

THE GERSTEN LAW FIRM PLLC  
9680 W Tropicana Avenue # 146  
Las Vegas, NV 89147  
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IN THE SUPREME COURT OF THE STATE OF NEVADA

JESSE NOBLE, JR.,  
  
Appellant,  
  
vs.  
  
THE STATE OF NEVADA,  
  
Appellee.

Electronically Filed  
Case No. 23-0023 12:12 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

APPELLANT'S APPENDIX

JOSEPH Z. GERSTEN, ESQ  
The Gersten Law Firm PLLC  
Nevada Bar No. 13876  
9680 W Tropicana Avenue # 146  
Las Vegas, NV 89147  
702-857-8777

STEVEN B. WOLFSON, ESQ.  
District Attorney Clark County  
200 Lewis Street, 3<sup>rd</sup> Floor  
Las Vegas, NV 89101

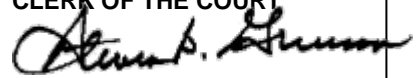
AARON FORD, ESQ.  
Nevada Attorney General  
100 North Carson Street  
Carson City, Nevada 89701  
775-684-1265

Counsel for Appellant

Counsel for Appellee

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**INFM**  
ADAM PAUL LAXALT  
Attorney General  
CHELSEA KALLAS (Bar No. 13902)  
Deputy Attorney General  
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555 E. Washington Ave., Ste. 3900  
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Ckallas@ag.nv.gov  
*Attorneys for the State of Nevada*

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

STATE OF NEVADA,

Plaintiff,

v.

JESSE D. NOBLE,  
a.k.a. Jesse Nobel, Jr., #2679811

Defendant.

Case No.: C-18-336940-1

Dept. No.: XIX

**INFORMATION**

ADAM PAUL LAXALT, Attorney General for the State of Nevada, in the name and by the authority of the State of Nevada, informs the Court that:

The above-named defendant, JESSE D. NOBLE, has committed the crime of BATTERY BY A PRISONER (Category B Felony – NRS 200.481(2)(f)). All of the acts alleged herein have been committed or completed on or about December 21, 2017, by the above-named defendant, within the County of Clark, State of Nevada, in the following manner:

**COUNT I**  
**BATTERY BY A PRISONER**  
**Category "B" Felony - NRS 200.481(2)(f)**

Defendant, JESSE D. NOBLE, in the County of Clark, State of Nevada, did willfully, unlawfully, and feloniously use force or violence upon the person of another, while being held in lawful custody of the Nevada Department of Corrections as a prisoner to wit: the Defendant, while incarcerated at High Desert State Prison, struck Correctional Officer Waylon Brown in the face and/or head and/or neck with a closed

1 fist. All of which is contrary to the form, force and effect of the statutes in such cases made and provided,  
2 and against the peace and dignity of the State of Nevada.

3 DATED this 20<sup>th</sup> day of December, 2018.


4 SUBMITTED BY

5 ADAM PAUL LAXALT  
6 Attorney General

7  
8 By: /s/ Chelsea Kallas  
9 CHELSEA KALLAS (Bar No. 13902)  
Deputy Attorney General  
Attorneys for the State of Nevada

**WITNESS LIST**

1. Waylon Brown  
Correctional Officer  
High Desert State Prison  
22010 Indian Springs, NV 89070
2. Joseph Dugan  
Correctional Sergeant  
High Desert State Prison  
22010 Indian Springs, NV 89070
3. Kerry Hunter  
Senior Correctional Officer  
High Desert State Prison  
22010 Indian Springs, NV 89070
4. Jamal Ali  
Institutional Investigator  
High Desert State Prison  
22010 Indian Springs, NV 89070
5. Dario Paccone  
Correctional Officer  
High Desert State Prison  
22010 Indian Springs, NV 89070
6. Henry Grant Jr.  
Correctional Officer Trainee  
High Desert State Prison  
22010 Indian Springs, NV 89070
7. Patrick Moreda  
Lieutenant  
High Desert State Prison  
22010 Indian Springs, NV 89070



CLERK OF THE COURT

**JUSTICE COURT, LAS VEGAS TOWNSHIP**  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

JESSE NOBEL, Jr.,

Defendant

District Court Case No.: C-18-336940-1  
Dept.: XIX

Justice Court Case No.: 18F18999X

**CERTIFICATE**

I hereby certify the foregoing to be a full, true and correct copy of the proceedings as  
the same appear in the above case.

Dated this 19th day of December, 2018



Justice of the Peace, Las Vegas Township

AA0004

1  
2 **JUSTICE COURT, LAS VEGAS TOWNSHIP**  
3 **CLARK COUNTY, NEVADA**

4 STATE OF NEVADA,

5 Plaintiff,

6 vs.

7 JESSE NOBEL, Jr.

8 Defendant  
9

District Court Case No.:

Justice Court Case No.: 18F18999X

10 **BINDOVER and ORDER TO APPEAR**

11 An Order having been made this day by me that **JESSE NOBEL, Jr.** be held to  
12 answer before the Eighth Judicial District Court, upon the charge(s) of **Battery by**  
13 **prsnr/PnP [50229]** committed in said Township and County, on December 21, 2017 .

14 **IT IS FURTHER ORDERED** that said defendant is commanded to appear in the  
15 Eighth Judicial District Court, Regional Justice Center, Lower Level Arraignment  
16 Courtroom "A", Las Vegas, Nevada on December 21, 2018 at 10:00 AM for arraignment  
and further proceedings on the within charge(s).

17 **IT IS FURTHER ORDERED** that the Sheriff of the County of Clark is hereby  
18 commanded to receive the above named defendant(s) into custody, and detain said  
19 defendant(s) until he/she can be legally discharged, and be committed to the custody of the  
Sheriff of said County, until bail is given in the sum of \$00/00 Total Bail.

20 Dated this 19th day of December, 2018

21  
22 

23  
24 Justice of the Peace, Las Vegas Township

25  
26  
27  
28 AA0005



ORIGINAL

COMP

ADAM PAUL LAXALT

Attorney General

CHELSEA KALLAS (Bar No. 13902)

Deputy Attorney General

Office of the Attorney General

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Las Vegas, Nevada 89101-1068

P: (702) 486-5707

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Ckallas@ag.nv.gov

Attorneys for the State of Nevada

FILED

2018 OCT 11 P 2:42

JUSTICE COURT  
LAS VEGAS NEVADA  
BY MW  
DEPUTY

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, STATE OF NEVADA

STATE OF NEVADA,

Plaintiff,

v.

JESSE D. NOBLE,

a.k.a. Jesse Nobel, Jr., ID #2679811,

Defendant.

Case No.: 18F18999X

Dept. No.: 5

**CRIMINAL COMPLAINT**

ADAM PAUL LAXALT, Attorney General for the State of Nevada, complains and charges that:

The above-named defendant, JESSE D. NOBLE, has committed the crime of BATTERY BY PRISONER (Category B Felony – NRS 200.481(2)(f)).

All of the acts alleged herein have been committed or completed on or about December 21, 2017, by the above-named defendant, within the County of Clark, State of Nevada, in the following manner:

**COUNT I**

**BATTERY BY PRISONER**

**Category "B" Felony - NRS 200.481(2)(f)**

Defendant, JESSE D. NOBLE, in the County of Clark, State of Nevada, did willfully, unlawfully, and feloniously use force or violence upon the person of another, while being held in lawful custody of the Nevada Department of Corrections as a prisoner to wit: the Defendant, while incarcerated at High Desert State Prison, struck Correctional Officer Waylon Brown in the head and/or neck with a closed fist.

18F18999X  
CRM  
Criminal Complaint  
10055152





1 All of which is contrary to the form, force and effect of the statutes in such cases made and  
2 provided, and against the peace and dignity of the state of Nevada.

3 ***The Complainant requests an Arrest Warrant be issued at this time pursuant to NRS 171.106.***

4 That Complainant knows these crimes occurred and that the Defendant, JESSE D. NOBLE, has  
5 committed these crimes because Complainant is a Deputy Attorney General, and is in possession of,  
6 among other things, an affidavit written by Investigator Jamal Ali, known to Complainant to be employed  
7 with the Nevada Department of Corrections, a copy of which is attached and incorporated by reference for  
8 the limited purpose of securing a warrant of arrest.

9 Said Complainant makes this declaration under penalty of perjury.

10 DATED this 9 day of October, 2018.

11 SUBMITTED BY

12 ADAM PAUL LAXALT  
13 Attorney General

14 By: Chelsea Kallas  
15 CHELSEA KALLAS (Bar No. 13902)  
16 Deputy Attorney General  
17 Attorneys for the State of Nevada  
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**Justice Court, Las Vegas Township  
Clark County, Nevada**

Department: 05

**Court Minutes**



L010061989

**18F18999X State of Nevada vs. NOBLE, JESSE**

**10/15/2018 7:29:00 AM Arrest Warrant Request**

Result: Arrest Warrant Issued

**PARTIES  
PRESENT:**

**Judge:** Cruz, Cynthia

**Court Clerk:** Cardwell, Ryan

**PROCEEDINGS**

**Events: Request for Arrest Warrant Filed**

Review Date: 10/17/2018

*Granted*

**Probable Cause Found**

**Arrest Warrant Ordered to be Issued**

*5,000/5,000 total bail*

**Justice Court, Las Vegas Township  
Clark County, Nevada**

Department: 05

**Court Minutes**



L010162837

**18F18999X State of Nevada vs. NOBLE, JESSE**

Lead Atty: Public Defender

**11/8/2018 7:45:00 AM Motion (No Bail Posted -  
In Custody Other Charges)**

Result: Matter Heard

<b>PARTIES</b>	State Of Nevada	LoGrippo, Frank
<b>PRESENT:</b>	Attorney	Navarro, Melissa C.
	Defendant	NOBLE, JESSE

**Judge:** Pro Tempore, Judge

**Court Reporter:** Cangemi, Robert

**Pro Tempore:** Stoberski, Holly S.

**Court Clerk:** Cardwell, Ryan

**PROCEEDINGS**

<b>Attorneys:</b>	<b>Navarro, Melissa C.</b>	NOBEL, JESSE, Jr.	Added
	<b>Public Defender</b>	NOBEL, JESSE, Jr.	Added

<b>Hearings:</b>	11/20/2018 9:15:00 AM: Preliminary Hearing	Added
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**Events:** **Initial Appearance Completed**

*Advised of Charges on Criminal Complaint, Waives Reading of Criminal Complaint*

**Public Defender Appointed**

**Not in custody**

*Counts: 001*

**Warrant Stands**

**Justice Court, Las Vegas Township  
Clark County, Nevada**

**Court Minutes**

Department: 05



L010186993

**18F18999X State of Nevada vs. NOBLE, JESSE**

Lead Atty: Kenneth G. Frizzell

**11/15/2018 7:45:00 AM Motion (No Bail Posted -  
ICOC (NDOC))**

Result: Matter Heard

**PARTIES PRESENT:** State Of Nevada Kovac, Michael

**Judge:** Cruz, Cynthia

**Court Reporter:** Cangemi, Robert

**Court Clerk:** Cardwell, Ryan

**PROCEEDINGS**

**Attorneys:** Frizzell, Kenneth G. NOBEL, JESSE, Jr.

Added

**Events:** Defendant not Transported

*Defendant is at NDOC*

**Motion to Withdraw Due to Conflict**

*Granted*

**Counsel Appointed**

*K. Frizzell, Esq.*

**Future Court Date Stands**

*11/20/18 at 9:15 am - For the Defendant's presence only*

**Not in custody**

*Counts: 001*

**Warrant Stands**

Justice Court, Las Vegas Township  
Clark County, Nevada

Court Minutes

Department: 05



L010204412

**18F18999X State of Nevada vs. NOBLE, JESSE**

Lead Atty: Kenneth G. Frizzell

**11/20/2018 9:15:00 AM Preliminary Hearing (No  
Bail Posted - ICOC (NDOC))**

Result: Matter Heard

**PARTIES PRESENT:** State Of Nevada  
Attorney  
Defendant  
Dickerson, Michael  
Frizzell, Kenneth G.  
NOBLE, JESSE

**Judge:** Senior/Visiting, Judge

**Court Reporter:** Nelson, Bill

**Senior/Visiting  
Judge:** Oesterle, Nancy

**Court Clerk:** Cardwell, Ryan

**PROCEEDINGS**

**Hearings:** 12/5/2018 9:15:00 AM: Preliminary Hearing

Added

**Events:** **Motion to Continue - Defense**  
*Granted*  
**Preliminary Hearing Date Reset**  
**Not in custody**  
*Counts: 001*  
**Warrant Stands**

**Justice Court, Las Vegas Township  
Clark County, Nevada**

Department: 05

**Court Minutes**



L010264872

**18F18999X      State of Nevada vs. NOBLE, JESSE**

Lead Atty: Kenneth G. Frizzell

**12/5/2018 9:15:00 AM Preliminary Hearing (No  
Bail Posted - ICOC (NDOC))**

Result: Matter Heard

<b>PARTIES</b>	State Of Nevada	Kallas, Chelsea
<b>PRESENT:</b>	Attorney	Frizzell, Kenneth G.
	Defendant	NOBLE, JESSE

**Judge:** Cruz, Cynthia

**Court Reporter:** Nelson, Bill

**Court Clerk:** Cardwell, Ryan

<b>PROCEEDINGS</b>
--------------------

**Hearings:** 12/19/2018 9:15:00 AM: Preliminary Hearing

Added

**Events:** **Hill Motion by State to Continue - Granted**

*Witness Not Present*

**Preliminary Hearing Date Reset**

**Not in custody**

*Counts: 001*

**Warrant Stands**

**Notice of Motion**

*and Motion to Continue*

**Justice Court, Las Vegas Township  
Clark County, Nevada**

**Court Minutes**

Department: 05



L010319238

**18F18999X State of Nevada vs. NOBLE, JESSE**

Lead Atty: Kenneth G. Frizzell

**12/19/2018 9:15:00 AM Preliminary Hearing (No  
Bail Posted - ICOC (NDOC))**

Result: Bound Over

**PARTIES** State Of Nevada Kallas, Chelsea  
**PRESENT:** Attorney Frizzell, Kenneth G.  
Defendant NOBLE, JESSE

**Judge:** Cruz, Cynthia  
**Court Reporter:** Cangemi, Robert  
**Court Clerk:** Cardwell, Ryan

**PROCEEDINGS**

**Exhibits:** **Document, Photograph, Etc. (ID: 01)** *Photograph* Admitted

**Events: Preliminary Hearing Held**

*Motion to Exclude Witnesses by State - Motion Granted*

*States Witnesses:*

*Waylon Brown - Identified the Defendant in Open Court*

*State Rests.*

*Defendant Advised of His Statutory Right to call witnesses, present evidence and/or to testify on his own behalf.*

*Defendant understands his rights and following the advice of his defense counsel, waives his rights at preliminary hearing*

*Defense Rests*

*Motion to Dismiss and Argument In Favor of Said Motion by Defense*

*Argument Against Said Motion by State*

*Motion to Dismiss Denied*

**Oral Motion by State to Amend Complaint by  
Interlineation**

*To Amend Line 28 to read - "Struck Corrections Officer Waylon Brown in the Face, and or Head." - Motion Granted*

**Bound Over to District Court as Charged**

Review Date: 12/20/2018

**District Court Appearance Date Set**

*Dec 21 2018 10:00AM: In Custody (NDOC)*

**Case Closed - Bound Over**

**Remand - Cash or Surety**

*Counts: 001 - \$0.00/\$0.00 Total Bail*

**Warrant Ordered Quashed**

Plea/Disp:

**Las Vegas Justice Court: Department 05**

LVJC\_RW\_Criminal\_MinuteOrderByEventCode

12/19/2018 12:13 PM

AA0013

**Justice Court, Las Vegas Township  
Clark County, Nevada**

**001: Battery by prsnr/PnP [50229]**

Disposition: Bound Over to District Court as Charged (PC Found)



# NEVADA PRETRIAL RISK (NPR) ASSESSMENT

Assessment Date: **10/11/2018**

Assessor: **Anna Vasquez**

County: **Clark**

Defendant's Name: **Jesse Nobel**

DOB: **1/8/1990** AGE: **28**

Case/Booking #: **18F18999X**

Dept. #: **5**

Address: **NOT INTERVIEWED**

Contact Phone #:

# of Current Charges: **1**

City:

State: Zip:

Most Serious Charge: **Battery by  
prsnr/PnP**

Total Bail at booking: **TBD**

## SCORING ITEMS

## SCORE

**1. Does the Defendant Have a Pending Pretrial Case at Booking?**

No If yes, list case # and jurisdiction:

**0**

**2. Age at First Arrest (include juvenile arrests)  
20 yrs and under**

First Arrest Date **5-15-08**

**2**

**3. Prior Misdemeanor Convictions (past 10 years)  
Six or more**

**2**

**4. Prior Felony/Gross Misd. Convictions (past 10 years)  
One or more**

**1**

**5. Prior Violent Crime Convictions (past 10 years)  
Two or more**

**2**

**6. Prior FTAs (past 24 months)  
None**

**0**

**7. Substance Abuse (past 10 years)  
Other**

**0**

**8. Mitigating Verified Stability Factors (limit of -2 pts. total deduction)**

**TOTAL SCORE:**

**7**

**Risk Level: Moderate Risk, 7 Points**

**OVERRIDE?:** ☒ Yes

☐ No

**Override Reason(s): Other**

**If Other, explain: Violent criminal convictions history**

**Final Recommended Risk Level: Higher**

☐ LOW

☐ MODERATE

☒ HIGHER

**Supervisor/Designee Signature**

**AMV**

**Date: 10/11/2018**

18F18999X  
NPR  
Nevada Risk Assessment Tool  
10055520



Revised 8.2017

**AA0015**

Felony convictions:

YEAR	STATE	CHARGE
16	NV	ROBBERY
16	NV	BURGLARY
11	NV	PSP
08	NV	ATT ROBB
08	NV	ATT ROBB

Misdemeanor Convictions:       **6 (14; 14 BDV)**

FTAS:       **8**

Detainers:   **NONE**

Pending Cases:   **NONE**

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

THE STATE OF NEVADA,

Plaintiff,

vs.

Jesse Noble #1039146

Defendant.

Case No.  
Dept. No.

**DECLARATION OF PROBABLE CAUSE  
FOR ARREST**

STATE OF NEVADA )

COUNTY OF CLARK )

ss:

I, Jamal Ali based upon information and belief, do hereby swear the assertions of this declaration are true:

1. That I am an Institutional Investigator for the State of Nevada, responsible for conducting criminal and internal investigations for the Department of Corrections in Clark County, Nevada and have more than 10 years of law enforcement experience.
2. That I believe the following facts and circumstances give rise for finding probable cause to believe that the crimes of crime of BATTERY ON A PEACE OFFICER, a category "B" felony in violation of NRS 200.481-1 (c) (1); BATTERY BY PRISONER a category "B" felony in violation of NRS 200.481-2 (c) (1); and CRIMES AGAINST FIRST RESPONDERS, (Enhancement) violation of NRS 193.169; occurred within the County of Clark, State of Nevada.
3. Through an investigation, Affiant learned the following facts:
4. The investigation revealed that Inmate Jesse Noble, a state prisoner who resided at High Desert State Prison (HDSP), on December 21, 2017 at approximately 1830 hours did commit a battery on a Peace Officer. The battery entailed Inmate Jesse Noble punching Waylon Brown, a Correctional Officer with the Nevada Department of Corrections. Officer Brown positively identified Noble when shown a photo lineup as the person who battered him. I conducted witness interviews with Officers who saw the battery take place. Everyone

FILED  
2018 OCT 11 P 2:42  
JUSTICE COURT  
LAS VEGAS NEVADA  
BY DEPUTY



1 who was interviewed positively identified Jesse Noble as the person who punched Officer  
2 Brown, with one exception. Officer Dario Paccone was not able to identify any suspect  
3 when shown a photo lineup. I also conducted an interview with Jesse Noble to get his side  
4 of the story. Inmate Noble denied ever striking Officer Brown throughout the interview. I  
5 conducted additional interviews in which two more witnesses confirmed that Inmate Jesse  
6 Noble punched Officer Waylon Brown. I reviewed medical records obtained from  
7 Concentra where Officer Brown was treated for his injuries. Officer Brown provided  
8 photographs of his injuries from December 21, 2017. Medical reports and photos were  
9 consistent with the witness accounts.

10 As a result of this investigation, I believe that there is probable cause to believe that the criminal offenses  
11 of crimes of BATTERY ON A PEACE OFFICER, a category "B" felony in violation of NRS 200.481-1  
12 (c) (1); BATTERY BY PRISONER a category "B" felony in violation of NRS 200.481-2 (c) (1); CRIMES  
13 AGAINST FIRST RESPONDERS, (Enhancement) violation of NRS 193.169 were committed by the  
14 defendant on December 21, 2017, within Clark County, Nevada.

15 I declare under penalty of perjury that the foregoing is true and correct.

16 EXECUTED ON this 13 day of February, 2018.

17  
18   
19 Jamal S. Ali  
20 Institutional Investigator  
21  
22  
23  
24  
25  
26  
27  
28

DEFENDANT NOBLE, JESSE

DEFENDANT ID# 02679811

CASE NO: 18F18999X

DEPARTMENT JCRT5

JUDGE CYNTHIA CRUZ

AGENCY: ATTY GENERAL

ORI	URI	NAME	NOBLE, JESSE		
DOB 01081990	SOC	SID			
RAC B	SEX M	HGT 604	WGT 185	HAI BLK	EYE BRO

-----WARRANT-----

HOI	COI	WNM NOBLE, JESSE
NOC 50229	AOC	OFC F FTF TRF JUV DSO DOW 10152018
OCA	CCN 18F18999X	BAIL 5,000.00
TRA	MIS	

-----SUPPLEMENTAL-----

AKA NOBEL, JESSE JR

SUBMITTING OFFICER ID#: NAME:

COUNTS	CHARGE
1	BATTERY BY PRSNR/PNP

\*\*\*\*\* C O N F I D E N T I A L \*\*\*\*\*

18F18999X  
AWA  
Arrest Warrant Confidential  
10062882



AA0019

WARRANT ELECTRONICALLY GENERATED AND ENTERED INTO NCJIS  
\*\*\* DO NOT MANUALLY ENTER INTO NCJIS \*\*\*

JUSTICE COURT, LAS VEGAS TOWNSHIP  
CLARK COUNTY NEVADA  
-----

THE STATE OF NEVADA	)	CASE NO: 18F18999X
	)	
PLAINTIFF	)	DEPT. NO: 5
VS.	)	
	)	AGENCY: ATTY GENERAL
NOBLE, JESSE	)	
ID# 02679811	)	
	)	
DEFENDANT	)	ARREST WARRANT
	)	-----

THE STATE OF NEVADA,

TO: ANY SHERIFF, CONSTABLE, MARSHALL, POLICEMAN, OR PEACE OFFICER  
IN THIS STATE:

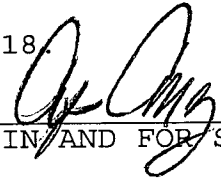
A COMPLAINT AND AN AFFIDAVIT UPON OATH HAS THIS DAY BEEN LAID  
BEFORE ME ACCUSING NOBLE, JESSE, OF THE CRIME(S):

COUNTS	CHARGE	BAIL: CASH	SURETY	PROPERTY
1	BATTERY BY PRSNR/PNP	5,000.00	5,000.00	

YOU ARE, THEREFORE, COMMANDED FORTHWITH TO ARREST THE ABOVE NAMED  
DEFENDANT AND BRING HIM BEFORE ME AT MY OFFICE IN LAS VEGAS TOWNSHIP,  
COUNTY OF CLARK, STATE OF NEVADA, OR IN MY ABSENCE OR INABILITY TO  
ACT, BEFORE THE NEAREST AND MOST ACCESSIBLE MAGISTRATE IN THIS COUNTY.

THIS WARRANT MAY BE SERVED AT ANY HOUR OF THE DAY OR NIGHT.

GIVEN UNDER MY HAND THIS 15TH DAY OF OCTOBER, 2018.

  
\_\_\_\_\_  
JUSTICE OF THE PEACE IN AND FOR SAID TOWNSHIP  
CYNTHIA CRUZ

SHERIFF'S RETURN  
-----

I HEREBY CERTIFY THAT I RECEIVED THE ABOVE AND FOREGOING WARRANT  
ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_, AND SERVED THE SAME BY  
ARRESTING AND BRINGING DEFENDANT, \_\_\_\_\_, INTO COU  
COURT THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.

JOSEPH LOMBARDO, SHERIFF, CLARK COUNTY, NEVADA

BY: \_\_\_\_\_, DEPUTY

18F18999X  
AWF  
Arrest Warrant - Face Sheet  
10062881



AA0020



ORIGINAL

FILED

2018 OCT 15 A 9:00

JUSTICE COURT, LAS VEGAS TOWNSHIP  
CLARK COUNTY, NEVADA

JUSTICE COURT  
LAS VEGAS, NEVADA  
BY: PC

THE STATE OF NEVADA, )  
)  
Plaintiff, )  
vs. )  
)  
JESSE D. NOBLE, )  
a.k.a. Jesse Nobel, Jr., ID # 2679811, )  
)  
Defendant. )  
)  
\_\_\_\_\_ )

CASE NO.: 18F18999X

DEPT. NO.: 5

REQUEST FOR ARREST WARRANT

COMES NOW, ADAM PAUL LAXALT, Attorney General, and requests that a Warrant of Arrest be issued for the above named Defendant pursuant to NRS 171.106 and the Complaint and/or Affidavit(s) attached hereto and incorporated herein by this reference.

ADAM PAUL LAXALT  
ATTORNEY GENERAL  
Nevada Bar #12426

PROBABLE CAUSE FOUND: 9

BAIL: \$5000

PROBABLE CAUSE NOT FOUND: \_\_\_\_\_

  
JUSTICE OF THE PEACE,  
LAS VEGAS TOWNSHIP

18F18999X  
AWR  
Request for Arrest Warrant Filed  
10061938



AA0021



ORIGINAL

ADAM PAUL LAXALT  
Attorney General  
CHELSEA KALLAS (Bar No. 13902)  
Deputy Attorney General  
State of Nevada  
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CKallas@ag.nv.gov  
Attorneys for the State of Nevada

FILED

2018 OCT 18 A 8:02

JUSTICE COURT  
LAS VEGAS NEVADA  
BY AMC  
DEPUTY

JUSTICE COURT, LAS VEGAS TOWNSHIP  
CLARK COUNTY, STATE OF NEVADA

STATE OF NEVADA,

Plaintiff,

v.

JESSE D. NOBLE,  
a.k.a. Jesse Nobel, Jr., ID #2679811

Defendant.

Case No.: 18F18999X

Dept. No.: 5

**MOTION FOR INITIAL ARRAIGNMENT**

Date: November 8, 2018

Time: 7:45 8:00 a.m.

THE STATE OF NEVADA, through legal counsel, ADAM PAUL LAXALT, Attorney General of the State of Nevada, by and through Deputy Attorney General, CHELSEA KALLAS, moves this Court to place the above-entitled matter on the Court's arraignment calendar. Defendant JESSE D. NOBLE, is charged with the following offense: one (1) count of BATTERY BY PRISONER, a category "B" felony in violation of NRS 200.481(2)(f).

Proper arrangements are being made to ensure the Defendant's presence in Court.

DATED this 17<sup>th</sup> day of October, 2018.

SUBMITTED BY:

ADAM PAUL LAXALT  
Attorney General

By:

Cheelsea Kallas

CHELSEA KALLAS (Bar No. 13902)  
Deputy Attorney General  
Attorneys for the State of Nevada

18F18999X  
MOF  
Motion  
10078820







ORIGINAL

ORDR

ADAM PAUL LAXALT

Attorney General

CHELSEA N. KALLAS (Bar No. 13902)

Deputy Attorney General

State of Nevada

Office of the Attorney General

555 E. Washington Ave., Ste. 3900

Las Vegas, Nevada 89101-1068

P: (702) 486-3420

F: (702) 486-0660

CKallas@ag.nv.gov

Attorneys for the State of Nevada

FILED

2018 OCT 19 P 2:04

JUSTICE COURT  
LAS VEGAS NEVADA

BY AMC  
DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

JESSE D. NOBLE,  
a.k.a. Jesse Nobel, Jr., #2679811

Defendant.

Case No.: 18F18999X

Dept. No.: 5

TRANSPORT ORDER

Date: November 8, 2018

Time: 745  
~~8:00~~ a.m.

**TO: TIMOTHY FILSON, Warden, NEVADA ELY STATE PRISON**

**THE COURT HEREBY FINDS** that the above-named Defendant is presently in the custody of the Nevada Department of Corrections, located at Nevada Ely State Prison.

**IT IS HEREBY ORDERED** that the Warden of NEVADA ELY STATE PRISON, or his designee, shall transport Defendant, JESSE D. NOBLE, Offender #1039146, from Ely State Prison in Ely, Nevada, to the Las Vegas Justice Court, Judge Cruz, Department 5 on the 8<sup>th</sup> day November, 2018, at 8:00 a.m. for his Initial Arraignment regarding the instant matter,

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18F18999X  
ORD  
Order  
10085786



RECEIVED

OCT 17 2018

JUSTICE COURT

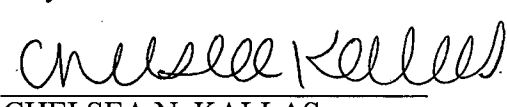
1 and arrange for his *appearance on said date, and all subsequent dates, as relayed by Memorandum*  
2 *from the Office of the Attorney General.*

3 DATED this OCT 19 2018 day of October, 2018.

4  
5   
6 JUSTICE COURT JUDGE  
CYNTHIA CRUZ

7 Respectfully submitted,

8 ADAM PAUL LAXALT  
9 Attorney General

10 By:   
11 CHELSEA N. KALLAS  
12 Nevada Bar No. 13902  
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**Justice Court, Las Vegas Township  
Clark County, Nevada**

**Custody Status Slip**



L010162708

Housed At:

Clerk: ryancar

Date: 11/8/2018: Motion

Department: 05

Judge: Pro Tempore, Judge

ProTem: Stoberski, Holly S.

---

Name: NOBEL, JESSE, Jr.

Case: 18F18999X

Defendant ID: 2679811

---

001: Battery by prsnr/PnP [50229] (F) (0030542736-001)

Not in custody: Counts: 001

**Other Case Conditions**

**Warrant Stands**

**Future Justice Court Hearings**

11/20/2018 9:15:00 AM: Preliminary Hearing (JC Department 05)

Added

ORIGINAL

0042

PHILIP J. KOHN, PUBLIC DEFENDER  
NEVADA BAR NO. 0556  
ERIC W. RUSLEY, DEPUTY PUBLIC DEFENDER  
NEVADA BAR NO. 5114  
**PUBLIC DEFENDERS OFFICE**  
309 South Third Street, Suite 226  
Las Vegas, Nevada 89155  
Telephone: (702) 455-4685  
Facsimile: (702) 455-5112  
RusleyEW@ClarkCountyNV.gov  
*Attorneys for Defendant*

FILED

2018 NOV -9 1:59

JUSTICE COURT  
LAS VEGAS, NEVADA  
BY JR  
DEPUTY

**JUSTICE COURT, LAS VEGAS TOWNSHIP**

**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

v.

JESSE D. NOBLE,

Defendant,

CASE NO. 18F18999X

DEPT. NO. 5

DATE: November 15, 2018  
TIME: 7:45 a.m.

**MOTION TO WITHDRAW DUE TO CONFLICT**

COMES NOW, the Defendant, JESSE D. NOBLE, by and through ERIC W. RUSLEY, Deputy Public Defender and respectfully moves this Honorable Court to allow the Public Defender to withdraw and to appoint independent counsel due to a conflict of interest.

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

DATED this 9th day of November, 2018.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By: /s/Eric W. Rusley  
ERIC W. RUSLEY, #5114  
Deputy Public Defender

18F18999X  
MWC  
Motion to Withdraw Due to Conflict  
10168334



AA0026

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**DECLARATION**

ERIC W. RUSLEY, makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and the Defendant has represented the following facts and circumstances of this case.

2. The Public Defender was appointed to represent Jesse Noble in connection with an alleged Battery on Officer at High Desert State Prison. Noble is alleged to have battered a corrections officer after an altercation between several inmates. After reviewing discovery it appears several inmates were witnesses to the alleged battery. Many of those inmates are believed to have been previously represented by the Public Defender.

3. That effective representation of the Defendant in the instant matter would necessarily prejudice the interests of any persons mentioned in this declaration.

4. Therefore, Defendant asks this Court to allow the Clark County Public Defender's Office to withdraw in this case due to conflict of interest and to appoint independent counsel to represent the Defendant.

5. The Defendant has been notified of the presentation of this motion.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045)

EXECUTED on this 9th day of November, 2018.

/s/Eric W. Rusley  
ERIC W. RUSLEY

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**NOTICE OF MOTION**

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the foregoing MOTION TO WITHDRAW  
DUE TO CONFLICT will be heard on 15th day of November, 2018, at 7:45 a.m., Justice Court,  
Department 5.

DATED this 9th day of November, 2018.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By: /s/Eric W. Rusley  
ERIC W. RUSLEY, #5114  
Deputy Public Defender

**RECEIPT OF COPY**

RECEIPT OF COPY of the above and foregoing MOTION is hereby acknowledged this  
9 day of November, 2018.

CLARK COUNTY DISTRICT ATTORNEY

By: \_\_\_\_\_

**Justice Court, Las Vegas Township  
Clark County, Nevada**

**Custody Status Slip**



L010186821

Housed At:

Clerk: ryancar

**Date: 11/15/2018: Motion**

**Department: 05**

**Judge: Cruz, Cynthia**

**Name: NOBEL, JESSE, Jr.**

**Case: 18F18999X**

**Defendant ID: 2679811**

**001: Battery by prsnr/PnP [50229] (F) (0030542736-001)**

Not in custody: Counts: 001

**Other Case Conditions**

**Future Court Date Stands**

**11/20/18 AT 9:15 AM - FOR THE DEFENDANT'S PRESENCE ONLY**

**Justice Court, Las Vegas Township  
Clark County, Nevada**

**Custody Status Slip**



L010204488

Housed At:

Clerk: ryancar

**Date: 11/20/2018: Preliminary Hearing**

**Department: 05**

**Judge: Senior/Visiting, Judge**

**Name: NOBEL, JESSE, Jr.**

**Case: 18F18999X**

**Defendant ID: 2679811**

**001: Battery by prsnr/PnP [50229] (F) (0030542736-001)**

Not in custody: Counts: 001

**Other Case Conditions**

**Warrant Stands**

**Future Justice Court Hearings**

12/5/2018 9:15:00 AM: Preliminary Hearing (JC Department 05)

Added



1 **NOTM**

2 ADAM PAUL LAXALT

3 Attorney General

4 CHELSEA KALLAS (Bar No. 13902)

5 Deputy Attorney General

6 State of Nevada

7 Office of the Attorney General

8 555 E. Washington Ave., Ste. 3900

9 (702) 486-5707 (phone)

10 (702) 486-0660 (fax)

11 Ckallas@ag.nv.gov

12 Attorneys for the State of Nevada

LAS VEGAS JUSTICE COURT  
FILED IN OPEN COURT

DEC - 5 2018

BY

CLERK

13 **JUSTICE COURT, LAS VEGAS TOWNSHIP**

14 **CLARK COUNTY, STATE OF NEVADA**

15 STATE OF NEVADA,

16 Plaintiff,

17 v.

18 JESSE D. NOBLE,

19 a.k.a. Jesse Nobel, Jr., ID 2679811,

20 Defendant.

Case No.: 18F18999X

Dept. No.: 5

21 **NOTICE OF MOTION AND MOTION TO CONTINUE**

22 The State of Nevada, through its counsel, ADAM PAUL LAXALT, Attorney General, by his  
23 undersigned deputy, respectfully moves this Honorable Court to reset the preliminary hearing in the  
24 above-entitled case. This Motion, which will be heard in Justice Court on the 5<sup>th</sup> day of December,  
25 2018, at 9:15 a.m., is based upon the accompanying points and authorities and the attached Declaration  
26 of Counsel.

27 DATED this 4<sup>th</sup> day of December, 2018.

28 ADAM PAUL LAXALT  
Attorney General

By: Chelsea Kallas  
CHELSEA KALLAS (Bar No. 13902)  
Deputy Attorney General

18F18999X  
NOMO  
Notice of Motion  
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YOU, AND EACH OF YOU, PLEASE TAKE NOTICE that the undersigned will bring the Motion to place on Calendar for the purpose of continuing the Preliminary Hearing on for hearing before this Honorable Court on the 5<sup>th</sup> day of December at 9:15 a.m., or soon thereafter as counsel will be heard.

Submitted by:

By: Chelsea Kallas  
Chelsea N. Kallas (Bar No. 13902)  
Deputy Attorney General

1 POINTS AND AUTHORITIES

2 A continuance may be warranted where the moving party files a declaration supporting such a  
3 motion showing good cause for the continuance. *Hill v. Sheriff*, 85 Nev. 234, 452 P.2d 918 (1969).  
4 Under *Hill*, the requirement of "good cause" may be met by stating "(a) the names of the absent  
5 witnesses and their present residences, if known; (b) the diligence used to procure their attendance; (c)  
6 a brief summary of the expected testimony of such witnesses and whether the same facts can be proven  
7 by other witnesses; (d) when the Declarant first learned that the attendance of such witnesses could not  
8 be obtained and (e) that the motion is made in good faith and not for the purposes of delay." 85 Nev. at  
9 235-36, 452 P.2d at 919. Additionally, there is no specific mandate in *Hill* that the witness be essential  
10 to any chance of successful prosecution for a continuance to be granted. *Hill* is based upon the  
11 requirement that "good cause" for the motion be shown. If the movant's case is significantly impaired  
12 without the witness' presence, this requirement is naturally met.

13 Based upon the above-cited authorities and the attached Declaration of Counsel, the  
14 requirements of *Hill/Terpstra* have been met and a continuance is warranted. For these reasons, the  
15 State respectfully requests that this Court grant its motion.

16 DATED this 4<sup>th</sup> day of December, 2018.

17 ADAM PAUL LAXALT  
18 Attorney General

19 By: Chelsea Kallas  
20 CHELSEA KALLAS (Bar No. 13902)  
21 Deputy Attorney General  
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1. That I am the Deputy Attorney General currently assigned to the prosecution of Defendant Jesse D. Noble, in Case No. 18F1999X;
2. That this case is set for preliminary hearing on the 5th day of December, 2018, at 9:15 a.m.;
3. On November 27, 2018, a subpoena was issued to Correctional Officer Waylon Brown. He is an essential witness in this case because Officer Brown can testify that Defendant struck him in the head and/or neck with a closed fist. There is no other witness who could so testify;
4. On November 30, 2018, I was notified Officer Brown could not be in court today. Defense counsel, Ken Frizzel, was notified of the State's intent to request a continuance;
5. I make this motion in good faith and not for purposes of delay.

Executed on December 4, 2018, in Clark County, Nevada.

Chelsea N. Kallas  
Declarant

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Kenneth G. Frizzell, Esq.  
The Law Office of Kenneth G. Frizzell  
619 S. 6<sup>th</sup> Street  
Las Vegas, NV 89101

s/ A. Reber

**Justice Court, Las Vegas Township  
Clark County, Nevada**

**Custody Status Slip**



L010261565

Housed At:

Clerk: ryancar

**Date: 12/5/2018: Preliminary Hearing**

**Department: 05**

**Judge: Cruz, Cynthia**

**Name: NOBEL, JESSE, Jr.**

**Case: 18F18999X**

**Defendant ID: 2679811**

**001: Battery by prsnr/PnP [50229] (F) (0030542736-001)**

Not in custody: Counts: 001

**Other Case Conditions**

**Warrant Stands**

**Future Justice Court Hearings**

12/19/2018 9:15:00 AM: Preliminary Hearing (JC Department 05)

Added

**Justice Court, Las Vegas Township  
Clark County, Nevada**

**Custody Status Slip**



L010318904

Housed At:

Clerk: ryancar

**Date: 12/19/2018: Preliminary Hearing**

**Department: 05**

**Judge: Cruz, Cynthia**

**Name: NOBEL, JESSE, Jr.**

**Case: 18F18999X**

**Defendant ID: 2679811**

**001: Battery by prsnr/PnP [50229] (F) (0030542736-001)**

Disposition: Bound Over to District Court as Charged (PC Found)

Remand - Cash or Surety: Counts: 001 - \$0.00/\$0.00 Total Bail

**Other Case Conditions**

**District Court Appearance Date Set**

**DEC 21 2018 10:00AM: IN CUSTODY (NDOC)**

ORIGINAL

VER

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

FEB 12 2019 at 12:06pm

BY, Carol Donahoo  
CAROL DONAHOO, DEPUTY

STATE OF NEVADA,

Case No.: C-18-336940-1

Dept. No.: VIII

Plaintiff,

v.

JESSE D. NOBLE,  
a.k.a. Jesse Nobel, Jr., #2679811

Defendant.

C-18-336940-1

VER

Verdict

4816397



VERDICT

We, the jury in the above entitled case, find the Defendant JESSE D. NOBLE, as follows:

COUNT ONE – BATTERY BY A PRISONER

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



Guilty of Battery By A Prisoner



Not Guilty

DATED this 12 day of February, 2019.

By: /s/

Dawn M. B. [Signature]  
FOREPERSON



27

FILED

NOV 18 2019

*Alan J. Blum*  
CLERK OF COURT

Jesse Noble #1039146  
ESP  
PO Box 1989  
Elkh NV 89301

~~United States District Court~~  
8th Judicial District Court

Jesse Noble  
NAME,

Plaintiff(s),

CASE NO.

James Ozurenda, Director  
NAME, of NDOC

C-18-336940-1  
~~18-336940-1~~

Defendant(s).

Dept: 19

December 9, 2019  
at 8:30AM

COMES NOW, Jesse Noble, in PRO PER and herein above respectfully

Moves this Honorable Court for a Motion for New Trial

The above is made and based on the following Memorandum of Points and Authorities.

RECEIVED

NOV 18 2019

CLERK OF THE COURT

C-18-336940-1  
MOT  
Motion  
4876746



AA0038

MEMORANDUM OF POINTS AND AUTHORITIES

This Motion is base on Evidence and Statements, that was never presented in Trial to the jury. This motion will also show and Verify Ineffective Assistance from Trial Attorney Kenneth Frizzell. Which lead to a Unfair and prejudice Outcome to petitioner Trial.

Do to Ineffective Assistance a Video Record est. That Verify that Petitioner didn't Assault Nor. Batteries a Prison Official. Was never presented at Trial. This Video is Showing the Incident and you can see Individuals Faces Clearly. There No logical reason, For this Video not being presented at Trial. Petitioner persisted that Video be presented at Trial, but Request was ~~Not~~ Ignored.

Their also was 4 witnesses that the AG. had. petitioner wanted interviewed and . Petitioner knew that the AG. wasint gone put Dario Paccane, Joseph Ogawa, Kerry hunter or Newman on the Stand During Trial. Do to their Story/Statements being Conflicting and Contradicting<sup>to</sup> each Other. And State ments was Completely different from the Victim Statement. Attorney Refused to Interview or witnesses, as Hot. Style Watnesses. Do to his Ineffective Assistance. valuable Statements was left from Trial and a Video. These

Could've and Would've lead to a better Out.Come.

### Argument

Ineffective Assistance of ~~Counsel~~ Counsel. The Sixth Amendment guarantees the right to effective assistance of Counsel in Criminal prosecutions. In *Stickland v. Washington* 466 U.S. 668, 104 S.Ct 2052 (1984) The Supreme Court established a two-prong test to evaluate ineffective assistance claims to Obtain a reversal of ~~Conviction~~ Conviction, the defendant must Prove: 1) that the Counsel Performance fell below an objective standard of reasonableness and (2) (1) that Counsel deficient performance prejudiced the defendant, & resulting in an unreliable or fundamentally Unfair outcome of the proceeding. 176.515 Courts may grant New Trial or Vacate judgment, in Certain Circumstance.

1) The Courts may grant a New Trial to a Defendant if required as a matter of law or on the Ground of Newly Discover Evidence.

Dated this 11 day of 2, 2019

By: Petitioner Jesse  
Noble Prose

CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP Rule 5 (b), I hereby certify that I am the Petitioner/Defendant named herein  
and that on this 1<sup>st</sup> day of 2, 20 19, I mailed a true and correct copy of this  
foregoing Motion to the following:

Clerk of the 8<sup>th</sup> Judicial Dist Ct  
200 Lewis Ave-3rd floor  
Las Vegas, Nevada 89155-2311

Nevada Attorney  
General-100 North  
Carson St, Carson City  
NV 89701

BY:

Jesse Noble

AFFIRMATION

Pursuant to NRS 239b.030

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

Motion For New Trial and Exhibits

(Title of Document)

Filed in case number: 18F18999X

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

Or

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

☐ A Specific state or federal law, to wit

Or

☐ For the administration of a public program

Or

☐ For an application for a federal or state grant

Or

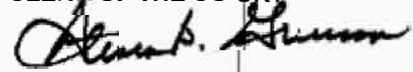
☐ Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230, and NRS 125b.055)

DATE: 4/2/18

  
(Signature)

Jesse Noble  
(Print Name)

Pro se  
(Attorney for)



JOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JESSE D. NOBLE  
aka Jesse Nobel, Jr.  
#2679811

Defendant.

CASE NO. C-18-336940-1

DEPT. NO. VIII

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crime of BATTERY BY A PRISONER (Category B Felony) in violation of NRS 200.481(2)(f); and the matter having been tried before a jury and the Defendant having been found guilty of the crime of BATTERY BY A PRISONER (Category B Felony) in violation of NRS 202.481(2)(f); thereafter, on the 3<sup>rd</sup> day of April, 2019, the Defendant was present in court for sentencing with counsel KENNETH FRIZZELL, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said crime as set forth in the jury's verdict and, in addition to the \$25.00 Administrative Assessment Fee and

<input type="checkbox"/> Nolle Prosequi (before trial)	<input type="checkbox"/> Bench (Non-Jury) Trial
<input type="checkbox"/> Dismissed (after diversion)	<input type="checkbox"/> Dismissed (during trial)
<input type="checkbox"/> Dismissed (before trial)	<input type="checkbox"/> Acquittal
<input checked="" type="checkbox"/> Guilty Plea with Sent (before trial)	<input type="checkbox"/> Guilty Plea with Sent (during trial)
<input type="checkbox"/> Transferred (before/during trial)	<input type="checkbox"/> Conviction
<input type="checkbox"/> Other Manner of Disposition	

AA0043

1 \$250.00 Indigent Defense Civil Assessment Fee plus \$3.00 DNA Collection Fee, the  
2 Defendant is SENTENCED as follows: a MAXIMUM of SEVENTY-TWO (72) MONTHS  
3 with a MINIMUM parole eligibility of TWENTY-EIGHT (28) MONTHS in the Nevada  
4 Department of Corrections (NDC), CONSECUTIVE with C312733; with ZERO (0) DAYS  
5 credit for time served. As the \$150.00 DNA Analysis Fee and Genetic Testing have  
6 been previously imposed, the Fee and Testing in the current case are WAIVED.  
7

8 DATED this 11<sup>th</sup> day of April, 2019.

10 MICHAEL P. VILLANI

11 FOR JUDGE

11 ->

11 DOUGLAS E. SMITH  
12 DISTRICT COURT JUDGE



**PWHC**  
JOSEPH Z. GERSTEN, ESQ.  
Nevada Bar No.: 13876  
The Gersten Law Firm PLLC  
9680 W Tropicana Avenue # 146  
Las Vegas, NV 89147  
Telephone (702) 857-8777  
joe@thegerstenlawfirm.com  
*Attorney for Petitioner*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JESSE NOBLE,

*Petitioner,*

vs.

CALVIN JOHNSON, WARDEN,

*Respondent.*

Case No.: C-18-336940-1

Dept. No.: IX

**SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS  
(POST-CONVICTION)**

**COMES NOW**, the Petitioner, **JESSE NOBLE**, by and through his attorney, **JOSEPH Z. GERSTEN, ESQ.**, of **THE GERSTEN LAW FIRM PLLC**, and hereby submits this **SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**. This Writ is made and based upon the pleadings attached hereto, the papers and pleadings on file herein, together with arguments of counsel adduced at the time of hearing on this matter.

///



DATED this 11<sup>th</sup> day of August 2020.

By Joseph Z. Gersten  
JOSEPH Z. GERSTEN, ESQ.  
Nevada Bar No.: 13876  
9680 W Tropicana Avenue # 146  
Las Vegas, NV 89147  
Telephone (702) 857-8777  
joe@thegerstenlawfirm.com  
*Attorney for Petitioner*

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: **High Desert State Prison, Clark County, Nevada**
2. Name and location of court which entered the judgment of conviction under attack: **Eighth District Judicial Court, Department XIX**
3. Date of judgment of conviction: **04/11/2019**
4. Case number: **C-18-336940-1**
5. (a) Length of sentence: **28 – 72 Months**  
(b) If sentence is death, state any date upon which execution is scheduled:  
**N/A**
6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes **X** No  
If “yes,” list crime, case number and sentence being served at this time:  
**ROBBERY, C-16-312733-1, 48 – 120 (months)**  
**BURGLARY, C-16-312733-1, 36 – 120 (months)**
7. Nature of offense involved in conviction being challenged: **BATTERY BY PRISONER (Category B Felony)**
8. What was your plea? (check one)  
(a) Not guilty **X**  
(b) Guilty  
(c) Guilty but mentally ill  
(d) Nolo contendere

///

///

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

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

(a) Jury **X**

(b) Judge without a jury

11. Did you testify at the trial? Yes ..... No **X**

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

13. If you did appeal, answer the following:

(a) Name of court: **Nevada Supreme Court**

(b) Case number or citation: **79739**

(c) Result: **Dismissed**

(d) Date of result: **12/06/2019**

(Attach copy of order or decision, if available.) **ATTACHED HERETO AS EXHIBIT A**

14. If you did not appeal, explain briefly why you did not:

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

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

(a) (1) Name of court:

(2) Nature of proceeding:

(3) Grounds raised:

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

(5) Result:

(6) Date of result:

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

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

(1) Name of court:

(2) Nature of proceeding:

(3) Grounds raised:

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

(5) Result:

(6) Date of result:

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

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

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

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

Citation or date of decision:

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

Citation or date of decision:

(3) Third or subsequent petitions, applications or motions?

Yes ..... No .....

Citation or date of decision:

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

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

(a) Which of the grounds is the same:

(b) The proceedings in which these grounds were raised:

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

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

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to

1 this question. Your response may be included on paper which is 8 1/2 by 11  
2 inches attached to the petition. Your response may not exceed five handwritten  
or typewritten pages in length.) **No**

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

5 If yes, state what court and the case number:

6 21. Give the name of each attorney who represented you in the proceeding  
7 resulting in your conviction and on direct appeal:

8 **Kenneth G. Frizzel, III**  
9 **619 South 6th Street**  
10 **Las Vegas, NV 89101**

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

13 If yes, specify where and when it is to be served, if you know:

14 23. State concisely every ground on which you claim that you are being held  
15 unlawfully. Summarize briefly the facts supporting each ground. If necessary,  
16 you may attach pages stating additional grounds and facts supporting same.

17 **EACH CLAIM IS PRESENTED BELOW.**  
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## INTRODUCTION

### FACTS

On October 24, 2016, Petitioner was convicted of Robbery and Burglary and sentenced to 48 – 120 months and 36 – 120 months respectively in the Nevada Department of Corrections. On December 21, 2017, while serving his sentence, an incident occurred at the High Desert State Prison. It is alleged that during an altercation, Petitioner struck an officer in the head with a closed fist. The officer allegedly positively identified the Petitioner as the one who struck him. Petitioner was charged with Battery by Prisoner. Slight or marginal evidence was found at the Petitioner's Preliminary hearing on December 19, 2018. Justice of the Peace Cruz bound Petitioner over to District Court on the same day.

Petitioner went to trial on the charge that is the subject of this matter on February 11, 2019, and a guilty verdict was rendered on February 12, 2019. Petitioner was represented by Kenneth Frizzel, Esq.

During the trial, Petitioner's trial counsel failed to present contradictory and exculpatory evidence. This created an ineffective assistance of counsel situation on the part of defense counsel.

Petitioner was found guilty, and sentenced on April 3, 2019, to 28 – 72 months consecutive to C-16-312733-1.

Thereafter, Petitioner filed a Motion for New Trial on November 18, 2019, and this Court graciously treated this Motion as a Writ for Habeas Corpus.

1 Subsequently, the undersigned was appointed to represent Petitioner concerning  
2 said Writ. This Supplemental Writ follows.

3 As Mr. Noble was not effectively represented by counsel his conviction is  
4 unconstitutional and must be vacated. Mr. Noble requests an evidentiary  
5 hearing.  
6

7 **STANDARD**

8 The purpose of the Writ of Habeas Corpus is to seek relief from a  
9 Judgment of Conviction or sentence in a criminal case. See NRS 34.720. Writs  
10 may issue “on petition by . . . any person . . . who has suffered a criminal  
11 conviction in their respective districts and has not completed the sentence  
12 imposed pursuant to the judgment of conviction.” NEV. CONST. ART. 6 § 6(1); NRS  
13 34.724(1). Habeas corpus is a special statutory remedy that cannot be classified  
14 as either civil or criminal for all purposes. Hill v. Warden, 96 Nev. 38, 39, 604  
15 P.2d 807, 808 (1980). Habeas corpus appeals generally follow the rules of  
16 criminal appellate procedure rather than civil appellate procedure, unless  
17 otherwise specified. See Klein v. Warden, 118 Nev. 305, 310, 43 P.3d 1029, 1033  
18 (2002) (“[R]ules of civil appellate procedure are not applicable to appeals from  
19 statutory post-conviction habeas corpus proceedings.”).  
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ARGUMENT

A. MR. NOBLE’S CONVICTION AND SENTENCE ARE INVALID UNDER THE 6TH AND 14TH FEDERAL CONSTITUTIONAL AMENDMENT GUARANTEES OF DUE PROCESS AND EQUAL PROTECTION AND UNDER THE LAW OF ARTICLE 1 OF THE NEVADA CONSTITUTION BECAUSE PRIOR COUNSEL’S PERFORMANCE FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS AS IS MANDATED BY STRICKLAND, 466 U.S. 668, 104 S. CT. 2052 (1984), BY FAILING TO INVESTIGATE, INTERVIEW, AND/OR INTRODUCE TESTIMONY FROM CERTAIN FAVORABLE WITNESSES.

Mr. Noble’s conviction and sentence are invalid under the 6th and 14th federal constitutional amendment guarantees of Due Process and Equal Protection and under the law of Article 1 of the Nevada Constitution because prior counsel’s performance fell below an objective standard of reasonableness as is mandated by Strickland, 466 U.S. 668, 104 S. Ct. 2052 (1984), by failing to investigate, interview, and/or introduce testimony from certain favorable witnesses. The Sixth Amendment of the U.S. Constitution guarantees the accused “the Assistance of Counsel for his defense.” “That a person who happens to be a lawyer is present at trial alongside the accused, however, is not enough to satisfy the constitutional command.” Strickland v. Washington, 466 U.S. 668, 685, 104 S. Ct. 2052, 2063 (1984). “[T]he right to counsel is the right to the effective assistance of counsel.” McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, n. 14 (1970).

Under Strickland v. Washington, a conviction must be reversed due to ineffective counsel if first, “counsel’s performance was deficient,” and second,

1 “the deficient performance prejudiced the defense.” Strickland v. Washington,  
2 466 U.S. at 687. The deficient performance prejudiced the defense if “there is a  
3 reasonable probability that, but for counsel’s unprofessional errors, the result of  
4 the proceeding would have been different. A reasonable probability is a  
5 probability sufficient to undermine confidence in the outcome.” Strickland, 466  
6 U.S. at 698. “The ultimate focus of the inquiry must be on the fundamental  
7 fairness of the proceeding. . .” Id. at 696. Nevada adopts the Strickland  
8 standards for the effective assistance of counsel. See Hurd v. State, 114 Nev.  
9 182, 188, 953 P.2d 270, 274 (1998).

10  
11 Here, Mr. Noble’s counsel failed to investigate, interview, and/or introduce  
12 evidence of four witnesses. These witnesses Dario Paccone, Joseph Dugan, Kerry  
13 Hunter, and a Newman made statements that were either conflicting or  
14 contradictory to the State’s narrative. An attorney must reasonably investigate  
15 in preparing for trial or reasonably decide not to. Strickland, 466 U.S. at 691;  
16 Kirksey v. State, 112 Nev. 980, 992, 923 P.2d 1102, 1110 (1996). In this case the  
17 investigation and introduction of these individual’s statements would have been  
18 critical in Petitioner’s defense yet were completely ignored by trial counsel. The  
19 introduction of these witness statements would have led to a reasonable  
20 probability of a different outcome, showing both good cause and actual prejudice.

21 In this case, Mr. Noble’s counsel made errors which fell below minimum  
22 standards of representation, undermined confidence in the adversarial outcome,  
23 and deprived Mr. Noble of fundamentally fair proceedings.  
24



1       **B. MR. NOBLE’S CONVICTION AND SENTENCE ARE INVALID**  
2       **UNDER THE 6TH AND 14TH FEDERAL CONSTITUTIONAL**  
3       **AMENDMENT GUARANTEES OF DUE PROCESS AND EQUAL**  
4       **PROTECTION AND UNDER THE LAW OF ARTICLE 1 OF THE**  
5       **NEVADA CONSTITUTION BECAUSE PRIOR COUNSEL’S**  
6       **PERFORMANCE FELL BELOW AN OBJECTIVE STANDARD OF**  
7       **REASONABLENESS AS IS MANDATED BY STRICKLAND, 466**  
8       **U.S. 668, 104 S. CT. 2052 (1984), BY FAILING TO INTRODUCE**  
9       **TESTIMONY FROM OFFICER BROWN, THE ALLEGED VICTIM.**

10       Mr. Noble’s conviction and sentence are invalid under the 6th and 14th  
11       federal constitutional amendment guarantees of Due Process and Equal  
12       Protection and under the law of Article 1 of the Nevada Constitution because  
13       prior counsel’s performance fell below an objective standard of reasonableness as  
14       is mandated by Strickland, 466 U.S. 668, 104 S. Ct. 2052 (1984), by failing to  
15       introduce testimony from Officer Brown the alleged victim. The Sixth  
16       Amendment of the U.S. Constitution guarantees the accused “the Assistance of  
17       Counsel for his defense.” “That a person who happens to be a lawyer is present  
18       at trial alongside the accused, however, is not enough to satisfy the  
19       constitutional command.” Strickland v. Washington, 466 U.S. 668, 685, 104 S.  
20       Ct. 2052, 2063 (1984). “[T]he right to counsel is the right to the effective  
21       assistance of counsel.” McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct.  
22       1441, n. 14 (1970).

23  
24       Under Strickland v. Washington, a conviction must be reversed due to  
25       ineffective counsel if first, “counsel’s performance was deficient,” and second,  
26       “the deficient performance prejudiced the defense.” Strickland v. Washington,  
27       466 U.S. at 687. The deficient performance prejudiced the defense if “there is a  
28

1 reasonable probability that, but for counsel's unprofessional errors, the result of  
2 the proceeding would have been different. A reasonable probability is a  
3 probability sufficient to undermine confidence in the outcome." Strickland, 466  
4 U.S. at 698. "The ultimate focus of the inquiry must be on the fundamental  
5 fairness of the proceeding. . . ." Id. at 696. Nevada adopts the Strickland  
6 standards for the effective assistance of counsel. See Hurd v. State, 114 Nev.  
7 182, 188, 953 P.2d 270, 274 (1998).  
8

9  
10 Here, Mr. Noble's counsel failed to introduce conflicting evidence from the  
11 State's key witness Officer Brown. An attorney must reasonably investigate in  
12 preparing for trial or reasonably decide not to. Strickland, 466 U.S. at 691;  
13 Kirksey v. State, 112 Nev. 980, 992, 923 P.2d 1102, 1110 (1996). In this case the  
14 introduction of Brown's conflicting statements, that he changed his story  
15 regarding which hand he grabbed during the incident, and the testimony that he  
16 blacked out and when he awoke the incident was over, contradicts his  
17 institutional statement. The introduction of these contradictory statements  
18 would have led to a reasonable probability of a different outcome, showing both  
19 good cause and actual prejudice.  
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22 In this case, Mr. Noble's counsel made errors which fell below  
23 minimum standards of representation, undermined confidence in the adversarial  
24 outcome, and deprived Mr. Noble of fundamentally fair proceedings.  
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1 C. MR. NOBLE’S CONVICTION AND SENTENCE ARE INVALID  
2 UNDER THE 6TH AND 14TH FEDERAL CONSTITUTIONAL  
3 AMENDMENT GUARANTEES OF DUE PROCESS AND EQUAL  
4 PROTECTION AND UNDER THE LAW OF ARTICLE 1 OF THE  
5 NEVADA CONSTITUTION BECAUSE PRIOR COUNSEL’S  
6 PERFORMANCE FELL BELOW AN OBJECTIVE STANDARD OF  
7 REASONABLENESS AS IS MANDATED BY STRICKLAND, 466  
8 U.S. 668, 104 S. CT. 2052 (1984), BY FAILING TO INTRODUCE THE  
9 VIDEO OF THE ALLEGED INCIDENT WHICH SHOW NO  
10 INSTANCES OF THE PETITIONER INVOLVED IN ANY ASPECT  
11 OF THE ALLEGED DISTURBANCE.

12 Mr. Noble’s conviction and sentence are invalid under the 6th and 14th  
13 federal constitutional amendment guarantees of Due Process and Equal  
14 Protection and under the law of Article 1 of the Nevada Constitution because  
15 prior counsel’s performance fell below an objective standard of reasonableness as  
16 is mandated by Strickland, 466 U.S. 668, 104 S. Ct. 2052 (1984), by failing to  
17 introduce the video of the alleged incident which show no instances of the  
18 Petitioner involved in any aspect of the alleged disturbance. The Sixth  
19 Amendment of the U.S. Constitution guarantees the accused “the Assistance of  
20 Counsel for his defense.” “That a person who happens to be a lawyer is present  
21 at trial alongside the accused, however, is not enough to satisfy the  
22 constitutional command.” Strickland v. Washington, 466 U.S. 668, 685, 104 S.  
23 Ct. 2052, 2063 (1984). “[T]he right to counsel is the right to the effective  
24 assistance of counsel.” McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct.  
25 1441, n. 14 (1970).

26 Under Strickland v. Washington, a conviction must be reversed due to  
27 ineffective counsel if first, “counsel’s performance was deficient,” and second,  
28

1 “the deficient performance prejudiced the defense.” Strickland v. Washington,  
2 466 U.S. at 687. The deficient performance prejudiced the defense if “there is a  
3 reasonable probability that, but for counsel’s unprofessional errors, the result of  
4 the proceeding would have been different. A reasonable probability is a  
5 probability sufficient to undermine confidence in the outcome.” Strickland, 466  
6 U.S. at 698. “The ultimate focus of the inquiry must be on the fundamental  
7 fairness of the proceeding. . .” Id. at 696. Nevada adopts the Strickland  
8 standards for the effective assistance of counsel. See Hurd v. State, 114 Nev.  
9 182, 188, 953 P.2d 270, 274 (1998).

12 Here, Mr. Noble’s counsel failed to introduce the video of the alleged  
13 incident which show no instances of the Petitioner involved in any aspect of the  
14 alleged disturbance. As noted previously, an attorney must reasonably  
15 investigate in preparing for trial or reasonably decide not to. Strickland, 466  
16 U.S. at 691; Kirksey v. State, 112 Nev. 980, 992, 923 P.2d 1102, 1110 (1996). In  
17 this case the introduction of the State’s video showing at no time was Petitioner  
18 involved in the acts which were the subject matter of this case, contradicts the  
19 statements prior witnesses. The introduction of the video in light of these  
20 contradictory statements would have led to a reasonable probability of a  
21 different outcome, showing both good cause and actual prejudice.

25 In this case, Mr. Noble’s counsel made errors which fell below minimum  
26 standards of representation, undermined confidence in the adversarial outcome,  
27 and deprived Mr. Noble of fundamentally fair proceedings.  
28

1           **WHEREFORE**, Petitioner prays that this Court grant Petitioner relief to  
2  
3 which Petitioner may be entitled in this proceeding to include an evidentiary  
4 hearing.

5  
6           DATED this 11<sup>th</sup> day of August 2020.

7           By Joseph Z. Gersten  
8           JOSEPH Z. GERSTEN, ESQ.  
9           Nevada Bar No.: 13876  
10          9680 W Tropicana Avenue # 146  
11          Las Vegas, NV 89147  
12          Telephone (702) 857-8777  
13          joe@thegerstenlawfirm.com  
14          Attorney for Petitioner

**VERIFICATION**

Pursuant to N.R.S. 34.730(1) I, Joseph Gersten, Esq. swear under penalty of perjury that the pleading is true except as to those matters stated on information and belief and as to such matters, counsel believes them to be true.

I am counsel for Jesse Noble and have his personal authorization to commence this action.

DATED this 11<sup>th</sup> day of August 2020.

By Joseph Z. Gersten  
JOSEPH Z. GERSTEN, ESQ.  
Nevada Bar No.: 13876  
9680 W Tropicana Avenue # 146  
Las Vegas, NV 89147  
Telephone (702) 857-8777  
joe@thegerstenlawfirm.com  
*Attorney for Petitioner*

**CERTIFICATE OF SERVICE BY MAIL**

I, Joseph Gersten, Esq., hereby certify, pursuant to N.R.C.P. 5(b), that on this 11<sup>th</sup> day of the month of August of the year 2020, I mailed a true and correct copy or submitted through the electronic system, the foregoing  
**SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS**  
addressed to:

CALVIN JOHNSON, Warden  
P.O. Box 650  
Indian Springs, Nevada 89070-0650  
22010 Cold Creek Road  
Indian Springs, Nevada 89070

STEVEN WOLFSON  
Clark County District Attorney  
200 Lewis Ave  
Las Vegas, NV 89101

AARON FORD  
Nevada Attorney General  
100 North Carson Street  
Carson City, Nevada 89701

By Joseph Z. Gersten  
An Employee of the Gersten Law Firm PLLC

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# EXHIBIT A



IN THE SUPREME COURT OF THE STATE OF NEVADA

JESSE D. NOBLE, A/K/A JESSE NOBEL, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 79739  
District Court Case No. C336940

**FILED**

DEC 06 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

**REMITTITUR**

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.  
Receipt for Remittitur.

DATE: November 14, 2019

Elizabeth A. Brown, Clerk of Court

By: Danielle Friend  
Administrative Assistant

cc (without enclosures):

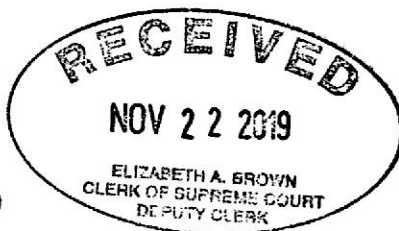
Hon. Michael Villani, District Judge  
Attorney General/Ely  
Clark County District Attorney  
Jesse D. Noble

**RECEIPT FOR REMITTITUR**

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the  
REMITTITUR issued in the above-entitled cause, on NOV 19 2019.

Deputy

*[Signature]*  
District Court Clerk



RECEIVED  
APPEALS

NOV 18 2019

CLERK OF THE COURT

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

JESSE D. NOBLE, A/K/A JESSE NOBEL, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 79739**  
District Court Case No. C336940

**CLERK'S CERTIFICATE**

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

**JUDGMENT**

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

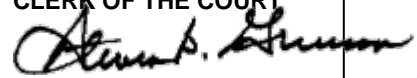
"ORDERS this appeal DISMISSED."

Judgment, as quoted above, entered this 18 day of October, 2019.

IN WITNESS WHEREOF, I have subscribed  
my name and affixed the seal of the Supreme  
Court at my Office in Carson City, Nevada this  
November 14, 2019.

Elizabeth A. Brown, Supreme Court Clerk

By: Danielle Friend  
Administrative Assistant



**RSPN**

AARON D. FORD  
Attorney General  
Allison Herr (Bar No. 5383)  
Senior Deputy Attorney General  
Adam Solinger (Bar. No. 13963)  
Deputy Attorney General  
State of Nevada  
Office of the Attorney General  
555 E. Washington Ave., Ste. 3900  
Las Vegas, NV 89101  
(702) 486-2625 (phone)  
(702) 486-2377 (fax)  
ASolinger@ag.nv.gov

Attorneys for Plaintiff

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

STATE OF NEVADA,

Plaintiff,

v.

JESSE D. NOBLE, a.k.a. Jesse Nobel, Jr.,  
#2679811,

Defendant.

Case No. C-18-336940-1  
Dept. No. IX

Date of Hearing: January 21, 2021  
Time of Hearing: 8:30 AM

**ANSWER TO MOTION FOR NEW TRIAL AND SUPPLEMENTAL  
PETITION FOR WRIT OF HABEAS CORPUS**

Plaintiff, the State of Nevada, through Aaron Ford, Attorney General for the State of Nevada, and his deputy Adam M. Solinger filed they answer responding to Noble's Motion for New Trial filed on November 18, 2019, and his counseled Supplemental Petition for Writ of Habeas Corpus filed on August 11, 2020. Both Noble's motion and petition should be denied as procedurally barred.

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1 Respondents base their answer on the following points and authorities, the papers and pleadings  
2 on file, and any oral argument made at the hearing for this Motion.

3 DATED: December 14, 2020.

4 Submitted by:

5 AARON D. FORD  
6 Attorney General

7 By: /s/ Adam Solinger  
8 Adam Solinger (Bar. No. 13963)  
9 Deputy Attorney General  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **Procedural and Factual Background**

3 **Noble's Conviction in Case Number C-16-312733-1 Sends Him to Prison.**

4 The State of Nevada charged Jesse Noble in 2015 with using a knife to rob three people, two of  
5 whom were elderly. He pleaded guilty to one count of Burglary and one count of Robbery, naming all  
6 victims. The Court sentenced Noble to an aggregate term of 120 months in the Nevada Department of  
7 Corrections with parole eligibility beginning after 48 months. *See Judgment of Conviction C-16-312733-*  
8 *1.*

9 **While in Prison Noble Commits a New Offense.**

10 In 2017, after Noble was in prison, there was an altercation between two other inmates of the 5-  
11 6 quad at High Desert State Prison. While not involved in that altercation, Noble was present in the area  
12 with many other inmates as correctional officers at the prison were seeking to control the scene. Part of  
13 prison protocol requires all uninvolved inmates to lay on their stomachs with their arms above their heads  
14 to allow officers to quickly sort out who is and who is not part of the issue and to show that they are not  
15 a threat.

16 Noble, apparently, did not want to lay on his stomach that night. Instead, he was turning onto his  
17 side and being noncompliant. Officer Brown ordered Noble to return to his stomach and put his hands  
18 above his head. Noble ignored Officer Brown's repeated orders to lay on his stomach. After 5 or 6 times  
19 of ordering him to comply, Noble said, "fuck you, why don't you make me." Officer Brown then went  
20 to restrain Noble by his wrist and Noble struck Officer Brown multiple times in the face causing Officer  
21 Brown to briefly black out.

22 The State of Nevada charged Noble with Battery by Prisoner. Noble elected to proceed to trial.  
23 After two days of testimony and argument, the jury found Noble guilty as charged. The Court sentenced  
24 Noble to 72 months in the Nevada Department of Corrections with parole eligibility after 28 months.  
25 This sentence was consecutive to his prior conviction as required by Nevada law. The judgment of  
26 conviction was filed on April 11, 2019.

27 ///

28 ///

1           **Noble Files an Untimely Notice of Appeal.**

2           On September 30, 2019, five months after the judgment of conviction was entered, Noble filed a  
3 pro per notice of appeal. The Nevada Supreme Court summary dismissed the notice as untimely. *See*  
4 *Order Dismissing Appeal in Nevada Supreme Court case number 79739.*

5           **Noble Files an Untimely Motion for New Trial.**

6           About six weeks later on November 18, 2019, Noble filed a motion for a new trial premised on  
7 the alleged ineffectiveness of his trial counsel. In his motion he alleged:

8       1.       That his trial counsel failed to identify and present a video record to establish that Noble did not  
9 batter Corrections Officer Brown.

10      2.       Trial Counsel failed to interview or present at trial witnesses Dario Paccone, Joseph Dugan, Kerry  
11 Hunter or Stephen Newman despite Noble request.

12      *See Motion at 2-3.* Concurrently, Noble also filed an ex parte request for appointment of counsel and for  
13 an evidentiary hearing.<sup>1</sup>

14           **Noble Is Appointed Counsel Who Files a Supplemental Habeas Petition.**

15           The Court granted Noble's request for counsel. Noble's current attorney, Joseph Gersten,  
16 confirmed as counsel of record and requested more time to meet with his client and to get a copy of the  
17 file. After two extensions on February 12, 2020, Mr. Gersten advised he would like 90 days to file a  
18 supplemental counseled writ. The minutes from that hearing reflect, "Mr. Gersten advised that the Deft.  
19 filed a Motion for a New Trial and he is treating that Motion as a Writ for Habeas Corpus". The transcript  
20 for the February hearing reflects the following exchange:

21                   Mr. Gersten: And just for clarity sake, Your Honor, we're going to be  
22                   treating this as a writ of habeas—he filed a writ for a new trial but we're  
                     going to be treating this as a writ of habeas corpus.

23                   The Court: Understood.

24      *Transcript of February 12, 2012 hearing* at 3:5-8. It is unclear from this exchange whether this was  
25 intended to be a substantive ruling by the Court or merely a statement of counsel's intention.

26      ///

27      

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28      <sup>1</sup> In the ex parte request for counsel, Noble expanded his list of grievances against his trial counsel, however as this was done in the form of an ex parte request it was not served on the appropriate parties. Counsel for the respondents only became aware of the filing after ordering copies of the trial record.

On August 11, 2020, Noble filed a counseled supplemental petition raising the following claims for relief:

Mr. Noble's conviction and sentence are invalid under the 6th and 14th federal constitutional amendment guarantees of due process and equal protection and under the law of article 1 of the Nevada Constitution because prior counsel's performance fell below an objective standard of reasonableness as is mandated by Strickland, 466 U.S. 668, 104 S. Ct. 2052 (1984), by failing to investigate, interview, and/or introduce testimony from certain favorable witnesses.

Mr. Noble's conviction and sentence are invalid under the 6th and 14th federal constitutional amendment guarantees of due process and equal protection and under the law of article 1 of the Nevada Constitution because prior counsel's performance fell below an objective standard of reasonableness as is mandated by Strickland, 466 U.S. 668, 104 S. Ct. 2052 (1984), by failing to introduce testimony from officer brown, the alleged victim.

Mr. Noble's conviction and sentence are invalid under the 6th and 14th federal constitutional amendment guarantees of due process and equal protection and under the law of article 1 of the Nevada Constitution because prior counsel's performance fell below an objective standard of reasonableness as is mandated by Strickland, 466 U.S. 668, 104 S. Ct. 2052 (1984), by failing to introduce the video of the alleged incident which show no instances of the petitioner involved in any aspect of the alleged disturbance.

*Supplemental Petition* at 8-13.

## **ARGUMENT**

### **I. Noble's Motion/Petition Should Be Denied on Procedural and Substantive Grounds.**

#### **A. The Motion for New Trial Is Untimely and Fails to Meet the Minimum Standards to be Deemed a Habeas Petition.**

Noble's use of a motion for new trial was untimely and procedurally improper. This untimely motion cannot be corrected by filing a supplemental habeas petition. To quote Barack Obama "you can put lipstick on a pig but it's still a pig". And as a result, the defective filings have left the Court in a procedural quagmire.

The statute governing a request for new trial imposes strict time and content limitations.

NRS 176.515 Court may grant new trial or vacate judgment in certain circumstances.

1. The court may grant a new trial to a defendant if required as a matter of law or on the ground of newly discovered evidence.

2. If trial was by the court without a jury, the court may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment.

1           3. Except as otherwise provided in NRS 176.09187, a motion for a  
2 new trial based on the ground of newly discovered evidence may be made  
3 only within 2 years after the verdict or finding of guilt.

4           4. A motion for a new trial based on any other grounds must be made  
5 within 7 days after the verdict or finding of guilt or within such further  
6 time as the court may fix during the 7-day period.

7           As set forth in NRS 176.515(4), a motion for new trial must be brought within seven days after  
8 a verdict is rendered, or within two years if the request is based on new evidence. Here Noble's request  
9 was not brought on new evidence but based upon Noble's belief that his trial counsel was ineffective.  
10 As such the time for filing his motion expired on February 19, 2019, and Noble's motion was filed nine  
11 months too late. Noble's motion must be denied because it is untimely, and it fails to establish grounds  
12 "as a matter of law" justifying a new trial.

13           While Noble may argue that his motion should be treated as a habeas petition, his pleading fails  
14 to address even minimal requirements for consideration of habeas relief. Respondents acknowledge that  
15 the courts have consistently held that an inmate's pleadings are to be construed liberally. Nonetheless, a  
16 pleading (regardless of title) must be dismissed if it does not meet the "relevant substantive statutory  
17 requirement for such a request" *Pangallo v. State*, 112 Nev. 1533 (1996). (Overruled on other grounds).  
18 See also *Passanisi v. Director Nevada Department of Prisons*, 105 Nev. 63 (1989).

19           NRS 34.724 provides that a post-conviction habeas petition should be used to challenge an illegal  
20 confinement or a challenge to the computation of sentence, and "must be used exclusively" in place of  
21 other common-law, statutory, or other remedies. Challenges to the validity of the underlying conviction  
22 must be filed where the conviction occurred, but any other challenges are filed where the inmate is  
23 incarcerated and "shall be filed as a new action separate and distinct from any original proceedings in  
24 which the criminal conviction was obtained". NRS 34.730(3).

25           The statute calls for a separate action to be opened because "[h]abeas corpus is a unique remedy  
26 that is governed by its own statutes regarding procedure and appeal. See *Mazzan v. State*, 109 Nev. 11  
27 1067, 863 P.2d 1035 (1993) as quoted in *Edwards v. State*, 112 Nev. 704, 709, 918 P.2d 321, 325 (1996).  
28 A habeas proceeding is characterized as neither civil nor criminal for all purposes. It is a special statutory  
remedy that is essentially unique. *Hill v. Warden*, 96 Nev. 38, 40, 604 P.2d 807, 808 (1980) as quoted in  
*Mazzan v. State*, 109 Nev. 1067, 1070, 863 P.2d 1035, 1036 (1993).



1           The statutory requirements for a habeas petition differ from motions filed in a criminal case. For  
2 instance, in a habeas petition, the inmate is the petitioner, and the warden is the named respondent. NRS  
3 34.730(2). This requirement is at odds with the Nevada Rules of Criminal Procedure, which require a  
4 case be prosecuted in the name of the State of Nevada as plaintiff (NRS 169.055), and the party  
5 prosecuted as the defendant (NRS 169.065). A habeas action involves different parties than a post-  
6 conviction criminal motion. The warden of the prison and the Nevada Department of Corrections  
7 (NDOC) are not parties to the criminal action or subject to the contempt powers of the Court absent a  
8 writ of habeas corpus. Moreover, the warden, and NDOC as non-parties to the criminal action would  
9 have no right to appeal a ruling arising from a criminal case but would have a right to appeal a ruling  
10 from a habeas petition.

11           Further, under NRS 34.780, the Nevada Rules of Civil Procedure apply to the extent that they  
12 are not inconsistent with the statutes governing habeas petitions and allow for discovery that would not  
13 otherwise be available in a post-conviction criminal action. Likewise, while criminal appeals are subject  
14 to fast-track appellate rules (NRAP Rule 3C), habeas petitions are not subject to the same rules (NRAP  
15 22 to 24) and proceed under their own statutory scheme.

16           Moreover, NRS 34.730 and NRS 34.735 establish the requirements for a pleading to be  
17 considered a habeas petition. These requirements include at a minimum that the petition must be verified.  
18 NRS 34.730(1). A copy must be served upon the warden and the Nevada Attorney General. NRS  
19 34.730(2). As mentioned above, it must be filed as a new and separate action. NRS 34.730(3). And it  
20 must contain the information required by NRS 34.735. Noble's motion did not meet any of these  
21 requirements.

22           Consequently, while it is common practice to liberally construed post-conviction motions, there  
23 is no amount of supplementation which can be extended to Noble to cure the deficits in his motion to  
24 turn it into a habeas action. Noble's motion for new trial must be denied as it untimely, and to the extent  
25 it is intended to substitute for a habeas petition, denied because it fails to meet procedural requirements.

26           **B.     The Motion's Deficits are Not Cured by The Supplemental Habeas Petition.**

27           NRS 34.750(3) provide that after the appointment of counsel, the "petitioner may file and serve  
28 supplemental pleadings". But these supplemental pleadings are intended to supplement not replace the

1 original filing. Thus, if there are deficient in the original pleading, the supplement must address the  
2 deficient. However, in this case the supplemental petition has failed to address the party, service, and  
3 verification requirements. As well as the other requirements of 34.720 to 34.830 inclusive. See *Miles v.*  
4 *State*, 120 Nev. 383, 387, 91 P.3d 588, 590 (2004) (Once the court acquires jurisdiction by the timely  
5 filing of the habeas petition, any defects in the petition may be cured by amended, even after the statutory  
6 time limit for filing the petition has elapsed.)

7 **C. The One Year Limitations Period Has Passed and As a Result The Amended**  
8 **Petition Must Relate Back.**

9 A writ of habeas corpus challenging the validity of a judgment of conviction must be filed 1 year  
10 after the entry of the judgment of conviction or one year after an appellate court issues its remittitur if  
11 an appeal is taken. NRS 34.726.

12 In this case, Noble's judgment of conviction was entered on April 11, 2019. Since he did not  
13 appeal, his deadline for filing of a writ ran on April 11, 2020. He did file what his attorney is converting  
14 to a writ on November 11, 2019 and that motion was timely filed. While the motion does not comply  
15 with the procedural requirements of Chapter 34, Noble's Counsel intended to file a supplemental writ  
16 pursuant to NRS 34.750. While a supplemental writ has been filed, the deadline for a writ with new  
17 claims that does not relate back to Noble's original pro per filing has passed. Thus, any claims in the  
18 supplemental writ, must relate back to the original filing by Noble.

19 In the event the Court does not grant the procedural relief requested *infra*, the State requests that  
20 the Court dismiss the petition as vague and conclusory pursuant to NRS 34.750.

21 **D. At a Minimum This Matter Must Be Transferred to Master Calendar For**  
22 **Reclassification as a Civil "A" Case Instead of Being Handled Within the Original**  
23 **Criminal Case.**

24 Even if this Court should elect to treat Noble's motion a seeking habeas relief at a minimum the  
25 Court should still be refer this matter to Master Calendar to be reclassified as a habeas action so that a  
26 new case number can be assigned and it is allowed to proceed as a habeas action upon appeal.

26 ///

27 ///

28 ///

1 Nevada law requires:

2 3. Except as otherwise provided in this subsection, the clerk of the district  
3 court shall file a petition as a new action separate and distinct from any  
4 original proceeding in which a conviction has been had. If a petition  
5 challenges the validity of a conviction or sentence, it must be:

- 6 (a) Filed with the record of the original proceeding to which it relates;  
7 and  
8 (b) Whenever possible, assigned to the original judge or court.

9 NRS 34.730(3).

10 As is clear, the Clerk for the Eighth Judicial District Court is required to file the petition as a  
11 separate action with a copy of the record in this case. It would then be assigned back to this Court for  
12 substantive handling.

13 **E. Noble's Claims Should Be Denied as Vague and Conclusory.**

14 To the extent this Court deems the motion and supplement to be deemed a valid petition for writ  
15 of habeas corpus they should still be denied on substantive grounds as conclusory and vague. The State  
16 cannot answer the claims because the claims are nonspecific to the point that the State would be required  
17 to create claims and then answer them with only the vaguest idea of what Nobles' allegations might be.  
18 Means v. State, 120 Nev. 1001, 103 P.3d 25 (2004) requires that Noble show that the underlying fact  
19 support his claims by a preponderance of the evidence.

20 **1. Ground 1 of the Supplemental Petition is Conclusory and Vague Warranting Dismissal.**

21 In this ground, Noble alleges his trial counsel was ineffective for failing to interview four  
22 witnesses and present their testimony because Noble alleges the testimony would have been conflicting  
23 and/or contradictory to testimony from the State's witnesses. However, Noble completely fails to allege  
24 with any degree of specificity what the witnesses would have testified to, and how the testimony would  
25 have been conflicting or contradictory to the State's case.

26 The four witnesses in question are all witnesses identified by the State. They are all correctional  
27 officers. They were interviewed and gave statements that were disclosed to Noble and his counsel. Noble  
28 now says they should have been interviewed again by his counsel, but he failed to allege what specific  
information would have been uncovered had this occurred. A petitioner may not make bare and naked

1 claims to support his petition; instead his claims must be supported with specific factual allegations that  
2 are not belied by the record and, if true, would entitle him to relief. *See Hargrove v. State*, 100 Nev. 498,  
3 502-03 (1984). Bare claims are insufficient to demonstrate that a petitioner is entitled to relief. *See*  
4 *Molina v. State*, 120 Nev. 185, 192, 87 P.13d 533, 538 (2004) (a petitioner claiming counsel did not  
5 conduct an adequate investigation must specify what a more thorough investigation would have  
6 uncovered)

7 Here, Noble makes no specific factual allegations regarding how the witnesses' proposed  
8 testimony would have been conflicting or contradictory to anything, yet alone evidence presented by  
9 the State. Thus, the State is without the ability to respond to this ground because it is nothing more than  
10 a bare and naked claim warranting dismissal. Noble cannot make conclusory claims that his trial  
11 counsel's conduct was deficient for not speaking with witnesses who Noble claims would offer helpful  
12 testimony without at least saying what the testimony would be and how he suffered prejudice.  
13 Additionally, the names of the proffered witnesses are correctional officers who were interviewed as  
14 part of the investigation and their interviews were recorded. Thus, Noble has had two chances – in his  
15 pro per petition and his counseled supplemental petition – to refine his allegation of deficient  
16 performance and prejudice and he failed to do so. As a result, this ground must be dismissed.

## 17 **2. Ground 2 is Conclusory Warranting Dismissal**

18 In this ground, Noble alleges his attorney was ineffective for apparently not impeaching Officer  
19 Brown for alleged inconsistencies. Specifically, Noble believes that Officer Brown changed his story  
20 regarding which hand he grabbed and whether he blacked out during the incident.

21 As set forth *infra* a petitioner must allege with specificity his allegations and allege specific facts  
22 that if true would warrant relief. Under *Strickland*, “strategic choices made after thorough investigation  
23 of law and facts relevant to plausible options are virtually unchallengeable...” 466 U.S. at 690-91.  
24 Tactical decisions such as this one “are virtually unchallengeable absent extraordinary circumstances”,  
25 *Ford v. State*, 105 Nev 850, 853, 784 P.2d 951, 953 (1989).

26 Here, Noble fails to allege that there was a reasonable probability of a different outcome at trial  
27 if Officer Brown was cross examined on Noble's proffered grounds. Noble points to no evidence that  
28 would have shown Officer Brown lied and/or made up the fact that he was assaulted by Noble. Instead,

1 Noble makes a conclusory allegation that the outcome of trial would have been different if Officer  
2 Brown's alleged inconsistencies were pointed out.

3         Additionally, Noble's trial counsel made a reasonable strategic choice not to try to impeach  
4 Officer Brown. Noble's trial counsel was also his counsel during Noble's preliminary hearing. At that  
5 hearing, counsel did cross-examine Officer Brown over which hand he grabbed during the incident and  
6 whether he blacked out. Thus, trial counsel decision not to revisit the same issues that he did not deem  
7 fruitful during the preliminary hearing is a reasonable strategic choice that cannot be challenged.

8         Even if the decision not to impeach the witness was deemed not to be a strategic choice that  
9 cannot be challenged, Noble fails to allege how the decision was constitutional deficient and how he  
10 suffered prejudice. In essence, Noble must allege that there is a reasonable probability that but for  
11 counsel's errors, the results of trial would have been different. It stretches credulity that a jury would  
12 have decided that Noble did not batter Officer Brown even if he was confused or unsure which wrist, he  
13 grabbed to try to make Noble comply or whether Officer Brown blacked out after Noble attacked him.  
14 As a result, this ground must be dismissed because it does not allege anything with specificity, and it is  
15 the type of conduct that cannot be challenged as a strategic choice made by counsel.

### 16                 **3.         Ground 3 is Conclusory Warranting Dismissal**

17         In this ground, Noble alleges that trial counsel was ineffective for not showing a video that Noble  
18 believes would show that he was not involved in any aspect of the alleged disturbance. At the outset,  
19 this ground is belied by the record. Officer Brown testified at the preliminary hearing that there are no  
20 cameras in the area where the disturbance occurred. Thus, no video exists.

21         Nonetheless, even if there were a video, that is not the issue in this case. Whether Noble was  
22 involved in the disturbance or not does not matter. The charges stem from Noble refusing to lay on his  
23 stomach as commanded by the correctional officer who was trying to resolve the disturbance. When  
24 Noble refused to lay on his stomach and instead insisted on laying on his side, Officer Brown reasonably  
25 concluded that Noble might decide to enter the disturbance and make it worse. Officer Brown was right.  
26 Noble then battered Officer Brown when Officer Brown tried to restrain him and prevent a further  
27 disturbance.

28         ///

1 Thus, even if Noble was not involved in the initial disturbance, that is not relevant to his current  
2 conviction. What matters is that he was a prisoner in lawful custody who then battered a correctional  
3 officer and Noble has failed to allege that any video would give him some type of legal justification for  
4 his battery. This ground must be dismissed because it is belied by the record and patently frivolous.

### 5 **III. Noble Received Constitutionally Effective Assistance of Counsel**

6 For Noble prevail on a claim of ineffective assistance of counsel, he must prove both that  
7 counsel's performance fell below an objective standard of reasonableness; and, but for counsel's error,  
8 the results would have been different. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). A defendant  
9 must prove both prongs of the *Strickland* test before relief can be granted. *United States v. Sanchez-*  
10 *Cervantes*, 282 F.3d 664, 672 (9th Cir. 2002) (citation omitted). "Without proof of both deficient  
11 performance and prejudice to the defense . . . it could not be said that the sentence or conviction 'resulted  
12 from a breakdown in the adversary process that rendered the result of the proceeding unreliable.'" *Bell*  
13 *v. Cone*, 535 U.S. 685, 695 (2002) (citation omitted).

14 To meet the first prong, Smith must show that his attorney's errors were so serious that the  
15 attorney was not functioning as the counsel guaranteed by the Sixth Amendment. *Id.* Review of an  
16 attorney's performance must be "highly deferential," and must adopt counsel's perspective at the time  
17 of the challenged conduct to avoid the "distorting effects of hindsight." *Id.* at 689. A court must "indulge  
18 a strong presumption that counsel's conduct falls within the wide range of reasonable professional  
19 assistance; that is, the defendant must overcome the presumption that, under the circumstances, the  
20 challenged action 'might be considered sound trial strategy.'" *Id.* (citation omitted). The court will  
21 strongly presume that counsel's conduct was within the wide range of reasonable assistance and that  
22 counsel exercised acceptable judgment in all significant respects. *Beardslee v. Woodford*, 358 F.3d 560,  
23 569 (9th Cir. 2004) (citation omitted). Because a lawyer is presumed to provide competent  
24 representation, "the burden rests on the accused to demonstrate a constitutional violation." *United States*  
25 *v. Cronin*, 466 U.S. 648, 658 (1984) (citation omitted). It is inappropriate to focus on what could have  
26 been done rather than focusing on the reasonableness of what counsel did. *Babbitt v. Calderon*, 151 F.3d  
27 1170, 1174 (9th Cir. 1998).

28 ///

1 For a petitioner to establish prejudice, the likelihood of a different result must be substantial, not  
2 merely conceivable. *Id.* at 693. “Without proof of both deficient performance and prejudice to the  
3 defense...it could not be said that the sentence or conviction ‘resulted from a breakdown in the adversary  
4 process that rendered the result of the proceeding unreliable.’” *Bell*, 535 U.S. at 695. Failure to meet  
5 either prong of the analysis defeats the claim of ineffective assistance. *Strickland*, 466 U.S. at 700.

6 Here, Noble has focused the totality of his argument on whether his counsel’s performance was  
7 deficient, but he has totally failed to address prejudice or show by a preponderance of evidence that there  
8 is a substantial likelihood the outcome of his trial would have been different.

### 9 CONCLUSION

10 The State of Nevada respectfully requests that the Court find that the one-year statute for filing  
11 of any new claims has run and that the supplemental petition filed by Noble’s Counsel may only address  
12 claims that relate back to the original pro per filing by Noble. Additionally, the Court must refer the ex  
13 parte motion filed by Noble to the Court Clerk for filing into a separate action and that a copy of the  
14 record in this case be concurrently filed with the same and then be assigned back to this Court.

15 Alternatively, if the Court proceeds in this case as it is procedurally postured, then all the claims  
16 must be dismissed. The claims are not pled with the required specificity and fail to allege anything, yet  
17 alone specific conduct that raises to the level of ineffective assistance of counsel.

18 DATED: December 14, 2020.

19 Submitted by:

20 AARON D. FORD  
21 Attorney General

22 By: /s/ Adam Solinger  
23 Adam Solinger (Bar. No. 13963)  
24 Deputy Attorney General  
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**RPLY**

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JESSE NOBLE,

*Petitioner,*

vs.

CALVIN JOHNSON, WARDEN,

*Respondent.*

Case No.: C-18-336940-1

Dept. No.: IX

**PETITIONER'S REPLY TO STATE'S ANSWER TO MOTION FOR NEW  
TRIAL AND SUPPLEMENTAL PETITION FOR WRIT OF HABEAS  
CORPUS (POST-CONVICTION)**

**COMES NOW**, the Petitioner, **JESSE NOBLE**, by and through his  
attorney, **JOSEPH Z. GERSTEN, ESQ.**, of **THE GERSTEN LAW FIRM  
PLLC**, and hereby submits this **PETITIONER'S REPLY TO STATE'S  
ANSWER TO MOTION FOR NEW TRIAL AND SUPPLEMENTAL  
PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**.

This Reply is made and based upon the pleadings attached hereto, the papers

1 and pleadings on file herein, together with arguments of counsel adduced at the  
2 time of hearing on this matter.

3 DATED this 12<sup>th</sup> day of January 2021.

4 By Joseph Z. Gersten  
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ARGUMENT

**A. MR. NOBLE’S PETITION SHOULD NOT BE DENIED ON PROCEDURAL OR SUBSTANTIVE GROUNDS.**

Mr. Noble’s Petition should not be denied on procedural and substantive grounds. NRS 34.720 provides:

The provisions of NRS 34.720 to 34.830, inclusive, apply only to petitions for writs of habeas corpus in which the petitioner:

1. Requests relief from a judgment of conviction or sentence in a criminal case;

....

See NRS 34.720 (emphasis added). Mr. Noble’s Petition is based upon a request for relief from a judgment of conviction or sentence in a criminal case.

See Petitioner’s Supplemental Petition for Writ of Habeas Corpus. In compliance with §§ 34.720 - 34.830, Mr. Noble’s Petition was served upon the Warden of High Desert State Prison (the location of Petitioner’s confinement), the District Attorney, and the Attorney General. Id. at 14. The Petition was verified in accordance with NRS 34.730. Id. at 15.<sup>1</sup> And, the Supplemental Petition was absolutely filed in the form required by NRS 34.735. Id.

Thus, procedurally and substantively, Petitioner satisfied any requirements of Title 3, Chapter 34 of the NRS.

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<sup>1</sup> As well, even if inadequate, verification or service is not a jurisdictional defect, and may be cured through amendment. See Miles v. State, 120 Nev. 383 (2004).

1           **B. ANY DEFICIENCIES CLAIMED BY RESPONDENTS ARE**  
2           **CURED BY MR. NOBLE’S SUPPLEMENTAL HABEAS**  
3           **PETITION.**

4           Any deficiencies claimed by Respondents are cured by Mr. Noble’s  
5           supplemental habeas petition. As indicated *supra* A, Petitioner’s  
6           Supplemental Petition DID address the claimed party, service, and  
7           verification requirements.

8           Again, procedurally and substantively, Petitioner satisfied any  
9           requirements of Title 3, Chapter 34 of the NRS.

10           **C. THE PETITION DOES RELATE BACK.**

11           The Petition does relate back. A supplemental petition relates back to  
12           the filing date of the original petition. See State v. Powell, 122 Nev. 751  
13           (2006). The State acquiesces and notes that Mr. Noble’s original Petition was  
14           timely filed. See State’s Response at 8, lns. 13 – 14. Thus, the Supplemental  
15           Petition relates back and is proper.

16           Again, procedurally and substantively, Petitioner satisfied any  
17           requirements of Title 3, Chapter 34 of the NRS.

18           **D. RESPONDENT’S CLAIMS ABOUT THE MASTER**  
19           **CALENDAR APPEAR TO BE DIRECTED TOWARDS THE**  
20           **CLERK OF THE COURT AND PETITIONER FINDS SAID**  
21           **MUSINGS CONFUSING AND MISDIRECTED AT THIS**  
22           **TIME.**

23           Respondent’s claims about the Master Calendar appear to be directed  
24           towards the Clerk of the Court and Petitioner finds said musings confusing  
25           and misleading.

1 and misdirected at this time. However, Petitioner reserves the right to  
2 respond at such time as said claims are either directed at Petitioner and/or  
3 are clarified in some way so as to make them cognizable.  
4

5 **E. PETITIONER'S CLAIMS SHOULD NOT BE DENIED AS**  
6 **VAGUE AND CONCLUSORY.**

7 Petitioner's claims should not be denied as vague and conclusory. As  
8 noted in Petitioner's Supplemental filing:  
9

10 Mr. Noble's counsel failed to investigate, interview, and/or  
11 introduce evidence of four witnesses. These witnesses Dario  
12 Paccone, Joseph Dugan, Kerry Hunter, and a Newman made  
13 statements that were either conflicting or contradictory to the  
14 State's narrative. An attorney must reasonably investigate in  
15 preparing for trial or reasonably decide not to. Strickland, 466  
16 U.S. at 691; Kirksey v. State, 112 Nev. 980, 992, 923 P.2d 1102,  
17 1110 (1996). In this case the investigation and introduction of  
18 these individual's statements would have been critical in  
19 Petitioner's defense yet were completely ignored by trial counsel.  
20 The introduction of these witness statements would have led to  
21 a reasonable probability of a different outcome, showing both  
22 good cause and actual prejudice.

23 See Petitioner's Supplemental Writ at 9. Here Petitioner specifically alleged  
24 that his counsel failed to investigate, interview, and/or introduce evidence  
25 that was either conflicting or contradictory to the State's narrative; otherwise  
26 known as impeachment. Id. Furthermore, Petitioner noted that the  
27 introduction of these witness statements would have led to a reasonable  
28 probability of a different outcome, showing both good cause and actual  
prejudice. Id. at 9.

///

As further noted in Petitioner's filing:

Here, Mr. Noble's counsel failed to introduce conflicting evidence from the State's key witness Officer Brown. An attorney must reasonably investigate in preparing for trial or reasonably decide not to. Strickland, 466 U.S. at 691; Kirksey v. State, 112 Nev. 980, 992, 923 P.2d 1102, 1110 (1996). In this case the introduction of Brown's conflicting statements, that he changed his story regarding which hand he grabbed during the incident, and the testimony that he blacked out and when he awoke the incident was over, contradicts his institutional statement. The introduction of these contradictory statements would have led to a reasonable probability of a different outcome, showing both good cause and actual prejudice.

See Petitioner's Supplemental Writ at 11. Here again, Petitioner makes specific allegations concerning Officer Brown; again otherwise known as impeachment. Id. And again, Petitioner noted that the introduction of this evidence would have led to a reasonable probability of a different outcome, showing both good cause and actual prejudice. Id. at 11.

Lastly, Petitioner's filing stated:

Here, Mr. Noble's counsel failed to introduce the video of the alleged incident which show no instances of the Petitioner involved in any aspect of the alleged disturbance. As noted previously, an attorney must reasonably investigate in preparing for trial or reasonably decide not to. Strickland, 466 U.S. at 691; Kirksey v. State, 112 Nev. 980, 992, 923 P.2d 1102, 1110 (1996). In this case the introduction of the State's video showing at no time was Petitioner involved in the acts which were the subject matter of this case, contradicts the statements prior witnesses. The introduction of the video in light of these contradictory statements would have led to a reasonable probability of a different outcome, showing both good cause and actual prejudice.

1 See Petitioner's Supplemental Writ at 13. Here again, Petitioner makes  
2 specific allegations concerning his trial counsel's failure to introduce video  
3 evidence demonstrating Petitioner's participation or lack thereof. Id. And  
4 again, Petitioner noted that the introduction of this evidence would have led  
5 to a reasonable probability of a different outcome, showing both good cause  
6 and actual prejudice. Id. at 13.

7  
8 With regard to the State's reference to Means v. State, Petitioner  
9 incorporates this argument/case into his own. See Means v. State, 120 Nev.  
10 1001 (2004). The Nevada Supreme Court has said:

11  
12  
13 Choosing consistency with federal authority, we now hold that a  
14 habeas corpus petitioner must prove the disputed factual  
15 allegations underlying his ineffective-assistance claim by a  
16 preponderance of the evidence. To the extent that our decision  
17 today conflicts with the "strong and convincing" language of  
18 Davis and its predecessors, we expressly overrule those cases.  
19 Therefore, when a petitioner alleges ineffective assistance of  
20 counsel, he must establish the factual allegations which form  
21 the basis for his claim of ineffective assistance by a  
22 preponderance of the evidence. Next, as stated in Strickland, the  
23 petitioner must establish that those facts show counsel's  
24 performance fell below a standard of objective reasonableness,  
25 and finally the petitioner must establish prejudice by showing a  
26 reasonable probability that, but for counsel's deficient  
27 performance, the outcome would have been different.

28 In this case, the evidence before the district court at the post-conviction evidentiary hearing primarily consisted of Means's testimony and that of his former attorneys.

...

Where there is credible, conflicting evidence, the burden of proof may make a difference in the district court's factual findings. Here, the evidence about whether Means requested his attorneys to file a direct appeal involved directly conflicting

1 testimony. Because the district court required Means to prove by  
2 clear and convincing evidence that he had asked his attorneys to  
3 pursue an appeal, Means's rights were prejudiced. The record  
4 before us does not disclose whether the district court's factual  
5 determination that Means had not asked his attorneys to appeal  
6 would have been different had Means only been required to  
7 establish this fact by a preponderance of the evidence.

8 By holding Means to an impermissibly higher burden of proof,  
9 we cannot conclude that the district court's error was harmless  
10 beyond a reasonable doubt. If the evidence is persuasive when  
11 the burden of a preponderance of the evidence is applied, then  
12 Means would be entitled to post-conviction relief because, as we  
13 discuss later in this opinion, prejudice is presumed. It is entirely  
14 possible that evidence may be persuasive under a preponderance  
15 standard although not under more stringent standards such as  
16 proof by clear and convincing evidence or the criminal standard  
17 requiring proof beyond a reasonable doubt.

18 Because Means is entitled to present his evidence and have  
19 disputed factual matters judged by a preponderance of the  
20 evidence, and because Means was, at the post-conviction  
21 hearing, improperly refused the opportunity to inspect his  
22 counsel's notes, we are compelled to reverse and remand for a  
23 new evidentiary hearing so that the district court may, first,  
24 permit Means access to the notes.

25 . . . .

26 Id. (emphasis added). The important takeaway here is that Petitioner was  
27 entitled to an evidentiary hearing where the evidence presented was  
28 considered using the preponderance of the evidence standard. Id. What was  
not required by the Court, was that Petitioner's filings had to demonstrate a  
preponderance of the evidence within his filed brief as is  
claimed/mischaracterized by the State. Id.

Again, procedurally and substantively, Petitioner satisfied any  
requirements of Title 3, Chapter 34 of the NRS.



**F. NOBLE DID NOT RECEIVE CONSTITUTIONALLY EFFECTIVE ASSISTANCE OF COUNSEL.**

Noble did not receive Constitutionally effective assistance of counsel. As noted in Petitioner's Brief, and *supra* E, he has identified multiple grounds on which his trial counsel was deficient. The State is again trying to muddy the waters by referring to a case, Means, that establishes the burden of proof (preponderance of the evidence), in these matters. However, as noted *supra*, Means applies this standard to the evidence received from an evidentiary hearing, NOT the filings of the Petitioner. Means v. State, 120 Nev. 1001 (2004).

Under Strickland v. Washington, a conviction must be reversed due to ineffective counsel if first, "counsel's performance was deficient," and second, "the deficient performance prejudiced the defense." Strickland v. Washington, 466 U.S. at 687. The deficient performance prejudiced the defense if "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 698. "The ultimate focus of the inquiry must be on the fundamental fairness of the proceeding. . . ." Id. at 696. Nevada adopted the Strickland standards for the effective assistance of counsel. See Hurd v. State, 114 Nev. 182, 188, 953 P.2d 270, 274 (1998).

1 Here, Mr. Noble's counsel failed to investigate, interview, and/or introduce  
2 evidence of four witnesses. These witnesses Dario Paccone, Joseph Dugan, Kerry  
3 Hunter, and a Newman made statements that were either conflicting or  
4 contradictory to the State's narrative. As well, Mr. Noble's counsel also failed to  
5 introduce conflicting evidence from the State's key witness Officer Brown. And  
6 finally, Mr. Noble's counsel failed to introduce the video of the alleged incident  
7 which show no instances of the Petitioner involved in any aspect of the alleged  
8 disturbance. In this case the introduction of the State's video showing at no time  
9 was Petitioner involved in the acts which were the subject matter of this case,  
10 contradicts the statements of prior witnesses.

11 As a result, Mr. Noble's counsel made errors which fell below minimum  
12 standards of representation, undermined confidence in the adversarial outcome,  
13 and deprived Mr. Noble of fundamentally fair proceedings.

14 **WHEREFORE**, Petitioner prays that this Court grant Petitioner relief to  
15 which Petitioner may be entitled in this proceeding to include an evidentiary  
16 hearing.

17 DATED this 12<sup>th</sup> day of January 2021.

18 By Joseph Z. Gersten  
19 JOSEPH Z. GERSTEN, ESQ.  
20 Nevada Bar No.: 13876  
21 9680 W Tropicana Avenue # 146  
22 Las Vegas, NV 89147  
23 Telephone (702) 857-8777  
24 joe@thegerstenlawfirm.com  
25 Attorney for Petitioner  
26  
27  
28

**VERIFICATION**

Pursuant to N.R.S. 34.730(1) I, Joseph Gersten, Esq. swear under penalty of perjury that the pleading is true except as to those matters stated on information and belief and as to such matters, counsel believes them to be true.

I am counsel for Jesse Noble and have his personal authorization to commence this action.

DATED this 12<sup>th</sup> day of January 2021.

By Joseph Z. Gersten  
JOSEPH Z. GERSTEN, ESQ.  
Nevada Bar No.: 13876  
9680 W Tropicana Avenue # 146  
Las Vegas, NV 89147  
Telephone (702) 857-8777  
joe@thegerstenlawfirm.com  
*Attorney for Petitioner*

**CERTIFICATE OF SERVICE BY MAIL**

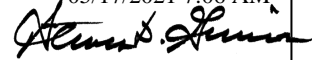
I, Joseph Gersten, Esq., hereby certify, pursuant to N.R.C.P. 5(b), that on this 12<sup>th</sup> day of the month of January of the year 2021, I mailed a true and correct copy or submitted through the electronic system, the foregoing **PETITIONER'S REPLY TO STATE'S ANSWER TO MOTION FOR NEW TRIAL AND SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)** addressed to:

CALVIN JOHNSON, Warden  
P.O. Box 650  
Indian Springs, Nevada 89070-0650  
22010 Cold Creek Road  
Indian Springs, Nevada 89070

STEVEN WOLFSON  
Clark County District Attorney  
200 Lewis Ave  
Las Vegas, NV 89101

AARON FORD  
Nevada Attorney General  
100 North Carson Street  
Carson City, Nevada 89701

By Joseph Z. Gersten  
An Employee of the Gersten Law Firm PLLC

  
CLERK OF THE COURT

1 **DAO**

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

5 JESSE NOBLE,

6 Petitioner,

7 vs.

8 CALVIN JOHNSON, WARDEN,

9 Respondent.

Case No. C-18-336940-1

Dept. No. IX

10 **DECISION AND ORDER**

11 THIS CAUSE came before the Honorable ~~Christina~~<sup>Cristina</sup> Silva this 24th day of March 2021, for review  
12 of Jesse Noble's *Supplemental Petition for Writ of Habeas Corpus* (Petition), and Respondents'  
13 *Response*. After oral argument, the Court now makes the following findings of fact and conclusions of  
14 law.

15 THE COURT FINDS that Noble filed a motion for a new trial and an ex-parte motion for  
16 appointment of counsel on November 18, 2019.

17 THE COURT FINDS that Noble did not timely file a motion for a new trial and therefore denies  
18 that motion, to the extent his intent was to request a new trial.

19 THE COURT FURTHER FINDS that Noble intended to file a petition for a writ of habeas corpus  
20 pursuant to NRS Chapter 34. Therefore, the Court will treat Noble's November 18, 2019 filing as a  
21 petition for writ of habeas corpus.

22 THE COURT FINDS that Noble has failed to plead with specificity facts that if true would entitle  
23 him to relief.

24 THE COURT FURTHER FINDS that Noble has failed to allege how his attorney was deficient  
25 in cross examining the witnesses called at trial. Merely stating that the witnesses were not impeached,  
26 without specific allegations of how they could have been impeached, is not enough to show by a  
27 preponderance of the evidence that Noble is entitled to relief and thus warrant an evidentiary hearing.  
28

1 THE COURT FINDS that Noble has failed to show a reasonable probability of a different  
2 outcome had the victim been cross examined over which hand he was punched with because the victim  
3 consistently testified that Noble battered him.

4 THE COURT FINDS that Noble has failed to show that his counsel was deficient for not  
5 introducing a video that does not show Noble in the video and counsel's strategic choices are entitled to  
6 deference.

7 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus is  
8 DENIED. **Dated this 17th day of May, 2021**

9 IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

10  
11   
The Honorable Cristina Silva  
District Court Judge EC

12 Submitted by:

13 /s/ Adam Solinger  
14 Adam M. Solinger (13963)  
15 Deputy Attorney General

**1F8 8BD 60BF 1E32**  
**Cristina D. Silva**  
**District Court Judge**

16 Approved as to form and content by:

17 /s/ Joseph Gersten  
18 Joseph Gersten, Esq.  
19 Attorney for Petitioner  
20  
21  
22  
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26  
27  
28

**From:** [Adam M. Solinger](#)  
**To:** [Lucas J. Combs](#)  
**Subject:** Fw: Jesse Noble Draft Order  
**Date:** Thursday, April 8, 2021 2:56:55 PM

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**From:** The Gersten Law Firm PLLC <[joe@thegerstenlawfirm.com](mailto:joe@thegerstenlawfirm.com)>  
**Sent:** Thursday, April 8, 2021 12:36 PM  
**To:** Adam M. Solinger <[ASolinger@ag.nv.gov](mailto:ASolinger@ag.nv.gov)>  
**Subject:** Re: Jesse Noble Draft Order

I approve. Thanks.

**Joseph Gersten, Esq.**



**9680 W Tropicana Avenue, Suite 146**  
**Las Vegas, NV 89147-8245**  
**Office: (702) 857-8777 | Fax: (702) 857-8767**

[www.thegerstenlawfirm.com](http://www.thegerstenlawfirm.com)



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On Thu, Apr 8, 2021 at 12:33 PM Adam M. Solinger <[ASolinger@ag.nv.gov](mailto:ASolinger@ag.nv.gov)> wrote:

Thank you. I'm sending this final pdf with your e-signature attached for final approval before I submit it to the court.

---

**From:** The Gersten Law Firm PLLC <[joe@thegerstenlawfirm.com](mailto:joe@thegerstenlawfirm.com)>  
**Sent:** Thursday, April 8, 2021 12:02 PM  
**To:** Adam M. Solinger <[ASolinger@ag.nv.gov](mailto:ASolinger@ag.nv.gov)>  
**Subject:** Re: Jesse Noble Draft Order

That's great. Let's go with it.

Joseph Gersten, Esq.

AA0092

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 State of Nevada

CASE NO: C-18-336940-1

7 vs

DEPT. NO. Department 9

8 Jesse Noble  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 5/17/2021

15 Allison Herr

aherr@ag.nv.gov

16 Marsha Landreth

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17 Joseph Gersten

joe@thegerstenlawfirm.com

18 Rikki Garate

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19 Chelsea Kallas

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20 Mike Kovac

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21 Cheryl Martinez

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22 Adam Solinger

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23 Nicara Brown

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24 Marcie Burris

mburris@ag.nv.gov

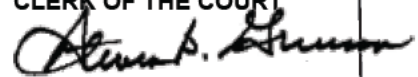
25 Lucas Combs

ljcombs@ag.nv.gov

26  
27  
28  
AA0093



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1 NOAS  
2 Jesse Noble, ID # 1039146  
3 High Desert State Prison  
4 P.O. Box 650  
5 Indian Springs, NV 89070-0650

6  
7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 JESSE NOBLE,  
10  
11 Petitioner,  
12  
13 vs.  
14  
15 CALVIN JOHNSON, WARDEN,  
16  
17 Respondent.

Case No.: C-18-336940-1  
Dept. No.: IX

18 **NOTICE OF APPEAL**

19 Notice is hereby given that **JESSE NOBLE**, Petitioner above named,  
20 hereby appeals to the Supreme Court of Nevada from the Order denying his  
21 **PETITION FOR WRIT OF HABEAS CORPUS**, entered in this action on the  
22 17<sup>th</sup> day of May 2021.

23 DATED this 5 day of 26 2021.

24 By Jesse Noble  
25 Jesse Noble, ID # 1039146  
26 High Desert State Prison  
27 P.O. Box 650  
Indian Springs, NV 89070-0650  
Petitioner

RECEIVED  
JUN 01 2021  
CLERK OF THE COURT

1 **CERTIFICATE OF SERVICE**

2

3 I hereby certify that on the 5 day of 26 2021, I filed a

4 true and correct copy of the **NOTICE OF APPEAL** using the Eighth Judicial

5 District's electronic filing system and/or deposited a true and correct copy in the

6 United States Mail at Las Vegas, Nevada, enclosed in a sealed envelope, first

7 class mail, postage prepaid, addressed as follows:

8

9 CALVIN JOHNSON, Warden

10 P.O. Box 650

11 Indian Springs, Nevada 89070-0650

12 22010 Cold Creek Road

13 Indian Springs, Nevada 89070

14 STEVEN B. WOLFSON, ESQ.

15 Clark County District Attorney

16 200 Lewis Avenue, 3<sup>rd</sup> Floor


17 Las Vegas, NV 89101

18 AARON FORD, ESQ.

19 Nevada Attorney General

20 100 North Carson Street

21 Carson City, Nevada 89701-4717

22 By  \_\_\_\_\_

23 Jesse Noble, ID # 1039146

24 High Desert State Prison

25 P.O. Box 650

26 Indian Springs, NV 89070-0650

27 *Petitioner*

28

Jesse Noble #1039146

H.D.S.P.

P.O. Box 650

Indian Spring, NV 89107

Confidential Legal  
Mail

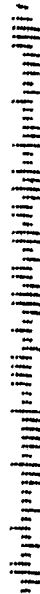
LAS VEGAS NV 890

27 MAY 2021PM 5 L

Steven D. Erickson, Clerk of the Court  
200 Lewis Ave. 3rd floor  
Las Vegas NV, 89155-1100

3762

000000-10168



AA0097

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESSE D. NOBLE, A/K/A JESSE  
NOBEL, JR.,  
Appellant,  
vs.  
CALVIN JOHNSON, WARDEN,  
Respondent.

No. 83024-COA

**FILED**

**JUL 08 2022**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING*

Jesse D. Noble appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on November 18, 2019.<sup>1</sup> Eighth Judicial District Court, Clark County; Cristina D. Silva, Judge.

Noble argues the district court erred by denying his claims that counsel was ineffective without first conducting an evidentiary hearing. To demonstrate ineffective assistance of trial counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*,

---

<sup>1</sup>Noble's initial pleading, filed pro se, is titled "Motion for New Trial." The district court construed it as a postconviction petition for a writ of habeas corpus, and Noble does not challenge this decision on appeal.

100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 687. We give deference to the district court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Noble claimed counsel was ineffective for failing to investigate, interview, or impeach four witnesses. Noble claimed these witnesses would have contradicted the testimony presented at trial. The four witnesses named in Noble's petition did not testify at trial, and Noble did not state what these witnesses would have testified to or how their testimony would have been contradictory. Therefore, he failed to support this claim with specific facts. Thus, he failed to demonstrate counsel was deficient or that he was prejudiced by counsel's failure to investigate, interview, or impeach the witnesses. Accordingly, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Second, Noble claimed counsel was ineffective for failing to properly impeach the victim. Specifically, Noble claimed counsel should have impeached the victim regarding which of Noble's hands he grabbed during the incident. Further, he claimed that the testimony at trial regarding the victim blacking out differed from the victim's statement made at the time of the incident. Noble failed to demonstrate that the victim's


confusion regarding which hand of Noble's he grabbed was impeachment evidence that would have resulted in a reasonable probability of a different outcome at trial. Thus, Noble failed to demonstrate he was prejudiced. Further, Noble failed to allege how the victim's testimony regarding blacking out differed from the victim's statement made at the time of the incident. Therefore, he failed to support this part of the claim with specific facts. Accordingly, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Third, Noble claimed counsel was ineffective for failing to present a video of the incident that would show he did not participate in the criminal activity. Noble claimed he told counsel about the video, but counsel refused to present it at trial. The district court made no definitive findings of fact regarding the existence of the video but nevertheless concluded it was a strategic decision of counsel not to present it. The record does not indicate whether counsel investigated or made a strategic decision to not investigate the existence of the video.

The State argues on appeal that the claim is belied by the record because the victim, who worked at the facility where the incident occurred, testified at Noble's preliminary hearing that there were no security cameras in the area. The State also argues that it was a strategic decision of counsel not to investigate the video. The victim's testimony does not belie the record because it was made without a complete foundation. The possibility of cameras that had a view of that area was not repelled. Rather the testimony created a question that results in a factual dispute that can only be resolved by an evidentiary hearing. *See Cortes v. State*, 127 Nev. 505, 509, 260 P.3d 184, 187-88 (2011) (noting that a district court must conduct an evidentiary

hearing "when a substantial claim is presented and there are disputed issues of material fact that will affect the outcome" (quotation marks omitted)). Without knowing whether the video exists, what the content of the video is, and why counsel may not have investigated the existence of the video and its content, this court cannot affirm the finding of the district court that this was a strategic decision of counsel. Noble supported his claim with specific facts that are not belied by the record and, if true, would entitle him to relief. Thus, we conclude the district court erred by denying this claim without first conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

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

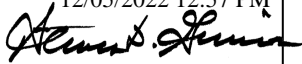
  
\_\_\_\_\_, J.  
Tao

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

cc: Chief Judge, Eighth Judicial District Court  
Eighth Judicial District Court, Dept. 9  
The Gersten Law Firm PLLC  
Attorney General/Carson City



Attorney General/Las Vegas  
Eighth District Court Clerk

  
CLERK OF THE COURT

1 **DAO**

2  
3 **DISTRICT COURT**

4 **CLARK COUNTY, NEVADA**

5 STATE OF NEVADA,

6 Plaintiff,

7 vs.

8 JESSE D. NOBLE,

9 Defendant.

Case No. C-18-336940-1

Dept. No. 18

Date of Hearing: 11/10/2022

Time of Hearing: 12:00 p.m.

10  
11 **DECISION AND ORDER FROM THE EVIDENTIARY HEARING OF NOVEMBER 10, 2022**

12 THIS CAUSE having come before the Court this 10th day of November 2022, the matter having  
13 been remanded from the Nevada Supreme Court for the limited purpose of conducting an evidentiary  
14 hearing to resolve disputed issues of material fact surrounding the claim that trial counsel was ineffective  
15 for failing to present a video during trial. This Court held an evidentiary hearing and heard testimony  
16 from Petitioner Jesse D. Noble, his trial counsel Kenneth Frizzell, and Jeremy Bean, the Acting Warden  
17 of High Desert State Prison .

18 THE COURT FINDS that Petitioner Noble was charged with Battery by a Prisoner (Category B  
19 Felony – NRS 200.481(2)(f)) for acts committed on December 21, 2017. A jury found Noble guilty of  
20 the charge. The Court sentenced Noble to 28 to 72 months in the Nevada Department of Corrections to  
21 run consecutive to another prison term in case C-16-312733-1. The judgment of conviction was entered  
22 on April 11, 2019.

23 THE COURT FURTHER FINDS that Petitioner Noble filed a post-conviction habeas challenge  
24 that the Court denied on May 17, 2021. Noble appealed. On July 8, 2022, the Nevada Court of Appeals  
25 affirmed in part, reversed in part, and remanded the matter to the district court to conduct an evidentiary  
26 hearing on the following issues: 1) whether a video of the incident between Noble and the correctional  
27 officer exists; 2) the content of the video; 3) whether trial counsel made an informed decision to forego  
28 introduction of the evidence at trial by investigating the existence and content of the video prior to trial.

1 THE COURT FURTHER FINDS that an altercation between several inmates took place in the 5-  
2 6 quad of High Desert State Prison on the night of December 21, 2017. Noble was not a part of the  
3 altercation but was in the quad area with other inmates when correctional officers sought to control the  
4 scene.

5 THE COURT FURTHER FINDS that Noble was found guilty of striking a correctional officer  
6 during the efforts to control the scene, which included all the inmates present in the quad area.

7 THE COURT FURTHER FINDS that no security cameras were installed in the 5-6 quad area of  
8 High Desert State Prison on December 21, 2017, or any time before that date that could have captured  
9 footage of the altercation between the inmates or of the battery Noble committed on the officer in this  
10 case. However, per prison protocol, correctional officers sometimes use a handheld video camera to  
11 capture footage following a spontaneous use of force.

12 THE COURT FURTHER FINDS that a correctional officer used a handheld video camera to  
13 capture footage following the altercation in the quad area on December 21, 2017. The video,  
14 approximately 26 minutes long, shows footage of inmates lying flat on their stomachs with their arms  
15 above their head while correctional officers took control of the scene in the 5-6 quad. The video does not  
16 capture the altercation between several inmates or of Noble battering the officer in the underlying  
17 criminal case.

18 THE COURT FURTHER FINDS that trial counsel received a copy of the video as part of  
19 discovery and made a strategic decision not to play the video during trial for two reasons: (1) the video  
20 was irrelevant because it did not contain footage of Noble battering the officer or of the altercation  
21 between several inmates for which Noble was never alleged to have been involved with; and (2) the last  
22 30 seconds of the video show Noble spontaneously utter "The dude hit me first" when an officer asked  
23 him his name and whether he had any injuries.

24 THE COURT FURTHER FINDS that the trial counsel's decision not to play the video during the  
25 trial was also strategic given a jury could have reasonably interpreted Noble's spontaneous utterance as  
26 an admission of guilt.

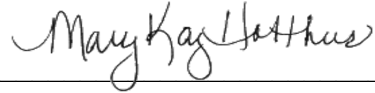
27 WHEREFORE THE COURT CONCLUDES that claims of ineffective assistance of counsel are  
28 subject to a two-part review under *Strickland v. Washington*, 466 U.S. 668, 669 (1984). First, Noble must

1 show that his counsel's performance was deficient and made errors so serious that counsel was not  
2 functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, Noble must  
3 show that the deficient performance caused him prejudice.

4 THE COURT FURTHER CONCLUDES that trial counsel was not deficient in failing to present  
5 a video that had no evidentiary value to Noble's defense. There being no deficiency, Noble cannot  
6 demonstrate prejudice.

7 THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED that Jesse D. Noble's  
8 petition for writ of habeas corpus is DENIED.

9  
10 Dated this 5th day of December, 2022

11   
12 \_\_\_\_\_

13 Submitted by:

998 87D 1CBA 0DEF  
Mary Kay Holthus  
District Court Judge

14 /s/Mariana Kihuen

15 Mariana Kihuen, Deputy Attorney General  
16 Attorney for The State of Nevada

17 Approved as to form and content:

18 /s/ Joseph Z. Gersen

19 Joseph Z. Gersten, Esq.  
20 Attorney for Jesse D. Noble  
21  
22  
23  
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25  
26  
27  
28

**From:** [Joseph Gersten](#)  
**To:** [Mariana Kihuen](#)  
**Subject:** RE: For Review: Jesse Noble - Draft of Decision and Order from Nov. 10, 2022 Evidentiary Hearing  
**Date:** Thursday, December 1, 2022 1:43:24 PM  
**Attachments:** [image002.png](#)  
[image003.png](#)

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**WARNING** - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hi Mariana:

I'm fine with all of it except:

THE COURT FURTHER FINDS that the trial counsel's decision not to play the video during the trial was not only strategic but wise, given a jury could have reasonably interpreted Noble's spontaneous utterance as an admission of guilt.

I'd rather we don't stumble into the court's opinion as to whether something was wise or not. If you want something like:

THE COURT FURTHER FINDS that the trial counsel's decision not to play the video during the trial was also strategic, given a jury could have reasonably interpreted Noble's spontaneous utterance as an admission of guilt.

I could live with that. Please let me know.

**Joseph Gersten, Esq.**



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**Las Vegas, NV 89147-8245**  
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AA0106

**From:** Mariana Kihuen <mkihuen@ag.nv.gov>

**Sent:** Wednesday, November 30, 2022 8:06 PM

**To:** Joseph Gersten <joe@gerstenlegal.com>

**Subject:** For Review: Jesse Noble - Draft of Decision and Order from Nov. 10, 2022 Evidentiary Hearing

Dear Mr. Gersten,

Hope you had a wonderful Thanksgiving holiday. I am reaching out to share the decision and order we drafted for your review from the Noble evidentiary hearing we had on 11/10/22. With your approval, we will use your electronic signature before emailing the DAO to the court.

I look forward to hearing from you.

**Mariana Kihuen**

Deputy Attorney General

Post-Conviction Division

Office of the Nevada Attorney General

555 E. Washington Ave., Ste 3900

Las Vegas, NV 89101

Direct Line: (702) 486-3792

Fax: (702) 486-2377



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1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 State of Nevada

CASE NO: C-18-336940-1

7 vs

DEPT. NO. Department 18

8 Jesse Noble  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 12/5/2022

15 Marsha Landreth

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AA0108

FILED

NOV 21 2022

~~Elizabeth Brown~~  
CLERK OF COURT

In the Supreme Court of the State of Nevada

Jesse Noble  
Petitioner

v.

C-18-336940-1

~~Cas 11-83024~~

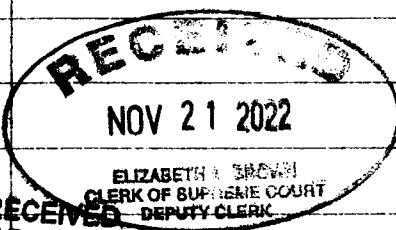
The State of Nevada  
Respondent

Notice of Appeal

Notice of Appeal

Come Now Petitioner Jesse Noble Notifying the  
Nevada Supreme Court of My ~~Nevada Supreme Court~~  
Notice of Appeal.

Respectfully Submitted  
Petitioner  
Jesse Noble



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C-18-336940-1  
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6015677

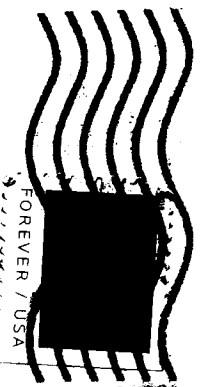


AA0109



Jesse 1 job # 1039146  
H.D.S.P  
PO Box 650  
Median Spring NV 89070

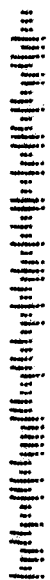
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AA0110

I. CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **APPELLANT'S APPENDIX** with the Clerk of the Court by using the electronic filing system on the 27<sup>th</sup> day of June 2023.

The following participants in this case are registered electronic filing system users and will be served electronically:

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By Joseph Z. Gersten  
Joseph Z. Gersten  
An Employee of The Gersten Law Firm PLLC