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COUNSEL FOR PLAINTIFF AND APPELLEE

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 22-0632

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

LORENZO JAMES HARRIS,

Defendant and Appellant.

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**UNOPPOSED MOTION TO STAY APPEAL  
AND CORRECT THE RECORD**

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The Appellee, State of Montana, respectfully requests this Court stay the appeal in this matter so an evidentiary hearing may be held in the district court to correct the record pursuant to M. R. App. P. 8(6).

On appeal, Appellant, Lorenzo James Harris, asserts the district court erred by failing to determine whether Harris committed mitigated deliberate homicide before convicting him of deliberate homicide following his bench trial. (Appellant's Br. at 1.) Harris asked the district court to consider whether he committed the homicide under mitigating circumstances for the first time in his sentencing memorandum and at the sentencing hearing. (D.C. Doc. 109; 8/4/22 Tr. at 50-51, 58-79.) A video exhibit played by Harris in support of his assertion that his conduct constituted mitigated homicide rather than deliberate homicide appears to have been inadvertently omitted from the record. The transcript from the hearing indicates the district court watched the video, the parties referenced the video at length, and the court relied upon the video. (8/4/22 Tr. at 58-79, 90-92.)

Correction or modification of the record on appeal is governed by M. R. App. P. 8(6) which states, in relevant part:

If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the district court, on motion of a party or upon its own motion, either before or after transmission of the record to the supreme court, may order that the omission or misstatement be corrected and, if necessary, that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the supreme court.

In the current matter there is a transcript of the sentencing hearing which clearly indicates that the video was intended to be part of the record. The transcript

also describes the contents of the video. The Honorable Judge Michael Moses presided over the proceedings in the district court for this matter. Judge Moses subsequently retired on July 1, 2023. Harris and the State are both represented by different counsel on appeal than in the district court proceedings. Given the circumstances, neither counsel on appeal nor a different district court judge would be able to attest to what video was played at the hearing.

In *Madera v. Risley*, 885 F. 2d 646, 648 (9th Cir. 1989), the court reconstructed the trial record by conducting an evidentiary hearing to receive testimony from trial attorneys and other persons present at an unrecorded hearing and issued an order expressing the most accurate statement of the unavailable evidence. Relying on *Madera*, this Court remanded for similar proceedings in *State v. Deschon*, 2002 MT 16, ¶¶ 26-30, 308 Mont. 175, 40 P.3d 391, to reconstruct voir dire when there was no written transcript.

The State respectfully requests that this Court stay Harris's appeal and order the district court to conduct an evidentiary hearing with the trial attorneys and retired Judge Moses in order to ensure that the correct video is supplemented to the record on appeal. The State requests that this Court stay the appeal until the district court transmits the supplemental record to this Court.

The State's response brief is currently due on February 8, 2025. The State additionally requests that this Court order the State's response brief to be due 30 days from receipt of the supplemental record.

The State has contacted opposing counsel. Opposing counsel has indicated that there is no objection to staying the appeal or to supplementing the record to add the video.

Respectfully submitted this 31st day of January, 2025.

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By: /s/ Christine Hutchison  
CHRISTINE HUTCHISON  
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## **CERTIFICATE OF SERVICE**

I, Christine M. Hutchison, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 01-31-2025:

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Electronically signed by Wendi Waterman on behalf of Christine M. Hutchison  
Dated: 01-31-2025