

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

**FILED**

NOV 01 2004

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ALFRED P. CENTOFANTI III,

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT COURT  
IN AND FOR THE COUNTY OF CLARK,  
STATE OF NEVADA, AND THE  
HONORABLE DONALD M. MOSLEY,  
DISTRICT COURT JUDGE,

Respondents.

CASE NO. 43895

District Court No. C172534

**REPLY TO RESPONDENT'S ANSWER TO PETITION FOR WRIT OF  
MANDAMUS/FOR WRIT OF PROHIBITION**

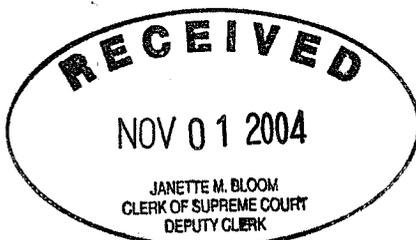
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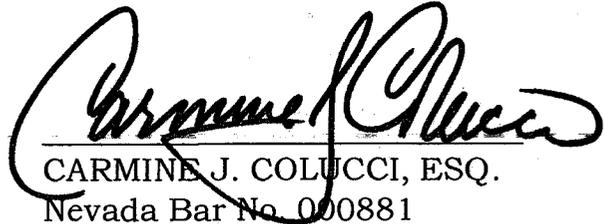
1                   **REPLY TO RESPONDENT'S ANSWER TO PETITION FOR WRIT OF**  
2                   **MANDAMUS/FOR WRIT OF PROHIBITION**

3                   COMES NOW, Petitioner, ALFRED P. CENTOFANTI III, by and through his  
4 attorney CARMINE J. COLUCCI, ESQ., of the law firm of CARMINE J. COLUCCI,  
5 CHTD., and submits this Reply to the Respondent's Answer to Petition for Writ of  
6 Mandamus/for Writ of Prohibition pursuant to the authority granted by this Court  
7 in its order filed on October 21, 2004.

8  
9                   This Reply is based upon the following points and authorities and the  
10 papers and pleadings on file herein.

11                   DATED this 28<sup>th</sup> day of October, 2004.

12  
13                   CARMINE J. COLUCCI CHTD.

14  
15                   

16                   CARMINE J. COLUCCI, ESQ.  
17                   Nevada Bar No. 000881  
18                   629 South Sixth Street  
19                   Las Vegas, Nevada 89101  
20                   Attorney for Petitioner

21                   **MEMORANDUM OF POINTS AND AUTHORITIES**

22                   The issues before this Court are 1) Whether the remedy of mandamus is  
23 available to compel the District Court to grant the Defendant's Motion for New  
24 Trial where the jury trial verdict was rendered by a jury composed of only eleven  
25 (11) qualified jurors and one unqualified person who unlawfully participated in  
26 jury deliberations which resulted in a guilty verdict. and 2) Whether the  
27 Defendant's Motion for New Trial was procedurally barred.  
28

1           These issues have been fully briefed in the Petition for Writ of Mandamus  
2 and the Answer to Petition for writ of Mandamus/for Writ of Prohibition  
3 (hereinafter referred to as Answer) filed thereto. However, in its Answer, the state  
4 has misstated material facts which are clearly repelled by the record and the  
5 evidence provided to the District Court at the hearing of the Defendant's Motion  
6 for New Trial.  
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8           The record is clear that Mrs. Barrs was not a person qualified to act as a  
9 juror when impaneled in this case. At the time that she unlawfully participated  
10 in jury deliberations, she was a person who was a convicted felon.  
11

12           In responding to this undeniable fact, the State has asserted in their  
13 Answer the following at page 16, ll. 20-23:  
14

15           The character of the error made by Mrs. Barrs (if any error at  
16 all) is minimal. It is a crime that occurred more than twenty years  
17 ago. The crime was for obtaining property in return for a worthless  
18 check. **Her civil rights had been restored and she was allowed to  
regain her right to vote as well as her nursing license.** (Emphasis  
added)

19           Mrs. Barrs' civil rights were **not** restored automatically or otherwise in  
20 Florida prior to sitting as a juror in this case (Petitioner's Appendix 83,  
21 hereinafter referred to as PA) which is a certificate from the Coordinator of the  
22 Office of Executive Clemency of the State of Florida that specifically states as  
23 follows:  
24

25           I have made a thorough search of the clemency records and there is  
26 **no record of restoration of civil rights**; specific authority to set as  
27 a juror, to vote, to receive, possess or transport in commerce a  
28 firearm, or a pardon of any kind, having been granted by the  
Governor and Cabinet of the State of Florida to a CAREN BARRS,

1           DOB 6/23/1946, in connection with her felon conviction in the State  
2           of Florida. (Emphasis added)

3           The state has continued to make this false assertion without reviewing the  
4           Defendant's proof or just choosing to ignore the obvious truth. If the state  
5           doubted the information contained in the certified document from the Office of  
6           Executive Clemency, they could have made a telephone call to the Office of  
7           Executive Clemency, they could have made a telephone call to the Office of  
8           Executive Clemency to confirm the proof contained in said certificate.

9           Further, Mrs. Barrs was only allowed to vote in Nevada because her felony  
10          status was never checked by the Registrar of Voters. She declared under penalty  
11          of perjury on the voter registration form that she was "not laboring under any  
12          felony conviction or other loss of civil rights which would make it unlawful for me  
13          to vote." PA 100, item 10. Mrs. Barrs provided false information to the Registrar  
14          who relied upon it and allowed her to register, even though her civil right to vote  
15          had never been restored in Florida.  
16

17  
18          The affidavit of the Jury Commissioner clearly repels the untruthful  
19          statement that Mrs. Barrs had reported her felony conviction to the Jury  
20          Commissioner or anyone on her staff despite the four (4) opportunities that she  
21          had to do so (PA 88-95). Nevertheless, the state has asserted at page 16 of their  
22

23          Answer, lines 24-26 as follows:

24                 Most importantly however, Mrs. Barrs told the Jury Commissioner on  
25                 more than one occasion about the felony conviction. She did not  
26                 intentionally conceal the conviction. In fact, the Jury Commissioner  
                  told her to appear for jury service and she did so.

27                 Prior to making this false assertion of fact, the state had subpoenaed  
28

1 and reviewed the Jury Commissioner's records and had numerous opportunities  
2 to interview the Jury Commissioner, her staff members and to review both the  
3 written and computer records relating to Mrs. Barrs. They have offices in the  
4 same building only one(1) floor apart. They either did so and chose to ignore the  
5 truth or they failed to investigate the truth of the defense assertions even after  
6 seeing the Jury Commissioner's affidavit and attached records.  
7

8           The state has tried to confuse the issue of whether a person is "qualified"  
9 as a juror with whether a juror is "competent." Despite compelling evidence in the  
10 record, in the state's Answer, they cite cases where "qualified" jurors concealed  
11 information bearing on bias or prejudice. The instant case is distinguishable  
12 because Mrs. Barrs was not "qualified" under NRS 6.010. The state has asserted  
13 that CAREN BARRS IS QUALIFIED TO SIT ON A JURY BECAUSE HER CIVIL  
14 RIGHTS HAVE BEEN RESTORED (PA 48, ll. 3-4). Obviously the opposite is true  
15 since her civil rights had **not** been restored and therefore she was not qualified to  
16 sit as a juror and participated unlawfully in the jury deliberation process.  
17  
18

19           The state has recklessly made assertions of fact which are not true. These  
20 assertions are misleading and were intended to have a direct bearing on the  
21 District Court's decision and this Court's decision. Their above-mentioned  
22 statements are repelled by the record.  
23  
24

25           Finally, the defense asserts that the time limits of NRS 176.515 do not apply  
26 since it is the initial qualification of this person to act as a juror that is at issue.  
27 When a person conceals the truth and asserts a false statement in its place, she  
28

1 cannot be allowed to gain an advantage and to profit from misleading the court or  
2 the parties to a proceeding. Either the Jury Commissioner or Mrs. Barrs is not  
3 telling the truth. Either the Office of Executive Clemency of the State of Florida  
4 is untruthful or Mrs. Barrs was untruthful. Either Mrs. Barrs answered Judge  
5 Mosley's voir dire inquiry about her previous contact with the criminal justice  
6 system truthfully or not. It is clear from her pattern that she was intentionally  
7 untruthful by omission.  
8  
9

10 There is not one shred of evidence in the record to back up the truthfulness  
11 of Mrs. Barrs' claim. The certificate from the Office of Executive Clemency, Voter  
12 Registration and Affidavit of the Jury Commissioner (PA 83, 88-95, 100) back up  
13 the defense claims. The bottom line is that Mrs. Barrs, whether she believed it or  
14 not, was a convicted felon whose civil rights had not been restored. Her record  
15 had obviously not been sealed and she had not complied with the Florida statutes  
16 in order to get her rights restored. She was therefore not qualified ab initio.  
17 Allowing her to participate in this trial and then subsequently denying the  
18 Defendant's motion for a new trial violated the Defendant's rights to due process  
19 and a fair trial which are guaranteed under the Constitution of United States, the  
20 Nevada Constitution and the Nevada Revised Statutes cited herein.  
21  
22

### 23 **CONCLUSION**

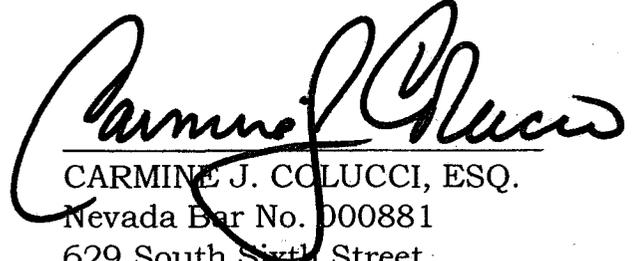
24 For the above stated reasons, Petitioner requests that his petition be  
25 granted and that the District Court be ordered to grant the Defendant's Motion for  
26 New Trial and to provide him with a full panel of twelve (12) qualified jurors to sit  
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as triers-of-fact in his case.

DATED this 28<sup>th</sup> day of October, 2004.

CARMINE J. COLUCCI CHTD.



CARMINE J. COLUCCI, ESQ.  
Nevada Bar No. 000881  
629 South Sixth Street  
Las Vegas, Nevada 89101  
Attorney for Petitioner

1 CERTIFICATE OF MAILING

2 I HEREBY CERTIFY that on the 28 day of October, 2004, I deposited in the  
3 United States Mail at Las Vegas, Nevada, a true and correct copy of the foregoing  
4  
5 REPLY TO RESPONDENT'S ANSWER TO PETITION FOR WRIT OF  
6 MANDAMUS/WRIT OF PROHIBITION enclosed in a sealed envelope upon which  
7 first class postage has been fully prepaid, addressed to:

8 David Roger  
9 Clark County District Attorney  
10 200 South Third Street  
11 P.O. Box 552212  
12 Las Vegas, Nevada 89155-2212

13 Bryan Sandoval  
14 Nevada Attorney General  
15 100 North Carson Street  
16 Carson City, Nevada 89701-4717

17   
18 an employee of  
19 CARMINE J. COLUCCI, CHTD.  
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