

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE,)

Case No. 77797

Appellant)

8TH CASE NO. A-18-783689-W

-VS-

CASE OF FIRST IMPRESSION

THE STATE OF NEVADA, et al.)

FILED

APR 22 2019

Respondent)

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

MOTION TO TAKE JUDICIAL NOTICE
PURSUANT NRS 47.150 (2) OF EXHIBIT
"A" AS A MATTER OF LAW PURSUANT
NRS 47.140 WITH AND BY AFFIDAVIT
OF APPELLANT O'KEEFE

COMES NOW, Brian O'Keefe, Appellant proper, who humbly submits this Judicial Notice pursuant NRS 47.150 (2) with EXHIBIT "A" attached, supported by affidavit of appellant.

This action is made in the absolute interest of justice where this Court will apply the "Rule of Law" with an equitable decision to be pronounced. (Courtrooms are for the people with real issues.)

This motion is made with the following Points and Authorities, in affidavit, attached along with EXHIBIT "A" pursuant NRS-47.150 (2) with all papers and pleadings on file herein and record to be forwarded ordered by this court.

Dated this 18th day of April 2019, by :
Pursuant NRS 208.165

Respectfully Submitted,
Brian K. O'Keefe
Brian K. O'Keefe
LOVELOCK CORR. CTR.
1200 Prison Road
Lovelock, Nevada 89419
proper #90244

19-17602

LCC LL FORM 28.014

RECEIVED

APR 28

INVOLVED HAINES v. KERNER, 404 U.S. 519, 520 (1972);

INVOLVED "OATH OF OFFICE," Nev. Const., Article 15 § 2.

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

AFFIDAVIT OF Brian Kerry O'Keefe

STATE OF NEVADA)

SCN Case No. 77797

) SS:

COUNTY OF PERSHING)

I, Brian O'Keefe,

the undersigned, do hereby swear that all the following statements are true and correct, to the best of my own knowledge and of my own volition.

1. My name is Brian O'Keefe.

2. I am over 18 years of age, I reside at Lovelock Correctional Center, 1200 Prison Road, Lovelock, Nevada 89419. I am fully competent to make this affidavit and I have personal knowledge of the facts stated herein.

3. At the time of police event 040529-2232, as district court case no. C202793, appellant O'Keefe lived in known cohabitation with Victoria Whitmarsh where no TPO existed.

4. Appellant attached EXHIBIT "A", pursuant NRS 47.150(2), [STATE'S] NOTICE OF MOTION AND MOTION IN LIMINE TO ADMIT EVIDENCE OF OTHER BAD ACTS PURSUANT TO NRS 48.045 AND EVIDENCE OF DOMESTIC VIOLENCE PURSUANT TO 48.061) which clarifies that subsequent the state prosecutor reading the police reports of event 040529-2232 (MAY 29, 2004) a judicial admission is made manifest demonstrating the state had knowledge that appellant O'Keefe and Victoria Whitmarsh lived in cohabitation and O'Keefe's occupancy is well established. Page 6 of state's motion as EXHIBIT "A" lines 25-28 express,

"Couple's Residence" and also " ... where Defendant [O'Keefe] and Victoria resided ..."

(Police event NO. 040529-2232 is BTH CASE NO. C202793)

5. Despite O'Keefe having an absolute right to enter residence where all my property, clothing, money and hygienic products existed, this fact became legally moot WHERE the jury returned a verdict which acquitted O'Keefe of all felonious entry/intent that the Burglary Count 6 charge was predicated upon. (Jury Verdict 10/20/2004)

SEE THE STATE OF NEVADA v. WHITE, 330 P.3d 482 (Nov. 2014) • CASE 0202793

6. The state committed fraud upon the newly assigned penalty phase Judge Bell, implying "sub silentio" that the Battery was a "felony" conviction and then placed on the CM/ECF as "NOTIS" (Nevada Offender Tracking System) that O'Keefe pled guilty to Count 6 to cover her tracks. Prosecutor was Susan Kricko and Ross Miller.

7. O'Keefe's parole was denied on August 21, 2018, as a "collateral consequence" and complete fundamental miscarriage of justice where the Burglary Count 6 conviction is void and legally should not have been charged in the first instance. "Continuing Violation Doctrine triggered!"

8. SEE ATTACHED EXHIBIT "A", STATE'S MOTION, PAGE 6.

I declare under penalty of perjury that the foregoing is true and correct, and that this document is executed without benefit of a notary pursuant to NRS 208.165 and/or 28 U.S.C.A § 1746 as I am a prisoner to state custody.

Dated this Thursday - 18th day of April, 2019

Brian K. O'Keefe
Brian K. O'Keefe #90244
pro per
LOVELACK CORR. CTX.
1200 Prison Road
LOVELACK, Nevada 89419

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EXHIBIT

A

- POLICE EVENT # 040529-2232 AS CASE # C202793

STATE'S MOTION

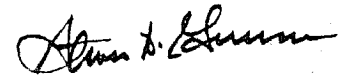
"SPECIFICALLY" OF OTHER BAD

ACTS MAKING JUDICIAL ADMOTION
BY POLICE REPORTS O'KEEFE

HAD "OCCUPANCY" LIVING IN
"COHABITATION" WITH VICTORIA

EXHIBIT

A



CLERK OF THE COURT

0332
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
CHRISTOPHER LALLI
Nevada Bar #005398
Chief Deputy District Attorney
LIZ MERCER
Deputy District Attorney
Nevada Bar #0010681
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRIAN O'KEEFE,
#1447732

Defendant.

Case No. C250630

Dept No. XVII

**NOTICE OF MOTION AND MOTION *IN LIMINE* TO ADMIT EVIDENCE
OF OTHER BAD ACTS PURSUANT TO NRS 48.045 AND
EVIDENCE OF DOMESTIC VIOLENCE PURSUANT TO 48.061**

DATE OF HEARING: 01/20/2011
TIME OF HEARING: 8:00 AM

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
CHRISTOPHER LALLI, Chief Deputy District Attorney, and LIZ MERCER, Deputy
District Attorney, and files this Notice of Motion and Motion to Admit Evidence of Other
Bad Acts Pursuant to NRS 48.045 and Evidence of Domestic Violence Pursuant to NRS
48.061.

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* SEE PAGE 6, lines 25-28 "COUPLES RESIDENCE"
"Defendant and Victim's RESIDENCE"

1 no visible injury, no arrest was made. However, Defendant was escorted from the residence
2 he shared with Victoria by Officer Price with the Las Vegas Metropolitan Police Department
3 and instructed to not return for twenty-four (24) hours. At approximately 11:00 p.m., that
4 same date, Defendant returned to residence, burst through the door open and entered. A
5 verbal argument again ensued. Defendant then began slapping Victoria with open hands on
6 both sides of her face, breaking her glasses in the process. A neighbor who heard the noise
7 telephoned police. Defendant fled the area prior to Officer Price's arrival. When Price
8 responded, he found Victoria crying, in fear, with a visible injury to her face. Defendant was
9 subsequently charged with battery constituting domestic violence, third offense in Case No.
10 C207835. After Jury Trial, Defendant was convicted of the charge and sentenced to twenty-
11 four (24) to sixty (60) months in the Nevada Department of Corrections.

12 **Event Number 040403-1089**

13 On April 3, 2004, Defendant returned to the apartment and began shouting at Victoria
14 for calling the police on him the day prior and continued to accuse her of being unfaithful.
15 Defendant then slapped Victoria across the face and tried to corner her. Victoria was able to
16 escape, fled from the apartment and ran to the apartment office. The manager, Linda
17 Eggleston, heard Victoria screaming, "Help me! Help me!" Eggleston was able to grab
18 Victoria and pull her into her office and lock the door. Then, they called the police. Officer
19 Rumery contacted Defendant at the couple's apartment and he was arrested for two (2)
20 counts battery constituting domestic violence – one for the April 2 incident and one for the
21 April 3 incident. Defendant was charged for both incidents in Las Vegas Municipal Court
22 Case No. C581783A and pled guilty to Battery Constituting Domestic Violence.

23 **Event Number 040529-2232**

(Case C202793, Burglary wrongful conviction)

24 In the late hours of May 28, 2004/early morning hours of May 29, 2004, Victoria and
25 Defendant got into a verbal argument. The police were once again called to the couple's
26 residence and Defendant left for a cooling off period. Later on May 29, 2004 dispatch
27 received a call from the Budget Suites management office where Defendant and Victoria
28 resided reporting a domestic incident between the two (2). Security advised dispatch that

MAY 29, 2004
INCIDENT

(8c) # 77797CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing
(check appropriate box)

☐ Opening Brief☐ Reply Brief☐ Motion: _____☐ Petition: _____☒ Other: Judicial Notice

to the below address(es) on this 18th day of April, 20 19, by
placing same in the hands of prison staff for posting in the U.S. Mail, per
Nev.R.App.P. 25: By Brass Slip No. 2285617

Nevada Supreme Court201 S. Carson StreetSuite 201OFFICE OF THE CLERKCarson City, Nevada 89 701

Attorney For _____

☐ and

_____, Nevada 89 _____

Brian K. O'KeefeBrian K. O'Keefe# 90244

Lovelock Correctional Center

1200 Prison Road

Lovelock, Nevada 89419

Appellant

In Pro Se

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE

Appellant,

vs.

THE STATE OF NEVADA, et al.

Respondent.

Supreme Court No. 77797

District Court No. A-18-783609-W

● SUPPLEMENTAL - APPELLANT'S INFORMAL BRIEF ¹

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.

ELIZABETH A. BROWN
Informal Brief Form, October 2017
DEPUTY CLERK

FN1: Supplemental based on district court's late Notice of Entry of Order filed 3/28/2019.
Supplement to INFORMAL FILED 3/18/2019.

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
03/25/19	NOTICE OF ENTRY OF ORDER: ORDER

Notice of Appeal. Give the date you filed your notice of appeal in the district court: _____

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

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.)

1. O'Keefe filed INFORMAL Brief March 8 2019 prior Judge's Order.
2. Judge Wiere finally Aiter and Enters ORDER Memorializing his December 5, 2018 decision of O'Keefe's Petition for Writ of Habeas Corpus based on collateral consequence where parole was denied on August 21, 2018 based on Void Burglary conviction entered as a fundamental miscarriage of justice.

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.)

1. District Court (Judge Wiese) incorrectly treated O'Keefe's CORAM NOBIS PETITION as a post conviction petition for habeas corpus because O'Keefe is not in custody on this case. The Nevada Supreme Court delineated this Act already in • Trujillo v. State of Nevada, 310 P.3d 594 (Oct. 10, 2013 FILED) Opinion by C.J. Douglas. see DISCUSSION
2. SCOPE OF PROVISIONS INCLUSIVE (NRS 34.720 to NRS 34.830) do not apply to petition for CORAM NOBIS. See also • Jackson v. State, 115 Nev. 21, 23, 973 P.2d 241, 242 (1999)

3. Judge Wise omits in procedural that O'Keefe timely filed and also served, "Judgment on the Pleadings" filed 11/30/2016 in which O'Keefe incorporated NRCivP 8(d), EDCR 2.20, EDCR 3.20 with state filing, no opposition. see NRCivP 31(d)

4. O'Keefe filed for 59(e) relief where court removed from court docket ?!

8. ● PRAYER AND ACTION FOR SUPREME COURT TO TAKE: "EXPEDITE"

- a) Retain case and resolve based on all "prejudice" O'Keefe has suffered where collateral consequences are occurring daily.
- b) Recognize "15" year extreme delay in having wrongful felony reported to the WORLD wrongly, unjustly.
A Question of Law exists, truly needing nothing else.
- c) Honor your Oath of Office, with the Rule of Law to apply and digest O'Keefe only sought a fair trial in the first instance (2002) and O'Keefe never asked anyone to commit simulated facts, favors or to let me go free.
O'Keefe only exercised his Constitutional Right being denied by state.

DATED this 10th day of April, 2019.

FN2: "Expedite Case" by retaining case. This case has been another "15" year matter of injustice.

Brian L. O'Keefe
Signature of Appellant

Brian L. O'Keefe
Print Name of Appellant

Subject-matter-jurisdiction claims can be raised at anytime, any stage and best raised in this court at a case-of-first-impression.

- see Landreth v. Malik, 127 Nev. 175 (2011 Filed) (... S.M.F. ... by Court of Review...)

- 4 ● Citing SWAN v. SWAN, 106 Nev. 464, 469 (1990)
- MAKE U.S. v. COHEN, 535 U.S. 623, 630 (2002)

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):

Office of the Clerk By Brian O'Keefe No. 2285607
201 S. Carson St.
Suite 201
Carson City, NV 89701

DATED this 18th day of April, 2019.

Brian O'Keefe

Signature of Appellant

Brian O'Keefe

Print Name of Appellant

1200 Prison Road

Address

Cove Neck Nevada 89419

City/State/Zip

Telephone