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3 Oakville, ON L6H 3M9 Canada

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5 hkhenson@cogeco.com

6 In Pro Per

7 RIVERSIDE SUPERIOUR COURT

8 APPEALS DIVISION

9 PEOPLE OF THE STATE OF CALIFORNIA)

10 Plaintiff/Respondent,)

11 vs)

12 KEITH HENSON,)

13 Defendant/Appellant)

Appellate No. 003226
Case No. HEM014371

14 **MOTION TO AUGMENT UNDER
15 RULE 12(a), MOTION FOR ORDER TO
16 "UNSEAL" AND TRANSCRIBE
17 RECORD**

18 Cal Rules of Ct 4, 12, 12.5, 243.1-243.4

19 Date:

20 Time:

21 Courtroom: Judge Waters

22 Rule 12, Augmenting and correcting the record, reads:

23 (a) Augmentation

24 (1) At any time, on motion of a party or its own motion, the reviewing court may order the record augmented to include:

25 (A) any document filed or lodged in the case in superior court; or

(B) a certified transcript--or agreed or settled statement--of oral proceedings not designated under rule 4.

(2) A party must attach to its motion a copy, if available, of any document or transcript that it wants added to the record. If the reviewing court grants the motion it may augment the record with the copy.

(3) If the party cannot attach a copy of the matter to be added, the party must identify it as required under rules 4 and 5.

1 Notice was given to the trial court on January 8, 2002 to augment the clerk's record and
2 part of reporter's transcript, under Rule 12(b)(1). (Exhibit A.)

3 Rule 12(b)(2) reads: "The clerk or reporter must comply with a notice under (1) within
4 10 days after it is filed. If the clerk or reporter fails to comply, the party may serve and file a
5 motion to augment under (a), attaching a copy of the notice."

6 It has been more than ten days. A telephone call on January 17 to the court reporter
7 Amanda Fagan, 909-955-1590, elicited no return call. Exhibit B is a letter from Ms Fagan
8 informing Mr. Leipold that the remaining portions of the reporter's transcript have been "sealed"
9 by Judge Wallerstein.

10 Rule 243.1(d) requires an express finding to seal records. Rule 243.2(b) requires a
11 motion to seal records. Neither a motion to seal nor any express finding of a reason to seal under
12 Rules 243.1(d)(1) through 243.1(d)(5) is in any court record of the case available to me.

13 Although *Faretta v. California* (1975), 422 U.S. 806, 821; 45 L.Ed.2d 562; 95 S.Ct. 2525,
14 is primarily about forcing counsel on unwilling defendants, there are extensive notes on the
15 history of law. Footnote 17 for example, "The court of Star Chamber was an efficient, somewhat
16 arbitrary arm of royal power . . ." and ". . . the Star Chamber has for centuries symbolized
17 disregard of basic individual rights."

18 Charles I made extensive use of the Court of Star Chamber to persecute dissenters,
19 including the Puritans who fled to New England. This puts the arbitrary use of judicial power at
20 the very root of the reasons the United States came to exist.

21 "Sealing" part of the transcript critical to appeal without due process is akin to a one
22 judge informal Star Chamber proceeding. According to Ms Fagan she was instructed by the
23 judge in a hallway not to transcribe motions in limine or *Voir Dire*. Her only justification of this
24 breach of the Rules was "He's the judge." (Exhibit C Henson declaration of November 17, 2001
25 and D Henson Declaration of January 22, 2002.)

1 Even if the California appeal courts apply fugitive disentitlement to my appeal, this
2 matter is not mooted. I will require the records described per Rule 12(a)(3) in the attached notice
3 filed January 8, 2002 for Canadian Immigration and Refugee Board proceedings.
4

5 Defendant/Appellant can attend a hearing by telephone if the court deems an appearance
6 in this matter necessary.
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8 Respectfully submitted,

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10 H. Keith Henson, pro se

Dated January 22, 2002

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Amanda Fagan, C.S.R.
4175 Main Street, Department F-1
Riverside, California 92501

Leipold & Shippe, LLP
Attn: Daniel A. Leipold
960-A West 17th Street
Santa Ana, California 92706

Re: People of the State of California v. Henson, Case # HEM014371

November 27, 2001

Dear Mr. Leipold,

Yesterday I received an envelope containing two letters from you, one dated October 19, 2001, and the other dated November 19, 2001. This was the first I had seen of either letter.

In the last month I have received numerous phone calls regarding the fact that the Motions in Limine were not included in the transcript of the trial in this case. Some of these phone calls were from people who would not reveal their name to me. As I told everyone who I have spoken with in regard to this case, Judge Wallerstein sealed both the jury voir dire and Motions in Limine in this case. These cannot be transcribed by me without an order from the Court.

If you have any questions regarding this matter, please call me at (909) 955-1590. This is my office telephone number, and I return all calls within two business days of receiving them. Also, please send any correspondence to the address listed above, with an attention line to "Department F-1 Court Reporter, Amanda Fagan"

Sincerely,

Amanda M. Fagan

DECLARATION OF H. KEITH HENSON

I, H. KEITH HENSON, declare:

1. The facts set forth in this declaration are known to me personally. If called to testify as to the truthfulness of the facts set forth in this declaration, I would do so.

2. About 11:50 a.m. Eastern time November 27, 2001 I spoke by phone for a few minutes with Amanda Fagan, the court reporter for the Hemet case (HEM014371).

3. When I asked her why the transcript for the morning of April 19, 2001 was missing, Amanda stated that the Judge Wallersheim informally (in the hallway) told her not to prepare the voir dire and Motions in Limine parts of the transcript.

4. When I expressed amazement that the court records could be sealed so casually, she replied, "He's the Judge."

5. I asked her if she was aware that the transcript was in conflict with the minute order of that day. She indicated she was not aware and was irritated at being asked.

6. She stated that her tapes are available and that she can transcribe this section if given an appropriate judicial order.

I declare under penalty of perjury under the laws of Ontario, Canada that the foregoing is true and correct.

Dated November 27, 2001 at 12:10 pm



H. Keith Henson

DECLARATION OF H. KEITH HENSON

I, H. KEITH HENSON, declare:

1. The facts set forth in this declaration are known to me personally. If called to testify as to the truthfulness of the facts set forth in this declaration, I would do so.

2. I have had a remarkably difficult time over several months getting the full record of the trial proceedings in case HEM014371 admitted to the appeal record.

3. This includes an amicus brief by Arnolando Lerma, a declaration by Frank Oliver and attached exhibits.

4. I have had particular difficulty in obtaining the court reporter's transcript outside of the actual trial itself. I have been told by the court reporter, Amada Fagan, these were "sealed" by Judge Wallerstein in what I believe is a violation of the rules of the court.

5. I left a message asking for a return phone call on Amanda Fagan's voice mail on January 17, 2002. I have not received a return call to this point in time.

6. I believe the transcript, especially the hearings on motions in limine, are critical to the appeal and to hearings before the Canadian Immigration and Refugee board. (The motions in limine essentially prevented presenting a defense.)

7. Further, I believe the transcript for early on April 19, 2001 is in conflict with the judge's minute order for that day. (Declaration of James Harr.)

I declare under penalty of perjury under the laws of Ontario, Canada that the foregoing is true and correct.

Dated January 22, 2002, 5 pm EST



H. KEITH HENSON

RIVERSIDE SUPERIOUR COURT

APPEALS DIVISION

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5 PEOPLE OF THE STATE OF CALIFORNIA) Appellate No. 003226
6 Plaintiff/Respondent,) Case No. HEM014371
7 vs) **[Proposed] ORDER TO AUGMENT,**
8 KEITH HENSON,) **ORDER TO UNSEAL**
9 Defendant/Appellant) **AND TRANSCRIBE RECORD**
10)
11)

12 The trial court is ordered to augment the clerk's record to include any material in the case
13 file, particularly but not limited to the amicus brief of Arnold Lerma, and the motion,
14 declaration, and exhibits filed on April 18, 2001 and admitted to the record on April 19, 2001.

15 The trial court is further ordered to unseal the omitted portions of the reporter's
16 transcript, particularly hearings on motions in limine, and that the Court reporter be ordered to
17 prepare, certify, and file the omitted portions in this court.

18 In the interest of economy, the Defendant/Appellant need only be supplied the additional
19 material.
20

21 Signed

22
23 _____ Dated _____
24

25 Judge Waters

SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
Minute Order/Judgment

Case No.: 003226 Date: 02/27/02 Dept: APP
Case Name: PEOPLE VS KEITH HENSON
Case Category: Appeal from Judgment - CRIMINAL
Hearing: Order re Dismissal of Appeal

Honorable SHARON J. WATERS, Presiding

Clerk: D.AVILA

Court Reporter: NONE

On the court's own motion the appeal in this matter is hereby
DISMISSED (see attached). Further, the motion to augment under Rule
12(a) and the request for judicial notice is hereby DENIED.

Clerk's Certificate of Mailing re: ORDER RE DISMISSAL OF APPEAL

Notice sent to DISTRICT ATTORNEY -RIVERSIDE on 2/27/02

Notice sent to MT SAN JACINTO JUDICIAL DIST - HEMET on 2/27/02

Notice Sent to KEITH HENSON

In this matter, the defendant-appellant filed a notice of appeal on August 15, 2001.

On November, 29, 2001, this court issued an order to show cause within twenty days of the date of the order as to why this appeal should not be dismissed on the grounds that the appellant is a fugitive and therefore has forfeited his right to appeal (see, e.g., *People v. Perez* (1991) 229 Cal.App.3d 302; *People v. Brych* (1988) 203 Cal.App.3d 1068; *People v. Redinger* (1880) 55 Cal. 290.

On December 19, 2001, the defendant-appellant filed his response to this court's OSC re: dismissal. On February 2, 2002, the Riverside County District Attorney's Office filed with this court a memoranda regarding this court's OSC re: dismissal.

California Rules of Court, Rule 190 states that if an appeal is irregular in any substantial respect, the superior court may, on its own motion, after written notice to the appellant, order it dismissed. After having considered the parties' filed documents, this court orders the defendant's appeal be dismissed. The defendant-appellant is a fugitive and cannot appeal while he remains a fugitive.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

- 4050 Main Street, Riverside, CA 92501
[] 4175 Main Street, Riverside, CA 92501
[] 880 N. State Street, Hemet, CA 92543
[] 41002 County Center Dr. #100 Temecula, CA 92591
[] 155 E. Hays Street, Banning, CA 92220
[] 505 S. Buena Vista Ave., Corona, CA 91720
[] 13800 Heacock #D201, Moreno Valley, CA 92553

CLERKS CERTIFICATE OF MAILING

PLAINTIFF: HILLARY DEZOTEL
VS.
DEFENDANT: H KEITH HENSON

Case No. 003381

TO: DAVIS & WOJCIK
1105 E FLORIDA AVE
HEMET CA 92543

I, clerk of the above entitled court, do hereby certify I am not a party to the within action or proceeding; that on the date below indicated, I served a copy of the attached ORDER GRANTING DISMISSAL OF APP depositing said copy enclosed in a sealed envelope with postage thereon fully prepaid in the mail at Riverside, California addressed as above.

CLERK OF THE COURT

Dated: 03/10/03

By: 
SOPHIA TOVAR

SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
Minute Order/Judgment

Case No.: 003381 Date: 03/07/03 Dept: 43
Case Name: HILLARY DEZOTEL VS H. KEITH HENSON
Case Category: Appeal from Judgment - CIVIL
Hearing: Ex Parte Hearing re RE ORDER GRANTING DISMISSAL OF APPEAL.

Honorable RONALD L TAYLOR, Presiding

Clerk: S. TOVAR

Court Reporter: NONE

SEE ATTACHED ORDER

Clerk's Certificate of Mailing re: ORDER GRANTING DISMISSAL OF APPEAL

Notice sent to DAVIS & WOJCIK on 3/10/03

Notice sent to MT SAN JACINTO JUDICIAL DIST - HEMET on 3/10/03

Notice Sent to H KEITH HENSON

RECEIVED

2003 MAR 10 10:00 AM

CASE TITLE: DEZOTELL V. HENSON, CASE NO. 003381

Plaintiffs' motion to dismiss defendant Henson's Notice of Appeal based on the disentanglement doctrine is GRANTED.

In his opposition, defendant relies on cases such as Doe v. Sup. Ct. (Polanski) (1990) 222 Cal.App.3d 1409, which held that a fugitive may defend a civil action brought against him by appearing through counsel. However, where the fugitive initiates the relevant proceeding, the disentanglement doctrine applies equally in civil and criminal cases. (Doe, supra, 222 Cal.App.3d at 1409.) Accordingly, this appeal initiated and maintained by a fugitive must be dismissed.