

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,)	96309-6
Respondent,)	No. 35040-1-III
)	
vs.)	RAP 9.6(a) MOTION
)	TO SUPPLEMENT
PATRICK GARCIA,)	RECORD
Appellant.)	
_____)	

I. IDENTITY OF MOVING PARTY

Appellant Patrick Garcia, by and through counsel of record, Nielsen, Broman & Koch, requests the relief stated in part II.

II. STATEMENT OF RELIEF SOUGHT

Pursuant to RAP 9.6(a), Garcia requests that this Court allow him to supplement the record on review with exhibits admitted by the trial court and referenced in the opening brief.

III. FACTS RELEVANT TO MOTION AND GROUNDS FOR RELIEF

RAP 9.6(a) specifies “[a]ny party may supplement the designation of clerk’s papers and exhibits prior to or with the filing of the party’s last brief. Thereafter, a party may supplement the designation only by order of the appellate court, upon motion.” The briefing has been completed in this case.

In his opening brief before this Court, Garcia referred to two exhibits, D-55 and D-61, which were admitted into evidence and considered by the jury at

Garcia's trial. Br. of Appellant, 11; RP 288-89. These exhibits showed the Knigges' yard was not fully fenced. The State agreed "the property on which the camper sat was only partially fenced." Br. of Resp't, 7.

Undersigned counsel inadvertently forgot to file a supplemental designation of exhibits along with the opening brief. This was entirely an oversight and not a tactical decision at all. Counsel only realized the mistake after the Court issued its decision in the case, which noted "[o]ur record does not describe the fencing on or about the property, although it appears from the transcript that some of the exhibits, which were not transmitted to us, display fencing." Opinion, 6 n.3 (emphasis added). Upon checking ACORDS, counsel realized a supplemental designation of exhibits was never filed.

Counsel now plans to file a petition for review in Mr. Garcia's case. In order to complete the record on review, counsel seeks to file a supplemental designation of exhibits, designating the two exhibits originally referenced in the opening brief. The exhibits were admitted at trial and considered by the deliberating jury. RP 288-89. They are not new evidence. And there is no prejudice to the State, who essentially agreed to the content of the exhibits. Nor does the supplemental designation impact this Court's decision, as this Court presumed the exhibits showed the yard was not fully fenced. The supplemental designation is merely meant to ensure the Washington Supreme Court has a complete record when considering the petition for review.

Undersigned counsel is filing a supplemental designation of exhibits contemporaneously with this motion.

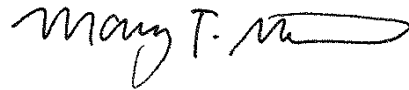
IV. CONCLUSION

Counsel respectfully requests that this Court grant the motion to supplement the record and accept the supplemental designation of exhibits, filed contemporaneously with this motion.

DATED this 28th day of August, 2018.

Respectfully submitted,

NIELSEN, BROMAN & KOCH

A handwritten signature in black ink, appearing to read "Mary T. Swift", with a horizontal line extending from the end of the signature.

MARY T. SWIFT, WSBA No. 45668

Office ID No. 91051

Attorneys for Appellant

NIELSEN, BROMAN & KOCH P.L.L.C.

August 28, 2018 - 3:33 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 35040-1
Appellate Court Case Title: State of Washington v. Patrick Michael Garcia
Superior Court Case Number: 15-1-00374-0

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