was not happy with his trial counsel, Jorgensen, because of the apparent speedy trial violations as well as his inability to communicate with Jorgensen. Id. at R. 000165 . Ultimately, the Court continued this hearing until October 30, 2008. Id.

On October 30, 2008, the Court held the continued hearing previously scheduled for October 23, 2008. (See Transcript of Hearing Re: State's Request Conflict of Trial Date Agreed). No change was made to the trial date. Id.

On November 4, 2008, the Court held a Calendar Call. (See Transcript of Hearing re: Calendar Call). Ross moved to represent himself, but with the assistance of counsel. Id. The Court denied the request. Id.

On November 12, 2008, the trial proceedings commenced. This was 541 days (18 months) after charges were initially filed. This delay occurred despite the fact that Ross asserted and specifically did not waive his right to a speedy trial. Further, at no time did Ross request a single continuance, but rather all delays arose from the actions of the State or the Court. (See Record generally).

On November 12, 2008, the State filed its Third Amended Information. (See Third Amended Information). This time, the charges were amended. Id. In the Third Amended Information, the Defendant was charged with Burglary (Felony-NRS 205.060), Larceny from the Person (Felony-NRS 205.270), Possession of Credit Card with Cardholder's Consent (Felony-NRS 205.690), Fraudulent use of Credit Card (Felony-NRS 205-760), Theft (FelonyNRS 205.0835, 205.0832); and Conspiracy to Commit Larceny (Gross Misdemeanor-NRS 205.220, 205.222, 199.480). Id.

At the commencement of the proceedings, the State admitted that the surveillance tape from the Santa Fe did not depict Ross. (TT, Vol. I, R. 000177). Therefore, the State moved to dismiss all charges which allegedly occurred at the Santa Fe. Id.

Jury selection began in this action. During the jury selection, Defense counsel Jorgensen asked only six (6) questions during the entire voir dire. Further, Jorgensen did not challenge a single juror for cause. (TT, Vol. I, P. 77, L. 2-3). This occurred despite one potential juror, No. 187 , specifically testifying that she worked with one of the detective witnesses who would testify during the trial of this matter, Juror No. 200 and 208 testified each was the victim of having her credit card stolen and used. (TT, Vol. I, R. 000184; TT, Vol. I, P. 32, L. 1-16; P. 37, L. 2-25). Trial Counsel was ineffective for failing to protect his client from a biased jury.

After jury selection, the Prosecution raised the issue of a potentially unavailable witness. (TT, Vol. I, P. 82, L. 22 et seq.). The Prosecution stated the witness was Deja Jarmon who was currently in a hospital in California for heart reasons. (TT, Vol. I, P. 83, L. 2-3). The Prosecution admitted knowing the location of the witness and failing to make the motion based on unavailability within the 15 day time limit. (TT, Vol. I, P. 83, L. 1 and L. 4-8). The Prosecution brought its investigator to testify. Id. Matthew Johns, the investigator, testified he was employed as a criminal investigator for the Clark County District Attorney's office. (TTT, Vol. I, P. 84, L. 14-15). Johns testified that as the investigator, he was charged with serving subpoenas on witnesses set to testify for trial. (TT, Vol. 1, P. 85, L. 6-8). Johns testified he received the subpoenas for witnesses who were going to testify on this case on October $16^{\text {th }}$. (TT, Vol. I, P. 85, L. 15-17). Johns testified he received a subpoena to serve on Deja Jarmin. (TT, Vol. I, P. 85 L. 24 to P. 86, L. 1). Johns testified they had a valid address for Jarmin.
(TT, Vol. I, P. 86, L. 5-6). Johns further testified he made contact with Jarmin's girlfriend. (TT, Vol. I, P. 86, L. 12-17). Johns testified he had a current telephone number for Jarmin and consistently attempted to contact Jarmin. (TT, Vol. I, P. 86, L. 18-22). Johns left approximately 10 to 15 messages for Jarmin. (TT, Vol. I, P. 86, L. 23-25). While Johns had three contacts with the girlfriend, he never had personal contact with Jarmin. (TT, Vol. I, P. 87, L. 3-8). Johns testified that he learned the morning of the commencement of the trial that Jarmin was in a hospital in San Bernardino due to a heart condition. (TT, Vol. I, P. 87, L. 1114). Johns was unable to confirm that Jarmin was in the hospital. (TT, Vol. I, P. 88, L. 4-7).

Defense counsel cross-examined Johns. (TT, Vol. I, P. 88, L. 12, et seq.). Johns admitted that while the girlfriend stated Jarmin was in a hospital, she did not tell Johns the name of the hospital. (TT, Vol. I, P. 88, L. 23 to P. 89, L. 1). Johns admitted that since receiving the subpoena for Jarmin in mid-October, he had neither seen nor spoken with Jarmin. (TT, Vol. I, P. 89, L. 8-11).

At the conclusion of Johns' examination, the Prosecutor was put under oath, and made an oral motion to utilize Jarmin's preliminary hearing testimony. (TT, Vol. I, P. 91, L. 12-13). The basis for filing the motion late was: (a) the State did not know Jarmin would be unavailable and; (b) that Jarmin just went into the hospital on Friday of the week prior to the commencement of the trial, which was past the calendar call date. (TT, Vol. I, P. 91, L. 1319). ${ }^{1}$ After the State's argument, Defense counsel effectively failed to make any argument regarding the untimeliness of the motion. To the contrary, Defense counsel stated that he did

[^0]not believe the untimeliness was relevant because the State didn't have 15 days because of the date they learned of Jarmin's unavailability. (TT, Vol. I, P. 82, L. 20-22). Effectively, counsel waived any argument regarding timeliness despite the fact that the State knew that it had not served the subpoena within the required fifteen (15) day period and therefore on that basis alone could have and should have moved based on unavailability timely. Defense counsel Jorgensen did argue a confrontation clause violation. (TT, Vol. I, P. 93, L. 2-12). Counsel argued that cross examination which occurs during a preliminary hearing is a fiction in the context of the Confrontation Clause because the purposes of the two examinations are so markedly different. (TT, Vol. I, P. 93-96).

Following argument, the Court concluded the State established good cause for not making the motion regarding unavailability within the prescribed time limit. (TT, Vol. I, P. 100, L. 6-8). The Court found under the totality of the circumstances, the preliminary hearing transcript could be used in lieu of live testimony from the witness the Court concluded was unavailable. (TT, Vol. I, P. 100, L. 12-13).

After the Court instructed the jury, the State made its opening argument. (TT, Vol. I, P. 118, L. 10, et seq.). The Defense then made its opening argument. (TT, Vol. I, P. 121, L. 22, et seq.).

The State then called its first witness, Georgia Stathopoulos ("Georgia"). (TT, Vol. I, P. 125, L. 17). Georgia was on vacation in Las Vegas staying at the Tropicana in March, 2007. (TT, Vol. I, P. 126, L. 9-12). On March 17, 2007 at approximately 1:00 p.m., Georgia had just completed eating at the buffet in the Tropicana. (TT., Vol. I, P. 126, L. 17-20). On her way back to her hotel room, Georgia stopped to play one of the machines. (TT, Vol. I, P. 126, L. 23-24). Georgia was carrying a purse. (TT, Vol. I, P. 127, L. 5-6). Georgia's wallet was in her
purse. (TT, Vol. I, P. 127, L. 13-14). Included among the items in Georgia's wallet was a Chase Bank credit card. (TT, Vol. I, P. 127, L. 21-23). Georgia also had approximately $\$ 150.00$ in cash in her wallet. (TT, Vol. I, P. 128, L. 6-7). Georgia took money out of her purse to play the slot machine and did not zip her purse closed. (TT, Vol. I, P. 129, L. 10).

While Georgia was playing the machine, it began to make a lot of noise and two young men approached her. (TT, Vol. I, P. 130, L. 8-11). Georgia identified Ross as one of the men who approached her in the casino. (TT, Vol. I, P. 130, L. 12-21). Georgia testified that the men were very close to her but she did not recall whether they touched her or not. (TT, Vol. I, P. 131, L. 14-22). Georgia testified that the men asked her how the machine worked, what she had won, and her attention was entirely focused on the machine. (TT, Vol. I, P. 132, L. 5-18). Georgia stated that the men remained close to her for approximately a couple of minutes. (TT, Vol. I, P. 133, L. 1). Shortly after the men left, so too did Georgia and her husband. (TT, Vol. I, P. 133, L. 9).

Georgia and her husband proceeded to their hotel room. (TT, Vol. I, P. 133, L. 12-13). Gloria testified that while she was playing the slot machine and en route to her hotel room, no one was as close to her as the two men about whom she previously testified. (TT, Vol, I, P. 133, L. 16 to P. 134, L. 2). Georgia testified that once she got to her hotel room, she noticed her wallet was gone. (TT, Vol. I, P. 134, L. 5-6). Georgia immediately thought that perhaps she lost her wallet at the buffet. (TT, Vol. I, P. 134, L. 14-16). Gcorgia did not find her wallet at the buffet. (TT, Vol. I, P. 134, L. 21-23). Georgia then contacted security and the police. (TT. Vol. I, P. 134, L. 24 to P. 135, L. 1). Georgia also contacted her credit card company. (TT, Vol. I, P. 135, L. 2-5). Georgia was informed that her credit card was used at a shoe store
after 1 o'clock. (TT, Vol. I, P. 135, L. 15-23). Georgia testified that she never gave the Defendant permission to take her wallet nor use her credit card. (TT, Vol. I, P. 136, L. 2-9).

During the examination, the State showed Georgia the receipt from the shoe store. Georgia testified that she had never seen the receipt before. (TT, Vol. I, P. 137, L. 1-2). Defense counsel stipulated to the conditional admission of the credit card receipt with the foundation laid by other witnesses. (TT, Vol. I, P. 137, L. 5-12). Georgia testified that it was not her signature on the receipt. (TT, Vol. I, P. 137, L. 19-24).

On cross examination, Georgia testified that she went to the buffet at the Tropicana at approximately $12: 30$ in the afternoon. (TT, Vol. I, P. 139, L. 23-25). Georgia paid for the lunch, but does not recall how she paid for it. (TT, Vol. I, P. 140, L. 16-21). Georgia testified that when she got to the slot machine, after paying for lunch she had a dollar left which she took out of her wallet. (TT, Vol. I, P. 141, L. 24 to P. 142, L. 1). However, Georgia was unsure whether she actually had to unzip her purse or whether it was already unzipped when she took the dollar out of her purse. (TT, Vol. I, P. 142, L. 7-9). When asked about the age of the persons who approached her, Georgia stated that she didn't pay that close attention. (TT, Vol. I, P. 142, L. 17-19). Georgia testified that she could not describe how the persons who approached her were dressed. (TT, Vol. I, P. 143, L. 12-14). Georgia did not recall whether the weather was cold enough to wear a jacket outside. (TT, Vol. I, P. 143, L. 17-19). Georgia did not recall the physical size or height of the persons who approached her. (TT, Vol. I, P. 144, L. 6-10). Georgia continued to play the slot machine after the men left until she had completed spending all of the money or plays in the machine. (TT, Vol. I, P. 145, L. 13-19).

Georgia testified that it was not immediately but shortly after she arrived in her room that she glanced in her purse and noticed the wallet was gone. (TT, Vol. I, P. 146, L. 2-5).

Georgia testified that her first inclination was to go back to the restaurant. (TT, Vol. I, P. 146, L. 15-18). However, she did not retrace her steps to see if she dropped the wallet. (TT, Vol. I, P. 146, L. 21-24). Georgia did not go back to the slot machine to see if her wallet was at the slot machine. TT, Vol. I, P. 146, L. 25 to P. 147, L. 3). Georgia stated she didn't think to look at the slot machine for her wallet. (TT, Vol. I, P. 147, L. 13-16).

Georgia testified that at approximately 1:45 p.m. she called the credit card company. (TT, Vol. I, P. 147, L. 17-20). The credit card company informed her there had already been a charge on the card at the shoe store. (TT, Vol. I, P. 147, L. 21-23). Georgia stated that she did not recall making a statement to the police that the shoe store clerk told her that the person who used the card came into the store with a girl. (TT, Vol. I, P. 149, P. 15-24). Georgia then gave specific responses to questions quoting statements made by the shoe clerk she spoke with, without any hearsay objections lodged by Defense counsel. (TT, Vol. I, P. 151, L. 10-19).

The State's next witness was Deja Jarmin, whose testimony was presented from the preliminary hearing through a reader. (TT, Vol. I, P. 153, L. 12, et seq.). His testimony is identical to that stated above.

The State then called Luis Valadez to testify ("Valadez"). (TT, Vol. I, P. 172, L. 12). Valadez was employed at Sheikh Shoes on March 17, 2007. (TT, Vol. I, P. 173, L. 2-5). He was a salesperson. (TT, Vol. I, P. 173, L. 20). Valadez identified Ross as a person who was in the shoe store on March 17, 2007. (TT, Vol. I, P. 174, L. 14-23). March 17, 2007 was the first time he had ever seen Ross in the store. (TT, Vol. I, P. 175, L. 6-8). Valadez could not remember what Ross did when he got into the store on March 17, 2007. (TT, Vol. I, P. 175, L. 12-14). Valadez testified that he remembered Ross making a purchase with a credit card but he
did not know what card was used as he did not conduct the transaction. (TT, Vol. I, P. 175, L. 21 to P. 176, L. 24).

On cross examination, Valadez testified that he no longer works at the shoe store. (TT, Vol. I, P. 180, L. 11-13). Valadez further testified that he did not remember the whole day. (TT, Vol. I, P. 186, L. 8-9). In fact, Valadez testified on cross-examination that he didn't actually see Ross use a credit card to make the purchase. (TT, Vol. I, P. 186, L. 12-17). It was only because a police detective made a print out of a receipt that Valadez learned the purchase was with a credit card. (TT, Vol. I, P. 186, L. 21-25).

The State then called Kevin Hancock to testify. (TT, Vol. I, P. 192, L. 23). Hancock was employed at Sheikh Shoes on March 17, 2007. (TT, Vol. I, P. 193, L. 3-5). Hancock specifically testified that between the hours of 1:00 and 2:00 p.m. on March 17, 2007, he was on break. (TT, Vol. I, P. 193, L. 8-11). Hancock reviewed the surveillance video. (TT, Vol. I, P. 193, L. 17-19). Hancock viewed surveillance video and identified Ross as the person depicted on the surveillance video. (TT, Vol. I, P. 194, L. 1-8 and 19-24). Hancock laid foundation for the credit card receipt of which Georgia testified and which was conditionally admitted subject to later witnesses providing foundation. (TT, Vol. I, P. 197, L. 5 to P. 200, L. 13). In addition, Hancock testified that the store had a surveillance system. (TT, Vol. I, P. 200, L. 14-16). While Hancock knew how to view the video captured by the surveillance system, he did not know how to make a copy of it. (TT, Vol. I, P. 201, L. 1-2). Hancock stated the system was digital and that if the tape was not taken off the system within a short period of time it would be lost. (TT, Vol. I, P. 201, L. 11-19). Hancock testified that while they contacted someone in an attempt to save the video, the person did not come out and the video was not saved. (TT, Vol. I, P. 202, L. 9-24).

On cross-examination, Hancock testified that while he had been working for the company since 2005 , he had only been working at this store for approximately two months. (TT, Vol. I, P. 203, L. 11-21). Prior to the police arriving at the store, Hancock did not recall when he realized that someone had used a credit card to make the purchase. (TT, Vol. I, P. 205, L. 22 to P. 206, L. 1). Hancock only reviewed the video tape because of the police request. (TT, Vol. I, P. 206, L. 9-13). Hancock reviewed the video tape with the detective. (TT, Vol. I, P. 207, L. 7-9). Hancock admitted that he was not watching the cashiering counter when the transaction was rung up. (TT, Vol. I, P. 208, L. 24 to P. 209, L. 1). Hancock testified that the video surveillance system would erase the recordings every week or two. (TT, Vol. I, P. 209, L. 23-25). Hancock testified the store is equipped with five or six surveillance cameras all of which capture the events which occur in the store. (TT. Vol. I, P.218, L. 10). Hancock testified that he did not personally witness the transaction. (TT, Vol. I, P. 218, L. 19-21).

The State then called William Rader ("Rader") to testify. (TT, Vol. I, P. 224, L. 14). Rader is a detective with the Las Vegas Metropolitan Police Department. (TT, Vol. I, P. 224, L. 20). Rader was working on March 24, 2007. (TT, Vol. I, P. 224, L. 24-25). Rader was assigned to the Tourist Safety Unit. (TT, Vol. I, P. 225, L. 3). Rader was working with Detective Flenner regarding an incident at the Tropicana casino. (TT, Vol. I, P. 225, L. 10-13). Rader identified Ross in the Courtroom. (TT, Vol. I, P. 225, L. 14-21). On March 24, 2007, Rader went to Sheikh shoe store. (TT, Vol. I, P. 225, L. 24 to P. 226, L. 1). Rader put together and showed a photographic lineup to three employees at the shoe store. (TT, Vol. I, P. 226, L. 5-8). Rader testified he followed protocol with respect to the photographic lineup. (TT, Vol. I, P. 226, L. 12-23). Rader testified that Valadez, Hancock and Deja all identified Ross from the photographic lineup he presented to them to review. (TT, Vol. I, P. 230, L. 2-19).

On cross examination, Rader admitted that his involvement with this case was limited to creating the photographic lineup and showing it to the store clerks. (TT, Vol. I, P. 231, L. 1115). Rader did not view the surveillance video from the store. (TT, Vol. I, P. 231, L.16-18).

The State then called Darrell Flenner ("Flenner") to testify. (TT, Vol. I, P. 232, L. 18). Flenner is employed by Las Vegas Metropolitan Police Department. (TT, Vol. I, P. 232, L. 24). Flenner is a detective in the Tourist Safety Unit. (TT, Vol. I, P. 233, L. 2-8). Flenner testified about his on-the-job and other training. (TT, Vol. I, P. 233, L. 13-20). Flenner testified hypothetically about how distraction thefts generally occur. (TT, Vol. I, P. 234, L. 323). Flenner testified he was familiar with Ross. (TT, Vol. I, P. 235, L. 2-4). Flenner identified Ross in Court. (TT, Vol. I, P. 235, L. 5-13).

Flenner testified that on March 17, 2007, he investigated a distraction theft at the Tropicana Hotel and Casino. (TT, Vol. I, P. 235, L. 18-23). The alleged victim was Georgia Stathopoulos. (TT, Vol. I, P. 236, L. 2-5). Flenner reviewed the surveillance video of the incident. (TT, Vol. I, P. 236, L. 9-11).

The State sought to admit the surveillance video from the incident at the Tropicana into evidence. (TT, Vol. I, P. 236, L. 12-15). Defense counsel stipulated to its admission. (TT, Vol. I, P. 236, L. 16-18). The surveillance video was played for the jury. (TT, Vol. I, P. 236, L. 24-25). Flenner identified Ross on the surveillance video. (TT, Vol. I, P. 237, L. 2-24). Flenner testified that the video depicts a jacket over the arm which is used "matador style" to conceal what the hand is doing. (TT, Vol. I, P. 238, L. 8-23). Flenner testified it was something he had seen many times before. (TT, Vol. I, P. 238, L. 24 to P. 239, L. 1). Flenner testified that the video depicts distraction through pointing which is a common practice in distraction thefts. (TT, Vol. I, P. 239, L. 12-21). Flenner testified that the video tape depicts a
hand off between the two suspects which Flenner stated was handing the coat and its contents. (TT, Vol. I, P. 241, L. 16-19). Flenner was asked whether you could see the wallet in the video and he testified that you could see "the black thing; it - it's in -it's in the jacket." (TT, Vol. I, P. 242, L. 2-5).

Flenner also testified he viewed a video tape from the shoe store. (TT, Vol. I, P. 243, L. 24 to P. 244, L. 1). However, Flenner admitted that while he viewed the video on the computer, he was not able to obtain a copy of the surveillance video. (TT, Vol. I, P. 244, L. 817). When asked whether he could identify Ross from the surveillance video, Flenner testified that it was from far away but the clothing seemed to match. (TT, Vol. I, P. 245, L. 18-23). Flenner based this judgment not on what he saw on the shoe store surveillance video alone but rather by assumption based on the clothing appearing to be the same as that worn by the person depicted on the Tropicana video. (TT, Vol. I, P. 246, L. 2 to P. 247, L. 2). Flenner testified that it was approximately fifteen minutes from the Tropicana to the shoe store. (TT, Vol. I, P. 247, L. 23 to P. 248, L. 1).

On cross-examination, Flenner testified that when he initially received the call regarding the incident at the Tropicana, he did not immediately go to the Tropicana but rather called the Tropicana investigator. (TT, Vol. I, P. 250, L. 19-21). However, he did speak with Georgia over the telephone. (TT, Vol. I, P. 250, L. 25). Flenner did not remember whether he began his investigation of the case on the day it was referred to him or some day thereafter. (TT, Vol. I, P. 251, L. 23-24). Flenner did not originally watch the Tropicana surveillance video at the Tropicana, but rather a swing shift officer picked the tape up and Flenner watched it at police headquarters. (TT, Vol. I, P. 252, L. 7-11). Flenner did not view the original tape, only a copy. (TT, Vol. I, P. 253, L. 6-7). Flenner further testified that what struck him from
the shoe store surveillance video is that the clothes were the same as those worn by the person in the Tropicana. (TT, Vol. I, P. 254, L. 16-19). Flenner admitted that the perspective of the shoe store's video was from the front doors looking into the store so that if a customer was making a purchase at the sale's counter, you could only see the customer's back. (TT, Vol. I, P. 255, L. 3-9). Flenner was unable to see the store employee who was assisting the customer. (TT, Vol. I, P. 255, L. 17-19). Flenner knew what portion of the surveillance to look at based on information provided by Georgia. (TT, Vol. I, P. 256, L. 1-23). Flenner ultimately met the clerk who handled the transaction, after viewing the video tape but was uncertain whether he could identify the clerk from having viewed the tape. (TT, Vol. I, P. 258, L. 4-6). Flenner could not tell from the surveillance tape how the transaction was paid. (TT, Vol. I, P. 259, L. 4-7).

Following cross-examination, a juror had two questions. Flenner responded to the questions by first stating that the resolution of the video from the shoe store surveillance was better than the resolution from the Tropicana video. (TT, Vol. I, P. 263, L. 9-15). In addition, Flenner testified he viewed only one angle of the store surveillance video, not multiple angles. (TT, Vol. I, P. 263, L. 16-19).

Following the examination of Flenner, the State rested. (TT, Vol. I, P. 264, L. 13-14). Thereafter, the Defense stated it did not have any witnesses. (TT, Vol. I, P. 264, L. 15-17). Thereafter, the Defense rested as well. (TT, Vol. I, P. 264, L. 18-19). After the jury was excused, the Court discussed the time to resume the next day as well as jury instructions. (TT, Vol. I, P. 264-266). The Court specifically inquired whether the defense had any jury instructions it would submit to which trial counsel responded, "No." (TT, Vol. I, P. 266, L. 1921). The Court made further inquiry into whether the defense wanted to propose an instruction
regarding the defendant not testifying and the defense responded it did not want such an instruction. (TT, Vol. I, P. 267, L. 22-25).

On November 13, 2008, twenty eight (28) Jury Instructions were filed in Court. Neither the State nor defense lodged any objections to the Jury Instructions. (TT, Vol. II, P. 2, L. 5-24). The Court thereafter instructed the jury. (TT, Vol. II, P. 4-17). The State then made its closing argument. (TT, Vol. II, P. 17, L. 19 to P. 29, L. 11). The Defense then made its closing argument. (TT, Vol. II, P. 29, L. 14 to P. 41). The State made rebuttal arguments. (TT, Vol. I, P. 41 to P. 50 ).

After the jury deliberated, they returned a verdict of "guilty" on counts I through VII. Sentencing was originally set for January 29, 2009. (See Transcript of Hearing, January 29, 2009). However, because Mr. Ross was disputing some of the felony convictions presented by the State, the Court continued the sentencing until April 7, 2009. (Id.).

The State argued for large habitual treatment. (Transcript from Sentencing Hearing, April 7, 2009, P. 2, L. 17-18). The State produced booking photographs from five prior felony convictions both within and without the State of Nevada. (Id. at L. 23-25). The State argued the sentence should be 10 to life. (Id. at P. 5, L. 13).

Mr. Ross addressed the Court. (Id. at P. 8, L. 18, et seq.). Mr. Ross inquired of the Court whether it had a letter which Mr. Ross wrote directly to the Judge, who stated he did not have the letter. (Id. at P. 8, L. 19 to P. 9, L. 16). Mr. Ross expressed his concern over his right to a speedy trial. (Id. at P. 9, L. 19-20). Mr. Ross argued that most of the cases referred to by the State were nonviolent crimes which were too remote to be considered on sentencing. (Id. at P. 10, L. 20-21). The Court informed Mr. Ross it was only going to consider the five felonies. (Id. at P. 12, L. 8-10). Mr. Jorgensen argued that absent fingerprint matching, the photographs
are not relevant and do not rise to the level of beyond a reasonable doubt. (Id. at P. 18, L.9-14). Jorgensen argued that the conduct does not merit a life sentence but rather should be treated as small habitual, if at all. (Id. at P. 19, L. 2-3).

The Court then imposed the following sentence: Count I-life with the possibility of parole after 10 years; Count II-life with the possibility of parole after 10 years to run concurrent with Count I; Count III through VII inclusive, life in prison with the possibility of parole after 10 years, to run consecutive to Counts I and II. (Id. at P. 22, L. 5-14). The Court ordered restitution in the amount of $\$ 270.00$. (Id. at L. 16). The Court gave Ross credit for 200 days time served. (Id. at P. 23, L. 21-22).

## I

## GENERAL LEGAL ARGUMENTS

The Sixth Amendment to the United States Constitution provides:
In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

VI Amend., U.S. Const. It is by this standard which the Petition for Writ of Habeas Corpus must be judged.

Ineffective assistance of counsel claims are never heard on direct appeal. Archanian $v$. State, 122 Nev. 1019, 1036, 145 P.3d 1008, 1020-21 (2006). While substantive arguments presented on direct appeal may in some cases become the law of the case, because those decision on the merits did not consider nor address whether such conduct constitutes ineffective assistance of counsel, the law of the case doctrine does not bar consideration of those matters
on this Petition. See e.g. McConnell v. State, 125 Nev. Adv. Op. No. 24, 49722, fn. 1, 212 P.3d 307 (2009).

A claim that counsel provided constitutionally inadequate representation is subject to the two-part test established by the Supreme Court in Strickland $v$. Washington, 466 U.S. 668 (1984). To prevail on a claim of ineffective assistance of trial or appellate counsel, a defendant must demonstrate (1) that counsel's performance was deficient and (2) that counsel's deficient performance prejudiced the defense. Id. at 687. A court need not consider both prongs of the Strickland test if a defendant makes an insufficient showing on either prong. Id. at 697. "A claim of ineffective assistance of counsel presents a mixed question of law and fact, subject to independent review." Evans v. State, 117 Nev. 609, 622, 28 P.3d 498, 508 (2001).

On the first prong of the analysis, the Petitioner's burden is to show that counsel's performance fell below an "objective standard of reasonableness." Strickland, supra, at 689. Obviously, there are a number of factors which must be evaluated to determine whether the complained of act or omission fell below that standard, which factors vary based on the nature of the allegation.

On the second prong, to establish prejudice the claimant must show that but for the attorney's mistakes, there is a reasonable probability the result of the proceeding would have been different. Strickland, supra, at 687-88. Obviously, there is a degree of speculation with respect to the prejudice prong, as no one can to a degree of absolute certainty know whether a jury would have concluded differently. A reasonable probability is "probability sufficient to undermine confidence in the outcome." Williams v. Taylor, 529 U.S. 362, 390-391 (2000) (citing Strickland, 466 U.S. at 687). Nonetheless, where there is a reasonably probability that the error was sufficiently significant as to suggest a potentially different outcome, ineffective
assistance of counsel should be found in order to exalt the protections of the Constitution over mindless convictions.

In order to avoid the distorting effects of hindsight, the evaluation begins with the strong presumption that "counsel's conduct falls within the wide range of reasonable professional assistance." Strickland, supra, at 689. This rebuttable presumption is so despite the clear fundamental liberty interests at stake. Nonetheless, the presumption is rebuttable considering the totality of the circumstances.

## II

## ARGUMENTS

## A. Trial Counsel was Ineffective for His Violation of Ross' $\mathbf{6}^{\text {th }}$ <br> Amendment Right to Speedy Trial

The Sixth Amendment to the United States Constitution provides, in relevant part, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial. . . ." The Sixth Amendment right to a speedy trial does not require a trial to commence within a specific number of days, and the United States Supreme Court has refused to quantify a specific time period. Vermont v. Brillon, 129 S. Ct. 1283, 1290 (2009). Instead, the Supreme Court uses a "balancing test, in which the conduct of both the prosecution and the defendant are weighed." Barker v. Wingo, 407 U.S. 514, 529 (1972). "'[S]ome of the factors' that courts should weigh include `[1]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant."' Brillon, 129 S. Ct. at 1290 (quoting Barker, 407 U.S. at 529). "The length of the delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance." Barker, 407 U.S. at 530.

First, the length of delay was severe. It took in excess of 540 days ( 18 months) to bring the action to trial. Second, the reasons for the delay were several. The State continually sought continuances several times because they wanted to consolidate this case with another case, something that would have changed Ross' defense immeasurably. These attempts were a violation of Ross's right to a speedy trial. The Petitioner clearly invoked his right to a speedy trial, to the extent it was the subject to dialogue by the Court. The delay was clearly prejudicial to Ross. Not only was he subject to incarceration for an extended period of time, but also valuable evidence which could have exonerated Ross was no longer available, including surveillance videos. Several witnesses testified that video was available immediately after the alleged incident, but not over 12 months later. It was ineffective assistance of counsel to fail to insist upon Ross's right to a speedy trial when that right was specifically invoked by Ross.

Finally, it should be noted that Ross himself made all of the objections to continuances. Trial Counsel did not make one single speedy trial objection. Instead, trial counsel accommodated the State and agreed to numerous continuances against his client's wishes. One, maybe two continuances, can be ascribed to trial strategy, but where the record illustrates a complete lack of any pre-trial investigation, discovery or serious preparation for trial, not even one continuance is legitimate.

## B. Trial Counsel was Ineffective Based on His Failure to Engage in Pretrial Discovery.

Trial counsel further failed to conduct appropriate pretrial discovery, including obtaining surveillance video from the shoe store which would have exonerated Ross. The trial record is completely void of any defense motions; not even a discovery motion.

In Kimmelman v. Morrison, 477 U.S. 365 (1986), the Supreme Court deemed trial counsel's lack of investigation to be deficient under Strickland's performance prong. The Kimmelman defendant was charged with rape, and his lawyer had neglected to file a timely motion to suppress an incriminating bed sheet seized without a search warrant. See 477 U.S. at 368-69. The trial record revealed that Defendant's counsel conducted no pretrial discovery. The Court held that counsel's failure to request discovery, again, was not based on "strategy," but on counsel's mistaken beliefs that the State was obliged to take the initiative and turn over all of its exculpatory evidence to the defense and that the victim's preferences would determine whether the State proceeded to trial after an indictment had been returned. Id. at 385. Despite "applying a heavy measure of deference to his judgment," the Court found "counsel's decision unreasonable, that is, contrary to prevailing professional norms." Id.

The instant case is no different. Counsel's failure to conduct pretrial investigation by obtaining surveillance videos from the shoe store precluded the presentation of a defense for Ross. Specifically, the surveillance videos may well have created a reasonable doubt that Ross in fact used a credit card to make any purchases at the shoe store and may well have created reasonable doubt concerning whether the individual depicted was in fact Ross. Investigators and prosecutors make mistakes which was evidenced by the State dismissing all of the Santa Fe related charges for misidentifying Ross on the surveillance from that incident. The prosecutor stated that "it's immediately apparent it is not Mr. Ross from the Santa Fe" (TT, vol. 1, page 3, lines 9-10). The dismissal of all the Santa Fe charges also begs the question as to whether Trial Counsel had reviewed them. Frankly, it seems very unlikely that Counsel would wait until trial to inform the State that they have the wrong guy in the surveillance video. Competent attorneys usually do this within 24 hours of reviewing any questionable surveillance
video-with or without their clients! It seems that Counsel just "got lucky" on the day of the trial. Luck cannot be ascribed to trial strategy.

Trial Counsel was certainly ineffective for failing to communicate this issue to another Public Defender that had a similar case involving Mr. Ross and video surveillance. (Case No. C220916). A little bit of "in-house" collaboration between public defenders with the same client with identical charges is certainly in order. By sharing the information with Attorney Will Ewing who handled Case No. C220916, Mr. Ewing may have been able to point out to Mr. Jorgensen that Mr. Ross does not appear in the Santa Fe videos. But this never could have happened because Mr. Jorgensen never communicated with Mr. Ewing. Mr. Ross will testify at an evidentiary hearing that he informed Mr. Jorgensen that he had another similar video surveillance case with Mr. Ewing.

Additionally, Counsel was ineffective for failing to mention the misidentification to the jury. This was purely an "identification case." Witness identification and video surveillance identification were used to convict Ross. When the State admits its investigators misidentified Ross in surveillance video and then puts the same investigators on the stand to identify Ross, common sense would dictate that Counsel would attack their ability to make any credible identification-especially in light of the prosecutor's comment that is was "immediately apparent that Ross was not the man in the video." Instead, Trial Counsel allowed the same group of police who misidentified Ross on the surveillance video to offer completely unchallenged positive identification of Ross at trial. This incident clearly shows a complete failure on Trial Counsel's part to prepare for trial or to think on his feet immediately prior to trial. There is no other explanation. This identification issue most likely would have changed the entire outcome of the trial. In this regard Ross was prejudiced by Trial Counsel's failure to
do anything, ANYTHING, when presented with an extraordinary opportunity to create doubt in the minds of the jury.

Counsel's failure to obtain discovery fell so far below professional norms that it unquestionably was not a matter of strategic judgment but rather a breach of professional norm. As previously discussed, these failures resulted in convictions which would not have occurred but for these failures. Counsel was ineffective and the convictions must be overturned.

## C. Ineffective Assistance Based on Counsel's Failure to Communicate with Petitioner Prior to Trial

Counsel's representation may be deficient constituting ineffective assistance of counsel for failing to communicate with the Petitioner. Adequate consultation between attorney and client is an essential element of the effective assistance of counsel. Strickland, 466 U.S. at 688, 104 S.Ct. at 2065. "From counsel's function as assistant to the defendant derives the overarching duty to advocate the defendant's cause and the more particular duties to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution." Id. See also Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000) and Johnson v. Parker, Civil Action No. 1:06CV217-SA-JAD (N.D.Miss. 9-12-2008) (failure to communicate may be both a symptom and cause of ineffective assistance).

There was a clear break down in communication between Trial Counsel and Ross. Ross will testify that it was apparent from Counsel's comments and questions that Counsel didn't understand the details of the cases. This failure precluded Ross from being able to effectively assist counsel in the preparation of his defense. Prejudice arose because Ross was unable to
explain his conduct, any potential alibis (which he certainly had regarding the Santa Fe incident), or otherwise present evidence in his defense. This resulted in prejudice.

## D. Trial counsel was Ineffective for Failing to Lodge Objections During Many of the Pretrial and Trial Proceedings

Trial counsel was ineffective for failing to lodge objections during many of the pretrial and trial proceedings. The failure to object may result in a properly laid ineffective assistance of counsel claim. See e.g. Warden v. Lyons, 100 Nev. 430, 683 P. 2 d 504 (1984), cert. denied, 471 U.S. 1004 (1985). In addition, the failure to object leads to a failure to preserve error for purposes of direct appeal. The failure to preserve issues for appellate review can constitute ineffective assistance of counsel. See e.g. Martin v. State, 501 So.2d 1313 (Fla. $1^{\text {st }}$ DCA 1986); Crenshaw v. State, 490 So.2d 1054 (Fla. 1st DCA 1986).

The entire trial transcript is almost entirely devoid of any objections lodged by defense counsel during the testimony of the witnesses. For example, the list of failed objections includes:

1. Despite not designating Detective Flenner as an expert, he was permitted to render expert opinions throughout his testimony regarding the methods and manners commonly utilized by pick pockets and distraction thefts. (TT, vol. 1, pages 234-250). No objection was lodged.
2. Trial Counsel failed to properly object to the use of the preliminary hearing transcript at trial regarding witness Deja Jarmin. Following the alleged purchase by Ross, Jarmin received a telephone call from someone indicating the credit card used to make the purchase was stolen. (Preliminary Hearing, pages 23-24). This was the only statement from Jarmin that linked the subject transaction to any criminal activity. The State did not exercise
due diligence in attempting to locate the witness prior to trial. Unfortunately, Trial Counsel actually agreed that the State had exercised due diligence, a fact that the Nevada Supreme Court relied upon in its Order of Affirmance. (TT, vol. 1, pages 92-97) Trial Counsel gave the State an enormous gift. It is this attorneys' opinion that had Trial Counsel objected, the Nevada Supreme Court most likely would have reversed Ross' conviction. To make matters worse, because Counsel waffled on the State's Pretrial Motion to admit Jarmin's Preliminary Hearing testimony, Ross was denied the ability to revisit the issue. There was no other evidence of criminal behavior from incident in the shoe store! Despite this damning hearsay statement, Counsel failed to lodge the proper objection.

Finally, Trial Counsel forgot to renew his best evidence objection from the Preliminary Hearing. He made no offer of proof about questions he was not able to ask Jarmin had he been present at the trial. This is a very important issue because Jarmin was testifying about the contents of a video that was destroyed before the Defense ever saw a copy.
3. Trial Counsel failed to object to an 18 month stale identification through witness Kevin Hancock. There were no questions about bias, misidentifications, etc. (TT, vol. 1, pages 193-202). Trial Counsel also failed to challenge any of the State's questionable ID's during cross-examination of Kevin Hancock. (TT, vol. 1, pages 203-218).
4. Trial Counsel failed to object to a Best Evidence Rule violation when the State introduced verbally State's Exhibit \#1, credit card receipt and computer print out. (TT, vol. 1, pages 197-200, 216-217).
5. No objection to leading witness Kevin Hancock on Direct Examination. (TT, vol. 1, page 198, lines 10-13 \& 17-20).
6. Through sloppy cross-examination Trial Counsel ends up solidifying an otherwise weak identification by one of the State's witnesses. (TT, vol. 1, pages 217-218). Again, no objection to the State's weak identification in Redirect Examination. (TT, vol. 1, pages 218-219).
7. No objection to "bad acts" implication by investigating detective. Detective Flenner testified he was familiar with Ross. (TT, vol. 1, page 235 , lines $2-3$, \& $15-16$, pages 262, lines 14-16). Furthermore, through sloppy cross-examination, Trial Counsel ends up soliciting testimony about his own client's prior bad acts! The Court actually stopped him and asked both attorneys to approach the bench to prevent Trial Counsel from continuing his line of questioning. Incredible! (TT, vol. 1, page 253-254).
8. No objection to lay person, Detective Flenner, giving incredibly damaging expert opinion testimony. (TT, Vol. 1, pages 233-234, 238-243).
9. No objection to hearsay testimony. (TT, vol. 1, page 250). Furthermore, through sloppy cross-examination Trial Counsel inadvertently brought out a damaging hearsay conversation. (TT, vol. 1, pages 168-169).

Clearly, it is the duty of defense counsel to insure that the proceedings are fair and that the State only puts before the finder of fact admissible evidence. There is no justifiable trial tactic which affords the State admission of evidence not otherwise admissible. Further, when defense counsel permits the admission of otherwise inadmissible evidence, not only are prejudicial matters presented to the jury but in addition it results in a failure to preserve the issues for direct appeal. Ross was prejudiced by the failure to timely object. First, inadmissible evidence was presented for the jury's consideration. Second, matters which should have been preserved for appeal were not. This prejudice could well have resulted in a
different result. One can only speculate regarding jury deliberations, but assuming they considered all of the evidence presented, they also considered evidence which should have been excluded. But for such evidence, the jury may not have rendered a guilty verdict on all counts.

## E. Trial Counsel was Ineffective for Failing to Retain Defense Experts

A claim for ineffective assistance of counsel may lie for failing to retain defense experts. Ineffective assistance of counsel claims are analyzed under the two-prong test of Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). Under Strickland, Ross must show both that his counsel's performance was deficient and that the deficient performance prejudiced his defense such that he was deprived of a "fair trial, a trial whose result is reliable." Id. at 687,104 S.Ct. at 2064.

During the trial of this action, the State called Detective Flenner to testify. Detective Flenner was not involved in the investigation of any of the crimes charged, other than to review the surveillance video. Despite having not been designated as an expert, Detective Flenner rendered expert opinions throughout the proceedings regarding the manner in which pick pockets and persons engaged in crimes of distraction operate. (TT, vol. 1, pages 233-234, 238243). Not only did Trial Counsel fail to objection to the expert testimony, Trial Counsel failed to call a counter expert to testify to refute the opinions that Ross' behavior and conduct as evidenced on the surveillance video was consistent with the conduct of a person engaging in pick pocketing. Had a rebuttal expert been called to rebut the expert opinions rendered by Detective Flenner, such an expert would have opined that Ross' conduct was consistent with non-criminal activity. Such an opinion would have diminished the credibility of the State's non-designated expert and would have created reasonable doubt.

Additionally, Detective Flenner testified that the "resolution" of surveillance video from the Shoe Store was better (meaning higher) than the surveillance video from the Tropicana Hotel and Casino. (TT, vol. 1, page 263, lines 9-15). This is answer is absolutely stunning! Had Counsel had a video surveillance/casino security expert on hand he could have easily showed the jury that Detective Flenner was certainly incorrect regarding resolution. Next to military surveillance systems, Casino surveillance systems are some of the most sophisticated video systems in the world. ${ }^{2}$ Casino cameras often can focus on the pores on the nose of a patron while playing Blackjack.

Ross was prejudiced by the failure to both retain experts and present an expert defense that his conduct was not criminal. Specifically, if such a defense were presented, it would have shown that Ross' conduct was as consistent with non-criminal activity and did not fit the pattern of behavior or mode of operation of a pick pocket. Additionally, a surveillance system/security expert could have refuted Detective Flenner's information thereby creating doubt in the minds of the jurors. Upon presentation of such proof, no convictions would have been entered against Ross.

## F. Trial Counsel was Ineffective for Failing to Investigate Ross' Claim that the PSI was Incorrect

At the first Sentencing Hearing, Ross objected to the Pre-Sentence investigation Report claiming that he only have 5 felony convictions, not the $18+$ that the Report identified. The Court continued Sentencing and ordered the State and Attorney Jorgenson to investigation the

[^1]Petitioner's claim. However, Jorgenson failed to investigate the claim nor did he file any motion to correct the PSI prior to sentencing. At a minimum, Jorgenson could have made a record of his diligence in this matter; however, the record is does not contain any information regarding Jorgenson's attempts to investigate his client's claim. Again, Jorgenson simply failed to do anything for Ross.

## G. The cumulative effect of all errors constitutes ineffective assistance

Finally, where the errors of counsel are numerous, their cumulative effect may constitute ineffective assistance of counsel. Hernandez v. State, 118 Nev. 513, 535, 50 P.3d 1100,1115 (2002). Thus, "[t]he cumulative effect of errors may violate a defendant's constitutional right to a fair trial even though errors are harmless individually." Id.

As discussed in both the Petition and this Supplement, there were numerous grounds of ineffective assistance of counsel. While Ross believes that each alone is sufficient to grant this Petition, collectively they are overwhelming. This Court should grant this Petition.

## CONCLUSION

The Petition should be granted. In a number of ways, Ross' constitutionally protected right to effective assistance of counsel was violated. Each of these grounds individually are alone sufficient, however cumulatively they are overwhelmingly so. Ross suffered prejudice as a result of these ineffective assistance claims. But for these constitutional violations, the outcome of the proceedings would have been different. As such, the Petition should be granted.

## DECLARATION AND VERIFICATION

1, Matthew Carling, am an attorney licensed to practice law in the State of Nevada who was duly appointed to represent the Petitioner, Ronald Ross, in the preparation and filing of the above Supplemental Writ of Habeas Corpus (Post Conviction), and that I filed the foregoing document at the specific instruction of the Petitioner, and based on the order of appointment by the Court.

Respectfully submitted on this $17^{\text {th }}$ day of July, 2012.
/s/ MATTHEW D. CARLING, ESQ.
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DISTRICT COURT CLARK COUNTY, NEVADA

RONALD ROSS,
Petitioner,
vs.
DWIGHT NEVER, WARDEN, HIGH DESERT STATE PRISION

Respondent.

## RECEIPT OF COPY

RECEIPT OF COPY of the foregoing First Supplemental Petition for Writ of Habeas Corpus (Post Conviction) is hereby acknowledged.

Dated this
day of July, 2012.


An Employee of the Clark County DA's Office

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RONALDROSS, \#970026

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## STPULATION AND ORDER EXTENDING TME

TH IS HEREBY STMYLATED AND AGREED by and beween the above named parties, through their morsigned counsel of reoord, that the brefne schedule regarding Delendants First Supplemental Petion for Writ of Habeas Corpus Pos-Conviction) is contrued as follows: State's Response is due on or about December 7, 2012. Defendant's oounsel, Mathew D. Carling, shall have 45 days from the date the State fles its Oppostion to he his Reply, and the date for Argumen on Defendan's First Suppiemental Pettion for Writ of Habeas Copus (Post-Conviction) cartenly set for October 19,2012 , will be vacated and reset to a dase convenient to the Court.

Watey this $\qquad$ day of Oetober, 2012

DATED this $\qquad$ day of Ociober, 2012.

STEVEV W. WOLSSO DISTRICT ATTORNEY
Nevad Wambli565

BY


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MATMEWD. CARLNG, BSO. ATTORNEY TOR DEFEMDANT


## ORDER

IT IS HERXBY ORDERED that the brefng schedue regardisg Deknonat's First
 Shae's Response is due on or abow Decomber 7, 2012. Detendant shall have 45 days fom the date the Shate hies is Oppostion to he Belondants Reply, and the date fr Agmment





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## RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Stipulation and Order Extending The is hereby acknowledged this $\qquad$ 10 day of October, 2012.

MATTHEW D. CARLING, ESQ. ATTORNEY FOR DEFENDANT


RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar \#001565
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Attorney for Plaintiff
DISTRICT COURT
CLARK COUNTY, NEVADA
THE STATE OF NEVADA,
Plaintiff,
-vs-
RONALD ROSS, \#1970026

Defendant.
STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS AND FIRST SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS

DATE OF HEARING: FEBRUARY 7, 2013
TIME OF HEARING: 8:15 AM
COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through FRANK COUMOU, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Petition for Writ of Habeas Corpus and First Supplemental Petition for Writ of Habeas Corpus.

This Response is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

## POINTS AND AUTHORITIES

## STATEMENT OF THE CASE

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.

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.

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 (18) 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 (19) prior Felony convictions.

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

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

Defendant filed a pro per petition for writ of habeas corpus (post-conviction) on November 30, 2011. The State's Response follows.

Defendant filed a Request for an Evidentiary Hearing in connection with his Petition as well as a Motion to Appoint Counsel on December 13, 2011. The State filed an Opposition on December 15, 2011. Defendant filed another Motion to Appoint Counsel on December 19, 2011. On January 5, 2012, the court held a hearing wherein it granted Defendant's Motion to Appoint Counsel.

Defendant's First Supplemental Petition for Writ of Habeas Corpus was filed on July 18, 2012. The State's response follows.

## ARGUMENT

## I. DEFENDANT'S FIRST SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS

## a. Ineffective Assistance of Counsel

## i. Standard of Review

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)).

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 $690-691,104 \mathrm{~S} . \mathrm{Ct}$. 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).

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, $112 \mathrm{Nev} .304,310,913$ 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)).

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 $675,584 \mathrm{P} .2 \mathrm{~d}$ at 711. In essence, the court must "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

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

## ii. Counsel was not ineffective during jury selection.

Defendant alleges counsel was ineffective in failing to excuse for cause Juror 187, Juror 200 and Juror 208 because they were biased against Defendant. When determining whether a potential juror is biased, the relevant inquiry is whether the juror's views "would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath." Weber v. State, $121 \mathrm{Nev} .554,580,119$ P.3d 107, 125 (2005) (quoting Leonard v. State, 117 Nev. 53, 65, 17 P.3d 397, 405 (2001)). Juror 187 stated that she used to work with one of the State's witnesses, Detective Darrell Flenner,
before she retired. Reporter's Transcript ${ }^{1} 11 / 12 / 2008$, pp. 10-11. Jurors 200 and 208 both stated that their credit cards had been previously stolen and used. RT 11/12/2008, pp. 32, 37. Furthermore, Juror 200 stated his son had previously been convicted in Clark County for burglary. RT 11/12/2008, pp. 50-51. However, all three prospective jurors unequivocally expressed they could lay aside these past experiences and that such would not affect their deliberations. RT $11 / 12 / 2008$, pp. $10-11,32,37-38,69,72-73$. When the State raised a challenge for cause concerning another juror, the court denied the challenge because, even though the prospective juror had a pending criminal matter in Clark County, "no one got him to say he can't be fair." RT 11/12/2008, p76. Thus, had counsel raised challenges for cause concerning the prospective jurors listed above, the court would have likely denied such on the same grounds. Because any challenge for cause concerning these jurors would have been futile, counsel cannot be found ineffective for not making such challenges. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Furthermore, Defendant cannot demonstrate prejudice as he cannot show that any of the listed prospective jurors actually served on the jury and were actually biased. ${ }^{2}$ Thus, because counsel did not act below an objective standard of reasonableness and because he cannot demonstrate prejudice, this claim must be denied.

## iii. Counsel did not fail to protect Defendant's rights to a speedy trial.

Defendant contends counsel was ineffective for not consistently asserting his right to a speedy trial. At Defendant's arraignment on September 9, 2007, he invoked his right to a speedy trial and trial was set for October 22. RT 9/5/2007, pp. 2-3. However, this trial date was vacated because there were pending appeals in two other cases involving Defendant (C220915 and C220916), ${ }^{3}$ one by the State and one by Defendant. RT $11 / 11 / 2007$, pp. 2-3. Because there was a commonality of legal issues and facts between all

[^2]three cases, both the State and Defendant agreed that trial in the instant case should be postponed until the pending appeals were resolved. RT 11/11/2007, pp. 2-3; 12/11/2007, pp. $2-3$. Defendant's only concern was he wished to be transported to prison as opposed to staying at the Clark County Detention Center to await the outcome of the pending appeals. RT $11 / 11 / 2007$, pp. $3-4 ; 12 / 11 / 2007$, pp. 2-3. When the pending appeals were resolved (See Supreme Court Case Nos. 49091 and 50153), Defendant re-asserted his right to a speedy trial and trial was set for September 2, 2008. RT 7/8/2008, p. 4-5. However, against the court's order, Defendant was not transported for the trial and it was vacated. RT 8/16/2008, p. 2. On September 16, 2008, Defendant received a new trial date of November 10, which was the earliest date that the State could transport out-of-state witnesses and the court could conduct the trial. RT 9/16/2008, p. 4-7. Trial commenced on November 12, 2008. RT 11/12/2008.

Counsel's willingness to waive Defendant's speedy trial rights pending the outcome of Defendant's appeals was in keeping with Defendant's wishes and was effective assistance of counsel. Both Defendant's counsel and the State represented to the court that the outcome of Defendant's pending appeals could significantly affect the instant case and that, if Defendant were tried prior to the Nevada Supreme Court's decision and such decision was in his favor, the instant case would have to be retried. RT 11/11/2007, p. 3' $12 / 11 / 2007$, p. 2. Defendant stated on the record that he understood the issue and had "no problem" waiting for the resolution of his pending appeals, but wished to wait for them at prison instead of the Clark County Detention Center. RT 11/11/2007, pp. 3-4; 12/11/2007, pp. 2-3. Given the significant effect Defendant's pending appeals could have had on a trial in this case, it was reasonable for counsel to waive Defendant's right to a speedy trial until after the appeals were determined.

Furthermore, Defendant cannot demonstrate prejudice. The Nevada Supreme Court considered and denied Defendant's speedy trial claim on direct appeal, finding that Defendant had failed to demonstrate prejudice or that the delay was in bad faith.

See Order of Affirmance, p. 1. ${ }^{4}$ Thus, if counsel had moved to dismiss Defendant's charges on this ground, such a motion would likely have been denied. Counsel cannot be found ineffective for failing to file futile motions. See Ennis, 122 Nev . at 706, 137 P.3d at 1103. Additionally, based on the same reasoning, Defendant cannot demonstrate a reasonable probability that the outcome of his case would have been different had counsel moved to dismiss his charges based on an alleged violation of his right to a speedy trial.

## iv. Counsel was not ineffective in conducting discovery.

Defendant alleges counsel was ineffective in the following regards: 1) Failed to file any motions, including discovery motions; 2) Failed to secure surveillance video from Sheikh Shoes; 3) Failed to review surveillance video from Santa Fe Station Hotel and Casino; 4) Failed to present evidence of misidentification of Defendant to the jury. As demonstrated below, these claims lack merit and must be denied.

## 1. Pretrial motions

Counsel has the "immediate and ultimate responsibility of deciding" what motions, if any, to file. See Rhyne, 118 Nev. at 8, 38 P.3d at 167. Importantly, other than a motion for discovery, Defendant does not specify what motions counsel should have filed but failed to. Inasmuch as Defendant fails to specify what motions counsel was ineffective for failing to file, this assertion is a bare allegation and does not warrant relief. See Hargrove, 100 Nev . at 502,686 P.2d at 225 . Furthermore, in light of the Clark County District Attorney's Office open file policy, Defendant fails to demonstrate how a motion for discovery would have resulted in discovery distinct from that which was already provided. Indeed, counsel stated on the record that he had received discovery and was going to compare what he received with the State's file prior to trial to verify discovery

[^3]was complete. RT 11/4/2008 p. 4. Thus, counsel's efforts at gathering discovery were sufficient and any motion for discovery would have been futile. See Ennis, 122 Nev. at 706, 137 P.3d at 1103.

## 2. Sheik Shoes video

Defendant alleges counsel's failure to timely secure the Sheik Shoes surveillance video resulted in its loss and prejudiced Defendant. This claim is belied by the record. Hancock testified the surveillance video depicting Defendant using Stathopoulos' credit card was saved in the computer database for $1-2$ weeks before being automatically erased. As the transaction took place on March 17, 2007, and no copies were made of the video, any surveillance of the transaction was automatically deleted by the end of March 2007 at the latest. Defendant was not arrested in connection with this case until June 6, 2007, and counsel was subsequently appointed. See Declaration of Arrest. Any surveillance video of Sheikh Shoes was already unavailable prior to counsel's appointment. Therefore, any subsequent action or inaction by counsel in securing such video did not result in its loss and this claim must be denied. See Hargrove, 100 Nev. at 502,686 P.2d at 225.

## 3. Santa Fe Station video

Defendant alleges counsel was ineffective for failing to review the Santa Fe Station video and notify prosecutors earlier than the first day of trial that the subject depicted was not Defendant. First, this claim is a bare assertion premised solely on the fact that the prosecutor filed the Third Amended Information omitting the Santa Fe Station offenses on the first day of trial. See Hargrove, 100 Nev. at 502, 686 P.2d at 225. Second, Defendant fails to demonstrate any prejudice. Even if counsel did not review the Santa Fe Station surveillance video prior to the first day of trial (a fact the State does not concede), Defendant cannot demonstrate a reasonable probability of a more favorable outcome than having those charges voluntarily dismissed by the State. RT 11/12/2008 p. 3. Thus, any deficiency of counsel was non-prejudicial, and Defendant's claim must be denied.

## 4. Evidence of misidentification

Defendant alleges counsel was ineffective for failing to present evidence that Defendant was initially misidentified from the Santa Fe Station video in efforts to impeach the identification of Defendant from the Tropicana Hotel and Casino surveillance video as well as the Sheik Shoe video. This claim lacks merit. At Defendant's preliminary hearing, Detective Julie Holl testified that she reviewed the Santa Fe Station video and identified Defendant as the person depicted committing a larceny. RT 6/19/2007, pp. 65-66. Prior to the beginning of trial on November 12, 2008, the State filed a Third Amended Information excluding all Santa Fe Station offenses because, in reviewing the Santa Fe Station video, the prosecutor determined that Defendant was not depicted. Detective Holl did not testify at trial. Detective Flenner testified at both the preliminary hearing and at trial that he observed the Tropicana video and the Sheikh Shoes video and identified Defendant as depicted in both. RT 6/19/2007, pp. 87-105; RT 11/12/2008, pp. 236, 243, 245-47. Detective Flenner did not review or testify concerning the Santa Fe Station video.

Any evidence that a non-testifying witness had misidentified Defendant in connection with another theft would have likely been excluded because it was irrelevant. NRS 48.025. The fact that Detective Holl had misidentified Defendant after observing the Santa Fe Station video did not increase or decrease the likelihood that Detective Flenner correctly identified Defendant after observing the Tropicana video and the Sheikh Shoes video and is therefore irrelevant. Therefore, offering such evidence would have been futile. See Ennis, 122 Nev. at 706, 137 P.3d at 1103.

Furthermore, even if such evidence was admissible, counsel appropriately declined to present it because of its minimal probative value and potential prejudicial effect. Trial counsel has the "immediate and ultimate responsibility of deciding" which witnesses, if any, to call, and what defenses to develop. Rhyne, 118 Nev . at 8,38 P.3d at 167. Defendant was on trial for larceny of Stathopoulos' purse while she was playing slot machines at a casino by distracting her and subsequently using her stolen credit card to purchase $\$ 490$ in shoes and clothing. Similarly, the larceny that occurred at Santa Fe Station
involved a person who stole money from a victim while the victim was playing slot machines at a casino by distracting them. RT 6/19/2007, pp. 67-69. Therefore, even if such evidence was admissible (a fact the State does not concede), counsel made a reasonable decision to avoid introducing evidence that Defendant was suspected in a very similar offense occurring in another casino.

## v. Counsel was not ineffective in communicating with Defendant.

Defendant's claim that counsel failed to sufficiently communicate with him is belied by the record. A defendant is not entitled to a particular "relationship" with his attorney. Morris v. Slappy, 461 U.S. 1, 14, 103 S. Ct. 1610, 1617 (1983). There is no requirement for any specific amount of communication as long as counsel is reasonably effective in his representation. See id. On November 4, 2008, Defendant requested to be made co-counsel because, in discussing the case with counsel, there were disagreements concerning what witnesses to call and what defenses to develop. RT $11 / 4 / 2008, \mathrm{p}$. 3 . The court recommended that counsel and Defendant contimue to discuss the case and counsel stated he would visit Defendant again before the beginning of trial to discuss the case. RT 11/4/2008, pp. 3-4. Such evidence of communication between Defendant and counsel belies Defendant's claim that there was a "communication breakdown." See Hargrove, 100 Nev . at 502 , 686 P. 2 d at 225 . Furthermore, it is the "immediate and ultimate responsibility" of counsel to determine what witnesses to call and what defenses to develop. Rhyne, 118 Nev . at 8,38 P.3d at 167. Finally, Defendant's allegation that counsel's cross-examination of witnesses demonstrates his lack of understanding of the details of the case is a bare allegation belied by the record. In fact, counsel engaged in lengthy and detailed crossexamination of key witnesses Stathopoulos, Luis Valdez, Hancock and Detective Flenner. RT 11/12/2008, pp. 139-53, 180-88, 203-18, 220-23, 248-62. Therefore, Defendant's claim does not warrant relief. See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

## vi. Counsel was not ineffective in not making certain objections.

Defendant alleges counsel was ineffective during trial in the following ways: 1) Failing to object to the expert testimony of Detective Flenner; 2) Failing to object to
the admission of Deja Jarmin's preliminary hearing testimony; 3) Failing to object to Hancock's identification of Defendant; 4) Failing to object to the verbal introduction of State's Exhibit 1; 5) Failing to object to leading questions during Hancock's direct testimony; 6) Ineffective cross-examination of Hancock and no objection to Hancock's identification during redirect examination; 7) Failing to object to Detective Flenner testifying that he was "familiar" with Defendant and solicitation of testimony of Defendant's other bad acts; 8) Failing to object to the admission of hearsay statement that Stathopoulos told Jarmin her stolen credit card had been used to make a purchase at Sheikh Shoes. Defendant contends such alleged ineffectiveness was prejudicial at trial and on appeal. Defendant fails to demonstrate counsel's performance fell below an objective standard of reasonably effective assistance of counsel or that he was prejudiced thereby.

## 1. Detective Flenner's testimony

Detective Flenner testified, in part, concerning his experiences investigating distract and pickpocket thefts and common techniques associated with those crimes. RT 11/12/2008, pp. 236-43 Counsel did not object. On appeal, Defendant contended Detective Flenner improperly testified as an expert. The Nevada Supreme Court rejected Defendant's claim, finding that Defendant failed to demonstrate plain error. Order of Affirmance, 11/8/2010, p. 2.

First, counsel had the "immediate and ultimate responsibility of deciding if and when to object." Rhyne, 118 Nev. at 8,38 P.3d at 167 . Secondly, assuming arguendo that Detective Flenner's testified as an expert, Defendant fails to demonstrate that Detective Flenner's testimony would have been prohibited had an objection been raised under NRS 174.234(2). NRS 174.234(3)(a) provides that the court shall prohibit the testimony of any improperly noticed expert only if such lack of notice was in bad faith. See also Mitchell v. State, 124 Nev. 807, 819, 192 P.3d 721, 729 (2008) (reviewing court's decision to admit improperly noticed expert for abuse of discretion and finding no bad faith nor prejudice to the defendant's substantial rights). Defendant does not argue in his Petition that the State's failure to notice Detective Flenner's testimony was in bad faith. Furthermore,
because Detective Flenner and other detectives testified similarly concerning distract and pickpocket crimes at Defendant's preliminary hearing, Defendant was on notice concerning the testimony and fails to demonstrate that his substantial rights were violated. See RT 6/19/2007, pp. 66-70, 90-93. Therefore, any objection to Detective Flenner's testimony at trial would have been futile and counsel cannot be found ineffective for failing to make futile objections. See Ennis, 122 Nev. at 706, 137 P.3d at 1103.

Furthermore, had the district court heard Defendant's objection and overruled it, Defendant cannot show a reasonable probability that he would have successfully appealed the decision because there was no prejudice. See Order of Affirmance, $11 / 8 / 2010$, p. 2. Therefore, the Nevada Supreme Court likely would have found any error harmless. NRS 178.598 . Thus, as Defendant cannot demonstrate a reasonable probability that any objection would have resulted in the exclusion of the testimony or overturn Defendant's conviction and sentence on appeal, this claim must be denied.

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

## 2. Jarmin's preliminary hearing testimony

Defendant contends counsel was ineffective in not objecting to the admission of Jarmin's preliminary hearing testimony on the grounds the State had failed to demonstrate due diligence in attempting to locate Jarmin. Any objection on this ground would have been futile. On the day of trial, the State moved to admit Jarmin's preliminary hearing testimony under NRS $171.198(7)(b)$, which allows the State to admit such testimony if a defendant was represented by counsel and cross-examined the witness at the preliminary hearing and the witness is "sick, out of the State, dead, or persistent in refusing to testify deposit an order of the judge to do so, or when the witness's personal attendance cannot be had in court." Clark County District Attorney's Office investigator Matthew Johns was sworn and testified that he had attempted to contact Jarmin at his address and called and left messages on Jarmin's phone beginning in mid-October. RT 11/12/2008, pp. 84-86. Johns contacted a woman claiming to be Jarmin's girlfriend who confirmed Jarmin's address and phone number but Johns was unable to contact Jarmin. RT 11/12/2008, p. 91. On the day of trial, Johns again contacted Jarmin's girlfriend, who told her that Jarmin had been admitted to a hospital in California on Friday for heart problems and that Jarmin's family lived in the area near the hospital. RT $11 / 12 / 2008$, p. 87 . Johns then attempted to contact the hospital as well as Jarmin's family in California to confirm that Jarmin was in the hospital, but was unsuccessful. RT 11/12/2008, pp. 87-88. The State moved to admit Jarmin's preliminary hearing testimony per NRS 171.198 on the grounds he was hospitalized in California. Counsel objected and argued admission of Jarmin's testimony would violate Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354 (2004). RT 11/12/2008, pp. 92-97. The district court admitted Jarmin's testimony.

Although Defendant conceded the State had demonstrated due diligence in attempting to locate Jarmin, the court would have found such regardless. Johns testified he attempted to locate Jarmin since mid-October when he was given the subpoena
and had attempted to contact him at work, home, and through approximately fifteen phone calls. Although Johns was unable to speak to Jarmin, he contacted Jarmin's girlfriend who confirmed Johns' contact information for Jarmin. Finally, when Johns followed up on past communication with Jarmin's girlfriend on the day of trial, he learned that Jarmin had recently been admitted to a California hospital, but was unable to confirm this statement. In light of such efforts, Defendant's claim that the State failed to exercise due diligence in attempting to locate Jarmin is a bare allegation belied by the record. See Hargrove, 100 Nev . at 502,686 P.2d at 225 . Notably, while Defendant now alleges the State did not exercise due diligence in attempting to locate Jarmin, he does not explain what additional efforts the State should have made. Thus, even if counsel had objected on the grounds advanced by Defendant, the objection would have been futile and counsel cannot be found ineffective for failing to make futile objections. Ennis, 122 Nev . at 706, 137 P.3d at 1103. Furthermore, that counsel objected on Crawford grounds demonstrates a reasoned tactical decision to advance what counsel believed to be the strongest argument for not admitting Jarmin's preliminary hearing testimony and such decision is not so deficient to warrant reconsideration. See Rhyme, 118 Nev . at 8, 38 P.3d at 167.

Inasmuch as Defendant alleges counsel was also ineffective for failing to object on the grounds of untimely notice of Jarmin's unavailability, such an objection would likewise have been futile. According to Jarmin's girlfriend, Jarmin had been admitted to the hospital the Friday prior to trial with heart problems, a fact Johns had learned the morning of trial. It was on this ground, not the State's inability to locate Jarmin, that the State requested Jarmin's preliminary hearing testimony be admitted per NRS 171.198(7)(b). Notice of Jarmin's medical condition was provided the same day that the State learned of it and any objection to the introduction of Jarmin's testimony on this ground would have been futile as NRS 171.198(7)(b) does not require such notice. See Ennis, 122 Nev. at 706, 137 P.3d at $1103 .{ }^{5}$
${ }^{5}$ Inasmuch as Defendant contends counsel was likewise ineffective for failing to renew his best evidence objection from the preliminary hearing in connection with Jarmin's testimony, such claim is without merit. First, it is unclear what objection Defendant is referring to, as counsel did not raise a best evidence objection during Jarmin's preliminary

## 3. Hancock's identification

Defendant contends counsel was ineffective for not objecting to and not cross-examining Hancock's identification of Defendant. First, counsel has the "immediate and ultimate responsibility" of deciding when and if to object. See Rhyne, 118 Nev. at 8,38 P.3d at 167. Further, Defendant fails to provide any authority for the proposition that a previous identification is inadmissible because of the length of time between the identification and trial. ${ }^{6}$ Therefore, any objection to Hancock's identification on this ground would have been futile. See Ennis, 122 Nev. at 706,137 P.3d at 1103 . Second, Defendant's claim that Hancock was not cross-examined concerning his identification of Defendant is belied by the record. Defendant was cross-examined concerning the time between the incident and the photographic identification, his knowledge of the offense prior to the identification and the fact that he did not personally see Defendant in Sheik Shoes on the day of the offense. RT 11/12/2008, pp. 204-09, 211-14. Therefore, this claim must be denied. See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

## 4. State's Exhibit 1

Defendant contends counsel was ineffective for failing to object to Hancock's testimony regarding State's Exhibit 1. State's Exhibit 1 was the receipt for the transaction made with Stathopoulos' credit card at Sheik Shoes on March 17, 2007. State's Exhibit 1. First, counsel has the "immediate and ultimate responsibility" of deciding when and if to object. See Rhyne, 118 Nev. at 8,38 P.3d at 167 . Second, State's Exhibit 1 had been admitted into evidence prior to Hancock's testimony. RT 11/12/2008, pp. 158-60. Thus, as the "best evidence" was already admitted, NRS 52.235 was not violated by Hancock's testimony and any objection would have been futile. See Ennis, 122 Nev. at 706,
hearing testimony. See RT 6/19/2007, pp. 17-34. Furthermore, any best evidence objection would have been overruled, as the State had sufficiently demonstrated that the original Sheikh Shoes video had been destroyed without the presence of fraud by the State and could not be obtained by judicial process. See NRS 52.255 . Thus, any objection by counsel would have been futile. Ennis, 122 Nev at 706,137 P. 3 d at 1103 . Furthermore, because such objection, or renewed objection, would have been futile, Defendant cannot demonstrate a reasonable probability that it would have been sustained at trial, or successful on appeal.
${ }^{6}$ In fact, NRS $51.035(2)(\mathrm{c})$ provides for the admission of prior statements of identification made "soon after perceiving the person" but does not prescribe a time limit between the identification and the trial.

137 P.3d at 1103. Finally, Defendant cannot demonstrate prejudice. Hancock's testimony concerned the contents of the State's Exhibit 1, including: the card number for the credit card used, the date, the salesperson, the items purchased and the amount. RT 11/12/2008, pp. 197200, 216-17. Defendant did not challenge that Stathopoulos' credit card was indeed used during the transaction State's Exhibit 1 memorialized. Given that the evidence testified to was admitted and all of the contents of the receipt were conceded to by Defendant, there is not a reasonable probability of a different outcome had counsel objected and such objection was sustained. Therefore, this claim must be denied.

## 5. Leading questions

Defendant contends counsel was ineffective for not objecting to leading questions during Hancock's direct testimony. The specific questions Defendant contends were improper concerned State's Exhibit 1 and follow:

Q: And it shows on here at the top a number 438852700012 1281; would that be the actual credit card number that was made a copy of from the actual credit card given to a clerk?
A: That's - that's how it prints? Yes.
Q: Okay.
A: Yeah.
Q: Now, showing you the last page, the full-length page of State's Exhibit number 1 ; is this actually a computer printout - is this actually a computer printout of a receipt detailing what was purchased?

A: Right. Yes, it is.

RT $11 / 12 / 2008$, p. 198. Leading questions are questions which unnecessarily suggest an answer and are generally not permitted during direct examination. NRS $50.115(3)$ (a). Counsel had the "immediate and ultimate responsibility" of deciding when and if to object. See Rhyne, 118 Nev . at $8,38 \mathrm{P} .3 \mathrm{~d}$ at 167 . Furthermore, neither of the challenged questions asked by the prosecutor unnecessarily suggested an answer. While both called for a "yes" or "no" answer, neither question suggested an answer to the witness and were therefore proper. Therefore, any objection would have been futile. See Ennis, 122 Nev. at 706,137 P.3d at
1103. Finally, Defendant cannot demonstrate that, had counsel objected, there is a reasonable probability of a different outcome. Both questions concerned evidence already admitted and facts conceded to by Defendant. Therefore, had counsel objected and such objection been sustained, the prosecutor likely would have simply rephrased the question. Even if the prosecutor had abandoned the line of questioning, the result of Defendant's trial would have been the same, as State's Exhibit 1 was admitted and Defendant conceded to its contents. Therefore, Defendant fails to demonstrate prejudice and this claim must be denied.

## 6. Cross-examination and redirect of Hancock

Defendant next alleges counsel's cross-examination of Hancock regarding identifying Defendant was "sloppy" and ineffective. As demonstrated supra, this is a bare allegation belied by the record as counsel. See Hargrove, 100 Nev . at 502,686 P. 2 d at 225. In fact, counsel cross-examined Hancock regarding his identification of Defendant. See RT 11/12/2008, pp. 204-09, 211-14. Furthermore, Defendant's claim that counsel was ineffective for failing to object to Hancock's testimony regarding Defendant's identity on redirect must likewise fail. Defendant does not state what grounds any objection to Hancock's identification could have been made and, as demonstrated supra, any objection to Hancock's identification testimony would have been futile as Hancock's identification was admissible. See Ennis, 122 Nev. at 706, 137 P.3d at 1103 . Therefore, this claim must be denied.

## 7. Detective Flenner's familiarity with Defendant

Defendant contends counsel was ineffective for failing to object, on "other acts" evidence grounds, to Detective Flenner's testimony that he was "familiar with" Defendant and for soliciting "other acts" evidence during cross-examination. ${ }^{7}$ Although evidence of other bad acts is inadmissible to prove action in conformity therewith, no evidence of other acts was offered against Defendant. Detective Flenner's testimony does not imply anything more than that he knew Defendant prior to March 17, 2007. This

[^4]```
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    A 'I don't hiver the account number. Inlave it at home.
    THE CCURT: Well, she has the police report that you
filled out. If you tocked at it, would that remind you or refresh
your recollection of the credit card number?
    THE WITNESS: Well, It ended in 1281.
    THE COURT: That's not the question. The question is:
If you look at the police report you wrote out, would it make you
think, oh, this is the number on that credit card or there is no
way you can remember it?
                            THE WITNESS: I really can't say that I would, even lf I
looked at it. I have it at home and I have the purchase that was
made on there. I know tt ended in 1281, but I don't have the
whote number.
    THE COURT: If you would like to approach, you may.
    MS. WALSH: I would, Judge.
BYMS. WALSH:
    Q Im showing you this document.
        Is this what you wrote to the police that day about your
credit cards in your pocket -- or in your wallet? (Indicating)
A Yes. That is correct.
Q And at the time you wrote this, these would have been the
accurate credit card numbers that you had in your wallet?
    A Right.
    Q Okay, Ared looking at that, does it have an account
number for a Chase Visa?
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A Yes.
    Q And is that account number 4388527000121281?
    A Nght.
    Q And im that, in fact, the accoumt number for the Chase
Visa that had you stolen from your wallet?
    A Yes, it is.
    Q Does that help refresh your memory that that's it?
    A Yes.
    MS. WALSH: Pass the witness, Judge.
    THE COURT: Any cross?
    MR. JORGENSON: No, Judge.
    THE COURT: Is she free to go?
    MR. SWEETIN: If we could just have her wait outside,
Judge.
    THE COURT: You can wat in the courtroom or outside
because the exclusionary rule is not invoked. So whatever you
prefer, but just stick arouncc.
    THE WITNESS: Thank you.
    MR, SWEEIIN: The State would call Deja Jamon.
    (Witness swom.)
    TME CLERK; You may be seated.
    Please state your name for the record.
    THE WITNESS: Deja Jarmon.
    THE COURT: Spell your first and last names.
    THE WITNESS: Defa --
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THE COURT: Soeak up.
THE WITNESS: D-e-j-a, J-a-rom-a-n.

DEIA JARMON
called as a witness on behalf of the State,
having been first duly sworn,
was examined and testified as follows:

\section*{DIRECT EXAMINATION}

BY MR. SWEETIN:
Q Good morning, Mr. Jarmon.
I want to turn your attention to March 17th, earlier this year, 2007.

How were you employed on that day?
A I'm a third koy at Sheikh Shoes.
Q That's s-h-e-l-k-h; is that correct?
A That's correct.
Q And you said third key. What exactly is a third key?

A Ix's a supervisor. I don't have the responsibility of the assistant manager. I'm under the assistart manager. I do some supervising and some cashiering.

Q So your duties would inclucde ringing people up, as well as supervising other employens; would that be accurata?

A Yes.
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Q And that Shlekh Shoes is located at 3525 South Marytand Parkway here in Las Vegas, Clark County, Nevada; is that correct?

A Right
Q Now, I want to turn your attention to the early afternoon
on that same clay, March 17th of 2007.
Were you on duty on that day?
A Yes, I was.
Q Did you sea amyone on that day, as you were on duty, that's present in the courtroom today?

A Yes, the defendant in the blue shirt. (Inclicating)
Q You made reference -- You pointed to an individual in the courtroom.

Could you again point that individual out and identify something that he's wearing.

A Tha defendant over here in the biue top with the corn rows.

Q And that is at the table next to me?
A Yes.
MR. SWEETIN: May the record reflect the witness has
identified the defendant.
THE COURT: That will be noted.
EY MR. SWEETIN:
Q Had you seen the defendant prior to that day?
A Yeah He had visited our store, I think, maybe twice RIN!
prior within a two or three week period.
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\(Q^{i}\) cashiered or anytuing of that sort?

A I spoke to him, but I never -I hactn't actually waited on him; someone else did.

Q Andi on those prior occastions, were you aware whether the conducted transactions at your store or not?

A Yes. Wenl, on one occaston, he did, that I remember.
Q Now, I want to turn your attention again to that eariy afternoon on March 17th of 2007.

Couid you tell us your observations of the defendant on that day when he entered your store.

A I recall that he had on - I belleve it was a T-shirt and maybe a jersey when he walked in with hls friend.

Q So he entered with a friend?
A Yes, he did.
Q And could you describe that friend.
A The friend, I don"t remernber exactly what he had on.
Q Was he white or -
A No, he was black - black gurf a littio shorter than the defendant.

Q Olkay. And could you describe what they did when they entered the store?

A They came in, spoke to me and the assistant manager, picked out a few items and made a purchase,

Q Now, at the time that you indicated they came into the ACCUSCRIPTS (702) 391-0379

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stors, picked out soms itents, how long were they in thare prior to finalizing their purchase7

A Maybe 20, 30 minutes.
Q Okay. And at the time that they finallzed the purchase, were you involved in that at ail?

A Yes, I was.
Q What was your involvernent?
A Actually, the defendant was the customer that I-that I had and I aiso rang up his purchase.

Q So he presented you with sorne merchandise he had selectred?

A Yes, he did.
Q And do you recall how the defendant intended to pay for the merchandise?

A He prodsced a credit card.
Q Olay. Now, do you have a normal procedure that you go through when people present with you a credit card?

A Weda.
Q What would the normal procedure be?
A With a credit card, we usually check ID to match the namme of the - of the ID on the credit card.

Q Did you do that in this case, on March 17th, with the defendant?

A No, I did not.
Q And why is that?

A Because hithad been there prior and he also used a credit card the last time that he came In. And this time, 1 just overiociked it and \(\%\) didn't do it because he's a repular customer.

Q So how did you use the credit card at that time to ring up the sale?

A I swiped the credit card and then I made a printout of the credit card.

Q So you just sort of swiped it through a machine that you herven is that right?

A Yes, it is.
Q All right. And as a result of you swiping the credit card, did the transaction ring up at that time?

A Ves, titwent through,
Q Doyou recall the amount of that tranamaction?
A I don't know offhand, but I do have a recsipt.
Q Did you bring some evidence with you today?
A Yes, 1 didi.
Q What did you bring?
A This tis actually a copy of the receipt and a printout.
Q Okay. I'm showing you what's been marked as State's
Proposed Exhibit Number 1.
Are these the documents that you brought to court today?
A Yes.
Q And do those, in fact, document the sale that occurred on this particular day of the defendant?

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A Yes, it does.
Q And what was the total amount of the sale?
A 490.07.
Q 490 and some cents?
A Yes.
Q And you indicated that that was run on a credit card; is
that correct?
A Yes, it was,
Q And does that, in fact, document the credit card as well?
A Yes, It dowes. It mtatess It's a Visa.
Q Now, these particular documents, these are the actual docurments that wero produced as an result of this sale; is that correct?

A Yes, it Is.
MR. SWEETIN: Okzy. The State would move for the
admission of what's been marked as State's Proposed Exhibit 1.
THE COURT: Any objection?
MR. JORGENSON: No objection.
THE COURT: That will come in.
(State's Exhibit 1 admitted into evidence.)
BY MR. SWEETIN:
Q You indicated there was a card number on there as well, a card that the deferidant used?

A Yes, there is the number,
Q And what is the card number?
1

A ' Z is 4388 s ' 27000121281.
Q okay. And what kind of a card is that?
A \(\mathbf{I} \cdot \mathrm{s}\) Yisa card.
Q Now, after ringing up this sale, what happenss next?
A The defendant - we usually offer a reward type thing
for - - for our customers, our regular customers, We get like a -
what is it called? Like a favorite customer type thing. So we'll write their number down and their name.

He gave me the name and the number, but I don't have that paper here with me.

Q So you are not sure what that name and number might have been that he gave you?

A No. I have a book but it's at my job.
Q Okay. Does the defendark leave subsequent to ringing up the transaction then?

A Yes, he does.
Q Olay. Do you have any other concern in regands to this transaction that same day?

A \(\mathbf{N o}_{n}\)
Q Doea anybody contact you in requards to that transaction?
A Yes. Shortty after the purchase, maybe an hour or so fater, 1 got a call from Miss \(-\mathbf{I}\) ean't say her last mame, but Georgia.

Q And that's the lady who you just observed testily; is that correct?
\[
\text { ACCUSCRIPTS (702) } 391-0379
\]

\section*{Page 24 of 123}

\section*{A Yes, it is.}

Q And did you have a conversation with her at that time?
A Yes, I did.
Q And as a result of that converstation, what did you do?
A She mentioned that her card had been used at our store and it was a stolen card. 1 got her name and phone number.

She staid that she had spoicen to detectives and spoike to the security at the hotel she was staying at and she would get in contact with me or have the detective get in contact with me.

Q Based upon the imformation that she gave you in regards to that card, did you locate the information you've just described?

A Yes, I did.
Q Dld you do anything elsa?
A After I got the information, I just waited for the
detective.
Q Do you hava a surveillance system in your store?
A Yeah, we do.
Q And that survelliance systern, thare is cameras in your store; would that be accurate?

A Yeah, there is.
Q Now, you indicated that you are a manager there at the store; is that correct?
A. Yes.

Q Do you use the surveillance system in the course of your ACCUSCRIPTS (702) 391-0379
dutien from time to time?
A yes, we do.
Q To what, observe transactions?
A Yeak sometimes we have to check and make sure that
nobody is stealing merchandise or, you know, we have to check on
if someone comes intos the storte and they're doing sornething
they're not supposed to.
Q On this particular day, did you have occasion to observe the video in regards to this transaction?

A Yeah. After I spoke to Ceorgia, I spoke to my district managex, who was present at the time, and the assistant manager. We then went back to look at the video, to find out if it wras the defendiant who made the pirchase

Q And did you-did you subsequently observe that video?
A Yes, we did.
Q And did the video depict al ciear and accurate depiction
of what you have described to the court as occurring on that date?
A Yes.
Q At some point in time, did the police talk to you in
regards to this incident?
A Yes, they did.
Q Do you recall a Detective Flenner?
A Yes, I dio.
Q Did Detective Flenner talk to you specifically about this incident at your store?
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\begin{tabular}{|c|c|}
\hline \begin{tabular}{l}
A \\
0
\end{tabular} & \begin{tabular}{l}
Yes, he did. \\
Did you, at amy point in time, talk about the video
\end{tabular} \\
\hline within & ve store when you were talking to Dekective Flenner? \\
\hline A & Yes, we did. \\
\hline Q & Did Detective Flenser have an opportunity to review that \\
\hline video? & \\
\hline A & Yes. \\
\hline Q & And that was the same video that clearly and accurately \\
\hline depplets & what you have just described as occurring to the Court? \\
\hline A & ves. \\
\hline & Mr. SWEEIIN: The State passes the witness. \\
\hline & THE COURT: Cross-examination. \\
\hline & GROSS:EXAMINATIQN \\
\hline BYMR. 1 & ORGENSON: \\
\hline \(\mathbf{Q}\) & You said you were the third key manager at the shoe \\
\hline store. & \\
\hline A & Yes, 1 ami \\
\hline \(Q\) & What doest that nsean? \\
\hline A & In's a supervisor. When the manager or the assistant \\
\hline manage & \(r\) is not in, then Irm the manager in charge. \\
\hline Q & So third key means you are third in charge? \\
\hline A & Exactiy. RIMI \\
\hline A & IMAGED \\
\hline \(Q\) & Got it. \\
\hline & And on that day, the 17th, you were working eight to \\
\hline & ACCUSCRIPTS (702) \(391-0379\), 9 \\
\hline
\end{tabular}

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                                    Page 3: of 123
                            Q "But you do remember tra grve you :, nsm kind of a credfit
    card?
A Yeah, he gave me -
Q And then oy fooking at the papers, you know what kind it is?
A Exactiy.
Q How soon atter you gat - you got the call from - well,

``` how soon after my client leaving your store did you get a call from a lady saying, hey, I think somebody used my credit card at your tatore?

A Between one to two hours afterwards.
Q And then it was after that that you taliced to the pollice?
A Yeah. Well, I didn't talk to them that day. I spoke to her. Several days later, I was contacted by the police.

Q All ripht. When, in reference to speaking to the polica or to the lady on the phone, dild you actually took at the video tape?

A Anter I spoke to her, that's when we looked -- me and the district manager and the assistant managur looked at the tape.

Q 50 you found out - or you heard a visitor to Las Vegas calling up and saying \(\mathbf{I}\) think sommone frauctulentiy used my card at your place, and then you turned around and in addition to looking it up, you contacted your supervisors?

A Yes
Q They all got together with you betore your shiit ended? ACCUSCRIPTS (702) 391-0379

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A Yes.
Q And, among other things, you gathered up thesa papers and ran the video tape for the time you remembered him - you remember the transsaction possibly to have happened?

A From the time that's on the credit card machine, from the time I tallced to her.

She called me and said that she had talked to her -- her
credit card company and they reported that the purchase wes made
for a certain amount with her cord.
She gave me the number and that's when I found it. It was a match. That's how I knaw.

Q Clay. So that's how you got the papers and that is where -- this survellance is a ruming survellance; it \(\ddagger\) ust continues to take a picture?

A Yes.
Q More than one camera or one camera?
A There is cameras all over tha store, but it's one custral unit in the back.

Q So then you go to it, back it up bo the time you think this transaction was supposed to have occurred and watched the cameras that woukd have focused on wherever you would have been standing; and that's what you sald you looked at and it showed What you remembered to have happened a couple hours eartler?

A Right.
Q At this time, it's like three or four o'ciock in the
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o'clock eanlier that day?

A Yeah.
MR. JORGENSON: Nothing else.
THE COURT: Any redirect?
MR. SWEETIN: Nothing further.
The COURT: is Mr. Jamon free to go or do you want him
to stay in the countroom or outside?
MR. SWEEIIN: the is free to go, Judge.
THE COURT: You can leave If you want, as you heard, or you can stay. If you do leave, no matter what, do not state anything about your testimeny until the end of the preliminary hearing. Thank you for walting.

\section*{(Recess in proceedings.)}

THE COURT: State's next witness.
MS. WALSH: The state calls lames violette.
(Winess swom.)
THE CIERK: F前ease state your name for the record and spell your first and last narse.

THE WITNESS: J-a-me-s, vi-aiet-te.

\[
\begin{aligned}
& \text { Q 'And what, II anything, did they doin Page } 39 \text { of } 123 \\
& \text { A they reimbursed me and filled out a police report. } \\
& \text { Q And wast the police department contacted as welr? } \\
& \text { A I suppose. I couldn't twil you. } \\
& \text { Q So you hadi contact mostly with the casino securty then; }
\end{aligned}
\]

Is that correct?
A Well, yeah. Somebody did come out to my house and interview me

Q And that would be later on then from this date?
A Yeah.
MS. WALSH: Pass the witness, Judge.
THE COURT: CROSS.

CROSS-EXAMINATION
BY MR. JORGENSON:
Q You were at the Santa Fe Casino On March 23rd, about seven o'dock in the afternoon, right?

A Ves, sir.
Q My cell phone says that's a Friday.
Does that sound right or do you know?
A Probably.
Q Okay.
A 1 couldn't tell you for sure.
Q Were you working regularly back then or retined?
A No, I worked.
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Q Monday through Firday or do you know?
A Uh-huh.
Q Were you working Monday through Friday?
A Yeah, Monday through Friday.
Q But you don't remember If this was the end of tha week or not?

A I only go in on Friday, Saturday and Sunday.
Q Ckay. Now, you were in a section of the Santa Fe that'a the high limit slot machines.

Does that mean they're five or ten dollar slots or what
does that mean?
A Anywhera from 50 cents to \(\$ 25\).
Q And you sat down on a row that had how many slots?
A Four.
Q And you sat down on the slot machine that was furthest to your right?

A Yes.
Q And you had pulled a thousand -- or ten one hundred ciollar bllis out of your pocket?

A Yes.
Q And put it with your left hand in between the end slot that you were looking at and the slot just next to you?

A No. I put -- I pulled a thousand doilars out, put \(\$ 200\) in the slot machine and then stuck 800 on the counter in fromt of me, with my cigarettes and ash tray on top of it.

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Q Are you rigit-handed or left-handed?
A Right-hancled.
Q So you set them down with your right or with your left
hand or do you remember?
A No, I couldn't - I don't know.
Q But you put it to your lett?
A Yeah. It was in my line of vision.
Q And you put it away from the open alsile?
A res.
Q Do you remenber why you put it there or does that - is that what you were thinking --

A That's where \(I\) always put it.
Q Out of the alsia?
A Yes.
Q The person who is sitting next to me came up to you from
behund, from your left, and started to ask you a quertion.
A Yeah.
Q Vou turned, while you were seated In your seat, and answered him?

A Well, actually, I was kind of tike ajready turned,
because the guy had already hit that straight fiush, so we were talking and then he kind of like fumped in the middle.

Q Did he actually sit down at the -
A No, he never did play. Me went back to the counter and acted like he was going to get some change and somebody told me ACCUSCRIPTS (702) 391-0379

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later he had a one dollar bill in his hand.
Q Just so I have this ripht: You are stiting at the far right siot, the guy who is my client comes up to you and asks you about the two machines that are inumediataly to your left, some question about how weil they're doing?

A Yess
Q And as ha's standing there or because he's standing
there, you take your dgarettes and your eight \(\$ 100\) bills and move it to your left \(\boldsymbol{m}\) - to your right?

A Yes.
Q Automatically or consciously?
A No, he was acting like he was going to sit down, so I was getting it out of his way.

Q cetit.
But he never actually sat down?
A No, he naver did.
Q And during this time while ha's talking to you and you are moving the bills, there is scmebody to your left hitting a fackpot?

A Yes.
Q In that same row of four?
A He's on the first machine.
Q So there is the two empty machines betveen you and the guy who hit the straight. flush?

A Yes.
that you reached for a cigaratte?
A Yes
Q The one that you were smoking was getting low or you just
warted to statt moking?
A I chain smoke.
Q olay.
A Couldn't have been too long.
Q All right. So that's my lant - just about my last
question; and that is: From the time you see my dient walling off to some change area, how long is it from then do you rotice your cigarethes gona?

A Probably just a coxpite semconds, because as soon as I reached for them and noticed they was gone, I was out of my chair and ruming out the back door and looking for hims.

Q And the back door is in the same direction as the change machine?

A No. There is lifice a front door and a back door.
Q Why did you run to the back door?
A That's the last direction I saw hirn go inn.
Q Okay, So you saw him leave your area, go toward a change place and then, out of the corner of your eye, noticed that he werst past ft toward the back door?

A Yes
Q You noticed your cigarettes are gone; then immediately after that, you noticed that the money is gona? ACCUSCRIPTS (702) 391-0379

A Yeah.
Q You, at some point, netice that the gry who you thought was gring to sit down next to you no longer is in the area,

A Well, he want back over to the -- to the change counter.
Q You coudd see him walk out?
A Well, mure, yeah.
Q Is the change coumter to your left or to your ityht?
A Tomy left.
Q Did you ever see him walk over to the rimht side of you?
A Never clid.
Q So as far as you know, you were always -- the mornenk you grabbed your bills and set them on the right part of your machirre, you were always in between the money and him?

A Until -- yeah.
Q Did you ever - you nover saw him walk down that alsie close -

A No, I never did see him go down the aista.
Q Oikay. And then what causes you to notice - on, you said

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A Yeah. As ston as I noticed the money was gone, I ran out that back door looking far him.

Q Never saw him?
A Never baw him.
MR. JORGENSON: Notring else.
THE COURT: Redirect.
MS. WALSH: Very briefly.

\section*{REDIRECT EXAHINATION}

BY MS. WALSH:
Q What is your date of birth, sir?
A January \(1244,1947\).
Q So in March of this year, would that maice you 60 years okd

A Yes.
MS. WALSH: Noching further, Jurge.
THE COURT: Recross?
MR. JORGENSON: Nothing.
THE COURT: And is Mr, Violette free to go? MS. WALSH: Yes, Judge. THE COURT: You are free to go; you can remain, find out What happens. Ether way, thank you for waiting and testifying.
You may step down from the witness chalr.
THE WITNESS: Thank you.
THE COURT: You are welcome. ACCUSCRIPTS (702) 391.0379

MS. WALSH: The state calls Dennis McCann. (Winess swom.)
THE CLERK: You may be seated.
Please state your name for the record.
TME WTINESS: Dennis Keith Mciann.
THE CIERK; And spell your first and last name, please.
THE WITNESS: First name, De-n-n-i-s; last name
\(\mathrm{M}-\mathrm{C}-\mathrm{C}-\mathrm{B}-\mathrm{m} \mathrm{n}\).

\section*{DENNIS MCCANN}
called as a witness on behaif of the State.
having been first dtuly sworn,
was examined and testified as follows:

\section*{DIRECT EXAMIMATION}

BY MS. WAISH:
Q How are you currentily errployed?
A I'm the director of surveillance at the Santa Fe Station Hotel a Casing.

Q Is that the Santa Fe at 4949 North Rancho here in Las Vegms, Clark County, Nevada?

A That would be correct.
Q And what are your duties as the director of survelliance?
A Maintain survellance equipment, training, observing.
I'm a worting director.
Q Okay. So part of your duties are to monitor the \(\quad\) NAM ACCUSCRIPTS (702) 391-0379
surveillaince yydiem ot the Santa fe?
A That is correct.
Q So it's fair to say you are very familiar with that system?

A That is correet.
Q Could you briefly describe to the Court what kind of survellance system you inave?

A It's a broad switch; it's 1024 by 64. It can handere up to 1,024 cameras, 64 monitor outputss, It cowers the casino ficor, Vp silots, the pit, the eages soft count, total caslino basically, inctuding the hotel tower and the hallways and that.

Q So you have carneras on the casino floor that - do those cameras feed any video up to a oertaln room on a monitor?

A Yes, they do. We have working monitors, which are cameras we can call up and see, and then, in the back, we have VCRs that recorti carmeras that are everywhere.

Q The feed that the comeras are catching on a vidteo are recorded on a system as mell?

A Correct.
Q Do you have a diate and time stamp on the video foed that's reported as well

A All video goen through time, date genverators and tr's autornatically imprinted on the vided tape.

Q And is the date and time starny checked for aceuracy regularty?
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A Yes. An inaccuracy would be if there is no tirne - it
there would be no tima/date there, then there le a problem with the time/data generator.

Q Olcay. And the survelliance system is maintained so its accurate and functioning on a requiar basia?

A According to the Nevadn Caming stratutes, that in correct.
Q Anct are you aware of an incident that occurred on March
23 rl with an individual by the name of Ronald Ross and James Violetten?

A I was wware of the name Violetta, yes.
Q And were you contacted by anyone in reference to al survelllance video regarding this Incident?

A To review an Incident of a tape of a distract and prab theft that had happened in the VIP slot section of the hoted.

Q Did you record any video surveillance that documented this incident?

A Several recordinns.
Q And are those recordings -- are those recordings a clear and accurates depiction of what occurred on that date and tirme?

A Yes.
Q You indicated you had several recorcings; is that
correct?
A That is correct.
Q And is that because the camera only captures a small portion of what's going on in the casino, so you would have to
move from different camera to camera to track some of these movernent through the entire casirno?

A Correct. And that's what would be on the composite tape that you have.

Q And did you providie this tape to anyone in reference to this Investigation?

A Detectiva Julie Hall from the Metropolitan Police
Department.
Q And you provided that tape that clearty and accurately depicts what occurred that evening involving Mr. Violette?

A Correct.
MS. WAi.SH: Pass the witness, Judge.
THE COURT: Cross.

\section*{CROSSEXAMNALION}

\section*{BY MR. JORGENSON:}

Q On the 23 rd of March of this year, you were at the Santa Fe on a shitt doing your job?

A Well, I don't actuaity work a shift. I'm the director. I could woek amy tima I want. I Just - you know, I just bike doling It

Q Do you remember what time you got to work on the 23 rd of March?

A I don't ciock in and out. My dayst can be - you know, I can show up at nine in the morning and leave - or one that next ACCUSCRIPTS (702) 391-0379
monting; or IH show up at sbx in the morning and leave at efeven o'clock that night.

You know, it just depencts. I like to work. I like to
catch bad guys. I Ilke to look at tape. 1 like to watch carneras.
Q All rigit. Watching these camerws and looking at tape, that occurs in one centrai room?

A That is correct.
Q Not on the gaming floor, but in a different area of the casinc - of the hotel?

A I'm not sure -- quite sure I understand the question.
Q Olay, You have some room set up with a lot of monitors and equipmert to recoed what those monitors are watching?

A The surveiliance rocm, yes,
Q And that's tike they show on TV, some dark room somewhere In the casino that's not a place where people normally waik in and out?

A No. And tris nothing llike TV,
Q Okay, But there is a whole bunch of monitors?
A Yes.
Q How many monitors in the room?
A I have 34 worling.
Q How many cameras are they uftimately hooked up to?
A Those 34 woriking, you only can sees the cameras you pull up on each monitor.

RIM
IMAGED
Q Sure. How many cameras do you have to choose from? CH
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A "I think the better question would be how many VCRs do we have that record cameras that tape on the casino fioer.

Q How many is that?
A That would probably be in excess of 600.
Q You have a a VCR for every camera?
A Some of them are quads, meaning that there is four
cameras - shots on one video screen.
Q But the - the idea is that every single camera is being recorded elther fill screen or a quarter screen somewhere on one of those tapess?

A The dream wish of every surveillance director is that every camera in the casino would be recorded, all the time.

THE COURT: The question is: Are all 600 of those
getting recorded?
THE WITNESS: No , they are not.
BY MR. JORGENSON:
Q Most of them?
A Well, a good majority of them, yes.
Q Olcay. Now, when this occurred, when this man sald he had money taken from him at the high limits area, do you recall il you were in that survelliance room when it happened?

A I believe I was.
Q But you didn't hear about the thert until a couple of minutes - or 10, 15 minutes later; is that right?

A That would be correct.
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Q So you would have to have someona tell you, look, siot number so and so or row number so and so just could hava been the tocation of a theffy, and then you, bassed on that information, 90 revind whatever camera was focused on that - whatever VCR was recording whatever the camera was focusing on and put it up on monitors?

A We would fust revieve it on another monitor, pull the tape out of the system and look at them.

Q And that's what you did in this case?
A That is correct.
Q Now, you were not at the scene of this high shot machine when the money was taken because you were up in the surveillance room, correct?

A Correct.
Q. How do you know then that what you then looked at, this recording, 10 ar 20 minutes later, and how -- do you know how much
later after this was supposed to have happened that you actually. first watched the tape?

A No, sir. I can't remember.
Q Half an hour or you had no idea?
A It could have been, you know, a haif an hour. I mean, I don't remember. I can't give you an answer to that.

Q Let's say a half an hour fust for the sake of the discussion -
A Olcay.

Q - knowing that you are not sure.
A Okny.
Q How do you know that what you are watcining a half an hour
after it acturally occurred really accourately demonstratess what
that tepe is supposed to be showing because you weren't there?
A Sir, you mre maying bmcause I wasn't -I I don't
understand the question again.
Q ril ask it agpin.
You told the prosecutor that these cameras and tape accurately reflect what was going on in front of what the eamera is focused on.

A Correct, in real time.
Q You watched 30 minutes tater, possibly what the camera showed in that particutar high siot area where the victim, who made the comptaint, was playing, but you didn't watch it until 30 minutes aftar it actually happened, if 30 minutes is the right amount is that correct?

A Okay. If we can go by, say, 30 minutes, sure.
Q How do you know that's accurate, glven the fact that you weren't anywhere close to that slot machine when the tape is running? How do you know that's what is really happening on that stot machine?

A Because that's what is recorced on the tape.
Q All right. So you are telling me this because of your experience of watching the tapes.
ACCUSCRIPTS (702) 391-0.379

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\begin{tabular}{|c|c|}
\hline & What expertence sives you the idea that these are \\
\hline accura & -- the camera is an accurate video tape? \\
\hline A & Ive done this for 17 years. \\
\hline Q & Hive you actually, during that time, been in the sce \\
\hline a cam & and then later on watched yourself and say to y \\
\hline This is & crurata? \\
\hline A & If it has happened, it's happened by accident. \\
\hline & MR. JORGENSON: I understond that. \\
\hline & THE COURT: I think the question is: Have you ever \\
\hline viewe & tape, hke set up a practice mode, and then, you, for \\
\hline example & saying: Okay. Weire going to be in this courtroom and \\
\hline we're g & g to want Mr. Jorgenson silting there video taping it \\
\hline and ma & sure it's accurate. He knows It's there; he waves to \\
\hline & \\
\hline
\end{tabular}

DIE WITNESS: Oh, yes, yes.
THE COURT: Or has it come back where he's tried to focus
on him and the recorting is actually for a different area of the casino?

THE WITNESS: In this instance, these are absotutely accurate.

BY MR. HORGENSON:
Q And you know that because of your working with these particular cameras and these particular tape machines?

A Correct. Because wel researched it, once we had
practice to go suack to where did the individivit-
Now, we know what they look like, mo now we start -w we
don't start at the endj we start back at the bepinging: When did they come in the casino?

We track them through the casing, using the various cameras that recond, that put them in thast area, in thyt location, at that time, when that thef occurred.

Q And then you make some ldind of compilation of those cenmora angles und efve that to the pollce?

A That is correat.
Q And you did that in this case?
A That is correct, sir.
Q And you make that on a computer dise or on a VHS tapef
A A Vhis tape.
Q Are they stored at your casinc on VHS tapes, iong-berm storage or how are they stored?

A In this particular case, they were locked in moy office in the survelltance room.

Q No, I mean, these - these cameras are running 24 hours a day?

A That is correct.
Q The tape goes for silx hours or whatever, you pull it out and put a fresh tapa in?

A Correct.
Q You are keeping the IUstory of these tapes - the history ACCUSCRIPTS (702) 391+0379

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of these campas on VHS tapes somewhere in a big storage rocin?
A Not all of them. In this particular incldent, we kept
all the tapes involved this incident; but, normally, they would
record for seven days and then -- or a little more than seven days and then they're recorcied over again.

Q And that keeping them for seven darys before you reuse
therm, the graming board gives you those rules on how long they want you to keep a tape before you reuse it?

A Correct, on the standards for surveillance.
Q Okay. In this case, you knewf it would be of interest, so you pulled these out of the normal stream and haven't reused them?

A No, we have not.
Q And those ane at your place or at the --
A Those are in my office at the Sarta Fe.
Q And you mace a compilation of the important parts of that and handed them to the poilice?

A That is correct.
Q And you watched the compilation; the compilation is every blt as accurate as each one of the tapes you took the compilation from?

A Correct, sir.
MR. JORGENSON: Nathing else.
THE COURT: Redirect?
MS. WALSH: Nothing further, Judge,
THE COURT: And is Mr. McCamn free to go?
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MR. SWEETin: Yes.
THE COURT: Mr. MCCann, thark you for waiting and
testifying. You are free to go. Do not alscuss your testimony
with anyocdy until the end of the preliminary hearing.
THE WITNESS: Thank you, Your Honor.
MR. SWEETIN: The State would call Detective Holl.

\section*{(Winess swom.)}

TME CLERK; You may be segted.
Phease state your name for the recond.
THE WITNESS: It's Julle Holl; H-o-l-I.

\section*{JULEHOL}
called as a witress on behalf of the State,
having been first duly swom, was examined and testified as follows:

\section*{DIRECTEXAMINAIION}

\section*{BYMR. SWEETIN:}

Q Detective Holl, how are you currently emplovest
A I'm employed with the Las Vequs Metropolitan Police Department, working as a detective in the tourist mafely unit

Q How loxg have you been employed by the police department?
A I've been employed with Metro for nixe years; and prior
to that, Inciana for almost 11 years.
Q You incicated you were assigned to a tourist eafety unit?
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A Yes.
Q What exactly does that do?
A We work any crimes that should happen to tourists,
especially within the tourist corridor, that being on the Strip or within any of the casinos.

Q And based on your astignment to the tourlst safery unit.
have you twad training and experience in repards to warious theft
sectrinigues that occur in the tourist corridor?
A Yes, Inave.
Q Would those include distraction theft and pick pociket type theits?

A Yes.
Q Now, 1 wart to turn your attertion to March of 2007. You were assigned to the tourist sofety unit during that period of time; is that correct?

A Yes.
Q Over that period of time, did you have occasion to become familiar with an individual by the name of Ronald Rosss?

A Yes, I have.
Q Do you seee that person in the courtroom today?
A Yes, I do. He's the gentieman sitting over here.
(Incicating)
Q Would you identily something he's wearing today?
A Yeah, ho's wearing a dark blue ccoc jumpsuit.
MR. SWEETIN: May the record reflect the witness has. CH
ACCUSCRIPTS (702) 391.0379

\section*{identifled the defendant.}

THE COURT: That will be noted.
BY MR. SWEET?N:

\section*{Q And how did you become famillar with the defendant?}

A Upon coming to the unit, we are familiarixed with certain
people that have commitued certain types of distract crimes, with Mr. Ross being one of those.

There are many different subjects that were on a list of people who have elther been arrested prior or had recentty gotten out of jall that everybocty has dealt with within the unit.

Q And based upon your knowledge of Ronald Ross, in March of 2007, did you take any action in regards to him, particudarty in notification of anyone?

A Just prior to being contacted by the Santa Fe Hotel,
there was an atternpt to distract that had occurred at the Venetian
Hotel; the victim in that case dild nok want to pursue a report, but I did have video and good pictures of the subjects who were involved. With that, I put out what we call a critical reach, portraying threes subjectus that were inwolved In that, for all the other casinos to bee on the look out for them.

Q Was one of the individuals that you put out then the defendant?

A At that time, no.
A critical reach had been put out on Mr. Ross after he
was reieased from -- from jall. I belleve that was back in either ACCUSCRIPTS (702) 391-0379

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January or February.
Q All right. So you are indicating that this critical reach - where does the critical reach disperse to?

A We disperse fit to many difrerent areas; all the jewelry stores are on that; all the casinos, police departments, CAT bus. It just depends on where you decide to send it out at that particular moment.

Q And that woutd inclucle a photo of the defendant, as well as a description of what to be on the fook out for in regards to that person; is that correct?

A Yes, it would.
Q Now, based upon that critical reach that was sent out,
did you have amy contacts on or about March 24th of this year, \(2007 ?\)

A Yes. I recelved a phone call from Dennis - I horrestly don't remember his last narne -

Q Was that the individual who just left?
A Yes. He would be the surveillance director at the Santa Fe Hotel,

Q Okay.
A He had contacted me and said that they had had a distract
theft at their hotef and they had video on It; and if I would
ike, to come and wlew the video and see if prossithly I could make any identificstion of the persons who were involved.

Q Okay, And based upon that information, what did you do ACCUSCRIPTS (702) 391-0379
next
A I responded over to the Santa Fe and viewed the viden.
MR. JORGENSON: Juodge, may we approach?
THE COURT: Absolutely.
(Unreported discussion at the bench.)
THE COURT: All right. For the record, what we were

\section*{discussing here at the bench was if the State was going to produce} a tape today.

We may address that first and then we will go from there and hear the testimony and see if there is any objection.

Mr. Sweetin, what would be.
Would we be viewing a video tape that Derective
Holl viewed?
MR, SWEETIN: No, Your Honor. The State does not intend to produce that today. We intend to eilicit testimony out of this witness in regards to her viewing of that video.

The State would submit that that's -- that's proper. We have lald a foundation in regards to the reliability of the video tape through the prior witness. That witress indicated that the composite tape that he described is being made of various areas of the casino and the defendant, from the time he enters the casino and for the entire time that he's in the casino was put together, provided to the police, particularly this particular detective.

This detective will testify as to all the happenings on that tape; and based upon her training and experience in the ACCUSCRIPTS (702) 391-0379

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tourist safety unit and her knowledge of the type of crimes that we have here, she'l describe the significance of the activity.

That's what the State intends to produce.
THE COURT: And the activity would also be what McCann testified to about the compilation of the tape, but also to what James Vidette testfied happened to him.

MS. WALSH: That is correct.
THE COURT: I presume that's what we're talking about.
MR. SWEETIN: That is correct, Judge.
THE COURT: MR. JORGENSON.
MR. JORGENSON: Judge, I would object to this witness describing what she sees on a computer monitor or a TV screen as not being retevant in this case because it's not the best evidence.

If they have the tape, they ought to play it and, hopefilliy, at triad, they wifl play it. But I think that, in a sense, it's hearsay. It isn't literally hearsay, but she's going to stand here and just repeat what she saw in flashes of light on a computer screen. And I just think that we could be doing it better and I think the rules of evidence indicate that if the State has a better way to do it, then they shoudd be doing it the better way and not having her say what she saw.

THE COURT: I'm going to overrule the objection by the defense. If we did not have James Violette's testimony as to what occurred, then I might take a different approach, but this is ACCUSCRIPTS (702) 391-0379

So at this stage, you may proceed with questioning over defense objection.

MR. SWEETIN: Thank you, Judge.
THE COURT: You are welcome.
SY MR. SWEEIIN:
Q You inclicmted that you had an opportunity to obtain a tape from the witness who just testified, who you know as Dennis; is that correct?

A Yes.
Q And upon receiving that tape or that compositite tape, did you have an opportunity to review it?

A Yes, I dild.
Q Could you describe what you observed on that tape?
THE COURT: I'm taking this over defense objection.
Go ahead.
THE WITNESS: The beginning of the tape, you see a white
vehicie that's pulling into the pariang lot. It appears to be an
older white vehicle, possibly a Thunderbird.
BYMR. SWEETIN:
Q Now, the tape that you observed, did it have a date and time stamp on it?

A Yes, it did.
Q And what was the approximate - or what was the time that was detailed on that tape as that car was pulling up into the ACCUSCRIPTS (702) 391-0379

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parking lot?
A I can only give you a round about time. To give you the exact time, I would need to actually see my report.

Q Would it refresh your recollection to review your report?
A Yes, it would.
Q I'm strowing you a report.
Is this the report you are making reference to?
A Yes, it is.
Q Go ahead and take a book at that report and let me know when you are done.

A Okay.
Q Doas that refresh your recollection?
A Yes, it does.
Q And what was the time of that vehicle pulling up in the parking lot?

A It was at 1833 mours or 6333.
Q And could you describe what you - what yow observed as that vehicle pulled up?

A The white vehtcie pulls up, pulls around; waits for another car to pull out, which would be closer to the casino area.

As the vehicle parks, two males and a fernale exit the vehicie. The video wasn't clear enough to be able to get a plate number on the vehicle.

Q Did you recognize any of the individuals that got out of the vehicle at that time?

A At that tintic, I wasn't a hundred percent. I thought
possibly I knew who one of them wass.
Q As you continued to view the video, did it become more clear?

A Yes, lit did.
Q And is one of those individuals present in the courtroom swotay?

A Yes. It would be Mr. Ross.
Q The deferxdant?
A Yes
Q Okay, Describe what you observed after these individuals exited the vainicie.

A They walk into the casinc. As they walk ints the casino, they 90 over to the sports book and the femsole that was with them, they seat her in the front row of the sports book.

At that time, then they walk off. I'm not that famillar winh the casino, so \(I\) couldn't tell you the emact areas that they were walleng through at that particular time.

Q Now, as you said they walked off.
That would be the defendant and the other male that you made reference to?

A Another malo.
Q A black male?
A Yes.
Q Go ahead Continue.
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A Olvay. As they started walking through, there was one particular spot where I could see Mr, Ross very clearly as he walked through. In fact, he had a black baseball cap that was on and it was tumed around backwards. (Indicating)

Q olcay.
A As they continued waiking through the casino, they went into what they call the high firnit siot area.

Mr. Ross is standing near the same sidie of the siot banks that Mr. Vichette was playing at and the other subject waliked around to the back side of it. Once he gort to the back side of It, I actually lost sigitt of exactily where he was.

Q Let me stap you there for a minute.
You indicated that you have training and experience in regards to this distract type of pick pocket incidentis; is that correct?

A Yes.
Q Did you receive specficic training in that regard on the tourist safety unit?

A Yes.
Q And, in fact, you investigated a number of thespe cases, \(I\) suppose; is that correct?

A Yes, I have.
Q About how many of these sort of distract plck pocket cases hava you investigated?

A Probably somewhere around 15 to 20. ACCUSCRIPTS (702) 391-0379

Q And in remards to these sorts of cincos, are there certain procedures or things that are done that are common in these sorts of crimes?

A Nommally, ti's \(^{\prime}\) at least two people together, although thay hava been known to do it by themselves, with one person one of the two person cnew - If it is a two person crew -w will do what we call the distract, and by doing that, they will get the subject to iook away from whatever thwey want to take.

In this case, that's what Mr. Ross was doing. Mr. Ross was actually doing the distract to take Mr. Violette's attention off of his money.

And then the other subject would actually go through and take the money and then they would both leave.

Q Okay. So now, you indicated that as they come to - the defendant and this other individual to the high stakes slot area, that thay separated; ts that correct?

A Yes.
Q And the sienificance of that, you sald that theat is a normal procedure in thesa sorts of crimesy is that correct?

A Ves.
Q Okay. At that time, besides observing both the defendant and this other individual, did you observe an individual by the name of James Violette?

A Yes.
Q And where was Jarmes Violette located in relation to the ACCUSCRIPTS (702) 391-0379

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defendant and this other individual, as you ohserved these Individuais enter the high stakes room?

A They were facing the stot bank that the camera was acturally on, on the sames side that Mr. Ross had walked up to. Mr. Violette would be sitting on the and machine to the right of the siot bank. Mr. Ross then came up to his letr and, according te Mr. Violette's statement, asked how the the machine was doing.

Q And did you observe where the other individital was in relation to the defendant Mr. Violette?

A Vou could sav a littie blt of a head moving around in the back. xt appeared as If that subject had come in and was actually across the slot bank on the other side of Mr. Violette.

Q Olay. What did you observe happen next?
A As you could see, Mr. Ross goes up, has some type of conversation and then he backed -- seemed to back away a little bit. Mr. Yolette, you can see him talding something from the left slde of his machine, place it to the right side of his machine on the - on the alsle area.

Then there is soma type of cormmotion, which \(Y\) later found out from Mr. Voletta that the subject on the left end of the slot bank had hit a - elther hit a Royal Flush or hit something big.

Q And you ohserved something that - -
A Yeah, you can tell, all of a suddion, everybody started looking over to that side.

Q And when you say everybody, would that be Mr. Violette, ACCUSCRIPTS (702) 391-0379
as well as the deffrivant?
A Oh, yeah, yeah.
Q What happens next?
A They all paid attention to what was happening over there. And then you can see a hand come around the - I guess it would be the other side of where Mr. Volette was sitting. You see a hand come up and then him - the other subject and Mr. Ross leave the casino.

Q And you observed them at that time leaving the casino together; is that correct?

A Yes. They, again, walked back through the casino, went into the sports book, pickesd up the femate that they had dropped off in there and then walked back out to the car and then left.

Q What was the amount of time that the defendant, this octher individual and this female were in the casino?

A It was right around 15 minutes from the time that thay parked until tha time that they pulled out.

Q And you indicated that this compositut that you viewed showed the defendant and this other individual for the entire time they were in the casino; is that correct?

A Yes.
Q At any point in time, did they - did they do any gaming?
A No.
Q At any point in times, did thay try to get any change,
anything of that sort?
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A No.
Q So they literally just went directly to this high stakes
area, hand poes around and they both leave?
A Yes.
MR. SWEETIN: Nothing further.
THE COURT: Cross.

\section*{CROSS-EXAMINATION}

BY MR. JORGENSON:
Q Do you work Monday through Friday, weekends or what?
A At that time, I was working swing shift. I was working Tuessday through Friday and every other Saturday.

Q The 24th, I think, is a Saturday. Does that sound inght?

A r'd have to see. I couldn't bell you for sure, but possibly could have been.

Q Becausa you - every other Saturday, you were on duty.
A Yes.
Q You get called out to the Santa Fe; you go there, go to their security office?

A Yes.
Q And they quewe up a tape that you watch, that you have just descrilbed for uss?

A Yes.
M HACED
Q You pop the tape out or they pop the tape out, you CH ACCUSCRIPTS (702) \(391-0379\)
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book -- you take it Into your possession andinuen put it into
evidemce?

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A No. At that time, they kept the videso.
Q Later on, they gave you a copy of it?
A Yes, thay did.
Q Have you watched the comy of the vileo?
A Yes, \(I\) have.
Q And to your memory, it's exactiy the same thing you just described to us?

A Yes. There was nothing added, nothing deletred.
Q The 15 minutes of tape - or 15 minutes of time that
wo're describing is dozens and doxens of different camera angless?
A Yes
Q The actual victim that you are focusinge on, along with my client in the same frame, that's just one angle though?

A Ves.
Q And it is from above and from behind?
A Yes,
Q So what you are watching -w what you can see then in that angle, among other things, is what is actually being played on the slot that the victim is facing.

A The slot bank. I believe it was four - four machines, maybe five machines that wras in a row.

Q And that camera angie that you are referring to, you could see all --
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A Four or flive, yes.
Q All in one picture?
A Yes.
Q And on the left-fuand portion - or the right-hand portion
of the screen, you see the guy who said his money wast taken?
A Yes.
Q And on the left-hand portion, you sea what carna to be the
focus of everyone's attention for a brief amount of time?
A Yes.
Q By looking at this video wn this tape, could you actually
tell what he hit or just some blur?
A Couldn't tell.
Q Okay. But you could see the machine he's at?
A reah.
Q And the person who is stiting at the machine may or may not ba blocking exactly what you are looking at because it's taken from behind?

A What's taken from - oh, you mean the video is taken from behind?

Q reah.
A And blocking what?
Q Okay. Why can't you bell axactly what this gur, who is on the far left, what he - what came up on his -- on his screen to make everyone happy?

A Well, the machine is about that blg on what he hit and ACCUSCRIPTS (702) 391-0379
fit"s just really hardico teil what he actually hit.
THE COURT: You are saying the machlne is that big; you are taiking about six inches?

THE WITNESS: Well, yeah, It's a poker machine so the screen is maybe a foot -- one by one maybe.
BY MR. JORGENSON:
Q Iust so I have this right the angie that you are watching on this compilation shows all four machines, but they're too smail in comparison with the entire field of view to make out the cletails of what's on that one particular maching.

A Right.
Q It's not so much that that angle is too low that it that the person playing the machine, his torso blocks the machine. The machine is just too indistinct because it's too far away?

A Yeah. And to be honest, I'm not paying so much attention to what's going on on this other guy's machine that's not aven involved. rm paying more attention to what's going on over at Mr. Violette's machine so that I didn't even pay attention to that much.

1 mean, I know something happened over thane, but when Y'm viewing a video - I mean, I'm viewing my victlm and the other guy wasn't my victim.

Q But you couid go back possibly and look at it again and maybe get mora information because It's all there on the tape?

A Yeah, passibly.
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Q All right. So you see my clent come, stand to the left of the guy who macia the complaint, who is playing on the right and; and at that point, you are looking at the whoulder and the back of both the victim and my client.

A In that view, more so the back of him; and at times, Mr. Ross does turn a nitile sideways. I mean, he coesn't always have his back to me.

Q Olay.
A And at times, when Mr. Violette went to look over to his left to what was happening. I could sea the side of Mr. Viofette's face.

Q 3ut the camera angle is not so high up that you can see who was playing on the opposita bank of machines?

A Na.
Q Could you see anybody who is standing or sitting directly behind where these two --

A siting, na.
Standing, you could see - depending how tall the person wass, you could see the top of their head.

Q All right. Now, directing your attention to exactly when you saw a hand grab where this money was altting.

A Uh-huh.
Q Prior to the hand coming into the frame and grabbing it, could you see who that hand belonged to?

A Not prior to, but just after he took \(i t\), 1 could. ACCUSCRIPTS (702) 391.0379

Q *okay. And if I have it ripht, this wruld have been a teft hand?

A 1 belleve so, yes.
Q Do you recall if th had a glove on, it it was a long
sheeved shirt, a short sieewed shirt?
A It was a short steaved shirt.
Q Could you tell the skin color?
A Yes.
Q What was it?
A Black.
Q All right. And then as woon ass the hand comes into view and grabs it, then you can see the rest of the body?

A Yes, because the person then stood up and walked off into the space in between the next stot banik.

Q And that is the same person that you bad seen walling with my chent, earlier in this compilation, coming from the car?

A Yes, just prior to this all occurring, yes, he wras walking with them. They walkwd into this sarve area together.

Q Now, you don't recognize, like you do my cllent Mr. Ross, who this other person is?

A No, I don't.
Q How do you know it's the same person that was with
Mr. Ross as he came from the car?
A You could tell from the video, from the time that they're walking through the casino, his look; he hass a very distinctive

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widow's peak and by what he's wearing. He's wearing a somewhat bright shirt.

Q This is the Identified guy?
A Yes.
Q Whose hand raaches and grabs?
A Yes.
Q So whille you don't know who the person is, this same shape and clothing that's consistant from whoever was with Mr. Ross when he left his car until 15 minutes fater when he gets back into his car?

A They were together just about the whole dme until they waiked Into this bank, this ilgh limit bank, where they separated.

Q For a brief pertod of time and then joined bacix up again?
A Yes.
Q After the hand reached around and grabbed?
A Yes.
Q Could you tell if - when my client is coming from his car and approaching the high Imits area, if he was having any type of discussion with the guy in the bright colored ciothes and the widow's peak?

A I couldn't give you a hundred percemt answer on that, but you could definitety tell that thoy were together. I mean, they came in a car together. They walked this fady to the sports book topether. They walked through the casino together. And then once the money was taken, they left from the high limits area together, ACCUSCRIPIS (702) 391-0379
wert together to thà sports book to pick up this gill and then
left together and got in the car together and feft the area together.

Q This guy who had the bright colored shirt and the
distinctive hair styla, do you have any lices, at this point, who that person is?

A Mo, \(\bar{I}\) don'z.
Q Never seen him hafore?
A I have one other video with him in it, but at that time, he had not committed a crime.

Q You don't have enough information to make an to on him?
A Mo, I don't.
Q How about the gird?
A No.
MR. JORGENSON: Nothing else.
THE COURT: Redirect.
MR. SWEETIN: Nothing further, Judge.
THE COURT: Is Detective Moll free to go or do you want her to remain here in court?

MR. SWEETIN: No, she's free to 90.
THE COURT: You are free to go or stick around and see what happens. Please do not discuss your testimony with anybody until the end of the preliminary hearing.

THE WITNESS: Thank you.
THE COURT: State's next witness. ACCUSCRIPTS (702) 391-0379

MS. WALSH: Thank you. The State calls Les Silva.
(Witness sworn.)
THE CLERK: You may be seated.
Please state your name for the record.
THE WITNESS: Les Siva.
THE COURT: Spell your name, please.
THE WITNESS: L-e-s, S-miv-a.

Les. SHVA
called as a witness on behalf of the State,
having been flist duly sworn,
was examined and testifed as follows:

\section*{DIBECT EXAMINATON}

BY MS. WALSH:
Q Sir, how are you currently employed?
A I'm currently employed at the Paris Hotel 8 Casino?
Q In what capacity?
A Im the survallance director.
Q How long?
A Three months.
Q And prior to that, where were you employed?
A I was the director of survelliance at tha Flamingo.
Q How long at the Flamingo?
A Approxdmately a year. ACCUSCRIPTS (702) 391-0379
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    Q 'I'm sorry. What?
    A A year.
    Q And in your capacity as director of surveillance at the
    Paris, are you famlliar wfth the survellance system there?
    A Yes,I am
    Q And is part of your duties to monitor that?
    A Yes, it is:
    Q And the surveillance systam at the Paris, does it have
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kind of the general survellinnce system where you have cameras on
the floor that feed up to \(\equiv\) surveillance room?
    A Correct. They feed up to a surveillance room where
they're utitized -- the lmages can be brought up on monitors, as
well as the images can be recorded on VCRs.

Q You indicated the cameras feed up into a survellance room where they're showing them in live time on a monitor, but they're also recorded; is that correct?

A Correct.
Q And when the video is recorded, is it also recording a date and time stamp on the actual video?

A Yes, itis.
Q And how is that dixte and time stamp checked for accuracy?
A It's a contirusal check nystem within the Paris
survelliance room. The computer system that the surveillance agents use to log incidents has a time generated on it and they comtinually compare that against the video that's displayed in ACCUSCRIPTS (702) 391.0379

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front of them.
Q And is the surveillance system, the cameras themselves, regularly dieciked for accuracy?

A Ves.
Q IF the camera and the recording system are operational, will the recording sybtum accurately record the live video feed?
A. Yes, it will.

Q Now, If you have an Incident that occurs in the casino Involving a police irvestigation, where the police are required to \(-\boldsymbol{x}\) I'm sorry. I'm sorry. I can's think.

If you have an incldent on the casino floor where the police are investigating and require a surveillance video, do you have a normal operating procedure as to how you provide them with the video?

A Yes, we do. We actually acquire a property recelpt from any law enforcement agency, but they're Imvited up into the survellance room through their investigation to observe any video tape pertinent to their case.

At that time that they make a request for a copy of the vided tape, we will supply a copy of the tape. We generate it within the room. We have numerous dubbing stations that create exact coples of origlnal video tape.

Q In that copy of the original vided tape, will that ciearly and accurately depict the originat recording?

A Yes, it is the original recording.

Q Olkay. Anct the ariginal recording, that would accuratuly depict what occurred on that dita and time?

A Yes.
MS. WALSH: Nothing further.
THE COURT: Cross

\section*{GROSS EXAMINATON}
gY MR JORGENSON:
Q You were on the joh on March 3ist of this year?
A Yes.
Q Do you remvember what shift?
A No. Actually, I work all different sthits.
Q So it coulid have been - you just remember you were on -w
In the Paris sometime on the 31st, but not whether it was in the marning or the evening?

A Cornect.
Q And part of your job is to not necessarily service these cameras, but to werily that from day-to-day they're working right?

A Correct. \(I\) insure that the agents check all of the equipment, as well as my tectinicians do the same.

Q Who are the agents?
A I have employaes that are in the room that actually work the monitors.

Q And then, from time to time, you actually do some kind of testing to verify that the cameras are working right, that they're ACCUSCRIPTS (702) 391-0379

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recording rinht, that the colors and the levels are proper so it really nctually captures property what the cameras are pointed at?

A Yes. The way the surveillance system is set up in our room, the image that the agents see is the final image; so, therefore, if there is any interruption in video or probtems with their cameras, it will be seen on their monitor.

Q What is being taped then is the same thing as they see on the screen?

A That is correct.
Q And then each of those cameras are fedinto a recorofing device that records what each of those cameras is watching all the tirne?

A True.
Q Onto a computer file or onto a tape?
A No, VHS tape.
Q Andituen you keep that tape for how long before you -..
A Seven days. It's a natural rotation; there is enough tapes in that supply for a seven day rotation.

Q How long is each tape?
A Eipht hours.
Q So 21 tapes or so, then you - then you tape over the tape that was at the first eloht hour shift on Sunday, the following Sunday and you use it again?

A Rigit.
Q Uniess you pulted it out of the cycle to stare it for Chit

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Jacket to his hands area.
As he sat down closer, he angled towarts the victum, who is sitting ilke this. (Indication) the's angled kind of dosse to her. The other subject came back, walked behind and was just talking along with them.

After approximately a minute, they got closer and they started pointing at the machine. His hand goes over to where her
purse is and then after a couple few more seconds you couid see
him fum handing the other guy, who he's with, the object.
Both of them exit in separate ways. The one guy who he handed the wallet to walked away immediately. Ross stayed a couple more seconds. Then he walked away a separate way.

Q So you are indicating when he first catre up to the victim, he had the jacketi over hila right arm, he got very ciose to her.

A Yes.
Q Could you tell if she had a purse on her at alf?
A Well, that was a question I had when I calied her up and taliked to her on the phonc. I had to verity that. The victim was not sure where her purse was. She said it was on ber left side but she was nok sure it it was around her shomolder or down beside her.

Well, when I looked at the video tape, to me, it appeared that there was a strap along the shoulder on her iet shouider and that would pot it in the same area where Mr. Ross was going

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towards.
Q Okay. And when the defiendarth came up close to the victim, that's - - be corne up ciose to where her purse was; is that correct?

A Yes, right mext to lt
Q And when you - when the second person came up in between the two and got very close, based on your training and experience, In there any significance to the way that the defenclant and this other person acted?

A Yeah, he was blocking, so anybody who was walling behind could not see what was going on with his hands.

Q And then I belfowe you testified that, at some point you saw him remove something from the purse; is that correct?

A Yes, ma'm.
Q What is that consistent with? Would that be consistent with a wallec?

A Yes.
Q And you indicated that he gave this wallet to the other person: is that correct?

A Yes.
Q Is there any significance to him being the one taking it and this cother person being the one to remove it from the casino?

A In case he was caught right after that, the could say, hey, I don't have it with me and there is nobody around to show that it was with him.

A Yes, I have - yes.
Q And besced upon all of that, that's what fed you to conctude thats that is the defendant on the video?
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\]

Q So then thix other person, this other unidentified
subject then takes the wafiet and leaves first?
A Yes.
Q And then the defendint leavest and they go in the same dilrection or semparate directions?

A Separate directions.
Q And about how fong affer this other person let did the cimiendant leave?

A Maybe five seconcts, fight after.
Q Now, when you watched the video, wero you able to bell that it was the defendarit on the video?

A It appeared to ba somebody I necognized as Ronald Ross.
Q Becausie the video is not thak clear nigint on lis faces is that eorrect?

A No.
Q And how were you abie to - or what makes you think that this is the defersdant on the video taper?

A The similat MO of the actions that took place, of how it happened. When he came towards the camera - he has what I call droopy eyes. You could see some of the facial festures on him.

Q And are you fammiliar with the way that the defendant cperates and seeing him on other videos?

A That wesp part of it, ves
Q And from your observations of the vided, was there anyone
else within this cione praxdritiy to the victim in this cease?
A No.
Q Now, did you also recrelve some information that one of the credit cards inside the wallet was twed on that date?

A Yes. When I spoike to the victim, she sald her credit card was used approximately 45 minutes alter the theft at II Sheikh shoe store located on Maryland Parioway and - which is loceted inside the Boulevard Mall.

Q And based upon that information, did you continue your investigation:

A Yes.
Q How did you do so?
A I went down there and spoike to the manager; don't remember his name at this time. They don't work off a VHS. They have a hard drive, a DVD system. He showed me a DVD of the transaction, which showed Rosss and the other same subject In the store 45 minutes after maidng that transaction that was on her crealit card.

Q Now, how were you able to tell it was the same individual?

A He's wearing the same numbered jersey at this time. It was a color video, so you can seee it was a hat, a red hat. He had RIII his jacket on at this time.

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knew -m supposed fit might ba Ronald Ross also. He took some photo Inneups down to the employees, three employees, wio positively 1D'd Ross as the subject that used Miss Tathopoutous' cradit card on thet date and time.

Q And you indicated the had tha same number six jersey on, Would that be the same numbered fersey he had on the videc at the Tropicana that you had coserved?

A Yes, ma'am.
Q You indicated he had a jacket on.
Would this be the same jacket that he had draped over his amm at the Tropicana?

A It appears to be.
Q When you got there and viewed tha vided of the defendank inside the store, wass it video tape - or you indicated it was on the hard drive?

A It was a hard drive, a DVR.
Q Were you ever abie to obtain a copy of the video?
A No, ma'am.
Q Were you able to ascertain why?
A Nobody knew how to operate the system to save it.
Q As far as you are aware right now, is the video still saved at the store?

A I don't know.
Q Okay.

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A They said they would toy to save it I don't krow if they did.

Q When you olaserved that video on that day, what, if anything, did you observe?

A At the Sheikh Shoes?
Q Yes.
A It was kind of a far off shot from where the camera is
at, but you can see him at the courter and it looks like a purchase, a transaction, takes pface.

Q Wern you able to observe a time on this video?
A It was approximately, \(I\) think, around \(\mathbf{2 3 5 0}\) hours, somewhere around there, \(\mathbf{1 : 4 9}\).

Q Okay. And this would be still the same day, March 17th?
A Yes, matam.
Q Now, your irvestigation with Mr. Ross had concluded with this March 17th event is that correct?

A correct.
Q Did you also begin an irvestigation Into another pick pocket and credit card usige on March 31st?

A Yes, ma'am.
Q And would this be regarding Miss Lunciquist at the Paris?
A Yes, ma'am, Roberta Lundowist.
Q And is the Paris at 3655 Las Vegas Boutevard here in
Clark County, Nevada?
A Yes, ma'am.
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Q In the coursa of your investlgation of this pick pocket
oftense at the Paris, did you have an occasion to review any video survelilance at that time?

A Yes, ma'am.
Q Where did yous view that video surveillanca an?
A At the Paris Hotel and at Macy's Department Store.
Q When you viewed tha video at the Paris, were you able to see arryone on the video that you see In here todiay?

A Ves, matarn.
Q And who was on the video?
A Ronald Ross in the Wte shist, no tie. (Indicading)
Q And how are yow able to make this identification as well?
A I've seen him numerous times on other videos and mug shobs.

Q So it's still the same reason you are able to ravike his ictertification, based on you prior conkact with Mr. Ross?

A Yes, maxam.
Q And can you briefly describe what you first saw in the video when you viawed it?

A Do you want to do it in a chronological order -- because I saw the Macy's first - or just go with Paris?

Q We can po with Paris now.
A At Paris Hotel, the time was somewhere around 19 alrnost 2000 hours. Mr. Ross and a second subject walked across the street from left to right into the open area, kind of off ACCUSCRIPTS (702) 391-0379

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camera.
About 15 mimutes later on 50 ; the victim waike from the right side of the screen to the feft - looking at the screen,
from the right side to the left sidie, to a row of penny stots.
She goes aroundito the right sida. Approximately 20 feet behind Is Mr. Ross walling around to the left side.

At that time, he walks around, approaches fher on her left side before she even sits down and starts pointing at the machine and talking to her.

He moves closer, angles in with his right arm and after naybe - It was fust seconxts, it seconds, you see he walks away.

Q Ofary. So you coutd tell how close in proxirrity he got to this victim from the video; is that correct?

A Yes, ma'am.
Q And you indicented that was a very close proximity?
A Yes, ma'am.
Q Wera you able to see him actually taike amything on this tape or not?

A You could see his arth go night next. I can't really - I can't really tell because it's blocked by the video that's right behind him.

Q But his arm does go down towards her purse?
A Mis arm is on the right side and he walls up to ther - RRIM har purse is on her left sidia. He walks up to her left side and \(/ \mathrm{fi} A \mathrm{CE} \mathrm{D}\) approaches and gets really ciose and starts pointing and leans of ACCUSCRIPTS (702) 391.0379
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her.
Q So is that jacket drayped over his arm again?
A I think I have to review my neport and see if the has the
jacket.
MS. WALSH: May I approach, Jutge?
THE COURT: YeS.
THE WITMESS: Don't believe he used a jacket on that one.
EY MS. WALSH:
Q Okay. You are not sure; is that correct?
A Yes.
Q And you indicated the time of this, I bellowe you said, was right around 2000 hours?
A It cocurred -- that's when he first came on camera, $\mathbf{x}$ belleve. It occurred closer to 2017.
Q And you indicated, when he came up and got close to her, he was pointing at the machine and kind of talking to her; is that correct?
A Yes, with his left arm and leaning in. I didn't see what his right arm was doing. (Indicating)
Q And what is the significance, based on your training and experience, to the way he was operating at that time?
A Two-fold. They get close enough to -m they direct their attention away from anything that's going on, so II they feel a tug or anything, it's to let them think that theyre just a body touch.

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Q And you indicated that the defendant was also walling around with another person?

A Yes, ma'am.
Q And based upon your observation of the video, did it appear to you that the defendart and this other individual were working together?

A They came in, left together, but, you know, I can't say that he had anything to do with it.

Q Now, you indicated you also did an investigation at Macy's regarding a credit card usage of Bertha Lundquist's; is that correct?

A Yes, ma'am.
Q Did you respond to the Macy's store?
A Yes.
Q Were you able to review video surveillance of this?
A Yes, ma'am
Q What didy you see on the video witen you reviewed this video?

A Approximateky 2027 hours, Ronald Ross, at a cashier, making the purchases of gift cards.

And then at 2032 hours, \(\mathbf{I}\) believe, was a second purchase at a sepurate cashler for the same amount \(\boldsymbol{-} \mathbf{\$ 1 2 0 0}\) in gitt cards.

Q Were you able to see how he paid for the gift card purchase?

A Appeared to hand a credit card.
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Q And did thts secondi subject in the video appear to be the same person that was in the video with him at the Paris?

A Ves, ma'am.
MS. WA:SH: Nothing further, Judge.
THE COURT: Before we start cross, the other case may be resolved and If it is, we'll tet everybody remain where they are.
(Recess in proceedings.)
THE COURT: Renee, back on the record.
We will go with cross-examination.

\section*{GBOSS-EXAMINATION}

\section*{BY MR. JORGENSON:}

Q You viewed video tapes from the Tropicana that Indicutes they were taken from inside the Tropicana on the 17th of March, at around one pam., correct?

A Yes, slr.
Q You looked at - you went over to a shoe sthere on that same - what day did you go to the shoe store, do you remember?

A I do not remember.
Q The same day you watched the video though at the -
A I don't fermember. I don't think so.
Q At somse point, though, in March, you went to a stice store and watched their computer, which had a DVR, with some peopto coming up to a cash register?

A Yes, sir.
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Q Then sometime probably the first part of April or -yeah, the first part of April, you, at the Paris, watched some wideos that were described to you as being interior scenes of the Paris from the 31st at about elght p.m?

A Yes, sir.
Q Just to reiterate the obvious, at no point were you
personally inside elther the shoe store or the Parls or the
Tropicana when these cancras were rolling or when these tapes were taping?

A No, I was not.
Q Your only view of what happened in the Troplcana or the Parls or the stove store was based upon what you saw on these two tapes or on this DVR?

A And talking to the victims.
Q And talking to the victims.
You weren't able to get a copy, nor to this date have you been abte to get a copy, of the DVR, correct?

A \(\mathrm{MO}_{\mathrm{o}}\) sir.
Q But you do have copies of both the Paris and Tropicana tape compilations?

A Dubbed copies, yes, sir.
Q And, hopelully, they're - have you looked at those dubbed copiea to see if they look the same to you as the ones that you saw at the casino?

A I'm sorry. I don't understand what your question RliNi ACCUSCRIPTS (702) 391-0379

locate the person?
    A No, I don't have an identity yat.
    Q But you are working on it?
    Pardon ma?
    You would be working on it?
    A If I saw it again, saw that person.
    Q Okay. Samm thing with what you saw, you saw a person
    hat appeared to be helping out my cilent on the 31st.
    approach the victim.
    Q Is the person you saw in the Paris video tape the same
    rson that you saw in the Tropicana video tape?
        Which person are wa taliking about, the unidentified
        Q The unidentified person.
        It is not tha same person
        You could tell enough that theyre two different black
            A Yes.
            Q 1 presume they're both black guys?
            A Yes.
            Q Male, in their 20 s or 30 s ?
            A 30s.
            ho tt was though, you would want to talik to that person and get
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\section*{their staternent?}

A Yes, sir.
Q And you haven't dione that yes because you don't have enough information on them as to who that ls?

A Ves, sir.
MR. JORGENSON: Nothing eise.
THE COURT: Redirect.
MS. WALSH: Nothing futher, Judge.
THE COURT: And will we be needing Detective Fienner at the next court date? Probably not?

MS. WALSH: That's correct, Judge.
THE COURT: All right. Detective, thank you for waiting and testifying. You are free to go. Please do not discuss your testimony with anybody until the end of the preliminary hearing.

With this stage, does that condude the State's witnesses for today?

MS. WALSH: That's correct, Judge, it does. We have five other witresses that we still need to call.

I dd speak with our out of state victim and she indicates she will be available on that July 23rd date and I've also confirmed that date with one of the other witnesses, the week of July 23 rd.

THE COURT: Well, July 23rd, Mr. Jorgenson is here on that date, that Monday.

MS. WALSH: Yeah, I believe that was one of the days we ACCUSCRIPTS (702) 391-0379

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were talking about when we discussed the matter.
THE COURT: So, Mr. Ross, Mr. Jorgenson, we will continue this case for July --

MR. JORGENSON: Judge -.
THE COURT: Wait one second.
-- to July \(\mathbf{2 3 r d}\), unless there was something else on that.
Go ahead, MR. JORGENSON.
MR. JORGENSON: Once again, on behaff of my client, we would coject to not conduding today. And he pointed out
something that is accurate, and that is, If the state is not ready
to put all of their witnesses on today, they certainly can dismiss without prefudice and relile later.

MS. WALSH: And if I can respond to that, Judge?
TME COURT: I was going to say: What is the State's response?

MS. WALSH: If we didn't have atl other witnesses today Iike we dan't have, we would actually be filing a hill motion and we would get together with the Court and the public defender and get a date where all 12 witnesses would be available to come in and testify.
rd also noticed the defendant is serving a 19 to 48 prison senterke. He's also being heid with no bail on his other case that's currently set for trial. So there should be no prejudice to the defendant by bifurcating the preiminary hearing. Rleft THE COURT: 1 didn't know about the prison time. IFAGD ACCUSCRIPTS (702) 391-0379 C219404.

MS. WALSH: That's correct.
THE COURT: NSP. I didn't even look that close at it, because I just saw in custody. I looked at the report. He's not going anywhere anyway.

So, at this time, the oral motion will be denied.
Mr. Ross, If you want to file a written motion, we will be happy to always ilsten.

And, Miss Walsh, you are correct that If we would have not been able to finish today -m or 1 mean, we would not have been able to have all this done in advance and we would not have discussed this, then the state would have filed a continuance motion, if they would have had the grounds. We would have set it for a day that we could have as many witnesses as possible.

Some matters take more than one day. I have a murder prelim that has taken -- took three days over a two month period, We continued a case that's out of custody though to July 20 th. That's going to have ten witnesses and we may not finish that day.

MR. JORGENSON: Judge, my -
THE COURT: So because there is no prejudice to Mr. Ross by staying in custody, I will deny that motion.

Mr. Jorgenson, next motion.
MR. IORGENSON: Well, my client would like to get up to the prison. Can you tell me what his bail status is? ACCUSCRIPTS (702) 391-0379

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THE COURT: Let me interrupt.
Mr. Ross, I have no problem with that. I don't know what's happening with your District Court V case.

THE DEFENDANT: Your Honor --
THE COURT: One second.
All I know is this: That's not my issue. I'll put it in the minutes. You are able to travel to NSP, because you are not the first person that said that. We just need you back here on -probably be best to have you here on July 20th, I'd say, because that's a Friday, or transport you down that day.

It's your call, MR. JORGENSON.
MR. JORGENSON: Yes, if we can get to prison, we need him back on the 20th.

THE COURT: Because the hearing itself will be on the 23rd. That way you are here on the 20th, Mr. Ross, to talk to your attomey.

Mr. Ross, do you have a question?
THE DEFENDANT: Yes. How much is the bail in this case so I will know.

THE COURT: \(4,000\).
THE DEFENDANT: 4,000.
THE COURT: My case is standard ball.
THE DEFENDANT: Can I have some rellef on the bail so I can make it to prison? I don't even know if they will take me in prison with a ball told on me.

THE COUn. Contact Mr. Jorgenson. And you are not first the person that's been in this situation.

I know they transport people with bail and they transport people without bail because you've already been sent to NSP; same prison system. That's a call for the defense attomey and you and the jall. I don't make that decision. Sometimes they transport; sometirnes they don't. But I have no problem with you being transported to NSP.

All right. That concludes today's hearing.
MS. WALSH: Thank you, Judge.
THE COURT: You are welcome.

ATTEST: Full, true and accurate transcript of proceedings.


Official Court Reporter
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ORIGINAL \({ }^{-}\)

Attomey for Plaintiff

THE STATE OF NEVADA,
Plaintiff,
-VS-
RONALD ROSS, \#1003485

DISTRICT COURT CLARK COUNTY, NEVADA

Case No.
C236169-1
Dept No.\(\left\{\begin{array}{l}\{ \\ \{ \\ \{ \end{array}\right.\)

\begin{tabular}{ll} 
& Plaintiff, \\
-vs- & \\
\begin{tabular}{ll} 
RONALD ROSS, \\
\(\# 1003485\)
\end{tabular} & \\
& \\
\hline
\end{tabular}

XVII

\section*{ORDER GRANTING DEFENDANT'S MOTION FOR APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HEARING}

DATE OF HEARING: JANUARY 3, 2012

THIS MATTER having come on for hearing before the above entitled Court on the 3rd day of January, 2012, the Defendant not being present, Defendant is incarcerated in the Nevada Department of Corrections (NDC)., RYAN MORTIER, ESQ., Mr. Mortier advised that he was appearing on behalf of MATTHEW CARLING, ESQ., the Plaintiff being represented by MARY-ANNE MILLER, District Attomey, through KRISTA BARRIE, Deputy District Attorney, and the Court having heard the arguments of counsel and good cause appearing therefor,

\section*{II}

Defendant.

\section*{TIME OF HEARING: 8:15 A.M.} -

Mr. Carling represents Defendant in another similar Post-Conviction relief matter, Case Number C220916. Therefore, COURT ORDERED, Motion GRANTED; Mr. Carling will be APPOINTED as counsel of record in the instant case as well.

Court noted Defendant's Petition for Writ of Habeas Corpus in set to be heard on February 9, 2012. Defendant 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, Defendant'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. DATED this 25 day of January, 2012.

MARY-ANNE MILLER DISTRICT ATTORNEY
Nevada Bar \#001419


KRISTA BARRIE
Deputy District Attorney
Nevada Bar \#010310
cc

1
\(\qquad\)
ORD
MATTHEW D. CARLING, ESQ.
Nevada Bar No.: 007302
1100 S . Tenth Street
Las Vegas, NV 89101
(702) 419-7330 (Office)
(702) 446-8065 (Fax)

CedarLegal@gmail.com
Attorneys for Petitioner, RONALD ROSS

\section*{ORDER OF APPOINTMENT}

IT IS HEREBY ORDERED that MATTHEW D. CARLING, ESQ., be appointed as counsel to represent Petitioner, Ronald Ross, in the appellate proceedings, effective June 1, 2013, and that counsel be paid by the County of Clark as set forth in NRS 7.125 WHMN1V

\section*{DISTRICT COURT} CLARK COUNTY, NEVADA

DWIGHT NEVEN, WARDEN, HIGH DESERT STATE PRISON, ET AL.,

Respondent.
RONALD ROSS,
Petitioner,
vs.
Petitioner,
vs.
DWIGHT SEVEN, WARDEN,
HIGH DESERT STATE PRISON, ET AL.,
\(\qquad\)

Case No.: 07C236169
Dept. No.: XVII
\[
\text { DATED and DONE this } 23 \text { day of } 2013
\]
\[
\text { DISTRICT COURT JUDGE } \propto \pi_{1}
\]

\section*{SAO}

MATTHEW D. CARLING, ESQ.
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Attorneys for Petitioner, RONALD ROSS


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

Respondent.

\section*{STIPULATION TO ENLARGE BRIEFING SCHEDULE AND ORDER}

The Petitioner, RONALD ROSS, by and through his attorney, MATTHEW D.
CARLING, ESQ., and the Plaintiff, the State of Nevada, by and through its attorney, LEON SIMON, ESQ., Deputy District Attomey, hereby stipulate to continue the briefing schedule in the above-captioned matter as follows:
1. That the Defendant will file his Supplement to his Petition for Writ of Habeas Corpus (Post-Conviction) on or before Wednesday July 11, 2012;
2. That the State will file its Response 60 days thereafter on or before Tuesday September 11, 2012;
3. That the Defendant will file his Reply 14 days thereafter on or before Tuesday September 25, 2012; and
4. That with this Court's permission, the Hearing for argument currently scheduled for in this matter be vacated and rescheduled for a date convenient for this Court after September 25, 2012.

Grounds for this Stipulation are that counsel for the Petitioner requires additional time to review transcripts that were recently obtained and obtain evidence that may be attached to the Supplement. This Stipulation is entered in good faith by both parties and is not for the purpose of undue delay.

DATED this \(\qquad\) day of


SEVEN B. WOLFSON, ESQ. DISTRICT ATTORNEY


H. LEON SIMON, ESQ.

Deputy District Attorney
Nevada Bar No.: 000411
200 S. Third Street
P.O. Box 552212

Las Vegas, Nevada 89155-2212
Attorneys for Plaintiff

\section*{ORDER}

IT IS HEREBY ORDERED that the above Stipulation be entered and the same is hereby approved by the Court.

IT IS FURTHER ORDERED that the Hearing set in this matter be vacated and rescheduled for the \(\qquad\) day of \(\qquad\) , 2012, at \(9: 30\), A.M.

DATED this \(\qquad\) day of \(\qquad\) , 2012.


SUPPL
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RONALD ROSS,
Petitioner,
vs.
DWIGHT NEVEN, WARDEN, HIGH DESERT STATE PRISION

Respondent.

Case No.: C236169
Dept. No.: XVII

\section*{Evidentiary Hearing Requested}

FIRST SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)

The Petitioner, Ronald Ross ("Ross"), by and through his attorney of record, Matthew D. Carling, hereby submit this First Supplemental Petition for Writ of Habeas Corpus (Post Conviction). This Supplement is exactly that, a supplement to Ross's Petition for Writ of Habeas Corpus. Therefore, Ross incorporates herein by this reference his Petition for Writ of Habeas Corpus (Post Conviction) including all facts, grounds, and legal arguments set forth therein. For the reasons set forth in the Petition and below in this Supplement, this Court should grant the Petition.

\section*{A. The Petitioner is Confined}

The Petitioner, Ronald Ross, is imprisoned at the High Desert State Prison, Clark County, Nevada.

\section*{B. The Petitioner Requests Relief from a Judgment of Conviction}

The Petitioner, Ronald Ross, requests relief from a judgment of conviction entered by the Eighth Judicial District Court on April 9, 2009.
C. Length of Sentence

The Petitioner was sentenced 10 years to life, with the possibility of parole.
D. Currently Serving A Sentence for Another Conviction

The Petitioner is currently serving a sentence for convictions arising in Case No.
C220916, 10 years to life with the possibility of parole.
E. Nature of the Offense Being Challenged

The Petitioner was adjudicated under the large habitual criminal statute, pursuant to convictions following a jury verdict of guilty on charges of larceny from a period, two (2) counts of burglary, fraudulent use of a credit card, theft and conspiracy to commit larceny.
F. What Was Petitioner's Plea?

Not Guilty.
G. If Petitioner was found guilty after a plea of not guilty, the finding was made by:

Jury.
H. Did the Petitioner Testify at Trial?

No.
1. If Petitioner Appealed, answer the following:
1. Court Appealed To: Nevada Supreme Court.
2. Case Number: 52921.
3. Result: Affirmed.
4. Date of Appeal: November 8, 2010.
J. Has Petitioner Filed Any Petitions, Applications or Motion with Respect to this Judgment?

No.

\section*{K. Names of Attorneys Representing Petitioner}

Craig Jorgensen (trial) and David Westbrook (appeal), both Clark County Public Defenders.

\section*{L. Grounds for Petition}

The grounds for this Supplement to the Petition are ineffective assistance of counsel, which are more fully set forth herein below. In addition, the grounds are set forth in the original Petition which is incorporated herein. Categorically, these grounds include:
1. Failure to secure a speedy trial;
2. Failure to adequately prepare including reviewing evidence produced prior to trial;
3. Failure to file pretrial motions;
4. Failure to argue the prejudice of evidence lost prior to trial;
5. Failure to adequately prepare for jury selection;
6. Failure to adequately prepare for trial;
7. Failure to retain defense experts;
8. Failure to object to the State's use of expert witness;
9. Failure to make appropriate objections during trial;
10. Failure to adequately prepare for sentencing; and
11. Cumulative effect of all errors.

\section*{Direct Appeals}

The Petitioner submitted his appeal to the Nevada Supreme Court on November 8, 2010, in Supreme Court Case No. 52921, in which the Supreme Court affirmed the decision of the lower Court.

\section*{STATEMENT OF FACTS}

On May 23, 2007, Ronald Ross was charged by Criminal Complaint with twenty (20) counts, to wit:

Count 1-Burglary;
Count 2-Larceny from the Person;
Count 3-Burglary;
Count 4 -Possession of Credit or Debit Card without Cardholder's Consent;
Count 5-Fraudulent Use of Credit or Debit Card;
Count 6-Theft;
Count 7-Burglary;
Count 8 -Grand Larceny;
Count 9-Burglary;
Count 10-Larceny from a Person, Victim 60 Years of Age or Older; Count 11-Burglary;
Count 12-Possession of Credit or Debit Card without Cardholder's Consent;
Count 13-Fraudulent Use of Credit or Debit Card;
Count 14-Theft;
Count 15-Possession of Credit or Debit Card without Cardholder's Consent;
Count 16-Fraudulent Use of Credit or Debit Card;
Count 17-Theft;
Count 18-Conspiracy to Commit Larceny;
Count 19-Conspiracy to Commit Larceny; and
Count 20-Conspiracy to Commit Larceny. (See Criminal Complaint).
Attomey Craig Jorgenson was appointed to represent Ross.
A Preliminary Hearing was conducted on June 19, 2007. (See Transcript of Preliminary Hearing). Georgia Stathopoulos testified that she was visiting Las Vegas in March, 2007. On March 17, 2007, she was at the Tropicana Hotel. (Id at P. 4). After eating at the buffet, Georgia stopped to play at a slot machine and won. She identified Ross as an individual who came up to her and started asking her questions about the machine and her winning. (Id. at 5). Georgia testified there was another man with Ross. (Id. at 6). Georgia testified that her purse was not zippered shut. Id. Georgia testified that when she returned to her hotel room, she noticed her purse was missing. Id. at 7. After discovering her wallet was missing, she went
back to the buffet to see if she had dropped her wallet. \(I d\). at 8 . She testified that inside her wallet was her driver's license, some cash and approximately 10 credit cards. Id. Georgia contacted hotel security. Id. Georgia immediately cancelled her credit cards. Id. at 9.

Deja Jarmin testified that he was the third key supervisor at Sheikh Shoes. Id. at 17. He was working at the shoe store on March 17, 2007. Id. at 18. Jarmin testified that on March 17, 2007, Ross came into the store. Id. After selecting merchandise to purchase, Ross presented a credit card for payment. Id. at 20. While the store's policy is to check identification with the credit card, Jarmin did not do so on this occasion. Id. The credit card was approved. \(I d\). at 21 . The amount of the purchase was \(\$ 490.07\). \(I d\). at 22 . Following the purchase, Jarmin received a telephone call indicating the credit card used to make the purchase was stolen. Id. at 23-24. Despite this hearsay testimony, Jorgensen failed to lodge any objections. Id. The store's surveillance video was reviewed. Id. at 25-26. Jarmin was uncertain whether the police retained a copy of the surveillance video. Id. at 33.

James Violette testified. James was playing slots at the Santa Fe Station on March 23, 2007. Id. at 35. James identified Ross had being in the Santa Fe Station on March 23, 2007 who sat next to James. Id. at 36. James had approximately \(\$ 800.00\) sitting under his pack of cigarettes. Id. at 37. James then noticed his cigarettes and money were gone, except \(\$ 100.00\). Id. at 38. James reported the missing money to the slot personnel. Id. The Santa Fe Station reimbursed James. Id. at 39.

Dennis McCann testified. Dennis is the director of surveillance at the Santa Fe Station. Id. at 46. Dennis testified there were several recordings which captured the incident to which James Violette testified. Id. at 48. Dennis testified he provided the surveillance videos of the event to the Metropolitan Police. Id. at 49.

Julie Holl testified. Julie testified she is employed as a detective for the Metropolitan Police. Id. at 57. Julie identified Defendant Ross. Id. at 58. Julie testified she was contacted by Dennis from Santa Fe Station. Id. at 60 . Julie reviewed the tapes provided by Santa Fe Station. Id. at 63. She testified that Ross was clearly depicted on the video produced. Id. at 65-66.

Les Silva testified. Les testified that he has been employed as the surveillance director at both the Paris and Flamingo Hotel \& Casinos. Id. at 78. Les testified generally about how the surveillance systems work. \(I d\). at 79-81.

Darrell Flenner testified that he is employed by the Las Vegas Metropolitan Police Department in the Tourist Safety Unit. Id. at 87. Darrell has been trained in pick pocketing and distraction thefts. Id. at 88. Darrell identified Ross. Id. Darrell investigated the alleged pick pocketing from Georgia at the Tropicana. Id. at 89. Darrell reviewed the surveillance video of this event and identified Ross on the video. Id. at 93.

Over defense objection, the Court continued the preliminary hearing which did not conclude on June 19, 2007.

On August 17, 2007, the State filed an Amended Criminal Complaint. In the Amended Criminal Complaint, the State struck from the original Criminal Complaint Counts 9 -17, and 20. (See Amended Criminal Complaint).

The Preliminary Hearing resumed on August 17, 2007. During the continued Preliminary Hearing, Paul Simeon and Charles Cauwell testified. At the conclusion of the Preliminary Hearing, the Court bound Ross over on ten (10) counts from the Amended Criminal Complaint. (See Preliminary Hearing Transcript, P. 27-28; R. 000084).

On August 22, 2007, the State filed its Information. (See Information). Pursuant to the Information, Ross was charged with Burglary (Felony-NRS 205.060), Larceny from the Person (Felony-NRS 205.067), Possession of Credit Card with Cardholder's Consent (Felony-NRS 205.690), Fraudulent use of Credit Card (Felony-NRS 205-760), Theft (Felony-NRS 205.0835, 205.0832); Larceny From a Person, Victim 60 years of age or Older (Felony - NRS 206.270, 193.1687); and Conspiracy to Commit Larceny (Gross Misdemeanor-NRS 205.220, 205.222, 199.480). Id. On August 23, 2007, the State filed an Amended Information. (See Amended Information). The charges themselves were not amended. Id. On August 24, 2007, the State filed its Second Amended Information. (See Second Amended Information). The charges themselves were again not amended. Id.

On September 5, 2007, the Defendant was arraigned. (See Transcript of Hearing re: Arraignment). Ross entered a guilty plea and invoked his right to a speedy trail. Id. (R. 000126).

On October 9, 2007, there was a status check. (See Transcript of Hearing re: Status Check, Trial Date). The State requested a continuance, which was granted until October 11, 2007. At the continued hearing on October 11, 2007, the Court continued the trial date based on actions in other cases, including one pending before the Nevada Supreme Court. (See Transcript of Hearing re: Status Check, Trial Date. R. 000131-000135).

On December 11, 2007, the Court held a status check. (See Transcript of Hearing re: Status Check. R. 000136). The Court again continued the matter, this time for six months. (Id. R. 000139).

On June 10, 2008, the Court again held a Status Check. (See Transcript of Hearing re: Status Check, Appeals in Other Cases. R. 00141). At the State's request, the matter was once again continued. (Id. R. 000143).

On July 8, 2008, the Court once again held a Status Check. (See Transcript of Hearing re: Status Check. R. 000145). During this status check, the Court made a specific inquiry regarding whether Ross had waived his right to speedy trial. Ross specifically responded to the Court that he had not waived his right to a speedy trial. (Id. R. 000147). Despite this lack of waiver, the Court set the trial beyond the 60 day time requirement, setting the matter for trial on September \(2^{\text {nd }}\). (Id. at R. 000149).

On August 26, 2008, the Court held a Calendar Call. (See Transcript of Hearing re: Calendar Call. R. 000151). Despite Court orders to the contrary, Ross was transported to prison and was unavailable for the calendar call. (R. 000152).

The Court held the continued calendar call on September 2, 2008. (See Transcript of Hearing re: Calendar Call. R. 000154). Again, Ross was not transported. Id. The matter was again continued. Id.

The Court held the second continued calendar call on September 16, 2008. (See Transcript of Hearing re: Status Check, Trial Setting. R. 000156). Because of all the transportation errors, the previously set trial date was vacated. Id. The Court set the trial date for November \(10^{\text {th }} . I d\). Ross made an objection on the record because the case had been going on for 478 days despite having invoked his right to a speedy trial. Id. at R. 000161.

On October 23, 2008, the Court held a hearing on the State's Request Conflict of Trial Date. (See Transcript of Hearing re: State's Request Conflict of Trial Date Agreed. R. 000164). During this hearing, the Court noted it had received a letter from Ross stating that he

THE CLERK: Yeah, 'cause I don't -- actually, the last time I see it on was September \(18^{\text {th }}\).

MR. PONTICELLO: Right, but it wasn't ruled on and then it just stops showing up on the minutes.

THE CLERK: It was never continued. Yeah.
THE COURT: Is there a possibility that this case is going to be consolidated?
MR. PONTICELLO: Yeah, there's a motion still pending in that other case and that other case has a trial date now we know of -

THE CLERK: It's still --
MR. PONTICELLO: -- November \(10^{\text {th }}\).
THE CLERK: -- it's still pending. It possibly needs to be renoticed because --
MR. PONTICELLO: Okay.
THE CLERK: -- if it -- it's just --
MR. PONTICELLO: I'll - I'll see that that's done.
THE CLERK: Right.
THE COURT: Let's go -- then we need to set a trial date in this case.
MR. JORGENSON: Right.
THE COURT: So it's just another status check. Let's just set it past that -that date.

MR. PONTICELLO: Has he --
MR. JORGENSON: Whether --
MR. PONTICELLO: -- he has previously waived the 60-day rule.
THE DEFENDANT: No, I haven't. No, I haven't, sir.
MR. PONTICELLO: Well --
THE DEFENDANT: I haven't.

THE COURT: Let's double check. Weill double check here.
THE DEFENDANT: Actually, I invoked.
THE CLERK: He originally invoked on September \(5^{\text {th }}\).
[Colloquy between the Court and the Clerk]
MR. JORGENSON: In September \(5^{\text {th }}\) of.--
THE COURT: He's never waived apparently.
MR. JORGENSON: Right.
[Colloquy between the Court and the Clerk]
THE COURT: All right, we'll --
MR. PONTICELLO: Okay. Well, hold on a second.
[Colloquy between the Court and the Clerk]
THE COURT: Sir, you still wish to have your trial within -
THE DEFENDANT: Yes, Your Honor. I've been invoking my right to a speedy trial --

THE COURT: All right.
THE DEFENDANT: -- for the past fifteen years.
MR. PONTICELLO: Well, the problem is he's never asserted it. I mean --
THE DEFENDANT: I've asserted it every time I came.
THE COURT: Well, sir, address it to me and he's - he's asserting it now.
MR. PONTICELLO: Fine, let's do it.
THE COURT: We'll - we'll grant your wish, sir. We'll set a trial.
[Colloquy between the Court and the Clerk]
THE COURT: Sir, because I have a split calendar meaning for five weeks I do civil trials, five weeks I do criminal trials, okay. Sir, right now the 60 days falls in the last week of my civil stack, so we can give you the very next week.

THE DEFENDANT: Will that violate my Sixth Amendment right to a speedy trial --

THE COURT: Well, that's --
THE DEFENDANT: -- if 1 agreed to waive it?
THE COURT: -- you're going to waive it for one week.
THE DEFENDANT: I'm saying, will that violate my -- 'cause l'm --
THE COURT: No, sir, 'cause.
THE DEFENDANT: --1 intend to file a motion to dismiss based on the grounds.

THE COURT: It won't waive it, sir, because that's the next available date for the Court. I just want to advise you that it's one week past the 60 days. I'm doing civil cases, but it's not a civil case.

THE DEFENDANT: Okay, but then so that's not going to stop my motion?
THE COURT: No, it's clear on the record that you've invoked your right to a speedy trial.

THE DEFENDANT: All right then.
THE COURT: So we'll give you this date.
THE CLERK: Calendar Call will be August \(26^{\text {th }}\) at 8 a.m. with a Trial date of September \(2^{\text {nd }}\) at 10 a.m.

THE DEFENDANT: Excuse me, that's like 90 days from now.
THE CLERK: No. It's the first week of September; it's 60 days. Today's July \(8^{\text {th }}\).

THE DEFENDANT: Sixty-three days. Okay [indecipherable].
Excuse me, he said something about a motion to consolidate was -was submitted.
\(\qquad\)
Exhibir c

THE COURT: There's --
THE DEFENDANT: [indecipherable]
THE COURT: - there maybe a motion in another Department that has not been renoticed and it's not on calendar today.

THE DEFENDANT: So --
THE COURT: Okay?
THE DEFENDANT: -- I don't get a chance to - I didn't --
THE COURT: You can oppose that motion --
THE DEFENDANT: -- [indecipherable].
THE COURT: -- in the other Department. Yes.
THE DEFENDANT: All right. I appreciate it.
THE COURT: All right.
[Proceeding concluded at 8:18 a.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.


DISTRICT COURT
CLARK COUNTY，NEVADA
the state of nevada，

Plaintiff，
vs．
RONALD ROSS，
Defendant．
CASE NO．C236169
DEPT．XVII
（ARRAIGNMENT HELD IN DEPT．ILA）

BEFORE THE HONORABLE KEVIN V．WILLIAMS，HEARING MASTER WEDNESDAY，SEPTEMBER 5， 2007 RECORDER＇S TRANSCRIPT OF HEARING RE： ARRAIGNMENT

APPEARANCES：
For the State：

For the Defendant：

NATHAN A．CRANE，ESQ．， Deputy District Attorney

CRAIG F．JORGENSON，ESQ．， Deputy Public Defender

RECORDED BY：KIARA SCHMIDT，COURT RECORDER

WEDNESDAY, SEPTEMBER 5, 2007

\section*{PROCEEDINGS}

THE COURT: Case Number C236169, State of Nevada versus Ronald Ross.
THE DEFENDANT: Yes.
THE COURT: What are we doing here, Mr. Jorgenson?
MR. JORGENSON: Not-guilty plea, invoke speedy trial right.
THE COURT: Okay. Have a copy of the Information, waive its reading, Mr. Jorgenson?

MR. JORGENSON: Yes. I gather we're going under the second amended Information, although, I never saw the first amended Information.

THE COURT: Well, check the second amended Information, State, and see if it matches the original complaint.

MR. JORGENSON: The thing is, after prelim, about nine charges were dismissed, and I think that's why they have an amended. They both have the same amount of counts. We can ge on the second amended Information, and if there is some problem, because the prelim was kind of -- a little involved in terms of counts that went through. If there is a problem, then I'll get with the -- Judge Villani and straighten it out.

THE COURT: You're going to see what to do? Is that fine, State?
MR. CRANE: Yes, it is, Judge.
THE COURT: Okay. But you do have a copy of it; is that correct?
MR. JORGENSON: Yes.
THE COURT: And you waive its reading?

MR. JORGENSON: I do.
THE COURT: What's your true name, sir?
THE DEFENDANT: Ronald Ross.
THE COURT: How old are you?
THE DEFENDANT: Thirty-seven.
THE COURT: How far did you go in school?
THE DEFENDANT: Eleventh grade.
THE COURT: Read, write, and understand the English language?
THE DEFENDANT: Yes.
THE COURT: Understand what you're charged with?
THE DEFENDANT: Yes.
THE COURT: What is your plea?
THE DEFENDANT: Not guilty.
THE COURT: You have a right to a speedy trial within 60 days. Do you want a speedy trial?

THE DEFENDANT: Yes.
THE COURT: Speedy trial for you, sir.
THE CLERK: Calendarcall, October \(16^{\text {th }}\), at 8:30. And jury trial, October 22 \({ }^{\text {nd }}\), at ten o'clock, in Department 17.

THE DEFENDANT: Excuse me.
THE COURT: Yes, sir?
THE DEFENDANT: I'm at High Desert, now. Can I get a bring down order like the week before my -

THE COURT: Oh, most definitely. I think that, Mr. Jorgenson, he wants to know -- come down at least a week before his --
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\]

THE DEFENDANT: -- calendar call, so l can --
THE COURT: -- calendar call, yeah. I think that's quite a good idea. Okay? So, Mr. Jorgenson, make a note of that. He wants to be back here early. So make sure you make all the proper preparations. In fact, why don't we -- what's the calendar call date?

THE CLERK: October \(16^{\text {th }}\).
THE COURT: Okay, give me -- put a status check the week before that in front of Judge Villani.

THE CLERK: A week before --
THE COURT: -- that, yeah. I'm trying to make sure you get down here --
THE DEFENDANT: Yeah, thank you.
THE COURT: -- because I know that you want to get down here.
THE CLERK: That'll be October \(9^{\text {th }}\), at \(8: 15\).
THE COURT: State, make sure you prepare an order for him to be transported from High Desert for October \(9^{\text {th }}\), that way Judge Villani.can remand him to custody to the Sheriff so he can finish preparing for his trial so nobody would have a problem.
(Proceedings concluded)

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entited case to the best of my ability.


Kiara Schmidt, Court Recorder/Transcriber


\section*{Nevada Supreme Court Docket Sheet}

Docket: 52921 ROSS (RONALD) VS. STATE Page 1

RONALD ROSS,
Appellant,
vs.
Supreme Court No. 52921
Consolidated with:
THE STATE OF NEVADA,
Respondent.

\section*{Counsel}

Clark County Public Defender, Las Vegas, NV IHoward Brooks, Craig F. Jorgenson, Philip David Westbrook, as counsel for Appellant, Ronald Ross

Attomey General/Carson City, Carson City, NV I Catherine Cortez Masto, as counsel for Respondent, The State of Nevada

Clark County District Attorney, Las Vegas, NV ISteven S. Owens, as counsel for Respondent, The State of Nevada

\begin{tabular}{|c|c|c|}
\hline \multicolumn{3}{|c|}{Nevada Supreme Court Docket Sheet} \\
\hline Docket: & 52921 ROSS (RONALD) VS. STATE & Page 2 \\
\hline 04/30/09 & Filed Order. Redesignating Appeal and Reinstating Briefing. Transcript Request Form due: 15 days. Opening Brief and Appendix due: 120 days. & 09-10729 \\
\hline 05/11/09 & Filed Request for Transcript of Proceedings. Transcripts requested: 9/5/07 (K. Schmidt), 10/9/07, 10/11/07, 12/11/07, 6/10/08, 7/8/08, 8/26/08, \(8 / 2 / 08,9 / 16 / 08,10 / 23 / 08,10 / 30 / 08\), 11/4/08, 11/12/08, 11/13/08, 1/29/09, \(4 / 7 / 09\) (M. Ramsey). & 09-11601 \\
\hline 05/41/08 & Filed Docketing Statement. & 09-11803 \\
\hline 05/19/09 & Filed Notice from Count Reporter. Kiara Schmidt stating that the requested transcripts were delivered. Dates of transcripts: 9/5/07. & 09-12402 \\
\hline 06/12/09 & Filed Motion to Extend Time. Motion for Extention of Time to Prepare and File Transcript. (20) days. & 09-14636 \\
\hline 08/15/09 & Filed Order. Granting Motion. Court recorder Michelle Ramsey's certificate of delivery due: 30 days. & 09-14748 \\
\hline 06/30/09 & Filed Notice from Court Reporter. Michelle Ramsey stating that the requested transcripts were delivered. Dates of transcripts: 10/9/07, 10/11/07, 12/11/07, 6/10/08, 7/8/08, 8/26/08, \(9 / 2 / 08,9 / 18 / 08,10 / 23 / 08,10 / 30 / 08,11 / 4 / 08,11 / 12 / 08,11 / 13 / 08,1 / 29 / 09,4 / 7 / 09\). & 09-16152 \\
\hline 08/28/09 & Filed Stipulation. & 09-21040 \\
\hline 08/28/09 & Filed Notice Motion/Stipulation Approved. Opening Brief due date: September 28, 2009. & 09-21041 \\
\hline 09/28/09 & Filed Motion to Extend Time. (90) days. & 09-23656 \\
\hline 10/01/09 & Filed Order. Granting Motion. Opening Brief and Appendix due: December 28, 2009. & 09-23979 \\
\hline 1228109 & Filed Motion to Extend Time. (75) days. & 09-31344 \\
\hline 12/30/09 & Filed Order. Granting Motion. Opening Brief and Appendix due: March 16, 2010. & 09-31527 \\
\hline 03/17/10 & Filed Motion to Extend Time. & 10-06988 \\
\hline 03/19/10 & Filed Order. Granting Motion. Opening Brief and Appendix due: April 19, 2010. & 10-07347 \\
\hline 04/20/10 & Filed Opening Brief. & 10-10246 \\
\hline 04/20/10 & Filed Appendix to Opening Brief. Voll. & 10-10247 \\
\hline 04/20110 & Filed Appendix to Opening Brief. Vollit. & 10-10251 \\
\hline 04/20/10 & Filed Appendix to Opening Brief. Vol III. & 10-10252 \\
\hline 04/20/10 & Filed Appendix to Opening Brief. Vol IV. & 10-10253 \\
\hline 04/22/10 & Filed Appendix to Opening Brief. Vol IV. Pages 705-790. (Screen capture: Santa Fe Station Casino Security Video) & 10-10491 \\
\hline 05/20/10 & Filed Motion to Extend Time. (30) days. & 10-13213 \\
\hline 05/20/10 & Filed Notice Motion/Stipulation Approved. Answering Brief due date: June 21, 2010. & 10-13224 \\
\hline 06/21/10 & Filed Answering Brief. & 10-16209 \\
\hline 07/21/10 & Filed Stipulation. & 10-18756 \\
\hline 07/21/10 & Filed Notice Motion/Stipulation Approved. The motion/stipulation to enlarge time to file reply brief is approved. Due date: August 20, 2010. & 10-18757 \\
\hline 08/24/10 & Filed Reply Brief & 10-21704 \\
\hline 08/30/10 & Filed Order. Cause appearing, oral argument will not be scheduled and this appeal shall stand submitted for decision as of the date of this order on the briefs filed herein. & 10-22264 \\
\hline 08/30/10 & Submitted for Decision & \\
\hline 11/08/10 & Filed Order of Affirmance. "ORDER the judgment of conviction AFFIRMED." & 10-29119 \\
\hline
\end{tabular}
Docket: 52921 ROSS (RONALD) VS. STATE
\begin{tabular}{|c|c|c|}
\hline 12/03/10 & Issued Remittitur. & 10-31389 \\
\hline 12/03/10 & Remittitur Issued/Case Closed. & \\
\hline 12/21/10 & Filed Remititur. Received by District Court Clerk on December 9, 2010. & 10-31399 \\
\hline
\end{tabular}

Q But personally you don't know?
A No. I don't remember exactly how much. Not at the time I can't remember exactly.

Q You just know that you didn't know how to record it --

A Right.
Q -- off the computer to something different.
A Right. Yeah.
Q And finally, someone came from California to set it up so you could then pop a disc in or something and record whatever you wanted to record for later use?

A Yes.
(2) But that was a month or two later after this happened?
(A) Yeah, I'd say a month or two.

Q You had seen this guy, phillie, in the weeks prior to this happening and the weeks after this happening.

A Yes.
Q How many times did -- did you see him altogether? A dozen maybe?

A I wouldn't say a dozen. Afterwards I believe like two times, and before, I don't know, maybe three or four times or something like that.

Q All in March or do you remember?
C236169 STATE OF NEVADA \(v\). ROSS \(11 / 12 / 2008\) TRANSCRIPT VERBATIM REPORTING \& TRANSCRIPTION, LLC
\(111: 5\) N, La Canada, Suite 275, Oro Valley, Aizona 85737 (520) 219-1449

A No.

Q So you have no idea how -- when Phillie was in the store -- do you know if Phillie was in the store on the 17th?

A Just from what they told me.
Q okay.
A Yeah.

Q Aside from what Deja told you and what you saw on the tape, you personally were -- even though you were there on the 17 th you don't remember seeing phillie during this -anytime during the day on the 17 th.

A No.
Q Now, on the videotape this thing was recording to a computer?

A Yes.
Q And the computer could -- how much would the -could the computer hold before it had to start erasing?

A I don't recall. I don't know.
Q Well --

A (Indiscernible) I don't -- I don't know exactly how much it holds.

Q Until you --
A I don't know.
Q Until you fixed it so it would start to save it was -- it would erase itself every day, every week, every month?

A It was like a week, a week or \(\rightarrow-\) a week or two.

C236169 STATE OF NEVADAV. ROSS \(11112 / 2008\) TRANSCRIPT
VEREATIM REPORTING \& TRANSCRIPTION, LLC
11115 N. La Canada, Sulte 275, Oro Valley, Arzona 85737 (520) 219-1449
through the photo lineup．
And you heard the testimony of those witnesses． They didn＇t talk about it amongst each other．You heard the testimony from Detective Rader；he didn＇t do the photo lineup where they＇re all together or they all know who each other one picked．They all pick the Defendant，Ronald Ross，as the guy who they saw in the store that day．

And you heard testimony from Luis，Kevin，and Deja that the Defendant is a regular customer．They＇re not just relying on their memory of this guy who came in who was just one of random thousands of customers that they＇ve probably seen and were able to pick out this guy．They remember him because they know him．

Is that all just the biggest coincidence ever that all these people are able to identify the Defendant？Or is it proof beyond a reasonable doubt that it＇s the Defendant （indiscernible）talking about？Is it just a coincidence that all of them－－Georgia，who has nothing to do with the people at the shoe store，is able to identify the same guy who used her credit card 40 minutes later？They all point to the same guy．And not just to any guy；to the Defendant．

Now，Mr．Jorgenson also said it＇s up to you to see if the detective＇s testimony about it being Mr．Ross on the video，does it make sense．And we have a lot of testimony about the video．You have the video from the Tropicana；
1. That in 1990, the Defendant was convicted in the State of New Jersey for the crime of Attempt to Commit Larceny.
2. That in 1990, the Defendant was convicted in the State of New Jersey for the crime of Larceny.
3. That in 1990, the Defendant was convicted in the State of New Jersey for the crime of Larceny.
4. That in 1990, the Defendant was convicted in the State of Pennsylvania for the crimes of Conspiracy and Robbery.
5. That in 1989, the Defendant was convicted in the State of Pennsylvania for the crimes of Theft by Unlawful Taking and Receiving Stolen Property.
6. That in 1993, the Defendant was convicted in the State of Pennsylvania for the crime of Robbery.
7. That in 1992, the Defendant was convicted in the State of Pennsylvania for the crimes of Theft by Unlawful Taking and Receiving Stolen Property.
8. That in :993, the Defendant was convicted in the State of Pennsylvania for the crimes of Theft by Unlawful Taking and Receiving Stolen Property.
9. That in 1994, the Defendant was convicted in the State of New Jersey for the crime of Larceny.
10. That in 1996, the Defendant was convicted in the State of Pennsylvania for the crime of Forgery.
11. That in 1997, the Defendant was convicted in the State of Pennsylvania for the crime of Simple Assault.
12. That in 2002, the Defendant was convicted in the State of New Jersey for the crime of Third Degree Bail Jumping.


Type or Print Legibly COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF CORRECTIONS

NOTE: Additional supply of this form available at above address:

DC-3008 (Part II) attached


Section \(\qquad\) of the Crimes Code) or (other statute) \(\qquad\)
\(t\) is further orderegty \({ }^{\prime}\) at the sap defengant pe delivered by the proper autherfy to and treaped as tya law directs at the 21 ale calceloxfacility located at


DISPOSTMON OF NON HCARCEMAON OFFENSE(S)





State of New Jersey -Arlannc-01002103-001 Pg 01 of 01
New Jersey Superior Court Law Division - Criminal

[x] JUDGMENT OF CONVICTION
I ] CHANGE OF JUDGMENT
[X] ORDER OF COMMITMENT
( ) MDICTMENT /ACCUSATION ISM.
I I JUDGMENT OF ACQUITTAL




\section*{IT IS, therefore on AUGUST 232002 ORDERED and AD.JUDGED that the defendant is sentenced as follows:}

CT 1: CCC 5 YEARS, PAROLE INELIGIBILTTY 2 YEARS, CREOTT TIME 204 DAYS.
VCCE \(\$ 50\).
CT 2: SAME AND CONCURRENT WITH COUNT 1.
VCCB \$SO. ALL MONIES CONSECUTIVE AND PAYABLE THRU PAROLE. REM CTS DISM.
\begin{tabular}{|c|c|}
\hline 1 IThe defendant is here by sentenced to community supervision lor life I IThe count finds that the defendants conduct was characterized by a pattem of repesitive and compulsiva behavior. & \begin{tabular}{l}
[ ] The court finds that the delendant is amenable to sax offender treatront \\
[ ] The count inds that the defendant is willing to participate in sex offerder Treatment
\end{tabular} \\
\hline \multicolumn{2}{|l|}{[ \(x\) ] It is further ORDERED that the sherif deliver the delenctant to the appropriate correctional autherity.} \\
\hline \begin{tabular}{l}
- (X ) Deferdant is to receive credit for lime spent in custody (R.3:21 \\
DATES FROMTO: 04-00-2001 TO 05-00-2001 05-10-2002 7
\end{tabular} & \[
\begin{gathered}
\text { TOTAL NUMBER OF DAYS: } \\
\text { O } 204 \\
\text { O8-23-2002, 04-14-1992 TO 04-14-1992 05-19-1994 TO 07-21-1994 }
\end{gathered}
\] \\
\hline - [. ) Defendant is to receive GAPTIME for time spent in custody (N/ DATES FROMTO: .. & 2C:44-5b(2)) TOTAL NUMBER OF DAYS: \\
\hline Total Custodial Term: \(05 Y\) OOM 000 Institution: \({ }^{\text {CAFE }}\) & MMISSICORR
\begin{tabular}{c} 
Total Probation \\
\(00 Y\) \\
00 M
\end{tabular} \\
\hline
\end{tabular}
v. )

TYRONE WRIGHT
) Pros. No. 01002103-001

The Grand Jurors of the County of Atlantic, for the State of New Jersey, upon their oaths, present that:

COUNT ONE
(Bail Jumping - Third Degree)
TRYONE WRIGHT
on or about May 25, 200I, in the City of Mays Landing, County of Atlantic, and within the jurisdiction of this Court, having been set at liberty by court order in the matter of State of New Jersey vs. Tyrone Wright, Atlantic County Indictment Nos) 94-07-1697, 92-06-1676-A-CP and 93-01-0262-C-CP, upon condition that he would appear at a specified time and place, namely, the Atlantic County Superior Court, Mays Landing, New Jersey on May 25, 2001, in connection with offenses punishable by a period of incarceration, namely, Theft From the Person, Third Degree, did without lawful excuse, fail to appear; contrary to the provisions of N.J.S.A. 2C:29.7, and against the peace of this State, the Government and dignity of the same.


ATRUE BILL:



\section*{Jersey Suparior Court Law Division－Criminal}
（X）JUOGMENT OF CONVICTION
［ 1 CHANGE OF JUOGMENT
［X］ORDER OF COMMTTMENT
！ 1 InDICTMENT／ACCUSATION DISM．
（ ）JUDGMENT OF ACOUTTTAL


FINAL CHARGES


IT IS，therefore on AUGUST 232002 ORDERED and ADJUDGED that the dafendantis sentenced as follows：
CT 1：CCC 5 YEARS CONCURRENT WITH 19206 1676，PAROLE INELIGIBILTY 2 YEARS，CREOTT TIME I DAY． SSCP \(\$ 75\) ，VCCB \(\$ 50\) ．ALL MONIES CONSECUTTVE AND PAYABLE THRU PAROLE．REM CTS AND 193010252 DISM．

\begin{tabular}{|c|c|c|}
\hline I The delendant is here by sentenced to commurity superisisontor the I The coust incts that the delendants conduct was charactetized by a pattem of fepetion and computsive bohavior． & \begin{tabular}{l}
I The count finds thal the defenctant is amerabto \\
I The count firds that the delendant is willing to Treatrient
\end{tabular} & onder trabiment in sax oltender ti． \\
\hline \multicolumn{3}{|l|}{［ \(X\) ］his further OROEAEO that the sherifi doliver the dofendant to tre approptato corractional authority．} \\
\hline －IX 1 Oofendant is to reccive eredit tor lime spent in custody（A．3：21－ DATES FROMTO：O5－18．1994 TO OS－18．1994 & TOTAL NUMEER OF DAYS： & \\
\hline  DATES FROWTO：．． & 2C：4－5b（2）\({ }^{\text {a }}\) TOTAL NUMBER Of DAYS： & － \\
\hline \multicolumn{2}{|l|}{05Y OOM 000 Institutlon： \begin{tabular}{cc} 
CARE COMMASSICORR & Total Probation Term： \\
OOY OOM
\end{tabular}} & \\
\hline
\end{tabular}

\title{
\(\square\) COPY \\ EIGHTH JUDICIAL DISTRICT COURT CRIMINAL DIVISION CLARK COUNTY, NEVADA
}

FILED
JUN 262009
State of NEVADA, )
- )
Plaintiff, )
vs.
                                    CASE NO. C236169
RONALD ROSS,
                                    DEPT.
                                    XVII
Defendant.
    BEFORE THE HONORABLE MICHAEL P. VILLANI,
            DISTRICT COURT JUDGE
                    TRANSCRIPT RE: SENTENCING
                        TUESDAY, APRIL 7, 2009
APPEARANCES:
            For the Plaintiff: DENA RINETTI, ESQ.
            For the Defendant: CRAIG JORGENSON, ESQ.
                    ExHibit \({ }^{\text {\# }} \mathrm{K}\)

THE COURT: All right. Anything else, Mr. Jorgenson or State?

MS. RINETTI: Your Honor, the only thing I would -I would add, just for the record, the booking photos that were given to -- to Your Honor as Exhibits 3, 4, and 5 -specifically 3 and 5 -- with the booking photos, attached to those booking photos are inmate printouts from New Jersey that detail not only the inmate number, which is on the bottom of the booking number, but also the date of the booking number. And those inmate numbers correspond to the input -- the inmate information printout that's behind the booking photo that lists the charges that the Defendant was adjudicated guilty of, and all those numbers are the same.

THE COURT: All right. The Court's going to receive as exhibits State's proposed 3 through 6.

MS. RINETTI: Your Honor, and I also did 1 and 2. Exhibit number 1 is just the cert - the affidavit saying that they were (indiscernible) that everything that was presented to Your Honor was a certified copy, the booking photos as well as the in -- inmate information. And in -- then Exhibit number 2 is just another photograph of the Defendant -- and I would ask that the State take judicial notice of that -- with a different num -- name. I believe the name on Exhibit number 2 is Kevin Johnson. But the New Jersey inmate number is 46457B, which is the same inmate number in all the other ju --



\section*{CERTEICATE OE SERVICEBYMAILING}
\(\qquad\) , hereby certify, pursuant to NRCP 5(b), that on this 17 day of 180,20 <6, 1 mailed a true and correct copy of the foregoing, " \(\qquad\) Peitiona Appaedix by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

\(\qquad\)
\(\qquad\)

CC:FILE

DATED: this \(\qquad\) day of \(\qquad\) Now \(20 / 1\).

\section*{AFFIRMATION \\ Pursuant to NRS 239B. 030}

The undersigned does hereby affirm that the preceding \(\qquad\)

filed in District Court Case number \(\qquad\)

Does not contain the social security number of any person.
-OR-
\(\square\) Contains the social security number of a person as required by:
A. A specific state or federal law, to wit:
(State specific law)
-or-
B. For the administration of a pubic program or for an application for a federal or state grant.


Signature

\(\qquad\)
Print Name
Title


PROW

\section*{FIE ED \\ DISTRICT COURT DEC 5733 AM 'Il CLARK COUNTY, NEVADA}

RONNIE ROSS,
Petitioner,
vs.
D.W. NEVEN WARDEN ETAL, Respondent,

THE COURTICE OF HEARING
DATE 2/9/12. TM E R:15 cm

\section*{FILE W TH}

Petitioner filed a petition for writ of habeas corpus (Post-Conviction Relief) on
November 30,2011. The Court has reviewed the petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the petition and file a return in accordance with the provisions of NRS 34.360 to 34.830 , inclusive.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's

Calendar on the \(\qquad\) day of \(\qquad\) , 20112, at the hour of

8:15a m o'clock for further proceedings.



OPPS
DAVID ROGER
Clark County District Attorney Nevada Bar \#002781
THOMAS CARROLL
Chief Deputy District Attorney
Nevada Bar \#004232
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500

Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA
THE STATE OF NEVADA,
Plaintiff,
-VS-
RONALD ROSS, \#1003485

Defendant.
STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HEARING

DATE OF HEARING: JANUARY 3, 2012
TIME OF HEARING: 8:15 A.M.
COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through THOMAS CARROLL, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion for Appointment of Counsel and Request for Evidentiary Hearing.

This Opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

\section*{POINTS AND AUTHORITIES \\ STATEMENT OF THE CASE}

On November 12, 2008, Ronald Ross (hereinafter "Defendant") was charged by way of Third Amended Information with the following: Counts 1 \& 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. On November 12, 2008, Defendant's trial began, and on November 13, 2008 the jury found Defendant guilty of all counts. The State filed its Notice of Intent to Seek Punishment as a Habitual Criminal and an Amended Notice of Intent to Seek Punishment as a Habitual Criminal on November 17, 2008, and a Second Amended Notice of Intent to Seek Punishment as a Habitual Criminal on January 5, 2009.

On April 7, 2009, Defendant was sentenced under the Large Habitual Criminal Statute as follows: as to Count 1 - a minimum of ten (10) years to a maximum of life in the Nevada Department of Corrections (NDC); as to Count 2 - a minimum of ten (10) years to a maximum of life in the NDC to run concurrent with Count 1 ; as to Count 3-a minimum of ten (10) years to a maximum of life in the NDC; as to Count 4 - a minimum of ten (10) years to a maximum of life in the NDC; as to Count 5 - a minimum of ten (10) years to a maximum of life in the NDC; as to Count 6-a minimum of ten (10) years to a maximum of life in the NDC; as to Count 7 - one (1) year in the Clark County Detention Center; Counts 3-7 are to run concurrent with each other and consecutive to Counts 1 and 2. Defendant received two hundred (200) days credit for time served. Judgment of Conviction was filed on April 16, 2009.

Defendant filed a direct appeal. On November 8, 2010, the Nevada Supreme Court affirmed Defendant's conviction. Remittitur issued December 3, 2010. Defendant filed a Petition For Writ Of Habeas Corpus (Post-Conviction) on November 30, 2011. Defendant filed the instant motion and request for evidentiary hearing on December 13, 2011. The State responds as follows.

\section*{ARGUMENT \\ I. DEFENDANT IS NOT ENTITLED TO APPOINTMENT OF COUNSEL.}

There is no Federal constitutional right under the Sixth Amendment and no State constitutional right to counsel in post-conviction relief proceedings. Coleman v. Thompson, 501 U.S. 722, 725, 111 S. Ct.2546, 2552 (1991); McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 257-58 (1996). However, a District Court judge has the discretion to appoint counsel under the following conditions pursuant to NRS 34.750:

A petition may allege that the petitioner is unable to pay the costs of the proceedings or to employ counsel. If the court is satisfied that the allegation of indigency is true and the petition is not dismissed summarily, the court may appoint counsel at the time the court orders the filing of an answer and a return. In making its determination, the court may consider whether:
(a) the issues are difficult;
(b) the petitioner is unable to comprehend the proceedings; or
(c) counsel is necessary to proceed with discovery.

NRS 34.750 (1999) (emphasis added). Furthermore, to be entitled to counsel, a defendant "must show that the requested review is not frivolous before he may have an attorney appointed." Peterson v. Warden, Nevada State Prison, 87 Nev. 134, 483 P.2d 204 (1971) (citing former statute NRS 177.345(2)).

Defendant has failed to meet the threshold requirement for appointment of counsel, as he has failed to set forth any facts which would demonstrate that his requested review is not frivolous. Accordingly, Defendant's request for appointment of counsel should be denied.

\section*{II. DEFENDANT IS NOT ENTITLED TO AN EVIDENTIARY HEARING.}

A defendant is only entitled to an evidentiary hearing if his claims are supported by specific factual allegations, which, if true, would entitle him to relief. Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605 (1994). Additionally, "[a] defendant seeking postconviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record." Hargrove V. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984); citing Grondin v. State, 97 Nev. 454, 634 P. 2 d 456 (1981).

Defendant has failed to come forward with any colorable claims which would entitle him to an evidentiary hearing. In fact, Defendant provides no facts whatsoever in support of his request. As such, Defendant's request for an evidentiary hearing should be denied.

\section*{CONCLUSION}

Based on the foregoing, the State respectfully requests that Defendant's Motion for Appointment of Counsel and Request for Evidentiary Hearing be denied.

DATED this 15 th day of December, 2011.
Respectfully submitted,
DAVID ROGER
Clark County District Attorney Nevada Bar \#002781

\author{
BY /s/ Thomas Carroll \\ THOMAS CARROLL \\ Chief Deputy District Attorney \\ Nevada Bar \#004232
}

\section*{CERTIFICATE OF MAILING}

I hereby certify that service of the above and foregoing was made this 15 th day of December, 2011, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

RONALD ROSS \#1003485
HIGH DESERT STATE PRISON P.O. Box 650

Indian Springs, Nevada 89070-0650

BY: /s/C. Cintola
C. Cintola

Employee of the District Attorney's Office
\(\mathrm{KR} / \mathrm{TC} / \mathrm{cc}\)

MOTS
MATTHEW D. CARLING, ESQ.
Nevada Bar No.: 007302
1100 S. Tenth Street
Las Vegas, NV 89101
(702) 419-7330 (Office)
(702) 446-8065 (Fax)

CedarLegal@gmail.com

Dec 19 || 26 AK' II


\section*{DISTRICT COURT} CLARK COUNTY, NEVADA

STATE OF NEVADA,
Plaintiff,

Case No.: C236169
Dept. No.: XVII
vs.

\section*{RONALD ROSS,}

Defendant.

\section*{MOTION FOR APPOINTMENT OF COUNSEL}

COMES NOW Matthew D. Carling. Esq., counsel for the Defendant in Case No.
C220916 and makes a limited appearance for the purpose of moving this honorable court for an order appointing him as counsel of record in the instant matter to assist the Defendant with his post-conviction habeas matter. This Motion is based on the Pleadings and papers on file herein, the accompanying Memorandum of Points and Authorities and any oral argument the Court wishes to entertain at a hearing in this matter.

DATED this \(15^{\text {th }}\) day of December, 2011.


\section*{NOTICE OF MOTION}

\section*{TO: THE STATE OF NEVADA}

NOTICE IS HEREBY GIVEN that the hearing on the above-captioned Motion for Appointment of Counsel on for hearing before the above-entitled Court in Department XVII at Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada, on the \(S\) \(\qquad\) day of Her_, 2012 at 8.5 o'clock A.M.

DATED this \(\qquad\) day of \(\qquad\) Decanter , 2011.


\section*{MEMORANDUM OF POINTS AND AUTHORITIES}
I.

\section*{FACTS}

This is a post-conviction matter. On September 19, 2011, the Defendant filed a Motion for the Appointment of Counsel and Request for Evidentiary Hearing on a preprinted form in Case No. C220916. (Exhibit "1") It appears that someone crossed out Case No. C236169 and replaced it with C220916 and Dept. 3. Defendant claims that he did not change the case number or department and intended to file the Motion in the instant case. Defendant filed a Petition for Writ of Habeas Corpus on November 30, 2011, in this matter. On August 29, 2011, counsel was appointed in case C220916; however, Defendant had not yet filed a
post-conviction petition in that matter. It appears that both cases are very similar and raise many of the same issues. Defendant has filed a post-conviction petition in both cases now and wishes to have his same attorney appointed in this matter to assist with the development of his Petition for Writ of Habeas Corpus.

\section*{II.}

\section*{LAW}

The Sixth Amendment of the United States Constitution guarantees that an accused person shall "have the assistance of counsel for his defense." The United States Supreme Court has clearly defined when the assistance of counsel becomes ineffective and an accused person is denied this right. Strickland v. Washington, 466 US 668 (1984). Mr. Ross is entitled to effective assistance of counsel during the present habeas litigation. See also US v. Cronic. 466 US 648 (1984).

Additionally, Mr. Ross has a federal constitutional right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the Constitution during this habeas litigation. See Justice Steven's concurrence and dissent to Ohio Adult Parole Authority v. Woodward, 523 US 272 (1998); see also Morrissey v. Brewer, 408 US 471 (1971), Gagnon v, Scarpelli, 411 US 778 (1983), Pennsylvania v. Finley, 481 US 551 (1987), and Yates v. Aiken, 484 US 211 (1988). Due process cannot be achieved in the present habeas without the appointment of counsel to review of all documents underlying Mr. Ross's trial, the documents filed with the Nevada Supreme Court, all transcripts, other Motions written by Mr. Ross, and defending Mr. Ross's position at a future hearing. The Nevada Supreme Court consistently
urges District Courts to appoint attorneys to help Defendants develop post-conviction petitions, etc.

\section*{III.}

\section*{PRAYER FOR RELIEF}

Matthew D. Carling, Esq., counsel for the Defendant in Case No. C220916 and moves this honorable court for an order appointing him as counsel of record in the instant matter to assist the Defendant with his post-conviction habeas matter.

DATED this \(\angle 5^{\text {th }}\) day of Deceriber_, 2011.


EXHIBIT "1"

0360


SEP 192011

(N THE \(\qquad\) JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF \(\qquad\) Clark. .

MOTION FOR THE APPOINTMENT OF COUNSEL
-vs-


REQUEST FOR EVIDENTIARY HEARING

COMES NOW, the Petitioner,
 proceeding pro se, within the above entitled cause of action and respectfully requests this Court to consider the appointment of counsel for Petitioner for the prosecution of this action.

This motion is made and based upon the matters set forth here, N.R.S. 34.750(1)(2), affidavit of Petitioner, the attached Memorandum of Points and Authorities, as well as all other pleadings and documents on file within this case.

MEMORANDUM OR POINTS AND AUTHORITIES
\(\angle\) STATEMENT OE THE CASE
This action commenced by Petitioner \(\qquad\) 55 in state custody, pursuant to Chapter 34, et seq., petition for Writ of Habeas Corpus (Post-Conviction).
II. STATEMENT OF THE FACTS

To support the Petitioner's need for the appointment of counsel in this action, he states the following:
1. The merits of claims for relief in this action are of Constitutional dimension, and Petitioner is likely to succeed in this case.

Motion for Appointment at Attorney 1612293
2. Pecitioncr is incarcerated at the Ely State Prison in Ely, Nevada. Petitioner is unable to undertake the ability, as an artomey would or could, to investigate crucial facts involved within the Petition for Writ of Habeas Corpus.
3. The issues presented in the Petition involves a complexity that Petitioner is unable to argue effectively.
4. Petitioner does not have the current legal knowledge and abilities, as an attomey would have, to properly present the case to this Count coupled with the fact that appointed counsel would be of service to the Court, Petitioner, and the Respondents as well, by sharpening the issues in this case, shaping the examination of potential witnesses and ultimately shontening the time of the prosecution of this case.
5. Petitioner has made an effor to obtain counsel, but does not have the funds necessary or available to pay for the costs of counsel, see Declaration of Petitioner.
6. Petitioner would need to bave an attomey appointed to assist in the determination of whether he should agree to sign consem for a psychological examination.
7. The prison severely limits the hours that Petitioner may have access to the Law Library, and as well, the facility has very limited legal research materials and sources.
8. While the Petitioner does have the assistance of a prison law clenk, he is not an attomey and not allowed to plead before the Courts and like Pctitioner, the legal assistants have limited knowledge and expertise.
9. The Petitioner and his assisting law clerks, by reason of their imprisonment, have a severely limited ability to investigate, or take depositions, expand the record or otherwise litigate this action.
10. The ends of justice will be served in this case by the appointment of professional and competent counsel to represent Petitioner.
II. ARGUMENT

Motions for the appointment of counsel are made pursuant to N.R.S. 34.750, and are addressed to the sound discretion of the Court. Under Chapter 34.750 the Court may request an atomey to represent any
such person unable to employ counsel. On a Motion for Appointment of Counsel pursuant to N.R.S. 34.750, the District Court should consider whether appointment of counsel would be of service to the indigent petitioner, the Court, and respondents as well, by sharpening the issues in the case, shaping examination of witnesses, and ultimately shonening trial and assisting in the just determination.

In order for the appointment of counsel to be granted, the Court must consider several factors to be met in order for the appointment of counsel to be granted; (1) The merits of the claim for relief; (2) The ability to investigate crucial factors; (3) whether evidence consists of conflicting testimony effectively treated only by counsel; (4) The ability to present the case; and (5) The complexity of the legal issues raised in the petition.

\section*{II. CONCLUSION}

Based upon the facts and law presented herein, Petitioner would respectfully request this Court to weigh the factors involved within this case, and appoint counsel for Petitioner to assist this Court in the just determination of this action

Dated this 3 Gator september get


Petitioner.

\section*{VERTICATION}

I declare, affirm and swear under the penalty of perjury the all of the above facts, statements and assertions are true and correct of my own knowledge. As to any such matters sated upon information or belief, I swear that I believe them all to be true and correct.

Dated this


Petitioner, pie jer.


NOTA
MATTHEW D. CARLING, ESQ.
Nevada Bar No.: 007302
1100 S . Tenth Street
Las Vegas, NV 89101
(702) 419-7330 (Office)
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CedarLegal@gmail.com
Attorneys for Petitioner, RONALD ROSS

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

Respondent.

Case No.: C236169
Dept. No.: XVII

\section*{NOTICE OF APPEARANCE OF COUNSEL}

NOTICE IS HEREBY GIVEN that MATTHEW D. CARLING, ESQ., is appearing as counsel of record in the above-captioned matter. Please address all correspondence and communication to Defense Counsel's Office at the address listed above.

DATED this \(24^{\text {th }}\) day of January, 2012.
/s/ MATTHEW D. CARLING, ESQ.
Nevada Bar No. 7302
Attorney for Petitioner RONALD ROSS



was he in relation to you?
A He was behind him, buti really didin't pet a look at hm or anything because it was only this person that spoike to me.

Q Did there come a point in time when the defendiant and this other person felt you?

A Yeah. Atter they approactied me and asked me what did I
win and how -- you know, this game, how it works, then shortly after, they left

Q About how long did they speend asking you questions about your game?

A Probably, you know, five minutes; maybe not even that.
Q Were you able to tell which direction they wert?
A I think they went towards the left again, on the left
side.
Q Atwer they left, what did you do next?
A You know, all we won was 15 more tries. We played them and then we went to our hotet room, which was down that hallway.

Q Did there come a point in time when you realized anything was missing?

A Very shortiy. As soon as I got lito my room, I noticed that my wallet was missing immedlately and I went back to the bufiet, thinking maybe \(I\) dropped it there.

Q So the last time you gaw your wallet was at the buffet then for lunch?

A Right

\section*{ACCUSCRIPTS (702) 391-0379}

Q What did you do when you noticed your wallet was missing?
A I ran back to the buffet, the luncheon buffet room, asked the hostexss, the waitress, and neither one of them had seen it

So I realized that it was those two young men that had
approached me. At least that's - that's what 1 figured happened,
that they took my wallet when I was sitting there and they
approached me and asked me questions about the machine and that.
Q What, if anything, was inside your wallet?
A 1 had a lot of stuff in my wallet. My wallet is the center of my purse. I had my drfver's Ilcansa, nyy credit cards.

Q Do you know about how mamy credit cards you had inside your wallet?

A How many? I had ten.
Q And did that Include a Chase Visa with the last four digits of 12817

A Yes.
Q Did you also have amy money inside of your wallet?
A Yes, \(I\) did. I had approximately about \(\$ 150\) in cash and I had a \(\$ 50\) shell gas card.

Q Did you comtact security at the casino then?
A Immediately. And they came top the hetel and filled out the report.

Q Did you ever becomse aware if any of your credit cards were used then after they were stoten?

A Yes. Immediately, we called Chase, because my husband ACCUSCRIPTS (702) 391-0379
had the phone numbior, he had the same credit card on him, and they told ma right away -

MR. IORGENSON: Objection; hearsay.
THE COURT: Sustained.
MS. WALSH: That's fine, Your Honor.
BY MS. WALSH:
Q Did you have to do anything with your credit cards after thay were staten? Did you change your credit card number at all?

A Yes
Q Did you give the defendant or this other person who came up with him permission to take your wallet?

A No.
Q Did you cive them permission to use or take your credilt cards?

A No.
Q Did you use any of your credit cards to make a purchase at the Shiek Shoes on March 17th?

A No.
MS. WALSH: Court's indulgence, Your Honor.
We'll pass the witness.
THE COURT: CTOSS.

\section*{CROSS-EXAMINATION}

EYMR. JORGENSON:
Q You were sitting down at a slot machine about one o'clock ACCUSCRIPTS (702) 391-0379

Page 10 of 123
atter eating lunch.
A Shortly after one, it milght have been, yes.
Q Why do you remmember that it was one o'clock?
A That was tha time we werk for tunch. It was around
12:30. I fust remember that was the trme we went.
Q In other words, when all of this - after you noticed the
things missing and you talked to security and the police, thinking
back, that's when you reconstructed and said I went to lunch at
12:30. I must have been at the sfot machine at about one o'clock, as opposed to looking at your watch the whole time?

A Rigit.
Q Your purse was missing or your wallet out of your purse was missing?

A My wallet
Q Did you - when did you see your wallet last, prior to noticing that it was missing?

A When we paide at the Tropicana buffet Iunch, I used my wallet to pay and to leave a tip, so that would have been right around that time.

\section*{Q Just right around one o"clock?}

A Or shortly after.
Q You immediately leave the restaurant after paying and
then headed over to this one machine that you were at when the guy sitting next to me came up to you?

A He wasn't stiting next to me. He walked up to me. ACCUSCRIPTS (702) 391-q379,

can come to some agreement, but the bottom line is, you know, he's -- he's trained in these matters and you may disagree.

I'm sure, Mr. Jorgenson, you can maybe have him sign some document if he wants you to present a certain defense against your wishes for your protection for any post conviction relief.

MR. JORGENSON: Sure.
THE COURT: We can go ahead and do that.
Do you understand what that means? That if you're bent on taking a certain path and you do not want Mr. Jorgenson to take, you know, strategy A and you want him to take strategy B on your case, he's going to come down and talk to you and perhaps have you sign some document with the understanding that, you know, or explaining, you know, what you want. And he's going to explain to you the reasons why he has a disagreement with you and we'll go from there, but you can't take charge of half of the trial and be, you know, be co-counsel on this case. All right.

And so this is first up and this is ready -- is this a two and half day trial?
MR. JORGENSON: Yes, Judge.
THE COURT: A two day or so?
MS. WALSH: Yes, Judge. This should be.
THE COURT: All right. Let's start Wednesday at 10.
THE DEFENDANT: I'm going to see you before then?
MR. JORGENSON: Judge, I am meeting with her tomorrow afternoon to make sure that l've got everything she's got and then l'll see him either that -tomorrow afternoon or Thursday.

THE DEFENDANT: Okay.

THE COURT: All right.
MS. WALSH: May we approach just briefly, Judge?
THE COURT: Sure.
[Bench Conference]
THE COURT: All right, sir, we're going to trial next Wednesday at 10 a.m.
THE CLERK: November 12 at 10 a.m.
[Proceeding concluded at 8:24 a.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my abilly.


\section*{LAS VEGAS, NEVADA; THURSDAY, JANUARY 29, 2009}
[Proceeding commenced at \(8: 22\) a.m.]

THE COURT: C236169, State of Nevada versus Ronald Ross. Mr. Ross is present in custody with Mr. Jorgenson, Mr. Nelson for the State. Time set -- set for sentencing. On November 13, 2008 --

MR. NELSON: Judge, I apologize to interrupt you, but this is Ms. Dena Rinetti's case, so she should be on her way to handle it.

THE COURT: All right.
[Matter trailed]
[Matter recalled at 8:51 a.m.]
THE COURT: All right. C236169, State of Nevada versus Ronald Ross. Mr. Ross is present in custody and Ms. Rinetti for the -- Mr. Jorgenson, Ms. Rinetti for the State. Counsel, approach please?
[Bench Conference]
THE COURT: All right, sir, it's my understanding that you're disputing some of the felony convictions that have been presented by the State; is that correct, sir? You're saying these are not you?

THE DEFENDANT: Yes.
THE COURT: No. Is that correct?
THE DEFENDANT: Yes.
THE COURT: Okay. Well, I don't want to give you the label of habitual felon if, in fact, they are not you. And so we're going to continue this for sixty days for both attorneys to -- Mr. Jorgenson to provide documentation to establish they're not you. The State to -- to provide documentation that they are you. She'll get booking
photos and fingerprint reports; and so we'll continue this for sixty days.
MS. RINETTI: Your Honor, if I could just put something on the record --
THE COURT: All right.
MS. RINETTI: -- for the State? Just for the record, I wanted to -- just for the record just to note that Defendant had previously contested the previous feiony convictions both in New Jersey as well as Philadelphia were not him; that was back in 2007 in case C219404. Ultimately the case was passed about five or six different times for the defense to get some kind of proof that the Defendant wasn't in New Jersey or Philadelphia during those times. The defense was unable to do so.

We filed a notice of habitual in this case in November 2008. We filed a sentencing memorandum listing all of the name, convictions as well as copies of the certified judgments of convictions on January \(5^{\text {th }}\) of 2009. Defense has had ample opportunity to bring this to the State's attention yet again that now again the Defendant is contesting the fact that the -- his previous eighteen felony convictions are not him.

THE COURT: Well, I don't know what information was provided in the other case. If there was proof provided in those then I want to make your job easier if you can pull the records of his other case, but if they're disputing them and they are under a -- under a -- some A.K.A's and different names, so that's my concern and I don't know what they did in the previous case if they just went ahead without double checking. I don't want this to come back 'cause we didn't double check.

And so that's what we're going to do, sir. I hope you're not playing games with this Court --

THE DEFENDANT: No, sir.
THE COURT: -- 'cause that could have an adverse impact on your sentence
in this case if you are. 'Cause that tells me you're not accepting responsibility for your conduct; all right?

THE DEFENDANT: Yes, sir.
THE COURT: So Ill accept you what you're saying is that they're not you and so we'll get booking photos and fingerprints.

THE DEFENDANT: Can I speak to my attorney for a minute?
THE COURT: Sure. Which one, you have two there? Both? Why don't you talk to both just in case?
[Matter trailed]
[Matter recalled at 9:01 am.]
THE COURT: Where are we at?
MR. RENNIE: We're ready, Your Honor.
MR. JORGENSON: We just need to get a -- a continued sentencing date?
THE DEFENDANT, JEROME FORD: Can I -- can I-- can I say something? My -- I'd like to have my attorney present. He's not here, Mr. Hart; and I would like for him to be here.

THE MARSHAL: We haven't called your case.
THE COURT: We're not talking about you, sir.
THE DEFENDANT, JEROME FORD: Oh, I'm sorry. Excuse me. I thought you said Ford.

THE COURT: No, we don't have a case unless an attorney shows up.
THE DEFENDANT, JEROME FORD: I'm sorry. I apologize.
THE COURT: All right. Sixty days?
MR. JORGENSON: Please.
THE CLERK: April \(2^{\text {nd }}, 8\) am.

MR. JORGENSON: Court's indulgence. Great.
THE CLERK: April \(2^{\text {nd }}, 8\) a.m.
MR. JORGENSON: Oh, l'm sorry that -- that's a Thursday. That's my -- one of my Justice Court days.

THE CLERK: How about April --
MR. JORGENSON: The following.
THE CLERK: \(-7^{\text {th }}\) ?
MR. JORGENSON: Perfect.
THE CLERK: Okay. April \(7^{\text {th }}, 8\) a.m.
[Proceeding concluded at 9:01 a.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Failure to raise all grounde I this petition may prechude you from filing future petitions challenging your conviction and sentence.
(6) You must allege specific facts supporting the claims in the petition you file secking relief from any conviction or sentence. Failure to allege specific facts rather then just conchusions may cause your petition to be dismissed. If your petition conttins a claim of ineffioctive assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
(7) IF your peition chullenges the validity of your conviction or sentence, the original and one copy munt be filed with the cleck of the district court for the county in which the conviction occurred Potions raising any other claim must be filed with the clerk of the district court for the county in which you are incarcerated. One copy must be mailed to the reapondent, one copy to the attornoy geamal's office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you sre challeaging your original conviction or sentence. Copies must conform in all particulars to the origion submitted for filing.

\section*{RETITION}
1. Name of institution and county in which you are presentily imprisoned or where and who you are preacatly restruined of your liberty: High Desert Statep inson-Clark County, Nevada
2. Name the location of court which entered the judgment of conviction under attack: Eighth Iudicial District Court - Clark County - Las Vegas, Nevada
3. Date of judgment of conviction: April 07,2009
4. Case number: 巳 236169
5. (s) Length of sentence: 10 yeass to Life w/possibility of parde
(b) If sentence is death, state any date upon which exocution is schoctuled: \(N / A\)
6. Are you presently sarving a sentence for a conviction other than the conviction under atteck in this motion:

Yes \(\qquad\) No KXX If "Yes", list crime, case mumber and senteace being served at this time: \(\qquad\)
7. Nature of offense involved in conviction being challenged: Adjudicated under the Large Habitual Criminal, pursuant to guay verdict of guilty: Larceny from A pesson... 2 -counts of Burglany... Fradulens u6E of a credix card...Theft... And Conspiracy to commit larceny
8. What was your plea? (Check one)
(a) Not guilty \(x \times x\)
(b) Guilty \(\qquad\)
(c) Nolo contender \(\qquad\)
9. If you entered a guilty plea to one count of an indictment or information, and a not guilty plea to another count of an indictment or information, or if a guilty plea was negotiated, give details: \(\qquad\) \(\longrightarrow\)\begin{tabular}{l|l} 
\\
& \(A\) \\
\hline
\end{tabular}
10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)
(a) Jury wace
(b) Judge without a jury \(\qquad\)
11. Did you testify at trial? Yes \(\qquad\) No \(\qquad\)
12. Did you appeal from the judgment of conviction?

Yes Xxx No \(\qquad\)
13. If you did appeal, answer the following:
(a) Name of court: Supreme Court State of NEvada
(b) Case number or citation: 52921
(c) Result: Affirmed Eighth Judicial District Court ruling
(d) Date of appeal: Nov. \(08,2010^{\circ}\)
(Attach copy of order or decision, if available).
14.) If you did not appeal, explain briefly why you did not: \(\qquad\)
N \({ }_{\text {NA }}\)
15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal? Yes \(\qquad\) No xxx
16. If your answer to No 15 was "Yes", give the following information:
(a) (1) Name of court:
(2) Nature of proceedings:

(3) Grounds raised : \(\qquad\)
\(\qquad\) \(N / A\)
(b) As to any second petition, application or motion, give the same information:
(1) Name of Court: \(\qquad\)
(2) Nature of proceeding:

(3) Grounds raised: \(\qquad\)
(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes \(\qquad\) No \(\qquad\)
(5) Result:

(6) Date of result:
(7) If known, citations or any written opinion or date of orders entered pursuant to each result: \(\qquad\)
(c) As to any third or subsequent additional application or motions, give the same information as above, list them on a separate sheet and attach.
(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?
(1) First petition, application or motion?

Yes \(\qquad\) No \(\qquad\)
Citation or date of decision: \(\qquad\)
(2) Second petition, application or motion?

Yes \(\qquad\) No \(\qquad\)
Citation or date of decision:

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You may relate specific fica in response to this question. Your response may be included on paper which is \(81 / 2 \times 11\) inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length).

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion or application or any other post-conviction proceeding? If so, identify: No
(a) Which of the grounds is the same: \(\qquad\)
(b) The proceedings in which thess ground e were raved:

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is \(81 / 2 \times 11\) inches attacker to the petition. Your response may not exceed five handwritten or typewritten pages in length). \(\qquad\) \(\longrightarrow+{ }_{\square}+\frac{1}{4}\)
18. If any of the grounds listed in Nos. 23(a), (b), (c), and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is \(81 / 2 \mathrm{x}\) 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length). \(\qquad\)
19. Are you filing this petition more thm one (1) year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasona for the deiay. (You must relate specific ficts in response to this question. Your response may be included on paper which is \(81 / 2 \times 11\) inches atached to the petition. Your response may not exceed five handwritten or typewritten pages in length). \(\qquad\)
20. Do you have any petition or appeal now pending in any court, either state or foderal, as to the judgment under attack?

Yes \(\qquad\) No \(\times \mathrm{x} \times\)

If "Yes", state whet court and the case number: \(\qquad\)
21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: My trial counsel was- Craig Iorgenson. Esa Depaly Public Defender and on appeal Philip I Kohn-Elack County Public Defender
22. Do you have any future sentences to serve after you completo the sentence imposed by the judgment under attack?

Yes \(\qquad\) No xax If "Yes", specify where and when it in to be served, if you know: \(\qquad\)

Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.
23. (a) GROUND ONE: Petitioner's right to a Speedy Trial was violated under the Safeguards of the Fourteenth (1 4Th) Amendment to our ow a U.S. Constitution, which guarantee even citizens right to equal protection and -. due process of law.
23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law): \(\qquad\)

Please set supporting Memorandum...

23. (c) GROUND THREE: Pefitionecis Sixth (b*) Amendment right to have Effective assistance of Counsel was violated when the failed to challenge the states use of an expat witness, and failed to thoroughly investigate ex review the Discovery.
23. (c) SUPPORTING FACTS (Tell your story briefly without citing cases or law): Please, SEe Supporting MEmorandum...

(a) Groand Five: PetitionEr's Sixth \(\left(b^{\text {mi }}\right)\) and Eighth ( \(\left.8^{\text {mi }}\right)\) Amendment raghts wexe víclated whed counsel was ineffective at seutencing which


Supponing FACTS (Tell your story brielly without citing cases or haw.):

\author{
Please see supporing Menvorandum
}
(b) Grouad Ske Petitioness bixth (6) Amendmant righ to Effective
 And after the tral

Supporing FACTS (Tell your story briefty without citing cassen or haw.):
\(\qquad\)
(c) Ground Seven
\(\qquad\)
\(\qquad\)
Supporting FACTS (Tell your story bricity without cting cases or haw.):
(d) Ground Eidm: \(\qquad\)
\(\qquad\)

Supporting PACTS (Tell your story briefly without citing casea or law.):

WHEREFORE, RONNiE ROSS_, prays that the court grant habeas corpus relief \(t i\) which be may be entitled in this proceeding.

EXECUTED at \(\qquad\)
on the \(17^{\text {产 }}\) day of \(\qquad\) 20 N .


\section*{VERIFICATION}

Under penalty of perjury, pursumat to N.R.S. \(208.165 \propto\) seq., the undersigned declares that he is the Petitioner named in the foregoing petition and knows the contents thereof, that the pleading is true and correct of his own personal knowledge, except as to those matter based on information and belief, and to those matters, be believes them to be true.


Petitioner Prod Se
Attorney for Petitioner


AFFIRMATION
Pursuant to NRS 239B. 030

The undersigned does hereby affirm that the preceding \(\qquad\)
Petition For Writ of Habeas Corpus
(Title of Document)
filed in District Court Case number \(\qquad\) C236169

Does not contain the social security number of any person.
-OR-

Contains the social security number of a person as required by:
A. A specific state or federal law, to wit:
(State specific law)
-or-
8. For the administration of a public program or for an application for a federal or state grant.

\[
\frac{\text { Hoy, } \$ 7,2011}{\text { Date }}
\]

Ronnie Ross
Print Name

隹

FILED
NOV 302011


7 Ronald Ross

\(12 \xrightarrow{\text { RESpond ENTS }}\)
CASE 236169
-DepT. XVII

Evidentiary Hearing Requested \(\qquad\)

Memorandum In Support of Petitioner's
Petition For Writ of Habeas Corpus (Pos t-Conviction)
Comes now the Petitioner, one Ronald Ross by and through t his proper person seeing the Approbation of this mast honorable Judiciary, to have an opportunity under the provisions of Rule 12 ... of the EJDCR in utilization and practice of NRS 34.360 SER For presentation of this Memorandum. This includes all required Points and Authorities in support of this pleading. The purpose of this writ is ta challenge Petitioners ongoing usurpation, as well as Respondents continued insouciance (Egarding theinsidicus, and unwarranted violation of his constitutional rights.
24 Petitioner is a duly cecogjurzed pro se litigant, submitting his owns proper person wat, 25 Of habeas comus... Addressing rum ecclus, in the case at bar, violations of a constitutional 28 Nature. This writ is a delineation of counsel's many \(6{ }^{1}\) Aminend mont violations in the ara 27 INclusive of ineffective assistance Also there exist qts and 14 Th A mendiment violations under

．
1 infractions against Petitions＇s right to equal protection．．．as well as due process of 2 taw．These damaging，constitutional，Entropties ate over．flagrant attacks upon 3 Petitioner，are entirely unlawful．．．．and cannot go un corrected by this honorable， 4 Tribunal．．．in the caseatbar．
5 The record will reflect that Petitioner is noterudited to any extent，in the vast 6 confusing syntax of criminal，or civil law．Consequently，Petitioner must give the， 7 state of Nevada formal notice of his intent to developer a myriad of issues＂witicho 8 target clear constitutional infractions．Such，standards are on dis played in ．．．． Handmak cases Hivala v．Woods， 195 F3d．1098， 1106 ，（ \(9^{\text {th }} \mathrm{Cir}\) ，1999）Zabelv．Williams，
 （Cir．2004）．This Memorandum is canstructeŕ on all documentation，papers，pleadings， on file in the case already．．．Along with the Appendix of related exhibits．Also the Petitioner additionally request an evidentiary hearing in an effort to excrobate，certain Arguements＂in the record．．．plus spotlight，vital mitigating evidence which may，at some point was not fully reputed，earlier in these proceedings ．．．when now en－ acting a perusal，of the merits in this whit of habeas corpus．

Appilcable Lav Standard Fox Effective Assistance Couns是
The Petitioner Ronald Ross，（hereafíc Ross）is now submitting a number of claims，before the court contesting constitutional violations．．．in the case at bar．In the interest of justice Ross must be perspicouous first and foremost．Secondly， Petitioner has，at this time no other acceptable options．．．legally speaking．．． outside of \(A\) formal promulgation that counsel performed，ineffectively throughout the complete trial process．Wherefore，the CASE of Boyd U．Ward， 179 F3d． 904 （1019 Cir． 1994 ） Raids a laid，and cognizant foundation for Ross to demonstrate that counsel was gravely ineffective．Our Nevada Constitution requires for someone to file A writ in district court，to correctly．．．challenge counsel＇s loyality，effective－ Ness，or duty in eporesentation．See Franklin v．State， 110 Nay．750，875，Ped． 1058

1)(1994). These type of litigative grounds are verboten in the format of a direct 2 appeal. Hence the need for a writ of habeas corpus, including a valid request for an 3 Evidentiary hearing to effectuate an objective determination whether or not if... 1 counsel did in fact, pefonv effectively.
5
Statavient of The Case
6 April 19, 2007 Ross is originally charged in the case, at bar. However 3 days later, 1 All charges in the matter, were correctly dropped pr dismissed. It must also be noted, 8 that when petitioner finally did go to trial...in this case, 18 additional charges 9. Were dismissed, stemming from a robbery of the Santa fe station Hotel and casino...

10 herein southern Nevada. Approximately, 90 dáys passed before Respondents again 11 G charged Ross, with the same accusations from early April. Despite enumerated, and 12 documented attempts by Petitioner to uryect his constitutional right into the judicial, procesdiags...to grant him a Speedy Trial, it was never fairly acknowledged by the court. Incredulous as it may sound, Ross appeared in the courtroom of one Judge Michael Villiani 541 days, belatedly, after the filing of his criminal complaint. If must be stated ... Petitioner did no f sex a single delay or continuancein these ongoing proceedings. The trial commenced on November 12,2008. Prior to the start of trial, the state submitted their Notice of Intent to seek Habitual Criminal teatMENT in this case. With the conclusion... of the trial, the jury found Ross guilty on owe gross misdemeanor, and six felonies all from an incident, which took place at the Tropicana Hotel. Next, Petitioner in the ordinary concise timely presented his Notice of Appeal. In mid autumn of 2010 ... Nevada Supreme Court affirmed the... ruling out of the district court. SEE Exhibit* A (Ny.S.CT. order dated 11/08/2010). Later the Remittitur was issued in early December 2010 , bringing the matter to a clusein Nevada's highest court. see exhibit "B (official notice closing casere|a/10) Statement of The Facts
Just prior to the beginning of Spring 2007, Ronald Ross was found shopping in a local establishment, called Sheikh Shoes here in Las Vegas, Nevada. Theton

March 17, 2007... Petitiones did in fact make a legitimate purchase from the shoe stere. He did not use a cueclit card, on the date in question...-Ross used cash to make his, acquisition that fateful day. An Alarmingly cauldron arose during the trial, itself. Kevin Hancock, An Employee of Sheikh Shoes, testified that Petitioner was in the store on March 17,2007 and made a transaction...noting the time Stamp, from the... now lost store security video footage, it iwas \(12: 53\) pm when Ross baughtritens out of the shae merchant. The actual thefty of Ms. Georgin Stahopoulous's credit card, happened almast 10 whale minutes, after Petitioner completed his cum lanufal -. transaction in the shop. Yet, Ross was convicted of taking her ceed it card. A classic, And tragic case of a "... cush to justice...couplied with blantant prosecutorial misconduct. Responclents deliberately held the Petitianer, at the Clark County Detention Cestes for a year and a half. Their desoltory, duplicitous, plan of the prosecution was to sinply detain Ross and coerce him until... he would ultimately" break", and in the aftermath of these immaral events, accept the states guilty plea a greement. Thus, Allowing Respoudents to clear up both the Santa Fe cobbery, and the lairceny againstims. Stahopoulous. In a vimdictive, unprovaked, mankuver to literally punish Ross for not takking the deal, the Respondents filed a notice of intent, seeking Habitual Criminal adjudication. Petitiones in the face of huge stress, and relentless apprehension remmined staleanart about his innocence. On the very first day of Ross trial, the Respondents only after manths of egreginus postulation regarding Ross involvement in the Santafe crime, dropped all, charges agninst Peritianer celated to the Santa fe Hotel/Casino. Sadly thangh those 18 conseciative months, Ross was wrongfully detrined, because of the stake and their Embarassing, injurious, mis-handling of the Santa feincident left Petitioner in A... ceal dilemmn. Due to the Enormous Amcunt, ... of time which cime between the March, 07 Sheikh Shoes occurrence, and the November 08' trial date...witnesses became unnvail able, critical euidence was lost or destroyed, and some called to testify, simply could... not recall what actually happened. Lastly, combining a plethora of elements with the opprobrium, ineffectiveness, and torpid performance of Ross counsel is the basis for this wist.

POINTS AND AUTHORITIES
Ground One
Petitioners right to a speedy trail was violated under 3 THE SafEgUARDS GF THE \(14^{\text {Th }}\) AMENDMENT T TO OUR OWN U.S. - CONStITUTION WHICH GUARANTEE EVERY CITIIEN'S RIGHT TO 7 EqUAL PROTECTION, AND DUE PROCESS OF LAN...

In early Spring of 2007 Petitioner was arrested on a seines of charges by WMPD. Within the period somewhere around 72 hours. Ross was released from custody. Then 90 days later he was arrested, once again on basicly the same criminal charges, and held at the E.C.D.C. Strikingly from his initial court appearance, and consistently throughout every judicial appearance, unto the start of trial petitioner sought to enforce his constitutional right, to a speedy trial. seé'Barker v. Wino, \(40 \%\) us. 514.92 5. Ct. 21 82,33 Led. 2d. idol. Here great scrutiny must be invoked to objectively canalize the overt and recalcitrant turpitude of bath the Respondents and Judge Villianii which has in His case created a, Manifest Miscarriage of Justice. Ross had an irrefutable right to a speedy trial. The uncom pounded fact, that he did not get such a trial is piegudicial as wall as grossly inconsistent with Petitions's substantial rights, defined indubitably under the \(6^{\text {Th }}\) Amendment of our, United States Constitution. Futhernore, this right is rigorously impPleanented by 18 U.S.C. A. 3161 et. SEa and Rule 50 FRCP... And Nevadis own State Constitution, Also. Proper demarcation to determine whether, or not delay was or is sand to be unreasonable, in the case at bar rest upon 4 factors.
2 First there is a required evaluation of the length of delay. In this case Ross did 25 not go to trial for 541 consecutive days. Once Petitioner was arrested a second time on 28 Essentially, the same criminal charges that mere the nexus of the original detention in 7 April 2007. -Ross right to a speedy trial was activated. Although Res pendents make a inaccurate, prevarication laced, claim to the contrary Ross nor his attorney of record...

1 made Even a single request ta delay the proceedings. Respondents were laboring with seuksal agendas; in the case at bar ranging from Efficaciously accomadating various scheduled commitionents of RESpondents, Extended unproductive machinations to have this case consolidated with another Ross case out of Dept. 5, and a illogical need, to pamper, this witness an Against Petitions. The record will reflect the delays mere very lengthy, questionable at best, and always granted by Judge Villiani without any sign of meaningful judicial Examination. The behavior of the honorable Judge at this pontine the proceedings does cause concern as to a violation of Ross constitutional right to, a fair and public trail since he permitted an excessive number of delays without any challengeprinquiry which in Ency instance behoved the Respondents. This is a laid structural error, in the case at bar. . con sequently warranting some degree of needed remediation. Equally important is the judge's unique, EUEN Special rESponsibility of... Ensuring the continued and uninterrupted integrity of the criminal judicial process. HE, the judge is mandated to live upton a code of professional ethics, at all times with out Exception. By repeatedly, Knowingly allowing multiple "uncommlanly lang, delays Judge Villani viol lated that entrusted code. SEE US v. White, 222 F3d:363 (7lecir. 2000 ) and Statev. Erenyi, 85 Ned. \(285,454, P 2 d .101\) (1969) and Sevencan V. Hestost, \(316 . .\). F3d. 76 ( Ind C ir. 2002). The possible scenairo of Ross trial unfolding within the 69 days normally afforded incarcerated defendants was lost, in the case at bar whens the opportunity for a meaningful hearing was eviscerated by an uncommonly long (effendi del day of 541 days. A dogmatic violation of Petitioner's \(14^{\text {th }}\) A mendmenat... right to due process. SeE City of West Purina v. Psorhins, 525 US. 234, 142, LEd. 2d. 636 119 sect. 675 (1999).
Second, these is An objective perusal of who in the EyES of the court is actually the blanefor creating such a delay, in the case at bar. Even delay requested show An intentional, covert, attempt by Respondents ta procure an unfair tactical admanage, to buttress their position at a delayed trial. This cather cunning plot was used to harm the Petitioner, and covered up the fact exculpatory Evidence had gone missing.

1 SEE, Brown v. National Bank Corp. 188 F3d. 579 ( \(5^{\text {Th }}\) Cir.1999) And Wand. Sheriff, 288 NeV. \(547,501,72 d .1034(1972)\). Themissing guidenuce, was the security video 3 footage from the share store. Ross could have the surveillance video to prove he did.... 4 not take Ms. Stahopoulous credit card. On each of the following dates Responderats 6 ask for, and got contrinuances...in this case. August OT, 2007... the prosecution due, - To a missing witness, ask for and receive a continuance. Less then 30 days later 7 Petitioner, DNCE Again ,promulgates his desire ta implement the cons itutional right to 8) A speedy trial, during District court acaiggement of September 05, 2007. Folbwing 9 that court appearance, the prosecution ask for and receives andattiec continuance 10 when all parties are in front of Judge Villani... October 11,2007 . Surprisingly,
11.2 months pass, when the Respondents seek, and are granted still another con12 tinuance, in the case at bar citing the exact same excuse they used in October, some 13. vague attempt to consolidate this case, with another separate... unrelated case out of 14 Dept. 5 this hearing occurred December 11,2007. For the record it must be noted, that 15 No alleged consolidation of cages ever happened. Ross next languisties for another, 16 Le entire mantas, in the Clark County Detention Center... on June 06,2008 the 17 is still another request for continuance made by the prosecution, Judge villani again 18 approves the supplication, without a challenge. A month expires, before all parties are 19 Convened in DepT. 17 again. Here Pefitiañat this juncture of the proceedings is bothy, 20 suffering from enormous lassitude, due ta his own counsel's lack of effectiveness. and 21 layality, set LockturTv. Terhune, 250 F3d. 1223 (Their. 2001). Ross counsel had a duty, 22 An Ethical responsibility, to question the courts Malady over allowing continuance... 23 After continuance... After continuance when counsel knew, Ross strong desire to
24 utilize his right to a speedy trial see, Community Dental Services v. Taxi, 282 Fad...

28 unmistakable evidence that Petitioner's counsel, as well as Judge Villani were for a 27 all intents, and purposes fully cognizant that Ross whinnied to proceed to trial now. (eat)
28 C. ... transcripts from hearing of \(07 / 08 / 08\), where it is confirmed Ross never waived

I
1 his right to a speedy trial, dating back to 09105/07). Petitioner, informed the court 2 on September in, 2007... that he wanted a Speedy Trail. see ext, c page 4 , lines 3 2-15). In open court on the (ecord the prosecution commits a disturbing, odium, 1 supercilious act of prosecutonial misconduct, when he intentionally lies to the count. He 8 |states that Ross did not at any time wane... or polled his right, to a speedy trial In 6 Exhibit C \({ }^{\text {E }}\)...page 3... lines \(16-25\). REspondents adamantly attempt dissimulation what7 ing the court to believe, Ross had failed to execute... his lo Amendment right to a 8 speedy trial. This is a momentous violation of Petitioner's right te equal protection.... 9 once he did give proper notice of hiss desire, to have a speedy trial, he should have been 10 treated essentially, as any other person similarly situated... who askfera speedy and 11 fair trial. This is a resounding safeguard of our 14 Th Amendment, which in the case at 12 bar, Ross was denied. SEE Brown y. City of Oneonta, NY, 195 F3d. 111 ( 2 Net \(^{2} C i \cdot 1999\) ). HENCE, 13 with the Petitioner not getting the speedy trial, that he timely... And redundant sought 14 from this honorable Tribunal, was a injuncus selective, and overtly discriminatory use of 15 the constitutionally guaranteed right to r speedy trial. SEe Anderson Romero, 72 Fad.
 17 subjected to 54 l days of delay, when Ross asserted his 6- Amendment r right to 18 a speedy trial, from the beginning of this case is a stunning travesty of justice. Not, 19 Once did Petitioner Ever seek a single continuance, delay, Extension of tine, or the 20 resetting of any court dates... not once.
21 With additional continuances (equested by Respondents, and granted by Judge...
22 NIllani an August 26, 2008... September 02, 2008 ...September 16, 2008... there can be,
29 Little doubt who bears the overum helming burden of being responsible for the delay in 24 this case. Unfortunately Judge Villani failed to protect Ross right to due process, when te 25 repeatedly permitted Respondents appeals for continuances, blantantly ignoring Ross and 20 his right to a speedy trial. Clearly, Petitioner does retain an unstuxkeableright to batt 27 A fair and speedy trial...from Judge Villani. Equally important when thee exist hurtful 8 And bias ambiguities, such as unreasonable continuances...these flaws belong only

1 ta the presiding judge and cob Petitóenfe of his \(14^{1 /}\) Amendmentrights of equal protect2 ian and due process See Ligenterg v. Health Services Corp. 486 US 847,100 Led. \(2 d\).
 4 Us v. Bass, 404 us. 336,92 5.et. 515 (1911).
6 Thirdly....to revisit exhibit" C , speaks volumes on page 3 , Ross had to firmly correct A 6 total preverication by the prosecution, who deliberately postulates, that Petitioner hod1 Waived his right to a speedy trial. On pages 4 and \(\overline{5}\), is a running dialogue back 1 8 And forth focused entirely on Ross right and protection of his speedy trial virtue, where 9 Judgevililami tries several prapitations, to calm Petitioner's anxiety ones whether, or not if his speedy trial right is being duly recognized: To peruse gatibit"D (initial arrangecent dated 09 105107) confirms the unequivical fact, Ross has, the outset done only one thing, consistently...invake his right to a speedy trial, an page 3... lines 2-17, obviates any questions about due course, of the Application of his speedy trial right:
14 Lastly the prejudice caused the Petition es resulting front the 541 days of delay was devastating. Anytime theses post-acusation delay of one year or longer it becomes, presumptively prejudicial. The extend pretrial confinement, mounting stress, the lost of potentially exculpatory Evidence(the missing video suneillance footage from sheikh shoes, in this case) failing memories, dimming eyewitness recapitulations, numerous concent of the cletrinee trail related, and otherwise are exacerbated by irrational, abusing, delays that lack true Judicial sense, or economy. The stealthy element of prosecuTorial coercion must be reputed. hear. The uncompounded theory aids. the longer he has to sit the more amiable, Ross is forced to entertain a deal or plea agreement. The excessively long and many delays... 9 in total; anis ceration any and all components of Petition ness right to due process, in the case at bar. 5 se Piland v. Clark County Jualanile SeeN. 85 Now. 489 \(45 j\) P. \(2 d .523\) (1969). For the basic element of maintaining constitutional fairness... The conviction must be vacated, or in the alternative convene an evidentiary hearing.
\(\qquad\)

1 Petitioner's \(6{ }^{\text {TH }}\) AND \(14^{\text {TH 2 }}\) AMEND AMENT rights WERE 2 VIOLATED When Critical evidence was lost before trail and counsel failed to attack effectively, this pivotal factor in the ordinary course of the trail process.

Courtrooms throughout this great ration both state, and federal turn to the Landmark case of Strickland y. Washington प66. U5.668,80 LEd. 2 d . \(674104 \ldots\) S.C. 2052 (1984), when faced with the arcluous task... of determine ing if t the given proformance was truly effective. Today a 2 -prong test is used, for djective evaluation. First and most importantly, was counsel reasonably effective in their representation of Ross; in the case at bar... And secondly was there a reasonable, probability of a different result, with effective assistance se US v. Glinsey 209 Fad. 386 ( \(5^{\text {th }} \mathrm{Cir}\) 2000) and MEANS v_State, \(120 \mathrm{NEV} 1001,103\) P3d:25 (2004). Once The trial commenced their is an expectation that Petitioner's counsel will be diligent, loyal, and ethical. This vital and needed constitutional protection, does exTend to the overall performance of appellate counsel, as well. SeE hs y Mankind, 212 F3cl. 835 ( \(3^{\text {rd }}\) Cir. 2000 ) and State V. LaVE, 109 NeV. 1136,865 Pd. \(322,323,(1493\) )... And LockharTv. Terhune, 250 F3d. 1223 (9ThCir, 2001). With, the preliminary leaning, the state introcluced a viedo of surveillance, footage from March 17,2007 Showing Someone, making a purchase at Sheikh Shoes ...herein Las Vegas. Respondents identified Ross as the individual, viewed on the footage making the trans action. However, when Petitioner's trial finally begin 18 months later, the state could wot produce this Noul critical piece of evidence. A troublesome, Almost, insufferable cauldron exist because... NEither trail counsel, nor a ppellute counsel brought ouT the distinct fact of A Brady violation, SEE Exhibit "E (NuTS. dx. dockeT Sheet). Sadly after Nearly 2 years of...Rass Appellate counsel preparing, and presenting the appellate arguement there is nothing

Addressing a Brady violation- This same insidious blunder was committed by the trial counsel. Manning, super and Makaquev. Warden, 112 Nev. 159 " \(9128.2 d .25\).... (257, (1996). The significance of the video footage, cannot he overstated. The \(14^{\text {th }}\) Amendment protects. Petitioner from any wanton conviction... whenever there is, 6 not price beyond reasonable doubt. In the case at bar. Ross ias essentially found 8 guilty on witness identification, much of that evidence was derived off the footage from the shoe store. Due to an unexcuseable, and avoidable lost of the video, not a single Member of the jury panel sane Eviden ce that seureal people testified to, including the socalled Express witness.... whoa was never, correctly noticed as an expert witness. Here in Nevada the states constitution under NRS 174.234, ... Mandates that proper notice must at 21 days before trial begnen, to all involved parties, This did not occur, Ross counsel ... failed to stramiously presertthis constitutional infraction, at trial-Lanes supra.
From the outcast of this ease Petitioner had been, himself...A victim of ineffectiveAssistance, prosecutoinal misconduct, and and abuse of judicial discretion. Russ does Not make any suppositions, or disingenuous claims about Sainthoad:...hanever curiount
 from wrongdoing and vindictive ham bought against him deliberately, by any officer, of then at any stage of the judical precess. See Brown v. National bank Comp., 188 Fad.
 LamberT v. CaliforniA, 335 us. 225, 2 1 Ed. 228, 78 S. Ct. 240 (1957). During the fist preliminary hearing the state charged petitioner witt 20 felony counts arising from, 3 separate incidents. This includes the case at bar, the alleged taking of a wallet... that belonged to, dove Georgia Stathopoulos... which occurred at the Tropicana, 2 ed A claim of theA ... At the Santa fe from a Javas Violate and \(3^{\text {rd }}\) an alleged act of thievery, it happened to Ms. Bertha Lundquist, at the Pan's Hotel. All of these offenses took phacein March, \(200^{\circ} 7\). In the stales unwarranted" "rush to justice...during the second, preliminary hearing held on August 17,2007, All charges related to the incident at the Paris Hotel, 10 in total ... were dismissed, the state could not produce the so -called victim.

This was followed by the Respondents, stubbornly, and relunctantly dropping all the charges against Ross associated with the Santa fe theft. In a tragic, y f true egregious misacarriage of justice, combined to mean-spirited prosecutorial misconduct, Petitioners was forced to sit in an over crowded Clark County Detention Center, 18 painstakingly lang, Arduous, consecutive months because the state refused to sente... the fiduciary they, entrusted to uphold, Rather than review available, Known, video surveillance taken the day of the event... March 23, 2007. Respondents remained completely intractable for over a... year and half, ta Examing the Santa fe footageswithout logical explaination. Finally when The trial began in the case at bars the state begrudingly dismissed every want, attached to the Santa fe, hance Ending a toatbodh case of vindictive prosecution. Unwillingly Ross now became a earnest target of an embarassed, frustrated, And exasperated district attorney's... office, who wage now down to a single case against Petitions with missing witnesses and lost evidence. A number of witnesses who appeared at the Preliminary hearing gave their, testimony in conjunction with their own, observing of footage talks from the shoe store sunvillance camera. An en omous, predicament comes into existence here. The state frilled to shaw that crucial video, at the preliminary hearing, nor document that this invaluable piece of gidemce was last.

The Respondents intentionally make the decision to not disclose to the Petitioner that, video from the March 17,2007, alleged incident is no longer available. They are cognizant... that by losing such vital evidence ... before trial io this case even the preliminary hearing Ross night to a fair trial is forever forfeited. Furthermore this in contravertablelost of vital Evidence, creates an absence of euidence...A sound basis for reasonable doubt in the... Case atbar.jes US y Basutista, 252 FId. 141 (2000 Cir, 2001) And US v. Ratiman. 189 F3d. 88 (2wicir.1999). Petitioner's counsel either (waw, or should have Known just how truly important the lost video was, in this case. If counsel had thoroughly gevienved all of his client's discovery, there was essential data to be utilized thee. Theindiuidual sean in the footage taken from Sheikh Shoes reveals a mun making a purchase in a forball \(J\) zesty with the number 6 , embossed on the front and back. Decisive attention, was
given to the fact the individual in the shoe store surveillance video and the man in the Santa fe security footage was african american...and wearing a football shit or gels key, with the number 6 onit. Responclerts wise so dead sit on making Ross... the assailant in these entirely unrelated events, that LWMPD Detective Moll did in, State the man in the video was Ross, making a purchase at Exactly \(12: \overline{\text { an }} 3\) pa. This is Almost 10 minutes before Geogin Stathopoulous credit card was stolen. Ccunstal also could have gotten flexes to inform the jury. Sheikh shoes was at least if minutes, from the Tropicana, where Stathopoulous was victimised... by Someone other than Petitioner. Effectively, fellonging this same line of questioning using the claim of \(A\) Brady violation, ones the loss video ... counsel could have under ont, forced Flennas to

Elunctantly admix that Ross hack already been wrongfully ickentified by the LYMPD from vidEo suneillance, et the Santa \(E\) Station, of a theft the state 18 , months after the fact , finally conceded he did wa commit. Pocstcutorial misconduct in its most basic form... repeatedly is on dis play in the case at bar. Exhibit (trial testimony of K. Hancock \(11 / 12 / 08\) ) commences forcefully to the Brady... violation, if counsel had used effective measures... such as thorough, Assiduous, investigation. Ross counsel either Knew, or should have K wow from examing the discovery, that K erin Hancock the Assist store Mgr. from Sheikh Shoes, a Key witness for the state... Testifies under ort, that Although Hancock himself is working on March 17, 2007, he did not absence Petitioner in the shoe store! Every ward of testimony than cock conveys to the jury panel, stems from the missing store security video, see exhibit "F pg. 209 , lines 1-12. Surveillance footage not sen by defense counsel ... or a single member of the gory. Counsel could have made a point to remind jurors, the last time Respondents were forth coming with security... video evidence, it irrefutably Exonerated Ross of Any wrongdoing in the Santa fo .... theft. With this fact lucidly established, by the record could have subsequently, said the states lest of the Sheikh Shoes nickles was not fortuitous, but intentional. Simply, because the prosecution did not want to lose another case, due to questionable, or... unclear contents of the security footage. This ladies, and gentleman of thegury is a Brady y... violation, FurThermore, counsel could have shared with jurors, that hancock told Defective Flennes na store personnel, knew how to save video footage, see ext. "Fig. 209 ... lines 12-25 and pg. 210 ... lines tile. Therefore leaving Def. Fl bennes no Excuse for failing to use police authority to con fiscates. The footage, obviously it was significant evidence, in the case at bar. If there had been better invesilgation by counsel, these was a plethora of evidence to establish first a Brady violation, second reasonable doubt in the minds... of the panel of Jurors sax Williams v, Taylor ... \(529,45.362\) (2000) and Strickles v. Greene, 527 us 263, 144 LEd. \(2 d .286,147\) S. CT. 1936(1999). Recognivizing the Brady Doctrine Even if Respondents failure to disclose
timely the lost of the stake video, which Petitioner has believed from the beginning had Exculpation y value...was inadvertent, it still caries overwhelming and unchanged able impact on the fairness of the entire proceedings as willful, and premeditated, concealment by Responiclents.
Lastly the prosecution had been granted 9 continua andes throughout the case. This tactic, delayed the trial bill days, and removed Ross chance to Exercise his 6 in... Amendment right to a speedy trial. When Responclents were permitted to use presimiwary transcripts in place of a critical missing witness... At trial. Shockingly Judge Nillani overruled, the defense objections to the aclmission of the transcripts. NexT the counsel for Ross requested a continuance. The request was rational and warranted, with the juclae Allowing (Petitioner thud never seen the video łwitigat) in, the preliminary hearing transcripts, defense counsel needed an opportunity... to "regroup" And then deal with the, depreciating ruling by Judge Villini. It must be noted, this was Russ first request for a continuance. To deny Petitioner's only attempt to procure a practical da lay in the case at bar, after granting the prosecution's 9 seperide resales to delay, is a distinct act of a siting judge abusing his discretion. Not permitting Russ the only continumke ask for by the defense was a gaur error, and adversely effected Petitioners sub stantial

 the facts presented in Grand Two, this how arable Tribunal must reverse and remand, or in the alternative, order an evidentiary tearing.

\section*{Ground Three}

PETITIONERS \(6{ }^{\text {TH }}\) AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL. WAS VIOLATED, WHEN COUNSEL FAILED TO CHALLENGE THE STATES USE OF AN EXPERT WITNESS, ALSO COUNSEL ERRORED by not diligently reviewing the discovery.

Counsel, Either KLEiN, a should have Known that the prosecution violated NEvada
law, under NRS 174:234 when LYMPD Detective Flenner was used as and Expert.... witness, and testified on behalf of the state. However in order to property use that detective at the trial, as An expert witivess, prosecution pursuant ant, to Nevada law must... 21 days before commencement give formal notice of their intent of usage of am exprot witness. If Ross counsel had effectively reviewed the available, given, discovery...he would realize there was no actual surveillance foot age, from Sheikh... shores, and therefore artfully used the missing hypercritical evidence, ta Ross advantage during cross-Examination of the states...un-noticed, rogue, so -called, expert witness. Counsel should have inform juras, that Flemner vas being allowed to speak to them...
 state law requirements to notice the LMMPD detective, as an ex pert witness... Yet he still testified as such. Petitions's Mien, or should have Known through his own legal representative... allowing flenner to spenll to the pruned of jury members, as the \(60-\) called "expert", witness would be extremely hurtful to the defense. Counsel should have fiercely challenged Flenner, being allowed to testify in that capacity, He should move, or should have moved for a mistrial or a continuance to discuss in Judge lillani's chambers, the flagrant, and profligated conduct of Respondents violating the needed safeguards of NRS 174.234. Regrettably Ross counsel did, in ESSENCE Not ting. What is bingsinto question; was thee any loyalty prided in the case at bar. to Petitions SEE Donovan V. State, "12 Nev. 843, 846, 921 Pad. 278,280 (199L) and Howard v. State 106 Nev. \(713,722,800\) P.2d. 175,180 (1990). To literally stand by allowing the test pony of a rogue, un-noticed expert witness, without challenge is an extraordinary and pusillianimous circumstance, to say the least. It was unreasonable representation, to wot question flenwer failing in any shape or form to meet the requirements of NRS 174.234. Equally important was Ross counsel again blundering, by not objecting to another reckless display of prosecutorial misconduct. The disregard of NRS \(174.234 \ldots\) seriously affected the integrity of the judicial procesdings,in the case at bar. Thee f is no debate, minus the testimony of Detective Flennes the ere exist a reasonable probability,
1. of a vastly different outcome se Wiggis v. Smith, 539, U5. 510,523 (2003) Also:.. 2 Se Rovilandy. State, 118 Nev. \(31,38,34\), P. Sd. 114 , \(118-19\) (2002). Flenner showed the Jury 3 a" surveillance video from the Tropicana, so poor in quality, inst virtually "nanacuous, anal 4 of greater connotation, this security footage does, show Ross doing anything illegal, 5 © nefarious. There is mot a modicum of guídence on the Tropicana video to declasse... 6 that Petitioners committing a crime. Sensing this growing conundrum, as the grypanel 7 watches the sumieillance recording, Fearer tables on the role of "tor guide". Instead 8 ) of allowing jurors to observe the footage, objectively, Flenner tels the jury what he... WANTS them to SEE, AS apposed to what is actually show ting on the screen. Perhaps none of these bias machinations by the state would have coneinto play, if Ross counsel had Effectively challenged the involvement of De Flenner, as an impouprely noticed expert witNess. Strickland, supra ...Wiggins, supra ... Love, supra. This huge, insidious error in the case At bar is grands for reversal, or in the alternative an Evidentiary hearing.

Ground Four
PEFíIIONER'S 6 TH AND \(4^{\text {TH }}\) AMENDMENT RIGHT WERE VIDUAED WHEN COUNSEL DID NOT PROTECT PETITIONERS CONSTITUTIONAL RIGHT TO CONFRONTATION OF WITNESSES AT TRIAL. AS WELL AS... RIGHT TO DUE PROCESS OF LAW.

Deja Jarmin was the prosecution's star withes against Petitioner. He was the Sheikh Shies employer, who actually rang-up Ross transaction in the... Store on March 17, 2007. Essentially, this man is the states only eye wit mess, to the questionable events.... an that early spang day. A detail study of what... Jamming stated in the original statement to the WIMPD, contravenes drasticly" what he aids, at Petitioner's preliminary... hearing. Thus creating a true need to Enforce Ross constitutional right under the 6 Amend men to confront any ... And All witnesses against him. In the clays, weeks, and months leading pto the trial
the Responiden这s consistently misled Ross into believing，that Deg Iarmid would in fact，benvailable to testify．．．．at trail．A record of the prosecution failure to gain， any type of commitment，about Inanind testifying at Petitioners trial，and Knowingly Not sharing this exculpatory information with Ross counsel is a resounding，clear 6 violation of Petitioner＇s right to due process．For the defense to know prior to trial， that the state cannot locate or continua that their own star witness will be available to give testimony，is enormously crucial to strategy preparation for Ross．Respond ant had a constitutional duty to disclose this，And intentionally failed to do this．see ．．．
 \(124 \mathrm{~S} \cdot \mathrm{Ct}\)－ 1354 （2004）．This elexasur of Petitioners a aquement is overtly cogent．During the preliminary hearing Jamming testified，at great lengTth．．．．about the contents ant A video surveillance recording from Sheikh Shoes．However，because this footage．．． was not showery，at Ross preliminary．．．Aux seen at any juncTure of these procedinges by defense counsel，nor were the Respandails forthright，or fair－miaded Evaught to Even rathe an apperpróate disclosure that the fErvid wis gone months before the prelim，y y there was no atterapt to share this vital data with
 MEANingful vignette of opportunity，to adequately cioss－Examination of Iacmin at the preliminary hearing．．．or confront this witness against him Sex Hegnand de i upstate， 118 ，

Pefitioner＇s counsel was aging egregiously，ineffective when he failed to revisit his excellent and accurate objection using the Best Evidence Rule．．．at trial，whose the state was allowed the use of Iaminis prelíninary hearing tanariopl，since Jamíd．．． Not at triAl）．Counsel either Knew，or should have Knowin．．．that the bad frith Actions of Respondent is removed Doss 6 th Araendment cightito confront this crucial witness．To replace Iaraju＇s live testimony，with a transcript combined with Repondents lost of passible Exculpáloy Evidence．．．And Respondents never truly establishing that Jacain was，in fart unavailable were all issues counsel should have，And could have
1. challenged, but the failed, to do 50. Strickland, supper. In Exhibit" \(G\) (closing arguement of 2 theprosecuitionat trial) Respondents become alarmingly hubris, and recalcitrant in 3 blantantly...As well as, improperly vouches for several of the states witness during 1 hes closing comments in front of the jury. Respond dents conarey their own personal. 6 PEelings or opinions, pertaining to the truthfulness of their testimony, see adhibit "G, lines 8 (1-21. In ha closing statement in lines 8-9 ... she wrongfully sards "Lu's, Kevin aud Degn" 7 One Daja Immin...nener even testified at Ross trial. It is verboten, amoral, And vexatious 8 to imply that facts not even before the jury or gigue credence to a witness credibility, 9 or to clelibecately build the states case on inferences pulled from testimonial privilege

 12 269 F3d. 877 (7² \(\operatorname{cir} 2001\) ). In the caseat bar there exist a momentous violation of, 13 the conf font Thitiod clause of the \(6^{\text {nh }}\) Amendment, therefore this most honorable Tribunal must acknow ledge the judicial need for reverse, and remand in this case. In the ... Alternative an euiclentiary hearing to reasonably examine a myriad of umesolusd, ye lucid factual predicates, that were not previcusly discovered.
17 Ground Five
PEITIONER'S \(6^{\text {TH }}\) AND \(8^{\text {Th }}\) AMENDMENT RIGHT WERE VIOLATED WHEN COUNSEL WAS INEFFECTIVE, AT SENTENCING CAUSING PETITIONER TO RECEIVE A SENTENCE THAT IS BOTH CRUEL AND UNUSUAL.

Although the court never... fully addressed er resolved sural concerns about the actual criminal history of Petitioner, hewas still.. 3 Entenced on April 0, 2009. From Exhibit "月 (listing of Ross prior convictions) it reveals that 10 of the \(12 \ldots\) prior convictions are over 15 years old. Every conviction frown the state of NEN IEsSEyinn Nevada would net even be adjudicated as a felony. Ross has never committal any violent crimes, in his criminal background. Here to protect Petitions from a haste, severe,

1 Violation of his 8 th. Amendment right, counsel should have called witnesses, such as... 2 family members, former employers ...to speak on Petitianif's rectitude, upbanaging, and 3 good character. This would have behoved counsel's mitigating arguexiant against Ross ogfiting 4) The habitual criminal entianceramen. Using limpid, strong, facts such as the lack of even 8 a single violent offense... the Nan Jesey offenses ate not ever recoginced as felonies; 8 herein Nevada... Several of Russ alleged prior convictions were never clearly defined to be 1 Wis true convictions, wee vital factor. Many of Petitioner's past convictions ane Extremely 8 remote, and do nat sente the real interest cf Justice. See French y. State, 48 Nev .235, Le 45...
9 P2d. 440 (1982) A detail perusal... Anat inspection of the documentation used, 10 by RESpondents to seek the habitual criminal: Against Ross, is not only lacking 11 In veracity, but procedurally unacceptable. Petitioner's counsel Knew, or should known 12 that the states entire presentiment to procure habitual adjudication was seriously 13 Hawed. Subsequently counsel had a duty... An unending expectation of loyality 14 to poss, under the safeguards of 6 Ah Amendment, to ferociously challenge almost, 15 Every aspect of Respondents torpid, inaccurate, wis leading and incomplete cause for 16 the enhanced sentence using noS 207.010. In the case at bar are, even today, a 17 troublesome number of constitutionally disputatious, uniesalvad elengats cons) frilled 18 to effectively challenge. In exhibitor" I (booking information from Pa.) it is for a man 19 foamed Robert Cornish. Counsel encored by not highlighting critical facts, such ask..
20 conflicting dates of birth, conflicting social security numbers, documents presented 21 wither stake of Pennsylvania embossed seals, or state certification are verboten
22 to the habitual criminal adjudication process. A photo of someone who resembles,
23 Petitioner, minus appropriate certification is not constitutionally dispositive. Here 24 the prosecution began their crusade for habitual criminal treatment, with a melt-
25 lEss, and hubris promulgation that Ross has 18 prior felony convictions surpiseling 28 is the fact, none of those occurred in Nevada. A myriad of Petitioner's convictions, 27 Were for theol in an amount...undes \(\leqslant 250 \%\) This is not Even A felony io nevada; To 28 Study Exhibit "I (commitment documents from New Jersey) show a continued, sordid,
1.

1 pattern of obstinate, supercilious, concluct by Respondents. None of the New Iecrey 2 cormuictions carry the equüred certification, or provide that Ross was represented by 3 Counsel. The New Testy convictions are for Kevin John son, Tyrone Wright, and one 4 Robert Cornish. Ross disputed... challenged all 18 of the pox convictions. Eventually b the statemoned forward, using only 5 prior alleged convictions of Ross. Still there 6 was never a level of proof established beyond, an objective reasonable doubt by the 1 state those convictions, belong to Petitioner... or that the paperwork meets all... 8 juclicil protocols for habitual criminal adjudication. Therefore, when the prosecution tries 9 Fo sway the cart to permit the en hancement to Ross sentence, citing some affidavit in place of the judicially mandated certified convictions, it is constitutional error, that the Fudge Allowed habitual adjudication, in the case at bar.... see exhibit" \(K\) (sentencing hear-
 is \(90 \%\) of convictions that are Stale, trivial, nan-violent, unconfirmed that Ross leary's the perpetrator in nearly every conviction or case... As well as, missing... required certifications, does create a viable circumstance where an adjudication of habitual criminality, is not reasonably serving the true interest of justice se French n supra... and Dotson v. State, 80 NEv. 42,389 Pd. 77 (1964).

Wherefore this most honorable Tribunal must convect this egregious constitutional Error by vacating the crud, wanton, and unusual sentence.... correctly remanding this Matter for resenkencing, in the case at bar.

Ground Six
PETITIONERS \(W^{\text {TH }}\) AMENDMENT RIGHT TO EFFECTIVE COUNSEL WAS VIOLATED BY COUNSELS CUMULATIVE ERRORS BEFORE, DURING, AND ON APFEAL...AS IT PERTAINS TO THE TRIAL.

Despite, counsel having enormous opportunity he stumbles repeatedly to display encimerated acts of prejudice, when Ross was ... deprived his right to a speedy z Trial, see Ground One. Counsel made another impalpable mistalle when he did not;
**
1 (estate this objection from the preliminary heañog challenging the admission of 2 transcripts taken at the prelim in place of live testimony from one Dep n Jamie. He 3 (Counsel) unexplainably madeno sound offer of proof, regarding a series of probing 1 questions, he could not ask Jamin during the preliminary hearing. This entire issue B Was excerpted, because this indispensable witness testified, about the video... from Sheikh Shoes. A video purposely destroyed, before defense counsel had any 7 chance to inspect i* forts exculpatory value... Respondents acted in bad faith. With, 8 . The state already dismissing charges lodged against Russ for incidents at both -9 Santa fe Station, and the Paris Hothland casino... due to surveil lance footage, proving his innocence. It becomes painfully obvious why the shoe store video never macle it, in to hands of the defense counsel, Brady supra. The lost of the froth ge is an Error, consequently it cannot be said, that the verdict would have remained the same including the abSENCE of this grave error. See Withrow U. State, 104, NEv. 721, 724, 765... P.2d-1153,1156, (1998) .. Muldery_State, 116, Nev, 1,17,992 P2d.845, 89, (2000)... .And Big Pond v. State, 101 Nev. 1, 692 P2d. 1288 (1985).

Cumulative eros that adversely, affect the trial...inarrant habeas corpus relief. It must bended, that in the case at bar... Cumulative error attaches when, Although no, one, ..or single trial error studied, a lune be sufficient bias to mandate a reversal but the cumulative effect of multiple eros may cause prejudice to Petitioner. se Mancuso v. Olivarez, 292 fad. 939 (974 Cir. 2002). Thomas y. Hubbard 273 f3d.


Conclusion
Petitioner prays this most how arable Tribunal will grant relief based on the many constitutional eras highlighted in this wat, and and this mournful usurpation.

111
Dated this \(17^{\text {TI }}\) of Number. 2011
Respectfully Submitted,

\section*{CERTEICATE OF SERVICE BY MAILING}

1, Luaraç \(\operatorname{los} 5\), hereby certify, pursuant to NRCP 5(b), that on this ? day of \(\qquad\) 2011 I mailed a true and correct copy of the foregoing, " \(\qquad\) Mesusundura
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

\(\qquad\)
\(\qquad\)
\(\qquad\)
CC.FILE

DATED: this \(\qquad\) day of \(\qquad\) NON \(20 / 1\)

\author{
Ross \\ /n Propria Personam Post Office box 650 [HDSP] Indian Springs, Nevada 89018 IN ERMA PAUPERS:
}

\section*{AFFIRMATION}

The undersigned does hereby affirm that the preceding \(\qquad\) MEATOLARDuen
(Title of Document)
filed in District Court Case number \(\qquad\) c.236149

Does not contain the social security number of any person.
```

-OR-

```
\(\square \quad\) Contains the social security number of a person as required by:
A. A specific state or federal law, to wit:
(State specific law)

> -or-
B. For the administration of a public program or for an application for a federal or state grant.


Pomelo Rows
Print Name



1 Exhibit \(G\) - 10
Exhibit G-Trial transcript in case 236169 ... dated November 13,2008 inclusive of... 2 district attorney's closing statement before the Jury in..."2uss y. State of Nevada.
3 Exhibit \(A\) - Complete chronological history listing Petitioner's prior criminal con1 fictions from 1990 through 2002... As presented fid the ETDC.
6 Exhibit \({ }^{p} T\) - A hand written court commitment to Dept. of Corrections Pewnsylvaita
 7 Or other official certification on the document. These are also fingerprint shears... 8 And a booking photo ... for Robert Cornish, undated without and state seal cr viable from of certification.
Exhibit I- Commitment orders fromi NEw Jersey dated 6/92....7/94... 6/01 not of the documents carry andy embossed seals, or other official ceritification, nor da they confirm counsel was present, at sentencing.
Exhibit \(k\) - Sentencing hearing in Dept XVII, transcripts... April 07, 2009 pg. 21... lines 3-24, district attorney attempts to use an affidavit to substitute for... missing certified prior convictions.
This conclucles the presentation of exhibits in Case e 236169 :
III

II
Respectfully Submitted,
III
Dated this \(47^{\text {th }}\) al November, 2011.
Ronald Ross
Ronald Russ \({ }^{\# 1} 1003485\)
Petitioner Pro Se

\section*{IN THE SUPREME COURT OF THE STATE OF NEVADA}

RONALD ROSS,
vs.
THE STATE OF NEVADA, Respondent.

\section*{ORDER OF AFFIRMANCE}

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of larceny from the person, possession of a credit card without the cardholder's consent, fraudulent use of a credit card, theft, conspiracy to commit larceny, and two counts of burglary. Eighth Judicial District Court, Clark County; Michael Villani, Judge. Appellant Ronald Ross raises five issues.

First, Ross contends that his statutory and constitutional rights to a speedy trial were violated. Ross' trial began fourteen months after his arraignment. The record shows that Ross invoked his speedytrial right at his arraignment but that further proceedings were continued at the State's and Ross' joint request to await the disposition of two pretrial appeals. After the appeals were decided eight months later, a new trial date was set. That date was further delayed because of the court's schedule. Ross fails to prove that the delay prejudiced him. Further, the record reveals no evidence that the State caused the delay or otherwise failed to make good-faith efforts to bring Ross to trial and his speedy-trial claims therefore lack merit. See Furbay v. State, \(116 \mathrm{Nev} .481,484-85\), 998 P.2d 553, 555 (2000); see also Anderson v. State, \(86 \mathrm{Nev} .829,833,477\)
any independent memory of the credit transaction he processed. Additionally, Ross does not specify what discovery had not been made available to him by the time of the preliminary hearing, aside from the video that was unintentionally destroyed and other videos that were collateral to the percipience of that witness. Accordingly, we conclude that Ross was afforded an adequate opportunity to examine the witness and his Confrontation Clause rights were not violated by the admission of the witness's preliminary hearing testimony. See Chavez, 125 Nev . at \(\qquad\) , 213 P.3d at 485-86. Finally, we note that because the testimony was duplicative of another witness-who testified at trial that Ross was a regular patron of the store and that he recognized Ross as the individual who was captured on video making the fraudulent transaction-any error was harmless beyond a reasonable doubt. See Hernandez v. State, 124 Nev. 639, 652, 188 P.3d 1126, 1135-36 (2008).

Having considered Ross' claims and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


\section*{IN THE SUPREME COURT OF THE STATE OF NEVADA}

RONALD ROSS, Appellant,
vs.
THE STATE OF NEVADA, Respondent.

Supreme Court No. 52921
District Court Case No. C236169

\section*{REMITTITUR}

TO: Steven Grierson, District Court Clerk
Pursuant to the rules of this court, enclosed are the following:
Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.


DATE: December 03, 2010
Tracie Lindeman, Clerk of Court
By: Amanda Ingersoll
Deputy Clerk
cc (without enclosures):
Hon. Michael Villani, District Judge
Clark County Public Defender
Attorney General/Carson Clity
Clark County District Attorney

\section*{RECEIPT FOR REMITTITUR}

Received of Tracie Lindeman, Clerk of the Supreme Court of the Statale of Nevada, the REMITTITUR issued in the above-entitled cause, on \(\qquad\) .

Deputy


OEC C 82010

\section*{LAS VEGAS, NEVADA; TUESDAY, JULY 8, 2008}

\section*{[Proceeding commenced at 8:12 a.m.]}

THE COURT: C236169, State of Nevada versus Ronald Ross. Mr. Ross is present in custody with -- is that yours?

MR. JORGENSON: Yes, Judge.
THE COURT: Mr. Jorgenson, Mr. Ponticello for the State. This is a Status Check.

MR. PONTICELLO: Well, l'm going to need some assistance from the Clerk to tell me what happened in another case.

THE CLERK: Okay.
MR. PONTICELLO: The -- the public Blackstone doesn't tell us, so you're going to have to go into the secret Blackstone. The case is C220916 in Department 5. I believe that a trial was set on July \(1^{\text {st }}\).

THE CLERK: It was.
MR. PONTICELLO: And the new trial date there is?
THE CLERK: Hold on. It's now in November; November \(10^{\text {th }}\) for all the Defendants.

MR. PONTICELLO: Okay. Do you know if the State's motion to consolidate in -- or in the alternative to admit other bad acts has been set? It was originally scheduled to be heard on September \(11^{\text {th }}\) of 2007 and then continued to October -well, then continued to September \(18^{\text {th }}\)--

THE CLERK: Right.
MR. PONTICELLO: -- and then continued to October \(9^{\text {th }}\), and then on October \(9^{\text {th }}\) it just drops off the minutes.

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD ROSS,
Appellant,
vs.
STATE OF NEVADA,
Respondent.

No. C236169
Electronically Filed Dec 042013 12:01 p.m.
Tracie K. Lindeman Clerk of Supreme Court

\section*{APPELLANT'S APPENDIX - VOLUME IV - PAGES 750-999}

\author{
MATTHEW D. CARLING \\ 1100 S. Tenth Street \\ Las Vegas, NV 89101 \\ (702) 419-7330 (Office) \\ Attorney for Appellant
}

\author{
STEVEN B. WOLFSON \\ Clark County District Attorney \\ 200 Lewis Avenue, \(3^{\text {rd }}\) Floor \\ Las Vegas, Nevada 89155 \\ Counsel for Respondent \\ CATHERINE CORTEZ MASTO Attorney General \\ 100 North Carson Street \\ Carson City, Nevada 89701-4717 \\ Counsel for Respondent
}

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distract thefts and how individuals operate when they're conducting a distract theft; that it's common to pick out an elderly victim who's not really surrounded by a lot of people. He walks by. You see her, look at her, notice her, prepares the coat, and comes back. What else are we doing with our coat if we're not preparing to pick the pocket -- to pick the wallet out of a purse that's open? If we're not going to stick around to play the machine, what are we doing asking a woman how you play it, how does it work, explain it to me? What else are you doing if you're not distracting her and getting her attention away from the wallet? What are you doing with this other person who's acting as a blocker? What are you doing having this other person stand this close to the victim if not to make sure passer-bys don't see what you're about to do with your coat and your hand that's hidden by your coat?

And we talked about larceny from the person, and you can see in the video she does have a black strap right there on her shoulder. She testified she couldn't remember if the strap was on her shoulder or if it wasn't -- if it was off.

And if we can pause it right there, please.
What else was that that we just saw if not a handoff of a wallet? Who gives a coat to somebody like that? I have my coat draped around my arm and I'm going to give it to someone, I'm going to pick it up and I'm going to say here you
go, here's my coat. You don't put it over to the side and say okay, here's my coat. The person who's taking it doesn't grab it like this and then walk away. If the wallet wasn't taken right there then what was that, what was going on there? The only possible explanation is you just saw the handoff between two people operating as a distract theft team, one person lifted, now he's still acting as distracting her from noticing that the second person is now walking away with a coat that has the wallet inside. We know when the wallet was taken. It was right there.

And we know what the intent of the Defendant was because you saw what he did. You saw him looking for the right victim. You saw him lift the wallet. We know he leaves because the timing says he has to have left almost immediately after taking the wallet: And we know these guys are working together because they're seen together at the shoe store. Detective Elenner said that's something that commonly happens in these types of thefts, because Georgia only paid attention to the Defendant, who's the one that was standing right next to her and talking to her. So if she would have immediately noticed that her wallet was missing, security would have been looking for Mr. Ross. And Mr. Ross wouldn't have been found with the property, and he could have said oh, not me, I don't have it, where's my stuff. It's because the guy I'm working with just walked off with it and we're going to meet up later,

C236169 STATE OF NEVADA v. ROSS \(11 / 13 / 2008\) TRANSCRIPT
VERBATIM REPORTING \& TRANSCRIPTION, LLC
11115 N. La Canada, Suite 275, Oro Valley, Arizona 85737 (520) 219-1443

And that's what happened that day, ladies and gentlemen. You know it. You know it's the Defendant for all of those reasons we just talked about. It's the Defendant on this tape, it's the Defendant at Sheikh Shoes, same clothing, a mere 30 minutes at the most after he appears on this videotape. And for all that we ask that you return a verdict of guilty.

THE COURT: All right. Thank you, Ms. Walsh.
The clerk will now swear in the marshal to take charge of the jury.

THE CLERK: You do solemnly swear that you will keep this jury together in some private and convenient place; that you will not permit any person to speak with them, nor speak to them yourself unless it be by order of the Court, except to ask them whether they have agreed upon a verdict; and that you will return them into court when they have so agreed, so help you God?

THE BAILIFF: (Indiscernible)
(Jury retires to deliberate)
THE DEFENDANT: Your Honor, a quick question?
THE COURT: Why don't you talk to your attorney
first, sir.
We are out -- for the record, we're outside the presence of the jury. I'd appreciate it if everyone can stay

C236189 STATE OF NEVADAV.ROSS \(11 / 13 / 2008\) TRANSCRIPT VERBATIM REPORTING \& TRANSCRIPTION, LLC 11115 N. La Canada, Suite 275, Oro Valley, Arizona 85737 (520) 219-1449
within 15 minutes of the courtroom, and we'll call you as soon as a verdict's reached.
(Off record)

THE COURT: This is Case Number C236169, State of Nevada versus Ronald Ross. Mr. Ross is present with. counsel, Mr. Jorgenson. Representatives of the State for the -- from the District Attorney's Office, Ms. Walsh and Ms. Rinetti.

I've been advised that we do have a verdict. And who is our foreperson?
(No audible response.)
THE COURT: Sir, can you please hand the verdict form to the marshal. The clerk will now read the verdict.

THE CLERK: District Court, Clark County, Nevada. State of Nevada, Plaintiff, versus Ronald Ross, Defendant, Case Number C236169, Department XVII. Verdict:

We, the jury, in the above-entitled case find the Defendant, Ronald Ross, as follows. Count I, burglary: guilty of burglary;

We, the jury, in the above-entitled case find the Defendant, Ronald Ross, as follows. Count II, larceny from the person: guilty of larceny from the person;

Count III, burglary: guilty of burglary;
Count IV, possession of credit or debit card without cardholder's consent: guilty of possession of credit or debit card without cardholder's consent;

Count V, fraudulent use of credit or debit card: guilty of fraudulent use of credit or debit card;

VI, theft -- or Count VI, theft: guilty of theft;
Count VII, conspiracy to commit larceny: guilty of conspiracy to commit larceny.

Dated this 13th day of November, 2008, signed by the foreperson, juror number 1, Robbie Davies.

Ladies and gentlemen of the jury, is this your verdict as read, so say you one so say you all?

THE JURY: Yes.
THE COURT: Do either party wish to have the jury polled?

MR. JORGENSON: No, Judge.
MS. WALSH: No, Judge.
THE COURT: All right. The clerk will now record the verdict in the official minutes. And the Defendant is remanded to custody. We're going to set this matter for sentencing, refer it to the Department of Parole and Probation for preparation of presentence investigation report, and imposition of sentence on the following day.

THE CLERK: That will be December 23rd at 8:00 a.m.
THE COURT: Ladies and gentlemen, I'd like to thank you for your service performing your -- your civic duty. I know it's late in the afternoon here, and even though it was a short trial I -- I often watch the jury and I could see that
everyone was very attentive and -- and watched this -- and watched the witnesses testify and listen to the evidence very carefully.

At - - at each break I read you an acimonishment that ordered you not to discuss the case with anyone else regarding -- discuss the case with anyone. You are now released from that admonishment, so you can talk with your friends, neighbors, coworkers about the case. Also, you can talk to any of the attorneys if you would like to do that. Oftentimes after a trial some of the jurors may have some questions of the attorneys -- why did you do something a certain way -- or if you just have any questions about the case or anything about the criminal procedure -- be more than happy to ask them those questions or -- as well as you can ask me any questions. If the attorneys have any questions for you you're not obligated to answer any questions. You're not obligated to ask them any questions also. But is a good -- it is a good learning tool for them. Sometimes you might just have a comment, what you thought was good with their presentation or what have you.

What I'd like to do is just meet you in your -- in the deliberation room and personally thank you for your service, and at that time the attorneys may, if they would like to, come back. And if you don't want to talk to them that's fine; if you do then that -- you're free to do that as

C236169 STATE OF NEVADA v. ROSS \(11 / 13 / 2008\) TRANSCRIPT
well. I know it's late in the afternoon or early evening here, and we want to get you on your way.

And so I'd like to again thank you for your service on behalf of the Eighth Judicial District Court. I appreciate you performing your civic duty and, in particular, in my department. And I thank you for your service.

And so we are adjourned.
(The proceedings ended at 5:52:05 p.m.)

ATTEST: I do hereby certify that I have truly and correctly transcribed the video proceedings in the aboveentitled case to the best of my ability.


Sean Rowley, Transcriptionist


\section*{LAS VEGAS, NEVADA; TUESDAY, OCTOBER 9, 2007}
[Proceeding commenced at 8:39 a.m.]

THE COURT: Case Number C236169, State of Nevada versus Ronald Ross.
MS. WALSH: Good morning, Judge, Jessica Walsh for the State. Judge, I believe the Defendant is in District Court 5 ; if we can pass this until Thursday.

THE COURT: All right. Is this matter negotiated do yoú know?
MS. WALSH: It's not negotiated, Your Honor. And the reason why we want to continue the trial is his other case is currently in the Supreme Court and there's apparently a motion to consolidate this case with the District Court 5 case. There's a status check today in District Court 5 to find out if the Supreme Court has done anything, but I think our brief was due just a few days ago in that case.

THE COURT: Okay, we'll just continue it 'til Thursday.
MS. WALSH: Thank you, Judge.
THE CLERK: That'll be October \(11^{\text {th }}\) at \(8: 15\).
[Proceeding concluded at 8:40 a.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my-ability.
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TRAN DISTRICT COURT CLARK COUNTY, NEVADA


Defendant.
BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

TUESDAY, JULY 8, 2008
RECORDER'S TRANSCRIPT OF HEARING RE: STATUS CHECK

APPEARANCES:
For the State:
FRANK M. PONTICELLO, ESQ., Deputy District Attorney

For the Defendant:
CRAIG F. JORGENSON, ESQ., Deputy Public Defender

RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

\section*{LAS VEGAS, NEVADA; TUESDAY, JULY 8, 2008}
[Proceeding commenced at \(8: 12\) a.m.]

THE COURT: C236169, State of Nevada versus Ronald Ross. Mr. Ross is present in custody with -- is that yours?

MR. JORGENSON: Yes, Judge.
THE COURT: Mr. Jorgenson, Mr. Ponticello for the State. This is a Status Check.

MR. PONTICELLO: Well, I'm going to need some assistance from the Clerk to tell me what happened in another case.

THE CLERK: Okay.
MR. PONTICELLO: The -- the public Blackstone doesn't tell us, so you're going to have to go into the secret Blackstone. The case is C220916 in Department 5. I believe that a trial was set on July \(1^{\text {st }}\).

THE CLERK: It was.
MR. PONTICELLO: And the new trial date there is?
THE CLERK: Hold on. It's now in November; November \(10^{\text {th }}\) for all the Defendants.

MR. PONTICELLO: Okay. Do you know if the State's motion to consolidate in -- or in the alternative to admit other bad acts has been set? It was originally scheduled to be heard on September \(11^{\text {th }}\) of 2007 and then continued to October -well, then continued to September \(18^{\text {th }}\)--

THE CLERK: Right.
MR. PONTICELLO: -- and then continued to October \(9^{\text {th }}\), and then on October \(9^{\text {th }}\) it just drops off the minutes.

MR. PCNTtCELLO: Right, but it wasn't ruled on and then it just stops
showing up cri the minutes.

THE CLERK: It was never continued. Yeah
THE CVURT: Is there a possibility that this case is going to be consolidated? MR. PowTICELLO: Yeah, there's a motion still pending in that other case and that other case has a trial date now we know of -

THE CIERK: I's stitl -
MR. PCATICELLO: - November \(10^{\text {h }}\).
THE C, : ERK: - it's still pending. It possibly needs to be renoticed because -
MR. PNNTICELLO: Okay,
THE CíERK: - if it - it's just - -
MR, PCAITICELLO: IH - I'll see that that's done.
THECL בRK: Right.
THE COURT: Let's go - then we need to set a trial date in this case.
MR. JCRAENSON: RIght.
THE COURT: So it's just another status check. Let's just set it past that that date.

MR. PCantICELLO: Has he -.
MR. JCTAGENSON: Whether ...
MR. PirNTICELLO: - he has previously waived the 60 -day rule.
THE DEFENDANT: No, I haven't. No, I haven't, sir.
MR, PCNTICELLO: Well --
THE DEFENDANT: I haven't

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THE OOURT: Let's double check. Well double check here.
THE AEFENDANT: Actually, I invoked.
THE CLERK: He riginally invoked on September \(5^{\text {th }}\).
i: [Colloquy between the Court and the Clerk]
MR. TRGENSON: In September \(5^{\text {点 }}\) of
THE :OURT; He's never waived apparently.
MR. \({ }^{*}\) URGENSON: Right.
[Colioquy between the Court and the Clerk]
THE BOURT; All right, we'll --
MR. EONTICELLO: Okay. Well, hold on a second.
[Coloquy between the Count and the Clerk]
THE ©OURT: Sir, you stil wish to have your trial within -
THE GEFENDANT: Yes, Your Honor. I've been invoking my right to a
speedy trial...
THE COURT: All right.
THE DEFENDANT: - for the past fifteen years.
MR. PONTICELLO: Wer, the problem is he's never asserted it. I mean -
THE DEFENDANT: Ive asserted it every time I came.
THE COURT: Well, sir, address it to me and he's -- ha's asserting it now.
MR. OONTICELLO: Fine, let's do it.
THE SOURT: We'ti-welf grant your wish, sit. We'll set a trial,
[Colloquy between the Court and the Clerk]
THE COURT: Sir, because I have a split calendar meaning for five weeks I do civil triay, five weeks I do criminal trials, okay. Sir, right now the 60 days falls in the last weck of my civil stack, so we can give you the very next week.

THE DEFENDANT: Will that violate my Sixth Amendment right to a speedy trial --

THE COURT: Well, that's --
THE DEFENDANT: -- if I agreed to waive it?
THE COURT: -- you're going to waive it for one week.
THE DEFENDANT: I'm saying, will that violate my -- 'cause I'm --
THE COURT: No, sir, 'cause.
THE DEFENDANT: - I intend to file a motion to dismiss based on the grounds.

THE COURT: It won't waive it, sir, because that's the next available date for the Court. I just want to advise you that it's one week past the 60 days. I'm doing civil cases, but it's not a civil case.

THE DEFENDANT: Okay, but then so that's not going to stop my motion?
THE COURT: No, it's clear on the record that you've invoked your right to a speedy trial.

THE DEFENDANT: All right then.
THE COURT: So we'll give you this date.
THE CLERK: Calendar Call will be August \(26^{\text {th }}\) at 8 a.m. with a Trial date of September \(2^{\text {nd }}\) at 10 a.m.

THE DEFENDANT: Excuse me, that's like 90 days from now.
THE CLERK: No. It's the first week of September; it's 60 days. Today's July \(8^{\text {th }}\)

THE DEFENDANT: Sixty-three days. Okay [indecipherable]. Excuse me, he said something about a motion to consolidate was -was submitted.

THE COURT: There's --
THE DEFENDANT: [indecipherable]
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THE COURT: -- there maybe a motion in another Department that has not been renoticed and it's not on calendar today.

THE DEFENDANT: So --
THE COURT: Okay?
THE DEFENDANT: -- I don't get a chance to -- I didn't --
THE COURT: You can oppose that motion --
THE DEFENDANT: -- [indecipherable].
THE COURT: -- in the other Department. Yes.
THE DEFENDANT: All right. I appreciate it.
THE COURT: All right.
[Proceeding concluded at 8:18 a.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.


THE COURT: C236169, State of Nevada versus Ronald Ross. Mr. Ross --
MR. DAVIS: He's in the Department of Corrections, Your Honor.
THE COURT: All right. Mr. Davis.
MR. DAVIS: This is actually Mr. Jorgenson's case. It's my understanding we -- he's got a couple of other cases that are Supreme Court level appeal that I -- my understanding from Mr. Jorgenson is the State was going to be checking on.

MR. PONTICELLO: We -- l've got some representations.
MR. DAVIS: Thank you.
MR. PONTICELLO: Thanks. His appeal in the Department 5 case was denied. He's on calendar at the end of the month for setting of a trial date in that Court. We still have a motion to consolidate this case with the Department 5 case, so what recommend we do is set a status check in approximately, oh, some time just after the first of July.

THE COURT: Which is the oldest case, this one or the 5 ?
MR. PONTICELLO: I don't know. I'm sorry.
MR. DAVIS: It must be - 1 think it's the 5 because at least Mr. Jorgenson mentioned what Frank was just now mentioning also. Could we ask to have him transported?

MS. LEIK: Court's indulgence.
[Colloquy between counsel]
MR. DAVIS: I was just told by a friend of the Court that it's possible he may have already had --. got a motion on for rehearing of what Frank just said got denied.

MR. PONTICELLO: I do have the other case number; it is a lower case number than this. It is C220916. He is the A Defendant on that case and that is in Department 5.

MR. DAVIS: I think what Frank is suggesting is appropriate. Some time after the start of July.

THE COURT: All right.
MR. DAVIS: And ask that -- and ask the State to have some more Order to transport him; that's Mr. Jorgenson's request.

MR. PONTICELLO: And that -- and that --
MR. DAVIS: I mean, in the event that --
MR. PONTICELLO: For a status check?
MR. DAVIS: -- Mr. -- I don't know. In the event Mr. Ross were actually to be set for calendar call and trial that day which is already kind of now been vacated --

THE COURT: Just submit an Order --
MR. DAVIS: He needs to --
THE COURT: -- and Ill sign it.
MR. DAVIS: - he needs to be here some time whenever we do set it.
MR. PONTICELLO: I'll do it. I'll prepare the Order to transport.
MR. DAVIS: Thank you.
THE CLERK: Let's do July \(8^{\text {th }}\) at 8 a.m., status check.
MR. PONTICELLO: Thank you.
MR. DAVIS: May I check to make sure that's Mr. Jorgenson's free day?
THE CLERK: It's a Tuesday.
MR. DAVIS: July \(8^{\text {th }}\), yes, that'll be fine.
[Proceeding concluded at 9:08 a.m.]

ATTEST: I hereby certify that I have truly and correctly transeribed the audio/video proceedings in the above-entitled case to the best of my ability.


THE STATE OF NEVADA,
Plaintiff,

Defendant.

APPEARANCES:
For the State:

For the Defendant:

\section*{ORIGINAL \\ DISTRICT COURT CLARK COUNTY, NEVADA}

CASE NO. C236169
DEPT. XVII
BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE
TUESDAY, DECEMBER 11, 2007
RECORDER'S TRANSCRIPT OF HEARING RE: STATUS CHECK
JESSICA A. WALSH, ESQ., Deputy District Attorney
CRAIG F. JORGENSON, ESQ., Deputy Public Defender
RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

\section*{LAS VEGAS, NEVADA; TUESDAY, DECEMBER 11, 2007}
[Proceeding commenced at 8:43 a.m.]

THE COURT: Case Number C236169, State of Nevada versus Ronald Ross. Mr. Ross is present in custody with Mr. Jorgenson.

MS. WALSH: Good morning, Judge, Jessica Walsh for the State.
THE COURT: All right. And this is a status check?
MS. WALSH: Yes, Judge. His other case in District Court 5 he appealed a decision by Judge Glass that's now in the Supreme Court. We also appealed Judge Halverson from Department 23 dismissing his third case, so both of those cases are in the Supreme Court. This case was kind of trailing the District Court 5 case. There is a motion to consolidate this case into the District Court 5 case, but the Judge is kind of waiting to see what the Supreme Court will do before she can rule on that and that's why this case was trailing yours.

THE COURT: Well, you know, the Supreme Court can hold it and they can decide tomorrow or hold it for another year. Why don't we just set it for trial?

MS. WALSH: Well, the other issue, Judge, is the issues that they are appealing Judge Glass on and we're appealing Judge Halverson on are present in this case, so should the ruling go in Mr. Ross' favor, if we would have already tried him, it would basically be an automatic retrial in this case.

MR. JORGENSON: Judge, my client has been here in the Detention Center since Summer time. He is doing a nineteen to forty-eight month sentence unrelated to this case and the other two cases. He has -- he's being held in addition to this case those other two cases. My client feels that if. he can get his bail changed from twenty-five thousand dollars down to ten thousand dollars, his family can post that
and that can allow him to be transported back to NSP.
If that's the case, then he can wait as long as it takes. So, his first -- his first request is to have the bail changed from twenty-five thousand dollar down to ten thousand. Even if you were going to give him an O.R., he's still -- he still has a nineteen to forty-eight month sentence in prison plus these other two cases. So, my request is to reduce the bail to ten thousand and then set a status check in whenever.

He wants to be doing this from prison waiting this thing out because he knows that normally a writ of mandamus can be -- should be resolved quickly, but since the writ of mandamus has the exact same issues as to Department 23 appeal, there -- they could wait until Summer time to decide it.

So, he's willing to wait it out. He just wants to wait it out up in prison. THE COURT: Any objection by the State?

MS. WALSH: And, Judge, the State's concern is that he was in custody on those other two cases including the one he's sentenced to the nineteen to forty-eight on. Some how through all of this coming to Court asking for the bail reduction here and there, all of a sudden he was out of custody and committing new.crimes; and that's the State's concern what's going to happen. If we keep reducing his bail, okay let's reduce his bail to ten thousand just so he can go to prison and what happens when his sentence expires in prison, we're still waiting on these other two cases and he can just bail out and he's going to be out in our society committing new crimes shown by the fact that's exactly what he did in March of this year.

This -- this new case arose from that; new crimes that he committed just days after posting bail in those other two or three cases. And that's exactly what he's going to do should he be released. I don't care where he goes, jail or prison. I
just don't want him to be released should the bail keep getting reduced in each case. Plus, I believe he's being held with no bail in Judge Glass' case given the fact of the bench warrant and committing of new crimes.

THE DEFENDANT: Excuse me, Your Honor.
THE COURT: I'm not inclined to reduce the bail at this time. Mr. Jorgenson, I'll more than open to you to revisit this matter with a formal motion and so the State can respond and provide me with all the background --

THE DEFENDANT: Excuse me, Your Honor. May I say something?
THE COURT: -- information regarding Mr. Ross. Well, sir, I made my --
THE MARSHAL: You need to wait 'til he finishes.
THE COURT: -- I made my decision on this. Your attorney can file a formal motion, so the State can file their opposition.

THE DEFENDANT: Hold on, man. Can I speak to my attorney about this? Can I speak to my -- when is my come back to Court?

CORRECTION'S OFFICER: Mr. Ross, have a seat and you can speak to your attorney there.

THE COURT: Sir, we're going to set a status check, sir. We'll set that -- let's -- six months and if -- if there's - if his other cases are resolved earlier I would request either one of the parties to put it back -- immediately back on calendar.

MR. JORGENSON: Yes, Judge.
MS. WALSH: That's perfect, Your Honor. Thank you.
THE CLERK: That'll be June \(10^{\text {th }}\) at \(8: 15\).
MR. JORGENSON: And l'll put the -- P'll put my motion in writing, Judge.
THE COURT: Yes. Thank you.
[Proceeding concluded at 8:47 a.m.]



LAS VEGAS, NEVADA; THURSDAY, OCTOBER 11, 2007 [Proceeding commenced at 9:03 a.m.]

THE COURT: Case Number C236169, State of Nevada versus Ronald Ross. Let the record reflect the presence of the Defendant in custody with Mr. Jorgenson.

MS. WALSH: Good morning, Judge, Jessica Walsh for the State.
THE COURT: That's right. Ms. Walsh for the State. Status check on a trial date?

MR. JORGENSON: Judge, yes. This case is a factually in a sort companion with two other cases in the fact that they -- they share the same Defendant and similar actions and similar legal issues. One of those cases, he got dismissed by Judge Halverson and the State appealed it. The other case that same motion to dismiss is made in front of Judge Glass. She denied it and then that's been appealed.

They share a similar -- they share similar issues with this case. They have status checks in both in -- in the Glass case in a month.

MS. WALSH: Wait. The main concern by the State is, Judge, we have currently a motion to consolidate this case in with Judge Glass' case because he was in custody on Judge Glass' case and then for some reason he was released. He had enough bail posted in all of his cases; that kind of added up to the bail that was left when he was only in custody in Judge Glass' Department.

He was released and then within a few weeks he was back out committing crimes. He committed the two separate acts that we bound him over on this case, but there were other allegations of other crimes. So we did do a motion to consolidate this case. And with Judge Glass' case, that motion hasn't been argued yet. We're setting status checks to find out what the Supreme Court's going to do that's why we're requesting to continue this trial date. One, because we're -- the State's asking to consolidate it into the Department 5 case; and two, if there is a ruling from the Supreme Court that should go in favor of the defense and the Defendant has already been tried and convicted in this Department, then most likely that conviction will come back on appeal.

MR. JORGENSON: Right. So, if we can get a status check say the latter part of November for five weeks, hopefully, we'll know by then if the -- the -- I think it's an extraordinary writ out of Glass' case 'cause it's not -- it wasn't a -- there's no final judgment in Glass' and so our office in a different team is -- has written to the Supreme Court. Hopefully, we'll know something in the next couple of weeks to see if they're going to entertain it or not; and then the State - any way.

THE COURT: Sixty days; does that sound about right?
MS. WALSH: Thank you, Judge.
THE COURT: All right.
THE CLERK: That'll be December \(11^{\text {th }}\) at \(8: 15\).
THE DEFENDANT: Excuse me, Your Honor.
THE COURT: Trial date vacated. Yes, sir.
THE DEFENDANT: May I address the Court please?
THE COURT: Sir, do you want to go to trial? Do you understand what they're saying; is that your other case is on appeal and this case maybe part and parcel of the other cases?

THE DEFENDANT: I understand exactly what's going on, Your Honor. My ponly concern is that -- he explained everything to me. I'm down here from NSP and they won't take me back --

MR. JORGENSON: Judge -
THE DEFENDANT: - because of this.
MR. JORGENSON: -- I'm going to next week file an O.R. motion in this case which may seem kind of [indecipherable] except if it's granted he can transfer up to NSP where [indecipherable] that I will do in writing to come back next week. This is what he's referring too, so I will -- we'll address that, but not today.

THE COURT: Well, can't this Court just enter an Order right now saying that he can be transferred back to NSP?

THE DEFENDANT: That's what they already did. They won't take me.
MS. WAL.SH: And, Judge, to inform the Court. In Department 5's case he's being held without bail --

THE COURT: Okay.
THE DEFENDANT: [indecipherable]
MS. WALSH: - due to his actions after he was released.
MR. JORGENSON: So I can't address that obviously, but he wants me to ask this Court for an O.R. so that it'll help him on his way; that will take up next week, but that's what he was -- that's what he's asking about.

THE COURT: I doubt the Court is going to be inclined to give him an O.R. on these serious charges.

MR. JORGENSON: I understand.
THE COURT: All right.
MR. JORGENSON: But I'll outline it in my motion --
THE COURT: Okay.
MR. JORGENSON: -- the reason for it.
THE COURT: We'll wait for the motion. Thank you.
[Proceeding concluded at 9:07 a.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my abiity.
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LAS VEGAS, NEVADA; TUESDAY, SEPTEMBER 2, 2008
[Proceeding commenced at 8:31 a.m.]

THE COURT: C236169, State of Nevada versus Ronald Ross.
MS. WALSH: He still is not present, Your Honor.
THE COURT: And last time didn't we order him to be present?
MS. WALSH: That's correct, Your Honor.
THE COURT: Mr. Ross apparently is in the Department -- Nevada Department of Corrections. We'll pass this two weeks. You're going to resubmit an Order?

MS. WALSH: I will, Judge, and I'll make sure we call a day or two before the - the hearing to make sure he's brought down.

MR. JORGENSON: So it's on to set -- for calendar -- to set trial?
THE COURT: Right. That's correct.
THE CLERK: That'll be September \(16^{\text {th }}\) at 8 a.m.
THE MARSHAL: Trial date vacated.
THE COURT: Trial date vacated. Yes.
[Proceeding concluded at 8:32 a.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my-abiity.


\section*{LAS VEGAS, NEVADA; TUESDAY, AUGUST 26, 2008}
[Proceeding commenced at 9:05 a.m.]

THE COURT: C236169, State of Nevada versus Ronald Ross.
MS. WALSH: Good morning, Judge.
THE COURT: Good morning.
MS. WALSH: And, Judge, Mr. Jorgenson informed me that the Defendant has not been transported. He was sent back to the prison despite, I believe, two Judges ordering that he remain at CCDC pending his trial.

THE COURT: Can we get him here by Thursday? is that enough time? Mr. Jorgenson, have you been in touch with him? Is he -- is this case going to resolve or is it going to trial?

MS. WALSH: Judge, can we approach?
THE COURT: Sure.

\section*{[Bench Conference]}

THE COURT: For whatever reason, the Defendant was transferred back up to prison. Although he was ordered to stay here, we won't be able to get him here by this Thursday, so I'm going to continue the calendar call 'til next Tuesday. And I think there may have been some discovery issues and I understand Ms. Walsh will take care of those today --

MS. WALSH: Yes, Your Honor.
THE COURT: -- Mr. Jorgenson. As soon as you get those tapes, please turn them over to Mr. Jorgenson. I'll continue the calendar call to next Tuesday.
[Colloquy between the Court and the Clerk]
THE CLERK: September \(2^{\text {nd }}, 8\) a.m.
[Proceeding concluded at 9:09 a.m.]


\section*{LAS VEGAS, NEVADA; TUESDAY, SEPTEMBER 16, 2008}
[Proceeding commenced at 8:39 a.m.]

THE COURT: C236169, State of Nevada versus Ronald Ross.
MR. CICHOSKI: Your Honor, if we can trail that for just a second. Mr. Jorgenson stepped out and went to the restroom.

THE COURT: All right.
[Matter trailed]
[Matter recalled at 9:18 a.m.]
THE COURT: All right, C236169, State of Nevada versus Ronald Ross. Mr. Ross is present in custody with Mr. Jorgenson. Status check on trial setting. What specifically are we -- does he have a trial yet or --

THE CLERK: I'm assuming he does.
MR. JORGENSON: Judge, I had this set on -- in October. I guess I must have written it down wrong.

THE COURT: I thought we had that and he waived his right to a speedy trial by one week 'cause of his scheduling and so I'm not sure why we're here today.

MR. JORGENSON: Well, I don't have a trial date.
MR. PONTICELLO: Well, we had a trial date of September 2. I don't know what happened to it. Let's see.

THE CLERK: At the calendar call, I guess Ms. -Ms . Walsh was here and । guess the Defendant was not transported.

MR. JORGENSON: Right.
THE CLERK: So we vacated --
MR. JORGENSON: This is the first time he's been here.

THE CLERK: -- the trial and we set it for this.
MR. JORGENSON: To set a trial date.
THE COURT: Okay.
THE CLERK: To set a trial.
THE COURT: All right, and he has invoked his right to a speedy trial?
MR. JORGENSON: Yes.
THE CLERK: So he's --
THE COURT: Is that correct, sir?
THE DEFENDANT: Yes. I invoked my right to a speedy trial.
THE COURT: All right.
THE DEFENDANT: As I was told to do.
THE COURT: I'm sorry?
THE DEFENDANT: I've continually invoked my right to speedy trial throughout this. I thought I was coming down in September the \(2^{\text {nd }}\) for me to start my trial, but they never even brought me down.

THE COURT: I think you were in the Nevada Department of Corrections; is that correct?

THE DEFENDANT: Yes.
THE COURT: All right. Well, for whatever reason you weren't transported down and we couldn't go forward, so we're going to give you a trial date as soon as we can. All right.

THE CLERK: How many --
THE DEFENDANT: Excuse me?
THE CLERK: -- how many --
THE COURT: Yes, sir.

THE DEFENDANT: I came down in July and you set my trial date for September and that was within the 60 days. She said it would be a few days over and asked me to waive it for 3 to 5 days. So that -- so now if I get a new trial date right, can you make it like as soon as possible because I'm already passed the -- l'm well passed the 60 days.

THE COURT: That's what we're going to do. We're going to do that, sir, as soon as possible.

THE CLERK: How many days is this trial expected to be?
MR. PONTICELLO: Don't know.
MR. JORGENSON: Two to three.
THE CLERK: Okay.
[Colloquy between the Court and the Clerk]
THE CLERK: Is November -- November \(10^{\text {th }}\) to early for you, Mr. Jorgenson?
MR. JORGENSON: No.
THE CLERK: Okay.
THE COURT: We'll get you in about two months, sir. All right?
THE DEFENDANT: Two months?
THE COURT: November \(10^{\text {th }}\).
THE CLERK: A month and a half. A month and a half.
THE COURT: A month and a half.
THE DEFENDANT: Can -- excuse me? Can I have anything sooner than that because I start trial in front of -- in -- in Judge Jackie Glass courtroom on November \(10^{\text {th }}\) in another case.

THE COURT: Mr. Jorgenson, we can -- we can get you --
MR. PONTICELLO: I don't have that.

THE COURT: -- in September \(29^{\text {th }}\), will you be ready?
MR. PONTICELLO: Court's indulgence.
THE DEFENDANT: Excuse me? Could I speak to my attorney please? I haven't had a chance to talk to him since l've been here?
[Colloquy between counsel]
MR. PONTICELLO: Can you run a Justice Court case?
THE CLERK: I can't.
MR. PONTICELLO: Can you run it by I.D. number in Blackstone?
THE CLERK: I can run to see if it made it's way up here. Yeah.
THE COURT: Let's call --
MR. PONTICELLO: The problem is --
THE COURT: -- let's call another case.
MR. PONTICELLO: -- the problem is I don't have Justice -- I don't have the case number.
[Matter trailed]
[Matter recalled at 9:27 a.m.]
THE COURT: Can you be ready on September 29?
THE DEFENDANT: Yes.
MR. JORGENSON: Sure.
THE CLERK: Okay.
MR. PONTICELLO: Wait. Wait. Wait. We can't be ready --
THE COURT: That's right.
MR. PONTICELLO: -- September --
THE COURT: It's -- that's too soon. Sorry. I wasn't thinking. We're going to have to -- that only gives you one week.

MR. PONTICELLO: Right.
THE COURT: That's not appropriate for two weeks.
THE CLERK: Okay, so as of September -- November \(10^{\text {th }}\) which is the first week of the next stack.

THE COURT: That's the very first week, sir.
THE DEFENDANT: I want to -- I want to object for the record of any continuance because this case has been going on for four hundred and seventyeight days. I asked my attorney to file a motion for me based on a speedy trial. He said he was going to bring it to the Court's attention, but I just wanted to know -- I just want it to be on the record that l'm asserting my right to a speedy trial and l'm objecting to any delay.

This is the second or third time that my trial has been set.
THE COURT: I understand that, sir. Sir, I have a split calendar which means every five -- five weeks -- every other five weeks, I have civil trials. You know, I can set you one earlier, but I can't set you during my civil stack. So l've given you the first week of the criminal stack.

THE DEFENDANT: Your Honor, I'm just asking, Your Honor, if the Court's schedule has to give me a continuance, so --

THE COURT: That's our --
THE DEFENDANT: [indecipherable]
THE COURT: -- that's the first week.
THE DEFENDANT: Okay.
THE COURT: You've got the first week available.
THE DEFENDANT: The bail on this case is thirty-two thousand dollars.
THE COURT: Okay, your attorney can file a motion for -- for the bail
reduction, but you're in prison right now so I don't know if that would be -- that would be -- be a waste money, but that's up to you.

THE DEFENDANT: I was just asking, sir [indecipherable].
THE COURT: Okay, sir, your attorney --
THE DEFENDANT: [indecipherable]
THE COURT: - sir, listen to me.
MR. PONTICELLO: Judge?
THE COURT: -- your attorney --
MR. PONTICELLO: Judge, I'm sorry to interrupt, he does have another trial set that same week, C220916 in Department 5. I -- that's no problem for me. You know, they may not both go. We'll do one or the other.

THE COURT: All right.
MR. PONTICELLO: Or maybe we'll just stack them up and do both the same week.

THE COURT: Okay.
MR. PONTICELLO: But I just want to let the Court know and the Defendant know and everybody know now he's got two trials set on the same day between Courts.

THE COURT: All right. We can probably start ours on a Wednesday. All right.

MR. PONTICELLO: Thank you.
THE CLERK: So your calendar call will be November \(4^{\text {th }}\) at 8 a.m. with a trial date of November \(10^{\text {th }}\) at 10 a.m.

THE DEFENDANT: Excuse me, Your Honor?
THE COURT: Sir, we're done.

CORRECTION'S OFFICER: Sit down.
THE DEFENDANT: [indecipherable]
THE COURT: Sir, your attorney will come and talk to you. [Matter recalled at 9:45 a.m.]

THE COURT: C236169, State of Nevada versus Ronald Ross.
MR. JORGENSON: Judge, my client he is down in prison.
THE COURT: Okay.
MR. JORGENSON: He just wants you to remand him here.
THE COURT: Okay, he's remanded in this case. Thank you.
MR. JORGENSON: Thanks.
[Proceeding concluded at 9:45 a.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my abitry.

Michelleramsey
Court Recorder/Transcriber
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ORIGINAL DISTRICT COURT CLARK COUNTY, NEVADA \\
THE STATE OF NEVADA, \\
CASE NO. C236169 \\
DEPT. XVII \\
BEFORE THE HONORABLE JOSEPH BONAVENTURE, SR. \\
DISTRICT COURT SENIOR JUDGE \\
THURSDAY, OCTOBER 23, 2008 \\
RECORDER'S TRANSCRIPT OF HEARING RE: STATE'S REQUEST CONFLICT OF TRIAL DATE AGREED \\
APPEARANCES: \\
For the State: \\
JESSICA A. WALSH, ESQ., Deputy District Attorney \\
For the Defendant: \\
CRAIG F. JORGENSON, ESQ., Deputy Public Defender \\
RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER
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\section*{LAS VEGAS, NEVADA; THURSDAY, OCTOBER 23, 2008}
[Proceeding commenced at 8:12 a.m.]

\section*{THE COURT: Ronald Ross?}

MS. WALSH: And, Judge, State put this case on calendar. When we were back here to set the trial date, the Court set the trial date for November \(10^{\text {th }}\) which is the same trial date as District Court 5 case, so we put this case back on calendar 'cause logistically trying to coordinate the witnesses and the out-of-state witnesses for a trial that set for two separate Departments in the same week.

THE COURT: For the same Defendant?
MS. WALSH: Same Defendant.
THE COURT: So he's going to go to trial on another case at the same time?
MS. WALSH: Right. It'll be -- he'll go to trial in one case. The District Court 5 case is an older case. We don't need to pass it that long. If we could -- we can even go two weeks or whatever the Court's pleasure is.

THE COURT: Who's the lawyer on this?
MR. JORGENSON: It's mine, Judge.
THE COURT: He wrote a letter here, Mr. Jorgenson. He's not very happy with you or his speedy rights being violated and he wanted me to look at this letter and he wants it to be made part of the record. He said he'd been languishing over five hundred days and he has not had a lot of contact with his lawyer and so -- but I mean the bottom line is he can't go trial on two cases if he's got the case that -- I'll have to do something with this case.

Yes, sir. So l'll make this part of the record --
THE DEFENDANT: Thank you.

THE COURT: -- the letter all right.
THE DEFENDANT: On the -- on the day that the trial date was set for the \(10^{\text {th }}\), I let the Court know that I had another trial date in front of Judge -- District Court 5.

THE COURT: All right. No big deal.
THE DEFENDANT: I already waived in that courtroom. I'm invoking my right to a speedy trial in this courtroom, so l've been --- I can continue that case. I talked to the attorney, Mr. Will Ewing. He said he's not going to be in town that week, so that case is not going to go. That case is already going to be continued. I don't want to continue this case any further than the \(10^{\text {th }}\). My family -- this is the third trial date. My family has already paid for their plane tickets to fly here from Philadetphia.

MS. WALSH: And if that's the case, Judge.
THE DEFENDANT: They took a --
MS. WALSH: -- not to interrupt, but for time if that's the case if we just want to pass this --

THE COURT: Yeah, I guess I'm going to have too.
MS. WALSH: -- and l'il check into that and then maybe we'll continue the case.

THE COURT: I will pass it because if that other case is going to be continued, then we'll go on this.

MS. WALSH: We'll go on this one. That's fine. The State wants to --
THE COURT: You check that out all right? Call up Mr. Ewing on the other case, double check it and we'll continue this 'til when? When's the next --

THE CLERK: How long do you need?
MS. WALSH: The next -- the next court date is fine.

THE COURT: Okay.
MS. WALSH: Monday.
THE MARSHAL: Tuesday.
MR. JORGENSON: Well, Tuesday I'm in Justice Court; if we can put it off a week from today.

MS. WALSH: That's fine.
THE COURT: Okay. All right, we're going to check this out.
THE DEFENDANT: All right. Thank you.
THE CLERK: October \(30^{\text {th }}\) at 8 a.m.
[Proceeding concluded at 8:14 a.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.


LAS VEGAS, NEVADA; THURSDAY, OCTOBER 30, 2008
[Proceeding commenced at 8:15 a.m.]

\section*{THE COURT: Page 8, Ronald Ross?}

MS. WALSH: Judge, I was able to check into his other case. If you recall --
THE COURT: Right.
MS. WALSH: -- we were trying to --
THE COURT: He said he wasn't going to go and he wants to go on this case.
MS. WALSH: That's correct, Judge. I contacted the Public Defender and he indicated he will be out of town. I guess there is a status check set for the Calendar Call to see if we can try that case in November, so we can just take this off calendar.

THE COURT: We're going to take the motion to continue this trial off calendar and as far as we're concerned this trial date stands.

MS. WALSH: Correct.
THE COURT: All right.
MS. WALSH: Thanks, Judge.
[Proceeding concluded at 8:15 a.m.]

ATTEST: I hereby certify that I have truly and correctly transsribed the audio/video proceedings in the above-entitled case to the best of my ability.

Michelle Ramsey
Coutt Recorder/Transcriber


APPEARANCES:
For the State:
JESSICA A. WALSH, ESQ., Deputy District Attorney

For the Defendant:
CRAIG F. JORGENSON, ESQ., Deputy Public Defender

RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

\section*{LAS VEGAS, NEVADA; TUESDAY, NOVEMBER 4, 2008}
[Proceeding commenced at 7:56 a.m.]

THE DEFENDANT: Good morning, Your Honor.
THE COURT: Good morning, sir.
MR. JORGENSON: Judge, if I may.
THE COURT: Just for the record, C236169, State of Nevada versus Ronald Ross. Mr. Ross is present in custody. Mr. Jorgenson, Mr. Ponticello for the State.

MR. PONTICELLO: Actually, it'll be Ms. Walsh for the State, Judge.
THE COURT: All right.
MR. JORGENSON: He has a request to represent himself, but l'll wait until Ms. Ross [sic] shows up.

MR. PONTICELLO: Ms. Welsh, Walsh show's up.
MR. JORGENSON: Right.
[Matter trailed]
[Matter recalled at 8:20 a.m.]
THE COURT: C236169, State of Nevada versus Ronald Ross. Mr. Ross is present in custody with Mr. Jorgenson, Ms. Walsh for the State.

MS. WALSH: Good morning, Judge.
THE COURT: Time set for Calendar Call; is this matter ready to go?
MS. WALSH: State's ready, Judge.
THE COURT: Defense ready?
MR. JORGENSON: Yes.
THE COURT: All right, and how many days?
MS. WALSH: Judge, it'll probably take about two to two and half days. We
have eight to twelve witnesses. They'll all be fairly short.
THE COURT: All right. Let's start Wednesday morning at 10.
MR. JORGENSON: Judge, we have this motion that I handed you.
THE COURT: Right. In this motion you wanted -- Mr. Ross, you asked for a motion for a Faretta hearing, but in the motion you state that basically you want someone to be your co-counsel on this case; and Faretta means that you want to represent yourself, but also in your motion you state you lack the legal skills and knowledge of rules of evidence procedure and courtroom decorum and has no previous experience.

THE DEFENDANT: That's why I want to be the co-counsel in my case, so I can, you know -- so I -- so I can address the Court personally. Me and Mr. Jorgenson, we having some conflict about the way I think that we should go about my defense. He has one strategy and I have a total opposite strategy. I actually submit a witness list in my case. He said he don't think that it need to be done, so we having conflict. Maybe that's the wrong motion that I filed. Maybe I should have filed a motion to just dismiss the Public Defender office. I didn't really know which one to file, but I sent a letter to Court last week. Mr. -- to Judge Bonaventure, he put it in the file. I don't know if you read it or not. He didn't hear --

THE COURT: I don't have it here, sir, but it doesn't work that way: You can't be co-counsel and split up the duties of the case. And from -- and from your own admission, you would not -- you would not meet the requirements of Faretta on this.

Since we'll start next --
THE DEFENDANT: [indecipherable]
THE COURT: -- Wednesday l'm, you know, l'll direct Mr. Jorgenson to come down and speak with you today and the next couple days this week to -- so guys```


[^0]:    ${ }^{1}$ It is interesting that Johns testified that he had no contact with Jarmin and was unable to confirm that Jarmin was in fact in a hospital in San Bernardino, yet the prosecutor was able to proffer to the Court that Jarmin's admission into the hospital just occurred on the Friday before the commencement of the trial, information which could not be known absent contact with Jarmin or confirmation from a bospital which was specifically denied by Johns during examination.

[^1]:    ${ }^{2}$ Gaming establishments are highly motivated to invest in state-of-the-art surveillance infrastructure that maximizes video coverage within the casino to protect both their assets and their integrity. Gaming surveillance systems are of the highest resolution and quality, often surpassing that of retail surveillance systems. See Nilsson, Fredrik, Intelligent Network Video: Understanding Modern Video Surveillance Systems, CRC Press, (2008).

[^2]:    ${ }^{1}$ Hereinafter "RT."
    ${ }^{2}$ In fact, the record demonstrates that Juror 187 and Juror 208 did not serve on the jury. Compare RT 11/12/2008, pp. $10-11,37-38$ with RT $11 / 12 / 2008$, p. 78 . It is unclear whether Juror 200 served as his name is not a part of the record. However, as demonstrated above, Juror 200 unequivocally stated he could lay aside any prejudice or perceived prejudice in deciding Defendant's case.
    ${ }^{3}$ The corresponding Supreme Court Case numbers are 49091 and 50153 , respectively.

[^3]:    ${ }^{4}$ Inasmuch as Defendant now alleges the delay was prejudicial because it caused the loss of exculpatory evidence, specifically the Sheikh Shoe store surveillance video, this claim is belied by the record. Sheikh Shoes store assistant manager Kevin Hancock testified that the surveillance video depicting Defendant using Georgia Stathopoulos' credit card was saved in the computer database for 1-2 weeks before being automatically erased. As the transaction took place on March 17, 2007, and Defendant was not arraigned until September 5, 2007, any surveillance video of Sheikh Shoes was unavailable prior to any delay of Defendant's trial. Therefore, because delay subsequent to September 5, 2007 did not result in the loss of such evidence, this claim must be denied. Sce Hargrove v. State, $100 \mathrm{Nev} .498,502,686$ P. 2 d 222, 225 (1984).

[^4]:    ${ }^{7}$ Defendant contends Detective Flenner testified twice that he was "familiar with" Defendant. However, the record demonstrates that Detective Flenner was asked once whether he was familiar with Defendant and he replied that he was. RT 11/12/2008, p. 235.

