

No. 85955

IN THE NEVADA SUPREME COURT

Electronically Filed
May 30 2023 06:18 PM
Elizabeth A. Brown
Clerk of Supreme Court

Adrian Powell,

Appellant,

v.

State of Nevada

Respondents.

On Appeal from the Order Denying Petition
for Writ of Habeas Corpus
Eighth Judicial District, Clark County (A-21-839265-W)
Honorable Ronald J. Israel, District Court Judge

**Joint Appendix
Volume 3 of 4**

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Felony/Gross Misdemeanor

COURT MINUTES

August 13, 2020

C-17-327767-2 State of Nevada
 vs
 Adrian Powell

August 13, 2020 01:15 PM Hearing RE: Appeal Remand-Denial of Withdrawal of Guilty Plea

HEARD BY: Israel, Ronald J. COURTROOM: RJC Courtroom 15C

COURT CLERK: Thomas, Kathy

RECORDER: Chappell, Judy

REPORTER:

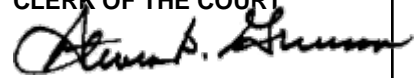
PARTIES PRESENT:

Adrian Powell	Defendant
John Giordani	Attorney for Defendant, Plaintiff
Monique A. McNeill	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Deft. POWELL present by video, in custody in the Nevada Department of Corrections (NDC). Mr. Kane, prior counsel, present by video. State noted this hearing is regarding the limited remand of two issues; ineffective counsel, counsel and Deft's understanding of the new charges and counsel advising Deft. of a 6 to 15 year sentence. Upon Court's inquiry of waiving attorney client privilege and following discussions, Deft. understood and agreed to waive the attorney client privilege between the Deft. and Mr. Kane. Ms. McNeill noted the parties had stipulated to specific dates: Counsel appointed 11/08/17, start of trial 07/30/18 and discovery received 09/11/18. State agreed and clarified discovery was not the entire discovery, only the discovery packet for sentencing.

HEARING: Mr. Kane sworn and testified. Deft's rested. State rested. Both Ms. McNeill and the State submitted on their closing arguments. Court trailed matter for review. Later recalled. Court found Mr. Kane's testimony to be credible and in direct conflict with the Deft's affidavit. Court referred to the testimony and quoted from the testimony. Court finds given counsel never told the Deft. he would receive 6 to 15 years, Court finds counsel was not ineffective as to this issues. Court Further noted Mr. Kane referred to; the Life Sentence being taken off the table and Mr. Kane went over the Guilty Plea Agreement several times with the Deft.; further the 10 other cases didn't matter they were just thrown in. Court noted an Evidentiary Hearing has been held and the Deft. is not entitled to relief. Court finds there was no ineffective assistance of counsel and based on the standards; Court finds no grounds that there was no reason under "the fair and just" to withdraw plea. Court directed the State to prepare the order and pass it by counsel.



EXPT
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ADRIAN POWELL,

Defendant.

CASE NO: C-17-327767-2

DEPT. NO: XXVIII

DATE: _____

TIME: _____

EX-PARTE APPLICATION FOR TRANSCRIPTS

COMES NOW, ADRIAN POWELL, by and through his attorney, Monique McNeill, Esq., and hereby requests this Honorable Court issue an Order directing Judy Chappell to prepare the transcript of the evidentiary hearing on August 13, 2020 with fees charged to the State.

This Application is made and based upon all the papers and pleadings on file

///

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///

///

ORDR

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

vs.

ADRIAN POWELL,

Defendant.

CASE NO: C-17-327767-2

DEPT. NO: XXVIII

DATE: _____

TIME: _____

ORDER FOR TRANSCRIPTS

Upon the application of the above-named Defendant, ADRIAN POWELL, by and through,
MONIQUE A. MCNEILL, ESQ., and good cause appearing therefore:

IT IS HEREBY ORDERED that Judy Chappell prepare the transcripts of the evidentiary
hearing held on August 13, 2020 be prepared at State Expense for purposes of transmitting to the
Supreme Court.

DATED _____ day of February, 2021.

Dated this 8th day of February, 2021

Ronald J. Israel

DISTRICT COURT JUDGE
108 B02 75C7 E394 SC
Ronald J. Israel
District Court Judge

Submitted by:

[Signature]

MONIQUE MCNEILL, ESQ
Nevada Bar No. 9862

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 State of Nevada

CASE NO: C-17-327767-2

7 vs

DEPT. NO. Department 28

8 Adrian Powell
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 2/8/2021

15 MICHAEL KANE

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16 John Giordani

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17 MONIQUE MCNEILL

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1 **FCL**

2 STEVEN B. WOLFSON
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9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 ADRIAN POWELL,

10 Petitioner,

11 -vs-

12 THE STATE OF NEVADA,

13
14 Respondent.

CASE NO: C-17-327767-2

DEPT NO: XXVIII

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

17 DATE OF HEARING: AUGUST 13, 2020

18 TIME OF HEARING: 1:15 P.M.

19 THIS CAUSE having come on for hearing before the Honorable RONALD J. ISRAEL,
20 District Court Judge, on the 13th day of August, 2020, Petitioner not being present, being
21 represented by MONIQUE A. MCNEILL, the Respondent being represented by STEVEN B.
22 WOLFSON, Clark County District Attorney, through JOHN GIORDANI, Chief Deputy
23 District Attorney, and the Court having considered the matter, including briefs, transcripts,
24 and documents on file herein, now therefore, the Court makes the following findings of fact
25 and conclusions of law:

26 //

27 //

28 //

//

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

2 **STATEMENT OF THE CASE**

3 On November 8, 2017, an Indictment returned in the District Court charging
4 Defendants Lorenzo Pinkey aka, Lorenzo Pinkney, and Adrian Powell with two (2) counts of
5 Conspiracy To Commit Robbery (Category B Felony - NRS 200.380, 199.480), two (2) counts
6 of Burglary While In Possession Of A Deadly Weapon (Category B Felony - NRS 205.060),
7 three (3) counts of First Degree Kidnapping With Use Of A Deadly Weapon (Category A
8 Felony - NRS 200.310, 200.320, 193.165), seven (7) counts of Robbery With Use Of A Deadly
9 Weapon (Category B Felony - NRS 200.380, 193.165) and one (1) count of Unlawful Taking
10 Of Vehicle (Gross Misdemeanor - NRS 205.2715). All charges stemmed from robberies that
11 occurred at a Pepe's Tacos restaurant and a Walgreens store in Las Vegas, Nevada on
12 September 28, 2017.

13 On November 13, 2017, Defendants Pinkney and Powell were arraigned on the
14 aforementioned charges in the District Court. The case ultimately proceeded to jury trial on
15 July 30, 2018. Voir Dire commenced on Monday, July 30, 2018. Court concluded for the day,
16 and the parties returned the following day to resume jury selection. That morning, the parties
17 negotiated for hours, and the State ultimately agreed to allow the Defendants to plead guilty
18 pursuant to the Guilty Plea Agreement discussed below.

19 The Defendants pled guilty, the jury was discharged, and a sentencing date was set for
20 September 12, 2018. The State agreed not to seek a life sentence on any count but retained full
21 right to argue.

22 Mr. Kane, Ben Durham and Roy Nelson, along with both Defendants, reviewed some
23 discovery regarding the other 10 events. The other 10 crimes are relatively inconsequential to
24 entering this guilty plea. Negotiations centered on Defendants trial charges when he plead.
25 The State's decision to refrain from filing other criminal charges against the Defendant's were
26 a bonus, not a crucial part of the Guilty Plea. However, the Defendant did not rely on state
27 agreeing to not file in his decision to plead guilty. The main benefit of the deal was getting life
28 off the table.

1 On January 14, 2019, Defendant filed a motion to withdraw guilty plea. The Court
2 denied the Defendant's motion to withdraw guilty plea on February 25, 2019. On May 22,
3 2019, Defendant was sentenced to FIVE HUNDRED FIFTY-TWO (552) MONTHS
4 MAXIMUM with a MINIMUM PAROLE ELIGIBILITY OF ONE HUNDRED NINETY-
5 TWO (192) MONTHS, and SIX HUNDRED TWO (602) DAYS credit for time served.
6 Defendant appealed the Court's denial of his Motion to Withdraw his Guilty Plea on June 14,
7 2019. The Nevada Supreme Court reversed and remanded to the district court to conduct an
8 evidentiary hearing on May 16, 2020.

9 The Court conducted an Evidentiary Hearing on August 13, 2020, at which Michael C.
10 Kane testified, who had been the Petitioner's attorney when the Guilty Plea was agreed to. The
11 Court found Mr. Kane's testimony to be credible and contradicted Defendant's claims. Mr.
12 Kane never advised Petitioner that he would receive a particular sentence or promised anything
13 regarding a particular sentence. The Court now makes the following findings and conclusions:

14 ANALYSIS

15 Petitioner claims (1) the district court erred by denying his present motion to withdraw
16 his guilty plea without first conducting an evidentiary hearing, (2) his counsel was ineffective.

17 **I. THERE WAS NO FAIR AND JUST REASON TO GRANT WITHDRAWAL** 18 **AS PETITIONER KNOWINGLY AND VOLUNTARILY ENTERED HIS** 19 **PLEA**

20 To Petitioners first claim, that the district court erred by denying his present motion to
21 withdraw his guilty plea without first conducting an evidentiary hearing, this Court finds no
22 fair and just reason to have granted the withdrawal. Pursuant to NRS 176.165, after sentencing,
23 a defendant's guilty plea can only be withdrawn to correct "manifest injustice." See also Baal
24 v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990). The law in Nevada establishes that a plea
25 of guilty is presumptively valid, and the burden is on a defendant to show that the plea was
26 not voluntarily entered. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing
27 Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)). Manifest injustice does
28 not exist if the defendant entered his plea voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

1 A court shall look to the totality of the circumstances to determine whether the plea was
2 made freely, knowingly and voluntarily, and whether the defendant understood the nature of
3 the offense and the consequences of the plea. State v. Freese, 116 Nev. 1097, 1105, 13 P.3d
4 442, 448 (2000). The “totality of the circumstances” test includes a review of the plea
5 agreement, the canvass conducted by the district court, and the record as a whole. Id.; Woods,
6 114 Nev. at 475, 958 P.2d at 95. Further, there is “[n]o specific formula for making this
7 determination,” thus each case is evaluated on a case-by-case basis. Freese, 116 Nev. at 1106,
8 13 P.3d at 448. Even though there is no specific formula, the Nevada Supreme Court has
9 concluded that “[a] thorough plea canvass coupled with a detailed, consistent, written plea
10 agreement supports a finding that the defendant entered the plea voluntarily, knowingly, and
11 intelligently.” Molina, 120 Nev. at 191, 87 P.3d at 537-38. The decision to enter into a guilty
12 plea belonged to Petitioner. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002). Petitioner
13 also attested that his plea was voluntarily entered:

14 VOLUNTARINESS OF PLEA

15 I understand that I am waiving and **forever giving up** the following rights and
16 privileges:

- 17 1. The constitutional privilege against self-incrimination...
- 18 2. The constitutional right to a speedy and public trial by an impartial jury...
- 19 3. The constitutional right to confront and cross-examine any witnesses who
20 would testify against me...I have discussed the elements of the original
21 charge(s) against me with my attorney and I understand the nature of the
22 charge(s) against me.... I have discussed with my attorney any possible
23 defenses, defense strategies and circumstances which might be in my favor...
24 All of the foregoing elements, consequences, rights, and waiver of rights have
25 been thoroughly explained to me by my attorney. I believe that pleading guilty
26 and accepting this plea bargain is in my best interest, and that trial would be
27 contrary to my best interest.

28 **I am signing this agreement voluntarily...and I am not acting under duress
or coercion or by virtue of any promise of leniency**, except for those set forth
in this agreement...My attorney has answered all my questions regarding this
guilty plea agreement and its consequences to my satisfaction and I am satisfied
with the services provided by my attorney.

1 Guilty Plea Agreement (09/11/2018), at 5-6.

2
3 Moreover, at no time during Petitioner's plea canvass did he inform the court that he
4 was being coerced into entering his plea, or that he was innocent of the crime charged:

5
6 THE COURT: Okay. I'm going to do these one at a time and very, hopefully,
7 carefully. Let's start off, Mr. Pinkey –

8 ...

9 DEFENDANT PINKNEY: [Defendant spells True Name]

10 THE COURT: And how old are you?

11 DEFENDANT PINKNEY: I'm 22, Your Honor.

12 THE COURT: How far did you go in school?

13 DEFENDANT PINKNEY: I never got my high school diploma or I never got
14 a GED, but I'm planning on getting that.

15 THE COURT: Do you have any sort of learning disability of any kind?

16 DEFENDANT PINKNEY: Yes, I grew up with a learning disability. I had an
17 IEP, and I grew up with a lot like behavior, my behavior. I got the information
18 on that too. Benjamin, he got status on the stuff, stating that type of stuff.

19 THE COURT: Okay, do you read, write and understand the English language?

20 DEFENDANT PINKNEY: Yes.

21 THE COURT: And is English your primary language?

22 DEFENDANT PINKNEY: Yes, sir.

23 THE COURT: Have you been treated recently for any mental illness or
24 addiction of any kind?

25 DEFENDANT PINKNEY: I have in the past, but not recently.

26 THE COURT: Okay. Has anyone ever suggested to you that you be treated for
27 mental illness or an emotional condition?

28 DEFENDANT PINKNEY: Well, yeah, but – and no. I say yeah and no. It's a

1 yeah on the mental affect, it has been where they wanted me to get treated, but
2 I just hadn't.

3 THE COURT: Okay. Are you currently under the influence of any drug,
4 medication, or alcoholic beverage?

5 DEFENDANT PINKNEY: No, sir.

6 THE COURT: Have you been on any medication during your time in jail?

7 DEFENDANT PINKNEY: No, sir.

8 THE COURT: Have you received a copy of the indictment – or the guilty plea
9 agreement?

10 DEFENDANT PINKNEY: Yes, I have.

11 THE COURT: Have you discussed this case with your attorney?

12 DEFENDANT PINKNEY: Yes.

13 **THE COURT: Are you satisfied with his representation and the advice given**
14 **to you by your attorney?**

15 **DEFENDANT PINKNEY: Yes I have. Or, yes, I am. Sorry.**

16 THE COURT: Okay. And as to the guilty plea agreement, are you pleading
17 guilty to Counts ... [Court lists counts in the Indictment]

18 DEFENDANT PINKNEY: Yes, I do.

19 **THE COURT: And do you understand all the – have you read a copy of the**
20 **guilty plea agreement?**

21 **DEFENDANT PINKNEY: Yes, I read it over, sir.**

22 THE COURT: And do you understand everything contained in the guilty plea
23 agreement?

24 DEFENDANT PINKNEY: Yes.

25 **THE COURT: And have you had an opportunity to discuss this with your**
26 **attorney?**

27 **DEFENDANT PINKNEY: Yes.**

28 **THE COURT: And if you had any questions, did he answer your questions?**

1 **DEFENDANT PINKNEY: Yes, he did.**

2 THE COURT: Do you have any questions of me regarding that at this time?

3 DEFENDANT PINKNEY: No, Your Honor.

4 THE COURT: And as to the charges in the guilty plea agreement that I just
5 discussed, how are you pleading?

6 DEFENDANT PINKNEY: Pleading guilty.

7 THE COURT: And is it because in truth and in fact you committed the charges
8 listed in the guilty plea agreement?

9 DEFENDANT PINKNEY: Yes.

10 **THE COURT: Are you making this plea freely and voluntarily?**

11 **DEFENDANT PINKNEY: Yes, I am, sir.**

12 THE COURT: Has anyone forced or threatened you or anyone close to you to
13 get you to enter this plea?

14 DEFENDANT PINKNEY: No, sir.

15 **THE COURT: Has anyone made any promises other than what's stated in the**
16 **guilty plea agreement to get you to enter this guilty plea agreement?**

17 **DEFENDANT PINKNEY: No.**

18 THE COURT: And do you understand that as part of the guilty plea
19 agreement, although you are not admitting to these crimes, that the State will
20 be allowed to argue these crimes as I'm about to list for you at the time of
21 sentencing? ... [Court then lists ten armed robbery dates, locations, and event
22 numbers, which are also contained on page 2 of the guilty plea agreement].

23 DEFENDANT PINKNEY: Yes.

24 THE COURT: And you're agreeable to the same? You're agreeable to that?

25 DEFENDANT PINKNEY: Yes, I am.

26 ... [Court showed Defendant his signature on the guilty plea agreement]

27 **THE COURT: Okay. Before you signed it, again, did you read and discuss it**
28 **with your attorney?**

1 **DEFENDANT PINKNEY: Yes.**

2 **THE COURT: And again, just to be clear, did you understand everything**
3 **contained in the guilty plea agreement?**

4 **DEFENDANT PINKNEY: Yes, I did, sir.**

5 THE COURT: Do you understand the constitutional rights you're giving up by
6 [] entering a guilty plea agreement?

7 DEFENDANT PINKNEY: Yes, sir.

8 THE COURT: And do you understand that you have a right to appeal on
9 reasonable constitutional, jurisdictional or other grounds that challenge the
10 legality of the proceedings?

11 DEFENDANT PINKNEY: Yes, sir.

12 ... [Parties recite the range of punishment for each and every count to which
13 Defendant pled]

14 THE COURT: Do you understand the range of punishment?

15 DEFENDANT PINKNEY: Yes, sir.

16 ... [Colloquy regarding the maximum punishment for all counts]

17 MR. GIORDANI: As long as both Mr. Pinkney and Mr. Powell understand the
18 range for each count...[a]nd then also they understand sentencing is
19 completely up to the Court, and if the Court can either run the counts
20 concurrent or run the counts consecutive.

21 THE COURT: Okay. ... So you understand the individual range of
22 punishments on each of the counts?

23 ...

24 DEFENDANT PINKNEY: Yes, sir.

25 THE COURT: I can – it's at my discretion. And do you understand that the
26 counts can be run consecutively or concurrently? Once again, that's up to me.

27 DEFENDANT PINKNEY: Yes, sir.

28 **THE COURT: And no one is in a position to promise you probation, leniency,**

1 **or any special treatment; do you understand that?**

2 **DEFENDANT PINKNEY: Oh, yeah, I understand that, sir.**

3 ...

4 THE COURT: Thank you. What is it that you did to cause you to plead guilty?

5 DEFENDANT PINKNEY: I committed – I went to an establishment, and I
6 committed two robberies – two more robberies – sir.

7 THE COURT: What were the establishments?

8 DEFENDANT PINKNEY: It was a Pepe's, and another one was Walgreen's,
9 sir.

10 THE COURT: All right. Do you have any questions you'd like to ask me or
11 your attorney before I accept this plea?

12 DEFENDANT PINKNEY: No, sir. Not questions, sir, no.

13 THE COURT: The Court finds the Defendant's plea of guilty is freely and
14 voluntarily made, and the Defendant understands the nature of the offenses and
15 consequences of his plea, and therefore, accepts the guilty plea. The matter is
16 referred to Parole & Probation for a PSI report.

17 MR. GIORDANI: Your Honor, before you move on, can I ask one more thing
18 of the Court?

19 THE COURT: Sure.

20 MR. GIORDANI: Just with regard to your first few questions of Mr. Pinkney
21 where he indicated he had an IEP, a learning program, learning disabilities
22 growing up, can we just be clear on the record that Mr. Pinkney had sufficient
23 time with his attorney – it's been a couple hours, I think, since we broke and
24 started really getting into the meat of this – understood fully both the written
25 words and, you know, the conversations that he had with his attorney.

26 MR. DURHAM: Your Honor, I signed the certificate of counsel, which
27 indicates that I believe he's fully competent to enter the plea; that I went over
28 it with him.

1 THE COURT: Okay.

2 MR. DURHAM: And so I would just ask the Court to adopt that as part of the
3 plea agreement.

4 THE COURT: That's fine, and I certainly think I've asked him three times at
5 least now if he had any questions regarding this, and he's advised me that he
6 does not. And you had plenty of time, for the record, to go over this with your
7 attorney since it's now 1:30 and you first met with him at approximately 11:00
8 a.m., correct?

9 DEFENDANT PINKNEY: Yes.

10 THE COURT: And once again, you have no questions regarding the
11 agreement?

12 DEFENDANT PINKNEY: No, sir.

13 THE COURT: All right. Thank you.

14 MR. DURHAM: Thank you.

15 THE COURT: I find it's freely and voluntarily entered into. The Defendant is
16 remanded.

17 Reporter's Transcript, pp. 3-12.

18 Therefore, any claim from Petitioner that he was coerced into entering his plea is belied
19 by the record and suitable for only summary denial under Hargrove, 100 Nev. at 502, 686 P.2d
20 at 225. Any claim that Petitioner was coerced lacks merit. Accordingly, this Court finds that
21 Petitioner knowingly and voluntarily entered his guilty plea. Thus, the Court finds no "the fair
22 and just" reason to have withdrawn Petitioners guilty plea.

23 **II. PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL**

24 Petitioner claims that counsel was ineffective for (1) advising him to enter a guilty plea
25 without fully understanding the nature of 10 new charges mentioned during negotiations, and
26 (2) advising petitioner that he would receive a sentence of approximately 6 to 15 years.
27 Petition at 2. Such claims are analyzed under the two-pronged test articulated in Strickland v.
28 Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), wherein the defendant must show (1) that

1 counsel's performance was deficient, and (2) that the deficient performance prejudiced the
2 defense. *Id.* at 687, 104 S. Ct. at 2064. "A court may consider the two test elements in any
3 order and need not consider both prongs if the defendant makes an insufficient showing on
4 either one." *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1997); *Molina v. State*,
5 120 Nev. 185, 190, 87 P.3d 533, 537 (2004).

6 "Surmounting Strickland's high bar is never an easy task." *Padilla v. Kentucky*, 559
7 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010), because the issue is whether the attorney's
8 representation amounted to incompetence under prevailing professional norms, "not whether
9 it deviated from best practices or most common custom." *Harrington v. Richter*, 562 U.S. 86,
10 88, 131 S. Ct. 770, 778 (2011). Further, "[e]ffective counsel does not mean errorless counsel,
11 but rather counsel whose assistance is '[w]ithin the range of competence demanded of
12 attorneys in criminal cases.'" *Jackson v. Warden, Nevada State Prison*, 91 Nev. 430, 432, 537
13 P.2d 473, 474 (1975) (quoting *McMann v. Richardson*, 397 U.S. 759, 771, 90 S. Ct. 1441,
14 1449 (1970)).

15 A Court begins with a presumption of effectiveness and then must determine whether
16 the petitioner has demonstrated by a preponderance of the evidence that counsel was
17 ineffective. *Means v. State*, 120 Nev. 1001, 1011-12, 103 P.3d 25, 32-33 (2004). The role of
18 a court in considering alleged ineffective assistance of counsel is "not to pass upon the merits
19 of the action not taken but to determine whether, under the particular facts and circumstances
20 of the case, trial counsel failed to render reasonably effective assistance." *Donovan v. State*,
21 94 Nev. 671, 675, 584 P.2d 708, 711(1978) (citing *Cooper v. Fitzharris*, 551 F.2d 1162, 1166
22 (9th Cir. 1977)).

23 In considering whether trial counsel was effective, this Court determined whether
24 counsel made a "sufficient inquiry into the information that is pertinent to his client's case,"
25 and then whether counsel made "a reasonable strategy decision on how to proceed with his
26 client's case." *Doleman v State*, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996) (citing
27 *Strickland*, 466 U.S. at 690-91, 104 S. Ct. at 2066). Additionally, a defendant is not entitled
28 to a particular "relationship" with his attorney. *Morris v. Slappy*, 461 U.S. 1, 14, 103 S. Ct.

1 1610, 1617 (1983). There is no requirement for any specific amount of communication as long
2 as counsel is reasonably effective in his representation. See Id.

3 Even if a defendant can demonstrate that his counsel's representation fell below an
4 objective standard of reasonableness, he must still demonstrate prejudice and show a
5 reasonable probability that he would not have pleaded guilty and would have insisted on going
6 to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366 (1985); Kirksey v. State, 112 Nev.
7 980, 988, 923 P.2d 1102, 1107 (1996). “The defendant carries the affirmative burden of
8 establishing prejudice.” Riley v. State, 110 Nev. 638, 646, 878 P.2d 272, 278 (1994).

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

19 Each of Defendant’s ineffective counsel claims is without merit and is therefore denied.

20 A. Ground One: Failure to Fully Understand the Evidence of Separate Charges

21 Defendant complains that his lawyer failed to fully understand the evidence of separate
22 charges that were mentioned during negotiations. Petition at 2. However, this claim is belied
23 by the record and suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at
24 225.

25 First, Defendant has not offered any support for his assertion that “there is no evidence
26 linking him to the new charges”. Petition at 2. Indeed, the record reflects the opposite. The
27 State presented Arrest Reports and Witness Statements related to the 10 other charges. Further,
28 the main concern of the Guilty Plea Agreement was taking life off the table, not these other

1 10 charges. This is supported by the fact that nowhere in the Guilty Plea Agreement are these
2 10 charges mentioned. The guilty plea agreement concerned getting a life sentence off the
3 table, not the other 10 cases, which were thrown in as an afterthought.

4 An Evidentiary Hearing was held on August 13, 2020. Mr. Kane testified that 10 other
5 cases didn't matter, but rather were just thrown in. The Court found Mr. Kane's testimony to
6 be credible.

7 Second, Defendant's claim is akin to a failure to investigate claim. However, a
8 defendant who contends his attorney was ineffective because he did not adequately investigate
9 must show how a better investigation would have rendered a more favorable outcome
10 probable. *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Defendant fails to do
11 so.

12 Defendant merely alleges that an investigation would have discovered no evidence
13 linking him to the new charges. Petition at 2. As an initial matter, Defendant's claims that
14 further investigation of the evidence would have shown no evidence linking him to the new
15 charges are bare and naked, suitable only for summary of denial. *Hargrove*, 100 Nev. at 502,
16 686 P.2d at 225. Moreover, Defendant cannot show prejudice because he cannot show how a
17 better investigation into the evidence of charges, separate from the charges he plead guilty to,
18 would have led to a better result—such as a verdict of not guilty at this trial.

19 The Defendant has not established that the State could not have proved the new charges
20 with the evidence it presented to Defendant. Thus, Defendant has not established that counsel
21 was objectively unreasonable for not further investigating the police reports and witness
22 statements or that he was at all prejudiced by this alleged failure. Because Defendant cannot
23 establish either Strickland prong, this claim is denied.

24 A. Ground Two: Advising Defendant to Plead Guilty

25 Defendant complains that his attorney advised him that he would “receive a sentence
26 of approximately 6 to 15 years”. Petition at 2. The decision whether to enter a guilty plea
27 belongs to the defendant. *Rhyne v. State*, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002). Defendant's
28 factual allegations—including that his attorney advised him that he faced possible 6 to 15 years

1 in jail only demonstrates that counsel fulfilled his duty to offer candid advise about the costs
2 and benefits of entering a guilty plea. Indeed, far from being ineffective, counsel was
3 objectively reasonable in offering a complete picture of possibilities.

4 Petitioner's counsel never promised him 6 to 15 years. Rather, Mr. Kane went over the
5 Guilty Plea Agreement several times with the Petitioner. At the Evidentiary Hearing on August
6 13, 2020, Mr. Kane testified that he never told the Defendant he would receive 6 to 15 years.
7 The Court found Mr. Kane's testimony to be credible.

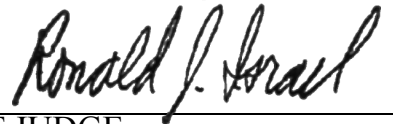
8 As such, Defendant's claim that he was "misled" or "convinced" to plead guilty is
9 belied by the record and suitable only for summary of denial. Hargrove, 100 Nev. at 502, 686
10 P.2d at 225. Moreover, in the end, the decision to accept counsel's advice to plead guilty was
11 Defendant's and Defendant's alone. Rhyne, 118 Nev. at 8, 38 P.3d at 167. Defendant cannot
12 establish that he was prejudiced by counsel's advice, even if that advice was objectively
13 unreasonable. This claim is denied.

14 **ORDER**

15 THEREFORE, IT IS HEREBY ORDERED, Petitioner Adrian Powell's Petition for
16 Writ of Habeas Corpus shall be, and is, DENIED.

17 DATED this _____ day of March, 2021.

Dated this 4th day of March, 2021



19 DISTRICT JUDGE
C-17-327767-2

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

4D8 8B3 016C 0440 SC
Ronald J. Israel
District Court Judge

22 BY /s// JOHN GIORDANI
23 JOHN GIORDANI
24 Chief Deputy District Attorney
25 Nevada Bar #012381
26
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CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that service of the above and foregoing was made this ____ day of
October, 2020, by electronic transmission to:

MONIQUE MCNEILL
Monique.mcneill@yahoo.com

BY /s// E. Del Padre
E. DEL PADRE
Secretary for the District Attorney’s Office

JG/ed/GCU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA
4

5
6 State of Nevada

CASE NO: C-17-327767-2

7 vs

DEPT. NO. Department 28

8
9 Adrian Powell

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 3/4/2021

15 MICHAEL KANE

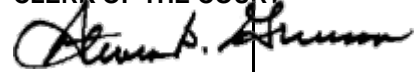
mike@the702firm.com

16 John Giordani

John.Giordani@clarkcountyda.com

17 MONIQUE MCNEILL

monique.mcneill@yahoo.com



NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ADRIAN POWELL,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: C-17-327767-2

Dept No: XXVIII

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

PLEASE TAKE NOTICE that on March 4, 2021, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on March 5, 2021.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 5 day of March 2021, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

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

☒ The United States mail addressed as follows:

Adrian Powell # 1217413
P.O. Box 208
Indian Springs, NV 89070

Monique McNeill, Esq.
P.O.Box 2451
Las Vegas, NV 89125

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

1 **FCL**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JOHN GIORDANI
6 Chief Deputy District Attorney
7 Nevada Bar #12381
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 ADRIAN POWELL,

10 Petitioner,

11 -vs-

12 THE STATE OF NEVADA,

13
14 Respondent.

CASE NO: C-17-327767-2

DEPT NO: XXVIII

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

17 DATE OF HEARING: AUGUST 13, 2020

18 TIME OF HEARING: 1:15 P.M.

19 THIS CAUSE having come on for hearing before the Honorable RONALD J. ISRAEL,
20 District Court Judge, on the 13th day of August, 2020, Petitioner not being present, being
21 represented by MONIQUE A. MCNEILL, the Respondent being represented by STEVEN B.
22 WOLFSON, Clark County District Attorney, through JOHN GIORDANI, Chief Deputy
23 District Attorney, and the Court having considered the matter, including briefs, transcripts,
24 and documents on file herein, now therefore, the Court makes the following findings of fact
25 and conclusions of law:

26 //

27 //

28 //

//

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

2 **STATEMENT OF THE CASE**

3 On November 8, 2017, an Indictment returned in the District Court charging
4 Defendants Lorenzo Pinkey aka, Lorenzo Pinkney, and Adrian Powell with two (2) counts of
5 Conspiracy To Commit Robbery (Category B Felony - NRS 200.380, 199.480), two (2) counts
6 of Burglary While In Possession Of A Deadly Weapon (Category B Felony - NRS 205.060),
7 three (3) counts of First Degree Kidnapping With Use Of A Deadly Weapon (Category A
8 Felony - NRS 200.310, 200.320, 193.165), seven (7) counts of Robbery With Use Of A Deadly
9 Weapon (Category B Felony - NRS 200.380, 193.165) and one (1) count of Unlawful Taking
10 Of Vehicle (Gross Misdemeanor - NRS 205.2715). All charges stemmed from robberies that
11 occurred at a Pepe's Tacos restaurant and a Walgreens store in Las Vegas, Nevada on
12 September 28, 2017.

13 On November 13, 2017, Defendants Pinkney and Powell were arraigned on the
14 aforementioned charges in the District Court. The case ultimately proceeded to jury trial on
15 July 30, 2018. Voir Dire commenced on Monday, July 30, 2018. Court concluded for the day,
16 and the parties returned the following day to resume jury selection. That morning, the parties
17 negotiated for hours, and the State ultimately agreed to allow the Defendants to plead guilty
18 pursuant to the Guilty Plea Agreement discussed below.

19 The Defendants pled guilty, the jury was discharged, and a sentencing date was set for
20 September 12, 2018. The State agreed not to seek a life sentence on any count but retained full
21 right to argue.

22 Mr. Kane, Ben Durham and Roy Nelson, along with both Defendants, reviewed some
23 discovery regarding the other 10 events. The other 10 crimes are relatively inconsequential to
24 entering this guilty plea. Negotiations centered on Defendants trial charges when he plead.
25 The State's decision to refrain from filing other criminal charges against the Defendant's were
26 a bonus, not a crucial part of the Guilty Plea. However, the Defendant did not rely on state
27 agreeing to not file in his decision to plead guilty. The main benefit of the deal was getting life
28 off the table.

1 On January 14, 2019, Defendant filed a motion to withdraw guilty plea. The Court
2 denied the Defendant's motion to withdraw guilty plea on February 25, 2019. On May 22,
3 2019, Defendant was sentenced to FIVE HUNDRED FIFTY-TWO (552) MONTHS
4 MAXIMUM with a MINIMUM PAROLE ELIGIBILITY OF ONE HUNDRED NINETY-
5 TWO (192) MONTHS, and SIX HUNDRED TWO (602) DAYS credit for time served.
6 Defendant appealed the Court's denial of his Motion to Withdraw his Guilty Plea on June 14,
7 2019. The Nevada Supreme Court reversed and remanded to the district court to conduct an
8 evidentiary hearing on May 16, 2020.

9 The Court conducted an Evidentiary Hearing on August 13, 2020, at which Michael C.
10 Kane testified, who had been the Petitioner's attorney when the Guilty Plea was agreed to. The
11 Court found Mr. Kane's testimony to be credible and contradicted Defendant's claims. Mr.
12 Kane never advised Petitioner that he would receive a particular sentence or promised anything
13 regarding a particular sentence. The Court now makes the following findings and conclusions:

14 ANALYSIS

15 Petitioner claims (1) the district court erred by denying his present motion to withdraw
16 his guilty plea without first conducting an evidentiary hearing, (2) his counsel was ineffective.

17 **I. THERE WAS NO FAIR AND JUST REASON TO GRANT WITHDRAWAL** 18 **AS PETITIONER KNOWINGLY AND VOLUNTARILY ENTERED HIS** 19 **PLEA**

20 To Petitioners first claim, that the district court erred by denying his present motion to
21 withdraw his guilty plea without first conducting an evidentiary hearing, this Court finds no
22 fair and just reason to have granted the withdrawal. Pursuant to NRS 176.165, after sentencing,
23 a defendant's guilty plea can only be withdrawn to correct "manifest injustice." See also Baal
24 v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990). The law in Nevada establishes that a plea
25 of guilty is presumptively valid, and the burden is on a defendant to show that the plea was
26 not voluntarily entered. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing
27 Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)). Manifest injustice does
28 not exist if the defendant entered his plea voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

1 A court shall look to the totality of the circumstances to determine whether the plea was
2 made freely, knowingly and voluntarily, and whether the defendant understood the nature of
3 the offense and the consequences of the plea. State v. Freese, 116 Nev. 1097, 1105, 13 P.3d
4 442, 448 (2000). The “totality of the circumstances” test includes a review of the plea
5 agreement, the canvass conducted by the district court, and the record as a whole. Id.; Woods,
6 114 Nev. at 475, 958 P.2d at 95. Further, there is “[n]o specific formula for making this
7 determination,” thus each case is evaluated on a case-by-case basis. Freese, 116 Nev. at 1106,
8 13 P.3d at 448. Even though there is no specific formula, the Nevada Supreme Court has
9 concluded that “[a] thorough plea canvass coupled with a detailed, consistent, written plea
10 agreement supports a finding that the defendant entered the plea voluntarily, knowingly, and
11 intelligently.” Molina, 120 Nev. at 191, 87 P.3d at 537-38. The decision to enter into a guilty
12 plea belonged to Petitioner. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002). Petitioner
13 also attested that his plea was voluntarily entered:

14 VOLUNTARINESS OF PLEA

15 I understand that I am waiving and **forever giving up** the following rights and
16 privileges:

- 17 1. The constitutional privilege against self-incrimination...
- 18 2. The constitutional right to a speedy and public trial by an impartial jury...
- 19 3. The constitutional right to confront and cross-examine any witnesses who
20 would testify against me...I have discussed the elements of the original
21 charge(s) against me with my attorney and I understand the nature of the
22 charge(s) against me.... I have discussed with my attorney any possible
23 defenses, defense strategies and circumstances which might be in my favor...
24 All of the foregoing elements, consequences, rights, and waiver of rights have
25 been thoroughly explained to me by my attorney. I believe that pleading guilty
26 and accepting this plea bargain is in my best interest, and that trial would be
27 contrary to my best interest.

28 **I am signing this agreement voluntarily...and I am not acting under duress
or coercion or by virtue of any promise of leniency**, except for those set forth
in this agreement...My attorney has answered all my questions regarding this
guilty plea agreement and its consequences to my satisfaction and I am satisfied
with the services provided by my attorney.

1 Guilty Plea Agreement (09/11/2018), at 5-6.

2
3 Moreover, at no time during Petitioner's plea canvass did he inform the court that he
4 was being coerced into entering his plea, or that he was innocent of the crime charged:

5
6 THE COURT: Okay. I'm going to do these one at a time and very, hopefully,
7 carefully. Let's start off, Mr. Pinkey –

8 ...

9 DEFENDANT PINKNEY: [Defendant spells True Name]

10 THE COURT: And how old are you?

11 DEFENDANT PINKNEY: I'm 22, Your Honor.

12 THE COURT: How far did you go in school?

13 DEFENDANT PINKNEY: I never got my high school diploma or I never got
14 a GED, but I'm planning on getting that.

15 THE COURT: Do you have any sort of learning disability of any kind?

16 DEFENDANT PINKNEY: Yes, I grew up with a learning disability. I had an
17 IEP, and I grew up with a lot like behavior, my behavior. I got the information
18 on that too. Benjamin, he got status on the stuff, stating that type of stuff.

19 THE COURT: Okay, do you read, write and understand the English language?

20 DEFENDANT PINKNEY: Yes.

21 THE COURT: And is English your primary language?

22 DEFENDANT PINKNEY: Yes, sir.

23 THE COURT: Have you been treated recently for any mental illness or
24 addiction of any kind?

25 DEFENDANT PINKNEY: I have in the past, but not recently.

26 THE COURT: Okay. Has anyone ever suggested to you that you be treated for
27 mental illness or an emotional condition?

28 DEFENDANT PINKNEY: Well, yeah, but – and no. I say yeah and no. It's a

1 yeah on the mental affect, it has been where they wanted me to get treated, but
2 I just hadn't.

3 THE COURT: Okay. Are you currently under the influence of any drug,
4 medication, or alcoholic beverage?

5 DEFENDANT PINKNEY: No, sir.

6 THE COURT: Have you been on any medication during your time in jail?

7 DEFENDANT PINKNEY: No, sir.

8 THE COURT: Have you received a copy of the indictment – or the guilty plea
9 agreement?

10 DEFENDANT PINKNEY: Yes, I have.

11 THE COURT: Have you discussed this case with your attorney?

12 DEFENDANT PINKNEY: Yes.

13 **THE COURT: Are you satisfied with his representation and the advice given**
14 **to you by your attorney?**

15 **DEFENDANT PINKNEY: Yes I have. Or, yes, I am. Sorry.**

16 THE COURT: Okay. And as to the guilty plea agreement, are you pleading
17 guilty to Counts ... [Court lists counts in the Indictment]

18 DEFENDANT PINKNEY: Yes, I do.

19 **THE COURT: And do you understand all the – have you read a copy of the**
20 **guilty plea agreement?**

21 **DEFENDANT PINKNEY: Yes, I read it over, sir.**

22 THE COURT: And do you understand everything contained in the guilty plea
23 agreement?

24 DEFENDANT PINKNEY: Yes.

25 **THE COURT: And have you had an opportunity to discuss this with your**
26 **attorney?**

27 **DEFENDANT PINKNEY: Yes.**

28 **THE COURT: And if you had any questions, did he answer your questions?**

1 **DEFENDANT PINKNEY: Yes, he did.**

2 THE COURT: Do you have any questions of me regarding that at this time?

3 DEFENDANT PINKNEY: No, Your Honor.

4 THE COURT: And as to the charges in the guilty plea agreement that I just
5 discussed, how are you pleading?

6 DEFENDANT PINKNEY: Pleading guilty.

7 THE COURT: And is it because in truth and in fact you committed the charges
8 listed in the guilty plea agreement?

9 DEFENDANT PINKNEY: Yes.

10 **THE COURT: Are you making this plea freely and voluntarily?**

11 **DEFENDANT PINKNEY: Yes, I am, sir.**

12 THE COURT: Has anyone forced or threatened you or anyone close to you to
13 get you to enter this plea?

14 DEFENDANT PINKNEY: No, sir.

15 **THE COURT: Has anyone made any promises other than what's stated in the**
16 **guilty plea agreement to get you to enter this guilty plea agreement?**

17 **DEFENDANT PINKNEY: No.**

18 THE COURT: And do you understand that as part of the guilty plea
19 agreement, although you are not admitting to these crimes, that the State will
20 be allowed to argue these crimes as I'm about to list for you at the time of
21 sentencing? ... [Court then lists ten armed robbery dates, locations, and event
22 numbers, which are also contained on page 2 of the guilty plea agreement].

23 DEFENDANT PINKNEY: Yes.

24 THE COURT: And you're agreeable to the same? You're agreeable to that?

25 DEFENDANT PINKNEY: Yes, I am.

26 ... [Court showed Defendant his signature on the guilty plea agreement]

27 **THE COURT: Okay. Before you signed it, again, did you read and discuss it**
28 **with your attorney?**

1 **DEFENDANT PINKNEY: Yes.**

2 **THE COURT: And again, just to be clear, did you understand everything**
3 **contained in the guilty plea agreement?**

4 **DEFENDANT PINKNEY: Yes, I did, sir.**

5 THE COURT: Do you understand the constitutional rights you're giving up by
6 [] entering a guilty plea agreement?

7 DEFENDANT PINKNEY: Yes, sir.

8 THE COURT: And do you understand that you have a right to appeal on
9 reasonable constitutional, jurisdictional or other grounds that challenge the
10 legality of the proceedings?

11 DEFENDANT PINKNEY: Yes, sir.

12 ... [Parties recite the range of punishment for each and every count to which
13 Defendant pled]

14 THE COURT: Do you understand the range of punishment?

15 DEFENDANT PINKNEY: Yes, sir.

16 ... [Colloquy regarding the maximum punishment for all counts]

17 MR. GIORDANI: As long as both Mr. Pinkney and Mr. Powell understand the
18 range for each count...[a]nd then also they understand sentencing is
19 completely up to the Court, and if the Court can either run the counts
20 concurrent or run the counts consecutive.

21 THE COURT: Okay. ... So you understand the individual range of
22 punishments on each of the counts?

23 ...

24 DEFENDANT PINKNEY: Yes, sir.

25 THE COURT: I can – it's at my discretion. And do you understand that the
26 counts can be run consecutively or concurrently? Once again, that's up to me.

27 DEFENDANT PINKNEY: Yes, sir.

28 **THE COURT: And no one is in a position to promise you probation, leniency,**

1 **or any special treatment; do you understand that?**

2 **DEFENDANT PINKNEY: Oh, yeah, I understand that, sir.**

3 ...

4 THE COURT: Thank you. What is it that you did to cause you to plead guilty?

5 DEFENDANT PINKNEY: I committed – I went to an establishment, and I
6 committed two robberies – two more robberies – sir.

7 THE COURT: What were the establishments?

8 DEFENDANT PINKNEY: It was a Pepe's, and another one was Walgreen's,
9 sir.

10 THE COURT: All right. Do you have any questions you'd like to ask me or
11 your attorney before I accept this plea?

12 DEFENDANT PINKNEY: No, sir. Not questions, sir, no.

13 THE COURT: The Court finds the Defendant's plea of guilty is freely and
14 voluntarily made, and the Defendant understands the nature of the offenses and
15 consequences of his plea, and therefore, accepts the guilty plea. The matter is
16 referred to Parole & Probation for a PSI report.

17 MR. GIORDANI: Your Honor, before you move on, can I ask one more thing
18 of the Court?

19 THE COURT: Sure.

20 MR. GIORDANI: Just with regard to your first few questions of Mr. Pinkney
21 where he indicated he had an IEP, a learning program, learning disabilities
22 growing up, can we just be clear on the record that Mr. Pinkney had sufficient
23 time with his attorney – it's been a couple hours, I think, since we broke and
24 started really getting into the meat of this – understood fully both the written
25 words and, you know, the conversations that he had with his attorney.

26 MR. DURHAM: Your Honor, I signed the certificate of counsel, which
27 indicates that I believe he's fully competent to enter the plea; that I went over
28 it with him.

1 THE COURT: Okay.

2 MR. DURHAM: And so I would just ask the Court to adopt that as part of the
3 plea agreement.

4 THE COURT: That's fine, and I certainly think I've asked him three times at
5 least now if he had any questions regarding this, and he's advised me that he
6 does not. And you had plenty of time, for the record, to go over this with your
7 attorney since it's now 1:30 and you first met with him at approximately 11:00
8 a.m., correct?

9 DEFENDANT PINKNEY: Yes.

10 THE COURT: And once again, you have no questions regarding the
11 agreement?

12 DEFENDANT PINKNEY: No, sir.

13 THE COURT: All right. Thank you.

14 MR. DURHAM: Thank you.

15 THE COURT: I find it's freely and voluntarily entered into. The Defendant is
16 remanded.

17 Reporter's Transcript, pp. 3-12.

18 Therefore, any claim from Petitioner that he was coerced into entering his plea is belied
19 by the record and suitable for only summary denial under Hargrove, 100 Nev. at 502, 686 P.2d
20 at 225. Any claim that Petitioner was coerced lacks merit. Accordingly, this Court finds that
21 Petitioner knowingly and voluntarily entered his guilty plea. Thus, the Court finds no "the fair
22 and just" reason to have withdrawn Petitioners guilty plea.

23 **II. PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL**

24 Petitioner claims that counsel was ineffective for (1) advising him to enter a guilty plea
25 without fully understanding the nature of 10 new charges mentioned during negotiations, and
26 (2) advising petitioner that he would receive a sentence of approximately 6 to 15 years.
27 Petition at 2. Such claims are analyzed under the two-pronged test articulated in Strickland v.
28 Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), wherein the defendant must show (1) that

1 counsel's performance was deficient, and (2) that the deficient performance prejudiced the
2 defense. *Id.* at 687, 104 S. Ct. at 2064. "A court may consider the two test elements in any
3 order and need not consider both prongs if the defendant makes an insufficient showing on
4 either one." *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1997); *Molina v. State*,
5 120 Nev. 185, 190, 87 P.3d 533, 537 (2004).

6 "Surmounting Strickland's high bar is never an easy task." *Padilla v. Kentucky*, 559
7 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010), because the issue is whether the attorney's
8 representation amounted to incompetence under prevailing professional norms, "not whether
9 it deviated from best practices or most common custom." *Harrington v. Richter*, 562 U.S. 86,
10 88, 131 S. Ct. 770, 778 (2011). Further, "[e]ffective counsel does not mean errorless counsel,
11 but rather counsel whose assistance is '[w]ithin the range of competence demanded of
12 attorneys in criminal cases.'" *Jackson v. Warden, Nevada State Prison*, 91 Nev. 430, 432, 537
13 P.2d 473, 474 (1975) (quoting *McMann v. Richardson*, 397 U.S. 759, 771, 90 S. Ct. 1441,
14 1449 (1970)).

15 A Court begins with a presumption of effectiveness and then must determine whether
16 the petitioner has demonstrated by a preponderance of the evidence that counsel was
17 ineffective. *Means v. State*, 120 Nev. 1001, 1011-12, 103 P.3d 25, 32-33 (2004). The role of
18 a court in considering alleged ineffective assistance of counsel is "not to pass upon the merits
19 of the action not taken but to determine whether, under the particular facts and circumstances
20 of the case, trial counsel failed to render reasonably effective assistance." *Donovan v. State*,
21 94 Nev. 671, 675, 584 P.2d 708, 711(1978) (citing *Cooper v. Fitzharris*, 551 F.2d 1162, 1166
22 (9th Cir. 1977)).

23 In considering whether trial counsel was effective, this Court determined whether
24 counsel made a "sufficient inquiry into the information that is pertinent to his client's case,"
25 and then whether counsel made "a reasonable strategy decision on how to proceed with his
26 client's case." *Doleman v State*, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996) (citing
27 *Strickland*, 466 U.S. at 690-91, 104 S. Ct. at 2066). Additionally, a defendant is not entitled
28 to a particular "relationship" with his attorney. *Morris v. Slappy*, 461 U.S. 1, 14, 103 S. Ct.

1 1610, 1617 (1983). There is no requirement for any specific amount of communication as long
2 as counsel is reasonably effective in his representation. See Id.

3 Even if a defendant can demonstrate that his counsel's representation fell below an
4 objective standard of reasonableness, he must still demonstrate prejudice and show a
5 reasonable probability that he would not have pleaded guilty and would have insisted on going
6 to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366 (1985); Kirksey v. State, 112 Nev.
7 980, 988, 923 P.2d 1102, 1107 (1996). “The defendant carries the affirmative burden of
8 establishing prejudice.” Riley v. State, 110 Nev. 638, 646, 878 P.2d 272, 278 (1994).

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

19 Each of Defendant’s ineffective counsel claims is without merit and is therefore denied.

20 A. Ground One: Failure to Fully Understand the Evidence of Separate Charges

21 Defendant complains that his lawyer failed to fully understand the evidence of separate
22 charges that were mentioned during negotiations. Petition at 2. However, this claim is belied
23 by the record and suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at
24 225.

25 First, Defendant has not offered any support for his assertion that “there is no evidence
26 linking him to the new charges”. Petition at 2. Indeed, the record reflects the opposite. The
27 State presented Arrest Reports and Witness Statements related to the 10 other charges. Further,
28 the main concern of the Guilty Plea Agreement was taking life off the table, not these other

1 10 charges. This is supported by the fact that nowhere in the Guilty Plea Agreement are these
2 10 charges mentioned. The guilty plea agreement concerned getting a life sentence off the
3 table, not the other 10 cases, which were thrown in as an afterthought.

4 An Evidentiary Hearing was held on August 13, 2020. Mr. Kane testified that 10 other
5 cases didn't matter, but rather were just thrown in. The Court found Mr. Kane's testimony to
6 be credible.

7 Second, Defendant's claim is akin to a failure to investigate claim. However, a
8 defendant who contends his attorney was ineffective because he did not adequately investigate
9 must show how a better investigation would have rendered a more favorable outcome
10 probable. *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Defendant fails to do
11 so.

12 Defendant merely alleges that an investigation would have discovered no evidence
13 linking him to the new charges. Petition at 2. As an initial matter, Defendant's claims that
14 further investigation of the evidence would have shown no evidence linking him to the new
15 charges are bare and naked, suitable only for summary of denial. *Hargrove*, 100 Nev. at 502,
16 686 P.2d at 225. Moreover, Defendant cannot show prejudice because he cannot show how a
17 better investigation into the evidence of charges, separate from the charges he plead guilty to,
18 would have led to a better result—such as a verdict of not guilty at this trial.

19 The Defendant has not established that the State could not have proved the new charges
20 with the evidence it presented to Defendant. Thus, Defendant has not established that counsel
21 was objectively unreasonable for not further investigating the police reports and witness
22 statements or that he was at all prejudiced by this alleged failure. Because Defendant cannot
23 establish either Strickland prong, this claim is denied.

24 A. Ground Two: Advising Defendant to Plead Guilty

25 Defendant complains that his attorney advised him that he would “receive a sentence
26 of approximately 6 to 15 years”. Petition at 2. The decision whether to enter a guilty plea
27 belongs to the defendant. *Rhyne v. State*, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002). Defendant's
28 factual allegations—including that his attorney advised him that he faced possible 6 to 15 years

1 in jail only demonstrates that counsel fulfilled his duty to offer candid advise about the costs
2 and benefits of entering a guilty plea. Indeed, far from being ineffective, counsel was
3 objectively reasonable in offering a complete picture of possibilities.

4 Petitioner's counsel never promised him 6 to 15 years. Rather, Mr. Kane went over the
5 Guilty Plea Agreement several times with the Petitioner. At the Evidentiary Hearing on August
6 13, 2020, Mr. Kane testified that he never told the Defendant he would receive 6 to 15 years.
7 The Court found Mr. Kane's testimony to be credible.

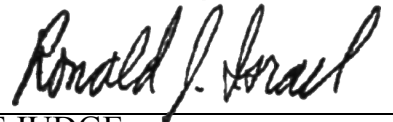
8 As such, Defendant's claim that he was "misled" or "convinced" to plead guilty is
9 belied by the record and suitable only for summary of denial. Hargrove, 100 Nev. at 502, 686
10 P.2d at 225. Moreover, in the end, the decision to accept counsel's advice to plead guilty was
11 Defendant's and Defendant's alone. Rhyne, 118 Nev. at 8, 38 P.3d at 167. Defendant cannot
12 establish that he was prejudiced by counsel's advice, even if that advice was objectively
13 unreasonable. This claim is denied.

14 **ORDER**

15 THEREFORE, IT IS HEREBY ORDERED, Petitioner Adrian Powell's Petition for
16 Writ of Habeas Corpus shall be, and is, DENIED.

17 DATED this _____ day of March, 2021.

Dated this 4th day of March, 2021



19 DISTRICT JUDGE

C-17-327767-2

4D8 8B3 016C 0440

SC

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

Ronald J. Israel
District Court Judge

22 BY /s// JOHN GIORDANI

23 JOHN GIORDANI

24 Chief Deputy District Attorney
25 Nevada Bar #012381
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CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that service of the above and foregoing was made this ____ day of
October, 2020, by electronic transmission to:

MONIQUE MCNEILL
Monique.mcneill@yahoo.com

BY /s// E. Del Padre
E. DEL PADRE
Secretary for the District Attorney’s Office

JG/ed/GCU

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 State of Nevada

CASE NO: C-17-327767-2

7 vs

DEPT. NO. Department 28

8
9 Adrian Powell

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 3/4/2021

15 MICHAEL KANE

mike@the702firm.com

16 John Giordani

John.Giordani@clarkcountyda.com

17 MONIQUE MCNEILL

monique.mcneill@yahoo.com

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27
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APP000497

EXHIBIT-(A)(1)

DECLARATION

MONIQUE A. MCNEILL, ESQ., makes the following declaration, under penalty of perjury:

1. I was appointed to represent Mr. Powell in his motion to withdraw the plea and then following appeal.
2. I am informed and aware of all relevant facts contained in this motion and declaration.
3. The supreme court issued a remittitur on June 30, 2020, and reversed and remanded the case to the district court for an evidentiary hearing.
4. At no time did I inform Mr. Powell that he had one year from the date of the remittitur to file a petition for writ of habeas corpus. My intent was to appeal after the hearing, depending on the outcome. Still, I should have informed Mr. Powell of ALL his right and ALL relevant dates, and I did not.
5. The district court held an evidentiary hearing, and the findings of fact and conclusions of law and order was filed in March, 2021.
- * 6. I did not file a Notice of Appeal after that hearing, as I sadly and embarrassingly miscalculated the date.
- * 7. Mr. Powell missed the date to appeal the court's decision after the hearing due to my error, which was inexcusable.
- * 8. Mr. Powell missed his opportunity to file a timely petition for writ of habeas corpus because of my error. Mr. Powell faces prejudice because due solely to my error, he missed deadlines to file appellate/ post conviction documents because he was unaware of the dates. Mr. Powell relied on me, and I failed to properly do my job. It is solely my error that causes Mr. Powell's petition to be untimely.

Attachment #1

1 9. I believe Mr. Powell has legitimate issues to litigate and my failure has caused him
2 prejudice by potentially putting him in a position to be denied the ability to litigate
3 legitimate issues. This denies Mr. Powell his constitutional rights.

4 EXECUTED this 5th Day of August 2021, under penalty of perjury.

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8 Monique McNeill, Esq.

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Attachment #2

EXHIBIT (A) (2)

LAW OFFICE OF
Monique McNeill, Esq.

PO Box 2451

Las Vegas, Nevada 89125

Telephone: (702) 497-9734 Facsimile: (702) 920-8708

August 5, 2021

Legal mail/confidential

Adrian Powell, ID# 1217413

Southern Desert Correctional Center

P.O. Box 208

Indian Springs, NV 89070

Mr. Powell,

I write to inform you that I am embarrassed to admit that I missed a deadline in your case. This is not something that any attorney should do, and therefore I intend to help you with claiming that I was ineffective.

I have enclosed for you an affidavit from me, explaining that I miscalculated a date in your post-conviction proceedings. You will need to file the enclosed blank petition for writ of habeas corpus, and you will attach the affidavit.

In the grounds, you will claim that:

- 1) your counsel was ineffective when counseling you to take a plea deal and that you would not have taken the deal but for his bad advice and
- 2) your appellate counsel (me) was ineffective for failing to raise all claims and for failing to advise you of the remittitur date.

Also, file a motion asking for an attorney. The law library will have that form. Make sure you attach my affidavit. Call or write with questions.

Sincerely,


Monique McNeill, Esq.

APP000500

A-21-839265-W
Dept. 28

FILED
AUG 10 2021
CLERK OF COURT

Case No
Dept. No

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

ADRIAN POWELL

Petitioner,

v.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

FEDERALIZE

NEVADA DEPT OF CORRECTIONS

Respondent.

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
- (7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: SOUTHERN DESERT CORRECTIONAL CNTR

2. Name and location of court which entered the judgment of conviction under attack: 8th JUDICIAL DIST. CT.

3. Date of judgment of conviction: 5/22/2019

4. Case number: S-17-327767-2

5. (a) Length of sentence: 16-TO-46 YEARS

CLERK OF THE COURT

JUL 27 2021

RECEIVED

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

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

Yes No ☒

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

7. Nature of offense involved in conviction being challenged: ROBBERY & KIDNAPPING & BURGLARY

8. What was your plea? (check one)

(a) Not guilty

(b) Guilty ☒

(c) Guilty but mentally ill

(d) Nolo contendere

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

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

(a) Jury N/A

(b) Judge without a jury N/A

11. Did you testify at the trial? Yes No N/A

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

13. If you did appeal, answer the following:

(a) Name of court: NEV. Sup. Ct.

(b) Case number or citation: # 79037

(c) Result: DENIAL

(d) Date of result:

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

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

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

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

(a) (1) Name of court: 8th Jud. Dist. Ct

(2) Nature of proceeding: HABEAS CORPUS

(3) Grounds raised: DIST. CT ABUSE OF DISCRETION, INEFFECTIVE ASST. OF COUNSEL

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

(5) Result: CONVICTION AFFIRMED

(6) Date of result: Aug. 13, 2020

(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: N/A

(2) Nature of proceeding: N/A

(3) Grounds raised: N/A

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

(5) Result: N/A

(6) Date of result: N/A

(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: 3-5-21

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

Citation or date of decision: N/A

(3) Third or subsequent petitions, applications or motions? Yes ☐ No ☒

Citation or date of decision: N/A

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

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

(a) Which of the grounds is the same: N/A

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

(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.)

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

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

If yes, state what court and the case number:

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

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

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

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

(I) U.S. CONST. 5th & 14th AMEND. - RIGHT TO DUE PROCESS OF LAW, & EQUAL PROTECTION OF LAWS (FEDERALIZE)

MR. POWELL, URGES THAT THE COMPLAINT AGAINST HIM WAS FATAALLY FLAWED TO BEGIN WITH. AND SINCE IT WAS FATAALLY FLAWED IN VARIOUS PARTS, IT INFRINGES UPON POWELL'S RIGHT TO DUE PROCESS OF LAW.

THOSE FLAWS ARE BASED ON,

- (1) THE STATES' FAILURE TO GIVE PROPER NOTICE.
- (2) THE STATES USAGE OF THE CONSPIRACY AS A BLANKET, AND CATCH-ALL.
- (3) THE KIDNAPPING CHARGE IS AMBIGUOUS
- (4) THE CRIMES OCCURRED AT DIFFERENT TIMES, SO THEY DON'T BELONG ON THE SAME COMPLAINT, BECAUSE THEY'RE [REDACTED] UNRELATED.
- (5) USAGE OF MULTIPLE STATUTES TO CHARGE ONE OFFENSE.

MR. POWELL, ASSERTS HERE THAT THE FATAALLY FLAWED COMPLAINT AGAINST HIM FAILED TO GIVE PROPER NOTICE OF THE CHARGES BECAUSE OF THE USAGE OF THE DISJUNCTIVE LANGUAGE OF "AND / OR", LISTED IN THE COMPLAINT.

BY USING THE "AND/OR" LANGUAGE IT LOWERS THE STATES' BURDEN OF PROOF. ALSO USING THE "AND/OR", LANGUAGE DOES NOT THOROUGHLY APPRISE, NOTIFY POWELL OF IF THE ALLEGATIONS ARE PINKNEY AND POWELL, TOGETHER DID A CRIME, OR WAS IT THAT PINKNEY OR POWELL, DID IT?

(1) (2) - CONT. = THEREFORE POWELL, URGES THAT THE COMPLAINT WAS UNCONSTITUTIONALLY VAGUE. AND, THE STATE DIDN'T DO A BILL OF PARTICULARS. WHEN THE COMPLAINT SHOULD'VE BEEN SPECIFIC

AND SO,

WITHOUT GIVING POWELL, DUE & PROPER NOTICE THE COMPLAINT IS INVALID, AND CANNOT STAND. POWELL, HAS A RIGHT TO BE PROPERLY NOTIFIED OF THE EXACT CHARGES HE WAS FACING. BY THE STATE INCLUDING CHARGES UNRELATED ALL ON ONE COMPLAINT, IT WAS TO GAIN AN UNFAIR ADVANTAGE, IN

- SETTING POWELL'S BAIL

- THE TRIAL OF POWELL

- THE PLEA BARGAINING PROCESS OF POWELL.

IN WHICH THE STRUCTURALITY OF THESE ERRORS, DOES WEIGH INTO A CONSTITUTIONAL LEVEL OF DUE PROCESS. POWELL, URGES THAT HE DESERVES A REVERSAL OF SUCH A TAINTED CONVICTION.

(1)(b) - POWELL, NOW CLAIMS THAT THE FATALY FLAWED COMPLAINT WAS DEFECTIVE AND IT RENDERS HIS GUILTY PLEA TO BE INVOLUNTARILY AND UNINTELLIGIBLY ENTERED.

IT'S A WELL KNOWN FACT OF LAW THAT WHEN A PLEA BARGAIN IS ENTERED THAT IT MUST BE ENTERED KNOWLEDGE-ABLY & VOLUNTARILY. YET HERE MR. POWELL, CLAIMS THAT HIS PLEA CAN'T BE VOLUNTARILY UNLESS FIRST HE WAS PROPERLY NOTIFIED OF THE CHARGES, WHICH HE WASN'T. THEREFORE THE PLEA WAS INVOLUNTARY, AND UNKNOWLEDGE-ABLE.

(1)(c). - POWELL, URGES THAT THE FATALY FLAWED COMPLAINT FAILS IN ITS IDENTIFICATION OF IDENTIFYING WHICH DEFENDANT DID EACH OFFENSE OR THE EXACT ROLE SUPPOSED BY POWELL, PLAYED. THE COMPLAINT FAILS IN ITS ALLEGATIONS UPON POWELL BECAUSE, THE STATE MESHEDED IN TOGETHER ALL OF THE CHARGES THEREBY MIXING SPECIFIC INTENT CRIMES WITH VICARIOUS LIABILITY CRIMES. THIS DID CONFUSE POWELL, AS TO EXACTLY WHICH CHARGES IS WHICH. POWELL, WAS CONFUSED BY WHICH ROBBER WAS HE ALLEGED TO BE? BECAUSE FOR COUNTS 3 & 13, THEY CANNOT STAND UNLESS IT WAS SPECIFIC INTENT

(2). - THE STATES' USAGE OF THE CONSPIRACY THEORY AS A BLANKETED, AND CATCH-ALL, IS UNCONSTITUTIONAL, AND ILLEGAL, ACCORDING TO THE U.S. -V- BRAVERMAN

DOCTRINE. BECAUSE ITS LONG SETTLED THAT ONE CONSPIRACY CANT BE USED TO COVER ALL CHARGES UNLESS THE DEFENDANT MEETS EACH ELEMENT ON EACH CRIME HE'S CHARGED WITH CONSPIRING FOR. ONE CONSPIRACY CANT BE BLANKETED TO BE SEVERAL. IF SO, IT WOULD BE DOUBLE JEOPARDY SINCE CONSPIRACY IS A CRIME IN AND OF ITSELF.

CONSPIRACY IS A SPECIFIC INTENT CRIME, AND SO THE LIABILITY CANNOT BE VICARIOUSLY TRANSFERRED. THAT CAN ONLY MEAN ONE THING. IS THAT THE COMPLAINT FAILS TO GIVE POWELL, PROPER NOTICE OF THE CHARGES.

(3). - POWELL, CLAIMS THAT THE KIDNAPPING LANGUAGE USED IN HIS COMPLAINT WAS UNCONSTITUTIONALLY VAGUE. BECAUSE THE WORDING USED IN THE COMPLAINT IS AMBIGUOUS, AND SINCE KIDNAP IS A SPECIFIC INTENT CRIME IT RENDERS THE COMPLAINT TO BE FATALY FLAWED BY ITS USAGE OF THE ALTERNATIVE THEORIES.

Schofield - v - STATE,

Also,

THE THEORY OF CONSPIRACY TO COMMIT KIDNAP, IS OFF BASE HERE BECAUSE IN ORDER FOR A KIDNAP TO BE 1ST DEGREE IT MUST BE AGGRAVATED. AND BY THE STATE USING GENERAL INTENT & VICARIOUS LIABILITY IN HOW IT CHARGED PINKNEY, AND POWELL, THEN IT WAS NEVER SPECIFIC IN WHO WAS ALLEGED ACTUALLY TO HAVE DONE THE KIDNAP. THEREFORE THE STATES LANGUAGE ON THE COMPLAINT IS ILICIT AND IT FAILS TO SPECIFICALLY NOTIFY WHO IS THE SPECIFIC INTENT CRIME OF KIDNAP IS BLAMED ON.

POWELL, THEREBY URGES THAT BOTH KIDNAPS ARE MISCHARGED AND SO COUNTS 3 & 13, SHOULD BE VACATED FOR THE AFOREMENTIONED REASONS. OTHERWISE POWELL'S CONVICTIONS FOR THOSE KIDNAPPINGS ARE VERY MUCH AN ILLEGAL SENTENCE.

(4) - POWELL, ALSO URGES THAT THE COMPLAINT IS FATAALLY FLAWED AND FAILS TO GIVE NOTICE IN HOW IT LISTS THE CRIMES CHARGED, ALL ON ONE COMPLAINT. THIS MADE THE COMPLAINT PREJUDICIAL FROM THE START, AND POWELL, DID GO TO TRIAL, WHICH IT ENDED IN A PLEA BARGAIN.

(5) - POWELL, CLAIMS THAT THE COMPLAINT IS FATAALLY FLAWED IN HOW IT USES A COMBINATION OF STATUTES JUST TO CHARGE ONE OFFENSE. SURELY IF LEGISLATURE INTENDED TO OUTLAW AN ACT THEN IT WOULD CREATE A PARTICULAR STATUTE FOR SUCH ACT. AND SURELY IF THE STATE IS CHARGING A DEFENDANT THEN IT COULD DO SO WITHOUT USING MULTIPLE STATUTES ON ONE SINGLE COUNT. THE WAY POWELL, WAS CHARGED WAS SURPLUSAGE AND THE STATE STACKED UP THE CASE THAT WAY ONLY TO GAIN AN UNFAIR ADVANTAGE. YES, THIS WEIGHED IN AGAINST POWELL, AT THE PLEA BARGAINING PHASE. BY USING SO MANY DIFFERING STATUTES ONLY CONFUSED POWELL, AND IT CAUSED A MISUNDERSTANDING IN WHAT EXACTLY & HOW POWELL, WAS CHARGED. BY USING SUCH UNETHICAL TACTICS IT CAUSED A FUNDAMENTAL MISCARRIAGE OF JUSTICE.

(II) U.S. CONST. 6th AMEND. - RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL. (FEDERALIZE)

POWELL, CLAIMS HERE THAT HIS TRIAL COUNSEL WAS INEFFECTIVE BECAUSE OF THE FOLLOWING REASONS, SUCH AS;

1). AT SOME POINT DURING THE PLEA BARGAINING PROCESS A CONFLICT OF INTEREST DEVELOPED.

2). TRIAL COUNSEL FAILED TO OBJECT TO THE FATALLY FLAWED COMPLAINT.

3). TRIAL COUNSEL FAILED TO THOROUGHLY INVESTIGATE THE CASE, IN CRITICAL ASPECTS SUCH AS, POWELL'S ALIBI, & ALIBI WITNESSES.

4). THERE WAS A BREAKDOWN IN COMMUNICATIONS

(1). POWELL, URGES HERE THAT IT'S A FACT THAT THE STANDARDS OF DUE PROCESS OF LAWS, DO APPLY AT EVERY STAGE AND IN EVERY ARENA OF LITIGATION. SO, AT THE JUNCTURE OF THE PLEA BARGAINING PROCESS, POWELL BELIEVES IT TO BE A CONFLICT AT THE POINT WHEN HIS ATTORNEY MISLED POWELL, TO BELIEVE POWELL, WOULD ONLY GET 6-TO-15 YEARS. THAT IN ITSELF WAS MISLEADING AND IT DID DUPE POWELL, INTO ACCEPTING THE PLEA. YET THIS IS WHAT CAUSED POWELL, TO SUBMIT A MOTION TO WITHDRAW HIS GUILTY PLEA. THE PLEA BARGAINING PROCESS BECAME UNFAIR. VIOLATING POWELL'S, DUE PROCESS OF LAWS.

(2). TRIAL COUNSEL, FAILED TO OBJECT TO THE FATALY FLAWED COMPLAINT. POWELL, URGES HERE THAT THE COMPLAINT WAS FATALY FLAWED IN THE VARIOUS WAYS MENTIONED HEREIN. (SEE, SECTION I). BY THE COMPLAINT BEING FATALY FLAWED, IT LED TO A MISCARRIAGE OF JUSTICE IN THE TOTALITY OF THE PROCEEDINGS IN HOW POWELL'S CASE WENT. IT CAUSED STRUCTURAL ERROR THROUGH AND THROUGH.

And,

SINCE THE COMPLAINT WAS FATALY FLAWED IT MADE THE PLEA OF GUILTY UNKNOWNINGLY, AND UNINTELLIGENTLY ENTERED SINCE IT WAS DEDUCED BY AND THROUGH TRICKERATION, AND DECEPTIVE, UNETHICAL TACTICS. SEE, WOODS-V-STATE, 114 NEV. 475 NOLLETTE -V- STATE, 118 NEV. 341 (2002) - "A DEFENDANT WHO ENTERS A GUILTY PLEA BASED ON THE ADVICE OF COUNSEL MAY WITHDRAW HIS PLEA BY DEMONSTRATING THAT COUNSEL PERFORMED INEFFECTIVELY".

(3). PURSUANT TO: LOVE-Vs-STATE, 109 NEV. 1136, POWELL ASSERTS THAT TRIAL COUNSEL FAILED TO INVESTIGATE THE CASE TO ANY DEPTH, BECAUSE HAD TRIAL COUNSEL INVESTIGATED THEN POWELL'S COUNSEL WOULD'VE SET FORTH POWELL'S DEFENSE WHICH CONSIST OF AN ALIBI & ALIBI WITNESSES [REDACTED] [REDACTED]). BECAUSE HAD POWELL, WENT TO TRIAL AND PRESENTED HIS ALIBI, AND DEFENSE THEN POWELL, WOULDN'T HAVE BEEN CONVICTED. ■ GROOMS-Vs-SOLEM 923 F.2d 88

U.S. CONST. 6th AMEND. - RIGHT TO COUNSEL.

(4). THERE WAS A BREAKDOWN IN COMMUNICATIONS BETWEEN POWELL, AND HIS COUNSEL. BECAUSE, POWELL, DIDN'T GET A CHANCE TO TALK, GO OVER DEFENSE STRATEGY, ALIBI WITNESSES, ET. CETERA. UNDER CHAMBERS-V-S-MISSISSIPPI, 410 U.S. POWELL, HAS A RIGHT TO PRESENT A DEFENSE. DUE TO TRIAL COUNSEL'S INEFFECTIVE ASSISTANCE [REDACTED] IT DEPRIVED POWELL OF ALL DUE FAIRNESS, AND RESULTED IN A MISCARRIAGE OF JUSTICE WITHIN THE PLEA BARGAINING PROCESS, THEREBY CAUSING THE EFFECT OF STRUCTURAL ERROR!

And,

WHEN THERE IS STRUCTURAL ERROR, USUALLY THE CASE IS REVERSED. POWELL, BELIEVES THAT HIS ATTY WAS THE CAUSE OF ALL OF THE UNFAIRNESS IN THE PROCEEDINGS, AND AN EVIDENTIARY HEARING IS WARRANTED. U.S.-V-CASTRO, 972 F.2d 1107 (9th CIR-1992), LAKIN-V-SINE, 41 F.Supp.2d 897 (1999). NEV. RULES OF PROF. CONDUCT #154-ATTY MUST KEEP DEF. REASONABLY INFORMED., ABA MODEL RULES OF PROFESSIONAL CONDUCT #1.7, PARAGRAPH 1b - CONFLICT OF INTEREST.

(III) U.S. CONST. 5th, 6th, 14th AMENDMENT,
DISCOVERY ISSUE, DUE PROCESS OF LAW, RIGHT TO A
FAIR TRIAL, RIGHT TO DUE NOTICE OF CHARGES.
(FEDERALIZE).

POWELL, CLAIMS HERE THAT THE STATES' ATTY AND
HIS OWN TRIAL COUNSEL FOR THE DEFENSE DID LIE TO POWELL,
IN THE PLEA BARGAIN NEGOTIATIONS PROCESS, HOW?, IS
BECAUSE POWELL, ELECTED TO GO TO TRIAL. A JURY TRIAL
DID BEGIN WITH VOIR DIRE. AND, ON DAY TWO OF JURY
SELECTION IS WHEN A DEAL WAS REACHED. DURING WHICH
IS WHEN THE STATE TOLD POWELL'S ATTY THAT THERE WERE
SUPPOSED TO BE 10 MORE CHARGES COMING UPON POWELL.
YET, THE STATE NEVER PRODUCED A SCINTILLA OF EVIDENCE
OR ANY DISCOVERY PERTAINING TO THE SUPPOSEDLY 10
NEW CHARGES. YET THE BLUFF STRATEGY DID HAVE AN
EFFECT ON POWELL, ACCEPTING THE DEAL.

POWELL, CLAIMS THAT THE VIOLATION OF DISCOVERY LED TO AN
UNINFORMED, UNINTELLIGIBLE DECISION. UNDER STRICKLAND
-V-WASHINGTON, 466 U.S. 686 AND, BRADY -V-MARYLAND,
83 S. CT. . BECAUSE UNDER BOTH DOCTRINES IT IS
ESTABLISHED THAT SUCH UNETHICAL TACTICS DOES VIOLATE A
DEFENDANTS U.S. CONSTITUTIONAL RIGHT TO DUE PROCESS
OF LAWS, AS WELL AS RIGHT TO PROPER NOTICE OF CHARGES.

AND SO,

IF POWELL, NEVER GOT NOTICE OF CHARGES THEN POWELL, DOES
URGE THAT IT WAS ILLICIT TO FACTOR THAT INTO THE DEAL.

ALSO,

POWELL, URGES HERE THAT THE STATE MENTIONING SOME UNCHARGED CRIMES IN ORDER JUST TO GAIN THE TACTICAL ADVANTAGE DURING PLEA BARGAIN NEGOTIATIONS did CONSTITUTE A FABRICATION OF EVIDENCE. BECAUSE THE STATE HAS A DUTY TO CHARGE A PERSON WITH A CRIME WHENCE THEY REASONABLY BELIEVE THAT THE DEFENDANT IS RESPONSIBLE FOR THE CRIME, AND SO BY THEM NOT CHARGING POWELL, AND FURNISHING THE DISCOVERY TO SUPPORT SUCH CHARGES IT VIOLATES POWELL'S U.S. CONSTITUTIONAL RIGHTS. 5TH AM. = RIGHT TO DUE PROCESS OF LAWS., 6TH AM. = RIGHT TO NOTICE OF CHARGES - "DISCOVERY INFORMATION" PURSUANT TO: BRADY-V-MARYLAND, 83 U.S. Ct, ALSO, 14TH AM. - EQUAL PROTECTION OF LAWS. THIS DOES INCLUDE THE STRICKLAND-V-WASHINGTON, 466 U.S. 686 STANDARDS OF THE EFFECTIVE ASSISTANCE OF COUNSEL. AND SO, THEREFORE, POWELL, DEEMS THE WHOLE SITUATION AND PROCESS OF HOW THE PLEA BARGAIN OCCURRED TO BE UNCONSTITUTIONAL AND UNFAIR.

POWELL, URGES THIS HONORABLE COURT TO REVERSE THE CONVICTIONS, AND REMAND FOR A NEW TRIAL, OR AT LEAST AN EVIDENTIARY HRNG.

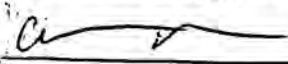
SEE; POWELL'S, MOTION TO WITHDRAW GUILTY PLEA. UPON THE RECORD

(IV). CUMULATIVE ERROR

POWELL, URGES THAT ALL OF THE ERRORS LISTED HEREIN, DOES DEMONSTRATE THAT THE GUILTY PLEA, AND THE SENTENCING, AND THE OTHER PROCEEDINGS did PRODUCE AN UNFAIR, & UNJUST RESULT. THESE DO FALL UNDER THE VALDEZ-V-STATE, _____ DOCTRINE WHICH DOES AUTHORIZE THE REVERSAL CONVICTION.


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

EXECUTED at High Desert State Prison on the 22 day of the month of July, 2021.


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

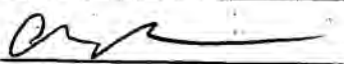
VERIFICATION

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

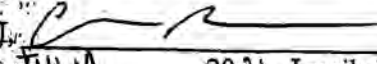

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

AFFIRMATION (Pursuant to NRS 239B.030)

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


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


CERTIFICATE OF SERVICE BY MAIL

I, , hereby certify pursuant to N.R.C.P. 5(b), that on this 22 day of the month of JULY, 2021, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

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

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

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


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

* Print your name and NDOC back number and sign

ADRIAN BOWELL #1217413
P.O. BOX 208 - S.D.C.C.
INDIAN SPRINGS, NV. 89070

Las Vegas PAUC 69199
FRI 23 JUL 2021 PM



200 LEWIS AV.
CASE #C-17-327767-2
REGIONAL Justice Cntr
DISTRICT COURT DEPT.
LV, NEV. 89101

PPOW

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Adrian Powell,

Petitioner,

vs.

Nevada Department of Corrections,

Respondent,

Case No: A-21-839265-W
Department 28 (C-17-327767-2)

**ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS**

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on August 10, 2021. The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

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

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

Calendar on the 18th day of October, 2021, at the hour of

12:30 pm

_____ o'clock for further proceedings.

COURT FURTHER ORDERED, matter also set for possible appointment of counsel through the office of Appointed Counsel - Drew Christensen.

Dated this 12th day of August, 2021

Ronald J. Israel

District Court Judge

SC

**BDB 6B7 5B9A 27DF
Ronald J. Israel
District Court Judge**

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Adrian Powell, Plaintiff(s)

CASE NO: A-21-839265-W

7 vs.

DEPT. NO. Department 28

8 Nevada Department of
9 Corrections, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 Electronic service was attempted through the Eighth Judicial District Court's
13 electronic filing system, but there were no registered users on the case.

14 If indicated below, a copy of the above mentioned filings were also served by mail
15 via United States Postal Service, postage prepaid, to the parties listed below at their last
16 known addresses on 8/13/2021

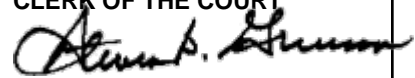
17 Adrian Powell

#1217413

SDCC

P.O. Box 208

Indian Springs, NV, 89070



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

DISTRICT COURT
CLARK COUNTY, NEVADA

ADRIAN POWELL,)
)
Petitioner,)
)
-vs-)
)
THE STATE OF NEVADA,)
)
Respondent.)

CASE NO: A-21-839265-W
C-17-327767-2
DEPT NO: XXVIII

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

DATE OF HEARING: OCTOBER 13, 2021
TIME OF HEARING: 8:30 a.m.

COMES NOW, the State of Nevada, by STEVEN WOLFSON, District Attorney,
through TALEEN PANDUKHT, Chief Deputy District Attorney, and hereby submits the
State's Response to Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction).

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On November 8, 2017, Adrian Powell (hereinafter “Petitioner”) and his Co-Defendant
4 Lorenzo Pinkey aka, Lorenzo Pinkney were charged by way of Indictment with: Counts 1 and
5 8 – Conspiracy to Commit Robbery (Category B Felony – NRS 200.380, 199.480); Counts 2
6 and 9 – Burglary While in Possession of a Deadly Weapon (Category B Felony – NRS
7 205.060); Counts 3, 10 and 14 – First Degree Kidnapping With Use of a Deadly Weapon
8 (Category A Felony – NRS 200.310, 200.320, 193.165); Counts 4-7, 11-12 and 15 – Robbery
9 With Use of a Deadly Weapon (Category B Felony – NRS 200.380, 193.165); and Count 13
10 – Unlawful Taking of Motor Vehicle (Gross Misdemeanor – NRS 205.2715).

11 On July 30, 2018, the State filed an Amended Indictment charging Petitioner and his
12 Co-Defendant with: Counts 1 and 8 – Conspiracy to Commit Robbery (Category B Felony –
13 NRS 200.380, 199.480); Counts 2 and 9 – Burglary While in Possession of a Deadly Weapon
14 (Category B Felony – NRS 205.060); Counts 3 and 13 – First Degree Kidnapping With Use
15 of a Deadly Weapon (Category A Felony – NRS 200.310, 200.320, 193.165); and Counts 4-
16 7, 10-11 and 14 – Robbery With Use of a Deadly Weapon (Category B Felony – NRS 200.380,
17 193.165). The case proceeded to jury trial on July 30, 2018. Voir Dire commenced on July 30,
18 2018. The Court concluded for the day, and the parties returned the following day to resume
19 jury selection. On July 31, 2018, the parties negotiated for hours, and the State ultimately
20 agreed to allow both Petitioner and his Co-Defendant to plead guilty.

21 On July 31, 2018, Petitioner pled guilty to Counts 1 and 8 - Conspiracy to Commit
22 Robbery, Counts 2 and 9 - Burglary While in Possession of a Deadly Weapon, Counts 3 and
23 13 - First Degree Kidnapping With Use of a Deadly Weapon, and Counts 4, 5, 6, 7, 10, 11 and
24 14 - Robbery With Use of a Deadly Weapon. The terms of the Guilty Plea Agreement
25 (hereinafter “GPA”) were as follows:

26 The Defendants agree to plead guilty to all counts in the Amended
27 Indictment. The State will maintain the full right to argue,
28 including for consecutive time between the counts, however, the
State agrees to not seek a Life sentence on any count. The State

retains the full right to argue the facts and circumstances, but agrees to not file charges, for the following events:

1. LVMPD Event No. 170605-0220: Armed robbery at 7-Eleven located at 4800 West Washington, Las Vegas, Clark County, Nevada, on June 5, 2017.
2. LVMPD Event No. 170614-0524: Armed robbery at Roberto's/Mangos located at 6650 Vegas Drive, Las Vegas, Clark County, Nevada, on June 14, 2017.
3. LVMPD Event No. 170618-0989: Armed robbery at Pepe's Tacos located at 1401 North Decatur, Las Vegas, Clark County, Nevada, on June 18, 2017.
4. LVMPD Event No. 170701-0545: Armed robbery at Roberto's located at 2685 South Eastern Avenue, Las Vegas, Clark County, Nevada, on July 1, 2017.
5. LVMPD Event No. 170812-3809: Armed robbery at Pizza Bakery located at 6475 West Charleston Boulevard, Las Vegas, Clark County, Nevada, on August 12, 2017.
6. LVMPD Event No. 170817-0241: Armed robbery at Terrible Herbst located at 6380 West Charleston Boulevard, Las Vegas, Clark County, Nevada, on August 17, 2017.
7. LVMPD Event No. 170817-0470: Armed robbery at Rebel located at 6400 West Lake Mead Boulevard, Las Vegas, Clark County, Nevada, on August 17, 2017.
8. LVMPD Event No. 170824-0521: Armed robbery at Roberto's located at 6820 West Flamingo Road, Las Vegas, Clark County, Nevada, on August 24, 2017.
9. LVMPD Event No. 170824-0645: Armed robbery at Roberto's located at 907 North Rainbow Boulevard, Las Vegas, Clark County, Nevada, on August 24, 2017.
10. LVMPD Event No. 170825-0589: Armed robbery at Pepe's Tacos located at 1401 North Decatur, Las Vegas, Clark County, Nevada, on August 25, 2017.

The Defendants agree to take no position at sentencing regarding the aforementioned ten (10) armed-robbery events.

This Agreement is contingent upon the co-defendant's acceptance and adjudication on his respective Agreement.

On October 31, 2018, the time set for sentencing, Petitioner expressed concerns about his plea, counsel was withdrawn, and new counsel, Monique McNeill, Esq., was appointed. On January 14, 2019, Petitioner filed a Motion to Withdraw Guilty Plea. The State filed its Opposition on February 5, 2019. On February 27, 2019, the district court denied Petitioner's motion without conducting an evidentiary hearing.

1 On May 22, 2019, Petitioner was sentenced to the Nevada Department of Corrections
2 as follows: as to Count 1 – twelve (12) to forty-eight (48) months; as to Count 2 – thirty-six
3 (36) to one hundred twenty (120) months concurrent with Count 1; as to Count 3 – five (5) to
4 fifteen (15) years with a consecutive term of thirty-six (36) to ninety-six (96) months for use
5 of a deadly weapon concurrent with Count 2; as to Count 4 – thirty-six (36) to one hundred
6 twenty (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for
7 use of a deadly weapon concurrent with Count 3; as to Count 5 - thirty-six (36) to one hundred
8 twenty (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for
9 use of a deadly weapon concurrent with Count 4; as to Count 6 - thirty-six (36) to one hundred
10 twenty (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for
11 use of a deadly weapon concurrent with Count 5; as to Count 7 - thirty-six (36) to one hundred
12 twenty (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for
13 use of a deadly weapon concurrent with Count 6; as to Count 8 – twelve (12) to forty-eight
14 (48) months concurrent with Count 7; as to Count 9 – thirty-six (36) to one hundred twenty
15 (120) months concurrent with Count 8; as to Count 10 - thirty-six (36) to one hundred twenty
16 (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for use of a
17 deadly weapon concurrent with Count 7; as to Count 11 - thirty-six (36) to one hundred twenty
18 (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for use of a
19 deadly weapon concurrent with Count 10; as to Count 13 - five (5) to fifteen (15) years with a
20 consecutive term of thirty-six (36) to ninety-six (96) months for use of a deadly weapon
21 consecutive to Count 3; and as to Count 14 - thirty-six (36) to one hundred twenty (120)
22 months with a consecutive term of thirty-six (36) to ninety-six (96) months for use of a deadly
23 weapon concurrent with Count 11, with six hundred two (602) days credit for time served.
24 The aggregate total sentence was five hundred fifty-two (552) months maximum with a
25 minimum parole eligibility of one hundred ninety-two (192) months.

26 The Judgment of Conviction was filed on May 24, 2019.

27 On June 14, 2019, Petitioner filed a Notice of Appeal. On May 11, 2020, the Nevada
28 Court of Appeals remanded the case for an evidentiary hearing to be conducted. Remittitur

1 issued on June 5, 2020. On August 13, 2020, an evidentiary hearing was conducted and
2 Petitioner's counsel Michael Kane, Esq. testified. At the conclusion of the evidentiary hearing,
3 the Court found that Petitioner was not entitled to relief. The Court found there was no
4 ineffective assistance of counsel and no grounds or fair and just reason to withdraw
5 Petitioner's plea. The Findings of Fact, Conclusions of Law and Order was filed on March 4,
6 2021.

7 On August 10, 2021, Petitioner filed the instant Petition for Writ of Habeas Corpus
8 (Post-Conviction). The State's Response now follows.

9 **STATEMENT OF THE CASE**

10 The evidence in this case was overwhelming. The following is a summary of the
11 victims' testimony from the Grand Jury presentation, as well as a summary of the forensic
12 evidence and the circumstantial evidence that would have been presented at trial.

13 **Testimony of Jose Chavarria**

14 Jose Alfredo Chavarria Valenzuela ("Chavarria") was working as a cook at Pepe's
15 Tacos located at 2490 Fremont Street, Las Vegas, Nevada on September 28, 2017. At
16 approximately 2:40 AM, Chavarria was in kitchen area when two gunmen entered the
17 restaurant. Chavarria ran toward the back refrigerator where his co-worker was located, when
18 one of the gunmen jumped the counter, followed Chavarria and pointed a gun at him. The
19 gunman told Chavarria to get on the ground and that he "wanted the money." The gunman
20 then forced Chavarria at gunpoint from the back of the store to the front cash registers. At the
21 cash registers, the gunman began jabbing Chavarria in his side, but Chavarria was unable to
22 open the till because he did not have the correct passcode. The second gunman then retrieved
23 Chavarria's coworker from the back of the store and forced her to open the cash registers at
24 the front of the store. One of the gunmen then took Chavarria to the second cash register, threw
25 him on the ground, and pointed a gun to Chavarria's head. The gunmen took the money from
26 the cash registers but did not take any property from Chavarria.

27 //

28 //

1 **Testimony of Yenir Hessing**

2 Yenir Hessing (“Hessing”) works as the shift lead at the Walgreens located at
3 4470 East Bonanza, Las Vegas, Nevada. On September 28, 2017, Hessing was working the
4 graveyard shift with four other Walgreens employees when, at approximately 4:05 AM, two
5 masked gunmen entered the store. Hessing was stocking the shelves in the food aisle when
6 one of the gunmen pointed a gun to her stomach, demanded she move to the front of the store.
7 The food aisle is located near the store’s photo section, away from the registers and store
8 entrance. While pushing her to the front of the store, the gunman told Hessing to go to the cash
9 registers in the front of the store, passing the cash register in the photo section. As gunman
10 pushed Hessing, he told her this is “not a game and I'm going to kill you.”

11 At the front of the store, the gunman told her to open the three cash registers, which
12 Hessing did. At that moment, another Walgreens employee, Tifnie Bobbitt (“Bobbitt”) was
13 returning from lunch and, upon seeing Bobbitt, the gunman ordered her the front of the store
14 too. Hessing testified that the gunman was “swearing and saying like really bad things ...
15 grabbed both of us and he asked me where is the big money, where is the safe, and I tell him
16 it was in the office.” The gunman then used the gun to again push Hessing, this time toward
17 the office located at the back of the store.

18 While the gunman pushed Hessing toward the back of the store, Hessing saw down an
19 aisle that the Walgreen’s pharmacist, Darlene Orat, was being held up by another gunman in
20 the pharmacy. As the gunman pushed Hessing toward the back office at gunpoint, he told
21 Hessing “I'm going to kill you.” Hessing responded to the gunman, telling him “please don't
22 hurt me, I'm nine weeks pregnant, don't do anything to me.” To which the gunman responded,
23 “I don't give a [fuck] I'm going to kill you if you do the wrong code or ... try to call [police].”

24 Upon reaching the back office, which is behind two doors that each have a different pin
25 code, Hessing entered the code and the gunman forced Hessing and Bobbitt into the office.
26 The door to the office closed behind them, leaving Hessing, Bobbitt and the gunman isolated
27 from the rest of the store. In the office, the gunman began hitting Hessing in the ribs with the
28 gun and demanding that she open the safe. Hessing opened the first of two safes and the

1 gunman grabbed everything. The gunman then demanded Hessing open the second safe, which
2 she did. The gunman grabbed the contents from the second safe and fled from the office.

3 **Testimony of Tifnie Bobbitt**

4 Bobbit was working as a cashier at the Walgreens located at 4470 East Bonanza, Las
5 Vegas, Nevada, on September 28, 2017. Around 4:00 AM, Bobbitt was headed to breakroom
6 to take her lunch break when she heard a man “say the F word.” Bobbitt looked over to see
7 the man crouching and walking behind Hessing. Bobbitt entered the code to the breakroom,
8 entered the room and approached the seconded code-locked door to the office, which she
9 knocked on to alert the Walgreen’s manager. Bobbitt’s manager left and did not return, so
10 Bobbitt, thinking the situation was taken care of, walked out of the breakroom into the store.
11 At that moment, the gunman saw her and yelled at her “Where the fuck do you think you’re
12 going, bitch?” The gunman then ordered Bobbitt to the front of the store where Hessing was
13 opening the cash registers for the gunman. From there, the gunman forced Bobbit and Hessing
14 from the front of the store to the back office, pushing Bobbitt while telling the women they
15 were walking too slowly. At the breakroom door, they enter the code and enter the breakroom.
16 From there, Hessing entered the code to the office door and the gunman forced the women
17 into the office. In the office, the gunman “kept jabbing the gun” into Hessing’s side as he was
18 forcing her to open the safes. Once the safes were open, the gunman took the money from the
19 safes and fled.

20 **Evidence in addition to Grand Jury Testimony**

21 Both of these armed robberies were captured on video surveillance. In addition, the
22 Defendants used Mr. Pinkey’s girlfriend’s vehicle. After the Walgreen’s event, they crashed
23 the vehicle while fleeing. Defendants Pinkney and Powell fled the wrecked vehicle on foot,
24 leaving a trail of US Currency, a mask, and the proceeds of the robberies in their wake. Mr.
25 Powell’s and Mr. Pinkney’s fingerprints were on the abandoned vehicle and Mr. Pinkney’s
26 fingerprints were on the prescription bottles from the Walgreen’s robbery. They were
27 apprehended a short time later wearing the same clothing they wore during the robberies.

28 //

ARGUMENT

I. THE COURT SHOULD DENY THIS PETITION AS IT IS PROCEDURALLY BARRED

This Petition is time-barred. The instant petition was not filed within the one-year statutory limit after the Judgment of Conviction. Thus, this Petition is time-barred pursuant to NRS 34.726(1):

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

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

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

The one-year time limit for preparing petitions for post-conviction relief under NRS 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002), the Nevada Supreme Court rejected a habeas petition that was filed two (2) days late despite evidence presented by the defendant that he purchased postage through the prison and mailed the petition within the one-year time limit.

This is not a case wherein the Judgment of Conviction was, for example, not final. See, e.g., Johnson v. State, 133 Nev. 571, 402 P.3d 1266 (2017) (holding that the defendant’s judgment of conviction was not final until the district court entered a new judgment of conviction on counts that the district court had vacated); Whitehead v. State, 128 Nev. 259,

1 285 P.3d 1053 (2012) (holding that a judgment of conviction that imposes restitution in an
2 unspecified amount is not final and therefore does not trigger the one-year period for filing a
3 habeas petition).

4 Given that Petitioner’s Judgment of Conviction was never vacated, there is no legal
5 basis for running the one-year time-limit from anything but the date of Remittitur. Remittitur
6 issued on June 5, 2020. Thus, Petitioner had one year from June 5, 2020, to file this Petition.
7 Petitioner did not file his Petition until August 10, 2021, over two (2) months late. Absent a
8 showing of good cause to excuse this delay, this Petition must be denied.

9 **A. The Application of the Procedural Bars is Mandatory**

10 The Nevada Supreme Court held that the district court has a *duty* to consider whether a
11 defendant’s post-conviction petition claims are procedurally barred. State v. Eighth Judicial
12 Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The Riker Court found
13 that “[a]pplication of the statutory procedural default rules to post-conviction habeas petitions
14 is mandatory,” noting:

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

19 Id. Additionally, the Court noted that procedural bars “cannot be ignored [by the district court]
20 when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
21 has granted no discretion to the district courts regarding whether to apply the statutory
22 procedural bars; the rules *must* be applied.

23 This position was reaffirmed in State v. Greene, 129 Nev. 559, 307 P.3d 322 (2013).
24 There the Court ruled that the defendant’s petition was “untimely, successive, and an abuse of
25 the writ” and that the defendant failed to show good cause and actual prejudice. Id. at 324, 307
26 P.3d at 326. Accordingly, the Court reversed the district court and ordered the defendant’s
27 petition dismissed pursuant to the procedural bars. Id. at 324, 307 P.3d at 322–23. The
28

1 procedural bars are so fundamental to the post-conviction process that they must be applied
2 by this Court even if not raised by the State. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

3 **B. Petitioner Waived the Substantive Claims by Not Addressing Them on Direct**
4 **Appeal**

5 As to any substantive claims regarding the Indictment¹, they are waived. NRS
6 34.810(1) reads:

7 The court shall dismiss a petition if the court determines that:

8 (a) The petitioner's conviction was upon a plea of guilty or guilty
9 but mentally ill and the petition is not based upon an allegation
10 that the plea was involuntarily or unknowingly or that the plea was
11 entered without effective assistance of counsel.

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

14 . . .

15 (2) Raised in a direct appeal or a prior petition for a writ of habeas
16 corpus or postconviction relief.

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

27 NRS 34.810 (1)(a) specifically states that if a conviction was based upon a plea of
28 guilty, the Court shall dismiss a petition if the claim is one other than "that the plea was
involuntarily or unknowingly entered or that the plea was entered without effective assistance
of counsel." As such, the only claims Appellant could raise in a Petition for Writ of Habeas

¹ Petitioner refers to the Indictment as the complaint throughout the Petition.

1 Corpus must be those related to whether his plea was involuntarily or unknowingly entered,
2 or whether he received ineffective assistance of counsel.

3 This Court should ignore Petitioner's substantive claims. In Ground One, Petitioner
4 alleges multiple substantive defects with the Indictment. In Ground Three, Petitioner alleges
5 Brady violations. These are substantive claims that should have been raised on direct appeal.
6 Therefore, these claims are waived unless Petitioner can demonstrate good cause and prejudice
7 to overcome the procedural bars.

8 **C. Res Judicata Bars Petitioner's Claims, as this Court Previously Addressed**
9 **Them**

10 Res Judicata bars Petitioner's claims regarding the voluntariness of the plea and
11 whether counsel misled him about his sentence. The decisions of the district court are final
12 decisions absent a showing of changed circumstances, and relitigation of claims is barred by
13 the doctrine of res judicata. See Mason v. State, 206 S.W.3d 869, 875 (Ark. 2005) (recognizing
14 the doctrine's applicability in the criminal context); see also York v. State, 342 S.W. 528, 553
15 (Tex. Crim. Appl. 2011). Accordingly, by simply continuing to file motions with the same
16 arguments, his motion is barred by the doctrines of the law of the case and res judicata. Id.;
17 Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

18 This is not Petitioner's first attempt to claim that the entry of his plea was unknowingly
19 and involuntarily. This Court previously ruled on a similar claim:

20 Therefore, any claim from Petitioner that he was coerced into
21 entering his plea is belied by the record and suitable for only
22 summary denial under Hargrove, 100 Nev. at 502, 686 P.2d at 225.
23 Any claim that Petitioner was coerced lacks merit. **Accordingly,**
24 **this Court finds that Petitioner knowingly and voluntarily**
entered his guilty plea. Thus, the Court finds no "the fair and just"
reason to have withdrawn Petitioners guilty plea

25 Order filed on March 4, 2021, at 10 (emphasis added). Petitioner also claims counsel misled
26 him about possible sentencing ranges. The Court also denied this claim:

27 Petitioner's counsel never promised him 6 to 15 years. Rather, Mr.
28 Kane went over the Guilty Plea Agreement several times with the

Petitioner. At the Evidentiary Hearing on August 13, 2020, Mr. Kane testified that he never told the Defendant he would receive 6 to 15 years. The Court found Mr. Kane's testimony to be credible. As such, Defendant's claim that he was "misled" or "convinced" to plead guilty is belied by the record and suitable only for summary of denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

Id. at 14. Petitioner litigated both these issues resulting in the denial of his claims by this Court. Further litigation violates the principles of Res Judicata. Therefore, this Court should deny these claims.

D. Petitioner Fails to Demonstrate, or Even Address, Good Cause

To avoid procedural default under NRS 34.726 and NRS 34.810, a defendant has the burden of pleading and proving specific facts that demonstrate good cause for his failure to present his claim in earlier proceedings or comply with the statutory requirements. Hogan v. Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Dir. Nev. Dep't of Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988).

"To establish good cause, appellants *must* show that an impediment external to the defense prevented their compliance with the applicable procedural rule." Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev. 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. Such an external impediment could be "that the factual or legal basis for a claim was not reasonably available to counsel, or that 'some interference by officials' made compliance impracticable." Hathaway, 119 Nev. at 251, 71 P.3d at 506 (quoting Murray v. Carrier, 477 U.S. 478, 488, 106 S. Ct. 2639, 2645 (1986)); see also Gonzalez, 118 Nev. at 595, 53 P.3d at 904 (citing Harris v. Warden, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)). Any delay in filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

The Nevada Supreme Court clarified that a defendant cannot attempt to manufacture good cause. See Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there must be a "substantial reason; one that affords a legal excuse." Hathaway, 119 Nev. at 251, 71 P.3d at 506; (quoting Colley v. State, 105 Nev. at 236, 773 P.2d at 1230). Excuses such as the lack of

1 assistance of counsel when preparing a petition, as well as the failure of trial counsel to forward
2 a copy of the file to a petitioner have been found not to constitute good cause. See Phelps, 104
3 Nev. at 660, 764 P.2d at 1306, superseded by statute on other grounds as recognized in Nika
4 v. State, 120 Nev. 600, 607, 97 P.3d 1140, 1145 (2004); Hood v. State, 111 Nev. 335, 890
5 P.2d 797 (1995).

6 Further, a petitioner raising good cause to excuse procedural bars must do so within a
7 reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34
8 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see
9 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably
10 available to the petitioner during the statutory time period did not constitute good cause to
11 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good
12 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,
13 453 120 S. Ct. 1587, 1592 (2000).

14 Petitioner fails to include any argument for good cause. Failure to address good cause
15 amounts to an admission that he is unable to do so. DCR 13(2); EDCR 3.20(b); Polk v. State,
16 126 Nev. 180, 186, 233 P.3d 357, 360-61 (2010). Nowhere in his petition does Petitioner
17 address the issue of good cause. He fails to allege any impediments that necessitated bringing
18 a claim outside of the one-year timeline. Thus, Petitioner’s silence should be read as an
19 admission that no good cause exists.

20 Even if Petitioner did address the issue, good cause cannot be demonstrated.
21 Petitioner’s claims rely upon facts that he had at his disposal. Petitioner knew about the
22 Indictment, his communications with counsel, and the ten (10) mentioned armed robberies.
23 Petitioner had all the facts and law available to file his Petition earlier but failed to do so.
24 Based on this failure to properly allege good cause, this Court should decline to consider these
25 claims.

26 //

27 //

28 //

1 **E. Petitioner Cannot Demonstrate Sufficient Prejudice to Ignore the Procedural**
2 **Defaults**

3 In order to establish prejudice, the defendant must show ““not merely that the errors of
4 [the proceedings] created possibility of prejudice, but that they worked to his actual and
5 substantial disadvantage, in affecting the state proceedings with error of constitutional
6 dimensions.”” Hogan v. Warden, 109 Nev. at 960, 860 P.2d at 716 (1993) (quoting United
7 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). Defendant’s procedural
8 defaults cannot be excused because his underlying claim is meritless.

9 In this case, Petitioner cannot establish prejudice to ignore the procedural defaults
10 because his claims are without merit and belied by the record, as will be further discussed in
11 more detail below. “Bare” and “naked” allegations are not sufficient to warrant post-
12 conviction relief, nor are those belied and repelled by the record. Hargrove v. State, 100 Nev.
13 498, 502, 686 P.2d 222, 225 (1984). “A claim is ‘belied’ when it is contradicted or proven to
14 be false by the record as it existed at the time the claim was made.” Mann v. State, 118 Nev.
15 351, 354, 46 P.3d 1228, 1230 (2002). As Petitioner cannot satisfy both prongs of Strickland
16 or the basis of his other claims, he cannot demonstrate sufficient prejudice to ignore the
17 procedural defaults.

18 **II. PETITIONER KNOWINGLY AND VOLUNTARILY ENTERED HIS PLEA**

19 Pursuant to NRS 176.165, after sentencing, a defendant’s guilty plea can only be
20 withdrawn to correct “manifest injustice.” See also Baal v. State, 106 Nev. 69, 72, 787 P.2d
21 391, 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively valid,
22 and the burden is on a defendant to show that the plea was not voluntarily entered. Bryant v.
23 State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336,
24 337, 535 P.2d 1295, 1295 (1975)). Manifest injustice does not exist if the defendant entered
25 his plea voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

26 In determining whether a guilty plea is knowingly and voluntarily entered, the court
27 will review the totality of the circumstances surrounding the defendant's plea. Bryant, 102
28 Nev. at 271, 721 P.2d at 367. The proper standard set forth in Bryant requires the trial court

1 to personally address a defendant at the time he enters his plea in order to determine whether
2 he understands the nature of the charges to which he is pleading. Id. at 271; State v. Freese,
3 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). The guidelines for voluntariness of guilty
4 pleas “do not require the articulation of talismanic phrases.” Heffley v. Warden, 89 Nev. 573,
5 575, 516 P.2d 1403, 1404 (1973). It requires only “that the record affirmatively disclose that
6 a defendant who pleaded guilty entered his plea understandingly and voluntarily.” Brady v.
7 United States, 397 U.S. 742, 747-748, 90 S.Ct. 1463, 1470 (1970); United States v. Sherman,
8 474 F.2d 303 (9th Cir. 1973).

9 Specifically, the record must affirmatively show the following: 1) the defendant
10 knowingly waived his privilege against self-incrimination, the right to trial by jury, and the
11 right to confront his accusers; 2) the plea was voluntary, was not coerced, and was not the
12 result of a promise of leniency; 3) the defendant understood the consequences of his plea and
13 the range of punishment; and 4) the defendant understood the nature of the charge, i.e., the
14 elements of the crime. Higby v. Sheriff, 86 Nev. 774, 781, 476 P.2d 950, 963 (1970).
15 Consequently, in applying the “totality of circumstances” test, the most significant factors for
16 review include the plea canvass and the written guilty plea agreement. See Hudson v. Warden,
17 117 Nev. 387, 399, 22 P.3d 1154, 1162 (2001).

18 The Nevada Supreme Court recently decided Stevenson v. State, 131 Nev. 598, 354
19 P.3d 1277, (2015), holding that the statement in Crawford v. State, 117 Nev. 718, 30 P.3d
20 1123 (2001), which focuses the “fair and just” analysis solely upon whether the plea was
21 knowing, voluntary, and intelligent is more narrow than contemplated by NRS 176.165. The
22 Nevada Supreme Court therefore disavowed Crawford’s exclusive focus on the validity of the
23 plea and affirmed that the district court must consider the totality of the circumstances to
24 determine whether permitting withdrawal of a guilty plea before sentencing would be fair and
25 just. However, the Court also held that appellant had failed to present a fair and just reason
26 favoring withdrawal of his plea and therefore affirmed his judgment of conviction. Stevenson
27 v. State, 131 Nev. 598, 605, 354 P.3d 1277, 1281-282 (2015).

28 In Stevenson, the Nevada Supreme Court found that none of the reasons presented

1 warranted the withdrawal of Stevenson’s guilty plea, including allegations that the members
2 of his defense team lied about the existence of the video to induce him to plead guilty. Id. The
3 Court found similarly unconvincing Stevenson’s contention that he was coerced into pleading
4 guilty based on the compounded pressures of the district court’s evidentiary ruling, standby
5 counsel’s pressure to negotiate a plea, and time constraints. Id. As the Court noted, undue
6 coercion occurs when a defendant is induced by promises or threats which deprive the plea of
7 the nature of a voluntary act. Id., quoting Doe v. Woodford, 508 F.3d 563, 570 (9th Cir. 2007).

8 The Nevada Supreme Court also rejected Stevenson’s implied contention that
9 withdrawal was warranted because he made an impulsive decision to plead guilty without
10 knowing definitively whether the video could be viewed. Id. Stevenson did not move to
11 withdraw his plea for several months. Id. The Court made clear that one of the goals of the fair
12 and just analysis is to allow a hastily entered plea made with unsure heart and confused mind
13 to be undone, not to allow a defendant to make a tactical decision to enter a plea, wait several
14 weeks, and then obtain a withdrawal if he believes that he made a bad choice in pleading
15 guilty. Id. at 1281-82, quoting United States v. Alexander, 948 F.2d 1002, 1004 (6th Cir.
16 1991). The Court found that considering the totality of the circumstances, there was no
17 difficulty in concluding that Stevenson failed to present a sufficient reason to permit
18 withdrawal of his plea. Id. at 1282. Permitting him to withdraw his plea under the
19 circumstances would allow the solemn entry of a guilty plea to become a mere gesture, a
20 temporary and meaningless formality reversible at the defendant’s whim, which the Court
21 cannot allow. Id., 354 P.3d at 1282, quoting United States v. Barker, 514 F. 2d 208, 222 (D.C.
22 Cir. 1975).

23 **A. Petitioner Voluntarily and Knowingly Entered His Plea**

24 Petitioner alleges that he entered his plea unknowingly and involuntarily. The
25 overwhelming evidence in the record indicates this claim is meritless. First, the signed Guilty
26 Plea Agreement (“GPA”) established that Petitioner understood he waived certain rights by
27 pleading guilty:

28 By entering my plea of guilty, I understand that I am waiving and

forever giving up the following rights and privileges:

1. The Constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.
2. The Constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense(s) charged.
3. The constitutional right to confront and cross-examine any witness who would testify against me
4. The constitutional right to subpoena witnesses to testify on my behalf.
5. The constitutional right to testify in my own defense
6. The right to appeal the conviction with the assistance of an attorney, either appointed or retained, unless specifically reserved in writing and agreed upon as provided in NRS 174.035(3). I understand this means I am unconditionally waiving my right to a direct appeal of this constitutional, jurisdictional, or other grounds that challenge the legality of the proceedings as stated in NRS 177.015(4). However, I remain free to challenge my conviction through other post-conviction remedies including a habeas corpus petition pursuant to NRS Chapter 34.

GPA, at 6. Not only did Petitioner acknowledge the waiver of rights, but he also acknowledged that his plea was voluntary and that he understood is charges:

I have discussed the element of all the original charge(s) against me with my attorney and I understand the nature of the charge(s) against me

...

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

1 Id. at 6-7. Petitioner's counsel executed a "Certificate of Counsel" as an officer
2 of the Court affirming the following:

- 3 1. I have fully explained to the Defendant the allegations
4 contained in the charge(s) to which guilty pleas are being
5 entered.
- 6 2. I have advised the Defendant of the penalties for each
7 charge and the restitution that the Defendant may be
8 ordered to pay.
- 9 3. I have inquired of Defendant facts concerning Defendant's
10 immigration status and explained to Defendant that if
11 Defendant is not a United States citizen any criminal
12 conviction will most likely result in serious negative
13 immigration consequences including but not limited to:
 - 14 a. The removal from the United States
15 through deportation;
 - 16 b. An inability to reenter the United States;
 - 17 c. The inability to gain United States
18 citizenship or legal residency;
 - 19 d. An inability to renew and/or retain any
20 legal residency status; and/or
 - 21 e. An indeterminate term of confinement, by with United
22 States Federal Government based on the conviction and
23 immigration status.

24 Moreover, I have explained that regardless of what Defendant may
25 have been told by any attorney, no one can promise Defendant that
26 this conviction will not result in negative immigration
27 consequences and/or impact Defendant's ability to become a
28 United States citizen and/or legal resident.

- 1 4. All pleas of guilty offered by the Defendant pursuant to this
2 agreement are consistent with the facts known to me and
3 are made with my advice to the Defendant.
- 4 5. To the best of my knowledge and belief, the Defendant:
 - 5 a. Is competent and understands the
6 charges and the consequences of
7 pleading guilty as provided in this
8 agreement,
 - 9 b. Executed this agreement and will
10 enter all guilty pleas pursuant hereto
11 voluntarily, and
 - 12 c. Was not under the influence of
13 intoxicating liquor, a controlled

1 substance or other drug at the time I
2 consulted with the Defendant as
3 certified in paragraphs 1 and 2
4 above.

5 Id. at 8.

6 In addition to the GPA, the Court canvassed Petitioner. During the canvassing,
7 Petitioner illustrated that he entered the plea both knowingly and voluntarily:

8 THE COURT: Okay. Fine. Mr. Powell, will you state and spell
9 your name for the record.

10 DEFENDANT POWELL: Adrian Powell, A-D-R-I-A-N, P-O-W-
11 E-L-L.

12 THE COURT: And --

13 MR. KANE: I'll come over here. [Court and Court Recorder
14 confer]

15 THE COURT: Sure. Okay. Mr. Powell, how hold are you?

16 DEFENDANT POWELL: I'm 23 years old. I'll be 24 on Thursday.

17 THE COURT: How far did you go in school?

18 DEFENDANT POWELL: I graduated high school.

19 THE COURT: And do you have any learning disability?

20 DEFENDANT POWELL: No, Your Honor.

21 THE COURT: Do you read, write and understand the English
22 language?

23 DEFENDANT POWELL: Yes, Your Honor.

24 THE COURT: And is English your primary language?

25 DEFENDANT POWELL: Yes, Your Honor.

26 THE COURT: Have you been treated recently for any mental
27 illness or addiction of any kind?

28 DEFENDANT POWELL: No, Your Honor.

THE COURT: Has anyone ever suggested you should be treated
for mental health?

DEFENDANT POWELL: No, Your Honor.

THE COURT: Are you currently under the influence of any drug,
medication or alcohol?

DEFENDANT POWELL: No, Your Honor.

THE COURT: Have you been on any medication during your stay
in jail?

DEFENDANT POWELL: Yes, Your Honor.

THE COURT: What medication?

DEFENDANT POWELL: Remeron.

THE COURT: What is -- what type of medication is that?

DEFENDANT POWELL: It treats depression.

1 THE COURT: How do you feel today?
2 DEFENDANT POWELL: I feel excellent, Your Honor.
3 THE COURT: Do you understand what's happening?
4 DEFENDANT POWELL: Yes, Your Honor.
5 THE COURT: Does the medication affect your ability to
6 understand what's going on today?
7 DEFENDANT POWELL: No, Your Honor.
8 THE COURT: Are you under any other effects of the medication?
9 DEFENDANT POWELL: No, Your Honor.
10 THE COURT: Have you received a copy of the guilty plea
11 agreement?
12 DEFENDANT POWELL: Yes, Your Honor.
13 **THE COURT: Did you read the guilty plea agreement?**
14 **DEFENDANT POWELL: Yes, Your Honor.**
15 THE COURT: Did you understand everything in the guilty plea
16 agreement?
17 DEFENDANT POWELL: Yes, Your Honor.
18 **THE COURT: Have you discussed this case with your**
19 **attorney?**
20 **DEFENDANT POWELL: Yes, Your Honor.**
21 **THE COURT: Are you satisfied with the representation and**
22 **advice given to you by your attorney?**
23 **DEFENDANT POWELL: Yes, Your Honor.**
24 THE COURT: As to the charges in the guilty plea agreement, how
25 do you plead?
26 DEFENDANT POWELL: I plead guilty, Your Honor
27 **THE COURT: I'm making this plea freely and voluntarily?**
28 **DEFENDANT POWELL: Yes, Your Honor.**
THE COURT: Has anyone forced or threatened you or
anyone close to you to get you to enter this plea?
DEFENDANT POWELL: No, Your Honor.
THE COURT: Has anyone made any promises other than
what's in the guilty plea agreement to get you to enter the plea?
DEFENDANT POWELL: No, Your Honor.
THE COURT: I have before me the guilty plea agreement, and I'm
going to hold this up, on page 7, is this your signature?
DEFENDANT POWELL: Yes, Your Honor.
THE COURT: Did you understand everything contained in
the guilty plea agreement?
DEFENDANT POWELL: Yes, Your Honor.
THE COURT: And do you understand that as part of the guilty
plea agreement, although you are not pleading guilty to these
alleged offenses, the State will be allowed to argue then at the time
of sentencing?

1 DEFENDANT POWELL: Yes, Your Honor.

2 ...

3 **THE COURT: So I don't know if I asked you, before you sign**
4 **this plea agreement, did you read it and discuss it with your**
5 **attorney?**

6 **DEFENDANT POWELL: Yes, Your Honor.**

7 **THE COURT: Do you understand everything contained in**
8 **this agreement?**

9 **DEFENDANT POWELL: Yes, Your Honor.**

10 THE COURT: You understand that there are certain constitutional
11 rights that you're giving up by entering the guilty plea agreement?

12 DEFENDANT POWELL: Yes, Your Honor.

13 THE COURT: You understand that you have a right to appeal on
14 reasonable constitutional, jurisdictional or other grounds that
15 challenge the legality of the proceedings?

16 DEFENDANT POWELL: Yes, Your Honor.

17 THE COURT: And, again, do you understand the range of
18 punishment? And counsel –

19 DEFENDANT POWELL: Yes, Your Honor.

20 THE COURT: Well, we're going to go through and put these on
21 the record, so it's clear.

22 MR. KANE: That's Counts 1 and 8, Your Honor. They carry with
23 it a 1 to 6 range; Counts 2 and 9, 2 to 15. Counts 3 and 13, 5 to life
24 or 5 to 15, plus a consecutive term of 1 to 15 for deadly weapon
25 enhancement. Counts 4, 5, 6, 7, 10, 11 and 14, they're 2 to 15; a
26 term of 1 to 15 for use of deadly weapon enhancement.

27 **THE COURT: Do you understand the range for each of those**
28 **counts?**

DEFENDANT POWELL: Yes, Your Honor.

THE COURT: Do you understand that sentencing is entirely up to
me?

DEFENDANT POWELL: Yes, Your Honor.

THE COURT: And do you understand that, again, it's up to me as
to whether any or whether all of those counts run consecutively or
concurrently?

DEFENDANT POWELL: Yes, Your Honor.

THE COURT: And no one is in a position to promise you
leniency or special treatment of any kind?

DEFENDANT POWELL: Yes, Your Honor.

THE COURT: In the information in the indictment, it says -- or
what is it that you did on the 28th of September to cause you to
plead guilty?

DEFENDANT POWELL: I went into two establishments, Your
Honor, and I committed the armed robbery.

1 THE COURT: And those establishments a -- is this Roberto's --
MR. KANE: Pepe's -- Pepe's and Walgreen's.

2 THE COURT: Pepe's and Walgreen's. Thank you. Pepe's and
Walgreen's?

3 DEFENDANT POWELL: Yes, Your Honor.

4 THE COURT: You went in those establishments and committed
the armed robberies?

5 DEFENDANT POWELL: Yes, Your Honor.

6 THE COURT: And do you have any questions you'd like to ask
me or your attorney before I accept this plea?

7 DEFENDANT POWELL: No, Your Honor.

8 THE COURT: Anything that I left out?

MR. GIORDANI: No.

9 THE COURT: Okay. And also for the record, you had
approximately two hours to discuss all of this -- maybe longer than
that now -- with your attorney before accepting this?

10 DEFENDANT POWELL: Yes, Your Honor.

11 THE COURT: And without telling me what they were, your
attorney answered all your questions regarding the guilty plea
agreement?

12 DEFENDANT POWELL: Yes, Your Honor.

13 THE COURT: Okay. The Court finds the Defendant's plea of
guilty is freely and voluntarily made and the Defendant
understands the nature of the offenses and the consequences of his
plea and, therefore, accepts the plea of guilty. The matter is
referred to Department of Parole & Probation for a PSI. What's the
date for sentencing?

14 Recorder's Transcript of Jury Trial Filed on November 2, 2018, at 14-20
15 (emphasis added).

16 Any claim that Petitioner entered the plea unknowingly and involuntarily is belied by
17 the record and suitable for summary denial under Hargrove, 100 Nev. at 502, 686 P.2d. In his
18 GPA, Petitioner acknowledged that he waived certain rights and privileges. GPA, at 6. He also
19 acknowledged that his decision to enter the plea was voluntary and not because of a promise
20 of leniency. GPA, at 7; Recorder's Transcript of Jury Trial Filed on November 2, 2018, at 19.
21 In both the Court's canvassing and his GPA, Petitioner showed that he understood the nature
22 of his crime as well the terms of plea. The totality of the circumstances show that Petitioner's
23 plea was knowingly and voluntarily entered. Thus, these claims should be denied.
24
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1 **B. Petitioner Only Alleges Bare and Naked Claims**

2 Petitioner's claims are not sufficiently pled pursuant to Hargrove, 100 Nev. at 502, 686
3 P.2d at 225, and Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). Indeed, a party
4 seeking review bears the responsibility "to cogently argue, and present relevant authority" to
5 support his assertions. Edwards v. Emperor's Garden Restaurant, 122 Nev. 317, 330 n.38, 130
6 P.3d 1280, 1288 n.38 (2006); Dept. of Motor Vehicles and Public Safety v. Rowland, 107
7 Nev. 475, 479, 814 P.2d 80, 83 (1991) (defendant's failure to present legal authority resulted
8 in no reason for the district court to consider defendant's claim); Maresca, 103 Nev. at 673,
9 748 P.2d at 6 (an arguing party must support his arguments with relevant authority and cogent
10 argument; "issues not so presented need not be addressed"); Randall v. Salvation Army, 100
11 Nev. 466, 470-71, 686 P.2d 241, 244 (1984) (court may decline consideration of issues lacking
12 citation to relevant legal authority); Holland Livestock v. B & C Enterprises, 92 Nev. 473, 533
13 P.2d 950 (1976) (issues lacking citation to relevant legal authority do not warrant review on
14 the merits). 100 Nev. 498

15 Petitioner's bare and naked allegations fail to include legal authority regarding what a
16 proper indictment must allege. An indictment must contain a "plain, concise, and definite
17 written statement of the essential facts constituting the offense charged." NRS 173.075.
18 Specifically, the indictment must: (1) contain the elements of the charged offense; (2) inform
19 the defendant of the charges so he can prepare a defense; and (3) "be definite enough to prevent
20 the prosecutor from changing the theory of the case." Husney v. O'Donnell, 95 Nev. 467, 469,
21 596 P.2d 230, 231 (1979); Laney v. State, 86 Nev. 173, 178, 466 P.2d 666, 670 (1970). When,
22 however, the sufficiency of an indictment is questioned for the first time upon appeal, it will
23 not be held insufficient to support the judgment, unless it is so defective that by no
24 construction, within the reasonable limits of the language used, can it be said to charge the
25 offense for which the defendant was convicted." Laney, 86 Nev. at 178, 466 P.2d at 670
26 (1970).

27 Petitioner fails to support his claims that there were any defects in the indictment. The
28 arguments in Section I of the Petition claim the indictment was fatally flawed. However,

1 Petitioner provides nothing more than conclusory statements that the indictment is improper.
2 His lack of legal support leaves his claim naked and, therefore, ripe only for summary
3 dismissal under Hargrove, 100 Nev. at 502, 686 P.2d at 225.

4 Even if Petitioner provided some legal support, his claims would fail as the indictment
5 contained no defects. Every count in the indictment contained a concise statement of the facts
6 for the offense charged. These statements were sufficient to inform Petitioner of the charges
7 and theory of the case. Thus, any claim that the indictment was flawed should be denied.

8 **III. PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL**

9 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
10 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
11 defense.” The United States Supreme Court has long recognized that “the right to counsel is
12 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,
13 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
14 (1993).

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

26 The court begins with the presumption of effectiveness and then must determine
27 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
28 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel

1 does not mean errorless counsel, but rather counsel whose assistance is “[w]ithin the range of
2 competence demanded of attorneys in criminal cases.” Jackson v. Warden, 91 Nev. 430, 432,
3 537 P.2d 473, 474 (1975).

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

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

23 When a conviction is the result of a guilty plea, a defendant must show that there is a
24 “reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and
25 would have *insisted* on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370
26 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107
27 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

28 Even if a defendant can demonstrate that his counsel's representation fell below an

1 objective standard of reasonableness, he must still demonstrate prejudice and show a
2 reasonable probability that, but for counsel's errors, the result of the trial would have been
3 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
4 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a probability
5 sufficient to undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-89,
6 694, 104 S. Ct. at 2064-65, 2068).

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

17 **A. Counsel Did Not Mislead Petitioner Regarding Sentencing**

18 Petitioner claims that a conflict of interest existed when counsel told him he would only
19 receive six (6) to fifteen (15) years. This is not Petitioner's first attempt to make this claim. In
20 a prior motion before this court, Petitioner alleged that trial counsel promised he would receive
21 six (6) to fifteen (15) years. Petitioner's counsel testified that no conversation ever took place:

22 Q [Ms. Mcneill]: Okay. When you were discussing the deal with
23 Mr. Powell, did you tell him that you were going to get him a 6-
24 to-15-year sentence?

25 A [Mr. Kane]: Never

26 Q: You never told him that.

27 A: Nope

28 Q: Okay. Did you tell him that if it weren't for the uncharged
cases, you could have gotten the 3 to 8?

A: No

1 Recorders Transcript of Hearing Filed on 2/1/2021, at 9. On cross-examination, Petitioner's
2 counsel made further statements regarding their conversation:

3 Q [Mr. Giordani]: He also claimed in his affidavit: My
4 attorney told me that regardless of what the guilty plea agreement
5 said, I was going to get a sentence of 6 to 15 years. Is that true or
6 false?

7 A [Mr. Kane]: No, and that's, you know, when I was
8 reading that today, that's the one I took the most offense of, out of
9 all of them. And that's because very early on in my career, I forgot
10 how it came about, but one of my mentors, Josh Tomshek, he says,
11 listen, you can never promise a sentence. Just like in civil cases,
12 you can never promise a client that they're going to get X amount
13 of money out of a settlement. Never have done it on any of my
14 cases, either criminal or civil. And so, yeah, that absolutely did not
15 take place. I've never promised a sentence. And going further, you
16 go -- I went over the Guilty Plea Agreement with him as well as
17 the sentencing memo multiple times. He -- we cannot guarantee
18 you a sentence. You cannot be guaranteed a sentence. This is the
19 sentencing range that you're looking at. The discretion's up to the
20 Judge. We'll do our best. We're going to get a sentencing memo
21 for you which we did. And we'll argue like hell for you, but, no,
22 did not tell him that.

23 Id. at 17-18. At no point does the record indicate that trial counsel made any promises
24 regarding the sentence Petitioner would receive. As discussed supra, Section I.3., this Court
25 already ruled on this issue. Thus, Petitioner's claim should be summarily denied. Hargrove,
26 100 Nev. at 502, 686 P.2d at 225.

27 **B. Counsel Cannot be Ineffective for Failing to Make a Futile Objection**

28 Petitioner claims that Counsel was ineffective for not objecting to the indictment.
Counsel cannot be ineffective for failing to make futile objections or arguments. See Ennis v.
State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the "immediate and
ultimate responsibility of deciding if and when to object, which witnesses, if any, to call, and
what defenses to develop." Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002). As
discussed supra, Section II, any claim that the indictment contained defects is meritless.
Petitioner's counsel cannot be ineffective for making a meritless objection. Therefore,

Petitioner's argument is insufficient to demonstrate ineffective assistance of counsel and should be summarily denied. Browning v. State, 120 Nev. 347, 357, 91 P.3d 39, 47 (2004); Hargrove, 100 Nev. at 502, 686 P.2d at 225.

C. The Record Belies Any claim that Counsel Did Not Investigate Possible Witnesses

Petitioner incorrectly claims counsel did not investigate possible alibi witnesses. A defendant who contends his attorney was ineffective because he did not adequately investigate must show how a better investigation would have changed the outcome of trial. Strickland, 466 U.S. at 687, 104 S. Ct. at 2064. Such a defendant must allege with specificity what the investigation would have revealed and how it would have altered the outcome of the trial. See State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

"[D]efense counsel has a duty 'to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.'" State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993) (quoting Strickland, 466 U.S. at 691, 104 S. Ct. at 2066). A decision "not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgment.'" Id. Moreover, "[a] decision not to call a witness will not generally constitute ineffective assistance of counsel" Id. at 1145, 865 P.2d at 328.

Indeed, to establish a claim of ineffective assistance of counsel for advice regarding a guilty plea, a defendant must show "gross error on the part of counsel." Turner v. Calderon, 281 F.3d 851, 880 (9th Cir. 2002). A plea of guilty is presumptively valid, particularly where it is entered into on the advice of counsel, and the burden is on a defendant to show that the plea was not voluntarily entered. Bryant, 102 Nev. at 272, 721 P.2d at 368 (citing Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)); Jezierski v. State, 107 Nev. 395, 397, 812 P.2d 355, 356 (1991). Ultimately, while it is counsel's duty to candidly advise a defendant regarding a plea offer, the decision of whether or not to accept a plea offer is the defendants. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 163 (2002).

The record belies any claim that counsel did not thoroughly investigate possible

1 witnesses. Counsel testified that he did follow up on possible alibi witnesses:

2 A [Mr. Kane]: [H]e would have – he wanted to talk to us about
3 alibi witnesses, you know, that we checked out.

4 Recorders Transcript of Hearing Filed on 2/1/2021, at 16. No evidence in the record indicates
5 that counsel failed to investigate witnesses. Thus, Petitioner’s claim should be summarily
6 denied as it is belied by the record.

7 Even if Petitioner could show deficiency, which he cannot, he makes no claims about
8 what further investigation would reveal. The basis of his claim is a failure to investigate alibi
9 witnesses. However, the petition contains no mention of any such alibi witness or their
10 testimony. Thus, Petitioner’s failure to show what further investigation would reveal
11 necessitates the denial of this claim.

12 **D. The Record Belies Any Claim that Counsel Failed to Communicate**

13 Petitioner claims counsel did not discuss trial strategy making him ineffective. A
14 defendant is not entitled to a particular “relationship” with his attorney. Morris v. Slappy, 461
15 U.S. 1, 14, 103 S. Ct. 1610, 1617 (1983). There is no requirement for any specific amount of
16 communication as long as counsel is reasonably effective in his representation. See Id.

17 Petitioner’s claims regarding a lack of communication are meritless. Counsel frequently
18 discussed the case with Petitioner:

19 Q [Ms. Mcneill]: How much contact have you had with Mr.
20 Powell prior to the start of the trial?

21 A[Mr. Kane]: Okay. So I reviewed -- I went back today. I looked
22 at it for about an hour and I looked at the original Motion to
23 Withdraw and the attached visits which candidly didn’t seem right
24 to me. So I looked at Rob Lawson’s billing records which showed
25 that he had been there eight times. And I believe I had been there
26 at least two, if not three times. The communication that we had
27 was he had my cell phone number and with the direct bill line that
28 he called quite frequently usually always at the same time. And so
we did discuss things over the phone as well

Q: Okay. Do you have any recollection of how many phone calls?

A: Between Mr. Powell, his mom, it’s either his girlfriend or
fiancée, and his dad –

Q: Well let’s just narrow it to Mr. Powell.

A: So for Mr. Powell, how many times he called or how many

1 times we actually spoke? I mean, he called -- Q How many times
2 you actually spoke? A Okay. We probably spoke 15 plus times
[indiscernible due to interruption by inmate] –

3 Recorders Transcript of Hearing Filed on 2/1/2021, at 9-10. Not only did frequent
4 conversations occur, but counsel discussed the strength of evidence in the case with Petitioner:

5 Q [Mr. Giordani]: He also claims: At no point did my attorney
6 discuss the discovery with me or discuss the theory of defense at
7 trial.

8 . . .
9 A [Mr. Kane]: It goes back to what I was talking about with the
10 alibi. You know, part of the issue when we were talking about
11 defenses was this case, it was a tough case for him. And so, you
12 know, going through the evidence and talking to him, I would and
13 then I know I did, and then I'm almost a hundred percent sure Rob
14 Lawson did as well, but if you asked him, well, listen, what's
15 missing? What should we look for? Your alibi witness, you know,
16 whatever. And so, we did discuss the defenses leading up to trial.
17 We discussed the defenses for -- not the defenses specifically, but
the facts of the case and the evidence in the back room right there
where they, where they keep the defendants for, had it was well
over 30 minutes from what I recall. And I want to be conservative
on that and it could have been even longer going through the
evidence, the date, yeah, before he took it. I don't, yeah, that's all
I got on that.

18 Id. at 17. Counsel later clarified that their communications lasted closer to an hour and a half.

19 Id. at 28. Counsel communicated with Petitioner about the evidence and witnesses for a
20 substantial amount of time. Thus, Petitioner's claim regarding a failure to communicate is
21 belied by the record and suitable for summary denial.

22 **IV. NO DUE PROCESS VIOLATION OCCURRED WHEN PETITIONER DID**
23 **NOT RECEIVE ALL THE DISCOVERY OF UNCHARGED CASES**

24 Petitioner claims that a due process violation occurred due to not receiving discovery
25 on uncharged cases. It is well-settled that Brady and its progeny require a prosecutor to
26 disclose evidence favorable to the defense when that evidence is material either to guilt or to
27 punishment. See Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963); Mazzan v. Warden,
28 116 Nev. 48, 66, 993 P.2d 25 (2000); Jimenez v. State, 112 Nev. 610, 618-19, 918 P.2d 687

(1996). “[T]here are three components to a Brady violation: (1) the evidence at issue is favorable to the accused; (2) the evidence was withheld by the state either intentionally or inadvertently; and (3) prejudice ensued, i.e., the evidence was material.” Mazzan, 116 Nev. at 67. “Where the state fails to provide evidence which the defense did not request or requested generally, it is constitutional error if the omitted evidence creates a reasonable doubt which did not otherwise exist. In other words, evidence is material if there is a reasonable probability that the result would have been different if the evidence had been disclosed.” Id. at 66 (internal citations omitted). “In Nevada, after a specific request for evidence, a Brady violation is material if there is a reasonable *possibility* that the omitted evidence would have affected the outcome. Id. (original emphasis) (citing Jimenez, 112 Nev. at 618-19, 918 P.2d at 692; Roberts v. State, 110 Nev. 1121, 1132, 881 P.2d 1, 8 (1994)).

“The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish ‘materiality’ in the constitutional sense.” United States v. Agurs, 427 U.S. 97, 108 96 S. Ct. 2392, 2399-400 (1976). Favorable evidence is material, and constitutional error results, “if there is a reasonable probability that the result of the proceeding would have been different.” Kyles, 514 U.S. at 433-34, 115 S. Ct. at 1565 (citing United States v. Bagley, 473 U.S. 667, 682 105 S. Ct. 3375, 3383 (1985)). A reasonable probability is shown when the nondisclosure undermines confidence in the outcome of the trial. Kyles, 514 U.S. at 434, 115 S. Ct. 1565.

Petitioner cites no law entitling him to pre-indictment discovery. The State is unaware of any Nevada case law directly addressing this issue. However, the Supreme Court of Nevada has previously stated that a defendant maintains no constitutional right to discovery in the grand jury setting. See Mayo v. Eighth Judicial Dist. Court of State in & for Count of Clark, 132 Nev. 801, 806, 384 P.3d 486, 490 (2016) (“Brady’s constitutional disclosure obligation, and by extension, the presumption stated in Agurs, thus do not apply in the grand jury setting”). Certainly, a person who has no right to discovery in a grand jury setting, also has no right to discovery prior to the grand jury proceeding. Even if an obligation did exist, none of these charges were material to Petitioner’s case. They were unrelated armed robberies committed

1 by Petitioner. Thus, Petitioner's claim should be denied.

2 Additionally, Petitioner's argument is belied by the record. Petitioner claims that the
3 State never provided any evidence related to the ten (10) additional armed robberies.
4 Petitioner's counsel previously testified that this claim is incorrect:

5 Q [Mr. Giordani]: Right. And you were shown some discovery on
6 those other uncharged acts like photographs -- still shots of
7 photographs from surveillance videos in the uncharged cases,
8 correct?

9 A [Mr. Kane]: Correct.

10 Q: And we kind of pointed out, look, you can see the shoes are the
11 exact same in some of the events and the way they all jumped, the
12 MO is the same. Do you recall those conversations?

13 A: I don't recall specifics. I recall that -- that you guys, the DA's
14 office, you know, thought they had evidence to file.

15 Q: Okay. And you recall going through some of it or at least
16 having some understanding of there are ten other events that are
17 potentially related and potentially could be charged after this trial
18 occurs, correct?

19 A: Yeah, that's correct.

20 Recorders Transcript of Hearing Filed on 2/1/2021, at 21-22. Petitioner's counsel did have a
21 chance to review some of the evidence in the uncharged armed robberies. Thus, Petitioner
22 claim is belied by the record and should be denied. Hargrove, 100 Nev. at 502, 686 P.2d at
23 225.

24 **V. PETITIONER'S CLAIM OF CUMULATIVE ERROR FAILS**

25 Petitioner argues that the cumulation of all of the above errors warrants relief. However,
26 the Nevada Supreme Court has not endorsed application of its direct appeal cumulative error
27 standard to the post-conviction Strickland context. McConnell v. State, 125 Nev. 243, 259,
28 212 P.3d 307, 318 (2009). Nor should cumulative error apply on post-conviction review.
Middleton v. Roper, 455 F.3d 838, 851 (8th Cir. 2006), cert. denied, 549 U.S. 1134, 1275 S.
Ct. 980 (2007) ("a habeas petitioner cannot build a showing of prejudice on series of errors,
none of which would by itself meet the prejudice test.").

Even if applicable, a finding of cumulative error in the context of a Strickland claim is

1 extraordinarily rare and requires an extensive aggregation of errors. See, e.g., Harris By and
2 through Ramseyer v. Wood, 64 F.3d 1432, 1438 (9th Cir. 1995). In fact, logic dictates that
3 there can be no cumulative error where the petitioner fails to demonstrate any single violation
4 of Strickland. Turner v. Quarterman, 481 F.3d 292, 301 (5th Cir. 2007) (“where individual
5 allegations of error are not of constitutional stature or are not errors, there is ‘nothing to
6 cumulate.’”) (quoting Yohey v. Collins, 985 F.2d 222, 229 (5th Cir. 1993)); Hughes v. Epps,
7 694 F.Supp.2d 533, 563 (N.D. Miss. 2010) (citing Leal v. Dretke, 428 F.3d 543, 552-53 (5th
8 Cir. 2005)). Since Petitioner has not demonstrated any claim warranting relief under
9 Strickland, there are no errors to cumulate.

10 Under the doctrine of cumulative error, “although individual errors may be harmless,
11 the cumulative effect of multiple errors may deprive a defendant of the constitutional right to
12 a fair trial.” Pertgen v. State, 110 Nev. 554, 566, 875 P.2d 361, 368 (1994) (citing Sipsas v.
13 State, 102 Nev. 119, 716 P.2d 231 (1986)); see also Big Pond v. State, 101 Nev. 1, 3, 692 P.2d
14 1288, 1289 (1985). The relevant factors to consider in determining “whether error is harmless
15 or prejudicial include whether ‘the issue of innocence or guilt is close, the quantity and
16 character of the error, and the gravity of the crime charged.’” Id., 101 Nev. at 3, 692 P.2d at
17 1289.

18 Here, Petitioner failed to show cumulative error because there are no errors to cumulate.
19 Petitioner failed to show how any of the above claims constituted ineffective assistance of
20 counsel. Instead, all of Petitioner’s claims are either belied by the record or otherwise
21 meritless. As such, Petitioner has failed to establish cumulative error.

22 **VI. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

23 The Nevada Supreme Court has held that if a petition can be resolved without
24 expanding the record, then no evidentiary hearing is necessary. NRS 34.770; Marshall v. State,
25 110 Nev. 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231
26 (2002). A defendant is entitled to an evidentiary hearing if his petition is supported by specific
27 factual allegations, which, if true, would entitle him to relief unless the factual allegations are
28 repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State,

1 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that “[a] defendant seeking post-
2 conviction relief is not entitled to an evidentiary hearing on factual allegations belied or
3 repelled by the record”). “A claim is ‘belied’ when it is contradicted or proven to be false by
4 the record as it existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at
5 1230 (2002).

6 It is improper to hold an evidentiary hearing simply to make a complete record. See
7 State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The
8 district court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted
9 ‘to make as complete a record as possible.’ This is an incorrect basis for an evidentiary
10 hearing.”).

11 At this stage, there is no need for an evidentiary hearing because all the claims are either
12 waived, without merit, or bare and naked allegations that are belied by the record.
13 Additionally, Petitioner’s counsel already testified at an evidentiary hearing regarding these
14 issues. Another evidentiary hearing is unnecessary, as the record concerning these issues is
15 complete. As none of Petitioner’s claims would entitle him to relief and there is no need to
16 expand the record, the request for another evidentiary hearing should be denied.

17 CONCLUSION

18 For the foregoing reasons, the State respectfully requests that this Court DENY
19 Petitioner’s Petition for Writ of Habeas Corpus.

20 DATED this 14th day of October, 2021.

21 Respectfully submitted,

22 STEVEN WOLFSON
23 Clark County District Attorney
Nevada Bar #001565

24
25 BY /s/ Taleen Pandukht

26 TALEEN PANDUKHT
27 Chief Deputy District Attorney
28 Nevada Bar #005734

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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 14th day of September, 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

ADRIAN POWELL #1217413
S.D.C.C.
PO BOX 208
INDIAN SPRINGS, NV 89070

BY /s/ **E. DEL PADRE**
E. DEL PADRE
Secretary for the District Attorney's Office

1 Adrian Powell, 1217413
2 Petitioner/In Propria Persona
3 Post Office Box 208, SDCC
4 Indian Springs, Nevada 89070

* File stamp
* Copy Requested *

5 IN THE Eight JUDICIAL DISTRICT COURT OF
6 THE STATE OF NEVADA IN AND FOR THE
7 COUNTY OF Clerk

FILED

OCT 14 2021

Adrian Powell
CLERK OF COURT

8 State of Nevada
9 Plaintiff,

10 vs.

11 Adrian Powell
12 Defendant,

Case No. C-17-32767-2

Dept. No. XXVIII

Docket _____

* Hearing Requested

14 MOTION TO WITHDRAW COUNSEL

15 Date of Hearing: _____

November 8, 2021
11:00 AM

16 Time of Hearing: _____

17 'ORAL ARGUMENT REQUESTED, Yes ____ No X'

18 COMES NOW, Defendant, Adrian Powell, proceeding in proper
19 person, moves this Honorable Court for an ORDER Granting him permission to withdraw his
20 present counsel of record in the proceeding action, namely,

21 Monique A. McNeil

22 This Motion is made and based on all papers and pleadings on file with the Clerk of the Court
23 which are hereby incorporated by this reference, the Points and Authorities herein, and attached
24 Affidavit of Defendant.

25 DATED: this 8 day of Oct, 2021.

26 BY: Adrian Powell #1217413
27 Defendant/In Propria Personam
28

RECEIVED
OCT 13 2021
CLERK OF THE COURT

1 POINTS AND AUTHORITIES

2 The Nevada Revised Statute 7.055(1), which deals with the duty of a discharged attorney, states:

3 "An attorney who has been discharged by his client shall, upon demand and payment of the fee due from
4 the client, immediately deliver to the client all papers, documents, pleadings and items of tangible property
which belong to or were prepared for that client."

5 As can be seen in this case, the defendant does not owe any fees, in fact, they, meaning counsel(s)
6 of record, were appointed by the Court to represent the defendant, who was an indigent, in Case
7 Number, C173277673 in Department No. XXVIII.

8 N.R.S. 7.055(2) gives this Court the power to Order the Attorney(s) of record to produce and
9 deliver to the defendant in his/her possession, which states:

10 "A client who, after demand therefore and payment of the fee due from him, does not receive from his
11 discharged attorney all papers, documents, pleadings and items of tangible personal property may, by
12 a motion filed after at least 5 days' notice to the attorney, obtain an order for the production of his papers,
Documents, pleadings and other property."

13 In numerous cases throughout this great land, the courts have held attorneys to a high degree of
14 professional responsibility and integrity. This carried from the time of hiring to and through the
15 attorney's termination of employment.

16 Supreme Court Rule 173 states quite clear that a withdrawn attorney owes his former client a
17 "... prompt accounting of all his client's ... property in his possession." This is echoed in Canon 2 of
18 the Code of Professional Responsibility of the American Bar Association, which states in pertinent
19 part EC 2-32: "A lawyer should protect the welfare of his client by ... delivering to the client all
20 papers and property to which the client is entitled." Again in Disciplinary Rule 2-110(A)(2) of the
21 ABA, this is brought out that a withdrawn attorney must deliver to the client all papers and comply with
22 applicable laws on the subject.

23 In the cases of In Re Yount, 93 Ariz. 322, 380 P.2d 780 (1963) and State v. Alvey, 215 Kan. 460,
24 324 P.2d 747 (1974), both of which dealt with a factual situation involving a withdrawn attorney
25 refusing to deliver to a former client his documents after being requested to do so by the client. The
26 court in Yount, supra, ordered the attorney disbarred while in Alvey, supra, the court had the attorney
27 censured.

1 While not the intention of the Defendant in this case to have the attorney disbarred, these cases do
2 show a pattern in the court in considering the refusal to deliver to a former client all his documents
3 and property after being requested to do so, a serious infraction of the law and of professional ethics.
4 See, In Re Sullivan, 212 Kan. 233, 510 P.2d 1199 (1973).

5 In summary, this court has jurisdiction through NRS 7.055 to Order the attorney(s) to produce and
6 deliver to the Defendant all documents and personal property in his/their possession belonging to him
7 or prepared for him. The Defendant has fulfilled his obligations in trying to obtain the papers. The
8 attorney(s) is in discord with Cannon 2 of the Code of Professional responsibility and the Nevada
9 Supreme Court Rules 173, 176 and 203.

10
11 DATED: this 8 day of OCT, 2021.

12
13 BY: 

14 Adrian Powell #1217413
15 Defendant/In Propria Personam
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AFFIDAVIT OF: Adrian Powell

STATE OF NEVADA)
COUNTY OF CLARK) ss:

TO WHOM IT MAY CONCERN:

I, Adrian Powell the undersigned, do hereby swear that all statements, facts and events within my foregoing Affidavit are true and correct of my own knowledge, information and belief, and as to those, I believe them to be True and Correct. Signed under the penalty of perjury, pursuant to, NRS. 29.010; 53.045; 208.165, and state the following:

[A large diagonal line is drawn across the body of the affidavit, indicating that the content has been redacted.]

FURTHER YOUR AFFIANT SAYETH NAUGHT.

EXECUTED AT: Indian Springs, Nevada, this 8 day of October

2021

BY:

Adrian Powell #1217413
Post Office Box-203 (SDCC)
Indian Springs, Nevada 89070
Affiant, In Propria Personam:

CERTIFICATE OF SERVICE BY MAILING


I, Adrian Powell, hereby certify, pursuant to NRCP 5(b), that on this 15
day of Oct, 2021, I mailed a true and correct copy of the foregoing, "Motion
to withdraw Counsel"

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

Clerk of Courts
200 Lewis Ave
3rd Floor
L.V. Nev 89155

CC:FILE

DATED: this 8 day of Oct, 2021.


Adrian Powell # 1217913
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding motion to

withdrawal Counsel

(Title of Document)

filed in District Court Case number C-17-327767-2

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

-OR-

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

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

(State specific law)

-or-

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


Signature

Oct 8, 2021
Date

Adrian Powell
Print Name

Title

Adrian Powell 41217413
S.D.C.
PO Box 208
J's New 8900

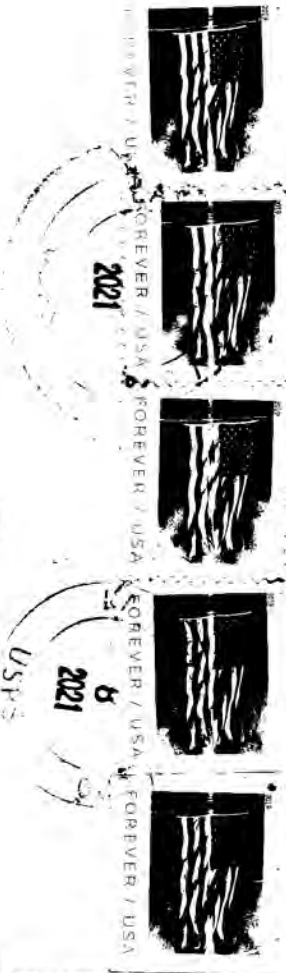
391 Mr. /

Chet OS Cards
200 Lewis Ave
3rd floor
Lv New 89155

851013E300 0075



391 Mr. /



Writ of Habeas Corpus

COURT MINUTES

October 18, 2021

A-21-839265-W Adrian Powell, Plaintiff(s)
vs.
Nevada Department of Corrections, Defendant(s)

October 18, 2021 12:00 PM All Pending Motions (10/18/2021)

HEARD BY: Israel, Ronald J. COURTROOM: RJC Courtroom 15C

COURT CLERK: Thomas, Kathy

RECORDER: Chappell, Judy

REPORTER:

PARTIES PRESENT:

Ashley A. Lacher

Attorney for Other

Julian Gregory

Attorney for Plaintiff

JOURNAL ENTRIES

STATUS CHECK: POSSIBLE APPOINTMENT OF COUNSEL THROUGH OFFICE OF
APPOINTED COUNSEL (JULIAN GREGORY)...PETITION FOR WRIT OF HABEAS
CORPUS

Deft. POWELL not present, in custody in the Nevada Department of Corrections (NDC). Mr.
Gregory confirmed as counsel. At the request of counsel, COURT ORDERED, Matter SET for
a status check to set the briefing schedule.

NDC

11-15-2021 12:00 PM STATUS CHECK: SET BRIEFING SCHEDULE...PETITION FOR WRIT
OF HABEAS CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

November 15, 2021

A-21-839265-W Adrian Powell, Plaintiff(s)
vs.
Nevada Department of Corrections, Defendant(s)

November 15, 2021 12:00 PM All Pending Motions

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Brown, Kristen

RECORDER: Chappell, Judy

REPORTER:

PARTIES PRESENT:

Julian Gregory Attorney for Plaintiff

JOURNAL ENTRIES

PETITION FOR WRIT OF HABEAS CORPUS...STATUS CHECK: SET BRIEFING
SCHEDULE

COURT ORDERED, matter SET for argument with a briefing schedule set as follows:
Petitioner to file the opening brief by February 14, 2022; State's opposition is due by March 14,
2022; and the Petitioner to file a reply by April 15, 2022. Court directed the State to prepare a
transport order for the Petition to be transported to court or the Petition can appear by video.

4/25/22 12:00 PM ARGUMENT: PETITION FOR WRIT OF HABEAS CORPUS

C-17-327767-2 State of Nevada
 vs
 Adrian Powell

November 29, 2021 11:00 AM Defendant's Proper Person Motion to Withdraw Counsel Monique A. McNeil

HEARD BY: Israel, Ronald J. COURTROOM: RJC Courtroom 15C

COURT CLERK: Bracamontez-Munguia, Carina

RECORDER: Chappell, Judy

REPORTER:

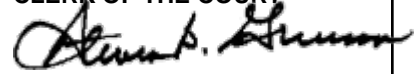
PARTIES PRESENT:

Julian Gregory Attorney for Defendant

JOURNAL ENTRIES

Mr. Gregory noted this was a Motion to Withdraw Monique McNeill, Esq. COURT ORDERED motion GRANTED.

NDC



MFW

JULIAN GREGORY, ESQ.
Nevada Bar No. 11978
LAW OFFICE OF JULIAN GREGORY, L.L.C.
324 South Third Street, Suite #200
Las Vegas, NV 89101
T: (702) 625-1183
F: (702) 302-4286
E: Julian@jglawlv.com
Attorney for Petitioner

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ADRIAN POWELL,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

Case No. A-21-839265-W
Dep't No. XXVIII

**MOTION TO WITHDRAW
AS COUNSEL OF RECORD**

(HEARING REQUESTED)

Julian Gregory, counsel for Petitioner Adrian Powell, submits this **Motion to Withdraw as Counsel of Record**. Attached are points and authorities and a declaration of counsel in support.

DATED this 11 of January, 2022.

/s/ Julian Gregory

JULIAN GREGORY, ESQ.

LAW OFFICE OF JULIAN GREGORY, L.L.C.
Attorney for Petitioner

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DECLARATION OF JULIAN GREGORY

I, Julian Gregory, hereby declare that:

- 1. I am an attorney duly licensed to practice law in the State of Nevada.
- 2. I have been appointed to represent the Petitioner in the above-referenced case.
- 3. I have accepted an offer to join the Clark County Special Public Defender’s office, a governmental organization.
- 4. The Petitioner’s telephone number is unknown to me.
- 5. The Petitioner’s last known address is Southern Desert Correctional Center, P.O. Box 208, Indian Springs, NV 89070-0208.
- 6. I declare under penalty of perjury that the foregoing is true and correct.

January 11, 2022
Date Executed

/s/ Julian Gregory
JULIAN GREGORY, ESQ.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am a person competent to serve papers, that I am not a party to
3 the above-entitled action, and that on January 11, 2022, I served the foregoing document and
4 all attachments on the parties or counsel listed below:

5 Steven B. Wolfson
6 Clark County District Attorney's Office

Via e-mail
motions@clarkcountynvda.com

7 Adrian Powell, #1217413
8 Petitioner

Via mail
c/o Southern Desert Correctional Center
P.O. Box 208
Indian Springs, NV 89070-0208

10 /s/ Julian Gregory
11 JULIAN GREGORY, ESQ.
12 **LAW OFFICE OF JULIAN GREGORY, L.L.C.**
13 Attorney for Petitioner
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27 **AFFIRMATION**

Pursuant to NRS 239B.030, this document contains no social security numbers.

28 /s/ Julian Gregory

Julian Gregory, Esq.

01-11-22

Date

A-21-839265-W Adrian Powell, Plaintiff(s)
vs.
Nevada Department of Corrections, Defendant(s)

January 26, 2022 11:00 AM Julian Gregory, Esq.'s, Motion to Withdraw as Counsel of Record
for Petitioner

HEARD BY: Israel, Ronald J. COURTROOM: RJC Courtroom 15C

COURT CLERK: Cunningham, Patia

RECORDER: Haak, Francesca

REPORTER:

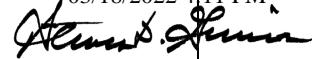
PARTIES PRESENT:

Colleen N Savage Attorney for Plaintiff

JOURNAL ENTRIES

Court noted Deft. not present. Ms. Savage advised she can confirm as counsel. COURT ORDERED, motion Granted and the Supplement is DUE by 3/30/22, the Response is DUE by 4/27/22, the Reply is DUE by 5/11/22, and Hearing SET for 5/25/22 11:00 AM.

NDC



CLERK OF THE COURT

ANTHONY P. SGRO, ESQ.
Nevada Bar No. 3811
COLLEEN N. SAVAGE, ESQ.
Nevada Bar No. 14947
SGRO & ROGER
720 S. 7th Street, Third Floor
Las Vegas, Nevada 89101
Telephone No.: (702) 384-9800
Facsimile No.: (702) 655-4120
tsgro@sgroandroger.com
csavage@sgroandroger.com
Attorneys for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

ADRIAN POWELL,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent

Case No.: A-21-839265-W

**STIPULATION AND ORDER TO
EXTEND DEADLINES AND FOR AN ORDER TO
TRANSPORT**

Entered in Odyssey/kd.

COMES NOW Petitioner, ADRIAN POWELL, by and through his attorneys of record,
ANTHONY P. SGRO, ESQ., and COLLEEN N. SAVAGE, ESQ., and counsel for the State of
Nevada, TALEEN PANDUKHT, ESQ., hereby stipulate and agree to extend the current deadlines
set forth in the briefing schedule.

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Mr. Powell's in custody status has made attorney client communication difficult, as such a brief extension of the supplemental briefing is now necessary. The parties further stipulate and agree that this extension is made in good faith and not intended for the purpose of delay. The proposed briefing schedule is set forth as follows:

	<u>Current</u>	<u>Proposed</u>
Petitioner's Supplement	March 30, 2022	April 29, 2022
State's Response	April 27, 2022	June 28, 2022

Dated this 16th day of March 2022.

SGRO & ROGER

**OFFICE OF THE CLARK COUNTY
DISTRICT ATTORNEY**

/s/ Colleen Savage
ANTHONY P. SGRO, ESQ.
Nevada Bar No. 3811
tsgro@sgroandroger.com
COLLEEN N. SAVAGE, ESQ.
Nevada Bar No. 14947
csavage@sgroandroger.com
Attorneys for Petitioner

/s/ Taleen Pandukht
TALEEN PANDUKHT, ESQ
Nevada Bar No. 005734
Taleen.pandukht@clarkcountynyda.com
Attorney for Respondent

ORDER

Based upon the above Stipulation and good cause appearing, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the new briefing schedule is set forth as follows:

	<u>Current</u>	<u>Proposed</u>
Petitioner's Supplement	March 30, 2022	April 29, 2022
State's Response	April 27, 2022	June 28, 2022

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Hearing on May 25, 2022, is hereby VACATED and RESET to August 3, 2022.

State to prepare an Order To Transport.

A-21-839265-W

JT

Dated this 18th day of March, 2022



**F29 106 4E4C DCB7
Ronald J. Israel
District Court Judge**

Respectfully submitted by:

s/ Colleen Savage

Colleen N. Savage, ESQ
Nevada Bar No. 14947
720 South 7th Street, Third floor
Las Vegas, Nevada 89101
csavage@sgroandroger.com

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Adrian Powell, Plaintiff(s)

CASE NO: A-21-839265-W

7 vs.

DEPT. NO. Department 28

8 Nevada Department of
9 Corrections, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

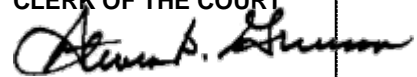
14 Service Date: 3/18/2022

15 Clark County District Attorney's Office

motions@clarkcountynvda.com

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APP000575



1 NEO

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 * * *

5
6 ADRIAN POWELL,

7 Plaintiff,

8 vs.

9 STATE OF NEVADA,

10 Defendant.

Case No.: A-21-839265-W

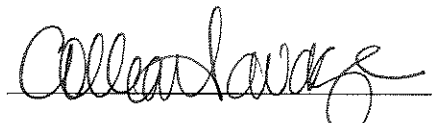
Dept. XVIII

11
12 **NOTICE OF ENTRY OF ORDER TO EXTEND DEADLINES AND FOR AN ORDER**
13 **TO TRANSPORT**

14 PLEASE TAKE NOTICE that an Order Extending Deadlines and Order to Transport
15 was filed on March 18, 2022 (a true and correct copy is attached hereto).

16 Dated this 21 day of March 2022.

17
18
19 **SGRO & ROGER**

20 

21 COLLEEN N. SAVAGE, ESQ.

22 Nevada Bar No. 3811

23 **SGRO & ROGER**

24 720 S. 7th St., 3rd Floor

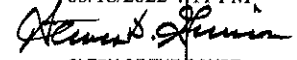
25 Las Vegas, Nevada 89101

26 Telephone No.: (702) 384-9800

27 csavage@sgroandroger.com

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APP000577


CLERK OF THE COURT

1 **ANTHONY P. SGRO, ESQ.**
Nevada Bar No. 3811
2 **COLLEEN N. SAVAGE, ESQ.**
3 Nevada Bar No. 14947
SGRO & ROGER
4 720 S. 7th Street, Third Floor
Las Vegas, Nevada 89101
5 Telephone No.: (702) 384-9800
6 Facsimile No.: (702) 655-4120
7 tsgro@sgroandroger.com
8 csavage@sgroandroger.com
Attorneys for Petitioner

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 ADRIAN POWELL,
12 Petitioner,
13 vs.
14 THE STATE OF NEVADA,
15 Respondent
16

Case No.: A-21-839265-W

**STIPULATION AND ORDER TO
EXTEND DEADLINES AND FOR AN ORDER TO
TRANSPORT**

Entered in Odyssey/kd.

17 COMES NOW Petitioner, ADRIAN POWELL, by and through his attorneys of record,
18 ANTHONY P. SGRO, ESQ., and COLLEEN N. SAVAGE, ESQ., and counsel for the State of
19 Nevada, TALEEN PANDUKHT, ESQ., hereby stipulate and agree to extend the current deadlines
20 set forth in the briefing schedule.
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1 Mr. Powell's in custody status has made attorney client communication difficult, as such
2 a brief extension of the supplemental briefing is now necessary. The parties further stipulate and
3 agree that this extension is made in good faith and not intended for the purpose of delay. The
4 proposed briefing schedule is set forth as follows:
5

	<u>Current</u>	<u>Proposed</u>
Petitioner's Supplement	March 30, 2022	April 29, 2022
State's Response	April 27, 2022	June 28, 2022

8
9 Dated this 16th day of March 2022.

10
11 **SGRO & ROGER**

**OFFICE OF THE CLARK COUNTY
DISTRICT ATTORNEY**

12
13
14 /s/ Colleen Savage

15 ANTHONY P. SGRO, ESQ.

16 Nevada Bar No. 3811

17 tsgro@sgroandroger.com

18 COLLEEN N. SAVAGE, ESQ.

19 Nevada Bar No. 14947

20 csavage@sgroandroger.com

21 Attorneys for Petitioner

/s/ Taleen Pandukht

TALEEN PANDUKHT, ESQ

Nevada Bar No. 005734

Taleen.pandukht@clarkcountynvda.com

Attorney for Respondent

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ORDER

Based upon the above Stipulation and good cause appearing, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the new briefing schedule is set forth as follows:

	<u>Current</u>	<u>Proposed</u>
Petitioner's Supplement	March 30, 2022	April 29, 2022
State's Response	April 27, 2022	June 28, 2022

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Hearing on May 25, 2022, is hereby VACATED and RESET to August 3, 2022.

State to prepare an Order To Transport.

A-21-839265-W

JT

Dated this 18th day of March, 2022



**F29 106 4E4C DCB7
Ronald J. Israel
District Court Judge**

Respectfully submitted by:

s/ Colleen Savage

Colleen N. Savage, ESQ
Nevada Bar No. 14947
720 South 7th Street, Third floor
Las Vegas, Nevada 89101
csavage@sgroandroger.com

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Adrian Powell, Plaintiff(s)

CASE NO: A-21-839265-W

7 vs.

DEPT. NO. Department 28

8 Nevada Department of
9 Corrections, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

Service Date: 3/18/2022

15 Clark County District Attorney's Office

16 motions@clarkcountyda.com
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1 **ANTHONY P. SGRO, ESQ.**
Nevada Bar No. 3811
2 **COLLEEN N. SAVAGE, ESQ.**
Nevada Bar No. 14947
3 **SGRO & ROGER**
4 720 S. 7th Street, Third Floor
Las Vegas, Nevada 89101
5 Telephone No.: (702) 384-9800
6 Facsimile No.: (702) 655-4120
7 tsagro@sgroandroger.com
8 csavage@sgroandroger.com
Attorneys for Petitioner

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 ADRIAN POWELL,

12 Petitioner,

13 vs.

14 THE STATE OF NEVADA,

15 Respondent
16

Case No.: A-21-839265-W

**STIPULATION AND ORDER TO
EXTEND DEADLINES**

Entered in Odyssey./kd

17 COMES NOW Petitioner, ADRIAN POWELL, by and through his attorneys of record,
18 ANTHONY P. SGRO, ESQ., and COLLEEN N. SAVAGE, ESQ., and counsel for the State of
19 Nevada, TALEEN PANDUKHT, ESQ., hereby stipulate and agree to extend the current deadlines
20 set forth in the briefing schedule.
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Mr. Powell's in custody status has made attorney client communication difficult, as such a brief extension of the supplemental briefing is now necessary. The parties further stipulate and agree that this extension is made in good faith and not intended for the purpose of delay. The proposed briefing schedule is set forth as follows:

	<u>Current</u>	<u>Proposed</u>
Petitioner's Supplement	April 29, 2022	May 29, 2022
State's Response	June 28, 2022	July 28, 2022

Dated this 22nd day of April 2022.

SGRO & ROGER

**OFFICE OF THE CLARK COUNTY
DISTRICT ATTORNEY**

/s/Colleen N. Savage

/s/Taleen Pandukht

ANTHONY P. SGRO, ESQ.
Nevada Bar No. 3811
tsgro@sgroandroger.com
COLLEEN N. SAVAGE, ESQ.
Nevada Bar No. 14947
csavage@sgroandroger.com
Attorneys for Petitioner

TALEEN PANDUKHT, ESQ.
Nevada Bar No. 005734
Taleen.pandukht@clarkcountyda.com
Attorney for Respondent

ORDER

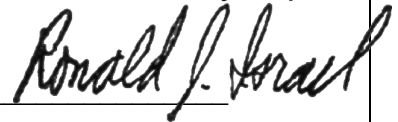
Based upon the above Stipulation and good cause appearing, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the new briefing schedule is set forth as follows:

	<u>Current</u>	<u>Proposed</u>
Petitioner's Supplement	April 29, 2022	May 29, 2022
State's Response	June 28, 2022	July 28, 2022

IT IS FURTHER ORDERED that the hearing date for the Petition for Writ of Habeas Corpus is CONTINUED to September 14, 2022, at 10:00 a.m.

IT IS SO ORDERED.

Dated this 25th day of April, 2022



DISTRICT COURT JUDGE
A-21-839265-W 038 017 14B3 6366 JT
Ronald J. Israel
District Court Judge

Respectfully submitted by:

/s/Colleen N. Savage
Colleen N. Savage, ESQ
Nevada Bar No. 14947
720 South 7th Street, Third floor
Las Vegas, Nevada 89101
csavage@sgroandroger.com

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Adrian Powell, Plaintiff(s)

CASE NO: A-21-839265-W

7 vs.

DEPT. NO. Department 28

8 Nevada Department of
9 Corrections, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 4/25/2022

15 E File

efile@sgroandroger.com

16 Colleen Savage

csavage@sgroandroger.com

17 Tanya Hayden

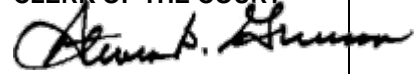
thayden@sgroandroger.com

18 Clark County District Attorney's Office

19 motions@clarkcountyda.com

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APP000585



Colleen N. Savage, Esq.
Nevada Bar No. 14947
SGRO & ROGER
720 S. 7th Street, 3rd Floor
Las Vegas, Nevada 89101
Telephone: (702) 384-9800
Facsimile: (702) 665-4120
csavage@sgroandroger.com
Attorney for Petitioner
ADRIAN POWELL

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ADRIAN POWELL,

Petitioner,

CASE NO.: A-21-839265-W
Dept. 28

vs.

THE STATE OF NEVADA,

Respondent.

**SUPPLEMENT TO PETITION FOR
WRIT OF HABEAS CORPUS**

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

DATE OF HEARING:
TIME OF HEARING:

TO: THE HONORABLE JUDGE OF THE EIGHTH JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK:

TO: SHERIFF OF CLARK COUNTY, JOSEPH LOMBARDO, AND HIS COUNSEL,
DISTRICT ATTORNEY STEVEN B. WOLFSON:

COMES NOW, Petitioner, ADRIAN POWELL, an inmate in custody at Southern Desert, Clark County, Nevada, and petitions this Court for a Writ of Habeas Corpus pursuant to NRS 34.724, for cause shows unto this Court the following facts, to wit:

1. Name of institution and county in which you are being presently imprisoned or here and how you are presently restrained of your liberty: Southern Desert, Clark County, Nevada

2. Name and location of court which entered the judgment of conviction under attack: Eighth Judicial District Court of Clark County, Nevada.

3. Date of judgment of conviction: May 22, 2019.

4. Case number: C-17-327767-2.

5. Length of Sentence: As to Count 1 – twelve (12) to forty-eight (48) months; as to Count 2 – thirty-six (36) to one hundred twenty (120) months concurrent with Count 1; as to Count 3 – five (5) to fifteen (15) years with a consecutive term of thirty-six (36) to ninety-six (96) months for use of a deadly weapon concurrent with Count 2; as to Count 4 – thirty-six (36) to one hundred twenty (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for use of a deadly weapon concurrent with Count 3; as to Count 5 - thirty-six (36) to one hundred twenty (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for use of a deadly weapon concurrent with Count 4; as to Count 6 - thirty-six (36) to one hundred twenty (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for use of a deadly weapon concurrent with Count 5; as to Count 7 - thirty-six (36) to one hundred twenty (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for use of a deadly weapon concurrent with Count 6; as to Count 8 – twelve (12) to forty-eight (48) months concurrent with Count 7; as to Count 9 – thirty-six (36) to one hundred twenty (120) months concurrent with Count 8; as to Count 10 - thirty-six (36) to one hundred

1 twenty (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for
2 use of a deadly weapon concurrent with Count 7; as to Count 11 - thirty-six (36) to one
3 hundred twenty (120) months with a consecutive term of thirty-six (36) to ninety-six (96)
4 months for use of a deadly weapon concurrent with Count 10; as to Count 13 - five (5) to
5 fifteen (15) years with a consecutive term of thirty-six (36) to ninety-six (96) months for
6 use of a deadly weapon consecutive to Count 3; and as to Count 14 - thirty-six (36) to one
7 hundred twenty (120) months with a consecutive term of thirty-six (36) to ninety-six (96)
8 months for use of a deadly weapon concurrent with Count 11, with six hundred two (602) days
9 credit for time served. The aggregate total sentence was five hundred fifty-two (552)
10 months maximum with a minimum parole eligibility of one hundred ninety-two (192)
11 months; with 1661 days credit for time served.

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

14 Yes _____ No X

15 If "yes" list crime, case number and sentence being served at this time:

16 7. Nature of offense involved in conviction being challenged: Counts 1 and 8 -
17 Conspiracy to Commit Robbery, Counts 2 and 9 - Burglary While in Possession of a Deadly
18 Weapon, Counts 3 and 13 - First Degree Kidnapping With Use of a Deadly Weapon, and
19 Counts 4, 5, 6, 7, 10, 11 and 14 - Robbery With Use of a Deadly Weapon." Plea: Guilty

20 8. Type of Trial: Plea negotiation

21 9. Whether Defendant testified at trial: N/A

22 10. Whether an appeal was filed from the judgment of conviction: Yes

23 11. If an appeal was filed: N/A

1 12. Whether, other than a direct appeal, any petitions, applications, or motions with respect
2 to this judgment have been filed in any court, state or federal: Yes.

3 13. If a petition, application, or motion was filed:
4

5 a. Name of Court: Eighth Judicial District Court

6 b. Nature of Proceeding: Motion to Withdraw Guilty Plea

7 c. Grounds Raised:

8 i. Mr. Powell did not enter the plea voluntarily, knowingly, and intelligently;

9 ii. Mr. Powell accepted the plea agreement based on incorrect information from his
10 counsel regarding sentencing;

11 iii. Mr. Powell's prior counsel did not meet objective standard of representation
12 which violated his right to counsel guaranteed under the Sixth Amendment to
13 the United States Constitution as prior counsel did not keep Mr. Powell
14 informed at every step of the proceedings; and

15 iv. Mr. Powell was coerced into giving his plea because prior counsel informed
16 him that there were ten uncharged cases that were pending if he did not accept
17 the plea deal.
18

19 14. Whether there was an evidentiary hearing on the petition, application, or motion: Yes.
20

21 15. Whether there was an appeal to the highest state court having jurisdiction the result of
22 action taken on any petition, application, or motion: Yes.
23

24 16. If an appeal was filed:

25 a. Name of Court: Supreme Court of Nevada

26 b. Result: The Court remanded the decision back to the Eighth Judicial District Court

27 c. Date of Result: Opinion filed May 11, 2020; Remittitur issued June 5, 2020
28

1 d. Grounds Raised:

- 2 i. Mr. Powell did not enter the plea voluntarily, knowingly, and intelligently;
- 3 ii. Mr. Powell accepted the plea agreement based on incorrect information from his
- 4 counsel regarding sentencing;
- 5
- 6 iii. Mr. Powell's prior counsel did not meet objective standard of representation
- 7 which violated his right to counsel guaranteed under the Sixth Amendment to
- 8 the United States Constitution as prior counsel did not keep Mr. Powell
- 9 informed at every step of the proceedings; and
- 10
- 11 iv. Mr. Powell was coerced into giving his plea because prior counsel informed
- 12 him that there were ten uncharged cases that were pending if he did not accept
- 13 the plea deal.

14 17. Attorneys who represented Defendant:

- 15 a. Arraignment and plea: Michael C. Kane, Esq., Retained.
- 16
- 17 b. Sentencing: Michael C. Kane, Esq., Retained.
- 18
- 19 c. Motion to Withdraw Plea: Monique A. McNeil, Esq., Retained.
- 20
- 21 d. Appeal from Denial of Motion to Withdraw Plea: Monique A. McNeil, Esq.,
- 22 Retained.
- 23
- 24 e. Remanded Motion to Withdraw Plea: Monique A. McNeil, Esq., Retained.

25 18. State concisely every ground on which you claim that you are being held unlawfully.

26 Summarize briefly the facts supporting each ground. If necessary, you may attach

27 pages stating additional ground and facts supporting the same:

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1 Mr. Powell agreed to plead guilty pursuant to the Guilty Plea Agreement after Mr.
2 Kane advised Mr. Powell to take the deal after stating that he would spend the rest of his life in
3 prison if he did not. (Exhibit "I" at 10-11).
4

5 Mr. Powell pled guilty, the jury was discharged, and a sentencing date was set. On
6 October 31, 2018, prior to sentencing, Mr. Powell expressed concerns regarding his counsel
7 and the guilty plea agreement, and his current counsel, Michael Kane was withdrawn and
8 Monique McNeil, Esq. was appointed. On January 14, 2019, Petitioner filed a Motion to
9 Withdraw Guilty Plea, requesting an evidentiary hearing. (Exhibit "I" at 1). On February 5,
10 2019, the State filed its Opposition. (Exhibit "J" at 1). On February 27 2019, the District Court
11 denied Petitioner's motion without conducting an evidentiary hearing.
12

13 On May 22, 2019, Petitioner was sentenced to the Nevada Department of Corrections
14 as follows: as to Count 1 – twelve (12) to forty-eight (48) months; as to Count 2 – thirty-six
15 (36) to one hundred twenty (120) months concurrent with Count 1; as to Count 3 – five (5) to
16 fifteen (15) years with a consecutive term of thirty-six (36) to ninety-six (96) months for use of
17 a deadly weapon concurrent with Count 2; as to Count 4 – thirty-six (36) to one hundred
18 twenty (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for
19 use of a deadly weapon concurrent with Count 3; as to Count 5 - thirty-six (36) to one hundred
20 twenty (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for
21 use of a deadly weapon concurrent with Count 4; as to Count 6 - thirty-six (36) to one hundred
22 twenty (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for
23 use of a deadly weapon concurrent with Count 5; as to Count 7 - thirty-six (36) to one hundred
24 twenty (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for
25 use of a deadly weapon concurrent with Count 6; as to Count 8 – twelve (12) to forty-eight
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1 (48) months concurrent with Count 7; as to Count 9 – thirty-six (36) to one hundred twenty
2 (120) months concurrent with Count 8; as to Count 10 - thirty-six (36) to one hundred twenty
3 (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for use of a
4 deadly weapon concurrent with Count 7; as to Count 11 - thirty-six (36) to one hundred twenty
5 (120) months with a consecutive term of thirty-six (36) to ninety-six (96) months for use of a
6 deadly weapon concurrent with Count 10; as to Count 13 - five (5) to fifteen (15) years with a
7 consecutive term of thirty-six (36) to ninety-six (96) months for use of a deadly weapon
8 consecutive to Count 3; and as to Count 14 - thirty-six (36) to one hundred twenty (120)
9 months with a consecutive term of thirty-six (36) to ninety-six (96) months for use of a deadly
10 weapon concurrent with Count 11, with six hundred two (602) days credit for time served. The
11 aggregate total sentence was five hundred fifty-two (552) months maximum with a minimum
12 parole eligibility of one hundred ninety-two (192) months. (Exhibit K at 1-4)

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14
15 The Judgment of Conviction was filed on May 24, 2019. *Id.*

16
17 The Defendant filed a direct appeal to the Nevada Supreme Court challenging only the
18 Court’s denial of his Motion to Withdraw his Guilty Plea on June 14, 2019. (Exhibit “M” at 1-
19 3) The Nevada Supreme Court reversed and remanded to the district court to conduct an
20 evidentiary hearing on May 11, 2020. (Exhibit “R” at 1). Remittitur was issued on June 5,
21 2020. *Id.* at 6.

22
23 The Court conducted an Evidentiary Hearing on August 13, 2020, at which only Mr.
24 Kane was called as a witness to testify. (Exhibit “Q” at 1). Mr. Nelson was not requested to
25 appear by Ms. McNeil. *Id.* Following the testimony, the Court found the Petitioner was not
26 entitled to relief. *Id.* at 33-37. The Court found there was no ineffective assistance of counsel
27 and no grounds or fair and just reason to withdraw Petitioner’s plea. *Id.* The Findings of Fact,
28

1 Conclusions of Law and Order was filed on March 4, 2021. (Exhibit “S” at 1). Ms. McNeil
2 failed to file a Petition for Writ of Habeas Corpus (Post Conviction) and failed to counsel
3 Petitioner on his ability to do so.
4

5 On August 10, 2021, Ms. McNeil filed a declaration stating that she failed to file a
6 timely Petition for Writ of Habeas Corpus (Post Conviction). (Exhibit “Y” at 1-2) On August
7 10, 2021, Petitioner filed the pro se Petition for Writ of Habeas Corpus (Post-Conviction).
8 (Exhibit “E” at 1 to 17). On September 9th, 2021, the state filed a Response to the Writ of
9 Habeas Corpus (Post Conviction).
10

11 On October 14, 2021, Mr. Powell filed a Motion to Dismiss Ms. McNeil as counsel.
12 (Exhibit “T” at 1). District Court granted the Motion to Dismiss Ms. McNeil on November 29,
13 2021. (XX). Undersigned counsel, Colleen Savage, Esq. was subsequently appointed on
14 January 26, 2022.
15

16 **STATEMENT OF FACTS**

17 Adrian Powell and Lorenzo Pinkey were arrested on September 28, 2017. (Exhibit “A”
18 at 1) The following is a summary of the victims’ testimony from the Grand Jury presentation,
19 as well as a summary of the forensic evidence and the circumstantial evidence that may have
20 been presented at trial.
21

22 **A. Testimony of Jose Chavarria**

23 Jose Alfredo Chavarria Valenzuela was working as a cook at Pepe’s Tacos located at 2490
24 Fremont Street, Las Vegas, Nevada on September 28, 2017. (Exhibit “B” at 32-33). At
25 approximately 2:40 AM, Chavarria was in kitchen area when two men entered the restaurant.
26 *Id.* at 35. Chavarria ran toward the back refrigerator where his co-worker was located, when
27 one of the men jumped the counter, followed Chavarria and pointed a gun at him. *Id.* The man
28

1 allegedly pointed his gun at Chavarria and Chavarria jumped on the ground. It is alleged that
2 Chavarria was directed from the back of the store to the front cash registers who was unable to
3 open the till because he did not have the correct password. *Id.* at 36. The second man then
4 retrieved Chavarria's coworker to assist Chavarria in opening the cash registers. *Id.* at 37. One
5 of the men then took Chavarria to the second cash register, where he was either thrown to the
6 ground or ordered to his knees, Chavarria's testimony is unclear. *Id.* The men then took the
7 money from the cash registers but did not take any property from Chavarria. *Id.* at 37-38.

9
10 B. Testimony of Yenir Hessing

11 Yenir Hessing works as the shift lead at the Walgreens located at 4470 East Bonanza, Las
12 Vegas, Nevada. *Id.* at 7. On September 28, 2017, Hessing was working the graveyard shift
13 with four other Walgreens employees when, at approximately 4:05 AM, two masked gunmen
14 entered the store. *Id.* at 8-10.

15 Hessing was stocking the shelves in the food aisle when one of the men allegedly
16 pointed a gun at her, demanding she move to the front of the store where he told her to open
17 the three cash registers, which Hessing did. *Id.* At that moment, another Walgreens employee,
18 Tifnie Bobbitt returned from lunch and was ordered toward the office located at the back of the
19 store. *Id.* at 10.

20
21
22 Upon reaching the back office, Hessing entered the code and Hessing and Bobbitt were
23 ordered in. *Id.* at 15-16. In the office, it is alleged that the man began hitting Hessing in the ribs
24 with the gun and demanding that she open the safe. *Id.* at 17. Hessing opened the first of two
25 safes and the man grabbed everything. *Id.* The man then demanded Hessing open the second
26 safe, which she did. *Id.* The gunman grabbed the contents from the second safe and fled. *Id.*

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1 Amazingly, Mr. Powell suffered from the fact that both of his lawyers were dealing with
2 substantial personal ordeals and tragedies that placed Mr. Powell in the untenable position of
3 having to rely upon them for key decisions, including entry of plea. *Id.* at 34. (Exhibit “W” and
4 “X”).
5

6 At the time originally set for sentencing hearing, Mr. Powell expressed concern
7 regarding his guilty plea agreement and his reliance on counsel which prompted the court to
8 dismiss trial counsel and appoint Ms. McNeil. While Ms. McNeil filed the motion to withdraw
9 the guilty plea for Mr. Powell, her subsequent representation was plagued with missed
10 deadlines. (Exhibit “I” at 1-7).
11

12 The combined effect of the ineffective assistance of counsel, the trial court’s refusal to
13 grant motion to withdraw guilty plea agreement, and the unconstitutionality of the dual
14 criminal liability of the charges were contrary to clearly established Nevada Law and resulted
15 in decisions all to the detriment of Mr. Powell. Mr. Powell now respectfully requests that this
16 Court grant this Petition for Writ of Habeas Corpus for all reasons set forth herein.
17

18 **I. INEFFECTIVE ASSISTANCE OF COUNSEL**

19 The Sixth Amendment right to counsel has been recognized by the United States Supreme
20 Court which includes the right to “the effective assistance of counsel” during criminal
21 proceedings. *Strickland v. Washington*, 466 U.S. 668, 686, 104 S.Ct. 2052, 2063, 80 L.Ed.2d
22 674 (1984) (*citing McMann v. Richardson*, 397 U.S. 759, 771, n. 14, 90 S.Ct. 1441, 1449, n.
23 14, 25 L.Ed.2d 763 (1970)). When measuring any claim of ineffectiveness, the standard is
24 “whether counsel's conduct so undermined the proper functioning of the adversarial process
25 that the proceeding cannot be relied on as having produced a just result.” *Paine v. State*, 110
26 Nev. 609, 620, 877 P.2d 1025, 1031 (1994) (*Overruled on other grounds by Leslie v. Warden*,
27 118 Nev. 773, 59 P.3d 440 (2002)).
28

1 As the Second Circuit Court of Appeals held, the proper standard for attorney performance
2 is that of reasonably effective assistance. *See Trapnell v. United States*, 725 F.2d, at 151-152.
3 The Court indirectly recognized as much when it stated in *McMann v. Richardson*, supra, 397
4 U.S., at 770, 771, 90 S.Ct., at 1448, 1449, that a guilty plea cannot be attacked when based on
5 inadequate legal advice unless trial counsel was not “a reasonably competent attorney” and the
6 advice was not “within the range of competence demanded of attorneys in criminal cases.” *See*
7 *also Cuvier v. Sullivan*, supra, 446 U.S., at 344, 100 S.Ct., at 1716. When a convicted
8 defendant complains of the ineffectiveness of counsel's assistance, the defendant must show
9 that counsel's representation fell below an objective standard of reasonableness. *Strickland*,
10 466 U.S. at 687-88. In order to establish that representation fell below an objective standard of
11 reasonableness, defendants must meet the factors set forth within the *Strickland* test:
12
13

- 14 (1) “First, the defendant must show that counsel's performance was deficient.
15 This requires showing that counsel made errors so serious that counsel
16 was not functioning as the ‘counsel’ guaranteed the defendant by the
17 Sixth Amendment.
- 18 (2) Second, the defendant must show that the deficient performance
19 prejudiced the defense. This requires showing that counsel's errors were
20 so serious as to deprive the defendant of a fair trial, a trial whose result is
21 reliable.”

22 **A. PRE-LITIGATION INEFFECTIVE ASSISTANCE OF COUNSEL**

23 Mr. Powell experienced prejudice from the onset when he was first appointed trial counsel.
24 Defendants have an incredible reliance on their counsel not only during trial, but through the
25 entire process of litigation. Defense counsel has the responsibility to defend against extraneous
26 charges and engage in pretrial motion practice, which is an objective standard for competent,
27 effective representation. Instead, Mr. Powell was left helpless as his counsel entirely failed to
28 engage in any pretrial motion practice which deprived him of a fair trial and prejudiced his

1 defense from the start. Mr. Powell's inability to challenge any charges prior to trial, combined
2 with inexperienced, distracted counsel left him vulnerable to the adversarial process.
3

4 **i. TRIAL COUNSEL FAILED TO OBJECT TO THE FATALLY FLAWED**
5 **COMPLAINT.**

6 The State's Indictment charged Mr. Powell with three counts of First-Degree
7 Kidnapping in relation to the alleged robbery victims. (Exhibit "A" at 2). Each of these charges
8 carried a potential life sentence, which was the harshest punishment contained in the charging
9 document. *Id.* Trial counsel failed to engage in any pretrial motion practice to contest these
10 charges, despite longstanding Nevada law giving a defendant the right to prevent dual criminal
11 liability when kidnapping charges overlap with robbery charges. Had trial counsel been
12 successful in dismissing the Kidnapping Charges during pretrial motion practice, it would have
13 changed the entire dynamic of plea negotiations, and, ultimately, Powell's decision to plead
14 guilty.
15

16 The ability to attack the kidnapping charges was available from the start of this case.
17 This legal distinction between robbery and kidnaping and the dual criminal liability is more
18 thoroughly set forth in section II below. Under Nevada law, the test found in *Mendoza*
19 differentiated the movement that was incidental to robbery as opposed to kidnapping where the
20 movement (1) substantially increases the risk of harm; and (2) substantially exceeds that
21 required to complete the associated crime. *Mendoza v. State*, 122 Nev. 267, 274-75, 130 P.3d
22 176, 180-81 (2006).
23

24 In the instant matter, Grand Jury testimony revealed that the robbery victims were only
25 moved as a means for the suspects to carry out the robbery. The intent of the suspects in each
26 robbery was to steal money from both locations via cash register and safe. In Mr. Chavarria's
27 case, this could not be accomplished due to Mr. Chavarria being unable to open the cash
28

1 register resulting in him ending up on the ground. (Exhibit “B” at 37). In Ms. Hessing’s case,
2 this could not be accomplished without Ms. Hessing opening the cash registers in the front of
3 the store or the safe in the office. In other words, all movement of the victims that took place
4 was incidental and necessary in order to commit the robberies. *Id.* at 7-17.

6 So long as the kidnapping is incidental to the robbery, defense counsel can attack the
7 kidnapping charges prior to trial. *Sheriff, Clark County v. Medberrv*, 96 Nev. 202, 204, 606 P.
8 2d 181, 182 (1980); *Langford v. State*, 95 Nev. 631, 638-639, 600 P.2d 231, 236-37 (1979).
9 This is a case where the grounds are clear. Counsel’s failure to attack the kidnapping counts
10 left three life sentences on the table, which turned out to be one of the main sources of leverage
11 the State used to coerce Powell into signing the plea agreement. (Exhibit “Q” at 20). Had trial
12 counsel filed a pretrial Writ of Habeas Corpus Mr. Powell would have had the opportunity to
13 argue for dismissal of the kidnapping charges. However, because there was not a pretrial Writ
14 of Habeas Corpus filed, and the joinder filed by trial counsel was dismissed as untimely, it
15 placed Mr. Powell at a significant disadvantage when it came time to negotiate a plea deal.
16 Mr. Powell was prejudiced by this deficient performance because there existed a reasonable
17 probability that some, if not all, of the kidnapping charges would have been dismissed. Had
18 these charges been dismissed, there is a significant probability that Powell would have rejected
19 the State’s offer and insisted on going to trial.

23 Not only did trial counsel fail to submit a Pretrial Petition for Writ of Habeas Corpus on
24 Mr. Powell’s behalf, trial counsel failed to file a single pretrial motion. Mr. Powell’s counsel
25 did not contest a single piece of evidence with pretrial motion practice. Notably, there was not
26 one motion pertaining to suppression of evidence, jury questionnaires, voir dire methodologies,
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1 nor opening statements. The record is wholly deficient, making it nearly impossible for Mr.
2 Powell to create a defense on the spot at trial.

3 **ii. A CONFLICT OF INTEREST DEVELOPED BETWEEN DEFENSE COUNSEL**
4 **AND THE CLIENT DURING THE CASE.**

5 The Nevada Supreme Court held that when the defense counsel has based his
6 recommendations on a plea bargain and tactical decision upon factors that would further his
7 own personal ambitions as opposed to his client's best interests, it was that conduct which "fell
8 below an objective standard of reasonableness" and resulted in "prejudice" to his client.
9 *Larson v. State*, 104 Nev. 691, 694, 766 P.2d 261, 263 (1988).

10
11 Here, Mr. Powell's constitutional right to effective assistance of counsel was severely
12 impacted by the personal circumstances each of his trial counsel were experiencing during
13 their representation which resulted in prejudice to Mr. Powell and ultimately created a conflict
14 of interest. Specifically, Mr. Nelson was referred to the Nevada Bar for professional
15 misconduct, which impacted his ability to practice law resulting in his removal from multiple
16 cases. (Exhibit "U", "W", "X"). Details surrounding Mr. Roy's circumstances are well
17 documented in his case currently postured before the Nevada Supreme Court, Case No. 84369;
18 In Re: Discipline of Roy L. Nelson, III. (Exhibit "W", "X"). Due to the personal struggles Mr.
19 Nelson was facing, he could not possibly act in the best interest of Mr. Powell as lead trial
20 counsel, and thus his representation fell below an objective standard of reasonableness as set
21 forth in *Larson*.

22
23 Like Mr. Nelson, trial counsel Kane was also preoccupied with a personal situation
24 which impacted his ability to perform his duties as an attorney. Tragically, while representing
25 Mr. Powell, Mr. Nelson experienced a terrible family tragedy which forced him to work from
26 home from March 2017 to May 2017. (Exhibit "Q" at 24). Trial preparation during the last few
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1 months leading up to trial is of incredible importance and time is extremely valuable to be able
2 to adequately prepare for trial. Trial preparation includes, amongst many others, meeting
3 clients, reviewing evidence, devising a trial strategy, and discussing theories of the case, all of
4 which are necessary to sufficiently prepare for trial. Unfortunately, Mr. Kane's personal
5 circumstances and lack of criminal experience rendered him incapable of adequately preparing
6 for a complex trial as in the instant matter, resulting in Mr. Powell receiving ineffective
7 assistance of counsel. Mr. Kane conceded to his lack of experience, stating under oath that he
8 brought Mr. Nelson on to Mr. Powell's case to act as the "first chair" specifically due to his
9 lack of criminal experience.
10
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12 Q. Mr. Kane, how many criminal jury trials have you done? At the time --

13 A. That would have been my first criminal jury trial.
14

15 ...

16 Q. And so you said you brought Roy Nelson on. Was Roy going to be considered first
17 chair or second chair?

18 A He was going to be considered first chair, I believe. I was planning on doing the voir
19 dire. I was going to do at least one witness.

20 *Id.* at 22.

21 Mr. Kane further conceded he was only able to visit Mr. Powell approximately two
22 times prior to the commencement of his trial, only one of which Mr. Nelson allegedly attended.
23 *Id.* at 18. It is unimaginable for even the most experienced criminal defense attorneys to
24 adequately prepare for trial after only two visits with a client. There is no time to completely
25 review the evidence, create a defense strategy, and discuss the potential consequences of trial
26 in just a few hours.
27

28 Mr. Kane and Mr. Nelson's personal circumstances created a situation where both

1 parties could be reasonably understood as distracted resulting in deficient performance as
2 counsel to Mr. Powell.

3
4 While this situation is different from the representation in *Larson*, where the attorney
5 made recommendations based on his personal ambitions which led to prejudice, here we have
6 two attorneys, facing substantial personal crises over the course of Mr. Powell's case, and
7 when faced with the first opportunity to take a Plea Agreement regardless of the merit, defense
8 counsel advised their client to take the erroneous deal. *Id.* at 20. Mr. Kane and Mr. Nelson's
9 personal struggles restricted their ability to adequately prepare permitting only a nominal
10 approach to Mr. Powell's case. Trial counsel failed to advise Mr. Powell about the potential
11 consequences of accepting the plea deal. Further, trial counsel failed to challenge the State
12 when threatened with additional uncharged crimes where no discovery had been reviewed,
13 which revealed a pattern of making recommendations and tactical decisions based on personal
14 motives as opposed to Mr. Powell's best interest. But for the prejudiced advice from Mr. Kane
15 and Mr. Nelson, it is reasonable that the proceeding would have been different.

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19 **iii. TRIAL COUNSEL FAILED TO THOROUGHLY INVESTIGATE MR.**
20 **POWELL's ALIBI AND ALIBI WITNESSES**

21 When a defense attorney fails to conduct an adequate investigation, he denies his client his
22 Sixth Amendment right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S.
23 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *also see Warner v. State*, 102 Nev. 635, 638, 729
24 P.2d 1359, 1361 (1986).

25
26 Under *Strickland*, the defense counsel has a duty "to make every reasonable investigation
27 or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S.
28 668. The trial counsel, at a minimum, must conduct a reasonable investigation enabling him to

1 make informed decisions regarding how to best represent his client. *Phillips v. Woodford*, 267
2 F.3d 966, 978 (9th Cir. 2002). Pretrial investigation is a critical area in any criminal case and
3 failure to accomplish that investigation has been held to constitute ineffective assistance
4 of counsel. The Nevada Supreme Court stated: “It is still recognized that a primary
5 requirement is that counsel... conduct careful factual and legal investigations and inquires with
6 a view toward developing matters of defense in order that they make informed decisions on his
7 client's behalf both at the pleading stage... and at trial.” *Jackson v. Warden*, 91 Nev. 430, 537
8 P.2d 473-474 (1975).

11 The Federal Courts also hold that pretrial investigation and preparation for trial are a key
12 to effective representation of counsel. *U.S. v. Tucker*, 716 F.2d 576 (1983). When the
13 deficiencies in counsel's performance can be found to be severe and cannot be characterized as
14 the product of strategic judgment, ineffectiveness may be clear. *United States v. Gray*, 878
15 F.2d 702, 711 (3d Cir. 1989). Thus, the courts of appeals agree that failure to conduct any
16 pretrial investigation generally constitutes a clear instance of ineffectiveness. *Id.*

18 In *Warner v. State*, 102 Nev. 635, 729 P.2d 1359 (1986), the Nevada Supreme Court
19 found that trial counsel was ineffective when counsel had failed to conduct an adequate pretrial
20 investigation, failed to properly utilize the full-time investigator employed by the public
21 defender, and failed to prepare for the testimony of defense witnesses. *See also, Sanborn v.*
22 *State*, 107 Nev. 399, 812 P.2d 1279 (1991). “At a minimum, counsel has the duty to interview
23 potential witnesses and to make an independent investigation of the facts and circumstances of
24 the case.” *Crisp v. Duckworth*, 743 F.2d 580, 583 (7th Cir.1984), *cert, denied*, 469 U.S. 1226,
25 105 S.Ct. 1221, 84 L.Ed.2d 361 (1985). Ineffectiveness is generally clear in the context of
26 complete failure to investigate because counsel can hardly be said to have made a strategic
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1 choice against pursuing a certain line of investigation when s/he has not yet obtained the facts
2 on which such a decision could be made. *See Strickland*, 466 U.S. at 690-91.

3 The Eighth Circuit Court of Appeals held that when counsel did not investigate his client's
4 alibi prior to trial that satisfied the requirement of the Strickland test for ineffective counsel.
5 *Grooms v. Solem*, 923 F.2d 88, 90 (8th Cir. 1991) The Sixth Circuit Court of Appeals also held
6 that when the previous counsel failed to interview the alibi witnesses prior to trial that was
7 found to be unreasonable thus satisfying the Strickland test. *Clark v. Redman*, 911 F.2d 731
8 (6th Cir. 1990).

9 As stated above, a failure to investigate qualifies as a deficiency of trial counsel
10 under *Strickland*. Trial counsel did not conduct any pretrial investigation for Powell's alibi,
11 despite his insistence that he had an alibi and provided contact information for alibi witnesses.
12 (Exhibit "I" at 10). To prove prejudice, Powell must present a "reasonable probability that, but
13 for trial counsel's unprofessional errors, the result of the proceeding would have been
14 different." *Strickland*, 466 U.S. at 694. A reasonable probability is a "probability sufficient to
15 undermine confidence in the outcome." *Id.* Virtually no investigation was done to substantiate
16 Powell's alibi prior to trial counsel's advice to accept the State's plea deal. Powell was facing
17 numerous serious felony charges and several life sentences, yet nothing was done to potentially
18 exonerate Powell of any guilt by providing a clear alibi. Powell provided contact information
19 for an alibi witness, in this case his fiancé. Despite Mr. Powell's request to investigate this alibi
20 neither his trial counsel nor anyone acting on their behalf reached out to this witness to discuss
21 anything alibi related at any point during their representation. (Exhibit "Q" at 17). This court
22 should be convinced that had the case been properly investigated and prepared for trial, and
23 had counsel been effective, that the outcome would have been different.

1
2 **B. INEFFECTIVE ASSISTANCE OF COUNSEL - GUILTY PLEA AGREEMENT**
3 **AND MOTION TO WITHDRAW**

4 **i. COUNSEL MISREPRESENTED TO HIS CLIENT THE PLEA DEAL HE**
5 **WOULD BE ENTERING**

6 It has long been the law that a plea of guilty is constitutionally valid only to the extent it is
7 “voluntary” and “intelligent. *Brady v. United States*, 397 U.S. 742, 748, 25 L.Ed.2d 747, 90
8 S.Ct. 1463 (1970). This standard connotes a two-part test.

9 The first prong of this test requires that the plea be intelligent. The United States Supreme
10 Court has held that:

11 A plea does not qualify as intelligent unless a criminal defendant first receives real
12 notice of a true nature of a charge against him, the first and most universally recognized
13 requirement of due process. *Bousley v. United States*, 523 U.S. 614, 618, 118 S.Ct.
14 1604 (1998) (internal citation omitted).

15 Second, a plea must be voluntary. The voluntary prong is addressed as follows:

16 A plea of guilty entered by one fully aware of the direct consequences, including the
17 actual value of any commitments made to him by the court, prosecutor, or his own
18 counsel, must stand unless induced by threats (or promises to discontinue improper
19 harassment), misrepresentation (including *10 unfulfilled or unfulfillable promises), or
20 perhaps by promises that are by their nature improper as having no proper relationship
21 to the prosecutor's business (e.g. bribes). *Brady v. United States*, 397 U.S. 742, 755.

22 A “knowing” plea is one entered into with a full understanding of the nature of the charge
23 and all the consequences for the plea. *Boykin v. Alabama*, 395 US 238 (1969) A plea
24 agreement is construed according to what the defendant reasonable understood when he
25 entered the plea. *Statz v. State* 113 Nev. 987, 993, 944 P.2d 813, 817 (1997); *Sullivan v. State*,
26 115 Nev. 383, 387, 990 P.2d 1258, 1260 (1999) The defendant’s reasonable understanding is
27 distinguishable from the mere subjective belief of defendant as to any potential sentence, or
28 hope of leniency, unsupported by a promise from the state or an indication by the court. *See*
Rouse v. State, 91 Nev. 677, 541 P. 2d 643 (1975)

1 A defendant who enters a guilty plea based on the advice of counsel may refute the guilty
2 plea by demonstrating the ineffectiveness of counsel's performance violated the defendant's
3 right to counsel guaranteed under the sixth amendment to the US constitution. *Nollete v. State*,
4 118 Nev. 341, 348-349, 46 P.3d 87, 92 (2002); *Strickland v. Washington*, 466 U.S. 668, 687-88
5 (1984) A defendant must substantiate their claim of ineffective assistance of counsel by
6 showing counsel's performance fell below an objective standard of reasonableness, and a
7 reasonable probability exists that, but for counsel's erroneous advice, the defendant would not
8 have pled guilty. Id; *Warden v. Lyons*, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984); *Hill v.*
9 *Lockhart*, 474 U.S. 52, 106 S. Ct. 366, 88 L.Ed.2d 203 (1985)
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12 Mr. Powell asserts that his plea was signed involuntarily because of the
13 misrepresentations made by his counsel during plea negotiations. These misrepresentations
14 included unfulfilled and unfulfillable promises of a sentence that guaranteed six to fifteen years
15 in prison. (Exhibit "T" at 10-11). His attorney could not promise something that is left to the
16 court's discretion, and the actual sentencing decision was significantly different from what
17 counsel had promised. Mr. Powell's counsel also failed to investigate or request discovery on
18 the undocumented charges that could result in an additional three hundred years of prison for
19 Mr. Powell prior to advising him to agree to the offered Plea Deal. (Exhibit "Q" at 8). At no
20 point would Mr. Powell have had a reasonable understanding of these threatened charges prior
21 to signing the Guilty Plea Agreement. This is clearly due to Mr. Powell's attorney's ineffective
22 assistance of counsel and erroneous advice. These promises and failures to effectively
23 communicate the nature of the deal fully implicate the Brady rule and invalidate the plea deal.
24 Had Mr. Powell known that there was a possibility that these additional charges were bare and
25 naked, and had he known that the sentence communicated to him was not guaranteed then he
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1 would not have pleaded guilty and would have insisted on going to trial. Therefore, Mr. Powell
2 is entitled to relief by way of granting this Writ of Habeas Corpus.

3
4 **ii. COUNSEL FAILED TO ASK THE STATE TO PROVIDE DISCOVERY ON**
5 **ALLEGED NEW CRIMINAL CASES THAT INFLUENCED GUILTY PLEA**

6 The Supreme Court held that to succeed in the second prong of the Strickland test when
7 arguing that ineffective assistance was erroneous plea advice, the defendant must prove that
8 they would have entered a different plea but for counsel's performance. *Hill v. Lockhart*.
9 When the deficiencies in counsel's performance can be found to be severe and cannot be
10 characterized as the product of strategic judgment, ineffectiveness may be clear. *United States*
11 *v. Gray*, 878 F.2d 702, 711 (3d Cir. 1989). Thus, the courts of appeals agree that failure to
12 conduct any pretrial investigation generally constitutes a clear instance of ineffectiveness. *Id.*

13
14 The Nevada Supreme Court has held that for a valid plea to stand, the Defendant must
15 understand the elements of offense to which the plea was entered or made factual statements to
16 court which constitute admission to offence pled to. *State v. Love*, 109 Nev. 1136, 1137, 865
17 P.2d 322, 329 (1993) When determining if trial counsel was effective, the court determines
18 whether counsel made a "sufficient inquiry into the information pertinent to his client's case."
19 *Doleman v. State*, 112 Nev. 843, 848, 921 P.2d 278, 280 (1996). And then whether counsel
20 made a "reasonable strategy decision on how to proceed with his client's case." *Id.* While trial
21 counsel is not required to exhaust all avenues of defense, that is only relevant when "counsel
22 and the client in a criminal case clearly understand the evidence and the permutations of proof
23 and outcome" *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

24
25 In this case, Mr. Kane and Mr. Nelson clearly failed to obtain discovery and understand
26 the probability of the charges actually being filed against Mr. Powell, and thus failed to
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1 effectively construct a reasonable strategy for their client which led to clear prejudice by Mr.
2 Powell accepting the Guilty Plea Agreement. Under Strickland, the first prong is the attorney's
3 performance must be proven to be deficient. This can be shown by trial counsel's erroneous
4 advice to Mr. Powell to accept a Guilty Plea Agreement with the State where a significant
5 component of that agreement was based on the State agreeing to not charge Mr. Powell with
6 ten additional robbery charges. (Exhibit "Q" at 8). Not only had trial counsel never reviewed
7 the discovery from those new cases; the only alleged evidence they were presented with were
8 photos on a police white board. *Id.* Even if other factors were included in the negotiation of the
9 Guilty Plea Agreement, such as taking life sentence off the table from the previously charged
10 crimes, the threat of ten additional robbery charges which could amount to a maximum of 150
11 years in prison which amounts to an additional life sentence on top of the previous charges. *Id.*
12 Mr. Powell was placed in the untenable position where, not only did he face three life
13 sentences from the original charges being brought against him, but he was faced with the
14 possibility of being sentenced to an additional three hundred years for crimes in which he had
15 no ability to review or even understand. *Id.* Mr. Powell relied on the representation appointed
16 to him to understand and represent him within a range of competence guaranteed to him by the
17 sixth amendment, and to reasonably advise him on this new and objectively significant change
18 in his case. The response of Mr. Powell's legal counsel was not to delay the trial for review of
19 these new charges being threatened by the State that clearly changed the dynamic of the entire
20 case, or even to request the discovery from these new cases, but to advise their client to blindly
21 accept the State's deal. *Id.* This advice clearly shows a lack of baseline competency expected
22 of an attorney advising a client of a deal with life altering consequences.
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Under Strickland, the second prong requires a reasonable probability that Mr. Powell

1 would have, but for counsels' unprofessional errors, resulted in a different outcome during the
2 Plea Agreement Negotiation. It is apparent that these new allegations would not only prejudice
3 Mr. Powell subjectively but would prejudice an objectively reasonable person in Mr. Powell's
4 position. The threat of an additional three hundred years of imprisonment combined with the
5 danger of the unknown is clearly a factor that could have affected Mr. Powell's decision to take
6 a plea deal. While these new allegations may or may not have been able to have been brought
7 by the State, Mr. Powell was in no position to understand or be able to understand these new
8 charges. This type of erroneous advice by trial counsel, which not only shows a clear and
9 obvious lack of understanding of these new potential charges being brought against Mr.
10 Powell, but a total lack of meaningful assistance. The ineffective assistance of Mr. Powell's
11 counsel plainly falls below the objective standard of reasonableness required, and the
12 reasonable probability of Mr. Powell not pleading guilty but for counsel's erroneous advice
13 plainly exists.

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17 • **INEFFECTIVE ASSISTANCE OF COUNSEL THROUGHOUT COLLATERAL**
18 **PROCEEDINGS.**
19

20 Unfortunately, the ineffective assistance of counsel did not stop after the imposition of
21 Mr. Powell's sentence. Following the judgment of conviction filed on May 24, 2019, Ms.
22 McNeil failed to file a direct appeal which challenged both the district court's denial of the
23 Motion to Withdraw the Guilty Plea, in addition to challenging the overall Judgment of
24 Conviction producing a procedural default. Furthermore, Ms. McNeil wholly failed to file, or
25 even advise Mr. Powell of his ability to file a Writ of Habeas Corpus within one year after
26 entry of the March 4, 2021 Findings of Fact and Conclusions of Law. Ms. McNeil admitted to
27 this shortcoming in a sworn declaration dated August 10, 2021. (Exhibit "Y" at 1-2)
28

1 A counsel's ineffectiveness can be found when they failed to properly "preserve a
2 claim for state-court review" but "only if that ineffectiveness itself constitutes an independent
3 constitutional claim". *Edwards v. Carpenter*, 529 U.S. 446, 447, 120 S. Ct. 1587, 1589, 146 L.
4 Ed. 2d 518 (2000). Ms. McNeil's performance continuously fell below the objective standard
5 of reasonableness. First, Ms. McNeil failed to challenge the Judgement of Conviction in its
6 entirety when she filed the June 14, 2019 Notice of Appeal, wherein she only challenged the
7 district court's denial of the Motion to Withdraw the Guilty Plea Agreement. (Exhibit "I" at 1).
8 Failure to challenge the overall judgment forever waived Mr. Powell's ability to do so on direct
9 appeal to the Nevada Supreme Court. Despite this, the Nevada Supreme Court remanded the
10 case for the purpose of conducting an evidentiary hearing on Mr. Powell's Motion to Withdraw
11 the Guilty Plea Agreement. (Exhibit "R" at 1) At the hearing, Ms. McNeil failed to call
12 relevant witnesses including "lead trial counsel" Roy Nelson who had been under scrutiny with
13 the Nevada Bar for suspected substance abuse and overall ineffective assistance. (Exhibit "Q"
14 at 1-2) Instead, Ms. McNeil only requested to examine one of Mr. Powell's former attorneys,
15 Michael Kane. *Id.* Incredibly, Ms. McNeil waived the opportunity to examine Mr. Nelson,
16 under oath, failing to obtain testimony regarding Mr. Nelson's preparation, counseling of Mr.
17 Powell and overall trial strategy. The Motion to Withdraw Guilty Plea Agreement was entirely
18 based on ineffective council and the fact that only one of Mr. Powell's attorneys was called for
19 examination by Ms. McNeil clearly prevents Mr. Powell being able to reasonably defend his
20 claim properly especially when considering the aforementioned issues Roy Nelson was facing.
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25 Following the May 24, 2019, Judgment of Conviction, McNeil again failed to provide
26 effective counsel to Mr. Powell by failing to file a direct appeal to the Nevada Supreme Court
27 challenging not only the district court's denial of the Motion to Withdraw the Guilty Plea, but
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1 the overall Judgment of Conviction, which led to the waiver of this claim. Furthermore,
2 following the March 4, 2021, Findings of Fact in Conclusions of Law, Ms. McNeil failed to
3 file a Petition for Writ of Habeas Corpus in a timely fashion, nor did she advise Mr. Powell of
4 his ability to challenge this ruling altogether. The details of this error can be seen in the sworn
5 declaration drafted by Ms. McNeil and filed on Mr. Powell's behalf where she plainly states
6 that she miscalculated the date which led to Mr. Powell missing the date to appeal the court's
7 decision based on her error. (Exhibit "Y" at 1-2)

8
9 Ms. McNeil has not only failed to advise Mr. Powell on the timeliness on two important
10 deadlines, but that failure has thereby waived any remedy Mr. Powell could have received by
11 appealing the district court's decision denying his Motion to Withdraw his Guilty Plea
12 Agreement. This has prejudiced Mr. Powell's ability to adequately challenge his conviction.
13 But for Ms. McNeil's ineffective counsel, the result of the proceeding would reasonably been
14 different.
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17 **II. THE STATE'S KIDNAPPING CHARGES ARE UNCONSTITUTIONAL**
18 **DUE TO THE DUAL CRIMINAL LIABILITY WHEN ALSO CHARGING**
19 **ROBBERY FOR THE SAME ACT.**

20 Pursuant to NRS 200.310(1) :

21 "A person who willfully seizes, confines, inveigles, entices, decoys, abducts, conceals,
22 kidnaps or carries away a person by any means whatsoever with the intent to hold or
23 detain, or who holds or detains, the person for ransom, or reward, or for the purpose of
24 committing sexual assault, extortion or robbery upon or from the person, or for the
25 purpose of killing the person or inflicting substantial bodily harm upon the person, or to
26 exact from relatives, friends, or any other person any money or valuable thing for the
27 return or disposition of the kidnapped person... is guilty of kidnapping in the first
28 degree which is a category A felony."

29 In *Wright v. State*, 94 Nev. 415, 417, 581 P.2d 442, 443 (1978), this Court considered
30 whether a defendant could be subjected to dual criminal liability when charged with both
31 kidnapping and robbery. The Court held that when the movement or detention of a victim is

1 incidental to the robbery “and does not substantially increase the risk of harm over and above
2 that necessarily present in the crime of robbery itself” dual convictions for robbery and
3 kidnapping could not be concurrently charged. Conversely, “if the movement of the victim
4 results in increased danger over and above that present in the crime of robbery itself, a
5 kidnapping charge also may lie.” *Id.* at 418, 581 P.2d at 444. The Nevada Supreme Court has
6 explained that “some movement or confinement of the victim's inherent in almost every
7 robbery.” *McKenna v. State*, 98 Nev. 323, 326, 647 P. 2d 865, 867 (1982).

8
9 This same issue was later addressed by this court in *Mendoza v. State*, 122 Nev. 267,
10 274-75, 130 P.3d 176, 180-81 (2006). In *Mendoza* this Court held:

12 “Movement or restraint incidental to an underlying offense where restraint or
13 movement is inherent, as a general matter, will not expose the defendant to dual
14 criminal liability under either the first- or second-degree kidnapping statutes. However,
15 where the movement or restraint serves to substantially increase the risk of harm to the
16 victim over and above that necessarily present in an associated offense, *i.e.*, robbery,
17 extortion, battery resulting in substantial bodily harm or sexual assault, or where the
18 seizure, restraint or movement of the victim substantially exceeds that required to
complete the associated crime charged, dual convictions under the kidnapping and
robbery statutes are proper. Also, per *Hutchins*, dual culpability is permitted where the
movement, seizure or restraint stands alone with independent significance from the
underlying charge.” *Id.*

19 In *Mendoza*, the Nevada Supreme Court upheld the *Wright* standard that when a
20 kidnapping is incidental to a robbery, the defendant cannot be convicted of both crimes. In the
21 test to determine if the movement or detention in the course of a robbery is deficient to charge
22 separate kidnapping charges, the movement/detention must either: (1) substantially increase
23 the risk of harm; (2) substantially exceed that required to complete the associated crime; or (2)
24 stand alone with independent significance from the associated offense. *Id.* at 274-
25 75, 130 P.3d at 180-81.
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1 While *Wright* was decided prior to *Mendoza*, the case is instructive on how to apply the
2 standard. In *Wright*, the defendants were charged with the robbery of a hotel. They had
3 entered the lobby, pointed multiple firearms at the staff and proceeded to steal the cash out of
4 the registers. The defendants then moved the staff to one of the back offices and forcefully
5 threatened the night auditor to open the safe for them. The defendants then made the victims lie
6 face down on the floor of the back office and preceded to leave the hotel. Presented with these
7 facts, the Court reversed the kidnapping convictions, finding that the movement of the victims
8 was incidental to the robbery and that their movement did not increase their risk of danger. The
9 Court explained its reasoning:
10
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12 “The statute is broad in its sweep. Literally applied, it would encompass an ordinary
13 robbery in the course of which the victim happens to be moved from one room to
14 another. Indeed, under a literal reading of NRS 200.310, it is difficult to conceive how
15 any robbery could be accomplished without committing the crime of kidnap: the
16 “forcible taking” necessary to commit robbery under NRS 200.380 necessarily involves
17 some form of “confinement” under NRS 200.310. The penalty for robbery, however, is
18 significantly less severe than that imposed for kidnapping. If, indeed, the movement of
19 the victim is incidental to the robbery and does not substantially increase the risk of
20 harm over and above that necessarily present in the crime of robbery itself, it would be
21 unreasonable to believe that the legislature intended a double punishment. *People v.*
22 *Daniels*, supra; cf. *Stalley v. State*, 91 Nev. 671, 541 P.2d 658 (1975). Within this
23 context, we approve the reasoning of *People v. Daniels*. On the other hand, if the
24 movement of the victim results in increased danger over and above that present in the
25 crime of robbery itself, a kidnapping charge also may lie.” *Wright v. State*, 94 Nev. At
26 417.
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29 This analysis was used in this court most recently in *Knight v. State* where the
30 defendant appealed a conviction for three brutal home invasions and the related robbery and
31 kidnapping charges. *Knight v. State*, 475 P.3d 765 (Nev. 2020). The court held that in the first
32 home invasion the totality of the circumstances was enough to satisfy the *Mendoza* test. The
33 court pointed out specifically the restraining of the victims with zip ties prior to leaving
34 substantially increased the risk of harm to the victims and substantially exceeded the

1 requirement needed to complete the home invasion/robbery. The court held that in the second
2 home invasion that due to the totality of the circumstances; hitting the victim in the head with a
3 gun and covering his head in a blanket while they were laying facedown was also unnecessary
4 to completing the robbery.
5

6 Here, Mr. Powell was charged with both robbery and kidnapping from two separate
7 incidents where none of the facts support the concurrent charging of both crimes under the
8 Mendoza test. The first kidnapping charge was of the clerk working at Pepe's Tacos, Jose
9 Chavarria. (Exhibit "B" at 32). In Mr. Chavarria's testimony during the grand jury, he stated
10 that the masked men pointed a gun at him and told him to take the money out of his register.
11 *Id.* Once completed, the masked men then told Mr. Chavarria to open the second register. *Id.* at
12 36. After being unable to open the second register, they threatened and forced Mr. Chavarria
13 onto his knees and went to find the second employee that had access to that register. *Id.* at 37.
14 At no point was Mr. Chavarria restrained as the victims were in *Knight*, nor was he placed in a
15 position that substantially increased the harm from the associated robbery. (Exhibit "B" at 37).
16 As in *Wright*, the movement of Mr. Chavarria was incidental to the aforementioned robbery,
17 placing him on his knees while another employee was obtained to finish the robbery and then
18 leave the property. (Exhibit "B" at 37). The threat of force used against Mr. Chavarria can be
19 reasonably construed within the original charge of robbery seen in NRS 200.380(1): "Robbery
20 is the unlawful taking of personal property...against his will...by means of fear of injury."
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24 The second kidnapping charge was of Yeneir Hessing, an employee working at
25 Walgreens. *Id.* at 7. In Ms. Hessing's testimony during the grand jury, she stated that a masked
26 man approached her while pointing a weapon at her and told her to go to the front of the store
27 with him. *Id.* at 8-10. The masked man took the money from the registers and then told Ms.
28

1 Hessing and the other employee, Tifnie Bonnit, to go to the office where the safe was kept. *Id.*
2 at 15-16. After taking the money, the masked man ran from the property. *Id. at 17.* The facts of
3 this case mirror those in *Wright*. There was no independent purpose for the movement. At no
4 time were Ms. Hessing or Ms. Bonnit restrained during the encounter as were the victims in
5 *Knight*. The only injury incurred were the bruises Ms. Hessing incurred from the weapon the
6 masked man pressed into her side as they were walking which can be construed as reasonably
7 incidental to the force needed to convict for the crime of a robbery with a deadly weapon as
8 seen in NRS 200.380(1) “Robbery is the unlawful taking of personal property...against his
9 will...by means of force.” (Exhibit “B” at 17). The suspects were there to take the property and
10 leave.
11

12
13 In *Gonzales v. State*, 131 Nev., Adv. Op. 49, 354 P.3d 654, 665 (Ct. App. 2015), the
14 Court of Appeals upheld dual convictions where the victims were moved from one location
15 into another. However, the instant case is easily distinguishable from *Gonzales*.
16

17 First, *Gonzales* was decided after the defendants' attorney had the opportunity to attack
18 the kidnapping counts unlike the instant matter, and therefore those arguments would not have
19 been available for the State to rely upon when arguing against dismissal in this case.
20 Additionally, *Gonzalez* can be distinguished on its facts. After the victim was brought inside
21 the house from the garage, the victim was moved from room-to-room for no apparent purpose;
22 the court explained as follows:
23

24 “In this case, Michelle was moved from the open garage into the house, and then from
25 room to room, while the criminals ransacked the entire home. *Gonzales* argues that the
26 movement was intended to assist him in locating valuables, but as it turned out,
27 Michelle provided almost no help because she did not know where [the items sought
28 were located]... Yet, even after realizing she could provide little guidance to them, the
perpetrators nonetheless continued moving her to different rooms for no ascertainable
purpose.” *Gonzales v. State*, 354 P. 3d at 666.

1 Although the *Gonzalez* court could not ascertain the purpose for the movement, the fact
2 that the movement was not incidental to the robbery and then classified the movement as
3 “independent and significant” under *Mendoza*. By contrast, in the instant case, none of the
4 victims were moved except as necessary for the suspects to steal money from the cash registers
5 and safe from the businesses. (Exhibit “B” at 35-38; 7-17)

7 Based on the facts above and that to charge one defendant with two crimes is
8 unreasonable to believe the legislature intended a double punishment for the same act, as such,
9 Mr. Powell now asks this Court to grant this Writ of Habeas Corpus.

11 **III. CUMULATIVE ERROR.**

12 Cumulative error warrants habeas relief where the errors have “so infected the
13 proceedings with unfairness as to make the resulting conviction a denial of due process.”
14 *Donnelly v DeChristoforo*, 416 U.S. 637, 643 94 S.Ct 1868, 4. L.Ed. 2d 431 (1974).
15 When errors of Constitutional magnitude are involved, reversal is warranted where those
16 combined errors have created prejudice for the defendant. *United States v. Wallace*, 848
17 F.2d 1464, 1475 (9th Cir. 1988). Even if an error does not, on its own, rise to the level of a
18 Constitutional violation, a combination of errors renders a trial fundamentally unfair in
19 violation of the Sixth Amendment to the United States Constitution. *See e.g., Lundy v.*
20 *Campbell*, 888 F.2d 467, 472073 (6th Cir. 1989), *cert. denied*, 495 U.S. 950, 110 S.Ct.
21 2212, 109 L.Ed.2d 538 (1990); *Walker v. Engle*, 703 F.2d 959, 963 (6th Cir. 1983), *cert.*
22 *denied*, 464 U.S. 951, 104 S.Ct. 367, 78 L.Ed.2d 327 (1983); *United States v. Necoechea*,
23 986 F.2d 1273, 1282 (9th Cir. 1993); *United States v. Glover*, 83 F.2d 429 (9th Cir. 1996);
24 *United States v. McPherson*, 108 F.3d 1387 (9th Cir. 1997); *Big Pond v. State*, 101 Nev. 1
25 (1985). Habeas relief is available for cumulative error when the errors, combined, have
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1 “so infected the trial with unfairness as to make the resulting conviction a denial of due
2 process.” *Donnelly*, 416 U.S. at 643, 94 S.Ct. at 1871.

3 In Mr. Powell’s case, the inadequacies and critical failures of trial counsel and
4 appellate counsel so infected Mr. Powell’s litigation with unfairness that he was denied
5 due process of the law as required by the Fifth and Fourteenth Amendments of the
6 United States Constitution. Additionally, the failures of trial and appellate counsel,
7 combined with the violation of Mr. Powell’s right against Dual Criminal Liability resulted in
8 cumulative errors, the effect of which resulted in a Guilty Plea Agreement that was “so
9 infected ... with unfairness as to make the resulting conviction a denial of due process.”
10 *Donnelly*, 416 U.S. at 643, 94 S.Ct. at 1868. Upon review, this Court should find this
11 cumulative error warrants granting this Writ of Habeas Corpus

12 DATED this 27th day of May 2022.

13 Respectfully Submitted:

14 **SGRO & ROGER**

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19
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Dated this 27th day of May 2022.

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SGRO & ROGER

APP000620

FILE UNDER SEAL

STATE OF NEVADA VS. LARENZO PINKNEY & ADRIAN POWELL

C-17-327767-1&2

Reports and Witness Statements re:

1. LVMPD Event No. 170605-0220: Armed robbery at 7-Eleven located at 4800 West Washington, Las Vegas, Clark County, Nevada, on June 5, 2017.
2. LVMPD Event No. 170614-0524: Armed robbery at Roberto's/Mangos located at 6650 Vegas Drive, Las Vegas, Clark County, Nevada, on June 14, 2017.
3. LVMPD Event No. 170618-0989: Armed robbery at Pepe's Tacos located at 1401 North Decatur, Las Vegas, Clark County, Nevada, on June 18, 2017.
4. LVMPD Event No. 170701-0545: Armed robbery at Roberto's located at 2685 South Eastern Avenue, Las Vegas, Clark County, Nevada, on July 1, 2017.
5. LVMPD Event No. 170812-3809: Armed robbery at Pizza Bakery located at 6475 West Charleston Boulevard, Las Vegas, Clark County, Nevada, on August 12, 2017.
6. LVMPD Event No. 170817-0241: Armed robbery at Terrible Herbst located at 6380 West Charleston Boulevard, Las Vegas, Clark County, Nevada, on August 17, 2017.
7. LVMPD Event No. 170817-0470: Armed robbery at Rebel located at 6400 West Lake Mead Boulevard, Las Vegas, Clark County, Nevada, on August 17, 2017.
8. LVMPD Event No. 170824-0521: Armed robbery at Roberto's located at 6820 West Flamingo Road, Las Vegas, Clark County, Nevada, on August 24, 2017.
9. LVMPD Event No. 170824-0645: Armed robbery at Roberto's located at 907 North Rainbow Boulevard, Las Vegas, Clark County, Nevada, on August 24, 2017.
10. LVMPD Event No. 170825-0589: Armed robbery at Pepe's Tacos located at 1401 North Decatur, Las Vegas, Clark County, Nevada, on August 25, 2017.



Administrative

Location 4800 W Washington Ave LV, NV 89108
Occurred On (Date / Time) Monday 6/5/2017 1:40:00 AM
Reporting Officer 15315 - Smith, Matthew
Entered By 15315 - Smith, Matthew
Related Cases

Or Between (Date / Time)
Reported On 6/5/2017
Entered On 6/5/2017 2:45:07 AM

Sector /Beat W2

Jurisdiction Las Vegas, City of

Traffic Report No

Place Type

Accident Involved

Offenses:

Robbery, E/DW(F)-NRS 200.380

Completed Yes Domestic Violence No
Entry Premises Entered
Weapons Handgun
Criminal Activities None/Unknown

Hate/Bias None (No Bias)
Type Security
Location Type Convenience Store Tools

Burglary While Poss Of Gun/Dw(F)-NRS 205.060.4

Completed Yes Domestic Violence No
Entry No Force Used Premises Entered

Hate/Bias None (No Bias)
Type Security Alarm System
Location Type Convenience Store Camera Tools

Weapons

Criminal Activities

Assault, W/Dw(F)-NRS 200.471.2B

Completed Yes Domestic Violence No
Entry Premises Entered
Weapons Handgun
Criminal Activities None/Unknown

Hate/Bias None (No Bias)
Type Security
Location Type Convenience Store Tools

Victims:

Name: 7-11

Victim Type Business Written Statement
Victim of 50138 - Robbery, E/DW(F)-NRS 200.380
50426 - Burglary While Poss Of Gun/Dw(F)-NRS 205.060.4

Can ID Suspect

DOB Age Sex Race
Height Weight Hair Color
Employer/School
Occupation/Grade Work Schedule
Injury Injury Weapons

Dissemination is restricted to Criminal
Justice Agencies ONLY. Secondary
dissemination to Non-Criminal Justice
Agencies is PROHIBITED.

AUG 03 2018

Addresses

Business 4800 W Washington Ave LV, NV 89108 United States

Phones

Business/Work (702) 646-2602

Offender Relationships

Notes:

Released to County Attorney
Las Vegas Metropolitan Police Dept.
By *[Signature]*

Name: Chamorro, Italo Martin

Victim Type Individual Written Statement Yes
Victim of 50201 - Assault, W/Dw(F)-NRS 200.471.2B

Can ID Suspect No

DOB 10/24/1970 Age 46 Sex Male Race White Ethnicity Hispanic or Latino
Height 5' 5" Weight 200 Hair Color Brown Eye Color Brown
Employer/School 7-11
Occupation/Grade Clerk Work Schedule
Injury None Observed Injury Weapons Handgun

Addresses

Residence 6537 Bradford Ln LV, NV 89108 United States

Phones

Cellular (702) 957-0631

Offender Relationships

S - Unknown 1 None

S - Unknown 2 None

Notes:

Suspects:

Name: Unknown 1

Alias:

Scope ID		DOB		Age	25	Race	Black or African American	Ethnicity	Not Hispanic or Latino
Sex	Male	Height	5' 7"	Weight	170	Hair Color		Eye Color	Brown
Employer/School						Occupation/Grade			

Addresses

Phones

Notes:

Name: Unknown 2

Alias:

Scope ID		DOB		Age	25	Race	Black or African American	Ethnicity	Not Hispanic or Latino
Sex	Male	Height	5' 7"	Weight	170	Hair Color		Eye Color	Brown
Employer/School						Occupation/Grade			

Witnesses:

Name: Johnson, Dajuan

Written Statement	Yes	Can ID Suspect	No						
DOB	2/17/1998	Age	19	Sex	Male	Race	Black or African American	Ethnicity	Not Hispanic or Latino
Height	5' 7"	Weight	130			Hair Color	Black	Eye Color	Brown

Addresses

Residence 613 Mcdermitt St Lv, NV 89107 United States

Phones

Cellular (702) 489-1354

Properties: ()

Type: Currency, Coins, Securities, Cash

Status	Stolen	Quantity	90	Value	90.00	Color	Green			
Description	\$80-\$100 cash in 1s, 5s, and 10s									
Manufacturer		Model		Serial No.	VIN					
Vehicle Year		Body Type		Lic Plate Exp						
Lic Plate #		Lic Plate State								
Insurance Company										
Owner	V - 7-11									

Notes:

Narrative

On 6/5/17 at approximately 0142 hours, LVMPD communications received a 911 call reference a robbery at the 7-11 convenience store located at 4800 W Washington, LV NV 89108. Officers arrived and made contact with the clerk, Chamorro, Italo 10/24/70, and witness Johnson, Dajuan 2/17/98.

Chamorro and Johnson both stated that two black males entered the store with hoodies pulled up and masks over their faces, holding semi-automatic handguns. One suspect shouted "cash, cash, cash" and began counting down from 5 while he went behind the counter and held Chamorro at gunpoint, while the other held Johnson at gunpoint. Chamorro emptied both cash registers (approx. \$80-\$100, mostly in small bills), and the suspect behind the counter grabbed the money in his hand. Both suspects then ran out the front of the store.

I viewed 7-11's video footage, which shows that both suspects appear to be black males in their twenties, 5'7-5'10, approx. 170 lbs. The first suspect was wearing a black hoodie with the hood pulled up, a black bandana with a white pattern over his face, blue jeans, black shoes, and black gloves. He had a black semi-auto handgun. The second suspect was wearing a black hoodie with the hood pulled up, a black ballcap, a black bandana with a white pattern on it covering his face, black pants, and white gloves. He had a black semi-automatic handgun, which he carried in his left hand.

The video footage shows both males arriving from Yale St. to the Northwest of the business, then entering through the front door with guns drawn. The first suspect pointed his gun at Chamorro, walked behind the counter, jabbed the clerk several times in the left arm using the barrel of his gun, and grabbed money from the cash drawers. The second suspect points his gun at Johnson, then pushed Johnson to the ground when Johnson tried to leave out the front door. The video shows both suspects leaving out the front door of 7-11, then running Northbound on Yale.

Johnson and Chamorro completed voluntary statements. Chamorro recovered what appeared to be a slide release from a firearm from the floor behind the counter. CSI arrived and processed the scene.

APP000623

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

Event #
170605-0220

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime <u>ROBBERY</u>	Date Occurred <u>6/5/17</u>	Time Occurred <u>0145</u>
Location of Occurrence <u>4800 W WASHINGTON NV 89107</u>	Sector/Beat <u>42</u>	<input checked="" type="checkbox"/> City <input type="checkbox"/> County

Your Name (Last / First / Middle) <u>Paul Duan Johnson</u>						Date of Birth <u>02/17/1998</u>	
Race <u>Blk</u>	Sex <u>M</u>	Height <u>5'7</u>	Weight <u>130</u>	Hair <u>Blk</u>	Eyes <u>Brown</u>	Work Schdl. (Hours)	(Days Off)
Residence Address (Number & Street) <u>4800 W WASHINGTON NV 89107</u>				Bldg./Apt.# <u>613</u>	City <u>Las Vegas</u>	State <u>NV</u>	Zip Code <u>89107</u>
Bus. (Local) Address: (Number & Street)				Bldg./Apt.#	City	State	Zip Code
Best place to contact you during the day <u>702-489-1359</u>				Best time to contact you during the day <u>702-489-1359</u>			Can You Identify the Suspect? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

DETAILS height around 5'7 black males, black hoodies, black mask.

Dissemination is restricted to Criminal Justice Agencies ONLY. Secondary dissemination to Non-Criminal Justice Agencies is PROHIBITED

AUG 03 2018

Released to County Attorney
Las Vegas Metropolitan Police Dept.
By ADW/BDC

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (LOCATION) 4800 W WASHINGTON NV NV 89107 ON THE 5th DAY OF JUNE AT 0230 (AM / PM), 2017.

Witness/Officer: [Signature] (SIGNATURE)

Witness/Officer: M. SMITH (PRINTED) P# 15313

Paul Duan Johnson
SIGNATURE OF PERSON GIVING STATEMENT



Administrative

Location 6650 Vegas Las Vegas, NV 89108
Occurred On (Date / Time) Wednesday 6/14/2017 4:00:00 AM
Reporting Officer 15222 - Lynn, Joshua
Entered By 15222 - Lynn, Joshua
Related Cases

Or Between (Date / Time)
Reported On 6/14/2017
Entered On 6/14/2017 4:30:18 AM
Jurisdiction Las Vegas, City of

Sector /Beat W2

Traffic Report Place Type Accident Involved

Offenses:

Robbery, E/DW(F)-NRS 200.380

Completed Yes Domestic Violence No Hate/Bias Unknown (Offenders Motivation Not Known)
Entry Premises Entered Type Security Tools
Weapons Firearm (Type Not Stated) Location Type Bar/Night Club
Criminal Activities None/Unknown

Kidnapping, 1st Degree(F)-NRS 200.310.1

Completed Yes Domestic Violence No Hate/Bias
Entry Premises Entered Type Security Tools
Weapons Location Type Bar/Night Club
Criminal Activities

Burglary, (1st)(F)-NRS 205.060.2

Completed Yes Domestic Violence No Hate/Bias Unknown (Offenders Motivation Not Known)
Entry No Force Used Premises Entered Type Security Exterior Lights Tools
Interior Lights
Camera
Weapons Location Type Bar/Night Club
Criminal Activities

Att Robbery, E/DW(F)-NRS 200.380

Completed Yes Domestic Violence No Hate/Bias Unknown (Offenders Motivation Not Known)
Entry Premises Entered Type Security Tools
Weapons Firearm (Type Not Stated) Location Type Restaurant
Criminal Activities None/Unknown

Victims:

Name: Trigg, Benjamin

Victim Type Individual Written Statement Yes Can ID Suspect Yes
Victim of 50051 - Kidnapping, 1st Degree(F)-NRS 200.310.1
50138 - Robbery, E/DW(F)-NRS 200.380
DOB 6/25/1984 Age 32 Sex Male Race White Ethnicity Not Hispanic or Latino
Height 5' 10" Weight 190 Hair Color Brown Eye Color Brown
Employer/School Mango's Beach Bar
Occupation/Grade
Injury Possible Internal Injury Work Schedule
Loss of Teeth Injury Weapons Firearm (Type Not Stated)
Other

Addresses

Residence 8600 W Charleston Apt 2085 Las Vegas, NV 89117 United States

Phones

Cellular (927) 270-8629

Offender Relationships

S - LNU, FNU ONE None

S - LNU, FNU TWO None

Notes: Bartender at Mango's

Name: Costa, William

Victim Type Individual Written Statement Yes Can ID Suspect Yes
Victim of 50051 - Kidnapping, 1st Degree(F)-NRS 200.310.1
50145 - Att Robbery, E/DW(F)-NRS 200.380

DOB 12/25/1975 Age 41 Sex Male Race White Ethnicity Hispanic or Latino
Height 5' 11" Weight 205 Hair Color Brown Eye Color Brown
Employer/School
Occupation/Grade Work Schedule
8/2/2018 3:16 PM

LLV170614000524

APP000625

Dissemination is restricted to Criminal
Justice Agencies ONLY. Secondary
dissemination to Non-Criminal Justice
Agencies is PROHIBITED

AUG 03 2018

Released to County Attorney
Las Vegas Metropolitan Police Dept.
By *[Signature]*

Injury None Observed

Injury Weapons

Firearm (Type Not Stated)

Addresses

Residence 6225 Caprino Ave Las Vegas, NV 89108 United States

Phones

Cellular (702) 945-5725

Offender Relationships

S - LNU, FNU ONE None

S - LNU, FNU TWO None

Notes:

Name: Rios-Muniz, Jose Luis

Victim Type Individual Written Statement Yes Can ID Suspect Yes
Victim of 50138 - Robbery, E/DW(F)-NRS 200.380
50051 - Kidnapping, 1st Degree(F)-NRS 200.310.1

DOB 1/11/1960 Age 57 Sex Male Race White Ethnicity Hispanic or Latino
Height 5' 7" Weight 180 Hair Color Brown Eye Color Brown
Employer/School Roberto's
Occupation/Grade
Injury Apparent Minor Injury Work Schedule
Injury Weapons Firearm (Type Not Stated)

Addresses

Residence 4272 Withering Pine St Las Vegas, NV 89108 United States

Phones

Cellular (702) 205-4689
Business/Work (702) 631-3600

Offender Relationships

S - LNU, FNU ONE None

S - LNU, FNU TWO None

Notes:

Name: Mango's Beach Bar

Victim Type Business Written Statement Can ID Suspect
Victim of 50424 - Burglary, (1st)(F)-NRS 205.060.2

DOB Age Sex Race Ethnicity
Height Weight Hair Color Eye Color
Employer/School
Occupation/Grade Work Schedule
Injury Injury Weapons

Addresses

Business 6650 Vegas Dr #104 Las Vegas, NV 89108 United States

Phones

Business/Work (702) 631-4711

Offender Relationships

Notes:

Name: Roberto's

Victim Type Business Written Statement Can ID Suspect
Victim of 50424 - Burglary, (1st)(F)-NRS 205.060.2

DOB Age Sex Race Ethnicity
Height Weight Hair Color Eye Color
Employer/School
Occupation/Grade Work Schedule
Injury Injury Weapons

Addresses

Business 6650 Vegas Dr Las Vegas, NV 89108 United States

Phones

Business/Work (702) 631-3600

Offender Relationships

Notes:

Name: Esquivel, Carlos

Victim Type Individual Written Statement Yes Can ID Suspect Yes
Victim of 50051 - Kidnapping, 1st Degree(F)-NRS 200.310.1
50138 - Robbery, E/DW(F)-NRS 200.380

DOB 10/29/1997 Age 19 Sex Male Race White Ethnicity Hispanic or Latino

Height 5' 3" Weight 122 Hair Color Brown Eye Color Brown
Employer/School
Occupation/Grade
Injury None Observed Work Schedule
Injury Weapons Firearm (Type Not Stated)

Addresses

Residence 6672 Fredonia Dr Las Vegas, NV 89108 United States

Phones

Cellular (702) 525-5028
Business/Work (702) 631-3600

Offender Relationships

S - LNU, FNU ONE None
S - LNU, FNU TWO None
Notes:

Suspects:

Name: LNU, FNU ONE

Alias:

Scope ID	DOB	Age	20	Race	Black or African American	Ethnicity	Not Hispanic or Latino
Sex	Male	Height		Weight		Hair Color	Eye Color
Employer/School				Occupation/Grade			

Addresses

Phones

Notes:

Name: LNU, FNU TWO

Alias:

Scope ID	DOB	Age	20	Race	Black or African American	Ethnicity	Not Hispanic or Latino
Sex	Male	Height	5' 10"	Weight	170	Hair Color	Eye Color
Employer/School				Occupation/Grade			

Properties: ()

Type: Currency, Coins, Securities, Cash

Status	Stolen	Quantity	200	Value	200.00	Color	Light Green															
Description	\$200 in various denominations of US currency																					
Manufacturer	United States Government	Model	Serial No.\VIN																			
Vehicle Year	Body Type																					
Lic Plate #	Lic Plate State	Lic Plate Exp																				
Insurance Company																						
Owner	V - Mango's Beach Bar																					
Notes:																						

Type: Currency, Coins, Securities, Cash

Status	Stolen	Quantity	325	Value	325.00	Color	Light Green															
Description	\$325 in numerous denominations of US currency																					
Manufacturer	United States Government	Model	Serial No.\VIN																			
Vehicle Year	Body Type																					
Lic Plate #	Lic Plate State	Lic Plate Exp																				
Insurance Company																						
Owner	V - Roberto's																					
Notes:																						

Narrative

On 6/14/17 at approximately 0401 hours, I Officer J. Lynn P# 15222 while operating as marked patrol unit 1W21 was dispatched to 6650 Vegas Dr, Las Vegas, NV 89108 in reference to a possible Robbery that had occurred at the Mango's Bar and Roberto's Taco Shop.

Upon arrival, I met with the bartender of the Mango's bar who identified himself via NV DL as Benjamin Trigg DOB 6/25/84. Trigg stated that around 0400 hours, while he was sitting at the bar he witnessed a worker of the Roberto's adjacent to Mango's run into the bar area. The Roberto's employee was later identified as Jose Luis Rios Muniz DOB 1/11/60. An unknown black male adult dressed in a black hoodie and dark pants with a spider-man mask covering his face entered into the bar area just after Muniz and began to yell at him whilst inside the bar area. Trigg yelled at the unknown male, at which time the unknown male produced a firearm and pointed it at Trigg causing him to duck behind the bar. The suspect then jumped the counter and began to address Trigg while hitting and pushing him saying, "take me to the safe" and "get me the money". Trigg then went over to the cash register on the west side of the bar and opened it. The suspect then began pulling unknown denominations out of the till. After the suspect was done pulling money from the till (roughly around \$200), he then instructed Trigg to open up the safe that was located on the west side of the bar. Trigg attempted to open up the safe but began to explain to the suspect that he could not open it due to a timer lock. The suspect then began to pistol whip Trigg approximately three to four times about the head area. Trigg stated he pretended to be unconscious and that's when the suspect fled on foot eastbound through the bar and exited over the east outside wall of the business. Trigg was then able to call

911 and notify authorities of what had occurred. Trigg had visible blood coming from several parts of his head and face where he had been hit by the suspect.

I then made contact with the employees at the Roberto's Taco Shop, Muniz as well as his coworker Carlos Esquivel DOB 10/29/97. Both Esquivel and Muniz stated that at around 0400 hours, two unknown black male adults in black hoodies entered the Roberto's through the west side entrance and produced firearms. One of the suspects placed his firearm against the neck of a customer that had been eating in the restaurant and demanded money. The customer was later identified as William Costa DOB 12/25/75. Muniz stated that when he saw this, he ran into the Mango's bar in an attempt to hide from the suspects where he was followed by one of them. Esquivel stated that the other suspect that didn't run after Muniz jumped the counter and demanded money out of the cash register. The suspect then removed the entire till (containing roughly around \$325) and then attempted to take the safe located in the back office. Being unsuccessful, the suspect then exited Roberto's eastbound with the entire cash tray, into the Mango's bar area and joined with the other suspect. Both suspects then exited the business through the outside area and over the east side wall.

CSA W. Speas P# 5228 arrived on site and processed the scene. Commercial Robbery Detective K Toomer P# 5780 arrived on site and reviewed surveillance footage assisted by Scott Walden, who is the manager of Mango's. Multiple bills and change were located and recovered in the outside area of Mango's as well as over the east wall into the desert area beyond the east wall.

Muniz, Trigg, Esquivel and Costa all filled out voluntary statements of what had occurred. Walden and Muniz were provided with a Victims Information Guide. AMR unit # 148 arrived on site and tended to Trigg's injuries but Trigg denied transport to a hospital. Trigg was later transported by his manager, Walden, to Mountain View Hospital.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

Event #

LV170614-0524

THIS PORTION TO BE COMPLETED BY OFFICER

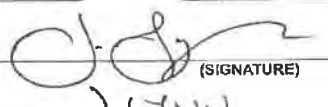
Specific Crime ROBBERY w/ DEADLY WEAPON	Date Occurred 6-14-17	Time Occurred 0400
Location of Occurrence 6650 VEGAS DR	Sector/Beat W2	<input checked="" type="checkbox"/> City <input type="checkbox"/> County

Your Name (Last / First / Middle) Trigg Benjamin Michael						Date of Birth 06/25/1984	
Race White	Sex M	Height 5'10"	Weight 210	Hair Brown	Eyes Brown	Work Schedl. (Hours) 11pm - 7am	(Days Off) None
Residence Address: (Number & Street) 8800 W. Charleston Blvd.		Bldg./Apt.# 2085	City Las Vegas		State NV	Zip Code 89117	Business / School Mangos / Treasures / Embassy North Hollywood
Bus. (Local) Address: (Number & Street)		Bldg./Apt.#	City		State	Zip Code	Res. Phone: 520 270 8229 Bus. Phone: 520 270 8229
Best place to contact you during the day						Best time to contact you during the day	
						Can You Identify the Suspect? <input type="checkbox"/> Yes <input type="checkbox"/> No	

DETAILS At approx. 4am I heard a loud crash through the inside door at Mangos Beach Bar, I stood up from my chair to see a Roberto's Taco Shop Employee being pushed into my bar area. I didn't realize what was going on and yelled at a suspect (1) to stop. The suspect was 5'7" African American Male about 160-170 lbs. After yelling at the suspect he pointed a gun at me and I ducked behind the bar. The suspect then directed me to open the safe at gun point and I took him to the cash drawer and opened it and returned to the ground. After the suspect finished looking the drawer he made me take him to the safe across the bar. I explained to him that I will open it but it is on a timed lock. I punched in the code and the suspect began pistol whipping me in the face and head. I continued to explain to him that it was on a timed lock. He said "Open the safe or I'll shoot you, you think I'm playing?" At that point suspect 2 came in through the side entrance, suspect 1 hit me in the head again and I acted like I passed out. The 2 suspects then fled the bar. The Roberto's Employee and I laid on the ground until we were sure they had left. I immediately called 911.

Dissemination is restricted to Criminal Justice Agencies ONLY. See policy on dissemination to Non-Criminal Justice Agencies.

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (LOCATION) **6650 VEGAS, LV, NV 89108** ON THE **14TH** DAY OF **JUNE** AT **0500** (AM) (PM), **2017**. **AUG 03 2018**

Witness/Officer:  (SIGNATURE)

Witness/Officer:
LVMPD 85 (REV. 6-08)

(PRINTED)

P# **15222**

Released to County Attorney

SIGNATURE OF PERSON GIVING STATEMENT

APP000629

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

Event # LLV170614-0524

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime <u>ROBBERY wdn</u>	Date Occurred <u>6-14-17</u>	Time Occurred <u>0400</u>
Location of Occurrence <u>6650 VEGAS DR LV, NV 89108</u>	Sector/Beat <u>W2</u>	<input checked="" type="checkbox"/> City <input type="checkbox"/> County

Your Name (Last / First / Middle) <u>William A. Costa</u>						Date of Birth <u>12-25-75</u>		Business / School	
Race <u>Mix</u>	Sex <u>M</u>	Height <u>5'10</u>	Weight <u>200</u>	Hair <u>Black</u>	Eyes	Work Schdl. (Hours)	(Days Off)		
Residence Address: (Number & Street) <u>6225 CAPRINO ST</u>				Bldg./Apt.#	City <u>LAS VEGAS NV</u>	State	Zip Code <u>89108</u>	Res. Phone: <u>702 945 5725</u>	
Bus. (Local) Address: (Number & Street)				Bldg./Apt.#	City	State	Zip Code	Bus. Phone:	
Best place to contact you during the day <u>HOME</u>				Best time to contact you during the day <u>ANY</u>				Can You Identify the Suspect? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

DETAILS CAME IN gun to neck wanted money jerk at pants. Theres 2 of them one chased one worker other wanted safe open and what he said I did. went to register made other worker open it started taking money then just ~~took~~ took the hole thing

Dissemination is restricted to Criminal Justice Agencies ONLY. Secondary dissemination to Non-Criminal Justice Agencies is PROHIBITED.

AUG 03 2018

Released to County Attorney
 Las Vegas Metropolitan Police Dept
 By ADW430C

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (LOCATION) 6650 VEGAS, LV, NV 89108
 ON THE 14th DAY OF JUNE AT 0530 (AM / PM), 2017.

Witness/Officer: [Signature] (SIGNATURE)

Witness/Officer: J. LYNN P# 15222
 LVMPD 85 (REV. 6-08) (PRINTED)

William Costa
 SIGNATURE OF PERSON GIVING STATEMENT

DECLARACION VOLUNTARIA

Incidente #

LV170614-0524

ESTA SECCION DEBE SER LLENADA POR UN OFICIAL

Delito <u>ROBBERY WDW</u>	Fecha de los Hechos <u>6-14-17</u>	Hora de los Hechos <u>04:00</u>
Lugar de los Hechos <u>6650 VEGAS DR, LV, NV 89108</u>	Sector/Beat <u>W2</u>	<input checked="" type="checkbox"/> Ciudad <input type="checkbox"/> Condado

Nombre (Apellido/Nombre/Segundo Nombre) <u>Jose Luis Brios Muntz</u>						Fecha de Nacimiento <u>01-11-60</u>	Número de Seguro Social
Raza <u>Hispanic M</u>	Sexo <u>M</u>	Estatura <u>5'7.5</u>	Peso <u>170 lbs</u>	Cabello <u>negro</u>	Ojos <u>negros</u>	Horario de Trabajo (Días Libres) <u>12 AM - 8 AM Tues</u>	Empleador/Escuela
Dirección: (Número y Calle) <u>6650 W 19672 WITHERS PINE</u>		Edif/Depto. # Ciudad <u>1AS Vegas</u>		Estado Código Postal <u>NV 89108</u>		Teléfono Casa: Cel. <u>205-46-89</u>	
Dirección (Local) Trabajo: Número y Calle <u>6650 W Vegas Drive</u>		Edif/Depto. # Ciudad <u>103 12AS Vegas</u>		Estado Código Postal <u>NV 89108</u>		Teléfono Trabajo: <u>(702) 631-3600</u>	
Lugar para comunicarnos con ud. durante el día						Ocupación <u>Cashier</u>	
Horario para comunicarnos con ud. durante el día						Fecha de Salida (visitantes)	
						Puede Identificar <input type="checkbox"/> Sí al Sospechoso <input checked="" type="checkbox"/> No	

DESCRIPCION DETALLADA

Estaba en tiempo de brunch. Vi que entraron dos hombres con máscara y con armas y uno vino para adentro agarró a mi coworker y lo iso que abriera la caja para llevarse el dinero i yo corrí para el bar que esta al lado. I uno de los que entró a robar me siguió y me tumbo al piso ~~to me~~ apuntandome con la pistola y luego golpeó al la persona que trabaja en el bar asta que lo iso que abriera la caja de el dinero. y luego que agarró el dinero se fueron. Apuntaban con las armas diciendonos que no nos movieramos y luego se alejaron. Ullendo.

Dissemination is restricted to Criminal Justice Agencies ONLY. Secondary dissemination to Non-Criminal Justice Agencies is PROHIBITED.

HE LEIDO ESTA DECLARACION Y CONFIRMO LA VERACIDAD Y EXACTITUD DE LOS HECHOS ANTES MENCIONADOS. ESTA DECLARACION SE REALIZO EN (LUGAR) 6650 VEGAS, LV, NV 89108
EL DIA 14th DE JUNE DE 2017 A LAS 0530 (AM/PM).

Testigo/Oficial:

[Signature]

Testigo/Oficial:

J. LYNN #15222
(Con Letra de Molde)

Jose Luis Brios Muntz
Firma del Declarante

Released to County Attorney
Las Vegas Metropolitan Police Dept.
By [Signature]

DECLARACION VOLUNTARIA

Incidente #

44170614-0524

ESTA SECCION DEBE SER LLENADA POR UN OFICIAL

Delito <u>Robbery wdw</u>	Fecha de los Hechos <u>6-14-17</u>	Hora de los Hechos <u>0400</u>
Lugar de los Hechos <u>6650 VEGAS DR, LV, NV 89108</u>	Sector/Beat <u>W2</u>	<input checked="" type="checkbox"/> Ciudad <input type="checkbox"/> Condado

Nombre (Apellido/Nombre/Segundo Nombre) <u>Esquivel Chairez Carlos Alonso</u>						Fecha de Nacimiento <u>10-29-oct-87</u>	Número de Seguro Social
Raza <u>Hispanic</u>	Sexo <u>masculino</u>	Estatura <u>5.3</u>	Peso <u>122 L</u>	Cabello <u>Negro</u>	Ojos <u>Cafes</u>	Horario de Trabajo (Días Libres) <u>12:00pm 8:00pm</u>	Empleador/Escuela <u>Empleado</u>
Dirección: (Número y Calle) <u>6672 Fredonia Dr Las Vegas NV</u>		Edif/Depto. # Ciudad <u>103 Las Vegas</u>		Estado Código Postal <u>NV 89108</u>		Teléfono Casa: 702-5255028 Teléfono Trabajo: <u>(702) 631-3600</u>	
Dirección (Local) Trabajo: Número y Calle <u>6650 W. Vegas Dr</u>		Edif/Depto. # Ciudad <u>103 Las Vegas</u>		Estado Código Postal <u>NV 89108</u>		Ocupación <u>Cosinero</u>	
Lugar para comunicarnos con ud. durante el día <u>Casa Casa</u>						Horario para comunicarnos con ud. durante el día <u>8:30am 11:00pm</u>	Puede Identificar <input type="checkbox"/> Si al Sospechoso <input checked="" type="checkbox"/> No

DESCRIPCION DETALLADA Cuando mire al sospechoso me aproxima a la caja registradora el cajero estaba comiendo al ver los sospechosos Corria asia el Bar me quede solo y brinco para adentro me golpeo el coxy me agarro fuerte de la manisa del coxy queria que abriera la caja fuerte me daba golpes con el arma en la cien para que abriera la caja No se y al fin me agarro de nuevo me llevo ala caja registradora que abriera la caja la abri y se fue solo nos tiro en el suelo, Segundas mas tarde llega el de la barra ensangretado yo me asuste fue cuando llame ala polida x fue de nuevo el de la Barra para ir a ver despues llega la policia.

Dissemination is restricted to Criminal Justice Agencies ONLY. Secondary dissemination to Non-Criminal Justice Agencies is prohibited.

HE LEIDO ESTA DECLARACION Y CONFIRMO LA VERACIDAD Y EXACTITUD DE LOS HECHOS ANTES MENCIONADOS. ESTA DECLARACION SE REALIZO EN (LUGAR) 6650 VEGAS, LV, NV 89108

EL DIA 14 DE JUNE DE 2017 A LAS 0530 (AM/PM).

Testigo/Oficial:

[Firma]

Testigo/Oficial:

J. LYNN #15220
(Con Letra de Molde)

Relayed to County Attorney
By [Firma] Las Vegas Metropolitan Police Dept.
Firma del Declarante



Administrative

Location 1401 Decatur Blvd Las Vegas, NV 89108
Occurred On (Date / Time) Sunday 6/18/2017 5:20:00 AM
Reporting Officer 15448 - Carrington, Jonathan
Entered By 15448 - Carrington, Jonathan
Related Cases

Or Between (Date / Time)
Reported On 6/18/2017
Entered On 6/18/2017 6:36:06 AM
Jurisdiction Las Vegas, City of

Sector /Beat W2

Traffic Report No Place Type Accident Involved

Offenses:

Robbery, E/DW(F)-NRS 200.380

Completed Yes Domestic Violence No
Entry Premises Entered
Weapons Handgun
Criminal Activities None/Unknown
Hate/Bias Unknown (Offenders Motivation Not Known)
Type Security Tools
Location Type Restaurant

Burglary While Poss Of Gun/Dw(F)-NRS 205.060.4

Completed Yes Domestic Violence No
Entry No Force Used Premises Entered
Weapons
Criminal Activities
Hate/Bias Unknown (Offenders Motivation Not Known)
Type Security Camera Tools
Location Type Restaurant

Victims:

Name: Medina, Maria

Victim Type Individual Written Statement Yes Can ID Suspect No
Victim of 50138 - Robbery, E/DW(F)-NRS 200.380
DOB 6/17/1977 Age 40 Sex Female Race White Ethnicity Hispanic or Latino
Height Weight Hair Color Eye Color
Employer/School
Occupation/Grade
Injury None Observed Work Schedule Handgun
Injury Weapons

Addresses

Phones

Cellular (702) 445-8797

Offender Relationships

S - UNK None

Notes:

Name: Pepes Tacos

Victim Type Business Written Statement
Victim of 50426 - Burglary While Poss Of Gun/Dw(F)-NRS 205.060.4

DOB Age Sex Race
Height Weight Hair Color
Employer/School
Occupation/Grade Work Schedule
Injury Injury Weapons

Addresses

Business 1401 N Decatur Las Vegas, NV 89108 United States

Phones

Business/Work (702) 638-6200

Offender Relationships

Notes:

Suspects:

Name: UNK

Alias:

Scope ID DOB Age 25 Race Black or African American Ethnicity Not Hispanic or Latino
Sex Male Height 5' 6" Weight 150 Hair Color Eye Color
Employer/School Occupation/Grade

8/3/2018 7:43 AM

LLV170618000989

APP000633

Page 1 of 2

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Justice Agencies ONLY. Secondary
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Agencies is PROHIBITED

AUG 03 2018

Released by Attorney
Las Vegas Metropolitan Police Dept.
By *AWY30X* Ethnicity

Addresses**Phones**

Notes:

Arrestees:**Witnesses:**Name: Crawford, JonathanWritten Statement **No**Can ID Suspect **No**

DOB	Age	Sex	Race	Ethnicity
Height	Weight		Hair Color	Eye Color

Addresses**Phones**

Cellular (915) 613-6447

Notes:

Name: Medrano, RebeccaWritten Statement **No**Can ID Suspect **No**

DOB	Age	Sex	Race	Ethnicity
Height	Weight		Hair Color	Eye Color

Addresses**Phones**

Cellular (915) 433-2013

Notes:

Name: Rodriguez, DavidWritten Statement **No**Can ID Suspect **No**

DOB	Age	Sex	Race	Ethnicity
Height	Weight		Hair Color	Eye Color

Addresses**Phones**

Cellular (915) 246-5713

Notes:

Other Entities:**Properties: ()**

Type: Currency, Coins, Securities, Cash

Status	Stolen	Quantity	1	Value	747.00	Color
Description	cash					
Manufacturer		Model		Serial No./VIN		
Vehicle Year		Body Type				
Lic Plate #		Lic Plate State		Lic Plate Exp		
Insurance Company						
Owner	V - Pepes Tacos					

Notes:

Narrative

On 06/18/17 at approximately 0527 hours, LVMPD dispatch recieved a call from an employee at Pepe's Tacos 1401 N Decatur Blvd, LV, NV, 89108 stating that they had just been robbed. Details of the call stated that a black male in wearing all black used a handgun and robbed them, then left Southbound on Decatur on foot.

Upon arrival officers spoke to the employee identified as Maria Medina DOB 06/17/77. Maria was working behind the counter at approximately 0519 when a black male in his early 20's, thin build, wearing all black, jumped over the counter and pointed a black semi automatic handgun at her, demanding money. The male had a black mask covering his face and was wearing white baseball style gloves. The male pushed her towards the register where she opened it. The male took \$767 in cash and left back out the front door.

Officers where able to view security footage that showed the male run southbound on Decatur and then turn West onto Westmoreland Dr. The male had a mask covering his face and wore white and black baseball style gloves that were possible Franklin brand. The suspect left several foot prints on the counter when he jumped over. LVMPD crime scene analysts arrived and photographed the scene. A \$20 bill was recovered on Yale and Westmoreland and was returned to the business.

APP000634

DECLARACION VOLUNTARIA

Incidente #

170618-0989

ESTA SECCION DEBE SER LLENADA POR UN OFICIAL

Delito <u>Robbery w/o / Burglary w/o</u>	Fecha de los Hechos <u>6/18/17</u>	Hora de los Hechos <u>0524</u>
Lugar de los Hechos <u>1401 N. DECATUR BLVD W.M 89108 (PEPE'S TACO'S)</u>	Sector/Beat <u>W2</u>	<input checked="" type="checkbox"/> Ciudad <input type="checkbox"/> Condado

Nombre (Apellido/Nombre/Segundo Nombre) <u>Fronisio Toledo LOPEZ</u>						Fecha de Nacimiento <u>03/09/85</u>	Número de Seguro Social
Raza <u>M</u>	Sexo <u>M</u>	Estatura <u>1.65</u>	Peso <u>180</u>	Cabello <u>negro</u>	Ojos <u>cafes</u>	Horario de Trabajo (Días Libres)	Empleador/Escuela <u>Taquero</u>
Dirección: (Número y Calle) <u>5220 PEBBLE BEACH BLVD</u>		Edif/Depto. # Ciudad <u>APT D 89108 Las Vegas NV</u>		Estado Código Postal <u>89108</u>		Teléfono Casa: <u>702 638 6200</u>	
Dirección (Local) Trabajo: Número y Calle		Edif/Depto. # Ciudad		Estado Código Postal		Ocupación	Fecha de Salida (visitantes)
Lugar para comunicarnos con ud. durante el día				Horario para comunicarnos con ud. durante el día		Puede identificar <input type="checkbox"/> Si <input checked="" type="checkbox"/> No al Sospechoso	

DESCRIPCION DETALLADA Estaba haciendo trastes cuando llego el tipo con una pistola apuntandolos, Donna Maria y yo y despues yo sali en la puerta de emergencia para dar la vuelta al restauran y entrar por la puerta (de) principal.

Dissemination is restricted to Criminal Justice Agencies ONLY. General dissemination to Non Criminal Justice Agencies is PROHIBITED.

6/18/17 0.8

Released to County Attorney
Las Vegas, Nevada
By CHUMBER

HE LEIDO ESTA DECLARACION Y CONFIRMO LA VERACIDAD Y EXACTITUD DE LOS HECHOS ANTES MENCIONADOS. ESTA DECLARACION SE REALIZO EN (LUGAR) 1401 N DECATUR BLVD W.M 89108
EL DIA 18 DE junio DE 2017 A LAS 0600 (AM/PM).

Testigo/Oficial: [Firma]

Testigo/Oficial: J. ADELVIN 13392
(Con Letra de Molde)

[Firma]
Firma del Declarante

DECLARACION VOLUNTARIA

Incidente #

170618-0989

ESTA SECCION DEBE SER LLENADA POR UN OFICIAL

Delito <u>Robbery WDW / Brawlery WDW</u>	Fecha de los Hechos <u>6/18/17</u>	Hora de los Hechos <u>0524</u>
Lugar de los Hechos <u>1401 N. DECATUR BLVD LV, NV 89108 (PEPE'S TACOS)</u>	Sector/Beat <u>W2</u>	<input checked="" type="checkbox"/> Ciudad <input type="checkbox"/> Condado

Nombre (Apellido/Nombre/Segundo Nombre) <u>Maria Medina</u>						Fecha de Nacimiento	Número de Seguro Social
Raza <u>ispana</u>	Sexo <u>F</u>	Estatura <u>5'7"</u>	Peso <u>180</u>	Cabello <u>negro</u>	Ojos <u>cafes</u>	Horario de Trabajo (Días Libres) <u>8</u>	Empleador/Escuela
Dirección: (Número y Calle) <u>912 Stanford St</u>		Edif/Depto. # Ciudad <u>Las Vegas</u>		Estado <u>N.V.</u>	Código Postal <u>89115</u>	Teléfono Casa: <u>702-445-8090</u>	
Dirección (Local) Trabajo: Número y Calle		Edif/Depto. # Ciudad		Estado	Código Postal	Ocupación	Fecha de Salida (visitantes)
Lugar para comunicarnos con ud. durante el día				Horario para comunicarnos con ud. durante el día		Puede Identificar <input type="checkbox"/> Sí al Sospechoso <input checked="" type="checkbox"/> No	

DESCRIPCION DETALLADA el muchaco drinco el mostador nos encontro al cosinero y ami el el pasillo me pidio que adviera la caja el bijo abre la caja y dame todo el dinero nos puso una pistola en frente el ladron trato de golpiar al cosinero le adri la caja tomo el dinero o llevo en sus manos y drinco el mostadar corrio asratras el restahurante

Dissemination is Controlled
Justice Agencies ONLY second
dissemination to Non-Criminal Justice
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AUG 03 2018

Released to County Attorney
Las Vegas Metropolitan Police Dept.
By AWY3A

HE LEIDO ESTA DECLARACION Y CONFIRMO LA VERACIDAD Y EXACTITUD DE LOS HECHOS ANTES MENCIONADOS. ESTA DECLARACION SE REALIZO EN (LUGAR) 1401 N DECATUR BLVD LV, NV 89108
EL DIA 18 DE Junio DE 17 A LAS 0600 (AM/PM).

Testigo/Oficial: J. MELVIN 13392
(Con Letra de Molde)

Firma del Declarante

APP000636



Administrative

Location 2685 Eastern LV, NV 89119
Occurred On (Date / Time) Saturday 7/1/2017 2:35:00 AM
Reporting Officer 08409 - Patterson, Mark S
Entered By 08788 - Morales, Carlos R
Related Cases

Or Between (Date / Time)
Reported On 7/1/2017
Entered On 7/1/2017 2:53:26 AM
Jurisdiction Clark County

Sector /Beat H1

Traffic Report No Place Type Accident Involved

Offenses:

Consp Robbery(F)-NRS 200.380

Completed Yes Domestic Violence No Hate/Bias None (No Bias)
Entry Premises Entered Type Security Tools
Weapons Handgun - Automatic Location Type Restaurant
Criminal Activities

Robbery, E/DW(F)-NRS 200.380

Completed Yes Domestic Violence No Hate/Bias None (No Bias)
Entry Premises Entered Type Security Tools
Weapons Handgun - Automatic Location Type Restaurant
Criminal Activities

Kidnapping, 2nd Degree, E/DW(F)-NRS 200.310.2

Completed Yes Domestic Violence No Hate/Bias None (No Bias)
Entry Premises Entered Type Security Tools
Weapons Location Type Restaurant
Criminal Activities

Assault, W/Dw(F)-NRS 200.471.2B

Completed Yes Domestic Violence No Hate/Bias None (No Bias)
Entry Premises Entered Type Security Tools
Weapons Firearm - Automatic (Type Not Stated) Location Type Restaurant
Criminal Activities

Victims:

Name: ROBERTOS

Victim Type Business Written Statement Can ID Suspect
Victim of 50147 - Consp Robbery(F)-NRS 200.380
50138 - Robbery, E/DW(F)-NRS 200.380

DOB Age Sex Race
Height Weight Hair Color
Employer/School
Occupation/Grade Work Schedule
Injury Injury Weapons

Addresses

Business 2685 S Eastern Ave Lv, NV 89121 United States

Phones

Cellular (702) 431-2754

Offender Relationships

Notes:

Name: ROBLEDO, RUBEN RAY

Victim Type Individual Written Statement Yes Can ID Suspect Yes
Victim of 50138 - Robbery, E/DW(F)-NRS 200.380
50076 - Kidnapping, 2nd Degree, E/DW(F)-NRS 200.310.2
50201 - Assault, W/Dw(F)-NRS 200.471.2B
50147 - Consp Robbery(F)-NRS 200.380

DOB 4/5/1980 Age 37 Sex Male Race White Ethnicity Not Hispanic or Latino
Height 5' 7" Weight 219 Hair Color Black Eye Color Brown
Employer/School Robertos employee
Occupation/Grade Work Schedule
Injury None Observed Injury Weapons Firearm - Automatic (Type Not Stated)

Addresses

Business 2685 S Eastern Ave Lv, NV 89121 United States

8/3/2018 7:45 AM

LLV170701000545

Dissemination is restricted to Criminal
Justice Agencies ONLY. Secondary
dissemination to Non-Criminal Justice
Agencies is PROHIBITED.

AUG 03 2018

Released to County Attorney
Las Vegas Metropolitan Police Dept.
By [Signature]

Phones
Business/Work (702) 431-2754

Offender Relationships

S - LNU, FNU None
S - LNU, FNU None

Notes:

Name: KASILIAN-TAPIA, ESTER

Victim Type	Individual	Written Statement	Yes	Can ID Suspect	No
Victim of	50076 - Kidnapping, 2nd Degree, E/DW(F)-NRS 200.310.2				
	50138 - Robbery, E/DW(F)-NRS 200.380				
	50201 - Assault, W/Dw(F)-NRS 200.471.2B				
	50147 - Consp Robbery(F)-NRS 200.380				

DOB	6/15/1974	Age	43	Sex	Female	Race	White	Ethnicity	Hispanic or Latino
Height	5' 5"	Weight	230			Hair Color	Brown	Eye Color	Brown
Employer/School	Robertos Employee								
Occupation/Grade									
Injury	None Observed			Work Schedule					
				Injury Weapons	Firearm - Automatic (Type Not Stated)				

Addresses

Business 2685 S Eastern Ave Lv, NV 89121 United States

Phones

Cellular (702) 431-2754

Offender Relationships

S - LNU, FNU Victim Was Stranger
S - LNU, FNU None

Notes:

Name: DE LEON GONZALEZ, JUAN CARLOS

Victim Type	Individual	Written Statement	Refused	Can ID Suspect	No
Victim of	50201 - Assault, W/Dw(F)-NRS 200.471.2B				
	50138 - Robbery, E/DW(F)-NRS 200.380				
	50147 - Consp Robbery(F)-NRS 200.380				
	50076 - Kidnapping, 2nd Degree, E/DW(F)-NRS 200.310.2				

DOB	11/27/1968	Age	48	Sex	Male	Race	White	Ethnicity	Hispanic or Latino
Height	5' 8"	Weight	226			Hair Color	Brown	Eye Color	Brown
Employer/School									
Occupation/Grade									
Injury	None Observed			Work Schedule					
				Injury Weapons	Firearm - Automatic (Type Not Stated)				

Addresses

Residence 1601 Eastwood Dr Lv, NV 89121 United States

Phones

Cellular (702) 604-4441

Offender Relationships

S - LNU, FNU Relationship Unknown
S - LNU, FNU Relationship Unknown

Notes: citizen buying food.

Suspects:

Name: LNU, FNU

Alias:

Scope ID		DOB		Age	18-25	Race	Black or African American	Ethnicity	Not Hispanic or Latino
Sex	Male	Height	5' 8" - 5' 10"	Weight	130 - 150	Hair Color		Eye Color	
Employer/School						Occupation/Grade			

Addresses

Phones

Notes:

Name: LNU, FNU

Alias:

Scope ID		DOB		Age	18-25	Race	Black or African American	Ethnicity	Not Hispanic or Latino
Sex	Male	Height	5' 8" - 5' 10"	Weight	130 - 150	Hair Color		Eye Color	
Employer/School						Occupation/Grade			

APP000638

Addresses**Phones**

Notes:

Properties: ()**Type:** Currency, Coins, Securities, Cash

Status	Stolen	Quantity	1	Value	303.00	Color	Green
Description	US currency						
Manufacturer	US currency	Model		Serial No.\VIN			
Vehicle Year		Body Type					
Lic Plate #		Lic Plate State		Lic Plate Exp			
Insurance Company							
Owner	V - ROBERTOS						
Notes:							

Type: Currency, Coins, Securities, Cash

Status	Found	Quantity	1	Value	30.00	Color	Green
Description	US currency						
Manufacturer	US currency	Model		Serial No.\VIN			
Vehicle Year		Body Type					
Lic Plate #		Lic Plate State		Lic Plate Exp			
Insurance Company							
Owner	V - ROBERTOS						
Notes:							

Narrative

On July 1, 2017 at approximately 0238 hours Officers responded to a robbery with a gun call at the Roberto's Taco Shop (#18) located at 2685 S Eastern Suit # 400 Las Vegas Nevada 89146.

Upon arrival Officers contacted employee Ruben Robledo date of birth 04/05/1980. Ruben stated while cooking and completing costumer's orders he saw two unidentified black male adults with their faces concealed, enter, point hand guns at customers and another employee named Ester Tapia, while yelling at them: "GET DOWN, GET DOWN." Suspect #2 (the lookout) forcibly put Ester to the ground, while maintaining gun coverage on the unknown customers.

Ruben stated Suspect #1 immediately jumped over the cashier counter and pointed a gun at him, stating "OPEN THE CASH REGISTER." Ruben stated he feared for his life and immediately he complied to the suspects' orders.

Ruben further stated while Suspect #1 was stealing the money from the register, the other suspect (#2) was walking up to the unknown customers and demanding their property at gun point. Although most customers remain unidentified, video confirmed property was forcibly taken from 3 unidentified customers. Customer Juan Deleon Gonzalez was the only other victim identified, as he remained on scene.

Ruben stated the suspect near the register seemed nervous and asked where the business safe was located. Ruben stated he told the suspect that they did not have any. Ruben then stated the suspect pointed the gun at him and demanded he move back towards the rear of the kitchen. Ruben again feared for his life, and felt he may be shot. Subsequently, he complied with the suspect's orders. Ruben stated as he was walking back he observed the suspect looking under the casher counter and register drawer for more money and to confirm if they owned a safe. Ruben stated as the robbery came to a close, one of the suspects shouted "we are out of time lets go."

It was at this point both suspects ran out the front door to the rear of the Roberto's (south side) with the stolen currency. ID was requested and responded.

Officers checked the area and found \$30.00 US currency to the rear of the Dollar Loan which was returned to Robert's.

APP000639

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

Event #

170701-0545

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime <u>RWDW</u>	Date Occurred <u>7-1-17</u>	Time Occurred <u>0255</u>
Location of Occurrence <u>2685 S EASTERN CU NV</u>	Sector/Beat <u>A-1</u>	<input type="checkbox"/> City <input checked="" type="checkbox"/> County

Your Name (Last / First / Middle) <u>Robledo, Ruben R</u>						Date of Birth <u>4/5/80</u>		Social Security # <u>[REDACTED]</u>	
Race <u>M</u>	Sex <u>M</u>	Height <u>5'7</u>	Weight <u>215</u>	Hair <u>BLK</u>	Eyes <u>BRN</u>	Work Schdt. (Hours) <u>DAM-8AM MON</u>	(Days Off)	Business / School	
Residence Address: (Number & Street) <u>5170 S. Jones Blvd</u>			Bldg./Apt.# <u>1106</u>	City <u>Las Vegas</u>		State <u>NV</u>	Zip Code <u>89118</u>	Res. Phone: <u>702-321-2754</u>	
Bus. (Local) Address: (Number & Street) <u>2685 S. Eastern Ave</u>			Bldg./Apt.# <u>400</u>	City <u>Las Vegas</u>		State <u>NV</u>	Zip Code <u>89146</u>	Bus. Phone: <u>702-431-2754</u>	
Best place to contact you during the day <u>cell phone 702-321-2478</u>			Best time to contact you during the day <u>Afternoon</u>			Occupation <u>Cook</u>		Depart Date (if visitor)	
Can You Identify the Suspect?								<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

DETAILS Around 2:30-2:40, I noticed a couple of guys try to open the side door but it was locked. Then a minute later, one of the men jumped over the counter and pointed a gun at me, telling me to open the register. I proceeded to the cash register and opened it, where the suspect took out the cash. He then asked me to show him the safe but I told him we didn't have one. He then told his partner to get out of here. I then went outside to see where they went and called the cop.

Dissemination is restricted to Criminal Justice Agencies - NLY Secondary dissemination to Non-Criminal Justice Agencies is PROHIBITED

AUG 03 2018

Released to County Attorney
Las Vegas Metropolitan Police Dept.
By ALM/AB

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (LOCATION) 2685 S. Eastern Ave Ste 400, Las Vegas NV ON THE 1st DAY OF July AT 3:06 (AM / PM), 2017.

Witness/Officer: [Signature] (SIGNATURE)Witness/Officer: MCV67 (PRINTED)

P#

8788[Signature]

SIGNATURE OF PERSON GIVING STATEMENT

APP000640

FYI

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

Event #

170701-0545

"Click here to add/edit Event Number"

"PRINT"

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime <u>Robbery / Kidnap</u>	Date Occurred <u>1 July 2017</u>	Time Occurred <u>0235</u>
Location of Occurrence <u>2685 Eastern, Las Vegas, NV 89119</u>	Sector/Beat <u>SEAC</u>	City <input checked="" type="checkbox"/> County <input type="checkbox"/>

Your Name (Last / First / Middle) <u>Corinna Georgia Noelle</u>								Date of Birth <u>8/12/77</u>	
Race <u>White</u>	Sex <u>F</u>	Height <u>5'3</u>	Weight <u>135</u>	Hair <u>brown</u>	Eyes <u>brown</u>	Work Schedl. (Hours) <u>on call</u>	Days Off <u>N/A</u>	Business / School <u>Texas Station</u>	
Residence Address (Number & Street) Bldg/Apt. # City State Zip Code <u>2601 S Grand Canyon Dr 1010 Las Vegas NV 89117</u>						Res. Phone <u>626 201 8483</u>			
Business (Local) Address (Number & Street) Bldg/Apt. # City State Zip Code <u>Rancho</u>						Occupation <u>Beverage Server</u>		Departure Date (If Visitor)	
Best place to contact you during the day: <u>2601 S. Grand Canyon Dr. Apt 1010</u>						Best time to contact you during the day: <u>N/A</u>		Can you identify the Suspect? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

DETAILS:

On July 1st, 2017, My friend Drew Lundberg and I went to Roberto's restaurant around sometime between 2:45 am and 3am to have some dinner. While we were eating, two men with guns robbed the establishment. My friend Drew instructed me to get under the table, therefore I didn't see anything. I had left my purse on the seat, and the burglars took my wallet. I'm filling out a report because my current address was on my driver's license. We both left the scene before the police arrived.

Event number 170701-0545

Dissemination is restricted to Criminal Justice For Official Use Only. Secondary dissemination to Non-Criminal Justice Agencies is PROHIBITED

AUG 03 2017

Released to County Attorney
Las Vegas Metropolitan Police Dept
By: 112488

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT

WAS COMPLETED AT (LOCATION) 400 S MLK BLVDON THE 3 DAY OF July, 2017 AT 1912 ☒ A.M. ☐ P.M.

Witness/Officer:

Witness/Officer:

(SIGNATURE)

(PRINTED)

15810

PH

SIGNATURE OF PERSON GIVING STATEMENT

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

Event #

170701-0545

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime ROWD	Date Occurred 7-1-17	Time Occurred 0250
Location of Occurrence 2685 S. Eastern 11, NV 89121	Sector/Beat 11-1	<input type="checkbox"/> City <input checked="" type="checkbox"/> County

Your Name (Last / First / Middle) Rosilian - Tapia Ester						Date of Birth 6-15-74		Social Security # [REDACTED]	
Race F	Sex F	Height 5'4	Weight 200	Hair Brown	Eyes Brown	Work Schedl. (Hours) Open	(Days Off)	Business / School ROBERTAS	
Residence Address: (Number & Street) 2685 S. Eastern			Bldg./Apt.# LU		City LV	State NV	Zip Code 89121	Res. Phone: 731-2754	
Bus. (Local) Address: (Number & Street)			Bldg./Apt.#		City	State	Zip Code	Bus. Phone:	
Best place to contact you during the day						Best time to contact you during the day		Can You Identify <input type="checkbox"/> Yes the Suspect? <input checked="" type="checkbox"/> No	

DETAILS

I was in the lobby Stocking the lobby with kids 2 african american guys came in with guns told everyone to get on their knees one guy jumped over the counter with gun pointed at Ruben askin for the money while the other guy was telling everyone to get down and askin for the customers cell phones and wallet. and telling his partner to hurry up. they after they got what they wanted they ran out the back.

Dissemination is to Criminal Justice Agencies ONLY. Secondary dissemination to Non-Criminal Agencies is PROHIBITED

AUG 03 2018

Released to County Attorney
Las Vegas Metropolitan Police Dept.

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (LOCATION) **2685 S Eastern** ON THE **1st** DAY OF **July** AT (AM / PM), **2017**.

Witness/Officer:

(SIGNATURE)

Witness/Officer:

(PRINTED)

P#

8788

SIGNATURE OF PERSON GIVING STATEMENT

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

Event #

170701-0545

"Click here to add/edit Event Number"

"PRINT"

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime Robbery	Date Occurred 07/01/17	Time Occurred 0300-0400
Location of Occurrence 2685 S. Eastern Ave.	Sector/Beat H1	City <input checked="" type="checkbox"/> County <input type="checkbox"/>

Your Name (Last / First / Middle) LUNDBERG / ANDREW / PATRICK								Date of Birth 4-19-70	
Race C	Sex M	Height 5'7"	Weight 145	Hair BRO	Eyes GRN	Work Schdl. (Hours) 6-2:30	Days Off 5+5	Business / School	
Residence Address (Number & Street) Bldg/Apt. # 1709 SOUTH X 14th						City LAS VEGAS	State NV	Zip Code 89104	Res. Phone 702-286-2816
Business (Local) Address (Number & Street) Bldg/Apt. #						City	State	Zip Code	Bus. Phone
Best place to contact you during the day: RES. PHONE - 702-286-2816, text please						Best time to contact you during the day: 8AM - 10pm			Can you identify the Suspect? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

DETAILS:

I WAS IN ROBERTO'S TACO SHOP (2659 SOUTH SAHARA, 89169), SEATED AT A BOOTH FACING NORTH, MY FRIEND GEORGIA CURINGA FACING SOUTH (AWAY FROM THE ENTRANCE). HER ADDRESS IS 2601 SOUTH FORT APACHE #1010, LAS VEGAS, NV, 89117. HER WALLET, A PINK TARGET BRAND, SIZE ABOUT 4X7", WAS STOLEN WITH HER TAN CARD, HEALTHCARD, CREDIT CARDS (CHASE BANK) AND NV DRIVER'S LICENSE (SAME ADDRESS). HER PHONE # IS 626-201-8483.

SEE I TOLD HER TO GET UNDER THE TABLE WHEN I SAW THE FIRST PERPETRATOR DRAW A BLACK ~~PISTOL~~ PISTOL FROM HIS RIGHT HIP, AND POINT IT AT THE REGISTER AREA. ANOTHER MAN PASSED BY HIM, REVEALING A CHROME SNUB-NOSED REVOLVER. HE DEMANDED CELL PHONES, WALLET, CASH. I SET MY CASH ON THE TABLE FOR NEXT TO MY PHONE. HE TOOK THE CASH, AND MY ~~KA~~ MISS CURINGA'S WALLET FROM HER PURSE. THEY BOTH QUICKLY LEFT.

For Official Use Only

Dissemination is restricted to Criminal Justice Agencies ONLY. Secondary dissemination to Non-Criminal Justice Agencies is PROHIBITED.

AUG 03 2018

EVENT # 170701-0545

THANK YOU!

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT

WAS COMPLETED AT (LOCATION) **400 S. Martin L King Blvd.**
ON THE **2nd** DAY OF **July**, 2017 AT **1114** ☒ A.M. ☐ P.M.

Witness/Officer:

Witness/Officer:

Amadeo Diaz

Amadeo Diaz

15373

SIGNATURE OF PERSON GIVING STATEMENT



Administrative

Location 6475 W Charleston Blvd LV, NV 89146
Occurred On (Date / Time) Saturday 8/12/2017 9:24:00 PM
Reporting Officer 16224 - Smith, Dylan
Entered By 16224 - Smith, Dylan
Related Cases

Or Between (Date / Time)
Reported On 8/12/2017
Entered On 8/12/2017 10:45:30 PM
Jurisdiction Las Vegas, City of

Sector /Beat P1

Traffic Report

Place Type

Accident Involved

Offenses:

Robbery, E/DW(F)-NRS 200.380

Completed Yes Domestic Violence No
Entry Premises Entered
Weapons Firearm - Automatic (Type Not Stated)
Criminal Activities None/Unknown

Hate/Bias Unknown (Offenders Motivation Not Known)
Type Security Tools
Location Type Restaurant

Kidnapping, 1st Degree(F)-NRS 200.310.1

Completed Yes Domestic Violence No
Entry Premises Entered
Weapons
Criminal Activities

Hate/Bias
Type Security Tools
Location Type Restaurant

Burglary While Poss Of Gun/Dw(F)-NRS 205.060.4

Completed Yes Domestic Violence No
Entry Forcible Premises Entered

Hate/Bias Unknown (Offenders Motivation Not Known)
Type Security Interior Lights Tools
Camera
Location Type Restaurant

Weapons

Criminal Activities

Assault, W/Dw(F)-NRS 200.471.2B

Completed Yes Domestic Violence No
Entry Premises Entered
Weapons Firearm - Automatic (Type Not Stated)
Criminal Activities None/Unknown

Hate/Bias None (No Bias)
Type Security Tools
Location Type Restaurant

Dissemination is restricted to Criminal
Justice Agencies ONLY. Secondary
Dissemination to Non-Criminal Justice
Agencies is PROHIBITED.

Victims:

Name: Harris, Colin

Victim Type Individual Written Statement Yes
Victim of 50138 - Robbery, E/DW(F)-NRS 200.380

DOB 7/18/1986 Age 31 Sex Male
Height 5' 9" Weight 260
Employer/School
Occupation/Grade
Injury None Observed

Race White
Hair Color Brown
Can ID Suspect No
Ethnicity Not Hispanic or Latino
Eye Color Brown
Work Schedule
Injury Weapons Firearm - Automatic (Type Not Stated)

Released to County Attorney
Las Vegas Metropolitan Police Dept.
By *[Signature]*

Addresses

Phones

Cellular (702) 339-8431

Offender Relationships

Notes:

Name: Nozohour, Moein

Victim Type Individual Written Statement Yes
Victim of 50138 - Robbery, E/DW(F)-NRS 200.380

DOB 12/20/1992 Age 24 Sex Male
Height 5' 11" Weight 250
Employer/School Pizza and bakery
Occupation/Grade Owner
Injury None Observed

Race White
Hair Color Black
Ethnicity Not Hispanic or Latino
Eye Color Brown
Work Schedule
Injury Weapons Firearm - Automatic (Type Not Stated)

Addresses

Residence

7636 Tender Tassals St LV, NV 89149 United States

Phones

Cellular (702) 328-6284

Offender Relationships

8/3/2018 7:48 AM

LLV170812003809

APP000644

Page 1 of 3

Docket 85955 Document 2023-16918

Notes:

Name: Zaynab, Sameh

Victim Type	Individual	Written Statement	Yes	Can ID Suspect	No				
Victim of	50051 - Kidnapping, 1st Degree(F)-NRS 200.310.1 50138 - Robbery, E/DW(F)-NRS 200.380 50426 - Burglary While Poss Of Gun/Dw(F)-NRS 205.060.4								
DOB	6/21/1990	Age	27	Sex	Female	Race	White	Ethnicity	Not Hispanic or Latino
Height	5' 4"	Weight	145			Hair Color	Brown	Eye Color	Brown
Employer/School									
Occupation/Grade									
Injury	None Observed	Work Schedule							
		Injury Weapons	Firearm - Automatic (Type Not Stated)						

Addresses

Residence 7636 Tender Tassels St Las Vegas, NV 89149 United States

Phones

Other None

Offender Relationships

Notes:

Name: Nozohour, Farvin

Victim Type	Individual	Written Statement	No	Can ID Suspect	No				
Victim of	50201 - Assault, W/Dw(F)-NRS 200.471.2B								
DOB	11/23/2014	Age	02	Sex	Male	Race	White	Ethnicity	Not Hispanic or Latino
Height	3' 5"	Weight	60			Hair Color	Bald	Eye Color	Brown
Employer/School									
Occupation/Grade									
Injury	None Observed	Work Schedule							
		Injury Weapons	Firearm - Automatic (Type Not Stated)						

Addresses

Phones

Cellular (702) 328-6284

Witnesses:

Name: Lopez, Teodora

Written Statement	Yes	Can ID Suspect	No						
DOB	10/29/1976	Age	40	Sex	Female	Race	White	Ethnicity	Hispanic or Latino
Height	5' 5"	Weight	137			Hair Color	Black	Eye Color	Brown

Addresses

Phones

Cellular (702) 248-6692

Notes:

Name: Chamele-Morales, Enma

Written Statement	Yes	Can ID Suspect	No						
DOB	4/12/1985	Age	32	Sex	Female	Race	White	Ethnicity	Hispanic or Latino
Height	5' 1"	Weight	139			Hair Color	Black	Eye Color	Brown

Addresses

Phones

Notes:

Name: Lopez, Armondo

Written Statement	Yes	Can ID Suspect	No						
DOB	11/4/1967	Age	49	Sex	Male	Race	White	Ethnicity	Hispanic or Latino
Height	5' 2"	Weight	120			Hair Color	Black	Eye Color	Brown

Addresses

Phones

Cellular 616262238

Notes:

APP000645

Properties: ()

Type: Currency, Coins, Securities, Cash

Status	Stolen	Quantity	1	Value	00.00	Color
Description	Unk amount US currency					
Manufacturer		Model		Serial No./VIN		
Vehicle Year		Body Type				
Lic Plate #		Lic Plate State		Lic Plate Exp		
Insurance Company						
Owner	V - Nozohour, Moein					
Notes:						

Narrative

On 08/13/2017 at 2114 hours a robbery occurred at 6425 W Charleston Blvd Las Vegas NV 89146 at Pizza House and Bakery. The details of the call stated that 2 black males both with guns entered the business and help people at gun point while they took the money out of the register.

Upon arrival I made contact with the owner Nozohour, Moein Born 12/20/1992. Nozohour stated that 2 males walked in the business and took money while pointing guns at his wife Zaynab, Sameh born 06/21/1990 and his son Nozohour, Farvin born 11/23/2014. He described suspect #1 to be a black male 6'0" 180lbs wearing a black hooded sweat shirt and black sweat pants with a black ski mask on and a white sock on his left hand. Suspect #1 had a black medium framed semi auto handgun in his right hand. Suspect #1 also had black Adidas shoes on with 3 white stripes down the side had what looks like a gray diamond design on the mid thigh of his black sweat pants.

Suspect #2 was described as a black male 5'11" 190 wearing a gray hooded sweat shirt and gray sweat pants, with the hood of his sweat shirt pulled over his face and white with red design shoes. Suspect #2 had what looked like a long gun/ rifle with a high capacity magazine carried in his right hand. Suspect #1 entered from the north doors of the of the business and made contact with Harris, Colin born 07/18/1992 where he cocked the the handgun and pointed it at him while telling him to empty his pockets. Suspect #1 then jumped the front counter pointing the handgun at Zaynab while she runs away. Suspect #1 then jumped back over the counter where he grabbed Zaynab and threw her to the ground and told her not to move or he would shoot her. Suspect #2 then walked into the business through the south entrance pointing the gun at the customers saying "don't move or I'm going to shoot you all" he then walked to the cash register while pointing the gun at Nozohour and his son Farvin telling them not to move. Suspect #1 opened the cash register while suspect #2 tried to carry the safe out of the room. Suspect #1 took an unknown amount of cash from the register, suspect #2 pushed the safe out of the room but ended up leaving it due to it being too heavy.

Det Raferty arrived on location conducted an investigation and was able to collect the video footage of the incident from the security cameras in the business. ID showed up on location and processed the scene.

APP000646

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT**

Event # 170812-3809

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime <u>RW BW</u>	Date Occurred <u>8/12-17</u>	Time Occurred <u>2124</u>
Location of Occurrence <u>6425 W CHARLESTON BLVD</u>	Sector/Beat <u>P1</u>	<input checked="" type="checkbox"/> City <input type="checkbox"/> County

Your Name (Last / First / Middle) <u>HARRIS, COLIN, ANDREW</u>						Date of Birth <u>[REDACTED]</u>	
Race <u>W</u>	Sex <u>M</u>	Height <u>5'9</u>	Weight <u>260</u>	Hair <u>BRN</u>	Eyes <u>BRN</u>	Work Schdl. (Hours)	(Days Off)
Residence Address: (Number & Street)				Bldg./Apt.#	City	State	Zip Code
Bus. (Local) Address: (Number & Street)				Bldg./Apt.#	City	State	Zip Code
Best place to contact you during the day <u>Cell 702 339 8431</u>						Best time to contact you during the day	
Can You Identify the Suspect?						<input type="checkbox"/> Yes <input type="checkbox"/> No	

DETAILS I WAS SITTING AT TABLE WHEN A SKINNY BLACK GUY WALKED IN WITH A SKI MASK AND A GUN HE COCKED AND SAID NOBODY MOVE HE WALKED INTO THE BACK OF RESTAURANT AND I STOOD UP AND STARTED WALKING TOWARD THE BACK DOOR WHEN ANOTHER GUY CAME IN WITH A RIFLE AND TOLD ME TO GET ON THE GROUND, HE WENT THRU MY POCKETS THEN WALKED OVER TO THE RESTAURANT AND JUMPED OVER THE COUNTER AT THAT POINT I GOT UP AND RAN OUT THE BACK DOOR OUTSIDE AND CALLED 911

Dissemination of this information to other law enforcement agencies is not required.

AUG 12, 2012

Released to County Attorney
Las Vegas Metropolitan Police Dept.
By [Signature]

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (LOCATION) SA ON THE 12TH DAY OF AUGUST AT 2124 (AM/PM) PM.

Witness/Officer: [Signature] (SIGNATURE)

Witness/Officer: D. SMITH (PRINTED)

P# 16229

X Colin A

SIGNATURE OF PERSON GIVING STATEMENT

DEPARTAMENTO DE POLICIA METROPOLITANA DE LAS VEGAS
DECLARACION VOLUNTARIA

Incidente #
170812-3809

ESTA SECCION DEBE SER LLENADA POR UN OFICIAL

Delito <u>RUIDO</u>	Fecha de los Hechos <u>8-12-17</u>	Hora de los Hechos <u>2124</u>
Lugar de los Hechos <u>6475 W. CHARLSTON BLVD LV NV 89146</u>	Sector/Beat <u>A</u>	<input checked="" type="checkbox"/> Ciudad <input type="checkbox"/> Condado

Nombre (Apellido/Nombre/Segundo Nombre) <u>CHAMELE-MORALES, ENMA</u>						Fecha de Nacimiento <u>4-14-85</u>		Número de Seguro Social <u>NONE</u>	
Raza <u>H</u>	Sexo <u>F</u>	Estatura <u>5'01"</u>	Peso <u>139</u>	Cabello <u>NEGRO</u>	Ojos <u>CAFE</u>	Horario de Trabajo (Días Libres) <u>VARIA</u>	Empleador/Escuela <u>TACOS EL JEFE</u>		
Dirección: (Número y Calle)		Edif/Depto. #		Ciudad	Estado	Código Postal	Teléfono Casa: <u>702-272-8531</u>		
							Teléfono Trabajo: <u>702-248-6692</u>		
Dirección (Local) Trabajo: Número y Calle		Edif/Depto. #		Ciudad	Estado	Código Postal	Ocupación	Fecha de Salida (visitantes)	
<u>6475 W. CHARLSTON BLVD</u>				<u>LV</u>	<u>NV</u>	<u>89146</u>	<u>EMPRESA</u>		
Lugar para comunicarnos con ud. durante el día						Horario para comunicarnos con ud. durante el día		Puede Identificar <input type="checkbox"/> Si al Sospechoso <input checked="" type="checkbox"/> No	

DESCRIPCION DETALLADA YO ESTABA SENTADA COMIENDO CUANDO ESCUCHE EL RUIDO DE UNA ARMA. VOLTIE A VER Y MIRE A UN SEÑOR. EL SEÑOR ERA ALTO Y FLACO Y TENIA UN GORRA ROJOA CUBRIENDO SU CARA Y CARGABA UNA PISTOLA DE MEDIO TAMAÑO. ENTONCES MI AMIGO PATRICK ME ENTO QUE ME METIERA A LA OFICINA Y CERRAMOS LA PUERTA. Y NO ME DA CUENTA PARA QUE RUIDOS SE FUERON A LA FUERA.

I OFFICER C. Luna #8257 write this statement for ENMA in Her own words

Dissemination is restricted to Criminal Justice Agencies & City, State, & Federal Law Enforcement Agencies & Attorneys

AUG 13 2017

Released to County Attorney
Las Vegas Metropolitan Police Dept
[Signature]

HE LEIDO ESTA DECLARACION Y CONFIRMO LA VERACIDAD Y EXACTITUD DE LOS HECHOS ANTES MENCIONADOS. ESTA DECLARACION SE REALIZO EN (LUGAR) STH
EL DIA 12 DE AGOSTO DE 2017 A LAS 10:10 (AM/PM).

Testigo/Oficial: [Signature]
Testigo/Oficial: C. Luna #8257
(Con Letra de Molde)

ENMA-CHAMELE
Firma del Declarante

DECLARACION VOLUNTARIA

Incidente #

170812 - 3509

ESTA SECCION DEBE SER LLENADA POR UN OFICIAL

Delito <u>RWOW</u>	Fecha de los Hechos <u>8-12-17</u>	Hora de los Hechos <u>2124</u>
Lugar de los Hechos <u>6475 W. Charleston LV NV 89146</u>	Sector/Beat <u>01</u>	<input checked="" type="checkbox"/> Ciudad <input type="checkbox"/> Condado

Nombre (Apellido/Nombre/Segundo Nombre) <u>X Teodora LOPEZ</u>						Fecha de Nacimiento <u>10-29-76</u>		Número de Seguro Social <u>[REDACTED]</u>	
Raza <u>T</u>	Sexo <u>F</u>	Estatura <u>137cm</u>	Peso <u>negro</u>	Cabello <u>negro</u>	Ojos <u>negro</u>	Horario de Trabajo <u>11-8</u>	(Días Libres)	Empleador/Escuela	
Dirección: (Número y Calle) <u>6475 W. Charleston</u>			Edif/Depto. # <u></u>		Ciudad <u>Las Vegas</u>	Estado <u>NV</u>	Código Postal <u>89146</u>	Teléfono Casa: <u>(702) 248 6692</u>	
Dirección: (Local) Trabajo: Número y Calle <u></u>			Edif/Depto. # <u></u>		Ciudad <u></u>	Estado <u></u>	Código Postal <u></u>	Ocupación <u></u>	Fecha de Salida (visitantes) <u></u>
Lugar para comunicarnos con ud. durante el día <u></u>						Horario para comunicarnos con ud. durante el día <u></u>		Puede identificar <input type="checkbox"/> Si al Sospechoso <input type="checkbox"/> No	

DESCRIPCION DETALLADA x Solamente vi que entro una persona por la puerta de enfrente traia una capucha negra y una arma y vi que Brinco la Ventana de la Pizza House mi esposo grito bamos para adentro es un robo, corrimos asi adentro cuando nosotros ibamos para dentro de la nuestra unidad vi otra persona tambien por la puerta trasera y tambien traia arma y lo unico que se escuchó que corto cartucho y lo dije a mi esposo que cerrara la puerta y nos encerramos al momento y no supimos mas

El que entro por la puerta de enfrente es alto Flaco y Negro

Released to County Attorney
Justice Agencies ON Y
Investigation Non-Criminal Justice
Agencies is PR-11817F

AUG 03 2018

HE LEIDO ESTA DECLARACION Y CONFIRMO LA VERACIDAD Y EXACTITUD DE LOS HECHOS ANTES MENCIONADOS. ESTA DECLARACION SE REALIZO EN (LUGAR) SLA

EL DIA 12 DE AGOSTO DE 2017 A LAS 10:00 (AM/PM).

Testigo/Oficial: [Firma]

Testigo/Oficial: CHINA 8257
(Con Letra de Molde)

x Teodora LOPEZ
Firma del Declarante

DECLARACION VOLUNTARIA

Incidente #

170812-3809

ESTA SECCION DEBE SER LLENADA POR UN OFICIAL

Delito <u>Rucon</u>	Fecha de los Hechos <u>8-12-17</u>	Hora de los Hechos <u>21H</u>
Lugar de los Hechos <u>6475 W. Charleston Blvd LV NV 89146</u>	Sector/Beat <u>D1</u>	<input checked="" type="checkbox"/> Ciudad <input type="checkbox"/> Condado

Nombre (Apellido/Nombre/Segundo Nombre) <u>Armando Lopez</u>						Fecha de Nacimiento <u>11-4-67</u>	Número de Seguro Social <u>[REDACTED]</u>
Raza	Sexo <u>M</u>	Estatura <u>5-2</u>	Peso	Cabello	Ojos	Horario de Trabajo	(Días Libres)
Dirección: (Número y Calle) <u>6475 W. Charleston</u>		Edif/Depto. # <u>120</u>	Ciudad <u>Las Vegas</u>	Estado <u>NV</u>	Código Postal <u>89146</u>	Teléfono Casa: <u>702-339-3349</u>	
Dirección (Local) Trabajo: Número y Calle		Edif/Depto. #	Ciudad	Estado	Código Postal	Ocupación <u>Cook</u>	Fecha de Salida (visitantes)
Lugar para comunicarnos con ud. durante el día				Horario para comunicarnos con ud. durante el día		Puede identificar <input type="checkbox"/> Si al Sospechoso <input checked="" type="checkbox"/> No	

DESCRIPCION DETALLADA

Estaba Sentado comiendo como Descansando un poco y Mire que Entro alguien por la Puerta de enfrente y solo mire que Entro Saco una Arma y Brinco al Primer Negocio que Estaba Abierto Entons yo lo Mire que Saco una Pistola y se Tapo la cara. despues Brinco y go solo Me tr a mi Empleada ajama Familia alacofre ya solo Escuche solo gritos de mis Vecinas

Justice Agencies
Agencies is PRNH BITE

AUG 03 2018

Released to County Attorney
Las Vegas Metropolitan Police Dept.

HE LEIDO ESTA DECLARACION Y CONFIRMO LA VERACIDAD Y EXACTITUD DE LOS HECHOS ANTES MENCIONADOS. ESTA DECLARACION SE REALIZO EN (LUGAR)

EL DIA 12 DE Agosto DE 2017 A LAS 10:25 (AM/PM).

Testigo/Oficial:

Testigo/Oficial:

[Signature]
(Firma)
[Signature]
(Con Letra de Molde)

Armando L
Firma del Declarante

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

Event #

170812-3809

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime <u>Ruow</u>	Date Occurred <u>8-12-17</u>	Time Occurred <u>2124</u>
Location of Occurrence <u>6425 W Charleston</u>	Sector/Beat <u>P1</u>	<input checked="" type="checkbox"/> City <input type="checkbox"/> County

Your Name (Last / First / Middle) <u>Zaynab Samels</u>						Date of Birth <u>06/21/90</u>		Social Security # <u>[REDACTED]</u>	
Race <u>White</u>	Sex <u>F</u>	Height	Weight	Hair	Eyes	Work Sched. (Hours)	(Days Off)	Business / School	
Residence Address: (Number & Street) <u>7636 Tenderloin</u>			Bldg./Apt. #	City	State	Zip Code <u>89144</u>	Res. Phone:		
Bus. (Local) Address: (Number & Street)			Bldg./Apt. #	City	State	Zip Code	Occupation		Depart Date (if visitor)
Best place to contact you during the day						Best time to contact you during the day		Can You Identify <input type="checkbox"/> Yes the Suspect? <input type="checkbox"/> No	

DETAILS

I see in camera somebody ~~use~~ come to the ~~a~~ reg front of register and try to get jump inside and he come inside I just see him come to the front push him with the ~~a~~ speed rack so ~~he~~ I think he come out I come out and he put the gun on me and told me before I shoot you open the register and I open register they just run away from back door and few days ago a black guy ~~come~~ use the ladies room ~~as~~ we ~~try~~ to went to the restroom and told him come out He didn't. So we just called the police and they come take him out.

Dissemination is restricted to Criminal Justice Agencies ONLY. Secondary dissemination to other Criminal Justice Agencies is PROHIBITED.

AUG 03 2018

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (LOCATION) S/A

ON THE 12 DAY OF AUGUST AT 9:50 (AM / PM) 2017

Witness/Officer:

(SIGNATURE)

Witness/Officer:

(PRINTED)

P# 16224

LVMPD 85 (REV. 6-08)

SIGNATURE OF PERSON GIVING STATEMENT

APP000651

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

Event #

170812-3809

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime <u>RWOW</u>	Date Occurred <u>8-12-17</u>	Time Occurred <u>2:24</u>
Location of Occurrence <u>6475 W. Charleston Blvd LV NV 89146</u>	Sector/Beat <u>P1</u>	<input checked="" type="checkbox"/> City <input type="checkbox"/> County

Your Name (Last / First / Middle) <u>Moein Nozohour</u>						Date of Birth <u>12-20-1998</u>		Social Security # [REDACTED]	
Race <u>M</u>	Sex <u>M</u>	Height <u>5-11</u>	Weight <u>250</u>	Hair <u>Black</u>	Eyes <u>Brown</u>	Work Sched. (Hours)	(Days Off)	Business / School <u>PIZZA house and Baker</u>	
Residence Address: (Number & Street) <u>7636 TENDER TASSALS ST</u>			Bldg./Apt.#	City <u>LAS VEGAS</u>	State <u>NV</u>	Zip Code <u>89149</u>		Res. Phone:	
Bus. (Local) Address: (Number & Street) <u>6475 W CHARLESTON</u>			Bldg./Apt.#	City <u>LAS VEGAS</u>	State <u>NV</u>	Zip Code <u>89146</u>		Bus. Phone: <u>702-328-6284</u>	
Best place to contact you during the day <u>702-328-6284</u>						Best time to contact you during the day <u>SAME</u>		Can You Identify <input type="checkbox"/> Yes the Suspect? <input type="checkbox"/> No	

DETAILS I WAS COOKING THE WINGS AND THEN TO THE
RIST AND I SEE THE GUY JUMPING TO THE KITCHEN
AND ASKING FOR OPING THE REGISTOR

Dissemination of Information
Criminal Justice Agency
Dissemination to Non-Criminal Justice
Agencies is not required

400 83 2010

Released to County Attorney
By ALM30R

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS
COMPLETED AT (LOCATION) 6475 W CHARLESTON BLV
ON THE 12 DAY OF August AT 9:45 (AM/PM), 2017.

Witness/Officer:

(SIGNATURE)

Witness/Officer:

(PRINTED)

P# 8257

SIGNATURE OF PERSON GIVING STATEMENT



Administrative

Location 6380 W Charleston Blvd Las Vegas, NV 89107
Occurred On (Date / Time) Thursday 8/17/2017 1:40:00 AM
Reporting Officer 15222 - Lynn, Joshua
Entered By 15222 - Lynn, Joshua
Related Cases

Or Between (Date / Time)
Reported On 8/17/2017
Entered On 8/17/2017 2:06:34 AM
Jurisdiction Las Vegas, City of

Sector /Beat W8

Traffic Report Place Type Accident Involved

Offenses:

Kidnapping, 1st Degree(F)-NRS 200.310.1
Completed Yes Domestic Violence No
Entry Premises Entered
Weapons
Criminal Activities

Hate/Bias
Type Security
Location Type Convenience Store Tools

Robbery, E/DW(F)-NRS 200.380
Completed Yes Domestic Violence No
Entry Premises Entered
Weapons Handgun - Automatic
Criminal Activities Possessing/Concealing

Hate/Bias Unknown (Offenders Motivation Not Known)
Type Security Tools
Location Type Convenience Store

Burglary While Poss Of Gun/Dw(F)-NRS 205.060.4
Completed Yes Domestic Violence No
Entry No Force Used Premises Entered
Weapons
Criminal Activities

Hate/Bias None (No Bias)
Type Security Tools
Location Type Convenience Store

Dissemination is restricted to Criminal
Justice Agencies ONLY. Secondary
dissemination to Non-Criminal Justice
Agencies is PROHIBITED.

Victims:

Name: Terrible's Gas Station

Victim Type Business Written Statement
Victim of 50426 - Burglary While Poss Of Gun/Dw(F)-NRS 205.060.4

Can ID Suspect

Addresses

Business 6380 W Charleston Las Vegas, NV 89107 United States

Phones

Business/Work (702) 870-0384

Released to County Attorney
Las Vegas Metropolitan Police Dept.
By *[Signature]*

Name: Castro, Josephine

Victim Type Individual Written Statement Yes
Victim of 50051 - Kidnapping, 1st Degree(F)-NRS 200.310.1
50138 - Robbery, E/DW(F)-NRS 200.380

Can ID Suspect No

DOB 8/27/1989 Age 27 Sex Female Race White Ethnicity Hispanic or Latino
Height 5' 9" Weight 330 Hair Color Brown Eye Color Brown
Injury Not Provided Injury Weapons Handgun - Automatic

Addresses

Residence 100 S Martin Luther King Apt 1225 Las Vegas, NV 89106 United States

Offender Relationships

S - LNU, FNU 1 None
S - LNU, FNU 2 None

Notes: Cashier at gas station

Suspects:

Name: LNU, FNU 1

Scope ID DOB Age 20 Race Black or African American Ethnicity Not Hispanic or Latino
Sex Male Height 5' 6" Weight 140 Hair Color Unknown Eye Color Unknown

Name: LNU, FNU 2

Scope ID DOB Age 20 Race Black or African American Ethnicity Not Hispanic or Latino
Sex Male Height 5' 7" Weight 170 Hair Color Unknown Eye Color Unknown
Employer/School Occupation/Grade

Witnesses:

Name: Richardson, Jamie Sue

Written Statement Yes Can ID Suspect No

8/3/2018 7:50 AM

LLV170817000241

APP000653

DOB	7/21/1980	Age	37	Sex	Female	Race	White	Ethnicity	Not Hispanic or Latino
Height	4' 10"	Weight	110			Hair Color	Brown	Eye Color	Blue

Addresses

Residence 6500 W Charleston Apt 93 Las Vegas, NV 89146 United States

Phones

Cellular (702) 203-8838

Notes:

Name: Gerrish, Daniel

Written Statement Yes Can ID Suspect No

DOB	8/10/1986	Age	31	Sex	Male	Race	White	Ethnicity	Not Hispanic or Latino
Height	6' 0"	Weight	165			Hair Color	Blond	Eye Color	Hazel

Addresses

Residence 6500 W Charleston Apt 92 Las Vegas, NV 89146 United States

Properties: ()**Type:** Currency, Coins, Securities, Cash

Status	Stolen	Quantity	57.63	Value	57.63	Color	Light Green
Description	\$57.63 of US currency						
Manufacturer	US Government	Model		Serial No.	VIN		
Owner	V - Terrible's Gas Station						

Type: Consumable Goods (incl Prescriptions/drugs/narcotics)

Status	Stolen	Quantity	9	Value	74.61	Color	Green
Description	Newport cigarettes						
Manufacturer	Newport	Model	cigarettes	Serial No.	VIN		
Owner	V - Terrible's Gas Station						

Narrative

On 8/17/17 at approximately 0141 hours, I Officer J. Lynn P# 15222 while operating as marked patrol unit 1W21, was dispatched to a call for service in reference to a possible Robbery to the Terrible's Gas Station at 6380 W Charleston, Las Vegas, NV 89107.

Upon arrival I met with the store clerk who identified herself via NV DL as Josephine Castro DOB 8/27/89 ID# 6072032. Castro stated that at around 0140 hours, she was taking care of the trash behind the counter with her back to the entrance of the convenience store. Castro then heard the tone bell of someone entering the store immediately followed by the cocking of what she believed to be a firearm. Castro turned to discover an unknown skinny black male adult dressed in a black hoodie, black shorts, blue shoes and blue latex gloves presenting a black in color firearm. The unknown male then grabbed Castro and demanded that she open the cash register all the while forcibly moving Castro towards it. Castro then opened that cash register. Unsatisfied with the little amount of money that was in the till, the suspect then stated "I know you have more in the back, we're going in the back." The suspect then attempted to physically move Castro a second time towards the back of the store. At that time, another unknown black male dressed in a black hoodie, red/orange pants, a black mask covering his face and wearing blue latex gloves entered the store and stood by the front door. Soon thereafter, both males exited the business on foot and fled northbound through the parking lot. The suspects left with a rough estimate of \$57.63 and around nine packs of Newport cigarettes valued at \$8.29 each.

Two witnesses were inside of the business gambling when the events occurred. Witnesses Daniel Garrish DOB 8/10/86 and Jamie Richardson DOB 7/21/80 both filled out a voluntary statement as well as Castro. Castro was provided with a victims information guide as well as the store manager, Gerald Grossman DOB 2/22/55.

Commercial robbery detective Sgt. O'Brien P# 6801 was notified. Video surveillance available.

APP000654

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

Event #

170817-0241

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime <u>Robbery wdw / KIDNAP</u>	Date Occurred <u>8-17-17</u>	Time Occurred <u>0140</u>
Location of Occurrence <u>6380 W CHARLESTON</u>	Sector/Beat <u>W8</u>	<input checked="" type="checkbox"/> City <input type="checkbox"/> County

Your Name (Last / First / Middle) <u>Castro Josephine Maria</u>						Date of Birth <u>8/27/89</u>	
Race <u>W</u>	Sex <u>F</u>	Height <u>5'9</u>	Weight <u>350</u>	Hair <u>Brown</u>	Eyes <u>Brown</u>	Work Schedl. (Hours)	(Days Off)
Residence Address: (Number & Street) <u>100 S. Martin Luther King Blvd</u>		Bldg./Apt.# <u>1225</u>	City <u>Las Vegas</u>		State <u>NV</u>	Zip Code <u>89106</u>	Res. Phone: <u>714 589 0696</u>
Bus. (Local) Address: (Number & Street) <u>6380 W. Charleston Blvd</u>		Bldg./Apt.#	City <u>Las Vegas</u>		State <u>NV</u>	Zip Code <u>89146</u>	Bus. Phone: <u>702 870 0384</u>
Best place to contact you during the day <u>Work</u>						Best time to contact you during the day	
Occupation <u>Cashier</u>						Depart Date (if visitor)	
Can You Identify the Suspect?						<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

DETAILS On Thursday August 17, 2017 while I was Changing the trash when a black male wearing all black came in and cocked his gun. He came around the corner and put the gun in my face and told me to open the register and give him the money. I opened the register he took no more then \$50. He told me that there was more money to open the other register. I told him we didn't have any more money in the store. He grabbed me by the back of the shirt and told me we were going in back. I told him there was no money in the back. He told me to get on the ground so I just stepped to the side he grabbed several packs of new port shorts. He dropped some pack and ran out of the door. After he told me to go the back his friend walks in and adjusted his mask. He didn't say anything. He was a black male wearing all black with a red mask.

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (LOCATION) TERREBLES GAS STATION

ON THE 17th DAY OF August AT 0230 (AM/PM) 2017

Witness/Officer:

(SIGNATURE)

Witness/Officer:

(PRINTED)

P# 15022

LVMPD 85 (REV. 6-08)

SIGNATURE OF PERSON GIVING STATEMENT

Las Vegas Metropolitan Police Dept.
By ABU 502

APP000655

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

Event #

170817-0241

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime <u>Robbery w/o / KIDNAP</u>	Date Occurred <u>8-17-17</u>	Time Occurred <u>0140</u>
Location of Occurrence <u>6380 W CHARLESTON</u>	Sector/Beat <u>W8</u>	<input checked="" type="checkbox"/> City <input type="checkbox"/> County

Your Name (Last, First, Middle) <u>Richardson, James S</u>		Date of Birth <u>7-21-80</u>
Race <u>White</u>	Height <u>5'10"</u>	Weight <u>180</u>
Hair <u>Brown</u>	Eyes <u>Blue</u>	Work Schdl. (Hours) <u>Call</u>
Days Off <u>Call</u>	Business / School <u>Call</u>	
Residence Address: Number & Street <u>1500 W 15th St</u>	Bldg / Apt.# <u>93</u>	City <u>Las Vegas</u>
State <u>NV</u>	Zip Code <u>89146</u>	Res. Phone: <u>702 203 9628</u>
Bus. (Local) Address: (Number & Street)	Bldg / Apt.#	City
State	Zip Code	Bus. Phone:
Occupation	Depart Date (if visitor)	
Best place to contact you during the day <u>My address</u>	Best time to contact you during the day <u>Anytime</u>	Can You Identify the Suspect? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

DETAILS

I was sitting at the Machine
Paying Rent when the
door opened as it opened I hear
the sound of a gun being clicked
on. Some black kid went running
towards the register I hear
the clerk let out a cry
The guy start yelling at
the clerk whines the risk
of the money where is it she
says he's got it that's all
I got when he says repeat
himself I hear the clerk
saying the money is in the
register and then

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS
COMPLETED AT (LOCATION) TERRELL'S GAS STATION
ON THE 17th DAY OF AUGUST AT 0230 (AM/PM) 2017.

Witness/Officer: [Signature]
(SIGNATURE)

Witness/Officer:
LVMPD 85 (REV. 6-08)

(PRINTED)

P# 15022

SIGNATURE OF PERSON GIVING STATEMENT

Las Vegas Metropolitan Police Dept.
By aw452

APP000656

let put another cry - & then
if want silent and

Q Was there a min goes
by of silence and then this
guy dark man runs in. ~~He~~
I got a better look at the second
guy. He was 6'1, ~~145~~ 145 lbs

~~he was looking at white~~

Was wearing a white wife
beater or t-shirt under hoodie
the hoodie was either red
or black → he was wearing
Sweat pants which was
the opposite color of
hoodie and he has a
black mask on → white
facemask

Witness/Officer:

(SIGNATURE)
SYNN
(PRINTED)

1502
P11

SIGNATURE OF PERSON GIVING STATEMENT

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

Event #

170817-0241

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime <u>Robbery w/ Wpn / KIDNAP</u> <u>Armed Robbery @ Terribles</u>	Date Occurred <u>8-17-17</u>	Time Occurred <u>01:40 +/-</u>
Location of Occurrence <u>Torrey Pines @ Charleston 6320 W</u>	Sector/Beat <u>W8</u>	<input checked="" type="checkbox"/> City <input type="checkbox"/> County

Your Name (Last / First / Middle) <u>Gerrish Daniel W</u>						Date of Birth <u>8-18-86</u>		Social Security # [REDACTED]	
Race <u>W</u>	Sex <u>M</u>	Height <u>6"</u>	Weight <u>155</u>	Hair <u>Bnd</u>	Eyes <u>Haz</u>	Work Sched. (Hours) <u>Varies</u>	Days Off		
Residence Address: (Number & Street) <u>6500 W Charleston</u>			Bldg./Apt.# <u>92</u>	City <u>Las Vegas</u>		State <u>NV</u>	Zip Code <u>89146</u>	Res. Phone: <u>435 299 1346</u>	
Bus. (Local) Address: (Number & Street)			Bldg./Apt.#	City		State	Zip Code	Bus. Phone:	
Best place to contact you during the day <u>any</u>			Best time to contact you during the day <u>any</u>				Can You Identify the Suspect? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

DETAILS

I was sitting at slot #7 ~~watching~~ watching my gf sitting @ #6 when she gestured to me that something was wrong when I looked up and seen ^{the} suspect w/ gun pointed @ clerk demanding cash. ~~then~~ She gave him what was in the drawer then he stated he wanted more I tapped my gf and went to stand to leave when I seen 2nd person open door with red mask and stood in doorway guarding it shortly after the 1st person came back to the 2nd and they departed on foot to the ~~the~~ East around the side of the store then to the North

Dissemination to non-law enforcement
Justice Agencies Only. Secondary
dissemination to non-law enforcement
Agency is PROHIBITED

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (LOCATION) Terribles @ Torrey Pines & Charleston

ON THE 17 DAY OF August AT 0216 (AM/PM), 2017

Witness/Officer:

[Signature]
(SIGNATURE)

Witness/Officer:

J. LYN
(PRINTED)

P# 15222

LVMPD 85 (REV. 6-08)

By [Signature]
SIGNATURE OF PERSON GIVING STATEMENT

APP000658



Administrative

Location 6400 W Lake Mead Blvd LV, NV 89208 Sector /Beat W1
Occurred On (Date / Time) Thursday 8/17/2017 3:15:00 AM
Reporting Officer 15256 - Roman, Abdiel Or Between (Date / Time) Thursday 8/17/2017 3:45:00 AM
Entered By 15256 - Roman, Abdiel Reported On 8/17/2017
Entered On 8/17/2017 3:49:59 AM
Related Cases Jurisdiction Las Vegas, City of

Traffic Report No Place Type Accident Involved

Offenses:

Robbery, E/DW(F)-NRS 200.380
Completed Yes Domestic Violence No Hate/Bias Unknown (Offenders Motivation Not Known)
Entry Premises Entered Type Security Tools
Weapons Handgun Location Type Convenience Store
Criminal Activities None/Unknown

Burglary While Poss Of Gun/Dw(F)-NRS 205.060.4
Completed Yes Domestic Violence No Hate/Bias Unknown (Offenders Motivation Not Known)
Entry No Force Used Premises Entered Type Security Camera Tools
Exterior Lights
Interior Lights
Weapons Location Type Service/Gas Station
Criminal Activities

Victims:

Name: Rebel Gas Station

Victim Type Business Written Statement Can ID Suspect
Victim of 50426 - Burglary While Poss Of Gun/Dw(F)-NRS 205.060.4

DOB Age Sex Race Ethnicity
Height Weight Hair Color Eye Color
Employer/School Work Schedule
Occupation/Grade Injury Weapons
Injury

Addresses
Business 6400 W Lake Mead Blvd LV, NV 89108 United States

Phones
Business/Work (702) 648-0403

Offender Relationships

Notes:

Name: Brown, Ta'Shay

Victim Type Individual Written Statement Yes Can ID Suspect No
Victim of 50138 - Robbery, E/DW(F)-NRS 200.380
DOB 1/28/1992 Age 25 Sex Female Race Black or African American Ethnicity Not Hispanic or Latino
Height 5' 0" Weight 210 Hair Color Black Eye Color Brown
Employer/School Rebel Gas Station
Occupation/Grade Night Clerk Work Schedule
Injury None Observed Injury Weapons Handgun

Addresses
Business 6400 W Lake Mead Blvd LV, NV 89108 United States
Residence 3635 Russian Olinest North LV, NV 89032 United States

Phones
Cellular (702) 272-9864
Business/Work (702) 648-0403

Offender Relationships

S - Last Unknown, First Unknown Relationship Unknown
Notes:

Suspects:

Name: Last Unknown, First Unknown

8/3/2018 7:59 AM

LLV170817000470

Scope ID	DOB	Age	18 - 30	Race	Black or African American	Ethnicity	Unknown
Sex	Male	Height	5' 5" - 5' 8"	Weight		Eye Color	
Employer/School				Occupation/Grade			

Witnesses:

Name: Johnson, Harry
Written Statement Refused Can ID Suspect No
DOB 1/5/1991 Age 26 Sex Male Race Black or African American Ethnicity Not Hispanic or Latino
Height 5' 6" Weight 145 Hair Color Black Eye Color Brown
Addresses
Residence 2200 N Torrey Pines Apt 1068 LV, NV 89108 United States
Phones
Cellular (702) 573-9031

Other Entities:

Name: Person Reporting/Complainant Miles, Sherry
Written Statement No Can ID Suspect No
DOB 3/27/1961 Age 56 Sex Female Race Black or African American Ethnicity Not Hispanic or Latino
Height 5' 1" Weight 195 Hair Color Brown Eye Color Brown
Driver License Number 1603399094 Driver License State Nevada
Addresses
Business 6400 W Lake Mead Blvd LV, NV 89108 United States
Residence 6245 Bellota Dr #b LV, NV 89108 United States
Phones
Business/Work (702) 648-0403
Cellular (702) 416-6372

Properties: ()

Type: Currency, Coins, Securities, Cash

Status	<u>Stolen</u>	Quantity	<u>349.48</u>	Value	<u>349.48</u>	Color	
Description	<u>U.S. Currency</u>						
Owner	<u>V - Rebel Gas Station</u>						

Narrative

On 08/17/17 I, Officer A. Roman P# 15256, while operating as marked LVMPD patrol unit was dispatched to the Rebel gas Station located at 6400 W. Lake Mead Blvd, LV, NV, 89108 in reference to a Robbery call. The details of the call stated that a firearm was used and that the suspect was wearing a marks.

Upon arrival I made contact with the night clerk, later identified as Ta'Shay Brown DOB 01/18/92, who began to state that she was assisting another customer with purchasing an item. As Ta'shay finished assisting the customer, the customer began to exit, she hears a handgun "cock" like a round was chambered into the barrel of a handgun. As Ta'Shay hears this noise, she simultaneously observes a black male adult wearing a black/grey hoodie or sweater, wearing a black mask, black basketball shorts, white socks, red shoes and was wearing blue latex gloves. The black male adult immediately jumped over the front counter and demanded that Ta'Shay open the cash register. Ta'Shay further stated that she opened her cash register and after she did, the black male adult demanded she opened the cash register next to her's and proceeded to take the money. After the black male adult retrieved the money from both the cash registers, he demanded Ta'Shay lay down on the floor, face down, while he jumped the counter and exited the business.

Per P# 15042, who was operating as an RT unit, stated that at approximately 0323 hours on 08/17/17 - the black male adult was walking south bound on Torrey Pines coming from the Brittnae Pines apartment complex. Per P# 15042, the black male adult is seen in the video wearing a black colored sweater or long sleeve shirt and black basketball shorts. Per P# 15042, the black male adult entered the business and was only inside the business for approximately 25 - 30 seconds. The black male adult then exits the business and proceeds to run north bound back into the Brittnae Pines apartment complex.

Per Officer C. Rogers P# 15666, while attempting to locate the suspect involved, Officer Rogers was hailed by a citizen at 2051 N. Torrey Pines, LV, NV, 89108 regarding what he witnessed. Per Officer Rogers, he made contact with Harry Johnson DOB 01/15/91 who stated that he observed a black male adult fitting the description of the robbery suspect run and enter a Red Ford Fiesta, unknown what year. The black male adult entered through the passenger side and the vehicle immediately drove off north bound on Torrey Pines.

Ta'Shay filled out a voluntary statement and the business was given a victim information guide. Harry refused to fill out a voluntary statement, but stated he is willing to speak with detectives. CSA was requested and responded and processed the scene. There is video surveillance and will be available at a later time for detectives. The black male adult took \$349.48 in U.S. currency (unknown denominations).

APP000660

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

Event #
170817-0470

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime <u>ROBBERY</u>	Date Occurred <u>8/17/17</u>	Time Occurred
Location of Occurrence <u>6400 W LAKE MEAD BLVD, LV, NV 89108</u>	Sector/Beat <u>W1</u>	<input checked="" type="checkbox"/> City <input type="checkbox"/> County

Your Name (Last / First / Middle) <u>Brown, Ta'Shay Viola</u>						Date of Birth <u>01/18/92</u>	
Race <u>B</u>	Sex <u>F</u>	Height <u>5'0</u>	Weight <u>210</u>	Hair <u>BLK</u>	Eyes <u>BRN</u>	Work Schdl. (Hours) <u>11-6:30 AM</u>	(Days Off)
Residence Address: (Number & Street) <u>3035 Russian Olive St</u>		Bldg./Apt. #	City <u>NV</u>	State <u>NV</u>	Zip Code <u>89032</u>	Res. Phone: <u>702 272 9864</u>	
Bus. (Local) Address: (Number & Street)		Bldg./Apt. #	City	State	Zip Code	Bus. Phone:	
Best place to contact you during the day <u>open</u>		Best time to contact you during the day <u>open</u>				Can You Identify <input type="checkbox"/> Yes the Suspect? <input checked="" type="checkbox"/> No	

DETAILS Just Rang up a counter. and a man start walking
towards me with a gun a told me to give him the money. he hoped
over the counter i opened my register. he told me to go to the
next register to open it. i opened it he told me to get on
the ground and hoped over the counter. He had on a BLACK
mask and had a Black gun.

Justice Agencies ONLY
 disseminator to _____ Criminal Justice
 Agencies & _____

APR 18 2018

Released to Court Attorney
 Las Vegas Metropolitan Police Dept
 By CA12430C

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS
 COMPLETED AT (LOCATION) 6400 W LAKE MEAD BLVD, LV, NV 89108
 ON THE 17th DAY OF AUGUST AT 6400 (AM/PM), 2017.

Witness/Officer: [Signature]
 (SIGNATURE)
 Witness/Officer: J. SOLES P# 15920
 (PRINTED)

[Signature]
 SIGNATURE OF PERSON GIVING STATEMENT



Administrative

Location 6820 W Flamingo Las Vegas, NV 89103
Occurred On (Date / Time) Thursday 8/24/2017 3:49:00 AM
Reporting Officer 15867 - Magazin, Jovan
Entered By 15867 - Magazin, Jovan
Related Cases

Or Between (Date / Time)
Reported On 8/24/2017
Entered On 8/24/2017 4:11:42 AM
Jurisdiction Clark County

Sector /Beat P3

Traffic Report No Place Type Accident Involved

Offenses:

Robbery, E/DW(F)-NRS 200.380

Completed Yes Domestic Violence No Hate/Bias None (No Bias)
Entry Premises Entered Type Security Tools
Weapons Handgun Location Type Restaurant
Criminal Activities None/Unknown

Burglary, (1st)(F)-NRS 205.060.2

Completed Yes Domestic Violence No Hate/Bias None (No Bias)
Entry No Force Used Premises Entered Type Security Exterior Lights Tools
Weapons Location Type Restaurant
Criminal Activities Camera

Victims:

Name: Chavez, Odani

Victim Type Individual Written Statement Yes Can ID Suspect No
Victim of 50138 - Robbery, E/DW(F)-NRS 200.380
DOB 2/10/1994 Age 23 Sex Male Race White Ethnicity Hispanic or Latino
Height 5' 6" Weight 160 Hair Color Black Eye Color Brown
Employer/School Robertos
Occupation/Grade Clerk Work Schedule
Injury Not Provided Injury Weapons Handgun
None Observed

Addresses

Residence 6500 W Charleston #54 Las Vegas, NV 89146 United States

Phones

Cellular (702) 330-2988

Offender Relationships

S - UNK None
S - Unk None
Notes:

Name: Maria, Ruiz-Rizo

Victim Type Individual Written Statement Yes Can ID Suspect No
Victim of 50138 - Robbery, E/DW(F)-NRS 200.380
DOB 8/26/1986 Age 30 Sex Female Race White Ethnicity Hispanic or Latino
Height 5' 2" Weight 180 Hair Color Black Eye Color Black
Employer/School Robertos
Occupation/Grade Clerk Work Schedule
Injury Not Provided Injury Weapons Handgun
None Observed

Addresses

Residence 4630 Koval Ln 63d Las Vegas, NV 89109 United States

Phones

Business/Work (702) 876-2353
Cellular (702) 601-8483

Offender Relationships

S - UNK None
S - Unk None
Notes:

Name: Robertos

Page 1 of 3

Victim Type Business Written Statement
Victim of 50424 - Burglary, (1st)(F)-NRS 205.060.2

Can ID Suspect

DOB Age Sex Race Ethnicity
Height Weight Hair Color Eye Color
Employer/School Work Schedule
Occupation/Grade Injury Weapons
Injury

Addresses

Business 6820 W Flamingo Las Vegas, NV 89103 United States

Phones

Business/Work (702) 876-2353

Offender Relationships

Notes:

Suspects:

Name: UNK

Alias:

Scope ID DOB Age 20-30 Race Black or African American Ethnicity Not Hispanic or Latino
Sex Male Height 5' 7" - 5' 9" Weight Hair Color Eye Color
Employer/School Occupation/Grade

Addresses

Phones

Notes:

Name: Unk

Alias:

Scope ID DOB Age 20-30 Race Black or African American Ethnicity Not Hispanic or Latino
Sex Male Height 5' 7" - 5' 9" Weight Hair Color Eye Color
Employer/School Occupation/Grade

Other Entities:

Name: Contact Rodriguez, Jose

Written Statement No Can ID Suspect No
DOB 12/14/1967 Age 49 Sex Male Race White Ethnicity Hispanic or Latino
Height 5' 6" Weight 145 Hair Color Black Eye Color Brown
Driver License Number 1601562972 Driver License State Nevada

Addresses

Residence 6743 W Charleston Blvd Unit 1 Las Vegas, NV 89146 United States

Business 6820 W Flamingo Las Vegas, NV United States

Phones

Cellular (847) 961-8034

Business/Work (702) 876-2353

Notes:

Properties: ()

Type: Currency, Coins, Securities, Cash

Status Stolen Quantity 1 Value 300.00 Color
Description cash
Manufacturer Model Serial No.\VIN
Vehicle Year Body Type
Lic Plate # Lic Plate State Lic Plate Exp
Insurance Company
Owner V - Robertos
Notes:

Type: Misc. (Cell Phones, Bicycles, Worthless Doc, items not listed)

Status Stolen Quantity 1 Value 50.00 Color
Description black wallet
Manufacturer Model Serial No.\VIN
Vehicle Year Body Type
Lic Plate # Lic Plate State Lic Plate Exp
Insurance Company

Owner V - Chavez, Odani
Notes:

Type: Misc. (Cell Phones, Bicycles, Worthless Doc, items not listed)

Status	Stolen	Quantity	1	Value	00.00	Color
Description	credit card					
Manufacturer		Model		Serial No.\VIN		
Vehicle Year		Body Type				
Lic Plate #		Lic Plate State		Lic Plate Exp		
Insurance Company						
Owner	V - Chavez, Odani					
Notes:						

Narrative

On 08/24/2017 at 0349 hours I, Officer J.Magazin P #15867, operating as marked patrol unit 1P45 responded to Robertos located at 6820 W Flamingo Las Vegas NV 89103, in reference of Robbery call. Details of the call stated time lapsed 3- 4 minutes to business, firearm used. The two suspects had their faces covered, left on foot towards trash cans.

Upon arrival I made contact with Chavez, Odani DOB 02/10/1994 who stated two black male suspects with ski masks entered the store, pointed a black hand gun at him and demanded from Odani to open cash register and give them the money. Odani gave suspects \$300.00 in cash, half of the cash was inside the black Wells fargo moneybag and the other half inside cash register. Both suspects fled easbound from the business.

Officers recovered \$ 140.00 dolalars in cash outside of the business on the ground, and it was returned to the business Manager.

Surveillance video showed the two suspects enter the business, jump over the counter and present the black handgun to the employee. The suspects took the cash ran out eastbound from the business.

DECLARACION VOLUNTARIA

Incidente #

LLV170824ce0521

ESTA SECCION DEBE SER LLENADA POR UN OFICIAL

Delito ROBBERY WDU	Fecha de los Hechos 8-24-17	Hora de los Hechos 0350
Lugar de los Hechos 6820 W. FLAMINGO RD	Sector/Beat P3	<input type="checkbox"/> Ciudad <input checked="" type="checkbox"/> Condado

Nombre (Apellido/Nombre/Segundo Nombre) odani CHAVEZ ZAVALETA						Fecha de Nacimiento 2-10-94		Número de Seguro Social	
Raza	Sexo	Estatura	Peso	Cabello	Ojos	Horario de Trabajo (Días Libres)	Empleador/Escuela		
	M.			black	black	12: -8			
Dirección: (Número y Calle)			Edif/Depto. #		Ciudad	Estado	Código Postal	Teléfono Casa: 702 601 8695	
6500 W CHARLESTON A.P.					Las Vegas	N.V.	89146	Teléfono Trabajo: 702	
Dirección (Local) Trabajo: Número y Calle			Edif/Depto. #		Ciudad	Estado	Código Postal	Ocupación	Fecha de Salida (visitantes)
6820 W. FLAMINGO					Las Vegas	N.V.	89103	cocinero	8 AM
Lugar para comunicarnos con ud. durante el día						Horario para comunicarnos con ud. durante el día		Puede Identificar <input type="checkbox"/> Si al Sospechoso <input type="checkbox"/> No	
la CASA						9. 5.			

DESCRIPCION DETALLADA Yo odani chavez siendo como alas 3:40 am- me encontraba picando unas papas cuando vimos que entraron 2 hombres asia nosotros uno de ellos armados + apuntando asia nosotros + nos abrian en ingles pidiendonos el dinero + nos trastiaban las bolsas + luego nos llevaron asia la caja donde se encontraba el dinero del ROBERTOS TACO ellos buscaban mas cosas + ami odani chavez me quitaron mis cartera + tambien me decian que abriera la caja para sacar el dinero pero me apuntaban con la pistola + luego se marcharon dirigiendose asia el lado izquierdo del ROBERTOS + luego tamen al 911.

Dissemination to other Law Enforcement Justice Agencies ON: Y / Conducar dissemination to Non Law Enforcement Agencies is PROHIBITED

AUG 03 2018

HE LEIDO ESTA DECLARACION Y CONFIRMO LA VERACIDAD Y EXACTITUD DE LOS HECHOS ANTES MENCIONADOS. ESTA DECLARACION SE REALIZO EN (LUGAR) **ROBERTOS TACO SHOP** EL DIA **JUEVES** DE **24** DE **2017** A LAS **3:40** (AM/PM).

Las Vegas Metropolitan Police Dept.
By **[Signature]**

Testigo/Oficial:

[Signature]
(Firma)

Testigo/Oficial:

[Signature]
(Gon Letrade Molda)
J. MAGAZIN 15867

[Signature]

Firma del Declarante

APP000665

DECLARACION VOLUNTARIA

Incidente #

LLU170824000521

ESTA SECCION DEBE SER LLENADA POR UN OFICIAL

Delito <u>ASALTO ROBBERY WDV</u>	Fecha de los Hechos <u>8-24-17</u>	Hora de los Hechos <u>3:50 AM.</u>
Lugar de los Hechos <u>6820 W Flamingo RD. D. Las Vegas NV 89103</u>	Sector/Beat <u>P3</u>	<input type="checkbox"/> Ciudad <input checked="" type="checkbox"/> Condado

Nombre (Apellido/Nombre/Segundo Nombre) <u>MARIA ENEDA RUIZ RIZO</u>						Fecha de Nacimiento <u>8-26-86</u>	Número de Seguro Social
Raza <u>F</u>	Sexo <u>F</u>	Estatura <u>5.02</u>	Peso <u>180</u>	Cabello <u>negro</u>	Ojos <u>negro</u>	Horario de Trabajo (Días Libres) <u>12:00am - 8am</u>	Empleador/Escuela
Dirección: (Número y Calle) <u>6820 W Flamingo RD</u>		Edif/Depto. # Ciudad <u>D. Las Vegas</u>		Estado Código Postal <u>NV 89103</u>		Teléfono Casa: <u>(702) 601-8483</u>	
Dirección (Local) Trabajo: Número y Calle		Edif/Depto. # Ciudad		Estado Código Postal		Teléfono Trabajo: <u>X</u>	
						Ocupación	
						Fecha de Salida (visitantes)	
Lugar para comunicarnos con ud. durante el día				Horario para comunicarnos con ud. durante el día			
				Puede Identificar <input type="checkbox"/> Si al Sospechoso <input type="checkbox"/> No			

DESCRIPCION DETALLADA HOY Jueves como alas 3:45 entraron dos Personas asaltarnos se brincaron la mesa y llegaron donde estábamos yo estaba echando el Pico de gallo en las charolas cuando ellos llegaron donde nosotros los apuntaron con la arma y traím. y nos llevaron donde la caja para que le diéramos el dinero y mi compañero de trabajo lo estaban apuntando con la arma para que abrieran la caja y luego sacaron el dinero de la caja y se llevaron la bolsa donde estaba el cambio y kerian las llaves para luego arrancaron corriendo para la salida y se fueron rumbo ala esquina de la basura y odani llamaron ala policía para hacer el reporte Primero llamamos al manager para decirle que nos abia asaltado hoy

Dissemination is restricted to Criminal Justice Agencies ONI & Secondary dissemination to Non-Criminal Justice Agencies

AU 03 218

HE LEIDO ESTA DECLARACION Y CONFIRMO LA VERACIDAD Y EXACTITUD DE LOS HECHOS ANTES MENCIONADOS. ESTA DECLARACION SE REALIZO EN (LUGAR) 6820 W Flamingo RD. D. Las Vegas NV 89103
EL DIA Jueves DE agosto DE 2017 A LAS 3:50 (AM/PM).

Testigo/Oficial:

Testigo/Oficial:

MARIA ENEDA RUIZ RIZO
(Con Letra de Molde)

J. MAGAZIN 15767

Firma del Declarante

APP000666



Administrative

Location 907 N Rainbow LV, NV 89145
Occurred On (Date / Time) Thursday 8/24/2017 5:10:00 AM
Reporting Officer 06067 - O'Neill, Timothy K
Entered By 06067 - O'Neill, Timothy K
Related Cases 170824-0521

Or Between (Date / Time)
Reported On 8/24/2017
Entered On 8/24/2017 5:42:52 AM
Jurisdiction Las Vegas, City of

Sector / Beat V4

Traffic Report No Place Type Accident Involved

Offenses:

Robbery, E/DW(F)-NRS 200.380

Completed Yes Domestic Violence No
Entry Premises Entered
Weapons Firearm - Automatic (Type Not Stated)
Criminal Activities None/Unknown
Hate/Bias None (No Bias)
Type Security
Location Type Restaurant
Tools

Victims:

Name: Roberto's Taco Shop Store#18

Victim Type Business Written Statement Can ID Suspect
Victim of 50138 - Robbery, E/DW(F)-NRS 200.380

DOB Age Sex Race
Height Weight Hair Color
Employer/School
Occupation/Grade Work Schedule
Injury Injury Weapons

Ethnicity Eye Color
Dissemination of Information to Criminal
Justice Agencies ONLY. Secondary
dissemination to Non-Criminal Justice
Agencies is PROHIBITED.

Addresses

Business 907 N Rainbow Blvd LV, NV 89145 United States

Phones

Business/Work (702) 258-2699

Offender Relationships

Notes: Estimated over \$500.00 US currency taken from cash register and bank box

Name: Roman, Gil

Victim Type Individual Written Statement Yes Can ID Suspect No
Victim of 50138 - Robbery, E/DW(F)-NRS 200.380

DOB 2/8/1987 Age 30 Sex Male Race White Ethnicity Hispanic or Latino
Height 5' 5" Weight 170 Hair Color Brown Eye Color Brown
Employer/School Roberto's Taco Shop
Occupation/Grade Cook Work Schedule
Injury None Observed Injury Weapons Firearm - Automatic (Type Not Stated)

Addresses

Residence 340 Upton LV, NV 89107 United States

Business 907 N Rainbow Blvd LV, NV 89145 United States

Phones

Cellular (702) 929-4005
Business/Work (702) 258-2699

Offender Relationships

Notes: no ssn/ suspect #1 punched Gil and took his wallet with Mexican ID and \$40.00 US currency

Suspects:

Name: Unknown

Alias:

Scope ID DOB Age 0 Race Black or African American Ethnicity Unknown
Sex Male Height 5' 5" Weight 140 Hair Color Black Eye Color Brown
Employer/School Occupation/Grade

Addresses

Phones

Notes: Punched Gil in the head and took his wallet. At time of robbery was wearing a black ski mask and gloves, right glove fingerless
8/3/2018 8:06 AM LLV170824000645

Name: Unknown

Alias:

Scope ID	DOB	Age	0	Race	Black or African American	Ethnicity	Unknown
Sex	Male	Height	6' 0"	Weight	160	Hair Color	Eye Color
Employer/School				Occupation/Grade			

Addresses

Phones

Notes: Only suspect that was armed, entered business first, shouted commands. At time of robbery was wearing a black ski mask and gloves, left glove fingerless.

Name: Unknown

Alias:

Scope ID	DOB	Age	0	Race	Unknown	Ethnicity	Unknown
Sex	Unknown	Height		Weight		Hair Color	Eye Color
Employer/School				Occupation/Grade			

Addresses

Phones

Notes: Driver of get away vehicle a 4 door gray or light colored Chevy Caprice type vehicle that picked up suspects #1 and #2 in the SE corner of parking lot. Then fled south onto Rainbow Blvd then east across Rainbow Blvd into the alleyway north of the Rebel gas station and south of the Medical plaza towards Lorenzi Street. No plate obtained.

Arrestees:

Witnesses:

Name: Cortez, Yuiiana

Written Statement	Yes	Can ID Suspect	No
DOB	10/10/1984	Age	32
Sex	Female	Race	White
Height	5' 0"	Weight	130
		Hair Color	Black
		Ethnicity	Hispanic or Latino
		Eye Color	Brown

Addresses

Residence 340 Upland LV, NV 89107 United States
Business 907 N Rainbow Blvd LV, NV 89145 United States

Phones

Cellular (702) 980-8795
Business/Work (702) 258-2699

Notes: No ssn/Nothing taken from person

Other Entities:

Properties: ()

Type: Currency, Coins, Securities, Cash

Status	Stolen	Quantity	1	Value	500.00	Color
Description	Estimated over \$500.00 US currency					
Manufacturer		Model		Serial No.\VIN		
Vehicle Year		Body Type		Lic Plate Exp		
Lic Plate #		Lic Plate State				
Insurance Company						
Owner	V - Roberto's Taco Shop Store#18					
Notes:	Taken from cash register and bank box.					

Type: Misc. (Cell Phones, Bicycles, Worthless Doc, items not listed)

Status	Stolen	Quantity	1	Value	50.00	Color	Black
Description	Wallet with Mexican ID						
Manufacturer	Polo	Model		Serial No.\VIN			
Vehicle Year		Body Type		Lic Plate Exp			
Lic Plate #		Lic Plate State					
Insurance Company							
Owner	V - Roman, Gil						
Notes:	\$40.00 US currency; 2-\$20 bills inside wallet						

Type: Currency, Coins, Securities, Cash

Status	Stolen	Quantity	2	Value	40.00	Color
Description	2-\$20 bills; \$40.00 US currency					
Manufacturer		Model		Serial No.\VIN		
Vehicle Year		Body Type		Lic Plate Exp		
Lic Plate #		Lic Plate State				

8/3/2018 8:06 AM

LLV170824000645

APP000668

Page 2 of 3

Insurance Company
Owner V - Roman, Gil
Notes: Inside wallet.

Type: Automobile (not Stolen or Recovered)

Status	Used In The Crime	Quantity	1	Value	over \$500.00	Color	Gray
Description	4 door, possible light colored Chevy Caprice style vehicle						
Manufacturer	Chevy	Model	Caprice	Serial No.	VIN		
Vehicle Year		Body Type					
Lic Plate #		Lic Plate State		Lic Plate Exp			
Insurance Company							
Owner	S - Unknown						
Notes:	Unknown suspect#3 driver, picked up Suspects #1 & #2, fled scene.						

Narrative

BWC I, Officer T. O'Neill, P#6067, working as marked unit 1V33, and Officers S. Cody, P#15865, working as marked unit 1X22, and J. Ayala, P#7906, working as marked unit 1V55, were dispatched to a robbery at 5:10AM, 8/24/2017, at Roberto's Taco Shop Store#18, at 907 N. Rainbow Blvd. Officers Cody and Ayala arrived first and met with the cook, Gil Roman and the cashier, Yuiiana Cortez, who speak Spanish, with some broken English, and stated that two, late teens to early 20s, BMAs, had committed an armed robbery of the business and of Gil's personal property. Gil stated that an unknown BMA (suspect#2), wearing a black ski mask, black bb cap, black long sleeved hoodie with white letters possibly "Hollister" across the chest, black gloves, with left glove fingerless, gray sweat pants, red/white Nike high top tennis shoes charged into the business, pointed a large frame, black, semi-automatic pistol, and yelled "give me the money or I'll kill you mother fuckers". Immediately after him, another unknown BMA (suspect#1), wearing a black ski mask, black bb cap, blue long sleeve hoodie, black gloves, right glove fingerless, black sweat pants, black or dark blue/white Adidas tennis shoes, black, blue and white multi-colored back pack ordered Gil and Yuiiana to the back of the store. Suspect#1 attacked the cash register and the bank box and stole an estimated over \$500.00 in US currency, stuffing the money in the back pack he brought. Suspect#1 and #2 tried to put Gil and Yuiiana in the freezer, Yuiiana went inside but Gil wouldn't go inside. Suspect#1 then punched Gil in the head and stole his wallet, containing his Mexican ID and \$40.00 US currency. Gil began to fight back as suspects#1 and #2 started to leave the business. Gil knocked down a shelving unit onto suspect#2, twice, and started throwing items at the suspects. The suspects fled the business and a unknown (suspect#3), the driver of get away vehicle, a 4 door gray or light colored Chevy Caprice type vehicle, picked up suspects #1 and #2 in the SE corner of parking lot. The suspects fled south onto Rainbow Blvd then east across Rainbow Blvd into the alleyway north of the Rebel gas station and south of the Medical plaza towards Lorenzi Street. No plate was obtained. Gil called police on 911. CSI responded and took photos and processed the scene.

APP000669

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

Event #

170824-0645

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime <u>ROBBERY WDW</u>	Date Occurred <u>8/24/17</u>	Time Occurred <u>0516</u>
Location of Occurrence <u>907 S RAINBOW BL LV NV 89145</u>	Sector/Beat <u>44</u>	<input checked="" type="checkbox"/> City <input type="checkbox"/> County

Your Name (Last / First / Middle) <u>Viliana Cortez</u>						Date of Birth <u>10-10-84</u>		Social Security # <u>STG#18</u>	
Race <u>H</u>	Sex <u>F</u>	Height <u>5</u>	Weight <u>130</u>	Hair <u>negro</u>	Eyes <u>negros</u>	Work Schd. (Hours) <u>40 horas</u>	(Days Off) <u>Mon</u>	Business / School <u>Roberto's tacos</u>	
Residence Address: (Number & Street) <u>340 Upland</u>			Bldg./Apt. # <u></u>	City <u>Las Vegas</u>		State <u>NV</u>		Zip Code <u>89107</u>	
Bus. (Local) Address: (Number & Street) <u>907 N. RAINBOW</u>			Bldg./Apt. # <u>-</u>	City <u>LV</u>		State <u>NV</u>		Zip Code <u>89145</u>	
Best place to contact you during the day <u>Home</u>			Best time to contact you during the day <u>8-8</u>			Can You Identify the Suspect? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			

DETAILS

los hombres negros nos asataron con pistola a mi Me en serraron en la nebera y Me pidieron que serrara los bolos y que no los abriera porque sino me iban amatar y no supe mas
el miedo Me puso mas

Dissemination to Criminal Justice Agencies Only - Secondary dissemination to Non-Criminal Justice Agencies is PROHIBITED

Released to County Attorney
Las Vegas Metropolitan Police Dept.
By [Signature]

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (LOCATION) 907 S. RAINBOW BL LV NV 89145

ON THE 34 DAY OF AUGUST AT 5:15 (AM / PM), 2017

Witness/Officer:

(SIGNATURE)

Witness/Officer
LVMPD 85 (REV. 6/08)

(PRINTED)

P#

7906

SIGNATURE OF PERSON GIVING STATEMENT

APP000670

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT**

Event # 170824-0645

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime <u>ROBBERY WDW</u>	Date Occurred <u>8/24/17</u>	Time Occurred <u>0516</u>
Location of Occurrence <u>907 S. RAINBOW BL LV NV 89145</u>	Sector/Beat <u>V4</u>	<input checked="" type="checkbox"/> City <input type="checkbox"/> County

Your Name (Last / First / Middle) <u>Roman Gilss</u>		Date of Birth <u>2-8-87</u>	Social Security # <u>STDM18</u>
Race <u>Mexi</u>	Sex <u>M</u>	Height <u>1.55</u>	Weight <u>170lb</u>
Hair <u>negro</u>	Eyes <u>gofos</u>	Work Schdl. (Hours) <u>12mm-8am</u>	(Days Off) <u>MON</u>
Business / School <u>ROBERTOS</u>	Residence Address: (Number & Street) <u>340 W Pan Bv</u>	Bldg./Apt.# <u>LV</u>	State <u>NV</u>
Zip Code <u>89101</u>	Res. Phone: <u>702 999 4205</u>	Bus. Phone: <u>702 258 2699</u>	Occupation <u>COOK</u>
Bus. (Local) Address: (Number & Street) <u>390 Uptan Bv</u>	Bldg./Apt.# <u>907 N. Wmsaw WNV 89145</u>	State <u>NV</u>	Zip Code <u>89101</u>
Best place to contact you during the day <u>Home</u>	Best time to contact you during the day <u>8-8</u>	Can You Identify the Suspect?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

DETAILS

ENTRAREN 2 ombres de color
con pistola y nos amenasaron de muerte
si no les damos el dinero
nos iban a matar Trai Ropa deportiva
maskas negras como pasa Mentanos
los dos Traian pistolas los Segui adente
estaban portados estaban portados
en el la plaza Healthcare Partners plaza
Me Revaron mi cartera

Dissemination is restricted to Criminal Justice Agencies ONLY. Secondary dissemination to Non-Criminal Justice Agencies is PROHIBITED.

APR 27 2018

Released to County Attorney
Las Vegas Administration Dept.

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (LOCATION) 907 S. RAINBOW BL LV NV 89145

ON THE 24 DAY OF AUGUST AT 550 (AM/PM), 2017

Witness/Officer:

Witness/Officer:

LVMPD 85 (REV 6-08)

(PRINTED)

P#

SIGNATURE OF PERSON GIVING STATEMENT

APP000671



Administrative

Location 1401 N Decatur Las Vegas, NV 89108
Occurred On (Date / Time) Friday 8/25/2017 4:00:00 AM
Reporting Officer 15222 - Lynn, Joshua
Entered By 15222 - Lynn, Joshua
Related Cases Jumping Jack Series

Or Between (Date / Time)
Reported On 8/25/2017
Entered On 8/25/2017 4:24:08 AM
Jurisdiction Las Vegas, City of

Sector /Beat W2

Traffic Report Place Type Accident Involved

Offenses:

Robbery, E/DW(F)-NRS 200.380

Completed Yes Domestic Violence No
Entry Premises Entered
Weapons Firearm - Automatic (Type Not Stated)
Criminal Activities None/Unknown

Hate/Bias Unknown (Offenders Motivation Not Known)
Type Security Tools
Location Type Restaurant

Burglary While Poss Of Gun/Dw(F)-NRS 205.060.4

Completed Yes Domestic Violence No
Entry No Force Used Premises Entered
Weapons
Criminal Activities

Hate/Bias None (No Bias)
Type Security Tools
Location Type Restaurant

Victims:

Name: Pepe's Tacos

Victim Type Business Written Statement
Victim of 50426 - Burglary While Poss Of Gun/Dw(F)-NRS 205.060.4

Can ID Suspect

DOB Age Sex Race
Height Weight Hair Color
Employer/School
Occupation/Grade Work Schedule
Injury Injury Weapons

Ethnicity Eye Color

Dissemination is restricted to Criminal
Justice Agencies ONLY Secondary
dissemination to Non-Criminal Justice
Agencies is prohibited

Addresses

Business 1401 N Decatur Las Vegas, NV 89108 United States

Phones

Business/Work (702) 638-6200

Offender Relationships

Notes:

Name: Cruz, Reyna

Victim Type Individual Written Statement Yes
Victim of 50138 - Robbery, E/DW(F)-NRS 200.380

Can ID Suspect No

DOB 9/7/1972 Age 44 Sex Female Race White Ethnicity Hispanic or Latino
Height 5' 2" Weight 180 Hair Color Brown Eye Color Brown
Employer/School Pepe's Tacos
Occupation/Grade Work Schedule
Injury None Observed Injury Weapons Firearm - Automatic (Type Not Stated)

Addresses

Residence 9025 Desert Inn #180 Las Vegas, NV 89117 United States

Phones

Cellular (702) 423-6899

Offender Relationships

S - LNU, FNU None

Notes: Cashier

Name: Medina, Maria

Victim Type Individual Written Statement Yes
Victim of 50138 - Robbery, E/DW(F)-NRS 200.380

Can ID Suspect No

DOB 6/17/1977 Age 40 Sex Female Race White Ethnicity Hispanic or Latino
Height 5' 1" Weight 190 Hair Color Black Eye Color Brown
Employer/School
Occupation/Grade Work Schedule
8/3/2018 8:09 AM

Injury None Observed

Injury Weapons

Firearm - Automatic (Type Not Stated)

Addresses

Residence

912 Stanfford Unit B Las Vegas, NV 89110 United States

Phones

Cellular

(702) 445-8090

Offender Relationships

S - LNU, FNU

None

Notes:

Suspects:

Name: LNU, FNU

Alias:

Scope ID		DOB		Age	20	Race		Black or African American	Ethnicity	Not Hispanic or Latino
Sex	Male	Height	5' 10"	Weight	160	Hair Color		Eye Color		

Witnesses:

Name: Medina, Maria

Written Statement	Yes	Can ID Suspect	No							
DOB	6/17/1977	Age	40	Sex	Female	Race	White	Ethnicity	Hispanic or Latino	
Height	5' 1"	Weight	190			Hair Color	Black	Eye Color	Brown	

Addresses

Residence

912 Stanfford Unit B Las Vegas, NV 89110 United States

Phones

Cellular

(702) 445-8090

Notes:

Name: Toledo-Vasquez, Francisco

Written Statement	Yes	Can ID Suspect	No							
DOB	3/9/1985	Age	32	Sex	Male	Race	White	Ethnicity	Hispanic or Latino	
Height	5' 9"	Weight	180			Hair Color	Brown	Eye Color	Brown	

Addresses

Residence

5220 Pebble Bch Bld D Las Vegas, NV 89108 United States

Phones

Cellular

(702) 638-6200

Notes:

Other Entities:

Name: Contact Nevarez, Sandra Elizabeth

Written Statement	Yes	Can ID Suspect	Yes							
DOB	4/3/1995	Age	22	Sex	Female	Race	White	Ethnicity	Hispanic or Latino	
Height	5' 5"	Weight	140			Hair Color	Brown	Eye Color	Brown	
Driver License Number						Driver License State				

Addresses

Residence

5820 Velma Ave Las Vegas, NV 89108 United States

Phones

Cellular

(702) 647-3773

Business/Work

(702) 324-1609

Notes: states that possible suspect entered autozone with an unknown black female adult around 0300 hours. surveillance video available.

Properties: ()

Type: Currency, Coins, Securities, Cash

Status	Stolen	Quantity	200	Value	200.00	Color	Light Green
Description	Estimated \$200 of US currency in unknown denominations						
Manufacturer	US Government	Model		Serial No./VIN			
Vehicle Year		Body Type					
Lic Plate #		Lic Plate State		Lic Plate Exp			
Insurance Company							
Owner	V - Pepe's Tacos						

Notes:

APP000673

Narrative

On 8/25/17 at approximately 0405 hours, I Officer J. Lynn P# 15222 while operating as marked patrol unit 1W21 was dispatched to a possible robbery to the Pepe's Taco Shop at 1401 N Decatur, Las Vegas, NV 89108.

Upon arrival I met with one of the workers of the business who verbally identified herself as Reyna Cruz DOB 9/7/72. Cruz stated that around 0400 hours, she went to the rear of the kitchen area of the business to continue cleaning mats. She then returned to see an unknown black male adult dressed in a dark colored hoodie with Hollister Hawaii writing in front, gray shorts, white / red Nike shoes and a black mask covering his face behind the counter. The unknown male then produced a black in color handgun and pointed it at Cruz, demanding her to open the cash register. When Cruz was unable to do so, the suspect pressed the firearm against her neck voicing his displeasure. Cruz then called for the assistance of her coworker, Maria Medina DOB 6/17/77. Medina was then able to open the register. The suspect then demanded all the employees to the floor while her was able to remove around \$200 in unknown denominations from the cash register. The suspect then jumped the counter and exited through the north side entrance on foot northbound through the parking lot. Cruz then notified the authorities of what had occurred.

Commercial Robbery Sgt. O'Brien P# 6801 responded to the scene along with Detectives Ticano P# 6804 and Rafferty P# 8919. CSA agent K. Thomas P# 13574 responded and processed the scene.

Cruz, Medina and Francisco Toledo (works as a cook and was located in the kitchen) filled out voluntary statements of what had occurred. Cruz was also provided with a victim's information guide.

Security camera footage available.

APP000674

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENTEvent #
170825-0589

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime <u>Robbery wdw</u>	Date Occurred <u>8-25-17</u>	Time Occurred <u>0400</u>
Location of Occurrence <u>4930 VEGAS DR LV, NV 89107</u> <u>AUTO ZONE</u>	Sector/Beat <u>W2</u>	<input checked="" type="checkbox"/> City <input type="checkbox"/> County

Your Name (Last / First / Middle) <u>S. Hernandez Sandra Elizabeth</u>						Date of Birth <u>4-3-95</u>		Social Security #	
Race <u>Hisp.</u>	Sex <u>F</u>	Height <u>5'5</u>	Weight <u>140</u>	Hair <u>Brown</u>	Eyes <u>Brown</u>	Work Schdl. (Hours) <u>Spm-2am</u>	(Days Off)	Business / School	
Residence Address: (Number & Street) <u>5820 Velma Ave</u>			Bldg./Apt. #	City <u>Las Vegas</u>	State <u>NV</u>	Zip Code <u>89108</u>	Res. Phone: <u>702 647-3773</u>		
Bus. (Local) Address: (Number & Street)			Bldg./Apt. #	City	State	Zip Code	Bus. Phone: <u>702 324-1609</u>		
Best place to contact you during the day <u>Home</u>			Best time to contact you during the day <u>Any</u>			Can You Identify the Suspect? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			

DETAILS Black male and Hispanic female came into the store around 3:30 am asking for a fuse, the manager on duty at the time [Blas Martinez] helped them. I kept an eye out for the female she was a little suspicious, I looked out our store window to see the vehicle they were driving, but they didn't have one, they were on foot. They didn't end up buying anything and just stayed about 5 min. Hispanic female was wearing Jean shorts and male was wearing red shirt and shorts, I just don't remember what color.

Dissemination is restricted to Criminal Justice Agencies ONLY. Secondary dissemination to Non-Criminal Justice Agencies is prohibited.

AUG 03 2018

Released to County Attorney
Las Vegas Metropolitan Police Dept.
By [Signature]

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (LOCATION) 4930 VEGAS DR LV, NV 89107
ON THE 25 DAY OF AUGUST AT 0400 (AM / PM), _____.

Witness/Officer: [Signature] (SIGNATURE)Witness/Officer:
LVMPD 85 (REV. 6-08)J. JOHNSON
(PRINTED)P# 15464

[Signature]
SIGNATURE OF PERSON GIVING STATEMENT

APP000675

DEPARTAMENTO DE POLICIA METROPOLITANA DE LAS VEGAS
DECLARACION VOLUNTARIA

Incidente # 170825 - 0589

ESTA SECCION DEBE SER LLENADA POR UN OFICIAL

Delito <u>ROBBERY WDW</u>	Fecha de los Hechos <u>8-25-17</u>	Hora de los Hechos <u>0400</u>
Lugar de los Hechos <u>1401 N DECATUR</u>	Sector/Beat <u>W2</u>	<input checked="" type="checkbox"/> Ciudad <input type="checkbox"/> Condado

Nombre (Apellido/Nombre/Segundo Nombre) <u>Maria Medina</u>						Fecha de Nacimiento <u>6-17-77</u>	Número de Seguro Social <u>8590</u>
Raza <u>Mexicano</u>	Sexo <u>F</u>	Estatura <u>5-1</u>	Peso <u>190</u>	Cabello <u>negro</u>	Ojos <u>cafe</u>	Horario de Trabajo (Días Libres) <u>11:45- 8:15 Domingo</u>	Empleador/Escuela
Dirección: (Número y Calle) <u>912 Stanford</u>		Edif/Depto. # Ciudad <u>B Las Vegas</u>		Estado Código Postal <u>NV 89110</u>		Teléfono Casa: <u>702-445-8090</u>	
Dirección (Local) Trabajo: Número y Calle		Edif/Depto. # Ciudad		Estado Código Postal		Teléfono Trabajo:	
						Ocupación	
						Fecha de Salida (visitantes)	
Lugar para comunicarnos con ud. durante el día <u>702-445-8090</u>				Horario para comunicarnos con ud. durante el día <u>todo el tiempo</u>		Puede Identificar <input type="checkbox"/> Si al Sospechoso <input checked="" type="checkbox"/> No	

DESCRIPCION DETALLADA un muchacho como 20-25 delgado como 120 libras no estaba drogado ni borracho et estoy segura que el nos robo el 18 de junio por que reconoci su bols y la forma de actuar era la misma.

Dissemination to Criminal Justice Agencies ONLY. Secondary dissemination to Non-Criminal Justice Agencies is prohibited.

406 01 201

Releashed to County Attorney
Las Vegas Metropolitan Police Dept.
By ALM/SLC

HE LEIDO ESTA DECLARACION Y CONFIRMO LA VERACIDAD Y EXACTITUD DE LOS HECHOS ANTES MENCIONADOS. ESTA DECLARACION SE REALIZO EN (LUGAR) 1401 N DECATUR
EL DIA 8-25-17 DE 8:58 A LAS 3:58 (AM/PM).

Testigo/Oficial: J. LYNN (Firma)
Testigo/Oficial: (Con Letra de Molde)
Firma del Declarante: (Firma)

DECLARACION VOLUNTARIA

Incidente #

170825-0589

ESTA SECCION DEBE SER LLENADA POR UN OFICIAL

Delito ROBBERY WDW	Fecha de los Hechos 8-25-17	Hora de los Hechos 0400
Lugar de los Hechos 1401 N DECATUR	Sector/Beat W2	<input checked="" type="checkbox"/> Ciudad <input type="checkbox"/> Condado

Nombre (Apellido/Nombre/Segundo Nombre) Fernando Toledo Vazquez				Fecha de Nacimiento 03/09/85		Número de Seguro Social	
Raza Mex.	Sexo M.	Estatura 5'9"	Peso 180	Cabello BRO	Ojos BRO	Horario de Trabajo (Días Libres)	Empleador/Escuela
Dirección: (Número y Calle) 5220 PEBBLE BEACH BLVD D Las Vegas NV.				Edif/Depto. # Ciudad		Estado Código Postal	
Dirección (Local) Trabajo: Número y Calle				Edif/Depto. # Ciudad		Estado Código Postal	
Lugar para comunicarnos con ud. durante el día				Horario para comunicarnos con ud. durante el día		Puede Identificar <input type="checkbox"/> Si al Sospechoso <input checked="" type="checkbox"/> No	
Teléfono Casa: 702-638-6200				Teléfono Trabajo:			
Ocupación Taquero				Fecha de Salida (visitantes)			

DESCRIPCION DETALLADA Estaba ya laburando por allá cuando llegó el tipo y la cajera estaba tirando agua del trapedor, El tipo llegó apuntándonos con la pistola y hablando en inglés que yo no lo entendía, agarra la cajera agarrado de la playera y ~~me~~ encanionando con la pistola llevándola a la caja diciéndole que abra la caja y ella no podía abrir y la seguía encanionando y me apuntaba a mí, le llamamos a otra cajera para que abriera la caja, ya que abrió la caja agorro todo el dinero que avia. Después hablaba y tampoco entendía solo vi que la cajera se volteó y no mirarlo y yo hice lo mismo después baje del mostrador y salí.

Dissemination is to Criminal Justice Agencies ONL. Secondary dissemination to on-Criminal Justice Agencies is PROHIBITED.

HE LEIDO ESTA DECLARACION Y CONFIRMO LA VERACIDAD Y EXACTITUD DE LOS HECHOS ANTES MENCIONADOS. ESTA DECLARACION SE REALIZO EN (LUGAR)

EL DIA 25 DE Agosto DE 2017 A LAS 3:50 (AM/PM).

Testigo/Oficial:

[Firma]

Testigo/Oficial:

[Firma]
(Con Letra de Molde)

Released to County Attorney
Las Vegas Metropolitan Police Dept.

[Firma del Declarante]

Firma del Declarante

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

Event #

170825-0589

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime <u>ROBBERY WDW</u>	Date Occurred <u>8/25/17</u>	Time Occurred <u>04:00 am</u>
Location of Occurrence <u>Decatur - Washington - 1401 N DECATUR</u>	Section/Beat <u>W2</u>	<input checked="" type="checkbox"/> City <input type="checkbox"/> County

Your Name (Last / First / Middle)
Cruz Reina

Date of Birth

09/07/72

Race <u>Spn</u>	Sex <u>F</u>	Height <u>5'2"</u>	Weight <u>180</u>	Hair <u>Black</u>	Eyes <u>Black</u>	Work Schdl. (Hours)	(Days Off)	Business / School
Residence Address: (Number & Street) <u>9025 Desser 1m</u>		Bldg./Apt. # <u>180</u>	City <u>Las Vegas</u>	State <u>NV</u>	Zip Code <u>89117</u>	Res. Phone <u>(702) 4236899</u>		Bus. Phone <u>X</u>
Bus. (Local) Address: (Number & Street)		Bldg./Apt. #	City	State	Zip Code	Occupation		Depart Date (if visitor)
Best place to contact you during the day				Best time to contact you during the day <u>9:am to 8pm</u>			Can You Identify the Suspect? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

DETAILS

YO Reina Estaba terminada de
Trapear. Cambiando el agua en la parte de
atras del restouron. Cuando el sospechoso me
Apunto con la pistola preguntando donde estaba el
dinero me tomo por la camisa de la parte de atras
Apuntado con la pistola pidiendo q abriera la
registradora y le dije q no podia por que
Era nueva y no sabia como hacerlo.
llame a Mona Para que ella lo hiciera
Ella uno y la abrio. pero el Estaba
Enojado por q ella camineba despacio y la
Apuntaba con la pistola. para q lo hiciera
Rapido. des pues pregunto por un sobre
pidiendo mas dinero. des pues q tome el
Dinero nos pido q nos pusieramos en el
Piso y salto para aderse ir.

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS
COMPLETED AT (LOCATION) 1401 N DECATUR

ON THE _____ DAY OF _____ AT _____ (AM / PM), _____.

Witness/Officer:

[Signature]
(SIGNATURE)

Witness/Officer:

LVMPD 85 (REV. 6-08)

Lynn
(PRINTED)P# 15022

[Signature]
SIGNATURE OF PERSON GIVING STATEMENT
By Ally

APP000678