

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFRED HARVEY,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

CASE NO:

Electronically Filed
May 20 2020 10:58 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**OPPOSITION TO MOTION TO STRIKE NOTICE OF SUPPLEMENTAL
AUTHORITIES**

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Chief Deputy, JONATHAN E. VANBOSKERCK, and files this Opposition to Motion to Strike Notice of Supplemental Authorities. This motion is filed pursuant to NRAP Rule 27 and Rule 31(e) and is based on the following memorandum and all papers and pleadings on file herein.

Dated this 20th day of May, 2020.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ Jonathan E. VanBoskerck*

JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
Office of the Clark County District Attorney

ARGUMENT

Appellant complains that Respondent’s Notice of Supplemental Authorities does not to comply with Rule 31(e) of the Nevada Rules of Appellate Procedure (NRAP) because it fails to concisely state the legal proposition supported by the cited precedents. Appellant offers multiple theories in support of this complaint. All are meritless because the cited portions of each precedent clearly address the variance issue.

NRAP 31(e) allows a party to raise “pertinent and significant authorities” that “come to a party's attention after the party's brief has been filed, but before a decision,” for consideration by this Court. Id. However, this privilege is limited to “setting forth the citations[,]” providing “references to the page(s) of the brief that is being supplemented” and stating “concisely and without argument the legal proposition for which each supplemental authority is cited[.]” Id. Further, a party may not raise new issues in a notice of supplemental authorities. Id.

Appellant initially complains that Jones v. State, 96 Nev. 71, 605 P.2d 202 (1980), was cited in the Answer to the Petition for Review and thus did not need to be raised in supplemental authorities. (Motion to Strike, filed May 19, 2020, p. 2). Appellant is correct, Jones is cited in the Answer to Petition for Review. As such including it in supplemental authorities was an oversight. Regardless, any error is harmless since it was included in the Answer to Petition for Review, which was filed nearly six months ago and clearly informed Appellant that Jones was cited

because it “examined whether the pleadings sufficiently noticed the defendant of the pending charges and the State’s theory of the case.” (Answer to Petition for Review, filed January 21, 2020, p. 5) (footnote omitted). Appellant has been aware of why Jones was cited since January.

Appellant’s various arguments flowing from his complaint that the Notice of Supplement Authorities fails to concisely state the proposition for which the precedents are offered are equally flawed. Appellant complains that the Notice of Supplemental Authorities failed to comply with concise proposition requirement of NRAP 31(e) and thereby somehow amounts to “raising new points and issues[,]” fails to give notice of the State’s appellate arguments and inhibits Appellant’s right to respond under NRAP 31(e). (Motion to Strike, filed May 19, 2020, p. 2, 3). Importantly, NRAP 31(e) specifically prohibits additional argument. As such, what Appellant is really complaining about is that the State failed to include parenthetical explanations for each case. This complaint ignores the surrounding context that clearly gave Appellant notice of why the cases were being cited.

First, as noted above, the citation to Jones in the Answer to Petition for Review made it clear that Jones was cited because it “examined whether the pleadings sufficiently noticed the defendant of the pending charges and the State’s theory of the case.” (Answer to Petition for Review, filed January 21, 2020, p. 5) (footnote omitted). Further, the Notice of Supplemental Authorities directed the

reader to pages 6-9 of the Answer to Petition for Review. (Notice of Supplemental Authorities, filed May 18, 2020, p. 1). The identified pages of the Answer to Petition for Review specifically address the variance issue. (Answer to Petition for Review, filed January 21, 2020, p. 6-9).

More importantly all Appellant needed to do to ascertain the point of citing these authorities was to read the cited text of the cases. The text cited from Berger v. U.S., 295 U.S. 78, 82-84, 55 S.Ct. 629, 630-31 (1935), U.S. v. Knuckles, 581 F.2d 305, 311-12 (2nd Cir. 1978), U.S. v. Von Stoll, 726 F.2d 584, 586-87 (9th Cir. 1984), U.S. v. Hoke, 610 F.2d 678, 679 (9th Cir. 1980), Shaw v. U.S., 392 F.2d 579, 579 (9th Cir. 1968), Smiley v. U.S., 186 F.2d 903, 904-05 (9th Cir. 1951), Jones, 96 Nev. at 73-76, 605 P.2d at, 204-06, all address the variance issue.

However, if Appellant cannot divine the rhyme behind the citations, Respondent encourages this Court to direct supplemental briefing on the variance issue. In any event, Appellant's complaints about the Notice of Supplemental Authorities are meritless given the totality of the record.

CONCLUSION

WHEREFORE, the State respectfully requests that this Court decline to strike the Notice of Supplemental Authorities filed by Respondent on May 18, 2020.

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Dated this 20th day of May, 2020.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney

BY */s/ Jonathan E. VanBoskerck*

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on May 20, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT
Nevada Attorney General

SHARON G. DICKINSON
Deputy Public Defender

JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney

BY /s/ J. Garcia
Employee, District Attorney's Office

JEV//jg