

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS PIMENTEL, III,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

)
)
)
)
)
)
)

Electronically Filed
Aug 16 2016 01:44 p.m.
Tracie K. Lindeman
Clerk of Supreme Court
Case No. 68710

MOTION TO STRIKE

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Chief Deputy, JONATHAN E. VANBOSKERCK, and files this Motion to Strike. This motion is filed pursuant to NRAP Rule 27 and is based on the following memorandum and all papers and pleadings on file herein.

Dated this 16th day of August, 2016.

Respectfully submitted,

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

BY */s/ Jonathan E. VanBoskerck*

JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
Office of the Clark County District Attorney
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2750

ARGUMENT

Appellant knowingly offers citation to unpublished authority in intentional violation of this Court's rules and invites this Court to look beyond the record to adjudicate questions of fact, something this Court cannot do. This Court should remedy Appellant's intentional violations by striking the offending portions of his Appellant's Reply Brief (ARB).

Citation to Unpublished Authority

Rule 36(c)(3) of the Nevada Rules of Appellate Procedure (NRAP) precludes citation to dispositional orders published prior to January 1, 2016. Despite this clear and mandatory rule, Appellant offers citation to an unpublished dispositional order from 2012. ARB, p. 3-4. Appellant claims he was not citing the case as precedent. Id. at 4, footnote 2. However, Appellant never explains what he is citing the case for if not its allegedly persuasive value as a prior statement by this Court. Counsel for Appellant knew that it was inappropriate to cite the case but decided to do so anyway because he believed it supported his position. Such skullduggery cannot go unchecked. This Court cannot allow the intentional violation of its rules to stand or it aids and abets the devaluation of its own rules and encourages litigants and their attorneys to ignore them.

///

///

Facts Outside the Record

The rules of this Court require that assertions of fact be sourced to the record. NRAP 28(e)(1); Thomas v. State, 120 Nev. 37, 43, 83 P.3d 818, 822 (2004); State v. Haberstroh, 119 Nev. 173, 186, 69 P.3d 676, 685 (2003); Rodriguez v. State, 117 Nev. 800, 811-12, 32 P.3d 773, 780-81 (2001); State v. Greenwald, 109 Nev. 808, 811, footnote 3, 858 P.2d 36, 38, footnote 3 (1993). “[T]he trial court record consists of the papers and exhibits filed in the district court, the transcript of the proceedings, if any, the district court minutes, and the docket entries made by the district court clerk.” NRAP 10(a). 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.” This Court has repeatedly stated that appellate courts “have no power to look outside of the record of a case.” 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).

Appellant twice asks this Court to rely upon facts outside this record in order to adjudicate factual disputes. He argues that the lower court likely invoked the exclusionary rule off the record and that defense proffered an objection complete with a particular statutory basis during an unrecorded bench conference. ARB, p. 15, 16. Both of these assertions demand that this Court make assumptions based

upon allegations of fact not contained in this record. Demanding that this Court knowingly violate its own rules is absolutely inappropriate. As such, this Court should strike Appellant's allegations of fact that are not sourced to this record.

CONCLUSION

This Court has warned that rules exist for a reason and that they cannot be ignored when it is convenient for a litigant to do so:

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 this Court strike citation to the unpublished authority found at pages 3-4 of Appellant's Reply Brief as well as reference to alleged facts outside the record relating to the invocation of the exclusionary rule and an objection at an unrecorded bench conference found at pages 15 and 16 of Appellant's Reply Brief.

Dated this 16th day of August, 2016.

Respectfully submitted,

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

BY */s/ Jonathan E. VanBoskerck*

JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155
(702) 671-2750

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on August 16, 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

WILLIAM M. WATERS
Deputy Public Defender

JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney

BY /s/ E.Davis
Employee, District Attorney's Office

JEV//ed