

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEANGELO R. CARROLL, ) No. 64757

Appellant, )

v. )

STATE OF NEVADA, )

Respondent. )

---

Electronically Filed  
Nov 18 2014 02:03 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

MOTION FOR ORDER DIRECTING DISTRICT COURT  
CLERK TO TRANSMIT ORIGINAL EXHIBIT 243

Pursuant to NRAP 30(d), appellant Deangelo R. Carroll respectfully requests the Court issue an order directing the district court clerk to transmit the State's original trial exhibit number 243 (hereinafter "Ex. 243"). Alternatively, if the Court prefers, Carroll can provide the Court and the State with a copy of Ex. 243 on a disc.

Memorandum in Support of Motion

Relevant factual background

Timothy J. Hadland (TJ) was murdered on the night of May 19, 2005.

On May 20, 2005, homicide detectives Martin Wildemann, Michael McGrath and Jimmy Vaccaro interrogated Carroll for at least

two and half hours in a small room at the homicide office about TJ's murder.

The detectives told Carroll that the interview was being audio recorded, but they did not tell him they were video-recording it as well. 7 AA 1489. That is something they did "surreptitious[ly]." 7 AA 1396. Wildemann was audio recording the interview with a small digital handheld recorder Carroll could see, while Vaccaro was video-recording it from "a back room." 7 AA 1396-97. The audio tape only captured "certain conversations." 7 AA 1398. The video tapes, however, captured everything that happened during the interrogation in the interview room. 7 AA 1397-98.

In 2005, homicide detectives used VCRs to record interviews. 7 AA 1397. At trial, Wildemann testified if one tape ran out, "you had to pull that tape real quick, insert another tape and hit the record button." *Id.* Carroll's interview spanned more than one video tape. *Id.*

Prior to trial, the State provided Carroll with a transcript of the portion his statement that was audio recorded. Carroll attached a copy of that transcript to his pretrial motion to suppress his statement. 3 AA

507.

For trial, however, the State had the VCR video recordings digitized. The digitized video recording was admitted into evidence at trial as State's Ex. 243. 7 AA 1397, 1424-25.

The State also created a partial transcript of Ex. 243 that is time-stamped on the left-hand side. It too was admitted into evidence as State's Ex. 246. 7 AA 1425-26 (the trial transcript shows the State did not provide Carroll with a copy of this partial transcript until about "two minutes" before they moved to admit it).

The transcript of the audio-recorded portion of Carroll's statement (3 AA 507-634) and Ex. 246 (12 AA 2463-577), the partial transcript of ex. 243, do not contain everything was said during Carroll's interview and do not show everything that happened during his interview. Only ex. 243 contains all of these facts and information.

*Ex. 243 is necessary to the determination of the issues on appeal*

NRAP 30(d) states:

Copies of relevant and necessary exhibits shall be clearly identified, and shall be included in the appendix as far as practicable. If the exhibits are too large or otherwise incapable of being reproduced in the appendix, the parties

may file a motion requesting the Supreme Court to direct the district court clerk to transmit the original exhibits. The Supreme Court will not permit the transmittal of original exhibits except upon a showing that the exhibits are relevant to the issues raised on appeal, and that the Supreme Court's review of the original exhibits is necessary to the determination of the issues.

On October 29, 2014, Carroll filed a motion seeking permission to file his opening brief in excess of the type-volume limitation. Attached to the motion is a copy of his opening brief. The Court has not ruled on the motion.

The proposed opening brief, however, shows that Carroll cites extensively to ex. 243 in support of many of his arguments. This is because Carroll is challenging the district court's decision to deny his motion to suppress his statement and to admit ex. 243 (and ex. 246) into evidence. The district court relied on the video recording of Carroll's statement, as well as the parties' briefing, to make these decisions. *See e.g.*, 3 AA 655. Carroll is also challenging the voluntariness of his statement, the detectives' decision to delay giving him *Miranda* warnings until after they got a full confession out of him, the detectives' interrogation tactics, the sufficiency of the *Miranda*

warnings, and other issues with his statement.

Moreover, Carroll is challenging the sufficiency of the evidence to support his convictions for conspiracy to commit murder and first-degree murder. The State's key piece of evidence to prove these crimes was Carroll's confession. They used it in their opening statement, they played ex. 243 for the jury, and played portions ex. 243 during closing argument.

Ex. 243 is absolutely relevant and necessary to the Court's determination of the issues on appeal. It is not enough to rely solely on a transcript that contains only the audio-recorded portion of Carroll's interview, or on ex. 246 (a partial transcript of ex. 243).

Only ex. 243 contains all of the questions, answers, and comments made during Carroll's interview, in particular that was said and done regarding Carroll's *Miranda* rights. Furthermore, only ex. 243 shows everything that happened during the interrogation: the detectives demeanor, the tone of their voices, how they physically handled and treated Carroll, and other interrogation tactics that aren't apparent (or can't be seen, obviously) by reading a transcript.

On October 29, 2014, the same day Carroll filed his motion to exceed the type-volume limitation with a copy of his opening brief, he also electronically filed his appendix, which consists of 12 volumes. He could not electronically file Ex. 243 as part of the appendix because it is a video recording.

Carroll therefore respectfully requests an order directing the district court clerk to transmit the State's original trial exhibit (Ex. 243) to the Court, since ex. 243 is relevant and necessary to a determination of the issues on appeal. Alternatively, if the Court prefers, Carroll can mail a disc to the Court and opposing counsel with Ex. 243 on it.

DATED: November 18, 2014.

/s/ Mario D. Valencia  
MARIO D. VALENCIA  
Nevada Bar No. 6154  
1055 Whitney Ranch Dr., Ste. 220  
Henderson, NV 89014  
(702) 940-2222  
*Counsel for Mr. Carroll*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY AND AFFIRM that this document was filed electronically with the Nevada Supreme Court on November 18, 2014.

Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ MASTO  
Nevada Attorney General

STEVEN OWENS  
Chief Deputy District Attorney

/s/ Mario D. Valencia  
MARIO D. VALENCIA