

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL MCNAIR

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Docket No. 78871

Direct Appeal From A Judgment of Conviction
Eighth Judicial District Court
The Honorable Douglas Herndon, District Judge
District Court No. C-17-327395-1

MOTION TO SUPPLEMENT APPENDIX

Navid Afshar
State Bar #14465
Deputy Special Public Defender
JoNell Thomas
State Bar #4771
Special Public Defender
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Las Vegas, NV 89155
(702) 455-6265
Attorney for McNair

COMES NOW, Appellant Michael McNair, by and through his attorneys, JoNell Thomas, Special Public Defender, and Navid Afshar, Deputy Special Public Defender, and requests this Honorable Court to allow Appellant to supplement the Appendix with Court's Exhibits 1, 2 and 3 which were submitted at trial in the district court under Case No. C-17-327395-1.

This request is made and based on the pleadings and papers on file with this Court as well as counsel's declaration attached hereto.

STATEMENT OF THE CASE

After proceeding to trial, Appellant Michael McNair was found guilty by the jury of First Degree Murder with use of a deadly weapon and Carrying a Concealed Firearm or other deadly weapon. Mr. McNair agreed to waive the penalty hearing and be sentenced by the Court. He was sentenced to 20 years to Life plus a consecutive term of 60-240 months for the use of the deadly weapon and a concurrent sentence for Count 2. The Judgment of Conviction was filed May 3, 2019, and the Notice of Appeal was timely filed on May 22, 2019.

The Opening Brief and Appendix were filed November 16, 2020. The State filed their Answering Brief January 14, 2021.

Appellant filed a second motion for an extension of time to file his Reply Brief, up to and including April 12, 2021. In his Motion, Counsel for Appellant advised the Court that based on a claim made by the State in its Answering Brief, it would be necessary to supplement the appendix with the Court's Exhibits (Court's Exhibit 1 (Race & Ethnicity Report); Court's Exhibit 2 (Transcript from C-239029); and Court's Exhibit 3 (2018 Census Stats)) in order to reply to their claim.¹ Counsel requested the clerk of the district court vault provide copies of the exhibits under case number C237395, but the clerk provided copies of exhibits under case number C293029. A response to counsel's request to provide the correct exhibits was delayed as the clerks were out of the office for several days. The correct exhibits were provided on this date.

Based on the reasons set forth in the declaration attached hereto, counsel for Appellant is requesting this Court to allow him to

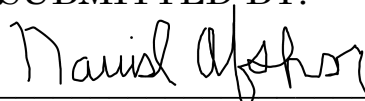
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¹ Central to addressing the State's claim in the Answering Brief is Exhibit 2 - Transcript from C-239029. However, Appellant submits that the Exhibits containing the Race & Ethnicity Reports and the Census data provide greater context to points and arguments both parties referenced in their briefs as well as rulings by the district court.

supplement the Appendix with the Court's Exhibits 1, 2 and 3, submitted at trial. The Exhibit List is a part of the Appendix at 10 APP 1968-1978.

DATED this 7th day of April, 2021.

SUBMITTED BY:



NAVID AFSHAR
Deputy Special Public Defender
330 S. Third St., Ste. 800
Las Vegas, Nevada 89101
702-455-6265
Attorney for Appellant McNair

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 handle Mr. McNair's direct appeal.

I filed a motion requesting a second extension of time to file the Reply Brief on April 1, 2021, up to and including April 12, 2021.

In the motion, I advised the Court that the State made a claim in their answering brief that requires the inclusion of exhibits submitted at trial to better address the State's claim.

On this date, I am submitting the Supplemental Appendix (Volume 11) which contains the Court's Exhibit 1 (Race & Ethnicity Report); Court's Exhibit 2 (Transcript from C-239029); and Court's Exhibit 3 (2018 Census Stats). The exhibit list is already part of the Appendix in Volume 10 at pages 1968-1978.

I am respectfully requesting that this Court grant Appellant's motion to supplement the appendix with the three exhibits and allow the Supplemental Appendix to be filed.

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



NAVID AFSHAR

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on 4/7/2021, a copy of the foregoing MOTION was served by electronic filing on:

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

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



NAVID AFSHAR