

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

Electronically Filed  
Nov 17 2023 11:34 AM  
Elizabeth A. Brown  
Clerk of Supreme Court

THE STATE OF NEVADA,

Plaintiff,

vs.

FERRILL JOSEPH VOLPICELLI,

Defendant.

---

Sup. Ct. Case No. 87505

Case No. CR02-0147

Dept. 10

RECORD ON APPEAL

VOLUME 4 OF 10

DOCUMENTS

APPELLANT

Ferrill J. Volpicelli #79565  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

RESPONDENT

Washoe County District  
Attorney's Office  
Jennifer P. Noble, Esq. #9446  
P.O. Box 30083  
Reno, Nevada 89502-3083

APPEAL INDEX  
SUPREME COURT NO: 87505  
DISTRICT CASE NO: CR02-0147  
STATE OF NEVADA vs FERRILL J. VOLPICELLI  
DATE: NOVEMBER 17, 2023

PLEADING	DATE FILED	VOL.	PAGE NO.
AMENDED APPLICATION FOR ORDER TO PRODUCE PRISONER	01-24-02	2	5-6
AMENDED INFORMATION	02-21-03	2	120-124
AMENDED JUDGMENT	03-02-15	5	735-736
AMENDED ORDER DENYING PETITION	05-03-23	8	1163-1164
AMENDED ORDER TO PRODUCE PRISONER	01-29-02	2	7-8
ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)	02-03-05	9	21-23
ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)	09-07-06	9	100-102
APPLICATION FOR ORDER TO PRODUCE PRISONER	01-15-02	2	1-2
APPLICATION FOR ORDER TO PRODUCE PRISONER	05-03-02	2	48-50
APPLICATION FOR ORDER TO PRODUCE PRISONER	05-03-02	2	51-53
APPLICATION FOR ORDER TO PRODUCE PRISONER	02-26-03	2	126-127
APPLICATION FOR SETTING	02-01-02	2	9-10
BRIEF IN SUPPORT OF THE ADMISSION OF THE STATE'S PROOF OF THE DEFENDANT'S PRIOR CONVICTION	12-11-03	3	308-322
CASE APPEAL STATE	06-22-22	6	1072-1073
CASE APPEAL STATEMENT	01-02-04	3	390-391
CASE APPEAL STATEMENT	03-12-14	4	607-608
CASE APPEAL STATEMENT	05-30-14	4	669-670
CASE APPEAL STATEMENT	03-11-15	5	744-745
CASE APPEAL STATEMENT	09-29-21	6	991-992
CASE APPEAL STATEMENT	10-24-23	8	1236-1237
CASE APPEAL STATEMENT	11-27-07	9	140-141
CASE ASSIGNMENT NOTIFICATION	03-16-21	5	909-910
CERTIFICATE OF CLERK	01-06-04	3	396
CERTIFICATE OF CLERK	11-27-07	9	142
CERTIFICATE OF CLERK AND TRANSMITTAL	04-01-15	5	827

APPEAL INDEX  
SUPREME COURT NO: 87505  
DISTRICT CASE NO: CR02-0147  
STATE OF NEVADA vs FERRILL J. VOLPICELLI  
DATE: NOVEMBER 17, 2023

PLEADING	DATE FILED	VOL.	PAGE NO.
CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL	03-12-14	4	609
CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL	05-30-14	4	671
CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL	03-11-15	5	746
CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL	09-29-21	6	993
CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL	06-22-22	6	1074
CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL	10-24-23	8	1238
CERTIFICATE OF CLERK AND TRANSMITTAL – RECORD ON APPEAL	07-29-14	5	696
CERTIFICATE OF CLERK AND TRANSMITTAL – RECORD ON APPEAL	07-21-22	7	1087
CERTIFICATE OF MAILING	09-16-16	5	870
CERTIFICATE OF MAILING	09-16-16	5	871-873
CERTIFICATE OF TRANSMITTAL	01-06-04	3	397
CERTIFICATE OF TRANSMITTAL	11-27-07	9	143
COMPETENCY EVALUATION	03-18-02	10	1-4
DEFENDANT’S BRIEF	12-12-03	3	334-351
ERRATA NOTICE OF APPEAL ISSUED TO BE RAISED NRAP 3C, FRE201, FRAP 28	03-10-15	5	742-743
EX PARTE MOTION FOR ORDER ALLOWING PAYMENT OF ATTORNEY’S FEES AND COSTS TO APPOINTED COUNSEL & AFFIDAVIT OF COUNSEL (APPEAL FROM DENIAL OF POST-CONVICTION RELIEF)	02-05-08	10	27-31
EX PARTE PETITION FOR CLARIFICATION ON ISSUES REGARDING STATE BAIL	07-16-03	2	237-239
EX PARTE PETITION FOR CLARIFICATION ON ISSUES REGARDING STATE BAIL	08-01-03	3	255-265
INFORMATION	02-06-02	2	21-24
INMATE REQUEST FORM	07-22-03	2	240-243
INMATE REQUEST FORM	07-22-03	3	244-252
INMATE REQUEST FORM	08-25-03	3	280-285
JUDGMENT	12-12-03	3	352-353

APPEAL INDEX  
SUPREME COURT NO: 87505  
DISTRICT CASE NO: CR02-0147  
STATE OF NEVADA vs FERRILL J. VOLPICELLI  
DATE: NOVEMBER 17, 2023

PLEADING	DATE FILED	VOL.	PAGE NO.
JUDICIAL NOTICE	05-06-14	4	635-643
JURY INSTRUCTIONS	07-10-03	2	207-234
JUSTICE COURT PROCEEDINGS	02-04-02	2	11-20
LETTER FROM DEFENDANT	09-12-03	3	286-291
LETTER FROM DEFENDANT	12-10-03	3	305-307
LETTER FROM THE EMPLOYER OF PROSPECTIVE JUROR REQUESTING RELIEF	07-10-03	2	197
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF NOTICE OF APPEAL ISSUES	03-19-15	5	754-822
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)	06-27-06	9	73-94
MINUTES – ARRAIGNMENT	02-13-02	2	26
MINUTES – CRIMINAL PROGRESS SHEET	04-19-02	2	41-43
MINUTES – ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE	12-05-03	3	304
MINUTES – ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE	12-12-03	3	354-356
MINUTES – JURY TRIAL	07-10-03	2	198-204
MINUTES – MOTION FOR AN O.R. RELEASE	04-29-03	2	145
MINUTES – MOTION FOR OWN RECOGNIZANCE RELEASE INTO FEDERAL CUSTODY	04-30-03	2	146
MINUTES – MOTION TO CONFIRM TRIAL	09-06-02	2	90
MINUTES – MOTION TO CONFIRM TRIAL	09-11-02	2	91
MINUTES – MOTION TO CONFIRM TRIAL	02-26-03	2	125
MINUTES – MOTION TO CONFIRM TRIAL	03-21-03	2	137
MINUTES – MOTION TO CONFIRM TRIAL	06-18-03	2	161
MINUTES – MOTION TO SET TRIAL	10-23-02	2	114
MINUTES – REPORT ON PSYCHIATRIC EVALUATIONS / ARRAIGNMENT	04-19-02	2	40
MINUTES – STATUS HEARING	06-12-03	2	160
MOTION FOR APPOINTMENT OF ALTERNATIVE COUNSEL	04-12-05	4	548-550

APPEAL INDEX  
SUPREME COURT NO: 87505  
DISTRICT CASE NO: CR02-0147  
STATE OF NEVADA vs FERRILL J. VOLPICELLI  
DATE: NOVEMBER 17, 2023

PLEADING	DATE FILED	VOL.	PAGE NO.
MOTION FOR APPOINTMENT OF COUNSEL (EX PARTE)	02-23-05	9	24-26
MOTION FOR APPOINTMENT OF PSYCHIATRISTS FOR EXAMINATION OF DEFENDANT	02-13-02	2	27-29
MOTION FOR APPOINTMENT OF PSYCHIATRISTS FOR EXAMINATION OF DEFENDANT	02-13-02	2	30-32
MOTION FOR CONSOLIDATION OF HABEAS CORPUS PROCEEDINGS	12-15-06	9	105-107
MOTION FOR CREDIT AMENDMENT TO PRESENTENCE CUSTODY	04-23-13	9	189-196
MOTION FOR ELIMINATION OF FEES	01-08-21	5	877-896
MOTION FOR JUDICIAL ACTION ON PETITION	11-06-09	9	172-173
MOTION FOR JUDICIAL NOTICE	04-13-23	8	1159-1160
MOTION FOR NEW TRIAL	08-01-03	3	266-276
MOTION FOR ORDER TRANSFERRING PETITION TO THE SIXTH JUDICIAL DISTRICT COURT FOR PERSHING COUNTY	09-07-06	9	97-99
MOTION FOR RECONSIDERATION	11-20-13	4	571-575
MOTION FOR RECONSIDERATION	06-24-21	6	943-950
MOTION TO AMEND JUDGMENT / CORRECT JUDGMENT	02-24-14	4	598-602
MOTION TO AMEND, CORRECT OR MODIFY PRE-SENTENCE CREDIT	06-16-16	5	844-852
MOTION TO CORRECT ILLEGAL SENTENCE	05-19-14	4	658-666
MOTION TO CORRECT JUDGMENT TO REMOVE DOUBLE JEOPARDY CHARGE	06-03-13	4	560-564
MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)	02-03-05	9	16-20
MOTION TO RECUSE	01-08-21	5	897-899
MOTION TO REMIT LEGAL DEFENSE FEES	11-29-21	6	1010-1022
MOTION TO STAY PETITION PENDING REMITTITUR	10-18-22	7	1096-1097
MOTION TO TAKE JUDICIAL NOTICE	11-29-22	8	1130-1131
MOTION TO TAKE JUDICIAL NOTICE	05-23-23	8	1170-1173
MOTION TO TAKE JUDICIAL NOTICE AND TO RECONSIDER	12-18-14	5	713-716
NOTICE OF ADDRESS CHANGE	01-05-04	3	395

APPEAL INDEX  
SUPREME COURT NO: 87505  
DISTRICT CASE NO: CR02-0147  
STATE OF NEVADA vs FERRILL J. VOLPICELLI  
DATE: NOVEMBER 17, 2023

PLEADING	DATE FILED	VOL.	PAGE NO.
NOTICE OF ADDRESS CHANGE	05-28-04	3	448
NOTICE OF ADDRESS CHANGE	06-01-04	3	449
NOTICE OF APPEAL	01-02-04	3	393-394
NOTICE OF APPEAL	03-10-14	4	605-606
NOTICE OF APPEAL	05-28-14	4	667-668
NOTICE OF APPEAL	03-10-15	5	740-741
NOTICE OF APPEAL	09-27-21	6	989-990
NOTICE OF APPEAL	06-21-22	6	1070-1071
NOTICE OF APPEAL	10-23-23	8	1231-1233
NOTICE OF APPEAL	11-26-07	9	138-139
NOTICE OF CHANGE OF ADDRESS	05-01-08	4	555-556
NOTICE OF DOCUMENT RECEIVED BUT NOT CONSIDERED BY THE COURT	05-02-03	2	147-149
NOTICE OF ENTRY OF ORDER	06-10-21	6	935-939
NOTICE OF ENTRY OF ORDER	09-13-21	6	980-985
NOTICE OF ENTRY OF ORDER	06-21-07	9	130-134
NOTICE OF ENTRY OF ORDER	01-05-10	9	184-188
NOTICE OF EXPERT WITNESSES PURSUANT TO NRS 174.234	08-30-02	2	68-89
NOTICE OF INTENT TO SEEK HABITUAL CRIMINALITY	08-02-02	2	65-67
NOTICE THAT SUPPLEMENT TO THE PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) WILL BE FILED	02-16-07	9	112-113
OPPOSITION TO MOTION TO AMEND, CORRECT OR MODIFY PRE-SENTENCE CREDIT	06-17-16	5	853-855
OPPOSITION TO REQUEST FOR SUBMISSION	04-13-05	4	551-554
ORDER	09-17-02	2	100
ORDER	09-17-02	2	101
ORDER	08-13-03	3	277-279
ORDER	10-31-13	4	567-569

APPEAL INDEX  
 SUPREME COURT NO: 87505  
 DISTRICT CASE NO: CR02-0147  
 STATE OF NEVADA vs FERRILL J. VOLPICELLI  
 DATE: NOVEMBER 17, 2023

PLEADING	DATE FILED	VOL.	PAGE NO.
ORDER	04-08-14	4	617-618
ORDER	07-08-14	5	685-686
ORDER	10-20-14	5	704-705
ORDER	03-02-15	5	728-731
ORDER	06-09-21	5	924-925
ORDER	12-21-04	9	14-15
ORDER	03-30-05	9	58-59
ORDER	04-29-05	9	62-63
ORDER	07-25-06	9	95-96
ORDER	01-26-07	9	109-111
ORDER	06-08-07	9	126-129
ORDER	11-18-09	9	176-178
ORDER APPROVING FEES OF COURT-APPOINTED ATTORNEY (PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) APPEAL TO NEVADA SUPREME COURT	02-15-08	10	32
ORDER DENYING MOTION FOR AMENDED JUDGMENT	05-09-14	4	652-654
ORDER DENYING MOTION FOR CREDIT AMENDMENT TO PRESENTENCE CUSTODY	06-19-13	9	199-200
ORDER DENYING MOTION TO TAKE JUDICIAL NOTICE	12-22-22	8	1144-1146
ORDER DENYING MOTION TO TAKE JUDICIAL NOTICE	08-17-23	8	1179-1182
ORDER DENYING PETITION	12-22-22	8	1150-1151
ORDER DENYING PETITION FOR DETERMINATION OF FACTUAL INNOCENCE	10-12-23	8	1222-1225
ORDER DENYING PETITIONER'S MOTION FOR ELIMINATION OF FEES	06-10-21	6	929-931
ORDER DENYING PETITIONER'S MOTION TO REMIT LEGAL DEFENSE FEES	06-09-22	6	1063-1066
ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION	12-30-13	4	578-581
ORDER DENYING PETITIONER'S SECOND MOTION FOR RECONSIDERATION	02-07-14	4	592-594

APPEAL INDEX  
SUPREME COURT NO: 87505  
DISTRICT CASE NO: CR02-0147  
STATE OF NEVADA vs FERRILL J. VOLPICELLI  
DATE: NOVEMBER 17, 2023

PLEADING	DATE FILED	VOL.	PAGE NO.
ORDER DENYING REQUEST FOR THE COURT'S INDEPENDENT REVIEW	10-09-23	8	1216-1218
ORDER FOR THE STATE'S RESPONSE	06-16-23	8	1174-1175
ORDER GRANTING IN FORMA PAUPERIS	11-20-09	9	180-182
ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION FOR RECONSIDERATION	09-10-21	6	959-962
ORDER RE: PETITIONER'S MOTION TO REMIT LEGAL DEFENSE FEES	02-08-22	6	1033-1035
ORDER RECUSING JUDGE SCOTT N. FREEMAN	03-16-21	5	904-905
ORDER TO PRODUCE PRISONER	01-23-02	2	3-4
ORDER TO PRODUCE PRISONER	05-07-02	2	54-56
ORDER TO PRODUCE PRISONER	03-06-03	2	128-129
ORDER TRANSFERRING PETITIONER'S MOTION TO AMEND CORRECT OR MODIFY PRE-SENTENCE CREDIT	09-14-16	5	864-866
PETITION FOR DETERMINATION OF FACTUAL INNOCENCE	08-31-23	8	1190-1213
PETITION FOR DISMISSAL OF COUNSEL AND PRO SE REPRESENTATION	09-19-03	3	292-296
PETITION FOR DISMISSAL OF COUNSEL AND PRO SE REPRESENTATION	10-08-03	3	297-301
PETITION FOR RELIEF BASED ON ACTUAL INNOCENCE PURSUANT TO NRS 34.900 ET SQ	10-18-22	7	1098-1120
PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)	10-07-04	9	1-13
PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)	06-27-06	9	64-72
PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)	09-04-09	9	156-171
PRESENTENCE REPORT	12-03-03	10	19-26
PROOF OF SERVICE OF ELECTRONIC FILING	03-22-13	4	559
PROOF OF SERVICE OF ELECTRONIC FILING	10-31-13	4	570
PROOF OF SERVICE OF ELECTRONIC FILING	12-30-13	4	582
PROOF OF SERVICE OF ELECTRONIC FILING	11-18-09	9	179
PROOF OF SERVICE OF ELECTRONIC FILING	11-20-09	9	183
PROOF OF SERVICE OF ELECTRONIC FILING	06-19-13	9	201



APPEAL INDEX  
SUPREME COURT NO: 87505  
DISTRICT CASE NO: CR02-0147  
STATE OF NEVADA vs FERRILL J. VOLPICELLI  
DATE: NOVEMBER 17, 2023

PLEADING	DATE FILED	VOL.	PAGE NO.
PSYCHIATRIC EVALUATION	06-16-03	10	5-18
REPLY TO OPPOSITION TO MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)	05-16-07	9	121-123
REPLY TO STATE'S OPPOSITION TO MOTION TO REMIT LEGAL FEES	03-10-22	6	1046-1057
REQUEST FOR CONTINUANCE. STIPULATION	09-17-02	2	98-99
REQUEST FOR SUBMISSION	07-22-03	3	253
REQUEST FOR SUBMISSION	08-01-03	3	254
REQUEST FOR SUBMISSION	10-24-03	3	302
REQUEST FOR SUBMISSION	10-24-03	3	303
REQUEST FOR SUBMISSION	12-15-04	4	547
REQUEST FOR SUBMISSION	07-25-16	5	859-860
REQUEST FOR SUBMISSION	04-07-21	5	919-920
REQUEST FOR SUBMISSION	12-09-21	6	1023-1024
REQUEST FOR SUBMISSION	04-08-22	6	1058-1059
REQUEST FOR SUBMISSION	02-14-23	8	1155-1156
REQUEST FOR SUBMISSION	04-05-05	9	60-61
REQUEST FOR SUBMISSION	10-20-06	9	103-104
REQUEST FOR SUBMISSION	05-16-07	9	124-125
REQUEST FOR SUBMISSION – DOCUMENT ERROR – NO IMAGE	12-15-06	9	108
REQUEST FOR SUBMISSION OF MOTION	09-13-13	4	565-566
REQUEST FOR SUBMISSION OF MOTION	11-20-13	4	576-577
REQUEST FOR SUBMISSION OF MOTION	01-09-14	4	590-591
REQUEST FOR SUBMISSION OF MOTION	02-24-14	4	603-604
REQUEST FOR SUBMISSION OF MOTION	04-10-14	4	627-628
REQUEST FOR SUBMISSION OF MOTION	06-17-14	4	679-680
REQUEST FOR SUBMISSION OF MOTION	08-22-14	5	700-701

APPEAL INDEX  
SUPREME COURT NO: 87505  
DISTRICT CASE NO: CR02-0147  
STATE OF NEVADA vs FERRILL J. VOLPICELLI  
DATE: NOVEMBER 17, 2023

PLEADING	DATE FILED	VOL.	PAGE NO.
REQUEST FOR SUBMISSION OF MOTION	09-24-14	5	702-703
REQUEST FOR SUBMISSION OF MOTION	12-18-14	5	717-718
REQUEST FOR SUBMISSION OF MOTION	01-26-21	5	903
REQUEST FOR SUBMISSION OF MOTION	04-07-21	5	914-915
REQUEST FOR SUBMISSION OF MOTION	07-06-21	6	954-955
REQUEST FOR SUBMISSION OF MOTION	09-10-21	6	966-976
REQUEST FOR SUBMISSION OF MOTION	11-29-22	8	1132-1133
REQUEST FOR SUBMISSION OF MOTION	11-29-22	8	1134-1135
REQUEST FOR SUBMISSION OF MOTION	04-13-23	8	1161-1162
REQUEST FOR SUBMISSION OF MOTION	05-23-23	8	1168-1169
REQUEST FOR SUBMISSION OF MOTION	08-29-23	8	1188-1189
REQUEST FOR SUBMISSION OF MOTION	08-31-23	8	1214-1215
REQUEST FOR SUBMISSION OF MOTION	10-23-23	8	1234-1235
REQUEST FOR SUBMISSION OF MOTION	11-06-09	9	174-175
REQUEST FOR SUBMISSION OF MOTION	04-23-13	9	197-198
REQUEST FOR SUBMISSION OF MOTION – 2 <sup>ND</sup> REQUEST	10-23-23	8	1229-1230
REQUEST FOR THE COURT’S INDEPENDENT REVIEW	08-29-23	8	1186-1187
REQUEST FOR TRANSCRIPTS	01-02-04	3	392
REQUEST, AGREEMENT AND ORDER FOR PRE-TRIAL RECIPROCAL DISCOVERY DEFENDANT'S REQUEST FOR DISCOVERY	04-29-02	2	44-47
REQUEST, AGREEMENT AND ORDER FOR PRE-TRIAL RECIPROCAL DISCOVERY DEFENDANT'S REQUEST FOR DISCOVERY	07-07-03	2	191-193
REQUEST, AGREEMENT AND ORDER FOR PRE-TRIAL RECIPROCAL DISCOVERY DEFENDANT'S REQUEST FOR DISCOVERY	07-09-03	2	194-196
RESPONSE TO “MOTION TO AMEND JUDGMENT/CORRECT JUDGMENT NRS 176.555	04-25-14	4	629-631
RESPONSE TO MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)	05-11-07	9	114-117
RESPONSE TO MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)	05-14-07	9	118-120

APPEAL INDEX  
SUPREME COURT NO: 87505  
DISTRICT CASE NO: CR02-0147  
STATE OF NEVADA vs FERRILL J. VOLPICELLI  
DATE: NOVEMBER 17, 2023

PLEADING	DATE FILED	VOL.	PAGE NO.
RETURN OF NEF	02-07-14	4	595-597
RETURN OF NEF	03-12-14	4	610-612
RETURN OF NEF	03-18-14	4	614-616
RETURN OF NEF	04-08-14	4	619-621
RETURN OF NEF	04-09-14	4	624-626
RETURN OF NEF	04-28-14	4	632-634
RETURN OF NEF	05-08-14	4	649-651
RETURN OF NEF	05-09-14	4	655-657
RETURN OF NEF	05-30-14	4	672-674
RETURN OF NEF	06-11-14	4	676-678
RETURN OF NEF	06-20-14	5	682-684
RETURN OF NEF	07-08-14	5	687-689
RETURN OF NEF	07-25-14	5	693-695
RETURN OF NEF	07-29-14	5	697-699
RETURN OF NEF	10-20-14	5	706-708
RETURN OF NEF	12-18-14	5	710-712
RETURN OF NEF	01-12-15	5	723-725
RETURN OF NEF	03-02-15	5	732-734
RETURN OF NEF	03-02-15	5	737-739
RETURN OF NEF	03-11-15	5	747-749
RETURN OF NEF	03-18-15	5	751-753
RETURN OF NEF	03-31-15	5	824-826
RETURN OF NEF	04-01-15	5	828-830
RETURN OF NEF	04-22-15	5	833-835
RETURN OF NEF	05-21-15	5	841-843
RETURN OF NEF	06-17-16	5	856-858

APPEAL INDEX  
SUPREME COURT NO: 87505  
DISTRICT CASE NO: CR02-0147  
STATE OF NEVADA vs FERRILL J. VOLPICELLI  
DATE: NOVEMBER 17, 2023

PLEADING	DATE FILED	VOL.	PAGE NO.
RETURN OF NEF	07-25-16	5	861-863
RETURN OF NEF	09-14-16	5	867-869
RETURN OF NEF	09-16-16	5	874-876
RETURN OF NEF	01-08-21	5	900-902
RETURN OF NEF	03-16-21	5	906-908
RETURN OF NEF	03-16-21	5	911-913
RETURN OF NEF	04-07-21	5	916-918
RETURN OF NEF	04-07-21	5	921-923
RETURN OF NEF	06-09-21	5	926-928
RETURN OF NEF	06-10-21	6	932-934
RETURN OF NEF	06-10-21	6	940-942
RETURN OF NEF	06-24-21	6	951-953
RETURN OF NEF	07-06-21	6	956-958
RETURN OF NEF	09-10-21	6	963-965
RETURN OF NEF	09-10-21	6	977-979
RETURN OF NEF	09-13-21	6	986-988
RETURN OF NEF	09-29-21	6	994-996
RETURN OF NEF	10-06-21	6	998-1000
RETURN OF NEF	10-25-21	6	1003-1005
RETURN OF NEF	11-19-21	6	1007-1009
RETURN OF NEF	12-29-21	6	1030-1032
RETURN OF NEF	02-08-22	6	1036-1038
RETURN OF NEF	02-22-22	6	1043-1045
RETURN OF NEF	04-08-22	6	1060-1062
RETURN OF NEF	06-09-22	6	1067-1069
RETURN OF NEF	06-22-22	6	1075-1077

APPEAL INDEX  
SUPREME COURT NO: 87505  
DISTRICT CASE NO: CR02-0147  
STATE OF NEVADA vs FERRILL J. VOLPICELLI  
DATE: NOVEMBER 17, 2023

PLEADING	DATE FILED	VOL.	PAGE NO.
RETURN OF NEF	06-29-22	7	1079-1081
RETURN OF NEF	07-18-22	7	1084-1086
RETURN OF NEF	07-21-22	7	1088-1090
RETURN OF NEF	10-04-22	7	1093-1095
RETURN OF NEF	10-21-22	8	1123-1125
RETURN OF NEF	11-21-22	8	1127-1129
RETURN OF NEF	11-30-22	8	1141-1143
RETURN OF NEF	12-22-22	8	1147-1149
RETURN OF NEF	12-22-22	8	1152-1154
RETURN OF NEF	05-03-23	8	1165-1167
RETURN OF NEF	06-16-23	8	1176-1178
RETURN OF NEF	08-17-23	8	1183-1185
RETURN OF NEF	10-09-23	8	1219-1221
RETURN OF NEF	10-12-23	8	1226-1228
RETURN OF NEF	10-24-23	8	1239-1241
RETURN OF NEF	10-31-23	8	1243-1245
RETURN OF NEF	11-14-23	8	1248-1250
RETURN OF NEF	03-15-05	9	42-57
SECOND MOTION FOR RECONSIDERATION	01-09-14	4	583-589
SECOND REQUEST FOR SUBMISSION OF MOTION	02-17-15	5	726-727
SECOND REQUEST FOR SUBMISSION OF MOTION	03-09-23	8	1157-1158
SEPARATE MEMORANDUM OF POINTS AND AUTHORITIES	10-21-04	4	457-546
STATE'S OPPOSITION TO MOTION TO REMIT LEGAL DEFENSE FEES	02-22-22	6	1039-1042
STATE'S RESPONSE TO MOTION TO CORRECT ILLEGAL SENTENCE	07-25-14	5	690-692
STIPULATION AND REQUEST FOR CONTINUANCE AND ORDER	03-15-02	2	37-39
SUBSTITUTION OF COUNSEL FOR THE STATE	03-22-13	4	557-558

APPEAL INDEX  
SUPREME COURT NO: 87505  
DISTRICT CASE NO: CR02-0147  
STATE OF NEVADA vs FERRILL J. VOLPICELLI  
DATE: NOVEMBER 17, 2023

PLEADING	DATE FILED	VOL.	PAGE NO.
SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) & REPLY TO RESPONDENT'S MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)	02-23-05	9	27-41
SUPREME COURT CLERK'S CERTIFICATE & JUDGMENT	06-09-04	3	455
SUPREME COURT CLERK'S CERTIFICATE & JUDGMENT	05-08-14	4	645
SUPREME COURT CLERK'S CERTIFICATE & JUDGMENT	01-12-15	5	720
SUPREME COURT CLERK'S CERTIFICATE & JUDGMENT	05-21-15	5	837
SUPREME COURT CLERK'S CERTIFICATE & JUDGMENT	11-30-22	8	1137
SUPREME COURT CLERK'S CERTIFICATE & JUDGMENT	04-04-08	9	150
SUPREME COURT CLERK'S CERTIFICATE & JUDGMENTS	12-29-21	6	1025
SUPREME COURT NOTICE OF TRANSFER TO COURT OF APPEALS	10-04-22	7	1091-1092
SUPREME COURT NOTICE TO TRANSMIT REQUIRED DOCUMENT	03-31-15	5	823
SUPREME COURT ORDER	11-21-22	8	1126
SUPREME COURT ORDER CONSOLIDATING APPEALS, DIRECTING TRANSMISSION OF RECORDS, DENYING MOTIONS, AND REGARDING BRIEFING	07-18-22	7	1082-1083
SUPREME COURT ORDER DENYING REHEARING	11-19-21	6	1006
SUPREME COURT ORDER DENYING REHEARING	12-29-21	6	1026
SUPREME COURT ORDER DIRECTING TRANSMISSION OF RECORD	06-20-14	4	681
SUPREME COURT ORDER DIRECTING TRANSMISSION OF RECORD	11-14-23	8	1246-1247
SUPREME COURT ORDER DISMISSING APPEAL	04-09-14	4	622-623
SUPREME COURT ORDER DISMISSING APPEAL	05-08-14	4	646-648
SUPREME COURT ORDER DISMISSING APPEAL	12-18-14	5	709
SUPREME COURT ORDER DISMISSING APPEAL	01-12-15	5	721-722
SUPREME COURT ORDER DISMISSING APPEAL	04-22-15	5	831-832
SUPREME COURT ORDER DISMISSING APPEAL	05-21-15	5	838-840
SUPREME COURT ORDER DISMISSING APPEALS	10-25-21	6	1001-1002

APPEAL INDEX  
SUPREME COURT NO: 87505  
DISTRICT CASE NO: CR02-0147  
STATE OF NEVADA vs FERRILL J. VOLPICELLI  
DATE: NOVEMBER 17, 2023

PLEADING	DATE FILED	VOL.	PAGE NO.
SUPREME COURT ORDER DISMISSING APPEALS	12-29-21	6	1027-1028
SUPREME COURT ORDER DISMISSING APPEALS	01-21-22	8	1121-1122
SUPREME COURT ORDER DISMISSING APPEALS	11-30-22	8	1138-1140
SUPREME COURT ORDER OF AFFIRMANCE	05-14-04	3	443-447
SUPREME COURT ORDER OF AFFIRMANCE	06-09-04	3	450-454
SUPREME COURT ORDER OF AFFIRMANCE	03-06-08	9	145-148
SUPREME COURT ORDER OF AFFIRMANCE	04-04-08	9	151-155
SUPREME COURT RECEIPT FOR DOCUMENTS	01-08-04	3	398
SUPREME COURT RECEIPT FOR DOCUMENTS	03-18-14	4	613
SUPREME COURT RECEIPT FOR DOCUMENTS	06-11-14	4	675
SUPREME COURT RECEIPT FOR DOCUMENTS	03-18-15	5	750
SUPREME COURT RECEIPT FOR DOCUMENTS	10-06-21	6	997
SUPREME COURT RECEIPT FOR DOCUMENTS	06-29-22	6	1078
SUPREME COURT RECEIPT FOR DOCUMENTS	10-31-23	8	1242
SUPREME COURT RECEIPT FOR DOCUMENTS	11-30-07	9	144
SUPREME COURT REMITTITUR	06-09-04	3	456
SUPREME COURT REMITTITUR	05-08-14	4	644
SUPREME COURT REMITTITUR	01-12-15	5	719
SUPREME COURT REMITTITUR	05-21-15	5	836
SUPREME COURT REMITTITUR	12-29-21	6	1029
SUPREME COURT REMITTITUR	11-30-22	8	1136
SUPREME COURT REMITTITUR	04-04-08	9	149
TRANSCRIPT OF PROCEEDINGS – ARRAIGNMENT – FEB. 13, 2002	03-12-02	2	33-36
TRANSCRIPT OF PROCEEDINGS – MOTION FOR O.R. RELEASE INTO FEDERAL CUSTODY – APRIL 30, 2003	05-13-03	2	150-159
TRANSCRIPT OF PROCEEDINGS – MOTION TO CONFIRM TRIAL – FEB. 26, 2003	03-17-03	2	130-136

APPEAL INDEX  
SUPREME COURT NO: 87505  
DISTRICT CASE NO: CR02-0147  
STATE OF NEVADA vs FERRILL J. VOLPICELLI  
DATE: NOVEMBER 17, 2023

PLEADING	DATE FILED	VOL.	PAGE NO.
TRANSCRIPT OF PROCEEDINGS – MOTION TO CONFIRM TRIAL – MARCH 21, 2003	04-09-03	2	138-144
TRANSCRIPT OF PROCEEDINGS – MOTION TO CONFIRM TRIAL – PETROCELLI HEARING – SEPT. 6, 2002	09-16-02	2	92-97
TRANSCRIPT OF PROCEEDINGS – MOTION TO CONFIRM TRIAL – STATUS HEARING – JUNE 12, 2003	06-18-03	2	162-169
TRANSCRIPT OF PROCEEDINGS – MOTION TO SET TRIAL – OCT. 23, 2002	11-06-02	2	115-119
TRANSCRIPT OF PROCEEDINGS – REPORT ON PSYCHIATRIC EVALUATION – APRIL 19, 2002	05-14-02	2	57-64
TRANSCRIPT OF PROCEEDINGS – REPORT ON PSYCHIATRIC EVALUATION – JUNE 18, 2003	06-23-03	2	170-190
TRANSCRIPT OF PROCEEDINGS – ROUGH DRAFT – APPEAL – JURY TRIAL – JULY 10, 2003	01-12-04	3	399-442
TRANSCRIPT OF PROCEEDINGS – SENTENCING – DEC. 10, 2003	12-16-03	3	357-375
TRANSCRIPT OF PROCEEDINGS – SENTENCING – DEC. 12, 2003	12-22-03	3	376-389
TRANSCRIPT OF PROCEEDINGS – SENTENCING – DEC. 5, 2003	12-11-03	3	323-333
TRANSCRIPT OF PROCEEDINGS – STATUS HEARING / MOTION TO CONFIRM – SEPT. 11, 2002	09-25-02	2	102-113
UNUSED VERDICT FORMS	07-10-03	2	235-236
VERDICT	07-10-03	2	205-206
WAIVE ROF PRELIMINARY EXAMINATION	02-06-02	2	25
WITHDRAWAL OF COUNSEL	11-14-07	9	135-137



ORIGINAL

79565 N DSC

CR02-0147  
STATE VS FERRILL  
District Court  
Washoe County  
10/21/2004 02:24 PM  
10/21/2004 02:24 PM  
1985  
WTRAPPC

IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

RONALD A. [illegible] RONALD A. [illegible]

BY [illegible] DEPUTY

BY [illegible] DEPUTY

FERRILL J. VOLPICELLI,  
PETITIONER,

Case CR-02-0147

DEPT: 9

STATE OF NEVADA, SEPARATE MEMORANDUM  
RESPONDENT, OF  
POINTS AND AUTHORITIES.

PETITIONER, FERRILL J. VOLPICELLI, HEREBY  
SUBMITS HIS SEPARATE MEMORANDUM OF  
POINTS AND AUTHORITIES RELEVANT TO  
PETITIONER'S PRO PER PETITION FOR WRIT  
OF HABEAS CORPUS (POST-CONVICTION).  
THAT UNDER NRS 34.724, A PERSON WHO  
MAY FILE A PETITION, IN RELEVANT PART,  
STATES ANY PERSON CONVICTED OF A CRIME  
AND UNDER SENTENCE OF IMPRISONMENT WHO  
CLAIMS THAT THE JUDGMENT WAS IMPOSED  
IN VIOLATION OF THE CONSTITUTION OF THE  
UNITED STATES, OR THE CONSTITUTION OR  
LAWS OF THIS STATE, MAY FILE A POST-  
CONVICTION PETITION FOR WRIT OF HABEAS  
CORPUS TO OBTAIN RELIEF FROM THE

SENTENCE. SEE NRS 34.720 ET SEQ AND NEV  
ART 1 § 8; PELLUGRINI V STATE, 117 NEV, 34 P3D 519  
THIS COURT HAS ALSO HELD THAT CLAIMS  
ASSERTED IN A PETITION FOR POST-CONVICTION  
RELIEF MUST BE SUPPORTED WITH SPECIFIC  
FACTUAL ALLEGATIONS, WHICH, IF TRUE, WOULD  
ENTITLE THE PETITIONER FOR RELIEF.  
HARGROVE V STATE 100 NEV 498, 502; 686  
P2D 222, 225 (1984)

THE MEMORANDUM, ALONG WITH THE  
ACCOMPANYING PETITION ARE MADE AND BASED  
UPON ALL PAPERS AND PLEADINGS ON FILE  
HEREIN, THE ATTACHED EXHIBITS IN SUPPORT  
HEREOF, AND ORAL ARGUMENT AT THE  
TIME OF HEARING, IF DEEMED NECESSARY  
BY THIS HONORABLE COURT.

### STATEMENT OF FACTS

AT THE TRIAL THE STATE PRESENTED THE  
TESTIMONY OF PATRICIA ALLEN, A POLICE  
OFFICER WITH THE CITY OF RENO (T.T. p. 44,  
1. 4-11). SHE TESTIFIED THAT WHEN SHE  
FIRST SAW THE DEFENDANT, HE WAS IN THE  
BACK SEAT OF HIS VEHICLE. (T.T. p. 62, 1. 16-18)  
ALL SHE COULD SEE OF HIM WAS HIS HAND  
AND HIS UPPER CHEST TO HIS HEAD (T.T. p. 62,

1. 19-22). FURTHER, SHE TESTIFIED THAT THERE WAS A PETITION WHICH COVERED PART OF DEFENDANT'S BODY WHICH WAS IN THE BACK SEAT OF HIS VEHICLE (TT, p. 62 1. 23- p. 63, 1. 22).

SHE TESTIFIED THAT SHE OBSERVED THE DEFENDANT, LEFT AND THEN CIRCUINUSLY TURNED AROUND AND CAME BACK WHICH SURPRISED THE DEFENDANT (TT, p. 64, 1. 9-24). ALSO, SHE TESTIFIED THAT SHE VOLUNTARILY WALKED BY THE VEHICLE WITH THE PURPOSE OF LOOKING IN TO THE VEHICLE, DESPITE THE DEFENDANT'S RECLINED POSITION IN THE REAR SEAT, & BEHIND PARTITIONS (TT, p. 66, 1. 14-18). FURTHER, SHE TESTIFIED THAT WITHOUT LOOKING DELIBERATELY DOWN AND INTO THE VEHICLE, IN AN EXPLANATORY MANNER, SHE COULD NOT SEE THE DEFENDANT OR WHAT HE WAS DOING. (TT, p. 66, 1. 19-P. 68, 1. 11). AS A RESULT OF OFFICER ALLEN LOOKING INTO THE VEHICLE, SHE WAS ABLE TO SEE WHAT SHE BELIEVED TO BE THE DEFENDANT'S OFFENSE AGAINST PUBLIC SENSIBILITIES WHICH IS THE BASIS OF THE STATES' CHARGES AGAINST THE DEFENDANT. (TT p. 69, 1. 5-12). IT WAS FROM THIS TESTIMONY THAT THE DEFENDANT WAS CONVICTED OF THE INDECENT EXPOSURE & LEWDNESS.

# I STATES VIOLATION OF THE 4TH AMENDMENT

THE FOURTH AMENDMENT PROTECTS PEOPLE AND NOT PLACES. FROM THE SCRUTINY OF THE GOVERNMENT.

EVERY INDIVIDUAL HAS EXPECTATIONS OF PRIVACY WITH REGARD TO HIS PERSON WHEREVER HE MAY GO - BE IT A PUBLIC PLACE OR PRIVATE PLACE,

470 P2d 514

PRIVACY INTERESTS PROTECTED BY THE STATES' CONSTITUTIONAL PROVISION REGARDING SEARCHES IS NOT THE PRIVACY THAT ONE REASONABLY EXPECTS - RATHER THE PRIVACY TO WHICH ONE HAS A RIGHT.

759 P2d 1040.

THE 4TH AMENDMENT, PROPERLY CONSTRUED, EMBODIES AND GIVES EFFECT TO OUR COLLECTIVE SENSE OF THE DEGREE TO WHICH MEN AND WOMEN, IN CIVILIZED SOCIETY, ARE ENTITLED TO BE LEFT ALONE BY THEIR GOVERNMENT.

48 SCt 564, 572.

A PERSON HAS A HALO OF PRIVACY WHEREVER HE GOES AND CAN INVOKE A PROTECTABLE RIGHT TO PRIVACY WHEREVER HE MAY LEGITIMATELY BE, AND BY HIS CONDUCT [OF IMPLEMENTING DISCREETNESS IN THE SANCTUARY OF HIS OWN VERTICE] REASONABLY EXPECTS FREEDOM FROM GOVERNMENTAL INTRUSIONS,

451 P2d 269

PROPERTY RIGHTS REFLECT SOCIETY'S EXPLICIT RECOGNITION OF A PERSON'S AUTHORITY TO ACT

AS HE WISHES IN CERTAIN AREAS; [THEY] SHOULD BE CONSIDERED IN DETERMINING WHETHER AN INDIVIDUALS EXPECTATIONS OF PRIVACY ARE REASONABLE.' 99 SCT 435

' CONSTITUTIONAL PROTECTION IS AFFORDED AGAINST UNREASONABLE SEARCHES BY THE GOVERNMENT AND THEY DON'T DISAPPEAR MERELY BECAUSE THE GOVERNMENT HAS THE RIGHT TO MAKE REASONABLE INTRUSIONS IN ITS CAPACITY.' 107 SCT 1084

' THE WARRANT CLAUSE OF THE 4<sup>TH</sup> AMENDMENT, PROTECTS COMMERCIAL PROPERTY AS WELL AS HOMES. 98 SCT 1819 / 87 SCT 1731

' SUBJECTIVE EXPECTATION OF PRIVACY IS THE EXPECTATION WHICH THE 4<sup>TH</sup> AMENDMENT IS INTENDED TO PROTECT.' 190 F3d 1041

' FOURTH AMENDMENT CONSTITUTIONAL PROVISIONS PROTECT PEOPLE'S PRIVACY FROM UNREASONABLE INVASIONS BY THE POLICE. AND THE DETERMINATION OF WHAT IS REASONABLE CAN'T BE LEFT TO THEM. THE RIGHT OF PRIVACY WAS DEEMED TO BE PRECIOUS TO ENTRUST TO THE DISCRETION OF THOSE WHOSE JOB IS THE DETECTION OF CRIME AND THE ARREST OF CRIMINALS.' 290 P2d 589 / 69 SCT 193

2) EVEN ON PAROLE DEFENDANT IS CONSTITUTIONALLY PROTECTED BY THE 4<sup>TH</sup> AMENDMENT OF THE U.S. CONSTITUTION AND NEVADA CONSTITUTION 1 § 18.

'EVERY INDIVIDUAL HAS EXPECTATIONS OF PRIVACY WITH REGARD TO HIS PERSON.

WHATEVER HE MAY GO, BE IT A PUBLIC PLACE OR PRIVATE PLACE.' 470 P2d 514

'THERE IS NO AUTHORITY EITHER IN HISTORY OR IN THE CONSTITUTION ITSELF EXEMPTING CERTAIN CLASSES OF PERSONS OR ENTITIES FROM THE RIGHTS OF THE 4<sup>TH</sup> AMENDMENT.' 78 SCF 1984

'THE PRISONERS OR PAROLEES' PRIVATE INTEREST IN THE INTEGRITY OF HIS OWN PERSON IS STILL PRESERVED.' 942 FSUPP 502

'4<sup>TH</sup> AMENDMENT RIGHTS EXIST EVEN IF PRIVATE INTERESTS WERE NEGLIGIBLE.'

645 F2d 252

'UNDER THE 4<sup>TH</sup> AMENDMENT, THE PERSONS' REASONABLE EXPECTATION OF PRIVATE CANNOT BE VIOLATED WITHOUT REQUIRING AUTHORITY OR THE LAW.' U.S. CONST. AM 1 § 7

770 P2d 445

'THE MERE FACT THAT LAW ENFORCEMENT MAY BE MADE MORE EFFICIENT CAN NEVER ITSELF JUSTIFY DISREGARD OF THE 4<sup>TH</sup> AMENDMENT'

91 SCF 2045

3) DEFENDANT'S CONDUCT MANIFESTED A SUBJECTIVE EXPECTATION OF PRIVACY THAT SOCIETY RECOGNIZES.

'IN THE WORDS OF KATZ MAJORITY, THE INDIVIDUAL HAS SHOWN THAT 'HE SEEKS TO PRESERVE AS PRIVATE', 88 SOT 511, BY IMPLEMENTING PARTITIONS AND RETREATING TO A RECLINED POSITION OF HIS OWN VEHICLE - OUT OF VIEW, AND WHETHER THE INDIVIDUAL'S EXPECTATIONS, VIEWED OBJECTIVELY, IS "JUSTIFIABLE" UNDER THE CIRCUMSTANCES. 99 SOT 430

'IN DETERMINING AN EXPECTATION OF PRIVACY, DEFENDANT DID SHOW THAT WITH PARTITIONS AND OUT OF PUBLIC VIEW HE INTENDED TO SHIELD ACTIONS FROM THE INSPECTION OF OTHERS.

186 F3D 1119

'THE TEST SHOULD BE THAT OF REASONABLENESS, BOTH OF THE POSSESSOR'S EXPECTATION OF PRIVACY AND OF THE OFFICER'S REASONS FOR INTRODUCING ON POSSESSOR'S PRIVACY.' 312 F2D 1171

'THE TEST FOR LEGITIMACY IS NOT WHETHER AN INDIVIDUAL CHOOSES TO CONCEAL HIS ACTIVITY, BUT INSTEAD, "WHETHER THE GOVERNMENT'S INTRUSION INFRINGES UPON THE PERSONAL AND

SOCIETAL VALUES PROTECTED BY THE 4<sup>TH</sup> AMENDMENT.  
106 Sct 1812.

- 'THAT A REASONABLY RESPECTIVE CITIZEN, WHEN CONFRONTED WITH A PARTITION, RESPECTS THE PRIVACY THAT EFFORTS CONVEY' 953 P2d 587
- 'A CLAIM TO PRIVACY IS THEREFORE STRENGTHENED BY THE FACT THAT THE CLAIMANT SOMEHOW MANIFESTED TO OTHER PEOPLE HIS DESIRE THAT THEY KEEP THEIR DISTANCE.' 100 Sct 2561
- 'APPELLANTS CONDUCT EXHIBITED [WITH PARTITIONS AND REMOVING HIMSELF FROM PUBLIC VIEW BY RECLINING ON THE REAR SEAT] EXHIBITS A SUBJECTIVE EXPECTATION OF PRIVACY, THAT THE PARTITIONS HAD GAPS FOR PARTIAL VIEWING DID NOT DIMINISH THIS EXPECTATION.' 716 P2d 495
- 'DEFENDANTS' INNOCENT ACTIVITIES OCCURRED WITHIN A LEGITIMATE ZONE OF PROTECTED PRIVACY.' 729 P2d 174.
- 'THE FACT THAT APERTURES EXISTED AROUND THE VEHICLE WHERE PARTITIONS, HIGH BACK SEATS AND TINTED WINDOWS WERE PARTIALLY INEFFICIENT, SO THAT UNLAWFULLY INTRUDING INDIVIDUALS SO MOTIVATED COULD SPY IN, DOES NOT DISPEL THE REASONABLENESS OF THE DEFENDANTS' EXPECTATIONS OF PRIVACY.' 511 P2d 41



'THE EXPECTATION OF PRIVACY SHOULD BE MEASURED FROM THE STANDPOINT OF THE CITIZEN WHOSE PRIVACY IS AT STAKE, NOT OF THE GOVERNMENT. PRIVACY IS COMPROMISED THE MOMENT INVASION OCCURS.'

104 SCt 3313-3314

'BUT WHAT THE DEFENDANT SEEKS TO PRESERVE AS PRIVATE EVEN IN AN AREA ACCESSIBLE TO THE PUBLIC MAY BE CONSTITUTIONALLY PRIVATE.' 389 US 351 / 80 SCt 1431

'THE PERSON'S REASONABLE EXPECTATION OF PRIVACY CANNOT BE VIOLATED WITHOUT REQUIRING AUTHORITY OR THE LAW.' (4<sup>th</sup> AMEND. CONST. ART 1 §7) 710 P2d 445

'A REASONABLE EXPECTATION OF PRIVACY IS THE SINE QUA NON OF A CHALLENGE TO THE VALIDITY OF A SEARCH.'

109 SCt 693

'THE 4<sup>th</sup> AMENDMENT PROTECTS PEOPLE FROM SOME MEANINGFUL INTERFERENCE WITH PRIVACY.' 468 US 712

'AS FOR THE PRIVACIES OF LIFE, THE FACT THAT GOVERNMENTAL OFFICIALS OR MEMBERS OF THE CIVILIAN PUBLIC MIGHT BE EXPECTED TO ENTER AN AREA, OR SEE IN PLAIN VIEW ACTIVITIES WITHIN AN INDIVIDUAL'S [OWN VEHICLE], DOES NOT NECESSARILY PRECLUDE REASONABLE CLAIMS OF PRIVACY FROM INTENSIVE SPYING BY POLICE OFFICERS LOOKING FOR EVIDENCE OF A CRIME.'

710 P2d 300

4) THE STATES INVESTIGATORS SELECTIVELY AND UNJUSTIFIABLY CONDUCTED AN UNCONSTITUTIONAL SEARCH, ABSENT A WARRANT BY A MAGISTRATE AND WITHOUT PROBABLE CAUSE.

'A SEARCH, AS THAT TERM IS USED IN THE 4TH AMENDMENT TO THE FEDERAL CONSTITUTION AND SECTION 1 EIK OF THE NEVADA CONSTITUTION, IMPLIES SOME EXPLORATORY INVESTIGATION OR AN INVASION OR QUEST, A LOOKING FOR OR SEEKING OUT. A SEARCH IMPLIES A PRYING INTO HIDDEN PLACES FOR THAT WHICH IS CONCEALED AND THAT THE OBJECT SEARCHED FOR OR PERSON HAS BEEN HIDDEN OR INTENTIONALLY BLOCKED OR PUT OUT OF THE WAY.' 300 P2d 729

'A SEARCH OCCURS WHEN A PERSON'S PRIVACY INTERESTS HAVE BEEN INVADED.' 672 P2d 708

'THE SEARCH CANNOT BE JUSTIFIED BY THE PLAIN VIEW OR OPEN VIEW DOCTRINES ON THE GROUNDS THAT NO CONSTITUTIONALLY PROTECTED RIGHT WAS INVAD.' 98 SCT 2410

'SEARCH QUESTIONS REQUIRE A DELICATE BALANCE BETWEEN THE NEED FOR POLICE TO EFFECTIVELY INVESTIGATE CRIMES, AND NOT MERELY WITTHUNT OR EXPLORE THEREBY DEPRIVING THE CITIZEN OF THE RIGHTS TO BE SECURE FROM UNREASONABLE GOVERNMENT INTRUSION.' 953 P2d 593

IN THE CASE OF SEARCHES CONDUCTED BY THE GOVERNMENT, WE MUST BALANCE THE INVASION OF THE INDIVIDUAL'S LEGITIMATE EXPECTATIONS OF PRIVACY, AGAINST THE GOVERNMENT'S NEED FOR SUPERVISION.

107 Sct 1499

'RANDOM SURVEILLANCE IS NOTHING MORE THAN AN EXPLORATORY SEARCH (AN EFFORT TO DISCOVER EVIDENCE OF CRIMINAL ACTIVITY, UNDERTAKEN WITHOUT A WARRANT, PROBABLE CAUSE OR EVEN A PARTICULARIZED SUSPICION.) SUCH SEARCHES ARE VIEWED WITH PROFOUND DISFAVOR PRECISELY BECAUSE THEY THREATEN THE SECURITY OF THE LAW-ABIDING AS WELL AS THE LAW BREAKER - CHILLING THE LEGITIMATE ACTIVITIES OF THE INNOCENT AS WELL AS THE ILLICIT SCHEMES OF THE GUILTY.'

506 P2d 232

'AN ILLEGAL SEARCH ONLY VIOLATES THE RIGHTS OF THOSE WHO HAVE A LEGITIMATE EXPECTATION OF PRIVACY IN THE INVADDED PLACE.'

99 Sct 430.

'STATES' INTRUSION INTO DEFENDANT'S ACTIVITIES ON TO WHICH THERE WAS A REASONABLE EXPECTATION OF PRIVACY WAS NOT JUSTIFIED AS PROLONGED SIGHTINGS WERE DELIBERATE AND NOT INADVERTENT.'

'THE 4<sup>TH</sup> AMENDMENT PROTECTS AGAINST GOVERNMENT INVASION OF PRIVACY EVEN WHEN THE INVASIONS ARE NOT ACCOMPANIED BY PHYSICAL INTRUSIONS.'

88 Sct 507

'DETECTIVES' CLAUDESTINE OBSERVATION OF DEFENDANT PROMPTED BY GENERAL CURIOSITY TO ASCERTAIN WHAT,

IF ANYTHING WAS GOING ON, WAS MANIFESTLY  
EXPLORATORY IN NATURE, AND VIOLATES BOTH THE LETTER  
AND SPIRIT OF THE 4<sup>TH</sup> AMENDMENT.' 478 P2d 465

'PROBABLE CAUSE FOR A SEARCH INVOLVES A WELL-  
WARRANTED SUSPICION OF A CRIME BEING COMMITTED;  
IT IS SUBSTANTIALLY LOWER THAN PROOF BEYOND A  
REASONABLE DOUBT - BUT SOMETHING MORE THAN A MERE  
POSSIBILITY. 556 P2d 142

'SUCH A PRACTICE OF SURVEILLANCE, WITH NO REASONABLE  
CAUSE TO ARREST THE PETITIONER, AMOUNTS TO A GENERAL  
EXPLORATORY SEARCH CONDUCTED SOLELY TO FIND EVIDENCE  
OF GUILT; A PRACTICE CONDEMNED BOTH BY FEDERAL  
LAW AND BY THE LAW OF THIS STATE,' 371 P2d 290

'THE SCRUTINY OF A PERSON IN HIS AUTO FOR THE PARTICULAR  
PURPOSE OF CONFIRMING A SUSPICION THAT CRIMINAL ACTIVITY  
MAY BE TAKING PLACE THERE REMAINS UNCONSTITUTIONAL,'

729 P2d 174, 183

'THE SUSPICION ALLEGED BY DETECTIVES AS A PRETEXT TO INVAD  
DEFENDANT'S PRIVACY SERVED AS AN UNAUTHORIZED PRETEXT UNDER  
THE 4<sup>TH</sup> AMENDMENT. A REASONABLE OFFICER WOULD NOT HAVE  
RESORTED TO THE SAME ACTIONS BY MERELY OBSERVING [THE  
OWNER OF HIS VEHICLE HOPPING INTO THE BACK SEAT AND  
IMPLEMENTING PARTITIONS].'

920 P2d 1010

'THAT THE DETECTIVES' HUNCH ABOUT DEFENDANT PROVED  
CORRECT IS PERHAPS A TRIBUTE TO DETECTIVES' INTUITION,  
BUT IT IS NOT SUFFICIENT TO JUSTIFY, EX POST FACTO, A

SEARCH THAT WAS NOT OBJECTIVELY REASONABLE,'

864 F.2d 1520 / 779 F.2d 704

'UNLESS AN OFFICER HAS PROBABLE CAUSE TO SEARCH, HE HAS NO RIGHT TO RETREAT TO A CLANDESTINE POSITION OR TAKE A CIRCUITOUS ROUTE TO PEER INTO OR BETWEEN PARTITIONS.

506 P.2d 239.

'THE FURTIVE GESTURE OF DEFENDANT HOPPING TO REAR SEAT CAN BE AFFORDED NO WEIGHT IN DETERMINING AN OFFICER'S REASONABLE SUSPICION OF CRIMINAL ACTIVITY.' 88 Sct 1904  
EVENTS AS CONSISTENT WITH INNOCENT ACTIVITY AS WITH CRIMINAL ACTIVITY ARE INSUFFICIENT TO SUPPORT THE LEGALITY OF SEARCH OR PROBABLE CAUSE. THE ARGUABLY SUSPICIOUS BEHAVIOR WAS SUSCEPTIBLE TO AN INNOCENT EXPLANATION [WHEREBY DEFENDANT WAS MERELY TENDING TO HIS MEDICAL NEEDS IN THE PRIVACY OF HIS OWN 4 WHEELED SANCTUARY] CLEARLY DEFINED BY HIS CONDUCT AND INTENT.

'TELESCOPIC SURVEILLANCE OF [DEFENDANT'S VEHICLE] FROM 1/4 MILE OR LESS AWAY VIOLATED A REASONABLE EXPECTATION OF PRIVACY.'

415 F.Supp 1252

'OFFICERS MAY NOT RELY UPON UNPARTICULARIZED SUSPICIONS TO JUSTIFY WARRANTLESS SEARCH.'

720 P.2d 3

'DETECTIVE HAD TO HAVE A PRIOR JUSTIFICATION FOR AN INTRUSION OF DEFENDANT'S PRIVACY IN THE COURSE OF WHICH THE DETECTIVE CAME ACROSS HIS PERSON.'

91 Sct 2039

'THE STATES' CLAIM OF A SEARCH UNDER THE GUISE OF EXECUTING A COMMUNITY CARETAKING FUNCTION IS NOT APPLICABLE AS THERE WAS NO SHOWING THAT PUBLIC SAFETY OR INCONVENIENCE IN QUESTION.

534 P.2d 1394

V4. 469 13

5) DEFENDANT ARGUES THAT THE INVESTIGATORS' AUTHORITY FOR EXPLORATORY SEARCH WAS NOT VALID UNDER THE PLAIN VIEW OR OPEN VIEW DOCTRINES.

'THE STATES' RELIANCE ON THE OPEN VIEW OR PUBLIC VIEW DOCTRINES IS MISPLACED. A PERSON MAY HAVE SUBJECTIVE EXPECTATION OF PRIVACY THAT IS OBJECTIVELY REASONABLE IN SOME AREA IN PUBLIC AND EXPECTATION IS NOT DEFEATED BECAUSE AREA IS ACCESSIBLE TO OTHERS,' 856 P2d 1266  
'WHILE THE SPACE BETWEEN [THE PARKED VEHICLES] WAS OPEN TO THE PLAIN VIEW OF THE OFFICER, IT WAS NOT OPEN TO UNLIMITED GOVERNMENTAL INTRUSIONS SUCH AS THE EXPLORATORY SEARCH THAT ENSUED,' 470 P2d 514

'PLAIN VIEW DOCTRINE MAY NOT BE USED TO EXTEND A GENERAL EXPLORATORY SEARCH FROM ONE OBJECT OR PERSON TO ANOTHER UNTIL SOMETHING INCRIMINATING AT LAST EMERGES.'

91 SCt 2045

'IF OBJECT OR ACTION OBSERVED IS IN PLAIN VIEW - IT MUST BE FROM AN UNINTRUSIVE VANTAGE POINT,' 856 P2d 1266

'FOR IN PLAIN VIEW CASES TO SUCCEED OR CIRCUMVENT 4<sup>th</sup> AMENDMENT COMPLICATIONS, THERE HAS TO BE A LEGITIMATE PRIOR

JUSTIFICATION FOR AN INTRUSION OF PRIVACY IN THE COURSE OF WHICH A DETECTIVE CAME INADVERTENTLY ACROSS THE DEFENDANT,

403 US 466 / 91 SCF 2037

'PLAIN VIEW ALONE IS NEVER ENOUGH TO JUSTIFY WARRANTLESS SEARCHES.' 91 SCF 2039

'IN PLAIN VIEW SITUATION, THE VIEW TAKES PLACE AFTER AN INTRUSION INTO ACTIVITIES OR AREAS AS TO WHICH THERE IS A REASONABLE EXPECTATION OF PRIVACY. THE OFFICER HAS ALREADY INTRUDED, AND, IF HER INTRUSION IS JUSTIFIED, THE EVIDENCE IN PLAIN VIEW, SIGHTED INADVERTENTLY, WILL BE ADMISSIBLE.' 403 US 443

'IN OPEN VIEW SITUATION, HOWEVER, THE OBSERVATION TAKES PLACE FROM A NON INTRUSIVE VANTAGE POINT. THE GOVERNMENT AGENT IS EITHER ON THE OUTSIDE LOOKING OUTSIDE, OR THE OUTSIDE LOOKING INSIDE TO THAT WHICH IS KNOWINGLY EXPOSED TO PUBLIC. AN OFFICER IS PERMITTED THE SAME LICENSE TO INTRUDE AS A REASONABLE RESPECTIVE CITIZEN.' 323 FS 425

'BUT FOR SUCH OBSERVATION TO BE A PLAIN VIEW RATHER THAN CONSTITUTING A SEARCH, THE OFFICER MUST HAVE HAD THE RIGHT TO BE IN THE POSITION TO HAVE THAT VIEW.' 88 SCF 993

'TESTIMONY PURPORTS UNDISPUTEDLY THAT THE

ACTIVITIES OF DEFENDANT WITNESSED BY DETECTIVE  
WERE NOT IN PLAIN SIGHT, OR READILY VISIBLE  
AND ACCESSIBLE, 371 P2d 291

'A SUBSTANTIAL AND UNREASONABLE DEPARTURE  
FROM SUCH AN AREA, OR A PARTICULARLY  
INTRUSIVE METHOD OF VIEWING, WILL EXCEED THE  
SCOPE OF THE IMPLIED INVITATION AND INTRUDE  
UPON A CONSTITUTIONALLY PROTECTED EXPECTATION  
OF PRIVACY.' 632 P2d 47.

'OFFICERS EXCEEDED THEIR SCOPE OF OPEN VIEW  
BY EMPLOYING A PARTICULARLY INTRUSIVE  
METHOD OF VIEWING.' 815 P2d 761, 769

'EXCEEDING SAID SCOPE OF VIEW INCLUDES  
WHETHER THE OFFICER ACTED SECRETLY. REASON  
BEING, FURTIVE INTRUSION IS NOT CONDUCT  
THAT IS EXPECTED OF ORDINARY CITIZENS.

815 P2d 761 -

'POLICE DETECTIVE TRANSGRESSED CONSTITUTIONAL  
LIMITS BY CIRCUITOUSLY AVERTING PARTITIONS AND  
PURPOSEFULLY PEERING IN AT DEFENDANTS [RECLINED  
IN THE BACK SEAT]' 511 P2d 38

'WHEN OBSERVATIONS BY OFFICERS WHERE THEY HAVE  
A RIGHT TO BE ARE MADE FROM A POSITION TO  
WHICH THE OFFICER HAS NOT BEEN EXPRESSLY OR  
IMPLICITLY INVITED, THE INTRUSION IS UNLAWFUL  
UNLESS EXECUTED 'PURSUANT TO A WARRANT OR  
EXIGENT CIRCUMSTANCES' 511 P2d 39



6) DEFENDANT ARGUES EVIDENCE SHOULD HAVE BEEN SUPPRESSED AND CASE DISMISSED FOR 4<sup>TH</sup> AMEND. VIOLATION. 'THIS IS A CASE WHERE DEFENDANT'S 4<sup>TH</sup> AMENDMENT RIGHTS WERE AT THE MERCY OF OVERLY ZEALOUS OFFICERS ENGAGED IN THE OFTEN COMPETITIVE ENTERPRISE OF FERRERING OUT CRIME.' 6P 369

'WITH THE DETECTIVES' INTRUSION, THE DEFENDANT'S REASONABLE EXPECTATION OF PRIVACY WITH THE PLACEMENT OF PARLONS IS NOT FORFEITED. TO ASSUME IT DOES, SURFACES TO SAY THAT THIS REASONING WOULD IMPERMISSIBLY CONVICT THE SUSPECT EVEN BEFORE THE EVIDENCE AGAINST HIM WAS GATHERED.' 489 P2246.

'THE PETITIONER MUST PERSONALLY CLAIM A JUSTIFIABLE, REASONABLE, OR LEGITIMATE EXPECTATION OF PRIVACY THAT HAS BEEN INVADDED BY GOVERNMENTAL ACTION.' 622 P221199

'A VALID FOURTH AMENDMENT CLAIM REQUIRES THAT AN INDIVIDUAL BY HIS CONDUCT HAS EXHIBITED A SUBJECTIVE EXPECTATION OF PRIVACY IN THE SEARCH, AND THAT THE EXPECTATION IS OBJECTIVELY REASONABLE.' 99 8CT 2577

'A SEARCH PROSECUTED IN VIOLATION OF THE CONSTITUTION IS NOT MADE LAWFUL BY WHAT IT BRINGS TO LIGHT.' 475CT 24P

'FEDERAL COURTS HAVE RULED THAT EVIDENCE MUST BE SUPPRESSED IF OBTAINED BY AUTHORITIES ONCE IT HAS BEEN DETERMINED THAT THE INDIVIDUAL'S EXPECTATION OF PRIVACY, VIEWED OBJECTIVELY, IS JUSTIFIABLE UNDER THE CIRCUMSTANCES.' 99 8CT 2580

'THREE PRINCIPLE CRITERIA JUSTIFY AN EXPECTATION OF

INVOLVES AN INTRUSION INTO ANY PLACE FROM WHICH THE [INTRUDER] MAY LAWFULLY BE EXCLUDED AND WHICH IS ALREADY MANTLED BY CONVEY REVERENTLY PRIVACY. ACCORDINGLY DETECTIVES CONDUCT WAS A CALM AND THEREAS NO ACTION WITH A GOVERNMENTAL OFFICIAL SHOULD NOT BE OBLIGED TO RESPECT SUCH UNEQUIVOCAL AND UNIVERSAL MANIFESTATIONS OF A CITIZEN'S DESIRE FOR PRIVACY. (i.e. IMPLEMENTATION OF PARTITIONS)

104 Sct 1730

'ALL EVIDENCE OBTAINED BY AN UNCONSTITUTIONAL SEARCH IS INADMISSIBLE IN A STATE COURT.' 81 Sct 1684  
'4TH AMENDMENT PROTECTION IS DESIGNED TO DETER LAW ENFORCEMENT AND OTHER GOVERNMENTAL INDIVIDUALS FROM UNREASONABLE INTRUSIONS UPON THE LIVES AND PROPERTY OF CITIZENS.'

81 Sct 1684

'GOVERNMENT CANNOT VIOLATE THE CONSTITUTIONAL RIGHTS OF PEOPLE TO BE SECURE IN THEIR PERSONS, HOMES, ETC., AGAINST UNREASONABLE SEARCHES, AND THEN USE THE FRUITS OF SUCH UNLAWFUL CONDUCT TO SECURE A CONVICTION.'  
FURTHER, IT CANNOT MAKE INDIRECT USE OF SUCH EVIDENCE FOR ITS CASE.'

74 Sct. 356

7) DEFENDANT ARGUES THE PRECISE CIRCUMSTANCES HERE DO NOT PERMIT A REASONABLE TRIER OF FACT TO CONCLUDE THE INCIDENT OCCURRED IN PUBLIC PLACE.

'WHILE THE INTERIOR OF AN AUTOMOBILE IS NOT SUBJECT TO THE SAME EXPECTATIONS OF PRIVACY THAT EXISTS WITH RESPECT TO ONE'S HOME, AN SUV'S INTERIOR, AS A WHOLE, IS NONETHELESS SUBJECT TO 4<sup>TH</sup> AMENDMENT PROTECTION FROM UNREASONABLE INTRUSIONS BY POLICE

475 US 114-115

'ONE LAWFULLY IN POSSESSION OR CONTROL OF PROPERTY [AUTO] WILL LIKELY HAVE A LEGITIMATE PRIVACY EXPECTATION BY VIRTUE OF THE RIGHT TO EXCLUDE.

99 SCT 430

'BUT WHAT THE DEFENDANT SEEKS TO PRESERVE AS PRIVATE, EVEN IN AN AREA ACCESSIBLE TO THE PUBLIC, MAY BE CONSTITUTIONALLY PRIVATE, 253 F3d 227

'THERE IS NO DIMINUTION OF ONE'S EXPECTATION OF PRIVACY SPECIFICALLY WHEN THE PRIVACY THAT IS, INVADDED IS SHELTERED BY WALLS OF METAL.....'

87 SCT 1737

'THE SCRUTINY OF A PERSON IN HIS AUTO FOR THE PARTICULAR PURPOSE OF CONFIRMING A SUSPICION THAT CRIMINAL ACTIVITY IS TAKING PLACE THERE REMAINS UNCONSTITUTIONAL, 729 P2d 174+183

'LEGALLY PARKED ON PRIVATE PROPERTY AND THE DEMONSTRABLE CONDUCT OF SEEKING PRIVACY WITHIN ONE VEHICLE CONCLUDES THE PLACE WAS "CONSTITUENTLY PROTECTED".' 458 P2d 715

'EVEN WITH AREAS, [INCLUDING PARKING LOTS] TO WHICH THE PUBLIC IS IMPLIEDLY INVITED, POLICE OFFICERS MUST RESTRICT THEIR ACTIVITY TO SUCH AREAS TO THE SAME LEVEL OF INTRUSION AND SAME LEVEL OF OBSERVATION AS WOULD BE EXPECTED FROM A REASONABLY RESPECTIVE PERSON.' 859 P2d 349

'IN McNAMARA, THE COURT OF APPEALS ASSESSED THE ADEQUACY OF SEVERAL INFORMATIONS IN WHICH DEFENDANTS WERE CHARGED WITH OFFENSES AGAINST PUBLIC SENSIBILITIES IN THEIR PARKED CARS. THE COURT FOUND THAT THE FACTUAL ALLEGATIONS IN THOSE INFORMATIONS WERE INSUFFICIENT TO ESTABLISH THE STATUTORY ELEMENT OF A 'PUBLIC PLACE', HOLDING THAT THE INTERIOR OF A VEHICLE PARKED AT A STATED ADDRESS IS NOT ITSELF A 'PUBLIC PLACE'. FURTHERMORE, THAT THE APPLICABLE STATUTES FOR OFFENSES AGAINST PUBLIC SENSIBILITIES WAS ENACTED "TO PREVENT OPEN FLOUTING OF SOCIETAL CONVENTIONS," NOT TO PROHIBIT ACTS OF PERSONS WHO DESIRE PRIVACY AND WHO TAKE REASONABLE MEASURES TO SECURE IT.' McNAMARA, 578 NYS 2d AT 481 (QUOTING N.Y. MODEL PENAL CODE).

## II DOUBLE JEOPARDY ISSUE

1) THE DEFENDANT CANNOT LEGALLY BE CONVICTED OF BOTH INDECENT EXPOSURE AND LEWDOENESS CONDUCT; THEY ARE REDUNDANT.

THE STATE CHOSE TO CHARGE 2 COUNTS KNOWING FULL WELL THE CHARGES ARE REDUNDANT - NRS 210.210 AND NRS 210.220. THE COURT DOES NOT LIMIT ITSELF TO BLACKBURNER V U.S., 284 US 299 (1932). AS THE TEST FOR DETERMINING REDUNDANT CONVICTIONS, THIS COURT HELD IN SERVIN V STATE, 117 NEV 775; 32 P3d 1277 (2001) THAT CONVICTIONS FOR BURGLARY AND HOME INVASION ARE REDUNDANT. ALTHOUGH THAT WAS IN THE CONTEXT OF AGGRAVATING CIRCUMSTANCES - A CAPITAL CASE - THE SAME REASONING SHOULD APPLY. IN FACT, SERVIN SAID, 'THUS, WHERE A DEFENDANT IS CONVICTED OF 2 OFFENSES, THAT, AS CHARGED, PUNISHED THE EXACT SAME ILLEGAL ACT, THE CONVICTIONS ARE REDUNDANT.' SERVIN V STATE, 117 NEV AT 789-790; 32 P3d AT 1287, CQUOTING STATE V DISTRICT COURT 116 NEV 127, 136; 994 P2d 692, 697 (2000), WHICH DISCUSSED ALBITRE V STATE, 103 NEV 281; 738 P2d 1307 (1987), AND WHICH DID NOT INVOLVE AGGRAVATING CIRCUMSTANCES. IN

ARBITRE, THE COURT LET STAND THE FELONY  
 DUI CHARGE BUT REVERSED THE FELONY RECKLESS  
 DRIVING AND INVOLUNTARY MANSLAUGHTER CHARGES.  
 STATE V DISTRICT COURT, SUPRA, ALSO DISCUSSED  
 OTHER REDUNDANT CHARGES, BATTERY WITH A  
 DEADLY WEAPON AND BATTERY WITH SUBSTANTIAL  
 BODILY HARM ARE REDUNDANT BECAUSE THE  
 GRAVAMEN OF THE CHARGES ARE THAT A PERSON  
 HIT SOMEONE WITH A BROKEN BEER BOTTLE,  
 CITING SKIBA V STATE, 114 NEV 612, 959 P2d  
 959 (1988). ANOTHER EXAMPLE IS DRIVING UNDER  
 THE INFLUENCE AND DRIVING WITH A BLOOD ALCOHOL  
 CONCENTRATION OF .10 WHERE THE GRAVAMEN IS  
 DRIVING WHILE INTOXICATED CITING DOWSEY V  
 STATE, 114 NEV 904, 964 P2d 782 (1988). IN  
 BOTH SKIBA V STATE AND DOWSEY V STATE THE  
 DEFENDANTS RECEIVED MULTIPLE CONVICTIONS ARISING  
 FROM WITHIN THE SAME SUBSECTION OF THE SAME  
 STATUTE. SERVING IS CONSISTENT WITH THE  
 LAW IN ARBITRE WHICH RULED THAT THE COURT  
 IS TO CONSIDER THE GRAVAMEN OF THE CHARGES.  
 WE ARE CONVINCED THAT THE LEGISLATURE  
 NEVER INTENDED TO PERMIT THE STATE TO  
 PROLIFERATE CHARGES AS TO ONE COURSE  
 OF CONDUCT BY ADDING IT WITH  
 CHAMELEONIC ATTIRE. ALTHOUGH CHARGING

TO THE LIMIT MAY BE JUSTIFIED TO COVER DEVELOPING NUANCES OF THE MURDER, THE JURY SHOULD HAVE RECEIVED AN INSTRUCTION LIMITING THE NUMBER OF CONVICTION ALTERNATIVES. THE FAILURE TO DO SO WAS PREJUDICIAL ERROR. ALBINE, 103 NEV AT 284.

CONVICTIONS FOR SEXUAL ASSAULT & LEWDNESS WITH A MINOR THAT ARISE FROM ONE INSTANCE OF PENETRATION ARE REDUNDANT. THE ACT WHICH CONSTITUTED THE LEWDNESS WAS DETERMINED NOT TO HAVE BEEN A SEPARATE ACT, EBEING 120 NEV ADV. OPN., 45 P3d — JUNE 15, 2004, AND INCIDENTAL TO LEWDNESS ACT, CROWLEY 83 P3d AT 285. FURTHER, CITING TALANCON V STATE, 102 NEV 294, 300; 721 P2d 765, 767 (1986), IN EBEING, "[A] COURT SHOULD NORMALLY PRESUME THAT A LEGISLATURE DID NOT INTEND MULTIPLE PUNISHMENT FOR THE SAME OFFENSE ABSENT A CLEAR EXPRESSION OF LEGISLATIVE INTENT TO THE CONTRARY."

HENCE, SINCE THIS DEFENDANT'S CONVICTIONS FOR INDECENT EXPOSURE AND LEWDNESS DID ARISE OUT OF THE SAME ACT (AS DEFINED IN ALBINE & EIGHTH JUDICIAL DISTRICT COURT V STATE,) THIS DEFENDANT'S CONVICTIONS ARE SIMILARLY REDUNDANT AND CLEARLY UNLAWFUL.

### III INEFFECTIVE ASSISTANCE OF COUNSEL ISSUES

1) THIS COURT HAS JURISDICTION IN THE CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL.

CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL ARE PROPERLY PRESENTED IN A TIMELY FIRST POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS BECAUSE SUCH A CLAIM IS GENERALLY NOT APPROPRIATE FOR REVIEW ON DIRECT APPEAL. THE FAILURE TO RAISE IT ON DIRECT APPEAL DOES NOT CONSTITUTE A WAIVER OF THE CLAIM FOR PURPOSES OF POST-CONVICTION PROCEEDINGS. *EVANS V STATE*, (Nev) 28 P3d 498, 501-508 (2001) CITING *DANIELS V STATE* 100 Nev 579, 580; 688 P2d 315-316 (1984) MODIFIED ON OTHER GROUNDS BY *VARWIG V STATE* 104 Nev -; '752 P2d 760 (1988)

IN ADDITION, THE NEVADA SUPREME COURT REJECTED MERITS OF PETITION FOR POST-CONVICTION RELIEF WHICH INCLUDED ISSUES THAT COULD HAVE BEEN PREVIOUSLY RAISED WHERE FAILURE TO RAISE THE ISSUES WAS RELATED TO DEFENDANT'S CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL. SEE *BENNET V STATE*, 111 Nev 1099; 901 P2d 676 (1995) DISTINGUISHED *MORGAN Mc DANIEL* 80 F3d 1261 @ 1270 (1996)



## 2) TRIAL COUNSEL AND APPELLATE COUNSEL GAVE INEFFECTIVE ASSISTANCE OF COUNSEL.

### A) STANDARD OF REVIEW

IN ORDER TO ASSESS A CLAIM FOR INEFFECTIVE ASSISTANCE OF COUNSEL A DEFENDANT MUST PROVE THAT HE WAS DENIED 'REASONABLY EFFECTIVE ASSISTANCE' OF COUNSEL BY SATISFYING THE TWO-PRONG TEST OF STRICKLAND V WASHINGTON 466 US 668, 686-87; 104 SCT 2052, 2063-64 (1984) SEE ALSO STATE V LOVE 109 NEV 1136, 1138; 865 P2D 322, 323 (1993). UNDER THIS TEST, THE DEFENDANT MUST SHOW FIRST, THAT HIS 'COUNSEL'S REPRESENTATION FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS, AND SECOND, THAT BUT FOR COUNSEL'S ERRORS, THERE IS A REASONABLE PROBABILITY THAT THE RESULT OF THE PROCEEDINGS WOULD HAVE BEEN DIFFERENT. STRICKLAND 466 US 687-88, 694; 104 SCT 2065, 2068; WARDEN OF NSP V LYONS 100 NEV 430, 432; 683 P2D 504, 505 (1984) [ADAPTING STRICKLAND TWO-PART TEST IN NEVADA] 'EFFECTIVE COUNSEL DOES NOT MEAN ERRONEOUS COUNSEL, BUT RATHER COUNSEL WHOSE ASSISTANCE IS '[w]ithin the RANGE OF COMPETENCE DEMANDED OF ATTORNEYS IN CRIMINAL CASES. JACKSON V WARDEN, NSP 91 NEV 430, 432; 537 P2D 473,

474. (1975), QUOTING *McMANN V RICHARDSON*,  
397 US 759, 771; 90 SC 1441, 1449 (1975).

IN CONSIDERING WHETHER TRIAL COUNSEL AND  
APPELLATE COUNSEL HAS MET THE STANDARD,  
THE COURT SHOULD FIRST DETERMINE WHETHER  
COUNSEL MADE A 'SUFFICIENT INQUIRY INTO  
THE INFORMATION THAT IS PERTINENT TO HIS  
CLIENT'S CASE.' *DOLEMAN V STATE* 112 NEV. 843,  
846; 924 P2d 278, 280 (1986) CITING *STRICKLAND*  
466 US AT 690, 691; 104 SC AT 2061. 'ONCE  
SUCH A REASONABLE INQUIRY HAS BEEN MADE  
BY COUNSEL, THE COURT SHOULD CONSIDER WHETHER  
COUNSEL MADE A 'REASONABLE STRATEGY' DECISION  
ON HOW TO PROCEED WITH HIS CLIENT'S CASE.'  
*DOLEMAN* 112 NEV 846; 921 P2d AT 280 CITING  
*STRICKLAND* 466 US AT 690-691; 104 SC AT 2066.  
FINALLY, COUNSEL'S STRATEGY DECISION IS A  
'TACTICAL' DECISION AND WILL BE 'VIRTUALLY  
UNCHALLENGEABLE ABSENT EXTRAORDINARY  
CIRCUMSTANCES' *DOLEMAN* 112 NEV AT 846; 921 P2d  
AT 280; *HOWARD V STATE* 106 NEV 713, 722;  
800 P2d 175, 180 (1990); *STRICKLAND* 466 US  
691; 104 SC 2066.

BASED ON THE ABOVE LAW, THE COURT BEGINS  
WITH THE PRESUMPTION OF EFFECTIVENESS AND  
THEN MUST DETERMINE WHETHER OR NOT THE

DEFENDANT HAS DEMONSTRATED BY 'STRONG AND  
 CONVINCING PROOF' THAT COUNSEL WAS INEFFECTIVE.  
 THOMICK V STATE 112 NEV 304, 310; 913 P2d 1280,  
 1285 (1996), CITING LENZ V STATE 97 NEV 65, 66;  
 624 P2d 15, 16 (1996), DAVIS V STATE 107 NEV 600,  
 602; 817 P2d 1169, 1170 (1991). THE ROLE OF A  
 COURT IN CONSIDERING ALLEGATIONS OF INEFFECTIVE  
 ASSISTANCE OF COUNSEL IS 'NOT TO PASS THE MERITS  
 OF THE ACTION NOT TAKEN BUT TO DETERMINE  
 WHETHER UNDER THE PARTICULAR FACTS AND  
 CIRCUMSTANCES OF THE CASE, TRIAL AND APPELLATE  
 COUNSEL FAILED TO RENDER REASONABLY  
 EFFECTIVE ASSISTANCE. DONOVAN V STATE, 94 NEV  
 671, 675; 584 P2d 708, 711 (1978), CITING COOPER  
 V FITZPATRICK 551 F2d 1162, 1166 9th (1997). THIS  
 ANALYSIS DOES NOT MEAN THAT THE COURT SHOULD  
 SECOND GUESS REASONED CHOICES BETWEEN TRIAL  
 TACTICS NOR DOES IT MEAN THAT DEFENSE  
 COUNSEL - TO PROTECT HIMSELF AGAINST ALLEGATIONS  
 OF INADEQUACY - MUST MAKE EVERY CONCEIVABLE  
 MOTION NO MATTER HOW REMOTE THE POSSIBILITIES  
 ARE OF SUCCESS. DONOVAN 94 NEV 675, 584 P2d  
 AT 911, IN ESSENCE, THE COURT MUST JUDGE  
 THE REASONABleness OF COUNSEL'S CHALLENGED  
 CONDUCT ON THE FACTS OF THE PARTICULAR CASE,  
 VIEWED AT THE TIME OF COUNSEL'S CONDUCT'

STRICKLAND 466 US 690; 104 Sct 2066. THERE ARE COUNTLESS WAYS TO PROVIDE EFFECTIVE ASSISTANCE IN ANY GIVEN CASE. EVEN THE BEST CRIMINAL DEFENSE ATTORNEYS WOULD NOT DEFEND A PARTICULAR CLIENT IN THE SAME WAY.

STRICKLAND 466 US AT 689; 104 Sct 2066. STRATEGIC CHOICES MADE BY COUNSEL AFTER THOROUGHLY INVESTIGATING THE PLAUSIBLE UPDONS ARE ALMOST UNCHALLENGABLE. DAWSON V STATE 108 NEV 112, 117; 825 P2d 593, 596 (1992), CITING STRICKLAND 466 US AT 690; 104 Sct 2066; SEE ALSO FORD V STATE 105 NEV 850, 853; 784 P2d 951, 953 (1989). EVEN IF A DEFENDANT CAN DEMONSTRATE THAT HIS COUNSEL'S REPRESENTATION FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS, HE MUST STILL DEMONSTRATE PREJUDICE AND 'SHOW A REASONABLE PROBABILITY THAT, BUT FOR COUNSEL'S ERRORS, THE RESULT OF THE TRIAL AND APPEAL WOULD HAVE BEEN DIFFERENT. MC NELSON V STATE, 115 NEV 396, 403; 990 P2d 1263, 1268 (1999), CITING STRICKLAND 466 US AT 687, Id, CITING STRICKLAND 466 US AT 687-689, 694.

IN VIEW OF THE FOREGOING, THIS DEFENDANT CLAIMS THE FOLLOWING:

a) COUNSEL FAILED TO OBJECT TO INVESTIGATIONS AND PROSECUTIONS' MISCONDUCT IN VIOLATING THIS DEFENDANT'S RIGHT UNDER THE U.S. CONSTITUTION AND STATE OF NEVADA CONSTITUTION TO AN EXPECTATION OF PRIVACY. 265 F3d 383  
 'COUNSEL'S FAILURE TO OBJECT TO SUCH ISSUES THROUGHOUT THE COURT'S PROCEEDINGS CONSTITUTES DEFECTIVE ASSISTANCE BECAUSE REASONABLE COUNSEL WOULD HAVE OBJECTED TO SUCH FLAGRANT VIOLATIONS OF DEFENDANT'S CONSTITUTIONAL RIGHTS TO AN EXPECTATION OF PRIVACY.'  
 BURNS V GRAMMON 260 F3d 892, 897 8th CIR (2001)

b) COUNSEL FAILED TO COMMUNICATE EFFECTUALLY WITH DEFENDANT AS EVIDENCED BY THIS DEFENDANT'S FRUSTRATION AND GRIEF CLEARLY SURFACED IN THE ACCOMPANYING LETTERS TO COURT-APPOINTED COUNSEL. HENCE, THIS DEMONSTRATES THAT COUNSEL DID NOT MAKE A SUFFICIENT INQUIRY INTO THE INFORMATION THAT IS PERTINENT TO HIS CLIENT'S CASE. DOLAN VS STATE

c) COUNSEL ERRONEOUSLY RELIED EXCLUSIVELY ON PROSECUTION'S FILE, FAILING TO PURSUE DISCOVERY COMPLETELY, INCLUDING, BUT NOT LIMITED TO INVESTIGATING AND PRESENTING TO THE COURT

EVIDENCE IN SUPPORT OF THIS DEFENDANT'S INNOCENT CONDUCT SO THAT IT WAS AVAILABLE FOR JURY'S CONSIDERATION. THAT AN ATTORNEY'S PERFORMANCE WAS DEFICIENT WHERE HE RELIED SOLELY ON THE PROSECUTOR'S FILE, AND COUNSEL REFUSED TO PREPARE A DEFENSE BASED ON INFORMATION, QUESTIONS FOR WITNESSES AND SO ON PROFFERED BY THE DEFENDANT IN SUPPORT OF HIS INNOCENCE. 923 P2d 1111 261 F3d 210, 216 see statement/medical records

d) DEFENDANT WAS UNFAIRLY PREJUDICED BY THE CONFLICT OF INTEREST WITH MULTIPLE ATTORNEY REPRESENTATION FROM THE COURT-APPOINTED OFFICE OF TARIK ALIAN.

THE RECORD WILL SHOW COUNSEL OF RECORD TO INCLUDE TARIK ALIAN, TENNY HUBERT AND JOHN KADUC. ON MORE THAN ONE OCCASION, JOHN KADUC COMPLAINED OF NOT RECEIVING ALL THE DISCOVERY PROVIDED BY THE DISTRICT ATTORNEY'S OFFICE THROUGH THE COURT-APPOINTED OFFICE OF TARIK ALIAN. THIS DYSFUNCTION IS UNFAIRLY PREJUDICIAL TO THIS DEFENDANT. SEE AMERICAN BAR ASSOCIATION - PROTECT ON STANDARDS FOR CRIMINAL JUSTICE, DISCOVERY AND PROCEDURE

BEFORE TRIAL § 2.1(2): TO THE EXTENT THIS PLACES A BURDEN ON THE LARGE PROSECUTION OFFICES, PROCEDURES & REGULATIONS CAN BE ESTABLISHED TO CARRY THAT BURDEN AND TO ENSURE COMMUNICATION OF ALL RELEVANT INFORMATION ON STATE AND EVERY CASE TO EVERY LAWYER CONNECTED WITH IT.

e) DEFENDANT WAS UNFAIRLY PREJUDICED WITH THE CONFLICT OF INTEREST WITH JUDGE KADUC'S PRIOR JUDGESHIP IN MATTERS OF A CRIMINAL NATURE RELEVANT TO RPD'S PRIOR INVESTIGATIONS FOR THE DEFENDANT'S PAST ACTIVITIES.

THIS CONFLICT OF INTEREST WAS MADE AWARE OF BY THIS DEFENDANT ON THE LAST DAY OF TRIAL AND OBJECTED TO VIA A MOTION TO THE COURT AND ALL INTERESTED PARTIES WITHIN 5 DAYS OF THE JURY'S VERDICT - ALL TO NO AVAIL. (SEE MOTION) THE PETITIONER CLAIMING INEFFECTIVE ASSISTANCE OF COUNSEL DUE TO AN ACTUAL CONFLICT OF INTEREST NEED NOT SHOW THAT RESULT OF TRIAL WOULD HAVE BEEN DIFFERENT WITHOUT CONFLICT OF INTEREST.

PETITIONER NEEDS TO SHOW ONLY THAT CONFLICT  
HAD ADVERSE EFFECT ON COUNSEL'S PERFORMANCE

919 F2d 1543

CENTRAL TO THIS, PETITIONER'S CLAIM IS THAT  
COUNSEL FAILED TO PROFFER A DEFENSE BASED  
ON THE 'STATEMENT' SENT TO COUNSEL. AND IN  
NINTH CIRCUIT COURT THIS HELD THAT COUNSEL  
FAILURE TO RESPOND TO AGGRAVATING EVIDENCE  
AND PRESENT READILY AVAILABLE MITIGATING  
EVIDENCE WAS INEFFECTIVE ASSISTANCE OF COUNSEL.  
VISCONTI V WOODFORD, 288 F3d 1097, 1110-17 (2ND)  
FURTHER, IT IS UNNECESSARY THAT THE CONFLICT  
ATTORNEY BETRAY CONFIDENCE; IT IS MERELY  
ENOUGH IF IT PLACES COUNSEL IN A  
POSITION WHICH LEAVES HIM OPEN TO SUCH CHARGE.

542 P2d 1003

THE SUPREME COURT HAS HELD THAT A  
DEFENDANT NEED NOT SHOW PREJUDICE ONCE  
AN ACTUAL CONFLICT OF INTEREST HAS BEEN  
SHOWN. TO HOLD OTHERWISE WOULD ENGAGE  
A REVIEWING COURT IN UNRELIABLE AND  
MISGUIDED SPECULATION AS TO THE AMOUNT  
OF PREJUDICE BY A PARTICULAR DEFENDANT.

98 SCt AT 1173

846 P2d 277 (NEVADA)

HENCE, THE FOREGOING ISSUES, ERRORS AND CONCERNS  
HARDLY QUANTIFY AS IDYLIC TACTICAL STRATEGY  
BY COUNSEL WITH THE OBJECTIVE OF JUSTICE.



## IV PREJUDICE OF CUMULATIVE ERROR ISSUES

1) THERE IS DEFINITELY A SHOWING OF CUMULATIVE ERROR.

THIS DEFENDANT ARGUES THAT THE SERIES OF ALLEGED VIOLATIONS OF HIS STATE AND FEDERAL CONSTITUTIONAL RIGHTS, AS A RESULT OF PROSECUTORIAL MISCONDUCT AND INEFFECTIVE COUNSEL, AMOUNTS TO REVERSIBLE ERROR. THIS COURT HAS HELD THAT UNDER THE DOCTRINE OF CUMULATIVE ERROR, ALTHOUGH INDIVIDUAL ERRORS MAY BE HARMLESS, THE CUMULATIVE EFFECT OF MULTIPLE ERRORS MAY DEPRIVE A DEFENDANT OF THE CONSTITUTIONAL RIGHT TO A FAIR TRIAL. PERIGEN V STATE, 110 NEV 554, 566; 875 P2D 361, 368 (1999), SEE ALSO BIG BOND V STATE 101 NEV 1, 3; 692 P2D 1288, 1289 (1985) THE RELEVANT FACTORS TO CONSIDER IN DETERMINING WHETHER ERROR IS HARMLESS OR PREJUDICIAL INCLUDE WHETHER THE ISSUE OF INNOCENCE OR GUILT IS CLOSE, THE QUANTITY AND QUALITY OF THE ERROR, AND THE GRAVITY OF THE CRIME CHARGED. BIG BOND 101 NEV AT 3; 692 P2D 1289.

THE DOCTRINE OF CUMULATIVE ERROR REQUIRES THAT NUMEROUS ERRORS BE COMMITTED, NOT

MERELY ALLEGED. PEOPLE V RIVENS 727 P2d 394, 401 (Colo. App. 1986); SEE ALSO PEOPLE V JONES 665 P2d 127, 131 (Colo. App. 1982).

EVIDENCE AGAINST THE DEFENDANT MUST THEREFORE BE SUBSTANTIATED ENOUGH TO CONVICT HIM IN AN OTHERWISE FAIR TRIAL AND IT MUST BE SHOWN WITHOUT RESERVATION THAT THE VERDICT WOULD HAVE BEEN THE SAME IN THE ABSENCE OF ERROR. WITHEROW V STATE, 104 NV 721, 724; 765 P2d 1103, 1156 (1988). FURTHER, IT IS THIS DEFENDANT'S CLAIM THAT HAD THE JURY BEEN MADE AWARE OF THE ERRORS, THE VERDICT WOULD HAVE BEEN DIFFERENT.

### CONCLUSION.

MOREOVER, THE CUMULATIVE EFFECT OF THE FOREGOING GROUNDS HAVE PERCEIVED AS REAL PREJUDICE UPON THE PETITIONER'S RIGHTS TO DUE PROCESS, MEANINGFUL CONFRONTATION, AN EXPECTATION OF PRIVACY, EFFECTIVE ASSISTANCE OF COUNSEL AND EQUAL PROTECTION UNDER THE LAWS OF THE STATE OF NEVADA AND THE UNITED STATES CONSTITUTIONS, THESE PROCEDURAL AND CONSTITUTIONAL VIOLATIONS ARE IRREVERSIBLE AND CANNOT BE RULED AS HARMLESS ERROR. THIS PETITIONER FURTHER ASSERTS THAT

THE FOREGOING PETITION FOR RELIEF CLEARLY DOES NOT RAISE ALL AVAILABLE ISSUES THAT MAY MERIT RELIEF ON GROUNDS THAT HE HAS NOT BEEN ACCORDED TRANSCRIPTS OF PRIOR PROCEEDINGS ENTITLED TO HIM. U.S. v HORVATH 157 F3d 131 (1998). IN ADDITION, THE PETITIONER ASSERTS THAT THE FOREGOING ARE NOT FRIVOLOUS ISSUES AND IN REASONABLY GOOD FAITH BELIEVES THAT COURT TRANSCRIPTS OF ALL HEARINGS, INCLUDING TRIAL, ALONG WITH A COMPLETE DISCOVERY FROM THE STATE IS NECESSARY TO DETERMINE WHETHER OTHER ISSUES ARE PRESENT FOR HABEAS RELIEF. HENCE, PETITIONER RESPECTFULLY REQUESTS THAT HIS RIGHTS BE RESERVED TO RAISE ANY OTHER ISSUES THAT MAY COME TO LIGHT WHEN HE IS PROVIDED WITH SAID REQUESTED COURT DOCUMENTS. ACCORDINGLY, CIRCUIT COURTS HAVE HELD BOTH IN CAPITAL AND NON-CAPITAL CASE THE COURT MUST APPOINT COUNSEL FOR AN EVIDENTIARY HEARING WHICH IS REQUIRED, OR WHEN NECESSARY FOR THE MOVANT'S EFFECTIVE UTILIZATION OF DISCOVERY. U.S. v DUARTE HIGAREDA. 68 F3d 369, 370 9th (1995). FURTHER,

THAT THE SIXTH AMENDMENT RIGHT TO COUNSEL IN CRIMINAL PROCEEDINGS APPLIES TO STATES THROUGH THE FOURTEENTH AMENDMENT, GIDEON V WAINWRIGHT 372 US 335, 342 (1963).

WHEREFORE, FOR EACH OF THE ABOVE ISSUES INDIVIDUALLY AND COLLECTIVELY, THIS DEFENDANT'S RIGHTS TO DUE PROCESS AND EQUAL PROTECTION WITH RESPECT TO A FAIR TRIAL, EFFECTIVE ASSISTANCE OF COUNSEL, TO BE FREE FROM DOUBLE JEOPARDY, AND HIS RIGHT TO AN EXPECTATION OF PRIVACY WERE DENIED.

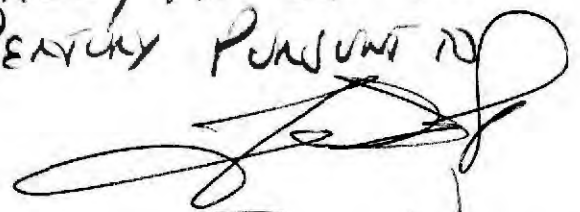
DATED THIS 30<sup>th</sup> DAY OF SEPTEMBER, 2004.

RESPECTFULLY SUBMITTED



FERN V. VOLPICELLI  
PETITIONER / DEFENDANT  
IN PROPER PERSON

CERTIFICATE OF  
SERVICE  
THE PETITION, MEMORANDUM & DECLARATION,  
DATED AND COPY MAILED ON THIS 30<sup>th</sup> DAY  
OF SEPTEMBER, 2004, TO THE WASHOE COUNTY  
DISTRICT ATTORNEY'S OFFICE, AS CERTIFIED  
UNDER PENALTY OF PERJURY PURSUANT TO  
NRS 208.165.



FERN V. VOLPICELLI

79565 HOSP BOX 650  
 INDIAN SPRINGS, NV 89018  
 PETITIONER IN PAY PER

IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRIL T. VOLPICELLI,  
 PETITIONER

CASE: CR-03-1263

✓

DEPT: 10

STATE OF NEVADA,  
 RESPONDENT

DECLARATION IN SUPPORT  
 OF PETITION FOR  
 POST-CONVICTION RELIEF

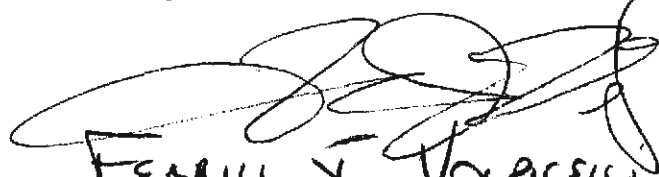
I, FERRIL T. VOLPICELLI, PURSUANT TO NRS 208.165  
 HEREBY DECLARE THAT:

1. I AM THE PETITIONER/DEFENDANT IN THIS MATTER.
2. I AM CURRENTLY IN CUSTODY AT HOSP, INDIAN SPRINGS NEVADA, WHICH IS IN A LOCK DOWN STATUS THEREBY PRECLUDING MY ACCESS TO ADEQUATE LEGAL RESOURCES, TYPING AND DUPLICATION OF DOCS.
3. I AM INDIGENT AND UNABLE TO DUPLICATE THE HUNDREDS OF COPIES WITH REGARDS TO THE EXHIBITS IN SUPPORT OF PETITION.
4. THE MATURITY OF SAID EXHIBITS ARE ALREADY PART OF THE COURT'S RECORD AND ANY DEFICIENCY WITH REGARDS TO THESE EXHIBITS WILL BE

PROVIDED TO THE COURT IN ADVANCE OF THE EVIDENTIARY HEARING IN THIS MATTER.

5. THE REFERENCED EXHIBITS ARE ACCURATELY HIGHLIGHTED AS TO DATES, INDIVIDUALS INVOLVED AS WELL AS THE CONTENTS THEREOF.
6. FROM THE ONSET OF 02-0147, THE ALIAN ESQ GROUP HAS REPRESENTED ME IN THIS MATTER UNTIL ABOUT SPRING OF 2003. (SPECIFICALLY ALIAN & HUBERT)
7. FROM SPRING OF 2003, AND THROUGH THE COURT-APPOINTED ALIAN GROUP, KADUC WAS COUNSEL OF RECORD THROUGH ABOUT SPRING OF 2004, INCLUSIVE OF TRIAL AND THE DIRECT APPEAL.
8. THE LETTERS, KITES AND MOTIONS CITED IN THE EXHIBITS IN SUPPORT OF THE PETITION ACCURATELY PURPORT MY FRUSTRATION, DISSATISFACTION AND GRIEF RELEVANT TO THE ISSUES OF INEFFECTIVE ASSISTANCE OF COUNSEL.
9. I DID PROVIDE TIMELY INQUIRIES AND REQUEST FOR ASSISTANCE RELEVANT TO BUILDING A DEFENSE FOR MY CASE WHICH KADUC, ALIAN & HUBERT DID NOT ACKNOWLEDGE, IMPLEMENT OR BRING TO THE JURY'S ATTENTION, INCLUDING, BUT NOT LIMITED TO THE STATEMENT AND MEDICAL RECORDS CONCERNING THE ACTIVITY IN MY VEHICLE.

DATED THIS 30<sup>th</sup> DAY OF SEPTEMBER, 2004.

  
 FERRIS V. VOLPESCU  
 PETITIONER PRO PER



## EXHIBITS IN SUPPORT OF PETITION

12-5-01	WCSO LAB RESULTS NEGATIVE FOR SEMEN IN EXPLORER
9-6-02	DEFENDANT'S LETTER TO COUNSEL REQUESTING MISSING DISCOVERY
9-30-02	DEFENDANT'S REQUEST TO WCSO FOR MEDICAL RECORDS
9-30-02	DEFENDANT COMPELLED TO REQUEST STANDER'S RECORDS
10-02	DEFENDANT SENDS COUNSEL 'STATEMENT' FOR DEFENSE
10-8-02	DEFENDANT'S LETTER TO COUNSEL TO PREPARE DEFENSE
10-18-02	DEFENDANT'S LETTER TO COUNSEL FOR DEFICIENT DISCOVERY
11-4-02	COUNSEL'S LETTER TO DEFENDANT PURSUING INVESTIGATION
11-24-02	DEFENDANT RECEIVES STANDER'S MEDICAL RECORDS
12-23-02	DEFENDANT'S LETTER TO COUNSEL REQUESTING ASSISTANCE
1-24-03	DEFENDANT'S LETTER TO INVESTIGATOR FOR ASSISTANCE
3-12-03	DEFENDANT'S LETTER OF INTRODUCTION TO NEW COUNSEL
3-23-03	DEFENDANT'S LETTER TO COUNSEL REQUESTING CONTACT
4-9-03	DEFENDANT'S LETTER TO COUNSEL INSISTING CONTACT
6-15-03	DEFENDANT'S LETTER TO COUNSEL OF DISSATISFACTION
6-22-03	DEFENDANT'S OUTLINE FOR DEFENSE SENT TO COUNSEL
6-28-03	DEFENDANT'S FOLLOWUP LETTER FOR DISCUSSION TO COUNSEL
7-1-03	DEFENDANT'S LETTER OF REQUEST TO INVESTIGATOR
7-16-03	DEFENDANT'S KITES, LETTERS & MOTION REGARDING CONFLICT
7-25-03	DEFENDANT'S AMENDED MOTION REGARDING CONFLICT COUNSEL
8-8-03	DEFENDANT'S LETTER OF COMPLAINT TO COUNSEL
8-19-03	DEFENDANT'S LETTER TO JUDGE OVER CONFLICT COUNSEL
12-17-03	DEFENDANT'S LETTER TO COUNSEL REQUESTING DISMISSAL
2-13-04	COUNSEL'S LETTER TO JUDGE REQUESTING HIS DISMISSAL
2-18-04	DEFENDANT'S LETTER OF TRANSCRIPT REQUEST TO COUNSEL
3-29-04	COUNSEL'S LETTER OF WITHDRAWAL FROM REPRESENTATION
5-13-04	DEFENDANT'S LETTER TO COUNSEL REGARDING APPEAL ISSUES
10-24-03	DEFENDANT'S PETITION FOR DISMISSAL OF COUNSEL

**WASHOE COUNTY SHERIFF'S OFFICE  
DENNIS BALAAM, SHERIFF  
FORENSIC SCIENCE DIVISION  
911 PARR BLVD.  
RENO, NV 89512-1000**

12/05/01

LABORATORY NUMBER: L7970-01-2  
 AGENCY: RENO P.D.  
 AGENCY CASE #: RP0100213180  
 SUSPECT: VOLPICELLI, FERRILL  
 VICTIM: STATE OF NEVADA  
 PERSON REQUESTING: DET. BROWN  
 DATE OF SUBMISSION: 10/29/01  
 OFFENSE: SEX OFFENSE / NON - ASSAULT

SCENE REPORT

LOCATION OF SCENE: 911 Parr Boulevard  
 F.I.S. Garage Bay #1  
 Reno, Nevada

DATE: 10/25/01  
 TIME NOTIFIED: 1230 HOURS  
 TIME ARRIVED: 1300 HOURS  
 TIME COMPLETED: 1455 HOURS

CASE SUMMARY

At approximately 1300 hours, Investigator T. Leal-Olsen and I arrived at the above listed location where we were met and briefed by Detective P.J. Brown of the Reno Police Department regarding the Search Warrant which needed to be performed on a blue "Ford Explorer," California License plate #4TCL040 (VIN #1FMCU24X8VUA65078).

The Alternate Light Source (ALS) was used to detect the possible presence of semen on the interior of the vehicle with the following results:

The roof above the rear passengers' area	Fluoresced
The roof area above the front passenger seat	Fluoresced
The visor on the passenger side	Fluoresced
The white short sleeved T-shirt from the rear passengers' area	Fluoresced
One of the floor mats that was located in the rear cargo area	Fluoresced
The tan short sleeved shirt from the rear passengers' area	Negative
The pillow that was located in the rear passengers' area	Negative
The driver's area	Negative
The rear cargo floor and roof	Negative
The rear passenger seat	Negative
The rear passenger floor area	Negative
The front passenger floor area	Negative
The front passenger seat	Negative

(Continued)



Criminalist S. Harmon assisted in the examination of the vehicle and performed presumptive tests for semen on the stains that were fluorescing.

The results of the presumptive tests are as follows:

Stain that was located on the roof above right rear passenger  
Stain that was located on the roof above front passenger area  
Stain that was located on the passenger visor  
Stain that was located on a white short sleeved T-shirt  
Stain that was located on the floor mat in rear cargo area

Negative  
Negative  
Negative  
Negative  
Negative

No evidence was collected by me at this time.

Shane D. Billau #2516  
Shane D. Billau  
Forensic Technician  
Forensic Investigation Section

km

Toni Leal-Olsen  
Toni Leal-Olsen  
Forensic Investigator  
Forensic Investigation Section

September 6, 2002

Ferrill Volpicelli  
#60076 @ NSP  
Box 607  
Carson City, NV 89702

Jack Alian Esq.  
360 W. Liberty  
Reno, NV 89509

RE: CONTINUANCE

Dear Jack,

Thank you for appearing on my behalf today.

In advance of our next court appearance on 9/10/02, and in the event that I do not connect with you telephonically on the Tuesday beforehand, I would like to reiterate that I am in need of the copies pertaining to the most recent acquisition of discovery. Only then will I be able to ascertain whether the prosecution is withholding evidence. I'm sure that you realize how critical this is in terms of obtaining a fair trial.

As far as the video and audio tapes are concerned, we can review them at a later time. I would like for you to have copies of the written discovery for me when we meet again for the scheduled court appearance on 9/10/02. I realize that you have a busy schedule, but you promised this information to me a month ago.

For reasons clearly outlined in previous communication to you, please seek an amenable date for all interested parties in mid December of 2002.

In the event that a continuance is not granted with the third case, I must insist that you file a written motion well in advance of any scheduled trial date.

Thank you for your continued cooperation with these matters.

Sincerely,

Ferrill Volpicelli

September 30, 2002

Ferrill Volpicelli  
#60076 @ NSP  
Box 607  
Carson City, Nevada 89702

Washoe County Sheriff's Office  
Attention: Medical Director  
911 E. Parr Blvd.  
Reno, Nevada 89512

RE: MEDICAL RECORDS

Dear Director,

Regrettably, I have returned to the custody of N.D.O.C. prior to receiving a response to my inquiry dated 9/13/02 (see enclosure). On the enclosed inmate request form, I specified that I am in need of documentation relevant to any and all treatment for skin disorders of the groin and rectal areas of my person during my custody at W.C.S.O. circa 9/98-11/98, as well as 10/01-2/02.

If my memory serves me, I submitted a medical kite for relief of a skin condition in the groin and/or rectal area during the later part of 2001, or early part of 2002. By the time I was finally seen by the nurse, the rash had subsided and no further treatment was requested.

Please review my medical files during the above referenced periods, and in your reply letter, document that I received treatment in 1998 and that I did indeed request to be seen for a skin condition in the groin or rectal area while in custody at W.C.S.O.

Thank you for your prompt accommodation of this request.

Kindest regards,

Ferrill Volpicelli

cc: Jack Alian, Esq.  
file

enclosure

September 30, 2002

Ferrill Volpicelli  
Box 607  
Carson City, Nevada 89702

Stanley M.D.  
Dermatologist  
640 W. Moana  
Reno, Nevada 89509

RE: REQUEST FOR DOCUMENTATION OF SKIN CONDITIONS

Dear Doctor,

This letter is requesting your prompt assistance in documenting certain skin conditions that you have seen me for in the past. As your records will indicate, I have been a patient of yours dating back to the 1980s.

At this point, I am in need of clarification regarding the specific skin conditions that have plagued my groin and rectal areas.

Specifically, could you document in a reply letter, that symptoms in the aforementioned areas of my person included discomfort due to venereal warts, and skin rashes. And that for these skin disorders, either in the groin or rectal areas, you prescribed cleaning, drying and medicating the areas with a topical cream or ointment upwards of three times daily.

Thank you for your cooperation with this request.

Kindest regards,

Ferrill Volpicelli

cc: file  
Jack Alian, Esq.

September 30, 2002

Ferrill Volpicelli  
#60076 @ NSP  
Box 607  
Carson City, NV 89702

Jack Alian, Esq.  
360 W. Liberty  
Reno, NV 89509  
775-7864211

Dear Jack,

After nearly three weeks of frustration I finally returned to NSP. While in custody at WCSO, and as I expected, I was dumped into the "segregation housing unit" which precluded my ability to readily communicate with anyone; including your office. I was lucky to eke out the few calls to your office which eventually facilitated my transfer of custody. Again, and as I mentioned in the past, please minimize my time at WCSO as it is a complete waste of time in terms of preparing for my defense.

Aside from this, it is my understanding that your office is in receipt of additional discovery pertaining to my cases. Discovery which I have patiently waited for during the past eleven months. Please forward the copies of such to my attention here at NSP as soon as possible.

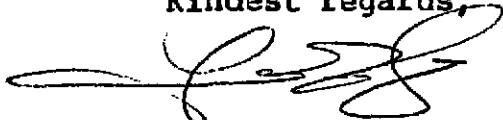
From what I gathered, it would appear that the continuance with case # 02-0147 was based on issues surrounding the discovery. If my memory serves, it was your intent to motion for a dismissal on this matter based on prosecutorial negligence with respect to the Mazda photos. As far as obtaining the photos after the fact, my brother's van was driven down to my father in Los Angeles and his girlfriend is using it. So far, her whereabouts remains a mystery making it unlikely that the photos can be obtained.

In the event that you are unsuccessful in achieving a dismissal of the entire case, then I must insist that you file a motion to split the three counts into two separate trials. Afterall, the ungrouping of the count I from counts II & III makes sense since the incidents were different cases, on different dates, within different vehicles, and and involve different investigators. All three counts together may lead to a conviction whereas separately the prosecution's positions are weak. Please review the cases along with the accompanying enclosures. Next, and if count I is indeed posed as a separate trial, I understand the following stipulations are in place for trial. Provided that I agree NOT to testify at trial, there will be a

redaction of the notice of intent to file the "habitual", no Petrocelli hearing, no reference to ROP's involvement with the 9/25/01 incident, and no reference to any prior sex registration or offenses. And lastly, due to complications with the photos on the Mazda van, counts I & II are either to be dismissed or deferred to another date. As you are aware, Count I involves an isolated incident in the Ford Explorer. While counts II & III allegedly occurred two days later in the Mazda van. Therefore, the statements in that case, including the lab tests on the tissue can't be brought to the jury's attention. Moreover, serious doubt comes into play in the minds of the jury; despite my lack of testimony. So without such evidence, and in conjunction with the facts outlined in the accompanying statement, the jury will be hard pressed to convict. With this in mind, I will attempt to contact your office by week's end.

Thank you...

Kindest regards,



Ferrill Volpicelli

cc: file  
enclosures

P.S. Please contact WCSO & Dr. STandlee for my records in time  
for trial

## STATEMENT

That on 9/25/01, the defendant drove his daughter's Ford Explorer to Crawford Insurance Adjuster's office to resolve an insurance claim. That unbeknownst to the defendant, he was under surveillance by ROP. That on all other occasions of surveillance referenced in the police reports, the defendant drove his brother's Mazda van. That at approximately 2:30pm in the afternoon on 9/25/01, the defendant left Crawford Adjuster's office feeling extreme discomfort due to his recurring skin condition. That the defendant's medical records will show he has waged a battle with skin rashes and infections typically exacerbated by perspiration in the hot summer months. That the defendant has sought medical attention for this matter with Dr. Standlee, a Reno dermatologist, as well as during his incarceration at the facility's infirmary. That in the past, the defendant was prescribed a treatment regime to include the use of topical medications in conjunction with other remedies. That to relieve his conditions, the defendant dries the areas with either powder, tissue or clothing and then applies ointment or cream upwards of 3X daily. That on that particular afternoon of 9/25/01, the defendant immediately pulled into the parking lot across the street from Crawford Adjusters at 500 Mae Anne to tend to his situation. That the defendant diligently sought to park AWAY from the store frontage and backed into a spot where vehicles were sparsely populated. That the defendant was pressed for time as he had to pick up his son twenty minutes later, (approx. 2:50pm) at Hunter Lake school, clear on the other side of town. That the defendant hurriedly hopped into the back seat of the TWO door Explorer, and rummaged frantically for an article to clean and dry his sweaty lower extremities. That the defendant gathered make shift partitions and suspended them in the front windshield and along the passenger side sport window facing the store front. That the defendant removed both his yellow Polo shirt and T-shirt. That the defendant immediately returned the yellow Polo shirt to his person with the intent to use the T-shirt for drying the infected areas of his groin and rectal areas. That prior to applying the ointment for relief, and just as the defendant was about to apply the medication, a woman was observed passing in front of the vehicle; seemingly en route to her vehicle a few spaces away. That as she passed, the defendant resumed with laying down on his left side on the backseat COMPLETELY OUT OF SIGHT FROM PUBLIC VIEW. That his pants were unbuttoned and lowered sufficiently to continue with the process. That within the ensuing minute, the woman surprisingly, and purposefully, had circled back around the front and along side the passenger side of the defendant's car. That even though she continued walking, and despite the partitions

n

for privacy, the high bucket seats, and the reclined position of the defendant, she still managed to make an effort to peer in for a second at the defendant. That the woman's statement of the defendant's position on the back seat, coupled with her relatively limited view, could leave considerable doubt as to the defendant's true actions. That the defendant was startled, embarrassed and felt violated for the woman's overt intention to surreptitiously seek out and observe the defendant while he discreetly tended with his medical condition. That the defendant immediately regrouped by sitting up, buttoning his pants, and removing the partitions. That within a minute of being violated, the defendant left the parking lot in frustration on a ten minute ride to pick up his son. That the defendant never felt that there was any wrong doing or that he violated any laws. That the defendant still wonders to this day what the true motives were of this determined undercover detective.

#### Exhibits

The T-shirt found in the Explorer which tested negative for any semen.

A letter to Dr. Standlee requesting documentation which will substantiate defendant's medical ailment. ie. medical records.

Washoe County Sheriff's Office lab results confirming negative presence of semen on the T-shirt and anywhere within the interior of the Ford Explorer.

Photos of the Explorer illustrating TWO doors, possessing tinted windows, and that interior having high bucket seats.

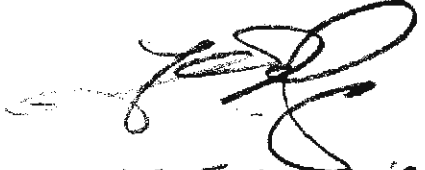
#### DISCUSSION

Probably the first issue to contend with concerns the Jury's thoughts as to why I was under scrutiny in the first place. Without the mention of ROP, along with the other surveillances being excluded because they deal with the Mazda van, the detective is going to appear as an overzealous investigator. Or, the Jury will likely believe something is awry and that all the details of the case are not being revealed. This matter has to be dealt with delicately. Next, I'd like to draw attention to detective Brown's conflicting statement in her police report. Specifically, this deals with her position walking along the passenger side of the Explorer relative to her limited view of the interior of the vehicle. It also states that she never stopped for any length of time to make absolutely sure of



her interpretation of the defendant's actions. After all, due to the tinted windows, the high bucket seats and my implementation of partitions, coupled with my discreet position on the back seat, the detective's split-second glimpse of my person could not place her in a position to accurately view me or determine my actions. Since I can't demonstrate this scenario at trial, another individual could readily illustrate the following. If I was laying down on my left side on the back seat, with my left leg extending outward from the seat, and my right leg was such that my knee was facing upwards, then with my pants lowered to just above my knees, ONLY my posterior, which was shrouded by my white undershorts, could be revealed relative to her angle of view. This, combined with the other factors hindering her glimpse of my person would likely cast doubt on the detective's interpretation of the incident. The exhibits of my medical records will substantiate my medical condition and that, just possibly, the motion the detective interpreted as masturbation could have been the mere process of tending to my medical situation in the privacy of my vehicle.

Altogether, an impartial Jury should see sufficient doubt and be hard pressed to convict in view of all the evidence. Lastly, and in the event that I'm acquitted on count I, counts II & III are weak without a conviction with count I. Especially when you consider detective Phay's statement purporting my virtual disappearance from all investigator's views on 9/27/01; despite the scrutiny of binoculars. Also, merely disposing of a tissue contaminated with semen, which incidentally can't readily be tagged as absolutely belonging to me since no DNA was available, is NOT lewd conduct or obscene. It is not a crime to properly and responsibly dispose of bodily fluids in public receptacles. And finally, both federal and state case law cite much controversy in interpreting the "obscenity" statutes—particularly what constitutes a "public place". And clearly, parking away from the store frontage on that dogged afternoon, utilizing discretion with partitions, and hiding out of sight on the back seat, coupled with the other factors contributing to obscurity from the public view, simply do not lend to "intent" on the part of the defendant to expose himself in public. And certainly, tending to a medical situation in the privacy of one's own sanctuary, be it a motor home, camper or van parked in a lot, should not be construed as a crime...



THE FOREGOING WAS PROVIDED TO COUNSEL IN  
SEPTEMBER OF 2002, COUNSEL PURPOSEFULLY  
DID NOT INTRODUCE THIS EVIDENCE AT TRIAL.

October 8, 2002

Ferrill Volpicelli  
#60076 @ NSP  
Box 607  
Carson City, NV 89702

Jack Allan, Esq.  
Attention: Ms. Hubach  
360 W. Liberty  
Reno, NV 89509

**RE: OCTOBER 23, 2002 HEARING**

Dear Ms. Hubach and Mr. Allan,

By now, you have had the opportunity to review the documents that I sent to your office last week. Inasmuch as we will need ample time to receive the medical records from Dr. Standlee and the WCSO infirmary, please secure a 90 ninety day extension for any and all related trials.

Additionally, I would like to remind you that I have yet to receive copies of the newly acquired discovery that you received from the prosecution several weeks ago. Again, this documentation is critical to the preparation of my defense and you promised me copies several weeks ago. Furthermore, there will likely be additional information required and investigative work involved with preparing for my cases well in advance of my trials.

Please forward the copies of the discovery to me this week.

See you at the upcoming Hearing where I anticipate we will be placing a motion for a resolution with lingering discovery issues and securing an extension with any trials.

Thank you for your continued assistance with my defense.

Kindest regards,

Ferrill Volpicelli

Cc: file

October 18, 2002

Ferrill Volpicelli  
#60076 @ NSP  
Box 607  
Carson City, NV89702

Jack Allan, Esq.  
360 W. Liberty  
Reno, NV 89509

RE: DISCOVERY

Dear Jack,

Inasmuch as I have not yet received the newly acquired discovery that you promised to and me a month ago, please bring a copy of the discovery to the scheduled hearing on 23 October, 2002.

Thank you

Sincerely,

Ferrill Volpicelli

Cc: file

**Law Offices of Jenny D. Hubach**

360 WEST LIBERTY STREET  
RENO, NEVADA 89501  
(775) 324-6259 • FAX (775) 324-0722

November 4, 2002

Mr. Ferrill Volpicelli  
Inmate #60076  
N.S.P.  
P.O. Box 607  
Carson City, NV 89702

**RE:** State of Nevada v. Ferrill Volpicelli


Dear Ferrill:

Pursuant to your request, I enclose a copy of your discovery, which completes the most recent discovery received from the district attorney's office in this matter. As I have advised you on prior occasions, do not leave these documents unattended. Do not discuss these documents with anyone other than your attorney or your investigator, Kenneth Peele.

In addition, I have scheduled the trial in the matter of CR02-0147 has been scheduled for Thursday, March 6, 2002, at 8:30 a.m. and your Motion to Confirm has been scheduled for Wednesday, February 26, 2002, at 8:30 a.m..

Please feel free to contact me with any further questions. Otherwise, I will keep you apprised as things develop in trial preparation.

I look forward to working with you. The best time to contact my office is late morning or late afternoon. You may call my office collect at 775-324-6259. If I am not in, the call simply goes to voicemail.

Yours truly,  
  
Jenny D. Hubach  
Attorney at Law

December 23, 2002

Ferrill Volpicelli  
60076 @ NNCC  
Box 7000  
Carson City, Nv 89702

Jenny Hubach Esq.  
360 W. Liberty  
Reno, NV 89509

RE: CR-02-0147

Dear Ms Hubach,

By now, Mr. Alian has likely made you ware of the 11/5/02 ordeal which compelled my hospitalization for much of November and into early December. Consequently, and although I did receive your 5 November letter and accompanying documents, I was precluded from contacting you in a timely fashion.

At this point, it is my assumption that you are representing me in the above referenced case. And if so, I'd like your office to inform me of the following.

Are the same negotiated stipulations that you and deputy district attorney Sullivan formulated at the September Hearing still in place for the imminent March trial date? Regarding the fate of the Mazda Van photos, I would like for you to prepare and file a motion to have counts II & III dismissed. The reasons for such are clearly outlined in my 30 September, 2002 letter to Mr. Alian.

It is also imperative that count I be severed from counts II & III (via separate trials) in the event that counts II & III are not dismissed, Again, this request is based on arguments outlined in the 30 September, 2002 letter.

Finally, and after three months of deliberation and patience, WCSO's infirmary and STandlee MD have not proffered the much needed medical records which are critical to my defense.

Timing is paramount and perhaps investigator Keele can have better luck.

If not, then we may be faced with yet another delay with March's trial.

Lest I hear from you by 1 February 2003, regarding these matters, I will be compelled to address the situation with the Honorable Hardesty.

Thank you for your assistance with my cases.

Sincerely,

Ferrill Volpicelli

cc: file

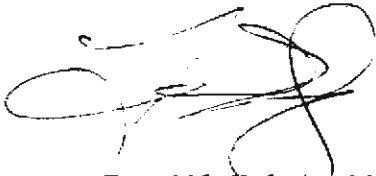
January 24, 2003

Ferrill Volpicelli  
60076 @ NNCC  
Box 7000  
Carson City, NV 89702

Mr. Kenneth Peele

In a letter dated 4 November, 2002, from Ms. Hubach, your name was provided as the investigator assigned to my case. To date, i have not received any information concerning the staus of my cases with regards to your involvement. Please forward me any information concerning your investigations with my cases. Thank you for your prompt accommodation of this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ferrill Volpicelli', with a large, stylized flourish at the end.

Ferrill Volpicelli

cc; file

# Skin Cancer & Dermatology Institute

Bret S. Blackhart, M.D.

Kevin L. Kiene, M.D.

Dan E. Rowe, M.D.

Anthony E. Albregts, M.D.

Kimberly A. Kolar, M.D.

890 Mill Street, Ste. 400  
Reno, NV 89502  
(775) 324-0699

75 Pringle Way, Ste 509  
Reno, NV 89502  
(775) 323-2135

1177 N. Division Street, Ste. 2  
Carson City, NV 89703  
(775) 882-8777

1520 Virginia Ranch Rd.  
Gardnerville, NV 89410  
(800) 784-0422

212 Elk Point Dr., Ste. 200  
Zephyr Cove, NV 89448  
(800) 784-0422

801 E. Williams St., Ste 2208  
Fallon, NV 89406  
(800) 784-0422

152 A. Pioneer Lane  
Bishop, CA 93514  
(800) 784-0422

185 Sierra Park Rd.  
Mammoth Lakes, CA 93546  
(800) 784-0422

## RELEASE OF RECORDS FROM SCDI

FROM:

Dr. Standlee  
SCDI Doctor's Name

RE:

Ferrill J. Volpicelli  
Patient's Name

Date of Birth

12-30-55

Patient's Signature

[Signature]

Date

10-10-02

Please release my medical records to the Skin Cancer and Dermatology Institute (SCDI) to the following address:

Doctor's Name

FERRILL VOLPICELLI

Address

BOX 607

Address

C

City State, Zip

CARSON CITY NV 89702

Thank you.

JACK ALAN ESQ

360 W. LIBERTY

RENO, NV 89509

775-7864211

THOMAS L. STANDLEE, M.D., LTD.  
75 PRINGLE WAY, SUITE 509  
RENO, NV 89502

VOLPICELLI, FERRILL  
1-24-96

CC: Pigmentation left cheek  
PI: Left cheek hyperpigmented macules, all less than 1 cm,  
uniform-in-color.  
DX: \* Lentigines  
\* Actinic keratoses  
RX: \* Options of therapy discussed  
\* Solaquin forte prescription given  
TLS:bj

11-12-97

CC: Wart left thumb and gluteal cleft rash.  
PI: Gluteal cleft rash is improved (has had it for a year) since  
stopping using Jockey shorts and wearing underwear and using topical  
hydrocortisone. Thumb wart for 4-5 days, tender, thought there might be  
a piece of glass in it. Has been using various topicals including  
salicylic acid.  
PE: Reveals a verrucoid macule with speckling crust of the left tip  
thumb, which, on scalpel-shaving, dimensions its diameter. It is at 4  
mm. Gluteal cleft erythema without ulceration or fissuring.  
DX: \* Intertrigo  
\* Wart  
RX: \* Cryo to wart after scalpel-shaving  
\* Mycolog ointment.  
TLS:bj

12-15-97

CC: Rash and warts  
PI: Rash is clear. Warts recurred.  
PE: 4.5 mm wart tip of left thumb.  
DX: \* Wart  
RX: \* Cryo today  
\* Transversal "6" to thumb wart qhs beginning 1-1-98.  
TLS:bj



March 12, 2003

Ferrill Volpicelli  
60076 @ NNCC  
Box 7000  
Carson City, Nv 89702

Law Offices of John Kadlic Esq.  
Reno, NV 89502

Dear Mr. Kadlic,

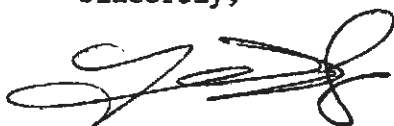
It is my understanding that you are now the court appointed counsel regarding my pending state matters. I am also aware that there is a status hearing slated for 9, April 2003 in Department 9 of District Court.

In anticipation of this hearing, could you inform me in writing if you are in possession of my file from Mr. Alian? This includes, but not limited to, ALL the discovery and copies of correspondence with Mr. Alian regarding issues with my case.

Please find the enclosed affidavit which I would like to have submitted in a request for an O.R. or bail reduction. I will contact you in regards to this in the coming week.

Thank you for your cooperation with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ferrill Volpicelli', with a stylized, looping flourish at the end.

Ferrill Volpicelli

cc: file

March 23, 2003

Ferrill Volpicelli  
60076 @ NNCC  
Box 7000  
Carson City, NV 89702

Mr. John Kadlic Esq.  
147 E. Liberty  
Reno, NV 89501

RE: 02-0147 UPDATE

Dear Mr Kadlic,

Thank you for appearing on my behalf in District Court on 3/21/03. At this point, I wish to address certain issues prior to your anticipated visit with me. For your review, I have enclosed copies of previous correspondence with Mr. Alian. Hopefully, this will clarify and augment our position on the matter.

Inasmuch as the controversial photographs of the Mazda van materialized, please disregard the references to such. Firstly, and despite my diligent efforts to retrieve the medical records from WCSO, I have not received a reply to my letters of inquiry. Aside from this, Dr. Standlee's file clearly substantiates the medical condition referenced in my statement.

Next, a change in events here at NNCC poses an exigency with respect to my state bail situation. As I mentioned in my previous letter, it is my objective to post bail on ALL FOUR CASES. Since my caseworker recently informed me that my amended expiration date for this state sentence has moved up dramatically, and largely due to my intense programming, I now anticipate an expiration date somewhere in mid to late April of 2003. At that time, my custody will shift to WCSO for the state charges and the pending federal supervised release violations. It is my objective to have the US Marshalls transport me at my release from the NDOC so that my federal situation can be resolved. However, in view of the pending state charges, the feds may opt to await the adjudication of the state matters. If my state bail was dealt with prior to my release from the NDOC, this would compell the feds to promptly execute the warrant and my time of federal custody would commence.

If I am fortuitous, and my federal PD argues for a retroactive concurrent federal supervised release sanction with my state parole revocation sentence, then I could feasibly and effectively deal with the state charges from the street.


From what I gather in conversing with my federal PD, the like conduct and same violations overlapping with state and fed condition could necessitate concurrent sanctions.

Lastly, and as I referenced in the accompanying correspondence with Mr. Alian, it is imperative to prepare and file a pre-trial motion with regards to severing count I from counts II & III; thereby culminating in separate trials. The rationale for this strategm can be gleaned from the letter to Mr. Alian.

As you are aware, timing is paramount if I am to substantiate issues and rights with regards to my case. Consequently, your prompt accommodation of the foregoing concerns would be greatly appreciated.

Thank you.

Best regards,



Ferrill Volpicelli

cc: file

April 9, 2003

Ferrill Volpicelli  
60076 @ NNCC  
Box 7000  
Carson City, NV 89702

John Kadlic Esq.  
147 E. Liberty Ste 201  
Reno, NV 89501

RE: REQUEST FOR IMMEDIATE BAIL HEARING

Dear Mr. Kadlic,

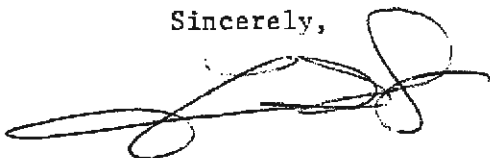
According to my federal public defender, it is imperative that you schedule an immediate bail hearing. In view of my pending federal warrant/detainer, I am requesting that you seek an O.R. on all the state matters.

In this way, I can achieve a timely and prudent objective of resolving my federal supervised release violations.

Inasmuch as your office does not accept my calls, and I have not received a reply to any of my written inquiries, I must insist that you pursue this matter within 5 business days. If not, I will be compelled to write the Honorable Judge Hardesty.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to be 'Ferrill Volpicelli', with a large, stylized loop at the end.

Ferrill Volpicelli

cc: file

FERRILL VOLPICELLI  
03-06119 WESO  
911 PARK

RENO, NV 89512

JUNE 15, 2013

LAW  
OFFICE  
OF  
JOHN  
KADUC

02-0147

DEAR MR. KADUC,  
TO DATE, I HAVE LEFT SEVERAL  
MESSAGES OF INQUIRY ON YOUR VOICE  
MAIL; ALL TO NO AVAIL.

IN MY LAST CONVERSATION WITH MR.  
AZIAN, HE PURPORTED THAT YOU CONTINUE  
TO BE THE COUNSEL OF RECORD ON  
02-0147.

ALSO, I SPECIFICALLY RECALL YOUR PROMISED  
VISIT IN CARSON CITY TO DISCUSS ISSUES  
WITH MY CASE.

AS I MENTIONED IN MY LAST MESSAGE  
TO YOUR VOICE MAIL, THE JULY 10<sup>TH</sup>  
SCHEDULED TRIAL DATE POSES A CONFLICT  
WITH MY HEARING IN THE FAMILY  
DIVISION OF WASHOE COUNTY DISTRICT  
COURT. 03-02634

IT IS MY ASSUMPTION THAT 02-0147 WILL  
BE DEFERRED. HOWEVER, I WOULD LIKE  
TO MEET WITH YOU FOR THE PREPARATION  
AND SUBMISSION OF A PRE-TRIAL MOTION  
TO SEVER THE 3 COUNTS INTO TWO  
TRIALS.

PLEASE VISIT ME AT WESO, HOUSING UNIT  
1 ON THIS MATTER WITHIN THE NEXT  
10 DAYS. THANK YOU.

SINCERELY,

AC FILE

V4. 517

6-22-03

TERRELL DOERFLEIN  
03-06889 @ WCSO  
911 PARK  
RENO, NV 89512

RE: 02-0147

LAW  
OFFICE  
OF  
JOHN  
KADUC  
ESQ.

DEAR MR. KADUC,

HOPEFULLY TIM BROOKER OR MY  
BROTHER HAS MADE CONTACT WITH  
YOU REGARDING MY STATE BAIL  
SITUATION.FOR YOUR REVIEW AND CONSIDERATION  
I HAVE ENCLOSED 'SNIPPETS' FROM  
CASES CULLED FROM LEGAL  
SOURCES AT NSP'S LIBRARY.AS YOU ARE AWARE, KEY ELEMENTS  
ARE INTENT AND WHAT CONSTITUTES  
A PUBLIC PLACE.IT IS MY ASSUMPTION THAT PAST  
SIMILAR SEXUAL IMPROPRIETIES WILL  
NOT SURFACE PROVIDED I DO NOT  
TESTIFY.IN VIEW OF THIS, CAN YOU STILL  
CONVEY TO THE COURT MY RITUAL  
OF TREATING MY SKIN ILLMENT?

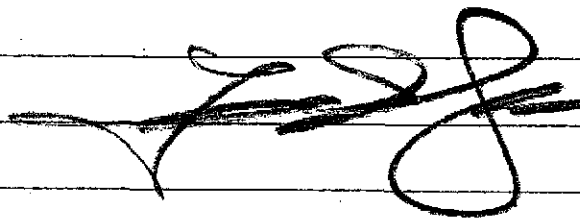
ALSO, AND IN THE EVENT OF A  
CONVICTION, CAN I POST AN  
APPEAL BOND TO REMAIN ON  
THE STREET AND CONTEST THE  
CONVICTION?

AND LASTLY, I HAVE INCLUDED  
A FEDERAL CIVIL SUIT § 1983  
INVOLVING AN INCIDENT AT MSP  
LAST YEAR.

PLEASE CONSIDER FURTHERING THIS  
CASE FOR ME.

THANK YOU FOR YOUR CONTINUED  
REPRESENTATION,

BEST REGARDS,

A stylized handwritten signature in black ink, consisting of a large loop and several horizontal strokes.

© WCDJ  
UNIT 7

6-24-03

TERRILL VOLUNTARY  
03-06771 @ WJSD  
911 PARR  
RENO, NV 89512

LAW  
OFFICE  
OF  
JOSH  
KADUC  
ESQ.

RE: 02-0147 / PRETRIAL PREPARATION

DEAR MR. KADUC,

THANK YOU FOR YOUR COOPERATION  
WITH REGARDS TO MY STATE BAIL  
SITUATION.

IN ANTICIPATION OF THE IMMINENT TRIAL  
ON 10 JULY, 2003, PLEASE NOTE THE  
FOLLOWING.

IT SHOULD BE OUR OBJECTIVE TO SHOW  
THE JURY THAT COUNT I WAS 2 DAYS  
PRIOR TO COUNTS II & III. THAT IT WAS  
AN ISOLATED INCIDENT WITH RESPECT TO MY  
DAUGHTER'S FORD EXPOSURE. WHENEVER I  
TENDED DISCREETLY TO MY SKIN TILMENT  
IN THE PRIVACY OF MY VEHICLE'S  
REAR SEAT, SHROUDED BY TINTED WINDOWS,  
BEHIND HIGH BACK SEATS & PARTITIONS,  
AS WELL AS BEING IN A RECLINED  
POSITION. THUS, NO INTENTION OF BEING  
IN PUBLIC VIEW, AND WITHOUT INTENT  
OR THE PUBLIC'S COMPLAINT, THERE IS NO  
MERIT TO ANY CRIME.

IN ADDITION, ALL OTHER NOTATIONS  
DURING SURVEILLANCE, OF MY ALLEGED  
PARKING IN RETAIL SHOPPING CENTERS,  
REPORT THE SAME DISCREETNESS WITH THE  
EXCEPTION BEING THAT THERE WERE W41520 NO



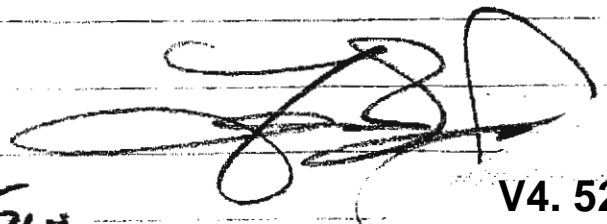
APPEARANCE OF A DEFECTIVE PURPOSEFULLY VIOLATING MY PRIVACY BY PEERING INSIDE THE TINTED WINDOWS OR BETWEEN THE SPACES OF PARTITIONS. AS ON 25 SEPT. 2001, AS CITED ON 27 SEPTEMBER, 2001, EVEN UNDER THE SCRUTINY OF SEVERAL DEFECTIVES USING BINOCULARS, I REMAINED OUT OF PUBLIC VIEW.

MY REASON FOR UTILIZING THE REAR SEAT OF THE VAN IS TWO FOLD. FIRSTLY, IT SERVED AS A COMFORTABLE AND COOLER AREA OF THE VEHICLE TO TEND TO A) MY SKIN CONDITION, AND B) AS EVIDENCED BY THE VAN'S PHOTOS ILLUSTRATING FILES AND OFFICE SUPPLIES, THE VAN WAS A MOBILE OFFICE OF SORTS.

MOREOVER, THE FOREGOING SHOULD CONVINCE THE JURY OF OVERZEALOUS INVESTIGATIONS & PROSECUTION. AND IF RELATED QBS ARE NOT ADMISSIBLE IN TESTIMONY AFTER 10 YRS OF AGE, THEN MY 1977 AND 1983 INCIDENTS SHOULD NOT SURFACE IF I AM COMPELLED TO TAKE THE STAND.

THANK YOU FOR YOUR CONTINUED REPRESENTATION.

SINCERELY,



CC's file

7-1-03

FERRILL VOLPICELLI  
03-UG889 @ WCSO  
911 PARR  
RENO, NV 89512Kenneth  
Peele

PRIVATE

INVESTIGATOR

33

MARSH

RENO

NEVADA

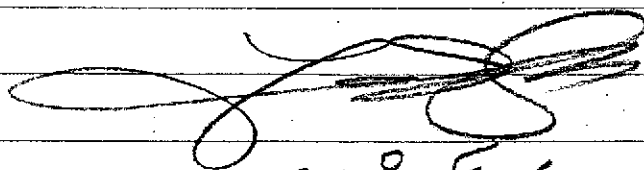
89509

RE: REQUEST FOR ASSISTANCE

DEAR MR. PEELE,

ENCLOSED IS A COPY OF A LETTER  
PURPORTING THAT YOUR SERVICES ARE  
AVAILABLE FOR MY CASES.CURRENTLY, I HAVE 3 CASES  
REPRESENTED BY JACK ALAN, BRAD  
VAN RY AND JOHN KAPUC.I HAVE ATTEMPTED TO CONTACT YOU  
THROUGH JACK ALAN'S OFFICE; TO  
NO AVAIL.MY FIRST TRIAL IS SCHEDULED FOR  
10 JULY, 2003 WITH JOHN KAPUC,  
REPRESENTING ME. IF POSSIBLE, I  
LIKE TO RECEIVE A VISIT SO THAT  
I CAN REVIEW ISSUES AND  
CONCERNS WITH REGARDS TO MY  
CASES.THANK YOU FOR YOUR PROMPT  
RESPONSE TO THIS LETTER.

BEST REGARDS,



cc @ FILE

HOUSING UNIT 7

V4. 523

WASHOE COUNTY DETENTION FACILITY

**INMATE REQUEST**

1. Only one issue/topic per request form.
2. Write only in the space provided.
3. Only one form per each issue/topic.
4. No profanity.
5. Do not address your request to a named individual.

Inmate's Name: FERRILL VOLPICELLI Booking #: 03-06089Housing Unit: 7 Cell #: 12 Date: 7-16-03

Describe Request: TO THE HONORABLE JUDGE HARDESTY  
ENCLOSED FOR THE COURT'S REVIEW AND CONSIDERATION  
ARE PLEADINGS REGARDING ISSUES WITH MY STATE CASES.  
CLEARLY, MR. KADUC HAS DISASSOCIATED HIMSELF FROM  
MY LEGAL MATTERS AND MR. ALAN HAS INFORMED ME  
THAT HE WILL NOT PREPARE SUCH PLEADINGS ON MY BEHALF.  
THUS, I AM LEFT WITH NO ALTERNATIVE BUT TO SUBMIT THE  
ENCLOSED PLEADINGS WHICH NEED TO BE ADDRESSED BY THE  
COURT.

AS FAR AS THE STATE BAIL ISSUE IS CONCERNED, A LETTER FROM  
YOUR OFFICE WILL SUFFICE.

THE COMPLICATIONS WITH MR. KADUC'S CONFLICT OF INTEREST  
POSES ISSUES WHICH ALSO NEED TO BE CONSIDERED IN A TIMELY  
MANNER.

PLEASE SCHEDULE A HEARING ON THE FOREGOING MATTERS AT  
THE NEXT AVAILABLE COURT DATE.

Inmate's Signature: [Signature]

RESPECTFULLY SUBMITTED,

Receiving Staff Member/I.D.#:

(PRINT NAME)

Date: 7/16/03

(INMATE IS NOT TO WRITE BELOW THIS SPACE)

**ACTION**

Routed to: \_\_\_\_\_ Date: \_\_\_\_\_ Re-Routed to: \_\_\_\_\_ Date: \_\_\_\_\_

Answer: Approved ☐Denied ☐

Reason:

CERTIFICATE OF SERVICE: DATED AND COPY MAILED ON THE  
16TH DAY OF JULY, 2003 TO WASHOE COUNTY DISTRICT  
ATTORNEY, JOHN KADUC ESQ, AND JAKE ALAN ESQ AS  
CERTIFIED UNDER PENALTY OF PERJURY PURSUANT TO  
NRS 208.165.

Responding Staff Member / I.D.#:

(PRINT NAME)

Date: JULY 16

**INMATE REQUEST**

1. Only one issue/topic per request form.
2. Write only in the space provided.
3. Only one form per each issue/topic.
4. No profanity.
5. Do not address your request to a named individual.

Inmate's Name: The Ferrill Volpicelli, Suri Turis Booking #: 03-06889Housing Unit: 7 Cell #: 12 Date: 7/16/2003Describe Request: P. 1

In the Second Judicial District Court  
In and for the County of Washoe

The State of Nevada  
Plaintiff

The Honorable Judge Hurdley

vs.

Ferril J. Volpicelli

Dept 9

CS: 02-0147

Invoked Title 28, U.S.C. 2072

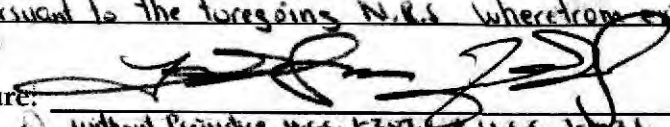
Motion: Pursuant to Title 14,

Chapter 176 NRS. 515 (2003)

Certification:

The Ferrill Volpicelli, Suri Turis, hereby moves the Court of Competent Jurisdiction in a  
a timely manner, and in accord with subsection 3 of the above mentioned NRS. and/or subsection 4.

Motion: Pursuant to the Foregoing N.R.s wherefrom exists the provision to move the

Inmate's Signature: 

7/16/03

Receiving Staff Member/I.D.#:

(PRINT NAME)

Date:

(INMATE IS NOT TO WRITE BELOW THIS SPACE)

**ACTION**

Routed to: \_\_\_\_\_ Date: \_\_\_\_\_ Re-Routed to: \_\_\_\_\_ Date: \_\_\_\_\_

Answer: Approved ☐Denied ☐

Reason:

Responding Staff Member / I.D.#:

(PRINT NAME)

Date:

**INMATE REQUEST**

1. Only one issue/topic per request form.
2. Write only in the space provided.
3. Only one form per each issue/topic.
4. No profanity.
5. Do not address your request to a named individual.

Inmate's Name: The Ferrill Volpicelli, Structures Booking #: 03-06889Housing Unit: 7 Cell #: 12 Date: 7/16/2003Describe Request: P.2

In the Second Judicial District Court  
For the County of Washoe  
The Honorable Judge Hardesty

Dept 9Motion Continued

court to grant a new trial and/or order a judgement of acquittal based upon  
newly discovered evidence which shall be construed to conclude that there is a  
high probability that counsel was ineffective due to a conflict of interest, which  
explains why the proper defense was not made in defense of said allegation:  
CN: 02-0147.

Affidavit in Support of Motion to grant a new trial and/or order a judgement of acquittalOn the evening of the 10 July 2003, during a conversation with family membersInmate's Signature: [Signature]7/16/03

Receiving Staff Member/I.D.#:

(PRINT NAME)

Date:

(INMATE IS NOT TO WRITE BELOW THIS SPACE)

**ACTION**

Routed to: \_\_\_\_\_ Date: \_\_\_\_\_ Re-Routed to: \_\_\_\_\_ Date: \_\_\_\_\_

Answer: Approved ☐Denied ☐

Reason: \_\_\_\_\_

Responding Staff Member / I.D.#:

(PRINT NAME)

Date:



**INMATE REQUEST**

1. Only one issue/topic per request form.
2. Write only in the space provided.
3. Only one form per each issue/topic.
4. No profanity.
5. Do not address your request to a named individual.

Inmate's Name: John Terrill Volpicelli, Sr. / Luis Booking #: 03-06889Housing Unit: 7 Cell #: 12 Date: 07/15/2003Describe Request: P. 3Affidavit in Support of Motion to grant a new trial and/or order a judgement of acquittal based upon newly discovered evidence CONT...

Following the Trial of before mentioned allegation, it was brought to my attention that it was former Judge Kadlic, who is known to this Court as John Kadlic, Esq., who authorized the warrant which resulted in the seizure of Personal Property stipulated in Exhibit A and of which continues to be an on-going dilemma. The latter mentioned reality leads the accused to believe and now understand why relevant evidence and Testimony was not presented during the Trial on the alleged wrong conduct and how Mr. Kadlic had an uncanny familiarity with my legal issues despite the concerns which are reflected in Exhibits B thru D. See: McCabe v. State, 98 Nev. 604, pss. 2d 536 (1982). Said accused recognized that it is at the discretion of the Trial Court to review the foregoing information without Prejudice.

Witnesses pursuant to my procedural due process and/or substantive rights will testify that I did not understand the reason for the obvious conflict of interest and

Inmate's Signature: [Signature]

7/16/03

U.C.C. 1-103.6 + U.C.C. 1-209 All Rights Reserved

Receiving Staff Member/I.D.#:

Date:

(PRINT NAME)

(INMATE IS NOT TO WRITE BELOW THIS SPACE)

**ACTION**

Routed to: \_\_\_\_\_ Date: \_\_\_\_\_ Re-Routed to: \_\_\_\_\_ Date: \_\_\_\_\_

Answer: Approved ☐Denied ☐

Reason:

Responding Staff Member / I.D.#:

Date:

(PRINT NAME)

**INMATE REQUEST**

1. Only one issue/topic per request form.
2. Write only in the space provided.
3. Only one form per each issue/topic.
4. No profanity.
5. Do not address your request to a named individual.

Inmate's Name: John Terrill Volpicelli, Sr. James Booking #: 03-06889Housing Unit: 7 Cell #: 12 Date: 7/16/2003

P.4  
Describe Request: Affidavit in Support of Motion to grant a new trial and/or order a judgement of acquittal based upon newly discovered evidence.

[Ineffective], or lack thereof, of the Bill of the Right's required assistance of an expert / counsel trained to defend the common-law and/or bound to support the Constitution of the United States of America. Also see: U.S. Kiliti, 156 F.3d 150 (and Cir. 1998); U.S. v. Shorter, 54 F.3d 1248 (7th Cir.) - 516 U.S. 896 (1995).

Conclusion

I shall be permitted that John Kadic knowingly, intelligently, and willfully withheld the knowledge of his past actions concerning me and that this also affected his willingness to adequately defend my Personal liberty and submit the evidence and testimony which would have resulted in a verdict of innocent.

Inmate's Signature: [Signature] Date: 7/16/03

N.E.C. Without Prejudice 1-207 + 103-6 No Right Reserved

Receiving Staff Member/I.D.#: \_\_\_\_\_ Date: \_\_\_\_\_  
(PRINT NAME)

(INMATE IS NOT TO WRITE BELOW THIS SPACE)

**ACTION**

Routed to: \_\_\_\_\_ Date: \_\_\_\_\_ Re-Routed to: \_\_\_\_\_ Date: \_\_\_\_\_

Answer: Approved ☐ Denied ☐

Reason: \_\_\_\_\_

Responding Staff Member / I.D.#: \_\_\_\_\_ Date: \_\_\_\_\_

(PRINT NAME)

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

## AFFIDAVIT

STATE OF NEVADA }

SS

CASE# 02-0147

COUNTY OF WASHOE }

COMES NOW DEFENDANT FERRILL T. VOLPICELLI,  
UNDER PENALTY OF PERJURY UNDER THE LAWS  
OF THE STATE OF NEVADA; DEPOSES AND SAYS:

THAT WITHIN A DAY OF THE TRIAL ADJOURNMENT  
IN THE ABOVE REFERENCED CASE, IT CAME TO  
THE ATTENTION OF THE DEFENDANT THAT A  
CONFLICT OF INTEREST EXISTS WITH LOCAL  
REPRESENTATION BY MR. JOHN KADUC ESQ.  
THAT SAID CONFLICT OF INTEREST WAS  
REALIZED BY DEFENDANT THROUGH COMMUNICATION  
WITH MS. LORI INMAN'S AND DEFENDANT'S  
CHILDREN.

THAT DEFENDANT CONFIRMED SAID CONFLICT OF  
INTEREST VIA RESEARCH OF COUNTY RECORDS -  
VERIFYING THAT IN OR ABOUT APRIL OF 1993,  
FORMER JUDGE KADUC'S NAME APPEARED ON  
A SEARCH WARRANT.

THAT SAID SEARCH WARRANT AUTHORIZED  
INVESTIGATIONS INTO DEFENDANT'S RETAIL  
ACTIVITIES.



1  
2 THAT THIS INCLUDED INVESTIGATIONS BY RENO  
3 POLICE DEPARTMENT, CALIFORNIA DEPARTMENT  
4 OF JUSTICE, THE CRIMINAL DIVISION OF THE  
5 U.S. JUSTICE DEPARTMENT, AND THE REPEAT  
6 OFFENDER PROGRAM OF NEVADA.

7 THAT SAID INVESTIGATIONS CULMINATED IN  
8 SUBSEQUENT INDICTMENTS AND EVENTUAL  
9 CONVICTIONS WITH COMMITMENTS OF THE  
10 DEFENDANT TO STATE AND FEDERAL FACILITIES.  
11 THAT TO DATE, UNRESOLVED ISSUES LINGER  
12 WITH RESPECT TO PROPERTY SEIZED BY  
13 THE C.D.O.T UNDER SAID WARRANT,  
14 (SEE ACCOMPANYING LETTER AND WASTHE DISTRICT  
15 ATTORNEY ROGER WILSONES.)

16  
17 THAT IF THE DEFENDANT WAS MADE AWARE  
18 OF THIS CONFLICT OF INTEREST EARLIER,  
19 HE WOULD HAVE PROMPTLY DISMISSED MR.  
20 KADLIC ESQ.

21 THAT IN OR ABOUT THE MONTHS OF APRIL  
22 MAY, JUNE, AND JULY OF 1993, DEFENDANT  
23 SOUGHT LOCAL REPRESENTATION THROUGH  
24 MR. VICK ALAN REGARDING THE WARRANT  
25 AND ENSUING INVESTIGATIONS.

26 THAT DEFENDANT IS NOT SATISFIED WITH  
27 THE REPRESENTATION OF MR. KADLIC  
28

Ferrill Volpicelli  
03-06889 @WCSO  
911 Parr Blvd  
Reno, NV 89512

1  
2 PRIOR TO AND DURING TRIAL, AS EVIDENCED  
3 BY THE ACCOMPANYING LETTERS.  
4 THAT DEFENDANT WAS NOT EVEN MADE  
5 AWARE OF THE 21 FEBRUARY, 2003 COMPLAINT  
6 AMENDMENT UNTIL DATE OF TRIAL.

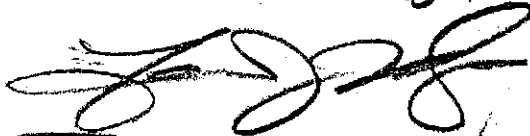
7 THAT AGAINST DEFENDANTS WISHE, MR  
8 KADIC PURPOSEFULLY DID NOT PRESENT EVIDENCE  
9 RELEVANT TO DEFENDANTS CASE.

10 THAT IN VIEW OF THE FOREGOING, THE  
11 DEFENDANT APPEALS THE FINAL VERDICT  
12 BASED UPON EXCULPATORY EVIDENCE WITH  
13 REGARD TO ATTORNEY-CLIENT CONFLICT OF INTEREST.

14 THAT IN THE EVENT THE PROSECUTION REDACTS  
15 THE ELIMINATION OF CONFIDENTIAL INFORMATION  
16 PERTAINING TO THE 27, SEPTEMBER 2003  
17 INCIDENT, DEFENDANT INSISTS UPON A  
18 SEVERANCE OF MATTERS INTO TWO TRIALS.

19 AND FINALLY, THAT IT WILL BE THE  
20 DEFENDANT'S INTENTION TO TESTIFY AT BOTH  
21 OF THESE TRIALS.

22  
23 RESPECTFULLY SUBMITTED,  
24 DATED THIS 16<sup>TH</sup> DAY OF JULY, 2005.

25  
26 

27 FERRILL V. VOLPICELLI  
28

June 25, 2002

**Ferrill Volpicelli**  
**#60076 @ NSP**  
**Box 607**  
**Carson City, NV 89702**

C.D.O.J.  
Attention: Special Agent In Charge  
Mr. Vincent Jura  
Mariposa Street  
Room 5000  
Fresno, CA.

**RE: RETURN OF PROPERTY**

Dear Mr. Jura,


In February of this year, I wrote a letter apprising you of my predicament and my continued interest in resolving the issue concerning the return of my property. Please find a copy of such for your review.

It is my ardent hope that I can make arrangements with my family to secure the property that you continue to store in evidence. Again, please bear with me on this matter.

At your earliest convenience, please provide me with a timely reply acknowledging your receipt of my correspondence, as well as your cooperation with this matter.

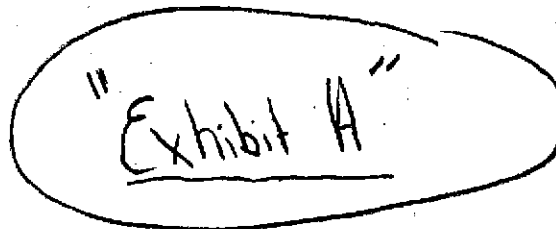
Thank you.

Best wishes,



Ferrill Volpicelli

Cc: file



"Exhibit A"

April 4, 2003

Ferrill Volpicelli  
60076 @ NNCC  
Box 7000  
Carson City, NV 89702

John Kadlic, Esq.  
147 E. Liberty Ste 2  
Reno, NV 89501

RE: REPLY TO PREVIOUS LETTERS

Dear Mr. Kadlic,

Thus far, I have made innumerable attempts to contact you, including two letters and countless dozens of calls to your office: all to no avail.

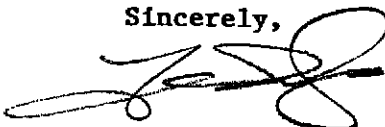
Of paramount concern is the state bail situation for reasons clearly outlined in my last letter. It is my objective to deal with this matter in advance of the imminent status hearing with the early May trial date.

In addition, I am still without confirmation as to my representation on the three other matters. In view of this, coupled with the lack of discovery on certain issues, there is no way that I am prepared to venture in to trial.

Finally, as a result of my desperation to discuss matters with you, I have requested my Power of Attorney, Kevin Sigstad, to call you. Please advise him as to the particulars regarding my bail situation. He is fully aware of my legal woes.

Thank you for your cooperation.

Sincerely,



Ferrill Volpicelli

cc: file

"Exhibit B"

April 9, 2003

Ferrill Volpicelli  
60076 @ NNCC  
Box 7000  
Carson City, NV 89702

John Kadlic Esq.  
147 E. Liberty Ste 201  
Reno, NV 89501

RE: REQUEST FOR IMMEDIATE BAIL HEARING

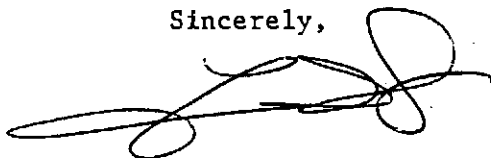
Dear Mr. Kadlic,

According to my federal public defender, it is imperative that you schedule an immediate bail hearing. In view of my pending federal warrant/detainer, I am requesting that you seek an O.R. on all the state matters. In this way, I can achieve a timely and prudent objective of resolving my federal supervised release violations.

Inasmuch as your office does not accept my calls, and I have not received a reply to any of my written inquiries, I must insist that you pursue this matter within 5 business days. If not, I will be compelled to write the Honorable Judge Hardesty.

Thank you.

Sincerely,



Ferrill Volpicelli

cc: file

"Exhibit C"

FERRILL VOLPICELL  
03-06889 WCD  
911 PARK  
RENO, NV 89512  
JUNE 15, 2003

LAW  
OFFICE  
OF  
JOHN  
KADUC

DEAR MR. KADUC,  
TO DATE, I HAVE LEFT SEVERAL  
MESSAGES OF INQUIRY ON YOUR VOICE  
MAIL; ALL TO NO AVAIL.

02-0147

IN MY LAST CONVERSATION WITH MR.  
AZIAN, HE PURSUED THAT YOU CONTINUE  
TO BE THE COUNSEL OF RECORD ON  
02-0147.

ALSO, I SPECIFICALLY RECALL YOUR PROMISED  
VISIT IN CARSON CITY TO DISCUSS ISSUES  
WITH MY CASE.

AS I MENTIONED IN MY LAST MESSAGE  
TO YOUR VOICE MAIL, THE JULY 10TH  
SCHEDULED TRIAL DATE POSES A CONFLICT  
WITH MY HEARING IN THE FAMILY  
DIVISION OF WASHOE COUNTY DISTRICT  
COURT. 03-02634

IT IS MY ASSUMPTION THAT 02-0147 WILL  
BE DEFERRED. HOWEVER, I WOULD LIKE  
TO MEET WITH YOU FOR THE PREPARATION  
AND SUBMISSION OF A PRE-TRIAL MOTION  
TO SEVER THE 3 COUNTS INTO TWO  
TRIALS.

PLEASE VISIT ME AT WCD, HOUSING UNIT  
1 ON THIS MATTER WITHIN THE NEXT  
10 DAYS.

THANK YOU  
"Exhibit D"

SINCERELY

1  
2 IN THE SECOND JUDICIAL DISTRICT COURT  
3 IN AND FOR THE COUNTY OF WASHOE  
4

5 STATE OF NEVADA.

6 PLAINTIFF,

CASE #: 02-0147

7  
8 VS

DEPT #: 9

9 FERRILL T. VOLPICELLI  
10 DEFENDANT,  
11

REQUEST FOR  
SUBMISSION.

12  
13 COME NOW THE DEFENDANT, FERRILL T.  
14 VOLPICELLI, TO REQUEST THAT THE ACCOMPANYING  
15 DOCUMENTS IN THE MATTER REFERENCED ABOVE,  
16 BE SUBMITTED TO THE COURT FOR CONSIDERATION.  
17

18  
19 THE UNDERSIGNED CERTIFIES THAT A COPY OF  
20 THIS REQUEST AND ACCOMPANYING DOCUMENTS  
21 HAVE BEEN MAILED TO, WASHOE COUNTY DISTRICT  
22 ATTORNEY, HONORABLE JUDGE HANDELY, VAIL  
23 ALAN ESQ AND JOHN KADUC ESQ.  
24

25 DATED THE 16<sup>TH</sup> DAY OF JULY, 2003.

26  
27  
28  
FERRILL T. VOLPICELLI


**INMATE REQUEST****INMATE COPY**

1. Only one issue/topic per request form.
2. Write only in the space provided.
3. Only one form per each issue/topic.
4. No profanity.
5. Do not address your request to a named individual.

Inmate's Name: FERRILL VOLPICELLI Booking #: 03-0689Housing Unit: 7 Cell #: 12 Date: 7-15-03

Describe Request: DEAR MR. KADUC  
INASMUCH AS YOU DO, NOT ACCEPT MY CALLS,  
ALONG WITH MR. ALAN'S POSITION THAT CASE 03-0147  
IS NOT HIS CONCERN, I WAS LEFT WITH NO ALTERNATIVE  
BUT TO WRITE YOU. AND IN ORDER TO BE IN  
COMPLIANCE WITH THE GUIDELINES OF THE APPLICABLE  
NEVADA REVISED STATUTE, I WAS COMPELLED TO FILE  
THE ACCOMPANYING PLEADING.  
MOREOVER, IT IS SELF EXPLANATORY IN VIEW OF THE  
RECENT REVELATION CONCERNING YOUR INVOLVEMENT  
AS A JUDGE & A CONFLICT OF INTEREST WHICH  
CONTINUES TO DAUNT MY FAMILY AND I THROUGHOUT  
PRESENT DAY.  
I'M CONFIDENT THAT YOU UNDERSTAND THE IMPLICATIONS  
WITH MY CASES.

THANK YOU

Inmate's Signature: 

Receiving Staff Member/I.D.#:

(PRINT NAME)

Date:

(INMATE IS NOT TO WRITE BELOW THIS SPACE)

**ACTION**

Routed to: \_\_\_\_\_ Date: \_\_\_\_\_ Re-Routed to: \_\_\_\_\_ Date: \_\_\_\_\_

Courts Transportation

Answer: Approved ☐Denied ☐

JUL 23 2003

Reason:

CERTIFICATE OF SERVICE: DATED AND COPY MAILED ON THE  
16TH DAY OF JULY 2003 TO THE HONORABLE JUDGE HARDESTY,  
WASHOE COUNTY DISTRICT ATTORNEY, WASHOE COUNTY DISTRICT COURT  
CLERK AND JACK ALAN, ESQ. AS CERTIFIED UNDER THE PENALTY  
OF PERJURY PURSUANT TO NRS 208.165

Responding Staff Member / I.D.#:

(PRINT NAME)

FERRILL VOLPICELLI Date: JUL 16



FILED

2003 AUG 1 AM 2:34  
RONALD A. WHITE, JR.  
T. White

IN THE SECOND JUDICIAL DISTRICT COURT STATE OF NEVADA

BY DEPUTY  
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,  
Plaintiff,

CASE No: CR02-0147

vs

DEPT. No: 9

Ferrill T. Volpicelli,  
Defendant,

MOTION FOR New Trial  
Pursuant to NRS § 176.515

Comes Now, Ferrill T. Volpicelli, Defendant  
and in pro per due to complications with  
existing counsel, hereby moving this  
Honorable Court for a "New Trial" and/or  
ORDER A JUDGMENT OF ACQUITTAL BASED  
UPON NEWLY DISCOVERED EVIDENCE WHICH  
SHALL BE CONSTRUED TO CONCLUDE THAT A  
HIGHLY PREJUDICIAL PRESUMPTION WITH DIRECT  
AND CIRCUMSTANTIAL EVIDENCE THAT THE  
APPOINTMENT OF COUNSEL WAS AN  
INEFFECTIVE APPOINTMENT, SINCE THE COURT

FERRILL VOLPICH  
03-06889 WESD  
911 PARK BLVD  
RENO, NV 89512  
#02-0147

Law  
office  
of  
JOHN  
KADUC  
ESQ.

AUGUST 8, 2003

DEAR MR. KADUC,  
FINALLY, AFTER ALMOST A MONTH'S WORTH  
OF DAILY ATTEMPTS TO CONTACT YOU BY  
TELEPHONE, MY FAMILY ACCOMMODATED ME  
WITH A 3 WAY CONNECTION TO YOUR  
OFFICE.

REGARDING OUR CONVERSATION TODAY, MICHELE  
AT JUDGE HANDELY'S OFFICE INFORMED ME  
THAT MY MOTIONS REGARDING THE COMPLETION  
WENT MY CASE HAVE BEEN FORWARDED TO  
YOUR OFFICE. IT IS MY UNDERSTANDING THAT  
SINCE YOU REMAIN COUNSEL OF RECORD, IT  
IS YOUR RESPONSIBILITY TO ASSIST ME WITH  
SUCH PROCEEDINGS. AND DESPITE YOUR RECENT  
AND EXPERIENCE RELEVANT TO OTHER CASES  
WHERE ALLEGED CONFLICTS OF INTEREST PRESENTED  
THEMSELVES, I BELIEVE THAT MY SITUATION IS  
UNIQUE.

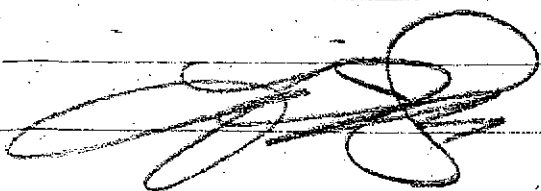
FIRSTLY, I BEG TO DIFFER WITH YOUR  
POSITION THAT YOUR INVOLVEMENT AS A JUDGE  
DATING BACK 10 YEARS AGO IS NOT RELEVANT  
TO THIS CASE. THE FACT REMAINS, REAO  
AUTHORITIES, SPECIFICALLY R.O.P., COMMENCED  
WITH ONGOING INVESTIGATIONS STEMMING FROM  
THE 1993 WARRANT YOU ISSUED CONCERNING MY  
RETAIL ACTIVITIES. AND AT MY ARREST, R.O.P.  
EMPHATICALLY STATED THAT THEIR INVESTIGATION

CONCLUDED ALMOST NINE YEARS OF SURVEILLANCE  
AND INVESTIGATIONS INTO MY RETAIL ACTIVITIES,  
ACTIVITIES WHICH THIS CASE'S POLICE REPORTS CLEARLY  
INDICATE WERE THE BASIS WITH REGARDS TO WHY  
I WAS SURVEILLED IN THE MONTHS OF SEPTEMBER  
AND OCTOBER OF 2001; PARTICULARLY ON SEPTEMBER 25<sup>th</sup> & 2  
SECONDLY, EXHIBIT 'A' CLEARLY DEMONSTRATES A  
LINGERING ISSUE WHICH CONTINUES TO THIS DAY DUE TO  
THAT WARRANT AND THE AUTHORITIES' INVESTIGATIONS.  
THUS, I IMPLORE YOU TO RECONSIDER YOUR  
POSITION WITH REGARDS TO NOT FILING A  
MOTION ON MY BEHALF. ESPECIALLY AFTER TARA  
ALAN INFORMED ME SEVERAL WEEKS AGO THAT  
IT WOULD BE YOUR INTENTION TO DO SO.

I TRUST THIS LETTER OF REQUEST WILL  
CULMINATE IN YOUR COOPERATION WITH THIS  
MATTER.

INASMUCH AS YOU DO NOT ACCEPT MY CALLS,  
AND ANOTHER FACILITATED 3 WAY CALL TO  
YOU IS UNLIKELY, PLEASE REPLY TO ME IN  
WRITING WITHIN THE NEXT 5 BUSINESS DAYS.

Sincerely,



cc's file.

FERRILL VOLPICELLI  
03-06449 WCSO  
911 PARR  
RENO, NV 89512

AUGUST 19, 2003

RE: 02-0147

HONORABLE  
DISTRICT  
COURT

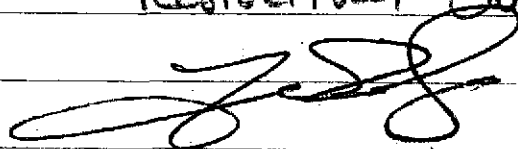
JUDGE  
DEPT.  
9

DEAR HONORABLE JUDGE HARDESTY,

PLEASE BE AWARE THAT I AM FILING  
MOTIONS AND PETITIONS WITH MY CASES  
BECAUSE MY COUNSEL HAS REFUSED TO  
BRING ISSUES TO THE COURT'S ATTENTION.  
ENCLOSED IS A COPY OF MY MOST RECENT  
ATTEMPT TO HAVE MR. KADLIC PREPARE AND  
FILE A MOTION FOR ACQUITTAL OR NEW TRIAL.  
THUS, I AM COMPELLED TO POSE THIS  
MATTER FOR YOUR REVIEW.

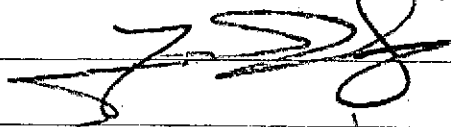
PLEASE HAVE YOUR CLERK SCHEDULE AN  
IMMEDIATE HEARING TO RESOLVE THE  
CONFLICT OF INTEREST ISSUES WITH MY CASE.  
THANK YOU.

RESPECTFULLY SUBMITTED,



FERRILL VOLPICELLI

CERTIFICATE OF SERVICE: DATED AND COPY MAILED ON THIS  
19<sup>th</sup> DAY OF AUGUST, 2003, TO JOHN KADLIC ESQ  
AND WASHOE COUNTY DISTRICT ATTORNEY UNDER  
PENALTY OF PERJURY PURSUANT TO NRS 208.165



FERRILL VOLPICELLI

FERRILL VOLPICELLI  
 3-06849 WCSO  
 911 PARR BLVD  
 RENO, NV 89512

LAW  
 OFFICE  
 OF  
 JOHN  
 KADUC  
 ESQ

17 DECEMBER, 2003  
 RE: 02-0147

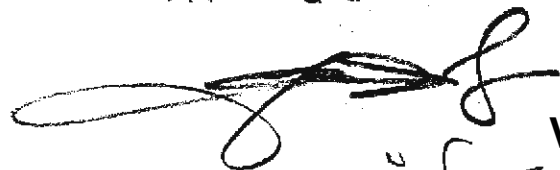
SUBJECT: REQUEST FOR WITHDRAWAL OF  
 ATTORNEY AS RECORD DUE TO  
 CONFLICT OF INTEREST...

DEAR MR. KADUC,

DESPITE JUDGE HARDESTY'S DENIAL IN  
 DISMISSING YOU AS COUNSEL OF RECORD  
 WITH MY CASE, I REMAIN STEADFAST  
 IN MY CLAIM THAT CONTINUED LEGAL  
 REPRESENTATION FROM YOU POSES A CONFLICT  
 OF INTEREST. THUS, I AM RESPECTFULLY  
 COMPELLED TO INSIST THAT YOU WITHDRAW  
 AS ATTORNEY OF RECORD. FURTHER, THAT YOU NOT  
 REPRESENT ME IN THE FOSTER NOTICE OF APPEAL  
 FOR JUDGMENT AND CONVICTION IN THE  
 ABOVE CASE.

AT YOUR EARLIEST CONVENIENCE, PLEASE FILE  
 THE APPROPRIATE DOCUMENT REGARDING YOUR  
 WITHDRAWAL AS COUNSEL, AND KINDLY PROVIDE  
 ME WITH A COPY OF THE COMPLETE CASE -  
 INCLUDING YOUR BRIEF REGARDING THE  
 CONTROVERSIAL EXHIBIT AT SENTENCING.  
 THANK YOU.

SINCERE REGARDS,

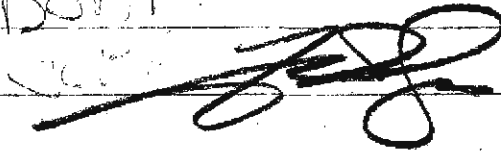


cc to file

CERTIFICATE  
 OF  
 SERVICE  
 ON  
 REVERSE  
 SIDE

CERTIFICATE OF SERVICE: I HEREBY CERTIFY, UNDER  
PENALTY OF PERJURY PURSUANT TO NRS 208.165,  
THAT I DEPOSITED A TRUE AND CORRECT COPY  
OF THIS LETTER TO TAMMY RIGGS ESQ AND  
JUDGE HARDEY ON THIS 17 DAY OF DECEMBER,  
2003.

DON'T

A handwritten signature in black ink, appearing to be "J. R. Riggs", written over a horizontal line.

**JOHN J. KADLIC**

ATTORNEY AT LAW

POST OFFICE BOX 2477  
RENO, NEVADA 89505

TELEPHONE  
(775) 322-7099  
FAX  
(775) 322-7511

February 13, 2004

Honorable James W. Hardesty  
P.O. Box 30083  
Reno, NV 89520-3083

Re: Ferrill Volpicelli

Dear Judge Hardesty:

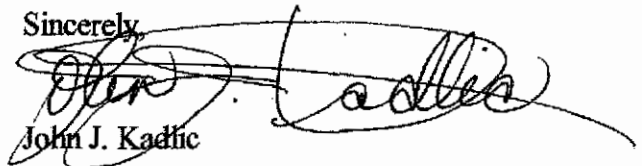
I am responding to the letter I received from Michele Shull dated February 11, 2004 regarding Ferrill Volpicelli. It is my understand, and you can correct me if I am wrong, that under the agreement with Jack Alian, the last duty a court appointed counsel has to his client is to file a Fast Track Statement with the Nevada Supreme Court if an appeal is filed. In the case of Mr. Volpicelli, the Notice of Appeal was filed on January 2, 2004 and on February 5, 2004, I filed my Fast Track Statement with the Nevada Supreme Court.

Therefore, I am under the assumption that my duty to him ended and I am no longer his counsel. As I understand the procedure, if the Nevada Supreme Court decides that they want a full brief in Mr. Volpicelli's case, they will remand the case back to your Court for the appointment of counsel to represent Mr. Volpicelli on that appeal. His court appointed trial counsel is not required to do that full briefing. If I am incorrect on that point, please advise me.

Otherwise, I deem my representation of Mr. Volpicelli ended and I suggest that any further correspondence from him be returned to him rather than forwarded to me as I have no intention of involving myself any further in his case based on my understanding of the court appointment duties.

I hope this letter will resolve the matter once and for all time.

Sincerely,



John J. Kadlic

JJK:mmmt

cc: Ferrill Volpicelli

Washoe Co. District Attorney, Appellate Division

FERRIL VOLPICH  
71865 NNCC  
BOX 7000  
CARSON CITY, NV 89702

18 FEBRUARY, 2004

CV 02-0147

JOHN  
KADUC  
ESQ.

Re: TRIAL TRANSCRIPT  
REQUEST

DEAR MR. KADUC,

I AM IN RECEIPT OF MY COPY OF THE  
APPEAR DOCUMENTS.

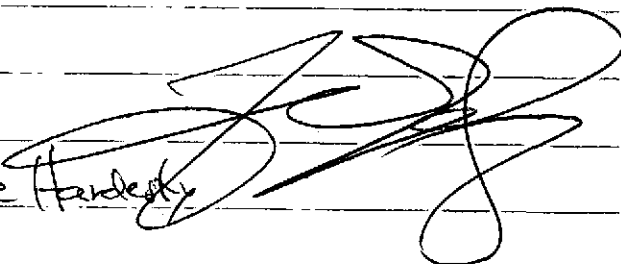
SINCE YOU HAVE EXPRESSED YOUR TERMINATION  
OF REPRESENTATION WITH MY CASE, AND THE  
FACT THAT JUDGE HARDESTY HAS REFERRED  
ME TO YOU IN-SO-FAR AS OBTAINING  
A COPY OF THE TRIAL TRANSCRIPT, PLEASE  
FORWARD A COPY OF SAME TO MY  
ATTENTION AT NNCC.

THANK YOU FOR YOUR COOPERATION  
WITH THIS FINAL REQUEST.

SINCERE REGARDS,

cc:file

Judge Hardesty





**JOHN J. KADLIC**

ATTORNEY AT LAW

POST OFFICE BOX 2477  
RENO, NEVADA 89505

TELEPHONE  
(775) 322-7099  
FAX  
(775) 322-7511

March 29, 2004

Ferrill Volpicelli #79565  
NNCC  
P.O. Box 7000  
Carson City, NV 89702

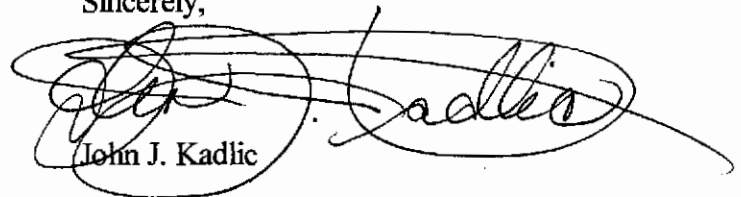
Re: State v Volpicelli

Dear Mr. Volpicelli:

I am enclosing a copy of the State's Fast Track Response. Procedurally, that ends the process. There is no response allowed to the State's Fast Track Response.

The final step in this process is for me to send you a copy of the Court's decision. Once they render their decision, I will do that. Other than that, I consider my duties to you ended.

Sincerely,



John J. Kadlic

JJK:mmt  
enclosure

RE: CR02-0147 / 42653

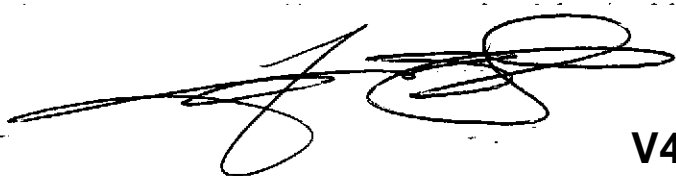
LAW DEAR MR. KADUC, I AM IN RECEIPT OF THE SUPREME COURT'S  
OFFICE ORDER OF AFFIRMATION REGARDING THE ABOVE CASE.  
OF SUFFICE IT TO SAY, IT IS MY INTENT TO FURTHER THIS MATTER  
TOTH UP THE LADDER OF JUSTICE BECAUSE OF THE MANIFEST INJUSTICE.  
KADUC ALTHOUGH YOUR ARGUMENTS CAST REASONABLE DOUBTS WHETHER  
ESA THE INCIDENT QUALIFIED AS CRIMINAL CONDUCT UNDER THE  
APPLICABLE STATUTE, I HAVE FOUND CONCLUSIVELY THAT RESEARCH  
CONFIRMS THE NEVADA SUPREME COURT'S RECURRENCE TO DISREGARD  
JURY'S VERDICTS.

IT IS MY ARDENT BELIEF THAT HAD YOU PURSUED THE CONSTITUTIONAL  
ISSUES SURROUNDING THE VIOLATION OF MY FOURTH AMENDMENT  
RIGHTS, THE COURT WOULD HAVE THEN CONSIDERED ISSUES CLEARLY  
OUTLINED IN KATZ 88 SCR 507. I AM STILL OF THE MIND THAT  
BY MY CONDUCT IN DISPLAYING PARTITIONS AND RETREATING TO THE  
REAR SEAT OF MY VEHICLE - RECLINED AND OUT OF SIGHT, THAT  
THERE WAS NO INTENT TO EXPOSE MYSELF IN PUBLIC VIEW.  
FURTHERMORE, THAT MY RIGHTS WERE ACTUALLY VIOLATED BY AN  
EXPLORATORY SEARCH ABSENT A MAGISTRATE'S APPROVAL, WHICH  
IS CONTRARY AGAINST THE LETTER & SPIRIT OF STATE AND FEDERAL  
CONSTITUTIONS.

CENTRAL TO THIS, MY SUBSEQUENT FILINGS WILL INCLUDE AN  
EMPHASIS CONCERNING THE FOREGOING ISSUES.

PLEASE FEEL FREE TO RESPOND TO THIS LETTER WITH  
ANY ADVICE WITH MY CASE. THANK YOU.

Sincere Regards,



PETITIONER

DEPT: 9

STATE OF NEVADA,  
Respondent,

Request for Submission  
of PETITION FOR WRIT OF  
HABEAS CORPUS (POST-CONVICTION)

PETITIONER, FERRIS T. VOLPICCHI, HEREBY MOVES THE  
COURT UNDER NRS 34.240 FOR A PROMPT  
SUBMISSION AND EXPEDITIOUS REVIEW. REQUESTOR  
THE PETITION FOR WRIT OF HABEAS CORPUS (POST-  
CONVICTION) FILED ON 7 DECEMBER, 2004.

DATED THIS 13<sup>TH</sup> DAY OF DECEMBER, 2004



FERRIS T. VOLPICCHI  
PETITIONER PRO PER

CERTIFICATE OF MAILING:  
DATED AND COPY MAILED ON  
THIS 13<sup>TH</sup> DAY OF DECEMBER,  
2004 TO WCDR, AS  
CERTIFIED UNDER PENALTY OF  
PERJURY PER NRS 208.160

ORIGINAL

FILED

2005 APR 12 PM 4:45

RONALD A. LOUGHEIN, JR.

BY *[Signature]*  
DEPUTY CLERK

Ferrill J. Volpicelli  
9565 LCC  
POB 359  
Lovelock, Nevada 89419

Petitioner, In Proper Person

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FERRILL J. VOLPICELLI,

Petitioner,

Case No: CR-02-0147

v.

STATE OF NEVADA,

Dept. No: 9

Respondent,

Motion For Appointment Of Alternative Counsel

COMES NOW, Petitioner, Ferrill J. Volpicelli, in his proper person, and hereby submits this Motion For Appointment Of Alternative Counsel in the above-entitled action.

This motion is made and based on all applicable court rules, all papers and pleadings on file herein, as well as the following argument.

Argument

On October 7, 2004, Petitioner filed a Petition For Habeas Corpus (post-conviction) in this court.

On or about February 2, 2005, the Respondent filed an answer and Motion to Dismiss Petition For Writ Of Habeas Corpus (post-conviction).

On February 18, 2005, Petitioner filed a Reply/Supplement to the

CR02-0147  
STATE VS FERRILL JOSEPH VOLP 3 Pages  
District Court 04/12/2005 04:45 PM  
Washoe County  
2490

aforementioned pleadings.

On March 30, 2005, this Court entered an order appointing Lewis Taitel, Esq. to represent Petitioner on his Petition For Writ Of Habeas Corpus (post-conviction).

Appointed counsel, Lewis Taitel, Esq, is counsel of record for Defendant(s) named in case number CV-03-3582, a civil action now pending in this Court (Dept. 6), for which this Petitioner is the Plaintiff.

Petitioner asserts that counsel's representation of Petitioner's ex-spouse and relatives in the pending civil action creates an actual conflict of interest; wherein the appointment of alternative counsel is mandated. Failure to appoint conflict-free counsel would tantamount to a denial of Petitioner's due process rights in the adjudication of his claims in the instant post-conviction matter.

#### Conclusion

Wherefore, Petitioner respectfully requests this Court to appoint alternative counsel in this action and relieve Lewis Taitel, Esq. of any further obligations in this action.

Dated this 31st day of March, 2005

Respectfully submitted,



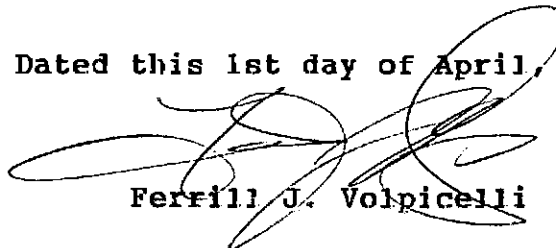
Ferrill J. Volpicelli

Petitioner, In Proper Person

CERTIFICATE OF MAILING

Pursuant to NRCP 5 (b), I certify that I am incarcerated at Lovelock Correctional Center (LCC), and that on this 1st day of April, 2005, I deposited for mailing, in a sealed envelope, with postage fully paid via brass slip, at LCC's law library, Lovelock Nevada, true and correct copies of the Motion For Alternative Counsel, and that said copies were mailed to Lewis Taitel, Esq, and Richard Gammick of the Washoe County Attorney's Office.

Dated this 1st day of April, 2005



Ferrill J. Volpicelli

Plaintiff, In Proper Person

ORIGINAL

FILED

Ferrill J. Volpicelli  
79565 LCC  
POB 359  
Lovelock, Nevada 89419

2005 APR 13 AM 2:37

RONALD A. LONGSTIN, JR.

BY                       
DEPUTY

Petitioner, In Proper Person

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

\*\*\*

FERRILL J. VOLPICELLI,

Petitioner,

Case No. CR02-0147

v.

THE STATE OF NEVADA,

Dept. 9

Respondent,

OPPOSITION TO REQUEST FOR SUBMISSION

COMES NOW, Petitioner, Ferrill J. Volpicelli, in his proper person and submits the instant Opposition To Request For Submission in the above entitled action.

This motion is made and based on all applicable rules of the court, all papers and pleadings on file herein, as well as the following argument.

...

...

CR02-0147  
STATE VS FERRILL J. VOLPICELLI  
District Court  
Washoe County  
DC-09900055303-004  
JOSEPH VOLP 4 Pages  
04/13/2005 02:37 PM  
2650  
MTAPPE

ARGUMENT

Petitioner filed a Petition For Writ of Habeas Corpus (post-conviction) on or about October 7, 2004.

On or about February 2, 2005, the Respondent filed an Answer and Motion To Dismiss Petitioner's petition.

On or about February 23, 2005, Petitioner filed a proper person Reply and/or Supplement to the original petition. Additionally, on February 23, 2005, Petitioner submitted an Ex-Parte Motion For Appointment of Counsel.

On or about March 30, 2005, this Court entered an order appointing Lewis Taitel, Esq. to represent Petitioner.

On or about March 31, 2005, Petitioner mailed a Motion For Appointment Of Alternative Counsel to the clerk of the court, as well as to the Respondent and Mr. Taitel; due to an "actual conflict of interest" between Petitioner and Lewis Taitel, Esq. To date, this Court has not addressed or ruled on the latest pleading. On or about April 4, 2005, the Respondent submitted a Request For Submission.

Petitioner hereby respectfully requests that this Honorable Court deny the Request For Submission on the following basis.

NRS 34.750- Appointment of counsel for indigents; pleadings supplemental; response to motion to dismiss.....

(3) After appointment by the court, counsel for Petitioner may file and serve supplemental pleadings, exhibits, transcripts, and documents within thirty (30) days after:

(a) the date the Court orders the filing of an answer or return; or

(b) the date of his appointment, whichever is later.



Counsel was apparently appointed by this Court to assist Petitioner in the instant action. Counsel is allowed, by statute, to further investigate and submit additional post-conviction pleadings. Counsel is better prepared than this incarcerated Petitioner to investigate and submit proper legal pleadings.

For this Court to enter a decision on Respondent's Motion To Dismiss would be highly prejudicial to Petitioner, if entered prior to counsel's investigative efforts and filing of supplemental pleadings.

Respondent's Request For Submission is therefore a fugitive document, premature, and should be declared moot.

#### CONCLUSION

Wherefore, Petitioner respectfully requests that this Honorable Court deny Respondent's Request For Submission; thereby allowing counsel to represent and assist Petitioner in the filing of supplemental post-conviction pleadings in the instant action prior to adjudication by this Court.

Dated this 11th day of April, 2005.

Respectfully submitted,



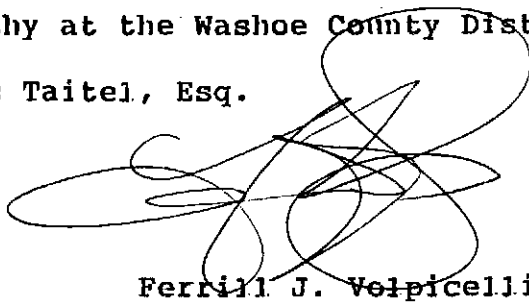
Ferrill J. Volpicelli

Petitioner, In Proper Person

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am incarcerated at Lovelock Correctional Center (LCC) and that, on this 11th day of April, 2005, I deposited for mailing through LCC's law library, Lovelock Nevada, postage prepaid via brass slip, a true copy of the foregoing document, addressed to:

Terrance McCarthy at the Washoe County District Attorney's Office,  
as well as Lewis Taitel, Esq.

A handwritten signature in black ink, appearing to read "Ferrill J. Velpicelli", is written over the printed name.

Ferrill J. Velpicelli

Petitioner, in Proper Person

CODE 2525

FERRILL J. VOLPICELLI # 79565

Lovelock Correctional Center

1200 Prison Road

Lovelock, Nevada 89419

Defendant In Pro Se

FILED

2008 MAY -1 AM 8:52

HOWARD W. CONYERS

BY [Signature]  
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

\*\*\*\*\*

9 THE STATE OF NEVADA, )10 Plaintiff, )Case No. CR02-0147

11 -vs- )

Dept. No. 912 FERRILL JOSEPH VOLPICELLI, )

13 \_\_\_\_\_, )

14 Defendant, )16 NOTICE OF CHANGE OF ADDRESS17 NOTICE IS HEREBY GIVEN that the address of Ferrill J. Volpicelli, in pro  
18 se, has been changed to the following:19 Lovelock Correctional Center  
20 1200 Prison Road  
Lovelock, Nevada 8941921 All further correspondence should be addressed to Defendant at his  
22 new address above.23 Dated this 24th day of April, 2008.24 FERRILL J. VOLPICELLI # 79565  
25 Lovelock Correctional Center  
26 1200 Prison Road  
Lovelock, Nevada 8941927 Defendant In Pro Se


ORIGINAL

CR02-0147  
STATE VS. FERRILL JOSEPH VOLPICELLI  
District Court  
Washoe County  
DC-9900003065-111  
JOSEPH VOLPICELLI  
95/01/2008 08:52 AM  
2525  
JLL/PLP

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing NOTICE OF CHANGE OF ADDRESS to the below address(es) on this 24th day of April, 2008, by placing same in the U.S. Mail, First-Class postage, per NRCP 5(b):

DUTRIK ATTORNEY  
P.O. Box 30083  
Reno, NV 89520-3083

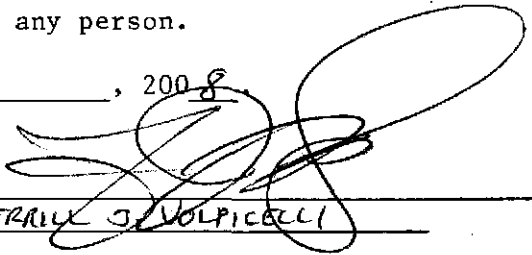
  
FERRILL J. VOLPICELLI # 79565  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

Defendant In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

I do affirm that the preceding document, NOTICE OF CHANGE OF ADDRESS, does NOT contain the social security number of any person.

Dated this 24th day of April, 2008

  
FERRILL J. VOLPICELLI  
Defendant In Pro Se

1 CODE 4075  
2 Richard A. Gammick  
3 #001510  
4 P.O. 30083  
5 Reno, NV. 89520  
6 (775) 328-3200  
7 Attorney for Plaintiff

8  
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
10  
11 IN AND FOR THE COUNTY OF WASHOE.

12 \* \* \*

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No. CR02-0147

15 v.

Dept. No. 9

16 FERRILL JOSEPH VOLPICELLI,

17 Defendant.

18 \_\_\_\_\_/  
19 SUBSTITUTION OF COUNSEL FOR THE STATE

20 Comes now, CHRISTIAN G. WILSON, Deputy District Attorney,  
21 and hereby substitutes in as the Deputy District Attorney handling  
22 the above-entitled matter on behalf of the State of Nevada. This  
23 substitution of counsel is being made as a matter of courtesy to  
24 comply with the requirements of the court's e-filing system and to  
25 assure that CHRISTIAN G. WILSON will receive proper e-filing  
26 notifications in this case.

///

///

///

///

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 22nd day of March, 2013.

RICHARD A. GAMMICK  
District Attorney  
Washoe County, Nevada

By: /s/ Christian G. Wilson  
CHRISTIAN G. WILSON  
6535  
Deputy District Attorney

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
PROOF OF SERVICE OF ELECTRONIC FILING

-

**A filing has been submitted to the court RE:** CR02-0147  
**Judge:** SCOTT FREEMAN  
**Official File Stamp:** 03-22-2013:11:38:05  
**Clerk Accepted:** 03-22-2013:12:07:11  
**Court:** Second Judicial District Court - State of Nevada  
**Case Title:** STATE VS FERRILL JOSEPH VOLPICELLI (D9)  
**Document(s) Submitted:** Substitution of Counsel  
**Filed By:** CHRISTIAN WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

GARY HATLESTAD, ESQ. for STATE OF NEVADA  
TAMMY RIGGS, ESQ.  
DIV. OF PAROLE & PROBATION  
JOHN KADLIC, ESQ. for FERRILL VOLPICELLI  
CHRISTIAN WILSON, ESQ. for STATE OF NEVADA

**The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):**

FERRILL VOLPICELLI  
STATE OF NEVADA

DC-9900046233-004  
STATE VS FERRILL JOSEPH VOLP 5 Pages  
District Court 06/03/2013 11:59 AM  
Washoe County 2490  
19057

Case No. CR92-0047  
Dept. No. 9

FILED

2013 JUN -3 PM 11:59

CLERK OF THE COURT

BY [Signature]  
DEPUTY

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

\*\*\*\*\*

FERRILL VOLPCEY,  
Plaintiff,  
-vs-  
STATE of NEVADA,  
Respondent.

MOTION TO CORRECT  
JUDGMENT TO REMOVE  
DOUBLE JEOPARDY CHARGES  
NRS 176.035 VS CA 5.14  
FRE 201 NRS 47.130-47.170

Comes Now Ferrill T. Volpcey in Pro Se Pursuant  
to the Above Statutes and Citations to Respectfully  
Request an Amended Judgment to Delete Duplicate  
DNA Fee(s) Entered in this case after previously  
submitting and paying for same in case CR98-2160  
Filed November 3, 1998. NRS 176.0913.  
JUDICIAL NOTICE FRE 201, NRS 47.130 - 47.170.  
The Court will also take notice of NRS 178.  
3975(6). A Defendant shall not be ordered  
to pay Attorney Fees unless the Defendant is or  
will be able to do so. (Emphasis). NRS 180.010  
The Court will note that Petitioner has been  
in custody since 1998 facing multiple life  
sentences and has no financial resources.

LCC LL FORM 26.014



1 This Request is made and Based on Papers,  
 2 Files & Records on File therein, as well as  
 3 in CR 3-1263, Along with the Accompanying  
 4 Affidavit herein.

5  
 6 This Matter is submitted pursuant to Haines v  
 7 Kerner, 404 US 519 (1972) - Pro Se Litigants  
 8 are entitled to be liberally considered.

### 9 10 Legal Authorities

11 Plaintiff Ferrill Volpicelli in Pro Se submits  
 12 that DNA fees were ordered and paid under  
 13 previous Judgment in CR 98-2160. Once  
 14 submitted it does not have to be duplicated  
 15 and constitutes an abuse of discretion to  
 16 order it again and again. Petitioner submits  
 17 the has paid for it in full and the NOSC  
 18 continues to debit said fees in CR 2-0147.  
 19 Additionally, Counsel Cost for Representation  
 20 under NRS 179.3975 subsection (2) states:  
 21 "The Court shall not order a Defendant to  
 22 make such a payment unless the Defendant is  
 23 or will be able to do so. In determining  
 24 the amount & method of payment, the Court  
 25 shall take into account the financial resources  
 26 of the Defendant and the nature of the burden  
 27  
 28

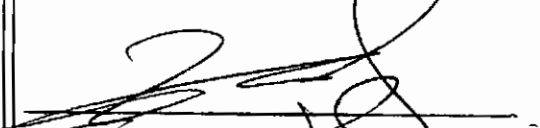
1 That the Payment was imposed. Again,  
 2 Petitioner has Merit Life Insurance &  
 3 has been in custody since 1991 as  
 4 an indigent inmate. Hence, the District  
 5 Court has Abused its Discretion in Making  
 6 Error of Law. Carter & Green v. Harman  
 7 Cell. 496 is 384, 402, 110 Sct 2447 (1990).

### 10 Conclusion

11 Petitioner further Volpicelli in Pro Se Requests  
 12 Arrest of Judgment insofar as DNA fees  
 13 & Counsel fees (NRS 176.0903 & NRS 176.  
 14 3975(2)), as the DNA fees are Double  
 15 Treasury by Documentation Process.

16 Relief Requested, if Granted, is that  
 17 the NDOC and other Administrative Agencies  
 18 as Needed be Served. NRS 233 B.030  
 19 sub seq. by Amended Judgment

20 Respectfully Submitted this 21 Day of May 2013

21  
 22   
 23  
 24 Ferrill J. Volpicelli  
 25 79305 Lee  
 26 New Mexico Rd  
 27 Colton, NV 89411  
 28

Ferrill J. Volpicelli  
 Pro Se Litigant

## AFFIDAVIT OF

FERRILL VOLPICERI

STATE OF NEVADA )

) SS:

COUNTY OF PERSHINGNEVADA

I, FERRILL VOLPICERI, the undersigned, do hereby swear that all the following statements are true and correct, to the best of my own knowledge and of my own volition.

1. My name is FERRILL VOLPICERI,

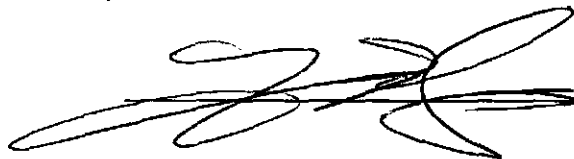
2. I am over 18 years of age, I reside at Lovelock Correctional Center, 1200 Prison Road, Lovelock, Nevada 89419. I am fully competent to make this affidavit and I have personal knowledge of the facts stated herein.

(1) THAT AS A RESULT OF AN NDOC AUDIT, AND INTERVIEW, I WAS MADE AWARE OF A FEE DEDUCTION DNA FEE. AND, THAT PER RECENT REVISED STATUTE, THE JUDGMENT IN ITS CURRENT FORM IS ILLEGAL AND IN VIOLATION OF DOUBLE JEOPARDY.

(2) PER NRS 47.130 - 47.132, I CERTIFY THAT THE RECENT JUDGMENTS IN CR21-2000 & CR22-0147 REFLECT MURDER COURT ORDERED DNA FEES, AS WELL AS AN ERRONEOUS ORDER FOR A REIMBURSEMENT OF ATTORNEY FEES IN VIEW OF MY PROTRACTED MURDER LIFE SENTENCE & INDIGENCY.

I declare under penalty of perjury that the foregoing is true and correct, and that this document is executed without benefit of a notary pursuant to NRS 208.165 and/or 28 U.S.C.A § 1746 as I am a prisoner to state custody.

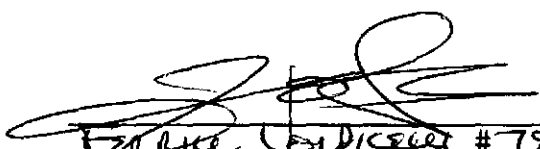
Dated this 28th day of MAY, 2013



CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing MOTION TO CORRECT JUDGMENT to the below address(es) on this 28 day of May, 2013, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

Lovelock County  
District Attorney  
POB 3083  
Reno, NV 89520-3083

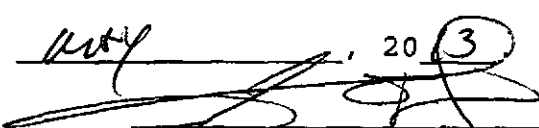
  
Terrence C. Meagher #72565  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

Terrence C. Meagher In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding MOTION TO CORRECT JUDGMENT filed in District Court Case No. CR02-0147 does not contain the social security number of any person.

Dated this 28 day of May, 2013

  
Terrence C. Meagher  
Terrence C. Meagher In Pro Se

1 Case No. CR020072 Dept. No. 9

FILED  
2013 SEP 13 PM 2:35

CLERK OF DISTRICT COURT  
BY [Signature]  
DEPUTY

3  
4  
5  
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF Washoe

8 \* \* \* \* \*

9 FERRILL T. VOLPICKER )  
10 Plaintiff )  
11 -vs- )  
12 State of Nevada )  
13 Respondent )  
14

REQUEST FOR SUBMISSION  
OF MOTION

15 It is requested that the Motion to Correct Judgment  
16 to Remove Double Jeopardy Charges  
17 which was filed on the 3rd day of JUNE, 2013, in  
18 the above-entitled matter, be submitted to the Court for  
19 decision.

20 Dated this 30 day of AUGUST, 2013


21  
22 [Signature]  
23 FERRILL T. VOLPICKER # 78205  
24 Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

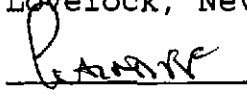
25 Plaintiff In Pro Se  
26  
27  
28

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing REQUEST FOR SUBMISSION OF MOTION to the below address(es) on this 30 day of August, 2013, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCF 5(b):

Washoe County  
District Attorney  
Room 30083  
Reno, NV 89520-3083

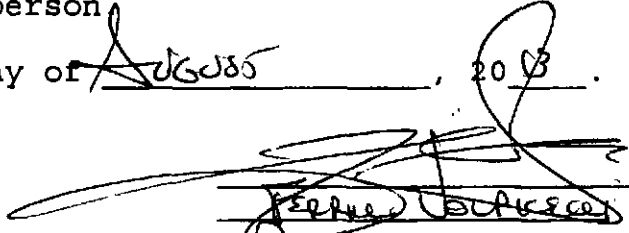
  
Fernand J. Lopez # 72025  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

 In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding REQUEST FOR SUBMISSION OF MOTION does not contain the social security number of any person.

Dated this 30 day of August, 2013.

  
Fernand J. Lopez  
In Pro Se

1 CODE: 3370  
2  
3  
4  
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE  
8

9 FERRILL JOSEPH VOLPICELLI,

10 Petitioner,

11 vs.

Case No. CR02-0147

12 THE STATE OF NEVADA,

Dept. No. 9

13 Respondent.  
14

15 \_\_\_\_\_/  
16 ORDER

17 The Court is in receipt of Petitioner FERRILL JOSEPH VOLPICELLI (hereinafter  
18 "Petitioner"), *Motion to Correct Judgment to Remove Double Jeopardy Charges* filed on June 3,  
19 2013, *in propria persona*. No timely opposition has been filed.

20 I. Petitioner's Arguments

21 Petitioner hereby requests this Court for an amended judgment to remove alleged "double  
22 jeopardy" charges pursuant to NRS 176.0913<sup>1</sup> and NRS. 178.3975(2).<sup>2</sup> See (Pet. Mot. p. 2).  
23 Specifically, Petitioner asserts that DNA fees were ordered and paid for under the previous  
24 judgment in case number CR98-2160, but the Nevada Department of Corrections ("NDOC")  
25 continues to "debit" additional DNA fees in the present case. *Id.* Thus, because the DNA fees were

26 <sup>1</sup> NRS 176.0913: "1. If a defendant is convicted of an offense listed in subsection 4 . . . (b) A biological specimen must  
27 be obtained from the defendant pursuant to the provisions of this section and the specimen must be used for an analysis  
to determine the genetic markers of the specimen . . . ."

28 <sup>2</sup> NRS 178.3975: "1. The court may order a defendant to pay all or any part of the expenses incurred by the county, city  
or state in providing the defendant with an attorney . . . ." "2. The court shall not order a defendant to make such a  
payment unless the defendant is or will be able to do so. In determining the amount and method of payment, the court  
shall take account of the financial resources of the defendant and the nature of the burden that payment will impose . . . ."

1 paid in the previous case, and Petitioner lacks financial resources to pay new DNA fees, Petitioner  
2 should not be required to pay for any DNA fees charged in the present case. *Id.*

3 **II. Discussion**

4 NRS 178.3975 provides in relevant part:

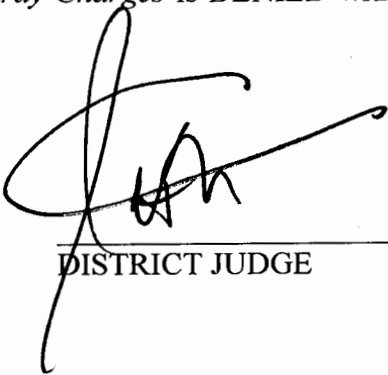
5 1. The court may order a defendant to pay all or any part of the expenses  
6 incurred by the county, city or state in providing the defendant with an attorney  
7 which are not recovered pursuant to NRS 178.398. The order may be made at the  
8 time of or after the appointment of an attorney and may direct the defendant to pay  
the expenses in installments.

9 2. The court shall not order a defendant to make such a payment unless the  
10 defendant is or will be able to do so. In determining the amount and method of  
11 payment, the court shall take account of the financial resources of the defendant and  
the nature of the burden that payment will impose.

12 Nev. Rev. Stat. § 178.3975. Here, Petitioner asserts that the NDOC continues to “debit” DNA fees  
13 in the above-entitled matter. Petitioner, however, does not provide any documentation that shows he  
14 paid said DNA fees in case number CR98-2160, or that the NDOC is in fact charging additional  
15 DNA fees in the present case. Furthermore, Petitioner has not provided the Court with any  
16 evidence, by affidavit or otherwise, that suggests he is currently unable to pay the alleged DNA  
17 fees.

18 THEREFORE, and good cause appearing, IT IS HEREBY ORDERED that Petitioner’s  
19 *Motion to Correct Judgment to Remove Double Jeopardy Charges* is DENIED without prejudice;  
20 to be re-filed with the appropriate documentation.

21 DATED: This 30 day of October, 2013.

22  
23   
24 \_\_\_\_\_  
DISTRICT JUDGE  
25  
26  
27  
28



**CERTIFICATE OF SERVICE**

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;  
that on the 31 day of October, 2013, I electronically filed the foregoing with  
the Clerk of the Court system which will send a notice of electronic filing to the following:

John Kadlic, Esq.

Christian Wilson, Esq.

Tammy Riggs, Esq.

Further, Pursuant to NRCP 5(b), I hereby certify that I am an employee of the  
Second Judicial District Court, in and for the County of Washoe; and that on this  
31 day of October, 2013, I deposited in the County mailing system for  
postage and mailing with the United States Postal Service in Reno, Nevada, a true and  
correct copy of the attached document addressed as follows:

Ferrill Joseph Volpicelli, #79565  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, NV 89419

  
\_\_\_\_\_  
Brianne Buzzell,  
Judicial Assistant

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
PROOF OF SERVICE OF ELECTRONIC FILING

-

**A filing has been submitted to the court RE:** CR02-0147  
**Judge:** SCOTT FREEMAN  
**Official File Stamp:** 10-31-2013:13:49:22  
**Clerk Accepted:** 10-31-2013:13:51:15  
**Court:** Second Judicial District Court - State of Nevada  
**Case Title:** STATE VS FERRILL JOSEPH VOLPICELLI (D9)  
**Document(s) Submitted:** Ord Denying Motion  
**Filed By:** Judicial Asst. BBuzzell

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

JOHN KADLIC, ESQ. for FERRILL VOLPICELLI  
GARY HATLESTAD, ESQ. for STATE OF NEVADA  
CHRISTIAN WILSON, ESQ. for STATE OF NEVADA  
TAMMY RIGGS, ESQ.  
DIV. OF PAROLE & PROBATION

**The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):**

STATE OF NEVADA  
FERRILL VOLPICELLI

CR02-0147  
DC-9900051300-048  
STATE VS FERRILL JOSEPH VOLP 5 Pages  
District Court 11/20/2013 03:07 PM  
Washoe County  
2175  
hnc

Case No. CR02-0147Dept. No. 9

FILED

2013 NOV 20 PM 3:07

JUDY BOONIN HASTINGS  
CLERK OF THE COURTBY [Signature]

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

\*\*\*\*\*

FERRILL JOSEPH, )  
PETITIONER, )  
-vs- )  
STATE OF NEVADA, )  
RESPONDENT. )

Motion for  
RECONSIDERATION

PETITIONER, FERRILL JOSEPH, in and by, moves the Court  
for reconsideration of his Request for an Amended  
Judgment of Conviction Removing the Contested Fees  
for DUT and Legal Representation in this case.  
This motion is based on the papers on file, as  
well as the accompanying two page affidavit  
in support of same.

DATED this 15 Day  
of November, 2013

[Signature]  
FERRILL JOSEPH  
PETITIONER in Pro Se

## AFFIDAVIT OF

Ferris Volperez

STATE OF NEVADA )

) SS:

COUNTY OF Pershing )NEVADA )

I, Ferris T. Volperez, the undersigned, do hereby swear that all the following statements are true and correct, to the best of my own knowledge and of my own volition.

1. My name is Ferris T. Volperez

2. I am over 18 years of age, I reside at Lovelock Correctional Center, 1200 Prison Road, Lovelock, Nevada 89419. I am fully competent to make this affidavit and I have personal knowledge of the facts stated herein.

THAT THIS AFFIDAVIT IS IN SUPPORT OF MY MOTION FOR AN AMENDED JUDGMENT OF CONVICTION REQUESTING THE REMOVAL OF COURT ORDERED DUKATIVE DNA FEES AND LEGAL REPRESENTATION FEES, AS WELL AS THIS COURT'S ORDER DATED 10-31-13 DENYING SAME UNTIL FURTHER DOCUMENTATION IS PROVIDED. THAT I AM UNABLE TO RECEIVE DOCUMENTATION FROM THE NDOC SHOWING COURT ORDERED DEBIT FROM MY INMATE TRUST ACCOUNT (#60076 - CREY-2160) FOR DNA FEES BECAUSE THOSE RECORDS ARE NOT AVAILABLE FOR EXPIRED BAC NUMBERS. BUT I AVER THAT IN EXCESS OF \$1300<sup>00</sup> (thirteen hundred dollars) WAS DEDUCTED BETWEEN 1999 & 2011.

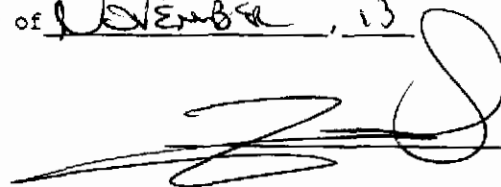
THAT I FILED A SIMILAR PETITION FOR REVIEW OF AN AMENDED JUDGMENT OF CONVICTION IN CR03-1263 ON 5-14-13

I declare under penalty of perjury that the foregoing is true and correct, and that this document is executed without benefit of a notary pursuant to NRS 208.165 and/or 28 U.S.C.A § 1746 as I am a prisoner to state custody.

Dated this

15<sup>TH</sup>

day of

November, 13


CONT'D

IN WHICH THE STATE FILED A NONOPPOSITION PETITION  
AND THE COURT ORDERED THE REMOVAL OF THE SAME  
ABOVE-REFERENCED FEES ON 6-4-13 VIA AN AMENDED  
JUDGMENT OF CONVICTION.

THAT I HAVE BEEN AN IMPEDIMENT IN MY  
SERVING MULTIPLE LIFE SENTENCES SINCE 2011 (#78565),  
WHICH I PREVIOUSLY PROSECUTED VIA MY AFFIDAVIT  
IN THIS MATTER (CR02-044) ON 6-3-13 AT #2, LINE 6

## AFFIDAVIT OF

Fernando Velazquez

STATE OF NEVADA )

) SS:

COUNTY OF Esmeralda  
Nevada

I, Fernando Velazquez, the undersigned, do hereby swear that all the following statements are true and correct, to the best of my own knowledge and of my own volition.

1. My name is Fernando Velazquez.

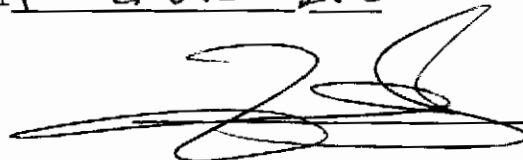
2. I am over 18 years of age, I reside at Lovelock Correctional Center, 1200 Prison Road, Lovelock, Nevada 89419. I am fully competent to make this affidavit and I have personal knowledge of the facts stated herein.

IN WHICH THE STATE FILED A NONPROSECUTION PENDING AND THE COURT ORDERED THE REMOVAL OF THE SAME ABOVE-REFERENCED FEES ON 6-4-13 VIA AN AMENDED JUDGMENT OF CONVICTION.

THAT I HAVE BEEN AN IMPRISONED INMATE SERVING MULTIPLE LIFE SENTENCES SINCE 2001 (#78025), WHICH I PREVIOUSLY PROCEAURED VIA MY AFFIDAVIT IN THIS MATTER (CLOSURE) ON 6-3-13 AT #2, line 6

I declare under penalty of perjury that the foregoing is true and correct, and that this document is executed without benefit of a notary pursuant to NRS 208.165 and/or 28 U.S.C.A § 1746 as I am a prisoner to state custody.

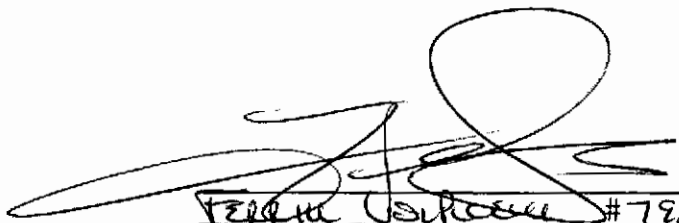
Dated this 15th day of November 2013



CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing Motion for Reconsideration to the below address(es) on this 15 day of November, 2013, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

Washoe County  
District Attorney  
POB 30083  
Reno NV 89520

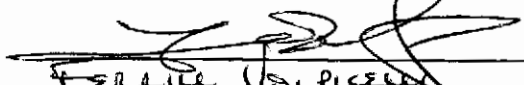
  
Felice Volpe #79560  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

Petitioner In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding Motion for Reconsideration filed in District Court Case No. CR02-0147 does not contain the social security number of any person.

Dated this 15 day of November, 2013.

  
Felice Volpe  
Petitioner In Pro Se

CR02-0147  
DC-9900051300-049  
STATE VS FERRILL JOSEPH VOLP 2 Pages  
District Court 11/20/2013 03:07 PM  
3960  
Washoe County  
NVC  
noc

Case No. CR02-0147Dept. No. 9

FILED

2013 NOV 20 PM 3:07

JUDY E. HASTINGS  
CLERK OF THE COURTBY [Signature]

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

\* \* \* \* \*

FERRILL JOSEPHPETITIONER

-vs-

STATE OF NEVADARESPONDENTREQUEST FOR SUBMISSION  
OF MOTIONIt is requested that the Motion ForRECONSIDERATION

which was filed on the 10<sup>th</sup> day of November, 2013, in  
the above-entitled matter, be submitted to the Court for

decision, SINCE THE STATE IS NOT OPPOSING THE REQUEST REQUESTED.

Dated this 10<sup>th</sup> day of November, 2013.

FERRILL JOSEPH # 7288  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

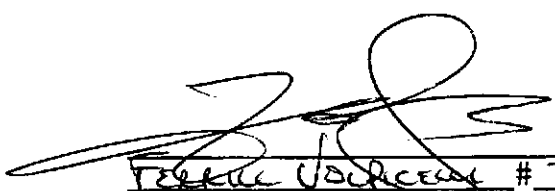
PETITIONER In Pro Se



CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing REQUEST FOR SUBMISSION OF MOTION to the below address(es) on this 15 day of November, 2013, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

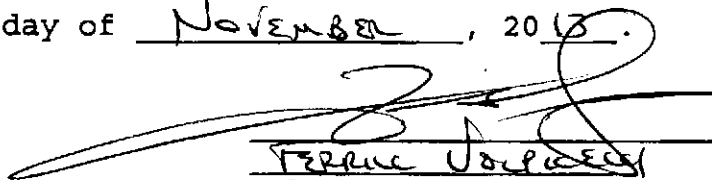
WASHOE COUNTY  
DISTRICT ATTORNEY  
POB 30083  
RENO, NV 89520-3083

  
TERRENCE JORGENSEN # 79368  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419  
TERRENCE In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding REQUEST FOR SUBMISSION OF MOTION does not contain the social security number of any person.

Dated this 15 day of November, 2013.

  
TERRENCE JORGENSEN  
TERRENCE In Pro Se

1 CODE: 2840  
2  
3  
4

5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
6 IN AND FOR THE COUNTY OF WASHOE  
7

8 FERRILL JOSEPH VOLPICELLI,  
9

10 Petitioner,  
11

12 vs.

Case No. CR02-0147

13 THE STATE OF NEVADA,  
14

Dept. No. 9

15 Respondent.  
16

ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION

17 The Court is in receipt of Petitioner FERRILL JOSEPH VOLPICELLI (hereinafter  
18 "Petitioner") *Motion for Reconsideration* filed on November 20, 2013. No timely opposition was  
19 filed.

20 **STANDARD OF REVIEW**

21 Motions for reconsideration are to be denied with the exception of "very rare instances in  
22 which new issues of fact or law are raised supporting a ruling contrary to the ruling already  
23 reached." *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). A decision may  
24 be reconsidered "if substantially different evidence is subsequently introduced or the decision is  
25 clearly erroneous." *Masonry and Title Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth*, 113  
26 Nev. 737, 741, 941 P.2d 486, 489 (1997).

27 **PETITIONER'S ARGUMENTS**

28 Petitioner hereby moves the Court to reconsider its *Order* denying the Petitioner's *Motion to  
Correct Judgment to Remove Double Jeopardy Charges*. Specifically, Petitioner declares by sworn

1 affidavit that he is unable to receive documentation from the Nevada Department of Corrections  
 2 (hereinafter “the NDOC”) that prove the Court ordered debits from his “inmate trust account” for  
 3 “DNA fees because those records are not available for “expired BAC numbers.” (Mot.  
 4 Reconsider.)(“Affidavit of Ferrill Volpicelli, p. 1). Petitioner avers that “in excess of \$1300.00 . . .  
 5 was deducted between 1999 & 2001.” *Id.* Finally, Petitioner further asserts that he filed a similar  
 6 motion on May 14, 2013, in case no. CR03-1263, which was subsequently granted by the  
 7 Honorable Judge Elliott A. Sattler (hereinafter “Judge Sattler”) of Department 10 of this District  
 8 Court. *Id.* at p. 2.

### 9 DISCUSSION

10 As an initial matter, this Court acknowledges that Judge Sattler did indeed grant a motion  
 11 similar to the one presented to this Court.<sup>1</sup> In that case, however, Petitioner attached two *distinct*  
 12 judgment of conviction orders that required the Petitioner to pay certain DNA fees.<sup>2</sup> Thus, Judge  
 13 Sattler was presented with sufficient evidence to establish that the Petitioner was in fact ordered to  
 14 pay duplicative DNA testing fees. Here, the Petitioner merely asserts that he was ordered to pay  
 15 DNA fees in Case no. CR98-2160, and that the NDOC continues to “debit” new and additional  
 16 DNA fees. However, unlike the case before Judge Sattler, Petitioner does not provide the Court  
 17 with any supporting documentation that proves that the Petitioner has paid duplicative DNA fees or  
 18 that the NDOC continues to debit new and additional DNA fees from Petitioner’s inmate trust  
 19 account. As a consequence, this Court cannot now conclude that an amended judgment of  
 20 conviction is warranted.

21 Based upon a careful review of the record, and the pleading and documents filed herein, the  
 22 Court finds that the Petitioner has not met the requisite standard for reconsideration. For instance,  
 23 Petitioner does not introduce any evidence to support the assertions that were previously reviewed  
 24 and ruled upon. Furthermore, Petitioner does not point to any new facts or changes in the applicable  
 25 law that demonstrates the Court’s *Order* was “clearly erroneous.” See *Unionamerica Mortgage &*  
 26

27 <sup>1</sup> See Case no. CR03-1263 (*Order Granting Motion to Correct Judgment of Conviction* filed on June 4, 2013).

28 <sup>2</sup> Compare *Judgment* filed on April 1, 2004 (“The Defendant is further ordered to pay . . . One Hundred Fifty Dollar (\$150.00) DNA testing fee . . .”) with *Judgment* filed on November 3, 1998 (“It is further ordered that the Defendant pay the . . . DNA fees of Two Hundred Fifty Dollars (\$250.00)”).

1 *Equity Trust v. McDonald*, 97 Nev. 210, 211-12, 626 P.2d 1272, 1273 (1981)("[a] finding is clearly  
2 erroneous when although there is evidence to support it, the reviewing court on the entire evidence  
3 is left with the definite and firm conviction that a mistake has been committed").

4 THEREFORE, and good cause appearing, IT IS HEREBY ORDERED that Petitioner's  
5 *Motion for Reconsideration* is DENIED.

6 DATED: this 30<sup>th</sup> day of December, 2013.

7  
8   
9 DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;  
that on the 30 day of December, 2013, I electronically filed the foregoing with  
the Clerk of the Court system which will send a notice of electronic filing to the following:

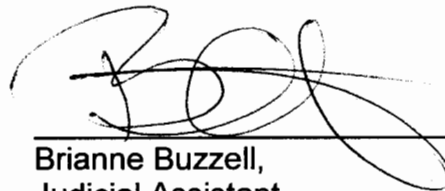
John Kadlic, Esq.

Christian Wilson, Esq.

Tammy Riggs, Esq.

Further, Pursuant to NRCP 5(b), I hereby certify that I am an employee of the  
Second Judicial District Court, in and for the County of Washoe; and that on this  
30 day of December, 2013, I deposited in the County mailing system for  
postage and mailing with the United States Postal Service in Reno, Nevada, a true and  
correct copy of the attached document addressed as follows:

Ferrill Joseph Volpicelli, #79565  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, NV 89419

  
\_\_\_\_\_  
Brianne Buzzell,  
Judicial Assistant

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
PROOF OF SERVICE OF ELECTRONIC FILING

-

**A filing has been submitted to the court RE:** CR02-0147  
**Judge:** SCOTT FREEMAN  
**Official File Stamp:** 12-30-2013:15:07:17  
**Clerk Accepted:** 12-30-2013:15:08:21  
**Court:** Second Judicial District Court - State of Nevada  
**Case Title:** STATE VS FERRILL JOSEPH VOLPICELLI (D9)  
**Document(s) Submitted:** Ord Denying Motion  
**Filed By:** Judicial Asst. BBuzzell

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

JOHN KADLIC, ESQ. for FERRILL VOLPICELLI  
CHRISTIAN WILSON, ESQ. for STATE OF NEVADA  
TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA  
TAMMY RIGGS, ESQ.  
DIV. OF PAROLE & PROBATION

**The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):**

STATE OF NEVADA  
FERRILL VOLPICELLI

DC-9500052682-074  
 CR02-0147 JOSEPH VOLPICELLI Page  
 STATE VS FERRILL 1 Page  
 District Court 01/09/2014 02:46 PM  
 2175  
 Washoe County  
 Nevada

Case No. CR02-0147Dept. No. 9

FILED

2014 JAN -9 PM 2:46

CLERK OF DISTRICT COURT

BY [Signature]IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADAIN AND FOR THE COUNTY OF Washoe

\*\*\*\*\*

FERRILL JOSEPH VOLPICELLIPETITIONER

-VS-

STATE OF NEVADARESPONDENT
SECOND  
MOTION  
FOR  
RECONSIDERATION

PETITIONER FERRILL VOLPICELLI, SUBMITS A SECOND MOTION  
 FOR RECONSIDERATION, MOVING THE COURT FOR AN AMENDED  
 JUDGMENT OF CONVICTION REFLECTING ONLY THE REMOVAL OF THE  
 DUPLICATIVE DNA FEE, WITH NO FURTHER CONSIDERATION OF  
 ANY REIMBURSEMENT OF ANY AND ALL DUPLICATE FEES PAID.  
 THIS MOTION IS BASED UPON THIS COURT'S INHERENT AUTHORITY,  
 AS WELL AS THE 'SUBSTANTIALLY DIFFERENT EVIDENCE' NOW  
 INTRODUCED (Moore v. City, 551 P2d 244, 246) IN ACCOMPANYING  
 EXHIBITS A & B, AS WELL AS ALL OTHER PAPERS ON FILE.

SUBMITTED THIS 6th  
 DAY OF JANUARY,  
 2014.

[Signature]  
 FERRILL T. VOLPICELLI  
 PETITIONER IN PRO SE

CR02-0147  
STATE VS FERRILL  
District Court  
Washoe County  
CV4

DC-9900052682-075  
JOSEPH VOLP 3 Pages  
01/09/2014 02:46 PM  
2175  
CLERK/

# EXHIBIT 1



FILED

NOV 3 1998  
BETTY J. LEWIS, ClerkBy B. Johnson  
Deputy Clerk

1 No. CR98-2160

2 Dept. No. 9

3  
4 **IN THE SECOND JUDICIAL DISTRICT COURT**  
5 **OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE**  
67  
8 **STATE OF NEVADA,**

Reporter: D. Vieira

9 **Plaintiff,**10 **vs.****J U D G M E N T**11 **FERRILL JOSEPH VOLPICELLI,**12 **Defendant.**  
13 \_\_\_\_\_14 The Defendant, having entered a plea of Guilty, and no sufficient cause being shown  
15 by Defendant as to why judgment should not be pronounced against him, the Court rendered  
16 judgment as follows:17 That Ferrill Joseph Volpicelli is guilty of the crime of Burglary, a violation of NRS  
18 205.060, a felony, as charged in Counts I and II of the Information, and that he be punished by  
19 imprisonment in the Nevada State Prison for a minimum term of twenty-four (24) months to a  
20 maximum term of seventy-two (72) months and by payment of a fine in the amount of Five Thousand  
21 Dollars (\$5,000.00) on Count I, to run consecutively to the Federal prison term he is obligated to  
22 serve; a minimum term of sixteen (16) months to a maximum term of seventy-two (72) months  
23 Nevada State Prison on Count II, to run consecutively to Count I. The sentence is suspended as to  
24 Count II and the Defendant is placed on probation for a period of time not to exceed three (3) years,  
25 to run consecutively to Count I and consecutively to the Federal prison term. The Defendant is given  
26 credit for eighty-seven (87) days time served. It is further ordered that the Defendant pay the

27 //

28 //

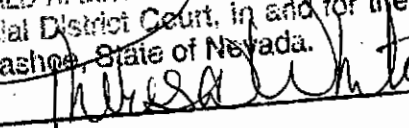
**EXHIBIT**

1 statutory Twenty-Five Dollar (\$25.00) administrative assessment fee and pay the DNA fees of Two  
2 Hundred Fifty Dollars (\$250.00).

3 Dated this 3rd day of November, 1998.

4  
5  
6   
7 DISTRICT JUDGE  
8  
9

10  
11 CERTIFIED COPY  
12 The document to which this certificate is  
13 attached is a full, true and correct copy of  
14 the original on file and of record in my office.

15 DATE: MAY 9 2002  
16 RONALD A. LONGTIN JR., Clerk of the Second  
17 Judicial District Court, in and for the County  
18 of Washoe, State of Nevada.  
19 By  Deputy  
20  
21  
22  
23  
24  
25  
26  
27  
28

CR02-0147 DC-9903052682-076  
STATE VS FERRILL JOSEPH VOLP 3 Pages  
District Court 01/09/2014 02:46 PM  
Washoe County 2175  
eunw001c

# EXHIBIT 2

ORIGINAL

CODE NO. 1850

FILED

12-12-03  
RONALD A. LONGIN, JR., ClerkBy S. Satter  
Deputy ClerkIN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

\* \* \*

THE STATE OF NEVADA,

Plaintiff,

Case No. CR02-0147

vs.

Dept. No. 9

FERRILL JOSEPH VOLPICELLI,

Reporter: D. Davidson

Defendant.

JUDGMENT

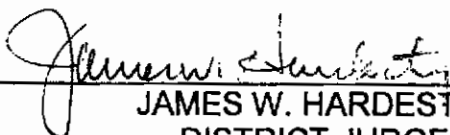
The Defendant having been found Guilty by a jury, and no sufficient cause being shown by Defendant as to why judgment should not be pronounced against him, the Court rendered judgment as follows:

That Ferrill Joseph Volpicelli is guilty of the crimes of Indecent Exposure, a violation of NRS 201.220, a felony, as charged in Count I of the Amended Information and Open or Gross Lewdness, a violation of NRS 201.210, a felony, as charged in Count II of the Amended Information, and that he be punished by imprisonment in the Nevada State Prison for the minimum term of twelve (12) months to a maximum term of forty-eight (48) months and by payment of a fine in the amount of Five Thousand Dollars (\$5,000.00), as to each of Counts I and II. The sentence in Count II shall run concurrently with the sentence in Count I. The Defendant is further ordered to pay the statutory Twenty-Five Dollar (\$25.00) administrative assessment fee, submit to a DNA analysis test for the purpose of determining genetic markers and pay a testing fee of One Hundred Fifty Dollars (\$150.00), an Eight

EXHIBIT B  
V4. 588

1 Hundred Dollar (\$800.00) Psychosexual Evaluation fee and reimburse the County of  
2 Washoe the sum of One Thounsad Dollars (\$1,000.00) for legal representation by the  
3 Washoe County Public Defender's Office. The Defendant is given credit for two hundred  
4 twenty-eight (228) days time served.

5 DATED this 12th day of December, 2003.

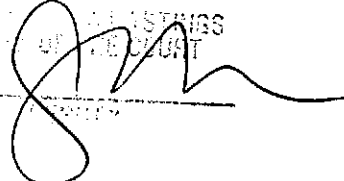
6  
7   
8 JAMES W. HARDESTY  
9 DISTRICT JUDGE  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CR02-0147  
 DC-9900052682-077  
 STATE VS FERRILL JOSEPH VOLP 2 Pages  
 District Court 01/09/2014 02:46 PM  
 Washoe County 3860  
 CHAMBERLAIN

1 Case No. CR02-01472 Dept. No. 9

FILED

2014 JAN -9 PM 2:46

 CLERK OF DISTRICT COURT  
 BY 

3  
 4  
 5  
 6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
 7 IN AND FOR THE COUNTY OF Washoe

\* \* \* \* \*

9 FERRILL JOSEPH VOLP, )10 PETITIONER, )

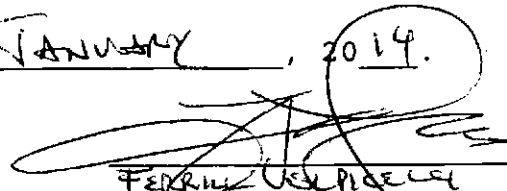
11 -VS-

12 STATE OF NEVADA, )13 RESPONDENT. )
 REQUEST FOR SUBMISSION  
OF MOTION

14  
 15 It is requested that the SECOND Motion for  
 16 RECONSIDERATION

17 which was filed on the 6<sup>th</sup> day of JANUARY, 2014, in  
 18 the above-entitled matter, be submitted to the Court for  
 19 decision.

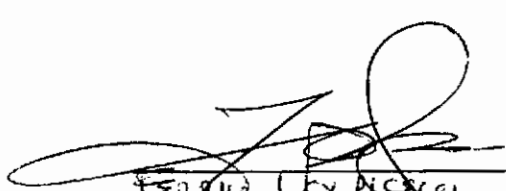
20 Dated this 6<sup>th</sup> day of JANUARY, 2014.

21  
 22   
 23 FERRILL JOSEPH VOLP # 78365  
 24 Lovelock Correctional Center  
 25 1200 Prison Road  
 26 Lovelock, Nevada 89419  
 27 PETITIONER In Pro Se  
 28

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing REQUEST FOR SUBMISSION OF MOTION to the below address(es) on this 6<sup>th</sup> day of JANUARY, 2014, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

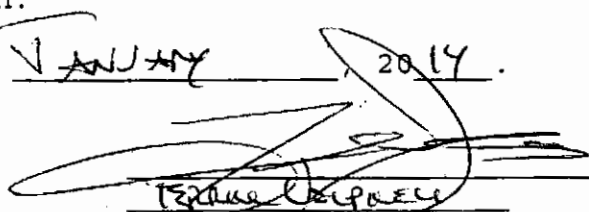
WASHOE COUNTY  
DISTRICT ATTORNEY  
POB 30083  
RENO, NV 89520

  
TERENCE L. PETERSON # 79805  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419  
PETERSON In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding REQUEST FOR SUBMISSION OF MOTION does not contain the social security number of any person.

Dated this 6<sup>th</sup> day of JANUARY, 2014.

  
TERENCE L. PETERSON  
PETERSON In Pro Se

1 CODE: 2840  
2  
3  
4

5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
6 IN AND FOR THE COUNTY OF WASHOE  
7

8 FERRILL JOSEPH VOLPICELLI,  
9

10 Petitioner,  
11

12 vs.  
13

Case No. CR02-0147

Dept. No. 9  
14

15 THE STATE OF NEVADA,  
16

17 Respondent.  
18

19 ORDER DENYING PETITIONER'S SECOND MOTION FOR RECONSIDERATION

20 The Court is in receipt of Petitioner FERRILL JOSEPH VOLPICELLI (hereinafter  
21 "Petitioner") *Second Motion for Reconsideration* filed on November 20, 2013. No timely  
22 opposition was filed.

23 **STANDARD OF REVIEW**

24 Motions for reconsideration are to be denied with the exception of "very rare instances in  
25 which new issues of fact or law are raised supporting a ruling contrary to the ruling already  
26 reached." *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). A decision may  
27 be reconsidered "if substantially different evidence is subsequently introduced or the decision is  
28 clearly erroneous." *Masonry and Title Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth*, 113  
Nev. 737, 741, 941 P.2d 486, 489 (1997).



## DISCUSSION

Petitioner hereby moves the Court to reconsider its *Order* denying the Petitioner's *Motion to Correct Judgment to Remove Double Jeopardy Charges*. Specifically, Petitioner requests this Court to issue an amended Judgment of Conviction that indicates the removal of duplicative DNA fees without further consideration of Petitioner's prior allegation that the Nevada Department of Corrections ("NDOC") continues to debit new and additional DNA fees from his inmate trust account. Initially, the Court acknowledges that Petitioner has attached two exhibits to the instant motion that indicate the Petitioner was previously ordered to pay duplicate DNA fees.<sup>1</sup> Notwithstanding, Petitioner has yet to produce any documentation that shows he actually paid the DNA fees that were previously ordered. Consequently, the Court cannot issue an amended Judgment of Conviction until the Petitioner submits proof that the DNA Fees were in fact paid.

Based upon a careful review of the record, and the pleadings and documents filed herein, the Court finds that the Petitioner has not met the requisite standard for reconsideration. For instance, Petitioner does not introduce any evidence to support the assertions that were previously reviewed and ruled upon. Furthermore, Petitioner does not point to any new facts or changes in the applicable law that demonstrates the Court's *Order* was "clearly erroneous." See *Unionamerica Mortgage & Equity Trust v. McDonald*, 97 Nev. 210, 211-12, 626 P.2d 1272, 1273 (1981)("[a] finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed").

THEREFORE, and good cause appearing, IT IS HEREBY ORDERED that Petitioner's *Second Motion for Reconsideration* is DENIED.

DATED: this 7 day of February, 2014.

  
DISTRICT JUDGE

<sup>1</sup> See (Second Mot. Recon. Exhibits 1 & 2)(the *Judgment of Conviction* issued by the Honorable Judge Mills Lane on November 3, 1998 and the *Judgment of Conviction* issued by the Honorable Judge James W. Hardesty on December 12, 2003).

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 7 day of February, 2014, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

John Kadlic, Esq.

Christian Wilson, Esq.

Tammy Riggs, Esq.

Further, Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court, in and for the County of Washoe; and that on this 7 day of February, 2014, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Ferrill Joseph Volpicelli, #79565  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, NV 89419

  
\_\_\_\_\_  
Brianne Buzzell,  
Judicial Assistant

**Return Of NEF****Recipients**

**TERRENCE MCCARTHY, ESQ.** - Notification received on 2014-02-07 15:41:02.577.

**CHRISTIAN WILSON, ESQ.** - Notification received on 2014-02-07 15:41:02.514.

**JOHN KADLIC, ESQ.** - Notification received on 2014-02-07 15:41:02.342.

**TAMMY RIGGS, ESQ.** - Notification received on 2014-02-07 15:41:02.405.

**DIV. OF PAROLE & PROBATION** - Notification received on 2014-02-07 15:41:02.452.

**SCOTT FREEMAN** - Notification received on 2014-02-07 15:41:02.358.

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

02-07-2014:15:39:53

Clerk Accepted:

02-07-2014:15:40:27

Court:

Second Judicial District Court - State of Nevada  
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Ord Denying Motion

Filed By:

Judicial Asst. BBuzzell

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

TAMMY M. RIGGS, ESQ.

DIV. OF PAROLE & PROBATION

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH  
VOLPICELLI

TERRENCE P. MCCARTHY, ESQ. for STATE  
OF NEVADA

CHRISTIAN G. WILSON, ESQ. for STATE OF  
NEVADA

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL  
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA

2383

CR02-0147  
 DC-09900053921-010  
 STATE VS FERRILL JOSEPH VOLP 5 Pages  
 District Court 02/24/2014 02:31 PM  
 Washoe County 2383  
 vcc

1 Case No. CR02-01472 Dept. No. 9

FILED

2014 FEB 24 PM 2:31

JOEY ORONA HASTINGS  
CLERK OF THE COURTBY [Signature]

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

\*\*\*\*\*

9 FERRILL T. VOLPICELLI, )10 PETITIONER, )

11 -VS- )

12 STATE OF NEVADA, )13 RESPONDENT. )

MOTION TO AMEND  
JUDGMENT / CORRECT  
JUDGMENT  
NRS 176.555

14 FERRILL T. VOLPICELLI, PETITIONER IN PRO SE  
 15 AND AS FORNAT PAUPER'S, MOVES THE COURT  
 16 FOR AN AMENDED JUDGMENT ABSENT THE  
 17 COURT ORDERED REPRESENTATION FEES IN THE  
 18 ABOVE CASE.

19 THIS REQUEST IS MADE AND BASED UPON ALL  
 20 PAPERS, DOCUMENTS AND EXHIBITS ON FILE, AS  
 21 WELL AS THE ACCOMPANYING POINTS AND  
 22 AUTHORITY/AFFIDAVIT.

23 /

24 /

25 /

26 /

27 /

28 /

## Points and Authorities

NRS 178.3925 provides in relevant part:

1. THE COURT MAY ORDER A DEFENDANT TO PAY ALL OR PART OF THE EXPENSES INCURRED BY THE COUNTY, CITY OR STATE IN PROVIDING THE DEFENDANT WITH AN ATTORNEY. ....

2. THE COURT SHALL NOT ORDER A DEFENDANT TO MAKE SUCH A PAYMENT UNLESS THE DEFENDANT IS OR WILL BE ABLE TO DO SO. IN DETERMINING THE AMOUNT AND METHOD OF PAYMENT, THE COURT SHALL TAKE ACCOUNT OF THE FINANCIAL RESOURCES OF THE DEFENDANT AND NATURE OF THE BURDEN THAT PAYMENT WILL IMPOSE.

PURSUANT TO THE ACCOMPANYING AFFIDAVIT, PENNISON HAS BEEN IMPRISONED SINCE 1988 SERVING MULTIPLE LIFE SENTENCES. FURTHERMORE, HE HAS NO FINANCIAL RESOURCES. THENCE, IN THE INTEREST OF PRUDENCE AND FAIRNESS THIS COURT SHOULD NOT REQUIRE PENNISON PAY FOR COURT REPRESENTATION FEES PURSUANT TO NRS 178.3925(1).

CONCLUSION

Wherefore, Petitioner Moves the Court  
For An AMENDER / CORRECTED JUDGMENT  
OF CONVICTION ABSENT THE COURT ORDERED  
REPRESENTATION FEE OF REIMBURSEMENT  
TO THE COUNTY OF WASCO IN THE  
SUM OF ONE THOUSAND DOLLARS (\$1,000<sup>00</sup>).

SUBMITTED THIS 16<sup>TH</sup>  
DAY OF FEBRUARY, 2014



FERRILL J. VOLPICELLI  
79065 LEE  
1200 PRISON ROAD  
LOVELOCK, NV 89409

PETITIONER W Pro Se



## AFFIDAVIT OF

FERRIN T VOLPCEM

STATE OF NEVADA )

COUNTY OF CLATSOP ) SS:Nevada

I, FERRIN T VOLPCEM, the undersigned, do hereby swear that all the following statements are true and correct, to the best of my own knowledge and of my own volition.

1. My name is FERRIN T VOLPCEM

2. I am over 18 years of age, I reside at Lovelock Correctional Center, 1200 Prison Road, Lovelock, Nevada 89419. I am fully competent to make this affidavit and I have personal knowledge of the facts stated herein.

THAT I AM AN INDIGENT INMATE IN CUSTODY  
AT LOVELOCK CORRECTIONAL CENTER SERVING  
MULTIPLE LIFE SENTENCE CONSEQUENCE TO OTHER  
STATE AND FEDERAL JUDGMENTS OF CONVICTIONS  
DATING BACK TO 1998.

THAT I AM DEPRIVED OF FINANCIAL RESOURCES TO  
SAFELY PAY COURT ORDERED FEES, INCLUDING  
THE COSTS OF LITIGATION AS WELL AS THE  
ONEROUS COURT REPRESENTATION FEES DEMAND  
FROM SAID JUDGMENTS OF CONVICTIONS.

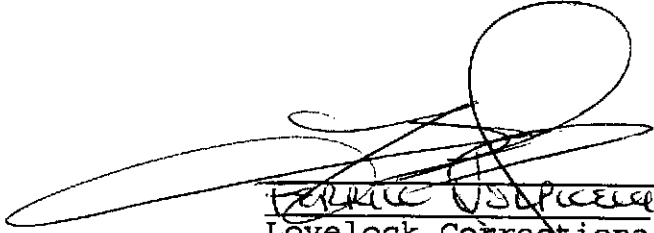
I declare under penalty of perjury that the foregoing is true and correct, and that this document is executed without benefit of a notary pursuant to NRS 208.165 and/or 28 U.S.C.A § 1746 as I am a prisoner to state custody.

Dated this 15 day of FEBRUARY, 2017.

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing MOTION TO AMEND / CORRECT JUDGMENT to the below address(es) on this 15<sup>th</sup> day of FEBRUARY, 2014, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

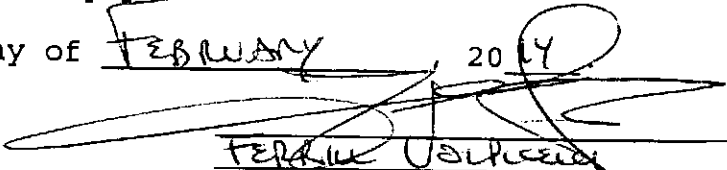
WASHOE COUNTY  
DISTRICT ATTORNEY  
POB 30083  
RENO, NV 89520-

  
FERRIE VOLKMER # 79065  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419  
PETITIONER In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding MOTION TO AMEND / CORRECT JUDGMENT filed in District Court Case No. CR02-0147 does not contain the social security number of any person.

Dated this 15<sup>th</sup> day of FEBRUARY, 2014

  
FERRIE VOLKMER  
PETITIONER In Pro Se

CR02-0147 DC-09900053921-011  
STATE VS FERRILL JOSEPH VOLP 2 Pages  
District Court 02/24/2014 02:31 PM  
Washoe County 386D  
JVC

1 Case No. CR02-0147  
2 Dept. No. 9

FILED

2014 FEB 24 PM 2:31

JOEY ORDUNA HASTINGS  
CLERK OF THE COURT  
BY [Signature]

3  
4  
5  
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE

\* \* \* \* \*

8  
9 FERRILL JOSEPH  
10 PETITIONER,

-VS-

11  
12 STATE OF NEVADA,  
13 RESPONDENT.

REQUEST FOR SUBMISSION  
OF MOTION

14  
15 It is requested that the MORAN V AMEND DOCUMENT  
16 CORRECT DOCUMENT  
17 which was filed on the 15<sup>th</sup> day of FEBRUARY, 2014, in  
18 the above-entitled matter, be submitted to the Court for  
19 decision.

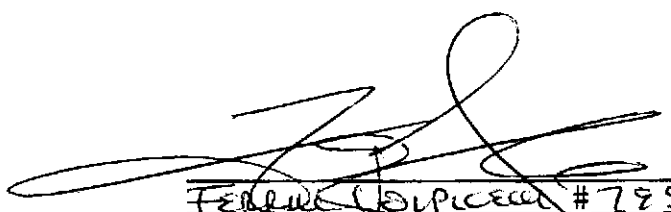
20 Dated this 15<sup>th</sup> day of FEBRUARY, 2014.

21  
22 FERRILL JOSEPH #72565  
23 Lovelock Correctional Center  
24 1200 Prison Road  
25 Lovelock, Nevada 89419  
26 PETITIONER In Pro Se  
27  
28

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing REQUEST FOR SUBMISSION OF MOTION to the below address(es) on this 10<sup>th</sup> day of FEBRUARY, 2014, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

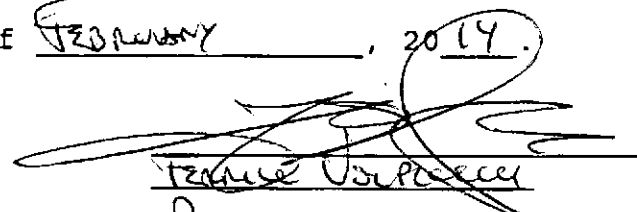
WASHOE COUNTY  
DISTRICT ATTORNEY  
POB 300B  
RENO, NV 89510

  
Fernand Vazquez #78565  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419  
Fernand Vazquez In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding REQUEST FOR SUBMISSION OF MOTION does not contain the social security number of any person.

Dated this 10<sup>th</sup> day of FEBRUARY, 2014.

  
Fernand Vazquez  
Fernand Vazquez In Pro Se

CR02-0147  
STATE VS. FERRILL JOSEPH VOLP 2 Pages  
District Court 03/10/2014 01:51 PM  
Kashoe County 2515  
non

Case No. CR02-0147  
Dept. No. 9

**FILED**  
2014 MAR 10 PM 1:51  
JOEY ORDOVAZ HASTINGS  
CLERK OF THE COURT  
BY [Signature]  
DEPUTY

IN THE Second JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF Washoe

\* \* \* \* \*

THE STATE OF NEVADA, )  
 )  
Plaintiff, )  
 )  
-vs- )  
 )  
FERRILL JOSEPH VOLP, )  
 )  
Defendant. )

NOTICE OF APPEAL

NOTICE IS GIVEN that Defendant, FERRILL JOSEPH VOLP,  
in pro se, hereby appeals to the Nevada Supreme Court the  
ORDERS DATED 10-31-13, 12-30-13 & 2-7-14  
filed/entered on or about the same day of AS ABOVE, 2014,  
in the above-entitled Court.


Dated this 6th day of March, 2014.

[Signature] # 72861  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419  
Defendant In Pro Se

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the below address(es) on this 6<sup>th</sup> day of March, 2014, by placing same in the U.S. Mail via prison law library staff:

White County  
District Attorney  
POB 30083  
Reno, NV 89520-3083

  
Terence J. Pappas # 72845  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

Defendant In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding NOTICE OF APPEAL filed in District Court Case No. Case 2-047 does not contain the social security number of any person.

Dated this 6<sup>th</sup> day of March, 2014.

  
Terence J. Pappas

Defendant In Pro Se

Code 1310

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

**FERRILL JOSEPH VOLPICELLI,****Petitioner,****Case No. CR02-0147****vs.****Dept. No. 9****THE STATE OF NEVADA,****Respondent.**

---

**CASE APPEAL STATEMENT**

This case appeal statement is filed pursuant to NRAP 3(2).

1. This appeal is from an order entered by the Honorable Scott Freeman.
2. Appellant is Ferrill Volpicelli. Appellant is representing himself in Proper Person on appeal:
3. Appellant's address is:  
Ferrill J Volpicelli #79565  
LCC - 1200 Prison Road  
Lovelock, Nevada 89419
4. Respondent is the State of Nevada. Respondent is represented by the Washoe County District Attorney's Office:  
Terrance McCarthy, Esq.  
P.O. Box 11130  
Reno, Nevada 89520
5. Respondent's attorney is licensed to practice law in Nevada.
6. Appellant was represented by appointed counsel in District Court.

7. Appellant is not represented by appointed counsel on appeal.
8. Appellant was granted leave to proceed in forma pauperis on November 20, 2009, in the District Court.
9. Proceeding commenced by the filing of an Information on February 6, 2002.
10. This is a criminal proceeding and the Appellant is appealing the Order filed October 31, 2013, the Order Denying Petitioner's Motion for Reconsideration filed December 30, 2013 and the Order Denying Petitioner's Second Motion for Reconsideration filed February 07, 2014.
11. The case has been the subject of a previous appeal to the Supreme Court: Supreme Court No. 42603 and 50595.
12. This case does not involve child custody or visitation.
13. This is not a civil case involving the possibility of a settlement.

Dated this 12th day of March, 2014.

JOEY ORDUNA HASTINGS  
CLERK OF THE COURT

By: /s/ Annie Smith  
Annie Smith  
Deputy Clerk



Code 1350

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

STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR02-0147

FERRILL J VOLPICELLI,

Dept. No. 9

Defendant.  
\_\_\_\_\_ /

**CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 12th day of March, 2014, I deposited in the Washoe County mailing system for postage and mailing in the United States Postal Service in Reno, Nevada, a copy of the Notice of Appeal documents addressed to the Nevada Supreme Court 201 S. Carson Street, Suite 201, Carson City, Nevada 89701.

I further certify that the transmitted documents are true and correct copies of the original pleadings on file with the Second Judicial District Court.

Dated this 12th day of March, 2014.

JOEY ORDUNA HASTINGS  
CLERK OF THE COURT

By /s/Annie Smith  
Annie Smith  
Deputy Clerk

**Return Of NEF****Recipients**

**TERRENCE MCCARTHY, ESQ.** - Notification received on 2014-03-12 08:53:15.868.

**CHRISTIAN WILSON, ESQ.** - Notification received on 2014-03-12 08:53:15.822.

**JOHN KADLIC, ESQ.** - Notification received on 2014-03-12 08:53:15.618.

**TAMMY RIGGS, ESQ.** - Notification received on 2014-03-12 08:53:15.728.

**DIV. OF PAROLE & PROBATION** - Notification received on 2014-03-12 08:53:15.775.

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

03-12-2014:08:51:13

Clerk Accepted:

03-12-2014:08:52:05

Court:

Second Judicial District Court - State of Nevada  
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Case Appeal Statement  
Certificate of Clerk

Filed By:

Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

TAMMY M. RIGGS, ESQ.

DIV. OF PAROLE & PROBATION

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH  
VOLPICELLI

TERRENCE P. MCCARTHY, ESQ. for STATE  
OF NEVADA

CHRISTIAN G. WILSON, ESQ. for STATE OF  
NEVADA

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL  
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA

**IN THE SUPREME COURT OF THE STATE OF NEVADA  
OFFICE OF THE CLERK**

FERRILL JOSEPH VOLPICELLI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 65192**  
District Court Case No. CR020147

D9

**RECEIPT FOR DOCUMENTS**

TO: Ferrill Joseph Volpicelli  
Washoe County District Attorney \ Terrence P. McCarthy, Deputy District Attorney  
Joey Orduna Hastings, Washoe District Court Clerk

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

03/12/2014 Appeal Filing fee waived. Criminal.

03/12/2014 Filed Notice of Appeal/Proper Person. Appeal docketed in the Supreme Court this day.

DATE: March 12, 2014

Tracie Lindeman, Clerk of Court  
rw

**Return Of NEF****Recipients**

**TERRENCE MCCARTHY, ESQ.** - Notification received on 2014-03-18 11:14:34.564.

**CHRISTIAN WILSON, ESQ.** - Notification received on 2014-03-18 11:14:34.033.

**JOHN KADLIC, ESQ.** - Notification received on 2014-03-18 11:14:32.407.

**TAMMY RIGGS, ESQ.** - Notification received on 2014-03-18 11:14:33.376.

**DIV. OF PAROLE & PROBATION** - Notification received on 2014-03-18 11:14:33.923.

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

03-18-2014:11:03:12

Clerk Accepted:

03-18-2014:11:10:50

Court:

Second Judicial District Court - State of Nevada  
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Supreme Court Receipt for Doc

Filed By:

Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

TAMMY M. RIGGS, ESQ.

DIV. OF PAROLE & PROBATION

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH  
VOLPICELLI

TERRENCE P. MCCARTHY, ESQ. for STATE  
OF NEVADA

CHRISTIAN G. WILSON, ESQ. for STATE OF  
NEVADA

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL  
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA



1 CODE: 3370  
2  
3  
45 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
6 IN AND FOR THE COUNTY OF WASHOE  
78 FERRILL JOSEPH VOLPICELLI,  
910 Petitioner,  
1112 vs.  
13

Case No. CR02-0147

Dept. No. 9

14 THE STATE OF NEVADA,  
15Respondent.  
16ORDER17 The Court is in receipt of Petitioner FERRILL JOSEPH VOLPICELLI (hereinafter  
18 "Petitioner") *Motion to Amend Judgment / Correct Judgment NRS 176.555* filed on February 24,  
19 2014.20 The Court orders the Washoe County District Attorney's Office to file a responsive pleading  
21 to Petitioner's *Motion to Amend Judgment / Correct Judgment NRS 176.555* within thirty (30) days  
22 from the date of this Order.23 DATED: this 8 day of April, 2014.24   
DISTRICT JUDGE  
25  
26  
27  
28

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 8<sup>th</sup> day of April, 2014, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Ferrill Joseph Volpicelli, #79565  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, NV 89419

Further, I certify that on the 8<sup>th</sup> day of April, 2014, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filing to the following:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

  
Brianne Buzzell  
Judicial Assistant

**Return Of NEF****Recipients**

**TERRENCE MCCARTHY, ESQ.** - Notification received on 2014-04-08 16:07:23.186.

**CHRISTIAN WILSON, ESQ.** - Notification received on 2014-04-08 16:07:22.936.

**JOHN KADLIC, ESQ.** - Notification received on 2014-04-08 16:07:22.764.

**TAMMY RIGGS, ESQ.** - Notification received on 2014-04-08 16:07:22.827.

**DIV. OF PAROLE & PROBATION** - Notification received on 2014-04-08 16:07:22.889.

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

04-08-2014:16:06:12

Clerk Accepted:

04-08-2014:16:06:48

Court:

Second Judicial District Court - State of Nevada  
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Order...

Filed By:

Judicial Asst. BBuzzell

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

TAMMY M. RIGGS, ESQ.

DIV. OF PAROLE & PROBATION

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH  
VOLPICELLI

TERRENCE P. MCCARTHY, ESQ. for STATE  
OF NEVADA

CHRISTIAN G. WILSON, ESQ. for STATE OF  
NEVADA

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL  
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA

## IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 65192

CLD2-0147  
D9  
**FILED**  
APR 04 2014TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

## ORDER DISMISSING APPEAL

This is a proper person appeal from an order denying a motion to correct judgment to remove double jeopardy charges and two motions for reconsideration. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Because no statute or court rule permits an appeal from an order denying the abovementioned motions, we lack jurisdiction. *Phelps v. State*, 111 Nev. 1021, 1022-23, 900 P.2d 344, 344-45 (1995); *Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990). Accordingly, we

ORDER this appeal DISMISSED.<sup>1</sup>

Pickering, J.  
Pickering

Parraguirre J.  
Parraguirre

Saitta, J.  
Saitta

<sup>1</sup>We have received the proper person documents submitted in this matter, and we conclude that no relief is warranted in light of the dismissal of this appeal.

cc: Hon. Scott N. Freeman, District Judge  
Ferrill Joseph Volpicelli  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

**Return Of NEF****Recipients**

**TERRENCE MCCARTHY, ESQ.** - Notification received on 2014-04-09 13:11:13.646.

**CHRISTIAN WILSON, ESQ.** - Notification received on 2014-04-09 13:11:13.615.

**JOHN KADLIC, ESQ.** - Notification received on 2014-04-09 13:11:13.443.

**TAMMY RIGGS, ESQ.** - Notification received on 2014-04-09 13:11:13.521.

**DIV. OF PAROLE & PROBATION** - Notification received on 2014-04-09 13:11:13.568.



\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

04-09-2014:13:10:03

Clerk Accepted:

04-09-2014:13:10:44

Court:

Second Judicial District Court - State of Nevada  
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Supreme Ct Ord Dismiss Appeal

Filed By:

Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TAMMY M. RIGGS, ESQ.

DIV. OF PAROLE & PROBATION

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH  
VOLPICELLI

TERRENCE P. MCCARTHY, ESQ. for STATE  
OF NEVADA

CHRISTIAN G. WILSON, ESQ. for STATE OF  
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL  
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA

CR02-0147 DC-0990065266-036  
STATE VS FERRILL JOSEPH VOLP 2 Pages  
District Court 04/10/2014 11:25 AM  
Washoe County 9860  
non SUMMATIC

Case No. CR02-0147  
Dept. No. 9

FILED

2014 APR 10 AM 11:25

JUDY H. ... ACTINGS  
CLERK OF THE COURTBY [Signature]

IN THE Second JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF Washoe

\* \* \* \* \*

FERRILL JOSEPH VOLP  
PETITIONER  
-vs-  
STATE of Nevada  
RESPONDENT

REQUEST FOR SUBMISSION  
OF MOTION

It is requested that the Order to Amend Judgment  
Correct Judgment  
which was filed on the 24 day of February, 2014, in  
the above-entitled matter, be submitted to the Court for  
decision.

Dated this 8th day of April, 2014.

[Signature]  
FERRILL JOSEPH VOLP # 79326  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419  
PETITIONER In Pro Se


CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing REQUEST FOR SUBMISSION OF MOTION to the below address(es) on this 8<sup>th</sup> day of June, 2014, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

Washoe County  
District Attorney

P.O. Box 30013

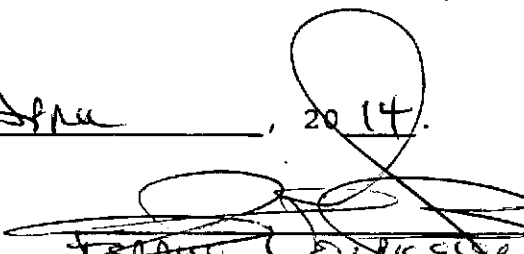
Reno, NV 89520-3013

  
Terance Cooksey #770268  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419  
Terance Cooksey In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding REQUEST FOR SUBMISSION OF MOTION does not contain the social security number of any person.

Dated this 8<sup>th</sup> day of June, 2014.

  
Terance Cooksey  
Terance Cooksey In Pro Se

1 CODE #3880  
2 RICHARD A. GAMMICK  
3 #001510  
4 P. O. Box 30083  
5 Reno, Nevada 89520-3083  
6 (775) 328-3200  
7 Attorney for Respondent

8  
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
10  
11 IN AND FOR THE COUNTY OF WASHOE

12 \* \* \*

13 FERRILL JOSEPH VOLPICELLI,

14 Petitioner,

15 v.

Case No. CR02-0147

16 THE STATE OF NEVADA,

Dept. No. 9

17 Respondent.  
18 \_\_\_\_\_/

19 RESPONSE TO "MOTION TO AMEND JUDGMENT/CORRECT JUDGMENT NRS 176.555"

20 COMES NOW, the State of Nevada, by and through counsel, and responds to the motion  
21 to correct or amend the judgment. This response is based on the records of this court and the  
22 following points and authorities.

23 POINTS AND AUTHORITIES

24 Petitioner Volpicelli has moved this court to amend the judgment of conviction and remove  
25 the provision requiring reimbursement to the County of the expenses of the prosecution, including  
26 the costs of appointed counsel. Volpicelli has sought the wrong remedy. NRS 178.3795 allows a  
court to enter a separate order of remission, not for amending the judgment. Amending the  
judgment is improper as the judgment is final and there are few procedural vehicles that would  
give the court the authority to amend it. *Edwards v. State*, 112 Nev. 704, 918 P.2d 321 (1996).  
Amending the judgment could have all sorts of untoward consequences such as re-starting the

1 appeal clock in either state or federal court.

2 Your undersigned has no way of knowing if the petitioner is or is not willfully in default of  
3 his obligations to pay. Nor does this court. Perhaps this court might want to require a more  
4 detailed affidavit, such as those that often accompany the request to proceed inform a pauperis, and  
5 the request for appointed counsel. If the court orders such things, and if Volpicelli complies, then  
6 the court can determine if a separate order of remission is appropriate. The instant motion,  
7 however, the motion to amend the judgment, should be denied as amending the judgment is not  
8 the correct remedy.

9 AFFIRMATION

10 The undersigned does hereby affirm that the preceding document does not contain the  
11 social security number of any person.

12 DATED: April 25, 2014.

13 RICHARD A. GAMMICK  
14 District Attorney

15 By /s/ TERRENCE P. McCARTHY  
16 TERRENCE P. McCARTHY  
17 Chief Appellate Deputy  
18  
19  
20  
21  
22  
23  
24  
25  
26

**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on April 25, 2014, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Ferrill Joseph Volpicelli, #79565  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, NV 89419

/s/ EARLEEN RUSSELL  
EARLEEN RUSSELL

**Return Of NEF****Recipients**

**TERRENCE MCCARTHY, ESQ.** - Notification received on 2014-04-28 08:31:28.995.  
**JOHN KADLIC, ESQ.** - Notification received on 2014-04-28 08:31:28.777.  
**TAMMY RIGGS, ESQ.** - Notification received on 2014-04-28 08:31:28.855.  
**KATHERINE LYON, ESQ.** - Notification received on 2014-04-28 08:31:28.948.  
**DIV. OF PAROLE & PROBATION** - Notification received on 2014-04-28 08:31:28.902.



\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

04-25-2014:15:21:44

Clerk Accepted:

04-28-2014:08:30:06

Court:

Second Judicial District Court - State of Nevada  
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Response

Filed By:

Terrence McCarthy

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

TAMMY M. RIGGS, ESQ.

DIV. OF PAROLE & PROBATION

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH  
VOLPICELLI

KATHERINE H. LYON, ESQ. for STATE OF  
NEVADA

TERRENCE P. MCCARTHY, ESQ. for STATE  
OF NEVADA

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL  
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA

2611

Case No. CRO2-0147Dept. No. 9

FILED

2014 MAY -6 PM 4:26

JOEY GARDIA HASTINGS  
CLERK OF THE COURTBY [Signature]IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADAIN AND FOR THE COUNTY OF Washoe

\*\*\*\*\*

FERRILL JOSEPH VOLPICKERPETITIONER

-VS-

THE STATE OF NEVADARESPONDENTJUDICIAL  
NOTICE

PETITIONER FERRILL T. VOLPICKER, moves the Court to take  
 JUDICIAL NOTICE that he is an indigent, pro se litigant  
 in custody serving multiple life sentences, <sup>①</sup> and that the  
 Second Judicial District Court has previously granted  
 relief with an amended judgment of conviction for  
 the removal of the legal representation fee under  
 NRS 178.3975(2) in CRO3-1263 on June 4, 2013, and <sup>②</sup>  
 that the District Attorney's office did not appear same.

Submitted this 30 Day  
 of April, 2014

[Signature]  
 FERRILL T. VOLPICKER  
 Petitioner in Pro Per  
 79265 @ LCC

① Attachment/Affidavit of FERRILL T. VOLPICKER  
 ② Exhibit/

CR02-0147  
 DC-09900055947-004  
 STATE VS FERRILL JOSEPH VOLPICKER  
 District Court  
 Washoe County  
 2610  
 .1405T  
 .004

# ATTACHMENT 1

# ATTACHMENT 1

FERRILL VOLPICELLI #79565  
LCC - 1200 PRISON RD  
LOVELOCK, NV 89419

## AFFIDAVIT OF

FERRIL J. VOLACEY

STATE OF NEVADA )

COUNTY OF PERKINS ) SS:

I, FERRIL J. VOLACEY, the undersigned, do hereby swear that all the following statements are true and correct, to the best of my own knowledge and of my own volition.

1. My name is FERRIL J. VOLACEY

2. I am over 18 years of age, I reside at Lovelock Correctional Center, 1200 Prison Road, Lovelock, Nevada 89419. I am fully competent to make this affidavit and I have personal knowledge of the facts stated herein.

THAT I AM THE PETITIONER IN THE INSTANT MOTION TO HAVE AN AMENDED JUDGMENT OF CONVICTION WITH THE REMOVAL OF THE ONEROUS LEGAL REPRESENTATION FEE PURSUANT TO NRS 178.3925(2) IN CRO2-0147 JUST AS I RECEIVED IN CRO3-1223.

THAT I HAVE A CONSTITUTIONAL RIGHT TO BE HEARD IN CUSTODY BY AN ACCURATE JUDGMENT OF CONVICTION. THAT MY INDIGENT STATUS AS AN INMATE AND PRO SE LITIGANT DATES BACK CONTINUOUSLY FOR OVER A DECADE AND WITH MULTIPLE LIFE SENTENCES REMAINING THAT FINANCIAL SCENARIOS WILL NOT CHANGE ANY TIME SOON.

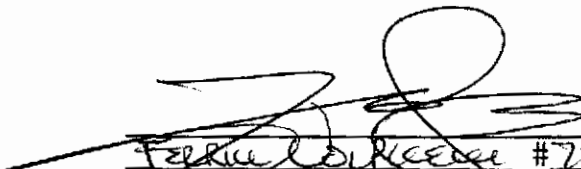
I declare under penalty of perjury that the foregoing is true and correct, and that this document is executed without benefit of a notary pursuant to NRS 208.165 and/or 28 U.S.C.A § 1746 as I am a prisoner to state custody.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing Judicial Notice to the below address(es) on this 30 day of April, 2014, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):


WASHOE COUNTY  
DISTRICT ATTORNEY  
POB 30083  
RENO, NV 89520-3083

  
FERRIS COLLEDGE #795045  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419  
Pendover In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding Judicial Notice filed in District Court Case No. CR2-0147 does not contain the social security number of any person.

Dated this 30 day of April, 2014.

  
FERRIS COLLEDGE  
Pendover In Pro Se

CR02-0147 OC-09900055947-005  
STATE VS FERRILL JOSEPH VOLP 5 Pages  
District Court 05/06/2014 04:26 PM  
Washoe County 2610  
-Y1 .1V0CT

# EXHIBIT 1

FERRILL VOLPICELLI #79565  
LCC - 1200 PRISON RD  
LOVELOCK, NV 89419

# EXHIBIT 1

FILED

Electronically

05-17-2013:10:22:37 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3732580

1 CODE 3880  
2 Richard A. Gammick  
3 #001510  
4 P.O. Box 30083  
5 Reno, NV 89520-3083  
6 (775) 328-3200  
7 Attorney for Plaintiff

8  
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
10  
11 IN AND FOR THE COUNTY OF WASHOE.

12 \* \* \*

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No. CR03-1263

15 v.

Dept. No. 10

16 FERRILL J. VOLPICELLI,

17 Defendant.

18 \_\_\_\_\_/  
19 **RESPONSE TO DEFENDANT'S MOTION**  
20 **TO CORRECT JUDGMENT OF COVICTION**

21 COMES NOW, RICHARD A. GAMMICK, District Attorney, Washoe  
22 County, Nevada, by and through Christian G. Wilson, Deputy District  
23 Attorney, and hereby Responds to Defendant Ferrill Joseph  
24 Volpicelli's Motion to Correct Judgment of Conviction in CR03-1263.  
25 The State has no objection to the Court filing an Amended Judgment of  
26 Conviction in CR03-1263 thereby removing from the original Judgment  
of Conviction in CR03-1263 the "One Hundred Fifty Dollar (\$150.00)  
DNA testing fee", due to such DNA test and fee having already been  
ordered in the Judgment of Conviction in CR98-2160; and further, the  
State has no objection to the Court removing from said original



1 Judgment of Conviction in CR03-1263 the order that the defendant  
2 "reimburse the County of Washoe the sum of Five Hundred Dollars  
3 (\$500.00) for legal representation by the Washoe County Public  
4 Defender's Office". This is due to the defendant's inability to pay  
5 in accordance with NRS 178.3975(2). The State would object to any  
6 other alteration or amendment, not listed above, to the Judgment of  
7 Conviction in CR03-1263.

8 AFFIRMATION PURSUANT TO NRS 239B.030

9 The undersigned does hereby affirm that the preceding  
10 document does not contain the social security number of any person.

11 Dated this 17th day of May, 2013.

12 RICHARD A. GAMMICK  
13 District Attorney,  
Washoe County, Nevada

14  
15 By /s/ Christian G. Wilson  
16 CHRISTIAN G. WILSON  
17 6535  
Deputy District Attorney

**FILED**

Electronically

06-04-2013:01:19:43 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3764809

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

\* \* \*

THE STATE OF NEVADA,

Plaintiff,

Case No.: CR03-1263

vs.

Dept. No.: 10

FERRILL J. VOLPICELLI,

Defendant.

**ORDER GRANTING MOTION TO CORRECT JUDGMENT OF CONVICTION**

Presently before the Court, is a Motion to Correct Judgment of Conviction filed by Defendant FERRILL J. VOLPICELLI (hereinafter "Defendant") on May 14, 2013. On May 17, 2013, Plaintiff THE STATE OF NEVADA (hereinafter "The State") filed a Response to Defendant's Motion to Correct Judgment of Conviction. On May 28, 2013, Defendant filed a Request for Submission.

The State has no objection to the Court filing an Amended Judgment of Conviction in CR03-1263 thereby removing from the original Judgment of Conviction in CR03-1263:

1. "One Hundred Fifty Dollar (\$150.00) DNA testing fee", due to such a DNA test and fee having already been ordered in the Judgment of Conviction in CR98-2160.

2. The order that the defendant "reimburse the County of Washoe the sum of Five Hundred Dollars (\$500.00) for legal representation by the Washoe County Public Defender's Office". This is due to defendant's inability to pay pursuant to NRS 178.3975 (2).

//

1       **NOW, THEREFORE, IT IS HEREBY ORDERED** that the "One Hundred Fifty Dollar  
2 (\$150.00) DNA testing fee" be removed from CR03-1263.

3       **IT IS FURTHER ORDERED** that the order that defendant "reimburse the County of  
4 Washoe the sum of Five Hundred Dollars (\$500.00) for legal representation by the Washoe County  
5 Public Defender's Office" be removed pursuant to NRS 178.3975 (2) from CR03-1263.

6  
7       **DATED** this 31 day of May 2013.

8  
9         
10       ELLIOTT A. SATTLER  
11       District Judge  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

FERRILL JOSEPH VOLPICELLI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 65192**  
District Court Case No. CR020147

D9

**REMITTITUR**

TO: Joey Orduna Hastings, Washoe 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: April 29, 2014

Tracie Lindeman, Clerk of Court

By: Rory Wunsch  
Deputy Clerk

cc (without enclosures):

Hon. Scott N. Freeman, District Judge  
Ferrill Joseph Volpicelli  
Washoe County District Attorney  
Attorney General/Carson City

**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 \_\_\_\_\_

  
\_\_\_\_\_  
District Court Clerk

## IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 65192  
District Court Case No. CR020147

DA

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 this appeal DISMISSED.""

Judgment, as quoted above, entered this 4th day of April, 2014.

IN WITNESS WHEREOF, I have subscribed  
my name and affixed the seal of the Supreme  
Court at my Office in Carson City, Nevada this  
April 29, 2014.

Tracie Lindeman, Supreme Court Clerk

By: Rory Wunsch  
Deputy Clerk



## IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 65192

CR02-0147  
D9**FILED**

APR 04 2014

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

## ORDER DISMISSING APPEAL

This is a proper person appeal from an order denying a motion to correct judgment to remove double jeopardy charges and two motions for reconsideration. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Because no statute or court rule permits an appeal from an order denying the abovementioned motions, we lack jurisdiction. *Phelps v. State*, 111 Nev. 1021, 1022-23, 900 P.2d 344, 344-45 (1995); *Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990). Accordingly, we

ORDER this appeal DISMISSED.<sup>1</sup>

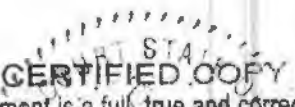
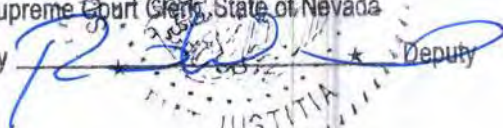
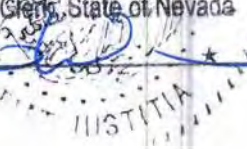
Pickering, J.  
Pickering

Parraguirre J.  
Parraguirre

Saitta, J.  
Saitta

<sup>1</sup>We have received the proper person documents submitted in this matter, and we conclude that no relief is warranted in light of the dismissal of this appeal.

cc: Hon. Scott N. Freeman, District Judge  
Ferrill Joseph Volpicelli  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

  
CERTIFIED COPY  
This document is a full, true and correct copy of  
the original on file and of record in my office.  
DATE: April 29th 2014  
Supreme Court Clerk, State of Nevada  
By  Deputy  




**Return Of NEF****Recipients**

**TERRENCE MCCARTHY, ESQ.** - Notification received on 2014-05-08 16:16:25.519.  
**JOHN KADLIC, ESQ.** - Notification received on 2014-05-08 16:16:25.363.  
**TAMMY RIGGS, ESQ.** - Notification received on 2014-05-08 16:16:25.425.  
**KATHERINE LYON, ESQ.** - Notification received on 2014-05-08 16:16:25.488.  
**DIV. OF PAROLE & PROBATION** - Notification received on 2014-05-08 16:16:25.456.

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***

**PROOF OF SERVICE OF ELECTRONIC FILING**

-

**A filing has been submitted to the court RE:** CR02-0147

**Judge:**

HONORABLE SCOTT N. FREEMAN

**Official File Stamp:**

05-08-2014:16:15:16

**Clerk Accepted:**

05-08-2014:16:15:53

**Court:**

Second Judicial District Court - State of Nevada  
Criminal

**Case Title:**

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

**Document(s) Submitted:**

Supreme Court Remittitur  
Supreme Ct Clk's Cert & Judg  
Supreme Ct Ord Dismis Appeal

**Filed By:**

Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

TAMMY M. RIGGS, ESQ.

DIV. OF PAROLE & PROBATION

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH  
VOLPICELLI

KATHERINE H. LYON, ESQ. for STATE OF  
NEVADA

TERRENCE P. MCCARTHY, ESQ. for STATE  
OF NEVADA

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL  
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA

1 CODE: 2840

2  
3  
4 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
5 IN AND FOR THE COUNTY OF WASHOE  
6

7 FERRILL J. VOLPICELLI,

8 Petitioner,

Case No. CR02-0147

9 Dept. No. 9

10 vs.

11 STATE OF NEVADA,

12 Respondent.  
13 \_\_\_\_\_ /

14 ORDER DENYING MOTION FOR AMENDED JUDGMENT

15 The Court is in receipt of Petitioner FERRILL J. VOLPICELLI (hereinafter "Petitioner")  
16 *Motion to Amend Judgment / Correct Judgment NRS 176.555* filed on June 25, 2013. On April 25,  
17 2014, and pursuant to an order for responsive pleading, Respondent STATE OF NEVADA  
18 (hereinafter "Respondent") filed a *Response to "Motion to Amend Judgment / Correct Judgment*  
19 *NRS 176.555."*

20 **ARGUMENTS**

21 Petitioner hereby moves the Court to amend the Judgment entered against him and remove  
22 the provision contained therein requiring Petitioner to reimburse Washoe County for the expenses  
23 of his prosecution, including the costs of appointed counsel.<sup>1</sup> Petitioner asserts that he has been  
24 imprisoned since 1998 and does not have the financial resources to pay for the costs associated with  
25 his legal representation; therefore, Petitioner asserts that he should not be required to pay said costs  
26 and/or expenses pursuant to NRS 178.3795. Respondent answers and asserts that Petitioner has  
27 \_\_\_\_\_

28 <sup>1</sup> On December 12, 2003, a *Judgment* was entered and filed, wherein Petitioner was ordered to reimburse the County of Washoe the sum of One Thousand Dollars and No Cents (\$1,000.00) for legal representation by the Washoe County Public Defender's Office.

sought the wrong remedy due to the fact that NRS 178.3795 permits a district court to enter a separate order of remission, not an order amending a judgment of conviction.

### DISCUSSION

NRS 178.3795 provides in relevant part:

1. The court may order a defendant to pay all or any part of the expenses incurred by the county, city or state in providing the defendant with an attorney which are not recovered pursuant to NRS 178.398. The order may be made at the time of or after the appointment of an attorney and may direct the defendant to pay the expenses in installments.

2. The court shall not order a defendant to make such a payment unless the defendant is or will be able to do so. In determining the amount and method of payment, the court shall take account of the financial resources of the defendant and the nature of the burden that payment will impose.

3. A defendant who has been ordered to pay expenses of the defendant's defense and who is not willfully or without good cause in default in the payment thereof may at any time petition the court which ordered the payment for remission of the payment or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due or modify the method of payment.

Nev. Rev. Stat. 178.3975. As emphasized above, NRS 178.3795 provides that this Court has the authority to remit all, or a portion of, any payments made by a defendant relating to the costs of his or her defense. NRS 178.3795 does not, however, require the Court to amend and/or correct a judgment of conviction in order to reflect the remission of said costs. Nevertheless, Petitioner has not presented sufficient information for this Court to conclude that the expenses associated with his prior legal representation were previously paid, or that he is not willfully or without good cause in default of his obligation to pay said expenses, which would provide the Court with an adequate basis to issue an order of remission pursuant to NRS 178.3795. Having carefully reviewed Petitioner's motion, and the papers and exhibits filed herein, the Court finds that Petitioner has not demonstrated that an amended judgment of conviction is warranted in this case.

THEREFORE, and good cause appearing, IT IS HEREBY ORDERED that Defendants' *Motion to Amend Judgment / Correct Judgment NRS 176.555* is DENIED.

DATED: This   6   day of May, 2014.

  
DISTRICT JUDGE

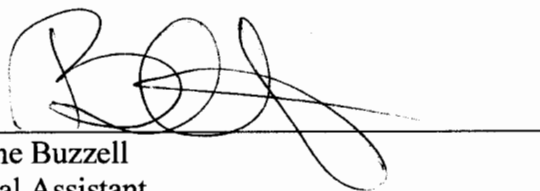
CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 9<sup>th</sup> day of May, 2014, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Ferrill J. Volpicelli, #79565  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, NV 89419

Further, I certify that on the 9<sup>th</sup> day of May, 2014, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filing to the following:

Terrance McCarthy, Esq.

  
\_\_\_\_\_  
Brianne Buzzell  
Judicial Assistant

**Return Of NEF****Recipients**

**TERRENCE MCCARTHY, ESQ.** - Notification received on 2014-05-09 15:48:46.393.  
**JOHN KADLIC, ESQ.** - Notification received on 2014-05-09 15:48:46.018.  
**TAMMY RIGGS, ESQ.** - Notification received on 2014-05-09 15:48:46.096.  
**KATHERINE LYON, ESQ.** - Notification received on 2014-05-09 15:48:46.362.  
**DIV. OF PAROLE & PROBATION** - Notification received on 2014-05-09 15:48:46.331.

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

05-09-2014:15:47:34

Clerk Accepted:

05-09-2014:15:48:14

Court:

Second Judicial District Court - State of Nevada  
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Ord Denying

Filed By:

Judicial Asst. BBuzzell

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

TAMMY M. RIGGS, ESQ.

DIV. OF PAROLE & PROBATION

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH  
VOLPICELLI

KATHERINE H. LYON, ESQ. for STATE OF  
NEVADA

TERRENCE P. MCCARTHY, ESQ. for STATE  
OF NEVADA

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL  
JOSEPH VOLPICELLI



STATE OF NEVADA for STATE OF NEVADA

CR02-0147  
DC-03900056377-014  
STATE VS FERRILL VOLP 2 Pages  
District Court 05/19/2014 02:16 PM  
2490  
Washoe County  
JVOBT  
NOC

2490  
Case No. CR02-0147

Dept. No. 9

FILED

2014 MAY 19 PM 2:16

JERRY HARRIS HASTINGS  
CLERK OF THE COURT

BY [Signature]

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Washoe

\*\*\*\*\*

FERRILL T. VOLPICELLI, )

PETITIONER, )

-vs-

STATE OF NEVADA, )

RESPONDENT. )

MOTION TO CORRECT  
JUDICIAL SENTENCE  
NRS 176.055

PETITIONER, FERRILL T. VOLPICELLI, IN PRO SE MOVES THE COURT FOR  
A CORRECTED SENTENCE/JUDGMENT OF CONVICTION, <sup>(1)</sup> REMOVING  
THE ERRONEOUSLY IMPOSED DUPLICATIVE DNA FEE UNDER NRS 176.055,  
BECAUSE IT WAS PREVIOUSLY IMPOSED IN CR98-216 <sup>(2)</sup> AND SATISFIED  
IN FULL <sup>(3)</sup> AND THE SENTENCING JUDGE WAS UNDER MISTAKE OF LAW.  
THIS MOTION IS MADE AND BASED UPON ALL DOCUMENTS ON FILE  
HEREIN, AS WELL AS THE ACCOMPANYING EXHIBITS.

SUBMITTED THIS 14<sup>th</sup> DAY of May, 2014 [Signature]

FERRILL T. VOLPICELLI  
PETITIONER IN PRO SE <sup>(4)</sup>

<sup>(1)</sup> "SENTENCE IS THE JUDGMENT OF CONVICTION." BERMAN V U.S., 513 F.2d 164 (9th Cir. 1975)

<sup>(2)</sup> EXHIBIT 1 / CR98216 J.O.C. WITH INITIAL DNA FEE IMPOSED.

<sup>(3)</sup> EXHIBIT 2 / WASHOE COUNTY CLERK'S STATEMENT INDICATING DNA PAID IN FULL

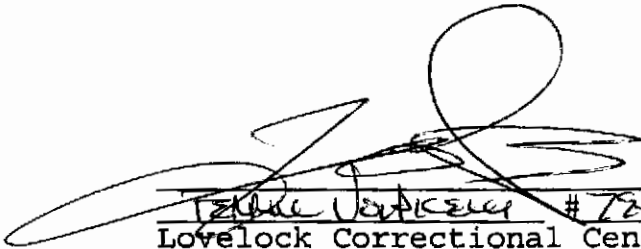
<sup>(4)</sup> NRS 176.055, EDWARDS V STATE, 112 Nev 750 / STATE V 8<sup>th</sup> DC, 100 Nev 90

<sup>(5)</sup> PRO SE PLEADINGS TO BE LIBERALLY CONSTRUED, HARRIS V KRAMER, 404 US 519

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing Motion to Correct Juvenile Sentence, NRS 126.055 to the below address(es) on this 14<sup>th</sup> day of MAY, 2014, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

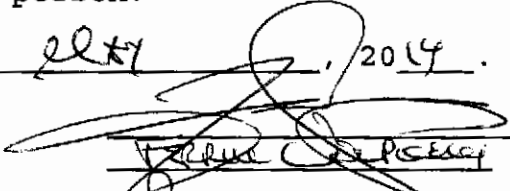
WASHOE COUNTY  
DISTRICT ATTORNEY  
POB 30083  
RENO, NV 89520-3083

  
TERENCE J. PENDERGAST #72568  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419  
Pendergast In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding Motion to Correct Juvenile Sentence, NRS 126.055 filed in District Court Case No. CRJ2-047 does not contain the social security number of any person.

Dated this 14<sup>th</sup> day of MAY, 2014.

  
TERENCE J. PENDERGAST  
Pendergast In Pro Se



CR02-0147 DC-09900056377-015  
STATE VS FERRILL JOSEPH VOLP 5 Pages  
District Court 05/19/2014 02:16 PM  
Washoe County 2490  
EX1 JY05T

# EXHIBIT

01

Ferrill Joseph Volpicelli  
79565  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, NV 89419

# EXHIBIT

01

FILED

NOV 3 1998  
BETTY J. LEWIS, ClerkBy B. Johnson  
Deputy Clerk

1 No. CR98-2160

2 Dept. No. 9

3  
4 **IN THE SECOND JUDICIAL DISTRICT COURT**  
5 **OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE**  
67  
8 **STATE OF NEVADA,**

Reporter: D. Vieira

9 **Plaintiff,**10 **vs.****J U D G M E N T**11 **FERRILL JOSEPH VOLPICELLI,**12 **Defendant.**  
1314 The Defendant, having entered a plea of Guilty, and no sufficient cause being shown  
15 by Defendant as to why judgment should not be pronounced against him, the Court rendered  
16 judgment as follows:17 That Ferrill Joseph Volpicelli is guilty of the crime of Burglary, a violation of NRS  
18 205.060, a felony, as charged in Counts I and II of the Information, and that he be punished by  
19 imprisonment in the Nevada State Prison for a minimum term of twenty-four (24) months to a  
20 maximum term of seventy-two (72) months and by payment of a fine in the amount of Five Thousand  
21 Dollars (\$5,000.00) on Count I, to run consecutively to the Federal prison term he is obligated to  
22 serve; a minimum term of sixteen (16) months to a maximum term of seventy-two (72) months  
23 Nevada State Prison on Count II, to run consecutively to Count I. The sentence is suspended as to  
24 Count II and the Defendant is placed on probation for a period of time not to exceed three (3) years,  
25 to run consecutively to Count I and consecutively to the Federal prison term. The Defendant is given  
26 credit for eighty-seven (87) days time served. It is further ordered that the Defendant pay the

27 //

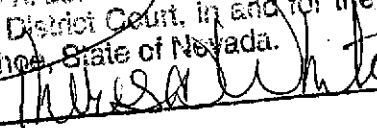
28 //

**EXHIBIT**

1 statutory Twenty-Five Dollar (\$25.00) administrative assessment fee and pay the DNA fees of Two  
2 Hundred Fifty Dollars (\$250.00).

3 Dated this 3rd day of November, 1998.

4  
5  
6   
7 DISTRICT JUDGE  
8  
9  
10

11 CERTIFIED COPY  
12 The document to which this certificate is  
13 attached is a full, true and correct copy of  
14 the original on file and of record in my office.  
15 DATE: MAY 9 2002  
16 RONALD A. LONGTIN, JR., Clerk of the Second  
17 Judicial District Court, in and for the County  
18 of Washoe, State of Nevada.  
19 By  Deputy  
20  
21  
22  
23  
24  
25  
26  
27  
28

ORIGINAL

CODE NO. 1850

**FILED**  
12-12-03  
RONALD A. LONGTIN, JR., Clerk  
By S. Satter  
Deputy Clerk

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

\* \* \*

THE STATE OF NEVADA,

Plaintiff,

Case No. CR02-0147

vs.

Dept. No. 9

FERRILL JOSEPH VOLPICELLI,

Reporter: D. Davidson

Defendant.

JUDGMENT


The Defendant having been found Guilty by a jury, and no sufficient cause being shown by Defendant as to why judgment should not be pronounced against him, the Court rendered judgment as follows:

That Ferrill Joseph Volpicelli is guilty of the crimes of Indecent Exposure, a violation of NRS 201.220, a felony, as charged in Count I of the Amended Information and Open or Gross Lewdness, a violation of NRS 201.210, a felony, as charged in Count II of the Amended Information, and that he be punished by imprisonment in the Nevada State Prison for the minimum term of twelve (12) months to a maximum term of forty-eight (48) months and by payment of a fine in the amount of Five Thousand Dollars (\$5,000.00), as to each of Counts I and II. The sentence in Count II shall run concurrently with the sentence in Count I. The Defendant is further ordered to pay the statutory Twenty-Five Dollar (\$25.00) administrative assessment fee, submit to a DNA analysis test for the purpose of determining genetic markers and pay a testing fee of One Hundred Fifty Dollars (\$150.00), an Eight

**EXHIBIT**

1 Hundred Dollar (\$800.00) Psychosexual Evaluation fee and reimburse the County of  
2 Washoe the sum of One Thousand Dollars (\$1,000.00) for legal representation by the  
3 Washoe County Public Defender's Office. The Defendant is given credit for two hundred  
4 twenty-eight (228) days time served.

5 DATED this 12th day of December, 2003.

6  
7   
8 JAMES W. HARDESTY  
9 DISTRICT JUDGE  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



CR02-0147 DC-09900056377-016  
STATE VS FERRILL JOSEPH VOLP 2 Pages  
District Court 05/19/2014 02:16 PM  
Washington County 2450  
EX2 JY051

**EXHIBIT**

02

**EXHIBIT**

02

Ferrill Joseph Volpicelli

79565

Lovelock Correctional Center

1200 Prison Road

Lovelock NV 89410

```
Report:   CBRACCT           Second Judicial District Court
User:     MBEST              Account Query Report
Instance: PROD
```

RunDate: 24-FEB-2014  
RunTime: 02:40 PM  
Page: 1

Case ID: CR98-2160 STATE VS. FERRILL JOSEPH VOLPICELLI (D9)  
ID:

Docket	Detail Desc.	Type	Amount + Adj.	Balance	Receipt
	Cash Pay - Tr P		-25.00	.00	DCDC50998
	Check Pay - T P		-1,055.19	.00	DCDC25356
	Check Pay - T P		-25.00	.00	DCDC45840
	Check Pay - T P		-25.00	.00	DCDC48395
	Check Pay - T P		-20.00	.00	DCDC53406
	Check Pay - T P		-20.00	.00	DCDC55633
	AA Assess Pri C		20.00	.00	DCDC25356
	AA Assess Pri C		5.00	.00	DCDC25356
	→ DNA Assess Pr C		250.00	.00	DCDC25356
	FINES Assess C		5,000.00	4,104.81	DCDC25356
					DCDC45840
					DCDC48395
					DCDC50998
					DCDC53406
					DCDC55633

ALL COURT RELATED FEES

ALL COURT RELATED FEES  
SATISFIED W/OUT ONLY FINES REMAINING

Person Balance: @67988

4,104.81

Total Case Balance:

4,104.81

Total Charges (C):	5,275.00
Total Monetary Payments (P):	-1,170.19
Total Non-monetary Pmnts (N):	.00
Total Bond Appl/Rfnd (B):	.00
Total Bond Balance:	.00

Report: CBRACCT Second Judicial District Court  
User: MBEST Account Query Report  
Instance: PROD

RunDate: 24-FEB-2014  
RunTime: 02:40 PM  
Page: 2

\* \* \* REPORT CONTROL INFORMATION \* \* \*

Parameter Seq No: 3062239

CR02-0147 DC-09900056606-001  
 STATE VS FERRILL JOSEPH VOLP 2 Pages  
 District Court 05/28/2014 08:56 AM  
 Washoe County 2515  
 NOC ASMITH

Case No. CR02-0147Dept. No. 9**FILED**

MAY 28 2014

JOEY HASTINGS, CLERK

By: [Signature]  
DEPUTY CLERK

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

\* \* \* \* \*

THE STATE OF NEVADA, )  
 RESPONDENT )  
 Plaintiff, )

-vs-

NOTICE OF APPEAL

FERRILL VOLP )  
 PETITIONER )  
 Defendant. )

NOTICE IS GIVEN that PETITIONER FERRILL VOLP,  
 in pro se, hereby appeals to the Nevada Supreme Court the  
ORDER DENYING MOTION FOR AMENDED JUDGMENT  
 filed/entered on or about the 9<sup>th</sup> day of May, 2014,  
 in the above-entitled Court.


Dated this 14<sup>th</sup> day of May, 2014.

[Signature] #295261  
 Lovelock Correctional Center  
 1200 Prison Road  
 Lovelock, Nevada 89419  
 PETITIONER  
 Defendant In Pro Se

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the below address(es) on this 14 day of May, 2014, by placing same in the U.S. Mail via prison law library staff:

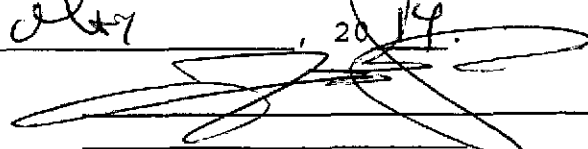
WASHOE COUNTY  
DISTRICT ATTORNEY  
POB 30083  
RENO, NV 89520-3083

  
PETITIONER #7825  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419  
PETITIONER  
Defendant In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding NOTICE OF APPEAL filed in District Court Case No. CRO-047 does not contain the social security number of any person.

Dated this 14<sup>th</sup> day of May, 2014.

  
Defendant In Pro Se  
PETITIONER

Code 1310

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

**FERRILL J. VOLPICELLI,****Petitioner,****Case No. CR02-0147****vs.****Dept. No. 9****STATE OF NEVADA,****Respondent.**

---

**CASE APPEAL STATEMENT**

This case appeal statement is filed pursuant to NRAP 3(2).

1. This appeal is from an order entered by the Honorable Judge Scott Freeman.
2. Appellant is Ferrill J. Volpicelli. Appellant is representing himself in Proper Person on appeal:
3. Appellant's address is:  
Ferrill J. Volpicelli #79565  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, NV 89419
4. Respondent is the State of Nevada. Respondent is represented by the Washoe County District Attorney's Office:  
Terrance McCarthy, Esq.  
P.O. Box 11130  
Reno, Nevada 89520
5. Respondent's attorney is licensed to practice law in Nevada.

6. Appellant was represented by appointed counsel in District Court.
7. Appellant was not represented by appointed counsel on appeal.
8. Appellant was granted leave to proceed in forma pauperis, filed November 20, 2009 in the District Court.
9. Proceeding commenced by the filing of an Information on February 6, 2002.
10. This is a criminal proceeding and the Appellant is appealing the Order Denying Motion For Amended Judgement filed May 9, 2014.
11. The case has been the subject of a previous appeal to the Supreme Court:  
Supreme Court No: 42603, 65192 and 50595.
12. This case does not involve child custody or visitation.
13. This is not a civil case involving the possibility of a settlement.

Dated this 30th day of May, 2014.

JOEY ORDUNA HASTINGS  
CLERK OF THE COURT

By: /s/ Annie Smith  
Annie Smith  
Deputy Clerk

Code 1350

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

**FERRILL J. VOLPICELLI,**

**Petitioner,**

**vs.**

**Case No. CR02-0147**

**STATE OF NEVADA,**

**Dept. No. 9**

**Respondent.**

---

**CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 30th day of May, 2014, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 30th day of May, 2014

JOEY ORDUNA HASTINGS  
CLERK OF THE COURT

By /s/ Annie Smith  
Annie Smith  
Deputy Clerk

**Return Of NEF****Recipients**

**TERRENCE MCCARTHY, ESQ.** - Notification received on 2014-05-30 10:11:22.803.  
**JOHN KADLIC, ESQ.** - Notification received on 2014-05-30 10:11:22.615.  
**TAMMY RIGGS, ESQ.** - Notification received on 2014-05-30 10:11:22.678.  
**KATHERINE LYON, ESQ.** - Notification received on 2014-05-30 10:11:22.772.  
**DIV. OF PAROLE & PROBATION** - Notification received on 2014-05-30 10:11:22.725.



\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR02-0147

Judge:

HONORABLE SCOTT N. FREEMAN

Official File Stamp:

05-30-2014:10:10:07

Clerk Accepted:

05-30-2014:10:10:49

Court:

Second Judicial District Court - State of Nevada  
Criminal

Case Title:

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

Document(s) Submitted:

Case Appeal Statement  
Certificate of Clerk

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

TAMMY M. RIGGS, ESQ.

DIV. OF PAROLE & PROBATION

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH  
VOLPICELLI

KATHERINE H. LYON, ESQ. for STATE OF  
NEVADA

TERRENCE P. MCCARTHY, ESQ. for STATE  
OF NEVADA

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

FERRILL JOSEPH VOLPICELLI for FERRILL  
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA

IN THE SUPREME COURT OF THE STATE OF NEVADA  
OFFICE OF THE CLERK

FERRILL JOSEPH VOLPICELLI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 65786  
District Court Case No. CR020147

D9

RECEIPT FOR DOCUMENTS

TO: Ferrill Joseph Volpicelli  
Washoe County District Attorney \ Terrence P. McCarthy, Deputy District Attorney  
Joey Orduna Hastings, Washoe District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

06/02/2014 Appeal Filing fee waived. Criminal.

06/02/2014 Filed Notice of Appeal/Proper Person. Appeal docketed in the Supreme Court this day.

DATE: June 02, 2014

Tracie Lindeman, Clerk of Court  
ai

**Return Of NEF****Recipients**

**TERRENCE MCCARTHY, ESQ.** - Notification received on 2014-06-11 09:21:56.248.  
**JOHN KADLIC, ESQ.** - Notification received on 2014-06-11 09:21:55.279.  
**TAMMY RIGGS, ESQ.** - Notification received on 2014-06-11 09:21:55.357.  
**KATHERINE LYON, ESQ.** - Notification received on 2014-06-11 09:21:56.201.  
**DIV. OF PAROLE & PROBATION** - Notification received on 2014-06-11 09:21:55.591.

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**PROOF OF SERVICE OF ELECTRONIC FILING**

-

**A filing has been submitted to the court RE:** CR02-0147

**Judge:**

HONORABLE SCOTT N. FREEMAN

**Official File Stamp:**

06-11-2014:09:20:48

**Clerk Accepted:**

06-11-2014:09:21:23

**Court:**

Second Judicial District Court - State of Nevada  
Criminal

**Case Title:**

STATE VS FERRILL JOSEPH VOLPICELLI (D9)

**Document(s) Submitted:**

Supreme Court Receipt for Doc

**Filed By:**

Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

TAMMY M. RIGGS, ESQ.

DIV. OF PAROLE & PROBATION

JOHN J. KADLIC, ESQ. for FERRILL JOSEPH  
VOLPICELLI

KATHERINE H. LYON, ESQ. for STATE OF  
NEVADA

TERRENCE P. MCCARTHY, ESQ. for STATE  
OF NEVADA

**The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):**

FERRILL JOSEPH VOLPICELLI for FERRILL  
JOSEPH VOLPICELLI

STATE OF NEVADA for STATE OF NEVADA

CR02-0147 DC-09900057121-038  
STATE VS FERRILL JOSEPH VOLP 2 Pages  
District Court 06/17/2014 12:05 PM  
Washoe County 3860  
NAC

1 Case No. CW2-01472 Dept. No. 9

FILED

2014 JUN 17 PM 12:05

JOEY GROUND HASTINGS  
CLERK OF THE COURTBY [Signature]  
DEPUTY6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA7 IN AND FOR THE COUNTY OF WASHOE

\* \* \* \* \*

8 FERRILL J. JOSEPH, )9 PETITIONER, )

11 -vs-

12 STATE OF NEVADA, )13 RESPONDENT. )REQUEST FOR SUBMISSION  
OF MOTION15 It is requested that the Motion to Correct Juvenile16 Sentence, NRS 176.33517 which was filed on the 19 day of MAY, 2014, in  
18 the above-entitled matter, be submitted to the Court for  
19 decision.20 Dated this 10<sup>th</sup> day of JUNE, 2014.22 FERRILL J. JOSEPH # 78525

Lovelock Correctional Center

1200 Prison Road

Lovelock, Nevada 89419


PETITIONER In Pro Se

LCC LL FORM 26.090

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing REQUEST FOR SUBMISSION OF MOTION to the below address(es) on this 10<sup>th</sup> day of JUNE, 2019, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

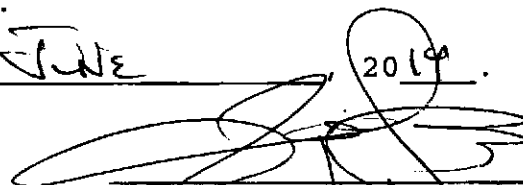
WASHOE COUNTY  
DISTRICT ATTORNEY  
POB 30003  
REMY N/ 87020-3003

  
Fernan Cortez # 29828  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419  
Fernan Cortez In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding REQUEST FOR SUBMISSION OF MOTION does not contain the social security number of any person.

Dated this 10 day of JUNE, 2019.

  
Fernan Cortez  
Fernan Cortez In Pro Se



## IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 65786

CR02-0147  
D9**FILED**

JUN 12 2014

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY D. Malone  
DEPUTY CLERK*ORDER DIRECTING TRANSMISSION OF RECORD*

This court has concluded that its review of the complete record is warranted. *See* NRAP 10(a)(1). Accordingly, the clerk of the district court shall have 45 days from the date of this order to transmit to the clerk of this court a certified copy of the complete trial court record of this appeal. *See* NRAP 11(a)(2). The record shall include copies of documentary exhibits submitted in the district court proceedings, but shall not include any physical, non-documentary exhibits or the original documentary exhibits. The record shall also include any presentence investigation reports submitted in a sealed envelope identifying the contents and marked confidential. *See* NRS 176.156(5).

It is so ORDERED.

Libla, C.J.

cc: Ferrill Joseph Volpicelli  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk ✓