

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD ERNEST LAKEMAN,

Petitioner,

vs

THE STATE OF NEVADA,

Respondent.

Electronically Filed
Oct 29 2014 09:36 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

CASE NO: 64609

**MOTION TO STRIKE APPELLANT'S OPENING BRIEF AND
APPELLANT'S APPENDIX**

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his deputy, RYAN J. MACDONALD, and moves this Court to strike Appellant's Opening Brief and Appendix. This motion is filed pursuant to NRAP 27 and is based on the following memorandum and all papers and pleadings on file herein.

Dated this 29th day of October, 2014.

Respectfully submitted,

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

BY */s/ Ryan J. MacDonald*

RYAN J. MACDONALD

Deputy District Attorney

Nevada Bar #012615

Office of the Clark County District Attorney

ARGUMENT

This is an appeal from a Judgment of Conviction entered in the Eighth Judicial District Court on November 13, 2013. After a forty-nine day jury trial, Appellant Ronald Lakeman was convicted of six counts of Insurance Fraud, four counts of Performance of Act in Reckless Disregard of Persons or Property Resulting in Substantial Bodily Harm, four counts of Criminal Neglect of Patients Resulting in Substantial Bodily Harm, one count of Theft, and one count of Obtaining Money Under False Pretenses. On September 24, 2014 Appellant filed Appellant's Appendix and on October 6, 2014, Appellant filed his Opening Brief. The State's Answering Brief is currently due on November 5, 2014.

The State's review of both the Opening Brief and Appendix reveals several fatal deficiencies. Among the claims raised in his Opening Brief, Appellant contends various instances of prosecutorial misconduct and a sufficiency of the evidence argument regarding his conviction of four counts of Criminal Negligence of Patients Resulting in Bodily Harm. Despite challenging the sufficiency-of-the-evidence, Appellant's Appendix does not contain a full transcript of the jury trial. Out of a forty-nine day trial, Appellant's Appendix includes only fragments of twenty-two days. The Reporter's Transcript for Jury Trial Day 9 includes only one page of testimony. In the Opening Brief, Appellant cites to testimony by a CDC investigator and an infectious disease epidemiologist, but does not include their

testimony in its entirety. The State cannot fully respond to these contentions without at least the complete testimony of witnesses cited to by Appellant.

NRAP 30(b)(1) expressly provides as follows: “Copies of all transcripts that are necessary to the Supreme Court’s review of the issues presented on appeal shall be included in the appendix.” It is the appellant’s “responsibility to provide the materials necessary for this court’s review. ”” Fields v. State, 125 Nev. 785, 789, 220 P.3d 709, 712 (2009) (quoting Jacobs v. State, 91 Nev. 155, 158, 532 P.2d 1034, 1036 (1975)). In light of the issues raised in Appellant’s Opening Brief and the vacuity of Appellant’s Appendix, the State would not merely be required to supplement the record to respond to Appellant’s claims, it would be required to provide the transcript of the majority of the jury trial. Therefore, as the State cannot reasonably respond to Appellant’s Opening Brief because the Appendix does not contain the completeness of transcripts necessary to respond, the State respectfully requests that this Court strike the Opening Brief and the Appendix.

Dated this 29th day of October, 2014.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney

BY */s/ Ryan J. MacDonald*

RYAN J. MACDONALD
Deputy District Attorney
Nevada Bar #012615
Office of the Clark County District Attorney
Regional Justice Center

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on October 29, 2014. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ MASTO
Nevada Attorney General

FREDERICK A. SANTACROCE, ESQ
Counsel for Appellant

RYAN J. MACDONALD
Deputy District Attorney

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

RJM/Genevieve Craggs/jg