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Tracie K. Lindeman
Clerk of Supreme Court

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>RESPONSE TO STATE'S</u>
)	<u>PETITION FOR REVIEW</u>
Respondent.)	
_____)	(Second 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 Response to State's Petition for Review in the above-captioned matter.

Based upon this Court's August 12, 2016 order, Mr. HUBBARD's responsive pleading is due to be filed on August 29, 2016.

Pursuant to N.R.A.P. 26(b), Mr. HUBBARD requests an additional ten days of time to file his Response. If this Honorable Court grants this request, Mr. HUBBARD's brief will be due to be filed on or before September 13, 2016.

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 29th day August, 2016.

Respectfully Submitted,

/s/ Brent D. Percival
BRENT D. PERCIVAL, ESQ.
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Counsel for Appellant:
CORY DEALVONE HUBBARD

**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. On April 1, 2016, the majority of the members of the Court of Appeals entered an order that: vacated three of the robbery counts due to insufficient evidence and reversed the remaining convictions based upon the admission of other crimes evidence (Washington conviction) which was not admissible as evidence of intent, absence of mistake or accident, or identity. Additionally, the majority of the Court found that the evidence of Mr. HUBBARD's guilt was not overwhelming and therefore admission of the other bad active evidence was prejudicial. Based on these findings, Mr. HUBBARD's case was remanded to the district court for proceedings consistent with the Court's order.

3. On April 19, 2016, the state filed a Petition for Review by the Supreme Court. The petition challenges the conclusions of the majority of the

Court of Appeals regarding the other bad act analysis the court engaged in. The petition asserted that this is a “new rule” which presents an “issue of first impression.”¹

6. I have engaged in significant research regarding the Court of Appeals’ conclusion that in order for evidence of the Washington conviction to be admissible, the state has to provide the district court with evidence that bad act is relevant to the basis for the admission of that evidence. In the motion requesting admission of the conviction, the state wrote that the Washington conviction was admissible to prove motive, intent, identity, absence of mistake or accident. (I AA 30). At the pre-trial hearing on the state’s motion, the district court ruled that the Washington conviction would be admissible to prove absence of mistake and accepted the prosecutor’s insertion of “and to prove motive, intent.” (I AA 87). During the state’s initial closing argument to the jury, the prosecutor informed the jury that the convictions (the ones Mr. HUBBARD admitted to doing and the Washington conviction) established absence of mistake or accident. (VI AA 1095). Additionally, the state argued that the Washington residential burglary could be “taken into account” in determining what Mr. HUBBARD’s intent was in

¹ See Petition 2-3.

entering the residence. (VI AA 1100).

7. It is submitted that this Court has, on occasion, decided that the admission of other bad act evidence should be reviewed as to each basis the state requests admission. Nonetheless, I have engaged in research on this specific issue analysis in other state and federal jurisdictions.

8. I have not been able to synthesize this Court's opinions and other courts' opinions on this issue and therefore need additional time to complete Mr. HUBBARD's response on this issue.

9. Although I have been practicing before this Honorable Court for many years, I have never been required to respond to a Petition for Review by this Honorable Court.

10. In order to provide this Honorable Court with adequate arguments responsive to the complicated new "at-issue" argument and the complicated standard of review argument, counsel must request an additional ten days to finalize Mr. HUBBARD's response to the state's Petition for Review by the Supreme Court

This request for additional time is made and based upon all of the forgoing information.

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This is the second request for additional time within which to file the Response to the state's Petition for Review.

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

Executed on this 29th day of August, 2016, at Las Vegas, Nevada.

/s/ Brent D. Percival
Brent D. Percival

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 29th day of August, 2016. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Chief Deputy District Attorney Steven Owens

Attorney General Adam Laxalt

Brent D. Percival

/s/ Brent D. Percival
Brent D. Percival
Counsel for Appellant:
CORY DEALVONE HUBBARD