

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

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5 ALFRED P. CENTOFANTI, III, )

CASE NO. 44984

6 Appellant, )

7 vs. )

8 THE STATE OF NEVADA, )

9 Respondent. )  
10  
11

**FILED**

JAN 18 2007  
ANGIE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

12 PETITION FOR REHEARING

13 COMES NOW Petitioner, ALFRED P. CENTOFANTI, III, by and through his  
14 attorney, CARMINE J. COLUCCI, ESQ., and petitions this Court for an order  
15 allowing rehearing of the issue set forth herein and reconsideration by this Court  
16 of that issue as it relates to the Order of Affirmance filed in this case on December  
17 27, 2006.

18  
19 DATED this 16<sup>th</sup> day of January, 2007.

20 CARMINE J. COLUCCI, CMTD.

21 *[Signature]*  
22 CARMINE J. COLUCCI, ESQ.

23 Nevada Bar No. 000881

24 629 South Sixth Street

25 Las Vegas, Nevada 89101

26 Attorney for Appellant

27 **RECEIVED**

28 JAN 18 2007

CLERK OF SUPREME COURT

By

DEPUTY CLERK

POINTS AND AUTHORITIES

29 The issue presented to this Court is whether this Court inadvertently  
30 overlooked or misapprehended a material fact in the record or a material question

11.11347

1 of law which was applicable thereto.

2 NRAP Rule 40 states in pertinent part as follows:

3 **Rule 40. Petition for rehearing.**

4 ...

5 ( c ) Scope of application; when rehearing considered.

6 ...

7 (2) The court may consider rehearings in the following  
8 circumstances:

9 (i) When the court has overlooked or misapprehended a material  
10 fact in the record or a material question of law in the case, or

11 (ii) When the court has overlooked, misapplied or failed to consider  
12 a statute, procedural rule, regulation or decision directly controlling  
13 a dispositive issue in the case.

14 ...

15 In this Court's Order of Affirmance, this Court noted that Petitioner had  
16 failed to demonstrate that Juror Karens Barrs, who this Court found had  
17 intentionally concealed her prior felony conviction throughout the course of  
18 Petitioner's case and the post conviction proceedings as well, was biased  
19 against him. This Court stated:

20 "However, a felon-juror's presence on the jury can be the basis for a  
21 new trial if the defendant can show actual bias or prejudice. We  
22 conclude that Centofanti has failed to demonstrate that Juror Barrs  
23 was actually biased against him or that he suffered prejudice from  
24 her jury service. Accordingly, Juror Barrs' mere presence on the jury  
is insufficient to warrant a new trial." (Order of Affirmance, pp. 5-6)

25 Petitioner asserts that because the district court did not grant Petitioner an  
26 evidentiary hearing on this issue, as he requested in his Motion For New Trial, he  
27 was not given the opportunity to present evidence to show actual bias or  
28

1 prejudice. The district court did not allow the defense to present witnesses or  
2 evidence on this issue. This conduct by Juror Barrs was egregious enough for  
3 this Court to make a finding that she intentionally concealed her felony status in  
4 order to serve on this jury. Petitioner should have been given the opportunity  
5 through the examination of this and other jurors to show actual or implied bias.  
6 How could the Petitioner show actual bias "through admission or proof" without  
7 a hearing? This Court may have inadvertently thought that Petitioner had been  
8 afforded that opportunity.  
9  
10

11 In the aforementioned order, this Court also found that Petitioner had failed  
12 to show that the gun experiment alleged to have been conducted by one of the  
13 jurors also unduly prejudiced Petitioner. Again, Petitioner was deprived of the  
14 opportunity to have an evidentiary hearing on that issue by the district court.  
15

16 Petitioner was also deprived of any opportunity to have an evidentiary  
17 hearing on the other issues raised in the Motion For New Trial, i.e. including the  
18 nature, extent and possible influence of the extrinsic firearms test and the impact  
19 of the prosecutor's improper use of the term "murder" during questioning even  
20 after objections to that term had been sustained and yet this Court made a finding  
21 that Petitioner had failed to show that he was prejudiced thereby. Petitioner  
22 asserts that since the district court did not grant him an evidentiary hearing on  
23 the issues that he raised, as Petitioner had requested, he did not "fail" to show  
24 prejudice. He simply was not given the opportunity to do so. The district court  
25 simply denied his motion for new trial on jurisdictional grounds because the  
26  
27  
28

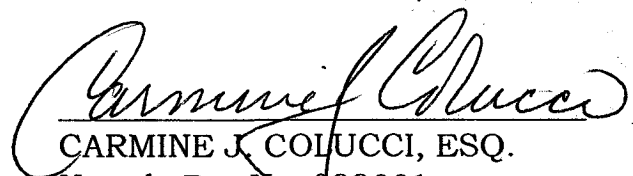
1 motion was filed more than seven (7) days after the verdict (AA Vol. 8, pp. 226-  
2 227).

3  
4 Petitioner also asserts that this Court may have been unaware that  
5 Petitioner had asked for an evidentiary hearing in district court but had been  
6 denied that hearing. Petitioner raised this issue in his original appeal. See  
7 Opening Brief pp. 11, 17, 19, 23. If that is the situation, then under NRAP 40,  
8 Petitioner is entitled to a rehearing.  
9

10 For the aforementioned reasons, Petitioner seeks a rehearing and  
11 reconsideration of the issues raised on appeal and seeks an order vacating the  
12 Order of Affirmance and instead the issuance by this Court of an order remanding  
13 this case back to the district court for an evidentiary hearing on the issues raised  
14 in this appeal.  
15

16 DATED this 16 <sup>th</sup> day of January, 2007.

17 CARMINE J. COLUCCI, CHTD.

18  
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21 Nevada Bar No. 000881

22 629 South Sixth Street

23 Las Vegas, Nevada 89101

24 Attorney for Appellant  
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DAVID ROGER  
DISTRICT ATTORNEY  
200 Lewis Avenue, 3<sup>rd</sup> Floor  
Post Office Box 552212  
Las Vegas, Nevada 89155-2212

Attorneys for Respondent

Zoe McCough  
an employee  
of CARMINE J. COLUCCI, CHTD.