

ARGUMENT

This Court should reject Appellant's inappropriate attempt to contaminate the record of this case with irrelevant and unrelated matters.¹

Supreme Court Rule (SCR) 250(6)(c) is clear as to the content of the record on appeal:

On direct appeal from a judgment of conviction and sentence of death, the clerk of the district court shall transmit as the record on appeal a certified copy of the complete record made and considered in the court below. The complete record shall include, without limitation, certified copies of: any criminal complaint, indictment or information (including any amendments); all papers, motions, petitions, oppositions, responses, replies, orders, opinions, and documentary evidence or exhibits filed in the lower courts; transcripts of all lower court proceedings; all jury instructions offered, excluded or given; all verdicts or findings of fact, conclusions of law, and decisions; the lower court minutes; any notice of appeal. No physical evidence or exhibits shall be transmitted absent an order of the supreme court. *The record shall be assembled, paginated, and indexed in the same manner as an appendix to the briefs under NRAP 30(c).* ...

(Emphasis added).

NRAP 30(c)(1) mandates that “[a]ll documents included in the appendix ... shall bear the file-stamp of the district court clerk, clearly showing the date the document was filed *in the proceeding below.*” (Emphasis added). In accordance with NRAP 30(c)(1), this Court has repeatedly stated that “[w]e have no power to look outside of the record of a case. We have consistently recognized this

¹ Respondent has no objection to Appellant's request for a 60 day extension in which to file the Opening Brief.

limitation.” Carson Ready Mix, Inc. v. First National Bank of Nevada, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) (quotation marks and internal citations omitted). As such, this Court must decline Appellant’s attempt to adulterate this record with documents from proceedings related to his co-defendants.

Even if this Court were willing to ignore the clear mandates of its own rules and consider taking judicial notice of the minutes of the co-defendant’s proceedings and the transcript portions from one co-defendant’s trial, there is simply no basis to do so. This Court may take judicial notice of facts that may be verified from a reliable source such that their accuracy may not be reasonably questioned. NRS 147.130(2); Mack v. Estate of Mack, 125 Nev. 80, 91, 206 P.3d 98, 106 (2006). Whether this Court will take judicial notice depends upon the “closeness of the relationship between the two cases.” Id. at 91-92, 206 P.3d at 106. Here, the only closeness is that the documents Appellant desires to import into this record are related to the proceedings of his co-defendants. Appellant has failed to demonstrate a close relationship between his case and that of his co-defendants as they relate to the specific information he wishes to incorporate.

Moreover, there is no need to borrow from outside this case because the record contains sufficient information to address Appellant’s concerns. Appellant wants to graft on to this record “a complete copy of the minutes for all three defendants[.]” (Motion to Supplement the Record on Appeal and Motion for

Extension of Time to File Opening Brief, filed June 3, 2015, p. 3). Appellant contends that the “complete minutes are necessary to provide for citation to the record for the procedural history of the case, which includes resolution of the charges against Mr. Zapata and the proceedings which resulted in Mr. Rios’s acquittal.” Id. However, the record in this case includes that Appellant, Zapata and Rios all faced the same charges. 13 Record on Appeal (RA) 2855. Zapata testified that he pled guilty and discussed his offenses and the negotiation of those charges. 10 RA 2035-36, 2045-47. Zapata’s guilty plea agreement and agreement to testify were admitted as State’s Exhibits 97 and 98. 10 RA 2035-36. Zapata also testified about the possible punishments and the sentence he actually received. 10 RA 2036-37, 2047-50. As to Rios, this record indicates that he was acquitted. 13 RA 2850, 2855.

Appellant also wants to transplant “the testimony of Mr. Zapata which was given on June 13, 2012, in Mr. Rios’s trial.” (Motion to Supplement the Record on Appeal and Motion for Extension of Time to File Opening Brief, filed June 3, 2015, p. 3). Rather than squarely address why this document should be part of this record, Appellant cryptically offers an explanation that is notable only for an absolute lack of clarity: “The testimony of Mr. Zapata from Mr. Rios’s trial is necessary to place a context on critical rulings concerning Mr. Zapata’s testimony during Mr. Jeremias’s trial.” Id. What rulings? How does Zapata’s testimony

place those rulings in context? What is the nature of the alleged context? How is any of it relevant to Appellant's appeal? Appellant's lack of candor prevents this Court from determining whether judicial notice can be taken of Zapata's testimony at Rios' trial and as such his request to ignore the clear rules of this Court should be denied. Regardless, this record demonstrates that Zapata was extensively examined about his testimony at Rios' trial. 10 RA 2051, 2053, 2056-66, 2077-78, 2084-85, 2104-06, 2110-12.

CONCLUSION

WHEREFORE, the State respectfully requests that this Court deny Appellant's Motion to Supplement the Record on Appeal and Motion for Extension of Time to File Opening Brief, filed June 3, 2015.

Dated this 5th day of June, 2015.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on June 5, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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JEV//ed