

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LUKE A. BUSBY, ESQ
Nevada Bar No. 10319
316 California Ave.
Reno, Nevada 89509
775-453-0112
luke@lukeandrewbusbyltd.com

Attorney for the Plaintiff in Intervention

**IN THE SECOND JUDICIAL DISTRICT COURT IN THE STATE OF NEVADA,
IN AND FOR WASHOE COUNTY**

* * *

STATE OF NEVADA,

Plaintiff,

Case No.: CR19-1535A and B

vs.

Dept. No.: 8

STEWART EVANS HANDTE and ROGER
HILLYGUS,

Defendant.

ALEXANDER FALCONI D/B/A OUR NEVADA
JUDGES,

Plaintiff in Intervention,

vs.

STEWART EVANS HANDTE, ROGER
HILLYGUS, and THE STATE OF NEVADA,

Defendants in Intervention.

MOTION FOR LIMITED INTERVENTION TO PROVIDE ELECTRONIC

COVERAGE UNDER SCR 230

1 COMES NOW, Plaintiff in Intervention ALEXANDER FALCONI D/B/A OUR
2 NEVADA JUDGES, by and through the undersigned counsel, and hereby submits
3 the following Motion for Limited Intervention to Provide Electronic Coverage Under
4 SCR 230.

5
6 This Motion is made and based upon all the pleadings and records on file for
7 this proceeding together with every exhibit that is mentioned herein or attached
8 hereto (each of which is incorporated by this reference as though it were set forth
9 here in haec verba), if any there be, as well as the points and authorities set forth
10 directly hereinafter.

11
12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **Background**

14 The facts and circumstances surrounding this case are described at length in
15 the Declaration of Alexander Falconi, which is attached hereto and incorporated
16 herein by reference as Exhibit 1.

17
18 According to the Declaration of Mr. Falconi, Our Nevada Judges is a media
19 entity that provides statistical analysis of all judicial districts in Nevada and their
20 corresponding departments, as well as electronic coverage of judicial proceedings,
21 which is then published on youtube.com, the primary purpose of which is to provide
22 education and information about how the judicial system in Nevada works. As further
23 described therein, Our Nevada Judges has provided electronic coverage from
24 numerous courts in the State of Nevada and has recorded and published some 223
25 videos of hearings and other proceedings.
26
27
28

1 As described in Mr. Falconi's Declaration, Our Nevada Judges has had some
2 difficulty in obtaining the consent of this Court, and in Justice Court, in providing
3 electronic coverage of this case.

4 The operate facts for purposes of this Motion are as follows: On October 26,
5 2021, Our Nevada Judges submitted a Supreme Court Rule ("SCR") 230(1) media
6 request to provide coverage of an October 28, 2021 hearing to this Court. See Exhibit
7 1. No response to the request was received. *Id.* On October 28, 2021, Our Nevada
8 Judges camerawoman Christine Tosti was informed that she would not be permitted
9 to film the proceedings as requested but would be permitted to attend and to take
10 notes. See Declaration of Christine Tosto, attached hereto and incorporated herein
11 as Exhibit 2. Our Nevada Judges has received no written order in response to its
12 request to provide electronic coverage of the October 28, 2021 hearing. See Exhibit
13 1. Our Nevada Judges now has a SCR 230 Media Request pending before the Court
14 for future proceedings. See Exhibit 3.

18 This case has already been subject to extensive media coverage from
19 sources other than the Plaintiff in Intervention. For example, on August 20, 2019,
20 the Las Vegas Review Journal published an article about the case entitled: *Bitter*
21 *Reno family battle leads to manhunt, arrests*, available at
22 [https://www.reviewjournal.com/local/local-nevada/bitter-reno-family-battle-leads-to-](https://www.reviewjournal.com/local/local-nevada/bitter-reno-family-battle-leads-to-manhunt-arrests-1830027/)
23 [manhunt-arrests-1830027/](https://www.reviewjournal.com/local/local-nevada/bitter-reno-family-battle-leads-to-manhunt-arrests-1830027/). On August 15, 2019, the Reno Gazette Journal
24 published an article about this case entitled: *Former Mineral County Sheriff arrested*
25 *for allegedly helping in kidnapping of woman, 80*, available at:
26
27
28

1 [https://www.rgj.com/story/news/crime/2019/08/15/former-nv-sheriff-arrested-](https://www.rgj.com/story/news/crime/2019/08/15/former-nv-sheriff-arrested-kidnapping-charges/2021407001/)
2 [kidnapping-charges/2021407001/](https://www.rgj.com/story/news/crime/2019/08/15/former-nv-sheriff-arrested-kidnapping-charges/2021407001/).

3 **Standard of Review**

4 A news reporter is “any person who gathers, prepares, collects, photographs,
5 records, writes, edits, reports, or publishes news or information that concerns local,
6 national, or international events or other matters of public interest for dissemination
7 to the public.” SCR 229(1)(c) and *Solid v. Eighth Judicial Dist. Court*, 133 Nev. 118,
8 118, 393 P.3d 666, 669 (2017).

9
10 Limited intervention by the press in criminal cases is permitted under the First
11 Amendment to the U.S. Constitution. “The public and the press have the right to seek
12 limited intervention in a criminal case to advance or argue constitutional claims
13 concerning access to court proceedings.” *Stephens Media, LLC v. Eighth Judicial*
14 *Dist. Court*, 125 Nev. 849, 860, 221 P.3d 1240, 1248 (2016) (en banc). A member
15 of the press or the public may also move to intervene in a criminal case to oppose
16 closure. *Id.*, 125 Nev. at 860, 221 P.3d at 1248 (holding “the public and the press
17 have the right to seek limited intervention in a criminal case to advance or argue
18 constitutional claims concerning access to court proceedings”). The importance of
19 the right to an open trial is also evident under the Sixth Amendment, which requires
20 a speedy and open trial. Even the closure of a suppression hearing over the
21 objections of the accused may constitute a violation of the rights of the accused. *See*
22 *Waller v. Georgia*, 467 U.S. 39, 40, 104 S. Ct. 2210, 2212 (1984).

23
24 Under SCR 229(1)(b), a “proceeding” means “any means any trial, hearing,
25 motion, hearing on an order to show cause or petition, or any other matter held in
26
27
28

1 open court which the public is entitled to attend.” The provisions of SCR 230 codify
2 the First Amendment right of the press to record proceedings in Nevada courts. SCR
3 230(2) provides that “...there is a presumption that all courtroom proceedings that
4 are open to the public are subject to electronic coverage.” The rule further provides
5 that, “A judge shall make particularized findings on the record when determining
6 whether electronic coverage will be allowed at a proceeding, in whole or in part.” A
7 Court is required to consider the following factors in deciding whether to permit
8 electronic coverage:
9

- 10
- 11 (a) The impact of coverage upon the right of any party to a fair trial; (b)
 - 12 The impact of coverage upon the right of privacy of any party or witness;
 - 13 (c) The impact of coverage upon the safety and well-being of any party,
 - 14 witness or juror; (d) The likelihood that coverage would distract
 - 15 participants or would detract from the dignity of the proceedings; (e) The
 - 16 adequacy of the physical facilities of the court for coverage; and (f) Any
 - 17 other factor affecting the fair administration of justice.

18 *Id.*

19 Thus, if a proceeding as defined by SCR 229(1)(b) is open to the public, and
20 a request to provide coverage is submitted in accordance with SCR 230(1), the
21 requirement for a written order on the request is triggered.

22 Where an issue is arguably moot, Courts should still consider such an issue,
23 ... “if it involves a matter of widespread importance that is capable of repetition, yet
24 evading review.” *Solid v. Eighth Judicial Dist. Court*, 133 Nev. at 120 (2017), quoting
25 *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010), citing
26 *Traffic Control Servs. v. United Rentals*, 120 Nev. 168, 171-72, 87 P.3d 1054, 1057
27 (2004).

28 ///

Analysis

1
2 Our Nevada Judges meets the standard as a “news reporter” under SCR
3 229(1)(c), as it collects, photographs, records, writes about, edits videos, reports on,
4 and publishes news that concerns matters of public interest for dissemination to the
5 public. See Exhibit 1, generally.
6

7 Our Nevada Judges has a right under the First Amendment to access criminal
8 proceedings. *Stephens Media, LLC v. Eighth Judicial Dist. Court*, 125 Nev. at 860,
9 (2016). “Public access inherently promotes public scrutiny of the judicial process,
10 which enhances both the fairness of criminal proceedings and the public confidence
11 in the criminal justice system. *Id.* citing *Press-Enterprise Co. v. Superior Court of*
12 *Cal.*, 464 U.S. 501, 104 S. Ct. 819 (1984) (primacy of presumptive right to an open
13 trial prevails over the government's interest in denying deny the right of access to
14 inhibit the disclosure of sensitive information). “The right to an open public trial is a
15 shared right of the accused and the public, the common concern being the assurance
16 of fairness.” *Id.* at 7. Trials can be closed at the behest of the government only if
17 there is an overriding interest due process interest, based on findings that closure is
18 essential to preserve higher values, and that is narrowly tailored to serve that specific
19 interest. *Id.*
20
21
22

23 According to the provisions of SCR 230, all proceedings in Nevada courts,
24 including criminal proceedings, are presumptively subject to electronic coverage by
25 entities like Our Nevada Judges. Further, if the Court does close proceedings after
26 a coverage request is made by Our Nevada Judges, it is required to make its decision
27 on the request part of the record of the proceeding, in writing. “The written order of
28

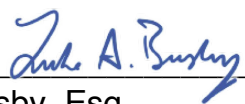
1 the judge granting or denying access by a news reporter to a proceeding shall be
2 made a part of the record of the proceedings.” See SCR 230(1). Our Nevada Judges
3 seeks limited intervention to preserve its First Amendment right to create an
4 electronic record of the proceedings in this case in accordance with its request
5 attached hereto as Exhibit 3. Further, although the October 28, 2021 hearing has
6 already transpired, Our Nevada Judges still seeks a written ruling on its October 26,
7 2021 request.

9 WHEREFORE, the Plaintiff in Intervention respectfully request that the Court
10 grant its motion to intervene and allow for electronic coverage of the proceedings in
11 this case.
12

13 ***Affirmation***

14 The undersigned does hereby affirm that this Motion filed herein does not
15 contain the social security number of any person.
16

17 **DATED** this Tuesday, November 2, 2021:

18
19 By: 
20 Luke Busby, Esq.
21 Nevada State Bar No. 10319
22 316 California Ave #82
23 Reno, NV 89509
24 775-453-0112
25 luke@lukeandrewbusbyltd.com
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit List

1. Declaration of Alexander Falconi
2. Declaration of Christine Tosti
3. November 1, 2021 Media Request

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE


I certify that on the date shown below, I caused service to be completed of a true and correct copy of the foregoing document by:

- personally delivering;
- delivery via Reno/Carson Messenger Service;
- sending via Federal Express (or other overnight delivery service);
- depositing for mailing in the U.S. mail, with sufficient postage affixed thereto; or,
- delivery via electronic means (fax, eflex, NEF, etc.) to:

Amos Stege, Esq.
Washoe County District Attorney
1 S Sierra St. # 7
Reno, NV 89501
Attorney for the Plaintiff

Thomas F. Pitaro
601 Las Vegas Blvd. South
Las Vegas, NV 89101
702-623-5185
Attorney for Defendant Stewart Handte

Roger Hilygus
Rhillygus@gmail.com
Defendant Pro Per

By: 
Luke Busby

Dated: 11/2/2021

Exhibit 1

Exhibit 1

DECLARATION OF ALEXANDER FALCONI

I, Alexander Falconi, declare that the assertions in this Declaration are true and correct, based upon my personal knowledge, and that I am competent to testify to the facts stated below:

1. I own, operate, and control and am the Administrator of Our Nevada Judges, which includes the website <https://www.ournevadajudges.com> as well as the corresponding social media profiles on Twitter and Facebook;

2. Our Nevada Judges is a media entity that provides statistical analysis of all judicial districts in Nevada and their corresponding departments, as well as electronic coverage of judicial proceedings, which is then published on youtube.com. The primary purpose of Our Nevada Judges is to provide education and information about how the judicial system in Nevada works;

3. Our Nevada Judges has been very successful, and has over 1 million views and approximately 20 million watch-time minutes, which constitutes the total number of minutes viewers have spent watching judicial proceedings published on the channels;

4. Our Nevada Judges has provided electronic coverage from the Supreme Court; the Court of Appeals; the Commission on Judicial Discipline; the First, Second, Fifth, Sixth, Eighth, Ninth, and Tenth Judicial District Courts; the Las Vegas, Reno, Boulder City, and Pahrump Justice Courts; and the Reno Municipal Court;

5. Our Nevada Judges has recorded and published a total of 223 hearing videos from the aforementioned courts;

6. Our Nevada Judges places camera equipment in a position that is not

distracting, quietly records, and swiftly packs up and departs, often without any need to communicate to judicial department staff, and has never had its right to provide electronic coverage revoked;

7. Our Nevada Judges has provided electronic coverage of sensitive matters, including child custody proceedings, adult guardianship proceedings, and dependency proceedings (involving the Department of Family Services);

8. On December 31, 2019, I submitted an SCR 230(1) media request to provide coverage of a February 18, 2020 hearing in Department 3 of the Reno Justice Court for State of Nevada vs Roger Hillygus in Case No. RCR2019-103468B;

9. On January 29, 2021, Lindsay Oberman, on behalf of Justice of the Peace Ryan Sullivan, notified me that objections to electronic coverage were made. I was not made aware of what the objections were, specifically;

10. On February 18, 2020, camera operator Glen Baker was not permitted to set up until after the objection was ruled on. Justice of the Peace Ryan Sullivan overruled the objection and pronounced orally from the bench that Mr. Baker could record, but the hearing commenced without time to allow Mr. Baker to set up and record;

11. On July 19, 2020, I submitted an SCR 230(1) media request to provide coverage of a July 22 and July 31, 2021 hearing in Department 3 of the Reno Justice Court for the State of Nevada vs Roger Hillygus;

12. On July 20, 2020, defense attorney Tom Pitaro submitted a limited objection to electronic coverage of the aforementioned hearings;

13. On July 22, 2020, deputy district attorney Amos Stege submitted an objection to electronic coverage of the aforementioned hearings;

14. On July 22, 2020, Justice of the Peace Ryan Sullivan overruled the

objection, but did not allow access to the proceeding. For a second time, electronic coverage could not be obtained;

15. On September 3, 2020, I submitted an SCR 230(1) media request to provide coverage of an October 21, 2020 hearing in Department 1 of the Second Judicial District Court in the State of Nevada vs Roger Hillygus, Case CR19-1535A and B;

16. On September 3, 2020, District Court Judge Kathleen Drakulich granted the request to provide electronic coverage of the aforementioned hearing. Judge Drakulich subsequently recused herself and the case was transferred to District Court Judge Barry Breslow;

17. On October 21, 2020, I provided electronic coverage of a 9 a.m. hearing in the State of Nevada vs Roger Hillygus. During the hearing Judge Barry Breslow ruled that an upcoming November 3, 2021 hearing would be closed to the public;

18. On October 26, 2021, I submitted an SCR 230(1) media request to provide coverage of an October 28, 2021 hearing in Department 8 of the Second Judicial District Court in the State of Nevada vs Roger Hillygus;

19. On October 27, 2021, having received no response I followed up with an email to the Judicial Executive Assistant of Chief Judge Scott Freeman. I did not receive a response from from Judge Breslow or Chief Judge Freeman;

20. On October 28, 2021, I received a phone call from my camera operator, Christine Tosti, that an Administrative Assistant for District Court Judge Barry Breslow had pulled her into a private room away from all counsel and litigants and notified her that they would open the proceeding to allow her to take notes and draft an article, but that she would not be allowed to set up her camera and record. I instructed Christine to depart as she is not a reporter;


///

///

21. I have not received a written ruling in response to our October 26, 2021 SCR 230(1) media request.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: NOVEMBER 2, 2021 in HENDERSON, Nevada

By: 

Alexander Falconi

Exhibit 2

Exhibit 2

DECLARATION OF CHRISTINE TOSTI

I, Christine Tosti, declare that the assertions in this Declaration are true and correct, based upon my personal knowledge, and that I am competent to testify to the facts stated below:

1. I am the District 3 Coordinator for Our Nevada Judges, an organization including a website <https://www.ournevadajudges.com> as well as the corresponding social media profiles on Twitter and Facebook;

2. I often assist as camera operator in other regions as needed;

3. When I record hearings, I always place camera equipment in a position that is not distracting, quietly records, and swiftly pack up and depart, often without any need to communicate to judicial department staff;

4. I have recorded proceedings in the First Judicial District Court, Reno Justice Court, and Reno Municipal Court;

5. On October 28, 2021, I arrived to record the hearing in State of Nevada vs Roger Hillygus, Case CR19-1535A and B. I was met by an Administrative Assistant ('AA') of District Court Judge Barry Breslow;

6. The AA pulled me into a jury room and asked me questions about the Supreme Court Rules. I informed the AA that I always comply with all Supreme Court Rules;

7. The AA then asked specifically if I would comply with "media pooling." I informed the AA we would of course comply with "media pooling," and I also mentioned that I did not believe there were other media present at the hearing to pool with;

///


///

8. The AA then notified me that the Judge would not allow a camera in the courtroom but that I could observe and take notes;

9. Consistent with Mr. Falconi's instructions, I notified her I was a camera operator and only provided electronic coverage. I departed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: NOVEMBER 2, 2021 in DAYTON, Nevada

By: 

Christine Tosti

Exhibit 3

Exhibit 3



Alexander Falconi <admin@ournevadajudges.com>

Media Request and Instructions on Counsel Appearing (Limited Scope)

2 messages

Alexander Falconi <admin@ournevadajudges.com>

Mon, Nov 1, 2021 at 11:47 AM

To: "Lerud, Alicia" <Alicia.Lerud@washoecourts.us>

Cc: Christine Tosti <district3@ournevadajudges.com>, Kim Bolin <district2@ournevadajudges.com>, pitaro@gmail.com, "Kuhl, Christine" <Christine.Kuhl@washoecourts.us>

Good morning Ms. Lerud:

This is a media request under SCR 230(1) for:

The hearing scheduled April 7, 2022.

The hearing scheduled April 13, 2022.

The jury trial scheduled May 2, 2022, and its entirety.

All prejudgment hearings that may arise.

All post-conviction proceedings that may arise.

I have counsel who's going to appear on our behalf to detail with some of the First Amendment issues we've been having with this particular case. I understand that once Our Nevada Judges has counsel, communication will go to the attorney; I only ask that communications on time sensitive issues (less than 48 hours notice) relating to camera access also be sent to me, as sometimes lawyers will be busy and camera operators need updates immediately. The attorney will represent us only in the capacity of obtaining coverage access with regards to Department 8 of the Second Judicial District Court; namely, District Court Judge Barry Breslow. I'll remain an unrepresented news reporter in matters before all other Departments in the Second Judicial District Court.

--

Alexander Falconi**Administrator**| *Those who fear the darkness have never seen what the light can do.*<https://www.ournevadajudges.com>

Alexander Falconi <admin@ournevadajudges.com>

Mon, Nov 1, 2021 at 12:16 PM

To: "Lerud, Alicia" <Alicia.Lerud@washoecourts.us>

Apologies, the case number is: CR19-1535A. State of Nevada vs Roger Hillygus.

[Quoted text hidden]