

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT HOLMES, III,

Appellant,

vs.

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT,

Respondent.

Case No.: 62274 Electronically Filed
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Tracie K. Lindeman
Clerk of Supreme Court

RESPONSE TO APPELLANT'S APPEAL STATEMENT

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6 Respondent, Las Vegas Metropolitan Police Department (“LVMPD”), is
7 a government entity, and it is not owned in whole or in part by any publicly
8 traded company.

12 Dated this 5th day of February, 2016.

By /s/ Micah S. Echols
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1 **I. INTRODUCTION**

2 This appeal involves Robert Holmes III's ("Holmes") challenge to the
3 District Court's summary judgment order granting Las Vegas Metropolitan
4 Police Department's ("LVMPD") sole claim for civil forfeiture.¹ In the Court's
5 recent opinion in Ferguson v. Las Vegas Metropolitan Police Dept., 131 Nev.
6 Adv. Op. 94 (2015), the Court set forth more clearly the requirements for a civil
7 forfeiture (NRS 179.1156–NRS 179.121) based on a criminal conviction.²

8 Holmes lacks standing in this matter because he did not have an interest
9 in the \$70,000 that is at issue in this appeal. This money was not in his
10 possession or control. Holmes gave these funds to his attorney, who provided it
11 to law enforcement. Although Holmes now offers reasons why he gave the
12 money to his attorney, these assertions without evidence do not establish that
13 Holmes had an interest in the funds provided to law enforcement by his
14 attorney. Therefore, this appeal is not properly before the Court because
15 Holmes lack standing.

16 Even if the Court considers the merits of this appeal, the Court should,
17 nevertheless, affirm the summary judgment order against Holmes for the
18 following reasons: First, several of Holmes' issues presented in this appeal
19 were not brought before the District Court in the summary judgment
20 proceedings in opposition and, therefore, are waived on appeal. Second,
21 Holmes' issues regarding warrants and his arguments that he was misled by

22 _____
23 ¹ Record on Appeal ("ROA") 4:704–710.

² The complete text of NRS 179.1156–NRS 179.121 is attached as **Exhibit 1**.

1 ICE and Metro have not been substantiated with any evidence. Third, there was
2 no error in the District Court reopening the case when it was statistically closed
3 in error prior to the completion of the criminal proceedings. Fourth, the funds
4 that are at issue in this appeal were subject to forfeiture under the statutory
5 language, as proceeds under NRS 179.1161, derived directly or indirectly from
6 the commission or attempted commission of a crime. Under the requirements
7 in the recent Ferguson opinion, the link between the proceeds and Holmes’
8 conviction has been established by clear and convincing evidence attached to
9 the motion for summary judgment. Co-defendant Tonya Trevarthen
10 (“Trevarthen”) withdrew stolen money and money from stolen property from
11 her bank account and gave this money to Holmes, who gave it to his attorney.
12 Taken together, therefore, this Court should affirm the District Court’ summary
13 judgment order against Holmes.

14 **II. FACTUAL AND PROCEDURAL BACKGROUND**

15 Holmes was involved with an extensive burglary ring in Las Vegas,
16 involving three other convicted individuals: Bryan Ferguson (“Ferguson”),
17 Daimon Monroe (“Monroe”), and Trevarthen. All defendants were adjudicated
18 guilty.³ On January 5, 2009, Holmes entered a plea of guilty to one count of
19 Conspiracy to Possess Stolen Property and/or Commit Burglary (NRS 199.480)
20 and two counts of Possession of Stolen Property. (NRS 205.275).⁴ Trevarthen
21 also pled guilty to one count of Conspiracy to Possess Stolen Property and/or to

22 ³ ROA 3:700, ll. 14–17.

23 ⁴ ROA 3:700, ll. 20–23.

1 Commit Burglary and one count of Possession of Stolen Property.⁵ Monroe and
2 Ferguson were both found guilty by a jury for one count of Conspiracy to
3 Possess Stolen Property and/or to Commit Burglary, and 26 and 25 counts,
4 respectively, of Possession of Stolen Property.⁶

5 After pleading guilty, Holmes filed a motion to withdraw his guilty plea,
6 which was denied by the District Court on April 16, 2009. Holmes filed a
7 separate appeal to this Court on the denial of his attempted withdrawal of the
8 guilty plea, based on ineffective counsel.⁷ This Court found that Holmes did
9 not meet his burden to establish counsel was deficient, nor was an evidentiary
10 hearing warranted.⁸ Holmes' reliance on counsel's advice on a potential
11 sentence was not sufficient to invalidate the plea.⁹

12 On November 13, 2012, the District Court granted LVMPD's motion for
13 summary judgment on civil forfeiture, pursuant to NRS 179.1171(1),
14 179.1171(5) and 179.1156 to 179.121.¹⁰ The forfeiture included \$281,656.73,
15 representing "proceeds attributable to the commission or attempted commission
16 of a felony," including burglary, grand larceny, and/or possession of stolen
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20 ⁵ ROA 3:700, ll. 17–20.

21 ⁶ ROA 3:700–701.

22 ⁷ Respondent's Appendix ("RA") 1:52–116.

23 ⁸ RA 1:117–119.

⁹ Id.

¹⁰ ROA 3:700–703.

1 property.¹¹ LVMPD's summary judgment motion set forth the convictions of
2 Holmes, Ferguson, Monroe, and Trevarthen.¹²

3 Holmes' appeal relates specifically to \$70,000, which was seized from
4 his attorney, Sean P. Sullivan, Esq.¹³ The evidence set forth at the criminal trial
5 and presented in the summary judgment hearing demonstrated the \$70,000
6 disputed by Holmes was given to him, along with an additional \$75,000, by
7 Trevarthen, who admitted that the money was from Monroe selling stolen
8 property.¹⁴ Trevarthen withdrew \$145,000 from her bank accounts.¹⁵ These
9 bank accounts were in Trevarthen's name but were also used by Monroe, who
10 had Trevarthen's ATM and online login to access and transfer money between
11 accounts.¹⁶ Trevarthen stated the money in the bank accounts was primarily
12 from Monroe either depositing money from his burglaries or money received
13 from Monroe selling stolen property, which occurred weekly.¹⁷ That is, the co-
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15 ¹¹ ROA 3:702 (finding the elements of the forfeiture complaint were
16 established); ROA 1:2 at ll. 15–20 (complaint).

17 ¹² ROA 2:329–331.

18 ¹³ ROA 4:727.

19 ¹⁴ See ROA 2:426–427.

20 ¹⁵ ROA 2:426, ll. 7–12.

21 ¹⁶ ROA 2:421; 2:402–403.

22 ¹⁷ ROA 2:427, ll. 4–24:

23 Q: Now that \$145,000 where did you get that money from?

A: It was from the bank accounts in my name.

Q: Okay. . . . I mean, if you're making \$2,000 a month how did
you accumulate all that money? . . . Was that from legitimate
means?

1 conspirators, including Holmes, often stole cash from the cash registers of the
2 businesses they burglarized. The income Trevarthen earned did not bring in
3 enough money to cover all of the bills.¹⁸ Trevarthen gave the money from the
4 bank accounts to Holmes after her arrest.¹⁹ Holmes then gave up possession of
5 \$70,000, voluntarily, to his attorney.²⁰

6 The fact that attorney Sean Sullivan possessed the money, rather than
7 Holmes himself, was critical in the summary judgment hearing, as Judge Smith
8 stated, “This is an important fact that you didn’t tell me that he gave it to the—
9 to attorneys.”²¹ The following exchange took place on the record:

10 THE COURT: But you gave the \$70,000 to him [Sean Sullivan,
Esq.] and –

11 MR. HOLMES: He told me, he said: Look, they going to seize
your houses—

12 THE COURT: Okay. Don’t tell me what he said. You
voluntarily gave that to him?

13 MR. HOLMES: I—me, personally. Yes. Yes, Your Honor.
Yes.

14 THE COURT: Okay. That’s all I need to know there.²²

15 Judge Smith determined, “As to Monroe and Holmes, the money turned
16 over pursuant to search warrants was in the possession of their attorneys at the
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18 A: Most of it was just cash that was made through selling the
19 stolen property.

20 See also ROA 2:405, ll. 16–18.

21 ¹⁸ ROA 2:422: 20–25.

22 ¹⁹ ROA 2:426.

23 ²⁰ RA 1:139–140.

²¹ RA 1:138, ll. 5–6.

²² RA 1:140, ll. 14–19.

1 time of the seizure therefore they have no possessory claim to the money.”²³
2 Judge Smith also concluded, “The proof of facts necessary to sustain the
3 conviction are, therefore, conclusive evidence in this forfeiture action against”
4 all four Defendants, and these facts satisfied all elements of the forfeiture
5 complaint.²⁴ Summary judgment was granted on November 29, 2012.²⁵

6 **III. STANDARDS FOR REVIEWING ORDERS GRANTING** 7 **SUMMARY JUDGMENT**

8 This Court reviews a district court’s order resolving a motion for
9 summary judgment de novo, without deference to the findings of the lower
10 court.²⁶ Summary judgment is appropriate and “shall be rendered forthwith”
11 when the pleadings and other evidence on file demonstrate that no “genuine
12 issue as to any material fact [remains] and that the moving party is entitled to a
13 judgment as a matter of law.”²⁷ The substantive law will determine which facts
14 are material.²⁸ A factual dispute is genuine when the evidence is such that a
15 rational trier of fact could return a verdict for the nonmoving party.²⁹

16 ²³ ROA 3:702, ll. 17–19.

17 ²⁴ ROA 3:702, ll. 12–16.

18 ²⁵ ROA 3:703.

19 ²⁶ Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026, 1029 (2005) (citing
20 GES, Inc. v. Corbitt, 117 Nev. 265, 268, 21 P.3d 11, 13 (2001) (citation
omitted)).

21 ²⁷ Id., (citing NRCP 56(c); Tucker v. Action Equip. and Scaffold Co., 113 Nev.
1349, 1353, 951 P.2d 1027, 1029 (1997)).

22 ²⁸ Id., 121 Nev. at 730, 121 P.3d at 1030.

23 ²⁹ Id., 121 Nev. at 731, 121 P.3d at 1031 (citing Matsushita Elec. Indus. Co. v.
Zenith Radio, 475 U.S. 574, 586, 106 S.Ct. 1348 (1986); Posadas v. City of
Reno, 109 Nev. 448, 452, 851 P.2d 438, 441–442 (1993)).

1 **IV. LEGAL ARGUMENT**

2 **A. HOLMES LACKS STANDING IN THIS APPEAL.**

3 Holmes lacks standing to claim any of the forfeited property for two
4 reasons. First, Holmes did not set forth the interest he claims in the property as
5 required by NRS 179.1171(5).³⁰ Second, Holmes did not have a possessory
6 interest in the funds at issue, as they were voluntarily given to his attorney,
7 Sean Sullivan, from whom they were seized.³¹ Notably, standing is an issue of
8 subject matter jurisdiction that can be raised at any time.³²

9 NRS 179.1171(5) states:

10 Each claimant served with the summons and complaint who
11 desires to contest the forfeiture shall, within 20 days after the
12 service, serve and file a **verified answer to the complaint**. The
13 claimant shall admit or deny the averments of the complaint
14 and shall, in short and plain terms, **describe the interest which
the claimant asserts in the property**. Concurrently with the
answer, the claimant shall serve answers or objections to any
written interrogatories served with the summons and
complaint.³³

15 Holmes lacks standing to claim the forfeited property, first, because he did not
16 set forth the interest he claims in the property in the answer as required by
17 NRS 179.1171(5).³⁴ Holmes was represented by counsel at the time of his
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20 ³⁰ See ROA 1:46–49.

21 ³¹ ROA 3:702, ll. 17–19; RA 1:140 at ll. 14–19.

22 ³² See Applera Corp. v. MP Biomedicals, LLC, 93 Cal. Rptr.3d 178, 192 (Ct.
App. 2009) (citation omitted).

23 ³³ (emphasis added).

³⁴ See ROA 1:46–49.

1 answer, and the answer did not state he had an interest in the property.³⁵
2 Second, Holmes admitted in court that he had given up possession of the funds
3 to his attorney.³⁶ With no possessory interest in the funds and no claim to the
4 funds under the requirements of the statute, Holmes lacks standing with respect
5 to the forfeiture of the \$70,000. Notably, Holmes' former attorney has not
6 asserted any interest in the funds that were forfeited from him.

7 The Court discussed standing in Ferguson, in which Ferguson claimed
8 interest in funds in bank accounts, but he did not follow the specifications in the
9 statute by describing the interest in the answer to the complaint.³⁷ The funds in
10 Ferguson were in a bank account, and the Court determined that Ferguson
11 claimed interest in the funds, although he did not claim this interest in the
12 answer.³⁸ The Court emphasized standing was not based exclusively on the
13 statute, because the failure to state his interest in the answer was a "minor
14 omission" that was not fatal to his case.³⁹ The Court explained that LVMPD
15 was on notice that Ferguson "claimed an interest in the money at issue because
16 it seized the money from his bank account" and also by LVMPD recognizing
17 him and serving him with the complaint as a Defendant. Technical
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³⁵ See id.

³⁶ RA 1:140: 14–19; see also ROA 3:702, ll. 17–19.

³⁷ Ferguson, 131 Nev. Adv. Op. 94 at *15–20.

³⁸ Id. at *18–19.

³⁹ Id. at *18.

1 noncompliance with procedural rules may be excused if the Defendant makes a
2 sufficient showing of his interest.⁴⁰

3 Holmes' situation is different in that the funds were not seized from
4 Holmes or a bank account in his name, but were seized from his former
5 attorney, Sean Sullivan. The \$70,000 was relinquished by Holmes to his former
6 attorney, and his former attorney turned the funds over pursuant to a warrant.
7 Holmes did not have control over the money anymore, nor did he have a
8 possessory interest in the money.⁴¹ In various documents filed with this Court,
9 Holmes reveals he knew the money was being provided to law enforcement.⁴²
10 Holmes voluntarily relinquished this money to his retained attorney and now
11 lacks standing as a "claimant" to the money under these circumstances.

12 Holmes argues that he did not "abandon his personal interest" in the
13 funds "which he personally handed to his attorney."⁴³ Specifically, he argues
14 the funds did not belong to Sean Sullivan, so that he "maintained a personal
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16 ⁴⁰ See id. at *19 (citations omitted).

17 ⁴¹ ROA 3:702.

18 ⁴² See, e.g., First Pro Se Amended Notice of Appeal and Appeal Statement
19 ("Appeal Statement") at ROA 4:729 (admitting Holmes gave the funds to Sean
20 Sullivan: "\$70,000.00 in which he personally handed to his attorney who had
21 been retained to act on the defendant Robert Holmes III, behalf" and "handed
22 this sum to Sean P. Sullivan Esq. under the fraudulent belief that the Federal
23 Bureau of Investigation would seize the properties of family members").

⁴³ See ROA 4:729. Holmes cites United States v. One 56-Foot Yacht Named Tahuna, 702 F.2d 1276, 1279 (9th Cir. 1983), but that case does not relate to one who has relinquished control but rather held that a subsequent purchaser may have standing to challenge the forfeiture, if they are the owner of the property.

1 interest in the funds at all times.”⁴⁴ Generally, federal cases on forfeiture have
2 explained a claimant must own seized property to challenge a forfeiture.⁴⁵
3 Although there is not Nevada case law on the subject of attorney fees in the
4 civil forfeiture context, federal case law has discussed the policy reasons for
5 why attorneys’ fees are not exempt from forfeiture.⁴⁶ Notably, standing is an
6 issue of subject matter jurisdiction that can be raised at any time.⁴⁷ Since
7 Holmes did not have any interest in the relinquished property, he lacks standing

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11 ⁴⁴ ROA 4:733.

12 ⁴⁵ United States v. All That Tract & Parcel of Land: 2306 N. Eiffel Court, 602
13 F. Supp. 307, 311 (N.D. Ga. 1985); see also United States v. One 1945 Douglas
14 C-54 (DC-4) Aircraft, 604 F.2d 27, 28 (8th Cir. 1979) (“It is the owner or
owners of the res who have standing to challenge a forfeiture Broadly
speaking, ownership may be defined as having a possessory interest in the res,
with its attendant characteristics of dominion and control.”).

15 ⁴⁶ See In re Forfeiture Hearing As to Caplin & Drysdale, Chartered, 837 F.2d
16 637, 646 (4th Cir. 1988) aff’d sub nom. Caplin & Drysdale, Chartered v. United
17 States, 491 U.S. 617, 109 S. Ct. 2646, 105 L. Ed. 2d 528 (1989) (“An outright
exemption of attorneys’ fees from forfeiture would impose a regime of stark
inequality whereby those most successful in harvesting the fruits of criminal
activity would be those most able to secure representation others are not
constitutionally guaranteed and cannot personally afford.”); see also F.T.C. v.
18 Network Services Depot, Inc., 617 F.3d 1127, 1143–1144 (9th Cir. 2010)
19 (“[W]hen an attorney is objectively on notice that his fees may derive from a
pool of frozen assets, he has a duty to make a good faith inquiry into the source
of those fees”); United States v. Unimex, Inc., 991 F.2d 546, 549 (9th Cir.
20 1993) (citing Caplin & Drysdale v. United States, 491 U.S. 617, 109 S.Ct. 2646,
21 105 L.Ed.2d 528 (1989)) (“[A] defendant has no right to use the government’s
money to retain counsel of its choice, and forfeitable money belongs to the
22 government”).

23 ⁴⁷ See Applera Corp. v. MP Biomedicals, LLC, 93 Cal. Rptr.3d 178, 192 (Ct.
App. 2009) (citation omitted).

1 to make any challenges, and the District Court's forfeiture order should be
2 affirmed.⁴⁸

3
4 **B. HOLMES DID NOT PROVIDE EVIDENTIARY SUPPORT
TO OPPOSE SUMMARY JUDGMENT.**

5 NRCP 56(e) requires a party opposing summary judgment to include any
6 evidentiary support.⁴⁹ A party opposing summary judgment must set forth
7 specific facts by affidavit or other proper evidence indicating there is a genuine
8 issue of material fact.⁵⁰ Mere allegations and conclusory statements are
9 insufficient to survive summary judgment.⁵¹ "[A] trial court may not consider
10 hearsay or other inadmissible evidence when considering summary
11 judgment."⁵²

12 Holmes filed an opposition to the motion for summary judgment⁵³ that
13 consisted of conclusory statements and arguments that were not substantiated.
14 First, Holmes argues he was fraudulently told that the FBI was going to seize

15 ⁴⁸ See, e.g., U.S. v. \$133,420.00 in U.S. Currency, 672 F.3d 629, 640 (9th Cir.
16 2012) ("Louis never offered any explanation of how he came to possess the
17 money seized from his vehicle, and an unexplained possessory interest is
insufficient to establish standing at any stage of a forfeiture proceeding.").

18 ⁴⁹ NRCP 56(e); see also King v. Cartlidge, 121 Nev. 926, 928, 124 P.3d 1161,
1162–1163 (2005).

19 ⁵⁰ Id. (citing Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 442
(1993)).

20 ⁵¹ King, 121 Nev. at 928, 124 P.3d at 1162–1163 (citing Yeager v. Harrah's
21 Club, Inc., 111 Nev. 830, 833, 897 P.2d 1093, 1094–1095 (1995)); see also
Collins v. Union Fed. Sav. & Loan Ass'n, 99 Nev. 284, 302, 662 P.2d 610, 621
(1983).

22 ⁵² Russ v. Gen. Motors Corp., 111 Nev. 1431, 1435, 906 P.2d 718, 720 (1995)
(citing Adamson v. Bowker, 85 Nev. 115, 119, 450 P.2d 796, 799 (1969)).

23 ⁵³ ROA 2:452–476.

1 his three homes, and his attorney advised him to give the \$70,000 to the FBI.
2 These allegations and conclusory statements are insufficient to survive
3 summary judgment.⁵⁴ The evidence offered by Holmes on this subject is in the
4 form of his own declaration, and specifically depends on the hearsay statements
5 of Sean Sullivan and “U.S. Immigration and Metropolitan Police
6 Department.”⁵⁵ Holmes’ opposition did not survive summary judgment because
7 it did not demonstrate a material question of fact existed on these issues. On
8 this preliminary substantive issue, the Court should affirm the District Court’s
9 summary judgment order against Holmes.

10 **C. NO EVIDENCE WAS PRESENTED TO ESTABLISH A**
11 **MATERIAL ISSUE OF FACT ON THE WARRANT ISSUE.**

12 In his appeal statement, Holmes argues that there was no warrant for the
13 \$70,000, as well as a parallel argument that LVMPD lacks standing.⁵⁶ Holmes
14 did not raise these issues in his opposition to summary judgment,⁵⁷ and this
15 issue has been waived.⁵⁸ The only mention of the warrant in the opposition was

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17 ⁵⁴ See King, 121 Nev. at 928, 124 P.3d at 1162–1163; see also Bird v. Casa
18 Royale West, 97 Nev. 67, 70, 624 P.2d 17, 19 (1981) (stating that mere
19 conclusory language is not evidence).

20 ⁵⁵ ROA 2:475, ¶ 8. (“U.S. Immigration and Metropolitan Police Department
21 alleged that they were the FBI and that they will seize my 3 homes. . . Attorney
22 Sean Sullivan advised me to give him \$70,000 so the FBI would not seize my 3
23 homes.”)

24 ⁵⁶ ROA 4:725; 4:727; and 4:734.

25 ⁵⁷ See ROA 2:463.

26 ⁵⁸ See e.g., Delgado v. Am. Family Ins. Group, 217 P.3d 563, 567 (Nev. 2009)
(declining to address argument because issue was not raised below and
appellant not entitled to raise it for the first time on appeal); Diamond Enters.,
Inc. v. Lau, 113 Nev. 1376, 1378, 951 P.2d 73, 74 (1997) (“It is well

1 Holmes' own statement that ICE and LVMPD entered his house without a
2 warrant.⁵⁹ Holmes never alleged the \$70,000 received from Sullivan related to
3 a warrant issue, nor did he present any evidence to substantiate there was a
4 warrantless search or seizure.⁶⁰ As such, he may not raise this new issue on
5 appeal.⁶¹

6
7 **D. HOLMES' JURISDICTIONAL ARGUMENTS ARE WITHOUT MERIT.**

8 Holmes argued that LVMPD's motion for reconsideration "should have
9 been denied" based on language in the order staying the forfeiture proceeding.⁶²
10 This case was initially stayed in 2007 pending the criminal proceedings.⁶³ On
11 October 29, 2009, the District Court ordered the case statistically closed.⁶⁴ On
12 November 30, 2011, LVMPD filed a motion to reconsider, in which LVMPD
13 explained that while checking the status of the criminal case in November 2011,
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16 established that arguments raised for the first time on appeal need not be
17 considered by this court."); Montesano v. Donrey Media Group, 99 Nev. 644,
18 650, 668 P.2d 1081, 1085 n. 5 (1983) ("Arguments raised for the first time on
19 appeal need not be considered."); Old Aztec Mine, Inc. v. Brown, 97 Nev. 49,
20 623 P.2d 981 (1981) ("A point not urged in the trial court, unless it goes to the
21 jurisdiction of that court, is deemed to have been waived and will not be
22 considered on appeal.")

23 ⁵⁹ See ROA 2:464.

⁶⁰ See ROA 2:452–470.

⁶¹ See Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 623 P.2d 981 (1981).

⁶² See ROA 4:731

⁶³ ROA 1:67.

⁶⁴ ROA 1:106.

1 it was discovered that the civil forfeiture case had been statistically closed.⁶⁵
2 Defendants filed oppositions, and the District Court acknowledged the
3 forfeiture case was improperly closed.⁶⁶ Judgments of convictions in the
4 criminal cases continued to be amended up to late June 2011.⁶⁷ On January 24,
5 2012, the Court granted the motion to reconsider statistically closing the case.⁶⁸
6 After the case was reopened, LVMPD filed a motion to lift stay.⁶⁹

7 The District Court considered Holmes' arguments about the reopening of
8 the case and the relevant timelines in the hearing on summary judgment.⁷⁰ The
9 Court explained that LVMPD's motion was administrative, and in a civil case,
10 "If either party wants to open it up, we reopen it. But sometimes people don't
11 go forward with civil cases."⁷¹ The Court explained that Holmes was "a little
12 confused" on his understanding of what rules applied to the motion, as Holmes
13 was discussing NRC 50, 59, and 60, as well as discussing enlargements of
14 time.⁷² As such, the District Court did not err in reopening this case upon the
15 motion of LVMPD, when the case was statistically closed in error while
16 criminal proceedings were still pending.

18 ⁶⁵ ROA 1:118–126.

19 ⁶⁶ See ROA 1:194–195.

20 ⁶⁷ See ROA 4:708.

21 ⁶⁸ ROA 1:136.

22 ⁶⁹ ROA 1:198.

23 ⁷⁰ See RA 1:133–134.

⁷¹ Id.

⁷² Id.

1 **E. THE FUNDS THAT ARE AT ISSUE IN THIS APPEAL**
2 **WERE PROCEEDS SUBJECT TO FORFEITURE UNDER**
3 **THE STATUTORY LANGUAGE AND THE RECENT**
4 **FERGASON OPINION.**

5 The \$70,000 from Holmes were “proceeds” under NRS 179.1161,
6 derived directly or indirectly from the commission or attempted commission of
7 a crime. The proof of a conviction, under NRS 179.1173(6) is “conclusive
8 evidence of all facts necessary to sustain the conviction.” In Ferguson, the
9 Court set forth requirements under NRS 179.1161; 179.1164(1)(a); and NRS
10 179.1173(4):

11 The State must establish by clear and convincing evidence (a)
12 that a felony was committed or attempted, and (2) that the funds
13 seized are “attributable to” or “derived directly or indirectly
14 from” the commission or attempt.⁷³

15 These elements were established in this case. Clear and convincing evidence
16 requires “evidence establishing every factual element to be highly probable.”⁷⁴
17 Ferguson explains under NRS 179.1173(6) that proof of conviction is
18 “conclusive evidence of all facts necessary to sustain the conviction.”⁷⁵ Holmes
19 entered a guilty plea to Conspiracy to Possess Stolen Property and/or Commit
20 Burglary and two counts of Possession of Stolen Property. The motion for
21 summary judgment set forth the proceeds were attributable to the commission
22 or attempted commission of a felony: Burglary, Grand Larceny, and/or

23 ⁷³ Ferguson, 131 Nev. Adv. Op. 94 at *6.

⁷⁴ Id.

⁷⁵ See id.

1 Possession of Stolen Property.⁷⁶ In addition to the conviction itself, the
2 evidence before the District Court in granting the summary judgment has been
3 set forth in detail herein, and links the money possessed by Holmes' attorney to
4 the criminal activity. There is a clear nexus between the crimes charged and the
5 money that was seized.

6 Specifically, the District Court record included exhibits attached to the
7 summary judgment motion including the following evidence: The \$70,000
8 disputed by Holmes was initially given to Holmes by Trevarthen, who admitted
9 the money in her bank account was from Monroe bringing home cash from
10 burglaries and selling stolen property every weekend.⁷⁷ Trevarthen withdrew
11 \$145,000 from her bank accounts, which she gave to Holmes.⁷⁸ These bank
12 accounts were in Trevarthen's name but accessed and used by Monroe, who did
13 not have an ID but used Trevarthen's ATM card and online login to access and
14 transfer money between accounts.⁷⁹ Cash deposits were made frequently by

15 ⁷⁶ See ROA 3:700.

16 ⁷⁷ ROA 2:402-403 ("Q: Okay. So what would he—did he ever come home
17 with cash after doing these burglaries? A: He has. . . . He has come home with
18 cash before"); ROA 2:405-406 ("Q: How often would he sell the property out
19 of the house? A: Basically, every weekend. Q: Okay. And that was Cutler?
20 A: Or during the week, you know, he would say he would get rid of everything.
He would try to get rid of it all before the next weekend"); ROA 2:426-427
21 ("Q: Do you know approximately how much money you withdrew in cash and
gave to Robert Holmes or Bobby [Robert Holmes]? A: I believe it was
\$145,000.").

22 ⁷⁸ ROA 2:426-427.

23 ⁷⁹ ROA 2:421 (Trevarthen explaining that Monroe had access to all accounts
through an ATM card and could access online banking, and typically they made
a lot of cash deposits together in the car using the ATM); see also ROA 2:402-
403.

1 Trevarthen and Monroe together using the ATM card, and cash “would
2 accumulate at the house” between deposits.⁸⁰ The money in the bank accounts
3 was primarily from Monroe either depositing money from his burglaries or
4 money Monroe received from selling stolen property, which occurred weekly.⁸¹
5 “There was usually cash in the house,” and Trevarthen and Monroe made a lot
6 of cash deposits to the accounts.⁸² Trevarthen explained Monroe “basically
7 considered it [burglarizing] his job.”⁸³ Trevarthen earned only \$2,000 per
8 month, which did not cover the bills.⁸⁴ Trevarthen then gave the money she
9 withdrew from her bank account to Holmes.⁸⁵ Holmes gave up possession of
10 the \$70,000, voluntarily, to his attorney.⁸⁶ LVMPD presented, with clear and
11 convincing evidence, the proceeds were attributable to the commission or
12 attempted commission of a felony. Therefore, the Court should affirm
13 summary judgment against Holmes.

14 ⁸⁰ ROA 2:421.

15 ⁸¹ ROA 2:405. ll. 16–18; see also ROA 2:427, ll. 4–24:

16 Q: Now that \$145,000 where did you get that money from?

17 A: It was from the bank accounts in my name.

18 Q: Okay. . . . I mean, if you’re making \$2,000 a month how did
19 you accumulate all that money?. . . Was that from legitimate
means?

20 A: Most of it was just cash that was made through selling the
stolen property.

21 See also ROA 2:403–405.

22 ⁸² ROA 2:421, ll. 13–24.

23 ⁸³ ROA 2:401, ll. 2–25.

⁸⁴ ROA 2:422, ll. 23–25; ROA 2:427, ll. 4–24.

⁸⁵ ROA 2:425, ll. 10–12.

⁸⁶ RA 1:139–140.

1 **V. CONCLUSION**

2 The District Court had sufficient evidence to grant summary judgment to
3 LVMPD in this civil forfeiture case. Holmes relinquished all control and
4 interest in the \$70,000 when he gave it to his attorney. These funds have been
5 linked to the criminal activity for which Holmes was convicted. Holmes'
6 additional arguments have been waived as they were either not raised in the
7 opposition, or no evidence was set forth to establish an issue of material fact
8 within his opposition. LVMPD respectfully requests that this Court affirm the
9 District Court's order granting summary judgment against Holmes for any of
10 the reasons presented or any other reason supported by the record.⁸⁷

11 Dated this 5th day of February, 2016.

12 MARQUIS AURBACH COFFING

13 By /s/ Micah S. Echols

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22 ⁸⁷ See Hotel Riviera, Inc. v. Torres, 97 Nev. 399, 403, 632 P.2d 1155, 1158
23 (1981) ("If a decision below is correct, it will not be disturbed on appeal even
though the lower court relied upon wrong reasons.") (citations omitted).

1 **CERTIFICATE OF COMPLIANCE**

2 1. I hereby certify that this brief complies with the formatting
3 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5)
4 and the type style requirements of NRAP 32(a)(6) because this brief has been
5 prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-
6 point Times New Roman font.

7 2. I further certify that this brief complies with the page- or type-
8 volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief
9 exempted by NRAP 32(a)(7)(C), it is either:

10 ☒ proportionally spaced, has a typeface of 14 points or more and
11 contains 4,560 words; or

12 ☐ does not exceed _____ pages.

13 3. Finally, I hereby certify that I have read this brief, and to the best
14 of my knowledge, information and belief, it is not frivolous or interposed for
15 any improper purpose. I further certify that this brief complies with all
16 applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1),
17 which requires every assertion in the brief regarding matters in the record to be
18 supported by a reference to the page and volume number, if any, of the
19 transcript or appendix where the matter relied on is to be found. I understand
20 that I may be subject to sanctions in the event that the accompanying brief is not

1 in conformity with the requirements of the Nevada Rules of Appellate
2 Procedure.

3 Dated this 5th day of February, 2016.

4
5 MARQUIS AURBACH COFFING

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONSE TO APPELLANT'S
APPEAL STATEMENT** was filed electronically with the Nevada Supreme Court on the 5th day of February, 2016. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

N/A

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

Robert Holmes III
Inmate ID: 1034184
SDCC
P.O. Box 208
Indian Springs, NV 89018
Appellant in Proper Person

Thomas Moreo, Esq.
District Attorney
200 Lewis Ave, 3rd Floor
Las Vegas, NV 89155

/s/ Leah Dell
Leah Dell, an employee of
Marquis Aurbach Coffing

Exhibit 1

NRS 179.1156 Scope. Except as otherwise provided in [NRS 179.1211](#) to [179.1235](#), inclusive, and [207.350](#) to [207.520](#), inclusive, the provisions of [NRS 179.1156](#) to [179.121](#), inclusive, govern the seizure, forfeiture and disposition of all property and proceeds subject to forfeiture.

(Added to NRS by [1987, 1380](#); A [1989, 1789](#); [2007, 205](#))

NRS 179.1157 Definitions. As used in [NRS 179.1156](#) to [179.119](#), inclusive, unless the context otherwise requires, the words and terms defined in [NRS 179.1158](#) to [179.11635](#), inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by [1987, 1380](#); A [1989, 1789](#); [1991, 209](#))

NRS 179.1158 “Claimant” defined. “Claimant” means any person who claims to have:

1. Any right, title or interest of record in the property or proceeds subject to forfeiture;
2. Any community property interest in the property or proceeds; or
3. Had possession of the property or proceeds at the time of the seizure thereof by the plaintiff.

(Added to NRS by [1987, 1380](#))

NRS 179.1159 “Plaintiff” defined. “Plaintiff” means the law enforcement agency which has commenced a proceeding for forfeiture.

(Added to NRS by [1987, 1380](#))

NRS 179.1161 “Proceeds” defined. “Proceeds” means any property, or that part of an item of property, derived directly or indirectly from the commission or attempted commission of a crime.

(Added to NRS by [1987, 1380](#))

NRS 179.1162 “Property” defined. “Property” includes any:

1. Real property or interest in real property.
2. Fixture or improvement to real property.

3. Personal property, whether tangible or intangible, or interest in personal property.

4. Conveyance, including any aircraft, vehicle or vessel.

5. Money, security or negotiable instrument.

6. Proceeds.

(Added to NRS by [1987, 1380](#))

NRS 179.1163 “Protected interest” defined. “Protected interest” means the enforceable interest of a claimant in property, which interest is shown not to be subject to forfeiture.

(Added to NRS by [1987, 1380](#))

NRS 179.11635 “Willful blindness” defined. “Willful blindness” means the intentional disregard of objective facts which would lead a reasonable person to conclude that the property was derived from unlawful activity or would be used for an unlawful purpose.

(Added to NRS by [1991, 209](#))

NRS 179.1164 Property subject to seizure and forfeiture; exceptions.

1. Except as otherwise provided in subsection 2, the following property is subject to seizure and forfeiture in a proceeding for forfeiture:

(a) Any proceeds attributable to the commission or attempted commission of any felony.

(b) Any property or proceeds otherwise subject to forfeiture pursuant to [NRS 179.121](#), [200.760](#), [202.257](#), [370.419](#), [453.301](#) or [501.3857](#).

2. Property may not, to the extent of the interest of any claimant, be declared forfeited by reason of an act or omission shown to have been committed or omitted without the knowledge, consent or willful blindness of the claimant.

3. Unless the owner of real property or a mobile home:

(a) Has given the tenant notice to surrender the premises pursuant to [NRS 40.254](#) within 90 days after the owner receives notice of a conviction pursuant to subsection 2 of [NRS 453.305](#); or

(b) Shows the court that the owner had good cause not to evict the tenant summarily pursuant to [NRS 40.254](#),

↳ the owner of real property or a mobile home used or intended for use by a tenant to facilitate any violation of the provisions of [NRS 453.011](#) to [453.552](#), inclusive, except [NRS 453.336](#), is disputably presumed to have known of and consented to that use if the notices required by [NRS 453.305](#) have been given in connection with another such violation relating to the property or mobile home. The holder of a lien or encumbrance on the property or mobile home is disputably presumed to have acquired an interest in the property for fair value and without knowledge or consent to such use, regardless of when the act giving rise to the forfeiture occurred.

(Added to NRS by [1987, 1380](#); A [1989, 1235](#); [1991, 209](#), [2286](#), [2288](#); [1995, 2534](#); [2001, 1066](#); [2003, 562](#); [2005, 1198](#))

NRS 179.1165 Seizure of property: Requirement of process.

1. Except as provided in subsection 2, property that is subject to forfeiture may only be seized by a law enforcement agency upon process issued by a magistrate having jurisdiction over the property.

2. A seizure of property may be made by a law enforcement agency without process if:

(a) The seizure is incident to:

(1) An arrest;

(2) A search pursuant to a search warrant; or

(3) An inspection pursuant to a warrant for an administrative inspection;

(b) The property is the subject of a final judgment in a proceeding for forfeiture;

(c) The law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The law enforcement agency has probable cause to believe that the property is subject to forfeiture.

(Added to NRS by [1985, 1466](#); A [1987, 1382](#))

NRS 179.1169 Title in property; transfer.

1. All right, title and interest in property subject to forfeiture vests in the plaintiff:

(a) In the case of property used or intended for use to facilitate the commission or attempted commission of any felony, when the property is so used or intended for such use.

(b) In the case of property otherwise subject to forfeiture, when the event giving rise to the forfeiture occurs.

(c) In the case of proceeds, when they become proceeds.

2. Any transfer of property which occurs after title to the property has become vested in the plaintiff, and before the termination of the proceeding for forfeiture, is void as against the plaintiff, unless the person to whom the transfer is made is a good faith purchaser for value. If such a transfer is made, the purchaser must, in the proceeding for forfeiture, establish by a preponderance of the evidence that the purchaser has:

(a) An interest of record in the property;

(b) Given fair value for the interest; and

(c) Acquired the interest without notice of the proceeding or the facts giving rise to the proceeding.

↪ If the purchaser acquires the interest after the seizure of the property by the plaintiff, it is conclusively presumed that the interest has been acquired with notice of the proceeding.

(Added to NRS by [1987, 1381](#))

NRS 179.1171 Proceedings for forfeiture: Rules of practice; complaint; service of summons and complaint; answer; parties.

1. Except as otherwise provided in [NRS 179.1156](#) to [179.119](#), inclusive, the Nevada Rules of Civil Procedure are applicable to and constitute the rules of practice in a proceeding for forfeiture pursuant to those sections.

2. A proceeding for forfeiture is commenced by filing a complaint for forfeiture. If the property has been seized without process, the plaintiff shall promptly file the complaint for forfeiture. The property is subject to an action to

claim its delivery only if the plaintiff does not file the complaint for forfeiture within 60 days after the property is seized. If the complaint for forfeiture is filed following the commencement of an action claiming delivery, the complaint must be treated as a counterclaim.

3. A proceeding for forfeiture is in rem. The complaint for forfeiture must be filed in the district court for the county in which the property which is the subject of the proceeding is located.

4. The plaintiff shall cause service of the summons and complaint to be made upon each claimant whose identity is known to the plaintiff or who can be identified through the exercise of reasonable diligence. If real property or any interest in real property is affected by the proceeding, the plaintiff shall file notice of the proceeding in the manner provided in [NRS 14.010](#).

5. Each claimant served with the summons and complaint who desires to contest the forfeiture shall, within 20 days after the service, serve and file a verified answer to the complaint. The claimant shall admit or deny the averments of the complaint and shall, in short and plain terms, describe the interest which the claimant asserts in the property. Concurrently with the answer, the claimant shall serve answers or objections to any written interrogatories served with the summons and complaint.

6. No person, other than the plaintiff and any claimant, is a proper party in the proceeding.

(Added to NRS by [1987, 1381](#))

NRS 179.1173 Proceedings for forfeiture: Priority over other civil matters; motion to stay; standard of proof; conviction of claimant not required; confidentiality of informants; return of property to claimant.

1. The district court shall proceed as soon as practicable to a trial and determination of the matter. A proceeding for forfeiture is entitled to priority over other civil actions which are not otherwise entitled to priority.

2. At a proceeding for forfeiture, the plaintiff or claimant may file a motion for an order staying the proceeding and the court shall grant that motion if a criminal action which is the basis of the proceeding is pending trial. The court shall, upon a motion made by the plaintiff, lift the stay upon a satisfactory showing that the claimant is a fugitive.

3. The plaintiff in a proceeding for forfeiture must establish proof by clear and convincing evidence that the property is subject to forfeiture.

4. In a proceeding for forfeiture, the rule of law that forfeitures are not favored does not apply.

5. The plaintiff is not required to plead or prove that a claimant has been charged with or convicted of any criminal offense. If proof of such a conviction is made, and it is shown that the judgment of conviction has become final, the proof is, as against any claimant, conclusive evidence of all facts necessary to sustain the conviction.

6. The plaintiff has an absolute privilege to refuse to disclose the identity of any person, other than a witness, who has furnished to a law enforcement officer information purporting to reveal the commission of a crime. The privilege may be claimed by an appropriate representative of the plaintiff.

7. If the court determines that the property is not subject to forfeiture, the court shall order the property and any interest accrued pursuant to subsection 2 of [NRS 179.1175](#) returned to the claimant found to be entitled to the property. If the court determines that the property is subject to forfeiture, the court shall so decree. The property, including any interest accrued pursuant to subsection 2 of [NRS 179.1175](#), must be forfeited to the plaintiff, subject to the right of any claimant who establishes a protected interest. Any such claimant must, upon the sale or retention of the property, be compensated for the claimant's interest in the manner provided in [NRS 179.118](#).

(Added to NRS by [1987, 1382](#); A [2001, 874](#))

NRS 179.1175 Disposition of property after seizure and forfeiture.

1. Except as otherwise provided in subsection 2, after property has been seized the agency which seized the property may:

(a) Place the property under seal;

(b) Remove the property to a place designated by the agency for the storage of that type of property; or

(c) Remove the property to an appropriate place for disposition in a manner authorized by the court.

2. If an agency seizes currency, unless otherwise ordered by the court, the agency shall deposit the currency in an interest-bearing account maintained for the purpose of holding currency seized by the agency.

3. When a court declares property to be forfeited, the plaintiff may:

(a) Retain it for official use;

(b) Sell any of it which is neither required by law to be destroyed nor harmful to the public; or

(c) Remove it for disposition in accordance with the applicable provisions of NRS.

(Added to NRS by [1985, 1467](#); A [1987, 1383](#); [2001, 875](#))

NRS 179.118 Distribution of proceeds from forfeited property.

1. The proceeds from any sale or retention of property declared to be forfeited and any interest accrued pursuant to subsection 2 of [NRS 179.1175](#) must be applied, first, to the satisfaction of any protected interest established by a claimant in the proceeding, then to the proper expenses of the proceeding for forfeiture and resulting sale, including the expense of effecting the seizure, the expense of maintaining custody, the expense of advertising and the costs of the suit.

2. Any balance remaining after the distribution required by subsection 1 must be deposited as follows:

(a) Except as otherwise provided in this subsection, if the plaintiff seized the property, in the special account established pursuant to [NRS 179.1187](#) by the governing body that controls the plaintiff.

(b) Except as otherwise provided in this subsection, if the plaintiff is a metropolitan police department, in the special account established by the Metropolitan Police Committee on Fiscal Affairs pursuant to [NRS 179.1187](#).

(c) Except as otherwise provided in this subsection, if more than one agency was substantially involved in the seizure, in an equitable manner to be directed by the court hearing the proceeding for forfeiture.

(d) If the property was seized pursuant to [NRS 200.760](#), in the State Treasury for credit to the Fund for the Compensation of Victims of Crime to be used for the

counseling and the medical treatment of victims of crimes committed in violation of [NRS 200.366](#), [200.710](#) to [200.730](#), inclusive, or [201.230](#).

(e) If the property was seized as the result of a violation of [NRS 202.300](#), in the general fund of the county in which the complaint for forfeiture was filed, to be used to support programs of counseling of persons ordered by the court to attend counseling pursuant to [NRS 62E.290](#).

(f) If the property was forfeited pursuant to [NRS 201.351](#), with the county treasurer to be distributed in accordance with the provisions of subsection 4 of [NRS 201.351](#).

(Added to NRS by [1985, 1467](#); A [1987, 1383](#); [1989, 1789](#); [1995, 1150](#); [1997, 1599](#); [2001, 875](#); [2003, 1120](#); [2009, 575](#))

NRS 179.1185 Issuance of certificate of title for forfeited vehicle or other conveyance. If a vehicle or other conveyance is forfeited of a kind which is subject to the provisions of title 43 of NRS governing certificates of title, the agency charged by law with responsibility for issuing certificates of title for conveyances of the kind shall issue a certificate of title to:

1. The governing body or the agency to whom the title was awarded by the court if the conveyance is retained for official use; or
2. The purchaser if the conveyance is sold by the governing body or the plaintiff.

(Added to NRS by [1985, 1467](#); A [1987, 1384](#); [2003, 478](#))

NRS 179.1187 Establishment of account for proceeds from forfeited property; restrictions on use of money in account; distribution of certain amount to school district; duties of school district and chief administrative officer of law enforcement agency.

1. The governing body controlling each law enforcement agency that receives proceeds from the sale of forfeited property shall establish with the State Treasurer, county treasurer, city treasurer or town treasurer, as custodian, a special account, known as the “..... Forfeiture Account.” The account is a separate and continuing account and no money in it reverts to the State General Fund or the general fund of the county, city or town at any time. For the purposes of this section, the governing body controlling a metropolitan police department is the Metropolitan Police Committee on Fiscal Affairs.

2. The money in the account may be used for any lawful purpose deemed appropriate by the chief administrative officer of the law enforcement agency, except that:

(a) The money must not be used to pay the ordinary operating expenses of the agency.

(b) Money derived from the forfeiture of any property described in [NRS 453.301](#) must be used to enforce the provisions of [chapter 453](#) of NRS.

(c) Money derived from the forfeiture of any property described in [NRS 501.3857](#) must be used to enforce the provisions of title 45 of NRS.

(d) Seventy percent of the amount of money in excess of \$100,000 remaining in the account at the end of each fiscal year, as determined based upon the accounting standards of the governing body controlling the law enforcement agency that are in place on March 1, 2001, must be distributed to the school district in the judicial district. If the judicial district serves more than one county, the money must be distributed to the school district in the county from which the property was seized.

3. Notwithstanding the provisions of paragraphs (a) and (b) of subsection 2, money in the account derived from the forfeiture of any property described in [NRS 453.301](#) may be used to pay for the operating expenses of a joint task force on narcotics otherwise funded by a federal, state or private grant or donation. As used in this subsection, “joint task force on narcotics” means a task force on narcotics operated by the Department of Public Safety in conjunction with other local or federal law enforcement agencies.

4. A school district that receives money pursuant to paragraph (d) of subsection 2 shall deposit such money into a separate account. The interest and income earned on the money in the account, after deducting any applicable charges, must be credited to the account. The money in the account must be used to purchase books and computer hardware and software for the use of the students in that school district.

5. The chief administrative officer of a law enforcement agency that distributes money to a school district pursuant to paragraph (d) of subsection 2 shall submit a report to the Director of the Legislative Counsel Bureau before January 1 of each odd-numbered year. The report must contain the amount of

money distributed to each school district pursuant to paragraph (d) of subsection 2 in the preceding biennium.

(Added to NRS by [1989, 1789](#); A [1991, 2287](#); [2001, 876](#); [2003, 2528](#))

NRS 179.119 Reports by law enforcement agencies that receive forfeited property or related proceeds; inclusion of such anticipated revenue in budget prohibited.

1. Any law enforcement agency that receives forfeited property or the proceeds of a sale of such property pursuant to the provisions contained in [NRS 179.1156](#) to [179.119](#), inclusive, shall:

(a) File a quarterly report of the approximate value of the property and the amount of the proceeds with the entity that controls the budget of the agency; and

(b) Provide the entity that controls the budget of the agency with a quarterly accounting of the receipt and use of the proceeds.

2. Revenue from forfeitures must not be considered in the preparation of the budget of a law enforcement agency except as money to match money from the Federal Government.

(Added to NRS by [1985, 1468](#); A [1987, 1384](#); [1989, 1790](#); [2003, 2529](#))

NRS 179.121 Forfeiture of personal property and conveyances used in commission of crime.

1. All personal property, including, without limitation, any tool, substance, weapon, machine, computer, money or security, which is used as an instrumentality in any of the following crimes is subject to forfeiture:

(a) The commission of or attempted commission of the crime of murder, robbery, kidnapping, burglary, invasion of the home, grand larceny or theft if it is punishable as a felony;

(b) The commission of or attempted commission of any felony with the intent to commit, cause, aid, further or conceal an act of terrorism;

(c) A violation of [NRS 202.445](#) or [202.446](#);

(d) The commission of any crime by a criminal gang, as defined in [NRS 213.1263](#); or

(e) A violation of [NRS 200.463](#) to [200.468](#), inclusive, [201.300](#), [201.320](#), [202.265](#), [202.287](#), [205.473](#) to [205.513](#), inclusive, [205.610](#) to [205.810](#), inclusive, [370.380](#), [370.382](#), [370.395](#), [370.405](#), [465.070](#) to [465.085](#), inclusive, [630.400](#), [630A.600](#), [631.400](#), [632.285](#), [632.291](#), [632.315](#), [633.741](#), [634.227](#), [634A.230](#), [635.167](#), [636.145](#), [637.090](#), [637A.352](#), [637B.290](#), [639.100](#), [639.2813](#), [640.169](#), [640A.230](#), [644.190](#) or [654.200](#).

2. Except as otherwise provided for conveyances forfeitable pursuant to [NRS 453.301](#) or [501.3857](#), all conveyances, including aircraft, vehicles or vessels, which are used or intended for use during the commission of a felony or a violation of [NRS 202.287](#), [202.300](#) or [465.070](#) to [465.085](#), inclusive, are subject to forfeiture except that:

(a) A conveyance used by any person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to the felony or violation;

(b) A conveyance is not subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge, consent or willful blindness;

(c) A conveyance is not subject to forfeiture for a violation of [NRS 202.300](#) if the firearm used in the violation of that section was not loaded at the time of the violation; and

(d) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the felony. If a conveyance is forfeited, the appropriate law enforcement agency may pay the existing balance and retain the conveyance for official use.

3. For the purposes of this section, a firearm is loaded if:

(a) There is a cartridge in the chamber of the firearm;

(b) There is a cartridge in the cylinder of the firearm, if the firearm is a revolver; or

(c) There is a cartridge in the magazine and the magazine is in the firearm or there is a cartridge in the chamber, if the firearm is a semiautomatic firearm.

4. As used in this section, “act of terrorism” has the meaning ascribed to it in [NRS 202.4415](#).

(Added to NRS by [1983, 1135](#); A [1985, 638, 1239](#); [1989, 656, 1187, 1188, 1241, 1242, 1453](#); [1991, 210, 2287, 2288](#); [1995, 1150, 1424](#); [1997, 639](#); [1999, 2711](#); [2003, 2952](#); [2005, 90, 1199](#); [2007, 1269](#); [2009, 575](#); [2013, 1857, 2248, 2420](#))