

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Case No. 53859

District Court Case No. C250630

FILED

AUG 19 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Malone*
DEPUTY CLERK

MOTION TO TRANSMIT EXHIBIT

COMES NOW, Appellant, BRIAN O'KEEFE, by and through his attorneys, DAVID M. SCHIECK, Special Public Defender and JoNELL THOMAS, Deputy Special Public Defender, and moves this Court for an Order directing the Eighth Judicial District Court Clerk to transmit to the Nevada Supreme Court for consideration in the above-captioned appeal Defense Proposed Exhibit B (subject of Issue A of O'Keefe's Fast Track Statement); and Exhibits 32, 33, 34, 35, 36, 37, 38, 40, 44, 45, 46, 47, 48, 55, 56, 57, 58, 59 (photographs of bruises on Whitmarsh's body which are the subject of Issue D of O'Keefe's Fast Track Statement).

This Motion is made and based upon the Declaration of counsel attached hereto.

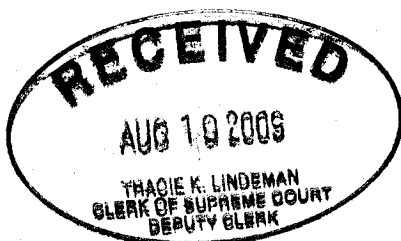
STATEMENT OF FACTS

This Court granted a Motion for Extension of Time to file the Fast Track Statement and Appendix. The Fast Track Statement and Appendix are due August 17, 2009.

DATED this 17th day of August, 2009.

SUBMITTED BY:
DAVID M. SCHIECK
SPECIAL PUBLIC DEFENDER

[Signature]
JoNELL THOMAS
Deputy Special Public Defender
330 S. Third St., Ste. 800
Las Vegas, Nevada 89155
702-455-6265
Attorney for Appellant



DECLARATION OF JONELL THOMAS

I, JoNell Thomas, do hereby declare as follows:

I am an attorney duly authorized to practice law in the State of Nevada.

I am the Deputy Special Public Defender appointed to represent Mr. O'Keefe on his direct appeal to the Nevada Supreme Court from his conviction and sentence entered in the Eighth Judicial District Court.

This Declaration is in support of the Motion to Transmit Exhibits. That the exhibits requested are

(1) Defense Proposed Exhibit B. This exhibit consists of documents that were proffered by O'Keefe's trial counsel during trial. The trial court ruled that the documents were not admissible. They are the subject of Issue A of O'Keefe's Fast Track Statement; and

(2) Exhibits 32-38, 40, 44-48 and 55-59 which are photographs of bruises on Whitmarsh's body. They are the subject of Issue D of O'Keefe's Fast Track Statement.

I am requesting the transmittal of the exhibits by the clerk's office to ensure that the exhibits at issue are identical to those presented in the district court and because it would not be practical for Appellant's counsel to correctly provide copies of the photos.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 17th day of August, 2009.


JONELL THOMAS

CERTIFICATE OF MAILING


The undersigned employee of The Special Public Defender's Office, does hereby certify that on the 17 day of August, 2009, I did deposit in the United States Post Office at Las Vegas, Nevada, a copy of the above and foregoing Motion to Transmit Exhibit, enclosed in a sealed envelope upon which first class postage was fully prepaid, addressed to

...

...

1 Clark County District Attorney, 200 Lewis Ave., 3rd Floor, Las Vegas NV 89155; and

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

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KATHLEEN FITZGERALD
an employee of
The Special Public Defender
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