

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONTE JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Case No. 45456

FILED

JUN 19 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

MOTION TO ENLARGE RECORD ON APPEAL

COMES NOW, Appellant, DONTE JOHNSON, by and through his attorney, LEE-ELIZABETH McMAHON, Deputy Special Public Defender, and moves this Court to enlarge the record on appeal to include the exhibits introduced into evidence by the State.

This Motion is made and based upon Supreme Court Rule 250 (6) and NRAP 26, and the Affidavit of counsel filed herewith.

DATED this 15th day of June, 2006.

SUBMITTED BY:

SPECIAL PUBLIC DEFENDER

LEE-ELIZABETH McMAHON
NEVADA BAR #1765
330 SOUTH THIRD ST., Ste. 800
LAS VEGAS, NV 89155-2316
(702)455-6265
Attorney for Appellant

POINTS AND AUTHORITIES

NRAP 26(b) states in pertinent part:

"The court for good cause shown may upon motion enlarge the time prescribed by these rules or by its order for doing any act to be done after the expiration of such time....."

Supreme Court Rule 250 sets forth the procedure of the clerk's office to follow on direct appeal from a judgement of conviction and

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1 sentence of death. The relevant sections state:

2 "(a) *Docketing of appeal.* When the district court
3 enters a written judgement of conviction imposing a
4 sentence of death, the clerk of the district court shall
5 immediately transmit to the clerk of the supreme court two
6 certified, file-stamped copies of the following documents:
7 (1) the written judgement signed by the judge and filed by
8 the district court clerk; (2) the notice of appeal, if any;
9 (3) the strict court docket entries; (4) the minutes of the
10 district court proceedings; and (5) a list of exhibits
11 offered into evidence, if any....." (emphasis added)

12 (c) *Form and contents of direct appeal record.* On
13 direct appeal from a judgement of conviction and sentence
14 of death, the clerk of the district court shall transmit as
15 the record on appeal a certified copy of the complete
16 record made and considered in the court below. The
17 complete record shall include, without limitation,
18 certified copies of: ... documentary evidence or exhibits
19 filed in the lower courts..... no physical evidence or
20 exhibits shall be transcript absent an order of the supreme
21 court....." (emphasis added)

22 During Appellant's oral argument on June 14, 2006, counsel for
23 JOHNSON stated JOHNSON deserved a new penalty hearing because
24 documents were given to the jury that violated his right to confront
25 his accusers. She further stated the documents, admitted as business
26 records, were unsworn affidavits that could not be repudiated or
27 clarified through cross-examination. This Court stated it could not
28 determine what type of records they were or whether they were
prejudicial since they were not part of the record and could not be
reviewed.

JOHNSON requests this Court allow the record on appeal to be
enlarged to include the 28 exhibits introduced into evidence by the

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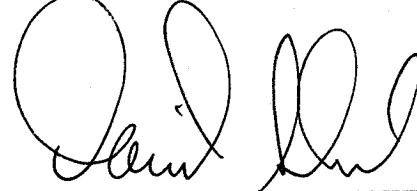
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1 state, specifically the discipline/incident reports from Clark County
2 Detention Center, and any other exhibits this Court deems relevant.

3 DATED this 15th day of June, 2006.

4 Respectfully submitted,

5 SPECIAL PUBLIC DEFENDER

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9 LEE-ELIZABETH McMAHON
10 NEVADA BAR #1765
11 330 SOUTH THIRD ST., Ste. 800
12 LAS VEGAS, NV 89155-2316
13 (702)455-6265
14 Attorney for Appellant

15 AFFIDAVIT OF COUNSEL

16 STATE OF NEVADA)

17) ss:
18 COUNTY OF CLARK)

19 DAVID M. SCHIECK, being first duly sworn, deposes and says:

20 Affiant is an attorney duly licensed to practice law in the State
21 of Nevada and the Special Public Defender. That Affiant submits this
22 Affidavit on behalf of Deputy Special Public Defender Lee-Elizabeth
23 McMahon in support of Appellant JOHNSON'S Motion to Enlarge the Record
24 of Appeal.

25 The Clark County Clerk's Office prepares the Record on Appeal in
26 capital cases. That pursuant to SCR 250(6) a list of exhibits are to
27 be transmitted to this Court upon the judgement of conviction being
28 entered if a sentence of death is imposed.

The rules of the Supreme Court state "documentary evidence or
exhibits filed in the lower courts" shall be included in the record
but it further states that no physical evidence or exhibits "shall be
transmitted absent an order of the supreme court."

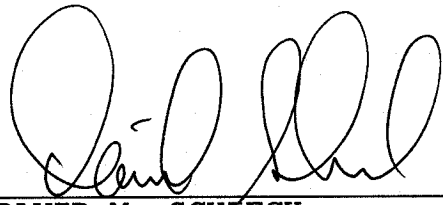
1 One of the issues raised by Appellant on direct appeal concerns
2 the State's introduction into evidence at trial of exhibits,
3 specifically discipline/incident reports from Clark County Detention
4 Center. At oral argument on June 14, 2006 Ms. McMahon stated JOHNSON
5 deserved a new penalty hearing because the documents violated his
6 right to confront his accusers. She further stated the documents,
7 admitted as business records, were boxes of reports from correctional
8 officers and were not really business records, but unsworn affidavits.
9 The records could not be repudiated or clarified through cross-
10 examination.

11 Affiant is informed and believes that in order for this Court to
12 determine what type of records they were or whether they were
13 prejudicial to Appellant, the record on appeal needs to be enlarged
14 to include same.

15 Therefore, Affiant requests this Court grant the Motion to
16 Enlarge the Record on Appeal and order the Clark County Clerk's Office
17 to include the exhibits introduced into evidence by the State.


18 This Motion is made in good faith and not for the purpose of
19 delay.

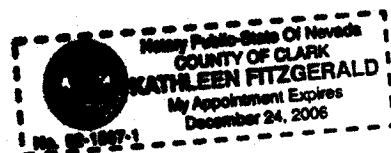
20 Further Affiant sayeth naught.



DAVID M. SCHIECK

23 SUBSCRIBED and SWORN to before me
24 this 15 day of June, 2006.


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26 _____
27 NOTARY PUBLIC



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Nevada Attorney General
100 N. Carson
Carson City NV 89701-4717

100 N. Carson
Carson City NV



KATHLEEN FITZGERALD
of The Special