

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

2
3 **No. 85782**

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Elizabeth A. Brown
Clerk of Supreme Court

4 **JUSTIN D. PORTER**

5 Appellant,

6 v.

7 **THE STATE OF NEVADA**

8 Respondent.

9
10
11 Appeal from a Judgment of Conviction
12 Eighth Judicial District Court, Clark County
13 The Honorable Jacqueline Bluth, District Court Judge
14 District Court Case No. 01C174954

15 **APPELLANT’S APPENDIX**
16 **VOLUME II**

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1 will be subject to cross-examination by the prosecutor. Do you
2 understand that?

3 THE DEFENDANT: Of course, ma'am.

4 THE COURT: Do you understand that if -- it may be much
5 easier for an attorney to contact potential witnesses on your behalf, to
6 gather evidence on your behalf, and to question witnesses on your
7 behalf, than it may be for you?

8 THE DEFENDANT: Of course, ma'am.

9 THE COURT: Do you understand that it may be much easier
10 for an attorney to provide legal research on legal questions that may
11 come before the court than for you to do on your own?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Do you understand that if you represent
14 yourself, you may limit, or even give up, certain issues that could be
15 appealed to a higher court if you are found guilty?

16 THE DEFENDANT: Of course, yes ma'am.

17 THE COURT: Do you know how to make a record for
18 appellate purposes?

19 THE DEFENDANT: Oh, yes, for sure.

20 THE COURT: You understand that since you are now a -- not
21 a lawyer, you may not know how to properly make the court record
22 which could cause you problems with an appeal even though you have a
23 right to appeal and a right to a lawyer to handle an appeal?

24 THE DEFENDANT: Of course.

25 THE COURT: Do you understand that you will be required to

1 conduct yourself in a professional and respectful manner to the court
2 and to all the witnesses involved in this case at all times?

3 THE DEFENDANT: With all due respect, I do understand,
4 ma'am.

5 THE COURT: Okay. Do you understand that if you do not
6 conduct yourself in such a manner, the court may revoke your right to
7 self-representation and may have you removed from the courtroom if
8 you become -- disruptive?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: In discussing this matter with you, I must
11 advise you that, in almost every case, it would be my opinion that a
12 trained lawyer would defend you far better than you could defend
13 yourself. It is almost always unwise for a defendant on trial to try and
14 represent themselves. You are not familiar with the law. You are not
15 familiar with handling a trial. You are not familiar with court procedures,
16 the Rules of Evidence. I would strongly urge you not to try to represent
17 yourself. And I want you to understand my position on this issue, do you
18 understand my position?

19 THE DEFENDANT: I understand it fully, ma'am.

20 THE COURT: Okay. There is an old saying that a man who
21 is his own lawyer has a fool for a client. Do you understand what that
22 means?

23 THE DEFENDANT: Uh-huh, that I'm a fool.

24 THE COURT: Okay. I would strongly suggest that you allow
25 a legally trained attorney to represent you in this matter.

1 THE DEFENDANT: I understand that.
2 THE COURT: But I also understand that you do have a right
3 to represent yourself --
4 THE DEFENDANT: Under 6th --
5 THE COURT: -- and I understand --
6 THE DEFENDANT: -- amendment.
7 THE COURT: -- that you are asking this Court to allow you to
8 do so; is that correct?
9 THE DEFENDANT: Absolutely, ma'am.
10 THE COURT: And you still wish to represent yourself?
11 THE DEFENDANT: With all due respect, yes I do.
12 THE COURT: And you're making this -- decision freely and
13 voluntarily?
14 THE DEFENDANT: And intelligently.
15 THE COURT: Do you have any questions you would like me
16 to clarify or explain further?
17 THE DEFENDANT: No, ma'am.
18 THE COURT: Okay. Now I would like to discuss with you the
19 issue of what's referred to as standby counsel. Do you know what that
20 means?
21 THE DEFENDANT: Counsel that would be -- on standby to
22 represent me when I can't myself, or if I need some things done that I
23 cannot do myself.
24 THE COURT: Do you understand that you may ask to be
25 represented by counsel at any time during these proceedings even

1 though you have currently waived your right to counsel?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Do you understand that doesn't mean that
4 they'll just pick up where you are now, there may be other issues that
5 need to be addressed that may necessitate a continuance?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: If you believe at some point during the
8 proceedings that you want to be represented by yourself -- or excuse
9 me, by counsel, you would need to let the court know immediately?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Are you requesting that I appoint standby
12 counsel, or do you wish to proceed by yourself?

13 THE DEFENDANT: I -- I'm requesting that you appoint
14 standby counsel.

15 THE COURT: Okay. So I am appointing Mr. Gill to sit as
16 standby counsel for you. You may talk to them at any time. You may
17 let me know if you need to speak to them any time.

18 THE DEFENDANT: Uh-huh.

19 THE COURT: He is to be present for all proceedings but you
20 must present your own case. Be aware that, if you later ask for him to
21 represent you or ask for another lawyer of your choice, you most likely
22 will not be allowed to repeat any part of the case already done or
23 completed without a lawyer. Do you understand that?

24 THE DEFENDANT: Yes, ma'am.

25 MR. GILL: Your Honor, can I interpret briefly --

1 THE COURT: Yes --

2 MR. GILL: -- on the --

3 THE COURT: -- Mr. Gill.

4 MR. GILL: -- standby. I want it to be very clear to Mr. Porter.
5 You mentioned errand boy early, standby counsel is not errand boy. I'm
6 not going to --

7 THE COURT: Right.

8 MR. GILL: -- as far as his phone calls go, I will take them
9 when I can.

10 THE COURT: Sure.

11 MR. GILL: But I am not at his beckon call, and I'm not his
12 errand boy. I want that very clear for the record.

13 THE COURT: So sometimes this gets a little bit murky for
14 defendants, because while Mr. Gill is your standby counsel, and he'll be
15 there to sit next to you, if you have a question you can turn and ask him.
16 He is no longer your attorney, so he's not going to go run and get
17 documents, he's not going to go and gather witnesses, he's not going go
18 and do all of those things. Those are now your job to do. Do you
19 understand that?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Okay.

22 THE DEFENDANT: I would ask that at the expense of the
23 State -- when I'm able to write the courts for any type of legal assistance,
24 which I have the right as well to write the court for any type of legal
25 assistance. That the courts assist me in receiving transcripts --

1 THE COURT: Sure. So let -- I want to talk about something.
2 So that's what I'm talking about, I can't give you legal assistance.
3 THE DEFENDANT: Right.
4 THE COURT: Now if you're saying --
5 THE DEFENDANT: Well --
6 THE COURT: -- let's say you write and you want a transcript?
7 THE DEFENDANT: Right.
8 THE COURT: Just like another lawyer, you need to do a
9 motion for a transcript, explain what transcript it is, and explain why you
10 need it, and then I'll -- look at those motions.
11 THE DEFENDANT: Right. And -- I apologize, ma'am. With
12 all due respect that's why I meant -- or I mean, --
13 THE COURT: Okay.
14 THE DEFENDANT: -- I file a motion.
15 THE COURT: Understood.
16 THE DEFENDANT: Yes, ma'am.
17 THE COURT: So the court finds, based upon the totality of
18 the circumstances, --
19 MS. LUZAICH: Before you go there, I just want put one thing -
20 -
21 THE COURT: Ms. Luzaich, yes.
22 MR. LUZAICH: -- in. He just needs to understand, because
23 that court asked him about testifying, if he testifies, his murder conviction
24 can be used to impeach him.
25 THE DEFENDANT: Well I -- would get back and file a motion

1 that will allow me to exclude the testimony of the murder trial, because it
2 was severed from the case. And -- I feel that it has impact on if the jury
3 hear it --

4 THE COURT: Sure.

5 THE DEFENDANT: -- that it could bring harm to my defense.

6 THE COURT: And I understand --

7 MS. LUZAICH: Okay.

8 THE COURT: -- that. So --

9 MS. LUZAICH: Just so we're clear. The State has no
10 intention of bring the evidence --

11 THE COURT: Yeah.

12 MS. LUZAICH: -- of the facts of the murder in --

13 THE DEFENDANT: Oh.

14 MS. LUZAICH: -- but if the defendant choses to testify the
15 State can use the conviction to impeach. And the State knows that all I
16 can ask is where you convicted of second degree murder, and whatever
17 else it was, in the Eighth Judicial District Court on whatever the date
18 was.

19 THE COURT: So if you testify under that law in Nevada, no
20 matter what, if you have a felony conviction within the last 10 years, the
21 State does get to get into it. It doesn't matter if it was severed. They
22 can't get into the facts --

23 THE DEFENDANT: You said over the last 10 years?

24 THE COURT: If --

25 MS. LUZAICH: Well --

1 THE COURT: Well if you're -- still serving a sentence, so --

2 THE DEFENDANT: Oh, okay.

3 THE COURT: -- let me put it this way. Yes, they would be
4 able to get into it, because you're --

5 THE DEFENDANT: Still --

6 THE COURT: -- serving --

7 THE DEFENDANT: -- serving.

8 THE COURT: -- on that. So if you --

9 THE DEFENDANT: When you--

10 THE COURT: -- represent -- excuse me, not if you represent
11 yourself, but if you testify the State will be allowed to ask in front of the
12 jury have you been convicted of a felony, what were the charges, and
13 when.

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Okay.

16 THE DEFENDANT: I understand that.

17 THE COURT: So that court finds, based upon the totality of
18 the circumstances, that defendant has waived his right to counsel
19 knowingly, intelligently, competently, and voluntarily as he desires to
20 waive the right to representation by an attorney and to represent himself.
21 The court further finds that the defendant has a full appreciation and
22 understanding of the waiver and its consequences. Accordingly, it is
23 ordered that the defendant's waiver of the right to counsel is accepted.
24 And from this point forward Mr. Porter will represent himself.

25 THE DEFENDANT: Thank you.

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MR. GILL: Thank --

THE COURT: All right.

MR. GILL: -- you, Your Honor.

THE DEFENDANT: Mr. Adam?

MR. GILL: Yes, sir.

THE DEFENDANT: May I shake your hand, sir, so you don't
hold no grudges towards me.

MR. GILL: No grudges.

[Hearing concluded at 11:34 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the
audio/video proceedings in the above-entitled case to the best of my
ability.


De'Awna Takas
Court Recorder/Transcriber

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

Justin Porter #1042449
P.O. Box 650 (HDSB)

AUG 12 2019

Indian Springs, NV 89010

BY: 
KEITH REED, DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Application of

CASE NO. C174954

JUSTIN D. PORTER aka Jug Capri Porter

DEPT. NO. 6

for a writ of Habeas corpus.

PETITION FOR WRIT OF HABEAS CORPUS

To: The Honorable Judge of the Eighth Judicial District Court of
the State of Nevada, in and for the County of Clark:

Comes now, Defendant JUSTIN PORTER, in Pro Se, and
files this Petition for writ of Habeas corpus.

This Petition is based upon the attached
Declaration of Justin Porter, the Memorandum of points
and Authorities, the constitution of the United States and
the State of Nevada, and the statutory law of the State
of Nevada.

DATED this 12 day of August, 2019.

Respectfully submitted,

By: Justin Porter

Justin Porter #1042449
Defendant, in Pro Se

01C174954
PWHC
Petition for Writ of Habeas Corpus
4856201



1 DECLARATION

2
3 STATE OF NEVADA

4 } SS

5 COUNTY OF CLARK

6
7 JUSTIN D. PORTER, makes the following
8 declaration:

9
10 1. I am the defendant in Pro se in the
11 State of Nevada; I am the defendant that is assigned
12 to represent myself in the instant matter, and I am
13 familiar with the facts and circumstances of this
14 case.

15 I declare under penalty of perjury that
16 the foregoing is true and correct. (NRS53.045 and
17 U.S.C. § 1746).

18
19 EXECUTED on this 12 day of August 2019.

20
21
22 Justin Porter
23 Justin Porter

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STATEMENT OF THE CASE

Petitioner JUSTIN D. PORTER was originally charged by way of Amended criminal complaint (Filed August 22, 2000) with Fifty eight crimes relating to thirteen separate incidents and sixteen different victims over a time period ranging from February 1, 2000 through June 9, 2000. Following a lengthy Preliminary Hearing lasting ten court days, the Petitioner was held to answer on forty-two crimes relating to nine separate incidents involving twelve different victims over the same time period. ON October 11, 2001 A Amended Information was Filed in open court. ON May 15, 2008, Motion for severest was filed to sever counts 30-32 from remainder of the charges. ON June 18, 2008, the Court ordered the murder event to be tried separately. ON May 8, 2009 A Jury Found defendant guilty of Just Second degree murder with the use of A deadly weapon, Found not guilty of counts 1 AND 2. Petitioner Remains with unprosecuted charges to this day, and Petitioner has had numerous Reschedules for Trial dates. Date for Trial is scheduled for September 26, 2019.

For purposes of this writ, each incident will be briefed separately.

STATEMENT OF ISSUES

ON OR About, September 19, 2007 Petitioner appeared before the Honorable Judge LEE A. GATES, and DEMANDED A TRIAL. The Judge acknowledged the Petitioner's DEMAND.

On or about November 22, 2010 Petitioner appeared before the Honorable Judge ELISSA F. CADESH, and [AGAIN] DEMANDED A TRIAL. The Judge acknowledged the Petitioner's DEMAND.

And Also see petitioner's 'MOTION For Dismissal For Lack of Speedy and Timely Prosecution,' Received by this Honorable Court Clerk, on or about the 16 day OF June, 2016.

And petitioner Filed the motion to dismiss Counsel / Motion to dismiss for Speedy Trial Violation, May 31, 2017. And on or about July 5, 2017 motion was heard, and Again petitioner asserted his rights to a speedy trial.

And petitioner again asserted his rights to a speedy trial on or about August 15, 2018 OR August 8, 2018.

It is clear that the Petitioner's 6th Amendment OF the U.S. Const. has been Violated.

POINTS AND AUTHORITIES IN SUPPORT
OF PETITION FOR WRIT OF HABEAS CORPUS

ARGUMENT

ON the day of September 19, 2007 Petitioner demanded a Trial. A demand is a necessary condition of the right to a speedy Trial; and such an approach, by Presuming waiver of a "Fundamental Right" from inaction is inconsistent with the United States Supreme Court's pronouncements on waiver of Constitutional Rights. *Barker v. Wingo*, 407 U.S. 514, 530 (1972).

It's been 19 years, and Petitioner has unprosecuted charges, which is a violation of Petitioner's 6th Amendment Right to the United States Constitution. Petitioner is prejudiced by the delay.

ON the day of November 19, 2010 Petitioner made another demand for trial. The demand for a Trial is a right to a speedy Trial. *Barker v. Wingo*, 407 U.S. 514, 530 (1972).

Because it's been 19 years, Petitioner **ABILITY TO DEFEND HIMSELF** is not possible, and Petitioner had the hand of prejudice take away his ability to defend himself. *Doggett v. United States*, 505 U.S. 647, 651-52 (1992); *Barker v. Wingo*, 407 U.S. 514, 530 (1972).

1 ON the day of, June 16, 2016 this Honorable Court Received
2 the motion to dismiss FOR LACK OF Speedy and timely
3 PROSecution. It was sent to Petitioner's counsel,
4 counsels knew that Petitioner DEMANDED to
5 have a trial, everyone OF Petitioner's counsels.
6 Because counsels knew that Petitioner wanted
7 a trial, but counsels FAIL to do so violated
8 Petitioner's rights to Effective assistance of counsel.
9 Strickland v. Washington, 466 U.S. 668 (1984). Also
10 violated Petitioner's 6th Amendment Right to Speedy
11 Trial ACT. Petitioner never consented to, nor
12 believe that there was sufficient cause shown
13 by either party, OR ever a AFFIDAVIT or APPLICATION
14 even motion to postpone his "demand for trial". NRS 174.515.

15 ON May 31, 2017 Petitioner Filed A motion to dismiss Counsel
16 / Dismiss For speedy Trial violation. And on or about July 5, 2017
17 motion was heard, and again Petitioner 6th Amendment right
18 to the U.S. Const., was violated. Barker v. Wingo, 407 U.S. 514,
19 530 (1972).

20 And Petitioner asserted his rights to a
21 Speedy Trial on OR about August 15, 2018 OR on the
22 day OF August 8, 2018. Petitioner's U.S. Const amend,
23 OF 6th Amendment was violated again. Barker V.
24 Wingo, 407 U.S. 514, 530 (1972).

25 It is clear that the Petitioner's
26 6th Amendment OF the U.S. Const. has been violated.

1 Petitioner made numerous demands to have a
2 trial. It's been 19 years, this lengthy
3 delay is not the Petitioner's FAULT. The state has
4 the duty of bringing a defendant to a trial, as well
5 as the duty of insuring that the trial is
6 consistent with "due process". The Petitioner
7 has no duty to bring himself to trial. *Barker V.*
8 *Wingo*, 407 U.S. 514, 530 (1972).

9 The sixth Amendment's guaranty to an accused of
10 the right to a speedy trial is "Fundamental" and is
11 imposed by the due process clause of the Fourteenth
12 Amendment on the STATES. THE primary burden
13 is on the courts and the prosecutors to assure
14 that cases are brought to trial. A defendant's
15 assertion of his right to a trial is entitled to strong
16 weight in determining whether he has been
17 deprived of his right. *Barker V. Wingo*, 407 U.S. 514,
18 530 (1972).

19 THE STATE COURT, equally with Federal
20 Court, and are under an obligation to guard and
21 enforce every right secured by the Federal
22 Constitution. This Honorable court must and
23 shall also will protect Petitioner Constitutional
24 rights. *MOONEY V. HOLOHAN*, 79 LEd 791, 294 U.S. 103-
25 115 (1935).

1 CONCLUSION

2
3 Based upon the Foregoing, it is
4 Respectfully Requested that all unprosecuted
5 Charges, OR as well as Criminal Complaints,
6 Informations and OR Indictments, must and
7 Shall also will be Dismiss with PREJUDICE.
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RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,)	
)	
Plaintiff(s),)	CASE NO. 01C174954
)	
vs.)	
)	DEPT. NO. VI
PORTER, JUSTIN D.,)	
)	
Defendant(s).)	
_____)	

BEFORE THE HONORABLE JACQUELINE M. BLUTH,

DISTRICT COURT JUDGE

WEDNESDAY, SEPTEMBER 18, 2019

RECORDER'S TRANSCRIPT OF HEARING:
ALL PENDING MOTIONS

APPEARANCES:

For the Plaintiffs:	ELISSA LUZAICH
For the Defendants:	JUSTIN PORTER
	ADAM L. GILL
	(Standby counsel)

RECORDED BY: DE'AWNA TAKAS, COURT RECORDER
TRANSCRIBED BY: ALLISON SWANSON, CSR No. 13377

1 Las Vegas, Nevada, Wednesday, September 18, 2019

2 [Case called at 11:59 a.m.]

3 *****

4 THE COURT: All righty. So let's call -- oh, are
5 we -- sorry. Are we on?

6 THE COURT RECORDER: Yes.

7 THE COURT: All right. Let's call the Porter matter
8 first, which is page 5, C174954. Mr. Porter is present, in
9 custody, representing himself. Mr. Gill is here as standby
10 counsel. Ms. Luzaich on behalf of the State.

11 All right. So I -- I read all of Mister --

12 THE DEFENDANT: Excuse me, ma'am.

13 THE COURT: Mm-hmm.

14 THE DEFENDANT: For the record, on the day of
15 September 16, 2019, which was Monday, I was actively at the
16 court in the holding cells where we're being held for court
17 and, all of a sudden I'm told by the officer when they come
18 to get us to leave, that I was booted today.

19 THE COURT: Yes.

20 THE DEFENDANT: And I -- I would like to know what
21 reason was that because that's a due process violation because
22 I am representing myself and any time I have the right to
23 organize the organization of my case and the conduct of it, I
24 have to be able to hear the process of it. And I was not.

1 THE COURT: So --

2 THE DEFENDANT: And I don't know what happened.

3 THE COURT: Because I was in a trial on Monday with
4 an evident -- excuse me. 'Cause I was in trial on Monday, and
5 I knew this was going to take a considerable amount of time,
6 and I was in the middle of a two-week trial. And on Monday I
7 was still on the first witness. And so there was no way I was
8 going to keep that jury from waiting. So I moved it till
9 Wednesday.

10 THE DEFENDANT: And I was not informed. And that
11 day was the day that we were supposed to hear from the
12 opposition of the prosecution to my motions and my pretrial
13 writ. And I know the Court needs no reminders of judicial
14 ethics, and I'm just trying to make sure the Court is
15 impartial and fair and diligent and they're seekys (phonetic)
16 of law.

17 THE COURT: And the what?

18 THE DEFENDANT: In the seekings of law.

19 THE COURT: Mm-hmm.

20 THE DEFENDANT: And findings of law. And my only
21 thing is now I received, from the bailiff today, the
22 opposition, which was filed today. According to the
23 Eighth Judicial District Court rules, when -- pursuant of
24 Rule 3.20, when motions are being filed -- and I'm supposed to

1 have, after they're filed, supposed to have seven days for --
2 to have an opposition. And any time that has not been handed
3 to me or -- at a certain amount of time, then it's already a
4 confession of error.

5 And today I'm receiving a stamp file copy today, which
6 was, I guess, done in court today is the 18th of --
7 September 18, 2019, which now I notice that this is what I'm
8 being handed. And my lawyer -- my standby counsel come trying
9 to hand me papple -- paper -- paperwork and some type of source
10 of paper that I didn't receive because he said it was from the
11 DA.

12 And I felt as though I wanted a stamp file copy, and I
13 don't know if he's in -- acted in concert with the DA or
14 District Attorney or what's going on, but as far as that
15 matter, and he's upset with me. You know, he -- he kind of
16 got mad with me when I asked him to come here to speak to him
17 about some things. He's just brushing me off. But I
18 understand. He's ineffective in his own way.

19 But the whole thing that I'm trying to come to now is I
20 don't want to overlook the Court with so much words, you know,
21 stress myself. You just got to just take your time with me,
22 man. And I know you -- you know a little bit more about law
23 than I do. But at the same time, I also -- even with the --
24 the writ of habeas corpus, the writ of habeas corpus ruled

1 3.40 of Eighth Judicial District Court rules as well that in
2 ten days of the filing of -- of, you know, the -- the writ
3 that they were supposed to respond.

4 The -- the Courts gave the District Attorney well over a
5 month. I did not consent to them getting a month. But now
6 here we are. And Monday I didn't come to court -- I mean,
7 well, I was here, but they didn't bring me up because of the
8 Court's issue, which has nothing to do with me. I just have
9 just as much equal protection as anybody else and I do have
10 due process of the law myself. And I'm just asking for my due
11 process of law and, you know, the Courts should have taken
12 consideration what the Defendant is saying.

13 THE COURT: Okay. And how were your due process
14 rights violated by --

15 THE DEFENDANT: Well, Your Honor --

16 THE COURT: -- moving this from Monday to Wednesday?

17 THE DEFENDANT: Because I wasn't informed of the
18 continuance. Any time -- the United States Supreme Court
19 recognize that any time that a Defendant that's representing
20 himself, he has every right to be present at every stage of
21 the proceedings.

22 THE COURT: Right. And it wasn't a stage. It was
23 moved.

24 THE DEFENDANT: Right. Well --

1 THE COURT: So there was no case.

2 THE DEFENDANT: The proceedings as well, Your Honor.
3 Because any time you continue and I'm supposed to be at court,
4 then you're taking away my right to be here to deny or confirm
5 the continuance. And I understand the Court's --

6 THE COURT: You can't deny the continuance.

7 THE DEFENDANT: Well, I understand the Courts have
8 they -- they -- they -- they jurisdiction of how they do
9 things. I understand that, ma'am. But at the same time I
10 realize that if I don't speak upon these and put it on the
11 record and I have no chance to say "Hey, listen, I spoke about
12 this years ago," or the time being, at the time.

13 THE COURT: Okay. Ms. Luzaich, do you have anything
14 to say to that?

15 MS. LUZAICH: Just as far as the opposition -- I do
16 apologize. I was in a two-week trial. I was in trial before
17 that. I had sent it to the Court's chambers yesterday before
18 I filed it. I handed Mr. Gill, because I saw him be -- long
19 before court started, a copy so that he could give it to the
20 Defendant so he would have at least the opportunity to review
21 it.

22 I filed it in court this morning. Apparently he didn't
23 want to take it earlier this morning. He took it from your
24 bailiff -- or your marshal.

1 And I filed one opposition to all the motions. As I look
2 at the calendar, I see there's a motion to suppress. I -- I
3 don't have a motion to suppress and I didn't see it in
4 Odyssey. I did not respond to that. I don't -- I don't know
5 what the grounds are, but I will tell the Court that, years
6 ago, with Mr. Abood and Mr. Brown, we litigated, at length,
7 all suppression issues. We had a multi-day evidentiary
8 hearing where the State called quite a few witnesses and the
9 Defense called quite a few witnesses --

10 THE DEFENDANT: Uh --

11 MS. LUZAICH: -- and we briefed --

12 THE COURT: Just one sec. You had your chance.

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: The underlying support for that is
15 because there was no arrest warrant, he was illegally arrested
16 in his house and, therefore, all the evidence obtained was a
17 result of an unlawful invasion. And the statements made while
18 in illegal custody should be excluded.

19 MS. LUZAICH: Okay. They didn't -- I guess they
20 didn't litigate the -- whether or not it was a lawful arrest
21 in the apartment. Although, I don't know. I would have to go
22 back. I know that the -- after the evidentiary hearing, my
23 responded brief was 75 pages. So their opening brief would
24 have been over hundred pages. I don't -- I don't know if

1 that, specifically, was litigated. But I did not oppose
2 almost all of his motions. I only -- I mean, I had no
3 position or not opposition to anything except the writ of
4 habeas corpus and the motion to dismiss.

5 THE COURT: Go ahead.

6 THE DEFENDANT: Oh, and you said previously -- the
7 Prosecution said she sent the -- a copy to the chambers,
8 somebody in chambers?

9 MS. LUZAICH: A courtesy copy to the law clerk,
10 which is --

11 THE DEFENDANT: Okay.

12 MS. LUZAICH: -- what we do every time.

13 THE DEFENDANT: All right. 'Cause I just wanted to
14 make sure I heard that clear.

15 As I've been saying, Your Honor, from the beginning, with
16 the -- the motion to suppress, of course, you know, all we
17 have to do is get the -- the data, the issuings of the arrest
18 warrant and compare it to the time that I was illegally
19 obtained.

20 And it shows in Matt versus Ohio, clearly, that you --
21 any time somebody is taken illegally from their home and
22 seized, anything that the State has received from the illegal
23 obtaining of the Defendant, then, therefore, they cannot use
24 it at all in any proceedings, whether it's evidentiary

1 hearing, trial, or anything of such matter. Because it's
2 illegally obtained. It's a violation of the 4th Amendment.

3 THE COURT: Okay.

4 THE DEFENDANT: I actually have the arrest warrant.
5 Or would Your Honor look for herself?

6 THE COURT: No. No. I'm okay.

7 MS. LUZAICH: There was -- there was testimony
8 during the course of the evidentiary hearing on the entry into
9 and the arrest of the Defendant. I just don't know if we
10 specifically briefed that one tiny issue or not. And that
11 would have been back -- well , it was in front of
12 Judge McGroarty. That's how long ago it was.

13 THE DEFENDANT: Yeah, that's true. But even in the
14 process of -- what was stated at the hearing was that they
15 did, Officer Kato, I believe it was, stated in his -- because
16 I don't think you did the preliminary hearing.

17 MS. LUZAICH: Oh, I -- I did all of it.

18 THE DEFENDANT: You -- you was there for the
19 preliminary hearing? Okay. I'm sorry.

20 At the preliminary hearing -- oh, I got to go look back.
21 Officer Kato stated (indiscernible) number of other officers
22 that I can't remember, that said they were -- it was -- I
23 remember from the transcripts that I was reading, that it was
24 a search warrant on the premises, but they didn't know who had

1 it. But he said "Oh, I realized it was when I seen one, but
2 I don't know who had it at the time."

3 Even entering the dwelling of my grandmother's building
4 and coming to the front of my door, even the door was knocked
5 off the hinges. My stepmother, she could contest -- I mean,
6 she could -- she could confirm what I'm saying. Even when
7 officer speaks and says on -- on -- at the hearing that the
8 door was open by a -- a female.

9 And when the door was opened, they asked where I was.
10 And she looked and she indicated or hinted that I was
11 somewhere. That's not giving you the -- the right to enter
12 anyone's dwelling because they look somewhere. Mere look
13 alone doesn't just say "hey, you can come right in."

14 They say once the look was indicated where I was, they
15 walked past her, came into the house -- I mean, apartment, at
16 that time, put me in handcuffs, took me out -- other officers
17 had they -- their weapons drawn. Took me up and then took me
18 to the precinct.

19 And I believe my lawyer asked, well, was I able to leave?
20 And they said, "No, he wasn't able to leave because we -- we
21 had, at that time, restrain him." Only be (indiscernible).

22 THE COURT: Okay. But was this matter already
23 litigated?

24 THE DEFENDANT: No, not this matter. Not the

1 illegal seizure. They did -- since I was a juvenile, they did
2 something -- I forgot what was the other hearing. What was
3 the other hearing?

4 MS. LUZAICH: There were numerous hearings.

5 THE DEFENDANT: Numerous hearings. But it was
6 another hearing. This is not one of the matters that was
7 brought up.

8 MS. LUZAICH: Can we -- can we at least put this --
9 today's Wednesday; right? Could we put this over -- this
10 issue over till Monday and I'll pull the briefs --

11 THE COURT: Because I'm not gonna relitigate
12 something that was already litigated.

13 THE DEFENDANT: Well, it wasn't relitigate -- I
14 mean, it -- it's not -- it wasn't litigated at first. It
15 never was. That's why it's a new issue --

16 MS. LUZAICH: That's why --

17 THE DEFENDANT: -- I'm bringing up.

18 MS. LUZAICH: That's why I ask --

19 THE DEFENDANT: It was never brought forward.

20 THE COURT: Just -- okay.

21 MS. LUZAICH: That's why I asked if we could have
22 just till Monday -- or Friday. Whatever the Court wants, so
23 that I can find the -- the briefs and see what was litigated.

24 THE COURT: Okay. So let's -- let's stop with that

1 (indiscernible).

2 THE DEFENDANT: Okay.

3 THE COURT: So in regards to -- I'm gonna go in the
4 order that I have it in my file. So the petition for writ of
5 habeas --

6 THE DEFENDANT: Excuse me, ma'am. Before you
7 proceed on with that, because I have to say this and I have to
8 get this on record, for the record, ma'am.

9 THE COURT: What.

10 THE DEFENDANT: Like I said, it's meritorious and
11 it's a confession --

12 THE COURT: Wait. What are you talking about? What
13 is meritorious?

14 THE DEFENDANT: A confession of error of me filing
15 all my writ of habeas corpus, my motions, and not having 'em
16 answer at the appropriate time when they were supposed to be
17 answered. Due to any -- due to the hands of the -- the
18 prosecutor's attorney saying she was on, I guess --

19 THE COURT: In another trial. So it's --

20 THE DEFENDANT: No, she didn't say she was in
21 another -- she said she was on vacation.

22 MS. LUZAICH: I most certainly did not.

23 THE COURT: No, she didn't. She just said she was
24 in back to back trials.

1 MS. LUZAICH: I was in trial.

2 THE COURT: Here's the deal --

3 THE DEFENDANT: No, I'm talking about on -- on the
4 day of August 12th. She said, Your Honor, I -- I haven't --
5 when -- when -- when the motions came, she said to
6 Your Honor -- I had then filed the motions previously in July.
7 And all the motions that I was filing before I was having the
8 problem with the Clerk of the Courts -- Clerk of the Courts to
9 have my motions filed, that's when I filed the motion to have
10 them to stop -- have -- have the Clerk of the Courts to start
11 filing my motions because they weren't letting me at first.

12 THE COURT: Okay. But you want to talk about EDCR
13 3.20. And EDCR 3.20 says that any motion that you file must
14 have a points of -- points and authority section --

15 THE DEFENDANT: I --

16 THE COURT: -- with the law. Every -- almost every
17 single one of these, except your motion to suppress, does not
18 have any points and authorities.

19 THE DEFENDANT: And my writ of habeas corpus had
20 point of authority -- points of authority, ma'am.

21 THE COURT: All right. So then we're going to go to
22 your petition of writ of habeas corpus --

23 THE DEFENDANT: Thank you.

24 THE COURT: -- that was filed on August 12th of

1 2019. So let me pull it up.

2 THE DEFENDANT: Yes, ma'am. I don't mean to make
3 the Courts mad at me. Just asking --

4 THE COURT: Well, you just have to follow the same
5 rules as you're telling her --

6 THE DEFENDANT: Yes, ma'am. Yes, ma'am.

7 THE COURT: -- that she needs to file [sic].

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Okay. So you are discussing that your
10 right to a speedy trial has been violated because you've been
11 held here for 19 years on unprosecuted charges. And you cite
12 Docket, which is some -- which is a Supreme Court case.

13 But when I have gone back and looked through the history
14 of this case, sir, it seems like in every stage of this
15 process, you have been the reason that this has been continued
16 over and over and over again. Especially your failure to get
17 along with counsel in multiple times. So how is this a State
18 issue?

19 THE DEFENDANT: Ma'am, on the day of September --

20 MS. LUZAICH: And I apologize. Just for purposes of
21 recordkeeping, if you're talking about his petition for writ
22 of habeas corpus, a pretrial petition must be filed within
23 21 days of the first appearance of district court. So I would
24 ask you to deny it as untimely. And you're going to rule on

1 the speedy trial, I would ask you to rule on it under the
2 motion to dismiss, just for recordkeeping.

3 THE DEFENDANT: According to the -- the -- according
4 to Rule 3.4, it doesn't state anything about 20 days after
5 being arrested or anything.

6 THE COURT: All -- all petitions for writ of habeas
7 corpus, unless they're post conviction, have to be filed
8 within 21 days.

9 THE DEFENDANT: All right. Yes, ma'am. Okay. All
10 right. I need to go back and look at my facts.

11 THE COURT: So if you wish to file a motion to
12 dismiss or if you're asking me to -- if you're ask -- so we
13 don't need to come back here, if you're asking me to handle
14 this state as a motion to dismiss --

15 MS. LUZAICH: I have a motion to dismiss that the
16 Defendant filed with those same grounds.

17 THE DEFENDANT: Yep.

18 MS. LUZAICH: Does the Court not have it?

19 THE COURT: Yeah. No. No. I do. So -- all right.
20 So the Defendant's petition for writ of habeas corpus is
21 denied in regards to the timeliness aspect.

22 So now we can go down to the motion to dismiss --

23 MR. GOODWIN: Okay.

24 THE COURT: -- which is August 12th of 2019. So let

1 me pull that up on my computer.

2 All right. And in regards to your motion to dismiss, did
3 you wish to be heard?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Okay. Go ahead.

6 THE DEFENDANT: As I simply was saying, I also
7 have -- I'm sorry about the speaker. Yeah. I have -- the
8 days that you say where it's all contributed to me, ma'am, on
9 the day of -- let me go to my -- excuse me. Okay. Take my
10 time here, Your Honor. Apologize. I have -- okay. Here we
11 go.

12 On the day of September 19, 2007 -- also the Barker
13 versus Wingo, states that any time a Defendant demands to have
14 a trial, a demand is simply a right for a speedy trial. And
15 on the day of September 19, 2007, I appeared before Judge Lee
16 Gates and I demanded a trial. The DA knows, as well as
17 counsel know, I demanded to have a speedy trial.

18 Not only did I demand then, but I demand again also in
19 front of Cadish, Judge Cadish. And that was on the date of --
20 on the day of November 19, 2010, I demanded, again. And the
21 demand was for trial -- for a speedy trial. I was not
22 accommodated to me.

23 And then on the day of June 16, 2016, again, I -- I tried
24 to file a motion for timely -- motion to dismiss for lack of

1 speedy and timely prosecution. Again, they sent it to my
2 counsel. I asked my counsel to file the motions. I even
3 asked Mr. Adam Gill. I even sent requests to all counsels,
4 through the Clerk of the Courts to send to counsel to make the
5 request. Because all I ever heard from Your Honor and other
6 judges is that it's up to my counsel to do it.

7 So I'm making requests upon my counsel and all they
8 trying to do is offer me deals. And I'm telling, I don't want
9 no deal. I want to go to trial. I invoke my right to a
10 speedy trial. I want to do trial. I even wrote letters to
11 the prosecuting attorney to let her know, "Hey, all my
12 counsels is violating my constitutional right. And the -- and
13 the judge is still not getting 'em off my case."

14 Curtis Brown and Joseph Abood, they declined to represent
15 me. They walked away themselves. I didn't fire them. I -- you
16 never see no motion on file for me firing them. Adam Gill --
17 I mean, Jeff Maningo, I tried to fire him and the judge denied
18 that motion. Then he turn around, months later, he withdraw
19 himself, tell the judge -- and if -- if the honor -- if
20 Your Honor want to get the record and see that the proceedings
21 for -- for me getting rid of him, if I'm correct, the days
22 that he was -- withdrew, I think it was August 15th or
23 August 8th, he -- he removed himself from my case on his own.

24 And then he told the Court lies that I said a certain

1 thing and then turn around when I say, "No, I didn't say
2 that." Then he confirm with the Court, "Yes. No, he didn't
3 tell me that." So once again -- and then I tell the judges --
4 the judge, Cadish, I said, "I -- I don't mind going to trial
5 with him" 'cause he was telling her I might put a pencil in
6 his neck or something like of that matter. And I said, "No,
7 I'm not gonna do that. I just don't want him saying I'm gonna
8 do something."

9 He saying that I'm -- I'm -- I'm talking crazy to him on
10 the phone. And then he saying I -- he never even heard me say
11 anything to him. I just called one of the head district -- I
12 mean, not district, public defenders and I made a request that
13 he file motions for me and stop playing and just file the
14 motions.

15 So he took it upon himself to come to the courts, months
16 later, and say, "Oh, he was" -- I was threatening him. And
17 then he didn't hear me threaten him. And so much went on in
18 that proceeding that the judge -- finally, when I say I -- I
19 don't mind going to trial with him, then the judge say -- but
20 I -- I told the judge that I don't mind -- I'm gonna speak up
21 for my rights. And any time he's not doing something right,
22 I'm gonna speak out on him. And I don't mind going to trial
23 with him.

24 First thing the judge did say, "No. No. No. No. No.

1 I'm -- I'm gonna get rid of him." Then they give me
2 Adam Gill. And when I get Adam, I sent Adam numerous
3 requests, file it -- file this motion. I even have them with
4 me today. File for speedy trial for -- for -- for
5 constitutional violation of my 6th Amendment. He never
6 accommodate that. He never accommodate me.

7 I wrote letters to the District Attorney -- I wrote
8 letters to the District Attorney allowing the
9 District Attorney understand that, hey, my counsel had
10 evidence that I'm trying to receive. My counsels are not
11 filing or they are not going to get any evidence that I
12 don't -- that I don't even know who my investigator is. I'm
13 trying to get things done.

14 All they keep telling me is "take a deal," "take a deal,"
15 "take a deal." And I'm trying to complain to him. I'm trying
16 to get things done. And nobody's accommodating.

17 THE COURT: All right. But here's the thing. You
18 waived your right to a speedy trial on May 2nd of 2001.

19 THE DEFENDANT: And -- and it wasn't --

20 THE COURT: This matter has been on several times --

21 THE DEFENDANT: Right.

22 THE COURT: -- in fact, every time you've attempted
23 to fire your attorneys, the State has been objecting to it
24 because they wanted to keep this case moving. So you've made

1 your record --

2 THE DEFENDANT: No, ma'am. I don't remember nobody
3 to prosecuting attorney object. Is that on record? Do I
4 need --

5 THE COURT: Ms. Luzaich?

6 MS. LUZAICH: Every single time the Public
7 Defender's Office -- originally Joe Abood and Curtis Brown
8 represented the Defendant --

9 THE DEFENDANT: Yeah.

10 MS. LUZAICH: -- he waived his right to a speedy
11 trial, as the Court indicated in 2001. We litigated numerous
12 severance going back to -- or going -- remanding to juvenile
13 court. And ultimately, Judge Gates severed the murder
14 incident from the rest of 'em.

15 We actually went to trial on the murder incident. So
16 when he's mentioned in 2007 and 2009 that he was requesting a
17 speedy trial, we wanted to try it all along. But when the
18 judge severed it, we went to trial on the murder in -- after
19 he had asked for his speedy trial.

20 After that, the Defendant got violent with Mr. Abood.
21 That's why Mr. Brown and Mr. Abood stopped representing the
22 Defendant. I objected even to that. I -- I mean, I -- just
23 because I felt that I needed to move the case along and it
24 shouldn't exclude the entire Public Defender's Office. And

1 that is why Mr. Min -- usually when a public defender
2 withdraws, the whole office is --

3 THE COURT: Right.

4 MS. LUZAICH: -- is taken from the case. But
5 because I had objected, they at least put Mr. Maningo and
6 Mr. Basher on it. And we litigated things. And, yes, we did
7 try to resolve the case because this is a case that very
8 easily could resolve due to the overwhelming nature of the
9 evidence.

10 But anyway, so there was a situation where Mr. Maningo
11 represented to the Court that Mr. Richards, Darren Richards,
12 who was the number two in the office at the time, got a phone
13 call from the Defendant where in Mr. Basher and Mr. Maningo
14 were threatened. And I objected to them being removed from
15 the case.

16 At that point I wanted an evidentiary hearing. But
17 Judge Cadish did remove them from the case. And that's when
18 Mr. Gill was appointed.

19 So I have tried to move this case through the system for
20 almost all of the 18 years. I've been litigating it the whole
21 time it's been in district court. And as the Court indicated,
22 the Supreme Court said that you can't create your own
23 conflict, which is what I kept arguing about not taking the
24 attorneys off, but you also can't create your own prejudice --

1 oops -- so to speak.

2 Every time this case has been continued, it was at the
3 request of the Defense, whether it was investigation, whether
4 it was getting things together. We went so far as to -- I
5 have seven boxes of documentary evidence in this case and
6 audios and videos and we enabled the Defense investigator,
7 come over here and copy each and every thing.

8 So we have done everything we can to move this case
9 forward, short of forcing a judge to let us try the case. So
10 I -- I don't see that there's anything else that the State
11 could have done.

12 THE DEFENDANT: And I have to disagree with that,
13 Your Honor. Because I never threatened my attorney. Once
14 again, I never threatened him. And I only ask that -- and it
15 hasn't been 18 years, it's been 19 years. And a month,
16 roughly so -- and the Court's recognized, any time this --
17 it's not upon the Defendant to bring himself to trial, but
18 it's upon the prosecution attorney --

19 THE COURT: Right. And they've been trying.
20 They've --

21 THE DEFENDANT: And -- and I -- and -- and now --
22 and I'm saying, Your Honor, I've been trying. I've been
23 trying. I have documents right here --

24 THE COURT: Okay. No, I've heard enough on this.

1 THE DEFENDANT: Your Honor, let me --
2 THE COURT: No --
3 THE DEFENDANT: Can I enter --
4 THE COURT: No, that's not happening.
5 THE DEFENDANT: -- introduce my exhibits?
6 THE COURT: You're done. No. This is not a
7 hearing.
8 THE DEFENDANT: Because Defendant state he does not
9 want to --
10 THE COURT: Okay. Defendants --
11 THE DEFENDANT: -- to accept negotiation.
12 (Indiscernible) proceed to trial --
13 THE COURT: Mr. Porter --
14 MR. GILL: Stop.
15 THE DEFENDANT: That's all I'm saying this is --
16 THE COURT: No.
17 MR. GILL: No --
18 THE DEFENDANT: -- September 2000 --
19 MR. GILL: (Indiscernible) you've been told to stop.
20 THE DEFENDANT: (Indiscernible)
21 THE COURT: Defendant's motion to --
22 THE DEFENDANT: I'm just saying, Your Honor. I'd
23 like --
24 THE COURT: Do you need to go back?

1 THE DEFENDANT: No, I just need a moment to be able
2 to --

3 THE COURT: Because you --

4 THE DEFENDANT: -- make a record -- record.

5 THE COURT: Let me tell you what happens. If you
6 cannot abide by court rules, then you forfeit your right to
7 represent yourself. So when I tell you I'm done hearing
8 argument, I'm done hearing argument.

9 The Defendant's motion to dismiss is denied.

10 THE DEFENDANT: Okay.

11 THE COURT: I have looked through the previous
12 record. I have found the amount of continuances; I have found
13 the amount of times that you have failed to get along with
14 each and every attorney that you have been given. I was even
15 here when you made all the representations against Mr. Gill.
16 So Defendant's motion to dismiss is denied.

17 THE DEFENDANT: Excuse me, Your Honor. May I say
18 one thing --

19 THE COURT: No, you may not.

20 THE DEFENDANT: -- for the record?

21 THE COURT: No.

22 MR. GILL: No.

23 THE DEFENDANT: I'm not able to say that my
24 counsel --

1 THE COURT: No, you may not.

2 MR. GILL: No, have a seat.

3 THE DEFENDANT: I've -- I've been asking 'em --
4 well, can I -- may -- may I -- may I leave? Because I'm not
5 receiving the -- the --

6 THE COURT: No.

7 THE DEFENDANT: I understand. I understand what you
8 all doing. Understand. You failing to give me my due process
9 right and I'm not here to -- to cause any problems for the
10 Courts.

11 THE COURT: Okay. So --

12 THE DEFENDANT: But I'm here to defend myself. I --
13 I --

14 THE COURT: Are you (indiscernible) Mr. Porter? Can
15 we move on to your next motion or are you just -- are you --

16 THE DEFENDANT: Oh, yeah. I --

17 THE COURT: -- going to continue talking?

18 THE DEFENDANT: Okay. Next motion.

19 THE COURT: All right. So in regards to the motion
20 for transport of inmate report, the State has no opposition to
21 that. That's granted. The Defendant should be transported to
22 court for the substantive proceedings. He has a right to do
23 so.

24 In regards to the motion for stopping of sabotaging

1 Defendant's legal filing, I don't -- I mean, I don't even
2 really understand --

3 THE DEFENDANT: Act -- actually what was occurring
4 was I wasn't able to file my -- my -- my writ of habeas
5 corpus. And they filed it under a -- a different -- the --
6 the -- well, that judicial --

7 THE COURT: A different -- a different --

8 THE DEFENDANT: A different -- they end up filing on
9 a different case number.

10 THE COURT: Right. That's what happens in every --
11 every writ is assigned a different case number.

12 THE DEFENDANT: No, this was supposed to be for --
13 well --

14 THE COURT: No, I'm --

15 THE DEFENDANT: -- case number C174954. But they
16 turned it -- I mean, they changed it to A -- case number
17 A19798035, slash -- dash, W. So they changed it --

18 THE COURT: Okay. Mr. Porter, listen to what I'm
19 saying to you. Every petition for writ of habeas corpus is
20 assigned a new number.

21 THE DEFENDANT: Yes, ma'am. Okay.

22 THE COURT: Okay? So Defendant's motion for
23 stopping of sabotaging Defendant's legal filing is denied.
24 There is no sabotaging. Every case that files a petition for

1 writ of habeas corpus is given a different case number for
2 that writ.

3 THE DEFENDANT: Okay.

4 THE COURT: Everything else will be filed under the
5 case number that we have before us.

6 THE DEFENDANT: Okay. But -- yes, ma'am. What's
7 next?

8 THE COURT: The motion for appointment of
9 independent forensic expert.

10 THE DEFENDANT: Okay. Hold on. Motion for
11 independent -- okay. Got it.

12 THE COURT: So this is one of the ones that I was
13 discussing with you that does not have any points and
14 authorities showing me any law that backs up this claim.

15 THE DEFENDANT: I -- I apologize, Your Honor. If I
16 knew that I needed that all the way, I would have reverted
17 back to --

18 THE COURT: So if you wish --

19 THE DEFENDANT: Can the Court just give me a moment?

20 THE COURT: Well, no. I mean, the issue is, I don't
21 have points and authorities. So I can't rule on it.

22 THE DEFENDANT: Okay. I --

23 THE COURT: So this matter --

24 THE DEFENDANT: I would have to rewrite it back up,

1 ma'am.

2 THE COURT: Right.

3 THE DEFENDANT: Can I give an oral motion as of
4 right now, an oral motion?

5 THE COURT: So motion for appointment of independent
6 forensic expert is denied pursuant to 3.20 because --

7 THE DEFENDANT: Okay.

8 THE COURT: -- there is no points and authorities
9 attached. So I'm unable to evaluate the law that the
10 Defendant would base his argument on.

11 So next would be motion for appointment of investigator.
12 Also, again, there was no case law --

13 THE DEFENDANT: Okay.

14 THE COURT: -- points and authorities that support
15 this position.

16 THE DEFENDANT: Oh, (indiscernible).

17 THE COURT: So (indiscernible). So the motion for
18 appointment of investigator, again, pursuant to 3.20, is
19 denied. There were no supplemental points and authorities
20 attached explaining why the Defendant felt like this was
21 necessary or why those services were necessary.

22 So in order for me to be able to evaluate this, I need
23 the points and authorities that you're relying on. And I also
24 need to know exactly what you feel you need an investigator to

1 do. 'Cause that's something --

2 THE DEFENDANT: What --

3 THE COURT: -- that I have to evaluate.

4 THE DEFENDANT: Okay. Well, for the purpose of
5 having an appointed an investigator, I need to have an
6 investigator to go speak to people that I know that could --
7 that could testify to my behalf as well as receiving evidence
8 from me and --

9 THE COURT: What do you mean "receiving evidence"?

10 THE DEFENDANT: Well, I -- as far as I need to be
11 sure that -- it's somebody I know named Bill that would
12 testify to -- to -- to my -- him knowing certain people that's
13 supposed to be victims in this case. And he could testify to
14 certain things as to the matter of --

15 THE COURT: All right. So when you write your
16 points and authorities, write out what you need that --

17 THE DEFENDANT: Okay.

18 THE COURT: -- person to do and why.

19 THE DEFENDANT: All right. Yes, ma'am. Thank you.
20 What about motion for subpoena of witnesses?

21 THE COURT: So you -- you can't just file something
22 that says "witnesses to be subpoenaed."

23 THE DEFENDANT: Right.

24 THE COURT: So there's no case law, there's no

1 statute that you pointed, so there's no points and
2 authorities. And also, all these people say all "address
3 unknown."

4 THE DEFENDANT: Yeah, because I don't -- like I --
5 like I once said, Your Honor, I -- I've -- I believe most of
6 these people -- so I, the Defendant, could cross-examine them
7 and not only that, have certain people in here that I know
8 that could testify on my behalf to certain incidents and
9 things of that matter. And -- and on and on and on, more and
10 more.

11 I'm just -- right now, Your Honor, I'm just -- I need to
12 take a -- a moment to realize something.

13 Yeah. Yeah. Sorry about that.

14 People that's gonna testify in my -- in my -- in my
15 behalf. Whew. It's hot in here. I'm just about
16 (indiscernible) sweating.

17 Yes, Your Honor. Peoples gonna testify to places I've
18 been, where I was at, at the time that they say a lot of
19 this -- the incidents happened or the crimes that occurred and
20 a lot of these -- and certain things that certain people said
21 that I can prove that what they said was not the truth.

22 THE COURT: Okay. So when you -- if you'd like to
23 re-file that --

24 THE DEFENDANT: Okay.

1 THE COURT: -- get some points and authorities that
2 attach the law --

3 THE DEFENDANT: Okay.

4 THE COURT: -- and also you need to follow, when you
5 do find that law, what information you need to give --

6 THE DEFENDANT: Yeah.

7 THE COURT: -- so that the State does -- excuse me.
8 If the State does not oppose it or if the Court grants it,
9 then the individual would know where to find those. All
10 right.

11 THE DEFENDANT: Okay. Yes, ma'am.

12 THE COURT: So motion for information of misconduct.

13 THE DEFENDANT: Okay.

14 MS. LUZAICH: And -- and back to the witnesses. It
15 sounds like he is trying to present an alibi defense.

16 THE DEFENDANT: Yes, an alibi --

17 MS. LUZAICH: If he's gonna do that, he needs to
18 file --

19 THE DEFENDANT: -- alibi defense.

20 MS. LUZAICH: -- a notice of alibi and comply with
21 the statute.

22 THE DEFENDANT: Okay. And you said the other one
23 was --

24 THE COURT: Misconduct.

1 THE DEFENDANT: Misconduct. Okay. I got it.
2 (Indiscernible) information of misconduct.

3 THE COURT: So pursuant to 3.20, there are no points
4 and authorities attached in regards to the law that supports
5 this motion (indiscernible).

6 So motion to preserve evidence --

7 THE DEFENDANT: Pursuant -- oh.

8 THE COURT: Motion to preserve evidence is one page,
9 does not have any points and authorities that establish any
10 type of law to back up the Defendant's request. So it is
11 denied pursuant to EDCR 33.20.

12 Motion to --

13 THE DEFENDANT: What subsection? What section?

14 THE COURT: 3.20.

15 THE DEFENDANT: 3.20. Okay.

16 THE COURT: A party filing a motion must also serve
17 and file with it a memorandum of points and authorities in
18 support of each ground there of.

19 THE DEFENDANT: Yeah.

20 THE COURT: The absence of such memorandum may be
21 construed as an admission that the motion is not meritorious
22 or cause for its denial.

23 Moving on to the motion to compel Clerk of the Court to
24 file pro se Defendant's motions. I mean, we already discussed

1 the fact that the petition for writ of habeas corpus are given
2 different -- different case numbers.

3 THE DEFENDANT: Mm-hmm.

4 THE COURT: But, obviously, yes. Anything -- that's
5 granted because anything that the Defendant files, as long as
6 he files the appropriate documents, then --

7 THE DEFENDANT: Say -- say that again one more time,
8 Your Honor.

9 THE COURT: So the motion to compel the Clerk of the
10 Court to file pro se Defendant's motions is granted, as long
11 as you are following all the rules of the court in filing
12 those documents.

13 THE DEFENDANT: Okay. So you gonna grant that for
14 me, huh?

15 THE COURT: Yep.

16 THE DEFENDANT: That ain't got no authority to it.

17 THE COURT: Right. But I want you -- I don't want
18 to be on record as denying. You want me to deny your right to
19 file records?

20 THE DEFENDANT: No. No. No. No. No. What I'm
21 saying is, Your Honor, I see that all my other --

22 THE COURT: Yeah, because you're not following the
23 rules --

24 THE DEFENDANT: Yes, ma'am.

1 THE COURT: -- which is what happens when you
2 represent yourself.

3 THE DEFENDANT: I understand.

4 THE COURT: So that should be it. so the only thing
5 left is calendar call.

6 THE DEFENDANT: Okay. As far as you say the motion
7 to -- the motion to suppress --

8 THE COURT: Yeah, so the motion for suppress,
9 Ms. Kollins would like the opportunity to see --

10 MS. LUZAICH: That would be Luzaich.

11 THE COURT: What did I say?

12 MS. LUZAICH: Kollins.

13 THE COURT: Oh, Kollins. Sorry. I've been --

14 MS. LUZAICH: You spent a long time with her. It's
15 okay. 'Cause we look so much alike.

16 THE DEFENDANT: I have to --

17 THE COURT: No, I've just been with her for two
18 weeks.

19 THE DEFENDANT: Okay. I have to say, Your Honor, as
20 far as that, that motion, it -- I know she received it, but at
21 the same time --

22 THE COURT: She's just saying that she needs time --
23 time to look at her records to see if this matter was
24 litigated.

1 THE DEFENDANT: Okay.

2 THE COURT: So let's deal with the calendar call
3 'cause today's the date for calendar call.

4 THE DEFENDANT: Okay. Your Honor, can I also put
5 something on the record?

6 THE COURT: After we discuss calendar call.

7 THE DEFENDANT: All right. I need to really speak
8 on -- on my behalf as far as I believe that -- and I don't
9 mean no harm or no disrespect to anyone, but I believe the
10 Court is -- is conducting itself in a manner that is very
11 disappointing to -- to the system. Because at the same time
12 as me trying to establish the truth, the DA is sitting here
13 telling lies upon me just as well as my lawyers have been of
14 threatening 'em.

15 And it's upsetting because the Courts are not allowing me
16 to speak on my own behalf when it comes to a matter of
17 somebody saying that I am the reason -- I am the reason for my
18 case being put on and on -- I mean, off and off when I'm
19 telling the Courts, "Hey, listen. I'm ready to go to trial."
20 I have evidence right here, court minutes where I'm trying to
21 show the Court that, hey, it shows you what the
22 (indiscernible) say we recognize that he -- he's not -- he
23 don't want to take the deal. He want to go to trial. And
24 then it's continued for on and on.

1 Who's ineffective here? It's the counsel, not me. And
2 I'm trying to explain this to the Courts, and the Courts just
3 keep slapping my motion down and telling me, no, don't --
4 don't speak just listen to me. And I think it's wrong because
5 I should have the right to be able to speak on my own behalf
6 when I'm representing myself. This is self-representation.
7 So I should have these rights, pursuant to -- for Etta versus
8 California.

9 Not only that, other -- the -- the Supreme Court
10 recognized just the 6th Amendment have so much in it alone
11 that allows the Defendant to do certain things. And when the
12 Court violate and abuse that right, then they have taken from
13 the Defendant his right --

14 THE COURT: Did you know that it's actually not a
15 right to be heard in court? That there are many courts that
16 just allow the writings and the pleadings. And if you don't
17 have anything to add outside of those pleadings, that you
18 can't be heard? So what you're talking about actually doesn't
19 exist. You talk all of the time, most of the time over
20 everybody else.

21 THE DEFENDANT: Right.

22 THE COURT: The issue is if you go back and you look
23 at the minutes in this case, it shows time and time and time
24 again you not getting along with investigators, you not

1 getting along --

2 THE DEFENDANT: I never even spoke --

3 THE COURT: -- with --

4 THE DEFENDANT: -- to one investigator. But the one
5 Adam -- and I get along with him.

6 THE COURT: With defense --

7 THE DEFENDANT: And that's the one I was trying to
8 get --

9 MR. GILL: Stop (indiscernible)

10 THE COURT: -- with defense attorney.

11 THE DEFENDANT: Yeah.

12 THE COURT: So you can't create your own issues when
13 you have been a problem with every attorney that has ever been
14 appointed to you.

15 So what we're gonna do is we're gonna continue the matter
16 over in regard to the petition -- or motion to dismiss to
17 see -- and I'll look through the --

18 MS. LUZAICH: Suppress?

19 THE COURT: Yeah. The motion to suppress to -- so I
20 can go through and also look and see how much of that was
21 litigated before. But what I need to discuss is calendar
22 call.

23 THE DEFENDANT: And, also, I never received my
24 transcripts that the Courts ordered for me to receive. I

1 never even received them. So I'm not able to bring forth the
2 evidence that I'm speaking upon.

3 THE COURT: We have the transcripts. Some of them
4 were filed under seal so we couldn't send them via mail.

5 THE DEFENDANT: Okay. Well, that -- that alone --
6 that's why I'm -- I'm sitting here arguing on a half of -- a
7 half standing of my facts versus the -- the -- the
8 Prosecution's in a verbal debate when I don't have the full
9 layout of the paperwork that the Courts say.

10 The Courts told me when I was trying to tell them that
11 my -- my counsel is not doing their job, which was Adam Gill,
12 they told me that he can construct the case however he wants
13 to. That he can -- and that is not true when it comes to --
14 when the Courts in McCoy versus Louisiana says the counsel is
15 only assist. He's to only assist and aid the Defendant when
16 he needs stuff done or when he want to pursue the case, the
17 Defense, the way he want to pursue -- present it.

18 The counsel can't come along, no matter how he feels, and
19 say, "Well, no. The Defendant says he's guilty" -- I mean,
20 "he's not guilty or something but I say he's guilty." No,
21 counsel cannot do that.

22 THE COURT: Okay. That's not what McCoy says at
23 all.

24 THE DEFENDANT: It --

1 THE COURT: That's literally not what McCoy says.
2 THE DEFENDANT: That's not what McCoy say?
3 THE COURT: No. So anyways, I'm gonna ask you one
4 more time about calendar call.
5 THE DEFENDANT: You know the Court's just really --
6 THE COURT: Calendar call.
7 THE DEFENDANT: They really --
8 THE COURT: Calendar call. Are you ready?
9 THE DEFENDANT: I understand. But I'm just so
10 upset --
11 THE COURT: Are you ready?
12 THE DEFENDANT: I'm just so upset, I'm just trying
13 to fight my case. I'm saying my 6th Amendment right has been
14 violated and I'm ready to invoke -- I'm invoked my right,
15 again, to speak at trial --
16 THE COURT: You waived --
17 THE DEFENDANT: And it's not me, it's counsel.
18 THE COURT: You -- okay. So are you ready to go to
19 trial?
20 THE DEFENDANT: It's counsel. It's the counsel.
21 I've been ready to go to trial. I've been --
22 THE COURT: Okay. Are you ready to start Monday?
23 THE DEFENDANT: -- (indiscernible) trial. And --
24 and I need -- well, I need my -- come on. Let's go. I need

1 my -- I need my defense. I ain't got no defense. I got no
2 witnesses. Okay. I'm ready to go. Forget. I mean, the
3 Courts just forcing me, then I'm gonna go.

4 THE COURT: Oh, my gosh.

5 THE DEFENDANT: The Courts can do whatever the
6 Courts want to do. All I'm saying is -- to the Courts is to
7 allow me to defend myself appropriately. And the Courts are
8 not allowing me because they feel as they being that I'm
9 representing myself, a per -- a pro se litigant, that they
10 can do whatever they want to do. And it's not right. Sorry
11 about that.

12 THE COURT: So is that a "yes" or a "no"?

13 THE DEFENDANT: It -- it's not right. I -- I --

14 THE COURT: Mr. Porter, look at me.

15 THE DEFENDANT: The Court's already heard what I
16 said already --

17 MR. GILL: Mr. Porter --

18 THE DEFENDANT: -- man.

19 THE COURT: Are you ready to go to trial?

20 THE DEFENDANT: I'm not --

21 THE COURT: "Yes" or "no."

22 THE DEFENDANT: I've been saying (indiscernible)
23 6th Amendment right. I've been saying it. The Courts just
24 heard what I just said.

1 THE COURT: Okay. So, yes, you're ready to start on
2 Monday.

3 THE DEFENDANT: We go today. Right now.

4 THE COURT: So that's a "yes."

5 THE DEFENDANT: We go right now. Forget it. We
6 going right now.

7 THE COURT: Okay. Do you see a jury here?

8 THE DEFENDANT: Well, we could pick. In Baxton
9 versus Kentucky --

10 THE COURT: Oh --

11 THE DEFENDANT: -- please pick the jury in -- in an
12 appropriate manner and don't exclude jurors from -- because it
13 ain't -- they -- they --

14 MS. LUZAICH: Okay. Well, for the record --

15 THE DEFENDANT: -- (indiscernible) huh? Oh, sorry.

16 MS. LUZAICH: He has told the Court he has not
17 subpoenaed any witnesses. He has not --

18 THE DEFENDANT: (Indiscernible)

19 MS. LUZAICH: -- he has an alibi defense and has not
20 filed a notice of alibi so --

21 THE DEFENDANT: Well, and that's what I tried to do
22 in the motion --

23 MS. LUZAICH: -- it appears the Defendant is --

24 THE COURT: Stop talking.

1 THE DEFENDANT: I'm sorry.

2 MS. LUZAICH: It appears the Defendant is not ready
3 for trial next week.

4 THE DEFENDANT: Well, no. I didn't say I wasn't.
5 Are you saying I'm under --

6 THE COURT: You don't -- you don't have --

7 THE DEFENDANT: -- how do you know (indiscernible).

8 THE COURT: -- one witness and you don't even have
9 your transcripts yet.

10 THE DEFENDANT: Because the Courts haven't supplied
11 me with 'em. And that's what I've been saying the whole time.
12 I've been needing everything that I've been requesting --
13 okay. I didn't put the point and authorities to it. Now I'm
14 saying, under the United States Supreme Court, under the
15 Constitution of -- of United States, under the 6th Amendment,
16 I'm -- I need a -- a -- I need to be able to subpoena all the
17 witnesses that I subpoenaed. Even though I didn't put case
18 law -- state case law, the NRS, orally, I'm saying --

19 THE COURT: Okay. But let me ask you this: Do you
20 think I have to follow the rules?

21 THE DEFENDANT: Of course. You have judicial
22 evidence.

23 THE COURT: Okay. So one of the rules I have to
24 follow is make sure you follow the rules. That's what I took

1 an oath to do is follow the rules and laws (indiscernible).

2 THE DEFENDANT: And I'm not trying --

3 THE COURT: So if the rule says I have to have
4 points and authorities, then I have to have points and
5 authorities. I have to follow the rules. That's what the
6 rules say.

7 You are going to walk into a trial with -- you just --
8 you have no witnesses. You don't have a Defense investigator.
9 And now you're saying you're ready. You're clearly not ready.
10 You don't have one witness. That means you get to call no
11 one; right? So clearly, you're not ready and you need more
12 time to prepare your case.

13 THE DEFENDANT: I feel as though the Courts gonna do
14 what the Courts want to do. And all I'm trying to do is abide
15 by the United States Constitution. All I'm asking for is the
16 due process of law --

17 THE COURT: Sir, you're just saying legal terms that
18 you know.

19 THE DEFENDANT: I -- I --

20 THE COURT: You can't just say, "The
21 Constitution" --

22 THE DEFENDANT: You right, ma'am.

23 THE COURT: -- and "due process" and "Baxton versus
24 Kentucky" --

1 THE DEFENDANT: The 14th Amendment.

2 THE COURT: -- that's not what this is about. There
3 are laws --

4 THE DEFENDANT: The 6th Amendment.

5 MR. GILL: Shh.

6 THE DEFENDANT: Yeah.

7 THE COURT: -- you can't just say "6th Amendment,"
8 "14th Amendment" --

9 THE DEFENDANT: You're right.

10 THE COURT: -- be able to back up what you say.
11 Right now, you're not backing up what you say. So you need to
12 tell me if you are ready for trial.

13 THE DEFENDANT: Well, all I'm saying, ma'am --

14 THE COURT: No. No. No.

15 THE DEFENDANT: -- is under the 6th Amendment --

16 THE COURT: It's not -- no, I am tired --

17 THE DEFENDANT: -- I have a right to a defense -- I
18 understand you tired. And I'm not trying to make the Courts
19 tired --

20 THE COURT: But you just --

21 THE DEFENDANT: -- but I'm gonna --

22 THE COURT: You don't care about anything except
23 yourself.

24 THE DEFENDANT: I -- I do, ma'am. I do care --

1 THE COURT: Do you --

2 THE DEFENDANT: -- about the Courts.

3 THE COURT: Are you ready to go to trial?

4 THE DEFENDANT: I do care about the system.

5 THE COURT: Are you ready to go to trial?

6 THE DEFENDANT: I've been saying I'm ready to do

7 whatever I have to do to get to where I need to be --

8 THE COURT: And who would you --

9 THE DEFENDANT: -- and my sister --

10 THE COURT: -- be -- who will you be calling as a

11 witness?

12 THE DEFENDANT: Everybody that I put in the motion

13 to subpoena.

14 THE COURT: You can't --

15 THE DEFENDANT: I know it doesn't -- but I -- I'm

16 stating now, on record, under the United States Constitution

17 of the 6th Amendment, I want to subpoena --

18 THE COURT: Great. Follow the laws. Follow the

19 rules that has to get you there.

20 THE DEFENDANT: And -- and I'm not trying to make

21 the Courts mad --

22 THE COURT: Also, just so you know --

23 THE DEFENDANT: -- and nothing like that, man.

24 Apologize. Take the -- take your time with me, man. Because

1 all I know is --

2 THE COURT: Sir, all you do is talk --

3 THE DEFENDANT: -- (indiscernible) the Constitution.

4 THE COURT: Okay. You --

5 MR. GILL: Judge, I -- I know I'm standby counsel.

6 Can I have one moment?

7 THE COURT: Sure.

8 THE DEFENDANT: All I know is the Constitution. All
9 I know is the Constitution.

10 If you helping me, you would have been (indiscernible)
11 you ain't been trying to help me. I didn't kick you off the
12 case. I just want to represent myself. I've been -- you --
13 you've been acting in concert with the DA the whole time.

14 MR. GILL: All right.

15 THE COURT: Okay.

16 MR. GILL: Never mind, Judge. Thank you.

17 THE COURT: Yeah.

18 THE DEFENDANT: You ain't filed one of my motions.

19 THE COURT: No worries.

20 So just so you know, there is a statute, NRS 174, that
21 deals with the filing of notice of witnesses.

22 THE DEFENDANT: Uh-huh.

23 THE COURT: As of right now, you have not noticed
24 any witnesses.

1 THE DEFENDANT: I don't even know where they at.
2 It's been -- I don't even know where they at.

3 THE COURT: Okay.

4 THE DEFENDANT: But I'm asking the Courts to assist
5 me --

6 THE COURT: Okay. Let me explain something for you.
7 If you start trial on Monday, five days before that Monday,
8 you have to file what's referred to as "a notice of witness."
9 You have not done that, which means you have no witnesses.
10 You don't get to call any witnesses, even if you could find
11 them.

12 THE DEFENDANT: So a motion is not good, Your Honor?

13 THE COURT: No, you need to file a notice of
14 witness -- I think it's 174.235 --

15 THE DEFENDANT: Okay.

16 THE COURT: -- within five days --

17 THE DEFENDANT: That's NRS?

18 THE COURT: -- of trial. Yes.

19 THE DEFENDANT: But what about constitution?

20 THE COURT: What about the Constitution? What are
21 you talking about? A notice of witness, pursuant to Nevada
22 law, must be filed five days before trial. An alibi witness,
23 I believe, is either ten --

24 MS. LUZAICH: Ten.

1 THE COURT: Ten -- it's ten. So if those people are
2 alibi witnesses, that means ten days before the start of the
3 trial, which is Monday, ten days ago --

4 THE DEFENDANT: No, they -- they not alibi witness.
5 They witnesses that can contest to what's being said that's
6 against me. They can -- they -- they here to let the Courts
7 know that, "Hey, listen, at this time" -- like I kept saying
8 and I continue saying, I advise counsel, the Courts,
9 everything I did. All the Courts have to do is look at the
10 record --

11 THE COURT: Okay.

12 THE DEFENDANT: -- and see that I have asked them --

13 THE COURT: All right.

14 THE DEFENDANT: -- numerous times the ask counsels
15 to point a -- to -- to have investigators and to -- to -- to
16 go and receive -- and go and talk to the people they need to
17 speak to.

18 THE COURT: Okay. So explain to me how you're going
19 to start trial on Monday without one witness?

20 THE DEFENDANT: Ma'am, all I'm saying is --

21 THE COURT: No, I --

22 THE DEFENDANT: -- under the Constitution --

23 THE COURT: I want you -- if you say "the
24 Constitution" one more time, I'm gonna lose it. I'm not

1 kidding you.

2 THE DEFENDANT: I'm so sorry --

3 THE COURT: Answer the question --

4 THE DEFENDANT: -- the Constitution has you upset,
5 ma'am.

6 THE COURT: No, sir. You have -- 'cause you just
7 think you can just say all these legal words and I'm gonna be
8 like "okay." No, I went to law school.

9 THE DEFENDANT: I know.

10 THE COURT: Get it? I know more about the
11 Constitution than you could ever. So what I'm trying to say
12 to you --

13 THE DEFENDANT: Dang, I got the bailiff to tell me
14 to stop talking --

15 THE COURT: -- is how are you going to start trial
16 on Monday without one witness? Can you start trial on Monday
17 without one witness?

18 THE DEFENDANT: Of course you can always start trial
19 without one witness, ma'am.

20 THE COURT: And that's what you'd like to do.

21 THE DEFENDANT: Hell, I need all my witnesses. Of
22 course the Courts know I need all my witnesses. But I'm tired
23 of waiting. I've been waiting the past 19 years --

24 THE COURT: Ms. Luzaich, are you ready for trial on

1 Monday?

2 THE DEFENDANT: -- what am I gonna do?

3 MS. LUZAICH: I could be if I have to be, Judge.
4 But I can't go to trial with this record.

5 THE COURT: I agree. You cannot have 10 or 12
6 motions that you believe are important to your case and not
7 file pursuant to the Nevada law --

8 THE DEFENDANT: I'm going off the Constitution,
9 ma'am.

10 THE COURT: -- points and authorities.

11 THE DEFENDANT: All I know is the United States
12 Supreme Court law.

13 THE COURT: All right. So the calendar call was
14 today. The trial is vacated. Mr. Porter states that he needs
15 witnesses, he needs independent forensic testing --

16 THE DEFENDANT: I'm saying --

17 THE COURT: -- he needs -- he filed a motion for
18 independent forensic testing. He filed a motion to subpoena
19 witnesses. He filed a motion in regards to misconduct.

20 THE DEFENDANT: You denied 'em all.

21 THE COURT: And I told you, you could re-file them
22 with points and authorities supporting why. Also --

23 THE DEFENDANT: I said I was ready to go to trial.

24 THE COURT: -- I'm showing that he also wants to

1 call, I don't know, minimum of somewhere between 10 and 20
2 witnesses. He has not filed a witness notice.

3 THE DEFENDANT: I did a motion, though.

4 THE COURT: Doesn't count. So the trial date is
5 vacated.

6 Ms. Luzaich, the next go-around is actually going to be a
7 firm -- a firm set. Like, you either have everything or you
8 don't and we're going. 'Cause I'm not doing this game
9 anymore. This is absolutely asinine.

10 So, Ms. Luzaich, what month can your trial schedule
11 accommodate this?

12 MS. LUZAICH: February?

13 THE COURT: And how long will this be? This trial.

14 MS. LUZAICH: Having done several pro per jury
15 trials before, in those circumstances, the sides, both parties
16 provided voir dire questions to the Court --

17 THE COURT: Yeah.

18 MS. LUZAICH: -- and the Court conducted all the
19 voir dire based on that. If the Court is willing to do that,
20 jury selection will go a lot faster and we can do the trial in
21 maybe three weeks. If the Court wants the parties to question
22 the jurors themselves, I think it will take an extra week.

23 THE COURT: No. With pro per, to facilitate a
24 better voir dire process, both -- both sides will need to

1 submit questions to me that they would like to ask the jury
2 and I'll ask them on behalf of both parties.

3 We'll give it the February 10th date to ensure that we
4 stay within our criminal trial status.

5 THE CLERK: Calendar call will be
6 February 3rd, 2020 --

7 THE DEFENDANT: One more last --

8 THE CLERK: -- 9:30.

9 UNIDENTIFIED: Stop.

10 THE DEFENDANT: Oh, sorry.

11 THE CLERK: Jury trial will be February 10, 2020,
12 10:00 o'clock.

13 THE DEFENDANT: Your Honor, one last thing. I don't
14 understand this. I've been saying I am confused. That the
15 Courts just doing this to me. I am just so, so upset with the
16 Courts.

17 THE COURT: Noted --

18 THE DEFENDANT: The Courts have just really
19 dishonored the Constitution.

20 THE COURT: Okay. It's noted for the record.

21 THE DEFENDANT: And violated the -- the --

22 THE MARSHAL: Okay. Let's go.

23 THE DEFENDANT: -- the rules and regulations of the
24 Constitution. Can I say one last thing 'cause --

1 THE MARSHAL: No.

2 THE DEFENDANT: -- I have the right to say this.

3 THE COURT: I'm not listening. I've stopped
4 listening.

5 THE DEFENDANT: Okay. Well, can I say this? Under
6 the 6th Amendment I -- I want a right to counsel right now
7 because I need a counsel 'cause the -- the -- they are not
8 gonna give me -- they tell me I need my counsel. I have a
9 right to a counsel. I need a counsel.

10 THE COURT: Uh, sir -- if you could just -- you can
11 take Mr. Porter back, but I do need to get him his
12 transcripts. So if you wouldn't mind --

13 THE DEFENDANT: I need a counsel. Please give me a
14 counsel on the 6th Amendment of United States of America.

15 MS. LUZAICH: Did the Court want to appoint counsel?

16 THE COURT: Is that what he's asking for?

17 MS. LUZAICH: Yeah. That's what he's saying. "I
18 need counsel under the 6th Amendment." No? Okay.

19 THE COURT: Okay. So his transcripts are right
20 here. Let the record reflect that the transcripts that he
21 requested are in this manilla folder. If those could be
22 handed to the transporting officers to give to Mr. Porter, I
23 appreciate that.

24 MS. LUZAICH: Are those in Odyssey with the

1 exception of the one that you said was --

2 THE COURT: Sealed.

3 MS. LUZAICH: -- sealed?

4 THE COURT: Yes. And then in regards to --

5 Ms. Luzaich, how much time did you need in regards to look
6 into the -- the suppress, motion to suppress?

7 MS. LUZAICH: And the only reason I would say a
8 little while, it was back in the way early 2000s. So I don't
9 know if I can pull it out of Odyssey.

10 THE COURT: All right.

11 MS. LUZAICH: So can I have a week?

12 THE COURT: Yeah.

13 THE CLERK: Okay.

14 THE COURT: Is that Wednesday (indiscernible)?

15 MS. LUZAICH: Oh, you know what? Can I have a week
16 to do that and then I'll mail it to him, and I'll send a copy
17 to the Court as well?

18 THE COURT: That is what?

19 MS. LUZAICH: If you give me a week to find it,
20 whatever I find, I will mail to the Defendant. 'Cause he had
21 made a comment earlier to Mr. Gill about he wanted things
22 mailed to him. So will you put it back on calendar in two
23 weeks, then I'll mail it to him and I'll send to the Court
24 whatever I find.

1 THE COURT: Okay. Well, he'll probably be back here
2 in two weeks. You know what I mean? He'll be here in two
3 weeks so -- so he needs to be back in two weeks, just so you
4 guys know.

5 THE CLERK: It'll be October 2nd, 9:30, motion to
6 suppress.

7 UNIDENTIFIED: What is it? October 3rd?

8 THE CLERK: October 2nd, 9:30.

9 UNIDENTIFIED: Thank you. Thank you.

10 MS. LUZAICH: He just took an a sap (phonetic) too.

11 THE COURT: He has to go to the bathroom
12 (indiscernible).


13 MS. LUZAICH: Oh, oh, oh, okay. Oh, my God.

14 [DISCUSSION OFF THE RECORD]

15 [Hearing concluding at 12:57 p.m.]

16 *****

17
18 ATTEST: I do hereby certify that I have truly and
19 correctly transcribed the audio/video proceedings in the
20 above-entitled case to the best of my ability.

21
22 
23 ALLISON SWANSON, CSR NO. 13377
24 CERTIFIED SHORTHAND REPORTER
FOR THE STATE OF CALIFORNIA

1. JUSTIN D. PORTER #1042449
2. P.O. BOX 650 (HDSR)
3. Indian SPRINGS, NV 89070

FILED

NOV 15 2019

Ann L. Blum
CLERK OF COURT

4. DISTRICT COURT
5. CLARK COUNTY, NEVADA

6.
7. JUSTIN D. PORTER,
8. Defendant,

CASE NO. DIC-174954

DEPT NO.

9. VS.

10. THE STATE OF NEVADA,

December 9, 2019

9:30 AM

11. Plaintiff.

12.
13. MOTION FOR DISMISS OF INFORMATION.
14.

15. COMES NOW, Defendant Justin D. Porter, in PRO SE,
16. and moves this Honorable Court to GRANT this
17. MOTION FOR DISMISS OF INFORMATION. This motion is
18. based upon Attached Points and Authorities, and
19. Affidavit, and EXHIBITS Contained Herein.

20.

21.

22.

23. DATED this 12 day OF November, 2019

24. Respectfully submitted

25. *Justin Porter*

26. Justin D. Porter #1042449
In PRO SE

27.

28.

1. STATEMENT OF THE CASE

2.

3. On August 12, 2000, Chicago Police illegally Arrested
4. the Defendant at his Father's Residence based upon
5. an false representation of a arrest warrant that
6. had been forwarded to them by LVMPD detectives.

7. The state charged Justin D. Porter, a Juvenile, on

8. August 22, 2000, in An Amended Complaint, with 58

9. Felonies, including murder and multiple counts of

10. Kidnapping, Robbery and sexual assault. After a Preliminary

11. hearing in Justice Court (I: 98-101), the Justice Court

12. Ordered Porter to Answer 40 counts in District Court.

13. (I: 102-03). The District Attorney filed an Amended

14. Information alleging 42 Felony counts. Porter Plead

15. not guilty to all the charges (V: 1055). After the

16. Defense litigated a Petition for a writ of Habeas

17. Corpus (V: 1055-~~57~~) which resulted in the dismissal

18. of more ~~counts~~ counts, the state Filed a Second

19. Amended Information alleging 38 felony counts.

20. ~~A motion was for the sever to sever counts 30-32~~

21. A Motion for the Severance of counts 30-32 was

22. granted. A Finding of guilty of Second Degree

23. Murder with use of a deadly weapon for the severed

24. counts. The remaining counts are unprosecuted.

25.

26.

27.

28.

Points and Authorities
Argument

1.
2. The constitutional Safeguards Against Post-Accusation
3. Delay. The Sixth Amendment to the constitution
4. Provides a fundamental right to a speedy Trial
5. that serves to (1) "prevent undue and oppressive
6. incarceration Prior to Trial"; (2) "minimize anxiety
7. and concern accompanying Public accusation"; and (3)
8. "limit the possibilities that long delay will impair
9. the ability of an accused to [Present a defense]."
10. U.S. V. Ewell, 383 U.S. 116, 120 (1966); see also Klopfer
11. V. N.C., 386 U.S. 213, 222-24 (1967). The Sixth Amendment
12. Provides that "in all Criminal Prosecutions, the
13. accused shall enjoy the right to a speedy and
14. Public trial". U.S. Const. amend. VI. The Sixth
15. Amendment speedy trial guarantee is binding
16. On the States through the Due Process Clause
17. OF the Fourteenth Amendment. Klopfer V. N.C., 386
18. U.S. 213, 222-23 (1967); see also Smith V. Hoey, 393 U.S. 374,
19. 377 (1969) (State is responsible For speedy Trial even
20. Where defendant is in Federal Prison). To determine
21. Whether a defendant has been deprived of the
22. right to a speedy trial, courts consider the
23. Conduct of the defendant and the Prosecution,
24. focusing on the four Factors articulated by
25. the Supreme Court in Barker V. Wingo: (1) length
26. of delay; (2) reason for delay; (3) whether, when, and
27. how the defendant asserted the speedy Trial
28. Right; and (4) whether the defendant was

1. Prejudiced by the delay. Barker, 407 U.S. 514, 534 (1972).
2.
3. A. The first Barker Factor, the length of delay,
4. is "a triggering mechanism" because "until there is
5. some delay which is presumptively prejudicial, there
6. is no necessity for inquiry into the other factors."
7. Barker, 407 U.S. 530; see also Doggett v. U.S., 505 U.S.
8. 647, 652 (1992) (defendant cannot complain government
9. denied speedy trial if it prosecuted case with
10. "customary promptness").
11. The defendant was arrested on the day of August 12, 2000,
12. by Chicago Police on the behalf of LVMPD detectives
13. for these unprosecuted charges. The right to a
14. speedy trial attaches at the time of arrest
15. or formal charge, whichever comes first. See
16. U.S. v. Marion, 404 U.S. 307, 313, 320 (1971) (right
17. attaches "only when a criminal prosecution has
18. begun and extends only to those... who have been
19. "accused" in the course of that prosecution"; it is either
20. a formal indictment or information or else the
21. actual restraints imposed by arrest... that engage
22. the... protections of the speedy trial provision of the
23. Sixth Amendment); see also Dillingham v. U.S., 423 U.S.
24. 64, 65 (1975) (if arrest precedes indictment or
25. arraignment, time must be calculated from date of
26. arrest). The delay of (19) years for trial has endangered
27. the values that the right protects, prejudice, the
28. defendant's defense is impaired because of the delay.

1. B. The second Barker Factor is the reason for
2. the delay. Barker, 407 U.S. at 531. The burden of
3. explaining delay most commonly rests with the
4. government. Deliberate Attempts to hamper the
5. defense weigh heavily against the government.
6. Barker, 407 U.S. at 531 (noting that "deliberate
7. attempt(s) to delay the trial in order to hamper
8. the defense should be weighed heavily against the
9. government"). Neutral reasons, such as overloaded
10. courts and negligence, also weigh against the govern-
11. ment. see Doggett v. U.S., 505 U.S. 647, 657 (1992)
12. (8½-year delay clearly attributable to government's
13. negligence weighed against government). For there
14. may be a situation in which the defendant has
15. been represented by incompetent counsel, has been
16. severely prejudiced, or even cases in which the
17. continuances were granted ex parte. Id. Barker,
18. 407 U.S. at 536 (There may be a situation in which
19. the defendant was represented by incompetent
20. counsel, was severely prejudiced, or even cases in
21. which the continuances were granted ex parte).
22. Because of incompetent counselors recommended
23. advice to the defendant on May 2, 2001 the defendant
24. waived the 60 day Rule. The court has defined
25. waiver as "an intentional relinquishment or
26. abandonment of a known right or privilege."
27. Johnson v. Zerbst, 304 U.S. 458, 464, 82 L Ed 1466, 58
28. S Ct 1019, 146 ALR 357 (1938) (in addressing

1. whether defendants waived their 6th Amendment
2. right, holding that such a waiver must be
3. "intelligent". If it had not been for incompetent
4. Counsel advising Defendant to waive the 60 day
5. Rule Defendant would have not waived the
6. 60 day Rule.

7.

8.

9. C. The Third Barker Factor Focuses on whether
10. and how the defendant asserted his right to
11. a speedy Trial. See Barker V. Wingo, 407 U.S. 514,
12. 529, 532 (1972) ("Frequency and Force of the Objections"
13. Should be taken into account). Barker, 407 U.S. 514,
14. 529, 532 (1972). On the day of September 19, 2007, the
15. Defendant stated he does not want to accept
16. negotiations and "want to Proceed to TRIAL".
17. (See EXHIBIT #A). Id. Barker, 407 U.S. 514 + 531.

18. And On the day of November 22, 2010, the
19. Defendant Presented argument in opposition
20. of the continuance of the trial and requested
21. a Sooner setting for trial, the Defendant
22. Objection was noted for the record.

23. (See EXHIBIT #B) Id. Barker, 407 U.S. 514 + 531.

24. And On the day of September 18, 2019,
25. the Prosecuting Attorney continued the
26. Defendant's Trial that was set for
27. September 26, 2019, again Defendant
28. objected but was overruled by the court.

1.. It was 'Bad Faith' on the Prosecuting Attorney
2.. to delay the Defendant's Trial again for NO
3.. Reason, weigh heavily against the Prosecuting
4.. Attorney. Barker, 407 U.S. 21531 (1972). IF the
5.. government acted in bad Faith or with
6.. dilatory motive then the government is
7.. responsible for delay, and it's 'Bad Faith'. See
8.. U.S. v. Loud Hawk, 474 U.S. 302, 316 (1986).
9.. On the days of September 19, 2007, Defendant
10.. demanded a Trial; November 22, 2010, Defendant
11.. demanded a Trial; July 5, 2017, Defendant deman-
12.. ded a Trial; and on the day of September 18, 2019.
13.. A Prior demand is a necessary condition to the
14.. consideration of the Speedy Trial right. Barker, 407
15.. U.S. 525 (1972). "A Defendant has no duty to bring
16.. himself to trial; the state has that duty as well
17.. as the duty of insuring that the trial is
18.. consistent with due process." Barker, 407 U.S.
19.. 527 (1972). "Since under the demand-waiver rule
20.. no time runs until the demand is made, the
21.. government will have whatever time is otherwise
22.. reasonable to bring the defendant to trial after a
23.. demand has been made." Therefore, the rule that a
24.. Defendant who fails to "demand a Speedy Trial
25.. forever waives his right." This does not mean, however,
26.. that the defendant has no responsibility to assert
27.. his right. Id. Barker, 407 U.S. 527, 528 (1972).
28..

1. **D.** The Fourth and Final Barker Factor is Prejudice.
2. Courts assess Prejudice "in the light of the interests
3. of defendants which the speedy Trial Right was
4. designed to protect", including oppressive Pretrial
5. incarceration, anxiety and concern, and impairment
6. of the defense. Barker, 407 U.S. at 532.

7. The Defendant's Alibi witnesses for his
8. defense is unavailable and cannot be found.
9. Pookie Ray is a Alibi witness that would have
10. testified to the fact that on the day of June 7, 2000,
11. between the hours of 1:30 and 2:00 am, I was not
12. at the apartment of Joni Hall that the defendant
13. was with him Pookie Ray on the day of June 6, 2000,
14. June 7, 2000 and June 8, 2000.

15. Pookie Ray would have also testified to the fact
16. that on the day of March 7, 2000, Defendant was
17. also with him all day long, and that defendant and
18. himself know the person name Shawn Carter that
19. Leona case said victimized her. She also told
20. Paramedic Diaz Fun that Shawn Carter was
21. the suspect and as well as investigator's
22. Heve Robert and Chief Hort.

23. Defendant was suppose to call as witnesses
24. for his defense Mr. Robert and Mr. Hort, defendant
25. do not know the whereabouts of the two witnesses.

26.

27.

28.

1. Bill was the defendant's Alibi witness that
2. Know Ramona Leyva and her African-American
3. husband. An would have testify to the fact that
4. on or about the day of March 25, 2000, Defendant
5. was with him all that day and staid the night
6. at his apartment to the next day. That the
7. Defendant could not be the suspect that
8. victimized Ramona Leyva because Defendant was
9. with him all night to the next day.
10. Defendant was going to call the Bonanza Spring
11. apartment security officer, Maurice Carson, as a
12. witness because he seen the suspect face in the
13. case of Ramona Leyva but Mr. Maurice whereabouts
14. is unknown to the Defendant.
15. Defendant was going to call a number of
16. Alibi witnesses that their whereabouts
17. is unknown to the Defendant,
18. Kurtis, Richards.
19. David G.
20. AKA Peanut.
21. DAVID P. Welch.
22. Kristopher Deloney.
23. Kristopher Deloney was going to testify to
24. the Event of the case of Teresa Tyler.
25.
26. The Defendant's defense is impair because the
27. defendant's alibi witnesses whereabouts is unknown
28. to the Defendant, and the Presentability rely

1. on the defense and the defense rely on the
2. Defendant's Alibi witnesses. Barker, 407 U.S. 27532.

3.
4.
5.
6. CONCLUSION

7.
8. The Defendant's defense is impaired by
9. the length of delay, and the loss of Alibi
10. witnesses Prejudice the Defendant's defense;
11. therefore the Information shall be dismissed
12. with Prejudice. Defendant Prays that the court
13. grant defendant relief to which defendant
14. may be entitled in this proceeding.

15.
16.
17.
18.
19.
20.
21.
22.
23. DATED this 12 day of November, 2019.

24. *Justin D. Porter*

25. Justin D. Porter #1042449

26. In Pro Se

01C174954

Exhibit # B

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

November 22, 2010

01C174954

The State of Nevada vs Justin D Porter

November 22, 2010 8:30 AM

Status Check

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Keith Reed
Tiffany Lawrence
Sharon Coffman

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

PRESENT:	Abood, Joseph K.	Attorney
	Luzaich, Elissa	Attorney
	Porter, Justin D	Defendant
	Public Defender	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Deft. Porter acknowledged the trial setting, presented argument in opposition of the continuance of the trial and requested a sooner setting. Colloquy between Court and Deft. regarding the continuance of the trial and the reason for the continuance. Court stated findings noting the continuance is due to an unavoidable conflict with counsels schedule and ORDERED, trial STANDS as calendared; Deft's objection noted for the record.

CUSTODY(COC-NDC)

4-11-11 9:30 AM CALENDAR CALL

4-18-11 10:00 AM JURY TRIAL

PRINT DATE: 10/27/2015

Page 282 of 316

Minutes Date: May 02, 2001

AA 0329

01C174954

EXHIBIT # A

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

September 19, 2007

01C174954

The State of Nevada vs Justin D Porter

September 19, 2007

9:00 AM

Status Check

STATUS CHECK:
NEGOTIATIONS
Relief Clerk: Carole
D'Aloia/cd//Phyllis
Irby
Reporter/Recorder:
Sonia Riley Heard
By: Lee Gates

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:

Abood, Joseph K.
Brown, Curtis
Luzaich, Elissa
Porter, Justin D
Public Defender

Attorney
Attorney
Attorney
Defendant
Attorney

JOURNAL ENTRIES

- Statements by Mr. Brown regarding the history of the case. Mr. Brown advised parties have been in discussions on trying to negotiate the matter. Ms. Luzaich stated she did make an offer to resolve the matter. Defendant stated he does not want to accept negotiations and wants to proceed to trial. Mr. Brown advised he cannot be prepared for trial until June of 2008 because of this trial schedule and the amount of work that needs to be done on this case. COURT ORDERED, matter set for JURY TRIAL AND ADVISED THIS IS A FIRM DATE.
CUSTODY

PRINT DATE: 10/27/2015

Page 199 of 316

Minutes Date: May 02, 2001

AA 0330

1 AFFIDAVIT OF Justin D. Porter

2
3 STATE OF NEVADA }
4 } ss...
5 COUNTY OF CLARK }

6 Pursuant to case No. 01C-174954:

7 I, Justin D. Porter, being First duly Sworn upon
8 OATH, Deposes and swears, to the Following:

9 That I am the Affiant herein, of sound mind,
10 good Physical Health, and above the age of 21 yrs.
11 Old, therefore qualified to testify to all matters
12 Herein. That I make this Affidavit in support
13 of any motion, Pleading or Document filed by
14 or on behalf of Justin D. Porter. That I make
15 this Affidavit in opposition to any motion,
16 Pleading or Document filed by or on behalf
17 of the State of Nevada. Pursuant to case 01C-174954

18 That on the day of August 12, 2000, Chicago Police
19 illegally Arrested me at my Father's Residence
20 based upon False representation of a arrest warrant
21 that had been forwarded to them by LVMPD
22 detectives.

23 That on or about the day of May 2, 2001, if it
24 had not been for Defendant's Attorneys
25 Curtis Brown and Joseph K. Aboud advising
26 me Justin D. Porter to waive the 60 day Rule
27 I would have not.

28

A

1 I made numerous request to Curtis Brown and
2 Joseph K. Aboud to have a Trial, but they told me
3 that the District Attorney and them was
4 working on a negotiation for me, and that the
5 district attorney and them thought it will
6 be best for me to plead guilty, but I
7 would not. So because of my Attorneys Failure
8 to accommodate my request, and the want of me
9 to plead guilty, I became frustrated and told
10 Judge LEE GATES I am not accepting no
11 negotiation and I want to proceed to trial,
12 this was on the day of September 19, 2007.

13
14 On the day of November 22, 2010, I objected
15 to another continuance, and at this point
16 the unprosecuted charges had been going
17 on for 10 years, so I request a soon
18 trial setting, I was overruled for trial.

19
20 On the day of ~~November~~ JULY 5, 2017 I
21 made a demand for trial.

22
23 On the day of September 18, 2019, again I
24 Justin D. Porter stated in open COURT that
25 I want to have my trial that was set
26 for September 26, 2019. But the District
27 Attorney requested another continuance
28 against my objection.

2 of A

1 I Justin D. Porter have been prejudice because of
2 the long delay of 19 years For my Trial.

3 I do not know the whereabouts of my
4 Alibi witnesses, Pookie Ray, Bill and the list
5 that follows of other witnesses I was go
6 to call to the witness stand for my Trial;

7 Diaz Fun: witness

8 David G: witness

9 Kristopher Deloney: witness

10 Maurine Carson: witness

11 Heve Robert: witness

12 Chief, Hort: witness

13 Kurtis Richards: witness

14 DAVID P. Welch: witness

15 AKA Peanut: witness

16 TERESA TYLER: witness

17 LEONA CASE: witness

18 RAMONA LEYVA: witness

19 JONI Hall: witness

20 MARLENE LIVINGSTON: witness

21

22 And numerous other witnesses I was go
23 to call to the witness stand.

24 Affiant made the accompanying motion for
25 Dismiss of Information, have read the same, finds
26 that it is true and correct to the best of my
27 memory and belief, except those matters wherein
28 I've had to rely on informatio, and believe

1 them true also.

2 Further Affiant sayeth nought, subscribed
3 and sworn to, Pursuant to NRS 171.102 (2) and NRS 208.165
4 Under Penalty of PerJury.

5

6

7

8

9 DATED This 12, day of November, 2019.

10 By: *Justin Porter*

11

12 Justin D. Porter - AFFIANT - PRO SE.

13

14

15

16

17

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Certificate of Service By mail

I, Justin D. Porter, hereby certify pursuant to N.R.C.P.5(b),
that on this 12 day of the month of November, 2019,
I mailed a true and correct copy of the foregoing
Motion for Dismiss of Information / Affidavit of
Justin D. Porter.

Addressed to:

Steven D. Grierson, Clerk of the Court
200 Lewis Avenue, 3RD Floor
Las Vegas, NV 89155-1160



Justin D. Porter
#1042449

P.O. Box 650 (HDSF)
Indian Springs, NV 89070

UNITED STATES POSTAL SERVICE

NOV 11 2019

UNIT 4 C/D

Justin D. Porter #1042449
P.O. BOX 650 (HDSF)
Indian Springs, NV 89070

(Newspaper)



2019

NOV

039

Steven D. Grierson, Clerk of Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160

9510186300 0075

LEGAL MAIL

Steven D. Grierson

1 DAO

2 EIGHTH JUDICIAL DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 THE STATE OF NEVADA,

6 Plaintiff,

7 vs.

8 JUSTIN D. PORTER,

9 Defendant.

Case No. 01C174954

Dept. No. 6

10
11 **DECISION AND ORDER**

12 Justin D. Porter filed a Motion for Mandatory Disqualification or Recusal. Mr. Porter's
13 affidavit alleges that Judge Bluth is biased against Mr. Porter because of Judge Bluth's actions
14 during official proceedings. After review of Mr. Porter's affidavit and Judge Bluth's response, the
15 Court denies Mr. Porter's request to disqualify Judge Bluth.

16 **I. Factual and Procedural Background**

17 A criminal case was opened against Mr. Porter on April 25, 2001. Mr. Porter appeared for
18 his initial arraignment on May 2, 2001, where Mr. Porter waived his right to a speedy trial. On May
19 8, 2009, Mr. Porter was found guilty of Second Degree Murder With Use of a Deadly Weapon. Mr.
20 Porter is still awaiting trial on charges of sexual assault in the same case. Mr. Porter has chosen to
21 represent himself on the sexual assault charges. As such, while serving his sentence for the murder
22 conviction, Mr. Porter has filed numerous pleadings into his case. Mr. Porter's case was reassigned
23 to Judge Bluth on April 29, 2019. On August 12, 2019, Mr. Porter filed a Motion to Dismiss and a
24 pre-conviction Petition for Writ of Habeas Corpus. Judge Bluth denied both the motion and the
25 petition at a hearing on September 18, 2019.

26 On September 24, 2019, Mr. Porter filed a Motion for Mandatory Disqualification or
27 Recusal. Mr. Porter's motion raises issues with Judge Bluth rulings and actions during Mr. Porter's
28

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

1 criminal case. Mr. Porter also alleges that Judge Bluth has violated Mr. Porter's right to a speedy
2 trial. Judge Bluth filed an affidavit and answer in response on October 2, 2019, categorically
3 denying any bias against Mr. Porter. The matter came before the Court on October 22, 2019, but the
4 court did not entertain arguments as Mr. Porter was in the Nevada Department of Corrections.

5 **II. Discussion**

6 **A. Legal Standard**

7 Nevada Revised Statute 1.230 provides the statutory grounds for disqualifying district Court
8 judges. The statute in pertinent part provides:

- 9 1. A judge shall not act in an action or proceeding when the judge entertains actual
10 bias or prejudice for or against one of the parties to the action.
11 2. A judge shall not act as such in an action or proceeding when implied bias exists
12 in any of the following respects:
13 (a) When the judge is a party to or interested in the action or proceeding.
14 (b) When the judge is related to either party by consanguinity or affinity within the
15 third degree.
16 (c) When the judge has been attorney or counsel for either of the parties in the
17 particular action or proceeding before the court.
18 (d) When the judge is related to an attorney or counselor for either of the parties by
19 consanguinity or affinity within the third degree. This paragraph does not apply
20 to the presentation of ex parte or contested matters, except in fixing fees for an
21 attorney so related to the judge.

22 The Revised Nevada Code of Judicial Conduct provides substantive grounds for judicial
23 disqualification. Pursuant to NCJC 2.11(A):

24 (A) A judge shall disqualify himself or herself in any proceeding in which the
25 judge's impartiality might reasonably be questioned, including but not limited to the
26 following circumstances:

- 27 (1) The judge has a personal bias or prejudice concerning a party or a party's
28 lawyer, or personal knowledge of facts that are in dispute in the proceeding.

A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might
be reasonably questioned. Ybarra v. State, 247 P.3d 269, 271 (Nev. 2011). The test for whether a
judge's impartiality might be reasonably questioned is objective and courts must decide whether a
reasonable person, knowing all the facts, would harbor reasonable doubts about a judge's
impartiality. Id. at 272.

1 The burden is on the party asserting the challenge to establish sufficient factual and legal
2 grounds warranting disqualification. Las Vegas Downtown Redevelopment Agency v. District
3 Court, 5 P.3d 1059, 1061 (Nev. 2000). A judge has a duty to preside to the conclusion of all
4 proceedings, in the absence of some statute, rule of court, ethical standard, or compelling reason
5 otherwise. Id. A judge is presumed to be unbiased. Millen v. District Court, 148 P.3d 694, 701
6 (Nev. 2006). A judge is presumed to be impartial, and the burden is on the party asserting the
7 challenge to establish sufficient factual grounds warranting disqualification. Yabarra, 247 P.3d at
8 272. Additionally, the Court must give substantial weight to a judge's determination that the judge
9 may not voluntarily disqualify themselves, and the judge's decision cannot be overturned in the
10 absence of clear abuse of discretion. In re Pet. To recall Dunleavy, 769 P.2d 1271, 1274 (Nev.
11 1988).

12 The Nevada Supreme Court has stated "rulings and actions of a judge during the course of
13 official judicial proceedings do not establish legally cognizable grounds for disqualifications." Id. at
14 1275. The personal bias necessary to disqualify must "stem from an extrajudicial source and result
15 in an opinion on the merits on some basis other than what the judge learned from participation in the
16 case." Id. "To permit an allegation of bias, partially founded upon a justice's performance of his [or
17 her] constitutionally mandated responsibilities, to disqualify that justice from discharging those
18 duties would nullify the court's authority and permit manipulation of justice, as well as the court."
19 Id.

20 The Nevada Supreme Court has noted that while the general rule is that what a judge learns
21 in his or her official capacity does not result in disqualification, "an opinion formed by a judge on
22 the basis of facts introduced or events occurring in the course of the current proceedings, or of prior
23 proceedings, constitutes a basis for a bias or partiality motion where the opinion displays 'a deep-
24 seated favoritism or antagonism that would make fair judgment impossible.'" Kirksey v. State, 923
25 P.2d 1102, 1107 (Nev. 1996). However, "remarks of a judge made in the context of a court
26 proceeding are not considered indicative of improper bias or prejudice unless they show that the
27 judge has closed his or her mind to the presentation of all the evidence." Cameron v. State, 968 P.2d
28 1169, 1171 (Nev. 1998).

B. Disqualification is not warranted because Mr. Porter has not established sufficient factual and legal grounds for disqualification.

Mr. Porter's arguments do not demonstrate extreme bias or prejudice against Mr. Porter that would support the disqualification of Judge Bluth.

1. The rulings and actions of Judge Bluth in the course of official judicial proceedings are not evidence of bias or prejudice.

Mr. Porter alleges that Judge Bluth is not performing judicial duties impartially, fairly, and diligently. Mr. Porter asserts that the September 18th hearing on Mr. Porter's Motion to Dismiss and pre-conviction Petition for Writ of Habeas Corpus is evidence of Judge Bluth's bias against him. Mr. Porter argues that Judge Bluth denied Mr. Porter's pleadings without considering their merits and that Judge Bluth gave the State favorable treatment. Mr. Porter further alleges that Judge Bluth refused to allow Mr. Porter to be present in the courtroom on September 16th.

The record does not support Mr. Porter's allegations. The basis for Mr. Porter's Motion to Dismiss was that Mr. Porter had been denied his right to a speedy trial. Mr. Porter, however, had waived his right to a speedy trial at his initial arraignment. In her answer, Judge Bluth responds that the motion to dismiss was denied on the basis of Mr. Porter's prior waiver. As for Mr. Porter's pre-conviction writ, under Nevada statute, a pre-conviction writ must be filed "within 21 days after the first appearance of the accused in the district court." NRS 34.700. Mr. Porter's first appearance in district court was in 2001. Judge Bluth responds that Nevada statute therefore required Judge Bluth to deny the writ as untimely. Lastly, Judge Bluth asserts that Mr. Porter was not in the courtroom on September 16th because Judge Bluth was in trial on that date. Mr. Porter's calendar call was thus continued to September 18th and Mr. Porter was present for the hearing.

The record shows that Judge Bluth performed her judicial duties at the September 18th hearing impartially, fairly, and diligently. To the extent that Mr. Porter disagrees with Judge Bluth's rulings, a motion or affidavit for disqualification is an inappropriate vehicle to attack the substantive rulings of the underlying case. If a litigant disagrees with the substantive rulings of a judge, they must go through the appellate process. Here, the facts do not demonstrate the extreme bias or prejudice against Mr. Porter that would be necessary for disqualification. Therefore, Mr. Porter's request to disqualify Judge Bluth on these grounds is denied.

1 **2. Judge Bluth has not violated Mr. Porter's constitutional rights.**

2 Mr. Porter argues that Judge Bluth has violated his constitutional rights by denying Mr.
3 Porter his right to a speedy trial. Mr. Porter alleges that Judge Bluth has wrongfully continued the
4 trial date over Mr. Porter's objections. Mr. Porter's allegations are not supported by the record.

5 First, as previously noted, Mr. Porter already waived his right to a speedy trial.
6 Furthermore, Judge Bluth notes that it was the District Attorney which objected to continuance of
7 the trial at the September 18th hearing, and the DA stated that Mr. Porter's actions have necessitated
8 repeated continuance of the trial. Judge Bluth also notes that Mr. Porter has had multiple attorneys
9 throughout the case and is currently unwilling to communicate with his standby counsel. The most
10 recent continuance was due in part to Mr. Porter's procedurally improper attempt to subpoena
11 witnesses for trial. As a result, Mr. Porter would not have had any witnesses to call if the trial had
12 not been continued.

13 Judge Bluth has not violated Mr. Porter's right to a speedy trial. Mr. Porter's request to
14 disqualify Judge Bluth on these grounds is therefore denied.

15 **III. Conclusion**

16 Mr. Porter does not bring any cognizable claims supported by factual or legal allegations
17 against Judge Bluth. Judge Bluth's rulings and actions in the course of official judicial proceedings
18 are not evidence of bias or prejudice. Additionally, Judge Bluth has not violated Mr. Porter's right
19 to a speedy trial because Mr. Porter waived this right at his initial arraignment. Thus, Mr. Porter's
20 request to disqualify Judge Bluth is denied.

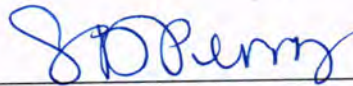
21
22 DATED this day of November 12 2019.

23
24 
25 LINDA MARIE BELL
26 DISTRICT COURT JUDGE
27
28

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date of filing, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system or, if no e-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for:

Name	Party
Justin D. Porter #1042449 HDSP PO Box 650 Indian Springs, NV 89070	Pro Se Defendant
Steven B. Wolfson Lisa Luzaich District Attorney's Office 200 Lewis Avenue Las Vegas, NV 89155-2212	Attorneys for Plaintiff
The Honorable Jacqueline M. Bluth	Judge



SYLVIA PERRY
JUDICIAL EXECUTIVE ASSISTANT, DEPARTMENT VII

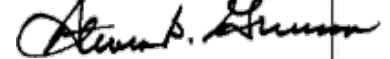
AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number 01C174954 DOES NOT contain the social security number of any person.

/s/ Linda Marie Bell
District Court Judge

Date: 11/7/2019



STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
LISA LUZAICH
Chief Deputy District Attorney
Nevada Bar #005056
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-

JUSTIN D. PORTER,
#1682627

Defendant.

CASE NO: **01C174954**

DEPT NO: **VI**

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER

DATE OF HEARING: **FEBRUARY 19, 2020**
TIME OF HEARING: **9:30 AM**

THIS CAUSE having presented before the Honorable JACQUELINE BLUTH, District Court Judge, on the 19th day of February, 2020; Petitioner present, represented by ADAM GILL, ESQ.; Respondent represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through LISA LUZAICH, Chief Deputy District Attorney; and having considered the matter, including briefs, transcripts, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of Law:

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(PORTER_JUSTIN_02_19_2020)-001.DOCX

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FINDINGS OF FACT, CONCLUSIONS OF LAW

STATEMENT OF THE CASE

On April 26, 2001, the State of Nevada, by way of Information, charged Justin Porter (hereinafter "Petitioner") with over 40 felony counts, including sexual assault, kidnapping, murder, burglary, and robbery, related to 9 events over a 4-month period, involving 12 victims. On May 2, 2001, an Amended Information was filed in open court to correct a typographical error. On October 11, 2001, a Second Amended Information was filed reducing the total charges to 38 counts. Counts 30, 31 and 32 alleged Burglary while in Possession of a Deadly Weapon; Attempt Robbery with Use of a Deadly Weapon; and Murder with Use of a Deadly Weapon (Open Murder), respectively. These three counts involved a single victim.

On May 15, 2008, Petitioner filed a Motion to Sever Counts 30-32 from the remainder of the charges. On June 12, 2008, the State filed its Opposition. On June 18, 2008, the Court granted Petitioner's Motion to Sever, and ordered the murder event be tried separately. The State subsequently filed a Third Amended Information in the instant case on April 30, 2009, charging Petitioner with: Count 1 – Burglary While in Possession of a Deadly Weapon (Felony – NRS 205.060, 193.165); Count 2 – Attempt Robbery With Use of a Deadly Weapon (Felony – NRS 193.330, 200.380, 193.165), and Count 3 – Murder With Use of a Deadly Weapon (Open Murder) (Felony – NRS 200.010, 200.030, 193.165).

On May 8, 2009, a jury found Petitioner guilty on Count 3 of Second Degree Murder with Use of a Deadly Weapon. Petitioner was found not guilty of Counts 1 and 2.

On September 30, 2009, the Court sentenced Petitioner to the Nevada Department of Corrections for 120 months to Life, plus a consecutive term of 120 months to Life for the use of a deadly weapon, with 3,338 days credit for time served. The Judgment of Conviction was filed on October 13, 2009. On October 29, 2009, Petitioner filed a Notice of Appeal. On November 8, 2010, the Nevada Supreme Court affirmed the Judgment of Conviction. Remittitur issued December 3, 2010.

1 //

2 //

3 On February 10, 2012, Petitioner filed his first pro per Post-Conviction Petition for
4 Writ of Habeas Corpus. The State filed its Response and Motion to Dismiss on March 21,
5 2012. On April 23, 2012, the Court denied Petitioner's first Petition as untimely. The
6 Findings of Fact, Conclusions of Law, and Order were filed on June 11, 2012. Petitioner
7 appealed the denial of his first Petition on May 8, 2012, and on March 11, 2013, the Nevada
8 Supreme Court affirmed the denial. Remittitur issued on March 19, 2013.

9 On August 26, 2013, Petitioner filed his second pro per Post-Conviction Petition for
10 Writ of Habeas Corpus, and a separate Motion to Appoint Counsel. The State filed its
11 Response and Motion to Dismiss on January 3, 2014. On January 13, 2014, the Court denied
12 Petitioner's second Petition as time-barred. Petitioner filed a Notice of Appeal from the
13 denial of his second Petition on February 7, 2014, and on June 11, 2014, the Nevada
14 Supreme Court affirmed the denial. Remittitur issued on July 15, 2014.

15 On October 26, 2015, Petitioner filed his third pro per Post-Conviction Petition for
16 Writ of Habeas Corpus. On August 17, 2016, the Nevada Supreme Court affirmed the
17 district court's ruling. Remittitur issued on January 24, 2017.

18 On July 5, 2019, Petitioner filed the instant pro per Post-Conviction Petition for Writ
19 of Habeas Corpus (the "instant Petition"). Petitioner then filed a "Supplement" to his Petition
20 on July 16, 2019. Petitioner filed another "Petition" on July 25, 2019.

21 On September 27, 2019, Petitioner filed a Notice of Appeal in the instant case. The
22 Nevada Supreme Court dismissed the appeal on October 18, 2019, as there was no order to
23 be appealed from. Remittitur issued on November 19, 2019. While the appeal was pending,
24 Petitioner filed a "Motion for Respondent to Petitioner's Habeas Corpus (Post-Conviction)."

25 On December 2, 2019, the State filed its Response and Motion to Dismiss Petitioner's
26 Petition for Writ of Habeas Corpus, and Motion to Strike Petitioner's Rogue Filings. The
27 matter came before this Court on December 9, 2019, at which time it was continued for the
28 appointment of counsel for Petitioner.

1 On February 19, 2020, this matter came before this Court for argument. After hearing
2 representations of the parties, this Court now finds and concludes as follows:

3 ANALYSIS

4 I. PETITIONER'S INSTANT PETITION DOES NOT ENTITLE PETITIONER 5 TO HABEAS RELIEF

6 A. The instant Petition is time-barred

7 The mandatory provision of NRS 34.726(1) states:

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

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

17 (emphasis added). “[T]he statutory rules regarding procedural default are mandatory and
18 cannot be ignored when properly raised by the State.” State v. Dist. Court (Riker), 121 Nev.
19 225, 233, 112 P.3d 1070, 1075 (2005).

20 Per the language, the one-year time bar prescribed by NRS 34.726 begins to run from
21 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.
22 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998); see Pellegrini v.
23 State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001) (holding that NRS 34.726 should be
24 construed by its plain meaning).

25 In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada
26 Supreme Court rejected a habeas petition that was filed two days late, pursuant to the “clear
27 and unambiguous” mandatory provisions of NRS 34.726(1). Gonzales reiterated the
28 importance of filing the petition with the District Court within the one-year mandate, absent
a showing of “good cause” for the delay in filing. Gonzales, 118, Nev. at 593, 590 P.3d at
902. The one-year time bar is therefore strictly construed. In contrast with the short amount
of time to file a notice of appeal, a prisoner has a full year to file a post-conviction habeas

1 petition, so there is no injustice in a strict application of NRS 34.726(1), despite any alleged
2 difficulties with the postal system. Id. at 595, 53 P.3d at 903.

3 In the instant case, Petitioner's instant Petition is beyond the one-year time bar. The
4 Nevada Supreme Court affirmed Petitioner's judgment of conviction on November 8, 2010,
5 and Remittitur issued on December 3, 2010. As such, Petitioner had until December 3, 2011
6 to file a post-conviction petition for writ of habeas corpus. The instant Petition was filed on
7 July 5, 2019, nearly eight (8) years after the time allowed by statute. Therefore, this Court
8 finds the instant Petition is time-barred pursuant to NRS 34.726(1).

9 **B. The instant Petition is successive and an abuse of the writ**

10 Petitioner's instant Petition is also procedurally barred because it is successive. NRS
11 34.810(2) reads:

12 A second or successive petition *must* be dismissed if the judge or
13 justice determines that it fails to allege new or different grounds for
14 relief and that the prior determination was on the merits or, if new
15 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.

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

23 The Nevada Supreme Court has stated: "Without such limitations on the availability
24 of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse
25 post-conviction remedies. In addition, meritless, successive and untimely petitions clog the
26 court system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d
27 at 950. The Nevada Supreme Court recognizes that "[u]nlike initial petitions which certainly
28 require a careful review of the record, successive petitions may be dismissed based solely on

1 the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In
2 other words, if the claim or allegation was previously available with reasonable diligence, it
3 is an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467,
4 497-498 (1991). Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231,
5 112 P.3d at 1074.

6 On February 10, 2012, Petitioner filed his first petition for habeas relief, which was
7 denied as untimely because the district court concluded that Petitioner did not demonstrate
8 good cause to overcome the time-bar. On August 26, 2013, Petitioner filed his second
9 petition for habeas relief, which was once again denied as untimely. Petitioner filed a third
10 petition for habeas relief on October 26, 2015, which the district court denied as procedurally
11 barred under NRS 34.726(1), finding that Petitioner’s actual innocence claims were
12 insufficient to overcome those procedural bars. Petitioner appealed each denial of his
13 respective petitions, and every denial was affirmed by the Nevada Supreme Court. Petitioner
14 has clearly had the opportunity to raise the grounds he now alleges are “new and different” in
15 each of these prior Petitions. Therefore, this Court finds the instant Petition is successive and
16 constitutes an abuse of the writ; as such, it is subject to denial pursuant to NRS 34.810(2).

17 **C. The instant Petition is subject to Laches**

18 NRS 34.800 creates a rebuttable presumption of prejudice to the State if “[a] period
19 exceeding five years [elapses] between the filing of a judgment of conviction, an order
20 imposing a sentence of imprisonment or a decision on direct appeal of a judgment of
21 conviction and the filing of a petition challenging the validity of a judgment of conviction...”
22 The Nevada Supreme Court observed in Groesbeck v. Warden, “[P]etitions that are filed
23 many years after conviction are an unreasonable burden on the criminal justice system. The
24 necessity for a workable system dictates that there must exist a time when a criminal
25 conviction is final.” 100 Nev. 259, 679 P.2d 1268 (1984). To invoke the presumption, the
26 statute requires the State plead laches in its motion to dismiss the petition. NRS 34.800(2).
27 The State affirmatively pleads laches in the instant case.
28

1 The instant Petition was filed over ten (10) years after the verdict and the sentencing
2 hearing, and almost nine (9) years after the Nevada Supreme Court affirmed the judgment of
3 conviction. Because these time periods exceed five (5) years, this Court finds the State is
4 entitled to a rebuttable presumption of prejudice. NRS 34.800(2).

5 //

6 **D. Petitioner's claim of "actual innocence" is not, itself, a cognizable claim for**
7 **habeas relief**

8 Petitioner's first claim is that he is "actually innocent" of those crimes for which he
9 was convicted at trial. Instant Petition at 13. The United States Supreme Court has held that
10 actual innocence is "not itself a constitutional claim, but instead a gateway through which a
11 habeas petitioner must pass to have his otherwise barred constitutional claim considered on
12 the merits." Schlup v. Delo, 513 U.S. 298, 327, 115 S. Ct. 851, 867 (1995). In order for a
13 petitioner to obtain a reversal of his conviction based on a claim of actual innocence, he must
14 prove that "it is more likely than not that *no* reasonable juror would have convicted him in
15 light of the 'new evidence' presented in habeas proceedings." Calderon v. Thompson, 523
16 U.S. 538, 560, 118 S. Ct. 1489, 1503 (1998) (emphasis added) (quoting Schlup).

17 Petitioner seems to acknowledge that his "actual innocence" claim is merely a vehicle
18 for overcoming the other procedural bars to the instant Petition. Instant Petition at 13.
19 However, the substance of this claim is merely a challenge to the sufficiency of the evidence
20 used to convict Petitioner at trial. Id. Petitioner does not offer any evidence that could be
21 considered "new" or that could support the requisite showing under Calderon. Therefore, this
22 Court concludes that Petitioner has failed to demonstrate that "actual innocence" establishes
23 good cause enough to overcome his procedural defaults, and the instant Petition is therefore
24 subject to dismissal.

25 **E. Petitioner fails to demonstrate good case or prejudice for failing to timely**
26 **raise his claims of ineffective assistance of counsel**

27 To avoid procedural default, under NRS 34.726, a petitioner has the burden of
28 pleading and proving specific facts that demonstrate good cause for his failure to present his

1 claim in earlier proceedings or to otherwise comply with the statutory requirements, *and* that
2 he will be unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a); see Hogan v.
3 Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep’t of
4 Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). “A court *must* dismiss a habeas
5 petition if it presents claims that either were or could have been presented in an earlier
6 proceeding, unless the court finds both cause for failing to present the claims earlier or for
7 raising them again *and* actual prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646–
8 47, 29 P.3d 498, 523 (2001) (emphasis added).

9 1. Petitioner has failed to establish good cause.

10 “To establish good cause, appellants *must* show that an impediment external to the
11 defense prevented their compliance with the applicable procedural rule.” Clem v. State, 119
12 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev.
13 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. “A qualifying
14 impediment might be shown where the factual or legal basis for a claim was not reasonably
15 available at the time of default.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003).
16 The Court continued, “appellants cannot attempt to manufacture good cause[.]” Id. at 621, 81
17 P.3d at 526. Examples of good cause include interference by State officials and the previous
18 unavailability of a legal or factual basis. See State v. Huebler, 128 Nev. Adv. Op. 19, 275
19 P.3d 91, 95 (2012). Clearly, any delay in the filing of the petition must not be the fault of the
20 petitioner. NRS 34.726(1)(a).

21 Petitioner has failed to address good cause to overcome this late filing, instead relying
22 upon allegations of “actual innocence” to excuse the procedural bars to the instant Petition.
23 As addressed in Section I(D), *supra.*, Petitioner fails to meet the standard under Calderon.
24 Thus, this Court finds that Petitioner does not assert good cause and so fails to overcome the
25 mandatory procedural bar.

26 2. Petitioner has failed to establish prejudice.

1 In addition, this Court finds Petitioner does not establish prejudice necessary to ignore
2 the procedural default because the underlying claims of ineffective assistance of counsel are
3 meritless.

4 The Sixth Amendment to the United States Constitution provides that, “[i]n all
5 criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel
6 for his defense.” The United States Supreme Court has long recognized that “the right to
7 counsel is the right to the effective assistance of counsel.” Strickland v. Washington, 466
8 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138,
9 865 P.2d 322, 323 (1993).

10 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
11 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test
12 of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063–64. See also Love, 109 Nev. at 1138,
13 865 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's
14 representation fell below an objective standard of reasonableness, and second, that but for
15 counsel's errors, there is a reasonable probability that the result of the proceedings would
16 have been different. 466 U.S. at 687–88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada
17 State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland
18 two-part test). “[T]here is no reason for a court deciding an ineffective assistance claim to
19 approach the inquiry in the same order or even to address both components of the inquiry if
20 the defendant makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct.
21 at 2069.

22 The court begins with the presumption of effectiveness and then must determine
23 whether the defendant has demonstrated by a preponderance of the evidence that counsel
24 was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective
25 counsel does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the
26 range of competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev.
27 430, 432, 537 P.2d 473, 474 (1975).

1 Counsel cannot be ineffective for failing to make futile objections or arguments. See
2 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
3 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
4 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
5 (2002).

6 Based on the above law, the role of a court in considering allegations of ineffective
7 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
8 whether, under the particular facts and circumstances of the case, trial counsel failed to
9 render reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708,
10 711 (1978). This analysis does not mean that the court should “second guess reasoned
11 choices between trial tactics nor does it mean that defense counsel, to protect himself against
12 allegations of inadequacy, must make every conceivable motion no matter how remote the
13 possibilities are of success.” Id. To be effective, the constitution “does not require that
14 counsel do what is impossible or unethical. If there is no bona fide defense to the charge,
15 counsel cannot create one and may disserve the interests of his client by attempting a useless
16 charade.” United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19
17 (1984).

18 “There are countless ways to provide effective assistance in any given case. Even the
19 best criminal defense attorneys would not defend a particular client in the same way.”
20 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
21 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
22 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
23 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's
24 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
25 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

26 Even if a defendant can demonstrate that his counsel's representation fell below an
27 objective standard of reasonableness, he must still demonstrate prejudice and show a
28 reasonable probability that, but for counsel's errors, the result of the trial would have been

1 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
2 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
3 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-
4 89, 694, 104 S. Ct. at 2064–65, 2068).

5 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the
6 disputed factual allegations underlying his ineffective-assistance claim by a preponderance
7 of the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
8 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief
9 must be supported with specific factual allegations, which if true, would entitle the petitioner
10 to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and
11 “naked” allegations are not sufficient, nor are those belied and repelled by the record. Id. “A
12 claim is ‘belied’ when it is contradicted or proven to be false by the record as it existed at the
13 time the claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).
14 NRS 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the
15 claims in the petition[.] . . . Failure to allege specific facts rather than just conclusions may
16 cause your petition to be dismissed.” (emphasis added).

17 Here, Petitioner alleges his trial counsel was ineffective in four ways: (1) failing to
18 instruct the jury on Petitioner’s theory of the case; (2) conceding guilt as to second degree
19 murder; (3) failing to subject prosecution’s case to a meaningful adverse testing process; and
20 (4) failing to object to Petitioner’s statement as involuntary. Instant Petition at 19-24.
21 However, Petitioner’s allegations are subject to the law of the case doctrine, as they have
22 been previously raised, and rejected, in earlier petitions.

23 “The law of a first appeal is law of the case on all subsequent appeals in which the
24 facts are substantially the same.” Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975)
25 (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). “The doctrine of the
26 law of the case cannot be avoided by a more detailed and precisely focused argument
27 subsequently made after reflection upon the previous proceedings.” Id. at 316, 535 P.2d at
28 799. Under the law of the case doctrine, issues previously decided on direct appeal may not

1 be reargued in a habeas petition. Pellegrini v. State, 117 Nev. at 879, 34 P.3d at 532 (citing
2 McNelson v. State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, this
3 Court cannot overrule the Nevada Supreme Court. NEV. CONST. Art. VI § 6.

4 *i. Failure to Instruct the Jury on Petitioner's Theory of the Case*

5 Petitioner raised the allegation that trial counsel failed to proffer proper jury
6 instructions in his third Petition. The district court determined that this allegation was
7 without merit in that Petition, and the district court's determination was upheld on appeal.
8 See, Findings of Fact, Conclusions of Law and Order, filed on March 14, 2016 in Case
9 Number 01C174954 ("3/14/16 FCL") at 5; see also, Order of Affirmance, filed on August
10 17, 2016 in Supreme Court Case 70206 ("8/17/16 Affirmance"). Therefore, this Court finds
11 this issue has already been raised and addressed and that it is therefore subject to the law of
12 the case doctrine.

13 *ii. Conceding Second Degree Murder*

14 Petitioner raised the allegation that trial counsel improperly conceded the issue of
15 guilt as to second degree murder in his second Petition. See Third Petition at 7. The district
16 court rejected this allegation and dismissed Petitioner's third Petition, a ruling that was also
17 upheld on appeal. See generally, 2/14/14 FCL; see also, 6/11/14 Affirmance. Because
18 Petitioner already unsuccessfully raised this allegation, and because there are no new facts
19 that would affect the Nevada Supreme Court's earlier determination of this issue, this Court
20 finds this claim is subject to the law of the case doctrine and cannot demonstrate prejudice.

21 *iii. Failure to Subject Prosecution's Case to a Meaningful Adverse Testing*
22 *Process*

23 Petitioner's third allegation in support of his claim of ineffective assistance of trial
24 counsel relies on the same actions of trial counsel as addressed in Section I(E)(2)(ii), *supra*.
25 – namely, that trial counsel conceded the issue of guilt as to second degree murder. As
26 addressed above, this claim has already been substantively addressed, and Petitioner's
27 position has been rejected by both the district court and the Nevada Supreme Court. Because
28 both courts have already ruled on this specific issue, this Court finds this claim is subject to

1 the law of the case doctrine. Furthermore, because it has no merit, this Court further finds
2 this claim cannot demonstrate prejudice.

3 *iv. Failure to Object to Petitioner's Statement as Involuntary*

4 Petitioner initially raised trial counsel's alleged failure to object to his statement to
5 police as involuntary on his direct appeal. See, Appellant's Opening Brief, filed on April 21,
6 2010 in Supreme Court Case 54866 at 7-10. However, the Nevada Supreme Court expressly
7 rejected the notion that Petitioner's statement to police was involuntary or unknowing,
8 instead concluding "[t]he totality of the circumstances reveals that Porter voluntarily,
9 knowingly, and intelligently waived his Miranda rights... and the district court therefore did
10 not err in admitting his confession." 11/08/2010 Affirmance at 2. Because the Nevada
11 Supreme Court found the issue of voluntariness to be without merit, trial counsel could not
12 be ineffective for failing to raise the issue.

13 Petitioner's allegation is further belied by a review of the district court record. On
14 September 26, 2002, trial counsel filed a "Motion to Suppress Defendant's Confessions and
15 Admissions to Metro and Chicago Detectives Based on Violation of his Miranda Rights and
16 Involuntariness and Request for Jackson v. Denno Hearing." Because Petitioner's allegation
17 is belied by the record and subject to the law of the case doctrine, this Court finds this claim
18 cannot demonstrate prejudice to overcome the procedural bars to the instant Petition.

19 Petitioner further alleges his appellate counsel was ineffective in two ways: (1) failing
20 to raise prosecutorial misconduct on appeal; and (2) failing to allege ineffective assistance of
21 trial counsel on appeal, both of which have also been addressed and rejected.

22 *i. Failure to Raise Issue of Prosecutorial Misconduct on Direct Appeal*

23 Petitioner's argument that his appellate counsel was ineffective for not alleging
24 prosecutorial misconduct is based on Petitioner's argument that mental disability rendered
25 his voluntary statement to detectives inadmissible, and that the statement should not have
26 been used at trial. See, Instant Petition at 26. This claim was, in fact, substantively raised on
27 direct appeal, and was rejected by the Nevada Supreme Court as being without merit.
28 11/08/2010 Affirmance at 2. Because this claim was previously substantively raised, and

1 rejected, this Court finds it is subject to the law of the case doctrine. It further cannot be used
2 to overcome the procedural bars precluding the instant Petition from being reviewed on its
3 merits.

4 *ii. Failure to Raise Issue of Ineffective Assistance of Trial Counsel*

5 Petitioner repeats his earlier four arguments regarding ineffectiveness of trial counsel,
6 and argues that appellate counsel was ineffective for failing to raise these issues on appeal.
7 Aside from the same conclusory statements made in support of his earlier claims, which
8 were all addressed and rejected on Petitioner's direct appeal, or in one of Petitioner's
9 numerous habeas petitions since, Petitioner fails to support his claim, and fails to show how
10 any of these justify overcoming the procedural bars to the instant Petition. Therefore, this
11 Court finds that Petitioner's claim is subject to the procedural bars.

12 //

13 //

14 **F. Petitioner's remaining claims of Prosecutorial Misconduct and Abuse of**
15 **Discretion are subject to the law of the case doctrine**

16 Petitioner also claims that admission of his statement to detectives at trial amounted to
17 prosecutorial misconduct, and that the trial court abused its discretion when it allowed the
18 statement to be used at trial. Instant Petition at 30-36. However, these claims are
19 substantively the same as Petitioner's claims regarding ineffective assistance of trial and
20 appellate counsel, as they all rely on Petitioner's argument that mental or cognitive
21 handicaps prevented his knowing and/or voluntary waiver of his Miranda rights. As
22 addressed, *supra.*, Petitioner substantively raised this issue on direct appeal. The Nevada
23 Supreme Court rejected the claim, concluding that the totality of the circumstances supported
24 the notion that Petitioner's statement was knowing and voluntary. 11/08/2010 Affirmance at
25 2. Therefore, this Court finds that, pursuant to Hall, these claims are subject to the law of the
26 case doctrine.

27 Because Petitioner's substantive claims are subject to the law of the case doctrine, and
28 further, because Petitioner fails to demonstrate good cause or prejudice to overcome the

1 procedural bars to the instant Petition, this Court concludes the instant Petition is ripe only
2 for summary dismissal.

3 **II. PETITIONER'S SUPPLEMENT AND SUBSEQUENT "PETITION" ARE**
4 **STRICKEN**

5 NRS 34.750(5) precludes the filing of any supplemental pleadings to a post-
6 conviction petition for writ of habeas corpus without leave of the court. The instant Petition
7 was filed on July 5, 2019. On July 16, 2019, absent any order or leave of this Court,
8 Petitioner filed a "Supplement to Habeas Corpus Postconviction." Then, on July 25, 2019,
9 again without order or leave of this Court, Petitioner filed another "Petition for Writ of
10 Habeas Corpus." Petitioner was not granted, nor did he even seek, leave of this Court to
11 supplement the instant Petition. NRS 37.750(5). Therefore, this Court concludes the
12 subsequent filings should be stricken as rogue and improper.

13 //

14 //

15 **CONCLUSION**

16 THEREFORE, **COURT ORDERED**, the State's Motion to Dismiss Pursuant to
17 Laches shall be and is GRANTED.


18 **IT IS FURTHER ORDERED**, Petitioner Justin Porter's Petition for Writ of Habeas
19 Corpus (Post-Conviction) shall be and is DISMISSED.

20 **IT IS FURTHER ORDERED**, Petitioner Justin Porter's July 16, 2019 Supplement
21 to Habeas Corpus Petition and July 25, 2019 Petition for Writ of Habeas Corpus shall be and
22 are STRICKEN.

23 DATED this 21st day of May, 2020.

24 
25 DISTRICT COURT JUDGE 

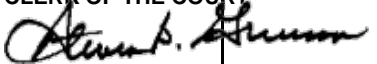
26 Respectfully submitted,

27 STEVEN B. WOLFSON
28 Clark County District Attorney
Nevada Bar #001565


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2 BY

LISA LUZAICH
Chief Deputy District Attorney
Nevada Bar #005056

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1 NEO

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4 JUSTIN D. PORTER,

5
6 Petitioner,

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

Case No: 01C174954

Dept No: VI

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

10
11 **PLEASE TAKE NOTICE** that on May 28, 2020, the court entered a decision or order in this matter, a
12 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 June 4, 2020.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Amanda Hampton

18 Amanda Hampton, Deputy Clerk

19 **CERTIFICATE OF E-SERVICE / MAILING**

20 I hereby certify that on this 4 day of June 2020, I served a copy of this Notice of Entry on the following:

21 ☒ By e-mail:

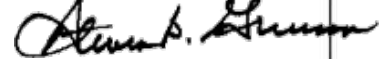
22 Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

23 ☒ The United States mail addressed as follows:

24 Justin D. Porter # 1042449 Adam L. Gill, Esq.
25 P.O. Box 650 723 S. 3rd St.
Indian Springs, NV 89070 Las Vegas, NV 89101

26 /s/ Amanda Hampton

27 Amanda Hampton, Deputy Clerk



STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
LISA LUZAICH
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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-

JUSTIN D. PORTER,
#1682627

Defendant.

CASE NO: **01C174954**

DEPT NO: **VI**

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER

DATE OF HEARING: **FEBRUARY 19, 2020**
TIME OF HEARING: **9:30 AM**

THIS CAUSE having presented before the Honorable JACQUELINE BLUTH, District Court Judge, on the 19th day of February, 2020; Petitioner present, represented by ADAM GILL, ESQ.; Respondent represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through LISA LUZAICH, Chief Deputy District Attorney; and having considered the matter, including briefs, transcripts, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of Law:

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2 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

3 **STATEMENT OF THE CASE**

4 On April 26, 2001, the State of Nevada, by way of Information, charged Justin Porter
5 (hereinafter "Petitioner") with over 40 felony counts, including sexual assault, kidnapping,
6 murder, burglary, and robbery, related to 9 events over a 4-month period, involving 12
7 victims. On May 2, 2001, an Amended Information was filed in open court to correct a
8 typographical error. On October 11, 2001, a Second Amended Information was filed
9 reducing the total charges to 38 counts. Counts 30, 31 and 32 alleged Burglary while in
10 Possession of a Deadly Weapon; Attempt Robbery with Use of a Deadly Weapon; and
11 Murder with Use of a Deadly Weapon (Open Murder), respectively. These three counts
12 involved a single victim.

13 On May 15, 2008, Petitioner filed a Motion to Sever Counts 30-32 from the remainder
14 of the charges. On June 12, 2008, the State filed its Opposition. On June 18, 2008, the Court
15 granted Petitioner's Motion to Sever, and ordered the murder event be tried separately. The
16 State subsequently filed a Third Amended Information in the instant case on April 30, 2009,
17 charging Petitioner with: Count 1 – Burglary While in Possession of a Deadly Weapon
18 (Felony – NRS 205.060, 193.165); Count 2 – Attempt Robbery With Use of a Deadly
19 Weapon (Felony – NRS 193.330, 200.380, 193.165), and Count 3 – Murder With Use of a
20 Deadly Weapon (Open Murder) (Felony – NRS 200.010, 200.030, 193.165).

21 On May 8, 2009, a jury found Petitioner guilty on Count 3 of Second Degree Murder
22 with Use of a Deadly Weapon. Petitioner was found not guilty of Counts 1 and 2.

23 On September 30, 2009, the Court sentenced Petitioner to the Nevada Department of
24 Corrections for 120 months to Life, plus a consecutive term of 120 months to Life for the use
25 of a deadly weapon, with 3,338 days credit for time served. The Judgment of Conviction was
26 filed on October 13, 2009. On October 29, 2009, Petitioner filed a Notice of Appeal. On
27 November 8, 2010, the Nevada Supreme Court affirmed the Judgment of Conviction.
28 Remittitur issued December 3, 2010.

1 //

2 //

3 On February 10, 2012, Petitioner filed his first pro per Post-Conviction Petition for
4 Writ of Habeas Corpus. The State filed its Response and Motion to Dismiss on March 21,
5 2012. On April 23, 2012, the Court denied Petitioner's first Petition as untimely. The
6 Findings of Fact, Conclusions of Law, and Order were filed on June 11, 2012. Petitioner
7 appealed the denial of his first Petition on May 8, 2012, and on March 11, 2013, the Nevada
8 Supreme Court affirmed the denial. Remittitur issued on March 19, 2013.

9 On August 26, 2013, Petitioner filed his second pro per Post-Conviction Petition for
10 Writ of Habeas Corpus, and a separate Motion to Appoint Counsel. The State filed its
11 Response and Motion to Dismiss on January 3, 2014. On January 13, 2014, the Court denied
12 Petitioner's second Petition as time-barred. Petitioner filed a Notice of Appeal from the
13 denial of his second Petition on February 7, 2014, and on June 11, 2014, the Nevada
14 Supreme Court affirmed the denial. Remittitur issued on July 15, 2014.

15 On October 26, 2015, Petitioner filed his third pro per Post-Conviction Petition for
16 Writ of Habeas Corpus. On August 17, 2016, the Nevada Supreme Court affirmed the
17 district court's ruling. Remittitur issued on January 24, 2017.

18 On July 5, 2019, Petitioner filed the instant pro per Post-Conviction Petition for Writ
19 of Habeas Corpus (the "instant Petition"). Petitioner then filed a "Supplement" to his Petition
20 on July 16, 2019. Petitioner filed another "Petition" on July 25, 2019.

21 On September 27, 2019, Petitioner filed a Notice of Appeal in the instant case. The
22 Nevada Supreme Court dismissed the appeal on October 18, 2019, as there was no order to
23 be appealed from. Remittitur issued on November 19, 2019. While the appeal was pending,
24 Petitioner filed a "Motion for Respondent to Petitioner's Habeas Corpus (Post-Conviction)."

25 On December 2, 2019, the State filed its Response and Motion to Dismiss Petitioner's
26 Petition for Writ of Habeas Corpus, and Motion to Strike Petitioner's Rogue Filings. The
27 matter came before this Court on December 9, 2019, at which time it was continued for the
28 appointment of counsel for Petitioner.

1 On February 19, 2020, this matter came before this Court for argument. After hearing
2 representations of the parties, this Court now finds and concludes as follows:

3 ANALYSIS

4 I. PETITIONER'S INSTANT PETITION DOES NOT ENTITLE PETITIONER 5 TO HABEAS RELIEF

6 A. The instant Petition is time-barred

7 The mandatory provision of NRS 34.726(1) states:

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

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

17 (emphasis added). “[T]he statutory rules regarding procedural default are mandatory and
18 cannot be ignored when properly raised by the State.” State v. Dist. Court (Riker), 121 Nev.
19 225, 233, 112 P.3d 1070, 1075 (2005).

20 Per the language, the one-year time bar prescribed by NRS 34.726 begins to run from
21 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.
22 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998); see Pellegrini v.
23 State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001) (holding that NRS 34.726 should be
24 construed by its plain meaning).

25 In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada
26 Supreme Court rejected a habeas petition that was filed two days late, pursuant to the “clear
27 and unambiguous” mandatory provisions of NRS 34.726(1). Gonzales reiterated the
28 importance of filing the petition with the District Court within the one-year mandate, absent
a showing of “good cause” for the delay in filing. Gonzales, 118, Nev. at 593, 590 P.3d at
902. The one-year time bar is therefore strictly construed. In contrast with the short amount
of time to file a notice of appeal, a prisoner has a full year to file a post-conviction habeas

1 petition, so there is no injustice in a strict application of NRS 34.726(1), despite any alleged
2 difficulties with the postal system. Id. at 595, 53 P.3d at 903.

3 In the instant case, Petitioner's instant Petition is beyond the one-year time bar. The
4 Nevada Supreme Court affirmed Petitioner's judgment of conviction on November 8, 2010,
5 and Remittitur issued on December 3, 2010. As such, Petitioner had until December 3, 2011
6 to file a post-conviction petition for writ of habeas corpus. The instant Petition was filed on
7 July 5, 2019, nearly eight (8) years after the time allowed by statute. Therefore, this Court
8 finds the instant Petition is time-barred pursuant to NRS 34.726(1).

9 **B. The instant Petition is successive and an abuse of the writ**

10 Petitioner's instant Petition is also procedurally barred because it is successive. NRS
11 34.810(2) reads:

12 A second or successive petition *must* be dismissed if the judge or
13 justice determines that it fails to allege new or different grounds for
14 relief and that the prior determination was on the merits or, if new
15 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.

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

23 The Nevada Supreme Court has stated: "Without such limitations on the availability
24 of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse
25 post-conviction remedies. In addition, meritless, successive and untimely petitions clog the
26 court system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d
27 at 950. The Nevada Supreme Court recognizes that "[u]nlike initial petitions which certainly
28 require a careful review of the record, successive petitions may be dismissed based solely on

1 the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In
2 other words, if the claim or allegation was previously available with reasonable diligence, it
3 is an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467,
4 497-498 (1991). Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231,
5 112 P.3d at 1074.

6 On February 10, 2012, Petitioner filed his first petition for habeas relief, which was
7 denied as untimely because the district court concluded that Petitioner did not demonstrate
8 good cause to overcome the time-bar. On August 26, 2013, Petitioner filed his second
9 petition for habeas relief, which was once again denied as untimely. Petitioner filed a third
10 petition for habeas relief on October 26, 2015, which the district court denied as procedurally
11 barred under NRS 34.726(1), finding that Petitioner’s actual innocence claims were
12 insufficient to overcome those procedural bars. Petitioner appealed each denial of his
13 respective petitions, and every denial was affirmed by the Nevada Supreme Court. Petitioner
14 has clearly had the opportunity to raise the grounds he now alleges are “new and different” in
15 each of these prior Petitions. Therefore, this Court finds the instant Petition is successive and
16 constitutes an abuse of the writ; as such, it is subject to denial pursuant to NRS 34.810(2).

17 **C. The instant Petition is subject to Laches**

18 NRS 34.800 creates a rebuttable presumption of prejudice to the State if “[a] period
19 exceeding five years [elapses] between the filing of a judgment of conviction, an order
20 imposing a sentence of imprisonment or a decision on direct appeal of a judgment of
21 conviction and the filing of a petition challenging the validity of a judgment of conviction...”
22 The Nevada Supreme Court observed in Groesbeck v. Warden, “[P]etitions that are filed
23 many years after conviction are an unreasonable burden on the criminal justice system. The
24 necessity for a workable system dictates that there must exist a time when a criminal
25 conviction is final.” 100 Nev. 259, 679 P.2d 1268 (1984). To invoke the presumption, the
26 statute requires the State plead laches in its motion to dismiss the petition. NRS 34.800(2).
27 The State affirmatively pleads laches in the instant case.

1 The instant Petition was filed over ten (10) years after the verdict and the sentencing
2 hearing, and almost nine (9) years after the Nevada Supreme Court affirmed the judgment of
3 conviction. Because these time periods exceed five (5) years, this Court finds the State is
4 entitled to a rebuttable presumption of prejudice. NRS 34.800(2).

5 //

6 **D. Petitioner's claim of "actual innocence" is not, itself, a cognizable claim for**
7 **habeas relief**

8 Petitioner's first claim is that he is "actually innocent" of those crimes for which he
9 was convicted at trial. Instant Petition at 13. The United States Supreme Court has held that
10 actual innocence is "not itself a constitutional claim, but instead a gateway through which a
11 habeas petitioner must pass to have his otherwise barred constitutional claim considered on
12 the merits." Schlup v. Delo, 513 U.S. 298, 327, 115 S. Ct. 851, 867 (1995). In order for a
13 petitioner to obtain a reversal of his conviction based on a claim of actual innocence, he must
14 prove that "it is more likely than not that *no* reasonable juror would have convicted him in
15 light of the 'new evidence' presented in habeas proceedings." Calderon v. Thompson, 523
16 U.S. 538, 560, 118 S. Ct. 1489, 1503 (1998) (emphasis added) (quoting Schlup).

17 Petitioner seems to acknowledge that his "actual innocence" claim is merely a vehicle
18 for overcoming the other procedural bars to the instant Petition. Instant Petition at 13.
19 However, the substance of this claim is merely a challenge to the sufficiency of the evidence
20 used to convict Petitioner at trial. Id. Petitioner does not offer any evidence that could be
21 considered "new" or that could support the requisite showing under Calderon. Therefore, this
22 Court concludes that Petitioner has failed to demonstrate that "actual innocence" establishes
23 good cause enough to overcome his procedural defaults, and the instant Petition is therefore
24 subject to dismissal.

25 **E. Petitioner fails to demonstrate good case or prejudice for failing to timely**
26 **raise his claims of ineffective assistance of counsel**

27 To avoid procedural default, under NRS 34.726, a petitioner has the burden of
28 pleading and proving specific facts that demonstrate good cause for his failure to present his

1 claim in earlier proceedings or to otherwise comply with the statutory requirements, *and* that
2 he will be unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a); see Hogan v.
3 Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep’t of
4 Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). “A court *must* dismiss a habeas
5 petition if it presents claims that either were or could have been presented in an earlier
6 proceeding, unless the court finds both cause for failing to present the claims earlier or for
7 raising them again *and* actual prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646–
8 47, 29 P.3d 498, 523 (2001) (emphasis added).

9 1. Petitioner has failed to establish good cause.

10 “To establish good cause, appellants *must* show that an impediment external to the
11 defense prevented their compliance with the applicable procedural rule.” Clem v. State, 119
12 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev.
13 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. “A qualifying
14 impediment might be shown where the factual or legal basis for a claim was not reasonably
15 available at the time of default.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003).
16 The Court continued, “appellants cannot attempt to manufacture good cause[.]” Id. at 621, 81
17 P.3d at 526. Examples of good cause include interference by State officials and the previous
18 unavailability of a legal or factual basis. See State v. Huebler, 128 Nev. Adv. Op. 19, 275
19 P.3d 91, 95 (2012). Clearly, any delay in the filing of the petition must not be the fault of the
20 petitioner. NRS 34.726(1)(a).

21 Petitioner has failed to address good cause to overcome this late filing, instead relying
22 upon allegations of “actual innocence” to excuse the procedural bars to the instant Petition.
23 As addressed in Section I(D), *supra.*, Petitioner fails to meet the standard under Calderon.
24 Thus, this Court finds that Petitioner does not assert good cause and so fails to overcome the
25 mandatory procedural bar.

26 2. Petitioner has failed to establish prejudice.

27
28

1 In addition, this Court finds Petitioner does not establish prejudice necessary to ignore
2 the procedural default because the underlying claims of ineffective assistance of counsel are
3 meritless.

4 The Sixth Amendment to the United States Constitution provides that, “[i]n all
5 criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel
6 for his defense.” The United States Supreme Court has long recognized that “the right to
7 counsel is the right to the effective assistance of counsel.” Strickland v. Washington, 466
8 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138,
9 865 P.2d 322, 323 (1993).

10 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
11 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test
12 of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063–64. See also Love, 109 Nev. at 1138,
13 865 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's
14 representation fell below an objective standard of reasonableness, and second, that but for
15 counsel's errors, there is a reasonable probability that the result of the proceedings would
16 have been different. 466 U.S. at 687–88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada
17 State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland
18 two-part test). “[T]here is no reason for a court deciding an ineffective assistance claim to
19 approach the inquiry in the same order or even to address both components of the inquiry if
20 the defendant makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct.
21 at 2069.

22 The court begins with the presumption of effectiveness and then must determine
23 whether the defendant has demonstrated by a preponderance of the evidence that counsel
24 was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective
25 counsel does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the
26 range of competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev.
27 430, 432, 537 P.2d 473, 474 (1975).

1 Counsel cannot be ineffective for failing to make futile objections or arguments. See
2 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
3 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
4 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
5 (2002).

6 Based on the above law, the role of a court in considering allegations of ineffective
7 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
8 whether, under the particular facts and circumstances of the case, trial counsel failed to
9 render reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708,
10 711 (1978). This analysis does not mean that the court should “second guess reasoned
11 choices between trial tactics nor does it mean that defense counsel, to protect himself against
12 allegations of inadequacy, must make every conceivable motion no matter how remote the
13 possibilities are of success.” Id. To be effective, the constitution “does not require that
14 counsel do what is impossible or unethical. If there is no bona fide defense to the charge,
15 counsel cannot create one and may disserve the interests of his client by attempting a useless
16 charade.” United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19
17 (1984).

18 “There are countless ways to provide effective assistance in any given case. Even the
19 best criminal defense attorneys would not defend a particular client in the same way.”
20 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
21 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
22 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
23 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's
24 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
25 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

26 Even if a defendant can demonstrate that his counsel's representation fell below an
27 objective standard of reasonableness, he must still demonstrate prejudice and show a
28 reasonable probability that, but for counsel's errors, the result of the trial would have been

1 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
2 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
3 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-
4 89, 694, 104 S. Ct. at 2064–65, 2068).

5 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the
6 disputed factual allegations underlying his ineffective-assistance claim by a preponderance
7 of the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
8 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief
9 must be supported with specific factual allegations, which if true, would entitle the petitioner
10 to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and
11 “naked” allegations are not sufficient, nor are those belied and repelled by the record. Id. “A
12 claim is ‘belied’ when it is contradicted or proven to be false by the record as it existed at the
13 time the claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).
14 NRS 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the
15 claims in the petition[.] . . . Failure to allege specific facts rather than just conclusions may
16 cause your petition to be dismissed.” (emphasis added).

17 Here, Petitioner alleges his trial counsel was ineffective in four ways: (1) failing to
18 instruct the jury on Petitioner’s theory of the case; (2) conceding guilt as to second degree
19 murder; (3) failing to subject prosecution’s case to a meaningful adverse testing process; and
20 (4) failing to object to Petitioner’s statement as involuntary. Instant Petition at 19-24.
21 However, Petitioner’s allegations are subject to the law of the case doctrine, as they have
22 been previously raised, and rejected, in earlier petitions.

23 “The law of a first appeal is law of the case on all subsequent appeals in which the
24 facts are substantially the same.” Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975)
25 (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). “The doctrine of the
26 law of the case cannot be avoided by a more detailed and precisely focused argument
27 subsequently made after reflection upon the previous proceedings.” Id. at 316, 535 P.2d at
28 799. Under the law of the case doctrine, issues previously decided on direct appeal may not

1 be reargued in a habeas petition. Pellegrini v. State, 117 Nev. at 879, 34 P.3d at 532 (citing
2 McNelson v. State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, this
3 Court cannot overrule the Nevada Supreme Court. NEV. CONST. Art. VI § 6.

4 *i. Failure to Instruct the Jury on Petitioner's Theory of the Case*

5 Petitioner raised the allegation that trial counsel failed to proffer proper jury
6 instructions in his third Petition. The district court determined that this allegation was
7 without merit in that Petition, and the district court's determination was upheld on appeal.
8 See, Findings of Fact, Conclusions of Law and Order, filed on March 14, 2016 in Case
9 Number 01C174954 ("3/14/16 FCL") at 5; see also, Order of Affirmance, filed on August
10 17, 2016 in Supreme Court Case 70206 ("8/17/16 Affirmance"). Therefore, this Court finds
11 this issue has already been raised and addressed and that it is therefore subject to the law of
12 the case doctrine.

13 *ii. Conceding Second Degree Murder*

14 Petitioner raised the allegation that trial counsel improperly conceded the issue of
15 guilt as to second degree murder in his second Petition. See Third Petition at 7. The district
16 court rejected this allegation and dismissed Petitioner's third Petition, a ruling that was also
17 upheld on appeal. See generally, 2/14/14 FCL; see also, 6/11/14 Affirmance. Because
18 Petitioner already unsuccessfully raised this allegation, and because there are no new facts
19 that would affect the Nevada Supreme Court's earlier determination of this issue, this Court
20 finds this claim is subject to the law of the case doctrine and cannot demonstrate prejudice.

21 *iii. Failure to Subject Prosecution's Case to a Meaningful Adverse Testing*
22 *Process*

23 Petitioner's third allegation in support of his claim of ineffective assistance of trial
24 counsel relies on the same actions of trial counsel as addressed in Section I(E)(2)(ii), *supra*.
25 – namely, that trial counsel conceded the issue of guilt as to second degree murder. As
26 addressed above, this claim has already been substantively addressed, and Petitioner's
27 position has been rejected by both the district court and the Nevada Supreme Court. Because
28 both courts have already ruled on this specific issue, this Court finds this claim is subject to

1 the law of the case doctrine. Furthermore, because it has no merit, this Court further finds
2 this claim cannot demonstrate prejudice.

3 *iv. Failure to Object to Petitioner's Statement as Involuntary*

4 Petitioner initially raised trial counsel's alleged failure to object to his statement to
5 police as involuntary on his direct appeal. See, Appellant's Opening Brief, filed on April 21,
6 2010 in Supreme Court Case 54866 at 7-10. However, the Nevada Supreme Court expressly
7 rejected the notion that Petitioner's statement to police was involuntary or unknowing,
8 instead concluding "[t]he totality of the circumstances reveals that Porter voluntarily,
9 knowingly, and intelligently waived his Miranda rights... and the district court therefore did
10 not err in admitting his confession." 11/08/2010 Affirmance at 2. Because the Nevada
11 Supreme Court found the issue of voluntariness to be without merit, trial counsel could not
12 be ineffective for failing to raise the issue.

13 Petitioner's allegation is further belied by a review of the district court record. On
14 September 26, 2002, trial counsel filed a "Motion to Suppress Defendant's Confessions and
15 Admissions to Metro and Chicago Detectives Based on Violation of his Miranda Rights and
16 Involuntariness and Request for Jackson v. Denno Hearing." Because Petitioner's allegation
17 is belied by the record and subject to the law of the case doctrine, this Court finds this claim
18 cannot demonstrate prejudice to overcome the procedural bars to the instant Petition.

19 Petitioner further alleges his appellate counsel was ineffective in two ways: (1) failing
20 to raise prosecutorial misconduct on appeal; and (2) failing to allege ineffective assistance of
21 trial counsel on appeal, both of which have also been addressed and rejected.

22 *i. Failure to Raise Issue of Prosecutorial Misconduct on Direct Appeal*

23 Petitioner's argument that his appellate counsel was ineffective for not alleging
24 prosecutorial misconduct is based on Petitioner's argument that mental disability rendered
25 his voluntary statement to detectives inadmissible, and that the statement should not have
26 been used at trial. See, Instant Petition at 26. This claim was, in fact, substantively raised on
27 direct appeal, and was rejected by the Nevada Supreme Court as being without merit.
28 11/08/2010 Affirmance at 2. Because this claim was previously substantively raised, and

1 rejected, this Court finds it is subject to the law of the case doctrine. It further cannot be used
2 to overcome the procedural bars precluding the instant Petition from being reviewed on its
3 merits.

4 *ii. Failure to Raise Issue of Ineffective Assistance of Trial Counsel*

5 Petitioner repeats his earlier four arguments regarding ineffectiveness of trial counsel,
6 and argues that appellate counsel was ineffective for failing to raise these issues on appeal.
7 Aside from the same conclusory statements made in support of his earlier claims, which
8 were all addressed and rejected on Petitioner's direct appeal, or in one of Petitioner's
9 numerous habeas petitions since, Petitioner fails to support his claim, and fails to show how
10 any of these justify overcoming the procedural bars to the instant Petition. Therefore, this
11 Court finds that Petitioner's claim is subject to the procedural bars.

12 //

13 //

14 **F. Petitioner's remaining claims of Prosecutorial Misconduct and Abuse of**
15 **Discretion are subject to the law of the case doctrine**

16 Petitioner also claims that admission of his statement to detectives at trial amounted to
17 prosecutorial misconduct, and that the trial court abused its discretion when it allowed the
18 statement to be used at trial. Instant Petition at 30-36. However, these claims are
19 substantively the same as Petitioner's claims regarding ineffective assistance of trial and
20 appellate counsel, as they all rely on Petitioner's argument that mental or cognitive
21 handicaps prevented his knowing and/or voluntary waiver of his Miranda rights. As
22 addressed, *supra.*, Petitioner substantively raised this issue on direct appeal. The Nevada
23 Supreme Court rejected the claim, concluding that the totality of the circumstances supported
24 the notion that Petitioner's statement was knowing and voluntary. 11/08/2010 Affirmance at
25 2. Therefore, this Court finds that, pursuant to Hall, these claims are subject to the law of the
26 case doctrine.

27 Because Petitioner's substantive claims are subject to the law of the case doctrine, and
28 further, because Petitioner fails to demonstrate good cause or prejudice to overcome the

1 procedural bars to the instant Petition, this Court concludes the instant Petition is ripe only
2 for summary dismissal.

3 **II. PETITIONER'S SUPPLEMENT AND SUBSEQUENT "PETITION" ARE**
4 **STRICKEN**

5 NRS 34.750(5) precludes the filing of any supplemental pleadings to a post-
6 conviction petition for writ of habeas corpus without leave of the court. The instant Petition
7 was filed on July 5, 2019. On July 16, 2019, absent any order or leave of this Court,
8 Petitioner filed a "Supplement to Habeas Corpus Postconviction." Then, on July 25, 2019,
9 again without order or leave of this Court, Petitioner filed another "Petition for Writ of
10 Habeas Corpus." Petitioner was not granted, nor did he even seek, leave of this Court to
11 supplement the instant Petition. NRS 37.750(5). Therefore, this Court concludes the
12 subsequent filings should be stricken as rogue and improper.

13 //

14 //

15 **CONCLUSION**

16 THEREFORE, **COURT ORDERED**, the State's Motion to Dismiss Pursuant to
17 Laches shall be and is GRANTED.

18 **IT IS FURTHER ORDERED**, Petitioner Justin Porter's Petition for Writ of Habeas
19 Corpus (Post-Conviction) shall be and is DISMISSED.

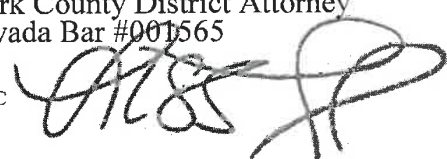
20 **IT IS FURTHER ORDERED**, Petitioner Justin Porter's July 16, 2019 Supplement
21 to Habeas Corpus Petition and July 25, 2019 Petition for Writ of Habeas Corpus shall be and
22 are STRICKEN.

23 DATED this 21st day of May, 2020.

24 
25 _____
26 DISTRICT COURT JUDGE 

27 Respectfully submitted,

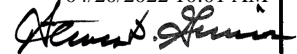
28 STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565



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2 BY

LISA LUZAICH
Chief Deputy District Attorney
Nevada Bar #005056

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CLERK OF THE COURT

ORDR
STEVEN B. WOLFSON
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LISA LUZAICH
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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

JUSTIN D. PORTER,
aka Jug Capri Porter,
#1682627

Defendant.

CASE NO: **01C174954**
DEPT NO: **VI**

STIPULATION AND ORDER TO RESET TRIAL DATE

THE STATE OF NEVADA, represented by STEVEN B. WOLFSON, District Attorney, through LISA LUZAICH, Chief Deputy District Attorney, and Defendant, represented by ADAM GILL, ESQ., STIPULATE AND AGREE that the trial date presently set for the 18th day of July, 2022, shall be vacated and reset to the 29th day of August, 2022, as the State will be unavailable.

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DISTRICT COURT
CLARK COUNTY, NEVADA

The State of Nevada vs Justin D Porter	CASE NO: 01C174954 DEPT. NO. Department 6
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AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Stipulation and Order was served via the court’s electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 4/20/2022

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4 Nevada Bar #001565
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8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Respondent

7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 **JUSTIN PORTER,**
11 **#7035217**

12 Petitioner,

13 -vs-

14 THE STATE OF NEVADA,

15 Respondent.

CASE NO: **A-19-798035-W**
01C174954

DEPT NO: **XVII**

16 **FINDINGS OF FACT, CONCLUSIONS**

17 **OF LAW, AND ORDER**

18 DATE OF HEARING: **JULY 6, 2022**
19 TIME OF HEARING: **8:30 AM**

20 THIS CAUSE having presented before the Honorable MICHAEL VILLANI, District
21 Judge, on the 6th day of July, 2022; Petitioner not present, IN PROPER PERSON; Respondent
22 represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through
23 LISA LUZAICH, Chief Deputy District Attorney; and having considered the matter, including
24 briefs, transcripts, and documents on file herein, and having taking the matter under
25 advisement, the Court makes the following Findings of Fact and Conclusions of Law:

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27 //

28 //

1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **PROCEDURAL HISTORY**

3 On May 8, 2009, a jury found Petitioner guilty of Second Degree Murder with Use of
4 a Deadly Weapon.

5 On September 30, 2009, the Court sentenced Petitioner to the Nevada Department of
6 Corrections for 120 months to Life, plus a consecutive term of 120 months to Life for the use
7 of a deadly weapon, with 3,338 days credit for time served. The Judgment of Conviction was
8 filed on October 13, 2009. On October 29, 2009, Petitioner filed a Notice of Appeal. On
9 November 8, 2010, the Nevada Supreme Court affirmed the Judgment of Conviction.
10 Remittitur issued December 3, 2010.

11 On February 10, 2012, Petitioner filed his first pro per Post-Conviction Petition for Writ
12 of Habeas Corpus.¹ The State filed its Response and Motion to Dismiss on March 21, 2012.
13 On April 23, 2012, the Court denied Petitioner's first Petition as untimely. The Findings of
14 Fact, Conclusions of Law, and Order were filed on June 11, 2012. Petitioner appealed the
15 denial of his first Petition on May 8, 2012, and on March 11, 2013, the Nevada Supreme Court
16 affirmed the denial. Remittitur issued on March 19, 2013.

17 On August 26, 2013, Petitioner filed his second pro per Post-Conviction Petition for
18 Writ of Habeas Corpus, and a separate Motion to Appoint Counsel.² The State filed its
19 Response and Motion to Dismiss on January 3, 2014. On January 13, 2014, the Court denied
20 Petitioner's second Petition as time-barred. Petitioner filed a Notice of Appeal from the denial
21 of his second Petition on February 7, 2014, and on June 11, 2014, the Nevada Supreme Court
22 affirmed the denial. Remittitur issued on July 15, 2014.

23 On October 26, 2015, Petitioner filed his third pro per Post-Conviction Petition for Writ
24 of Habeas Corpus.³ The State responded on January 26, 2016, and the Court issued the findings
25 denying the Petition on March 22, 2016. On August 17, 2016, the Nevada Supreme Court
26 affirmed the district court's ruling. Remittitur issued on January 24, 2017.

27
28

¹ In case 01C174954.

² Also in case 01C174954.

³ Also in case 01C174954.

1 On July 5, 2019, Petitioner filed a fourth pro per Post-Conviction Petition for Writ of
2 Habeas Corpus.⁴ The State responded to the fourth petition on December 2, 2019, and the
3 Court issued a findings denying the fourth Petition on June 1, 2020. The Nevada Supreme
4 Court affirmed the denial of the fourth petition, and remittitur issued August 23, 2021.

5 On August 12, 2019, Petitioner filed a fifth petition for writ of habeas corpus in
6 C174954. On May 28, 2020, the Court filed findings denying this petition.

7 On November 23, 2021, Petitioner filed a Sixth Petition for writ of habeas corpus (post-
8 conviction).⁵ On April 29, 2022, petitioner filed a Seventh Petition for writ of habeas corpus,
9 a memorandum of points and authorities, and a motion for appointment of counsel.⁶ This court
10 ordered the state to respond to the Seventh Petition on May 2, 2022. The State's response to
11 the petition, the motion for appointment of counsel, and countermotion to dismiss pursuant to
12 laches was filed on June 1, 2022. Petitioner did not file a response or opposition to the State's
13 Motion to Dismiss pursuant to laches.

14 On July 6, 2022, this Court denied the Petitions. This Court's Findings of Fact,
15 Conclusions of Law and Order now follows.

16 ANALYSIS

17 **I. PETITIONER'S SIXTH AND SEVENTH PETITIONS ARE TIMEBARRED**

18 Petitioner's Sixth Petition is identical to the Seventh Petition, and is denied for the same
19 reasons that follow.

20 The mandatory provision of NRS 34.726(1) states:

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

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

27 //

28

⁴ In case A798035.

⁵ Also in case A798035.

⁶ Also in case A798035.

1 (emphasis added). “[T]he statutory rules regarding procedural default are mandatory and
2 cannot be ignored when properly raised by the State.” State v. Dist. Court (Riker), 121 Nev.
3 225, 233, 112 P.3d 1070, 1075 (2005).

4 The one-year time bar prescribed by NRS 34.726 begins to run from the date the
5 judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson
6 v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998); see Pellegrini v. State, 117
7 Nev. 860, 873, 34 P.3d 519, 528 (2001) (holding that NRS 34.726 should be construed by its
8 plain meaning).

9 In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada Supreme
10 Court rejected a habeas petition that was filed two days late, pursuant to the “clear and
11 unambiguous” mandatory provisions of NRS 34.726(1). Gonzales reiterated the importance
12 of filing the petition with the District Court within the one-year mandate, absent a showing of
13 “good cause” for the delay in filing. Gonzales, 118, Nev. at 593, 590 P.3d at 902. The one-
14 year time bar is therefore strictly construed. In contrast with the short amount of time to file
15 a notice of appeal, a prisoner has a full year to file a post-conviction habeas petition, so there
16 is no injustice in a strict application of NRS 34.726(1), despite any alleged difficulties with
17 the postal system. Id. at 595, 53 P.3d at 903.

18 In the instant case, Petitioner’s Sixth and Seventh Petitions are beyond the one-year
19 time bar. The Nevada Supreme Court affirmed Petitioner’s judgment of conviction on
20 November 8, 2010, and Remittitur issued on December 3, 2010. As such, Petitioner had until
21 December 3, 2011 to file a post-conviction petition for writ of habeas corpus. The instant
22 Petitions were filed on November 23, 2021, and April 29, 2022, over ten years after the time
23 allowed by statute. Therefore, the Petitions must be denied as time-barred pursuant to NRS
24 34.726(1).

25 **A. The Sixth and Seventh Petitions are successive and an abuse of the writ**

26 Petitioner’s Sixth and Seventh Petitions are also procedurally barred because they are
27 successive and an abuse of the writ. NRS 34.810(2) reads:

28 //

1 A second or successive petition *must* be dismissed if the judge or
2 justice determines that it fails to allege new or different grounds for
3 relief and that the prior determination was on the merits or, if new and
4 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.

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

11 The Nevada Supreme Court has stated: "Without such limitations on the availability of
12 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-
13 conviction remedies. In addition, meritless, successive and untimely petitions clog the court
14 system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950.
15 The Nevada Supreme Court recognizes that "[u]nlike initial petitions which certainly require
16 a careful review of the record, successive petitions may be dismissed based solely on the face
17 of the petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words,
18 if the claim or allegation was previously available with reasonable diligence, it is an abuse of
19 the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497-498 (1991).
20 Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

21 These are Petitioner's sixth and seventh habeas petitions. Petitioner appealed each
22 denial of his previous petitions, and every denial was affirmed by the Nevada Supreme Court.
23 Petitioner has clearly had the opportunity to raise the grounds he now alleges in each of these
24 prior Petitions. Therefore, the Sixth and Seventh Petitions are successive and constitutes and
25 abuse of the writ; as such, they must be denied pursuant to NRS 34.810(2).

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1 **B. Petitioner’s claim of “actual innocence” is insufficient**

2 The United States Supreme Court has held that actual innocence is “not itself a
3 constitutional claim, but instead a gateway through which a habeas petitioner must pass to
4 have his otherwise barred constitutional claim considered on the merits.” Schlup v. Delo, 513
5 U.S. 298, 327, 115 S. Ct. 851, 867 (1995). In order for a petitioner to obtain a reversal of his
6 conviction based on a claim of actual innocence, he must prove that ““it is more likely than
7 not that *no* reasonable juror would have convicted him in light of the ‘new evidence’ presented
8 in habeas proceedings.” Calderon v. Thompson, 523 U.S. 538, 560, 118 S. Ct. 1489, 1503
9 (1998) (emphasis added) (quoting Schlup). “Actual innocence” means factual innocence, not
10 mere legal insufficiency. Mitchell v. State, 122 Nev. 1269, 1273-74, 149 P.3d 33, 36 (2006)
11 (internal quotation marks and brackets omitted).

12 Petitioner asserts that he has good cause to overcome the procedural bars based on an
13 alleged “Brady/Napue” claim related to an asserted warrantless arrest in 2000. Memorandum
14 at 3-6 Brady v. Maryland, requires prosecutors to disclose exculpatory evidence which a
15 defendant cannot obtain through the exercise of due diligence, but Petitioner does not identify
16 any evidence that was not disclosed. 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).
17 Instead, his claim is that he was arrested over twenty years ago in Chicago, IL, without a
18 warrant. His Napue claim, similarly, relates to testimony at trial wherein a witness said he was
19 arrested pursuant to a warrant. Petitioner’s claim is unsubstantiated and is belied by the record.
20 See Criminal Bindover, filed April 30, 2001, at 298 (declaration of arrest showing defendant
21 was arrested in, and extradited from, Chicago pursuant to a warrant), 299 (arrest warrant
22 abstract), 301 (arrest warrant, signed August, 2000, by the Honorable Judge Lippis), 308-316
23 (request for, and declaration of, warrant for arrest.) Petitioner’s Napue claim fails because the
24 testimony was not false. Even if either claim had merit, a warrantless arrest is legal
25 insufficiency, not factual innocence sufficient to overcome the procedural bars.

26 Petitioner’s related prosecutorial misconduct claim is, therefore, timebarred,
27 successive, an abuse of the writ, and meritless. Memorandum at 7-11. Likewise, his related
28 IAC claim is procedurally barred and meritless. Id. at 12.

1 Accordingly, Petitioner fails to demonstrate good cause to overcome the procedural
2 bars and his Sixth and Seventh petitions must be denied.

3 **II. THE SIXTH AND SEVENTH PETITION ARE DISMISSED PURSUANT TO**
4 **LACHES**

5 NRS 34.800 creates a rebuttable presumption of prejudice to the State if “[a] period
6 exceeding five years [elapses] between the filing of a judgment of conviction, an order
7 imposing a sentence of imprisonment or a decision on direct appeal of a judgment of
8 conviction and the filing of a petition challenging the validity of a judgment of conviction...”
9 The Nevada Supreme Court observed in Groesbeck v. Warden, “[P]etitions that are filed many
10 years after conviction are an unreasonable burden on the criminal justice system. The necessity
11 for a workable system dictates that there must exist a time when a criminal conviction is final.”
12 100 Nev. 259, 679 P.2d 1268 (1984). To invoke the presumption, the statute requires the State
13 plead laches in its motion to dismiss the petition. NRS 34.800(2). The State affirmatively
14 pleads laches in the instant case.

15 The Sixth and Seventh Petitions were filed over ten years after the verdict, the
16 sentencing hearing, and after the Nevada Supreme Court affirmed the judgment of conviction.
17 Because these time periods exceed five (5) years, the State is entitled to a rebuttable
18 presumption of prejudice. NRS 34.800(2). Petitioner did not file a response or opposition to
19 the State’s motion to dismiss, and has failed to overcome the presumption of prejudice to the
20 State.

21 **III. THE MOTION FOR APPOINTMENT OF COUNSEL AND REQUEST FOR**
22 **AN EVIDENTIARY HEARING ARE DENIED**

23 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-
24 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566
25 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada
26 Supreme Court similarly observed that “[t]he Nevada Constitution...does not guarantee a right
27 to counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s right to
28 counsel provision as being coextensive with the Sixth Amendment to the United States

1 Constitution.” McKague specifically held that with the exception of NRS 34.820(1)(a)
2 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
3 “any constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at
4 164, 912 P.2d at 258.

5 However, the Nevada Legislature has given courts the discretion to appoint post-
6 conviction counsel so long as “the court is satisfied that the allegation of indigency is true and
7 the petition is not dismissed summarily.” NRS 34.750. NRS 34.750 reads:

8 A petition may allege that the Defendant is unable to pay the costs of
9 the proceedings or employ counsel. If the court is satisfied that the
10 allegation of indigency is true and the petition *is not dismissed*
11 *summarily*, the court may appoint counsel to represent the petitioner.
In making its determination, the court may consider, among other
things, the severity of the consequences facing the petitioner and
whether:

- 12 (a) The issues presented are difficult;
13 (b) The petitioner is unable to comprehend the proceedings; or
14 (c) Counsel is necessary to proceed with discovery.

15 (emphasis added).

16 Petitioner’s Sixth and Seventh Petition are procedurally barred and subject to laches.
17 None of the issues are difficult, Petitioner fails to demonstrate that he cannot comprehend the
18 proceedings, and no discovery is necessary. To the extent Petitioner requests an evidentiary
19 hearing, that request is denied because there is no need to expand the record. Petitioner fails
20 to meet *any* of the Strickland elements, and the errors, if any, in this case do not rise to the
21 level of cumulative error which would warrant relief.

22 //

23 //

24 //

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ORDER

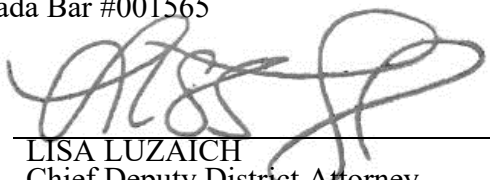
THEREFORE, IT IS HEREBY ORDERED that Petitioner's Sixth and Seventh Petitions for Writ of Habeas Corpus are DENIED in their entirety, Petitioner's motion for appointment of counsel and request for an evidentiary hearing are DENIED, and the State's countermotion to dismiss pursuant to laches is GRANTED.

Dated this 13th day of July, 2022


E8B DDC 4D42 9AE5
Michael Villani
District Court Judge

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

BY


LISA LUZAICH
Chief Deputy District Attorney
Nevada Bar #005056

hjc/SVU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Justin Porter, Plaintiff(s)

CASE NO: A-19-798035-W

7 vs.

DEPT. NO. Department 17

8 Brian Williams, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

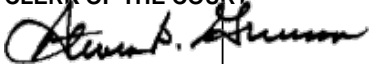
14 Service Date: 7/13/2022

15 Elissa Luzaich

luzaici@co.clark.nv.us

16 BETSY ESQ.

BETSYALLENESQ@YAHOO.COM



1 NEO

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4
5 JUSTIN D. PORTER,

6 Petitioner,

Case No: 01C174954

Dept No: VI

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

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

10
11 **PLEASE TAKE NOTICE** that on July 13, 2022, the court entered a decision or order in this matter, a true
12 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 mailed
to you. This notice was mailed on July 19, 2022.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Heather Ungermann

17 Heather Ungermann, Deputy Clerk

18
19 **CERTIFICATE OF E-SERVICE / MAILING**

20 I hereby certify that on this 19 day of July 2022, I served a copy of this Notice of Entry on the following:

21 ☒ By e-mail:

22 Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

23
24 ☒ The United States mail addressed as follows:

Justin Porter # 1042449

Adam L. Gill, Esq.

P.O. Box 650

723 S. 3rd St.

Indian Springs, NV 89070

Las Vegas, NV 89101

25
26
27 /s/ Heather Ungermann

28 Heather Ungermann, Deputy Clerk

1 **FFCO**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JOHN AFSHAR
6 Deputy District Attorney
7 Nevada Bar #014408
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Respondent

7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 **JUSTIN PORTER,**
11 **#7035217**

12 Petitioner,

13 -vs-

14 THE STATE OF NEVADA,

15 Respondent.

CASE NO: **A-19-798035-W**
01C174954

DEPT NO: **XVII**

16 **FINDINGS OF FACT, CONCLUSIONS**

17 **OF LAW, AND ORDER**

18 DATE OF HEARING: **JULY 6, 2022**
19 TIME OF HEARING: **8:30 AM**

20 THIS CAUSE having presented before the Honorable MICHAEL VILLANI, District
21 Judge, on the 6th day of July, 2022; Petitioner not present, IN PROPER PERSON; Respondent
22 represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through
23 LISA LUZAICH, Chief Deputy District Attorney; and having considered the matter, including
24 briefs, transcripts, and documents on file herein, and having taking the matter under
25 advisement, the Court makes the following Findings of Fact and Conclusions of Law:

26 //

27 //

28 //

1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **PROCEDURAL HISTORY**

3 On May 8, 2009, a jury found Petitioner guilty of Second Degree Murder with Use of
4 a Deadly Weapon.

5 On September 30, 2009, the Court sentenced Petitioner to the Nevada Department of
6 Corrections for 120 months to Life, plus a consecutive term of 120 months to Life for the use
7 of a deadly weapon, with 3,338 days credit for time served. The Judgment of Conviction was
8 filed on October 13, 2009. On October 29, 2009, Petitioner filed a Notice of Appeal. On
9 November 8, 2010, the Nevada Supreme Court affirmed the Judgment of Conviction.
10 Remittitur issued December 3, 2010.

11 On February 10, 2012, Petitioner filed his first pro per Post-Conviction Petition for Writ
12 of Habeas Corpus.¹ The State filed its Response and Motion to Dismiss on March 21, 2012.
13 On April 23, 2012, the Court denied Petitioner's first Petition as untimely. The Findings of
14 Fact, Conclusions of Law, and Order were filed on June 11, 2012. Petitioner appealed the
15 denial of his first Petition on May 8, 2012, and on March 11, 2013, the Nevada Supreme Court
16 affirmed the denial. Remittitur issued on March 19, 2013.

17 On August 26, 2013, Petitioner filed his second pro per Post-Conviction Petition for
18 Writ of Habeas Corpus, and a separate Motion to Appoint Counsel.² The State filed its
19 Response and Motion to Dismiss on January 3, 2014. On January 13, 2014, the Court denied
20 Petitioner's second Petition as time-barred. Petitioner filed a Notice of Appeal from the denial
21 of his second Petition on February 7, 2014, and on June 11, 2014, the Nevada Supreme Court
22 affirmed the denial. Remittitur issued on July 15, 2014.

23 On October 26, 2015, Petitioner filed his third pro per Post-Conviction Petition for Writ
24 of Habeas Corpus.³ The State responded on January 26, 2016, and the Court issued the findings
25 denying the Petition on March 22, 2016. On August 17, 2016, the Nevada Supreme Court
26 affirmed the district court's ruling. Remittitur issued on January 24, 2017.

27
28

¹ In case 01C174954.

² Also in case 01C174954.

³ Also in case 01C174954.

1 On July 5, 2019, Petitioner filed a fourth pro per Post-Conviction Petition for Writ of
2 Habeas Corpus.⁴ The State responded to the fourth petition on December 2, 2019, and the
3 Court issued a findings denying the fourth Petition on June 1, 2020. The Nevada Supreme
4 Court affirmed the denial of the fourth petition, and remittitur issued August 23, 2021.

5 On August 12, 2019, Petitioner filed a fifth petition for writ of habeas corpus in
6 C174954. On May 28, 2020, the Court filed findings denying this petition.

7 On November 23, 2021, Petitioner filed a Sixth Petition for writ of habeas corpus (post-
8 conviction).⁵ On April 29, 2022, petitioner filed a Seventh Petition for writ of habeas corpus,
9 a memorandum of points and authorities, and a motion for appointment of counsel.⁶ This court
10 ordered the state to respond to the Seventh Petition on May 2, 2022. The State's response to
11 the petition, the motion for appointment of counsel, and countermotion to dismiss pursuant to
12 laches was filed on June 1, 2022. Petitioner did not file a response or opposition to the State's
13 Motion to Dismiss pursuant to laches.

14 On July 6, 2022, this Court denied the Petitions. This Court's Findings of Fact,
15 Conclusions of Law and Order now follows.

16 ANALYSIS

17 **I. PETITIONER'S SIXTH AND SEVENTH PETITIONS ARE TIMEBARRED**

18 Petitioner's Sixth Petition is identical to the Seventh Petition, and is denied for the same
19 reasons that follow.

20 The mandatory provision of NRS 34.726(1) states:

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

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

27 //

28

⁴ In case A798035.

⁵ Also in case A798035.

⁶ Also in case A798035.

1 (emphasis added). “[T]he statutory rules regarding procedural default are mandatory and
2 cannot be ignored when properly raised by the State.” State v. Dist. Court (Riker), 121 Nev.
3 225, 233, 112 P.3d 1070, 1075 (2005).

4 The one-year time bar prescribed by NRS 34.726 begins to run from the date the
5 judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson
6 v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998); see Pellegrini v. State, 117
7 Nev. 860, 873, 34 P.3d 519, 528 (2001) (holding that NRS 34.726 should be construed by its
8 plain meaning).

9 In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada Supreme
10 Court rejected a habeas petition that was filed two days late, pursuant to the “clear and
11 unambiguous” mandatory provisions of NRS 34.726(1). Gonzales reiterated the importance
12 of filing the petition with the District Court within the one-year mandate, absent a showing of
13 “good cause” for the delay in filing. Gonzales, 118, Nev. at 593, 590 P.3d at 902. The one-
14 year time bar is therefore strictly construed. In contrast with the short amount of time to file
15 a notice of appeal, a prisoner has a full year to file a post-conviction habeas petition, so there
16 is no injustice in a strict application of NRS 34.726(1), despite any alleged difficulties with
17 the postal system. Id. at 595, 53 P.3d at 903.

18 In the instant case, Petitioner’s Sixth and Seventh Petitions are beyond the one-year
19 time bar. The Nevada Supreme Court affirmed Petitioner’s judgment of conviction on
20 November 8, 2010, and Remittitur issued on December 3, 2010. As such, Petitioner had until
21 December 3, 2011 to file a post-conviction petition for writ of habeas corpus. The instant
22 Petitions were filed on November 23, 2021, and April 29, 2022, over ten years after the time
23 allowed by statute. Therefore, the Petitions must be denied as time-barred pursuant to NRS
24 34.726(1).

25 **A. The Sixth and Seventh Petitions are successive and an abuse of the writ**

26 Petitioner’s Sixth and Seventh Petitions are also procedurally barred because they are
27 successive and an abuse of the writ. NRS 34.810(2) reads:

28 //

1 A second or successive petition *must* be dismissed if the judge or
2 justice determines that it fails to allege new or different grounds for
3 relief and that the prior determination was on the merits or, if new and
4 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.

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

11 The Nevada Supreme Court has stated: "Without such limitations on the availability of
12 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-
13 conviction remedies. In addition, meritless, successive and untimely petitions clog the court
14 system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950.
15 The Nevada Supreme Court recognizes that "[u]nlike initial petitions which certainly require
16 a careful review of the record, successive petitions may be dismissed based solely on the face
17 of the petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words,
18 if the claim or allegation was previously available with reasonable diligence, it is an abuse of
19 the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497-498 (1991).
20 Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

21 These are Petitioner's sixth and seventh habeas petitions. Petitioner appealed each
22 denial of his previous petitions, and every denial was affirmed by the Nevada Supreme Court.
23 Petitioner has clearly had the opportunity to raise the grounds he now alleges in each of these
24 prior Petitions. Therefore, the Sixth and Seventh Petitions are successive and constitutes and
25 abuse of the writ; as such, they must be denied pursuant to NRS 34.810(2).

26 //

27 //

28 //

1 **B. Petitioner’s claim of “actual innocence” is insufficient**

2 The United States Supreme Court has held that actual innocence is “not itself a
3 constitutional claim, but instead a gateway through which a habeas petitioner must pass to
4 have his otherwise barred constitutional claim considered on the merits.” Schlup v. Delo, 513
5 U.S. 298, 327, 115 S. Ct. 851, 867 (1995). In order for a petitioner to obtain a reversal of his
6 conviction based on a claim of actual innocence, he must prove that ““it is more likely than
7 not that *no* reasonable juror would have convicted him in light of the ‘new evidence’ presented
8 in habeas proceedings.” Calderon v. Thompson, 523 U.S. 538, 560, 118 S. Ct. 1489, 1503
9 (1998) (emphasis added) (quoting Schlup). “Actual innocence” means factual innocence, not
10 mere legal insufficiency. Mitchell v. State, 122 Nev. 1269, 1273-74, 149 P.3d 33, 36 (2006)
11 (internal quotation marks and brackets omitted).

12 Petitioner asserts that he has good cause to overcome the procedural bars based on an
13 alleged “Brady/Napue” claim related to an asserted warrantless arrest in 2000. Memorandum
14 at 3-6 Brady v. Maryland, requires prosecutors to disclose exculpatory evidence which a
15 defendant cannot obtain through the exercise of due diligence, but Petitioner does not identify
16 any evidence that was not disclosed. 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).
17 Instead, his claim is that he was arrested over twenty years ago in Chicago, IL, without a
18 warrant. His Napue claim, similarly, relates to testimony at trial wherein a witness said he was
19 arrested pursuant to a warrant. Petitioner’s claim is unsubstantiated and is belied by the record.
20 See Criminal Bindover, filed April 30, 2001, at 298 (declaration of arrest showing defendant
21 was arrested in, and extradited from, Chicago pursuant to a warrant), 299 (arrest warrant
22 abstract), 301 (arrest warrant, signed August, 2000, by the Honorable Judge Lippis), 308-316
23 (request for, and declaration of, warrant for arrest.) Petitioner’s Napue claim fails because the
24 testimony was not false. Even if either claim had merit, a warrantless arrest is legal
25 insufficiency, not factual innocence sufficient to overcome the procedural bars.

26 Petitioner’s related prosecutorial misconduct claim is, therefore, timebarred,
27 successive, an abuse of the writ, and meritless. Memorandum at 7-11. Likewise, his related
28 IAC claim is procedurally barred and meritless. Id. at 12.

1 Accordingly, Petitioner fails to demonstrate good cause to overcome the procedural
2 bars and his Sixth and Seventh petitions must be denied.

3 **II. THE SIXTH AND SEVENTH PETITION ARE DISMISSED PURSUANT TO**
4 **LACHES**

5 NRS 34.800 creates a rebuttable presumption of prejudice to the State if “[a] period
6 exceeding five years [elapses] between the filing of a judgment of conviction, an order
7 imposing a sentence of imprisonment or a decision on direct appeal of a judgment of
8 conviction and the filing of a petition challenging the validity of a judgment of conviction...”
9 The Nevada Supreme Court observed in Groesbeck v. Warden, “[P]etitions that are filed many
10 years after conviction are an unreasonable burden on the criminal justice system. The necessity
11 for a workable system dictates that there must exist a time when a criminal conviction is final.”
12 100 Nev. 259, 679 P.2d 1268 (1984). To invoke the presumption, the statute requires the State
13 plead laches in its motion to dismiss the petition. NRS 34.800(2). The State affirmatively
14 pleads laches in the instant case.

15 The Sixth and Seventh Petitions were filed over ten years after the verdict, the
16 sentencing hearing, and after the Nevada Supreme Court affirmed the judgment of conviction.
17 Because these time periods exceed five (5) years, the State is entitled to a rebuttable
18 presumption of prejudice. NRS 34.800(2). Petitioner did not file a response or opposition to
19 the State’s motion to dismiss, and has failed to overcome the presumption of prejudice to the
20 State.

21 **III. THE MOTION FOR APPOINTMENT OF COUNSEL AND REQUEST FOR**
22 **AN EVIDENTIARY HEARING ARE DENIED**

23 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-
24 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566
25 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada
26 Supreme Court similarly observed that “[t]he Nevada Constitution...does not guarantee a right
27 to counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s right to
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1 Constitution.” McKague specifically held that with the exception of NRS 34.820(1)(a)
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5 However, the Nevada Legislature has given courts the discretion to appoint post-
6 conviction counsel so long as “the court is satisfied that the allegation of indigency is true and
7 the petition is not dismissed summarily.” NRS 34.750. NRS 34.750 reads:

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In making its determination, the court may consider, among other
things, the severity of the consequences facing the petitioner and
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- 12 (a) The issues presented are difficult;
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14 (c) Counsel is necessary to proceed with discovery.

15 (emphasis added).

16 Petitioner’s Sixth and Seventh Petition are procedurally barred and subject to laches.
17 None of the issues are difficult, Petitioner fails to demonstrate that he cannot comprehend the
18 proceedings, and no discovery is necessary. To the extent Petitioner requests an evidentiary
19 hearing, that request is denied because there is no need to expand the record. Petitioner fails
20 to meet *any* of the Strickland elements, and the errors, if any, in this case do not rise to the
21 level of cumulative error which would warrant relief.

22 //

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ORDER

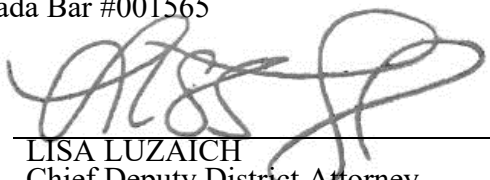
THEREFORE, IT IS HEREBY ORDERED that Petitioner's Sixth and Seventh Petitions for Writ of Habeas Corpus are DENIED in their entirety, Petitioner's motion for appointment of counsel and request for an evidentiary hearing are DENIED, and the State's countermotion to dismiss pursuant to laches is GRANTED.

Dated this 13th day of July, 2022


E8B DDC 4D42 9AE5
Michael Villani
District Court Judge

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

BY


LISA LUZAICH
Chief Deputy District Attorney
Nevada Bar #005056

hjc/SVU

1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 Justin Porter, Plaintiff(s)

CASE NO: A-19-798035-W

7 vs.

DEPT. NO. Department 17

8 Brian Williams, Defendant(s)

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case as listed below:

14 Service Date: 7/13/2022

15 Elissa Luzaich

luzaici@co.clark.nv.us

16 BETSY ESQ.

BETSYALLENESQ@YAHOO.COM



RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,)	
)	
Plaintiff(s),)	CASE NO. 01C174954
)	
vs.)	
)	DEPT. NO. VI
PORTER, JUSTIN D.,)	
)	
Defendant(s).)	
_____)	

BEFORE THE HONORABLE JACQUELINE M. BLUTH, DISTRICT COURT

JUDGE

WEDNESDAY, AUGUST 31, 2022

RECORDER'S TRANSCRIPT OF HEARING:
JURY TRIAL - DAY 1

APPEARANCES:

For the Plaintiffs:	STACY L. KOLLINS
	ELISSA LUZAICH

For the Defendants:	ADAM L. GILL
	CHARLES R. GOODWIN

RECORDED BY: DE'AWNA TAKAS, COURT RECORDER
TRANSCRIBED BY: ALLISON SWANSON, CSR No. 13377

1 Las Vegas, Nevada, Wednesday, August 31, 2022

2 [Case called at 1:18 p.m.]

3 *****

4 [OUTSIDE THE PRESENCE OF THE JURY]

5 [DISCUSSION OFF THE RECORD]

6 THE COURT: All right. We are on the record in
7 State of Nevada versus Justin Porter, C174954. Mr. Porter is
8 present in custody with Mr. Gill as well as Mr. Goodwin. Both
9 Chief Deputy District Attorneys Ms. Luzaich as well as
10 Ms. Kollins are present on behalf of the State. We are
11 outside the presence of the prospective jury (indiscernible)
12 panel.

13 All right. So in regards to the -- the -- there are, I
14 think 42 -- 39 counts, if we take out -- or --

15 THE CLERK: Thirty-five, I think.

16 MS. LUZAICH: What -- how many people? Thirty-six.

17 THE COURT: No, how many counts.

18 MS. LUZAICH: Oh, counts? If we take out the --

19 THE COURT: If we took out the two -- right? -- it's
20 39; right?

21 MS. LUZAICH: Three. There's three that get taken
22 out.

23 THE COURT: Three that -- take it out from, I
24 thought, was it 42?

1 THE CLERK: From the amended information to the
2 second amended information, it goes from 42 to 38. So some of
3 'em look like they might have been dropped between the two --

4 MS. LUZAICH: Yeah, there was a writ argument.

5 THE CLERK: Okay.

6 MS. LUZAICH: So the second amended information is
7 what I am amend -- sorry. The second amended information is
8 what I'm doing a fourth amended from. And on that, Counts 30,
9 31, and 32 were from the murder. The very last count is 38.
10 So count -- there will be 35 counts in total.

11 THE COURT: Okay. All right. So there'll be 35
12 counts in total.

13 When the parties are stipulating to when we read the
14 information to the prospective jurors, we will read the counts
15 but not the underlying facts; is that correct, Mr. Gill?

16 MR. GILL: Yes, Your Honor.

17 THE COURT: Okay. And, Ms. Luzaich?

18 MS. LUZAICH: Yes, judge.

19 THE COURT: All right. So we will do it that way
20 instead of reading all of the underlying information for each
21 count.

22 Mr. Porter, are there any preliminary -- I mean, I know
23 Mr. Gill is your attorney and he speaks -- you speak through
24 him. But I just want to get anything out of the way before we

1 bring the jury in, in regards to questions or issues you have
2 throughout this process?

3 THE DEFENDANT: No, thank you.

4 THE COURT: Nothing?

5 MR. GILL: No, thank you, he said --

6 THE COURT: Okay.

7 MR. GILL: -- for the record.

8 THE COURT: Sounds good.

9 MR. GILL: Thank you, Your Honor.

10 THE COURT: Then we are going to bring in the
11 juries. We'll qualify 36.

12 So normally what Chris does is he separates the 36. So
13 we have 24 here and then he separates the 36 from everybody
14 else so we can always see which block we're dealing with.

15 THE MARSHAL: All good, Judge?

16 THE COURT: We are good, thank you.

17 THE MARSHAL: All rise.

18 [IN THE PRESENCE OF THE JURY]

19 THE COURT: Oh, you guys can go ahead and be seated
20 as soon as you come in. Thank you.

21 All right. Welcome in, everybody. Please be seated.
22 This is (indiscernible) case set for trial in State of Nevada
23 versus Justin Porter, C174954. The record will reflect the
24 presence of Mr. Porter with his counsel, Mister --

1 MR. GILL: My name's Adam Gill.

2 THE COURT: Well, I know your name. Thank you.

3 MR. GOODWIN: Charles Goodwin, Your Honor.

4 THE COURT: Sorry. I was -- no. No. That's okay.

5 I was just looking and making sure I had the right information
6 in front of me.

7 Mr. Gill as well as Mr. Goodwin. Both District
8 Attorneys, Ms. Luzaich, as well as Ms. Kollins are present on
9 behalf of the State.

10 Do the parties stipulate to the presence of the jury
11 (indiscernible) panel?

12 MS. LUZAICH: Yes, Judge.

13 MR. GILL: Yes, Your Honor.

14 THE COURT: And -- and are the parties ready to
15 proceed?

16 MS. LUZAICH: State's ready.

17 MR. GILL: Defense is ready, Your Honor.

18 THE COURT: All right. Thank you.

19 Ladies and gentlemen, good afternoon. You are in
20 Department 6 of the Eighth Judicial District Court. My name
21 is Jacqueline Bluth and I am the presiding judge in this
22 department. You have been called upon today to serve as a
23 juror in a criminal case.

24 I am going to read the charges now into the record:

1 Count 1, burglary while in possession of a deadly weapon.
2 Count 2, first degree kidnapping with use of a deadly weapon.
3 Count 3, sexual assault with use of a deadly weapon. Count 4,
4 sexual assault with use of a deadly weapon. Count 5, sexual
5 assault with use of a deadly weapon. Count 6, sexual assault
6 with use of a deadly weapon. Count 7, robbery with use of a
7 deadly weapon. Count 8, burglary while in possession of a
8 deadly weapon. Count 9, first degree kidnapping with use of a
9 deadly weapon with substantial bodily harm. Count 10, sexual
10 assault with use of a deadly weapon with substantial bodily
11 harm. Count 11, attempt murder with use of a deadly weapon.
12 Count 12, sexual assault with use of a deadly weapon with
13 substantial bodily harm. Count 13, robbery with use of a
14 deadly weapon. Count 14, first degree arson. Count 15,
15 burglary while in possession of a deadly weapon. Count 16,
16 first degree kidnapping with use of a deadly weapon. Count 17,
17 sexual assault with use of a deadly weapon. Count 18, robbery
18 with use of a deadly weapon. Count 19, burglary while in
19 possession of a deadly weapon. Count 20, sexual assault with
20 use of a deadly weapon, victim is 65 years of age or older.
21 Count 21, robbery with use of a deadly weapon, victim 65 years
22 of age or older. Count 22, burglary while in possession of a
23 deadly weapon. Count 23, robbery with use of a deadly weapon,
24 victim 65 years of age or older. Count 24, robbery with use

1 of a deadly weapon, victim 65 years of age or older.
2 Count 25, burglary while in possession of a deadly weapon.
3 Count 26, burglary while in possession of a deadly weapon.
4 Count 27, first degree kidnapping with use of a deadly weapon.
5 Count 28, sexual assault with use of a deadly weapon.
6 Count 29, robbery with use of a deadly weapon. Next count,
7 burglary while in possession of a deadly weapon, robbery with
8 use of a deadly weapon, attempt robbery with use of a deadly
9 weapon, attempt robbery with use of a deadly weapon, attempt
10 murder with use of a deadly weapon, and battery with use of a
11 deadly weapon.

12 We expect this trial to last between three and
13 four weeks. Our trials generally run from no earlier than
14 8:30 in the morning to no later than 5:00 at night.
15 Ultimately, 16 of you will be going forward with us, jurors
16 and alternate jurors, in this case.

17 In this country we place great faith in our citizens as
18 jurors to reach fair and objective decisions. Part of what
19 you're doing here is you're being good citizens of our county
20 and -- or country and community.

21 Jury duty is a civic responsibility, like obeying laws,
22 voting, and paying taxes. We appreciate the fact that you
23 responded to the jury summons and showed up willing to do your
24 job, and it's important what you're doing here. I hope that

1 you enjoy your experience as a juror and find it rewarding.

2 I say this every trial because I was a juror once and I
3 went through this process and I know that when I say "I hope
4 you find this process rewarding," that many of you are rolling
5 your eyes at me. And I get that because I understand it.
6 Like, it takes time away from our jobs and our families, our
7 significant others. I 100 percent am on board with you and I
8 understand that.

9 But I just ask you to think of a few things. Number one,
10 if you were in -- if you were involved in any type of case,
11 whether it be criminal or civil, how important it would be for
12 you to have jurors willing to come and listen and pay
13 attention and give the process the respect that it deserves.

14 Number two, I recognize that three to four weeks is a
15 long time. I -- I'm not saying that it's not. Just to put it
16 in perspective, though, in the last few years, they have
17 picked juries six to nine months. One was sat for a year. So
18 while I recognize three to four weeks is a long time, in
19 regards to trials, this is more of the shorter to moderate
20 trial in -- in the scheme of things. I know that that's hard
21 to think about, but nine months is a lot longer. So if you
22 get out of a trial in my department, you may be reassigned to
23 another department picking a jury.

24 The last thing I would say, and I know this is really,

1 really hard to understand, I have never ever done a trial --
2 I've done almost 90 jury trials. I've never done a jury trial
3 where, afterwards, the jurors didn't say "I -- I know you said
4 that you hope we would enjoy it and I actually really did. I
5 never thought I would say that, but I really did."

6 We just finished a trial last week and the juror raised
7 their hand afterwards and she said, "I really did roll my eyes
8 when you said I hoped I was gonna enjoy this experience. And
9 it has been the best experience." So I know that that's hard
10 to see right now from where you're sitting, but just be
11 patient with the process; all right?

12 So let's talk a little bit about the introduction to the
13 individuals in the courtroom. So let me take the opportunity
14 to introduce my court staff first. You've already met my
15 marshal, Officer Kennis (phonetic). His job is to maintain
16 order and security in the courtroom. He's also my
17 representative to the jury. Anything you need or any problems
18 that come up for you during the course of the trial, they
19 should be brought to his attention. Keep in mind that the
20 only thing he cannot talk to you about is the facts of the
21 case. He can never talk to anybody about the facts of the
22 case.

23 My traditional executive assistant, Crystal Jacobs
24 (phonetic), or my law clerk, Joe, they come in and you'll see

1 them coming in. They work in chambers behind this wall in my
2 office. They also are allowed to have contact with you. For
3 instance, if some days, you know, when you're deliberating, we
4 get you lunch. She'll often come in and ask you guys about
5 lunch. You can talk to her as well, as well as my law clerk.

6 But anybody else, you can't speak to. And that's just
7 because there are ethical rules that prevent anyone else
8 involved in the case speaking to you. So if you see any of
9 the parties in the elevator or down in the lobby and they
10 don't -- if you say hi to them and they don't say hi back,
11 just know that they're under strict orders from me not to have
12 any communication at all. They're not being rude in any way.

13 MS. LUZAICH: Can we approach?

14 THE COURT: Yeah.

15 [BENCH CONFERENCE BEGIN]

16 MS. LUZAICH: He's sitting (indiscernible) you need
17 to --

18 MR. GILL: I didn't even notice. I'm sorry.

19 THE COURT: Oh, it's not -- why are you --

20 MS. LUZAICH: He's (indiscernible).

21 THE COURT: That's why I didn't say (indiscernible).

22 MR. GILL: I didn't notice. I'm sorry.

23 THE COURT: I was so (indiscernible) because he was
24 (indiscernible).

1 MR. GILL: When you were reading --
2 THE COURT: Yeah.
3 MR. GILL: Just the whole time?
4 THE COURT: He seems to me --
5 MS. LUZAICH: Yep.
6 THE COURT: -- when I looked up to say your guys's
7 presence, he was just (indiscernible) and I --
8 MR. GILL: He's doing it right now --
9 THE COURT: -- like (indiscernible) --
10 MS. LUZAICH: Yeah.
11 MR. GILL: All right. I'll do my best.
12 THE COURT: Just tell him to take some deep
13 breaths --
14 MR. GILL: Relax.
15 THE COURT: -- calm down -- yeah.
16 MR. GILL: I'll try not to draw attention to it.
17 THE COURT: I -- I was pretty shocked by that.
18 Yeah.
19 MR. GILL: Okay. Thank you.
20 THE COURT: All right.
21 [BENCH CONFERENCE END]
22 THE COURT: Okay. To my far left is De'Awna Takas,
23 she's my court recorder. She sees that everything that is
24 said during the trial is recorded so that there's an accurate,

1 legal record of everything we say and do during this trial.

2 A lot of the times when we speak in -- in real-life,
3 outside of the courtroom, we use nonverbal cues like -- like
4 shaking our head up and down, shaking it back and forth for
5 yes and nos or we say "uh-huh" and "huh-uh." Unfortunately,
6 none of those translate when the recorder goes to transcribe
7 our statements. So if you answer a question by shaking your
8 head, nodding your head, or if you say "uh-huh," "huh-uh,"
9 we'll just politely say, "Was that a yes?" "Was that a no?"
10 And just know that we have to do that in order to make sure
11 it's a clear legal record, okay?

12 You'll also notice that there are several cameras around
13 my courtroom. In regards to those, those are used for
14 different court proceedings in regards to when I have my
15 morning calendars. Jurors' faces are never released, so I
16 don't want you to worry about the cameras at all.

17 On my immediate left is my court clerk, Kristen Brown.
18 She swears in witnesses, marks exhibits, keeps track of all of
19 the evidence, and she prepares what's referred to as
20 "minutes," which is a short synopsis of what happens in court,
21 of the proceedings for the court record.

22 Like I stated, you may also see my judicial executive
23 assistant, Crystal Jacobs, and my law clerk, Joseph Bareda
24 (phonetic), come in from the back. They make everything run

1 behind the scenes smoothly while we are in trial.

2 In a moment, I'm going to ask the State, as well as the
3 Defense, to introduce themselves to you and read a list of
4 witnesses. I'll also ask them to just give like a short,
5 brief synopsis of the case. Please pay attention to the list
6 of the witnesses that they may name because a short while
7 after that, in a few minutes, I'm going to ask you if you
8 recognize any of the in -- individuals listed that they stated
9 to you on the record.

10 All right. Counsel for the State, your turn. You're up.

11 MS. LUZAICH: Thank you.

12 Good afternoon, ladies and gentlemen. My name is
13 Lisa Luzaich. My co-counsel is Stacy Kollins. We represent
14 the State of Nevada.

15 In between February of 2000 and June of 2000, the
16 Defendant committed a series of home invasions. There are
17 eight separate events, and depending on who was on the other
18 side of the door, depending on what happened next.

19 On February 1st of 2000, Theresa Tyler (phonetic) was
20 living at 2895 East Charleston when the Defendant broke into
21 her home.

22 On March 7th of 2000, Leona Case (phonetic) was living in
23 301 East Charleston.

24 On March 25, 2000, Ramona Leva (phonetic) was living at

1 600 East Bonanza when Defendant broke into her home.

2 On April 4, 2000, Marlene Livingston (phonetic) was
3 living at 2301 Clifford when the Defendant broke into her
4 home --

5 MR. GILL: Your Honor, can we approach?

6 THE COURT: Sure. Yeah.

7 [BENCH CONFERENCE BEGIN]

8 MR. GILL: Sorry. It seems a little bit like
9 argument that "he did" -- "he broke in" and "he" -- so I
10 thought we were just going over kind of witnesses instead of
11 arguing facts that they -- because there's no even statement
12 that "the State will prove," it's just "he did this." So I am
13 objecting to that.

14 THE COURT: Okay. Ms. Luzaich?

15 MS. LUZAICH: I won't say the Defendant did
16 whatever. But I give the dates and location --

17 MR. GILL: Of course.

18 MS. LUZAICH: -- in case they know it.

19 MR. GILL: Of course.

20 THE COURT: I agree with the State in regards to
21 that. Okay?

22 MR. GILL: Okay. Thanks, Judge.

23 THE COURT: Yep.

24 [BENCH CONFERENCE END]

1 MS. LUZAICH: On April 12, 2000, Francis and
2 Clarence Rumbaugh were living in their home at -- oh, sorry.
3 I misplaced the address, but it is in the downtown area.

4 On June 6, 2000, Lee Roy Fowler (phonetic) was living in
5 his home at 1121 East Ogden.

6 On June 7th of 2000, Joni Hall was living in her home,
7 624 North 13th.

8 And on June 9, 2000, Beatrice Zazwegda (phonetic),
9 Guadeloupe Lopez, and Laura Zazwegda (phonetic) were living in
10 their home on 2830 East Cedar.

11 I'm gonna read a really long list of witnesses to you. I
12 promise that we will not call every one of these witnesses.
13 But the people that you don't hear from, you will hear about.

14 So in no particular order: Richard Good from the Metro
15 Crime Lab; Dr. Sheldon Green; Detective Laura Anderson
16 (phonetic), from Metro -- all of these officers are gonna be
17 from Metro.

18 Fred Body, G -- Officer Gene Obrisko (phonetic);
19 Debra Brotherson; Officer Michael Calarco (phonetic);
20 Detective Michael Castaneda; Officer Vinchent -- Vincent,
21 sorry, De Angelo (phonetic); Joel Gellar (phonetic);
22 Cathy Gunthar (phonetic); Detective Kenneth Hefner;
23 Detective Barry Jenson; Detective James La Rochelle;
24 Officer David La Master; Officer Maria Lopez; Detective Debbie

1 Love; Theresa Main (phonetic); Terry Martin; Joseph Matvay
2 (phonetic); Officer Jovani Menaletti (phonetic); Officer Mark
3 Mezarocka (phonetic); Detective Theresa Mogg (phonetic);
4 Detective Timothy Monio (phonetic); Marlene Montaelovio
5 (phonetic). Sorry. I'm sure I butchered her name.

6 James O'Donnell (phonetic); Francis Pulium (phonetic);
7 Gary Reed; Raymond Reyes; Jesse Sams; Peter Shelberg
8 (phonetic); Jeffrey Smink (phonetic); Sergeant Michael
9 Thompson; Detective Tommy -- Thomas Fouzan (phonetic);
10 David Welsh; Officer Robert Williams; Rick Workman; and --
11 these individuals are not with Metro, they're just people.
12 That came out wrong, but -- civilians. How's that? Olive
13 Mayiho Awalom, A-W-A-L-O-M.

14 Leona Case; Sam Cerone (phonetic), Jay Cleveland;
15 Ed Cunningham; Jean Barnett (phonetic), Flosie Burnstein
16 (phonetic); Hi Dou (phonetic); Christopher de Loni (phonetic);
17 Christian de Loni; Regina Dylan (phonetic); Dorothy Frazier
18 (phonetic); Joel Gellar; James Gibson (phonetic);
19 Cathy Gunther (phonetic); Robert Hevel (phonetic);
20 Christian Kato; Gealsto Longtok (phonetic); Dorothy pour --
21 Parton. Sorry. Dorothy Parton.

22 George Porter; Sergio Prevost (phonetic); Rebecca Anne
23 Regalato-Gonzalez (phonetic); Dina Regalato-Cordonez
24 (phonetic); Lily Rich; Curtis Richards; Maria Schwino

1 (phonetic); Angela Smith Porter; Derrick Sterling;
2 Maria Thomas; Samantha Tyler; Antoine Willson; Nan Winters;
3 Lee Roy Fowler; Joni Hall; Ramona Leva; Marlene Livingston;
4 Guadeloupe Lopez; Lily Rich -- oh, I said that already. Sorry
5 about that. Clorence -- Clarence Rumbaugh; Francis Rumbaugh;
6 Theresa Tyler; Laura Zazwegda; and Beatrice Zazwegda.

7 Thank you.

8 THE COURT: Mr. Gill, whenever you're ready.

9 MR. GILL: Thank you. Thank you, Your Honor.

10 My name is Adam Gill, along with my co-counsel
11 Charles Goodwin. We represent Mr. Justin Porter, who's
12 sitting between us.

13 Thank you.

14 THE COURT: Thank you, Mr. Gill.

15 All right. Ladies and gentlemen, I am going to call roll
16 at this point. When you hear your name, just please say
17 "present" or "here" loud enough so that I can make sure that
18 you're here, okay?

19 [JURY ROLL CALL]

20 THE COURT: All right. Is there anyone who's
21 present but I -- and I didn't say your name?

22 Showing no hands for the record.

23 All right. We are about to begin the jury selection
24 process. This is part of the case where the parties and their

1 lawyers have an opportunity to get to know a little bit about
2 you in order to help them come to their own conclusions about
3 your ability to be fair and impartial so that they can decide
4 who they think should be the jurors in this case. This
5 process is done under oath.

6 Can you please stand and raise your right hand so that my
7 clerk can swear you in.

8 [THE JURY WAS DULY SWORN]

9 THE CLERK: Please be seated.

10 THE COURT: All right. The process will go like
11 this: First, I'm going to ask some general questions while
12 you're all seated in the positions that you're in. These
13 questions will be directed to everyone in the audience, both
14 to my jury box and behind, in the galley. After those general
15 questions, the focus of the questions will then turn to the
16 first 36 of you. And those first 36 are everybody to my right
17 and those first two rows before we have that cutoff to the
18 next third row, okay?

19 After I ask you individual questions, each of the
20 lawyers, one from each side, or if they split the duties, will
21 have the opportunity to ask you questions as well. The
22 questions that you will be asked during this process are not
23 intended in any way to embarrass or unnecessarily pry into
24 your personal affairs. But it is important that the parties

1 and their attorneys know enough about you to make this
2 important decision.

3 There are no right or wrong answers to the questions that
4 will be asked of you. The only thing I ask is that you answer
5 the questions as honestly and completely as you can. You've
6 taken an oath to answer all the questions truthfully and you
7 must do so. Remaining silent when you have information you
8 should disclose is a violation of that oath as well.

9 If a juror violates this oath, it not only may result in
10 having to try the case all over again, but it also can result
11 in penalties against the juror personally. So, again, it is
12 very important that you be as honest and complete with your
13 answers as possible. If you don't understand the question,
14 please ask for an explanation or clarification.

15 At some point during the process of selecting a jury, the
16 attorneys for both sides will have the right that a particular
17 person not serve as a juror. That is called a "challenge."
18 There are two types of challenges. The first type of
19 challenge is a challenge for cause. A challenge for cause is
20 a request to excuse a juror because the juror might have a
21 difficult time being fair and impartial in this particular
22 case. The second type of challenge is a preemptory challenge.
23 A preemptory challenge means that a juror can be excused from
24 duty without counsel having to give a reason for the excusal.

1 Please do not be offended should you be excused by either
2 of the challenging procedures. They are simply part of the
3 procedure designed to assist the parties and their attorneys
4 to select a fair and impartial jury.

5 Once all challenges are exercised, we will have 16
6 qualified jurors. Two of the -- or excuse me -- four of the
7 16 will be designated as alternates and the 12 remaining
8 jurors will deliberate in the case. However, you won't know
9 which of the 16 are the jurors and which are the alternates.
10 So please make sure, if you're selected, you're paying
11 attention at all times.

12 I am now going to ask some questions of the entire group
13 in the seats that you're in right now. If you wish to respond
14 to a question, please raise your hand. My marshal will then
15 come to you with a microphone. Please state on your name
16 [sic] very clearly, the last three digits of your badge number
17 and your last name.

18 Your badge number can be found on your jury summons.
19 Make sure you're looking at the badge number and not the jury
20 ID number.

21 All right. Question number one, is there anyone here who
22 has a disability or a medical issue that might impact their
23 ability to serve as a juror? A disability or a medical issue.

24 I'll start with the people to my right. Anybody?

1 All right. Let's go first row, second group back there.
2 Name and badge number, please.

3 JUROR NO. 425: Badge number 425, [JUROR NO. 425].

4 THE COURT: Yes, ma'am.

5 JUROR NO. 425: I -- I do have migraines that affect
6 my daily life. So that is my medical issue that I have.

7 THE COURT: Okay. And, then, do you work?

8 JUROR NO. 425: I do.

9 THE COURT: And what do you do when they hit at
10 work?

11 JUROR NO. 425: I'm [sic] actually have FMLA that
12 I'm allowed to be excused from work.

13 THE COURT: Okay.

14 JUROR NO. 425: And they get really painful.

15 THE COURT: And are you -- how often do you have
16 them and are you on medication for them?

17 JUROR NO. 425: I am on medication. I have 'em
18 maybe twice a week.

19 THE COURT: Okay.

20 JUROR NO. 425: Mm-hmm.

21 THE COURT: All right. Thank you. If you could
22 pass that to [JUROR NO. 433], 433.

23 Yes, ma'am. And you guys don't need to stand. Don't
24 worry about that.

1 JUROR NO. 433: Oh, I'm currently dealing with
2 breast cancer. So I have oncology appointments and surgery
3 scheduled October 5th as -- as well as, like, preop. So I
4 don't know if that would be an issue for me to still meet my
5 medical needs.

6 THE COURT: Yeah. So do -- is -- is the surgery in
7 October or the preop?

8 JUROR NO. 433: Surgery's October 5th. I think
9 preop is, I think, the 28th, I think.

10 THE COURT: Of September?

11 JUROR NO. 433: Yeah. And --

12 THE COURT: Or --

13 JUROR NO. 433: -- I have an oncology appointment
14 next Wednesday. But it's not, like, emergent. It's just to
15 go over info. And I know it's at the end of the day. So it's
16 at, like, 4:00-something. So I don't -- I don't know. I
17 just --

18 THE COURT: Okay.

19 JUROR NO. 433: I want to be able to have my double
20 mastectomy October 5th.

21 THE COURT: Oh, yeah. No. No. No. I would
22 never -- we can always work around those types of things.

23 JUROR NO. 433: Okay.

24 THE COURT: So I don't want you to stress out about

1 it.

2 JUROR NO. 433: Okay. Thanks.

3 THE COURT: Yeah. [JUROR NO. 480], (spells name),
4 and badge number 480. Yes, sir.

5 JUROR NO. 480: I just suffer from depression and
6 anxiety.

7 THE COURT: Okay. And do you take medications for
8 those?

9 JUROR NO. 480: No, but I see a therapist.

10 THE COURT: Okay. And is there anything about that
11 that makes you feel like you wouldn't be able to be a juror?

12 JUROR NO. 480: Just in anxiety form, you mean?
13 Just that particular --

14 THE COURT: Yeah. So maybe I asked a -- a -- maybe
15 I worded it poorly. But there -- we often have individuals
16 in -- in the same situation -- which I completely understand.
17 And thank you for being honest -- and they're able to serve.
18 They just kind of tell me, "Yeah, I mean, I struggle with this
19 but I think that this is something I can do." So I just was
20 wondering where you were on that spectrum.

21 JUROR NO. 480: I'm not really sure. I wouldn't
22 want -- I'm under oath, but I have mood swings with my
23 depression. It's a little hard to cope with sometimes.

24 THE COURT: And then do you work?

1 JUROR NO. 480: Yes.

2 THE COURT: What do you do?

3 JUROR NO. 480: I wholesale cars.

4 THE COURT: Do you ever have to leave work because

5 of that or are you able pretty much to --

6 JUROR NO. 480: I -- I'm able pretty much to handle

7 work every day.

8 THE COURT: Okay. All right. Thank you.

9 THE MARSHAL: Who else had their hand?

10 I'll get you next. Ma'am.

11 JUROR NO. 579: [JUROR NO. 579], badge 055.

12 THE COURT: Okay.

13 JUROR NO. 579: I'm not sure if this applies. It's

14 not for me, but my daughter has cerebral palsy and we are

15 one-income family. And my husband had to call in sick to be

16 with her. And I can't -- we -- we would be in big trouble if

17 he loses his job over this.

18 THE COURT: Okay. So I apologize. Can you give me

19 that number again? 'Cause it's not matching with mine.

20 JUROR NO. 579: Oh, badge number. I'm sorry. 579.

21 THE COURT: 579. Okay.

22 JUROR NO. 579: Sorry.

23 THE COURT: All right. And how old is your

24 daughter?

1 JUROR NO. 579: She is 11.

2 THE COURT: And does she stay -- is she -- does she
3 stay home full-time?

4 JUROR NO. 579: She is in school, but we have to
5 have someone available 'cause they call very often to have her
6 come home because she has dizzy spells, balance issues. And
7 when she starts having those issues at school, we have to come
8 and get her.

9 THE COURT: So how -- how often would you say that
10 she comes home during the week?

11 JUROR NO. 579: Probably two to three times a week.

12 THE COURT: Okay. Has she come home this week -- or
13 this school year yet?

14 JUROR NO. 579: Yes. And I had to have her out sick
15 for a whole day the one day 'cause she was throwing up and
16 just couldn't get out of bed.

17 THE COURT: Okay. Thank you.

18 JUROR NO. 579: Thanks.

19 THE COURT: Any other hands that I --

20 THE MARSHAL: Just had one in the back.

21 THE COURT: Okay.

22 JUROR NO. 1002: Yes. [JUROR NO. 1002]. Badge
23 number 23-1002.

24 THE COURT: Okay.

1 JUROR NO. 1002: This is kind of embarrassing for
2 me, but I suffer from irritable bowel syndrome, which I have
3 to take medicine four times a day.

4 THE COURT: Don't be -- you actually -- this is very
5 common. I feel like every jury panel we have this. So I
6 don't want you to feel that way. Do you work or are you
7 retired?

8 JUROR NO. 1002: I'm a homemaker.

9 THE COURT: You're a home --

10 JUROR NO. 1002: And I take care of my grandkids.
11 So --

12 THE COURT: And how often do you usually use the
13 restroom during the day?

14 JUROR NO. 1002: Oh, my God. Whenever I eat
15 something. It just goes, like, right through me and stuff.
16 So I could go, like, seems like eight times a day or more.
17 Depending.

18 THE COURT: And does the medication help with that
19 or not really?

20 JUROR NO. 1002: I just barely started taking it.
21 It has -- doctor said it has to be at least three to four
22 weeks before it starts really actually kicking in, my system.

23 THE COURT: Okay. All right. Thank you.

24 Before we come back up in this area, is there anybody

1 else we missed in the back?

2 JUROR NO. 548: I'm so sorry. I'm juror 548.

3 THE COURT: Okay. [JUROR NO. 548].

4 JUROR NO. 548: I don't know if you consider it or
5 not, but I -- I want to serve on the jury, but I have blood
6 work on Friday and a doctor's visit on the 22nd of September
7 for chronic diarrhea. I think I can control it.

8 THE COURT: When is your blood work on Friday?

9 JUROR NO. 548: Friday in the morning. I'll be done
10 at 10:45. I could reschedule it.

11 MR. GILL: I'm sorry, Your Honor. Which badge
12 number was this?

13 THE COURT: That was 548, [JUROR NO. 548].

14 MR. GILL: Thank you.

15 THE COURT: You're welcome.

16 All right. Thank you, ma'am.

17 JUROR NO. 537: [JUROR NO. 537], badge 537.

18 I don't know if it makes a difference or not, but I'm a
19 smoker and I cough a lot. I just wanted to put it out there.
20 I don't know if it makes a difference.

21 THE COURT: All right. Thank you.

22 JUROR NO. 537: Thank you.

23 THE COURT: And then right here in the third row.

24 JUROR NO. 261: [JUROR NO. 261], badge 261.

1 I, too, actually am dealing with a possibility of breast
2 cancer. I do have a mammogram coming up in early October.
3 And, then, I am a single mom. I do have a little
4 two-year-old. So each week, twice a week, I take him to
5 occupational therapy because he's a little bit delayed.

6 THE COURT: And what time is that?

7 JUROR NO. 261: It mixes. They usual work around my
8 schedule is when I'm off from work. And I work part-time
9 for -- in retail.

10 THE COURT: Okay. All right.

11 Okay. Is there anyone here who has been convicted of a
12 felony?

13 All right. Let's go back, please. And let's start with
14 [JUROR NO. 480], badge number 480.

15 [JUROR NO. 480], what year was that?

16 JUROR NO. 480: 2016.

17 THE COURT: And was that here in Nevada?

18 JUROR NO. 480: Yes.

19 THE COURT: And what was the felony?

20 JUROR NO. 480: Robbery.

21 THE COURT: Okay. And are you -- are you done? Are
22 you on probation? Are you done with everything?

23 JUROR NO. 480: I completed everything.

24 THE COURT: Completed everything. And does it

1 remain a felony when you completed everything or did it drop
2 down?

3 JUROR NO. 480: It remained a felony and I -- I
4 completed full probation and I was honorably discharged.

5 THE COURT: Okay. And have your -- do you know if
6 your civil rights have been restored yet?

7 JUROR NO. 480: I asked my attorney. I'm not
8 100 percent -- he's not sure.

9 THE COURT: I -- I'm trying to remember the statute,
10 but I think, in Nevada, it's seven years --

11 JUROR NO. 480: I believe so.

12 THE COURT: -- for them to become automatically
13 restored. So I'm not sure that they are yet. But -- but
14 thank you for telling me. I appreciate that. If you could
15 pass it behind you, please, to [JUROR NO. 537], badge number
16 537.

17 [JUROR NO. 537], what year and what state?

18 JUROR NO. 537: Nine -- 1997, California.

19 THE COURT: And what was the felony?

20 JUROR NO. 537: Credit card fraud.

21 THE COURT: Okay. And then you have voted since
22 then --

23 JUROR NO. 537: Yes.

24 THE COURT: -- 'cause your civil rights have been --

1 should have been restored.

2 JUROR NO. 537: Yes.

3 THE COURT: Okay. Thank you.

4 Anyone else hands I missed?

5 Is there anyone here who's not a United States citizen?
6 Not a United States citizen?

7 Showing no response for the record.

8 Like I stated, we anticipate this case is going to last
9 three to four weeks. And I recognize that serving on a jury
10 is almost always a personal or financial hardship. For that
11 reason, the Eighth Judicial District Court does not generally
12 consider financial hardship as an excuse to serving as a
13 juror.

14 In a moment I'm going to list the reasons that are
15 generally given and individuals are generally excused if they
16 have this reason. You might be confronted with unique
17 inconveniences or hardships that would impact your service in
18 this particular trial at this particular time.

19 Let me give you some examples of what generally suffices
20 for excusal: If you are a full-time caregiver to a vulnerable
21 person. Now, this doesn't mean like a nurse or a doctor.
22 This is actually someone who you live with and you -- they are
23 a vulnerable person and they -- something very serious will
24 happen if you're not taking care of them at your house. You

1 are a full-time student. You have an upcoming surgery, a
2 surgery during this period of time or multiple post-ops that
3 you will miss, or you have out of state or out of city travel
4 where you can show me bus tickets, plane tickets, train
5 tickets, hotel, something like that where it can be confirmed
6 that you're leaving.

7 So those are -- I just need to give you kind of a
8 threshold of those are usually the excuses that suffice for
9 excusal. I feel like I've heard everything, but maybe I
10 haven't. There may be something that you have that I haven't
11 heard that you want to bring to my attention and that's
12 totally fine. But just kind of know the baseline of what
13 it -- it is that gets you out of jury duty.

14 Okay. So is there anyone who has an extraordinary
15 reason, knowing what I just stated, why he or she cannot serve
16 as a juror in this particular time, please raise your hand.

17 All right. Okay. Let's start with second row, please.

18 JUROR NO. 255: [JUROR NO. 255], badge number 255.

19 THE COURT: Yes, sir.

20 JUROR NO. 255: I'm a transportation employee. I
21 live in Laughlin. I believe, you know, this might be a
22 (indiscernible) issue, driving up and back and forth. I'm due
23 out of town -- since the Court is not in session on weekends,
24 I have to mark-up and be available for subject to call on the

1 train. And I'm not due federal rest since I did not perform
2 service. So I may be operating on a train right after court
3 on Friday. And I go out of town. I have to stay in a hotel,
4 rest out, and then it might be really hard to get back on
5 Monday. 'Cause I stay out of state. So I have there --

6 THE COURT: Sorry. So I'm trying to pull this all
7 together. So you have a trip planned for leaving on Saturday?

8 JUROR NO. 255: I'm a BNSF conductor --

9 THE COURT: Yeah.

10 JUROR NO. 255: -- in transportation.

11 THE COURT: Mm-hmm.

12 JUROR NO. 255: They do not allow me to be off on
13 the weekends. So I have to be available after courts, end of
14 session. And I'm subject to call for work. And I could be,
15 you know, out of town 'cause I'm due -- you know, I go on the
16 board and I could be on the train. I have to leave town and
17 stay in a hotel and rest out. And I could be stuck -- you
18 know, my trips, I'm out of town a couple days --

19 THE COURT: Yeah.

20 JUROR NO. 255: -- and it's hard to get back.

21 THE COURT: So I'm -- just so you know, from a legal
22 perspective, that they -- legally, they wouldn't be able to do
23 that. They can't prevent you from leaving the area and then
24 from coming back for a jury -- for jury duty, under the laws.

1 So they wouldn't be able to --

2 JUROR NO. 255: So they're gonna have to provide
3 some transportation when I'm out of state? 'Cause I travel to
4 Needles.

5 THE COURT: Well, I'm telling you they couldn't send
6 you on the trip, if they weren't going to be able to get you
7 back here in time. Then, yeah, they either --

8 JUROR NO. 255: And, see, they --

9 THE COURT: -- don't send you or -- I mean, I'm
10 happy to talk to them or send --

11 JUROR NO. 255: Okay. Yeah.

12 THE COURT: -- them a letter.

13 JUROR NO. 255: You could figure something out.
14 Okay.

15 THE COURT: But, yeah, that's -- you can't -- you
16 can't in any way obstruct someone from serving, but --

17 JUROR NO. 255: Yeah. And that's --

18 THE COURT: -- if they don't know that then --

19 JUROR NO. 255: -- that's the way it's -- it's been
20 really crazy right now, being stuck on trains for over
21 12 hours, you know, 14, 15 hours with transportation since the
22 crew management problems we're having right now.

23 THE COURT: Okay.

24 JUROR NO. 255: Okay. Thank you.

1 THE COURT: You're welcome.

2 [JUROR NO. 259], did you have something?

3 JUROR NO. 259: Yes.

4 THE COURT: [JUROR NO. 259], 259.

5 JUROR NO. 259: Yes. I have tickets for out of town
6 for the 14th and it's a ticket where I can't refund. I've had
7 it for over two months.

8 THE COURT: And where are you going?

9 JUROR NO. 259: To Boston.

10 THE COURT: And how long are you going to be there
11 for?

12 JUROR NO. 259: I'll be there five days.

13 THE COURT: So you're coming back on the 19th?

14 JUROR NO. 259: Yes.

15 THE COURT: Okay. Thank you. If you could pass
16 that to [JUROR NO. 260], 260.

17 [JUROR NO. 260]?

18 JUROR NO. 260: We have a Disney cruise planned from
19 September 22nd. We leave here to go to California. We get on
20 the ship on the 23rd of September. And we get off the ship on
21 the 28th of December -- of September. So it's a five-day
22 cruise.

23 THE COURT: Okay. Thank you.

24 Anybody else in these first two rows?

1 JUROR NO. 360: Hi. My name's [JUROR NO. 360] and
2 my badge number is 360.

3 THE COURT: Yes.

4 JUROR NO. 360: I'm a licensed mental health
5 professional and I see victims of crime clients. On my
6 caseload, Your Honor, I currently have three clients that I'm
7 worried about them moved towards suicide completion. And I'm
8 seeing them over the next couple of days. And I see them on a
9 weekly or biweekly basis.

10 THE COURT: And do you generally see them -- is
11 we're -- in a lot of days, we're not in court till, like,
12 11:30 because I have what's referred to as a "criminal
13 calendar" in the morning.

14 JUROR NO. 360: Sure.

15 THE COURT: So would you be able to see them if we
16 were able to schedule?

17 JUROR NO. 360: Not depending on their -- their work
18 loads and all of those things. So I work from, like, 9:00 to
19 7:00 every day with my clients.

20 THE COURT: Okay.

21 JUROR NO. 360: I have a letter from my employer,
22 too, if that would be helpful for you?

23 THE COURT: Oh, no. That's okay.

24 JUROR NO. 360: Thank you.

1 JUROR NO. 397: Yes. My name is [JUROR NO. 397] and
2 my badge number is 397.

3 THE COURT: Yes, sir.

4 JUROR NO. 397: Currently, I'm a stay-at-home parent
5 also actually been working the sports field. So I have two
6 children that I have to drop off at school early in the day.
7 So one has to go to school at 9:00; one has school at 8:00.
8 And then, also, with it being a one single house -- my wife is
9 assistant principal. So I have to drop her off at work as
10 well. And then after they're get -- they get out of school,
11 my children have dance and gymnastics six days out of the
12 week.

13 THE COURT: Okay. So drop off is at 8:00 and at
14 9:00. And then when is gymnastics and dance?

15 JUROR NO. 397: Gymnastics -- it can range. It can
16 be 3:30, it could be 4:30. So it --

17 THE COURT: And your wife can --

18 JUROR NO. 397: She -- she's assistant principal.

19 THE COURT: Right. But so -- I'm sorry. Why
20 couldn't she take them?

21 JUROR NO. 397: Because -- because of her schedule.
22 Like, I have to -- I have to do -- I have to pick them up.
23 Like, I have to do those things.

24 THE COURT: Okay.

1 THE MARSHAL: You just have two more up here.

2 THE COURT: Okay.

3 THE MARSHAL: Thank you. I got you next.

4 JUROR NO. 261: [JUROR NO. 261] again. And it's
5 261. I actually live with my elderly folks. My father is
6 83 years old. And my mom's up there. And they both have
7 health issues. So when I'm working, usually they -- I mean, I
8 work about maybe four or five hours a day at my job. They
9 usually try to take care of him, but it would be hard for them
10 to deal with taking care of a terrible two right now.

11 THE COURT: Okay.

12 JUROR NO. 230: Hi. My name is [JUROR NO. 230]. My
13 badge number is 230. I'm an insurance agent. I have a small
14 agency. I'm the only license there. So a lot of time, most
15 of the work has to be done by me. Similar to this gentleman
16 in front of me, I do have two children that I have to drop off
17 every day. My husband and I don't have the same schedule.
18 They get dropped off around 7:45 and then, block day, they'll
19 be out at 1:00 and then full day will be around 2:45 -- 3:15.
20 I'm sorry. 3:15. So that's my schedule. I do have an
21 upcoming event in Reno, October 14th --

22 THE COURT: Oh, we'll be done long before that.

23 JUROR NO. 230: -- to the 16 -- oh, okay. Never
24 mind.

1 THE COURT: Is that it to my right?

2 THE MARSHAL: Back there?

3 THE COURT: [JUROR NO. 480] -- or sorry. No. Go
4 before that. Is there [JUROR NO. 472].

5 JUROR NO. 472: [JUROR NO. 472].

6 THE COURT: Okay.

7 JUROR NO. 472: My badge is 472. And I have travel
8 to 30 -- September 30th.

9 THE COURT: Sorry. Where are you going?

10 JUROR NO. 472: I have to citizenship. I'm sorry.
11 My English is not good.

12 THE COURT: That's okay.

13 JUROR NO. 472: And I have to vote in the Brazilian
14 aide in Los Angeles. So I have to be there and -- between
15 30 September to October -- October 2nd and September 30th.
16 Yeah.

17 THE COURT: Okay. Thank you.

18 THE MARSHAL: Right here.

19 JUROR NO. 480: Also, Your Honor, I'm a single
20 father that has full custody and my daughter -- my mother does
21 help me with my daughter throughout the week. But I drop her
22 off at least two days or three days, depending on what days my
23 mom could help me.

24 THE COURT: Okay.

1 JUROR NO. 480: And we had a trip planned for
2 Legoland. I don't know the exact dates of it. I think it was
3 September 9th to the 13th. But I'm not 100 percent sure.

4 THE COURT: Do you have anything on your phone?

5 JUROR NO. 480: Um --

6 THE COURT: Since you don't know for sure.

7 JUROR NO. 480: No, but I could text my mom and find
8 out.

9 THE COURT: Go ahead. Yeah.

10 JUROR NO. 480: Would you like me to do that?

11 THE COURT: Yes, please.

12 JUROR NO. 480: Okay.

13 THE MARSHAL: In the back.

14 JUROR NO. 496: [JUROR NO. 496], 496. Taking the
15 family, we're all flying out to Orlando Saturday morning,
16 September 3rd to the -- September 12th.

17 THE COURT: Thank you.

18 JUROR NO. 503: My last name is [JUROR NO. 503],
19 badge number 503. I just wanted to mention that I do not have
20 a problem with schedule, but I do work for Las Vegas Justice
21 Court.

22 THE COURT: Okay.

23 JUROR NO. 503: So just wanted to mention that for
24 the record.

1 THE COURT: And what do you do for LV --

2 JUROR NO. 503: I work for the Pretrial Division.

3 THE COURT: Okay.

4 JUROR NO. 521: Good afternoon, Your Honor. My
5 name's [JUROR NO. 521]. Badge number 521. I've been a civil
6 trial lawyer for 32 years here in Nevada. We are scheduled
7 for multiple trials over the next six months, first one
8 beginning September 9th, in front of Judge Bell. It's a firm
9 setting. It will go forward and be about ten days in trial.

10 We also have a 45-day trial set in front of Special
11 Master Hale (phonetic), appointed by Judge Williams, that
12 begins the first week in November. We're certainly
13 double-tracking depositions this week, prepping for that trial
14 on September 19th next week and then additional depositions
15 for the other one after that.

16 So unfortunately, as much as I would love to be here and
17 I -- I've enjoyed this experience so far, I would like to
18 serve as a juror, it would be a significant hardship on my
19 clients to be able to do so.

20 THE COURT: Okay. Thank you.

21 JUROR NO. 584: Hi, I'm [JUROR NO. 584]. My badge
22 number is 0583 [sic]. And I have -- I pick up my
23 granddaughters; I drop them off at school at -- one goes to
24 school at 7:45 and the other one goes to school at 9:00. And

1 then I pick them up -- one up at 3:30 and the other one at
2 4:00. I help my daughters out in the morning and in the
3 afternoon because they -- it's no way that they can leave
4 work. One is in training until January, and they won't
5 release her. I -- she's been telling them that, you know,
6 both of 'em that I had jury duty to see and they won't release
7 her because it's not them.

8 THE COURT: Oh, 'cause it's not her?

9 JUROR NO. 584: It's not her, yeah. Both of them.
10 Both my daughters, it's not --

11 THE COURT: They -- do they work --

12 JUROR NO. 584: They --

13 THE COURT: -- at the same place?

14 JUROR NO. 584: No.

15 THE COURT: Oh.

16 JUROR NO. 584: No. One does billing and the other
17 one does billing for CVS. And my other daughter is billing --
18 I forgot what company she works for. But they told her if it
19 was them -- it was both of them, then they would be able to
20 go. But since it's not, they can't -- one can't come out of
21 training and the other one they won't let her off.

22 THE COURT: Okay. And do they have significant
23 others that --

24 JUROR NO. 584: No.

1 THE COURT: Oh, okay.

2 JUROR NO. 584: I wish.

3 THE COURT: Thank you.

4 Anybody else in the back?

5 Okay. Do you -- oh, okay. Sorry. I didn't see your
6 hand.

7 JUROR NO. 588: Badge number 588, [JUROR NO. 588].

8 I will be out of state September 14th through the 18th.

9 THE COURT: And where are you going, ma'am?

10 JUROR NO. 588: Portland, Oregon.

11 THE COURT: Okay. You want to just pass it down --
12 no, down that same row.

13 JUROR NO. 579: [JUROR NO. 579], badge 579. Just
14 again, I have to be there for my daughter with the cerebral
15 palsy and she cannot be left alone. I have to pick her and my
16 son up at 2:11 from school. And my husband works until 5:00.
17 So he would have to be calling in sick every day to be
18 available if she needs to come home early from school and to
19 pick up and drop off at school.

20 THE COURT: Okay.

21 JUROR NO. 559: Hello. [JUROR NO. 559], badge
22 number 559. I -- oh, my gosh. I get (indiscernible) sorry.
23 My three boys are home with me and I'm breastfeeding the one.

24 THE COURT: Okay.

1 JUROR NO. 559: And my other two are homeschooled
2 because the one has Tourette's.

3 THE COURT: Okay.

4 JUROR NO. 559: So, yeah, they're -- all three of
5 'em are home with me all day.

6 THE COURT: Okay.

7 JUROR NO. 559: And we just moved back from
8 Minnesota --

9 THE COURT: Okay.

10 JUROR NO. 559: -- so I don't have, like, a group of
11 people yet to help.

12 THE COURT: Okay.

13 JUROR NO. 603: [JUROR NO. 603], my badge number is
14 603. We're just going to Florida tomorrow. We'll be back on
15 Sunday. But we're -- my husband is swearing in my son in the
16 Navy the end of September. We'll be gone four days.

17 THE COURT: Okay.

18 JUROR NO. 626: Hi, [JUROR NO. 626]. Badge number
19 0626. Going -- I'll be out of town September 3rd through the
20 10th, going to Massachusetts.

21 THE COURT: Okay. Thank you.

22 JUROR NO. 633: [JUROR NO. 633], 633. I have -- I'm
23 in trade shows and conventions. And I have a trade show to
24 set up in New York City. I fly out at 10:00 a.m. on Monday

1 the 12th of September, and I get back to Vegas on the 14th, at
2 8:05 p.m.

3 THE COURT: Okay. Thank you.

4 JUROR NO. 533: [JUROR NO. 533]. Sorry. I said the
5 whole thing. Badge number 533. I do have a trip planned to
6 California, leaving Friday morning, hotel for the two nights,
7 and then coming back Sunday evening.

8 THE COURT: Sorry. You're leaving Friday morning?

9 JUROR NO. 533: Friday -- I'm sorry. Friday the
10 9th.

11 THE COURT: Friday the 9th. And what time is that
12 flight?

13 JUROR NO. 533: It would be as early as we can get
14 out. It's for work and also vacation mixed in, but --

15 THE COURT: Are you driving or --

16 JUROR NO. 533: We're driving, yes. Just to
17 Southern California. And another thing I didn't mention, I --
18 I do have MS, and I do have two appointments at the end of
19 September. They could probably be moved. Looking at my
20 calendar, I have the -- it's the morning on the 23rd and
21 another one on the 27th.

22 THE COURT: Okay. Thank you.

23 JUROR NO. 322: My name is [JUROR NO. 322], badge
24 number 332. Not sure if it's worth mentioning, but I just

1 want to say that I am attending UNLV. It's technically
2 part-time, but I'm only three credits away from full-time.
3 And they are junior year advance level computer engineering
4 classes.

5 THE COURT: And what time do you go to school?

6 JUROR NO. 322: Monday through Thursdays and my
7 classes are from 12:00 to 7:00 p.m.

8 THE COURT: Thank you. And then if you could slide
9 it down.

10 JUROR NO. 305: My name is [JUROR NO. 305]. My
11 number is 23-0305. I just speak a little bit English, so my
12 English (indiscernible) so sorry. So on September 20th I go
13 starting San Francisco, Santa Clara because my son is die
14 because (indiscernible) and I had a court for the people that
15 of they die for my son in September.

16 THE COURT: Okay. All right. Thank you.

17 Any other hands I missed?

18 Chris, there's one right behind ya.

19 JUROR NO. 412: Hi, [JUROR NO. 412], my badge is
20 412. And I have a trip on September 9th to 21st. I going to
21 Montana.

22 THE COURT: Okay. Anyone else?

23 All right. So this is really important because this is
24 the last time that I can do this analysis with the attorneys

1 and let people go. So, literally, every single trial I say to
2 people, if you have anything you need to tell me about that
3 you think will get you out of jury excusal -- a trip, an
4 appointment, anything like that -- tell me now or forever hold
5 your peace. Because after right now and after I go discuss it
6 with the attorneys, I'm not considering anything else.

7 And even though I say this every time, I guarantee you,
8 tomorrow, a minimum of three people will walk to Chris and
9 tell them that they have brain surgery tomorrow or that
10 they're going on a world cruise that they forgot about for
11 11 months. I will not consider it after right now.

12 And Chris -- and then he hates to come and tell me
13 because he knows I'm gonna get upset and then -- don't put
14 Chris in that spot. So if you have something, tell me or do
15 not every tell me ever.

16 Okay.

17 JUROR NO. 216: Hi, my name is [JUROR NO. 216] and
18 my English is no good. I'm sorry. So my number is 0216. So
19 I no come back more a little speaking -- speak English.

20 THE COURT: Okay. What do you do for work?

21 JUROR NO. 216: I'm work for a Mexican restaurant.

22 THE COURT: And how long have you been in the
23 United States?

24 JUROR NO. 216: Oh, maybe ten years.

1 THE COURT: Ten years?

2 Okay.

3 JUROR NO. 218: [JUROR NO. 218], badge number 218.
4 It's not really that big of an issue, but I -- I just -- we
5 have limited transportation. So I have no way of coming here.
6 I just -- I mean, I can take Uber, I guess, but that's gonna
7 be a little too hard doing it, like, for three to four weeks
8 while I have, like, work.

9 THE COURT: Okay. Thank you.

10 JUROR NO. 221: [JUROR NO. 221]. And badge 221. I
11 watch a friend of mine. They're elderly couple, but they have
12 a young -- a young daughter that I watch, you know, daily from
13 Monday through Friday.

14 THE COURT: Okay.

15 JUROR NO. 248: This is just, like, for finances and
16 travel and stuff. It's not for other things.

17 THE COURT: I don't know. It depends. Let's start
18 with your name and badge number.

19 JUROR NO. 248: Oh, [JUROR NO. 248], 248.

20 THE COURT: Okay.

21 JUROR NO. 248: Just -- I'm assuming the attorneys
22 will probably ask questions, but just something that has
23 happened prior in my life that might --

24 THE COURT: In -- we'll ask questions about that.

1 JUROR NO. 248: So that's not for now, that's
2 another point --

3 THE COURT: Yeah.

4 JUROR NO. 248: Okay. That's what I wasn't sure.

5 THE COURT: We will get there. Thank you, though.

6 JUROR NO. 245: Hi. My name is [JUROR NO. 245],
7 245, badge number. I just have -- I don't know but just -- if
8 it's taken consideration, but I am diabetic and I -- I have
9 hypertension. And I'm not feeling well late -- the last few
10 days. And my wife is always take M -- FMLM [sic] to take care
11 of me at home.

12 THE COURT: Okay.

13 JUROR NO. 245: So right now I'm not feeling well.

14 THE COURT: Okay. Thank you.

15 Any --

16 JUROR NO. 410: Hey, my name's [JUROR NO. 410] and
17 my badge number is 410.

18 THE COURT: Yes, sir.

19 JUROR NO. 410: And I'm pretty sure everybody got
20 financial problems, but I actually have -- well, everybody
21 probably has actual bills. And I work 10:00 to 7:00 five days
22 a week. And I don't want to miss out on opportunity of being
23 able to pay my bills because, you know, everything that's
24 going on. And, yeah, so --

1 THE COURT: Okay.

2 JUROR NO. 410: -- that's just my reason.

3 THE COURT: Thank you.

4 JUROR NO. 433: [JUROR NO. 433], 433. Probably not
5 an issue, just letting you know I'm also working on my
6 doctorate, my DMP. It's part-time, I believe. So -- but just
7 letting you know.

8 THE COURT: Doctorate in what?

9 JUROR NO. 433: Nurse practitioner. It's psych,
10 mental health, nursing practice --

11 THE COURT: Okay.

12 JUROR NO. 433: -- doctorate.

13 THE COURT: Thank you.

14 JUROR NO. 433: Okay.

15 JUROR NO. 447: Yes, Your Honor. My name is [JUROR
16 NO. 447].

17 THE COURT: Yes, ma'am.

18 JUROR NO. 447: The reason I didn't speak up before
19 'cause I left my badge thing in the restroom, I think. So I
20 don't know my number.

21 THE COURT: Okay. That's okay. You are 447.

22 JUROR NO. 447: Okay. So I do -- I pick up my
23 grandson from school five days a week and he gets out at 2:00
24 and he goes to school at 7:30.

1 THE COURT: Do you do drop off?
2 JUROR NO. 447: I do drop off. 'Cause I work
3 graveyard.
4 THE COURT: Oh, all right. Thank you.
5 JUROR NO. 447: Okay.
6 JUROR NO. 472: [JUROR NO. 472], 472. And I -- I
7 don't know the case, but I have bradycardia. It's a heart
8 disease. And I have a lot problems to understand English very
9 well.
10 THE COURT: Okay.
11 JUROR NO. 472: So you guys speak too fast.
12 THE COURT: Okay.
13 JUROR NO. 472: Sorry.
14 THE COURT: That's okay. Thank you.
15 MR. GILL: Your Honor, what was the sickness?
16 THE COURT: Oh, bradycardia.
17 MR. GILL: Okay.
18 THE COURT: It's a heart issue.
19 JUROR NO. 509: Hello. My name is [JUROR NO. 509].
20 The badge number is 509. And I don't understand English much.
21 THE COURT: Okay.
22 JUROR NO. 509: I live near 15 years, but I try
23 to --
24 THE COURT: What do you do for work?

1 JUROR NO. 509: I drive Uber.

2 THE COURT: Okay.

3 JUROR NO. 412: [JUROR NO. 412]. 412 is my badge.

4 And I had the same problem with the language. I under -- I

5 don't understand 100 percent.

6 THE COURT: Okay. And --

7 JUROR NO. 412: Just letting --

8 THE COURT: -- what do you do for work?

9 JUROR NO. 412: Right now I know that -- I in study

10 in course online.

11 THE COURT: You study courses online?

12 JUROR NO. 412: Yes.

13 THE COURT: And --

14 JUROR NO. 412: Cloud partitioner.

15 THE COURT: I'm sorry. For what?

16 JUROR NO. 412: It's junior cloud partitioner.

17 THE COURT: Okay. And what -- what language are

18 your classes in?

19 JUROR NO. 412: It's in English, but I use subtitles

20 in these different because I study before a computer. So I

21 understand different kind of English. Like a technical

22 English or something like that. But I -- I don't understand,

23 like, you said before -- well, you explained different

24 process, so I don't get that too much.

1 THE COURT: Mm-hmm. Next.

2 JUROR NO. 637: Hello. My name's [JUROR NO. 637]
3 and my badge number, 637. I'm a single mom. I have a
4 full-time job and my ex-husband and I, we coparent my son.
5 And since we don't have the finances for child care, when I'm
6 not working, my son is with me; and when he's not working, my
7 son is with him.

8 THE COURT: Okay. Do you guys have any family in
9 town?

10 JUROR NO. 637: Um, no. I -- I don't have any
11 family. It's just me.

12 THE COURT: Does he?

13 JUROR NO. 637: He -- he doesn't either. It's just
14 him.

15 THE COURT: Okay.

16 JUROR NO. 639: Hi. I'm [JUROR NO. 639], badge 639.
17 I work down here at Fremont Street Experience. I'm a security
18 manager. I have 60 officers I have to deal with. We have
19 special events, along with first variety and I have to handle
20 all their payroll, too, on a weekly to biweekly time frame.

21 THE COURT: Okay. Thank you.

22 JUROR NO. 572: Hi, my name is [JUROR NO. 572],
23 number 0572. I understand English well, but my writing,
24 spelling is not that good. Is that really concern? I'm

1 just --

2 THE COURT: No, you don't have to do any writing.

3 JUROR NO. 572: Okay. I -- that's all I'm
4 concern --

5 THE COURT: No. That's okay.

6 JUROR NO. 572: Then I'll be able to do that.

7 THE COURT: No, that's totally fine. I appreciate
8 you telling me.

9 JUROR NO. 397: Yes. Again, my name is [JUROR
10 NO. 397], badge number 397. Again, I mentioned earlier about
11 picking up -- dropping off kids to school, picking them up,
12 taking them to dance and whatnot. I know I have a younger
13 three-year-old that has a medical condition where she has
14 seizures. I know she recently had one a few weeks ago at
15 school. So we had to take her home.

16 So I'm -- I'm responsible for doing that while my wife --
17 again, wife's still at work. Things like that. So any time
18 there's an emergency, things like that, I'm responsible for
19 handling all issues.

20 THE COURT: Okay.

21 JUROR NO. 410: Yeah. Yeah. [JUROR NO. 410], 410.
22 I do just also want to mention that my car recently just broke
23 down. So I really have no transportation here. This was
24 actually my friend's off day. So I was actually able to get

1 taken. That's all I wanted to say. I appreciate it. Thank
2 you.

3 THE COURT: Okay.

4 JUROR NO. 372: My last name is [JUROR NO. 372] and
5 my badge number is 372.

6 THE COURT: Yes, sir.

7 JUROR NO. 372: On the 22nd of this month I'll be
8 driving down with some people that -- that I go to church
9 with, on the 22nd of this month. And I'll be coming back the
10 next day, like, probably, like, evening or something.

11 THE COURT: 22nd is wen -- or wait -- a Thursday;
12 right?

13 JUROR NO. 372: Yeah, I believe so.

14 THE COURT: And when -- sorry. What -- you're
15 driving down to -- did you say California?

16 JUROR NO. 372: Prescott, Arizona.

17 THE COURT: Prescott, Arizona. And what's the
18 reason for that?

19 JUROR NO. 372: We're gonna get our passports
20 because we're going to Saint Lucia later on this year.

21 THE COURT: Wait. So why do you have to go to
22 Arizona to do that?

23 JUROR NO. 372: It's quicker.

24 THE COURT: Oh. [JUROR NO. 360], you're badge

1 number 360.

2 JUROR NO. 360: Yes. Thank you.

3 I'm also a primary supervisor for interns, marriage and
4 family therapists, and clinical professional counselor
5 interns. And I'm approved by the state. So I'm on-call with
6 all of them, based on their cases too.

7 THE COURT: Okay.

8 JUROR NO. 360: Thank you.

9 THE COURT: Anything else?

10 All right. Nobody else. All right. Attorneys in the
11 back, please.

12 [BENCH CONFERENCE NOT RECORDED]

13 THE COURT: If you hear your name and badge number,
14 please stand. 216, [JUROR NO. 216]. [JUROR NO. 255], I have
15 a question for you that I didn't understand.

16 JUROR NO. 255: Yeah.

17 THE COURT: Did you say you live in Laughlin or
18 take --

19 JUROR NO. 255: I --

20 THE COURT: -- you -- you leave from Laughlin?

21 JUROR NO. 255: I live in Laughlin and then -- okay.

22 THE COURT: No, you -- yeah.

23 JUROR NO. 255: And then I -- I work in Needles,
24 California.

1 THE COURT: Understood. Okay.

2 JUROR NO. 255: So I get on the train --

3 THE COURT: Sorry. The Laughlin thing threw me off.

4 JUROR NO. 255: Okay.

5 THE COURT: All right. So [JUROR NO. 216], please
6 stand. [JUROR NO. 255], please stand. Two -- so [JUROR
7 NO. 255] is 255. 259, [JUROR NO. 259]; 260 [JUROR NO. 260];
8 305, [JUROR NO. 305]; 332, [JUROR NO. 332]; 360 -- no sorry.
9 That's not true. 412, [JUROR NO. 412]; 425, [JUROR NO. 425];
10 433, [JUROR NO. 433]; 472, [JUROR NO. 472]; 480, [JUROR NO.
11 480]; 496, [JUROR NO. 496]; 509, [JUROR NO. 509]; 521, [JUROR
12 NO. 521]; 559, [JUROR NO. 559]; 579, [JUROR NO. 579]; 588,
13 [JUROR
14 NO. 588]; 603, [JUROR NO. 603]; 626, [JUROR NO. 626]; 633,
15 [JUROR NO. 633]; 636, [JUROR NO. 636]; 637, [JUROR NO. 637];
16 1002, [JUROR NO. 1002].

17 Those of you who discussed transportation problems, we're
18 checking into that with Jury Services. We used to provide
19 something, but I can't remember if we stopped it during COVID.
20 So give me a second in regards to that. Those of you that are
21 standing, you are excused at this time. Please go ahead and
22 exit through the doors.

23 THE MARSHAL: I just need everybody's badge as they
24 walk out. Thank you.

1 THE COURT: That's okay. Tell me your number again.

2 JUROR NO. 636: It's 533.

3 THE COURT: Oh, no, it's 636. You're using your
4 juror number.

5 JUROR NO. 636: Oh.

6 THE COURT: So you're -- you're gone.

7 UNIDENTIFIED: And, Your Honor, 360 was
8 (indiscernible).

9 THE COURT: Yeah.

10 All right. For those of you that remain, are any of you
11 acquainted with me or any of my staff? Acquainted with me or
12 any of my staff?

13 [JUROR NO. 410], 410, I apologize. We do not have
14 transportation. You are released.

15 JUROR NO. 410: 410?

16 THE COURT: Yeah. And then one other --

17 MS. LUZAICH: I'm sorry, Judge. That's 410; is that
18 right?

19 THE COURT: Yeah.

20 MS. LUZAICH: Thank you.

21 THE COURT: Give me one second.

22 MS. LUZAICH: 218.

23 THE COURT: 218?

24 MS. LUZAICH: Yeah. Seat 4.

1 THE COURT: Yes. [JUROR NO. 218], 218, you are
2 released.

3 All right. Do any of you know one another?

4 Showing no response.

5 Are any of you acquainted with the Defendant, Mr. Porter,
6 or either of his attorneys, Mr. Gill or Mr. Goodwin?

7 Showing no response.

8 Are any of you acquainted with either of the Chief Deputy
9 District Attorneys Ms. Luzaich or Ms. Kollins?

10 No response.

11 Are any of you acquainted with District Attorney
12 Steve Wolfson or any of the individuals that work with his
13 office?

14 No response.

15 Are any of you acquainted with any of the witnesses
16 who -- whose names were called by the State of Nevada or whose
17 names were listed by the attorneys when we first got in here?

18 Showing no response.

19 Have you or anyone -- excuse me. You heard the State
20 give a sort recitation of the facts and the charges and the
21 time frame and the addresses. I realize that's very limited
22 information. But with the limited information that you do
23 have, does anyone think they remembered seeing, hearing
24 anything on the news, social media, anything like that?

1 Anything ring a bell with this case?

2 Showing no response.

3 Are there any individuals in this case that would need
4 the use of an interpreter for any type of language,
5 Ms. Kollins or Ms. Luzaich?

6 MS. LUZAICH: Yes.

7 MS. KOLLINS: Yes.

8 THE COURT: Okay. All right. So when an individual
9 needs an interpreter in court -- so let me just use Spanish as
10 an example. So let's say that the witness is -- the witness
11 speaks Spanish and they use a Spanish interpreter during
12 trial. First of all, let me -- is it a Spanish interpreter?
13 What --

14 MS. LUZAICH: Yes.

15 THE COURT: Okay. First of all, of any one in
16 here -- does anyone speak Spanish?

17 Some? Okay. So, yeah, there was like five or six hands
18 of people that speak Spanish.

19 So the rules of the interpreter say that even though you
20 speak Spanish and you can hear the per -- the witness
21 testifying, you have to use the interpreter's interpretation.
22 And so let's say you interpret something a little bit
23 different. On recess or back in the jury deliberation room,
24 you can't say "that's not what he said. He said," you know,

1 blah, blah, blah. So you -- you have to take the
2 interpreter's interpretation at their -- at their word, I
3 guess.

4 I mean, if there are issues, you can raise your hand and
5 then I can -- we can -- I can bring you up here and we can
6 talk about it. But you can't go to your other jurors and you
7 can't just think to yourself "that's not what she said, I'm --
8 I'm taking this into account."

9 Is there anyone here who wouldn't be able to follow that
10 or who would have issues with that?

11 All right. Showing no response.

12 Under our system, certain principles apply in every
13 criminal trial. It doesn't matter what courtroom you're in,
14 what county you're in, what state you're in, in the
15 United States, it's all the same. Every time you walk into a
16 criminal courtroom, the following three principles apply: The
17 charging document filed in this case, the charges, are merely
18 accusations and are not evidence in any way of guilt.

19 Mr. Porter, the Defendant, is presumed innocent. And number
20 three, the State must prove the Defendant guilty beyond a
21 reasonable doubt.

22 Is there anyone here who doesn't understand either of
23 those principles -- I'm happy to go through them -- or doesn't
24 believe in either of those principle -- in any of those

1 principles?

2 Showing no response.

3 All right. So let's talk a little bit more about those.
4 So in regards to the charging document, that was what I -- I
5 read the charges, if you remember, right after you sat down,
6 letting you know what the charges were in this case. So the
7 first principle says that those are just charges. Those are
8 just accusations and are in no way evidence of guilt at all.

9 The second one is as Mr. Porter sits here right now, he
10 is presumed innocent. Just like if each of you were charged
11 with a crime, you are presumed innocent until the State meets
12 its burden. So if you were to go back there right now and
13 vote, what would your vote be?

14 UNIDENTIFIED JUROR: Not guilty.

15 THE COURT: Not guilty. Thank you for whoever said
16 that. I appreciate that. Thank you, ma'am.

17 So it'd be not guilty -- right? -- because you haven't
18 heard anything and the presumption is always been innocence.
19 It's not until the State meets their burden, which is the
20 third principle of proving beyond a reasonable doubt the
21 Defendant's guilt that that presumption is lost, okay?

22 The other thing that's an important principle in our
23 criminal justice system is that because the State has the
24 burden, the Defense doesn't have to do anything; right? They

1 could sit there -- I'm not saying that they're going to do
2 this because they're great attorneys. But they could,
3 legally, sit there, text, doodle, do a puzzle, do whatever
4 they wanted, because they don't have to do anything. It's the
5 State's job to prove the Defendant is guilty beyond a
6 reasonable doubt. Defense doesn't have to do anything. It's
7 not their burden.

8 Does anybody disagree with that, have any questions about
9 that?

10 All right. Another thing I want to talk about is all of
11 these attorneys work in this courthouse on multiple, different
12 floors, on multiple, different cases. So at times you will
13 see them coming in and out of the courtroom. You'll see them
14 on their cell phones, you'll see them on their computers.
15 Please don't hold that against them.

16 It's not that they're not paying attention. It's not
17 that they're taking this seriously. It's that a -- being in
18 trial is such a dynamic, dynamic thing. You are constantly
19 trying to arrange witnesses to make sure that the jury's not
20 sitting here, you know, waiting for a witness. So you're
21 constantly communicating with one another, communicating with
22 witnesses outside.

23 And so I never want jurors to think that the attorneys
24 are being disrespectful or that they're not working hard on

1 the case. They often are actually working on this case. So
2 please take that into -- into account.

3 All right. So there is also -- at the end of the case,
4 the parties will have -- do what's referred to as "closing
5 argument." Before they do, I will read to you the law that
6 applies to this case. So each crime has certain elements and
7 has certain laws that apply. So I read to you the laws that
8 apply to this -- this case and these charges.

9 And is there anyone here who would have trouble following
10 the law, regardless of whether or not they agree with it or
11 not? Is there anyone here who believes that they would have
12 trouble following the law, even if they disagreed with it?

13 So, as jurors, we take oaths to follow the law and apply
14 the law to the case. Whether or not we agree with the law or
15 disagree with the law, the law is the law. Is there anyone
16 here who has an issue with that?

17 Okay. All right. So we are going to take our first
18 15-minute break. But before we do that, I think we're going
19 to move some seats around so that when people come back they
20 know exactly where to sit.

21 So, Kristen, could you help us with that?

22 THE CLERK: Yes. So in seat number 3 will be [JUROR
23 NO. 503], badge number 503.

24 In seat number 4 will be [JUROR NO. 517], badge number

1 51 -- I'm sorry. Wait a minute. Hold on.

2 MS. LUZAICH: [JUROR NO. 506].

3 THE CLERK: Will be [JUROR NO. 506], badge number
4 506.

5 Then in seat number 10 is [JUROR NO. 517], badge number
6 517.

7 In seat number 11 will be [JUROR NO. 525], badge number
8 525.

9 Seat number 12, [JUROR NO. 537], badge number 537.

10 In seat number 15 will be [JUROR NO. 538], badge number
11 538.

12 In seat number 18, [JUROR NO. 548], badge number 548.

13 In seat number 24 will be [JUROR NO. 558], badge number
14 558.

15 In seat number 25 will be [JUROR NO. 572], badge number
16 572.

17 In seat number 26, [JUROR NO. 584], badge number 584.

18 In seat number 27 will be [JUROR NO. 639], badge number
19 639.

20 In seat number 30 will be [JUROR NO. 647], badge number
21 647.

22 THE COURT: Okay. We're going to take a 15-minute
23 recess now. Every time we break, I have to read you the same
24 admonishment. So please, during this recess, do not discuss

1 or communicate with anyone, including fellow jurors, in any
2 way regard the case or its merits either by voice, phone,
3 e-mail, text, internet, or other means of communication or
4 social media. Please do not read, watch, or listen to any
5 news, media accounts, or comments about the case; do any
6 research, such as consulting dictionaries, using the internet,
7 or using reference materials.

8 Please do not make any investigation, test a theory of
9 the case, recreate any aspect of the case, or in any other way
10 attempt to learn or investigate the case on your own. And
11 please do not form or express any opinion on this matter until
12 it's formally submitted to you.

13 I'll see you at 3:05. Please pay attention to the seat
14 where you're sitting because that's where you'll return to.
15 Thank you.

16 THE MARSHAL: All rise.

17 [RECESS AT 2:48 P.M.; PROCEEDINGS RESUMED AT
18 3:04 P.M.]

19 [OUTSIDE THE PRESENCE OF THE JURY]

20 [DISCUSSION OFF THE RECORD]

21 THE COURT: All right. So let's go on, please.

22 We are on the record?

23 State of Nevada versus Justin Porters, C174954.

24 Mr. Porter is present with Mr. Goodwin, in custody, outside

1 the presence of the jury. Ms. Kollins and Ms. Luzaich present
2 on behalf of the State.

3 So, Mr. Porter, I know that when this first started -- it
4 seems like you're doing a little bit better now, but when this
5 first started, it seemed like you were pretty emotional. Is
6 that fair?

7 Yeah?

8 Okay.

9 THE COURT RECORDER: I didn't hear -- I didn't hear
10 a response, Your Honor.

11 THE COURT: Oh, yeah, that's okay. He's just -- he
12 was nodding up -- up and down. So I'll just have the record
13 reflect that he was nodding up and down.

14 Is there something specific that's going on right now?
15 Because I've -- I've had you in court before and I've never
16 seen you emotional. So I just want to make sure we're all on
17 the same page and everything is going okay.

18 THE DEFENDANT: Yeah, it's all -- it's -- it's not
19 an easy task. It's -- it's not.

20 THE COURT: Yeah.

21 THE DEFENDANT: To -- to -- to deal with everything.
22 You know, you're not going through this process, being here
23 is -- is -- is much more easy. But when you have to sit here
24 and deal with it, it's -- it's not easy thing. It's

1 emotionally, mentally, it's -- it's just stuff going on in my
2 mind. I just -- I just feel pain and I just -- I don't know.

3 THE COURT: Okay.

4 THE DEFENDANT: (Indiscernible)

5 THE COURT: Okay.

6 THE DEFENDANT: I don't know. It's just -- you
7 know, this could be stressful.

8 THE COURT: Yeah. I agree. I think it can be
9 stressful. I just want to make sure that the jury -- the
10 prospective jury focuses on the issues.

11 Listen, I'm not saying that you can't be emotional or
12 that if an alleged witness or an alleged victim comes in here,
13 they can't be emotional; right? Like, these things are
14 emotional. And so I get it. But just try as best as you can
15 to keep it in check. 'Cause I don't want anyone to judge you
16 for it --

17 THE DEFENDANT: Sure.

18 THE COURT: -- or -- you know what I mean? Like, we
19 have to make sure --

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: -- that we're all staying as composed as
22 possible just because you never want a prospective juror, or a
23 juror to think, "Oh, he's crying 'cause he did it," or "he's
24 crying because he feels guilty," or "he's crying because he

1 didn't do it." You know what I mean? Like --

2 THE DEFENDANT: Yes, ma'am. Yes, ma'am.

3 THE COURT: -- we've got to make sure that they're
4 assessing it on the facts. So just try your best, okay?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: All right. Okay. Let's bring 'em in,
7 Chris.

8 THE MARSHAL: All rise.

9 [IN THE PRESENCE OF THE JURY]

10 THE COURT: Go ahead and be seated when you walk in.
11 Thanks, guys.

12 All right. Welcome back, everybody. Please be seated.
13 We're on the record in State of Nevada versus Justin Porter,
14 C174954. Mr. Porter is present with Mr. Goodwin. Both
15 Chief Deputy District Attorneys, Ms. Kollins as well as
16 Ms. Luzaich, are present on behalf of the State.

17 Do the parties stipulate to the presence of the
18 prospective jury panel?

19 MS. LUZAICH: Yes, Judge.

20 THE COURT: All right. Mr. Goodwin, do you
21 stipulate to the presence of the prospective jury panel?

22 MR. GOODWIN: Yes, Your Honor.

23 THE COURT: Okay. Great. Thank you.

24 All right. So when you came in -- actually, right now my

1 marshal is handing out pieces of paper to each of you. So
2 instead of me asking these questions one by one to you, the
3 process flows a lot easier if you just read it from the piece
4 of paper.

5 There's a -- a specific way, though, in which it needs to
6 be done. So I don't need you to read the question. Some
7 people will, like, read the whole question out loud, like,
8 "How long have you lived in Clark County? I've lived in Clark
9 County 25 years. How far did you go in school? I've gone" --
10 I don't need you to do that.

11 But also, some other people will be like, "Two, yes;
12 three, no; four, yes; five, yes." Can't do that. It has to
13 be a happy medium between those two things. Which means you
14 have to incorporate your answer -- or incorporate your
15 question into the answer.

16 So if I were doing it, I would say, "I've lived in
17 Clark County for 25 years. I went to law school. Yes, I'm
18 employed. I'm a judge." And then I would go down those
19 questions so that, by my answer, people could tell exactly
20 which question I'm at.

21 Couple other things about this. I have to establish ten
22 years of residency. So when I say how long if [sic] you've
23 lived in Clark County, if you haven't lived here ten years,
24 just tell me where you were for the rest of that ten-year

1 period.

2 And then if you turn the page to question number 9, "Is
3 there anything you have heard about the trial thus far that
4 makes you feel like it would be difficult for you to sit as a
5 juror?" When I ask this question, it's different from the
6 question that I asked earlier, like, "Has anyone heard
7 anything about this trial," you know, social media, newspaper,
8 TV, anything like that, it's different. It's just saying,
9 "Listen, I heard that this is what the case is about" or, you
10 know, "I don't like so-and-so. I can't be fair." So that
11 question's a little bit different.

12 Lastly, if you look at question number 6, "Have you or
13 anyone close to you ever been a victim of a crime?" These
14 are -- this question is also crimes -- just general crimes or
15 crimes of a sexual nature. For some reason people don't --
16 sometimes don't say crimes of a sexual nature. And I don't
17 know if it's because they don't consider it just as crimes as
18 we have there. But the full question should read, "Have you
19 or anyone close to you ever been the victim of a crime,
20 including crimes of a sexual nature?"

21 And the same thing for seven. "Have you or anyone close
22 to you ever been accused of a crime, including crimes of
23 sexual nature."

24 So we will start from the top. Mister -- let's see.

1 [JUROR NO. 206] still on one?

2 [JUROR NO. 206], we will start with you, sir. And
3 whenever you're ready, from the top, please.

4 JUROR NO. 206: Okay. I've lived here since '99, so
5 more than ten years. I've gone -- I've attended college, some
6 college, did not complete. I am employed. I'm a senior
7 network engineer. I am not married. I don't have children.
8 My sister has been sexually assaulted, and this happened,
9 like, five years ago. The person was caught. This was in
10 Okinawa, though, when she was stationed there. I have only
11 had a DUI. No, I have not served as a juror. No, for
12 number 9. And, yes -- and, yes, for 10 and 11.

13 THE COURT: Okay. So let's go back for a second.
14 In regards to your DUI, was that here?

15 JUROR NO. 206: Yes, that was back in 2013.

16 THE COURT: And how did you feel like that situation
17 was handled by the police and then to the court system?

18 JUROR NO. 206: It -- it was handled fine.

19 THE COURT: Okay. No issues with that?

20 JUROR NO. 206: No.

21 THE COURT: All right. And then -- sorry to hear
22 about your sister. You said that was about five years ago?

23 JUROR NO. 206: Yes.

24 THE COURT: All right. And she was stay -- she was

1 stationed --

2 JUROR NO. 206: Yes.

3 THE COURT: -- overseas?

4 JUROR NO. 206: Correct. In Okinawa.

5 THE COURT: And did she know the individual or was
6 it a stranger?

7 JUROR NO. 206: No, this was -- she know the
8 individual.

9 THE COURT: Okay. And you said it was reported?

10 JUROR NO. 206: Yes, it was reported and he got
11 caught.

12 THE COURT: All right. And then did she have to go
13 through a court process?

14 JUROR NO. 206: Uh, it was in the Marine Corps., so
15 that's -- they went through the ECMJ.

16 THE COURT: Okay. How do you feel like that
17 situation was handled?

18 JUROR NO. 206: It -- it -- she was overseas so it's
19 a little bit difficult to understand it. And when she came
20 back it was more like she told me more about it. But it's
21 kind of hard 'cause you -- being so far away --

22 THE COURT: Yeah.

23 JUROR NO. 206: -- it's -- don't really get too much
24 detail from that.

1 THE COURT: Okay. All right.

2 Okay. Thank you. Appreciate that.

3 Next.

4 JUROR NO. 211: Hi. So I've been living here --

5 THE COURT: Is it [JUROR NO. 211]?

6 JUROR NO. 211: Yes.

7 THE COURT: Badge number 211. Go ahead.

8 JUROR NO. 211: Yes. I've been living here in
9 Clark County since 2017, before that it was Columbia. I had
10 some college. I am employed. I'm a manager. I am not
11 married. I don't have childrens [sic]. My father has been
12 victim of a crime before. I have not been accused or [sic]
13 any crime.

14 THE COURT: Let's go back to your father for a
15 second for me. Was that here or in Columbia?

16 JUROR NO. 211: It was here in the United States.

17 THE COURT: In the United States. Okay. And what
18 year about or -- like ten years ago? Five years ago?

19 JUROR NO. 211: It was in the span of 2018, I
20 believe.

21 THE COURT: 2019?

22 JUROR NO. 211: '18.

23 THE COURT: 2018? Okay. And what was the crime?

24 JUROR NO. 211: He was working as a cashier on gas

1 station. He got robbed.

2 THE COURT: Okay. And was a weapon used?

3 JUROR NO. 211: No, but the person that they caught
4 had something that resembled a gun.

5 THE COURT: Okay. And -- so the person was caught.
6 It was reported and the person was caught?

7 JUROR NO. 211: Indeed.

8 THE COURT: And do you have any feelings about how
9 that situation was handled?

10 JUROR NO. 211: Well, my father really didn't spoke
11 English as much at the time. So I don't really have details.
12 He really didn't recall much besides just being there and
13 saying that the person was the person that he saw that day.

14 THE COURT: Okay. Okay. Sounds good. All right.
15 Go ahead. Sorry. I didn't mean to interrupt you.

16 JUROR NO. 211: No worries.

17 Never been a juror before. I have never heard anything
18 about this case. For number 10, yes. And for number 11, yes,
19 but I think my answer can be a little bit bias.

20 THE COURT: Okay. You feel like you'll be a little
21 bit biased? Tell me about that.

22 JUROR NO. 211: Depending how I understand the
23 system in here and the fact that I am so new here. I just
24 turn a citizen. I'm still figuring out how this can work. So

1 that is the reason why.

2 THE COURT: Okay. So I want to unpack that a little
3 bit because in one part you're saying "I might be a little bit
4 biased because I may not understand the system" and the other
5 part, the other -- or sorry. One part you're saying "I may be
6 a little bit biased" and then the other part you're saying
7 "I" -- you know, "I don't understand the system. I just
8 became a citizen so I'm still learning it."

9 As far as, like, being a -- just becoming a citizen and
10 learning, I -- I don't think that there are any issues with
11 that because we'll be able to explain to you the law and apply
12 it. But if you have a bias, meaning you came in here and you
13 already think one way or the other, that's probably something
14 we need to explore.

15 JUROR NO. 211: Okay.

16 THE COURT: So as you sit here right now, are you
17 already thinking like, "Oh, one side's right and one side's
18 wrong" or no?

19 JUROR NO. 211: Not at the moment.

20 THE COURT: Okay. When -- a little bit earlier,
21 when I was talking about, you know, in the United States the
22 State -- so the prosecutors, the people -- there's this adage
23 called "if you do the accusing, then I do the proving." So it
24 means if you bring charges against someone, it's your duty, at

1 that point, to prove to the jurors that the Defendant is
2 guilty beyond a reasonable doubt. And at the end of the
3 trial, we will define what that term means, "guilty beyond a
4 reasonable doubt."

5 As long as you hold the State to that burden and you make
6 them prove to you that the Defendant is guilty beyond a
7 reasonable doubt, you can be a juror.

8 So is that something that you feel comfortable with, is
9 listening to the facts and then having them explain the law to
10 you at the end?

11 JUROR NO. 211: Yes.

12 THE COURT: Okay. All right. Well, congratulations
13 on your citizenship.

14 JUROR NO. 211: Thank you.

15 THE COURT: And thank you for being here. We
16 appreciate you.

17 JUROR NO. 211: Thank you.

18 THE COURT: All right. Next, please. Name and
19 badge number.

20 JUROR NO. 503: My last name is [JUROR NO. 503].
21 Badge 503.

22 THE COURT: All right. Yes, sir.

23 JUROR NO. 503: So I've been here now, Clark County,
24 about three years. Before that I was living in Los Angeles.

1 I graduated high school and attended part of college. I am
2 current employee. I work here at Las Vegas Justice Court for
3 the Pretrial Division. I'm single. I don't have any
4 children. I don't think I know anybody that has been directly
5 a victim of a crime. I have not been accuse of a crime or
6 anyone that I know. This is my first time as a -- doing jury
7 deliberation.

8 THE COURT: Okay.

9 JUROR NO. 503: I haven't heard anything about this
10 particular case. And yes and yes to the last two questions.

11 THE COURT: Okay. Thank you.

12 Name and badge number.

13 JUROR NO. 506: My name's [JUROR NO. 506], badge
14 number 506. I moved to Clark County in 2016. I lived in
15 San Diego prior to that. I have a bachelor's degree. I am an
16 administrative officer in the ER at the VA hospital. I
17 retired from the Army. I have two grown kids. My son is 38;
18 my daughter's 35. My son does cyber security and my daughter
19 works for a call center. And they both work out of state.

20 THE COURT: Okay.

21 JUROR NO. 506: And I do not know anyone or have not
22 been a victim of crime -- a crime or accused of one. I have
23 served on a jury before. It was a criminal case. I do not
24 remember the verdict of the case. I was not the foreperson.

1 And I have never heard anything about this trial before. It
2 will not be difficult to sit as a juror, and I do think that
3 the last two are yes and yes.

4 THE COURT: Okay. When you were a juror, how long
5 ago would you say that was?

6 JUROR NO. 506: Ooo, uh, I want to say probably a
7 good 20 years ago.

8 THE COURT: Oh, wow. Okay.

9 JUROR NO. 506: Yeah.

10 THE COURT: And then what state was that in?

11 JUROR NO. 506: Texas.

12 THE COURT: Texas?

13 JUROR NO. 506: Mm-hmm.

14 THE COURT: And do you remember -- you said it was
15 remembered it was criminal.

16 JUROR NO. 506: Right.

17 THE COURT: Do you remember what type of case? Was
18 it, like, murder, robberies --

19 JUROR NO. 506: No, it was a DUI case.

20 THE COURT: Okay.

21 JUROR NO. 506: Yeah.

22 THE COURT: And did you say you were not the
23 foreperson?

24 JUROR NO. 506: I was not.

1 THE COURT: You were not the foreperson. Okay.
2 Great. Thank you very much.

3 JUROR NO. 506: You're welcome.

4 THE COURT: I appreciate it.

5 JUROR NO. 221: [JUROR NO. 221], badge number 221.

6 THE COURT: Yes, [JUROR NO. 221].

7 JUROR NO. 221: I've lived here since '99, graduated
8 high school. Three years of college. Retired. Was a
9 director of the girl's school in New Mexico juvenile
10 corrections. Not married. I have one son, he's 45. He works
11 for FedEx. My sister was accused -- I mean, she wasn't
12 accused. I'm sorry. She was a victim of a crime. She was a
13 cashier at a service station and it got robbed a couple of
14 times. The person was caught.

15 THE COURT: Was a weapon used?

16 JUROR NO. 221: Yes.

17 THE COURT: Okay. Sorry. So it was reported.
18 Person caught. Any feelings in regards to how that was
19 handled?

20 JUROR NO. 221: It was in Indiana. And long as they
21 caught him, I guess it's okay.

22 THE COURT: Okay.

23 JUROR NO. 221: Yeah, my bother was accused of
24 crimes in California.

1 THE COURT: When was that?

2 JUROR NO. 221: Ooo, about 20 years ago.

3 THE COURT: Okay. And did you know -- like, were
4 you close with your brother? Did you know a lot about it or
5 not really?

6 JUROR NO. 221: I didn't know that much about it at
7 the time.

8 THE COURT: And now, looking back, if you have an
9 opinion, do you feel like the situation was handled
10 appropriately? Inappropriately?

11 JUROR NO. 221: Comme ci comme ça.

12 THE COURT: Not really strong either way?

13 JUROR NO. 221: Yeah.

14 THE COURT: Okay. Anything about that situation
15 that you feel like would impact you any way here?

16 JUROR NO. 221: No.

17 THE COURT: Okay.

18 JUROR NO. 221: I have never -- I've been called
19 for -- you know, summoned but never been a juror. I was not a
20 foreman. Number 9, it's kind of iffy on -- on number 9 there
21 because, you know, I'm elderly and also, you know, I was, you
22 know, a victim of rape earlier in life. So that's kind of
23 hard.

24 THE COURT: And I -- I'm sorry. We have to talk

1 about this a little bit. When you say "early in life," like
2 as a child?

3 JUROR NO. 221: Yeah. At 12.

4 THE COURT: And was that a one-time thing or was
5 that an abusive situation that went on?

6 JUROR NO. 221: A family friend. So it was off and
7 on.

8 THE COURT: Okay. Was that reported as you were a
9 child?

10 JUROR NO. 221: Not at that -- you know, they didn't
11 do that back in the day. You tell your parents and they don't
12 believe you so --

13 THE COURT: Is that what happened?

14 JUROR NO. 221: Yeah.

15 I -- I can be fair and impartial on both sides.

16 THE COURT: Okay. A lot of the times -- and I know
17 specifically -- like, I've done several trials where the
18 allegations have been sexual abuse on a child. And, you know,
19 people often raise their hands and say "that happened to me,"
20 "that happened to my brother" or my cousin, my friend,
21 something like that.

22 And the questions that we always ask the jurors are
23 always the same is that, you can separate those two things in
24 your mind, and the word that is often used is "clinical."

1 Like, can you look at this from a clinical perspective,
2 meaning can you look at the facts in this case as presented?
3 Can you look at the law that applies and make a clinical
4 judgment in regards to "did the State meet their burden with
5 those acts and the law?"

6 Do you feel that you're someone who can do that, look at
7 it clinically?

8 JUROR NO. 221: Yeah. Time has passed.

9 THE COURT: Okay. I appreciate you. Thank you.

10 [JUROR NO. 226], 226.

11 JUROR NO. 226: Question 1, I've lived here on and
12 off since '86, but the last time I moved back here was '99.

13 THE COURT: Okay.

14 JUROR NO. 226: Or I'm sorry. 1989 was when I moved
15 here --

16 THE COURT: Okay.

17 JUROR NO. 226: -- originally. How -- I've had some
18 college. I'm employed. I'm a data analyst for healthcare
19 company. My -- I'm married. My wife also works in
20 healthcare, as a customer service rep. I have two children,
21 11 and 14. My -- my daughter was sexually assaulted. The
22 person was caught. The situation was, in my opinion,
23 laughable as to how it was handled. Because the person that
24 did it was also a minor, so they couldn't tell me anything.

1 And I have no idea what the resolution was.

2 THE COURT: So it didn't go through the court
3 system, even as a minor?

4 JUROR NO. 226: No.

5 THE COURT: How long ago was this?

6 JUROR NO. 226: Five years ago.

7 THE COURT: And in what state?

8 JUROR NO. 226: Here.

9 THE COURT: And when you say it was reported, like
10 as in reported to the police.

11 JUROR NO. 226: Yes. And -- and no one ever
12 disclosed any information beyond that to us.

13 THE COURT: Okay.

14 JUROR NO. 226: So -- no, I've never been accused of
15 a crime or anyone I know. I've been called as a juror, never
16 served as one. I haven't heard anything about the trial. You
17 know, I -- I'm an analyst, so I'd like to say I can base my
18 verdict solely on the evidence, but I -- I can't really say
19 that for sure. And -- I mean, I -- again, an -- by nature, I
20 would say I could be impartial. But --

21 THE COURT: Okay. I'll let the attorneys ask you
22 some additional questions.

23 JUROR NO. 242: [JUROR NO. 242], 0242. Lived in
24 Las Vegas about five years. Before that, I lived in

1 New Hampshire. Graduated high school. No college. I am
2 employed as a software support specialist for a chiropractic
3 software company. Separating. She works as a cashier at a
4 convenience store. We have two children, ages 6 and 7.

5 Let's see. Anyone I know been a victim of a crime. My
6 sister-in-law's been molested twice. My soon-to-be ex-wife,
7 or whatever you want to call her, she was raped when she was a
8 little girl.

9 THE COURT: Is that -- would that be her sister or
10 that's a different person --

11 JUROR NO. 242: Her sister.

12 THE COURT: -- related to your brother?

13 So both of them.

14 JUROR NO. 242: Yep.

15 THE COURT: Same person?

16 JUROR NO. 242: No. No. My sister-in-law, she
17 was -- the first time was by -- in the state of Vermont.
18 'Cause that's where we're from. And because the person was
19 mentally -- or labeled as "mentally disabled," nothing came of
20 it. Even though he knew enough to try and bribe her to make
21 sure she didn't tell. To me, that means there's -- you know,
22 they knew it was wrong. But, anyways.

23 And the second time is actually here in Vegas. My wife,
24 actually, she didn't even think of it as rape at first because

1 she convinced herself it was consensual until later on,
2 talking about it, it came out that it wasn't. And by that
3 point it was too late.

4 THE COURT: With the sister-in-law?

5 JUROR NO. 242: My -- no, my wife.

6 THE COURT: Your wife. Okay.

7 JUROR NO. 242: So --

8 THE COURT: Okay.

9 JUROR NO. 242: Do I know anyone that's been accused
10 of crimes. Well, this is always fun explaining. My
11 ex-stepfather-in-law has been convicted of discharging a
12 firearm inside the Las Vegas city limits. And my cousin was
13 convicted of internet predatory -- I forget what they labeled
14 it. They basically (indiscernible) weird, you know, pretended
15 to be a -- a child on a chat room --

16 THE COURT: Yeah.

17 JUROR NO. 242: -- and convince them to go
18 someplace. But he didn't actually finish going there. They
19 picked him up on his way home.

20 THE COURT: Got it.

21 JUROR NO. 242: So -- do, do, do, do, do, do.

22 I have served as a jury [sic] about ten years ago, State
23 of New York. It was a civil suit between the -- one of the
24 towns, the people of the town, the construction company, and

1 the engineer of a dam that failed and damaged lots of
2 property. I was not the foreperson. Not that I know of, I
3 don't believe I've heard anything about this case.

4 THE COURT: Was there a verdict reached in the civil
5 case?

6 JUROR NO. 242: Oh, yeah. It was a bifurcated case.
7 So all we had to do is just assign blame. And it was a
8 percentage. I don't remember which percentage it was.

9 THE COURT: Okay.

10 JUROR NO. 242: But everyone got a piece of it.
11 'Cause everyone was at fault. It was one of those type of
12 situation. Everyone but the people.

13 THE COURT: Yeah. Got it.

14 JUROR NO. 242: I believe I can look at the evidence
15 at hand, being -- been a jury [sic] before. That was an
16 experience and a half. My only concern being here would be,
17 of course, the length of time and financial concerns. And,
18 yeah, I should be able to be impartial.

19 THE COURT: Okay. Thank you, sir.

20 JUROR NO. 245: [JUROR NO. 245], 245. I live here
21 for about six years now. I live in California before. And I
22 finish my school, I finished my degree in -- back home in the
23 Philippines. It was a long, long time ago. And I'm retired.
24 Yes, I'm married. And I have three kids. I have two in my

1 previous marriage and I got one in my marriage right now.

2 THE COURT: Okay.

3 JUROR NO. 245: And, yes, I am a victim of a crime
4 before. I -- one of my store back in California was rob.
5 My -- I used to be a franchise of 7-Eleven. And the guy
6 didn't get caught. He got away. But one of my clerk got a
7 little bit hurt.

8 THE COURT: Were you there or just your store?

9 JUROR NO. 245: I was there. I -- I was not on the
10 (indiscernible) while situation, but the police call my house
11 and I got to be at the store.

12 THE COURT: Okay.

13 JUROR NO. 245: You know. And I -- no, I'm not
14 accuse of any crime. I never serve as a juror before. I
15 don't -- I don't -- I don't -- I never heard about this --
16 this trial be -- this trial before. And the -- I can be --
17 yes, and, yes, on the last two.

18 THE COURT: Okay. You can be fair and impartial and
19 you can wait in forming your opinion.

20 JUROR NO. 245: Yes.

21 THE COURT: Perfect. Thank you.

22 [JUROR NO. 248], 248.

23 JUROR NO. 248: I've lived in Clark County just shy
24 of 67 years. I graduated high school. I am retired. I was

1 office manager for a law firm here in Las Vegas for 22 years.
2 I am married. My partner is -- or my husband is retired. I'm
3 retired. Think I read those out of order. I -- I do have
4 children. They are 35 and 37. One is a -- a phone tech. I
5 don't know. He answers how to fix things. And the other one
6 is a -- a handyman.

7 I have personally been a victim of a crime, as well as my
8 two sons, two separate incidents. I mean, the police were
9 great, but nothing ever -- nobody ever got caught. And it
10 kind of changed a lot of things. My kids were pretty young.
11 I had to put bars up on my house and get an alarm system
12 and -- for me -- you probably don't want a lot of detail, but
13 it was hard.

14 THE COURT: Was --

15 JUROR NO. 248: There was no sexual, no. But it --
16 you know, it was a gun to my head and --

17 THE COURT: And this was -- were the kids home?

18 JUROR NO. 248: No. They were two separate
19 incidents. Praise God they were not home. They were at their
20 dad's.

21 THE COURT: Okay. So it was like a residential
22 burglary? Like they broke into the home?

23 JUROR NO. 248: Well, they were -- for the kids?

24 THE COURT: Oh, no, for you.

1 JUROR NO. 248: We had just come home from a concert
2 with four -- with three of my girlfriends, and I kind of had a
3 blind corner on my house. And they must have seen us and
4 pulled up behind the wall and it just ran and, you know,
5 they -- they held us up and -- and I was -- it was just kind
6 of scary.

7 THE COURT: Of course.

8 JUROR NO. 248: Yeah.

9 THE COURT: Did they rob you?

10 JUROR NO. 248: Oh, yeah. Yeah. Fortunately, you
11 know, we didn't get hurt, but it was terrifying.

12 THE COURT: Yeah. Did they -- were there weapons
13 used?

14 JUROR NO. 248: Yes. There was at least one gun and
15 that was to my head.

16 THE COURT: Gotcha. Okay. All right. And then
17 tell me about your boys.

18 JUROR NO. 248: They were just -- not allowed to let
19 friends in after school and -- except for certain designated
20 ones. And they met this kid that saw that they had a music
21 equipment, and so they acted friendly. They played music and
22 then they came back another time with the friend and his
23 friend and somebody kicked the door in. I -- I don't know
24 what happened. And anyway, they beat the crap out of my one

1 son and took a -- a bunch of guitars and speakers and stuff.
2 And both -- both were reported.

3 THE COURT: Okay.

4 JUROR NO. 248: Both crimes were reported.

5 THE COURT: But nobody caught on either?

6 JUROR NO. 248: No. Well, we tried on the one. We
7 knew who the one kid was, but I don't know. I guess they
8 never got him.

9 THE COURT: Okay.

10 JUROR NO. 248: I've never served on a jury before.
11 Number 9, little disturbing because I can kind of relate to
12 what the accusations are.

13 THE COURT: Sure.

14 JUROR NO. 248: I would like to think I could be
15 impartial on 10 and 11. I would try my best, I guess.

16 THE COURT: Let me ask you this -- and you've heard
17 me use the term before that the State has the burden. You
18 can't hold them to less than the burden and you can't hold
19 them to higher than a burden.

20 JUROR NO. 248: Right.

21 THE COURT: And so, simply put, because, you know,
22 that horrifying thing happened to you, would you automatically
23 lessen their burden just because you feel like I -- you know,
24 "I was a victim; I know what this is like"?

1 JUROR NO. 248: I would like to think that I could
2 be fair, but I -- I really don't know what kind of feelings --
3 I would like to think I could be fair.

4 THE COURT: Okay. All right. Thank you.

5 JUROR NO. 517: [JUROR NO. 517], badge number 517.

6 THE COURT: Okay.

7 JUROR NO. 517: I've lived in Clark County for six
8 years. Before that I lived in Oxnard, California. I attended
9 college. I got my associates in criminal justice. I am
10 employed. I'm employed as a supervisor for a call center. I
11 am in a significant relationship. My partner is a plumber. I
12 do not have children. My brother was -- was actually accused
13 of a crime.

14 THE COURT: Okay. When was that and where?

15 JUROR NO. 517: That was in California, in
16 Santa Barbara. I'm not sure what it was. I was six years old
17 when it happened. I was kept in the dark.

18 THE COURT: Okay.

19 JUROR NO. 517: My -- my partner's brother was also
20 accused of a crime, for domestic violence. But the charges
21 were dropped.

22 THE COURT: Do you have any feelings how those two
23 situations were handled within the criminal justice system?

24 JUROR NO. 517: As far as my brother's situation, I