IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 82231

CLEMON HUDSON

Appellant,

v.

THE STATE OF NEVADA

Respondent.

Appeal from a Judgment of Conviction and from a denial of a Petition for Writ of Habeas Corpus (Post-Conviction)
Eighth Judicial District Court, Clark County
The Honorable Carli Kierny, District Court Judge
District Court Case Nos. C-15-309578-2 & A-18-783635-W

APPELLANT'S REPLY BRIEF

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I. NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualifications or recusal.

NONE

Attorney of Record for Clemon Hudson:

/s/ Christopher R. Oram

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IV. ARGUMENT

A. DIRECT APPEAL CLAIMS

1. The District Court Abused its Discretion by not Granting Mr. Hudson's Motion to Sever Defendants.

The State argued that the District Court properly denied severance for two reasons. First, the State argued that severance would have been improper because Mr. Turner's statement did not implicate Mr. Hudson. Second, the State argued that the co-defendants' defenses did not constitute antagonistic defenses as such that required severance. For the reasons explained below, the State's arguments fail. The District Court abused its discretion by not severing Mr. Hudson's trial.

Mr. Turner's Statement Implicated Mr. Hudson

To rebut Mr. Hudson's claim, the State relied heavily upon *Richardson v. Marsh*, 481 U.S. 200, 208-209, 107 S.Ct. 1702, 95 L.Ed.2d 176 (1987) for the proposition that redacting a co-defendant's statement avoids a Confrontation Clause issue. Respondent's Answering Brief ("RAB"), at 15. Moreover, the State relied upon *Richardson* to argue that "Where a confession is not incriminating on its face but only becomes so when linked with other introduced evidence, *Bruton* is not implicated." *Richardson*, 481 U.S. at 208-209. The State also alleged that *Lisle v. State*, 113 Nev. 679, 941 P.2d 459 (1997), and *Jones v. State*, 111 Nev. 848, 899 P.2d 544 (1995) further supported the *Richardson* holding that a redacted

statement cannot violate *Bruton* if it only links the defendant by other evidence introduced it trial. RAB, at 15-16.

As Mr. Hudson demonstrated in the Opening Brief and will further demonstrate in the following paragraphs, none of these cases held that a co-defendant's redacted statement cannot constitute facially incriminatory evidence against a defendant such that violates *Bruton v. United States*, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968) and the Confrontation Clause of the Sixth Amendment.

In *Richardson*, the United States Supreme Court distinguished Richardson's case from *Bruton* because "the confession was not incriminating on its face, and became so only when linked with evidence introduced later at trial (the defendant's own testimony)." *Richardson*, 481 U.S. at 208. In *Lisle*, a witness testified that the co-defendant told him that "the other guy" shot the victim. 113 Nev. at 692. This Court found the statement not to be facially incriminating because it did not incriminate Lisle until other evidence linked to Lisle to the statement as "the other guy." *Id*. at 693.

In this case, contrary to the State's assertions, Mr. Turner's statement as presented at trial absolutely implicated Mr. Hudson. Admitting a non-testifying codefendant's confession that implicates a defendant constitutes prejudicial error. *Bruton*, 391 U.S. at 137.

To begin the discussion, the State argued that Mr. Turner's statement could have implicated another individual because the defense theory "appeared to revolve around the presence of a "third guy" who might have actually been responsible." RAB at 16. The State then asserted that there were no issues with the admission of Mr. Hudson's statement because his own incriminatory statements could be used against him and because he did not have standing to challenge his own statement on Mr. Turner's behalf. The State has missed the point of Mr. Hudson's claim.

Mr. Hudson did not argue against the admissibility of his own statement. Mr. Hudson discussed his own statement to explain the context of the larger issue. Near the end of the State's case-in-chief at trial, Mr. Hudson's and Mr. Turner's statements came into evidence through the testimony of Detectives Jex and Pazos, respectively. Immediately before the detectives testified to the defendants' statements, the State elicited testimony from each detective regarding his initial contact with the defendants in order to establish the identity of the two defendants as the only two perpetrators responsible for the charged crimes. For example, Detective Jex identified both Mr. Hudson and Mr. Turner at trial, then immediately thereafter testified regarding Mr. Hudson's statement in the context of having identified Mr. Turner. The identifications created a situation wherein the detectives essentially identified the only two alleged "bad guys" in front of the jury as a segue

into telegraphing what each alleged "bad guy" said about the other alleged "bad guy."

The State then elicited pointed testimony from each detective regarding each defendant's statement. The statements as identified in the Opening Brief could not have led the jury to believe they implicated some random individual. The State presented the testimony near the end of its case in chief, when the other evidence had already been presented. Had the State simply elicited the statements without first making each detective identify the defendants, perhaps a curative instruction could have sufficed. That situation did not occur in this case. No curative instruction could have fixed the violation of Mr. Hudson's rights.

Next, the State argued that Mr. Turner's statement did not implicate Mr. Hudson because the incriminatory statements must be taken "within the context of the other evidence introduced at trial" before they could implicate Mr. Hudson. RAB, at 18. This could not be farther from accurate, and the State has mistaken the case law as set forth by *Richardson*, *Lisle*, and *Jones*.

Under the State's theory, the jury should not consider any testimony in the context of other evidence. This theory completely undercuts the constitutional principles that a criminal defendant is entitled to a fair trial in front of a fair and impartial jury. For example, under the State's theory, the jury would have to consider that "someone" picked up Mr. Turner in a complete vacuum and disregard

all of the other testimony presented before the alleged statement. *See*, A.A. Vol. 7, pg. 1185. Also, the jury would not have been able to consider Mr. Turner's statement that "there was nobody in the car with us" in the context of the other evidence. *See*, A.A. Vol. 7, pg. 1190. Clearly, the Court can see the non-sensical nature of the argument. The whole point of having a trier of fact sit through the whole trial is to consider all of the evidence before rendering a verdict based upon the evidence.

Under no circumstances can the State accurately argue that Mr. Turner's statement did not implicate Mr. Hudson. As demonstrated in the Opening Brief, the testimony of Mr. Turner's statement clearly drew references to Mr. Hudson's vehicle, the shotgun, Mr. Hudson's presence in the back yard, and the lack of a third suspect. There would be no way for Mr. Turner's statement to have implicated anyone else. The State had the detectives identify Mr. Hudson and Mr. Turner before testifying about the alleged statements. The detectives simply identified both defendants and testified about the statements, which left no room for imagination as to the identity of the "someone."

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Furthermore, Mr. Turner's Counsel relied upon Mr. Turner's statement implicating Mr. Hudson during the closing argument. The following dialogue occurred before and during a bench conference in Mr. Turner's closing argument:

Ms. Machnich: So what happened that night? First, as you heard, Steven was at home with his family when Hudson calls, and they go out to take some weed.

Mr. Giordani: Objection. That misstates the testimony. Hudson didn't call him.

The Court: Counsel, approach.

[Bench conference transcribed as follows:]

Ms. Machnich: Hudson did call him. Your Honor, my –

The Court: What is the stated evidence? Did Hudson call him, or did he call him?

Ms. Machnich: I believe they each say the opposite.

The Court: Huh?

Ms. Machnich: I believe they each say the opposite.

The Court: Okay. It's argument, I'm going to allow it.

A.A. Vol. 9, pg. 1457.

The dialogue during this bench conference clearly referenced Mr. Turner's statement as told by Detective Pazos. Mr. Hudson, however, never got the chance to cross-examine Mr. Turner.

After this bench conference, Mr. Turner's Counsel continued to rely upon Mr. Turner's statement to accuse Mr. Hudson of the crimes. Mr. Turner's Counsel explicitly argued the following:

> Ms. Machnich: Now, we know that Hudson had the guns and he brought the guns. How do we know that? You heard testimony that Steven saw them in the back of the car and that he recognized his uncle's gun in the back of the car.
>
> ...
>
> Ms. Machnich: And just how we go to recognizes his uncle's stolen gun, that was in the statement that was made, a gun that had gone missing. You can infer that someone who would come over and pick someone up to go steal some weed might also know where someone's uncle lives, if they live in the immediate area.

A.A. Vol. 9, pg. 1458-1459.

Again, Mr. Turner's own Counsel reminded the jury that Mr. Turner's statement implicated Mr. Hudson, yet Mr. Hudson never had the opportunity to cross-examine Mr. Turner. As explained in the Appellant's Opening Brief, Mr. Turner's statement facially implicated Mr. Hudson—just as Mr. Turner's Counsel argued. *See*, Appellant's Opening Brief ("AOB"), at 23. The District Court should not have allowed a joint trial in this case.

The Sixth Amendment matters. The Fourteenth Amendment matters. Judicial economy and cost-saving measures cannot trump a defendant's rights to a fair trial and to confront a witness against him. *Marshall v. State*, 118 Nev. 642, 646, 56 P.3d 376 (2002). A district court should sever the trial when a joint trial is "so manifestly prejudicial that it outweighs the dominant concern with judicial economy." *United States v. Doe*, 655 F.2d 920, 926 (9th Cir. 1980). Fundamental rights cannot be thrown out the window under the guise of judicial economy. The American justice system simply cannot function that way.

Joinder of Mr. Hudson's and Mr. Turner's trials caused a situation in which the prejudice outweighed the concerns for judicial economy. The error was not harmless. Mr. Hudson is serving sentences on attempt murder charges that he should not be serving. Mr. Hudson respectfully requests that this Court reverse the convictions and grant him a new trial.

Mr. Hudson's and Mr. Turner's Defenses were Antagonistic

The State argued that Mr. Hudson and Mr. Turner did not have antagonistic defense theories. RAB, at 18-19. The State argued: "Turner's defense, that some other person shot the officer, and Appellant's that he never intended to commit murder, are not so conflicting and irreconcilable that the jury could infer guilt based only on the conflicts of their defenses." RAB, at 19.

This case was not a typical "whodunnit" case where two defendants pointed fingers at each other and tried to escape criminal liability altogether. Mr. Hudson and Mr. Turner both conceded their involvement. Mr. Hudson conceded the burglary and conspiracy to commit burglary counts. The jury knew Mr. Hudson and Mr. Turner went to the residence the night of the incident.

The central issue rests upon whether Mr. Hudson intended to kill. Mr. Turner's statement to Detective Pazos propounded Mr. Hudson as the individual with the intent to kill. Had Mr. Hudson been convicted on all counts ***except*** the two attempt murder counts, he would have served a total of thirty-six (36) to one hundred twenty (120) months in the Nevada Department of Corrections.[1] (A.A. Vol. 10, pg. 1659-1661). Instead, Mr. Hudson is serving a grand total of one hundred sixty eight (168) to four hundred eighty (480) months in prison. (A.A. Vol. 10, pg. 1659-1661).

Defense Counsel argued that the pair went to the residence to steal weed. In contrast, Mr. Turner's statement implicated Mr. Hudson for the attempt murder. During closing arguments, Mr. Turner's Counsel capitalized on Mr. Turner's statement by arguing that he initially agreed to burglarize the house to steal weed, but then "as soon as things got violent, both literally and figuratively, Steven was

[1] These numbers are taken from the sentences imposed in the Judgment of Conviction filed on July 2, 2018.

out." (A.A. Vol. 9, pg. 1456). Mr. Turner's Counsel used the statement to Detective Pazos to ensure Mr. Hudson's guilty verdict on the attempt murder counts. Without evidence of Mr. Turner's statement pointing to Mr. Hudson as the attempted murderer, Mr. Hudson would not have been convicted on the attempt murder charges. Therefore, prejudice ensued, and the District Court should have severed the trials.

Summary

In conclusion, the District Court abused its discretion by not severing the defendants. Mr. Hudson respectfully requests that this Court reverse his convictions and remand the case for a new trial.

2. <u>The Prosecutor Committed Misconduct at Trial such that the Conviction Must be Reversed.</u>

A. Telling the Jurors to Feel "Good" about Catching Mr. Hudson

A prosecutor may not appeal to jurors' sympathies to divert their attention away from the evidence in order to secure a conviction. *Pantano v. State,* 122 Nev. 782, 783, 138 P.3d 477 (2006).

The State argued that the prosecutor's comment does not "warrant reversal in light of the substantial evidence of Appellant's guilt." RAB, at 22. Although this Court found that the error did not warrant reversal in *Turner v. State*, 473 P.3d 438, 449 (2020), Mr. Hudson requests that this Court rule on the issue in Mr. Hudson's

favor, as substantial evidence did not connect Mr. Hudson to the two attempt murder counts.

This comment diverted the jury's attention away from the issues at trial and gave the jury an emotional tie to wanting to put attempted-cop-killers behind bars. Therefore, Mr. Hudson requests that the Court consider this issue, rule that Mr. Hudson has shown plain error, and reverse the conviction.

B. Injecting Personal Opinions into the Argument about Issues not in Evidence

Nevada law does not allow a prosecutor to "inject his personal opinion or beliefs into the proceedings or attempt to inflame the jury's fears or passions in pursuit of a conviction." *Valdez v. State*, 124 Nev. 1172, 1192, 196 P.3d 465 (2008).

In the Answering Brief, the State attempted to differentiate between the prosecutor's improper comments about more crimes being possible and the prosecutor's continuation with the argument after the sustained objection. RAB, at 22-23. Despite the State's attempted differentiation, the prosecutor's narrative in closing argument after the sustained objection followed directly from the point being made before the objection. (A.A. Vol. 9, pg. 1509-1510). Although the District Court sustained the objection, the prosecutor continued his argument without pause and injected personal opinion about Mr. Hudson's alleged guilt. (A.A. Vol. 9, pg. 1510).

The State further confused the issue on appeal by arguing:

> Appellant did not object to the prosecutor's comments about the nature of attempted murder and transferred intent at trial. Since this is a correct statement of the law of attempted murder, the prosecutor's underscoring the point cannot be improper. RAB, at 23.

It is puzzling that the State would inject this argument into Mr. Hudson's issue. Mr. Hudson strictly argued the impropriety and inflammatory nature of the prosecutorial comments and personal beliefs under the standard set forth in *Valdez* and as further enunciated in *United States v. Roberts*, 618 F.2d 530, 533 (9th Cir. 1980) (quoting *Berger v. United States*, 295 U.S. 78, 88, 55 S.Ct. 629, 633, 79 L.Ed. 1314 (1935)). Mr. Hudson requests that the Court disregard the State's argument on this point because it does not apply to Mr. Hudson's issue.

Accordingly, Mr. Hudson respectfully requests that the Court find the prosecutor's comments improper, reverse Mr. Hudson's conviction, and grant him a new trial.

3. <u>The District Court Erred by Giving Improper Jury Instructions.</u>

A. The District Court Improperly Gave Jury Instruction No. 29.

Jury Instruction No. 29 derived from *Ewell v. State*, 105 Nev. 897, 899, 785 P.2d 1028 (1989). Defense Counsel challenged Jury Instruction No. 29 because the *Ewell* case regarding shooting into a group did not apply to the instant case. In contrast, the State argued that Jury Instruction Nos. 28 and 29 should be read

together as the transferred intent instructions. RAB, at 26. The State then provided definitions for the word "group." RAB, at 26.

Mr. Hudson submits that *Ewell* does not apply to the instant case because the evidence showed that Mr. Hudson went to the house to burglarize and obtain marijuana without the intent to kill. In *Ewell*, the defendants performed a drive-by shooting and aimed shots toward a group of officers. *Ewell*, 105 Nev. 899. Mr. Hudson respectfully requests that this Court reverse his conviction and grant him a new trial.

B. The District Court Improperly Gave Jury Instruction No. 38.

The State argued that three of Mr. Hudson's cited cases do not apply to the instant case. First, the State asserted that *Weber v. State*, 121 Nev. 554, 119 P.3d 107 (2005), did not apply because "there is no evidence that a significant amount of time passed between crime and arrest." RAB, at 29. Second, the State asserted that *Guy v. State*, 108 Nev. 770, 839 P.2d 578 (1992), did not apply because "The flight instruction was not used to explain the time between the two events." RAB, at 29. Third, the State claimed that *Miles v. State*, 97 Nev. 82, 624 P.2d 494 (1981), did not apply because "Appellant did not go away at all." RAB, at 29.

By making these arguments, the State has effectively argued that the flight instruction—Jury Instruction No. 38—did not apply to Mr. Hudson. Mr. Hudson agrees that the flight instruction presented at trial did not apply to him. Hence, the

State has agreed to the fundamental premise of this issue. Mr. Hudson presented each of those cases in the Opening Brief to explain the issue and give examples as to why the flight instruction did not apply.

The State, however, mistakenly argued that no evidence showed that the jury imputed the flight instruction to Mr. Hudson. That is not the issue. The issue is that the District Court gave no limiting instruction to the jury to ensure that they would not consider flight as an issue against Mr. Hudson. It makes no sense that jurors should have to parse out ambiguity and determine which instructions go to which defendants without any direction or assistance. The grand jury charged both Mr. Hudson and Mr. Turner in the exact same counts in the exact same Amended Indictment. On top of that, the jury convicted both Mr. Hudson and Mr. Turner of exactly the same charges on each of their respective verdict forms. The jury found no differences.

Although the flight instruction clearly had no application to Mr. Hudson whatsoever, *Rosky v. State*, 121 Nev. 184, 199, 111 P.3d 690, 699-700 (2005), the District Court should have given a limiting instruction to advise the jury that Mr. Hudson did not flea. Mr. Hudson recognizes that Defense Counsel did not object, and this Court must review the issue for plain error. Therefore, Mr. Hudson respectfully requests that this Court consider the issue under the plain error standard and reverse Mr. Hudson's conviction.

C. The District Court Improperly Gave Jury Instruction No. 40 (The Reasonable Doubt Instruction) and Instruction No. 50 (The Equal and Exact Justice Instruction)

The State argued that Jury Instruction Nos. 40 and 50 have provided the correct standard of proof as required by Nevada law. RAB, at 30-34. Although the jury instructions have been upheld by courts, Mr. Hudson raised these issues because the wording of these particular instructions minimized the State's burden of proof. Due process requires that the State prove every element against a defendant beyond a reasonable doubt. *Cage v. Louisiana*, 498 U.S. 39, 41, 111 S.Ct. 328, 112 L.Ed.2d 339 (1990), quoting *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). Accordingly, Mr. Hudson respectfully requests that this Court find plain error and reverse the conviction.

4. <u>The District Court Erred by Allowing Uniformed Officers to Pack the Courtroom.</u>

In the Answering Brief, the State tried to analogize the instant case to *McKenna v. State*, 114 Nev. 1044, 968 P.2d 739 (1998). In *McKenna*, the uniformed officers attended the trial to provide security and maintain custody of the defendants. *McKenna*, 114 Nev. at 1048. Upon review, this Court found that "Even if a slight degree of prejudice existed by deployment of the state troopers, sufficient cause for the level of security was found in the state's need to maintain custody of the defendants during the proceedings." *Id*. at 1050.

Here, the uniformed officers in the gallery did not function to provide security or maintain order. Instead, they attended to watch the closing arguments. The State correctly argued that the officers had a right to attend the public proceedings. Attendance, in and of itself, is not the issue. The issue is that the officers went to the courtroom in full uniform, which would have intimidated a jury deciding the fate of two defendants accused of shooting an officer. This rendered the proceedings fundamentally unfair as the jury could not have been impartial to Mr. Hudson with the pressure of being watched by a courtroom full of uniformed officers. Thus, Mr. Hudson respectfully requests that the Court reverse the convictions and order a new trial.

5. <u>Cumulative Error in the Trial Proceedings</u>

Mr. Hudson has shown numerous issues of error that affected the outcome of the proceedings. This Court has repeatedly held that the "cumulative effect of errors may violate a defendant's constitutional right to a fair trial even though errors are harmless individually." *Rose v. State*, 123 Nev. 194, 211, 163 P.3d 408 (2007), see also *Hernandez v. State*, 118 Nev. 513, 535, 50 P.3d 1100 (2002). This Court has adopted the following factors for determining whether the cumulative effect of the errors denied a defendant the right to a fair trial: "the issue of innocence or guilt is close, the quantity and character of the error, and the gravity

of the crime charged." *DeChant v. State*, 116 Nev. 918, 927, 10 P.3d 108 (2000); see also, *Rose*, at 212.

The State argued that Mr. Hudson has not supported a "single claim of error, much less multiple errors that could be accumulated to warrant relief." RAB, at 40. This argument is not persuasive. Mr. Hudson has in fact raised several issues that warrant relief.

Additionally, contrary to the State's assertions, the issue of guilt was close as to the attempt murder charges because there was evidence that the officers shot at Mr. Hudson first. Next, given the number and gravity of errors, Mr. Hudson has met the burden for showing that the quantity and character of the errors were numerous. Finally, Mr. Hudson has been convicted of very severe crimes and is serving a very long sentence. Thus, Mr. Hudson has met the burden for showing cumulative error. Accordingly, Mr. Hudson respectfully requests that this Court reverse the District Court's Judgment of Conviction and grant him a new trial.

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B. POST-CONVICTION CLAIMS

1. The District Court Abused its Discretion by failing to find that Mr. Hudson Received Ineffective Assistance of Defense Counsel for failure to object to the District Court's Presentation of Instruction Number 38 Regarding Flight to the Jury.

The State argued that Defense Counsel could not be held ineffective for failing to challenge the flight instruction because it would have been a futile objection. RAB, at 43, see, *Ennis v. State*, 122 Nev. 694, 706, 137 P.3d 1095 (2006). Specifically, the State argued that "Raising an objection to this instruction would have been futile since Appellant's co-defendant fled" and could not have affected Mr. Hudson's rights. RAB, at 44. The State has mistaken the argument.

Mr. Hudson did not dispute that Defense Counsel must make strategic decisions that comport with an objective standard of reasonableness. *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Powell*, 122 Nev. 751, 759, 138 P.3d 453 (2006). Mr. Hudson simply claimed that Defense Counsel's failure to object to Instruction No. 38 constituted an unreasonable decision.

Consequently, the State's argument mistook the issue. Mr. Hudson has never argued that the flight instruction did not apply to Mr. Turner. To the contrary, Mr. Hudson has clearly argued that the flight only applied to Mr. Turner. Mr. Hudson's Defense Counsel, however, did not protect the record and ensure that the Court gave an instruction explaining the application of the flight instruction to the jury.

Had Defense Counsel raised the objection, there is a reasonable probability that the result of the trial would have been different because the jury would not have attributed flight to Mr. Hudson and considered the flight issue during deliberations against Mr. Hudson. Mr. Hudson further argued that the District Court erred by not granting an evidentiary hearing to expand the record on the issue.

For these reasons, the District Court erred by not granting an evidentiary hearing and denying Mr. Hudson's claim. Mr. Hudson respectfully requests that this Court reverse the District Court's denial and grant Mr. Hudson's claim. In the alternative, Mr. Hudson requests that this Court reverse the denial and remand the proceedings for an evidentiary hearing on this issue.

2. <u>The District Court Abused its Discretion by Failing to Find Defense Counsel Ineffective for Failure to Object to the District Court's Giving of Instruction Numbers 40 and 50 in Violation of the Fifth and Fourteenth Amendments to the United States Constitution.</u>

The State argued that the reasonable doubt and the equal and exact justice instructions were properly given as they have been upheld by Nevada courts. Although courts have found the jury instructions to be permissible, Mr. Hudson requests that this Court revisit its prior decisions and find that these instructions are unconstitutional.

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V. CONCLUSION

Based on the foregoing, Mr. Hudson respectfully requests that this Court vacate his conviction and order a new trial.

Respectfully submitted this 7th day of October, 2021.

By: /s/ Christopher R. Oram

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VI. CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I further certify that this brief complies with the formatting requirements of NRAP 32(a)(4)-(6) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word, a word-processing program, in 14 point Times New Roman.*

*Certificate of Compliance containing word count continued to page 22.

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I further certify that this brief complies with the type volume limitations of NRAP 32(a)(7) because it is proportionately spaced, has a typeface of 14 points or more and contains 5,139 words. I understand that I may be subject to sanctions in the event that the accompanying brief in not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 7th day of October, 2021.

Respectfully submitted,

By: /s/ Christopher R. Oram

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VII. CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on October 7, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD
Nevada Attorney General

STEVEN B. WOLFSON
Clark County District Attorney

BY /s/ Nancy Medina
Employee of Christopher R. Oram