

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE FERNANDO MONAY-PINA,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
Oct 23 2018 02:43 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 74199

RESPONDENT'S ANSWERING BRIEF

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

MATTHEW LAY, ESQ.
Nguyen & Lay
Nevada Bar #012249
400 South Fourth Street, Suite 650
Las Vegas, Nevada 89101
(702) 383-3200

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500
State of Nevada

ADAM PAUL LAXALT
Nevada Attorney General
Nevada Bar #012426
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1265

Counsel for Appellant

Counsel for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF THE ISSUES.....	1
STATEMENT OF THE CASE.....	1
STATEMENT OF THE FACTS	3
SUMMARY OF THE ARGUMENT	8
ARGUMENT	9
I. The district court properly denied Pina’s motion for a mistrial because the State’s remarks did not shift the burden and Pina was not prejudiced.	9
CONCLUSION	15
CERTIFICATE OF COMPLIANCE.....	16
CERTIFICATE OF SERVICE	17

TABLE OF AUTHORITIES

Page Number:

Cases

Bridges v. State,

116 Nev. 752, 762, 6 P.3d 1000, 1008 (2000)9

Browning v. State,

124 Nev. 517, 533, 188 P.3d 60, 72 (2008)10

Colley v. State,

98 Nev. 14, 16, 639 P.2d 530, 532 (1982)9

Evans v. State,

117 Nev. 609, 631, 28 P.3d 498, 513 (2001)9

Gallego v. State,

117 Nev. 348, 365, 23 P.3d 227, 239 (2001)11

Garner v. State,

116 Nev. 770, 783, 6 P.3d 1013, 1022 (2000).11

Green v. State,

119 Nev. 542, 545, 80 P.3d 93, 95 (2003)11

Knipes v. State,

124 Nev. 927, 935, 192 P.3d 1178, 1183 (2008)14

Lisle v. State,

113 Nev. 540, 558, 937 P.2d 473, 484 (1997)13

McNelson v. State,

115 Nev. 396, 408–09, 990 P.2d 1263, 1271–72 (1999)10

Neder v. United States,

527 U.S. 1, 3, 119 S. Ct. 1827, 1830 (1999)13

Rimer v. State,

351 P.3d 697, 716 (citation omitted) (2015)11

<u>Rowland v. State,</u>	
118 Nev. 31, 38, 39 P.3d 114, 118 (2002)	11
<u>State v. Green,</u>	
81 Nev. 173, 176, 400 P.2d 766, 767 (1965)	9
<u>Tavares v. State,</u>	
117 Nev. 725, 732 n.14, 30 P.3d 1128, 1132 n. 14 (2001)	13
<u>U.S. v. Lopez-Alvarez,</u>	
970 F.2d 583, 596 (9 th Cir. 1992)	9
<u>United States v. Young,</u>	
470 U.S. 1, 11 (1985)	14
<u>Walch v. State,</u>	
112 Nev. 25, 34, 909 P.2d 1184, 1189 (1996)	12
<u>Statutes</u>	
NRS 178.598	13

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE FERNANDO MONAY-PINA,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No. 74199

RESPONDENT’S ANSWERING BRIEF

**Appeal from Judgment of Conviction
Eighth Judicial District Court, Clark County**

ROUTING STATEMENT

This appeal is not presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(2) because it is an appeal from a Judgment of Conviction that involves a Category B felony.

STATEMENT OF THE ISSUES

1. Whether the State impermissibly shifted the burden of proof at trial.

STATEMENT OF THE CASE

On March 4, 2016, Defendant Jose Fernando Monay-Pina (“Pina”) was charged by way of Information with one count of Conspiracy to Commit Robbery; two counts of Burglary While in Possession of a Firearm; two counts of Robbery With Use of a Deadly Weapon; four counts of Batter With Use of a Deadly Weapon

Resulting in Substantial Bodily Harm; one count of Attempt Murder With Use of a Deadly Weapon; one count of Aiming a Firearm at a Human Being; one count of Coercion With Use of a Deadly Weapon; and one count of Battery With Intent to Commit a Crime. 1 Appellant's Appendix ("AA") 0001-0007.

On March 7, 2016, Pina was arraigned, entered a plea of not guilty, and invoked his right to a speedy trial within 60 days. 1 AA 0090. Trial was scheduled for May 2, 2016, with a calendar call of April 25, 2016. Id. At calendar call, Pina waived his right to a speedy trial, requested a continuance, and the trial date was vacated and reset to September 26, 2016. 1 AA 0091-0092. After a few more continuances, at the February 27, 2017, calendar call, the case was reassigned to Department VII. 1 AA 0093, 0095, 0097-0099, 0101, and 0103.

On March 13, 2017, trial commenced before the Honorable Linda Bell. 1 AA 0106. That same day, the State filed a Second Amended Information. Id. On March 15, 2017, the State filed a Third Amended Information. 1 AA 0110-0111. The jury returned guilty verdicts as to all counts against Pina: Count 1 – Conspiracy to Commit Robbery (Category B Felony – NRS 200.380, 199.480); Counts 2 and 4 – Burglary While in Possession of a Firearm (Category B Felony – NRS 205.060); Counts 3 and 5 – Robbery With Use of a Deadly Weapon (Category B Felony – NRS 200.380, 193.165); Counts 6 and 8 – Battery With Use of a Deadly Weapon Resulting in Substantial Bodily Harm (Category B Felony – NRS 200.481); Count

7 – Attempt Murder With Use of a Deadly Weapon (Category B Felony – NRS 200.010, 200.030, 193.330, 193.165); Counts 9 and 10 – Battery With Use of a Deadly Weapon (Category B Felony – NRS 200.481); Count 11 – Aiming a Firearm at a Human Being (Gross Misdemeanor – NRS 202.290); Count 12 Coercion With Use of a Deadly Weapon (Category B Felony – NRS 207.190, 193.165); and Count 13 – Battery With Intent to Commit a Crime (Category B Felony – NRS 200.400.2). 1 AA 0066-0069, 0110-0111. Sentencing was set for June 15, 2017. 1 AA 0111.

After a continuance, Pina was sentenced on September 7, 2017. 1 AA 0114-0116. Pina was sentenced to an aggregate term of a minimum of nine-four (94) months and a maximum of four hundred twenty (420) months in the Nevada Department of Corrections, with six hundred four (604) days credit for time served. 1 AA 0115-0116. The Judgement of Conviction was filed on September 21, 2017. 1 AA 0074-0077.

Pina filed his Notice of Appeal on October 3, 2017. 1 AA 0078-0079. Pina filed his Opening Brief on September 25, 2018. The State responds below.

STATEMENT OF THE FACTS

On January 12, 2016, Richard DeCamp (“DeCamp”), was working the graveyard shift at a local 7-Eleven convenience store. 3 AA 0145-0146. At approximately 3:00 a.m., while DeCamp was working the store by himself, two men, one later identified as Pina, entered the store. 3 AA 0147; 0177-0179; 0272-0273;

0276. DeCamp described the men as a “tall guy and a [] short guy” and both men wore masks and had guns. 3 AA 0147. At one point, the men pointed their guns at DeCamp and ordered him to empty the cash register. 3 AA 0150.¹ Seeing a second cash register, the taller man, while continuing to point his gun at DeCamp, demanded that DeCamp empty the second cash register. Id. The men ordered a frightened DeCamp to lay on the floor while the men fled with the money from both cash registers. 3 AA 0152. DeCamp lied on the floor for a few minutes, got up, and called 911. Id. Approximately ten minutes later, Las Vegas Metropolitan Police Department (“Metro”) responded. Id.

Metro patrol officer, Isaiah Simmons (“Officer Simmons”) and Metro Sergeant Abraham Aguirre (“Sergeant Aguirre”) responded to a robbery call at a 7-Eleven. 3 AA 0174-0175; 0191. At trial, Officer Simmons testified that upon making contact with DeCamp he was visibly shaking and frightened. 3 AA 0175. Officer Simmons secured the scene, reviewed the store’s surveillance video, and documented that \$139.00 had been taken from the store. Id. After DeCamp calmed down, Officer Simmons took a voluntary statement from him and developed a description of the suspects: “two Hispanic males . . . brandishing large firearms, dark clothing, gloves, masks . . . [and] [o]ne had a puffy jacket.” 3 AA 0175-0176.

¹ DeCamp testified that during his shift, he tries to keep about ten five-dollar bills in the register and eliminates twenty-dollar bills by depositing them in a safe. 3 AA 0148.

Nearby, Javier Colon (“Javier”), a former landscape worker, was living with his sister, Adriana Colon (“Adriana”) and her three children.² 3 AA 0233-0236. At the time, Javier was living in his sister’s garage. Id. In the early hours of the January 12, 2016, Javier was asleep and suddenly awakened when two men opened the garage door and one of them screamed “Javier, get up, get up.” 3 AA 0235. After the men opened the garage, one of the men rushed Javier and began beating him by using a firearm as a blunt object to repeatedly hit Javier over the head. 3 AA 0238-0239. During the attack, Javier noticed Pina was pointing his firearm at his family through the garage windows. 3 AA 0239. Javier pleaded with the men to stop, but they ignored him. 3 AA 0240. That morning, Javier planned on doing a “side job” so he had sharpened an axe and kept it near his bed. 3 AA 0240. Seeing the axe and while Javier was lying on his back in the bed, Pina’s Co-defendant, picked it up and swung the blade at Javier three times: hitting his leg, ribs, and attempting to hit his head. 3 AA 0237-0241. Luckily, prior to the blade hitting Javier’s head, Javier raised his right hand and intercepted the blade which cut his hand open. 3 AA 0241-0242.

At trial, Javier recognized one of the men as a former landscaping colleague who he worked with in the past. 3 AA 0236. Javier also identified Pina as one of the assailants because he remembered seeing Pina’s eyes while Pina stood in the garage,

² At trial, Adriana testified that her children Lizbeth, Samantha, and Cesar were 16, 14, and 10 years old respectively.

recognized Pina's eyes in court, and, in the past, had worked with Pina in landscaping. 3 AA 0272-0273; 0276. Further, Javier observed Pina wore gloves. 3 AA 0273-0274. Javier recognized the gloves worn by Pina as the same black and red gloves that the landscaping company had given them while they worked there. 3 AA 0275-0276. At one point, the men noticed police lights approaching and escaped. 3 AA 0243. A bloodied Javier was transported to the hospital where he received multiple stitches and staples on his head and hand. 3 AA 0245-0250. Javier noticed the assailants took his camera, an MP3 player, and two collection knives. 3 AA 0246.

Prior to the attack on Javier, Adriana heard Javier screaming that someone was threatening him. 3 AA 0280. She made her way toward the windows facing the garage and saw two men who told her to "shut up" or they were going to "break [her] too." 3 AA 0280. Adriana observed that the men had firearms and were pointing them at the windows where she was standing. 3 AA 0280-0281. Adriana heard the men hitting Javier "really hard." 3 AA 0282. She begged them to leave, but they did not. 3 AA 0281. Eventually, Adriana's daughter called the police and they responded within minutes. 3 AA 0283.

Meanwhile, at approximately 4:22 a.m., while Sergeant Aguirre was putting up crime scene tape at the 7-Eleven he heard a "high priority call" coming through the radio. 3 AA 0193-0194. The call described "two Hispanic males wearing dark clothing had forced their way into [a] home and were pistol whipping [a man]." 3

AA 0193-0194. Sergeant Aguirre made contact with Officer Simmons and told him he was going to respond to the nearby high priority call located approximately “right around the corner” from the 7-Eleven. Id. On arrival Sergeant Aguirre made contact with Officer Ivan Duron (“Officer Duron”) and Officer Justin Spurling (“Officer Spurling”). 3 AA 0197. Sergeant Aguirre immediately noticed Officer Duron was rendering aid to Javier in the garage and observed a large “amount of blood on the bedding, walls, and floor.” Id. Sergeant Aguirre also observed an axe by the entryway to the garage. 3 AA 0198. Sergeant Aguirre then received a radio call from Officer Spurling indicating he apprehended two suspects in a backyard. 3 AA 0198. Sergeant Aguirre left Officer Duron behind to assist Officer Spurling. Id.

When Officer Spurling arrived he noticed a man screaming and crying inside a garage port. 3 AA 0339-0340. The man was also bleeding “pretty badly from his face.” Id. Officer Spurling focused on finding anyone else who might have been involved. 3 AA 0341. He surveilled the area and jumped over a wall. 3 AA 0341-0342; 0352-0353. Once on the other side of the wall, Officer Spurling noticed a man, later identified as Pina, standing in the middle of a backyard. Id. After Officer Spurling and Pina made eye contact, Pina, who was wearing a stocking cap on his head, immediately ducked down. Id. Officer Spurling placed a call on his radio that he potentially located a suspect and continued to give Pina commands until he was taken into custody along with the other assailant. 3 AA 0343-0350. Officer Spurling

testified the following items were recovered from the backyard where Pina was apprehended: a “wad of cash,” Javier’s wallet, a “replica firearm,” and a knife and sheath. 3 AA 0354-0356. Once Adam Felabom (“Mr. Felabom”), a Crime Scene Analyst with Metro, arrived on scene he examined the wad of cash and it totaled \$138.00. 4 AA 0404. Mr. Felabom also photographed, collected, and impounded a blue ski mask from the backyard. 4 AA 0400-0401. A DNA swab was taken from the blue ski mask. 3 AA 0465. After the sample was analyzed, it was determined that the DNA found on the blue ski mask was at least 298 million times more likely to belong to Pina and one other individual compared to any other person. 4 AA 0465-0466.

Once Pina was arrested, Officer Simmons took Decamp to the arrest scene where a show-up was conducted and Decamp identified Pina and the other suspect as the ones who had robbed him at gunpoint at the 7-Eleven. 3 AA 0177-0179.

SUMMARY OF THE ARGUMENT

The State did not commit prosecutorial misconduct in its closing rebuttal argument when it made the following remarks to the jury:

I do think it’s interesting that we go through all these different pictures, all this evidence, all these things. The defense gets up and talks to you about their closing, right? Their case -- they don’t show you any of the pictures, right? They don’t go through any of the evidence.

4 AA 0532. Pina’s argument that these statements constituted burden shifting is meritless. Pina failed to show there was prosecutorial misconduct and Pina cannot

establish that he was prejudiced and denied a fundamentally fair trial. Furthermore, any alleged misconduct does not warrant reversal under plain or harmless error.

ARGUMENT

I. The district court properly denied Pina's motion for a mistrial because the State's remarks did not shift the burden and Pina was not prejudiced.

“[A]s long as a prosecutor's remarks do not call attention to a defendant's failure to testify, it is permissible to comment on the failure of the defense to counter or explain evidence presented.” Evans v. State, 117 Nev. 609, 631, 28 P.3d 498, 513 (2001), citing U.S. v. Lopez-Alvarez, 970 F.2d 583, 596 (9th Cir. 1992). Further, the State may respond to defense theories and arguments. Williams v. State, 113 Nev. 1008, 1018-19, 945 P.2d 438, 444-45 (1997). This includes commenting on a defendant's failure to substantiate his theory. Colley v. State, 98 Nev. 14, 16, 639 P.2d 530, 532 (1982); See also Bridges v. State, 116 Nev. 752, 762, 6 P.3d 1000, 1008 (2000), citing State v. Green, 81 Nev. 173, 176, 400 P.2d 766, 767 (1965) (“The prosecutor had a right to comment upon the testimony and to ask the jury to draw inferences from the evidence, and has the right to state fully his views as to what the evidence shows.”). *Further, if the defendant presents a theory of defense, but fails to present evidence thereon, the State may comment upon the failure to support the supposed theory.* Evans, 117 Nev. at 630-631, 28 P.3d at 513; see

McNelton v. State, 115 Nev. 396, 408–09, 990 P.2d 1263, 1271–72 (1999) (emphasis added).

Commenting on the lack of evidence supporting a defense theory does not constitute burden shifting. Pina takes issue with comments made by the State during its rebuttal closing argument. Appellant’s Opening Brief (“AOB”) at 12. However, these statements must be taken in context, as criminal convictions are not to be overturned lightly. Browning v. State, 124 Nev. 517, 533, 188 P.3d 60, 72 (2008) (“When reviewing prosecutorial misconduct, the challenged comments must be considered in context and a criminal conviction is not to be lightly overturned on the basis of a prosecutor’s comments standing alone.”) (internal quotations omitted).

Here, the State was merely commenting on the evidence as part of an evaluation of defense’s argument that the State had not presented sufficient evidence to convict Pina. See generally 4 AA 0519-0531. Specifically, it was Pina’s counsel, during closing, who mentioned that the State had presented “photos,” but that the jury should doubt the State’s evidence. 4 AA 0529. The State was not arguing that Pina had to provide evidence to rebut elements of the charges against him. To the contrary, the State at the beginning of their closing argument reminded the jury that it was incumbent on the State “to prove two things: that . . . crimes were committed and that the Defendant . . . committed the crimes.” 4 AA 0504. Further, the State’s comment that defense counsel did not show the jury “any of the pictures” or

highlight “any of the evidence” did not disparage counsel or Pina. Rather, the State’s remark was a mere comment on the evidence presented at trial, which is entirely permissible. Evans, 117 Nev. at 630–31, 28 P.3d at 513; McNelton, 115 Nev. at 408–409, 990 P.2d at 1271–1272; Colley, 98 Nev. at 16, 639 P.2d at 532.

A. Plain Error

This Court may only consider this allegation for plain error because Pina failed to offer an objection during trial. Rowland v. State, 118 Nev. 31, 38, 39 P.3d 114, 118 (2002); see also Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001) (if a party fails to object, this Court reviews for plain error). In determining whether an error is plain, this Court must consider “whether there was ‘error,’ whether the error was ‘plain’ or clear, and whether the error affected the defendant’s substantial rights. Additionally, the burden is on an appellant to show actual prejudice or a miscarriage of justice.” Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (footnote omitted).

At a minimum, the error must be clear under current law, and, normally, the defendant must show that an error was prejudicial in order to establish that it affected substantial rights.” Rimer v. State, 351 P.3d 697, 716 (citation omitted) (2015); Garner v. State, 116 Nev. 770, 783, 6 P.3d 1013, 1022 (2000). Reversal under plain error requires that an appellant show that a substantial right was prejudiced. Id. “When an appellant fails to raise an issue below and the asserted error is neither

plain nor constitutional in magnitude, this Court will not consider it on appeal.”
Walch v. State, 112 Nev. 25, 34, 909 P.2d 1184, 1189 (1996).

Here, should the Court find that the State’s remarks during closing rebuttal resulted in prosecutorial misconduct, the Court should apply a plain error standard of review. This is particularly true because Pina’s trial counsel not only failed to object to the State’s remarks, but he also did not seek a bench conference, a curative instruction from the court, or request a mistrial. 4 AA 0532-0534. In fact, it was Pina’s Co-defendant’s counsel who objected and moved for a mistrial. Id. Pina’s counsel never joined Co-defendant’s counsel in his objection. Rowland, 118 Nev. at 38, 39 P.3d at 118 (2002); see also Gallego, 117 Nev. at 365, 23 P.3d at 239 (2001) (if a party fails to object, this Court reviews for plain error).

Pina argues the burden of proof was shifted to him because the State’s comments suggested that Pina should be found guilty because his attorney failed to address “any of the pictures” or “go through any of the evidence” during Pina’s closing. AOB at 12. This argument is unconvincing because Pina cannot avail himself of Co-defendant’s objection to preserve this issue for appeal purposes. Pina also fails to show how a substantial right was prejudiced by the State’s remarks during rebuttal. Immediately, after Co-defendant’s counsel objected and a bench conference was held, the district court reminded the jury that the State bears the

burden of proof.³ This curative instruction neutralized any prejudice that may have stemmed from the prosecutor's remarks, especially in light of the overwhelming evidence presented to the jury.⁴ See Lisle v. State, 113 Nev. 540, 558, 937 P.2d 473, 484 (1997) (stating jurors are presumed to follow the district court's instructions).

B. Harmless Error

However, even if the Court considers the issue preserved, Pina's claim still fails under a harmless error standard of review because Pina cannot show a substantial right was prejudiced and given the evidence at trial a rational jury would have found Pina guilty.

NRS 178.598 provides that "[a]ny error, defect, irregularity or variance which does not affect substantial rights shall be disregarded." Constitutional error is harmless when "it is 'clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error.'" Tavares v. State, 117 Nev. 725, 732 n.14, 30 P.3d 1128, 1132 n. 14 (2001) (quoting Neder v. United States, 527 U.S. 1, 3, 119 S. Ct. 1827, 1830 (1999)). Non-constitutional trial error is reviewed for harmlessness based on whether it had substantial and injurious effect or influence in

³ The district court admonished the jury as follows: "I remind the lady -- the ladies and gentlemen of the jury that the burden is on the State, and the defense is not required to present any evidence." 4 AA 0533.

⁴ The State does not concede that Pina was prejudiced and any error occurred during trial.

determining the jury's verdict. Knipes v. State, 124 Nev. 927, 935, 192 P.3d 1178, 1183 (2008).

Here, the State presented extensive and compelling evidence linking Pina to the crime. The jury was presented with testimony from DeCamp and Javier, both of which identified Pina as one of the perpetrators. Notably, Javier identified the gloves worn by Pina as the same gloves they had worn when they worked in landscaping. The jury also heard testimony regarding the uncanny similarity in the amount of cash taken from the 7-Eleven and recovered from the backyard. Furthermore, the State presented DNA evidence linking Pina to the blue mask that was found in the backyard after Javier was brutally attacked. Valdez, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008) (reasoning that “this court will not reverse a conviction based on prosecutorial misconduct if it was harmless error.”); see also United States v. Young, 470 U.S. 1, 11 (1985) (“[A] criminal conviction is not to be lightly overturned on the basis of a prosecutor’s comments standing alone, for the statements or conduct must be viewed in context . . .”).

Accordingly, because any rational trier of fact, given the overwhelming evidence presented by the State, would have found Pina guilty beyond a reasonable doubt, Pina’s argument fails.

CONCLUSION

Based on the foregoing, the State respectfully requests this Court order the Judgment of Conviction AFFIRMED.

Dated this 23rd day of October, 2018.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ John Niman*

JOHN NIMAN
Deputy District Attorney
Nevada Bar #014408
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500

CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page and type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points, contains 3,415 words and does not exceed 30 pages.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 23rd day of October, 2018.

Respectfully submitted

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ John Niman*

JOHN NIMAN
Deputy District Attorney
Nevada Bar #014408
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on October 23, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT
Nevada Attorney General

MATTHEW LAY, ESQ.
Counsel for Appellant

JOHN NIMAN
Deputy District Attorney

/s/ E. Davis

Employee, Clark County
District Attorney's Office

JN/John Torre/ed