

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

MICHAEL JOSEPH JEFFRIES,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Electronically Filed  
Jul 05 2016 04:04 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

CASE NO: 68338

**OPPOSITION TO MOTION FOR IMPOSITION OF SANCTIONS**

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Chief Deputy, STEVEN S. OWENS, and files this Opposition to Motion for Imposition Sanctions. This opposition is based on the following memorandum, declaration of counsel and all papers and pleadings on file herein.

Dated this 5<sup>th</sup> day of July, 2016.

Respectfully submitted,

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

BY /s/ Steven S. Owens  
STEVEN S. OWENS  
Chief Deputy District Attorney  
Nevada Bar #004352  
Office of the Clark County District Attorney

## MEMORANDUM

This is appeal from a judgment of conviction for 2<sup>nd</sup> Murder With Deadly Weapon by jury verdict. Appellant now seeks sanctions against the State for taking approximately four months' time to file its Answering Brief and for the State's failure to file a Respondent's Appendix to include documents omitted from Appellant's Appendix. The motion should be denied for the following reasons.

The Notice of Appeal in this matter was filed on June 29, 2015. After obtaining two extensions of time, Appellant finally filed his Opening Brief on February 11, 2016. This was approximately 5 months after all transcripts were filed and were made available to counsel on September 14, 2015. Both of Appellant's extensions were sought at least in part upon grounds of counsel's caseload in other matters, which this Court has repeatedly admonished is no excuse. See Varnum v. Grady, 90 Nev. 374, 376, 528 P.2d 1027, 1029 (1974). The State also sought extensions of time, for valid reasons other than its caseload, and submitted its Answering Brief to the Court for filing on June 13, 2016. This was approximately 4 months after the Opening Brief was filed, such that the State took less time than Appellant to file its brief. Any inference of intentional delay by the State is belied by these facts alone.

In its third motion for extension of time, the State represented that it needed to prepare a Respondent's Appendix. Twelve days later when the State submitted

its Answering Brief for filing, no Respondent's Appendix was included. According to Appellant, the State's representations "were therefore, by definition, made in bad faith, in order to procure the undue delay of this appeal." Motion, p. 8. Such reasoning is flawed. In a similar situation, this Court rejected the argument that since the district attorney was later able to obtain a True Bill without a missing witness's testimony, the witness was never really essential and the *Bustos* declaration was necessarily false. Phillips v. Sheriff, Clark County, 93 Nev. 309, 311, 565 P.2d 330, 331 (1977) ("That the district attorney was able to obtain a True Bill from the grand jury without the testimony of the absent witness does not, by itself, establish that such witness's testimony was unnecessary at the time of the preliminary examination"). In order to show bad faith, Appellant must demonstrate something more than mere change in circumstances.

In truth, the law clerk assigned to draft the Answering Brief in this matter discovered that the Defendant's motion for new trial filed on April 2, 2015, and the State's opposition filed on April 10, 2015, had not been included in the Appellant's Appendix despite the issue appearing prominently in the Opening Brief. Exhibit 1. Accordingly, this prompted the representation that the State would be filing a Respondent's Appendix to cure Appellant's deficiency and the law clerk's draft of the Answering Brief included references to these two documents. *Id.* However, upon further consideration, the reviewing attorney determined that the adequacy of the

appendix is the responsibility of the Appellant, not Respondent, and the two documents were not essential to the State's argument. *Id.* As a result, the Respondent's Appendix and all references to it were omitted from the final version of the State's Answering Brief submitted for filing. *Id.*

Appellant seeks to strike the Answering Brief, preclude the State from oral argument, and deem the State to have confessed error. But the law does not support the imposition of such sanctions in the circumstances of this case. Appellant's case law is all premised upon an omitted issue in a parties' brief or the failure to file a brief at all. Polk v. State, 126 Nev. \_\_\_, 233 P.3d 357 (2010); County Comm'rs v. Las Vegas Discount Golf, 110 Nev. 567, 875 P.2d 1045 (1994). Likewise, NRAP 28(j) dictates the sanctions for an inadequate or noncompliant brief, while NRAP 31(d)(2) prescribes the sanction for a parties' failure to file any brief at all. No such omission or failure to file a brief exists in the present case. The State's Answering Brief is on file. None of Appellant's authority applies to the present situation. While certainly the Court has authority to sanction the parties appearing before it in appropriate circumstances, Appellant has fallen woefully short of establishing a false representation or bad faith.

WHEREFORE, the State respectfully requests that the Motion for Imposition of Sanctions be denied.

Dated this 5<sup>th</sup> day of July, 2016.

Respectfully submitted,

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

BY */s/ Steven S. Owens*

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STEVEN S. OWENS  
Chief Deputy District Attorney  
Nevada Bar #004352  
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## **CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on this 5<sup>th</sup> day of July, 2016. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT  
Nevada Attorney General

VINCENT SAVARESE, III, ESQ.  
Counsel for Appellant

STEVEN S. OWENS  
Chief Deputy District Attorney

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

SSO/Ekaterina Derjavina/jg

EXHIBIT 1

EXHIBIT 1

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STEVEN S. OWENS, being first duly sworn, deposes and says:


That he is a Chief Deputy District Attorney with the Office of the Clark County District Attorney;

The law clerk assigned to draft the Answering Brief in this matter discovered that the Defendant's motion for new trial filed on April 2, 2015, and the State's opposition filed on April 10, 2015, had not been included in the Appellant's Appendix despite the issue appearing prominently in the Opening Brief.

However, upon further consideration, the reviewing attorney determined that the adequacy of the appendix is the responsibility of the Appellant, not Respondent, and the two documents were not essential to the State's argument.

The State has made all representations and submitted its Answering Brief in good faith and without any unnecessary delay.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

  
**STEVEN S. OWENS**  
**Chief Deputy District Attorney**  
**Nevada Bar #004352**