

IN THE SUPREME COURT OF THE STATE OF NEVADA

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KEANDRE VALENTINE, )  
 )  
 Appellant, )  
 )  
 vs. )  
 )  
 THE STATE OF NEVADA, )  
 )  
 Respondent. )  
\_\_\_\_\_ )

Electronically Filed  
Jul 31 2018 10:49 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
Case No. 74468

**APPELLANT’S MOTION FOR THREE DAY EXTENSION  
OF TIME TO FILE OPENING BRIEF**

Comes Now Appellant KEANDRE VALENTINE, by and through Chief Deputy Public Defender SHARON G. DICKINSON, and moves for an extension of time of three (3) days from Monday, July 30, 2018, through and including Thursday, August 2, 2018, to file the Opening Brief in this case. The grounds for this request are described in the attached Declaration.

DATED this 30 day of July, 2018.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By /s/ Sharon G. Dickinson  
SHARON G. DICKINSON, #3710  
Chief Deputy Public Defender

## DECLARATION OF SHARON G. DICKINSON

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 06/28/18, Court granted my motion for an extension due to missing documents. At the time I requested an extension, I had filed a motion to reconstruct in district court because emails sent to the court by the defense and prosecution trial attorneys were not made part of the record. Our attorney could not remember what or if they sent anything. Also, some of the Defense proposed exhibits were incorrectly marked as having been withdrawn. In granting the extension to file the Opening Brief, Court set a new filing date for the Opening Brief – today 07/30/18.

3. I am now asking for a three day extension due in part to the delay in receiving the information from the district court.

4. At a hearing in district court on 07/02/18, the district court granted our motion to reconstruct the record. *See Exhibit A*. District Court agreed it would look for the emails sent between the parties and the court and if found then they would be made part of the court record.

5. The district court did not file the order until 07/25/18. *Exhibit B*. Although the order was not served on me, I found it in Odyssey

towards the end of the day on 07/25/18. When I could not locate any emails or exhibits from the district court in the district court evidence vault, I contacted the courts JEA who told me they had filed the documents as a notice on 7/10/18. Because I was never served with the notice, I did not know it was filed. After finding the notice and documents in Odyssey, I could not open the file and needed my secretary to download it for me. Thus, I did not receive any of the information until at the end of the day on 7/25/18.

6. Based on the delay in obtaining these documents, I did not have time to complete the Opening Brief regarding this issue and several others. I had put the case aside while waiting for the documents because I had no idea what the court would find or how it would affect the issues I was raising. Thus, I am now asking for an extension of three days to complete the issues and research involving several issues.

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7. This motion is not made for the purposes of delay but to allow me time to finish putting together the appendix and addressing and researching issues for the Opening Brief.

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

EXECUTED on the 30 day of July, 2018.

/s/ Sharon G. Dickinson  
SHARON G. DICKINSON

**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 30 day of July, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM LAXALT  
STEVEN S. OWENS

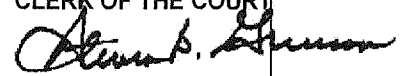
SHARON G. DICKINSON  
HOWARD S. BROOKS

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

KEANDRE VALENTINE  
NDOC No. 1187170  
c/o Ely State Prison  
P.O. Box 1989  
Ely, NV 89301

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

Exhibit A



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RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

vs.

KEANDRE VALENTINE,  
Defendant.

CASE#: C-16-316081-1  
DEPT. 2

BEFORE THE HONORABLE RICHARD SCOTTI, DISTRICT COURT JUDGE  
MONDAY, JULY 2, 2018

**RECORDER'S TRANSCRIPT OF HEARING:  
DEFENDANT'S MOTION TO RECONSTRUCT THE RECORD**

APPEARANCES:

For the State: MICHAEL DICKERSON, ESQ.  
Deputy District Attorney

For the Defendant: TEGAN C. MACHNICH, ESQ.  
Deputy Public Defender

RECORDED BY: DALYNE EASLEY, COURT RECORDER

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Las Vegas, Nevada, Monday, July 2, 2018

[Hearing began at 9:20 a.m.]

MS. MACHNICH: Good morning, Your Honor.

THE COURT: Hi, Counsel.

MR. DICKERSON: Good morning, Your Honor, Mike Dickerson on behalf of the State.

MS. MACHNICH: Tegan Machnich on behalf of Mr. Valentine.

THE COURT: Great. I don't know why this got set before me because this case was transferred to Judge Bailus back on August 21 of last year so I don't have jurisdiction over it anymore; unless you know something different.

MS. MACHNICH: Your Honor, we called and we were told that it had stayed with you because of the trial issues and the fact that we're just trying to address a couple issues with the trial record. And that's why we ended up filing it.

THE COURT: Who'd you call?

MS. MACHNICH: I thought we called your department but it appears we may not have; so. I thought my secretary called your department and we were told it should go before you because it's a trial record issue.

THE COURT: Well, I would think so. Normally what happens in these cases where -- let me just tell you, it looks like the record on Odyssey shows that on August 21, 2017 it went to



1 Department 18.

2 MS. MACHNICH: Yes.

3 THE COURT: And then Bailus, starting today I think, is not  
4 doing criminal anymore so this case would have been transferred to  
5 someone else. And I don't know who that is yet.

6 MS. MACHNICH: So, I --

7 THE COURT: So normally what happens is when there's a  
8 trial judge that heard some matter and the case got transferred to  
9 somebody else, that judge who now has jurisdiction can make a  
10 limited reference back to the trial judge so the trial judge can rule on  
11 whatever is the matter that he would have personal knowledge of.  
12 But that has to be a written reference.

13 MS. MACHNICH: And, Your Honor, I'm certainly willing to  
14 do that. I know that our continuance for our appeal was only until  
15 July 30<sup>th</sup>. And I do believe now, if I'm remembering correctly, the  
16 reason why we were told that your department was keeping it was  
17 because we were an overflow case as opposed to a track case.

18 THE COURT: Well, let me check. My Clerk is trying to tell  
19 me something.

20 Okay. It looks like it was referred back to me.

21 MS. MACHNICH: Okay.

22 THE COURT: So, I didn't realize that. This case has  
23 bounced around a little bit.

24 MS. MACHNICH: It has.

25 THE COURT: Alright, so, let's go ahead and try to resolve

1 it then.

2 MR. DICKERSON: The State's, obviously, just submitting.  
3 We didn't file a written opposition with this case.

4 THE COURT: Great. Yeah, I didn't see an opposition.

5 Here's why I was a little bit confused, Ms. Machnich, and  
6 maybe you can help me untangle this.

7 MS. MACHNICH: Okay.

8 THE COURT: Because I want your record to be correct but  
9 I also want to make sure that we're consistent with the transcript.

10 Looks like you had three things that you were concerned  
11 about back at the hearing on August 2, 2017: some booking photos  
12 and then some, there might have been two booking photos, then a  
13 side photo.

14 MS. MACHNICH: Yes.

15 THE COURT: In the transcript -- oh, and you reference  
16 those as L, K and U.

17 MS. MACHNICH: Yes.

18 THE COURT: Alright? So the Court Clerk's records for L  
19 and K show that those were offered on August 1, alright? And yet  
20 in the transcript when you are talking about the exhibits that I think  
21 are the subject of this motion --

22 MS. MACHNICH: Yes.

23 THE COURT: -- you say you're going to be offering them,  
24 so they haven't been offered yet. So what I think happened is the  
25 August 2 transcript is referring to something that I objected to but

1 it's not L and K because, like I said, L and K were already offered.  
2 And what you're complaining about August 2<sup>nd</sup> is something that  
3 wasn't offered yet. So, you might have your numbers wrong; it's  
4 not L and K.

5 MS. MACHNICH: I believe it is L, K and U, Your Honor.  
6 And I think what happened was we had them marked and to be  
7 offered into evidence and marked as Defense Exhibits, and then we  
8 took the issue outside the presence of the jury because we had had  
9 prior to this date, and obviously Mr. Dickerson can clarify if he  
10 remembers things differently, but my recollection was we had,  
11 initially, we had informed the State that we were going to be trying  
12 to introduce the booking photos of what we deemed as the alternate  
13 suspect, which is Bobby McCoy, which is the photographs that are  
14 in question with L, K and U. And at that point the State had  
15 objected to those and we subpoenaed the personnel necessary to  
16 get them in through booking and had those people waiting in the  
17 hall.

18 This was sort of a compound issue with this and SCOPE so  
19 we had several different witnesses waiting in the hall because of  
20 some authentication issues that we had anticipated would come up  
21 because the State was not inclined to stipulate to their admission  
22 and authenticity; which is fine.

23 Before we brought in the jury that day we brought it to  
24 Your Honor's attention that these were disputed between the parties  
25 and that the State had offered to stipulate to just the front view of

1 Mr. McCoy in lieu of these. We had said that we were not inclined  
2 to not introduce these but we did not have an opposition to the  
3 stipulation because obviously that picture, we did think, was  
4 appropriately in. We just thought these were, additionally,  
5 appropriately in.

6 THE COURT: Right.

7 MS. MACHNICH: And then we addressed the issue  
8 outside the presence of the jury that morning and Your Honor was  
9 disinclined to allow us to go down that path. And because of that  
10 we did not call the witness to bring those in.

11 THE COURT: In looking at the transcript again there was a  
12 black and white photo that I allowed but apparently it was the color  
13 photo that I disallowed. So, that's based on the transcript here. So,  
14 I'm assuming the booking photo was in color and it was the other  
15 black and white photo that was the subject of the stipulation?

16 MS. MACHNICH: The one front view was the subject of  
17 the stipulation between the parties.

18 THE COURT: Do you have a copy of the booking photo  
19 because --

20 MS. MACHNICH: I have copies of the ones of the three  
21 exhibits that we believe that we offered but were not -- Your Honor  
22 did not allow them in and did not allow that witness to testify as to  
23 those items. And those were the pictures with the front and side  
24 view. And my understanding, and honestly, because of the  
25 photocopies associated with the motion I am not one hundred

1 percent certain which one's which but I believe that K, from viewing  
2 these photographs, K was likely the black and white.

3 THE COURT: The side photo I kept out. I know that.

4 MS. MACHNICH: You did. And we had a color version of  
5 the front and side, a black and white version of the front and side  
6 and U, which is the booking photo with the actual arrest date of the  
7 suspect with the Las Vegas Metropolitan Police Department, so  
8 that's U, and we wanted -- we were requesting all of those. And  
9 those were all defense exhibits and none of them were allowed by  
10 Your Honor and so they were not introduced at trial.

11 THE COURT: Okay.

12 MS. MACHNICH: And we just --

13 THE COURT: Can you show me the one that was  
14 allowed? The McCoy photo that was allowed, do you have it?

15 MS. MACHNICH: I honestly don't have it --

16 THE COURT: Okay.

17 MS. MACHNICH: -- in my briefing. It's one front photo of  
18 Mr. McCoy.

19 THE COURT: Was it -- okay, give me one second. So that  
20 must have been T, it says black and white photo, McCoy. And that  
21 one shows as withdrawn too. Perhaps that one was not withdrawn?

22 MS. MACHNICH: Ultimately, the version of that was  
23 offered into evidence in lieu of T was, let me see here, it was a  
24 State's exhibit. The State brought in --

25 THE COURT: I understand.

1 MS. MACHNICH: -- a separate State's exhibit of the exact  
2 same thing and we brought it in -- we were not able to bring it in.  
3 They brought it in. We had no problem with that coming in and we  
4 did stipulate to the admission of that exhibit.

5 THE COURT: Thanks for your patience, Mr. Dickerson.  
6 I'm just trying to double check this.

7 MR. DICKERSON: Absolutely, Your Honor, I wish I had  
8 more to add here.

9 THE COURT: Alright Ms. Machnich, you appear to be  
10 correct. Alright, I'll grant your Motion to Reconstruct the Record to  
11 reflect that L, K and U were not withdrawn but they were moved for  
12 admission, objected to by the State and the objection was sustained  
13 by the Court. So the record is hereby reconstructed to reflect that.

14 MS. MACHNICH: Thank you, Your Honor.

15 THE COURT: You can prepare a proposed order for that.

16 Now as to the other issue, you had mentioned the email  
17 that I had sent --

18 MS. MACHNICH: Yes.

19 THE COURT: -- which was the culmination of emails that I  
20 had received from the parties.

21 MS. MACHNICH: Correct.

22 THE COURT: And I issued a temporary -- by the way, so  
23 this wasn't an actual order. As you know, it was just a tentative  
24 order. I mean, it does say tentative all throughout there but you still  
25 want the emails that the parties sent me?

1 MS. MACHNICH: Yes, Your Honor.

2 THE COURT: To say -- there's been a lot of changes to  
3 the server and it might be that it doesn't exist anymore. We can  
4 look for it but it would be a lot easier if each of the parties could  
5 just, if you could just attach it to your proposed order. Find what  
6 the parties submitted to me?

7 MS. MACHNICH: So, Your Honor, here's the issues for --

8 THE COURT: Because I don't know if I can find them.

9 MS. MACHNICH: Your Honor, here's my understanding,  
10 our email -- we tried to, from the defense's side, we tried to. We did  
11 not reach out to the State too so they haven't said that they won't.  
12 However, our email retention policy in our office deletes our emails.  
13 So, I do not have anything that goes -- that dates back that far so  
14 we would only request Your Honor if they exist.

15 THE COURT: I'll search for it. I just haven't had a chance  
16 to search for it yet.

17 MS. MACHNICH: Thank you.

18 THE COURT: And if we find it, Brandonn, could you call  
19 Ms. Machnich up and let her know so she can attach them to her  
20 proposed order; alright? We're looking for an email from the State  
21 and an email from the defense, probably right around August, what  
22 would it have been? August 5<sup>th</sup>, sometime around August 5<sup>th</sup>, would  
23 you think?

24 MS. MACHNICH: I think that it might be just a little before  
25 that only because we would have gotten to the jail calls slightly

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earlier in the trial but it would have been during the trial period.

THE COURT: Oh, right, right, right; I'm sorry. It's around August 2<sup>nd</sup>.

MS. MACHNICH: Yes.

THE COURT: Alright, we'll look for it and we'll let you know.

MS. MACHNICH: Thank you, and --

THE COURT: Thank you. Thanks for your patience.

MS. MACHNICH: -- Your Honor, would you mind signing an ex parte order for expedited transcripts for this hearing?

THE COURT: I don't mind. Thank you.

MS. MACHNICH: Thank you, Your Honor.

MR. DICKERSON: Thank you, Your Honor.

THE COURT: Alright and stay in touch with Brandonn and he'll help you finalize that.

MS. MACHNICH: Okay, thank you so much, Your Honor.

THE COURT: Thank you.

MS. MACHNICH: Bye.

[Hearing concluded at 9:31 a.m.]

\* \* \* \* \*

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


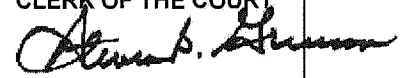
  
DALYNE EASLEY  
Court Recorder/Transcriber



Exhibit B



1 ORDR  
2 PHILIP J. KOHN, PUBLIC DEFENDER  
3 NEVADA BAR NO. 0556  
4 TEGAN C. MACHNICH, DEPUTY PUBLIC DEFENDER  
5 NEVADA BAR NO. 11642  
6 **PUBLIC DEFENDERS OFFICE**  
7 309 South Third Street, Suite 226  
8 Las Vegas, Nevada 89155  
9 Telephone: (702) 455-4685  
10 Facsimile: (702) 455-5112  
11 Tegan.Machnich@clarkcountynv.gov  
12 *Attorneys for Defendant*

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 THE STATE OF NEVADA, )  
16 )  
17 Plaintiff, )  
18 )  
19 v. )  
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21 KEANDRE VALENTINE, )  
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23 Defendant, )  
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CASE NO. C-16-316081-1  
DEPT. NO. II

25 **ORDER**

26 THIS MATTER having come before the Court on July 2, 2018, and good cause  
27 appearing therefore, Defendant's Motion to Reconstruct the Record is hereby granted;

28 IT IS HEREBY ORDERED that Defense Proposed Exhibits L, K and U shall be listed as  
Defense trial exhibits that were offered by the Defense, objected to by the State, and indicate that  
the Court ruled they would not be admitted. The label "withdrawn" currently describing these  
exhibits on the Defense Exhibit List is erroneous.

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JUL 12 2018

1 IT IS FURTHER ORDERED that any email correspondence between the Parties and the  
2 Court that exists as of July 2, 2018 in the Court's email system, was sent/received during the  
3 course of the Jury Trial in this matter and that pertains to substantive legal matters addressed at  
4 trial will be marked as a Court Exhibit as part of the trial record in this case.

5 DATED 16 day of July, 2018.

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DISTRICT COURT JUDGE (MN)

9 Submitted by:

10 PHILIP J. KOHN  
11 CLARK COUNTY PUBLIC DEFENDER

12  
13 By   
14 TEGAN C. MACHNICH, #11642  
Chief Deputy Public Defender

**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that service of the above and forgoing Order was served via electronic e-filing to the Clark County District Attorney's Office on this 25 day of July, 2018.

By: /s/ Annie McMahan

An employee of the  
Clark County Public Defender's Office

Case Name: Keandre Valentine

Case No.: C-16-316081-1

Dept. No.: II