

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

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5 GREGORY SCOTT HERMANSKI,

6 a/k/a Robert James Day,

7 Appellant,

8 v.

9 THE STATE OF NEVADA,

10 Respondent.

**ORIGINAL
FILED**

Case No. 41405

MAR 02 2004

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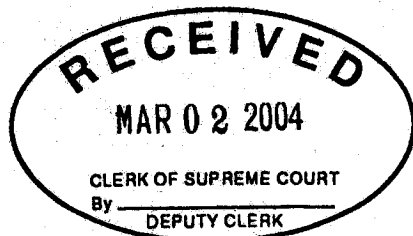
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12 RESPONDENT'S ANSWERING BRIEF

13 **Appeal From Amended Judgment of Conviction**
14 **Eighth Judicial District Court, Clark County**

15 PAUL E. WOMMER, ESQ.
16 Law Offices of Paul E. Wommer
17 Nevada Bar #000015
18 625 South Sixth Street
19 Las Vegas, Nevada 89101
20 (702) 388-8817

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
Clark County Courthouse
200 South Third Street, Suite 701
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 455-4711
State of Nevada

BRIAN SANDOVAL
Nevada Attorney General
Nevada Bar No. 003805
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1265



28 Counsel for Appellant

Counsel for Respondent

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21
22
23
24
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28 Counsel for Appellant

Counsel for Respondent

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Case No. 41405

Appeal From Amended Judgment of Conviction Eighth Judicial District Court, Clark County

1. Whether the State violated Defendant's due process rights when the Defendant perjured himself by claiming a false identity at trial.

2. Whether the Defendant received adequate notice of the habitual criminal proceedings.

Gregory Scott Hermanski was arrested and prosecuted for committing the crimes of robbery with the use of a deadly weapon and burglary while in possession of a deadly weapon. (Appellant's Appendix (AA) 14-16). When arrested, the State believed his name was Robert James Day and the case proceeded to trial with that understanding. (AA 1-7). Defendant was convicted and he appealed. (AA 67-71). This Court affirmed the conviction but remanded to district court because the trial judge had not sentenced Defendant properly under the habitual criminal statute. (*Day v. State*, Docket No. 38028. The Defendant was resentenced and now appeals from the Amended Judgment of Conviction.

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1 Robert Jamie Day.” (RA 3). After his testimony, the defense called Price Beasley as a
2 witness. Defense counsel stated to him “I’m going to ask you to look at Robert Day
3 over here.” Mr. Beasley responded “Yeah, I worked with him several times.” (RA 55).
4 This demonstrates that Defendant was passing himself off to others as Robert Day.

5 During sentencing, Defendant continued to pretend he was Robert Day. After
6 defense counsel read a self serving letter the Defendant had written, the Defendant
7 asked if he could be heard. The court allowed him to briefly address the court. He
8 asked the court to give him a sentence that would allow him to get a medical parole.
9 (RA 73). The court responded, “All right. Mr. Day, all you’re interested in is trying to
10 manipulate the system once again.” *Id.* It’s clear that the Defendant had successfully
11 assumed his false identity all the way through the district court proceedings.

12 Following remand from this Court, the matter was before the district court on
13 July 25, 2002, on various proper person motions filed by the Defendant. At that time,
14 defense counsel advised the court that had obtained information that her client was not
15 Robert Day. (RA 95). The matter was back in court on October 2, 2002, for pending
16 motions. The State represented that it agreed that the Defendant was not who
17 everyone thought he was and that he should be resentenced under his true name. The
18 State asked that a new Presentence Report be prepared. (RA 96). The matter was next
19 on calendar on December 4, 2002, at which time the State advised the court that the
20 Defendant, now identified as Gregory Hermanski, has eleven felony convictions. The
21 court noted that the Defendant had lied to the court. The court ordered Parole and
22 Probation to prepare a new presentence report. (RA 98-99). The matter was on
23 calendar again on December 16, 2002, at which time the deputy public defender who
24 had represented the Defendant throughout the proceedings asked to withdraw in light
25 of the Defendant’s request that different counsel be appointed. (RA 100, 75). The
26 court granted the request. *Id.*

27 On December 26, 2002, the State filed its Notice of Intent to Seek Punishment
28 as a Habitual Criminal. (RA 91-94). Said notice identified Defendant as Gregory

1 Hermanski and listed his eleven prior felony convictions. *Id.* The new presentence
2 report was prepared and submitted to the court (RA 102-108).

3 On April 30, 2003, the Defendant was again adjudicated a habitual criminal,
4 this time under his true name and criminal history. (RA 101). On May 16, 2003, an
5 Amended Judgment of Conviction was filed memorializing the court's sentence. (RA
6 109-110).

7 8 ARGUMENT

9 I

10 **THE STATE DID VIOLATE DEFENDANT'S DUE 11 PROCESS RIGHTS**

12 The Defendant claims that when he knowingly assumed a false identity at trial,
13 pretending to be Robert Day when in fact he was not, the State knew it all along and
14 thereby violated his due process right to a fair trial. He asserts that the State, by
15 playing along with Defendant's perjurious charade, was able to impeach his trial
16 testimony with Robert Day's four felony convictions. (Appellant's Opening Brief
17 (AOB), p. 13). That assertion is patently ridiculous. Why would the prosecutor want
18 to impeach the Defendant with someone else's four felony convictions when it could
19 have more effectively impeached him with his own eleven? The Defendant claims that
20 the State knew from the beginning that he was not really Robert Day because it ran a
21 fingerprint check through the F.B.I. fingerprint database. (AOB, p. 14). He offers no
22 support for this assertion. The Defendant's self-serving affidavit filed in December of
23 2002, engages in such speculation but the record doesn't support the claim.
24 Knowingly prosecuting an individual under a false identity would be utterly
nonsensical for the State to do.

25 As additional support for his wild speculation, the Defendant states that the
26 temporary custody record reflects a N.C.I.C number of 00F06978X. (AOB p. 14). That
27 number is found on the temporary custody record under a box labeled "WARR/NCIC
28 NUMBER" (AA 3). However, that number is nothing more than the justice court

1 number found on the criminal complaint. (AA 1). Right below the number on the
2 temporary custody record, it displays the notation "JC1". (AA 3). That stands for
3 Justice Court 1. The criminal complaint is clearly marked as being filed in Justice
4 Court Department 1. (AA 1). Defendant goes to argue that the report of Cheryl
5 Stubblefield, LVMPD Senior Law Enforcement Technician, concluded that the
6 booking card of the Defendant does not contain the fingerprints of Robert Day. (AOB,
7 p. 14; Appellant's Latest Appendix (ALP) 7-11). However, it must be noted that her
8 report is dated March 20, 2002, which is after this Court remanded this case back to
9 district court for resentencing and during the time when the defense began asserting
10 that the Defendant was not Robert Day. (RA 95). If anything, this suggests that
11 LVMPD had not done any fingerprint checking prior to the time of Stubblefield's
12 report.

13 The Defendant also asserts that the presentence report "clearly indicates Day's
14 true name is Gregory Scott Hermanski and Robert James Day is only an alias." He
15 cites to page 4 of Appellant's Latest Appendix. (AOB p. 14). However, page 4 of
16 Appellant's Latest Appendix served on the State is page 2 of this Court's Order
17 Affirming in Part and Remanding in Part. The presentence report prepared for the
18 Defendant's resentencing does clearly reveal that the Defendant's true name is
19 Gregory Scott Hermanski and that Robert Day is an alias but that is obviously because
20 Defendant's true identity was discovered after remand by this Court. (RA 102). The
21 original presentence report, prepared when the State believed Defendant was Robert
22 Day, does list Gregory Scott Hermanski as an alias but that doesn't mean that the
23 State knew that Robert Day and Gregory Hermanski were two different people. When
24 a presentence report lists aliases, that just means that that defendant uses other names
25 but those other names may not actually be other people but just made-up names.

26 The Defendant states: "Had the jury been apprised of the true facts [that Robert
27 Day was in fact Gregory Hermanski], however, it may have concluded that Hermanski
28 was not the same violent-type person as Day. Thus, in this case, the prosecutor's

1 conduct rises to the level of a due process violation.” (AOB 15). However, the use of
2 prior felony convictions for impeachment is to demonstrate that the Defendant is not a
3 credible witness. See NRS 50.095. They are not used as propensity evidence. See
4 NRS 48.045; NRS 48.055. In any event, Hermanski’s criminal history is worse than
5 Day’s and Hermanski has numerous convictions for crimes of violence. (RA 103-
6 105).

7 The Defendant’s final attempt to demonstrate the validity of his claim is that,
8 believing Defendant was Day, the State offered him a plea negotiation where he
9 would be adjudicated under the “small” habitual criminal based upon Day’s criminal
10 history. Had the State prosecuted him under his true identity, the State would not
11 offered him such a negotiation but would have insisted that he plead and be subject to
12 the “big” habitual criminal, and since no defendant would accept such a negotiation,
13 the State would be forced to take the case to trial. (AOB p.16). First of all, the
14 Defendant is apparently clairvoyant enough to know what the State would offer as a
15 plea negotiation if the Defendant were prosecuted under his true identity. But if, as the
16 Defendant seems to be suggesting, the State’s motive was to avoid going to trial, even
17 if the State were prosecuting the Defendant under his true identity, the State could
18 have offered the same negotiation as was offered to Defendant as Robert Day.
19 Offering a plea negotiation which would subject the Defendant to being adjudicated
20 under the “large” habitual criminal statute would, as the Defendant asserts, be rejected
21 by any knowledgeable defense attorney, thus defeating the State’s attempt to avoid
22 trial. But this whole argument made by the Defendant is so lacking in common sense
23 that it should be apparent to any objective person that this Defendant went through the
24 criminal justice with everyone believing he was Robert Day.

25 The Defendant’s entire premise for his due process violation claim is based on a
26 false premise: that the State knew from the beginning that he was not Robert Day but
27 wanted to prosecute him under that name for some tactical advantage. The problem
28 with his position is that it simply is not true and makes no sense. Defendant

1 Hermanski is a career criminal and a manipulative liar. He fooled everyone in the
2 criminal justice system up until the remand to district court when his charade was
3 discovered. To now turn his deceit into an allegation of misconduct by the State is
4 totally disingenuous. This Court should reject this ridiculous claim.

5 II

6 **THE DISTRICT COURT DID NOT ERR IN**
7 **ADJUDICATING DEFENDANT A HABITUAL**
8 **CRIMINAL**

9 The Defendant argues that the district court improperly imposed the enhanced
10 sentence under NRS 207.012(a) because the State never filed the information under
11 the name Gregory Hermanski and thus no notice was given pursuant to the above-
12 mentioned statute. See, *Crutcher v. District Court*, 111 Nev. 1286, 903 P.2d 823
13 (1995). The suggestion that the Defendant never received notice that he was going to
14 be considered for habitual criminal treatment under the name Gregory Hermanski is
15 ludicrous. The numerous court proceedings in late 2002 mention over and over that
16 the Defendant's true identity was now known and the State was going to seek
17 adjudication as a habitual criminal for Gregory Hermanski using his eleven prior
18 felony convictions. (RA 96-100). Indeed, the State served formal notice of its
19 intention to seek habitual criminal treatment of the Defendant as Gregory Hermanski.
20 (RA 91-94).

21 When the matter came before the district court on April 30, 2003, neither the
22 Defendant nor his counsel objected to the lack of notice. This claim is meritless.

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Dated this 1st day of March, 2004.

BY

Office of the Clark County District Attorney
Clark County Courthouse
200 South Third Street, Suite 701
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 455-4711

1 **CERTIFICATE OF COMPLIANCE**

2 I hereby certify that I have read this appellate brief, and to the best of my
3 knowledge, information, and belief, it is not frivolous or interposed for any improper
4 purpose. I further certify that this brief complies with all applicable Nevada Rules of
5 Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the
6 brief regarding matters in the record to be supported by appropriate references to the
7 record on appeal. I understand that I may be subject to sanctions in the event that the
8 accompanying brief is not in conformity with the requirements of the Nevada Rules of
9 Appellate Procedure.

10 Dated this 1st day of March, 2004

11 DAVID ROGER
12 Clark County District Attorney
13 Nevada Bar #002781

14 BY

15 
16 James Tufteland
17 Chief Deputy District Attorney
18 Nevada Bar #000439
19 Office of the Clark County District Attorney
20 Clark County Courthouse
21 200 South Third Street, Suite 701
22 Post Office Box 552212
23 Las Vegas, Nevada 89155-2212
24 (702) 455-4711
25
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Paul E. Wommer, Esq.
Law Offices of Paul E. Wommer
625 South Sixth Street
Las Vegas, Nevada 89101

Marge English
Employee of Clark County
District Attorney's Office