

● ORIGINAL ●


IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT JAMES DAY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 38028

**FILED**

JAN -3 2002

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

PETITION FOR REHEARING

Petitioner, Robert James Day, by and through his attorney, DIANNE M. DICKSON, Deputy Public Defender, hereby petitions this Honorable Court pursuant to Rule 40, Nevada Rules of Appellate Procedure, for rehearing in the above-entitled cause on grounds that the decision entered in the instant case was based on an unreasonable determination of the facts in light of the evidence presented at trial.

In this Court's decision entered November 15, 2001, it appears that the Court has determined that the in-court identification was not tainted as a result of the witness being given a photograph of Appellant prior to trial since the witness had identified Appellant at the one-on-one confrontation prior to having been given the photograph. (See, "Order Affirming in Part and Remanding in Part")

However, since nowhere in the record of these proceedings has it ever been established what level of certainty (if any) the witness exhibited at this confrontation, it is not known whether that identification was "tentative" or "positive" or whether the witness in-court identification was a result of being given the

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JAN 03 2002

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
DEPUTY CLERK



1 that this Court's conclusion that the photograph did not effect the  
2 reliability of eyewitness identification is unfounded as there is  
3 nothing in the record to show what level of certainty the eyewitness  
4 exhibited prior to receiving the photograph of Appellant. Thus,  
5 Petitioner prays that this Honorable Court will grant his Petition  
6 for Rehearing to consider this matter.

7  
8 MARCUS D. COOPER  
CLARK COUNTY PUBLIC DEFENDER

9  
10 By 

DIANNE M. DICKSON  
NEVADA BAR #5620  
DEPUTY PUBLIC DEFENDER  
309 SOUTH THIRD STREET, SUITE #226  
LAS VEGAS, NEVADA 89155-2610  
(702) 455-4685

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22 RECEIPT OF A COPY of the foregoing Petition for Rehearing  
23 is hereby acknowledged this 28th day of December 2001.

24 STEWART L. BELL  
CLARK COUNTY DISTRICT ATTORNEY

25  
26 By 