

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 1:03:CR:239

NORMAN DAVID SOMERVILLE

HON. GORDON J. QUIST

Defendant.

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**MEMORANDUM ORDER**

The Court has before it Defendant's Motion to Supplement the Record for Appeal to include various letters, reports and warrants. Defendant does not state which, if any, of these documents are already a part of the record. He also does not explain why they were not introduced as evidence in earlier proceedings. For the following reasons, Defendant's motion will be denied.

Federal Rule of Appellate Procedure 10(a) provides that the following items constitute the record on appeal: (1) the original papers and exhibits filed in the district court; (2) the transcript of proceedings, if any; and (3) a certified copy of the docket entries prepared by the district court. Thus, normally, new evidence cannot be introduced into the record on appeal. See Inland Bulk Transfer Co. v. Cummins Engine Co., 332 F.3d 1007, 1012 (6th Cir. 2003). However, Federal Rule of Appellate Procedure 10(e) allows for supplementation in very limited circumstances:

**(e) Correction or Modification of the Record.**

....

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

- (A) on stipulation of the parties;
- (B) by the district court before or after the record has been forwarded; or
- (C) by the court of appeals.

Fed. R. App. P. 10(e)(2). As indicated by the language of Rule 10(e)(2), the record may be supplemented only if material was omitted from the record by error or accident. The Court of Appeals for the Sixth Circuit has held that “the purpose of the rule is to allow the district court to correct omissions from or misstatements in the record for appeal, not to introduce new evidence in the court of appeals.” S & E Shipping Corp. v. Chesapeake & Ohio Ry. Co., 678 F.2d 636, 641 (6th Cir. 1982). More recently, the Sixth Circuit observed that it has “not allowed [Rule 10(e)] to be used to add new evidence that substantially alters the record after notice of appeal has been filed; rather we have allowed enough modification to ensure the accuracy of the record.” United States v. Barrow, 118 F.3d 482, 487-88 (6th Cir. 1997).

The Court may not allow new materials to be made part of the record on appeal simply because the Defendant now requests it. Rather, the documents may be made a part of the record on appeal only if they were in the record before this Court. Therefore,

**IT IS HEREBY ORDERED** that Defendant’s Motion to Supplement the Record for Appeal (Docket No. 140) is DENIED.

Dated: December 5, 2005

/s/ Gordon J. Quist  
GORDON J. QUIST  
UNITED STATES DISTRICT JUDGE