

# IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TONEY ANTHONY WHITE,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Electronically Filed  
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Elizabeth A. Brown  
Clerk of Supreme Court

Case No: C-16-313216-2  
*Related Case A-20-824261-W*  
Docket No: 82889-COA

# RECORD ON APPEAL VOLUME 7

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DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

TONEY ANTHONY WHITE,

Defendant.

CASE NO. C-16-313216-2

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

TUESDAY, APRIL 18, 2017

**RECORDER'S TRANSCRIPT OF PROCEEDINGS  
DEFENDANT WHITE'S PRO PER MOTION FOR TRIAL EXTENSION FOR 180  
DAYS; MOTION TO RECUSE COUNSEL AND APPLICATION TO PROCEED IN  
PROPRIA PERSONAM**

APPEARANCES:

For the State:

MICHAEL J. SCHWARTZER  
Chief Deputy District Attorney

For the Defendant:

HARVEY GRUBER, ESQ.

RECORDED BY: KRISTINE SANTI, COURT RECORDER

1 LAS VEGAS, NEVADA, TUESDAY, APRIL 18, 2017, 8:51 A.M.

2 \* \* \* \* \*

3 THE COURT: Page 7, State of Nevada versus Toney White, C313216, he's  
4 present. He's in custody. I had a chance to read your motion again. Again, I don't  
5 believe that there's any legal basis, you know, we've talked about some of these  
6 motions and, you know, things that you think your attorney should have brought, I  
7 just want to remind you again, your attorney cannot raise somebody else's Fourth  
8 Amendment rights. Okay. So I know you keep bringing that up that you think the  
9 search of that car --

10 THE DEFENDANT: Well, I --

11 THE COURT: -- was illegal and somehow that -- you can't raise that issue.  
12 So is there anything else?

13 THE DEFENDANT: No, I just don't believe that it's proper that the individual  
14 that was driving my vehicle had standing to authorize a search when he didn't -- he  
15 didn't --

16 THE COURT: It doesn't matter what you think. It matters what the law is.  
17 You can't raise somebody else -- you have no standing. So you understand it  
18 because you even used the term.

19 THE DEFENDANT: I -- well, when I researched, I have standing, so.

20 THE COURT: You don't have standing. Okay. So just -- and, again, I just  
21 want to remind you that your attorney cannot raise issues that are frivolous. So I  
22 don't know -- I mean, you keep wanting to dismiss your attorney because he won't  
23 file a motion that I've told you would be inappropriate.

24 THE DEFENDANT: Right. It's more than a motion that I'm concerned with.  
25 I've been -- I've been incarcerated with my codefendants for a year.

1 THE COURT: Okay.

2 THE DEFENDANT: Over a year. I have -- I have none of the discovery. I  
3 mean, I have the discovery that he provided, but I don't have all the discovery. And  
4 if there's [indiscernible] amount of time --

5 THE COURT: Okay. So, here's the thing, I'm not sure what you think, but the  
6 discovery, I mean, you think your attorney has certain discovery and he's not giving  
7 it to you?

8 THE DEFENDANT: Well, I don't know if the glitch is on his side or if the glitch  
9 is on the prosecution's side, but I know that, like, my interrogation --

10 THE COURT: What glitch do you think there is?

11 THE DEFENDANT: There's a glitch somewhere because we don't have the  
12 discovery. We don't have all the discovery.

13 THE COURT: What is it?

14 THE DEFENDANT: The pictures.

15 THE COURT: I mean, have you turned over the discovery?

16 MR. SCHWARTZER: I've turned over everything to Mr. Gruber.

17 THE COURT: Have you turned over everything to your client that the State's  
18 provided?

19 MR. GRUBER: Everything that I have, I've turned over. In fact, there was  
20 one day I went over and brought my whole file and went through everything with  
21 him. Since then I've gotten additional stuff and forwarded it on to him.

22 THE COURT: Okay. So is there something you think exists that the State  
23 should have turned over? Okay.

24 THE DEFENDANT: Well, yeah, we went to the grand -- they took the case to  
25 the grand jury for an indictment, all the evidence that was admitted before the grand

1 jury, we've gotten none of that. I don't understand how you can present the  
2 evidence to the grand jury and we're not provided any copies. I don't know if they  
3 did a Marcum notice, I don't know what's going on.

4 MR. SCHWARTZER: First off, for the record, he was served Marcum notice  
5 in court. His attorneys were served Marcum notice through email and Mr. White  
6 was actually served a Marcum notice in court, so I know he's received a Marcum  
7 notice.

8 THE COURT: Okay. Is it -- what is it you think that they introduced at the  
9 grand jury that you don't have?

10 THE DEFENDANT: There was a total of 24 pictures. There was a total of --

11 THE COURT: How do you know you don't have them?

12 THE DEFENDANT: Because they're not in my possession.

13 THE COURT: Pardon?

14 THE DEFENDANT: I don't have them -- I don't have them in my possession.

15 MR. GRUBER: Judge, I will recheck my file for a third time and make sure he  
16 has everything.

17 THE COURT: For photos.

18 MR. GRUBER: If there is --

19 THE COURT: So you think you're missing photos?

20 THE DEFENDANT: I'm missing photos, I'm missing the transcription of my  
21 interrogation with Henderson Police Department. I have all the transcriptions of my  
22 codefendants.

23 THE COURT: You gave a recorded statement?

24 THE DEFENDANT: I gave a recorded statement. And I don't know if they're  
25 holding that back as a tactical advantage over the case. I don't know what's going

1 on with that. But I know that I got all the transcriptions of my codefendants and all  
2 the victims and all that, but I don't have mine.

3 THE COURT: Have you provided him with his recorded transcript?

4 MR. GRUBER: I don't --

5 THE COURT: Recorded statement transcript?

6 MR. GRUBER: Judge, I'm not exaggerating when I say this file's at least four  
7 inches thick. I -- I --

8 THE COURT: Okay. But you've seen it, right?

9 MR. GRUBER: I've seen it. I'm pretty sure he has it or he had it at one point.  
10 I will endeavor to get it to him again.

11 THE COURT: Okay. So, there's some photos you think you don't have and a  
12 copy of your statement to the police. And I've told your attorney, even if he's  
13 provided it, to provide that to you again.

14 Is there anything else?

15 THE DEFENDANT: No, that's it.

16 THE COURT: Okay. Anything else you want to say about your motion?

17 THE DEFENDANT: No, that's just my concern, the discovery and I'm not,  
18 yeah, I'm not being issued a lot of the stuff that they have in their possession.

19 THE COURT: Okay. You've told me two things. There's a set of photos you  
20 think you haven't gotten and a copy of a recorded statement, a transcript of a  
21 recorded statement, which I've told your attorney that if he has not provided to you,  
22 he needs to provide to you right away. Is there anything else?

23 THE DEFENDANT: And there -- yeah, there's also reports of, like, different  
24 officers that made reports that are mentioned in my report, I don't have copies of  
25 none of those narrative reports.

1 THE COURT: Okay. You're going to have to be more specific than that.

2 THE DEFENDANT: Okay. There's -- there's reports of seven officers and  
3 they're Nielson [phonetic], Niswonger, Nichols [phonetic], Ebert, Wadford, Leinan.

4 THE COURT: Why do you think they all made separate reports?

5 THE DEFENDANT: Because all these reports are mentioned in my report,  
6 so.

7 THE COURT: Okay. Read it to me. Read it to me where you think that  
8 there's --

9 THE DEFENDANT: My report? This is the motion.

10 THE COURT: No, because generally there's not seven different reports.  
11 Generally, there's a police officer that's in charge and that officer prepares a report.

12 THE DEFENDANT: There's one -- you're right. There's one report of the  
13 crime, but that report refers me to other reports. See Officer Such-and-such's  
14 report.

15 THE COURT: Like what? Read it -- read it to me so I know.

16 THE DEFENDANT: This is the motion. I didn't bring the report with me. I just  
17 brought the motions.

18 THE COURT: Okay. Because I don't know, just because you think that  
19 there's other reports does not mean that there are. Okay. Are there seven other -- I  
20 would find that to be unusual if there were -- was the main report plus seven other  
21 reports, does that exist in this case?

22 MR. SCHWARTZER: I mean, I don't know exactly how many reports there  
23 are. There are a lot of reports, Your Honor.

24 THE COURT: Okay.

25 MR. SCHWARTZER: If you -- I guess if you include all the C.S.A. reports, it

1 could be up to seven. But all that has been provided.

2 THE COURT: Oh, you mean he's -- he's -- oh, okay, you mean, like reports --

3 THE DEFENDANT: It's not the C.S.A. report I'm concerned with. I have that  
4 report, the crime scene analysis report, I have that one. I'm concerned with the  
5 officers' reports because -- and my report is saying, like, all these officers had  
6 different roles in my arrest, and the roles that they played in my arrest, they  
7 documented those roles. But all those roles aren't in the -- the --

8 THE COURT: Are you telling me that a police report you've read refers and  
9 references seven different police reports? Because I would find that to be unusual.

10 THE DEFENDANT: It does, yeah.

11 THE COURT: Okay. When I'm done with court today I'll read that police  
12 report and -- and if those seven reports exist, you're entitled to them.

13 THE DEFENDANT: All right.

14 THE COURT: Okay. But, again, just because you think they exist doesn't  
15 mean they exist.

16 THE DEFENDANT: I don't see any logic in the officers referencing some  
17 reports that don't exist.

18 THE COURT: Yeah. I agree.

19 THE DEFENDANT: See Officer --

20 THE COURT: I agree. If they reference other reports and they're about this  
21 case or you're entitled to them, I'll make sure you get them.

22 THE DEFENDANT: All right.

23 THE COURT: Anything else?

24 THE DEFENDANT: That's it.

25 THE COURT: Okay. At this time I'm going to deny the motion.

1 Do you have anything --

2 MR. GRUBER: Just for the record, Judge, I know he's met with my  
3 investigator on at least one occasion, I'll send him over again to make sure what  
4 he's missing and he'll get back to me.

5 THE COURT: Okay.

6 MR. GRUBER: And I'll get with Mr. Schwartzer and make sure I have  
7 everything to him in the next 14 days.

8 THE COURT: Have you reviewed the State's file?

9 MR. GRUBER: I -- I haven't reviewed the State's file. I know I've reviewed  
10 my file and --

11 THE COURT: Sure.

12 MR. GRUBER: -- I don't believe anything's missing.

13 THE COURT: Okay.

14 MR. GRUBER: But, you know, things get -- this is a large report and things  
15 may have fallen, you know, a large case and something may have fallen through the  
16 cracks.

17 THE COURT: Okay.

18 THE DEFENDANT: Your Honor, can I address the Court again?

19 THE COURT: Of course.

20 THE DEFENDANT: Yeah, there is -- I asked my attorney to ask the D.A. for,  
21 like, all the material in their file that I'm entitled to. I mean, if there's, like --

22 THE COURT: Okay. Let me just tell you, your attorney is not required to  
23 that -- required to do that. The district attorney has an obligation to --

24 THE DEFENDANT: To turn it over.

25 THE COURT: -- turn that over without a request.



1 THE DEFENDANT: Okay. I understand that. Now, there is -- I don't know --  
2 I asked my attorney why, like, certain evidence haven't been handed over, he's  
3 telling me that they only have to hand over the evidence that they're going to use in  
4 trial. Well, that puts me at a disadvantage because --

5 THE COURT: Well, that's somewhat true.

6 THE DEFENDANT: Excuse me?

7 THE COURT: That's somewhat true. They're required, the statute requires  
8 them to turn over evidence that they're going to use in their case-in-chief, but they're  
9 also required to turn over anything that is exculpatory.

10 THE DEFENDANT: Yeah. And it just limits my, like, defenses. I don't even --  
11 we don't even know what the defense is for trial yet and trial is less than two months  
12 away.

13 THE COURT: Okay. And, again, I found that to be kind of an unusual  
14 argument that you want to build your defense based on -- I don't really understand  
15 that. I don't -- I don't follow your argument.

16 THE DEFENDANT: This -- this is, like -- that's part of the reason why we  
17 were uncomfortable with the, like, the -- the negotiations, we were uncomfortable  
18 with that because we don't know the strengths and the weaknesses of the case to  
19 take that in consideration as to, you know what I'm saying?

20 THE COURT: Who's "we"? Who's "we"?

21 THE DEFENDANT: Me and my codefendant.

22 THE COURT: Okay. All right. Well, I feel pretty confident your attorney  
23 knows the strengths and weaknesses.

24 THE DEFENDANT: That's not being shared with me. I'm not -- there's no  
25 open line of communication there. I don't -- I don't know what we're doing in trial,

1 ma'am.

2 THE COURT: Just for the record, you're talking to your client, right?

3 MR. GRUBER: I'm talking to my client over the phone. I haven't visited him  
4 in a while. Since the bar complaint, everything is done in writing and over the phone  
5 with someone in my office with me and he's met with my investigator.

6 THE COURT: Okay.

7 Is there any other discovery? Anything else you want to talk about?

8 THE DEFENDANT: No, that's it.

9 THE COURT: Okay. Thank you, Mr. White.

10 MR. GRUBER: Thank you, Judge.

11 THE COURT: Thank you.

12 PROCEEDINGS CONCLUDED AT 9:01 A.M.

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22 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-  
23 video recording of this proceeding in the above-entitled case.

24

25

  
SARA RICHARDSON  
Court Recorder/Transcriber

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**June 03, 2021**

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C-16-313216-2      State of Nevada  
                                 vs  
                                 Toney White

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<b>June 03, 2021</b>	<b>11:00 AM</b>	<b>Motion for Appointment of Attorney</b>	<b>Motion for Appointment of Attorney for Appeal</b>
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**HEARD BY:** Leavitt, Michelle

**COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Haly Pannullo

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Brooks, Parker State of Nevada	Attorney Plaintiff
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**JOURNAL ENTRIES**

- Defendant not present. COURT ORDERED, Motion DENIED as the Defendant is not entitled to appointed counsel; State to prepare the Order. State inquired as to the Order including that the same motion was previously denied in the C case. COURT SO ORDERED.

NDC

# Certification of Copy and Transmittal of Record

State of Nevada }  
County of Clark } SS:

Pursuant to the Court of Appeals order dated February 18, 2022, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the supplemental trial court record for the case referenced below. The record comprises volume seven with pages numbered 1260 through 1270.

STATE OF NEVADA,

Plaintiff(s),

vs.

TONEY ANTHONY WHITE,

Defendant(s),

Case No: C-16-313216-2

*Related Case A-20-824261-W*

Dept. No: XII

now on file and of record in this office.

**IN WITNESS THEREOF**, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 23 day of February 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk