IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

v.

JOHN JOSEPH SEKA,

Respondent.

CASE NO: 80925

APPELLANT'S REPLY BRIEF

Appeal From Granting of Motion for New Trial
Eighth Judicial District Court, Clark County

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500
State of Nevada

AARON D. FORD
Nevada Attorney General
Nevada Bar No. 007704
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1265

Counsel for Appellant

PAOLA M. ARMENI, ESQ.
Nevada Bar #008357
Clark Hill
3800 Howard Hughes Pkwy., Ste. 500
Las Vegas, Nevada 89169
(702) 862-8300

JENNIFER SPRINGER, ESQ.
Nevada Bar #013767
Rocky Mountain Innocence Center
358 South 700 East, B235
Salt Lake City, Utah 84105
(801) 355-1888

Counsel for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page Number:

Cases

Statutes

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA, Appellant, v. JOHN JOSEPH SEKA, Respondent.	CASE NO: 80925

APPELLANT'S REPLY BRIEF

Appeal From Granting of Motion for New Trial
Eighth Judicial District Court, Clark County

ARGUMENT

I. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT GRANTED SEKA'S MOTION FOR NEW TRIAL.

Under NRS 176.515(1), a district court may grant a new trial on the basis of newly discovered evidence, and this court reviews the district court's decision for an abuse of discretion. Sanborn v. State, 107 Nev. 399, 406, 812 P.2d 1279, 1284 (1991).

> To establish a basis for a new trial on this ground, the evidence must be: newly discovered; material to the defense; such that even with the exercise of reasonable diligence it could not have been discovered and produced for trial; non-cumulative; such as to render a different result probable upon retrial; not only an attempt to contradict, impeach, or discredit a former witness, unless the witness is so important that a different result would

> be reasonably probable; and the best evidence the case admits.

Id. at 406, 812 P.2d at 1284-85 (footnote omitted) (*citing* McLemore v. State, 94 Nev. 237, 577 P.2d 871 (1978)). The Sanborn factors are conjunctive, and if the purported evidence fails to satisfy a single factor, the district court does not abuse its discretion by denying the motion for a new trial. See id. at 406, 812 P.2d at 1285.

Here, the district court abused its discretion when it granted Seka's Motion for New Trial. The "newly discovered" evidence presented by Seka was previously presented to the jury during Seka's trial and, thus, does not constitute newly discovered evidence. Further, some of the items of evidence were not relevant to the crime scene and therefore are not favorable to defense. As Seka failed to demonstrate that the evidence was newly discovered, material to the defense and non-cumulative, the district court abused its discretion when it granted Seka's Motion for New Trial. In any event, the evidence was not relevant to the Limanni crime scene and the district court abused its discretion when it granted Seka's motion as to the Limanni murder.

a. Seka is not entitled to a new trial.

i. Seka's "newly discovered" DNA evidence is not favorable to the defense and is cumulative of the evidence presented at trial.

NRS 176.09187 states in relevant part:

> 1. If the results of a genetic marker analysis performed pursuant to this section and NRS 176.0918 and 176.09183 are favorable to the petitioner:
>
> (a) The petitioner may bring a motion for a new trial based on the ground of newly discovered evidence pursuant to NRS 176.515; and
>
> (b) The restriction on the time for filing the motion set forth in subsection 3 of NRS 176.515 is not applicable.

Here, Seka claims that the newly tested DNA evidence is exculpatory and, therefore, favorable to the defense under 176.09187. 8 AA 001853-67. However, Seka failed to demonstrate that the evidence was newly discovered, material to the defense and non-cumulative, the district court abused its discretion when it granted Seka's Motion for New Trial.

1. **Hamilton's Fingernail Clippings**

First, some DNA from under one of the victim's, Eric Hamilton's, fingernail clippings were tested. Id. at 001843. Seka was excluded as a contributor to the DNA sample under Hamilton's nails. Id.; see also, 10 AA 002437-41. A second foreign contributor was found in the DNA sample. Id. Seka based his argument that he is entitled to a new trial on the fact that, although Hamilton was shot twice and there was no evidence of defensive wounds, the killer *may* have dragged Hamilton by his wrists and, thus, DNA *may* have transferred to Hamilton's hands and fingernails. 8 AA 001855-56. Seka's claims are meritless as they are speculative at best. Seka fails to address the speculative nature of his claim and his silence should be construed as

an admission that his claims are speculative and wholly unproven. Polk v. State, 126 Nev. 180, 185-86, 233 P.3d 357, 360 (2010).

Forensic scientist Craig King completed the 2018 analysis of certain items of evidence from Seka's trial. King testified that he analyzed Hamilton's fingernail clippings obtained at his autopsy in 1998. 7 AA 001680. This evidence was previously tested in 1999 by another LVMPD forensic scientist. Id. at 001680-81. In 1999, the forensic scientist tested what appeared to be blood on Hamilton's fingernail clippings and included Hamilton as a contributor to the DNA profile and excluded Seka as a possible contributor. Id. at 001681. King retested the clippings and, regarding the right hand clippings, found a mixture DNA profile, which he assumed came from two (2) individuals with one male profile present. Id. at 001682. King concluded that Hamilton's DNA profile was present in the sample and that the profile was 99% Hamilton's DNA and 1% belonged to an unknown individual. Id. at 001685-86. King testified that such a small amount of DNA could come from something as simple as shaking someone's hand. Id. at 001686-87. Seka was excluded as a contributor. Id. at 001690. King's conclusion was the same as to the left hand fingernail clippings. Id. at 001692-93.

As an initial matter, King never verified that there was in fact a second DNA profile under Hamilton's fingernails. King testified that there was a very, very limited amount of DNA in the sample. Id. at 001686. King also testified that there

were two locations where there could *possibly* be a second person. Id. King stated that he erred on the side of caution and ran the test under the assumption there was a second DNA profile. Id. at 001687. The district court also confirmed with King that "possibly there wasn't additional DNA, but [he] can't rule it out so [he left] it in there." Id. at 001689. Essentially, King has no idea if there was a second DNA profile contained under Hamilton's fingernails, he is merely assuming so because there was a slight anomaly in his testing. Seka provides no other evidence or argument which demonstrates that a second DNA profile was present. Therefore, Seka cannot even demonstrate that there is in fact another DNA profile under Hamilton's fingernails and his claim fails.

Despite Seka's contention, the fact that there was DNA under Hamilton's fingernails and the fact that Seka was excluded as a source of that DNA was presented to the jury at trial. 3 AA 000655-56. Seka's claims otherwise are wholly false. Further, the fact that this evidence underwent a new type of testing with the same result does not de facto make the results newly discovered evidence. Therefore, this evidence is not newly discovered, is cumulative and, thus, not appropriately raised in a motion for new trial. See NRS 176.515. Further, as this evidence was presented to the jury at trial, Seka fails to demonstrate a reasonable probability that this evidence would have changed the outcome at trial. Sanborn, 107 Nev. at 406, 812 P.2d at 1284-85. The jury heard evidence that Seka's DNA was not underneath

Hamilton's fingernails. The jury still convicted Seka of the murder of Hamilton based on all the other evidence presented at trial. Additionally, this evidence does not exonerate Seka as he claims. Even if there was an additional contributor to the DNA under Hamilton's fingernails, Seka cannot definitively state when or how this DNA got under Hamilton's fingernails. Instead, he relies on speculation that the killer's DNA may have transferred to Hamilton's hands or nails when his body was being dragged. As Seka provides no evidence that this in fact happened and cannot even demonstrate that the DNA must belong to the killer, he cannot demonstrate that this evidence is favorable to the defense or that there is a reasonable probability this evidence would have rendered a different outcome at trial. Therefore, his claim fails.

2. Hair Under Hamilton's Fingernails

Hairs found under Hamilton's nails were also tested. 8 AA 001843. At the evidentiary hearing, King testified that the hairs under Hamilton's fingernails were tested in 1999 and that Hamilton was included as the source of the blood on the hairs while Seka was excluded. 7 AA 001693-94. King testified that he retested the hairs in 2018 and that Hamilton was the only contributor to the DNA profile from the hairs. Id. at 001696-97. King also testified that all of the hairs were black and consistent with hair from an African American individual. Id. at 001698. King also testified that it was 3.24 billion times more likely that the hairs came from Hamilton than a random individual. Id.

At trial, it was stated that Hamilton could not be excluded as a source of that hair and that the probability of the hair coming from another African American individual was one in 2.8 million. 3 AA 000623. The hair was identified as coming from an African American individual and Seka is Caucasian. Therefore, Seka was excluded as being a possible source of that hair at trial, although Seka claims this is "newly discovered" evidence. The fact that this evidence underwent a new type of testing with the same result does not de facto make the results newly discovered evidence. As this evidence was presented to the jury at trial, Seka fails to demonstrate a reasonable probability that this evidence would have changed the outcome at trial. Sanborn, 107 Nev. at 406, 812 P.2d at 1284-85. It has since been determined that Hamilton was the source of the hair. 10 AA 002442-44. The fact that the victim's own hair was found under his fingernails is not exculpatory evidence, as it does not demonstrate a reasonable probability that the outcome at trial would have been different. Therefore, Seka's claim fails.

3. Cigarette Butts, Skoal container and beer bottle

There were cigarette butts collected from the site where Hamilton's body was found. 8 AA 001843-44. Both Hamilton and Seka were excluded as contributors to the DNA samples on the cigarettes. Id. at 001844. A Skoal container was also collected from the site where Hamilton's body was found. Id. Both Hamilton and Seka were excluded as possible contributors to the DNA samples on the container.

Id. Beer bottles were also collected from the site where Hamilton's body was found. Id. at 001844-45. Seka, Limanni and Hamilton were all excluded as possible sources of the latent prints on the bottle and Hamilton and Seka were excluded as possible sources of the DNA sample on the bottle. Id. Further, the DNA sample was identified as female. Id. at 001844.

King examined the two (2) cigarette butts found in the general area where Hamilton's body was located. 7 AA 001674-75. These items had been previously tested by a different LVMPD forensic scientist in 1999. Id. at 001675. There was no DNA material detected on the items back in 1999 and King confirmed that he found no DNA material on the first cigarette butt. Id. at 001675-76. King testified that he obtained a partial DNA profile from the second cigarette butt and both Hamilton and Seka were excluded as contributors to the DNA profile. Id. at 001678-79.

King also examined the Skoal container as well as the beer bottles. Id. at 001714. King testified that he was concerned with testing those items for DNA because, at the time they were originally tested, the technique for testing for latent prints, known as "huffing" could contaminate any DNA profiles on the item. Id. at 001714-15. Huffing occurs when the latent fingerprint analyst breathes onto the item in order to create condensation to better visualize if a latent print is present. Id. at 001715. Further, testing for touch DNA was not possible at the time of Seka's trial and, therefore, there was not a concern with preserving such evidence or preventing

contamination. Id. King testified that there was a possibility that the fingerprint examiner's DNA could have transferred onto the evidence items. Id. King also testified that, based on procedures used prior to touch DNA testing, the examiner may not have worn gloves or may have worn the same gloves while touching multiple items of evidence, thereby contaminating these items. Id. at 001716. King also stated that examiners during that time would use the same fingerprint brush to dust for fingerprints on multiple items of evidence and that would potentially lead to cross-contamination. Id.

Essentially, Seka argues that because LVMPD, out of an abundance of caution, collected certain trash items that *could* have been relevant to the crime scene, the fact that these items did not have Seka's DNA or fingerprints is exculpatory and demonstrates that he should receive a new trial. 8 AA 001856-57. However, just because there were trash items located near the site where Hamilton was found does not make them relevant to the crime scene or even definitively mean that there will be DNA or fingerprint evidence from the individual involved in the crime. Further, Seka does not even argue that these items were related to the crime or the perpetrator. Instead, he merely states that because police collected the items and these items did not have Seka's DNA on them, this must show that there was an alternate suspect. Seka's claims are meritless.

Seka has failed to demonstrate that these items are related to the crime scene at all or that the 2018 DNA testing was reliable. The validity of the DNA testing of these trash items in 2018 is questionable at best. King testified that, because touch DNA was not testable in 1999, the methods for collecting fingerprints and other types of DNA evidence would compromise touch DNA evidence. 7 AA 001714-16. Therefore, any DNA evidence collected after these techniques were used would be compromised and potentially unreliable. Further, Hamilton's body was dumped on the side of the road. According to the crime scene diagram shown to the jury at trial, most of the trash items collected were not even near the body. One of the cigarette butts, marked 2 on State's Exhibit 79, was located approximately 25-30 feet away from Hamilton's body. 11 AA 002630-31. The Skoal tobacco container, marked 3 on State's 79, was located approximately 20 feet away from the body. Id. Finally, the beer bottles, marked 4 and 5 on State's 79, were located approximately 30-35 feet and 120 feet away from the body respectively. Id. The State never argued at trial that the items were somehow related to the murder or would lead to identifying the killer of Hamilton. It is laughable to think that these items might be related to the crime scene. As Seka provides no evidence that this evidence was not just unrelated trash discarded on the side of the road and cannot even demonstrate that any DNA must belong to the killer, he cannot demonstrate that this evidence is favorable to the defense or that there is a reasonable probability this evidence would have

rendered a different outcome at trial. Sanborn, 107 Nev. at 406, 812 P.2d at 1284-85. Therefore, his claim fails.

4. Baseball Hat

Hamilton's baseball cap was collected from the air conditioning business and not tested for DNA at the time of trial. 8 AA 001845. In the recent testing, Hamilton's DNA was identified as well as two unknown profiles. Id. However, at the evidentiary hearing, King testified that he had not tested the baseball hat. 7 AA 001699. King also testified that the evidence bag containing the hat was not properly sealed and there was no way to tell how many times the package had been opened or closed based on its condition. Id. at 001700. King testified that, based on the condition of the bag, LVMPD's forensic lab would refuse the evidence because there would be concerns as to the integrity of the evidence inside. Id. at 001705. King also testified that he would be concerned because the evidence package was opened at trial and was still in an unsealed condition in 2018 and, therefore, the jurors would have been able to physically handle and/or talk over the hat and transfer DNA during their deliberations. Id. at 001707-08; 3 AA 000562. King also testified that he did not place the DNA profiles into CODIS because "CODIS will only allow us to enter in profiles that we believe to be attributed to a *suspect*…." Id. at 001710. Thus, because King did not believe the DNA profile belonged to a suspect, he did not enter

the profile into CODIS. In fact, Seka's own expert confirmed that there were many ways for DNA mixtures to get onto the baseball hat:

> Q. You have also heard, let's assume that the hat did go back to the jury room and multiple jurors touched the hat. Would that assumption -- would you expect to find jurors' DNA on the hat?
> A. Under your hypothesis of multiple jurors, I would expect some DNA to also be transferred there. I would also -- my experience is even if people don't handle
> a hat after a crime, we often get mixtures on hats. So I think people swap hats -- the hat salesman, hat manufacturer, who knows. So it's not uncommon to have mixtures. Whether the minor components come after a criminal act or before a criminal act really doesn't matter to my work.

7 AA 001735. Further, Seka's expert confirmed that, without other evidence, there is no way to tell when a DNA profile was left on the hat. Id. at 001736.

Seka does not even attempt to argue how other DNA evidence on Hamilton's hat, which consisted of a mixture of at least three individuals and did not exclude Seka, creates a reasonable probability that the outcome at trial would be different. Sanborn, 107 Nev. at 406, 812 P.2d at 1284-85. Further, Seka cannot make such a demonstration because there is no way to tell when these DNA samples were transferred to the hat and, thus, any individual Hamilton came into contact with could have contributed to those DNA samples. Therefore, Seka's claim fails.

/ / /

/ / /

5. Fingerprints

Seka complains that there were latent fingerprints from the Beck's beer bottle, a piece of lumber at the scene where Hamilton's body was found, a purse found in the ceiling of the business, and various doors and windows in the business were not examined. 8 AA 001845. However, even now Seka cannot show who these fingerprints belonged to our that a latent print comparison would have shown these prints were related to the investigation. In fact, Seka falsely claims that the evidence includes a single unknown individual, trying to insinuate to this Court that one alternative suspect has appeared. Respondent's Answering Brief ("RAB") at 28. However, there has been no comparison of the fingerprint evidence or the alleged DNA evidence for that matter to determine if they came from one individual. 8 AA 001856. Therefore, this evidence does not exonerate Seka as he claims. Seka's continued attempts to mislead this Court as to the veracity of the evidence fail.

The beer bottle and the purse did not belong to either the victims or Seka and so it is to be expected that there could be fingerprints from other sources on these items. Further, Seka's claim that all fingerprints found near the windows and doors of Limanni's air conditioning business is meritless, as any one of their customers, vendors, employees, friends, family, etc., could have accessed the business and left a fingerprint in those areas at any time, as noted by Seka in his motion. See id. at 001860. The fingerprint on the lumber, which came from the business, could also

have come from one of these individuals and could have been transferred to the lumber at any time prior to the murders. There is no indication that any fingerprint comparison would have pointed to an alternate suspect or was in any way favorable to the defense. Therefore, Seka cannot demonstrate that this evidence was favorable to the defense and his claim fails.

As Seka points out, the State did not rely on DNA evidence in proving Seka's guilt. Id. at 001850-51. Instead, witnesses testified as to the relationship between Seka and the victims, other physical evidence and Seka's own inconsistent stories and behavior to attempt to hide evidence demonstrated that he committed the crime. Moreover, Seka admits that the DNA does not implicate anyone else in the commission of the crime. Id. at 001856. Therefore, there is not a reasonable probability that the result at trial would have been different and this evidence is not material to the defense. Sanborn, 107 Nev. at 406, 812 P.2d at 1284-85. Thus, Seka has failed to demonstrate several of the Sanborn factors as to each item of "newly discovered" evidence and the district court abused its discretion when it granted Seka's Motion for New Trial.

Even if this Court were to find that Seka is entitled to a new trial as to the Hamilton murder, Seka is not entitled to a new trial as to the Limanni murder. All of the items of evidence that were retested for the presence of DNA related to items that were either found at the scene of where Hamilton was murdered at 1929 Western

or found where Hamilton's body was located on South Las Vegas Boulevard. Despite this fact, the district court granted a new trial as to all four counts that Seka was convicted of which included two counts where Peter Limanni was the victim (a Second Degree Murder with use of a Deadly Weapon count ((Count 2)) as well as one count of Robbery ((count 4)). In the event this Court finds that the district court did not abuse its discretion when it granted the motion as to the Hamilton murder, this Court must find the district court abused its discretion as it relates to the Limanni murder/robbery. However, the State maintains that the district court abused its discretion when it granted Seka's Motion for New Trial as to both murders.

b. There was sufficient evidence presented at trial to convict Seka without the DNA evidence and, therefore, the district court abused its discretion when it determined Seka was entitled to a new trial.

Seka claims that the sufficiency of the evidence in support of Seka's conviction is irrelevant to his claim. RAB at 50-57. However, the sufficiency of the evidence in support of Seka's conviction goes directly to the reasonable probability of a different outcome in the face of the DNA evidence. The standard of review for sufficiency of the evidence upon appeal is whether the jury, acting reasonably, could have been convinced of the defendant's guilt beyond a reasonable doubt. Edwards v. State, 90 Nev. 255, 258-259, 524 P.2d 328, 331 (1974). In reviewing a claim of insufficient evidence, the relevant inquiry is "whether, after reviewing 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." Origel-Candid v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998) (quoting Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984)); see also Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979).

Moreover, "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." Origel-Candido, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (quoting McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992)); see also Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221 (1979) (holding that it is the function of the jury to weigh the credibility of the identifying witnesses); Azbill v. Stet, 88 Nev. 240, 252, 495 P.2d 1064, 1072 (1972) (concluding that the weight and sufficiency of the evidence are questions for the jury; its verdict will not be disturbed if there is evidence to support it and the evidence will not be weighed by an Appellate Court) (cert. denied by 429 U.S. 895, 97 S. Ct. 257 (1976)). Thus, 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" is preserved. 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, this 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)); see also Mulder v. State, 116 Nev. 1, 15, 992 P.2d 845, 853 (2000) ("The trier of fact determines the weight and credibility to give conflicting testimony.").

There was both direct and circumstantial evidence linking Seka to both murders. When police found Hamilton's body, he had a piece of paper in his pocket with the name "Jack" on it and a telephone number which came back to Seka's place of employment. 3 AA 000521-22; 4 AA 000901-02, 000904. Further, Hamilton's body was covered by lumber from the business and Seka's fingerprint was on the lumber covering both Hamilton and Limanni's bodies. 3 AA 000518; 5 AA 001011, 001015-16, 001019-22. Seka was also driving the Toyota pickup truck which had tires matching the tire tracks left at the location where Hamilton's body was dumped. 4 AA 000823-24; 5 AA 001030-35, 001040-44. Hamilton's blood was also located in the truck. 3 AA 000619. Moreover, after being interviewed by police, Seka tried to leave the business with the company van containing Limanni's blood. 3 AA 000614; 5 AA 001079-82. Seka also admitted to Thomas Cramer that he murdered Limanni. 4 AA 000775-77, 000781-82.

Additionally, Seka lied to police and said that Limanni was out of town with his girlfriend when Seka knew that Jennifer Harrison had been looking for Limanni. 2 AA 000460-61; 4 AA 000825. Limanni's personal documents and credit cards

were also recovered from inside the business, where Seka admits only he and Limanni had access to. 3 AA 000526-27; 11 AA 002610-11. Harrison also testified that Limanni's dog, Jake, was always with Limanni and that he would not have left Jake with Seka. 2 AA 000459, 000464. Moreover, after the police left the business after their initial search, Seka was left alone in the business and a bullet from the table disappeared and burnt clothing and other miscellaneous items appeared in the dumpster when police returned to search the business again later that day. 2 AA 000375-76; 3 AA 000523, 000534-35, 000585-86; 4 AA 000827-28, 000846-47, 000850-52. Seka also wrote a to-do list which talked about liquidating the company's assets and finding a new home for Jake. 11 AA 002603. This list was dated prior to Limanni's body being discovered in December of 1998. 3 AA 000508-10; 4 AA 000758.

There was more than sufficient evidence to sustain Seka's convictions for both murders. Therefore, there is not a reasonable probability that the result at trial would have been different. Sanborn, 107 Nev. at 406, 812 P.2d at 1284-85. Thus, because there was more than sufficient evidence to sustain Seka's conviction without the DNA evidence, and because Seka has failed to demonstrate that the result of trial would have been different, the district court abused its discretion when it granted Seka's Motion for New Trial.

/ / /

CONCLUSION

Based on the foregoing, the State respectfully requests that this Court reverse the district court's granting of Seka's Motion for a New Trial.

Dated this 3rd day of December, 2020.

Respectfully submitted,

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

BY */s/ Alexander Chen*
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #010539
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500

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 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the type-volume limitations of NRAP 32(a)(8)(B) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points and contains 4,557 words and 373 lines of text.
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 3rd day of December, 2020.

Respectfully submitted

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

BY */s/ Alexander Chen*

ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #010539
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on December 3, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

PAOLA M. ARMENI, ESQ.
JENNIFER SPRINGER, ESQ.
Counsels for Respondent

ALEXANDER CHEN
Chief Deputy District Attorney

/s/ E. Davis
Employee, Clark County
District Attorney's Office

AC/Skyler Sullivan/ed