No. 80925

IN THE NEVADA SUPREME COURT

Electronically Filed
Aug 30 2021 02:59 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

The State of Nevada,

Appellant,

v.

John Joseph Seka,

Respondent.

On Appeal from the Order Granting Motion for New Trial
Eighth Judicial District, Clark County (CR 99C159915)
Honorable Kathleen Delaney, District Court Judge

Brief of Nevada Attorneys for Criminal Justice as amicus curiae in support of respondent and en banc reconsideration

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Docket 80925 Document 2021-25194

NRAP 26.1 DISCLOSURE

I hereby disclose the following attorneys and law firms under Nevada Rule of Appellate Procedure 26.1(a) so the judges of this Court may evaluate possible disqualification or recusal.

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STATEMENT OF AMICUS CURIAE

The Nevada Attorneys for Criminal Justice ("NACJ") respectfully submits this brief as amicus curiae in support of Mr. Seka's petition for en banc reconsideration. NACJ is a state-wide, non-profit organization of criminal defense attorneys. The organization's mission is to ensure accused and convicted persons receive effective, zealous representation through shared resources, legislative lobbying, and intra-organizational support. This includes filing amicus briefs in state and federal court, where appropriate. Members of NACJ represent numerous criminal defendants throughout the State of Nevada, some of whom are actively pursuing litigation under the genetic marker statutes at issue in this appeal. NACJ therefore has a substantial interest in the Court correctly interpreting the genetic marker statutes. NACJ therefore respectfully submits this amicus brief to assist the Court in resolving Mr. Seka's petition for en banc reconsideration. NACJ is filing a corresponding motion for leave to file this amicus brief.

Introduction and Summary of Argument

This appeal requires the Court to interpret the genetic marker statutes, NRS 176.0918 et seq. Under these provisions, a convicted defendant may file a post-conviction petition requesting new DNA testing. As a threshold matter, the petitioner generally needs to explain why the requested testing might produce exculpatory results that would've been material at trial—in other words, why the proposed testing might end up being helpful to the petitioner. The statute sets a low materiality standard: the petitioner need only demonstrate "a reasonable *possibility*" the hypothetical exculpatory results would've impacted the trial. NRS 176.0918(3)(b) (emphasis added).

If the petitioner satisfies this standard, the district court must order testing. NRS 176.09183(1)(c)(1). If the DNA results "are favorable to the petitioner," the petitioner may then file an otherwise out-of-time motion for a new trial, and presumably the motion should succeed. NRS 176.09187(1).

This appeal turns on the definition of "favorable." According to the panel, exculpatory DNA results are "favorable" only if they make "a different result . . . reasonably *probable*." Slip op. at 14 (emphasis added).

The panel erred by imposing this heightened materiality standard. The statutory text specifies its own, lower materiality standard—a reasonable *possibility* standard. That standard is decidedly more favorable to petitioners. *See James v. State*, 137 Nev. Adv. Op. 38, __ P.3d __, at *4 (2021). But the panel overrode that legislative standard and improperly backdoored a more prosecution-friendly standard into the text through the term "favorable."

The Court should grant en banc reconsideration for this exceptionally important issue. *See* Nev. R. App. P. 40A(a). Innocent petitioners across the State rely on the genetic marker statutes as a check on wrongful convictions and a means to secure new trials—just as the legislature intended. The panel decision subverts the statute, foreclosing petitioners from receiving relief to which they'd otherwise be entitled. The en banc Court should resolve this critical issue.

ARGUMENT

The genetic marker statutes allow a petitioner to pursue DNA testing if there's a "reasonable possibility" exculpatory results would've been material at trial. Likewise, DNA results are "favorable" if they satisfy the same statutory materiality standard. The panel decision erroneously holds petitioners to a higher standard. En banc review is needed to ensure petitioners retain full access to this vital post-conviction tool.

I. The genetic marker statutes provide for DNA testing when it's reasonably *possible* the results would be material.

Nevada law authorizes petitioners to pursue post-conviction DNA testing. Under the genetic marker statutes, "[a] person convicted of a felony . . . may file a postconviction petition requesting a genetic marker analysis of evidence within the possession or custody of the State which may contain genetic marker information relating to the investigation or prosecution that resulted in the judgment of conviction." NRS 176.0918(1). Put simply, a petitioner can seek post-conviction DNA testing on potentially relevant evidence.

To secure testing in the first instance, the petitioner must satisfy various statutory requirements. Among others, the petitioner must

explain in the petition "why a reasonable *possibility* exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through" the proposed DNA testing. NRS 176.0918(3)(b) (emphasis added); *see also* NRS 176.09183(1)(c)(1) (repeating the "reasonable possibility" standard). In other words, the petitioner needs to explain why the DNA testing might hypothetically produce exculpatory results, and why those hypothetical exculpatory results would've been material under a "reasonable possibility" standard.

If the district court concludes the petitioner satisfies the "reasonable *possibility*" standard (and the other statutory requirements), the district court must order testing. NRS 176.09183(1)(c)(1) (emphasis added).

Once the testing is done, "If the results of [the] genetic marker analysis . . . are *favorable*," then a petitioner may file a motion for a new trial based on newly discovered evidence, even if the motion would otherwise be untimely. NRS 176.09187(1) (emphasis added). On the other hand, if the results "are not *favorable* to the petitioner," then the petitioner cannot file an out-of-time new trial motion, and the court must dismiss the petition. NRS 176.09183(5)(b) (emphasis added). The issue in this appeal is how to define the statutory term "favorable."

A concrete (but theoretical) example may help illustrate how the statute works. Assume a culprit committed a home invasion and robbery. The culprit threatened the home's occupants with a knife and accidentally cut himself during the incident. The police processed the scene and took swabs of apparent blood stains. Based on a tip from a confidential informant, the police interrogated the defendant; he confessed, but he ultimately recanted. Due to neglect, no DNA testing took place leading up to trial. The jury convicted the defendant, largely based on his subsequently recanted confession (along with other weak circumstantial evidence).

Assume this defendant files a post-conviction petition for genetic marker analysis seeking DNA testing on the blood stains. The defendant might argue that if the testing generates a DNA profile and the defendant (and the home's occupants) can be excluded as the source of the DNA profile, then those results would suggest an unknown suspect committed the crime (because the blood presumably came from the culprit). The defendant might argue testing is necessary because there's a "reasonable possibility" the potential exculpatory results (i.e., a DNA profile that doesn't match the defendant or the home's occupants) would've made a

difference at trial. For its part, the State might oppose DNA testing, arguing the defendant cannot show a "reasonable possibility" of a different outcome because the defendant confessed.

Assume the court concludes there's a "reasonable possibility" the hypothetical exculpatory results would've been material. The court then orders the crime lab to conduct DNA testing on the swabs from the blood stains. The lab conducts the testing, and in fact the results are exactly what the defendant predicted: the DNA in the blood couldn't have come from the defendant or the home's occupants and instead must've come from some unknown person, who was likely the culprit.

At that stage, the defendant might file a motion for a new trial. If the DNA results were "favorable," then the motion is necessarily timely (even if it falls outside the otherwise applicable two-year time limit), and presumably the defendant should win the motion on its merits. Again, the issue in this appeal is how to define the statutory term "favorable."

II. DNA results are favorable if it's reasonably *possible* they would've been material.

The genetic marker statutes require testing if the petitioner demonstrates a reasonable *possibility* exculpatory results would've led to a different verdict. By the same token, if a court authorizes testing and the results are indeed exculpatory, those results are "favorable" within the meaning of the statute. Thus, the same materiality standard flows through the entire statutory scheme—(1) DNA testing is warranted, and (2) the results of DNA testing are favorable—if there's a reasonable *possibility* the results would've made a difference at trial.

Multiple canons of construction and other interpretive aids support this conclusion.

A. The ordinary meaning of "favorable" should apply.

The statutory term "favorable" isn't a legal term of art but instead has an ordinary meaning. The panel decision gives the term an unusual, atypical definition. The Court should grant en banc reconsideration and apply the ordinary meaning of the statutory text.

"Words are to be understood in their ordinary, everyday meanings—unless the context indicates that they bear a technical sense."

Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 69 (2012) (hereinafter "Reading Law"). This "is the most fundamental semantic rule of interpretation." *Id.* The rule avoids the need "to divine arcane nuances or to discover hidden meanings." *Id.* When a word or phrase "has a commonly understood, plain meaning," a court should apply that meaning. *Sheriff v. Burcham*, 124 Nev. 1247, 1255, 198 P.3d 326, 331 (2008).

The word "favorable"—the statutory word at issue in this appeal—has a common, ordinary meaning. Its definition includes synonyms like "agreeable," "regards with favour," "inclined to countenance or help," "partial," "[t]ending to palliate or extenuate," "facilitating one's purpose or wishes," "advantageous," and "helpful." *Favorable*, Oxford English Dictionary (2021), available at https://bit.ly/3z4alQQ. Applied in this context, DNA results are "favorable" to a petitioner if they're "helpful" and "advantageous" to the defense, because they "tend[] to" exculpate the petitioner.

The criminal law uses the term "favorable" in this sense in other contexts. For example, *Brady v. Maryland*, 373 U.S. 83 (1963), requires the prosecution to disclose evidence that's favorable to the defense,

regardless of whether the evidence is material. "Any evidence that would tend to call the government's case into doubt is favorable for *Brady* purposes." *Milke v. Ryan*, 711 F.3d 998, 1012 (9th Cir. 2013). "[W]hether evidence is favorable is a question of substance, not degree, and evidence that has any affirmative, evidentiary support for the defendant's case or any impeachment value is, by definition, favorable." *Comstock v. Humphries*, 786 F.3d 701, 708 (9th Cir. 2015). "[E]vidence is favorable to a defendant even if its value is only minimal." *Id.*

"Favorable" has the same meaning in the DNA statutes. At the pre-testing stage, the petitioner must explain what the exculpatory DNA results might be, and why it's reasonably possible those hypothetical exculpatory results would've impacted the trial. Once the testing takes place, the court needs to evaluate whether the results are helpful to the defense in the manner the petitioner originally hypothesized. If so, then the results are "favorable" within the meaning of the statutes, and a motion for a new trial is appropriate (and should generally succeed on the merits).

The panel decision ignores the ordinary meaning of "favorable." In the panel's view, DNA results are "favorable" only if they're "material," such that "had [the DNA evidence] been introduced at trial, a different

result would have been reasonably probable." Slip op. at 14. But the term "favorable" isn't synonymous with "material," much less a heightened materiality standard. To the contrary, "evidence is favorable to a defendant even if its value is only minimal." *Comstock*, 786 F.3d at 708. The panel ignored normal interpretive methods when it gave "favorable" a unique, atypical meaning, and the en banc Court should fix this error.

B. The statutory text should be read as a harmonious whole.

Even if the word "favorable" incorporates a materiality standard, the panel erred by adopting a "reasonable probability" standard. The genetic marker statutes expressly enact a petitioner-friendly "reasonable possibility" standard, not a prosecution-friendly "reasonable probability" standard. *See James*, 137 Nev. Adv. Op. 38 at *4 (discussing the lenient "reasonable possibility" standard). By mandating a higher standard, the panel failed to interpret the statutory scheme as a harmonious whole. The en banc Court should grant reconsideration, interpret the genetic marker statutes harmoniously, and conclude they apply the same materiality standard at each stage of the litigation.

Statutory "text must be construed as a whole." Reading Law at 167. A court should "consider the entire text, in view of its structure and of the physical and logical relation of its many parts." *Id.* Such a reading "best express[es] the meaning of the makers." *Id.* (cleaned up). "[T]he proper mode of discovering [a term's] true meaning is by comparing it with the other sections, and finding out the sense of one clause by the words or obvious intent of the other." *Id.* (cleaned up). This is a "holistic endeavor." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988). "A statute cannot be dissected into individual words, each one being thrown onto the anvil of dialectics to be hammered into a meaning which has no association with the words from which it has violently been separated." *Blackburn v. State*, 129 Nev. 92, 97, 294 P.3d 422, 426 (2013) (cleaned up); *see also Abramski v. United States*, 573 U.S. 169, 179 (2014) ("[W]e must (as usual) interpret the relevant words not in a vacuum, but with reference to the statutory context, structure, history, and purpose.") (cleaned up).

Other canons embody similar principles. "The provisions of a text should be interpreted in a way that renders them compatible, not contradictory." Reading Law at 180. "[T]here can be no justification for

needlessly rendering provisions in conflict if they can be interpreted harmoniously." *Id.* "[I]t is the duty of this court, when possible, to interpret provisions within a common statutory scheme harmoniously with one another in accordance with the general purpose of those statutes." *Torrealba v. Kesmetis*, 124 Nev. 95, 101, 178 P.3d 716, 721 (2008) (cleaned up); *see also Nevada State Dep't of Motor Vehicles v. Turner*, 89 Nev. 514, 517, 515 P.2d 1265, 1266 (1973) ("[L]egislative acts are to be construed so that all parts thereof are harmonious.").

Here, reading the statutory scheme as a single harmonious whole, the "reasonable possibility" standard applies at all stages of the litigation. A petitioner will typically initiate a genetic maker petition by identifying the items to be tested, explaining what the hypothetical exculpatory results might be, and arguing why those alleged results would've been material. If the court agrees and finds a "reasonable possibility" the hypothetical results would've affected the trial, then the court authorizes testing. If the results of the testing are exculpatory in the manner the petitioner hypothesized, then the results are "favorable," and the petitioner may file (and presumably should win) an otherwise out-of-time motion for a new trial. This reading harmonizes the statutory scheme by

applying the same materiality standard—the "reasonable possibility" standard—at every step of the litigation.

By contrast, the panel's interpretation erroneously highlights a single statutory term—"favorable"—and throws that word "onto the anvil of dialectics to be hammered into a meaning which has no association with the words from which it has violently been separated." *Blackburn*, 129 Nev. at 97, 294 P.3d at 426 (cleaned up). The result of the panel's blacksmithing is a new, atextual materiality standard—a "reasonable probability" standard—that expressly contradicts the actual statutory standard the legislature put in place. "[T]here can be no justification for needlessly rendering [these] provisions in conflict" when "they can be interpreted harmoniously." Reading Law at 180. The en banc Court should reconsider this case to resolve this disharmony.

C. The statutory text shouldn't produce absurd results.

By enacting different materiality standards for different points in the proceedings, the panel decision encourages needless litigation and requires wasteful forensic work. The en banc Court should review this

case and decline to interpret the statute in a manner that produces absurd results.

"A statute should be construed in light of the policy and the spirit of the law, and the interpretation should avoid absurd results." *Hunt v. Warden*, 111 Nev. 1284, 1285, 903 P.2d 826, 827 (1995). In deciding whether an interpretation would produce absurd results, the Court can consider the potential effect on the district courts' workloads. *See State v. Kopp*, 118 Nev. 199, 204, 43 P.3d 340, 343 (2002).

The panel decision's interpretation of "favorable" produces absurd results. A petitioner can secure DNA testing by convincing the district court the potential exculpatory results would've been material under a "reasonable possibility" standard. But under the panel's interpretation, even if the court orders testing and the results are exactly what the petitioner predicted, the petitioner may nonetheless be unable to convince the court the evidence is "favorable" under the heightened "reasonable probability" standard. Indeed, the petitioner might not be able to file a motion for a new trial *at all*, because the motion might theoretically be time barred (because the new evidence isn't "favorable," so the petitioner can't file an out-of-time motion). In that event, the DNA testing would've

been a pointless endeavor: the court would've ordered testing under a petitioner-friendly standard, but if the results don't satisfy a prosecution-friendly standard, then the petitioner has no way under the genetic marker statutes to put the results to practical use (or to even litigate the issue further).

This outcome qualifies as an absurd result the en banc Court should avoid. It would generate needless litigation if a petitioner may secure DNA testing under a beneficial pre-testing standard, but if the petitioner must then argue against a heightened post-testing standard just to file a new trial motion (and then to secure actual relief). Meanwhile, DNA testing can be time- and labor-intensive; it makes little sense if the statute requires wasteful DNA testing on the front end that, even if fully exculpatory, might not benefit the petitioner in a concrete fashion on the back end. The testing process can also be expensive; if the results aren't "favorable," then the petitioner is on the hook to pay. NRS 176.09187(3). It would be unfair for a court to order testing under the "reasonable possibility" standard, then require payment from the petitioner even if the results are as expected, simply because they don't satisfy the more challenging "reasonable probability" standard.

By contrast, none of these absurd results arises if the statutory "reasonable possibility" standard flows through the entire legislative scheme. Under that interpretation, a petitioner may secure testing by satisfying the reasonable possibility standard on the front end; if the results are what the petitioner predicted, then the results are "favorable," and they support an out-of-time new trial motion on the back end. The en banc Court should reconsider this case and adopt this understanding.

D. The legislature specifically rejected a "reasonable probability" standard.

The legislature made a conscious decision to adopt a petitioner-friendly "reasonable possibility" standard, not a prosecution-friendly "reasonable probability" standard. The en banc Court should grant review to ensure the statute's meaning matches the legislative intent.

"[I]f the statutory language is subject to two or more reasonable interpretations, the statute is ambiguous, and we then look beyond the statute to the legislative history and interpret the statute in a reasonable manner in light of the policy and the spirit of the law." *Pawlik v. Shyang-Fenn Deng*, 134 Nev. 83, 85, 412 P.3d 68, 71 (2018) (cleaned up). Although the Court sometimes declines to consider legislative history when

a statute is unambiguous, "ambiguity is not always a prerequisite to using extrinsic aids." *A.J. v. Eighth Jud. Dist. Ct.*, 133 Nev. 202, 206, 394 P.3d 1209, 1213 (2017) (cleaned up). "[C]ourts even have concluded that statutory interpretation necessarily begins with consideration of the legislative history to uncover any indications of legislative intent." *Id.* (cleaned up). "[S]tatutes with a protective purpose should be liberally construed in order to effectuate the benefits intended to be obtained." *Id.* (cleaned up).

Here, the legislature enacted the initial version of Nevada's genetic marker statutes in 2003 based on "the nationwide concern about the possibility of executing an innocent person." Minutes, Senate Comm. on Judiciary, 2003 Leg., 72d Sess. (May 22, 2003) (statement of Sheila Leslie) (available at https://bit.ly/3iocKzV). The legislature believed the bill would "provide a very important safeguard" against wrongful executions. *Id.* Although the statutes originally applied only to capital inmates, the legislature has twice broadened the law to apply to additional non-capital petitioners. *See* A.B. 179, 75th Sess., 2009 Stat. 1197; A.B. 233, 77th Sess., 2013 Stat. 1409.

Back in 2003, the legislature considered applying a heightened materiality standard that would require a petitioner to demonstrate "a reasonable *probability* exists that the petitioner would not have been prosecuted" based on exculpatory DNA results. Minutes, Assembly Comm. on Judiciary, 2003 Leg., 72d Sess. (Mar. 20, 2003) (statement of Allison Combs) (available at https://bit.ly/2WQeWrv) (emphasis added). But the legislature decided to change the language to require only a reasonable *possibility* of a different outcome. *Id.* When it made the change, the legislature explicitly recognized the new language was "a little bit broader" and "expanded the definition rather dramatically." *Id.* (statement of Chairman Bernie Anderson). But the legislature consciously decided to rewrite the statutory text in this manner.

The panel decision fails to respect this legislative history. The legislature knew the difference between the "reasonable possibility" and "reasonable probability" standards. It specifically made the petitioner-friendly choice. By interpreting "favorable" to mean "reasonable probability," the panel reads back into the statute the prosecution-friendly "reasonable probability" standard the legislature expressly rejected. The en banc Court should correct this mistake.

E. The panel unpersuasively relies on the canon against abrogating the common law.

In its decision, the panel invokes only one canon of construction to support its definition of "favorable." Its reasoning is unpersuasive.

According to the panel, when a litigant files a motion for a new trial based on new evidence in other contexts, the litigant generally needs to show the new evidence is "material," "such as to render a different result probable upon retrial." Slip op. at 13-14 (quoting *Sanborn v. State*, 107 Nev. 399, 406, 812 P.2d 1279, 1284 (1991)); *see also id.* (explaining that if the new evidence is impeachment evidence, the litigant must show "a different result would be reasonably probable") (quoting *Sanborn*, 107 Nev. at 406, 812 P.2d at 1284-85). In the panel's view, the genetic marker statutes should be read "in concert with this long-honored caselaw," so the panel defined "favorable" as adopting a "reasonable probability" standard. *Id.*

The panel misapplied this canon. To start, the panel erroneously assumed the *Sanborn* standard necessarily applies to all motions for a new trial based on new evidence. Based on that assumption, the panel concluded the same standard should apply in the context of DNA

evidence. But *Sanborn* doesn't govern every category of new trial motion based on new evidence. *See, e.g.*, *Brioady v. State*, 133 Nev. 285, 288-90, 396 P.3d 822, 824-25 (2017) (reversing the denial of a motion for new trial based on new evidence of juror misconduct, without any discussion of *Sanborn*); *Jones v. State*, 108 Nev. 651, 657-59, 837 P.2d 1349, 1353-54 (1992) (reversing the denial of a motion for new trial based on "allegations of impropriety" by the police, without any discussion of *Sanborn*). Because different standards apply in different contexts, there was no need to apply the canon in this specific context. The panel also referenced a "century" of relevant common law, but the only century-old case it cited was a *civil* case involving a *family law* proceeding. Slip op. at 13 (citing *Whise v. Whise*, 36 Nev. 16, 24, 131 P. 967, 969 (1913)). Surely the common law would accommodate different standards for civil family disputes on the one hand, and criminal cases involving new DNA evidence on the other hand.

Even if *Sanborn* might conceivably apply here by default, the legislature clearly altered the relevant common law standards for new trial motions brought under the genetic marker statutes. Although the Court generally "will not read a statute to abrogate the common law," it will do

so if there's "clear legislative instruction." *First Fin. Bank v. Lane*, 130 Nev. 972, 978, 339 P.3d 1289, 1293 (2014); slip op. at 14 (citing *First Fin. Bank*); *see also* Reading Law at 318 (explaining a legislature should act with "clarity" when it alters the common law); slip op. at 14 (citing Reading Law). Here, the legislature acted clearly when it chose a "reasonable possibility" standard to govern the genetic marker statutes. The panel should've respected that choice.

In any event, assuming this canon could arguably support the panel's decision, the panel erred by applying this sole interpretive technique to the exclusion of all others. "No canon of interpretation is absolute. Each may be overcome by the strength of differing principles that point in other directions." Reading Law at 59. Here, all the other relevant principles—the ordinary meaning of "favorable," the need to read statutes harmoniously, the goal of avoiding absurd results, and the straightforward legislative history—support applying the "reasonable possibility" standard consistently throughout the statutory framework. The Court should grant en banc review and adopt that interpretation.

III. This issue is highly significant to petitioners, so en banc reconsideration is appropriate.

It's critically important the Court correctly interpret the genetic marker statutes. En banc review is needed.

Under the Court's rules, en banc reconsideration is warranted when "the proceeding involves a substantial precedential, constitutional or public policy issue." Nev. R. App. P. 40A(a). The definition of "favorable" in the genetic marker statutes satisfies these criteria. Petitioners throughout Nevada have a concrete stake in meaningful access to DNA testing and corresponding post-conviction remedies. The legislature explicitly enacted the genetic marker statutory framework as a mechanism to guarantee re-trials when new forensic evidence suggests a petitioner may have been wrongfully convicted. Defendants throughout the State have a vested interest in ensuring the DNA testing process ultimately allows for meaningful relief when the process produces new exculpatory results.

If not corrected, the panel's restrictive reading of the statute will harm untold petitioners who are currently pursuing, or who may in the future pursue, DNA testing as a means of eventually securing a new trial.

This public policy issue is fundamental to Nevada's criminal justice system and post-conviction processes. The Court should grant en banc reconsideration to address this issue.

CONCLUSION

The Court should reconsider this case en banc.

Dated August 30, 2021.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I hereby certify this brief complies with the formatting requirements of Rule 32(a)(4), the typeface requirements of Rule 32(a)(5), and the type style requirements of Rule 32(a)(6). This brief has been prepared in Microsoft Word using a 14-point proportionally spaced font (Century Schoolbook) in plain, roman style.

2. I further certify this brief complies with the page- or type-volume limitations of Rule 32(a)(7) because, excluding the parts of the brief exempted by Rule 32(a)(7)(c), it has been prepared with a proportionally spaced font and contains only 4,300 words.

3. I further certify 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 this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular Rule 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 I may be subject to sanctions in the event the

accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated August 30, 2021.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/Jeremy C. Baron
Jeremy C. Baron
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2021, I electronically filed the foregoing with the Clerk of the Nevada Supreme Court by using the appellate electronic filing system.

Participants in the case who are registered users in the appellate electronic filing system will be served by the system and include Alexander G. Chen, John T. Fattig, Aaron D. Ford, Paola M. Armeni, and Jennifer Springer.

/s/ Richard D. Chavez
An Employee of the
Federal Public Defender