

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTIS L. MOORE
Appellant,
vs.
THE STATE OF NEVADA
Respondent.

Supreme Court No. 69329

District Court No. C151122

FILED

APR 19 2016

APPELLANT'S INFORMAL BRIEF

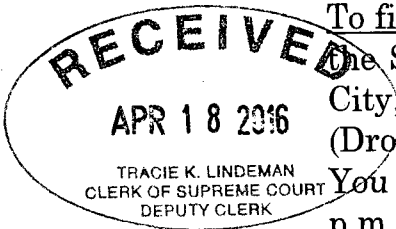
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

INSTRUCTIONS: If you are an appellant proceeding pro se (without an attorney) in the Nevada Supreme Court, you must file either (1) a brief that complies with Nevada Rule of Appellate Procedure (NRAP) 28(a), or (2) a completed copy of this informal brief form, *see* NRAP 28(k), with the Nevada Supreme Court on or before the due date, *see* NRAP 31. In civil appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court may dismiss your appeal. In postconviction criminal appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court or Nevada Court of Appeals may decide your appeal on the record without briefing.

HOW TO FILL OUT THIS FORM: This form must be typed, unless you are incarcerated, in which case it must be clearly handwritten. You do not need to refer to legal authority or the district court record. If you are completing your brief on this form, write only in the space allowed on the form. **Additional pages and attachments are not allowed.** If typing an informal brief, you may either use the lined paper contained in this form or an equivalent number of pages of your own paper. Your brief will be stricken if you fail to follow the directions in this form and the Nevada Rules of Appellate Procedure.

WHERE TO FILE THE BRIEF: You may file your brief in person or by mail.

To file your brief in person: Bring the brief to the Clerk's Office at the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada, or at the Regional Justice Center Clerk's Office (Drop Box), 200 Lewis Street, 17th Floor, Las Vegas, Nevada. You can file your brief Monday through Friday, 8:00 a.m. to 4:00 p.m.



To file your brief by mail: Mail the brief to the Clerk of the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada 89701. **Your brief must be postmarked on or before the due date.**

You must file the original brief and 1 copy with the clerk of the Nevada Supreme Court. If you want the clerk to return a file-stamped copy of your brief, you must file the original form and 2 copies and include a self-addressed, stamped envelope. Documents cannot be faxed or emailed to the Supreme Court Clerk's Office.

Copies of the brief must be mailed or delivered to the other parties to this appeal or to the parties' attorneys, if they have attorneys. You must also include a proper certificate of service or complete the certificate that is attached to the informal brief form.

CAUTION: Pro se parties are prohibited from representing other parties. A pro se party may not complete a brief on behalf of other parties. Pro se parties may collaborate on their briefs, however, provided that if one brief is submitted on behalf of multiple pro se parties, each party must sign and date the brief to confirm that he or she has participated in the preparation of the brief and, by his or her signature, joins in the arguments and representations contained therein.

Judgment or Order You Are Appealing. List the judgment or order that you are appealing from and the date that the judgment or order was filed in the district court.

Filed Date	Name of Judgment or Order
Nov. 18, 2015	DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS

Notice of Appeal. Give the date you filed your notice of appeal in the district court: DECEMBER 3, 2015

Related Cases. List all other court cases related to this case. Provide the case number, title of the case and name of the court where the case was filed.

Case No.	Case Title	Name of Court
67296	MOORE V. STATE	NEV. COURT OF APPEALS
11-15695	MOORE V. BAKER	9TH CIR. COURT OF APPEALS
307-CV-00240	MOORE V. BAKER	U.S. DISTRICT COURT (NEV.)

Pro Bono Counsel. Would you be interested in having pro bono counsel assigned to represent you in this appeal?

☒ Yes ☐ No

NOTE: If the court determines that your case may be appropriate for having pro bono counsel assigned, an appropriate order will be entered. Assignment of pro bono counsel is not automatic.

Statement of Facts. Explain the facts of your case. (Your answer must be provided in the space allowed.)

FOR THE PURPOSES OF THIS INFORMAL BRIEF, APPELLANT WILL PROVIDE
A STATEMENT OF FACTS FROM THE TRIAL, HOWEVER, WITH THE CAVEAT
THAT I HAVE ALWAYS CONTENDED THAT A PROPER INVESTIGATION WAS NOT
CONDUCTED BEFORE EITHER MY TRIAL OR MY PENALTY HEARING ANY THEREFORE
THE TESTIMONY PRESENTED AT TRIAL WAS VIRTUALLY UNOPPOSED AND DOES NOT
ACCURATELY PORTRAY THE FACTS OF THE CASE.

ON MAY 18, 1998 AT APPROXIMATELY 4:30 AM, TWO MEN

1 with SCARVES OVER THEIR FACES (CO-DEFENDANTS LASHAWN LEVI AND KENSHAWN
2 MAXEY) ARMED WITH A HANDGUN AND A RIFLE, ENTERED INTO THE OACES BAR
3 AND GRILL. PATRONS INSIDE WERE ORDERED TO GET ON THE FLOOR. A WAITRESS
4 WAS ORDERED TO GET ON THE FLOOR; THEY TOLD HER TO OPEN THE CASH
5 REGISTER BUT HER KEY WOULDN'T WORK. FRUSTRATED BY THIS, LEVI HIT HER IN THE
6 FACE WITH HIS GUN. WHEN THIS HAPPENED, THE BARTENDER CAME TO HER AID,
7 AND BEGAN TO STRUGGLE WITH LEVI OVER THE GUN, TO WHICH LEVI TOLD MAXEY
8 TO "SHOOT HIM." MAXEY BEGAN SHOOTING HIS WEAPON AND ONE OF HIS SHOTS
9 HIT LEVI, KILLING HIM. THE BARTENDER WAS SHOT ALSO AND DIED AT THE
10 SCENE. MAXEY GRABBED THE MONEY AND RAN OUT THE BACK DOOR. A
11 SECURITY GUARD IN THE ALLEY SAW MAXEY JUMP OVER THE WALL. MAXEY
12 RE-ENTERED THE BAR, BUT BEFORE RE-ENTERING THE BAR TRIED TO GET
13 MOORE TO GET OUT THE CAR AND HELP HIM GET LEVI. MOORE REFUSED.
14 SO MAXEY WENT BACK IN AND MOORE PULLED OFF. WHILE BACK IN
15 THE BAR MAXEY TRIED TO CAREY LEVI OUT, BUT IT WAS TOO DIFFICULT, SO
16 HE LEFT. WHEN MAXEY WENT OUTSIDE HE WAS ORDERED BY LV.M.P.D
17 OFFICERS TO DROP HIS WEAPON. HE DID AND WAS TAKEN INTO CUSTODY.
18 APPELLANT MOORE SUBSEQUENTLY WENT TO THE APARTMENT OF THREE
19 FEMALE FRIENDS AND TOLD THEM LEVI HAD BEEN ~~SHOT~~ SHOT AND
20 THEN THEY DROVE TO MOUNTAIN VIEW HOSPITAL AND INQUIRED ABOUT LEVI'S
21 CONDITION. HOWEVER, TWO LVMPD OFFICERS WERE PRESENT AT THE
22 HOSPITAL. THEY BECAME SUSPICIOUS AND QUESTIONED MOORE AND THE
23 FEMALES. A SUBSEQUENT SEARCH OF MOORE'S VEHICLE REVEALED U.S.
24 CURRENCY WITH BLOOD ON SOME OF THE BILLS. APPELLANT MOORE WAS
25 NEVER PRESENT INSIDE THE BAR AT ANY TIME AND HAD ~~NO~~ NO
26 KNOWLEDGE THAT LEVI AND MAXEY HAD ANY INTENTIONS TO MURDER ANYONE.
27 ON FEBRUARY 25, 1999 MOORE WAS FOUND GUILTY ON ALL COUNTS, PAUL WAMMER
28 REPRESENTED MOORE AT TRIAL AND DIRECT APPEAL OF THE CONVICTION. AT SENTENCING

1 MOORE WAS SENTENCED TO LIFE WITHOUT PAROLE ON THE CHARGE OF FIRST
2 DEGREE MURDER. ON THE REMAINING COUNTS, THE COURT SENTENCED
3 MOORE TO CONCURRENT TERMS OF 40-180 MONTHS; 16-17 MONTHS, 40-180
4 MONTHS AND 40-180 MONTHS ON COUNTS 1-4, THE SENTENCES ON
5 COUNTS SIX AND SEVEN WERE CONSECUTIVE TERMS OF LIFE WITHOUT
6 PAROLE

7 8 Statement of District Court Error.

9 Explain why you believe the district court was wrong.
10 Also state what action you want the NEVADA
11 SUPREME COURT to take. (YOUR ANSWER MUST BE
12 PROVIDED IN THE SPACE ALLOWED).

13
14 I BELIEVE THAT THE DISTRICT COURT WAS WRONG IN DENYING MY
15 PETITION, BECAUSE I BASED MY PETITION FILED ON OCTOBER 6, 2015 ON
16 THE THEN RECENT RULING BY THE NINTH CIRCUIT COURT OF APPEALS IN
17 RILEY V MCDANIEL, 2015 WL 2262549 (CA.9 (NEV) WHICH IS THE
18 KAZALYN INSTRUCTIONS, RILEY WAS DECIDED ON MAY 15, 2015, LESS THEN
19 SIX (6) MONTHS BEFORE I FILED MY PETITION AND WHICH HELD, IN PART,
20 THAT THE TRIAL COURT'S JURY INSTRUCTION CONFLATING PREMEDITATION
21 AND DELIBERATION ELEMENTS OF FIRST DEGREE MURDER VIOLATED
22 DUE PROCESS AND THAT THE COURT'S ERRONEOUS INSTRUCTION HAD A
23 SUBSTANTIAL AND INJURIOUS EFFECT OR INFLUENCE IN DETERMINING THE
24 JURY'S VERDICT. I STATED THAT THIS NEW CASE CONSTITUTED GOOD CAUSE
25 FOR DELAY. HOWEVER, THE DISTRICT COURT DID NOT MENTION RILEY V.
26 MCDANIEL ANYWHERE IN ITS FACTS AND FINDINGS, CONCLUSIONS OF LAW
27 USED TO DENY MY PETITION AND CITED ANOTHER CASE THAT WAS NOT THE
28 BASIS OF MY PETITION. ADDITIONALLY, IN RILEY, THE NINTH CIRCUIT HELD

1 That NEVADAS PROCEDURAL RULE CONCERNING SECOND OR SUCCESSIVE
2 HABEAS PETITIONS WAS INADEQUATE TO BAR FEDERAL HABEAS REVIEW
3 BECAUSE IT WAS NOT REGULARY AND CONSISTENTLY APPLIED. THE
4 DISTRICT COURT DID CITE THIS NRS 34.810 AS ITS BASIS FOR DENIAL,
5 EVEN THOUGH IT WAS WRONG, IN MY CASE, TO HAVE DONE SO. THE JURY
6 INSTRUCTIONS USED IN RILEYS TRIAL WAS THE SAME UNCONSTITUTIONAL
7 JURY INSTRUCTIONS USED IN MY JURY TRIAL. THE DISTRICT COURT DID NOT
8 EVEN CONDUCT ANY KIND OF HEARING ~~did~~. THE STATE WAS NOT ORDERED TO
9 ANSWER OR OPPOSE MY PETITION BEFORE DENYING IT. I BELIEVE THIS
10 WAS TOTALLY WRONG FOR THE DISTRICT COURT TO DO. THIS IS PROVEN BY
11 THE FACT THAT NEVADA TRIAL COURTS INSTRUCTIONS TO THE JURY THAT
12 IF IT FOUND PREMEDITATION UNDER NEVADA FIRST DEGREE MURDER
13 STATUTE, IT HAD NECESSARILY FOUND DELIBERATION, VIOLATED MY DUE
14 PROCESS RIGHT, SINCE NEVADA LAW TREATED DELIBERATION AS A
15 DISTINCT ELEMENT OF FIRST DEGREE MURDER AT THE TIME I WAS
16 CONVICTED AND AT THE TIME MY CONVICTION BECAME FINAL.
17 U.S.C.A. CONST. AMEND. 14. THE SUBSTANTIAL AND INJURIOUS EFFECT
18 THAT THIS UNCONSTITUTIONAL JURY INSTRUCTION HAD ON DETERMINING OF
19 INFLUENCING THE JURYS VERDICT WAS STATED AND DOCUMENTED INSIDE
20 OF MY FILED PETITION. HOWEVER THE DISTRICT COURT DID NOT GIVE MY
21 PETITION A FULL AND FAIR REVIEW OF THE MERITS OF MY CLAIMS BEFORE
22 DENY MY HABEAS PETITION. THEREFORE, I BELIEVE, THE DISTRICT COURT
23 WAS WRONG TO DENY MY HABEAS PETITION WITHOUT ADJUDICATING THE
24 PETITION ON ITS MERITS. SINCE NO STATE COURT HAS ADJUDICATED THIS
25 CLAIM ON ITS MERITS, THE STATE HAS ESTABLISH NO PROCEDURAL BAR TO
26 ITS CONSIDERATION NEXT, NEVADA LAW STATES THAT TO BE CONVICTED
27 OF AIDING AND ABETTING THEORIES, THE DEFENDANT MUST EITHER
28 POSSESS THE REQUIRED INTENT TO COMMIT THE CRIME OR HAVE

1 participated while knowing that the principal had requisite
2 intent; in this case, the evidence at trial merely established
3 that I was in the area of the bar that morning, but that I was
4 absolutely, not present inside the bar when the shooting
5 occurred at the time I was intoxicated and really didn't
6 understand what was going on. There was insufficient
7 evidence for a rational trier of fact to conclude that I had
8 any intent to aid or abet a murder or any specific intent
9 crime. In *Sharma v. State*, 56 P.3d 868 (2002), the court held;
10 in order for a person to be held accountable for the
11 specific intent of another under an aiding and abetting theory
12 of principal liability, the aider or abettor must have
13 knowingly aided the other person with the intent that the other
14 person commit the charged crime. The *Sharma* court
15 scuttled the "natural and probable consequence" theory stating that
16 it was "incongruous and unjust" because it imposes accomplice
17 liability solely upon proof of foreseeability or negligence when
18 typically a higher degree of mens rea is required of the principal.
19 It permits a criminal liability to be predicated upon negligence
20 when the crime involved requires a different state of mind. The
21 general application in Nevada to specific intent crimes is unsound
22 precisely for that reason: it permits conviction without proof
23 that the accused possessed the state of mind required by the
24 statutory definition of the crime. Id at 873. Therefore, the
25 district court was wrong to deny my petition without any
26 hearing on the merits of that petition and without any
27 opposition by the state's attorney regarding the merits. Finally, I
28 think the district court was wrong to deny my petition without

1 mentioning anything about Riley v. McDaniels or MONTGOMERY
2 V. LOUISIANA, 577 U.S. — (2016) which I contend mandates a
3 RETROACTIVE APPLICATION AND EFFECT WHEN A NEW SUBSTANTIVE
4 RULE OF CONSTITUTION ~~LAW~~ LAW CONTROLS THE OUT COME OF A
5 CASE, THE CONSTITUTION REQUIRES STATE COLLATERAL REVIEW COURTS TO
6 GIVE RETROACTIVE EFFECT TO THAT RULE. THE U.S. SUPREME COURTS
7 PRECEDENTS ADDRESSING THE NATURE OF SUBSTANTIVE RULE, THEIR
8 DIFFERENCES FROM PROCEDURAL RULES, AND THEIR HISTORY OF
9 RETROACTIVE APPLICATION ESTABLISH THAT THE CONSTITUTION REQUIRES
10 SUBSTANTIVE RULES TO HAVE RETROACTIVE EFFECT REGARDLESS OF WHEN
11 A CONVICTION BECAME FINAL. A SENTENCE OR CONVICTION IMPOSED
12 IN VIOLATION OF A SUBSTANTIVE RULE IS NOT JUST ERRONEOUS BUT
13 CONTRARY TO LAW AND, AS A RESULT, VOID. IT FOLLOWS, THAT A
14 COURT HAS NO AUTHORITY TO LEAVE IN PLACE A CONVICTION OR
15 SENTENCE THAT VIOLATES A SUBSTANTIVE RULE, REGARDLESS OF
16 WHETHER THE CONVICTION OR SENTENCE BECAME FINAL BEFORE THE
17 RULE WAS ANNOUNCED. I BELIEVE THAT MY CONVICTION AND SENTENCE
18 SHOULD BE REVERSED FOR A NEW TRIAL DUE TO THESE DISTRICT COURT
19 ERRORS OR AN EVIDENTIARY HEARING WITH COUNSEL, BE CONDUCTED
20 TO CONSIDER THE SAME.

21
22
23 Dated this 11 day of April 2016

24
25 Artis Moore

26 SIGNATURE OF APPELLANT

27 ARTIS MOORE

28 PRINT NAME OF APPELLANT

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a copy of this completed informal brief form upon all parties to the appeal as follows:

- ☐ By personally serving it upon him/her; or
☒ By mailing it by first-class mail with sufficient postage prepaid to the following address(es) (list names and address(es) of parties served):

STEVEN WOLFSON
DISTRICT ATTORNEY
200 LEWIS AVENUE
LAS VEGAS, NV 89155-2212

DATED this 11 day of April, 2016.



Signature of Appellant

Print Name of Appellant

P.O. Box 208 / # 61167 / SDCC
Address

INDIAN SPRINGS, NV 89070
City/State/Zip

Telephone