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DVONTAE RICHARD

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Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

DVONTAE RICHARD,)	
)	Case No.: 70542
Appellant,)	<u>AMENDED</u>
)	MOTION FOR ADDITIONAL
vs.)	TIME TO FILE OPENING
)	BRIEF AND APPENDIX
THE STATE OF NEVADA,)	
)	(Seventh Request)
Respondent.)	
_____)	

COMES NOW Appellant, DVONTAE RICHARD, 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 requests this Honorable Court enter an order, pursuant to NRAP 26(b), extending the time within which to file Appellant's Opening Brief and Appendix .

Mr. RICHARD's opening brief and appendix are presently due to be filed on January 20, 2017.

It is submitted that the facts, which are contained in the following Declaration, establish a “showing of extraordinary circumstances and extreme need.”

Based upon the fact that NRAP 9 which gives a court recorder thirty (30) days to produce a transcript, this pleading requests an additional forty-five (45) days of time to file the opening brief and appendix. If this Honorable Court grants this request, Mr. RICHARD’s brief and appendix will be due to be filed on or before March 6, 2017.

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 20th day January, 2017.

Respectfully Submitted,

/s/ Brent D. Percival
BRENT D. PERCIVAL, ESQ.
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630 South Third Street
Las Vegas, Nevada 89101
(702) 868-5650
Counsel for Appellant:
DVONTAE RICHARD

**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 DVONTAE RICHARD in the Eighth Judicial District Court.

3. This is an appeal following a five day trial. Mr. RICHARD was convicted of committing ten (10) crimes and sentenced to an aggregate minimum of sixteen (16) years and an aggregate maximum of sixty-one (61) years of incarceration in the Nevada Department of Corrections.

4. On this date, Mr. RICHARD's opening brief was being finalized. One of the last task completed before efilng the brief involved cross referencing the appendix transcripts with the district court minutes and adding the record citations from the district court minutes to the brief.

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5. The district court minutes for February 24, 2016 contain descriptions of two arguments made during the trial regarding the primary issue of Mr. RICHARD's opening brief - the district court's denial of Mr. RICHARD's motion to suppress his two custodial interrogations. A copy of the February 24, 2016 minutes bates stamped as 639 and 640 are attached to this pleading and are incorporated by reference.

6. As Mr. RICHARD's opening brief did not contain any reference to this important information, review of the February 24, 2016 transcript was completed. The rough draft transcript did not contain any of the arguments noted in the district court minutes.

7. Thinking that the minutes might be dated incorrectly, a complete review of all of the trial transcripts was completed.

8. Even though the Transcript Request Form, which was filed in the district court on June 9, 2016 and with this Court on June 20, 2016, requested court recorder Judy Chappell prepare a transcript of the entire day of February 24, 2016, the arguments referenced in the February 24, 2016 court minutes were not contained in any transcript that has been prepared at this point in time.

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8. The primary issues raised in Mr. RICHARD's opening brief challenge the district court's finding that Mr. RICHARD was properly Mirandized even though the recording made of Mr. RICHARD's second custodial interrogation did not contain any evidence that Mr. RICHARD was Mirandized. Additionally, the opening brief challenges the district court's determination that both of Mr. RICHARD's custodial statements were made voluntarily even though the interrogations took place at the University Medical Center just before he went in for surgery and after surgery had been completed.

9. Counsel has a duty to provide this Court with a complete record regarding any and all issues raised in an opening brief.

10. Additionally, counsel has a duty to render effective assistance of counsel during this appeal.

11. Counsel cannot fulfill either of these duties without obtaining a transcript of the arguments made on February 24, 2016.

12. On this date, contact was made with court recorder Judy Chappell who is investigating this issue.

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13. It is anticipated that Ms. Chappell will either produce the transcript pursuant to the June 6, 2017 request or a second transcript request form, requesting transcription of the February 24, 2016 arguments, will be completed, efiled and served upon Ms. Chappell.

14. This issue has never arisen during any other appeal litigated in this Court.

Based upon the forgoing, it is asserted that “extraordinary circumstances and extreme need” has been established.

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

Executed on this 20th day of January, 2017, at Las Vegas, Nevada.

/s/ Brent D. Percival
Brent D. Percival

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 24, 2016

C-15-308258-1 State of Nevada
vs
Dvontae Richard

February 24, 2016 9:00 AM Jury Trial

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell
Sandra Pruchnic

REPORTER:

PARTIES

PRESENT:	Giordani, John	Attorney
	Lexis, Chad N.	Attorney
	Percival, Brent D.	Attorney
	Richard, Dvontae	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding proposed jury instructions.

JURY PRESENT: Clerk took the roll of the jury. Testimony and exhibits presented (see worksheets.)

OUTSIDE THE PRESENCE OF THE JURY: Arguments regarding case U.S. America v. Larry Louscious 2:15-cr-00106-JAD-VCF. Court noted case noted was an unpublished Federal Court opinion overrule in Nevada. Mr. Percival requested the Court reconsider the Motion from last Wednesday, Motion to Suppress pursuant to Jackson V. Denno Hearing and not allow the State's witnesses, the Officers, to testify regarding the Deft's testimony in the hospital. Arguments by the State. Court noted it reviewed the decision and the minutes from the Jackson V. Denno Hearing conducted by Judge Delaney and the miranda warning was voluntary and appropriate, Judge Delaney ruled "Deft. was properly mirandized" and further noted this Court will not hold a second hearing based on Larry Louscious to overturn Judge Delaney's decision, Court DENIED, Motion to

reconsider.

JURY PRESENT: Further testimony and exhibits presented (see worksheets.)

OUTSIDE THE PRESENCE OF THE JURY: Mr. Percival stated arguments to preserve his right to challenge the miranda warning. Court noted the warning the Officer read to the Deft. regarding his rights was before questioning and not during questioning.

JURY PRESENT: Further testimony and exhibits presented (see worksheets.) State rests.

OUTSIDE THE PRESENCE OF THE JURY: Court advised Defendant of his/her right not to testify. Colloquy regarding jury instructions.

Evening recess.

CUSTODY

02/25/16 11:00 AM JURY TRIAL

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 20th day of January, 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

Counsel for Appellant:

DVONTAE RICHARD