

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE,)
)
 Appellant,)
)
 -VS-)
)
 THE STATE OF NEVADA)
)
)
)
 Respondent)

Case No. 77797

(see AFFIDAVIT ATTACHED) **FILED**

JAN 07 2020

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

MOTION FOR LEAVE TO FILE AND MOTION FOR
 SUPPLEMENTAL ARGUMENT FOR PETITION
 FOR REVIEW WHERE AFFIRMATIVE DEFENSE
 OF WAIVER BECAME WAIVED PURSUANT
 NRCVP 8(C) BASED ON CLARK COUNTY
 DISTRICT ATTORNEY FAILURE TO RAISE
 CAUSED BY FAILURE TO FILE RESPONSE INTENTIONALLY

[NRA 40 et seq.]

COMES NOW, Brian O'Keefe, Appellant pro per, to humbly file this Supplemental Argument in the clear "interest of justice" whereas this Honorable Supreme Court should allow and apply the "Rule of Law."

With great emphasis, an undisputed miscarriage of justice has occurred which results in fundamental manifest injustice. This final appellate court must exercise their Constitutional and Statutory authority and provide a complete swift remedy and vacate the absolute void burglary felony judgment in case C202793.

[M]isdemeanor conduct cannot constitute [F]elonious conduct to support or sustain an improper felonious intent required for NRS 205.060. Appellant provides all the Points and Authorities via the attached affidavit in support of the pending Petition for Review.

Dated this 31st day of December 2019, pursuant NRS 208.165 by: *[Signature]*
 INVOKE HAINEX v. KERNER, 404 U.S. 519, 520 (1972) (pro se leniency) Brian K. O'Keefe

#90244

20-00853

AFFIDAVIT OF Brian O'Keefe #90244

STATE OF NEVADA)
) SS: Supreme Court Case No. 77797
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. Nev. Rule Civil P B(c) requires the state to raise the affirmative defense of "waiver" where "SHALL" is mandatory language. IF a party specifically fails to assert in pleading, they are waived see Williams v. Cottonwood Cove Dev. Co., 96 Nev. 857, 619 P. 2d 1219 (1980)

4. A Court may not raise a affirmative defense issue for opposing party who especially intentionally with knowledge chose not to answer fundamental error! see Idaho Resources Inc. v. Freeport McMoran Gold Co., 110 Nev. 459, 874 P. 2d 742 (1994)

5. "Actual Innocence" exists by "factual innocence" where only a simple battery misdemeanor conviction was returned by the jury where in the same information (04C202793) the added Count 6 (F) Burglary-NR8 205.060 was based on felonious intent. see Mitchell v. State, 122 Nev. 1269, 1273, 149 P. 3d 33, 34 (2006)
(ACTUAL INNOCENCE)

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 31st - Tuesday day of December, 2019

Brian O'Keefe #90244
Brian K. O'Keefe
pro per

LCC LL FORM 34.018

CERTIFICATE 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: SUPPLEMENTAL ARGUMENT

to the below address(es) on this _____ day of _____, 20____, by
placing same in the hands of prison staff for posting in the U.S. Mail, per
Nev.R.App.P. 25:

Clerk of the Court
201 S. Carson St.
Suite 201
Carson City, Nevada 89 701

Attorney For _____

☐ and

_____, Nevada 89 _____

Brian K. O'Keefe
Brian K. O'Keefe # 90246
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Appellant In Pro Se