No. 79554

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTIAN STEPHON MILES,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Appeal

From the Eighth Judicial District Court, Clark County
The Honorable Mary Kay Holthus, District Court Judge

APPELLANT'S REPLY BRIEF

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I. Miles did not knowingly, intelligently, and voluntarily waive his constitutional right to counsel, and the district court erred by not revoking his right to self-representation once it was apparent Miles was delaying and disrupting the proceedings.

The record shows that Miles did not knowingly, intelligently, and voluntarily waive his constitutional right to counsel. Furthermore, after the district court allowed Miles to represent himself, it should have revoked that right (as it is authorized to do) when it became apparent he was delaying and disrupting the proceedings.

A. Miles did not knowingly, intelligently, and voluntarily waive his constitutional right to counsel because, as the record unequivocally shows, he did not understand the elements of "each" crime charged, and he did not understand the possible penalties and punishments, including the total possible sentence he could receive if convicted.

"To knowingly, intelligently, and voluntarily waive the right to counsel, the defendant should . . . be made aware of the dangers and disadvantages of self-representation, so that the record will establish that he knows what he is doing and his choice is made with eyes open." *Hooks v. State*, 124 Nev. 48, 54, 176 P.3d 1081, 1084 (2008) (internal citations and quotations omitted). This requires, according to this Court, that a defendant "understand 'the elements of *each* crime' charged, *including* 'the possible penalties or punishments, *and the total possible sentence* the defendant could receive' if convicted." *Banks v. State*, 2019 WL

4791704, *1, No. 75106, (Nev. September 27, 2019) (unpublished disposition) (emphasis added) (citing SCR 253(3)(f), (g); *Hooks*, 124 Nev. at 54, 176 P.3d at 1084).

The record in this case unequivocally shows that Miles did *not* understand the elements of *each* crime he was charged with, and he did *not* understand "the possible penalties or punishments, *and the total possible sentence* [he] could receive" if convicted. *Banks*, 2019 WL 4791704,*1, No. 75106 (emphasis added); *see also Hooks*, 124 Nev. at 56-57, 176 P.3d at 1086 (reversing due to a limited inquiry into a defendant's understanding of "the dangers, disadvantages, and *consequences* of representing himself at trial," noting that a lack of understanding "the potential sentence" was of "particular significance") (emphasis added). Therefore, Miles could not have knowingly, intelligently, and voluntarily waived his constitutional right to counsel because he did not make that choice with "eyes open." *Hooks*, 124 Nev. at 54, 176 P.3d at 1084.

The State fails to substantively address these facts, arguments, and the supporting case law. Instead, the State's view seems to be, quite frankly, that none of it matters because Miles was "insistent upon representing himself." Answering Brief 20. The State relies on *Hooks v. State* for this contention but overlooks the fact that *Hooks* states, "the omission of a canvass is not reversible error if it appears from the whole record *that the defendant knew his rights* **and** *insisted upon*

representing himself." 124 Nev. at 55, 176 P.3d at 1085. (citation and internal quotation marks omitted) (emphasis added). Thus, a waiver of the right to counsel is invalid if a defendant insists on representing himself but the "whole record" demonstrates that the defendant did not "*kn[ow] his rights*." *Ibid*. (emphasis added). Here, the record shows exactly that scenario: Miles did not understand his rights.

1. Potential Penalties and Punishments

The State inaccurately claims that, during Miles's *Faretta* canvass, the district court discussed "the punishments for the *two* Category A felonies [he] was facing." Answering Brief 19-20 (emphasis added). But in fact, the court only addressed one of the Category A felonies. Specifically, the court told Miles: "You could be -- if you're convicted on first-degree kidnapping in Count 2, you could be sentenced to life. Do you understand that?" 1 AA 83.

The court did not address the possible penalties or punishments for the other Category A felony Miles faced (i.e., Sex Trafficking of a Minor under 18 Years of Age (NRS 201.300(2)(b)(2)(III)), or for the other felonies he was charged with (i.e., Living from the Earnings of a Prostitute (NRS 201.320(1)(b)), and Child Abuse, Neglect, or Endangerment (NRS 200.508(1)(b)(1))). 1 AA 112-13. Similarly, and just as significantly, the district court did *not* address "*the total possible sentence* [Miles] could receive if convicted" on all counts; in particular,

the possible sentence that he would face if the court imposed all of his sentences consecutively. *Banks*, 2019 WL 4791704, *1 (internal citation and quotation marks omitted) (emphasis added).

Miles's total possible sentence was not "[f]ive to life," as he mistakenly believed. 1 AA 83. It was a minimum of 12 years in prison and maximum back-to-back life sentences. *See* NRS 193.130(2)(d), 200.320(2)(a), 200.508(1)(b)(1), 201.300(2)(b)(2)(III), and 201.320(1)(b). Miles clearly did not understand the possible penalties and punishments he was facing, including the total sentence he could receive if convicted on all counts. *Banks*, 2019 WL 4791704, *1. He therefore could not, and did not, knowingly and intelligently waive his constitutional right to counsel with "eyes open." *Hooks*, 124 Nev. at 54, 176 P.3d at 1084.

2. Elements of Each Crime

Miles also did *not* understand "the elements of *each* crime" he was charged with. *Banks*, 2019 WL 4791704, *1 (citing SCR 253(3)(f), (g); *Hooks*, 124 Nev. at 54, 176 P.3d at 1084) (emphasis added). In fact, the record shows he did not even know or understand the elements of *one* of the crimes, let alone all four. During his *Faretta* canvass, the following exchange took place:

> THE COURT: An attorney knows the elements of the offense that you've been charged with and any other possible defenses that could

be presented on your behalf. Are you aware of the elements and *the crime* [singular] that you're charged with?[1]

THE DEFENDANT: Yes.

THE COURT: What are they?

THE DEFENDANT: Sex trafficking –

THE COURT: What's the elements of sex trafficking? Do you understand that each criminal charge has numerous elements to it that the State has to prove beyond a reasonable doubt?

THE DEFENDANT: -- yes Your Honor.

THE COURT: Do you know what the elements of *the crime* [singular] you're charged with are?

THE DEFENDANT: Yes, Your Honor.

THE COURT: What are they?

THE DEFENDANT: Recruiting – recruiting, enticing a person to commit sex trafficking, *conspiracy*; **it's a whole bunch**, your Honor. **I don't know off the top of my head**, but there's a whole bunch of elements Your Honor.

1 AA 78 (emphasis added).

It is clear Miles did not know the elements of the Sex Trafficking of a Child under 18 Years of Age charge. *Ibid*. ("I don't know off the top of my head, but there's a whole bunch of elements, Your Honor."). Moreover, there is nothing in the record to show he understood, or was even asked about, the elements of his

[1] Miles was actually charged with four crimes. 1 AA 112-13.

other charges (i.e., First Degree Kidnaping, Living from the Earnings of a Prostitute, and Child Abuse, Neglect, or Endangerment). 1 AA 112-13. Since the record as a whole fails to show Miles knew and understood the elements of *each* crime he was charged with, he could not have knowingly, intelligently, and voluntarily waived his right to counsel with "eyes open." *Hooks*, 124 Nev. at 54, 176 P.3d at 1084; *Banks v. State*, 2019 WL 4791704, *1 (to show that a defendant knowingly makes his choice to waive his constitutional right to counsel with "eyes open," the record must establish he "understand[s] 'the elements of *each* crime' charged") (internal citations omitted) (emphasis added).

Rather than pointing to anything in the record to show that Miles understood the elements of each charge, the State's response is that Miles was generically asked about his "understanding of the case against him," and that is good enough. Answering Brief 19. The State is wrong.

The law requires more. It requires that Miles understand the *elements* of *each* charge against him. *Banks v. State*, 2019 WL 4791704, *1. And, the record shows he did not. Miles, therefore, did not knowingly, intelligently, and voluntarily waive his constitutional right to counsel with "eyes open." *Hooks*, 124 Nev. at 54, 176 P.3d at 1084.

3. A Quick Note on the *Lyons* Case

Now, a quick note about *Lyons v. State*, 106 Nev. 438, 796 P.2d 210 (1990), *abrogated by Vanisi v. State*, 117 Nev. 330, 22 P.3d 1164 (2001). In the opening brief, Miles wrote:

> Also, with the added elements of dealing with a minor, prior solicitation charges against Gabby, and complexity regarding whether or not Miles thought that Gabby had permission to leave her home, *see* Supplemental PSI 6; *see also* 4 AA 584—this case was far too complex for the court to have been appeased by a simple "yes" when asked about the nature of Miles' charges and defenses. *See Lyons v. State*, 106 Nev. 438, 443-44, 796 P.2d 210, 213 (1990) (holding that the constitutional right of self-representation can be properly denied or revoked, where: "the case is especially complex, requiring the assistance of counsel").

Opening Brief 39-40.

I failed to point out, however, that *Lyons* was abrogated by *Vanisi*, and thus complexity is no longer an *independent* basis for denying a motion for self-representation. *Vanisi*, 117 Nev. at 341, 22 P.3d at 1172. However, the Court in *Vanisi* made it clear that complexity is still an important factor for a district court to address with a defendant to ensure he understands his decision and the difficulties he will be facing by proceeding in proper person. *Ibid*. ("The district court *should inquire of a defendant about the complexity of the case to ensure that the defendant understands his or her decision* and, in particular, the difficulties he or she will face proceeding in proper person" but "it is not an independent basis for denial of a motion for self-representation.") (emphasis added).

My mistake in failing to point out that *Lyons* was abrogated by *Vanisi*, however, should in no way be misconstrued as an attempt to mislead or misinform the Court. *See* Answering Brief 20-21. On the contrary, what Miles argued in his opening brief, as shown above, is that there were factual and legal complexities in this case, and that merely asking Miles broadly if he understood the charges and defenses, and getting a simple "yes" response, *see* 1 AA 83, does not adequately show Miles understood the complexity of the case and his decision to represent himself. Opening Brief 39-40; *Vanisi*, 117 Nev. at 341, 22 P.3d at 1172. Furthermore, Miles never argued that complexity was an *independent* basis for denying or revoking his request to represent himself. Opening Brief 39-40.

B. The district court should have revoked Miles's right to represent himself once it was apparent he was delaying and disrupting the judicial process.

Miles argued in the opening brief that once it became apparent he was delaying and disrupting the judicial process —— by, for example, filing numerous frivolous motions ("over twenty-five [pretrial] motions" plus responses and replies)[2] which resulted in nearly a four-year delay in getting this case to trial (e.g., preliminary hearing was held on May 7, 2015 (1 AA 7-20) and the first day of trial was held on April 1, 2019 (2 AA 114-280)) —— the district court should have

[2] This resulted in over thirty pretrial hearings, including three to four evidentiary hearings, as the record shows. *See e.g.*, 8 AA 1407-45.

revoked his right to represent himself and had standby counsel (who had already been appointed by the court, 1 AA 85, and was present at all proceedings and the trial) step in to take over Miles's defense. *See* Opening Brief 16-17, 41-42.

The State responded that Miles did not support "this claim with *any* legal authority," and then from the other side of its mouth says that *Lyons*, a case Miles cited to support his argument, "does not set forth any such *ability*." Answering Brief 21 (emphasis added). Thus, according to the State, Miles's argument that his right to self-representation can be revoked is "without merit," and *Lyons* does not support such a contention. It is the State's argument, however, that is meritless.

The U.S. Supreme Court, in *Faretta v. California*, recognized that a "trial judge may *terminate* self-representation by a defendant who deliberately engages in serious and obstructionist misconduct." 422 U.S. 806, 834 n. 46 (1975) (emphasis added). In *Martinez v. Court of Appeals of California, Fourth Appellate District*, the U.S. Supreme Court added: "As the *Faretta* opinion recognized, the right to self-representation is not absolute." 528 U.S. 152, 161-62 (2000). "A trial judge may. . . terminate self-representation or appoint 'standby counsel' — even over the defendant's objection — if necessary." *Id.* at 162 (citing *Faretta*, 422 U.S. at 834, n. 46).

The United States Court of Appeals for the Ninth Circuit also recognizes that "the right to self-representation is not absolute." *Cooks v. Newland*, 395 F.3d

1077, 1080 (9th Cir. 2005) (citing *Martinez*, 528 U.S. at 161). According to the Ninth Circuit, the right to self-representation "cannot be 'a license not to comply with relevant rules of procedural and substantive law,' and a trial court may terminate self-representation where a defendant 'deliberately engages in serious and obstructionist misconduct.'" *Ibid*. (quoting *Faretta*, 422 U.S. at 834 n. 46). And, like the U.S. Supreme Court, the Ninth Circuit noted that a "trial court may also, 'even over objection by the accused — appoint a 'standby counsel' to aid the accused.'" *Ibid*. (internal citation omitted).

Like the U.S. Supreme Court and the Ninth Circuit, the Nevada Supreme Court also holds that the right to self-representation is *not* absolute. *Guerrina v. State*, 134 Nev. 338, 341, 419 P.3d 705, 709 (2018). And, like the U.S. Supreme Court and the Ninth Circuit, the Nevada Supreme Court also recognizes that the right can be denied or terminated for various reasons, including if it is for "purposes of delay" or "the defendant is disrupting the judicial process." *Lyons*, 106 Nev. at 443-44, 796 P.2d at 213[3]; *see also Guerrina*, 134 Nev. at 341, 419 P.3d at 709; *Vanisi*, 117 Nev. at 339-40, 22 P.3d at 1171. In Nevada, district courts do not only have the authority and discretion to grant or deny the right when a request is made. They also have the authority and discretion to revoke or terminate

[3] The Nevada Supreme Court has cited to *Lyons* for this principle. *See e.g.*, *Tanksley v. State*, 113 Nev. 997, 1001, 946 P.2d 148, 150 (1997).

the right to self-representation *after* it has been granted. *See e.g.*, *Hymon v. State*, 121 Nev. 200, 204, 111 P.3d 1092, 1096 (2005) (noting that the district court *revoked* defendant's right to represent himself and appointed new counsel); *see also Malone v. State*, 2013 WL 7155086, *1-2, No. 61006 (Nev. December 18, 2013) (unpublished disposition) (district court revoked defendant's right to self-representation and reappointed counsel)[4]; *Johnson v. State*, 117 Nev. 153, 159, 17 P.3d 1008, 1012 (2001) (holding that the district court properly *revoked* its order allowing defendant to represent himself as co-counsel, and "ordered defense counsel to serve as the sole counsel for the defense" after mental competency came into question).

Clearly, the State's argument is meritless. The right to self-representation is not absolute. It can be revoked or terminated *after* it has been granted for, among other things, the reasons stated in *Lyons* (e.g., purposes of delay, or being disruptive), and standby counsel may be appointed to take over the defense.

That is what should have been done in this case. Once it became apparent that Miles's self-representation was resulting in extreme delay and disruption of the judicial process, the district court should have terminated his right to self-representation and had standby counsel take over his defense. *See* 1 AA 69, 85-86.

[4] Miles is not citing to *Malone* as binding precedent or for its persuasive value. *See* NRAP 36(c). It is included simply for illustrative purposes to show that district courts terminate or revoke the right to self-representation *after* it has been granted.

By failing to do so, the court allowed Miles to continuously and excessively delay the case (for nearly four years) and disrupt judicial proceedings, as noted in the opening brief and above. This prejudiced Miles and, coupled with his invalid waiver of the right to counsel, as shown above, violated his constitutional right to counsel. *See* U.S. Const. amend. VI.

II. NRS 176.035(1) Is Unconstitutionally Vague and Allows For Disproportionate Sentencing, In Violation of the Eighth Amendment.

Miles's argument has been, and continues to be, that NRS 176.035(1), which gives the court unfettered discretion to *aggregate sentences together consecutively or concurrently without sufficient reasoning or guidance*, is unconstitutionally vague and resulted in a disproportionate sentence. Despite the State's contention otherwise, *see* Answering Brief 8-9, Miles's argument is not that his *individual* sentences are unconstitutional. The State's argument that Miles's failure to challenge the individual sentencing statutes "should be fatal," *see* Answering Brief 9 n. 1, clearly misunderstands Miles's argument. NRS 176.035(1) permits the district court to impose consecutive or concurrent sentences *without* rhyme or reason and thus gives unconstitutional, unfettered discretion to trial courts in imposing consecutive sentences. The vagueness and *lack of guidance* given to courts is key, especially when viewed in light of the disproportionate nature of Miles's sentence.

The State also argues that Miles makes an "unqualified assertion that the reasoning of the Court of Appeals [in *Pitmon v. State*, 131 Nev. 123, 352 P.3d 655 (Ct. App. 2015)] is inapplicable to this case," and that *Pitmon* "constitutes binding precedent." Answering Brief 15 (internal citation and quotation marks omitted). But Pitmon's argument and the Court of Appeals' reasoning in *Pitmon* are distinguishable from this case, as explained in the Opening Brief, and are therefore not binding.[5] *See* Opening Brief 32.

> "Miles challenges the statute as it has been *applied to him*, and furthermore, the reasoning of the court of appeals [in *Pitmon*] is inapplicable to this case. There, the defendant argued that the statute intended to require concurrent sentences. However, in Miles' case we are simply arguing that without sufficient guidelines, vagueness so permeates the language of the statute that it is impossible for the district court not to dole out arbitrary and discriminatory punishments."

Ibid.[6] Again, Miles's argument boils down to (A) the need for guidance to the lower courts on when a sentence should be given consecutively or concurrently,

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[5] A Court of Appeals' decision is also not binding precedent on the Supreme Court of the State. "The principle of *stare decisis* is designed to promote stability and certainty in the law. While most often invoked to justify a court's refusal to reconsider its own decisions, it applies *a fortiori* to enjoin *lower courts to follow the decision of a higher court*." *Hubbard v. United States*, 514 U.S. 695, 720 (1995) (Rehnquist, C.J., dissenting) (emphasis added); *see also Palmieri v. Clark Cty.*, 131 Nev. 1028, 1062, 367 P.3d 442, 465 (Ct. App. 2015) (reasoning that lower courts must "follow and apply [Nevada Supreme Court precedent] faithfully" and citing *Hubbard v. United States* for that proposition).

[6] It is important to note that the default in Nevada is to run sentences concurrently. *See* NRS 176.035(1) ("Except as otherwise provided in subsections 3 and 4, if the

and (B) that without that guidance, Miles was disproportionately and unconstitutionally sentenced.

A. Need for Court Guidance Due To Statutory Vagueness

NRS 176.035(1) is unconstitutionally vague. The statute allows a district court unfettered discretion in determining whether the sentences are imposed concurrently or consecutively—in violation of the Constitution. Here, this vague language and lack of this Court's guidance allowed the district court to sentence Miles disproportionately, *see infra* Part II.B., and caused him prejudice. The State even agrees with Miles's argument that "[l]egislatures cannot create enough sentencing law to match the nuances of each crime and perpetrator." *See* Answering Brief 17 (quoting *Sims v. State*, 107 Nev. 438, 442-43, 814 P.2d 63, 65-66 (1991) (dissent of Justice Rose)). It is for this precise reason that the Court should comment on this issue.

The Supreme Court has a duty to interpret statutes in such a way that they are constitutional. *Bell v. Anderson,* 109 Nev. 363, 366, 849 P.2d 350, 352 (1993) ("Where a statute is susceptible to more than one interpretation, this court will interpret the statute so that it complies with constitutional standards."). To properly interpret NRS 176.035(1), this Court should issue a decision that gives guidance to

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court makes no order with reference thereto, all such subsequent sentences run concurrently.").

the district courts of this state on how to utilize their inherent, wide discretion in a constitutional manner when determining consecutive and concurrent sentences.

The State even further solidifies this void (and the glaring need for guidance from the Court) by stating, "Appellant fails to include any relevant legal authority that sets a standard for determining between the concurrent and consecutive imposition of sentences." Answering Brief 14. **That is precisely the point: there are no Nevada cases, and there is no guidance**. Miles is asking the Court to provide that direction—for example, by adopting and using the *Solem* factors, *see infra* Part II.B.—on potential justifications and/or standards for concurrent versus consecutive sentencing decisions.

Additionally, Miles is not asking this Court to "view itself as an appellate sentencing body," as mischaracterized by the State. Answering Brief 16. As the highest court in the state, the Nevada Supreme Court can and should provide guidance to lower courts, attorneys, and defendants regarding reasons, justifications, and factors that may warrant a consecutive sentence. Likewise, the court should remind the lower courts that their sentencing discretion is not unfettered and may be reviewed on appeal, thus encouraging district courts to substantively document their reasoning for running sentences consecutively. *See Sims v. State*, 107 Nev. 438, 442-43, 814 P.2d 63, 65-66 (1991) (dissent of Justice Rose) ("[T]he argument that this court would be usurping legislative functions by

reviewing sentences is pure sophistry. . . . [s]ince the exercise of discretion in sentencing is an integral part of the criminal judicial process, it should be subject to our review."). Providing guidance to the lower courts is essential to avoid disproportionate and unconstitutional sentencing decisions like the one made in this case.

B. Miles's Sentence Is Unconstitutionally Disproportionate

Miles's total sentence, consisting of all consecutive sentences and resulting in back-to-back life sentences, is unconstitutionally disproportionate and constitutes cruel and unusual punishment. *See* Opening Brief 20-23. While Miles acknowledges that reversals on the grounds of cruel and unusual punishment are rare, *Solem v. Helm*, 463 U.S. 277, 289-90 (1983), this case calls for the exception. It is well settled, and noted in the opening brief (Opening Brief 20), that district courts possess wide discretion in imposing sentences in criminal cases. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). But a district court may not impose a sentence that is "so unreasonably disproportionate to the offense as to shock the conscience." *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 489 (2009) (citation omitted). Here, Miles argued that the district court imposed a disproportionally severe punishment on Miles in comparison with the severity of the offense for which he was convicted. Opening Brief 20-27. Such a sentence

constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution, and Article 1, § 6 of Nevada's Constitution.

Using the *Solem* factors, Miles established exactly why this case should be distinguished from other Nevada cases that have rejected the *Solem* analysis: the harshness of Miles's punishment; a comparison of sentences for other crimes within the same jurisdiction; and a comparison of sentences for the same crime outside of this jurisdiction. *See* Opening Brief 23-27. Based on these three factors, it is evident that Miles's total sentence, including back-to-back life sentences, is unreasonably disproportionate.

Despite the State's assertion otherwise, Miles noted in the Opening Brief that, "[u]nfortunately, Nevada has not followed the lead of the federal courts and many other state supreme courts in adopting official factors to determine sentencing proportionality," and stated that other jurisdictions have adopted the *Solem* factors. Opening Brief 23. Miles then addressed the *Solem* factors to demonstrate their efficacy to the court. *Ibid*. Any argument by the State that Miles "d[id] not even acknowledge the extensive Nevada authority addressing *Solem*," Answering Brief 13, is incorrect, since Miles stated that Nevada has not yet adopted these factors and further, he noted sister states that have. Opening Brief 23 n. 7.

Although a district court has wide discretion in sentencing matters, Miles is asking this Court to recognize that a district court's discretion is not (or should not) be unlimited, and should be guided by both codified language and any precedence or guidance set by the Nevada Supreme Court. The vagueness in the language of the sentencing statute, and lack of guidance about the topic from this Court, allowed Miles to receive a disproportionate sentence. This violated both Miles's constitutional right to due process and his right to be free from cruel and unusual punishment. The Court, therefore, should (1) provide substantive guidance on this topic to the lower courts, (2) reverse the district court's decision to run all of Miles's sentences consecutively, and (3) remand to the district court for resentencing.

Conclusion

Miles did not knowingly, intelligently, and voluntarily waive his constitutional right to counsel because, as the record unequivocally shows, he did not understand the elements of *each* crime charged, and he did not understand the possible penalties and punishments, including the total possible sentence he could receive if convicted. And, after the district court improperly allowed Miles to represent himself, it should have revoked that right (as it is authorized to do) when it became apparent that Miles was delaying and disrupting the proceedings.

Furthermore, Miles's constitutional right to due process was violated because the language of NRS 176.035(1) is unconstitutionally vague. The district court's decision to run all of Miles's sentences consecutively, based on that statute, resulted in an unconstitutionally disproportionate punishment. These fundamental constitutional violations should result in Miles's convictions being reversed, his sentences vacated, and the case remanded to the district court for a new trial and/or resentencing.

DATED: July 2, 2020.

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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 2019 in 14 point font of the Times New Roman style.

2. I further certify that this brief complies with the page- or 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 or more, and contains 4,374 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 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: July 2, 2020.

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Certificate of Service

I HEREBY CERTIFY AND AFFIRM that this document, Appellant's Reply Brief, was filed electronically with the Nevada Supreme Court on July 2, 2020. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

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