IN THE SUPREME COURT OF THE STATE OF NEVADA

ARNOLD ANDERSON,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No. 74076

RESPONDENT'S ANSWERING BRIEF

Appeal From Denial of Petition for Writ of Habeas Corpus
Eighth Judicial District Court, Clark County

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ROUTING STATEMENT

This appeal is presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(3) because it is an appeal from a judgment of conviction pursuant to the jury verdict.

STATEMENT OF THE ISSUES

I. Whether the district court did not abuse its discretion when it denied Arnold Anderson's Motion for new counsel

II. Whether the district court did not abuse its discretion when it concluded that under the doctrine of forfeiture by wrongdoing the

State was permitted to introduce statements made by a witness procured unavailable by Arnold Anderson

III. Whether Arnold Anderson's convictions for Attempted Murder and Battery do not violate Double Jeopardy

STATEMENT OF THE CASE

On September 6, 2016, the State filed a Criminal Complaint against Arnold Anderson (hereinafter "Appellant") charging him with Attempt Murder with Use of a Deadly Weapon, Robbery with Use of a Deadly Weapon, and Battery with Use of a Deadly Weapon resulting in Substantial Bodily Harm. 1 AA 13-14. On October 26, 2016, the preliminary hearing was conducted, and at the conclusion, Appellant was held to answer the above charges in district court. 1 AA 48.

On October 27, 2016, the State filed an Information against Defendant charging him with the above charges. 1 AA 101-102.

On October 31, 2016, Appellant subsequently pled not guilty and invoked his right to a speedy trial. 1 AA 104.

On November 4, 2016, Appellant filed a Pro Per Motion to "Dismiss Counsel and Represent Myself." 1 AA 109-111.

On November 28, 2016, Appellant filed Motion to "Vacate Motion (12-6-16) to Dismiss Attorney of Record," where he stated that he changed his mind and wanted to keep his appointed counsel Ken Frizzell. 1 AA 117.

On December 29, 2016, Appellant filed another Motion to "Dismiss Counsel and Appoint New Counsel Plus Pro-Per Ferretta Rights." 1 AA 168-169.

On January 24, 2017, the district court held a hearing on Appellant's Motion to "Dismiss Counsel and Appoint New Counsel Plus Pro-Per Ferretta Rights," and after hearing from the parties the district court continued the matter for a week for a status check. 2 AA 205. A week later during the status check Appellant and his attorney stated that they came to an understanding and that the conflict was resolved. 2 AA 215. On March 7, 2017, the district court held a hearing on Appellant's renewed Motion to "Dismiss Counsel and Replace Counsel, and Appoint Defendant Pro Per Status," and denied it. 1 AA 245-248

On March 16, 2017, the district court, after conducting Faretta canvass granted Appellant's request to represent himself, finding that he knowingly, voluntary and intelligently waived his right to be represented by counsel. 2 AA 324, 366.

On August 28, 2017, Appellant's jury trial commenced. 4 AA 775. On September 1, 2017, the Jury returned a guilty verdict on Count 1 - Attempt Murder with Use of a Deadly Weapon, and Count 3 - Battery with Use of a Deadly Weapon resulting in Substantial Bodily Harm. 8 AA 1658-59.

On December 5, 2017, the Judgment of Conviction was filed, sentencing Appellant to aggregate total of maximum 50 years and minimum parole eligibility after 20 years. 8 AA 1809-1810.

On April 23, 2018, Appellant filed the instant opening brief.

STATEMENT OF THE FACTS

STRICKEN PER 06/21/18 ORDER.

~~The facts relevant to this appeal are outlined in Appellant's Presentence Investigation Report:~~

~~Records provided by the Las Vegas Metropolitan Police Department and the Clark County District Attorney's Office reflect that the instant offense occurred substantially as follows: On August 23, 2016, officers responded to a residence in reference to a report that a person had been shot in the stomach by the defendant, Arnold Anderson and that the victim had been pulled into another residence. The victim was transported to the hospital where he was treated for three gunshot wounds. The victim's girlfriend reported that she was with the victim waiting on the defendant to meet them. The victim was to leave with the defendant upon his arrival; however, when he arrived, the victim's girlfriend observed them having a fist fight behind the vehicle. She saw a female exit the defendant's vehicle and then Mr. Anderson produced a firearm. She saw the victim put both hands in the air and then saw the defendant shoot at the victim three times. The female and the defendant then got in his vehicle and fled the scene. The victim's girlfriend then got help and called police. The officers responded to the hospital to make contact with the victim who told officers that the defendant sold drugs and he was one of his customers. The defendant wanted him to start selling drugs for him and that he would set him up with a hotel room so he could sell for him. The victim refused once he found out what the defendant's intentions were. Then a few days prior, the defendant gave him $200 worth of drugs to which he still owed money for. The day of the incident the defendant contacted the victim to meet up outside his brother's apartment. Upon his arrival, the defendant asked him for $10 for gas. The victim pulled out $198 and the defendant snatched the money. A fight ensued which led the defendant to yell out~~

to his girlfriend, "Throw me a gun." She exited the vehicle and threw him a gun. The defendant then began shooting. He reported hearing around 5 shots and being shot several times. As he fell on the ground the defendant got in his vehicle and drove away. The victim reported that before driving off the defendant backed up his vehicle and attempted to run him over but he managed to roll over avoiding the vehicle. On September 5, 2016, officers located the defendant and conducted a vehicle stop. The defendant was taken into custody. The defendant told officers he did not know anything about the incident and did not know anyone who lived at the residence in question. He also reported that he did not know the victim or his girlfriend and denied any involvement with the shooting. Mr. Anderson was arrested and transported to the Clark County Detention Center.

Presentence Investigation Report, filed November 7, 2017, at 6.

SUMMARY OF THE ARGUMENT

The district court conducted thorough inquiry into alleged conflict between Appellant and his appointed counsel and found that Appellant did not demonstrate "a complete breakdown of communication, or an irreconcilable conflict which [could] lead…to an apparently unjust verdict." Gallego v. State, 117 Nev. 348, 363, 23 P.3d 227, 237 (2001). Therefore, the district court did not abuse its discretion in denying Appellant's request to substitute new appointed counsel.

Appellant claims that his conviction for Attempted Murder and Battery violate Double Jeopardy. In Jackson v. State this Court found that Attempted Murder (NRS 193.330, NRS 200.010) and Battery (NRS 200.481) do not violate Double Jeopardy: "the statutes do not proscribe the same offence, and the presumption against multiple

punishments for the same offence does not arise." 128 Nev. 598, 607, 291 P.3d 1274, 1280 (2012). Accordingly, Appellant's claim fails.

Finally, the State has proved by a preponderance of the evidence that Appellant wrongfully procured absence of the witness against him. Therefore, the district court did not abuse its discretion when it concluded that under the doctrine of forfeiture by wrongdoing the State was permitted to introduce the absent witness' statements through the investigator.

Therefore, this Court should affirm Appellant's convictions.

ARGUMENT

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DENYING THE REQUEST FOR NEW APPOINTED COUNSEL BECAUSE APPELLANT FAILED TO DEMONSTRATE GOOD CAUSE

A. Appellant waived his right to be represented by a counsel

This Court has held that "[a] criminal defendant has the right to self-representation under the Sixth Amendment of the United States Constitution and the Nevada Constitution." Vanisi v. State, 117 Nev. 330, 337, 22 P.3d 1164, 1169 (2001). To waive one's right to counsel, this Court has stated that "an accused who chooses self-representation must satisfy the court that his waiver of the right to counsel is knowing and voluntary." Id. at 117 Nev. 337-38, 22 P.3d 1170. To represent himself, a defendant must knowingly and intelligently forgo the benefits associated with the right to counsel. Faretta v. California, 422 U.S. 806, 835, 95 S. Ct. 2525, 2541 (1975). A proper Faretta canvass must determine if the accused

understands the dangers and disadvantages of self-representation. Arajakis v. State, 108 Nev. 976, 980, 843 P.2d 800, 802 (1992). Further, the Nevada Supreme Court has adopted a rule that established guidelines and procedures that district courts should follow to ensure that a defendant who chooses self-representation has validly waived the right to counsel. Hooks v. State, 124 Nev. 48, 54, 176 P.3d 1081, 1084 (2008).

Here, the district court conducted a thorough Faretta canvass. See 2 AA 269-301, 317-376. The district court inquired into Appellant's level of education and ability to represent himself, and also emphasized that self-representation was not in his best interest "I think that's entirely unfair to you to have come in a process where you have to defend yourself and your life, basically, against someone who clearly knows what the rules are and you don't." 2 AA 321-324. The district court even drew a parallel between representing oneself and performing your own surgery, to make sure Appellant understood how complex it was. 2 AA 325. Nevertheless, Appellant insisted that he wanted to represent himself. 2 AA 324, 366. Accordingly, the district court made a finding that Appellant freely, voluntary and intelligently waived his right to be represented by a counsel, and allowed him to represent himself. Id.

Therefore, Appellant was not denied his constitutional right to a counsel—he was appointed counsel, but waived his right to be represented by an attorney and

chose to represent himself. So he cannot now be heard complaining that he was denied his constitutional right, when he knowingly and voluntary waived it. Therefore, appellant's claim that he was denied his right to counsel is belied by the record.

B. The district court did not abuse its discretion in denying the request for new appointed counsel because Appellant failed to demonstrate good cause

Determining whether friction between a defendant and his attorney justifies substitution of counsel is within the sound discretion of the trial court, and this Court will not disturb such a decision on appeal absent a clear abuse of discretion. Thomas v. State, 94 Nev. 605, 607, 584 P.2d 674, 676 (1978). Generally, a district court should not summarily reject a motion for new counsel where such motion is made considerably in advance of trial without first conducting an "adequate inquiry" into the defendant's complaints. Garcia v. State, 121 Nev. 327, 337, 113 P.3d 836, 842 (2005) (quoting Young v. State, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004)).

However, absent a showing of good cause, a defendant is not entitled to the substitution of court-appointed counsel at public expense. Garcia, 121 Nev. at 337, 113 P.3d at 842; Young, 120 Nev. at 968, 102 P.3d at 576. This Court has defined good cause only as "a conflict of interest, a complete breakdown of communication, or an irreconcilable conflict which [could] lead...to an apparently unjust verdict." Gallego v. State, 117 Nev. 348, 363, 23 P.3d 227, 237 (2001) (overruled on other grounds by Nunnery v. State, 127 Nev. ___, 263 P.3d 235 (2011)). Good cause is

"not determined solely according to the subjective standard of what the defendant perceives." Id. Nor is "[t]he mere loss of confidence in appointed counsel...good cause." Id. While a defendant's lack of trust in counsel is a factor in the determination, a defendant must nonetheless provide the court with legitimate explanations for that lack of trust. Id. (citing McKee v. Harris, 649 F.2d 927, 932 (2nd Cir. 1981)).

Moreover, a defendant may not request substitution of counsel based on his own refusal to cooperate with present counsel because, as this Court has noted, "'[s]uch a doctrine would lead to absurd results.'" Thomas, 94 Nev. at 608, P.2d 674 at 676 (quoting Shaw v. United States, 403 F.2d 528, 529 (8th Cir. 1968)). Because counsel alone is responsible for tactical decisions regarding a defense, a mere disagreement between counsel and defendant regarding such decisions cannot give rise to an irreconcilable conflict justifying substitution. See Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002). In particular, where a defendant disagrees with counsel's reasonable defense strategy and wishes instead to present his own ill-conceived strategy, no conflict of interest arises. See Gallego, 117 Nev. at 363, 23 P.3d at 237. Rather, attorney-client conflict warrants substitution "only when counsel and defendant are so at odds as to prevent presentation of an adequate defense." Id.

This Court has articulated three factors to consider when reviewing a district court's denial of a motion to substitute counsel: (1) the extent of the conflict; (2) the timeliness of the motion and the extent to which it would result in inconvenience of delay; and (3) the adequacy of the court's inquiry into the defendant's complaints. Young, 120 Nev. at 968-69, 102 P.3d at 576-78.

In the case at bar after thorough inquiry in the alleged conflict the district court properly denied Appellant's request for a substitute counsel, concluding that Appellant's allegations lack legal basis. On January 24, 2017, the district court held a hearing on Appellant's Pro Per Motion to Dismiss Counsel and Appoint New Counsel plus Pro per Ferretta Rights in order to determine the extent of the conflict. 1 AA 205. Appellant complained about his court-appointed attorney and informed the district court that the counsel does not communicate with him enough "he only talked to me in the jail one time." 1 AA 206. He also criticized counsel's investigation. 1 AA 207. The thrust of Appellant's complaint was his subjective belief that counsel does absolutely nothing to investigate his case and that he has no communication with him. See 1 AA 206-207. Appellant's counsel explained that he in fact was investigating appellant's alibi, but because the alibi witness was living out of state it was taking him longer to investigate. 1 AA 207-208.

Defendant is not entitled to a particular relationship with his attorney, and "not every restriction on counsel's time or opportunity to investigate or to consult with

his client or otherwise to prepare for trial violates a defendant's Sixth Amendment right to counsel." Morris v. Slappy, 461 U.S. 1, 3, 103 S. Ct. 1610, 1612 (1983). Similarly, the proffered examples of counsel's conduct all involved strategic decisions reserved for counsel. As such, Appellant's complaints were insufficient to warrant new counsel before trial and the district court did not abuse its discretion in denying the request. See Rhyne, 118 Nev. at 8, 38 P.3d at 167. After hearing from both parties the district court ordered Appellant's attorney to communicate with him and set a status check in one week. 1 AA 210.

On January 31, 2017, during the status check, Appellant's attorney reported that he visited Appellant in the detention center, and that they were able to clear the misunderstanding between them. 1 AA 214. The district court then asked Appellant, who was present at the hearing if the representations made by his attorney were correct, to which Appellant responded: "[y]eah it's resolved." Id. Appellant also confirmed that he wanted to withdraw his complaint against his attorney. 1 AA 215. Accordingly, the conflict between Appellant and his attorney was not severe, since they were able to come to an understanding.

On March 7, 2017, the district court held a hearing on Appellant's renewed Motion to Dismiss Counsel. 2 AA 245. Appellant's attorney explained to the court that Appellant was going from sending him affectionate letters with a hand written made out type check for his services to "getting angry" with him. 2 AA 246.

Appellant again complained about his counsel not communicating with him enough and not investigating the alleged alibi witness from California. 2 AA 247-248. Appellant's attorney explained that he investigated the alleged alibi witness and that he was not "panning out." 2 AA 248. The district court explained to Appellant that his attorney cannot make a witness say things Appellant wants them to say. 2 AA 248. After considering these arguments the district court found that Appellant has failed to state a legal basis for his Motion to Dismiss Counsel, and denied it. 2 AA 247-248. Appellant then indicated that he wanted to represent himself. 2 AA 249. Again, as discussed supra, restrictions on attorney's amount of communication with defendant and investigation of the case are insufficient grounds to warrant the substitution of appointed counsel. Morris, 461 U.S. at 3, 103 S. Ct. at 1612; Rhyne, 118 Nev. at 8, 38 P.3d at 167. Since none of Appellant's complaints were sufficient, the district court's decision to deny his request was not an abuse of discretion. See Rhyne, 118 Nev. at 8, 38 P.3d at 167; Gallego, 117 Nev. at 363, 23 P.3d at 237.

Finally, Appellant alleges that he was never communicated a plea deal offered by the State. AOB 15. This contention is false and belied by the record—Appellant's attorney communicated the deal to him, but he refused to accept it. 2 AA 356. In short, Appellant's unreasonable expectations about the work his attorney was supposed to do regarding his case are unsupported by the applicable legal standard. Morris, 461 U.S. at 3, 103 S. Ct. at 1612.

Therefore the inquiry conducted by the district court did not demonstrate "a complete breakdown of communication, or an irreconcilable conflict which [could] lead...to an apparently unjust verdict." Gallego, 117 Nev. at 363, 23 P.3d at 237. Appellant's request for a new attorney had no merit. Therefore, the district court did not abuse its discretion in denying Appellant's request to substitute new appointed counsel. Therefore, Appellant's claim fails.

II. THE DISTRICT COURT DID NOT ABUSE ITS DISSCRETION WHEN IT CONCLUDED THAT UNDER THE DOCTRINE OF FORFEITURE BY WRONGDOING THE STATE WAS PERMITTED TO INTRODUCE STATEMENTS MADE BY THE WITNESS PROCURED UNAVAILABLE BY APPELLANT

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." The Amendment contemplates that a witness who makes testimonial statements admitted against a defendant will ordinarily be present at trial for cross-examination, and that if the witness is unavailable, his prior testimony will be introduced only if the defendant had a prior opportunity to cross-examine him. Crawford v. Washington, 541 U.S. 68, 124 S. Ct. 1354, 1359 (2004). A doctrine of forfeiture by wrongdoing allows "the introduction of statements of a witness who was detained or kept away by the means or procurement of the defendant." Giles v. California, 554 U.S. 353, 355, 128 S. Ct. 2678, 2681 (2008).

Although the United States Constitution gives the accused the privilege of being confronted with the witnesses against him, if "he voluntarily keeps the witnesses away, he cannot insist on his privilege." Id. Accordingly, if defendant procured a witness' absence, no constitutional violation occurs if the evidence that was supposed to be presented thru the absent witness is "supplied in some lawful way." Id.

The Ninth Circuit following Giles explained that the forfeiture-by-wrongdoing doctrine is an exception to the Confrontation Clause's protections and applies "where there has been affirmative action on the part of the defendant that produces the desired result, non-appearance by a prospective witness against him in a criminal case." Carlson v. AG of Cal., 791 F.3d 1003, 1010 (9th Cir. 2015). Another Ninth Circuit decision similarly stated that the forfeiture by wrongdoing exception applies against a criminal defendant when the defendant acted with the design to prevent the witness from testifying. United States v. Hernandez, 715 F. App'x 604, 606 (9th Cir. 2017). In Hernandez the Ninth Circuit found that the district court did not abuse its discretion when it allowed the prosecution to introduce statements made by the witness who was absent due to defendant's wrongful actions (as was established by preponderance of the evidence). Id.

Here, the State has proved by preponderance of the evidence that Appellant procured the unavailability of the witness against him. During trial the State received

information of a phone call made by Appellant to his daughter, who was prosecution's witness, where he was asking her to disappear and to leave her phone, so she could not be tracked and subpoenaed to testify at trial. 5 AA 1059. For this reason, despite numerous fruitless attempts to locate her, she was unavailable to come in and testify at trial to the statements she made earlier to the State's investigator. Id. The said phone call was played for the judge in the courtroom when the State moved to admit the unavailable witness' statements under the doctrine of forfeiture by wrongdoing. 5 AA 1062. After that, Appellant had an opportunity to address the court and made statements in his defense, he argued that the person he spoke to was not his daughter. 5 AA 1062-1063. However, the State had in its possession the recording of another phone call made on August 3, 2017, to the same phone number where Appellant says "happy birthday." 6 AA 1259. According to the records August 3 is in fact his daughter's birthday. Id.

Despite this evidence, the district court still gave Appellant the benefit of a doubt and deferred her ruling in hopes that the witness would be located. 6 AA 1258. Finally, the district court found that the State showed by a preponderance of the evidence that the witness is not available due to Appellant's actions in deterring her, and that he intended to do it to prevent her from coming and testifying against him. 6 AA 1261. At trial investigator Marco Rafalovich testified that Appellant's

daughter told him at a proffer that Appellant told her to say that they were in California when the crime occurred, which was not true. 7 AA 1412.

Accordingly, the State proved by a preponderance of the evidence that Appellant wrongfully procured the absence of the witness against him. Therefore, the district court did not abuse its discretion when it concluded that under the doctrine of forfeiture by wrongdoing the State was permitted to introduce the absent witness' statements through the investigator.

III. APPELLANT'S CONVICTIONS FOR ATTEMPTED MURDER AND BATTERY DO NOT VIOLATE DOUBLE JEOPARDY

Appellant claims that his conviction for Attempted Murder and Battery violate Double Jeopardy. AOB 28. Under the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." This protection is also guaranteed by the Nevada Constitution. Nev. Const. art. 1, § 8. The Double Jeopardy Clause protects against the following: (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense. North Carolina v. Pearce, 395 U.S. 711, 717, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969) (footnotes omitted), overruled on other grounds by Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201, 104 L. Ed. 2d 865 (1989).

When reviewing potential Double Jeopardy Clause violations, Nevada employs the Blockburger test which provides that no violation of the Double Jeopardy Clause occurs "where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." Estes v. State, 122 Nev. 1123, 1143, 146 P.3d 1114, 1127 (2006); Blockburger v. United States, 284 U.S. 299, 304, 52 S. Ct. 180, 76 L. Ed. 306 (1932) (emphasis added).

In Jackson v. State, 128 Nev. 598, 604, 291 P.3d 1274, 1277-78 (2012), this Court held that no violation of the Double Jeopardy Clause occurred from the multiple punishments for convictions, arising from single incidents. In Jackson defendant claimed that under Nevada redundancy case law, multiple convictions factually based on the same act or course of conduct cannot stand, even if each crime contains an element the other does not. Id at 608. This Court rejected this argument and disapproved of Salazar v. State, 119 Nev. 224, 70 P.3d 749 (2003); Skiba v. State, 114 Nev. 612, 959 P.2d 959 (1998); Albitre v. State, 103 Nev. 281, 284, 738 P.2d 1307, 1309 (1987); and their "redundancy" progeny to the extent that they endorse a fact-based "same conduct" test for determining the permissibility of cumulative punishment. Id at 601. This Court explained:

> Rather than the facts or evidence in a specific case, the proper focus is on legislative authorization, beginning with an analysis of the statutory

> text. If the Legislature has authorized—or interdicted—cumulative punishment, that legislative directive controls. Absent express legislative direction, the Blockburger test is employed. Blockburger licenses multiple punishment unless, analyzed in terms of their elements, one charged offense is the same or a lesser-included offense of the other.

Id. In denying Jackson's Double Jeopardy violation claim, this Court specifically emphasized that not "same conduct" but Blockburger's "same elements" approach should be used when determining if Double Jeopardy violation occurred. Id at 608.

In the case at bar, Appellant's entire analysis of the alleged Double Jeopardy violation hinges on the facts of the case and the State's theory of the case. AOB 30-31. This approach is incorrect—this Court explained that not the facts of the case at bar, but the text of relevant statutes should be analyzed to determine whether the Double Jeopardy Clause was violated. Jackson, 128 Nev. at 608.

Jackson is directly on point here—in Jackson this Court specifically explained that Attempted Murder requires intent to kill, malice aforethought, and failure to complete the crime of murder, none of which are elements of battery or assault. Jackson, 128 Nev. at 601 (citing NRS 193.330 and NRS 200.010). This Court further explained that Battery requires unlawful use of force or violence upon the person of another, i.e., physical contact, which attempted murder does not. Id (citing NRS 200.481). This Court found that Attempted Murder and Battery statutes do not violate Double Jeopardy: "the statutes do not proscribe the same offence, and the

presumption against multiple punishments for the same offence does not arise." Id. Accordingly, Appellant's claim fails.

CONCLUSION

Based on the forgoing, the State respectfully request that this Court AFFIRM Appellant's convictions.

Dated this 23rd day of May, 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 4,297 words and 19 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 23rd day of May, 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 23rd day of May, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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