

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

SEP 08 2014

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

MATTHEW LEON MOULTRIE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Case No. 65390

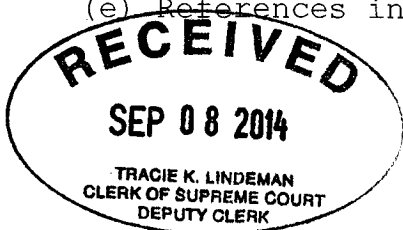
ON APPEAL FROM THE FIFTH JUDICIAL DISTRICT COURT IN AND FOR  
THE COUNTY OF ESMERALDA, THE HONORABLE ROBERT LANE PRESIDING

RESPONSE TO MOTION TO STRIKE

Plaintiff STATE OF NEVADA, by and through its attorney of  
record, Robert E. Glennen III, Esmeralda County District  
Attorney, hereby files the following Opposition to Appellant's  
Motion to Strike filed on or about August 22, 2014.

Appellant requests that this court strike three portions of  
Respondent's Fast Track Response. This Motion is made based upon  
Rule 28(e) of the Nevada Rule of Appellate Procedure assertedly  
violated by Respondent, without quotation thereof. NRAP 28(e)  
states, in pertinent part:

(e) References in Briefs to the Record.



14-29679

(1) Every assertion in briefs regarding matters in the record shall be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is to be found. A party referring to evidence whose admissibility is in controversy must cite the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

First, Appellant moves to strike portions of page 4 of the Response for FAILURE TO CITE TO APPELLANT's Fast Track Brief regarding Appellant's own arguments! (Emphasis added). In its Fast Track Brief, page 9, Appellant makes arguments which Respondent has characterized as 'prejudice' arguments, without any citation to the record on that page. This court has that document and its arguments, and failure to specifically cite the page of the opposing party's briefs where his argument (not fact) was located is not a matter "in the Appendix", and this seems an overly formal ticky tack argument.

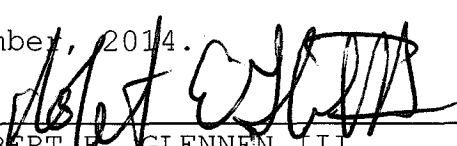
Second, Appellant moves to strike page 6 of the Response and its referral to a legal decision by the Fifth Judicial District Court. This District Court order is part of Appellant's Appendix at page 82. It is cited by Appellant on at least 2 occasions, pages 2 and 6. This legal decision was not specifically cited by Respondent, but is not a testimonial fact normally contained in the Appendix, and is cited by Appellant on 2 occasions. Again, the argument is overly technical and has not possibly led to extra inconvenience to this Court in finding the cited page. In addition, on Page 6 through 7, assertions of fact are made

without direct citation by Respondent. However, Respondent cited to the record as to almost identical factual statements concerning the 'hearsay issue' in its own Statement of Facts, found at page 2 of the Response. There, the Justice Court decision is cited to Page 24 and 56 of the appendix. The consent by Defendant is shown on page 22 of the appendix. The specific citation in the legal argument is not found, but is found within page 2 of the Response.

Finally, Appellant requests striking assertions on Page 8 of the Response. These same statements in almost identical form, are shown with citation to the appendix on Page 2 of the Response. The Motion to Amend and Justice Court decision are shown located on Page 56 of the appendix, and the District Court decision, Appx. 82, are shown in the record and specifically cited by Appellant twice.

Based upon the foregoing, Appellant's Motion to Strike should be denied in its entirety.

SUBMITTED this 3rd day of September, 2014.

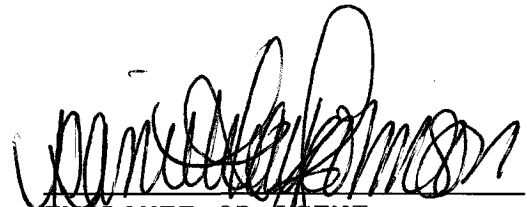
  
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ROBERT E. GLENNEN III  
Nev. Bar No. 002143  
ESMERALDA DISTRICT ATTORNEY  
P.O. Box 339  
Goldfield, NV 89013  
Attorney for Respondent

**CERTIFICATE OF SERVICE BY MAIL**

I HEREBY CERTIFY that I am an agent or employee of the above attorney, and that on the 4th day of September, 2014, I served the above and foregoing RESPONSE TO MOTION TO STRIKE by depositing a copy in the United States mails, postage prepaid, addressed to the following persons or parties at their last known addresses as indicated below:

Chris Arabia, Esq.  
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601 S. Tenth Street, #107  
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Attorney For Defendant

Catherine Cortez-Masto, Esq.  
Nevada Attorney General  
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Attorney for Plaintiff



EMPLOYEE OR AGENT