

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

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Elizabeth A. Brown  
Clerk of Supreme Court

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COREY THOMAS BARNETT,

Appellant,

*vs.*

THE STATE OF NEVADA,

Respondent.

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Docket No. 71132

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Appeal from a Judgment of Conviction  
Following a Jury Trial and Verdict  
Eighth Judicial District Court, Clark County  
The Honorable Douglas Smith, District Judge  
Case No. C-16-312887-1

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**APPELLANT'S OPENING BRIEF**

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### **NRAP 26.1 DISCLOSURE**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed pursuant to that rule. These representations are made so that the justices of this Court may evaluate any potential conflicts warranting disqualification or recusal.

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  - a. Ben Nadig
2. Publicly-held Companies Associated:
  - a. N/A
3. Law Firm(s) Appearing in the Court(s) Below:
  - a. Clark County District Attorney
  - b. Law Office of Benjamin Nadig, Chtd.

DATED this 26 of April, 2017.

/s/ Ben Nadig

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### **JURISDICTIONAL STATEMENT**

This is an appeal from a verdict following a jury trial held before the Honorable Douglas Smith in the Eighth Judicial District Court and the subsequent Judgment of Conviction. (2 Appellant's Appendix [AA] 129-30, 145-46.) This Court has jurisdiction to hear this appeal pursuant to NRS 177.015(3), which provides for the right to appeal a final judgment in a criminal case.

### **ROUTING STATEMENT**

This appeal is presumptively assigned to the Court of Appeals because it challenges only the sufficiency of the evidence presented at trial. NRAP 17(b)(1).

### **STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

There was insufficient evidence to support the jury's verdict of guilty on the charge of possession of a firearm by a prohibited person pursuant to NRS 202.360.

## **STATEMENT OF FACTS**

The facts that follow are those presented by the State at trial. On September 25, 2015, at around 9:00 AM, Las Vegas Metropolitan Police Detective Juan Fernandez, then a patrol officer, was dispatched to Lincoln Valley Road for a suspicious vehicle call. (1 AA 181:1-13, 183:13-184:3.) Officer Fernandez located the vehicle on the south side of the cul-de-sac. (*Id.* at 186:9-20.) Inside, Officer Fernandez found a woman, Ashley Allen, sleeping on the driver's side and Defendant-Appellant Corey Thomas Barnett sleeping on the passenger's side. (*Id.* at 187:20-188:12; 2 AA 14:15-15:12.) Officer Fernandez conducted a records check on the passengers; Ms. Allen had a traffic warrant. (1 AA 189:5-22.) The vehicle returned as registered to Irene Barnett, Mr. Barnett's mother, but it looked like a man and woman were living inside it. (*Id.* at 203:11-17; 2 AA 43:3-16.)

Officer Fernandez asked for assistance and Officer Christopher Deang responded to assist him. (1 AA 189:24-190:3; 2 AA 10:6-12:20.) The passengers got out of the vehicle at the officers' direction. (1 AA 190:11-17; 2 AA 15:22-16:8.) Officer Deang observed a firearm on the driver's side floorboard, and the officers then placed the passengers into handcuffs. (1 AA 192:3-193:20; 2 AA 18:19-19:1, 20:19-20.) Officers later discovered an airsoft – or pellet – gun on the passenger side. (1 AA 193:23-195:3; 2 AA 22:22-23:1,

25:17-23.) On searching Mr. Barnett, Officer Fernandez found two baggies of methamphetamine. (1 AA 196:11-21; 2 AA 21:13-17, 97:13-98:22.)

### **STATEMENT OF THE CASE**

On February 24, 2016, the State of Nevada filed an Indictment charging Defendant-Appellant Corey Thomas Barnett with trafficking in a controlled substance and ownership or possession of a firearm by a prohibited person. (1 AA 1-2.) The State filed an Amended Indictment on April 7, 2016, substituting a count of possession of a controlled substance for the trafficking count. (*Id.* at 4-5.)

Trial commenced on April 11, 2016, and lasted for two days. (1 AA 6; 2 AA 1.) The jury returned verdicts of guilty on both counts. (2 AA 129-30.) On June 15, 2016, the district court sentenced Mr. Barnett as a habitual criminal pursuant to NRS 207.010(a) to 12 to 30 months on the possession of a controlled substance count and a concurrent sentence of 96 to 240 months for the possession of a firearm by a prohibited person count. (*Id.* at 143:13-23, 145-46.) This appeal follows. (*Id.* at 147.)

### **SUMMARY OF THE ARGUMENT**

The evidence presented at trial did not establish that Mr. Barnett was capable of exercising dominion or control over the firearm located in the vehicle. The jury's verdict finding him guilty of that count beyond a reasonable doubt was therefore in error and must be reversed.

## ARGUMENT ON THE ISSUES

### **I. The Evidence Adduced at Trial was Insufficient to Sustain a Finding of Guilty on the Charge of Possession of a Firearm by a Prohibited Person.**

At trial, the State presented evidence that there was a gun in the vehicle where Mr. Barnett and Ms. Allen were sleeping. The State also presented evidence that, while the interior of the car was small, the firearm in question was located on the driver's side, under the seat where Ms. Allen was sitting. Mr. Barnett was therefore not in possession of the firearm, and the jury's verdict was erroneous.

A defendant in a criminal action is entitled to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution. The Constitution prohibits the criminal conviction of any person except upon proof of guilt beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364 (1970); *Edwards v. State*, 90 Nev. 255, 258-59, 524 P.2d 328, 331 (1974). In reviewing an insufficiency of the evidence claim, a court must determine whether, viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). A verdict will be upheld only if supported by "substantial evidence." *Cunningham v. State*, 94 Nev. 128, 130, 575 P.2d 936, 937 (1978). The burden in a criminal case is always on the prosecution to prove that the accused



has committed an act in violation of a criminal statute. *See, e.g., Johnson v. Florida*, 391 U.S. 596, 598 (1968). A claim of self-defense requires the State to prove beyond a reasonable doubt that the defendant did not act in self-defense. *Runion v. State*, 116 Nev. 1041, 1052, 13 P.3d 52, 59 (2000).

In *Hughes v. State*, this Court found sufficient evidence when the gun was found in a car behind the metal adjustment bar under the driver's seat, pointing forward, with the hammer pulled back, and the defendant was seated behind the driver. 116 Nev. 975, 976, 982, 12 P.3d 948, 949, 952 (2000). In comparison, in *Woodall v. State*, this Court found insufficient evidence when nothing showed that the defendant "possessed or exercised dominion and control over the firearm in question." 97 Nev. 235, 236, 627 P.2d 402, 402 (1981). In that case, the weapon was found in a vehicle occupied by two individuals, and "the circumstances [did] not resolve who placed [the gun] there." *Id.*

The evidence presented here, like in *Woodall*, did not rise beyond the threshold of a reasonable doubt. None of the witnesses testified that they ever saw Mr. Barnett in actual possession of the firearm. Rather, the jury heard evidence that the firearm was found underneath the driver's seat, with the butt protruding from underneath the front of the seat where Ms. Allen

was sitting. (1 AA 187:20-188:12, 192:3-193:20; 2 AA 14:15-15:12, 18:19-19:1, 20:19-20.)

The jury's verdict in light of the lack of evidence was untenable, as it was not supported by "substantial evidence" that Mr. Barnett committed the charged offenses. For that reason, this conviction should be overturned.

### **CONCLUSION**

For these reasons, Mr. Barnett would ask this Court to vacate the conviction and sentence for possession of a firearm by a prohibited person in this case.

DATED this 26 of April, 2017.

/s/ Ben Nadig

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**ATTORNEY'S CERTIFICATE OF COMPLIANCE**

I certify that I have read this brief and, to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I certify that this brief is typed in 14-point Georgia font using Microsoft Word 2016, is 14 pages and 2329 words long, and complies with the typeface and -style requirements of NRAP 32(a)(4)-(6), as well as the page length requirements of NRAP 32(a)(7)(A). I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure and/or subsequent orders of this Court and with NRAP 28(e), which requires every assertion in the brief regarding matters in the record be supported by a reference to a page 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 26 of April, 2017.

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## **CERTIFICATE OF SERVICE**

I hereby certify that on the 26 of April, 2017, I served this document on the following:

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### **AFFIRMATION**

Pursuant to NRS 239B.030, this document contains no social security numbers.

/s/ Ben Nadig

Ben Nadig

4-26-17

Date