

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN FLOYD VOSS

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Supreme Court No. 75064

District Court No. CR96-1581

FILED

FEB 16 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY Richard
DEPUTY CLERK

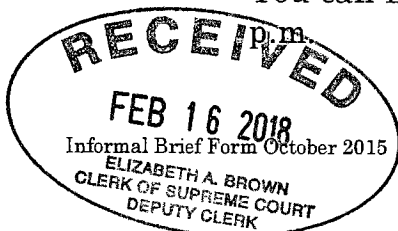
APPELLANT'S INFORMAL BRIEF

INSTRUCTIONS: If you are an appellant proceeding pro se (without an attorney) in the Nevada Supreme Court, you must file either (1) a brief that complies with Nevada Rule of Appellate Procedure (NRAP) 28(a), or (2) a completed copy of this informal brief form, *see* NRAP 28(k), with the Nevada Supreme Court on or before the due date, *see* NRAP 31. In civil appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court may dismiss your appeal. In postconviction criminal appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court or Nevada Court of Appeals may decide your appeal on the record without briefing.

HOW TO FILL OUT THIS FORM: This form must be typed, unless you are incarcerated, in which case it must be clearly handwritten. You do not need to refer to legal authority or the district court record. If you are completing your brief on this form, write only in the space allowed on the form. **Additional pages and attachments are not allowed.** If typing an informal brief, you may either use the lined paper contained in this form or an equivalent number of pages of your own paper. Your brief will be stricken if you fail to follow the directions in this form and the Nevada Rules of Appellate Procedure.

WHERE TO FILE THE BRIEF: You may file your brief in person or by mail.

To file your brief in person: Bring the brief to the Clerk's Office at the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada, or at the Regional Justice Center Clerk's Office (Drop Box), 200 Lewis Street, 17th Floor, Las Vegas, Nevada. You can file your brief Monday through Friday, 8:00 a.m. to 4:00



18-06487

To file your brief by mail: Mail the brief to the Clerk of the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada 89701. **Your brief must be postmarked on or before the due date.**

You must file the original brief and 1 copy with the clerk of the Nevada Supreme Court. If you want the clerk to return a file-stamped copy of your brief, you must file the original form and 2 copies and include a self-addressed, stamped envelope. Documents cannot be faxed or emailed to the Supreme Court Clerk's Office.

Copies of the brief must be mailed or delivered to the other parties to this appeal or to the parties' attorneys, if they have attorneys. You must also include a proper certificate of service or complete the certificate that is attached to the informal brief form.

CAUTION: Pro se parties are prohibited from representing other parties. A pro se party may not complete a brief on behalf of other parties. Pro se parties may collaborate on their briefs, however, provided that if one brief is submitted on behalf of multiple pro se parties, each party must sign and date the brief to confirm that he or she has participated in the preparation of the brief and, by his or her signature, joins in the arguments and representations contained therein.

Judgment or Order You Are Appealing. List the judgment or order that you are appealing from and the date that the judgment or order was filed in the district court.

Filed Date	Name of Judgment or Order
01-25-2018	"ORDER" (which had denied the Appellant's Pre-Sentencing Motion To Set Aside Jury Verdicts)

Notice of Appeal. Give the date you filed your notice of appeal in the district court: February 5, 2018

Related Cases. List all other court cases related to this case. Provide the case number, title of the case and name of the court where the case was filed.

Case No.	Case Title	Name of Court
29783	Voss v. State (Direct Appeal)	Nevada Supreme Court
38373	Voss v. State (Habeas Appeal)	Nevada Supreme Court
CR96-P-1581	Voss v. Crawford (Habeas Petition)	Washoe County Dist. Court

Pro Bono Counsel. Would you be interested in having pro bono counsel assigned to represent you in this appeal?

☐ Yes

☒ No

NOTE: If the court determines that your case may be appropriate for having pro bono counsel assigned, an appropriate order will be entered. Assignment of pro bono counsel is not automatic.

Statement of Facts. Explain the facts of your case. (Your answer must be provided in the space allowed.)

Following a Preliminary Hearing on July 15, 1996 in the Reno Justice Court, a Criminal Information was filed in the Second Judicial District Court of The State of Nevada (Washoe County) on July 16, 1996. Said Criminal Information which had charged the Appellant with: Count I, Burglary; Count II and III, uttering A Forged Instrument; Count IV and V, Forgery; and Count VI, Attempted Theft. The case had

proceeded to Jury Trial on October 7, 1996. Prior to such Trial, Appellant's Defense Counsel, Cotter C. Conway, Esq. had filed Motions In Limine on September 25, 1996. Wherein, said Counsel moved the Court to preclude: (1) Hearsay statements of the alleged victim; (2) Defendant's exposure to jurors in prison garb or restraints; (3) references to the Defendant's in-custody status; (4) improper comments and arguments by the state; (5) references in Argument to evidence not before the jury; (6) even admissible evidence, under NRS 48.035, if its probative value is substantially outweighed by the danger of unfair prejudice, of confusing the issues, or of misleading the jury; (7) evidence relating to prior bad acts and character evidence; (8) evidence relating to prior convictions; (9) comments and references to matters privileged by law; and (10) invasion of the province of the jury regarding witness credibility. However, the Trial Court, in pertinent part, had refused to preclude Victim Hearsay Testimony. Nonetheless, the Court ruled that such testimony would be strictly limited to the alleged victim's then existing intentions at the time of the alleged utterance of such statements. Thus, the state was permitted to admit the Victim Hearsay Testimony of numerous state's witnesses, regarding the alleged victims, alleged intentions, regarding the deposit of a \$5,026.⁰⁰ Settlement Check, and here use of funds derived therefrom. Such Victim Hearsay statements which were admittedly non-contemporaneous to the alleged crimes. Further, the Court failed to provide the jury with any

admonishment or instruction which would function to limit the jury's use of said Victim Hearsay Testimony when determining guilt or innocence, to the alleged victims then existing intentions at the time of the alleged utterances. Moreover, the Appellant was deprived of his sixth Amendment right to confront all adverse witnesses, where he was not afforded an opportunity to examine the absent declarant. Further, the state was permitted to admit evidence at trial which was prohibited under the 4th, 5th, 6th and 14th Amendments, without demonstrating the use of procedural safeguards. Nonetheless, the District Court declined to consider the Appellant's Pre-Sentencing Motion To Set Aside Jury Verdicts upon its obvious merits.

Statement of District Court Error. Explain why you believe the district court was wrong. Also state what action you want the Nevada Supreme Court to take. (Your answer must be provided in the space allowed).

The Appellant alleges that the District Court's denial of his Pre-Sentencing Motion To Set Aside Jury Verdicts is erroneous and an abuse of the court's discretion. Where the District Court declined to consider such Motion on the merits, applying Law of The Case Doctrine. The District Court deferring to: (1) the Nevada Supreme Court's March 11, 1999 Order Dismissing Appeal, Case No. 29783. wherein, the court held that "the jury's verdict will not be disturbed on appeal where, as here, sufficient evidence supports the verdict; and (2) the Nevada Supreme Court's January 17, 2002

Order of Affirmance, Case No. 38373, Wherein, the
court held that

" [the Appellant] was essentially caught in the midst of the commission of the crime at a Reno Bank as he attempted to cash the victims forged personal check. Although [the Appellant] alleged that he had consent from the victim, there was sufficient evidence to support the jury's finding to the contrary."

The Appellant, however, alleges that the Nevada Supreme Court's findings in Case No. 29783 (Direct Appeal), and in Case No. 38373 (Appeal from the partial denial of Post-conviction Petition For writ of Habeas Corpus), do not function as an estoppel to the Appellant's Pre-Sentencing-Motion To Set Aside Jury Verdicts claims. Whereas, the Nevada Supreme Court in the context of such cases did not consider the matters of the substantive inadmissibility of the evidence admitted at trial, and its inherent effect of rendering the trial proceedings fundamentally unfair, and the jury's Guilty Verdicts unworthy of confidence. The Nevada Supreme Court has never considered claims that the jury's Guilty Verdicts are founded upon: (1) statutorily and constitutionally prohibited Victim Hearsay Testimony; (2) statutorily and constitutionally prohibited physical evidence; and (3) statutorily and constitutionally prohibited involuntary in-custody statements of the Defendant. Such claims which the Appellant had raised within his aforementioned Motion.

Such claims which were not previously litigated between the parties, and which were not considered, *sua sponte*, by any Court of the state of Nevada. Thus, principles of collateral estoppel, judicial estoppel, issue preclusion, and *res judicata*, doctrines are inapplicable, as is law of the case doctrine, to said Pre-sentencing Motion

Therefore, the District Court's conclusion that the Appellant's claims had been previously litigated, considered, or finally decided in prior proceedings, is clearly erroneous. Thus, that Court's refusal to consider said Motion on the merits, was clearly erroneous and an abuse of the Court's discretion. Whereas, the Appellant's Pre-sentencing Motion To Set Aside Jury Verdicts was properly before the Court pursuant to NRS 175.381, and the claims raised are not only meritorious, but supported by the record itself. Thus, it is a matter of undisputable fact that the jury's Guilty Verdicts are founded upon statutorily and constitutionally prohibited evidence. To wit: (1) Victim Hearsay Testimony, which does not fall within any exception to the Hearsay Rule (NRS 51.065), or the Sixth Amendment's Confrontation Clause; (2) Physical Evidence, obtained without a valid Search Warrant required under the Fourth Amendment, and admitted at trial in violation of the Fourteenth Amendment; and (3) Involuntary In-Custody statements of the Appellant, obtained in violation of his

Fifth and Sixth Amendment rights, and admitted at trial in violation of his Fourteenth Amendment rights.

The Appellant requests that this Court review his claims for relief asserted within his Pre-Sentencing-Motion To Set Aside Jury Verdicts upon the merits thereof, and to Order the Jury's Guilty Verdicts be set aside, or to otherwise remand the matters to the District Court with instructions to consider the Appellant's aforementioned Motion upon the merits thereof, and to grant appropriate relief in the premises thereof.

Where, due to the District Court's failure to conduct re-sentencing proceedings pursuant to the Court's August 14, 2001 writ of Habeas corpus, the Appellant has been deprived of the due process of a Direct Appeal and/or Collateral Attack to an Amended Judgment of Conviction.

DATED this 14th day of February, 2018.


Signature of Appellant

STEVEN FLOYD VOSS
Print Name of Appellant

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a copy of this completed informal brief form upon all parties to the appeal as follows:

☐ By personally serving it upon him/her; or

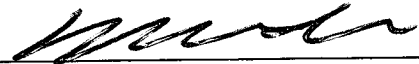
☒ By mailing it by first-class mail with sufficient postage prepaid to the following address(es) (list names and address(es) of parties served):

TERRENCE P. MCCARTHY, Esq. (DDA)
% Washoe County District Attorney
Post Office Box #11130
Reno, Nevada 89520-0027

And

Paul Adam Laxalt, Esq.
Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717

DATED this 14th day of February, 2018.



Signature of Appellant

STEVEN FLOYD VOSS

Print Name of Appellant

NNCC, P.O. Box #7000

Address

Carson City, NV. 89702-7000

City/State/Zip

N/A

Telephone