLY WEAPON (OPEN MURDER) (Felony - NRS 200.010, 200.030, 193.165) and
8 ROBBERY WITH USE OF A DEADLY WEAPON (Felony - NRS 200.380, 193.165). An
9 Amended Information, charging only Defendant, was filed on March 29, 2004, following the
10 district court's granting of the motion to sever their trials.

11 Defendant's jury trial commenced on March 31, 2004. On April 8, 2004, the jury found
12 Defendant guilty of all counts.

13 On June 3, 2004, Defendant was sentenced as follows: Count 1 - to a maximum of
14 ninety-six (96) months with a minimum of twenty-two (22) months in the Nevada Department
15 of Corrections; Count 2 - to a term of Life imprisonment without the possibility of parole in
16 the Nevada Department of Corrections (NDC), plus an equal and consecutive term for Use of
17 a Deadly Weapon; Count 3 - to a maximum on one hundred fifty-six (156) months and a
18 minimum of thirty-five (35) months in the NDC, plus an equal and consecutive term for the
19 Use of a Deadly Weapon, Count 3 consecutive to Count 3. The Judgment of Conviction was
20 filed on June 10, 2004.

21 Defendant filed a direct appeal. All convictions were subsequently affirmed by the
22 Nevada Supreme Court on February 15, 2006. Remittitur issued March 14, 2006.

23 On April 3, 2006, Defendant filed a Petition for Writ of Habeas Corpus. On April 20,
24 2006, he filed a Motion to Withdraw his Petition Without Prejudice. The State filed its
25 Response on April 25, 2006. Defendant filed a Reply on May 3, 2006. On May 31, 2006,
26 Defendant filed a Supplemental Petition for Writ of Habeas Corpus, Memorandum of Points
27 and Authorities In Support of the Petition, and Appendix of Exhibits.

1 On April 12, 2007, counsel was appointed to represent Defendant. On August 27, 2007,
2 appointed counsel filed a Supplement to Defendant's Petition for Writ of Habeas Corpus. The
3 State filed its Response to the Supplemental Petition on November 6, 2007, addressing the
4 merits of the Petition. The district court held an evidentiary hearing on Defendant's ineffective
5 assistance of counsel claims on January 10, 2008. Following the evidentiary hearing, the court
6 denied Defendant's Petition on the merits. The Findings of Facts, Conclusions of Law, and
7 Order was filed on February 26, 2008.

8 On January 28, 2008, Defendant filed a Notice of Appeal regarding of the denial of his
9 Petition on the merits. The Nevada Supreme Court subsequently affirmed this Court's denial
10 of Defendant's Petition. Remittitur issued June 4, 2010.

11 On August 28, 2018 - over eight years later - Defendant filed the instant Petition for
12 Writ of Habeas Corpus (Post-Conviction). The State responded on October 29, 2018.

13 On November 1, 2018, this court held a hearing on Defendant's claims.

14 ANALYSIS

15 I. DEFENDANT'S PETITION IS PROCEDURALLY BARRED

16
17 The Nevada Supreme Court has held that "[a]pplication of the statutory procedural
18 default rules to post-conviction habeas petitions is mandatory, noting:

19 Habeas corpus petitions that are filed many years after conviction
20 are an unreasonable burden on the criminal justice system. The
21 necessity for a workable system dictates that there must exist a
time when a criminal conviction is final.

22 State v. District Court (Riker), 121 Nev. 225, 331 112 P.3d 1070, 1074 (2005).
23 Additionally, the Court noted that procedural bars "cannot be ignored [by the district court]
24 when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
25 has granted no discretion to the district courts regarding whether to apply the statutory
26 procedural bars; this Court must apply them. Since the Supplemental Fourth Petition is
27 procedurally barred, it is denied.
28

1 **A. THE PETITION IS TIME-BARRED.**

2 Defendant's Petition is time-barred. Pursuant to NRS 34.726(1):

3 Unless there is good cause shown for delay, a petition that
4 challenges the validity of a judgment or sentence must be filed
5 within 1 year of the entry of the judgment of conviction or, if
6 an appeal has been taken from the judgment, within 1 year after
7 the Supreme Court issues its remittitur. For the purposes of
8 this subsection, good cause for delay exists if the petitioner
9 demonstrates to the satisfaction of the court:

- 10 (a) That the delay is not the fault of the petitioner; and
11 (b) That dismissal of the petition as untimely will unduly
12 prejudice the petitioner.

13 NRS 34.726(1) (emphasis added).

14 The Supreme Court of Nevada has held that NRS 34.726 should be construed by its
15 plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). The one-
16 year time bar proscribed by NRS 34.726 begins to run from the date the Judgment of
17 Conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114
18 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

19 The one-year time limit for filing petitions for post-conviction relief under NRS 34.726
20 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002), the
21 Nevada Supreme Court rejected a habeas petition that was filed two (2) days late despite
22 evidence presented by the defendant that he purchased postage through the prison and mailed
23 the Notice within the one-year time limit. Gonzales reiterated the importance of filing the
24 petition within the mandatory deadline, absent a showing of "good cause" for the delay in
25 filing. 118 Nev. at 590, 53 P.3d at 902.

26 In this case, Defendant's Judgment of Conviction was filed on June 10, 2004.
27 Defendant pursued a direct appeal, his convictions were all affirmed, and Remittitur issued
28 March 14, 2006. As such, Defendant had until March 14, 2007 to file a timely post-conviction
petition. The instant Petition was filed on August 28, 2018, over eleven years after this
mandatory time bar. Thus, the Petition is time-barred and therefore denied.

1 **B. THE PETITION IS BARRED BY LACHES.**

2 When a period exceeding five years has passed “between the filing of a judgment of
3 conviction...and the filing of a petition challenging” its validity, there is a “rebuttable
4 presumption of prejudice to the State.” NRS 34.800(2). In Groesbeck v. Warden, the Nevada
5 Supreme Court noted that petitions filed so long after a conviction create an “unreasonable
6 burden on the criminal justice system.” Groesbeck, 100 Nev. 259, 679 P.2d 1268 (1984). It
7 continued that the “necessity for a workable system dictates that there must exist a time when
8 a criminal conviction is final.” Id. To invoke the presumption, the statute requires the State
9 plead laches in its motion to dismiss the petition. NRS 34.800(2).

10 The State affirmatively pleaded laches here – Defendant’s Judgment of Conviction was
11 filed on June 10, 2004. Defendant pursued a direct appeal, his convictions were all affirmed,
12 and Remittitur issued March 14, 2006. As such, more than fourteen years have passed since
13 the Judgment of Conviction was filed (and more than twelve years have passed since
14 Remittitur on direct appeal). This time lapse, which is significantly longer than the statutory
15 five year period, presumptively prejudices both the State’s ability to respond to the merits of
16 any claims and, should relief be granted, to retry the case. Further still, Defendant has failed
17 to rebut this presumption. Therefore, the Petition is barred by laches and denied.

18 **C. THE PETITION IS SUCCESSIVE.**

19 Defendant’s Petition is procedurally barred because it is successive. NRS 34.810(2)
20 reads:

21 A second or successive petition must be dismissed if the judge or
22 justice determines that it fails to allege new or different grounds
23 for relief and that the prior determination was on the merits or, if
24 new and different grounds are alleged, the judge or justice finds
that the failure of the petitioner to assert those grounds in a prior
petition constituted an abuse of the writ.

25 NRS 34.810(2) (emphasis added). Second or successive petitions are petitions that either: 1)
26 fail to allege new or different grounds for relief and the grounds have already been decided on
27 the merits or 2) that allege new or different grounds but a judge or justice finds that the
28 petitioner’s failure to assert those grounds in a prior petition would constitute an abuse of the

1 writ. Second or successive petitions will only be decided on the merits if the petitioner can
2 show good cause and prejudice. NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d
3 944, 950 (1994).

4 The Nevada Supreme Court has stated that “[w]ithout [] limitations on the availability
5 of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse
6 post-conviction remedies. In addition, meritless, successive and untimely petitions clog the
7 court system and undermine the finality of convictions.” Lozada, 110 Nev. at 358, 871 P.2d at
8 950. The Nevada Supreme Court recognizes that “[u]nlike initial petitions which certainly
9 require a careful review of the record, successive petitions may be dismissed based solely on
10 the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In
11 other words, if the claim or allegation was previously available with reasonable diligence, it is
12 an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467,
13 497-498 (1991).

14 In this case, Defendant’s first Petition – through appointed counsel – was considered
15 on the merits. An evidentiary hearing was held on the first Petition. Following the evidentiary
16 hearing, the Court denied Defendant’s first Petition on the merits. The Findings of Facts,
17 Conclusions of Law, and Order was filed on February 26, 2008. Defendant appealed the denial
18 of his first Petition on the merits, and the Nevada Supreme Court affirmed this Court’s denial.
19 Remittitur issued June 4, 2010. Defendant filed this subsequent Petition on August 28, 2018.
20 As such, this subsequent Petition is successive and an abuse of the writ. Accordingly, it must
21 be, and is, denied.

22 **II. DEFENDANT FAILS TO SHOW GOOD CAUSE AND PREJUDICE**
23 **NECESSARY TO OVERCOME THE MULTIPLE MANDATORY**
24 **PROCEDURAL DEFAULTS.**

25 A showing of good cause and prejudice may overcome procedural bars. To show good
26 cause for delay under NRS 34.726(1), a petitioner must demonstrate the following: (1) “[t]hat
27 the delay is not the fault of the petitioner” and (2) that the petitioner will be “unduly
28 prejudice[d]” if the petition is dismissed as untimely.

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

7 Once a petitioner has established good cause, he must also show actual prejudice
8 resulting from the errors of which he complains. In other words, in order to establish prejudice,
9 the defendant must show “not merely that the errors of [the proceedings] created possibility
10 of prejudice, but that they worked to his actual and substantial disadvantage, in affecting the
11 state proceedings with error of constitutional dimensions.” Hogan v. Warden, 109 Nev. 952,
12 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152, 170, 102 S. Ct.
13 1584, 1596 (1982)). To find good cause there must be a “substantial reason; one that affords a
14 legal excuse.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley
15 v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Claims asserted in a petition for
16 post-conviction relief must be supported with specific factual allegations, which if true, would
17 entitle the petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. “Bare” and “naked”
18 allegations are not sufficient, nor are those belied and repelled by the record. Id.

19 As alleged good cause, Defendant claims that he is innocent of the charges. However,
20 to support this allegation of actual innocence, Defendant challenges the jury instructions,
21 claims that the State committed prosecutorial misconduct during closing argument, and other
22 aspects of his trial. Not only is this not a claim of actual innocence, it is insufficient and
23 completely without merit.

24 Actual innocence means factual innocence, not mere legal insufficiency. Bousley v.
25 United States, 523 U.S. 614, 623, 118 S. Ct. 1604, 1611 (1998) (emphasis added); Sawyer v.
26 Whitley, 505 U.S. 333, 338-39, 112 S. Ct. 2514, 2518-19 (1992). Actual innocence is a
27 stringent standard designed to be applied only in the most extraordinary situations. Pellegrini,
28 117 Nev. at 876, 34 P.3d at 530.

1 To establish actual innocence of a crime, a Defendant “must show that it is more likely
2 than not that no reasonable juror would have convicted him absent a constitutional violation.”
3 Pellegrini, 117 Nev. at 887, 34 P.3d at 537.

4 “Without any new evidence of innocence, even the existence of a concededly
5 meritorious constitutional violation is not itself sufficient to establish a miscarriage of justice
6 that would allow a habeas court to reach the merits of the barred claim.” Schlup v. Delo, 513
7 U.S. 298, 316, 115 S. Ct. 851, 861 (1995). Furthermore, any alleged newly discovered
8 evidence suggesting a defendant’s innocence must be “so strong that a court cannot have
9 confidence in the outcome of the trial.” Id. at 316, 115 S. Ct. at 861.

10 Moreover, actual innocence is not a free-standing claim. The United States Court of
11 Appeals for the Eighth Circuit has “rejected free-standing claims of actual innocence as a basis
12 for habeas review, stating, ‘[c]laims of actual innocence based on newly discovered evidence
13 have never been held to state a ground for federal habeas relief absent an independent
14 constitutional violation occurring in the underlying state criminal proceeding.’” Meadows v.
15 Delo, 99 F.3d 280, 283 (8th Cir. 1996) (emphasis added) (citing Herrera v. Collins, 506 U.S.
16 390, 400, 113 S. Ct. 853, 860 (1993)). Once a defendant has made such a showing, he may
17 then use the claim of actual innocence as a “gateway” to present his constitutional challenges
18 to the court and require the court to decide them on the merits. Schlup, 513 U.S. at 315, 115
19 S. Ct. at 861.

20 In this case, Defendant does not actually claim that he is innocent. Rather, he again
21 challenges aspects of the trial – jury instructions, closing arguments, and the like. This is not
22 sufficient. Bousley v. United States, 523 U.S. 614, 623, 118 S. Ct. 1604, 1611 (1998)
23 (emphasis added) (actual innocence means factual innocence, not mere legal insufficiency);
24 see also Sawyer v. Whitley, 505 U.S. 333, 338-39, 112 S. Ct. 2514, 2518-19 (1992).
25 Moreover, Defendant has presented no new evidence in support of this claim. In addition,
26 Defendant’s claims of ineffective assistance of appellate counsel and others raised in the
27 instant Petition were readily available to him at the time he filed his initial, timely Petition that
28

1 was considered (and denied) on the merits. Thus, for all these reasons, Defendant has failed to
2 overcome the multiple mandatory procedural bars to the instant Petition and it is denied.

3
4 **ORDER**

5 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus
6 shall be, and it is, hereby denied.

7 DATED this ____ day of November, 2018.

8
9 
DISTRICT JUDGE

10 STEVEN B. WOLFSON
11 Clark County District Attorney
Nevada Bar #001565

12 BY

13 
KRISTA D. BARRIE
14 Chief Deputy District Attorney
Nevada Bar #010301

15
16
17 **CERTIFICATE OF MAILING**

18 I hereby certify that service of the above and foregoing was made this 5 day of
19 December, 2018, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

20 SALLY VILLAVERDE, #1187297
21 HIGH DESERT STATE PRISON
22 PO BOX 650
INDIAN SPRINGS, NV 89070

23
24 BY


E. DEL PADRE
25 Secretary for the District Attorney's Office
26
27

28 ed/GCU



1 NEO

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4 SALLY VILLAVERDE,

5
6 Petitioner,

Case No: A-18-780041-W

Dept No: III

7 vs.

8 BRIAN WILLIAMS WARDEN,

9 Respondent,

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

10
11 **PLEASE TAKE NOTICE** that on December 5, 2018, the court entered a decision or order in this
12 matter, a true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
15 mailed to you. This notice was mailed on December 12, 2018.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Amanda Hampton

18 Amanda Hampton, Deputy Clerk

19 **CERTIFICATE OF E-SERVICE / MAILING**

20 I hereby certify that on this 12 day of December 2018, I served a copy of this Notice of Entry on the
21 following:

22 ☒ By e-mail:

23 Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

24 ☒ The United States mail addressed as follows:

25 Sally Villaverde # 1187297
26 P.O. Box 650
Indian Springs, NV 89070
Last Known Address

27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk



FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
KRISTA D. BARRIE
Chief Deputy District Attorney
Nevada Bar #010301
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

SALLY VILLAVERDE,
#1433466

Defendant.

CASE NO: A-18-780041-W

DEPT NO: III

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

DATE OF HEARING: NOVEMBER 1, 2018
TIME OF HEARING: 9:00 AM

THIS CAUSE having come on for hearing before the Honorable DOUGLAS W. HERNDON, District Judge, on the 1st day of November, 2018, the Petitioner not being present, PROCEEDING IN PROPER PERSON, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through DENA RINETTI, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

On March 23, 2003, Sally Villaverde ("Defendant") and co-defendants Rene Gato and Robert Castro were charged by way of Amended Criminal Complaint with BURGLARY (Felony - NRS 205.060); MURDER WITH USE OF A DEADLY WEAPON (OPEN

1 MURDER) (Felony - NRS 200.010, 200.030, 193.165) and ROBBERY WITH USE OF A
2 DEADLY WEAPON (Felony - NRS 200.380, 193.165).

3 On March 21, 2003, a preliminary hearing was held. Following the preliminary
4 hearing, the district court held all three defendants to answer to the charges in district court.

5 On March 25, 2003, Defendant and the co-defendants were charged by way of
6 Information with BURGLARY (Felony - NRS 205.060); MURDER WITH USE OF A
7 DEADLY WEAPON (OPEN MURDER) (Felony - NRS 200.010, 200.030, 193.165) and
8 ROBBERY WITH USE OF A DEADLY WEAPON (Felony - NRS 200.380, 193.165). An
9 Amended Information, charging only Defendant, was filed on March 29, 2004, following the
10 district court's granting of the motion to sever their trials.

11 Defendant's jury trial commenced on March 31, 2004. On April 8, 2004, the jury found
12 Defendant guilty of all counts.

13 On June 3, 2004, Defendant was sentenced as follows: Count 1 - to a maximum of
14 ninety-six (96) months with a minimum of twenty-two (22) months in the Nevada Department
15 of Corrections; Count 2 - to a term of Life imprisonment without the possibility of parole in
16 the Nevada Department of Corrections (NDC), plus an equal and consecutive term for Use of
17 a Deadly Weapon; Count 3 - to a maximum on one hundred fifty-six (156) months and a
18 minimum of thirty-five (35) months in the NDC, plus an equal and consecutive term for the
19 Use of a Deadly Weapon, Count 3 consecutive to Count 3. The Judgment of Conviction was
20 filed on June 10, 2004.

21 Defendant filed a direct appeal. All convictions were subsequently affirmed by the
22 Nevada Supreme Court on February 15, 2006. Remittitur issued March 14, 2006.

23 On April 3, 2006, Defendant filed a Petition for Writ of Habeas Corpus. On April 20,
24 2006, he filed a Motion to Withdraw his Petition Without Prejudice. The State filed its
25 Response on April 25, 2006. Defendant filed a Reply on May 3, 2006. On May 31, 2006,
26 Defendant filed a Supplemental Petition for Writ of Habeas Corpus, Memorandum of Points
27 and Authorities In Support of the Petition, and Appendix of Exhibits.

1 On April 12, 2007, counsel was appointed to represent Defendant. On August 27, 2007,
2 appointed counsel filed a Supplement to Defendant's Petition for Writ of Habeas Corpus. The
3 State filed its Response to the Supplemental Petition on November 6, 2007, addressing the
4 merits of the Petition. The district court held an evidentiary hearing on Defendant's ineffective
5 assistance of counsel claims on January 10, 2008. Following the evidentiary hearing, the court
6 denied Defendant's Petition on the merits. The Findings of Facts, Conclusions of Law, and
7 Order was filed on February 26, 2008.

8 On January 28, 2008, Defendant filed a Notice of Appeal regarding of the denial of his
9 Petition on the merits. The Nevada Supreme Court subsequently affirmed this Court's denial
10 of Defendant's Petition. Remittitur issued June 4, 2010.

11 On August 28, 2018 - over eight years later - Defendant filed the instant Petition for
12 Writ of Habeas Corpus (Post-Conviction). The State responded on October 29, 2018.

13 On November 1, 2018, this court held a hearing on Defendant's claims.

14 ANALYSIS

15 I. DEFENDANT'S PETITION IS PROCEDURALLY BARRED

16
17 The Nevada Supreme Court has held that "[a]pplication of the statutory procedural
18 default rules to post-conviction habeas petitions is mandatory, noting:

19 Habeas corpus petitions that are filed many years after conviction
20 are an unreasonable burden on the criminal justice system. The
21 necessity for a workable system dictates that there must exist a
time when a criminal conviction is final.

22 State v. District Court (Riker), 121 Nev. 225, 331 112 P.3d 1070, 1074 (2005).
23 Additionally, the Court noted that procedural bars "cannot be ignored [by the district court]
24 when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
25 has granted no discretion to the district courts regarding whether to apply the statutory
26 procedural bars; this Court must apply them. Since the Supplemental Fourth Petition is
27 procedurally barred, it is denied.
28

1 **A. THE PETITION IS TIME-BARRED.**

2 Defendant's Petition is time-barred. Pursuant to NRS 34.726(1):

3 Unless there is good cause shown for delay, a petition that
4 challenges the validity of a judgment or sentence must be filed
5 within 1 year of the entry of the judgment of conviction or, if
6 an appeal has been taken from the judgment, within 1 year after
7 the Supreme Court issues its remittitur. For the purposes of
8 this subsection, good cause for delay exists if the petitioner
9 demonstrates to the satisfaction of the court:

- 10 (a) That the delay is not the fault of the petitioner; and
11 (b) That dismissal of the petition as untimely will unduly
12 prejudice the petitioner.

13 NRS 34.726(1) (emphasis added).

14 The Supreme Court of Nevada has held that NRS 34.726 should be construed by its
15 plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). The one-
16 year time bar proscribed by NRS 34.726 begins to run from the date the Judgment of
17 Conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114
18 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

19 The one-year time limit for filing petitions for post-conviction relief under NRS 34.726
20 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002), the
21 Nevada Supreme Court rejected a habeas petition that was filed two (2) days late despite
22 evidence presented by the defendant that he purchased postage through the prison and mailed
23 the Notice within the one-year time limit. Gonzales reiterated the importance of filing the
24 petition within the mandatory deadline, absent a showing of "good cause" for the delay in
25 filing. 118 Nev. at 590, 53 P.3d at 902.

26 In this case, Defendant's Judgment of Conviction was filed on June 10, 2004.
27 Defendant pursued a direct appeal, his convictions were all affirmed, and Remittitur issued
28 March 14, 2006. As such, Defendant had until March 14, 2007 to file a timely post-conviction
petition. The instant Petition was filed on August 28, 2018, over eleven years after this
mandatory time bar. Thus, the Petition is time-barred and therefore denied.

1 **B. THE PETITION IS BARRED BY LACHES.**

2 When a period exceeding five years has passed “between the filing of a judgment of
3 conviction...and the filing of a petition challenging” its validity, there is a “rebuttable
4 presumption of prejudice to the State.” NRS 34.800(2). In Groesbeck v. Warden, the Nevada
5 Supreme Court noted that petitions filed so long after a conviction create an “unreasonable
6 burden on the criminal justice system.” Groesbeck, 100 Nev. 259, 679 P.2d 1268 (1984). It
7 continued that the “necessity for a workable system dictates that there must exist a time when
8 a criminal conviction is final.” Id. To invoke the presumption, the statute requires the State
9 plead laches in its motion to dismiss the petition. NRS 34.800(2).

10 The State affirmatively pleaded laches here – Defendant’s Judgment of Conviction was
11 filed on June 10, 2004. Defendant pursued a direct appeal, his convictions were all affirmed,
12 and Remittitur issued March 14, 2006. As such, more than fourteen years have passed since
13 the Judgment of Conviction was filed (and more than twelve years have passed since
14 Remittitur on direct appeal). This time lapse, which is significantly longer than the statutory
15 five year period, presumptively prejudices both the State’s ability to respond to the merits of
16 any claims and, should relief be granted, to retry the case. Further still, Defendant has failed
17 to rebut this presumption. Therefore, the Petition is barred by laches and denied.

18 **C. THE PETITION IS SUCCESSIVE.**

19 Defendant’s Petition is procedurally barred because it is successive. NRS 34.810(2)
20 reads:

21 A second or successive petition must be dismissed if the judge or
22 justice determines that it fails to allege new or different grounds
23 for relief and that the prior determination was on the merits or, if
24 new and different grounds are alleged, the judge or justice finds
that the failure of the petitioner to assert those grounds in a prior
petition constituted an abuse of the writ.

25 NRS 34.810(2) (emphasis added). Second or successive petitions are petitions that either: 1)
26 fail to allege new or different grounds for relief and the grounds have already been decided on
27 the merits or 2) that allege new or different grounds but a judge or justice finds that the
28 petitioner’s failure to assert those grounds in a prior petition would constitute an abuse of the

1 writ. Second or successive petitions will only be decided on the merits if the petitioner can
2 show good cause and prejudice. NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d
3 944, 950 (1994).

4 The Nevada Supreme Court has stated that “[w]ithout [] limitations on the availability
5 of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse
6 post-conviction remedies. In addition, meritless, successive and untimely petitions clog the
7 court system and undermine the finality of convictions.” Lozada, 110 Nev. at 358, 871 P.2d at
8 950. The Nevada Supreme Court recognizes that “[u]nlike initial petitions which certainly
9 require a careful review of the record, successive petitions may be dismissed based solely on
10 the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In
11 other words, if the claim or allegation was previously available with reasonable diligence, it is
12 an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467,
13 497-498 (1991).

14 In this case, Defendant’s first Petition – through appointed counsel – was considered
15 on the merits. An evidentiary hearing was held on the first Petition. Following the evidentiary
16 hearing, the Court denied Defendant’s first Petition on the merits. The Findings of Facts,
17 Conclusions of Law, and Order was filed on February 26, 2008. Defendant appealed the denial
18 of his first Petition on the merits, and the Nevada Supreme Court affirmed this Court’s denial.
19 Remittitur issued June 4, 2010. Defendant filed this subsequent Petition on August 28, 2018.
20 As such, this subsequent Petition is successive and an abuse of the writ. Accordingly, it must
21 be, and is, denied.

22 **II. DEFENDANT FAILS TO SHOW GOOD CAUSE AND PREJUDICE**
23 **NECESSARY TO OVERCOME THE MULTIPLE MANDATORY**
24 **PROCEDURAL DEFAULTS.**

25 A showing of good cause and prejudice may overcome procedural bars. To show good
26 cause for delay under NRS 34.726(1), a petitioner must demonstrate the following: (1) “[t]hat
27 the delay is not the fault of the petitioner” and (2) that the petitioner will be “unduly
28 prejudice[d]” if the petition is dismissed as untimely.

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

7 Once a petitioner has established good cause, he must also show actual prejudice
8 resulting from the errors of which he complains. In other words, in order to establish prejudice,
9 the defendant must show “not merely that the errors of [the proceedings] created possibility
10 of prejudice, but that they worked to his actual and substantial disadvantage, in affecting the
11 state proceedings with error of constitutional dimensions.” Hogan v. Warden, 109 Nev. 952,
12 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152, 170, 102 S. Ct.
13 1584, 1596 (1982)). To find good cause there must be a “substantial reason; one that affords a
14 legal excuse.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley
15 v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Claims asserted in a petition for
16 post-conviction relief must be supported with specific factual allegations, which if true, would
17 entitle the petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. “Bare” and “naked”
18 allegations are not sufficient, nor are those belied and repelled by the record. Id.

19 As alleged good cause, Defendant claims that he is innocent of the charges. However,
20 to support this allegation of actual innocence, Defendant challenges the jury instructions,
21 claims that the State committed prosecutorial misconduct during closing argument, and other
22 aspects of his trial. Not only is this not a claim of actual innocence, it is insufficient and
23 completely without merit.

24 Actual innocence means factual innocence, not mere legal insufficiency. Bousley v.
25 United States, 523 U.S. 614, 623, 118 S. Ct. 1604, 1611 (1998) (emphasis added); Sawyer v.
26 Whitley, 505 U.S. 333, 338-39, 112 S. Ct. 2514, 2518-19 (1992). Actual innocence is a
27 stringent standard designed to be applied only in the most extraordinary situations. Pellegrini,
28 117 Nev. at 876, 34 P.3d at 530.

1 To establish actual innocence of a crime, a Defendant “must show that it is more likely
2 than not that no reasonable juror would have convicted him absent a constitutional violation.”
3 Pellegrini, 117 Nev. at 887, 34 P.3d at 537.

4 “Without any new evidence of innocence, even the existence of a concededly
5 meritorious constitutional violation is not itself sufficient to establish a miscarriage of justice
6 that would allow a habeas court to reach the merits of the barred claim.” Schlup v. Delo, 513
7 U.S. 298, 316, 115 S. Ct. 851, 861 (1995). Furthermore, any alleged newly discovered
8 evidence suggesting a defendant’s innocence must be “so strong that a court cannot have
9 confidence in the outcome of the trial.” Id. at 316, 115 S. Ct. at 861.

10 Moreover, actual innocence is not a free-standing claim. The United States Court of
11 Appeals for the Eighth Circuit has “rejected free-standing claims of actual innocence as a basis
12 for habeas review, stating, ‘[c]laims of actual innocence based on newly discovered evidence
13 have never been held to state a ground for federal habeas relief absent an independent
14 constitutional violation occurring in the underlying state criminal proceeding.’” Meadows v.
15 Delo, 99 F.3d 280, 283 (8th Cir. 1996) (emphasis added) (citing Herrera v. Collins, 506 U.S.
16 390, 400, 113 S. Ct. 853, 860 (1993)). Once a defendant has made such a showing, he may
17 then use the claim of actual innocence as a “gateway” to present his constitutional challenges
18 to the court and require the court to decide them on the merits. Schlup, 513 U.S. at 315, 115
19 S. Ct. at 861.

20 In this case, Defendant does not actually claim that he is innocent. Rather, he again
21 challenges aspects of the trial – jury instructions, closing arguments, and the like. This is not
22 sufficient. Bousley v. United States, 523 U.S. 614, 623, 118 S. Ct. 1604, 1611 (1998)
23 (emphasis added) (actual innocence means factual innocence, not mere legal insufficiency);
24 see also Sawyer v. Whitley, 505 U.S. 333, 338-39, 112 S. Ct. 2514, 2518-19 (1992).
25 Moreover, Defendant has presented no new evidence in support of this claim. In addition,
26 Defendant’s claims of ineffective assistance of appellate counsel and others raised in the
27 instant Petition were readily available to him at the time he filed his initial, timely Petition that
28

1 was considered (and denied) on the merits. Thus, for all these reasons, Defendant has failed to
2 overcome the multiple mandatory procedural bars to the instant Petition and it is denied.

3
4 **ORDER**

5 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus
6 shall be, and it is, hereby denied.

7 DATED this ____ day of November, 2018.

8
9 
DISTRICT JUDGE

10 STEVEN B. WOLFSON
11 Clark County District Attorney
Nevada Bar #001565

12 BY

13 
KRISTA D. BARRIE
14 Chief Deputy District Attorney
Nevada Bar #010301

15
16
17 **CERTIFICATE OF MAILING**

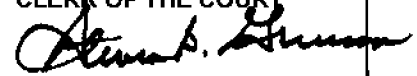
18 I hereby certify that service of the above and foregoing was made this 5 day of
19 December, 2018, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

20 SALLY VILLAVERDE, #1187297
21 HIGH DESERT STATE PRISON
22 PO BOX 650
INDIAN SPRINGS, NV 89070

23
24 BY


E. DEL PADRE
25 Secretary for the District Attorney's Office
26
27

28 ed/GCU



ORDR
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
DENA RINETTI
Chief Deputy District Attorney
Nevada Bar #9897
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

SALLY VILLAVERDE,
aka Sally Dorian Villaverde, #1433466,
#

Defendant.

CASE NO: A-18-780041-W
(03C191012-2)

DEPT NO: III

**ORDER DENYING DEFENDANT'S PRO PER MOTION FOR TRANSCRIPTS AT
STATE'S EXPENSE**

DATE OF HEARING: January 08, 2019
TIME OF HEARING: 09:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 8th day of January, 2019, the Defendant not being present, IN PROPER PERSON, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through DENA RINETTI, Chief Deputy District Attorney, and the Court, without argument, based on the pleadings and good cause appearing therefor,

///

///

///

///

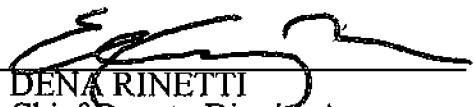
1 IT IS HEREBY ORDERED that the Defendant's Pro Per Motion for Transcripts at
2 State's Expense, shall be, and it is DENIED.

3 DATED this 22 day of April, 2019.

4
5 
DISTRICT JUDGE

6 STEVEN B. WOLFSON
7 Clark County District Attorney
8 Nevada Bar #001565

9 BY


10 DENA RINETTI
11 Chief Deputy District Attorney
12 Nevada Bar #9897

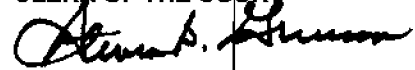
13 CERTIFICATE OF SERVICE

14 I certify that on the 24th day of April, 2019, I mailed a copy of the foregoing Order
15 to:

16 SALLY VILLAVERDE, BAC #81701
17 HIGH DESERT STATE PRISON
18 P. O. BOX 650
19 INDIAN SPRINGS, NEVADA 89070

20 BY /s/ J. HAYES
21 Secretary for the District Attorney's Office
22
23
24
25
26
27

28 03F02357A/jlh/GCU



OSCC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SALLY VILLAVERDE, PLAINTIFF(S) VS. BRIAN WILLIAMS WARDEN, DEFENDANT(S)	CASE NO.: A-18-780041-W DEPARTMENT 3
---	---

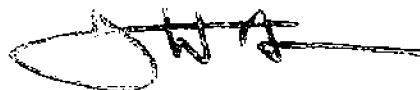
CIVIL ORDER TO STATISTICALLY CLOSE CASE

Upon review of this matter and good cause appearing,
IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to
statistically close this case for the following reason:

DISPOSITIONS:

- | | |
|-------------------------------------|--|
| ☐ | Default Judgment |
| ☐ | Judgment on Arbitration |
| ☐ | Stipulated Judgment |
| ☒ | Summary Judgment |
| ☐ | Involuntary Dismissal |
| ☐ | Motion to Dismiss by Defendant(s) |
| ☐ | Stipulated Dismissal |
| ☐ | Voluntary Dismissal |
| ☐ | Transferred (before trial) |
| ☐ | Non-Jury – Disposed After Trial Starts |
| ☐ | Non-Jury – Judgment Reached |
| ☐ | Jury – Disposed After Trial Starts |
| ☐ | Jury – Verdict Reached |
| ☐ | Other Manner of Disposition |

DATED this 21st day of October, 2019.



**DOUGLAS W. HERNDON
DISTRICT COURT JUDGE**

IN THE SUPREME COURT OF THE STATE OF NEVADA

SALLY DORIAN VILLAVERDE,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

Supreme Court No. 77563
District Court Case No. A780041

FILED

FEB 25 2020

Alana B. Brown
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"GRANT REHEARING and ORDER the judgment of the district court
AFFIRMED."

Judgment, as quoted above, entered this 22nd day of January, 2020.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
February 18, 2020.

Elizabeth A. Brown, Supreme Court Clerk

By: Monique Mercier
Administrative Assistant

A-18-780041-W
CCJA
NV Supreme Court Clerks Certificate/Judgm
4898620



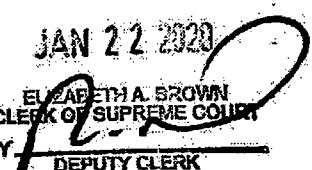
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SALLY DORIAN VILLAVERDE,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

No. 77563-COA

FILED

JAN 22 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER GRANTING REHEARING AND ORDER OF AFFIRMANCE

Sally Dorian Villaverde appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 26, 2018. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

On October 30, 2019, this court entered an order of affirmance in this appeal. On November 20, 2019, Villaverde submitted a petition for rehearing. In his petition, among other claims, Villaverde asserts this court overlooked his claim that he had good cause to overcome the procedural bars based on ineffective assistance of appellate counsel. After reviewing the petition filed below and the opening brief filed on appeal, we conclude Villaverde demonstrated this court overlooked his good cause claim. Accordingly, we grant the petition for rehearing, *see* NRAP 40(c)(2), vacate the "Order of Affirmance" filed on October 30, 2019, and issue this order in its place.

Villaverde filed his petition more than 12 years after issuance of the remittitur on direct appeal on March 14, 2006. *See Villaverde v. State*, Docket No. 43443 (Order of Affirmance, February 15, 2016). Thus, Villaverde's petition was untimely filed. *See* NRS 34.726(1). Moreover,

Villaverde's petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.¹ See NRS 34.810(1)(b)(2); NRS 34.810(2). Villaverde's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

First, Villaverde claims the district court erred by denying his claim that he demonstrated good cause to overcome the procedural bars based on actual innocence. Specifically, Villaverde claimed he was actually innocent because his codefendant, who actually committed the physical act of killing the victim, pleaded guilty to voluntary manslaughter and the other charges against the codefendant were dropped. Villaverde claimed his codefendant's guilty plea was new evidence, not presented at trial, that showed that he could not have committed first-degree murder with the use of a deadly weapon, robbery with the use of a deadly weapon, and burglary.

"A habeas petitioner may overcome these [procedural] bars and secure review of the merits of defaulted claims by showing that the failure to consider the petition on its merits would amount to a fundamental miscarriage of justice." *Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015). A colorable showing of actual innocence may overcome a procedural bar under the fundamental miscarriage of justice standard. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). To demonstrate actual innocence a "petitioner must show that it is more likely than not that no reasonable juror would have convicted him in light of new evidence." *Berry*, 131 Nev. at 966, 363 P.3d at 1154 (quoting *Schlup v. Delo*,

¹*Villaverde v. State*, Docket No. 51000 (Order of Affirmance, May 10, 2010).

513 U.S. 298, 327 (1995)). "[A]ctual innocence means factual innocence, not mere legal insufficiency." *Bousley v. United States*, 523 U.S. 614, 623 (1998). "[A]n evidentiary hearing regarding actual innocence is required where the new evidence, if credited, would show that it is more likely than not that no reasonable jury would find the petitioner guilty beyond a reasonable doubt." *Berry*, 131 Nev. at 967, 363 P.3d at 1155 (internal quotation marks omitted).

Villaverde failed to demonstrate he was actually innocent. Villaverde's codefendant's *Alford*² plea to lesser charges did not demonstrate Villaverde was factually innocent of the charges he was convicted of. Accordingly, because Villaverde failed to demonstrate it was more likely than not that no reasonable jury would find him guilty beyond a reasonable doubt based on his codefendant's plea, we conclude the district court did not err by denying this claim without first holding an evidentiary hearing.

Second, Villaverde appears to have argued he had good cause based on the State's failure to inform him that his codefendant pleaded guilty to lesser charges, which he claimed violated *Brady v. Maryland*, 373 U.S. 83 (1963). "Good cause and prejudice [to excuse a procedural bar] parallel the second and third *Brady* components; in other words proving that the State withheld the evidence generally establishes cause, and proving that the withheld evidence was material establishes prejudice." *State v. Bennett*, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003). An evidentiary hearing is warranted when a petitioner supports his claim with specific

²*North Carolina v. Alford*, 400 U.S. 25 (1970).

facts not belied by the record and that, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Villaverde failed to demonstrate his codefendant's plea was material. His codefendant did not testify at Villaverde's trial and Villaverde failed to demonstrate how his codefendant's plea would have been admissible at trial. Further, his codefendant did not plead guilty until after Villaverde's trial. Therefore, Villaverde failed to demonstrate good cause or prejudice to excuse the procedural bars. Accordingly, we conclude the district court did not err by denying this claim without first holding an evidentiary hearing.

Finally, Villaverde argues the district court erred by denying his claim that he demonstrated good cause to overcome the procedural bars because appellate counsel was ineffective for failing to investigate and raise his *Brady* claim on appeal. He argued this claim was not itself procedurally barred because it was based on newly discovered evidence.

"A claim of ineffective assistance may [] excuse a procedural default if counsel was so ineffective as to violate the Sixth Amendment." *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). However, "the ineffective assistance of counsel claim itself must not be procedurally defaulted." *Id.* A claim that "the factual or legal basis was not reasonably available to counsel" may provide cause to overcome the procedural default. *Id.* A good cause argument must be raised within a year of when the claim becomes available. See *Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018).

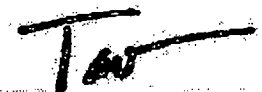
Villaverde failed to allege when he learned of the new evidence or that he filed his petition within a year of learning of the new evidence. Further, as discussed above, he failed to demonstrate his *Brady* claim had

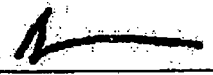
a reasonable likelihood of success on appeal. *See Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). Therefore, Villaverde failed to demonstrate good cause or prejudice to excuse the procedural bars. Accordingly, we conclude the district court did not err by denying this claim without first holding an evidentiary hearing.

For the foregoing reasons, we

GRANT REHEARING and ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Douglas W. Herndon, District Judge
Sally Dorian Villaverde
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³Because the district court did not give Villaverde an adequate time to respond to the State's laches argument, we conclude the district court erred by denying the petition based on laches. *See* NRS 34.800(2). However, because the district court otherwise correctly denied the petition as procedurally barred under NRS 34.810, we conclude the district court did not err by denying the petition.

CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: February 18, 2020

Supreme Court Clerk, State of Nevada

By [Signature] Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

SALLY DORIAN VILLAVERDE,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

Supreme Court No. 77563
District Court Case No. A780041

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: February 18, 2020

Elizabeth A. Brown, Clerk of Court

By: Monique Mercier
Administrative Assistant

cc (without enclosures):

Hon. Douglas W. Herndon, District Judge
Sally Dorian Villaverde
Clark County District Attorney \ Alexander G. Chen, Chief Deputy District
Attorney

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on FEB 25 2020.

HEATHER UNGERMANN

Deputy District Court Clerk

RECEIVED
APPEALS

FEB 21 2020

CLERK OF THE COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

SALLY DORIAN VILLAYERDE,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

Supreme Court No. 77563
District Court Case No. A780041

FILED

MAY 21 2020

Elizabeth A. Brown
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"GRANT REHEARING and ORDER the judgment of the district court
AFFIRMED."

Judgment, as quoted above, entered this 22nd day of January, 2020.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Review denied."

Judgment, as quoted above, entered this 22nd day of April, 2020.

A-18-780041-W
CCJA
NV Supreme Court Clerks Certificate/Judgr
4914058



IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
May 18, 2020.

Elizabeth A. Brown, Supreme Court Clerk

By: Monique Mercier
Administrative Assistant

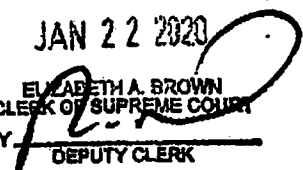
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SALLY DORIAN VILLAVERDE,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

No. 77563-COA

FILED

JAN 22 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER GRANTING REHEARING AND ORDER OF AFFIRMANCE

Sally Dorian Villaverde appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 26, 2018. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

On October 30, 2019, this court entered an order of affirmance in this appeal. On November 20, 2019, Villaverde submitted a petition for rehearing. In his petition, among other claims, Villaverde asserts this court overlooked his claim that he had good cause to overcome the procedural bars based on ineffective assistance of appellate counsel. After reviewing the petition filed below and the opening brief filed on appeal, we conclude Villaverde demonstrated this court overlooked his good cause claim. Accordingly, we grant the petition for rehearing, *see* NRAP 40(c)(2), vacate the "Order of Affirmance" filed on October 30, 2019, and issue this order in its place.

Villaverde filed his petition more than 12 years after issuance of the remittitur on direct appeal on March 14, 2006. *See Villaverde v. State*, Docket No. 43443 (Order of Affirmance, February 15, 2016). Thus, Villaverde's petition was untimely filed. *See* NRS 34.726(1). Moreover,

Villaverde's petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.¹ See NRS 34.810(1)(b)(2); NRS 34.810(2). Villaverde's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

First, Villaverde claims the district court erred by denying his claim that he demonstrated good cause to overcome the procedural bars based on actual innocence. Specifically, Villaverde claimed he was actually innocent because his codefendant, who actually committed the physical act of killing the victim, pleaded guilty to voluntary manslaughter and the other charges against the codefendant were dropped. Villaverde claimed his codefendant's guilty plea was new evidence, not presented at trial, that showed that he could not have committed first-degree murder with the use of a deadly weapon, robbery with the use of a deadly weapon, and burglary.

"A habeas petitioner may overcome these [procedural] bars and secure review of the merits of defaulted claims by showing that the failure to consider the petition on its merits would amount to a fundamental miscarriage of justice." *Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015). A colorable showing of actual innocence may overcome a procedural bar under the fundamental miscarriage of justice standard. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). To demonstrate actual innocence a "petitioner must show that it is more likely than not that no reasonable juror would have convicted him in light of new evidence." *Berry*, 131 Nev. at 966, 363 P.3d at 1154 (quoting *Schlup v. Delo*,

¹*Villaverde v. State*, Docket No. 51000 (Order of Affirmance, May 10, 2010).

513 U.S. 298, 327 (1995)). "[A]ctual innocence means factual innocence, not mere legal insufficiency." *Bousley v. United States*, 523 U.S. 614, 623 (1998). "[A]n evidentiary hearing regarding actual innocence is required where the new evidence, if credited, would show that it is more likely than not that no reasonable jury would find the petitioner guilty beyond a reasonable doubt." *Berry*, 131 Nev. at 967, 363 P.3d at 1155 (internal quotation marks omitted).

Villaverde failed to demonstrate he was actually innocent. Villaverde's codefendant's *Alford*² plea to lesser charges did not demonstrate Villaverde was factually innocent of the charges he was convicted of. Accordingly, because Villaverde failed to demonstrate it was more likely than not that no reasonable jury would find him guilty beyond a reasonable doubt based on his codefendant's plea, we conclude the district court did not err by denying this claim without first holding an evidentiary hearing.

Second, Villaverde appears to have argued he had good cause based on the State's failure to inform him that his codefendant pleaded guilty to lesser charges, which he claimed violated *Brady v. Maryland*, 373 U.S. 83 (1963). "Good cause and prejudice [to excuse a procedural bar] parallel the second and third *Brady* components; in other words proving that the State withheld the evidence generally establishes cause, and proving that the withheld evidence was material establishes prejudice." *State v. Bennett*, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003). An evidentiary hearing is warranted when a petitioner supports his claim with specific

²*North Carolina v. Alford*, 400 U.S. 25 (1970).

facts not belied by the record and that, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Villaverde failed to demonstrate his codefendant's plea was material. His codefendant did not testify at Villaverde's trial and Villaverde failed to demonstrate how his codefendant's plea would have been admissible at trial. Further, his codefendant did not plead guilty until after Villaverde's trial. Therefore, Villaverde failed to demonstrate good cause or prejudice to excuse the procedural bars. Accordingly, we conclude the district court did not err by denying this claim without first holding an evidentiary hearing.

Finally, Villaverde argues the district court erred by denying his claim that he demonstrated good cause to overcome the procedural bars because appellate counsel was ineffective for failing to investigate and raise his *Brady* claim on appeal. He argued this claim was not itself procedurally barred because it was based on newly discovered evidence.

"A claim of ineffective assistance may [] excuse a procedural default if counsel was so ineffective as to violate the Sixth Amendment." *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). However, "the ineffective assistance of counsel claim itself must not be procedurally defaulted." *Id.* A claim that "the factual or legal basis was not reasonably available to counsel" may provide cause to overcome the procedural default. *Id.* A good cause argument must be raised within a year of when the claim becomes available. *See Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018).

Villaverde failed to allege when he learned of the new evidence or that he filed his petition within a year of learning of the new evidence. Further, as discussed above, he failed to demonstrate his *Brady* claim had

a reasonable likelihood of success on appeal. *See Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). Therefore, Villaverde failed to demonstrate good cause or prejudice to excuse the procedural bars. Accordingly, we conclude the district court did not err by denying this claim without first holding an evidentiary hearing.

For the foregoing reasons, we

GRANT REHEARING and ORDER the judgment of the district court AFFIRMED.³



Gibbons C.J.



Tao J.



Bulla J.

cc: Hon. Douglas W. Herndon, District Judge
Sally Dorian Villaverde
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³Because the district court did not give Villaverde an adequate time to respond to the State's laches argument, we conclude the district court erred by denying the petition based on laches. *See* NRS 34.800(2). However, because the district court otherwise correctly denied the petition as procedurally barred under NRS 34.810, we conclude the district court did not err by denying the petition.

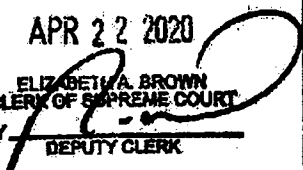
IN THE SUPREME COURT OF THE STATE OF NEVADA

SALLY DORIAN VILLAVERDE,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

No. 77563

FILED

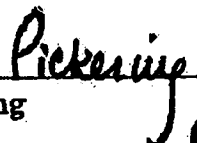
APR 22 2020

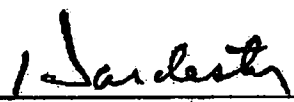
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DENYING PETITION FOR REVIEW

Review denied. NRAP 40B.¹

It is so ORDERED.


Pickering, C.J.
Pickering


Hardesty, J.
Hardesty


Parraguirre, J.
Parraguirre


Stiglich, J.
Stiglich


Cadish, J.
Cadish

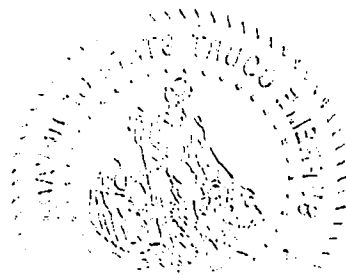

Silver, J.
Silver

¹The Honorable Mark Gibbons, Justice, did not participate in the decision of this matter.

cc: Hon. Douglas W. Herndon, District Judge
Sally Dorian Villaverde
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

SUPREME COURT
OF
NEVADA

(O) 197A 



IN THE SUPREME COURT OF THE STATE OF NEVADA

SALLY DORIAN VILLAVERDE,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

Supreme Court No. 77563
District Court Case No. A780041

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: May 18, 2020

Elizabeth A. Brown, Clerk of Court

By: Monique Mercier
Administrative Assistant

cc (without enclosures):

Hon. Douglas W. Herndon, District Judge
Sally Dorian Villaverde
Clark County District Attorney \ Alexander G. Chen, Chief Deputy District
Attorney

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on MAY 21 2020.

HEATHER UNGERMANN

Deputy District Court Clerk

RECEIVED
APPEALS

MAY 20 2020

CLERK OF THE COURT

A-18-780041-W
Dept. 10

Case No.
Dept. No

FILED
OCT 04 2021

John J. Fleming
CLERK OF COURT

IN THE ~~EIGHT~~ JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK.

SALLY D. VILLAYERDE

Petitioner,

v.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

WILLIAM HUTSHING (warden)

Respondent.

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 but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
- (7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: SDCC P.O. BOX 708 Indian Spring, Nevada 89070 Clark County

2. Name and location of court which entered the judgment of conviction under attack: District Court Clark County, Nevada

Date of judgment of conviction: June 14, 2021 (Amended J.O.C)

Case number: 03C191012-2

(a) Length of sentence: Life without the possibility of Parole Plus an equal and Consecutive term for use of a deadly weapon. (156) months and a 35 months Plus an Equal and Consecutive term for the use of a deadly weapon and 96 months a minimum 22 months.

RECEIVED

SEP 27 2021

CLERK OF THE COURT

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

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

Yes No ☒

If "yes," list crime, case number and sentence being served at this time: N/A

7. Nature of offense involved in conviction being challenged: First degree murder w/ use deadly weapon,
Robbery w/ use of a deadly weapon and burglary.

8. What was your plea? (check one)

(a) Not guilty ☒

(b) Guilty

(c) Guilty but mentally ill

(d) Nolo contendere

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details: N/A

10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: (check one)

(a) Jury ☒

(b) Judge without a jury

11. Did you testify at the trial? Yes No ☒

12. Did you appeal from the judgment of conviction? Yes ☒ No

13. If you did appeal, answer the following:

(a) Name of court: Supreme Court of Nevada,

(b) Case number or citation: 43443

(c) Result: denied or Affirmance

(d) Date of result: February 15, 2006

(Attach copy of order or decision, if available.)

14. If you did not appeal, explain briefly why you did not: N/A

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal? Yes ☒ No ☐

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

(a) (1) Name of court: Eight Judicial District Court

(2) Nature of proceeding: Petition of habeas Corpus (Post-Conviction)

(3) Grounds raised: Ineffective Assistant of trial Counsel, Confrontation Clause issues, Sentencing issues, etc.

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☒ No ☐

(5) Result: denied

(6) Date of result: February 28, 2008

(7) If known, citations of any written opinion or date of orders entered pursuant to such result:

N/A

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

(1) Name of court: District Court, Supreme Court and Ninth Circuit Court of appeals

(2) Nature of proceeding: Successive Petition

(3) Grounds raised: Newly discovered evidences, Actual innocent, ineffective Asst of trial Counsel

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☐ No ☒

(5) Result: denied

(6) Date of result: 12/5/2018, 5/7/2019, 10/30/19, 1/22/20, 3/12/20

(7) If known, citations of any written opinion or date of orders entered pursuant to such result:

N/A

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

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

(1) First petition, application or motion? Yes ☒ No ☐

Citation or date of decision: March 28, 2016

(2) Second petition, application or motion? Yes ☐ No ☒

Citation or date of decision: N/A

(3) Third or subsequent petitions, applications or motions? Yes ☐ No ☒

Citation or date of decision: N/A

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

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same: NO GROUND III THE TRIAL COURT ABUSED ITS DISCRETION BY ALLOWING THE TRANSCRIPT OF TERESA GAMBOA INTO EVIDENCE AND THEREBY ADMITTING CONFESSIONS BY NON-TESTIFYING ACCOMPLICES TO THE CRIMES.

(b) The proceedings in which these grounds were raised: DIRECT APPEAL / Post-Conviction (state)

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) THE JUDGMENT OF CONVICTION WAS AMENDED ON JUNE 14, 2021, THUS THIS SHALL BE CONSIDERED THE FIRST PETITION. SEE TURNER V. BAKER 912 F3d 1236, 2019 U.S.

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

1
2 19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing
3 of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in
4 response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the
5 petition. Your response may not exceed five handwritten or typewritten pages in length.)NO.....
6

7 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment
8 under attack? Yes ☒ No

9 If yes, state what court and the case number: United States District Court, District of Nevada
10 at Case no. 2:21-CV-01595-GMN-BNW
11

12 21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on
13 direct appeal: RANDALL H. PIKE (Direct Appeal), Amy Chelini (Post-Conviction), Daniel J. Albright
(Post-Conviction) And Mary Lou Wilson (Federal Habeas C-Post).
14

15 22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under
16 attack? Yes No ☒

17 If yes, specify where and when it is to be served, if you know: N/A
18

19 23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the
20 facts supporting each ground. If necessary you may attach pages stating additional grounds and facts
21 supporting same.
22 see attach pages
23
24
25
26
27
28

1 SALLY D. VILLAYERDE
2 SDCC P.O. Box 208
3 Indian Springs, NV 89070
4

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 SALLY D. VILLAYERDE
9 Petitioner

10 vs

CASE NO. _____

11 WILLIAM HUTSHING (warden
12 Respondent

13
14 PETITIONER'S OPENING BRIEF IN
15 SUPPORT OF PETITION FOR WRIT OF
16 HABEAS CORPUS (POST CONVICTION)
17
18
19
20

21 SALLY D. VILLAYERDE ID NO. 81701
22 Petitioner Acting Pro SE
23 SDCC P.O. Box 208
24 Indian Springs, NV 89070
25
26
27
28

1 STATEMENT OF THE CASE

2 On APRIL 08 2004 Petitioner herein (VILLAVERDE) was convicted of three (3) Crimi-
3 nal Counts in Clark County District Court following a Jury trial. Petitioner was Con-
4 victed of first degree murder with use of a deadly weapon, Robbery with use of
5 a deadly weapon and burglary.

6 On June 3, 2004, Villaverde was sentenced to a maximum term of 96 months and
7 a minimum term of 22 months in the Nevada Department of Corrections (NDOC) on
8 the burglary Count, to a term of life imprisonment without the possibility of parole
9 on the murder Count, plus an equal and consecutive identical term for the deadly
10 weapon enhancement. The third Count was to run consecutive to the second Count
11 and the first Count was to run concurrent to the other two, and Credit for time
12 served denied.

13 Villaverde filed a direct appeal of his conviction with the Supreme Court of Nevada
14 and on February 15, 2006 the Court affirmed the convictions and sentences.

15 Villaverde's case was severed for trial purpose from codefendant(s) Roberto Castro
16 and Rene Gato. Villaverde was the first one to face trial, convicted and sentenced
17 on January 31, 2005. The prosecution filed an Amended information in support of
18 Co-defendant Roberto Castro Alford Plea. See (Exh. A attach herein), also informing
19 that VILLAVERDE committed the offense of "Voluntary Manslaughter" by Aiding/or
20 Abetting Defendant Roberto Castro to commit the underlying offense.

21 On or around April 2018, Villaverde learned of this information through docu-
22 ments sent by the Clerk of the Court at Clark County. immediately, Villaverde
23 filed a Petition for writ of Habeas Corpus that was denied by the eight
24 District Court, Court of Appeals, (Supreme Court) as untimely in 2020.

25 On MAY 19, 2021 Villaverde filed a motion for Amended judgment of Con-
26 viction to include Jail time Credits. This Court granted the UNOPPOSED motion
27 and on June 14, 2021, an Amended Judgment of Conviction was filed. Awar-

1 ding Petitioner 469 DAYS Credit for time Served.

2 Now, Petitioner herein is Submitting This Petition, which shall be Considered
3 his first Petition. See Turner V. Baker 912 F.3d 1236, 2019 U.S APP. Lexis 1289
4 (9th Circuit) NO. 17-72044. Also See, Argument Below.

5 LEGAL ARGUMENTS.

6 New Villaverde is challenging the New Judgment of Conviction (JOC)
7 Pursuant Nevada Supreme Court Rules Whereas "trial Court should
8 amend the defendant's Judgment to include Credite for time Served,
9 Judgment that do not include a defendant's Credit for time Served
10 is invalid. Therefore, Villaverde's Habeas Petition is the first Petition
11 Challenging his Amended Judgment. See Turner V. Baker 912 F.3d 1236,
12 2019 U.S APP Lexis 1289 (9th Circuit) NO. 17-72044, A Petition Can be deemed
13 "Second or Successive" under § 2244(b) only if it Challenges the Same state
14 Court Judgment Challenged in an earlier Petition. See United States v.
15 Buenrostro, 895 F.3d 1160, 1165 (9th Cir 2018). thus when a New Judgment
16 intervenes between the filing of two federal Habeas petitions a Petition
17 Challenging the new intervening Judgment is not Considered "Second or
18 Successive." Magwood v. Patterson, 561 U.S. 320, 341-42, 130 S. Ct. 2708, 177 LEd
19 2d 592 (2010). Villaverde's Amended Judgment of Conviction Awarding 469
20 days Credit for time Served resulted in issuance of a new intervening Judgment,
21 and This Petition therefore is not second or Successive. Morales v. Sherman
22 949 F.3d 474, 2020 U.S APP. Lexis 2992 NO. 17-56304, Wantzell v. Neven 674 F.3d
23 1124, 2012 U.S APP Lexis 6572.

(a) Ground ONE: TRIAL COUNSEL WAS INEFFECTIVE BY FAILING TO OBJECT TO PROSECUTOR'S IMPROPER COMMENTS AT CLOSING ARGUMENTS AND FAILURE TO OBJECT TO JURY INSTRUCTIONS 3, 34, 37 RELATED TO THE THEORIES OF CRIMINAL LIABILITY AND AIDING AND ABETTING WHICH VIOLATED PETITIONER'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS.

Supporting FACTS (Tell your story briefly without citing cases or law.):

Prosecutors may prosecute with aggressiveness and vigor, but they may not take improper liberties with their cases. "Improper argument will only warrant relief if it renders a Petitioner's trial or sentencing fundamentally unfair, that determination depends on whether there is a reasonable probability that in the absence of the improper arguments the outcome would have been different. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome." DRAKE V. KEMP 762 F.2d 1449, 1985.

In the present case, Petitioner here in Aver, a challengeable Constitutional violation occurred during trial proceedings at closing arguments and written jury instructions.

At the end of Petitioner's jury trial, specifically, at closing arguments, the prosecutor orally instructed the following, relating the theory of aiding and abetting and/or criminal liability.

a-) And under the law we commonly use the term the act of one is the act of all. And Instruction Number 27 also explains this particular concept. It tells you that every person concerned in the commission of a crime, whether directly committing it or conspiring with others or aiding and abetting, in other words, or assisting the others in the commission of the crime, even if the person is not actually present at the crime scene at the time the crime is committed, is treated as a principal or equal as the person that actually physically and directly committed the crime.

1 Now, going back to Instruction Number 3, page 2 --
2 it spills over into two pages here -- similar to an aiding and
3 abetting theory is Number 3, "by conspiring with others to
4 commit the offense of robbery and/or murder whereby each
5 conspirator is vicariously liable for the foreseeable acts of
6 the other made in furtherance of the conspiracy." Similar
7 concept to Number 2, aiding and abetting.

8
9 This theory of criminal liability states that if you
10 conspire or agree to commit a crime with others you are held
11 equally accountable under the law for the, quote, "foreseeable
12 acts of the other made in furtherance of the conspiracy,"

13 And also, as the charging document says, if we prove
14 that he -- that Enrique Caminero was killed because a robbery
15 was taking place and as a result of that felony, the robbery
16 or the burglary, the act of going into the room with -- excuse
17 me -- felonious intent, as a natural result of either one of
18 those two crimes the killing took place, that is a theory of
19 criminal liability that covers Mr. Villaverde, because the
20 killing took place pursuant to a conspiracy to do this
21 robbery.

22 See trial transcripts (lit) at closing Arguments Pg 15, 16 and 106
23 THE RECORD clearly reflect that the above instructions and Comments are
24 inconsistent with Nevada existing law regarding "the natural and probable
25 consequence doctrine" whereas, The Nevada Supreme Court "harshly criticized
26 by most commentators as both incongruous and unjust because it imposes accom-
27 plice liability solely upon proof of foreseeability or negligence when typically a
28 higher degree of mens rea is required of the principal." see SHARMA V. STATE 118 Nev.
648, 56 P.3d 868, 871-72 (Nev 2000), MITCHELL V. STATE 122 Nev. 1269, 149 P.3d 33, 2006.

Petitioner was charged with burglary, a specific intent crime, and one of the underlying felony upon which the Prosecutors based their Arguments to impose the felony murder Rule, which was also the theory that Villaverde was held accountable and found guilty of first degree murder w/use of the deadly weapon not by his own Actions, but by Co-defendant Roberto Castro's Action whom the Prosecution Alleged committed The Criminal Act of Physical Act of killing the Victim in this Case. (ENRIQUE CAMINERO).

Trial Counsel for Villaverde should have objected, to the Prosecution's Comments and oral instructions during Closing Arguments. Counsel knew that the "foreseeable language" introduced by the Prosecution was misleading, specifically, because there were not independent evidences of BURGLARY/OR ROBBERY. Also See United States v. Verkuilen, 690 F.2d 648 (7th Cir 1982). And How do we know that in the Present Case there is not any evidences to Sustain The Burglary / ROBBERY OFFENSE.

First- in Count 1- Burglary: THE motel room where the alleged crime occurred was LEGALLY rented by VILLAVERDE'S GIRLFRIEND (TERESA GAMBOA), whom at that time maintained a romantic relationship with him. Thus, Villaverde had an unconditional and absolute right to enter the room. See Elisa v. State 2016 Nev. App. UnPub. Lexis 79 (April 20, 2016). Two- WAS THE Victim (MR. CAMINERO) that came into the motel room with the sole purpose of conducting a drug transaction. third- Testimonies on record at the time of trial placed Villaverde out of the room, entering the room after the fact. In other words, he was not present or near when the alleged crime happened. Therefore under these facts, Villaverde could not be convicted of burglary a specific intent crime.

* Count 3 ROBBERY: Forensic physical evidences at trial shown. That the Victim was found with all his belongings, which included, THE Victim's wallet, credit cards, and 10 Grams of Pure Cocaine. Street Value between \$500 - \$600. In other words, the record is barren of any evidence that something was taken from the Victim. Only the formulated inferences and comments made by the Prosecution at Closing Ar.

On January 31, 2005 THE Prosecution also filed,
Disposition 2.- ROBBERY Charge Amended/dropped
See. Exh. A

1 gument instructing the following:

2 Now, Count 3, on the second page of Instruction
3 Number 3, deals with the final charge, which is robbery with
4 use of a deadly weapon. And this is a pretty self-explanatory
5 charge. And Instruction Number 47 particularly defines it,
6 and it simply lays out that a robbery is taking property from
7 another person by force or by threat of force. And just as in
8 Count 2, murder with use of a deadly weapon, when it comes to
9 Count 3, robbery with use of a deadly weapon, the same
10 theories apply. The defendant in this case should be held
11 accountable for the robbery of Enrique Caminero, even if he
12 didn't take the property from him, as long as he either aided
13 and abetted in its commission or if he entered into a
14 conspiracy to rob him. And you'll find that the robbery was
15 carried out. See t.t. closing Arg at Pg 18

17 Again, the records show Comments made by the Prosecution which are inconsistent
18 With NRS 200.380 which define Robbery as, "the unlawful taking of Personal Property."
19 THE PROSECUTOR'S comments above eliminated the essential element of The Robbery
20 Offense which is "Possession". thus, trial Counsel was ineffective by failing to
21 object to this Comments / instructions. related to aiding / abetting and Criminal
22 Liability.

23 THE harm was not Cured by the Jury instructions, specifically, instructions NO. 34
24 and NO. 37. which stated the following:

25 "A Co-Conspirator and/or an aider or abetter is guilty not only of the offense he
26 intended to facilitate or encourage but also of any reasonably foreseeable
27 offense Committed by the Co-Conspirator and/or the Person he aids or abets."

28 See instruction NO. 34

1 THE PARTICIPATION OF A DEFENDANT NOT ACTUALLY IN POSSESSION OF THE WEAPON BY
2 AIDING OR ABETTING THE ACTUAL USER IN THE UNLAWFUL USE OF THE WEAPON, MAKES A
3 DEFENDANT EQUALLY SUBJECT TO THE ADDED WEAPON ENHANCEMENT AVAILABLE TO THE
4 USER WHO COMMITS A CRIME THROUGH THE USE OF A DEADLY WEAPON." SEE INSTRUCTION NO. 37
5 INSTRUCTION NO. 34 RELATED TO AIDING AND ABETTING, ERRONEOUSLY, INSTRUCTED
6 ACCOMPLICE LIABILITY SOLELY UPON PROOF OF FORESEEABILITY WHEN TYPICALLY A
7 HIGHER DEGREE OF MENS REA IS REQUIRED OF THE PRINCIPAL. SEE SHARMA V. STATE
8 118 NEV. 648, 56 P.3D 868, 2002. THIS INSTRUCTION WAS DETRIMENTAL, WHICH ALONG WITH
9 THE PROSECUTOR'S COMMENTS, LESSENED THE BURDEN OF PROOF IN THE STATE'S THEORIES
10 OF LIABILITY, AND WAS PREJUDICIAL TO VILLAVERDE'S CASE, BECAUSE, NOW THE JURY
11 WAS CAPABLE TO FIND VILLAVERDE GUILTY OF ANY FORESEEABLE OFFENSE, INCLUDING
12 THE SPECIFIC INTENT CRIME OF BURGLARY, AN OFFENSE USED BY THE STATE TO
13 PROCURE A CONVICTION FOR FELONY MURDER. SEE PAGE 7 HEREIN AT TRIAL EXCERPTS.
14 THE SAME CAN BE SEEN AT JURY INSTRUCTION NO. 37. WHEREAS, THE STATE INSTRUCTED
15 "ACCOUNTABILITY OR LIABILITY FOR THE USE OF A DEADLY WEAPON." THE SUPREME COURT OF
16 NEVADA IN SHARMA, REASONED, "NEVADA LAW IS VULNERABLE TO THE GENERAL
17 CRITICISM THAT CONSIDERABLE CONFUSION EXISTS AS TO WHAT THE ACCOMPLICE'S MENTAL
18 STATE MUST BE IN ORDER TO HOLD HIM ACCOUNTABLE FOR AN OFFENSE COMMITTED BY ANO-
19 THER." THE COURT, FURTHER ADDRESSED, THAT, HAS REQUIRED THE STATE TO SHOW THAT THE DEFEN-
20 DANT KNOWINGLY AND INTENTIONALLY AIDED ANOTHER TO COMMIT THE CHARGED CRIME."
21 VILLAVERDE, CONTEND THAT TRIAL COUNSEL SHOULD HAVE KNOWN THAT THE ABOVE JURY
22 INSTRUCTIONS 34 AND 37 EXCLUDED THE MENS REA/OR MENTAL STATE, NECESSARY TO HOLD VILLA-
23 VERDE ACCOUNTABLE, TRIAL COUNSEL SHOULD HAVE KNOWN THAT FAILURE TO OBJECT TO AN INSTRUCTION
24 GIVEN TO THE JURY OR TO ONE THAT IS NOT GIVEN BUT HAS BEEN REQUESTED MAY BE WAIVED UNLESS
25 IT IS PLAIN ERROR. UNITED STATES V. JOHNSON, 767 F.2D 1259, 1267 (8TH CIR. 1985), UNITED STATES
26 V. ECHEVERRY, 759 F.2D 1451, 1455 (9TH CIR. 1985). MOREOVER, TRIAL COUNSEL KNEW, THAT THE
27 STATE COULD NOT HOLD VILLAVERDE LIABLE OR ACCOUNTABLE FOR THE USE OF THE DEADLY WEAP-
28 ON BY CO-CONSPIRATOR ROBERTO CASTRO, BECAUSE, (1) THERE WERE NOT EVIDENCE OF CAS-

1 TR05 using a deadly weapon (2) Forensic evidences at trial indicated the Victim
2 died of ASPHYXIA by strangulation. (3) and even more relevant, is the fact, that
3 after Villaverde's Trial and Sentencing, THE STATE Conceded, by way of an Amen-
4 ded information THAT, CASTRO Committed the lesser Offense OF Voluntary Manslaugh
5 ter by *manual Strangulation. See Amended information filed on January 31, 2005 in
6 Open Court. below: therefore, Counsel's Performance fell below the objective standard
7 set forth in Strickland, Controlling Precedent, and Violated Villaverde's sixth
8 Amendment Right and fourteenth Amendment Right to effective Assis-
9 tant of Counsel and due Process of Law.

10 II. WHETHER PETITIONER WAS SUBSTANTIALLY PREJUDICED BY THE STATE
11 FILING A NEW THEORY OF AIDING AND ABETTING POSTTRIAL, WHICH VIOLATED
12 HIS SIXTH AND FOURTEENTH AMENDMENT RIGHT TO EQUAL PROTECTION OF
13 LAW AND DUE PROCESS.

14 "Prosecutors may rely on alternative theories. Provided that there are no incon-
15 sistencies at the "Core" of their Presentations where they try two defendants Sepa-
16 rately for the same offense. Smith v. Goose, 205 F.3d 1045, 1052 (8th Cir. 2000). However,
17 inconsistent Prosecutorial theories will rise to the level of a due Process violation
18 when the Prosecutor manipulates evidence and witnesses, and argues inconsistent
19 motives". Thompson v. Calderon. 120 F.3d 1045, 1057-59 (9th Cir. 1997).

20 THE FOLLOWING IS AN EXCERPT OF AN Amended information filed by State Prosecutors
21 Post-trial on January 31, 2005 in Open Court:

22 DAVID ROGER, District Attorney within and for the County of Clark, State of
23 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

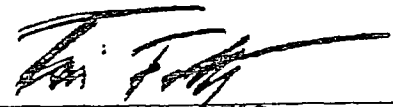
24 That ROBERT CASTRO, Robert Rance Castromontalvo, the Defendant above
25 named, having committed the crime of VOLUNTARY MANSLAUGHTER (Felony -
26 NRS 200.040, 200.050, 200.080), on or about the 6th day of March, 2002, within the County
27 of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases
28 made and provided, and against the peace and dignity of the State of Nevada, did, together
with SALLY VILLAVERDE and/or RENE GATO, then and there without authority of

2. Also on January 31, 2005 the state filed
disposition 2. USE OF A DEADLY WEAPON AND Page - 11
OR TEAR GAS CHARGE: AMENDED / DROPPED 241

1 law, wilfully, unlawfully, and feloniously, without malice and without deliberation kill
2 ENRIQUE CAMINERO, JR., a human being, by manual strangulation and/or by inflicting
3 multiple blunt force trauma upon his body, said defendant being liable under one or more of
4 the following principles of criminal liability, to-wit: (1) by Defendant and/or SALLY
5 VILLAVERDE and/or RENE GATO directly committing the acts constituting the offense;
6 and/or (2) by said Defendant and/or SALLY VILLAVERDE and/or RENE GATO aiding or
7 abetting each other in its commission by directly or indirectly counseling, encouraging,
8 commanding or procuring the other to commit the offense, as evidenced by the conduct of
9 the Defendant and/or SALLY VILLAVERDE and/or RENE GATO before, during and after
10 the offense and/or (3) by conspiring with SALLY VILLAVERDE and/or RENE GATO to
11 commit the offense of robbery and/or murder whereby each is vicariously liable for the
12 foreseeable acts of the other made in furtherance of the conspiracy.'

13 DAVID ROGER
14 DISTRICT ATTORNEY
15 Nevada Bar #002781

16 BY


17 J. TIMOTHY FATTIG
18 Deputy District Attorney
19 Nevada Bar #006639

20 SEE (Exhibit A attached here in)

21 THE ABOVE document was filed in open Court on January 31, 2005 in Support of Co-Defendant ROBERTO
22 CASTRO'S ALFORD PLEA whom also Pleaded Guilty to The offense of "Voluntary manslaughter" in
23 The same date (see Arrangement hearing) attach herein.
24 VILLAVERDE Contend that he was substantially Prejudiced by the state Prosecutors
25 when they filed the above mentioned Amended information /OR CHarging docu-
26 ment which (1)- introduced new offenses, and a New theory of the Case that
27 was not heard by the Jury at his trial. (2)- THE Amended information set forth
28 additional information as to the specific Acts Constituting the means of Aiding
and abetting. (3) THE Amended information clearly indicates the crime charged
"Voluntary manslaughter" which is to say "in the heat of Passion". Also define its

1 elements "without malice and without deliberation" and the means by which
2 the Co-defendant ROBERTO CASTRO, SALLY VILLAVERDE AND RENE GATO committed the
3 offense within a set time period.

4 These factual basis were accepted by the Trial Court which rendered judgment on
5 these basis, and these factual basis are new material information that ~~were~~
6 not available to villaverde's jury at his trial, specifically, the Aiding and
7 for Abetting and Criminal liability theories. That were argued extensively
8 and erroneously instructed during Villaverde's trial.

9 THE PREJUDICE involve in this case is that, the jury found GUILTY and Convic-
10 ted villaverde on theories inconsistent with the theories allege by the
11 state at CASTRO's CHARGING document or information. whereas, the Prose-
12 cution also identified VILLAVERDE as an Aider or Abettor of The Lesser
13 OFFENSE OF Voluntary manslaughter, and adduced Criminal liability for
14 the same OFFENSE, these discrepancies on record. Violated VILLAVERDE'S Subs-
15 tantial rights of due Process and equal Protection of Law, because the
16 JURY have the right to decide which Act he committed. See TAYLOR V. CATE
17 772 F.3d 842, 2014, Either, VILLAVERDE Aided or Abetted ROBERTO CASTRO to Co-
18 mmit murder during the Perpetration of a felony. or VILLAVERDE aided or abe-
19 tted Castro to commit Voluntary Manslaughter while "in the heat of Passion."

20 THE STATE CAN'T have it both way. These are Constitutional discrepancies and dile-
21 ma That now formed Part of The record. and, if these evidences formed Part of
22 The record. Petitioner, Villaverde is entitled to reap the benefits of the
23 Prosecution's Concessions stated on record. in other word, if the State Conceded
24 in open Court, That defendants named thereto on the Above Amended informa-
25 tion committed Voluntary manslaughter while "in the heat of Passion" then by
26 operation of State and Federal Law, Villaverde's Conviction for first degree
27 murder must be Vacated because, "Per. NRS 200.010, 200.030, 200.040, 200.050."

28 THE FELONY MURDER Rule will not apply to upgrade The Manslaughter to Felony murder.

**PLEADING
CONTINUES
IN NEXT
VOLUME**