IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON JONES,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No. 63136

RESPONDENT'S ANSWERING BRIEF

Appeal From Judgment of Conviction
Eighth Judicial District Court, Clark County

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RESPONDENT'S ANSWERING BRIEF

Appeal from Judgment of Conviction
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STATEMENT OF THE ISSUES

1. Whether the district court properly denied Appellant's Motion to Dismiss Counsel.
2. Whether sufficient evidence supports Appellant's conviction for second-degree murder.
3. Whether the district court properly allowed Detective Ivie to testify as to the reluctance of witnesses in Appellant's neighborhood to give statements to police.
4. Whether the district court properly instructed the jury.
5. Whether cumulative error exists.

STATEMENT OF THE CASE

On November 14, 2012, the State charged Jason Jones ("Appellant") with one count of Murder with Use of a Deadly Weapon (Category A Felony – NRS 200.010, 200.010, 193.165). 1 AA 1-3; 2 AA 171-82. On January 10, 2013,

Appellant filed a Motion to Dismiss Counsel, which the district court heard and denied that same day. 2 AA 168-70.

On January 22, 2013, a jury trial commenced. 3 AA 223. On January 29, 2013, the jury returned a verdict of guilty of second-degree murder. 15 AA 1543. On April 4, 2013, Appellant appeared in court with counsel and was sentenced to to LIFE in the Nevada Department of Corrections (NDC) with MINIMUM PAROLE ELIGIBILITY AFTER 10 YEARS, plus a CONSECUTIVE term of a MAXIMUM of 240 MONTHS and a MINIMUM of 60 MONTHS in the Nevada Department of Corrections (NDC), for use of deadly weapon; with 287 days credit for time served. 15 AA 1595-96. Judgment of Conviction was filed on April 29, 2013. Id. Appellant filed a Notice of Appeal on May 3, 2013. 15 AA 1597-98.

Appellant filed his instant Opening Brief ("AOB") on September 4, 2013. The State answers as follows:

STATEMENT OF THE FACTS

On June 17, 2012, at around 10:30 p.m., Appellant shot and killed Jaime Corona, through the front door of Jaime's apartment, at the complex at 1416 F Street in Las Vegas where both men lived. 1416 F Street is a very small complex consisting of about 20 units surrounding an interior courtyard. 11 AA 1093; 12 AA 1163-66. Many residents of 1416 F Street testified to what they saw and heard that

night, and law enforcement officials testified to their roles in the investigation into Jaime's death. Additionally, Appellant's statement to police was introduced at trial.

RESIDENTS' TESTIMONY

William Coleman

William lived with his girlfriend, Jovonne Butler, at 1416 F Street. 7 AA 689-90. His sister Loretta lived there as well. 7 AA 691. He heard a gunshot on the night of June 17, 2012, and looked out the window to see a man get into and drive away in a black car that he recognized as belonging to either Appellant or his fiancée. 7 AA 693-94, 696-97. After William went outside, he heard Loretta screaming "they shot him over five dollars." 7 AA 700. In a conversation with another resident a "couple of days" before, William had heard Appellant say, "I'm getting my money." 7 AA 707. Appellant had seemed "upset" at the time of this conversation. Id.

William testified that Appellant lived at 1416 F Street with his girlfriend, Denise. 7 AA 707. He observed that "SWAT had to come and get her out" very "late that night" [actually early on the morning of the 18th]. Id.

William had a conversation on the night of the murder with Detective Travis Ivie of the Las Vegas Metropolitan Police Department ("Metro"). 7 AA 697.[1] William testified that he did not remember much of This conversation with the

[1] Detective Ivie testified to William's prior inconsistent statements.

detective. 7 AA 695-705. Specifically, he did not remember telling Det. Ivie that he actually saw the Appellant running away from Jaime's apartment after the shot, nor did he remember telling Det. Ivie that he had seen Appellant at Jaime's apartment that evening, demanding money, before Jaime was killed. 7 AA 695-96, 702-05.

William was "afraid" to be testifying in court that day, as his sister Loretta still lived at 1416 F Street, and he was afraid that "something might happen to here because she was there." 7 AA 737-38.

Jovonne Butler

Jovonne, William's girlfriend, who lived with him at the time, did not see what happened on June 17, 2012. However, she testified that after she heard a "loud bang," William immediately told her he had seen Appellant run from the direction of Jaime's apartment, run through the gate at the front of the complex, and flee in his black car. 7 AA 744-47. Jovonne had previously seen Appellant and his girlfriend drive a black car. 7 AA 748-49. Jovonne had taken a hit of marijuana that night, but she was not feeling its effects by the time William told her what he saw. 7 AA 756-57.

Jovonne was also scared to testify, and was afraid that she was going to be "hurt" because of the fact that she had testified. 7 AA 741-42.

/ / /

Loretta Coleman

Loretta, William's sister, was also Jaime's neighbor. 8 AA 816-17. She was drinking with Jaime in his apartment on the night of June 17, 2012. 8 AA 819. Both she and Jaime were very intoxicated, but she remembered a male banging on the door of Jaime's apartment at some point before the shooting. 8 AA 820. While she did not see that person, and could not remember everything that person said, whoever it was banged on the door so loudly that Loretta was scared the door would break. 8 AA 820-21. She heard the person say something with respect to the number "five," and something else about money. 8 AA 821-22. The person also "said [her] name" while he was outside. 8 AA 827. Jaime called 911 in response to this person banging on his door.[2] 8 AA 824.

Later in the evening, Loretta passed out from intoxication, and was awoken by the gunshot that ultimately killed Jaime. 8 AA 827-28.

Jimmie Brown

Jimmie, another resident at 1416 F Street, knew both Appellant and Jaime well. 9 AA 868-69. Three days before Jaime was killed, Appellant had come to ask Jimmie about a break-in at Appellant's apartment, and if Jimmie had seen

[2] The police came out twice that evening: the first time, when Jaime called them, and the second time, after he had been shot. However, when the police came out the first time that evening, Jaime was too intoxicated to describe what had happened. 7 AA 659.

anything. 9 AA 871-73. Jimmie had not, but he saw Appellant then go down to talk to Jaime about it. 9 AA 873.

Later that day, Jimmie saw Appellant talking to Jaime through Jaime's metal mesh apartment door; Appellant looked excited and was throwing his arms around. 9 AA 873, 875. Appellant was banging on the door trying to get Jaime's attention. 9 AA 876. Thirty minutes after Jimmie saw Appellant banging on Jaime's door, trying to talk to him, Jimmie saw the police go inside Jaime's apartment. 9 AA 879. Appellant went back to Jaime's door about 30 to 45 minutes after the police left and continued to bang on it. 9 AA 884-90. Jimmie had taken medicine for pain and took some sleeping pills after he saw Appellant for the last time, and had also smoked some marijuana around noon. 9 AA 892-98.

Denise Williams

Denise Williams, who was Appellant's fiancée and with whom he had a child, was arrested in order to be brought to court to testify. 10 AA 932-34. Denise did not want to leave her apartment on the night of June 17, 2012, when Metro officers searching for Appellant knocked on her door and identified themselves. SWAT was ultimately required to bring her out of her apartment by force at around 4:30 a.m. 10 AA 941-42. At that point, she gave a statement that Metro officers recorded, although she testified that she could not remember the contents of that statement. 10 AA 943.

Denise testified that she had only seen Appellant on the morning of June 17, 2012. 10 AA 945. She also testified that Appellant did not specifically have a phone. 10 AA 946. She did, however, state that Appellant drove her black Dodge Neon, and had driven it away that morning. Id. Denise stated that a number "475-1998" was the number of a phone she shared with Appellant, and that he would sometimes take it so she could get in touch with him. 10 AA 946-49. She stated that she never used that phone to contact anyone about acquiring a firearm, specifically a .380 Beretta or a 9 mm. 10 AA 948-49. She also testified that it was normal for Appellant to be gone all day. 10 AA 950-51. Denise testified that she was close friends with two other residents, Cassandra and Mini-Me (later identified as Vincent Herrera), and that Appellant knew them as well. 10 AA 943-44

Denise and Appellant had walked into their apartment a few days before Jaime was killed to discover it had been broken into. 10 AA 954-56. Appellant was upset about the break-in. 10 AA 957. Denise testified that they tried to find out who had broken into their apartment, but she "couldn't recall" if they found out who it was. 10 AA 957-58. Interestingly, on cross-examination, Denise testified that she and Appellant had, in fact, discovered that Jaime had broken into their apartment, but that a restitution arrangement had supposedly been made whereby Jaime had returned the items he had stolen and had paid or would pay them some money, and any conflict was resolved. 10 AA 980-81.

Denise testified that she started to move out the next day, although she had not found a new apartment at the time. 10 AA 960-61. Denise testified that she did not see Appellant in the "several days" after the shooting occurred. 10 AA 964. After these several days had passed she testified that she went to "find him" at his family's house. Id.

When the recorded statement Denise gave to police was played, although Denise identified a voice stating her name and date of birth as hers, she testified that she did not believe the rest of the same recorded statement was her voice. 10 AA 999.

TESTIMONY OF LAW ENFORCEMENT

Dr. Timothy Dutra

Dr. Dutra, a medical examiner with the Clark County Coroner's Office, testified that the gunshot that killed Jaime was fired at close range based on the presence of "stippling," or gunpowder burns, on the Jaime's skin. 11 AA 1046-47. He indicated Jaime's blood-alcohol content at the time of his death was .321. 11 AA 1050. He also indicated that the cause of death was gunshot wound, and the manner of death was homicide. 11 AA 1051-52.

Detective Travis Ivie

Det. Ivie, a homicide investigator, responded to at 1416 F Street on June 17, 2012, with Detective Tate Sanborn. 11 AA 1069-71. Det. Ivie testified that he

noticed an expended cartridge on the ground near Jaime's apartment, which was later determined to be a .380 caliber cartridge, and a bullet hole in the mesh metal security door to Jaime's apartment. 11 AA 1074-75, 1133. Det. Ivie tried to interview witnesses at the scene, but noted that in his experience as a homicide detective in this particular area of the city, it could sometimes be difficult for him to get witnesses to talk to him for fear of retaliation. 11 AA 1076-79.

Det. Ivie first spoke to Loretta, who had told him a male was outside Jaime's apartment earlier that evening talking about money with Jaime. 11 AA 1081-83. She also told him that the male knew her name. Id. Det. Ivie next spoke with William. 11 AA 1085. William asked if his statement was being recorded, to which Det. Ivie responded it was not, and did not record this statement. 11 AA 1086. Det. Ivie testified that William was "looking around nervously," and indicated he was afraid of retaliation. 11 AA 1086-87. When Det. Ivie asked William if he could record William's statement, William responded, "Come on, I have to live here in this neighborhood." Id.

William told Det. Ivie that he had heard Appellant knocking on Jaime's door on two occasions that evening. 11 AA 1087. The first was at approximately 9:00 p.m., where Appellant was banging on Jaime's door and asking for money; the police arrived for the first time shortly thereafter. 11 AA 1087-88. The second time, Appellant again knocked loudly on Jaime's door; William told Det. Ivie this

continued for approximately 10 minutes before William heard a gunshot. 11 AA 1089. William then told Det. Ivie that he ran outside and saw Appellant get into the black Dodge Neon and drive away. 11 AA 1090.

Det. Ivie learned from William that Appellant and Denise lived at 1416 F Street. 11 AA 1093. He knocked on Denise's door for "several minutes" with uniformed Metro officers. Id. When she did not respond, Det. Ivie obtained and executed a search warrant to have SWAT come out to open her apartment. 11 AA 1094. Denise eventually exited her apartment after SWAT came, several hours later. 11 AA 1096.

After Det. Ivie searched the apartment he indicated there were still belongings in it. 11 AA 1097. Det. Ivie took a statement from Denise that he recorded without her knowledge. 11 AA 1098. Det. Ivie told Denise that Jaime had been killed, and that Appellant was a suspect in his death. 11 AA 1099-1100. She told Det. Ivie that Appellant had left their apartment at approximately 8:00 p.m. that evening to go watch a basketball game with his uncle. 11 AA 1105. She also gave Det. Ivie Appellant's cell phone number. 11 AA 1114. Denise and Det. Ivie discussed the break-in that Jaime perpetrated at their apartment a few days prior; specifically, Denise said Appellant was upset about the break-in and that Jaime still owed them money at the time. 11 AA 1115-16.

During the course of his investigation, Det. Ivie also became aware of a fight Jaime had gotten into with another man, Bradley Sappington, the night before Jaime was killed. 11 AA 1117. Det. Ivie later determined that Sappington was still in jail at the time Jaime was killed, and had made no telephone calls from the jail while he had been in custody. Id.

James Krylo

Krylo, a forensic firearms expert for Metro, testified that the expended cartridge outside Jaime's apartment was consistent with a .380 caliber firearm. 13 AA 1297, 1302. However, he testified that a caliber .380 bullet could also be fired from a 9mm Luger. 13 AA 1303-06.

Detective Tate Sanborn

Det. Sanborn, with Metro, was the last State's witness to testify. 13 AA 1312. He first testified substantially as Det. Ivie did. 13 AA 1312-28. Det. Sanborn indicated, after SWAT searched Appellant's apartment, they left a return indicating what, if any, items were taken during the course of the search. 13 AA 1325. He also learned that two different black cars were driven by residents of 1416 F Street, one by Appellant and Denise, and another by a Hispanic female resident. 13 AA 1328-29. When the female resident returned from work at approximately 3:00 a.m., William told Det. Sanborn this was not the car Appellant drove, nor the car he had seen drive away after Jaime was killed. 13 AA 1330.

Several days later, Det. Sanborn learned Appellant's whereabouts. 13 AA 1332-34. Appellant was arrested at Denise's brother's apartment complex; the black Dodge Neon was recovered there and searched. 12 AA 1237-42. Several phones were recovered from the vehicle. Id. Additionally, the return from the search warrant left at Appellant's and Denise's apartment was found in Denise's brother's apartment at that complex. 12 AA 1245-46. One of the phones discovered in the Dodge Neon was a Cricket phone, with Appellant as the listed subscriber, and Appellant's address as the subscriber address. 13 AA 1338.

Det. Sanborn discovered many text messages on that phone. Appellant and Denise often sent text messages to each other, with Denise using their mutual friend Cassandra's phone (identified as "Kazandra" in Appellant's phone). 13 AA 1343. In a text message sent in May, Appellant wrote "I need a 9 milli clip bro." 13 AA 1346. When the recipient of the message asked Appellant what gun he needed it for, Appellant responded "Hi Point 9mm Lugar, Model C9." 13 AA 1348. On June 7, 2012, Mini-Me (Cassandra's boyfriend) sent Appellant a text message stating "go get my gun bros." Id. Also on June 10, 2012, Appellant sent Mini-Me a message asking for a gun. 13 AA 1349.

On June 14, 2012, at 9:10 p.m., Appellant sent a text that said "you still got that 380 bro?" 13 AA 1342, 1352. When the recipient responded affirmatively, Appellant said "where you at, bro?" 13 AA 1353. The next day, Appellant sent a

text saying "you at the spot bro." 13 AA 1354. The recipient, after some conversation, told Appellant "I was gonna stop through," to "come through," and asked if Appellant could "bring a Newport." 13 AA 1354-55.

Det. Sanborn also testified that, in his experience, in cases with fact patterns similar to this one he would not expect to recover the gun, as it would typically be discarded after the crime is committed. 13 AA 1398-1401.

On June 21, 2012, Detectives Sanborn and Ivie interrogated Appellant, and this recorded statement was played for the jury. 13 AA 1370.

APPELLANT'S STATEMENTS

Prior to interrogation, Appellant was properly Mirandized and waived those rights (Appellant does not dispute this in his Opening Brief). Respondent's Appendix, pp. 2-4. Appellant did not confess to the murder of Jaime during his interrogation. Instead, Appellant first claimed that he did not even know Jaime had broken into his house. RA 5. On the day of the shooting, Appellant also claimed that he had left in the morning, and when he was pulling up to 1416 F Street that evening, he heard a "pop," which he said sounded "like a gunshot" so he "duck[ed]" back in the car and left again. RA 5-6. Appellant then claimed that he did remember something about a restitution agreement with Jaime, whereby Jaime was to pay them for breaking Appellant's radio, although Appellant could not remember the substance or genesis of that restitution agreement. RA 8-10.

Appellant, after some conversation, eventually remembered going over to Jaime's apartment the morning of June 17, 2012, to wish him a "happy Father's Day." RA 17. Appellant stated he did not have a cell phone at the time, and that it had possibly been shut off in early June. RA 21. After some more conversation, Appellant stated he was acquainted with Cassandra, but did not know if she had a boyfriend. RA 21. Appellant claimed he did not know that a SWAT team had entered his apartment, and did not even know that Jaime had been killed. RA 26-27. Appellant also claimed that his apartment was "empty" because they were in the process of moving out. RA 40-42.

SUMMARY OF THE ARGUMENT

Appellant asserts five claims in his Opening Brief, each of which fails. First, Appellant contends that the district court did not properly inquire into his Motion to Dismiss Counsel. However, the record belies this claim. Second, Appellant contends insufficient evidence supports the jury's verdict. This claim is meritless, and a review of the record makes it clear that the verdict was supported by not only substantial, but overwhelming, evidence. Third, Appellant argues that the district court erred by allowing Det. Ivie to present evidence that witnesses in Appellant's neighborhood were generally afraid to give statements to police. However, as Det. Ivie properly gave his opinion within his experience, and as this opinion did not prejudice Appellant in any way, the district court did not err in allowing this

testimony. Fourth, Appellant claims the district court erred with respect to two jury instructions that it gave. However, as both of these instructions were proper statements of the law that did not prejudice Appellant in any way, this claim is likewise without merit. Finally, Appellant argues that cumulative error demands a reversal of his conviction. However, as Appellant as made no single showing of error with respect to his trial, he can make no showing of cumulative error, and his conviction must stand.

ARGUMENT

I

THE DISTRICT COURT PROPERLY DENIED APPELLANT'S MOTION TO DISMISS COUNSEL

Appellant filed a pro per Motion to Dismiss Counsel on January 10, 2013, wherein he alleged his trial counsel 1) had not returned his calls, 2) were actually state employees working with the prosecution, 3) told him he was going to prison and if he did not like it to hire a private attorney, and 4) ignored him, his views, and his requests at a pre-trial meeting. 2 AA 168-70, 172. That day, the district court conducted an inquiry into this motion and, determining Appellant was not entitled to substitution of counsel, denied Appellant's motion.

A. Standard of Review

This Court reviews the denial of a motion for substitution of counsel for an abuse of discretion. Young v. State, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004). In reviewing this denial, this Court considers 1) the extent of the conflict, 2) the

adequacy of the inquiry, and 3) the timeliness of the motion. Id. A defendant's right to substitution of counsel is limited. See id. Absent a showing of adequate cause, a defendant is not entitled to reject his court-appointed counsel and request substitution of other counsel at public expense. Id.

The Sixth Amendment does not guarantee a defendant a meaningful relationship with his attorney. Morris v. Slappy, 461 U.S. 1, 14, 103 S. Ct. 1610, 1617 (1983). As such, a court's refusal to substitute counsel does not violate the Sixth Amendment unless the attorney-client relationship *completely collapses*. Young, 120 Nev. at 969, 102 P.3d at 576.

B. The District Court Properly Denied Appellant's Motion to Dismiss Counsel

1. The extent of the conflict

The record here demonstrates defense counsel's competent representation of Appellant, as well as the district court's thorough inquiry into the situation:

> **The Court:** Okay. Basically, you know, you say they haven't returned your phone calls. Counsel, have you been in communication with the defendant?
>
> **Defense Counsel:** Yes, Your Honor.
>
> **The Court:** Okay. They're not PDs; they're correct. They are State employees. I'm looking at ground No. 4 on this. That doesn't mean they're working with the State, meaning the State of Nevada the prosecutors' office.
>
> . . . .

Now, if your family can hire counsel for you, that's certainly a right that you and any other defendant has. If you cannot afford counsel, and you qualified for the appointment of counsel, you don't get to pick and choose. This Court will only remove counsel and appoint someone else if there's an actual conflict or if for some reason counsel falls below standards because, you know, something going on in their office or a health reason, or there's some real true conflict between them being able to represent you.

I've read your motion here at the bench. There is nothing like that in this particular case. I am not going to remove Mr. Cano and Mr. Pike from representing you. So you either take them or you can represent yourself. Those are your two options if you pass a Faretta canvass.

Basically, again, these are excellent attorneys. All they do is murder defense. That's all they do. They're experts in this. So, you know, the fact that you don't like everything or you don't feel that they're attentive enough to your needs is not grounds . . . for me to remove them as your counsel and appoint somebody else.

So I've reviewed your motion. I don't know if there's anything [defense counsel wants] to address regarding any of, you know, the allegations in the motion in court.

Defense Counsel: No, Your Honor, we've met with the client. We've conducted a full investigation.

. . . .

He directed that we not file any motions. . . . I'll submit the motions, but I felt I had an ethical obligation to file those motions despite the fact that he did not want any motions at all filed in his case.

The Court: All right. Mr. Jones, I'm somewhat reluctant—I ask you this question against my better judgment. Why don't you want your attorneys filing motions? You just don't want them to file any motions on your behalf, correct?

Defendant: Correct. You know, after seeing this motion that they're trying to file today on my behalf, you know, it's clearly against my

> benefit in my case. This is my life, Your Honor. I would rather, you know, have no counsel at all than to have them based upon the fact that this is my life. I would have to go up not them.
>
> **The Court:** Okay. First of all, even if the motion isn't granted, that doesn't mean it's against your interests. In order to preserve all the issues for appeal, they have to raise them here regardless of what the outcome is.

2 AA 172-76.

The collapse of the attorney-client relationship in Young, as well as United States v. Moore, 159 F.3d 1154 (9th Cir. 1998), from which this Court drew much of its analysis in Young, was evident. This Court in Young found an irreconcilable conflict based on, inter alia, a finding that Young's attorney's was in "flagrant violation of the district court's order" to visit Young after Young had complained his attorney did not visit him. Id. at 969, 102 P.3d at 576. In Moore, the Ninth Circuit found defense counsel failed to inform a client of a plea offer before it expired. Moore, 159 F.3d at 1159. No commensurate attorney misconduct exists here, and Appellant does not cite to any. In front of the district court, Appellant alleged nothing more than general concerns that his attorneys were not meeting with him as much as he would like, or ignoring his views on the case. The district court addressed this by making sure his attorneys were, in fact, meeting with him, and making a record that, as they were experienced attorneys who knew much more than he did, they were not simply ignoring him.

The case at bar is much more similar to this Court's decision in Garcia v. State, 121 Nev. 327, 338, 113 P.3d 836, 843 (2005), modified on other grounds by Mendoza v. State, 122 Nev. 267, 130 P.3d 176 (2006). In that case:

> On February 25, 2003, [defense counsel] represented to the court that he had spoken to [the defendant] numerous times throughout the week regarding an offered plea negotiation. Given that [defense counsel] visited [defendant] on numerous occasions, and because he agreed to provide [defendant] the discovery documents as requested, we conclude that no irreconcilable conflict existed between [defendant] and his court-appointed counsel.

Id. Here, the record demonstrates consistent contact between Appellant and his counsel. Defense counsel made similar representations to the district court here as those in Garcia, including defense counsel's plea discussions with Appellant, and Appellant's own admissions that he had 1) seen motions defense counsel was going to file, and 2) explained that he did not want his defense counsel to file those motions as he believed they were not in his best interest.

In both Young and Moore, the eponymous clients made repeated motions which the trial court never adequately examined. See Young, 120 Nev. at 970, 102 P.3d at 577; Moore, 159 F.3d at 1160. While the duration in the instant case between charge and trial may be considered relatively short, all the record shows is Appellant's one unsubstantiated complaint and the trial court's satisfactory inquiry into it. Based on Appellant's failure to demonstrate adequate cause for substitution of counsel, or anything resembling a "complete collapse" of the relationship, as well as defense counsel's representations to the contrary, the district court did not

abuse its discretion with respect to its denial of Appellant's Motion to Dismiss Counsel.

2. The adequacy of the inquiry

Appellant also claims he was entitled to an evidentiary hearing to examine the complaints in his motion, without showing any authority that mandates this form of inquiry. AOB 24. Upon review, this Court in fact reviews whether the district court made a "thorough inquiry[.]" Young, 120 Nev. at 970, 102 P.3d at 577. Again, the district court conducted a thorough inquiry, demonstrated supra. It did not simply brush off Appellant's concerns, but asked him pointed questions related to the specific grounds in his motion. As Appellant's answers revealed no actual conflict between himself and his counsel, the district court did not abuse its discretion with respect to the nature of its inquiry.

3. The timeliness of the motion(s)

Appellant made his motion two weeks before trial which, he contends, "given the incredibly short period between arraignment and trial, was well in advance of the trial date." AOB 25. However, the district court balances the "defendant's constitutional right to counsel against the inconvenience and delay that would result from the substitution of counsel." Young, 120 Nev. at 969-70, 102 P.3d at 577. Approving Appellant's motion two weeks before a murder trial would have led to inconvenience and delay for both the trial court and Appellant.

However, even should this Court find Appellant timely made his motion, as Appellant has failed to meet the other two prongs of the Young, his claim must nevertheless be denied.

II
SUFFICIENT EVIDENCE SUPPORTED DEFENDANT'S CONVICTION OF SECOND-DEGREE MURDER

Appellant claims insufficient evidence supported his verdict of second-degree murder. AOB 26-27. This claim must fail.

A. Standard of Review

"[I]t is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness." Walker v. State, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975). The jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981). Accordingly, the standard of review for a challenge to the sufficiency of the evidence is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational [juror] could have found the essential elements of the crime beyond a reasonable doubt." McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992); see also Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781 (1979). In rendering its verdict, a jury is free to rely on circumstantial evidence. Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980).

"In reviewing the evidence supporting a jury's verdict, the question is not whether this Court is convinced of the defendant's guilt beyond a reasonable

doubt, but whether the jury, acting reasonably, could have been convinced to that certitude by the evidence it had a right to consider." Wilkins v. State, 96 Nev. 367, 374, 609 P.2d 309, 313 (1980) (citing Edwards v. Jackson, 90 Nev. 255, 258-59, 524 P.2d 328, 331 (1974)).

B. Substantial Evidence Supported the Jury's Verdict, and That Verdict Should Not Be Disturbed Here

The jury heard evidence that Jaime had broken into Appellant's apartment and that Appellant was upset by this. 10 AA 954-58. Notwithstanding the restitution arrangement Appellant and Jaime supposedly made, Jaime apparently still owed Appellant money. 10 AA 980-81. Appellant was then overheard to say "I'm getting my money," and he was upset at the time he said it. 7 AA 707. The jury was specifically instructed that they could consider evidence of motive as a circumstance in the case. 15 AA 1509.

Further, the jury heard evidence that Appellant was seen at Jaime's apartment on the night of his death, initially causing a disturbance sufficient to cause Jaime to call the police. 8 AA 820-24; 9 AA 873-79. Appellant was seen banging on Jaime's door and flailing his arms around angrily, after which the police arrived. 9 AA 873-79. William testified that he saw a man fleeing in Appellant's car immediately after the shooting. 7 AA 693-97. Text messages on Appellant's phone indicated that he was seeking the same caliber of gun as the

bullet that ultimately killed Jaime—right around the time he had discovered Jaime stole from him. 13 AA 1342-55.

Additionally, Denise and Appellant both gave their own inconsistent, incredible statements. Denise testified that she did not see Appellant—her fiancé and the father of her child—in the "several days" after the shooting occurred. 10 AA 964. Moreover, she testified that Appellant did not have a phone (when three were found in his car), and that she just went and "found him" several days later. Id. However, Denise did testify that Appellant was the only one with access to their car on the night of the shooting—the same car William saw "someone" get into and drive away in immediately after the shooting. 7 AA 693-94, 696-97; 10 AA 945-46. Appellant, for his part, stated in his interrogation that he had driven up to hear what sounded to him like a gunshot, so he had driven off—leaving his fiancée and child in an unknown and potentially dangerous situation. RA 5-6. He also stated that he did not know if Cassandra had a boyfriend (Mini-Me, who lived downstairs from Appellant and with whom Appellant had exchanged a number of text messages). RA 21, 13 AA 1348-49.

This evidence alone would have been sufficient for a reasonable jury to convict Appellant when viewed in the light most favorable to the prosecution. Even if none of this evidence constituted direct evidence, as the jury was properly instructed, the law makes no distinction between the weight given to direct or

circumstantial evidence. 15 AA 1512. But this was not all the evidence the jury heard.

Det. Ivie testified to William's prior inconsistent statement that William had heard Appellant banging on Jaime's door for 10 minutes immediately before the gunshot, and had seen Appellant run from the direction of Jaime's apartment immediately after the shooting. 11 AA 1087-90. Jovonne testified to substantially the same information. 7 AA 744-49. Appellant attempts to characterize William's prior consistent statement as the only evidence supporting his conviction, thereby vitiating this conviction, because case law holds this type of evidence insufficient standing alone to support a conviction. AOB 29-30. Appellant ignores the rest of the evidence adduced at trial. See supra Statement of Facts. Moreover, Appellant misstates the law. The law in Nevada specifically states that a prior inconsistent statement is admissible as substantive evidence. LaPierre v. State, 108 Nev. 528, 532, 836 P.2d 56, 58 (1992) (where this Court held that a prior "inconsistent statement was also admissible as *substantive evidence* that the victim had previously been sexually abused while in foster care") (emphasis added).

To the extent Appellant avers various unsubstantiated theories attempting to turn Jaime's murder into a "whodunit," these theories are of no consequence. Appellant claims he could have seen the "actual killer," whom he knew or was afraid of, and fled the scene after this real killer murdered Jaime. AOB 29.

Although Appellant was not obligated to present any evidence at trial, it seems curious that if Appellant had seen Jaime being killed he would not have at least made a passing reference to this—perhaps to the police—after being arrested for Jaime's murder. Additionally, Jaime had been in a fight with another person, Bradley Sappington, before he was killed. While Appellant acknowledges Sappington was in custody and incommunicado between the fight and the time of the murder, he also states ominously that "the record is silent as to whether Bradley's confrontation with Jaime possibly involved other people who might have also had a motive to kill Jaime." AOB 28. It should come as no surprise that the record is silent as to this; the record is silent as to many irrelevant things. In the absence of any exculpatory evidence presented by Appellant, his conspiracy theories did not apparently rise to the level of reasonable doubt in the eyes of the jury, especially in light of the evidence against him.

Here, the testimony and evidence at trial present a damning picture of Appellant's actions on and about June 17, 2012. Viewing this evidence in the light most favorable to the State, it is clear that a reasonable jury could have found—and did find—Appellant guilty, and this Court should not disturb its verdict.

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III
THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY ALLOWING DETECTIVE IVIE TO TESTIFY AS TO HIS EXPERIENCE WITH WITNESSES IN APPELLANT'S NEIGHBORHOOD

Appellant next claims that the district court abused its discretion by admitting evidence of the reluctance of witnesses who live in Appellant's neighborhood to give statements to police. AOB 31. As this evidence was relevant to explain William's changing stories about what happened at 1416 F Street on June 17, 2012, this claim must also fail.

A. Standard of Review

The decision to admit or exclude evidence is within the sound discretion of the district court. Johnson v. State, 113 Nev. 772, 776, 942 P.2d 167, 170 (1997). This Court has held that the district court's decision to admit or exclude evidence will not be disturbed absent manifest abuse of discretion. See Hughes v. State, 112 Nev. 84, 88, 910 P.2d 254, 256 (1996). Relevant evidence is generally admissible. See NRS 48.025. However, even relevant evidence may be inadmissible if the danger of unfair prejudice outweighs its admission. NRS 48.035(1).

Although out-of-court statements are generally inadmissible as hearsay,[3] NRS 51.035 states:

> "Hearsay" means a statement offered in evidence to prove the truth of the matter asserted unless:
> 2. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

[3] See generally NRS 51.035, 51.065.

(a) inconsistent with the declarant's testimony.

As Appellant objected to the admission of this evidence, this Court reviews for harmless error. 11 AA 1077; Valdez v. State, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). NRS 178.598 ("Harmless error") states: "Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."

B. The District Court Did Not Abuse Its Discretion by Admitting This Neighborhood-Reluctance Evidence

Det. Ivie testified about his experiences getting statements from witnesses who lived in the neighborhood surrounding 1416 F Street:

> **The State:** As a homicide detective, you said you'd try to talk to everybody. Has it been your experience that sometimes it's difficult to get everybody to talk to you?
>
> **Det. Ivie:** Absolutely.
>
> **The State:** Why is that?
>
> **Det. Ivie:** Some people are reluctant to come forward, for all kinds of reasons. Some people live in certain—
>
> **Defense Counsel:** Objection, Your Honor. This calls for speculation.
>
> **The State:** Based on his experience.
>
> **The Court:** Well . . .
>
> **Defense Counsel:** Irrelevant as to this case.
>
> **The Court:** He can testify as to whether, in his experience, people—if it's unusual or not for people to be reluctant.

The State: Based on your experience as a homicide detective, and you testified it is somewhat usual for people to be reluctant to talk to you?

Det. Ivie: Yes.

The State: All right. But at the same, too, other people are willing to talk to you?

Det. Ivie: Yes.

The State: All right. Now, where was this crime scene? Again, you described it as 1416 F Street?

Det. Ivie: Yes.

. . . .

The State: All right. And you've investigated crime scenes in this particular area before?

Det. Ivie: Yes.

The State: As a homicide detective, have you had difficulty obtaining witnesses—getting witness statements in this area?

Det. Ivie: Yes.

The State: What have your difficulties been with cases in this area?

Defense Counsel: Objection, Your Honor. Relevance.

The Court: Overruled.

The State: What types of difficulties have you had getting witnesses to speak with you in this area?

. . . .

Det. Ivie: It's difficult, because it's—it's—has many, many crimes going on. Usually it's neighbors or people they know. People are reluctant. There's fear of retaliation.

Defense Counsel: Objection, Your Honor. Can I approach the bench?

The Court: Yeah. Well, don't—don't, you know, speculate as to what people might be thinking. So . . .

Go on, Mr. Pandelis. Would you say it's a high crime area?

Defense Counsel: Your Honor.

Det. Ivie: Absolutely.

Defense Counsel: Your Honor.

The Court: All right.

Defense Counsel: I'd—I'd move it be stricken. I'd move it be stricken.

The Court: My question?

Defense Counsel: No, I'm sorry.

Defense Counsel: His response.

Defense Counsel: The prior response and—and actually, if we can approach the bench.

The Court: Well, that—that's overruled.

Defense Counsel: All right.

The Court: You can approach, if you want to.

Defense Counsel: Thank you.

11 AA 1076-79.

After the bench conference (which was not transcribed), the district court concluded that Det. Ivie's opinion on the reluctance of witnesses living around 1416 F Street to testify was relevant to explain why William might feel compelled to change his story on the witness stand. 11 AA 1109-13. As the court observed, the State questioned Det. Ivie if he had ever had problems getting witnesses who lived in "this area" to testify. Det. Ivie never testified that William indicated he was afraid of Appellant. William specifically referenced the "neighborhood" he lived in as the basis for his fear of talking to the police. 11 AA 1086-87. Moreover, William indicated on the stand he was scared to be testifying for fear of what could happen to his sister—Appellant's apparent presence in custody notwithstanding. 7 AA 737-38. Additionally, and as the district court found, Appellant's arrest did not cure the pressures not to testify from sources beyond Appellant's knowledge or control, such as being labeled a "snitch" or the stigma that could come with giving a statement to police or testifying. 11 AA 1111-12.

Moreover, the district court found that defense counsel opened the door for the State to allow this neighborhood-reluctance evidence during its opening statement. 11 AA 1112-13. There, defense counsel alluded to William's anticipated testimony, stating that:

> Some people may not want to talk to the police. They may come and say, well, is anybody out there? I'll tell you this, but you're not recording me, are you? Well, once somebody is arrested, they're no

> longer a threat, then presumably [indiscernible] will go away, and they can speak the truth.

6 AA 648-49. This Court has held that "a party will not be heard to complain on appeal of errors which he himself induced or provoked the court or the opposite party to commit." Pearson v. Pearson, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994). For this doctrine to apply, "it is sufficient that the party who on appeal complains of the error has contributed to it." Id. As the district court found, when defense counsel affirmatively said in opening statement that there was no longer anything for the reluctant witnesses to be scared of because Appellant had been arrested, the State was allowed to respond with non-prejudicial evidence demonstrating the general reluctance of witnesses in that neighborhood to testify. 11 AA 1112-13. Additionally, to the extent Det. Ivie testified that the neighborhood was a high-crime area, the district court found this "cut to [Appellant's] benefit," as it indicated a number of other things could have occurred that led to Jaime's death. 11 AA 1110.

For these reasons, the district court found Det. Ivie's statement was not prejudicial and properly admitted it. However, even if the district court did err in admitting this neighborhood-reluctance evidence, any error was harmless beyond a reasonable doubt. The jury heard substantial evidence of Appellant's guilt, and both Det. Ivie and Jovonne testified to William's prior inconsistent statement. This neighborhood-reluctance evidence did not imply that Appellant was somehow

responsible for witness intimidation, but did explain the apparent reluctance of witnesses, such as William and Jovonne, to testify or to testify truthfully. Det. Ivie did not claim that Appellant was the source of this fear with respect to any witnesses at trial, and in fact the district court specifically instructed him not to speculate on this matter. This testimony of non-specific fears of retaliation against witnesses did not prejudice Appellant as to the crime already committed, especially in light of the evidence presented against him, and the statements of witnesses themselves that they were afraid to be testifying because of fears of retaliation.

Based on the foregoing record, the district court did not commit a manifest abuse of discretion in admitting Det. Ivie's statement, and this Court should not disturb that decision here.

C. Appellant Was Not Entitled to a Mistrial

At the bench conference, defense counsel moved for a mistrial, which the district court denied. 11 AA 1109-10. "It is within the sound discretion of the trial court to determine whether a mistrial is warranted." Meegan v. State, 114 Nev. 1150, 968 P.2d 292, 295 (1998), abrogated on other grounds by Vanisi v. State, 117 Nev. 330, 22 P.3d 1164 (2001). "Absent a clear showing of abuse of discretion, the trial court's determination will not be disturbed on appeal." Id.

Due to Appellant's failure to demonstrate that the district court abused its discretion in admitting this evidence, the district court clearly did not abuse its

discretion by refusing to grant a mistrial, and this Court should not disturb that decision.

IV
THE DISTRICT COURT PROPERLY INSTRUCTED THE JURY

Appellant claims the district court gave two erroneous jury instructions. AOB 35. These claims likewise fail.

A. Standard of Review

A district court has broad discretion to settle jury instructions, and this Court reviews that decision for an abuse of discretion or judicial error. Hoagland v. State, 126 Nev. ___, ___, 240 P.3d 1043, 1045 (2010) (citing Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005)). "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, 121 Nev. at 748, 121 P.3d at 585. Where an instruction correctly states the law and summarizes the statutory definition of the crime, this Court has found no abuse of discretion. Id.

This Court presumes "that juries follow district court orders and instructions." Summers, 122 Nev. at 1334, 148 P.3d at 783. Even if the district court errs in its instruction, where a jury would have nevertheless found Appellant guilty "absent the error," this error is harmless beyond a reasonable doubt. Grey v. State, 124 Nev. 110, 123, 178 P.3d 154, 163 (2008).

A district court need not instruct the jury on redundant principles. Elvik v. State, 114 Nev. 883, 899, 965 P.2d 281, 291 (1998). Likewise, "[w]here the district court refuses a jury instruction on defendant's theory of the case that is substantially covered by other instructions, it does not commit reversible error." Earl v. State, 111 Nev. 1304, 1308, 904 P.2d 1029, 1031 (1995) (citing Shannon v. State, 105 Nev. 782, 787, 783 P.2d 942, 945 (1989); Bean v. State, 81 Nev. 25, 34, 398 P.2d 251, 256 (1965).

B. The District Court's Instruction on Presumption of Innocence Was Proper

Defense counsel objected to instruction No. 10, which stated (in relevant part):

> The Defendant is presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of the crime charged and that the Defendant is the person who committed the offense.

AOB 36; 15 AA 1515. Appellant's stated objection was to the lack of instruction as to which elements were "material." AOB 37; 14 AA 1417.

This Court recently rejected this argument in Nunnery v. State, 127 Nev. ___, ___, 263 P.3d 235, 259 (2011), cert. denied, 132 S. Ct. 2774 (2012):

> [Appellant] also argues that one jury instruction was improper because it stated that the State had the burden of "proving beyond a reasonable doubt every material element of the crime charged" without specifying the elements that are material. This court has repeatedly upheld such language. See, e.g., Morales v. State, 122 Nev. 966, 971, 143 P.3d 463, 466 (2006) [citing the exact jury instruction given in the instant case]; Crawford v. State, 121 Nev. 744, 751, 121 P.3d 582, 586 (2005); Gaxiola v. State, 121 Nev. 638,

> 650, 119 P.3d 1225, 1233 (2005); Leonard v. State, 114 Nev. 1196, 1209, 969 P.2d 288, 296 (1998). Therefore, the district court did not abuse its discretion in giving this instruction.

Accordingly, this issue is well-settled, and thus Appellant's claim should be denied.

Appellant asserts that this "error" requires reversal because this Court's holding in Nunnery that giving the material-elements instruction did not constitute an abuse of discretion was insufficiently reasoned. This claim must fail, as the absence of reasoning in the opinion does not change the substance of its holding. The district court could not have "exceed[ed] the bounds of law or reason" in instructing the jury in accordance with case law. See Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001). That the amount of reasoning behind it does not meet Appellant's standards is of no moment.

Appellant also briefly contends that this jury instruction likewise constituted structural error. AOB 42; see also Cortinas v. State, 124 Nev. 1013, 1024, 195 P.3d 315, 322 (2008) (internal citations and quotation marks omitted). The United States Supreme Court has held that erroneous reasonable doubt instructions may constitute structural error. Sullivan v. Louisiana, 508 U.S. 275, 281-82, 113 S. Ct. 2078, 2083 (1993). However, as this instruction was not an erroneous statement of the law, but in fact, a proper one as demonstrated supra, this claim of structural error is without merit.

Finally, and in the alternative, Appellant contends that this "highly prejudicial" instruction violated his substantial rights. AOB 42-43. Appellant further argues that the jury's failure to convict him for first-degree murder is somehow proof that the evidence of his conviction for second-degree murder was not overwhelming. These statements are spurious. Appellant ignores 1) the fact that an eyewitness placed him banging on Jaime's door before—and running from the scene moments after—Jaime was shot, 2) his texts seeking a weapon of the same caliber that killed Jaime, and 3) the evidence of his conflict with Jaime, among other things. This evidence was, in fact, overwhelming, and it should be clear that a jury would have found Appellant guilty absent this "error." As Appellant has utterly failed to demonstrate how a wholly-proper jury instruction prejudiced him, these statements should be disregarded.

C. The District Court's Instruction on Voluntary Manslaughter Was Proper

Appellant also contends that the district court erred in its instruction on voluntary manslaughter. AOB 43; 15 AA 1530-31. The district court's instructions were essentially recitations of the statutory definitions of manslaughter. See NRS 200.040, 200.060; 15 AA 1530. The district court also gave specific instructions describing how and in what manner homicide would be reduced to manslaughter. As Instruction 26 described in relevant part:

> The heat of passion ***which will reduce homicide to Voluntary Manslaughter*** must be such an irresistible passion as naturally would

> be aroused in the mind of an ordinarily reasonable person in the same circumstances

15 AA 1531 (emphasis added). Further, Instruction 27—which Appellant omits from his discussion—stated that:

> If you find the State has established that the defendant has committed murder you shall select the appropriate degree of murder as your verdict. The crime of murder may include the crime of voluntary manslaughter. You may find the defendant guilty of voluntary manslaughter if:
>
> 1. You have not found, beyond a reasonable doubt, that the defendant is guilty of murder of either the first or second degree, and
> 2. All twelve of you are convinced beyond a reasonable doubt the defendant is guilty of the crime of voluntary manslaughter.
>
> If you are satisfied beyond a reasonable doubt that the killing was unlawful, but you have a reasonable doubt whether the crime is murder or voluntary manslaughter, you must give the defendant the benefit of that doubt and return a verdict of voluntary manslaughter.

15 AA 1532.

Appellant proffered the following *additional* instruction:

> If after the consideration of all the evidence you have a reasonable doubt as to whether or not the defendant acted in a heat of passion caused by the requisite legal passion, you must return a verdict of voluntary manslaughter. This is because the State has the burden of proving beyond a reasonable doubt that the defendant did not act in the heat of passion.

8 AA 804.

Based on Instructions 26 and 27, Appellant's additional proffered instruction was redundant. It was clear from the given instructions that passion was a material element of the offense, and that the jury would have to find such passion beyond a reasonable doubt to overcome Appellant's presumption of innocence and reduce

Appellant's homicide charges to manslaughter. Additionally, this Court has held that even where a jury receives an incorrect instruction on voluntary manslaughter, the error is harmless if the jury would nevertheless have reached the same conclusion at trial. Schoels v. State, 114 Nev. 981, 986, 966 P.2d 735, 738 (1998) (upholding a conviction of first-degree murder). Based on the evidence against Appellant here, the jury would have reached the same verdict notwithstanding Appellant's redundant proffered instruction.

As this instruction would have been redundant where it was substantially covered by other instructions, the district court did not abuse its discretion by refusing to proffer this additional defense instruction. See Elvik, 114 Nev. at 899, 965 P.2d at 291; Earl, 111 Nev. at 1308, 904 P.2d at 1031. Accordingly, Appellant's claim must fail.

V
NO CUMULATIVE ERROR EXISTS

When evaluating a claim of cumulative error, courts consider: 1) whether the issue of guilt is close; 2) the quantity and character of the error; and 3) the gravity of the crime charged. Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 854-55 (2000), cert. denied, 531 U.S. 843, 121 S.Ct. 110 (2000), (citing Leonard v. State, 114 Nev. 1196, 1216, 969 P.2d 288, 301 (1998)). Where an appellant cannot demonstrate any error detrimental to him, courts will not find cumulative error. See Mulder, 116 Nev. at 17, 992 P.2d at 855.

The issue of guilt was not close here. As demonstrated, the jury convicted Appellant of second-degree murder based on overwhelming evidence. Furthermore, Appellant has failed to demonstrate any error detrimental to him in the instant matter. While the crime is grave, based on the foregoing, as Appellant has not demonstrated *any* error on the part of the district court, his claim of cumulative error is without merit.

CONCLUSION

Wherefore, based on the foregoing, the State respectfully requests that this Honorable Court AFFIRM the Judgment of Conviction.

Dated this 9th day of October, 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 font of the 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 9,042 words.
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 a 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 9th day of October, 2013.

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 9th day of October, 2013. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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