

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
IVAN KELLY BRIMHALL,
Respondent.

No. 40208

FILED

OCT 28 2002

ORDER DISMISSING APPEAL

JANETIE M BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

This is an appeal from an order of the district court excluding statements of respondent. This court's preliminary review of this appeal revealed a jurisdictional defect.

The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists.¹ In this case, the district court ruled that statements of respondent would not be allowed into evidence at trial because the State failed to file its offer of proof regarding the statements within the time limits established by the district court.

The State characterizes this as an appeal from an order of the district court granting a motion to suppress.² "'Motion to suppress' is a term of art which is defined as a request for the exclusion of evidence premised upon an allegation that the evidence was illegally obtained."³ In this case, there was no allegation that the evidence was illegally obtained, and the district court specifically stated that the evidence was being

¹Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990).

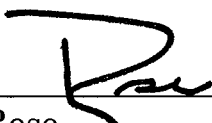
²See NRS 177.015(2).


³State v. Shade, 110 Nev. 57, 63, 867 P.2d 393, 396 (1994).


excluded because of the untimely filing of the offer of proof, not because of any Constitutional issues. Moreover, respondent apparently did not file a motion to suppress. It does not, therefore, appear that this is an appeal pursuant to NRS 177.015(2).

No court order or statute appears to provide for an appeal from an order excluding evidence based on the State's failure to meet a deadline. Accordingly, on September 25, 2002, this court ordered the State to show cause why this appeal should not be dismissed for lack of jurisdiction. On October 14, 2002, the State filed a response. In the response, the State fails to identify any statute or court rule that provides for an appeal from an order excluding evidence based on the State's failure to meet a deadline. We therefore conclude that we lack jurisdiction to entertain this appeal, and we

ORDER this appeal DISMISSED.


_____, J.
Rose


_____, J.
Young


_____, J.
Agosti

cc: Hon. J. Michael Memeo, District Judge
Attorney General/Carson City
Elko County District Attorney
Matthew J. Stermitz
Elko County Clerk