IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER ROBERT KELLER, Appellant, v. THE STATE OF NEVADA, Respondent.	Case No. 73871

RESPONDENT'S ANSWERING BRIEF

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

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ROUTING STATEMENT

This case is not presumptively assigned to the Court of Appeals under NRAP 17(b)(2) as it is an appeal from a judgment of conviction based on a jury verdict, involving a conviction for several Category B offenses.

STATEMENT OF THE ISSUES

1. Whether the District Court abused its discretion in denying Appellant's sixth continuance request on the day trial was set to start.
2. Whether the District Court abused its discretion in denying Appellant's pretrial motion to suppress the evidence discovered in Appellant's residence pursuant to a search warrant.

3. Whether the District Court erred in admitting the jail calls introduced by the State.

4. Whether there was cumulative error.

STATEMENT OF THE CASE

On February 17, 2016, Christopher Robert Keller ("Appellant") was charged by way of Information with COUNTS 1 and 2 - Trafficking In Controlled Substance (Category A Felony - NRS 453.3385.3 - NOC 51160); COUNT 3 - Possession Of Controlled Substance, Marijuana (Category E Felony - NRS 453.336 - NOC 51127); COUNTS 4, 5, 6, and 7 - Possession Of Controlled Substance With Intent To Sell (Category D Felony - NRS 453.337 - NOC 51141); and COUNTS 8 and 9 - Ownership Or Possession Of Firearm By Prohibited Person (Category B Felony - NRS 202.360 - NOC 51460). On February 18, 2016, Appellant entered a plea of not guilty and invoked his constitutional right to a speedy trial. Appellant's Appendix ("1 AA") at 1-4; Respondent's Appendix, Vol. 1 ("1 RA") at 1.

On March 24, 2016, the State filed a Notice of Intent to Seek Punishment as a Habitual Criminal. 1 RA 3-4. At Calendar Call on April 13, 2016, Appellant's counsel, Michael Sanft, Esq., announced he had a conflict for the trial date due to the upcoming trial. RA 5-6. Due to counsel's conflict, the court ordered the trial date reset. Id. At this date, the State also extended a plea offer to Appellant for one count of low level trafficking in a controlled substance and one count of possession

of a firearm by a prohibited person, with Appellant stipulating to small habitual treatment, with a stipulated maximum sentence of twelve and one half years. Id. The trial date was reset to May 2, 2016 ("First Continuance").

At Calendar Call on April 20, 2016, the Court vacated the trial date and referred the matter to overflow for April 29, 2016. 1 RA 7. On April 29, 2016, Mr. Sanft requested to withdraw due to a conflict of interest; the court granted the request and appointed Kenneth Frizzell, Esq., who confirmed as counsel on May 4, 2016. 1 RA 8. Due to the change in counsel, the trial date was vacated and reset to June 27, 2016 ("Second Continuance"). Id.

On June 10, 2016, Appellant filed a Motion to Suppress. 1 AA 81-92; 1 RA 9-28. The State filed an Opposition on June 17, 2016. 1 AA 93-102. On June 20, 2016, Appellant requested more time to file a Reply to the State's Opposition, and the Court vacated the trial date of June 27, 2016, and ordered Calendar Call on July 20, 2016, and a Denno hearing on July 21, 2016 ("Third Continuance"). 1 RA 32-33; 1 AA 103-04.

On June 13, 2016, Appellant, pro se, filed a Motion to Dismiss Counsel and Appoint Alternate Counsel. 1 RA 29-31. The District Court denied the Motion on July 21, 2016, after hearing from Appellant. Id. at 36-37.

On July 18, 2016, the State filed a Notice of Intent to Seek Habitual Criminal Treatment. Id. at 34-35. On July 21, 2016, the State also informed the court that it

had extended a new plea offer for one count of mid-level trafficking, and one count of possession of a firearm by a prohibited person, with no opposition to the counts running concurrent and with the State retaining the right to argue. Id. at 36-37. Appellant rejected the offer. Id. On July 21, 2016, the court also denied Appellant's Motion to Suppress after a Jackson v. Denno hearing. Id. The Court denied Appellant's pro per Motion to Dismiss Counsel and Appoint Alternate Counsel. Id. The Order denying the motions was filed on August 18, 2016. Id. at 103-04.

On July 21, 2017, Defense counsel requested another continuance, stating that, due to the Motion to Suppress, he had not been able to prepare for trial ("Fourth Continuance"). Id. at 37. The District Court granted the continuance, and reset the trial date for September 19, 2016. Id.

At Calendar Call, on September 14, 2016, Appellant waived his speedy trial right and requested a continuance ("Fifth Continuance"). Id. at 38. The District Court granted the continuance and reset the trial to March 6, 2016. Id.

Both Appellant and the State announced ready for the March 6, 2016, trial date – which was the sixth trial setting in the case. Id. at 40, 52. On March 6, 2017, the day trial was due to start, Amy Feliciano, Esq., appeared in Court, and attempted to substitute in as trial counsel. Id. at 40-60. Ms. Feliciano informed the Court that she had been retained by Appellant's mother sometime in early February, but had not moved to substitute in as counsel until March 6, 2017, due to multiple medical

and personal problems. Id. at 40-42. As Ms. Feliciano was unprepared for trial without a sixth continuance being granted, the Court denied Appellant's request for a continuance and ordered trial to proceed with Mr. Frizzell as counsel. Id. at 42-56.

On March 6, 2017, the State filed a Second Amended Information, as the State chose to bifurcate Counts 8 and 9 from the first seven charges. 1 RA 59-60. The Second Amended Information charged Appellant with COUNTS 1 and 2 - Trafficking In Controlled Substance (Category A Felony - NRS 453.3385.3 - NOC 51160); COUNT 3 Possession Of Controlled Substance, Marijuana (Category E Felony - NRS 453.336 - NOC 51127); and COUNTS 4-7 - Possession Of Controlled Substance With Intent To Sell (Category D Felony - NRS 453.337 - NOC 51141). Appellant's jury trial started on March 7, 2017, and ended on March 10, 2017, when the jury returned a verdict of guilty on Counts 1 through 7. 4 RA 573-76; 1 AA 64-66.

The State filed its Third Amended Information in open court on March 10, 2017, charging Appellant with COUNTS 8 and 9 – Ownership or Possession of Firearm by Prohibited Person (Category B Felony - NRS 202.360 - NOC 51460). 1 RA 59-60; 4 RA 576. The jury returned a verdict of guilty on counts 8 and 9 that same day. 4 RA 590-91; 1 AA 64-66.

On April 29, 2017, Ms. Feliciano substituted as counsel of record, and Mr. Frizzell withdrew from the representation. 4 RA 599-601. Ms. Feliciano requested that sentencing be continued three times: on May 8, 2017, on June 5, 2017, and on June 19, 2017. 4 RA 602-04. On July 24, 2017, Ms. Feliciano requested a fourth sentencing continuance, and Appellant requested she be dismissed as counsel of record. 4 RA 605. The District Court granted Appellant's request, and re-appointed Mr. Frizzell as Appellant's counsel. Id. On July 31, 2017, the Court granted Mr. Frizzell a continuance to allow him to retrieve Appellant's file from Ms. Feliciano. 4 RA 606.

On August 7, 2017, Appellant was sentenced as follows: as to Count 1- LIFE in the Nevada Department of Corrections (NDC) with a minimum parole eligibility after ten (10) years in NDC; as to Count 2 – LIFE in the NDC with a minimum parole eligibility after ten (10) years in the NDC; Count 2 to run concurrent with Count 1; as to Count 3 – a minimum of twelve (12) months and a maximum of forty-right (48) months in the NDC; Count 3 to run concurrent with Count 2; as to Count 4 – to a minimum of twelve (12) months and a maximum of forty-eight (48) months in the NDC; Count 4 to run concurrent with Count 3; as to Count 5 – a minimum of twelve (12) month and a maximum of forty-eight (48) months in the NDC; Count 5 to run concurrent with county 4; as to Count 6 - to a minimum of twelve (12) months and a maximum of forty-eight (48) months in the NDC; Count 6 to run concurrent

with Count 5; as to Count 7 - to a minimum of twelve (12) months and a maximum of forty-right (48) months in the NDC; Count 7 to run concurrent with Count 6; as to Counts 8 – Appellant sentenced under the large habitual criminal statute to LIFE in the Nevada Department of Corrections (NDC) with a minimum parole eligibility after ten (10) years in the NDC; Count 8 to run CONSECUTIVE to Counts 1, 2, 3, 4, 5, 6, and 7; and as to Count 9, Appellant sentenced under the large habitual criminal statute to LIFE in the Nevada Department of Corrections (NDC) with a minimum parole eligibility after ten (10) years in the NDC; Count 9 to run concurrent with Count 8; for a total aggregate sentence of LIFE in the NDC with a minimum parole eligibility of TWENTY (20) years in the NDC, and 559 days' credit for time served. 4 RA 618-621. Appellant's Judgment of Conviction was filed on August 10, 2017. 1 AA 67-70.

An Amended Judgment of Conviction was filed on December 12, 2017, correcting the statute to NRS 435.337 – Possession of Controlled Substance with Intent to Sell for Counts 4, 5, 6, and 7. 1 AA 71-74.

On August 24, 2017, Appellant filed a Notice of Appeal. 1 AA 75. Appellant filed his Opening Brief on January 11, 2018. The State answers herein.

STATEMENT OF THE FACTS

On January 28, 2016, at approximately 2:25 a.m., Officer Lopez conducted a vehicle stop on a 2002 silver Dodge Stratus – later found to be driven by Appellant.

See 2 RA 139-148. Officer Lopez observed the vehicle travelling over 300 feet in a double-yellow left- hand turn lane, making a U-turn, making an abrupt turn into a residential area, travelling at a high rate of speed, and having a broken taillight. 2 RA 139-46. Officer Lopez testified that it was obvious to him that the Dodge was trying to put distance between them. Id. at 143-44. Once the vehicle entered the residential area, it parked, and Appellant quickly left the vehicle after Officer Lopez turned on his siren and lights. Id. at 148-49. Officer Lopez observed Appellant quickly jump out of the vehicle, appearing as though he wanted to avoid him. Id. at 150, 265. Officer Lopez was able to smell the odor of marijuana coming from Appellant's person as well as from the inside of the vehicle. Id. at 152.

Officer Lopez initiated a traffic stop. Id. at 151-52. Appellant consented to allow Officer Lopez to remove his wallet from his pocket to see Appellant's identification. Id. at 153. Upon removing the wallet, Officer Lopez noted that Appellant was carrying what appeared to be a large amount of cash. Id. at 153-54, 271-72. The cash was right outside of Appellant's wallet, with multiple denominations, among which sixty-eight $20 bills separated in groups of five bills and folded in alternating directions. Id. at 154. The amount of cash was determined to be $2,187.00. Id. at 157. Based upon the manner in which the cash was situated, and the amount of cash that Appellant carried, Officer Lopez determined that the cash was, in his training and experience, consistent with the sale of narcotics. Id. at

171-73. Officer Lopez based this conclusion, in part, on the denominations of the cash, the way the cash was specifically folded, the fact that 20-dollar-bills were folded in increments of $100, the direction the bills were facing, and the fact that "wad of cash" was made up of mostly smaller denominations, such as $20, $5 and $10 bills. See id. at 153-55, 171-74.

During the vehicle stop and pat-down, there were approximately five shots fired within the apartment complex, so Officer Lopez placed Appellant in handcuffs and into the patrol vehicle not only for Appellant's safety, but also so that Officer Lopez would be able to safely address any issues stemming from the shots fired. Id. at 152-53, 160-62, 163. Additionally, Officer Lopez believed that Appellant would be a flight risk based upon his attempts to avoid the officer, his nervousness, the fact that he was so upset about being stopped, and Defendant's behavior while Officer Lopez conducted the pat down for weapons. Id.

Afterward, Officer Lopez located, while standing outside the driver's door, noticed a green leafy residue on the floorboard of the driver's side vehicle in plain view. Id. at 163-65. Based upon the vehicle, the odor of marijuana emanating from Appellant and the vehicle, and the green leafy residue in plain view, Officer Lopez conducted a probable cause search of Appellant's vehicle. Id. at 165-66, 267-28. During the probable cause search, Officer Lopez located a clear sealable plastic bag containing multiple smaller clear plastic bags underneath the driver's seat, as well

as another large sealable plastic bag between the driver's seat and the center console. Id. At that point, based on the size of the bags found in Appellant's car, as well as the amount of cash found on Appellant's person, Officer Lopez called for a K-9 narcotics dog. Id. at 171-72. The dog alerted to the glove box, wherein Officer Lopez located a concealed compartment. Id. at 176-77. Officer Lopez testified he put his hand inside the hole, and could feel a bag with something solid inside. Id. at 177. At that point in time, Officer Lopez stopped his search and obtained a search warrant. Id. Pursuant to the search warrant, Officer Lopez located several items of evidence. Id. at 181-214.

Officer Lopez, Officer Henry, and Crime Scene Analyst Stephanie Thi searched the vehicle. 1 RA 101-04; 2 RA 180-83. In the secret compartment, they found a black mesh bag, within which they found two gold colored plastic bags. 1 RA at 106-08; 2 RA 182-83. One of the gold bags contained a nylon drawstring bag within which a loaded Beretta model 950, .22 caliber handgun was found. 1 RA 108-10, 112-14; 2 RA 184. Moreover, Officer Lopez also found several packages of a white crystal substance, plastic wrappers with a brown substance, and a plastic bag with an off white powdery substance. 1 RA 107-10. Officer Lopez believed these substances, based on his training and experience, to be various controlled substances, respectively. 2 RA 183, 186-213.

Forensic Scientist Jason Althnether tested the substances and determined that the white crystal substance was methamphetamine, of a net weight of 344.29 grams; that the brown substance was indeed heroin, with a net weight of 33.92 grams; and that the white powdery substance was indeed cocaine, with a weight of 0.537 grams. 3 RA 451-55, 458-60, 561-62. Officer Lopez testified he also found a blue powdery substance in the secret compartment; Mr. Althnether tested the substance and determined it was a combination of methamphetamine, amphetamine, and cocaine, of a weight of 0.795 grams. 2 RA 213-14; 3 RA 463-65.

Based on what was discovered in the car, Officer Lopez obtained a search warrant for Appellant's house, at 265 North Lamb, Unit F – the unit in front of which Appellant had parked the car. 2 RA 226-27.

Officer Lopez, Officer Steven Hough, Detective Chad Embry and Detective Michael Belmont searched Appellant's residence. 2 RA 228-29. While searching the bedroom, Officer Lopez found used smoking pipes, four scales, a box of 9mm ammunition, and two bags containing a white crystalline substance. Id. at 229-30, 234, 236-39, 241, 250-51; 3 RA 466-67. This substance was later tested by Mr. Althnether, who determined the substance was methamphetamine: the first bag weighted 3.818 grams, and the second 2.357 grams. 3 RA 472-73. Officer Lopez also found in the bedroom a brown substance he also believed was heroin. Upon

testing, Mr. Althnether confirmed the substance was heroin, weighing .895 grams. 3 RA 473.

In the storage closet, Detective Embry found .22 short ammunition. 2 RA 252-53, 307-09; 3 RA 382-83. In the bedroom, police also discovered a Ruger 9mm handgun and a pay stub with Appellant's name on it, which was impounded by Officer Lopez. 2 RA 242-43, 244-46, 310-11.

Detective Belmont, upon searching the kitchen, also found a glass jar containing a green leafy substance believed to be marijuana, which was confirmed as such by Mr. Althnether, finding the marijuana to weigh 175 grams. 2 RA 246-49, 228-29; 3 RA 383-84, 467-48, 471. Officers also found balloons, clean pipes, syringes and elastic bands in Appellant's residence. 2 RA 229, 233-34; 3 RA 387-400. Moreover, Crime Scene Analyst Thi testified that the Nevada DMV registration found in the car listed Appellant as the owner of the Dodge. 1 RA 116-17; 2 RA 296-97; 3 RA 514. During trial, the State introduced a jail call wherein Appellant told a woman to move into his house, and make it her home. See 3 RA 484-85, 533.

Appellant was placed under arrest and brought to Northeast Area Command. Id. at 400-01. While there, Officer Hough, who was watching Appellant in an interview room on a monitor, observed Appellant pull out a small baggie from inside his pants, and by the time he and another officer arrived in the room, Appellant had

a white powdery substance on his nose and mouth. Id. at 401-03, 413, 424-25. Upon searching Appellant, Officer Hough found another small bag of white powder attached to the left side of Appellant's scrotum. Id. at 402.

SUMMARY OF THE ARGUMENT

First, the District Court did not abuse its discretion in denying Appellant's sixth continuance request, as Appellant fails to show he was prejudiced by this denial. Not only had the parties announced ready in February, but on the day set for the first day of trial, Ms. Feliciano was unprepared to proceed to trial, despite having been retained in February. Moreover, given Ms. Feliciano's personal problems, as well as her repeated absences after being retained by Appellant at sentencing, Appellant fails to show that Ms. Feliciano would have been present and prepared for trial, and as such, his claim fails.

Second, the District Court did not abuse its discretion in denying Appellant's pretrial Motion to suppress the evidence found in Appellant's house, as Officer Lopez had probable cause to search Appellant's car based on the numerous traffic violations observed and the smell of marijuana permeating Appellant and the car, and as Officer Lopez had probable cause, as well as a valid search warrant, to search Appellant's residence. Appellant's claim is without merit and should thus be denied.

Third, the District Court did not err in admitting the jail calls into evidence, as they did not constitute hearsay, but were introduced as adoptive admissions by a

party-opponent by the State against Appellant. Even if the District Court had committed error, the error would be harmless, given the wealth of evidence against Appellant. As such, Appellant's claim should be denied.

Finally, as there is no trial error, there are no errors to cumulate, and Appellant's claim of cumulative error fails.

ARGUMENT

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DENYING APPELLANT'S SIXTH REQUEST FOR A CONTINUANCE

Appellant first contends that the District Court abused its discretion in denying his sixth request for a continuance when, on the day trial was due to start, Amy Feliciano, Esq. attempted to substitute as counsel of record. AOB at 7-9. This Court reviews a district court's decision regarding a motion for continuance for an abuse of discretion. Rose v. State, 123 Nev. 194, 206, 163 P.3d 408, 416 (2007). If a defendant fails to demonstrate he was prejudiced by the denial of a continuance, the district court's denial is not an abuse of discretion. Id. "Each case turns on its own particular facts, and much weight is given to the reasons offered to the trial judge at the time the request for a continuance is made." Zessman v. State, 94 Nev. 28, 31, 573 P.2d 1174, 1177 (1978). An abuse of discretion is "any unreasonable, unconscionable and arbitrary action taken without proper consideration of facts and law[.]" *Abuse of Discretion*, Black's Law Dictionary (Abridged 6th Ed. 1991).

NRS 174.515(1) provides the standard for a court to grant a continuance upon a party's request:

> When an action is called for trial, or at any time previous thereto, the court may, **upon sufficient cause shown** by either party by affidavit, direct the trial to be postponed to another day. . . .

(Emphasis added). Moreover, Eighth Judicial District Court Rule 7.40(c) clearly states that "**no application for withdrawal or substitution may be granted if a delay of the trial or of the hearing of any other matter in the case would result**." (Emphasis added).

Although the Sixth Amendment of the United States Constitution includes the right for a defendant to retain counsel of his choice, the Supreme Court and this Court have held that this right is not absolute. Rimer v. State, 251 P.3d 697, 712 (2015). In Rimer, on the eve trial was set to start, the defendant informed the district court that he intended to substitute his court-appointed counsel for private counsel. This Court, in affirming the denial of Rimer's continuance, explained that, although "the denial of a continuance may infringe upon the defendant's right to counsel of choice, '[] only an unreasoning and arbitrary insistence upon expeditiousness in the face of a justifiable request for delay violates the right to the assistance of counsel.'" Id. (citation omitted). Here, as in Rimer, Appellant had known since September 14, 2016, that trial was set to begin on March 6, 2017. Moreover, both parties had announced ready at Calendar Call in February.

There was no justifiable request for delay in this case, and thus, no violation of Appellant's Sixth Amendment right to counsel. In the instant Appellant failed to show sufficient cause to warrant a continuance: Ms. Feliciano had allegedly been contacted by Appellant's mother in early February – at which time both the State and the defense had already announced ready to proceed to trial. See 1 RA 40-41. However, it was not until several weeks later, on February 28, 2017 – one week before trial was set, for the sixth time, to begin, that Ms. Feliciano and Appellant informed the Court and the State of Appellant's mother's intent to retain Ms. Feliciano. Id. at 40-41, 45. Ms. Feliciano was unprepared to proceed to trial on March 6, 2017, and requested a sixth continuance and seventh trial setting, which the District Court chose to refuse. On that date, Ms. Feliciano appeared in Court, requested the continuance, and explained her problems, which included both grand mal seizures, aphasia, and a sixteen-year old son in a mental health facility. See 1 RA 40-41.

The District Court explained that Appellant had initially invoked his right to a speedy trial, that Mr. Frizzell was not the first attorney appointed to Appellant, and that based on Mr. Frizzell announcing ready, the Court was ready to proceed to trial on that date. 1 RA 42-43. The District Court further stated that when attorneys intend to substitute in at calendar call, they should be ready to proceed to trial, because "it's just not fair to the parties. It's not even fair to the Court here. And it's

certainly not fair to your client." 1 RA 43. Moreover, the State informed the Court that Appellant, in jail calls to his mother, wanted Ms. Feliciano to substitute in, so that he could get rid of Mr. Frizzell, and Ms. Feliciano "[could] file a bunch of motions and the DA would give [him] a better deal [because he needed] to get a better deal." 1 RA 45. The District Court then further stated that Appellant was trying to control the court, and that based on case law and statutes, the court was denying Appellant's request for this sixth continuance. See 1 RA 49-52.[1]

Accordingly, as the District Court denied the continuance after proper consideration of the law and facts of the instant case, it did not abuse its discretion, and Appellant's claim to the contrary should be denied.

II. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN REFUSING TO SUPPRESS THE EVIDENCE FOUND IN APPELLANT'S HOME

Appellant then alleges that the District Court abused its discretion when it denied his pre-trial motion to suppress the evidence of drug trafficking found in Appellant's home. AOB at 9. This argument is without merit. This Court generally review a district court's decision to admit evidence for an abuse of discretion; however, it reviews various issues regarding the admissibility of evidence that

[1] Moreover, given Ms. Feliciano's repeated absences and requests for continuances at Appellant's sentencing, which resulted in the District Court re-appointing Mr. Frizzell and dismissing Ms. Feliciano at Appellant's request, Appellant also fails to show that he was prejudiced by the denial of the continuance, as he fails to demonstrate how Ms. Feliciano would have ever been ready for trial.

implicate constitutional rights as mixed questions of law and fact subject to de novo review. Hernandez v. State, 124 Nev. 60, 188 P.3d 1126 (2008); Johnson v. State, 118 Nev. 787, 794, 59 P.3d 450, 455 (2002) ("Suppression issues present mixed questions of law and fact.").

Here, Appellant confusingly claims that the State "made an assumption upon an assumption" when the State "assumed [Appellant] was a drug dealer [and] assumed there would be drugs in his residence." AOB at 9. He further claims that the search warrant for Appellant's house was unsupported by probable cause. This Court has held that a search warrant requires three things: "(1) it must be issued upon probable cause and have support for the statement of probable cause; (2) it must describe the area to be searched; and (3) it must describe what will be seized. The linchpin of a warrant, however, is the existence of probable cause." State v. Allen, 119 Nev. 166, 170, 69 P.3d 232, 235 (2003). To establish probable cause, the State must prove (1) that a crime was committed, and (2) that Appellant committed the crime. Frutiger v. State, 111 Nev. 1285, 1389, 907 P.2d 158, 160 (1995). Here, probable cause supported the search warrant.

In his brief, Appellant fails to detail any of the facts leading to the search warrant of Appellant's residence. He fails to detail the traffic stop, which led to Officer Lopez finding a large wad of cash and $20 bills on Appellant, the smell of marijuana, which led to the probable cause for Officer Lopez to search Appellant's

car, wherein Officer Lopez found multiple small baggies under the driver's seat. This in turn led to Officer Lopez obtaining a search warrant to search the hidden compartment of the car, leading in turn to the discovery of 344.29 grams of methamphetamine, 33.92 grams of heroin; and 0.537 grams of cocaine – along with a bag containing 0.795 grams of a mix of cocaine, methamphetamine and heroin, and a .22 Beretta. 3 RA 451-55, 458-60, 561-62.

Based on the quantity of drugs, the gun, and the multiple little baggies found in the car, Officer Lopez based on his training and experience, had probable cause to believe Appellant was a drug dealer. Based on this probable cause, the contraband found in the car, and the fact that the DMV registration showed Appellant's residence to be the house in front of which he had parked – 265 North Lamb, Unit F – Officer Lamb applied for, and obtained a search warrant for 265 North Lamb, Unit F.

Appellant claims that the State made the "jump from the car to the home without any statements from Appellant or additional evidence." AOB at 9. Yet, in this case, none was needed. No assumption was made. The police found large quantities of drugs, a weapon, and baggies, which were all consistent with drug trafficking. Appellant was parked in front of his residence and attempting to get inside when Officer Lopez stopped him. Although Appellant conveniently leaves out all these facts in his brief and claimed the police made an "unsupported

assumption" that he was a drug dealer, the evidence, in fact, supports this assumption, and supports the probable cause sworn to in the application for the search warrant for Appellant's residence.

Appellant's claim is thus wholly belied by the trial record and is without merit. The District Court, in considering the law and the facts, did not abuse its discretion in denying Appellant's oral pretrial motion to suppress the evidence. As such, Appellant's claim should be denied.

III. THE DISTRICT COURT DID NOT ERR IN ADMITTING THE JAIL CALLS INTO EVIDENCE

Appellant claims that the District Court erred in admitting the jail calls because the jail call conversations were hearsay. AOB at 11-12. "Harmless error analysis applies to hearsay errors." Tabish v. State, 119 Nev. 293, 311, 72 P.3d 584, 595 (2003). Non-constitutional trial error is reviewed for harmlessness based on whether it had substantial and injurious effect or influence in determining the jury's verdict. Knipes v. State, 192 P.3d 1178 (2008).

Here, the statements introduced by the State qualified as adoptive admissions – and not excited utterances, despite what Appellant claims. However, even assuming arguendo that the statements did qualify as hearsay, the error was harmless, as the evidence presented against Appellant extremely strong. See supra § II.

In fact, Appellant objected to one portion of one jail call, in which he asserted a hearsay objection to statements coming from the woman speaking to Appellant, wherein she claimed to have fired the five shots while he was being detained by Officer Lopez, and wherein Appellant acknowledged her and stated he saw her. 1 AA 55-56. First, any statements by Appellant are statements by a party-opponent, introduced by the State, under NRS 51.035(3)(a), and are thus not hearsay. Second, any statements by the person with whom Appellant was talking were not introduced for the truth of the matter they asserted – i.e. that she actually shot off the gun. They were introduced in the context of the speaker's entire conversation with Appellant, and serve to demonstrate his knowledge and his consciousness of guilt. Even if considered for the truth of the matter asserted, those statements were adoptive admissions under NRS 51.035(3)(b), as Appellant acknowledged seeing her run and hearing the shots, in response to which the woman stated that she fired the shots. 1 AA 56-57. Appellant also acknowledged the police officers were concerned about the shots. Id. at 57.

Moreover, even if the District Court erred in admitting the statements into evidence, the error was harmless, as the quantity and quality of the drugs, weapons, and drug paraphernalia found in the car and residence registered to Appellant were sufficient, in and of themselves, for a reasonable jury to find, beyond a reasonable

doubt, that Appellant was guilty of Counts 1 through 9 of the Second and Third Amended Informations. Accordingly, Appellant's claim of error should be denied.

IV. THERE IS NO CUMULATIVE ERROR

The cumulative error doctrine applies where the Court finds multiple errors that, although harmless individually, cumulate to violate a defendant's constitutional right to a fair trial. 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. McConnell v. State, 125 Nev. 243, 259 (2009). When evaluating a claim of cumulative error, this Court considers "(1) whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged." Valdez v. State, 124 Nev. 1172, 1195, 196 P.3d 465, 481 (2008) (citation omitted).

Here, the issue of guilt was not close: the jury found Appellant guilty – in under two hours – of all counts charged in the Second and Third Amended Informations. Moreover, as discussed supra, Appellant has not asserted even one meritorious claim of error, much less multiple claims, and, as such, there is "nothing to cumulate." Id.

CONCLUSION

WHEREFORE, based on the foregoing, the State respectfully requests that the Judgment of Conviction be AFFIRMED.

Dated this 13th day of April, 2018.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionately spaced, has a typeface of 14 points of more, contains 5,234 words and 22 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 13th day of April, 2018.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 13th day of April, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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