

IN THE SUPREME COURT OF THE STATE OF NEVADA

KRISTIN BLAISE LOBATO,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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May 07 2014 09:59 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

CASE NO: 58913

**OPPOSITION TO MOTION FOR LEAVE TO FILE APPELLANT'S
SUPPLEMENTAL REPLY BRIEF IN EXCESS OF PAGE LIMIT**

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Chief Deputy, JONATHAN E. VANBOSKERCK, and files this Opposition to Motion for Leave to File Appellant's Supplemental Reply Brief in Excess of Page Limit. This opposition is filed pursuant to NRAP Rule 27 and is based on the following memorandum and all papers and pleadings on file herein.

Dated this 7th day of May, 2014.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ Jonathan E. VanBoskerck*

JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
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Office of the Clark County District Attorney

ARGUMENT

Appellant offers nothing more substantive than conclusory complaints to justify a request to offer substantially more supplemental argument than this Court has already generously granted. Appellant's request to exceed the page limitation imposed upon the supplemental reply by this Court should be denied since it is nothing more than an attempt to get yet more argument without permitting the State the opportunity to respond.

Appellant repeatedly violated Rule 31(e) of the Nevada Rules of Appellate Procedure (NRAP) by submitting supplemental authorities that contained additional argument. (Appellant's Notice of Supplemental Authorities, filed February 21, 2014; Appellant's Second Notice of Supplemental Authorities, filed March 25, 2014). Rather than rejected these documents due to Appellant's decision to ignore the limited nature of supplemental authorities under NRAP 31(e), this Court generously permitted supplemental briefing. (Order, filed March 31, 2014). However, this Court limited both the opening and answering supplemental briefs to 10 pages and any reply to 5 pages. (Order, filed March 31, 2014).

Despite the convoluted drafting and open ended nature of the arguments offered in Appellant's Supplemental Opening Brief, the State made the hard choices about which arguments needed to be included within the 10 pages allotted

and which could be omitted as arguments that the State would merely like to include but could not. (Respondent's Supplemental Answering Brief, filed April 21, 2014). The State made these hard choices in the belief that this Court meant what it said about page limitations in the March 31, 2014, Order.

Apparently Appellant believes limitations only apply to the State. After this Court generously ignored Appellant's repeated violations of NRAP 31(e) and reopened briefing for Appellant's convenience, Appellant complains that this Court was insufficiently generous with page limitations that collectively gave Appellant approximately 1.5 pages for every 1 page given to the State in supplemental briefing. (Motion for Leave to File Appellant's Supplemental Reply Brief in Excess of Page Limit, filed May 1, 2014). Appellant's attempt to grab even greater advantage is prejudicial to the State because if granted it would allow Appellant the opportunity to offer unfettered argument without concern for the need to restrain the over zealousness of counsel while hobbling the State with severe restrictions on the arguments it was permitted to offer.

Of perhaps even greater concern is that despite this Court's generosity in overlooking Appellant's repeated and intentional violations of NRAP 31(e) and in re-opening briefing as a courtesy to Appellant, Appellant fails to comply with NRAP Rule 27 in making yet another extraordinary request of this Court. NRAP Rule 27 indicates that a motion "must state with particularity the grounds for the

motion.” Instead of explaining “with particularity” why Appellant feels the need to exceed the page limitations imposed by this Court, Appellant offers conclusory allegations of skullduggery by the State. For example, Appellant complains that she desires to address “[m]ore than a dozen material assertions that are belied by the record or otherwise misrepresent, misapprehend, or omit material facts” as well as challenge “[n]ew citations of inapplicable case law and erroneous material assumptions and omissions related to case law[.]” (Motion for Leave to File Appellant’s Supplemental Reply Brief in Excess of Page Limit, filed May 1, 2014, p. 2). Yet, Appellant’s Motion never substantiates or explains these naked allegations. Moreover, this failure is compounded by the fact that the Appellant’s Supplemental Reply Brief presented for filing offers substantial reiteration of argument offered by Appellant’s various other filings.

Basic fairness requires the denial of Appellant’s Motion for Leave to File Appellant’s Supplemental Reply Brief in Excess of Page Limit.

CONCLUSION

This Court has warned that rules exist for a reason and that violating them comes with a price:

In the words of Justice Cardozo,

Every system of laws has within it artificial devices which are deemed to promote ... forms of public good. These devices take the shape of rules or standards to which the individual though he be careless or ignorant,

must at his peril conform. If they were to be abandoned by the law whenever they had been disregarded by the litigants affected, there would be no sense in making them.

Benjamin N. Cardozo, *The Paradoxes of Legal Science* 68 (1928).

Scott E. v. State, 113 Nev. 234, 239, 931 P.2d 1370, 1373 (1997).

WHEREFORE, the State respectfully requests that Appellant's Supplemental Reply Brief in Excess of Page Limit be denied and that Appellant be directed to file a supplemental reply in compliance with the page limitations of this Court's March 31, 2014, Order.

Dated this 7th day of May, 2014.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney

BY */s/ Jonathan E. VanBoskerck*

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on May 7, 2014. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

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BY /s/ j.garcia
Employee, District Attorney's Office

JEV//jg