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DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

v.

MAURICIO MELENDEZ,

Defendant.

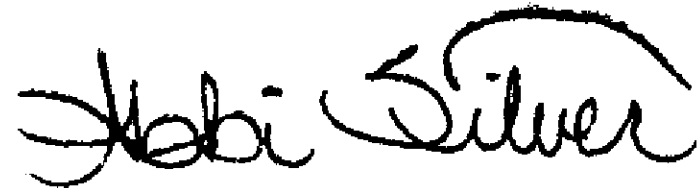
CASE NO. C247868

DEPT NO. XV

**NOTICE OF ENTRY OF ORDER**

NOTICE IS HEREBY given that the Court has entered the following Findings of Fact, Conclusion of Law and Order on April 14, 2014, a copy of which is attached hereto.

DATED this 14th day of March, 2014.



The Honorable Abbi Silver  
Eighth Judicial District Court  
Department XV

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gms  
APR 14 2014

**CERTIFICATE OF SERVICE**

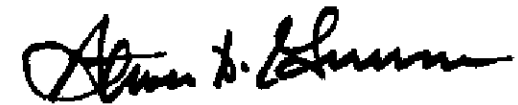
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I hereby certify that on or about the date e-filed, I mailed, emailed, faxed or placed a copy of the Decision And Order in the attorney folder in the Clerk's Office addressed to:

Karen Connolly, Esq      [advocate@kconnollylawyers.com](mailto:advocate@kconnollylawyers.com)  
Ryan MacDonald, DDA      [ryan.macdonald@clarkcountyda.com](mailto:ryan.macdonald@clarkcountyda.com)

  
Judicial Executive Assistant DC XV

1 **ORDR**



CLERK OF THE COURT

3 **DISTRICT COURT**

4 **CLARK COUNTY, NEVADA**

6 STATE OF NEVADA,	)	CASE NO. C247868
	)	
7 Plaintiff(s),	)	DEPT NO. XV
	)	
8 v.	)	
	)	
9 MAURICIO MELENDEZ,	)	
	)	
10 Defendant(s)	)	
	)	
	)	
	)	

13 **FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER**

14 THIS CAUSE having come on for hearing before the Honorable ABBI SILVER,  
 15 District Judge on January 23, 2014, the Petitioner being present, represented by his  
 16 attorney KAREN CONNOLLY, ESQ., the Respondent being represented by STEVEN B.  
 17 WOLFSON, District Attorney, by and through RYAN MACDONALD, Chief Deputy  
 18 District Attorney, and the Court having considered the matter including briefs, transcripts,  
 19 arguments of counsel, and documents on file herein, now therefore, the Court makes the  
 20 following findings of fact and conclusions of law:  
 21

22 **FACTS OF THE CASE**

23 Petitioner Mauricio Melendez (hereinafter "Petitioner") lived with his wife,  
 24 Chennel, and their seven-year old son, Ciran, at an apartment in Las Vegas, Nevada. The  
 25 Petitioner worked at the Paris and Bally's hotels as a clerk. Petitioner and his wife were  
 26 both off work on August 6, 2008, and the family had a barbeque in the afternoon. Both  
 27

APR 11 2014

28 **ABBI SILVER**  
DISTRICT JUDGE

1 Petitioner and his wife were drinking. The family went to a convenience store to buy beer  
2 and put gas in the car before returning home. Petitioner and his wife sat at the dining table,  
3 talking and drinking alcohol. Ciran was in the bedroom playing video games. Petitioner  
4 and his wife were not arguing, yelling, or fighting. At some point, Ciran fell asleep, but his  
5 bedroom door remained open.

6 While they sat at the table drinking, Petitioner showed his wife how to use his gun.  
7 At the time, Petitioner and his wife were still drinking. According to the Petitioner, he  
8 accidentally shot his wife while showing her how to use the gun.  
9

10 Ciran was awakened by a loud bang at about 12:45 a.m. Ciran entered the living  
11 room and saw his mother bleeding from her ears at the kitchen table. Ciran asked the  
12 Petitioner what was wrong with Chennel. Petitioner told him that the red substance was  
13 juice. Ciran went back to sleep. When Ciran got up the next morning, his mother was lying  
14 on the couch wrapped in blankets. The Petitioner then called 911, and said that Chennel  
15 had been shot when they were playing with a handgun. The Petitioner took photographs of  
16 his deceased wife.  
17

18 Chennel Melendez died as a result of a single gunshot wound to the head. Chennel  
19 had no other injuries to her person. The autopsy revealed Chennel's blood alcohol level  
20 was .16 hours after death.  
21

### 22 FINDINGS OF FACT

23 1. On September 23, 2008, Mauricio Melendez (hereinafter "Petitioner") was  
24 charged by way of information with one count of MURDER WITH USE OF A DEADLY  
25 WEAPON (Felony – NRS 200.010, 200.030, 193.165).

26 2. Petitioner's jury trial commenced on July 27, 2009, with Christy Craig and Scott  
27 Coffee from the Clark County Public Defender's Office representing the Defendant.  
28

1           3. On July 31, 2009, the jury found the Petitioner guilty of First Degree Murder  
2 with use of a Deadly Weapon.

3           4. On September 17, 2009, the Court sentenced the Petitioner to TWENTY (20)  
4 years to LIFE in prison, plus a consecutive term of EIGHT (8) years to TWENTY (20)  
5 years in prison for the weapon enhancement.

6           5. On October 15, 2009, the Petitioner appealed, represented by Audrey Conway  
7 of the Clark County Public Defender's Office. Counsel filed the Appellate Brief on July  
8 12, 2010. The State responded on September 22, 2010. Counsel for the Petitioner replied  
9 November 22, 2010. On August 30, 2011, the Nevada Supreme Court affirmed the  
10 conviction.

11           6. Petitioner's Pro Per Petition for Writ of Habeas Corpus (Post Conviction) was  
12 filed on February 12, 2012. The Petitioner alleged that he had received ineffective  
13 assistance of counsel under the Fifth, Sixth and Fourteenth Amendments to the United  
14 States Constitution and Strickland v. Washington, 466 U.S. 668, 697, 104 S. Ct. 2052  
15 (1984), raising the following grounds for relief: failure of trial counsel to retain, consult,  
16 or utilize at trial an expert as to the customs and practices of El Salvador as they related to  
17 petitioner and the facts and circumstances of the alleged incidents; failure of trial counsel  
18 to object pursuant to Melendez-Diaz v. Massachusetts to use of a substitute coroner by the  
19 state to testify at trial; failure of trial counsel to communicate the state's plea offer to  
20 petitioner; failure to address the issue of destruction of evidence (petitioner's blood) at any  
21 state of proceeding; failure to consult with or hire and/or retain the services of a  
22 toxicologist/expert on intoxication; failure to properly prepare for the testimony of Claudia  
23 Egglestone; failure to retain, consult, or utilize trial experts to investigate and testify as to  
24 the shooting; failure to object to the testimony of Detective Steven Popp at trial; failure to  
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1 object and to preserve for the record the improper admission of testimony of Claudia  
2 Egglestone; failure to otherwise preserve for the record the testimony of Nicole  
3 Todorovich; failure to prepare viable defenses to the charges at trial; failure to obtain  
4 client's consent before conceding guilt at trial; and ineffective assistance of appellate  
5 counsel for failing to raise meritorious issues on appeal.

6 7. On March 14, 2012, the State was ordered to respond to the petition. State's  
7 Response to Petitioner's Petition for Writ of Habeas Corpus (Post Conviction) and  
8 Opposition to Petitioner's Motion to Appoint Counsel and Motion for Discovery was filed  
9 by on May 9, 2012.

10 11 8. On May 31, 2012, the court referred the matter for appointment of counsel. On  
12 June 7 2014, the Court appointed undersigned counsel. On April 5, 2013, Supplement to  
13 Petition for Writ of Habeas Corpus was filed. Counsel raised additional grounds: failure to  
14 conduct an adequate investigation; failure to object to the improper testimony of Melissa  
15 Hill; failure to object to the improper testimony of Nicole Todorovich; failure to file a  
16 motion to suppress petitioner's statement, failure of appellate counsel to object to the  
17 district court giving Jury Instructions numbers 7, 26 and 34; and failure of appellate  
18 counsel to raise all meritorious issues.

19 20 9. On April 9, 2013, the Petitioner filed an Amendment to Supplement to Petition  
21 for Writ of Habeas Corpus-Post Conviction. On June 6, 2013, the State filed a Response to  
22 Supplement to Petition for Writ of Habeas Corpus and Amendment Thereto. On July 8,  
23 2013, Petitioner filed his Reply to State's Response to Supplement to Petition for Writ of  
24 Habeas Corpus and Amendment Thereto. A report from George Schiro, MS, F-ABC,  
25 consulting Forensic Scientist was attached as an Exhibit.  
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10. On August 16, 2013, Petitioner filed the Second Supplement to Petition for Writ of Habeas Corpus-Post Conviction. The State filed its Response on November 18, 2013, and the Petitioner filed his Reply on January 14, 2014.

11. This Court held a hearing on Petitioner's Petition on January 23, 2014. Petitioner was present and represented by counsel, Ms. Karen A. Connolly, Esq., and Petitioner's trial counsel, Ms. Craig and Mr. Coffee, were also present and testified in response to Defendant's claims.

12. The Petitioner claimed that trial counsel were ineffective for conceding the Petitioner's guilt at trial. In her opening statement, Ms. Craig assured the jury that death of Chennel Melendez was an accident, and that there would be absolutely no evidence of motive or evil intent. The Petitioner proclaimed his innocence, testifying that the shooting was accidental. However, Mr. Coffee, in his very last statement to the jury, conceded his client's guilt, telling the jury they should convict him of manslaughter.

14. During the evidentiary hearing, Ms. Craig testified that the defense in this case was accident and this continued to be her belief and defense – that the shooting was accidental, not a criminal act.

15. The Petitioner was not consulted prior to the concession of guilt by Mr. Coffee. The concession of guilt undermined Petitioner's own testimony, and was contrary to the entire theory of defense and the entire defense strategy as discussed by lead counsel, Ms. Craig.

16. Under the facts and circumstances of this case, trial counsel's concession of guilt was objectively unreasonable and amounted to ineffective assistance of counsel. Jones v. Edwards, 110 Nev. 730, 877 P.2d 1052 (1994), Strickland v. Washington, 466 U.S. 668 (1984)

1 17. This defense strategy in this case was always accidental shooting, making this  
2 case unlike Nixon v. Florida, 543 U.S. 175, 125 S.Ct. 551 (2004) in which counsel  
3 followed a reasonable strategy in conceding guilt to maintain credibility during the penalty  
4 phase. Here, telling the jury that the Petitioner was guilty of manslaughter undermined the  
5 credibility of the entire defense.

6 18. The Petitioner claimed that trial counsel was ineffective for stipulating to the  
7 admission of the autopsy report. Dr. Jacqueline Benjamins performed the victim's autopsy  
8 in this case, but at the time of trial Dr. Benjamins was no longer employed by the  
9 Coroner's Office and she did not testify at trial.

10 19. Trial counsel stipulated to the admission of Dr. Benjamins' autopsy report at  
11 trial. The defense's theory was accident; however, the autopsy report stated that the cause  
12 of death was a gunshot wound to the head and manner of death was homicide.

13 20. It was not objectively reasonable for trial counsel to stipulate to the admission  
14 of the autopsy report. The report was prejudicial to the Petitioner because it listed the  
15 manner of death as homicide, when the Petitioner's entire defense was accident.

16 21. The admission of the Dr. Benjamins' autopsy report amounted to a violation of  
17 Petitioner's constitutional right to confrontation protected under the Sixth Amendment to  
18 the United States Constitution. The autopsy report was a crucial piece of evidence, it was  
19 not cumulative. But for counsel's error in stipulating to the admission of the autopsy  
20 report, it would not have been admissible, and there is a reasonable probability the result of  
21 the trial would have been different. Therefore, counsel was ineffective for stipulating to the  
22 admission of Dr. Benjamins' autopsy report.

23 22. Moreover, trial counsel did not object to the testimony of Dr. Larry Simms,  
24 who testified as the State's forensic pathologist at trial. Dr. Simms did not perform the  
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autopsy. Dr. Simms' testimony was not independent; rather, it was based on Dr. Benjamins' autopsy report, her x-rays, and photos shown during trial. Dr. Simms testified that he relied upon the autopsy report in rendering his opinions.

23. From a foundational perspective, absent admission of the autopsy report, the prosecution could not establish sufficient facts to support Dr. Simms' testimony. See, Williams v. Illinois, 132 S.Ct. 2221 (2012).

24. It was not objectively reasonable for trial counsel to fail to object to Dr. Simms' testimony. Dr. Simms' testimony prejudiced Petitioner. Therefore, counsel was ineffective for failing to object to Dr. Simms' testimony. But for counsel's error in failing to object to the testimony of Simms, there is a reasonable probability the result of the trial would have been different.

25. Petitioner claimed that trial counsel was ineffective for failing to consult or utilize any experts in relation to this case. It was the defense position that Petitioner and his wife were drunk and the gun accidentally discharged.

26. Ms. Craig testified that she believed the Petitioner's video recorded statement and testimony would be persuasive and powerful, such that the jury would find this was an accidental shooting. Ms. Craig further testified that she did not believe she needed to consult with any experts because the Petitioner's testimony was enough of an explanation for what happened.

27. During trial, the State sought in rebuttal to reconstruct the shooting to prove it could not have been accidental, and that the victim was shot "execution style." The State discussed bullet trajectory, angles, and the weight of the trigger pull to prove that the shooting was not accidental. The State used the unchallenged testimony of its experts that the trigger pull required pressure equivalent to half a gallon of milk before the gun would

1 discharge, and the State further argued that the pounds of pressure it would take to cock the  
2 hammer was equivalent to a ten-pound bag of potatoes.

3 28. Trial counsel did not present any expert testimony to refute the State's  
4 allegations, or to support the defense theory that the shooting was accidental.

5 29. Considering the facts and circumstances of this case, it was objectively  
6 unreasonable to believe that the Petitioner's testimony alone would be sufficient to  
7 convince a jury that the shooting was accidental.

8 30. Post-Conviction counsel hired George Schiro, MS-F-ABC, Consulting Forensic  
9 Scientist, who prepared a report that was attached to the Reply to State's Response to  
10 Supplement to Petition for Writ of Habeas Corpus and Amendment Thereto.

11 31. At the evidentiary hearing, trial counsel was questioned about Mr. Schiro's  
12 report and his findings. Mr. Schiro's report indicated that the testimony that the gun's  
13 trigger pull was the equivalent of holding half a gallon of milk with one finger was  
14 mischaracterized, and rather, that a slight amount of pressure to move the trigger a few  
15 millimeters was all that would be necessary to discharge the firearm once it was cocked.

16 32. Mr. Schiro further opined that the State's argument regarding bullet trajectory  
17 was also incorrect, and refuted the State's contention that the bullet path was a 10-degree  
18 downward angle. Mr. Schiro opined that the position of the bullet's path would lend  
19 support to the shooting being accidental.

20 33. Trial counsel did not present any expert testimony regarding the gun or the  
21 bullet's trajectory, and did not consult with any experts regarding this case. Trial counsel  
22 should have consulted with or presented an expert at trial in light of the defense theory that  
23 this was an accidental shooting.  
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1 34. It was objectively unreasonable to not consult with any experts regarding the  
2 defense theory, and the strategic decision to not call any experts was made after a less than  
3 adequate investigation. Therefore, trial counsels' decision was not reasonable, and counsel  
4 was ineffective for failing to adequately investigate and support the theory of defense.

5 35. Petitioner claimed that trial counsel was ineffective in counsels' interactions  
6 and subsequent questioning of the victim's sister, Claudine Egglestone.

7 36. During opening statements, Ms. Craig told the jury there would be no evidence  
8 of motive presented during the trial.

9 37. To establish the requisite intent for intentional, first-degree murder, the State  
10 portrayed the Petitioner as a controlling husband whose wife wanted a divorce. The State  
11 provided evidence of motive through the testimony of Ms. Egglestone, who was listed as a  
12 State's witness.

13 38. Ms. Craig testified that, prior to trial, she attempted to speak to Ms. Egglestone  
14 regarding the victim, but did so in the absence of a third-party or investigator. Ms. Craig  
15 testified that Ms. Egglestone was uncooperative. Ms. Craig also testified that counsel  
16 should always have a third-party present when witnesses are interviewed.

17 39. At trial, Ms. Egglestone testified that Melendez would sometimes answer her  
18 sister's phone when Ms. Egglestone called and hung up on her or "wouldn't let" her speak  
19 to the deceased. Ms. Egglestone also testified that the victim told her she was not happy in  
20 her marriage, but that the victim did not leave out of concern that the Petitioner would take  
21 their son. There was no evidence that the Petitioner was even aware of these conversations.

22 40. At trial, defense counsel attempted to discredit Ms. Egglestone by attempting to  
23 portray her as hostile to the defense and biased in favor of the State, with whom she had  
24 communicated frequently. Defense counsel accused her of refusing to cooperate with  
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1 defense counsel. However, Ms. Egglestone testified that she had tried to track down  
2 defense counsel to speak to them. At the evidentiary hearing, Ms. Craig testified that Ms.  
3 Egglestone's allegations were false, and Ms. Egglestone had never attempted to contact the  
4 defense.

5 41. Due to trial counsel's inability to communicate with Ms. Egglestone, and the  
6 failure of counsel to gain Ms. Egglestone's cooperation by using an investigator or other  
7 third party, Mr. Coffee's attempts to discredit her at trial had the opposite effect, and  
8 bolstered her testimony.  
9

10 42. Trial counsel was ineffective in failing to request from the State and/or the  
11 court that the witness be made available to be interviewed.

12 43. Ms. Egglestone's testimony undermined the entire theory of defense, included  
13 information about prior bad acts, and was not impeached due to ineffective assistance of  
14 counsel. Ms. Egglestone's testimony was prejudicial to the Petitioner, and trial counsel's  
15 failure to contact her in the presence of a third-party witness or through an investigator was  
16 objectively unreasonable.  
17

18 44. Moreover, if Ms. Egglestone refused to talk to defense counsel about her sister,  
19 defense counsel should have formally requested from the State that Ms. Egglestone be  
20 made available to them. If the State refused to assist, trial counsel would have been able to  
21 file a motion so the court could have directed that Ms. Egglestone be made available.  
22 Finally, trial counsel filed a motion before trial, would have had the opportunity to brief  
23 and object to the substance of Ms. Egglestone's testimony on hearsay grounds and/  
24 requested a limiting instruction before trial under Tabish v. State, 119 Nev. 293, 72 P.3d  
25 584 (2003).  
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1           45. The Nevada Supreme Court found that Ms. Egglestone's hearsay testimony was  
2 improperly admitted. However, the court also found the error to be harmless under the  
3 circumstances, referring in part to the un-refuted expert testimony in what the Supreme  
4 Court referred to as an otherwise fair trial. However, when instances of ineffective  
5 assistance of counsel addressed herein are taken into consideration, the trial was not  
6 otherwise fair. Therefore, Ms. Egglestone's testimony was not harmless.

7           46. Petitioner claimed that trial counsel was ineffective for failing to retain, consult,  
8 or utilize at trial an expert as to the customs and practices in El Salvador as they related to  
9 Petitioner and the facts and circumstances of the incident. However, Ms. Craig testified  
10 that she had worked with clients from El Salvador and was familiar with their customs.  
11 Counsel was not ineffective.

12           47. Ms. Craig, testified that she had extensive and significant memories regarding  
13 conversations with Petitioner about the plea offer extended by the state. Accordingly, there  
14 was no Missouri v. Frye, 132 S.Ct. 1399 (2012) or Lafler v. Cooper, 132 S.Ct. 1376 (2012)  
15 error.

16           48. Petitioner claimed that trial counsel was ineffective for failing to address the  
17 issue of destruction of evidence, specifically Petitioner's blood. Police did not preserve  
18 and/or determine Petitioner's blood alcohol content. However, evidence established that  
19 Petitioner and his wife were drinking heavily together and that the victim's blood alcohol  
20 level was .16. Therefore, there was no error in not testing the alcohol content of  
21 Petitioner's blood, and counsel was not ineffective.

22           49. Petitioner claimed that trial counsel was ineffective in failing to consult with or  
23 hire and/or retain the services of a toxicologist/expert on intoxication. However, there was  
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evidence presented at trial that both parties had been drinking heavily. Therefore, counsel was not ineffective.

50. Petitioner claimed that trial counsel was ineffective for failing to contemporaneously object to the testimony of Detective Steven Popp at trial. Det. Popp's testimony to the effect that the shooting was a murder/suicide gone awry was akin to lay testimony, not expert testimony. Therefore, counsel was not ineffective.

51. Trial counsel was not ineffective in regard to the testimony of Melissa Hill.

52. Trial counsel was not ineffective in failing to file a motion to suppress Petitioner's statement.

53. Trial counsel was not ineffective in failing to object to jury instruction numbers 7, 26, and 34.

54. Appellate counsel raised all meritorious issues on appeal and was not ineffective.

**CONCLUSIONS OF LAW**

1. To prevail on a claim of ineffective assistance of trial counsel, "a defendant must demonstrate (1) that counsel's performance was deficient and (2) that counsel's deficient performance prejudiced the defense." Strickland v. Washington, 466 U.S. 668, 697, 104 S. Ct. 2052 (1984); McConnell v. State, 125 Nev. 243, 212 P.3d 307, 313 (2009). A defendant is entitled to relief where "counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Strickland, 466 U.S. at 687, 104 S. Ct. at 2064; Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984) Deficient performance requires a showing that trial counsel's representation of the defendant fell below and objective standard of reasonableness. Id.

1 2. "A court considering a claim of ineffective assistance must apply a strong  
2 presumption that counsel's representation was within the wide range of reasonable  
3 professional assistance." Harrington v. Richter, 131 S. Ct. 770, 787 (2011).

4 3. "To overcome that presumption, a [petitioner] must show that counsel failed to  
5 act reasonably considering all the circumstances." Cullen v. Pinholster, 131 S. Ct. 1388,  
6 1403 (2011). Petitioner must also show prejudice, which is "a reasonable probability that,  
7 but for counsel's unprofessional errors, the result of the proceeding would have been  
8 different." Strickland, 466 U.S at 694. "A reasonable probability is a probability sufficient  
9 to undermine confidence in the outcome." Id., Kirksey v. State, 112 Nev. 980, 923 P.2d  
10 1102 (1996).

11 4. Although a concession of guilt strategy is no longer considered the equivalent of  
12 a guilty plea necessitating a canvass by the trial court, the reasonableness of counsel's  
13 performance is still a matter to be determined in an appropriate proceeding based on  
14 ineffective assistance of counsel claims. Armenta-Carpio v. State, 306 P.3d 395, 396  
15 (2013).

16 5. When counsel, to the surprise of his client, admits his client's guilt during the  
17 guilt phase of trial, the harm is so likely and so apparent, that the issue of prejudice need  
18 not be addressed. Jones v. State, 110 Nev. 730, 739 (1994), *quoting* State v. Harbison, 315  
19 N.C. 175 (1985).

20 6. Under Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354 (2004), the  
21 testimonial statement of an otherwise unavailable witness is inadmissible "unless the  
22 defendant had an opportunity to previously cross-examine the witness regarding the  
23 witness's statement." Id., Medina v. State, 122 Nev. 346, 143 P.3d 471, Polk v. State, 233  
24 P.3d 357 (2010).

1 7. A report is testimonial if “it would lead an objective witness to reasonably  
2 believe that the statement would be available for use at a later trial.” Vega v. State, 236  
3 P.3d 632 (2010).

4 8. In Melendez-Diaz v. Massachusetts, 557 U.S. 305, 129 S.  
5 Ct. 2527(2009), the United States Supreme Court held that forensic reports that certify  
6 incriminating test results are testimonial in nature and that their admission into evidence  
7 without being subject to cross examination is a violation of the Confrontation Clause.

8 9. In Bullcoming v. New Mexico, the Court reaffirmed the five justice majority  
9 ruling in Melendez-Diaz, and established that scientific reports could not be used as  
10 substantive evidence against a defendant unless the analyst who prepared and certified the  
11 report was subject to confrontation. 131 S. Ct. 2705 (2011). The prosecution may not  
12 introduce a report containing testimonial certification, made for the purposes of proving a  
13 particular fact, through the in-court testimony of a scientist who did not sign the  
14 certification or perform or observe the test reported. Id. at 2713.

15 10. In Vega v. State, 236 P.3d 632 (2010), the Nevada Supreme Court held that the  
16 nurse’s report was testimonial hearsay and should not have been admitted, but that a  
17 testifying physician can testify if they form an independent conclusion that is not based on  
18 testimonial evidence.

19 11. Potential prejudice from a Crawford Confrontation Clause error is reviewed for  
20 harmless error. The United States Supreme Court has identified a host of factors to be  
21 considered. These factors include “the importance of the witness’ testimony in the  
22 prosecution's case, whether the testimony was cumulative, the presence or absence of  
23 evidence corroborating or contradicting the testimony of the witness on material points, . . .  
24 and, of course, the overall strength of the prosecution's case.” Medina v. State, 122 Nev.  
25 346, 143 P.3d 471 (2006)  
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1           12. The State could not have met the burden of proving beyond a reasonable doubt  
2 that the confrontation clause error did not contribute to the verdict and was thus harmless.  
3 Polk v. State, 233 P.2d 257 (2010).

4           13. In Warner v. State, 102 Nev. 635, 729 P.2d 1359 (1986), the Nevada Supreme  
5 Court found that trial counsel was ineffective when failing to conduct an adequate pretrial  
6 investigation, failed to properly utilize the public defender's full time investigator,  
7 neglected to consult with other attorney's although urged to do so, and failed to prepare for  
8 the testimony of defense witnesses  
9

10           14. In State of Nevada v. Love, 865 P.2d 322, 109 Nev. 1136, (1993), the Supreme  
11 Court upheld a reversal for ineffective assistance of counsel for failure of trial counsel to  
12 properly investigate and interview prospective witnesses. Under Strickland, strategic  
13 choices made after less than complete investigation are reasonable precisely to the extent  
14 that reasonable professional judgments support the limitations on investigation. Id.

15           15. Trial counsel must, at a minimum, conduct a reasonable investigation enabling  
16 him to make informed decisions about how to best represent his client. Phillips v.  
17 Woodford, 267 F.3d 966, 978 (9th Cir. 2001).

18           15. It is clearly established Supreme Court law that the failure to conduct a  
19 reasonable investigation constitutes deficient performance. Visciotti v. Woodford, 288  
20 F.3d 1097, 1110 (9th Cir. 2002). Counsel has a duty to make reasonable investigations or  
21 to make a reasonable decision that makes particular investigations unnecessary. Id. citing  
22 Strickland v. Washington, 466 U.S. 688, 104 S.Ct. 2052 (1984). In assessing the  
23 reasonableness of counsel's performance, the court must judge "counsel's challenged  
24 conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id.  
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1           16. Strategic choices made after less than complete investigation are reasonable  
2 precisely to the extent that reasonable professional judgments support the limitations on  
3 investigation. Strickland, 466 U.S. 688 (1984).

4           16. Even when a single dereliction of counsel is not sufficient alone to warrant  
5 relief, the cumulative effect of the instances of ineffective counsel alleged herein warrant  
6 relief. See McConnell v. State, 125 Nev. 243, 246, 212 P.3d 307 (2009).

7           17. Multiple deficiencies in counsel's performance may be cumulated for purposes  
8 of the prejudice prong of the Strickland test when the individual deficiencies otherwise  
9 would not meet the prejudice prong. See, e.g., Harris by and through Ramseyer v. Wood,  
10 64 F.3d 1432, 1438 (9th Cir. 1995) (stating that "prejudice may result from the cumulative  
11 impact of multiple deficiencies" (quoting Cooper v. Fitzharris, 586 F.2d 1325, 1333 (9th  
12 Cir. 1978))); Schofield v. Holsey, 281 Ga. 809, 642 S.E.2d 56, 60 n.1 (Ga. 2007), cert.  
13 denied, 552 U.S. 1070, 128 S. Ct. 728; State v. Thiel, 264 Wis. 2d 571, 665 N.W.2d 305,  
14 323 (Wis. 2003) (stating that it "need not look at the prejudice of each deficient act or  
15 omission in isolation, because we conclude that the cumulative effect undermines our  
16 confidence in the outcome of the trial")

17           18. The cumulative effect of errors may violate a defendant's constitutional right to  
18 a fair trial even though errors are harmless individually. McConnell v. State, 125 Nev. 243,  
19 212 P.3d 307 (2009.)

20           19. Relevant factors to consider in evaluating a claim of cumulative error include  
21 whether "the issue of innocence or guilt is close, the quantity and character of the error,  
22 and the gravity of the crime charged." Leonard v. State, 969 Nev. 288, 301 (1998) *citing*  
23 Homick v. State, 112 Nev. 304, 316, 913 P.2d 1280 (1996) (quoting Big Pond, 101 Nev. at  
24 3, 692 P.2d at 1289), cert. denied, 117 S.Ct. 519, 136 L.Ed.2d 407 (1996).  
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20. Based upon the above and foregoing, if not singularly, the cumulative effect of the instances of ineffective assistance of counsel catalogued herein warrant relief. McConnel v. State, 125 Nev. 243, 246, 212 P.3d 307, 313 (2009)

21. Taken as a whole, the performance of trial counsel fell below any objective standard of reasonableness to such an extent that it rendered verdict unreliable and the trial unfair. See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984), cert. denied, 471 U.S. 1004 (1985).

Accordingly, the petition is granted.

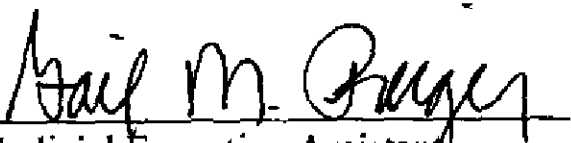
DATED this 11 day of April, 2014.

  
JUDGE ABBI SILVER  
EIGHTH JUDICIAL COURT XV

**CERTIFICATE OF SERVICE**

I hereby certify that on or about the date e-filed, the foregoing was e-served, e-mailed, or a copy of the above document was placed in the attorney's folder in the Clerk's Office, or mailed to the following:

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