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Respondent.

Electronically Filed
Feb 16 2021 09:36 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

COMES NOW Appellant, KODY HARLAN, by and through his counsel in this matter, JEAN J. SCHWARTZER, ESQ., and moves this Court for the fifth time for an enlargement of time of twenty (20) days from February 16, 2021 to file Appellant's Opening Brief, making said brief due March 8, 2021. This motion is based upon the following memorandum and all papers and pleadings on file herein.

Dated this 16th day of February, 2021.

Respectfully submitted,

/s/ Jean J. Schwartz
JEAN J. SCHWARTZER, ESQ.
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Las Vegas, NV 89141
Phone: 702-979-9941
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Counsel for Appellant

1 **MEMORANDUM**

2 I, JEAN J. SCHWARTZER, ESQ., am the attorney in the above-captioned case.
3 Appellant's Opening Brief is due on February 16, 2021. Pursuant to NRAP
4 31(b)(3)(B), this Court may grant a fifth motion for extension of time for filing an
5 Opening Brief upon a showing of extreme need. This is Appellant's fifth request for an
6 extension of time to file his Opening Brief.

7 Counsel apologizes for the delay but due to unforeseen technical difficulties out
8 of her control, she is unable to complete the brief. Counsel worked on finishing the
9 Opening Brief over the last two weeks and set aside this past Sunday, Monday and
10 today solely to finish researching and briefing a novel issue being raised with respect
11 to the constitutionality of the jury instructions regarding robbery after the fact in the
12 context of felony murder and the jury instructions regarding conspiracy theory of
13 liability. Due to the fact that this is a novel issue, there is no published case law
14 directly on point. Counsel was able to find unpublished decisions wherein it appears
15 that this particular issue or an ancillary issue was possibly raised but because the
16 decisions were not published, they were not detailed enough to determine the details
17 of the arguments made and case law cited to in the appellate briefs. Therefore Counsel
18 needed to review the briefs filed in those appeals as well as some of the underlying
19 pleadings filed in district court as part of her research. Counsel also needed to access
20 Odyssey and/or DC Portal to upload documents in the instant case for the appendix.
21 However, the Nevada Supreme Court website was not working properly on Sunday
22 and Monday. Additionally, Odyssey and DC Portal were not working on Monday and
23 today and only started working with reliability later afternoon today. Due to these
24 technical difficulties, counsel was unable to conduct the research needed to finish the
25 brief and was unable to upload some of the documents needed for the appendix.

26 Although Counsel would normally only need a few more days to complete this
27 brief, Counsel must now change gears and focus on an upcoming two day evidentiary
28

1 hearing that is to take place next week. This is not a work load issue. This is a timing
2 issue with respect to the technical difficulties that were out of Counsel's control. This
3 is the reason for the request of twenty (20) days as opposed to only a few days.

4 Therefore, Appellant requests twenty (20) additional days to file his Opening
5 Brief making said brief due on March 8, 2021.

6 This Motion is made in good faith and not for the purposes of undue delay.

7 I declare under penalty of perjury the factual representations set forth in the
8 foregoing memorandum are true and correct.

9 Dated this 16th day of February, 2021.

10
11 Respectfully submitted,

12 /s/ Jean J. Schwartz

13 JEAN J. SCHWARTZER, ESQ.

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19 Counsel for Appellant

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY AND AFFIRM that this document was filed electronically with the Nevada Supreme Court on February 16th, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD, ESQ.
Nevada Attorney General

ALEXANDER G. CHEN, ESQ.
Chief Deputy District Attorney

/s/ Jean J. Schwartzer
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