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8 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

9  
10 CALVIN ELAM,

Appellant,

11 vs.

12 STATE OF NEVADA,

13 Respondent.  
14  
15

Case No. 74581

**APPELLANT'S REPLY  
BRIEF**

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## **I. NRAP 26.1 DISCLOSURE**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualifications or recusal.

**NONE**

Attorney of Record for Appellant:

/s/ Thomas A. Ericsson

## **II. ARGUMENT**

### **1. The trial court abused its discretion when it denied Appellant's motion to remove a prospective juror for bias in favor of law enforcement.**

Appellant respectfully submits that he was prejudiced when the trial court abused its discretion in failing to remove for cause a prospective juror who indicated that he would not be able to fairly evaluate the testimony of law enforcement officers during the trial. The extent of his inability to do so is discussed at length in the opening brief.

Appellant further respectfully submits that the jury empaneled at his trial was in fact unfairly prejudicial because he was not able to present his defense to the 12 jurors who he believed would be in the best situation to fairly evaluate the evidence presented at the trial. The trial judge's error should not be allowed to prevent a defendant from seating the most impartial jurors from the jury venire

1 panel. In other words, a defendant facing a potential life sentence should not have  
2 to settle for second best jurors due to a fundamental error of the trial judge.

3 **2. The trial court abused its discretion by eliciting and allowing extremely**  
4 **prejudicial hearsay evidence to be presented to the jury.**

5 The State argues that testimony that Appellant had allegedly gone to  
6 another neighbor's apartment, kicked the door into the apartment and presented a  
7 shotgun during the alleged break-in "did not constitute prior bad act  
8 evidence. . . ." State's Answer at 25. Appellant submits that such alleged conduct  
9 is in fact "prior bad act" evidence and is extremely prejudicial. The fact that it also  
10 constituted hearsay evidence is further harm to Appellant.  
11  
12

13 The presentation of this improper evidence fundamentally tainted that  
14 minds of the jurors and cannot be considered harmless error. While no trial can be  
15 perfect, every defendant is entitled to a fundamentally fair trial and Mr. Elam did  
16 not receive one in this matter due to the Court's error in admitting this information  
17 before the jury.  
18  
19

20 As a result, Appellant is entitled to a new trial.  
21

22 **3. The cumulative effect of the errors requires reversal of the convictions.**  
23

24 The trial errors outlined in Mr. Elam's briefing were foundational and  
25 substantive violations of his right to a fair trial under Nevada law and the U.S.  
26 Constitution protections. Mr. Elam respectfully requests a new trial.  
27  
28

### **III. CONCLUSION**

Appellant respectfully requests that this Court to reverse his convictions and remand this matter to district court for a new trial.

Respectfully submitted this 14<sup>th</sup> day of September, 2018.

By: /s/ Thomas A. Ericsson  
Thomas A. Ericsson, Esq.  
Rachael E. Stewart, Esq.  
*Attorneys for Appellant*

**CERTIFICATE OF COMPLIANCE**

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 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 of the transcript or appendix where the matter relied on is to be found. I further certify that this brief complies with the formatting requirements of NRAP 32(a)(4)-(6) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word, a word-processing program, in 14 point Times New Roman.

\*Certificate of Compliance containing word count continued on next page.

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1 I further certify that this brief complies with the type volume limitations of  
2 NRAP 32(a)(7) because it is proportionately spaced, has a typeface of 14 points or  
3 more and contains 951 words. I understand that I may be subject to sanctions in the  
4 event that the accompanying brief is not in conformity with the requirements of the  
5 Nevada Rules of Appellate Procedure.  
6

7 Respectfully submitted this 14<sup>th</sup> day of September, 2018.  
8

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## CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on September 14, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT  
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Chief Deputy District Attorney

BY /s/ T.A. Ericsson  
Oronoz & Ericsson, LLC