IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW WASHINGTON, Appellant, vs. THE STATE OF NEVADA, Respondent.	)	NO. 65998

APPELLANT'S OPENING BRIEF

(Appeal from Judgment of Conviction)

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TABLE OF CONTENTS

PAGE NO.

TABLE OF AUTHORITIES

PAGE NO.

Cases

Statutes

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ROUTING STATEMENT

Twenty-three year old Mathew Washington was convicted by jury verdict of one category A felony and 17 category B felonies.[1] He will be eligible for parole in 57.25 years when he is almost 80 years old.

[1] *Count 1*: conspiracy to commit murder, category B felony (48 to 120 months;)

Count 2: murder with use of deadly weapon, category A felony (life with parole in 240 months and consecutive 60 to 240 months enhancement);

Counts: 3, 5, and 6: attempt murder with use deadly weapon, category B felony, (96 to 240 months and consecutive 60 to 240 months enhancement for each); *Counts: 4 and 7:* battery with use of deadly weapon, category B felony (48 to 120 months each),

Counts: 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17: discharging a firearm at or into structure, category B felony (28 to 72 months each);

Additional Count: possession of a firearm by ex-felon, category B felony (28-72 months).

Count 1 and 2 run concurrent; Count 3 is consecutive to 2, Count 4 is concurrent with 3, Count 5 is consecutive to 4, and Count 6 is consecutive to 5 – all others run concurrent. Mathew received 225 days credit and was

Mathew's appeal is not presumptively assigned to the Court of Appeals because it arises from one category A and several B felonies, is not a plea, and challenges more than sentence imposed or sufficiency of evidence. NRAP 17(b)(1).

Nevada Supreme Court should hear his appeal because it addresses issues of first impression involving United States or Nevada Constitution, raises substantial precedential and public policy questions, and discusses issues of statutory construction. NRAP 17(a)(13) and (14).

Mathew's case presents an issue of statutory construction and constitutional importance under the Double Jeopardy Clause: whether NRS 202.285 and/or double jeopardy prohibit convictions for multiple counts of discharging a firearm at or into a structure when all acts arise from the same incident and are charged as a violation of NRS 202.285.

Mathew's case also raises substantial and public policy questions regarding pleading of unknown coconspirators, whether State may use a general intent crime to prove specific intent of murder, and a Fourth Amendment issue involving two searches from one search warrant.

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accessed: Administrative Fee ($25.00); Restitution – jointly and severally liable ($12,015.71); and DNA Collection Fee ($3). DNA testing waived. IV:788-79.

JURISDICTIONAL STATEMENT

NRS 177.015 gives Court jurisdiction to review appeal from jury verdict. District court filed judgment on 06/27/14 notice of appeal. IV:786-89. Two notices of appeal were filed within 30 day time limit established by NRAP 4(b): Mathew filed on 06/30/14 and his attorney filed on 07/17/14. IV:790-96.

ISSUES PRESENTED FOR REVIEW

I. DOUBLE JEOPARDY PRECLUDES MULTIPLE CONVICTIONS FOR ONE INCIDENT OF DISCHARGING A FIREARM AT OR INTO A STRUCTURE.

II. PRINCIPAL OR AIDER AND ABETTER MAY NOT BE HELD LIABLE FOR ACTIONS OF UNNAMED COCONSPIRATOR WHEN STATE PRESENTED NO EVIDENCE THAT AN UNNAMED PERSON EXISTED.

III. EVIDENCE WAS INSUFFICIENT TO CONVICT.

IV. PREJUDICIAL ERROR IN JURY INSTRUCTIONS.

V. PROSECUTORIAL MISCONDUCT IN CLOSING.

VI. VIOALTION OF THE FOURTH AMENDMENT OCCURRED WHEN POLICE SEARCHED THE CAR A SECOND TIME.

VII. VIOLATION OF RIGHT OF CONFRONTATION.

VIII. PREJUDICIAL ERROR OCCURRED IN THE PENALTY PHASE WHEN STATE PRESENTED PICTURES OF MATHEW COLLECTED BY POLICE DURING FIELD INTERVIEWS AND DISCUSSED THE FIELD INTERVIEWS AND SHOWED TATTOOS.

IX. EVEN IF THIS COURT DOES NOT FIND ANY ONE SINGLE ERROR ENOUGH TO WARRANT REVERSAL, MATHEW ASKS THIS COURT TO CONSIDER THE CUMULATIVE ERROR.

STATEMENT OF THE CASE

On 11/06/13, State charged Mathew Washington and co-defendant Martell Moten with numerous felonies arising out of a shooting at an apartment – 10 counts of discharging a firearm at or into a structure at 2655 Sherwood. I:001-07. Both were also charged with a conspiracy and the murder of Nathan Rawls, and attempt murder and battery of Ashely Scott, LaRoy Thomas, and Marque Hill – all with a deadly weapon.

On 11/12/13, State amended the Criminal Complaint, changing theory of case by deleting a named coconspirator, and adding words "unknown coconspirator". I:008-24.

Mathew's preliminary hearing took place on 12/05/13 and 12/09/13. I:025-II:417. Upon completion of the hearings, justice court struck all gang enhancements within charging document. II:391; *Justice court minutes at* II:418-25.

On 12/23/13, district court arraigned Mathew under Information filed on 12/20/13.[2] He invoked his right to speedy trial in 60 days. Court set trial to begin on 02/03/14. *Hearing*-IV:832-36;*Minutes*-IV:797.

After meeting with the death committee, State decided not to seek the death penalty in Mathew's case. *Hearing*-IV:836-43;*Minutes*-VI:798-800.

On 01/22/14, court severed trial of defendants because Mathew continued to invoke his right to speedy trial and co-defendant Moten waived. *Defendant's motion to sever*: II:441-444; *Opposition*-III:589-602; *Hearings*-IV:849-57;*Minutes*-IV:800-02.

Trial did not begin as planned on 02/03/14 because Defense Attorney requested continuance due to late discovery and scheduling issues.[3] However, Mathew never waived his right to speedy trial.

Trial began on 04/07/14, lasting 8 days with jury returning guilty verdict on all counts.[4]

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[2] Information at II:426-40, On 04/07/14, State filed Amended Information deleting co-defendant. III:658-71. During trial, State filed two Second Amended Informations, separating ex-felon in possession of firearm charge from other charges. III;672-83; IV:747.49.

[3] IV:858-63:M-803-04.

[4] *Day 1:* 04/07/13:V:888-1021-*Minutes*-:IV:813; *Day 2:* 04/08/14: V:1022-1104; VI: 1105-1202-*Min*-IV:815; *Day 3:* 04/09/13: VI:1203-1323-*Min*-IV:816-7; *Day 4:* 04/10/14: VII:1324-1493-*Min*-IV:818; ***Day 5:*** 04/11/14: VIII:1494-173-*Min*-IV:819-20; *Day 6:* 04/14/14:IX:1731-1857-*Min*-IV:821-22; *Day 7:* 04/15/14: IX:1858-1906-*Min*-IV:823; ***Day 8:***

Immediately upon receiving guilty verdicts, court held second trial on ex-felon in possession of a firearm count. Jury returned a guilty verdict same day.[5]

On 04/17/14, court held penalty hearing for murder charge. Jury returned verdict of life with possibility of parole.[6]

On 06/18/14, court sentenced Mathew. *See footnote 1.*

STATEMENT OF THE FACTS

Four time convicted felon Marque Hill was staying at 2655 Sherwood, Apartment 18, in November of 2013. VIII:1460-61. He was not the leaseholder; a woman named Teresa leased the apartment. VII:1462. Marque testified Teresa allowed him to stay in the apartment but he did not know her last name. VII:1462.

Apartment 18 was relatively bare of furniture. There were two mattresses on the floor in each of the two bedrooms, a sofa and a love seat in the living room, a coffee table, a lamp, an Xbox, and a TV on a stand. X:2067; VIII:1377;1881;1469;1470;1482;1525;1540. There were curtains on

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04/16/14: IX:1907-1951-*Min*-IV:824-25; *Jury Instructions:* IV:688-41; *Verdict:* IV:742-46.

[5] *Day 8:* 04/16/14: IX:1907-1951-*Min*-IV:824-25; *Jury Instructions:* IV:750 -67; *Verdict* at IV:768.

[6] *Day 9:* Penalty Phase: X:1952-2039-*Min*-IV:826-27; Jury Istructions:IV:769-780; Verdict IV:781

the windows so that no one could see inside the apartment. VII:1413;1473;1483.

State presented no evidence of food in the refrigerator or kitchen cabinets, no kitchen table and chairs, no chest of drawers, no pictures or decorative items, and nothing inside to indicate apartment 18 was permanently inhabited. Marque said he live in the apartment on and off for four months. VIII:1482.

On 11/04/13, Marque's friend LaRoy Thomas was staying in the apartment with him. LaRoy stayed with his friend Marque for approximately 2 weeks; he lived permanently in Tampa, Florida. VIII:137274.

Like Marque, LaRoy was a four time convicted felon out of Cook County, Illinois. Both were originally from Chicago. While LaRoy's past convictions arose out of drug crimes, Marque's convictions involved theft, possession of controlled substances, and second degree murder. VII:1404;1460.

Two other people were inside apartment 18 on 11/04/13: Nathan Rawls and Ashely Scott. Nathan was staying in apartment 18 for about one week while his girlfriend returned to their home - Nashville, Tennessee - to get paperwork to qualify her for subsidized housing in Las Vegas.

VIII:1375;1463. Marque did not know Nathan before. VII:1463. Nathan was a friend of LaRoy's ex-wife. VII:1375

Ashely Scott was homeless at the time. She arrived at apartment 18 because LaRoy offered her a place to stay and a hamburger. VII:1377-78;1430-32. LaRoy claimed Ashely came to the apartment around 8 PM but Ashely said it was close to 11:45 PM. VII:1378;1429-30. Marque testified Ashely arrived after he went to sleep. VII:1467.

There was a difference of memories as to what occurred the night before the shooting. LaRoy said they watched baseball and played Xbox then went to PT's for hamburgers and to the gas station to purchase cigars, beer, and snacks. VII:1377-80;1432. LaRoy said Marque was already asleep when he and Nathan returned. VII:1380.

On the other hand, Marque claimed they watched the Bears and Packers football game and then went out for food and snacks; he returned to the apartment by himself. VII:1465-66. Marque went to sleep in the back bedroom about 20 minutes after arriving at the apartment. VII:1466. He slept on a mattress on the floor. VII:1469.

Ashely testified that she ate food, played Xbox, and then slept on the love seat with LaRoy. VII:1382;1432-33;VII:1382;1433. Nathan fell asleep on the long couch next to the big picture window. VII:1382;1433.

Around 4 AM, LaRoy heard 5 or 6 gunshots. VII:1383. LaRoy scrambled, realizing gunshots were coming through the window across from the loveseat; but, he was already hit in his legs. VII:1383-4;1391-96. The curtain to the window was closed so that he could not see out and no one could see inside. VII:1413. He said, "I just hit the ground because it's dark in the house so I can't see nothing." VII:1283. He crawled to the back room. VII:1284. LaRoy said no one inside had a weapon. VI:1403-4.

When the shots began, Ashely jumped up then down, crawling to a closet. VII:1433-34. She could not see because the room was dark. VII:1434-45. She was hit in the foot with a bullet. VII:1434-35.

Marque was in the back bedroom when he heard 7 gun shots. VII:1468. Marque rolled to the floor and checked to see if everyone was okay. VII:1468. He claimed he heard bullets whiz past him. VII:1469. While crawling on the floor, he saw LaRoy come flying through the door, saying he was hit. VII:1469. He could also hear Ashely hollering. VII:1469. Ashely was in the closet and said her leg was on fire. VII:1470.

Marque crawled to the living room to check on Nathan. VIII:1470. Nathan was on the floor, not breathing. VII:1470. Marque called 911.

Others also heard gunshots. Darren and Lorraine DeSoto, who live at 2635 Sherwood, woke at 4:35 AM when hearing 5 gunshots.[7] Darren looked out the bedroom window and upon seeing nothing went to the kitchen window which is near the alley. Darren saw the glow of car headlights coming towards his apartment. The "silver Dodge Magnum, with limo tint windows, after-market rims, no front license plate, no visible chrome" drove past the kitchen window, within 7 feet from where Darren was standing. VI:1246-49. He told Lorraine to call 911.

Lorraine looked outside the bedroom window and saw the Dodge drive past at a normal speed. She had not seen the car in her neighborhood before. The windows were tinted and rolled up. VI:1254-55. She called 911.

Police and medical arrived almost immediately. Officer Weber testified that upon arrival, officers drew their guns, knocked on the door to apartment 18, and cleared the apartment. VI:1224-40. When Weber arrived, the curtains were closed and no one could see inside the apartment. VI:1239. They found no firearms inside; three wounded came – two of them, LaRoy and Ashely, were taken to the hospital.[8] One person did not need medical

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[7] See Darren DeSoto at VI:1241-1252 and Lorraine at VI:1253-1268.

[8] After police arrived LaRoy was taken to Sunrise Hospital. On 11/05/13, CSA Jessie Sams collected evidence from Sunrise Hospital Security Officer Salvatore Martin. According to the chain-of-custody

treatment (Marque) while another (Nathan) lay out floor and was determined to be deceased. VI:1225-30.

Nathan was the one closest to the window through which bullets entered; he suffered 3 gunshot wounds. VII:1415-16. One bullet entered his right upper back, creating lethal internal damage. This bullet travelled through his upper chest, hitting lungs, heart, and aoata, then left his body. VII:1417-20. Second bullet entered his right upper arm, travelling through his shoulder to his chest through lung area. VII:1420-21. The third bullet fractured his knee cap.[9] VII:1422.

While some officers immediately responded to apartment 18, others looked for the silver Dodge Magnum seen by the DeSotos. Within four minutes of receiving the call over the radio, Officer Parquette stopped a silver

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documents, she was given a plastic vial contained one bullet removed from LeRoy Thomas. VIII:1638-41. Martin testified that he met CSA Sams on 11/05/13 and gave her evidence with the name of LeRoy Thomas on the paperwork. VII:1485-90.

Ashely was also taken to Sunrise Hospital. Ashley testified the bullet in her foot was removed 9 days after the incident. VII:1439-40. On 11/13/13, CSA Shandra Lynch responded to Sunrise Hospital and obtained an envelope with the name Ashely Scott written on it from Officer Figurella. It was her understanding that the envelope contained a bullet removed from Ashely. VIII:1627-32.

[9] Forensic pathologist Dr. Larry Simms conducted the autopsy of Nathan on 11/06/13. VII:1414-28. Detective Raetz attended the autopsy. VIII:1656-60.CSA Shayla Joseph documented the autopsy conducted by Dr. Simms and noted that one bullet was removed. VIII:1554-57; Exhibit 85.

Dodge Magnum on Eastern and Ogden. VI:1269-96. Mathew was driving the car and Martell Moten was in the backseat driver's side of the car. VI:1278-80. Both complied with officer's orders and exited the car as directed.

Parquette testified that she asked Mathew if there was anything illegal in the car and he responded: "No. But if there is, it's his [the co-defendant]." VI:1281. Officer Sokolowski added that Mathew claimed he had just picked up Moten near the Stratosphere and consented to a search of the car. VI:1290;1308-10;1315. Sokolowski said the Stratosphere was close to the apartment on Sherwood. VI:1310.

Officers declined to search the Dodge based on Mathew's consent, instead waiting for a search warrant. But when looking into the car through the open doors, Parquette saw a latex glove and the butt of a handgun in the back seat area of the car, under the front passenger seat. VI:1284-88.

Because the incident involved a death, homicide Detective Rogers took over as one of the lead detectives. VII:1330-70. Rogers responded to the car stop, called for crime scene investigators, and preserved the integrity of the scene while other detectives obtained a search warrant. When he first arrived, he walked around the car and when looking into an open door saw a handgun under the front passenger seat. VII:1336.

CSA Cromwell (VIII:1559-1602) and CSA Taylor (VIII:1603-26) arrived to process the Dodge. While waiting for the search warrant, Cromwell took pictures of the outside of the car and of Mathew and Moten. VIII:1565-67. Cromwell saw red fibers in Moten's hairline and a red sweatshirt inside the car. VIII:1566-67.

Police took Darren and Lorraine DeSoto to Ogden and Eastern to view the car stopped on the side of the road. Both confirmed it was the same car they saw driving past their apartment windows after they heard gunshots. VI:1250-52;1248-60.

Upon receiving notice of the search warrant, Cromwell documented the car by taking notes and photographs while Taylor impounded evidence. VIII:1559-1602;VIII:1603-26.

Cromwell stated there was no license on the front of the car. VIII:1563.

Taylor impounded a Smith and Wesson firearm, model 660, 9 millimeter found under the front passenger seat. VIII:1569;1572-73;1582;1605. The slide was forward with a cartridge in the chamber and a magazine containing 8 cartridges. VIII:1601;1619;1622. The CSA's only did a cursory search of the car then sealed it before having it towed to METRO crime lab garage for a more extensive search. VIII:1569;1607.

It was later learned that the registered owner of the car was Mathew's girlfriend, Kwame Jackson. VIII:1656-61.

Meanwhile, CSA Brenda Vaandering documented and processed the crime scene on Sherwood. VIII:1504-54. In a courtyard area outside apartment 18, Vaandering recovered 13 cartridge cases: 7 were .40 cartridge cases and 6 were 9mm. VIII:1510-11-19;X:2068;2084. As to the .40 cartridge cases, some were marked as R-P 40 S&W and others said Federal 40 S&W. VIII:1532.

Vaandering collected bullets and bullet fragments inside apartment 18 as marked on a diagram. X:2067; VIII:1536-44. As seen in photographs, she marked bullet holes and strikes with pink arrows inside and outside the apartment. VIII:1519;X:2086-2103. Using a laser and rods, she marked the trajectory of bullets from entry through the window into the apartment. VIII:1520-26. She pointed out bullet holes in the walls for the jury. VIII:1524-29.

Vaandering determined that at least one bullet went through the window, through the curtain, through the loveseat, through the wall, into the bedroom and then lodged in the exterior wall. VIII:1543;1547-48,15550-51. Several bullets were found in the back bedroom and the livingroom. X:2067.

Vaandering worked with two other CSAs to document the scene, under the direction of lead homicide Detective Raetz.VIII:1508; 1644-63. Raetz testified that other than to check on the victims and clear the apartment, METRO waited for a search warrant before processing the apartment. VIII:1647-49. Raetz counted 13 separate bullet impacts in front of the apartment – 10 shots through the front window. VIII:1650. When he entered the apartment, directly in front of the window was the couch and Nathan's body. VIII:1652.

In the meantime, Detective Rogers remained with the Dodge until the tow truck arrived and then followed it back to METRO garage. VII:1337-38. Once at the garage, Rogers oversaw Cromwell and Taylor's processing of the Dodge. VII:1583-92;1607-09.

Taylor impounded the red sweatshirt and Chicago Bulls jacket while Cromwell re-photographed the car and they processed the car for fingerprints. VII:1587-91;1607-09. Upon completion of the search, Cromwell and Taylor went to lunch while Rogers waited for the tow truck. VII:1337-38;1592X;2073-76.

Subsequently, Rogers received information that a second gun may be inside the Dodge. VII:1339. Rogers opened the car, searched under the pedal

area, then pulled down the dash board near the steering column. VII:1339. Rogers saw a firearm inside. VII:1339.

Cromwell testified that he received a call from his supervisor and he and Taylor returned to find the dash board in the Dodge pulled down and a firearm inside. VII:1340-51;1593-94;1609-10;See X:2078. Cromwell took pictures while Taylor impounded the weapon: Glock, Model 22, .40 caliber, with an attached green laser and a magazine containing one cartridge and one cartridge in the chamber. VII:1594;1611;1617. Taylor processed both guns for fingerprints. VII:1598-16001625.

Forensic Scientist David Johnson worked in METRO's latent print detail. VIII:1664-81. Johnson identified fingerprints or palm prints belonging to Mathew on the exterior surface of the driver's door, exterior side surface of rear driver side window, and exterior rear window of the trunk. VIII:1673-76;1679. No latent prints found inside the car belonged to Mathew. VIII:1680. Johnson was unable to lift prints from the blue latex glove.[10] VIII:1670-71.

[10] On 11/05/12, CSA Jocelyn Maldonado went to Ewing Brother's Towing lot and collected the blue latex gloves. IV:1737-40.

Forensic Scientist Beata Vida worked in METRO's DNA section. VIII:1682-09. Vida did not find Mathew's DNA on any items tested from the car or apartment 18.[11]

Vida testified that DNA results on the blue glove contained a mixture with Moten being a major contributor and other contributors being inconclusive. VIII:1169-93. No identifiable DNA was found on the firearms, the magazines, or the red sweatshirt. VIII:1697-1701;1708. Vida did not test the bullets or cartridge casings. VIII:1707.

Forensic Scientist Anya Lester worked in METRO's firearms and tool marks unit. IX:1742-1806. Lester examined the two firearms recovered inside the Dodge and the bullets, fragments, and cartridge casings found outside and inside apartment. 18.

Lester testified that the Glock was submitted to her with one cartridge casing head stamped R-P 40 Smith & Wesson. VII:1761-71. After test firing the Glock and examining the evidence impounded, Lester concluded that 7 cartridge casings found outside the apartment came from the Glock.

[11] On 11/14/13, CSA Moretta McIntyre met detectives at the tow yard to conduct further examination on the Dodge Magnum. VIII:1633-37. She photographed the car inside and out; one seal was broken. She swabbed areas for DNA.

VII:1780. Additionally, 6 bullets or fragments recovered inside the apartment came from the Glock. VII:1784.

As to the Smith and Wesson 9 millimeter firearm, after test firing and making a comparison, Lester concluded that 6 of the 9 millimeter Luger Cartridge cases found outside the apartment came from the Smith and Wesson. VII:1762. She was not able to reach a conclusion as to whether any bullets or bullet fragments found inside the apartment came from the Smith and Wesson though there were 5 grooves of similarity. VII:1789-93.

State presented no evidence as to why the shooting occurred.

LaRoy testified that he did not know Mathew or Martell Moten, knew of no reason for the shooting, and did not have any problems with any one prior to the shooting. VII:1405;1413. LaRoy said he also never saw Nathan, Marque, and Ashely having any problems with anyone. VII:1405.

Ashley stated there were no arguments in apartment 18 that night, she did not know Mathew, and she did not know why anyone would shoot into apartment 18. VII:1448;1451.

Likewise, Marque did not know Mathew and was unaware of Nathan, Ashely, or LeRoy having problems with someone else anytime during the week preceding the shooting. VII:1480-83. Marque knew of no disputes. VII:1480-81.

All testified that the curtains inside apartment 18 were closed at the time of the shooting, they could not see outside, it was dark in the house, and anyone outside could not see inside. VII:1383;1413;143-44;1452;1483.

SUMMARY OF THE ARGUMENT

Marque, LaRoy, and Ashely testified that they knew no reason why anyone would want to kill or injured them or Nathan. No one had any disputes prior to the shooting of the apartment they stayed in on 11/04/13. At the time of the shooting, all the curtains were drawn closed, no one could see inside the apartment and no one could see out. It dark inside and outside.

Marque, LaRoy, and Ashely did not know Mather or co-defendant Moten.

Yet State obtained convictions for specific intent crimes of murder and attempt murder with a deadly weapon, even though there was no proof or reason that Mathew or Moten specifically wanted to kill them. There was no proof that an "unnamed coconspirator" sought to kill them either.

Additionally, State obtained convictions against Mathew for ten gunshots into the window of the apartment even though under NRS 202.285 the use of a firearm is the unit of prosecution rather than each bullet.

Other reasons for reversal include prejudicial jury instructions, overly prejudicial information at sentencing, incorrect pleading of an "unnamed coconspirator," violation of the Fourth Amendment, and cumulative error.

ARGUMENT

I. DOUBLE JEOPARDY PRECLUDES MULTIPLE CONVICTIONS FOR ONE INCIDENT OF DISCHARGING A FIREARM AT OR INTO A STRUCTURE.

A. De novo review.

The constitutional protections of double jeopardy and/or questions concerning statutory interpretation may be raised for the first time on appeal. *Murray v. State*, 113 Nev. 11, 17 (1997); *Firestone v. State*, 120 Nev. 13 (2004); *See NRS 178.602* (plain error review). Court decides issues of constitutional proportion, such as double jeopardy, and questions of statutory construction under de novo review. *Davidson v. State*, 123 Nev. 892, 896 (2008); *Firestone at* 281.

B. Double Jeopardy protections pursuant to U.S. Const. Amend V, Amend XIV, Nev. Const. Art l, Sec.8(1), and "unit of prosecution" test.

The Double Jeopardy Clauses of the Fifth Amendment to United States Constitution and the Nevada Constitution prohibit multiple prosecutions and punishments for the same offense. *Benton v. Maryland*, 395 U.S. 784, 794(1969); *Whalen v. United States*, 445 U.S. 684, 688 (1980); *U.S. v. Dixon*,

509 U.S. 688 (1993); U.S. Amend V, Amend XIV, Nev. Const. Art l, Sec.8 (1).

Nevada "embraces a more expansive interpretation of constitutional rights than federal law." *Wilson v. State*, 123 Nev. 587, 595 (2007).

What constitutes the same offense under the Fifth Amendment was explained by this Court in *Jackson v. State*, 128 Nev. Ad. Op. 55, 291 P.3d 1274, 1276 (2012). "In general, the answer to the single act/multiple punishment question depends on the statutes violated, specifically, whether they proscribe the same offense and, if so, whether they nonetheless authorize cumulative punishment." *Id. at* 1276.

When deciding double jeopardy questions involving multiple convictions for the same act under the same statute, Court reviews the plain wording of the statute and uses the "unit of prosecution" test. *Jackson* at 1283; *Firestone* at 16 (the act of leaving the scene of an accident is one offense under NRS 484.219(1) now NRS 484E.010). "[T]he plain meaning of the statute's words are presumed to reflect the legislature's intent in enacting the statute." *Anthony Lee R. v. State*, 113 Nev. 1406, 1414 (1997).

C. The use of a firearm is the "unit of prosecution" under NRS 202.285.

In examining the wording of a statute, "'[A] court should normally presume that a legislature did not intend multiple punishments for the same

offense absent a clear expression of legislative intent to the contrary.'" *Firestone* at 281, *citing Talancon v. State*, 102 Nev. 294 (1986). Criminal statutes are "strictly construed and resolved in favor of the defendant." *Id. citing Anderson v. State*, 95 Nev. 625, 629 (1979) *abrogated on other grounds in Brooks v. State*, 124 Nev. 203 (2008).

NRS 202.285 is housed in Chapter 202, Crimes Against Public Health and Safety, under the Weapons subsection, specifically under Dangerous Weapons and Firearms. It is entitled: "Discharging firearm at or into structure, vehicle, aircraft or watercraft; penalties." NRS 202.285.

The body of NRS 202.285 states in pertinent part:

> 1. A person who willfully and maliciously discharges a firearm at or into any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, aircraft, vehicle, vehicle trailer, semitrailer or house trailer, railroad locomotive, car or tender:
>
> (a) If it has been abandoned, is guilty of a misdemeanor unless a greater penalty is provided in NRS 202.287.
>
> (b) If it is occupied, is guilty of a category B felony… (Emphasis added).

Based on the placing of NRS 202.285 within the weapons section, the title, and the plain wording of NRS 202.285, the "unit of prosecution" is clearly the "firearm." Thus, the discharging of a firearm several times during the same incident amounts to one violation of NRS 202.285.

Court used the same type of analysis in *Firestone*, *Wilson v. State*, 121 Nev. 345, 356-57 (2005), and *Ebeling v. State*, 120 Nev. 401 (2004). In *Wilson*, the Court found the prohibited act under NRS 200.710 act was the use of a child in a sexual performance. Thus, Wilson could only be held guilty for one count - not for multiple counts - for taking separate pictures of the child during the incident. Likewise, in *Ebeling,* the prohibited act under NRS 201.229(1) was indecent exposure rather than how many witnesses observed the act.

Furthermore, because the legislature did not specifically allow for multiple punishments, Court must construe NRS 202.285 in favor of the defendant. To allow State to charge one count for each bullet leads to absurd and unreasonable results.

Therefore, 9 of the 10 convictions for discharging a firearm must be reversed and dismissed.

II. PRINCIPAL OR AIDER AND ABETTER MAY NOT BE HELD LIABLE FOR ACTIONS OF UNNAMED COCONSPIRATOR WHEN STATE PRESENTED NO EVIDENCE THAT AN UNNAMED PERSON EXISTED.

State charged Mathew under three theories of liability in each count: (1) directly committing the crimes; (2) aiding and abetting Martell Moten or (3) aiding and abetting an "unnamed coconspirator." III:658-71;IV:690-701.

In closing, State never addressed any facts to contend Mathew acted with an "unknown conspirator." In fact, State argued: "State obviously alleged defendant directly committed this crime, aiding and abetting in the commission of this crime, or via co-conspiracy with him and Martell Moten." 1885; 1875;1871

In rebuttal, State addressed the "unknown co-conspirator," indicating that "maybe there was a third person" because the jury may find it odd that two people are in the car when it is stopped with one in the back and one in the front. IX:1901. Thus, State pled the case with an "unknown co-conspirator" to appease the jury who may not find Mathew guilty because there may be a third unknown person. IX:1901. But, State did not admit there were any facts to show there was an "unknown co-conspirator." IX:1901-2. Thus, by State's own admission, there was insufficient evidence to prove the theory of aiding and abetting an unnamed coconspirator thereby requiring a not guilty under that theory on each count. *See Issue III.*

Although a person may be charged with conspiring with some "unknown" person there must exist some evidence that an "unknown coconspirator existed. *O'Conner v. State,* 590 So.2d 1018, 1021 (Fla. App. 5 Dist. 1991); *People of Illinois v. Harmison*, 124 Ill. App. 3rd 236 (1984).

Not only is there a proof problem when coconspirator is unknown, it is also a pleading problem. In *Ike v. State,* 107 Nev. 916 (1991), State pled each defendant as aiding each other and an unknown black female. *Id.* at 918. Although there was testimony regarding acts of the co-defendant and the unnamed female, there was no evidence Ike participated with them in the theft, thus, this Court reversed on appeal.

Ike Court held State must plead specific facts explaining how a defendant aided and abetted a codefendant to provide notice. Although not addressed in *Ike,* this should also include specific facts as to what the "unnamed coconspirator" did so as to provide notice and to prohibit State from using the theory when there is no evidence presented of any actions of an unknown coconspirator.

In *Goldberg v. State*, 315 So.2d 332 (Fla. 1977), the Florida Court disapproved of the shotgun approach to pleading coconspirators by using and/or as used in every count charged in this case. IV:690-701. *Also see Battle v. State,* 365 So.2d 1035 (Fla. 3d DCA 1978)(finding it impossible to determine if defendant jointly and severally conspired with named co-defendants or if he conspired with an unnamed defendant); *State v. Giardino*, 363 So.2d 201 (Fla. 3d DCA 1978(disapproving charges that are impossible to determine who defendant conspired with or the unlawful object of the

conspiracy or the nature of the charged conspiracy). Thus, reversal is warranted because the jury may have returned a guilty verdict based on deceptive pleadings allowing them to find Mathew guilty based on unknown acts of an unknown coconspirator under an incorrect theory. *See Nay v. State*, 123 Nev. 326, 334 (2007).

III. EVIDENCE WAS INSUFFICIENT TO CONVICT.

A. Standard of review.

When applying the sufficiency of evidence test, Court decides whether jury, acting reasonably could be convinced to that certitude [of beyond a reasonable doubt] by the [direct and circumstantial] evidence it had a right to consider. *Wilkins v. State*, 96 Nev. 397, 374 (1980). Court does not reweigh the evidence but reviews record to determine if competent evidence exists to prove each and "every element of a crime," as well as "every fact necessary to prove the crime" beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 476 (2000); *In re Winship*, 397 U.S. 358, 364 (1970); NRS 175.191; NRS 175.201.[12]

Court considers evidence in the light most favorable to prosecution.

[12] In *Stephans v. State*, 262 P.3d 727 (Nevada 2011), this Court found the opposite by relying in part on *McDaniel v. Brown*, 558 U.S. -, -, 130 S.Ct. 665 (2010) rather than NRS 175.201. But *Brown* holding does not apply in light of NRS 175.201 because Brown was a federal habeas claim rather than a direct appeal.

Jackson v. Virginia, 443 U.S. 307, 319 (1979); *Oriegel-Candido v. State*, 114 Nev. 378, 381, (1998).

B. Facts.

Mathew incorporates the Statement of Facts.

C. No evidence of "unknown co-conspirator."

One theory of liability State alleged was that Mathew conspired with and acted with an "unknown co-conspirator" in committing crimes, making him liable for both his action and actions of "unknown co-conspirator."

State presented no evidence of an "unknown co-conspirator" as addressed in Issue II and Court did not give a specific verdict. Because the jury was not required to be unanimous on the theory of liability, jury may have found Mathew guilty based on an incorrect legal theory thereby requiring reversal because it is impossible to conclude, beyond a reasonable doubt, that the jury did not use this theory. *Nay at* 334; see Issue II.

D. No evidence of specific intent to kill and no malice aforethought and no willfulness, no deliberation, no premeditation.

In closing, the only reason State provided for specific intent to kill was to claim specific intent was shown by trajectory of the bullets. IX:1882-83;1898-99. Thus, State admitted there was no motive, no plan to attack these specific individuals, no specific intent to kill, and Mathew and Moten did not know the victims.

Shooting into an apartment when the drapes are closed, the apartment dark, and there is no evidence someone is inside may be reckless and warrant a guilty verdict for manslaughter, NRS 200.070, but not for first degree murder because there was no evidence of specific intent to kill.

Jury Instruction 21 explained specific intent was "the intent to accomplish the precise act which the law prohibits." IV:719. Thus, State needed to prove Mathew had the specific intent to kill someone and acted with malice aforethought as defined in Jury Instruction 25. IV:723. There was no evidence he acted out of anger, hatred, revenge or ill will against the person killed or the persons attempted to be killed. Each witness testified there was no animosity between them and Mathew – they did not know him.

Furthermore, there is no evidence Mathew or Moten acted with an abandoned and malignant heart as required for implied malice. IV:724.

State presented no evidence Mathew or Moten willfully sought to kill someone or acted in deliberate manner to cause their death or acted with premeditation. IV:725.

The facts regarding intent to commit murder in the case at bar are weaker than those in *Valdez v. State*, 124 Nev. 11172 (2008) where this Court reversed a first degree murder conviction based on cumulative error and the lack of overwhelming evidence of deliberation and premeditation. In *Valdez*,

the Court found that the fact that the defendant was drinking alcohol and arguing with others at the time of the murder supported an inference of an impulsive attack rather than one of deliberation and premeditation.

Here, there was no evidence that Mathew or Moten wanted to injury or kill any of people in apartment 8.

E. No evidence Mathew knew apartment was not abandoned.

In closing, State argued no one would think that apartment was abandoned because the apartment complex was not abandoned- there are cars parked on the lot and people are there. IX:1899. However, State presented no evidence to indicate this particular apartment appeared to be inhabited or that Mathew knew people were inside. Thus, at best, State proved a misdemeanor crime.

IV. PREJUDICIAL ERROR REGARDING JURY INSTRUCTIONS.

A. Standard of review.

A district court has broad discretion when settling jury instructions and the Supreme Court generally reviews the district court's decision under an abuse of discretion or judicial error standard. *Hoagland v. State*, 240 P.3d 1043 (Nev. 2010). "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." *Jackson v. State*, 117 Nev. 116, 120 (2001).

Trial courts must give complete and accurate theory of defense jury instructions when submitted. *Carter v. State*, 121 Nev. 759 (2005). It is the court's obligation to sua sponte correct an inaccurate or incomplete theory of defense jury instruction. *Id.* The failure to instruct the jury on the defendant's theory of the case is not harmless but reversible per se. *U.S. v. Escobar de Bright,* 742 F.2d 1196 (1984).

Jury instructions that are an inaccurate statement of law involve a legal question subject to de novo review by the Court on appeal. *Nay v. State*, 123 Nev. 326, 330 (2007).

B. Court allowed jury to know charges were felonies.

Jury Instruction 3 listed the statutes and the categories of each crime alleged, thereby allowing the jury to know each was a felony and the seriousness of the crimes. Contrary to Jury Instruction 3, Jury Instruction 13 informed the jury not to consider the subject of punishment. IV:711. Thus, Mathew was prejudiced by court listing each statute violated and noting it was a felony because the jury is not to consider punishment.

D. Lack of motive jury instruction.

Mathew proposed a jury instruction which supported his theory of defense that the jury should consider the lack of motive when deciding whether he was guilty of the crime. Because the presence of motive is a

strong indicator of guilt, the absence of motive should be considered by the jury as a circumstance of reasonable doubt. *See People v. Estep*, 42 42 Ca.App.4th 733, 738 (1996)(finding the presence of a movie is a circumstance that may establish guilt). Thus, court's decision to reject this instruction was arbitrary and capricious.

V. PROSECUTORIAL MISCONDUCT IN CLOSING.

By arguing the projectile of the bullets showed specific intent, prosecutors indirectly used the crime of discharging a firearm much as one would under the felony murder rule, allowing the jury to conclude that if Mathew fired a gunshot into the apartment then that act alone showed specific intent – just as in the felony murder rule. But *Rose v. State*, 255 P.3d 291 (Nev. 2011) indicates the contrary. The *Rose* Court held that the merger doctrine requires the underlying felony for the felony-murder rule to be an independent felony, independent of the murder, not an assault, Thus, prosecutor incorrectly argued the law by indirectly inferring that if jury found he shot the gun then there was specific intent.

Although not objected to at trial, this Court may use a plain error standard on appeal because "improper argument is presumed to be injurious." *Pacheco v. State*, 82 Nev. 172, 179 (1966). Prosecutorial misconduct is grounds for reversal unless the error is harmless beyond a reasonable doubt.

Brown v. United States, 951 F.2d 1011, 1014 (9th Cir. 1991) citing *Chapman v. California*, 386 U.S. 18, 24 (1967). Since evidence of guilt of specific intent was not overwhelming, the improper comments by the prosecutor are grounds for reversal.

VI. VIOALTION OF THE FOURTH AMENDMENT OCCURRED WHEN POLICE SEARCHED THE CAR A SECOND TIME.

The United States and Nevada Constitution prohibit unreasonable searches and seizures of an individual and his property. U.S. Cont. Amend. IV; Amend. XIV; Nev. Const. Art. I Sec. 18. Warrentless police invasions of personal privacy are per se unreasonable subject to a few specifically established exceptions. Katz v. U.S., 389 U.S. 347(1967); NRS 179.015 et seq.

Here, METRO obtained a search warrant to search the Dodge. CSA Cromwell and Taylor completed the search and left for lunch while Detective Rogers waited for the tow truck to take the car to the tow yard. Thus, the search was complete, the return filled out, paperwork done, and the probable cause for the search dissipated.

However, Rogers then went into the Dodge and dismantled the dash around the steering wheel and found a gun. The CSA's were recalled to the garage and conducted another search. See Statement of Facts pp. 24-25.

Thus, at this point, State needed a new search warrant based on the new information Rogers received which led him to believe a firearm was hidden inside the dash board.

Whether a search warrant provides continuing authorization for police to search an area they already searched is decided by the "reasonable continuation doctrine." *State v. Hai Kim Nguyen*, 419 N.J. Super 413, 426 (2011); *also see United States v. Kaplan*, 895 F.2d 618, 623 (9rh Cir. 1990); *U.S. v. Keszthelyi*, 308 F.3rd 557, 569 (6th Cir. 2002). A subsequent search is allowed if: (1) the entry is a continuation of the initial search rather than a new and separate search and (2) decision to re-search the area must be reasonable under the totality of the circumstances. *Id. at 569, Kim Nguyen* at 427.

There is no evidence that at the time of the first search, officers believed two, rather than one, firearm was used in the shooting. They did not look for a second firearm prior to completing the search. At the time Cromwell and Taylor left the garage for lunch, the search and return were completed. Thus, the second entry into the car by Rogers – not Cromwell and Taylor- was a new search based on new information he received. were unaware as to how many firearms were used.

Furthermore, the search by Rogers was more intrusive than the prior search because he pulled down the dash board, basically breaking it open. Thus, a second search warrant was needed.

The general rule is that once a search warrant is executed, the authority under the warrant expires and further government intrusion must cease because a search warrant only authorizes one search. *U.S. v. Gagnon*, 635 F.2d 766, 769 (10th Cir. 1980). "[A] warrant may be executed only once, and thus where police unsuccessfully searched [the] premises for a gun and departed but then returned an hour later and searched further because in the interim an informant told the police of the precise location of the gun, the second search could not be justified as an additional search under the authority of the warrant." *Keszthelyi*, at 569 *citing* Wayne R. LaFave, 2 *Search & Seizure: A Treatise on the Fourth Amendment* § 4.10(d) (3d Ed.1996).

Although not objected to at trial, constitutional issues may be reviewed for plain error for the first time on appeal.

VII. VIOLATION OF RIGHT OF CONFRONTATION.

On redirect examination, METRO's firearms and tool mark forensic scientist, Anya Lester testified that all her analysis and conclusions were:

- Verified by second independent firearm and tool mark examiner. IX:1798.

- Technically reviewed by third qualified firearms examiner to make sure all policies and procedures were followed and her conclusions were supported by data in the case file. IX:1799.
- Administratively reviewed by a fourth person: the manager IX:1799-80.

Thus, Anya testified that opinions of three non-testifying experts were same as her conclusion that the bullets, fragments, and shell casings came from the guns found in the car Mathew was driving.

The Confrontation Clause guarantees a defendant the right to confront and cross-examine the witnesses against him. U.S. Const. Amend. VI; Amend. XIV. Unless the declarant is unavailable and the defendant had a prior opportunity to cross-examine the declarant, the testimonial hearsay statements will not be admitted at trial. *Crawford v. Washington*, 541 U.S. 36 (2004); *Flores v. State*, 121 Nev. 706, 714 (2005).

In Nevada, expert testimony regarding content of a non-testifying expert's report is the equivalent of a testimonial statement. *Vega v. State, 236 P.3d, 632,* 638 (Nev. 2010). A defendant's constitutional right to confrontation is violated "when the district court erroneously admit[s] the testimonial statements from an unavailable expert witness without the witness previously being subjected to cross-examination." *Vega* at 634.

Although not objected to at trial, Court may review this constitutional issue raised for the first time on appeal.

Here, the error was plain because testimony regarding the conclusions and opinions of nontestifying experts is testimonial under *Vega.* Also see *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009)(forensic reports are testimonial); *Bullcoming v. New Mexico*, 564 U.S. -, 121 S. Ct. 2705 (2011). *Melendez-Diaz* Court affirmed the position that the Constitution requires analysts to testify in court before their analysis is introduced into evidence. *Melendez-Diaz* at 351.

This Court holds that expert testimony regarding the content of a testimonial statement in a written report is the equivalent of a testimonial statement. *Vega*. at 638; *Polk v. State*, 126 Nev. -, -, 233 P.3d 357, 359 (2010). A defendant's constitutional right to confrontation is violated "when the district court erroneously admit[s] the testimonial statements from an unavailable expert witness without the witness previously being subjected to cross-examination." *Vega* at 634.

The error is not harmless because Lester's testimony and the opinions of her un-testifying partners regarding the comparison of the bullets, fragments, and casings to the firearms found was pivotal to State's argument that Mathew and Moten used the firearms found in the car to shoot into the apartment. Lester and her un-testifying experts provided testimony akin to that of an eye witness by placing the guns – and thus Mathew and Moten – at

the crime scene. Thus, State used the testimony of the un-testifying experts to bolster her opinion – an opinion she did not give to a reasonable degree of scientific certainty. She just gave her opinion and stated others agreed.

VIII. PREJUDICIAL ERROR OCCURRED IN THE PENALTY PHASE WHEN STATE PRESENTED PICTURES OF MATHEW COLLECTED BY POLICE DURING FIELD INTERVIEWS AND DISCUSSED THE FIELD INTERVIEWS.

During the penalty phase, State presented testimony through Detective Gillis regarding information he discovered when searching filed interview cards on Mathew. Gillis described field interview cards as: "A field interview card is utilized when an officer makes contact with an individual in a person top, a vehicle stop, or when they are assigned to a call, if they want to document the contact and information that they receive from an individual." X:1982.

State also introduced pictures taken of Mathew during field interviews when he was stopped and asked if he belonged to a gang and photographs taken while he was in prison, showing the jury his tattoos. X:1893;2000-03;2103-22;X:1893.

Gillis testified that field interview cards showed on several occasions Mathews admitted being a gang member:

- 07/13/10 by North Las Vegas Police for loitering. During this interview, he was asked what gang he had an affiliation with and he admitted he was a member of the Rolling 60s Crips gang since 2005. X:1985-88.
- 10/29/13, North Las Vegas conducted another field interview in reference to a traffic stop. X:1986-87.
- 04/27/09, event 090427-2510, North Las Vegas stopped him and asked about gang affiliation and Mathew admitted being a member of the Rolling 60's Crip;
- On an unknown date METRO stopped him at 2200 West Bonanza and he admitted being a Rolling 60s gang member. X:1988-89.
- Field interview picture taken when Mathew was stopped running out of an elevator at the Four Queens after a shooting for which he was convicted of a felony. X:1989-90;XI:2104.
- Field interview at Stocker and Owens. Mathew admitted he was a Rolling 60s and one of the people who discarded a pistol in the trash in the location of a shooting. X:1991.
- Photograph associated with a Field interview card.X:2105-06
- Field interview event 100317-0578. Mathew admitted being a gang member X:1991-2

- Filed interview event 100625-0524 at Ownes and B Street. Admitted gang member possible robbery suspect. X:1992.
- Field interview event 101023-4615 at Lake Mead and Pink Rose. Mathew was a passenger in a car and a firearm was found in the car; his probation was violated, X:19923.

Prior to introducing evidence obtained during field interviews, the Court was required to have State to prove the constitutionality of the field interview stops.

In *Somee v. State*, 124 Nev. 434 (2008), Court held field interviews:

> must comply with the United States and Nevada Constitutions, or evidence obtained thereby must be suppressed. Unless a recognized exception applies, both physical evidence and a defendant's statements obtained as a result of an illegal search or seizure should be suppressed. Furthermore, involuntary statements should be suppressed as well as incriminating statements made by a suspect under custodial interrogation unless Miranda warnings have been given or other procedural safeguards have been followed.

Somee at 444. *Somee* Court reversed conviction and remanded case to district court for a hearing to determine the constitutionality of evidence obtained during field interviews.

Same requirement holds true for a penalty hearing because NRS 175.551(3) states in pertinent part:

> During the [penalty] hearing, evidence may be presented concerning aggravating and mitigating circumstances relative to the offense, defendant or victim and on any other matter which the court deems relevant to the sentence, whether or not the evidence is ordinarily admissible. Evidence may be offered to refute hearsay matters. No evidence which was secured in violation of the Constitution of the United States or the Constitution of the State of Nevada may be introduced. (Emphasis added)

Therefore, Court's failure to sua sponte hold an evidentiary hearing to determine the constitutionality of the numerous field interviews introduced as evidence in the penalty hearing is plain error.

Here, as in *Somee,* this Court may review this constitutional error on appeal even though it was not objected to at trial.

Mathew was further prejudiced by the numerous overly prejudicial pictures of his tattoos introduced by the State to claim he was a member of a gang. 2107-2122. Although in *Rhyme v. State*, 118 Nev. 1 (2002) Court did not find one tattoo prejudicial, the amount of tattoos introduced in this case was excessive thereby making the evidence more prejudicial than probative. NRS 48.035. The constitutional guarantee of due process operates during the critical stages of a criminal case, including sentencing. *Gardner v. Florida* 430 U.S. 439 (1977).

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IX. EVEN IF THIS COURT DOES NOT FIND ANY ONE SINGLE ERROR ENOUGH TO WARRANT REVERSAL, MATHEW ASKS THIS COURT TO CONSIDER THE CUMULATIVE ERROR.

Even if this Court believes that an individual error is not enough to reverse the convictions, the cumulative effect of error may warrant reversal. *Big Pond v. State*, 101 Nev. 1, 3 (1985); *Dechant v. State*, 116 Nev. 918, 927-28 (2000); *Valdez v. State*, 124 Nev. 1172, 1195-98 (2008). When deciding cumulative error, this Court evaluates: "(1) whether the issue of guilt is close, (2) the quantity and character of the error[s], and (3) the gravity of the crime charged." *Valdez citing Hernandez v. State*, 118 Nev. 513, 535 (2002). As in *Valdez*, here, the crime of murder and attempt murder with a deadly weapon is grave and the evidence is not overwhelming due to the lack of specific intent. The quality and character of the errors are substantial and significant. Mathew will not be eligible for parole until he is almost 80 years old.

CONCLUSION

In view of the above Mathew asks this Court to reverse his convictions.

Respectfully submitted,

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By: */s/ Sharon G. Dickinson*

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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:

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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 1st day of June, 2015.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By *__/s/ Sharon G. Dickinson__*
SHARON G. DICKINSON, #3710
Deputy Public Defender

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 1st day of June, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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BY ____*/s/ Carrie M. Connolly*_____
Employee, Clark County Public
Defender's Office