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ORIGINAL

2nd Civ. No. B229748

IN THE COURT OF APPEAL OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

ANNETTE B. [REDACTED],

Defendant and Appellant,

COURT OF APPEAL - SECOND DIST.

FILED

MAY 10 2011

JOSEPH A. LANE Clerk

D. LEE Deputy Clerk

**RESPONDENT'S MOTION TO AUGMENT RECORD ON APPEAL;
DECLARATION OF CAROLINE K. CASTILLO IN SUPPORT
THEREOF**

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THE PEOPLE OF THE STATE OF CALIFORNIA

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MEMORANDUM

Pursuant to Rule 8.155, (a)(1)(A), of the California Rules of Court (“CRC”), Respondent, The People of The State of California, (“Respondent”), asks that this Court augment the record on appeal with the Additional Clerk’s Transcript from the trial court. (A true and correct copy of which is attached as Exhibit A to the attached Declaration of Caroline K. Castillo). Appellant references documents from the Additional Clerk’s Transcript in arguments made in her Appellant’s Opening Brief after failing to make it part of the record on appeal. In order to respond to Appellant’s arguments and support its own contentions relative thereto by referencing documents contained in the Additional Clerk’s Transcript, it is necessary that that document be added to the record on appeal.

CRC, Rule 8.155 (a)(1)(A) provides in pertinent part that, on motion of a party, the appellate court may order the record augmented to include “[a]ny document filed or lodged in the case in superior court...” As detailed below in the Declaration of Caroline K. Castillo, Esq., the Additional Clerk’s Transcript with which Respondent seeks to augment the record was lodged in the superior court in the instant case.

As stated in the attached Declaration of Caroline K. Castillo, the record on appeal should be augmented with the Additional Clerk’s Transcript in order to assure a complete record. Accordingly, by this request, Respondent seeks to augment the record.

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This request is based on this Memorandum, the attached Declaration of Caroline K. Castillo, Esq., the copy of the Additional Clerk's Transcript attached to that declaration as Exhibit A and on the documents already on file in this appeal.

DAPEER, ROSENBLIT & LITVAK, LLP

Dated: May 10, 2011

By: 

William Litvak, Esq.

Caroline K. Castillo, Esq.

Attorneys for Respondent

The People of the State of California

DECLARATION OF CAROLINE K. CASTILLO

I, Caroline K. Castillo, declare:

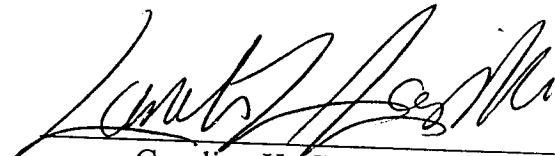
1. I am an attorney licensed to practice in the State of California and am an associate in the firm of Dapeer, Rosenblit and Litvak, City Prosecutors and counsel for Respondent, The People of the State of California ("Respondent"), in the above-entitled appeal. As the attorney primarily responsible for this matter, I know the matters in this Declaration from personal knowledge or from my review of the file maintained by my office in the ordinary course of business, and if called to testify, I could and would testify competently thereto.
2. I make this Declaration in support of the Respondent's motion to augment the record on appeal with the Additional Clerk's Transcript ("Additional CT") from the trial court in this case.
3. The Additional CT comprises one volume of seven (7) pages. (See, Exhibit A.) The documents contained therein are Appellant's Objection to Order Concerning Appellant's Proposed Statement on Appeal and Request for Hearing (Exhibit A, Additional CT, pp. 1-4), the trial court's Response to Appellant's Objection To Order Concerning Appellant's Proposed Statement on Appeal and Request for Hearing. (Exhibit A, Additional CT, p. 6) and the Clerk's Certification/Certificate of Mailing Transcript on Appeal. (Exhibit A, Additional CT, p. 7.)
4. In the present appeal, Appellant, ANNETTE B [REDACTED], ("Appellant") references in her Appellant's Opening Brief documents included in the Additional CT created in the trial court but failed to make that transcript part of the record on appeal. In order for the Respondent to properly address Appellant's contentions relative to her objection to the Settled Statement on Appeal, it is crucial that the record on appeal be augmented with the Additional CT. Further, of course, the Additional CT

is required to allow this Court to consider the parties' arguments in light of a full and complete appellate record.

5. Inclusion of the Additional CT is necessary to assure a complete record before this Court because it contains the trial court's order overruling Appellant's objections to the Order Concerning Appellant's Proposed Statement on Appeal and denying her Request for Hearing. (Exhibit A, p. 6.) Importantly, that order by the trial court states that the Settled Statement submitted by the trial court on Form CR-144 "is a complete and accurate summary of the trial and proceedings in this matter." (Exhibit A, p. 6.) That order is not contained in any other portion of the existing record on appeal in this case.

6. For these reasons, inclusion of the Additional CT in the record of appeal is necessary to proper administration of this appeal and Respondent respectfully requests that this Court so order.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. This declaration was signed on May 10, 2011, in Los Angeles, California.


Caroline K. Castillo, Esq.

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ANNETTE B [REDACTED] Esq. SBN 224143

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FILED

LOS ANGELES SUPERIOR COURT

MAR 02 2010

Attorney for ANNETTE B [REDACTED]

JOHN A. CLARKE, CLERK
Maria Martinez
BY MARIA MARTINEZ, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

Plaintiff: PEOPLE OF THE STATE OF CALIFORNIA
and
Respondent: ANNETTE B [REDACTED]

CASE NO. BI 20734

**APPELLANT'S OBJECTION TO
ORDER CONCERNING
APPELLANT'S PROPOSED
STATEMENT AND REQUEST FOR
HEARING; CRC 8.916 (D) & (E)**

DEPT: 004

Appellant is hereby objecting to the Order Concerning Appellant's Proposed Statement on Appeal settled by the Court on February 22, 2010 (hereafter "Court's Proposed Statement") (Rules of Court, Rule 8.916.(e)) Appellant is also requesting a hearing, before a Court Reporter, pursuant to Rules of Court, Rule 8.916(b)(2) as there is a factual dispute about material aspect of the trial proceeding.

Appellant respectfully submits that the Court's Proposed Statement is not a Complete and Accurate summary of the trial Court evidence and proceeding and does not comport to the mandates of Rules of Court, Rule 8.916(c) or the holding of *People v. Jenkins* (1976) 55 Cal.App. 3d Supp. 55, 127 Cal.Rptr. 870, requiring that it contain a narrative summary of testimony of witnesses whose testimony is relevant to the issues raised in the Appeal.

1 Pursuant to California Rules of Court, Rule 8.916 (c) the contents of the proposed
2 statement on appeal must contain:

- 3 (1) **A condensed narrative of the oral proceedings** that the
4 appellant believes necessary for the appeal and a summary of the trial
5 court's holding and the sentence imposed on the defendant. Subject
6 to the court's approval, the appellant may present some or all of the
7 evidence by question and answer; and
8 (2) A statement of the points the appellant is raising on appeal. The
9 appeal is then limited to those points unless the appellate division
10 determines that the record permits the full consideration of another
11 point.

12 (A) The statement must specify the intended grounds of appeal by
13 clearly stating each point to be raised but need not identify each
14 particular ruling or matter to be challenged.

15 (B) **The statement must include as much of the evidence or**
16 **proceeding as necessary to support the stated grounds.** Any
17 evidence or portion of a proceeding not included will be presumed to
18 support the judgment or order appealed from.

19 (C) If one of the grounds of appeal is insufficiency of the evidence,
20 the statement must specify how it is insufficient. (Emphasis added)

21 Pursuant to *People v. Jenkins* (1976) 55 Cal.App. 3d Supp. 55, 127 Cal.Rptr. 870,

22 a proper settled statement should contain the following:

23 "2. A narrative summary of the testimony of each witness who
24 testified for the People and for the defendant whose testimony is
25 relevant to the issues raised in the grounds on appeal. A
26 conclusory statement of what the evidence showed as to the
27 disputed issue or the sufficiency of the evidence to establish guilt does
28 not comply with the responsibility of the trial judge under rule 187 to
29 set forth the evidence "fairly and truly." It is of no value to this court to
30 include the trial court's conclusions as to the merits of the appellant's
31 grounds of appeal. Such conclusions tend to cast doubt on the
32 impartiality of the trier of fact.

33 3. The specification of the error submitted by the appellant. It is
34 mandatory that these be included as formulated by the appellant.
35 (Rule 187)."

36 Although Rule 187 was renumbered and repealed on January 1, 2009, it is
37 consistent with the California Rules of Court, Rule 8.916 (c), enacted on July 1, 2009.

38 Proposed Statement must include a summary of oral proceedings. Appellant's
39 Proposed Statement contained the necessary narrative summary of the proceeding
40 documenting the arguments the Appellant made during her Motion in Limine and detailing
41 Officer Butkus' responses during voir dire, both of which are the basis of this appeal.

42 The Court's Proposed Statement does not make a complete and accurate record

1 of Officer Butkus' responses during voir dire. The Court's Proposed Statement simply
2 states as follows: "[S]he asked to take Officer Butkus on *voir dire* and was allowed to do
3 so. ...Once again, the Court rejected Appellant's arguments, found that there was
4 sufficient foundation laid by the testimony of Officer Butkus to admit the evidence, and
5 that the *Melendez-Diaz* case was distinguishable and inapplicable to the case at bar.
6 People's #1 was then admitted into evidence over Appellant's objection."

7 Appellant submits that this statement is not a complete and accurate narrative of
8 the voir dire of Officer Butkus. It is a conclusionary statement prohibited by *People v.*
9 *Jenkins*, which does not comply with the duty to set forth the evidence "fairly and truly."

10 Since the voir dire was conducted for the purpose of showing that the officer was
11 not qualified to lay the foundation for the records he sought to admit, the dialogue of the
12 voir dire is an essential part of the trial record.

13 The Proposed Statement makes no mention of the testimony of Officer Butkus
14 admitting that he did not work for Redflux, that he is not employed by them, that he was
15 not the custodian of records for them, that he did not inspect the photo enforcement unit
16 in this case, that he was not there when the inspection was purportedly done, that it was
17 not a part of his job duty to inspect or calibrate the unit, that he did not prepare the logs
18 that he sought to admit, that he did not make the entries in the maintenance log, that the
19 person who made the entries did not work at the Beverly Hills Police Department, that he
20 did not calibrated the machines, that he does not know the qualifications of the person
21 who inspected the machine, that he was not present when the photos were taken, that
22 he did not take the photos, etc.

23 Appellant took great care to create this record during trial. She recorded the
24 Officer Butkus' responses contemporaneously in her notes, which contained each
25 questioned she asked in Court.

26 The Court's Proposed Statement does not contain this narrative and is hence not
27 a complete and accurate record of the trial proceeding.

28 The Proposed Statement does not completely and accurately document

1 Defendant's Motion in Limine. There was more to the Appellant's Motion in Limine than
2 the fact that it was made and it was denied. One of the basis for the appeal is the denial
3 of the Motion in Limine. Appellant's Proposed Statement accurately reflects the Motion
4 in Limine as it was made at trial. It sets forth the specific evidence that the Appellant
5 sought to be excluded, the argument and facts justifying the exclusion.

6 Appellant took great care to create this record during trial. Her Motion in Limine
7 was read from written form prepared before trial. As such, Appellant is able to provide
8 a record of her Motion in Limine.

9 None of this is included in the Court's settled Proposed Statement.

10 Furthermore, the Court's Proposed Statement does not document the specifics of
11 the evidence offered by the people which the Appellant sought to excluded from trial.
12 This is a necessary element of the Appeal. The officer sought to admit photographs,
13 maintenance logs prepared by an Australian Company and Video taken by the video
14 maintained by the Australian Company. These are critical facts that are omitted from the
15 Court's Proposed Statement. There is not one mention of the fact that the officer testified
16 that the cameras and the video recorder were maintained by an Australian Company and
17 not the Beverly Hills Police Department. There is no mention of the fact that the officer
18 admitted to not being the custodian of records for the Australian company who prepared
19 the maintenance logs. This is the basis for Appellant's appeal. Without these facts, the
20 record before the Appellate Court will be inaccurate and prejudicial to the Appellant.

21 Appellant is therefore respectfully objecting to the Order Concerning Appellant's
22 Proposed Statement on Appeal and is requesting a hearing in the presence of a Court
23 reporter pursuant to California Rules of Court, Rules 8.916(d) & (e).

24 The People of the State of California have not served a Proposed Statement nor
25 objected to the Appellant's Proposed Statement.

26
27 Dated: March 2, 2010

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By: 
ANNETTE P. [redacted], Esq.

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Beverly Hills Court 9355 Burton Way, Beverly Hills, Ca. 90210		
People of the State of California		
DEFENDANT: ANNETTE B [REDACTED]		
CLERK'S CERTIFICATION / CERTIFICATE OF MAILING TRANSCRIPT ON APPEAL		CASE NUMBER: B120734

- I hereby certify that the Clerk's Transcript contains true and correct copies of the original documents on file in this action;
- I hereby verify that all volumes of the Reporter's Transcript have been certified by the official Court Reporter;
- I hereby verify that the statement on appeal has been certified by the trial court judge.
- I hereby certify this record to be a full, true and correct transcript(s) on appeal.

I, John A. Clarke, Executive Officer/Clerk of the Superior Court of California, County of Los Angeles, do hereby certify that I am not a party to the cause herein, and that on this date I mailed the record on appeal by depositing true copies enclosed in sealed envelopes in United States mail or United Parcel Service with return receipt requested, with postage thereon fully prepaid; or deposited in the county messenger addressed as follows:

Appellate Division
Stanley Mosk Courthouse
111 North Hill Street
6th Floor, Room 607
Los Angeles, ca. 90012

Annette [REDACTED]
[REDACTED]

City Attorney
Dapeer, Rosenblit & Litvak
11500 W. Olympic Blvd.,
Suite 550
Los Angeles, Ca. 90064
Attn: Caroline Castillo



Dated: 04/19/10

John A. Clarke, Executive Officer/Clerk

J. WILLIAMS

By: _____
JAMELLIA WILLIAMS, Deputy Clerk

