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CASE NO. 09-52877  
Tracie K. Lindeman

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1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2           The Appellant respectfully submits that this Court misapprehended the underlying  
3 facts, considering its prior ruling regarding the very same car stop in *Monroe v. State* case  
4 no. 52234, in deciding to affirm the lower court's decision in denying the Appellant's Motion  
5 to Suppress, based upon violations of the Appellant's Fourth Amendment Rights, and  
6 therefore rehearing is warranted under Nevada Rules of Appellate Procedure, Rule 40(c)(2)  
7 as to this issue.

8   **I.     THE COURT'S RULING IS IN OPPOSITION TO A PRIOR RULING BY**  
9   **THIS COURT REGARDING THE SAME CAR STOP IN *MONROE V. STATE*,**  
10   **NEVADA SUPREME COURT CASE NO. 52234.**

11           Under NRS 171.123, Nevada law enforcement officers may conduct investigative  
12 stops, but those stops may only occur if the officer has a reasonable belief "that the person  
13 has committed, or is committing, or is about to commit a crime." NRS 171.123(1).  
14 However, a stop made pursuant to NRS 171.123 is limited only to ascertain the person's  
15 "identity and the suspicious circumstances surrounding his presence abroad. Any person so  
16 detained shall identify himself, but may not be compelled to answer any other inquiry of any  
17 peace officer." NRS 171.123(3). Any detention must be limited in scope and duration.  
18 *Florida v. Royer*, 460 U.S. 491, 500 (1983).

19           Car stops by law enforcement are considered seizures subject to Fourth Amendment  
20 protections. *U.S. v. Garcia*, 205 F.3d 1182, 1186 (9<sup>th</sup> Cir. 2000). Any stop done by an  
21 officer must be 'justified at its inception, and ... reasonably related in scope to the  
22 circumstances which justified the interference in the first place.' *Hiibel v. Sixth Judicial v.*  
23 *District Court of Nevada, Humboldt County*, 542 U.S. 177, 185 (2004) (quoting *United*  
24 *States v. Shape*, 470 U.S. 675, 682 (1985) (quoting *Terry v. Ohio*, 392 U.S. 1, 20 (1968)).  
25 If the stop is not based upon a specific and objective set of facts that establish reasonable  
26 suspicion that the person stopped was involved in criminal activity, then the stop is  
27 unreasonable and violates the Fourth Amendment. *Id.* at 184; *Brown v. Texas*, 443 U.S. 47  
28 (1979). Any search is only permitted for limited purposes of searching for weapons and only

1 if police believe a suspect is armed and dangerous. *Somme v. State*, 124 Nev. \_\_\_, 187 P.3d  
2 152, 158 (2008); NRS 171.1232(1).

3 Here, the lower court only heard argument regarding the Appellant's Motion to  
4 Suppress. Appellant's Appendix, hereinafter 'AA' at 235-237. No evidentiary hearing was  
5 held, despite there being a factual dispute as to the basis of the stop, the search of the van,  
6 whether anything happened pertaining to the dentist business and the timing of connecting  
7 the Anku Crystal Palace burglary with the Just for Kid Dentistry. In affirming the lower  
8 court's decision to deny the motion to suppress, this Court mistakenly ruled that the officers  
9 knew at the time of the stop that the Appellant and his co-defendant Monroe were linked to  
10 the Anku burglary. However, no such evidence was offered aside from CAD reports noting  
11 the Anku location was not linked until a significant time after the inception of the stop. Such  
12 was one of the main issues contended. The lower court made no specific findings of when  
13 the Anku burglary was linked to the Just for Kids burglary, whether the length of the  
14 detention was proper, as no evidentiary hearing was held to help make such a factual ruling  
15 for review by this Court.

16 This Court repeatedly advises district courts to issue express factual findings when  
17 ruling on suppression motions so that the Court not have to speculate as to what findings  
18 were made below. *Somme v. State*, 124 Nev. \_\_\_, 187 P.3d 152, 157-158 (2008); *State v.*  
19 *Ruscetta*, 123 Nev. 299, 163 P.3d 451, 455 (2007); *Rosky v. State*, 121 Nev. 184, 191, 111  
20 P.3d 690, 695 (2005). Here, there was clearly a factual dispute regarding numerous issues  
21 surrounding the car stop, requiring an evidentiary hearing. These were the same factual  
22 issues surrounding the denied motion to suppress offered by Daimon Monroe in his appeal  
23 to this Court in Nevada Supreme Court case no. 52234. That case dealt with the very same  
24 car stop of both the Appellant and Monroe and had the very same factual issues in dispute.  
25 The lower court also only heard argument regarding Monroe's motion to suppress, and  
26 conducted no evidentiary hearing before denying Monroe's motion - a situation identical as  
27 the matter before this Court. However, this Court, in ruling on the lower court's denial of  
28

1 Monroe's motion, reversed Monroe's convictions and remanded the matter for an evidentiary  
2 hearing and a new trial. In reaching its decision, this Court noted:

3 "The interplay of the factual circumstances surrounding a search or seizure and  
4 the constitutional standards for when searches and seizures are reasonable  
5 requires the two-step review of a mixed question of law and fact .... we review  
6 the district court's findings of historical fact for clear error but review the legal  
7 consequences of those factual findings de novo." *Somme v. State*, 124 Nev.  
8 \_\_\_, \_\_\_ 187 P.3d 152, 157-58 (2008). For this court to conduct this analysis,  
9 "district courts must make specific factual findings." *Id.* at \_\_\_, 187 P.3d at  
10 158. We "cannot review a district court's decision to admit or suppress  
11 evidence" absent such findings. *Id.*; see also *State v. Ruscetta*, 123 Nev. 299,  
12 304, 163 P.3d 451, 455 (2007) (noting that while certain facts may be inferred  
13 from ruling, this court will not speculate about factual inferences drawn by  
14 district court).

15 ...

16 Given the district court's failure to conduct an evidentiary hearing respecting  
17 Monroe's motion and the lack of specific findings, we cannot conclude that the  
18 State met its burden of proving that the stop of the van was supported by  
19 reasonable suspicion ... Having determined that the district court erred in  
20 denying Monroe's motion to suppress evidence we ORDER the judgement of  
21 conviction REVERSED AND REMAND this matter to the district court for  
22 proceedings consistent with this order.

23 Order of Reversal and Remand, *Monroe v. State*, Nevada Supreme Court case no. 52234,  
24 page 2, 4 (Sept 10, 2009).

25 The Fourteenth Amendment mandates that all people similarly situated are entitled  
26 to receive like treatment under the law. UNITED STATES CONSTITUTION, AMENDMENT XIV;  
27 *Gaines v. State*, 116 Nev. 359, 371, 998 P.2d 166 (2000). Once there is a ruling on the merits  
28 of an issue, that ruling is the law of the case such that the issue will not be relitigated. See  
*Mitchell v. State*, 122 Nev. 1269, 149 P.3d 33, 36 (2006); *Pellegrini v. State*, 117 Nev. 860,  
879, 34 P.3d 519 (2001). It is a firmly established rule, even for criminal cases, that an  
adjudication on appeal is the law of the case on all subsequent claims for the case when the  
facts are substantially the same. *State v. Loveless*, 62 Nev. 312, 315, 150 P.2d 1015 (1944).  
The doctrine of *res judicata* does exist for criminal cases beyond that set forth by the fifth  
amendment. *United States v. Oppenheimer*, 242 U.S. 85, 87 (1916).

As the Appellant was involved in the identical car stop as Monroe, and this Court has  
previously ruled that denying the motion to suppress regarding Fourth Amendment violations  
occurring during the very same car stop, without factual findings or an evidentiary hearing,

1 was error, the same ruling should apply to him. This will allow this Court to maintain  
2 consistent rulings, protect the Appellant's Equal Protection Rights and follow this Court's  
3 principles under the doctrines of collateral estoppel, res judicata, and law of the case.  
4 Accordingly, this Court should reconsider its ruling affirming the lower court's denial of the  
5 Appellant's Motion to Suppress, and instead, change its prior ruling to conform with this  
6 Court's prior rulings regarding the exact same car stop. This Court should reverse the  
7 Appellant's convictions to remand the matter back to district court for an evidentiary hearing  
8 as to his Motion to Suppress and new trial following such hearing.

9 **CONCLUSION**

10 WHEREFORE, for all the reasons cited and addressed above, the Appellant  
11 respectfully asks this Court to grant its Petition for Rehearing and grant the appropriate relief  
12 requested in this matter.

13 DATED this 23rd day of August, 2010.

14 LAW OFFICE OF CYNTHIA DUSTIN, LLC.

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**CERTIFICATE OF MAILING**

The undersigned hereby declares that on the 23rd day of August, 2010, this document was filed electronically with the Nevada Supreme Court. Electronic service of the foregoing document was made in accordance to the Master Service List to the following:

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