

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFRED C. HARVEY,)	
)	
Appellant,)	
)	
vs.)	
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	
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May 31 2020 07:14 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Case No. 72829

**NOTICE OF RESPONSE TO STATE’S
SUPPLEMENTAL AUTHORITIES**

COMES NOW Appellant, ALFRED C HARVEY, by and through his attorney, SHARON G. DICKINSON, Chief Deputy Public Defender, and pursuant to NRAP 31 (e) and NRAP 27, files a response to State’s supplemental points and authorities filed on Friday 5/29/20.

DATED this 31 day of May, 2020.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By /s/ Sharon G. Dickinson
SHARON G. DICKINSON, #3710
Chief Deputy Public Defender
309 So. Third Street, Suite #226
Las Vegas, Nevada 89155-2610
(702) 455-4588

POINTS AND AUTHORITIES

NRAP 31 (e) allows a party to file a response to opposing counsel's supplemental authorities as long as it is "made promptly" and limited to significant points.

State's supplemental authorities are all distinguishable from the facts in the case at bar as follows:

- *Berger v. United States*, 295 U.S. 78, 82-84 (1935)(discussion about a variance in pleading when two conspiracies were pled in one count and the defendant was only identified in one of the two conspiracies; government presented evidence of the one conspiracy).
- *U.S. v. Knuckles*, 581 F.2d 305, 311-12 (2nd Cir. 1978)(evidence presented conformed to the charges of conspiracy and distribution of heroin but there was also testimony about cocaine and judge amended the indictment to add cocaine).

- *U.S. v. Von Stoll*, 726 F.2d 584, 586-87 (9th Cir. 1984)(discussion about whether a constructive amendment occurred when indictment charged defendant with receiving money from one person involved in the scheme but he actually received the money from the other person involved).
- *U.S. v. Hoke*, 610 F.2d 678, 679 (9th Cir. 1980)(finding variance as to evidence and pleading regarding the correct name of the insurer for the bank that was robbed was not material - Federal Deposit Insurance Corporation v. Federal Savings and Loan Insurance Corporation).
- *Shaw v. United States*, 392 F.2d 579 (9th Cir. 1968)(variance not material when charging document identified stolen car as 58N123708 and evidence indicated it was F58N123708).
- *Smiley v. United States*, 186 F.2d 903, 904-05 (9th Cir. 1951)(charges for false misrepresentation to an officer listed the wrong booking officer but found not to be a material variance because the named officer was present in the room during the questioning, even though he did not hear the answer, and the

variance did not affect the defendant's defense or trigger double jeopardy concerns).

Respectfully submitted,

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By /s/ Sharon G. Dickinson
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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 31 day of May, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
ALEXANDER CHEN

SHARON G. DICKINSON
HOWARD S. BROOKS

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

ALFRED HARVEY
NDOC No. 1174900
c/o Southern Desert Correctional Center
P.O. Box 208
Indian Springs, NV 89018

BY /s/ Carrie M. Connolly
Employee, Clark County Public
Defender's Office