

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONOVINE MATHEWS,)
)
Appellant,)
)
vs.)
)
THE STATE OF NEVADA,)
)
Respondent.)

Electronically Filed
Sep 05 2017 08:42 a.m.
Elizabeth A. Brown
Clerk of Supreme Court
Case No. 72701

**APPELLANT'S MOTION FOR EXTENSION OF TIME
TO FILE OPENING BRIEF**

Comes Now Appellant DONOVINE MATHEWS, by and through Deputy Public Defender DEBORAH L. WESTBROOK, and moves for an extension of time of forty-five (45) days from Tuesday, September 5, 2017 through and including Friday, October 20, 2017 to file the Opening Brief in this case. The grounds for this request are described in the attached Declaration.

DATED this 5th day of September, 2017.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By /s/ Deborah L. Westbrook
DEBORAH L. WESTBROOK, #9285
Deputy Public Defender

DECLARATION OF DEBORAH L. WESTBROOK

1. I am an attorney licensed to practice law in the State of Nevada; I am a deputy public defender assigned to handle the appeal of this matter; I am familiar with the procedural history of this case.

2. On March 10, 2017, the District Court filed a Judgment of Conviction against Donovine Mathews (“Donovine”), sentencing him to 3-10 years in the Nevada Department of Corrections for child abuse and neglect with substantial bodily harm. Donovine filed a pro-per notice of appeal on March 23, 2017, which was docketed in the Supreme Court on March 30, 2017.

3. Donovine’s Opening Brief and Appendix were originally due on August 5, 2017; however, because I was unable to review Appellant’s 7-volume, 1620-page Appendix during the month of July, I obtained a stipulated 30-day extension of time to submit the Opening Brief until September 5, 2017.

4. During the month of August, I reviewed Appellant’s Appendix, preparing a 56-page outline of the record on appeal. At this time, I have identified at least fourteen (14) issues that may have merit on appeal: (1) the district court improperly denied Donovine’s request for discovery of notes prepared by the State’s expert witnesses while ordering Donovine to

produce his own expert's notes; (2) the district court improperly forced Donovine to disclose evidence he did not intend to introduce in his case in chief; (3) the district court improperly excluded Donovine's biomechanical engineering expert at trial where his testimony was essential to Donovine's accident theory of the case and necessary to rebut the State's expert witnesses, without conducting a full evidentiary hearing; (4) the district court improperly allowed the State's medical expert, Dr. Sandra Cetl, to refute testimony that would have been given by Donovine's biomechanical engineering expert, and then cut off Donovine's cross-examination of Dr. Cetl's testimony; (5) the district court refused to strike the State's burn expert, Philip Peltier, after the State failed to turn over Mr. Peltier's notes until the middle of trial; (6) the district court refused to strike Mr. Peltier's cumulative expert testimony; (7) the district court improperly allowed the State to introduce 12 prejudicial photographs of the victim's burned hands, without presenting the person who took those pictures, where even the State's expert agreed the photographs appeared unnaturally red; (8) the district court unduly restricted Donovine's ability to cross-examine multiple witnesses; (9) the district court allowed the State to impeach a witness on collateral issues where the defense did not open the door to the questioning and where the impeachment involved jail calls that were not disclosed in a

timely manner; (10) the district court rejected Donovan's request for a jury instruction on his "accident" theory of the case; (11) the district court prevented Donovan from arguing his theory of the case in closing; (12) the State engaged in prosecutorial misconduct during closing argument; (13) Donovan was denied a fair and impartial trial due to judicial misconduct; (14) cumulative error. There may be additional issues as well.

5. Unfortunately, due to the large number of complex issues involved in this case, I have been unable to adequately research and prepare the Opening Brief at this time. I am still drafting the statement of facts and statement of the case and have not yet begun drafting the argument section of the Opening Brief. Additionally, Donovan has requested that I visit him at High Desert State Prison before completing the Opening Brief so that we can discuss the issues in his case face-to-face. I have an appointment to meet with him on September 19, 2017 at 1:00 p.m.

6. In light of the serious nature of Donovan's child abuse conviction, the number of complex appellate issues that require additional research and exploration, and my need to meet with my client, I respectfully request additional time to prepare Donovan's Opening Brief. In my professional opinion, a **forty five (45) day** extension of time is necessary in order to safeguard Donovan's Sixth Amendment right to the effective

assistance of counsel, and his 5th and 14th Amendment rights to due process. Therefore, I am requesting a **45-day** extension of time to file the Opening Brief and Appendix, up to and including **Friday, October 20, 2017**.

7. This motion is made in good faith, and not for the purpose of delay.

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

EXECUTED on the 5th day of September, 2017

/s/ Deborah L. Westbrook
DEBORAH L. WESTBROOK

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 5th day of September, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM LAXALT
STEVEN S. OWENS

DEBORAH L. WESTBROOK
HOWARD S. BROOKS

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

DONOVINE MICHAEL MATHEWS
NDOC No. 1161064
c/o High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

BY /s/ Carrie M. Connolly
Employee, Clark County Public
Defender's Office