IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES DAEVON MANNING, Appellant, v. THE STATE OF NEVADA, Respondent.	CASE NO: 65856

FAST TRACK RESPONSE

1. Name of party filing this fast track response: The State of Nevada

2. Name, law firm, address, and telephone number of attorney submitting this fast track response:

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3. Name, law firm, address, and telephone number of appellate counsel if different from trial counsel:

Same as (2) above.

4. Proceedings raising same issues. List the case name and docket number of all appeals or original proceedings presently pending before this court, of which you are aware, which raise the same issues raised in this appeal: None.

5. Procedural history.

On June 27, 2013, the State filed an Information charging James Manning ("Appellant") with one count of Robbery, Victim 60 Years of Age or Older, and one count of Battery with the Intent to Commit a Crime.

Appellant's jury trial commenced on January 13, 2014. Appellant was found not guilty of Count 1, Robbery, Victim 60 Years of Age or Older, but was found guilty of Count 2, Battery with the Intent to Commit a Crime. 1 AA 131. On May 13, 2014, Appellant was sentenced to a maximum term of imprisonment of 60 months, with a minimum parole eligibility of 24 months. 1 AA 143-144. The Judgment of Conviction was filed on May 15, 2014. 1 AA 143-144. Appellant filed a Notice of Appeal on June 11, 2014. 1 AA 145-146.

6. Statement of Facts.

At approximately 4:00 P.M., on March 29, 2013, Thor Berg entered a bus traveling from Sunset Station to Sam's Town. 2 AA 369. As Mr. Berg began to exit the bus he felt someone place their hand in his right pocket. 2 AA 371. Mr. Berg carried his identification, player's cards, and cash, which were wrapped together, in his right pocket. 2 AA 371. Mr. Berg then felt a pressure on the back of his knee and fell to his back. 2 AA 372. While he was falling, Mr. Berg felt the hand leave his pocket, and identified Appellant as the man who had placed his hand in Mr. Berg's pocket and knocked him to the ground. 2 AA 371. Mr. Berg watched Appellant exit the back of the bus. 2 AA 371. Mr. Berg noticed that the items that were in his pocket had been stolen. 2 AA 372.

Officer Robert Steinbach, was the first law enforcement officer to arrive at the scene. 2 AA 389. When Officer Steinbach arrived on the scene, he assessed Mr.

Berg's medical needs and began talking to potential witnesses. 2 AA 389. Law enforcement officers then identified some potential suspects, and took Mr. Berg to their location to determine if any of the men was the one who pushed him down and stole his property. 2 AA 373. Mr. Berg informed the officers that none of the suspects was the perpetrator of the crime. 2 AA 379. Officer Steinbach did not collect any video footage from the bus. 2 AA 399.

Callie Mae Borley, was a passenger on the bus and witnessed the incident. 2 AA 402. Ms. Borley saw what she thought to be a wallet hanging from Mr. Berg's pocket. 2 AA 404. Ms. Borley watched Appellant take the item out of Mr. Berg's pocket, and knock Mr. Berg down. 2 AA 405-406. Ms. Borley called 911. 2 AA 406.

Appellant was subsequently arrested after having been found asleep on a playground. 2 AA 232. Appellant was questioned regarding this case and another case involving another bus robbery. 3 AA 639-675. When questioned about the incidents, Appellant informed officers that he had attempted to snatch phones from several people in the past, including one instance on a bus. 3 AA 654-662. Appellant then told officers about another time where he tried to snatch a phone on a bus but the guy did not have one. 3 AA 662. Appellant stated that he committed these acts because he was being intimidated by Nicholas Thompson. 3 AA 653.

Prior to trial, Appellant requested that the State provide the video from the CAT bus on the day Mr. Berg was robbed. 1 AA 21. The District Attorney contacted Detective Chad Embry concerning the video's status. 1 AA 181. Detective Embry informed the District Attorney that although the police possessed still images from the incident it did not have the video. 1 AA 186. Detective Embry attempted to obtain a copy of the video but found out that the company who stored the video had merged with another company and had destroyed the video. 3 AA 466-467.

The State did not introduce the statement Appellant made to police in its case in chief. However, Appellant elected to testify, and the State attempted to cross-examine Appellant regarding his statement. 3 AA 495. Appellant objected to the questioning and arguments were held outside the presence of the jury to determine whether statements regarding Appellant's prior bad acts could be admissible. 3 AA 495. The district court overruled the objection and allowed the State to proceed with cross-examination. 3 AA 512.

Prior to closing arguments, Appellant asked the court to give an instruction on Battery. 3 AA 558. Counsel argued that Battery was the underlying force necessary to commit Robbery in this case, and was thus a lesser-included offense of Robbery. 3 AA 558. The court found that Battery was not a lesser-included offense of Robbery, and did not present the jury with a Battery Instruction. 3 AA 558-559.

7. Issue(s) on appeal.

I. Whether Appellant's Due Process Rights were Violated When the State Was Unable to Produce the Video
II. Whether the District Court Erred by Allowing the State to Introduce Other Crimes to Prove Motive and Common Scheme or Plan
III. Whether the District Court Erred by Refusing to Give the Jury a Battery Instruction
IV. Whether Cumulative Error Warrants Reversal

8. Legal Argument, including authorities:

I. APPELLANT'S DUE PROCESS RIGHTS WERE NOT VIOLATED WHEN THE STATE WAS UNABLE TO PRODUCE THE VIDEO

During discovery, Appellant requested that the State provide the video the CAT bus on the day Mr. Berg was robbed. 1 AA 21. The State informed Appellant that the video had been destroyed when the company storing the video merged with another company. 1 AA 186. Appellant indicated that he might file a Motion to Dismiss based on the State's failure to preserve evidence, but no such motion was filed. 1 AA 186. Prior to closing arguments Appellant requested an instruction stating that the evidence of the video is presumed to be favorable to Appellant. 3 AA 548. The court rejected the instruction finding that the State's failure to collect the video at most amounted to negligence and thus the instruction was not proper. 3 AA 553-554.

Appellant's due process rights were not violated by the State's inability to produce the video evidence of the robbery. "A conviction may be reversed when the State loses evidence if (1) the defendant is prejudiced by the loss or, (2) the

evidence was "lost" in bad faith by the government." Sparks v. State, 104 Nev. 316, 319, 759 P.2d 180, 182 (1988).

The State never possessed the video. When Officer Steinbach arrived at the scene of the crime, he attended to Mr. Berg, and then began collecting information from witnesses. 2 AA 389. Officer Steinbach learned that a potential suspect was in custody and took Mr. Berg to the potential suspect in order to make an identification. 2 AA 373. Officer Steinbach never collected the video. 2 AA399. The State obtained stills from the video but never possessed the video. Detective Embry attempted to obtain the video but learned it had been destroyed. 3 AA 466-467. As such, the State cannot be faulted for the destruction of a video it did not possess.

Even if the State possessed the video, Appellant was not prejudiced by the loss of the video, nor was the evidence lost in bad faith by the government. Appellant bears the burden of proving that he was prejudiced by the lost evidence. Boggs v. State, 95 Nev. 911, 913, 604 P.2d 107, 108 (1979). In order to demonstrate prejudice Appellant must show "that it could be reasonably anticipated that the evidence would have been exculpatory and material to the defense." Sparks at 319, 759 P.2d at 382. Appellant cannot show that the video would have been exculpatory if provided. Appellant claims that the video would not have shown Appellant reaching his hand into Mr. Berg's pocket. Appellant's Fast Track Statement ("FTS")

at 13. This assertion is pure speculation and is belied by the testimony of Mr. Berg and Ms. Borley. A hoped for conclusion is not sufficient to establish prejudice. Boggs at 913, 604 P.2d at 109.

Furthermore, the video was not lost in bad faith by the State. As previously discussed, the State was not in possession of the video. When Detective Embry attempted to retrieve the video, he learned that the video was destroyed by a third party are a result of a merger. 1 AA 186. The State could not have anticipated that the evidence would have been destroyed in this case. When the State learned that the video was not in its possession it made reasonable attempts to retrieve the video. 1 AA 186. This Court has held that bad faith does not exists when a third party destroys evidence without the State's knowledge. See Williams v. State, 118 Nev. 536, 552, 50 P.3d 1116, 1126 (2002) (finding that the State did not act in bad faith when blood was destroyed by an independent lab who stored the blood in an unrefrigerated location). Accordingly, Appellant is not entitled to relief.

Appellant argues in the alternative, that his conviction must be overturned because the State failed to collect evidence. "[P]olice officers generally have no duty to collect all potential evidence from a crime scene…" Daniels v. State, 114 Nev. 261, 268, 956 P.2d 111, 115 (1998). In order for Appellant to show that the State's failure to collect evidence violated his due process rights, he must show that the uncollected evidence was material, and if the evidence

was material, that the failure to gather the evidence was a result of bad faith or gross negligence. Id. at 267, 956 P.2d at 115. Evidence is material if "there is a reasonable probability that, had the evidence been available to the defense, the result of the proceedings would have been different." Id. If the evidence was material this Court must then determine whether the failure to collect the evidence result of negligence, gross negligence, or bad faith. If the failure is result of negligence then no sanctions are imposed. Id. If the failure is a result of gross negligence then the defendant is entitled to a presumption that the evidence would have been unfavorable to the State. Id. If the failure is a result of bad faith then reversal may be proper. Id.

Appellant cannot show that the video would have been material to his case. As discussed above, Appellant cannot show that the video was exculpatory. It is merely Appellant's hoped for conclusion that the video would have shown him not putting his hand in Mr. Berg's pocket. Multiple witnesses testified that the bus was crowded and there is a strong likelihood that the video would not be able to show the incident with any helpful detail. Furthermore, Mr. Berg and Ms. Borley both testified that Appellant put his hand in Mr. Berg's pocket. As such, Appellant cannot show that had the video been available that the results of the proceedings would have been different.

Additionally, Appellant cannot show that the failure to collect the video was a result of bad faith or gross negligence on the part of the State. This crime happened

on a crowded bus. 2 AA 372-373. Officer Steinbach's first priority was to ensure that Mr. Berg's medical needs were taken care of. 2 AA 389. Officer Steinbach then began talking to witnesses in order to find out what happened. 2 AA 389. Officer Steinbach then took Mr. Berg to identify a potential suspect. 2 AA 373. Officer Steinbach did not have an unlimited amount of time to gather evidence due to the nature of the crime. Officer Steinbach's actions were reasonable and there was no reason for him to believe that the video could not be retrieved later. As such, Officer Steinbach's decision to not collect the video at most amounted to negligence. When Detective Embry learned of the video's existence he immediately took steps to retrieve it. 1 AA 186. Because the State's failure to collect evidence was not a result of bad faith or gross negligence Appellant is not entitled to relief.

II. THE DISTRICT COURT DID NOT ERR BY ALLOWING THE STATE TO INTRODUCE OTHER CRIMES TO PROVE MOTIVE AND COMMON SCHEME OR PLAN

The district court did not commit reversible error by allowing the State to question Appellant regarding the voluntary statement he gave to Detective Kavon. Generally, the State is prohibited from introducing evidence of a defendant's prior bad acts to show that he is predisposed to commit crime. However, the State may introduce this type of evidence to show motive, intent, lack of a mistake, or a common scheme or plan. NRS 48.045(2). "The district court's decision to admit or

exclude evidence is reviewed for an abuse of discretion." Balthazar-Monterrosa v. State, 122 Nev. 606, 619, 137 P.3d 1137, 1145 (2006).

If the State plans to introduce this type of evidence at trial, the court must first hold a hearing to determine the admissibility of the prior bad act. "[T]he trial court must determine, outside the presence of the jury, that: (1) the incident is relevant to the crime charged; (2) the act is proven by clear and convincing evidence; and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice." Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-1065 (1997); Walker v. State, 112 Nev. 819, 824, 921 P.2d 923, 926 (1996). However, if a hearing regarding the admissibility is not held it may not warrant reversal in certain situations. Reversal is not warranted if, "(1) the record is sufficient for this court to determine that the evidence is admissible under the test for admissibility of bad acts evidence set forth in Tinch; or (2) where the result would have been the same if the trial court had not admitted." Qualls v. State, 114 Nev. 900, 903-904, 961 P.2d 765, 767 (1998).

Here, a hearing was held to determine whether or not the bad acts were admissible. 3 AA 495. On the record, outside the presence of the jury, the court listened to arguments regarding the admissibility of Appellant's prior bad acts. 3 AA 496. The district court found that the acts were relative to establish Appellant's motive to commit the crime, and were relevant as evidence of a common scheme or

plan. 3 AA 511-512. The district court relied on Appellant's description of the events in his voluntary statement to find that the acts existed by clear and convincing evidence. 3 AA 510. Finally, the court found that the probative value was not substantially outweighed by the danger of unfair prejudice. 3 AA 507-509. The district court's hearing on the record, outside the presence of the jury, met all of the requirements set forth in Tinch.

Assuming *arguendo* that the hearing outside the presence of the jury was not a sufficient bad acts hearing, the record is sufficient for this Court to determine that the evidence is admissible under the test for admissibility of bad acts evidence set forth in Tinch. This Court must first determine whether the prior bad acts were relevant. The acts mentioned in Appellant's statement are relevant to establish Appellant's motivation for committing the crime, and to show that these crimes were part of a common scheme or plan. In his voluntary statement, Appellant told Detective Kavon about Nicholas Thompson. 3 AA 642. Appellant tells Detective Kavon that Thompson is a terrifying man who intimidates people on the streets. 3 AA 643. Appellant then states that Thompson forces him to do things. 3 AA 646. Appellant then describes numerous situation where Thompsons forced him to try and take people's phones. 3 AA 654-662. Appellant stated that "… I didn't create this, I didn't want this, I don't even got a history of this, I don't do shit like this man." 3 AA 670. Appellant clearly states that his association with Thompson was

the motivating factor for him attempting to commit the various robberies. The statement also established that these types of crimes were part of a common plan in which Appellant would snatch items from people while walking down the street or on a bus.

The acts were also established by clear and convincing evidence. Appellant's own statement, corroborated by the video of an uncharged robbery on March 27, 2012, in which he takes a phone from a woman, supports a finding that the acts did in fact happen. Appellant was also able to identify Thompson in one of the photographs, and provided Detective Kavon with an identification card belonging to Thompson. 3 AA 662-666.

Finally, the record is sufficient to show that the probative value outweighed any unfair prejudice. This information was highly probative because it showed Appellant's motivation for committing these robberies. While incriminating, the evidence was not unfairly prejudicial to Appellant. At trial the State only questioned Appellant about his relationship with Thompson and did not go into any of the specifics about the March 27th robbery. 3 AA 517-522. Furthermore, any risk of unfair prejudice was cured by the court's instruction that the jury could not consider the evidence of prior bad acts to show that Appellant is predisposed to commit crime. 3 AA 567. Because the record is sufficient to show that the evidence would have been admissible had there been a hearing, Appellant is not entitled to relief.

Furthermore, the district court's decision to admit this evidence did not alter the outcome of the trial. The State did not go into any of the bad acts mentioned in the voluntary statement except Appellant's association with Thompson. 3 AA 517-522. The State's questions were based on Appellant's statements to Detective Kavon. 3 AA 517-522. Appellant could not recall most of the statements he made to Detective Kavon. 3 AA 517-522. The State then questioned Appellant about whether Thompson made him do anything illegal, to which Appellant replied "no." 3 AA 519.

Evidence of Appellant's association with Thompson played a *de minimus* role in Appellant's conviction. Appellant's conviction was based primarily off of the testimony of Mr. Berg and Ms. Borley. Furthermore, Appellant testified that he was on the bus and did knock Mr. Berg down. 3 AA 494. Additionally, the court gave the jury a limiting instruction stating that the jury could only consider the bad acts to show motive, intent, or as proof of a common scheme or plan. 3 AA 567. As such, the result of the trial would not have changed had there been no mention of Appellant's prior bad acts.

III. THE DISTRICT COURT DID NOT ERR BY REFUSING TO GIVE A BATTERY INSTRUCTION

The district court did not err by failing to give the jury an instruction regarding Battery. "The district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for an abuse of that discretion or judicial

error." Crawford v. State, 121 Nev. 746, 748, 121 P.3d 582, 585 (2005). There are two situations in which the district court is required to give the jury an instruction regarding a lesser offense. The first situation "is that in which there is evidence which would absolve the defendant from guilt of the greater offense or degree but would support a finding of guilt of the lesser offense or degree. The instruction is mandatory, without request." Lisby v. State, 82 Nev. 183, 187, 414 P.2d 592, 595 (1966). Secondly, "if there is any evidence at all, however slight, on any reasonable theory of the case under which the defendant might be convicted of a lower degree or lesser-included offense, the court must, if requested, instruct on the lower degree or lesser-included offense." Id. at 188, 414 P.2d at 595. Appellant argues that the district court was required to give the jury an instruction on Battery, as a lesser-included offense of Battery with Intent to Commit a Crime. However, neither of the two situations described in Lisby, are applicable to Appellant, and thus the court did not err by failing to give the instruction.

While a district court may be required in some situations to give lesser-included instructions *sua sponte*, the district court is not required to issue these instructions when "the evidence would not support a finding of guilty of the lesser offense or degree, e.g., where the defendant denies any complicity in the crime charged and thus lays no foundation for any intermediate verdict…" Id. This is the exact situation that occurred in the instant case. At trial Appellant testified that he

did not commit any crime. Appellant testified that he "just walked past him [Mr. Berg], I didn't mean to like…" 3 AA 523. Appellant testified at trial that he did make contact with Mr. Berg because it was crowded on the bus and they were next to each other. 3 AA 494. Appellant's testimony shows that the contact was accidental and not willful, and thus did not constitute Battery. See NRS 200.481(1)(a). Because Appellant denied complicity in the crime, a *sua sponte* Battery instruction would not have been proper under Lisby. Appellant now argues that the district court should have, *sua sponte*, issued a jury instruction that contradicted his testimony regarding the events leading up to the crime. This argument is not supported by law or common sense. Accordingly, the district court did not err by refusing to give a Battery instruction *sua sponte*.

Additionally the State would have this Court reconsider district court's mandatory duty to issue instructions of lesser-included offenses *sua sponte*. While the United States Supreme Court has found that a defendant has the right to a lesser-included offense jury instruction if requested, "[n]o federal court has imposed on trial judges a duty to *sua sponte* instruct on lesser included offenses." Kubat v. Thieret, 867 F.2d 351, 365-366, (7th Cir. 1989).

Requiring the district court to issue lesser-included instructions *sua sponte*, interferes "with strategy of defense counsel who may opt to omit a lesser-included offense instruction in order to **force** the jury to find the defendant guilty of the crime

charged or acquit him." Kubat, 867 F.2d. at 365-66. This Court has repeatedly protected the ability of attorneys to make strategic decisions during the course of a trial. In the context of ineffective assistance of counsel, this Court has found that strategic decisions are almost unchallengeable. Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). Requiring the district court issue lesser-included instructions can adversely affect a defendant when he chooses not to request a lesser-included instruction for strategic reasons. "Not only does such a policy impinge on the advocate's role, but the result may be to unfairly surprise both the defense and the prosecution." Montana v. Sheppard, 253 Mont. 118, 124, 832 P.2d 370, 373 (1992). Accordingly, district courts should never instruct *sua sponte* on lesser-included offenses and may do so only upon request of the defense.

Appellant argues, in the alternative, that the district court erred by not giving the Battery instruction after Appellant requested the court to do so. Prior to closing arguments Appellant's counsel stated, "… the last issue is that we asked for a lesser included in this case. We are of the belief, based on the testimony of Mr. Berg and Ms. Borley's testimony it shows that the battery in this case is the force required in the *robbery*. We'd like that included also." 3 AA 558 (emphasis added). Importantly, Appellant did not mention Battery with Intent to Commit a Crime when making the request for a lesser-included instruction. The court then found that

Battery was not a lesser-included offense of Robbery, and thus did not include the instruction. 3 AA 558-559.

The theory Appellant presented to the district court was that Battery is a lesser-included offense of Robbery, and that Appellant's testimony provided evidence that would support a Battery conviction. However, Battery is not a lesser-included offense of Robbery, and the court did not err by refusing to issue the Battery instruction.

A defendant may be convicted of "an offense necessarily included in the offense charged…" NRS 175.501. "To determine whether an offense is necessarily included in the offense charged, the test is whether the offense charged cannot be committed without committing the lesser offense." Slobodian v. State, 98 Nev. 52, 53, 639 P.2d 561, 562 (1982). This Court has previously found that Battery is not a lesser-included offense of Robbery. See Zgombic v. State, 106 Nev. 571, 578, 798 P.2d 548, 552 (1990). Because Robbery can be committed without committing Battery the district court's decision to not issue the Battery instruction was correct. Appellant did not ask the court to issue a Battery instruction based off the fact that Battery is a lesser-included offense of Battery with Intent to Commit a Crime. Because Appellant did not raise this issue at trial he is precluded from making the argument for the first time on appeal. See Mason v. Cuisenaire, 122 Nev. 43, 48,

128 P.3d 446, 449 (2006). As such, the district court's decision not to issue the Battery instruction does not warrant reversal.

Furthermore, Jury instruction errors are subject to harmless error analysis. Barnier v. State, 119 Nev. 129, 132, 67 P.3d 320, 322 (2003). An "error is harmless when it is 'clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error." Nay v. State, 123 Nev. 326, 334, 167 P.3d 430, 435, 2007. Here, any alleged error did not substantially affect the jury's verdict. The testimony of Mr. Berg and Ms. Borley supports the jury's finding that Appellant intended to rob Mr. Berg. The jury's failure to acquit shows that they found Mr. Berg's and Ms. Borley's testimony credible, while finding that Appellant's testimony was not credible. As such, any alleged error was harmless beyond a reasonable doubt in this case.

IV. CUMULATIVE ERROR DOES NOT WARRANT REVERSAL

A defendant is not entitled to a perfect trial, but only to a fair trial. Rudin v. State, 120 Nev. 121, 136, 86 P.3d 572, 582 (2004). However, "[t]he cumulative effect of errors may violate a defendant's constitutional right to a fair trial even though errors are harmless individually." Valdez, 124 Nev. at 1195, 196 P.3d at 481 (quoting Hernandez, 118 Nev. at 535, 50 P.3d at 1115). This Court reviews claims of cumulative error based on the following factors: (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).

The issue of guilt was not close in Appellant's case. Mr. Berg testified that he felt a hand reach into his pocket, directly before he was knocked down. 2 AA . Mr. Berg was later able to identify Appellant as the man who knocked him down. 2 AA 371. Ms. Borley corroborated Mr. Berg's testimony and testified that she saw Appellant grab what she thought was a wallet out of Mr. Berg's pocket before knocking him to the ground. 2 AA 404. Appellant also testified that he did in fact knock Mr. Berg down. 3 AA 494. Here, the issue of guilt was not close based off of the testimony of multiple witnesses. Accordingly, this factor weighs in favor of the State.

As discussed above, Appellant's claims of error largely lack merit. Any alleged errors were minor and did not affect the outcome of the trial. Furthermore, the crime in this case was serious. Appellant pushed down a 60 year old man in order to try and take his belongings. Appellant has not shown that the district court did in fact err in this case. Given the evidence in support of Appellant's conviction and the serious nature of the crime in this case, cumulative error does not warrant reversal.

9. Preservation of the Issue.

The above issues were fully litigated and properly preserved for appeal.

VERIFICATION

1. I hereby certify that this Fast Track Response 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 Fast Track Response has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point and Times New Roman style.
2. I further certify that this Fast Track Response complies with the type-volume limitations of NRAP 32(a)(8)(B) because it is proportionately spaced, has a typeface of 14 points and contains 4,667 words.
3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing a timely fast track response and the Supreme Court of Nevada may sanction an attorney for failing to file a timely fast track response, or failing to cooperate fully with appellate counsel during the course of an appeal. I therefore certify that the information provided in this fast track response is true and complete to the best of my knowledge, information and belief.

Dated this 12th day of March, 2015.

Respectfully submitted,

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BY */s/ Steven S. Owens*

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on March 12, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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