IN THE SUPREME COURT OF THE STATE OF NEVADA

LAZARO MARTINEZ-HERNANDEZ, Appellant, v. THE STATE OF NEVADA, Respondent.	Case No. 72069

RESPONDENT'S ANSWERING BRIEF

Appeal From Denial of Post-Conviction Writ of Habeas Corpus
Eighth Judicial District Court, Clark County

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ROUTING STATEMENT

This appeal is appropriately assigned to the Court of Appeals pursuant to NRAP 17(b)(1) because it is a post-conviction appeal of an offense that is not a Category A felony.

STATEMENT OF THE ISSUE

1. Whether the Court properly denied Appellant's Petition for Writ of Habeas Corpus.

STATEMENT OF THE CASE

On February 16, 2007, the State charged Lazaro Martinez-Hernandez (hereinafter "Appellant") by way of Information with one count of Assault With a Deadly Weapon (Felony – NRS 200.471). 1 Appellant's Appendix (AA) 1-2. On February 5, 2008, a jury found Appellant guilty. 1 AA 3. On April 10, 2008,

Appellant was sentenced to the Nevada Department of Corrections for 12 to 36 months. The sentence was suspended, and Appellant was placed on probation for an indeterminate period not to exceed three years, subject to certain conditions of release. 1 AA 4-5. The Judgment of Conviction was filed on April 25, 2008. 1 AA 4-5. Appellant did not file a direct appeal.

On January 1, 2010, Appellant's stipulated to having violated the conditions of his probation and his probation was revoked. The original 12 to 36 month sentence was imposed, and Appellant received 96 days credit for time served. An Amended Judgment of Conviction was filed on February 1, 2010. 1 AA 6-7.

On February 1, 2011, Appellant filed a Petition for Writ of Habeas Corpus through counsel, wherein he raised an appeal-deprivation claim. 1 AA 8-18. On May 18, 2012, Appellant filed a Supplement to his Petition. 2 AA 236. The State filed its Response and Motion to Dismiss on July 2, 2012. 2 AA 234. The District Court found that Appellant had been deprived of his right to a direct appeal and was therefore entitled to file an untimely appeal pursuant to NRAP 4(c).

On July 22, 2013, Appellant filed a Notice of Appeal. 1 AA 240. The Nevada Supreme Court affirmed Appellant's conviction on July 22, 2014, and Remittitur issued on August 26, 2014. 2 AA 241-247.

On February 24, 2015, Appellant filed Supplemental Points and Authorities in Support of Petition for Writ of Habeas Corpus for Post-Conviction Relief

("Supplemental Petition") as a supplement to the Petition for Writ of Habeas Corpus that he had filed on February 1, 2011. 2 AA 248-260. The State filed its response on July 22, 2015. 2 AA 261-264. On September 11, 2015, Appellant filed a Supplemental Points and Authorities on Whether Court Has Jurisdiction to Consider Petitioner's Post-Conviction Writ. 2 AA 267-272. The State filed its Response on October 6, 2015. 2 AA 273-277.

On November 5, 2015, the Court entered its Findings of Fact, Conclusions of Law and Order denying Appellant's Supplemental Petition as moot because Appellant had already been released from custody at the time he filed it. 2 AA 278-781. Appellant filed a Notice of Appeal from the District Court's Order denying his Supplemental Petition. On August 12, 2016, the Nevada Supreme Court ruled that, because the original Petition had been filed while Appellant was in custody in 2011, the Supplemental Petition was not moot even though Appellant was not currently in custody. As such, the Nevada Supreme Court remanded the case to the District Court for Appellant's Supplemental Petition to be considered on the merits. 2 AA 283-290. The State responded on November 7, 2016 and the District Court denied the petition on November 10, 2016. 2 AA 293-306. The Court entered its Findings of Fact, Conclusions of Law and Order on December 15, 2016. 2 AA 309-313.

Appellant filed a Notice of Appeal on December 23, 2016 and his opening brief on May 3, 2017. The State herein responds.

SUMMARY OF THE ARGUMENT

Appellant's Petition for Writ of Habeas Corpus was initially filed more than two years after his Judgment of Conviction was filed, and a year after the time limit to file a timely post-conviction petition had elapsed. For that reason, Appellant's petition should have been denied in the first instance and, despite being denied on other grounds, its present denial ought to be affirmed.

Furthermore, Appellant fails to bring forth any meritorious claims. Therefore, even if the procedural bars were to be ignored, he still would not be entitled to relief.

ARGUMENT

I. APPELLANT'S PETITION WAS PROCEDURALLY DEFAULTED

This Court gives deference to a district court's factual findings in habeas matters but reviews the court's application of the law to those facts de novo. State v. Huebler, 128 Nev. 128, 192, 275 P.3d 91, 95 (2012), cert. denied, 133 S. Ct. 988 (2013).

In the instant case, Appellant's habeas petition was denied on November 10, 2016 on the merits, the court having found that Appellant did not receive ineffective assistance of counsel. 2 AA 311-312. The denial of Appellant's petition ought to be affirmed, first, because his petition was procedurally defaulted and, further, because Appellant did not receive ineffective assistance of counsel.

Pursuant to NRS 34.726:

> 1. Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year of the entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court issues its remittitur. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:
> (a) That the delay is not the fault of the petitioner; and
> (b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

Appellant's petition does not fall within this statutory time limitation. The Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001). As per the language of the statute, the one-year time bar prescribed by NRS 34.726 begins to run from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

The one-year time limit for preparing petitions for post-conviction relief under NRS 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 53 P.3d 901 (2002), the Nevada Supreme Court rejected a habeas petition that was filed two days late despite evidence presented by the defendant that he purchased postage through the prison and mailed the Notice within the one-year time limit.

Appellant's Judgment of Conviction was entered on April 25, 2008. 1 AA 45. Notwithstanding the subsequent procedural history in Appellant's case, all of his

claims in the instant appeal relate back to the performance of counsel at his initial jury trial and, therefore, his original Judgment of Conviction. Thus, the one year time limit expired on April 25, 2009.

As such, Appellant's petition should have been denied when it was first heard on May 11, 2012. The Nevada Supreme Court has specifically found that the district court has a duty to consider whether the procedural bars apply to a post-conviction petition and not arbitrarily disregard them. In State v. Dist. Ct. (Riker), 121 Nev. 225, 112 P.3d 1070 (2005), the Court held that "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory," and "cannot be ignored when properly raised by the State." Id. at 231, 233, 112 P.3d at 1074, 1075. There, the Court reversed the district court's decision not to bar the defendant's untimely and successive petition:

> Given the untimely and successive nature of [defendant's] petition, the district court ***had a duty imposed by law*** to consider whether any or all of [defendant's] claims were barred under NRS 34.726, NRS 34.810, NRS 34.800, or by the law of the case . . . [and] the court's failure to make this determination here constituted an arbitrary and unreasonable exercise of discretion.

Id. at 234, 112 P.3d at 1076 (emphasis added). The Court justified this holding by noting that "[t]he necessity for a workable system dictates that there must exist a time when a criminal conviction is final." Id. at 231, 112 P.3d 1074 (citation omitted); see also State v. Haberstroh, 119 Nev. 173, 180-81, 69 P.3d 676, 681-82 (2003) (wherein the Nevada Supreme Court held that parties cannot stipulate to

waive, ignore or disregard the mandatory procedural default rules nor can they empower a court to disregard them).

In State v. Greene, the Nevada Supreme Court reaffirmed its prior holdings that the procedural bars are mandatory when it reversed the district court's grant of a post-conviction petition for writ of habeas corpus. See State v. Greene, 129 Nev. ___, 307 P.3d 322 (2013). There, the Court ruled that the defendant's petition was "untimely, successive, and an abuse of the writ" and that the defendant failed to show good cause and actual prejudice. Id. 307 P.3d at 324. Accordingly, the Court reversed the district court and ordered the defendant's petition dismissed pursuant to the procedural bars. Id. 307 P.3d at 323.

"If a judgment or order of a trial court reaches the right result, although it is based on an incorrect ground, the judgment or order will be affirmed on appeal." Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970). Here, when the court ultimately denied Appellant's petition on November 10, 2016 it reached the right result for the wrong reason and that decision ought to be upheld.

II. APPELLANT DID NOT RECEIVE INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

To the extent the Court seeks to reach Appellant's arguments on the merit, he cannot prevail.

A. Counsel was not ineffective in voir dire.

In the instant appeal, Appellant argues "when the Defendant's attorneys did not effectively use voir dire so they could then effectively use all peremptory challenges during this case the Defendant was prejudiced thereby." AOB at 9. In analyzing claims of ineffective assistance of counsel, the Court must apply the two-pronged test set forth in Strickland. 466 U.S. at 687-88, 104 S. Ct. at 2063-64. The first prong of Strickland can be satisfied by showing that counsel's performance fell below an objective standard of reasonableness. Id. To overcome the presumption of effectiveness, Appellant must demonstrate by a preponderance of the evidence that counsel was ineffective. Means, 120 Nev. at 1011, 103 P.3d at 32. Bare, naked allegations are not sufficient to entitle Appellant to relief. Hargrove, 100 Nev. at 502.

Appellant claims that counsel was ineffective for not challenging jurors for cause following the Court's allegedly "perfunctory inquiry." AOB at 10. However, Appellant does not show, nor does the record support, that there was any evidence of a basis for for-cause challenges during voir dire. Such bare, naked allegation cannot serve as a basis for relief.

In addition to failing to show that counsel's performance was deficient, Appellant fails to establish that he was prejudiced by any alleged deficiency. Appellant challenges the Court's questioning as inadequate to protect him and claims that counsel was further ineffective for failing to effectively use peremptory

challenges. However, not one of the jurors that Appellant claims were biased was chosen as a jury member. 1 AA 67. Appellant conveniently ignores that counsel's performance during voir dire was sufficient to exclude those potential jury members he claims were biased. Appellant's claim that "failure to weed out possibly biased jurors may amount to reversible error" is belied by the record. AOB at 12. All the jurors that Appellant contends might have been biased were, in fact, "weeded out" during voir dire. As such, Appellant has failed to meet his burden under either prong of Strickland. Therefore, this claim should be denied.

B. Counsel was not ineffective for failure to call an expert witness.

Appellant claims that he received ineffective assistance of trial counsel because counsel failed to seek expert assistance to examine videotape evidence. AOB at 14. The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." The United States Supreme Court has long recognized that "the right to counsel is the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also

Love, 109 Nev. at 1138, 865 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's representation fell below an objective standard of reasonableness, and second, that but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). "[T]here is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

The court begins with the presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975).

Based on the above law, the role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the

case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). This analysis does not mean that the court should "second guess reasoned choices between trial tactics nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success." Id. To be effective, the constitution "does not require that counsel do what is impossible or unethical. If there is no bona fide defense to the charge, counsel cannot create one and may disserve the interests of his client by attempting a useless charade." United States v. Cronic, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

"There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." Strickland, 466 U.S. at 689, 104 S. Ct. at 689. "Strategic choices made by counsel after thoroughly investigating the plausible options are almost unchallengeable." Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). In essence, the court must "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

Even if a defendant can demonstrate that his counsel's representation fell below an objective standard of reasonableness, he must still demonstrate prejudice and show a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (*citing* Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. (*citing* Strickland, 466 U.S. at 687-89, 694, 104 S. Ct. at 2064-65, 2068).

The Nevada Supreme Court has held "that a habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence." Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS 34.735(6) states in relevant part, "[Petitioner] *must* allege specific facts supporting the claims in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed." (emphasis added).

In support of his assertion that counsel was ineffective for not pursuing a self-defense theory, Appellant cites to People v. Frierson, 25 Cal. 3d 142, 599 P.2d 587

(1979). Appellant's reliance on Frierson is misplaced. Since the time Frierson was decided in the Supreme Court of California in 1979, the United States Supreme Court established the two-part Strickland test to determine questions of ineffective assistance of counsel. As discussed below, Appellant has failed to meet his burden under either prong of Strickland, which requires showing both that counsel's performance fell below an objective standard of reasonableness and that the defendant was prejudiced by the deficiency.

Appellant claims that "[t]he possibility the tape had been altered should have been easy to prove with expert assistance. Counsel's investigation pretrial must therefore be considered inadequate." AOB at 15. A defendant who contends his attorney was ineffective because he did not adequately investigate must show how an investigation would have led to a better outcome. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Instead of explaining why an expert would be necessary to the defense theory that the videotape evidence was inaccurate, Appellant makes a conclusory statement, unsupported by evidence. Appellant does not present any evidence or argument to support his assertion that it "should have been easy to prove with expert assistance" that the tape had been altered, nor does Appellant explain how an expert could have easily established that the tape was altered. AOB at 15.

Such unsupported allegations do not meet the preponderance of the evidence standard required by Means, 120 Nev. at 1012, 103 P.3d at 33. Additionally, the claim that counsel did not sufficiently investigate self-defense before settling on the strategy they chose is a bare, naked allegation. Appellant has failed to meet his burden under Strickland of showing by a preponderance of the evidence that counsel was ineffective. Therefore, this claim should be denied.

C. Counsel was not ineffective in regards to bench conferences.

Appellant claims that he received ineffective assistance of counsel because trial counsel failed to ensure that bench conferences were memorialized. AOB at 19-20. This claim is without merit because he has failed to show that counsel's assistance was not "[w]ithin the range of competence demanded of attorneys in criminal cases." Jackson, 91 Nev. at 432, 537 P.2d at 474.

In Preciado v. State, 318 P.3d 176, 178 (2014) the Nevada Supreme Court ruled that district courts should memorialize all bench conferences, either contemporaneously or by allowing the attorneys to make a record afterward, see also Daniel v. State, 119 Nev. 498, 507-08, 78 P.3d 890, 897 (2003). However, the Nevada Supreme Court rendered its decision in Preciado in February 2014. The verdict in Appellant's jury trial was entered on February 5, 2008. At the time that Appellant's trial took place, the standing law in Nevada was that bench conferences and sidebars must be recorded only in capital cases. Daniel, 119 Nev. at 507-08, 78

P.3d at 897. There was no such requirement for non-capital cases until the Nevada Supreme Court extended its holding from Daniel, over six years after the verdict in Appellant's trial was returned. Preciado, 318 P.3d at 178. Trial counsel's performance cannot be deemed to have fallen below an objective standard of reasonableness for following what was the standing law at the time of Appellant's trial.

Additionally, in order to establish that he received ineffective assistance of counsel, Appellant must also show prejudice. Strickland, 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068. In cases where a bench conference was not memorialized, Appellant must show that the record's missing portions are so significant that their absence precludes the Court from conducting a meaningful review of the alleged errors that the Appellant identified and the prejudicial effect of any such error. Daniel at 508, 78 P.3d at 897. Appellant does not demonstrate that the Court's failure to record all bench conferences prejudiced him. He makes bare, naked allegations that he was prejudiced, but he cannot explain how discussions during the bench conferences might have resulted in prejudice given the extensive record in this case. He alleges, for example, that the testimony of a witness called to impeach the victim "ended abruptly after the sidebar conference and he was never able to testify fully," implying that it is impossible to deduce the Court's reasoning without a transcript of the bench conference. AOB at 23. This assertion is belied by the record. First, the

record shows that the witness in question continued to testify on direct examination after the bench conference, and before he was cross-examined. Second, the arguments of both parties are clear from the record:

> MS. KOLIAS (for the defense): Okay, at any time did you ask Richard if you could go to the hospital?
> THE WITNESS: Oh yes, I told him I'm going to go to the hospital, I'm bleeding a lot, and he said no, no, you don't need to, you're just fine like that.
> MS. THOMAS: Your Honor, the answer's calling for hearsay again, and this whole line of questioning at this point is irrelevant, whether he went to the hospital or whether he didn't go to the hospital. At this point I'm going to object, that it's beyond.
> THE COURT: All right, ***it is (a) hearsay, and (b) I don't – how is it relevant***?
> MS. KOLIAS: Number one it completely contradicts what the alleged victim says in this case, and number two the victim talked about how this was unusual –
> MR. WESTMEYER: Judge, could we do this in sidebar?
> THE COURT: Come up.
> [Bench conference – not transcribed]

1 AA 173-174 (emphasis added).

At this point, the record clearly shows that the Court overruled the State's objection to the defense's line of questioning because, after the sidebar conference, counsel continued the line of questioning about whether the witness went to the hospital or not. Id. Contrary to Appellant's claim that the bench conference "abruptly ended" the witness's testimony, the record shows that defense counsel continued to question him:

> MS. KOLIAS: Did you end up going to the hospital that night?
>
> THE WITNESS: Yes, directly from the club to the hospital.

> MS. KOLIAS: Did you see Lazaro at the club prior to your leaving the nightclub?
> THE WITNESS: No.
> MS. KOLIAS: Okay, so you left the nightclub before Lazaro arrived?
> THE WITNESS: Yes.
> MS. KOLIAS: Okay, and did you get any medical treatment?
> THE WITNESS: Yes.

1 AA 174.

The Court allowed the questioning to continue until the questions veered into topics that were not relevant. The Court stated, on the record, its reasoning in halting that particular line of questioning:

> MS. KOLIAS: What was that medical treatment?
> THE COURT: Excuse me, counsel, ***how is that relevant? He left before—***
> MS. KOLIAS: Okay. All right.
> THE COURT: ***—Mr. Martinez-Hernandez got there***. He went to the hospital. ***What they did to him in the hospital is of no relevance to what we're doing here***.
> MS. KOLIAS: ***All right, Your Honor. Okay. All right***.

Id (emphasis added). Appellant's claim that the failure to record a sidebar conference, an act that was in accordance with Nevada law at the time of trial, resulted in a record that was "so very deficient" that the Court can now do nothing but guess at the trial

court's reasoning is absurd given the record showing that the Court stated its reasoning shortly after the sidebar conference. AOB at 23-24.

The record is sufficient to allow this Court to adequately consider the issues that Appellant raises. Appellant has not shown that counsel acted below an objective standard of reasonableness because counsel followed what was Nevada law at the time of trial, and the unrecorded conferences did not prejudice Appellant. Therefore, this claim should be denied.

D. Appellant was not prejudiced by cummulative error.

Appellant alleges that the "numerous error and deficiencies of counsel" require reversal. AOB at 25. The Ninth Circuit has recognized a claim of cumulative prejudice in habeas petitions. Harris by & Through Ramseyer v. Wood, 64 F.3d 1432, 1438 (9th Cir. 1995). However, while the Nevada Supreme Court has addressed the issue of cumulative error in habeas petitions in unpublished opinions, the Court has never expressly held that ineffective assistance of counsel claims in a Petition for Writ of Habeas Corpus may be aggregated to determine prejudice.

Even assuming, *arguendo*, that Appellant may bring such a claim in a petition for writ of habeas corpus, the claim is without merit. The cumulative error doctrine applies where the Court finds multiple errors that, although harmless individually, cumulate to violate a defendant's constitutional rights. Byford v. State, 116 Nev. 215, 241 (2000). By definition, a finding of cumulative error requires that there be

more than one error in a given case. Cumulative error *cannot* exist where, as here, an appellant has not shown that even one underlying error occurred. McConnell v. State, 125 Nev. 243, 259 (2009).

Appellant has not asserted a single meritorious claim and, as such, there is "nothing to cumulate." Id. Therefore, this claim should be denied.

CONCLUSION

For the foroging reasons, the State respectfully requests that the denial Appellant's Petition for Writ of Habeas Corpus be AFFIRMED.

Dated this 29th day of June, 2017.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page and type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points, contains 4,297 words and does not exceed 30 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 29th day of June, 2017.

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 June 29, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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