IN THE SUPREME COURT OF THE STATE OF NEVADA

DAIMON MONROE, Appellant, v. THE STATE OF NEVADA, Respondent.	)	Case No. 65827

RESPONDENT'S APPENDIX

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on March 4, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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FILED

2008 MAY -3 A 9:57

COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,	)	CASE NO.: C228752
	)	
Plaintiff,	)	DEPT. NO.: VII
	)	
vs.	)	
	)	
DAIMON MONROE aka	)	
DAIMON HOYT.	)	
#0715429,	)	
	)	
Defendant.	)	
	)	

NOTICE OF MOTION AND MOTION TO SUPPRESS EVIDENCE OBTAINED PURSUANT TO SEARCH WARRANTS

COMES NOW the accused DAIMON MONROE, by and through his attorney, MARTIN HART, and hereby moves this Honorable Court to suppress certain evidence, as set forth more specifically in the following Points and Authorities.

This Motion is based upon the pleadings and papers on file herein, the following Points and Authorities, and any argument which may be had at the time of hearing hereon, all as incorporated herein.

DATED this 30th day of April, 2008.

By: _____
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NOTICE OF MOTION

TO: THE STATE OF NEVADA, Plaintiff; and

TO: DAVID J. ROGER, Clark County District Attorney

YOU AND EACH OF YOU will please take notice that a MOTION TO SUPPRESS will come on for hearing before the above-entitled Court on the 12 day of May, 2008, at the hour of 8:30 a.m. in Department VII.

DATED this 30th day of April, 2008.

By: _____
MARTIN HART
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POINTS AND AUTHORITIES

FACTUAL BACKGROUND

According to the Declaration of Arrest and Arrest Report, in the early morning hours of September 24, 2006, at approximately 2:20 a.m., Las Vegas Metropolitan Police Officers Salisbury and Macdonald were dispatched to Anku Crystal Palace at 6015 Fort Apache Road, concerning a possible burglary. On their way to that location, Salisbury and Macdonald received another call about a possible burglary at Just for Kids Dentistry on 9837 West Tropicana. The officers decided to go to the second call because they were informed that the suspects were still inside the business. When the officers arrived at the West Tropicana address, they conducted a traffic stop on a white Plymouth van that was leaving business parking lot. The reports did not indicate the nature of any traffic violation leading to this stop.

The two occupants of the van were identified as Daimon Monroe and Bryan Fergason. Officer Salisbury saw an unknown crystal object in between the two front seats of the van. He learned that the item was one of those taken in the Anku Crystal Palace burglary.

Both Monroe and Fergason were arrested for Possession of Stolen Property, Burglary, and Conspiracy to Commit Burglary. A criminal complaint was filed regarding this incident and the matter is currently assigned as case C227874.

Following their arrests, Monroe was released, but Fergason remained in custody at the Clark County Detention Center. During that time, numerous phone conversations between the two men and additional parties with whom they associate were recorded by the Las Vegas Metropolitan Police Department. Some of the conversations referenced moving items from a storage unit. Detectives contacted numerous storage units in Las Vegas and located a storage unit rented by Tonya Trevarthan, an associate of Fergason and Monroe. Detectives also surveilled Monroe and watched as he and Trevarthan unloaded items from a storage unit and took them to a home located at 1504 Cutler Drive.

Based upon these conversations and the investigation, on November 3, 2006, officers applied for, and ultimately received, search warrants for 1504 Cutler, 7400 Pirates Cove #220 , Ferguson's apartment, 5900 Smoke Ranch #174, a storage unit in the name of Trevarthen, and 8100 W. Charleston #A138, a storage unit rented to Trevarthan. In pertinent part, the affidavits for the warrants contained identical language and the warrants authorized seizure of:

> A) Burglary Tools (implements adapted, designed or commonly used for the commission of burglary such as pry tools, nippers, grinders, lock picks, altered keys, etc.)
>
> B) Items of property that are used to make burglary tools (grinders, torches, files, bending tools, etc.)
>
> C) Items of property including tools, electronic equipment, household items, retail merchandise and other individual pieces of property which contain specific identifiable descriptions and/or the serial numbers which would enable officers to compare and confirm through comparison with stolen property and police crime reports that said property is, in fact stolen and if said property is confirmed stolen for officers to seized the same.

Pursuant to the searches authorized by these warrants, Officers seized 388 items from the Cutler Address. The some of the items seized included televisions, stereos, computers and other electronic items along with numerous tools. Of the tools seized, only a couple of grinders fit the description listed on the face of the warrant. Most of the tools seized were woodworking type

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power tools such as saws although 2 pruners and a hedge trimmer were also confiscated. The property return sheet also included, dozens of pieces of artwork and sports memorabilia, a knife set, cigars and a humidor, exercise equipment, musical instruments, a coffee maker and the proverbial sink (no notation as to whether kitchen or bathroom). At 7400 Pirate's Cove the officers seized 2 tools along with a figurine and a golf club. At 5900 Smoke Ranch, officers seized 212 items including numerous items of memorabilia and artwork along with hair products, lotions, a box of vitamins and another box of shoes. At 8100 W. Charleston, officers seized 204 items, none of which were tools and only a couple which were electronics with serial numbers. The items seized again included numerous pieces of artwork and memorabilia along with furniture, boxes of clothes and cigarettes.

As a result of the search of the Cutler residence, Detectives became aware that Monroe had rented storage unit B-106 at 8265 West Sahara. On November 7, 2006, Detectives applied for a search warrant for the unit, requesting authorization to seize the following property:

> "Burglary Tools, Stolen property such as paintings, sports memorabilia, art work, appliances, furniture and articles of personal property which would tend to establish the identity of persons in control of said premises, . . ."

The November 3, 2006 warrant was attached as an exhibit to the Application and Affidavit for new Warrant. The request was granted and the officers seized 96 items that included numerous items of artwork and memorabilia but also included, a disco ball and Halloween masks. Monroe was subsequently charged under instant case with numerous counts of possession of stolen property. The same description wos used to obtain a warrant for 3250 Buffalo, a storage unit in the name of Ferguason. Again, numerous items of memorabilia and art were seized but so were cosmetics, perfume and light bulbs.

LEGAL ARGUMENT

I. THE TWO SEARCH WARRANTS ISSUED AUTHORIZED UNLAWFUL GENERAL SEARCHES IN VIOLATION OF THE FOURTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES

The Fourth Amendment requires that a warrant particularly describe both the place to be searched and the person or things to be seized. The description must be specific enough to enable

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the person conducting the search reasonably to identify the things authorized to be seized. See *United States v. Spilotro*, 800 F.2d 959 (9th Cir. 1986); see also *United States v. Crozier*, 777 F.2d 1376, 1380 (9th Cir. 1985); citing *Marron v. United States* (citations omitted). A general order to explore and rummage through a person's belongings is not permitted. *United States v. Cook*, 657 F.2d 730, 733 (5th Cir. 1981).

In determining whether a description is sufficiently precise, the Ninth Circuit Court of Appeals has concentrated on one or more of the following: (1) whether probable cause exists to seize all items of a particular type described in the warrant; (2) whether the warrant sets out objective standards by which executing officers can differentiate items subject to seizure from those which are not; and, (3) whether the government was able to describe the items more particularly in light of the information available to it at the time the warrant was issued. *Spilotro*, 800 F.2d at 963.

Assuming arguendo, probable cause existed for the warrant to issue, the next step in the afore-mentioned analysis is whether the warrant sets out objective standards by which executing officers can differentiate items subject to seizure from those which are not. Id. In the instant matter, the November 3, 2006 warrants seek "[I]tems of property including tools, electronic equipment, household items, retail merchandise and other individual pieces of property . . " In the November 7, 2006 warrant, the warrant authorizes the seizure of, "[S]tolen property such as paintings, sports memorabilia, art work, appliances, furniture . . ." The items to be seized were limited to "stolen property" and "burglary tools" however, in the absence of any further direction, those are not sufficient descriptions. See, e.g. *United States v. Cardwell*, 680 F.2d 75, 77 (9th Cir.1982). As the warrants stand, they authorized wholesale seizures of entire categories of items not generally evidence of criminal activity, and provide no guidelines to distinguish items used lawfully from those the government had probable cause to seize. *Spilotro*, 800 F.2d at 964.

The next issue in the analysis is whether the government was able to describe the items more particularly in light of the information available to it at the time the warrant was issued. Generic classifications in a warrant are acceptable only when a more precise description is not possible. *Cardwell*, 680 F.2d at 78, quoting *United States v. Bright* (citations omitted). When

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there is probable cause to believe that premises to be searched contains a class of generic items or goods, a portion of which are stolen or contraband, a search warrant may direct inspection of the entire class or all of the goods if there are objective, articulated standards for the executing officers to distinguish between property legally possessed and that which is not. *United States v. Hillyard*, 667 F.2d 1336, 1340 (9th Cir.1982) (citations omitted) (emphasis added). The State could refine the scope of the warrant by reference to particular criminal episodes, time periods and subject matter. *Cardwell*, 680 F.2d at 78. At no point in either the warrant or the affidavit did the State narrow the class of items sought, or link any items in any way to a particular theft.

Here, the November 3, 2006 warrants seek the seizure of "burglary tools," described as "implements adapted, designed or commonly used for the commission of burglary such as pry tools, nippers, grinders, lock picks, altered keys, etc." The November 7, 2006 warrant is even less descriptive, stating only "[B]urglary tools." The State could have been more precise in its description of burglary tools, as they already had one in their possession. Id. at 78. In the November 3, 2006 Application and Affidavit for Search Warrant, Affiant describes one "tool" which police had impounded as a result of the initial stop; it was not an ordinary tool, but one that had been altered considerably. Affiant even uses that tool to unlock the doors at Anku Crystal Palace and Just for Kids Dentistry. The descriptions are also at odds with the statute regarding burglary tools, which requires that such items be possessed under circumstances evidencing intent to use them in the commission of a crime. See NRS 205.080. Obviously, the purpose of the statute is to allow the legal possession of tools within a person's home or storage unit. However, the warrants issued are so general they authorize the seizure of an entire category of items which are not generally the evidence of criminal activity. *Spilotro*, 800 F.2d at 964. Furthermore, the warrants give absolutely no objective, articulated standards for the executing officers to distinguish between property legally possessed and that which is not. *Hillyard*, 667 F.2d at 1340.

The instant case is analogous to *United States v. Spilotro*, supra. In *Spilotro*, along with the warrant request, the investigating FBI agent submitted a 157 page affidavit, detailing surveillance and telephone taps. Although the Ninth Circuit noted that the investigation exposed

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"a general pattern of criminal wrongdoing without providing strong evidence of isolated criminal transactions," they ultimately concluded that "there was probable cause to believe that Spilotro supervised a loan shark and bookmaking operation." *Spilotro*, 800 F.2d at 964. Notwithstanding the Court's stance on probable cause, the Court deemed the warrant, which authorized the seizure of:

> "[C]ertain property, namely notebooks, notes, documents, address books and other records; safe deposit box keys, cash, gemstones and other items of jewelry and other assets; photographs, equipment including electronic scanning devices, and other items and paraphernalia, which are evidence of violations of 18 U.S.C. § 1084, 1952, 1955, 892-894, 371, 1503, 1511, 2314, 2315, 1962-1963 and which are or may be: (1) property that constitutes evidence of the commission of a criminal offense; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) property designed or intended for use or which is or has been used as the means of committing a criminal offense . ."

Id. at 961. was general and invalid. Id. at 965. The Court concluded that a more precise description of the items sought was possible. Id. at 964. The Court further stated that the authorization to seize "gemstones and other items of jewelry" was far too broad, and provided "no basis for distinguishing these diamonds from others the government could expect to find on the premises." Id. at 965.

II. AS THE SEARCH WARRANTS AUTHORIZED UNLAWFUL SEARCHES THE EVIDENCED SEIZED MUST BE SUPPRESSED

The property evidence seized as a result of the search warrants in the instant matter must be suppressed as the warrants authorized an unlawful general search in violation of The Fourth Amendment of the United States Constitution.

In *United States v. Leon*, 104 S. Ct. 3405 (1984), the United States Supreme Court observed that in cases where a warrant is "so facially deficient- i.e., in failing to particularize the place to be searched or the things to be seized-that the executing officers cannot reasonably presume it to be valid." Id. at 3422 (emphasis added).

The Ninth Circuit addressed this same issue in *United States v. Crozier*, supra, holding that an agent could not rely reasonably on an overly broad warrant limiting a search only to evidence of violation of two statutes, at least absent specific assurances from the magistrate that

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the over breadth concern was without merit. Crozier, at 1381-1382. In this case, there were no such assurances from the magistrate. See United States v. Spilotro, supra. The Ninth Circuit held that the exclusionary rule applied. See Spilotro, 800 F.2d at 968. See also United States v. Washington, 782 F.2d 807, 819 (9th Cir. 1986) (overbroad warrants so facially deficient that reliance not reasonable).

CONCLUSION

Based upon the foregoing, Daimon Monroe respectfully prays this Honorable Court to grant his Motion to Suppress Evidence Obtained Pursuant to Search Warrants.

DATED this 30th day of April, 2008.

By: _____
MARTIN HART
Nevada Bar No. 5984
229 S. Las Vegas Blvd. Suite 200
Las Vegas, Nevada 89101
(702) 380-4278

RECEIPT OF COPY

RECEIPT OF A COPY of the foregoing, MOTION TO SUPPRESS is hereby acknowledge this ____ day of _____, 2008.

_____

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(ORIGINAL)

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2008 MAY -7 P 3:37
CLERK OF THE COURT

FILE WITH MASTER CALENDAR

JOIN
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(702) 380-4278
Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

vs.

DAIMON MONROE

Case No. C228752 (C227874)
Dept. No. VI

JOINDER TO MOTIONS

COMES NOW the accused DAIMON MONROE, by and through his attorney, MARTIN HART, and hereby file this Joinder to Defendant Bryan Ferguson's Motion in Limine to Bar the Admissions of Recorded Telephone Calls; Motion in Limine to Exclude Preclude Evidence Attributed to Co-Defendants From Being Admitted During Trial Against the Defendant; Motion to Dismiss Possession of Stolen Property Charges; Motion for Production of Discovery and ony other motions that may be forthcoming from either co-defendant.

This Motion is based upon the pleadings and papers on file herein, the following Points and Authorities, and any argument which may be had at the time of hearing hereon, all as incorporated herein.

DATED this 7 day of May, 2008.

By: _____
MARTIN HART
Nevada Bar No. 5984
229 S. Las Vegas Blvd. Suite 200
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(702) 380-4278

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RECEIVED
MAY 07 2008
CLERK OF THE COURT

DEPARTMENT VII
NOTICE OF HEARING
DATE 5.12.08 TIME 8:30 a.m.
APPROVED BY

NOTICE OF MOTION

TO: THE STATE OF NEVADA, Plaintiff; and
TO: DAVID J. ROGER, Clark County District Attorney

YOU AND EACH OF YOU will please take notice that a MOTION TO SUPPRESS will come on for hearing before the above-entitled Court on the 12 day of May, 2008, at the hour of 8:30 a.m. in Department. VII

DATED this 7 day of May, 2008.

By:
MARTIN HART
Nevada Bar No. 5984
229 S. Las Vegas Blvd. Suite 200
Las Vegas, Nevada 89101
(702) 380-4278

RELIEF REQUESTED

Defendant, Daimon Monore joins in Defendant Bryan Fergason's Motion in Limine to Bar the Admissions of Recorded Telephone Calls; Motion in Limine to Exclude Preclude Evidence Attributed to Co-Defendants From Being Admitted During Trial Against the Defendant; Motion to Dismiss Possession of Stolen Property Charges; and Motion for Production of Discovery.

CONCLUSION

Based upon the foregoing reasons, Mr. Monroe respectfully prays this Honorable Court grant his Joinder to Motions.

DATED this 7 day of May, 2008.

By:
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RECEIPT OF COPY

RECEIPT OF A COPY of the foregoing, **JOINDER TO MOTIONS** is hereby acknowledge this 7 day of May, 2008.

DISTRICT ATTORNEY

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ORIGINAL

FILED

2008 MAY -7 P 3:34

FILE WITH MASTER CALENDAR OF THE COURT

MOTN
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Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

STATE OF NEVADA,

Plaintiff,

vs.

DAIMON MONROE,
ID# 0715429

Defendant.

Case No. : C228752
Dept. No. : VII

Date of Hearing:
Time of Hearing:

MOTION TO SUPPRESS

COMES NOW, the Defendant by and through his attorney of record MARTIN HART ESQ., and moves this Honorable Court to Suppress all evidence in the instant case as fruit of the poisonous tree. This motion is made and based upon the attached Points and Authorities, the papers and pleadings on file herein, together with the arguments of counsel to be heard at the time of the hearing on this matter.

DATED this 7 day of May, 2008.

LAW OFFICES OF MARTIN HART, LLC.

Martin W. Hart, Esq.
Nevada Bar No. 5984
229 South Las Vegas Blvd., Ste. 200
Las Vegas, NV 89101
Attorney for Defendant

RECEIVED
MAY 07 2008
CLERK OF THE COURT

DEPARTMENT VII
NOTICE OF HEARING
DATE 5/12/08 TIME 8:30
APPROVED BY

NOTICE OF MOTION

TO: THE STATE OF NEVADA, Plaintiff; and

TO: DAVID J. ROGER, Clark County District Attorney

YOU AND EACH OF YOU will please take notice that a **MOTION TO DISQUALIFY THE DISTRICT ATTORNEY'S OFFICE AS PROSECUTOR DUE TO CONFLICT OF INTEREST** will come on for hearing before the above-entitled Court on the 12 day of May, 2008, at the hour of 8:30 a.m. in Department VII.

DATED this 12 day of May, 2008.

LAW OFFICES OF MARTIN HART, LLC.

Martin W. Hart, Esq.
Nevada Bar No. 5984
229 South Las Vegas Blvd., Ste. 200
Las Vegas, NV 89101
Attorney for Defendant

POINTS AND AUTHORITIES

FACTUAL BACKGROUND

On September 24, 2006, Daimon Monroe and Bryan Ferguson were stopped and wrongfuly arrested for Burglary and Possession of Stolen Property. After their arrest, officers listened to numerous phone calls made from the detention center and obtained search warrants which resulted in the instant case. As the intial stop and search were improper, all evidence obtained as fruits of that stop and arrest must be suppressed.

1. Information from police reports:

According to the Declaration of Arrest and Arrest Report, in the early morning hours of September 24, 2006, at approximately 2:20 a.m., Officers Salisbury and Macdonald were dispatched to the Anku Crystal Palace, located at 6015 Fort Apache Road concerning a possible burglary. When they were getting close to that location, Salisbury and Macdonald received another call about a possible

burglary a mile away at 9837 W. Tropicana under event number 060924-0427. According to the reports, the officers decided to go to the second burglary call because they were close and were informed that the suspects were still inside the business. The reports further indicated that when the officers arrived at the W. Tropicana address, they saw a white Plymouth van leaving from in front of the business, and conducted a traffic stop on the van as it pulled out of the parking lot. The reports did not indicate the nature of any traffic violation leading to this stop. After the stop, the officers identified the two occupants of the van as being co-defendants Daimon Monroe and Bryan Fergason. The officers stated that both Monroe and Fergason appeared to be under the influence of a controlled substance, apparently because Monroe was jittery and speaking rapidly, and Fergason had fixated pupils and his eyelids fluttered when his eyes were shut. No sobriety tests were performed and no charges relating to intoxication were filed.

According to Officer Salisbury's report, after the stop, he looked inside the vehicle and saw an unknown crystal object in between the two front seats. This struck him as odd. He also indicated that he had other officers go to the 9837 W. Tropicana business to see if it had, in fact, been burglarized, and was informed that it had **not** been burglarized. He was later on the telephone with an officer who had responded to the first burglary call at 6015 S. Fort Apache, who told him that included in the items taken in that burglary were petit cash, bracelets, wooden statues, and a 10" crystal fixture. According to the report, the other officer described the fixture to Salisbury, and he thought "it seemed very possible" that the crystal item he saw in the van was the same one taken in the burglary at Fort Apache.

The reports further indicate that Officer Salisbury had the owner of the business from the first burglary call, Anku Crystal Palace, come to where the van was stopped. He indicated that the owner positively identified the crystal fixture in the van as being from his store, and that they then looked further in the van and found other items identified as being from the Anku Crystal Palace. Salisbury then determined that Monroe and Fergason were in possession of stolen items, and arrested them for possession of stolen property, burglary, and conspiracy to commit burglary, with regard to the Anku Crystal Palace burglary call. The reports added that in a search incident to arrest, other items identified as being from the Anku Crystal Palace were found, and that upon further searching of the van the

officers found items they believed to be burglary tools, so Salisbury also arrested them for possession of burglary tools. The Declaration of Arrest and Arrest Report contained no other information regarding the West Tropicana burglary call, but the Incident Report indicates that the business at that location was Just for Kids Dentistry.

2. Timing of events:

Both of the businesses in the two burglary calls were protected by ADT. According to the ADT Alarm Response Incident Report on Anku Crystal Palace, the alarm was activated at 1:14.32 a.m. It appears from that report, and the preliminary hearing testimony (Preliminary Hearing Transcript, Vol. I, p. 9)[1] that whoever was in the store exited via the back door at 1:17.42 a.m.

According to the ADT report on Just for Kids Dentistry, the alarm was activated at 2:15.34 a.m. At 2:19.56 a.m., ADT sent an alarm response officer to that location. (PH, I, p. 15) According to the Incident Recall for the Anku Crystal Palace, it appears that Officers Salisbury and MacDonald were dispatched to that location at approximately 2:12 a.m. in regard to a possible burglary. Dispatch noted that the keyholder to the business and security were standing by waiting for officers and had not entered the business. Prior to arriving to that location, however, Salisbury and Macdonald were freed from that event, and at 2:17 a.m. went instead to a possible burglary still in progress at Just for Kids Dentistry, located at 9837 West Tropicana Avenue. At 2:34 a.m., dispatch notified the people waiting for the officers at the Anku store, that there was a delay as to the arrival of officers, and it appears that no officers were present at that location until approximately 2:38 a.m.

From the Incident Recall concerning the Just For Kids Dentistry location, it appears that as the officers were arriving at the location at 2:19 a.m., the vehicle later determined to contain Mr. Monroe and Mr. Fergason was leaving the parking lot at that strip mall. It seems that this vehicle was stopped by police at approximately 2:22 a.m.. At 2:24 a.m., dispatch notified Salisbury and Macdonald that the front doors of Just for Kids Dentistry was secure and that the back of the business was being checked.

---

[1] Hereafter, cites to the preliminary hearing transcripts will be in the form of (PH, I, p.__), where the second item is either I or II for volume I or II of the transcripts.

Salisbury and Macdonald were subsequently informed that the Just for Kids Dentistry had not been broken into. It appears that at least sixteen (16) minutes elapsed from the time of the stop of the van on West Tropicana and the arrival of any law enforcement officers at the Anku Crystal Palace. According to the Arrest Report and Officer Salisbury's testimony at the preliminary hearing (PH, I, 117), the time of actual arrest of the defendants is somewhat unclear, at one point being 3:03 a.m., and at another not being until 3:30 a.m.

Preliminary Hearing Testimony:

At the preliminary hearing in this matter, Officer Salisbury stated that before he actually arrived at the strip mall, he saw the vehicle begin moving and that when the vehicle was actually stopped, it was heading eastbound on Tropicana. He also stated that when the police lights and sirens were activated, the van pulled over. (PH, I, pp. 85-86) Later during the hearing, however, Officer Salisbury testified that the vehicle was pulled over immediately out of the parking lot, not down the road. (PH, I, p. 107) He also indicated that the initial stop of the van was a felony stop (as opposed to a traffic stop), and was made because the van was the only vehicle in the entire parking lot at 9837 West Tropicana. (PH, I, pp. 83-84, 86, 107). Salisbury said the vehicle stop was done to determine whether it had been involved with the burglary call for Just for Kids Dentistry, and that the stop was a *Terry* stop.

Salisbury further indicated that when he does a felony car stop, he immediately has the occupants exit the vehicle and that in this case, he approached the passenger side while MacDonald approached the driver's side, and that they had both occupants step outside and come back to their patrol cars. He then identified Mr. Monroe and Mr. Fergason as the occupants. (PH, I, pp. 86-87) When they approached the vehicle, they had their guns drawn, and patted the occupants down for weapons. The pat down produced negative results. (PH, I, p. 88) Salisbury indicated that both Monroe and Fergason were very cooperative. (PH, I, p. 89)

According to Salisbury, he had Mr. Fergason leave the passenger door open because the windows were tinted, and that he tried to open the back door to the van, but could not because it was locked. He then leaned inside the van over on the passenger seat and determined no one else was in the van. (PH, I, p. 89) He testified that when doing this sweep, he noted a nice glass crystalline object on

the floorboard of the van, and that as he looked back, he saw other items taking up sitting room, leading him again to believe no one else could have been in the van. (PH, I, p. 90)

The officer stated that they then ran a records check on the vehicle and subjects, and that about ten to fifteen minutes *after* learning of the defendants' criminal histories, the crystal object and other items seen in the van, struck him as "weird." At this time, he began to suspect that the items he saw were related to the other burglary call, and after speaking with an officer at the other scene, he decided the items he found had been stolen from the Anku Crystal Palace. He then placed both Mr. Monroe and Mr. Fergason under arrest. (PH, I, pp. 92-93) Based on the time line set forth in the preceding section, it appears that over an hour had elapsed from the time of the stop until this arrest, however, there was also testimony from Officer Salisbury that this period of elapsed time was only fifteen to twenty minutes. (PH, II, p. 40) Incident recall logs noted that at 3:02 a.m., the Tropicana event was linked to the Fort Apache event, over 30 minutes after Salisbury was informed that the front doors of the Just for Kids Dentistry were secure.

On cross-examination, it was established that based on the facts and circumstances known to the officers at the time, the Just for Kids Dentistry *had not* been burglarized. (PH, II, pp. 5-6) According to Officer Salisbury, the defendants were placed under arrest for the Anku Crystal Palace burglary, prior to the owner of that business coming to the scene. He testified that his probable cause for placing them under arrest for that burglary was due to "the short time lapse of that burglary," "the prior arrests that they have had," burglary tools he found them to have, and the description of items taken from Anku Crystal Palace that he knew were in their vehicle. (PH, II, p. 11) When Officer Salisbury conducted his "protective sweep" of the van, he entered the vehicle. (PH, II, p. 12) Although he had a cell phone and could radio dispatch, Officer Salisbury never attempted to obtain a search warrant for the vehicle, either before or after the arrests of Mr. Monroe and Mr. Fergason. (PH, II, pp. 12-13)

Officer Salisbury agreed that his arrest report indicated that the van was stopped on a traffic stop, but did not remember if, in fact, there were any traffic violations involved. (PH, II, pp.16-17) He also testified that he believed that both front windows of the van were down (PH, II, p. 21) It was further established that when the officer pulled Mr. Fergason out of the van, he did not tell him why he

was being detained or why the van had been stopped, but at that time Mr. Fergason was not free to leave. (PH, II, p. 23) Although the windshield of the van was clear, Officer Salisbury did not look through the windshield for others who might have been in the van because of concern for his safety. He also did not ask anyone else in the van to step out, or use his flashlight to see if anyone else was in the vehicle. (PH, II, pp. 25-27) When the officer looked in the vehicle, he was looking for "anything out of the ordinary that I see but mainly for people." When he saw the crystal object in the van, he had no knowledge that it was contraband. (PH, II, p.29)

Brent Engle also testified at the preliminary hearing and said he was in the parking lot at 9837 West Tropicana on September 24th talking on the phone with his girlfriend around 1:30 to 2:00 a.m. He also explained that the location was a strip mall with the Timbers Bar, and five or six businesses. (PH, I, pp. 55-56) Mr. Engle indicated that while he was talking on the phone, he noticed a car pull into the parking lot, circle the lot once, and stop in the middle of the lot. At the time he observed this, he was standing between an SUV and a truck in the parking lot. (PH, I, pp. 56-57) Mr. Engle further testified that two people, whose faces he never saw, got out of the van and went into the dentist's office. He thought that wasn't right, so he went into the bar and asked the bartender to call Metro. He then went back outside with the cook from the bar. (PH, I, pp. 58-60) He saw the two individuals walk around the end of the strip mall building and go straight into the van. The van then took off, and Engle said that less than a minute later a police helicopter came flying down on the parking lot and police cars were coming from every direction. (PH, I, p. 62) Officer Salisbury did not testify abut this air support or multiple additional police vehicles. Mr. Engle saw the van later where it had been stopped further down Tropicana, about 1/3 to 1/2 a mile away from the parking lot. (PH, I, p. 62-63).

LEGAL ARGUMENT

The Fourth Amendment of the United States Constitution protects individuals from unreasonable seizures of their person by law enforcement. The Fourth Amendment is made applicable to the states by the Fourteenth Amendment of the United States Constitution. *Mapp v. Ohio*, 367 U.S. 643 (1961). The Fourth Amendment applies "whenever a police officer accosts an individual and restrains his freedom to walk away," as such activity is considered to be a seizure of that person. *Brown*

v. Texas, 443 U.S. 47, 50 (1979).

> In the ordinary course a police officer is free to ask a person for identification without implicating the *Fourth Amendment*. "[I]nterrogation relating to one's identity or a request for identification by the police does not, by itself, constitute a *Fourth Amendment* seizure." Beginning with *Terry v. Ohio, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968)*, the Court has recognized that a law enforcement officer's reasonable suspicion that a person may be involved in criminal activity permits the officer to stop the person for a brief time and take additional steps to investigate further. *To ensure that the resulting seizure is constitutionally reasonable, a Terry stop must be limited. The officer's action must be "'justified at its inception, and . . . reasonably related in scope to the circumstances which justified the interference in the first place.'" For example, the seizure cannot continue for an excessive period of time, or resemble a traditional arrest,...*

Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County, 542 U.S. 177, 185-86 (2004). (internal citations omitted and emphasis added)

To determine whether a seizure is reasonable under the Fourth Amendment, the reviewing court must balance the intrusion on the individual's Fourth Amendment interests against the promotion of legitimate government interests. *Hiibel*, 542 U.S. at 187-188. If the initial stop is not based upon a specific and objective set of facts that establish reasonable suspicion that the person stopped was involved in criminal activity, then the stop is unreasonable and violates the Fourth Amendment. *Id.* at 184. In making an assessment of reasonableness, the facts must be considered under an objective standard. *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968). The court must determine whether, at the moment of seizure such conduct was appropriate under those particular circumstances. *Id.* "Anything less would invite intrusions upon constitutionally guaranteed rights based upon nothing more substantial than inarticulate hunches, a result this Court has consistently refused to sanction." *Id.* at 22. A simple good faith belief of the officer is not enough. *Id.* The scope of an investigative detention must be "carefully tailored to its underlying justification..." and last no longer than is necessary to effectuate the underlying purpose of the stop. *Florida v. Royer*, 460 U.S. 491, 500 (1983).

A seizure that is lawful at the inception can violate the Fourth Amendment if its manner of execution unreasonably infringes upon constitutionally protected interests. *See, e.g., Illinois v. Caballes*, 543 U.S. 405, 407 (2005) were a seizure justified originally on the premise of issuing a ticket

was found to be lawful because it was not prolonged beyond the time reasonably required to do such. *Id.* To conduct an investigatory stop on a vehicle, there must ordinarily be a showing of reasonable or individualized suspicion. *United States v. Thomas*, 211 F.3d 1186, 1189 (9th Cir. 2000). *See, also, Indianapolis v. Edmund*, 531 U.S. 32 (2000).

Under NRS 171.123, Nevada law enforcement officers may conduct investigative stops, but those stops may only occur if the officer has a reasonable belief "that the person has committed, or is committing, or is about to commit a crime." NRS 171.123(1). A stop made pursuant to NRS 171.123 is limited, however, to ascertaining the person's "identity and the suspicious circumstances surrounding his presence abroad. Any person so detained shall identify himself, but may not be compelled to answer any other inquiry of any peace officer." NRS 171.123(3).

In *State v. Lisenbee*, 116 Nev. 1124, 13 P.3d 947 (2005), the Nevada Supreme Court was called upon to determine whether a district court's suppression of evidence was proper. Lisenbee was stopped by officers on suspicion that he might be a possible burglary suspect based upon his appearance. When the officers asked for his identification, he produced it and voluntarily pulled up his shirt to reveal a small (legal) knife and cell phone clipped to his belt. When the officers then grabbed at him, a fight ensued, and he eventually broke free and ran from the officers. During his flight, the officers lost sight of him briefly. Lisenbee was ultimately caught, and when officers retraced the defendant's path during the pursuit, a large plastic baggie containing methamphetamine was found. *Id.*, 116 Nev. at 1126.

Although the *Lisenbee* court did not ultimately find that the methamphetamine had to be suppressed as fruit of the poisonous tree because Lisenbee had broken free of the encounter and abandoned the drugs during his flight; the court did find that he had originally been illegally detained. *Id.* at 1131. In so doing, the court noted that during an investigatory stop, officers may conduct a brief investigation if the officer has a reasonable and articulable suspicion that criminal activity is taking place. *Id.* at 1127. This suspicion must be more than an "inchoate and unparticularized suspicion or hunch." *Id.* at 1128 (quoting *Terry v. Ohio*, 392 U.S. 1, at 27 (1968)). The *Lisenbee* court concluded that the officers in that case had only a hunch that the defendant might be the burglary suspect, and that once he had produced identification showing that he was not the person sought; the officers were

precluded from detaining him further, and his detention became unreasonable. *Id.* at 1129. The *Lisenbee* court also noted that "[u]nreasonable detention equates to an unlawful seizure.," and that "once an individual is 'seized,' no subsequent events or circumstances can retroactively justify the 'seizure.'" *Id.*

"[C]ourts still retain their traditional responsibility to guard against police conduct which is over-bearing or harassing, or which trenches upon personal security without the objective evidentiary justification which the Constitution requires. When such conduct is identified, it must be condemned by the judiciary and its fruits must be excluded from evidence in criminal trials." *Terry*, 392 U.S. at 15 (1968) Therefore, the remedy for violations of the Fourth Amendment is for the evidence unlawfully found to be suppressed and not used against the person claiming the violation.

In the instant case, Officer Salisbury stated in his Declaration of Arrest, that Mr. Monroe and Mr. Fergason were stopped on a traffic stop. He was unable to state, however, what traffic violation prompted the stop. It is therefore arguable that this traffic stop was unreasonable as there was no articulated basis for conducting the stop on the van. As discussed *infra,* without specific articulated reasons for detaining a suspect, the stop and detention of his person are *per se* unreasonable.

Mr. Monroe anticipates that the State may attempt to argue that the stop was made as a justifiable felony *Terry* stop. In this case, however, the officer testified that he stopped the van because it was the only vehicle in the entire parking lot and was pulling away from the dentist's office, and that he had received a broadcast of a burglary in progress at that location. Mr. Engle testified that he was watching the van earlier as he was standing between an SUV and a truck. Therefore, the van was clearly not the only vehicle in the entire parking lot. There was no indication in the police reports, the preliminary hearing testimony, or the 911 call, that the officers had any identifying information about the van they stopped. As set forth previously, Salisbury said the vehicle stop was done to determine whether it had been involved with the burglary call for Just for Kids Dentistry, and that the stop was a *Terry* stop. Because there *were* other vehicles in the parking lot, and Officer Salisbury did not provide any additional reasons for this stop, Mr. Monroe would posit that it was based merely on the officer's "inchoate and unparticularized suspicion or hunch," and not on the required reasonable or

individualized suspicion. Therefore, Mr. Monroe submits that the original stop in his case was unreasonable as either a traffic or felony stop.

The instant case is also distinguishable from *Hughes v. State*, 116 Nev. 975, 12 P.3d 948 (2000), wherein the Nevada Supreme Court found the felony stop and refusal to suppress evidence proper. In *Hughes*, a state trooper responded to a report that shots had just been fired at a casino, and was flagged down by a security guard who provided a description of the vehicle allegedly involved, along with the license plate number of the vehicle. *Id.*, 116 Nev. at 977. When he caught up with the vehicle, he drew his weapon and ordered the four occupants out of the vehicle, patted them down, handcuffed them, and sat them by the side of the road. He then searched the vehicle for weapons, and not for officer safety. His search revealed, among other things, a gun later used to convict Hughes of ex-felon in possession of a handgun. The occupants were then arrested. *Id.* at 977-98. Hughes filed a motion to suppress the evidence seized in the warrantless search of the vehicle, which was denied by the trial court, which stated that "[k]nowing that there was likely a gun and it wasn't found on the persons stopped, it was only reasonable for the officers to conclude that the gun or guns would likely be in the car. It was unreasonable under these factual circumstances to not search for weapons." *Id.* at 979. The supreme court also noted that in any event it would find an adequate showing of exigent circumstances based on the likelihood of firearms being in the vehicle, apparently because a shooting had been involved. *Id.*

In reaching its conclusion, the *Hughes* court set forth the following:

> "Warrantless searches 'are per se unreasonable under the Fourth Amendment subject only to a few specifically established and well delineated exceptions.'" *Barrios-Lomeli v. State, 113 Nev. 952, 957, 944 P.2d 791, 793 (1997)* (quoting *Katz v. United States, 389 U.S. 347, 357, 19 L. Ed. 2d 576, 88 S. Ct. 507 (1967))*. One such exception is the "automobile exception," which applies if two conditions are present: "first, there must be probable cause to believe that criminal evidence was located in the vehicle; and second, there must be exigent circumstances sufficient to dispense with the need for a warrant." *State v. Harnisch, 113 Nev. 214, 222-23, 931 P.2d* [*980] *1359, 1365 (1997)* (Harnisch I) (citation omitted); see also *State v. Harnisch, 114 Nev. 225, 228-29, 954 P.2d 1180, 1183 (1998)* (Harnisch II) (concluding that, under the Nevada Constitution, ***both*** probable cause and exigent circumstances must exist to justify the warrantless search of a parked, immobile and unoccupied vehicle).

Hughes, at 979-980 (emphasis added). The court found the first prong, probable cause, was met because there was sufficient probable cause to believe that weapons were in the vehicle because of the

description of the vehicle and the report that shots had been fired at the casino. *Id.*, at 980. The court likewise found the second prong of exigent circumstances was satisfied, concluding that "the imminent arrest of appellant and the other occupants of the vehicle, following a pursuit from the scene of a crime, would similarly leave the vehicle "on the roadside subject to a police inventory search and later impoundment, creating . . . a sufficient exigent circumstance" to satisfy the second prong of the automobile exception." *Id.*

In the instant case, Mr. Monroe submits that evidence to support both of the prongs set forth in *Hughes*, is lacking. As discussed *infra*, the officer testified that he made the stop based on the fact that the van was allegedly the only vehicle in the parking lot were a burglary had been reported. He did not contend that he had any identifying information about the van, and a citizen witness established that the van was not the only vehicle in the entire lot. The officer also indicated that as soon as the lights and sirens were activated, the van pulled over, and that the occupants were very cooperative. Although Officer Salisbury indicated that he entered the van to make sure that there were no other people inside, he admitted that the windshield of the van was clear glass and that he believed both front windows of the van were down. He also admitted that he never asked anyone else in the van to step out or inquire as to whether any others were in the van. Most telling, however, was the officer's testimony that when he looked in the vehicle, he was looking for "*anything out of the ordinary that I see* but mainly for people. Clearly, therefore, the initial search of the van was not just a protective sweep to determine if others were present, but was also evidentiary in nature.

Even assuming *arguendo*, that the original stop was legal and justified, Mr. Monroe's prolonged detention and the search of his van was violative of the Fourth Amendment. Officer Salisbury indicated that the van was originally stopped to investigate whether its occupants were involved in the burglary of Just for Kids Dentistry. It appears that the officers arrived at that location at approximately 2:19 a.m., and stopped the van Mr. Monroe was driving at 2:22 a.m. Two minutes later, he was informed that the front doors of the business were secure, and some time later he was informed that there had not been a burglary at the business. It is unclear as to exactly when this last information was received, but based on the times that other things occurred, it appears that the information was received prior to

establishing any purported link between the van and the Anku Crystal Palace burglary. As noted in the section on Timing of Events, it appears that at least 16 minutes had elapsed from the time of stop of the van and the arrival of any law enforcement officials at the Anku Crystal Palace. This would also indicate that the back door of the Just for Kids Dentistry was being checked at least 14 minutes prior to the arrival of officers at the Anku Crystal Palace.

Mr. Monroe would submit that when the officers had reason to believe there had been no burglary of Just for Kids Dentistry, they had no further reason to properly detain him. Although Officer Salisbury testified that he thought the items he saw in the van were "weird," he did not have any evidence that they were contraband until later speaking with the officer at the Anku Crystal Palace location. Prior to that time, his purported reason to stop the van and briefly detain Mr. Monroe pursuant to a *Terry* stop had ended. Even if the officer's original entry into the van were considered proper; the fact that he thought the items contained within the van, which he claimed were within plain view, were "weird" or "odd" did not rise to the required level of probable cause to believe that they were stolen. *See, e.g., Arizona v. Hicks,* 480 U.S. 321, 326-27 (1987), holding that probable cause, and not the lesser reasonable suspicion, is required to invoke the "plain view" doctrine as it applies to seizures.

The officers in the instant case used what was purportedly seen in plain view, to piggyback further investigation and further searches, leading to the charges related to the Anku Crystal Palace burglary. Here, the initial entry into the van did not create probable cause to believe it contained stolen items, and there was not probable cause to believe Mr. Monroe was involved in the burglary of Just For Kids Dentristy after the officers were advised it had not been burglarized. Therefore, even if the initial stop and entry into the van were justified, the further searches and investigation leading to Mr. Monroe's arrest, were the product of actions violative of his Fourth Amendment right to be free from unreasonable searches and seizures. Because the evidence subsequently used to arrest and charge him with the burglary of the Anku Crystal Palace was obtained illegally, and was fruit of the poisonous tree, it must be suppressed. *Silverthorne Lumber Company v. United States,* 251 U.S. 145.

CONCLUSION

For all of the foregoing reasons, Mr. Monroe submits that the officers' stop of the van he was

driving was unreasonable and unlawful, and that his subsequent detention and the search of the van was in violation of his Fourth Amendment rights, as well as his right to be free from unreasonable searches and seizures under Article 1, section 18 of the Nevada Constitution. Therefore, any evidence found as a result of this detention and search must be suppressed, and Mr. Monroe respectfully prays this Honorable Court to suppress the same. Alternatively, he requests that a hearing be held on this issue, where further facts in support of this motion can be adduced.

DATED this 7 day of May, 2008.

LAW OFFICES OF MARTIN HART, LLC.

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RECEIPT OF COPY

RECEIPT OF COPY of the above and forgoing Notice of Motion and Motion to Suppress Evidence, is hereby acknowledged this 7 day of May, 2008.

CLARK COUNTY DISTRICT ATTORNEY

By: Teresa Lado

CERTIFICATE OF SERVICE

I hereby certify that a courtesy copy of this motion was served by facsimile transmission on Cynthia Dustin and Sean Sullivan counsel for co-defendants Bryan Ferguson and Robert Holmes this 7 day of May, 2008 at facsimile numbers 382-6903 and 385-7282.

An employee of The Law Offices of Martin Hart, LLC

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, -vs- DAIMON MONROE, aka Daimon Devi Hoyt, #1299193 Defendant.	CASE NO: C228752 DEPT NO: VII

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS EVIDENCE OBTAINED PURSUANT TO SEARCH WARRANTS

DATE OF HEARING: 5/12/08
TIME OF HEARING: 8:30 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through SANDRA K. DIGIACOMO, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion To Suppress Evidence Obtained Pursuant To Search Warrants.

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.

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POINTS AND AUTHORITIES

I.

THE SEARCH WARRANTS DEFENDANT REFERENCES DID NOT AUTHORIZE UNLAWFUL "GENERAL" SEARCHES.

Defendant argues that the search warrants issued on November 3, 2006 and the search warrant issued November 7, 2006 were invalid because they were "too general" in regards to the items to be seized at those locations. Defendant's argument lacks merit and Defendant's reliance on United States v. Spilotro, 800 F.2d 959 (9th Cir. 1986) is misplaced.

The Nevada and United States Constitutions require a search warrant to be issued only upon a showing of probable cause. More specifically, "no warrant shall issue but on probable cause, supported by Oath or Affirmation, particularly describing the place or places to be searched, and the person or persons, and thing or things to be seized." Nev. Const. art. 1, § 18; *see also* U.S. Const. amend. IV.

Therefore, a search warrant has three basic parts: "(1) It must be issued upon probable cause and have support for the statement of probable cause; (2) it must describe the area to be searched; and it must describe what will be seized. The linchpin of a warrant, however, is the existence of probable cause." State v. Allen, 118 Nev. 842, 846-47, 60 P.3d 475, 478 (2002); *see also* NRS 179.045.

The second requirement is typically referred to as the specificity requirement. The purpose of the specificity requirement is to prevent general searches where police have too much discretion as to what to seize. Berger v. State of New York, 388 U.S. 41, 87 S.Ct. 1873 (1967). While a "boiler plate" list may be invalidated as too general, People v. Frank, 38 Cal.3d 711, 700 P.2d 415 (1985), the United States Supreme Court has held that items found in a search, but not specifically mentioned in a search warrant, will not be suppressed as long as there was probable cause in the search warrant to look for those items and the scope of the search did not exceed what would be reasonable. Horton v. California, 496 U.S. 128, 138-39, 110 S.Ct. 2301, 2309 (1990).

In United States v. Spilotro, 800 F.2d 959 (9th Cir. 1986), a case Defendant heavily relies upon in his motion, the Ninth Circuit held that the specificity requirement in search warrants will depend on the circumstances and the type of items involved in the search. Id at 963. Therefore, if a more specific description of an item is not possible, a search warrant will not be considered invalid for describing generic categories. Id.

That court also provided a test in which to determine whether a description is sufficiently precise. That test is to determine if one or more of the following are present in the warrant: "(1) whether probable cause exists to seize all items of a particular type described in the warrant; (2) whether the warrant sets out objective standards by which executing officers can differentiate items subject to seizure for those which are not; and (3) whether the government was able to describe the items more particularly in light of the information available to it at the time the warrant was issued. Id.

Furthermore, in Spilotro, the Ninth Circuit also explained why the search warrant in that case was defective. The defendant in that case owned a jewelry store. The search warrant authorized the seizure of "certain property, namely notebooks, notes, documents, address books and other records; safe deposit box keys, cash gemstones and other items of jewelry and other assets…," but did not articulate the actual offenses against the defendants there. Id at 961. Therefore, those descriptions were too general because the government could have narrowed the descriptions to items one commonly expects to find on premises used for the criminal activities in question, or, "at the very least, by describing the criminal activities…rather than simply…referring to the statute believed to have been violated." Id. at 964.

The court held that a proper warrant would have authorized the seizure of "records relating to loan sharking and gambling, including pay and collection sheets, lists of loan customers, loan accounts and telephone numbers, line sheets, bet slips, tally sheets, and bottom sheets." Id, *citing* United States v. Timpani, 665 F.2d 1, 4-5 (1st Cir. 1981).

Therefore, per the Ninth Circuit, the use of generic descriptions in a search warrant will not be fatal when the search warrant specifically identifies the alleged criminal activities

in connection with the items sought. Spilotro, 800 F.2d at 964. To wit, "[r]eference to specific illegal activity can…provide substantive guidance for the officer's exercise of discretion in executing the warrant. Id.; *See also* United States v. Washington, 782 F.2d 807, 818 (9th Cir. 1986) (search limited to items evidencing "involvement and control of prostitution activity" narrow enough to satisfy particularity requirement) (*opinion superseded by* United States v. Washington, 797 F.2d 1461 (9th Cir. 1986); United States v. LeBron, 729 F.2d 533, 538-39 (8th Cir. 1984) (reference to specific illegal activities such as narcotic sales or credit transaction business provides a particularized description and inherent guidelines).

Here, the first warrant Defendant references, dated November 3, 2006, granted search rights at 1504 Cutler, 7400 Pirates Cove #220, Fergason's apartment, 5900 Smoke Ranch #174, a storage unit in the name of Trevarthen, and 8100 W. Charleston #A138, a storage unit rented to Trevarthen. That warrant stated that the property referred to and sought to be seized consists of the following:

A) Burglary tools (implements adapted, designed or commonly used for the commission of burglary such as pry tools, nippers, bolt cutters, grinders, lock picks, altered keys, etc.),
B) Items of property that are used to make burglary tools (grinders, torches, files, bending tools, etc.),
C) Items of property including tools, electronic equipment, household items, retail merchandise and other individual pieces of property which contain specific identifiable descriptions and/or serial numbers which would enable officers to compare and confirm through comparison with stolen property and police crime reports that said property is, in fact stolen and if said property is confirmed stolen for officers to seize the same,
D) Articles of personal property which would tend to establish the identity of person is control of said premises, which items of property would consist in part of and include, but not limited to papers, documents and effects which tend to show possession, dominion and control over said premises, including but not limited to keys, canceled mail envelopes, rental agreements and receipts, utility and telephone bills, prescription bottles, vehicle registration, vehicle repairs and gas receipts. Items which tend to show evidence of motive and/or the identity of the perpetrator such as photographs and undeveloped film, insurance policies and letters, address and telephone records, diaries,

governmental notices, whether such items are written, typed or stored on computer disc. Objects which bear a person's name, phone number or address.

The property hereinbefore described constitutes evidence which tends to demonstrate that the criminal offenses of **Burglary, Grand Larceny, Possession of Stolen Property & Possession of Burglary Tools** have been and are continuing to be committed.

The State next offered the arrest reports and eighteen (18) pages of facts to support the existence of probable cause. Many of the pages detail the ongoing conspiracy between defendants, and in particular, the phone calls between Defendant and Defendant Fergason from jail.

The other warrant Defendant references, dated November 7, 2006, granted the right to search a storage unit that Defendant had rented at 8265 W. Sahara, Unit B-106. That warrant stated that the property referred to and sought to be seized consists of the following:

> Burglary tools, stolen property such as paintings, sports memorabilia, art work, appliances, furniture, and articles of personal property which would tend to establish the identity of persons in control of said premises, which items of property would consist in part of and include, but not limited to papers, documents and effects which tend to show possession, dominion and control over said premises, including but not limited to keys, cancelled mail envelopes, rental agreements and receipts, utility and telephone bills, prescription bottles, vehicle registration, vehicle repairs and gas receipts. Items which tend to show evidence of motive and/or identity of the perpetrator such as photographs and undeveloped film, insurance policies and letters, address and telephone records, diaries, governmental notices, whether such items are written, typed or stored on computer disc. Objects which bear a person's name, phone number or address.
>
> The property hereinbefore described constitutes evidence which tends to demonstrate that the criminal offenses of **Possession of Stolen Property** has been committed.

The State next referenced the other search warrants (November 3, 2006) which was executed on November 6, 2006 and articulated how that search led to paperwork indicating that Defendant had an additional storage unit located at the W. Sahara address listed above. Furthermore, detectives discovered that the storage unit was leased to an Ashton Monroe;

detectives found a NV ID card in the name of Ashton Monroe with Defendant's picture on it.

Taking into consideration the circumstances and the type of items involved in the searches, Spilotro, 800 F.2d at 963, this case is distinguishable from the facts in Spilotro.

The State clearly declared that the property to be searched would demonstrate that Burglary, Grand Larceny, Possession of Stolen Property & Possession of Burglary Tools occurred. Therefore, officers specifically knew exactly what types of property they were looking for and what would be associated with these types of crimes.

Next, taking into consideration the three step balancing proffered by the Ninth Circuit as a method to determine whether or not there is sufficient particularity in a warrant, the State could show under any of the three factors, even though a showing of all three is not required, that the warrant was particular enough.

First, as to whether probable cause existed to seize all items of a particular type described in the warrant, the State clearly articulated in eighteen (18) pages of facts regarding the ongoing conspiracy between defendants, and in particular, the phone calls between Defendant and Defendant Fergason from jail articulating further plans regarding burglary and stolen property.

As for probable cause in the second warrant, the State simply "piggybacked" the original warrant and attached the original warrant as an exhibit to the November 7, 2006 warrant. This is completely permissible for probable cause purposes.

Second, as to whether the warrant sets out objective standards by which executing officers can differentiate items subject to seizure for those which are not, the State clearly delineated what the purported offenses were and, additionally, delineated what burglary tools were, what was used to make burglary tools, and, lastly, set forth articles of property that tended to establish the identity of the person is control of the premises and documents to show as such. Therefore, there can be no argument that the warrant was ambiguous or provided police too little restriction in searching.

Lastly, as to whether the government was able to describe the items more particularly in light of the information available to it at the time the warrant was issued, the State would

point this court back to the eighteen (18) pages of facts regarding the ongoing conspiracy between defendants, and in particular, the phone calls between Defendant and Defendant Fergason from jail articulating further plans regarding burglary and stolen property.

The State knew an ongoing conspiracy was occurring, however, the State could in no way delineate every item that was stolen. In such cases, since the State has worked as hard as possible to get all the descriptive facts that a reasonable investigation of the type of crime involved could be expected to uncover, courts generally allow more latitude in description. United States v. Storage Spaces, 777 F.2d 1363 (9th Cir. 1985).

For these reasons, the search warrants in this case were valid; Defendant's motion to dismiss should be denied.

II.

EVEN IF THE SEARCHES WERE UNLAWFUL, THE EVIDENCE WOULD NOT BE SUPPRESSED IN VIEW OF THE "GOOD FAITH" EXCEPTION.

Assuming arguendo, that the searches were unlawful, Defendant argues in Section II of his argument that unlawful searches require the evidence seized to be suppressed. This argument lacks merit because Defendant has failed to realize that the good faith exception would cure any fault of an inappropriate warrant.

Suppression is an appropriate remedy only if: (1) the magistrate was mislead by information the affiant knew to be false or would have known to be false except for his reckless disregard for the truth; (2) the issuing magistrate wholly abandoned his detached and neutral role; or (3) the executing officer could not have possibly manifested a good faith reliance on a "warrant based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." United States v. Leon, 468 US 897, 899, 104 S.Ct. 3405, 3407 (1984).

Applying this standard to the case at bar, it is abundantly clear that the Court's order obtained by the State would be upheld under the good faith doctrine. Defendant does not claim that the State knowingly mislead the Court. Additionally, there is no allegation that

the Court acted in any manner other than as a detached and neutral body in issuing its order. Lastly, given the fact that the application was supported by over eighteen (18) pages of facts and, in particular, the jail house calls made to Defendant regarding unlawful activity, it cannot be said that the affidavit was "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." Leon, supra.

Since the Court's order did not fall within one of the three instances which require suppression, the evidence seized should remain admissible.

DATED this 9th day of May, 2008.

Respectfully submitted,

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/SANDRA K. DIGIACOMO
SANDRA K. DIGIACOMO
Deputy District Attorney
Nevada Bar #006204

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of the above and foregoing, was made this 8th day of May, 2008, by facsimile transmission to:

MARTY HART, ESQ.
384-6006

.

/s/D. Daniels
Secretary for the District Attorney's Office

SKD/dd

REGISTER OF ACTIONS

CASE NO. 06C228752-1

The State of Nevada vs Daimon Monroe

Case Type:	**Felony/Gross Misdemeanor**
Date Filed:	**12/13/2006**
Location:	**Department 20**
Cross-Reference Case Number:	**C228752**
Defendant's Scope ID #:	**0715429**
Lower Court Case Number:	**06GJ00101**
Supreme Court No.:	**52788, 59871, 65827**

RELATED CASE INFORMATION

Related Cases
06C228752-2 (Multi-Defendant Case)
06C228752-3 (Multi-Defendant Case)
06C228752-4 (Multi-Defendant Case)

PARTY INFORMATION

Defendant	**Monroe, Daimon**	**Lead Attorneys** **Michael H Schwarz** *Retained* 702-598-3909(W)
Plaintiff	**State of Nevada**	**Steven B Wolfson** 702-671-2700(W)

CHARGE INFORMATION

Charges: Monroe, Daimon	Statute	Level	Date
1. CONSPIRACY TO COMMIT A CRIME	199.480	Gross Misdemeanor	01/01/1900
1. RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Gross Misdemeanor	01/01/1900
1. BURGLARY.	205.060	Gross Misdemeanor	01/01/1900
2. RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Felony	01/01/1900
3. RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Felony	01/01/1900
4. RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Felony	01/01/1900
5. RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Felony	01/01/1900
6. RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Felony	01/01/1900
7. RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Felony	01/01/1900
8. RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Felony	01/01/1900
9. RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Felony	01/01/1900
10. RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Felony	01/01/1900
11. RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Felony	01/01/1900
12. RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Felony	01/01/1900
13. RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Felony	01/01/1900
14. RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Felony	01/01/1900

15.RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Felony	01/01/1900
16.RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Felony	01/01/1900
17.RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Felony	01/01/1900
18.RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Felony	01/01/1900
19.RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Felony	01/01/1900
20.RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Felony	01/01/1900
21.RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Felony	01/01/1900
22.RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Felony	01/01/1900
23.RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Felony	01/01/1900
24.RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Felony	01/01/1900
25.RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Felony	01/01/1900
26.RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Felony	01/01/1900
27.RECEIVING, POSSESSING OR WITHHOLDING STOLEN GOODS	205.275	Felony	01/01/1900
30.HABITUAL CRIMINAL	207.010	Felony	01/01/1900

EVENTS & ORDERS OF THE COURT

05/12/2008 **All Pending Motions** (8:30 AM) ()
ALL PENDING MOTIONS 5-12-08 Court Clerk: Tina Hurd Reporter/Recorder: Renee Vincent Heard By: Stewart Bell

Minutes
05/12/2008 8:30 AM
- 9:50 A.M.--Deft. Holmes not present. Court advised he will hear the motions and, if Deft. Holmes is not present when jury selection starts, he will issue a bench warrant. DEFT. MONROE'S JOINDER TO MOTIONS...DEFT. HOLMES' MOTION TO JOIN CO-DEFT. DAIMON MONROE'S MOTIONS...DEFT. HOLMES' MOTION TO JOIN CO-DEFT. BRYAN FERGASON'S MOTIONS...Ms. Dustin joined in Mr. Hart's motions. COURT ORDERED, the joinders are GRANTED and any rulings on the motions will be as to all Defts. DEFT. MONROE'S MOTION IN LIMINE RE: ROP DETECTIVES...Court stated he does not see there is much prejudice on this. On the other hand, he does not see any relevance to the flyers and does not see it is necessarily inferable they have prior convictions. Mr. Hart argued it is more than a slight inference of a history. Ms. Dustin argued Deft. Fergason never got out of custody so they could not have been following him. Further arguments by counsel. COURT ORDERED, motion to exclude reference to repeat offenders is DENIED; the evidence regarding the flyers is marginally relevant, however, the prejudicial effect outweighs the probative value and the flyers are EXCLUDED. DEFT. MONROE'S MOTION TO DISQUALIFY DISTRICT ATTORNEY'S OFFICE AND SANDRA DiGIACOMO AS PROSECUTOR...COURT ORDERED, motion DENIED as there is no impropriety. DEFT. MONROE'S MOTION TO SUPPRESS TELEPHONE RECORDINGS...Court advised he needs to see the transcripts of these phone calls and advised Bruton trumps conspiracy. They would be admissible against the person on the phone but specific content is not admissible regarding past crimes without a Petrocelli Hearing and regarding a third person that is not on the phone. As to the case in Department 5, Court advised the Jury is not going to know they were convicted there. Arguments by counsel. Court advised the arrest and the burglary are part and parcel of the conspiracy and is material and relevant and that led to the search warrant. DEFT. MONROE'S MOTION TO SUPPRESS EVIDENCE OBTAINED PURSUANT TO SEARCH

WARRANTS...Mr. Hart argued it was a very general warrant. Court advised, given the information the police had and observations they made, he believes the search warrant was reasonably specific and does NOT find it was over broad. COURT ORDERED, motion DENIED. DEFT. MONROE'S MOTION TO SUPPRESS...DEFT. FERGASON'S MOTION TO SUPPRESS... Ms. Dustin argued unreasonable detention. COURT ORDERED, motions DENIED. Court stated he believes it is pretty clear that foul play was afoot and it started with a Terry stop and moved to probable cause. DEFT. FERGASON'S MOTION TO STRIKE LANGUAGE IN COUNT 1 & COUNT 13 OF AMENDED INDICTMENT...Court stated he believes Ms. Dustin is not correct as to Count 1 but is correct as to Count 13. There is no way to know what items the Jury would be convinced of in Count 13. Ms. Dustin argued the Oncu Crystal Palace language added to Count 1 is substantive and was not brought in before the Grand Jury. Ms. DiGiacomo argued it is a different standard before the Grand Jury and was basic information. COURT ORDERED, as to Count 1, motion DENIED, however, that language is STRICKEN from Count 13; State to amend the Indictment to strike the new language that was added. DEFT. FERGASON'S MOTION IN LIMINE TO BAR ADMISSION OF EXPERT TESTIMONY OR EVIDENCE OF VALUE FOR THE PROPERTY AT ISSUE...COURT ORDERED, motion GRANTED as to the expert. Court advised the people can clearly value their own property and ORDERED, motion to preclude the owners from testifying as to the value of their own property is DENIED. DEFT. FERGASON'S MOTION IN LIMINE TO BAR ADMISSION OF EVIDENCE THAT THE DEFT. COMMITTED BURGLARY IN THE INSTANT CASE...Arguments by counsel regarding any burglaries before that time period. COURT ORDERED, motion GRANTED. DEFT. FERGASON'S MOTION FOR PRODUCTION OF DISCOVERY (set for May 19)...Ms. Dustin advised this issue resolved yesterday. COURT ORDERED, motion WITHDRAWN and hearing date VACATED. DEFT. FERGASON'S MOTION IN LIMINE TO EXCLUDE/PRECLUDE EVIDENCE OF CO-DEFT'S RESIDENCE (set for May 19)...COURT ORDERED, motion DENIED. Court advised, if the State convinces the Jury of a conspiracy, the act of one is the act of all. DEFT'S FERGASON'S MOTION TO DISMISS POSSESSION OF STOLEN PROPERTY CHARGES ...DEFT. HOLMES' MOTION TO DISMISS CONSPIRACY TO COMMIT BURGLARY AND/OR POSSESSION OF STOLEN PROPERTY CHARGES...Court advised there really is not a motion to dismiss in this jurisdiction, it is really a Writ of Habeas Corpus and is procedurally barred. Ms. Dustin stated she believes some of the Possession of Stolen Property charges are stale by the statute of limitations. Court advised possession is the date it is recovered by the police. Arguments by counsel. Court FINDS the motions are procedurally barred and FINDS a Jury could convict or acquit. COURT ORDERED, motions DENIED. DEFT. FERGASON'S MOTION TO BAR RECORDED PHONE CALLS (set for May 19)... DEFT. HOLMES' MOTION IN LIMINE TO BAR THE ADMISSION OF RECORDED TELEPHONE CALLS...COURT ORDERED, the calls may come in if they are in furtherance of a conspiracy. Ms. Dustin argued the conspiracy ended when Deft. Fergason was taken into custody. Court advised it may or may not have been over, however, the conspiracy could still be going on today. COURT ORDERED, Deft. Fergason's motion DENIED for both substantive and procedural reasons. COURT FURTHER ORDERED, Deft. Holmes' motion DENIED for the same reasons. DEFT. HOLMES' MOTION IN LIMINE TO EXCLUDE ANY TESTIMONY REGARDING DEFT. HOLMES' PRIOR ARRESTS AND/OR CRIMINAL HISTORY AS WELL AS ANY CIRCUMSTANCES SURROUNDING THOSE EVENTS...COURT ORDERED, motion GRANTED, however, they may come in if Deft. Holmes testifies; non-Felonies and arrests that did not amount to a conviction may NOT come in. DEFT. HOLMES' MOTION TO SUPPRESS...COURT ORDERED, motion DENIED. Court advised he sees no problems with these, assuming the Jury believes the officers. 10:36 A.M.--Deft. Holmes still not present. Mr. Sullivan advised

Deft's wife indicated they had a fight and he took off. Court stated he believes Deft. Holmes took off but not for that reason. COURT ORDERED, BENCH WARRANT WILL ISSUE, NO BAIL, for Deft. Holmes. Court advised, if Deft. Holmes is picked up in the next week, he will be tried with Deft. Fergason. Mr. Sullivan may file a motion to withdraw. Mr. Sullivan advised he spoke with Deft. Holmes last night and advised Deft. has been compliant with his appearances up to now. Court advised Deft. Holmes has generally not been here at the prior hearings and Mr. Sullivan has represented he had good contact. Hearing concluded. CUSTODY (COC - MONROE & FERGASON)...B.W. (BOND - HOLMES)

Parties Present
Return to Register of Actions

ORIGINAL

NOA
MARTIN HART, ESQ.
Nevada Bar #005984
THE LAW OFFICES OF MARTIN HART, LLC
229 South Las Vegas Boulevard South, Suite 200
Las Vegas, Nevada 89101
(702) 380-4278
Attorney for Appellant

FILED
Nov 19 4 37 PM '08
CLERK OF THE COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

DAIMON MONORE,
aka DAIMON DEVI HOYT
#0715429

Defendant.

CASE NO.: C-228752
DEPT NO.: V II

NOTICE OF APPEAL

Notice is hereby given that defendant above-named, hereby appeals to the Supreme Court of Nevada from the Judgment of Conviction filed November 4, 2008.

DATED this 13 day of November, 2008.

MARTIN HART ESQ.
Nevada Bar No. 5984
THE LAW OFFICES OF MARTIN HART, LLC
229 South Las Vegas Boulevard South, Suite 200
Las Vegas, Nevada 89101
(702) 380-4278
Attorney for Appellant

RECEIVED
NOV 19 2008
CLERK OF THE COURT

CERTIFICATE OF SERVICE

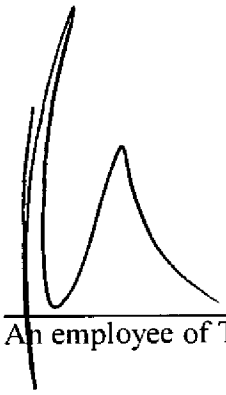
I hereby certify that a true and accurate copy of the foregoing Notice of Appeal was served this 19 day of November, 2008, on the following persons by First Class United States Mail, postage prepaid:

DAVID ROGER
Clark County District Attorney
Appellate Division
200 E. Lewis Ave.
Las Vegas, Nevada 89155

CATHERINE CORTEZ MASTO
Nevada Attorney General
100 N. Carson St.
Carson City, NV 89701-4717

and by personal service on:

DAIMON MONORE,
aka DAIMON DEVI HOYT
#0715429
Clark County Detention Center
330 S. Casino Center Blvd.
Las Vegas, NV 89101



An employee of The Law Offices of Martin Hart, LLC

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED
AUG 30 2010
CLERK OF COURT

DAIMON MONROE A/K/A DAIMON DEVI HOYT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 52788

District Court Case No. C228752

06C228752-1
JUDG
Judgment
912176

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter for entry of an amended judgment of conviction consistent with this order."

Judgment, as quoted above, entered this 30th day of July, 2010.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 24th day of August, 2010.

Tracie Lindeman, Supreme Court Clerk

By: A Ingersoll
Deputy Clerk

SUPREME COURT OF THE STATE OF NEVADA

2sided

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAIMON MONROE A/K/A DAIMON DEVI HOYT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52788

FILED

JUL 30 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to possess stolen property and/or to commit burglary and 26 counts of possession of stolen property. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

Appellant Daimon Monroe and accomplice Bryan Fergason were arrested for burglarizing Anku Crystal Palace. Officers subsequently executed search warrants on Monroe's home and storage units rented by Fergason, Monroe, and Monroe's girlfriend, Tonya Trevarthen. They also searched Fergason and Trevarthen's bank accounts and safety deposit boxes. The searches revealed large quantities of stolen property.

On appeal, Monroe argues that (1) his pre-arrest detention was illegal, (2) the search warrants violated his Fourth Amendment rights because they were not supported by probable cause and lacked particularity, and (3) there is insufficient evidence relating to the value of the stolen items to support his conviction.[1] While we conclude that count

[1]Monroe also argues that (1) the district court erred by allowing the State to amend the indictment shortly before trial, which resulted in the

continued on next page . . .

11 of Monroe's conviction must be reversed because there is insufficient evidence of value to support his conviction of possession of stolen property with a value of $2,500 or more (a category B felony), we affirm Monroe's conviction in all other respects.

Pre-arrest detention

Monroe contends that his initial arrest was unlawful because it occurred as the result of an unreasonable search or seizure. See U.S. Const. amend. IV; Brown v. Texas, 443 U.S. 47, 50 (1979); Mapp v. Ohio, 367 U.S. 643 (1961). From this premise he reasons that, since his arrest was unlawful, the evidence seized as the result of his arrest should have been suppressed, and that the district court abused its discretion in not doing so. See Steagald v. United States, 451 U.S. 204, 215-16 (1981). We disagree.

NRS 171.123 governs investigative stops, and states, in relevant part:

> (1) Any peace officer may detain any person whom the officer encounters under circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime.
>
> . . .
>
> (3) The officer may detain the person pursuant to this section only to ascertain [his] identity and the

. . . *continued*

admission of inadmissible bad acts evidence; and (2) his sentencing under Nevada's large habitual felon statute constitutes cruel and unusual punishment. We have considered these arguments and conclude that they lack merit.

> suspicious circumstances surrounding [his] presence abroad. . . .
>
> (4) A person must not be detained longer than is reasonably necessary to effect the purposes of this section, and in no event longer than 60 minutes.

Investigative stops are also governed as a matter of constitutional law by Terry v. Ohio, 392 U.S. 1 (1968), and its progeny. See State v. Lisenbee, 116 Nev. 1124, 1127-28, 13 P.3d 947, 949 (2000). Any stop by an officer must be "'"justified at its inception, and . . . reasonably related in scope to the circumstances which justified the interference in the first place."'" Hiibel v. Sixth Judicial Dist. Court of Nev., Humboldt Cty., 542 U.S. 177, 185 (2004) (alteration in original) (quoting United States v. Sharpe, 470 U.S. 675, 682 (1985) (quoting Terry, 392 U.S. at 20)). "The 'reasonable, articulable suspicion' necessary for a Terry stop is more than an 'inchoate and unparticularized suspicion or "hunch."' Rather, there must be some objective justification for detaining a person." Lisenbee, 116 Nev. at 1128, 13 P.3d at 949 (quoting Terry, 392 U.S. at 27).

The police initially stopped Monroe and Fergason for suspicion of burglary of a nearby dentist's office. Monroe claims that the detention became unlawful once police learned that the dentist's office showed no signs of forced entry or missing property. This argument, however, ignores the fact that the detaining officers were aware of the suspected burglary at Anku Crystal Palace and were awaiting the arrival of another investigative unit. Under these circumstances, the officers were justified in detaining Monroe and Fergason until the officers responding to Anku Crystal Palace had investigated there and reported back their findings. The suspected break-ins were similar (entry through the front door), their locations were close to one another, and the timing would have enabled

Monroe and Fergason to have burglarized Anku Crystal Palace before burglarizing the dentist's office.

Accordingly, we conclude that Monroe's arrest did not result from an unreasonable search or seizure and thus reject his argument that the district court abused its discretion by not suppressing the evidence seized as the result of his arrest.

Search warrants

Monroe contends that the search warrants violated his Fourth Amendment rights because they were not based on probable cause and lacked particularity. We disagree.

The burden of proving that a search warrant is invalid is on the defendant by a preponderance of the evidence, see U.S. v. Richardson, 943 F.2d 547, 548 (5th Cir. 1991), and this court will pay great deference to a lower court's finding of probable cause. See Illinois v. Gates, 462 U.S. 213, 236 (1983).

All search warrants must be based on probable cause. See U.S. Const. amend. IV; Mapp v. Ohio, 367 U.S. 643, 646 n.4 (1961); Keesee v. State, 110 Nev. 997, 1002, 879 P.2d 63, 66-67 (1994). "'Probable cause' requires . . . trustworthy facts and circumstances which would cause a person of reasonable caution to believe that it is more likely than not that the specific items to be searched for are: [subject to] seiz[ure] and will be found in the place to be searched." Keesee, 110 Nev. at 1002, 879 P.2d at 66.

Additionally, all search warrants must describe the items to be seized with particularity. See U.S. Const. amend. IV. While the descriptions must be specific enough to allow the person conducting the search to reasonably identify the things authorized to be seized, a search

warrant that describes generic categories of items will not be deemed invalid if a more specific description of an item is not possible. See United States v. Spilotro, 800 F.2d 959, 963 (9th Cir. 1986).

Here, we conclude that the phone calls between Monroe and his accomplices, the ensuing investigation, and Monroe's extensive criminal history sufficiently established probable cause for the issuance of the warrants. Throughout a series of recorded jailhouse phone calls, Monroe repeatedly referenced burglary tools, alluded to future burglaries he wished to commit, and expressed concern about the police searching his house and finding the stolen property. Additionally, detectives discovered that Monroe had rented a storage unit under a fake name. Finally, Monroe had a long record of prior felony convictions, many of which were for burglaries.

We also conclude that the warrants at issue described the items to be seized with sufficient particularity. The warrants authorized the seizure of "[b]urglary tools[,]" "[i]tems of property that are used to make burglary tools[,]" "[i]tems of property . . . which contain specific identifiable descriptions and/or serial numbers" that would allow officers to confirm the items as stolen, and "[a]rticles of personal property which would tend to establish the identity of persons in control of said premises . . . ." Moreover, the search warrants provided examples of each type of item to be seized.

Accordingly, we conclude that the district court did not err in refusing to suppress the evidence gathered as a result of the searches of Monroe's property.[2]

Sufficiency of the evidence

Monroe contends that the State failed to introduce sufficient evidence of value to support his conviction of 26 counts of possession of stolen property. With the exception of count 11, as discussed below, we conclude that the evidence was sufficient to support Monroe's convictions.

The record indicates that the State did not introduce sufficient evidence of value to support Monroe's conviction of count 11. In count 11, Monroe was charged with possession of stolen property with a value over $2,500—a category B felony per NRS 205.275(2)(c). However, testimony at trial established that the stolen property was worth only $2,310, which does not meet the $2,500 threshold required for conviction of category B felony possession of stolen property.[3]

---

[2]Because we reject Monroe's argument that the searches violated his Fourth Amendment rights, we similarly reject his dependant argument that there is insufficient evidence to support his convictions if the evidence from the searches is disallowed.

[3]Monroe argues that the State improperly based the value of the stolen property on testimony from the property owners rather than experts. Monroe's argument, however, ignores the general rule "that an owner, because of his ownership, is presumed to have special knowledge of the property and may testify as to its value." City of Elko v. Zillich, 100 Nev. 366, 371, 683 P.2d 5, 8 (1984) (holding that a real property owner's testimony as to the value of his property is admissible).

Moreover, NRS 205.275(6) states that "the value of the property involved shall be deemed to be the highest value attributable to the property by any reasonable standard." This court has defined that

continued on next page . . .

Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART and REMAND this matter for entry of an amended judgment of conviction consistent with this order.

_____, J.
Hardesty

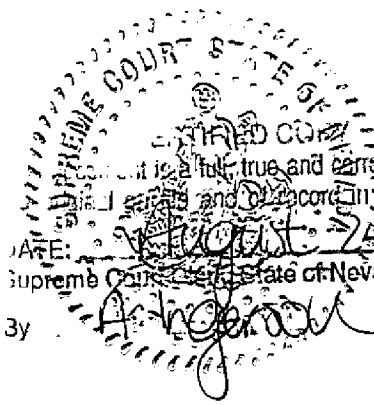
_____, J.
Douglas

_____, J.
Pickering

cc: Eighth Judicial District Court Dept. 7, District Judge
Law Offices of Martin Hart, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

. . . continued

standard as "the fair market value of the property at the time and place it was stolen . . . [but] where such market value cannot be reasonably determined other evidence of value may be received such as replacement cost or purchase price." Bain v. Sheriff, 88 Nev. 699, 701, 504 P.2d 695, 696 (1972) (citations, emphasis, and internal quotation marks omitted). Accordingly, Monroe's challenge to the value testimony fails.


SUPREME COURT
CERTIFIED COPY
document is a full, true and correct copy of
the original on file and of record in my office.
DATE: AUGUST 25 2010
Supreme Court Clerk, State of Nevada
By Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAIMON MONROE A/K/A DAIMON DEVI HOYT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 52788
District Court Case No. C228752

REMITTITUR

TO: Steven Grierson, Clark 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: August 24, 2010

Tracie Lindeman, Clerk of Court

By: Amanda Ingersoll
Deputy Clerk

cc (without enclosures):
Eighth Judicial District Court Dept. 7, District Judge
Law Offices of Martin Hart, LLC
Attorney General/Carson City
Clark County District Attorney

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the REMITTITUR issued in the above-entitled cause, on AUG 30 2010.

Deputy HEATHER LOFQUIST
District Court Clerk

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CLERK OF THE COURT

MOT

STEVEN B. WOLFSON
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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DAIMON MONROE, aka,
Daimon Devi Hoyt, #1299193

Defendant.

CASE NO: C228752-1

DEPT NO: XX

ENTERED

STATE'S ~~NOTICE OF MOTION AND~~ (AW) MOTION TO HEAR DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) ON THE MERITS; MOTION TO APPOINT DEFENDANT COUNSEL; AND MOTION FOR RECONSIDERATION OF PRE-FILING INJUNCTION ORDER

DATE OF HEARING: APRIL 4, 2013
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through SANDRA K. DIGIACOMO, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Support of the State's Motion to Hear Defendant's Pro Per Petition for Writ of Habeas Corpus (Post-Conviction) on the Merits; Motion to Appoint Defendant Counsel; and Motion for Reconsideration of Pre-filing Injunction Order.

This Motion 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.

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NOTICE OF HEARING

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing motion on for setting before the above entitled Court, in Department XX thereof, on Thursday, the 4th day of April, 2013, at the hour of 8:30 o'clock AM, or as soon thereafter as counsel may be heard.

DATED this 29th day of March, 2013.

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY
SANDRA K. DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006204

(pw)

POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On December 13, 2006, the State of Nevada charged DAIMON MONROE, aka, Daimon Devi Hoyt (hereinafter "Defendant") by Indictment with: COUNT 1 – Conspiracy to Possess Stolen Property and/or Commit Burglary (Gross Misdemeanor – NRS 205.275, 199.480); and COUNTS 2-27 – Possession of Stolen Property (Felony – NRS 205.275). The State also filed on April 30, 2008, a notice of intent to seek Defendant's adjudication as a habitual criminal. The State successfully sought leave to amend the Indictment, and, on May 1, 2008, filed the Amended Indictment. Defendant filed on May 3, 2008 a Notice of Motion to Suppress Evidence Obtained Pursuant to Search Warrants, which the State opposed in a May 9, 2008 filing. On May 7, 2008, Defendant: 1) filed a Joinder of Motions, which joined motions filed by his co-defendants; 2) filed a pleading styled "Motion to Suppress Evidence (as Fruit of the Poisonous Tree)"; and 3) joined in his co-defendant's "Motion to Suppress Evidence (as Fruit of the Poisonous Tree)." The State filed its opposition on May 9, 2008, and, on May 12, 2008, the Court denied both of Defendant's motions.

Defendant proceeded to trial on May 13, 2008. His jury trial concluded on May 20, 2008, with a jury verdict finding him guilty of COUNTS 1-27 of a Second Amended Indictment. On October 1, 2008, the Court adjudicated Defendant under the large habitual criminal statute and sentenced him to the following: COUNT 1 – TWELVE (12) MONTHS in the Clark County Detention Center (CCDC); COUNTS 2-14 – LIFE without the possibility of parole, COUNTS 2-14 running concurrently to one another; COUNTS 15-27 – LIFE without the possibility of parole, COUNTS 15-27 running concurrently with each other, but consecutively to COUNTS 2-14. The Court also ordered Defendant's sentence in this case to run consecutively to his sentence in Case Number C227874 with ZERO (0) DAYS credit for time served. The Court filed its Judgment Of Conviction on November 4, 2008.

Defendant filed a timely notice of appeal on November 19, 2008. Among other appellate claims, Defendant alleged the Court erred in denying his motions to suppress based on a traffic stop and resulting search warrants. On July 30, 2010, the Nevada Supreme Court affirmed Defendant's COUNTS 1-10, and 12-27 convictions and sentences, vacated his conviction on COUNT 11 due to insufficient evidence of value, and issued its remittitur on August 30, 2010. As to Defendant's Fourth Amendment claims, the Nevada Supreme Court concluded "that Monroe's arrest did not result from an unreasonable search or seizure...," and that the search warrants were supported by adequately particularized probable cause. Monroe v. State, Case No. 52788 (Order of Affirmance), July 30, 2010, p .2-6.

Defendant filed a pro per Petition for Writ of Habeas Corpus (Post-Conviction) on July 7, 2011. Defendant filed a Supplement to the Petition on July 22, 2011. The State filed responses on October 13, 2011 and October 27, 2011. The Petition was set to be heard on January 5, 2012. Before the District Court was able to consider the Petition on the merits, Defendant filed a Notice of Appeal on December 15, 2011. Believing that the Notice of Appeal divested the District Court of jurisdiction, the District Court denied the Petition without prejudice on January 19, 2012. On January 26, 2012, the Nevada Supreme Court dismissed Defendant's appeal because it lacked jurisdiction since no decision had yet been

made by the District Court. Monroe v. State, No. 59871, Order Dismissing Appeal (January 26, 2012). On February 27, 2012, the District Court issued Findings of Fact, Conclusions of Law and Order denying the Petition. Remittitur from the Supreme Court issued February 21, 2012.

Between November 2012 and February 2013, Defendant filed approximately sixteen (16) duplicative motions in this court and in District Court Department 3 (Case Number 06C228581) attempting in some way to secure the return of property Defendant stole to prove the illegality of the search warrants in the underlying case. Each of them was denied as barred by the doctrine of the law of the case, since the Nevada Supreme Court had found on direct appeal that the warrants were proper and supported by probable cause. On February 15, 2013, the State filed a Motion for Determination of Vexatious Litigation; and Request for Order to Show Cause Why the Court Should Not Issue a Pre-Filing Injunction Order. On March 28, 2013, Defendant appeared in court for the show cause hearing. At that hearing, it became apparent that Defendant incorrectly believed his post-conviction Petition was still pending. But because Defendant did not disagree that he was continually filing the same motion, the District Court granted the State's Motion as unopposed.

Because jurisdiction to hear the Petition never properly lied in the Supreme Court, the jurisdiction remained in the District Court and the Petition should be heard on the merits. As such, the State moves this court to place the Petition back on calendar or to hear the Petition on the merits. Because of Defendant's lengthy sentence, counsel should be appointed to assist Defendant and a briefing schedule for a Supplemental Petition should be set. Because the Motion for Determination of Vexatious Litigation was premised on the belief that Defendant had exhausted all avenues of post-conviction process and that the Petition had properly been disposed of, the granting of the Motion should be reconsidered.

ARGUMENT

I. The Court Should Consider the Petition on the Merits

Believing Defendant's premature appeal of the District Court's purported denial of the Petition deprived it of jurisdiction, this court denied Defendant's Petition without

prejudice on January 19, 2012. The Findings of Fact, Conclusions of Law and Order cited to Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994), which states "[j]urisdiction in an appeal is vested solely in the supreme court until the remittitur issues to the district court." Exceptions to Buffington exist, however, for post-conviction petitions, such that a district court may hear a post-conviction petition while an appeal is pending before the Supreme Court. Varwig v. State, 104 Nev. 40, 42, 752 P.2d 760, 761 (1988), overruling Daniels v. State, 100 Nev. 579, 580, 688 P.2d 315, 316 (1984).

Moreover, a premature notice of appeal from the non-existent decision of a district court does not deprive the district court of jurisdiction. See NRAP 4(a)(6). Rather, as the Nevada Supreme Court found in dismissing Defendant's premature appeal (Monroe v. State, No. 59871, Order Dismissing Appeal (January 26, 2012)), the appeal from a non-existent decision of a district court deprives the Nevada Supreme Court of jurisdiction to hear the appeal. As such, jurisdiction lies in the district court until such time as it renders a decision. Defendant's Petition should now be heard on the merits.

II. Counsel Should Be Appointed to Assist Defendant

NRS 34.750 provides,

> 1. 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 to represent the petitioner. In making its determination, the court may consider, among other things, the severity of the consequences facing the petitioner and whether:
>
> (a) The issues presented are difficult;
>
> (b) The petitioner is unable to comprehend the proceedings; or
>
> (c) Counsel is necessary to proceed with discovery.

In Coleman v. Thompson, 501 U.S. 722 (1991), the United States Supreme Court ruled that the Sixth Amendment provides no right to counsel in post-conviction proceedings. In McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada Supreme Court similarly observed that "[t]he Nevada Constitution...does not guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution's right to counsel provision as being coextensive with the Sixth Amendment to the United States

Constitution." However, this court retains statutory discretion in appointing post-conviction counsel and may do so in cases where the defendant is serving a lengthy sentence. See NRS 34.750. In Ford v. State, 281 P.3d 1172 (Nev. 2009), the Nevada Supreme Court found the district court's failure to appoint post-conviction counsel deprived the defendant of a meaningful opportunity to litigate where Defendant was serving a lengthy sentence and the issues raised in the defendant's Petition were complex.

Here, Defendant is serving multiple life sentences under the large habitual criminal statute, after a jury convicted him of one (1) count of Conspiracy to Possess Stolen Property and/or to Commit Burglary and twenty-six (26) counts of Possession of Stolen Property. The issues necessitated in Defendant's Petition are likely complex given the complex procedural history, the seriousness of Defendant's offenses, the number of witnesses at trial, the number of exhibits (over 1,000) and the length of the jury trial. Additionally, the Nevada Supreme Court, over the past year, has remanded Appeals from denials of Petitions of Writ of Habeas Corpus where the defendant is serving a lengthy sentence, finding the failure to appoint post-conviction counsel deprived defendant of a meaningful opportunity to litigate. See Pearce v. State, 59954, 2012 WL 3060170 (Nev. July 25, 2012); Adams v. State, 60136, 2012 WL 2196421 (Nev. June 14, 2012); Rogers v. State, 59335, 2012 WL 1655975 (Nev. May 9, 2012); Butler v. State, 58759, 2012 WL 1252693 (Nev. Apr. 11, 2012). As such, the State submits it is in the best interest of both the State and Defendant that counsel be appointed.

III. The Grant of the Motion for Determination of Vexatious Litigation and Granting of the Pre-Filing Injunction Order Should Be Reconsidered

A district court may reconsider a ruling when moved by a party. EJDCR 2.24(b) ("A party seeking reconsideration of a ruling of the court . . . must file a motion for such relief within ten (10) days after service of written notice of the order or judgment unless the time is shortened or enlarged by order. A motion for rehearing or reconsideration must be served, noticed, filed and heard as is any other motion."). "Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached

should a motion for rehearing be granted." Moore v. City of Las Vegas, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). Additionally, a district court may consider a motion for reconsideration concerning a previously decided issue if the decision was clearly erroneous. Masonry and Tile v. Jolley, Urga & Wirth, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). The State moves this court to reconsider the grant of the Motion for a Determination of Vexatious Litigation and imposition of the pre-filing injunction against Defendant.

It was revealed for the first time at the Order to Show Cause Hearing that Defendant believed his Petition was still pending since the district court never heard the Petition on the merits, prompting further research into the matter on behalf of the State. None of Defendant's previous duplicative Motions made clear that he was seeking to litigate his Petition, nor did he ever re-file a petition following the dismissal of the original Petition without prejudice. It was also revealed for the first time at the Order to Show Cause Hearing that the previous duplicative Motions for the Return of Illegally Seized Property were in pursuit of the Petition Defendant believed was still pending. Since the Petition was dismissed without prejudice, the case reflected as closed on Odyssey. Believing Defendant had exhausted the direct appeal and post-conviction processes, the State moved to declare Defendant a vexatious litigant for continually filing motions of the same substance to no apparent end. Because the new facts were revealed at the show cause hearing prompting further investigation revealing the erroneous dismissal of the Petition, and because the duplicative Motions were in pursuit of that Petition, the motion for reconsideration should be granted.

Since, as discussed above, the Petition should be heard on the merits, the premise underlying the State's motion and the district court's Order is compromised and the imposition of a pre-filing injunction is clearly erroneous. The fact that the Petition had erroneously been denied for lack of jurisdiction was obscured through the volume of Defendant's filings. Although Defendant did not reveal in his duplicative Motions that he was pursuing post-conviction relief and the State's Motion for Determination of Vexatious Litigation was well-founded at the time with then existing knowledge, Defendant should not,

in the interest of justice, be restricted in his ability to pursue his Petition within the bounds of the law. In any case, Defendant's future filings with regard to his Petition would come through counsel, if counsel is appointed as requested above.

CONCLUSION

Based on the foregoing arguments, the State respectfully requests this Honorable Court to: 1) GRANT the State's Motion to Hear Petition on the Merits; 2) GRANT the State's Motion for Appointment of Counsel; 3) GRANT the State's Motion for Reconsideration; and 4) VACATE the Court's determination of vexatious litigation and pre-filing injunction order.

DATED this 29th day of March, 2013.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY _____
SANDRA K. DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006204

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 29th day of March, 2013, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

DAIMON MONROE, aka,
Daimon Devi Hoyt #38299
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89018

BY: _____
R. JOHNSON
Secretary for the District Attorney's Office

EM/SKD/rj/M-1