

Jonathan Grossman 154452
Staff Attorney
Sixth District Appellate Program
95 S. Market Street, Suite 570
San Jose CA 95113
(408) 241-6171
jonathan@sdap.org

Attorney for Donovan Wayne Johnson

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

<p>PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. DONAVAN WAYNE JOHNSON, Defendant and Appellant.</p>
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No. H049257
(Monterey
County
Superior
Court No.
18CR010752)

Motion to Unseal Portions of the Record

Pursuant to California Rules of Court, rule 8.46(f), appellant Donovan Wayne Johnson moves, through counsel, to unseal People’s Exhibit 40A (3CT 589-606), Court Exhibit 1A (3CT 607-614), People’s Exhibit 43A (3CT 615-659), Court Exhibits 1 through 3 (3CT 660-663), and the jury instructions (ACT 1-55) because they were not sealed in the superior court and there appears to be no authority or reason for them to be sealed in the record on appeal.

The motions are based on this notice, the accompanying Memorandum of Points and Authorities which follows.

MEMORANDUM OF POINTS AND AUTHORITIES
Portions of the Clerk’s Transcript Should be Unsealed.

People's Exhibit 40A is a transcript of a recorded telephone call by the complaining witness to a 911 dispatcher. (3CT 589-606.) Court Exhibit 1A is a transcript of an interview between the complaining witness and a police detective. (3CT 607-614.) People's Exhibit 43A is a transcript of a recorded telephone call between appellant at the jail with his mother. (3CT 615-659.) Court Exhibits 1 through 3 are jury questions. (3CT 660-663.) The jury instructions are in the augmented clerk's transcript. (ACT 1-55.) These items were delivered to appellate counsel in separate volumes marked "Confidential: May Not Be Examined Without A Court Order." Keeping the material confidential when it is unwarranted would require filing briefs under seal if the material is mentioned.

California Rules of Court, rule 8.46(f) provides the reviewing court authority to unseal a record when appropriate. Rule 8.46(c) states if a "record filed or lodged publicly in the trial court and not ordered sealed by that court must not be filed under seal in the reviewing court." It is presumed that material submitted to the superior court is open to the public. (Rule 2.550(c) ["Unless confidentiality is required by law, court records are presumed to be open."].) There is no indication the above-mentioned material was sealed in the superior court pursuant to rule 2.550. It does not appear that any other authority describes the above-mentioned material to be confidential or permit them to be sealed. Therefore, this Court should order that they be unsealed.

DATED: February 23, 2022

Respectfully submitted,

By: */s/ Jonathan Grossman*
Jonathan Grossman
Attorney for Appellant
Donavan Wayne Johnson