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IN THE SUPREME COURT OF THE STATE OF NEVADA

2007 MAR 15 PM 3:34

ERICK M. BROWN,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

SUPREME COURT NO. 47856

CASE NO. C189658

DEPT NO. XIV

FILED

APR 17 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
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APPELLANT'S ERRATA TO FAST TRACK STATEMENT APPEAL FROM
JUDGMENT OF CONVICTION

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FAST TRACK OPENING

21. Statement of facts. Briefly set forth the facts material to the issues on appeal:

On November 23, 2002, two men entered the Las Vegas Manufacturing Jewelers (LVMJ) for the purposes of robbing the facility. (AA p.5) The perpetrators, armed with a gun, forced victim Connelly (Connelly) and victim Golsecker (Golsecker) to the floor of the back room. (AA p.6-7) They tied the victims' hands together, using force, and repeatedly asked where money, keys, and surveillance were located. (AA p.7-8) If the victims did not timely respond, the perpetrators continued to use force in order to ascertain the location of money. (AA p.8)

In order to remove jewelry and monies from the victims' possession, the perpetrators continued to keep the victims bound by their hands, laying on the ground. (AA p.8-10)

Blackwell was convicted of the crimes pertaining to the LVMJ incident. The victims were able to give an accurate description of the "shorter" 5'7 perpetrator (Blackwell), and positively identify Blackwell, at a photographic lineup, at the preliminary hearing, and at trial. (AA p.11-12) Blackwell was referred to, at Appellant's trial, as the "shorter" perpetrator. (AA p.11)

Appellant Brown was tried as being the "taller" perpetrator, though the description given by the victims was inconsistent with Appellant Brown's person, nor could either victim identify Appellant Brown at a photographic lineup, as Blackwell had previously been identified. (AA 11-13, 23)

Connelly described the "taller" perpetrator as being "tall and thin," younger than 25, and with "longer" hair than the shorter perpetrator. (AA 14, 16) Golsecker described the "taller" perpetrator as having a full head of hair. (AA

1 p.22) Connelly described the perpetrators as having been identified by the name
2 of "Cal, Dean, Pete, Greg, or Craig." (AA p.17) It was not until Connelly saw a
3 subpoena with Appellant Brown's name that he stated recognition of the name
4 "Erick." (AA p.17) The victims' description also included that the "taller"
5 perpetrator had an earring. (AA p.18, 24)

6 Appellant Brown was 33 at the time of trial. (AA p.30) He had consistently
7 sported a shaven head, and did not wear an earring. (AA p.34-35)

8 Though an identification was later made at the preliminary hearing, both
9 victims admitted that they could not positively identify Appellant Brown when they
10 were shown a 6 pack photographic lineup. (AA p.16, 24) Both victims admitted
11 to having only a few seconds of interaction with the "taller" perpetrator (between
12 5-15 seconds). (AA p.15, 21)

13 Though the victims believed fingerprints were "all over," and samples were
14 indeed taken, no latents matched Appellant Brown's fingerprints. (AA p.14, 19)

15 Appellant Brown took the stand and denied involvement with the incident at
16 LVMJ. (AA p.30) Though he was in possession of the victims' property, he
17 stated that he was in receipt of the property only for the purposes of selling the
18 property, and did not personally obtain said property from LVMJ. (AA p.31)

19 At Appellant Brown's trial, evidence was brought forth that another
20 individual was also found in possession of stolen property relating to the LVMJ
21 incident. (AA p.36) Williams closely matched the victims' description of the
22 "taller" perpetrator, standing at 6'1. (Appellant Brown at 6'5, and Williams at 6'1,
23 are both taller than Blackwell). (AA p.33) Williams had short hair. (AA p.32)
24 Williams was known to have sported an earring. (AA p.32) Finally, Williams also
25 had a criminal history. (AA p.36)

26 The victims' description of the "taller" perpetrator was weaker than the
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1 victims' description of Blackwell; moreover, the victims were unable to identify
2 Appellant Brown at a 6 pack photographic lineup, though they were able to
3 identify Blackwell under these circumstances. ((AA 11, 12, 16, 24)

4 The State, for the alleged "purpose" of strengthening the victims' ability to
5 identify, paraded Blackwell before the jury, in front a special agent with the FBI,
6 Aimaro, and asked Aimaro to identify Blackwell as the "shorter" perpetrator. (AA
7 p.28) Blackwell did not take the stand, nor did the defense have an opportunity to
8 cross-examine him. (AA p.28) Over Defense counsel's objection, the State
9 argued that it was not error to parade Blackwell, a convicted felon, in front of the
10 jury because he was simply a piece of "evidence," to prove accuracy for
11 identification purposes. (AA p.26-27)

12 Appellant Brown was convicted of the crimes relating to the LVMJ incident,
13 as the "taller" perpetrator. (See Judgment of Conviction, AA p.1-2).

14
15 DATED this 13th day of March, 2007.

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17 Respectfully submitted by:

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DATED this 13th day of March, 2007.

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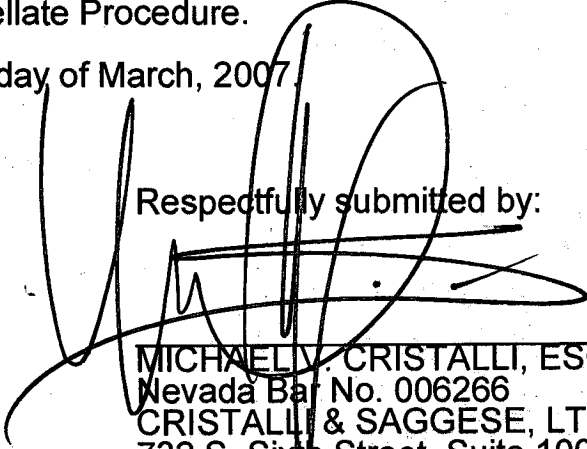
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1 **CERTIFICATE OF COMPLIANCE**

2 I hereby certify that I have read this appellate brief, and to the best of my
3 knowledge, information and belief, it is not frivolous or interposed for any
4 improper purpose. I further certify that this brief complies with all applicable
5 Nevada Rules of Appellate Procedure, in particular N.R.A.P.28(e), which
6 requires every assertion in the brief regarding matters in the record to be
7 supported by a reference to the page of the transcript or appendix where the
8 matter relied on is to be found. I understand that I may be subject to sanction in
9 the event that the accompanying brief is not in conformity with the requirements
10 of the Nevada Rules of Appellate Procedure.

11 DATED this 13th day of March, 2007.

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1 **CERTIFICATE OF MAILING**

2 I hereby certify that on the 13th day of March, 2007, I deposited a copy
3 of the Appellant's ERRATA TO FAST TRACK APPEAL in the United States
4 Mail, in a sealed envelope with postage fully pre-paid, addressed to:

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16 and that there is regular communication between the place(s) so addressed and
17 the place(s) of mailing.

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20 An employee of CRISTALLI & SAGGESE, LTD.
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