

CLERK OF THE COURT

Electronically Filed  
Jul 18 2013 01:44 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

1 **NOASC**  
2 **MATTHEW D. CARLING, ESQ.**  
3 Nevada Bar No.: 007302  
4 51 East 400 North, Bldg. #1  
5 Cedar City, UT 84721  
6 (702) 419-7330 (Office)  
7 (702) 446-8065 (Fax)  
8 CedarLegal@gmail.com  
9 *Attorneys for Petitioner,*  
10 **RONALD ROSS**

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\* \* \* \* \*

RONALD ROSS,  
  
Petitioner,  
  
vs.

Case No.: C236169  
Dept. No.: XVII

DWIGHT NEVEN, WARDEN,  
HIGH DESERT STATE PRISON  
  
Respondent.

**NOTICE OF APPEAL**

TO: THE STATE OF NEVADA

STEVEN B. WOLFSON, DISTRICT ATTORNEY, CLARK COUNTY, NEVADA  
and DEPARTMENT 17 OF THE EIGHTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK.

NOTICE is hereby given that RONALD ROSS, presently incarcerated at the  
High Desert State Prison, appeals to the Supreme Court of the State of Nevada from the

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///

///

1 an Order denying his Petition for a Writ of Habeas Corpus (Post-Conviction) entered on or  
2 about June 17, 2013.

3 DATED this 16<sup>th</sup> day of July, 2013.

4 CARLING LAW OFFICE, PC

5 /s/ MATTHEW D. CARLING, ESQ.

6 Nevada Bar No.: 007302

7 51 East 400 North, Bldg. #1

8 Cedar City, Utah 84720

9 (702) 419-7330 (Office)

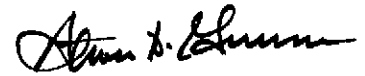
10 (702) 446-8065 (Fax)

11 CedarLegal@gmail.com

12 *Attorneys for Petitioner,*

13 RONALD ROSS





CLERK OF THE COURT

ASTA  
MATTHEW D. CARLING, ESQ.  
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[CedarLegal@gmail.com](mailto:CedarLegal@gmail.com)  
*Attorneys for Petitioner,*  
RONALD ROSS

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\* \* \* \* \*

RONALD ROSS,  
Petitioner,  
vs.  
DWIGHT NEVEN, WARDEN,  
HIGH DESERT STATE PRISON,  
Respondent.

Case No.: C236169  
Dept. No.: XVII

**CASE APPEAL STATEMENT  
(NRAP 3(d)(4))**

1. Name of appellant filing this case appeal statement: RONALD ROSS.
2. Identify the judge issuing the decision, judgment, or order appealed from: THE HONORABLE MICHAEL VILLANI.
3. Identify each appellant and the name and address of counsel for each appellant:  
  
MATTHEW D. CARLING, ESQ.  
51 East 400 North, Bldg. #1  
Cedar City, Utah 84720  
(702) 419-7330 (Office)  
(702) 446-8065 (Fax)  
[CedarLegal@gmail.com](mailto:CedarLegal@gmail.com)  
Attorneys for Petitioner/Appellant,  
RONALD ROSS
4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is

unknown, indicate as much and provide the name and address of that respondent's trial counsel):

STEVEN B. WOLFSON  
CLARK COUNTY DISTRICT ATTORNEY  
200 Lewis Avenue  
Las Vegas, NV 89155-2212  
*Attorneys for Plaintiff/Respondent*

CATHERINE CORTEZ MASTO  
ATTORNEY GENERAL OF NEVADA  
Office of the Attorney General  
Capitol Complex, Heroes' Memorial Building  
100 North Carson Street  
Carson City, Nevada 89701  
*Counsel for Respondent*

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission): N/A
6. Indicate whether appellant was represented by appointed or retained counsel in the district court: CRAIG JORGENSEN, Deputy Public Defender, was appointed to assist the Defendant in District Court. DAVID WESTBROOK, Deputy Public Defender, was appointed to prepare the direct appeal. MATTHEW CARLING was appointed to assist the Petitioner during his post-conviction matter.
7. Indicate whether appellant is represented by appointed or retained counsel on appeal: Appellant is represented by appointed counsel in the instant appeal.
8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave: Appellant did not file a Motion to Proceed in Forma Pauperis.
9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed): May 23, 2007.
10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court: On May 23, 2007, Appellant was charged with twenty (20) various property, theft, burglary crimes. Appellant was convicted after jury trial. The Court sentenced the Appellant on April 7, 2009. Appellant filed a Petition for Writ of Habeas Corpus (Post-Conviction) on November 30, 2011. Petitioner, through appointed counsel, filed a Supplemental

Memorandum in Support of Petitioner for Writ of Habeas Corpus (Post-Conviction) on July 18, 2012. The District Court conducted an Evidentiary Hearing on February 22, 2013, and denied the Appellant's Petition. Appellant is appealing the Court's Findings of Fact, Conclusions of Law and Order entered on or about June 17, 2013.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding: Ross (Ronald) v. State, Nos. 50153, 52921, 53882, 58563, & 60171 (C220916). Appellant appeals directly pursuant to an Findings of Fact and Order pursuant to NRAP 4(b).
12. Indicate whether this appeal involves child custody or visitation: N/A.
13. If this is a civil case, indicate whether this appeal involves the possibility of settlement: N/A.

Dated this 16<sup>th</sup> day of July, 2013.

CARLING LAW OFFICE, PC

/s/ MATTHEW D. CARLING, ESQ.

Nevada Bar No.: 007302

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*Attorneys for Petitioner,*

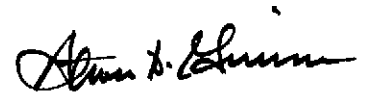
RONALD ROSS

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RONALD ROSS (#1003485)  
HDSP  
P.O. BOX 650  
INDIAN SPRINGS, NEVADA 89070-0650

CARLING LAW OFFICE, PC

Page 4 of 4

  
CLERK OF THE COURT

**REQT**  
MATTHEW D. CARLING, ESQ.  
Nevada Bar No.: 007302  
51 East 400 North, Bldg. #1  
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(702) 419-7330 (Office)  
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*Attorneys for Petitioner,*  
RONALD ROSS

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\* \* \* \* \*

RONALD ROSS,  
  
Petitioner,  
  
vs.

Case No.: C236169  
Dept. No.: XVII

DWIGHT NEVEN, WARDEN,  
HIGH DESERT STATE PRISON  
  
Respondent.

**REQUEST FOR ROUGH DRAFT TRANSCRIPTS  
OF DISTRICT COURT PROCEEDINGS**

TO: COURT REPORTER – DEPARTMENT NO. 17

RONALD ROSS, defendant named above, requests preparation of a rough draft transcript of certain portions of the proceedings before the district court, as follows:

DATE	JUDGE	PORTION	ORIGINAL PLUS <sup>1</sup>
02/22/13	Villani, Michael	All	2

<sup>1</sup> Original Rough Draft to be filed with the District Court, two certified copies to be served on Mr. Carling, and original certificate of service to be filed with the Nevada Supreme Court. NRAP 3C(3)(F).



This notice requests a transcript of only those portions of the District Court proceedings which counsel reasonably and in good faith believes are necessary to determine whether appellate issues are present. Voir dire examination of jurors, opening statements and closing arguments of trial counsel, and the reading of jury instructions shall not be transcribed unless specifically requested above.

I recognize that I must personally serve a copy of this form on the above named court reporter and opposing counsel, and that the above named court reporter shall have twenty (20) days from the receipt of this notice to prepare and submit to the district court the transcript requested herein. I further certify that the defendant is indigent and therefore exempt from paying a deposit.

DATED this 16<sup>th</sup> day of July, 2013.

CARLING LAW OFFICE, PC

/s/ MATTHEW D. CARLING, ESQ.  
Nevada Bar No.: 007302  
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Cedar City, UT 84721  
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*Attorneys for Petitioner/Defendant,*  
RONALD ROSS

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STEVEN B. WOLFSON, ESQ. CLARK COUNTY DISTRICT ATTORNEY 200 LEWIS AVENUE LAS VEGAS, NEVADA 89101	COURT REPORTER DEPT. 17 200 LEWIS AVENUE LAS VEGAS, NEVADA 89101
RONALD ROSS (#1003485) HDSP P.O. BOX 650 INDIAN SPRINGS, NEVADA 89070-0650	

/s/ MATTHEW D. CARLING, ESQ.  
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CedarLegal@gmail.com  
*Attorneys for Petitioner/Defendant,*  
RONALD ROSS

DEPARTMENT 17  
**CASE SUMMARY**  
**CASE NO. 07C236169**

**The State of Nevada vs Ronald Ross**

§ Location: **Department 17**  
§ Judicial Officer: **Villani, Michael**  
§ Filed on: **08/21/2007**  
§ Conversion Case Number: **C236169**  
§ Defendant's Scope ID #: **1970026**  
§ Lower Court Case Number: **07F09465**  
§

**CASE INFORMATION**

<b>Offense</b>	<b>Deg</b>	<b>Date</b>	<b>Case Type: Felony/Gross Misdemeanor</b>
1. BURGLARY.	F	01/01/1900	<b>Case Flags: Bail Set Appealed to Supreme Court Custody Status - Nevada Department of Corrections</b>
2. TAKING PROPERTY FROM PERSON OF ANOTHER UNDER CIRCUMSTANCES NOT AMOUNTING	F	01/01/1900	
3. BURGLARY.	F	01/01/1900	
4. OBTAINING OR POSSESSING CREDIT CARD WITHOUT CARDHOLDER'S CONSENT;	F	01/01/1900	
5. FRAUDULENT USE OF CREDIT CARD OR NUMBER OF CREDIT ACCOUNT; PRESUMPTION	F	01/01/1900	
6. ACTIONS WHICH CONSTITUTE THEFT	F	01/01/1900	
6. THEFT-PENALTIES	F	01/01/1900	
7. CONSPIRACY TO COMMIT A CRIME	G	01/01/1900	
7. TAKING PROPERTY FROM PERSON OF ANOTHER UNDER CIRCUMSTANCES NOT AMOUNTING	G	01/01/1900	
8. HABITUAL CRIMINAL	F	01/01/1900	
9. CONSPIRACY TO COMMIT A CRIME	G	01/01/1900	
9. GRAND LARCENY.	G	01/01/1900	
9. GRAND LARCENY: PENALTIES	G	01/01/1900	
10. CONSPIRACY TO COMMIT A CRIME	G	01/01/1900	
10. GRAND LARCENY.	G	01/01/1900	
10. GRAND LARCENY: PENALTIES	G	01/01/1900	

**Related Cases**

07F09465X (Bind Over Related Case)

**Statistical Closures**

06/28/2013 Jury Trial - Conviction - Criminal  
04/16/2009 USJR Reporting Statistical Closure

**DATE**

**CASE ASSIGNMENT**

**Current Case Assignment**

Case Number	07C236169
Court	Department 17
Date Assigned	08/21/2007
Judicial Officer	Villani, Michael

**PARTY INFORMATION**

DEPARTMENT 17  
**CASE SUMMARY**  
**CASE NO. 07C236169**

**Defendant**                **Ross, Ronald**






*Lead Attorneys*  
**Carling, Matthew D.**  
*Retained*  
435-865-1200(W)

**Plaintiff**                **State of Nevada**


**Wolfson, Steven B**  
702-671-2700(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
01/01/1900	<b>Plea</b> (Judicial Officer: User, Conversion) 1. BURGLARY. Not Guilty	
01/01/1900	<b>Plea</b> (Judicial Officer: User, Conversion) 2. TAKING PROPERTY FROM PERSON OF ANOTHER UNDER CIRCUMSTANCES NOT AMOUNTING Not Guilty	
01/01/1900	<b>Plea</b> (Judicial Officer: User, Conversion) 3. BURGLARY. Not Guilty	
01/01/1900	<b>Plea</b> (Judicial Officer: User, Conversion) 4. OBTAINING OR POSSESSING CREDIT CARD WITHOUT CARDHOLDER'S CONSENT; Not Guilty	
01/01/1900	<b>Plea</b> (Judicial Officer: User, Conversion) 5. FRAUDULENT USE OF CREDIT CARD OR NUMBER OF CREDIT ACCOUNT; PRESUMPTION Not Guilty	
01/01/1900	<b>Plea</b> (Judicial Officer: User, Conversion) 6. ACTIONS WHICH CONSTITUTE THEFT Not Guilty	
01/01/1900	<b>Plea</b> (Judicial Officer: User, Conversion) 6. THEFT-PENALTIES Not Guilty	
01/01/1900	<b>Plea</b> (Judicial Officer: User, Conversion) 7. CONSPIRACY TO COMMIT A CRIME Not Guilty	
01/01/1900	<b>Plea</b> (Judicial Officer: User, Conversion) 7. TAKING PROPERTY FROM PERSON OF ANOTHER UNDER CIRCUMSTANCES NOT AMOUNTING Not Guilty	
01/01/1900	<b>Plea</b> (Judicial Officer: User, Conversion) 8. HABITUAL CRIMINAL. Not Guilty	
01/01/1900	<b>Plea</b> (Judicial Officer: User, Conversion) 9. CONSPIRACY TO COMMIT A CRIME Not Guilty	
01/01/1900	<b>Plea</b> (Judicial Officer: User, Conversion) 9. GRAND LARCENY. Not Guilty	
01/01/1900		







DEPARTMENT 17  
**CASE SUMMARY**  
**CASE NO. 07C236169**

	<b>Plea</b> (Judicial Officer: User, Conversion) 9. GRAND LARCENY: PENALTIES Not Guilty	
01/01/1900	<b>Plea</b> (Judicial Officer: User, Conversion) 10. CONSPIRACY TO COMMIT A CRIME Not Guilty	
01/01/1900	<b>Plea</b> (Judicial Officer: User, Conversion) 10. GRAND LARCENY. Not Guilty	
01/01/1900	<b>Plea</b> (Judicial Officer: User, Conversion) 10. GRAND LARCENY: PENALTIES Not Guilty	
08/21/2007	 Criminal Bindover <i>CRIMINAL BINDOVER Fee \$0.00</i>	07C2361690001.tif pages
08/21/2007	Hearing <i>INITIAL ARRAIGNMENT</i>	07C2361690002.tif pages
08/22/2007	 Information <i>INFORMATION</i>	07C2361690005.tif pages
08/23/2007	 Information <i>AMENDED INFORMATION</i>	07C2361690006.tif pages
08/24/2007	 Information <i>SECOND AMENDED INFORMATION</i>	07C2361690007.tif pages
09/05/2007	<b>Initial Arraignment</b> (10:30 AM) Events: 08/21/2007 Hearing <i>INITIAL ARRAIGNMENT Court Clerk: Nora Pena/np Relief Clerk: Dana Cooper Reporter/Recorder: Kiara Schmidt Heard By: Kevin Williams</i>	
09/05/2007	Hearing <i>STATUS CHECK: TRIAL DATES</i>	07C2361690008.tif pages
10/09/2007	<b>Status Check</b> (8:15 AM) Events: 09/05/2007 Hearing <i>STATUS CHECK: TRIAL DATES Court Clerk: Kristen Brown Reporter/Recorder: Michelle Ramsey Heard By: Villani, Michael</i>	
10/10/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT PRELIMINARY HEARING</i>	07C2361690012.tif pages
10/11/2007	<b>Status Check</b> (8:15 AM) <i>STATUS CHECK: TRIAL DATES Court Clerk: Kristen Brown Reporter/Recorder: Michelle Ramsey Heard By: Michael Villani</i>	
10/11/2007	Hearing <i>STATUS CHECK: APPEALS IN OTHER CASES</i>	07C2361690011.tif pages
10/16/2007	<b>CANCELED Calendar Call</b> (8:30 AM) <i>Vacated</i>	
10/22/2007	<b>CANCELED Jury Trial</b> (10:00 AM)	







DEPARTMENT 17  
**CASE SUMMARY**  
**CASE NO. 07C236169**

	<i>Vacated</i>	
12/11/2007	<b>Status Check (8:15 AM)</b> Events: 10/11/2007 Hearing <i>STATUS CHECK: APPEALS IN OTHER CASES Court Clerk: Kristen Brown Reporter/Recorder: Michelle Ramsey Heard By: Villani, Michael</i>	
06/10/2008	<b>Status Check (8:15 AM)</b> <i>STATUS CHECK: APPEALS IN OTHER CASES Court Clerk: Kristen Brown Reporter/Recorder: Michelle Ramsey Heard By: Michael Villani</i>	
06/10/2008	Hearing <i>STATUS CHECK:</i>	07C2361690013.tif pages
06/18/2008	 Order <i>ORDER FOR PRODUCTION OF INMATE</i>	07C2361690014.tif pages
07/08/2008	<b>Status Check (8:00 AM)</b> Events: 06/10/2008 Hearing <i>STATUS CHECK: Court Clerk: Kristen Brown Reporter/Recorder: Michelle Ramsey Heard By: Michael Villani</i>	
08/26/2008	<b>Calendar Call (8:00 AM)</b> <i>CALENDAR CALL Court Clerk: Kristen Brown Reporter/Recorder: Michelle Ramsey Heard By: Villani, Michael</i>	
09/02/2008	<b>Calendar Call (8:00 AM)</b> <i>CALENDAR CALL Relief Clerk: Phyllis Irby/pi Reporter/Recorder: Michelle Ramsey Heard By: Michael Villani</i>	
09/02/2008	<b>CANCELED Jury Trial (10:00 AM)</b> <i>Vacated</i>	
09/02/2008	Hearing <i>STATUS CHECK: TRIAL SETTING</i>	07C2361690017.tif pages
09/16/2008	<b>Status Check (8:00 AM)</b> Events: 09/02/2008 Hearing <i>STATUS CHECK: TRIAL SETTING Court Clerk: Kristen Brown Relief Clerk: Damedia Scott/ds Reporter/Recorder: Michelle Ramsey Heard By: Michael Villani</i>	
10/17/2008	Hearing <i>STATE'S REQUEST CONFLICT OF TRIAL DATE - AGREED</i>	07C2361690020.tif pages
10/21/2008	<b>Request (8:00 AM)</b> Events: 10/17/2008 Hearing <i>STATE'S REQUEST CONFLICT OF TRIAL DATE -AGREED Heard By: Michael Villani</i>	
10/23/2008	<b>Request (8:00 AM)</b> <i>STATE'S REQUEST CONFLICT OF TRIAL DATE -AGREED Court Clerk: Kristen Brown Relief Clerk: Damedia Scott/ds Reporter/Recorder: Michelle Ramsey Heard By: BONAVENTURE, JOSEPH</i>	
10/30/2008	<b>Request (8:00 AM)</b> <i>STATE'S REQUEST CONFLICT OF TRIAL DATE -AGREED Court Clerk: Kristen Brown Relief Clerk: Damedia Scott/ds Reporter/Recorder: Michelle Ramsey Heard By: JOSEPH BONAVENTURE</i>	
11/04/2008	<b>Calendar Call (8:00 AM)</b> <i>CALENDAR CALL Court Clerk: Kristen Brown Relief Clerk: Damedia Scott/ds Reporter/Recorder: Michelle Ramsey Heard By: Michael Villani</i>	

DEPARTMENT 17  
**CASE SUMMARY**  
**CASE NO. 07C236169**

11/10/2008	<b>CANCELED Jury Trial</b> (10:00 AM) <i>Vacated</i>	
11/12/2008	<b>Jury Trial</b> (10:00 AM) <i>TRIAL BY JURY Court Clerk: Kristen Brown Reporter/Recorder: Michelle Ramsey Heard By: Villani, Michael</i>	
11/12/2008	 <b>Information</b> <i>THIRD AMENDED INFORMATION</i>	07C2361690025.tif pages
11/12/2008	 <b>Jury List</b> <i>DISTRICT COURT AMENDED JURY LIST</i>	07C2361690027.tif pages
11/12/2008	 <b>Jury List</b> <i>DISTRICT COURT JURY LIST</i>	07C2361690029.tif pages
11/12/2008	<b>Disposition</b> (Judicial Officer: User, Conversion) 9. CONSPIRACY TO COMMIT A CRIME Charges Amended/Dropped	
11/12/2008	<b>Disposition</b> (Judicial Officer: User, Conversion) 9. GRAND LARCENY. Charges Amended/Dropped	
11/12/2008	<b>Disposition</b> (Judicial Officer: User, Conversion) 9. GRAND LARCENY: PENALTIES Charges Amended/Dropped	
11/12/2008	<b>Disposition</b> (Judicial Officer: User, Conversion) 10. CONSPIRACY TO COMMIT A CRIME Charges Amended/Dropped	
11/12/2008	<b>Disposition</b> (Judicial Officer: User, Conversion) 10. GRAND LARCENY. Charges Amended/Dropped	
11/12/2008	<b>Disposition</b> (Judicial Officer: User, Conversion) 10. GRAND LARCENY: PENALTIES Charges Amended/Dropped	
11/13/2008	<b>Jury Trial</b> (1:00 PM) <i>TRIAL BY JURY Court Clerk: Kristen Brown Reporter/Recorder: Michelle Ramsey Heard By: Michael Villani</i>	
11/13/2008	Conversion Case Event Type <i>SENTENCING</i>	07C2361690023.tif pages
11/13/2008	 <b>Instructions to the Jury</b> <i>INSTRUCTIONS TO THE JURY - INSTRUCTION NO 1</i>	07C2361690028.tif pages
11/13/2008	 <b>Judgment</b> <i>VERDICT</i>	07C2361690030.tif pages
11/17/2008	 <b>Notice</b> <i>NOTICE OF INTENT TO SEEK PUNISHMENT AS A HABITUAL CRIMINAL</i>	07C2361690031.tif pages  07C2361690032.tif pages

DEPARTMENT 17  
**CASE SUMMARY**  
**CASE NO. 07C236169**

11/17/2008	 Notice <i>AMENDED NOTICE OF INTENT TO SEEK PUNISHMENT AS A HABITUAL CRIMINAL</i>	
12/05/2008	 Notice of Appeal Filed By: Defendant Ross, Ronald <i>NOTICE OF APPEAL (SC 52921)</i>	07C2361690034.tif pages
12/08/2008	 Statement <i>CASE APPEAL STATEMENT</i>	07C2361690033.tif pages
12/23/2008	<b>Sentencing</b> (8:00 AM) Events: 11/13/2008 Conversion Case Event Type <i>SENTENCING Heard By: Michael Villani</i>	
01/05/2009	 Memorandum <i>MEMORANDUM IN SUPPORT OF HABITUAL CRIMINAL TREATMENT</i>	07C2361690035.tif pages
01/05/2009	 Notice <i>SECOND AMENDED NOTICE OF INTENT TO SEEK PUNISHMENT AS A HABITUAL CRIMINAL</i>	07C2361690036.tif pages
01/07/2009	 Receipt of Copy <i>RECEIPT OF COPY</i>	07C2361690037.tif pages
01/29/2009	<b>Sentencing</b> (8:00 AM) <i>SENTENCING Court Clerk: Kristen Brown Reporter/Recorder: Michelle Ramsey Heard By: Villani, Michael</i>	
04/07/2009	<b>Sentencing</b> (8:00 AM) <i>SENTENCING Court Clerk: Kristen Brown Reporter/Recorder: Michelle Ramsey Heard By: Michael Villani</i>	
04/07/2009	<b>Disposition</b> (Judicial Officer: User, Conversion) 1. BURGLARY. Guilty	
04/07/2009	<b>Disposition</b> (Judicial Officer: User, Conversion)	
04/07/2009	<b>Disposition</b> (Judicial Officer: User, Conversion) 2. TAKING PROPERTY FROM PERSON OF ANOTHER UNDER CIRCUMSTANCES NOT AMOUNTING Guilty	
04/07/2009	<b>Disposition</b> (Judicial Officer: User, Conversion)	
04/07/2009	<b>Disposition</b> (Judicial Officer: User, Conversion) 3. BURGLARY. Guilty	
04/07/2009	<b>Disposition</b> (Judicial Officer: User, Conversion)	
04/07/2009	<b>Disposition</b> (Judicial Officer: User, Conversion) 4. OBTAINING OR POSSESSING CREDIT CARD WITHOUT CARDHOLDER'S CONSENT; Guilty	
04/07/2009	<b>Disposition</b> (Judicial Officer: User, Conversion)	



DEPARTMENT 17  
**CASE SUMMARY**  
**CASE No. 07C236169**

04/07/2009	<b>Disposition</b> (Judicial Officer: User, Conversion) 5. FRAUDULENT USE OF CREDIT CARD OR NUMBER OF CREDIT ACCOUNT; PRESUMPTION Guilty
04/07/2009	<b>Disposition</b> (Judicial Officer: User, Conversion)
04/07/2009	<b>Disposition</b> (Judicial Officer: User, Conversion) 6. ACTIONS WHICH CONSTITUTE THEFT Guilty
04/07/2009	<b>Disposition</b> (Judicial Officer: User, Conversion)
04/07/2009	<b>Disposition</b> (Judicial Officer: User, Conversion) 6. THEFT-PENALTIES Guilty
04/07/2009	<b>Disposition</b> (Judicial Officer: User, Conversion) 7. CONSPIRACY TO COMMIT A CRIME Guilty
04/07/2009	<b>Disposition</b> (Judicial Officer: User, Conversion)
04/07/2009	<b>Disposition</b> (Judicial Officer: User, Conversion) 7. TAKING PROPERTY FROM PERSON OF ANOTHER UNDER CIRCUMSTANCES NOT AMOUNTING Guilty
04/07/2009	<b>Disposition</b> (Judicial Officer: User, Conversion) 8. HABITUAL CRIMINAL Guilty
04/07/2009	<b>Sentence</b> (Judicial Officer: User, Conversion) 1. BURGLARY. Adult Adjudication Converted Disposition: Sentence# 0001: LIFE WITH POSSIBILITY OF PAROLE Converted Disposition: Sentence# 0002: CREDIT FOR TIME SERVED Minimum 200 Days to Maximum 200 Days
04/07/2009	<b>Sentence</b> (Judicial Officer: User, Conversion) 2. TAKING PROPERTY FROM PERSON OF ANOTHER UNDER CIRCUMSTANCES NOT AMOUNTING Adult Adjudication Converted Disposition: Sentence# 0001: LIFE WITH POSSIBILITY OF PAROLE
04/07/2009	<b>Sentence</b> (Judicial Officer: User, Conversion) 3. BURGLARY. Adult Adjudication Converted Disposition: Sentence# 0001: LIFE WITH POSSIBILITY OF PAROLE Cons/Conc: Consecutive w/Charge Item: 0001 and Sentence#: 0001
04/07/2009	<b>Sentence</b> (Judicial Officer: User, Conversion) 4. OBTAINING OR POSSESSING CREDIT CARD WITHOUT CARDHOLDER'S CONSENT; Adult Adjudication

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Converted Disposition:  
Sentence# 0001: LIFE WITH POSSIBILITY OF PAROLE  
Cons/Conc: Concurrent  
w/Charge Item: 0003  
and Sentence#: 0001

04/07/2009 **Sentence** (Judicial Officer: User, Conversion)  
5. FRAUDULENT USE OF CREDIT CARD OR NUMBER OF CREDIT ACCOUNT;  
PRESUMPTION  
Adult Adjudication  
Converted Disposition:  
Sentence# 0001: LIFE WITH POSSIBILITY OF PAROLE  
Cons/Conc: Concurrent  
w/Charge Item: 0004  
and Sentence#: 0001

04/07/2009 **Sentence** (Judicial Officer: User, Conversion)  
6. ACTIONS WHICH CONSTITUTE THEFT  
Adult Adjudication  
Converted Disposition:  
Sentence# 0001: LIFE WITH POSSIBILITY OF PAROLE  
Cons/Conc: Concurrent  
w/Charge Item: 0005  
and Sentence#: 0001

04/07/2009 **Sentence** (Judicial Officer: User, Conversion)  
7. CONSPIRACY TO COMMIT A CRIME  
Adult Adjudication  
Converted Disposition:  
Sentence# 0001:  
Minimum 12 Months to Maximum 12 Months  
Placement: CCDC  
Cons/Conc: Concurrent  
w/Charge Item: 0006  
and Sentence#: 0001

04/16/2009  Judgment  
*JUDGMENT OF CONVICTION/ADMIN ASSESSMENT*

*07C2361690038.tif pages*

04/16/2009 Judgment  
*JUDGMENT OF CONVICTION/GENETIC TESTING*

*07C2361690039.tif pages*

04/16/2009 Judgment  
*JUDGMENT OF CONVICTION/RESTITUTION*

*07C2361690040.tif pages*

05/14/2009  Reporters Transcript  
*RECORDER'S TRANSCRIPT OF HEARING RE ARRAIGNMENT - HEARD 09-05-07*

*07C2361690041.tif pages*

06/26/2009  Reporters Transcript  
*REPORTER'S TRANSCRIPT RE JURY TRIAL - VOLUME I - HEARD 11-12-08*

*07C2361690044.tif pages*

06/26/2009  Reporters Transcript  
*REPORTER'S TRANSCRIPT RE SENTENCING - HEARD 04-07-09*

*07C2361690045.tif pages*

06/26/2009  Reporters Transcript  
*REPORTER'S TRANSCRIPT RE JURY TRIAL - VOLUME II - HEARD 11-13-08*

*07C2361690046.tif pages*

06/26/2009  Reporters Transcript  
*RECORDER'S TRANSCRIPT OF HEARING RE STATUS CHECK - TRIAL DATE -*

*07C2361690047.tif pages*












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**CASE NO. 07C236169**

HEARD 10-09-07 10-09-07













06/26/2009	 Reporters Transcript <i>RECORDER'S TRANSCRIPT OF HEARING RE STATUS CHECK - HEARD 07-08-08</i>	07C2361690048.tif pages
06/26/2009	 Reporters Transcript <i>RECORDER'S TRANSCRIPT OF HEARING RE STATUS CHECK - APPEALS IN OTHER CASES - HEARD 06-10-08 CASES - HEARD 06-10-08</i>	07C2361690049.tif pages
06/26/2009	 Reporters Transcript <i>RECORDER'S TRANSCRIPT OF HEARING RE STATUS CHECK - HEARD 12-11-07</i>	07C2361690050.tif pages
06/26/2009	 Reporters Transcript <i>RECORDER'S TRANSCRIPT OF HEARING RE STATUS CHECK - TRIAL DATE - HEARD 10-11-07 10-11-07</i>	07C2361690051.tif pages
06/26/2009	 Reporters Transcript <i>RECORDER'S TRANSCRIPT OF HEARING RE CALENDAR CALL - HEARD 09-02-08</i>	07C2361690052.tif pages
06/26/2009	 Reporters Transcript <i>RECORDER'S TRANSCRIPT OF HEARING RE CALENDAR CALL - HEARD 08-26-08</i>	07C2361690053.tif pages
06/26/2009	 Reporters Transcript <i>RECORDER'S TRANSCRIPT OF HEARING RE STATUS CHECK - TRIAL SETTING - HEARD 09-16-08 HEARD 09-16-08</i>	07C2361690054.tif pages
06/26/2009	 Reporters Transcript <i>RECORDER'S TRANSCRIPT OF HEARING RE STATES REQUEST - CONFLICT OF TRIAL DATE AGREED - HEARD 10-23-08 DATE AGREED - HEARD 10-23-08</i>	07C2361690055.tif pages
06/26/2009	 Reporters Transcript <i>RECORDER'S TRANSCRIPT OF HEARING RE STATES REQUEST - CONFLICT OF TRIAL DATE AGREED - HEARD 10-30-08 DATE AGREED - HEARD 10-30-08</i>	07C2361690056.tif pages
06/26/2009	 Reporters Transcript <i>RECORDER'S TRANSCRIPT OF HEARING RE CALENDAR CALL - HEARD 11-04-08</i>	07C2361690057.tif pages
06/26/2009	 Reporters Transcript <i>RECORDER'S TRANSCRIPT OF HEARING RE SENTENCING - HEARD 01-29-09</i>	07C2361690058.tif pages
12/09/2010	 NV Supreme Court Clerks Certificate/Judgment - Affirmed	
11/30/2011	 Petition for Writ of Habeas Corpus Filed by: Defendant Ross, Ronald <i>Petition for Writ of Habeas Corpus(Post Conviction)</i>	
11/30/2011	 Memorandum Filed By: Defendant Ross, Ronald <i>Memorandum in Support of Petitioner's Petition for Writ of Habeas Corpus(Post Conviction)</i>	
11/30/2011	 Appendix Filed By: Defendant Ross, Ronald	

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*Petitioner's Appendix of Exhibits*

12/05/2011	 Order for Petition for Writ of Habeas Corpus
12/13/2011	 Motion Filed By: Defendant Ross, Ronald <i>Motion for the Appointment of Counsel</i>
12/15/2011	 Opposition <i>State's Opposition to Defendant's Motion for Appointment of Counsel and Request for Evidentiary Hearing</i>
12/19/2011	 Motion for Appointment of Attorney Filed By: Defendant Ross, Ronald <i>Motion for Appointment of Counsel</i>
01/05/2012	<b>Motion (8:15 AM)</b> (Judicial Officer: Villani, Michael) Events: 12/13/2011 Motion <i>Motion for the Appointment of Counsel</i>
01/05/2012	<b>Motion for Appointment of Attorney (8:15 AM)</b> (Judicial Officer: Villani, Michael) Events: 12/19/2011 Motion for Appointment of Attorney <i>Motion for Appointment of Counsel</i>
01/05/2012	 <b>All Pending Motions (8:15 AM)</b> (Judicial Officer: Villani, Michael) <i>Matthew D. Carling, Esq.'s, Motion for Appointment of Counsel . . . Deft.'s Pro Per Motion for the Appointment of Counsel and Request for Evidentiary Hearing</i>
01/24/2012	 Notice <i>Notice of Appearance of Counsel</i>
01/30/2012	 Reporters Transcript Filed By: Plaintiff State of Nevada <i>Reporters Transcript of preliminary Hearing - Heard 06-19-07</i>
01/30/2012	 Order Granting Motion Filed By: Plaintiff State of Nevada <i>Order Granting Defendant's Motion For Appointment Of Counsel And Request For Evidentiary Hearing</i>
01/31/2012	 <b>Status Check (8:15 AM)</b> (Judicial Officer: Villani, Michael) <b>01/31/2012, 04/12/2012</b> <i>Status Check: Briefing Schedule/Hearing Date</i>
02/01/2012	 Order Filed By: Defendant Ross, Ronald <i>Order of Appointment</i>
02/09/2012	<b>CANCELED Petition for Writ of Habeas Corpus (8:15 AM)</b> (Judicial Officer: Villani, Michael) <i>Vacated - per Judge</i>
07/11/2012	 Stipulation and Order Filed by: Defendant Ross, Ronald <i>Stipulation to Enlarge Briefing Schedule and Order</i>

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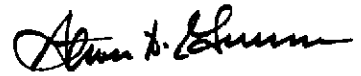
07/18/2012	 Supplement Filed by: Defendant Ross, Ronald <i>First Supplemental Petition for Writ of Habeas Corpus (Post Conviction)</i>
07/25/2012	 Receipt of Copy Filed by: Defendant Ross, Ronald <i>Receipt of Copy</i>
08/03/2012	<b>CANCELED Hearing (9:00 AM) (Judicial Officer: Villani, Michael)</b> <i>Vacated - per Stipulation and Order</i> <i>Hearing: Petition for Writ of Habeas Corpus</i>
10/12/2012	 Stipulation and Order Filed by: Plaintiff State of Nevada <i>Stipulation and Order Extending Time</i>
12/28/2012	 Response Filed by: Plaintiff State of Nevada <i>State's Response To Defendant's Petition For Writ Of Habeas Corpus And First Supplemental Petition For Writ Of Habeas Corpus</i>
01/22/2013	 Ex Parte <i>Ex Parte Application For Authorization Of Fees In Excess Of The Statutory Amount Authorized By Nrs 7.125 And 7.145 And Application For Payment Of Interim Fees</i>
01/22/2013	 Ex Parte Filed By: Defendant Ross, Ronald <i>Ex Parte Application For Authorization Of Fees In Excess Of The Statutory Amount Authorized By Nrs 7.125 And 7.145 And Application For Payment Of Interim Fees</i>
01/22/2013	 Reply Filed by: Defendant Ross, Ronald <i>Reply To State's Response To Defendant's Petition For Writ Of Habeas Corpus And First Supplemental Petition For Writ Of Habeas Corpus (Post-Conviction)</i>
02/05/2013	 Response Filed by: Plaintiff State of Nevada <i>State's Response to New Issue Raised in Defendant's Reply</i>
02/07/2013	 <b>Hearing (8:15 AM) (Judicial Officer: Villani, Michael)</b> <b>02/07/2013, 02/22/2013</b> <i>Hearing: Petition for Writ of Habeas Corpus</i>
05/07/2013	 <b>Decision (8:15 AM) (Judicial Officer: Villani, Michael)</b> <i>Decision: Petition for Writ of Habeas Corpus</i>
06/12/2013	 Findings of Fact, Conclusions of Law and Order Filed By: Plaintiff State of Nevada
06/17/2013	 Notice of Entry Filed By: Plaintiff State of Nevada <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
06/28/2013	

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	 Criminal Order to Statistically Close Case <i>Criminal Order to Statistically Close Case</i>	
07/16/2013	 Request Filed by: Defendant Ross, Ronald <i>Request for Rough Draft Transcripts of District Court Proceedings</i>	
07/16/2013	 Case Appeal Statement Filed By: Defendant Ross, Ronald <i>Case Appeal Statement</i>	
07/16/2013	 Notice of Appeal (criminal) Party: Defendant Ross, Ronald <i>Notice of Appeal</i>	

DATE	FINANCIAL INFORMATION
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<b>Defendant</b> Ross, Ronald	
Total Charges	666.00
Total Payments and Credits	491.00
<b>Balance Due as of 7/17/2013</b>	<b>175.00</b>

  
CLERK OF THE COURT

**ORDR**

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
HILARY HEAP  
Deputy District Attorney  
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Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

RONALD ROSS,  
#1970026

Defendant.

CASE NO: C236169

DEPT NO: XVII

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND ORDER

DATE OF HEARING: FEBRUARY 22, 2013

TIME OF HEARING: 8:15 A.M.

THIS CAUSE having come on for hearing before the Honorable MICHAEL VILLANI, District Judge, on the 22ND day of FEBRUARY, 2013, the Petitioner not being present, represented by MATTHEW D. CARLING, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through HILARY HEAP, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein and the Court having taken the matter under submission until Mar 7, 2013, now therefore, the Court makes the following findings of fact and conclusions of law:

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DEPT. 17 ON

JUN 10 2013

## FINDINGS OF FACT

1. On August 22, 2007, an Information was filed charging Ronald Ross ("Defendant") as follows: Counts 1, 3 and 7: Burglary (Felony – NRS 205.060); Count 2: Larceny from the Person (Felony – NRS 205.067); Count 4: Possession of Credit or Debit Card Without Cardholder's Consent (Felony – NRS 205.690); Count 5: Fraudulent Use of Credit or Debit Card (Felony – NRS 205.760); Count 6: Theft (Felony – NRS 205.0835, 205.0832); Count 8: Grand Larceny, Victim 60 Years of Age or Older (Felony – NRS 206.270, 193.1687); Counts 9 and 10: Conspiracy to Commit Larceny (Gross Misdemeanor – NRS 205.220, 205.222, 199.480). On August 23, 2007, an Amended Information was filed charging Defendant with the same offenses. On August 24, 2007, a Second Amended Information was filed charging Defendant with the same offenses. On November 12, 2008, Defendant was charged by way of Third Amended Information with the following: Counts 1 and 3: Burglary; Count 2: Larceny from the Person; Count 4: Possession of Credit or Debit Card Without Cardholder's Consent; Count 5: Fraudulent Use of Credit or Debit Card; Count 6: Theft; and Count 7: Conspiracy to Commit Larceny.

2. On November 12, 2008, Defendant's trial began. The jury returned a verdict of guilty on all counts contained in the Third Amended Information on November 13, 2008.

3. On November 17, 2008, the State filed a Notice of Intent to Seek Punishment as a Habitual Criminal, alleging seventeen prior felony convictions. The State filed an Amended Notice of Intent to Seek Punishment as a Habitual Criminal on the same day alleging eighteen prior felony convictions. A Second Amended Notice of Intent to Seek Punishment as a Habitual Criminal and a Memorandum in Support of Habitual Criminal Treatment were filed on January 5, 2009, alleging nineteen prior felony convictions.

4. On April 7, 2009, Defendant was adjudged guilty of the offenses charged in the Third Amended Information under the Large Habitual Criminal Statute and sentenced to imprisonment in the Nevada Department of Corrections as follows: Count 1: Minimum of ten (10) years, maximum of life; Count 2: Minimum of ten (10) years, maximum of life, sentence to run concurrent with count 1; Count 3: Minimum of ten (10) years, maximum of



1 life, sentence to run consecutive to counts 1 and 2.; Count 4: Minimum of ten (10) years,  
2 maximum of life, sentence to run consecutive to counts 1 and 2 and concurrent with count 3;  
3 Count 5: Minimum of ten (10) years, maximum of life, sentence to run consecutive to counts  
4 1 and 2 and concurrent with count 4; Count 6: Minimum of ten (10) years, maximum of life,  
5 sentence to run consecutive to counts 1 and 2 and concurrent with count 5; Count 7: one (1)  
6 year in the Clark County Detention Center. Defendant received two hundred (200) days  
7 credit for time served. A Judgment of Conviction was filed on April 16, 2009.

8 5. Defendant filed a Notice of Appeal on December 5, 2008. On November 8, 2010, the  
9 Nevada Supreme Court affirmed Defendant's convictions. Remittitur issued December 3,  
10 2010.

11 6. Defendant filed a pro per petition for writ of habeas corpus (post-conviction) on  
12 November 30, 2011. Defendant's First Supplemental Petition for Writ of Habeas Corpus was  
13 filed on July 18, 2012. The State's filed a Response on December 28, 2012. Defendant filed  
14 a Reply on January 22, 2013. The State filed a Response on February 5, 2013. A hearing was  
15 conducted on the Petition on February 22, 2013. The district court subsequently denied  
16 Defendant's Petition with a Minute Order on May 7, 2013.

17 7. Defendant's claim that counsel was ineffective for not challenging Jurors 187, 200,  
18 and 208 for cause is without merit. All three jurors unequivocally expressed they could lay  
19 aside these past experiences and that such would not affect their deliberations. Reporter's  
20 Transcript,<sup>1</sup> 11/12/2008, pp. 10-11, 32, 37-38, 69, 72-73. When the State raised a challenge  
21 for cause concerning another juror, the court denied the challenge because, even though the  
22 prospective juror had a pending criminal matter in Clark County, "no one got him to say he  
23 can't be fair." RT 11/12/2008, p. 76. Thus, any efforts to challenge the above listed jurors for  
24 cause would have been futile. Furthermore, Defendant cannot demonstrate prejudice as he  
25 cannot show that any of the listed prospective jurors actually served on the jury and were  
26 actually biased. The record demonstrates that Juror 187 and Juror 208 did not serve on the  
27 jury. Compare RT 11/12/2008, pp. 10-11, 37-38 with RT 11/12/2008, p. 78. It is unclear  
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<sup>1</sup> Hereinafter "RT."

1 whether Juror 200 served as his name is not a part of the record. However, as demonstrated  
2 above, Juror 200 unequivocally stated he could lay aside any prejudice or perceived  
3 prejudice in deciding Defendant's case. Thus, because counsel did not act below an objective  
4 standard of reasonableness and because he cannot demonstrate prejudice, this claim is  
5 denied.

6 8. Counsel was not ineffective in asserting Defendant's right to a speedy trial. At  
7 Defendant's arraignment on September 9, 2007, he invoked his right to a speedy trial and  
8 trial was set for October 22. RT 9/5/2007, pp. 2-3. However, this trial date was vacated  
9 because there were pending appeals in two other cases involving Defendant (C220915 and  
10 C220916),<sup>2</sup> one by the State and one by Defendant. RT 11/11/2007, pp. 2-3. Both  
11 Defendant's counsel and the State represented to the court that the outcome of the pending  
12 appeals could significantly affect the instant case and that, if Defendant were tried prior to  
13 the Nevada Supreme Court's decision and such decision was in his favor, the instant case  
14 would have to be retried. RT 11/11/2007, p. 3, 12/11/2007, p. 2. The State and Defendant  
15 therefore agreed that trial in the instant case should be postponed until the pending appeals  
16 were resolved. RT 11/11/2007, pp. 2-3; 12/11/2007, pp. 2-3. Defendant's stated he had "no  
17 problem" waiting for the resolution of the pending appeal but asked to be transported to  
18 prison as opposed to staying at the Clark County Detention Center while he awaited the  
19 outcome. RT 11/11/2007, pp. 3-4; 12/11/2007, pp. 2-3. When the pending appeals were  
20 resolved (See Supreme Court Case Nos. 49091 and 50153), Defendant re-asserted his right  
21 to a speedy trial and trial was set for September 2, 2008. RT 7/8/2008, p. 4-5. However,  
22 against the court's order, Defendant was not transported for the trial and it was vacated. RT  
23 8/16/2008, p. 2. On September 16, 2008, Defendant received a new trial date of November  
24 10, which was the earliest date that the State could transport out-of-state witnesses and the  
25 court could conduct the trial. RT 9/16/2008, p. 4-7. Trial commenced on November 12,  
26 2008. RT 11/12/2008. Given the significant effect Defendant's pending appeals could have  
27 had on a trial in this case, it was reasonable for counsel to waive Defendant's right to a  
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<sup>2</sup> The corresponding Supreme Court Case numbers are 49091 and 50153, respectively.

1 speedy trial until after the appeals were determined. Furthermore, Defendant cannot  
2 demonstrate prejudice. The Nevada Supreme Court considered and denied Defendant's  
3 speedy trial claim on direct appeal, finding that Defendant had failed to demonstrate  
4 prejudice or that the delay was in bad faith. See Order of Affirmance, p. 1. Thus, if counsel  
5 had moved to dismiss Defendant's charges on this ground, such a motion would likely have  
6 been denied. Additionally, based on the same reasoning, Defendant cannot demonstrate a  
7 reasonable probability that the outcome of his case would have been different had counsel  
8 moved to dismiss his charges based on an alleged violation of his right to a speedy trial.

9 9. Inasmuch as Defendant now alleges the delay of his trial was prejudicial because it  
10 caused the loss of exculpatory evidence, specifically the Sheikh Shoes surveillance video,  
11 this claim is belied by the record. Sheikh Shoes store assistant manager Kevin Hancock  
12 testified that the surveillance video depicting Defendant using Georgia Stathopoulos' credit  
13 card was saved in the computer database for 1-2 weeks before being automatically erased.  
14 As the transaction took place on March 17, 2007, and Defendant was not arraigned until  
15 September 5, 2007, any surveillance video of Sheikh Shoes was unavailable prior to any  
16 delay of Defendant's trial. Therefore, because delay subsequent to September 5, 2007 did not  
17 result in the loss of such evidence, this claim is denied.

18 10. Inasmuch as Defendant is alleging his prosecution violated his right to a speedy trial,  
19 consideration of this claim is precluded by the law of the case. On direct appeal, the Nevada  
20 Supreme Court considered and rejected Defendant's claim that his speedy trial rights were  
21 violated. Order of Affirmance 11/8/2010, p. 1-2. Therefore, consideration of this claim is  
22 precluded and it is dismissed.

23 11. Counsel was not ineffective in deciding not to file a discovery motion. Defendant was  
24 already in possession of all discovery and was therefore not prejudiced by the absence of a  
25 formal motion.

26 12. Counsel was not ineffective for failing to preserve the Sheikh Shoes video  
27 surveillance prior to its destruction. Any surveillance of the Sheikh Shoes transaction was  
28 automatically deleted by the end of March 2007 at the latest. Defendant was not arrested in

1 connection with this case until June 6, 2007, and counsel was subsequently appointed. See  
2 Declaration of Arrest. Thus, any surveillance video of Sheikh Shoes was already unavailable  
3 prior to counsel's appointment and Defendant's claim is denied.

4 13. Defendant's claim that the State violated Brady v. Maryland, 373 U.S. 83, 83 S Ct.  
5 1194 (1963), by not providing him with the Sheikh Shoes video is not cognizable as this claim  
6 could have been raised on appeal, but was not.

7 14. Inasmuch as Defendant contends the State intentionally failed to preserve the Sheikh  
8 Shoes video, this claim is without merit. First, this claim is barred because Defendant could  
9 have raised it on appeal but did not. Second, although the State has an obligation to preserve  
10 evidence in its possession or control, Defendant fails to demonstrate that the State ever had  
11 possession or control of the Sheikh Shoes video. Furthermore, Defendant's claim that the  
12 State did not take steps to preserve the evidence is belied by the record. Detective Flenner  
13 testified at the preliminary hearing and at trial that he asked for a copy of the Sheikh Shoes  
14 video to be made. RT 6/19/2007, p. 95-96, 11/12/2008, p. 244. Additionally, Hancock  
15 testified that he tried to make a copy of the video but that support staff was unable to travel  
16 to the location until after the video had been automatically erased. RT 11/12/2008, pp. 200-  
17 02. Because Defendant cannot demonstrate that the Sheikh Shoes video was in the State's  
18 possession or control and because his claim that it was intentionally destroyed is belied by  
19 the record, this claim is denied.

20 15. Counsel was not ineffective for failing to secure the Santa Fe Station video  
21 surveillance. Defendant fails to demonstrate any prejudice. Even if counsel did not review  
22 the Santa Fe Station surveillance video prior to the first day of trial (a fact unknown to this  
23 Court), Defendant cannot demonstrate a reasonable probability of a more favorable outcome  
24 than having the charges concerning the Santa Fe Station offenses voluntarily dismissed by  
25 the State. RT 11/12/2008 p. 3. Thus, any deficiency of counsel was non-prejudicial, and  
26 Defendant's claim is hereby denied.

27 16. Counsel was not ineffective in not presenting the Santa Fe Station video in order to  
28 impeach the identification of Defendant from the Tropicana Hotel and Casino surveillance

1 video as well as the Sheik Shoes video. At Defendant's preliminary hearing, Detective Julie  
2 Holl testified that she reviewed the Santa Fe Station video and identified Defendant as the  
3 person depicted committing a larceny. RT 6/19/2007, pp. 65-66. Prior to the beginning of  
4 trial on November 12, 2008, the State filed a Third Amended Information excluding all  
5 Santa Fe Station offenses because, in reviewing the Santa Fe Station video, the prosecutor  
6 determined that Defendant was not depicted. Detective Holl did not testify at trial. Detective  
7 Flenner testified at both the preliminary hearing and at trial that he observed the Tropicana  
8 video and the Sheikh Shoes video and identified Defendant as depicted in both. RT  
9 6/19/2007, pp. 87-105; RT 11/12/2008, pp. 236, 243, 245-47. Detective Flenner did not  
10 review or testify concerning the Santa Fe Station video. Any evidence that a non-testifying  
11 witness had misidentified Defendant in connection with another theft would have likely been  
12 excluded because it was irrelevant. The fact that Detective Holl had misidentified Defendant  
13 after observing the Santa Fe Station video did not increase or decrease the likelihood that  
14 Detective Flenner correctly identified Defendant after observing the Tropicana video and the  
15 Sheikh Shoes video and is therefore irrelevant. Furthermore, even if such evidence was  
16 admissible, counsel appropriately declined to present it because of its minimal probative  
17 value and potential prejudicial effect. Defendant was on trial for larceny of Stathopoulos'  
18 purse while she was playing slot machines at a casino by distracting her and subsequently  
19 using her stolen credit card to purchase \$490 in shoes and clothing. Similarly, the larceny  
20 that occurred at Santa Fe Station involved a person who stole money from a victim while the  
21 victim was playing slot machines at a casino by distracting them. RT 6/19/2007, pp. 67-69.  
22 Therefore, even if such evidence was admissible, counsel made a reasonable decision to  
23 avoid introducing evidence that Defendant was suspected in a very similar offense occurring  
24 in another casino.

25 17. Defendant's claim that counsel failed to sufficiently communicate with him is belied  
26 by the record. On November 4, 2008, Defendant requested to be made co-counsel because,  
27 in discussing the case with counsel, there were disagreements concerning what witnesses to  
28 call and what defenses to develop. RT 11/4/2008, p. 3. The court recommended that counsel

1 and Defendant continue to discuss the case and counsel stated he would visit Defendant  
2 again before the beginning of trial to discuss the case. RT 11/4/2008, pp. 3-4. Such evidence  
3 of communication between Defendant and counsel belies Defendant's claim that there was a  
4 communication breakdown. Defendant's allegation that counsel's cross-examination of  
5 witnesses demonstrates his lack of understanding of the details of the case is also a bare  
6 allegation belied by the record. In fact, counsel engaged in lengthy and detailed cross-  
7 examinations of key witnesses Stathopoulos, Luis Valdez, Hancock and Detective Flenner.  
8 RT 11/12/2008, pp. 139-53, 180-88, 203-18, 220-23, 248-62. Therefore, Defendant's claim  
9 does not warrant relief and is hereby denied.

10 18. Counsel was not ineffective for not objecting to expert testimony by Detective  
11 Flenner. Detective Flenner testified, in part, concerning his experiences investigating distract  
12 and pickpocket thefts and common techniques associated with those crimes. RT 11/12/2008,  
13 pp. 236-43 Counsel did not object. On appeal, Defendant contended Detective Flenner  
14 improperly testified as an expert. The Nevada Supreme Court rejected Defendant's claim,  
15 finding that Defendant failed to demonstrate plain error. Order of Affirmance, 11/8/2010, p.  
16 2. It was a reasoned tactical decision to not object. Defendant fails to demonstrate that  
17 Detective Flenner's testimony would have been prohibited had an objection been raised  
18 under NRS 174.234(2). Defendant does not argue in his Petition that the State's failure to  
19 notice Detective Flenner's testimony was in bad faith. Furthermore, because Detective  
20 Flenner and other detectives testified similarly concerning distract and pickpocket crimes at  
21 Defendant's preliminary hearing, Defendant was on notice concerning the testimony and  
22 fails to demonstrate that his substantial rights were violated. See RT 6/19/2007, pp. 66-70,  
23 90-93. Therefore, any objection to Detective Flenner's testimony at trial would have been  
24 futile. Furthermore, had the district court heard Defendant's objection and overruled it,  
25 Defendant cannot show a reasonable probability that he would have successfully appealed  
26 the decision because there was no prejudice. See Order of Affirmance, 11/8/2010, p. 2.  
27 Therefore, the Nevada Supreme Court likely would have found any error harmless. Finally,  
28 even if Defendant had objected and Detective Flenner was prohibited from testifying

1 concerning distract and pickpocket crimes in general, Defendant fails to demonstrate a  
2 reasonable probability that the outcome of his trial would have been different. At trial, a  
3 videotape was admitted that showed Defendant and another unidentified male approach  
4 Stathopoulos with a coat draped over Defendant's arm, speak with Stathopoulos for a few  
5 minutes while Defendant's coat was over Stathopoulos' open purse, then Defendant gave his  
6 coat containing a black skinny object to the unidentified male and they left in separate  
7 directions. RT 11/12/2008, pp. 236-243. Stathopoulos identified Defendant and stated that  
8 her wallet was black and skinny and was stolen during the time that Defendant was speaking  
9 with her. RT 11/12/2008, pp. 127, 130-33. Stathopoulos' credit card was then used at Sheikh  
10 Shoes approximately forty minutes later and four people identified Defendant as the person  
11 that used the credit card to purchase \$490 in merchandise. RT 11/12/2008, pp. 157-58, 162-  
12 63, 175-76, 194, 246, 246-47. In light of such evidence, Defendant cannot demonstrate a  
13 reasonable probability that the jury would have acquitted him even if evidence concerning  
14 the techniques of distract and pickpocket thefts was excluded. Therefore, Defendant's claim  
15 is denied.

16 19. Counsel was not ineffective for not objecting to the admission of Deja Jarmin's  
17 preliminary hearing testimony. Defendant contends counsel was ineffective in not objecting  
18 to the admission of Jarmin's preliminary hearing testimony on the grounds the State had  
19 failed to demonstrate due diligence in attempting to locate Jarmin. Any objection on this  
20 ground would have been futile. Although Defendant conceded the State had demonstrated  
21 due diligence in attempting to locate Jarmin, the court would have found such regardless.  
22 Clark County District Attorney's Office investigator Matthew Johns was sworn and testified  
23 that he had attempted to contact Jarmin at his address and called and left messages on  
24 Jarmin's phone beginning in mid-October. RT 11/12/2008, pp. 84-86. Johns contacted a  
25 woman claiming to be Jarmin's girlfriend who confirmed Jarmin's address and phone  
26 number but Johns was unable to contact Jarmin. RT 11/12/2008, p. 91. On the day of trial,  
27 Johns again contacted Jarmin's girlfriend, who told him that Jarmin had been admitted to a  
28 hospital in California on Friday for heart problems and that Jarmin's family lived in the area

1 near the hospital. RT 11/12/2008, p. 87. Johns then attempted to contact the hospital as well  
2 as Jarmin's family in California to confirm that Jarmin was in the hospital, but was  
3 unsuccessful. RT 11/12/2008, pp. 87-88. In light of such efforts, Defendant's claim that the  
4 State failed to exercise due diligence in attempting to locate Jarmin is a bare allegation  
5 belied by the record. Notably, while Defendant now alleges the State did not exercise due  
6 diligence in attempting to locate Jarmin, he does not explain what additional efforts the State  
7 should have made. Thus, any objection on the grounds advanced by Defendant would have  
8 been futile. Furthermore, that counsel objected to admission of Jarmin's preliminary hearing  
9 testimony on different grounds demonstrates a reasoned tactical decision to advance what  
10 counsel believed to be the strongest argument for not admitting Jarmin's preliminary hearing  
11 testimony and such decision is not so deficient to warrant reconsideration.

12 20. Inasmuch as Defendant alleges counsel was also ineffective for failing to object on  
13 the grounds of untimely notice of Jarmin's unavailability, such an objection would likewise  
14 have been futile. According to Jarmin's girlfriend, Jarmin had been admitted to the hospital  
15 the Friday prior to trial with heart problems, a fact Johns had learned the morning of trial. It  
16 was on this ground, not the State's inability to locate Jarmin, that the State requested  
17 Jarmin's preliminary hearing testimony be admitted. Notice of Jarmin's medical condition  
18 was provided the same day that the State learned of it and any objection to the introduction  
19 of Jarmin's testimony on this ground would have been futile.

20 21. Inasmuch as Defendant contends counsel was likewise ineffective for failing to renew  
21 his best evidence objection from the preliminary hearing in connection with Jarmin's  
22 testimony, such claim is without merit. First, it is unclear what objection Defendant is  
23 referring to, as counsel did not raise a best evidence objection during Jarmin's preliminary  
24 hearing testimony. See RT 6/19/2007, pp. 17-34. Furthermore, any best evidence objection  
25 would have been overruled, as the State had sufficiently demonstrated that the original  
26 Sheikh Shoes video had been destroyed without the presence of fraud by the State and could  
27 not be obtained by judicial process. Thus, any objection by counsel would have been futile.  
28 Furthermore, because such objection, or renewed objection, would have been futile,



1 Defendant cannot demonstrate a reasonable probability that it would have been sustained at  
2 trial, or successful on appeal, and so cannot demonstrate prejudice.

3 22. Counsel was not ineffective for not objecting to Hancock's prior identification of  
4 Defendant. Counsel's decision to not object to Hancock's prior identification was a reasoned  
5 tactical decision. Defendant fails to provide any authority for the proposition that a previous  
6 identification is inadmissible because of the length of time between the identification and  
7 trial. Therefore, any objection to Hancock's identification on this ground would have been  
8 futile. Second, Defendant's claim that Hancock was not cross-examined concerning his  
9 identification of Defendant is belied by the record. Defendant was cross-examined  
10 concerning the time between the incident and the photographic identification, his knowledge  
11 of the offense prior to the identification and the fact that he did not personally see Defendant  
12 in Sheik Shoes on the day of the offense. RT 11/12/2008, pp. 204-09, 211-14. Therefore, this  
13 claim is denied.

14 23. Counsel was not ineffective for not objecting to the verbal introduction of the receipt  
15 for the transaction made with Stathopoulos' credit card at Sheik Shoes on March 17, 2007  
16 during Hancock's testimony. State's Exhibit 1. Counsel's decision to not object was a  
17 reasoned strategic decision. Additionally, State's Exhibit 1 had been admitted into evidence  
18 prior to Hancock's testimony. RT 11/12/2008, pp. 158-60. Thus, as the "best evidence" was  
19 already admitted, NRS 52.235 was not violated by Hancock's testimony and any objection  
20 would have been futile. Finally, Defendant cannot demonstrate prejudice. Hancock's  
21 testimony concerned the contents of the State's Exhibit 1, including: the card number for the  
22 credit card used, the date, the salesperson, the items purchased and the amount. RT  
23 11/12/2008, pp. 197-200, 216-17. Defendant did not challenge that Stathopoulos' credit card  
24 was indeed used during the transaction State's Exhibit 1 memorialized. Given that the  
25 evidence testified to was admitted and all of the contents of the receipt were conceded to by  
26 Defendant, there is not a reasonable probability of a different outcome had counsel objected  
27 and such objection was sustained. Therefore, this claim is denied.

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1 24. Counsel was not ineffective for not objecting to allegedly leading questions during  
2 Hancock's direct testimony concerning State's Exhibit 1. The decision to not object was a  
3 reasoned strategic decision. Furthermore, neither of the challenged questions asked by the  
4 prosecutor unnecessarily suggested an answer. While both called for a "yes" or "no" answer,  
5 neither question suggested an answer to the witness and were therefore proper. Thus, any  
6 objection would have been futile. Finally, Defendant cannot demonstrate that, had counsel  
7 objected, there is a reasonable probability of a different outcome. Both questions concerned  
8 evidence already admitted and facts conceded to by Defendant. Therefore, had counsel  
9 objected and such objection been sustained, the prosecutor likely would have simply  
10 rephrased the question. Even if the prosecutor had abandoned the line of questioning, the  
11 result of Defendant's trial would have been the same, as State's Exhibit 1 was admitted and  
12 Defendant conceded to its contents. Therefore, Defendant fails to demonstrate prejudice and  
13 this claim is denied.

14 25. Counsel was not ineffective during the cross-examination of Hancock's testimony  
15 concerning identification of Defendant and for not objecting to Hancock's identification  
16 during redirect examination. Defendant's claim is a bare allegation belied by the record.  
17 Counsel cross-examined Hancock regarding his identification of Defendant. See RT  
18 11/12/2008, pp. 204-09, 211-14. Furthermore, Defendant's claim that counsel was  
19 ineffective for failing to object to Hancock's testimony regarding Defendant's identity on  
20 redirect is without merit. Defendant does not state the grounds upon which any objection to  
21 Hancock's identification could have been made and any objection to Hancock's  
22 identification testimony would have been futile as Hancock's identification was admissible.

23 26. Counsel was not ineffective for not objecting to Detective Flenner testifying that he  
24 was "familiar" with Defendant and for soliciting testimony of Defendant's other bad acts.  
25 Although evidence of other bad acts is inadmissible to prove action in conformity therewith,  
26 no evidence of other acts was offered against Defendant. Detective Flenner's testimony did  
27 not imply anything more than that he was acquainted with Defendant prior to March 17,  
28 2007. This knowledge could have originated from a multitude of avenues having nothing to

do with Defendant's prior bad acts. The jury received no testimony concerning the basis of Detective Flenner's prior knowledge of Defendant and it was instructed to not consider facts not in evidence. Jury Instruction 24. Thus, Defendant's contention that the jury inferred from Detective Flenner's testimony that Defendant had committed other bad acts is a bare allegation unsupported by the record. Furthermore, the decision to not object was a reasoned strategic decision. Finally, even if the testimony was improper under NRS 48.045(2), Defendant cannot demonstrate prejudice. Evidence of Defendant's guilt was overwhelming and included the testimony of one witness and a video of Defendant's theft and the testimony of four witnesses concerning the use of Stathopoulos' credit card. Thus, even if counsel had successfully objected to the challenged testimony, Defendant cannot demonstrate a reasonable probability that the result would have been different.

27. Defendant's claim that counsel solicited evidence of other acts is belied by the record. During cross-examination, counsel asked Detective Flenner how he was able to identify Defendant's facial features on the Tropicana surveillance video in light of the video images' poor quality. The court then asked counsel to approach and advised counsel during the bench conference that the question had the potential to elicit testimony of other acts. The question was then withdrawn and counsel was permitted to continue with cross-examination. RT 11/12/2008, pp. 253-54. Thus, no evidence of other acts was actually offered during cross-examination and Defendant's claim is denied. Furthermore, inasmuch as Defendant is contending counsel's question alone demonstrates ineffective assistance of counsel, Defendant fails to show how an unanswered question regarding the video quality of the Tropicana video prejudiced him. Therefore, this claim is denied.

28. Counsel was not ineffective for not objecting to the admission of a hearsay statement that Stathopoulos told Jarmin her stolen credit card had been used to make a purchase at Sheikh Shoes. Such testimony was not objectionable as hearsay. Testimony by Jarmin and Detective Flenner that they received information that Stathopoulos' stolen credit card had been used at Sheikh Shoes was not offered to prove that Stathopoulos' credit card was indeed stolen and used at Sheikh Shoes. Instead, such testimony was offered to put reactions

1 by Jarmin and Detective Flenner in context. Based on the information they received  
2 concerning the use of Stathopoulos' credit card at Sheik Shoes, Jarmin and Detective Flenner  
3 investigated the credit card receipts at Sheikh Shoes and found a receipt for items purchased  
4 with Stathopoulos' credit card. See RT 11/12/2008, pp. 161-63, 245. Because Stathopoulos'  
5 statement was not being offered to prove the truth of the matter asserted, such testimony was  
6 not hearsay and any objection would have been futile. Furthermore, counsel pursued an  
7 identity defense at trial and conceded that a theft and use of a stolen credit card had occurred.  
8 RT 11/12/2008, pp. 122, 124; 11/13/2008, pp. 29-30, 35-36, 39-41. Thus, counsel's decision  
9 to not object was a reasoned strategic decision. Finally, Defendant fails to demonstrate  
10 prejudice. There was much more probative evidence that Stathopoulos' credit card had been  
11 stolen and used at Sheikh Shoes than her out-of-court statement to Jarmin. Specifically,  
12 Stathopoulos' testified that her wallet, including her credit card, was stolen at approximately  
13 1:00 PM on March 17, 2007, and the same card was used to purchase a significant amount of  
14 clothing and shoes approximately forty minutes later, as evidenced by the credit card receipt  
15 from Sheikh Shoes entered into evidence. RT 11/12/2008, pp. 126-27; State's Exhibit 1.  
16 Further, testimony and video demonstrated Defendant stole Stathopoulos' purse and four  
17 witnesses identified Defendant as the person that used Stathopoulos' credit card at Sheikh  
18 Shoes. RT 11/12/2008, pp. 130, 162-63, 175, 194, 243, 246-47. Therefore, Defendant cannot  
19 demonstrate a reasonable probability that the outcome of the matter would have been  
20 different had the jury not known that Stathopoulos told Jarmin her stolen credit card had  
21 been used at Sheikh Shoes. Thus, Defendant's claim is denied.

22 29. Counsel was not ineffective in declining to present expert testimony concerning  
23 distract and pickpocket crimes. Such was a reasoned strategic decision. Additionally,  
24 Defendant's implied assertion that counsel could have secured an expert witness to counter  
25 the testimony of Detective Flenner is a bare allegation unsupported by the record and does  
26 not warrant relief. Further, the jury did not require an expert to testify that Defendant's  
27 actions "were consistent with non-criminal activity" as such fact was not outside the ken of  
28 ordinary laity. Therefore, if such testimony was proffered, it would have likely been

1 excluded and counsel cannot be found ineffective for failing to proffer inadmissible  
2 evidence. Finally, Defendant fails to demonstrate prejudice. Even if the jury received expert  
3 testimony that Defendant's actions on the Tropicana surveillance video were consistent with  
4 non-criminal activity, the admission of evidence that no one else was close enough to  
5 Stathopoulos to take her purse and the fact that Defendant used Stathopoulos' credit card  
6 approximately forty minutes after her wallet was stolen would have resulted in the same  
7 conviction. Thus, Defendant cannot demonstrate a reasonable probability of a different  
8 outcome and his claim is denied.

9 30. Counsel was not ineffective in declining to present the testimony of a video expert to  
10 counter Detective Flenner's testimony that the Sheikh Shoes video had better resolution than  
11 the Tropicana video. Such was a reasoned strategic decision. Additionally, that counsel  
12 could have secured an expert witness to counter the testimony of Detective Flenner is a bare  
13 allegation and does not warrant relief. A copy of the Tropicana video was played at trial and  
14 Detective Flenner acknowledged on cross-examination that it had "streaks and was not very  
15 clear." See RT 11/12/2008, pp. 252-53. Detective Flenner viewed the original Sheikh Shoes  
16 video and never received a copy. RT 11/12/2008, p. 244. The original was destroyed by the  
17 time of trial. As the original Sheikh Shoes video that Detective Flenner viewed had been  
18 destroyed shortly after the March 17, 2007 transaction, it is unclear how a defense expert  
19 could have testified about the comparative quality of the two videos. Further, considering  
20 that the Sheikh Shoes video was an original and the Tropicana video was a copy, had an  
21 expert been called to testify, it is likely that they would have opined that originals are  
22 generally of higher quality or resolution than copies. Finally, Defendant cannot demonstrate  
23 prejudice. Even if an expert had been called and opined that casino surveillance videos are  
24 generally of higher resolution than other surveillance videos, there is not a reasonable  
25 probability that the outcome of Defendant's trial would have been different. Two  
26 eyewitnesses, including the clerk that processed the sale, testified that Defendant made a  
27 purchase at Sheikh Shoes with Stathopoulos' credit card forty minutes after it was stolen. RT  
28 11/12/2008, pp. 155-60, 175-76. Such testimony would have been sufficient to overcome

1 any vague challenge to the quality of the Sheikh Shoes video. Thus, Defendant's claim does  
2 not warrant relief.

3 31. Counsel was not ineffective in not challenging alleged errors in Defendant's  
4 Presentence Investigation Report. First, Defendant's claim that counsel failed to investigate  
5 his prior felony convictions is a bare allegation belied by the record. On January 29, 2009,  
6 counsel requested sentencing to be continued to resolve disputes regarding Defendant's prior  
7 felonies. RT 1/29/2009, pp. 2-3. The sentencing was continued to April 7, 2009, when the  
8 State proffered booking photos for five prior felonies. RT 4/7/2009, pp. 2-4. When asked,  
9 Defendant admitted that the booking photos for the five felonies depicted him but disputed  
10 the other prior felony convictions alleged by the State. RT 4/7/2009, pp. 10-12. The district  
11 court stated it was only considering the five felony convictions with corresponding booking  
12 photos in its sentencing. RT 4/7/2009, p. 12. Counsel contended that the identity in  
13 connection with the five prior felonies was still unconfirmed and requested a continuance to  
14 establish identity through fingerprints. RT 4/7/2009, pp. 15-16. The court denied counsel's  
15 request and sentenced Defendant under the large habitual criminal statute. RT 4/7/2009, p.  
16 22. Thus, the record supports the presumption that counsel indeed investigated Defendant's  
17 prior felony offenses. Further, in light of the fact Defendant conceded he had been  
18 previously convicted of five felonies either in Nevada or elsewhere, Defendant cannot now  
19 demonstrate prejudice. The five prior felony convictions Defendant acknowledged were the  
20 only prior felony convictions the court considered in sentencing Defendant as a large  
21 habitual criminal and were sufficient to support such a sentence. Because Defendant cannot  
22 demonstrate that, had counsel more effectively investigated prior felony convictions not  
23 considered by the court, there is a reasonable probability that the outcome of his sentencing  
24 would have been more favorable, this claim is denied.

25 32. Inasmuch as Defendant contends counsel was ineffective in challenging the  
26 authenticity of the prior felony convictions alleged, this claim is belied by the record. After  
27 the booking photos for five prior felony convictions were admitted and Defendant agreed  
28 that the person photographed was him, counsel still insisted that identity was not proven and

1 requested fingerprint analysis. RT 4/7/2009, pp. 10-11, 15-16. In fact, counsel challenged the  
2 authenticity of Defendant's prior felony convictions more forcefully than Defendant himself.  
3 Therefore, this claim is denied

4 33. Appellate counsel was not ineffective for declining to raise a claim that the State  
5 violated Brady. Appellate counsel raised five claims on appeal and contended that testimony  
6 of the contents of the Sheikh Shoes video in the absence of the video violated the best-  
7 evidence rule. Furthermore, prosecutors did not violate Brady. Defendant fails to  
8 demonstrate that the Sheikh Shoes video was ever in the State's possession. In fact,  
9 Detective Flenner testified he viewed the video as it existed on the security system at Sheikh  
10 Shoes and never received a copy. RT 11/12/2008, p. 244. Thus, as such evidence was not in  
11 the State's possession at any time, Defendant cannot demonstrate a Brady violation and  
12 appellate counsel appropriately declined to raise the issue. Furthermore, Defendant's claim  
13 that the State never disclosed that the security video had been destroyed is a bare allegation  
14 belied by the record. At the preliminary hearing, Detective Flenner testified the Sheikh  
15 Shoes employees did not know how to make a copy. Detective Flenner testified he did not  
16 receive a copy and was unaware of whether a copy was ever made. RT 6/19/2007, pp. 95-96.  
17 Therefore, Defendant was on notice at least as early as June 19, 2007, that the State had not  
18 secured a copy of the Sheikh Shoes video and had an equal opportunity to further investigate  
19 whether such a copy existed. Therefore, because the record demonstrates Defendant had  
20 equal access to determine whether a copy of the Sheikh Shoes video existed, his claim did not  
21 have a reasonable probability of success on appeal and counsel appropriately declined to  
22 raise it.

23 34. Defendant's contention that counsel failed to cross-examine witnesses concerning the  
24 timing between the theft and the use of Stathopoulos' credit card is belied by the record.  
25 Counsel cross-examined both Stathopoulos and Jarmin concerning the length of time  
26 between the alleged theft and use of Stathopoulos' credit card. RT 11/12/2008, pp. 147, 152,  
27 164-66. The witnesses consistently testified that Stathopoulos' purse and credit card were  
28 stolen at approximately 1:00 PM and Stathopoulos' credit card was used at Sheikh Shoes

1 approximately forty minutes later. RT 11/12/2008, pp. 126-27, 147, 160-61, 164-66. As  
2 Defendant's claim is belied by the record, it is denied.

3 35. Defendant's claim that counsel was ineffective for failing to raise the alleged Brady  
4 violation to the jury is without merit. Any consideration or findings concerning alleged  
5 Brady violations would have been rendered by the trial court and were outside the purview  
6 of the jury as fact finder. Thus, any attempt by counsel to argue to the jury that Brady  
7 violations had occurred would have raised an objection by the State and such objection  
8 would have been sustained.

9 36. Defendant's claim that the trial court improperly denied his motion to continue after  
10 admitting Jarmin's preliminary hearing testimony is belied by the record. No such motion to  
11 continue trial was ever made. RT 11/12/2008, pp. 100-04. The trial court cannot be held at  
12 fault for denying motions never raised. Further, even if such denial of a motion to continue  
13 occurred, this claim is barred because Defendant could have raised it on direct appeal but  
14 failed to. Therefore, Defendant's claim is denied.

15 37. Defendant's claim that the prosecutor committed misconduct by vouching for  
16 Jarmin's credibility is barred because Defendant could have raised it on direct appeal but  
17 failed to. Additionally, this claim is without merit as the allegedly improper comment did not  
18 constitute vouching. Finally, inasmuch as Defendant is contending counsel was ineffective  
19 for failing to object to such argument, the argument was proper and any objection would  
20 have been overruled.

21 38. Defendant's claim that many of his alleged prior convictions were over fifteen years  
22 old is barred because it could have been raised on appeal but was not. Further, this claim is  
23 without merit as there is no time requirement for the use of prior felony convictions under  
24 NRS 207.010.

25 39. Defendant's claim that the felonies he was convicted of in New Jersey are not felonies  
26 under Nevada law is barred because it could have been raised on appeal but was not. Further,  
27 this claim is without merit as Defendant's New Jersey crimes were felonies under New  
28 Jersey law, therefore, whether they constitute felonies under Nevada law is irrelevant.



1 40. Defendant's claim that counsel was ineffective for failing to call family members,  
2 former employers and others in mitigation as well as for not objecting to the admission of  
3 Defendant's prior felony convictions is without merit. Defendant's claim that family  
4 members, former employers and others would have been willing to testify at Defendant's  
5 sentencing is a bare allegation and does not warrant relief. Furthermore, even if such  
6 witnesses existed and were willing to testify, Defendant fails to demonstrate a reasonable  
7 probability that such would have resulted in a more favorable outcome at sentencing.  
8 Defendant's criminal record demonstrates a career criminal that consistently selects elderly  
9 and disabled victims at casinos and steals from them through distract and pickpocket  
10 methods. RT 4/7/2009, pp. 5-6. In light of such consistent criminal behavior by Defendant,  
11 any comments from family and friends would not raise a reasonable likelihood of a more  
12 favorable sentence.

13 41. Defendant's claim that some alleged prior convictions were erroneous because they  
14 were not for Defendant is barred because it could have been raised on appeal but was not.  
15 Furthermore, inasmuch as Defendant claims the five prior felony convictions used to  
16 sentence him to habitual criminal treatment were erroneous, this claim is belied by the record  
17 and without merit. Defendant acknowledged he was the person photographed in connection  
18 with the five prior felonies the court considered in sentencing. RT 4/7/2009, pp. 10-11. Any  
19 present claims to the contrary are belied by this earlier admission. Furthermore, the district  
20 court independently found the photographs identified Defendant in connection with the prior  
21 felony convictions. RT 4/7/2009, p. 22. Finally, inasmuch as Defendant is contending  
22 records of prior felony convictions alleged by the State but not considered by the sentencing  
23 judge were erroneous, Defendant fails to demonstrate any prejudice. Therefore, Defendant's  
24 claim is denied.

25 42. Defendant's claim that the New Jersey convictions were not properly certified is  
26 barred because it could have been raised on appeal but was not. Furthermore, this claim is  
27 without merit as the State produced certified copies of judgments of conviction for five  
28 different prior felony convictions as well as booking photos showing that Defendant was the

perpetrator. RT 4/7/2009, pp. 2-4. Counsel conceded that the judgments of convictions were properly certified and the district court agreed. RT 4/7/2009, pp. 17-18, 22. Any assertion by Defendant to the contrary are thus bare allegations unsupported by the record and are denied.

43. Inasmuch as Defendant is contending his sentence is cruel and unusual, consideration of this claim is barred because Defendant could have raised it on direct appeal but did not

44. Trial counsel was effective.

45. Appellate counsel was effective.

46. Cumulative error does not warrant relief.

47. An evidentiary hearing is not warranted. Many of Defendant's claims are belied by the record and therefore do not warrant an evidentiary hearing. Furthermore, Defendant has failed to demonstrate that, even if all of his claims are true, he was prejudiced thereby. Thus, an expansion of the record would not assist the merits of Defendant's claims and his request is hereby denied.

#### CONCLUSIONS OF LAW

1. In order to assert a claim for ineffective assistance of counsel, a defendant must prove he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland v. Washington, 466 U.S. 668, 686-87, 104 S. Ct. 2052, 2063-64 (1984). See also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this test, the Defendant must show first, that his counsel's representation fell below an objective standard of reasonableness, and second, that but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. Strickland, 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting Strickland two-part test in Nevada). "Effective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 1449 (1970)).

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2. In considering whether trial counsel has met this standard, the court should first determine whether counsel made a "sufficient inquiry into the information that is pertinent to [the] client's case." Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996) (citing Strickland, 466 U.S. at 690-691, 104 S. Ct. at 2066). Once proof of such a reasonable inquiry by counsel has been shown, the court should consider whether counsel made "a reasonable strategy decision on how to proceed with his client's case." Id. at 846, 921 P.2d at 280 (citing Strickland, 466 U.S. at 690-691, 104 S. Ct. at 2066). Finally, counsel's strategy decisions are "tactical" and will be "virtually unchallengeable absent extraordinary circumstances." Id.; Strickland, 466 U.S. at 691, 104 S. Ct. at 2066; Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990). Trial counsel has the "immediate and ultimate responsibility of deciding if and when to object, which witnesses, if any, to call, and what defenses to develop. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002). Counsel cannot be found ineffective for not raising futile arguments. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

3. Based on the above law, the court begins with the presumption of effectiveness and then must determine whether the defendant has demonstrated by "strong and convincing proof" that counsel was ineffective. Homick v State, 112 Nev. 304, 310, 913 P.2d 1280, 1285 (1996) (citing Lenz v. State, 97 Nev. 65, 66, 624 P.2d 15, 16 (1981)); Davis v. State, 107 Nev. 600, 602, 817 P.2d 1169, 1170 (1991). The role of a court in considering an allegation of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (citing Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)).

4. This analysis means that the court should not "second guess reasoned choices between trial tactics" and defense counsel need not "make every conceivable motion no matter how remote the possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711. In essence, the court must "judge the reasonableness of counsel's challenged conduct on

1 the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466  
2 U.S. at 690, 104 S. Ct. at 2066.

3 5. Even if a defendant can demonstrate that his counsel's representation fell below an  
4 objective standard of reasonableness, he must also demonstrate prejudice by showing a  
5 reasonable probability that, but for counsel's errors, the result of the trial would have been  
6 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
7 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a probability  
8 sufficient to undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-  
9 89, 694, 104 S. Ct. at 2064-65, 2068). Similarly, a defendant who contends his attorney was  
10 ineffective because he did not adequately investigate must show that the investigation was  
11 unreasonable and that a better investigation would have rendered a more favorable outcome  
12 probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

13 6. When determining whether a potential juror is biased, the relevant inquiry is whether  
14 the juror's views "would prevent or substantially impair the performance of his duties as a  
15 juror in accordance with his instructions and his oath." Weber v. State, 121 Nev. 554, 580,  
16 119 P.3d 107, 125 (2005) (quoting Leonard v. State, 117 Nev. 53, 65, 17 P.3d 397, 405  
17 (2001)).

18 7. Bare assertions and claims belied by the record do not warrant post-conviction relief.  
19 See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

20 8. NRS 174.234(3)(a) provides that the court shall prohibit the testimony of any  
21 improperly noticed expert *only if* such lack of notice was in bad faith. See also Mitchell v.  
22 State, 124 Nev. 807, 819, 192 P.3d 721, 729 (2008) (reviewing court's decision to admit  
23 improperly noticed expert for abuse of discretion and finding no bad faith nor prejudice to  
24 the defendant's substantial rights).

25 9. NRS 171.198(7)(b), allows the State to admit preliminary hearing testimony if a  
26 defendant was represented by counsel and cross-examined the witness at the preliminary  
27 hearing and the witness is "sick, out of the State, dead, or persistent in refusing to testify

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1 deposit an order of the judge to do so, or when the witness's personal attendance cannot be  
2 had in court."

3 10. NRS 51.035(2)(c) provides for the admission of prior statements of identification  
4 made "soon after perceiving the person" but does not prescribe a time limit between the  
5 identification and the trial.

6 11. Leading questions are questions which unnecessarily suggest an answer and are  
7 generally not permitted during direct examination. NRS 50.115(3)(a).

8 12. Hearsay is defined as an out-of-court statement offered into evidence to prove the  
9 truth of the matter asserted. NRS 51.035.

10 13. The threshold test for admitting expert testimony is whether such testimony would  
11 assist the jury in determining truth in "areas outside the ken of ordinary laity." Townsend v.  
12 State, 103 Nev. 113, 117, 734 P.2d 705, 708 (1987).

13 14. NRS 207.010(1) provides:

14 Unless the person is prosecuted pursuant to NRS 207.012 or  
15 207.014, a person convicted in this State of:

16 "... (b) Any felony, who has previously been three times  
17 convicted, whether in this State or elsewhere, of any crime which  
18 under the laws of the situs of the crime or of this State would  
amount to a felony is a habitual criminal and shall be punished  
for a category A felony by imprisonment in the state prison[.]

19 15. "Relevant factors to consider in evaluating a claim of cumulative error are (1)  
20 whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the  
21 gravity of the crime charged." Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 855 (2000).

22 Here the issue of guilt was not close as there was testimony and video demonstrating that  
23 Defendant stole Stathopoulos' purse at the Tropicana and used one of her credit cards forty  
24 minutes later at Sheikh Shoes. Further, although the crime had some gravity, the quantity  
25 and character of any errors by counsel were minimal and Defendant "is not entitled to a  
26 perfect trial, but only a fair trial." Ennis v. State, 91 Nev. 530, 533, 539 P.2d 114, 115  
27 (1975). In fact, there was no single instance of ineffective assistance in Defendant's case.  
28 See United States v. Rivera, 900 F.2d 1462, 1471 (10th Cir. 1990) ("[A] cumulative-error

1 analysis should evaluate only the effect of matters determined to be error, not the cumulative  
2 effect of non-errors.”).

3 16. “The law of a first appeal is law of the case on all subsequent appeals in which the  
4 facts are substantially the same.” Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975)  
5 (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). “The doctrine of the  
6 law of the case cannot be avoided by a more detailed and precisely focused argument  
7 subsequently made after reflection upon the previous proceedings.” Id. at 316, 535 P.2d at  
8 799. Under the law of the case doctrine, issues previously decided on direct appeal or in  
9 appeals to previous petitions may not be reargued in a subsequent petition. Pellegrini v.  
10 State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001).

11 17. NRS 34.810(1)(b)(2) reads:

12 The court shall dismiss a petition if the court determines that:  
13 (b) The petitioner’s conviction was the result of a trial and the  
grounds for the petition could have been:

14 (2) Raised in a direct appeal or a prior petition for a writ of  
15 habeas corpus or postconviction relief.

16 The Nevada Supreme Court has held that “challenges to the validity of a guilty plea and  
17 claims of ineffective assistance of trial and appellate counsel must first be pursued in post-  
18 conviction proceedings.... [A]ll other claims that are appropriate for a direct appeal must be  
19 pursued on direct appeal, or they will be *considered waived in subsequent proceedings.*”  
20 Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added)  
21 (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). “A  
22 court must dismiss a habeas petition if it presents claims that either were or could have been  
23 presented in an earlier proceeding, unless the court finds both cause for failing to present the  
24 claims earlier or for raising them again and actual prejudice to the petitioner.” Evans v. State,  
25 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001).

26 18. There is a strong presumption that appellate counsel's performance was reasonable  
27 and fell within “the wide range of reasonable professional assistance.” See United States v.  
28 Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990) (citing Strickland, 466 U.S. at 689, 104 S. Ct. at

2065). Federal courts have held that a claim of ineffective assistance of appellate counsel must satisfy the two-prong test set forth by Strickland. Williams v. Collins, 16 F.3d 626, 635 (5th Cir. 1994); Hollenback v. United States, 987 F.2d 1272, 1275 (7th Cir. 1993); Heath v. Jones, 941 F.2d 1126, 1130 (11th Cir. 1991). In order to satisfy Strickland's second prong, the defendant must show that the omitted issue would have had a reasonable probability of success on appeal. See Duhamel v. Collins, 955 F.2d 962, 967 (5th Cir. 1992); Heath, 941 F.2d at 1132.

19. To establish a Brady violation, a defendant must demonstrate that: (1) the prosecution suppressed evidence in its possession; (2) the evidence was favorable to the defense; and (3) the evidence was material to an issue at trial. See, e.g., Mazzan v. Warden, 116 Nev. 48, 67, 993 P.2d 25, 37 (2000). An accused cannot complain that exculpatory evidence has been suppressed by the prosecution when the information is known to him or could have been discovered through reasonable diligence. Rippo v. State, 113 Nev. 1239, 1258, 946 P.2d 1017, 1029 (1997).

20. The State has an obligation to preserve evidence in its possession or control. See Steese v. State, 114 Nev. 479, 491, 960 P.2d 321, 329 (1998).

21. "Vouching may occur in two ways: the prosecution may put the prestige of the government behind the witness or may indicate that information not presented to the jury supports the witness's testimony." Lisle v. State, 113 Nev. 540, 553, 937 P.2d 473, 481 (1997).

22. NRS 207.010(1)(b) provides for habitual criminal treatment if a defendant has three convictions for crimes that are *either* felonies under Nevada law *or* under the law of the situs of the crime.

23. An evidentiary hearing is not warranted. NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

1. The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required. A petitioner must not be discharged or committed to the custody of a person other than the respondent unless an evidentiary hearing is held.

1 2. If the judge or justice determines that the petitioner is not  
2 entitled to relief and an evidentiary hearing is not required, he  
3 shall dismiss the petition without a hearing.

3 3. If the judge or justice determines that an evidentiary hearing  
4 is required, he shall grant the writ and shall set a date for the  
5 hearing.

5 NRS 34.770. The Nevada Supreme Court has held that if a petition can be resolved without  
6 expanding the record, no evidentiary hearing is necessary. Mann v. State, 118 Nev. 351, 356,  
7 46 P.3d 1228, 1231 (2002); Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994). A  
8 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual  
9 allegations, which, if true, would entitle him to relief unless the factual allegations are  
10 repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; See also Hargrove, 100  
11 Nev. at 503, 686 P.2d at 225 ("A defendant seeking post-conviction relief is not entitled to  
12 an evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is  
13 'belied' when it is contradicted or proven to be false by the record as it existed at the time  
14 the claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

15 ORDER


16 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction  
17 Relief shall be, and it is, hereby denied.

18 DATED this 11 day of June, 2013.

19 

20 DISTRICT JUDGE 

21  
22 STEVEN B. WOLFSON  
23 Clark County District Attorney  
24 Nevada Bar #001565

25 BY   
26 HILARY HEAP  
27 Deputy District Attorney  
28 Nevada Bar #012395

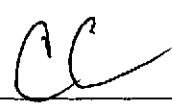


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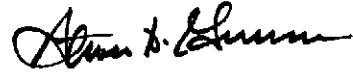
CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of Findings Of Fact, Conclusions Of Law And Order, for review, was made this 5th day of June, 2013, by facsimile transmission to:

MATTHEW CARLING, ESQ.  
446-8065

BY:   
C. Cintola  
Employee of the District Attorney's Office

CB/HH/cc/L3



CLERK OF THE COURT

NEO

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

RONALD ROSS,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: 07C236169

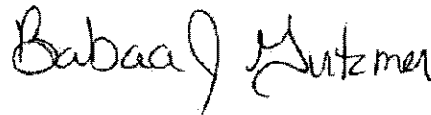
Dept No: XVII

**NOTICE OF ENTRY OF FINDINGS OF  
FACT, CONCLUSIONS OF LAW AND  
ORDER**

**PLEASE TAKE NOTICE** that on June 12, 2013, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on June 17, 2013.

STEVEN D. GRIERSON, CLERK OF THE COURT



Barbara J. Gutzmer, Deputy Clerk

CERTIFICATE OF MAILING

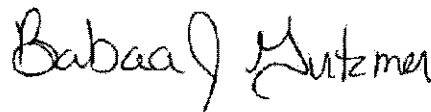
I hereby certify that on this 17 day of June 2013, I placed a copy of this Notice of Entry in:

The bin(s) located in the Regional Justice Center of:  
Clark County District Attorney's Office  
Attorney General's Office – Appellate Division-

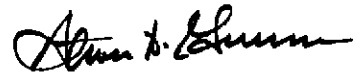
☒ The United States mail addressed as follows:

Ronald Ross # 1003485  
P.O. Box 650  
Indian Springs, NV 89070

Matthew D. Carling, Esq.  
1100 S. Tenth Street  
Las Vegas, NV 89101



Barbara J. Gutzmer, Deputy Clerk

  
CLERK OF THE COURT

1 **ORDR**

2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 HILARY HEAP  
6 Deputy District Attorney  
7 Nevada Bar #012395  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,  
13  
14 Plaintiff,

15 -vs-

16 RONALD ROSS,  
17 #1970026

18 Defendant.

CASE NO: C236169

DEPT NO: XVII

19 FINDINGS OF FACT, CONCLUSIONS OF  
20 LAW AND ORDER

21 DATE OF HEARING: FEBRUARY 22, 2013

22 TIME OF HEARING: 8:15 A.M.

23 THIS CAUSE having come on for hearing before the Honorable MICHAEL  
24 VILLANI, District Judge, on the 22ND day of FEBRUARY, 2013, the Petitioner not being  
25 present, represented by MATTHEW D. CARLING, the Respondent being represented by  
26 STEVEN B. WOLFSON, Clark County District Attorney, by and through HILARY HEAP,  
27 Deputy District Attorney, and the Court having considered the matter, including briefs,  
28 transcripts, arguments of counsel, and documents on file herein and the Court having taken  
the matter under submission until Mar 7, 2013, now therefore, the Court makes the following  
findings of fact and conclusions of law:

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RECEIVED BY  
DEPT. 17 ON

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## FINDINGS OF FACT

1. On August 22, 2007, an Information was filed charging Ronald Ross ("Defendant") as follows: Counts 1, 3 and 7: Burglary (Felony – NRS 205.060); Count 2: Larceny from the Person (Felony – NRS 205.067); Count 4: Possession of Credit or Debit Card Without Cardholder's Consent (Felony – NRS 205.690); Count 5: Fraudulent Use of Credit or Debit Card (Felony – NRS 205.760); Count 6: Theft (Felony – NRS 205.0835, 205.0832); Count 8: Grand Larceny, Victim 60 Years of Age or Older (Felony – NRS 206.270, 193.1687); Counts 9 and 10: Conspiracy to Commit Larceny (Gross Misdemeanor – NRS 205.220, 205.222, 199.480). On August 23, 2007, an Amended Information was filed charging Defendant with the same offenses. On August 24, 2007, a Second Amended Information was filed charging Defendant with the same offenses. On November 12, 2008, Defendant was charged by way of Third Amended Information with the following: Counts 1 and 3: Burglary; Count 2: Larceny from the Person; Count 4: Possession of Credit or Debit Card Without Cardholder's Consent; Count 5: Fraudulent Use of Credit or Debit Card; Count 6: Theft; and Count 7: Conspiracy to Commit Larceny.

2. On November 12, 2008, Defendant's trial began. The jury returned a verdict of guilty on all counts contained in the Third Amended Information on November 13, 2008.

3. On November 17, 2008, the State filed a Notice of Intent to Seek Punishment as a Habitual Criminal, alleging seventeen prior felony convictions. The State filed an Amended Notice of Intent to Seek Punishment as a Habitual Criminal on the same day alleging eighteen prior felony convictions. A Second Amended Notice of Intent to Seek Punishment as a Habitual Criminal and a Memorandum in Support of Habitual Criminal Treatment were filed on January 5, 2009, alleging nineteen prior felony convictions.

4. On April 7, 2009, Defendant was adjudged guilty of the offenses charged in the Third Amended Information under the Large Habitual Criminal Statute and sentenced to imprisonment in the Nevada Department of Corrections as follows: Count 1: Minimum of ten (10) years, maximum of life; Count 2: Minimum of ten (10) years, maximum of life, sentence to run concurrent with count 1; Count 3: Minimum of ten (10) years, maximum of

1 life, sentence to run consecutive to counts 1 and 2.; Count 4: Minimum of ten (10) years,  
2 maximum of life, sentence to run consecutive to counts 1 and 2 and concurrent with count 3;  
3 Count 5: Minimum of ten (10) years, maximum of life, sentence to run consecutive to counts  
4 1 and 2 and concurrent with count 4; Count 6: Minimum of ten (10) years, maximum of life,  
5 sentence to run consecutive to counts 1 and 2 and concurrent with count 5; Count 7: one (1)  
6 year in the Clark County Detention Center. Defendant received two hundred (200) days  
7 credit for time served. A Judgment of Conviction was filed on April 16, 2009.

8 5. Defendant filed a Notice of Appeal on December 5, 2008. On November 8, 2010, the  
9 Nevada Supreme Court affirmed Defendant's convictions. Remittitur issued December 3,  
10 2010.

11 6. Defendant filed a pro per petition for writ of habeas corpus (post-conviction) on  
12 November 30, 2011. Defendant's First Supplemental Petition for Writ of Habeas Corpus was  
13 filed on July 18, 2012. The State's filed a Response on December 28, 2012. Defendant filed  
14 a Reply on January 22, 2013. The State filed a Response on February 5, 2013. A hearing was  
15 conducted on the Petition on February 22, 2013. The district court subsequently denied  
16 Defendant's Petition with a Minute Order on May 7, 2013.

17 7. Defendant's claim that counsel was ineffective for not challenging Jurors 187, 200,  
18 and 208 for cause is without merit. All three jurors unequivocally expressed they could lay  
19 aside these past experiences and that such would not affect their deliberations. Reporter's  
20 Transcript,<sup>1</sup> 11/12/2008, pp. 10-11, 32, 37-38, 69, 72-73. When the State raised a challenge  
21 for cause concerning another juror, the court denied the challenge because, even though the  
22 prospective juror had a pending criminal matter in Clark County, "no one got him to say he  
23 can't be fair." RT 11/12/2008, p. 76. Thus, any efforts to challenge the above listed jurors for  
24 cause would have been futile. Furthermore, Defendant cannot demonstrate prejudice as he  
25 cannot show that any of the listed prospective jurors actually served on the jury and were  
26 actually biased. The record demonstrates that Juror 187 and Juror 208 did not serve on the  
27 jury. Compare RT 11/12/2008, pp. 10-11, 37-38 with RT 11/12/2008, p. 78. It is unclear  
28

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<sup>1</sup> Hereinafter "RT."

1 whether Juror 200 served as his name is not a part of the record. However, as demonstrated  
2 above, Juror 200 unequivocally stated he could lay aside any prejudice or perceived  
3 prejudice in deciding Defendant's case. Thus, because counsel did not act below an objective  
4 standard of reasonableness and because he cannot demonstrate prejudice, this claim is  
5 denied.

6 8. Counsel was not ineffective in asserting Defendant's right to a speedy trial. At  
7 Defendant's arraignment on September 9, 2007, he invoked his right to a speedy trial and  
8 trial was set for October 22. RT 9/5/2007, pp. 2-3. However, this trial date was vacated  
9 because there were pending appeals in two other cases involving Defendant (C220915 and  
10 C220916),<sup>2</sup> one by the State and one by Defendant. RT 11/11/2007, pp. 2-3. Both  
11 Defendant's counsel and the State represented to the court that the outcome of the pending  
12 appeals could significantly affect the instant case and that, if Defendant were tried prior to  
13 the Nevada Supreme Court's decision and such decision was in his favor, the instant case  
14 would have to be retried. RT 11/11/2007, p. 3, 12/11/2007, p. 2. The State and Defendant  
15 therefore agreed that trial in the instant case should be postponed until the pending appeals  
16 were resolved. RT 11/11/2007, pp. 2-3; 12/11/2007, pp. 2-3. Defendant's stated he had "no  
17 problem" waiting for the resolution of the pending appeal but asked to be transported to  
18 prison as opposed to staying at the Clark County Detention Center while he awaited the  
19 outcome. RT 11/11/2007, pp. 3-4; 12/11/2007, pp. 2-3. When the pending appeals were  
20 resolved (See Supreme Court Case Nos. 49091 and 50153), Defendant re-asserted his right  
21 to a speedy trial and trial was set for September 2, 2008. RT 7/8/2008, p. 4-5. However,  
22 against the court's order, Defendant was not transported for the trial and it was vacated. RT  
23 8/16/2008, p. 2. On September 16, 2008, Defendant received a new trial date of November  
24 10, which was the earliest date that the State could transport out-of-state witnesses and the  
25 court could conduct the trial. RT 9/16/2008, p. 4-7. Trial commenced on November 12,  
26 2008. RT 11/12/2008. Given the significant effect Defendant's pending appeals could have  
27 had on a trial in this case, it was reasonable for counsel to waive Defendant's right to a  
28

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<sup>2</sup> The corresponding Supreme Court Case numbers are 49091 and 50153, respectively.

1 speedy trial until after the appeals were determined. Furthermore, Defendant cannot  
2 demonstrate prejudice. The Nevada Supreme Court considered and denied Defendant's  
3 speedy trial claim on direct appeal, finding that Defendant had failed to demonstrate  
4 prejudice or that the delay was in bad faith. See Order of Affirmance, p. 1. Thus, if counsel  
5 had moved to dismiss Defendant's charges on this ground, such a motion would likely have  
6 been denied. Additionally, based on the same reasoning, Defendant cannot demonstrate a  
7 reasonable probability that the outcome of his case would have been different had counsel  
8 moved to dismiss his charges based on an alleged violation of his right to a speedy trial.

9 9. Inasmuch as Defendant now alleges the delay of his trial was prejudicial because it  
10 caused the loss of exculpatory evidence, specifically the Sheikh Shoes surveillance video,  
11 this claim is belied by the record. Sheikh Shoes store assistant manager Kevin Hancock  
12 testified that the surveillance video depicting Defendant using Georgia Stathopoulos' credit  
13 card was saved in the computer database for 1-2 weeks before being automatically erased.  
14 As the transaction took place on March 17, 2007, and Defendant was not arraigned until  
15 September 5, 2007, any surveillance video of Sheikh Shoes was unavailable prior to any  
16 delay of Defendant's trial. Therefore, because delay subsequent to September 5, 2007 did not  
17 result in the loss of such evidence, this claim is denied.

18 10. Inasmuch as Defendant is alleging his prosecution violated his right to a speedy trial,  
19 consideration of this claim is precluded by the law of the case. On direct appeal, the Nevada  
20 Supreme Court considered and rejected Defendant's claim that his speedy trial rights were  
21 violated. Order of Affirmance 11/8/2010, p. 1-2. Therefore, consideration of this claim is  
22 precluded and it is dismissed.

23 11. Counsel was not ineffective in deciding not to file a discovery motion. Defendant was  
24 already in possession of all discovery and was therefore not prejudiced by the absence of a  
25 formal motion.

26 12. Counsel was not ineffective for failing to preserve the Sheikh Shoes video  
27 surveillance prior to its destruction. Any surveillance of the Sheikh Shoes transaction was  
28 automatically deleted by the end of March 2007 at the latest. Defendant was not arrested in

1 connection with this case until June 6, 2007, and counsel was subsequently appointed. See  
2 Declaration of Arrest. Thus, any surveillance video of Sheikh Shoes was already unavailable  
3 prior to counsel's appointment and Defendant's claim is denied.

4 13. Defendant's claim that the State violated Brady v. Maryland, 373 U.S. 83, 83 S Ct.  
5 1194 (1963), by not providing him with the Sheikh Shoes video is not cognizable as this claim  
6 could have been raised on appeal, but was not.

7 14. Inasmuch as Defendant contends the State intentionally failed to preserve the Sheikh  
8 Shoes video, this claim is without merit. First, this claim is barred because Defendant could  
9 have raised it on appeal but did not. Second, although the State has an obligation to preserve  
10 evidence in its possession or control, Defendant fails to demonstrate that the State ever had  
11 possession or control of the Sheikh Shoes video. Furthermore, Defendant's claim that the  
12 State did not take steps to preserve the evidence is belied by the record. Detective Flenner  
13 testified at the preliminary hearing and at trial that he asked for a copy of the Sheikh Shoes  
14 video to be made. RT 6/19/2007, p. 95-96, 11/12/2008, p. 244. Additionally, Hancock  
15 testified that he tried to make a copy of the video but that support staff was unable to travel  
16 to the location until after the video had been automatically erased. RT 11/12/2008, pp. 200-  
17 02. Because Defendant cannot demonstrate that the Sheikh Shoes video was in the State's  
18 possession or control and because his claim that it was intentionally destroyed is belied by  
19 the record, this claim is denied.

20 15. Counsel was not ineffective for failing to secure the Santa Fe Station video  
21 surveillance. Defendant fails to demonstrate any prejudice. Even if counsel did not review  
22 the Santa Fe Station surveillance video prior to the first day of trial (a fact unknown to this  
23 Court), Defendant cannot demonstrate a reasonable probability of a more favorable outcome  
24 than having the charges concerning the Santa Fe Station offenses voluntarily dismissed by  
25 the State. RT 11/12/2008 p. 3. Thus, any deficiency of counsel was non-prejudicial, and  
26 Defendant's claim is hereby denied.

27 16. Counsel was not ineffective in not presenting the Santa Fe Station video in order to  
28 impeach the identification of Defendant from the Tropicana Hotel and Casino surveillance



1 video as well as the Sheik Shoes video. At Defendant's preliminary hearing, Detective Julie  
2 Holl testified that she reviewed the Santa Fe Station video and identified Defendant as the  
3 person depicted committing a larceny. RT 6/19/2007, pp. 65-66. Prior to the beginning of  
4 trial on November 12, 2008, the State filed a Third Amended Information excluding all  
5 Santa Fe Station offenses because, in reviewing the Santa Fe Station video, the prosecutor  
6 determined that Defendant was not depicted. Detective Holl did not testify at trial. Detective  
7 Flenner testified at both the preliminary hearing and at trial that he observed the Tropicana  
8 video and the Sheikh Shoes video and identified Defendant as depicted in both. RT  
9 6/19/2007, pp. 87-105; RT 11/12/2008, pp. 236, 243, 245-47. Detective Flenner did not  
10 review or testify concerning the Santa Fe Station video. Any evidence that a non-testifying  
11 witness had misidentified Defendant in connection with another theft would have likely been  
12 excluded because it was irrelevant. The fact that Detective Holl had misidentified Defendant  
13 after observing the Santa Fe Station video did not increase or decrease the likelihood that  
14 Detective Flenner correctly identified Defendant after observing the Tropicana video and the  
15 Sheikh Shoes video and is therefore irrelevant. Furthermore, even if such evidence was  
16 admissible, counsel appropriately declined to present it because of its minimal probative  
17 value and potential prejudicial effect. Defendant was on trial for larceny of Stathopoulos'  
18 purse while she was playing slot machines at a casino by distracting her and subsequently  
19 using her stolen credit card to purchase \$490 in shoes and clothing. Similarly, the larceny  
20 that occurred at Santa Fe Station involved a person who stole money from a victim while the  
21 victim was playing slot machines at a casino by distracting them. RT 6/19/2007, pp. 67-69.  
22 Therefore, even if such evidence was admissible, counsel made a reasonable decision to  
23 avoid introducing evidence that Defendant was suspected in a very similar offense occurring  
24 in another casino.

25 17. Defendant's claim that counsel failed to sufficiently communicate with him is belied  
26 by the record. On November 4, 2008, Defendant requested to be made co-counsel because,  
27 in discussing the case with counsel, there were disagreements concerning what witnesses to  
28 call and what defenses to develop. RT 11/4/2008, p. 3. The court recommended that counsel

1 and Defendant continue to discuss the case and counsel stated he would visit Defendant  
2 again before the beginning of trial to discuss the case. RT 11/4/2008, pp. 3-4. Such evidence  
3 of communication between Defendant and counsel belies Defendant's claim that there was a  
4 communication breakdown. Defendant's allegation that counsel's cross-examination of  
5 witnesses demonstrates his lack of understanding of the details of the case is also a bare  
6 allegation belied by the record. In fact, counsel engaged in lengthy and detailed cross-  
7 examinations of key witnesses Stathopoulos, Luis Valdez, Hancock and Detective Flenner.  
8 RT 11/12/2008, pp. 139-53, 180-88, 203-18, 220-23, 248-62. Therefore, Defendant's claim  
9 does not warrant relief and is hereby denied.

10 18. Counsel was not ineffective for not objecting to expert testimony by Detective  
11 Flenner. Detective Flenner testified, in part, concerning his experiences investigating distract  
12 and pickpocket thefts and common techniques associated with those crimes. RT 11/12/2008,  
13 pp. 236-43 Counsel did not object. On appeal, Defendant contended Detective Flenner  
14 improperly testified as an expert. The Nevada Supreme Court rejected Defendant's claim,  
15 finding that Defendant failed to demonstrate plain error. Order of Affirmance, 11/8/2010, p.  
16 2. It was a reasoned tactical decision to not object. Defendant fails to demonstrate that  
17 Detective Flenner's testimony would have been prohibited had an objection been raised  
18 under NRS 174.234(2). Defendant does not argue in his Petition that the State's failure to  
19 notice Detective Flenner's testimony was in bad faith. Furthermore, because Detective  
20 Flenner and other detectives testified similarly concerning distract and pickpocket crimes at  
21 Defendant's preliminary hearing, Defendant was on notice concerning the testimony and  
22 fails to demonstrate that his substantial rights were violated. See RT 6/19/2007, pp. 66-70,  
23 90-93. Therefore, any objection to Detective Flenner's testimony at trial would have been  
24 futile. Furthermore, had the district court heard Defendant's objection and overruled it,  
25 Defendant cannot show a reasonable probability that he would have successfully appealed  
26 the decision because there was no prejudice. See Order of Affirmance, 11/8/2010, p. 2.  
27 Therefore, the Nevada Supreme Court likely would have found any error harmless. Finally,  
28 even if Defendant had objected and Detective Flenner was prohibited from testifying

1 concerning distract and pickpocket crimes in general, Defendant fails to demonstrate a  
2 reasonable probability that the outcome of his trial would have been different. At trial, a  
3 videotape was admitted that showed Defendant and another unidentified male approach  
4 Stathopoulos with a coat draped over Defendant's arm, speak with Stathopoulos for a few  
5 minutes while Defendant's coat was over Stathopoulos' open purse, then Defendant gave his  
6 coat containing a black skinny object to the unidentified male and they left in separate  
7 directions. RT 11/12/2008, pp. 236-243. Stathopoulos identified Defendant and stated that  
8 her wallet was black and skinny and was stolen during the time that Defendant was speaking  
9 with her. RT 11/12/2008, pp. 127, 130-33. Stathopoulos' credit card was then used at Sheikh  
10 Shoes approximately forty minutes later and four people identified Defendant as the person  
11 that used the credit card to purchase \$490 in merchandise. RT 11/12/2008, pp. 157-58, 162-  
12 63, 175-76, 194, 246, 246-47. In light of such evidence, Defendant cannot demonstrate a  
13 reasonable probability that the jury would have acquitted him even if evidence concerning  
14 the techniques of distract and pickpocket thefts was excluded. Therefore, Defendant's claim  
15 is denied.

16 19. Counsel was not ineffective for not objecting to the admission of Deja Jarmin's  
17 preliminary hearing testimony. Defendant contends counsel was ineffective in not objecting  
18 to the admission of Jarmin's preliminary hearing testimony on the grounds the State had  
19 failed to demonstrate due diligence in attempting to locate Jarmin. Any objection on this  
20 ground would have been futile. Although Defendant conceded the State had demonstrated  
21 due diligence in attempting to locate Jarmin, the court would have found such regardless.  
22 Clark County District Attorney's Office investigator Matthew Johns was sworn and testified  
23 that he had attempted to contact Jarmin at his address and called and left messages on  
24 Jarmin's phone beginning in mid-October. RT 11/12/2008, pp. 84-86. Johns contacted a  
25 woman claiming to be Jarmin's girlfriend who confirmed Jarmin's address and phone  
26 number but Johns was unable to contact Jarmin. RT 11/12/2008, p. 91. On the day of trial,  
27 Johns again contacted Jarmin's girlfriend, who told him that Jarmin had been admitted to a  
28 hospital in California on Friday for heart problems and that Jarmin's family lived in the area

1 near the hospital. RT 11/12/2008, p. 87. Johns then attempted to contact the hospital as well  
2 as Jarmin's family in California to confirm that Jarmin was in the hospital, but was  
3 unsuccessful. RT 11/12/2008, pp. 87-88. In light of such efforts, Defendant's claim that the  
4 State failed to exercise due diligence in attempting to locate Jarmin is a bare allegation  
5 belied by the record. Notably, while Defendant now alleges the State did not exercise due  
6 diligence in attempting to locate Jarmin, he does not explain what additional efforts the State  
7 should have made. Thus, any objection on the grounds advanced by Defendant would have  
8 been futile. Furthermore, that counsel objected to admission of Jarmin's preliminary hearing  
9 testimony on different grounds demonstrates a reasoned tactical decision to advance what  
10 counsel believed to be the strongest argument for not admitting Jarmin's preliminary hearing  
11 testimony and such decision is not so deficient to warrant reconsideration.

12 20. Inasmuch as Defendant alleges counsel was also ineffective for failing to object on  
13 the grounds of untimely notice of Jarmin's unavailability, such an objection would likewise  
14 have been futile. According to Jarmin's girlfriend, Jarmin had been admitted to the hospital  
15 the Friday prior to trial with heart problems, a fact Johns had learned the morning of trial. It  
16 was on this ground, not the State's inability to locate Jarmin, that the State requested  
17 Jarmin's preliminary hearing testimony be admitted. Notice of Jarmin's medical condition  
18 was provided the same day that the State learned of it and any objection to the introduction  
19 of Jarmin's testimony on this ground would have been futile.

20 21. Inasmuch as Defendant contends counsel was likewise ineffective for failing to renew  
21 his best evidence objection from the preliminary hearing in connection with Jarmin's  
22 testimony, such claim is without merit. First, it is unclear what objection Defendant is  
23 referring to, as counsel did not raise a best evidence objection during Jarmin's preliminary  
24 hearing testimony. See RT 6/19/2007, pp. 17-34. Furthermore, any best evidence objection  
25 would have been overruled, as the State had sufficiently demonstrated that the original  
26 Sheikh Shoes video had been destroyed without the presence of fraud by the State and could  
27 not be obtained by judicial process. Thus, any objection by counsel would have been futile.  
28 Furthermore, because such objection, or renewed objection, would have been futile,

1 Defendant cannot demonstrate a reasonable probability that it would have been sustained at  
2 trial, or successful on appeal, and so cannot demonstrate prejudice.

3 22. Counsel was not ineffective for not objecting to Hancock's prior identification of  
4 Defendant. Counsel's decision to not object to Hancock's prior identification was a reasoned  
5 tactical decision. Defendant fails to provide any authority for the proposition that a previous  
6 identification is inadmissible because of the length of time between the identification and  
7 trial. Therefore, any objection to Hancock's identification on this ground would have been  
8 futile. Second, Defendant's claim that Hancock was not cross-examined concerning his  
9 identification of Defendant is belied by the record. Defendant was cross-examined  
10 concerning the time between the incident and the photographic identification, his knowledge  
11 of the offense prior to the identification and the fact that he did not personally see Defendant  
12 in Sheik Shoes on the day of the offense. RT 11/12/2008, pp. 204-09, 211-14. Therefore, this  
13 claim is denied.

14 23. Counsel was not ineffective for not objecting to the verbal introduction of the receipt  
15 for the transaction made with Stathopoulos' credit card at Sheik Shoes on March 17, 2007  
16 during Hancock's testimony. State's Exhibit 1. Counsel's decision to not object was a  
17 reasoned strategic decision. Additionally, State's Exhibit 1 had been admitted into evidence  
18 prior to Hancock's testimony. RT 11/12/2008, pp. 158-60. Thus, as the "best evidence" was  
19 already admitted, NRS 52.235 was not violated by Hancock's testimony and any objection  
20 would have been futile. Finally, Defendant cannot demonstrate prejudice. Hancock's  
21 testimony concerned the contents of the State's Exhibit 1, including: the card number for the  
22 credit card used, the date, the salesperson, the items purchased and the amount. RT  
23 11/12/2008, pp. 197-200, 216-17. Defendant did not challenge that Stathopoulos' credit card  
24 was indeed used during the transaction State's Exhibit 1 memorialized. Given that the  
25 evidence testified to was admitted and all of the contents of the receipt were conceded to by  
26 Defendant, there is not a reasonable probability of a different outcome had counsel objected  
27 and such objection was sustained. Therefore, this claim is denied.

28 ///

1 24. Counsel was not ineffective for not objecting to allegedly leading questions during  
2 Hancock's direct testimony concerning State's Exhibit 1. The decision to not object was a  
3 reasoned strategic decision. Furthermore, neither of the challenged questions asked by the  
4 prosecutor unnecessarily suggested an answer. While both called for a "yes" or "no" answer,  
5 neither question suggested an answer to the witness and were therefore proper. Thus, any  
6 objection would have been futile. Finally, Defendant cannot demonstrate that, had counsel  
7 objected, there is a reasonable probability of a different outcome. Both questions concerned  
8 evidence already admitted and facts conceded to by Defendant. Therefore, had counsel  
9 objected and such objection been sustained, the prosecutor likely would have simply  
10 rephrased the question. Even if the prosecutor had abandoned the line of questioning, the  
11 result of Defendant's trial would have been the same, as State's Exhibit 1 was admitted and  
12 Defendant conceded to its contents. Therefore, Defendant fails to demonstrate prejudice and  
13 this claim is denied.

14 25. Counsel was not ineffective during the cross-examination of Hancock's testimony  
15 concerning identification of Defendant and for not objecting to Hancock's identification  
16 during redirect examination. Defendant's claim is a bare allegation belied by the record.  
17 Counsel cross-examined Hancock regarding his identification of Defendant. See RT  
18 11/12/2008, pp. 204-09, 211-14. Furthermore, Defendant's claim that counsel was  
19 ineffective for failing to object to Hancock's testimony regarding Defendant's identity on  
20 redirect is without merit. Defendant does not state the grounds upon which any objection to  
21 Hancock's identification could have been made and any objection to Hancock's  
22 identification testimony would have been futile as Hancock's identification was admissible.

23 26. Counsel was not ineffective for not objecting to Detective Flenner testifying that he  
24 was "familiar" with Defendant and for soliciting testimony of Defendant's other bad acts.  
25 Although evidence of other bad acts is inadmissible to prove action in conformity therewith,  
26 no evidence of other acts was offered against Defendant. Detective Flenner's testimony did  
27 not imply anything more than that he was acquainted with Defendant prior to March 17,  
28 2007. This knowledge could have originated from a multitude of avenues having nothing to

do with Defendant's prior bad acts. The jury received no testimony concerning the basis of Detective Flenner's prior knowledge of Defendant and it was instructed to not consider facts not in evidence. Jury Instruction 24. Thus, Defendant's contention that the jury inferred from Detective Flenner's testimony that Defendant had committed other bad acts is a bare allegation unsupported by the record. Furthermore, the decision to not object was a reasoned strategic decision. Finally, even if the testimony was improper under NRS 48.045(2), Defendant cannot demonstrate prejudice. Evidence of Defendant's guilt was overwhelming and included the testimony of one witness and a video of Defendant's theft and the testimony of four witnesses concerning the use of Stathopoulos' credit card. Thus, even if counsel had successfully objected to the challenged testimony, Defendant cannot demonstrate a reasonable probability that the result would have been different.

27. Defendant's claim that counsel solicited evidence of other acts is belied by the record. During cross-examination, counsel asked Detective Flenner how he was able to identify Defendant's facial features on the Tropicana surveillance video in light of the video images' poor quality. The court then asked counsel to approach and advised counsel during the bench conference that the question had the potential to elicit testimony of other acts. The question was then withdrawn and counsel was permitted to continue with cross-examination. RT 11/12/2008, pp. 253-54. Thus, no evidence of other acts was actually offered during cross-examination and Defendant's claim is denied. Furthermore, inasmuch as Defendant is contending counsel's question alone demonstrates ineffective assistance of counsel, Defendant fails to show how an unanswered question regarding the video quality of the Tropicana video prejudiced him. Therefore, this claim is denied.

28. Counsel was not ineffective for not objecting to the admission of a hearsay statement that Stathopoulos told Jarmin her stolen credit card had been used to make a purchase at Sheikh Shoes. Such testimony was not objectionable as hearsay. Testimony by Jarmin and Detective Flenner that they received information that Stathopoulos' stolen credit card had been used at Sheikh Shoes was not offered to prove that Stathopoulos' credit card was indeed stolen and used at Sheikh Shoes. Instead, such testimony was offered to put reactions

1 by Jarmin and Detective Flenner in context. Based on the information they received  
2 concerning the use of Stathopoulos' credit card at Sheik Shoes, Jarmin and Detective Flenner  
3 investigated the credit card receipts at Sheikh Shoes and found a receipt for items purchased  
4 with Stathopoulos' credit card. See RT 11/12/2008, pp. 161-63, 245. Because Stathopoulos'  
5 statement was not being offered to prove the truth of the matter asserted, such testimony was  
6 not hearsay and any objection would have been futile. Furthermore, counsel pursued an  
7 identity defense at trial and conceded that a theft and use of a stolen credit card had occurred.  
8 RT 11/12/2008, pp. 122, 124; 11/13/2008, pp. 29-30, 35-36, 39-41. Thus, counsel's decision  
9 to not object was a reasoned strategic decision. Finally, Defendant fails to demonstrate  
10 prejudice. There was much more probative evidence that Stathopoulos' credit card had been  
11 stolen and used at Sheikh Shoes than her out-of-court statement to Jarmin. Specifically,  
12 Stathopoulos' testified that her wallet, including her credit card, was stolen at approximately  
13 1:00 PM on March 17, 2007, and the same card was used to purchase a significant amount of  
14 clothing and shoes approximately forty minutes later, as evidenced by the credit card receipt  
15 from Sheikh Shoes entered into evidence. RT 11/12/2008, pp. 126-27; State's Exhibit 1.  
16 Further, testimony and video demonstrated Defendant stole Stathopoulos' purse and four  
17 witnesses identified Defendant as the person that used Stathopoulos' credit card at Sheikh  
18 Shoes. RT 11/12/2008, pp. 130, 162-63, 175, 194, 243, 246-47. Therefore, Defendant cannot  
19 demonstrate a reasonable probability that the outcome of the matter would have been  
20 different had the jury not known that Stathopoulos told Jarmin her stolen credit card had  
21 been used at Sheikh Shoes. Thus, Defendant's claim is denied.

22 29. Counsel was not ineffective in declining to present expert testimony concerning  
23 distract and pickpocket crimes. Such was a reasoned strategic decision. Additionally,  
24 Defendant's implied assertion that counsel could have secured an expert witness to counter  
25 the testimony of Detective Flenner is a bare allegation unsupported by the record and does  
26 not warrant relief. Further, the jury did not require an expert to testify that Defendant's  
27 actions "were consistent with non-criminal activity" as such fact was not outside the ken of  
28 ordinary laity. Therefore, if such testimony was proffered, it would have likely been



1 excluded and counsel cannot be found ineffective for failing to proffer inadmissible  
2 evidence. Finally, Defendant fails to demonstrate prejudice. Even if the jury received expert  
3 testimony that Defendant's actions on the Tropicana surveillance video were consistent with  
4 non-criminal activity, the admission of evidence that no one else was close enough to  
5 Stathopoulos to take her purse and the fact that Defendant used Stathopoulos' credit card  
6 approximately forty minutes after her wallet was stolen would have resulted in the same  
7 conviction. Thus, Defendant cannot demonstrate a reasonable probability of a different  
8 outcome and his claim is denied.

9 30. Counsel was not ineffective in declining to present the testimony of a video expert to  
10 counter Detective Flenner's testimony that the Sheikh Shoes video had better resolution than  
11 the Tropicana video. Such was a reasoned strategic decision. Additionally, that counsel  
12 could have secured an expert witness to counter the testimony of Detective Flenner is a bare  
13 allegation and does not warrant relief. A copy of the Tropicana video was played at trial and  
14 Detective Flenner acknowledged on cross-examination that it had "streaks and was not very  
15 clear." See RT 11/12/2008, pp. 252-53. Detective Flenner viewed the original Sheikh Shoes  
16 video and never received a copy. RT 11/12/2008, p. 244. The original was destroyed by the  
17 time of trial. As the original Sheikh Shoes video that Detective Flenner viewed had been  
18 destroyed shortly after the March 17, 2007 transaction, it is unclear how a defense expert  
19 could have testified about the comparative quality of the two videos. Further, considering  
20 that the Sheikh Shoes video was an original and the Tropicana video was a copy, had an  
21 expert been called to testify, it is likely that they would have opined that originals are  
22 generally of higher quality or resolution than copies. Finally, Defendant cannot demonstrate  
23 prejudice. Even if an expert had been called and opined that casino surveillance videos are  
24 generally of higher resolution than other surveillance videos, there is not a reasonable  
25 probability that the outcome of Defendant's trial would have been different. Two  
26 eyewitnesses, including the clerk that processed the sale, testified that Defendant made a  
27 purchase at Sheikh Shoes with Stathopoulos' credit card forty minutes after it was stolen. RT  
28 11/12/2008, pp. 155-60, 175-76. Such testimony would have been sufficient to overcome

1 any vague challenge to the quality of the Sheikh Shoes video. Thus, Defendant's claim does  
2 not warrant relief.

3 31. Counsel was not ineffective in not challenging alleged errors in Defendant's  
4 Presentence Investigation Report. First, Defendant's claim that counsel failed to investigate  
5 his prior felony convictions is a bare allegation belied by the record. On January 29, 2009,  
6 counsel requested sentencing to be continued to resolve disputes regarding Defendant's prior  
7 felonies. RT 1/29/2009, pp. 2-3. The sentencing was continued to April 7, 2009, when the  
8 State proffered booking photos for five prior felonies. RT 4/7/2009, pp. 2-4. When asked,  
9 Defendant admitted that the booking photos for the five felonies depicted him but disputed  
10 the other prior felony convictions alleged by the State. RT 4/7/2009, pp. 10-12. The district  
11 court stated it was only considering the five felony convictions with corresponding booking  
12 photos in its sentencing. RT 4/7/2009, p. 12. Counsel contended that the identity in  
13 connection with the five prior felonies was still unconfirmed and requested a continuance to  
14 establish identity through fingerprints. RT 4/7/2009, pp. 15-16. The court denied counsel's  
15 request and sentenced Defendant under the large habitual criminal statute. RT 4/7/2009, p.  
16 22. Thus, the record supports the presumption that counsel indeed investigated Defendant's  
17 prior felony offenses. Further, in light of the fact Defendant conceded he had been  
18 previously convicted of five felonies either in Nevada or elsewhere, Defendant cannot now  
19 demonstrate prejudice. The five prior felony convictions Defendant acknowledged were the  
20 only prior felony convictions the court considered in sentencing Defendant as a large  
21 habitual criminal and were sufficient to support such a sentence. Because Defendant cannot  
22 demonstrate that, had counsel more effectively investigated prior felony convictions not  
23 considered by the court, there is a reasonable probability that the outcome of his sentencing  
24 would have been more favorable, this claim is denied.

25 32. Inasmuch as Defendant contends counsel was ineffective in challenging the  
26 authenticity of the prior felony convictions alleged, this claim is belied by the record. After  
27 the booking photos for five prior felony convictions were admitted and Defendant agreed  
28 that the person photographed was him, counsel still insisted that identity was not proven and

1 requested fingerprint analysis. RT 4/7/2009, pp. 10-11, 15-16. In fact, counsel challenged the  
2 authenticity of Defendant's prior felony convictions more forcefully than Defendant himself.  
3 Therefore, this claim is denied

4 33. Appellate counsel was not ineffective for declining to raise a claim that the State  
5 violated Brady. Appellate counsel raised five claims on appeal and contended that testimony  
6 of the contents of the Sheikh Shoes video in the absence of the video violated the best-  
7 evidence rule. Furthermore, prosecutors did not violate Brady. Defendant fails to  
8 demonstrate that the Sheikh Shoes video was ever in the State's possession. In fact,  
9 Detective Flenner testified he viewed the video as it existed on the security system at Sheikh  
10 Shoes and never received a copy. RT 11/12/2008, p. 244. Thus, as such evidence was not in  
11 the State's possession at any time, Defendant cannot demonstrate a Brady violation and  
12 appellate counsel appropriately declined to raise the issue. Furthermore, Defendant's claim  
13 that the State never disclosed that the security video had been destroyed is a bare allegation  
14 belied by the record. At the preliminary hearing, Detective Flenner testified the Sheikh  
15 Shoes employees did not know how to make a copy. Detective Flenner testified he did not  
16 receive a copy and was unaware of whether a copy was ever made. RT 6/19/2007, pp. 95-96.  
17 Therefore, Defendant was on notice at least as early as June 19, 2007, that the State had not  
18 secured a copy of the Sheikh Shoes video and had an equal opportunity to further investigate  
19 whether such a copy existed. Therefore, because the record demonstrates Defendant had  
20 equal access to determine whether a copy of the Sheikh Shoes video existed, his claim did not  
21 have a reasonable probability of success on appeal and counsel appropriately declined to  
22 raise it.

23 34. Defendant's contention that counsel failed to cross-examine witnesses concerning the  
24 timing between the theft and the use of Stathopoulos' credit card is belied by the record.  
25 Counsel cross-examined both Stathopoulos and Jarmin concerning the length of time  
26 between the alleged theft and use of Stathopoulos' credit card. RT 11/12/2008, pp. 147, 152,  
27 164-66. The witnesses consistently testified that Stathopoulos' purse and credit card were  
28 stolen at approximately 1:00 PM and Stathopoulos' credit card was used at Sheikh Shoes

1 approximately forty minutes later. RT 11/12/2008, pp. 126-27, 147, 160-61, 164-66. As  
2 Defendant's claim is belied by the record, it is denied.

3 35. Defendant's claim that counsel was ineffective for failing to raise the alleged Brady  
4 violation to the jury is without merit. Any consideration or findings concerning alleged  
5 Brady violations would have been rendered by the trial court and were outside the purview  
6 of the jury as fact finder. Thus, any attempt by counsel to argue to the jury that Brady  
7 violations had occurred would have raised an objection by the State and such objection  
8 would have been sustained.

9 36. Defendant's claim that the trial court improperly denied his motion to continue after  
10 admitting Jarmin's preliminary hearing testimony is belied by the record. No such motion to  
11 continue trial was ever made. RT 11/12/2008, pp. 100-04. The trial court cannot be held at  
12 fault for denying motions never raised. Further, even if such denial of a motion to continue  
13 occurred, this claim is barred because Defendant could have raised it on direct appeal but  
14 failed to. Therefore, Defendant's claim is denied.

15 37. Defendant's claim that the prosecutor committed misconduct by vouching for  
16 Jarmin's credibility is barred because Defendant could have raised it on direct appeal but  
17 failed to. Additionally, this claim is without merit as the allegedly improper comment did not  
18 constitute vouching. Finally, inasmuch as Defendant is contending counsel was ineffective  
19 for failing to object to such argument, the argument was proper and any objection would  
20 have been overruled.

21 38. Defendant's claim that many of his alleged prior convictions were over fifteen years  
22 old is barred because it could have been raised on appeal but was not. Further, this claim is  
23 without merit as there is no time requirement for the use of prior felony convictions under  
24 NRS 207.010.

25 39. Defendant's claim that the felonies he was convicted of in New Jersey are not felonies  
26 under Nevada law is barred because it could have been raised on appeal but was not. Further,  
27 this claim is without merit as Defendant's New Jersey crimes were felonies under New  
28 Jersey law, therefore, whether they constitute felonies under Nevada law is irrelevant.

1 40. Defendant's claim that counsel was ineffective for failing to call family members,  
2 former employers and others in mitigation as well as for not objecting to the admission of  
3 Defendant's prior felony convictions is without merit. Defendant's claim that family  
4 members, former employers and others would have been willing to testify at Defendant's  
5 sentencing is a bare allegation and does not warrant relief. Furthermore, even if such  
6 witnesses existed and were willing to testify, Defendant fails to demonstrate a reasonable  
7 probability that such would have resulted in a more favorable outcome at sentencing.  
8 Defendant's criminal record demonstrates a career criminal that consistently selects elderly  
9 and disabled victims at casinos and steals from them through distract and pickpocket  
10 methods. RT 4/7/2009, pp. 5-6. In light of such consistent criminal behavior by Defendant,  
11 any comments from family and friends would not raise a reasonable likelihood of a more  
12 favorable sentence.

13 41. Defendant's claim that some alleged prior convictions were erroneous because they  
14 were not for Defendant is barred because it could have been raised on appeal but was not.  
15 Furthermore, inasmuch as Defendant claims the five prior felony convictions used to  
16 sentence him to habitual criminal treatment were erroneous, this claim is belied by the record  
17 and without merit. Defendant acknowledged he was the person photographed in connection  
18 with the five prior felonies the court considered in sentencing. RT 4/7/2009, pp. 10-11. Any  
19 present claims to the contrary are belied by this earlier admission. Furthermore, the district  
20 court independently found the photographs identified Defendant in connection with the prior  
21 felony convictions. RT 4/7/2009, p. 22. Finally, inasmuch as Defendant is contending  
22 records of prior felony convictions alleged by the State but not considered by the sentencing  
23 judge were erroneous, Defendant fails to demonstrate any prejudice. Therefore, Defendant's  
24 claim is denied.

25 42. Defendant's claim that the New Jersey convictions were not properly certified is  
26 barred because it could have been raised on appeal but was not. Furthermore, this claim is  
27 without merit as the State produced certified copies of judgments of conviction for five  
28 different prior felony convictions as well as booking photos showing that Defendant was the

perpetrator. RT 4/7/2009, pp. 2-4. Counsel conceded that the judgments of convictions were properly certified and the district court agreed. RT 4/7/2009, pp. 17-18, 22. Any assertion by Defendant to the contrary are thus bare allegations unsupported by the record and are denied.

43. Inasmuch as Defendant is contending his sentence is cruel and unusual, consideration of this claim is barred because Defendant could have raised it on direct appeal but did not

44. Trial counsel was effective.

45. Appellate counsel was effective.

46. Cumulative error does not warrant relief.

47. An evidentiary hearing is not warranted. Many of Defendant's claims are belied by the record and therefore do not warrant an evidentiary hearing. Furthermore, Defendant has failed to demonstrate that, even if all of his claims are true, he was prejudiced thereby. Thus, an expansion of the record would not assist the merits of Defendant's claims and his request is hereby denied.

#### CONCLUSIONS OF LAW

1. In order to assert a claim for ineffective assistance of counsel, a defendant must prove he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland v. Washington, 466 U.S. 668, 686-87, 104 S. Ct. 2052, 2063-64 (1984). See also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this test, the Defendant must show first, that his counsel's representation fell below an objective standard of reasonableness, and second, that but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. Strickland, 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting Strickland two-part test in Nevada). "Effective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 1449 (1970)).

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2. In considering whether trial counsel has met this standard, the court should first determine whether counsel made a "sufficient inquiry into the information that is pertinent to [the] client's case." Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996) (citing Strickland, 466 U.S. at 690-691, 104 S. Ct. at 2066). Once proof of such a reasonable inquiry by counsel has been shown, the court should consider whether counsel made "a reasonable strategy decision on how to proceed with his client's case." Id. at 846, 921 P.2d at 280 (citing Strickland, 466 U.S. at 690-691, 104 S. Ct. at 2066). Finally, counsel's strategy decisions are "tactical" and will be "virtually unchallengeable absent extraordinary circumstances." Id.; Strickland, 466 U.S. at 691, 104 S. Ct. at 2066; Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990). Trial counsel has the "immediate and ultimate responsibility of deciding if and when to object, which witnesses, if any, to call, and what defenses to develop. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002). Counsel cannot be found ineffective for not raising futile arguments. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

3. Based on the above law, the court begins with the presumption of effectiveness and then must determine whether the defendant has demonstrated by "strong and convincing proof" that counsel was ineffective. Homick v State, 112 Nev. 304, 310, 913 P.2d 1280, 1285 (1996) (citing Lenz v. State, 97 Nev. 65, 66, 624 P.2d 15, 16 (1981)); Davis v. State, 107 Nev. 600, 602, 817 P.2d 1169, 1170 (1991). The role of a court in considering an allegation of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (citing Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)).

4. This analysis means that the court should not "second guess reasoned choices between trial tactics" and defense counsel need not "make every conceivable motion no matter how remote the possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711. In essence, the court must "judge the reasonableness of counsel's challenged conduct on

1 the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466  
2 U.S. at 690, 104 S. Ct. at 2066.

3 5. Even if a defendant can demonstrate that his counsel's representation fell below an  
4 objective standard of reasonableness, he must also demonstrate prejudice by showing a  
5 reasonable probability that, but for counsel's errors, the result of the trial would have been  
6 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
7 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a probability  
8 sufficient to undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-  
9 89, 694, 104 S. Ct. at 2064-65, 2068). Similarly, a defendant who contends his attorney was  
10 ineffective because he did not adequately investigate must show that the investigation was  
11 unreasonable and that a better investigation would have rendered a more favorable outcome  
12 probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

13 6. When determining whether a potential juror is biased, the relevant inquiry is whether  
14 the juror's views "would prevent or substantially impair the performance of his duties as a  
15 juror in accordance with his instructions and his oath." Weber v. State, 121 Nev. 554, 580,  
16 119 P.3d 107, 125 (2005) (quoting Leonard v. State, 117 Nev. 53, 65, 17 P.3d 397, 405  
17 (2001)).

18 7. Bare assertions and claims belied by the record do not warrant post-conviction relief.  
19 See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

20 8. NRS 174.234(3)(a) provides that the court shall prohibit the testimony of any  
21 improperly noticed expert *only if* such lack of notice was in bad faith. See also Mitchell v.  
22 State, 124 Nev. 807, 819, 192 P.3d 721, 729 (2008) (reviewing court's decision to admit  
23 improperly noticed expert for abuse of discretion and finding no bad faith nor prejudice to  
24 the defendant's substantial rights).

25 9. NRS 171.198(7)(b), allows the State to admit preliminary hearing testimony if a  
26 defendant was represented by counsel and cross-examined the witness at the preliminary  
27 hearing and the witness is "sick, out of the State, dead, or persistent in refusing to testify

28 ///



1 deposit an order of the judge to do so, or when the witness's personal attendance cannot be  
2 had in court."

3 10. NRS 51.035(2)(c) provides for the admission of prior statements of identification  
4 made "soon after perceiving the person" but does not prescribe a time limit between the  
5 identification and the trial.

6 11. Leading questions are questions which unnecessarily suggest an answer and are  
7 generally not permitted during direct examination. NRS 50.115(3)(a).

8 12. Hearsay is defined as an out-of-court statement offered into evidence to prove the  
9 truth of the matter asserted. NRS 51.035.

10 13. The threshold test for admitting expert testimony is whether such testimony would  
11 assist the jury in determining truth in "areas outside the ken of ordinary laity." Townsend v.  
12 State, 103 Nev. 113, 117, 734 P.2d 705, 708 (1987).

13 14. NRS 207.010(1) provides:

14 Unless the person is prosecuted pursuant to NRS 207.012 or  
15 207.014, a person convicted in this State of:

16 "... (b) Any felony, who has previously been three times  
17 convicted, whether in this State or elsewhere, of any crime which  
18 under the laws of the situs of the crime or of this State would  
amount to a felony is a habitual criminal and shall be punished  
for a category A felony by imprisonment in the state prison[.]

19 15. "Relevant factors to consider in evaluating a claim of cumulative error are (1)  
20 whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the  
21 gravity of the crime charged." Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 855 (2000).

22 Here the issue of guilt was not close as there was testimony and video demonstrating that  
23 Defendant stole Stathopoulos' purse at the Tropicana and used one of her credit cards forty  
24 minutes later at Sheikh Shoes. Further, although the crime had some gravity, the quantity  
25 and character of any errors by counsel were minimal and Defendant "is not entitled to a  
26 perfect trial, but only a fair trial." Ennis v. State, 91 Nev. 530, 533, 539 P.2d 114, 115  
27 (1975). In fact, there was no single instance of ineffective assistance in Defendant's case.  
28 See United States v. Rivera, 900 F.2d 1462, 1471 (10th Cir. 1990) ("[A] cumulative-error

1 analysis should evaluate only the effect of matters determined to be error, not the cumulative  
2 effect of non-errors.”).

3 16. “The law of a first appeal is law of the case on all subsequent appeals in which the  
4 facts are substantially the same.” Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975)  
5 (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). “The doctrine of the  
6 law of the case cannot be avoided by a more detailed and precisely focused argument  
7 subsequently made after reflection upon the previous proceedings.” Id. at 316, 535 P.2d at  
8 799. Under the law of the case doctrine, issues previously decided on direct appeal or in  
9 appeals to previous petitions may not be reargued in a subsequent petition. Pellegrini v.  
10 State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001).

11 17. NRS 34.810(1)(b)(2) reads:

12 The court shall dismiss a petition if the court determines that:  
13 (b) The petitioner’s conviction was the result of a trial and the  
grounds for the petition could have been:

14 (2) Raised in a direct appeal or a prior petition for a writ of  
15 habeas corpus or postconviction relief.

16 The Nevada Supreme Court has held that “challenges to the validity of a guilty plea and  
17 claims of ineffective assistance of trial and appellate counsel must first be pursued in post-  
18 conviction proceedings.... [A]ll other claims that are appropriate for a direct appeal must be  
19 pursued on direct appeal, or they will be *considered waived in subsequent proceedings.*”  
20 Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added)  
21 (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). “A  
22 court must dismiss a habeas petition if it presents claims that either were or could have been  
23 presented in an earlier proceeding, unless the court finds both cause for failing to present the  
24 claims earlier or for raising them again and actual prejudice to the petitioner.” Evans v. State,  
25 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001).

26 18. There is a strong presumption that appellate counsel's performance was reasonable  
27 and fell within “the wide range of reasonable professional assistance.” See United States v.  
28 Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990) (citing Strickland, 466 U.S. at 689, 104 S. Ct. at

2065). Federal courts have held that a claim of ineffective assistance of appellate counsel must satisfy the two-prong test set forth by Strickland. Williams v. Collins, 16 F.3d 626, 635 (5th Cir. 1994); Hollenback v. United States, 987 F.2d 1272, 1275 (7th Cir. 1993); Heath v. Jones, 941 F.2d 1126, 1130 (11th Cir. 1991). In order to satisfy Strickland's second prong, the defendant must show that the omitted issue would have had a reasonable probability of success on appeal. See Duhamel v. Collins, 955 F.2d 962, 967 (5th Cir. 1992); Heath, 941 F.2d at 1132.

19. To establish a Brady violation, a defendant must demonstrate that: (1) the prosecution suppressed evidence in its possession; (2) the evidence was favorable to the defense; and (3) the evidence was material to an issue at trial. See, e.g., Mazzan v. Warden, 116 Nev. 48, 67, 993 P.2d 25, 37 (2000). An accused cannot complain that exculpatory evidence has been suppressed by the prosecution when the information is known to him or could have been discovered through reasonable diligence. Rippo v. State, 113 Nev. 1239, 1258, 946 P.2d 1017, 1029 (1997).

20. The State has an obligation to preserve evidence in its possession or control. See Steese v. State, 114 Nev. 479, 491, 960 P.2d 321, 329 (1998).

21. "Vouching may occur in two ways: the prosecution may put the prestige of the government behind the witness or may indicate that information not presented to the jury supports the witness's testimony." Lisle v. State, 113 Nev. 540, 553, 937 P.2d 473, 481 (1997).

22. NRS 207.010(1)(b) provides for habitual criminal treatment if a defendant has three convictions for crimes that are *either* felonies under Nevada law *or* under the law of the situs of the crime.

23. An evidentiary hearing is not warranted. NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

1. The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required. A petitioner must not be discharged or committed to the custody of a person other than the respondent unless an evidentiary hearing is held.

1 2. If the judge or justice determines that the petitioner is not  
2 entitled to relief and an evidentiary hearing is not required, he  
3 shall dismiss the petition without a hearing.

3 3. If the judge or justice determines that an evidentiary hearing  
4 is required, he shall grant the writ and shall set a date for the  
5 hearing.

5 NRS 34.770. The Nevada Supreme Court has held that if a petition can be resolved without  
6 expanding the record, no evidentiary hearing is necessary. Mann v. State, 118 Nev. 351, 356,  
7 46 P.3d 1228, 1231 (2002); Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994). A  
8 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual  
9 allegations, which, if true, would entitle him to relief unless the factual allegations are  
10 repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; See also Hargrove, 100  
11 Nev. at 503, 686 P.2d at 225 ("A defendant seeking post-conviction relief is not entitled to  
12 an evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is  
13 'belied' when it is contradicted or proven to be false by the record as it existed at the time  
14 the claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

15 ORDER


16 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction  
17 Relief shall be, and it is, hereby denied.

18 DATED this 11 day of June, 2013.

19 

20 DISTRICT JUDGE 

21  
22 STEVEN B. WOLFSON  
23 Clark County District Attorney  
24 Nevada Bar #001565

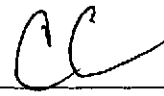
25 BY   
26 HILARY HEAP  
27 Deputy District Attorney  
28 Nevada Bar #012395

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of Findings Of Fact, Conclusions Of Law And Order, for review, was made this 5th day of June, 2013, by facsimile transmission to:

MATTHEW CARLING, ESQ.  
446-8065

BY:   
C. Cintola  
Employee of the District Attorney's Office

CB/HH/cc/L3

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****September 05, 2007**

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07C236169

The State of Nevada vs Ronald Ross

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**September 05, 2007****10:30 AM****Initial Arraignment**

**INITIAL  
ARRAIGNMENT  
Court Clerk: Nora  
Pena/np Relief  
Clerk: Dana Cooper  
Reporter/Recorder:  
Kiara Schmidt Heard  
By: Kevin Williams**

**HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Crane, Nathan A.  
Jorgenson, Craig F.  
Public Defender  
Ross, Ronald

Attorney  
Attorney  
Attorney  
Defendant

**JOURNAL ENTRIES**

- DEFT. ROSS ARRAIGNED ON THE SECOND AMENDED INFORMATION, PLED NOT GUILTY and INVOKED THE 60-DAY RULE. COURT ORDERED, matter set for trial and set for a status check as to the trial date.

**CUSTODY**

10/09/07 8:15 AM STATUS CHECK: TRIAL DATES

10/16/07 8:30 AM CALENDAR CALL

10/22/07 10:00 AM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****October 09, 2007**

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07C236169

The State of Nevada vs Ronald Ross

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**October 09, 2007****8:15 AM****Status Check**

**STATUS CHECK:  
TRIAL DATES  
Court Clerk: Kristen  
Brown  
Reporter/Recorder:  
Michelle Ramsey  
Heard By: Villani,  
Michael**

**HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Jorgenson, Craig F.  
Public Defender  
Walsh, Jessica A.

Attorney  
Attorney  
Attorney

**JOURNAL ENTRIES**

- Ms. Walsh stated this matter is not negotiated; deft's has another case in the Supreme Court and a motion to consolidate that is being heard in Department V. COURT ORDERED, matter CONTINUED.  
CUSTODY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****October 11, 2007**

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07C236169

The State of Nevada vs Ronald Ross

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**October 11, 2007****8:15 AM****Status Check**

**STATUS CHECK:  
TRIAL DATES  
Court Clerk: Kristen  
Brown  
Reporter/Recorder:  
Michelle Ramsey  
Heard By: Michael  
Villani**

**HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Jorgenson, Craig F.  
Public Defender  
Walsh, Jessica A.

Attorney  
Attorney  
Attorney

**JOURNAL ENTRIES**

- Mr. Jorgenson stated this matter is not negotiated; deft. has two other cases, one of which has been appealed and is in the Supreme Court, the other case is in Department V and is set for a status check in one month. Ms. Walsh stated there is a motion to consolidate with the Department V case which has not been argued yet and requested this be continued. COURT ORDERED, matter set for status check regarding the appeal. Deft. requested to be returned to the Nevada Department of Corrections. Mr. Jorgenson stated a motion to for own recognizance release will be filed and if it is granted, deft. will be transferred to the prison. Ms. Walsh stated the deft. is being without bail in the Department V case. Court stated it would not be inclined to release the deft., but Mr. Jorgenson can file the motion. CUSTODY (COC)



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****December 11, 2007**

07C236169

The State of Nevada vs Ronald Ross

**December 11, 2007****8:15 AM****Status Check**

**STATUS CHECK:**  
**APPEALS IN OTHER**  
**CASES Court Clerk:**  
**Kristen Brown**  
**Reporter/Recorder:**  
**Michelle Ramsey**  
**Heard By: Villani,**  
**Michael**

**HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Jorgenson, Craig F.  
 Public Defender  
 Ross, Ronald  
 Walsh, Jessica A.

Attorney  
 Attorney  
 Defendant  
 Attorney

**JOURNAL ENTRIES**

- Ms. Walsh advised the Court that deft's cases in Department V and Department XXIII are still on appeal with the Supreme Court; Judge Glass has not ruled upon the Motion to Consolidate as she is waiting for a decision from the Supreme Court. Upon Court's inquiry, Ms. Walsh stated this matter should not be set for trial at this time as the issues that are on appeal are the same issues in this case. COURT ORDERED, matter CONTINUED. Mr. Jorgenson advised the Court that the deft. is serving a prison sentence in an unrelated case and requested the bail be reduced to \$10,000 so that the deft's family can post the bail and the deft. will then be transported to the Nevada Department of

Corrections. Argument by Ms. Walsh. Court stated it is not inclined to reduce the bail at this time but Mr. Jorgenson is free to file a motion and allow the State to file its opposition.  
CUSTODY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****June 10, 2008**

07C236169

The State of Nevada vs Ronald Ross

**June 10, 2008****8:15 AM****Status Check**

**STATUS CHECK:**  
**APPEALS IN OTHER**  
**CASES Court Clerk:**  
**Kristen Brown**  
**Reporter/Recorder:**  
**Michelle Ramsey**  
**Heard By: Michael**  
**Villani**

**HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

<b>PRESENT:</b>	Davis, Craig B.	Attorney
	Ponticello, Frank M.	Attorney
	Public Defender	Attorney

**JOURNAL ENTRIES**

- Mr. Ponticello advised the Court that the appeal filed in the Department V case was denied and is set for trial setting. Mr. Ponticello requested matter be set for status check after that date. COURT ORDERED, matter set for status check and the State is to prepare a transport order at the request of Mr. Davis.

NDC

7/08/08 8:00 AM STATUS CHECK

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****July 08, 2008**

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07C236169

The State of Nevada vs Ronald Ross

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**July 08, 2008****8:00 AM****Status Check**

**STATUS CHECK:**  
**Court Clerk: Kristen Brown**  
**Reporter/Recorder: Michelle Ramsey**  
**Heard By: Michael Villani**

**HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Ponticello, Frank M.  
Public Defender  
Ross, Ronald

Attorney  
Attorney  
Defendant

**JOURNAL ENTRIES**

- COURT ORDERED, matter set for trial. Upon Court's inquiry, deft. stated that he INVOKED his right to a speedy trial but will WAIVE the sixty day requirement by one week.

NDC

8/26/08 8:00 AM CALENDAR CALL

9/02/08 10:00 AM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****August 26, 2008**

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07C236169

The State of Nevada vs Ronald Ross

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**August 26, 2008****8:00 AM****Calendar Call**

**CALENDAR CALL  
Court Clerk: Kristen  
Brown  
Reporter/Recorder:  
Michelle Ramsey  
Heard By: Villani,  
Michael**

**HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Jorgenson, Craig F.  
Public Defender  
Walsh, Jessica A.

Attorney  
Attorney  
Attorney

**JOURNAL ENTRIES**

- Ms. Walsh stated the deft. was transported to prison even though two Courts ordered the deft. to remain in the Clark County Detention Center. Following a conference at the Bench, COURT ORDERED, matter CONTINUED.  
CUSTODY (COC-NDC)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****September 02, 2008**

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07C236169

The State of Nevada vs Ronald Ross

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**September 02, 2008****8:00 AM****Calendar Call**

**CALENDAR CALL  
Relief Clerk: Phyllis  
Irby/pi  
Reporter/Recorder:  
Michelle Ramsey  
Heard By: Michael  
Villani**

**HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Jorgenson, Craig F.  
Public Defender  
Walsh, Jessica A.

Attorney  
Attorney  
Attorney

**JOURNAL ENTRIES**

- Ms. Walsh advised Deft is in Nevada Department of Corrections; need to submit an Order for Transport. COURT ORDERED, Trial VACATED; matter set for status check.

NDC

9-16-08 8:00 AM STATUS CHECK: TRIAL SETTING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****September 16, 2008**

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07C236169

The State of Nevada vs Ronald Ross

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**September 16, 2008****8:00 AM****Status Check**

**STATUS CHECK:  
TRIAL SETTING  
Court Clerk: Kristen  
Brown Relief Clerk:  
Dameda Scott/ds  
Reporter/Recorder:  
Michelle Ramsey  
Heard By: Michael  
Villani**

**HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Jorgenson, Craig F.  
Ponticello, Frank M.  
Public Defender  
Ross, Ronald

Attorney  
Attorney  
Attorney  
Defendant

**JOURNAL ENTRIES**

- Colloquy regarding speedy trial and trial date availability. Counsel indicated time estimate as 2-3 days. COURT ORDERED, matter set for trial at its earliest availability; FURTHER, Defendant REMANDED TO CUSTODY.

**CUSTODY****11-4-08 8:00 AM CALENDAR CALL****11-10-08 10:00 AM TRIAL BY JURY**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****October 23, 2008**

07C236169

The State of Nevada vs Ronald Ross

**October 23, 2008****8:00 AM****Request**

**STATE'S REQUEST  
CONFLICT OF  
TRIAL DATE -  
AGREED Court  
Clerk: Kristen Brown  
Relief Clerk: Damedia  
Scott/ds  
Reporter/Recorder:  
Michelle Ramsey  
Heard By:  
BONAVENTURE,  
JOSEPH**

**HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Jorgenson, Craig F.  
Public Defender  
Ross, Ronald  
Walsh, Jessica A.

Attorney  
Attorney  
Defendant  
Attorney

**JOURNAL ENTRIES**

- Mr. Jorgenson indicated that Defendant has conflicting trial dates in another case in Dept. 5 and he would agree to vacate and re-set the trial on a date sooner than 11-10-08. Statement by the Defendant regarding his trial date in Dept. 5. COURT ORDERED, matter CONTINUED for counsel to find out



**07C236169**

the status of Deft.'s case in Dept. 5.  
CUSTODY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****October 30, 2008**

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07C236169

The State of Nevada vs Ronald Ross

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**October 30, 2008****8:00 AM****Request**

**STATE'S REQUEST  
CONFLICT OF  
TRIAL DATE -  
AGREED Court  
Clerk: Kristen Brown  
Relief Clerk: Damedia  
Scott/ds  
Reporter/Recorder:  
Michelle Ramsey  
Heard By: JOSEPH  
BONAVENTURE**

**HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Jorgenson, Craig F.  
Public Defender  
Ross, Ronald  
Walsh, Jessica A.

Attorney  
Attorney  
Defendant  
Attorney

**JOURNAL ENTRIES**

- COURT ORDERED, matter OFF CALENDAR pursuant to the parties indicating there is no longer a trial date conflict.  
CUSTODY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****November 04, 2008**

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07C236169

The State of Nevada vs Ronald Ross

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**November 04, 2008****8:00 AM****Calendar Call**

**CALENDAR CALL  
Court Clerk: Kristen  
Brown Relief Clerk:  
Damedia Scott/ds  
Reporter/Recorder:  
Michelle Ramsey  
Heard By: Michael  
Villani**

**HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Jorgenson, Craig F.  
Public Defender  
Ross, Ronald  
Walsh, Jessica A.

Attorney  
Attorney  
Defendant  
Attorney

**JOURNAL ENTRIES**

- Counsel announce they are ready for trial. Defendant presented motion to represent himself and appoint co-counsel. COURT FINDS the Defendant does not meet Faretta requirements. COURT ORDERED, trial VACATED and RE-SET.

**CUSTODY****11-12-08 10:00 AM TRIAL BY JURY**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****November 12, 2008**

07C236169

The State of Nevada vs Ronald Ross

**November 12, 2008****10:00 AM****Jury Trial**

**TRIAL BY JURY**  
**Court Clerk: Kristen Brown**  
**Reporter/Recorder: Michelle Ramsey**  
**Heard By: Villani, Michael**

**HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Jorgenson, Craig F.  
 Public Defender  
 Rinetti, Dena I.  
 Ross, Ronald  
 Walsh, Jessica A.

Attorney  
 Attorney  
 Attorney  
 Defendant  
 Attorney

**JOURNAL ENTRIES**

- Third Amended Information FILED IN OPEN COURT. Jury and 1 alternate selected.

OUTSIDE THE PRESENCE OF THE JURY: Court advised counsel that Juror #12 advised the Marshal that he does not speak English. Colloquy between Court and counsel. Upon Court's inquiry, Mr. Jorgenson requested Juror #12 be excused and to seat the alternate. Juror #12 present and questioned. COURT ORDERED, Juror #12 RELEASED and the alternate juror seated. Ms. Walsh moved to use the Preliminary Hearing transcript used for one of the witnesses that is not available. Matthew Johns, Investigator and Ms. Walsh sworn and testified. Arguments by counsel. Mr. Jorgenson stated that this should be a Bustos motion or continue the trial. Court FINDS there good cause has been shown by the State and has shown reasonable diligence, therefore ORDERED, Ms.

Walsh's Oral Motion to use the Preliminary Hearing Transcript GRANTED.

JURY PRESENT: Jury sworn. Court Clerk read the Third Amended Information to the jury and stated the deft's plea thereto. Opening statements by counsel.

OUTSIDE THE PRESENCE OF THE JURY: Court advised the deft. of his right not to testify.

JURY PRESENT: Testimony and exhibits presented (See worksheets). State rests. Defense rests.

COURT ORDERED, matter CONTINUED.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****November 13, 2008**

07C236169

The State of Nevada vs Ronald Ross

**November 13, 2008****1:00 PM****Jury Trial**

**TRIAL BY JURY**  
**Court Clerk: Kristen Brown**  
**Reporter/Recorder: Michelle Ramsey**  
**Heard By: Michael Villani**

**HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

<b>PRESENT:</b>	Jorgenson, Craig F.	Attorney
	Public Defender	Attorney
	Rinetti, Dena I.	Attorney
	Ross, Ronald	Defendant
	Walsh, Jessica A.	Attorney

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE JURY: Instructions settled on the record.

JURY PRESENT: Court instructed the jury. Closing arguments by counsel. At the hour of 2:45 pm, the jury retired to deliberate. At the hour of 5:50 pm, the jury returned with a verdict of:

COUNT 1 - GUILTY of BURGLARY COUNT 2 - GUILTY of LARCENY FROM THE PERSON

COUNT 3 - GUILTY of BURGLARY COUNT 4 - GUILTY of POSSESSION OF CREDIT OR DEBIT

CARD WITHOUT CARDHOLDER'S CONSENT COUNT 5 - GUILTY of FRAUDULENT USE OF

CREDIT OR DEBIT CARD COUNT 6 - GUILTY of THEFT COUNT 7 - GUILTY of CONSPIRACY TO COMMIT LARCENY

COURT ORDERED, Deft. REMANDED TO CUSTODY and matter referred to the Division of Parole

**07C236169**

and Probation (P & P) and set for sentencing. Court THANKED and EXCUSED the jury.  
CUSTODY

12/23/08 8:00 AM SENTENCING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****January 29, 2009**

07C236169

The State of Nevada vs Ronald Ross

**January 29, 2009****8:00 AM****Sentencing**

**SENTENCING**  
**Court Clerk: Kristen Brown**  
**Reporter/Recorder: Michelle Ramsey**  
**Heard By: Villani, Michael**

**HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Public Defender  
 Rinetti, Dena I.  
 Ross, Ronald

Attorney  
 Attorney  
 Defendant

**JOURNAL ENTRIES**

- Conference at the Bench. Court stated the deft. is disputing some of the felony convictions presented by the State. COURT ORDERED, matter CONTINUED for both attorney's to establish whether they are or not the deft. Ms. Rinetti advised the Court that the deft. previously contested his felony convictions in C219404 and argued that the deft. has had ample opportunity to bring this up. Court stated if the deft. is playing games, this could have an adverse effect.

**CUSTODY**



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****April 07, 2009**

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07C236169

The State of Nevada vs Ronald Ross

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**April 07, 2009****8:00 AM****Sentencing**

**SENTENCING**  
**Court Clerk: Kristen**  
**Brown**  
**Reporter/Recorder:**  
**Michelle Ramsey**  
**Heard By: Michael**  
**Villani**

**HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Jorgenson, Craig F.  
Public Defender  
Rinetti, Dena I.  
Ross, Ronald

Attorney  
Attorney  
Attorney  
Defendant

**JOURNAL ENTRIES**

- Pursuant to the verdict reached by the jury on November 13, 2009, DEFT. ROSS ADJUDGED GUILTY of COUNT 1 - BURGLARY (F); COUNT 2 - LARCENY FROM THE PERSON (F); COUNT 3 - BURGLARY (F); COUNT 4 - POSSESSION OF CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S CONSENT (F); COUNT 5 - FRAUDULENT USE OF CREDIT OR DEBIT CARD (F); COUNT 6 - THEFT (F); and COUNT 7 - CONSPIRACY TO COMMIT LARCENY (GM). Argument by Ms. Rinetti. Statements by the deft. and Mr. Jorgenson. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, \$270.00 Restitution and a \$150.00 DNA Analysis fee including testing to determine genetic markers, Deft. SENTENCED under the LARGE HABITUAL CRIMINAL STATUTE as to:

COUNT 1 - to a MINIMUM of TEN (10) YEARS and a MAXIMUM of LIFE in the Nevada

Department of Corrections (NDC); COUNT 2 - to a MINIMUM of TEN (10) YEARS and a MAXIMUM of LIFE in the Nevada Department of Corrections (NDC) to run CONCURRENT with Count 1; COUNT 3 - to a MINIMUM of TEN (10) YEARS and a MAXIMUM of LIFE in the Nevada Department of Corrections (NDC); COUNT 4 - to a MINIMUM of TEN (10) YEARS and a MAXIMUM of LIFE in the Nevada Department of Corrections (NDC); COUNT 5 - to a MINIMUM of TEN (10) YEARS and a MAXIMUM of LIFE in the Nevada Department of Corrections (NDC); COUNT 6 - to a MINIMUM of TEN (10) YEARS and a MAXIMUM of LIFE in the Nevada Department of Corrections (NDC); COUNT 7 - to ONE (1) YEAR in the Clark County Detention Center (CCDC)  
COURT FURTHER ORDERED, Counts 3-7 are to run CONCURRENT with each other and CONSECUTIVE to Counts 1 & 2 with 200 DAYS credit for time served. BOND, if any, EXONERATED.  
NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****January 05, 2012**

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07C236169

The State of Nevada vs Ronald Ross

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**January 05, 2012****8:15 AM****All Pending Motions****HEARD BY:** Villani, Michael**COURTROOM:** RJC Courtroom 11A**COURT CLERK:** Carol Donahoo**RECORDER:** Michelle Ramsey**REPORTER:****PARTIES****PRESENT:**

**JOURNAL ENTRIES**

- MATTHEW D. CARLING, ESQ.'S, MOTION FOR APPOINTMENT OF COUNSEL . . . DEFT.'S PRO  
PER MOTION FOR THE APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY  
HEARING

Krista Barrie, Dep DA, present on behalf of the State and Ryan Mortier, Esq., present on behalf of  
Deft. Ross, who is not present; Deft. is incarcerated in the Nevada Department of Corrections (NDC).

Mr. Mortier advised that he was appearing on behalf of Matthew Carling, Esq. Mr. Carling represents  
Deft. in another similar Post-Conviction relief matter, C220916. Therefore, COURT ORDERED,  
Motion GRANTED; Mr. Carling will be APPOINTED as counsel of record in the instant case as well.

Court noted Deft.'s Petition for Writ of Habeas Corpus in set to be heard on February 9, 2012. Deft.  
has also filed a Motion for Appointment of Counsel and Request for Evidentiary Hearing. A briefing  
schedule for either has not been set. COURT ORDERED, matter set for status check. In the meantime,  
Mr. Carling can review the file, Deft.'s Writ and the above-referenced Motion and file any  
appropriate supplements. A briefing schedule and hearing date shall be set at the status check.  
COURT FURTHER ORDERED, the February 9, 2012, hearing date is VACATED.

**07C236169**

NDC

01/31/12 8:15 AM STATUS CHECK: BRIEFING SCHEDULE/HEARING DATE

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****January 31, 2012**

07C236169

The State of Nevada vs Ronald Ross

**January 31, 2012****8:15 AM****Status Check**

**Briefing  
Schedule/Hearing  
Date**

**HEARD BY:** Villani, Michael**COURTROOM:** RJC Courtroom 11A**COURT CLERK:** Carol Donahoo**RECORDER:** Michelle Ramsey**REPORTER:****PARTIES****PRESENT:**

**JOURNAL ENTRIES**

- Dena Rinetti, Dep DA, present on behalf of the State and Matthew Carling, Esq., present on behalf of Deft. Ross, who is not present. Deft. is incarcerated in the Nevada Department of Corrections (NDC).

Mr. Carling advised he received a voluminous amount of material from the Public Defender's office and needs additional time to review this matter before filing any pleadings. COURT ORDERED, matter CONTINUED. Hopefully, a briefing schedule can be set next date.

NDC

CONTINUED TO: 04/12/12 8:15 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****April 12, 2012**

07C236169

The State of Nevada vs Ronald Ross

**April 12, 2012****8:15 AM****Status Check**

**Briefing  
Schedule/Hearing  
Date**

**HEARD BY:** Villani, Michael**COURTROOM:** RJC Courtroom 11A**COURT CLERK:** Carol Donahoo**RECORDER:** Michelle Ramsey**REPORTER:****PARTIES****PRESENT:**

**JOURNAL ENTRIES**

- Michael Radovic, Dep DA, present on behalf of the State and Matthew Carling, Esq., present on behalf of Deft. Ross, who is not present; Deft. is incarcerated in the Nevada Department of Corrections (NDC).

Mr. Carling advised that he could file his brief in thirty (30) days. Court set the following briefing schedule:

05/10/12 - Supplemental Brief

07/13/12 - State's Response

COURT ORDERED, matter set or hearing.

NDC

08/03/12 9:00 AM HEARING: PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****February 07, 2013**

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07C236169

The State of Nevada vs Ronald Ross

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**February 07, 2013****8:15 AM****Hearing****Petition for Writ of  
Habeas Corpus****HEARD BY:** Villani, Michael**COURTROOM:** RJC Courtroom 11A**COURT CLERK:** Carol Donahoo**RECORDER:** Michelle Ramsey**REPORTER:****PARTIES****PRESENT:**

**JOURNAL ENTRIES**

- Michael Radovic, Dep DA, present on behalf of the State and Matthew Carling, Esq., present on behalf of Deft. Ross, who is not present. Deft. is incarcerated in the Nevada Department of Corrections.

Court advised it would like to move this matter to a Friday for argument and, therefore, ORDERED, matter CONTINUED. If an Evidentiary Hearing is necessary, one will be set at a later date.

NDC

CONTINUED TO: 02/22/13 9:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**February 22, 2013**

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07C236169

The State of Nevada vs Ronald Ross

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**February 22, 2013**

**9:30 AM**

**Hearing**

**HEARD BY:** Villani, Michael

**COURTROOM:** RJC Courtroom 11A

**COURT CLERK:** Aaron Carbajal

**RECORDER:** Michelle Ramsey

**REPORTER:**

**PARTIES**

**PRESENT:**

Carling, Matthew D.  
Heap, Hilary  
State of Nevada

Attorney  
Attorney  
Plaintiff

**JOURNAL ENTRIES**

- Deft. not present. Argument by Mr. Carling regarding pre-trial communication, misidentification, the expert witness not qualified, and proper objections. Opposition by Ms. Heap. Argument regarding prejudice. COURT ORDERED, a written Order shall issue from chambers.

NDC



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****May 07, 2013**

07C236169

The State of Nevada vs Ronald Ross

**May 07, 2013****8:15 AM****Decision****Petition for Writ of  
Habeas Corpus****HEARD BY:** Villani, Michael**COURTROOM:** RJC Courtroom 11A**COURT CLERK:** Carol Donahoo**RECORDER:****REPORTER:****PARTIES****PRESENT:**

**JOURNAL ENTRIES**

- Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction) came before this Court for hearing on February 22, 2013. The decision in this matter was deferred so that the Court could review the lengthy procedural history of this matter and the Court now rules as follows:

On November 30, 2011, Petitioner filed his Petition for Writ of Habeas Corpus (Post-Conviction) in Proper Person. Subsequently, counsel was appointed to represent the Petitioner in this matter. A Supplemental Brief was filed July 18, 2012. Thereafter, on or about December 28, 2012, a Reply to the State's Response was filed and then the State filed a Response to new issues raised in Petitioner's Reply. The Court has reviewed this matter and adopts the procedural history as set forth in the State's Response.

Petitioner's conviction was appealed and said conviction was affirmed by the Nevada Supreme Court. Petitioner sets forth eleven (11) claims of ineffective assistance of counsel; to wit: failure to secure speedy trial, failure to prepare for trial, failure to file motions, failure to argue prejudice for lost evidence, jury selection errors, general failure to prepare for trial, failure to retain a defense expert, failure to object to the State's expert, failure to make objections, failure to prepare for sentencing, and the cumulative effect of all errors.

Although Petitioner invoked his right to a speedy trial, the trial date was continued by the agreement of counsel until such time various cases were decided by the Nevada Supreme Court. The record reflects that the Petitioner did not object to the continuance. The cases on appeal had common issues to those before the Court in the instant case. The Petitioner has failed to establish that he was prejudiced by the continuance. Further, this matter was addressed on Appeal and rejected as the Petitioner could not establish prejudice.

Counsel was in possession of all of the discovery in this matter. Petitioner fails to set forth how a separate Motion for Discovery (after having already received all of the State's discovery) would have brought forth any new or different discovery. The Sheikh's video had already been destroyed and the State did not pursue the crime involved at the Santa Fe so any discovery on the incident would have been irrelevant. Similarly, any misidentification charges not pursued would be of no consequence, although counsel may not have had the requested contact with the Petitioner, it is apparent from counsel's extensive cross-examination that he was familiar with the pertinent facts of the case.

None of the jurors passed for cause or seated as a juror stated that the performance of their duty as jurors would be prevented or substantially impaired as a result of any alleged bias. Additionally, a request for an expert to testify that the Petitioner's actions were not consistent with criminal activity would have been inadmissible and infringed upon the province of the fact finder.

It is the duty of counsel to make appropriate evidentiary objections, and the decision not to make an objection is related to trial tactics and will not be disputed. Further, the making of futile objections would not have led to a different result and a number of the requested objections would have been futile.

Any claim that Petitioner's counsel was unprepared for sentencing is belied by the record.

In order to establish ineffective assistance of counsel, the Petitioner must show that counsel's representation fell below an objective standard of reasonableness, and but for the errors, if any, there is a reasonable probability that the result would have been different. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). The COURT FINDS Petitioner fails to establish either prong of *Strickland*.

Therefore, COURT ORDERED, the Petition for Writ of Habeas Corpus (Post-Conviction) is DENIED. Counsel for State of Nevada is directed to submit a proposed Findings of Fact, Conclusions of Law and Order consistent with the foregoing within ten (10) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder of the District Attorney.

## Exhibit List

Case: 07C236169 Party: Sort Order: Status Defendant Name: Ross, Ronald DOB

Exhibit ID	On Behalf Of	Status/Date	Return/Destroy Date	Type and Description	Exhibit Flag	Source	In Custody Of	Location
PJ	Plaintiff			JUSTICE COURT EXHIBITS		State of Nevada	District Court Criminal/Civil 08/21/2007	Evidence Vault
		Comment: ExhibitID : 138329						
PCT1	Plaintiff			QUESTION FROM JUROR		State of Nevada	District Court Criminal/Civil 11/12/2008	Evidence Vault
		Comment: ExhibitID : 173553						
PCT2	Plaintiff			EMAIL FROM WALSH		State of Nevada	District Court Criminal/Civil 11/13/2008	Evidence Vault
		Comment: ExhibitID : 173554						
PCT3	Plaintiff			QUESTION & ANSWER FROM JURY DELIBERATION		State of Nevada	District Court Criminal/Civil 11/13/2008	Evidence Vault
		Comment: ExhibitID : 173555						
P1	Plaintiff	Admitted 11/12/2008		3/17/07 RECEIPTS & CREDIT CARD SLIP		State of Nevada	District Court Criminal/Civil 11/12/2008	Evidence Vault
		Comment: ExhibitID : 173547 NO OBJECTION						
P2	Plaintiff	Admitted 11/12/2008		VHS TAPE		State of Nevada	District Court Criminal/Civil 11/12/2008	Evidence Vault
		Comment: ExhibitID : 173548 STIPULATION						
P3	Plaintiff	Admitted 11/12/2008		LINE PHOTO		State of Nevada	District Court Criminal/Civil 11/12/2008	Evidence Vault
		Comment: ExhibitID : 173549 NO OBJECTION						

## Exhibit List

Case: 07C236169 Party: Sort Order: Status Defendant Name: Ross, Ronald DOB

Exhibit ID	On Behalf Of	Status/Date	Return/Destroy Date	Type and Description	Exhibit Flag	Source	In Custody Of	Location
P4	Plaintiff	Admitted 11/12/2008		LINE UP PHOTOS IN COLOR		State of Nevada	District Court Criminal/Civil 11/12/2008	Evidence Vault
Comment: ExhibitID : 173550 NO OBJECTION								
P5	Plaintiff	Admitted 11/12/2008		LINE-UP PHOTOS		State of Nevada	District Court Criminal/Civil 11/12/2008	Evidence Vault
Comment: ExhibitID : 173551 NO OBJECTION								
P6	Plaintiff	Admitted 11/12/2008		LINE UP PHOTOS COLOR		State of Nevada	District Court Criminal/Civil 11/12/2008	Evidence Vault
Comment: ExhibitID : 173552 NO OBJECTION								
P-1	Plaintiff	Admitted 04/07/2009		LTTR ST OF NEW JERSEY DEPT OF CORRECTION		State of Nevada	District Court Criminal/Civil 04/07/2009	Evidence Vault
Comment: ExhibitID : 180947 NO OBJECTION								
P-2	Plaintiff	Admitted 04/07/2009		MUG SHOT OF DEFT		State of Nevada	District Court Criminal/Civil 04/07/2009	Evidence Vault
Comment: ExhibitID : 180949 NO OBJECTION								
P-3	Plaintiff	Admitted 04/07/2009		MUG SHOTS & INFOR FO DEFT FROM NJ		State of Nevada	District Court Criminal/Civil 04/07/2009	Evidence Vault
Comment: ExhibitID : 180952 NO OBJECTION								

## Exhibit List

Case: 07C236169 Party: Sort Order: Status Defendant Name: Ross, Ronald DOB

Exhibit ID	On Behalf Of	Status/Date	Return/Destroy Date	Type and Description	Exhibit Flag	Source	In Custody Of	Location
P-4	Plaintiff	Admitted 04/07/2009		PSI OFFENSE INFORMATION		State of Nevada	District Court Criminal/Civil 04/07/2009	Evidence Vault
Comment: ExhibitID : 180953 NO OBJECTION								
P-5	Plaintiff	Admitted 04/07/2009		MUG SHOTS & INFO FRM NJ 4/17/01		State of Nevada	District Court Criminal/Civil 04/07/2009	Evidence Vault
Comment: ExhibitID : 180956 NO OBJECTION								
P-6	Plaintiff	Admitted 04/07/2009		MUG SHOTS & INFO FROM NJ 12/16/05		State of Nevada	District Court Criminal/Civil 04/07/2009	Evidence Vault
Comment: ExhibitID : 180958 NO OBJECTION								

# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT (NRAP 3(D)(4));  
REQUEST FOR ROUGH DRAFT TRANSCRIPTS OF DISTRICT COURT PROCEEDINGS;  
DISTRICT COURT DOCKET ENTRIES; FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER;  
DISTRICT COURT MINUTES; EXHIBITS LIST

STATE OF NEVADA,

Plaintiff(s),

vs.

RONALD ROSS,

Defendant(s).

Case No: C236169  
Dept No: XVII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 17 day of July 2013.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk