

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

2                   LYUDMYLA ABID,  
3                                   Appellant,

Supreme Court No. .69995  
District Court Case No. D-10-424830-Z  
**Electronically Filed**  
Oct 04 2016 11:13 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

4  
5                   v.

6                   SEAN ABID,  
7                                   Respondent.

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9  
10                   **OPPOSITION TO MOTION TO STRIKE APPELLANT’S REPLY TO FAST**  
11                                   **TRACK RESPONSE**

12                   COMES NOW, Appellant, LYUDMYLA ABID (“Lyuda”), by and through her  
13 attorneys, Radford J. Smith, Esq. and Garima Varshney, Esq. of Radford J. Smith,  
14 Chartered and submits the following points and authorities in Opposition to Respondent,  
15 SEAN ABID’s (“Sean”) Motion to Strike Appellant’s Reply to Fast Track Response  
16 (“Motion to Strike”) and requests that Sean’s Motion to Strike be denied.

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18  
19                   Dated this 4<sup>th</sup> day of October, 2016.

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21                   RADFORD J. SMITH, CHARTERED

22                   *Garima Varshney*  
23                   RADFORD J. SMITH, ESQ.  
24                   Nevada State Bar No. 002791  
25                   GARIMA VARSHNEY, ESQ.  
26                   Nevada State Bar No. 011878  
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28                   Henderson, Nevada 89074  
                  Attorney for Appellant

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I.

POINTS AND AUTHORITIES

The Court's order granting Appellant's request to file a Reply to Respondent's Brief stated that the Reply brief should address Respondent's argument that the district court should have admitted the tape recordings that the expert witness relied on. Appellant's Reply was limited to addressing specifically why the district court could not have admitted the tape recordings. Appellant's Reply has three (3) sections. Each of those sections are discussed below –

***1. The Court's Findings Rely Solely on the Interview Report of Dr. Holland and the Inadmissible Evidence in It, and did not Consider the Direct Evidence Presented at Trial***

One of the fundamental issues in this case is the use of inadmissible evidence by an expert. Respondent argued that the district court should have admitted the tape recordings. In Appellant's section 1, Appellant addresses why the district court could not have admitted the tapes.

Appellant addresses that though the district court found that Respondent had not shown a basis to apply the vicarious consent doctrine, the content of the illegally obtained tapes would be permitted (in violation of the express provisions of NRS 200.650) to be disseminated to an expert, quoted by the expert in a written report that was admitted into evidence, and testified about by the expert. The district court ruling arises from the notion that an expert may rely upon "anything," even inadmissible evidence. Such a ruling

1 would encourage others to present surreptitiously and illegally obtained recordings to  
2 experts with the knowledge that they could be used for advantage in a custody action (or  
3 any lawsuit). Such a ruling undermines a basic constitutional right of privacy ensured by  
4 Nevada statute.

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7 **2. *Neither Federal or Nevada Law Allows the Use of Illegally Obtained Tapes in any***  
8 ***Matter***

9 Appellant's section 2 addresses the prohibition of the use of inadmissible evidence  
10 in both Federal and Nevada law.

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12 **3. *The District Court Failed to Consider the Parties' Agreement of Joint Custody***

13 Appellant's section 3 was included only to cite a case that was decided since the  
14 filing of Appellant's Brief.

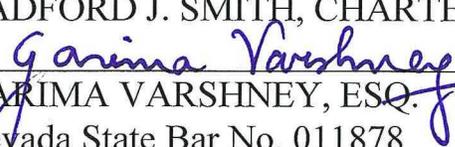
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16 **II.**

17 **CONCLUSION**

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19 For reasons set forth herein, Appellant respectfully requests that Respondent's  
20 Motion to Strike Reply to Fast Track Response be denied and Appellant's Reply to the  
21 Fast Track Response be reviewed by the Court.

22  
23 Dated this 4<sup>th</sup> day of October, 2016.

24 RADFORD J. SMITH, CHARTERED

25   
26 GARIMA VARSHNEY, ESQ.

27 Nevada State Bar No. 011878  
28 2470 St. Rose Parkway, Suite 206

Henderson, Nevada 89074

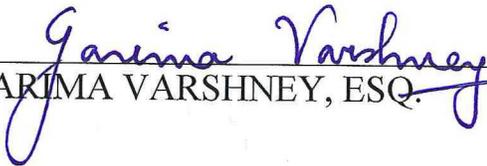
*Attorney for Appellant*

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## CERTIFICATE OF SERVICE

I certify that on the 4<sup>th</sup> day of October, 2016, I served a copy of this  
OPPOSITION TO MOTION TO STRIKE APPELLANT'S REPLY TO FAST TRACK  
RESPONSE upon all counsel of record by mailing it by first class mail with sufficient  
postage prepaid to the following address:

John Jones, Esq.  
10777 W. Twain Ave., #300  
Las Vegas, Nevada 89135  
Attorney for Respondent

  
GARIMA VARSHNEY, ESQ.