IN THE SUPREME COURT OF THE STATE OF NEVADA

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TERRENCE BOWSER,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No. 71516

RESPONDENT'S SUPPLEMENTAL ANSWERING BRIEF

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

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STATEMENT OF THE ISSUE

Whether Appellant's due process rights were not violated by the increased sentence after a new trial.

STATEMENT OF THE CASE

On April 29, 2005, Appellant Terrence Karyan Bowser was charged by way of Indictment with: Count 1 – Conspiracy to Commit Murder (Felony - NRS 200.010, 200.030, 199.480); Count 2 – Murder with Use of a Deadly Weapon (Felony - NRS 200.010, 200.030, 193.165); Count 3 – Conspiracy to Discharge Firearm Out of a Motor Vehicle (Gross Misdemeanor - NRS 202.287, 199.480); Count 4 – Discharging Firearm Out of Motor Vehicle (Felony - NRS 202.287); Count 5 – Conspiracy to Discharge Firearm at or into Structure, Vehicle, Aircraft,

or Watercraft (Gross Misdemeanor - NRS 202.285, 199.480); and Count 6 – Discharging Firearm at or into Structure, Vehicle, Aircraft, or Watercraft (Felony - NRS 202.285). 1 AA 1 – 7.

On October 3, 2007, a jury trial convened and on October 11, 2007, the jury found Bowser guilty as charged on all counts. 1 AA 109 – 10. On October 16, 2007, the jurors returned a verdict of 40 years to Life on Count 2. 1 AA 111. On December 5, 2007, Bowser was sentenced to the Nevada Department of Corrections ("NDOC") as follows: as to Count 1 – a maximum of 120 months with a minimum parole eligibility of 24 months; as to Count 2 – Life with a minimum parole eligibility of 20 years, plus an equal and consecutive term of Life with 20 years minimum parole eligibility; as to Count 3 – 365 days with credit for time served; as to Count 4 – a maximum of 60 months with a minimum parole eligibility of 12 months, to run concurrent with Counts 1 and 2; as to Count 5 – 365 days with credit for time served; and as to Count 6 – to a maximum of 60 months with a minimum parole eligibility of 12 months, to run concurrent with Counts 1 through 5. 1 AA 112 – 14. Bowser received 1,038 days credit for time served. Id. A Judgment of Conviction was filed on December 13, 2007. Id.

On January 2, 2008, Bowser filed a Notice of Appeal. 1 AA 115 – 17. On February 26, 2010, the Nevada Supreme Court issued an Order of Reversal and Remand. 1 AA 118 – 27. Remittitur issued March 27, 2010. Id.

On May 18, 2015, Bowser's retrial convened and lasted six days. 2 AA 173 - 5 AA 1133. On May 26, 2015, the jury found Bowser guilty of Count 2 – Voluntary Manslaughter with Use of a Deadly Weapon, Count 4 – Discharging Firearm Out of a Motor Vehicle, and Count 6 – Discharging Firearm at or into Structure, Vehicle, Aircraft, Watercraft. 6 AA 1200 – 01. However, the jury found Bowser not guilty of Counts 1, 3, and 5. Id.

On August 19, 2015, Bowser was sentenced to the NDOC as follows: as to Count 2 – to a maximum of 120 months with a minimum parole eligibility of 48 months, plus an equal and consecutive term of 120 months with a minimum parole eligibility of 48 months for use of a Deadly Weapon; as to Count 4 – to a maximum of 120 months with a minimum parole eligibility of 48 months, to run consecutive to Count 2; and as to Count 6 – to a maximum of 72 months with a minimum parole eligibility of 28 months, to run concurrent with Count 4. 6 AA 1236 – 38. Bowser received 3,852 days credit for time served. Id. A Judgment of Conviction was filed on August 31, 2015. Id.

On May 20, 2016, Bowser filed a Post-Conviction Petition for Writ of Habeas Corpus. 6 AA 1243 – 67. On August 15, 2016, the district court granted Bowser's Post-Conviction Petition for Writ of Habeas Corpus. 6 AA 1268 – 75.

On October 13, 2016, Bowser filed a Notice of Appeal. 6 AA 1276 – 77. On February 8, 2017, Bowser filed his Opening Brief. On May 1, 2017, the State filed its Answering Brief. On May 9, 2017, Bowser filed his Reply Brief.

On June 14, 2017, Bowser filed a Motion for Leave to File Supplemental Opening Brief. On July 6, 2017, the Nevada Court of Appeals granted Bowser's Motion. On July 19, 2017, Bowser filed his Supplemental Brief. On July 26, 2017, the State filed its Supplemental Answering Brief. On July 28, 2017, Bowser filed his Supplemental Reply Brief.

On December 15, 2017, in an unpublished Order, the Nevada Court of Appeals affirmed Bowser's Judgment of Conviction. On December 22, 2017, Bowser petitioned this Court for review. On February 23, 2018, this Court filed an Order directing the State to answer the petition within 15 days. The State filed its Answer to Petition for Review on March 9, 2018. On March 21, 2018, this Court granted the Petition for Review and ordered supplemental briefing. Bowser filed his Supplemental Brief ("Supp") on April 19, 2018. The State responds herein.

STATEMENT OF THE FACTS

On January 31, 2005, Las Vegas Metropolitan Police Department ("Metro") officers were dispatched to a local area regarding a shooting. 4 AA 667. Officers learned that a male, later identified as John McCoy, had been shot and crashed into the property wall of a local residence. 4 AA 669. Upon arrival, McCoy told officers

that the shooter was in a brown Lincoln and that there were two black males inside the car. 4 AA 680 – 81.

A short time later, a North Las Vegas Police Department ("NLVPD") officer in a nearby area observed a Lincoln Continental, without front or rear license plates, traveling with its headlights turned off. 4 AA 705, 719 – 20. The vehicle then turned its headlights on and as it passed the officer's vehicle, the officer observed that the two male occupants were wearing dark hoods that were pulled up over their heads. 4 AA 706. The officer made a U-turn and began to follow the vehicle. Id. The officer also activated his lights and sirens, but the driver of the vehicle attempted to evade the officer. 4 AA 706 – 08. The driver made several turns and finally pulled into a driveway. 4 AA 709 – 10. The driver attempted to back the vehicle out of the driveway, but the officer drew his weapon and commanded the driver to stop the vehicle. Id. Both occupants were taken into custody. 4 AA 712. The driver was identified as Bowser, and the passenger was identified as the co-defendant, Jamar R. Green. 4 AA 712 – 13.

A pistol grip pump action shotgun was found on the gravel next to the driveway of the residence. 4 AA 716, 732. The shotgun was empty; however, a box of shotgun shells was seen in plain view on the front seat of the vehicle. 4 AA 715 – 16. Inside the vehicle, three spent shotgun cases were observed on the front

floorboard. 4 AA 715. Officers were later informed that McCoy died as a result of his injuries. 4 AA 691.

At the Clark County Detention Center ("CCDC"), officers made contact with Bowser and he agreed to answer questions. 1 AA 8 – 97. Bowser initially stated the shooting was a result of a road rage incident, but later admitted the incident was not the result of road rage. 1 AA 54, 74 – 76. Bowser stated that he and Green joked about what it would be like to shoot into a vehicle. 1 AA 74 – 76. Bowser told officers he put the box of shotgun shells in his car before he went to meet Green at his residence. 1 AA 40. Bowser stated he had been drinking Hennessey and was drunk. 1 AA 36. After he had something to eat at Green's house, he and Green decided to go cruising. 1 AA 37 – 38.

Bowser stated Green had his shotgun on his lap as they drove around. 1 AA 38, 77. Eventually, Bowser and Green drove by McCoy. 1 AA 44. Green then told Bowser that McCoy "was talking shit." Id. Bowser did not actually hear McCoy "talking shit," but took Green's word that he was. 1 AA 47. In addition to not being able to hear anything coming from McCoy's vehicle, Bowser stated that he could not see into the vehicle. 1 AA 68. Bowser and Green then began to follow McCoy. 1 AA 46. Bowser and Green pulled up beside McCoy. 1 AA 49. Bowser stated that he told Green to shoot McCoy. 1 AA 95. Green pointed the shotgun out of the window and Bowser pulled up next to the driver's side of the vehicle. 1 AA 67 – 69.

Bowser stated he heard Green fire at least two rounds. 1 AA 49 – 50. As Bowser made a U-turn to drive away, they were spotted by a NLVPD officer who tried to stop them. 1 AA 61 – 62.

SUMMARY OF THE ARGUMENT

Bowser argues that the sentence imposed after his retrial violated Double Jeopardy because the reasons for the district court's increased sentence for Counts 4 and 6 do not affirmatively appear in the record. Supp. at 2. However, the district court did not abuse its discretion and the Court of Appeals properly affirmed the Judgment of Conviction. The Court of Appeals found that Bowser failed to provide an adequate appellate record and thus could not determine whether the reasons for an increased sentence "affirmatively appear on the record." Thus, the Court of Appeals correctly affirmed the Judgment of Conviction and this Court should reaffirm, without even reaching the merits.

However, if this Court elects to reach the merits, the district court did not abuse its discretion and the Court of Appeals properly affirmed the Judgment of Conviction. When a conviction is successfully appealed and reversed, jeopardy is not considered to terminate because the first trial and the appeal, and the second trial required by the appeal, are the same prosecution. Id. However, an exception to this is the principle that a sentencing court cannot impose a harsher sentence after a successful appeal "with the purpose of punishing a successful appeal." North

Carolina v. Pearce, 395 U.S. 711, 725, 89 S. Ct. 2072, 2080 (1969)).

The United States Supreme Court stated that "vindictiveness against a defendant for having successfully attacked his first conviction must play no part in the sentence he receives after a new trial." Id. Pearce held that "whenever a judge imposes a more severe sentence upon a defendant after a new trial, the reasons for his doing so must affirmatively appear" to ensure the absence of vindictiveness. Id. at 726, 670. However, in 1989, the United States Supreme Court explicitly narrowed the presumption of vindictiveness announced in Pearce. "While the Pearce opinion appeared on its face to announce a rule of sweeping dimension, our subsequent cases have made clear that its presumption of vindictiveness 'do[es] not apply in every case where a convicted defendant receives a higher sentence on retrial.'" Ala. v. Smith, 490 U.S. 794, 799, 109 S. Ct. 2201, 2204 (1989) (citing Texas *v.* McCullough, 475 U.S. 134, 138, 106 S. Ct. 976, 978-979 (1986)). In each case, the Court must look to the need, under the circumstances, to "guard against vindictiveness in the resentencing process." Chaffin *v.* Stynchcombe, 412 U.S. 17, 25 (1973). Thus, the United States Supreme Court has limited the Pearce presumption of vindictiveness to circumstances in which "there is a reasonable likelihood that the increase in sentence is the product of actual vindictiveness on the part of the sentencing authority. Where there is no such reasonable likelihood, *the burden remains upon the defendant to prove actual vindictiveness*." Smith, 490 U.S.

at 799-800, 109 S. Ct. at 2205 (emphasis added) (internal citations omitted).

The Court of Appeals utilized the correct standard. Judge Tao looked to the totality of the circumstances to determine the need, under the circumstances, to guard against vindictiveness in the resentencing process. The Concurrence determined that a different judge presided over the 2015 and 2007 sentencings, the prosecutors in the two trials and sentencings were different, at least one of Bowser's defense attorneys differed. Id. Moreover, the way the case was tried and the arguments presented by the State and the defense differed. Id. The second jury convicted Bowser of different crimes that carried different sentencing ranges. Id. Further, Judge Tao found that "the 2015 sentencing judge did not impose the maximum sentence for which Bowser was eligible; one would think that a judge operating from pure vindictiveness would have done precisely that." Id. Based on those factors, Judge Tao concluded "that there is simply no reason to presume that the second (notably shorter) sentence must have been the product of judicial vindictiveness rather than simply a reflection of so much about the case being so different on re-trial." Id.

Accordingly, the district court did not abuse its discretion in sentencing and the Court of Appeals did not err in affirming the Judgment of Conviction.

ARGUMENT

I. THE SENTENCE IMPOSED DID NOT VIOLATE BOWSER'S DUE PROCESS RIGHTS

Bowser argues that the sentence imposed after his retrial violated Double

Jeopardy because the reasons for the district court's increased sentence for Counts 4 and 6 do not affirmatively appear in the record. Supp. at 2. However, the district court did not abuse its discretion and the Court of Appeals properly affirmed the Judgment of Conviction.

The Court of Appeals found that Bowser failed to provide an adequate appellate record. Order at 8. Therefore, the majority opinion found that there can be no determination regarding whether the reasons for an increased sentence affirmatively appear on the record. Id. Bowser failed to present to the Court of Appeals with the first sentencing transcript, first Pre-Sentence Investigation Report ("PSI"), or any other documents related to his first sentencing hearing, and the PSI from his retrial sentencing hearing. Id. Thus, the Court of Appeals correctly held that it could not determine whether the reasons for an increased sentence "affirmatively appear on the record" when it lacks an adequate appellate record. Id. The Court of Appeals "assume[d] the missing portions of the record support[ed] the district court's decision, and [did] not reverse on this basis." Id. (citing Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) (The burden to make a proper appellate record rests on appellant.); De Santiago-Ortiz v. State, No. 67424, 2016 WL 699867; and Cuzze v. Univ. & Cmty. College Sys., 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's

decision.)). Thus, the Court of Appeals correctly affirmed the Judgment of Conviction and this Court should reaffirm, without even reaching the merits.

However, if this Court elects to reach the merits, the district court did not abuse its discretion and the Court of Appeals properly affirmed the Judgment of Conviction. Nevada's Double Jeopardy Clause provides that "[n]o person shall be subject to be twice put in jeopardy for the same offense." Nev. Const. art. 1 § 8(1). The Nevada Supreme Court refers to United States Supreme Court precedent interpreting the Fifth Amendment as controlling authority on how Nevada's clause should be interpreted. Holbrook v. State, 90 Nev. 95, 98, 518 P.2d 1242, 1244 (1974) (citing North Carolina v. Pearce, 395 U.S. 711, 725, 89 S. Ct. 2072, 2080 (1969)). "Once a defendant is placed in jeopardy for an offense, and jeopardy terminates with respect to that offense, the defendant may neither be tried nor punished a second time for the same offense." Sattazahn v. Pennsylvania, 537 U.S. 101, 106, 123 S. Ct. 732, 736 (2003).

When a conviction is successfully appealed and reversed, jeopardy is not considered to terminate because the first trial and the appeal, and the second trial required by the appeal, are the same prosecution. Id. However, an exception to this is the principle that a sentencing court cannot impose a harsher sentence after a successful appeal "with the purpose of punishing a successful appeal." Pearce, 395 U.S. at 723 – 25, 89 S. Ct. at 2079 – 80. The United States Supreme Court stated

that "vindictiveness against a defendant for having successfully attacked his first conviction must play no part in the sentence he receives after a new trial." Id. Pearce held that "whenever a judge imposes a more severe sentence upon a defendant after a new trial, the reasons for his doing so must affirmatively appear" to ensure the absence of vindictiveness. Id. at 726, 670. Thus, Pearce held that in some circumstances vindictiveness may be presumed. Id.

Based on Pearce, Bowser argues that the trial court had a duty to overcome the presumption of vindictiveness by affirmatively stating its reasons for the harsher sentence. Supp. at 2. Even though the Court of Appeals determined that the merits of this issue need not, and could not, be reached due to Bowser's failure to provide an adequate record, it issued a concurrence to "explore the nuances of Bowser's double jeopardy argument." Order at 8 – 9.

The concurrence stated that the vindictiveness exception to double jeopardy is not broad. Id. at 14. In 1989, the United States Supreme Court explicitly narrowed the presumption of vindictiveness announced in Pearce. "While the Pearce opinion appeared on its face to announce a rule of sweeping dimension, our subsequent cases have made clear that its presumption of vindictiveness 'do[es] not apply in every case where a convicted defendant receives a higher sentence on retrial.'" Ala. v. Smith, 490 U.S. 794, 799, 109 S. Ct. 2201, 2204 (1989) (citing Texas *v.* McCullough, 475 U.S. 134, 138, 106 S. Ct. 976, 978-979 (1986)). In McCullough,

the United States Supreme Court stated:

> The Pearce requirements thus do not apply in every case where a convicted defendant receives a higher sentence on retrial. Like other "judicially created means of effectuating the rights secured by the [Constitution]," Stone *v.* Powell, 428 U.S. 465, 482 (1976), we have restricted application of Pearce to areas where its "objectives are thought most efficaciously served," 428 U.S., at 487. Accordingly, in each case, we look to the need, under the circumstances, to "guard against vindictiveness in the resentencing process." Chaffin *v.* Stynchcombe, 412 U.S. 17, 25 (1973) (emphasis omitted).

475 U.S. at 138, 106 S. Ct. at 978-979. Thus, the United States Supreme Court has limited the Pearce presumption of vindictiveness to circumstances in which "there is a reasonable likelihood that the increase in sentence is the product of actual vindictiveness on the part of the sentencing authority. Where there is no such reasonable likelihood, *the burden remains upon the defendant to prove actual vindictiveness*." Smith, 490 U.S. at 799-800, 109 S. Ct. at 2205 (emphasis added) (internal citations omitted).

The Supreme Court cases decided since Pearce demonstrate that the application of the rules depend on the particular circumstances presented. State v. Sierra, 361 Ore. 723, 741, 399 P.3d 987, 998-999 (2017). Courts look to the particular circumstances presented to determine whether there is an apparent need to "guard against vindictiveness in the resentencing process." Chaffin , 412 U.S. at 24. In circumstances where there is a second sentencer, the risk is low, and the second sentencer is not required to articulate the reasons for a more severe sentence, and a

failure to do so will not give rise to a presumption of vindictiveness. Sierra, 361 Ore. at 741, 399 P.3d at 998-999. The Supreme Court's post-Pearce cases can be read more broadly to indicate an intent to dispense with the requirement that a judge who imposes a second, harsher sentence must articulate its reasons for doing. See Gonzales v. Wolfe, 290 Fed Appx 799, 813 (6th Cir 2008).

The Supreme Court has recognized that an exception to the presumption of vindictiveness is made where a different judge imposes sentence after appeal. McCullough, 475 U.S. at 140. This exception arises from the recognition that a sentencing judge uninvolved in the imposition of the earlier sentence would lack a "personal stake" in the outcome of later proceedings and would thus have little motive to act vindictively. Id. at 140 n.3. In Wolfe, the court stated:

> The judge that sentenced Gonzales after his first trial was not the same as the one who sentenced him at his third trial. As a result, no presumption of vindictiveness applies, and Gonzales must demonstrate actual vindictiveness on the part of the sentencing judge. Since Gonzales has offered no such proof, the state court's holding that Gonzales' sentence did not violate Pearce was not an unreasonable application of federal law.

290 Fed. Appx. at 813.

Bowser attempts to distinguish McCullough and Smith. Supp. at 12 – 13. Bowser argues that McCullough is distinguishable because it lacks "the important element of a reversal by a higher tribunal." Supp. at 12. However, McCullough stated:

> Beyond doubt, vindictiveness of a sentencing judge is the evil the Court sought to prevent *rather than simply enlarged sentences after a new trial.* The Pearce requirements thus do not apply in every case where a convicted defendant receives a higher sentence on retrial. Like other "judicially created means of effectuating the rights secured by the [Constitution]," Stone *v.* Powell, 428 U.S. 465, 482 (1976), *we have restricted application of* Pearce *to areas where its "objectives are thought most efficaciously served,"* 428 U.S., at 487. *Accordingly, in each case, we look to the need, under the circumstances, to "guard against vindictiveness in the resentencing process."* Chaffin *v.* Stynchcombe, 412 U.S. 17, 25 (1973).

McCullough, 475 U.S. at 138 (emphasis added). Thus, the Court considered the totality of the circumstances resulting in the lengthier sentence. Id. The circumstances leading to the new trial was one of the factors the Court analyzed; however, it was not the only factor as Bowser attempts to argue. The Court went on to state:

> The presumption *is also inapplicable because different sentencers assessed the varying sentences that McCullough received. In such circumstances, a sentence "increase" cannot truly be said to have taken place.* In Colten v. Kentucky, 407 U.S. 104, which bears directly on this case, we recognized that *when different sentencers are involved, "[it] may often be that the [second sentencer] will impose a punishment more severe than that received from the [first]. But it no more follows that such a sentence is a vindictive penalty for seeking a [new] trial than that the [first sentencer] imposed a lenient penalty.*"

McCullough, 475 U.S. at 138 – 140 (emphasis added). Accordingly, the fact that McCullough's sentences were imposed by different judges played a significant role in the Court finding that the presumption is inapplicable. Similarly here, the

presumption is inapplicable because different sentencers assessed the varying sentences and thus the sentence is not vindictive, rather the first sentencer imposed a more lenient penalty.

Bowser also attempts to distinguish Smith arguing that its holding only delineates between guilty plea agreements and trials regarding a presumption of vindictiveness. Supp. at 13. While Smith did hold that no presumption arises when the first sentence was after a guilty plea agreement and the second after a trial, the Court still reaffirmed that the Pearce presumption of vindictiveness was narrowed. Smith, 490 U.S. at 799. The Court simply analyzed the narrowed rule to determine whether the presumption applies in that specific circumstance and found that it did not. Id. However, Smith does not hold that only in cases with the same exact circumstances does the presumption not apply. Id. Rather, the relevant inquiry is whether "the increase in sentence is not more likely than not attributable to the vindictiveness on the part of the sentencing judge." Id. Here, the increase in Bowser's sentence is not more likely than not attributable to the vindictiveness on the part of the sentencing judge because the sentencing judge was a different judge with a fresh take, a different perspective, and his own discretion. The second judge was unlikely to have a "personal stake" in the prior conviction or to be "sensitive to the institutional interests that might occasion higher sentences." Id. at 794.

The Concurrence utilized the correct standard, stating:

> The critical question is whether the second, harsher sentence was imposed solely due to vindictiveness rather than other legitimate sentencing considerations such as newly discovered information since the first sentence, more detailed information about things already known before the first sentence, or simply a "fresh determination of guilt" by a new jury or new tribunal.

Order at 14 – 15. Judge Tao agreed with the majority opinion that since Bowser failed to provide an adequate appellate record, there was no way for the court to "'presume' that the 2015 sentencing judge must have acted out of vindictiveness toward Bowser and nothing else." Id. at 15 (citing United States v. Lincoln, 581 F.2d 200, 201 (9th Cir. 1978)). However, Judge Tao also chose to "go a step further and conclude that, even if copies of the reports had been provided, and even if they proved to contain identical information, this isn't the kind of case where vindictiveness would be presumed." Id. at 15 – 16. Judge Tao looked to the totality of the circumstances to determine the need, under the circumstances, to guard against vindictiveness in the resentencing process. The Concurrence determined that a different judge presided over the 2015 and 2007 sentencings, the prosecutors in the two trials and sentencings were different, at least one of Bowser's defense attorneys differed. Id. Moreover, the way the case was tried and the arguments presented by the State and the defense differed. Id. The second jury convicted Bowser of different crimes that carried different sentencing ranges. Id. Further, Judge Tao found that "the 2015 sentencing judge did not impose the maximum sentence for which Bowser was eligible; one would think that a judge operating from pure vindictiveness would

have done precisely that." Id. Based on those factors, Judge Tao concluded "that there is simply no reason to presume that the second (notably shorter) sentence must have been the product of judicial vindictiveness rather than simply a reflection of so much about the case being so different on re-trial." Id.

Accordingly, the district court did not abuse its discretion in sentencing and the Court of Appeals did not err in affirming the Judgment of Conviction.

CONCLUSION

Based on the forgoing, the State respectfully requests that this Court affirm the Nevada Court of Appeals decision and affirm Bowser's Judgment of Conviction.

Dated this 21st day of May, 2018.

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 2003 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionately spaced, has a typeface of 14 points of more, contains 4,347 words and 18 pages.
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 21st day of May, 2018.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 21st day of May, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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