

IN THE SUPREME COURT OF THE STATE OF NEVADA

KAMESHA JOANN COOPER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
Case No. 71402
April 20 2017 11:25 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT'S REPLY BRIEF
FIRST JUDICIAL DISTRICT COURT, CARSON CITY

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2 **TABLE OF AUTHORITIES**

3 **Cases**

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4 *McGautha v. California*, 402 U.S. 183, 91 S. Ct. 1454 (1971) 1

5 *People v. Coleman*, 533 P.2d 1024 (Cal. 1975) 1, 2

1 LEGAL ARGUMENT

2 In Appellant's opening brief, Appellant mentioned that the California
3 Supreme Court in *People v. Coleman*, 533 P.2d 1024 (Cal. 1975) had partially
4 relied on the holding in *McGautha v. California*, 402 U.S. 183, 91 S. Ct. 1454
5 (1971), in crafting a rule that testimony of a probationer at a revocation hearing
6 held prior to the disposition of criminal charges arising out of the alleged violation
7 of the conditions of his probation, and the fruits of that evidence, should not be
8 used against him at the later trial. Appellant's Opening Brief at pp. 7:12-20-8:2.

9 In their response, the State argues that the Court should follow the line of
10 cases following *McGautha*--that a defendant's Fifth Amendment rights are not
11 violated in the case of joinders or sentencing in capital unitary trials. Respondent's
12 Answering Brief at pp. 4:3-6:21. This Court should not rely on that line of logic.

13 Importantly, evidence admitted during a probation violation proceeding is
14 not generally held to the same evidentiary standards that a trial is. Thus, a
15 defendant may be compelled to respond or deny evidence that may not have been
16 allowed in the subsequent proceeding. This compelled testimony can result in a
17 lesser burden for the prosecution in later criminal trials.

18 "The heavy burden thus placed upon the prosecution in a criminal trial to
19 prove through its own investigation the guilt of the defendant may be substantially
20 lightened if the prosecution is allowed to take advantage of the defendant's

1 testimony at a prior probation revocation hearing.” *People v. Coleman*, 533 P.2d
2 1024, 1032 (Cal. 1975).

3 Because the inapplicability of certain evidentiary rules and the lower
4 standard of proof obtaining at a probation revocation hearing, the
5 People are generally more likely to achieve a probationer’s
6 incarceration through the probation revocation process than through
7 the new prosecution and conviction. When a probationer is deterred
8 from testifying at his revocation hearing by fears of self-incrimination
9 at his subsequent trial, the People’s chances of securing his
10 incarceration through the revocation proceeding are further enhanced.
11 And if a probationer does successfully fight revocation by testifying at
12 the hearing, the People’s chances of securing his conviction of a new
13 offense will have been improved by the probationer’s having been
14 forced, in effect, to be one of the prosecution’s principal witnesses in
15 its case in chief at his trial.

16 *Id.* at 1033. Thus, the prosecution should not be allowed an unfair advantage and
17 lower burden because they schedule a probation revocation hearing prior to the
18 trial based on the same alleged criminal activity.

19 Any other issues are submitted on the briefs.
20

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this reply brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This reply has been prepared in a proportionally spaced typeface using Microsoft Word 2000, Version 9.0 in Times New Roman 14 pt.

2. I further certify that this reply brief complies with the page- or type-volume limitations of NRAP 28(a)(1)-(2) and NRAP 32(a)(7) because it is either:

☐ Proportionately spaced, has a typeface of 14 points or more, and contains 1542 words; or

☐ Monospaced, has 10/5 or fewer characters per inch, and contains ____ words or ____ lines of text; or

☒ Does not exceed 15 pages.

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3. Finally, I recognize that pursuant to NRAP 3C, I am responsible for filing a timely reply brief I therefore certify that the information provided in this reply brief is true and complete to the best of my knowledge, information and belief.

DATED this 20th day of April, 2017.

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