

Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court
Case No. 70387

**APPELLANT'S MOTION FOR LEAVE TO FILE
OPENING BRIEF IN EXCESS OF TYPE-VOLUME LIMITATION**

Comes Now Appellant, JASON RICHARD LOFTHOUSE, by and through Deputy Public Defender, WILLIAM M. WATERS, and moves this Honorable Court for leave to file an Opening Brief in excess of type-volume limitations. This Motion is based upon the attached Declaration of Counsel.

DATED THIS 29th day of September, 2017.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ William M. Waters
WILLIAM M. WATERS #9456
Deputy Public Defender

DECLARATION OF WILLIAM M. WATERS

1. I am an attorney licensed to practice law in the State of Nevada; I am a deputy public defender assigned to represent JASON RICHARD LOFTHOUSE in this appeal; I am familiar with the procedural history of this case.

2. To fully develop the facts and issues in this case, I found it necessary to write an Opening Brief in excess of 14,000 words and 1,300 lines of text. The Opening Brief contains 17,642 words and 1,798 lines of text which exceeds the limitations set forth in NRAP 32(a)(7).

3. Pursuant to ADKT 411, Nevada Indigent Defense Standards of Performance, Standards 2-10(a), 3-1, 3-2(a)-(f), I am required to raise all potentially meritorious issues in the Opening Brief, including unpreserved issues and issues which may be "complex, unique, controversial in nature, such as issues of first impression or arguments for change in the existing law."

4. The instant Opening Brief raises numerous potentially meritorious issues, some of which are issues of first impression, issues of constitutional magnitude and/or complex in magnitude, and issues which were unpreserved below. Those issues include, but are not necessarily limited to:

(a) An issue of first impression involving whether NRS 201.540, which prohibits Sexual conduct between certain employees of

school or volunteers at school and pupil, can be the associated offense for First-Degree Kidnapping under NRS 200.310(1) and if so, whether NRS 200.310(1) is unconstitutionally vague. Additionally, if NRS 201.540 can be the associated offense, and if NRS 200.310(1) is not vague then Appellant's prosecution under NRS 201.540 preempted his prosecution under NRS 200.310(1). This issue required an extensive analysis of Kidnapping's common law and legislative history. The argument on these issues is approximately 2,696 words.

(b) An issue of first impression involving whether NRS 201.540 authorizes multiple punishments for each individual sexual act between a teacher and student or only authorizes one punishment for one sexual relationship between a teacher and student. This issue required an extensive analysis of NRS 201.540's legislative history. The argument on this issue is approximately 1,457 words;

(c) An issue regarding whether the prohibition upon dual liability for kidnapping and an associated offense applies when the associated offense is not specifically mentioned in NRS 200.310. This issue required an extensive analysis of this Court's dual liability precedent. The argument on this issue is approximately 1,234 words;

(e) Issues involving pervasive and systematic prosecutorial misconduct which occurred throughout Appellant's trial. This issue

required extensive citation to the record. The argument on this issue is approximately 3,935 words;

(f) Issues involving the district court's evidentiary decisions including a violation of Appellant's fundamental right to confrontation. The argument on these issues is approximately 1,475 words;

(g) An issue which occurred after Appellant's conviction while his case was pending in this Court. Although this Court granted Appellant's motion for a limited remand so the district court could correct Appellant's illegal sentence, while the case was in the district court on remand the court also improperly increased Appellant's sentence by adding an additional four (4) years to Appellant's maximum term. This issue required extensive citation to the district court and Nevada Supreme Court record. The argument on this issue is approximately 1,846 words;

(h) Other miscellaneous issues including the propriety of a jury instruction, the general verdict, the district court's refusal to answer a jury question during deliberation, and cumulative error. The argument on these issues totals approximately 3,202 words.

5. The Clark County Public Defender's Office did not represent Appellant in the district court prior to the instant appeal. Appellant was represented by a California attorney practicing pursuant to Nevada Supreme Court Rule 42. Appellant's California attorney failed to object and/or preserve many of the issues on appeal which necessitated

analyzing these issues for plain error. This substantially increased the word count in Appellant's brief.

6. Appellant, a former teacher in the Clark County School District, is currently serving six (6) to nineteen (19) years in prison for having consensual sexual intercourse with a 17 year-old woman who happened to be his student. Effective representation within the Opening Brief on the aforementioned errors required briefing in excess of that otherwise allowed by NRAP 32(a)(7).

7. Accordingly, I am requesting that this Honorable Court grant appellant leave to submit the Opening Brief in excess of 14,000 words and 1,300 lines of text.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on the 29th day of September, 2017.

/s/ William M. Waters
WILLIAM M. WATERS

CERTIFICATE OF COMPLIANCE

1. I hereby certify that the opening brief complies partially 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:

The opening brief has been prepared in a proportionally spaced typeface using Times New Roman in 14 size font.

2. I further certify that the opening brief is proportionately spaced, has a typeface of 14 points or more, however, it contains 17,642 words and 1,798 lines of text which exceeds the limitations set forth in NRAP 32(a)(7) of 14,000 words or 1,300 lines of text.

DATED this 29th day of September, 2017.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By /s/ William M. Waters
WILLIAM M. WATERS, #9456
Deputy Public Defender

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 29th day of September, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM LAXALT
STEVEN S. OWENS

WILLIAM M. WATERS
HOWARD S. BROOKS

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

JASON RICHARD LOFTHOUSE
NDOC No. 1159974
c/o High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

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