

FILED

JAN 13 2022

IN THE SUPREME COURT OF THE STATE OF

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

JOEL BURKEIT

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

83743

Supreme Court No. 83748

District Court No. A-19-78363-W

APPELLANT'S INFORMAL BRIEF

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.

RECEIVED
JAN 13 2022
Informal Brief Form October 2017
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

22-01408

To file your brief by mail: Mail the brief to the Clerk of the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada 89701. **Your brief must be postmarked on or before the due date.**

You must file the original brief and 1 copy with the clerk of the Nevada Supreme Court. If you want the clerk to return a file-stamped copy of your brief, you must file the original form and 2 copies and include a self-addressed, stamped envelope. Documents cannot be faxed or emailed to the Supreme Court Clerk's Office.

Copies of the brief must be mailed or delivered to the other parties to this appeal or to the parties' attorneys, if they have attorneys. You must also include a proper certificate of service or complete the certificate that is attached to the informal brief form.

CAUTION: Pro se parties are prohibited from representing other parties. A pro se party may not complete a brief on behalf of other parties. Pro se parties may collaborate on their briefs, however, provided that if one brief is submitted on behalf of multiple pro se parties, each party must sign and date the brief to confirm that he or she has participated in the preparation of the brief and, by his or her signature, joins in the arguments and representations contained therein.

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
2-3-2019	JOEL BURKEIT V. THE STATE OF NEVADA

Notice of Appeal. Give the date you filed your notice of appeal in the district court: SEPT. 23RD 2021

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.)

BURKEIT'S TRIAL ATTORNEY CONCEDED HIS GUILT
WITHOUT HIS CONSENT TO THE CRIME OF
SEXUAL ASSAULT. THE JURY WAS INSTRUCTED
"IF THE ATTORNEYS STIPULATE OR AGREE TO
THE EXISTANCE OF A FACT, YOU MUST
ACCEPT THE STIPULATION AS EVIDENCE AND
REGARD THE FACT AS PROVEN (JURY INSTRUCTION 20)

IN THE FACE OF JURY INSTRUCTION 20,
COUNSEL INFORMED THE JURY:

"WHAT COULD YOU FIND HIM GUILTY OF
THESE FOUR COUNTS, THAT LEAVES
ONE COUNT ~~THAT~~ THAT HE HAD SEXUAL
INTERCOURSE WITH HER AGAINST HER
WILL, BY FORCE OR FEAR, A SEXUAL
ASSAULT, MORE REFINED WAY FOR
RAPE, ALL RIGHT, AND THERE WAS EVIDENCE
OF THAT TAKING THE BEST EVENTS,
BECAUSE SHE AGREED IT WASN'T WITH
HER CONSENT (TRIAL TRANSCRIPT PG. 476)
THAT'S EVIDENCE OF RAPE (T.T. PG 477)
YOU COULD COME BACK WITH A VERDICT
OF GUILTY OF SEXUAL ASSAULT (T.T. PG 477)
ONLY ONE CRIME YOU CAN FIND HIM
GUILTY OF, THAT'S SEXUAL ASSAULT,
ONE COUNT OF HAVING SEXUAL INTERCOURSE
WITH TIANA CAGE, BECAUSE TO FIND
HIM GUILTY OF THE REST YOU HAVE
TO FIND BEYOND A REASONABLE
DOUBT (T.T. PG (479) YOU KNEW IT
COULD BE IN PART TRUE EVERYTHING
AFTER THE FACT OF GOING OUT IN THE
DESERT MAYBE HE FORCED HIMSELF
ON HER (T.T. PG 481)

HE WENT ON TO TELL THE JURY: "SO WE REALLY ARE DOWN, NOT A VERY HARD PROBLEM AS FAR AS YOU'RE CONCERNED BECAUSE, COURSE I'M HERE TO TRY AND CONVINCE YOU OTHERWISE" (T.T. Pg 480-481) COUNSEL HAD INFORMED THE JURY BURKEIT WAS GUILTY OF SEXUAL ASSAULT, CONTRARY TO BURKEIT'S OWN TESTIMONY (T.T. Pg 392-423) MOREOVER AND LIKEWISE JURY INSTRUCTION JURY 20 ALONE VIOLATE BURKEIT'S SIXTH AMENDMENT RIGHT OF AUTONOMY MCCOY V. LOUISIANA 138 S.Ct. 1500 (2018)

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.)

NOTICENTLY MISSING FROM THE DISTRICT COURT'S ORDER OR REASONING IS THE FACT THE JURY WAS INSTRUCTED: "IF THE ATTORNEYS STIPULATE OR AGREE TO THE EXISTENCE OF A FACT YOU MUST ACCEPT THE STIPULATION AS EVIDENCE AND REGARD THE FACT AS PROVEN (JURY INSTRUCTION 20) IN LIGHT OF (JURY INSTRUCTION 20 TRIAL COUNSEL'S CONCESSIONS WAS

IN FACT A GUILTY PLEA AND/OR
DIRECTED VERDICT FOR THE CRIME
OF SEXUAL ASSAULT. THERE SIMPLY IS
NO WAY AROUND THAT FACT.
LIKEWISE, THE DISTRICT COURT POINTS
TO THIS COURT'S DECISION IN
HATHAWAY V. STATE 119 NEU 243 (2003)
THAT BURKETT COULD HAVE RAISED HIS
CLAIM SOONER, THIS IS OF COURSE
MISLEADING, BECAUSE BURKETT HAD
NO SIXTH AMENDMENT SECURED
AUTONOMY RIGHT UNTIL THE
UNITED STATES SUPREME COURT'S
RULING IN MCCOY (SUPRA) SEE
JUSTICE ALITO'S DISSENT; "SO THE
COURT'S NEWLY DISCOVERED FUNDAMENTAL
RIGHT" IT DID NOT EXIST PRIOR
TO MCCOY (SUPRA)

BURKETT CONTENTS THAT HE MUST
BE GRANTED A NEW TRIAL PURSUANT
TO MCCOY (SUPRA) MOREOVER,
THAT MCCOY (SUPRA) APPLIES
RETROACTIVELY PURSUANT TO

THIS COURT'S REASONING IN
COLWELL V. STATE 137 P.3D 1095 (2002)
ENNIS V. STATE 59 P.3D 463 (2002)

IT DOES NOT MATTER THAT TRIAL
COUNSEL MAY HAVE VIGOROUSLY
ARGUED BURKEIT WAS NOT GUILTY
OF THE OTHER CRIMES CHARGED,
ONCE COUNSEL STIPULATED THE
STATE HAD PROVEN THE CRIME OF
SEXUAL ASSAULT, THERE WAS
NOTHING LEFT FOR THE JURY TO
DO BUT SIGN THE GUILTY VERDICT.

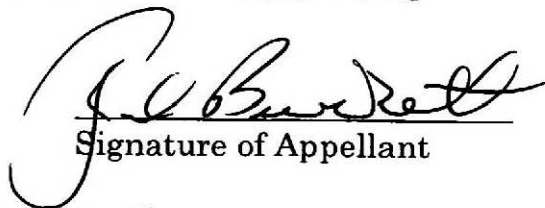
THE COURT IN ARMENTA V. STATE,
306 P.3D 395 (2013) HELD;
"A CONCESSION OF GUILT STRATEGY
IS NOT THE EQUIVALENT OF
A GUILTY PLEA" HOWEVER,
BURKEIT IS DISTINGUISHABLE FROM
THAT HOLDING IN LIGHT OF
JURY INSTRUCTION 20.
COUNSEL TOLD THE JURY: "YOU
COULD COME BACK WITH A VERDICT
OF GUILTY OF SEXUAL ASSAULT
(T.T. PG 471) AND THAT

"TO FIND HIM GUILTY OF THE REST YOU
HAVE TO FIND BEYOND A REASONABLE
DOUBT" (T.T.P. 479)

MOREOVER, EVEN IN MCCOY, SUPRE THE
DISSENT RECOGNIZED MCCOY AS A NEW
FUNDAMENTAL RIGHT, "SO THE COURT'S
NEWLY DISCOVERED FUNDAMENTAL RIGHT"
MCCOY SUPRA 200 LEd 25 459

BURKETT RESPECTFULLY STATES; HE IS
ENTITLED TO A NEW TRIAL AND
MCCOY SHOULD APPLY RETROACTIVELY
COLWELL 59 P.3D 463 (2002)

DATED this 6th day of JAN, 2022


Signature of Appellant

JOEL BURKETT
Print Name of Appellant

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):

JAMIE STILZ
OFFICE OF THE NEVADA ATTORNEY GENERAL
555 E. WASHINGTON AVE STE. 3000
LAS VEGAS, NEV
89101

DATED this 11 day of JAN, 2022

[Signature]
Signature of Appellant

JOEL BURKET
Print Name of Appellant

PO BOX 7000
Address

LAS VEGAS, NV 89102
City/State/Zip

Telephone