

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

* * * * *

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

Case No. 86804 COA

D.C. Case No. C202193

(SEE AFFIDAVIT ATTACHED)
SUPPLEMENTAL AUTHORITY

FILED

DEC 26 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

MOTION TO TAKE JUDICIAL NOTICE WHERE
NINTH CIRCUIT ANNOUNCED JULY 26 2023 IN
LEEDS V. RUSSELL; ATTORNEY GENERAL OF NEVADA,
75 F.4th 1009 CITING STATE V. WHITE, 136 NEV.
533 (en banc) (2014) AFFIRMANCE WHERE TRIAL
COUNSEL WAS INEFFECTIVE BY FAILING TO ARGUE A
PERSON CANNOT BURGLARIZE HIS OWN HOME
AS SUPPLEMENTAL AUTHORITY

COMES NOW, Brian O'Keefe, Appellant prose, to humbly request notice,
by this motion (NRAP 27), of the newly announced authority relevant to
this pending matter - detailed in the affidavit attached.

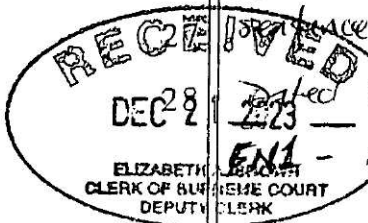
• see LEEDS V. RUSSELL; A.P. of Nev., 75 F. 4th 1009 (July 26, 2023 Filed)

Appellant O'Keefe has and still suffers a true manifest injustice
despite his timely NRS 34.724 petition which denied the same claim
in a consolidated appeal - no's 48673- 49329 - on March 24, 2008
by this "appellate courts" while Appellant was still in custody!

A new trial court on 12/21/2004 (J. S. Bell) for Judge Lehrer imposed an
unconstitutional felony burglary sentence where O'Keefe completed said
sentence resulting in a honorable discharge. Time for relief by court.

dated this 10th day of december pursuant NRS 208.165 by: Brian O'Keefe
EN1 - Nevada Supreme Court affirmed direct appeal, hears Brian O'Keefe

LCC LL FORM 28.018



23-41794

AFFIDAVIT OF Brian Kerry O'Keefe #90244

STATE OF NEVADA)

) ss:

Supreme Court Case No. 86804-COA

COUNTY OF PERSHING)

- COURT OF APPEALS

(8th case No. 0202793)

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, pursuant new supplemental authority.

1. My name is Brian O'Keefe and I'm innocent of burglary, pled not guilty!

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. As a "dispositive fact" the newly announced decision demonstrates that Appellant suffered a miscarriage of justice where Leeds v. Russell, Attorney General of Nevada, 75 F.4th 1009 (July 26, 2023 FILED) delineates police informed parties that a right to live there existed under the law where an eviction process would have to be sought otherwise even when suspect had no keys and agreed to leave. Moreover, IAC of trial counsel existed.

4. Appellant filed same claim with "affirmance" on 3/24/2008, (# 48673-49329) where continuing daily prejudicial collateral consequences exist giving standing.

5. Pursuant ABA MODEL RULES OF PROFESSIONAL CONDUCT 4.1 (2) Truthfulness was reported by all attorneys (State and Special Public Defenders Office Todel (Thompson)) in EXHIBITS 2, 3 and 5 (STATEMENT OF FACTS) of Petition For a Writ of Coram Vobis submitted and filed on March 28, 2023, Case No. 04C202793 dept. VII that O'Keefe was convicted of burglary for entering into the couple's joint dwelling, etc. etc. 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 Saturday 16th day of December, 2023.

6. ABA MODEL RULE 3.3 (1)(i) applies where a lawyer shall not knowingly make a false statement of fact or law Brian K. O'Keefe to a tribunal or fail to correct...
Brian K. O'Keefe

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 18th day of December, 2023, by
placing same in the hands of prison staff for posting in the U.S. Mail, per

Nev.R.App.P. 25: SERVICE LIST

Aaron D. Ford

Nevada Attorney General

100 N. Carson Street

Carson City, Nevada 89701-4717

Attorney For _____

☐ and

_____, Nevada 89_____

Brian K. O'Keefe

Brian K. O'Keefe # 90244

Lovelock Correctional Center

1200 Prison Road

Lovelock, Nevada 89419

Appeal

In Pro Se