

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAMON DORADO,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court

CASE NO: 79556

**MOTION TO STRIKE PORTIONS OF APPELLANT'S
AMENDED INDEX TO SUPPLEMENTAL APPENDIX**

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Chief Deputy, KAREN MISHLER, and moves this Court to strike portions of Appellant's Amended Index to Supplemental Appendix. This motion is based on the following memorandum, declaration of counsel and all papers and pleadings on file herein.

Dated this 2nd day of December, 2021.

Respectfully submitted,

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

BY /s/ Karen Mishler
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #013730
Office of the Clark County District Attorney

MEMORANDUM

On August 17, 2020, this Court remanded this case to the district court for the limited purpose of conducting an evidentiary hearing regarding the merits of Appellant's motion to dismiss the case for pre-indictment delay. (Order of Limited Remand, Aug. 17, 2020). After the evidentiary hearing was conducted, this Court granted Appellant permission to file a supplemental opening brief as well as a supplemental appendix containing the transcripts of the evidentiary hearing conducted in the district court. (Order Granting Motion, Jan. 25, 2021).

On February 24, 2021, Appellant filed an Amended Supplemental Appendix and an Amended Index to Supplemental Appendix. In addition to the transcripts of the proceedings held in the district court, and the district court's order denying Appellant's motion to dismiss, Appellant's supplemental appendix included numerous documents that were not admitted in the district court proceedings, and thus are not properly part of the record before this Court. This Court should reject Appellant's attempt to entice it into considering documents outside the record of the proceeding below.

“[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 Rule 10(a). Further, 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 “[w]e have no power to look outside of the record of a case. We have consistently recognized this 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).

Appellant’s Supplemental Appendix contains documents that do not “bear the file-stamp of the district court clerk, clearly showing the date the document was filed in the proceeding below.” NRAP 30(c)(1). Specifically, pages 06-39 of Appellant’s Supplemental Appendix violate NRAP 10(a) and NRAP 30(c)(1). While the documents contained in pages 6-13 and page 17 do appear to accurately represent documents that were admitted during the evidentiary hearing as Exhibits A and C, respectively, they lack the file-stamp of the district court clerk. Most concerning, as Appellant acknowledges in his Amended Index, the document he has titled “Exhibit B”, found on page 15 of the Supplemental Appendix, is a document Appellant attempted to have admitted at the evidentiary hearing, but which the district court declined to admit. Supplemental Appendix, at 86-89. The documents contained in pages 21-39 of the Supplemental Appendix were never admitted or offered as exhibits at the evidentiary hearing. As these documents and arguments violate the clear and unambiguous rules of this Court, they should be struck.

Appellant should not be permitted to supplement the record below in a blatant violation of this Court's rules.

Counsel for Respondent apologizes to this Court and its staff for not catching Appellant's wrongdoing sooner. The blunt truth is that when Appellant's Supplemental Appendix was served counsel for Respondent reviewed it quickly and simply missed Appellant's violation of the rules. Only upon a more thorough review in preparation for oral argument did undersigned counsel notice Appellant's intentional violation of the rules.

However, Appellant should never have blatantly violated the rules of this Court. Respondent and this Court are entitled to assume that litigants will not knowingly violate the rules of this Court. Indeed, "[t]his court expects all appeals to be pursued with high standards of diligence, professionalism, and competence.

This Court has warned that rules exist for a reason and violating them comes with a price:

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 that this Court strike pages 06-39 of Appellant's Supplemental Appendix for violating NRAP 10(a) and 30(c)(1).

Dated this 2nd day of December, 2021.

Respectfully submitted,

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

BY */s/ Karen Mishler*

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on December 2, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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Nevada Attorney General

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Chief Deputy District Attorney

BY /s/ E. Davis

Employee,
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KM//ed