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IN THE SUPREME COURT OF THE STATE OF NEVADA

CORY DEALVONE HUBBARD,)	
)	Case No.: 66185
Appellant,)	District Court No.: C-13-292507-1
)	
vs.)	<u>REQUEST FOR ADDITIONAL</u>
)	<u>TIME TO FILE APPELLANT'S</u>
THE STATE OF NEVADA,)	<u>REPLY BRIEF</u>
)	
Respondent.)	(First Request)
_____)	

COMES NOW Appellant, CORY DEALVONE HUBBARD, by and through his attorney of record, BRENT D. PERCIVAL, ESQ., of the law office of Brent D. Percival, Esq. P.C. and hereby respectfully submits the present Request for Additional Time to File Appellant's Reply Brief in the above-captioned matter.

Mr. HUBBARD's reply brief presently due to be filed on October 1, 2015.

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This pleading requests an additional twenty-five days of time to file this brief. If this Honorable Court grants this request, Mr. HUBBARD's brief will be due to be filed on or before October 26, 2015.

This request for additional time is made and based upon the entirety of the pleadings and papers presently on file herein and upon the declaration of Brent D. Percival, Esq. which is attached to this Request.

DATED this 1st day October, 2015.

Respectfully Submitted,

 /s/ Brent D. Percival
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DECLARATION OF BRENT D. PERCIVAL IN SUPPORT OF REQUEST FOR ADDITIONAL TIME TO FILE OPENING BRIEF AND APPENDIX

BRENT D. PERCIVAL, knowing the penalties for perjury, does state the following under penalty of perjury:

1. I am attorney licensed to practice in the state of Nevada, before the U.S. District Courts in and for the States of Nevada and Kansas. I have been so licensed within the State of Nevada since approximately November 18, 1988.

2. I was appointed to represent Defendant/Appellant CORY DEALVONE HUBBARD in the Justice Court for the Township of Nevada. After the state sought and obtained an indictment charging Mr. HUBBARD with committing twelve crimes, I continued to represent Mr. HUBBARD during the litigation in the Eighth Judicial District Court.

3. This appeal follows after a six day jury trial. After conclusion of the trial evidence presentation, Mr. HUBBARD was convicted of committing eleven crimes: conspiracy to commit robbery, burglary, seven counts of robbery with use of a deadly weapon, assault, and discharging a firearm within a structure.

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4. On June 26, 2014, the district court found that Mr. HUBBARD was a habitual criminal and sentence him to life without possibility of parole on ten of the counts of conviction. The district court ordered all sentences to run concurrent to each other. Mr. HUBBARD was granted three hundred eight days of credit for time served.

5. Mr. HUBBARD's opening brief was received, by the clerk of this Court, on July 27, 2015 and filed on August 5, 2015. The brief challenged the sufficiency of the evidence adduced during Mr. HUBBARD's trial regarding five of the seven counts of robbery with use of a deadly weapon. Additionally, the opening brief challenged the introduction of other bad act evidence regarding a crime previously committed in the state of Washington.

6. The state's answering brief was filed on August 31, 2015. The state's response to Mr. HUBBARD's challenge to the five robbery convictions is based solely upon three opinions previously published by this Court: Robertson v. Sheriff, 93 Nev. 300, 302 (1977), Phillips v. State, 99 Nev. 693, 696 (1983) and State v. Ah Loi, 5 Nev. 99, 101 (1869).

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According to the state, these three cases establish sufficient evidence was adduced because (1) the “victims” of the five counts were in the same room or an adjacent room or in an upstairs room that did not have a view into either of the rooms during the robbery and therefore were “in the presence” of the two victims who actually had property taken from them; and (2) because the five victims were “friends and family members” each had a possessory interest in the iPad/cell phone taken from the person of one victim - Asia (who did not own the property but is clearly a victim of robbery) and also the cellular phone owned by and taken directly from another person - Kenneth.¹

7. In preparing the reply brief regarding the sufficiency issue, I located only one case - Klein v. State - which discussed “joint possession” in the context of taking money from a business when two employees were present.²

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¹ Other than making the general assertion that all victims were “family or friends”, the state fails to address how Anthony Roberts, the friend of only one person - David Powers - who was upstairs in the master bedroom area, had a possessory interest in any of the three items actually taken “from the persons of another.”

² Klein, 105 Nev. 880, 885 (1989).

Additionally, only one case - Phillips v. State - discusses the possessory interest aspect of robbery again in the context of taking money/items from a business.³ Further, while shepardizing/key citing these two cases, I was unable to locate any other published opinion by this Court which discusses the Klein “joint possession” or the Phillips “possessory interest” aspects of robbery.

8. As both Klein, which is not cited by the state, and Phillips are clearly distinguishable from the facts underlying Mr. HUBBARD’s robbery convictions and neither holds that “family and friends” have a possessory interest in items taken from the person of another, I began researching these issues in other state jurisdictions. While I recognize that other state court opinions are clearly not binding upon this Court, they can offer an analysis of the issues presented in the case at bar that haven’t been determined by this Court and could therefore be instructive.

9. These issues - presence of another and possessory interest in property taken during a robbery, which are being electronically researched through Westlaw, - are very general concepts.

³ Phillips, 99 Nev. 693, 694-96 (1983). As noted above, the state’s answering brief relies on this case.

The initial boolean search “rob! /25 presence /10 person & reversed” resulted in the location of 1601 published criminal decisions. The revised boolean search ‘rob! /25 presence /p multiple numerous several /15 “victims” “person” & reverse” resulted in the location of 61 cases. The vast majority of these 61 cases did provide any legal analysis relevant to the preparation of Mr. HUBBARD’s reply brief.

10. Based upon these facts, I began to quickly view the 1601 cases to determine which state statutes are not similar to Nevada’s definition of robbery or contain additional elements. This determination was then used to begin to limit the cases that need to be reviewed.

11. Unfortunately, due to the number of identified cases, I was unable to finalize this research by October 1, 2015. Therefore, I require additional time to complete this research task which is essential to the adequate and effect presentation of Mr. HUBBARD’s reply brief.

12. In the Eighth Judicial District Court, Mr. HUBBARD filed two separate motions to have me removed as counsel. While the district court denied these motions, it is important that I properly and adequately research and prepare Mr. HUBBARD’s reply brief.

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13. Since August 31, 2015, the date the state filed its answering brief, I have been diligently completing the tasks associated with the preparation of Mr. HUBBARD's reply brief. Nonetheless, I have been unable to finalize all of the tasks required to file Mr. HUBBARD's brief.

Based upon all of the above noted facts, I respectfully request this Honorable Court grant me an additional twenty-five days to file the reply brief. This is the first request for additional time to file this brief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 1st day of October, 2015, at Las Vegas, Nevada.

 /s/ Brent D. Percival
Brent D. Percival

