IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL PHILLIP ANSELMO, No. 81382

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

_____/

RESPONDENT'S PETITION FOR REHEARING

HOLLAND & HART LLP
J. Robert Smith
Sydney R. Gambee
Jessica E. Whelan
995 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

ROCKY MOUNTAIN
INNOCENCE CENTER
Jennifer Springer
358 South 700 East, B235
Salt Lake City, Utah 84102

ATTORNEYS FOR APPELLANT

CHRISTOPHER J. HICKS
Washoe County District Attorney

MARILEE CATE
Appellate Deputy
One South Sierra Street
Reno, Nevada 89501

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

Pages

TABLE OF AUTHORITIES

Pages

Cases

Statutes

Rules

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL PHILLIP ANSELMO, No. 81382

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

_____/

RESPONDENT'S PETITION FOR REHEARING

I. THE COURT'S PUBLISHED OPINION AND BASIS FOR REHEARING

On March 10, 2021, a panel of this Court issued a published decision in the above-entitled case, which reversed the district court's decision denying a petition for genetic marker analysis and provided instructions concerning the related inventories prepared by evidence custodians. *See Anselmo v. State*, 138 Nev. Adv. Op. 11 (2022) ("Opinion"). Nevada Rule of Appellate Procedure ("NRAP") 40(c)(2) permits the Panel to reconsider the decision in this matter under the following circumstances:

(A) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case, or
(B) When the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case.

As will be discussed below, the State seeks rehearing under both prongs of the rule.

II. TIMELINESS OF THE PETITION

This Petition is timely filed in accordance with NRAP 40(a)(1) because it is filed on March 28, 2022, which is within eighteen days after the filing of the Opinion at issue.

III. ARGUMENT

A. The Panel overlooked and misapprehended material facts and misapplied the relevant legal standard to the district court's order denying Anselmo's petition for genetic marker analysis.

1. The Panel improperly conducted a de novo review of the merits of Anselmo's Petition.

The Panel should reconsider its decision under the appropriate standard of review. The Panel indicated that an order denying a petition for genetic marker analysis is subject to abuse of discretion review. Opinion, 8. Instead, the Panel applied a *de novo* review to the merits of the Petition and inappropriately substituted its judgment for the district court's.

An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason. *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001). The Panel did not consider the district court's order under this standard. Instead, the Panel

largely accepted Anselmo's factual recitation and evaluated the State's arguments for dismissal of the genetic marker petition as if it were the district court considering them for the first time. *See e.g.,* Opinion, 3-7 (facts and procedural history), 10 ("[t]he State's contrary arguments are not persuasive"), 11 ("[t]he State points out…") ("[t]he State argues…"). In its analysis of whether testing should occur, the Panel did not address the district court's order or findings once. The Panel also did not identify how the district court's decision was arbitrary, capricious, or founded on prejudice rather than reason. *See* Opinion, 7-11. Instead, the Panel simply concluded at the end of its Opinion that "[o]n the record before us, the district court abused its discretion by denying Anselmo's petition for genetic marker analysis because he showed a reasonable possibility that, assuming exculpatory results, the jury would not have convicted him." Opinion, 14-15. This is again telling because it suggests that the Panel conducted an independent review of the facts and made its own findings.

This is not a case like *James v. State,* 137 Nev. Adv. Op. 38, 492 P.3d 1 (2021), where the district court failed to issue an order with findings and analysis to support its decision. Here, the district court issued a reasoned order after considering the petition, various pleadings, supplemental briefing, and oral argument. 8 AA 1647-1654 (district court's order

dismissing the petition, which details the procedural history and pleadings considered); *see also* 5 AA 955-965 (order to preserve and for a hearing on the petition), 966-992 (initial hearing); 7 AA 1285-1336 (oral argument). As discussed in more depth below, the district court's decision and factual findings are supported by substantial evidence and this Court should have affirmed its order dismissing Anselmo's petition. *See James*, 137 Nev. Adv. Op. 38, 492 P.3d at 4 (indicating that the Court will give a district court's factual findings in these cases deference on appeal, "so long as they are supported by substantial evidence and are not clearly wrong"); *See Garcia v. Scolari's Food & Drug*, 125 Nev. 48, 56, 200 P.3d 514, 520 (2009) ("[s]ubstantial evidence is evidence that a reasonable mind might accept as adequate to support the… conclusion.").

2. *The Panel overlooked or misapprehended material facts in its Opinion because Anselmo has not maintained his innocence or his story about John Soares.*

The Panel found that Anselmo has maintained his innocence and pointed to John Soares as the murderer, with the only exception being in his interrogation where he confessed to the crime. Opinion, 3. This finding overlooks or ignores Anselmo's repeated confessions, the inconsistencies in his story, and his admitted false allegations about John Soares.

During trial, the State pointed out numerous inconsistencies in Anselmo's story about John Soares. *See* Answering Brief ("AB"), 18-21 (detailing numerous inconsistencies, including citations to the record). In addition, Anselmo admitted to lying multiple times to police about John Soares' involvement in other crimes. Anselmo falsely claimed that John Soares committed a burglary with him in South Lake Tahoe around the time of the murder and also falsely claimed that John Soares abducted a second woman for Anselmo to kill after Trudy's murder. 4 AA 702-704, 714-716, 719. Anselmo had a prior conviction bearing on his truthfulness as well. *Id.* at 622 (a felony for misuse of a credit card). Put simply, the Panel overlooked Anselmo's everchanging and fraudulent allegations about John Soares.[1]

More importantly, though, when the Panel found that Anselmo had maintained his innocence in this case, it overlooked Anselmo's three confessions and an additional statement evidencing a consciousness of guilt. *See* Opinion, 3. Anselmo was initially taken into custody on an

[1] The Panel also overlooked the fact that Anselmo's allegations concerning John Soares were proven false in the State's rebuttal case. The State offered evidence, including testimony from an independent car salesman, proving that John Soares was in Los Angeles when Trudy was murdered in South Lake Tahoe. *See* AB, 21-22 (detailing the evidence with citations to the record).

unrelated burglary charge and, before interrogation in this case, he made a significant statement showing a consciousness of guilt. At that initial booking, he inquired, "[w]hen are you going to book me for burglary, rape and murder?" 3 AA 585.

As this Panel is aware, Anselmo also confessed during his subsequent interrogation.[2] *Id.* at 433-439. Anselmo's next admission came during the arraignment in this case. Anselmo told the judge, "[s]end me to prison. I killed her. I don't want a lawyer. Get it over with." *Id.* at 525. Finally, Anselmo admitted to killing Trudy during his 2005 pardons hearing and said, "I don't know any words I can say to explain how sorry I am, how remorseful I am for taking Trudy Ann Hiller's life." 6 AA 1205. Thus, contrary to the Panel's finding, Anselmo has not maintained his innocence in this case.

As the State noted during oral argument, in prior cases the Nevada Supreme Court has *only* found testing appropriate when the petitioners have maintained their innocence, including in *James*, *supra*. Anselmo did

[2] The Panel suggests that there were discrepancies in his confession and the pathologist findings, but the record reveals that Anselmo provided details that only the killer could have known. For example, that Trudy "just wasn't here" when he stabbed her, and the pathologist testified that the stabbing occurred after Trudy was strangled and very close to her death. 3 AA 388-389, 436. Thus, Anselmo's confession to police should not be discounted.

not cite a single case from any jurisdiction where the petitioner made four separate admissions and testing was deemed appropriate under any standard. Indeed, the State has not found a single case where *any court* has disregarded four admissions to determine that genetic marker analysis of evidence would have changed a result at trial. Anselmo's multiple admissions were substantial evidence to support the district court's denial of his petition. Under these circumstances, the district court's decision was not outside the bounds of law or reason and this Court should find that no abuse of discretion occurred here.

3. *The Panel departed from its precedent when it applied the "reasonable possibility" standard to the "rape kit" and fingernail evidence.*

In *James*, and in this case, the Court relied on *Brady*[3] cases to define the "reasonable possibility" standard. *James v. State*, 137 Nev. Adv. Op. 38, 492 P.3d 1 (2021) (citing *Wade v. State*, 115 Nev. 290, 296, n.4, 986 P.2d 438, 441, n. 4 (1999)); Opinion, 9-10 (*citing Roberts v. State*, 110 Nev. 1121, 1132, 881 P.2d 1, 8 (1994) for the proposition that "the 'reasonable possibility' standard is satisfied if there is a real possibility that the [exculpatory] evidence would have affected the result."). In this case, the Panel appears to suggest that the reasonable possibility test must be

[3] *Brady v. Maryland*, 373 U.S. 83 (1963).

considered in a vacuum without regard to other evidence introduced or whether similar evidence/argument had any impact on the jury. Opinion, 10 ("[w]hile the State asserts that the jury considered and rejected similarly exculpatory evidence, the evidence it identifies is not the same as the presumed exculpatory evidence the genetic marker analysis would produce.").

However, the legislature did not intend for courts to consider petitions in such a manner. The proponents of Assembly Bill 179 in 2009 advocated that its purpose was to create a remedy for "truly innocent people", but that the district courts should dismiss petitions that do not have a basis in the case. *See e.g.*, 7 AA 1366 (Ms. Kruse, a proponent of the bill concluded that "[i]n the event that there are petitions that are filed that do not have a basis in the case, the court can look at the face of the petition and dismiss it.").

The Panel's application of the reasonable possibility standard here is also at odds with other Nevada Supreme Court cases applying the same standard. In other cases where the Court has analyzed whether a reasonable possibility exists of a different result, it has evaluated the presentation by the defense wholistically and rejected contentions that a particular item of evidence would have produced a different result, even if

the same evidence was not presented previously. *See e.g. Wade v. State*, 115 Nev. 290, 296, 986 P.2d 438, 442 (1999) (concluding the reasonable possibility standard was not met when defendant's counsel effectively and thoroughly cross-examined witnesses regarding the possible defenses, presented the defense theory in other means, and the jury was adequately instructed on the defense theories); *Rippo v. State*, 134 Nev. 411, 433, 423 P.3d 1084, 1104-1105 (2018) (concluding that other potential impeachment evidence was already presented by defense counsel and the significance of the new possible evidence did not create a reasonable possibility of a different outcome at trial).

The Nevada Supreme Court's precedent also provides that new evidence which would simply corroborate or assist a defendant's theory at trial does not militate a conclusion that a different result would have occurred. *See Roberts*, 110 Nev. at 1132, 881 P.2d at 8 (explaining that to satisfy the "reasonable possibility" standard, there must "exist more than the *mere possibility* that the undisclosed information *might* have helped the defense….") (*emphasis in original*); AB, 37-38. In this case, the Panel materially departed from its precedent when it concluded a reasonable possibility of a different result exists simply because the exact evidence that

could be developed through genetic testing was not presented to the jury. *See* Opinion, 10-11.

The Panel also mistakenly found that material recovered from Trudy's fingernails would allow the jury to infer that the victim fought back against the perpetrator and would create a reasonable possibility that the jury would not have convicted Anselmo as a result. Opinion, 10. This theory has no basis in the record. Trudy did not have defensive wounds, and certainly no defensive wounds on her hands suggesting a struggle. *See generally*, 3 AA 384-387, 396. Put simply, it is a hypothetical possibility, as opposed to a real possibility under the facts of this case and does not meet the reasonable possibility standard set forth above.

The Panel also misapplied the standard in its analysis concerning the "rape kit" and made a material mistake of fact with respect to the State's theory of the case as one of felony murder. Opinion, 10. While felony murder was a charged theory, and briefly addressed by the late Justice Rose during closing argument, the district court correctly concluded that the State's primary theory at trial was based on evidence showing malice, premeditation, and deliberation. 5 AA 863-867. In the almost twenty pages of initial closing argument, the prosecutor spent less than a page, less than 15 sentences, addressing the felony murder theory. *See* 5 AA 863, 857-

875. It was not the gravamen of the argument, and indeed, when Justice Parraguirre inquired into the original charges during the Pardons Hearing in 2005, Justice Rose responded, "[i]t was charged as first-degree murder. There was no evidence of sexual assault." 6 AA 1209. Justice Rose's representation was true—the testimony during trial suggested that Trudy had sexual intercourse likely within 24 hours of her death. 3 AA 391-392, 404-405. There was no evidence that she was raped or had consensual sexual intercourse with her killer. *See id.*

Further, the Panel's Opinion appears to disregard the strong evidence of premeditated and deliberate murder in favor of a hypothetical possibility that would only apply to the felony murder theory of guilt. The general verdict should not dictate this Panel's analysis. Opinion, 10. Even if there was exculpatory evidence on the felony murder theory, this Court would have affirmed the general verdict on direct appeal based on sufficient evidence of premeditation and deliberation. *See e.g., Phillips v. State,* 121 Nev. 591, 597, 119 P.3d 711, 716 (2005) ("a general verdict can stand if sufficient evidence supports only one of the theories.").

The Panel's Opinion addresses the potential exculpatory evidence from the "rape kit" and Trudy's fingernails in a vacuum without acknowledging the mountain of other evidence which would have

supported the jury's first-degree murder verdict. The Panel suggests that the State was merely relying on other circumstantial evidence to support the district court's decision. Opinion, 11. While the circumstantial evidence was strong,[4] it was not the only evidence of guilt. Indeed, Anselmo's admissions to fraudulently implicating John Soares in other crimes and his *three* admissions to Trudy's murder before trial made his conviction a certainty. As such, the district court's finding that there was not a real possibility of a different result in this case was supported by substantial evidence in the record. Even if reasonable minds could differ on whether testing should be ordered in such circumstances, the district court's decision should still be affirmed under the abuse of discretion standard of review. *See Leavitt v. Siems,* 130 Nev. 503, 509, 330 P.3d 1, 5 (2014) ("[a]n abuse of discretion occurs when no reasonable judge could reach a similar conclusion under the same circumstances.").

/ / /

/ / /

/ / /

[4] This includes, but is not limited to, the evidence of Anselmo stalking around the employee parking lot the night before Trudy disappeared, the suspicious circumstances of him finding Trudy's body and knowledge of her belongings whereabouts, and his demeanor following the discovery of Trudy's body (including his multiple visits to her body prior to reporting her death).

4. The Panel overlooked the district court's decision with respect to other items in the petition—such as, the hairs, purse, and pantyhose.

Anselmo requested genetic testing for six items in his petition: the "rape kit", two blond hair strands found inside the vehicle Trudy drove on the night she disappeared, Trudy's fingernail clippings, Trudy's brown leather purse, and Trudy's pantyhose. 5 AA 946-954. As discussed above, the State submits that the district court did not abuse its discretion by denying testing on the "rape kit" and the fingernail clippings. But, even if this Panel disagrees, it should reconsider its Opinion to the extent that it reverses the district court's order in its entirety.

Anselmo failed to demonstrate that exculpatory results from genetic testing of the two hairs found in the mustang would change the result at trial. The evidence presented by Anselmo at trial showed that several types of hair were found on Trudy's clothing and purse, including brown Caucasian head hairs on her blouse and skirt, two types of blonde hair recovered from Trudy's purse (one bleached and one not, which varied from four and half to nine and a half inches long), and another unrelated hair in a brush found in Trudy's purse. 4 AA 615-616. Anselmo conceded in his petition that the jury heard evidence that hairs found on Trudy's purse did not match Anselmo's hair. 5 AA 951. As the district court found,

the vehicle was regularly driven by the five roommates, which would suggest that hairs belonging to persons other than Trudy and the murderer would be found inside. *See* 1 AA 107-108; 8 AA 1651. The jury was not persuaded by the fact that Anselmo's hair did not match the hairs found with Trudy's clothing and other personal effects. Thus, the record suggests that the jury would not be persuaded even if DNA testing confirmed that Anselmo's hair was not found in the vehicle.

The potential of exculpatory DNA from Trudy's purse and pantyhose is equally unhelpful to Anselmo. The evidence presented at trial indicated that Trudy's clothes, including the pantyhose, were found inside her purse. 2 AA 353, 367-368. The presence of other DNA on the purse would be consistent with other testimony that suggested another individual found Trudy's purse in the forest two days after her murder, rifled through the contents, and discarded the purse and remaining items after the security guard began chasing him (to prevent what the security guard believed was a purse snatching). 2 AA 226-227, 350, 353, 355-356, 367-368; 4 AA 721-722.

The Panel's decision is a wholesale reversal based on its analysis of how the "rape kit" and fingernail clippings could change the result of trial. However, the district court's finding that there was not a reasonable

possibility of a different result if exculpatory evidence was obtained from the hairs found inside the car, Trudy's purse, or Trudy's pantyhose, is supported by substantial evidence in the record. Anselmo failed to demonstrate that the district court abused its discretion by denying testing of these items. As such, the Panel should reconsider its Opinion and find that the district court did not abuse its discretion with respect to testing of the hairs, purse, or pantyhose, even if it rejects the State's urge to reconsider its decision regarding the testing of the "rape kit" and fingernail clippings.

5. *The Panel should reach the merits of the State's judicial estoppel argument because Anselmo implicitly conceded that a Pardons Hearing is a quasi-judicial proceeding.*

The Panel refused to consider the State's judicial estoppel argument because, in part, the State did not provide analysis to show that the Pardons Board hearing was a quasi-judicial proceeding, and it was "not obvious that a Pardons Board hearing would qualify…." Opinion, 11, n. 3. Anselmo never challenged the State's argument for judicial estoppel on this basis. Indeed, throughout the litigation, Anselmo has implicitly conceded that the Pardons Board hearing is a quasi-judicial proceeding and instead argued that judicial estoppel should not apply because his changed position has not

been used to gain an unfair advantage.[5] Reply Brief ("RB"), 24-27; *see also* 7 AA 1280-1281 (a similar argument is found in Anselmo's reply in support of his petition). This Court should reach the merits of the judicial estoppel issue because the parties agreed that the Pardons Hearing was quasi-judicial in nature.[6] Thus, as argued in the State's Answering Brief, this Court should find that judicial estoppel applies and supports the district court's denial of Anselmo's petition. *See* AB, 52-54.

Even if the Court does not find that judicial estoppel applies or will not consider the argument, it should still reconsider its decision in light of other post-conviction precedent favoring finality of convictions and

---

[5] Interestingly, Anselmo asserted that it is common for people seeking pardons to falsely confess to crimes to obtain relief and that this court should not hold a false confession against Anselmo now. Anselmo's argument ignores the very point of judicial estoppel—to guard the integrity of the judicial process and prevent individuals from benefiting from their changed positions and fraudulent statements.

[6] There is no Nevada precedent on point regarding Pardons Hearings, but the Nevada Supreme Court has repeatedly found that similar hearings, such as parole hearings, are quasi-judicial proceedings. *See Witherow v. State Bd. Of Parole Com'rs*, 123 Nev. 305, 309, 167 P.3d 408, 410 (2007) (concluding that the parole board performs a judicial function when releasing prisoners on parole and concluding that the board acts in a quasi-judicial capacity when it decides to grant, deny, or revoke parole); *see also Stockmeier v. State Bd. Of parole Com'rs*, 127 Nev. 243, 252, 255 P.3d 209, 253 (2011); *Raggio v. Campbell*, 80 Nev. 418, 423, 395 P.2d 625, 627 (1964). This line of cases is likely why Anselmo implicitly conceded the hearing was quasi-judicial in nature and, instead, focused his argument on other aspects of the State's judicial estoppel analysis.

reconsider whether allowing genetic testing under the circumstances of this case is in the interest of justice and is sound public policy. *See* AB, 52-54; *James*, 137 Nev. Adv. Op. 38, 492 P.3d at 5 ("[w]e must next considering if the district court nonetheless correctly denied the petition"); *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) ("[i]f a judgment or order of a trial court reaches the right result, although it is based on an incorrect ground, the judgment or order will be affirmed on appeal.").

Anselmo's petition undermines the very integrity of this Court and the Pardons body, as he suggests that he can take two diametrically opposed positions before members of the judiciary without consequences. Pursuant to NRS 178.09183(3)(f) unfavorable results of genetic testing must be forwarded to the Board of Parole Commissioners. This provision was part of the Legislative effort to discourage meritless petitions. In this case, there is no similar consequence for Anselmo. His sentence has been commuted.

Further, this conviction is more than 50 years old and Anselmo has admitted to killing Trudy on four separate occasions. After 50 years and multiple admissions guilt, the community's interest in the finality of this conviction is significant and the costs of testing and further litigation are not justified. *See Brown v. McDaniel*, 130 Nev. 565, 573, 331 P.3d 867, 872

(2014) (discussing successive post-conviction challenges to convictions and concluding that allowing them to go forward "would overload the court system, significantly increase the costs of post-conviction proceedings, and undermine the finality of the judgment of conviction.").

B. The Panel misapplied the relevant legal standard to the district court's order denying Anselmo's motion for an order to show cause and created a confusing and overly burdensome rule for future cases.

The Panel found that the district court abused its discretion by denying Anselmo's motion for order to show cause regarding the evidence custodian inventories. Opinion, 12, 15. The Panel should reconsider this ruling because it did not apply the correct standard of review and it creates a confusing and overly burdensome rule for future cases.

Initially, the Panel appears to have analyzed this issue *de novo*, despite indicating elsewhere that it was subject to abuse of discretion review. *See* Opinion 12 ("the State's contrary arguments are not persuasive"), 15; *see also State v. Second Judicial Dist. Court (Ojeda)*, 134 Nev. 770, 772, 431 P.3d 47, 50 (2018) ("[d]istrict courts enjoy broad discretion in the realm of discovery disputes."). Even if the district court's interpretation of the statute was at odds with this Panel's interpretation, the Panel still should have considered whether the district court nonetheless had a basis in law or reason to deny Anselmo's motion for an

order to show cause. *See James*, 137 Nev. Adv. Op. 38, 492 P.3d at 5; *Wyatt*, 86 Nev. at 298, 468 P.2d at 341.

The order at issue here was to address a discovery dispute and Anselmo has not shown that the district court abused its broad discretion in denying his motion when it was made. Importantly, Anselmo did not provide the district court with binding precedent to support his motion for an order to show cause against non-parties to the proceeding. AB, 56; 5 AA 1010-1015 (Anselmo only cited NRS 176.0918 to support his motion). In addition, Anselmo did not provide the district court with even persuasive authority to support the timing and nature of his request to open all sealed containers in evidence. *See* 5 AA 1010-1015. Thus, the district court did not abuse discretion by denying the motion when Anselmo did not provide authority to support the same.

In addition, NRS 176.098, *et seq*. does not provide a format for evidence inventories and, even in other post-conviction proceedings, discovery is not appropriate until an evidentiary hearing on a petition is ordered. *See* NRS 34.780(2). Anselmo did not show that the district court's decision was outside the bounds of law or reason. Anselmo also did not show that the order would even preclude him from having the evidence in the packages tested in the future. The district court's decision was

consistent with its broad discretion to control discovery and this Panel should reconsider its Opinion on point.

To the extent that this Panel wishes to create a new rule regarding sufficiency of evidence inventories, it should not curtail the district court's ability to manage discovery and litigation. The practical impacts of premature orders such as the one Anselmo advocated for in this case are significant. The Panel's Opinion can be read to suggest that whenever a petition is filed, the evidence custodians must open all sealed containers to describe evidence in their possession, even if the petition is without merit and even if the container would not encompass any relevant material to the petition. *Compare* Opinion, 15 (ordering the district court to instruct the evidence custodians to submit a new evidence inventory that details the evidence within the containers it previously identified but did not open) *with* NRS 176.0918(4)(c)(2) (limiting the required inventory to the "evidence relevant to the claims in the petition"). If the Panel's decision is applied broadly in the future, there will be a substantial burden on evidence custodians, potential for error, and, most certainly, a delay the resolution of meritorious petitions.

There should not be a blanket requirement for evidence custodians to open all sealed containers—including those, due to their shape or size, that

would not contain relevant evidence—simply because a petition is filed. NRS 176.0918(4)(c)(2) certainly does not require evidence custodians to address all evidence in their position. Thus, this Panel should reconsider and/or clarify its ruling. This Panel should allow district courts to maintain discretion concerning when and if additional evidence inventories are required and not require evidence custodians to open containers that have no relevance to a petition. *See* NRS 176.0918(4)(c)(2); *Ojeda*, 134 Nev. at 772, 431 P.3d at 50.

IV. CONCLUSION

Based on the foregoing, the State respectfully requests that this Court reconsider its Opinion and affirm the district court's decision regarding Anselmo's genetic marker petition and discovery order. In the alternative, the State requests that the Court only reverse the district court's decision regarding the petition for genetic marker analysis in part and clarify its ruling with respect to evidence inventories.

DATED: March 28, 2022.

CHRISTOPHER J. HICKS
DISTRICT ATTORNEY

By: MARILEE CATE
Appellate Deputy

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the form requirements of NRAP 40(b)(1), because it also 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). This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Georgia 14.

2. I further certify that this brief complies with the length limitations of NRAP 40(b) because it does not exceed 4,667 words. It contains 4,598 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 40(a)(2), requiring that any claim that the court has overlooked or misapprehended a material fact shall be supported by a reference to the page of the transcript, appendix, or record where the matter is to be found, and that any claim that the court has overlooked or misapprehended a material question of law or has overlooked, misapplied or failed to consider controlling authority shall be supported by a reference

to the page of the brief where petitioner has raised the issue. 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: March 28, 2022.

CHRISTOPHER J. HICKS
Washoe County District Attorney

BY: MARILEE CATE
Appellate Deputy
Nevada State Bar No. 12563
One South Sierra Street
Reno, Nevada 89501
(775) 328-3200

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on March 28, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Sydney Gambee, Esq.
J. Robert Smith, Esq.
Jennifer Springer, Esq.
Jessica E. Whelan, Esq.

Tatyana Kazantseva
Washoe County District Attorney's Office