

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

THE STATE OF NEVADA,

No. 79792/80008/80009

Petitioner,

v.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE; AND THE HONORABLE
KATHLEEN DRAKULICH, DISTRICT JUDGE,

Respondents.

**REPLY IN SUPPORT OF MOTION FOR ORDER
FOR TRANSMISSION OF SEALED TRANSCRIPT**

COMES NOW, the State of Nevada, by and through counsel, and pursuant to NRAP 27 (a)(4), replies in support of its Motions for Order for Transmission of Sealed Transcript in CV19-02261, CV19-01896, CV18-02094, and CV19-01480.

The Second Judicial District Court has opposed the State's Motion, claiming that NRAP 30(d) precludes the transmission of the transcripts in the four sealing matters because they are "original exhibits" not "necessary to reply to Respondent's position on appeal." Opposition, 2. They further

assert that the transcripts would be “redundant of documents already included in Petitioner’s Reply Appendix.” *Id.* Neither argument has merit.

First, transcripts of proceedings are not “original exhibits.”

Transcripts are distinct from exhibits admitted during a proceeding. NRAP 10 (a). Second, transmission of the sealed hearing transcripts is necessary to respond to the District Court’s position. In its Answer, the District Court argued that Petitioner’s filing of certain pleadings in *other sealing matters* was tantamount to a concession that the State is a party to proceedings:

...the WCDA has recently submitted several documents entitled “State’s Waiver of Appearance Pursuant to NRS 179.245” [...] Either the WCDA may maintain that it is not a party, or it can seek orders from the court, but it cannot do both.

Answer, 13, citing Respondent’s Appendix 1-18.

In support of this argument, the District Court relied upon documents from sealing proceedings that are not the subject of the current consolidated writ: CV19-01796, CV19-01796, and CV19-02457. The District Court also included pleadings from those proceedings in its appendix.

Answer, 13-14, *citing to* Respondent’s Appendix, 16-18, 2-15.

The Washoe County District Attorney’s (hereinafter, “WCDA”) counterargument is that the waivers are not a concession of party status, but instead a reasonable response to the coercive impact of oral threats of contempt of court received from some District Court judges. The WCDA

responds to the Answer by asserting that some District Court judges have orally indicated on the record that they will hold individual prosecutors in contempt if they failed to appear at a sealed proceeding, while others have accepted the WCDA's proffered waiver as valid. To support this factual assertion, the WCDA references hearing transcripts in recent sealing proceedings. Reply, 9-10. Support for this factual representation may only be found in transcripts of sealed proceedings. No other documents filed in the appendix to the Petition or the Reply support this factual assertion regarding the contempt issue. Transmission of transcripts of those sealing proceedings is critical to the WCDA's ability to support factual representations in its Reply with references to the record, as required by NRAP 28 (e).

DATED: March 3, 2020.

CHRISTOPHER J. HICKS
DISTRICT ATTORNEY

By: JENNIFER P. NOBLE
Chief Appellate Deputy

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on March 3, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Greg D. Ott, Chief Deputy Attorney General

Peter P. Handy, Deputy Attorney General

/s/ Tatyana Kazantseva
TATYANA KAZANTSEVA