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Electronically Filed
May 17 2017 04:16 p.m.
Elizabeth A. Brown
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>MOTION FOR PERMISSION</u>
)	<u>TO FILE A REPLY TO THE</u>
THE STATE OF NEVADA,)	<u>RESPONDENT'S</u>
)	<u>SUPPLEMENTAL BRIEF</u>
Respondent.)	
_____)	

COMES NOW, Cory Hubbard, by and through his counsel of record,
Brent D. Percival, and requests this Honorable Court enter an order permitting
Mr. Hubbard to file a reply to the Respondent's Supplemental Brief.

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In this Court's initial order granting the state's Petition for Review in part and directing supplemental briefing, the court did not include any provision for Mr. Hubbard to file a reply brief responsive to the arguments raised in the state's supplemental brief.¹

A reply brief should be permitted because the state's supplemental briefing argues that when a specific intent crime is alleged, intent is always at issue. In this argument, rather than recognizing and distinguishing the multiple state appellate decisions enunciated in Mr. Hubbard's Supplemental Brief on this issue,² the state relies entirely upon federal opinions from numerous circuit courts. If there is a reason why numerous federal courts have held that intent is always at issue when a specific intent crime is alleged and numerous state courts have held the opposite then Mr. Hubbard should be permitted to present this information to this Court through a reply brief.

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¹ In this Court's most recent order of April 17, 2017, the only enunciated filing date was for the state's supplemental brief.

² Compare Mr. Hubbard's Supplemental Brief pp.22-26 to state's Supplemental Brief pp.4-7.

Additionally, the state's supplement asserts that the Court of Appeals decision, on direct review, regarding admissibility of other act evidence "was based on the erroneous premise that Appellant removed intent from issue because he did not actively argue it." This assertion is then supported by a footnote which claims that "[t]his confusion [of the Court of Appeals] might stem from quotes such as the following" from three federal cases.³ The Court of Appeals' opinion did not cite to or rely upon any of the three noted federal cases. Mr. Hubbard should have the opportunity to refute the erroneous assertions contained in the state's Supplemental Brief.

Next, the state asserts that Mr. Hubbard's reliance on Newman v. State "is misplaced" and that Mr. Hubbard confuses the issue by arguing that the intent requirement of the burglary charge was established by the robbery charge.⁴

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³ See fn. 4 at p.7 of the state's Supplemental Brief. Hereinafter, the state's Supplemental Brief shall be referred to as SSB.

⁴ See SSB 8. Mr. Hubbard actually argued that the intent element of the burglary charge was proven by the actions taken by Mr. Hubbard and the others which evidenced the crimes of robbery, larceny, assault with a deadly weapon and discharge of a firearm in a structure. See Mr. Hubbard's brief at 18-22.

Further, the state again distinguishes Newman and Honkanen v. State in response to Mr. Hubbard's argument that lack of mistake was not at issue because it was not raised during the defense.⁵

Finally, the state makes a completely inappropriate argument that the Washington crime was admissible to prove identity.⁶ This Court's October 21, 2016 order established that the supplemental briefing would be limited to whether the district court abused its discretion in admitting prior bad act evidence to prove absence of mistake and intent and "only to that issue."⁷

It is respectfully submitted that Mr. Hubbard should be provided with the opportunity to refute all of these arguments by filing a reply brief.

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⁵ Compare SSB 10-12 with Mr. Hubbard's brief 26-28.

⁶ However, there are sufficient similarities and uniqueness between the Washing residential burglary and this case to establish identity." SSB 13.

⁷ See Order filed on October 21, 2016.

If this Court permits Mr. Hubbard to file a reply brief it is also requested that he have twenty (20) days, from the date of this Court's order, to file his reply.⁸

DATED this 17th day May, 2017.

Respectfully Submitted,

/s/ Brent D. Percival
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⁸ This request is based upon the fact that undersigned counsel is appointed to represent Mr. Hubbard in this case and should not expend time on preparation of a brief that may not be permitted.

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 17th day of May 2017. 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
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CORY DEALVONE HUBBARD