

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

MAR 20 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

DALE EDWARD FLANAGAN

Appellant,

v.

Case No. 40232

THE STATE OF NEVADA,

Respondent.

**STATES OPPOSITION TO APPELLANT'S MOTION FOR
LEAVE TO FILE A SUPPLEMENTAL BRIEF AND ISSUE**

POINTS AND AUTHORITIES

Briefing in this case was initially concluded with the filing of Appellant's Reply Brief on or about January 25, 2006. Thereafter, because the case had not yet been decided, Petitioner filed a Supplemental Brief on or about December 20, 2006, supplementing his McConnell issue with new authority. Petitioner now seeks once again to file supplemental authorities, but this time attempts to raise an entirely new issue based on Sharma which was not previously briefed in the case. Petitioner seeks not just to add Sharma as a new Claim 37, but also includes supplemental language that pertains to Claims 1C, 4, 10, 12, 22 and 25. Repeated filing of supplemental points and authorities in this manner will forever forestall resolution of this appeal and may do damage to this Court's important procedural safeguards.

Nevada Rule of Appellate Procedure 31(d) provides that parties may supplement their briefs with new authorities, but may not raise new points or issues. The likely rationale behind this rule is to prevent appellants from sidestepping the rules regarding the length of briefs by simply filing an initial brief, then filing supplemental briefs with additional claims and issues. NRAP 31(d) also functions to

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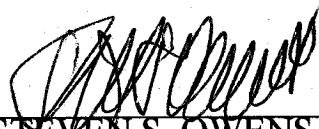
1 encourage appellants to select their strongest claims to the court rather than raise
2 every non-frivolous claim. See Hernandez v. State, 117 Nev. 463, 24 P.3d 767
3 (2001). As this Court has explained, "A reasonable limit on the length of appellate
4 briefs is also necessary for the functioning of this court and is consistent with due
5 process." Id. at 467. The proposed language to amend Claims 1C, 4, 10, 12, 22 and
6 25 does not even include "new authority" but simply adds more factual argument.

7 By addressing Sharma in a new Claim 37 for the first time on appeal, this Court
8 runs dangerously afoul of its own rules and gives ammunition to critics who seek to
9 undermine this Court's application of the procedural bars. See State v. District Court
10 (Riker), 121 Nev. 225, 112 P.3d 1070 (2005); Pellegrini v. State, 117 Nev. 860, 34
11 P.3d 519 (2001). Additionally, this Court has a policy of declining to review factual
12 issues that have neither been raised nor determined before a district judge. Gibbons
13 supra, 97 Nev. 520 at 523, citing Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 623
14 P.2d 981 (1981). To do otherwise invites conjecture upon an incomplete factual
15 record concerning the explanations and strategy decisions of counsel.

16 WHEREFORE, the State respectfully requests this court to deny the Appellant's
17 Motion for Leave to File a Supplemental Brief and Issue.

18 Dated March 14, 2007.

19
20 BY


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

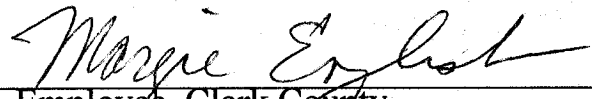
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1 **CERTIFICATE OF MAILING**

2 I hereby certify and affirm that I mailed a copy of the foregoing States
3 Opposition To Appellant's Motion For Leave To File A Supplemental Brief and Issue
4 to the attorneys of record listed below on March 14, 2007.

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