

COURT OF APPEALS
IN THE ~~SUPREME COURT~~ OF THE STATE OF NEVADA

FILED

SEP 23 2019

BRIAN KERRY O'KEEFE

Case No. 77541-COA

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

Appellant

8TH Case No. 080250630

BY DEPUTY CLERK

-VS-

CASE-OF- FIRST-IMPRESSION

THE STATE OF NEVADA

"Pigouistical and Illegal Collateral Consequences"

Respondent

(Via Affidavit) (Brian K. O'Keefe)

• Pursuant to NRS 208.165, 28 USC § 1746

MOTION TO TAKE JUDICIAL NOTICE NRS 47.150(2)
OF THE LAW OF THE FIRST APPEAL AS THE LAW OF THE
CASE (NRS 47.140) WHICH AS A TRUE MATTER OF FACT
(NRS 47.130(1)) THE STATE FILED A SECOND-AMENDED
INFORMATION UNSUPPORTED BY ANY NOTICE AND CHARGE
OF ANY FELONIOUS USE OF FORCE AS FATAL VARIANCE
AND A MISARRIAGE OF JUSTICE RENDERING SENTENCE
COMPLETELY VOID WHERE DISTRICT COURT LACKED "S.M.J."
BASED ON ABSOLUTE EXTRINSIC FRAUD UPON NEW COURT
HEARING THE THIRD TRIAL RESULTING IN MANIFEST INJUSTICE
CONTRARY TO STARE DECISIS OF SCN No. 53659

(ORDER OF REVERSAL AND REMAND)

FILED APR 7, 2010

*NOTE: (This case is intertwined with 8th case No. 78550 and COA case No. 77797.)
State used improper, unlawful convictions, 0202793 and 020835 in case 0256630
Also, Ohio case 0406232 which was a (9) month sentence only. (Nev Const, 15th Art, 15th Sec)

• COMEX NOW, Brian Kerry O'Keefe, pro per as Appellant, to humbly
present this Honorable Court of Appeals of the State of Nevada with
this Motion to Take Judicial Notice of facts relevant to the issue
on hand, as an alternative fundamental right and reason the lower
district court was without subject-matter jurisdiction.

With Emphasis,
the "Supreme Court of Nevada with the Court of Appeals" provide that
subject-matter jurisdiction claims, "can be raised at anytime, or sua sponte by a
court of review...". (Landreth v. Malik, 127 Nev 173, 251 P.3d 163 (2011)); see also

SWAN T. SWAN, 106 Nev. 461, 796 P.2d 221

Dated Sept. 14, 2019 By: Respectfully Submitted,

STEEL T. STEEL, 1 Nev. 27, 1865 Nev. LEXIS 3 (1865) pursuant NRS 208.165

Brian K. O'Keefe #90244

INVOKER HAINES v. KERNER, 404 U.S. 519, 520 (1972) (pro se tenancy);

Brian K. O'Keefe

Nev. R. Cr. P. 8(d) (plain simple statement which would manifest relief warranted)

High Desert State Prison

* There has never been a case in the history of Nevada since
the joining of the United States, involving (4) cases with Ohio being the fourth case!

AFFIDAVIT OF Brian Kerry O'Keefe (#90244)

STATE OF NEVADA)

SEN/CoA Case No. 77541

COUNTY OF CLARK)

SS:

BTH CASE NO.

08C250630

*** INVOKE RULE OF LAW and FIRST Rule (First do no harm!)**

I, Brian Kerry 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 Kerry O'Keefe.

2. I am over 18 years of age, I reside at High Desert State Prison P.O. Box - 650 Indian Springs Nevada 89070-0070, Prison Road, Lovelock, Nevada 89419. I am fully competent to make this

affidavit and I have personal knowledge of the facts stated herein.

3. - STATE filed "OPEN MURDER" COMPLAINT based on "simple misdemeanor conduct" based as a simple "BATTERY" Domestic Violence, case no. DBF23348X, ADMONISHMENT OF RIGHTS. This, by statute, obtains by law, as a protected liberty interest, the meaning ascribed to it in paragraph (2) of subsection 1 of NRS 200.481 as... "any willful and unlawful use of force or violence upon the person of another." This would only sustain involuntary manslaughter!

4. (MARCH 16, 2009 - MONDAY DAY 1) First trial, state's opening statement, ... O'Keefe stabbed, Mrs. Whitmarsh died, it was unlawful and nothing less than an intentional act. CLOSING ARGUMENT, state specifically verbatim, ... "the 'Battery' or something precipitated the stabbing." (MARCH 20, 2009 - FRIDAY DAY 5, D.D.A. SMITH)

5. April 7, 2010, Defense Motion to Settle the Record, Court concurred, all parties, O'Keefe to drunk to form any intent. Made part of record on direct appeal, SEN No. 53859. (Self defense)

6. "JACKSON STANDARD" was invoked on direct appeal. (see Jackson v. Virginia, 443 U.S. 307, 319 (1979)) Self ultimately issues law-of-the-case, pertaining to implied malice J.I. 18(2):

"where an involuntary killing occurs in the commission of an unlawful act, the natural consequences are dangerous to life, which act is intentionally performed by a person who KNOWS his conduct endangers the life of another, even though there is no specific intent to kill."

LAW-OF-CASE, that the state's alternative theory was not alleged in the charging document AND the evidence presented at trial did not support this theory of second-degree murder.

The "CONDUCT", contrary to law, was the "unlawful act", with the natural consequences being dangerous to life. The act was the alleged [voluntary] intentional stabbing with KNOWLEDGE. However, the SEN recognized that second-degree implied malice murder requires a "notice" and "charge" of a felony reckless unlawful act for actus reus. Became a fatal variance and a miscarriage of justice. No felony use of force. However, also gave insufficiency of evidence ruling for Remand, which was ignored!

7. State files Second-Amended Information identical to first information only charging second degree implied malice murder on August 19, 2010, (Case no. C250630), instead of "OPEN" naturally. However, state files no new unlawful act (conduct) to underpin information. O'Leke's defense attorney, who was a prior Nevada Supreme Court - STAFF ATTORNEY¹ for seven years, argued at the end of the second trial, when settling jury instructions, that the state absolutely failed to notice any new unlawful act (CONDUCT CONTRARY TO LAW) and use presented a myriad of evidence warranting a lawful act involuntary theory which would conform with the Nevada Supreme Court's law of the case that O'Leke committed no unlawful act. (Second Trial, August 31, 2010 - Day 8, pg. 57-60) The state conceded by silence, no dispute!

8. State and all defense attorneys admit no new evidence. Rehashed, beelined up argument.

8. State files new Motion to Admit evidence of bad acts for third trial. Files bogus case as C205165. (No such case) Court grants in part, allows state to introduce bogus felony (sent #78550) case C207835 without charging or alleging in INFORMATION. This is the same case already granted by the first petrocelli hearing. Used in all three trials. However, this is a bogus case now being addressed in the Supreme Court of Nevada, case no. 78550.² The state took a prior City of Las Vegas alleged battery d.v., police event no. 040402-3158, and ultimately took a petty, simple City police event, summarily adjudicated by "then" "Now" Justice ABBISILVER and recharged it as a "felony" battery. This case was also brought on by Nevada Court of Appeals pending case no. 77797 where the state wrongly accused O'Leke and charged him with BURGLARY on his own residence.³ Cases sent 78550 and CoA case 77797 were used to impeach me in CoA case no. 77541 and I was denied parole. STATE CONVICTED ME BASED ON NO UNLAWFUL CONDUCT!

I declare under penalty of perjury that the foregoing is true and correct, and
 * New Hearing Judge was bamboozled. EXTRINSIC FRAUD UPON COURT about law of the case!
 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, unlawfully detained now at High Desert, placed in solitary confinement with all my mail disappearing!

Dated this Saturday 14th day of September, 2019

FNL Ms. Patricia Palm, bar no. 6009

Brian K. O'Leke #90244
 Brian K. O'Leke

FN2 CASE NO. 78550 - Petition for Coram Nobis. Also CoA case no. 77797 is a petition for coram nobis. State lied and placed on NOTICE, O'Leke pled guilty!

FN3 Nevada also sent me, participated, to demanding state Ohio, calling me a fugitive when I was paying child support from Venetian Hotel, and Las Vegas Hilton for years. Never a fugitive!

All (3) felonies in my PET are all simulated facts!! Ohio case already resolved. Assistant district attorney Chris Lalli admitted on record not a felony!

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: JUDICIAL NOTICE

☐ Petition: _____

☐ Other: _____

to the below address(es) on this 17th day of September, 2019, by
placing same in the hands of prison staff for posting in the U.S. Mail, per
Nev.R.App.P. 25: Prepaid postage - STAMP

OFFICE OF THE CLERK
SUPREME / COURT OF APPEALS - NEVADA
201 S. Carson St.
Suite 201
Carson City, Nevada 89761

Attorney For _____

☐ and _____

_____, Nevada 89_____

High Desert State Prison Brian O'Keefe # 90244
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

INDIAN SPRING, NV. Petitioner In Pro Se

89070-0070