

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN FERGASON,

Appellant,

vs.

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT,

Respondent.

Electronically Filed
Nov 13 2014 09:38 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Case No.: 62357

Appeal from The Eighth Judicial
District Court, The Honorable Douglas
E. Smith Presiding

RESPONDENT'S AMENDED ANSWERING BRIEF

MARQUIS AURBACH COFFING

Micah S. Echols, Esq.
Nevada Bar No. 8437
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
mechols@maclaw.com

**CLARK COUNTY DISTRICT
ATTORNEY**

Steven B. Wolfson
Clark County District Attorney
Nevada Bar No. 1565
Thomas J. Moreo
Chief Deputy District Attorney
Nevada Bar No. 2415
200 Lewis Avenue
Las Vegas, NV 89155
Telephone: (702) 671-2501
Facsimile: (702) 455-2294
thomas.moreo@clarkcountynvda.com

Attorneys for Respondent, LVMPD

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

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

12 Dated this 6th day of November, 2014.

By /s/ Micah S. Echols
Micah S. Echols, Esq.
Nevada Bar No. 8437
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Respondent, LVMPD

TABLE OF CONTENTS

1		
2	I.	JURISDICTIONAL STATEMENT.....1
3	II.	ISSUES ON APPEAL1
4	A.	WHETHER FERGASON HAS FAILED TO
5		ADEQUATELY DEMONSTRATE THAT HE HAS
6		STANDING TO CHALLENGE LVMPD’S CIVIL
7		FORFEITURE.....1
8	B.	WHETHER FERGASON’S FAILURE TO RAISE HIS
9		PRECLUSION ARGUMENTS IN THE DISTRICT
10		COURT PROHIBITS HIM FROM DOING SO NOW FOR
11		THE FIRST TIME ON APPEAL, WHICH, IN ANY
12		EVENT, DO NOT REQUIRE REVERSAL.1
13	C.	WHETHER FERGASON’S FAILURE TO PRESENT ANY
14		EVIDENCE IN OPPOSITION TO LVMPD’S MOTION
15		FOR SUMMARY JUDGMENT OPERATES AS AN
16		ADMISSION THAT THERE ARE NO GENUINE ISSUES
17		OF MATERIAL FACT FOR TRIAL.....1
18	D.	WHETHER THE DISTRICT COURT PROPERLY
19		DETERMINED BY CLEAR AND CONVINCING PROOF
20		THAT THE EVIDENCE PRESENTED IN THE
21		COMPANION CRIMINAL PROCEEDINGS
22		CONSTITUTES PROCEEDS ATTRIBUTABLE TO THE
23		COMMISSION OR ATTEMPTED COMMISSION OF
		ANY FELONY SUFFICIENT FOR THE ENTRY OF
		SUMMARY JUDGMENT.....2
	III.	STATEMENT OF THE CASE AND SUMMARY OF
		ARGUMENT2
	IV.	STANDARDS OF REVIEW6
	A.	STANDARDS FOR REVIEWING QUESTIONS OF LAW.6
	B.	STANDARDS FOR REVIEWING ORDERS GRANTING
		SUMMARY JUDGMENT.....6
	V.	RELEVANT FACTUAL AND PROCEDURAL BACKGROUND8
	A.	FERGASON’S “PROLIFIC” BURGLARY RING.8

1	B.	FERGASON'S ARREST AND THE RELATED SEARCH WARRANTS.....	9
2			
3	C.	FERGASON'S GUILTY PLEA AND CONVICTIONS IN THE CRIMINAL PROCEEDINGS.....	11
4			
5	D.	LVMPD'S CONCURRENT COMPLAINT FOR CIVIL FORFEITURE AND FERGASON'S FAILURE TO MAKE ANY CLAIM IN HIS ANSWER.....	13
6			
7	E.	FERGASON'S PRIOR NEVADA SUPREME COURT APPEALS.....	14
8			
9	F.	LVMPD'S MOTION FOR SUMMARY JUDGMENT ON CIVIL FORFEITURE AND FERGASON'S BARE OPPOSITION.....	15
10			
11	G.	THE DISTRICT COURT HEARING ON LVMPD'S MOTION FOR SUMMARY JUDGMENT ON CIVIL FORFEITURE AND SUBSEQUENT WRITTEN ORDER.....	16
12	VI.	LEGAL ARGUMENT.....	18
13			
14	A.	FERGASON HAS FAILED TO ADEQUATELY DEMONSTRATE THAT HE HAS STANDING TO CHALLENGE LVMPD'S CIVIL FORFEITURE.	18
15			
16	1.	The Plain Language of NRS 179.1171(5) Required Ferguson to Describe in His Answer Any Interest He May Have Had in the Funds Seized from Bank of America.	18
17			
18	2.	Due to Ferguson's Failure to Describe Any Interest He May Have Had in the Seized Funds from Bank of America, He Lacks Standing to Challenge LVMPD's Forfeiture.	20
19			
20	B.	FERGASON'S FAILURE TO RAISE HIS PRECLUSION ARGUMENTS IN THE DISTRICT COURT PROHIBITS HIM FROM DOING SO NOW FOR THE FIRST TIME ON APPEAL, WHICH, IN ANY EVENT, DO NOT REQUIRE REVERSAL.	22
21			
22			
23	1.	Since Ferguson Did Not Challenge the Application of NRS 179.1173(5) in the District Court, He Cannot Do So Now for the First Time on Appeal.	23

1	2.	In Any Event, Ferguson's Preclusion Arguments Would Not Warrant Disturbing Summary Judgment, Even if They Had Been Properly Presented.	24
2			
3	C.	FERGASON'S FAILURE TO PRESENT ANY EVIDENCE IN OPPOSITION TO LVMPD'S MOTION FOR SUMMARY JUDGMENT OPERATES AS AN ADMISSION THAT THERE ARE NO GENUINE ISSUES OF MATERIAL FACT FOR TRIAL.....	28
4			
5			
6	1.	To Avoid Summary Judgment, Ferguson Was Required to Present Admissible Evidence to Demonstrate the Existence of Genuine Issues of Material Fact for Trial.....	28
7			
8	2.	Not Only Was Ferguson's Request for Additional Discovery Procedurally Improper, But It is Now Waived for Failure to Raise the Issue in His Opening Brief.....	31
9			
10	D.	THE DISTRICT COURT PROPERLY DETERMINED BY CLEAR AND CONVINCING PROOF THAT THE EVIDENCE PRESENTED IN THE COMPANION CRIMINAL PROCEEDINGS CONSTITUTES PROCEEDS ATTRIBUTABLE TO THE COMMISSION OR ATTEMPTED COMMISSION OF ANY FELONY SUFFICIENT FOR THE ENTRY OF SUMMARY JUDGMENT.....	32
11			
12	1.	The District Court Properly Applied the Conclusive Presumption of NRS 179.1173(5) Since a Conspiracy Conviction Implies Joint and Several Liability.....	33
13			
14	2.	Ferguson's Entire Position Asks This Court to Take an Extremely Limited View of the Evidence, Which Is Prohibited by NRS 179.11635 and NRS 179.1164(2).	35
15			
16	3.	The Law-of-the-Case Doctrine Prohibits Ferguson's Arguments, Which Should All Be Rejected by This Court.....	35
17			
18			
19			
20			
21	VII.	CONCLUSION	38
22			
23			

TABLE OF AUTHORITIES**CASES**

<u>A.F. Constr. Co. v. Virgin River Casino,</u> 118 Nev. 699, 56 P.3d 887 (2002).....	18, 19
<u>Already, LLC v. Nike, Inc.,</u> 133 S.Ct. 721 (2013)	21
<u>Anderson v. Liberty Lobby, Inc.,</u> 477 U.S. 242, 106 S.Ct. 2505 (1986).....	7
<u>Applera Corp. v. MP Biomedicals, LLC,</u> 93 Cal. Rptr.3d 178 (Ct. App. 2009)	3, 18, 20
<u>Bakerink v. Orthopaedic Associates, Ltd.,</u> 94 Nev. 428, 581 P.2d 9 (1978).....	31
<u>Bird v. Casa Royale West,</u> 97 Nev. 67, 624 P.2d 17 (1981).....	4, 28, 29
<u>Birth Mother v. Adoptive Parents,</u> 118 Nev. 972, 59 P.3d 1233 (2002).....	6
<u>Catrone v. 105 Casino Corp.,</u> 82 Nev. 166, 414 P.2d 106 (1966).....	30
<u>Clauson v. Lloyd,</u> 103 Nev. 432, 743 P.2d 631 (1987).....	30
<u>Cleghorn v. Hess,</u> 109 Nev. 544, 853 P.2d 1260 (1993).....	19
<u>Collins v. Union Fed. Sav. & Loan Ass'n,</u> 99 Nev. 284, 662 P.2d 610 (1983).....	4, 28, 29
<u>Cowgill v. Raymark Indus., Inc.,</u> 832 F.2d 798 (3d Cir. 1987)	36
<u>Delgado v. Am. Family Ins. Group,</u> 217 P.3d 563 (Nev. 2009)	23
<u>Dennison v. Allen Group Leasing Corp.,</u> 110 Nev. 181, 871 P.2d 288 (1994).....	30

1	<u>Diamond Enters., Inc. v. Lau,</u>	
2	113 Nev. 1376, 951 P.2d 73 (1997).....	23
3	<u>Five Star Capital Corp. v. Ruby,</u>	
4	124 Nev. 1048, 194 P.3d 709 (2008).....	3, 22, 24
5	<u>Foster v. Dingwall,</u>	
6	228 P.3d 453 (Nev. 2010)	17
7	<u>GES, Inc. v. Corbitt,</u>	
8	117 Nev. 265, 21 P.3d 11 (2001).....	6
9	<u>Hall v. State,</u>	
10	91 Nev. 314, 535 P.2d 797 (1975).....	36
11	<u>Hotel Riviera, Inc. v. Torres,</u>	
12	97 Nev. 399, 632 P.2d 1155 (1981).....	6
13	<u>Kahn v. Morse & Mowbray,</u>	
14	121 Nev. 464, 117 P.3d 227 (2005).....	4, 28, 31
15	<u>Leven v. Frey,</u>	
16	123 Nev. 399, 168 P.3d 712 (2007).....	19, 20
17	<u>LoBue v. State ex rel. Dep't Hwys.,</u>	
18	92 Nev. 529, 554 P.2d 250 (1976).....	36
19	<u>Mack-Manley v. Manley,</u>	
20	122 Nev. 849, 138 P.3d 525 (2006).....	17
21	<u>Matsushita Elec. Indus. Co. v. Zenith Radio,</u>	
22	475 U.S. 574, 106 S.Ct. 1348 (1986).....	7
23	<u>Montesano v. Donrey Media Group,</u>	
	99 Nev. 644 P.2d 1081 (1983)	23
	<u>Munoz v. County of Imperial,</u>	
	667 F.2d 811 (9th Cir. 1982).....	36
	<u>North Carolina v. Alford,</u>	
	400 U.S. 25, 91 S.Ct. 160 (1970)	3, 11, 22
	<u>Old Aztec Mine, Inc. v. Brown,</u>	
	97 Nev. 49, 623 P.2d 981 (1981).....	23

1	<u>Olney v. U.S.</u> ,	
2	433 F.2d 161 (9th Cir. 1970).....	38
3	<u>Pegasus v. Reno Newspapers, Inc.</u> ,	
4	118 Nev. 706, 57 P.3d 82 (2002).....	7
5	<u>Pellegrini v. State</u> ,	
6	117 Nev. 860, 34 P.3d 519 (2001).....	5, 33, 37
7	<u>Posadas v. City of Reno</u> ,	
8	109 Nev. 448, 851 P.2d 438 (1993).....	7
9	<u>Salas v. Allstate Rent-A-Car, Inc.</u> ,	
10	116 Nev. 1165, 14 P.3d 511 (2000).....	18
11	<u>Schuck v. Signature Flight Support of Nev., Inc.</u> ,	
12	245 P.3d 542 (Nev. 2010)	23
13	<u>Secretary of State v. Nevada State Legislature</u> ,	
14	120 Nev. 456, 93 P.3d 746 (2004).....	21
15	<u>SIIS v. United Exposition Services Co.</u> ,	
16	109 Nev. 28, 846 P.2d 294 (1993).....	18
17	<u>Southern Nev. Homebuilders v. Clark County</u> ,	
18	121 Nev. 446, 117 P.3d 171 (2005).....	19
19	<u>State v. Bennett</u> ,	
20	119 Nev. 589, 81 P.3d 1(2003).....	36
21	<u>State, Dep't Mtr. Vehicles v. Vezeris</u> ,	
22	102 Nev. 232, 720 P.2d 1208 (1986).....	19
23	<u>Swan v. Swan</u> ,	
	106 Nev. 464, 796 P.2d 221 (1990).....	20
	<u>Thomas v. State</u> ,	
	114 Nev. 1127, 967 P.2d 1111 (1998).....	29
	<u>Tucker v. Action Equip. and Scaffold Co.</u> ,	
	113 Nev. 1349, 951 P.2d 1027 (1997).....	7
	<u>U.S. v. \$133,420.00 in U.S. Currency</u> ,	
	672 F.3d 629 (9th Cir. 2012).....	3, 18, 21

1	<u>U.S. v. 8136 S. Dobson Street,</u>	
2	125 F.3d 1076 (7th Cir. 1997).....	21
3	<u>U.S. v. Corrado,</u>	
4	227 F.3d 543 (6th Cir. 2000).....	5, 32, 33
5	<u>U.S. v. Simmons,</u>	
6	154 F.3d 765 (8th Cir. 1998).....	34
7	<u>U.S. v. Thomas,</u>	
8	913 F.2d 1111 (4th Cir. 1990).....	30
9	<u>White v. U.S.,</u>	
10	371 F.3d 900 (7th Cir. 2004).....	38
11	<u>Williams v. Zellhoefer,</u>	
12	89 Nev. 579, 517 P.2d 789 (1973).....	23
13	<u>Wood v. Safeway, Inc.,</u>	
14	121 Nev. 724, 121 P.3d 1026 (2005).....	6
15	<u>RULES</u>	
16	NRAP 3A(b)(1)	1
17	NRCP 56(c)	7
18	NRCP 56(f).....	31
19	<u>STATUTES</u>	
20	NRS 179.1156–NRS 179.121	2
21	NRS 179.11635	5, 32, 35
22	NRS 179.1164(1)(a).....	25, 29
23	NRS 179.1164(2).....	5, 32, 35
	NRS 179.1171(5).....	2, 14, 16, 18, 20, 22, 38
	NRS 179.1173(3).....	25, 29

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1	NRS 179.1173(5).....	3, 4, 15, 22, 23, 25, 32, 33, 34, 37, 39
2	NRS 193.330	4, 11, 23, 29
3	NRS 199.480	3, 11, 22, 29, 30
4	NRS 199.490	30
5	NRS 205.060	4, 11, 23, 29
6	NRS 205.275	3, 11, 22, 29
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		

1 **I. JURISDICTIONAL STATEMENT**

2 The District Court entered an order granting summary judgment in favor
3 of LVMPD and against all Defendants, including Ferguson who is the only
4 Appellant in this appeal.¹ The District Court's summary judgment order
5 resolved LVMPD's sole claim for civil forfeiture.² Ferguson's notice of appeal
6 was filed on December 21, 2012,³ which was within 30 days of the
7 November 29, 2012 notice of entry of order granting LVMPD's motion for
8 summary judgment.⁴ Therefore, according to NRAP 3A(b)(1), this Court has
9 appellate jurisdiction over this case as an appeal from a final judgment.

10 **II. ISSUES ON APPEAL**

- 11 **A. WHETHER FERGASON HAS FAILED TO ADEQUATELY**
12 **DEMONSTRATE THAT HE HAS STANDING TO**
13 **CHALLENGE LVMPD'S CIVIL FORFEITURE.**
- 14 **B. WHETHER FERGASON'S FAILURE TO RAISE HIS**
15 **PRECLUSION ARGUMENTS IN THE DISTRICT COURT**
16 **PROHIBITS HIM FROM DOING SO NOW FOR THE**
17 **FIRST TIME ON APPEAL, WHICH, IN ANY EVENT, DO**
18 **NOT REQUIRE REVERSAL.**
- 19 **C. WHETHER FERGASON'S FAILURE TO PRESENT ANY**
20 **EVIDENCE IN OPPOSITION TO LVMPD'S MOTION FOR**
21 **SUMMARY JUDGMENT OPERATES AS AN ADMISSION**
22 **THAT THERE ARE NO GENUINE ISSUES OF MATERIAL**
23 **FACT FOR TRIAL.**

20 ¹ Record on Appeal ("ROA") 4:704–710.

21 ² Id.; ROA 1:1–6.

22 ³ ROA 4:795–798.

23 ⁴ ROA 4:704–710.

1 D. **WHETHER THE DISTRICT COURT PROPERLY**
2 **DETERMINED BY CLEAR AND CONVINCING PROOF**
3 **THAT THE EVIDENCE PRESENTED IN THE**
4 **COMPANION CRIMINAL PROCEEDINGS CONSTITUTES**
5 **PROCEEDS ATTRIBUTABLE TO THE COMMISSION OR**
6 **ATTEMPTED COMMISSION OF ANY FELONY**
7 **SUFFICIENT FOR THE ENTRY OF SUMMARY**
8 **JUDGMENT.**

9 **III. STATEMENT OF THE CASE AND SUMMARY OF ARGUMENT**

10 This appeal involves Fergason's challenge to the District Court's
11 summary judgment order granting LVMPD's sole claim for civil forfeiture.⁵

12 While Fergason lacks standing and has otherwise waived certain arguments he
13 has presented to this Court in his opening brief, this case provides the Court
14 with an opportunity to construe and emphasize certain provisions of Nevada's
15 civil forfeiture statutes (NRS 179.1156–NRS 179.121).⁶ Based upon any of the
16 following reasons, this Court should affirm the District Court's summary
17 judgment order:

18 First, Fergason lacks standing to claim any of the forfeited property
19 because in his answer filed in the District Court, he failed to “describe the
20 interest which the claimant asserts in the property,” as required by
21 NRS 179.1171(5).⁷ Notably, standing is an issue of subject matter jurisdiction

22 ⁵ ROA 4:704–710.

23 ⁶ The complete text of NRS 179.1156–NRS 179.121 is attached as **Exhibit 1**.

⁷ ROA 1:42–44.

1 that can be raised at any time.⁸ Since Fergason never alleged any interest in the
2 forfeited property, he lacks standing to make any challenges, and the District
3 Court's forfeiture order should be affirmed.⁹

4 Second, Fergason cannot raise his preclusion arguments for the first time
5 on appeal, which, in any event, do not require reversal. Fergason simply cannot
6 overcome the language of NRS 179.1173(5), which states, "If proof of such a
7 conviction is made, and it is shown that the judgment of conviction has become
8 final, the proof is, as against any claimant, conclusive evidence of all facts
9 necessary to sustain the conviction." Despite the controlling language of this
10 statute, Fergason suggests that an analysis of preclusion principles somehow
11 changes the outcome. However, even if preclusion principles were applied, in
12 contrast to the plain language of the statute, Fergason would be barred from
13 claims that he could have made¹⁰ in the criminal proceedings where he was
14 convicted of various counts of conspiracy to possess stolen property and/or to
15 commit burglary (NRS 205.275, NRS 199.480) and possession of stolen
16 property (NRS 205.275) and pled guilty (pursuant to Alford) of attempt

17 _____
18 ⁸ See Applera Corp. v. MP Biomedicals, LLC, 93 Cal. Rptr.3d 178, 192 (Ct.
App. 2009) (citation omitted).

19 ⁹ See, e.g., U.S. v. \$133,420.00 in U.S. Currency, 672 F.3d 629, 640 (9th Cir.
20 2012) ("Louis never offered any explanation of how he came to possess the
21 money seized from his vehicle, and an unexplained possessory interest is
insufficient to establish standing at any stage of a forfeiture proceeding.").

22 ¹⁰ See Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1054–1055, 194 P.3d
23 709, 713 (2008) (concluding that for claim preclusion, the preclusive effect
applies to "all grounds of recovery that were or could have been brought in the
first case.") (citation omitted).

1 burglary (NRS 193.330, NRS 205.060).¹¹ Therefore, Ferguson's preclusion
2 arguments do not serve to disturb the District Court's summary judgment order.

3 Third, Ferguson's failure to present any evidence in opposition to
4 LVMPD's motion for summary judgment operates as an admission that there
5 are no genuine issues of material fact for trial.¹² Instead of evidence,
6 Ferguson's District Court opposition only offered bare argument, which is not
7 evidence.¹³ Additionally, Ferguson does not ask for additional discovery in his
8 opening brief, having now waived that argument.¹⁴ Thus, Ferguson simply has
9 no evidence to present to the jury, and summary judgment should be affirmed.

10 Fourth, the District Court properly applied the conclusive presumption of
11 NRS 179.1173(5) based upon the evidence presented. Ferguson's opening brief
12 significantly downplays the importance of this statutory provision, even though
13 his convictions operate as "against any claimant, conclusive evidence of all
14 facts necessary to sustain the conviction." For example, Ferguson's conviction
15 for conspiracy raises the notion that Ferguson was jointly and severally liable
16
17

18 ¹¹ ROA 2:371–375, 383–384.

19 ¹² See Collins v. Union Fed. Sav. & Loan Ass'n, 99 Nev. 284, 302, 662 P.2d
20 610, 621 (1983).

21 ¹³ See Bird v. Casa Royale West, 97 Nev. 67, 70, 624 P.2d 17, 19 (1981)
(stating that mere conclusory language is not evidence).

22 ¹⁴ See, e.g., Kahn v. Morse & Mowbray, 121 Nev. 464, 480, 117 P.3d 227, 238,
23 n. 24 (2005) (stating that an issue is waived by failing to raise the issue in
briefing).

1 for forfeiture proceeds of the conspiracy.¹⁵ In contrast, Ferguson impermissibly
2 asks this Court to take a narrow view of the evidence presented, despite the
3 statutory prohibition against willful blindness.¹⁶ Ferguson's entire position in
4 this appeal essentially asks the Court to reconsider points that were already
5 established in previous appeals before this Court.¹⁷ Once the Court reviews
6 certain previous filings, including its own order, there is really no reason to
7 disturb the District Court's summary judgment order.¹⁸ In fact, the law of the
8 case doctrine prohibits Ferguson's attempts to re-litigate factual issues already
9 established in his criminal proceedings and upheld by this Court.¹⁹

10 In summary, these four reasons demonstrate that Ferguson has waived
11 certain arguments, the District Court had sufficient evidence to grant summary
12 judgment to LVMPD in this civil forfeiture case, and once the applicable

13 ¹⁵ See, e.g., U.S. v. Corrado, 227 F.3d 543, 553 (6th Cir. 2000) ("The
14 government is not required to prove the specific portion of proceeds for which
15 each defendant is responsible. Such a requirement would allow defendants 'to
16 mask the allocation of the proceeds to avoid forfeiting them altogether.'")
(citations omitted).

17 ¹⁶ See NRS 179.11635 & NRS 179.1164(2).

18 ¹⁷ See, e.g., Respondent's Appendix ("RA") 3:680 ("The officers who executed
19 search warrants on Ferguson's storage units, apartment, bank accounts, and
20 safety deposit box also testified. These searches resulted in the discovery of
evidence that directly or inferentially linked Ferguson to the crimes of burglary
and/or possession of stolen property.").

21 ¹⁸ RA 3:678-685.

22 ¹⁹ See Pellegrini v. State, 117 Nev. 860, 884, 34 P.3d 519, 535 (2001) ("The law
23 of a first appeal is the law of the case on all subsequent appeals in which the
facts are substantially the same.") (citations and internal quotation marks
omitted).

1 presumptions and law are applied, Ferguson has no ability to re-litigate
2 established points. Therefore, LVMPD respectfully requests that this Court
3 affirm the District Court's order granting summary judgment to LVMPD for
4 any of the reasons presented or any other reason supported by the record.²⁰

5 **IV. STANDARDS OF REVIEW**

6 **A. STANDARDS FOR REVIEWING QUESTIONS OF LAW.**

7 This Court reviews questions of law de novo.²¹ Statutory interpretation is
8 a question of law which this Court reviews de novo.²²

9 **B. STANDARDS FOR REVIEWING ORDERS GRANTING 10 SUMMARY JUDGMENT.**

11 This Court reviews a district court's order resolving a motion for
12 summary judgment de novo, without deference to the findings of the lower
13 court.²³ Summary judgment is appropriate and 'shall be rendered forthwith'
14 when the pleadings and other evidence on file demonstrate that no 'genuine
15 issue as to any material fact [remains] and that the moving party is entitled to a
16

17 ²⁰ See Hotel Riviera, Inc. v. Torres, 97 Nev. 399, 403, 632 P.2d 1155, 1158
18 (1981) ("If a decision below is correct, it will not be disturbed on appeal even
19 though the lower court relied upon wrong reasons.") (citations omitted).

20 ²¹ Birth Mother v. Adoptive Parents, 118 Nev. 972, 974, 59 P.3d 1233, 1235
(2002).

21 ²² Id.

22 ²³ Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026, 1029 (2005) (citing
23 GES, Inc. v. Corbitt, 117 Nev. 265, 268, 21 P.3d 11, 13 (2001) (citation
omitted)).

1 judgment as a matter of law.’²⁴ The substantive law will determine which facts
2 are material.²⁵ A factual dispute is genuine when the evidence is such that a
3 rational trier of fact could return a verdict for the nonmoving party.²⁶

4 Only disputes over facts that might affect the outcome of the suit under
5 the governing law will properly preclude the entry of summary judgment.²⁷
6 Factual disputes that are irrelevant or unnecessary will not be counted.²⁸ The
7 nonmoving party may not defeat a motion for summary judgment by relying on
8 the gossamer threads of whimsy, speculation, and conjecture.²⁹ While the
9 pleadings and other proof must be construed in a light most favorable to the
10 nonmoving party, that party bears the burden to ‘do more than simply show that
11 there is some metaphysical doubt’ as to the operative facts in order to avoid
12 summary judgment being entered in the moving party’s favor.³⁰

14 ²⁴ Id. (citing NRCP 56(c); Tucker v. Action Equip. and Scaffold Co., 113 Nev.
15 1349, 1353, 951 P.2d 1027, 1029 (1997)).

16 ²⁵ Id., 121 Nev. at 730, 121 P.3d at 1030.

17 ²⁶ Id., 121 Nev. at 731, 121 P.3d at 1031 (citing Matsushita Elec. Indus. Co. v.
18 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)).

19 ²⁷ Id., 121 Nev. at 730, 121 P.3d at 1030.

20 ²⁸ Id. (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247–248, 106 S.Ct.
2505 (1986)).

21 ²⁹ Id. (citing Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 713–714, 57
22 P.3d 82, 87 (2002) (citations and internal quotations omitted)).

23 ³⁰ Id., 121 Nev. at 732, 121 P.3d at 1031 (citing Matsushita, 475 U.S. at 586,
106 S.Ct. 1348).

1 Based upon these standards of review, the Court should affirm the
2 District Court's summary judgment order in favor of LVMPD.

3 **V. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

4 **A. FERGASON'S "PROLIFIC" BURGLARY RING.**

5 Ferguson was part of one of the most prolific burglary rings in Las
6 Vegas.³¹ He often went by the nickname "JB."³² After Ferguson was arrested
7 and the burglary tools were impounded, LVMPD discovered that Ferguson and
8 his co-conspirators had crafted a tool to gain entry to businesses without any
9 significant damage to the door or evidence of how entry was made.³³ This
10 burglary tool was created from a screwdriver that had been bent at a 90 degree
11 angle and ground down really thin.³⁴ This tool was used to manipulate the
12 thumb lock from the outside of the entry doors to a business by placing the tool
13 in the small gap between the doors.³⁵ With this burglary tool, access could be
14 gained to a business with a similar internal thumb lock within about a minute.³⁶
15 During Ferguson's phone calls from the Clark County Detention Center
16 ("CCDC") to his accomplice Tonya Trevarthen ("Trevarthen"), LVMPD

17
18 _____
³¹ RA 1:156.

19 ³² RA 1:85:19–22.

20 ³³ RA 1:136.

21 ³⁴ RA 1:137–138.

22 ³⁵ Id.

23 ³⁶ Id.

1 learned that Ferguson and his co-conspirators named this burglary tool
2 “Matthew.”³⁷

3
4 **B. FERGASON’S ARREST AND THE RELATED SEARCH WARRANTS.**

5 LVMPD received a call about a white minivan parked near a dentist’s
6 office late at night.³⁸ After LVMPD officers arrived at the scene, they had the
7 occupants of the minivan, including Ferguson, step out of the vehicle.³⁹ When
8 questioned about his employment, Ferguson told officers that he worked for
9 J&B’s Pressure Washing (which does not actually exist).⁴⁰ The responding
10 LVMPD officers were also in contact with other officers who had investigated a
11 similar burglary at Anku Crystal Palace.⁴¹ Ferguson was initially arrested that
12 evening for possession of burglary tools, including “Matthew.”⁴² LVMPD also
13 later learned that Ferguson and his co-conspirators had used a large white
14 moving van of approximately 27 feet to move stolen property.⁴³

15
16
17 ³⁷ RA 1:147; RA 3:457.

18 ³⁸ RA 2:231–233.

19 ³⁹ RA 2:236–237.

20 ⁴⁰ RA 2:243. Sometimes the record references “D&B Power Washing” which also does not exist.

21 ⁴¹ RA 2:244.

22 ⁴² RA 2:253.

23 ⁴³ RA 1:148–149.

1 From LVMPD's monitoring of Ferguson's phone calls from CCDC,
2 LVMPD issued several search warrants to residences and storage units that
3 housed the co-conspirators' stolen property.⁴⁴ The execution of these search
4 warrants resulted in evidence that then led LVMPD to Bank of America
5 accounts that were held by Tonya Trevarthen, Damon Monroe, Bobby Holmes,
6 or Ferguson.⁴⁵ This evidence included receipts showing Ferguson's Bank of
7 America accounts.⁴⁶ Ferguson had approximately \$126,000 in his Bank of
8 America accounts.⁴⁷ LVMPD officers also executed a search warrant for
9 Ferguson's safe deposit box at the Westcliff Bank of America branch in Las
10 Vegas.⁴⁸ The safe deposit box contained collector's gold coins and paper
11 money, as well as large prehistoric shark teeth.⁴⁹ Ferguson does not challenge
12 the forfeiture of the content of his safe deposit box.

13 The assistant manager for the downtown Las Vegas Bank of America
14 branch testified during the criminal trial that she had received paperwork from
15 the police regarding a warrant for the seizure of Ferguson's accounts, and that
16 she authorized the procedure after receiving approval from the Bank of America
17

18 ⁴⁴ RA 1:173.

19 ⁴⁵ RA 1:173–174.

20 ⁴⁶ RA 3:469–470.

21 ⁴⁷ RA 1:174.

22 ⁴⁸ RA 3:474.

23 ⁴⁹ RA 3:475.

1 legal department.⁵⁰ Fergason had opened checking, savings, and CD accounts
2 with Bank of America.⁵¹ After the warrant was processed, Bank of America
3 issued a cashier's check to LVMPD for the contents of Fergason's accounts.⁵²

4
5 **C. FERGASON'S GUILTY PLEA AND CONVICTIONS IN THE
CRIMINAL PROCEEDINGS.**

6 Fergason pled guilty (pursuant to Alford)⁵³ of attempt burglary
7 (NRS 193.330, NRS 205.060) and was convicted of various counts of
8 conspiracy to possess stolen property and/or to commit burglary (NRS 205.275,
9 NRS 199.480) and possession of stolen property (NRS 205.275).⁵⁴ During the
10 criminal trials,⁵⁵ Trevarthen testified that she had lived with co-Defendant
11 Devon Monroe ("Monroe") and had a relationship with him.⁵⁶ Trevarthen
12 testified that she and Monroe had a house full of furniture, computers,
13 paintings, and flat screen TVs in every room.⁵⁷ In the couple's garage, they
14 also stored stolen items, including sports memorabilia and a fountain drink

15 _____
⁵⁰ RA 1:48–50.

16 ⁵¹ RA 1:52:5–9.

17 ⁵² RA 1:52:19–25.

18 ⁵³ See North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160 (1970).

19 ⁵⁴ ROA 2:371–375, 383–384.

20 ⁵⁵ As District Court Judge Stewart Bell explained, some of the criminal
21 proceedings involving Fergason and his co-conspirators were tried separately
22 because of the timing of the different charges. RA 3:670–674.

22 ⁵⁶ RA 1:57–58.

23 ⁵⁷ RA 1:60.

1 machine.⁵⁸ Police would later seize these items, as well as guitars, photographs,
2 baseball cards, footballs, and football helmets.⁵⁹

3 For her employment, Trevarthen earned \$10.50 per hour as an
4 administrative assistant at a university, which was less than \$2,000 per month.⁶⁰

5 Her teaching job paid about the same amount.⁶¹ Trevarthen paid for a storage
6 unit on Charleston to store Fergason's belongings.⁶² Trevarthen also

7 maintained accounts at Bank of America.⁶³ Trevarthen and Monroe made a lot
8 of cash deposits together into her accounts.⁶⁴ Trevarthen also testified that

9 Monroe did not have a job and that her earnings did not cover the monthly bills
10 for their household.⁶⁵ Further, Fergason's only job was with a moving

11 company, and he only held the job for a few months.⁶⁶ In addition to his
12 storage unit paid for by Trevarthen, Fergason also parked his car at

15 ⁵⁸ RA 1:65–66.

16 ⁵⁹ RA 2:279.

17 ⁶⁰ RA 1:67–68.

18 ⁶¹ Id.

19 ⁶² RA 1:69.

20 ⁶³ RA 1:69–70.

21 ⁶⁴ RA 1:70–71.

22 ⁶⁵ RA 1:71.

23 ⁶⁶ RA 2:394.

1 Trevarthen's home and kept some of his belongings there.⁶⁷ Trevarthen
2 eventually testified that almost everything in the entire house was stolen.⁶⁸

3 After Trevarthen was arrested for possession of stolen property, she
4 withdrew approximately \$145,000 from Bank of America.⁶⁹ Trevarthen
5 explained that she deposited cash into her Bank of America accounts from
6 selling the stolen items.⁷⁰ Trevarthen also explained that after she had assisted
7 in loading stolen property into Ferguson's Charleston storage unit, both Monroe
8 and Ferguson asked her advice about where to store cash and the types of
9 accounts to use because Trevarthen had worked in a bank and had already set
10 up some accounts.⁷¹ As part of Trevarthen's plea deal, she disclaimed any
11 interest in the seized money.⁷²

12 **D. LVMPD'S CONCURRENT COMPLAINT FOR CIVIL**
13 **FORFEITURE AND FERGASON'S FAILURE TO MAKE**
14 **ANY CLAIM IN HIS ANSWER.**

15 During the pendency of the criminal proceedings, LVMPD filed a
16 complaint for civil forfeiture against Ferguson and his co-conspirators.⁷³ This
17 complaint alleged a sole claim for civil forfeiture and specifically mentioned the

18 ⁶⁷ RA 1:77–78.

19 ⁶⁸ RA 1:92–95.

20 ⁶⁹ RA 1:97.

21 ⁷⁰ RA 1:98.

22 ⁷¹ RA 1:430.

23 ⁷² RA 1:112.

⁷³ ROA 1:1–6.

1 \$124,216.36 seized from Fergason's Bank of America account.⁷⁴ Although
2 Fergason was represented by counsel at the time, his filed answer only denied
3 the allegations of LVMPD's complaint for civil forfeiture, but the answer did
4 not identify Fergason's alleged interest in the funds seized from Bank of
5 America,⁷⁵ as required by NRS 179.1171(5): "The claimant shall admit or deny
6 the averments of the complaint and shall, in short and plain terms, describe the
7 interest which the claimant asserts in the property."

8
9 **E. FERGASON'S PRIOR NEVADA SUPREME COURT APPEALS.**

10 Fergason has previously filed at least six appeals to this Court,
11 challenging various aspects of his convictions and denials of post-conviction
12 relief.⁷⁶ Of these cases, Fergason's direct appeal from the jury verdict (Case
13 No. 52877) has the most relevance to the instant case. In Case No. 52877, this
14 Court affirmed Fergason's convictions, and provided key language that is
15 relevant to the law-of-the-case doctrine,

16 The officers who executed search warrants on Fergason's storage
17 units, apartment, *bank accounts*, and safety deposit box also
18 testified. These searches resulted in the discovery of *evidence that*
19 *directly or inferentially linked Fergason to the crimes of burglary*
20 *and/or possession of stolen property*. . . . From this evidence the
21 jury could have concluded Fergason conspired with all three of his

21 ⁷⁴ ROA 1:4:4–13.

22 ⁷⁵ ROA 1:42–44.

23 ⁷⁶ See Supreme Court Case Nos. 52877, 56182, 56925, 59264, 59910.

1 alleged accomplices to commit burglary and/or possess stolen
2 property.⁷⁷

3 Accordingly, Ferguson's bare argument that nothing connected his Bank of
4 America accounts to the commission of a crime is undermined by the record.

5 **F. LVMPD'S MOTION FOR SUMMARY JUDGMENT ON**
6 **CIVIL FORFEITURE AND FERGASON'S BARE**
7 **OPPOSITION.**

8 While the companion criminal proceedings were pending, LVMPD's
9 civil forfeiture action was stayed, at Ferguson's request.⁷⁸ However, after the
10 criminal proceedings became final, the stay was lifted to allow the District
11 Court civil forfeiture action to go forward.⁷⁹ After the stay was lifted, LVMPD
12 promptly filed a motion for summary judgment since according to
13 NRS 179.1173(5) once "the judgment of conviction has become final, the proof
14 is, as against any claimant, conclusive evidence of all facts necessary to sustain
15 the conviction."

16 LVMPD documented its motion for summary judgment with key
17 excerpts of the trial testimony to support forfeiture.⁸⁰ LVMPD's summary
18 judgment motion reiterated that "cash would accumulate in the house"⁸¹ and

19 ⁷⁷ RA 3:678–685; see especially RA 3:680 (emphasis added).

20 ⁷⁸ ROA 1:56–58, 67–68.

21 ⁷⁹ ROA 2:320–321.

22 ⁸⁰ ROA 2:326–429.

23 ⁸¹ ROA 2:413, 421.

1 that Trevarthen would deposit this cash into her Bank of America accounts.⁸²
2 Additionally, Trevarthen also testified that Monroe also had access to her
3 accounts, as well as the ability to transfer funds out of her accounts.⁸³ As such,
4 LVMPD requested forfeiture of all funds previous seized from Bank of
5 America.

6 Despite LVMPD's well documented motion for summary judgment,
7 Ferguson did not offer any evidence in his opposition.⁸⁴ Instead, he made broad
8 claims to the funds seized from his account as supposedly belonging to a
9 legitimate business "D&B Power Washing (the company founded and run by
10 Claimant [Ferguson] and Daimon Monroe)."⁸⁵ As such, Ferguson's opposition
11 to summary judgment approaches the bare statement that should have been
12 made in his answer, as required by NRS 179.1171(5). But, there was simply no
13 evidence upon which the District Court could have proceeded to trial.

14 **G. THE DISTRICT COURT HEARING ON LVMPD'S**
15 **MOTION FOR SUMMARY JUDGMENT ON CIVIL**
FORFEITURE AND SUBSEQUENT WRITTEN ORDER.

16 To preserve Ferguson's procedural due process, he was transported and
17 permitted to speak in the District Court hearing.⁸⁶ Ferguson did not offer any
18

19 ⁸² Id.

20 ⁸³ ROA 2:421.

21 ⁸⁴ ROA 3:663–667.

22 ⁸⁵ ROA 3:665.

23 ⁸⁶ Appellant's Appendix ("AA") 1:123–136.

1 substantive arguments during the hearing.⁸⁷ Because there were pending
2 appeals, the District Court considered itself to be divested of jurisdiction.⁸⁸ As
3 such, the District Court did not immediately rule on LVMPD's motion for
4 summary judgment.⁸⁹ However, the District Court stated that while it was
5 waiting for a resolution on the then-pending appeals, the District Court would
6 "review the criminal stuff."⁹⁰

7 After the remittitur issued in the pending appeal matters,⁹¹ the District
8 Court issued a written order granting LVMPD's motion for summary
9 judgment.⁹² As to Ferguson, the conclusion was reached that "the money was
10 seized from his bank account as proceeds from illegal activities."⁹³ Ferguson
11 now appeals from the District Court's order granting summary judgment to
12 LVMPD.⁹⁴

13 ⁸⁷ AA 1:129–132.

14 ⁸⁸ AA 1:124. See Mack-Manley v. Manley, 122 Nev. 849, 855, 138 P.3d 525,
15 529 (2006) (holding that the timely filing of a notice of appeal "divests the
16 district court of jurisdiction to act and vests jurisdiction in this court.") (citation
and internal quotation marks omitted).

17 ⁸⁹ See Foster v. Dingwall, 228 P.3d 453, 455 (Nev. 2010) (clarifying that even
18 when a district court still has jurisdiction, the court still has jurisdiction to direct
briefing and hold a hearing.

19 ⁹⁰ AA 1:134:2–3.

20 ⁹¹ ROA 3:680–694.

21 ⁹² ROA 4:704–710.

22 ⁹³ ROA 4:709:20–21.

23 ⁹⁴ ROA 4:795–798.

1 **VI. LEGAL ARGUMENT**

2 **A. FERGASON HAS FAILED TO ADEQUATELY**
3 **DEMONSTRATE THAT HE HAS STANDING TO**
4 **CHALLENGE LVMPD'S CIVIL FORFEITURE.**

5 Ferguson lacks standing to claim any of the forfeited property because in
6 his answer he failed to "describe the interest which the claimant asserts in the
7 property," as required by NRS 179.1171(5).⁹⁵ Notably, standing is an issue of
8 subject matter jurisdiction that can be raised at any time.⁹⁶ Since Ferguson
9 never alleged any interest in the forfeited property, he lacks standing to make
10 any challenges, and the District Court's forfeiture order should be affirmed.⁹⁷

11 **1. The Plain Language of NRS 179.1171(5) Required**
12 **Ferguson to Describe in His Answer Any Interest He**
13 **May Have Had in the Funds Seized from Bank of**
14 **America.**

15 The construction of a statute is a question of law that this Court reviews
16 de novo.⁹⁸ The "court first looks to the plain language of the statute."⁹⁹ If the

17 ⁹⁵ ROA 1:42–44.

18 ⁹⁶ See Applera Corp. v. MP Biomedicals, LLC, 93 Cal. Rptr.3d 178, 192 (Ct.
19 App. 2009) (citation omitted).

20 ⁹⁷ See, e.g., U.S. v. \$133,420.00 in U.S. Currency, 672 F.3d 629, 640 (9th Cir.
21 2012) ("Louis never offered any explanation of how he came to possess the
22 money seized from his vehicle, and an unexplained possessory interest is
23 insufficient to establish standing at any stage of a forfeiture proceeding.").

⁹⁸ A.F. Constr. Co. v. Virgin River Casino, 118 Nev. 699, 703, 56 P.3d 887, 890
(2002) (citing SIIS v. United Exposition Services Co., 109 Nev. 28, 30, 846
P.2d 294, 295 (1993)).

⁹⁹ A.F. Constr. Co., 118 Nev. at 703, 56 P.3d at 890 (citing Salas v. Allstate
Rent-A-Car, Inc., 116 Nev. 1165, 1168, 14 P.3d 511, 513–514 (2000)).

1 statutory language fails to address the issue, this Court will then construe the
2 statute according to that which reason and public policy would indicate the
3 Legislature intended.¹⁰⁰

4 The Legislature's intent is the primary consideration when interpreting an
5 ambiguous statute.¹⁰¹ When construing an ambiguous statutory provision, this
6 Court determines the meaning of the words used in a statute by examining the
7 context and the spirit of the law or the causes which induced the Legislature to
8 enact it.¹⁰² In conducting this analysis, "[t]he entire subject matter and policy
9 may be involved as an interpretive aid."¹⁰³ Accordingly, this Court will
10 consider "the statute's multiple legislative provisions as a whole."¹⁰⁴

11 Courts have a duty to construe statutes as a whole so that all provisions
12 are considered together and, to the extent practicable, reconciled and
13 harmonized.¹⁰⁵ In addition, this Court will not render any part of the statute

16
17 ¹⁰⁰ A.F. Constr. Co., 118 Nev. at 703, 56 P.3d at 890 (citing State, Dep't Mtr.
Vehicles v. Vezeris, 102 Nev. 232, 236, 720 P.2d 1208, 1211 (1986)).

18 ¹⁰¹ Cleghorn v. Hess, 109 Nev. 544, 548, 853 P.2d 1260, 1262 (1993).

19 ¹⁰² Leven v. Frey, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007) (internal
20 quotation marks omitted).

21 ¹⁰³ Id. (internal quotation marks omitted).

22 ¹⁰⁴ Id.

23 ¹⁰⁵ Id.; Southern Nev. Homebuilders v. Clark County, 121 Nev. 446, 449, 117
P.3d 171, 173 (2005).

1 meaningless, and will not read the statute's language so as to produce absurd or
2 unreasonable results.¹⁰⁶

3 In the instant case, the plain language of NRS 179.1171(5) required
4 Ferguson to not only admit or deny the averments in LVMPD's forfeiture
5 complaint, but Ferguson was also required "in short and plain terms, describe
6 the interest which the claimant asserts in the property." Notably, this
7 requirement is preceded by the term "shall," which calls for a mandatory
8 requirement.¹⁰⁷ Ferguson's answer very clearly does not contain any claim to
9 any of the property seized by LVMPD.¹⁰⁸

10
11 **2. Due to Ferguson's Failure to Describe Any Interest He**
12 **May Have Had in the Seized Funds from Bank of**
13 **America, He Lacks Standing to Challenge LVMPD's**
14 **Forfeiture.**

15 Since Ferguson never described his interest in the funds seized from
16 Bank of America, he lacks standing to challenge LVMPD's forfeiture.
17 Standing is jurisdictional, and can be raised for the first time on appeal.¹⁰⁹
18 Issues of subject matter jurisdiction can be raised at any time, even for the first
19 time on appeal, and are not waivable.¹¹⁰ Even the United States Supreme Court

20
21 ¹⁰⁶ Leven, 123 Nev. at 405, 168 P.3d at 716.

22 ¹⁰⁷ See NRS 0.025(1)(d): "'Shall' imposes a duty to act."

23 ¹⁰⁸ ROA 1:42-44.

¹⁰⁹ See Applera Corp. v. MP Biomedicals, LLC, 93 Cal. Rptr.3d 178, 192 (Ct. App. 2009) (citation omitted).

¹¹⁰ See Swan v. Swan, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990) (citations omitted).

1 has commented that standing must “persist throughout all stages of
2 litigation.”¹¹¹

3 As a general matter, standing is the legal right to set judicial
4 machinery in motion.¹¹² Other courts looking at standing in the context of
5 civil forfeiture proceedings have required claimants to explain how they came
6 into possession of the seized funds or other property.¹¹³ The claimant must
7 assert either an ownership interest or a possessory interest, and the claim must
8 be explicit.¹¹⁴ The Ninth Circuit has also explained that while the government
9 bears the burden of proving that the property is subject to forfeiture, the burden
10 of establishing standing is on the claimant.¹¹⁵ Similar to the Ninth Circuit’s
11 holding, the Seventh Circuit has also concluded that absent the filing of a claim
12 to a property subject to forfeiture, a “putative claimant is not a party to the
13 action.”¹¹⁶ As such, a putative claimant lacks standing to seek relief from, for
14 example, a default judgment.¹¹⁷ Since Ferguson undeniably failed to comply

15 ¹¹¹ Already, LLC v. Nike, Inc., 133 S.Ct. 721, 726 (2013).

16 ¹¹² Secretary of State v. Nevada State Legislature, 120 Nev. 456, 460, 93 P.3d
17 746, 749 (2004).

18 ¹¹³ See, e.g., U.S. v. \$133,420.00 in U.S. Currency, 672 F.3d 629, 640 (9th Cir.
19 2012) (“Louis never offered any explanation of how he came to possess the
20 money seized from his vehicle, and an unexplained possessory interest is
21 insufficient to establish standing at any stage of a forfeiture proceeding.”).

22 ¹¹⁴ Id. at 643.

23 ¹¹⁵ Id. (citation omitted).

¹¹⁶ U.S. v. 8136 S. Dobson Street, 125 F.3d 1076, 1082 (7th Cir. 1997).

¹¹⁷ Id.

1 with the mandatory requirement of NRS 179.1171(5), the Court should
2 conclude that he lacks standing, thus requiring the District Court's summary
3 judgment order to be affirmed.

4 **B. FERGASON'S FAILURE TO RAISE HIS PRECLUSION**
5 **ARGUMENTS IN THE DISTRICT COURT PROHIBITS**
6 **HIM FROM DOING SO NOW FOR THE FIRST TIME ON**
7 **APPEAL, WHICH, IN ANY EVENT, DO NOT REQUIRE**
8 **REVERSAL.**

9 Ferguson cannot raise his preclusion arguments for the first time on
10 appeal, which, in any event, do not require reversal. Ferguson simply cannot
11 overcome the language of NRS 179.1173(5), which states, "If proof of such a
12 conviction is made, and it is shown that the judgment of conviction has become
13 final, the proof is, as against any claimant, conclusive evidence of all facts
14 necessary to sustain the conviction." Despite the controlling language of this
15 statute, Ferguson suggests that an analysis of preclusion principles somehow
16 changes the outcome. However, even if preclusion principles were applied, in
17 contrast to the plain language of the statute, Ferguson would be barred from
18 claims that he could have made¹¹⁸ in the criminal proceedings where he was
19 convicted of various counts of conspiracy to possess stolen property and/or to
20 commit burglary (NRS 205.275, NRS 199.480) and possession of stolen
21 property (NRS 205.275) and pled guilty (pursuant to Alford) of attempt

22 ¹¹⁸ See Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1054–1055, 194 P.3d
23 709, 713 (2008) (concluding that for claim preclusion, the preclusive effect
 applies to "all grounds of recovery that were or could have been brought in the
 first case.") (citation omitted).

1 burglary (NRS 193.330, NRS 205.060).¹¹⁹ Therefore, Ferguson's preclusion
2 arguments do not serve to disturb the District Court's summary judgment order.

3 **1. Since Ferguson Did Not Challenge the Application of**
4 **NRS 179.1173(5) in the District Court, He Cannot Do So**
5 **Now for the First Time on Appeal.**

6 This Court has prohibited the raising of issues in the District Court
7 without any factual support for the position,¹²⁰ which is similar to not even
8 raising the legal argument.¹²¹ Very simply, Ferguson's opposition to LVMPD's
9 motion for summary judgment did not raise any preclusion arguments.¹²²
10 Instead, Ferguson claimed that Trevarthen's trial testimony was inadmissible
11 and unreliable.¹²³ Since Ferguson did not mention in the District Court any of

12 _____
13 ¹¹⁹ ROA 2:371–375, 383–384.

14 ¹²⁰ See Schuck v. Signature Flight Support of Nev., Inc., 245 P.3d 542, 544–546
(Nev. 2010).

15 ¹²¹ See e.g., Delgado v. Am. Family Ins. Group, 217 P.3d 563, 567 (Nev. 2009)
16 (declining to address argument because issue was not raised below and
17 appellant not entitled to raise it for the first time on appeal); Diamond Enters.,
18 Inc. v. Lau, 113 Nev. 1376, 1378, 951 P.2d 73, 74 (1997) ("It is well
19 established that arguments raised for the first time on appeal need not be
20 considered by this court."); Montesano v. Donrey Media Group, 99 Nev. 644,
21 650, 668 P.2d 1081, 1085 n. 5 (1983) ("Arguments raised for the first time on
22 appeal need not be considered."); Old Aztec Mine, Inc. v. Brown, 97 Nev. 49,
23 623 P.2d 981 (1981) ("A point not urged in the trial court, unless it goes to the
jurisdiction of that court, is deemed to have been waived and will not be
considered on appeal."); Williams v. Zellhoefer, 89 Nev. 579, 580, 517 P.2d
789, 789 (1973) ("If appellant presents no argument or authorities in support of
an alleged error in the court below, this court will not consider the
assignment.").

¹²² ROA 3:663–667.

¹²³ ROA 3:664.

1 the preclusion arguments that he now raises, the Court should simply disregard
2 this portion of Ferguson's opening brief.

3 **2. In Any Event, Ferguson's Preclusion Arguments Would**
4 **Not Warrant Disturbing Summary Judgment, Even if**
5 **They Had Been Properly Presented.**

6 Even if the Court were to consider Ferguson's new preclusion arguments,
7 they do not warrant disturbing summary judgment. In Five Star, this Court
8 enumerated tests for both claim preclusion and issue preclusion. For claim
9 preclusion to apply, the following three factors must be satisfied: (1) the parties
10 or their privies are the same; (2) the final judgment is valid; and (3) the
11 subsequent action is based on the same claims or any part of them that were or
12 could have been brought in the first case.¹²⁴ The Court also commented that for
13 claim preclusion, the preclusive effect applies to "all grounds of recovery that
14 were or could have been brought in the first case."¹²⁵

15 With regard to issue preclusion, this Court enumerated the following four
16 factors to be satisfied: (1) the issue decided in the prior litigation must be
17 identical to the issue presented in the current action; (2) the initial ruling must
18 have been on the merits and have become final; (3) the party against whom the
19 judgment is asserted must have been a party or in privity with a party to the
20 prior litigation; and (4) the issue was actually and necessarily litigated.¹²⁶

21 ¹²⁴ See Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1054–1055, 194 P.3d
22 709, 713 (2008) (enumerating claim preclusion and issue preclusion tests).

23 ¹²⁵ Id. (citations omitted).

¹²⁶ Five Star, 124 Nev. at 1055, 194 P.3d at 713–714 (citations and internal
quotation marks omitted).

1 Of course, if the Court were to look beyond the statutory language of
2 NRS 179.1173(5) and apply principles of claim preclusion, Fergason's newly-
3 minted preclusion argument would fail because he most certainly could have
4 raised his claim to the funds seized from Bank of America. Since he did not,
5 claim preclusion would prevent him from doing so now.¹²⁷ Additionally,
6 Fergason is a party to both actions, and the final judgment from Fergason's
7 criminal case is valid, having been affirmed by this Court.¹²⁸

8 Principles of issue preclusion similarly do not warrant disturbing the
9 District Court's summary judgment order. Although Fergason offers a token
10 no-substantial-evidence argument, the evidence presented in the criminal trials
11 satisfied the burden to operate as a conclusive presumption that the seized
12 property was forfeited according to NRS 179.1173(5). Notably,
13 NRS 179.1164(1)(a) makes property subject to seizure and forfeiture that is
14 "attributable to the commission or attempted commission of any felony." The
15 following evidence demonstrates that LVMPD satisfied this burden to a clear
16 and convincing standard, as outlined in NRS 179.1173(3):

17 (A) LVMPD's execution of the search warrants, where known stolen
18 property was located, resulted in evidence that then led LVMPD to Bank of
19 America accounts that were held by Tonya Trevarthen, Damon Monroe, Bobby
20
21

22 ¹²⁷ Id., 124 Nev. at 1054–1055, 194 P.3d at 713 (citations omitted).

23 ¹²⁸ RA 3:678–685.

1 Holmes, or Fergason.¹²⁹ This evidence included receipts showing Fergason's
2 Bank of America accounts.¹³⁰

3 (B) LVMPD officers also executed a search warrant for Fergason's
4 safe deposit box at the Westcliff Bank of America branch in Las Vegas.¹³¹ The
5 safe deposit box contained collector's gold coins and paper money, as well as
6 large prehistoric shark teeth.¹³² Fergason does not challenge LVMPD's seizure
7 or forfeiture of the items contained within his Bank of America safe deposit
8 box.

9 (C) Trevarthen testified that Monroe did not have a job and that her
10 earnings did not cover the monthly bills for their household.¹³³ Fergason's only
11 job was with a moving company, and he only held the job for a few months.¹³⁴
12 In addition to his storage unit paid for by Trevarthen, Fergason also parked his
13 car at Trevarthen's home and kept some of his belongings there.¹³⁵

14 (D) Trevarthen also explained that after she had assisted in loading
15 stolen property into Fergason's Charleston storage unit, both Monroe and
16 Fergason asked her advice about where to store cash and the types of accounts

17 ¹²⁹ RA 1:173–174.

18 ¹³⁰ RA 3:469–470.

19 ¹³¹ RA 3:474.

20 ¹³² RA 3:475.

21 ¹³³ RA 1:71.

22 ¹³⁴ RA 2:394.

23 ¹³⁵ RA 1:77–78.

1 to use because Trevarthen had worked in a bank and had already set up some
2 accounts.¹³⁶

3 (E) In Supreme Court Case No. 52877, this Court affirmed Ferguson's
4 convictions and explained,

5 The officers who executed search warrants on Ferguson's storage
6 units, apartment, **bank accounts**, and safety deposit box also
7 testified. These searches resulted in the discovery of **evidence that**
8 **directly or inferentially linked Ferguson to the crimes of burglary**
9 **and/or possession of stolen property**. . . . From this evidence the
10 jury could have concluded Ferguson conspired with all three of his
11 alleged accomplices to commit burglary and/or possess stolen
12 property.¹³⁷

13 (F) LVMPD's summary judgment motion reiterated that "cash would
14 accumulate in the house"¹³⁸ and that Trevarthen would deposit this cash into her
15 Bank of America accounts.¹³⁹ Additionally, Trevarthen also testified that
16 Monroe also had access to her accounts, as well as the ability to transfer funds
17 out of her accounts.¹⁴⁰

18 In summary, the Court should disregard Ferguson's preclusion arguments
19 raised for the first time on appeal. Yet, even if the Court considers these
20 arguments, the Court should conclude that there was sufficient evidence to
21

22 ¹³⁶ RA 1:430.

23 ¹³⁷ RA 3:678–685; see especially RA 3:680 (emphasis added).

¹³⁸ ROA 2:413, 421.

¹³⁹ Id.

¹⁴⁰ ROA 2:421.

1 demonstrate that the funds in the Bank of America account were subject to
2 seizure and forfeiture.

3 **C. FERGASON’S FAILURE TO PRESENT ANY EVIDENCE IN**
4 **OPPOSITION TO LVMPD’S MOTION FOR SUMMARY**
5 **JUDGMENT OPERATES AS AN ADMISSION THAT**
6 **THERE ARE NO GENUINE ISSUES OF MATERIAL FACT**
7 **FOR TRIAL.**

8 Ferguson’s failure to present any evidence in opposition to LVMPD’s
9 motion for summary judgment operates as an admission that there are no
10 genuine issues of material fact for trial.¹⁴¹ Instead of evidence, Ferguson’s
11 opposition only offered bare argument, which is not evidence.¹⁴² Additionally,
12 Ferguson does not ask for additional discovery in his opening brief, having now
13 waived that argument.¹⁴³ Thus, Ferguson simply has no evidence to present to
14 the jury, and summary judgment should be affirmed.

15 **1. To Avoid Summary Judgment, Ferguson Was Required**
16 **to Present Admissible Evidence to Demonstrate the**
17 **Existence of Genuine Issues of Material Fact for Trial.**

18 In his opening brief, Ferguson asks this Court to reverse and remand the
19 case for trial. But, Ferguson’s requested relief begs the question of what
20 evidence he would present at trial since he did not present any in opposition to
21 summary judgment. Indeed, Ferguson’s opposition to summary judgment

22 ¹⁴¹ See Collins v. Union Fed. Sav. & Loan Ass’n, 99 Nev. 284, 302, 662 P.2d
23 610, 621 (1983).

¹⁴² See Bird v. Casa Royale West, 97 Nev. 67, 70, 624 P.2d 17, 19 (1981)
(stating that mere conclusory language is not evidence).

¹⁴³ See, e.g., Kahn v. Morse & Mowbray, 121 Nev. 464, 480, 117 P.3d 227,
238, n. 24 (2005) (stating that an issue is waived by failing to raise the issue in
briefing).

1 contains only pure argument, which is not “evidence.”¹⁴⁴ And, most certainly,
2 Ferguson has not presented any “admissible evidence” which is required to
3 oppose summary judgment.¹⁴⁵

4 In construing NRS 179.1173(3) in isolation, regarding proof by clear and
5 convincing evidence, Ferguson’s excuse for failing to present any admissible
6 evidence appears to hinge on the argument that there is allegedly no direct
7 evidence linking his “commission or attempted commission of any felony”¹⁴⁶ to
8 the Bank of America account. However, Ferguson’s convictions for attempt
9 burglary (NRS 193.330, NRS 205.060), conspiracy to possess stolen property
10 and/or to commit burglary (NRS 205.275, NRS 199.480), and possession of
11 stolen property (NRS 205.275) provide the necessary predicate to uphold the
12 forfeiture.¹⁴⁷

13 By the very nature of the crime, “[c]onspiracy is seldom susceptible of
14 direct proof and is usually established by inference from the conduct of the
15 parties.”¹⁴⁸ Yet, this Court has previously held that “if a coordinated series of
16 acts furthering the underlying offense is sufficient to infer the existence of an
17 agreement, then sufficient evidence exists to support a conspiracy

18 ¹⁴⁴ See Bird, 97 Nev. at 70, 624 at 17 (stating that mere conclusory language is
19 not evidence).

20 ¹⁴⁵ See Collins, 99 Nev. at 302, 662 P.2d at 621.

21 ¹⁴⁶ NRS 179.1164(1)(a).

22 ¹⁴⁷ ROA 2:371–375, 383–384.

23 ¹⁴⁸ Thomas v. State, 114 Nev. 1127, 1143, 967 P.2d 1111, 1122 (1998)
(citations and internal quotation marks omitted).

1 conviction.”¹⁴⁹ Indeed, NRS 199.490 specifically excludes this type of overt act
2 to sustain a conspiracy conviction (and provide the necessary predicate for civil
3 forfeiture): “In any such proceeding for violation of NRS 199.480, it shall *not*
4 *be necessary* to prove that any overt act was done in pursuance of such
5 unlawful conspiracy or combination.”¹⁵⁰ This Court’s order of affirmance from
6 Ferguson’s direct appeal reflects these legal principles.¹⁵¹

7 With respect to civil forfeiture, courts have considered large quantities of
8 cash and large cash purchases, that vastly exceed a defendant’s income, as
9 suggestive of proceeds of criminal activity.¹⁵² As such, once LVMPD
10 presented evidence that Ferguson’s Bank of America account was subject to
11 forfeiture, it was incumbent upon Ferguson to present some justification,
12 supported by admissible evidence. Since Ferguson could provide only his own
13 uncorroborated, self-serving testimony, summary judgment was properly
14 entered.¹⁵³ Therefore, on this independent basis, the Court should affirm the
15 District Court’s order granting summary judgment to LVMPD.

16
17 ¹⁴⁹ Id. (citation and internal quotation marks omitted).

18 ¹⁵⁰ (emphasis added).

19 ¹⁵¹ RA 3:678–685.

20 ¹⁵² See, e.g., U.S. v. Thomas, 913 F.2d 1111, 1117–1118 (4th Cir. 1990)
(collecting cases).

21 ¹⁵³ See Dennison v. Allen Group Leasing Corp., 110 Nev. 181, 185, 871 P.2d
22 288, 290–291 (1994) (stating that self-serving affidavits are not evidence in
summary judgment proceedings); see also Clauson v. Lloyd, 103 Nev. 432,
23 434–435, 743 P.2d 631, 632–633 (1987) (same); see also Catrone v. 105 Casino Corp., 82 Nev. 166, 170–171, 414 P.2d 106, 108–109 (1966) (same).

2. **Not Only Was Ferguson's Request for Additional Discovery Procedurally Improper, But It is Now Waived for Failure to Raise the Issue in His Opening Brief.**

It is noteworthy that Ferguson requested additional discovery in the District Court to oppose LVMPD's motion for summary judgment.¹⁵⁴ Of course, the District Court denied Ferguson's request, likely because it failed to satisfy the strict requirements of NRCP 56(f).¹⁵⁵ Yet, whether Ferguson should be permitted to conduct additional discovery is not preserved because his opening brief does not assign any error to this issue, and it is now waived.¹⁵⁶ As such, the Court should not permit Ferguson to request additional discovery in his reply brief.

In summary, the Court should deem Ferguson's failure to present any admissible evidence in opposition to summary judgment as an admission that the Bank of America account is, in fact, subject to forfeiture.

¹⁵⁴ ROA 3:663–667.

¹⁵⁵ See Bakerink v. Orthopaedic Associates, Ltd., 94 Nev. 428, 431, 581 P.2d 9, 11 (1978) (“Rule 56(f) is not a shield that can be raised to block a motion for summary judgment without even the slightest showing by the opposing party that his opposition is meritorious.”).

¹⁵⁶ See, e.g., Kahn, 121 Nev. at 480, 117 P.3d at 238, n. 24 (stating that an issue is waived by failing to raise the issue in briefing).

1 **D. THE DISTRICT COURT PROPERLY DETERMINED BY**
2 **CLEAR AND CONVINCING PROOF THAT THE**
3 **EVIDENCE PRESENTED IN THE COMPANION**
4 **CRIMINAL PROCEEDINGS CONSTITUTES PROCEEDS**
5 **ATTRIBUTABLE TO THE COMMISSION OR**
6 **ATTEMPTED COMMISSION OF ANY FELONY**
7 **SUFFICIENT FOR THE ENTRY OF SUMMARY**
8 **JUDGMENT.**

9 The District Court properly applied the conclusive presumption of
10 NRS 179.1173(5) based upon the evidence presented. Ferguson's opening brief
11 significantly downplays the importance of this statutory provision, even though
12 his convictions operate as "against any claimant, conclusive evidence of all
13 facts necessary to sustain the conviction." For example, Ferguson's conviction
14 for conspiracy raises the notion that Ferguson was jointly and severally liable
15 for forfeiture proceeds of the conspiracy.¹⁵⁷ In contrast, Ferguson
16 impermissibly asks this Court to take a narrow view of the evidence presented,
17 despite the statutory prohibition against willful blindness.¹⁵⁸ Ferguson's entire
18 position in this appeal essentially asks the Court to reconsider points that were
19 already established in previous appeals before this Court.¹⁵⁹ Once the Court

20

¹⁵⁷ See, e.g., U.S. v. Corrado, 227 F.3d 543, 553 (6th Cir. 2000) ("The
21 government is not required to prove the specific portion of proceeds for which
22 each defendant is responsible. Such a requirement would allow defendants 'to
23 mask the allocation of the proceeds to avoid forfeiting them altogether.'")
(citations omitted).

¹⁵⁸ See NRS 179.11635 & NRS 179.1164(2).

¹⁵⁹ See, e.g., RA 3:680 ("The officers who executed search warrants on
Ferguson's storage units, apartment, bank accounts, and safety deposit box also
testified. These searches resulted in the discovery of evidence that directly or
inferentially linked Ferguson to the crimes of burglary and/or possession of
stolen property.").

1 reviews certain previous filings, including its own order, there is really no
2 reason to disturb the District Court's summary judgment order.¹⁶⁰ In fact, the
3 law of the case doctrine prohibits Ferguson's attempts to re-litigate factual
4 issues already established in his criminal proceedings and upheld by this
5 Court.¹⁶¹

6 **1. The District Court Properly Applied the Conclusive**
7 **Presumption of NRS 179.1173(5) Since a Conspiracy**
8 **Conviction Implies Joint and Several Liability.**

9 Aside from the inherent indirect nature of the evidence that *is* sufficient
10 to sustain a conspiracy conviction, such a conviction also implies joint and
11 several liability, even as applied to forfeiture proceedings. Construing law
12 relevant to a RICO conspiracy, the Sixth Circuit concluded, "The government is
13 not required to prove the specific portion of proceeds for which each defendant
14 is responsible. Such a requirement would allow defendants to mask the
15 allocation of the proceeds to avoid forfeiting them altogether."¹⁶² The Eighth
16 Circuit reached the same conclusion as the Sixth Circuit with respect to civil
17 forfeiture actions arising out of conspiracy convictions, explaining that "[o]ur
18 ruling is in accord with the traditional rules with respect to criminal conspiracy,

19 ¹⁶⁰ RA 3:678–685.

20 ¹⁶¹ See Pellegrini v. State, 117 Nev. 860, 884, 34 P.3d 519, 535 (2001) ("The
21 law of a first appeal is the law of the case on all subsequent appeals in which
22 the facts are substantially the same.") (citations and internal quotation marks
23 omitted).

¹⁶² U.S. v. Corrado, 227 F.3d 543, 553 (6th Cir. 2000) (citation and internal
quotation marks omitted).

1 under which all members of a conspiracy are responsible for the foreseeable
2 acts of co-conspirators taken in furtherance of the conspiracy.”¹⁶³

3 In the instant case, it was established that Ferguson and Monroe
4 burglarized businesses and obtained stolen property.¹⁶⁴ It was also established
5 that Holmes and other co-conspirators sold the stolen property for cash.¹⁶⁵
6 Monroe took some of this cash and deposited it into Trevarthen’s Bank of
7 America account, while other cash was left in the home where Monroe and
8 Trevarthen resided.¹⁶⁶ Ferguson also had belongings at this residence where
9 Monroe and Trevarthen resided, and Ferguson even parked his vehicle there.¹⁶⁷
10 Ferguson also established his own Bank of America accounts and deposited
11 admittedly stolen items into a Bank of America safe deposit box.¹⁶⁸ Monroe
12 had the ability to transfer funds to and from Trevarthen’s Bank of America
13 account, which would presumably include Ferguson’s accounts.¹⁶⁹ Therefore,
14 under the proper framework of NRS 179.1173(5), the District Court properly
15 granted summary judgment.

17 ¹⁶³ U.S. v. Simmons, 154 F.3d 765, 770 (8th Cir. 1998) (citations omitted).

18 ¹⁶⁴ ROA 2:371–375, 383–384.

19 ¹⁶⁵ ROA 2:413, 421.

20 ¹⁶⁶ Id.

21 ¹⁶⁷ RA 1:77–78.

22 ¹⁶⁸ RA 3:474–475.

23 ¹⁶⁹ ROA 2:413, 421.

1 2. **Ferguson’s Entire Position Asks This Court to Take an**
2 **Extremely Limited View of the Evidence, Which Is**
3 **Prohibited by NRS 179.11635 and NRS 179.1164(2).**

4 Despite the statutory framework of NRS Chapter 179, the presumptions
5 accompanying Ferguson’s specific convictions, and the federal case law
6 elaborating the burden shifting in civil forfeiture actions, Ferguson claims that
7 there is no evidence to support the District Court’s order granting summary
8 judgment. Without reiterating each of these points, LVMPD points out two
9 additional statutes that drastically limit Ferguson’s entire argument. First,
10 NRS 179.11635 defines “willful blindness” as “the intentional disregard of
11 objective facts which would lead a reasonable person to conclude that the
12 property was derived from unlawful activity or would be used for an unlawful
13 purpose.” Second, NRS 179.1164(2) allows property to be subject to civil
14 forfeiture, despite the “willful blindness of the claimant.” In essence, the
15 objective facts highlighted in this brief demonstrate that the District Court
16 would have had to intentionally disregard these facts to side with Ferguson’s
17 position. Therefore, this Court should affirm the District Court’s order granting
18 summary judgment to LVMPD.

18 3. **The Law-of-the-Case Doctrine Prohibits Ferguson’s**
19 **Arguments, Which Should All Be Rejected by This**
20 **Court.**

21 Generally, the law-of-the-case doctrine provides that where an appellate
22 court deciding an appeal states a principle or rule of law, necessary to the
23 decision, the principle or rule becomes the law of the case and must be adhered
24 to throughout its subsequent progress both in the lower court and upon

1 subsequent appeal.¹⁷⁰ Additionally, the law-of-the-case doctrine counsels that
2 courts “need not and do not consider a new contention that could have been but
3 was not raised on the prior appeal.”¹⁷¹ This principle is also applicable to
4 criminal proceedings. As such, the “doctrine of the law of the case cannot be
5 avoided by a more detailed and precisely focused argument subsequently made
6 after reflection upon the previous proceedings.”¹⁷² In essence, the “doctrine of
7 the law of the case prevents relitigation” of claims.¹⁷³ The Third Circuit has
8 also described the law of the case as “an estoppel” to revisit those issues that
9 were either argued or could have been argued in a prior appeal.¹⁷⁴

10 This case presents a unique application of this doctrine because the
11 controlling rulings from this Court actually occurred in the context of the
12 companion criminal proceedings.¹⁷⁵ Yet, this Court’s conclusions in Ferguson’s
13 direct appeal from his criminal convictions are not only relevant, but dispositive
14 of the instant appeal according to the Court’s conclusions in Case No. 52877,

15 The officers who executed search warrants on Ferguson’s storage
16 units, apartment, **bank accounts**, and safety deposit box also
testified. These searches resulted in the discovery of **evidence that**

17 ¹⁷⁰ See, e.g., LoBue v. State ex rel. Dep’t Hwys., 92 Nev. 529, 532, 554 P.2d
18 258, 260 (1976).

19 ¹⁷¹ See Munoz v. County of Imperial, 667 F.2d 811, 817 (9th Cir. 1982).

20 ¹⁷² Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

21 ¹⁷³ State v. Bennett, 119 Nev. 589, 605, 81 P.3d 1, 12 (2003).

22 ¹⁷⁴ See Cowgill v. Raymark Indus., Inc., 832 F.2d 798, 802–803 (3d Cir. 1987)
(citations omitted).

23 ¹⁷⁵ RA 3:678–685.

1 *directly or inferentially linked Ferguson to the crimes of burglary*
2 *and/or possession of stolen property*. . . . From this evidence the
3 jury could have concluded Ferguson conspired with all three of his
alleged accomplices to commit burglary and/or possess stolen
property.¹⁷⁶

4 The specific mention of Ferguson's bank accounts and the fact that LVMPD
5 discovered evidence, directly or inferentially, not only supports Ferguson's
6 convictions for burglary and/or possession of stolen property, but this
7 conclusion similarly supports the presumption that these convictions are
8 "conclusive evidence" of all the elements necessary for civil forfeiture.¹⁷⁷ In
9 fact, this Court's order of affirmance in Case No. 52877 explicitly undermines
10 the basis of Ferguson's entire appeal because there *was* evidence linking
11 Ferguson's convictions to his Bank of America accounts.¹⁷⁸

12 In addition to taking judicial notice of this Court's own previous order of
13 affirmance, case law construing the law-of-the-case doctrine also prohibits re-
14 litigation of issues in collateral cases, such as the instant case. For example,
15 this Court explained that the doctrine of the law of the case applies in the
16 context of a binding decision on direct appeal, when reviewed in a petition for
17 post-conviction relief: "The law of a first appeal is the law of the case on all
18 subsequent appeals in which the facts are substantially the same."¹⁷⁹ Likewise,

19 _____
20 ¹⁷⁶ RA 3:678–685; see especially RA 3:680 (emphasis added).

21 ¹⁷⁷ See NRS 179.1173(5).

22 ¹⁷⁸ RA 3:678–685.

23 ¹⁷⁹ Pellegrini v. State, 117 Nev. 860, 884, 34 P.3d 519, 535 (2001) (citations
and internal quotation marks omitted).

1 the Seventh Circuit has applied this doctrine in similar contexts: “Invoking the
2 doctrine of the law of the case, the courts, including our court, forbid a prisoner
3 to relitigate in a collateral proceeding an issue that was decided on his direct
4 appeal.”¹⁸⁰ The Ninth Circuit also prohibited a re-litigation of facts established
5 on direct appeal through a subsequent attack on sentencing: “Having raised this
6 point unsuccessfully on direct appeal, appellant cannot now seek to relitigate it
7 . . .”¹⁸¹ Therefore, since this Court’s order in Ferguson’s direct appeal is
8 dispositive of the only issue that he has raised in this civil forfeiture proceeding,
9 the Court should apply the doctrine of the law of the case and conclude that
10 Ferguson cannot re-litigate the controlling determination that the Bank of
11 America account was, in fact, proceeds of Ferguson’s criminal activities and
12 convictions. As such, the Court should affirm the District Court’s summary
13 judgment order.

14 **VII. CONCLUSION**

15 In summary, this Court should affirm the District Court’s order granting
16 summary judgment in favor of LVMPD for four main reasons. First, Ferguson
17 failed to comply with the mandatory requirement outlined in NRS 179.1171(5)
18 to describe his claim to the seized property in his answer. Due to this failure,
19 Ferguson lacks standing to challenge LVMPD’s forfeiture and the District
20 Court’s summary judgment order.

22 ¹⁸⁰ White v. U.S., 371 F.3d 900, 902 (7th Cir. 2004) (citations omitted).

23 ¹⁸¹ Olney v. U.S., 433 F.2d 161, 162 (9th Cir. 1970) (citation omitted).

1 Second, Ferguson cannot raise preclusion arguments for the first time on
2 appeal. Regardless, these preclusion arguments do not have any effect upon the
3 presumption in NRS 179.1173(5) that the criminal convictions are conclusive
4 evidence of the civil forfeiture proceeding.

5 Third, Ferguson's utter failure to present any evidence in opposition to
6 LVMPD's motion for summary judgment operates as an admission that no
7 genuine issues of material fact exist, and that Ferguson has nothing to present at
8 trial.

9 Finally, Ferguson's conspiracy conviction gives rise to the notion that he
10 was jointly and severally liable with his co-conspirators, including the amounts
11 held in his Bank of America accounts. This particular point was also
12 established by previous rulings from this Court, and the law-of-the-case
13 doctrine also bars Ferguson from attempting to re-litigate these issues in this
14 civil forfeiture proceeding. Therefore, LVMPD respectfully requests that this
15 Court affirm the District Court's order granting summary judgment to LVMPD.

16 Dated this 6th day of November, 2014.

17
18 MARQUIS AURBACH COFFING

19 By /s/ Micah S. Echols
20 Micah S. Echols, Esq.
21 Nevada Bar No. 8437
22 10001 Park Run Drive
23 Las Vegas, Nevada 89145
Attorneys for Respondent, LVMPD

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

10
11
12
13
14
15
16
17
18
19
20
21
22
23

12
13
14
15
16
17
18
19
20
21
22
23

13
14
15
16
17
18
19
20
21
22
23

21
22
23

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

3 Dated this 6th day of November, 2014.

4 MARQUIS AURBACH COFFING

6 By /s/ Micah S. Echols

7 Micah S. Echols, Esq.

8 Nevada Bar No. 8437

9 10001 Park Run Drive

10 Las Vegas, Nevada 89145

11 *Attorneys for Respondent, LVMPD*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing **RESPONDENT'S AMENDED**
3 **ANSWERING BRIEF** was filed electronically with the Nevada Supreme
4 Court on the 6th day of November, 2014. Electronic Service of the foregoing
5 document shall be made in accordance with the Master Service List as follows:

6 Ryan Daniels, Esq.

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

9 Thomas J. Moreo
10 Chief Deputy District Attorney
11 Clark County District Attorney
12 200 Lewis Ave., 3rd Floor
13 Las Vegas, NV 89155
14 *Co-counsel for Respondent, LVMPD*

14 /s/ Leah Dell

15 Leah Dell, an employee of
16 Marquis Aurbach Coffing

Exhibit 1

COMPLETE TEXT OF NRS 179.1156–NRS 179.121

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)