

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN MICHAEL FERGASON

Appellant,

vs.

LAS VEGAS METROPOLITAN POLICE DEPT

Respondent.

Supreme Court No. 74411

District Court No. 07AS37416

FILED

NOV 21 2017

APPELLANT'S INFORMAL BRIEF

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
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 submit your brief for filing in person or by mail.

To file your brief in person: Briefs may be submitted for filing Monday through Friday, 8:00 a.m. to 4:00 p.m.

Carson City: Bring the brief to the Clerk's Office at the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada, 89701.

Las Vegas: Place your brief in the Clerk's Office Drop Box at the Las Vegas courthouse for the Nevada Appellate Courts, 408 East Clark Avenue, Las Vegas, Nevada, 89101.

Informal Brief Form October 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

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
MARCH 17, 2017	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Notice of Appeal. Give the date you filed your notice of appeal in the district court: MARCH 16, 2017

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
364 P.3d 592	FERGUSON V. LUMPD	NEVADA SUPREME COURT

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.)

ON December 24, 2015, this Honorable Court issued its decision in the case of Bryan Ferguson v. LUMPD, 364 P.3d 592 in which the Court held "[T]he state failed to present evidence showing an absence of genuine issue of material fact... whether funds seized from Ferguson's bank accounts were subject to forfeiture as proceeds attributable to the commission of a felony, the district court erred by granting summary judgment, and we Reverse and Remand for further proceedings."

On March 15, 2016 LUMPD filed a "Renewed Motion for Summary Judgment against Defendant, Bryan Ferguson." ("Ferguson")

On May 18, 2016 Ferguson filed an Opposition and Requested other Relief

A. The appointment of counsel; motion to strike per NRC 12(b)(6) due to false statements
B. service; 2. Violation of EDCR 2.24 and law of the case; 3. use of inadmissible, irrelevant evidence;

C. LUMPD failed to meet NRC 56(c) burden and that in the Ferguson decision, Supra, (3) Summary Judgment standard not supported by facts of the case. Ferguson also requested discovery and an evidentiary hearing on disputed facts, witnesses, documents and evidence provided by LUMPD in support of its motion, especially Trevanthen and Nickell.

On June 21, 2016, LUMPD Replied and the issue of co-defendant Trevanthen's "voluntary statement" and Det. Nickell's "affidavit" was discussed.

On June 28, 2016, Ferguson filed a Motion to Strike the Reply as violative of the dc's previous order, late (per NRC and EDCR); Addition Time / continuance; Leave to file a limited Response to the Reply; and Reiterated his requests for (1) counsel; (2) Denial based on law of the case; (3) strike co-defendants and evidence from consideration; (3) Denial on NRC 56(c); (4) inadmissibility of voluntary statement and (5) assistance of his criminal counsel.

On July 12, 2016, LUMPD filed an opposition claiming Trevanthen's statements are corroborated by Det. Nickell and bank records and to deny all other requested relief.

On August 31, 2016, Ferguson filed his Reply outlining US the bad conduct of LUMPD and its counsel in litigating the forfeiture and requesting the court (1) strike the late opposition of July 12, 2016; strike the late Reply of June 21, 2016; hold a hearing re: Trevanthen and Nickell, and refer the matter to a settlement conference.

On February 7, 2017 a hearing was held and argument received as to Ferguson's motions and Request for a stay, evidentiary hearing and discovery.

On February 9, 2017, LUMPD filed a Supplement to Renewed Motion for Summary Judgment.

On February 23, 2017, Ferguson filed a Motion to Strike the Supplement as no leave requested or given, no motion filed, violative of NRC 56 and also set forth

an opposition to the supplement, asked for a stay and Related Relief.

On March 1, 2017, LUMPD Replied.

On March 7, 2017 the dc granted summary judgment in oparcant and a finding of fact, Conclusions of Law, and order filed March 17, 2017

On March 16, 2017, Ferguson filed a motion for Reconsideration on the basis of abuse of discretion (1) inadequate notice of hearing; (2) LUMPD's supplemental pleadings; (3) inadequate review of Ferguson's pleadings; (4) exclusion from settlement discussions; Summary Judgment should not have been granted; and Request for stay. Not appealable, but Ferguson seeks review in support of appeal.

On March 27, 2017, LUMPD opposed.

On March 16, 2017 Ferguson's Notice of Appeal was Filed and in Response LUMPD sought to have the appeal dismissed to which Ferguson Opposed and sought Relief.

Statement of District Court Error. Explain why you believe the district court was wrong. Also state what action you want the Nevada Supreme Court to take. (Your answer must be provided in the space allowed).

The district court was wrong to grant LUMPD's renewed motion for Summary Judgment.

A. Plaintiff LUMPD did not meet the burden set in Ferguson, 364 P.3d 592.

To the extent LUMPD utilized the exact same facts, law and argument presented, argued and rejected in Ferguson, the motion fails per law of the case.

It appears the only "additional evidence" consisted of Ferguson's co-defendant Trevartha's voluntary statement, LUMPD employee Nickell's affidavit, so-called "bank records" and alleged 'facts', 'witnesses', 'documents' and 'evidence' that was, is, and remains disputed in terms of its relevance, admissibility and ability to support either forfeiture under NRS Chapter 179 or Summary Judgment under NRC P 56.

None of the additional so called "complete record" of the criminal case and evidence from the criminal trial submitted in response to footnote 4 of Ferguson avoids the holdings in ~~Ferguson~~ that "the money seized from Ferguson was attributable to the commission of a felony" and the analysis of this court as to NRS 179.1173(6) and Trevathan's testimony ("none... refers to Ferguson or his bank account... any possession of cash by Ferguson, or any conversion of stolen property to proceeds", *supra*), do not support forfeiture or summary judgment.

Ferguson notes at pp. 14-14 of his Opening Brief in Case 62357 the Trevathan evidence is irrelevant, inadmissible, and "utterly fails to establish a link between the funds", and, is not "clear and convincing evidence" and, "proceeds of criminal activities". This has not changed in the renewed motion. First, the Receipts of the bank acct are irrelevant (Id at p. 15 L 5-6), ^{2nd} Safety deposit box irrelevant (Id at 10-14), ^{3rd} Testimony re Ferguson's work history inadmissible speculation under NRS 50.025 (Id at p. 15, line 15, to p. 16, line 4), ^{4th} Trevathan's testimony is unclear (Id at p. 16 L 5-13), ^{5th} irrelevant (Id at 14-17). The voluntary statement does not cure those deficiencies, nor does Det. Nickell's affidavit, or Receipts or business records.

Action Requested: Reverse the Order Granting Summary Judgment and find LUMPB cannot meet its burden as a matter of law, dismiss action with prejudice.

B. The district court erred in granting Summary Judgment.

The findings of Fact, Conclusions of Law, and order do not support summary judgment (hereinafter "Findings"). The Findings do not set forth all of the findings of fact and do not dispose of all of the issues, and as that basis alone, should mandate reversal. The Findings fail to provide even that Ferguson filed an opposition on May 16, 2016, nor address his various Requests for Relief other than his request for counsel and a stay, the Requests as to motions to strike, an evidentiary hearing, discovery and others are not contained and addressed.

Paragraphs 17-27 do not support Summary judgment. Para. 17 is non-supportive, Para(s) 18, 19, and 20 are inadmissible speculation as Ferguson's employment status is, was, and remains, irrelevant to the criminal proceedings. Nickell's post-trial self-serving affidavit is not "undisputed" and does not meet the burden under MECP 56.

Para 21 does not prove the required link to criminal activity, and Para 22's assertion that DOB was undisclosed (a misdeemeanor) does not establish it "did not exist". Para 23 reveals nothing but speculation as Para 24 relates to Monroe not Ferguson. Para(s) 25-26 do not cure the lack of evidence supporting forfeiture and Para 27 was admitted by CUMPD to be a joke (Monroe would 'rob' Ferguson's account). NO facts = NO ability to grant Summary judgment = dc error and abuse of discretion.

The "law" section is similarly deficient. In the absence of evidence of Ferguson converting stolen property to cash and the cash being deposited in the BOA account to the tune of \$125,000 the Voluntary statement of Trevaunton, does not meet the forfeiture / Summary judgment standards.

Since para (10) (of p. 7) does not meet the burden, as this Court held in Ferguson, para (11) is irrelevant "Because the state failed to present evidence sufficient to satisfy its burden, the burden of production did not shift to Ferguson." Without para(s) 10 and 11, no summary judgment.

Action Requested: Reversal of Order granting Summary judgment and the relief requested in "A" above.

C. The Court erred by not granting Ferguson the Relief requested throughout the proceedings.

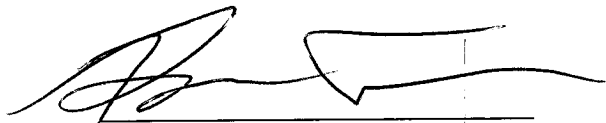
Ferguson believes the district court erred in not properly considering and granting his or the several requests to strike the motion for summary judgment as violative of law of the case and other grounds, as well as the dilatory and scandalous conduct of counsel in filing late, Rogue and Improper Replies, oppositions and Supplements.

Similarly it was an abuse of discretion not to appoint counsel, allow discovery under NRCP 56(f) (orally and in writing), hold an evidentiary hearing, Refer the matter for settlement, and to turn the March 7, 2017 status check into argument on the motion without proper notice to Ferguson and without a review of Ferguson's pleadings.

The admissibility of Trevanthen's voluntary statement, Nickell's affidavit and the impact of co-claimant (co-criminal defendant) Monroe's challenge to the search warrants (used to seize Ferguson's bank accounts) were also not properly considered by the district court prior to granting summary judgment. As Judge Smith stated on the record, the NSC wanted hearings, we had some hearings. Well, not good enough, and not enough for ~~foreclosure~~ summary judgment.

Relief Sought from Supreme Court: If (A) and (B) (above) not granted, then a reversal and Remand is requested as to all outstanding issues: counsel, discovery, evidentiary hearing, and Referral for settlement conference

DATED this 15 day of November, 2017.



Signature of Appellant

Bryan Ferguson #96803
Print Name of Appellant

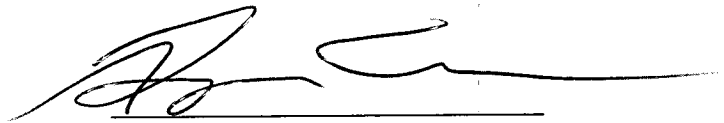
CERTIFICATE OF SERVICE

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):

Adek V. Karoun, Esq. 10001 Park Run Drive Las Vegas, NV 89145 Counsel for Plaintiff, LUMP D	Matthew Christian, Esq. 400 S. Martin Luther King Blvd. Las Vegas, NV 89106
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DATED this 15 day of November, 2017.



Signature of Appellant

Bryan Ferguson #96803
Print Name of Appellant

HOSP / P.O. BOX 650
Address

Indian Springs, NV 89070
City/State/Zip

None - Incarcerated
Telephone