

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 19–0471

STATE OF MONTANA,

Plaintiff and Appellee,

v.

CARESSA JILL HARDY, aka

GLENN LEE DIBLEY,

Defendant and Appellant.

**UNOPPOSED MOTION TO UNSEAL CONFIDENTIAL
TRANSCRIPT AND SUPPLEMENT THE RECORD**

Upon the request of my client, Appellant Caressa Jill Hardy a/k/a Glenn Lee Dibley, the undersigned, pursuant to Mont. R. App. P. 8(6), moves this Court for an order supplementing the record in this matter with two documents discussed during the proceedings below: 1) John Braunreiter's letter to Brian Lowney dated April 22, 2019, attached as Exhibit 1; and 2) the transcript of a confidential attorney-client privileged communication between Glenn and his defense team that was recorded by the court reporter on the second-to-last day of trial, May 15, 2019, attached hereto as Exhibit 2. Because the district court placed the court reporter's notes of that conversation "under seal,"

counsel further requests this Court unseal the notes and transcript at this time. Opposing counsel has been contacted and does not object to this motion.

The parties and counsel discussed the contents of Braunreiter's letters to the court and counsel both before and during trial on several occasions. (*See* Tr. at 503–05, 2343–52, 2354–61.) Glenn personally discussed the contents of this letter on the record, *see* Tr. at 2355–61, and the court's ruling prohibiting defense counsel from commenting on Braunreiter's absence during closing argument, which is the subject of Issue 3 in Appellant's Brief, appears to be based, at least in part, on this letter. (*See* Tr. at 2343–52, 2477–78.) Exhibit 1, however, was not entered into the court record.

During this discussion, the court asked whether defense counsel would like to have a discussion with Glenn “on the record, without anyone else present, and then seal that record, you know, pending later procedures.” (Tr. at 2358.) After additional discussion, the court again suggested this procedure, and defense counsel agreed. (Tr. at 2361–62.) The court reporter, Ceresse Parker, transcribed a discussion between Glenn, his two trial attorneys, and a defense paralegal, which was

conducted in the courtroom outside the presence of the jury, the judge, and the prosecution on the second-to-last day of trial. The transcript of that conversation was not prepared as part of the record on appeal. Upon Glenn's request, the undersigned obtained a copy of the transcript from Ms. Parker, which is attached as Exhibit 2.

Opposing counsel has had the opportunity to review the exhibits and has no objection to supplementing the record with them.

Respectfully submitted this 16th day of May, 2022.

OFFICE OF STATE PUBLIC DEFENDER
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P.O. Box 200147
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By: /s/ Tammy A. Hinderman
TAMMY A. HINDERMAN
Assistant Appellate Defender

CERTIFICATE OF SERVICE

I, Tammy Ann Hinderman, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 05-16-2022:

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Electronically signed by Pamela S. Rossi on behalf of Tammy Ann Hinderman
Dated: 05-16-2022