

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

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KIRSTIN BLAISE LOBATO,)
)
Appellant,)
)
vs.)
)
THE STATE OF NEVADA,)
)
Respondent.)

Case No. 49087

FILED

OCT 30 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Castillo*
CHIEF DEPUTY CLERK

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Las Vegas Drop Box
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2007 OCT 25 PM 2:52

MOTION FOR THIRD EXTENSION OF TIME TO
FILE OPENING BRIEF AND APPENDIX

COMES NOW, Appellant, KIRSTIN BLAISE LOBATO, by and through her attorneys, DAVID M. SCHIECK, Special Public Defender and JONELL THOMAS, Deputy Special Public Defender, and moves this Court for an Order granting an extension of time of thirty (30) days to file Appellant's Opening Brief up to and including November 28, 2007.

This Motion is made and based upon NRAP 31, the Affidavit filed herewith, and the Points and Authorities attached hereto.

DATED this 25th day of October, 2007.

SUBMITTED BY:

DAVID M. SCHIECK

SPECIAL PUBLIC DEFENDER

[Signature]
Jonell THOMAS
Deputy Special Public Defender
Nevada Bar No. 4771
330 S. Third St., Ste. 800
Las Vegas, Nevada 89155
702-455-6265
Attorney for Appellant

RECEIVED
OCT 30 2007
JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

1 1. I am the attorney assigned to prepare the Opening Brief for
2 the direct appeal of Kirstin Lobato.

3 2. The trial in this case was very lengthy and I am near
4 completion of my review and summary of the trial record. The
5 appendix of record has been prepared.

6 3. While summarizing the record and review the transcript I
7 learned for the first time that the court reporter's recording
8 machine malfunctioned on Tuesday, September 26, 2006, during the
9 first substantive defense of defense expert Dr. Laufer. The
10 transcript notes the following:

11 "The court recorded has advised me that what we did since
12 coming back from lunch got record up until the last bench
13 conference when Mr. Kephart asked to approach the bench,
14 that that did not get recorded, and also the Court's
reading of the admonishment to the ladies and gentlemen of
the jury did not get recorded.

15 So the Court makes the record at this time that the
16 admonishment was given to the jury at the last recess, the
17 same admonishment that the Court has given throughout the
trial was given. And we're proceeding forward, and Mrs.
Greenberger may resume."

18 The transcript, however, does not include any testimony following
19 the lunch break until the time that the above record was made. It
20 appears that a significant portion of the expert witness's testimony
21 is missing as prior to the lunch break the testimony concerned his
22 qualifications and the next testimony following the district court's
23 notation which is set forth above was the following:

24 "Dr. Laufer, before we broke, you were discussing that it
25 was your opinion that scissors may have inflicted the
26 injuries in the first photograph we're looking at. Is that
27 correct?"

28 The transcript does not include any prior testimony by the witness
concerning injuries by scissors, which leads me to believe that the

1 recording malfunction lasted longer than indicated by the district
2 court judge.

3 4. I was not a trial attorney in this proceeding and have no
4 personal knowledge of the testimony at trial, so I do not know how
5 much of the testimony is missing or what was said during this
6 testimony.

7 5. I have discussed this matter with David Schieck, who was one
8 of Ms. Lobato's trial attorneys. He did not conduct the examination
9 of Dr. Laufer and does not have detailed recollection of what was
10 said during the missing portion of the testimony. He informs me that
11 if he would have known that substantive testimony was not recorded
12 that he would have made a full record of it at that time, but
13 because the extent of the malfunction was either not known or not
14 accurately recited, he did not make such a record.

15 6. I am aware that Court TV covered this trial and Mr. Schieck
16 also informs me that the trial attorneys received daily recordings
17 of the testimony. He does not have these recordings, however, as
18 they were kept by Ms. Lobato's trial attorneys. The Clark County
19 Evidence Vault personnel inform me that they do not have copies of
20 these recordings. I believe that either Court TV videotapes or the
21 daily recordings would serve as the best substitute for the missing
22 transcript.

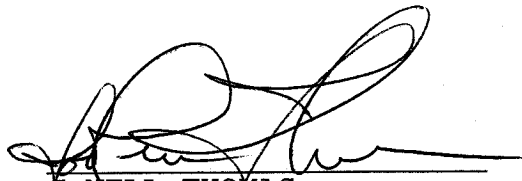
23 7. I have placed telephone calls to the court recorder and
24 District Attorney's Office regarding this matter. I am also
25 attempting to obtain the recordings which belong to Ms. Lobato's
26 former counsel.

27 8. The Opening Brief in this matter is due on October 29, 2007.
28 I have spent considerable time in dealing with this matter and have

1 not yet completed the brief. I will be in Reno, Nevada for an
2 evidentiary hearing from October 29th through November 2nd, and will
3 not be able to work on this matter until I return.

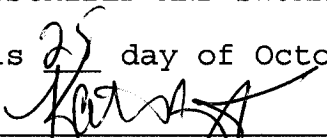
4 9. I respectfully request an extension of time of 30 days based
5 upon these unforeseen matters. That I make this request in good
6 faith and not for purposes of delay.

7 Further Affiant sayeth naught.

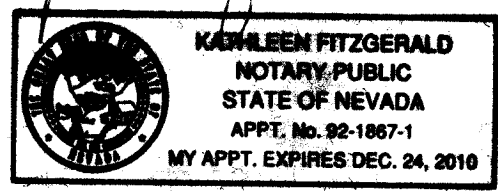


JONELL THOMAS

10 SUBSCRIBED AND SWORN to before me
11 this 25 day of October, 2007.




NOTARY PUBLIC



13 CERTIFICATE OF MAILING

14 I, KATHLEEN FITZGERALD, do hereby certify that on the 25 day
15 of October, 2007, I did deposit in the United States Post Office at
16 Las Vegas, Nevada, a copy of the above and foregoing Motion,
17 enclosed in a sealed envelope upon which first class postage was
18 fully prepaid, addressed to the following: Clark County District
19 Attorney, 200 Lewis Ave., 3rd Floor, Las Vegas NV 89155; and Nevada
20 Attorney General, 100 N. Carson St., Carson City NV 89701-4717.

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23 KATHLEEN FITZGERALD
24 an employee of the Special Public
25 Defender's Office
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