IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH LAGUNA,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No. 71939

RESPONDENT'S ANSWERING BRIEF

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

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JOSEPH LAGUNA, Appellant, v. THE STATE OF NEVADA, Respondent.	Case No. 71939

RESPONDENT'S ANSWERING BRIEF

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

ROUTING STATEMENT

This proceeding is appropriately retained by the Supreme Court. The Court of Appeals does not have jurisdiction because this is appeal involves conviction for offenses that are category A and B felonies. NRAP 17(b)(2)(A).

STATEMENT OF THE ISSUE(S)

1. Whether the Court was within its' discretion to admit properly noticed expert testimony.
2. Whether the Court was within its' discretion to admit non-hearsay testimony.
3. Whether Laguna was convicted by sufficient evidence.

STATEMENT OF THE FACTS

In or around July, 2014, Summer Larsen ("Summer") broke into her estranged husband, Joey Larsen's ("Larsen"), house and stole $12,000 and approximately 12 pounds of marijuana.[1] 11 LA 2634.[2] She later told co-defendant David Murphy ("Murphy"), that she had done so, and he asked her why she did not bring him along. 11 LA 2635. Summer suggested that they could burglarize Larsen's supplier's house. 11 LA 2635-36. Summer told Murphy that Larsen's supplier obtained between 100-200 pounds of marijuana weekly, and described the procedure whereby Larsen's supplier obtained the marijuana and whereby Larsen, afterwards, purchased marijuana from his supplier. 11 LA 2636-38. This conversation occurred approximately three weeks prior to the events of this case. 11 LA 2638-39. A few days after the conversation, Summer showed Murphy where Larsen's supplier's house was located. 11 LA 2639. Murphy and Summer had several more conversations about robbing Larsen's supplier. Id.

On September 20, 2014, Murphy told co-defendant Jorge Mendoza ("Mendoza") that he knew of a place they could burglarize to help Mendoza get some money. 18 LA 4425. Mendoza initially dismissed the conversation. 18 LA 4426. At 4:00 a.m. on September 21, 2014, Murphy called Mendoza, and Mendoza

[1] Summer Larsen is also known as Summer Rice. Id.

[2] For the Court's convenience, the State adopts Larsen's abbreviation and refers to Appellant's Appendix as "LA."

drove his Nissan Maxima to Murphy's house. 18 LA 4426-27. Mendoza picked up Murphy, and the two of them went to Appellant Joseph Laguna's ("Laguna") house. 18 LA 4427. Mendoza, following Laguna's directions, then drove to Robert Figueroa's ("Figueroa") house, arriving around 7:30 a.m. 18 LA 4428-29. Figueroa got into the car with a duffel bag. 18 LA 4429. Mendoza, Laguna, and Figueroa then drove to an AMPM gas station to meet back up with Murphy. 18 LA 4450. Murphy had an older white pick-up truck, and was waiting with a Hispanic woman with tattoos. 18 LA 4432. The woman drove Mendoza's vehicle, and Murphy led in his pick-up truck. 18 LA 4433-34. The two vehicles drove to the neighborhood where Larsen's supplier lived, but a lawn maintenance crew was detailing a yard a few houses away. 18 LA 4436-37. Mendoza suggested they not burglarize the house; Figueroa said they should. 18 LA 4437. Figueroa was going to breach the door, and Mendoza was to run in and steal the duffel bag containing the marijuana. Id. Ultimately, no burglary occurred because the woman drove Mendoza's car out of the neighborhood. 18 LA 4439-40. The group then proceeded back to Laguna's house, where they engaged in further discussions about trying again, or robbing somewhere else. 18 LA 4440. Mendoza and Figueroa left shortly thereafter. 18 LA 4442.

Around 6:00 p.m., Murphy told Mendoza to pick up Figueroa. 19 LA 4475. Mendoza did so, then proceeded to Laguna's house, stopping on the way at

Mendoza's house so that Mendoza could arm himself with a Hi-point rifle. 19 LA 4476-78. When they arrived at Laguna's house, Laguna came outside and Murphy arrived. 19 LA 4478-79. Figueroa asked who they were going to rob, and Murphy answered. 19 LA 4480-81. Eventually, the four of them left in Mendoza's car, with Murphy driving because he knew where they were going. 19 LA 4481-82. They drove to Larsen's house, and decided how to break into it on the way. 19 LA 4482-84. Figueroa was to enter the house, get everyone under control, Mendoza was to enter the house and grab the marijuana from upstairs, and Laguna was to stay outside and provide cover in case someone unexpectedly appeared. 19 LA 4485. When they arrived, Murphy dropped them off, drove a short distance up the street, and made a u-turn to face the house to prepare to drive them away. 19 LA 4484-86.

Figueroa hit the door first, breaking it open on the second attempt. 19 LA 4488-89. Figueroa entered the house, and Mendoza remained near the front door with his rifle. 19 LA 4489. Shortly thereafter, gunfire erupted. 19 LA 4490. Figueroa was struck by a bullet in his face, dropped to the floor, and then was struck on his left side as he turned to flee out the door. 15 LA 3710. Figueroa ran down the street. 15 LA 3710. Mendoza began firing his rifle while backing away and was shot in the leg and fell into the street. 19 LA 4493-94. Laguna ran out into the street as well. 19 LA 4494. Mendoza could not walk, so he scooted away from the house with the rifle still in his hands. 19 LA 4497-99. Mendoza fired his rifle at the house, killing Monty

Gibson. 19 LA 4500-01; 11 LA 2577. While the shooting was occurring, Murphy picked up Laguna and fled the scene, stranding Mendoza and Figueroa. 15 LA 3716; 16 LA 3831; 17 LA 4069-70. Mendoza scooted to an abandoned car and crawled inside, where he waited until the police followed his blood trail and apprehended him. 19 LA 4504-06.

Figueroa managed to escape down the street and hide in a neighbors' back yard for several hours. 15 LA 3716-18. Figueroa called Laguna, who did not answer; Murphy called Figueroa and told him that he was not going to pick him up.[3] 15 LA 3718-20; 16 LA 3834. Figueroa then called "everybody in [his] phone" over the next 8-9 hours until his sister agreed to pick him up. 16 LA 3834-38. By then, Mendoza had been apprehended and everyone else had escaped. Murphy later drove Mendoza's wife to Laguna's house so that she could retrieve Mendoza's car. 12 LA 2771-73; 15 LA 3511; 18 LA 4286. Figueroa went to California and received medical care for his injuries. 16 LA 3839-40. After he returned, he was apprehended by police on October 20, 2014. 16 LA 3842.

At trial, both Figueroa and Mendoza testified, generally consistently, as to the events described above. 15 LA 3675 – 17 LA 4072; 18 LA 4416 – 19 LA 4567. Additionally, the jury was presented with cell phone records that demonstrated

[3] Most of the conspirators have, and know each other by, nicknames. Murphy is "Duboy" or "Dough boy." 11 LA 2677. Laguna is "Montone." 15 LA 3688.

Murphy, Mendoza, Laguna, and Figueroa were talking to, and moving throughout the city together at the times, and to the locations, indicated by Mendoza and Figueroa. 12 LA 2863-2928; 15 LA 3534-3674.

STATEMENT OF THE CASE

On January 8, 2015, the State charged Laguna, by way of Indictment, with CONSPIRACY TO COMMIT ROBBERY, BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON, HOME. INVASION WHILE IN POSSESSION OF A DEADLY WEAPON, ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON, MURDER WITH USE OF A DEADLY WEAPON, and ATTEMPT MURDER WITH USE OF A DEADLY WEAPON. 2 LA 273-79. A Superseding Indictment was filed on February 27, 2015, and a Second Superseding Indictment was filed on May 29, 2015; both contained the same charges. 3 LA 703-09; 5 LA 1043-49.

Laguna's trial began on September 12, 2016, and continued until October 7, 2016. 6 LA 1363 – 21 LA 5108. Laguna was convicted on all counts. 21 LA 5102-04.

On November 28, 2016, Laguna was sentenced to an aggregate sentence of 27-to-LIFE, in part because of his lengthy, and violent, criminal history. 21 LA 5154-5181. A Judgment of Conviction was filed on December 2, 2016, and reflected the same. 21 LA 5182-84.

On December 9, 2016, Laguna filed a Notice of Appeal. 21 LA 5185-86.

SUMMARY OF THE ARGUMENT

The Court was within its discretion to admit expert testimony because notice was properly given at least five days prior to trial pursuant to NRS 174.234(2). The Court was also within its discretion to admit non-hearsay evidence of an officer's observation, which, even if considered a "statement," was not offered for the truth of the matter asserted. The Court was additionally within its discretion not to exclude unobjected-to "double hearsay" which was elicited by Laguna. Finally, Laguna was convicted by overwhelming evidence, including testimony from two accomplices which was corroborated by properly noticed testimony and ample evidence from non-accomplices.

ARGUMENT

I.

THE COURT WAS WITHIN ITS DISCRETION TO ADMIT PROPERLY NOTICED EXPERT TESTIMONY

This Court reviews a district court's decision to admit or exclude evidence for an abuse of discretion. Hernandez v. State, 124 Nev. 639, 646, 188 P.3d 1126, 1131, (2008); see, e.g., Mclellan v. State, 124 Nev. ___, 182 P.3d 106, 109 (2008). NRS 174.234(2), states:

> 2. If the defendant will be tried for one or more offenses that are punishable as a gross misdemeanor or felony and a witness that a party intends to call during the case in chief of the State or during the case in chief of the defendant is expected to offer testimony as an expert witness, the party who intends to call that witness shall file and serve

> upon the opposing party, not less than 21 days before trial or at such other time as the court directs, a written notice containing:
>
> (a) A brief statement regarding the subject matter on which the expert witness is expected to testify and the substance of the testimony;
>
> (b) A copy of the curriculum vitae of the expert witness; and
>
> (c) A copy of all reports made by or at the direction of the expert witness.

On March 26, 2015, the State filed a Notice of Expert Witnesses. 4 LA 744-68. On April 3, 2015, the State filed a Supplemental Notice of Expert Witnesses. Id. at 769-79. On August 15, 2016, the State filed a Second Supplemental Notice of Expert Witnesses. 6 LA 1217-25. On August 22, 2016, the State filed a Third Supplemental Notice of Expert Witnesses, which included E. "Gino" Bastilotta from the Las Vegas Metropolitan Police Department ("LVMPD") who "will testify as an expert regarding how cellular phones work, how phones interact with towers, and the interpretation of that information" and Christopher Gandy, also from LVMPD, who was to testify as to the same. 5 LA 1233 - 6 LA 1258. The Notice included the required CVs. Id. Voir Dire began on September 12, 2016, 21 days later. 6 LA 1363.

Laguna argues that the Court abused its discretion by allowing an unnoticed expert witness to provide expert testimony as to cellular phone records. Appellant's Opening Brief ("AOB") 10-17. This claim must be denied as it is belied by the record. "Bare" and "naked" allegations are not sufficient to warrant relief, nor are those belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "A claim is 'belied' when it is contradicted or proven to be

false by the record as it existed at the time the claim was made." Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

Because Officer Gandy was properly noticed, his testimony was properly admitted whether considered expert testimony or lay testimony. It is the State's position, with which the Court agreed, that certain *exhibits*, which Officer Gandy testified to, were merely demonstrative of evidence already admitted through the Custodians of Records for the cellular phone companies[4], but at no point was Officer Gandy's *testimony* challenged at trial on the basis of being an unnoticed expert.[5] 15 LA 3520-34. Further, Officer Gandy did not created the maps presented at trial, but was merely asked to confirm that they matched the cell phone records from the

[4] At trial, co-defendant Murphy's counsel objected to exhibits 315-324, which included maps showing when and where certain cell phone pings occurred, based on lack of disclosure. 15 LA 3520-24. Laguna's counsel joined, though admitted that the records for her client contained the information Murphy's counsel claimed was missing from Murphy's records, and objected based on the fact that she could not tell where Murphy was "in relation to my client at the times that are relevant." 15 LA 3524. Mendoza's counsel also joined. Id. The State argued that the cell phone records, from which the maps were created, had been previously disclosed and that Officer Gandy's testimony regarding those maps was not expert testimony. 15 LA 3524-26. The Court held that the underlying cell phone records had been properly admitted into evidence, and that the maps were mere demonstrative exhibits of those underlying records and admissible pursuant to statute. 15 LA 3526-27, 3532. Murphy's counsel conceded that the underlying records had been provided. 15 LA 3530.

[5] For instance, the maps Officer Gandy testified to, and the interpretation of cell phone records, could be accomplished by following the "How To" instructions provided with the records from the cellular phone companies, and could be mapped on Google Earth. 15 LA 3587-88, 3592.

cellular phone companies. 15 LA 3598. Officer Gandy's testimony was clearly relevant, because it tended to demonstrate that the defendants, including Figueroa who appeared as a witness, were at the scene of both attempted robberies and were conspiring throughout the day. Because Laguna's claim that Officer Gandy was not properly noticed as an expert is belied by the record, whether Officer Gandy's testimony was "expert" or lay, the Court was within its discretion to admit it.

II.
THE COURT WAS WITHIN ITS DISCRETION TO ADMIT NON-HEARSAY TESTIMONY

This Court reviews a district court's decision to admit or exclude evidence for an abuse of discretion. Hernandez, 124 Nev. at 649, 188 P.3d at 1131; see, e.g., Mclellan, 124 Nev. at ___, 182 P.3d at 109. Hearsay is a statement offered in evidence to prove the truth of the matter asserted. NRS 51.035. A "statement" is an oral or written assertion, or nonverbal conduct of a person, if it is intended as an assertion. NRS 51.045. This court reviews admission of a hearsay statement, or a Confrontation Clause issue, for harmless error. Franco v. State, 109 Nev. 1229, 1236, 866 P.2d 247, 252, (1993).

Laguna argues that Detective Tod Williams' testimony regarding an image he saw on Amanda Mendoza's phone constitutes hearsay. AOB 17-22. This claim is meritless because Williams neither relayed a statement Amanda made to him, nor was Williams' observation given for the truth of the matter asserted.

At trial, Michelle Estavillo testified that Amanda Mendoza used an app on her phone to ping Mendoza's location in an attempt to find him after he disappeared with his car and would not return her phone calls. 12 LA 2762, 2767-69, 2771-73. At the time, Jorge Mendoza had already been apprehended by police from the scene of the crime and was receiving treatment at University Medical Center. 12 LA 2763-64. Murphy later came to pick Amanda up and take her to the car, which was present by 2:00 a.m. the next day when police arrived. 12 LA 2771.

Later, Detective Tod Williams testified about his experience interviewing Amanda Mendoza. Detective Williams testified that he observed a location on an iPhone app on Amanda's phone, and that he later went to that location. 14 LA 3417, 3422. The State introduced a map, with no objection, and asked Detective Williams if the map showed the location that he observed on the app. 14 LA 3424-25. Laguna objected that the location on the app was hearsay. 14 LA 3425. It was unclear at trial, and now on appeal, how this could be hearsay. Hearsay requires a "statement," and a "statement" must be an oral or written assertion, or some nonverbal conduct *by a person* intended to make an assertion. NRS 51.035-45. Moreover, hearsay requires a *declarant*, which must be a person. NRS 51.025. Laguna cites to no authority that an inanimate object makes an "assertion" subject to the hearsay rule, and an inanimate object is certainly not a "person," and so can neither be a declarant nor can it makes a nonverbal assertion. The California Supreme Court and some federal

courts have held that machines are not declarants for purposes of the Confrontation Clause. See People v. Lopez, 55 Cal. 4th 569, 286 P.3d 469, 478 (Cal. 2012) (noting agreement with federal courts). Regardless, Detective Williams' observation of the information displayed on the phone screen would not be excluded as hearsay under the silent witness doctrine since the image on the phone "speaks for itself" in much the same way as a video does. See, Rogers v. State, 902 N.E.2d 871, 876 (Ind. Ct. App. 2009); McHenry v. State, 820 N.E.2d 124, 128 (Ind. 2005); Edwards v. State, 762 N.E.2d 128, 136 (Ind. Ct. App. 2002); Wagner v. State, 707 So. 2d 827, 830 (Fla. Dist. Ct. App. 1998).

Laguna argues that in some manner Amanda was making a statement through her phone. AOB 19. Even assuming, *arguendo*, that this could be the case, where Amanda went to retrieve her car was not what Detective Williams testified to. Detective Williams said that *he went to a location that he saw on Amanda's phone.* 14 LA 3422. Defense counsels objected, on differing grounds, when Williams was asked whether he recognized on a map the location that he went to after observing a location on a phone. 14 LA 3425-26. None of these are statements, and the Court overruled the objection. 14 LA 3426. Even if, somehow, this could be construed as a "statement," it was not offered for the truth of the matter asserted (presumably that that is where Amanda went to retrieve the car) but to explain why Detective Williams

went to that location. Under no plausible analysis, then, is an observation off a phone hearsay.[6]

Laguna also identifies what he claims is "double hearsay" based on Detective Jensen's testimony. AOB at 20. Specifically, Laguna states that "Detective Williams, however, told Detective Jensen that Amanda told him (Williams) that she found Jorge's car near Lucky Horseshoe Street." Id. Although not specifically quoted, the relevant quote based on the citation given appears to be:

> Q: You were also made aware by Amanda Mendoza that she found the car in a location near that Lucky Horseshoe address, right?
> A: Detective Williams was made aware of that, and then I learned –

18 LA 4286.

The problem with any argument that this constitutes double hearsay is that Laguna asked the question and elicited the answer. 18 LA 4283, 4286-87. Further, no party objected to the question, and so the Court below never had the opportunity to address any alleged error.

Because an app cannot make a "statement," and because even if Amanda Mendoza somehow made a statement through her phone such statement was not offered for the truth of the matter asserted, but for the effect on the recipient (i.e., causing Detective Williams to go to a location,) Laguna's first hearsay claim should

[6] It is possible that in some case, an observation on a phone could possibly constitute hearsay – such as if a third party were to observe a message between people on a phone. However, that did not happen here and is, therefore, not at issue.

be denied. Because Laguna asked the question and elicited the answer which forms the basis of his second hearsay claim, and because no objection was lodged at trial, his second claim must be denied.

III.
LAGUNA WAS CONVICTED BY SUFFICIENT EVIDENCE

The standard of review for sufficiency of the evidence upon appeal is whether the jury, acting reasonably, could have been convinced of the defendant's guilt beyond a reasonable doubt. Edwards v. State, 90 Nev. 255, 258-259, 524 P.2d 328, 331 (1974). In reviewing a claim of insufficient evidence, the relevant inquiry is "whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Origel-Candid v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998), (quoting Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984)); See also Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789 (1979). "Where there is substantial evidence to support a jury verdict, it [the verdict] will not be disturbed on appeal"; Smith v. State, 112 Nev. 1269, 1280 927 P.2d 14, 20 (1996) (overruled on other grounds); accord Kazalyn v. State, 108 Nev. 67, 71, 825 P.2d 578, 581 (1992); Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Moreover, "it is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of the witnesses." Origel-Candido, 114 Nev. 378, 381, 956 P.2d 1378, 1380. (quoting McNair v. State, 108 Nev. 53, 56,

825 P.2d 571, 573 (1992); see also Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221 (1979) (Court held it is the function of the jury to weigh the credibility of the identifying witnesses); Azbill v. Stet, 88 Nev. 240, 252, 495 P.2d 1064, 1072 (1972) (In all criminal proceedings, the weight and sufficiency of the evidence are questions for the jury; its verdict will not be disturbed if there is evidence to support it and the evidence will not be weighed by an Appellate Court), cert. denied, 429 U.S. 895, 97 S.Ct. 257 (1976). This does not require this Court to decide whether "it believes that the evidence at the trial established guilt beyond a reasonable doubt." Jackson, 443 U.S. at 319-20, 99 S.Ct. at 2789 (quoting Woodby v. INS, 385 U.S. 276, 282, 87 S.Ct. 483, 486 (1966)). This standard thus preserves the fact finder's role and responsibility "[to fairly] resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." Id. at 319, 99 S.Ct. at 2789.

A jury is free to rely on both direct and circumstantial evidence in returning its verdict. Wilkins v. State, 96 Nev. 367, 376, 609 P.2d 309, 313 (1980). Also, the Nevada Supreme Court has consistently held that circumstantial evidence alone may sustain a conviction. Deveroux v. State, 96 Nev. 388, 391, 610 P.2d 722, 724 (1980) (citing Crawford v. State, 92 Nev. 456, 457, 552 P.2d 1378, 1379 (1976)).

Accomplice testimony must be corroborated by evidence which "tends to connect the defendant with the commission of the offense." NRS 175.291(1);

Heglemeier v. State, 111 Nev. 1244, 1250, 903 P.2d 799, 803 (1995). "Corroborative evidence 'need not in itself be sufficient to establish guilt' --- 'it will satisfy the statute if it merely tends to connect the accused to the offense.' Id. quoting Cheatham v. State, 104 Nev. 500, 504-05, 761 P.2d 419, 422 (1988)). In addition, "corroborative evidence may be either direct or circumstantial, and can be taken front the evidence as a whole." Id. The State agrees with Laguna that Figueroa and Mendoza were accomplices, and if their testimony was corroborated there is no question that it was sufficient to convict Laguna. AOB at 23. The only real issue, then, is whether other evidence sufficiently corroborated that testimony.

Records from Laguna's phone number were introduced through custodians of record. 12 LA 2863–2928. Detective Gandy went through the cell phone records and testified regarding a map showing the locations of various phone records throughout the day of the two attempted robberies. 15 LA 3547-65. Various phone numbers were tied to the defendants and Figueroa, including Laguna. 15 LA 3565. The records showed Murphy, Figueroa, and Mendoza communicating with each other. 15 LA 3570-72. The maps were placed into a power point presentation which depicted Murphy, Figueroa, Mendoza, and Laguna communicating and travelling together throughout the day. 15 LA 3578-86.[7]

[7] For the Court's review, Laguna has included Exhibit 324, a visual exhibit, depicting the location and times of the various phone contacts. 16 LA 3723-56.

At minimum, it is clear that Mendoza's phone was pinging off a tower in the north part of the valley between 7:22 a.m. and 10:33 a.m., placing it near Larsen's supplier's house. 15 LA 3580. Between 4:21 and 5:19 p.m. his phone was pinging off a tower near his home. 15 LA 3581. At 7:29 p.m., it was pinging off a tower servicing Laguna's home, just prior to the robbery. 15 LA 3582.

At 9:26 a.m., Figueroa's phone was pinging off the tower servicing Laguna's home. 15 LA 3583. Between 8:10 p.m. on September 21, 2016, and 6:09 a.m., Figueroa's phone is pinging off a tower that services Larsen's house – the scene of the second robbery – corroborating his statement that he called just about "everybody in his phone" while looking for someone to pick him up as he hid in a back yard with two gunshot wounds. 16 LA 3834-38.

At 7:46 a.m., Laguna's phone was pinging off the tower servicing Figueroa's residence. 15 LA 3584. At 8:55 a.m., Laguna's phone was pinging off a tower near the location of the first attempted robbery. Id. Between 10:40 a.m. and 7:02 p.m. it was pinging off a tower servicing his residence. Id. At 8:10 p.m., Laguna's phone was pinging off a tower servicing Larsen's house. Id. By 9:09 p.m., Laguna's phone was pinging off the tower that services his house again. Id.

Between 5:05 and 5:14 a.m., Murphy's phone pinged off a tower near the first robbery attempt. 15 LA 3585. Between 7:00 and 7:22 a.m., Murphy's phone pinged off towers near Laguna's house. Id. Between 8:55 and 8:59 a.m., Murphy's phone

was again pinging near the location of the first attempted robbery. Id. At 9:13 a.m., Murphy's phone was pinging off a tower near Laguna's house. Id. Between 7:29 and 7:37 p.m., Murphy's phone was pinging near Laguna's house again. Id. At 8:06 p.m., Murphy's phone was pinging near the location of the second attempted robbery. Id. Between 8:40 and 8:45 p.m., Murphy's phone was again pinging near Laguna's house. Id. Between 12:23 and 12:25 a.m. on September 22, 2016, Murphy's phone was pinging off towers servicing Mendoza's address. 15 LA 3585-86. At 12:54 a.m., Murphy's phone was again pinging near Laguna's address. 15 LA 3586.

Amanda Mendoza's phone pinged near Laguna's residence at 12:50 a.m. on September 22, 2016. Id. By 1:19 a.m., her phone was pinging the tower near her residence again. Id.

These records corroborate the testimony that Murphy initially went to scout out the supplier's house, then went to Laguna's house and picked everyone up. Murphy, Mendoza, and Laguna's phones all pinged near the location of the first attempted robbery, and it is likely that Figueroa was there as well because he was at Laguna's house afterward. 15 LA 3699-3701. The parties generally disbursed for the day, but some went to others houses. At or around the time of the second attempted robbery where Monty Gibson was killed, Murphy, Mendoza, Laguna, and Figueroa's phones all pinged off the tower servicing that address. Figueroa's phone continued pinging that tower for hours as he called for a ride. Mendoza's phone

followed his car (probably because he left the phone in the car) and appeared at Laguna's house after the botched robbery while he was still in the back of a car on the scene or apprehended by police. Murphy, Laguna, and Mendoza's phones appeared near Laguna's house again. Murphy left Laguna's house to go pick up Amanda Mendoza. Her phone then pinged near Laguna's house and, then back near her residence just before the police arrived and saw the vehicle there.

Around 2:00 a.m., when Detectives went to Mendoza's house, his Champaign-colored Nissan was there. 14 LA 3415. Mendoza's neighbor had earlier testified that Murphy came by to take Amanda Mendoza to the car. 12 LA 2762-72. That Mendoza's car had been missing corroborates the testimony that Murphy, Laguna, Figueroa, and Mendoza had used that car in the commission of the later robbery. Were Murphy not part of the robbery, he would have no reason to know where the vehicle was shortly after the robbery. Further, it is clear that neither Figueroa nor Mendoza could have driven the vehicle away, as Figueroa was hiding in a back yard with gunshot wounds to his face and his side, and Mendoza was at University Medical Center receiving treatment for his gunshot wound after being apprehended by police. 14 LA 3410-11. Amanda Mendoza's neighbor had seen her access an app that provided a location to Mendoza's phone. 14 LA 3410-12. Police later saw that same location, and went to that location. 14 LA 3417, 3426-27. That location was 3668 Lucky Horseshoe Court. 15 LA 3477. That address is Laguna's

residence. 12 LA 2877. A jury could infer that Murphy drove Laguna home after the robbery, explaining why he knew the vehicle was there, why Mendoza's wife's phone showed that it was there, why neither of them were apprehended at the scene, and why the vehicle they travelled to the robbery in was not found at the scene.

Based on the above, the phone records and other testimony sufficiently corroborated the testimony of Summer, Figueroa, and Mendoza because the records match the times they said they were certain places, and far from showing a phone at a particular location at one time, they show continued meetings and groupings of the defendants at two separate crime scenes throughout the day. Of course, this analysis does not even include the statements that Summer and Figueroa made to police which, while not testimony as such, only further implicated Laguna and the other defendants. Because the records and testimony above sufficiently corroborated Summer, Figueroa, and Mendoza's testimony, the jury was entitled to consider the testimony of the other co-conspirators. And, because the jury could consider that testimony, the evidence of guilt was not only sufficient, it was overwhelming.

CONCLUSION

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

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/ / /

Dated this 12th day of September, 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 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 4,906 words and 20 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 12th day of September, 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 12th day of September, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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