IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN TURNER, Appellant, vs. THE STATE OF NEVADA, Respondent.	)	NO. 76465

PETITION FOR REVIEW

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	)	
Appellant,	)	
	)	
vs.	)	
	)	
THE STATE OF NEVADA,	)	
	)	
Respondent.	)	
	)	

PETITION FOR REVIEW

COMES NOW Chief Deputy Public Defender DEBORAH L. WESTBROOK, on behalf of the appellant, STEVEN TURNER, and pursuant to NRAP 40B, petitions this Court for review of the Order of Affirmance, filed by the Nevada Court of Appeals in the above-captioned case. This petition is based on the following Memorandum of Points and Authorities and all papers and pleadings on file herein.

Dated this 18 day of November, 2019.

Respectfully submitted,

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CLARK COUNTY PUBLIC DEFENDER

By: */s/ Deborah L. Westbrook*
DEBORAH L. WESTBROOK, #9285
Attorney for Appellant

MEMORANDUM OF POINTS AND AUTHORITIES

I. JURISDICTION

On October 31, 2019, the Nevada Court of Appeals issued an Order affirming Steven Turner's convictions for conspiracy to commit burglary, attempted burglary while in possession of a firearm or deadly weapon, two counts of attempted murder with use of a deadly weapon, and battery with use of a deadly weapon resulting in substantial bodily harm. See Exhibit 1, Order of Affirmance. **NRAP 40B** permits an aggrieved party to petition the Nevada Supreme Court for review of a decision of the Court of Appeals within 18 days after the filing of the Court of Appeals' decision. See **NRAP 40B(c)**. This Petition for Review has been timely filed within that 18-day period.

II. QUESTIONS PRESENTED FOR REVIEW

A. Whether the Court of Appeals erred in affirming Steven Turner's convictions for the specific intent crime of attempt murder with use of a deadly weapon, where the State asked the jury to convict him based on the contents of his nontestifying co-defendant's partially-redacted statements to police, in violation of **Bruton v. United States**, 391 U.S. 123 (1968).

B. What degree of specificity is required to satisfy **NRS 174.234(2)(a)**, which states that an expert disclosure "shall" include a "brief statement regarding the subject matter on which the expert witness is expected to testify and the substance of the testimony", and whether the State's expert witness notice satisfied that standard in this case.

III. REASONS REVIEW IS WARRANTED

Pursuant to **NRAP 40B**, this Court has discretion to review a decision of the Court of Appeals at the request of an aggrieved party. Factors that this Court will consider when exercising that discretion include:

> (1) Whether the question presented is one of first impression of general statewide significance;
> (2) Whether the decision of the Court of Appeals conflicts with a prior decision of the Court of Appeals, the Supreme Court, or the United States Supreme Court;
> (3) Whether the case involves fundamental issues of statewide public importance.

NRAP 40B(a).

This Petition raises two fundamental issues of first statewide public importance: (1) the State's improper use of a nontestifying codefendant's redacted confession against a defendant in a joint trial in violation of the Sixth Amendment; and (2) the level of specificity required for expert disclosures made pursuant to **NRS 174.234(2)(a).**

As to the first issue, the Court of Appeals' analysis generally conflicts with United States Supreme Court precedent in **Bruton v. United States**, 391 U.S. 123 (1968), **Richardson v. Marsh**, 481 U.S. 200 (1987) and **Grey v. Maryland**, 523 U.S. 185 (1998). The Court of Appeals' analysis also generally conflicts with this Court's precedent in **Ducksworth v. State**, 113 Nev. 780 (1997) ("**Ducksworth I**"), **Ducksworth v. State**, 114 Nev. 951

(1998) ("**Ducksworth II**"), and **Sitton v. State**, No. 73014, 2019 WL 1772439 (Nev., April 19, 2019) (unpublished). Furthermore, although both **Ducksworth I and II** and **Sitton** generally addressed redacted statements that (in and of themselves) inculpated a co-defendant, this case involves a much more serious type of **Bruton** violation, and one that the Nevada Supreme Court has not had occasion to address in a published decision: the impact of a closing argument by the State that specifically asks the jury to consider a co-defendant's redacted statement as evidence that the defendant committed the charged crimes.

Finally, as to the second issue, the degree of specificity required under **NRS 174.234(2)(a)** appears to be an issue of first impression in the State of Nevada. Discretionary review is warranted to address both of these important issues.

*A. The Court of Appeals erred in affirming Steven Turner's two convictions for attempt murder with use of a deadly weapon, where the State asked the jury to convict him based on the contents of his non-testifying co-defendant's partially-redacted statements to police, in violation of **Bruton**.*

In the early morning hours of September 4, 2015, Eric Clarkson and Willoughby Potter de Grimaldi awoke to discover three black males prowling around their home. (VII:1362-63;XI:2359-62). They called the police and Officers Malik Grego Smith and Jeremy Robertson arrived

shortly thereafter. (VII:1308,1314,1348;VIII:1598,1650). The officers entered the pitch-black home and proceeded to the back of the house, after the residents indicated that a prowler was on their back patio. (VII:1314;VIII:1606-07). As Officer Robertson unlocked the patio door and Grego-Smith took a step to go outside, "two shots" came in from outside on the patio. (VIII:1612-13). Officer Robertson was shot in the leg and seriously injured. (VIII:1656).

After the shoot-out, police discovered Clemon Hudson on the ground in the back yard with a shotgun between his legs, a rifle underneath him and a small Beretta handgun nearby. (VII:1452,VIII:1514). Three-and-a-half hours later, police located Steven Turner walking down the street with a gunshot wound to the leg. (VIII:1524,1528).

Hudson and Turner both gave statements to police. Although Turner admitted that Hudson had driven him to the home so they could steal some weed and possibly some money (IX:1782-83), Turner adamantly denied ever handling any of the firearms found at the scene. (IX:1790).

Hudson, by contrast, told police that **both of them** handled the weapons, and directly implicated Turner in the shooting:

- "I didn't have the shotgun at the time **when both of us fired** – when the fire was going on." Court Exhibit A, November 30, 2017 (clemon ct redactions 1) at p. 12 (emphasis added).

- "And we were getting blasted, you know, through the mirror. I fell on the ground and **I see him shoot to the right side of me**." Court Exhibit A, November 30, 2017 (clemon ct redactions 1) at p. 13 (emphasis added).

- "**And he had the SK**." Court Exhibit A, November 30, 2017 (clemon ct redactions 2) at p. 13 (emphasis added).

- CJ: . . . . How many shots does [he] shoot? CH: I have no idea."

Court Exhibit A, November 30, 2017 (clemon ct redactions 2) at p. 13.

Turner and Hudson were indicted together on six charges, including two counts of attempt murder with use of a deadly weapon. (I:1-6). Before trial, Turner and Hudson jointly moved to sever their trials pursuant to **Bruton v. United States**, 391 U.S. 123, 135-37 (1968). (XI:2247-52;II:276-472). The district court denied the joint motion, believing that the co-defendants' incriminating statements could be adequately redacted to avoid prejudice. (III:718).

At trial, Turner conceded that he was guilty of conspiracy to commit burglary and attempt burglary because he and Hudson had driven to the house together, intending to steal weed. (VII:1268-71). However, Turner asked the jury to find him "not guilty" of attempted murder with use of a

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deadly weapon because he never handled or fired any weapon. (X:2069).[1]

Turner's theory of defense was that a third individual held the SKS rifle that shot Officer Robertson. (X:2047-51;2057-58;2061-63). Evidence presented at trial supported Turner's defense that a third person had met them at the home after they arrived in Hudson's car:

- Grimaldi saw three distinct individuals circling his home on the morning in question, but none of those individuals matched Turner's description. When defense counsel showed Grimaldi a photograph of Turner that had been taken on the day in question, Grimaldi acknowledged that he did not recognize Turner as one of the individuals he saw at the house. (VII:1362-63;XI:2359-62;State's Exhibit 28).

- Although Clarkson testified that he had known Turner for several years and that the two had been friends, (VII:1300-01), he did not see Turner at his house that night either. (VII:1332-33).

- Turner did not match the description of the shirtless individual in basketball shorts that Grego-Smith saw on the back patio, and Grego-Smith confirmed that Hudson was not that individual either. (VIII:1623).

- Turner had not changed his clothing after being shot in the leg; when arrested, he was wearing bright orange pants with holes in them that were covered in his blood. (X:2050;State's Exhibits 28-32).

- After examining 16 separate lab items, including the three firearms that allegedly belonged to the two suspects in this case, the State was unable to connect *any* of those items to Turner using either DNA or fingerprint analysis. (IX:1722).

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[1] At trial, Turner also asked the jury to find him "not guilty" of possessing a firearm during the attempt burglary, and "not guilty" of battery with use of a deadly weapon causing substantial bodily harm. X:2069). However, Turner does not challenge those convictions in this Petition for Review.

- In his two statements that were admitted at trial, Turner denied having or firing a gun during the incident. (IX:1788-90).

At trial, the State asked the jury to consider Hudson's redacted statements as evidence of Turner's guilt on the attempt murder charges. See Appellant's Opening Brief at 19-22. The State used Hudson's statements to establish that there were only two people involved in the crime, not three as argued by Turner. (IX:1737,1739,1744,1746-47,1750,1752). The State also used Hudson's statements to establish that Turner both held and fired the SKS rifle that shot Officer Robertson in the leg. (IX:1740,1749). In closing, the State specifically asked the jury to consider the co-defendants' inculpatory statements against one-another:

- "What else do we know? Remember that diagram?[2] You'll have this map to take back with you as well. **Two stars right up against that window. Two people**." (X:2040).

- "What does Mr. Hudson say? **Both are standing by the window** when the shots come out, **when they start shooting**. Okay." (X:2040)

- "**There's two confessions; both of them said two people**. There's two stars on the diagram. Turner said it. Hudson said it. I could go on" (X:2092).

- There's two cell phones that come back to them in those -- in that car, and **they said so**. There's no third person ever in the car. There's two defendants, **they told you**, they were [in] that car. (X:2093-94).

[2] This diagram was based on Hudson's statements to police.

- "**They told** you they were going to do armed robbery. **Hudson said so.** Turner minimized. He kind of distanced himself from the gun when he realized that he put a round through an officer." (X:2094).

- "All the witnesses said they opened fire without warning. **Hudson claimed the other guy, who I submit to you is Turner, shot before him.**" (X:2095).

After the jury found Turner guilty of all charges, he filed a motion for a new trial based on the State's violation of **Bruton** at trial. (III:620-26). The court denied Turner's motion for a new trial and Turner appealed. (IV:741).

Citing "plain error" doctrine, the Nevada Court of Appeals affirmed Turner's convictions for attempted murder with use of a deadly weapon for two reasons: (1) because the State's closing argument "did not violate *Bruton*"; and (2) because Turner "did not suffer prejudice" from the State's argument. See Exhibit 1 at page 8. Yet, even under plain error doctrine, these conclusions conflict with prior decisions of the United States Supreme Court and the Nevada Supreme Court, and this Court should hold the State accountable for using Hudson's redacted confession as direct evidence of Turner's guilt at trial.

In **Bruton v. United States**, 391 U.S. at 128-29, the Supreme Court held that the State could not use a nontestifying co-defendant's confession against a defendant at trial without violating the Sixth Amendment's Confrontation Clause. In **Richardson v. Marsh**, 481 U.S. 200, 211 (1987),

the Supreme Court clarified that the Confrontation Clause would not be violated by the admission of a nontestifying codefendant's statement if "the confession [were] redacted to eliminate not only the defendant's name but any reference to his or her existence" and if a proper limiting instruction were given. But **Richardson** cautioned the State that it must not "undo the effect of [a] limiting instruction by urging the jury to use [a co-defendant's] confession in evaluating [defendant's] case". 481 U.S. at 211.

At trial, the State violated both **Bruton** and **Richardson** when it asked the jury to consider Hudson's statement as evidence that Turner both held and fired the weapon that shattered Officer Robertson's leg. Yet, inexplicably, the Court of Appeals found no **Bruton** error:

> [A] review of the record shows that the prosecutor expressly noted that Hudson's statement did not mention Turner by name but only mentioned that "the other guy" fired a gun first. In an aside, the prosecutor argued that the jury could conclude that Turner was the "other guy." **Because the prosecutor never implied that Hudson specifically named Turner, the argument did not violate *Bruton*.**

Exhibit 1 at p. 8 (emphasis added). The Court of Appeals interprets **Bruton** much too narrowly. The prosecutor did not have to tell the jury that Hudson "specifically named Turner" to violate the Sixth Amendment. The prosecutor violated the Sixth Amendment by "urging the jury to use

[Hudson's] confession in evaluating [Turner's] case". See **Richardson**, 481 U.S. at 211.

Furthermore, Hudson's reference to the "other guy", when coupled with the State's argument that Turner was the "other guy", was directly accusatory under **Gray v. Maryland**, 523 U.S. 185, 195 (1998). In **Gray**, the Supreme Court held that redactions that replace a name with an obvious blank space, a word such as "deleted", a symbol, or which "similarly notify the jury that a name has been deleted" are insufficient to protect a defendant's Confrontation Clause rights. Id. at 194. As the Supreme Court explained, these types of "obviously redacted" confessions are "directly accusatory" in nature and can be understood by the jury to refer specifically to the defendant, particularly when combined with a limiting instruction. **Id.** at 194. But in this case, the State went farther than simply introducing an "obviously redacted" confession that inculpated Turner. The State actually asked the jury to rely on that confession as evidence of Turner's guilt.

The State appears to take the position that it can make any argument it wants about a redacted confession once that confession has been admitted as evidence at trial. And while it is true that a prosecutor "may argue inferences from the evidence and offer conclusions on contested issues," **Miller v. State**, 121 Nev. 92, 100 (2005) (internal quotation marks omitted), both

Bruton and **Richardson** explicitly prohibit the State from doing what it did in this case: arguing that Hudson's redacted confession was evidence of Turner's guilt. The State's error was plain under existing Supreme Court precedent.

The Court of Appeals also disregarded existing precedent when it concluded that "Turner did not suffer prejudice during his joint trial, and thus no plain error occurred." Exhibit 1 at 5. To determine whether a defendant's Confrontation Clause rights have been violated by the admission of a nontestifying codefendant's redacted statement, "the central question is whether the jury likely obeyed the court's instruction to disregard the statement in assessing the defendant's guilt." **Ducksworth II**, 114 Nev. at 955. Where the State's closing argument specifically asked the jury to rely on Hudson's statement as evidence that Turner held and fired a weapon, and where a limiting instruction was not included in the packet of jury instructions provided during deliberations (III:516-617), it is unlikely that the jury obeyed the court's oral limiting instruction provided days earlier.[3]

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[3] A limiting instruction was read in court on April 23, 2018. (VIII:1734-35). Jury instructions were read and closing arguments were made on April 26, 2018. (IV:738).

In **Ducksworth I**, 113 Nev. at 794, this Court found prejudicial error from a **Bruton** violation where the evidence against the appellant was "largely circumstantial." Notwithstanding the Court of Appeals' contrary conclusion,[4] evidence of Turner's guilt of attempted murder[5] with use of a deadly weapon was largely circumstantial. Cf. Exhibit 1 at 5. At trial, the State conceded that Turner and Hudson "didn't go there with the intent to kill a cop." (X:2106). Therefore, in order to convict Turner of attempt murder, the State had to prove that Turner actually fired a weapon at the police. See Appellant's Opening Brief ("AOB") at 62-63. In closing, the State argued that both men possessed and fired their own individual weapons, and that each man's specific intent to kill was formed when the door opened and they each opened fire:

> These guys did not go over there that day with the intent to murder a police officer. They didn't. They went over to rob, with high-powered weapons that were loaded, a couple of harmless people.

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[4] The Court of Appeals found, "Though much of the State's direct evidence implicated Hudson, there was also considerable direct evidence of Turner's guilt. For example, Turner confessed to large portions of the crime, and suffered a gunshot wound that medical evidence connected to the shootout following the burglary. Thus, the State did not rely only, or even primarily, upon Hudson's statement to prove Turner's guilt. Exhibit 1 at 5.

[5] **Keys v. State**, 104 Nev. 736, 740 (1988) (attempt murder is a specific intent crime).

> **They formed the intent to kill when that door started to open.** And instead of going, This is a bad idea, or, Oh, this is about to get crazy, or, Give me your weed, **they chose to almost end that man's life.** By the grace of God, they missed his artery. He fell. The shotgun blast missed him. Does not change their intent. **Their intent was to kill. Both of those shots were kill shots, and both of those men made their decisions.**

(X:2100) (emphasis added).

> No single person fired both these weapons. **Both of the people who fired those weapons had one intent when they pulled the trigger.** Not the intent going to the house, not even the intent when they went into the backyard, maybe not the intent for the 15 minutes they tried to break into the house to rob people with guns; but **when that door opened, the intent is clear: Rounds through the house, rounds at the bodies of human beings.**

(X:2107) (emphasis added).

The State's only evidence of "intent to kill" was that the weapons were fired when the door opened. But unless Turner actually fired one of those weapons, the State could not prove that he, personally, had the specific intent to kill. See, e.g., **Sharma v. State**, 118 Nev. 648, 657-58 (2002) (to convict defendant of attempt murder, jury had to find that he "aided or abetted with the specific intent to kill"); **Bolden v. State**, 121 Nev. 908 (2005) (extending the specific intent requirement of aiding and abetting to the charge of conspiracy), receded from on other grounds by, **Cortinas v. State**, 124 Nev. 1013, 1026–27 (2008).

Apart from the inculpatory statements made by Hudson, there was no direct evidence that Turner possessed or fired any weapon during the underlying conspiracy to commit burglary. See Appellant's Opening Brief (AOB) at 27-30. Although the Court of Appeals found that Turner "confessed to large portions of the crime" (Exhibit 1 at 5), Turner did not confess to holding or firing a weapon. Turner's statements to police (*i.e.*, that he was present at the scene, that he knew there were guns, and that there were only two guys who drove to the scene) were insufficient on their own to establish that Turner fired a weapon with the intent to kill. As a result, evidence of Turner's specific intent to kill was "largely circumstantial". See **Ducksworth I**, 113 Nev. at 794.

On habeas review, courts have found actual prejudice and reversible error from the erroneous admission of similar evidence in violation of **Bruton**. For instance, in **Vasquez v. Wilson**, 550 F.3d 270, 281 (3d Cir. 2008),[6] the Third Circuit reversed a defendant's first-degree murder conviction where the defendant "never confessed to being a shooter, and there was no witness at trial who said that he saw [him] fire a weapon" apart from his co-defendant's improperly-admitted statement. Under those

[6] **Vasquez** was cited with approval by this Court in **Sitton**, 2019 WL 1772439 at 2.

circumstances, the Third Circuit found that the **Bruton** error had a "substantial and injurious effect" on the trial.

Likewise, in **Rueda-Denvers v. Baker**, 359 F.Supp.3d 973 (2019), the U.S. District Court for the District of Nevada recently reversed an appellant's convictions for first degree murder, attempt murder, and other crimes where the only direct evidence that defendant knew his co-defendant had placed a bomb in a coffee cup came from his co-defendant's improperly-admitted statement, and defendant denied such knowledge. The court found "actual prejudice" from the **Bruton** error in that case as well.

In this case, prejudice was not limited to the improper admission of evidence – an even greater prejudice occurred because of the State's improper use of that evidence in its closing argument. Like in **Vasquez** and **Rueda-Denvers**, there was no direct evidence of Turner's guilt on the attempt murder charges. See AOB at 28-30. Turner denied holding or firing any weapon. As a result, when the State argued that Hudson's statement to police established that Turner shot Officer Robertson, the error caused actual prejudice and a miscarriage of justice requiring reversal, even under a plain

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error standard of review.[7]

B. The State's expert notice was not sufficiently specific to satisfy ***NRS 174.234(2)(a).***

To present expert testimony at trial, the State had to provide Turner with the following information at least 21 days prior to trial:

> (a) A brief statement regarding the subject matter on which the expert is expected to testify **and the substance of the testimony**;
> (b) A copy of the curriculum vitae of the expert witness; and
> (c) A copy of all reports made by or at the direction of the expert witness.

NRS 174.234(2) (emphasis added). On appeal, Turner argued that the State should not have been allowed to present expert testimony about stippling of gunpowder on human skin or clothing because that topic was never disclosed in any of the State's pretrial expert disclosures. See AOB at 30-50; (III:545-55).

Instead of notifying Turner that Anya Lester would give expert testimony about stippling, the State disclosed the "substance" of Lester's

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[7] Importantly, the defendants in **Vasquez** and **Rueda-Denvers** were held to a higher standard of review than the plain error standard relied on by the Court of Appeals in the instant case. See **Henderson v. Kibbe**, 431 U.S. 145, 154 (1977) ("The burden of demonstrating that an erroneous instruction was so prejudicial that it will support a collateral attack on the constitutional validity of a state court's judgment is even greater than the showing required to establish plain error on direct appeal."). Where the errors in **Vasquez** and **Rueda-Denvers** were deemed "so prejudicial" as to warrant collateral relief, the more serious error in this case certainly establish prejudicial plain error.

testimony as follows: "She is an expert in the field of firearm and toolmark comparisons and is expected to testify thereto." (III:550). That single sentence was the entirety of the State's expert disclosure. Based on that limited disclosure, Turner had notice that Lester might compare or contrast the markings made by the different types weapons involved in the case (*e.g.*, the SKS rifle, Hudson's shotgun, and Officer Grego-Smith's Glock 17).[8] However, Turner did not have any notice that Lester would discuss the distances at which stippling might appear on human skin or clothing. See AOB at 33-36.

At trial, Turner explained to the court exactly why this lack of notice was so prejudicial:

> [T]he State [will] argue that my client had stippling on his leg. And based on this witness testifying that there was no stippling beyond 2 feet, which is an area she's not been disclosed in, they're going to use that in their closing arguments to say he had to have been within 2 feet of a firearm when it was discharged for that pattern to have happened, and thus, the defense theory is incorrect.

(IX:1898-99). Turner moved to strike the testimony or, in the alternative, for a one-week continuance so that he could retain his own expert to refute the

[8] When asked to describe her expertise, Lester confirmed that her job was to examine "firearms . . . ammunition, ammunition components, any other firearms-related evidence, including microscopic comparisons of bullets, cartridge cases, and ammunition components to determine if they were fired from a particular firearm." (X:1861).

State's anticipated argument. (X:1867-68;IX:1903,1907). Yet, the court denied Turner's reasonable request, and he suffered prejudice when the State used the unnoticed stippling evidence in closing to argue that Turner had fired the SKS rifle. See AOB at 40-41.

The Court of Appeals rejected Turner's notice argument, concluding:

> Lester's testimony was also proper under NRS 174.234(2) because Turner received notice that she would testify regarding firearm and toolmark comparisons. Because stippling is a subcategory of firearms analysis and specifically relates to gunshot residue, Lester's notice was sufficient to include testimony regarding stippling. Thus, the district court did not abuse its discretion in allowing her testimony.

Exhibit 1 at 7.

In **Perez v. State**, 129 Nev. 850 (2013), this Court considered an argument by the defense that the State' expert witness disclosure on the subject of grooming was inadequate under **NRS 174.234(2)**. In rejecting the defense argument, a majority of four Justices noted that "Perez's brief argument does not allege that the State acted in bad faith or that his substantial rights were prejudiced because the notice did not include a report or more detail about the substance of Dr. Paglini's testimony." **Id**. at 863. By contrast, the dissenting three Justices deemed the expert notice to be insufficient as a matter of law:

> The State's expert-witness disclosure designated Dr. Paglini and stated he would "testify as to grooming techniques used

> upon children," nothing more. This notice was far too brief, and while it identified the subject matter of the testimony in the broadest of terms, it did not sufficiently address the substance of that testimony. As noted above, most of Dr. Paglini's direct testimony involved his opinion of hypothetical scenarios posed by the prosecutor that mirrored the specific facts of this case. The notice did not inform Perez that the State sought Dr. Paglini's opinion on these matters.

Id. at 868 (J. Douglas, dissenting).

This Court has not yet issued a published decision detailing the minimum level of specificity that is required to satisfy **NRS 174.234(2).** However, in this case, Turner made the very arguments demanded by the majority of this Court in **Perez** to warrant consideration of that issue: he explained that the State acted in bad faith by deliberately providing a vague expert notice,[9] and he explained that his substantial rights were prejudiced because the notice did not advise him that stippling would be discussed by

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[9] As explained in Turner's Opening Brief, the State admitted that it had not, and would "never" have told defense counsel that experts would testify about stippling because it did not have to reveal its "trial strategy" to the defense:

> the general idea of stippling falls within the purview of firearms, ammunitions, ballistics, etcetera. . . . **There is no other notice we could possibly have given, other than saying, this is our trial strategy. Here you go. We cannot, and will never, do that. It's not required by law.**

(IX:1904) (emphasis added).

the State's firearm and toolmark comparison expert and, without a continuance, he was unable to obtain his own expert witness to counter that testimony at trial. See AOB at 34-35, 46-50. On review, this Court should address the level of specificity required in an expert notice under **NRS 174.234(2)** so that issues of this nature do not continue to arise in the future.

CONCLUSION

Based on the foregoing, this Court should grant review in the instant case.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this petition for review complies with the formatting requirements of NRAP32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6), because:

It has been prepared proportionally spaced typeface using Times New Roman in 14 font.

2. I further certify that this brief complies with the page or type-volume limitations of NRAP 40B because it is either:

Proportionately spaced, has a typeface of 14 points or more, and contains 4,137 words which does not exceed the 4,667 word limit.

DATED this 18 day of November, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 18 day of November, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
ALEXANDER CHEN

DEBORAH L. WESTBROOK
HOWARD S. BROOKS

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

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BY *_/s/ Carrie M. Connolly_*
Employee, Clark County Public
Defender's Office