ORIGINAL

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FILED

JUL 16 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

JONATHAN QUISANO

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

CASE NO: 66816

SUPPLEMENTAL FAST TRACK RESPONSE

1. Name of party filing this fast track response: The State of Nevada

2. Name, law firm, address, and telephone number of attorney submitting this fast track response:

Steven S. Owens
Clark County District Attorney's Office
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Las Vegas, Nevada 89155-2212
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3. Name, law firm, address, and telephone number of appellate counsel if different from trial counsel:

Same as (2) above.

4. Proceedings raising same issues. List the case name and docket number of all appeals or original proceedings presently pending before this court, of which you are aware, which raise the same issues raised in this appeal: None.

5. Procedural history.

On December 4, 2013, the State charged Jonathan Quisano ("Appellant") by way of Amended Information with an open count of Murder for the death of his three year old son. Vol. 2 Appellant's Appendix ("__ AA") 465-67. On May 21, 2014,

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Appellant filed a Motion to Compel Production of Discovery ("Discovery Motion"), seeking production of a wealth of certain materials from the State. IV AA 792-816.

On May 23, 2014, the State filed an Opposition to Appellant's Discovery Motion, wherein it clearly articulated its discovery policy as limited to those materials that require disclosure pursuant to NRS 174.235 and Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963). Id. at 817-836. The District Court granted the motion in part on June 3, 2014, limiting its ruling to those categories of discovery already required by statute and the Constitution. See VI AA 1250.

On June 10, 2014, pursuant to negotiations, Appellant entered into a Guilty Plea Agreement with the State, wherein he agreed to plead guilty to one count of Voluntary Manslaughter and one count of Child Abuse, Neglect, or Endangerment with Substantial Bodily Harm. 5 AA 1000-1008. A Second Amended Information was filed in open court reflecting the Guilty Plea Agreement the same day. On November 7, 2014, following a sentencing hearing, Appellant was sentenced to a maximum of 120 months with a minimum of 48 months imprisonment in the Nevada Department of Corrections with respect to Count 1, and a maximum of 230 months with a minimum of 72 months with respect to Count 2. 5 AA 1166-67. Count 2 was to run consecutive to Count 1, and Appellant received 488 days credit for time served. Id. The instant appeal followed. This Court ordered supplemental briefing on the matter on May 26, 2015.

6. Statement of Facts.

Among the long list of items demanded in Appellant's Discovery Motion were "recorded or unrecorded" statements and "oral statement[s]" of State witnesses. IV AA 811. In its Opposition, the State noted that by requesting "oral statements" of witnesses, Appellant had attempted to exceed the scope of NRS 174.235's requirement that the State produce only "written or recorded statements" of a witness. Id. at 820. At a hearing on the motion, the State informed the Court:

> With regard to [witness statements], [the defense] went a step beyond the statute. They said not only the statements that are written as required by the statute, but they want anything oral that may have been said to someone. I mean, that's not required.

VI AA 1250.

The court agreed, and ordered that the only witness statements worthy of production were those detailed in NRS 174.235 – "written or recorded" statements – and oral statements in which a witness "say[s] something inconsistent with what's been said already." Id. Thus, "oral statements" of witnesses generally were not included in the discovery order. The court further noted that many of Appellant's requests for production were "overly broad," and that as such, the court was not inclined to grant them all. Id. at 1252.

Appellant subsequently pleaded guilty to Voluntary Manslaughter and Child Abuse, Neglect or Endangerment with Substantial Bodily Harm. V AA 1000-1008.

At sentencing, the defense called Appellant's wife, Christina Rodrigues as a victim-impact speaker. V AA 1170-78. Despite the defense facilitating Ms. Rodrigues' testimony, no warning or notice of such testimony or its content was provided to the State or the court. Id. at 1177-78; VII AA 1529.

Ms. Rodrigues attempted to mitigate Appellant's sentence by discussing his "loving, caring, responsible" behavior as a father, asked the court for leniency, and stated she hoped Appellant would be sentenced to mere probation. V AA 1172. The State then cross-examined Ms. Rodrigues. Id. To counter the request that Appellant receive probation, the State attempted to impeach Ms. Rodrigues with an affidavit executed by a Department of Family Services ("DFS") staff member, wherein the individual relayed a conversation he or she had with Ms. Rodrigues in Family Court during which Ms. Rodrigues stated a belief that Appellant had killed their son and that he should go to prison for his crime. Id. at 1173. Ms. Rodrigues vehemently denied ever having made the statement, and defense counsel immediately objected to the State's questioning. Id. at 1175. The court sustained the objection on the grounds that the statement had been made in "a different forum." Id. Thus, the State was precluded from actually using the affidavit to impeach Ms. Rodrigues. See Id. The court also noted it had never viewed the affidavit. Id.

Only after viewing the affidavit, once defense counsel's objection had already been sustained, did defense counsel make any mention of an alleged discovery

violation. Id. at 1176. The State explained that it had not had any warning that the defense would call Ms. Rodrigues at sentencing, and that the affidavit was not considered "discovery." Id. at 1176-78. As such, the State did not provide a copy of the affidavit to the defense prior to sentencing. Id. at 1176. Importantly, the record is largely void of detail surrounding the affidavit itself.[1]

Following sentencing arguments by both sides, as well as Ms. Rodrigues' statement, the court sentenced Appellant and clearly articulated its reasoning. VII AA 1539-40. Specifically, the court discussed Appellant's guilty plea and his suspected prior abuse of his child, but made no mention of Ms. Rodrigues' statement or the content of the affidavit at issue. See Id.

At no time after sentencing, until the instant Appeal, did Appellant petition any court for a finding that the State violated its Discovery Order, or otherwise seek relief for a purported discovery violation or a new sentencing hearing.

7. Issue(s) on appeal.

Whether the State had a duty to produce an inculpatory affidavit by a non-witness during discovery pursuant to an alleged "open file policy," and whether the State's discovery obligation continues through sentencing.

8. Legal Argument, including authorities:

[1] Appellant has failed to include the challenged affidavit itself in the appellate record, despite the fact that the affidavit was filed as a court exhibit upon Appellant's objection to its use at sentencing, and notwithstanding the fact that the affidavit forms the basis of Appellant's claim on appeal.

I. THE STATE DOES NOT MAINTAIN AN "OPEN FILE POLICY" AND DID NOT PROFESS SUCH A POLICY IN THIS MATTER

In the instant matter, Appellant has simply failed to demonstrate that the State maintains some sort of alleged "open file policy" which would entitle him to discovery of any and all material within the State's possession, or that the State professed any such policy here. Nor does the record show that the defense relied upon or asserted such a policy below, or in their Opening Brief. In fact, Appellant filed a lengthy discovery motion rather than rely upon some policy that might entitle him to complete access to all materials in the State's possession. The filing of such a motion conclusively belies any claim that Appellant relied on some sort of purported "open file policy." Importantly, until such time as this Court requested briefing on the issue of a possible "open file policy," Appellant consistently asserted only that the State failed to satisfy its statutory and constitutional discovery obligations, and did not allege that he relied on *any* discovery policy of the State.

At the outset, the State notes that there are several relevant and important procedural considerations to address. First, because the issue of a possible "open file policy" or violation thereof was not raised below,[2] the issue may only be reviewed

[2] When defense counsel objected to the State's use of the affidavit at sentencing, such objection was made only on the grounds that the affidavit "was never provided in discovery." V AA 1176-77. Defense counsel at no point referenced any of "open file policy," and Appellant did not claim that the State violated an alleged "open file policy" in his Opening Brief in the instant appeal.

for plain error. See Pellegrini v. State, 117 Nev. 860, 884, 34 P.3d 519, 535 (2001). Naturally, as the issue has been raised *sua sponte* by this Court in the first instance on appeal, the factual record is not sufficiently developed. Furthermore, because Appellant's objection to the State's attempt to question Ms. Rodrigues with the challenged affidavit was immediately sustained, and the court made clear it did not consider the document when imposing Appellant's sentence, Appellant cannot possibly demonstrate that he has suffered prejudice. Indeed, this Court has held that where an appellant objects immediately to an improper question and the objection is sustained, reversal is not warranted. See Hernandez v. State, 118 Nev. 513, 526, 50 P.3d 1100, 1109 (2002) (overruled in part on other grounds by Armenta-Carpio v. State, 129 Nev. ___, 306 P.3d 395 (2013)); see also Manley v. State, 115 Nev. 114, 124, 979 P.2d 703, 709 (1999) (concluding reversal not warranted where appellant objected immediately to improper question and district court sustained the objection and struck the question). Accordingly, Appellant is not entitled to reversal in this matter.

Appellant's unsupported allegation that "[h]istorically, the Clark County District Attorney's Office has employed an 'open file policy'" is meritless. Not only does Appellant fail to support this sweeping statement with a single cite to the record, or to any specific instance of the State professing such a policy, but he overlooks the

fact that the State clearly articulated its limited discovery policy repeatedly here. In its Opposition to Appellant's Discovery Motion, the State noted:

> It is the position of the Clark County District Attorney to permit discovery and inspection of any relevant material pursuant to NRS 174.235 *et seq.*, and any exculpatory material under Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963). To the extent that Defendant's request for discovery exceeds the statutory and legal requirements outlined in Brady, the State objects to the defense's motion for discovery.

IV AA 818. Plainly, the State acknowledged its long-standing burden of production pursuant to NRS 174.235 and Brady, and importantly, indicated its unwillingness to provide the defense with unrestricted access to materials outside the scope of either requirement. Therefore, Appellant's contention that the State "referenced its open filed policy"[3] in its opposition to his discovery motion is inaccurate, as the State neither used the term "open file" nor implied ready access to *all* materials in its possession. See IV AA 828-35.

The State had previously set forth an identical sentiment with respect to its discovery duties on a Receipt of Copy form detailing various discovery the State produced to the defense on October 4, 2013. There, the State similarly made clear that it was aware of and would comply only with statutory and constitutional discovery obligations, noting it had and would continue to make discovery

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[3] See Appellant's Supplemental Fast Track Statement at p. 5.

"available to the defense in compliance with the requirements of NRS 174.235, as well as Brady v. Maryland, 373 U.S. 83 (1963) and Giglio v. United States, 405 U.S. 150 (1972). 1 AA 20-22.

These statements illustrate several important considerations, and though they may invite the defense to freely view those discovery materials in the government's case file which must be disclosed pursuant to NRS 174.235 and Brady, they by no means profess free reign over all materials within the State's possession. Rather, allowing the defense to freely view the contents of the State's case file that are *required by statute and constitutional principles* is the means by which the State complies with those requirements. Such a policy does not, however, equate to a promise to include materials in the State's file which are not mandated by NRS 173.235 or Brady, or to otherwise produce or allow access to those materials. Indeed, the State generally makes no representations that the content of its file contains anything other than that required by statute and constitutional principles, and the record is void of any indication that any such representations were made in this matter.

As more fully discussed below, the relevant discovery statutes require that the State permit the defendant to inspect and copy only certain, specific categories of material. See NRS 174.235. They do not, however, require that the State include any and all possible materials related to a matter in its case file, or that it allow unfettered

access to all materials within its possession. They also do not require that the State disclose "oral statements" made by a witness to a third party. See Id. Furthermore, in ruling on Appellant's Discovery Motion, the District Court ordered only that the State produce written or recorded statements of witnesses as defined in NRS 174.235, and oral statements of witnesses wherein the declarant makes a statement inconsistent with a statement previously provided to the defense. See VI AA 1250.

The same reasoning applies to the State's acknowledgment of the continuing nature of its discovery obligations. NRS 174.295 provides that the State's obligation to produce those materials covered by NRS 174.235 continues only "up to and during trial." See NRS 174.295(1). Thus, the State acknowledged only that after the initial production on October 4, 2013, it would continue to comply with its burden of production until such time as is specified in the aforementioned statute. As the State acknowledged, and as more fully explained below, that burden did not continue through sentencing. Importantly, the District Court did not order that the State continue to produce discovery through sentencing. Accordingly, Appellant has not demonstrated that the State professed, or that he relied, on a discovery policy that would have entitled him to production of the affidavit.

II. THE STATE COMPLIED WITH ALL DISCOVERY REQUIREMENTS AND HAD NO OBLIGATION TO PROVIDE DISCOVERY THROUGH SENTENCING

Contrary to Appellant's claim, the State did not violate any discovery requirements, either statutory or constitutional, in the instant matter. In fact, the State fully complied with the requirements it acknowledged in the statements of its discovery policy set forth above, as disclosure of the affidavit was not mandated by NRS 174.235, by constitutional principles articulated in Brady or Giglio, or by this Court's decisions in McKee v. State, 112 Nev. 642, 917 P.2d 940 (1996), and Furbay v. State, 116 Nev. 481, 998 P.2d 553 (2000).

A. The State Was Not Statutorily Required to Produce the Affidavit Prior to Sentencing.

As mentioned, the State's discovery duties are set forth in part in NRS 174.235. Specifically, the provisions require that upon request of a defendant, the State shall permit the defendant to inspect, copy or photograph:

> (a) Written or recorded statements or confessions made by the defendant, or any **written or recorded statements made by a witness the prosecuting attorney intends to call during the case in chief of the state**, or copies thereof, within the possession, custody or control of the state, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney;
>
> ...and
>
> (b) Books, papers, documents, tangible objects, or copies thereof, **which the prosecuting attorney intends to introduce during the case in chief of the state** and which are within the possession, custody or control of the state, the existence of which is known, or by the

> exercise of due diligence may become known, to the prosecuting attorney.

(Emphasis added).

Here, the affidavit at issue did not qualify for production under NRS 174.235 (a) or (b). First, although Appellant correctly asserts that the State noticed Ms. Rodrigues as a witness in its case in chief when the parties intended to proceed to trial, the affidavit did not qualify as a "written or recorded statement[] made by a witness," as it was not executed by Ms. Rodrigues herself. Rather, the affidavit contained sworn statements by a third party, a DFS worker, who recited a prior hearsay statement declared by Ms. Rodrigues.

Furthermore, the affidavit did not qualify as a document the State intended to introduce in its case in chief – which refers to the time of trial, not sentencing – as the State had no involvement in Ms. Rodrigues's decision to speak at sentencing and had no notice she would do so. Appellant's reliance on Floyd v. State, 118 Nev. 156, 42 P.3d 249 (2002), for the proposition that the State's "case in chief" encompasses sentencing is misguided. Floyd clearly holds that "the term 'case in chief' in NRS 174.234(2) and 174.245(1)(b) encompasses the initial presentation of evidence by either party *in the penalty phase of a capital trial*," none of which is apposite to the instant matter. 118 Nev. at 169, 42 P.3d at 258 (emphasis added). Further, when Appellant's counsel objected to the State's attempt to use the affidavit, the State noted that: "as far as anything provided to the defense that may have been used, I

didn't know she was going to hit the stand until this morning when she showed up." V AA 1177. The court noted that defense counsel had indeed failed to inform either the State or the Court that Ms. Rodrigues would appear. Id. Thus, the State did not intend to use the affidavit in its case in chief.

Importantly, to the extent the District Court's discovery order obligated the State to provide only written and recorded witness statements as required by NRS 174.235, as well as inconsistent oral statements, the State fully complied with that order. As explained, the affidavit was not a "written or recorded" statement of a witness within the meaning of NRS 174.235. Moreover, although the affidavit contained an oral statement of a witness, there is no indication that the statement was inconsistent with any of Ms. Rodrigues's prior statements at the time it was made or at the time the State became aware of it. Rather, the statement only became inconsistent at the moment Ms. Rodriguez attempted to mitigate Appellant's sentence at the sentencing hearing.

Moreover, as the Nevada legislature has made clear, the duties of production outlined in NRS 174.235 are not perpetual. Pursuant to NRS 174.295(1), the State's burden of production extends only through the period "*before or during trial.*" (emphasis added). Thus, at least with respect to the above categories of discovery, no continuing obligation exists beyond the close of trial, or by default, after such time as a defendant's guilt or innocence has been established. See Id. Here,

Appellant waived his right to trial when he pled guilty. Moreover, there is nothing in the record to suggest that the State obtained the affidavit at some time before Appellant entered a guilty plea. Accordingly, the State had no continuing obligation of production.

B. The State Was Not Required to Produce the Affidavit Prior to Sentencing Under Constitutional Principles.

As this Court is aware, it is well established that pursuant to the discovery standards set forth by the United States Supreme Court in Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963), the government has an affirmative duty to disclose exculpatory evidence to a criminal defendant. However, this holding does not extend to all forms of exculpatory evidence in cases where a defendant enters a guilty plea, and similarly does not generally extend to inculpatory evidence.

Indeed, the government's obligation to provide discovery of both inculpatory and exculpatory impeachment information is not unconditional. The Supreme Court has made abundantly clear that, prior to a defendant's entry of a plea of guilty, neither the Court's Brady holding nor the United States Constitution require government disclosure of material exculpatory impeachment evidence. United States v. Ruiz, 536 U.S. 622, 633, 122 S.Ct. 2450, 2457 (2002); see also State v. Huebler, 128 Nev. ___, 275 P.3d 91. 96 (2012). "Impeachment evidence" within the contemplation of Brady and Giglio generally refers to evidence *useful to a defendant* in impeaching a government witness where "reliability of [the] witness may well be

determinative of guilt or innocence," i.e., "a promise made to the key Government witness that he would not be prosecuted if he testified for the Government." United States v. Bagley, 473 U.S. 667, 676-77, 105 S.Ct. 3375, 3380-81 (1985); see also Giglio v. United States, 405 U.S. 150, 154, 92 S.Ct. 763, 766 (1972). Thus, contrary to Appellant's reasoning, Brady does not require disclosure of all evidence the State may possibly employ to impeach any witness at any time.

In the instant matter, the affidavit was plainly not the sort of impeachment evidence contemplated in Brady. Ms. Rodrigues' alleged belief that Appellant be sentenced to time in prison was in no way determinative of Appellant's guilt or innocence. Moreover, because Appellant had already pled guilty, his guilt or innocence was not at issue and the credibility of Ms. Rodrigues' testimony was of no consequence with respect to that determination. Further, the alleged impeachment evidence would not have been useful to Appellant, as Ms. Rodrigues' desire that Appellant be sentenced to time in prison is certainly not exculpatory.

Tellingly, Appellant admitted that the affidavit at issue does not fall within the traditional understanding of "exculpatory impeachment evidence" requiring disclosure under Brady and Giglio. In his Discovery Motion, Appellant requested disclosure of "impeachment evidence," which he defined as "any and all compensation, express or implied, promises of favorable treatment or leniency, or any other benefit that any of the State's witnesses may of have [sic] received in

exchange for their cooperation in this or any related prosecution." IV AA 810 Appellant also defined impeachment evidence under Giglio as "any/all cooperation agreement(s) between a government witness and prosecutors." Id. at 799. As explained, the affidavit absolutely did not fit within these definitions.

Finally, even if the affidavit can be characterized as impeachment information, the State is simply not required to disclose such material before a defendant enters a guilty plea. Ruiz, 536 U.S. at 629, 122 S.Ct. at 2455. In reaching this conclusion, the high Court noted "it is particularly difficult to characterize impeachment information as critical information of which the defendant must always be aware prior to pleading guilty given the random way in which such information may, or may not, help a particular defendant." Id. at 630, 2546. Again, Appellant has not demonstrated, and the record does not indicate, that the affidavit was in the State's possession at any time before Appellant's entry of a guilty plea. Accordingly, the State was not obligated to disclose *any* impeachment evidence not covered by NRS 174.235 before such plea was entered.

From the above principles, it necessarily follows that the government has no affirmative duty to disclose *inculpatory* impeachment evidence, which is of far less value to the accused, prior to his entry of a plea. Certainly, this notion is even truer *after* a defendant has entered his plea, as guilt has been established and inculpatory evidence is of no consequence. Also demonstrated by the above discussion is the

fact that, if the affidavit can be construed as Brady material meaning the State was obligated to produce it at any time, that obligation certainly did not continue through sentencing and in fact, pursuant to Ruiz, terminated when Appellant pled guilty.

C. The State Was Not Required to Produce the Affidavit Pursuant to This Court's Holdings in McKee and Furbay.

Finally, a comparison of this Court's decisions in McKee v. State, 112 Nev. 642, 917 P.2d 940 (1996), and Furbay v. State, 116 Nev. 481, 998 P.2d 553 (2000), demonstrates that the State had no obligation, particularly not a continuing obligation through sentencing, to disclose the affidavit to Appellant.

In McKee, this Court found that where the District Attorney's Office of Humboldt County maintained a standing "open file policy," yet withheld an inculpatory photograph of McKee because it was not going to use it in its case in chief, yet planned to impeach McKee with the photograph when he testified, the State unfairly prejudiced McKee's defense. 112 Nev. at 648, 917 P.2d at 944. In so holding, this Court relied heavily on the fact that the record showed "that McKee's counsel believed that the open file policy meant that the District Attorney's Office would make available all relevant inculpatory, as well as, exculpatory evidence[,]" and that therefore, "it was reasonable for McKee to believe the State would make available *all* relevant evidence." Id. (emphasis added). The details surrounding the State's open file policy are not discussed in the decision.

By contrast, in Furbay, this Court found that where the State does not maintain or profess an "open file policy," the prosecution "is under no general duty to provide inculpatory, as opposed to exculpatory, evidence to the defense." 116 Nev. at 487, 998 P.2d at 557 (*citing* Brady, 373 U.S. 83, 87, 83 S.Ct. 1194). This Court distinguished McKee, noting that in that case, "the prosecution deliberately withheld inculpatory evidence in its possession and control despite professing to have an open file policy," whereas the facts of Furbay "[did] not involve a prosecutor's promise to provide *all evidence in its possession* to the defense." Id. (emphasis added). This Court held that, therefore, the State's presentation of an investigator's testimony at Furbay's sentencing, where the State failed to produce all the investigator's reports, did not prejudice Furbay. Id.

In the instant matter, much like Furbay, the State refrained from making any explicit promise to produce *all* evidence in its possession. Rather, as the two statements regarding the State's discovery policy quoted above plainly reflect, the State promised to produce only those materials it was invariably obligated to disclose pursuant to NRS 174.235, Brady, and Giglio. As explained, the affidavit did not qualify as discovery material under any of these. Simply put, no promise was made by the State which Appellant could have reasonably relied upon in belief that the State would produce all inculpatory material within its possession before sentencing, and the State was not otherwise obligated to produce the affidavit.

Furthermore, unlike the facts of McKee, in the case at bar there is nothing in the record to indicate that the State intentionally withheld the affidavit in an effort to later use it against Appellant himself. As explained, the State did not have notice that Ms. Rodrigues would testify at sentencing. Moreover, even if the State knew Ms. Rodrigues would speak, it could not have anticipated the exact content of her statement. Finally, and quite importantly, the District Court precluded the State from actually using the affidavit. Thus, Appellant's defense was not prejudiced.

Therefore, because the State did not promise to provide all inculpatory documents within its possession, Furbay and McKee support a finding that the State had no obligation to produce the inculpatory affidavit. Accordingly, and because Appellant cannot demonstrate that he suffered prejudice, his claim should be rejected.

9. Preservation of the Issue.

While the defense objected to the State's attempt to impeach the victim-speaker with the affidavit at the sentencing hearing, the objection was sustained and the defense made no further motion or request for relief from the alleged discovery violation and has sought a remedy for the first time on appeal. Any claim based on a purported "open file policy" was not preserved.

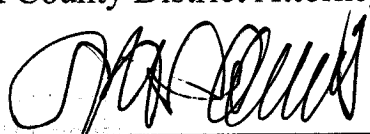
VERIFICATION

1. I hereby certify that this Fast Track Response 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 Fast Track Response has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point and Times New Roman style.
2. I further certify that this Fast Track Response complies with the type-volume limitations of NRAP 32(a)(8)(B) because it is proportionately spaced, has a typeface of 14 points and contains 4,482 words.
3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing a timely fast track response and the Supreme Court of Nevada may sanction an attorney for failing to file a timely fast track response, or failing to cooperate fully with appellate counsel during the course of an appeal. I therefore certify that the information provided in this fast track response is true and complete to the best of my knowledge, information and belief.

Dated this 13th day of July, 2015.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney

BY 

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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 13th day of July, 2015, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

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