

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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WILLIS T. BROWN,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA, IN  
AND FOR THE COUNTY OF CLARK,  
AND THE HONORABLE WILLIAM D.  
KEPHART, DISTRICT JUDGE

Respondents,

And

THE STATE OF NEVADA,

Real Party in Interest.

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Aug 04 2017 12:46 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

CASE NO: 72950

**RESPONDENT'S APPENDIX**

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### CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on August 4, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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I further certify that service of the above and foregoing was made this 4<sup>th</sup> day of August, 2017, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

JUDGE WILLIAM D. KEPHART  
Eighth Judicial District Court, Dept. XIX  
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BY /s/ E. Davis  
Employee, District Attorney's Office

CT/Michael Schwartz/ed



1 **RTRAN**

2  
3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

5  
6 THE STATE OF NEVADA, )  
7 ) CASE NO. C-16-319125-1  
8 Plaintiff, )  
9 vs. ) DEPT. NO. XIX  
10 WILLIS TYRONE BROWN, ) **TRANSCRIPT OF PROCEEDINGS**  
11 Defendant. )

12 **BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE**  
13 **MONDAY, JUNE 26, 2017 AT 8:57 A.M.**

14 **REQUEST OF COURT**

15  
16 **APPEARANCES:**

17  
18 **FOR THE STATE:** JAMES SWEETIN  
19 Chief Deputy District Attorney

20 **FOR THE DEFENDANT:** GARY MODAFFERI, ESQ.

21  
22  
23  
24  
25 **Recorded by: CHRISTINE ERICKSON, COURT RECORDER**

1 LAS VEGAS, NEVADA, MONDAY, JUNE 26, 2017 at 8:57 A.M.

2  
3 THE COURT: State of Nevada versus Willis Tyrone Brown; this is  
4 C319125.

5 MR. MODAFFERI: Good morning, Judge.

6 THE COURT: Mr. Modafferi, I received a notice from the Supreme  
7 Court that is a -- it's a little confusing to me in light of the fact that I'm not  
8 sure if they're asking the State to respond to this or the Court to respond.

9 So what I've done, I actually prepared something for the record  
10 here. I'm going to read this into the record right now. Okay? This is what I  
11 went through.

12 In the writ the Defendant has claimed that the Court was  
13 arbitrary and capricious in its decision. I disagree with the Petitioner  
14 obviously in that matter for when I indicated that your client did not qualify  
15 as an indigent individual pursuant to *Widdis*.

16 *Widdis* requires two different requirements. One, he has to show  
17 indigency and two, he has to show a need for it. There's actually a third one  
18 that I kind of gleamed out of the descent and I'll tell you what I've looked  
19 here. Although the descendent agreed with the Court except for said that  
20 there had to be even some type of information to give the Court an  
21 understanding how much they were asking for -- what money wise.

22 So at the hearing it became very clear that the Petitioner's  
23 financial position had changed considerably between the time of his first  
24 request for Court appointed services and application declaring indigency  
25 before the Honorable Justice of the Peace Cynthia Cruz.

1 In his first application before Judge Cruz Petitioner represented to  
2 be unemployed with no source of income. And I draw attention to the actual  
3 application. It appeared that the Defendant was released on house arrest.  
4 Secured a bond for \$75,000 and secured services of retained counsel. How  
5 much that was I have no idea, but it was never indicated on his application  
6 that he owed anything towards any of that.

7 In the Petitioner's motion for expert services pursuant to *Widdis*  
8 filed in this Court on April 11, 2017, he attached a second application for  
9 the Court appointed counsel for *Widdis* fees. In review of the attached  
10 application to this Court, the Petitioner's financial situation improved  
11 substantially. Petitioner was now fully employed. He had no further debt for  
12 legal fees. He had secured his release from custody with posting the  
13 \$75,000 bond. And he was paying house arrest fees.

14 It was interesting to the Court as his previous application claimed  
15 that he was unemployed with no source of income; however, he was able to  
16 secure, and I believe it possibly based on the representation in the motion  
17 towards the Supreme Court was that the -- I mean before this Court is that  
18 he had exhausted his resources from his family to pay for his attorney. So  
19 he had resources. And his application also revealed that his debt ratio  
20 decreased by almost 50% between the time of his first application and his  
21 subsequent application that he used to support his motion for expert witness  
22 fees before the Court on April 11, 2017.

23 I believe that he failed to specify either in his motion for expert  
24 services pursuant to *Widdis*, or in his argument at the hearing held on the  
25 April 24, 2017, what his expectation of costs of the investigation will be or

1 what it would entail.

2           Petitioner also had failed to show how an investigator needed for  
3 assisting his counsel would have been included within his -- wouldn't have  
4 been included within his legal fees, or if it was even discussed when  
5 securing counsel. Petitioner has represented a cursory at most need and  
6 therefore failed to present a sufficient showing of his need for the requested  
7 services at public's expense at this stage in the proceedings.

8           So my finding was is that he wasn't indigent. That he hadn't  
9 met a showing of need. And I also indicated that at this -- at least at this  
10 stage in the proceedings it was a cursory attempt to show need. So that  
11 was my decision. That's why -- so I'm putting that on the record so it's  
12 clearer. So if I needed to respond myself to the Supreme Court that's what I  
13 would have been -- that's what would've been presented to them. Okay?  
14 That's all I was doing.

15           MR. MODAFFERI: Judge, can I put on the record that just given that  
16 response, I utilized the standard *Widdis* application that's provided by the  
17 Court in order to request *Widdis* fees. There's no indication on that form  
18 about where or who paid your legal fees.

19           THE COURT: No.

20           MR. MODAFFERI: But I will make this representation to the Court just  
21 so the records clear. My legal fees were paid by his father-in-law. They  
22 weren't paid by the Defendant.

23           THE COURT: No, you had -- Mr. Modafferi, you actually presented  
24 that in your motion. I saw that. What I'm saying is that when they talk  
25 about -- talk about in the application, it actually says monthly debts. And

1 there's a section that says attorneys.

2 MR. MODAFFERI: Yes.

3 THE COURT: And there was nothing placed in there. So my  
4 perception of that is that he doesn't owe you any further legal fees. So he's  
5 secured that. He's paid the \$75,000 bond. He secured that. When he says  
6 in his previous application before Judge Justice Cruz, and he says that he  
7 has -- he's not employed, and he has no means or resources, that changed.  
8 Because now he's full-time employed and he previously had a source in  
9 income because the income is coming from his family.

10 So it may not just be, you know, a job or something like that.  
11 But when somebody's supporting it -- supporting his fees and his debts like  
12 he did here, then he does have -- that's -- I'm considering that. I may be  
13 wrong, but that's how I look at because he was able to secure it. I mean, if  
14 you go to your job -- Mr. Modafferi, if you go to your job and your job says  
15 yeah, here's a check for \$50 for your work.

16 MR. MODAFFERI: Right.

17 THE COURT: That's a source of income.

18 MR. MODAFFERI: Sure.

19 THE COURT: If you go to your family and say, you know what, I have  
20 no money, and they go here's \$50 to help you out, that's a source of  
21 income. And so --

22 MR. MODAFFERI: I understand that. But this is our point of view. He  
23 was working as an executive director for the Boys and Girls Club of America.  
24 Because of these allegations he lost his job. Now he's driving a cab.

25 THE COURT: No. I know.

1 MR. MODAFFERI: He's making minimum wage plus whatever tips he  
2 can garner.

3 THE COURT: Right. Right.

4 MR. MODAFFERI: So that is a major drop off of income.

5 THE COURT: I mean, it is --

6 MR. MODAFFERI: And he's got a --

7 THE COURT: But it's not a question of indigency then. Just because  
8 he's paying less. And the thing is too is I made the statement in the  
9 previous argument is that he may need to adjust his expenses.

10 At the time that I received an application his debts were way  
11 lower than the initial debt. And -- but he hadn't changed his so to speak  
12 lifestyle. He was still living in a pretty expensive place where he could  
13 change that. You know, it doesn't -- because he's living at, you know, X  
14 amount a month doesn't mean he needs to continue living that way because  
15 obviously his incomes went down. I see that. I understand that.

16 MR. MODAFFERI: And a three year old to support. And a wife to  
17 support on a minimum wage.

18 THE COURT: He had that before though. He had it before and -- but  
19 when he said he had no source of income he that before. So I understand. I  
20 understand. I just -- I'm just making my record.

21 MR. MODAFFERI: So, for purposes of -- I know the Supreme Court  
22 gave someone 20 days to respond to the writ, right?

23 THE COURT: Right. See I -- the way it reads it seems like it's directed  
24 to me, but then it says the real parties in interest on behalf of respondents --

25 MR. SWEETIN: Yeah.



1 THE COURT: -- shall have 20 days.

2 MR. SWEETIN: And the way that we've interpreted that is the District  
3 Attorney's office.

4 THE COURT: Okay.

5 MR. SWEETIN: And we are preparing a response.

6 THE COURT: Okay.

7 MR. SWEETIN: And I would just ask that we receive a transcript and  
8 that the Court order an expedited copy of the transcript to be produced so  
9 that we can obtain that and include that in our response.

10 THE COURT: Okay. You need an order.

11 MR. SWEETIN: I'll present to you this afternoon.

12 THE COURT: Okay. I just --

13 MR. MODAFFERI: And I appreciate the Court's putting this on the  
14 record, Judge. The other --

15 THE COURT: Well I've never seen one of these. And so I contacted  
16 my brethren and they said there was different answers but all of them said  
17 put it back on the record and make your record. If -- because we were kind  
18 of, when I say we, it was just a few of us that we talked. We weren't really  
19 sure how to address it either.

20 So I said I'm going to put it on the record and put it on and just  
21 have Mr. Modafferi and the State here and I'll represent what I'm saying and  
22 so -- 'cause I was fully expecting -- I was fully intending to just go ahead and  
23 respond to it, but then when I'm reading it -- it says the real party in interest  
24 on behalf of respondent. So I'm doing it to give the State an opportunity to  
25 address what their order is.

1 MR. MODAFFERI: And I just wanted to just supplement what you've  
2 said, Judge, by the fact that down below in Justice Court we did file a  
3 *Widdis* motion that was granted by Justice Cruz. And because of the work  
4 that was put in by the investigator, we were able to get the attendance logs  
5 which were an important part of our presentation at prelim and the  
6 photographs.

7 Now the attendance logs have been supplemented to our writ on  
8 the probable cause argument, but the photographs were not. They were  
9 transmitted from the preliminary Justice Court. And now I understand the  
10 part of your file here at District Court. If I would submit an order to get a  
11 copy of the photographs up to the Supreme Court on the probable cause  
12 issue, would that be permissible?

13 THE COURT: Yeah. If you need for -- I can get --

14 MR. MODAFFERI: Thank you. I'll get that to you. Because I've  
15 already got the attendance logs.

16 THE COURT: It's -- yeah, you've already filed it up there though.  
17 You've already filed your writ.

18 MR. MODAFFERI: I did file the writ but I'd like to supplement it with  
19 the photographs that were included at the preliminary hearing. And I know  
20 that --

21 THE COURT: Yeah. They'll have the record. Right? They get the  
22 record?

23 THE COURT CLERK: Right. They don't -- I don't believe that they'll  
24 get a copy of the photographs unless the Supreme Court requests a copy of  
25 them.

1 THE COURT: Right.

2 THE COURT CLERK: And I believe that if he wants a copy of the  
3 photographs he can speak to the evidence vault techs and request it from  
4 them.

5 THE COURT: Well because of the nature of the photographs is what  
6 the issue is. Also, Mr. Modafferi, what's interesting when you read the  
7 *Widdis* case completely --

8 MR. MODAFFERI: Yes, Judge.

9 THE COURT: The facts are pretty much on point. In *Widdis*, the  
10 individual pleads guilty -- he has the private counsel, pleads guilty, but never  
11 hired any experts or whatever through that stage, pleads guilty, then prior to  
12 sentencing he gets out of custody, gets a full-time job, which he didn't have  
13 before, and then they want to do a psychological evaluation, and they ask  
14 for fees for that. And there was a claim of indigency and the court rejected  
15 it. And then the Supreme Court issued the opinion.

16 So we have to show there's indigency and you have to show a  
17 need for it. And there was never anything -- any follow-up, so I don't ever  
18 know whatever happened to Mr. Lewis, who *Widdis* was the attorney.

19 MR. MODAFFERI: Was the attorney. Yes.

20 THE COURT: Mr. Lewis was the actual -- I don't know whatever  
21 happened to it. But that's the standard.

22 So, but under those kind of facts, the Supreme Court seemed to  
23 agree with the way I made my determination here. So -- but I don't know. I  
24 mean they may say that there still is an indigency, but we know that  
25 financial situations can change. And that's what I was looking at.

So -- 'cause I've had it the other way. I've had individuals out of custody, do something where they go back in, lose their jobs, and all of a sudden they become indigent. And then the Public Defenders then pick-up when they started with a well -- pretty -- you guys aren't cheap. So, you know, okay? All right, that's my order.

MR. SWEETIN: Thank you.

MR. MODAFFERI: All right, Judge, thank you.

[PROCEEDINGS CONCLUDED AT 9:09 A.M.]

\* \* \* \* \*

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case to the best of my ability.

*Chen*

Christine Erickson,  
Court Recorder