IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY BARR, Appellant, v. THE STATE OF NEVADA, Respondent.	Case No. 78295

RESPONDENT'S ANSWERING BRIEF

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

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STATEMENT OF THE ISSUE(S)

I. Whether the court did not err when sentencing Appellant.

II. Whether Appellant was properly charged for all four robberies in the indictment.

III. Whether Appellant was properly tried with Co-defendant Phillips.

IV. Whether the trial court did not err when admitting evidence of Appellant's prior car stops.

V. Whether Appellant's right to Confrontation was not violated.

VI. Whether the court did not allow unqualified expert testimony.

VII. Whether there was sufficient evidence of a deadly weapon.

VIII. Whether there was no cumulative error.

STATEMENT OF THE CASE

On October 23, 2018, the State filed an Information, charging Anthony Barr (Hereinafter "Appellant") and Co-defendant Damien Phillips (hereinafter "Phillips") with: Count 1 – Conspiracy to Commit Burglary; Count 2 – Conspiracy to Commit Robbery; Counts 5, 8, 11, 14-15 – Burglary while in Possession of a Deadly Weapon; Counts 6-7, 9-10, 12-13, 16-17 – Robbery with Use of a Deadly Weapon; Counts 18-20 – Assault with a Deadly Weapon; Count 21 – Assault with a Deadly Weapon – Victim 60 Years of Age or Older; Count 22 – Carry Concealed Pneumatic Gun; and Count 23 – Preventing or Dissuading a Witness or Victim from Reporting a Crime or Commencing Prosecution. IAA1-13.

On December 3, 2018, Appellant's trial began. IAA15. On December 13, 2018, the jury found Appellant guilty of Counts 1-2, and 5-22. VIIAA1687. The jury found Appellant not guilty of Count 23. VIIAA1685-1687.

On January 29, 2019, the district court sentenced to the following: Count 1 – 364 days; Count 2 – 12 to 48 months, concurrent with Count 1; Count 3 – 36 to 120 months, concurrent with Count 2; Count 4 – 36 to 120 months with a consecutive 36 to 120 months for the deadly weapon enhancement, concurrent with Counts 1 through 3; Counts 5, 8, 11, 14-15 – 36 to 120 months, running concurrent with other counts; Counts 6-7, 9-10, 12-13, 16-17 – life without the possibility of parole with a

consecutive term of 36 to 120 months for the deadly weapon enhancement, running consecutively; Counts 18-20 – 12 to 48 months, running concurrent; Count 21 – 12 to 48 months with a consecutive term of 36 to 120 months for the deadly weapon enhancement, running concurrent to Count 17; and Count 22 – 12 to 48 months, running concurrent with Count 21. VIIIAA1770-71. The Court sentenced Appellant under the violent habitual criminal statute for Counts 5 through 17. VIIIAA1770-71. The aggregate total sentence was life without the possibility of parole pursuant to NRS 207.010(1)(b), Habitual criminals. VIIIAA1771.

On February 4, 2019, the district court clarified the sentence, correcting the following errors: Appellant was no longer adjudicated guilty of Counts 2 and 3; and adjudicated guilty of Count 22. VIIAA1743. Appellant's aggregate sentence did not change. VIIIAA1771.

The Judgment of Conviction was filed on February 27, 2019. VIIIAA1767-71. Appellant filed a Notice of Appeal on February 28, 2019. VIIIAA1772.

STATEMENT OF THE FACTS

On July 23, 2018, two African American males robbed a US Bank ("Robbery One"). IIAA307. When the men walked into the bank, Matthew Pedroza, an employee, offered his assistance, which they declined. IIAA345. He had not seen them before. IIAA349. One of the men wore silver reflective aviator sunglasses, a white track jacket with a red stripe, and a goatee. IIAA409. The other wore a black

do-rag with a hat over it, prescription glasses, and a collared shirt. IIAA335; IIAA386-87. The man in the hat approached Melanie Terada and presented a note stating, "give me your cash. We have a gun." IIAA386-90. She gave him $10,395. IIAA396. The man wearing the jacket approached Allyson Santomauro and also presented a note demanding money and "no bullshit." IIAA409. She gave him $5,775. IIAA412. Once the two had the money, they left the bank together. IIAA390. At trial, Alex Orellana, an employee, was "very certain" Appellant and Phillips were the robbers. IIAA324. Chelsea Gritton, the branch manager, also identified them with "100% certainty." IIAA367-69.

When reviewing the surveillance footage, police noted the physical features and clothing worn by each suspect and learned the suspects parked far from the bank and ran to their car when the robbery was complete. IIIAA586-88. Officers could not identify the suspects. IVAA926.

Eight days later, on July 31, 2018, those same men robbed a Bank of the West ("Robbery Two"). IIAA446. One dressed like woman with a black and white wig, burgundy dress, and gold sandals. IIAA491. The other wore black clothes, a camouflage baseball hat with a blue bill, covered his neck with a towel, and had a cluster of moles or pimples on his face. IIAA437; IIIAA501.

The man dressed as a woman approached Mary Grace Mones, a teller, put a black bag in front of her window, and presented a note saying "give me all your

money. I have a bomb tied in the bag." IIAA472-73. Mones gave him $1,929. IIAA475-76. The man with the towel around his neck presented Nur Begum, a teller, a note saying: "Give me all your money. Do not do anything funny. I have a gun." IIAA449. Begum gave him $688. IIAA450; 454. She noticed another person watching her and thought he or she might have a gun. IIAA451. Once both men had the money, they ran out of the bank together. IIAA462. Begum and another teller, Regina Coleman, saw the suspects running up a hill towards a church. IIAA454; 495. Coleman identified Appellant as the man in the hat, and Phillips as the man dressed like a woman. IIIAA513.

When Detective Lippisch reviewed the surveillance footage, he noted the following similarities between this robbery and Robbery One: two black male adults approached tellers and presented notes demanding money and saying they have weapons; and both parked their vehicles far away from the bank. IVAA928. When Lippisch reviewed surveillance footage from Anthem Realty, he saw the suspects getting out of a maroon car before the robbery and jumping into that same car moments after the robbery. IVAA935-37. Lippisch knew these people were the suspects because one was dressed as a woman wearing the same dress and wig, and the other was wearing the same camouflage hat with the blue bill and towel wrapped around his neck. IVAA935-36. IVAA937. Detectives also learned there was a third

person involved because both suspects got into the passenger side of the car and the car drove away before either was fully in the car. IVAA937.

The vehicle in the footage had a trailer hitch, distinctive oxidation marks on the trunk and roof of the car, and blemishes on the bumper, and no license plate. IVAA932; 938. Detective Lippisch determined the car was a 1994 Maroon Mercury Grand Marquis. IVAA932. When he searched for that car in the DMV database, he learned that a matching car had been recently stopped four times in three months. IVAA932-33. After reviewing body camera footage of each car stop, Lippisch confirmed it was the same car in each car stop and it was the same car in the footage from the robbery. IVAA938.

In the body camera footage of the car stop, Detective Lippisch also noticed that an African American male with face tattoos and big silver aviator glasses who was trying to cover his neck tattoos with a towel was either the driver or the passenger every time. IVAA941-45. A woman named Sabrina Henderson was also present every time. IVAA941. Lippisch compared the man in the car stops with the surveillance footage from Robberies One and Two and identified Appellant as the man in both. IVAA941-44. Based on this information, Lippisch applied for a tracker warrant for the vehicle. IVAA971.

On August 6, 2018, Appellant and Phillips robbed a US Bank inside a Smith's Grocery Store ("Robbery Three"). IIAA722. Appellant and Phillips entered the store

and told David Kranz, assistant store director, they needed crayons when he asked if they needed help. IIIAA685. Phillips picked up a box of crayons, but eventually set them down elsewhere in the store while approaching the bank. IIIAA709.

As with the prior robberies, one man approached Meghan Zitzman and presented a note demanding all her money. IIIAA724. However, the man was shaking so badly, Zitzman, a teller could not read the note, so he told her to give him everything or he would shoot her. IIIAA725. She gave him $1,047. IIIAA734. The other man approached Sunny Shay Cortner and presented a note she could not read because it was upside down. IIIAA745. He then verbally demanded everything in her drawer and told her not to do anything or he would shoot her. IIIAA745-46. Cortner gave him $1,439. IIIAA745.

When Detective Lippisch reviewed the surveillance footage he noticed the following similarities with Robberies One and Two: (1) the same camouflage hat with blue bill from Robbery Two; (2) the same glasses from Robbery One; and (3) the same mannerisms for both suspects. IVAA950-52. Lippisch also noticed that immediately preceding the robbery, Henderson—the woman with Appellant during the car stops—entered the Smith's and wandered around for one minute while looking in the direction of the bank and left without purchasing anything. IVAA954-59. Lippisch knew she was Henderson because she had a very distinct hairstyle and a similar height and weight. IVAA957. Lippisch also reviewed surveillance footage

from Desert Dental where he saw the suspects walking in the direction of the Smith's right before the robbery and running away from the Smith's immediately after. IVAA961.

Phillips's fingerprints were on the box of crayons. IVAA968-69. Phillips's fingerprints were also on a cart he was seen touching in the surveillance video. IVAA870. In reviewing Phillips's Facebook page, officers learned that he lived at Aviator Suites. IVAA971. On August 8, 2018, detectives went to the Aviator Suites and saw Appellant, Phillips, and Henderson getting out of the same Maroon Mercury Grand Marquis depicted in the surveillance footage and car stops. IVAA974-75. When Appellant, Phillips, and Henderson got into the car and drove away, detectives followed them to the Circus Circus Manor, where Appellant and Phillips entered a room. IVAA977-78. After continued surveillance, Detectives Gutierrez and Stier placed a mobile tracker on the vehicle while it was parked at the Circus Circus Manor outside of Appellant's and Phillips's room. IVAA979.

The next day, August 9, 2018, the tracker notified Detective Lippisch the car was moving. IVAA992. As the tracker map did not also provide landmark locations surrounding the roads the car was traveling on, Lippisch cross-referenced the car's location on the tracker map to Google Maps and determined that they parked near a complex with two banks—a US Bank inside a Smith's and a stand-alone Chase bank. IVAA992-93. Lippsich notified Detectives Ebert, Worley, and Hubbard who went

to that location and made visual contact with the vehicle, and Appellant and Phillips. VAA1036. All three detectives identified Appellant and Co-defendant at trial. IVAA970; VAA1198; VIAA1257.

The car was parked at an apartment complex near the shopping center with the banks. VIAA1266-67. Appellant and Phillips got out of the car and walked towards the complex with the banks. VIAA1266-67. Appellant and Phillips approached the Smith's first and stood outside the entrance collaborating before entering and exiting shortly after. VIAA1269. They walked to the Chase Bank and did the same thing. VAA1239. The entire time, Appellant had a bulge on his lower back waistline. VAA1204. Appellant and Phillips returned to the car, where the females, Henderson and Melissa Summlears were waiting in the front seat, and the car drove away. VIAA1272. Detectives knew they were surveilling the same men because their physical descriptors and clothing matched. VIAA1267.

Detectives followed the car to an alley near of a US Bank, where it parked ("Robbery Four"). VAA1211; VAA1241; VIAA1270. Summlears walked into the bank, asked Jada Copeland about opening an account, left without doing anything, and returned to the car. VIAA171-73; VAA1181. About one minute later, Appellant and Phillips emerged from the same alley and walked into the bank.

Inside the bank, one pulled a gun out of his waistband, held it in the air, and demanded everyone get on the ground. VAA1103. He pointed the gun at Teri

Williams, a 76-year old customer; Keri Pedroza and Michael Irish, both employees of the bank; and Vincent Rotolo, another customer. VAA1052; VAA1103-04; VAA1118-19; IVAA917-18. Williams identified Appellant and Co-defendant at trial. VAA1058.

The other man approached Claudia Ruacho, a bank teller, and demanded money. VAA1067. She described him as black, tall, and skinny. VAA1067. Ruacho gave him $5,452. VIAA1068; 1073. VAA1069. The man also demanded money from Ms. Copeland, who gave him $3,108. VAA1070-03. Ruacho and Copeland saw the other man holding a gun. VAA1069; 1188. Once they gave Appellant and Phillips the money, the man put it in a yellow bag and the pair fled. VAA1187; 1192.

Detective Ebert saw Appellant and co-defendant running from the bank holding a yellow bag and get into the car Henderson was driving. VIAA1276-77. When officers pulled the car over, both Appellant and Phillips fled on foot but were apprehended shortly thereafter. VIAA1325; 1282; VIAA1327; 1345. Several officers noticed that Appellant was wearing makeup to cover his face tattoos. VAA1019; 1225; VIAA1356. Officers further saw a black handgun, later identified as a BB gun, on the floor of the back-passenger seat. VIAA1283; VIIAA1545-46.

At trial Jazmin Moorehead, a neighbor of Appellant and Phillips identified them in every robbery surveillance video. VIAA1445-50. She also recognized both Appellant and Phillips in a press release asking for information about Robbery One.

VIAA1437. She confirmed that Phillips said he got the money from "hitting licks," meaning criminal activity. VIAA1430-32. She also testified to seeing Phillips leave his apartment dressed like a woman, with Appellant who was wearing makeup to cover his face tattoos. VIAA1432-33. Finally, she testified that she saw Appellant and Phillips leaving on August 9 in the same clothes as the men who committed Robbery Four. VIAA1443-45. At trial, Vidal Holman, who lived with Moorehead and knew Appellant and Phillips also identified both in court and in the video surveillance footage from all the robberies. VIAA1473-75; 1484-890.

SUMMARY OF THE ARGUMENT

First, Appellant's sentence is proper. The sentencing court was not required to continue Appellant's sentencing hearing because there was no legal basis to do so. Appellant's Presentence Investigation Report ("PSI") was correct and Appellant fails to specify what errors in his PSI prejudiced him. Additionally, the sentencing court was clear that Appellant's sentence was based on the facts of the case and Judgments of Conviction used to sentence him as a violent habitual criminal. At no point did the judge say he was considering facts not in the record or punishing Appellant for invoking his right to a speedy trial. Further, the court's resentencing of Appellant one month later was proper as the resentencing hearing was to correct a clerical error and did not increase Appellant's aggregate sentence.

Second, Appellant was properly charged with all four robberies in the same Information. Given the similarities of the robberies—Appellant and Phillips entered a bank, presented a note to tellers demanding money and threatening a weapon, and escaped to their car which they parked far away—they were connected together and common scheme. Further evidence of the robberies was cross-admissible to show identity. The detectives could not describe how they identified Appellant without referencing their investigation in the other robberies. Further, joinder was not unfairly prejudicial because there was overwhelming evidence of guilt.

Third, Appellant and Phillips were properly tried together. As their defenses were an inability to identify them as the suspects in the robberies, their defenses were neither antagonistic nor mutually exclusive. Evidence of Phillips's guilt did not prejudice Appellant. The police identified Appellant as a suspect first when they learned he was the owner of the Maroon Mercury Grand Marquis. That Phillips went to trial because Appellant rejected the State's plea offer is also not a basis for severance because the jury never learned about the rejected plea deal when reaching a verdict. Further, any error was harmless because witness at the robberies, Moorehead, and Holman identified Appellant.

Fourth, evidence of Appellant's prior car stops was properly admitted. First, it was *res gestae* because detectives could not testify to how they identified Appellant without referencing the car stops. Had officers been precluded from

testifying about the car stops, the jury would have been left to wonder how they identified Appellant. As such, the court was not required to assess the prejudice created by admission of this evidence. Regardless, the potential prejudice caused by evidence of a car stop for unregistered plate is virtually nonexistent.

Even if evidence of prior car stops does not fall under the doctrine of *res gestae*, it was still properly admitted. One of the four car stops does not qualify as a prior bad act as no criminal conduct on the part of Appellant was at issue. Additionally, this evidence was essential to identifying Appellant, was proved by body camera footage, and the prejudice was nonexistent. Even without this evidence, the result would have been the same as those present during the robbery and Moorehead and Holman identified Appellant as the person in all four robberies.

Fifth, Appellant's Confrontation Clause rights were not violated. While trial counsel was not permitted to question detectives about the size of the mobile tracker placed on Appellant's car or how big it was, those questions are irrelevant to whether the tracker was accurate. Moreover, the court specifically told counsel he could question detectives about the tracker's accuracy, which they did. Further there was no testimonial hearsay at issue because the contested evidence dealt with a satellite trace of Appellant's car. A satellite reading is not a statement subject to the rules of hearsay. Regardless, Appellant cannot show prejudice because there is no question that the tracker accurately transmitted the car's and Appellant's location. Detectives

went to the physical location of where the tracker pinpointed the car and made visual contact with the car, Appellant, and Phillips.

Sixth, the district court did not admit improper expert testimony. At trial, Detective Lippisch testified that as he was tracking Appellant and the car via the mobile tracker, he used Google Maps to determine there were two banks in the same area of Appellant. He did not use Google Maps to track Appellant. All Detective Lippisch did was read a map. That does not require any specialized knowledge, training or skill. Moreover, as there is no issue with the mobile tracker's accuracy, Appellant cannot show prejudice.

Seventh, there was sufficient evidence of the deadly weapon enhancement because witnesses testified that Appellant and/or Phillips indicated they had a weapon during the course of the robbery. The witnesses did not have to demand to see the gun first. Instead, it was enough that Appellant and/or Phillips used the threat of a weapon to produce fear of harm.

Finally, there is no issue of cumulative error. While Appellant raises two new claims, failure to raise them before makes them effectively non-errors and non-errors cannot be cumulated. Moreover, those claims are not cogently argued, lack any citation to the record, and are bare and naked. Further, because the issue of Appellant's guilt is not close, there is no other error, and the crimes Appellant was convicted of are not grave, Appellant's claim fails.

ARGUMENT

I. THE TRIAL COURT DID NOT ERR WHEN SENTENCING APPELLANT

Appellant claims the sentencing court erred when it denied Appellant's request to continue the sentencing hearing for alleged errors in Appellant's PSI. AOB6.[1] Appellant accuses the sentencing court of acting vindictively when using facts not on record to sentence Appellant to life without the possibility of parole as a violent criminal. AOB8. Appellant alleges this sentence was a punishment for Appellant invoking his right to a speedy trial. AOB7. Appellant claims that the trial court erred in giving Appellant a higher sentence one month later. AOB11. However, not only were there no errors in Appellant's PSI, but the court did not sentence him using facts not in evidence, and most certainly did not increase Appellant's sentence one month later.

When sentencing a defendant, the district court must base their sentence on an accurate PSI. Stockmeier v. Bd. of Parole Comm'rs, 127 Nev. 243, 247, 255 P.3d 209, 212 (2011). A defendant's "'PSI must not include information based on 'impalpable or highly suspect evidence.'" Id. at 249, 255 P.3d at 213 (quoting

[1] Throughout their brief, Appellant fails to cite to the appendix. Instead, Appellant cites to pages of documents filed in the district court. This is improper as NRAP 28(e)(1) requires every assertion in briefs regarding matters in the record be supported by a reference to the page and volume number of the appendix where the matter relied on is to be found.

Goodson v. State, 98 Nev. 493, 496, 654 P.2d 1006, 1007 (1982)). A sentencing judge may consider a variety of information to ensure "the punishment fits not only the crime, but also the individual defendant." Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998). All objections to the accuracy of a PSI must be raised and resolved prior to sentencing. Sasser v. State, 130 Nev. 387, 390, 324 P.3d 1221, 1223 (2014).

A judge is permitted broad discretion in imposing a sentence and, absent an abuse of discretion, the district court's determination will not be disturbed on appeal. Randell v. State, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993) (citing Deveroux v. State, 96 Nev. 388, 390, 610 P.2d 722, 723-724 (1980)). This Court will not interfere with the district court's sentence if the defendant was not prejudiced. Chavez v. State, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009).

As long as the sentence is within the limits set by the Legislature, a sentence will normally not be considered cruel and unusual. Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 593 (1994). While courts forbid sentences that are grossly disproportionate to the crime, sentences need not be strictly proportionate to the crime. Chavez v. State, 125 Nev. 328, 347-348, 213 P.3d 476, 489 (2009) (citing Harmelin v. Michigan, 501 U.S. 957, 1001, 111 S. Ct. 2680, 2705 (1991) (plurality opinion)). A sentence within the statutory limits is "not considered cruel and unusual punishment unless (1) the statute fixing punishment is unconstitutional or (2) the

sentence is so unreasonably disproportionate to the offense as to shock the conscience." Id.

a. There was no basis to continue Appellant's sentencing.

This Court reviews the district court's decision regarding a continuance for an abuse of discretion. Higgs v. State, 126 Nev1,9, 222 P.3d 648, 653 (2010). "Each case turns on its own particular facts, and much weight is given to the reasons offered to the trial judge at the time the request for a continuance is made." Id. The trial judge enjoys wide discretion in determining whether to grant a continuance, and the judge's decision is not an abuse of discretion if the defendant fails to demonstrate that he was prejudiced. Id.

There was no legal basis to continue Appellant's sentencing. Appellant claims the criminal record included in his PSI was inaccurate and that it included social security numbers that were not his. AOB6. However, Appellant fails to cite to any specific error in the PSI. The most Appellant claims is that there were misdemeanor convictions and fugitive charges that were not his. Without more, Appellant's claim is a bare and naked conclusion suitable for summary denial. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). NRAP 28(a)(10)(A) requires appellants to support their arguments with citations to relevant the parts of the record. Any unsupported arguments are summarily rejected on appeal. Thomas v. State, 120 Nev. 37, 83 P.3d 818 (2004).

Moreover, there was no error in Appellant's criminal record. At the original sentencing hearing, trial counsel requested a continuance because Appellant's PSI incorrectly stated he served four prison terms. VIIAA1713-14. The sentencing court agreed that if the PSI was incorrect, the hearing needed to be continued. VIIAA1714. The State interjected and explained that there was no error because Appellant was actually sentenced to prison for four separate felonies, but that he served the sentences concurrently. VIIAA1715. The State provided the Judgments of Conviction for all four felonies because it was those felonies that required the court to sentence Appellant to either (1) life without the possibility of parole; (2) life with the possibility of parole after 10 years; or (3) 10 to 25 years as a habitual criminal pursuant to NRS 207.010. VIIAA1715. When Appellant next claimed that crimes of a "Gregory Reynolds" were listed, the State again explained that "Gregory Reynolds" is an "AKA." VIIAA1716. Based on the State's explanation, it was clear there was no legal basis to continue Appellant's sentencing.

While Appellant claims the PSI incorrectly included misdemeanor convictions, Appellant fails to provide information supporting the claim that the conviction is in fact incorrect. Therefore, this Court need not consider that issue. Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (This Court need not consider issues that are not cogently argued). As such, the court did not sentence Appellant using susceptible or highly impalpable evidence.

Next, the court did not sentence Appellant with facts outside the record. First, Appellant fails to explain what facts not in the record impacted the court's sentencing decision. Additionally, the judge explained he would sentence Appellant only the facts of the case and convictions being used to sentence him as a violent habitual criminal. VIIAA1717. All comments made by the court dealt with Appellant's prior convictions and conduct in this case, which are all supported by the record. VIIAA1722, 1735. When counsel still protested to proceeding with sentencing, the State explained that Appellant wanted a continuance because he did not want that particular judge sentencing him. VIIAA1719. This is not a proper reason to continue sentencing. VIIAA1719.

Moreover, the court did not punish Appellant for invoking his right to a speedy trial. Instead, the judge imposed a sentence he was required to pursuant to NRS 207.010 because Appellant had four prior felonies and was therefore considered a habitual criminal. While the State explained that the defense strategy was to rush through to trial in hopes that the State would be unable to to gather the evidence, the court simply focused on Appellant's prior convictions, without commenting on the fact that Appellant invoked his right to a speedy trial. VIIAA1720-22. Instead, the court simply denied Appellant's request to continue the sentencing hearing because there was no legal basis for it.

Finally, Appellant cannot show prejudice. Appellant's sentence was based on the facts of the crimes and criminal history. While the judge sentenced Appellant to life without the possibility of parole, he did so pursuant to NRS 207.010(1)(b) where he was mandated to sentence Appellant to either one of the following ranges: (1) life without the possibility of parole; (2) life with the possibility of parole after 10 years; or (3) 10 to 25 years. As such, the court's sentence was not excessive, because Appellant was sentenced as a habitual criminal. As all of those facts were in the record and correct, Appellant cannot show that his sentence would have changed had the court granted the baseless request to continue the sentencing hearing.

b. Re-sentence one month later was proper.

A district court has the inherent and statutory authority to correct clerical errors and errors resulting from mistake. NRS 176.565. On February 4, 2019, one month after Appellant was sentenced, the judge clarified his underlying sentence. VIIAA1741-VIIIAA1745. Specifically, at the first sentencing date, the court mistakenly imposed sentences for Counts 3 and 4 and forgot to impose a sentence for Count 22. VIIAA1735-37. At the resentencing, the court struck the sentences for Counts 3 and 4, and sentenced Appellant to 12 to 48 months on Count 22 to run concurrent with all other counts. VIIAA1743. The court did not hear additional arguments. The court had the jurisdiction to correct the error and the amended

sentence was proper. Moreover, Appellant was not prejudiced because his aggregate sentence of life without the possibility of parole did not change. VIIIAA1767-71.

II. APPELLANT WAS PROPERLY CHARGED FOR ALL FOUR ROBBERIES IN THE SAME INDICTMENT

Appellant claims the district court should have, *sua sponte*, severed the counts involving the four different robberies because they were not admissible under a common scheme or plan or identity. AOB14. This argument is without merit. Each robbery would have been cross-admissible at separate trials as they were part of a common scheme and plan, and relevant to the identity of both Appellant and Phillips.

As an initial matter, Appellant never moved to sever the charges below and makes this argument for the first time on appeal. As such, it is waived. Guy v. State, 108 Nev. 770, 780, 839 P .2d 578, 584 (1992), cert. denied, 507, U.S. 1009, 113 S. Ct. 1656 (1993) This Court has consistently reaffirmed that "[t]he failure to specifically object on the grounds urged on appeal preclude[s] appellate consideration on the grounds not raised below." Pantano v. State, 122 Nev. 782, 795 n. 28, 138 P.3d 477, 486 n. 28 (2006) (quotation omitted). Moreover, appellate review requires that the district court be given a chance to rule on the legal and constitutional questions involved. Lizotte v. State, 102 Nev. 238, 239-40, 720 P.2d 1212, 1214 (1986). As such, the issue may only be reviewed for plain error. Maestas v. State, 128 Nev. 124, 146, 275 P.3d 74, 89 (2012). "Reversal for plain error is only warranted if the error is readily apparent and the appellant demonstrates that the error

was prejudicial to his substantial rights." Martinorellan v. State, 131 Nev. 43, 49, 343 P.3d 590, 594 (2015).

"The decision to sever is left to the discretion of the trial court, and an appellant has the 'heavy burden' of showing that the court abused its discretion." Honeycutt v. State, 118 Nev. 660, 667, 56 P.3d 362,367 (2002) overruled on other grounds by Carter v. State, 121 Nev. 759, 765, 121 P.3d 592, 596 (2005) (quoting Middleton v. State, 114 Nev. 1089, 1108, 968 P.2d 296, 309 (1998)). An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason. Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001). Moreover, "[a]n error arising from misjoinder is subject to harmless error analysis and warrants reversal only if the error had a 'substantial and injurious effect or influence in determining the jury's verdict.'" Tabish v. State, 119 Nev. 293, 302, 72 P.3d 584, 590 (2003) (quoting Robins v. State, 106 Nev. 611, 619 (1990)).

"Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, are … [b]ased on two or more acts or transactions connected together or constituting parts of a common scheme or plan. NRS 173.115(2). "[F]or two charged crimes to be 'connected together,' a court must determine that evidence of either crime would be admissible in a separate trial regarding the other crime." Weber v. State, 121 Nev. 554, 573, 119

P.3d 107, 120 (2005). To make this determination, the court conclude the evidence of other crimes, wrongs or acts is admissible to for purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident pursuant to NRS 48.045(2).

This Court has held that joinder of offenses as permissible when they are "connected together," meaning they are parts of a common scheme *and* plan. Farmer v. State, 133 Nev. 693, 697, 405 P.3d 114, 120 (2017); Weber, 121 Nev. 554, 119 P.3d 107. Offenses are part of a common scheme when the crimes share features idiosyncratic in character like. "(1) degree of similarity of offenses; (2) degree of similarity of victims; (3) temporal proximity; (4) physical proximity; (5) number of victims; and (6) other context-specific features." Farmer, 133 Nev. at 698, 405 P.3d at 120 (internal citations omitted). Offenses are "connected together" when evidence of the crimes would be cross-admissible under NRS 48.045. Rimer v. State, 131 Nev. 307, 321-22, 351 P.3d 697, 697 (2015) (citing Weber, 119 P.3d at 120, 121 Nev. at 573). This Court in Rimer explained that while "the abuse of his children and death of his four-year-old son" did not constitute the "same act or transaction" or a "single scheme or plan," they were "connected together." Id. This Court concluded the evidence of Rimer's different crimes was relevant to establish intent and lack of mistake and a pattern of abuse is relevant to intent. Id.

Here, there is no unmistakable, readily apparent joinder issue, The district court was presented with no circumstances which would have demanded severance *sua sponte*. All four robberies were part of a common scheme as explained in Farmer, and "connected together" as explained in Rimer. There are extensive similarities of circumstances and facts of the four robberies which establish that they are part of both a common scheme and connected together. Further, evidence of each robbery would have been cross-admissible to show identity. NRS 48.045(2).

Specifically, the facts surrounding each robbery were cross-admissible because detectives had to reference their investigation in all four robberies to explain how they identified Appellant and Phillips. Each robbery occurred in the beginning of the week around the same time of day. VAA1045. In all but the final robbery, Appellant and Phillips entered a bank, approached separate tellers and presented a note demanding money, indicating they had a weapon. VIIAA1639. Additionally, in each robbery, Appellant and Phillips parked their car some distance away from the banks, walked into the banks, then ran back towards the car. IAA221.

Second, the unique characteristics of Appellant and Phillips were cross-admissible for identification. The suspects wore the same large silver aviator-style glasses in Robberies One and Two that Appellant had when stopped by the police. VIIAA1670. Appellant wore long sleeves, long pants, and a towel around his neck—which he also had on when stopped by police—during Robberies One, Two, and

Three. VIIAA1675. Police found the jeans Appellant wore during Robbery Three in Appellant's and Phillips's room at Circus Circus Manor. VIIAA1678-79. Appellant wore the same camouflage hat with blue bill in Robberies Two and Three. VIIAA1675. Finally, the suspects wore the same shoes in the robberies. Further, at trial, at least one victim from each robbery identified Appellant and Phillips. VIIAA1667-38. Moorehead and Holman did the same when showed the surveillance footage from each robbery. VIAA1445-50; 1484-890. As such, joinder was appropriate because law enforcement could not explain how they identified Appellant and Phillips as the suspects without mentioning the similarities noted in all four robberies.

A. Joinder was not unfairly prejudicial

In Rimer, this Court analyzed whether joinder was prejudicial under NRS 174.165(1). 131 Nev. at 323, 351 P.3d at 709. Prejudicial joinder requires "more than a mere showing that severance may improve his or her chances of acquittal." Id. Indeed, "[t]o require severance, the defendant must demonstrate that a joint trial would be manifestly prejudicial. The simultaneous trial of the offenses must render the trial fundamentally unfair, and hence, result in a violation of due process." Id. (citing Honeycutt v. State, 118 Nev. 660, 667–68, 56 P.3d 362, 367 (2002)). To do so, courts must examine the unique facts of the case and decide whether the prejudice

of a joint trial outweighs the dominant concern of judicial economy, thereby compelling the exercise of the court's discretion to sever. Id. at 324, 351 P.3d at 710.

This Court has identified three types of prejudice that require severance of joined counts: (1) if the large number of offenses charged lead a jury to believe that the person charged has a criminal disposition, thereby cumulating the evidence against him; "(2) evidence of guilt on one count may "spillover" to other counts, and lead to a conviction on those other counts even though the spillover evidence would have been inadmissible at a separate trial"; and (3) if a defendant wishes to testify in their own defense on one charge but not another. Id. at 323, 351 P.3d at 709 (internal citations omitted).

Here, joinder was not unfairly prejudicial. Appellant cites several cases discussing unfairly prejudicial joinder—but offers absolutely no analysis of the alleged prejudice in his own case. Appellant also fails to note that in Tabish, this Court explained that even when there are prejudice issues in a misjoinder, they may not apply to both crimes when the issue of guilt is close as to only one of the crimes. Id.

Regardless, unlike in Tabish, Appellant suffered no prejudice. First, given the overwhelming amount of evidence of guilt for each individual charge, there is little meritorious implication of "criminal disposition" in the number of charges. The victims of each robbery identified Appellant, as did Moorehead and Holman when

shown surveillance footage of each robbery. VIIAA1667-68; VIAA1445-50; 1484-890. Next, as explained above, all four robberies were cross-admissible. Therefore, concerns about "spillover" do not apply. Rimer, 131 Nev. at 323, 351 P.3d at 709. Indeed, the jury's finding of not guilty on Count 23 – Preventing or Dissuading a Witness from Reporting a Crime or Commencing Prosecution demonstrates this was not the case. VIIAA. Further, Appellant does not claim he would have testified in his defense for one robbery but not another. VIIAA1685-1687.

As such, there was no basis for the court to *sua sponte* sever all four robbery charges. In light of the overwhelming evidence, Appellant cannot show that joinder denied him due process or had a "substantial and injurious effect" on the verdict. Thus, even if there was misjoinder, it was harmless. Tabish, 119 Nev. at 302, 72 P.3d at 590.

III. APPELLANT WAS PROPERLY TRIED WITH HIS CO-DEFENDANT PHILLIPS

Appellant claims the district court should have, *sua sponte*, severed Appellant and Phillips. AOB15. Appellant makes broad claims that Appellant's and Phillips's defenses were antagonistic because when Appellant rejected the state's plea negotiation, Phillips was forced to go to trial. AOB16. Appellant claims the jury could not clearly separate the evidence against each defendant which negatively impacted Appellant because there was more evidence against Phillips than him. AOB15-16. This argument is without merit. Appellant's rejection of the State's plea

deal does not make his defense antagonistic to Phillips's, particularly when the jury knew nothing about it. Moreover, fingerprint evidence against Phillips did not prejudice Appellant, particularly when police identified Appellant as a suspect before identifying Phillips, and victims and associates of Appellant identified him.

Again, this issue is waive as Appellant never moved to sever the charges below, and is raising this argument the first time on appeal. Now, the issue may only be reviewed for plain error. Maestas, 128 Nev. at 146, 275 P.3d at 89. "Reversal for plain error is only warranted if the error is readily apparent and the appellant demonstrates that the error was prejudicial to his substantial rights." Martinorellan, 131 Nev. at 49, 343 P.3d at 594.

NRS 173.135 allows for co-defendants to be charged under the same information if they participated in the same criminal conduct. Joint trials are overwhelmingly favored. Jones v. State, 111 Nev. 848, 853, 899 P.2d 544, 547 (1995). "Moreover, it is well settled that where persons have been jointly indicted they should be tried jointly, absent compelling reasons to the contrary." Id., citing United States v. Escalante, 637 F.2d 1197, 1201 (9th Cir. 1980). In order to promote efficiency and equitable outcomes, Nevada law favors trying multiple defendants together. Jones, 111 Nev. at 853, 899 P.2d at 547 (1995).

Trial courts have broad discretion to join or sever trials and severance is not required unless a joint trial would be manifestly prejudicial. See Gay, 567 F.2d at

919. "A district court should grant a severance only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants or prevent the jury from making a reliable judgment about guilt or innocence." Chartier v. State, 124 Nev. 760, 765, 191 P.3d 1182, 1185 (2008) (quoting Marshall v. State, 118 Nev. 642, 646, 56 P.3d 376, 378 (2002)); NRS 174.165.

Broad allegations of prejudice are not enough to require a trial court to grant severance. United States v. Baker, 10 F.3d 1374, 1389 (9th Cir.1993), cert. denied, 513 U.S. 934, 115 S. Ct. 330 (1994), overruled on other grounds by United States v. Nordby, 225 F.3d 1053 (9th Cir. 2000). Generally speaking, severance is proper only when: (1) the codefendants' theories of defense are so antagonistic that they are "mutually exclusive" and so irreconcilable with one another that the acceptance of the one codefendant's theory by the jury precludes acquittal of the other; and (2) there is "a serious risk that a joint trial would compromise a specific trial right . . . or prevent the jury from making a reliable judgment about guilt or innocence." Chartier, 124 Nev. at 765, 191 P.3d at 1185 (internal citations omitted).

Importantly, reversal for prejudice from an improper joinder is proper only if joinder had a substantial and injurious effect on the verdict which requires more than establishing that severance made acquittal more likely. Id. at 764-65, 191 P.3d at 1185 (quoting Marshall, 118 Nev. at 647, 56 P.3d at 379). Further, this Court has

long recognized that as "some level of prejudice exists in a joint trial, error in refusing to sever joint trials is subject to harmless-error review." Id.

Here, Appellant has failed to demonstrate that the joint trial undermined certainty in the jury's verdict or affected any specific trial right. fails to explain what his defense was, let alone how it substantially conflicted with Phillips's. This Court need not consider issues that are not cogently argued. Maresca, 103 Nev. at 673, 748 P.2d at 6. NRAP 28(a)(10)(A) requires appellants to support their arguments with citations to relevant the parts of the record. If an appellant fails to do so, the Court need not examine the merits of an argument and may instead dismiss it outright. Any unsupported arguments are summarily rejected on appeal. Thomas, 120 Nev. 37, 83 P.3d 818.

Moreover, Appellant and Phillips's defenses were not antagonistic. Instead, their defenses were the same—that there was not enough evidence to identify Appellant or Phillips as the robbers. VIIAA1653-1662. At no point did Appellant point the finger at Phillips, or did Phillips point his finger at Appellant. Given there were two robbers in each video, doing so would have been futile.

Moreover, that Phillips went to trial because Appellant rejected the State's plea negotiation does not make their defenses antagonistic. At no point during the trial was the rejected plea offer mentioned, so it could not have possibly impacted the jury's verdict. That Phillips's trial counsel mentioned this at sentencing also does

not prejudice Appellant because, again, the jury never heard that and there is no evidence that the court considered that fact when sentencing Appellant.

Additionally, evidence of Phillips's guilt did not compromise Appellant's specific trial rights. Phillips's fingerprints, social media posts of their apartment, or evidence that Phillips engaged in a robbery without Appellant did not make the jury's determination of Appellant's guilt more likely. Just because Phillips led police to their apartment is not grounds for severance. Moreover, evidence of Phillips's independent robbery did not impact Appellant's trial rights as there was no question that it was Phillips who committed that robbery.

Further, Detectives identified Appellant as a suspect before Phillips. Detective Lippisch testified that when he identified the car used in Robbery Two, he saw Appellant's face which he compared to the surveillance footage of the robberies. IVAA944-45. Phillips was not in any of those car stops. Detective Lippisch did all of this before knowing Phillips left his fingerprints at the crime scene, let alone before learning where Phillips and Appellant lived. As such joinder between Appellant and Phillips was proper. Finally, any error caused through joinder was harmless as witnesses identified Appellant and Phillips.

IV. THE TRIAL COURT DID NOT ERR IN ADMITTING EVIDENCE OF APPELLANT'S PRIOR CAR STOPS

Appellant complains that the State improperly introduced prior bad act evidence in the form of traffic stops for unregister plates involving Appellant and

his Maroon Mercury Grand Marquis on April 25, 2018, May 3, 2018, June 8, 2018, and June 12, 2018. AOB17-19. Appellant claims the court should have conducted a hearing to determine whether these acts were admissible, and that even if the court had done so, they would have been excluded because in-court identifications lessened the relevance of these acts. AOB19. Appellant's claim is meritless as evidence of all four prior car stops was admissible *res gestae*, as well as for the identity of Appellant.

As an initial matter, Appellant never objected to the admission of Appellant's prior car stops below. Therefore, review of this issue is waived absent plain error. Guy v. State, 108 Nev.at 780, 839 P .2d at 584. "Reversal for plain error is only warranted if the error is readily apparent and the appellant demonstrates that the error was prejudicial to his substantial rights." Martinorellan, 131 Nev. at 49, 343 P.3d at 594 (2015).

A. Evidence of Appellant's prior car stops was admissible *res gestae*.

Generally, evidence of other acts is inadmissible where it is used to show that a defendant has the propensity to commit the crime charged. NRS 48.045(2). However, evidence of an uncharged crime is admissible when it is so closely related to the crime charged that a witness cannot describe the crime without referring to the other act. NRS 48.035(3). This long-standing principle of *res gestae* provides that the State is entitled to present, and the jury is entitled to hear, "the complete story of

the crime." Allen v. State, 92. Nev. 318, 549 P.2d 1402 (1976). This Court explained in Dutton v. State, 94 Nev. 461, 464, 581 P.2d 856, 858 (1978), that "the State is entitled to present a full and accurate account of the circumstances of the commission of the crime" even if doing so requires introducing evidence implicating a defendant in an uncharged act.

When the doctrine of *res gestae* is invoked, a hearing on the admissibility of the evidence at issue pursuant to Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985), is not required because "the controlling question is whether witnesses can describe the crime charged without referring to related uncharged acts. If the court determines that testimony relevant to the charged crime cannot be introduced without reference to uncharged acts, it must not exclude the evidence of the uncharged acts." State v. Shade, 111 Nev. 887, 894, 900 P.2d 327, 331 (1995). Indeed, *res gestae* evidence cannot be excluded solely because of its prejudicial nature. Id. at 894, fn.1, 900 P.2d at 331, fn.1. The decision to admit or exclude evidence is within the sound discretion of the trial court and will not be disturbed unless manifestly wrong. Wesley v. State, 112 Nev. 503, 512, 916 P.2d 793, 799 (1996).

Here, evidence of Appellant's traffic infractions was admissible *res gestae* because Detective Lippisch could not explain how he identified Appellant without referencing those car stops. Lippisch testified that when investigating Robbery Two,

he found surveillance footage of the suspects jumping into a Maroon Mercury Grand Marquis that had no license plate, a trailer hitch, distinct blemishes on the trunk and roof of the car, and on the side and bumper of the car. IVAA932. When he searched for that car in the DMV database, he learned that it had been stopped four times in three months, each time because it was unregistered. IVAA933-39.

Based on this information, Detective Lippisch reviewed the body camera footage from each stop and confirmed that the car was the same as the one the suspects in Robbery Two fled in. IVAA939. When reviewing the body camera footage, Lippisch also noticed that Appellant was stopped in that car every time. IVAA944. When Lippisch compared the face of the man stopped for driving an unregistered car with the face of the man in the bank surveillance footage, both were Appellant. IVAA944-45. At trial, the State admitted the body camera footage of all four car stops to confirm that the man in the car stops was in fact Appellant and was in fact the same person as the one on the bank surveillance cameras. IIIAA611-675. Further, based on his review of the body camera footage, Detective Lippisch applied for and received a warrant to track the car. IVAA971.

The district court did not abuse its discretion in admitting the evidence because it was essential to present a full and accurate account of the crime charged. This information was critical to show that Appellant had possession and control over the getaway car used in the robberies and was in fact one of the bank robbers.

Presentation of that body camera evidence allowed the jury to confirm what Detective Lippisch testified to. Without this information, Detective Lippisch could not have explained how he identified Appellant as a suspect or any of his investigation afterwards, namely how he received the tracker warrant, or how he knew exactly which vehicle to track.

Further, even though the court was not required to assess the danger of prejudice created by the evidence, the likelihood the evidence created prejudice was virtually nonexistent. The notion that the jury viewed evidence of Appellant driving an unregistered car as indicative of a propensity to rob banks with a deadly weapon is farfetched. Therefore, Appellant suffered no prejudice and introduction of the evidence was proper.

B. The district court did not err in admitting evidence of the prior police conduct without a Petrocelli hearing.

Even if evidence of Appellant's car stops does not qualify as *res gestae*, the trial court still properly allowed introduction of that evidence at trial because it was essential to identifying Appellant. NRS 48.045(2) provides that [e]vidence of other crimes, wrongs or acts is admissible for non-propensity purposes such identity.

In order to admit such evidence, the State must establish that "(1) the prior bad act is relevant to the crime charged and for a purpose other than proving the defendant's propensity, (2) the act is proven by clear and convincing evidence, and (3) the probative value of the evidence is not substantially outweighed by the danger

of unfair prejudice." Bigpond v. State, 128 Nev. 108, 117 270 P.3d 1244, 1250 (2012). A district court's failure to conduct a Petrocelli hearing prior to the admission of bad acts testimony does not require reversal of a defendant's subsequent conviction if: "(1) the record is sufficient to determine that the evidence is admissible under [the modified standard set forth in Bigpond, *supra*]; or (2) the result would have been the same if the trial court had not admitted the evidence." McNelton v. State, 115 Nev. 396, 405, 990 P.2d 1263, 1269 (1999). Either exception will prevent reversal of a conviction; here, both exceptions apply.

However, evidence is not a prior bad act unless the evidence elicited speaks to chargeable collateral offenses. See Salgado v. State, 114 Nev. 1039, 1042-43, 968 P.2d 324, 326-27 (1998) (explaining that cases in which the evidence does not implicate prior bad acts or collateral offense on the defendant's part, a Petrocelli hearing is not required).

Here, even without a Petrocelli hearing, evidence of Appellant's traffic infractions was admissible. As a preliminary matter, one of the traffic stops at issue does not even qualify as a prior bad act. On June 8, 2018, officers pulled over the car for unregistered plates, but Henderson was the driver and Appellant was not cited for any criminal conduct. IIIAA626-29.

Further, evidence of the prior car stops was admissible. First, they were relevant to prove identity. Evidence is considered relevant where it makes a material

fact at issue more or less probable. Pasgove v. State, 98 Nev. 434, 436 651 P.2d 100, 102 (1982). The fact that on four occasions within four months of Appellant robbing banks, he was pulled over while driving or riding in the exact same car used as the getaway vehicle in the robberies made the fact that Appellant was one of the suspects in the robberies—a material fact—more or less probable. Without this evidence, it would have been impossible for the State to lay the foundation necessary to question officers about how they identified Appellant as one who was involved in the bank robberies.

Second, the act was proven by clear and convincing evidence. The State showed the body camera footage from each car stop where Appellant was clearly depicted. IIIAA611-675. As such, there is no question that Appellant was the person in the car when it was pulled over. Third, the evidence was not significantly more prejudicial than probative because evidence that Appellant was in an unregistered car is not so prejudicial that without that evidence, the jury would not have convicted him of four separate bank robberies.

As such, even if this Court were to find error, it is harmless. Tavares v. State, 117 Nev. 725, 732, 30 P.3d 1128, 1132 (2001). The likelihood the evidence created prejudice was virtually nonexistent. Even if this evidence had not been admitted, there was still significant evidence of Appellant's guilt because the tellers in every bank identified him, as did Jazmine Moorehead and Mr, Holman when shown the

surveillance tapes. VIIAA1667-68; VIAA1445-50;1484-890. As such, there was no question that Appellant was guilty of all four robberies.

V. APPELLANT'S RIGHT TO CONFRONTATION WAS NOT VIOLATED

Appellant argues he was deprived of his right to confront witnesses when the district court would not let trial counsel question detectives about how the mobile tracker was placed on the car, how big the tracker is, or the mechanics behind how the mobile tracker worked. AOB23. Appellant claims this prevented counsel from challenging the reliability of the mobile tracker. AOB23. Appellant argues that testimony about what the tracker told detectives without first establishing its accuracy is the equivalent of testimonial statements made by unavailable witnesses. AOB23. However, what Appellant is really complaining about is whether the district court erred when it ruled that questions about the size and placement of a mobile tracker on Appellant's car were irrelevant. Not only is Appellant's claim nonsensical, it is meritless.

As with the rest of Appellant's claims, the standard of review here is plain error because Appellant did not make this argument before the district court. Guy, 108 Nev.at 780, 839 P .2d at 584. "Reversal for plain error is only warranted if the error is readily apparent and the appellant demonstrates that the error was prejudicial to his substantial rights." Martinorellan, 131 Nev. at 49, 343 P.3d at 594 (2015).

The trial court has the broadest discretion when determining the permissible extent of cross-examination where the cross-examination is utilized to attack a witness's general credibility. Bushnell v. State, 95 Nev. 570, 572, 599 P.2d 1038, 1039 (1979). This Court will determine the adequacy of the opportunity to cross-examine on a case-by-case basis, taking into consideration such factors as the extent of the discovery available at the time of cross-examination and whether there was a thorough opportunity to cross-examine. Chavez v. State, 125 Nev. 328, 338-339, 231 P.3d 476, 484 (2009).

"The Confrontation Clause guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." Id. The Confrontation Clause is "generally satisfied when the defense is given a full and fair opportunity to probe and expose these infirmities through cross-examination[.]" Delaware v. Fensterer, 474 U.S. 15, 22, 106 S. Ct. 292, 295 (1985).

A defendant's due process right to present a defense is not unlimited, but is subject to reasonable restrictions, namely the rules of evidence. United States v. Scheffer, 523 U.S. 303, 308, 18 S.Ct 1261, 1264 (1998); Rose v. State, 123 Nev. 194, 205 n.18, 163 P.2d 408, 416 n.18 (2007). As such, a defendant is not "permitted to present every piece of evidence he wishes." Brown v. State, 107 Nev. 164, 167, 807 P.2d 1379, 1381 (1991) (citations omitted). "Exclusion of evidence only violates

a defendant's right to present a defense when the exclusion is 'arbitrary' or 'disproportionate to the purposes they are designed to serve.'" Scheffer, 523 U.S. at 308, 18 S.Ct at 1264. Relevant evidence is evidence that makes a material fact at issue more or less probable. NRS 48.015. Although generally admissible, relevant evidence is inadmissible if its probative value is substantially outweighed by unfair prejudice, if it confuses the issues, or if it misleads the jury. NRS 48.025; NRS 48.035.

Testimonial out-of-court statements are inadmissible unless (1) the witness is unavailable, and (2) the defendant had a prior opportunity to cross-examine them. Crawford v. Washington, 541 U.S. 36, 53–54, 124 S. Ct. 1354, 1365 (2004). To determine whether statements made to police are testimonial, this Court applies the test developed in Davis v. Washington, 547 U.S. 813, 822, 126 S.Ct. 2266, 2273-74 (2006). Harkins v. State, 122 Nev. 974, 983, 143 P.3d 706, 712 (2006). In Davis, the U.S. Supreme Court explained that statements made to the police during an ongoing emergency are nontestimonial; whereas statements are testimonial when made for the primary purpose of investigating a past event which may be relevant to criminal prosecution. Davis, 547 U.S. at 822, 126 S.Ct. at 2273-74.

Here, the evidence of how big a tracker is or how it is placed onto a car was irrelevant and not even hearsay, let alone testimonial hearsay. First, neither Appellant's nor Phillips's trial counsels were precluded from questioning Detective

Lippisch about the accuracy of the tracker placed on Appellant's car. Instead, the court would not let counsel question detectives about how big the tracker was, or how it is placed on a vehicle. VAA1126. When Detective Gutierrez testified that he and Detective Stier placed the mobile tracker on Appellant's vehicle, defense attempted to ask whether the device was "screwed into the subject vehicle" as well as inquired about the size of the device. IVAA985; VAA1026. Each time, the State objected, and the court sustained that objection because the questions were irrelevant. IVAA985-86. The court further explained that defense counsels could question witnesses "about accuracy and other things like that, but where it was precisely on the car and the size and shape of it" was irrelevant to any issue in this case. VAA1126. The court's ruling was proper because whether the tracker was screwed onto the car or how big it was is irrelevant to whether the tracker worked. Further, Appellant did not and does not claim that how the device was placed on the car or its size affected the accuracy of the device.

Next, Appellant's claim that the State violated Crawford by admitting testimonial hearsay is completely bare, naked, and belied by the record. A claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made." Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002). Appellant takes issue with the fact that detectives could testify to the information received from the tracker without having to explain what the tracker

looked like or how it was put on a car. Not only does that information have zero bearing on the accuracy of the mobile tracker, but there is not even a hearsay statement at issue. Hearsay is a statement offered to prove the truth of the matter asserted. NRS 51.035. A "statement" is an oral or written assertion, or nonverbal conduct of a person, if it is intended as an assertion. NRS 51.045. Detectives testified that a satellite received transmissions every second from the mobile tracker and transmitted that tracker's location to the detectives. VAA1027. A satellite reading of a location is not a statement and it would be impossible to call a satellite to testify as a witness.

Further, defense counsel was able to question Detective Lippisch about the accuracy of the mobile tracker used as well as his past experiences using mobile trackers. VAA1005; VAA1032. Appellant asked Detective Lippisch about the specific capabilities of the device, how it transmits the subject's location, and whether mountains, tall buildings, or weather impacted its accuracy. VAA1026-33. To all of Appellant's questions, Lippisch said he never had any issues with the accuracy of mobile trackers. VIAA1033. At no point did Lippisch testify that mobile trackers are always accurate. Therefore, Appellant's claim that the court would not let counsel question detectives about the accuracy of the device is belied by the record and suitable for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

Moreover, Appellant cannot demonstrate prejudice because there is no question the tracker was accurate. VAA1036. When Detective Lippisch received a notification that the car was moving, Detectives Ebert and Worley went to the location the tracker indicated the vehicle was and saw Appellant's vehicle as well as Appellant and Co-defendant casing banks. VAA999-1008. Detectives then followed the car with the tracker on it car to the US Bank they did rob in Robbery Four and continued to follow the car until a marked police unit pulled it over and Appellant and Phillips fled. VAA1011-15. As such, there is no question that the mobile tracker was accurate, and Appellant cannot show prejudice.

VI. THE TRIAL COURT DID NOT ALLOW UNQUALIFIED EXPERT WITNESS TESTIMONY

Appellant claims the district court allowed improper expert testimony regarding use of the mobile tracker in conjunction with Google Maps because the State did not notice Detective Lippisch as an expert witness. AOB24. Appellant explains that "the use of tracker in conjunction with google map qualifies as scientific and technical evidence. What they are, how it works, and whether they are reliable are facts that the jury needed to determine facts in issue in this trial." AOB24.

As an initial matter, Appellant did not object to how the State noticed their witnesses below and has therefore waived appellate review of this claim absent plain error. Guy, 108 Nev.at 780, 839 P .2d at 584. "Reversal for plain error is only warranted if the error is readily apparent and the appellant demonstrates that the error

was prejudicial to his substantial rights." Martinorellan, 131 Nev. at 49, 343 P.3d at 594 (2015).

Appellant has further waived review of this issue because he failed to name a detective, let alone cite to specific portions of trial testimony where these unnamed detectives improperly testified as experts. This Court need not consider issues that are not cogently argued. Maresca, 103 Nev. 669, at 748 P.2d at 6. Any unsupported arguments are summarily rejected on appeal. Thomas, 120 Nev. 37, 83 P.3d 818 (2004). Appellant's failure to cite to the record, let alone identify whose testimony he takes issue with waived his opportunity for appellate review.

NRS 174.234(1)-(2) requires parties to notice lay witnesses they plan to call at trial no later than 5 judicial days before trial, and expert witnesses at least 21 days before trial along with a brief statement about the subject of their testimony, a curriculum vitae, and a copy of all reports made. However, "there is a strong presumption to allow the testimony of even late-disclosed witnesses" when their testimony goes to the heart of the case. Sampson v. State, 121 Nev. 820, 828, 122 P.3d 1255, 1260 (2005). Moreover, the remedy for an improperly disclosed witnesses is a continuance, not a reversal. See, Burnside v. State, 131 Nev. 371, 384, 352 P.3d 627, 637 (2015).

A lay witness, may testify to opinions or inferences that are "[r]ationally based on the perception of the witness; and . . . [h]elpful to a clear understanding of the

testimony of the witness or the determination of a fact in issue." NRS 50.265. An expert may testify to matters within their "special knowledge, skill, experience, training or education" when "scientific, technical or other specialized knowledgewill assist the trier of fact to understand the evidence or to determine a fact in issue." NRS 50.275. The key to determining whether testimony constitutes lay or expert testimony lies with a careful consideration of the substance of the testimony—does the testimony concern information within the common knowledge of or capable of perception by the average layperson or does it require some specialized knowledge or skill beyond the realm of everyday experience? Burnside, 131 Nev. at 383, 352 P.3d at 636.

Here, the only detective who testified to using the mobile tracker placed on Appellant's car in conjunction with Google Maps was Detective Lippisch. While he was not noticed as an expert, his testimony about using the tracker and Google Maps does not qualify as expert testimony. Detective Lippisch explained how he used the tracker to follow the location of Appellant and the car. VAA1005. He also explained that because the tracker does not provide landmarks—like banks—surrounding a subject's location, he looked at Appellant's location on Google Maps to figure out whether Appellant was near a bank. VAA1025. Detective Lippisch did not use Google Maps to track Appellant. VAA1025. Instead, when Appellant's car stopped in an area, he compared Appellant's location in the tracker to Google Maps and

determined that the vehicle was parked in a shopping complex with two banks. IVAA993. As such, Detective Lippisch's testimony required no scientific or specialized knowledge. It required knowing how to read a map.

Moreover, even if the State should have noticed Detective Lippisch as an expert, his testimony was properly admitted whether considered expert testimony or lay testimony. He was the only detective who had access to the location the tracker was transmitting and testified that the location of the tracker is transmitted via satellite every second. VAA1027. This bare bones explanation did not require any specialized knowledge and he never claimed that the mechanics of the tracker makes them accurate. Instead, he testified that in his experience as a police officer for over a decade, mobile trackers have been accurate. VAA1025.

Regardless, any error in failing to notice the detectives as experts is harmless. Pursuant to NRS 178.598, "any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded." See also Knipes v. State, 124 Nev. 927, 935, 192 P.3d 1178, 1183 (2008) (noting that nonconstitutional trial error is reviewed for harmlessness based on whether it had substantial and injurious effect or influence in determining the jury's verdict). There is no question that the tracker accurately traced the location of Appellant's vehicle. As discussed *supra* in section V, when Detective Lippisch received a notification that the car was moving, detectives in the field went to the location the tracker said the car was, saw both the

car and Appellant, followed that car to the US Bank which he robbed, and ultimately pulled that car over and took Appellant and Co-defendant into custody. IVAA994-95. As such, there is no question that the mobile tracker was accurate in this case and any error regarding Detective Lippisch's testimony about the accuracy of the mobile tracker is harmless.

VII. THERE WAS SUFFICIENT EVIDENCE OF THE DEADLY WEAPON ENHANCEMENT

Appellant argues that there was insufficient evidence of a deadly weapon for Counts 5 to 13. AOB 28. Appellant's argument fails because the victims all had a reasonable apprehension that Appellant or his co-defendant had and were willing to use a deadly weapon.

When reviewing a sufficiency of the evidence claim, the relevant inquiry is not whether the court is convinced of the defendant's guilt beyond a reasonable doubt. Wilkins v. State, 96 Nev. 367, 374, 609 P.2d 309, 313 (1980). Rather, the limited inquiry is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." when viewing the evidence in the light most favorable to the prosecution. Milton v. State, 111 Nev. 1487, 1491, 908 P.2d 684, 686-87 (1995) (quotation and citation omitted). Thus, the evidence is only insufficient when "the prosecution has not produced a minimum threshold of evidence upon which a conviction may be based, even if such evidence were

believed by the jury." Evans v. State, 112 Nev. 1172, 1193, 926 P.2d 265, 279 (1996) (emphasis removed).

"When there is substantial evidence in support of a conviction, the jury's verdict will not be disturbed on appeal. Id. This court will not reweigh the evidence or evaluate the credibility of witnesses because that is the responsibility of the trier of fact. McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). "It is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of the witnesses."' McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). "This does not require this Court to decide whether 'it believes that the evidence at the trial established guilt beyond a reasonable doubt."' Jackson, 443 U.S. at 319-20, 99 S.Ct. at 2789 (quoting Woodby v. INS, 385 U.S. 895, 87 S.Ct. 483, 486 (1966)). This standard preserves the fact finder's role and responsibility "[to fairly] resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." Id. at 319, 99 S.Ct. at 2789.

A jury is free to rely on both direct and circumstantial evidence in returning its verdict. Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980). Also, the Nevada Supreme Court has consistently held that circumstantial evidence alone may sustain a conviction. Deveroux v. State, 96 Nev. 388, 391, 610 P.2d 722, 724 (1980) (citing Crawford v. State, 92 Nev. 456, 552 P.2d 1378 (1976).

Under NRS 193.165(6), a deadly weapon is defined, in part, as, "[a]ny weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or *threatened to be used*, is readily capable of causing substantial bodily harm or death." (emphasis added). A pneumatic gun falls within this statute. Funderburk v. State, 125 Nev. 260, 212 P.3d 337 (2009).

A defendant uses a deadly weapon through conduct that produces fear of harm by means or display of the deadly weapon. Allen v. State, 96 Nev. 334, 336, 609 P.2d 321, 322 (1980), overruled on other grounds by Berry v. State, 125 Nev. 265, 212 P.3d 1085 (2009). This Court has suggested that for the deadly weapon enhancement to apply, the victim does not need to necessarily see the weapon, so long as the victim believes that the defendant has the weapon and would use it. Brisbane v. State, Unpublished Disposition, No. 67936, 385 P.3d 55 (Aug. 10, 2016) (citing Bartle v. Sheriff, 92 Nev. 459, 460, 552 P.2d 1099, 1099 (1976)). If an unarmed offender had knowledge of the use of a deadly weapon by his co-offender, then that offender can be convicted of use with a deadly weapon even though he did not personally use it. Brooks v. State, 124 Nev. 203, 210, 180 P.3d 657, 661 (2008).

In support of his claim that there was insufficient evidence to support the deadly weapon enhancement on Counts 5 through 13, Appellant cites a single unpublished case from 2014— Dozier v. State, 128 Nev 893, WL 204569 (2012). Not only does reliance and citing to this case violate NRAP 36(c)(3), the facts are

markedly dissimilar from what occurred here. In Dozier, this Court found there was insufficient evidence of the deadly weapon enhancement because the medical examiner could not conclusively determine whether the victim was shot; and the two witnesses who testified that the defendant did shoot the victim had taken methamphetamine prior to witnessing the murder, making their credibility an issue. Id. at *2.

Here, there is sufficient evidence to sustain the deadly weapon enhancement as to all counts because Appellant and Phillips had access to guns, opportunity to use those guns, used a gun and/or bomb by means of threatening to use those, and finally displayed a gun. First, Appellant and Phillips had access to guns. Moorehead testified that she previously saw both Appellant and Phillips with guns. VIAA1438-40. They asked her to join them in the robberies and when she declined, Appellant threatened her that her life was over if she ever spoke about it. VIAA1440. Mr. Holman also testified that he had previously tested out Phillips' gun with Phillips to see if it would work. VIAA90. Two pneumatic weapons were found after Appellant and Phillips were arrested—one in Phillips' car, the other in Appellant's car. VIIAA1520; 1525. The gun found in Appellant's car was recovered and tested. VIAA1545; 1547-49. A firearm expert testified that the gun was indeed a pneumatic gun. VIAA1548. He had tested the weapon in the lab and found it to be functional,

despite the defect on the air tank. VIIAA1550-51. Under NRS 193.165, this weapon recovered from Appellant's car is a deadly weapon.

Appellant and Phillips had the opportunity and used those weapons by means of threatening to use them. As to Counts 5 and 6, Melanie Terada was shown a note that threatened, "We have a gun." IIAA388-90. As to Counts 5 and 7, Allyson Santomauro was shown a note threatening that this was a robbery and demanding all of the cash in her drawer. IIAA406. As to Counts 8 and 9, Nur Begum saw a note that threatened, "I have a weapon." IIAA449. As to Counts 8 and 10, Mary Grace was shown a note that threatened, "I have a bomb in my bag." IIAA472. Phillips also placed a bag on the counter in front of the teller window as he showed her the note. Id. These threats constitute the means of using a deadly weapon under NRS 193.165(6) and Allen, 96 Nev. at 336, 609 P.2d at 322. The victims did not need to see the weapon, nor did Appellant and Phillips need to display the weapon for the enhancement to apply.

Appellant and Phillips also made verbal threats about weapons during some of the robberies. As to Counts 11 and 13, Meghan Zitzmann was told, "We have a gun," and "If you alarm, I'm going to shoot you." IIIAA725. As to Counts 11 and 12, Sunny Cortner was told if she says anything, moves, or does anything else, then he'll shoot her. IIIAA746. These threats also constitute the means of using a deadly weapon under NRS 193.165(6) and Allen, 96 Nev. at 336, 609 P.2d at 322. Again,

the victims did not need to see the weapon nor did Appellant and Phillips need to display the weapon for the enhancement to apply.

The witnesses did not have to see a weapon for Appellant and Phillips to be charged with Robbery with use of a Deadly Weapon. Instead, it was sufficient that the notes presented by Appellant or Phillips indicated possession a weapon. Based on the notes, it was reasonable for every teller to believe that Appellant and/or Phillips did in fact have a weapon and were willing to use it. The law does not require victims of a crime to call a suspect's bluff and demand to actually see a weapon. The threat of a weapon was sufficient to constitute force by means of a deadly weapon because it was reasonable for the victims to believe Appellant or Phillips did in fact have a weapon.

Finally, Appellant and Phillips displayed a gun. As to Count 14, Detective Worley saw a bulge by Appellant's lower back near his waistband area. VAA1204. Video and photo footage reflected Detective Worley's testimony. VAA1204. Appellant used a gun in a robbery a mere 30 minutes later at another U.S. Bank. VAA1052. Further, the jury could reasonably infer from the gun being used in the last robbery that a gun was used in the prior robberies. Thus, in the light most favorable to the prosecution, there was sufficient evidence for a rational juror to find that a deadly weapon was used beyond a reasonable doubt as to Counts 3 through 14.

VIII. THERE WAS NO CUMULATIVE ERROR

Appellant alleges that the cumulative effect of the alleged errors deprived him of his right to a fair trial. AOB61. This Court considers the following factors in addressing a claim of cumulative error: (1) whether the issue of guilt is close; (2) the quantity and character of the error; and (3) the gravity of the crime charged. Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 854–55 (2000). Appellant must present all three elements to be successful on appeal. Id. Moreover, a defendant "is not entitled to a perfect trial, but only a fair trial." Ennis v. State, 91 Nev. 530, 533, 539 P.2d 114, 115 (1975) (citing Michigan v. Tucker, 417 U.S. 433, 94 S.Ct. 2357 (1974)).

In arguing that there was cumulative error, Appellant makes two new claims not otherwise raised on appeal. First, Appellant claims the State failed to properly preserve material evidence when they left the windows of Appellant's car open. AOB29. Second, Appellant claims that the trial court erred by allowing the State to file an amended information after trial started. AOB29. However, because Appellant did not raise these claims as actual individual errors in his brief, this Court should consider them non-errors and Appellant cannot cumulate non-errors. United States v. Rivera, 900 F.2d 1462, 1471 (10th Cir. 1990) ("…cumulative-error analysis should evaluate only the effect of matters determined to be error, *not the cumulative effect of non-errors*.") (emphasis added).

Should this court choose to examine the merits of these new claims, Appellant's claims of error still fail. At the outset, both of these alleged errors are subject to plain error review because Appellant did not raise these claims before the trial court. Guy, 108 Nev.at 780, 839 P .2d at 584. Further, Appellant fails to cite any legal or factual authority supporting his claims. This failure is fatal. Edwards v. Emperor's Garden Rest., 122 Nev. 317, 330, n.38, 130 P. 3d 1280, n. 38 (2006) (court need not consider claims unsupported by relevant authority); Maresca, 103 Nev. at 673, 748 P.2d at 6 (1987). Thus, this Court should not consider this claim as Appellant failed to support his argument with relevant legal or factual authority.

First, Appellant claims police failed to preserve evidence when they left the windows of Appellant's car open during impound. AOB24. Generally, law enforcement officials have no duty to collect all potential evidence. Daniels v. State, 114 Nev. 261, 267, 956 P.2d 111, 115 (1998). To establish a due process violation based on a failure to preserve evidence, a defendant must first establish that the evidence was material, meaning access to that evidence would have created a reasonable probability that the result of the proceedings would have been different; *and* that the failure to preserve that material evidence "was the result of mere negligence, gross negligence, or a bad faith attempt to prejudice the defendant's case." Id. If the failure was the result of negligence, no sanctions are imposed. Id. If gross negligence is involved; the defense is entitled to a presumption that the

evidence would have been favorable to their case. Id. A defendant is only entitled to a possible dismissal of charges if the destruction of evidence was the result of bad fault and there is no other available remedy. Id.

Here, Appellant does not explain what evidence was not preserved or how it prejudiced Appellant. At trial, Appellant made no claim of alternative suspects and the State identified Appellant and Phillips as the suspects based on what the exterior of the car looked like, not what was in the car. The only evidence impounded from the inside of the car was the black handgun found on the rear passenger floor and a makeup case. VIIAA1530. There was no forensic analysis performed on the interior of the car and there was no material evidence lost. As such, Appellant's claim must fail.

Next, the trial court did not err in allowing the State to file an amended information after trial started because the changes did not add a new charge or prejudice Appellant's substantial rights. According to NRS 173.095(1), an information may be amended at any time before the jury returns a verdict if the changes to not add charges, and do not prejudice the defendant's substantial rights. This Court reviews the decision of a district court for an abuse of discretion. Viray v. State, 121 Nev. 159, 162, 111 P.3d 1079, 1081 (2005). Inaccurate facts in the Information do not prejudice the defendant so long as he is on notice of the State's theory of prosecution. Id. at 162–63, 111 P.3d at 1081–82.

On the seventh day of trial, the State moved to identify Vincent Rotolo as the previously unnamed victim in Count 20 – Assault with a Deadly Weapon. VIIAA1420. The State then amended the information to correct a clerical error on the heading with the list of all charges filed. VIIAA1421. Resp. Appx. 12. Specifically, the date of August 6, 2018 was amended to August 9, 2018 to reflect Counts 14 to 23. Resp. Appx. 2. Appellant's counsel did not object to either change. VIIAA1420-22. None of these changes added a new charge or required Appellant to defend new or unnoticed crimes. Moreover, the changes not prejudice Appellant because he was already charged with the crimes committed on August 9 and the change made was not to a specific charge. It was to correct a clerical error.

With respect to the other errors alleged in Appellant's brief, Appellant has failed to show cumulative error. First, the issue of guilt was not close as Appellant was identified in all four robberies by those present during the robbery and by neighbors who recognized him when watching the surveillance footage. Next, the gravity of the errors is nonexistent as Appellant has not asserted any meritorious claims of error, so there is no error to cumulate. Rivera, 900 F.2d at 1471. Finally, Appellant was not convicted of grave crimes. See Valdez, 124 Nev. at 1198, 196 P.3d at 482 (2008) (stating crimes of first-degree murder and attempt murder are very grave crimes). Appellant was convicted of much lesser offenses, and, therefore, the third factor does not weigh in his favor.

CONCLUSION

Based on the foregoing, the State respectfully requests that this Court affirm the Judgment of Conviction.

Dated this 5th day of February, 2020.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionately spaced, has a typeface of 14 points of more, contains 13,619 words.
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 5th day of February, 2020.

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 5th day of February, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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