

MELVYN PERRY SPROWSON, JR., )  
 )  
 Appellant, )  
 )  
 vs. )  
 )  
 THE STATE OF NEVADA, )  
 )  
 Respondent. )

Electronically Filed  
May 03 2018 08:05 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
Case No. 13678

COMES NOW Appellant, MELVYN PERRY SPROWSON, JR., by and through Deputy Public Defender DEBORAH L. WESTBROOK, 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 24-28** to this Court for use when reaching a decision on the issues on appeal. This Motion is based upon the following Memorandum of Points and Authorities and all papers and pleadings on file herein.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER  
By /s/ Deborah L. Westbrook  
DEBORAH L. WESTBROOK, #9285  
Deputy Public Defender  
309 So. Third Street, Suite #226  
Las Vegas, Nevada 89155-2610  
(702) 455-4685

## MEMORANDUM OF POINTS AND AUTHORITIES

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

.....file a motion requesting the Supreme Court to direct the district court clerk to transmit the original exhibits. The Supreme Court will not permit the transmittal of original exhibits except upon a showing that 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.

### **NRAP 30(d).**

Appellant was tried and convicted of four counts of unlawful use of a minor in the production of pornography. At trial, the State admitted photographic evidence claimed to be "child pornography" as **State's Exhibits 24-28** and the jury relied on those exhibits in finding Appellant guilty of all four counts. On appeal, Appellant contends that his four convictions for unlawful use of a minor in the production of pornography should be vacated because the photographs in **State's Exhibits 24-28** do not depict "sexual conduct" as defined in NRS 200.700(3) and because NRS 200.700(4) is unconstitutional. Appellant relies on and cites to **Exhibits 24-28** throughout Section III of his Opening Brief.

A review of **Exhibits 24-28** is necessary to this Court's determination of issues in the case. This Court must review, *de novo*, whether the images in question actually constitute child pornography. See U.S. v. Amirault, 173 F.3d 28, 33 (1st Cir. 1999); Comm v. Rex, 469 Mass. 36, 42, 11 N.E.3d 1060, 1067 (2014) ("the United States Supreme Court had emphasized... that 'cases involving speech under the First Amendment require independent appellate review of the offending material to ensure that protected speech is not infringed.'")(citing Bose Corp. v. Consumers Union of U.S., Inc., 466 U.S. 485, 504-05 (1984)).

Yet, Appellant cannot include **Exhibits 24-28** in Appellant's Appendix because it would violate the attached Stipulation and Order Regarding Discovery of [alleged] Child Pornographic Materials. See **Exhibit A**. Among other things, defense counsel is prohibited from making any "additional copies of said images", she may not "mail or transport said images", and she must "keep said images safe at [her] place of business". Id.

Although it is Appellant's contention that the photographs in **Exhibits 24-28** do not constitute child pornography, if this Court disagrees, counsel could be subject to criminal liability for including the photographs in Appellant's Appendix. See **NRS 200.725** ("A person who knowingly

prepares, advertises or distributes any item or material that depicts a minor engaging in, or simulating, or assisting others to engage in or simulate, sexual conduct is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 15 years, or by a fine of not more than \$15,000, or by both fine and imprisonment.”); see also State v. Second Judicial District Court, 120 Nev. 254 (2004).

Based upon the foregoing, Appellant respectfully requests that this Court order the District Court to transmit **State’s Exhibits 24-28** to this Court for review.

DATED this 2nd day of May, 2018.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By /s/ Deborah L. Westbrook  
DEBORAH L. WESTBROOK, #9285  
Deputy Public Defender  
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**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that service of the above and foregoing was made this 2 day of May, 2018, by Electronic Filing to:

District Attorneys Office  
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/s/ Carrie M. Connolly  
Secretary for the  
Public Defender's Office

## **EXHIBIT A**

1 **SAO**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JACQUELINE BLUTH  
6 Chief Deputy District Attorney  
7 Nevada Bar #010625  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

SEP 21 2015

BY:   
ROBIN C. THOMAS, DEPUTY

8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 THE STATE OF NEVADA,  
11  
12 Plaintiff,

13 -VS-

14 MELVYN PERRY SPROWSON, JR.,  
15 #5996049

16 Defendant.

CASE NO. C-14-295158-1

DEPT NO. XXIII

17 **STIPULATION AND ORDER REGARDING DISCOVERY OF**  
18 **CHILD PORNOGRAPHIC MATERIALS**

19 It is hereby stipulated and agreed to by both parties that in accordance with the Nevada  
20 Supreme Court ruling in State v. Second Judicial District Court, 120 Nev. 254 (2004), Defense  
21 Counsel must adhere to the following strict limitations regarding any images deemed to be  
22 Child Pornography received through the discovery process:

- 23 1. Defendant cannot possess a copy of said images; however, Defendant  
24 may view them with counsel in preparing defense;
- 25 2. Defense Counsel cannot make additional copies of said images;
- 26 3. Only attorneys, legal staff, Defendant, an audio/video technician and  
27 expert witnesses associated with the subject case may view said images;
- 28 4. Attorney(s) must keep said images safe at their place of business;

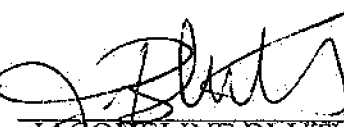
- 1 5. No one may mail or transport said images by any third-party commercial  
2 carriers;  
3 6. No one may transport said images across state lines without a written  
4 court order;  
5 7. After the defendant has been adjudicated guilty and sentenced, the  
6 criminal case has otherwise reached a final disposition, or upon defense  
7 counsel ceasing to represent defendant, counsel must promptly return  
8 said images directly to the Prosecutor, who will destroy them.

9 DATED this 21<sup>st</sup> day of September, 2015. DATED this 21 day of September, 2015.

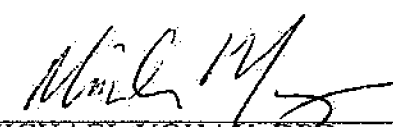
10 STEVEN B. WOLFSON  
11 DISTRICT ATTORNEY  
12 Nevada Bar #001565

ATTORNEY FOR DEFENDANT

13 BY

14   
15 JACQUELINE BLUTH  
16 Chief Deputy District Attorney  
17 Nevada Bar #010625

BY

18   
19 MICHAEL YOHAY, DPD  
20 309 S 3RD STREET  
21 LAS VEGAS, NV 89101  
22 Nevada Bar #008316

23 SO ORDERED,

24 DATED this 21 day of September, 2015.

25   
26 DISTRICT COURT JUDGE

27 hjc/SVU