IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS ANGEL CASTRO,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No. 78643

RESPONDENT'S ANSWERING BRIEF

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

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ROUTING STATEMENT

This case is presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(1) because it involves an appeal from a judgment of conviction based on a plea of guilty.

STATEMENT OF THE ISSUE(S)

1. Whether the district court did not err by not correcting Appellant's PSI.
2. Whether Appellant waived his claim that the district court erred by failing to award Appellant his credit for time served.
3. Whether Appellant's sentence does not constitute cruel and unusual punishment.

4. Whether Appellant's claim of cumulative error does not entitle him to relief.

STATEMENT OF THE CASE

On April 12, 2016, Appellant Luis Angel Castro (hereinafter, "Appellant") was charged by way of Information, as follows: Count 1 – CONSPIRACY TO COMMIT MURDER (Category B Felony – NRS 200.010, 200.030, 199.480); Count 2 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.010, 200.030, 193.330, 193.165); Count 3 – MAYHEM WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.280, 193.165); Count 4 – BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony – NRS 200.481); Count 5 – FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category A Felony – NRS 200.310, 200.320, 193.165); Count 6 – EXTORTION WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 205.320, 193.165); Count 7 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380, 193.165); and Count 8 – FIRST DEGREE ARSON (Category B Felony – NRS 205.010) for actions committed on or about March 7, 2016. Appellant's Appendix, Volume I ("1AA") at 001-008.

On February 4, 2019, pursuant to a Guilty Plea Agreement ("GPA"), the State filed an Amended Information, charging Appellant with one count of FIRST

DEGREE KIDNAPPING RESULTING IN SUBSTANTIAL BODILY HARM (Category A Felony – NRS 200.310, 200.320). 1AA at 095-096. The GPA was also filed on February 4, 2019, with all parties agreeing, "the State will have the right to argue for Life without the possibility of Parole, and the Defense will argue for Life with the possibility of Parole after fifteen (15) years. All Parties agree that no one will seek the term of years." Id. at 097. By executing the GPA, Appellant acknowledged:

> I understand that as a consequence of my plea of guilty The Court must sentence me to imprisonment in the Nevada Department of Corrections for a minimum term of not less than FIFTEEN (15) years and a maximum term of not more than FORTY (40) years, OR for a minimum term of not less than FIFTEEN (15) years and a maximum term of LIFE, OR LIFE WITHOUT PAROLE.

Id. at 098. Appellant further affirmed, "I have not been promised or guaranteed any particular sentence by anyone. I know that my sentence is to be determined by the Court within the limits prescribed by statute." Id. at 099. Appellant also recognized, "the Division of Parole and Probation will prepare a report for the sentencing judge prior to sentencing…This report may contain hearsay information regarding my background and criminal history. My attorney and I will each have the opportunity to comment on the information contained in the report at the time of sentencing." 2AA at 100.

Also on February 4, 2019, the district court canvassed Appellant and accepted his guilty plea. 2AA at 209-214. Appellant verbally acknowledged to the district

court that he understood the potential range of sentences for the crime to which he pled guilty. Id. at 211. The district court then referred the matter to the Division of Parole and Probation for the preparation of a Presentence Investigation Report ("PSI") and set the matter for sentencing. Id. at 214.

On March 22, 2019, in preparation for the sentencing hearing, the State submitted a Sentencing Memorandum for the district court's consideration. 2AA at 105-132. Appellant also submitted a Sentencing Memorandum on March 24, 2019. Id. at 133-200.

On March 26, 2019, Appellant appeared for sentencing before the district court. 2AA at 235-264. Before the parties argued regarding Appellant's sentence, Appellant's counsel brought to the district court's attention that the PSI writer erroneously indicated that Appellant was "19 or younger" at the time of his first arrest, when in fact Appellant was "24 and older." Id. at 237. The State agreed to the error. Id. The court indicated that the error did not implicate Stockmeier v. State, Bd. of Parole Com'rs, 127 Nev. 243, 255 P.3d 209 (2011). Id. Appellant's counsel agreed, stating, "I don't believe there's any reason we wouldn't be able to put [the error] on the record and then proceed," and the parties proceeded with sentencing. Id. at 236-37. Following the arguments of the State and Appellant's counsel, as well as Appellant's statement, the district court sentenced Appellant to LIFE in the Nevada Department of Corrections without the possibility of parole. Id. at 257-58.

The district court stated that, based on the sentence announced, the court did not believe that credit for time served was necessary. Id. at 258. Neither Appellant, nor his counsel, disagreed. Id.

On March 28, 2019, the district court filed Appellant's Judgment of Conviction. 2AA at 201-02.

On April 22, 2019, Appellant filed his Notice of Appeal. 2AA at 203-05.

STATEMENT OF THE FACTS

In early March, 2016, Jose Salazar-Ortiz ("Salazar-Ortiz") was familiar with Appellant, as the two had participated in methamphetamine use together. 1AA at 021. Salazar-Ortiz was also familiar with Appellant's co-defendants, Edward Honabach ("Honabach"), Lionel King ("King") and Fabiola Jimenez ("Jimenez") through Appellant. Id. at 024.

A few days before the incident giving rise to the instant case, Salazar-Ortiz's girlfriend's car broke down near Honabach's house. Id. at 025. While walking, Salazar-Ortiz encountered Honabach and asked for help with the car. Id. at 025-026. Honabach called Appellant, and they met Salazar-Ortiz at the car. Id. Appellant told Honabach that they would charge Salazar-Ortiz seven dollars per mile to bring the car to Salazar-Ortiz's girlfriend's house. Id. at 025. Salazar-Ortiz declined. Id. at 026. Appellant and Honabach then told Salazar-Ortiz he owed them fifty (50) dollars

for wasting their time. Id. Salazar-Ortiz did not pay them, and instead went to his own house. Id. at 027.

At about 11:00 a.m. on March 7, 2016, Salazar-Ortiz was at his girlfriend's house. 1AA at 027. Appellant, Honabach, and King showed up together at Salazar-Ortiz's girlfriend's house. Id. Appellant began asking Salazar-Ortiz for money, while the other two surrounded Salazar-Ortiz. Id. at 029. Salazar-Ortiz told the men that he did not owe them any money, and told them to leave. Id. When Salazar-Ortiz refused to give them money, the men asked for Salazar-Ortiz's girlfriend's phone. Id. at 030. Salazar-Ortiz gave them the phone because he felt threatened. Id. The men then prepared to leave, and told Salazar-Ortiz that he needed to go with them. Id. When Salazar-Ortiz refused, the men dragged Salazar-Ortiz to Honabach's truck. Id. at 030-031. Salazar-Ortiz got into the truck, fearing that the men carried weapons. Id. at 031. The men then drove Salazar-Ortiz to an abandoned house. Id. at 032-033.

Jimenez was at the abandoned house, and opened the door to let the men bring Salazar-Ortiz inside. 1AA at 033-034. Inside the house, Honabach held a knife to Salazar-Ortiz's throat and told him not to move. Id. at 034. Honabach emptied Salazar-Ortiz's pockets, taking Salazar-Ortiz's wallet, cigarettes, and lighter. Id. at 046-047. The group then led Salazar-Ortiz to a chair and Honabach and King tied Salazar-Ortiz up. Id. at 035. Salazar-Ortiz testified that Appellant was giving the orders to tie Salazar-Ortiz up. Id. Salazar-Ortiz was then kicked and again asked for

money. Id. at 036-037. The group gave Salazar-Ortiz three calls to get money; however, Salazar-Ortiz was unsuccessful. Id. at 037. During the calls, Honabach was grabbing Salazar-Ortiz's pinky finger with pliers. Id. at 037-038. King was, at the same time, stabbing Salazar-Ortiz's right arm and ribs. Id. at 038. When Salazar-Ortiz was unsuccessful, Honabach cut Salazar-Ortiz's finger and ripped off his fingernail, and King continued to stab Salazar-Ortiz. Id. During this ordeal, Appellant and Jimenez were making out, while Appellant stared at Salazar-Ortiz. Id.

Later, Honabach cut Salazar-Ortiz's throat with a knife. 1AA at 039. Appellant then said that the cut was "too small," so Jimenez cut Salazar-Ortiz's throat again, and Appellant cut Salazar-Ortiz's throat a third time. Id. Finally, King cut deeply into Salazar-Ortiz's throat. Id. at 040. At the preliminary hearing, the State presented evidence of injuries to Salazar-Ortiz including Salazar-Ortiz's throat cut open, stab wounds to Salazar-Ortiz's belly and leg, burns on Salazar-Ortiz's arm and hands, Salazar-Ortiz's finger chopped off and Salazar-Ortiz's fingernails removed. Id. at 040-041.

After his throat was cut, Salazar-Ortiz pretended to be dead. 1AA at 041. Salazar-Ortiz could not remember if Appellant and Jimenez remained in the house, or if they left after cutting Salazar-Ortiz's throat. Id. at 061-064. Honabach and King proceeded to light the house on fire and cover Salazar-Ortiz with garbage. Id. at 042. They then left the burning building. Id.

After the group had left, the chair Salazar-Ortiz was tied to was falling apart, so Salazar-Ortiz was able to stand up. 1AA at 042-043. Salazar-Ortiz was unable to untie himself, so he jumped to a sliding glass door and got out of the house. Id. at 043-044. A girl found Salazar-Ortiz. Id. at 045.

SUMMARY OF THE ARGUMENT

Appellant fails to demonstrate that his sentence warrants reversal, as he cannot demonstrate that the district court committed error or that his sentence constitutes cruel and unusual punishment. While there may have been a factual error in the PSI, Appellant fails to demonstrate that he challenged the error prior to sentencing, and cannot demonstrate that the error resulted in an invalid sentence. Appellant waived his argument regarding credit for time served by failing to raise it before the sentencing court; further, Appellant could not demonstrate any prejudice resulting from the Court's failure to award credit for time served. Appellant's sentence was within statutory limits, and Appellant does not argue that it was based on impalpable or highly suspect evidence; therefore, Appellant cannot demonstrate that his sentence constitutes cruel and unusual punishment. Finally, because Appellant fails to demonstrate error, there is nothing to cumulate in support of overturning Appellant's sentence. Because Appellant fails to demonstrate that he is entitled to relief, this Court should AFFIRM Appellant's sentence as set forth in the Judgment of Conviction in this case.

ARGUMENT

I. THE DISTRICT COURT DID NOT ERR BY NOT CORRECTING APPELLANT'S PSI

NRS 176.135(1) requires that the Nevada Division of Parole and Probation ("P&P") "prepare a PSI to be used at sentencing for any defendant who pleads guilty to or is found guilty of a felony." Stockmeier v. State, Bd. of Parole Com'rs, 127 Nev. 243, 248, 255 P.3d 209, 212 (2011). The PSI must contain "information about the defendant's prior criminal record, the circumstances affecting the defendant's behavior and the offense, and the impact of the offense on the victim." Id. at 248, 255 P.3d at 212-13. Defendants have the right to object to any factual errors in a PSI, as long as they object before sentencing. Sasser v. State, 130 Nev. 387, 394, 324 P.3d 1221, 1226 (2014). However, neither P&P nor district courts have authority to amend a PSI after a defendant is sentenced. Id. at 249, 255 P.3d at 213. Therefore, "it is imperative that a defendant contest his PSI at the time of sentencing if he believes that his PSI contains inaccuracies." Id. at 250, 255 P.3d at 213. When a sentence is challenged based on alleged errors in a PSI, the Nevada Supreme Court has explained that it considers "(1) whether those errors constituted impalpable or highly suspect evidence, and (2) if so, whether prejudice resulted from the district court's consideration of information founded upon such evidence." Blankenship v. State, 132 Nev. 500, 508, 375 P.3d 407, 412 (2016). However, "[a] simple error in a [PSI] does not constitute impalpable or highly suspect evidence. Rather, the error

must be such that it taints the PSI sentencing recommendation." Id. at 509, 375 P.3d at 413.

In the instant case, Appellant argues that the PSI writer's erroneous indication that Appellant was "19 or younger" at the time of his first arrest, rather than the proper "24 and older," should have been corrected before the district court pronounced Appellant's sentence. Appellant's Opening Brief ("AOB") at 10-11. However, Appellant crucially misrepresents the district court's actions upon his trial counsel's statement of the issue. Appellant argues that his counsel "objected" to the issue "and argued that the PSI should be corrected…but the district court refused to correct the error." Id. at 10. Contrary to Appellant's pejorative representation, the transcript of the sentencing hearing reflects the following exchange:

> MR. GELLER: On behalf of Defendant Castro, there is one stipulated correction to his PSI. *I don't believe there's any reason we wouldn't be able to put that on the record and then proceed.*
>
> THE COURT: Let's do that now. What's the issue?
>
> MR. GELLER: With respect to page 2, there are three boxes which the PSI author can check in this case with an X, indicating age at first arrest. On Mr. Castro's PSI, it's checked "19 or younger." That's not substantiated by his arrest history later in the report. The parties have agreed to have that removed. And I believe a "24 and older" would be the appropriate box that should have been checked in that instance.
>
> MS. THOMSON: I agree.
>
> THE COURT: Okay. That doesn't rise to the level of a Stockmeier issue, I don't believe.
>
> MR. GELLER: *I don't believe either,* Your Honor.

2AA at 236-37 (emphasis added). The record reflects that Appellant did not, in fact, object to proceeding on the PSI. The record expressly contradicts Appellant's misrepresentation that the district court "refused to correct the error." AOB at 10. The record demonstrates that Appellant, the State, and the district court were all in agreement that a verbal recognition of the error in the PSI was sufficient, and that sentencing could proceed without any further action.

Even if Appellant sufficiently raised the error before sentencing, the error in his PSI does not rise to the level of "impalpable or highly suspect evidence" sufficient to "taint the PSI." See, Blankenship, 132 Nev. at 508-09, 375 P.2d at 412-13. In Stockmeier, the inaccuracies in the PSI included alleged threats involving a deadly weapon during the commission of the offense, and an unsavory advertisement purportedly found in the defendant's home. 127 Nev. at 246, 255 P.3d at 211. In Sasser, the improper information included alleged threats to kill the victim and a dismissed sexual assault charge in an unrelated, subsequent case. 130 Nev. at 389-90, 324 P.3d at 1222. In Blankenship, P&P failed to account for the defendant's mental disabilities when evaluating the defendant's employment history, which affected the defendant's Probation Success Probability and, therefore, P&P's sentencing recommendation in the PSI. 132 Nev. at 503, 375 P.3d at 409.

In the instant case, the error consisted of incorrectly classifying Appellant's age at the time of his first arrest. 2AA at 237. However, per trial counsel's admission,

that error is contradicted by the arrest history later in the same PSI. Id. The information incorrectly entered in the PSI does not implicate Appellant's propensity for violence, and Appellant does not argue that it affected P&P's sentencing recommendation. In fact, the sentencing recommendation in the PSI is for the lowest sentence pursuant to statute. AOB at 4. Thus, this case is distinguishable from Blankenship, where the inaccuracies in the PSI affected the sentencing recommendation and were not clearly addressed by the court. 132 Nev. at 509, 375 P.3d at 413.

Furthermore, in this case, the district court clearly set forth its rationale for Appellant's sentence, stating:

> I want to be merciful, but at the same time I know that justice has to be done… And we have a victim who, but for the fact that he lived against what you all thought -- my understanding is not only he was tortured and mutilated in this room for a period of time, for a period of hours, but that everybody thought he was dead, tried to burn the house down around him.

2AA at 257. Therefore, the State submits that this case is like Sasser, where the district court acknowledged the error and was clear that it would not rely on that error in determining the defendant's sentence; here, the district court acknowledged Appellant's true age at the time of his first arrest and clearly explained its sentencing decision. Id. at 237, 257.

Because the error in Appellant's PSI was extremely minor, in that it neither impacted the sentencing recommendation, nor the district court's sentencing

determination, the State respectfully requests that this Court affirm Appellant's Judgment of Conviction.

II. APPELLANT WAIVED HIS CLAIM THAT THE DISTRICT COURT ERRED BY FAILING TO AWARD APPELLANT HIS CREDIT FOR TIME SERVED

In order to raise a perceived error on appeal, a criminal defendant must first preserve that issue by objecting or raising it at the trial level. Valdez v. State, 124 Nev. 1172, 1190, 196 P.3d 465 (2008); Garner v. State, 116 Nev. 770, 783, 6 P.3d 1013, 1022 (2000), overruled on other grounds by Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002); see also Dermody v. City of Reno, 113 Nev. 207, 210, 931 P.2d 1354 , 1357 (1997) ("Parties may not raise a new theory for the first time on appeal." (internal citation omitted)). Failure to preserve an issue for appeal results in a waiver of that issue, and this Court will only review that issue for plain error. Nelson v. State, 123 Nev. 534, 543, 170 P.3d 517, 524 (2007); Maestas v. State, 128 Nev. 124, 146, 275 P.3d 74, 89 (2012) ("[Defendant] failed to raise his First Amendment claim below. That failure leaves us to consider the claim in the context of plain error."); Guy v. State, 108 Nev. 770, 780, 839 P.2d 578, 584 (1992) (failure to present a specific argument at trial precludes consideration of that argument on appeal). This Court has explained:

> "To amount to plain error, the 'error must be so unmistakable that it is apparent from a casual inspection of the record.'" Vega v. State, 126 Nev. 332, 338, 236 P.3d 632, 637 (2010) (quoting Nelson, 123 Nev. at 543, 170 P.3d at 524). In addition, "the defendant [must] demonstrate [] that the error affected his or her substantial rights, by causing 'actual

> prejudice or a miscarriage of justice.'" Valdez, 124 Nev. at 1190, 196 P.3d at 477 (quoting Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003))). Thus, 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). Under Green, this Court reviews for plain error by "examin[ing] whether there was 'error,' whether the error was 'plain' or clear, and whether the error affected the defendant's substantial rights." 119 Nev. at 545, 80 P.3d at 95. "Additionally, the burden is on the defendant to show actual prejudice or a miscarriage of justice." Id.

Appellant claims that the district court committed error when it failed to award him his credit for time served. AOB at 11. However, Appellant never preserved this issue by raising it at the time of sentencing. At the time the district court announced Appellant's sentence, the district court also opined, "I don't think credit time served matters." Id. at 258. The district court then asked if any party had anything to add to the proceedings, at which point Appellant's counsel stated, "No." Id. Therefore, Appellant failed to preserve this issue and it is reviewable only for plain error review. Nelson, 123 Nev. at 543, 170 P.3d at 524.

In support of his claim, Appellant cites to Johnson v. State, 120 Nev. 296, 298, 89 P.3d 669, 670 (2004). Id. at 11-12. However, that case is easily distinguishable from the instant case. In Johnson, the defendant was convicted of three felonies and sentenced to three determinate prison terms, two concurrent with each other and one

consecutive to the others. 120 Nev. at 297, 89 P.3d at 669. The district court in that case did not award credit for time served at the sentencing hearing; instead, it only included the award in the judgment of conviction and only applied it to one of the concurrent sentences. Id. at 298, 89 P.3d at 669. In fact, there was no mention of credit for time served at the sentencing hearing at all. Id. at 298, 89 P.3d at 670. The Johnson Court specifically concluded that "credit for time served in presentence confinement may not be denied to a defendant *by applying it only to one of multiple concurrent sentences*," and remanded the matter to the district court for credit to be applied to both concurrent counts. Id. at 299, 89 P.3d at 671.

In the instant case, Appellant pled guilty to a single count, and was sentenced on the same. 2AA at 201-02. The district court did not award credit for time served at all, opining instead that such credit was of no moment. Id. at 258. Beyond the fact that the district court mentioned credit for time served, the instant case is further distinguishable from Johnson in that the district court gave defense counsel an opportunity to respond before concluding proceedings. Id. Finally, Appellant's claim does not arise from the district court incorrectly applying credit to one sentence and not another – it arises from the district court declining to apply credit at all. Thus, Johnson does not provide grounds for this Court to reverse Appellant's judgment of conviction on the basis of credit for time served.

Finally, the State submits that Appellant cannot demonstrate plain error because he cannot show he was prejudiced by the court's failure to award credit for time served. Martinorellan, 131 Nev. at 49, 343 P.3d at 594. Appellant does not specifically allege any "actual prejudice or a miscarriage of justice." Valdez, 124 Nev. at 1190, 196 P.3d at 477. Furthermore, Appellant is not eligible for release on parole. 2AA at 201-02. Therefore, he cannot demonstrate that any lack credit for time served prejudices him in the amount of time he will remain in prison.[1]

Because Appellant's claim is subject only to plain error review, and because Appellant cannot demonstrate prejudice, the State respectfully requests that this Court affirm Appellant's Judgment of Conviction.

III. APPELLANT'S SENTENCE DOES NOT CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT

The Eighth Amendment to the United States Constitution as well as Article 1, Section 6 of the Nevada Constitution prohibits the imposition of cruel and unusual punishment. The Nevada Supreme Court has stated that "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" Allred v. State, 120 Nev. 410, 92 P.2d 1246, 1253 (2004) (quoting Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284

[1] On a related note, Appellant has failed to provide any documentation supporting his claim that he is entitled to 1112 days of credit for time served.

(1996) (quoting Culverson v. State, 95 Nev. 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979).

Additionally, the Nevada Supreme Court has granted district courts "wide discretion" in sentencing decisions, and these are not to be disturbed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence." Allred, 120 Nev. at 410, 92 P.2d at 1253 (quoting Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976)). A sentencing 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, 846 P.2d 278 (1993) (citing Deveroux v. State, 96 Nev. 388, 610 P.2d 722 (1980)). 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, 871 P.2d 950 (1994).

In the instant case, Appellant alleges that his sentence of Life without the possibility of parole is disproportionate to the crime of which he was convicted. AOB at 12-14. Appellant does not allege that his sentence falls outside the statutory limits for the crime of which he was convicted. Id. Nor does he argue that the statute fixing punishment is unconstitutional. Id. at 14. Instead, Appellant argues that he does not have the criminal history that his co-defendants had at the time of the instant

offense, and that he did not know how violent the instant offense would become. Id. at 13. Appellant also cites to his mental health as a mitigating factor. Id. at 13-14.

Contrary to Appellant's argument, Salazar-Ortiz testified at the preliminary hearing that Appellant was "the one giving orders" throughout the terrible ordeal. 1AA at 035. Salazar-Ortiz further testified that Appellant was a part of each step of the torture and mutilation, including stabbings, the chopping of a finger, the removal of fingernails with pliers, and the slicing open of Salazar-Ortiz's throat four (4) times, each time deeper than the last. Id. at 039-041.

Additionally, Appellant included numerous letters and documents as mitigation evidence in his sentencing memorandum, filed before sentencing. 2AA at 133-200. These letters and documents include the same information that Appellant cites to in his Opening Brief, arguing that it supports his argument that his sentence is disproportionate to his crime. See, id.; see also, AOB at 13-14. However, the district court affirmed that it had considered this information, and exercised its wide discretion pursuant to statute and Allred to sentence Appellant to Life without the possibility of parole. 2AA at 238, 256-58; 120 Nev. at 410, 92 P.2d at 1253.

Because the district court did not consider any impalpable or highly suspect evidence, and because it sentenced Appellant within the statutory limits, the State submits that this Court should affirm Appellant's Judgment of Conviction.

/ / /

IV. APPELLANT'S CLAIM OF CUMULATIVE ERROR DOES NOT ENTITLE HIM TO RELIEF

Appellant finally asserts a claim of cumulative error. AOB at 14-15. However, Appellant fails to demonstrate cumulative error sufficient to warrant reversal. "Relevant factors to consider in evaluating a claim of cumulative error are (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, 855 (2000).

In the instant case, the issue of guilt was not close as Appellant pled guilty. 1AA at 097-2AA at 102; 2AA at 209-214. Additionally, Appellant cites only to self-serving argument in his sentencing memorandum to support his arguments that the district court erred with its sentencing determination. See, AOB at 15 (citing 2AA at 135-38). As discussed *supra*, these arguments are insufficient to demonstrate error on behalf of the district court; therefore, there is nothing for this Court to cumulate. Finally, it is clear that Appellant was charged with a crime of extreme gravity – First Degree Kidnapping with Substantial Bodily Harm; however, the charge itself is not error, and Appellant freely and voluntarily entered into the GPA in this case. 1AA at 097-2AA at 102; 2AA at 209-214. A review of the preliminary hearing transcript clearly demonstrates that such a charge was substantiated by the facts of this case, and the State submits that such a weighty penalty is clearly justified by the actions of Appellant and his co-conspirators. 1AA at 009-094.

Because Appellant fails to demonstrate that there is any error to cumulate, much less that such error warrants reversal of his Judgment of Conviction, the State respectfully requests that this Court affirm Appellant's Judgment of Conviction.

CONCLUSION

Based on the foregoing, the State respectfully requests that this Court AFFIRM Appellant's sentence as set forth in the Judgment of Conviction in this case.

Dated this 17th day of January, 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 4,580 words and 20 pages.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 17th day of January, 2020.

Respectfully submitted

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BY */s/ Karen Mishler*

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 17th day of January, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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