

MEMORANDUM OF POINTS AND AUTHORITIES

Rule 30(d) of the Nevada Rules of Appellate Procedure allows an appellant to include copies of relevant and necessary exhibits in the Appellant's Appendix. However, if an exhibit is not able to be reproduced,

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.

NRAP 30 (d).

Steven Turner asks that this Court direct the District Court Clerk's office to transmit original **State's Exhibits 28-32** (from trial) and **Court Exhibit A** (from November 30, 2017), to the Supreme Court for its review.

State's Exhibits 28-32 are color photographs that were taken of Turner when he was arrested several hours after the shooting. In the photographs, Turner can be seen wearing a purple shirt and bright orange pants that are covered with blood and have holes in them. These photographs support Turner's argument that he was not the person who fired the SKS rifle that shattered Officer Robertson's leg. See Appellant's Opening Brief ("AOB") at pp. 9, 13, 29, 49.

When Officer Grego-Smith turned on his flashlight, he saw *a shirtless man in basketball shorts* standing in the back yard. See AOB at 7-8. Officer

Grego-Smith confirmed that the man he saw in the back yard was *not Hudson*. AOB at 8. With his bright orange pants and a purple shirt, Turner looked nothing like the man that Grego-Smith saw in the back yard. See AOB at pp. 9 and 13. Thus, the color photographs support Turner's defense that a third individual (someone other than Hudson or Turner) was holding the SKS rifle that shot Officer Robertson. AOB at 28. Turner relies on the color photographs to make this argument at multiple points in his Opening Brief. See AOB at 9, 13, 29, 49. Yet, Turner is unable to include color copies of the photographs in Appellant's Appendix. As such, it is necessary for this Court to obtain the original photographs from the Evidence Vault in order to evaluate Turner's argument on appeal. See **NRAP 30(d)**.

Court Exhibit A (from November 30, 2017) is a CD containing two e-mails from prosecutor, Leah Beverly, to defense attorney, Tegan Machnich, forwarding color copies of Clemon Hudson's two redacted statements to police. The redacted statements contain the State's proposed redactions (in gray), Steven Turner's proposed redactions (in green), and the court's redactions (in yellow). The exhibit is cited in several places in Turner's Opening Brief and it demonstrates that the court failed to make all of the redactions requested by the defense. See AOB at 3, 17-18. The exhibit is relevant to Turner's argument on appeal that the district court

erred by failing to sever Turner's and Hudson's trials pursuant to **Bruton v. United States**, 391 U.S. 123, 135-37 (1968) and **Richardson v. Marsh**, 481 U.S. 200 (1987) (permitting redactions under certain circumstances). Because **Court Exhibit A** (from November 30, 2017) is a CD containing e-mails with color-copies of the redactions, Turner is unable to reproduce it in Appellant's Appendix. This Court must obtain the original exhibit from the Evidence Vault in order to evaluate Turner's severance argument on appeal. See NRAP 30(d).

For all the foregoing reasons, Turner requests that this Honorable Court direct the Eighth Judicial District Court Clerk to transmit original **State's Exhibits 28-32** (from trial) and **Court Exhibit A** (from November 30, 2017) for this Court's review.

DATED this 4 day of February, 2019.

DARIN IMLAY
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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 4 day of February, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD
STEVEN S. OWENS

DEBORAH L. WESTBROOK
HOWARD S. BROOKS

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

STEVEN TURNER
NDOC No. 1200863
c/o High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

BY /s/ Carrie M. Connolly
Employee, Clark County Public
Defender's Office