

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2

3 BRYAN MICHAEL FERGASON,

4 Appellant Case No: 74411

5 VS

6 LAS VEGAS METROPOLITAN

7 POLICE DEPARTMENT,

8 Respondent.

FILED

AUG 14 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [Signature] DEPUTY CLERK

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10 APPELLANT'S REPLY BRIEF

11

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COMES NOW, Appellant Bryan Ferguson, and hereby files the following Reply to Respondent LUMPO's Answering Brief, pursuant to the NRAP, the April 12, 2010 Order of the Court, and the Relief requested in Ferguson's concurrently filed motion as follows:

A. LUMPO failed to Address what felony or felonies the \$28,000 in deposits from July 2006 to September 2006 were attributable to:

Starting at page 20 of the Answering Brief, and continuing until page 23, line 2, LUMPO fails to Answer this Court's question. The failure to respond should be considered a confession of error entitling Ferguson relief as to this issue.

Simply stated, LUMPO recycles the very same failed factual and legal points raised and rejected by this Court in Ferguson v. LUMPO, 364 P.3d 592, 594 (Ariz. 2015).

Both the LUMPO and the lower court assumed that all LUMPO had to do to prevail on a second motion for summary judgment was to present to the lower court "this Court elected not to review... in the first appeal." Answering Brief, page 2.

So, LUMPO presented those "certain documents" to the lower court who then rubber stamped its ruling in LUMPO's favor.

However, this court astutely picked up in this flaw of logic, reason, fact, evidence and lower court deficiency and asked LUMPO to respond. Their response is lacking.

LUMPO points to NRS 179 and convictions not meeting the date parameters set by this Court. Then it makes the blanket statement "that all of Ferguson's felonies provide the basis for

1 ~~forfeiture~~ (Id. at pp. 20-21) which is now responsive.

2 Next LUMP throws around the term "Bonglary Ring" and
3 launches into a analysis of conspiracy and the federal (4th (12)
4 and an Alabama state case. Irrelevant, now responsive, and not,
5 ~~arguendo~~, bleeding on this Cant. (Id. at pp. 22-23)

6 At what hearing held in the lower cant was Ferguson allowed to
7 respond to the "observations" made and alluded to at pp. 22-23.

8 As Ferguson has maintained the whole time, how can a so-called
9 Bonglary Ring in which he was not charged with Bonglary but
10 possession of stolen property and for which no restriction was
11 ordered or owed in his judgment of conviction (all property
12 recovered) form the basis for forfeiture?

13 How many more years, pleadings, hearings, appeals and
14 charges with LUMPO he gives? Since there is no analysis
15 or reference to the so called unreviewed documents from the 1st
16 appeal in the answer to the Cant's question in the 2nd the
17 answer should be none and the forfeiture of the \$28,000⁰⁰ overturned.

18
19 B. LUMPO failed to address what record evidence there is
20 to indicate that the remaining account balance accrued
21 from large-scale cash deposits that were made while the
22 bonglary ring was active

23 Ferguson incorporates argument A, supra, as though fully set forth
24 herein, and to that, adds the following.

25 LUMPO spends exactly a page and 1/2 on question 2. See,
26 pp. 23-24. Now responsive, recycled and conclusory, it does
27 not provide the basis for forfeiture of the remaining seized monies.

¹ U.S. v. Thomas, 913 F.2d 1111 (4th Cir. 1990) was specifically rejected by this court in Ferguson at 549, as was the conspiracy arguments. Id.

1 The Jailhouse conversation cited to at p. 22, is hardly "new" and
2 does not meet the "clear and convincing evidence" standard as articulated
3 in Ferguson at pages 595-596.

4 Nor does the Answering Brief overcome the very same problems
5 outlined in Ferguson

6 1. The state presented the district court with no evidence that the
7 stolen property had been converted to money and that such money
8 "came to rest in Ferguson's seized bank accounts. Id at 596.

9 2. That Ferguson's bank account was not relevant to the crimes
10 with which he was charged. Id - at 597.

11 3. None of the trial testimony offered by the state in support
12 of summary judgment refers to Ferguson's bank account, any
13 possession of cash by Ferguson, or any conversion of stolen
14 property to proceeds by Ferguson. Id at 598

15 4. The state offered no evidence that Ferguson's bank account
16 contained proceeds of anyone's criminal activity. Id at 599

17 The conclusory statement that

18 This exchange makes it abundantly clear that Ferguson had
19 "put away" cash from the burglary ring based on the pattern
20 of selling the stolen property before the next weekend.

21 Answering Brief at p. 23

22 Does not make it so, nor qualify as "clear and convincing
23 evidence" of, well, anything, under NRS 174.1164, Schoka,
24 and U.S. v. Corrado, specifically REJECTED by this Court
25 in Ferguson at p. 599.

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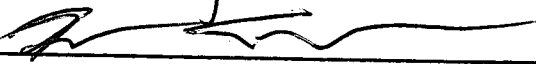
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28 1 Ferguson acknowledges footnote Page 4 4 and the additional "documents"
submitted but simply contends none of them "indicate that the amounts seized from
Ferguson's account were attributable to felonies allegedly committed by Ferguson." Id. at 594

1 Conclusion

2 In Summary, this Court should overturn the District Court's
3 granting of Summary Judgment in favor of LUMPA as LUMPA
4 failed in it's answering brief to adequately respond to the
5 two questions it was asked to answer and brief, it recycled
6 the same facts, law, and argument rejected in this Court's
7 Ferguson decision, and failed to meet the burdens outlined in
8 Ferguson and set forth in this Reply.

9
10 Respectfully submitted this 6 day of August, 2018.

11 
12 Bryan Michael Ferguson # 96803
13 ~~Appellant~~ Appellant in Pro Per.

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15 Certificate of Mailing

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17 A copy of this Reply was mailed to counsel for Respondents
18 Micah Echols, Esq and Matthew Christlaw at the
19 addresses listed on the Answering Brief, postage prepaid.

20
21 Dated this 6 day of August, 2018.

22 
23 Bryan Michael Ferguson # 96803
24 Appellant in Pro Per