

IN THE SUPREME COURT OF THE STATE OF NEVADA

ADAM ANTHONY BERNARD,

Appellant,
vs.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
May 06 2022 09:37 a.m.
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court Case Clerk 83323

REPLY TO OPPOSITION TO

MOTION TO TRANSMIT EXHIBIT

COMES NOW, the State of Nevada, by and through counsel, and, pursuant to NRAP 27(a)(4), files its reply to the defendant's opposition to transmit exhibit.

The defendant objects to transmittal of a video of the crime in this case arguing that the contents of the video have been sufficiently described in the record. First, common sense dictates that words in a transcript cannot nearly convey the true nature of a video of a man being beaten to death in the street.

Second, the defendant neglects to inform this Court that in the proceedings below, he disputed those descriptions of the beating that he now claims are sufficient to describe it. For example, the State argued that the video showed 29 brutal punches to Brian's head. JA Vol. III, 472. The defendant argued that many of the punches the State said struck the victim in the head in fact missed and did

not strike the victim. JA Vol. III, 403. The State described the defendant giving Brian brutal kicks to the head. JA Vol. III, 472. The defendant disputed this and termed the kicks either a nudge with his foot or a cautionary kick. JA Vol. 1, 84-85; JA Vol. III, 440, 467.

Third, if this Court decides it must review the sentencing hearing and imposition of sentence for plain error, it should have before it the one piece of evidence so significant to the district court's decision that the court specifically described the importance of the exhibit when it pronounced judgment. JA Vol. III, 523. Yet the defendant seeks to prevent this Court from reviewing it even though the defendant, without any opposition from the State, was permitted to present to this Court all of its mitigating evidence.

Finally, the defendant seeks to prevent this Court from reviewing evidence based on an unsuccessful opposition he made at the pre-trial motions hearing in this case. The defendant raised no objection to the video at the sentencing hearing. Further, the defendant failed to preserve any issues related to his objection to the video at the pre-trial motions hearing. Once the defendant entered his guilty plea he waived any such issues. *Kirksey v. State*, 112 Nev. 980, 999 (1996) (“[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise

independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.”)

For the above reasons, and those contained within the State’s motion, the State requests that this Court direct the district court clerk to transmit the State’s Exhibit 2 from the sentencing hearing to this Court.

DATED this 6th day of May, 2022.

MARK B. JACKSON
Douglas County District Attorney

By: /s/ Erik A. Levin
ERIK A. LEVIN
Chief Deputy District Attorney
Douglas County
Nevada Bar No. 6719
P.O. Box 218
Minden, NV 89423
(775) 782-9800
elevin@douglas.nv.us
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that this document, **REPLY TO OPPOSITION TO MOTION TO TRANSMIT EXHIBIT**, was filed electronically with the Nevada Supreme Court on the 6th day of May, 2022. Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Maria Pence, Esq.
1662 U.S. Highway 395, Suite 203
Minden, NV 89423
Attorney for Appellant

Aaron Ford
Nevada Attorney General
100 N. Carson Street
Carson City, NV 89701

/s/ Erik A. Levin
Erik A. Levin
Chief Deputy District Attorney