

ORIGINAL

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Attorney for Petitioner ERICK BROWN

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERICK BROWN,
Petitioner.

v

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA
in and for the County of Clark, and
the HONORABLE JUDGE
DONALD M. MOSLEY, Judge
thereof,

Respondents.

APPEAL NO: #44588

DISTRICT COURT NO:
C189658

FILED

MAR 11 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY S. Yang
DEPUTY CLERK

SUPPLEMENTAL APPENDIX IN
SUPPORT OF PETITIONER BROWN'S ORIGINAL
PETITION FOR WRIT OF MANDAMUS

Petitioner Erick Brown submits this Evidentiary Appendix in support of his
Petition for Writ of Mandamus.

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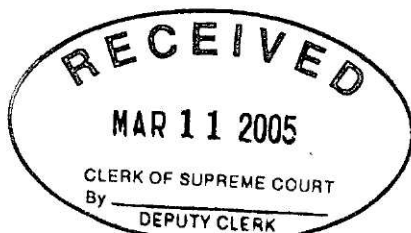
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05-04916

1. Attached hereto as Exhibit 8, is a true and correct copy of the District Court, Clark County, Nevada, Reporter's Transcript of Proceeding held on December 16, 2004.

DATED this 7 day of March, 2005.

Respectfully submitted by:

~~MICHAEL V. CRISTALLI, ESQ.
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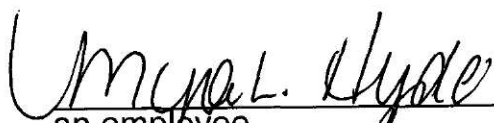
Attorney for Petitioner ERICK BROWN

1 CERTIFICATE OF MAILING

2 I hereby certify that on the 7 day of March, 2005, I duly deposited for
3 mailing, postage prepaid, at Las Vegas, Nevada, a true and correct copy of the
4 Petitioners' Original Petition for a Writ of Mandamus, addressed to the following:

5
6 DAVID ROGERS, ESQ.
7 Chief Deputy District Attorney
8 Office of the District Attorney
9 200 South Third Street, 7th Floor
10 Las Vegas, Nevada 89101

11 HONORABLE DONALD MOSLEY
12 Eighth Judicial District Court
13 Department XIV
14 200 South Third Street
15 Las Vegas, Nevada 89101

16
17 
18 an employee
19 of CRISTALLI & SAGGESE, LTD.
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ERIC M. BROWN,

Defendant.

No. C189658
Dept. No. XIV

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DONALD M. MOSLEY

December 16, 2004
9:00 a.m.
Department XIV

APPEARANCES:

For the State:
MR. MARC DIGIACOMO
Deputy District Attorney

For the Defendant:
MICHAEL V. CRISTALLI
Attorney-at-Law

For Parole and Probation:
NO APPEARANCE

Reported by:
Joseph A. D'Amato
Nevada CCR #17

COPY

THE CLERK: Page 12, Eric Brown.

THE COURT: C189658, State versus Eric M. Brown. Let the record reflect presence of Mr. Cristalli representing the Defendant, Mr. DiGiacomo for the State. The Defendant is present in custody.

~~This is a motion for reasonable bail.~~

We entertained this motion on May 7 -- with Mr. Fritz -- of 2003. It was denied.

Why are we doing it again?

MR. CRISTALLI: I'll explain that to you.

Initially, when bail was set, it was set in Justice Court without Mr. Brown's presence. He was in California at that time.

He was considered a fugitive. Not a fugitive because he was voiding this case, but a fugitive because the charges had come down while he was in California.

At that time Justice Court in Henderson set bail. There was no argument, substantively, with regard to why bail should be set and how much the bail should be set at.

Subsequently there was a preliminary hearing. There was a bindover, but there was never the issue of bail addressed substantively at the Justice Court level while Mr. Brown was present.

THE COURT: That was done here, right?

The 7th of May of 2003 we had a hearing.

MR. CRISTALLI: No.

Well, what happened is there was a bail motion filed. You considered the bail motion.

However, when you evaluated the bail motion you deferred to Justice Court. In Justice Court having an opportunity to review the facts and circumstances behind the bail setting and therefore you did not address the issue of bail in any substantive manner, but rather deferred to the Justice Court ruling on a belief that the Justice Court had an opportunity to review all of the facts and consider the bail, based on a full review of the circumstances of the case, which was never -- which never happened.

That's why I brought it before Your Honor again. Not just to rehash issues that have been previously litigated, but have to have an opportunity to litigate the issue.

THE COURT: I'm very much aware of what is alleged in this case.

Was there a writ filed?

There was a writ filed at some point.

MR. DIGIACOMO: There's been a writ, motions for discovery, been other motions to suppress

identifications.

We litigated this case on numerous occasions.

I'd like to respond to some of the things Mr. Cristalli said. To a certain extent, they were lawyerspeak, judge.

THE COURT: Go ahead.

MR. DIGIACOMO: On December 11, 2002, while in Justice Court there was an active warrant out for the Defendant. He was picked up in San Bernardino County.

Mr. Fritz came in and requested the warrant be recalled or a bail be set. Justice of the Peace George then said "I need a written motion."

A written motion was filed. A hearing was held.

Mr. Cristalli isn't lying to the Court when he says his client wasn't there. His client was still in San Bernardino County.

There was a fully litigated bail hearing before a Justice of the Peace with Defense counsel and the State present.

Thereafter, the case went up after preliminary hearing to this particular court. There was a bail motion filed in this Court and litigated in this court and, once again, the Court agreed with the Justice

1 Court and said "This is reasonable bail."

2 Since that time -- try to recount it real
3 quickly. The State has announced ready at every single
4 calendar call and the defense has made the request to
5 continue those calendar calls.

6 It's not our fault he's still in custody.
7 We would be happy to go to trial and resolve the issue.

8 Based upon the nature of the charges, the
9 possibility of looking at two consecutive life without
10 possibility of parole sentences, because it is a First
11 Degree Kidnapping with use of deadly weapon resulting in
12 substantial bodily harm to a very old victim, judge, the
13 bail is reasonable in this case.

14 There's only one last thing to mention.

15 One of his exhibits he filed is an affidavit
16 from his investigator saying he talked to the other
17 Defendant.

18 If you recall the case, the other Defendant
19 went to trial and only when his lawyer stood up and said
20 "I didn't realize it was a potential life without;
21 otherwise we would have negotiated it," the State allowed
22 him to enter his plea in the middle of trial and heard
23 some of the facts -- and you saw the victim in this case.

24 THE COURT: We had both victims testify.

25 MR. DIGIACOMO: That's correct. Both

1 alleged, and I'm not reducing bail.

2 MR. CRISTALLI: It's a million dollars.

3 THE COURT: Thank you very much. That's my
4 ruling.

5 MR. CRISTALLI: Can I make one thing clear.

6 THE COURT: Yes. What is it?

7 MR. CRISTALLI: My only point with regard to
8 bail is it cannot be set in a punitive manner.

9 THE COURT: It's not being set in a punitive
10 manner.

11 This man is a danger to our community and
12 he's a definite flight risk, in my judgment. Those are
13 two reasons I'm denying your request.

14 Thank you.

21 ATTEST that this is a true and complete transcript of the
22 proceedings held, DATED this 1st day of January 2005.

23
24
25 
J.A. D'AMATO CCR #17

1 victims testified before you.

2 THE COURT: Mr. Cristalli, let me -- I'm
3 imminently aware of what's going on here.

4 I'm not inclined to reduce this bail 10
5 cents.

6 MR. CRISTALLI: With regard to some of the
7 representations made its a much different situation as we
8 sit here today than where we were in Henderson, because
9 the bail was set in light of the fact that Mr. Brown was
10 in California, not in the State of Nevada, and was
11 fighting extradition or at least dealing with the issue
12 with regard to extradition.

13 It's not a life without possibility of
14 parole sentence. That's a misstatement by the State with
15 regard to the possible punishment in this case.

16 I understand Your Honor heard the facts and
17 circumstances of the case and presided over the trial of a
18 co-defendant.

19 However, Your Honor, we believe strongly we
20 will be successful in defending Mr. Brown. Mr. Brown has
21 no history of violence in his past at all.

22 He is not an individual who has a past which
23 involves any type of criminal convictions with regard --

24 THE COURT: Mr. Cristalli, I'm going to move
25 this along. I'm aware of your client, aware of the facts