DFDIN THE SUPREME COURT OF THE STATE OF NEVADA

Ryan Lipsitz, Appellant vs. The State of Nevada, Respondent,	)))))))))	Supreme Court Case No.: 72057 **APPELLANT'S REPLY BRIEF**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Competency

The State contends that it was not error to proceed to trial without a competency evaluation for two reasons: first, "Appellant never requested a competency hearing," and second, "Appellant did not lack a rational and factual understanding of the proceedings" (State's Answering Brief, hereinafter "SAB," 10; 12). Respectfully, the State's position on the first point is directly belied by controlling case law and the State's second point is similarly belied by the record.

The applicable competency statute and case law unambiguously hold that it is incumbent upon the **Court** to refer a case for a competency evaluation once doubts arise, not upon defense counsel to request one for his or her client. As the State quoted in its brief, "The doubt mentioned in NRS 178.405 means doubt in the mind of the trial court, ***rather than counsel or others***." *Williams v. State*, 85 Nev. 169, 174 (1969) (emphasis added). Therefore, opinions of both the State and the defense regarding the competency of a defendant are subordinate to the opinion of the court – and in this case, both the State and the trial court noted its concerns on the record.

The State similarly contends that Ryan's behavior was rational in refusing to dress out of his jail uniform because it was based on the mistaken belief that he would remain handcuffed in a suit. However, the State's analysis fails to take into account that Ryan's initial reason given was that he did not want to wear a suit at all because "I'm very specific and particular about the suits that I choose to wear, keep a large collection of suits, about 50 plus ties when I go to work" and "I would rather take my chance with jail clothes than wear a suit it doesn't fit me" (Bates 343). If anything, Ryan's sudden changes in reasoning only exacerbate his erratic behavior from being rational one minute to irrational the next.

Furthermore, it bears noting that although it is not included as part of the court record in this case and therefore was not made part of the appendix, in Ryan's other case he was referred for a competency evaluation and **was found <u>not</u> competent** to stand trial. He was involuntarily committed at a treatment facility for 9 months before he was declared competent (see District Court Case C-15-306510-1, Order of Commitment, filed 12/16/2016).

The State argues that Ryan's refusal to attend his own trial does not indicate that he was incompetent, and that his behavior was merely "a childish refusal to participate when things did not go his way" (SAB 14). To the

contrary, Ryan's purported reasons for refusing to attend his own trial indicate a very clear lack of understanding as to the seriousness and nature of the proceedings. While Ryan did have legitimate concerns regarding the lack of Hannah's presence during these proceedings, he also refused to attend his own trial because, among other reasons:

- "I have things to do. I've got a job. Do you know how much it takes to – to cancel your membership from LVAC [Las Vegas Athletic Club]? It's like 250 bucks" (Bates 563).
- "I can go and play pinochle" (Bates 571)
- "I could be in a card game gambling Top Ramen soups" (Bates 571)
- "You don't know they brought this girl off the street and gave her a hundred dollars and you don't know where it's coming from" (Bates 574)
- "This is a foregone conclusion that I'm not going to receive a fair trial in this courtroom already. It's a foregone conclusion. Why all the pomp?" (Bates 582)
- "I want to be at my dead ex-girlfriend's funeral that I was not notified of. I want to attend to my – my son – Maverick Jameson (phoenetic) or whatever they named him" (Bates 583)
- "Again, I – I've got – I've got 20 cent noodles that I could be gambling in a card game" (Bates 584)
- "Last time I was in NDC I wrote a – a six-page business plan. I could do something like that. I've got a screenplay book. I've got screenplays on the backburner. I've got way more productive things to be doing than this" (Bates 585).

Additionally, another means of questioning competency is the defendant's inability to assist in his own defense. This can similarly be called into questions based on Ryan's refusal to participate with or speak to his

attorneys about the trial or his rights. Prior to trial, Ryan tried to dismiss his public defenders because of a non-existent "debacle" that he believed occurred in court, stating "I'm not going to – I'm not going to put my life on the line in a contentious relationship where I'm not listened to. I'm not going to do that. I'm not going to participate in that" (Bates 563). Ryan eventually asked to represent himself, and the trial court tried to dissuade him from this course of action. The Court suggested to Ryan that he speak with his attorneys about his concerns, at which time Ryan responded that he and his counsel have "nothing to talk about" (Bates 566). Perhaps the most illustrative exchange, however, is the following discussion regarding Ryan's right to testify in his own defense:

> THE COURT: … I assume you've talked with your attorneys about your constitutional rights here in the courtroom?
> THE DEFENDANT: I have.
> THE COURT: And that would include your right to testify or not to testify?
> THE DEFENDANT: No, I haven't actually and no, I – I understand my rights and I haven't spoken with my attorneys about it.
> THE COURT: All right. Do you want to speak with your attorneys about your constitutional rights in –
> THE DEFENDANT: Not at all.
> THE COURT: You sure?
> THE DEFENDANT: Yeah, I'm sure. I sleep – I sleep better when the phone doesn't ring and it's – or if it rings, it's not for me.
> THE COURT: Okay. Would you like to talk with your attorneys – I'm not sure if we can arrange you to speak with them over the telephone –

THE DEFENDANT: Not at all (Bates 970).

Not only was Ryan's behavior in the courtroom sufficient to have "doubts arise" as to his competency, but the record also contains numerous examples of his refusal to participate in his own defense. Based on the above, Appellant would respectfully disagree with the State that nothing in the record indicates he was incompetent. Furthermore, the State is estopped from claiming that Ryan's actions did not question his competency when the State itself raised these concerns to the trial court on two separate occasions. The State had concerns with his competency, the Court had concerns with his competency, Ryan's behavior, complete absence from trial and lack of participation create doubts of competency, and Ryan was found incompetent to stand trial in a separate evaluation conducted shortly after this trial occurred (the final Judgment of Conviction in this case was entered on December 13, 2016; his order of commitment in another case was filed only three days later on December 16, 2016).

For these reasons, it was erroneous to conduct a trial without referring Ryan for a competency evaluation.

II. Remote Testimony

The State first argues that Ryan "forfeited his confrontation right when he asked to be removed from the courtroom." However, the record indicates that Ryan asked to be removed **after** the trial court had already declared that Hannah may testify by remote means; he cannot "forfeit" a right that was already denied to him.

Additionally, the State is incorrect that *Crawford*'s protections under the Sixth Amendment apply only to hearsay statements (SAB 16) ("To run afoul of the Confrontation Clause, therefore, out-of-court statements introduced at trial must not only be 'testimonial' but must also be hearsay"). For example, take Hannah's testimony that she was asleep on the couch and "she'd woken up with a man on top of her inside of her" (which conflicts her previous testimony that she woke up with Ryan standing at the foot of the couch) (Bates 752). This statement is clearly testimonial in nature, is being offered to establish the truth of the matter asserted, but is not hearsay because it does not convey any out of court statement.

Crawford rights apply to testimonial statements made for the purpose of "establishing the truth of the matter asserted," *Craawford v. Washington*, 541 U.S. 36, 51 (2004), not testimonial statements previously made out-of-court

offered to prove the truth of the matter asserted. The State's analysis severely restricts the scope of *Crawford* by imputing a requirement of hearsay that does not otherwise exist in a Confrontation Clause analysis – a prior out-of-court statement. The State's position is further contradicted by *Crawford* itself, which applies to "all those who bear testimony" against the defendant – not "all those who bear hearsay testimony" against the defendant.

Finally, the State argues that Appellant "fails to cite to any legal authority which supports his contention that a defendant is entitled to ***physically*** face his accuser" (SAB 19) (emphasis in original). The State's argument is somewhat disingenuous, as not more than one page later the State concedes that "the State is aware that the United States Supreme Court has stated that the elements of confrontation ***include physical presence***, oath, cross-examination, and observation of demeanor by the trier of fact" (SAB 20) (citing to *Maryland v. Craig*, 497 U.S. 836, 846 (1990)) (emphasis added).

The Confrontation Clause understandably does not require an "actual face-to-face encounter in ***every*** instance in which testimony is admitted against a defendant" *Id.* (emphasis in original). The absence of a bright-line rule is reasonable because, as discussed in thorough detail in *Craig*, such a rule would present unusual difficulties in cases involving **children**. Specifically, in

Craig the Supreme Court held that "the Confrontation Clause does not prohibit a State from using a one-way closed circuit television procedure for the receipt of testimony ***by a child witness in a child abuse case***." *Id*. at 860 (emphasis added).

Here, although the State continually refers to Hannah Combs as "H.C.," an abbreviation of initials typically reserved for references to minors, Hannah Combs was not a minor at the time of the offense and not a minor at the time of sentencing. She is a legal adult, and therefore the Confrontation Clause considerations specific to children, such as those expressed in *Craig*, are inapposite to this case.

Given that the Confrontation Clause applies to the instant case, the only remaining question is whether Hannah's excuse for failing to appear is sufficient to overcome the constitutional violation. While the State writes that Hannah's excusal was medically necessary, there is a difference between "medical necessity" and actions that may not suit her "well-being" four months after voluntarily admitting herself into yet another rehabilitation program. As the State wrote in their own Motion to Use Audio/Visual Technology, "[t]he treatment staff at the Florida facility have indicated that

Victim could not travel to Las Vegas before the Grand Jury as it would be detrimental to Victim's treatment and well-being."

Per her own testimony, Hannah was committed to a mental hospital in Indiana called Community North (Bates 654). She moved to Las Vegas and was shortly thereafter admitted to the hospital to detox her system of methamphetamine, cocaine, heroin and marijuana (Bates 625). From the hospital, she was admitted directly to Desert Hope rehabilitation facility, where this alleged rape took place (*Id.*). After being released from Desert Hope, she went immediately to a halfway house in Florida called Awakenings (Bates 713). From the halfway house, she went to yet another rehabilitation center in Florida called Treatment Alternatives (Bates 623). Most importantly, Hannah stated that she checked into Treatment Alternatives on May 1st (*Id.*). She was still at Treatment Alternatives went the trial began on September 12th. Hannah had already been in this facility for four months by the time the trial began.

Hannah did not show up to testify for the preliminary hearing ***even when she was not in treatment***. When the preliminary hearing was reset, she failed to show up again. She did not testify in person during the grand jury, and she never testified in person during the trial. Hannah's self-admitted

multi-drug addictions and constant bouncing from one treatment facility to the next is insufficient to overcome Ryan's confrontation rights – it is *Ryan* that is facing twenty years to life in prison, not Hannah – and at some point it is *Ryan's* constitutional rights that must take precedence.

The two cases relied upon as support by the State – *Horn* and *Harrell* – are also illustrative of the Confrontation problems in this case. In *Horn v. Quarterman*, 508 F.3d 306 (5th Cir. 2007), the witness at issue could not travel due to a diagnosed terminal illness – a far cry from Hannah's endless stream of *voluntary* drug treatment throughout these proceedings. In *Harrell v. Butterworth*, 251 F.3d 926 (11th Cir. 2001), the witness was both in poor health *and* would have required international travel from Argentina to the United States. Here, Hannah was still in Las Vegas when she failed to appear for the preliminary hearing(s), and then in Florida during the trial; at all times, Hannah was located domestically within the United States, further distinguishing the level of unavailability here from that presented in *Harrell*.

Hannah's unavailability is drastically different from those presented in the cases relied upon by the State. Furthermore, the State fails to address the very strict definition of "unavailability" that also indicates Hannah was not truly "unavailable" for Confrontation Clause purposes. Involvement in

voluntary detox drug programs *ad infinitum* is not a valid excuse to deny Ryan his constitutional right, **especially** when his entire conviction rests solely on the testimony of this woman who had never once testified in the State of Nevada.

III. Attempt and Completed Sexual Assault

The State concedes that Ryan's convictions for both completed and attempted sexual assault derive from the same act, and similarly concedes that such a result is logically and legally impossible. However, despite a clear ruling of the trial court to the contrary, the State continues to argue that the attempt charge should be dismissed on the grounds that touching on the lips alone is sufficient for a consummated act of sexual assault. This position is untenable for a number of reasons.

First, the State claims that the act, which does not support an "intrusion," however slight, still qualifies as fellatio because "fellatio is statutorily an act of penetration which satisfies the elements of sexual assault" (SAB 25). By conceding that there was no "intrusion" but still claiming that Ryan's actions constitute fellatio by "penetration," the State is arguing that

"penetration" is an act that is different and distinct from an "intrusion" for purposes of sexual assault. This argument is patently absurd.

The State's entire argument that Appellant's use of "intrusion" is inapplicable is premised on the assumption that "penetrate" is somehow legally distinct from "intrusion." By their plain language, however, "penetration" and "intrusion" are synonymous – hence why penetration includes the statutory definition of "any intrusion, however slight." Therefore, whether sexual assault by fellatio requires "penetration" or any "intrusion," Appellant's argument applies.

In fact, Appellant agrees and stipulates that the act of fellatio requires penetration – which is why the statutory definition of penetration includes fellatio – but whether the State wants to refer to it as an "intrusion," or as "penetration," or by any other synonymous name, none of them occurred here.

If a man's penis touches a woman's ear, is it sexual assault? No. If it touches her nose, is that a sexual assault? No, because the mere touching of a man's penis to an *external* organ is not a penetration, intrusion, etc. As human beings, we tend to mentally associate lips with the mouth due to their location as directly over the mouth, but the fact remains that lips are an *external* facial

feature much like a nose or ear. Although touching to lips is certainly close proximity to the mouth, a "close" sexual assault is an attempted, **but not completed**, sexual assault.

The trial court agreed with this factual finding as well. The trial court clearly held that merely touching of penis to lips is **not** an act of sex assault, and factual findings are given wide deference. Factual findings by the lower court will not be disturbed on appeal unless they are "clearly erroneous." *Ybarra v. State*, 127 Nev. 47, 58, 247 P.3d 269, 276 (2011). Here, the trial court's finding that touching of the penis to an external facial organ does not constitute a completed act of sexual assault is not clearly erroneous, and therefore should be entitled to deference.

In addition to both the common sense definition of sexual assault and the district court's findings, both of which would hold that Ryan is only guilty of **attempt** sexual assault, the State's reliance on *Crowley* is misplaced. Specifically, the State cites to *Crowley v. State*, 120 Nev. 30 (2004) and two other cases which hold that a conviction for a lesser included offense should be dismissed as opposed to a conviction for a greater offense. This makes perfect logical sense, as the elements of a lesser included offense are, by its nature, entirely included within the greater offense, but a lesser-included

offense analysis is inapplicable here; the law is clear that Attempt Sexual Assault is **not** a lesser included offense of Sexual Assault. To the contrary, rather than being a lesser included offense, the two convictions are **mutually exclusive**. As quoted in Appellant's Opening Brief:

> Before addressing the basis for the error, **we note that both the district court and the district attorney erroneously concluded that Attempt Sexual Assault is a lesser included offense to the crime of Sexual Assault**. In so concluding, the district court relied on NRS 175.501. It is seen that the statute differentiates between a lesser included offense and an attempt by referring to both in the disjunctive. Moreover, we have held on numerous occasions that the test for determining whether a crime is a lesser included offense is whether the offense in question cannot be committed without committing the lesser offense. It is generally held that attempt offenses consist of three elements: (1) the intent to commit the crime; (2) performance of some act toward the commission of the crime; and (3) the failure to consummate its commission. **In Nevada, the statutory definition of an attempt is tending but failing to accomplish it." Because an element of the crime of attempt is the failure to accomplish it, an attempt crime may not be a lesser included offense of the completed crime.** *Crawford v. State*, 107 Nev. 345, 351, 811 P.2d 67, 71 (1991) (internal citations omitted) (emphasis added).

Under *Crawford*, the State's argument that Attempt Sexual Assault should be dismissed as a lesser included offense is facially without merit. To the contrary, the facts of the case as well as the determination of the trial

court hold that Ryan's conviction for the completed sexual assault must be dismissed. There was no intrusion, no penetration, and touching to an external organ only is not a completed act of sexual assault.

IV. Insufficient Evidence

As an initial matter, the State mistakenly misrepresents a material fact on numerous occasions. At least three times in their Answer Brief, the State claims that "semen was found on her underwear" (SAB 29). However, quite the opposite is true, as there was **ZERO** evidence of sexual assault found anywhere on Hannah except for her neck and jaw consistent with kissing.

Allison Rubino, the forensic scientist with the Las Vegas Metropolitan Police Department, testified that Hannah's external genitalia swabs were negative for the presence of semen or sperm (Bates 086). Both samples from her underwear came back to Hannah Combs (Bates 092). The penis swab from Ryan did not show Hannah's DNA (Bates 092). Swabs from Ryan's fingers also failed show Hannah's DNA (Bates 093).

The State argues that sufficient evidence exists to support Ryan's conviction for two reasons – the jury found Hannah's testimony to be credible, and Ryan was seen leaving the facility. However, Ryan's presence at the

facility was never in controversy, and contact between them was never in controversy (as Ryan's saliva was found on her jaw).

But, a purportedly random, violent forcible rape against a habitual multi-drug user, living in a sober living facility for fourteen days, by a man who was randomly found holding a pipe with very recent meth residue, and who happened to know exactly how to sneak into this facility through a propped-open door, without being detected by numerous active security cameras, and who knew exactly where to find Hannah, who also randomly happened to be all alone, spontaneously with her hair done and wearing makeup, jewelry and a dress at 3 in the morning, who just by coincidence was sitting in a room where nobody else could see her, there by herself on a couch? The same woman who immediately told the nurses to "drop it" when they said it would be caught on the surveillance video, and then acted "anxious" and "defensive" with the investigating officer? The same woman who claims, depending on the day, that she "yelled," "screamed," or "cried softly" during this supposed attack in a facility that was so quiet she could hear coffee pouring down the hall, yet not one of the **three** nurses around the corner heard anything? The same woman who claimed that she and Ryan had

unprotected vaginal intercourse, and then a rape kit immediately thereafter revealed no evidence of DNA? In this case, the facts speak for themselves.

V. Constitutionality of NRS 50.700

The State admits that *de novo* review applies to issues of statutory constitutionality, but then spends a considerable number of pages articulating the standard for plain error. However, *de novo* review is an analysis conducted independently of the lower court record, whereas plain error examines the lower court record to determine if a substantial right has been affected. *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). Since *de novo* review is distinct from plain error review, the State's substantive discussion on the plain error standard is informative but—nonetheless—inapplicable.

Logically, an analysis under the plain error standard would not make sense in this case. The statute in question specifically mandates that psychological examinations are prohibited for witnesses in sexual assault cases; it is non-discretionary. Therefore, any filing that would request such an examination would have been frivolous given the clear prohibition in the statute. Counsel is not required to file frivolous claims. According to the State, in order to preserve the issue, defense counsel must first make a frivolous claim, and thus do exactly what the law and ethics compels attorneys **not** to

do, in order to fully appeal the issue on the merits. The State writes that "Appellant cannot show that the district court would not have granted his request," (SAB 32) but the discretion of the district court is irrelevant since the court is specifically bound by statute **not** to grant that request. This is precisely why independent *de novo* review applies to these claims.

Returning to the merits of the claim, the State contends that this Court should not consider the legislative intent because the plain language of NRS 50.700 "clearly relates to the 'victim of or a witness to the sexual offense' without limiting it," and the plain language controls (SAB 34). However, the State's argument is applicable in the context of statutory **interpretation**, not statutory **constitutionality**. The plain language of a statute cannot be a basis of support when it is this same plain language that is alleged to be facially unconstitutional.

Next, the State argues that Appellant's argument is a "stretch" because this Court's holding in *Abbott* is "nothing more than judicial dictum" (SAB 35). Without even delving into the substantive holding in *Abbott*, the State ignores the Court's language set forth a very clear and universally applicable policy cementing the importance and necessity of psychological examinations in sexual assault cases. Whether classified as "dictum" or the "holding" or simply

"analysis," the Court's affirmative position on the importance of these evaluations is directly on point and persuasive.

Finally, the State contends that "Appellant has failed to show that the statute led to the complete denial of ***his*** defense" (SAB 36) (emphasis in original). The State's contention is flawed for two reasons: first, Appellant made it abundantly clear that given Hannah's long history of psychological issues, including being housed in numerous mental health facilities and her admission of regularly lying to police, plus the fact that her testimony alone resulted in a sentence of 20 years to life in prison, "a psychological evaluation clearly would have been germane to the instant case" (Appellant's Opening Brief 30). Second, Appellant is presenting a *facial* constitutional challenge rather than an *as-applied* challenge.

The State, by and large, fails to counter the substance of Appellant's constitutional argument. In this case as in many others, the only supporting evidence of sexual assault is the testimony of the victim herself. When the victim cannot be psychologically examined, the Defense loses the only available means to independently discredit her testimony from an expert, medical perspective. It is, in essence, leaving the Defense without a defense, which is specifically prohibited in both *Abbott* and *Finger v. State*.

The State likewise fails to address the claim that the statutory language goes far beyond its intended scope, which makes the statute facially unconstitutional as a matter of law. To reiterate the basis for the passing of the statutory language:

> I would like to address section 24, the psychological evaluations of victims. I recognize that it is important to protect the rights of defendants; however, it seems we are forgetting to protect the victims of these sex offenses, **especially the children**. The **children** who are victims of sex offenses are the ones who are the most vulnerable in society and need the most protection. The Special Victims Unit is seeing more and more motions by defense to **compel our children** to undergo psychological evaluations. We always thought our goal was to **protect these children**, not revictimize them by forcing them to undergo a psychological examination at the hands of a defense expert. When these **children** finally find the courage to tell somebody what happened to them, they first have to talk to the police and describe what has happened to them over the course of time with the intimate details. Once they have talked to the police they probably will have to talk to a forensic interviewer, then they are given a physical examination. So **little eight-year-old Susie** has to go to a doctor and undergo a vaginal exam which grown women probably do not enjoy and **a child** should never have to go through. The case is then submitted to the district attorney's office and **the child** has to come in and describe these instances to a deputy district attorney who is going to handle the case. The deputy attorney then takes **the child** to court and **the child** has to testify in front of the perpetrator, which I am not saying is inappropriate, but she has to describe these intimate details in front of the perpetrator and the is subject to cross-examination. *State of Nevada v. Eighth Jud. Dist. Court*, 2017 WL 3608649, Sup. Ct. Case No. 72226 (Nev. 2017).

Not only is the purpose of the statute clearly aimed at protecting child victims of sexual abuse, it also addresses only victims, whereas the language of the active statute prohibits all examinations of both victims ***and witnesses***. The intent of the statute to prevent the re-victimization of children through needless and intrusive examinations is a far cry from the actual statute that prohibits all evaluations of any victim and any witness in any sexual case, which is grossly excessive to these purported aims. *Holmes v. South Carolina*, 547 U.S. 319, 324–25, 126 S. Ct. 1727, 1731 (2006). The statute severely restricts the available (and often only) defense to these cases, and therefore does not pass constitutional muster.

CONCLUSION

For these reasons, Ryan Liptsitz respectfully requests that this Court reverse and vacate the convictions entered in District Court or, in the alternative, remand this case for a new trial.

VERIFICATION OF BRIAN VASEK, ESQ.

1. I am an attorney at law, admitted to practice in the State of Nevada.
2. I am the attorney handling this matter on behalf of Appellant.
3. The factual contentions contained within the Reply Brief are true and correct to the best of my knowledge.

Dated this 5th day of September, 2018.

VASEK LAW PLLC
Respectfully Submitted By:

/s/ BRIAN VASEK
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CERTIFICATE OF COMPLIANCE

1. I 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 2007 with 14 point, double spaced Cambria font.

2. I further certify that this brief complies with the page-or-type-volume limitations of NRAP 32(a)(7)(A)(ii) because it is proportionally spaced, has a monospaced typeface of 14 points or more and contains 5,121 words, which pursuant to NRAP 32(7)(ii) is less than half the type-volume of Appellant's Opening Brief.

3. 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(c), which requires every assertion in the brief regarding matters in

the record to be supported by a reference to the page of the transcript or appendix where the matte relied on is to be found.

I understand that I may be subject to sanction in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 5th day of September, 2018.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(d), I hereby certify that on the 5th day of September, 2018, I served a true and correct copy of the Reply Brief to the last known address set forth below:

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