

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

FREDERICK LEWIS BOWMAN,  
Appellant,

vs.

THE STATE OF NEVADA,  
Respondent.

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No. 67656

Electronically Filed  
Aug 08 2016 08:34 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**ANSWER TO STATE’S PETITION FOR EN BANC RECONSIDERATION**

COMES NOW, Appellant Mr. Fredrick Lewis Bowman, by and through his Counsel Theresa Ristenpart, Esq., and responds to this Court’s Order on July 22, 2016 directing an Answer to the Petition for En Banc Reconsideration filed by Respondent on April 28, 2016.

Pursuant to Nevada Rules of Appellate Practice Rule 40A(a), “En banc reconsideration of a decision of a panel of the Supreme Court is not favored and ordinarily will not be ordered except when (1) reconsideration by the full court is necessary to secure or maintain uniformity of decisions of the Supreme Court or Court of Appeals, or (2) the proceeding involves a substantial precedential, constitutional or public policy issue.”

Here, the State fails to present a proper ground to request an en banc reconsideration. The State argues that en banc reconsideration is warranted because “the Court should grant en banc reconsideration to maintain the standard

of review in reviewing a district court's findings of facts." Then the State re-argues, now for the third time, its version of the case facts in an attempt to convince this Court that two of the twelve jurors in this case were not influenced by the extrinsic and unauthorized experiments. The State argues that this Court "misapprehended a material fact" and should abide by the lower district court's factual findings.

This is the exact same argument the State used in its failed Petition for Rehearing on this case. After reviewing the case facts and record, this Court found that the jury was exposed to extrinsic evidence in the form of two independent investigations performed by different jurors. This Court took a comprehensive *de novo* review and found that the hypothetical, average juror would have been influenced by these experiments. This Court looked at the timing of the juror deliberations, the nature of the experiment, and the conflicting stories of Juror Nielsen who changed his testimony in his sworn affidavit after meeting with the District Attorney investigator.

"Absent clear error, the district court's findings of fact will not be disturbed. However, where the misconduct involves allegations that the jury was exposed to extrinsic evidence in violation of the Confrontation Clause,<sup>2</sup> *de novo* review of a trial court's conclusions regarding the

prejudicial effect of any misconduct is appropriate." *Meyer v. State*, 119 Nev. 554, 561-62, 80 P.3d 447, 453 (2003) (citing *United States v. Saya*, 247 F.3d 929, 935 (9<sup>th</sup> Cir. 2001)).

This Court used the proper standard of review and found that the independent investigations would have had a prejudicial effect on the average, hypothetical juror. The State has not raised any new grounds for en banc reconsideration. This is a frivolous filing. The State is reiterating their same arguments from their Reply Brief and Petition for Rehearing, therefore en banc reconsideration is not warranted.

### **CONCLUSION**

WHEREFORE, Mr. Bowman respectfully requests the Petition for En Banc Reconsideration be summarily denied.

DATED this 5<sup>th</sup> day of August, 2016.

/s/ Theresa Ristenpart  
THERESA RISTENPART  
Attorney for Mr. Fredrick Bowman

## VERIFICATION

1. I hereby certify that this Answer 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).

2. I further certify that this Answer complies with the page – or type-volume limitations of NRAP 3C(h)(2) because it is: Proportionately spaced, has a typeface of 14 points and contains 773 words, and does not exceed 15 pages.

3. This Answer complies with the requires of NRAP 40(b)(3) that every factual assertion in the Answer to Petition for Rehearing regarding matters in the record is supported by appropriate references to the record on appeal.

DATED this 5<sup>th</sup> day of August, 2016.

/s/ Theresa Ristenpart  
THERESA RISTENPART

Nevada Bar No. 9665  
Theresa@ristenpartlaw.com

## CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 5<sup>th</sup> day of August, 2016. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Chief Appellate Deputy,  
Washoe County District Attorney's Office

I further certify that I served a copy of this document to defendant's last known address by mailing a true and correct copy thereof, postage pre-paid, addressed to:

Frederick Lewis Bowman (#1057893)  
Carlin Conservation Camp  
Post Office Box 1490  
Carlin, Nevada 89822

/s/ Theresa Ristenpart  
Theresa Ristenpart, Esq.