IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL PHILLIP ANSELMO,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.
_____/

No. 81382

RESPONDENT'S PETITION FOR EN BANC RECONSIDERATION

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

SIMONS HALL JOHNSTON PC
J. Robert Smith
690 Sierra Rose Drive
Reno, Nevada 89511

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

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 EN BANC RECONSIDERATION

I. INTRODUCTION

In 1971, Appellant Michael Phillip Anselmo (hereinafter, "Anselmo") was convicted of first-degree murder for killing Trudy Ann Hiler ("Trudy"). Prior to trial, Anselmo admitted to murdering Trudy on three separate occasions. *See* 3 AA 433-439, 525, 585. In 2005, Anselmo again admitted to murdering Trudy at his pardons hearing and was granted relief from his life without the possibility of parole sentence. 6 AA 1205. In 2018, despite these four separate admissions and receiving relief from his sentence, Anselmo changed course and filed a petition for genetic marker analysis with the district court, wherein he claimed he was not Trudy's murderer. 5 AA 946-954. After briefing and argument, the district court dismissed Anselmo's petition and also denied Anselmo's related motion for order to

show cause concerning the evidence inventories filed by the Washoe County Sheriff's Office and the district court's evidence custodian.

On March 10, 2021, a Panel of this Court reversed the district court's decision denying Anselmo's 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"). The State sought rehearing pursuant to Nevada Rule of Appellate Procedure ("NRAP") 40(c)(2), which was denied by the Panel on April 15, 2022. Pursuant to NRAP 40A, the State seeks en banc reconsideration in order to maintain uniformity with prior decisions of the Supreme Court and because this case involves substantial precedential and public policy issues. NRAP 40A(a).

II. TIMELINESS OF THE PETITION

This Petition is timely filed in accordance with NRAP 40A(b) because the Panel denied reconsideration on April 15, 2022, and this Petition is filed within 14 days thereafter.

III. ARGUMENT

En banc reconsideration is necessary because this is only the second published Opinion addressing the standard for a petition for genetic marker analysis under NRS 176.09183, and it is the first published opinion addressing the sufficiency of the related evidence inventories required by

NRS 176.0918. Petitions for genetic marker analysis are being filed with increasing frequency. As discussed more fully below, this Court should grant en banc reconsideration here to maintain uniformity with other related authority and because this case involves significant precedential and public policy issues. NRAP 40A(a).

A. En banc reconsideration is necessary to maintain uniformity in Nevada's appellate decisions.

1. *The Panel's Opinion conflicts with the one published decision on point, as well as unpublished orders, because it does not provide any weight to Anselmo's multiple admissions.*

This case is unlike the seminal case interpreting NRS 176.09183, *James v. State*, 137 Nev. Adv. Op. 38, 492 P.3d 1 (2021), because in that case the petitioner maintained his innocence. In *James,* the fact that the petitioner maintained his innocence was critical to the Court's analysis of whether there was a reasonable possibility that the defendant would not have been prosecuted or convicted if exculpatory results were obtained from testing. The Court explained:

> James maintained throughout his case that he is innocent of this crime and that he did not engage in any sexual activity, consensual or nonconsensual, with T.H. Accordingly, the existence of another man's DNA on T.H.'s body, as discovered in a rape kit collected the day of the alleged assault, paired with T.H.'s report that she had engaged in no sexual activity for a year prior to the assault, would have strongly supported James' defense.
>
> *Id.* at *5.

In Anselmo's Errata to his Opening Brief, he provided another example of a case where testing was ordered when a defendant maintained his innocence below. Anselmo cited the unpublished order from Justice Silver, when she was a district court judge, where she ordered genetic testing in the *State v. Frank LaPena* murder case. Errata to Opening Brief; Case No. C059791, Decision and Order (dated Aug. 4, 2017). Unlike Anselmo, Frank LaPena maintained his innocence throughout his case and did not testify at trial. *Id.* at 7. Also, unlike Anselmo where the State presented significant circumstantial evidence, LaPena's conviction was largely based on the testimony of a single confidential informant, who later admitted to perjuring himself when he testified that the defendant orchestrated the murder. *Id.* at 8-9 ("LaPena's conviction, therefore, was based entirely on the jury believing [the confidential informant's] testimony" and [the confidential informant] was "a notorious perjurer and murderer.") (emphasis in original).

Historically, genetic testing has been denied in cases like Anselmo's, where the defendant made at least one admission and circumstantial evidence supported the defendant's guilt. For example, in two cases cited previously by Anselmo, the Court of Appeals affirmed the lower court's denial of petitions for genetic marker analysis relying, in part, on each

defendant's admission. *See e.g., Nolan v. State*, Dkt. 76572-COA, 2019 WL 4053954, *1 (Nev. Ct. App., Aug. 27, 2019) (*unpublished*) (finding that the standard for genetic testing had not been met in a sexual assault case when the evidence of guilt included witness testimony that the defendant followed the victim out of the bar and defendant admitted to having sexual intercourse with the victim); *Bolich v. State,* Dkt. 67236, 131 Nev. 1255, 2015 WL 1879622, *1 (Nev. Ct. App., April 15, 2015) (*unpublished*) (affirming the lower court's denial of a petition for genetic marker analysis in a driving under the influence case where the defendant admitted to drinking, his appearance and mannerisms were consistent with alcohol use, and he failed several field sobriety tests).

Even if this Court does not consider the unpublished cases on point, this case is drastically different from *James*, *supra*. Unlike the petitioner in *James*, Anselmo has not maintained his innocence. In fact, Anselmo has made four separate admissions that are relevant to this Court's consideration. At his initial booking on an unrelated burglary charge and prior to his arrest in this case, Anselmo inquired, "[w]hen are you going to book me for burglary, rape and murder?" 3 AA 585. Anselmo also

confessed during a subsequent interrogation.[1] *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.

In other cases in Nevada, admissions or the lack thereof, have been significant to this Court's analysis of whether genetic testing is appropriate. Notably, Anselmo did not cite a single case from Nevada or any other jurisdiction where the petitioner made four separate admissions and genetic testing was deemed appropriate. Indeed, in *Weeks v. State*, which was cited in Anselmo's Reply Brief, the Supreme Court of Missouri concluded that, "[o]f course, the movant must also continue to claim that he was not the perpetrator, otherwise there would be no prejudice from denying DNA testing." 140 S.W.3d 39, 47, n. 9 (Mo. 2004) (*en banc*).

---

[1] The Panel suggests that Anselmo's confession should be viewed cautiously because there were discrepancies in his confession and the pathologist findings. Yet, during trial, Anselmo's counsel pointed to the very same alleged discrepancies noted by the Panel and challenged the voluntariness of his confession. *See* 4 AA 637-644, 648-663; 5 AA 881-885, 888-889. The jury convicted him anyway.

Despite the contrary precedent in Nevada and elsewhere, the Panel ignored Anselmo's multiple admissions in its reasonable possibility analysis. This Court should reconsider the Panel decision to maintain uniformity in the Court's published and unpublished decisions and, after doing so, the Court should affirm the district court's order dismissing Anselmo's petition for genetic marker analysis.

2. *The Panel Opinion represents a departure from the way the reasonable possibility standard has been applied in the past.*

In *James*, and in this case, the Panel relied on *Brady*[2] 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."). Yet, the Panel's decision here departs from precedent when it suggests that the reasonable possibility test must be considered in a vacuum, without regard to other evidence introduced or whether similar evidence and/or argument had any impact on the jury. *See* Opinion, 10 ("[w]hile the State asserts that the jury

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

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.").

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).

This 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*); s*ee also Turpin v. State*, Dkt. 64112, 130 Nev. 1256, 2014 WL 982347 (2014) (finding that the petitioner did not demonstrate a reasonable possibility that he would not have been prosecuted or convicted in a murder case when the evidence at issue would only have bolstered his claim that he acted in self-defense).

In this case, the Panel materially departed from the Court's precedent when it concluded that a reasonable possibility of a different result exists simply because the exact evidence that may be developed through genetic testing was not presented to the jury. *See* Opinion, 10-11. Anselmo's counsel thoroughly cross-examined the State's witnesses and tested the State's theories of the case. Anselmo's counsel also introduced his own exculpatory evidence to support Anselmo's trial theory that he did not have intercourse with Trudy on the night of her murder and his hair did not match the hairs recovered from the crime scene or on Trudy's purse. *See e.g.,* 3 AA 391-393, 405, 407; 4 AA 615-616. Anselmo seeks testing of these items, but exculpatory evidence was already presented and rejected by the

jury. This demonstrates the importance of Anselmo's multiple admissions, as well as the strength of the State's case against him.

The Panel's decision discounts the exculpatory evidence previously offered by Anselmo's attorney at trial because it was not the exact same as what could be developed with genetic testing. *See* Opinion, 10-11. As with any other case involving the reasonable possibility standard, this Court should consider the defense case wholistically and the other exculpatory evidence presented instead of assuming that the standard is met simply because the exact exculpatory evidence was not presented to the jury. As addressed in the State's Answering Brief and by the district court, the potential exculpatory evidence identified in Anselmo's petition is largely cumulative to what was already presented. *See e.g.*, 8 AA 1651-1652 (district court's order finding that "the jury heard this exculpatory information" and "the jury heard the evidence on which these arguments are based"). The cumulative nature of the potential exculpatory evidence, along with Anselmo's admissions, history of false and changing allegations about John Soares,[3] and his suspicious behavior surrounding Trudy's

[3] Anselmo admitted to falsely claiming that John Soares committed a burglary with him in South Lake Tahoe around the time of the murder and also that John Soares abducted a second woman for Anselmo to kill after Trudy's murder. 4 AA 702-704, 714-716, 719. Further, the State offered evidence in its rebuttal case showing that John Soares could not have

murder indicates that the jury would not have reached a different result.[4] In line with the other cases discussed above, this Court should reconsider the Panel's Opinion and find that even if exculpatory results were obtained from the items at issue in Anselmo's petition, Anselmo would still have been prosecuted or convicted and, therefore, the district court did not abuse its discretion by dismissing his petition.

/ / /

/ / /

/ / /

/ / /

---

murdered Trudy because he was in Los Angeles when Trudy was murdered in South Lake Tahoe. *Id.* at 774, 779; 5 AA 823-829, 834-837, 842-846.

[4] As the district court noted, Anselmo argued that there was no physical evidence tying him to the murder, but the jury found "Mr. Anselmo guilty beyond a reasonable doubt after hearing evidence of Mr. Anselmo's suspicious behavior on the night Ms. Hiler disappeared, during the searches and discovery of her body, as well after hearing evidence including his inconsistent statements and unique knowledge regarding the locations of Ms. Hiler's belongings, such as the keys to the vehicle." 8 AA 1652. As detailed in the State's Answering Brief, these findings as well as many others made by the district court were supported by the record and were entitled to deference on review. *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.").

B. En Banc reconsideration is necessary because this case presents substantial precedential and public policy issues.

1. The Panel's Opinion is contrary to the doctrine of judicial estoppel and sound public policy.

The Panel refused to consider the State's judicial estoppel argument because it concluded, in part, that 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. Yet, Anselmo implicitly conceded throughout this litigation that the pardon's hearing was quasi-judicial in nature and this Court has repeatedly found that similar hearings, such as parole hearings, are quasi-judicial proceedings. Reply Brief ("RB"), 24-27; 7 AA 1280-1281; *see also 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); *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).

Moreover, this Court had applied estoppel in the past, even when the State did not support its argument with authority. *See Witter v. State*, 135

Nev. 412, 416, 452 P.3d 406, 409-410 (2019) (*en banc*) (concluding that the defendant was estopped from arguing that his judgment was not final and subsequent proceedings were null and void when he treated the judgment as final from 1995 to 2017); *see also Witter v. State*, Dkt. 73444, Respondent's Answering Brief, filed Oct. 29, 2018, pg. 25-26 (where the State simply asserted "Witter is now estopped" from claiming his judgment was not final). The purpose of the judicial estoppel doctrine is to guard the judiciary's integrity, so the Court should be able to consider it *sua sponte*. However, in this case, the State did argue judicial estoppel and supported its argument with authority. *See* Answering Brief, 52-54. The Panel's refusal to apply the doctrine will have lasting impact on pardons hearings and future post-conviction litigation.

Indeed, Anselmo's petition undermines the very integrity of this Court and the Pardons Commission, as he suggests that he can take diametrically opposed positions concerning his guilt after judgment and there will not be consequences.[5] This Court has held that the doctrine of judicial estoppel should be applied when "a party's inconsistent position

[5] Any unfavorable results of testing will have no bearing on parole, since Anselmo has already been released. *See* NRS 178.09183(3)(f) (providing that unfavorable results of genetic testing must be forwarded to the Board of Parole Commissioners).

arises from intentional wrongdoing or an attempt to obtain an unfair advantage." *Marcuse v. Del Webb Communities, Inc.*, 123 Nev. 278, 287-288, 163 P.3d 462, 469 (2007). Throughout this case, Anselmo has asserted that it is common for people seeking pardons to falsely confess to crimes to obtain relief and that this court should not hold his allegedly false confession against him now. Assuming, *arguendo*, that Anselmo falsely confessed to the Pardons Commission, then Anselmo has conceded that he has made a knowingly false statement to the Commission in order to receive a significant benefit—a commutation of his sentence. That behavior is the type of intentional wrongdoing and an attempt to gain an unfair advantage that the doctrine of judicial estoppel was created to guard against.

If this Court allows Anselmo to continue with his changed position in this litigation, it will send a message to future parole and pardon applicants that they should say whatever they can to obtain relief, even if it is false. The extensive evidence presented at trial and Anselmo's four admissions suggest that he did not swear falsely at his pardons hearing. Even if he did, he made the choice to do so and has significantly benefited from it. This Court should find that judicial estoppel applies here and affirm the district court's decision to deny genetic testing in this case, even though the district court did not

deny the petition on judicial estoppel grounds. *See James*, 137 Nev. Adv. Op. 38, 492 P.3d at 5 ("[w]e must next consider 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.").

Moreover, as this Court has recognized in the context of other post-conviction challenges, "[t]he necessity for a workable system dictates that there must exist a time when a criminal conviction is final." *State v. Eighth Jud. Dist. Ct.* (*Riker*), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). Finality is a "compelling consideration for courts when reviewing a challenge to the validity of a conviction." *Witter*, 135 Nev. at 416, 452 P.3d at 409. "A challenge to a conviction made years after the conviction is a burden on the parties and the courts because memories of the crime may diminish and become attenuated, and the record may not be sufficiently preserved." *Id.* (cleaned up); s*ee also Brown v. McDaniel*, 130 Nev. 565, 573, 331 P.3d 867, 872 (2014) (concluding that allowing successive post-conviction challenges to convictions 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.").

If the Panel's decision stands, the costs of testing and further litigation will be borne by the State, the community, and the judicial system. 50 years have passed since Anselmo's conviction. He made four significant admissions of guilt over the course of those 50 years. Most recently, in 2005 before the Pardons Commission. As a result, Anselmo's sentence was commuted. Anselmo accepted his new sentence and thereafter sought parole and pursued relief with this Court to obtain his release. *See e.g., Anselmo v. Bisbee*, 133 Nev. 317, 396 P.3d 848 (2017). Anselmo has now been released from prison. It is well past the time that this conviction should be deemed final and further litigation over his commuted conviction should be halted. Even if the Court does not find that judicial estoppel applies or will not consider the argument, it should find that genetic testing under the circumstances of this case is not in the interest of justice or sound public policy and it should affirm the district court's order dismissing Anselmo's petition. *See James*, 137 Nev. Adv. Op. 38, 492 P.3d at 5; *Wyatt*, 86 Nev. at 298, 468 P.2d at 341.

2. *The Panel's instructions concerning the evidence inventories creates confusing and overly burdensome precedent for future cases.*

The Panel's decision regarding the evidence inventories also is precedentially problematic. The underlying order at issue followed a

motion for an order to show cause and involves a discovery dispute, which occurred before the district court determined whether genetic testing would be appropriate.

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). The district court's order did not preclude Anselmo from having the evidence in the packages opened or tested in the future. The district court simply denied Anselmo's request to open sealed evidence containers at the time of his request because Anselmo wanted the evidence custodians to connect the dots between the evidence and whom it belonged to, which the district court concluded was beyond the statutory requirements. 6 AA 1037-1038 (finding that the evidence custodians "were not required to go beyond describing the evidence in their possession [to] identify to whom certain evidence belonged or pertained at the time of the underlying crime" and that Anselmo cited police reports and other documentary evidence that could assist him with that). Anselmo's request also came before the district court had an opportunity to consider the merits of his petition. As such, the district court's decision was consistent with NRS 176.098 and its broad discretion to control discovery. This Court should reconsider the Panel's

Opinion and find that the district court did not abuse its discretion under the circumstances. *See 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.").

To the extent that this Court 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. Initially, as the district court noted, Anselmo sought information that himself and his counsel were in better positions of addressing—such as who the items in evidence may have belonged to by reviewing the inventory along with police reports.

Further, the practical impacts of premature orders such as the one Anselmo advocated for in this case are significant. The Panel's Opinion is the only case in Nevada to address the sufficiency of evidence inventories. 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"). Here, the evidence custodians listed every item in their respective custody, so the Opinion as written will require them to potentially open irrelevant material. If the Panel's decision is applied in this manner 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. As a procedural matter, petitioners must file their petitions prior to evidence inventories. *See* NRS 176.0918. As the proponents of the expansion of the genetic marker analysis suggested, the analysis starts with the district court's assessment of whether the petition has any basis in the case. If the petition does not have a basis in the case, the petition should be dismissed. *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."). It follows that evidence

custodians should only be required to break the existing chains of custody and open sealed evidence containers if the petition has a basis in the case and the container may actually contain something relevant to the petition. *See id.*; *see also* NRS 176.0918(4)(c)(2). Thus, this Court should reconsider and/or clarify the Panel's Opinion on point to avoid future confusion and an overly burdensome rule where evidence custodians must open all sealed containers in their possession anytime a petition is filed. In doing so, this Court should allow district courts to maintain discretion concerning when and if additional evidence inventories are required and should 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 the Opinion issued on March 10, 2022 pursuant to NRAP 40A(a).

DATED: April 29, 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 40A, 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 40A(d) because it does not exceed 4,667 words. It contains 4,371 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, including NRAP 40A(g), which prohibits counsel from filing frivolous petitions that do not meet the grounds for *en banc* reconsideration as specified in NRAP 40A(a). 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: April 29, 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 April 29, 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