

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH JUNIOR BARLOW

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Docket No. 77055

Direct Appeal From A Judgment of Conviction
Eighth Judicial District Court
The Honorable Douglas Herndon, District Judge
District Court No. C-13-290219-1

**MOTION TO CLARIFY ORDER AND MOTION FOR
EXTENSION OF TIME TO FILE
OPENING BRIEF (3RD REQUEST)**

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COMES NOW, Appellant Keith Junior Barlow, by and through his attorneys, JoNell Thomas, Special Public Defender, and Navid Afshar, Deputy Special Public Defender, and requests this honorable Court to clarify its Order regarding the Record on Appeal by unsealing three of the exhibits this Court ordered to be filed and to add a new volume to existing record with the six exhibits that this Court approved of in its Order on July 11, 2019 in the instant matter. The public view of the case history on the Court's site shows that three of the six exhibits this Court approved for filing do not appear. Furthermore, based upon information and belief, these exhibits are sealed.

This motion is made and based upon Nevada Supreme Court Rule 250(6)(c), the Memorandum of Points and Authorities, and Declaration of Counsel.

Memorandum of Points and Authorities

SCR 250(6)(c) states as follows:

On direct appeal from a judgment of conviction and sentence of death, the clerk of the district court shall transmit as the record on appeal a certified copy of the complete record made and considered in the court below. The complete record shall include, without limitation, certified copies of: any criminal complaint, indictment or information (including any amendments); all papers, motions, petitions, oppositions, responses, replies, orders, opinions, and documentary evidence or exhibits filed in the lower courts; transcripts of all lower court proceedings; all jury instructions offered, excluded or given; all verdicts or findings of fact, conclusions of law, and decisions; the lower court minutes; any notices of appeal. No physical evidence or exhibits shall be transmitted absent an order of the supreme court. The record shall be assembled, paginated, and indexed in the same manner

as an appendix to the briefs under NRAP 30(c). No designation of record is required. The clerk of the district court shall retain the original record. All questions as to the filing, form, and content of the record on appeal shall be presented to the supreme court.

This is an appeal from a judgment of conviction of five counts, including: Home Invasion While in Possession of a Deadly Weapon; Burglary While in Possession of a Firearm; 2 counts Murder with Use of a Deadly Weapon; and Assault with a Deadly Weapon. The jury also delivered two special verdicts for the separate counts of Murder with Use of a Deadly Weapon, finding unanimously for both counts that the murder was willful, deliberated, and premeditated, and unanimously found that the murders were committed during the perpetration of a Home Invasion and/or Burglary. Subsequent to a penalty hearing, on July 6, 2018, the jury returned a verdict of death for Mr. Barlow. Mr. Barlow was sentenced on September 26, 2018. On October 28, 2018, the Certification of Copy and Transmittal Record was filed.

On April 12, 2019, Appellant filed a motion with this Honorable court to supplement the record with the jury list that indicated the number and order of peremptory challenges each side exercised during trial. On May, 23, 2019, Appellant filed a Motion to Supplement Record on Appeal and Motion for Extension of Time to File Opening Brief (2nd Request). On July 11, 2019, this

Court granted Appellant's unopposed motion, ordering that the clerk of the district court to file the following exhibits within 30 days of the Order:

1. Jury List of the final venire panel with peremptory challenges marked;
2. Notice of Motion and Motion to Correct the Record filed March 29, 2019, with exhibits attached;
3. Minute order of the district court granting the Motion to Correct the Record on April 9, 2019;
4. Court Exhibit #17 (State's Closing Powerpoint) admitted June 28, 2018;
5. Court Exhibit #18 (State's Closing Powerpoint (Penalty)) admitted July 6, 2018; and
6. State's Exhibit #51 (Crime Scene Photo Danielle at Scene) admitted June 5, 2018.¹

After thirty days had passed from this Court's Order, counsel discovered that only three of the six exhibits that this Court ordered to be filed appeared on the public view site of Mr. Barlow's case. Furthermore, upon contacting both the Clerk of the Nevada Supreme Court and the Clerk of the District Court, Appellant learned that of the exhibits listed above, Exhibits 4, 5, and 6 were filed under seal. Based upon information and belief, and the previously filed exhibit list, these three exhibits were not sealed by the district court. Upon information and belief, it was conveyed to this office that the three exhibits were sealed because they were sent by certified mail to this Court, and perhaps because they came via certified mail,

¹ All of these exhibits have already been filed with this court in Appellant's Motion to Supplement Record on Appeal (filed April 12, 2019) and Motion to Supplement Record on Appeal and Motion for Extension of Time to File Opening Brief (2nd request) (filed May 23, 2019).

were subsequently sealed. However, these were not original exhibits and all three are copies. Two of these items are printouts of the PowerPoint slides from the State's closing argument, and one is a copy of the crime scene photo, Appellant submits that there is no need for these items to be sealed. Furthermore Appellant electronically filed these exhibits with his Motion to Supplement Record on Appeal and Motion for Extension of Time to File Opening Brief (2nd request) on May 23, 2019. This Court granted Appellant's request with the electronic exhibits and in its Order never stated that any of the six exhibits be filed under seal. As such, Appellant respectfully requests that these exhibits be unsealed. Furthermore, Appellant respectfully requests that this Honorable Court clarify its Order of July 11, 2019 to ask that the Clerk of the Court create an additional volume of these six exhibits to be added to the existing Record on Appeal.

SCR 250(6)(e) states as follows:

e) The Supreme Court may grant an initial extension of time of up to 60 days to file a brief upon a showing of good cause, but shall not grant additional extensions of time except upon a showing of extraordinary circumstances and extreme need.

In addition, Mr. Barlow is requesting an extension of time, of 30 days from the

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date the supplemental Record on Appeal is docketed in this Court, to file his Opening Brief.

DATED: 8/15/19

RESPECTFULLY SUBMITTED:

/s/ NAVID AFSHAR

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ATTORNEYS FOR APPELLANT BARLOW

DECLARATION OF NAVID AFSHAR

Navid Afshar, hereby declares as follows:

I am an attorney duly licensed to practice law in the State of Nevada, and the Deputy Special Public Defender assigned to assist with Mr. Barlow's direct capital appeal. While examining the filing of exhibits pursuant to this Court's Order of July 11, 2019, counsel noticed that three exhibits were not visible on the public viewing site for his case. Upon further inquiry, counsel discovered that three exhibits were filed under seal. All six of these exhibits are relevant to Mr. Barlow's appeal and counsel needs them included in an additional volume to the existing Record on Appeal.

It is respectfully requested that this Court grant the instant motion to clarify its Order to unseal three of the exhibits (Exhibits 4, 5, 6 as listed above and in this Court's order of July 11, 2019), to add an additional volume to the Record on Appeal to include the six exhibits contained in the Order of July 11, 2019, and to grant Mr. Barlow 30 days from the date the Record on Appeal is updated to submit his opening brief.

I declare that I make this request in good faith and not for purposes of delay.

/s/ NAVID AFSHAR

Navid Afshar

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on 8/15/19 a copy of the foregoing MOTION was served as follows:

BY ELECTRONIC FILING TO

District Attorney's Office
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155

Nevada Attorney General
100 N. Carson St.
Carson City NV 89701

/s/ NAVID AFSHAR

NAVID AFSHAR