> Two discrete inquiries are essential to this determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was at liberty to terminate the interrogation and leave. Once the scene is set and the players' lines and actions are reconstructed, the court must apply an objective test to resolve the ultimate inquiry: was there a formal arrest or restraint on freedom of movement of the degree associated with formal arrest.

Id. at 270 (quoting *Thompson v. Keohane*, 516 U.S. 99, 112 (1995)). Courts are to "examine all the circumstances surrounding the interrogation." *Id.* at 270–71 (citation omitted). But "officers are not required to 'make guesses' as to circumstances 'unknowable' to them at the time." *Id.* at 271 (citation omitted).

To summarize the evidence described above, Redeker was: handcuffed for thirty minutes before consenting to having police officers look through his house and car to try to locate Tuk early in the encounter; asked if he felt like talking and didn't respond; told that he was not under arrest; told that he could not go back into the house; told that he had to talk to Jackson *if* he wanted to help find Tuk; allowed to "meander" around the front yard smoking cigarettes and eating McDonalds; asked if he would come to the police station; transported to the police station in the front seat of a unmarked car without handcuffs; given a soda when he arrived; allowed to voluntarily sit down in the room, where he was not told that he was being taped; and questioned for a total of under two hours over a timespan of six-and-a-half hours before the confession. *Cf. United States v. Crawford*, 372 F.3d 1048, 1060 (9th Cir. 2004) (noting that whether a suspect is told they are not under arrest is the factor "most significant for resolving the question of custody"). Moreover, officers throughout the day were appealing to Redeker's desire to find Tuk more than threatening him with arrest. *See Yarborough*, 541 U.S. at 664 ("Instead of pressuring Alvarado with the threat of arrest and prosecution, she appealed to his interest in telling the truth and being helpful to a police officer."). Admittedly, this is far from a clear case. But in sum, a reasonable person would have felt that this was more an attempt to find Tuk than incriminate Redeker; this falls short of the "ultimate inquiry" of there being "a formal arrest or restraint on freedom of movement of the degree associated with formal arrest." *J.D.B.*, 564 U.S. at 270 (citation omitted). Therefore, Redeker's claim that his

statements were elicited in violation of *Miranda* fail, and for the same reason, his claim that he was under *de facto* arrest fails.

But even if Redeker's statements at his house were in violation of *Miranda* because he was "in custody," the intervening facts between leaving his house with Hardy and confessing to Hardy preclude a finding that he was in custody at the police station. And because the admission of any statements that Redeker made to the detectives was harmless beyond a reasonable doubt in light of the other evidence, Redeker's claim to suppress the police station interrogation would still fail. *See Chapman*, 386 U.S. at 24.

Alternatively, even if Redeker's statements before being *Mirandized* were the result of a custodial interrogation in violation of his constitutional rights, he would not be entitled to relief. The admission of any pre-*Miranda* statements would be harmless beyond a reasonable doubt if the post-*Miranda* statement were admissible. *See Chapman*, 386 U.S. at 24. The question in such a case would be whether the *post-Miranda* statements were still elicited in violation of *Miranda* under *Missouri v. Seibert*, 542 U.S. 600 (2004). *Seibert* holds that *Miranda* warnings are inadequate if the police deliberately use a two-step process to first extract an unwarned confession and then re-extract the confession after giving a warning unless adequate curative measures are taken "to ensure that later *Miranda* warnings are genuinely understood." *Reyes v. Lewis*, 833 F.3d 1001, 1029 (9th Cir. 2016). Thus, to be excluded, the two-part strategy must have been used deliberately and the later curative *Miranda* warnings must have been inadequate.

To determine if the two-step strategy was deliberate, I look at both objective and subjective evidence "to support an inference that the two-step interrogation procedure was used to undermine the *Miranda* warning." *United States v. Williams*, 435 F.3d 1148, 1158 (9th Cir. 2006). The Ninth Circuit has provided a "nonexhaustive list of probative objective evidence of deliberateness" including "the timing, setting and completeness of the prewarning interrogation, the continuity of police personnel and the overlapping content of the pre- and postwarning statements." *Reyes*, 833 F.3d at 1030 (quoting *Williams*, 435 F.3d at 1159). "Once a law enforcement officer has detained a subject and *subjects him to interrogation* . . . there is rarely, if ever, a legitimate reason to delay

giving a *Miranda* warning until after the suspect has confessed. Instead, the most plausible reason for the delay is an *illegitimate* one, which is the interrogator's desire to weaken the warning's effectiveness." *Williams*, 435 F.3d at 1159.

This, though, is far from the typical case. The police officers were not responding to a homicide—they were responding to a missing person report, a basic welfare check. While there was, of course, always the possibility that it was a homicide—and, indeed, homicide detectives were called—the questions were primarily focused on trying to locate Tuk. Giving *Miranda* warnings has the partially-intended consequence of having people actually choose to exercise their rights to remain silent or to a have an attorney—both of which would be unlikely to aid in finding Tuk. And while Redeker's seeming desire not to answer questions at times might lead some to think that he was trying to hide something, his mental health history and the fact that he might have been intoxicated that evening provide another reasonable explanation. Moreover, even if they thought Redeker was trying to hide something, it is not clear what. Perhaps after their fight, Tuk drove off and got injured, and Redeker blamed himself. Or he rammed her car and left her in a ditch. These are, of course, pure conjecture, but they are relevant to whether Hardy *deliberately* sought an unwarned confession in the hopes of re-*Mirandizing* him and getting a new confession afterward.

Moreover, how the first confession played out, and the types of questions that Hardy was asking, shows that he was more focused on finding Tuk than on incriminating Redeker. After general questions about Tuk and Redeker had come to a standstill, Redeker drew a map, pointed to a road, and said "that's where she's at." (Exhibit 251 at 4–5; *see also* Exhibit 128 at 12). He was asked how she got there, why she was out there, and if she was okay. He said "earlier today," and "no, she'd dead." (Exhibit 251 at 5). Detective Hardy asked him why she was dead—perhaps she might have only been in an accident still needing medical help—and Redeker responded "I don't know." (*Id.*). Hardy asked whether they had an argument earlier in the day, to which Redeker responded yes. (*Id.*). He then tried to get Redeker to take them to Tuk and asked if he would at least help them find the right road. After trying to narrow down which road, Hardy finally asked how she died. (*Id.* at 5–6). Redeker responded "Strangulation." (*Id.* at 6). Hardy asked "Did you strangle her

or did somebody else?" and Redeker replied "I did." (*Id.*). Hardy then read Redeker his *Miranda* rights. (*Id.*).

Hardy then starting asking questions that were focused more on inculpating Redeker than on finding or saving Tuk. He asked "how'd you strangle her?" and tried to find out "what, ah, led up to all this" and whether he "mean[t] for it to happen" or if he "felt bad about" it. (*Id.* at 7–8). He then asked whether Redeker had been drinking and what led up to Tuk's death. (*Id.* at 8). Hardy ended up getting a detailed explanation of the events that led up to what happened and why Redeker became so upset with her. (*See id.* at 9–38).

On the one hand, the two interrogations happened back-to-back, in the same place, without a break, and with the same two law enforcement officers. But on the other hand, there was a substantial difference between the content and degree of specificity elicited in the two interviews. *See Reyes*, 833 F.3d at 1030 (noting that factors include "the timing, setting and completeness of the prewarning interrogation, the continuity of police personnel and the overlapping content of the pre- and postwarning statements" (quoting *Williams*, 435 F.3d at 1159)). While consideration of only these factors might lead to the conclusion that the two-step process was deliberate, they are non-exhaustive. *See id.* Based on the totality of the circumstances as described above, I find that the two-step inquiry was not deliberate and that, therefore, the second confession was not tainted by the lack of a *Miranda* warning before the first one.

Ground 5 provides no basis for habeas relief. Nonetheless, because Redeker has made a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c), I issue a certificate of appealability as to Ground 5. *See* Fed. R. App. P. 22(b); *United States v. Asrar*, 116 F.3d 1258, 1270 (9th Cir. 1997).

E. Ground 6

In Ground 6, Redeker argues that the "trial court erroneously admitted post-it notes found in Redeker's home, in violation of his right to be free of unlawful searches and seizures, his right to confrontation and his right to due process as guaranteed by Amendments four, five, six and fourteen

of the United States Constitution." (ECF No. 28 at 20). The Supreme Court of Nevada summarily rejected this claim. (Exhibit 159 at 1 n.1).

Trial counsel had objected to the admission of the Post-it notes—his "position was that the notes aren't relevant . . . . I think it's kind of cryptic and has the potential to be confusing for the jury." (Exhibit 128 at 42). The State explained that "[t]hese notes bear on his thought process and elements of First Degree Murder" because, for example, Redeker "writes on one of the post-it's the word losses, then he puts a colon and writes child, vehicle, house, good citizen standing, life." (*Id.* at 43; *see* Exhibit 128A at 3 (the Post-it notes)). The trial court ruled that the evidence "tends to buttress or assist in [the State's] theory of the case" and asked "is there anything else?" (Exhibit 128 at 44). Redeker's counsel responded "No." (*Id.*). At trial, then, Redeker objected only to the relevance of the Post-it notes, and that objection was overruled.

Detective Hardy testified that the notes were given to him in a manila envelope by the district attorney's office and that it was "labeled as notes written by Arie Redeker I found in [his] home by George Savage." (*Id.* at 16–18). After the State moved to admit the notes, the court asked "[I]s there any opposition other than what we discussed?" (*Id.* at 18). Redeker's counsel replied "No." (*Id.*).

Redeker now argues that the Post-it notes and Savage's note describing where they were found were admitted "in the absence of proper foundation," "in the absence of proper authentication testimony identifying the handwriting," and as inadmissible hearsay. (ECF No. 28 at 20). As discussed above in Ground 3, on federal habeas review we determine only "whether the admission of the evidence so fundamentally infected the proceedings as to render them fundamentally unfair." *Jammal*, 926 F.2d at 919. The admission of the Post-it notes and Savage's note does not meet that high standard.

First, as discussed above, the notes were primarily used as evidence of first-degree murder, which the State did not win a conviction on anyway. Second, trial counsel did not object, thus indicating that the Post-it notes actually *were* written by Redeker. Third, the state called as a witness Savage, the person who found the Post-it notes and wrote the note saying where they were found. (Exhibit 124 at 89). Admittedly, this was done on July 13, 2006, before the State called Hardy and

introduced the Post-it notes on July 17, 2006. Fourth, Savage discussed the Post-it notes, and testified that he found them in the home, that he turned them over to the police, that only Redekter, Tuk, and the kids lived at the house, and that the Post-it notes were not in Tuk's handwriting. (*Id.* at 102–03). The notes referenced a "child," so it likely wasn't written by a young child. Fifth, when the notes were introduced, Redeker sole objection was to relevance.

Redeker also argues that "the trial court's admission of the Post-its, together with George Savage's note [identifying where they were found], violated Redeker's and [sic] constitutional rights." (ECF No. 28 at 20). Because the trial was not fundamentally unfair, the only remaining constitutional claim is Redeker's argument that the "admission of the notes violated Redeker's confrontation right [under the Sixth Amendment] since [Savage] was never examined regarding the circumstances of the notes." (ECF No. 47 at 47). Redeker concedes that Savage was called as a witness, but argues that "the critical question is whether there was also an opportunity to cross-examine the declarant." (*Id.* at 48). He argues that there was not such an opportunity because the State introduced the evidence after Savage was off of the witness stand. (*See id.*). But counsel was given that opportunity: as discussed above, the State asked Savage about the notes, where he found them, and what he thought of the handwriting during direct examination. (*See* Exhibit 124 at 102–03). All of that content explained the note and Savage's basis for the note. Redeker opted not to explore this content on cross-examination or re-cross-examination. (*See id.* at 104–07; *id.* 108–09). Moreover, as discussed above, Redeker did not object at the time beyond relevance, never mentioned the Confrontation Clause or even hearsay, and never tried to recall Savage—who, as the victim's step-father, likely would have been more than happy to re-explain how he deduced what he wrote on the note. While there might be a technical argument that this violated the Confrontation Clause, the Supreme Court of Nevada's determination that this was not a violation was not an unreasonable application of United States Supreme Court law in light of the fact that it was not raised before the trial court, and Redeker has therefore not met his burden of showing that "there was no reasonable basis for the state court to deny relief." *Richter*, 562 U.S. at 98.

Ground 6 provides no basis for habeas relief.

F. Ground 7

In Ground 7, Redeker argues that the "court's jury instruction defining the use of a deadly weapon was unconstitutionally broad and the state failed to corroborate Redeker's confession, resulting in violation of Redeker's right to due process guaranteed by the Fourteenth Amendment to the Constitution of the United States." (ECF No. 28 at 21).

Redeker was found guilty of second-degree murder with use of a deadly weapon on July 20, 2006. (Exhibit 134). The indictment identifies the weapon as a "cord and/or ligature" according. (Exhibit 6 at 2). According to Redeker's confession, he used a telephone cord. (Exhibit 251 at 14–15). The jury was instructed that

> "Deadly weapon" means any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death or any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing substantial bodily harm or death.

(Exhibit 136 at 20). Redeker argues that the text of Nevada Revised Statute § 193.165(6), on which the jury instruction was based, "defines 'deadly weapon' in a constitutionally overbroad and vague manner." (ECF No. 59 at 53). The statute defines "deadly weapon" as "[a]ny instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death" or "[a]ny weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death." Nev. Rev. Stat. § 193.165(6)(a), (b). Redeker made no objection to the statute to the state trial court but did raise the issue on appeal to the Supreme Court of Nevada, which summarily rejected his claim. (Exhibit 159 at 1 n.1).

The Supreme Court of the United States has held that, under the Due Process Clause, "a penal statute [must] define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). The question is whether ordinary people would know "with sufficient definiteness" what this statute prescribes, and specifically, whether strangling someone with a telephone cord "was readily capable of causing

substantial bodily harm or death." Nev. Rev. Stat. § 193.165(6)(b). The Supreme Court of Nevada could have reasonably held, without running afoul of clearly established Supreme Court law, that the answer to both questions was yes. Moreover, that court similarly could have concluded that the statute did not run afoul of "the requirement that the legislature establish minimal guidelines to govern law enforcement." *Kolender*, 461 U.S. at 358. The statute considers a deadly weapon anything that is "readily capable" of causing substantial bodily harm or death when used in the manner in which it was used. The Supreme Court of Nevada would not have made a decision contrary to, or an unreasonable application of, clearly established U.S. Supreme Court law in concluding that this standard is easily understandable and provides adequate guidelines to law enforcement.

Redeker's argument that the statute is overbroad fails because statutes are overbroad only if they prohibit conduct that is constitutionally protected. *See Zwickler v. Koota*, 389 U.S. 241 (1967); *Schwartzmiller v. Gardner*, 752 F.2d 1341 (9th Cir. 1984). There is no indication of that here.

Redeker also argues that the trial court "improperly instructed the jury on the Use of a Deadly Weapon allegation" because doing so violated the *corpus delicti* rule. (ECF No. 28 at 21). Under Nevada state law, the *corpus delicti* rule prohibits the admission of a confession unless there is independent evidence "permitting a reasonable inference that a crime was committed." *Doyle v. State*, 921 P.2d 901, 910 (Nev. 1996) (citation omitted), *overruled on other grounds by Kaczmarek v. State*, 91 P.3d 16 (Nev. 2004). Because that definition of the rule is a state rule of evidence, its violation cannot warrant federal habeas relief. *McGuire*, 502 U.S. at 67. Instead, the question is whether the admission of the challenged evidence rendered the trial "fundamentally unfair." *Jammal*, 926 F.2d at 919. In federal courts, the *corpus delicti* rule "requires that a conviction must rest on more than a defendant's uncorroborated confession." *United States v. Niebla-Torres*, 847 F.3d 1049, 1054 (9th Cir. 2017). The government must "introduce corroborating evidence 'to support independently only the gravamen of the offense—the existence of the injury that forms the core of the offense and a link to a criminal actor.'" *Id.* at 1055 (quoting *United States v. Lopez-Alvarez*, 970 F.2d 583, 591 (9th Cir. 1992)); *see also Opper v. United States*, 348 U.S. 84, 92–94 (1954). Here,

the State introduced more than sufficient evidence independent of Redeker's confession to corroborate the "existence of the injury" and "a link to a criminal actor" to survive a due process challenge: Tuk's body was located and she had been strangled (Exhibit 124 at 40–45); half a telephone cord was found in a trash can and the other half was found, along with a single hoop earring, in the master bedroom in Redeker's home (Exhibit 125 at 11–16, 22–24); and Redeker had a history of threatening to grievously injure Tuk (Exhibit 124 at 74–75; Exhibit 128 at 51–53, 63–64).

Ground 7 provides no basis for habeas relief.

G. Ground 8

In Ground 8, Redeker argues that he invoked his right to proceed pro se, but that the trial court "failed to have a hearing on Redeker's request to represent himself in violation of [his] right to counsel and due process as guaranteed by the Sixth Amendment of the United States Constitution." (ECF No. 28 at 22). The hearing that Redeker points to was for his "Pro Per motion to have counsel withdrawn and have appointed alternate counsel." (Exhibit 13 at 1; *see* Exhibit 12 at 3 ("Therefore, it is asked by the defendant, that this court appoint an [sic] Court-appointed attorney, and that his name and address be provided to the defendant."); *see also* Exhibit 11 ("At this time, the defendant is asking for a court-appointed attorney.")). During the hearing, Redeker first requested a different court-appointed counsel but later requested to dismiss his attorney to proceed pro se, at least "until [he was] able to find other representation." (Exhibit 13 at 8). Redeker then explained his reasons, which his counsel neutered. (*See id.* 8–9). His real problem, it turns out, was that his counsel didn't file a motion. The court responded that "it was early for that," and counsel explained that he wasn't going to file every motion that could be filed. So, the court said that "when the time comes for these motions to be seriously considered," "the attorney is the one that makes the decision as to whether or not the motion is to be made." (*Id.* at 9). Redeker said that he understood. (*Id.* at 10). The trial court then said that, sometime the following week or so, "we can entertain a *Faretta* Canvass [sic] and see where he's at on the issue. . . . I understand you want to have a hearing. I'll tell you you're going to have a hearing on that issue." (*Id.* at 10). There is no evidence that hearing was ever held. However, some months later, Redeker filed a motion for a substitution of counsel—he did not request to

proceed pro se, and in explaining the history of his requests as to counsel he did not claim to have ever requested to proceed pro se. (*See* Exhibit 85).

The Supreme Court of Nevada summarily rejected this claim. (Exhibit 159 at 1 n.1). The Ninth Circuit has held that when a defendant "makes an unequivocal request to proceed pro se, the court must hold a hearing." *United States v. Farias*, 618 F.3d 1049, 1051–52 (9th Cir. 2010). The Supreme Court of Nevada could have reasonably concluded that Redeker did not unequivocally request to proceed pro se. First, the hearing was initially about asking the court to appoint new counsel, not to allow Redeker to proceed pro se. When that didn't work, Redeker asked to represent himself, at least until he could find new counsel, which led to the discussion above and a possible amelioration of Redeker's request. With this context, the Supreme Court of Nevada could have reasonably held that Redeker equivocated in his request. Moreover, even if his request was unequivocal, there is no Supreme Court case holding that when such a request is made and then forgotten about and never raised again even though other requests for new court-appointed counsel are made, that the initial denial violated constitutional rights. Redeker contends that *Faretta* says that, but I cannot find it therein. *See Faretta v. California*, 422 U.S. 806, 815–16 (1975). Therefore, Redeker failed to meet his burden of showing that "there was no reasonable basis for the state court to deny relief." *Richter*, 562 U.S. at 98.

Ground 8 provides no basis for habeas relief.

H. Ground 9

In Ground 9 Redeker argues that "the prosecutor committed acts of misconduct in closing argument in violation of Redeker's right to a fair trial and due process as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution."

Redeker argues:

> In rebuttal summation, the prosecutor argued: "During the jury selection process we asked you repeatedly if we prove to you the elements of First Degree Murder would you convict? You all assured us that you would. We've certainly satisfied testified [sic] our obligation in this case." This amounted to misconduct. A prosecutor is not supposed to inject his personal beliefs into the case.

> Additionally, the prosecutor argued that: "Justice in this case demands a verdict of First Degree Murder. Tuk Lannan is not entitled to less justice simply because Arie Redeker couldn't cope with his problems. . . ." This amounted to misconduct in that the prosecutor was attempting to inflame the jurors into determining guilt through vengeance.

(ECF No. 28 at 23 (citations omitted)). The Supreme Court of Nevada summarily rejected the claim. (Exhibit 159 at 1 n.1). Redeker's rights are violated in instances such as this only if the statements so fundamentally infected the proceedings as to render them fundamentally unfair. *See McGuire*, 502 U.S. at 68–69. These statement do not come close to meeting this bar, and he has thus failed to carry his burden of showing that "there was no reasonable basis for the state court to deny relief." *Richter*, 562 U.S. at 98.

Ground 9 provides no basis for habeas relief.

I. Ground 10

In Ground 10, Redeker argues that the "prosecution failed to present sufficient evidence to sustain Redeker's second-degree murder with use of a deadly weapon conviction. As such, Redeker is imprisoned in violation of his right [to] due process as guaranteed by the Fourteenth Amendment to the United States Constitution." (ECF No. 28 at 24). This argument hinges on *Jackson v. Virginia*, 443 U.S. 307 (1979), where the Supreme Court held that due process does not allow a conviction if, viewing the evidence in the light most favorable to the prosecution, "no rational trier of fact could have found essential elements of the crime beyond a reasonable doubt." *Id.* at 319. The Supreme Court of Nevada summarily rejected the claim. (Exhibit 159 at 1 n.1).

Redeker argues that the only evidence of what happened that night came from Redeker's mouth, and that all that evidence necessarily pointed to manslaughter rather than second-degree murder. (ECF No. 28 at 24; ECF No. 29 at 73). However, a rational trier of fact did not have to believe Redeker's comments about drug use and mental health problems; rather, it could have focused on his threats and the planning that came with it, discounting the drug use or health problems. He has thus failed to carry his burden of showing that "there was no reasonable basis for the state court to deny relief." *Richter*, 562 U.S. at 98.

Ground 10 provides no basis for habeas relief.

J. Ground 11

In Ground 11, Redeker argues that his trial counsel was ineffective for failing to "take reasonable steps to raise issues regarding website postings made by jurors in his case" in violation of his Fifth, Sixth, and Fourteenth Amendment rights. (ECF No. 28 at 25). To succeed on a typical ineffective assistance of counsel claim on direct appeal, a defendant must show that counsel's representation fell below an objective standard of reasonableness and a "reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). Courts evaluate counsel's performance from counsel's perspective at the time and begin with a strong presumption that counsel's conduct well within the wide range of reasonable conduct. *See, e.g.*, *Beardslee v. Woodford*, 358 F.3d 560, 569 (9th Cir. 2004). When a state court has reviewed a *Strickland* claim, a federal court's habeas review is "doubly deferential"—the reviewing court must take a "highly deferential" look at counsel's performance through the also "highly deferential" lens of § 2254(d). *Cullen*, 563 U.S. at 190, 202.

Redeker was found guilty of second-degree murder with use of a deadly weapon on July 20, 2006. (Exhibit 134; Exhibit 137). Two days later, Juror 4 wrote in his blog that "[i]n light of the fact that the defense failed to implant for me any reasonable doubt about these three elements [willfulness, deliberateness, and premeditation] it was a simple deduction that we had a clear case of first-degree murder." (Exhibit 202 at 15). Redeker contends that this statement indicated that this juror improperly shifted the burden of proof onto the defendant from the State. (*See* ECF No. 59 at 69). On July 24, two days after the juror made the initial post, Redeker's trial counsel seemingly acknowledged as much, writing that Juror 4's "interpretation places a burden on the defense to prove a defendant wasn't guilty, which is wrong." (Exhibit 202 at 22–23). According to Redeker, the blog post showed juror misconduct because the "jury failed to follow the court's instructions with regard to . . . proof beyond a reasonable doubt," trial "[c]ounsel should have moved for a mistrial," and trial counsel was ineffective for failing to do so. (ECF No. 59 at 70–72).

The Supreme Court of Nevada applied the proper *Strickland* standard and rejected Redeker's claim on its merits for failing to demonstrate either deficiency or prejudice. (Exhibit 204 at 2). It referenced a possible problem with the blog even being admissible evidence under Nevada Revised Statute § 50.065(2) but "assum[ed] without deciding" that it was admissible. (*Id.*). The court held that "the blog did not necessarily indicate that the juror was using the wrong standard but rather that once the State put on its case and met its burden of proof, the defense would need to rebut that evidence to avoid a conviction." (*Id.*). In other words, the State met its burden of proving Redeker's guilt beyond a reasonable doubt; after it did so, nothing Redeker did changed that. Therefore, trial counsel was not ineffective for not raising the issue and, even if he were, no prejudice could have resulted. Under the federal court's doubly deferential review of ineffective assistance of counsel claims on habeas, this holding was neither an unreasonable determination of fact nor an unreasonable application of Supreme Court case law.

Ground 11 provides no basis for habeas relief.

K. Ground 12

In Ground 12, Redeker argues that his trial counsel was ineffective for failing to "investigate and present evidence regarding Redeker's mental health issues" in violation of his Fifth, Sixth, and Fourteenth Amendment rights. (ECF No. 28 at 27). The standards for ineffective assistance of counsel are discussed above in regards to Ground 11.

Trial counsel explained, during the evidentiary hearing on Redeker's state petition for a writ of habeas corpus, that he did not raise a mental health defense "because it would subject the defendant to having to undergo a mental health evaluation from the State." (Exhibit 183 at 45). Moreover, he knew that the State would not have Redeker undergo such a mental health evaluation at the penalty phase, but if he put Redeker's mental health into issue at the guilt phase, the State would request a mental health evaluation that it would subsequently be able to use at the penalty phase. (*Id.* at 48–49). Additionally, he thought that "the issue of bipolar disorder, while compelling during a penalty phase, was evaluated as only being marginally relevant to the issue of guilt, because Nevada does not recognize diminished capacity." (*Id.* at 49).