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Dec 04 2015 10:48 a.m.
Case No. 15-17423
Tracie K. Lindeman
Clerk of Supreme Court

Appellant,

THE STATE OF NEVADA,

Respondent.

COMES NOW Appellant, JOSHUA CALEB SHUE, by and through Deputy Public Defender William M. Waters, and pursuant to Nevada Rules of Appellate Procedure 30(d) and 10(b)(1) asks this Court to direct the District Court to send a copy of State's exhibits 1, 2, 3 - 11, and 75 to this Court for use when reaching a decision on the issues on appeal.

This Motion is based upon the following Memorandum and all papers and pleadings on file herein.

DATED this 4th day of December, 2015.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By /s/ William M. Waters
WILLIAM M. WATERS, #9456
Deputy Public Defender
309 So. Third Street, Suite #226
Las Vegas, Nevada 89155-2610
(702) 455-2685

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Rule 30(d) of the Nevada Rules of Appellate Procedure
3 allows an appellant to include copies of relevant and necessary
4 exhibits in the appendix. However, if an exhibit is not able to
5 be reproduced, a party may:
6

7 file a motion requesting the Supreme
8 Court to direct the district court clerk to
9 transmit the original exhibits. The Supreme
10 Court will not permit the transmittal of
11 original exhibits except upon a showing that
12 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 issue.

13 NRAP 30(d).

14 Appellant was tried and convicted in the Eighth
15 Judicial District Court for creating and possessing images of
16 minors as either the subject of a sexual portrayal in a
17 performance or as depicting minors engaged in sexual conduct,
18 i.e., child pornography. At trial the State admitted all videos
19 images as exhibit 1 and photographic evidence as exhibits 2, 3 -
20 11, and 75. Appellant asks that this Court direct the District
21 Court Clerk's office to transmit the aforementioned exhibits to
22 this Court for purposes of appeal.
23

24 It is crucial for this Court to review the videos and
25 images located on the exhibits when reaching a decision on the
26 merits of Appellant's case. The videos and still images are
27 important because they were shown to the jury at trial and are
28 repeatedly referenced in Appellant's Opening Brief, Respondent's

1 Answering Brief, and Appellant's Reply Brief. Accordingly, the
2 exhibits are necessary for Appellant's appeal.

3 Finally, because Appellant's case and the images at issue
4 involve a mixed question of law and fact this Court should
5 review, *de novo*, whether the images constitute child
6 pornography. See U.S. v. Amirault, 173 F.3d 28, 33 (1st Cir.
7 1999); Comm v. Rex, 469 Mass. 36, 42, 11 N.E.3d 1060, 1067
8 (2014) ("the United States Supreme Court had emphasized ...that
9 'cases involving speech under the First Amendment require
10 independent appellate review of the offending material to ensure
11 that protected speech is not infringed.'") (citing Bose Corp. v.
12 Consumers Union of U.S., Inc., 466 U.S. 485, 504-05 (1984)).

13
14 Based upon the foregoing, Appellant respectfully requests
15 this Court order the district court to transmit State's Exhibit
16 1, 2, 3 - 11, and 75 to this court for review.
17

18 Respectfully submitted,

19
20 PHILIP J. KOHN
21 CLARK COUNTY PUBLIC DEFENDER

22
23 By /s/ William M. Waters
24 WILLIAM M. WATERS, #9456
25 Deputy Public Defender
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