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IN THE SUPREME COURT OF THE STATE OF IDAHO

ST. LUKE’S HEALTH SYSTEM, LTD; ST.
LUKE’S REGIONAL MEDICAL CENTER,
LTD; CHRIS ROTH, an individual;
NATASHA D. ERICKSON, MD, an
individual; and TRACY W. JUNGMAN, NP,
an individual,

Plaintiffs/Respondents,

vs.

DIEGO RODRIGUEZ, an individual,

Defendant/Appellant,

and

AMMON BUNDY, an individual; AMMON
BUNDY FOR GOVERNOR, a political
organization; FREEDOM MAN PRESS LLC,
a limited liability company; FREEDOM
MAN PAC, a registered political action
committee; and PEOPLE’S RIGHTS
NETWORK, a political organization and an
unincorporated association,

Defendants.

Docket No. 51244-2023

Ada County Case No. CV01-22-06789

**MEMORANDUM IN OPPOSITION TO
MOTION TO AUGMENT THE RECORD
ON APPEAL**

Plaintiffs/Respondents, St. Luke’s Health System, Ltd., St. Luke’s Regional Medical

Center, Ltd., Chris Roth, Natasha D. Erickson, M.D., and Tracy W. Jungman, NP (“St. Luke’s

Parties”), by and through their attorneys of record, Holland & Hart LLP, hereby oppose Appellant/Defendant Diego Rodriguez's (“Rodriguez”) Motion to Augment the Record.

I. INTRODUCTION

Rodriguez seeks to add to the appellate record (1) newly created materials that were not part of the district court record (a declaration from Ammon Bundy and a timeline); and (2) two videos posted on Rodriguez’s “Freedom Man” website that he claims are “newly discovered evidence.”¹ Mot. at 4.

The motion should be denied. First, these materials do not fall within the scope of Idaho Appellate Rule 30(a), which permits addition of items that were filed with the district court or considered by the district court.

Second, Rodriguez’s complaint about a video being “spliced” is unpersuasive because the video was admitted into evidence and shown to the jury in full. Moreover, the video (Exhibit 174) is already part of the appellate record. While clips of Exhibit 174 were published again to the jury (Exhibit 174A and Exhibit 174B) so that later witnesses could testify about them, there was nothing misleading about their presentation. The context is explained below, using the trial transcript to show the order of events and relevant testimony. And even if a defendant’s own selfie video could be considered “newly discovered evidence” as Rodriguez contends, the requirements of *Brady v. Maryland*, 373 U.S. 83 (1963) are inapplicable in a civil proceeding.

¹ Rodriguez also moves to augment the appellate record with unidentified “Transcript excerpts and trial references where the edited version was submitted[.]” Mot. at 4. This request is moot because the entire trial transcript is already part of the appellate record.

II. ARGUMENT

Idaho Appellate Rule 30 permits a party to file a motion to augment the clerk's record. I.A.R. 30(a). Documents may only be added to the clerk's record if they were before the district court. *See id.* Specifically, either (1) the document sought to be included in the appellate record must "have a legible filing stamp of the clerk indicating the date of its filing," or (2) "the moving party must establish by citation to the record or transcript that the document was presented to the district court." I.A.R. 30(a); *see also Ellis v. Ellis*, 167 Idaho 1, 5 n.2, 467 P.3d 365, 369 n.2 (2020) (noting that failing to comply with the requirements of I.A.R. 30(a) results in the Court not considering the documents sought to be added to the record).

A. The Proposed Addition of Ammon Bundy's Declaration and the "Timeline" Should Be Denied Because They Were Not Part of the District Court Record.

Rodriguez seeks to add to the appellate record a newly created declaration from Ammon Bundy and a "timeline" he claims is relevant to the declaration. These documents should not be added to the record on appeal because they were neither filed with nor considered by the district court. *See* I.A.R. 30(a); *Ellis*, 167 Idaho at 5 n.2, 467 P.3d at 369 n.2.

B. The Request to Add Videos from Rodriguez's Website Is Inappropriate, and the Full Video Is Already Part of the Appellate Record as Trial Exhibit 174.

For the same reasons, the videos from Rodriguez's "Freedom Man" website should not be added to the appellate record. *See id.* Moreover, the full video that Rodriguez references was admitted into evidence, published to the jury in full, and is part of the appellate record. The background is outlined below.

Rodriguez wrongly accuses the St. Luke's Parties of presenting a video clip he contends is misleading. Mot. at 1-5. His false narrative about the trial he skipped is belied by the record.

Contrary to his assertions, the full video he references was admitted into evidence and published to the jury as Exhibit 174. Tr. p. 332, L. 17–p. 333, L. 10. There was no concealment.

Additionally, “clips from Exhibit 174” were admitted as Exhibit 174A and played for the jurors to refresh their memory prior to a second witness testifying that the clip was an example of Bundy’s communications to the People’s Rights Network. Tr. p. 597, L.12–p. 600, L.1. It would have been duplicative and inefficient to replay the entire eight-minute video the jury had already seen.

Another clip from Exhibit 174 was included in a compilation exhibit admitted and published to the jury (“Exhibit 174B”).² Tr. p. 1273, Ls. 5–24, p. 1289, L.6–p. 1290, L.21. This compilation exhibit included clips from three videos saved together in one video file, to play in relation to another witness’s testimony. This was explained before the jury, with the exhibit expressly identified as a “compilation” video. Tr. p. 1273, Ls. 5–24. The witness then testified about each clip individually. *See* Tr. p. 1289, L.6–p. 1290, L.21.

There is no need to augment. The full video, Exhibit 174, is part of the appellate record. So is Exhibit 174A. They were added at the St. Luke’s Parties’ request—over Rodriguez’s objection, in fact. On October 18, 2023, the St. Luke’s Parties filed their Request for Additional Materials pursuant to Idaho Appellate Rule 28(c). Declaration of Jennifer M. Jensen (“Jensen Decl.”), Ex. A. Among other exhibits, they requested that Exhibit 174, Exhibit 174A, and Exhibit 174B be added to the appellate record. *See id.* at 16. When the appellate record was prepared, some exhibits approved for addition (including Exhibit 174, Exhibit 174A, and Exhibit

² The transcript mistakenly identifies the compilation exhibit as Exhibit 174A, the same exhibit number as the clips testified about in pages 597-600 of the transcript in the appellate record. But the trial record correctly names the compilation video file Exhibit 174B.

174B) were missing. On June 3, 2024, the St. Luke's Parties duly submitted an Objection to Clerk's Record on Appeal, requesting addition of the missing exhibits. *Id.*, Ex. B at 3. The same day, Rodriguez filed a groundless "Motion to Dismiss Plaintiff's [sic] Objection to Clerk's Record." *Id.*, Exs. C, D. On June 21, 2024, the district court granted the St. Luke's Parties' Objection to the Clerk's Record on Appeal. *Id.*, Ex. E. The amended record produced by the district court on July 1, 2024 included Exhibit 174 and Exhibit 174A.

Rodriguez's argument about "newly discovered evidence" is frivolous. *See* Mot. at 3-4. To make the argument, he relies on a *Brady* violation case (*United States v. Kohring*, 637 F.3d 895 (9th Cir. 2011)), although *Brady* does not apply in civil cases. *See State v. Head*, 172 Idaho 564, 571-74, 535 P.3d 188, 195-98 (2023) (holding *Brady* inapplicable in a restitution hearing ancillary to criminal sentencing because restitution is civil in nature). The other two unpublished Idaho Court of Appeal decisions he cites appear to be fabricated, or artificial intelligence hallucinations. The St. Luke's Parties are unable to find Rodriguez's cited cases of "Robertson v. Richards, 2006 WL 618821 (Idaho Ct. App.)" or "Barnes v. Barnes, 2008 WL 2896366 (Idaho Ct. App.)." Regardless, unpublished cases from the Idaho Court of Appeals are not binding on this Court. And in keeping with general common sense, a defendant's own selfie video can hardly constitute newly discovered evidence.

Nothing was concealed from Rodriguez or Bundy. Bundy created and published the video captured at Exhibit 174 in 2022. The clips of Exhibit 174 in Exhibits 174A and 174B have been part of the trial record since July 2023.

This Court should deny Rodriguez's motion to augment the record to add the video files from his "Freedom Man" website. Exhibit 174 and Exhibit 174A are part of the appellate record. To the extent that Rodriguez files a timely, proper motion to augment the appellate record to

include Exhibit 174B, the St. Luke's Parties do not object to the addition of the exhibit. But augmenting the record with videos posted on Rodriguez's "Freedom Man" website is not within the scope of Rule 30.

III. CONCLUSION

For all the foregoing reasons, the St. Luke's Parties request this Court deny Rodriguez's Motion to Augment the Record on Appeal.

DATED: June 23, 2025.

HOLLAND & HART LLP

By: /s/ Jennifer M. Jensen

Erik F. Stidham

Jennifer M. Jensen

Anne Henderson Haws

Counsel for Plaintiffs-Respondents

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of June, 2025, I caused to be filed via iCourt and served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Diego Rodriguez
1317 Edgewater Dr., #5077
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- ☐ U.S. Mail
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☒ Email/iCourt/eServe:
freedommanpress@protonmail.com

/s/ Jennifer M. Jensen

Jennifer M. Jensen
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