

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

JASON J. BOLDEN, A/K/A JASON  
JEROME BOLEN,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Electronically Filed  
Nov 03 2021 03:03 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

CASE NO: 79715

**STATE’S OPPOSITION TO AMICUS’ MOTION FOR PERMISSION TO  
FILE BRIEF OF AMICI CURIAE IN SUPPORT OF APPELLANT’S  
PETITION FOR EN BANC RECONSIDERATION**

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Deputy District Attorney, JOHN NIMAN, and files this Opposition to Amicus’ Motion for Permission to File Brief of Amici Curiae in Support of Appellant's Petition for En Banc Reconsideration, filed on October 28, 2021 (“Motion”).

This Opposition is based on the following memorandum of points and authorities and all papers and pleadings on file herein.

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Dated this 3rd day of November, 2021.

Respectfully submitted,

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

BY /s/ John Niman  
JOHN NIMAN  
Deputy District Attorney  
Nevada Bar #014408  
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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **STATEMENT OF THE CASE**

On September 24, 2019, JASON J. BOLDEN (hereinafter, “Appellant”) noticed his appeal from his Judgment of Conviction, which was filed on August 27, 2019. That Notice was filed with this Court on October 1, 2019.

On July 8, 2021, after briefing from the parties, this Court filed its Opinion, affirming Appellant’s Judgment of Conviction (this Court’s “Affirmance”).

On July 21, 2021, Appellant filed a Petition for Rehearing. Thereafter, on August 2, 2021, this Court filed an Order Directing Answer to Appellant’s instant Petition. The State filed an Answer on August 11, 2021. On September 23, 2021, this Court denied the Petition for Rehearing and issued an amended Opinion.

On October 21, 2021, after receiving an extension, Appellant filed a Petition for En Banc Reconsideration. This Court ordered the State to answer the Petition for En Banc Reconsideration, and the State's Answer is due November 16, 2021. On October 28, 2021, Amici filed the instant Motion. The state's opposition follows.

## **ARGUMENT**

### **AMICI BRIEFING IS UNNECESSARY AND UNWARRANTED**

Amici have sought permission to file an improper and unnecessary brief in support of Appellant's Petition for En Banc Reconsideration, which this Court should deny. The brief is improper because it is overlength. A petition for en banc reconsideration is limited to 10 pages, or 4,667 words. NRAP 40A(d). An amici brief must comply with NRAP 29. An amici brief is acceptable if it contains "no more than one-half the maximum length authorized by these Rules for a party's brief." NRAP 29(e). An amici brief in support of a petition for en banc reconsideration, therefore, may be no more than five pages, or 2,334 words (rounding up.) The amici brief in this case is 4,313 words, nearly double that which is permissible, and is 21 pages long, from identity through conclusion. Brief of Amici Curiae Clark County Public Defender, Clark County Special Public Defender, And Nevada Attorneys For Criminal Justice In Support of Appellant's Petition For En Banc Reconsideration ("Amici Brief") filed October 28, 2021 at 1-22. Amici have not requested, nor been granted permission to file, an oversized brief.

Amici's brief also attempts to inject arguments Appellant did not make, not just for the first time on appeal, but for the first time during the *third round of appellate briefing*. The panel of this Court which decided the initial appeal, and denied the Petition for Rehearing, reviewed a district court's decision to grant an entirely unopposed motion for leave to amend information. RA 1-2. The panel deemed Appellant's claim waived, but considered his claim, raised for the first time on appeal, for plain error. Affirmance at 4-5. Although the State will respond, as ordered, to Appellant's Petition for En Banc Reconsideration and address in detail why yet further reconsideration is unwarranted, for the purposes of this opposition Amici are attempting to interject arguments that were (1) not made in the first instance to the district court, (2) not made on direct appeal, even for the first time, (3) not made in a petition for rehearing, even for the first time, and (4) apparently, at least upon Amici's belief, not sufficiently made or made at all, even for the first time, in a petition for en banc reconsideration. Motion at 4-5. There is no need for an amici brief to reconsider a panel of this Court's decision upholding the district court's granting of an entirely unopposed motion below. If "[a] point not urged in the trial court ... will not be considered on appeal" means anything at all, it must certainly mean that a point not urged in the trial court, or the appellate court, or for a second time in the appellate court, or for the third time in an appellate court should

not be raised by a third party during the third round of appellate briefing. Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

### **CONCLUSION**

For the foregoing reasons, the State respectfully requests that this Court DENY Amici's Motion.

Dated this 3<sup>rd</sup> day of November, 2021.

Respectfully submitted,

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

BY */s/ John Niman*

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## **CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on November 3, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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BY /s/ E. Davis

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JN//ed