

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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3
4 TULY LEPOLO,

5 Appellant,

6
7 vs.

8 STATE OF NEVADA,

9 Respondent,
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Supreme Court Case No. 85631
District Court Case No. C-20-345911-1
Electronically Filed
Aug 25 2023 09:36 PM
Elizabeth A. Brown
Clerk of Supreme Court

12
13 **MOTION FOR TRANSMITTAL OF**
14 **EXHIBITS PURSUANT TO NRAP 30(D)**
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16 COMES NOW Appellant, TULY LEPOLO, by and through his counsel
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18 in this matter, JEAN J. SCHWARTZER, ESQ., and pursuant to Nevada Rule
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20 of Appellate Procedure 30(d), asks this Court to direct the District Court to
21
22 transmit State's Exhibit 323 admitted at trial on August 23, 2022 to the
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24 Supreme Court of Nevada to be used for the purpose of reaching a decision
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26 on the issues raised in Appellant's appeal filed this same day.

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1 This motion is based upon the following memorandum and all papers
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3 and pleadings on file herein.

4 DATED this 25th day of August, 2023.

6 /s/ Jean J. Schwartzer

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8 JEAN J. SCHWARTZER, ESQ
9 Nevada State Bar No. 11223
10 Law Office of Jean J. Schwartzer
11 411 E. Bonneville Avenue, Suite#360
12 Las Vegas, Nevada 89101
13 (702) 979-9941
14 Counsel for Appellant

14 **MEMORANDUM**

15 Rule 30 (d) of the Nevada Rules of Appellate Procedure allows the
16
17 inclusion of copies of relevant and necessary exhibits in an appendix.
18
19 However, if an exhibit cannot be reproduced, a party may:

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21 ...file a motion requesting the Supreme Court to direct the
22 district court clerk to transmit the original exhibits. The
23 Supreme Court will not permit the transmittal of original
24 exhibits except upon a showing that the exhibits are
25 relevant to the issues raised on appeal, and that the
26 Supreme Court's review of the original exhibits is necessary
27 to the determination of the issue.
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1 NRAP 30(d).

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3 Appellant asks that this Court direct the District Court Clerk's Office
4 to transmit State's Exhibit 323 admitted at trial on August 23, 2022.
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6 State's Exhibit 323 admitted at trial on August 23, 2022 consists of a
7 recording of the redacted police interview with Appellant. Appellant argued
8 in his direct appeal that the district court erred when it denied his request to
9 suppress this statement based upon the lack of voluntariness as well as the
10 fact that Appellant asked for an attorney. Hearing the tone and cadence of
11 Appellant's request is integral to the inquiry as to whether or not the
12 statement was voluntary and whether he unequivocally invoked his Fifth
13 Amendment right to counsel. The district court listened to the recording
14 before making the ruling. Moreover transcripts were not provided to the jury
15 and the jurors only heard the recording of Appellant's statement.
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22 The recording offers the Court an opportunity to view direct evidence
23 in making its determination.
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1 Counsel cannot submit this recording in Appellant's Appendix
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3 because it is an audio recording and cannot be uploaded to the Supreme
4 Court of Nevada E-Flex System.
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6 **CONCLUSION**

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8 Based upon the foregoing, Chambers respectfully requests the Court
9 to order the District Court Clerk's Office to transmit State's Exhibit 323
10 admitted at trial on August 23, 2022 to the Supreme Court of Nevada so as
11 to be used when reaching a decision on the issues on appeal.
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13

14 DATED this 25th day of August, 2023.
15

16 /s/ Jean J. Schwartzer

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ALEXANDER CHEN

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