

No. 1-22-0322

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the Circuit Court
Plaintiff–Appellee,	)	of Cook County, Illinois
	)	
v.	)	Circuit Court No. 20 CR 03050-01
	)	
JUSSIE SMOLLETT,	)	
	)	The Honorable James B. Linn,
Defendant–Appellant.	)	Judge Presiding.
	)	

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**THE STATE-APPELLEE’S RESPONSE IN OPPOSITION TO THE DEFENDANT-  
APPELLANT’S MOTION FOR LEAVE TO FILE OVERSIZED BRIEF**

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The State of Illinois (“State-Appellee”), by and through the Office of the Special Prosecutor (“OSP”), hereby submits its response in opposition to Defendant-Appellant Jussie Smollett’s Motion for Leave to File Oversized Brief (“Motion” or “Mot.”) and states as follows:

1. This Court should deny the Motion.

2. Mr. Smollett admits, as he must, that motions for leave to file an oversized brief are “not favored” under Rule 341(b)(2). Mot., ¶ 1.

3. This is especially true here, where Mr. Smollett has repeatedly represented to this Court, for months now, that his opening brief was “near completion.” Indeed, he made that representation on November 17, 2022 (in connection with requesting a *third* extension of time to file the opening brief), and then again on December 21, 2022 (in connection with a *fourth* extension request).

4. Yet, despite those representations, Mr. Smollett brings this Motion just 10 days<sup>1</sup> before his opening brief is due, claiming that he now needs 30 additional pages—a 60% increase for a total of 80 pages—to the standard page limit for briefs required by Rule 341(b).

5. Mr. Smollett advances his uncreditable request by once again mischaracterizing the scope of his pending appeal by making extensive reference to cases, orders, and supposed “Constitutional” issues that are not before this Court.

6. The Motion once again claims that his appeal “involves matters related to three different case numbers (19-CR-03104-01, 19MR00014-01 and 20-CR-03050-01)” and that Mr. Smollett “is effectively dealing with three different cases.” Mot., ¶¶ 1, 7. As the OSP has previously stated, this is wrong. The only matter on appeal before this Court is from case number

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<sup>1</sup> The Motion was filed on January 15, 2022, a Sunday night, at nearly 10:00 p.m., which is the shortest amount of lead time to submit a motion for leave to file an oversized brief in compliance with Rule 341(b)(2) which requires such motions to be filed “not less than 10 days before the brief is due.”

20-CR-03050-01, meaning that this Court’s jurisdiction is limited to the issues presented on the record and properly preserved in case number 20-CR-03050-01. There is no appeal pending in this Court from case numbers 19-CR-03104-01 or 19MR00014-01. Mr. Smollett knows this and even acknowledges that case number 20-CR-03050-01 is “the source of the current appeal.” *Id.* at ¶ 3.

7. Whatever appellate process Mr. Smollett had to challenge orders issued by different courts in case numbers 19-CR-03104-01 and 19MR00014-01 has passed. For example, Mr. Smollett hints that he intends to challenge the order appointing a special prosecutor issued in case number 19MR00014-01. Mot., ¶ 2. But again, that case number is not part of this appeal and Mr. Smollett never filed a direct appeal to this Court from that appointment order in 19MR00014-01.<sup>2</sup>

8. Similarly, Mr. Smollett points to the “size” of the record on appeal to somehow justify granting relief, but here the record has been drastically and incorrectly inflated due to Mr. Smollett’s inclusion of the filings, orders and transcripts from case numbers 19-CR-03104-01 and 19MR00014-01. Simply put, Mr. Smollett cannot shoehorn orders and rulings into this appeal from other cases which are not properly before this Court, and his attempts to do so do not justify granting leave to file an oversized brief with 30 extra pages.

9. Mr. Smollett also argues that the “outsized and significant international, national, and local mass media and public attention” on this case—much of it brought about by Mr. Smollett himself—necessitate Mr. Smollett filing an oversized brief. However, the supposed attention to any case is not a basis for granting leave to file an oversized brief, and tellingly, Mr. Smollett cites no authority for such a proposition.

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<sup>2</sup> Rather than file a direct appeal, Mr. Smollett brought an emergency motion for a supervisory order pursuant to Illinois Supreme Court Rule 383 on February 24, 2020, which the Illinois Supreme Court denied on March 6, 2020. See *Jussie Smollett v. The Hon. Michael P. Toomin*, No. 125790 (Ill. Sup. Ct.).

10. Moreover, Mr. Smollett simply has not sufficiently demonstrated the specific grounds establishing the necessity for 30 more pages. Indeed, completely absent from Mr. Smollett's motion was a sworn affidavit or verification by certification under Section 1-109 of the Code of Civil Procedure from Mr. Smollett's counsel, as required by Rule 341(b)(2).

11. Like any other litigant before this Court, Mr. Smollett will be able to effectively advance each of the arguments he wants this Court to review and will not be forced to "dispose" or "waive" issues on appeal by adhering to the 50-page bounds of Rule 341(b)(1).

12. As such, the OSP respectfully requests that this Court deny Mr. Smollett's Motion for Leave to File an Oversized Brief.

Dated: January 19, 2023

Respectfully Submitted,

/s/ Sean G. Wieber

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JUSSIE SMOLLETT,	)	
	)	The Honorable James B. Linn,
Defendant–Appellant.	)	Judge Presiding.
	)	

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**NOTICE OF FILING**

Please take notice that on January 20, 2023, I, Sean G. Wieber, the undersigned attorney, caused The State’s Response to Defendant-Appellant’s Motion for Leave to File an Oversized Brief to be electronically filed with the Clerk of the Appellate Court of Illinois for the First Judicial District.

Dated: January 19, 2023

Respectfully submitted,

/s/ Sean G. Wieber  
Deputy Special Prosecutor

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## **PROOF OF FILING AND SERVICE**

Under the penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On January 19, 2023, the foregoing The State's Response to Defendant-Appellant's Motion for Leave to File Oversized Brief, was electronically filed with the Clerk, Illinois Appellate Court for the First Judicial District, thereby causing service to be effected electronically to:

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*/s/ Sean G. Wieber* \_\_\_\_\_