

**In the Supreme Court of the State of Nevada**

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No. 83243

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**ANDREW YOUNG,**

Appellant,

vs.

**THE STATE OF NEVADA,**

Respondent.

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**Appeal from Judgment of Conviction**

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**APPELLANT’S PETITION FOR REVIEW**

DIANE C. LOWE, ESQ.  
Lowe Law, L.L.C.  
7350 West Centennial Pkwy #3078  
Las Vegas, Nevada 89113  
(725) 212-2451  
Attorney for Appellant

STEVE B. WOLFSON, ESQ.  
JOHN T. AFSHAR  
PARKER P. BROOKS  
ALEXANDER G CHEN  
CLARK COUNTY DISTRICT  
ATTORNEY’S OFFICE  
200 Lewis Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89155  
(702) 455-4711

AARON D. FORD  
Attorney General  
100 North Carson Street  
Carson City, Nevada 89701  
Attorneys for Respondent

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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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ANDREW YOUNG,	)	
	)	
Appellant,	)	
	)	
v.	)	
	)	
THE STATE OF NEVADA,	)	No. 83243
	)	
Respondent.	)	
	)	
	)	

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**PETITION FOR REVIEW**

COMES NOW Appellant ANDREW YOUNG, by and through his attorney DIANE C. LOWE, and timely petitions, pursuant to NRAP 40B(c), this Honorable Court for a review of the Order Denying Rehearing from the Court of Appeals issued in this case.

Dated this 5th of October 2023.

/s/ Diane C. Lowe \_\_\_\_\_  
Diane C. Lowe, Esq  
Lowe Law, LLC  
7350 W. Centennial Parkway #3078  
Las Vegas, NV, 89131  
(725)212 2451  
DianeLowe@LoweLawLLC.com

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. JURISDICTION**

The Court of Appeals (COA) issued an Order - affirming in part and reversing in part on July 20, 2023 Andrew Young's April 30, 2021 - 20-felony-count jury conviction. (Docket 23-25398) 2AA375-80. He was convicted of multiple counts of Larceny from a person 60 years old and beyond, Grand Larceny, Burglary, and Fraudulent use of a Credit Card. The resulting Judgement of Conviction was filed June 29, 2021 3AA519-524. Young filed a Petition for Rehearing August 28, 2023. (Docket 23-28102). An Order Denying Rehearing was filed September 21, 2023. (Docket 23-31056). Young now files this timely Petition for Review 14 days later. See NRAP 40B(c).

### **II. QUESTION PRESENTED**

**A. Whether The Court of Appeals Errs in Affirming the District Court's refusal to Declare a Mistrial Following a Juror's Disclosure of Inferential Bias During Trial Violated Mr. Young's Constitutional Rights.**

### **III. FACTUAL BACKGROUND**

Prosecutors alleged that, between June 29, 2020 and August 10, 2020, Mr. Young committed a series of thefts followed by fraudulent credit card transactions.

#### **Mary Campo**

Mary Campo, 72, testified that, on June 29, 2020, she was sitting at the Rampart Casino playing a gaming machine when she was approached by two men. V App. 787-91. One of the men approached her from the right and asked her about something. Id. She could feel the other gentleman standing behind her. Id. After the men left, Ms. Campo reached inside her purse and noticed her wallet was missing. Id. Ms. Campo had approximately \$1400 as well as various cards, including her debit card, inside her wallet. Id.

Ms. Campo then contacted Bank of America to report her debit card stolen. V App. 792-94. Not long thereafter, Ms. Campo received word that someone had tried to use her debit card at a 7-Eleven on Maryland Parkway. V App. 795.

LVMPD Officer Ethan Grimes was assigned to investigate Ms. Campo's wallet theft. VI App. 1163-65. Officer Grimes testified that, in

the surveillance video, the individuals seen near Ms. Campo were carrying jackets and "pretending to gamble but mainly looking around."

VI App. 1166

Officer Grimes also obtained receipts and surveillance footage from the 7-11 where Ms. Campo' s card was used. VI App. 117 4-75. Marcia Martinez, the manager of that 7-11, located a receipt for cigarette purchase with Ms. Campo's card. VI App. 1008-09.

Officer Grimes testified that it takes approximately 20-25 minutes to drive from the Rampart Casino to the 7-11 on Maryland Parkway where Ms. Campo's card was used. VI App. 1175. According to Officer Grimes, this time frame was consistent with the time the alleged perpetrators were observed to have left the Rampart and arrived at the Maryland Parkway 7- 11. VI App. 1173-76.

#### Lydia Hefner

Vianca Eskildsen, an asset protection officer at Walmart on Eastern and Serene Avenue, testified that, on July 8, 2020, she was monitoring activity at her store when she noticed a man engaging in suspicious behavior. VI App. 1069. So she went into her office and "picked up surveillance via CCTV." VI App. 1072. While watching the CCTV, Ms.

Eskildsen observed the man to have his eyes trained on a customer's purse as he concealed his hand with his jacket. VI App. 1074-75.

Worried, Ms. Eskildsen called police. VI App. 1075.

While waiting for officers to arrive, Ms. Eskildsen watched as the man began looking at another woman and her purse. VI App. 1078-80.

Shortly thereafter, L VMPD officers arrived and joined her in her office.

VI 1080-81. Ms. Eskildsen and the officers then headed to the front of the store, where they apprehended him. VI App. 1083-85. The man identified himself as Mr. Young. VI App. 1083-85.

The woman to whom that wallet belonged was Lydia Hefner, 69. Ms. Hefner testified that she was shopping at the Walmart when Ms. Eskildsen stopped her as she approached the checkout line. VI App. 1131-35. When Ms. Eskildsen asked that she check to make sure her wallet was still in her purse, Ms. Hefner discovered that her wallet was missing. Id.

According to Officer Wheeler, Mr. Young, when confronted and Mirandized by officers, explained that he found Ms. Hefner's wallet on the floor in the milk aisle. V App. 851. Officer Wheeler issued Mr. Young a citation for petit larceny and released him. V App. 852; VI App. 1086.



Rhonda Hatcher

Rhonda Hatcher, 64, testified that, on July 8, 2020, she was staying at Caesar's Palace Hotel and Casino with her mother when, after an evening out, the women encountered two men in a hotel elevator. VI App. 989-93. One of the men indicated he was blind and asked Ms. Hatcher if he pushed the right button for his floor. VI App. 993. Once Ms. Hatcher and her mother reached their floor, they had to step around the men to exit the elevator. VI App. 993.

As she walked to her room, Ms. Hatcher felt like something was wrong. VI App. 994. She checked her purse and discovered her wallet, which contained approximately \$180 as well as her debit and credit cards, was missing. VI App. 994-95. The transactions totaled around \$1,000. Id.

Ms. Hatcher did not identify either man with her in the elevator. VI App. 988-1006.

Once she returned home, Ms. Hatcher filed a report with the LVMPD. VI App. 995. Her case was assigned to LVMPD officer Jeremy Jacobitz, who immediately requested surveillance video from Caesar's. VI App. 892. Officer Jacobitz described the wallet theft as a 'distract

theft' in which Mr. Young took Ms. Hatcher's blue wallet while his partner blocked the elevator doorway. V App. 895-98.

Over defense objection, Officer Jacobitz opined that the theft was a joint effort as neither Mr. Young nor his acquaintance was registered to the hotel; and after completing the 'distract theft' both men returned to the ground floor and left the casino. V App. 898-99. Officer Jacobitz additionally opined that Mr. Young was " ... smooth at this. He's been doing this for a long time. He's good."2 V App. 897-98. However, Officer Jacobitz admitted that he had "no information" that Mr. Young had, indeed, "been doing this a long time." V App. 898.

#### Joanne Frank

Joanne Frank, 77, testified that, on July 22, 2020, she was shopping at Albertson's on Rainbow Boulevard when she was approached by two individuals as she perused frozen shrimp. V App. 811-13. She had a backpack-type purse with her, in which she had various personal items including her wallet. Id. Her wallet contained approximately \$75 as well as her credit and other cards. V App. 811-13; 816.

Ms. Frank could not provide identifying details regarding the individuals who approached her other than very general descriptors. V App. 820-21

Barbara Bowen

Barbara Bowen, 81, testified that, on July 23, 2020, she was shopping with her daughter at Walmart on Boulder Highway when a man with a shopping cart approached her as she was getting fruit cups. VI App. 1049-52. Ms. Bowen testified she handed the man a fruit cup and then turned her back to him to get him another one. VI App. 1052. The man thanked her and went on his way. Id.

Ms. Bowen could not identify the man who took her wallet. VI App. 1059-60.

Investigating officers obtained receipts and surveillance footage of the transactions involving Ms. Bowen's cards at the GameStop and Walgreens. Based upon the receipts and surveillance footage, Kristen Trock, a GameStop store leader, testified that, on July 23, 2020, a man attempted to purchase a Vanilla Visa card for \$450 using (Ms. Bowen's) Visa credit card ending in 4527.3 V App. 960-68; 973-74; 968.

Serry Mello

Serry Mello, 69, testified that, on July 29, 2020, he and his wife encountered two men in an elevator while they were on their way to their hotel room at the Flamingo Hotel and Casino. V App. 929-33. When Mr. Mello and his wife reached their floor, one of the men helped

Mr. Mello, who was dragging two suitcases, exit the elevator. V App. 934.

L VMPD Officer Dominick Cipriano responded to the Flamingo Hotel to investigate the Mr. Mello' s wallet theft. V App. 940-41. He obtained surveillance video of Mr. Mello's encounter with the men in the elevator. V App. 942. Narrating the video, Officer Cipriano testified that the surveillance footage showed one of the men going through his belongings after the Mellos exited, after which both men took another elevator down to the casino. V App. 944.

#### Montho Boone

Montho Boone, 81, testified that, on August 1, 2020, she was shopping with her daughter, Benji, at Walmart on Boulder Highway when she discovered someone had opened her purse and removed her wallet. V App. 827-30. Ms. Boone's wallet contained approximately \$230 as well as her credit and debit cards. V App. 830.

Ms. Boone could not identify the individual who took her wallet as she did not see the theft. V App. 833; VI App. 1159.

According to GameStop store leader Kristen Trock, a man tried to purchase a Vanilla Visa card using Ms. Boone's credit card (ending in 3609) that same day.<sup>6</sup> V App. 969-70. Approximately 15 minutes later,

someone tried to use Ms. Boone's cards at a nearby Walgreens. VI App. 1142. Walgreen's assistant manager Janelle Phung testified that someone tried to purchase a Vanilla Visa gift card with Ms. Boone's Visa card (ending in 3609). 7 VI App. 1091. Ms. Phung indicated that, when the first transaction failed to process, the individual attempted to use a second card, this one ending in 7001. VI App. 1091-92. When that transaction also failed, the individual tried to run the transaction again with the first card ending in 3609. VI App. 1092. When transaction again failed to process, the individual used a card ending in 7669, which went through. VI App. 1092.

Ms. Boone and her daughter reported the wallet theft, ultimately providing her credit/debit card information to L VMPD Officer Sandeep Liske (V App. 830-31 ), the detective assigned to her case. VI App. 1137-38. Officer Liske determined that the stores where Ms. Boone's cards were used were within walking distance from the Walmart where her wallet was stolen. He indicated that the GameStop store was a 5- to 10-minute walk from the Walmart; and the Walgreens was a 15- to 20- minute walk from the GameStop. VI App. 1139-40. Coincidentally, Officer Liske's partner was investigating [the Bowen] wallet theft from July 23, 2020. VI App. 1144. According to Officer

Liske, the surveillance footage depicted an individual wearing the same clothes during both the July 23, 2020 and August 1, 2020 GameStop / Walgreens transactions. VI App. 1146.

Tina Leigh

Officer Liske was also assigned to investigate a wallet theft reported by Tina Leigh from the same Walmart. VI App. 1149-50. Ms. Leigh, 618, testified that, on August 7, 2020, she went to the Walmart on Boulder Highway to buy cleaning supplies. V App. 867-68. While looking at the cleaning supplies, a tall gentleman approached her and asked questions about mixing various cleaning agents. V App. 869. While speaking with him, she noticed another man stick his hand in her purse and take something. V App. 869. She immediately determined that he had taken her wallet, which contained her debit and credit cards, amongst other things. V App. 869-72. Within an hour, Ms. Leigh received word that someone had tried to use her credit and/or bank cards. V App. 876.

Ms. Leigh described both individuals as black. V App. 870.

Barbara Angersbach

Barbara Angersbach, 83, testified that, on the late evening of August 9, 2020/early morning of August 10, 2020, she was at the Suncoast Casino gambling when two men approached her, ostensibly attempting to play

the gaming machines to the right and left of her. V App. 904-10. After Ms. Angersbach reminded the man to her right that they could not stand within ( 6) feet of her due to Covid restrictions, the man to her left agreed they were too close, and they left. V App. 904-10.

Shortly thereafter, Ms. Angersbach noticed her wallet was not in her purse. V App. 911. She assumed she left it at home until she began receiving cell phone messages notifying her of suspicious transactions on her credit cards. V App. 912. Once she returned home and determined her wallet was not there, she reported it stolen. V App. 913. She then learned that someone used her credit/debit cards at a "motor speed" place, a Taco Bell, and a gas station. V App. 914.

Ms. Angersbach could not identify either man who approached her at the Suncoast. V App. 920-21.

LVMPD Officer Grimes, already investigating Ms. Campo's wallet theft from the nearby Rampart Casino a month earlier, was assigned Ms. Angersbach's case. VI App. 1171-72. Officer Grimes testified that, when he obtained the surveillance footage of the Angersbach theft from the Suncoast, he recognized the two men seen on the video as the same two men involved in the theft of Ms. Campo's wallet. VI App. 1172.

Officer Grimes noted, amongst other things, that the shoes worn by one of the men were the same in both thefts. VI App. 1172-74.

Officer Grimes explained that, between the first incident involving Ms. Campo and the later incident involving Ms. Angersbach, L VMPD officers began coordinating their investigations of the wallet thefts, including those occurring at the Walmart on Boulder Highway. VI App. 1176-77.

Officer Grimes then communicated Mr. Young's name to officers investigating similar wallet thefts, including L VMPD Officer Janacek, who was investigating Ms. Frank's wallet theft at Albertson's. VI App. 1178. Officer Grimes testified that reviewed the surveillance footage from Albertson's and "recognized both of the suspects in [that] video as being the same two suspects in [his] cases." VI App. 1178-79. Officer Grimes explained that he recognized one of the suspects as wearing the same shorts and shoes, having a bald head, and displaying the same mannerisms as one of the suspects in the cases he was investigating. VI App. 1179-80.

#### Detective Trent Byrd

L VMPD Detective Trent Byrd testified that he was called upon to assist with identifying the individual(s) involved in the wallet thefts. VII App.



1207. Det. Byrd explained that he identified Mr. Young as one of the perpetrators based on the incident involving Ms. Hefner. VII App. 1208. Det. Byrd compared certain of Mr. Young's characteristics depicted in the Hefner footage - such as race, height, approximate age, build, clothing, accessories, and mannerisms - to that of the suspects in the other wallet thefts. VII App. 1208-20. Det. Byrd opined that Mr. Young was depicted in nearly all the surveillance videos obtained from the other wallet thefts and related credit/debit card transactions.<sup>9</sup> VII App. 1208-20. Det. Byrd identified Andrew Young as the man sitting at the defense counsel table in court. *Id.*

**Juror Bilzerian makes a special request**

Following the testimony of nearly all the complainants, Juror 111, .Mr. Bilzerian, sent out a note asking the judge: "Would you mind if I give each of the victims \$2,000.00 in an envelope after they are excused?" VI App. 1039-42; 1115. The court responded by explaining she could not answer the question since the issue of gift-giving to witnesses/victims is "out of her control." *Id.* The court then canvassed Mr. Bilzerian on his ability to fairly adjudicate the case. *Id.* at 1115-16. Mr. Bilzerian assured the parties that his sympathy for the victims did

not have anything to do with his perception of Mr. Young's guilt or innocence. *Id.* at 1115-20.

Defense counsel then moved for a mistrial, arguing, *inter alia*, that Mr. Bilzerian's expression of sympathy for the victims gave rise to an insurmountable inference of bias. *Id.* at 1120-26. Defense counsel contended that Mr. Bilzerian's request revealed he had formed an opinion about the case prior to the submission of all the evidence - in direct contravention of the court's repeated admonitions. *Id.* at 1125. Defense counsel added that Mr. Bilzerian's "status and his reputation" (as a famous YouTube personality) gave rise to the possibility that "he may have an extra ability to influence this case."<sup>10</sup> *Id.* at 1121.

Without canvassing the other jurors to ensure that Mr. Bilzerian's sympathies had not been the subject of discussion and/or influenced their perceptions of the case, the trial court denied the defense mistrial motion and allowed Mr. Bilzerian to remain on the jury. VI App. 1121-30. Jurors ultimately convicted Mr. Young of all but two of the offenses with which he was charged.

#### **IV. REASONS REVIEW IS WARRANTED**

This Court should hear this issue because per Nev. R. App. P. 40B(a) (3) it involves a fundamental issue of statewide public importance. Getting a fair jury trial is of utmost importance to all in Nevada.

"A defendant is denied the right to an impartial jury if only one juror is biased or prejudiced." Tinsley v. Borg, 895 F.2d 520, 523-24 (9th Cir. 1990).

The law in Nevada needs elaboration on when inferred juror bias starts and gives way to actionable relief. There is no quantitative factor considered in determining when actual bias also becomes inferred bias. So a gift of \$20 proportional and small is treated equally with a gift or requested gift that far exceeds the monetary loss by thousands of dollars. Furthermore the Court of Appeals appears to hold that if there is actual bias then that precludes a finding of inferred bias. (Docket 23-25398). The caselaw that they cite and rely on to deny Young relief is distinguishable: 3 jurors after conviction of the defendant and before the penalty phase - went out and bought the daughter - whose mother, the complainant, had been murdered - bought her a little outfit. Hernandez v. State, 118 Nev. 513, 50 P.3d 1100, 2002 Nev. LEXIS 69, 118 Nev. Adv. Rep. 55.

Young's Direct Appeal Opening Brief: p. 40 (Docket 22-07351)

Accordingly, a judge may exercise her discretion to infer bias "when the facts elicited in voir dire ... show an average person in the juror's situation would be unable to decide the matter objectively." Id.

The trial court erred by refusing to grant a mistrial following juror Bilzerian's disclosure of inferential bias against Mr. Young. Mr. Bilzerian's expression sympathy for the victims in the case - to the extent that he wanted to spend thousands of dollars gifting each \$2,000.00 - gave rise to an inference of bias so profound as to undermine his assurances of impartiality. This is especially true given that Mr. Young was the individual alleged to have occasioned the losses each of the victims suffered - a critical fact that distinguishes Mr. Young's case from Hernandez v. State, 118 Nev. 513 (2002), the case relied upon by the trial court in denying Mr. Young's mistrial motion.

In Hernandez, three jurors bought a gift for a murder victim's daughter between the guilt and penalty phases of trial. Id. at 521-22. The trial court canvassed the jurors about the purchase, after which the defense moved for a mistrial. Id. The trial court denied the mistrial motion. Id. This Court held that the trial court's decision did not amount to an abuse of discretion, concluding that "the facts do not establish prejudice but merely p. 41 demonstrate that the jury was sympathetic to an innocent child, who was a collateral victim of the murder." Id. (emphasis added).

Respondent's Answering Brief to Young p. 31: (Docket 22-21180)

Juror misconduct does not occur solely because a juror desires to aid a victim financially. Hernandez v. State, 118 Nev. 513, 521, 50 P.3d 1100, 1106 (2002). In Hernandez, the jury convicted a defendant of first-degree murder. Id. at 520, 50 P.3d at 1105. After the defendant's guilt phase, but prior to his penalty phase, three jurors purchased a gift for murder victim's daughter. Id. at 521, 50 P.3d at 1106. The jurors returned a death sentence. Id. When questioned by the district court, the record only

p. 32. showed that “the jury was sympathetic to an innocent child, who was a collateral victim of the murder.” Id. at 522, 50 P.3d at 1107. This Court held that the record did not support the underlying claim of juror misconduct. Id. at 522, 50 P.3d at 1106-07. This Court also held that the defendant was not prejudiced as the record only demonstrated a sympathetic jury. Id.

COA Opinion 83243-COA: 25, 26 (Docket 23-25398)

p. 25 footnote: "We recognize that the district court cited to Hernandez v. State, 118 Nev. 513. 50 P.3d 1100 (2002), in its efforts to address juror no. 11's sympathy for the elderly victims. On appeal, the State also relies on Hernandez, and Young did not address the issues related to juror no. 11 in his reply brief. Despite the factual similarities between this case and Hernandez, Hernandez is not controlling. In Hernandez, the Nevada Supreme Court held that reversal was not required where a motion for a mistrial was denied when certain jurors purchased a gift for the murder victim's daughter following the guilt phase of the trial but before the penalty phase and kept the gift in the jury room during the penalty phase deliberations. Id. at 521-22, 50 P.3d at 1106-07. The supreme court held that the jurors' discussion about the gift was not misconduct, but even if it

p. 26 footnote: was, it was not prejudicial because the conduct "merely demonstrate[d] that the jury was sympathetic to an innocent child, who\_ was a collateral victim of the murder." Id. at 522, 50 P.3d at 1107. Hernandez dealt solely with the issue of juror misconduct and possible prejudice resulting therefrom, which is subject to abuse of discretion and harmless error review, see id., as opposed to the failure to remove a biased juror, which (if proven) is reversible error. See Sanders, 131 Nev. at 511, 354 P.3d at 208 ("Under Nevada law, when a failure to remove a biased juror results in an unfair empaneled jury, the error is reversible.").

Jury Trial Day 3

The Court: All right. Mr. Fischer, did you want to lay a record sir?"

Day 3 p. 138; 6AA1121

Trial Attorney for Young: Mr. Fischer: Your Honor, I absolutely want – would like to. I may need some opportunity to brief this, but just for the time being, if you'd like me to make – this is sort of obviously off the cuff, as I wasn't prepared for this issue. But I think it speaks to an exact reason we have jury selection, as I stated. And I don't see how this Court can reconcile the two. I don't see how you can have a juror who's clearly expressed a preference. Maybe it's something that he thinks is not relevant to the trial and he can separate the two, but I cannot believe that anybody reviewing this transcript would be able to conclude that keeping this juror under the circumstances, especially somebody of his stature and his reputation, he may have an extra ability to influence this case, to say that this is not a due process violation of Mr. Young's trial, just it is an impossibility, just based on various constitutional violations I could just cite to Fourth, the Fifth the Sixth, the Eighth. 6AA1121. So having said that , Your Honor, I move for a mistrial."

Jury Trial Day 3: 6AA1039.

Complainant 1 Count 2, 3, 5 Mary Campo

Complainant 2 Count 5, 8 Rhonda Kay Hatcher

Complainant 3 Count 10 Joanne Frank

Complainant 4 Count 12, 14 (not guilty) Barbara Bowens

2 Complainant 5 Count 16 Serry Mello

3 Complainant 6 Count 17, 18 Robert Will

4 Complainant 7 Count 20 (not guilty), 22 Montho Booth.

\$14,000 if one includes the ultimately bifurcated attempt murder count.

Amended Superseding Indictment 1AA76-84.

As noted in appellate counsel Jason Margolis' oral argument and as most practicing attorneys must be aware it is an extraordinary action to be moved to the point of wanting prior to conviction to give the complainants thousands of dollars: \$12,000-\$14,000. 83243-COA, Young (Andrew vs. State Oral Argument 3.30.23 - 4 minutes in of 35:14 recording found at

[https://nvcourts.gov/supreme/arguments/court\\_of\\_appeals\\_prior\\_oral\\_argument\\_recordings](https://nvcourts.gov/supreme/arguments/court_of_appeals_prior_oral_argument_recordings).

He also argues how it is unlikely that he could be motivated to make such a magnanimous gesture without also harboring prejudice against the defendant and wanting him punished. And he argues that there was never an assertion that they didn't lose money.

Impetus for such action cannot be analyzed properly under an actual bias supposition. No colloquy can appropriately determine the depth of his motivation sufficiently to ensure Mr. Young's constitutionally guaranteed rights to a fair trial. Mr. Bilzerian elaborates in his actual bias colloquy with the court on day three of the jury trial "I mean, I help victims all the time" Line 15 p. 133 of Day 3 Jury Trial Transcript. 6AA1116. Generally people pick their charities for a purpose and more likely than not – it reflects a much larger issue not being divulged by Mr. Bilzerian – which the law for implied *and* inferred bias anticipates by not allowing a self-serving colloquy to overcome findings of bias for these two. Having said that he did admit during voir dire to being victimized similarly to the complainants on at least three occasions. 4AA676 lines 21-22. 4AA677 line 7-10. 4AA678 lines 12-19.

Which is one of the clear grounds for a finding of inferred bias and considering his overly generous offer and admitted donations or 'help' to victims all the time – must allow this honorable court to come to the only fair conclusion - an egregious error occurred when Bilzerian remained on the panel for deliberation. So manifestly unfair that the verdicts must be overturned.



Again we stress actual bias does not cancel out a finding of inferred bias. We feel that the deciding courts started with that and then stopped without going further. Instead they should have started at inferred bias. The obscene amount of money being offered is relevant in that analysis. That he had not been found guilty yet. That he gave to victims all the time. That he had been victimized himself. That offers of this nature almost never happen despite the sympathy many complainants no doubt general with the jury and millions of panel members over the years. It is safe to say most trial attorneys can go their entire career without having this issue arise.

An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason. Crawford v. State, 121 Nev. 746, 746, 121 P.3d 582, 583 (2005). An erroneous view of the law is always an abuse of discretion. United States v. Tsarnaev, 968 F.3d 24, 34 (1st Cir. 2020) overturned on other grounds. "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason.").

Farmer v. State, 133 Nev. 693, 701-02, 405 P.3d 114, 122  
(2017).

**V. CONCLUSION**

This Court should grant review based on the above.

Dated this 4th of October 2023.

/s/ Diane C. Lowe  
Diane C. Lowe, Esq  
Lowe Law, LLC  
7350 W. Centennial Parkway #3078  
Las Vegas, NV, 89131  
(725)212 2451  
DianeLowe@LoweLawLLC.com

## **ATTORNEY'S CERTIFICATE OF COMPLIANCE**

I certify that this petition for rehearing complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using 14-point Times Roman font.

I further certify that this brief complies with the type-volume limitations of NRAP 40(b)(3) because it contains 4625 words.

Dated this 4th of October 2023.

/s/ Diane C. Lowe  
Diane C. Lowe, Esq  
Lowe Law, LLC  
7350 W. Centennial Parkway #3078  
Las Vegas, NV, 89131  
(725)212 2451  
DianeLowe@LoweLawLLC.com

## **CERTIFICATE OF SERVICE**

I hereby certify that on the 4th of October 2023, I served this document on the following in Accordance with the Master Service List and or by USPS mail:

Steven B. Wolfson, Esq #1565  
Clark County District Attorney

200 Lewis Avenue  
Las Vegas, NV 89155

John T. Afshar Esq #14408  
Clark County District Attorney's  
Office

200 Lewis Avenue  
Las Vegas, NV 89155

Parker P. Brooks, Esq.#11927  
Clark County District Attorney's  
Office

200 Lewis Avenue  
Las Vegas, NV.89155

Alexander G. Chen, Esq. #10539  
Clark County District Attorney's  
Office

200 Lewis Avenue  
Las Vegas, NV.89155

Aaron D. Ford, , Esq. #7704  
Attorney General  
Department of Justice

100 N Carson St  
Carson City, NV. 89701

Andrew Young #0092511  
High Desert State Prison

PO Box 650  
22010 Cold Creek Road  
Indian Springs, NV 89070-  
0650