

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FILED

MAR 22 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

In re BRIAN KERRY O'KEEFE,

Petitioner,

Vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK,

Respondent.

No. 74878

PETITION FOR REHEARING (RULE 40)
FROM ORDER DENYING PETITION MARCH 14, 2018

APPELLANT'S APPENDIX

BRIAN KERRY O'KEEFE
APPELLANT PRO SE
LOVELOCK CORRECTIONAL CENTER
1200 PRISON ROAD
LOVELOCK, NEVADA 89419

ADAM PAUL LAKAT
ATTORNEY FOR RESPONDENT
100 N. CARSON STREET
CARSON CITY, NEVADA 89701
(775) 684-1265

18-900571

(INDEX)
APPELLANT'S APPENDIX ("AA")

EXHIBIT

AA No. 8

STATE'S OPPOSITION TO DEFENDANT'S
MOTION TO PRECLUDE THE STATE
FROM INTRODUCING AT TRIAL
IMPROPER EVIDENCE AND ARGUMENT

AA 01-02

NOTICE OF MOTION AND MOTION BY
DEFENDANT O'KEEFE TO PRECLUDE
THE STATE FROM INTRODUCING AT TRIAL
IMPROPER EVIDENCE AND ARGUMENT

AA 03-04

OHIO (JOC) ENTRY OF SENTENCE

2005 MAY 11

CASE NO. 04-CR-237

NINE (9) MONTH SENTENCE

CONCURRENT ON (2) COUNTS

(53) DAYS CTS

AA 05

ALL EXHIBITS ARE EXACT COPIES PURSUANT NRS 208.165

AND 28 U.S.C. § 1746, DATED MARCH 20, 2018 by James L. O'Keefe
#90246

1 **OPPS**

2 **DAVID ROGER**
3 Clark County District Attorney
4 Nevada Bar #002781
5 **CHRISTOPHER J. LALLI**
6 Chief Deputy District Attorney
7 Nevada Bar #005398
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 christopher.lalli@ccdanv.com
12 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 BRIAN K. O'KEEFE

13 Defendant.

Case No: 08-C-250630

Dept. No: XVII

Date: January 13, 2011

Time: 8:15 a.m.

14 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO**
15 **PRECLUDE THE STATE FROM INTRODUCING AT**
16 **TRIAL IMPROPER EVIDENCE AND ARGUMENT'**

17 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
18 CHRISTOPHER J. LALLI, Chief Deputy District Attorney, and hereby opposes the
19 Defendant's Motion to Preclude Evidence and Argument. This Opposition is made and
20 based upon all the papers and pleadings on file herein, the attached points and authorities in
21 support hereof, and oral argument at the time of hearing, if deemed necessary by this
22 Honorable Court.

23 DATED this 12th day of January, 2011.

24 **DAVID ROGER**
25 Clark County District Attorney
26 Nevada Bar #002781

27 BY /s/ Christopher J. Lalli
28 **CHRISTOPHER J. LALLI**
Chief Deputy District Attorney
Nevada Bar #005398

AA 01

1 *Id.* at 644-45 (internal citations refined).

2 Of course, there is nothing magical about the foregoing. It is what every first year
3 law student is taught about giving opening statements and closing arguments. It is a
4 rudimentary lesson of being an effective advocate and presenting a compelling opening
5 statement or closing argument. The dark days of beginning an opening statement with "An
6 opening statement is a roadmap ..." are long gone. The State's use of quotations regarding
7 domestic violence in its opening statement and closing argument were altogether proper.

8 **4. Defendant's Convictions for Criminal Non-Support of Dependents**

9 After reviewing the Defendant's Entry of Sentence and related documents as well as
10 relevant Ohio law, the State agrees with the Defendant that these convictions do not meet the
11 criteria of NRS 20.095(1).

12 **CONCLUSION**

13 Based upon all of the foregoing, the State respectfully prays that the Defendant's
14 Motion to Preclude the State from Introducing at Trial Improper Evidence and Argument,
15 except with respect to his convictions for Criminal Non-Support of Dependents, be denied.

16 DATED this 12 day of January, 2011.

17 DAVID ROGER
18 Clark County District Attorney
Nevada Bar #002781

19 BY /s/ Christopher J. Lalli
20 CHRISTOPHER J. LALLI
21 Chief Deputy District Attorney
22 Nevada Bar #005398
23
24
25
26
27
28

001
PALM LAW FIRM, LTD.
PATRICIA PALM, ESQ.
NEVADA BAR NO. 6009
1212 CASINO CENTER BLVD.
LAS VEGAS, NV 89104
Phone: (702) 386-9113
Fax: (702) 386-9114
Email: Patricia.palmlaw@gmail.com
Attorney for Brian O'Keefe

FILED

JAN 03 2011

Patricia A. Palm
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

BRIAN K. O'KEEFE,

Defendant.

CASE NO: C250630

DEPT. NO: XVII

DATE:

TIME:

**NOTICE OF MOTION AND MOTION BY DEFENDANT O'KEEFE TO PRECLUDE THE
STATE FROM INTRODUCING AT TRIAL IMPROPER EVIDENCE AND ARGUMENT**

COMES NOW the Defendant, Brian O'Keefe, by and through his attorney,
Patricia Palm of Palm Law Firm, Ltd., and hereby moves this Honorable Court for an
Order precluding the State from introducing at trial improper evidence and argument
which is irrelevant and overly prejudicial and would violate O'Keefe's constitutional
rights to due process and a fair trial.

This Motion is made and based upon the following Points and Authorities, all
papers and documents on file in these proceedings, the attached Exhibits, and any
argument as may be had at the time of hearing.

Dated this 1st day of January, 2011.

PALM LAW FIRM, LTD.

Patricia A. Palm
Patricia A. Palm, Bar No. 6009

AA 03

1 The State should be precluded from making such improper and unsupported claims in
2 the upcoming trial.

3 **5. This Court should preclude the State from inquiring about O'Keefe's 2005**
4 **convictions for non-support of his children, as these do not qualify for**
5 **admission under NRS 50.095.**

6 Evidence of O'Keefe's prior convictions for non-support is not admissible for
7 impeachment purposes. Although this issue was overlooked by counsel during
8 O'Keefe's first trial, and the evidence was admitted by the defense, O'Keefe raises it
9 here to avoid any reliance by the State upon the prior defense miscalculation.

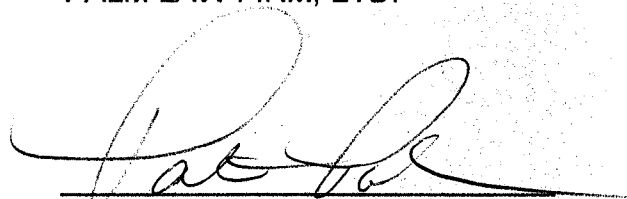
10 NRS 50.095(1) provides: "For the purpose of attacking the credibility of a
11 witness, evidence that the witness has been convicted of a crime is admissible but only
12 if the crime was punishable by death or imprisonment for more than 1 year under the
13 law under which the witness was convicted." O'Keefe's 2005 convictions for two counts
14 of non-support in Ohio resulted from no contest pleas under Ohio Revised Code Section
15 2919.21(A)(2) and (G)(1), which provided for a maximum penalty of one year
16 imprisonment. See Exh. E (Attached). O'Keefe was actually sentenced to nine (9)
17 months on each count. Id. Therefore, these convictions are not admissible for
18 impeachment in Nevada.

19 **CONCLUSION**

20 Based on the foregoing, Brian O'Keefe moves this Honorable Court for rulings
21 precluding the State from introducing the above-mentioned improper evidence and
22 argument and requiring the State to caution its witnesses regarding the same.

23 DATED this 1st day of January, 2011.

24 PALM LAW FIRM, LTD.

25 

26 Patricia Palm, Bar No. 6009
27 1212 Casino Center Blvd.
28 Las Vegas, NV 89104
Phone: (702) 386-9113

AA OA

ORIGINAL

IN THE COURT OF COMMON PLEAS OF FAIRFIELD COUNTY, OHIO

FILED

2005 MAY 11 AM 9:11

3667 P. 460-468

RON BALSER
CLERK OF COURTS
FAIRFIELD CO. OHIO

Case No. 04-CR-237
SETS 7006332188
JUDGE RICHARD E. BERENS

IN COMPUTER

STATE OF OHIO,

Plaintiff,

vs.

BRIAN K. O'KEEFE,
DOB: 3-14-63
SSN: 530-76-7555

Defendant.

ENTRY OF SENTENCE

Date of Conviction: After Indictment filed August 6, 2004

Offense and Degree: Criminal Non-Support of Dependents F5 - 2 Counts

Sentence

9 months in appropriate penal institution
Concurrent on each Count
Community Control Sanctions
Credit for Fifty-Three (53) Days

Fine:

-0-
Costs

On August 6, 2004, the Grand Jury met and issued a Two Count Indictment charging the Defendant, Brian K. O'Keefe, with Criminal Non-Support of a Dependent on Two Counts, a violation of Ohio Revised Code Section 2919.21(A)(2) and (G)(1), being a felony of the Fifth Degree.

On April 29, 2005, the Defendant entered a plea of "No Contest" to the Two Count Indictment.

On April 29, 2005, Jeffrey F. Bender, Special Assistant Prosecuting Attorney, appeared on behalf of the State of Ohio, and the Defendant, Brian K. O'Keefe, appeared with his counsel, James A. Fields. The Defendant advised the Court that he was entering a plea of "No Contest" to Count One and Count Two of the Indictment.

Prior to the Court's acceptance of the Defendant's plea, the Court personally addressed the Defendant and advised the Defendant of all the

AA 05