

Franny A. Forsman
Bar No. 14
P.O. Box 43401
Las Vegas, NV 89116
(702) 501-8728
f.forsman@cox.net

Electronically Filed
Jul 11 2014 02:40 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

Attorney for Appellant Dipak Kantilal Desai

IN THE SUPREME COURT OF THE STATE OF NEVADA

DIPAK KANTILAL DESAI)	
Appellant,)	Supreme Court No. 64591
)	
vs.)	
)	
THE STATE OF NEVADA,)	
Respondent)	
_____)	

Second Motion for Extension of Time to File Opening Brief

Appellant Dipak Kantilal Desai, by and through counsel, Franny A. Forsman, moves for an extension of time within which to file his Opening Brief. This motion is made pursuant to NRAP 31(b)(3). The Opening Brief is currently due on July 21, 2014. One previous extension has been granted. The Opening Brief was originally due on April 11, 2014. On April 21, 2014, at the request of Appellant, this court extended the time for filing the Opening Brief to July 21,

2014. The Motion for Extension was denied in part in that Appellant requested an extension to August 9, 2014.

Appellant seeks an extension of time of 43 days which would extend the due date to September 2, 2014.¹

Extraordinary Circumstances and Extreme Need Warrant an Extension

Extraordinary circumstances exist in this case which require an unusual and extreme need for additional time to adequately prepare the Opening Brief. The prosecution proceeded on unique, and alternative, theories of culpability. The original indictment was amended three times during the four years of pretrial proceedings. The indictment alleged 28 counts ranging from Insurance Fraud to Second Degree Murder. Prior to the start of trial, over 20 substantive Pretrial Motions were filed by the defense and the State. Four extraordinary proceedings were initiated in this court. There were 39 pretrial hearings ranging from discovery and evidentiary disputes to challenges to the indictment to competency of the defendant to stand trial. 548 exhibits were offered by the parties. The transcripts encompass over 12,000 pages. There were approximately 100 bench conferences which were neither recorded nor transcribed many of which involved

¹Co-defendant in this trial, Ronald Lakeman, is the Appellant in Appeal No. 64609. The Opening Brief in that appeal is due September 25, 2014.

admissibility of evidence.

The legal theories employed in this case are unusual and complex. Numerous issues were raised during pretrial proceedings and at trial which are issues of first impression in Nevada and, in some instances, of first impression nationally. The time needed for legal research and analysis is, accordingly, extraordinarily lengthy. The facts in the case are also complex due to the numerous witnesses and the alternative theories of proof utilized by the State. As a result, preparation of a Statement of Facts which will be understandable and clear to the reader requires an extraordinary amount of time for both writing and editing.

Counsel for Appellant Has Been Diligent

The transcripts of the trial were available on March 17, 2014. Appellate counsel employed a paralegal who began immediately to summarize the voluminous transcripts. While summarization of the transcripts has permitted appellate counsel to more efficiently review and analyze the transcripts, no effective appellate attorney would rely on summarizations alone and thus counsel must read the complete transcript of a number of witnesses, legal arguments and evidentiary hearings. Although working almost full time on this case, the paralegal completed the summaries on July 7, 2014.

Counsel for Appellant has been working almost full-time on this case since the receipt of the transcripts but that amount of time has not been sufficient to allow for preparation of the Opening Brief. Assembling the record has required that counsel review the exhibits stored in the Evidence Vault as the transcripts revealed, for instance, that some exhibits were amended during the testimony of a witness and after the provision of the original exhibit in discovery. Additionally, a number of critical exhibits in the case involve charts and summaries of voluminous documents which were impossible to understand based on a reading of the transcript and required extensive consultation with trial counsel. Sometimes the substance of the numerous unrecorded bench conferences can be ascertained from the transcript but some, which appeared to be material, depended on a review of notes of trial counsel and observers to determine what may have occurred. In this case, numerous exhibits were referenced by witnesses, including scientific articles and reports, which were either admitted or were marked as “court’s exhibits.” Those articles must be reviewed by appellate counsel in addition to the testimony.

Appellant has been sentenced to life in prison. The issues which must be presented to this court are voluminous and complex, both factually and legally. Some of those issues will be issues of first impression. Counsel for Appellant has

worked diligently to try to meet the due date for the brief but simply cannot present an adequate Opening Brief without the additional time.

Dated this 11th day of July, 2014.

FRANNY A. FORSMAN

/s/ Franny A. Forsman
Franny A. Forsman
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on July 11, 2014. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Steven S. Owens, Chief Deputy District Attorney
Clark County

Catherine Cortez-Masto, Attorney General
State of Nevada

Dated this 11th day of July, 2014

FRANNY A. FORSMAN

/s/ Franny A. Forsman
Franny A. Forsman.
Bar No. 14
P.O. Box 43401
Las Vegas, NV 89116
(702) 501-8728