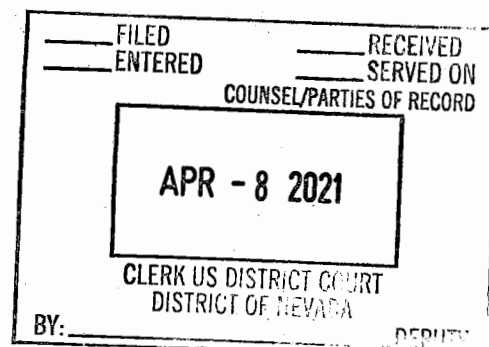


Isaac Lewis
 Name
1126780
 Prison Number
High Desert State Prison
 Place of Confinement



UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

Isaac Lewis, Petitioner,
 (Full Name)

2:21-cv-00580-RFB-NJK

vs.

Warden Johnson, Respondent,
 (Name of Warden, Superintendent, jailor or
 authorized person having custody of petitioner)

and

The Attorney General of the State of Nevada

**PETITION FOR A
 WRIT OF HABEAS CORPUS
 PURSUANT TO 28 U.S.C. § 2254
 BY A PERSON IN STATE CUSTODY
 (NOT SENTENCED TO DEATH)**

- Name and location of court, and name of judge, that entered the judgment of conviction you are challenging: Eighth Judicial District Clark County
- Full date judgment of conviction was entered: 6/14/17. (month/day/year)
- Did you appeal the conviction? ☒ Yes ___ No. Date appeal decided: 9/12/19.

- Did you file a petition for post-conviction relief or petition for habeas corpus in the state court?
☒ Yes ___ No. If yes, name the court and date the petition was filed: 8th Judicial District Clark County 1/13/20. Did you appeal from the denial of the petition for post-conviction relief or petition for writ of habeas corpus? ☒ Yes ___ No. Date the appeal was decided: 1/22/21. Have all of the grounds stated in this petition been presented to the state supreme court? ___ Yes ☒ No. If no, which grounds have not? grounds 2

- Date you are mailing (or handing to correctional officer) this petition to this court: 2/17/21.

RECEIVED
FEB 26 2021

ELIZABETH A. BROWN
 CLERK OF SUPREME COURT
 DEPUTY CLERK

Attach to this petition a copy of all state court written decisions regarding this conviction.

6. Is this the first federal petition for writ of habeas corpus challenging this conviction? ☒ Yes
 ___ No. If no, what was the prior case number? _____. And in what court was
 the prior action filed? _____.
- Was the prior action ___ denied on the merits or ___ dismissed for procedural reasons (check one). Date of decision: ____/____/____. Are any of the issues in this petition raised in the prior petition? ___ Yes ___ No. If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this successive petition? ___ Yes ___ No.
7. Do you have any petition, application, motion or appeal (or by any other means) now pending in any court regarding the conviction that you are challenging in this action? ☒ Yes ___ No.
 If yes, state the name of the court and the nature of the proceedings: Petition for writ of habeas in State Court Clark County.
8. Case number of the judgment of conviction being challenged: C-15-311294-2.
9. Length and terms of sentence(s): 30-140 year and Life without parole.
10. Start date and projected release date: 12-8-15-No release date.
11. What was (were) the offense(s) for which you were convicted: Robbery with use of a gun, Preventing witness from testifying, Battery with use of a gun, Conspiracy to commit Robbery.
12. What was your plea? ___ Guilty ☒ Not Guilty ___ Nolo Contendere. If you pleaded guilty or nolo contendere pursuant to a plea bargain, state the terms and conditions of the agreement: _____.
13. Who was the attorney that represented you in the proceedings in state court? Identify whether the attorney was appointed, retained, or whether you represented yourself *pro se* (without counsel).

	Name of Attorney	Appointed	Retained	Pro se
arraignment and plea	<u>Susan Bush, David Bunin</u>	<input checked="" type="checkbox"/>	___	___
trial/guilty plea	<u>Travis Shetter</u>	<input checked="" type="checkbox"/>	___	___
sentencing	<u>Travis Shetter</u>	<input checked="" type="checkbox"/>	___	___
direct appeal	<u>William brown</u>	<input checked="" type="checkbox"/>	___	___
1st post-conviction petition	<u>Myself</u>	___	___	<input checked="" type="checkbox"/>
appeal from post conviction	<u>Myself</u>	___	___	<input checked="" type="checkbox"/>
2nd post-conviction petition	<u>Myself</u>	___	___	<input checked="" type="checkbox"/>
appeal from 2nd post-conviction	<u>Myself</u>	___	___	<input checked="" type="checkbox"/>

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 1

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my Sixth and Fourteenth Amendment right to Effective Counsel, based on these facts:

Trial Counsel, Travis Shetter failed to adequately review and investigate the defendant's case. On 12-28-16 Travis Shetter was appointed to represent me, the defendant. After being appointed to represent me Shetter began to show blatant disregard for my legal proceedings. I did not see and/or hear from Mr Shetter again until a hearing on 2-22-17 for a motion that I filed myself requesting to represent myself along side Mr. Shetter so that I may still have the representation of counsel, but also have the ability to file motions on my own behalf. A Farretta canvas was set for 3-13-17 at which time Judge Kathy Hardcastle, standing in for Judge Kenneth Cox, granted my motion to represent myself with Travis Shetter as my stand by counsel. After 2 weeks of self representation & filing my own motions, I requested my stand by counsel to step in. Travis Shetter began representing me again. My trial began on 4-4-17, on 4-6-17 Shetter made an oral motion to the court stating the following:

"I Just wanted to make a record before you proceed to trial, at this time I still think is premature... There are still a number of matters that I felt needed to be done in this case prior to going to trial so that I could provide effective counsel"

Exhaustion of state court remedies regarding Ground 1:

Ground #1 Continued

Please see trial transcripts Day #13 (4-6-17) @ page #4
LNS # 8-10. This admission from Mr. Shetter, on the record
of his unpreparedness is a clear indication of his
failure to Review and investigate my case, Thus denying
me my ~~my~~ Sixth and Fourteenth amendment rights to
Effective assistance of counsel and a Fair Trial. If
Mr. Shetter would have properly prepared for trial the
Outcome and/or verdict would have been different.

► **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

___ Yes ☒ No. If no, explain why not: my attorney refused to

► **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

___ Yes ☒ No. If no, explain why not: New information/evidence

If yes, name of court: _____ date petition filed ___/___/___

Did you receive an evidentiary hearing? ___ Yes ___ No. Did you appeal to the Nevada Supreme Court? ___ Yes ___ No. If no, explain why not: _____

If yes, did you raise this issue? ___ Yes ___ No. If no, explain why not: _____

► **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

___ Yes ☒ No. If ~~yes~~ explain why: New information/evidence

If yes, name of court: _____ date petition filed ___/___/___

Did you receive an evidentiary hearing? ___ Yes ___ No. Did you appeal to the Nevada Supreme Court? ___ Yes ___ No. If no, explain why not: _____

If yes, did you raise this issue? ___ Yes ___ No. If no, explain why not: _____

► **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or

sentence overturned based on this issue (such as administrative remedies)? ___ Yes ☒ No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is

unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 2

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my Fifth Sixth and Fourteenth Amendment right to Effective Assistance of counsel, based on these facts:

Trial Counsel, Travis Shetter, was ineffective by failing to interview any witnesses in my case prior to trial.

Trial Counsel, Travis Shetter began representing me on 12-28-16. My trial began on 4-4-17. During his time representing me prior to trial Mr. Shetter never spoke with and/or interviewed any witnesses in regards to my case. Shetter himself admitted to his failure to do so on the record at the beginning of my trial when he said:

"Your honor I Just wanted to make a record before you.... There are witnesses that could have been interviewed.... and those things never had an opportunity to happen"

please see trial transcripts day #3 (4-10-17) page 5 lines 17-24. Despite my continuous requests to interview witnesses Shetter never did. If he had interviewed witnesses he could have possibly obtained impeachment material, and he would have certainly been more properly prepared for trial. His failure to interview witnesses, seek impeachment material and properly prepare for trial denied me the effective assistance of counsel that I'm entitled to, and that denial violated my Fifth, Sixth, and Fourteenth amendment rights.

Exhaustion of state court remedies regarding Ground 2:

- ▶ **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

☐ Yes ☒ No. If no, explain why not: My attorney refused to

► **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

☐ Yes ☒ No. If no, explain why not: New information/evidence

If yes, name of court: _____ date petition filed / /

Did you receive an evidentiary hearing? ☐ Yes ☒ No. Did you appeal to the Nevada Supreme Court? ☐ Yes ☐ No. If no, explain why not: _____

If yes, did you raise this issue? ☐ Yes ☐ No. If no, explain why not: _____

► **Second Post Conviction:**

Did you raise this issue in a second petition for post conviction relief or state petition for habeas corpus?

☐ Yes ☒ No. If yes, explain why: New information/evidence

If yes, name of court: _____ date petition filed / /

Did you receive an evidentiary hearing? ☐ Yes ☐ No. Did you appeal to the Nevada Supreme Court? ☐ Yes ☐ No. If no, explain why not: _____

If yes, did you raise this issue? ☐ Yes ☐ No. If no, explain why not: _____

► **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? ☐ Yes ☒ No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two

extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 3

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my Fifth, Sixth, & Fourteenth Amendment right to Effective Assistance of counsel, based on these facts:

Defense counsel, Travis Shetter failed to conduct any investigation as to the credibility of any of the witnesses. My case is an identity case. The States entire case is based off of witness testimony, there was no solid physical evidence only stories told by witnesses. Because of this fact, the credibility of said witnesses is vital to make an accurate determination of Guilt in this case. Shetter never made any effort at all whatsoever to research the credibility of any witnesses in this case nor did he attempt to procure any possible impeachment material. Shetter's failure to investigate and/or research the credibility of any witnesses in my case deprived me the right allotted to me by the Fifth Sixth and Fourteenth amendment to the effective assistance of trial counsel. If the credibility of the witnesses were properly attacked the outcome of the trial would have been different. The following ~~and~~ witnesses credibility were vital in the determination of this case
 Devon Norwood; Justin Condemi; Garrett Burnett;
 Theodore Mitchell; Ray Picardo; Brian Lemcke; and should've been checked thoroughly for any possible impeachment material prior to trial to insure the integrity of the trial.

Exhaustion of state court remedies regarding Ground 3:

► Direct Appeal:

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

☐ Yes ☒ No. If no, explain why not: My attorney refused to

► **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

☐ Yes ☒ No. If no, explain why not: New information/evidence

If yes, name of court: _____ date petition filed ____/____/____.

Did you receive an evidentiary hearing? ☐ Yes ☒ No. Did you appeal to the Nevada Supreme Court? ☐ Yes ☐ No. If no, explain why not: _____

If yes, did you raise this issue? ☐ Yes ☐ No. If no, explain why not: _____

► **Second Post Conviction:**

Did you raise this issue in a second petition for post conviction relief or state petition for habeas corpus?

☐ Yes ☒ No. If yes, explain why: New information/evidence

If yes, name of court: _____ date petition filed ____/____/____.

Did you receive an evidentiary hearing? ☐ Yes ☐ No. Did you appeal to the Nevada Supreme Court? ☐ Yes ☐ No. If no, explain why not: _____

If yes, did you raise this issue? ☐ Yes ☐ No. If no, explain why not: _____

► **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? ☐ Yes ☒ No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 4

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my Fifth, Sixth, & Fourteenth Amendment right to Effective Assistance of Counsel based on these facts:

Trial counsel, Travis Shetter failed to prepare for any direct and/or cross examination. Travis Shetter who began representing me on 12-28-16, was not only unprepared for trial, but also failed to prepare at all whatsoever for direct and/or cross examination. When it was time for Mr. Shetter to cross examine witnesses, he asked me, the defendant, a high school drop out, what questions he should ask the witness who was on the stand waiting to be examined. Mr. Shetter had no planned course of action in regards to cross examining any witnesses at my trial, his failure to do so denied me my Fifth, Sixth, and Fourteenth Amendment rights to the effective assistance of counsel, because if Mr. Shetter had prepared for the cross examination of witnesses its likely that the verdict would have been different.

Exhaustion of state court remedies regarding Ground**► Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

 Yes ☒ No. If no, explain why not: My attorney Refused to**► First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

 Yes ☒ No. If no, explain why not: New information/EvidenceIf yes, name of court: _____ date petition filed / / .Did you receive an evidentiary hearing? Yes ☒ No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____If yes, did you raise this issue? Yes No. If no, explain why not: _____**► Second Post Conviction:**Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus? Yes ☒ No. If yes, explain why: New information/evidenceIf yes, name of court: _____ date petition filed / / .Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____If yes, did you raise this issue? Yes No. If no, explain why not: _____**► Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or

sentence overturned based on this issue (such as administrative remedies)? Yes ☒ No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 5

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my Fifth, Sixth, & Fourteenth Amendment right to Effective Assistance of counsel, based on these facts:

Trial counsel, Travis Shetter, failed to investigate my alibi, as well as locate, investigate, and/or interview my alibi witnesses despite my repeated requests for him to do so. Travis Shetter, who began representing me on 12-28-16 refused to locate, and/or interview my alibi witness despite the fact that I not only requested him to do so several times, but I also gave him a name phone number and address of Alibi witnesses. His failure/refusal to do so denied me my Fifth, Sixth, and Fourteenth amendment right to the Effective assistance of counsel. Had Mr. Shetter located and interviewed said witnesses a verdict of not Guilty is likely to have been made. Mr. Shetter admitted to his failure to locate and interview alibi witnesses on the record stating "There are witnesses that could have been interviewed... and those things never had an opportunity to happen" See trial transcripts day #3 (4-6-17) page 5 lines 17-24

Exhaustion of state court remedies regarding Ground**► Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

 Yes ☒ No. If no, explain why not: My attorney Refused to**► First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

 Yes ☒ No. If no, explain why not: New Information, EvidenceIf yes, name of court: _____ date petition filed / / .Did you receive an evidentiary hearing? Yes ☒ No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____If yes, did you raise this issue? Yes No. If no, explain why not: _____**► Second Post Conviction:**

Did you raise this issue in a second petition for post conviction relief or state petition for habeas corpus?

 Yes ☒ No. If yes, explain why: New Information/EvidenceIf yes, name of court: _____ date petition filed / / .Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____If yes, did you raise this issue? Yes No. If no, explain why not: _____**► Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or

sentence overturned based on this issue (such as administrative remedies)? Yes ☒ No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 6

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my Fifth, Sixth, & Fourteenth Amendment right to Effective Assistance of counsel based on these facts:

Trial counsel, Travis Shetter, failed to pursue, and/or investigate my theory of defense. Travis Shetter who began representing me on 12-28-16, I told him numerous times that I had an alibi and a witness who could verify it. I even gave him information in regards to said witness. I also requested him to interview my codefendant (who took a plea deal prior to trial and went to prison) because my codefendant who was chased down and caught at the scene of the crime will testify that he does not know me and that I'm not the person who committed the crime with him. Shetter virtually admitted to his failure to do so when he said on the record at trial...

"There are still a number of matters that I felt needed to be done in this case prior to going to trial so that I could provide effective counsel". (please see trial transcripts Day #3 (4-6-17) page #4 lines #8-10)

Mr. Shetter's failure to pursue/investigate my theory of defence denied me my Fifth, Sixth, and Fourteenth amendment rights to Effective Assistance of Counsel. There is a great possibility that had Mr. Shetter done so The Jury would have come back with a Verdict of not Guilty

Exhaustion of state court remedies regarding Ground**► Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

 Yes ☒ No. If no, explain why not: My attorney refused to**► First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

 Yes ☒ No. If no, explain why not: New information/evidenceIf yes, name of court: _____ date petition filed / / .Did you receive an evidentiary hearing? Yes ☒ No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____If yes, did you raise this issue? Yes ☒ No. If no, explain why not: _____**► Second Post Conviction:**Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus? Yes ☒ No. If yes, explain why: New information/evidenceIf yes, name of court: _____ date petition filed / / .Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____If yes, did you raise this issue? Yes No. If no, explain why not: _____**► Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or

sentence overturned based on this issue (such as administrative remedies)? Yes ☒ No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 7

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my Fifth, Sixth, and Fourteenth Amendment right to Effective Assistance of Counsel, based on these facts:

Trial counsel, Travis Shetter, failed to call any Expert Witnesses to testify at trial. My case is essentially based primarily upon identity, there is no solid physical evidence. Because of this fact the testimony of an expert who specializes in eye witness Identification would have been crucial to my defense especially considering that witnesses were only 50 percent, and 70 percent sure of their assumption that the defendant (me) was the culprit. Mr. Shetter Admitted to his failure to do so when he said on the record at trial "... There are still a number of matters that I felt needed to be done in this case prior to going to trial so that I could provide effective Assistance - counsel"

(Please see trial transcripts Day #3 (4-6-17) page #4 Lines 8-10)

Mr. Shetter's failure to call any expert witnesses to testify at my trial denied me my Fifth, Sixth, and Fourteenth amendment rights to Effective assistance of counsel and a fair trial. IF Mr. Shetter had done so it is highly likely that the Jury would've returned a Verdict of not Guilty

Exhaustion of state court remedies regarding Ground**► Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

 Yes ☒ No. If no, explain why not: My attorney refused to**► First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

 Yes ☒ No. If no, explain why not: New information/evidenceIf yes, name of court: _____ date petition filed / / .Did you receive an evidentiary hearing? Yes ☒ No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____If yes, did you raise this issue? Yes No. If no, explain why not: _____**► Second Post Conviction:**Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus? Yes ☒ No. If yes, explain why: New information/evidenceIf yes, name of court: _____ date petition filed / / .Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____If yes, did you raise this issue? Yes No. If no, explain why not: _____**► Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or

sentence overturned based on this issue (such as administrative remedies)? Yes ☒ No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 8

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my Fifth, Sixth, & Fourteenth Amendment right to Effective Assistance of counsel, based on these facts:

Trial counsel, Travis Shetter, failed to object to the courts Jury instruction, and/or failure to do so. Prior to the start of the trial Juror "Macklin" told the court that he "wanted to express" that the fact that there were multiple crimes in question it gave him "pause for concern". The courts remedy to the Jurors concern was that at the end of the trial, a Jury instruction would be given instructing the Jury to weigh each count individually based on the facts of the case. No such instruction was ever given, Nor did Mr. Shetter object to the fact that no such instruction was given. This Juror at one point even said that he wouldn't want a Juror like himself if he were on trial because "I wouldn't be comfortable, because yeah, if I did something, I would want a fair Juror" (trial transcripts day #2 (4-5-17) page 39 lines 7-8) The fact that I was being charged with different crimes was so concerning to the Juror that he felt compelled to express his concern, the courts projected remedy for this Jurors potential bias was a Jury instruction that was never given. Mr. Shetter's failure to object to the court not making such instruction violated My Fifth, Sixth, and Fourteenth amendment rights to Effective counsel and a fair trial. If Mr. Shetter would've object to the lack of instructing the Jury, the Jury more than likely would've come back with a different Verdict.

► **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

___ Yes ☒ No. If no, explain why not: my attorney refused to

► **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

___ Yes ☒ No. If no, explain why not: New information/evidence

If yes, name of court: _____ date petition filed ___ / ___ / ___

Did you receive an evidentiary hearing? ___ Yes ___ No. Did you appeal to the Nevada Supreme Court? ___ Yes ___ No. If no, explain why not: _____

If yes, did you raise this issue? ___ Yes ___ No. If no, explain why not: _____

► **Second Post Conviction:**

Did you raise this issue in a second petition for post conviction relief or state petition for habeas corpus?

___ Yes ☒ No. If ~~yes~~ explain why: New information/evidence

If yes, name of court: _____ date petition filed ___ / ___ / ___

Did you receive an evidentiary hearing? ___ Yes ___ No. Did you appeal to the Nevada Supreme Court? ___ Yes ___ No. If no, explain why not: _____

If yes, did you raise this issue? ___ Yes ___ No. If no, explain why not: _____

► **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or

sentence overturned based on this issue (such as administrative remedies)? ___ Yes ☒ No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 9

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my Fifth, Sixth, & Fourteenth Amendment right to Effective assistance of counsel, based on these facts:

Trial Counsel, Travis Shetter denied me effective assistance when he failed to object to prosecutorial misconduct. In closing arguments District Attorney Noreen Demonte, Bolstered and supported witness Jawan Timmons statements which misled the Jury. Jawan Timmons claimed on the stand at trial that he not only did not receive any leniency in his case for providing testimony at my trial but he also got sentenced in his case to a larger amount of time than he had signed for, stating that the District Attorney did him wrong and he is still testifying because "it's the right thing to do". This statement was misleading to the Jury because it was made in an effort to Bolster his credibility and honesty, making him seem like even though I got more time than I signed for I'm still doing this. However he left out the fact that he only got a larger sentence because he violated the terms and condition of his bail. The District Attorney Noreen Demonte bolstered this misleading statement in closing arguments which was clearly prosecutorial misconduct. Travis Shetter's failure to object to this prosecutorial misconduct denied me my Fifth Sixth and Fourteenth amendment rights to Effective counsel and a fair trial. Had he done so there is a good chance that the Verdict would've been different.

Exhaustion of state court remedies regarding Ground

► **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

___ Yes ☒ No. If no, explain why not: My attorney refused to

► **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

___ Yes ☒ No. If no, explain why not: New information/evidence

If yes, name of court: _____ date petition filed ___ / ___ / ___.

Did you receive an evidentiary hearing? ___ Yes ☒ No. Did you appeal to the Nevada Supreme Court? ___ Yes ___ No. If no, explain why not: _____

If yes, did you raise this issue? ___ Yes ___ No. If no, explain why not: _____

► **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

___ Yes ☒ No. If yes, explain why: New information/evidence

If yes, name of court: _____ date petition filed ___ / ___ / ___.

Did you receive an evidentiary hearing? ___ Yes ___ No. Did you appeal to the Nevada Supreme Court? ___ Yes ___ No. If no, explain why not: _____

If yes, did you raise this issue? ___ Yes ___ No. If no, explain why not: _____

► **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or

sentence overturned based on this issue (such as administrative remedies)? ___ Yes ☒ No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 10

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my Fifth, Sixth, & Fourteenth Amendment right to Effective Assistance of Counsel, based on these facts:

As shown in the foregoing grounds Trial counsel, Travis Shetter,
did little more than stand in the courtroom beside the petitioner.
He failed to adequately review & investigate my case
He failed to interview witnesses
He failed to investigate the credibility of witnesses
He failed to prepare for direct and/or cross examination of witnesses
He failed to investigate my alibi, and/or interview alibi witnesses
He failed to pursue and investigate my theory of defense
He failed to call expert witnesses
He failed to object the lack of Jury instruction
He failed to object to the prosecutorial misconduct
& He failed to prepare for trial altogether
All of these errors singly or combined have deprived me of my
right to due process of law, a fair trial, and the effective
assistance of counsel. Absent these errors there is a good
chance that I would've been found Not Guilty.
Shetter's failure to provide me effective assistance was so prejudicial in fact that
he felt obligated to put it on the record multiple times at the beginning of my
Trial that he "could not provide (me) effective Assistance" and that (my) rights
are being impacted," please see trial transcripts day #13 (4-6-17) as well as
calendar call transcripts on (3-29-17) He also felt obligated to state on

Ground 10 Continued

On the record at Calendar call "unfortunately my trial schedule is a complicated trial schedule... I wasn't able to follow through on some of my things I told him we would do because of my trial schedule which doesn't excuse it, so his rights are being impacted here... If trial starts next week and I'm asked to stand at this table and represent him there are things that I would like to have done that haven't been done.... To move forward with trial I would be concerned about my ability to properly represent him... There are things out there that should still be done on this case to be effective!! Please see Calendar call transcripts (3-29-17)

Then Shetter felt obligated to make yet another record at the beginning of trial when he said on the record "I just wanted to make a record before you proceed to trial, at this point in time I still think is premature as far as the matters I would have liked to have done is counsel.... There are still a number of matters that I felt needed to be done in this case prior to going to trial so that I could provide effective counsel... There are still a number of items... That I feel will make it very difficult for me to PROPERLY and fully represent him and give him effective counsel in this trial"

He reiterated this assertion several times stating "There are still things need to be done in this case for me to provide truly effective counsel.... There are witnesses that could have been interviewed out there... There are other matters to investigate"

Shetter emphasized that he "just wanted to make sure he got that on the record"

Exhaustion of state court remedies regarding Ground

► **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

___ Yes ☒ No. If no, explain why not: My attorney refused to

► **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

___ Yes ☒ No. If no, explain why not: New information / evidence

If yes, name of court: _____ date petition filed ___ / ___ / ___.

Did you receive an evidentiary hearing? ___ Yes ☒ No. Did you appeal to the Nevada Supreme Court? ___ Yes ___ No. If no, explain why not: _____

If yes, did you raise this issue? ___ Yes ☒ No. If no, explain why not: _____

► **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

___ Yes ☒ No. If yes, explain why: New information / evidence

If yes, name of court: _____ date petition filed ___ / ___ / ___.

Did you receive an evidentiary hearing? ___ Yes ___ No. Did you appeal to the Nevada Supreme Court? ___ Yes ___ No. If no, explain why not: _____

If yes, did you raise this issue? ___ Yes ___ No. If no, explain why not: _____

► **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? ___ Yes ☒ No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 11

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my Fifth and Fourteenth Amendment right to due process and a Fair Trial, based on these facts:

The court abused its discretion by denying me my motion to continue trial as well as my Attorney Travis Shetter's motion to continue trial. I have a constitutional right to have an adequate opportunity to create my defense. When considering a motion to continue the trial the court must take into consideration the totality of the circumstances surrounding the case at the time of the motion for continuance. For nearly a year I was represented by Attorney Daniel Bunin. During this time Mr. Bunin did absolutely nothing in regards to my case except filed 4 continuances. I dismissed Mr. Bunin as my counsel because of his lack of action in my case. I was then appointed Travis Shetter who represented me for merely 3 months before being forced to go to trial. Shetter filed a motion to continue the trial based on the fact that he was not "prepared to go to trial yet." The court denied the motion to continue, as well as my motion to continue based on the fact that it had been continued 4 times by Mr. Bunin. Bunin's time representing me as well as his continuances should have been nullified by the fact that he was dismissed for "not doing anything." Nevertheless the court abused its discretion by denying our motions to continue the trial, and in doing so denied me my Fifth and Fourteenth amendment rights to a fair trial, and due process. By Denying our Motion for continuance, the court Denied us the opportunity and/or time to create a defense allotted to me By the Fifth and Fourteenth

Exhaustion of state court remedies regarding Ground

► **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

___ Yes ☒ No. If no, explain why not: My attorney Refused to

► **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

___ Yes ☒ No. If no, explain why not: New Information, Evidence

If yes, name of court: _____ date petition filed ___ / ___ / ___.

Did you receive an evidentiary hearing? ___ Yes ☒ No. Did you appeal to the Nevada Supreme Court? ___ Yes ___ No. If no, explain why not: _____

If yes, did you raise this issue? ___ Yes ___ No. If no, explain why not: _____

► **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

___ Yes ☒ No. If yes, explain why: New Information/Evidence

If yes, name of court: _____ date petition filed ___ / ___ / ___.

Did you receive an evidentiary hearing? ___ Yes ___ No. Did you appeal to the Nevada Supreme Court? ___ Yes ___ No. If no, explain why not: _____

If yes, did you raise this issue? ___ Yes ___ No. If no, explain why not: _____

► **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or

sentence overturned based on this issue (such as administrative remedies)? ___ Yes ☒ No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 12

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my Fifth & Fourteenth Amendment right to due process & a fair trial, based on these facts:

The court denied my motion to Sever counts. NRS 173.115 provides that: Two or more offenses may be charged in the same indictment in a separate count for each offense if the offenses charged are:
1) Based on the same act or transaction; 2) Based on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

Grounds to sever counts are provided in NRS 174.105 which reads: "If it appears that a defendant or the State of Nevada is prejudiced by a joinder of offenses or of defendants in an indictment... the court may order an election or separate trials of counts. Rule (14) of the Federal Rules of Criminal Procedure States: 'If Joinder of offenses... appears to prejudice a defendant or the government the court may order separate trials of counts' The trial court abused its discretion when it denied my motion to sever counts. I was put on trial for four separate crimes, with separate victims and witnesses at the same time compelling the jury to infer criminal propensity. This inference by the jury was verified by Juror 'Macklin' when he stated that the fact that I'm being accused of multiple crimes gave him 'pause for concern' by denying my severance motion the court denied me my Fifth and Fourteenth Amendment right to due process and a fair trial. Had the counts been severed the verdict would have been different

Exhaustion of state court remedies regarding Ground**► Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

 Yes ☒ No. If no, explain why not: My attorney Refused to**► First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

 Yes ☒ No. If no, explain why not: New information/EvidenceIf yes, name of court: _____ date petition filed / / .Did you receive an evidentiary hearing? Yes ☒ No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____If yes, did you raise this issue? Yes No. If no, explain why not: _____**► Second Post Conviction:**Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus? Yes ☒ No. If yes, explain why: New information/EvidenceIf yes, name of court: _____ date petition filed / / .Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____If yes, did you raise this issue? Yes No. If no, explain why not: _____**► Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or

sentence overturned based on this issue (such as administrative remedies)? Yes ☒ No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 13

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my Fifth & Fourteenth Amendment right to due process and a fair trial, based on these facts:

The district court abused its discretion and/or erred in denying my motion to suppress evidence obtained in an unconstitutional seizure. I was arrested after being held illegally on 12-8-15. After my arrest and/or during the course of my arrest the officers took both my sweat shirt and a pocket knife into evidence to be used against me at trial. This arrest was made 5 weeks after the crime occurred in the absence of exigent circumstances, reasonable suspicion, and/or a warrant. Prior to the arrest I was ~~was~~ taken to a police station and held against my will for over 2 hours in violation of NRS 171.123. While being held against my will and/or moved in violation of NRS 171.123 I asked several times if I was under arrest and why I was being arrested. The (PSU) officers who apprehended me told me "You're not under arrest, someone wants to talk to you." I said I didn't want to talk to anyone. They said they didn't care. Both the fact that they moved me and the fact that they "detained" me for more than an hour violated NRS 171.123. Since the detention was illegal the arrest that happened subsequently was illegal as well. The District court therefore erred in denying my motion to suppress evidence that was obtained stemming from an illegal detention, thus denying me my Fifth and Fourteenth amendment rights to due process and a fair trial. Absent the court's error the verdict would have been different.

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

☐ Yes ☒ No. If no, explain why not: My attorney refused to

► **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

☐ Yes ☒ No. If no, explain why not: New information/evidence

If yes, name of court: _____ date petition filed / /

Did you receive an evidentiary hearing? ☐ Yes ☒ No. Did you appeal to the Nevada Supreme Court? ☐ Yes ☐ No. If no, explain why not: _____

If yes, did you raise this issue? ☐ Yes ☐ No. If no, explain why not: _____

► **Second Post Conviction:**

Did you raise this issue in a second petition for post conviction relief or state petition for habeas corpus?

☐ Yes ☒ No. If yes, explain why: New information/evidence

If yes, name of court: _____ date petition filed / /

Did you receive an evidentiary hearing? ☐ Yes ☐ No. Did you appeal to the Nevada Supreme Court? ☐ Yes ☐ No. If no, explain why not: _____

If yes, did you raise this issue? ☐ Yes ☐ No. If no, explain why not: _____

► **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or

sentence overturned based on this issue (such as administrative remedies)? ☐ Yes ☒ No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 14

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my

Fourth

Amendment right to Protection Against unreasonable Seizures

based on these facts:

My Fourth amendment right to protection against unreasonable Searches, and seizures was violated when I was arrested 6 weeks after a crime occurred without an arrest warrant and/or exigent circumstances. On 12-8-15 the "PSU" or Problem Solving unit pulled over Jumped out of cars and pointed weapons at me and my girlfriend. They placed handcuffs on me and forced me into the back seat of a police car. I asked this Problem Solving unit several times why I was being arrested they told me I was not under arrest, someone wants to talk to me, and even though I told them that I did not want to talk to anyone they still took me across town to the South Central Area command center and cuffed me to a pole in an Interigation room for 2 hours and 15 mins until Detective Janeczek arrived and placed me under arrest. The PSU's actions violated both NRS. 171.123 and my Fourth amendment right to protection against unreasonable Searches and seizures. Because of this violation any evidence obtained should have been suppressed according to the "Fruit of the poisonous tree doctrine" If said evidence was suppressed the outcome of the trial would've been different.

► **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

☐ Yes ☒ No. If no, explain why not: my attorney refused to

► **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

☐ Yes ☒ No. If no, explain why not: New information/evidence

If yes, name of court: _____ date petition filed ____/____/____.

Did you receive an evidentiary hearing? ☐ Yes ☐ No. Did you appeal to the Nevada Supreme Court? ☐ Yes ☐ No. If no, explain why not: _____

If yes, did you raise this issue? ☐ Yes ☐ No. If no, explain why not: _____

► **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

☐ Yes ☒ No. If ~~yes~~ explain why: New information/evidence

If yes, name of court: _____ date petition filed ____/____/____.

Did you receive an evidentiary hearing? ☐ Yes ☐ No. Did you appeal to the Nevada Supreme Court? ☐ Yes ☐ No. If no, explain why not: _____

If yes, did you raise this issue? ☐ Yes ☐ No. If no, explain why not: _____

► **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? ☐ Yes ☒ No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is

IN THE SUPREME COURT OF THE STATE OF NEVADA

ISAAC LEWIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75136

FILED

SEP 12 2019

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit robbery, burglary, two counts of robbery with use of a deadly weapon, burglary while in possession of a firearm, battery with use of a deadly weapon resulting in substantial bodily harm, attempted murder with use of a deadly weapon, and preventing or dissuading a witness from testifying.¹ Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge. Appellant Isaac Lewis raises three main contentions on appeal.

Lewis first argues that the district court abused its discretion and violated his constitutional rights when it denied his motions to continue the trial. We disagree. Not only was the need for a continuance Lewis' fault as he vacillated between wanting to represent himself and wanting appointed counsel, *see Rose v. State*, 123 Nev. 194, 206, 163 P.3d 408, 416 (2007) (considering whether a continuance was the defendant's fault when deciding if the district court abused its discretion); *see also Higgs v. State*, 126 Nev. 1, 9, 222 P.3d 648, 653 (2010) ("Each case turns on its own particular facts, and much weight is given to the reasons offered to the trial

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

judge at the time the request for a continuance is made.”), but Lewis also fails to demonstrate prejudice resulting from the court’s denial, *see Higgs*, 126 Nev. at 9, 222 P.3d at 653 (“[I]f a defendant fails to demonstrate that he was prejudiced by the denial of the continuance, then the district court’s decision to deny the continuance is not an abuse of discretion.”). Indeed, although Lewis contends that appointed counsel was unprepared to move forward with trial, he does not identify what additional witnesses or evidence he would have pursued had the district court granted the continuance or how such evidence would have affected the jury’s verdict.²

Second, Lewis challenges the joinder of offenses, and further argues that the district court abused its discretion by denying his motion to sever. We disagree. With regard to joinder, it was appropriate because the acts charged evinced a common scheme: the incidents occurred during the span of a few weeks; involved the same weapons and vehicle; and occurred at retail stores (Undeclared, Wal-Mart, and Old Navy). *See* NRS 173.115(1)(b) (allowing for joinder of offenses that constitute “parts of a common scheme”); *see also Farmer v. State*, 133 Nev. 693, 699-700, 405 P.3d 114, 120-21 (2017) (defining common scheme and explaining that the offenses are not required to be identical to be joined under NRS 173.115). With regard to severance, Lewis fails to demonstrate that he would be unduly prejudiced by the joinder of charges as evidence of all the offenses

²Lewis also argues that *Williams v. Steward*, 441 F.3d 1030, 1056 (9th Cir. 2006), requires federal district courts to consider certain factors when considering continuance motions, but that decision is not binding on this court. *See Winston Prods. Co. v. DeBoer*, 122 Nev. 517, 523, 134 P.3d 726, 730 (2006). We also reject Lewis’ argument that *Colgain v. State*, 102 Nev. 220, 719 P.2d 1263 (1986), warrants a reversal based on the court’s denial of the continuance motion as the facts therein are distinguishable from the facts presented here.


would be cross-admissible to prove identity and intent—the same knife and revolver were used in the crimes; a unique hat, sold only at Undeclared stores; was worn by Lewis in the Wal-Mart robbery; and the same vehicle was present in the Wal-Mart and Old Navy robberies, and the Undeclared shooting. See NRS 174.165 (providing district courts discretion to order separate trials where it appears that a defendant will be prejudiced by a joinder of offenses); *Farmer*, 133 Nev. at 700, 405 P.3d at 121 (providing that, even if offenses are properly joined, the district court should order separate trials “if it appears that the defendant will be unduly prejudiced”); see also *Middleton v. State*, 114 Nev. 1089, 1108, 968 P.2d 296, 309 (1998) (pointing to the cross-admissibility of evidence as indicative of the lack of undue prejudice against the defendant). Without any evidence of prejudice resulting from the joinder, we conclude that the district court did not abuse its discretion in denying Lewis’ motion to sever. See *Tabish v. State*, 119 Nev. 293, 302, 72 P.3d 584, 589-90 (2003) (reviewing a district court’s decision on a motion to sever for an abuse of discretion).


Third, Lewis argues that the State’s failure to correct a cellmate’s false testimony regarding the benefit he received in exchange for his testimony against Lewis was plain error warranting reversal. We disagree because Lewis failed to demonstrate that the cellmate’s testimony was false. See *Napue v. Illinois*, 360 U.S. 264, 269 (1959) (providing that it is a constitutional violation for the State to obtain a conviction through the knowing use of false evidence or failing to correct false evidence); *Jackson v. Brown*, 513 F.3d 1057, 1071 (9th Cir. 2008) (noting that the first element for a successful *Napue* claim is demonstrating that “the testimony . . . was actually false”); see also *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008) (defining plain-error as an error affecting a defendant’s

substantial rights by causing actual prejudice, a miscarriage of justice, or a grossly unfair outcome). Moreover, nothing in our review of the record supports Lewis' contention that the cellmate's testimony was "actually false." *Jackson*, 513 F.3d at 1071.

We therefore,

ORDER the judgment of conviction AFFIRMED.³


Gibbons C.J.



Stiglich J.


Douglas Sr. J.

cc: Hon. Carolyn Ellsworth, District Judge
The Law Offices of William H. Brown, Ltd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³Senior Justice Douglas participated in this case under a general order of assignment.

(Name of person who wrote this
complaint if not Plaintiff)



(Signature of Plaintiff)

2/17/21

(Date)

(Signature of attorney, if any)


(Attorney's address & telephone number)

DECLARATION UNDER PENALTY OF PERJURY

I understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.**

See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

Executed at High Desert State Prison on 2/17/21.
(Location) (Date)



(Signature)

1126780

(Inmate prison number)

Hasler

04/06/2021

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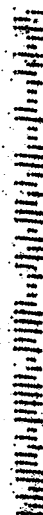
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