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NARCUS WESLEY

FILED

APR 07 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

NARCUS WESLEY,)	Case No.: 52127
)	
Appellant,)	District Court Case No.: C232494
v.)	District Court Dept. No.: XXIV
)	
STATE OF NEVADA,)	
)	
Respondent.)	

APPELLANT'S EX-PARTE MOTION

FOR ENLARGEMENT OF TIME TO FILE OPENING BRIEF & APPENDIX

[Fourth Request]

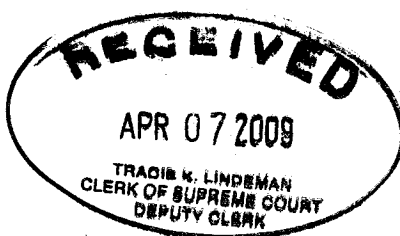
COMES NOW, the Appellant, NARCUS WESLEY a/k/a NARCUS SAMONE WESLEY, by counsel, DAN M. WINDER, ESQ., and moves the Court to grant the Appellant an enlargement of time of an additional thirty (30) days, within which to file Appellant's Opening Brief and Appendix. This pleading is supported by the attached Memorandum of Points and Authorities, the Affidavit of Dan M. Winder, Esq., and all pleadings and papers on file, herein.

DATED this 1 day of April, 2009.

Respectfully submitted,

By:

[Signature]
DAN M. WINDER, ESQ.
Attorney for Appellant
NARCUS WESLEY



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Statement of the Relevant Facts

This appeal arises from an underlying case, in the District Court of Clark County, in the matter of State of Nevada v. Narcus Wesley, Case No. C232494. On May 9, 2007, the Defendant was arraigned on the charges of Robbery, Use of a Deadly Weapon in a Crime, Sexual Assault, and Sexual Assault/Seduction. On May 22, 2008, the Defendant was sentenced to a term of imprisonment, inclusive of the range of life imprisonment (with the possibility of parole).

On or about July 3, 2008, the Judgment of Conviction was entered, as a matter of record. Thereafter, the Appellant filed his Notice of Appeal and Case Appeal Statement. The Opening Brief and Appendix are presently due on April 2, 2009.

Your Affiant recently received a letter from Defendant requesting that several points and authorities be included in his brief (**Attached hereto as Exhibit 1**). He has also requested that we research a list of a dozen or so cases that he feels support his case and should be included. An additional thirty (30) days is requested to properly address Defendant's concerns.

Time is needed to properly research information provided by Defendant and to properly integrate any additional information which support his motion into the Brief that has already been prepared.

It is my duty as the attorney of record to research and included any pertinent information that the Defendant feels will aide him in a favorable outcome in his case.

Law and Argument

The Nevada Rules of Appellate Procedure, Rule 31 (a) (1), provide as follows:

"Time for serving and filing briefs...By written stipulation timely filed with the
Supreme Court, the parties may extend the time for filing any brief for a total of thirty

1 (30) additional days unless the court otherwise orders (see Rule 26 (d)). Applications for
2 extensions of time beyond that to which the parties are permitted to stipulate are not
3 favored, and will be considered only on motion for good cause clearly shown or ex parte
4 in cases of extreme and unforeseeable emergency..."

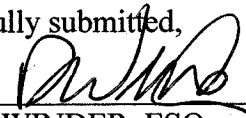
5 The rule provides for a permissive thirty (30) day extension of time, to file any brief. In
6 the case at bar, the Appellant seeks a thirty (30) day extension, within which to file his Opening
7 Brief and Appendix.
8

9 WHEREFORE, the Appellant moves the Court to grant a thirty (30) day enlargement of
10 time, within which to file Appellant's Opening Brief and Appendix, through and including April
11 6, 2009 and for all such other relief as is just and proper in the premises.

12 Dated this 1st day of April, 2009.

13 Respectfully submitted,

14 By:


15 DAN M. WINDER, ESQ.
16 Nevada Bar No. 001569
17 Attorney for Appellant
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1 COUNTY OF CLARK)
2) SS:
3 STATE OF NEVADA)

4 **AFFIDAVIT OF DAN M. WINDER, ESQ.**

5 1. Your Affiant is the attorney of record in the case of Narcus Wesley v. State of
6 Nevada, in the Supreme Court of the State of Nevada, Case No. 52127.

7 2. Your Affiant is fully knowledgeable, regarding all of the matters set forth in this
8 Affidavit and is competent to testify, respecting the same.

9 3. That the Opening Brief and Appendix are due, in the above referenced cause of
10 action, on or about April 2, 2009.

11 4. That your Affiant is a sole practitioner and your Affiant and his staff are working
12 diligently on the matters related to the preparation of the instant appeal.

13 5. That in order to adequately and properly prepare the appeal, an enlargement of
14 Time of thirty (30) days is needed, within which to file the Appellant's Opening Brief and
15 Appendix.
16

17 6. That the extension of time is requested for good cause and is not interposed for
18 the purpose of delay.

19 FURTHER AFFIANT SAYETH NAUGHT.

20 Dated this 1ST, day April, 2009.

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23 _____
24 DAN M. WINDER, ESQ.
25 AFFIANT

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CERTIFICATE OF SERVICE

Clark County District Attorney
David Roger, Esq.
200 S. Lewis Avenue
Las Vegas, Nevada 89155

Attorney General
State of Nevada
555 E. Washington Ave. #3900
Las Vegas, NV 89101



An Employee of Dan M. Winder, Esq.

EXHIBIT 1

MOTION PURSUANT TO RULE 4-252

THE DEFENDANT, BY UNDERSIGNED COUNSEL, PURSUANT TO RULE 4-252, RESPECTFULLY ALLEGES THE FOLLOWING:

1. THAT THERE IS A DEFECT IN THE INSTITUTION OF THE PROSECUTION INCLUDING, BUT NOT LIMITED TO DOUBLE JEOPARDY, IMPROPER PROCEDURES ASSOCIATED WITH THE PRESENTATION AND RETURN OF ANY INDICTMENT, DEFECTS IN THE THE FILING OF ANY INFORMATION, DELAY IN THE INSTITUTION OF THE PROSECUTION, AND SUCH FURTHER DEFECTS AS SHALL BECOME KNOWN TO THE DEFENDANT UPON RECEIPT OF DISCOVERY AND INVESTIGATION OF THIS CASE.
2. THAT THERE IS A DEFECT IN THE CHARGING DOCUMENT INCLUDING, BUT NOT LIMITED TO DUPLICITY, VAGUENESS, AND ALL POSSIBLE CONSTITUTIONAL DEFECTS. THAT THE CHARGING DOCUMENT DOES NOT COMPLY WITH RULE 4-202.
3. ANY SEARCH, SEIZURE, STATEMENT, OR OTHER EVIDENCE IN THIS CASE WAS THE RESULT OR PRODUCT OF AN UNLAWFUL ARREST.
4. ANY SEARCH AND SEIZURE IN THIS CASE WAS NOT PURSUANT TO A VALID WARRANT OR ANY RECOGNIZED EXCEPTION TO THE WARRANT REQUIREMENT.

5. ANY WARRANT WHICH RESULTED IN A SEARCH AND SEIZURE WAS IMPROPERLY ISSUED. WAS OVERLY BROAD, WAS STALE, DID NOT DEMONSTRATE PROBABLE CAUSE, AND WAS OTHERWISE IMPROPER.

6. ANY PRE-TRIAL IDENTIFICATION WAS IMPERMISSIBLY SUGGESTIVE, THE RESULT OF SUCH PRE-TRIAL IDENTIFICATION IS A SUBSTANTIAL LIKELIHOOD OF FUTHER IRREPARABLE MIS-IDENTIFICATION.

7. ANY STATEMENT, ADMISSION, OR CONFESSION OF THE ACCUSED WAS OBTAINED DURING A PERIOD OF UNNECESSARY DELAY, WAS OBTAINED IN VIOLATION OF THE MIRANDA RIGHTS OF THE ACCUSED, WAS INVOLUNTARY, WAS THE RESULT OF IMPROPER THREATS, PROMISES OR INDUCEMENTS, OR WAS OTHERWISE UNLAWFULLY OBTAINED.

WHEREFORE, DEFENDANT RESPECTFULLY REQUESTS THE FOLLOWING RELIEF AFTER HEARING ON THIS MATTER.

1. DISMISSAL OF THE CHARGING DOCUMENT
2. SUPPRESSION OF ANY EVIDENCE WHICH IS THE PRODUCT OR FRUIT OF ANY UNLAWFUL SEARCH, SEIZURE, OR INTERCEPTION OF IMPROPER WIRE OR ORAL COMMUNICATION.

3. SUPPRESSION OF ANY EVIDENCE WHICH IS DERIVED FROM ANY UNLAWFUL SEARCH, SEIZURE, OR INTERCEPTION OF IMPROPER, TAMPERED WIRE OR ORAL COMMUNICATION.

4. SUPPRESSION OF ANY PRE-TRIAL IDENTIFICATION AND ANY SUBSEQUENT IDENTIFICATION IN COURT OR ELSEWHERE.

5. SUPPRESSION OF ANY UNLAWFULLY OBTAINED STATEMENT, ADMISSION OR CONFESSION AND ANY DERIVATIVE EVIDENCE.

6. AND FOR SUCH OTHER AND FURTHER RELIEF AS JUSTICE SHALL REQUIRE AFTER HEARING OF THIS MATTER.

POINTS AND AUTHORITIES IN SUPPORT OF
DEFENDANT MOTION PURSUANT TO RULE 4-252

THE DEFENDANT RESERVES THE RIGHT TO FILE FURTHER AND MORE SPECIFIC POINTS AND AUTHORITIES IN SUPPORT OF THIS MOTION UPON RECEIPT OF COMPLETE DISCOVERY AND AFTER HEARING ON THIS MATTER.

THE FIFTH AMENDMENT PROHIBITION AGAINST DOUBLE JEOPARDY IS BINDING ON THE STATES AND FEDERAL STANDARDS APPLY. DENTIN V. MARYLAND 395 U.S. 784 (1969)

THE FOURTH AMENDMENT PROTECTION AGAINST UNREASONABLE SEARCH AND SEIZURE GUARANTEES ALL CITIZENS A REASONABLE EXPECTATION OF PRIVACY.
KATZ V. U.S. 389 U.S. 347 (1967)

A SEARCH WHICH IS REASONABLE AT INCEPTION MAY VIOLATE THE FOURTH AMENDMENT BY ITS INTENSITY AND SCOPE.

V. BARRA V. ILLINOIS 444 U.S. 85 (1979)

MORE EVIDENCE CANNOT BE SEIZED UNLESS THERE IS PROBABLE CAUSE TO BELIEVE IT WILL AID IN A PARTICULAR APPREHENSION OR CONVICTION. GENERAL EXPLORATORY SEARCHES ARE FORBIDDEN.

SHANFORD V. TEXAS - 379 U.S. 476 (1965)

A SEARCH WARRANT IN ORDER TO BE VALID, MUST BE SPECIFIC.

ANDERSEN V. MARYLAND, 427 U.S. 463 (1976)

THE BURDEN IS ON THE GOVT TO JUSTIFY ANY SEARCH NOT PURSUANT TO A WARRANT.

BUMPER V. NORTH CAROLINA 391 U.S. 593 (1968)

A FOURTH AMENDMENT VIOLATION MAY CAUSE A
SUBSEQUENT STATEMENT OF AN ACCUSED TO BE
INADMISSIBLE.

BROWN V. ILINOIS, 422 U.S. 590 (1975). SEE →

DUNAWAY V. NEW YORK, 422 U.S. 200 (1979).

IMPERMISSIBLY SUGGESTIVE IDENTIFICATION PROCEDURES
MANDATE SUPPRESSION OF THE IDENTIFICATION AND
SUBSEQUENT IDENTIFICATIONS.

SEE. NEIL V. BIGGERS, 409 U.S. 188 (1972)

MANSON V. BRATHWAITE; 432 U.S. 98 (1977).

(CONFESSION OF CO-DEFENDANT - VIOLATION OF
CONFRONTATION RIGHT).

BURTON V. UNITED STATES, 391 U.S. 123 (1968)

THE GOVERNMENT BEARS THE BURDEN OF PROVING
THAT ANY CONFESSION OF THE ACCUSED WAS VOLUNTARY
IN COMPLIANCE WITH MIRANDA AND OTHERWISE PROPER.

LEGG V. TWOMEY, 404 U.S. 477