



SUPREME COURT OF NEVADA
OFFICE OF THE CLERK
ELIZABETH A. BROWN, CLERK
201 SOUTH CARSON STREET, SUITE 201
CARSON CITY, NEVADA 89701-4702

Telephone
(775) 684-1600

April 27, 2017

Anthony Castaneda
Inmate ID: 1142611
Warm Springs Correctional Center
P.O. Box 7007
Carson City, NV 89701

Re: Castaneda (Anthony) vs State, Supreme Court Case No. 64515

Dear Mr. Castaneda:

We are returning, unfiled, the "Review and Reconsider Decision of Appeal #64515" received in this office on April 27, 2017 in the above-entitled matter.

A decision was filed in this case on June 16, 2016 and the remittitur issued on July 12, 2016. Therefore, this court no longer has jurisdiction over this matter.

Sincerely,

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

R. Wunsch
Deputy Clerk

17-13997

Case: C-11-272657-1

MOTION TO Re-consider

DEFT: ANTHONY CastANeda

Date: 4-1-2017, cover page

MOTION TO Re-consider, Appeal #64515

ANTHONY CastANeda
PETITIONER

Case No: C-11-272657

DEPT No: V

VS

Docket **RETURNED
UNFILED**

WARDEN, High DESERT STATE PRISON
and State of Nevada

APR 27 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY DEPUTY CLERK

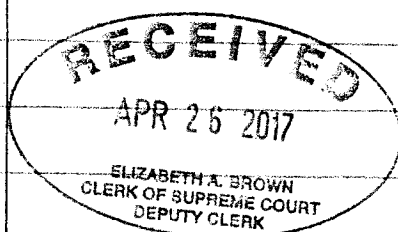
Comes Now, ANTHONY CastANeda, herein above
Respectfully moves This Honorable Court FOR a Review
AND Reconsideration of its Recent decision,
(Appeal #64515, "Affirmed in part, vacated in part, and remanded.")

This Motion is made and based upon The accompanying
Memorandum of Points, and Authorities.

Dated: This 24th day of April, 2017.

By: ANTHONY CastANeda
#1142611

Defendant / IN Proper Personam



Case: C-11-272657-1/64515

MOTION TO RE-CONSIDER 64515

Deft: ANTHONY Castaneda

DATE: 4-24-2017, page 1 of

MOTION TO Reconsider, Appeal #64515

A. Defendant ANTHONY Castaneda Requests The Supreme Court of The State of Nevada To Review and Re-consider it's recent decision of appeal #64515.

Although a partial success, on only one of it's 9 issues, The other issues were turned down, for what are factually incorrect reasons, in The written Opinion.

B. Deft. Castaneda was charged with violating NRS 200.730 which reads (partially) as follows:

"A person who knowingly and willfully has in his or her possession for any purpose any film, photograph, or other visual presentation depicting a person under the age of 16 years as the subject of a sexual portrayal..."

The key phrases being "knowingly and willfully", and the legally important, "possession". Originally convicted of 15 felonies, these convictions were reduced to one, based on the unit-of-prosecution argument. (issue VII, 64515)

C. The other 8 issues were dismissed in a single section (III), and paragraph, that the court briefly addressed. In each stated reason, the court was factually wrong.

RECEIVED
APR 26 2017
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CLERK OF SUPREME COURT
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Case: C-11-272657-1=64515 MOTION TO Reconsider 64515
Def: ANTHONY Castaneda Date: 4-24-2017, Page 2
MOTION TO Reconsider, appeal *64515

D. Chief among these & other issues is Deft's challenge to the sufficiency of the evidence. (64515, p. 16) Deft charges that the State failed to prove "that it was Castaneda, and not a virus, automated program, or another individual..."

Actually, during trial, state forensic Det. Ehlers was forced to concede that fast, simultaneous access times to the C.P. files (7 files per sec, on 2 computers, at the same time) could NOT be performed by humans.

De. Deft elicited testimony that a virus, could have accessed the files, other testimony established that the downloads were more likely the product of human endeavor" (64515, p. 16)

Actually, there were no downloads, on any of Deft's computers. The state presented no web browser download, or URL-history logs, to support download of any of these files.

(web browser download and URL-history logs, are the standard for proving possession in C.P. cases (US. v Mohrbacher, 182 F.3d,

Second, as in D above, the fast simultaneous access on 2 computers, is impossible for humans to perform.

Third, the PC/OS keeps no access logs to determine whether a program or person, accessed a file.

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D1. "SIMILARLY, while Castaneda's housemates at one time had access to Castaneda's desktop, other evidence indicated they did NOT have access to Castaneda's password protected user account on the desktop, or laptop." (64515, p. 16)

Actually, Castaneda's house-sitters conceded they knew the Deft's personal account password as early as the police interview when they "donated" the initial evidence. They conceded it again at preliminary under oath, and again, at trial. At preliminary, under oath, state witness Tami Hines bragged she knew "everybody's password", and that she and her eldest daughter, had transferred identification and resume files to Deft, using his own email and server accounts, while he was away.

D0. "The Jury was entitled to hear that the same images had appeared on more than one device, and that when he saw an image opened by a Detective, Castaneda had commented "Those are kids. I'm sorry." (64515, p. 16)

Actually, Castaneda challenged Det. Tooley and Det. Ramirez, to produce child porn, and was surprised by their existence, denying possession, ownership, or even awareness of them, 56 times afterward. That phrase is no admission of any guilt.

Case: C-11-272657-1

MOTION TO RECONSIDER

DefT: ANTHONY CASTANEDA

Date: 4-24-2017, page 4 of
MOTION TO RECONSIDER, Appeal 64515

D3. FOR YOUR CONSIDERATION:

1. Web browser download and URL-history LOGS are The Standard for proving C.P. Possession, "ON OR about a certain date".
The DA provided NO PROOF in the form of Logs or dates.
2. The DA provided NO PROOF DefT. had emailed / printed CP Files.
3. The DA provided NO PROOF DefT., OR his computers, had EVER visited CP Websites, OR downloaded CP Files. (see No. 1)
4. The DA provided NO PROOF DefT., a Traveling Network Engineer, was Present, at Home, when any CP File was created.
5. The DA provided NO PROOF, Forensically, for any download, or physical copy chain, but claims both at Summary.
6. The DA provided NO PROOF to support DA witness Perjury, under oath, but, repeats their claims at Summary.
7. The DA provided NO PROOF to support / Forensic Expert, over another, but, repeats one claim at Summary.
8. The DA provided NO PROOF that DA witness Modification of CP Files was harmless, but, claims it at Summary.
9. The DA provided NO PROOF that PC/os creation-dates were "UNRELIABLE", when BOTH The U.S. and Nevada Supreme Courts support file-creation-dates as evidence.
10. The DA provided unallocated space data, as a PROOF of Possession, when The US Supreme Court has Ruled (in US v FIER) that unallocated space data is NOT, and "INSUFFICIENT for Possession."
Those are why DefT argues INSUFFICIENT evidence.

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E. Deft. Castaneda Next challenges The District Court's Refusal To permit him to call a previously UNNOTICED expert witness" (64515, p. 17)

Detective Ehlers claimed file REMNANTS IN "UNallocated space" means that it was viewed, and was upon that computer at some time... to prove Possession.

This is Forensic Nonsense, and Defense immediately Late-Noticed a Defense-retained Expert. (Leon Mare) At a bench conference, Defense made a specific Record, of The Need for a defense Rebuttal expert. (VI 1422) The Court denied This defense motion, due to Late Notice (VI 1424)

E1. This Trial Testimony also CONTRADICTS U.S. Supreme Court Ruling "U.S. v FLYER", which reads:

"Images in UNallocated space are INSUFFICIENT for proving Possession, and, without added evidence, Tend to show INNOCENT behavior." (U.S. v FLYER, 633 F3d)

Detective Ehlers claim is Repeated many Times, at Trial, in Summary, and even in Power Point Slides. It is never supported by added evidence, in any format.

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MOTION TO RECONSIDER

Deft.: ANTHONY Castaneda

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F. IN The Appeal decision, The Nevada Supreme Court states, "Castaneda misses The Facts That Detective Ehlers Testified at The Preliminary hearing That...". (64515, P. 17)

Actually, Detective Ehlers NEVER TESTIFIED at any of The Preliminary hearings, and The Detective who did, Det. Ramirez, directly CONTRADICTED Ehler's claims about UNallocated space data. That's why Ehlers was a surprise.

Ramirez Testified That UNallocated space was "where The general user Just can't go-". This agrees with The U.S. supreme COURT IN US v FLYER, which reads:

"UNallocated space cannot be seen, or accessed by a user without The use of FORENSIC SOFTWARE..."

This is The NORMAL FORENSIC INTERPRETATION.

G. IN SHORT, EVERY given REASON FOR NOT considering The OTHER 8 issues IN Deft.'s appeal are Factually WRONG.

H. Deft. Castaneda asks The Nevada Supreme Court, To Review and Reconsider its decision Rendered IN Appeal 64515, and CORRECT The ERRORS AT Trial.