IN THE SUPREME COURT OF THE STATE OF NEVADA

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RAEKWON ROBERTSON,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No. 81400

RESPONDENT'S ANSWERING BRIEF

Appeal From Judgment of Conviction
Eighth Judicial District Court, Clark County

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JURISDICTIONAL STATEMENT

This is an appeal from a judgment of conviction after a jury trial finding Raekwon Robertson ("Appellant") guilty of Conspiracy to Commit Murder, Attempted Robbery with the Use of a Deadly Weapon, and Murder with the Use of a Deadly Weapon. (7 Appellant's Appendix "AA" 001632-AA001633). The Judgment of Conviction was filed on June 17, 2020. (7 AA001668-AA001670). The Notice of Appeal was filed on June 24, 2020. (7 AA001672). This Court has jurisdiction over this appeal under NRS 177.015 which provides for the right to appeal a final judgment in a criminal case.

ROUTING STATEMENT

This appeal is presumptively retained by the Supreme Court because it relates to a conviction for a Category A felony. NRAP 17(b)(2)(A).

STATEMENT OF THE ISSUES

The Appellant did not carry his burden of proof in a *Batson* challenge where he failed to show a prima facie case of discrimination, the state proffered a race-neutral reason for the preemptory challenge of the prospective juror, and the court determined the reason was not pretextual. Further, ample evidence supports Appellant's conviction.

STATEMENT OF THE CASE

Following a Grand Jury hearing on December 13, 2017, the state charged Appellant and two others with seven crimes arising from an armed robbery in Las Vegas in August of that year. (1 AA 000001-AA000006). On January 2, 2019, Appellant's codefendant moved to sever his trial and the State did not oppose this motion. (1 AA000102-AA000103; AA000133). As part of this severance, the State filed an Amended Superseding Indictment containing only three of the seven counts: one count of Conspiracy to Commit Robbery, one count of Attempted Robbery with use of a Deadly Weapon, and one count of Murder with use of a Deadly Weapon. (1 AA000138).

Appellant's trial began the same day, on February 11, 2020. (1 AA000142). After deliberation, the jury returned with guilty verdicts on all three counts. (7 AA001632-AA001633).

On March 12, 2020 Robertson signed a Guilty Plea Agreement to two more of the original seven counts: Conspiracy to Commit Robbery and Robbery with a Deadly Weapon. (7 AA001645-AA001653). Robertson was sentenced on June 11, 2020 to 28 years to life. (7 AA001654-AA001667).

On November 12, 2020, Appellant appealed his conviction.

STATEMENT OF FACTS

At trial, Deshawn Robinson, a fourteen-year old male, testified against Appellant and one of his codefendants as required by a guilty plea he signed. (5 AA001041). In exchange, the State agreed not to charge the teenager with Murder with Use of a Deadly Weapon. (5 AA001048). Deshawn testified that on August 8th, 2017, Appellant sent Deshawn's brother, codefendant Demario Lofton-Robinson, a message asking if the brothers would care to join him in robbing a house that evening and that Davonte Wheeler had already accepted the invitation. (5 AA001031).

The four men, Raekwon Robertson, Davonte Wheeler, Demario Lofton-Robinson, and Deshawn Robinson agreed to rob a house. (5 AA0001020). Three of them carried guns, while Deshawn did not. (5 AA001019). That evening, they stopped at a convenience store, where the clerk noticed the gun Devonte Wheeler

carried in a holster on his hip. (3 AA000669, 5 AA001011). Just before midnight, the four drove to Dewey Avenue and Lindell Avenue in Demario Lofton-Robinson's white Mercury Grand Marquis. (3 AA000683, 5 AA001011). A passing jogger spotted the men loitering in the area in the middle of the night and made note of their license plate. (3 AA00686-AA000690).

Shortly after midnight, a young nursing student named Gabriel Valenzuela returned home to 5536 West Dewey. (3 AA000664). After retrieving the mail from his mailbox, Mr. Valenzuela walked past the foursome on his way into his house. (3 AA000665).

Appellant and his three accomplices demanded everything Mr. Valenzuela had, then shot him three times in the head and abdomen and left him to die alone in his driveway. (3 AA000665-3 AA000666). The four men fled without taking any of Mr. Valenzuela's property. (5 AA001036).

SUMMARY OF THE ARGUMENT

The district court correctly found that Appellant could not establish a prima facie case for racial discrimination. And even had he established a prima facie case, the State provided a valid race-neutral reason for using the peremptory challenge on the juror. Therefore, the district court did not err by denying the Batson challenge.

Further, the State presented ample evidence at trial tying appellant to the robbery and murder, allowing the jury to find Appellant guilty beyond a reasonable doubt. This Court should affirm Appellant's Judgment of Conviction.

ARGUMENT

I. The District Court properly denied Appellant's Batson challenge when the State did not evince a pattern of discriminatory strikes and its race-neutral reason was not pretextual.

Appellant alleges the district court erred by denying Appellant's Batson challenge to the State's peremptory removal of prospective juror #468, the only African American venire-member who remained after the parties passed for cause. AOB at 8.

The racially discriminatory use of peremptory challenges is unconstitutional under the Equal Protection clause. Batson v. Kentucky, 476 U.S. 79, 89-90 (1986). The defendant bears the heavy burden of showing the State deliberately discriminated by its use of juror challenges. Conner v. State, 130 Nev. 457, 464 (2014). A challenge will not be unconstitutional if it results in a racially disproportionate impact if the challenge itself was not animated by a racially discriminatory purpose. Doyle v. State, 112 Nev. 879, 890 (1996) (quoting Arlington Heights v Metropolitan Housing Development Corp., 429 U.S. 252, 264-265 (1977)).

"In reviewing a Batson challenge, '[t]he trial court's decision on the ultimate question of discriminatory intent represents a finding of fact of the sort accorded great deference on appeal.'" Diomampo v. State, 124 Nev. 414, 422-423 (2008) (quoting Walker v. State, 113 Nev. 853, 867-68 (1997). This Court "review[s] the district court's ruling on the issue of discriminatory intent for clear error." Connor, 130 Nev. at 464.

In Purkett v. Elem, 514 U.S. 765, 766-767 (1995), the United States Supreme Court announced a three-part test for determining whether a prospective juror has been impermissibly excluded under Batson:

> [O]nce the opponent of a peremptory challenge has made out a prima facie case of racial discrimination (step 1), the burden of production shifts to the proponent of the strike to come forward with a race-neutral explanation (step 2). If a race-neutral explanation is tendered, the trial court must then decide (step 3) whether the opponent of the strike has proved purposeful racial discrimination.

This Court has adopted the Purkett three-step analysis. Doyle, 112 Nev. at 887. The burden to prove purposeful discrimination by a preponderance of the evidence is at all times on the opponent of the peremptory challenge. Batson, 476 U.S. at 93; Conner, 130 Nev. 459.

A. The District Court held that Appellant did not meet his burden to show a prima facie case of purposeful discrimination.

In step one, a "defendant alleging that members of a cognizable group have been impermissibly excluded from the venire may make out a prima facie case of purposeful discrimination by showing that the totality of the relevant facts give rise to an inference of discriminatory purpose." Batson, 476 U.S. at 94. The court, in deciding whether the requisite showing of a prima facie case has been made, may consider the "pattern of strikes" exercised or the questions and statements made by counsel during the voir dire examination. Batson, 476 U.S. at 96-97; Libby v. State, 113 Nev. 251, 255 (1997). Only after the movant has established a prima facie case of intentional discrimination is the proponent of the strike compelled to proffer a race-neutral explanation. A prima facie case requires a discriminatory pattern, which would not be demonstrated by a single strike of an African American juror. Doyle, 112 Nev. at 889 fn 2 (upholding a lower court who did not ask for a reason for striking the first of a series of minority jurors, as a first struck juror cannot show a pattern).

While a prosecutor may not use racial discrimination in selecting which jurors to place on a jury, a defendant does not have a right to have members of his own race on the petit jury. Batson, 476 U.S. at 86 (*citing* Strauder v. West Virginia, 100 U.S. 303, 305 (1880)). The petit jury itself is not required to mirror the diversity of

the community. Batson, 476 U.S. at 85, fn 6 (*citing* Taylor v. Louisiana, 419 U.S. 522, 538 (1975)). Batson states that using peremptory challenges to strike blacks is not unconstitutional unless discriminatory intent underlies the challenge. Batson, 476 U.S. at 101 (concur, J. White).

In Batson, the prosecutor struck all four African Americans in the venire without offering race-neutral reasons, which gave rise to a presumption of discriminatory intent. Batson, 476 U.S. at 83. In Diomampo, the prosecutor struck two minorities, claiming without evidence that a Hispanic man had language troubles and that another was bitter about a divorce even though other non-minority jurors appeared more bitter. Diomampo, 124 Nev. at 423-425.

A Nevada court upheld a challenge when a prosecutor struck a juror because he felt professors were "notoriously liberal." Hawkins v. State, 127 Nev. 575, 577 (2011). On appeal, the defendant merely asserted this was pretextual, but his summary conclusion was not enough to sustain his burden. Id. at 579. Similarly, the dismissal of a "young and inexperienced" gum-chewer was not pretextual. , 1136

Asking comparable questions of minority and nonminority jurors is one factor in disputing a claim of discriminatory intent. Walker v. State, 113 Nev. 853, 868 (1997). The manner of questioning, if it varies by the juror's race, can indicate discriminatory intent. Miller-El v. Cockrell, 537 U.S. 322, 332 (2003).

In the case at bar, the State only struck one African American juror. Defense Attorney Sanft admitted the State had not evinced a pattern of discriminatory strikes, saying "what we do have in this case is one individual black juror on this jury that's being struck." (3 AA000611). In light of this single strike, the district court held that Appellant failed to show a pattern of discriminatory challenges. (3 AA000618).

B. The State proffered a race-neutral reason for its peremptory challenge of Juror #468.

If the court finds a prima facie case of discrimination, the State is asked for a race-neutral reason for the challenged strikes. Purkett, 514 U.S. at 766-767. "The second step of this process does not demand an explanation that is persuasive or even plausible." Id. at 768. "Unless a discriminatory intent is inherent in the State's explanation, the reason offered will be deemed race neutral." Id.at 767; Doyle, 112 Nev. at 888.

Even if the proffered reason is "silly or superstitious," the court must continue to the third state of the analysis. Purkett, 514 U.S. at 768. Though the judge may choose to disbelieve the reason, he is not to terminate the inquiry at step two. Id. A legitimate reason for excluding a juror does not have to make sense so long as it is not discriminatory. Purkett, 514 U.S. at 769.

Once an inquiry into a Batson challenge reaches steps two and three, further examination of step one is moot. Doyle v. State, 112 Nev. 879, 888 (1996).

Here, the State offered as its reason for excusing Juror 468 the fact that she is a criminal justice student who plans to become a defense attorney. This reason is, on its face, race-neutral. "Defense attorney" is not barely veiled code for African American. Further, discriminating against defense attorneys does not discriminate against a protected group.

Without conceding that Appellant met its burden on the first step, the State gave its reason for challenging the juror. (3 AA000613). Based on Mr. Pesci's experience with the Nevada Supreme Court, he felt the appellate court would want to see the reason for the challenge on the record even though the Appellant had not met his burden on the first step in the Batson analysis. Id. The juror, Ms. Newell, was the only person among the prospective jurors who planned to become a defense attorney. Id. In other words, the 22 year old student planned to dedicate her life to opposing the State in court in cases just like the one at bar for the foreseeable next forty years.

As Mr. Pesci told the court, "I'm never picking a criminal defense attorney, no matter what color, no matter what ethnicity, no matter what sex, no matter what gender, on my jury. Never, ever having someone who aspires to be a criminal defense attorney." (3 AA000613-3 AA000614). Mr. Pesci then postulated that the Appellant's lawyer would be unlikely to select a future district attorney for the jury if the tables had been turned. The State is only required to give a race-neutral reason

for the strike, but as it happens, the State's reason was also unarguably excellent trial strategy. The State's proffered reason, therefore, survives the low bar needed to progress to step three.

C. The District Court found the State's reason was not pretextual.

Step three requires a credibility determination on the persuasiveness of the prosecutor's proffered race-neutral reason for the disputed strike. Miller-El, 537 U.S. at 338-39. "Credibility can be measured by, among other factors, the prosecutor's demeanor; by how reasonable, or how improbable, the explanations are; and by whether the proffered rationale has some basis in accepted trial strategy." Id.

The burden is on the opponent of the strike to develop a pretext for the explanation at the district court level. Hawkins v. State, 127 Nev. 575, 578 (2011). The focus is on the genuineness, not the reasonableness, of the asserted motive for the strike. Purkett, 514 U.S. at 769. The court examines whether the offered explanation is a mere pretext and whether the opponent of the strike has proved intentional discrimination. King v. State, 116 Nev. 349, 353 (2000).

This determination by the lower court is a factual one entitled to significant deference. Miller-El, 537 U.S. at 340. This deference is not, however, an abandonment of judicial review. Id. "The credibility of the prosecutor's explanation goes to the heart of the equal protection analysis, and once that has been settled, there seems nothing left to review." Id.

The basic purpose of peremptory challenges is to allow for the removal of jurors suspected of bias even if the bias cannot be proven. Diomampo, 124 Nev. at 426. Although the Batson analysis limits somewhat the free-wheeling nature of the prosecutor's use of peremptory strikes, the proffered reason "need not rise to the level justifying exercise of a challenge for cause." Batson, 476 U.S. at 97. What is meant by a legitimate race-neutral reason "is not a reason that makes sense, but a reason that does not deny equal protection." Purkett, 514 U.S. at 769; Thomas v. State, 114 Nev. 1127, 1137 (1999).

Alexis Newell, Juror #468, was a 22 year old undergraduate student at UNLV. (1 AA000221). She studied criminal justice and planned to be a criminal defense attorney. (1 AA000222, 2 AA000387). She normally attended school during court hours. (1 AA000222). She asked for and received a letter from the court asking her professor to excuse her for missing an exam. (2 AA000439).

The questions asked of Ms. Newell did not differ from those of non-minorities who were similarly situated. The prosecutor asked another student the same questions as Ms. Newell regarding future career plans. (2 AA000412). That student indicated a plan to teach history. (2 AA000412). A third student planned to become a medical lab technician. (2 AA000384). All three students were asked the same types of questions. Notably, neither a historian nor a medical lab technician inherently desires to oppose the State's prosecutions as a career objective.

Attorney Sanft stated Ms. Newell was struck though he did not see a "glaring" reason why she would not be fit to serve on the petit jury. (3 AA000611). Since he did not understand why Ms. Newell was struck, he surmised that she must have been struck for being African American. (3 AA000612).

The fact that the current defense attorney cannot see a glaring reason to strike a future defense attorney from the petit jury misstates the standard for a peremptory challenge. The court defined a juror challenged for cause as one whose answers "indicate that he or she would have a difficult time in giving a fair and impartial hearing," while a juror excused for a peremptory challenge would be asked to leave without any reason being given. (1 AA000161).

The court correctly stated that the standard is not that the State used a challenge to remove a minority person from the jury. (3 AA000612). The court must be able to make an inference that the juror was struck based on race. Id. The Nevada Supreme Court has held that "striking potential jurors who have relatives in the criminal justice system rationally serves the legitimate purpose of assuring a fair and impartial jury in criminal cases." Doyle, 112 Nev. at 891. This quote referred to striking jurors with family members who had been prosecuted by the State, but the thought can be applied even more vigorously to jurors who themselves wish to undertake a career fighting the State's prosecutions. (3 AA000617).

The lower court did not err in finding that the defense failed to show a discriminatory purpose when a prosecutor barred a future defense attorney from serving on his jury. The district court did not belabor the obvious – that no sane prosecutor would choose someone who opposed the very nature of his profession to sit in judgment on that same profession. The defense failed to show even an iota of discriminatory purpose in the challenge to Juror Newell.

II. Ample evidence supported Appellant's conviction and the jury properly weighed all the evidence presented at trial.

Appellant's second issue on appeal appears to be a sufficiency of the evidence claim. Appellant's brief fails to identify the precise nature of his objection and cites no authorities that undergird his claim for relief. Appellant says the "State presented an unreliable witness to corroborate evidence that on its own could not have resulted in a guilty verdict." AOB at 10.

This issue fails because juries, not defendants, determine a witness's reliability to decide how much weight to give to the testimony. Further, each individual piece of evidence need not support a guilty verdict on its own. It is the aggregated evidence, weighed by the jury, that supports a verdict.

A. The jury, not the defendant, weighs the reliability of a witness.

The jury alone assesses the credibility of witnesses and the weight to be given to evidence. McNair v. State, 108 Nev. 53, 56 (1992). An appellate court does not reweigh the evidence to decide if it finds the defendant guilty beyond a reasonable

doubt. Jackson v. Virginia, 443 U.S. 307, 319 (1979). People with personal knowledge of a matter are competent to testify. NRS 50.015, NRS 50.025. Entering into a plea bargain does not make a witness incompetent. NRS 50.068.

In the case at bar, the witness is Deshawn Robinson, an eighth-grader who entered an Alford plea to the robbery that resulted in the victim's death in this case. (5 AA000995, 5 AA001040). Appellant says Deshawn lied to the police when first interviewed and was motivated to lie on the State's behalf once murder charges were dismissed against him. AOB at 10.

Jury Instruction #9 informed the jury of their duty to weigh each witness's credibility. AOB at 10-11. Jury Instruction #11 said the testimony of an accomplice must be supported by other evidence. AOB at 11. Deshawn testified while wearing inmate clothing and handcuffs, so the jury knew he was in custody. (4 AA000935, 5 AA000995). He said he was testifying as part of his agreement with the State. (5 AA001043). Additionally, Deshawn admitted he lied to detectives when he was first arrested. (5 AA001060). If the jury felt Deshawn had motivation to lie or the evidence failed to corroborate his testimony, the jury was empowered to discount his testimony.

Defense counsel tricked the teenager into saying he lied in court during his Alford plea canvass when he did not allocute to his crimes. (5 AA001081). The court summoned the parties to the bench to declare out of the jury's hearing that Deshawn

did not lie by failing to answer a question he was never asked. (5 AA001083). The question and answer was stricken from the record. (5 AA001089).

The jury had the opportunity to evaluate all the circumstances surrounding Deshawn's testimony. That he was in custody, that he had to testify to get the benefit of his plea bargain, and that he lied previously to the detectives are all facts in evidence that the jury could weigh in deciding whether to believe Deshawn. The defense attorney's false statement, that Deshawn lied by omission to the court during his Alford plea, worked to the defendant's advantage and did not improperly bolster Deshawn's testimony.

B. Ample evidence other than Deshawn's testimony supports Appellant's conviction.

Appellant next argues that the evidence, examined in isolation, does not support his conviction. Evidence is not examined in isolation, and the evidence presented in the instant case easily supports Appellant's conviction.

An appellate court must view the evidence in the light most favorable to the prosecution when determining if sufficient evidence exists to prove the elements of a crime beyond a reasonable doubt to any rational trier of fact. Jackson v. Virginia, 443 U.S. 307, 319 (1979).

When an accomplice testifies against his cohorts, his testimony must be corroborated by other evidence. Appellant's brief twists this the other way, complaining that the other evidence is corroborated by the accomplice. AOB at 10.

In fact, the physical evidence and Deshawn's testimony corroborate each other, as they should.

Appellant argued during closing arguments that Deshawn was the state's star witness and conviction was only possible if the jurors believed his testimony. (7 AA001527). This is not true. In addition to Deshawn's testimony, ample other evidence supports Appellant's conviction. Deshawn's testimony corroborates and is corroborated by this other evidence. In fact, the evidence in this case was so compelling, a juror was dismissed halfway through the trial because he was already convinced Appellant was guilty beyond a reasonable doubt. (4 AA000905).

Appellant conspired to commit robbery (Count 1). Deshawn testified Appellant texted him the day of the murder, asking if he and his brother would like to join in a robbery that evening. This is corroborated by the message itself, found on Appellant's cell phone. (3 AA000663). Deshawn and his brother manifested their agreement by picking up Appellant that evening in their car with a fourth conspirator and two handguns. (7 AA001503). The surveillance video from the convenience store captured the four men together, after the solicitation but before the crime, in the neighborhood of the crime scene and with at least one visible gun. (3 AA000669). The message and the fact the men assembled with guns near the crime scene corroborate Deshawn's testimony. The crime of conspiracy was complete at this point.

Appellant attempted to commit robbery with the use of a deadly weapon (Count 2). Deshawn testified the men planned to rob a house and that his job would be to rush in and order everyone down on the ground. They then would rob the victims by force. This testimony is corroborated by the conspiracy between the men to commit a robbery as described above.

Deshawn testified they visited a convenience store near the crime scene before the robbery. The convenience store clerk saw the men and their car together shortly before the crime. (3 AA000668). The clerk described the men, their clothing, and their car. (3 AA000668). The clerk mentioned one of the men open-carried a gun in a holster on his hip. (3 AA000668). One of the cell phones belonging to the men pinged a cell tower near the convenience store less than three miles to the murder scene shortly before the attempted robbery occurred. (7 AA001562). The clerk corroborated Deshawn's testimony about their visit to the store and the store video corroborated the clerk's testimony. (3 AA000669).

Deshawn testified that as he lay in wait for a victim with the other men, he saw a jogger wearing red shorts pass by. Robert Mason, a jogger shown on police body cam to be wearing red shorts, saw the men and their car at the home where the victim was killed. (3 AA000661). Deshawn told the jury where the men parked and where they waited for a victim. Mason described the men, the clothes they wore, and the license plate of the car they drove. (3 AA000661, 3 AA000662). The men caught

Mason's attention because they wore dark hoodies in August in Las Vegas, they stood against a wall in an unlit area removed from any reasonable place to visit at midnight, and their car was parked away from any driveway or walkway but looked poised for quick flight. (3 AA000661, 3 AA000662). When Mason later saw police activity at the same spot, he reported what he had seen to the police. (3 AA000664). His testimony puts the men and their car at the scene of the crime at the time of the crime and corroborates Deshawn's testimony.

Deshawn identified each person in the convenience store video, naming him and describing his clothing. Police found the clothing each person wore in that person's possession, which is corroborated by Mason's description and the store video. (3 AA000671, 3 AA000672, 3 AA000673). Deshawn testified where each person sat in his brother's car. Fingerprints confirmed where each man sat in the car, which belonged to Deshawn's brother. (3 AA000671). He said three of the men had guns. Police found guns in the possession of each man. (3 AA000671, 3 AA000672, 3 AA000673). He said the other men traded bullets among themselves while sitting in the car. In the car, police found bullets from different guns, including one that matched a bullet at the scene of the murder. (3 AA000671). Physical evidence corroborated Deshawn's testimony on all these points. (7 AA001565).

Deshawn described the robbery/murder victim which was corroborated by the victim's appearance. He testified that the men grabbed the victim, encircled him,

brandished guns, and that Appellant demanded his property. When Appellant and his friends shot the victim, they left without taking anything. Whether the men touched the victim's clothes, encircled him versus faced him, or spoke aloud is not corroborated, but since everything else Deshawn said was corroborated, the jury was free to believe his testimony on these matters.

Either way, the men planned a robbery, (3 AA000663), assembled before the robbery, (3 AA000668), brought guns, (3 AA000668), drove to a hidden place to lay in wait, (3 AA000661), and tried but were unsuccessful in taking property by force, (3 AA000661). They committed attempted robbery with deadly weapons.

Appellant committed first degree murder with a deadly weapon, either under a theory of deliberate murder or felony murder. As to felony murder, the death of Gabriel Valenzuela occurred during the commission of a robbery as described above. Under the deliberate theory, Appellant shot the victim with a handgun and intended the natural consequence of his action.

Deshawn testified the men robbed Mr. Valenzuela after he retrieved the mail from the family's mailbox. Mr. Valenzuela was found dead in his driveway, surrounded by pieces of mail. (3 AA000661). Deshawn testified Appellant fired first, using a .22 caliber gun. Mr. Valenzuela's wounds included a gunshot wound in his abdomen from a .22 caliber gun. (3 AA000661). Appellant had the only .22 caliber gun that evening. (3 AA000673). In a search of Appellant's home, police found a

.22 caliper gun that bore Appellant's DNA. (3 AA000673). Although the bullet was too damaged to be matched to Appellant's gun, it also could not be eliminated. (3 AA000673). Finally, ballistics evidence matched that gun to a cartridge case found at the crime scene. (3 AA000673).

Even without Deshawn's testimony, the physical evidence proves Appellant killed Mr. Valenzuela that evening. Even if the jury chose to disbelieve Deshawn, and that is their choice to make, the remaining evidence alone supports the guilty verdict in this case. Appellant's conviction is supported by the facts of this case.

CONCLUSION

Wherefore, the State respectfully requests that Appellant's Judgment of Conviction be AFFIRMED.

Dated this 9th day of December, 2020.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page and type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points, contains 4,522 words and does not exceed 30 pages.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 9th day of December, 2020.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on December 9, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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