

In the Supreme Court of the State of Nevada

FERRIL JOSEPH VOLPKEH,
Appellant,

STATE OF NEVADA,
Respondent.

No. 87171

FILED

APR 30 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

Motion to Take
Judicial Notice

Appellant, FERRIL JOSEPH VOLPKEH, (VOLPKEH)
Moves the Court to Take Judicial Notice
of then Presiding Judge HADDESTY'S November
7, 2003, Order in Criminal Case CRO3-1203.
Specific Reference and Attention is Requested at
Page 2, Lines 3-7 and Lines 14-16. Therein, the
warrant is clear that the Prior Bad Acts
(1998 Prior Felony Conviction) is Suppressed for
the Duration of the Criminal Proceedings. Further,
that the order specifically references that the State's
presumption of said previous conviction provided Notice
to the Grand Jurors, the District Court itself,
as well as Volpkeh of the State's intent to
suppress his Criminal Status. NRS 207.016(2).

RECEIVED
APR 30 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

This Motion is made pursuant to the Appellate
Rules and NRS, as well as the
Accompanying Exhibit A

DATED this 10 Day
of April, 2024

24-15080
Ferril Volpkeh
Appellant in Pro Se

EXHIBIT A

FILED

NOV 07 2003

RONALD A. LONGTIN, JR., CLERK

By: [Signature]
DEPUTY

1 3370

2

3

CR03-1263
STATE VS. FERRILL JOSEPH VOLPICELLI
District Court
Washoe County
NVC
DC-9900025141-024
JOSEPH VOLPICELLI
11/07/2003 05:48 PM
3370
JAME

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR03-1263

Dept. No. 9

FERRILL JOSEPH VOLPICELLI,

Defendant.

ORDER

The Court has reviewed and considered the points and authorities in support of and in opposition to Defendant's Petition for Pre-trial Writ of Habeas Corpus filed on August 8, 2003.

Defendant requests the Court quash his indictment based on the presentation of prior bad acts evidence by the State to the grand jury, during bind over proceedings.

A challenge to the validity of the grand jury proceedings must be made by motion and not by pretrial habeas corpus proceedings. *Franklin v. State*, 89 Nev. 382 (1973). Such an improper pleading constitutes a waiver of any defense or objection a defendant might have, however the Court may grant relief from said waiver for cause shown. NRS 174.105(2).

1 Accordingly, the Court now considers Defendant's proposed Petition for Pre-
2 trial Writ of Habeas Corpus as a Motion to Suppress.

3 In the present case, the Grand Jury was presented with a certified copy of
4 Defendant's prior conviction of burglary dated 1998. The evidence was accompanied by a
5 limiting instruction by the State, informing the members of the grand jury that they only
6 consider the prior conviction for the sole purpose of noticing Defendant of the intent by the
7 State to pursue habitual criminal status at sentencing. ←

8 Defendant asserts the prejudicial effect of a prior burglary, when presently
9 charged with seven counts of burglary in a proposed indictment, is severe and warrants
10 the indictment be quashed by the Court.

11 The State cites several cases in its Opposition to Defendant's requested
12 relief. However said cases relate to DUI law, and following the Court's inquiry, do not
13 appear to have been applied to any other arena.

→ Good cause appearing, IT IS HEREBY ORDERED that Defendant's Motion
15 to Suppress is GRANTED regarding the presentation of Defendant's prior bad acts to the
16 grand jury.

17 "A grand jury 'ought to find an indictment when all the evidence before them,
18 taken together establishes probable cause to believe that an offense has been committed
19 and that the defendant has committed it.'" *Franklin v. State*, 89 Nev. 382, 388 (1973);
20 citing *NRS 172:155(1)*. A grand jury "does not determine guilt or innocence, but needs
21 only to have before them legally sufficient evidence to establish probable cause." *Id.*

22 "A defendant is entitled to fair but not perfect consideration before a grand
23 jury." *Id.*; citing *Lutwak v. United States*, 344 U.S. 604 (1952). In the present case, the
24 State presented nine witnesses, including an accomplice, who testified to witnessing
25 various acts committed by Defendant during the ten charged crimes, as well as describing
26 the merchandise allegedly illegally obtained by Defendant.

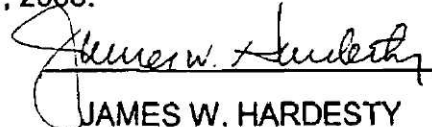
27 ////

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS FURTHER ORDERED that Defendant's request to quash the indictment is DENIED.

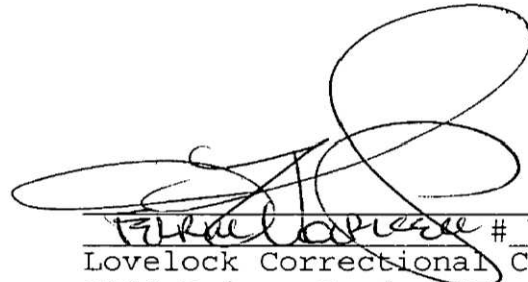
Dated this 7 day of November, 2003.


JAMES W. HARDESTY
DISTRICT JUDGE

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the
foregoing Notice to Take Judicial Notice
to the below address(es) on this 26 day of April,
2024, by placing same in the U.S. Mail via prison law library
staff, pursuant to NRCP 5(b):

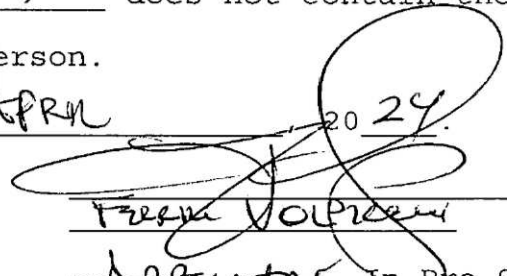
Washoe County
District Attorney
Reyn, NV 89501


Trial Officer # 7986
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
Appellate In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding
Notice to Take Judicial Notice filed in
NSC
District Court Case No. 811717 does not contain the
social security number of any person.

Dated this 26 day of April 2024.


Trial Officer
Appellate In Pro Se