IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA, Appellant, v. TARIQ MANSON, Respondent.	Case No. 82038

APPELLANT'S SUPPLEMENTAL BRIEF

Appeal from the District Court's Decision that Respondent is Incompetent Without the Possibility of Restoration
Eighth Judicial District Court, Clark County

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STATEMENT OF THE ISSUE(S)

(1) What burden of proof should apply in a competency determination?

(2) Which party has the burden of proof in a competency determination?

(3) What competency standard should a district court apply if not Dusky?

(4) What competency standard did the district court apply below?

ARGUMENT

I. BURDEN OF PROOF STANDARDS FOR COMPETENCY DETERMINATIONS

This case had two separate court rulings regarding Manson's competency. The first ruling the court made was that Manson was not competent to stand trial. The second, perhaps more troubling decision, is that the court declared Manson

incompetent without the possibility of restoration, thereby resulting in his case being dismissed.

1. The burden of proof applied to a competency hearing for a defendant to stand trial is by a preponderance of the evidence

Defendants are normally presumed to be competent. Where a reasonable doubt exists as to a defendant's competency, procedural due process requires that a competency hearing be held. NRS 178.415; Melchor-Gloria v. State, 99 Nev. 174, 180 (1983). Such a competency hearing must be conducted when there is "substantial evidence" that the defendant may be mentally incompetent to stand trial. Id.

Once it is determined that a competency hearing is required, then it becomes the responsibility of the district court to determine if the defendant is mentally fit to stand trial.

The United States Supreme Court has held that the burden of proof when deciding a defendant's competency may not exceed a preponderance of the evidence burden of standard. Cooper v. Oklahoma, 517 U.S. 348 (1996). In Cooper, the Supreme Court rejected an Oklahoma statute that required the defendant to show by clear and convincing evidence that he was not competent to stand trial. The Court reasoned through historical reference that the preponderance of the evidence burden of proof was deeply rooted, and that the vast majority of jurisdictions applied this standard to competency hearings. Id., at 360. Based on the Supreme Court's holding,

to apply any standard beyond a preponderance of the evidence when deciding an individual's competency to stand trial would offend the Due Process Clause of the Constitution.

2. A different standard applies when a court decides that the defendant is incompetent without a probability of restoration

Proving that a defendant is incompetent to stand trial by a preponderance of the evidence is the standard at a competency hearing. However, a different standard applies when the court decides that a defendant cannot be restored to competency.

In Jackson v. Indiana, 406 U.S. 715 (1972) the United States Supreme Court examined the question of how long an individual charged with crimes could be held in pretrial status as incompetent to stand trial. In its decision, the Supreme Court held:

> a person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than a reasonable period of time necessary to determine whether there is substantial probability that he will attain capacity in the foreseeable future. If it is determined that this is not the case, then the State must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen, or release the defendant. Id., at 738.

The Supreme Court was remiss to set any definitive timeframe or deadlines on its use of phrases like "reasonable period" and "substantial probability." However, the Court adopted a "substantial probability" standard for courts to use when determining if criminal charges may continue. If there is a substantial

probability the defendant will attain the capacity to stand trial in the foreseeable future, then the case may proceed to trial. Conversely, if a substantial probability does not exist that the individual will be competent to stand trial, then the criminal charges would be dismissed.

The Nevada Legislature then codified this language in 1981 when it added subsection (5) of NRS 178.425 to read:

> Whenever the defendant has been found incompetent, with no substantial probability of attaining competency in the foreseeable future…the proceedings against the defendant which were suspended must be dismissed.

This requirement that there must be a substantial probability is higher than what is required at a normal competency hearing. As mentioned in the previous section, a party must prove by a preponderance of the evidence (more likely than not) that the individual is incompetent to stand trial. However, here the issue is not whether an individual is merely incompetent to stand trial at a particular point in time, but whether the criminal charges should be dismissed. This heightened standard certainly makes sense given the State's interest in protecting society from those that have committed crimes. *See* United States v. Salerno, 481 U.S. 739, 749 (1987).

If a defendant is found competent to stand trial, he will still benefit from a trial's inherent constitutional protections. Proceeding to trial where a defendant cannot even show he is "probably" incompetent violates no due process concern.

The State bears the burden of proof for all elements of the crimes charged, including the element of intent. Even where the jury finds the defendant factually guilty of the crime, the jury will still have to find the required *mens rea*. If the jury, confronted with evidence of the defendant's marginal competency, finds him incapable of the requisite intent, the jury must find him not guilty. The defendant's personal characteristics as they relate to competency will be evaluated a third time, after the competency hearing and the trial, when the judge contemplates an appropriate sentence. Evidence of marginal competency can be presented to the sentencing judge as mitigating circumstances. A finding of competency to stand trial, then, does not end the story for the defendant, as he has other opportunities to have his unique circumstances weighed against his culpability.

By contrast, if the defendant is found incompetent to stand trial, with no hope of regaining competency, the matter ends. The State cannot hold him accountable for his actions that have harmed society. His victims will not see justice. Further, where the defendant's intellect is unlikely to sharpen in the future, the defendant will unlikely be held accountable for any future crimes. Competency, after all, is not based on the seriousness of the alleged crime, but on the characteristics of the defendant.

Therefore, while a mere preponderance of the evidence standard should be applied to a normal competency determination. The court is required to have facts

and evidence supporting a reasonably probability that the individual would not attain competency to dismiss a criminal case.

II. PARTY WISHING TO DECLARE THE DEFENDANT INCOMPETENT SHOULD BEAR THE BURDEN OF PROOF

The United States Supreme Court acknowledged in Medina v. California, 505 U.S. 438 (1992) "there is no settled tradition on the proper allocation of the burden of proof in a proceeding to determine competence." However, due process does not require that the State bear the burden of proof that a defendant is competent to stand trial. Id.

Where the standard of proof is by a preponderance of the evidence, the only time it matters which party bears the burden of proof would be "where the evidence that a defendant is competent is just as strong as the evidence that he is incompetent." Medina, 505 U.S. at 449, 112 S. Ct. at 2579.

In a competency battle, the stakes are high for each party, and for society. A just society cannot permit an incompetent defendant to face trial. On the other hand, the government's interest in protecting society from those charged with crimes is both "legitimate and compelling." United States v. Salerno, 481 U.S. 739, 749, 107 S.Ct. 2095 (1987). To balance these concerns, it may be fruitful to examine the consequences of a decision for either side.

Nevada statutes do not clearly establish which party bears the burden of proof in a challenge to competency. California, Connecticut and Pennsylvania place the

burden on the party raising the issue. Medina, 505 U.S. at 447, 112 S. Ct. at 2578. In California, defendants are presumed competent unless it is proven by a preponderance of the evidence that the defendant is mentally incompetent. Cal. Penal Code § 1369 (f); *see also* People v. Ary, 51 Cal.4th 510 (2011).

Georgia, Iowa, New Mexico, and Texas place the burden of proving incompetence on the defendant. Id. Delaware, Massachusetts, New Hampshire, and South Dakota place the burden on the prosecution. Id. In Utah, the burden is on the proponent of incompetency at the competency evaluation, but once the defendant has been found incompetent and is committed to a state facility, the burden shifts to the proponent of competency to reinitiate proceedings. Utah Code Ann. 77-15.5; 77-15-6(4).

A court normally applies the burden of proof assigned by statute. However, when the party that bears the burden of proof is not specified by statute, courts will generally assign the burden to the party seeking the request. Schaffer ex rel. Schaffer v. Weast, 546 U.S. 49, 56 (2005).

Because it is the defendant that benefits from having avoiding trial, it would be appropriate for him to bear the burden of proof. Although Nevada statutes do not specifically state that defendants are presumed competent, this fact is implied by the simple fact that the vast majority of defendants never undergo a competency evaluation. Only when there is a reasonable doubt as to one's competency is a

hearing even warranted. Therefore, an individual arguing that his incompetency should prevent him from standing trial is the party seeking a request, and the party that should bear the burden of proof.

III. DUSKY IS THE PREVAILING STANDARD FOR COMPETENCY DETERMINATIONS

The Dusky standard is the appropriate standard for competency determinations. All fifty states and the federal courts use a variation of the Dusky standard. Justice Study at 1-2; *see* Dusky v. United States, 362 U.S. 402, 80 S.Ct. 788 (1960). Dusky held the test to be used is whether the defendant "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him." Id. at 402, 80 S. Ct. at 789.

The Dusky standard is codified into Nevada law at NRS 178.400, which states:

> 1. A person may not be tried or adjudged to punishment for a public offense while incompetent.
> 2. For the purposes of this section, "incompetent" means that the person does not have the present ability to:
>   (a) Understand the nature of the criminal charges against the person;
>   (b) Understand the nature and purpose of the court proceedings; or
>   (c) Aid and assist the person's counsel in the defense at any time during the proceedings with a reasonable degree of rational understanding.

NRS 178.400(c) is not part of the Dusky standard, but our Legislature has decided that a defendant must not stand trial if he either cannot understand the charges

against him or he is not able to aid or assist his counsel at trial or after. Calvin v. State, 122 Nev. 1178, 1180, 147 P.3d 1097, 1098 (2006). Despite the variation, this Court has held that the statute is consistent with the Dusky standard. Id.

Notably, however, the standards set forth in Dusky and NRS 178.400 speak to a person's present abilities, not his future ones. The statutory scheme as well as the cases acknowledge the possibility that a person while not presently competent may be restored to competency and permitted to stand trial.

IV. THE DISTRICT COURT FAILED TO APPLY THE STANDARD SET FORTH IN DUSKY

1. The district court erroneously placed an overwhelming emphasis on Manson's raw intelligence rather than his ability to understand and help in his proceedings

The district court's decision to rely solely on Dr. Jones-Forrester was a fundamental deviation from the information that doctors use to assess competency under Dusky. Rather than focusing on Manson's competency under Dusky, the district court relied on Dr. Jones-Forrester and her emphasis on raw intelligence, education, and attorney-client interaction. In doing so, the district court erred because it ignored Manson's progress at Stein in favor of concentrating on his intellectual deficiencies. Based upon his intellectual deficiencies, and not his progress under Dusky, the district court then found a substantial likelihood that Manson would not be competent in the foreseeable future and dismissed the criminal charges against him.

As Dr. Sussman stated during Mr. Manson's competency hearing,

> [W]hen I looked at the [Jones-Forrester] report at first I said wow, it—it only took me a very short time to realize if I sit down do some penmanship here, you know, we could tear a lot of holes in this because as admirable as it is—as admirable it is for the defense to have her in their behalf to try and zealously avoid trial, this would—what she was saying would constitute a revolutionary alteration of the way competency determinations go. It's not only highly nuanced and doesn't get to the four corners of what—three corners actually with Dusky what constitute competence, but competency determinations not only need not be that tortuous, they shouldn't be that tortious … that's revolutionizing competency determination.

Manson AA 182-83. Competency is "a simple bar, widely noted to be a simple, low bar." Manson AA 183. Dr. Jones-Forrester "makes very frequent references to a lot of specific cognitive spheres and that's not what competency determination is all about." Manson AA 183.

The evaluation by Dr. Jones-Forrester, Ph.D., was intended to exceed the bounds of competency: "[i]t should be stated that neuropsychological evaluation examines intellectual, neurocognitive, and psychological functioning comprehensively, and thus includes neurocognitive testing over and above what would typically be included in competency evaluation alone." Manson AA 72. The district court acknowledged Dr. Jones-Forrester's inquiry went further than mere competence: "The Stein doctors did not perform testing on the extent of Mr. Manson's intellectual disability." Manson AA 281.

In its Decision and Order, the district court acknowledged competency determinations are guided by Dusky and NRS 178.400. AA 279-280. The district court then relied upon Dr. Jones-Forrester's findings to rule that Manson is unable to understand the charges, the nature of the proceedings against him, and the ability to assist his counsel. AA 280.

The district court then proceeded to explain that Manson's low IQ combined with his general lack of education, and difficulties in attention, mental tracking, processing speed, and executive functioning skills, rendered him incompetent to stand trial. AA 280. Rather than comply with Dusky, the district court made its decision on Manson's intellectual disabilities as opposed to his ability to understand the charges and proceedings, and to assist his attorney.

All of the individuals that tested Manson acknowledged that he had some level of intellectual disability. Yet despite this acknowledgment, the Stein doctors that interacted with Manson believed that he was competent to stand trial even with his intellectual deficiencies. They had seen improvement during his time at Stein, and their use of objective tests supported their conclusion that he was competent. Even the district court acknowledges in its order that Manson's understanding of the court proceedings had improved over time. AA 281.

At issue here is the overwhelming emphasis the district court placed on Manson's intellectual disabilities as opposed to his ability to understand the charges

and proceedings, and to assist his attorney. All the individuals that tested Manson acknowledged that he had some level of intellectual disability. Yet despite this acknowledgment, the Stein doctors that interacted with Manson all believed that he was competent to stand trial even with his intellectual deficiencies. They had seen improvement during his time at Stein, and their use of objective tests supported their conclusion that he was competent to stand trial.

In addition to the district court's focus on Manson's low intelligence, the district court also placed a great deal of weight on Dr. Jones-Forrester's observation of Manson interacting with his attorney. This interaction was not recorded. At least one Stein doctor expressed concerns about the abstract nature of this interaction. Manson AA 228, 232. Yet the district court relied on this defense role-playing: "None of the Stein doctors observed Mr. Manson interact with his attorney." Manson AA 281. The role-playing was to allow Dr. Jones-Forrester to "specifically assess Tariq's abilities across multiple areas of legal knowledge." Manson AA 74.

> Specifically addressed areas of legal knowledge included his knowledge of his charges and facts of his case, understanding of the roles of members of the legal community and court proceedings, understanding of sentencing structure, understanding of offers and negotiation processes, understanding and retention of counsel's advice, ability to weigh the possible outcomes of going to trial and to weigh the relative strength and weakness of evidence and witnesses against him, and ability to appreciate the adversarial nature of the legal process.

Manson AA 74. This clearly exceeds the Dusky requirements.

2. Under the Dusky standard, Manson is competent to stand trial.

A competency evaluation looks at the totality of the defendant's abilities, based on working with the individual, as well as the entirety of the person's records. Manson AA 174. It is not based off a simple checklist of things needed to show in order to be competent. Manson AA 174. Each doctor prepares his own evaluation, even when they are in the same room at the same time. Manson AA 174.

Dr. Bossi testified he did not feel Mr. Manson provided rote answers without understanding the underlying concepts. Manson AA 147-48. "We try to get as much elaboration as possible, specifically to make sure that he has a true understanding of this and that he's not just regurgitating answers." Manson AA 150.

The district court conceded Mr. Manson had a factual understanding on the Dusky prongs, but was concerned about whether he had a rational understanding. Manson AA 151. Mr. Manson could rationally explain that he was charged with a sexual offense with a minor, that the law said that was wrong, and that he could be punished for it. Manson AA 151. The district court said a "rational understanding is more about the ability to make decisions so can he make a decision to plead guilty or go to trial, not does he understand what pleading guilty is." Manson AA 152.

"Rational" means having reason or understanding, agreeable to reason. *See*

Merriam-Webster Dictionary at www.merriam-webster.com/dictionary/rational. To have a rational understanding, a person must be able to understand the relevant points of the issue. The word does not, however, require the ability to make the best or most logical decision possible. For example, when waiving the right to counsel, the person must rationally understand he has the right to an attorney, but deciding to waive counsel need not be a good decision.

Dr. Bossi explained that Mr. Manson could go beyond an explanation of the plea bargaining process and actually articulate what type of plea he would be willing to accept. Manson AA 153. Dr. Bossi explicitly stated that the opinion of Dr. Jones-Forrester required a high level of understanding of complex terms, whereas the Dusky standard does not require that level of nuanced understanding. Manson AA 155.

He discussed reasonable accommodations that could be made to enable Mr. Manson to better understand. Manson AA 156-57. He cited to reports written about court proceedings in other states with intellectual disabilities who proceed to trial. Manson AA 157. The Stein doctors used the Dusky standard. Manson AA 177.

Most competency evaluations are completed without observation of the defendant interacting with his attorney. Manson AA 158. If Dr. Bossi or the other Stein evaluators had concerns in that area, they would have requested the opportunity to observe the interaction. Manson AA 158. The competency restoration

classes did use role-playing methods, among others. Manson AA 168, 173. If his attorney had asked the Stein doctors to observe him with his client, the doctors would have done so. Manson AA 173-74.

Based on his experience conducting more than a thousand competency evaluations in Nevada, Dr. Sussman said Mr. Manson "clearly met the bar" for competency. Manson AA 183. Mr. Manson scored an 78 on the Georgia Court Competency Test-1992 Revision, where competent defendants tend to score 70 or better. Manson AA 210. Dr. Damas explained that when a person reads at the second grade level, he would not be similar to a second-grader on the stand. Manson AA 221.

a. Understanding the charges

Mr. Manson said he faces charges of sexual assault and lewdness with a minor, and he knew they were all Category A felonies carrying a penalty of one year to life in prison. Manson AA 55, 61, 67. He said a plea bargain is when "the DA gives you a bargain to reduce charges." Manson AA 56. He is aware of the risks of going to trial. Manson AA 68.

He understood the differences between not guilty, guilty, and no contest pleas. Manson AA 150. He said a guilty plea is "you did it," and that a no contest plea meant "not saying you did it or didn't do it." Manson AA 61. He volunteered that if he wanted to go to trial, he would plead not guilty. Manson AA 150. He appreciated

that the evidence against him indicated he would likely lose his case if the case went to trial. Manson AA 154.

Mr. Manson understood the potential penalties he faced, including long prison time and the need to register as a sex offender. Manson AA 162. He hoped for probation and did not want to register because he is not "a bad guy." Manson AA 162. He estimated his potential prison sentence as ranging from one year to life in prison. Manson AA 164.

His ability to understand the charges against him was "excellent," his knowledge of the range of punishment for a felony was "excellent," his understanding of plea deals was "good," and his awareness of the risks of going to trial was "fair." Manson AA 67-68, 177-78. He showed a poor understanding of pleading not guilty by reason of insanity. Manson AA 178.

The court asked if Mr. Manson knew potential defenses he could use, though it should be noted that there is not always a defense available to a defendant, based on the facts of the case. Manson AA 149. Where Mr. Manson said he did not know sex with a thirteen-year-old was illegal, this touched on criminal responsibility, not competency. Manson AA 180. He "gave good spontaneous recital of the allegations." Manson AA 180. He offered his ignorance of the law as exoneration, which would speak more to his immaturity. Manson AA 180. He acted younger than his peers and had playmates who were younger, and he did not see anything wrong

with having a younger girlfriend. Manson AA 180. This could potentially be mitigating in the eyes of a jury. Manson AA 180-81. Dr. Sussman pointed out criminal responsibility is not the same as competency. Manson AA 181. The court noted diminished capacity is not a defense in Nevada. Manson AA 185.

Dr. Jones-Forrester said that if Mr. Manson did not understand why he should not have sex with a child, he did not have a rational understanding. Manson AA 236.

> Q: And—and he demonstrated he understood what he was charged with, correct? Factually understood what he was charged with?
>
> A: Factually absolutely, Mr. O'Brien, but not rationally.
>
> Q: Well he understood that the law said that his accused behavior was illegal even though he didn't understand why it was illegal, correct?
>
> A: That's correct. Yes.
>
> Q: So that's sort of the rational you're getting at is you want him to understand why society says you can't have sex with a 14-year-old or someone under 14 and he just understands that he can't?

Manson AA 246.

Dusky does not require a rational understanding of why society has outlawed certain behavior; it only requires the defendant to know what he did that has caused him to face criminal charges.

b. Understanding court proceedings

Mr. Manson had an "excellent" ability to "self-recite" the roles of the key players, meaning without prompting. Manson AA 178. He volunteered that if he misbehaved in court, he could be found in "contempt of court." Manson AA 62.

He knew the proceeding would be adversarial and that the prosecutor was not on his side. Manson AA 163-64. Mr. Manson said the district attorney would "try to prove me guilty" while the public defender would help him. Manson AA 61. He knew his attorney was on his side and he wished to work with him. Manson AA 163. "The judge is neutral" and the jury "would see if you're guilty or not guilty." Manson AA 61. Although Mr. Manson struggled with the definition of the jury, he understood the nature of the court proceedings and his role in the matter. Manson AA 163.

c. Assisting counsel

Mr. Manson said he would tell his attorney the truth, talk to him if he did not understand or if a witness lied, and knew their conversations were confidential. Manson AA 56. Given his polite and acquiescent nature, he was encouraged to write down questions for his attorney prior to their meetings. Manson AA 57. He offered a rational account of the events leading up to the charges. Manson AA 62. "He is able to plan a legal strategy with the assistance of his attorney, and he stated he

would follow his attorney's advice and felt his attorney was trustworthy." Manson AA 63.

Dr. Bossi, under this prong, considered Mr. Manson's ability to have a reciprocal conversation with his attorney, to trust him, to understand his attorney's advice and the reasoning behind it. Manson AA 160. The district court expressed concern that he might simply follow his attorney's advice because he wants to please him. Manson AA 160. To check for this, Dr. Bossi evaluates whether the defendant can say why he has chosen to accept the attorney's advice. Manson AA 161. When asked about his attorney's advice about not going to trial, Mr. Manson cited the witnesses and evidence against him, including a letter he had written to the victim's mother. Manson AA 148-49, 153, 161-62.

Defense counsel expressed a concern that Mr. Manson would sit quietly in court and would not alert his attorney if he needed to. Manson AA 209. Dr. Sussman said counsel's expectations would need to be spelled out for him. Manson AA 209.

Manson is only required to assist his counsel by communicating relevant events to him; he is not expected to replace his attorney and conduct his own trial. Neither the Dusky standard nor NRS 178.400 require that every defendant be as competent as any other. Rather, the standards require a defendant understand the crime he is alleged to have committed, understand the basics of courtroom

procedure, and be able to help his attorney with his defense. Manson meets these standards.

3. Manson's intellectual disabilities were not grounds to dismiss his case when he was otherwise competent under Dusky

The district court then used his intellectual and neurocognitive deficits to render Manson incompetent without the possibility of restoration. AA 281-282. The district court's decision to declare Manson incompetent without the possibility was written in a paragraph explaining its rationale:

> At the challenge hearing, Dr. Jones-Forrester testified that Mr. Manson's low IQ and neurocognitive deficits would be lifelong disabilities. Mr. Manson's educational shortcomings may be improved upon with literacy, numeracy, and writing training, but Mr. Manson's intellectual and neurocognitive deficits would significantly limit the range of any improvement. Based on Mr. Manson's lifelong intellectual and neurocognitive deficits, the Court finds that Mr. Manson is incompetent without the possibility of restoration. AA281-282.

This ruling by the court was an abuse of discretion because it ignored the Dusky standard in favor of Manson's intellectual deficiencies. "The fact that a defendant might not understand the proceedings unless they are explained to him in simple language would put an additional burden upon counsel, but certainly does not establish that the defendant is incompetent to stand trial." United States v. Glover, 596 F.2d 857, 867 (9th Cir. 1979).

Placing an excessive importance on IQ as opposed to Manson's abilities under the Dusky standards creates an inherent problem because an individual's IQ is

unlikely to change much during the time that a person is being restored to competency. Understandably, Manson's IQ combined with his lack of education, certainly makes him more susceptible to having issues with some concepts and with court in general. Nevertheless, not understanding a concept is a possibility for any defendant. For example, a defendant who is charged with murder may not understand the science behind DNA, forensics, and the autopsy, but that lack of understand does bar him from being criminally tried. The Dusky standards appropriately considers an individual's ability to understand the proceedings rather than the person's academic or intellectual knowledge of the situation.

In placing an undue weight on the role of intelligence, the district court held that Manson cannot be criminally responsible for his actions, even if they have shown an ability to be restored to competency and improved in their knowledge of the court system just as Manson did.

CONCLUSION

The district court's decision to disproportionately rely on raw intellect will have widespread consequences. Individuals underdoing competency evaluations are not routinely tested for their intelligence because intelligence is not what Dusky requires. Here, the opinion of an independent doctor not involved with evaluating Manson's competency to stand trial, but instead focused on his IQ and his attorney interactions, carried the day. If this is to be an allowable standard for the dismissal

of a criminal case, it would behoove all defendants to present evidence of their intellectual deficiencies in hopes of avoiding any repercussions for their actions. If this became the standard, the factors set forth in Dusky would become entirely irrelevant. Thus, it is for the above-stated reasons that it is requested that this Court reverse the district court's order or dismissal.

Dated this 13th day of April, 2022.

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 4,936 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 13th day of April, 2022.

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 April 13, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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