

FILED

AUG 15 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

1 Keith Sullivan ID NO. 92630

2 SOUTHERN DESERT CORRECTIONAL CTN.
3 20825 COLD CREEK RD.
4 P.O. BOX 208
5 INDIAN SPRINGS, NV 89070

6 IN THE SUPREME COURT OF THE
7 STATE OF NEVADA

8 Keith Sullivan,
9 Appellant / Petitioner

10 v.

11 Perry Russell, Warden, et al
12 Respondents

CASE NO.: CR19-0427

DEPT. NO.: N/A

DOCKET: 85075

13 Motion to File an Appendix to Amended Petition
14 for Writ of Habeas corpus

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16
17 COMES NOW, Keith, W. Sullivan, In Proper Person, herein above respectfully
18 moves this Honorable Court for an Motion to File an Appendix to his
19 Amended Petition for Writ of Habeas corpus

20
21 This Motion is made and based upon the accompanying Memorandum of Points and
22 Authorities,

23 DATED: this 8th day of August, 2022

24 BY: *[Signature]*

25 Keith Sullivan # 92630

26 ~~By~~ In Proper Personum
27 Appellant

28 RECEIVED

AUG 15 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY

22-25488

1 This motion is set before this Honorable Court in order to
2 include with the record the transcripts of the second trial
3 in case number CR19-0427. My charges were bifurcated
4 and two trials were held. These transcripts were from
5 the second set of charges' trial. As can be seen from
6 the Washoe Co. Public Defender's Memo (unsigned) by W.C.
7 P.D. Kendra Bertschy, I did not receive these transcripts
8 until late July; July 26th, in fact.

9 With this motion granted, I would have them admitted
10 as an appendix to Ground six^① of my June 13th, 2022,
11 Amended Petition for Writ of Habeas Corpus, filed in this Court
12 on July 26th, 2022. In that Ground I mention the mistrial
13 that occurred due to the prosecutorial misconduct of
14 Ms. Morton's impermissible statement to the jury.

15 That makes these transcripts relevant to the
16 thrust of Ground six^① because it provides a point of
17 comparison.

18 This motion is timely because no ruling or decision has
19 been made by this Court and I have only recently obtain-
20 ed the transcripts. (See also, Motion to Apply Equitable Tolling)

21 Therefore I submit the Appendix to Ground six to
22 be included with the Amended Petition for writ of
23 Habeas corpus.

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26 ① This pertains to Ground eight as well
27
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Appendix to Ground Six of
Amended Petition for Writ of Habeas corpus
Filed in the Nevada Supreme Court, July 26, 2022,

Trial transcripts of CR18-0427, trial held
Jan. 15th, 2019.

Appendix to Ground six. Trial transcripts from
case no: CR18-0427, Jan. 15th, 2022.

1 AS can be seen from the Jan. 15th, 2019, trial transcripts,
2 MS. Morton uttered only one sentence that resulted in
3 a mistrial. (See trial transcript, page 3, lines 14-16) The
4 statements she made in her opening argument in the
5 first trial of this case were far more inflammatory
6 and prejudicial to the jury.

7 AS can be seen on page 28, lines 19-23, Judge Breslow
8 ~~then~~ realized the error after my attorneys objected in
9 this trial to the far less substantial comment in this
10 case vis-a-vis the ones made in the prior trial. This
11 reflects not only the prosecutorial misconduct stated in
12 Ground six but the ineffective assistance of counsel as
13 stated in Ground eight. Had MS. Correlli objected in the
14 first trial as she did in the second, it is clear that the
15 same result would have occurred. (See page 29, lines 10-13)

16 But for the prosecutor's impermissible statement, the
17 trial would have proceeded.

18 But for MS. Correlli's failure to object to the same and
19 more effusive statements in the first trial it too
20 would have resulted in a mistrial.



WASHOE COUNTY

PUBLIC DEFENDER

350 S Center St.
Reno, NV 89501-2103
(775) 337-4800
(800) 762-8031
FAX: (775) 337-4856
www.washoecounty.gov/defender

July 19, 2022

Keith William Sullivan, BAC #92630
c/o South Desert Correctional Center
PO Box 208
Indian Springs, NV 89070

Re: Case No. 78567
PD No. 0223919

Dear Mr. Sullivan:

Enclosed please find the transcript you requested from the Opening Statements on January 15, 2019.

Sincerely,

/s/ Kendra Bertschy

John Petty
Chief Deputy Public Defender

KGB/jh



1 4185

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 HONORABLE BARRY L. BRESLOW

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

Case No. CR18-0427

12 KEITH SULLIVAN,

Department No. 8

13 Defendant.

14 -----/

15 TRANSCRIPT OF PROCEEDINGS
16 Opening statements & granting of mistrial
January 15, 2019

17 APPEARANCES:

18 For the State:

Carrie Morton
Deputy District Attorney
1 South Sierra Street
Reno, Nevada

19

20

21 For the Defendant:

Kendra Bertschy & Melinda Correlli
Deputy Public Defenders
350 South Center Street
Reno, Nevada

22

23

24

Reported by:

Isolde Zihn, CCR #87

1 RENO, NEVADA, TUESDAY, JANUARY 15, 2019, 3:10 P.M.

2 ***

3 THE COURT: At this time, I would like the State to
4 proceed with opening statement.

5 Ms. Morton.

6 MS. MORTON: Thank you, Judge.

7 The defendant, Keith Sullivan, was at the Reno Police
8 Department on January 2nd of 2018 to obtain some cell phones.
9 The detective at that time told him to come back the
10 following day to obtain those cell phones.

11 So, on January 3rd of 2018, the defendant was again
12 at the Reno Police Department for the purpose of obtaining
13 those phones.

14 Now, during that time, several undercover detectives
15 were beginning to set up surveillance on the defendant for an
16 unrelated matter.

17 As the detectives were watching him leave the Reno
18 Police Department, they watched him head down south on Hill
19 Street, over to Mill Street. They watch him enter a dirt
20 parking area parking lot behind a business.

21 Detective Thomsen sees him enter a red Ford truck.
22 She then follows him to Pickett Park, along with other
23 undercover detectives who are watching the defendant and
24 following him, again, to the Pickett Park area.

1 of Keith Sullivan and the subsequent search were lawful."

2 I realize that the State has concern that that leaves
3 a gap in the story board here.

4 I realize that the State thinks that you need to
5 inform the jury, for res gestae purposes, for complete story,
6 that, while prejudicial, there has been a prior arrest, it
7 does not substantially outweigh -- the concern or risk of
8 undue prejudice, I get that.

9 But what I tried to do here -- and I didn't do it
10 very well, and I apologize to all involved -- but what I
11 tried to do here is to say, indicate the arrest was valid --
12 not valid -- was lawful, was not unlawful; that the
13 surveillance was ongoing for something unrelated; that the
14 truck was the same between those three or four days.

15 But not to say that he was arrested in the past for
16 something else. That's a prior bad act. We had a hearing.
17 I didn't make myself clear. I wanted to prevent that type of
18 evidence or argument from coming in.


19 So, again, I stand by the Court's ruling. I think
20 error occurred here. I think the jury now knows that the
21 defendant has been arrested for an unrelated matter. I think
22 the State doesn't need to have that point made in order to
23 have a fair trial on both sides of the case.

24 And I think that there's been no intent by the State

1 to violate any court order. My order apparently was not
2 clear.

3 MS. MORTON: Your Honor, just for the record, then I
4 did not understand your order. I thought I was permitted to
5 say that he was arrested on a --

6 THE COURT: I thought you parties had agreed because
7 I saw these -- what I thought was the stipulations to
8 instructions, not stipulations. These were just submitted,
9 and so here we are.

 [10 But here's the deal. I mean, we're only in the
11 opening statement part. And nobody likes a mistrial. I'm as
12 disappointed in the way that we got to this point as probably
13 anybody else here. And it's on me. I have to own this.

14 But this is not -- this does not prevent the State
15 from re-filing this -- from re-trying this case. I'll make
16 myself available to preside over the trial here in short
17 order. And we'll set it for four days, and we'll get this
18 case tried.

19 This is not a case where jeopardy applies. It's not
20 a mistrial sought by the State. It's not a mistrial sought
21 by the defense that was egged on by the State. It wasn't
22 anything intentional. It's because the court order
23 apparently wasn't clear.

24 Here's what I want to do. I want to make sure that

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion to File

an Appendix to Amended Petition for writ of Habeas corpus
(Title of Document)

Supreme
filed in ~~Dist~~ Court Case number 85075

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.

Heath Guy
Signature

8/8/22
Date

Keith Sullivan
Print Name

Petitioner/Appellant IN Proper Person
Title

CERTIFICATE OF SERVICE BY MAILING

I, Keith Sullivan, hereby certify, pursuant to NRCP 5(b), that on this 8th
day of August, 2022 I mailed a true and correct copy of the foregoing, "Motion to file
an Appendix to Amended Petition for writ of Habeas corpus"
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

Nevada Supreme Court
201 S. Carson St. Suite 201
Carson City, NV 89701-4702

Nevada Attny Gen. Office
100 N. Carson St.
Carson City, NV 89701-4717

Washoe Co. Dist. Attny Office
one S. Sierra St.
Reno, NV 89501

CC: FILE

DATED: this 8th day of AUGUST, 2022



Keith Sullivan # 92630

/In Propria Personam

Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018

IN FORMA PAUPERIS: