

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

THE STATE OF NEVADA

Appellant,

v.

TAREN DESHAWN BROWN A/K/A,  
TAREN DE SHAWNE BROWN A/K/A,  
“GOLDY-LOX”,

Respondent.

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**SUPPLEMENTAL BRIEF IN SUPPORT OF  
GOOD CAUSE FOR APPEAL**

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**SUPPLEMENTAL BRIEF IN SUPPORT OF**  
**GOOD CAUSE FOR APPEAL**

I. INTRODUCTION

This is an interlocutory appeal of the district court’s order granting Respondent’s motion to suppress. After Brown waived preliminary hearing, the State charged him via information with count I, attempted murder with the use of a deadly weapon; count II, assault with a deadly weapon; count III, carrying a concealed firearm; and count IV, possession of a firearm with an altered or removed serial number. AA, 1-3. Brown filed a motion to suppress in the district court, and after the State opposed the motion, the district court held an evidentiary hearing on the motion.

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*Id.*, 5-16; 17-29; 30-70. After the hearing, the district court granted the motion to suppress. *Id.*, 87-99.

The State appealed the district court order, and filed its Brief in Support of Good Cause for Appeal on March 13, 2018. Respondent filed an Opposition to State's Brief in Support of Good Cause for Appeal on March 23, 2018. On October 11, 2018, this Court ordered supplemental briefing to address 1) whether the suppressed evidence is of substantial importance in the case; 2) whether the suppression of evidence would significantly impair or terminate the State's ability to prosecute the case; and 3) whether the appeal was taken for the purpose of delay.

## II. STATEMENT OF FACTS

On October 20, 2017, Sergeant Larmon Smith was traveling on Lake Street in downtown Reno to meet some fellow officers for lunch at the Eldorado casino. AA, 56. As he was passing the bus station, he noticed commotion out of the corner of his eye. Two people were running into the street toward his vehicle. *Id.* He proceeded to investigate the situation. In the course of doing so, he responded to a nearby parking lot, where Brown was being held in the back of a patrol unit. *Id.*, 57. He made contact with Brown, and recorded their interview. Exhibit A; 58. Brown was immediately cooperative, talkative and emotional. *Id.*, 58. Sergeant Smith

interrupted Brown to advise him of his rights. It is undisputed that the admonition was as follows:

Sergeant Smith: You are in custody man. You have rights, okay, so I just want you to know that you don't have to talk to me. You have the right to remain silent, you know, and if we do talk about stuff, you know, we can use the stuff against you. Obviously if you can't afford an attorney, or something like that, regardless of what charges we have for you, we can always provide one of them for you as well. Now, do you understand your rights everything (indistinct) just said, Mr. Brown.

Mr. Brown: Yes, I heard you.

Sergeant Smith: Okay now do you understand that your rights and stuff. Do you want me to tell your side of it and tell me what happened, what led up to this bro?

AA, 88; Exhibit A.

After the admonition, Brown went on to make several incriminating statements and admissions about why he had approached the victim with a drawn handgun. He explained that on a separate occasion, the victim had threatened him and his ex-girlfriend with a knife, and that the incident has caused the end of their romantic relationship. Exhibit A, 5:41-6:50. Brown also admitted to pulling the gun out while the victim's back was turned, and pointing it at the back of the victim's shoulder. *Id.*, 5:41-6:50; 9:36-9:51. Brown also admitted that the gun was loaded with three bullets. *Id.*, 10:00-10:10.

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### III. GOOD CAUSE SUPPORTS THIS APPEAL

#### A. Brown's Statements Are Of Substantial Importance In This Case.

Brown is charged with count I, attempted murder with the use of a deadly weapon; count II, assault with the use of a deadly weapon; count III, carrying a concealed firearm; and count IV, possession of a firearm with an altered or removed serial number. In *United States v. W.R. Grace*, 526 F.3d 499, 505 (9th Cir. 2008), the Ninth Circuit explained that in order for the government to properly exercise its right to an interlocutory appeal, the suppressed evidence must be “ ‘substantial proof of a fact material to the proceeding.’ ” *W.R. Grace*, 526 F.3d 499, 504, *quoting and overruling in part United States v. Loud Hawk*, 628 F.2d 1139, 1150 (9th Cir. 1979).

The Court also noted that materiality for this purpose is defined as “ ‘assuming that the evidence would be admissible, a reasonable trier of fact could find the evidence persuasive in establishing the proposition for which the government seeks to admit it.’ ” *See W.R. Grace*, 526 F.3d at 505, *quoting and overruling in part United States v. Adrian*, 978 F.2d 486, 491 (9th Cir. 2008).

Here, Brown's admissions to police are substantial proof of facts that a reasonable jury would find persuasive in deciding that Brown is guilty of the charged offenses. Brown admitted to police that he ran up to the victim

and pulled out a gun. Brown admitted that he knew the gun was loaded with three bullets. He admitted to putting the gun to the victim's shoulder and warning him to stay away from his ex-girlfriend. Exhibit A, 5:41-6:50; 9:36-9:51; 10:00-10:10.

Brown's statements are compelling evidence that will allow the State to prove various elements of the charged offenses. Of course, the statements are compelling evidence regarding any question of identity. Additionally, the statements help establish the requisite intents, and nature of the weapon used. To establish that Brown attempted to murder the victim, the State must show that 1) Brown acted with express malice, that is, with the deliberate intention to unlawfully kill another person; 2) Brown performed some act toward committing the killing; and 3) Brown failed to consummate the commission of the killing. *Sharma v. State*, 118 Nev. 648, 652, 56 P.3d 868, 870 (2002); *Valdez v. State*, 124 Nev. 1172, 1196-97, 196 P.3d 465 (2008). Brown's admission that he saw the victim on the street, ran up to the victim, and pointed a loaded gun at the victim are substantial proof that Brown acted deliberately, and that he committed an act consistent with the desire to kill the victim.

To prove the crime of assault with a deadly weapon, the State must prove that the defendant willfully and unlawfully, and intentionally placed



another person in immediate apprehension of physical harm. Brown's admission that he ran up to the victim and pointed a loaded gun at the victim is highly probative of the required intent. Brown's admission that the gun had three bullets tends to show that he knew the gun was a deadly weapon, i.e., "any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death." NRS 193.165 (6) (b). Additionally, Brown's admission to possessing the firearm helps establish he willfully had a firearm in his possession, thereby supporting the intent element of the charge of possession of a firearm with an altered serial number.

B. Suppression of Respondent's Statements Will Impair the State's Ability to Prosecute the Case.

Although there is surveillance footage in this case, the camera is relatively far away, and Brown is wearing a hooded sweatshirt. Thus, the State's ability to prove Brown's identity to a jury beyond a reasonable doubt as to each of the charged offenses will be substantially impaired if Brown's admission to being at the scene is suppressed. Additionally, Brown's admissions to deliberately confronting the victim and pointing a loaded gun at him are evidence of the intent element of counts II and III, as well as the *actus reus* needed to prove counts I, II, III, and IV.

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C. This Appeal Has Not Been Taken For the Purpose of Delay.

The State was prepared to proceed to trial in this case, and remains prepared to proceed to trial. It was not until critical evidence was suppressed that the State sought intervention from this Court.

IV. CONCLUSION

This Court should hear the State's appeal, as it is supported by good cause. This Court should therefore exercise its discretion to entertain the appeal. *W.R. Grace*, 526 F.3d at 505.

DATED: October 22, 2018.

CHRISTOPHER J. HICKS  
DISTRICT ATTORNEY

By: JENNIFER P. NOBLE  
Chief Appellate Deputy

**CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Georgia 14.

2. I further certify that this brief complies with the page limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it does not exceed 30 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in

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the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: October 22, 2018.

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**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on October 22, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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/s/ Margaret Ford  
MARGARET FORD