IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

v.

TROY RICHARD WHITE,

Respondent.

CASE NO: 62890

APPELLANT'S OPENING BRIEF

Appeal from Order Granting Defendant's Writ of Habeas Corpus
Eighth Judicial District Court, Clark County

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JURISDICTIONAL STATEMENT

The Nevada Supreme Court has jurisdiction to hear this matter pursuant to Nevada Revised Statute ("NRS") 34.575(2), and Nevada Rules of Appellate Procedure ("NRAP") 4(b)(1)(B).

STATEMENT OF THE ISSUE

1. Whether the District Court erred in granting Defendant's Writ of Habeas Corpus, thereby dismissing Defendant's charge of Burglary, for the stated reason that a person cannot lawfully commit burglary against his own house under NRS 205.060

STATEMENT OF THE CASE

On December 12, 2012, Troy Richard White ("Defendant") was charged by way of Criminal Complaint in the Justice Court, Clark County, Nevada with Burglary While in Possession of a Firearm (Category B Felony – 205.060)

("Burglary") (Count 1); Murder With Use of a Deadly Weapon (Category A Felony – NRS 200.010, 200.030) (Count 2); Attempt Murder With Use of a Deadly Weapon (Category B Felony – NRS 200.010, 200.030, 193.330) (Count 3); Carrying a Concealed Firearm or Other Deadly Weapon (Category C Felony – NRS 202.350(1)(d)(3)) (Count 4); and Child Abuse, Neglect, or Endangerment (Category B Felony – NRS 200.508(1)) (Counts 5-14). Record on Appeal ("ROA") 3-7. A Preliminary Hearing was also held on December 12, 2012. ROA 36.

On December 27, 2012, the case was bound over to Clark County District Court ("District Court"), Clark County, Nevada, where Defendant was charged by way of Information with Burglary While in Possession of a Firearm (Category B Felony – 205.060) (Count 1); Murder With Use of a Deadly Weapon (Category A Felony – NRS 200.010, 200.030) (Count 2); Attempt Murder With Use of a Deadly Weapon (Category B Felony – NRS 200.010, 200.030, 193.330) (Count 3); Carrying a Concealed Firearm or Other Deadly Weapon (Category C Felony – NRS 202.350(1)(d)(3)) (Count 4); and Child Abuse, Neglect, or Endangerment (Category B Felony – NRS 200.508(1)) (Counts 5-9). Id. at 33-36.[1]

[1] This Brief will cite to the ROA throughout, pursuant to the Nevada Supreme Court's Order Setting Briefing Schedule for the instant matter, filed July 11, 2013, in which the Court stated "Because we have already received a copy of the record on appeal, the parties may cite to the record in their briefs and need not file an appendix."

On February 4, 2013, Defendant filed a Petition for Writ of Habeas Corpus ("Petition") to have the charge of Burglary dismissed, as Defendant asserted there was insufficient probable cause for the State of Nevada ("State") to have charged him with Burglary.[2] Id. at 72. On February 27, 2012, an Order issuing the Writ of Habeas Corpus was entered, Id. at 114, and on March 19, 2013, the State filed a Return to Writ of Habeas Corpus in response. Id. at 117. Oral argument was held on the Petition on March 27, 2013, and the District Court granted Defendant's Petition and dismissed the charge of Burglary. Id. at 135, 148. The state filed a Notice of Appeal on March 27, 2013. Id. at 127. This appeal followed.

STATEMENT OF THE FACTS

Defendant and his wife, Echo Lucas White ("Echo") jointly owned a house. ROA 54. In June of 2012, Defendant and Echo separated. Id. at 40. Once separated, Echo and Joseph Averman ("Joseph"), with whom she had an approximately eight (8) year friendship, entered into a relationship. Id. Joseph moved into the house, where Echo and her five (5) children continued to live, toward the end of June 2012. Id. at 40-41. Defendant came to the house for visitation with the children on the weekends. Id. at 46. Defendant typically showed up at the house between 2:00 p.m. and 3:00 p.m. on Friday afternoon, and stayed

[2] This Petition was based on the testimony of Joseph Averman, one of the witnesses to the alleged, at the Preliminary Hearing on December 12, 2012.

during the weekend while Echo and Joseph left the house. Id. at 41. Defendant stayed at the house because, with the number of children (5) at the house, it was "just easier to do it that way." Id.

Defendant was upset about his separation from Echo, and began to repeatedly harass her with telephone calls and text messages. Id. Moreover, once Defendant learned of Echo's relationship with Joseph, he threatened Joseph, making statements to him including "If you don't stay away, I'm going to fucking kill you." Id.

Throughout the night of Thursday, July 26, 2012, and the early morning hours of Friday, July 27, Defendant incessantly called and texted Echo. Id. 42. At 2:00 a.m. on the 27th, Defendant came to the house and began banging on the bedroom window. Id. Echo heard the banging and told Defendant he could not do that kind of thing, as the children were sleeping. Id. After that, Joseph and Echo went to sleep. Id.

At approximately 11:45 a.m. on July 27, Echo awoke from a nap on her couch (having been kept awake a good portion of the night by Defendant's actions) to see that she had missed several more texts and phone calls from Defendant. Id. at 42-43. Because she was still tired, Joseph told her to go lie down in the bedroom. Id. at 43. As she went to lie down, two of the older children told her "Mommy, Mommy, Daddy's here" (referring to the Defendant). Id.

After Defendant came inside he asked Echo to speak with him. Id. She responded that he was not supposed to be there yet, and Defendant asked Joseph to give him five minutes alone with Echo, which he did. Id. Defendant and Echo went into the house's spare bedroom, directly across from the master bedroom where Joseph was. Id. at 43.

Between the time Defendant entered the house and when he shot Echo and Joseph, he had become angry, aggressive, and upset. Id. at 49. While Joseph was in the master bedroom, he heard Echo cry out "Troy, no, please don't" and "Stop". Id. at 44. Joseph became alarmed and went to check on her, as he knew Defendant had a history of abusing Echo. Id. at 43-44. Joseph saw Echo trying to come out of the bedroom, but Defendant grabbed her arm and pulled her back into the room. Id. at 44. After Defendant pulled Echo back in, he pushed her against the wall and shot her in the stomach. Id. When Echo tumbled over and fell, Defendant turned and shot Joseph. Id. At no point before this had Joseph seen a firearm in Defendant's hand or otherwise in his possession. Id. at 43.

At some point, the police and paramedics came to the house and took Joseph to the hospital. Id. at 45. Detective Travis Ivie responded to the scene on July 27, 2012, to investigate the homicide of Echo and shooting of Joseph. Id. at 51. Upon arrival, he observed a spent bullet in the driveway. Id. He also found on the driveway a black and white backpack with an empty gun holster inside. Id. When

he entered the residence, he found a spent shell casing for a 9 millimeter handgun in the spare bedroom. Id. Inside the master bedroom, he found a bullet hole indicating the bullet went through the bedroom and exited out of the front of the house. Id. He also found another spent shell casing in the hallway. Id.

Later that day (July 27), Detective Ivie traveled to the Yavapai County Sheriff's Office in Prescott where he encountered Defendant. Id. Detective Ivie was present while a search warrant was executed on the silver Dodge Durango Defendant took from the residence after shooting Echo and Joseph. Id. During the search of the vehicle, a 9 mm firearm was located. Id. The firearm was unloaded, but next to the firearm were two magazines. Id. One of those magazines contained twelve (12) rounds, and the other contained nine (9). Id. The headstamp on the cartridge cases matched those found at the scene. Id.

An autopsy conducted by Dr. Lisa Gavin of the Coroner's Office determined that the cause of Echo's death was the gunshot wound to her abdomen and that the manner of death was homicide. Id.

SUMMARY OF THE ARGUMENT

Based on the plain meaning of the burglary statute, the standard for dismissing charges for lack of probable cause, and Defendant's failure to cite any *binding* legal authority to support his assertion that one cannot, commit burglary by entering his own home, the District Court substantially erred when it granted the

Petition, and dismissed the charge of Burglary against the Defendant for lack of probable cause. As such, the State respectfully requests the Court reverse the District Court's Order Granting Defendant's Writ of Habeas Corpus ("Order") and remand the matter for further proceedings. ROA 148-55.

ARGUMENT

I

THE DISTRICT COURT SUBSTANTIALLY ERRED BY INFERRING THAT NONOWNERSHIP WAS AN ELEMENT OF BURGLARY

A. Reading the Plain Language of NRS 205.060, a Person May Commit Burglary by Entering His Own House

1. Unambiguous Statutes Must Be Strictly Construed

Issues of statutory construction are reviewed de novo by this Court, which only looks "beyond the plain meaning of the statute if that language is ambiguous or its plain meaning *clearly* was not intended." Sheriff, Clark County v. Burcham, 124 Nev. 1247, 1253, 198 P.3d 326, 329 (2008) (emphasis added). Likewise, "when 'the language of the statute is plain and unambiguous, and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself.'" Nelson v. Heer, 123 Nev. 217, 224, 163 P.3d 420, 425 (2007), (*quoting* State, Div. of Insurance v, State Farm, 116 Nev. 290, 293, 995 P.2d 482, 484 (2002). See also State v. Jepsen, 46 Nev. 193, 196, 209 P. 501, 502 (1922)). Courts must read the statute as a whole

and, if possible, give meaning to all parts of the statute. Matter of Petition of Phillip A.C., 122 Nev. 1284, 1293, 149 P.3d 51, 57-58 (2006).

NRS 205.060 states "[a] person who, by day or night, enters *any* house . . . with the intent to commit . . . any felony . . . is guilty of burglary." (Emphasis added.) NRS 0.039 states "Except as otherwise expressly provided in a particular statute or required by context, 'person' means a natural person . . . ." This Court has generally found "when a statute contains broad, inclusive terms, such as 'any person' or 'whoever,' it is applicable to all perpetrators . . . ." Cote H. v. Eighth Judicial District Court, 124 Nev. 36, 40, 175 P.3d 906, 908 (2008). "[B]y its ordinary meaning, the term 'person' is broad and all-encompassing." Id. Furthermore, if the Legislature wished to apply the definition of person to only certain types of people, it would have done so, as it has in other places, and the Court has been unwilling to create an exception to a statutory term "when, based on its plain and ordinary meaning, none exists." See Id. at 40-41, 908-09. "Any," in turn, is defined as "one or some indiscriminately of whatever kind." Merriam-Webster, 2013.

When the words "any" and "person" are read in conjunction with the applicable statutes, there is literally no way to read NRS 205.060 other than to define burglary as the entry by a person—*including the home owner or resident*—into *any* house, which may be any unspecified house—*including his own*. Based on

the plain meaning of the statute, beyond which courts are not permitted to read in absence of ambiguity, a person may properly be charged, as Defendant was, with burglary by entering his house.

2. Even if the Statute Is Ambiguous, Legislative Intent Is Clear

Courts are not permitted to read beyond the plain meaning of the statute unless the plain meaning is *clearly* not intended. Burcham, 124 Nev. at 329, 198 P.3d at 1253 (emphasis added). Despite Defendant's vigorous protests that the statute cannot possibly be read to mean a person may not burgle his own house, ROA 76-78, this is exactly what the statute says. Only if the statute is ambiguous, may courts examine its legislative history or legislative intent. Nelson, 123 Nev. at 224, 163 P.3d at 425.

The statutory crime of Burglary in Nevada arose out of the common law definition. In 1861, Nevada adopted the common law by way of territorial statute, which the Constitution adopted in turn. Van Sickle v. Haines, 7 Nev. 249, 21 (1872). NRS 1.030, adopted in 1911, reads "The common law of England, so far as it is not repugnant to *or in conflict with the . . . laws of this state*, shall be the rule of decision in all courts of this State." (Emphasis added.)

However, this Court has specifically, consistently, and repeatedly moved away from the common law definition of burglary. For example, unlawful entry is no longer an element of burglary. See State v. Adams, 94 Nev. 503, 505, 581 P.2d

868, 869 (1979). Furthermore, the Court has held consent to enter is no defense to burglary. See Hernandez v. State, 118 Nev. 513, 531, 50 P.3d 1100, 1113 (2002); see also, Barrett v. State, 105 Nev. 361, 364, 775 P.2d 1276, 1277 (1989). Additionally, this Court has specifically noted that the Legislature has intentionally written the burglary statute in a broader form. See generally, McNeely v. State, 81 Nev. 663, 666-67, 409 P.2d 135, 136 (1966). Finally, this Court has upheld a Burglary conviction where a defendant offered evidence that he lived at the home of his ex-girlfriend, which he then entered in order to murder her. See generally, Chappell v. State, 114 Nev. 1403, 1405, 972 P.2d 838, 839 (1998).

The statutory scheme on which NRS 205.060 is based was first enacted in 1911. It was amended in 1953 by the Legislature. Defendant, in his petition, refers to Smith v. First Judicial District Court, 75 Nev. 526, 347 P.2d 526 (1959) to describe the standard for burglary at common law, which was the breaking and entering into the dwelling of another at night with the intent to commit a felony therein. ROA 75. Smith defined statutory burglary under the very same NRS 205.060 that defines it today: "Every person who enters any house . . . with intent to commit . . . any felony, is guilty of burglary." The relevant parts of the statute have remained remarkably unchanged throughout the years, save for the substitution of "a" for "every" at some point in the intervening decades. The Legislature had not, at the time of enactment, addressed Defendant's proposition

that one cannot commit burglary by entering his own house, nor did it in 1953, nor did it at any point when the statute was amended again in 1967, 1968, 1971, 1979, 1981, 1983, 1989, 1995, or 2005. As such, if the statute *clearly* meant to exclude those who commit burglary in their own houses, it seems likely the Legislature would have addressed this view.

The fact that the Legislature has not is telling. The Legislature is presumed to have knowledge of the state of the law when it enacts and amends statutes, and the Court will not assume the Legislature overlooked a fact or unintentionally omitted a term from a statute. See Clover Valley Land & Stock Co. v. Lamb, 43 Nev. 375, 187 P. 723, 725-27 (1920). Where a statute does not possess an element or term:

> Clearly this would be an intentional omission on the part of the Legislature, and a court would be making a wide departure in saying that such an omission was the result on the part of [multiple] legislative bodies, where a different plain construction of the statute is apparent, without indulging in the presumption that such an oversight was made.

Id. at 725. If the Legislature intended to exclude persons from burglarizing their own houses, it would not have used language clearly indicating the contrary. See generally, Id. at 726. Concomitantly, this Court has held where the Legislature did not specifically define a term (such as "any") in a statute or subsequent amendments to that statute, "the Legislature intended the term to have broad applicability." Funderburk v. State, 125 Nev. 260, 265, 212 P.3d 337, 340 (2009).

Likewise, in Smith, the Court specifically held "If the intention of the Legislature is in doubt as to defining as *burglary* the defendant's act as charged in the information, the legislative act *must be strictly construed*." 75 Nev. at 527, 347 P.2d at 528 (emphasis added).

The essence of Defendant's argument is, as the "common law definition of burglary still impacts the statutory interpretation," this common law interpretation—requiring the dwelling broken into to belong to another—must therefore still control. ROA 78. When the District Court granted Defendant's Petition, it agreed, and based its ruling not on the plain meaning of the statute, but on the common law: "The Court does not understand how you can burgle your own house. *At common law you couldn't burgle your own house*." Id. at 144 (emphasis added). When the State asked for clarification as to which authority the District Court was citing for this assertion, the District Court specifically said it was basing its ruling on "the common law." Id. at 145. Finally, the District Court, in its Order, stated that "in the absence of clear legislative intent to abandon the common law on" whether a person may burgle his own property, "the court will not do so." Id. at 151.

The District Court's interpretation of NRS 205.060 according to the original common law definition of burglary was incorrect. The crime of burglary in Nevada is no longer charged according to the common law; it is charged according to NRS

205.060. The codification of NRS 205.060 *removed* the common law element requiring burglary be committed against the dwelling of another. This removal evinces the clear intent of the Legislature that a person may commit burglary against *any* house, including one he owns.

B. People v. Gauze Is Inapposite to the Instant Matter

Defendant cites exactly one case to support his proposition that a person may not commit burglary against his own house: People v. Gauze, 15 Cal.3d 709, 542 P.2d 1365 (Cal. 1975). While the State recognizes that Nevada courts may sometimes turn to other states for guidance on the law, this California case is not binding in Nevada. Moreover, as discussed *supra* in Part II.A, statute that has an otherwise plain meaning must control the outcome of the issue, and courts are not permitted to look outside the statute—such as to the laws of other jurisdictions—for guidance.

However, should the Court find Gauze persuasive, it is nevertheless distinguishable. The California Supreme Court held a defendant "cannot be guilty of burglarizing his own *home*." Id. at 717, 1369. (emphasis added). Additionally, the California Supreme Court spherically held that the "more important[]" point to its holding was defendant's "*absolute* right to enter the apartment." Id. (emphasis added). The defendant in that case lived at the apartment with his two roommates,

and nothing in the holding or the facts indicated that he lived elsewhere. Id. at 711, 1365-66.

It is not in dispute here that Defendant owned the house. ROA 54. However, while Defendant may have spent some time at the house, it was clearly not the Defendant's *home*, unlike the situation in Gauze. Although Defendant "stayed" at the house on the weekends, this was necessitated by the logistical difficulties of transporting five young children from place to place, and five days of the week, Defendant was residing elsewhere. Id. at 41. It is not at all clear from the facts that Defendant had an absolute right to enter the house. Home ownership does not automatically grant a right of entry.[3] Further, Defendant only came to the house to stay with the children after 2:00 p.m. on Fridays. Id. at 41. When he arrived on Friday July 27, 2012, it was around 12:00 p.m., and Echo specifically indicated to him that he was not supposed to be there at that time. Id. It defies common sense to call this house—a house in which Defendant's recently-separated wife and her lover lived, against whom Defendant had expressed extremely angry, threatening behavior—Defendant's "home."

[3] Ownership of a house is not an automatic defense to burglary. For example, under landlord-tenant law a landlord—notwithstanding his ownership of the property—may only access the house after a 24 hour notice period to the tenant, and does not have any other general right of access excepting emergencies, court order, abandonment, or repairs. See generally NRS 118A.330.

The Gauze court recognized the interest protected by the burglary statute was not a property right, but rather:

> "Burglary laws are based primarily upon a recognition of the dangers to personal safety created by the usual burglary situation—the danger that the intruder will harm the occupants in attempting to perpetrate the intended crime or to escape and the danger that the occupants will in anger or panic react violently to the invasion, thereby inviting more violence. The laws are primarily designed, then, not to deter the trespass and the intended crime, which are prohibited by other laws, so much as to forestall the germination of a situation dangerous to public safety."

15 Cal.3d 709, 715, 542 P.2d 1365, 1368 (1975) (*quoting* People v. Lewis, 274 Cal.App.2d 912, 920, 79 Cal.Rptr. 650, 655 (1969).

The relevance of the public safety policy animating any burglary statute is demonstrated by this case. Defendant had repeatedly harassed and threatened both Joseph and Echo. ROA 41. Additionally, Defendant had a history of abusing Echo. Id. at 43. When Defendant came to the house on the weekends to stay with the children, Joseph and Echo vacated for those two days—clearly not wanting to reside in the same house—in all likelihood to avoid another volatile situation. Id. at 41. Applying NRS 205.060 to the instant matter would not contravene public policy, but rather, would reinforce it.

Courts in other jurisdictions have acknowledged the primacy of public safety in construing burglary statutes. The South Carolina Supreme Court held that, while a person cannot commit burglary against his own "home," the concept of "one's

'own home' must be examined in light of the very purpose behind the law of burglary." State v. Singley, 392 S.C. 270, 276, 709 S.E.2d 603, 606 (S.C. 2011). "Therefore, the proper test is whether, under the totality of the circumstances, a burglary defendant had custody and control of . . . the dwelling burglarized." Id. at 277, 606. As the South Carolina Supreme Court stated, the question of lawful possession in that case is one of fact for the jury. Id. In State v. Hagedorn, 679 N.W.2d 666, 667-68 (Iowa 2004) the Iowa Supreme Court held a husband could burgle his former residence, which was the marital home where his estranged wife resided. The court also recognized that burglary laws were created to protect personal safety in a dwelling, and that "a spouse who stays in the marital residence after the other spouse has moved out should be able to enjoy the sanctity and security of his or her home without the necessity of obtaining a restraining order." Id. at 670-71. While the court acknowledged the defendant in that case had absolutely no right to be at the property (unlike the Defendant in the instant matter), and "murkier" situations of residency could undoubtedly arise, such issues were questions of fact appropriate for the jury. Id. at 671.

Based on the foregoing, a person may clearly commit burglary against a house in which he has an ownership interest. However, whether this house was truly Defendant's home or residence sufficient to satisfy this element of NRS 205.060 was a question of fact for the jury, and the District Court substantially

erred when it dismissed the Burglary for lack of probable cause on this question of fact.

II
SUFFICIENT EVIDENCE WAS PRESENTED TO THE TRIAL COURT TO ESTABLISH SLIGHT OR MARGINAL EVIDENCE THAT DEFENDANT COMMITTED BURGLARY

A. Standard of Review

When reviewing a district court's decision to grant or deny a pretrial habeas corpus petition, the sole function of the Court is "to determine whether all of the evidence received at the preliminary hearing . . . establishes probable cause to believe that an offense has been committed and that the accused committed it." Kinsey v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971). "At a preliminary examination . . . the issue of guilt or innocence of the accused is not involved." Id. Likewise, "The evidence need not be sufficient to support a conviction." Id. "To commit an accused for trial," the State is only required "to present enough evidence to support a reasonable inference that the accused committed the offense." Id. This finding of probable cause may be based on "slight, or even marginal evidence." Sheriff v. Burcham, 124 Nev. 1247, 1258, 198 P.3d 326, 333 (2008).

"In reviewing a district court's order granting a pretrial petition for writ of habeas corpus for lack of probable cause," the Court "will not overturn the district court's order unless the district court committed substantial error." Id. at 1257,

332. If the State presents sufficient evidence to support a reasonable inference that the defendant committed the crime with which he is charged, a district court's dismissal of that charge constitutes substantial error. Id.

B. Because the State Met Its Burden of Proof to Show the Defendant Committed Burglary, the District Court Substantially Erred in Dismissing the Charge of Burglary Against Defendant

The State does not have to prove at a pretrial proceeding that Defendant committed the crime charged beyond a reasonable doubt. The court need only find *slight* or *marginal* evidence sufficient to support a finding that Defendant committed the crime in question. Id. at 1258, 333.

Upon a reading of the plain meaning of the statute (discussed *infra* in Part I.A), the evidence given at the preliminary hearing (stipulated to by both parties, ROA 52) clearly supports a reasonable inference that Defendant committed the Burglary through a showing of slight or marginal evidence. The testimony of Joseph demonstrated that Defendant entered the house on July 27, 2012, with the intent to commit the Murder and/or Attempt Murder.[4] Id. at 43-44. Defendant had displayed threatening behavior on repeated occasions toward Echo and Joseph. Id. at 41. He had spent the previous night banging on the window of the house. Id. at 42. Additionally, he had texted and called Echo incessantly throughout the

[4] The State listed Murder and/or Assault and/or Battery as the supporting felony for the charge of Burglary. ROA 34.

previous night and into the morning of July 27. Id. at 42. When he came to the house on July 27, he brought a loaded firearm into the house with him, leaving the holster outside. Id. at 44, 51. And, ultimately, Defendant did shoot Echo and Joseph, killing Echo. Id. at 44.

The State had clearly met its burden to offer slight or marginal evidence to support a reasonable inference the Defendant committed the crime in question. The only way to find that the State did not offer sufficient evidence to support the charge of Burglary against Defendant is to read into the statute, as the District Court did, a meaning unattribiutable to it—namely, that a person cannot commit burglary by entering his own house. For this reason, the District Court substantially erred when it issued its Order.

CONCLUSION

Based on the foregoing, the District Court substantially erred when it dismissed Defendant's Petition for lack of probable cause. The State respectfully requests the Court reverse the District Court's order granting Defendant's pretrial Petition, and remand the matter for further proceedings.

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Dated this 12th day of August, 2013.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief 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 this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14 point and Times New Roman style.
2. **I further certify** that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionately spaced, has a typeface of 14 points or more and contains no more than 14,000 words or does not exceed 30 pages.
3. **Finally, 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 further 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 reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 12th day of August, 2013.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on August 12, 2013. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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