IN THE SUPREME COURT OF THE STATE OF NEVADA

IAN ANDRE HAGER, No. 72613

Appellant,

v.

THE STATE OF NEVADA,

Respondent.
_____/

RESPONDENT'S SUPPLEMENTAL BRIEF

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RESPONDENT'S SUPPLEMENTAL BRIEF

A jury convicted Hager of violating NRS 202.360(2)(a), which provides that "[a] person shall not own or have in his or her possession or under his or her custody or control any firearm if the person: (a) [h]as been adjudicated as mentally ill or has been committed to any health facility by a court of this State, any other state or the United States." The State's theory was that Hager was adjudicated mentally ill when he was assigned to and successfully completed a mental health program that Washoe County established under NRS 176A.250 et seq. To that end, the district court instructed the jury that it had to find that Hager had "been adjudicated mentally ill by a court" as an element of the crime (Joint Appendix, Volume 1, 163) ("JA"; "Vol."). The

district court instructed the jury that "[t]o adjudicate is to rule upon judicially." *Id*.

The Court requests the parties to brief whether the jury's decision that Hager's referral to the Washoe County mental health court program constituted an adjudication of mental illness is a question of law that the district court should have decided.

I. Hager's adjudication of mental illness was an element of the crime—and therefore an issue of fact—that he was entitled to have a jury determine.

A question of law is one that presents an abstract legal issue that can be decided "quickly and cleanly without having to study the record." *Ahrenholz v. Board of Trustees of University of Illinois*, 219 F.3d 674, 677 (7th Cir. 2000). In reference to interlocutory appeals in bankruptcy cases, a question of law "has reference to a question of the meaning of a statutory or constitutional provision, regulation, or common law doctrine . . . ." *Id*. at 676. It refers to "a 'pure question of law' rather than a mixed question of law and fact or the application of law to a particular set of facts." *K.S-A v. Hawaii, Department of Education*, 2018 WL 3431922 (2018). *See also McFarlin v. Conseco Servs., LLC*, 381 F.3d 1251, 1259 (11th Cir. 2004) (section "1292(b) appeals were intended, and should be reserved, for situations in which the

court of appeals can rule on a pure, controlling question of law without having to delve beyond the surface of the record in order to determine the facts").

Here, Hager never argued in the district court or in this Court that the district court should have determined, as a matter of law, whether his referral to a mental health court program constituted an adjudication of mental illness under NRS 202.360(2)(a). He only argued that the State had failed to prove beyond a reasonable doubt that he had been adjudicated mentally ill (Appellant's Opening Brief, 20-26). "Generally, the failure to clearly object on the record to a jury instruction precludes appellate review." *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93,, 95 (2003). The Court "has the discretion to address an error if it was plain and affected the defendant's substantial rights." *Gallego v. State*, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001); *see also* NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."). In conducting plain error review, this Court examines whether there was "error," whether the error was "plain" or clear, and whether the error affected the defendant's substantial rights. *Green*, 119 Nev. At 545, 80 P.3d at 95. "Additionally, the burden is on the defendant to show actual prejudice or a

miscarriage of justice." *Id.* "An error is 'plain' if 'the error is so unmistakable that it reveals itself by a casual inspection of the record.' " *Torres v. Farmers Insurance Exchange*, 106 Nev. 340, 345 n. 2, 793 P.2d 839, 842 11.2 (1990) (*quoting Williams v. Zellhoefer*, 89 Nev. 579, 580, 517 P.2d 789, 789 (1973)).

Hager cannot show plain error. A casual inspection of the record, even one that includes an examination of the trial transcript, jury instructions, and legal authority, does not plainly show that whether Hager's referral to a mental health program constitutes an adjudication of mental illness is a question of law.

A person commits a crime when his conduct violates the essential parts of a defined offense—i.e., elements of the offense. Generally, each element of a charged crime must be set forth in the charging document, *Hamling v. United States*, 418 U.S. 87 (1974), and the State must prove the elements beyond a reasonable doubt, *In re Winship*, 397 U.S. 358, 364 (1970), if the defendant invokes his right to a jury trial. *Sullivan v. Louisiana*, 508 U.S. 275, 277–278 (1993); *Burnside v. State*, 131 Nev., Adv. Op. 40, 352 P.3d 627, 638 (2015) (the State has the burden to prove the elements of a crime beyond a reasonable doubt). A defendant has a right to have a jury find all

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the elements of a crime beyond a reasonable doubt. *Rossana v. State*, 113 Nev. 375, 934 P.2d 1045 (1997) ("The Sixth Amendment of the U.S. Constitution mandates that the jury find all elements of a given crime; failing to instruct the jury about essential elements of a crime constitutes constitutional error in that the jury may convict the defendant without finding the defendant guilty of a necessary element of a crime.").

" 'Elements' are the 'constituent parts' of a crime's legal definition—the things the 'prosecution must prove to sustain a conviction.' " *Mathis v. United States*, 136 S. Ct. 2243, 2248 (2016) (*quoting* Black's Law Dictionary 634 (10th ed. 2014)). *See also State v. Harkin*, 7 Nev. 377, 384 (1872) ("The elements of a crime are the "facts necessary to constitute the crime . . . .").

In Nevada, a person may not possess a firearm if he has been adjudicated mentally ill. NRS 202.360(2)(a). An adjudication of mental illness is thus a necessary part—or a necessary fact—of the definition of the crime of possessing a firearm by a prohibited person under NRS 202.360(2)(a). Accordingly, it is an essential element of NRS 202.360(2)(a), which Hager had the right to have the State prove beyond a reasonable doubt to a jury. As such, it was a question of fact, and not of law, that had to be proved at trial. There is no plain error here.

The trial record also shows that whether Hager's referral to mental health court constituted an adjudication of mental illness was a matter of disputed fact—one that depended on (1) which party's version of facts the jury found credible, and (2) how the jury applied the law to the facts. James Popovich, the specialty courts manager for the Second Judicial District Court, testified that the Second Judicial District Court established a mental health court under NRS Chapter 176A (JA, Vol. 3, 486). A district court judge determines whether an individual meets the criteria to be admitted into mental health court. *Id*. at 487. Before the district court judge makes that determination, a committee consisting of a specialty court officer, a parole and probation official, and the parties' counsel staff the case and make a recommendation whether a defendant should be placed into mental health court. *Id*. at 486, 493. Admission into the mental health court requires a qualifying diagnosis of severe mental illness, as defined in NRS 433.164. NRS 176A.260; NRS 176A.045. The qualifying diagnosis must be made by a licensed marriage and family therapist, psychologist, or psychiatrist (JA, Vol. 3, 494). Not every defendant who has a qualifying diagnosis or who is referred to mental health court is accepted into the program. *Id*. at 492. If a

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defendant is not accepted into mental health court, he can be referred again at another time. *Id.* at 509.

In Hager's case, the Sixth Judicial District Court referred him to the mental health court of the Second Judicial District Court (JA, Vol. 3, 490). The referral was not a determination of eligibility; it was a request to determine Hager's eligibility. *Id.* at 492. The State presented evidence that a district court judge in the Second Judicial District admitted Hager into mental health court with a qualifying diagnosis of post-traumatic stress disorder. *Id.* at 490, 491.

Hager traversed the State's evidence that he had received a proper qualifying diagnosis and admittance to mental health court. For example, the letter that was necessary to accept Hager into mental health court was not signed by a judge. *Id*. at 495-96. Nor was there an order signed by a judge that admitted Hager into mental health court. *Id.* at 506. Mr. Popovich could not say whether a "judge had anything to say about whether or not [Hager] belonged" in mental health court. *Id*. at 508. There was no record indicating which judge was present when Hager's case was being staffed. *Id.* The qualifying diagnosis on the referral was not made by a licensed professional. *Id.* at 497. Hager also elicited evidence at trial that

successful completion of mental health court "restores the defendant in the contemplation of the law to the status occupied before the arrest, Indictment or Information." *Id*. at 501.

This Court stated in its order directing supplemental briefing that the jury instructions "asked the jury to decide whether Hager's referral to Washoe County's mental health court program constituted an adjudication of mental illness for purposes of NRS 202.360(2)(a)." But the jury instructions did not focus on a referral to mental health court in asking the jury to determine whether that constituted an adjudication of mental illness. Jury Instruction Number 18 instructed the jury that the crime of possessing a firearm by a prohibited person required the jury to find that Hager had "been adjudicated mentally ill by a court of this State" and that an "adjudication" was a judicial ruling (JA, Vol. 1, 163). The jury instruction does not refer to Hager's referral to mental health court. And the testimony at trial demonstrated that a mere referral to mental health court does not constitute an adjudication of mental illness for purposes of NRS 202.360(2)(a). Hager disputed whether he had been properly referred and accepted into mental health court. His referral and acceptance were thus contested issues of fact regarding whether he had been adjudicated mentally

ill. As such, whether Hager was adjudicated mentally ill was a question of fact that the jury was required to decide. Hager's adjudication as mentally ill was not "an abstract legal issue that can be decided quickly and cleanly without having to study the record." *Ahrenholz, supra*. Hager's adjudication was more "a mixed question of law and fact or the application of law to a particular set of facts." *K.S-A v. Hawaii, supra*. Because this Court must "delve beyond the surface of the record in order to determine the facts," the question of Hager's adjudication is not a question of law that the district court should have decided. *McFarlin, supra.*

If it were error to instruct the jury that it was to determine whether Hager had been adjudicated mentally ill, the error was not plain because it is not apparent from a casual inspection of the record or the law. Moreover, Hager cannot show prejudice. The trial record shows that a court adjudicated Hager with a qualifying diagnosis of PTSD, a mental illness for purposes of NRS 202.360(2)(a) (JA, Vol. 3, 503, 504, 505, 506). In other words, even if Hager's adjudication of mental illness is a question of law that the district court should have decided, no remand is necessary because the record is sufficiently developed to answer the question of whether Hager was

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adjudicated mentally ill. *Compare United States v. McLinn*, 896 F.3d 1152 (10th Cir. 2018) (whether the defendant had been adjudicated mentally defective was a question of law that could not be resolved on appeal because the record on the issue was undeveloped and not briefed on appeal).

II. Hager participated in the mental health diversion program because he was adjudicated as mentally ill.

The Court requests the parties to brief the issue of whether a defendant who participates in a specialty court diversion program under NRS 176A.250 et seq., is thereby adjudicated as mentally ill for purposes of NRS 202.360(2)(a).

The Court "has the discretion to address an error if it was plain and affected the defendant's substantial rights." *Gallego v. State*, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001); *see also* NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.").

NRS 176A.250 authorizes a court to "establish an appropriate program for the treatment of mental illness or intellectual disabilities to which it may assign a defendant pursuant to NRS 176A.260." The successful completion of the program permits the court to discharge the defendant and dismiss the

proceedings without an adjudication of guilt against him. NRS 176A.260(4). To be eligible for such a program, the defendant must suffer from mental illness or be intellectually disabled. NRS 176A.260(1). *See also* NRS 176A.255(2) (an "eligible defendant" in justice or municipal court is one who, among other things, "[a]ppears to suffer from mental illness or to be intellectually disabled").

Here, Mr. Popovich testified that a district court judge determines whether an individual meets the criteria to be admitted into mental health court, i.e., whether the defendant has a qualifying mental illness (JA, Vol. 3, 487). The qualifying diagnosis must meet the definition of mental illness, as defined in NRS 433.164. NRS 176A.260; NRS 176A.045. The diagnosis must be made by a licensed marriage and family therapist, psychologist, or psychiatrist (JA, Vol. 3, 494). Thus, a court's finding of mental illness for purposes of NRS 176A.260 is an adjudication of mental illness. Furthermore, a court may, but is not required to, place a defendant in a mental health program—even if the defendant qualifies for the program. NRS 176A.260(1). Since the court determines whether a defendant is eligible for and whether he will be placed in a mental health program, the court thus adjudicates the defendant as mentally ill or intellectually disabled.

If a court adjudicates a defendant mentally ill for purposes of NRS 176A.260, that would seem to constitute an adjudication of mental illness that prohibits a person under NRS 202.360(2)(a) from possessing a firearm. The adjudication of mental illness for purposes of NRS 176A.260 is made according to statutory and medical guidelines set forth in either the International Classification of Diseases or the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, DSM-IV, Axis I. NRS 433.164(1). NRS 202.360(2)(a) prohibits the possession of a firearm by one who has been adjudicated mentally ill. There is no reason why a finding of mental illness for purposes of NRS 176A.260 would not also constitute an adjudication of mental illness under NRS 202.360(2)(a), given the criteria and procedure that guide a finding of mental illness under NRS 176A.260.

There is no plain error.

III. Hager's participation in a specialty court under NRS 176A.250 et seq., which resulted in a dismissal of charges, did not negate the mental illness he was judicially determined to have for purposes of being a prohibited person who may not possess a firearm.

The Court asks the parties to brief the following question: if admission to a mental health court program constitutes an adjudication of mental

illness that disarms an individual under NRS 202.360(2)(a), does dismissal and discharge of charges under NRS 176A.260(4) after successful completion of the program permit the individual to legally possess a firearm?

Hager must show plain error as he did not raise this issue below. Otherwise, this Court reviews questions of statutory construction de novo. *Leven v. Frey*, 123 Nev. 399, 402, 168 P.3d 712, 714 (2007). Statutes are generally construed with a view to promoting, rather than defeating, legislative policy behind them. *Ebarb v. State, Dep't of Mtr. Vehicles*, 107 Nev. 985, 987, 822 P.2d 1120, 1122 (1991). "Whenever possible, this court will interpret a rule or statute in harmony with other rules and statutes." *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 993, 860 P.2d 720, 723 (1993). When possible, the Court construes statutes such that no part of the statute is rendered nugatory or turned to mere surplusage. *Paramount Ins. v. Rayson & Smitley*, 86 Nev. 644, 649, 472 P.2d 530, 533 (1970).

"If the plain meaning of a statute is clear on its face, then [this Court] will not go beyond the language of the statute to determine its meaning." *Rosequist v. Int'l Ass'n of Firefighters*, 118 Nev. 444, 448, 49 P.3d 651, 653 (2002). However, when a statute "is susceptible to more than one natural or honest interpretation, it is ambiguous, and the plain meaning rule has no

application." *State, Bus. & Indus. v. Granite Constr.*, 118 Nev. 83, 87, 40 P.3d 423, 426 (2002). In construing an ambiguous statute, [the Court] must give the statute the interpretation that "reason and public policy would indicate the legislature intended." *State, Dep't Mtr. Vehicles v. Vezeris*, 102 Nev. 232, 236, 720 P.2d 1208, 1211 (1986) (internal quotations and citations omitted).

NRS 176A.260(4) provides that if a defendant successfully completes a mental health program under NRS 176A.250 et seq., "the court shall discharge the defendant and dismiss the proceedings." The statute further provides:

> Discharge and dismissal pursuant to this section is without adjudication of guilt and is not a conviction for purposes of this section or for purposes of employment, civil rights or any statute or regulation or license or questionnaire or for any other public or private purpose, but is a conviction for the purpose of additional penalties imposed for second or subsequent convictions or the setting of bail. Discharge and dismissal restores the defendant, in the contemplation of the law, to the status occupied before the arrest, indictment or information.

NRS 176A.260(4) does not authorize a person who is found to have a mental illness and who successfully completes mental health court to possess a firearm. While NRS 176A.260(4) dismisses any charge that the defendant was charged with if he successfully completes mental health court, it does not negate the fact that the defendant was adjudicated

mentally ill before he was found guilty either by plea or by a trier of fact. The adjudication of mental illness pursuant to NRS 176A.250 has nothing to do with the charges against the defendant or his guilt. It is only a criterion of eligibility to participate in the mental health court, and therefore stands independent of the charges against the defendant or his guilt. Thus, an adjudication of mental illness under NRS 176A.260 is not dismissed or extinguished if the defendant successfully completes a mental health program.

Recognizing a defendant's adjudication of mental illness after he has been discharged and his case dismissed does not conflict with the language in NRS 176A.260(4) that "[d]ischarge and dismissal restores the defendant, in the contemplation of the law, to the status occupied before the arrest, indictment of information." Restoring the defendant to his original status refers to the fact that he was never charged or convicted. But it is still the case that he was adjudged mentally ill because his mental illness had no determinative value in charging him or in determining his guilt.

If that is the case, then a defendant who has successfully completed mental health court may still not possess a firearm. This permits the legislative intent behind both NRS 176A.250 et seq. and NRS 202.360(2) to be

fully operative—mental health court permits a defendant to extinguish the finding of guilt and to have the case dismissed, but since he was deemed mentally ill he cannot possess a firearm. Read this way, the relevant statutes thus operate harmoniously with each other and the public policy behind treating the mentally ill and controlling their access to firearms are both accomplished.

Further, discharge and dismissal under NRS 176A.260(4) take effect only "for purposes of employment, civil rights or any statute or regulation or license or questionnaire of for any other public or private purpose." Discharge of the defendant and dismissal of charges do not arise if additional penalties are imposed in case the defendant incurs another conviction. NRS 176A.260(4). This too supports the idea that the legislature did not intend to give a defendant complete immunity for the criminal act and everything else that led him to mental health court. If the defendant incurs a subsequent conviction everything about the prior charge in mental health court can be used to increase the sentence for a subsequent conviction.

Here, Hager completed a mental health diversion program in 2014. He was charged with violating NRS 202.360(2) in 2016 (JA, Vol. 1, 1). The fact that Hager obtained another conviction after 2014 means that his 2014

offense remained a conviction because it could increase, i.e., result in an additional penalty, i.e., the sentence in this case. Thus, Hager's adjudication of mental illness would still obtain and prohibit his possession of a firearm under NRS 202.360(2).

IV. NRS 176A.260(4) and NRS 176A.265 do not prohibit a prosecution under NRS 202.360(2)(a).

The Court inquires what significance it should attach to the final sentence of NRS 176A.260(4) and NRS 176A.265.

The last sentence of NRS 176A.260(4) states: "The defendant may not be held thereafter under any law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge that arrest, indictment, information or trial in response to an inquiry made of the defendant for any purpose." The sentence refers to the consequence of discharging the defendant and dismissing charges against him if he successfully completes a mental health program under NRS 176A.250 et seq.

The last part of NRS 176A.260(4) does not prohibit a prosecution under NRS 202.360(2)(a). It only declares that a defendant may not be prosecuted for making a false statement for failing to acknowledge an arrest or prosecution for any charge that was dismissed because the defendant

successfully completed mental health court. But it does not negate a prior adjudication of mental illness. The existence of a mental illness is not an element of the original crime for which the defendant entered a mental health program, nor is it part of the arrest or prosecution of the original crime. NRS 176A.260(4) is inapposite to a charge under NRS 202.360(2).

NRS 176A.265(1) provides that after a defendant is discharged from probation (because he has successfully completed a mental health program under NRS 176A.250 et. seq.), "the court shall order sealed all documents, papers and exhibits in the defendant's record, minute book entries and entries on dockets, and other documents relating to the case in the custody of such other agencies and officers as are named in the court's order . . . ."

NRS 176A.265(1) applies only to sealing records "in the custody of such other agencies and officers as are named in the court's order . . . ." NRS 176A.265(1) does not apply to the court's own records or records that belong to someone else not named in the court order. The record fact of Hager's mental illness was part of a court record (JA, Vol. 1, 117-19, 142). Thus, the sealing component of NRS 176A.265(1) does not apply here. And there is no court order sealing any record in the custody of another agency or officer in Hager's case.

Furthermore, as argued above, the fact that a defendant was found to have mental illness should exist independent of anything a court may seal. The adjudication of mental illness has nothing to do with the merits of the underlying crime; it's only a qualifying criterion for acceptance into a mental health program. That the legislature intended the fact that one who was adjudicated mentally ill can still be the basis of a prosecution under NRS 202.360(2)(a), despite NRS 176A.265(1), is reflected in the fact that the legislature passed NRS 202.360(2)(a).

And, as mentioned above, a defendant's prior crime can still be used as a conviction to enhance penalties for subsequent convictions. NRS 176A.260(4). Thus, the sealing portion of NRS 176A.265(1) does not prevent using records of the defendant's case or mental health court records in all situations.

Finally, Hager did not raise the issue; thus, it is waived, since there is no plain error.

V. NRS 179A.163; NRS 433A.310(3); NRS 176A.400

The Court asks the parties to brief the question whether "the State's interpretation of NRS 202.360(2)(a) can be squared with NRS 179A.663, NRS 433A.310(3), and NRS 176A.400."

In relevant part, NRS 179A.163(1) provides that the Central Repository for Nevada Records of Criminal History must include information it receives pursuant to NRS 159.0593, 174.035, 175.533, 175.539, 178.425, or 433A.310 in each appropriate database of the National Instant Criminal Background Check System, and may include such information in the appropriate database of the National Crime Information Center. Under NRS 179A.163(2), a person "may petition the court for an order declaring that: (a) The basis for the adjudication reported in the record no longer exists; (b) The adjudication reported in the record is deemed not to have occurred for purposes of 18 U.S.C. sec. 922(d)(4) and (g)(4) and NRS 202.360; and (c) the information reported in the record must be removed from the National Instant Criminal Background Check System and the National Crime Information Center."

NRS 179A.163 does not apply to Hager's case. The records referred to in NRS 179A.163(1) are not records that are part of a mental health court diversion program. *See* NRS 159.0593(1) (determining whether a proposed ward is prohibited from possessing a firearm under federal law); NRS 174.035(8) (the court must transmit a record of a plea of guilty but mentally ill under NRS 174.035 to the Central Repository); NRS 175.533(3) (the court must transmit a record of a defendant who is found guilty but mentally ill

after a trial to the Central Repository); NRS 175.539(4) (the court must transmit a record of a verdict acquitting a defendant by reason of insanity to the Central Repository); NRS 178.425(6) (he court must transmit a record of a finding that a defendant is incompetent to the Central Repository); NRS 433A.310(5) (the court must transmit a record of an order involuntarily admitting a person to a public or private mental health facility or a program of community-based or outpatient services to the Central Repository).

Even if the records were part of Hager's metal health program, nothing about their inclusion in a national database would affect the prosecution in this case. And Hager never petitioned a court under NRS 179A.163(2) for an order declaring that he was no longer mentally ill. As such, he was subject to prosecution as one who possessed a firearm and who had been adjudicated mentally ill. Hager fails to show plain error.

NRS 433A.310(3), in relevant part, provides that a court-ordered involuntary admission to a mental health facility for one who is mentally ill "automatically expires at the end of 6 months if not terminated previously by the medical director of the public or private mental health facility . . . ." The statute is inapplicable because Hager was not involuntarily committed to a mental health facility by court order. Moreover, NRS 433A.310(3) operates to

terminate an involuntary admission at the end of 6 months. A person may be involuntarily held for another six-month period if there is sufficient evidence to show that the person "has a mental illness and, because of that illness, is likely to harm himself or herself or others if allowed his or her liberty . . . ." NRS 433A(1)(b)(3). NRS 202.360(2), on the other hand, requires only a person to have been adjudicated mentally ill. The statute does not become inoperable through the passage of time. The legislature thus intended that anyone who has been adjudicated mentally ill may not possess a firearm. Presumably, the legislature feared that those who regained their mental health after an adjudication of mental illness could still have an episode of mental illness in the future that could endanger themselves or others. The legislature was particularly way of anyone who possess a firearm who has been mentally ill. In this way, the expiration of an involuntary hold, absent evidence of continuing mental illness, is not applicable to the criminal statute.

Whether a defendant who has been declared mentally ill for purposes of NRS 176A.250 et seq. should be able to present a defense to a charge under NRS 202.360(2)(a) that he was not mentally ill at the time he possessed a firearm is a matter for the legislature. This Court should not read such a

defense into the statute where it does not exist. As mentioned above, there are a number of reasons why the legislature would have prohibited a person who has been adjudicated mentally ill from possessing a firearm. Mental illness ebbs and flows. It is usually never completely cured. The citizens of this state do not want to risk the possibility that one who has been adjudicated mentally ill might, for any reason, stop taking medication or receiving treatment. The fact that a mentally ill individual might become stable at one point certainly does not preclude future relapses.

Those with mental illness can be easy targets for people to use as illegal "straw man" purchasers. The mentally ill may also be more unlikely to safely store their firearms or more likely to let others have access to them. It is well known by now that the mentally ill increase the deadly consequences of their use of firearms.

NRS 176A.400(2) allows a court to order a defendant to participate in "any alternative program, treatment or activity deemed appropriate by the court." This does not present an additional conflict between NRS 176A.250 and NRS 202.360(2).

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For the foregoing reasons, the State requests the Court to affirm the judgment of conviction.

DATED: November 5, 2018.

CHRISTOPHER J. HICKS
DISTRICT ATTORNEY

By: JOSEPH R. PLATER
Appellate Deputy

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 Constantia 14.

2. I further certify that this brief complies with the page limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it 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

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the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: November 5, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on November 5, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

John Reese Petty
Chief Deputy Public Defender

/s/ Margaret Ford
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