## IN THE SUPREME COURT OF THE STATE OF NEVADA 2 3 Electronically Filed CHRISTOPHER SENA, 4 Aug 24 2021 12:12 p.m. Elizabeth A. Brown 5 Appellant, Clerk of Supreme Court Case No. 79036 6 VS. 7 8 THE STATE OF NEVADA, Respondent. 10 11 APPELLANT'S MOTION REQUESTING TRANSMITTAL OF 12 **EXHIBITS PURSUANT TO NRAP 30(d)** 13 COMES NOW Appellant, CHRISTOPHER SENA, by and through 14 15 Deputy Public Defender William M. Waters, and pursuant to Nevada Rules of 16 Appellate Procedure 30(d) and 10(b)(1) asks this Court to direct the District Court 17 to send a copy of State's exhibits 79, 80, 81, and 82 to this Court for use when 18 19 reaching a decision on the issues on appeal. 20 This Motion is based upon the following Memorandum and all papers 21 22 and pleadings on file herein. 23 DATED this 24th day of August, 2021. 24 DARIN F. IMLAY 25 CLARK COUNTY PUBLIC DEFENDER 26 27 /s/ William M. Waters By 28 WILLIAM M. WATERS, #9456 Deputy Public Defender

## 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 in the Eighth Judicial District Court for creating and possessing images of minors as either the subject of a sexual portrayal in a performance or as depicting minors engaged in sexual conduct, i.e., child pornography. At trial the State admitted evidence to substantiate its allegations as exhibits 79, 80, 81 and 82. Appellant asks that this Court direct the District Court Clerk's office to transmit the aforementioned exhibits to this Court for purposes of appeal.

It is crucial for this Court to review the videos and images located on the exhibits when reaching a decision on the merits of Appellant's case. The videos and still images are important because they were shown to the jury at trial and are repeatedly referenced in Appellant's Opening Brief, Respondent's Answering

Brief, and Appellant's Reply Brief. Accordingly, the exhibits are necessary for Appellant's appeal.

Finally, because Appellant's case and the images at issue involve a mixed question of law and fact this Court should review, *de novo*, whether the images constitute child pornography. *See* <u>U.S. v. Amirault</u>, 173 F.3d 28, 33 (1<sup>st</sup> Cir. 1999); <u>Comm v. Rex</u>, 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* <u>Bose</u> <u>Corp. v. Consumers Union of U.S., Inc.</u>, 466 U.S. 485, 504-05 (1984)).

Based upon the foregoing, Appellant respectfully requests this Court order the district court to transmit State's Exhibits 79, 80, 81 and 82 to this court for review.

Respectfully submitted,

DARIN F. IMLAY CLARK COUNTY PUBLIC DEFENDER

By /s/ William M. Waters
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## **CERTIFICATE OF SERVICE** I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 24<sup>th</sup> day of August, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows: AARON D. FORD WILLIAM M. WATERS **ALEXANDER CHEN** I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to: CHRISTOPHER SENA NDOC No: 1217884 c/o High Desert State Prison P.O. Box 650 Indian Springs, NV 89070 BY /s/ Carrie M. Connolly Employee, Clark County Public Defender's Office