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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>RESPONSE TO STATE'S</u>
)	<u>PETITION FOR REVIEW</u>
Respondent.)	
_____)	(Third 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.

Mr. HUBBARD's responsive pleading is due to be filed on September 13, 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 27, 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 13th day September, 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 THE RESPONSE TO THE STATE'S
PETITION FOR REVIEW**

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, in pertinent part, reversed several of Mr. HUBBARD's 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 the admission of the other bad act 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.

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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

4. 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 had to provide the district court with evidence that the bad act was relevant to the asserted basis for the admission of that evidence.

5. This research has established that this Court’s requirement that other bad act evidence must be relevant, that is having any tendency to make the existence of any fact that is of consequence to the determination of the action, requires the prosecutor to specify the exact theory of admissibility in the trial court. No longer can the state just cite the words contained in NRS 48.045(2). Moreover, the trial courts must apply the tests enunciated by this Court for each of the different categories of bad act evidence.

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¹ See Petition 2-3.

6. I have also engaged in research in other state and federal jurisdictions. This research has established that eleven other states: Alabama, Connecticut, Delaware, Florida, Kansas, Mississippi, New York, Oregon, South Carolina and Texas also require the state to specifically enunciate the specific basis underlying the admissibility of other crimes evidence. These courts also engage in a relevance analysis of the each specific basis identified in order to determine if intent is actually at issue in the case.

7. Research in the federal jurisdictions establishes that the 3rd, 4th, 6th, 7th, and 9th Circuit Courts of Appeals also engage in a relevance analysis of each specific basis identified by the prosecution in order to determine whether intent is actually at issue in the case.

8 This research has been completed and the response to the state's assertion that the Court of Appeals engaged in a "new rule" of admissibility which the state characterized as an "issue of first impression" has been completed. The analysis contained within the response establishes that the state mis-characterized both of the asserted reasons for this Court to engage in a review of the Court of Appeal's decision in the case at bar.

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9. Unfortunately, I have not been able to finalize the analysis of the standard of review issue also challenged by the state. I have completed research on this issue but have not yet been able to discern how the standard of review is applied in cases where this Court finds an abuse of discretion and reverses a case versus cases where this Court does not find error.

10. Based upon this fact, I need additional time to complete Mr. HUBBARD's response on this issue.

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. This is the third 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 13th day of September, 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 13th day of September, 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