

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSHUA SHUE,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

)
)
)
)
)
)
)

Case No. 67428

Electronically Filed
Jul 05 2016 01:30 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

OPPOSITION TO MOTION TO SUPPLEMENT
APPELLANT'S OPENING BRIEF

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Chief Deputy, JONATHAN E. VANBOSKERCK, and files this Opposition to Motion to Supplement Appellant's Opening Brief. This opposition is filed pursuant to NRAP Rule 27 and is based on the following memorandum and all papers and pleadings on file herein.

Dated this 5th day of July 2016.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar # 001565

BY */s/ Jonathan E. VanBoskerck*

JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
Office of the Clark County District Attorney
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2750

ARGUMENT

Supplemental briefing is unwarranted because this case is factually and legally distinguishable from Castaneda v. State, 132 Nev. Adv. Op. 44, 2016 Nev. Lexis 524 (2016).

Appellant complains that supplemental briefing is necessary because his Opening Brief “did not argue he should not have been convicted of multiple counts of possession based upon the fact that all images were located on a single computer.” (Appellant’s Motion to Supplement his Opening Brief, filed July 1, 2016, p. 3). Appellant wants to make this argument based upon his erroneous view that “Appellant’s case presents an identical factual scenario to Castaneda. Here, Appellant allegedly simultaneously possessed the 10 images of alleged child pornography in the same location, his computer.” Id. at 3-4.

Castaneda is not relevant to this case. Factually, in Castaneda, “[t]he State prosecuted the images as a group and did not attempt to show, other than that there were 15 different images, individual distinct crimes of possession.” 132 Nev. Adv. Op. 44, p. 15, 2016 Nev. Lexis 524, p. 19. Unlike Castaneda, Appellant created the child pornography by setting up a hidden camera that captured sexual images of two children on different dates. The facts of this case make it clear that the child pornography was created by Appellant, and thus possessed by Appellant, on different dates during different incidents. H.I. viewed all of the videos of her and

her brother and repeatedly said they related to different dates and thus different incidents. 6 Appellant's Appendix (AA) 1040-42, 1050, 1052, 1053, 1055, 1057, 1058, 1060, 1062, 1067, 1069, 1070, 1071-72, 1073, 1075-76, 1077, 1078, 1079, 1080, 1081, 1082, 1083.

Indeed, Castaneda indicated it was not deciding the issue presented here: "This case does not require us to decide whether distinct downloads at different times and in different locations would establish separate units of prosecution as some courts have held." 132 Nev. Adv. Op. 44, p. 15, 2016 Nev. Lexis 524, p. 19. Unlike Castaneda, the facts at trial made it clear that Appellant's hidden camera captured, thereby creating and possessing, distinct images from different times and incidents. 6 AA 1040-42, 1050, 1052, 1053, 1055, 1057, 1058, 1060, 1062, 1067, 1069, 1070, 1071-72, 1073, 1075-76, 1077, 1078, 1079, 1080, 1081, 1082, 1083.

Castaneda simply does not provide cause for supplemental briefing since it is so different factually. If this Court believes Castaneda has any relevance at all, it should construe Appellant's request for supplemental briefing as a notice of supplemental authorities pursuant to Rule 31(e) of the Nevada Rules of Appellate Procedure. Regardless, that Appellant now desires to argue that Castaneda created a per se rule that any number of images found on a computer amounts to only a single count under this Court's unit of prosecution jurisprudence ignores the text of

Castaneda and the facts of his repeated victimization of two children by taking sexual images of them on different dates during different incidents.

CONCLUSION

WHEREFORE, the State respectfully requests this Court deny Appellant's Motion to Supplement his Opening Brief.

Dated this 5th day of July 2016.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar # 1565

BY */s/ Jonathan E. VanBoskerck*

JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155
(702) 671-2750

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on July 5, 2016. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT
Nevada Attorney General

WILLIAM M. WATERS
Deputy Public Defender

JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney

BY /s/ E.Davis
Employee, District Attorney's Office

JEV//ed