

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY DECORLEON BROWN

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Docket No. 81962

Direct Appeal From A Judgment of Conviction
Eighth Judicial District Court
The Honorable Valerie Adair, District Judge
District Court No. C-17-326247-1

**MOTION TO STAY BRIEFING SCHEDULE, TRANSMIT SEALED
HEARING TRANSCRIPT, AND TO UNSEAL RECORD, OR IN
THE ALTERNATIVE, MOTION SEEKING GUIDANCE ON HOW
TO CITE TO SEALED RECORD**

Navid Afshar
State Bar #14465
Deputy Special Public Defender
JoNell Thomas
State Bar #4771
Special Public Defender
330 South 3rd Street
Las Vegas, NV 89155
(702) 455-6265
Attorney for Appellant Brown

COMES NOW, Appellant Larry Brown, by and through his attorneys JoNell Thomas, Special Public Defender, and Navid Afshar, Deputy Special Public Defender, and submits this Motion respectfully requesting this Court unseal a sealed hearing in this matter, or in the alternative clarify how appellant may reference the sealed record in the Opening Brief. He further requests that the briefing schedule for this appeal be stayed until this motion is resolved. This motion is based on the following memorandum, NRAP 2 and 30, and all papers and pleadings on file herein.

STATEMENT OF THE CASE

This is an appeal from a judgment of conviction of Conspiracy to Commit Robbery, Robbery with Use of a Deadly Weapon, and First Degree Murder with Use of a Deadly Weapon. The Opening Brief and Appendix are due May 18, 2021.

While preparing the record on appeal in this case, counsel for Appellant realized that a portion of the trial on December 13, 2019, was sealed (as well as the minutes for said date). Trial counsel filed a motion in district court requesting the hearing and minutes be unsealed and a

copy of each provided to counsel for appellate purposes. On November 5, 2020, the district court heard arguments regarding unsealing the hearing. *See Exhibit A* attached hereto. On November 6, 2020, the court entered an Order, granting Mr. Brown's motion to unseal testimony from the hearing. *See Exhibit B* attached hereto. However, the district court also ruled that afterwards, both the hearing and minutes should be resealed. The district court provided no explanation as to why the hearing needed to be resealed. *See Exhibits A and B* attached hereto.

The December 13, 2019, trial court hearing concerned expert testimony by a representative from Cellebrite, which is a corporation that took possession of a cellular phone and then conducted an examination of the phone. Evidence from the phone was presented during trial. Mr. Brown intends to argue that limitations placed on his counsel, concerning evidence about Cellebrite, its processes, and its credibility, were unconstitutional and deprived him of a fair trial. He also intends to argue that the district court erred in allowing the State to present this testimony without affording defense counsel sufficient information and time needed to engage a defense expert. This issue cannot be fairly

presented to this Court without citation to the transcript of the hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

Mr. Brown submits that the record of the sealed hearing reveals that there was no basis to seal it again after it was unsealed. Furthermore, Mr. Brown believes the record of the hearing is a necessary part of the appellate record that must be cited to, with certain portions potentially quoted, and will assist this Court in review of the issue as it is directly relevant to the issues raised on appeal.

Accordingly, Mr. Brown requests that this Court stay this matter, direct the District Court Clerk to transmit the sealed hearing for review, and order that the record be unsealed.

NRAP 2 sets forth in pertinent part:

On the court's own or a party's motion, the court may — to expedite its decision or for other good cause — suspend any provision of these Rules in a particular case and order proceedings as the court directs. . . .

NRAP 30 sets forth the contents of an appendix to be submitted with the Opening Brief. While sealed documents are not referenced,

NRAP 30(d) does reference the procedure for submitting exhibits to this Court that are incapable of being reproduced in the appendix:

Copies of relevant and necessary exhibits shall be clearly identified, and shall be included in the appendix as far as practicable. If the exhibits are too large or otherwise incapable of being reproduced in the appendix, the parties may file a motion requesting the court to direct the district court clerk to transmit the original exhibits. The 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 court's review of the original exhibits is necessary to the determination of the issues.

The sealed hearing is relevant and necessary and should be included in the record, but as it is sealed, it is not able to be included in the appendix or quoted to in the Opening Brief.

Mr. Brown respectfully requests that this Court grant his motion for a stay in these proceedings, direct the District Court Clerk to transmit the sealed portion of the trial held on December 13, 2019, to this Court for review in determining whether to grant Appellant's motion, and order that the hearing be unsealed in district court to be made a part of the record.

In the alternative, should this Court deny Mr. Brown's request to have the transcript unsealed in the district court, then Mr. Brown respectfully asks this Court for clarification on how to reference the sealed record in the briefs.

DATED 5/13/2021.

RESPECTFULLY SUBMITTED

A handwritten signature in dark ink, appearing to read "Navid Afshar", is written over a horizontal line.

Navid Afshar
Nevada Bar No. 14465
Special Public Defender's Office
330 S. Third Street Ste. 800
Las Vegas NV 89101
Attorneys for Brown

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 assist with Mr. Brown's direct appeal.

1. That I am an attorney duly licensed to practice law in the State of Nevada, and the deputy with the Clark County Special Public Defender's office assigned to represent Mr. Brown on his direct appeal from a Judgment of Conviction (Verdict From Jury Trial).
2. I was not the trial attorney in this case.
3. While reviewing the record in this matter and preparing the Opening Brief, I have determined that it is necessary for this Honorable Court to review a hearing that took place during day 5 of the trial. The district court sealed the hearing; and I am requesting that the hearing be unsealed.

Specifically, the hearing in question relates to a Confrontation Clause violation by a private company refusing to disclose certain information on the basis that it did not want to disclose trade secrets. Furthermore, there are issues related to lack of notice to prepare expert testimony, as well as issues of chain of custody and credibility. At the end of the hearing, the district court asked if any proprietary information was disclosed during the hearing and

counsel for the private company in question indicated that no proprietary information had been disclosed.

As such, there is no basis for the hearing and the associated minutes to have been sealed. During the hearing, the State, district court, witness for the private company in question and their attorney, along with counsel for Mr. Brown discussed several key evidentiary matters that are critical to this issue. Furthermore, during the hearing, the district court made specific rulings limiting the scope of cross-examination related to both issues of chain of custody and credibility of evidence, and allowed the witness from Cellebrite to avoid answering certain questions. I believe that this hearing will assist this Court in reviewing this issue, is necessary to Mr. Brown's appeal, lacks any basis to be sealed, and should be viewable in the Appendix and citable / quotable in the Opening Brief.

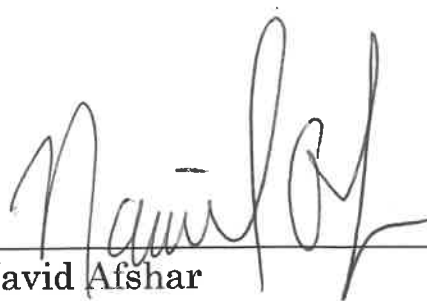
4. I therefore request that this Court stay the briefing schedule, and direct the District Court Clerk to transmit the sealed hearing of

December 12, 2019 to this Court for its review. District Court Case No. C-17-326247-1, jury trial Day 5, December 13, 2019.

5. After this Court's review of the sealed hearing, I request that this Court find there was not sufficient reason to have had the hearing and minutes sealed and order the hearing and associated minutes be unsealed so that it can be made a part of the record and Appellant may properly cite, reference, and quote from this hearing, and that this Court may refer to it in deciding this appeal.
6. If this Court does not grant the motion to unseal the hearing and minutes, then Counsel moves the Court for clarification as to how the parties will cite to the sealed portion of the record in the briefs.

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

Dated: 5/13/2021



Navid Afshar
Nevada Bar No. 14465


CERTIFICATE OF SERVICE

The undersigned does hereby certify that on 5/13/2021, a copy of the foregoing Motion was served as follows:

BY ELECTRONIC FILING TO

District Attorney's Office
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89101

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


A handwritten signature in dark ink, appearing to read 'Navid Afshar', is written over a horizontal line.

Navid Afshar, Esq.
Nevada Bar No. 14465



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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,
9 Plaintiff,

10 vs.

11 LARRY DECORLEON BROWN,
12 Defendant.

CASE NO: C-17-326247-1

DEPT. XXI

13
14 BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE
15 THURSDAY, NOVEMBER 5, 2020

16 **RECORDER'S TRANSCRIPT OF HEARING RE:**
17 **DEFENDANT'S MOTION TO UNSEAL MINUTES AND PORTION OF**
18 **SEALED PART OF THE TESTIMONY ON DECEMBER 13, 2019**

19 APPEARANCES:

20 For the State:

JOHN L. GIORDANI, III, ESQ.
Chief Deputy District Attorney

22 For the Defendant:

23 MONICA R. TRUJILLO, ESQ.
Chief Deputy Special Public Defender

24
25 RECORDED BY: ROBIN PAGE, COURT RECORDER

EXHIBIT A

1 Las Vegas, Nevada; Thursday, November 5, 2020

2 * * * * *

3 [Proceeding commenced at 1:49 p.m.]

4 THE COURT: State versus Larry Brown.

5 MS. TRUJILLO: Hi, Judge.

6 MR. GIORDANI: Good afternoon.

7 THE COURT: Hello, Ms. Trujillo. And your client's
8 incarcerated in Nevada Department of Corrections.

9 MS. TRUJILLO: Yes.

10 THE COURT: This is your motion to unseal the minutes and a
11 portion of the testimony so that we can provide those to you for potential
12 use in the appeal. I'm assuming the State is taking no position on this.

13 Correct, State?

14 MR. GIORDANI: Correct.

15 THE COURT: All right.

16 MR. GIORDANI: Correct.

17 THE COURT: And that's Mr. --

18 MR. GIORDANI: John Giordani.

19 THE COURT: Oh, I'm sorry, I barely recognized you there.
20 All right. So that motion is granted.

21 Ms. Trujillo, would you submit an order to that affect and also
22 an order directing Ms. Page to prepare the transcript?

23 MS. TRUJILLO: Yes, thank you, Judge.

24 MR. GIORDANI: Thanks, Judge.

25 THE COURT: And just to be clear, once the transcript is

1 prepared, it will be provided to defense counsel, but it will then again be
2 sealed and filed in Odyssey sealed.

3 MS. TRUJILLO: Yes.

4 MR. GIORDANI: Thank you.

5 THE COURT: That is what you're requesting, right?

6 MS. TRUJILLO: Yes.

7 THE COURT: Okay.

8 MS. TRUJILLO: Thank you.

9 MR. GIORDANI: And that's going to be sent to the State as
10 well, right, the transcript?

11 THE COURT: I'm assuming you're not requesting that,
12 Ms. Trujillo, unless you wind up using it in the appeal because it was
13 based on a closed door hearing.

14 MS. TRUJILLO: Correct. But it was the hearing that we were
15 -- it was the cell phone hearing.

16 THE COURT: Okay. Was Mr. Giordani or --

17 MS. TRUJILLO: Yes.

18 THE COURT: The State was there. Okay. I was mistaken
19 and confused then. As long as Mr. Giordani was at the hearing, then I
20 see no reason why the minutes as well as the transcript cannot be
21 provided to both the defense and the State.

22 MR. GIORDANI: Thank you, Your Honor.

23 THE COURT: All right. Thank you.

24 So, Ms. Page, those should be provided to both sides.

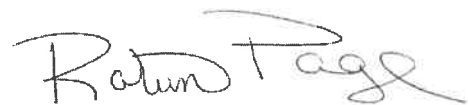
25 THE COURT RECORDER: Okay.

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THE COURT: All right. Thank you.

[Proceeding concluded at 1:52 p.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Robin Page
Court Recorder/Transcriber

Heather S. Smith
CLERK OF THE COURT

1 ORDG
2 JoNell Thomas, NSB #4771
3 Special Public Defender
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5 Chief Deputy Special Public Defender
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13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

16 THE STATE OF NEVADA,

17 Plaintiff,

18 vs.

20 LARRY D. BROWN

21 Defendant.

CASE NO. C-17-326247-1

DEPARTMENT: 21

DATE: 11/5/2020

TIME: 1:45 PM

23 **ORDER GRANTING DEFENDANT'S MOTION TO UNSEAL**
24 **MINUTES AND PORTION OF SEALED**
25 **PART OF THE TESTIMONY ON DECEMBER 13, 2019**

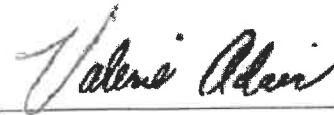
26 Defendant's Motion to Unseal Minutes and Portion of Sealed Part of
27 the Testimony on December 13, 2019, having come before the Court on
28

1 November 5, 2020, the Court being fully advised in the premises, and good
2 cause appearing, it is hereby

3 ORDERED, ADJUDGED AND DECREED that Defendant's Motion is
4 granted and the minutes of December 13, 2019 will be unsealed, a copy
5 provided to the defense and the State; and then the minutes will be resealed.
6

7 IT IS FURTHER ORDERED that the closed proceedings on December
8 13, 2019 that were sealed will be unsealed, the court recorder will transcribe
9 the closed proceedings, and a copy of the transcript will be provided to
10 counsel for Plaintiff and Defendant. Thereafter, the court recorder will
11 reseat the closed hearing testimony.
12

13 Dated this 6th day of November, 2020

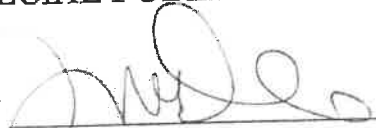
14 
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16 578 8C0 FFC3 0090
17 Valerie Adair
18 District Court Judge
19

TW

20 SUBMITTED BY:

21 JoNELL THOMAS
22 SPECIAL PUBLIC DEFENDER

23 
24 BY
25 MONICA R. TRUJILLO
26 W. JEREMY STORMS
27 Attorneys for Brown
28