IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY ANTHONY WILLIAMS, Appellant, v. THE STATE OF NEVADA, Respondent.	Case No. 70868

RESPONDENT'S ANSWERING BRIEF

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

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ROUTING STATEMENT

This appeal is not presumptively assigned to the Nevada Court of Appeals pursuant to NRAP 17(b)(1) because it is a direct appeal from a Judgment of Conviction based on a jury verdict that involves convictions for offenses that are Category A felonies.

STATEMENT OF THE ISSUES

I. Whether the District Court did not abuse its discretion in denying Appellant Gregory Williams' Motion to Sever.
II. Whether the District Court properly denied Williams' Motion to Admit Evidence of Alleged Victim's Ability to Contrive a Sexual Assault Allegation and Theory of Defense Evidence.
III. Whether the District Court properly denied Williams' Batson challenge.
IV. Whether the District Court properly denied Williams' challenges for cause.

V. Whether the District Court properly rejected Williams' proposed jury instructions.
VI. Whether the evidence was sufficient to support the convictions.
VII. Whether the District Court properly denied Williams' motion seeking dismissal of counsel.
VIII. Whether the sentence imposed did not amount to cruel and unusual punishment.
IX. Whether Williams has demonstrated cumulative error sufficient to warrant reversal.

STATEMENT OF THE CASE

On September 10, 2013, the State charged Williams by way of a Criminal Complaint with three counts of Lewdness with a Child under the Age of 14 (Category A Felony – NRS 201.230) and five counts of Sexual Assault with a Minor under Fourteen Years of Age (Category A Felony – NRS 200.364, 200.366). 1 Appellant's Appendix ("AA") 1-4. On September 19, 2013, the State filed an Amended Criminal Complaint, charging 28 counts of Lewdness with a Child under the Age of 14 and 25 counts of Sexual Assault with a Minor under Fourteen Years of Age. 1AA5-20. On December 6, 2013, Williams unconditionally waived his right to a preliminary hearing and was bound over to District Court pursuant to negotiations. 1AA27,31-34.

On December 10, 2013, pursuant to these negotiations, the State filed an Information, charging Williams with one count of Attempt Sexual Assault with a Minor under Fourteen Years of Age (Category B Felony – NRS 200.364, 200.366, 193.330) and one count of Attempt Lewdness with a Child under the Age of 14

(Category B Felony – NRS 201.230, 193.330). 1AA45-46. However, at his arraignment held on December 27, 2013, Williams decided not to plead guilty. 2AA316,354-56.

On December 27, 2013, the State filed an Amended Information once again lodging the counts contained in the Amended Criminal Complaint. 1AA47-64. On January 2, 2014, Williams pleaded not guilty to these charges. 2AA357-59.

On October 15, 2014, Williams filed a Motion to Admit Evidence of Alleged Victims' Ability to Contrive a Sexual Assault Allegation and Theory of Defense Evidence. 1AA71-77. On March 5, 2015, the District Court held an evidentiary hearing on the matter. 6 AA 1263-1306. At the close of the hearing, the District Court denied Williams' Motion and entered an Order to that effect on March 17, 2015. 1AA107; 6AA1304.

On March 18, 2016, Williams filed both a Motion to Sever Counts Relating to Different Victims and a Renewed Motion to Admit Evidence of Alleged Victims' Ability to Contrive a Sexual Assault Allegation and Theory of Defense Evidence. 1AA153-67. On March 28, 2016, Williams filed a proper person Motion to Discharge his attorney. 1AA246-48. The Court held a hearing on March 28, 2016, on these motions. 2AA338-39,432-59. The Court denied all of these motions. 2AA338-39.

On March 29, 2016, the State filed a Second Amended Information, charging

Williams with nine counts of Lewdness with a Child under the Age of 14 and six counts of Sexual Assault with a Minor under Fourteen Years of Age. 2AA266-71. William's jury trial commenced that same day. 2AA340. On April 4, 2016, the jury returned a verdict finding Williams guilty of six of the nine lewdness counts (Counts 1-3, 5, 7, and 9) and three of the six sexual assault counts (Counts 4, 6, and 8).[1] 2AA305-07,347-48; 5AA1248-49.

On June 13, 2016, Williams was adjudged guilty and sentenced to the Nevada Department of Corrections ("NDC") as follows: as to Count 1 (Lewdness with a Child under the Age of 14), 120 months to life; as to Count 2 (same), 120 months to life, to run concurrent with Count 1; as to Count 3 (same), 120 months to life, to run concurrent with Counts 1 and 2; as to Count 4 (Sexual Assault with a Minor Under Fourteen Years of Age), 420 months to life, to run consecutive to Counts 1, 2, and 3; as to Count 6 (same), 420 months to life, to run consecutive to Counts 1, 2, 3, and 4; and as to Count 8 (same), 420 months to life, to run consecutive to Counts 1, 2, 3, 4, and 6. 2AA350-51; 6AA1255-62. The Judgment of Conviction was filed on June 23, 2016. 2AA308-10. On July 15, 2016, Williams filed his Notice of Appeal. 2AA311-14.

/ / /

[1] The State, however, moved to dismiss Counts 5, 7, and 9, noting that these were alternate counts to Counts 4, 6, and 8. 6 AA 1260.

STATEMENT OF THE FACTS

In September of 2013, Aneesah Hasan was residing with Williams along with her five children: A.H, who was 12 years old; D.M., who was 11 years old; T.H., who was 10 years old; K.M., who was 8 years old; and J.M., who was 7 years old. 3AA746,748. On September 7, 2013, the five children approached Hasan to tell them what Williams had done to T.H. and A.H. 4AA754,765,795-96,851,853-56,919,945.

T.H.

Williams moved in with Hasan and her children in June of 2009. 3AA748. They were then living in an apartment on Washington in Las Vegas. 3AA748. In April of 2011, they all moved together to another apartment located at 2851 Sunrise Avenue in Las Vegas. Id. Williams would stay at the house for most of the day, playing video games and watching television. 3AA750. He did, however, have intermittent employment as a photographer. 4AA751.

A.H., J.M., K.M., and D.H each testified that T.H. was Williams' "favorite" of the children. 4AA789-90,809,907,944. According to A.H., J.M., and K.M., Williams would spend a lot of time together with T.H. in the living room. 4AA790,809-10,909. A.H., J.M., and K.M. further testified how Williams would tell all of them (with the exception of T.H.) to go to their respective rooms while he was in the living room alone with T.H. 4AA793-94,814-15,909. J.M, K.M., and D.H. also recalled how T.H. would often sit on Williams' lap. 4AA796,813,950,953. And,

according to K.M. and D.H, T.H. would be facing Williams while sitting on his lap. 4AA813,953.

T.H. was able to testify in detail regarding three episodes of sexual assault that took place in 2013. The first incident happened around March of 2013. 4AA860. T.H. found herself alone with Williams in the spare bedroom.[2] She recalled how all of them had gotten "in trouble." Id. Each of the four other children were separated and sent to different rooms. 4AA861-62. When Williams was alone with T.H. in the spare room, Williams beckoned for T.H. to come to where he was. 4AA862. Williams then told T.H. to remove her pants. 4AA863. After her pants and underwear were off, Williams proceeded to penetrate T.H.'s anus and then her vagina with his penis. Id.

T.H. recalled another episode of sexual assault that took place in the living room prior to the last incident that occurred in September of 2013. 4AA865-69. During this episode, all of the other four children were in the girls' bedroom while T.H. was alone with Williams in the living room. 4AA865-67. At the time, Williams was watching pornography. 4AA865,867. Williams started touching T.H. in places

[2] As explained by Hasan, the apartment they were living in at this time was a four-bedroom apartment. 3AA748. Williams and Hasan shared one bedroom, the two boys (D.H. and J.M.) shared the second bedroom, the three girls (T.H., A.H., and K.M.) shared the third bedroom, and the fourth bedroom served as a spare bedroom. 3AA748-50. In this spare bedroom, there was a couch, a computer, and a television set. 3AA750.

"you aren't supposed to be touched." 4AA868. Specifically, T.H. recalled that Williams removed her pants and penetrated her both anally and vaginally with his penis. 4AA868-69.

T.H. recalled that the final incident of sexual assault took place on September 6, 2013. 4AA842-50. On this occasion, Williams was playing a video game in the living room. 4AA842. Hasan and the other four children were in their respective rooms. 4AA842-43. T.H., however, was in the living room with Williams. 4AA844. Williams had T.H. join him on the couch. 4AA845-46. He then told her to remove her pants. 4AA846. Once her pants and underwear were off, Williams proceeded to penetrate her vagina with his penis. 4AA847. After this, Williams penetrated her anus with his penis. 4AA847.[3]

The following day is when T.H. and the other children approached Hasan to relay what Williams had being doing. 4AA851, 853-56. After being informed by her children as to this most recent episode, Hasan called 9-1-1. 4AA759-60. After law enforcement arrested Williams, Hasan took the children to Sunrise Hospital. 4AA761,857-58. At Sunrise Hospital, Dr. Theresa Vergara and Nurse Griselda Campbell conducted a sexual assault examination of T.H. 5AA1139,1159-63. T.H.'s hymen was intact. 5AA1144. However, Dr. Vergara explained that the hymen could

[3] T.H. also indicated that there were other times that she was sexually assaulted by Williams. 4AA871. However, she could only recall in detail the three aforementioned episodes. Id.

remain intact even if there was penetration. 5AA1144-46. Dr. Vergara did note that there was "generalized erythema" (i.e., redness), caused by friction from rubbing. 5AA1144. While she could not draw a conclusion as to whether this redness resulted from penetration, Dr. Vergara did explain that such redness was not inconsistent with penetration. Id. Part of the sexual assault examination included swabbing T.H.'s vaginal and rectal areas. 5AA1148.

These swabs were later examined by Cassandra Robertson, Forensic Scientist in the biology DNA detail at the Las Vegas Metropolitan Police Department ("LVMPD"), who received buccal swabs from Williams in addition to the sexual assault kit from T.H. 4AA962. Robertson obtained sperm material from the vaginal swabs. 4AA975. Robertson was not able to develop a full profile from this sperm material. 4AA977-78,981. However, Robertson also obtained sperm material from the rectal swabs. 4AA981-82. And Robertson was able to develop a full profile from this sperm material. 4AA983-84. The profile was consistent with Williams' DNA. 4AA989. Robertson also examined T.H's underwear and discovered sperm material. 4AA990. The sperm material found inside the underwear was again consistent with Williams' DNA. 4AA994; 5AA1039,1042,1096,1104.

A.H.

A.H. testified that Williams inappropriately touched her. 4AA913. A.H. could not recall either the month or the year when this happened but was able to recall that

they were all living in the apartment complex located at 2851 Sunrise Avenue. 4AA913-14.

The first incident occurred in the evening and in the living room. 4AA914,916. All of the other children were in their bedrooms with the doors closed. 4AA917. A.H. was told to stand in the corner of the room because she was "in trouble." 4AA914. Williams, however, told A.H. to come over to him on the couch. Id. After talking to her, he told her to lay down on the couch at which point he got on his knees, pulled up her shirt, and sucked on her breasts. 4AA914-16.

The following day, Williams again inappropriately touched A.H. 4AA917. Williams told A.H. to come to him at which point he pulled up her shirt. Id. He got the shirt halfway up when A.H. started to cry. 4AA917-18.

SUMMARY OF THE ARGUMENT

First, the District Court properly denied Williams' motion to sever the charges relating to T.H. and A.H. The incidents involving T.H. and A.H. were relevant to one another for the purposes of proving motive and opportunity and were thus sufficiently "connected together" for purposes of joinder under NRS 173.115. Moreover, Williams has failed to demonstrate that he was unfairly prejudiced by joinder of the charges relating to T.H. and A.H.—let alone demonstrate that joinder was "manifestly prejudicial."

Second, the District Court properly denied Williams' Motion to Admit Evidence of Alleged Victim's Ability to Contrive a Sexual Assault Allegation and Theory of Defense Evidence. Unlike in Summit v. State, 101 Nev. 159, 163-64 (1985)—which Williams relies on heavily—there are no allegations from either of the victims that they have previously been sexually abused by anybody. In fact, there is not so much as an allegation that either of the victims has had any type of prior sexual experience or that either of them has engaged in any prior sexual conduct. This Court's holding in Summit is limited to just such evidence. Accordingly, as regards Williams' motion, the inquiry is whether evidence of Hasan's employment in the adult film industry is relevant, and whether its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury. Williams, however, has failed to prove that Hasan's employment in the adult film industry is relevant. But even if he did make such a showing, any probative value that evidence of Hasan's employment may have had was substantially outweighed by the dangers of unfair prejudice and confusion of the issues.

Third, the District Court properly denied William's challenge to the removal of Prospective Juror 0023. Williams failed to establish a prima facie case of racial discrimination. Furthermore, the State provided a race-neutral explanation for using its peremptory challenge to remove Prospective Juror 0023. This prospective juror expressed skepticism regarding scientific evidence. This was troubling given that

the evidence against Williams included his DNA on T.H.'s rectal swabs and in her underwear.

Fourth, the District Court properly denied Williams' challenges for cause to Prospective Jurors 018 and 069. After extensive questioning, both conveyed their ability to be fair and impartial.

Fifth, the District Court properly rejected Williams' proposed jury instructions, which were sufficiently covered by other instructions. Moreover, some of Williams' proposed instructions—particularly, his reasonable-doubt instruction—were contrary to law.

Sixth, the evidence was sufficient to support Williams' convictions. The evidence, which included the testimony of the victims and DNA, when viewed in the light most favorable to the State, was more than sufficient to establish Williams' guilt.

Seventh, the District Court properly denied Williams' motion seeking dismissal of his counsel. Williams' motion was presented to the Court one day before trial and was premised (1) on Williams' erroneous belief that he was entitled to maintain possession of the discovery in the case and (2) on a disagreement about counsel's tactical decisions.

Eighth, the sentence imposed did not amount to cruel and unusual punishment. Williams was sentenced in accordance with NRS 200.366(3)(c) and NRS

201.230(2). Additionally, because the sex crimes perpetrated by Williams were particularly egregious in nature, the sentence ultimately imposed was not so grossly disproportionate as to constitute cruel and unusual punishment.

Last, because Williams has failed to demonstrate any error below, he has failed to prove cumulative error.

ARGUMENT

I. The District Court Did Not Abuse Its Discretion In Denying The Motion To Sever.

"The decision to sever is left to the discretion of the trial court, and an appellant has the 'heavy burden' of showing that the court abused its discretion." Honeycutt v. State, 118 Nev. 660, 667 (2002) overruled on other grounds by Carter v. State, 121 Nev. 759, 765 (2005) (quoting Middleton v. State, 114 Nev. 1089, 1108 (1998)).

Moreover, "[a]n error arising from misjoinder is subject to harmless error analysis and warrants reversal only if the error had a 'substantial and injurious effect or influence in determining the jury's verdict.' " Tabish v. State, 119 Nev. 293, 302 (2003) (quoting Robins v. State, 106 Nev. 611, 619 (1990)).

NRS 173.115 states the following:

> Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are:
>
> 1. Based on the same act or transaction; or

> 2. Based on two or more acts or transactions connected together or constituting parts of a common scheme or plan

NRS 173.115.

Williams complains that the charges were neither based on the same act or transaction nor were they part of the common scheme/plan." Appellant's Opening Brief ("AOB") at 11-13. He contends that they were not "cross-admissible." Id. at 13. In so arguing, Williams conflates the terms "connected together" and "common scheme or plan."

Contrary to the impression given by Williams, the concepts of "connected together" and "common scheme or plan" are discrete. "[F]or two charged crimes to be 'connected together' under NRS 173.115(2) a court must determine that evidence of either crime would be admissible in a separate trial regarding the other crime." Weber v. State, 121 Nev. 554, 573 (2005). To make this determination, the court must conduct an analysis under NRS 48.045(2)—the statute governing the admission of other bad acts—which states that while evidence of "other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith," such evidence may be "admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

However, in joining offenses there is no need for the State to establish the three factors that would otherwise need to be established in order to admit other bad

acts. See Tinch v. State, 113 Nev. 1170, 1176 (1997) ("To be deemed an admissible bad act, the 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."). In Rimer v. State, 351 P.3d 697, 708 (2015), this Court clarified the difference between "the procedural issue of joinder and the evidentiary issue of admitting evidence of 'other crimes' ":

> The admissibility of evidence of 'other crimes, wrongs or acts' is an evidentiary issue that may arise at any time during the course of a trial, and the district court's evaluation of that evidence's relevance, reliability, and risk of unfair prejudice is necessary to ensure that the evidence is subjected to some form of procedural safeguard before it has a chance to influence the jury. In contrast, the joinder of offenses is a procedural issue that is decided before a trial and does not compel the same safeguards as evidence that is introduced after a trial has started.

(citations omitted). Accordingly, "[i]n a joinder decision there is no need to prove a defendant's participation in the charged crimes by clear and convincing evidence because '[a]ll crimes charged, and, therefore, amenable to the possible joinder, are the considered products of grand jury indictments or criminal informations' and therefore are 'of equal stature.' " Id. (quoting Solomon v. State, 646 A.2d 1064, 1070 (Md. Ct. Spec. App. 1994)). In short, the only Tinch factor that the district court has to consider when deciding whether certain charges are "connected together" for

purposes of joinder is whether evidence of either charge would have been admissible for a relevant, non-propensity purpose in a separate trial for the other charge. See Rimer, 351 P.3d. at 708-09.

Here, the incidents involving T.H. and A.H. were relevant to one another for the purposes of proving motive and opportunity and were thus sufficiently "connected together" for purposes of joinder under NRS 173.115. The facts of the incident involving T.H. and A.H. are far more similar than what Williams portrays. Starting with T.H., we have man (i.e., Williams) who was trusted as a caregiver and served as a father-figure to Hasan's five children. Williams took advantage of this position in the household to manipulate T.H. into engaging in sexual conduct. Moreover, this sexual contact happened while all of the other children were elsewhere—specifically, in other rooms throughout the house. Two of the three incidents testified to by T.H. occurred in the living room of the apartment. The one incident that occurred elsewhere (specifically, in the spare bedroom), involved a unique set of circumstances: namely, T.H. was "in trouble" and standing in a corner of the room; Williams, however, told T.H. to come to him at which point he made sexual contact with her.

Turning to A.H., we again have a man (i.e., Williams) using his position as caregiver and father-figure to manipulate A.H. into engaging in sexual conduct. Again, this sexual contact happened while all of the other children were elsewhere—

specifically, in other rooms throughout the house. And, as with T.H., the incidents occurred in the living room of the apartment. Moreover, one of the incidents involved the same unique set of circumstances as one of the incidents involving T.H: namely, A.H. was "in trouble" and standing in a corner of the room; Williams, however, told A.H. to come over to him at which point he made sexual contact with her. Given the remarkable similarity between the incidents involving A.H. and T.H and the attendant circumstances—which reflected that Williams took advantage of the opportunities he had alone with the children—the incidents involving A.H. and T.H. were relevant to one another for the purpose of proving Williams' motive and opportunity and were thus sufficiently "connected together" for purposes of joinder under NRS 173.115.

Williams, however, goes on to argue that even if joinder was proper, joinder was "so prejudicial as to require severance." AOB at 16. Under NRS 174.165(1), "[i]f it appears that a defendant . . . is prejudiced by a joinder of offenses . . . the court may order . . . separate trials." However, to demonstrate such unfair prejudice, the defendant must do more than simply show that "severance might have made acquittal more likely." Weber, 121 Nev. at 575 (internal quotation marks omitted). "NRS 174.165(1) 'does not require severance even if prejudice is shown; rather, it leaves the tailoring of the relief to be granted, if any, to the district court's sound discretion.' " Rimer, 351 P.3d at 709 (quoting Zafiro v. United States, 506 U.S. 534,

538-39 (1993)). In order to *require* severance, the defendant has the heavy burden of proving that a "joint trial would be 'manifestly prejudicial,' " which, in turn, requires a showing that the simultaneous trial of the offenses would "render the trial fundamentally unfair, and hence, result in a violation of due process." Honeycutt, 118 Nev. at 667-68 (quoting United States v. Bronco, 597 F.2d 1300, 1302 (9th Cir. 1979)).

Williams has failed to demonstrate unfair prejudice by joinder of the charges relating to T.H. and A.H.—let alone demonstrate that joinder was "manifestly prejudicial." None of the charges were so weak as to suggest a due process violation. This was not a case in "which charges in a weak case have been combined with charges in a strong case to help bolster the former." See Rimer, 351 P.3d at 709 (*citing* Weber, 121 Nev. at 575).

Williams, however, argues that he "may have taken the stand in a separate trial involving only one complaining witness, but in a joined trial could not elect to limit his testimony to one set of charges and retain his right against self-incrimination as to the other charges[.]" Id. Interestingly, Williams does not state that he would have taken the stand had the charges involving either T.H. or A.H. gone to a separate trial. Nor does it seem likely that he would have given the remarkable similarity between the incidents. Williams erroneously argues that the "charges involved two separate and distinct complaining witnesses making

fundamentally different types of allegations." AOB at 18. For the reasons explained above, these incidents did not involve "fundamental" differences. While Williams may not have penetrated either A.H.'s vagina or anus with his penis, the fact remains that he abused his position as a caregiver and father-figure to manipulate *both* A.H. and T.H. into gratifying his lust by engaging in sexual contact.

Williams further argues that had the charges relating to A.H. been severed from those relating to T.H., he may not have been convicted "on the separate offenses, or may not have [been] convicted of at least some of the counts." AOB at 18. However, as noted above, to demonstrate such unfair prejudice, Williams must do more than simply show that "severance might have made acquittal more likely." Weber, 121 Nev. at 575 (internal quotation marks omitted). This he has failed to do. According to Williams, "[t]he dual allegations of misconduct unfairly corroborated each other." AOB at 18. He then goes on to note that T.H.'s and A.H's testimony "suffered from lack of detail" and that each of them were inconsistent regarding what they alleged happened. Id. The Court should reject Williams' assertion regarding cross-corroboration and the line of reasoning Williams has employed to reach the conclusion that he did. It defies logic for Williams to argue that the victims, who according to him were incredible, lent credibility to each other's accounts. In essence, Williams is arguing that the testimonies of two incredible witnesses made for an overall credible account. Thus, Williams' argument regarding cross-

corroboration is undermined by the very logic he has employed to support that argument.

Lastly, Williams argues that the "[t]he Court should have proffered an instruction limiting the jury's consideration of the evidence pertaining to the joined offenses." AOB at 19. Williams, however, did not raise this issue at the trial. That being the case, this issued is waived and reviewable only for plain error. Martinorellan v. State, 343 P.3d 590, 593 (2015); Maestas v. State, 275 P.3d 74, 89 (2012); Green v. State, 119 Nev. 542, 545 (2003); Patterson v. State, 111 Nev. 1525, 1530 (1995); Ford v. Warden, 111 Nev. 872, 884 (1995).

This Court has held that limiting instructions help eliminate the prejudice that may result from joinder. See Tabish v. State, 119 Nev. 293, 304 (2003) ("When some potential prejudice is present, it can usually be adequately addressed by a limiting instruction to the jury."). The District Court's failure to issue such a limiting instruction, however, was harmless error that did not affect Williams' substantial rights. Instructional errors are harmless when it is "clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error," and the error is not the type that would undermine certainty in the verdict. Wegner v. State, 116 Nev. 1149, 1155–56 (2000) overruled on other grounds, Rosas v. State, 122 Nev. 1258 (2006).

The evidence against Williams was significant. All three of the sexual assault counts and one of the three lewdness counts related to T.H. The evidence proving Williams' guilt as to these charges included both testimony and DNA. T.H. testified to three instances in which Williams penetrated her with his penis vaginally and rectally. 4AA842-50,860-63,865-67. A.H., J.M., K.M., and D.H testified how T.H. was Williams' "favorite." 4AA789-90,809,907,944. And, according to A.H., J.M., and K.M., Williams would spend a lot of time with T.H. and would tell the other children to go their rooms while he was alone with T.H. 4AA790,793-94,809-10,814-15,909. J.M, K.M., and D.H. further recalled how T.H. would often sit on Williams' lap. 4AA796,813,950,953. And, according to K.M. and D.H, T.H. would be facing Williams while sitting on his lap. 4AA813,953. The evidence also included Williams' DNA, found on T.H.'s rectal swabs and in T.H.'s underwear. 4AA981-84,989-90,994; 5AA1039,1042,1096,1104.

The remaining two lewdness counts related to A.H. And, while the only evidence here included A.H.'s testimony, see 4AA913-14, that is to be expected given Williams *modus operandi* (i.e., ensuring all of the other children are elsewhere before taking advantage of the victim in the living room), the fact that the incident occurred before March of 2013 (and, thus, any DNA evidence would have long disappeared), and A.H.'s reluctance in reporting the incident until what happened to T.H. came to light. In any event, there is no need to corroborate A.H.'s testimony so

long as A.H.' testimony established all of the elements of the offense—which it certainly did. See Gaxiola v. State, 121 Nev. 633, 648 (2005) ("This court has repeatedly stated that the uncorroborated testimony of a victim, without more, is sufficient to uphold a rape conviction.").

Williams has failed to demonstrate that joinder was so prejudicial as to outweigh "the dominant concern [of] judicial economy and compel[] the exercise of the court's discretion to sever." Tabish, 119 Nev. at 304. Accordingly, the District Court did not abuse its discretion in denying Williams' Motion to Sever.

II. The District Court Properly Denied Williams' Motion To Admit Evidence Of Alleged Victim's Ability To Contrive A Sexual Assault Allegation And Theory Of Defense Evidence.

NRS 50.090 provides that--

> In any prosecution for sexual assault or statutory sexual seduction or for attempt to commit or conspiracy to commit either crime, the accused may not present evidence of any previous sexual conduct of the victim of the crime to challenge the victim's credibility as a witness unless the prosecutor has presented evidence or the victim has testified concerning such conduct, or the absence of such conduct, in which case the scope of the accused's cross-examination of the victim or rebuttal must be limited to the evidence presented by the prosecutor or victim.

This Court has delineated two exceptions to this general rule. In Miller v. State, 105 Nev. 497, 501 (1989), this Court held that in a sexual assault case, NRS 50.090 does not bar the cross-examination of a complaining witness about prior *false* accusations. Further, in Summit, 101 Nev. at 163-64, this Court held that prior sexual experiences of a child victim may be admissible to demonstrate that the child's prior sexual

experiences could explain the source of the child's knowledge of the charged sexual activity and, in turn, demonstrate the child's ability to contrive a charge against the defendant. Prior to admitting such evidence, however, "the trial court must undertake to balance the probative value of the evidence against its prejudicial effect." See NRS 48.035(1). "[T]he inquiry should particularly focus upon 'potential prejudice to the truthfinding process itself,' i.e., 'whether the introduction of the victim's past sexual conduct may confuse the issues, mislead the jury, or cause the jury to decide the case on an improper or emotional basis.' " Summit 101 Nev. at 163 (citation omitted).

"The trial court has sound discretion to admit or exclude evidence of a victim's prior false allegations or prior sexual experiences." Abbott v. State, 122 Nev. at 732 (2006). "In the exercise of its sound discretion, the trial court should be mindful of the important policy considerations underlying the rape-shield statute, and accordingly should limit the admission of evidence of specific instances of the complainant's sexual conduct . . . without unduly infringing upon the defendant's constitutional right to confrontation." Summit, 101 Nev. at 164.

The District Court did not abuse its discretion in denying Williams' motion. Williams relies heavily on this Court's decision in Summit. See AOB at 22-28. This reliance, however, is misplaced. In Summit, 101 Nev. at 160, the defendant was tried and convicted of two counts of sexual assault. The acts of sexual assault consisted

of cunnilingus and fellatio with a six-year-old child. Id. At trial, the defense sought to introduce evidence of a prior sexual assault that had taken place, in the same trailer park, two years before the crime in issue. Id. The prior assault included the acts of intercourse, fellatio, and the fondling of the victim's genitalia. Id. The defense had offered the evidence in an attempt to show that the young victim had had prior independent knowledge of similar acts which constituted the basis for his charge. Id. The district court, however, precluded such evidence under NRS 50.090. Id. This Court reversed, noting that the victim's prior sexual conduct "could explain the source of her knowledge of the sexual activity she described in her testimony." Id. at 163.

Unlike Summit, there are no allegations that either of the victims has previously been sexually abused by anybody else. In fact, there is not so much as an allegation that either of the victims has had any type of prior sexual experience or that either of them has engaged in any prior sexual conduct. This Court's holding in Summit is limited to just such evidence:

> However, if statutory rape victims *have had other sexual experiences*, it would be possible for them to provide detailed, realistic testimony concerning an incident that may never have happened. To preclude a defendant from presenting such evidence to the jury, if it is otherwise admissible, would be obvious error. Accordingly, a defendant must be afforded the opportunity to show, *by specific incidents of sexual conduct*, that the prosecutrix has the experience and ability to contrive a statutory rape charge against him.

Id. at 164. Williams even quotes this portion of Summit, AOB at 24, but obviously fails to grasp its import. If, however, Williams is seeking to expand the scope of Summit's holding to include *any* evidence (apart from the victim's own sexual experiences) that may have a tendency to show how a young victim could have acquired knowledge of sexual acts, the Court should reject such an attempt. The inquiry in such matters is that which pertains to any other challenged evidence—i.e., whether the evidence is relevant under NRS 48.015, and whether its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury under NRS 48.035(1).

Williams argues that evidence of Hasan's "career as an adult film actress comprised a crucial component of Williams' theory of defense" insofar as "the creation of pornography in the home comprised an alternate source of sexual knowledge on the part of T.H. and A.H." AOB at 26. As noted above, the first line of inquiry is whether evidence of Hasan's employment was relevant pursuant to NRS 48.015. Evidence is considered relevant where it has some tendency in reason to establish a proposition material to the case. Pasgove v. State, 98 Nev. 434, 436 (1982). Hasan's employment is only relevant insofar as either A.H. or T.H. observed Hasan actually engage in sexual acts because it is only through such observation that the children would have acquired the knowledge that Williams imputes to them. The

most Williams has alleged here is that "A.H. admitted to familiarity with her mother's employment." AOB at 26.

Recognizing this, Williams has renewed his argument that both of the children should have been further examined under oath. See id. at 24, 26. To be sure, the district court had set a hearing for March 5, 2015, for just this purpose. See 6AA1263-1306. At that hearing, the State indicated that it had intended to call T.H. and A.H. as witnesses in order to ascertain the extent of their knowledge regarding their mother's employment. See id. at 1265-67. It came to light, however, that the day before the hearing, defense counsel had gone to the children's school with his investigator, had the children pulled out of class without their mother's permission, and then proceeded to interview them. See id. at 1267-69. Finding that defense counsel potentially tainted the witnesses' testimonies, the Court denied Williams' motion. Id. at 1304-05. Given defense counsel's rash course of action and the risk that the children's testimony may have been compromised, the District Court's refusal to entertain any further discussion on the matter was reasonable.

However, the district court did afford Williams the opportunity to refile his motion, see id. at 1305, which he did more than one year later on March 18, 2016. 1AA163-67. However, by that time, his motion was untimely under EDCR 2.24.[4]

[4] The District Court entered its Order denying Williams' Motion to Admit Evidence of Alleged Victims' Ability to Contrive a Sexual Assault Allegation and Theory of Defense Evidence on March 17, 2015. 1AA176; see also 1AA107. Thus, Williams'

Additionally, because the motion was filed just 12 days before the trial setting, it was also untimely under EDCR Rule 3.20(a).[5] Lastly, as noted by the State in its Opposition below, defense counsel had not provided the State with the audio recordings of the interviews conducted at the children's school until March 18, 2016—again, more than one year after the hearing held on the first motion. See 1AA176. Nonetheless, in denying the renewed motion, the district court still kept open the possibility that evidence of Hasan's employment might be introduced depending on the testimony that was elicited at trial:

> The Court: I gave him the right to bring it up. But I still don't think it's relevant unless it comes up. Before you ask any questions, approach the bench.
>
> Ms. Kollins: And I'm sorry, Your Honor. So you don't think it's relevant, but --
>
> The Court: But if something comes up and he wants to ask a question, then you'll approach the bench and we'll talk about it.

---

motion, which was in essence a motion seeking reconsideration of the Court's previous denial, should have been filed no later than March 27, 2015. See EDCR 2.24 ("A party seeking reconsideration of a ruling of the court, other than any order which may be addressed by motion pursuant to N.R.C.P. 50(b), 52(b), 59 or 60, must file a motion for such relief within 10 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order.").

[5] EDCR 3.20(a) provides the following:

> Unless otherwise provided by law or by these rules, all motions must be served and filed not less than 15 days before the date set for trial. The court will only consider late motions based upon an affidavit demonstrating good cause and it may decline to consider any motion filed in violation of this rule.

Ms. Kollins:	What would Your Honor consider opening the door where that might be appropriate?
The Court:	I don't know. That's why I say--
Ms. Kollins:	Okay.
The Court:	I'm not opposed to holding that off to listen to what is being said. Because 52 counts, there's going to be a lot of testimony.
….	
The Court:	Okay. If something should come up and you think the door's open, do not ask the question without coming to the Court.
Mr. Speed:	We will do that, Your Honor.
The Court:	But at this time, it's denied.
. . .	
Mr. Speed:	Just so that I'm clear, Your Honor. The motion is denied if a situation arises where this may become relevant to our proceedings, then --
The Court:	Yes.
Mr. Speed:	-- both state and defense should approach the bench.
The Court:	Approach the bench and we'll talk.

2AA454-56. Given the District Court's willingness to address the issue during trial, this Court should find that the District Court's handling of Williams' motion did not constitute an abuse of discretion.

Turning back to the two-pronged inquiry set out above—namely, whether the evidence is relevant pursuant to NRS 48.015, and whether its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury pursuant to NRS 48.035(1)—this Court should find that

evidence of Hasan's employment was irrelevant given that it was never established whether the children observed their mother engage in sexual acts. But even assuming that Williams had established that such evidence was relevant, he still fails to satisfy the second prong inasmuch as any probative value that evidence of Hasan's employment may have had was substantially outweighed by the dangers of unfair prejudice and confusion of the issues.

According to Williams, the danger of unfair prejudice was slight. See AOB at 26-27 ("Further, where Hasan was not a complaining witness and not the prosecutrix in the case, and where the girls' chastity and reputations were not remotely impugned by this evidence or at issue in the case, the right of the defendant to pursue his theory of the case far outweighed any tangential prejudice to Hasan as a witness."). Williams, however, seems to misunderstand what "unfair prejudice" means. This Court has defined unfair prejudice "as an appeal to 'the emotional and sympathetic tendencies of a jury, rather than the jury's intellectual ability to evaluate evidence.' " State v. Eighth Judicial Dist. Court of Nev., 127 Nev. 927, 933 (2011) (quoting Krause Inc. v. Little, 117 Nev. 929, 935 (2001)). This Court has further explained that "[a]lthough unfair prejudice commonly refers to decisions based on emotion, it is not so limited." Id. (*citing* Fed. R. Evid. 403 advisory committee's note). Thus, any time that considerations extraneous to the merits are introduced into trial, there is a risk of unfair prejudice. See People v. Greenlee, 200 P.3d 363, 367

(Colo. 2009) (noting that "[e]vidence is unfairly prejudicial where it introduces into the trial considerations extraneous to the merits, such as bias, sympathy, anger, or shock"); Camp Takajo, Inc. v. SimplexGrinnell, L.P., 957 A.2d 68, 72 (Me. 2008) (stating that "unfair prejudice . . . refers to an undue tendency to move the tribunal to decide on an improper basis, commonly, though not always, an emotional one" (quotation and footnote omitted)).

The unfair prejudice that would have resulted from the introduction of Hasan's employment in the adult film industry has to do with more than how the jury would have perceived Hasan. Should evidence of Hasan's employment come to light, there was a substantial risk that the jury would have been biased against the victims no less than towards the mother. While not illegal, Hasan's employment would nonetheless have triggered emotions on the part of the jury, who would have been given the impression that the children were growing up in a depraved environment in which their status as "innocent" children was suspect by virtue of that environment. In that same vein, there was a substantial risk that the jury would have imputed the mother's behavior and lifestyle onto the children.

Moreover, there was a danger of confusion of the issues insofar as there was a substantial risk that the jury would shift some of the blame for what happened to T.H. and A.H. from Williams to Hasan. Evidence concerning Hasan's employment would have distracted from what was really at issue—namely, Williams

inappropriate interactions with two young girls—by giving undue attention to Hasan's lifestyle. Again, while not illegal, Hasan's lifestyle is by no means conventional and thus there was a substantial risk that the focus that should have been on Williams and what he did to the girls would have shifted to Hasan and what she did for a living at one point in time.

Therefore, this Court should find that the District Court properly denied Williams's motion. Williams' reliance on this Court's decision in Summit is misplaced insofar as this case involves no allegation that T.H. or A.H. engaged in prior sexual conduct. Morever, Williams has failed to prove that evidence of Hasan's employment was relevant. But even if he did make such a showing, any probative value this evidence may have had was substantially outweighed by the dangers of unfair prejudice and of confusion of the issues.

III. The District Court Properly Denied William's Batson Challenge.

Batson v. Kentucky, 476 U.S. 79, 89 (1986), held that the use of peremptory challenges to remove potential jurors on the basis of race is unconstitutional. Adjudicating a Batson challenge is a three step process: (1) the defendant must make a prima facie showing that racial discrimination has occurred based upon the totality of the circumstances, (2) the prosecution then must provide a race-neutral explanation, and (3) the district court must determine whether the defendant, in fact, demonstrated purposeful discrimination. Id. at 94.

In step one, a defendant alleging that members of a cognizable group "have been impermissibly excluded from the venire may make out a prima facie case of purposeful discrimination by showing that the totality of the relevant facts give rise to an inference of discriminatory purpose." Id. at 94-95. In deciding whether or not the requisite prima facie case has been made, a court may consider the "pattern of strikes" exercised or the questions and statements made by counsel during the voir dire examination. Id. at 96-97.

Only after the movant has established a prima facie case of intentional discrimination is the proponent of the strike compelled to proffer a race-neutral explanation. "The second step of this process does not demand an explanation that is persuasive, or even plausible." Purkett v. Elem, 514 U.S. 765, 767-68 (1995). The neutral explanation "is not a reason that makes sense, but a reason that does not deny equal protection." Id. at 769. "Unless a discriminatory intent is inherent in the State's explanation, the reason offered will be deemed race neutral." Id. at 768 (internal citations omitted).

Step three comes down to credibility: "the district court must determine whether the explanation was a mere pretext and whether the opponent successfully proved racial discrimination." King v. State, 116 Nev. 349, 353 (2000). This can be measured by "how reasonable, or how improbable, the explanations are; and by

whether the proffered rationale has some basis in accepted trial strategy." Miller-El v. Cockrell, 537 U.S. 322, 324 (2003).

This Court "review[s] the district court's ruling on the issue of discriminatory intent for clear error." Conner v. State, 327 P.3d 503, 508 (2014). " 'The trial court's decision on the ultimate question of discriminatory intent represents a finding of fact of the sort accorded great deference on appeal.' " Walker v. State, 113 Nev. at 867-68 (1997) (quoting Hernandez v. New York, 500 U.S. 352, 364 (1991) (plurality opinion)). The reason for such a standard is the trial court is in the position to best assess whether from the "totality of the relevant facts" that racial discrimination is occurring. Hernandez, 50 U.S. at 363. Further, this Court has emphasized that the burden is on the opponent of the strike in step three to develop a pretext for the explanation at the district court level. Hawkins v. State, 127 Nev. 575, 577 (2011).

The District Court did not err in denying Williams' challenge to the State's use of a peremptory challenges to remove Prospective Juror 023, Ms. Ryan Williams. For one, Williams failed to even make out a prima facie case of racial discrimination. As noted by Williams at the trial, Ms. Williams was just one of eight African-Americans on the panel. 3AA601,646. Thus, other than point to her race, Williams has failed to show how the "totality of the relevant facts give rise to an inference of discriminatory purpose." Batson, 476 U.S. at 94-95.

Regardless, the State provided a race-neutral explanation. Ms. Williams expressed skepticism regarding scientific evidence. 3AA589-90. Such skepticism was troubling given that the evidence against Williams included his DNA, found on T.H.'s rectal swabs and in T.H's underwear. Moreover, Ms. Williams' demeanor gave "serious concern about whether or not she would be able to deliberate . . . in the group effectively." 3AA647. A review of her answers to the questions posed by both parties shows that "her answers were short" and that "she was unwilling to communicate much more than yes or no answers." Id.

Williams, however, avers that other prospective jurors expressed skepticism regarding scientific evidence and were likewise curt in their answers. AOB at 31. First, he points to Prospective Jurors 036 and 025. But these prospective jurors were removed by the defense, thus making it unnecessary for the State to even consider using a peremptory challenges on either of them. See 3AA573,603,624,648.

Williams then points to Prospective Jurors 028 and 046 as two other examples of jurors who were skeptical of scientific evidence. AOB at 32. The record, however, reflects that the answers they provided did not convey a skepticism of scientific evidence as much as they reflected an appreciation of the reality that scientific testing can sometimes result in errors. 3AA569-71.

Thus, contrary to what Williams argues, the State's race-neutral explanation was not a pretext. Ms. Williams' skepticism of scientific evidence and her curt

answers coupled with her demeanor gave the State cause for concern that she would not be able to deliberate in a group setting effectively.[6] Therefore, the Court should find that the District Court did not clearly err in denying Williams' Batson challenge.

IV. The District Court Properly Denied Williams' Challenges For Cause.

"Jury selection is 'particularly within the province of the trial judge.' " Skilling v. United States, 561 U.S. 358, 362 (2010) (quoting Ristaino v. Ross, 424 U.S. 589, 594-595 (1975)). "Decisions concerning the scope of voir dire and the manner in which it is conducted are reviewable only for abuse of discretion." Hogan v. State, 103 Nev. 21, 23 (1987). On appeal, how a court chooses to conduct voir dire is given "considerable deference." Lamb v. State, 127 Nev. 26, 37 (2011) (quoting Johnson v. State, 122 Nev. 1344, 1355 (2006)). "The purpose of jury voir dire is to discover whether a juror will consider and decide the facts impartially and conscientiously apply the law as charged by the court." Johnson, 122 Nev. at 1354 (quoting Witter v. State, 112 Nev. 908, 914 (1996)) (internal quotation marks omitted).

A prospective juror may be challenged for cause for any reason "which would prevent the juror from adjudicating the facts fairly." NRS 175.036. However, a juror

[6] Lastly, Williams faults the District Court for not making any specific findings regarding Ms. Williams' demeanor. See AOB at 33. Although the District Court may not have articulated its findings in regards Ms. Williams' demeanor, it did expressly conclude that the State did not base its peremptory challenge on race, ostensibly for the very reasons articulated by the State. 3AA648.

may not be removed if the record as a whole demonstrates that the prospective juror could "lay aside his impression or opinion and render a verdict based on the evidence presented in court." Blake v. State, 121 Nev. 779, 795 (2005). Because the district court is "better able to view a prospective juror's demeanor," the district court enjoys "broad discretion" in ruling on challenges for cause. Leonard v. State, 117 Nev. 53, 67 (2001).

The District Court did not abuse its discretion in denying Williams' for-cause challenges of Prospective Jurors 018 (Jorgensen) and 069 (Downer). The District Court explained how both of these jurors conveyed their ability to be fair and impartial. Ms. Jorgensen was examined at great length regarding her ability to be impartial. 3AA528. The following is part of the dialogue that took place between the State and Jorgensen:

Ms. Kollins:	[ ] Do you think you could separate your experiences with that community and sit as a fair and impartial juror in this case?
Prosp. Juror 018:	I would hope so, yeah.
Ms. Kollins:	You realize as he sits here Mr. Williams is presumed innocent?
Prosp. Juror 018:	Correct
Ms. Kollins:	And he can only be found guilty after the State proffers enough evidence to prove him guilty beyond a reasonable doubt, right?
Prosp. Juror 018:	Correct

3AA528,587-88.

After defense counsel brought up its concern that Jorgensen did not have "a lot of confidence in her own ability to be fair and impartial," the District Court then conducted its own examination:

The Court:	Are you going to automatically believe the children or will you be fair and impartial and listen to the – all of the evidence.
Prosp. Juror 018:	Yeah, that's part of the process here is to listen and make a fair decision.
The Court:	Make a fair decision. And you'll do that.
Prosp. Juror 018:	[No audible response—nods head yes]

3AA589. Thus, Jorgensen's answers, while reflecting her candid assessment that there is a natural bias inherent in every rational being, were nonetheless sufficient to assure the District Court that she would be able to put away any such bias as best she could so that she could be fair and impartial in the case.

Downer was also examined at great length regarding her ability to be impartial. The following is part of the dialogue that took place between defense counsel and Downer:

Mr. Speed:	If you were selected to serve as a juror in this trial and you heard some of the things that the children are going to say -- or all of the things that the children are going to say, would you be inclined to believe them immediately because they're children --
Prosp. Juror 069:	No.
Mr. Speed:	-- talking about something like this?
Prosp. Juror 069:	No.

Mr. Speed:	Talk to me about that Ms. Downer. You wouldn't [ ] believe them but you'd be uncomfortable hearing it. Tell me how you reconcile those two things.
Prosp. Juror 69:	Well I'd have to listen to all of it and I just don't want to watch them go through it all again. If it's factual -- it's just that that whole part's going to be the hard part.

3AA583. Because defense counsel believed that Downer had "a preconceived idea of these children as victims who have been traumatized," he moved to strike Downer for cause. 3AA600. The District Court, finding that Downer was capable of being fair and impartial, denied Williams' challenge. Id.

The following day, however, Williams' counsel renewed its challenge for cause upon eliciting testimony from Downer that she believed "something must have happened in order for [the victims] to go through the first time around." 3AA691. The State, however, further examined Downer to establish that she could be fair and impartial. See 3AA691-92. The State's line of questioning elicited testimony from Downer sufficient to assure the Court that she, while still believing that the experience of testifying in Court might be difficult for the children, would be able to be fair and impartial in the case.

Williams further argues that the Court committed reversible error in denying these challenges for cause because it forced him to use peremptory challenges to remove these jurors. See AOB at 37; see also 3AA636,695. As explained by this Court, "[a] district court's erroneous denial of a challenge for cause is reversible

error only if it results in an unfair empaneled jury." Preciado v. State, 318 P.3d 176, 178 (2014) (*citing* Blake, 121 Nev. at 796). Williams does not argue that the jury actually seated in his case was biased or otherwise impartial. Accordingly, Williams was not denied his right to an impartial jury. Blake, 121 Nev. at 796 ("If the jury actually seated is impartial, the fact that a defendant had to use a peremptory challenge to achieve that result does not mean that the defendant was denied his right to an impartial jury."). As to Williams' contention that he had to use peremptory challenges to remove Jorgensen and Downer, he fails to explain how exactly he has been prejudiced by this. Specifically, Williams does not explain who he would have wanted to remove by way of a peremptory challenge and was precluded from doing so because he had "no choice" but to use two peremptory challenges on Jorgensen and Downer.

V. The District Court Properly Rejected Williams' Proposed Jury Instructions.

District courts have "broad discretion" to settle jury instructions. Cortinas v. State, 124 Nev. 1013, 1019 (2008). District courts' decisions settling jury instructions are reviewed for an abuse of discretion. Crawford v. State, 121 Nev. 746, 748 (2003). This Court reviews whether an instruction is an accurate statement of the law de novo. Cortinas, 124 Nev. at 1019. Further, instructional errors are harmless when it is "clear beyond a reasonable doubt that a rational jury would have

found the defendant guilty absent the error," and the error is not the type that would undermine certainty in the verdict. Wegner, 116 Nev. at 1155–56.

A district court may refuse to give a jury instruction which is substantially covered by another instruction. Davis v. State, 321 P.3d 867, 874 (2014); Crawford, 121 Nev. at 754–55. Further, though a defendant is entitled to an instruction on his theory of defense so long as there is any evidence to support it, he is not entitled to demand a specific wording of an instruction. Crawford, 121 Nev. at 754. Importantly, a trial court may also refuse to give an instruction if it is less accurate than other instructions, or will confuse the jury. Sanchez-Dominguez v. State, 318 P.3d 1068, 1072 (2014).

A. The District Court Properly Rejected Williams' Proposed Presumption-Of-Innocence Instruction.

The District Court did not abuse its discretion in refusing to give this instruction. Instruction 5, the reasonable-doubt instruction, clearly stated that Williams "is presumed innocent until the contrary is proved" and that "[t]his presumption places upon the State the burden of proving beyond a reasonable doubt every element of the crime charged and that the Defendant is person who committed the offense." 2AA283. Additionally, Instruction 7, which explained that no inference of guilt is to be drawn from the fact that Williams chose not to testify, further highlighted the notion that the defense has no obligation to present evidence or prove innocence. 2AA285.

Therefore, because Williams' proposed presumption-of-evidence instruction was sufficiently covered by Instructions 5 and 7, the District Court did not abuse its discretion in refusing to give Williams' proposed instruction.

B. The District Court Properly Rejected Williams' Proposed Witness-Credibility Instruction.

The District Court did not abuse its discretion in refusing to give this instruction on witness credibility. The instruction actually given here reads as follows:

> The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the manner to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.
>
> If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

2AA287. Accordingly, the jury was properly instructed on the issue of witness credibility.

To the extent that Williams argues that his proposed instruction was much more expansive than the one given, this Court should find that this is not a sufficient basis to find that the District Court abused its discretion. In Hawkins v. State, 2016 Nev. App. Unpub. LEXIS 395, *2 (Nev. Ct. App. Oct. 19, 2016), the Nevada Court of Appeals faced the same situation as that here. In Hawkins, the defendant had argued that the district court abused its discretion in refusing to give his proposed

witness-credibility instruction, which was much more expansive than the instruction given. Id. The district court had denied the proposed instruction, noting that "the State's jury instruction regarding witness credibility [was] 'broad enough to cover all of the potential factors that a juror may properly consider,' including the specific factors listed in Hawkins' proposed instructions." Id. The Nevada Court of Appeals agreed with the district court and explained that although the defendant's proposed instruction would have "instructed the jurors that they could consider prior inconsistent statements and any evidence corroborating a witness's testimony to evaluate a witness's credibility," these factors were already "covered by the district court's direction to the jury to consider the reasonableness of the witness's statements and the strength of the witness's recollections." Id. at n.2; see also Fondo v. State, 2016 Nev. Unpub. LEXIS 45, *10, 2016 WL 207611 (2016) (noting that although the defendant's "version contained more examples of what the jury could consider," it was nonetheless "substantially covered by the instruction given").

Williams' proposed instruction was certainly more expansive than the instruction given to the jury. Like the proposed instruction in Hawkins, Williams' proposed instruction would have instructed the jurors that they could consider prior inconsistent statements and any evidence corroborating a witness's testimony to evaluate a witness's credibility. Compare Hawkins, 2016 Nev. App. Unpub. LEXIS 395, *2 n.2 with 6AA1309. But, as in Hawkins, the District Court's instruction was

already broad enough to cover all of the potential factors that a juror may properly consider. Accordingly, this Court should find that the District Court did not abuse its discretion in refusing to give Williams' proposed instruction on witness credibility.

C. The District Court Properly Rejected Williams' Proposed Instruction Regarding Evidence Capable Of Two Different Interpretations.

Williams' next complaint is that the District Court improperly rejected his proposed jury instruction "regarding evidence capable of two different interpretations." 6AA1311; see AOB at 40.

This argument is without merit, as this Court has held on numerous occasions that it is *not* error to refuse to give this kind of instruction where the jury has been properly instructed on the standard of reasonable doubt. See Mason v. State, 118 Nev. 554, 559 (2002); *Bails v. State*, 92 Nev. 95, 96-98 (1976). Moreover, defendants are not "entitled to instructions that are misleading, inaccurate, or duplicitous," Crawford, 121 Nev. at 754, and when the jury is properly instructed on reasonable doubt, as it was here, 4AA283, "an additional instruction on the sufficiency of [the] evidence invites confusion." State v. Guthrie, 461 S.E.2d 163, 175 (W. Va. 1995); State v. Humpherys, 8 P.3d 652 (Idaho 2000).

This Court has examined identical language as that proposed by Williams and has held that "it is not error to refuse to give the instruction if the jury is properly instructed regarding reasonable doubt." Bails, 92 Nev. at 97. Here, the jury was

properly instructed on reasonable doubt and on how to interpret and weigh the evidence. 2AA283-84. Therefore, because the jury was properly instructed, the District Court did not abuse its discretion in denying this proposed jury instruction.

D. The District Court Properly Rejected Williams' Proposed Reasonable-Doubt Instruction.

Williams next argues that the District Court improperly rejected his proposed jury instruction regarding reasonable doubt, which provided, in relevant part, the following:

> In order to find Gregory Williams guilty of the crime charged, you must reach a subjective state of near certitude on the facts in issue.

6AA1312; see AOB at 41.

However, Williams' complaint is unavailing and unsupported by law. The actual relevant instruction provided to the jury at trial—namely, Instruction No. 5—tracks the language of NRS 175.211, which provides the definition of "reasonable doubt." Compare 6AA283 with NRS 175.211.

This Court has noted that "175.211(2) provides that no other definition of reasonable doubt may be given to Nevada juries." Meek v. State, 112 Nev. 1288, 1297 (1996). Additionally, "[t]he lower courts of this state must defer to the legislature's institutional competence and adhere to the statutorily prescribed reasonable doubt instruction codified at NRS 175.211." Holmes v. State, 114 Nev. 1357, 1366 (1998). "The concept of reasonable doubt is inherently qualitative. Any

attempt to quantify it may impermissibly lower the prosecution's burden of proof, and is likely to confuse rather than clarify." McCullough v State, 99 Nev. 72, 75 (1983). The Nevada Supreme Court further cautioned against an attempt to quantify, supplement, or clarify the statutorily prescribed reasonable doubt standard, explaining that when combined with the use of a disapproved reasonable doubt instruction, this may constitute reversible error. Holmes, 114 Nev. at 1365-66.

The jury was properly instructed on the definition of reasonable doubt pursuant to NRS 175.211, and Williams was not entitled to demand a specific wording of this instruction. Crawford, 121 Nev. at 754. In fact, NRS 175.211(2) explicitly states that "[n]o other definition of reasonable doubt may be given by the court to juries in criminal actions in this state." Therefore, Williams' claim that the District Court's rejection of his proposed reasonable-doubt instruction was improper is without merit.

E. The District Court Properly Rejected Williams' Proposed Negatively Worded Instructions.

In just one paragraph, Williams argues that the District Court abused its discretion in denying "several negatively worded instructions under Crawford v. State." AOB at 42. Specifically, Williams cites his proposed instructions 7, 8, 9, 14,

and 15.[7] Id. Citing Crawford, he believes that he was entitled to such "defense-specific instructions." Id.

Williams fails to demonstrate that the District Court abused its discretion in denying these proposed instructions. Specifically, this Court has stated that "[a] positive instruction as to the elements of the crime does not justify refusing a properly worded negatively phrased 'position' or 'theory' instruction." Crawford, 121 Nev. at 753. Proposed Instruction 7, which dealt generally with the State's burden "to prove beyond a reasonable doubt any element of any charged offense" was not a position or theory-of-the-case instruction and was already covered by the reasonable-doubt instruction. 2AA283. Proposed Instructions 8 and 9 were not position or theory-of-the-case instructions but were instead negatively worded instructions describing the elements of the offense of Lewdness with a Child under the Age of 14. The relevant instructions that were ultimately issued by the District Court (Instructions 16-19, 21) not only described the elements of this offense but also defined key terms, explained what type of conduct would satisfy the statutory elements, and clarified what would not constitute a defense to the offense. 6AA294-97,299. Additionally, while the Nevada Court of Appeals found an abuse of discretion in refusing to give an inverse elements instruction that was not misleading

[7] The proposed instructions are not actually numbered. See 6AA1307-21. The number assigned here refers to page number on which these negatively worded instructions appear. See 6AA1313-15,1320-21.

or confusing, Guitron v. State, 350 P.3d 93, 103 (Nev. Ct. App. 2015), Williams' instruction was duplicitous and already covered by the aforementioned instructions in conjunction with the instruction describing the standard of proof. See Crawford, 121 Nev. At 754.

Lastly, Proposed Instructions 14 and 15 were not position or theory-of-the-case instructions but were instead negatively worded instructions defining Sexual Assault with a Minor under Fourteen Years of Age. The District Court provided an instruction that laid out the elements of the offense of Sexual Assault with a Minor under Fourteen Years of Age. 2AA289. This instruction also defined the term "sexual penetration." Id. And, again, while the Nevada Court of Appeals found an abuse of discretion in refusing to give an inverse elements instruction that was not misleading or confusing, Guitron, 350 P.3d at 103, Williams' instruction was duplicitous and substantially covered by the instruction regarding the definition of Sexual Assault with a Minor under Fourteen Years of Age in conjunction with the instruction describing the standard of proof. See Crawford, 121 Nev. at 754.

F. The District Court Properly Rejected Williams' Particularity Instructions.

Lastly, Williams complains that the District Court improperly rejected his proposed instructions regarding particularity. AOB at 43. Williams sought to introduce instructions "to the effect that a complaining witness must testify with 'some particularity' regarding the alleged incidents of abuse." AOB at 43;

6AA1316-18.

The District Court did not abuse its discretion in rejecting these proposed instructions. In Rose v. State, 123 Nev. 194, 204 (2007), the defendant proposed a similar "particularity" instruction, which stated, in part, that "the victim must testify with some particularity regarding each incident charge[d] for [the jury] to sustain a verdict of guilt on that particular charge." Id. (internal quotation marks omitted). While acknowledging that the instruction was a correct statement of the law, this Court explained that the defendant's proposed instruction "was sufficiently covered by other jury instructions regarding the State's burden of proof and the reasonable doubt standard." Id. at 205. In acknowledging that this instruction was a correct statement of the law, Rose cited LaPierre v. State, 108 Nev. 528 (1992)—the decision relied on exclusively by Williams in support of his argument that the District Court abused its discretion in refusing to give this instruction—and provided the following commentary:

> The discussion in LaPierre regarding the particularity required in the victim's testimony involves the sufficiency of the evidence. In other words, if there is no corroboration, then the victim's testimony must be sufficient to meet the State's burden of proof. The jury was properly instructed on that burden.

Rose, 123 Nev. at 205. Accordingly, this Court found that a separate instruction was unnecessary. Id. at 205.

Here, as in Rose, there was no need to give any of the three proposed

"particularity" instructions. The instructions proposed by Williams were sufficiently covered by the other jury instructions regarding the State's burden of proof and the reasonable doubt standard. Therefore, the District Court did not abuse its discretion in refusing Williams' proposed "particularity" instructions.

Moreover, any failure to give these instructions was harmless. The jury found Williams not guilty of Counts 10-15, likely because T.H. failed to testify with particularity regarding these alleged incidents. 4AA871. T.H.'s testimony described in detail three discrete incidents of sexual abuse; accordingly, the jury returned a verdict of guilty as to these three incidents, which were covered by Counts 3-9. The jury's verdict thus reflects that the jury was properly instructed and understood the requirement—which was implicit in the jury instructions regarding the State's burden of proof and the reasonable doubt standard—that the victim must testify with "some particularity" regarding the alleged incidents of abuse. That being the case, the failure to give the instructions proposed by Williams was harmless.

VI. The Evidence Was Sufficient To Support The Convictions.

"When reviewing a criminal conviction for sufficiency of the evidence, this Court determines whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt when viewing the evidence in the light most favorable to the prosecution." Brass v. State, 291 P.3d 145, 149-50 (2012) (internal citations omitted). When there is substantial evidence in support, the jury's

verdict will not be disturbed on appeal. Id. This court will not reweigh the evidence or evaluate the credibility of witnesses because that is the responsibility of the trier of fact. McNair v. State, 108 Nev. 53, 56 (1992). Further, circumstantial evidence alone may support a conviction. Collman v. State, 116 Nev. 687, 711 (2000).

Williams' convictions for Lewdness with a Child under the Age of 14 involved both A.H. and T.H. As for Counts 1 and 2 involving A.H., A.H. testified to two incidents in which Williams pulled up her shirt with the intent of gratifying his lust. 4AA914-18. The first incident involved Williams lifting up A.H's shirt and sucking her breasts. 4AA914-16. The second incident again involved Williams lifting A.H.'s shirt. 4AA917-18.

Williams, however, takes issue with A.H's credibility. According to Williams, "A.H's testimony lacked detail and carried no corroborating physical evidence." See AOB at 46. Williams, however, fails to understand that this Court will not reweigh the evidence or evaluate the credibility of witnesses because that is the responsibility of the trier of fact. McNair, 108 Nev. at 56. And here the jury obviously found A.H.'s testimony credible. Moreover, contrary to what Williams believes, there was no need for corroborating evidence so long as A.H.'s testimony was sufficient to satisfy all of the elements of the charged crime. See Gaxiola, 121 Nev. at 648. Here, A.H's testimony was sufficient to satisfy the elements of the offense described in NRS 201.230(1)(b).

As for the Lewdness Count 3 involving T.H., this count was premised on Williams' actions with T.H.'s buttocks. 2AA267 (alleging that Williams used "his penis to touch and/or rub and/or fondle the buttock(s)" of T.H.). Here, the evidence substantiating this count included T.H.'s testimony and DNA. T.H. testified to three different incidents in which Williams inserted his penis into her anus. 4AA842-47,863,865-69. Moreover, Williams' DNA was found on T.H.'s rectal swabs and in T.H.'s underwear. 4AA981-84,989-90,994; 5AA1039,1042,1096,1104.

As for the three sexual assault counts involving T.H., these counts were premised on Williams' penetration of T.H.'s vagina.[8] 2AA267-68. The evidence establishing that these crimes were committed by Williams again included T.H.'s testimony and DNA. T.H. testified to three different incidents in which Williams inserted his penis into her vagina. 4AA842-47,863,865-69. Moreover, Williams' DNA was found in T.H.'s underwear. 4AA981-84,989-90,994; 5AA 1039,1042,1096,1104.

Williams, however, takes issue with T.H's credibility. See AOB at 47. But, again, because the credibility of witnesses is the responsibility of the trier of fact, it is not for this Court to reevaluate T.H.'s testimony, which the jury has already found credible. McNair, 108 Nev. at 56. Williams further takes issue with the DNA

[8] Again, all three counts of Sexual Assault with a Minor under the Age of 14 of which Williams was convicted (namely, Counts 4, 6, and 8) involved T.H. alone. See 2AA267-68.

evidence, arguing that "the rectal swab presumptive test was [ ] negative," that "the amount of sperm cells Robertson allegedly identified on the slide fell bar below the expected range of cells in a sample that size" and "that several of the genetic markers she analyzed in these samples were below the 'interpretive threshold.' " AOB at 49-50.

Williams' arguments are nothing more than red herrings. As noted by the State in closing, the "presumptive tests" that Williams points to are simply preliminary tests. 5AA1239. The fact is that Robertson conducted further testing and was able to conclude that the profile she obtained was consistent with Williams' DNA. 4AA981-84,989-90,994; 5AA1039,1042,1096,1104. That the genetic markers analyzed were below the "interpretative threshold" is by no means inconsistent with the fact that Robertson was able to ultimately conclude that it was Williams' DNA found on the rectal swabs and in T.H.'s underwear. The jury therefore properly relied on the evidence.

Therefore, based on the foregoing, this Court should find that the evidence, when viewed in the light most favorable to the State, is sufficient to establish Williams' guilt of the three Lewdness counts and the three Sexual Assault counts beyond a reasonable doubt as determined by a rational trier of fact.

VII. The District Court Properly Denied Williams' Motion Seeking Dismissal Of Counsel.

Determining whether friction between a defendant and his attorney justifies

substitution of counsel is within the sound discretion of the trial court, and this Court will not disturb such a decision on appeal absent a clear abuse of discretion. Thomas v. State, 94 Nev. 605, 607 (1978). A defendant's motion for new counsel should not be granted absent a showing of good cause, which arises only from "a conflict of interest, a complete breakdown of communication, or an irreconcilable conflict which [could] lead . . . to an apparently unjust verdict." Gallego v. State, 117 Nev. 348, 363 (2001), abrogated on other grounds by Nunnery v. State, 127 Nev. 749 (2011). Good cause is not "determined solely according to the subjective standard of what the defendant perceives." Id. Importantly, "[t]he mere loss of confidence in appointed counsel does not constitute good cause." Id. While a defendant's lack of trust in counsel is a factor in the determination, a defendant must nonetheless provide the court with legitimate explanations for that lack of trust. Id.

A defendant may not request substitution of counsel based on his own refusal to cooperate with present counsel, because as this Court has noted, " '[s]uch a doctrine would lead to absurd results.' " Thomas, 94 Nev. at 608 (quoting Shaw v. United States, 403 F.2d 528, 529 (8th Cir. 1968)). Because counsel alone is responsible for tactical decisions regarding a defense, a mere disagreement between counsel and a defendant regarding such decisions cannot give rise to an irreconcilable conflict justifying substitution. See Rhyne v. State, 118 Nev. 1, 8 (2002). In particular, where a defendant disagrees with counsel's reasonable defense

strategy and wishes instead to present his own ill-conceived strategy, no conflict of interest arises. See Gallego, 117 Nev. at 363. Rather, attorney-client conflict warrants substitution "only when counsel and defendant are so at odds as to prevent presentation of an adequate defense." Id.

In reviewing a district court's denial of a motion for substitution of counsel, this Court examines three factors: "(1) the extent of the conflict; (2) the adequacy of the inquiry; and (3) the timeliness of the motion." Young v. State, 120 Nev. 963, 968 (2004).

On March 28, 2016—just one day before the trial was scheduled to begin—Williams filed his "Motion to Discharge Mr. Kevin Speed as Attorney of Record Pursuant to Nevada RPC 1.16." 1AA246-48. In this Motion, Williams requested that the Court discharge Mr. Speed as counsel of record "due to a complete and irreconcilable breakdown in communications and for other specific reasons that cannot be disclosed[.]" 1AA246. That very day, the Court held an inquiry into the matter. The Court's inquiry into the matter revealed that Williams' issue did not really involve a "complete and irreconcilable breakdown in communications" as Williams alleged in his motion but rather involved Williams' frustration with Mr. Speed's decision not to hand over discovery to Williams as well as Williams' frustration with Mr. Speed's tactical decisions. 2AA435-37. Accordingly, the District Court denied Williams' motion. 2AA438.

Taking on first the third factor laid out in Young, this Court should note that Williams' motion, which was presented the day before trial was set to begin, was untimely. Nonetheless, consistent with second factor laid out in Young, the Court conducted a thorough inquiry into Williams' allegation that there was a "complete and irreconcilable breakdown in communications." 1AA246; 2AA435-38. And, contrary to what Williams avers, the Court's inquiry rebutted the notion that "the attorney-client relationship had completed collapsed." AOB at 52. Rather, the Court's inquiry revealed that Williams was frustrated over matters that were outside of his purview. As to Williams' contention regarding discovery, the Court properly explained that counsel's decision not to hand over the discovery for Williams was for his own good. See 2AA435-36. As noted by the Court, there was a substantial risk that this discovery would be compromised given the minimal privacy Williams is afforded in the jail. Id. As for Williams' contention regarding his disagreement with counsel's tactical decisions, the Court explained how defense attorneys are entrusted with precisely those types of decisions and that Mr. Speed was competently fulfilling that role. 2AA437-38.

Therefore, based on the Young factors, this Court should find that the District Court did not abuse its discretion in denying Williams' untimely motion seeking dismissal of his counsel, which was essentially premised on Williams' erroneous

belief that he was entitled to maintain possession of the discovery in the case and on a mere disagreement about counsel's tactical decisions.

VIII. The Sentence Imposed Did Not Amount To Cruel And Unusual Punishment.

The Eighth Amendment to the United States Constitution as well as Article 1, Section 6 of the Nevada Constitution prohibits the imposition of cruel and unusual punishment. The Eighth Amendment and Nevada Constitution do not require the sentence to be strictly proportionate to the crime; they only forbid a sentence that is grossly disproportionate to the crime. Chavez v. State, 125 Nev. 328, 347-348 (2009). A sentence within the statutory limits is "not considered cruel and unusual punishment unless (1) the statute fixing punishment is unconstitutional or (2) the sentence is so unreasonably disproportionate to the offense as to shock the conscience." Id.

Additionally, the district court has wide discretion when sentencing. Id. at 348. This Court will not interfere with an imposed sentence unless the record shows prejudice from facts based on "impalpable or highly suspect evidence." Silks v. State, 92 Nev. 91, 94 (1976). The sentence should not be overruled absent an abuse of discretion. Houk v. State, 103 Nev. 659, 664 (1987). A punishment is excessive "if it (1) makes no measurable contribution to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering; or (2) is grossly out of proportion to the severity of the crime." Pickard v.

State, 94 Nev. 681, 684 (1978). Further, the sentencing judge may consider a variety of information to ensure "the punishment fits not only the crime, but also the individual defendant." Martinez v. State, 114 Nev. 735, 738 (1998).

NRS 201.230(2) provides that "a person who commits lewdness with a child under the age of 14 years is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served." NRS 200.366(3)(c) provides that a person who commits a sexual assault against a child under the age of 14 shall be punished "by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 35 years has been served."

Williams was sentenced in accordance with these statutes. For each of the three lewdness counts, the District Court sentenced Williams to 10 years to life in the NDC, with the sentences to run concurrent with each other. 2AA309. For each of the three sexual assault counts, the District Court sentenced Williams to 35 years to life in the NDC, with the sentences to run consecutive to each other. Id.

To the extent that Williams takes issue with the fact that the sentences for the sexual assault counts were imposed consecutively, the Court should find that the circumstances surrounding his abuse of T.H. and A.H. were particularly egregious and thus warranted the imposition of consecutive sentences. As noted by the State at

sentencing, the abuse of both A.H. and T.H. occurred over an extended period of time. 6AA1257. Morever, the sexual assault crimes, which involved T.H. exclusively, were particularly troubling. On three separate occasions, Williams took advantage of his position as a trusted member of the household to engage in sexual intercourse with the ten-year-old victim—specifically, by penetrating her with his penis both vaginally and anally. The Presentence Investigation Report ("PSI") further noted the extent of the impact that Williams' actions had on the family. See PSI at 7.[9]

Because the sentence imposed was in accordance with NRS 200.366(3)(c) and NRS 201.230(2) and because the sex crimes perpetrated by Williams were particularly egregious in nature, this Court should find that the sentence imposed was not so grossly disproportionate to those crimes as to constitute cruel and unusual punishment.

IX. Williams Has Failed To Demonstrate Cumulative Error Warranting Reversal.

This Court considers the following factors in addressing a claim of cumulative error: (1) the quantity and character of the error; (2) whether the issue of guilt is close; and (3) the gravity of the crime charged. Mulder v. State, 116 Nev.

[9] The State has filed a motion asking this Court to direct the district court to transmit Williams' Presentence Investigation Report contemporaneously with the filing of this Answering Brief.

1, 17 (2000). Moreover, a defendant is "not entitled to a perfect trial, but only to a fair trial." Ennis v. State, 91 Nev. 530, 533 (1975).

To be sure, Williams who was convicted of three counts of Lewdness with a Child under the Age of 14 and three counts of Sexual Assault with a Minor under Fourteen Years of Age was convicted of rather serious crimes. See Boyer v. State, 2016 Nev. Unpub. LEXIS 758, *16 (Nev. 2016) ("Unquestionably, sexual assault of a minor is a grave crime"). However, the first and second factors do not weigh in Williams' favor. As for the quantity and character of the error, Williams has not asserted any meritorious claims, and, thus, there is no error to cumulate. United States v. Rivera, 900 F.2d 1462, 1471 (10th Cir. 1990) ("[A] cumulative-error analysis should evaluate only the effect of matters determined to be error, not the cumulative effect of non-errors."). And, more importantly, the issue of guilt was not close. As discussed above, the State presented substantial evidence that Williams committed the crimes of which he was ultimately convicted. Therefore, Williams' claim of cumulative error has no merit and his conviction should be affirmed.

CONCLUSION

Based on the foregoing, the State respectfully requests that this Court affirm the Judgment of Conviction.

/ / /

/ / /

Dated this 17th day of May, 2017.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the type-volume limitations of NRAP 32(a)(8)(B) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points and contains 13,757 words.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 17th day of May, 2017.

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on May 17, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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