IN THE SUPREME COURT OF THE STATE OF NEVADA

KATHERINE DEE FLETCHER,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

_____/

No. 82047

RESPONDENT'S ANSWERING BRIEF

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RESPONDENT'S ANSWERING BRIEF

I. STATEMENT OF THE CASE

On January 31, 2020, Appellant Katherine Dee Fletcher (hereinafter, "Fletcher") was convicted by a jury of murdering her child's father, Robert Trask, with the use of a deadly weapon. 8 Appellant's Appendix ("AA") 1317-1318, 1483. Fletcher waived the jury sentencing. On October 29, 2020, the district court sentenced Fletcher to life without the possibility of parole, as well as related fines and fees. *Id*. at 1483-1485, 1488-1489. Fletcher, in pro per, filed three timely notices of appeal. *See id*. at 1490-1495.

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II. ROUTING STATEMENT[1]

This appeal is not presumptively assigned to either appellate court. NRAP 17. Because this is a direct appeal from a conviction for a category A felony following a jury verdict, the Nevada Supreme Court may exercise its discretion to hear this matter or assign it to the Court of Appeals. *Id.*

III. STATEMENT OF ISSUES

A. Whether Judge Sattler erred in denying Fletcher's motion to recuse Judge Walker, when the basis for that motion stemmed from his work as a judicial officer in a prior proceeding and comments or observations made in the course of the proceedings?

B. Whether the district court plainly erred by admitting statements Fletcher made to Dr. Piasecki in the State's case-in-chief, when the statements were voluntarily made, and she was advised that their communications were not privileged?

IV. STATEMENT OF FACTS[2]

On July 28, 2016, Fletcher left her parent's home at 3:30 p.m. in her Dodge Neon wearing a two-piece bathing suit with a white blouse over it and a purse. 5 AA 801-802, 932-933. Fletcher went to the house where her son, Max, lived with his father Robert Trask. 6 AA 1110. At the time,

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[1] The State agrees with Fletcher's Jurisdictional Statement and will not repeat the same herein. NRAP 28(b).

[2] These facts pertain to the murder of Mr. Trask and the State's overwhelming evidence of Fletcher's guilt. The issues on appeal relate to a pretrial motion to recuse the presiding judge and the admission of specific evidence during trial. The discrete facts necessary for the resolution of each issue will be discussed in the analysis section of this brief.

Fletcher and Mr. Trask were involved in a protracted custody dispute involving Max and Fletcher was only to have supervised visitation with Max for one hour once a week. 6 AA 1108, 1110, 1153-1155, 1157-1160; 5 AA 846-848, 850-852, 856-857.

After Fletcher arrived at Mr. Trask's house, the three left the residence and took separate cars to Oxbow Park, which is located on the Truckee River and has a series of docks or platforms in the water. 6 AA 1110-1113. Prior to arriving at the park, Fletcher bought pizza from a Little Caesars nearby. 5 AA 916, 1002-1004. At the time that she purchased the pizza, she was wearing a pink and blue bikini with polka dots, a ball cap, and had a white purse slung over her shoulder. 5 AA 916, 1002-1004.

The three arrived at Oxbow Park around 4:22 p.m. 5 AA 994. Max recalled playing in the water and eating pizza on a little dock by the river. 6 AA 1111-1113. Shortly after 7:30 p.m. Fletcher, Mr. Trask, and Max were located on one of the platforms, where Mr. Trask and Max were looking over the railing the water. 4 AA 693; 6 AA 1114-1115. Mr. Trask was to Max's left, Max was in the middle, and Fletcher was on Max's right. *Id.* at 1115. Max saw a piece of trash in the river and picked it up. *Id.* All of a sudden, Max heard a "big bang" and when he turned around, he saw his dad "on the ground with a blood stained shirt in one area on his back." *Id.*

at 1115-1116. Max knew the sound was a gunshot and said it was "so loud" and "echoed off the trees." *Id.* at 1117.

Another man, Eric Preciado, was also in the park at the time of the shot and testified about his observations. Mr. Preciado had taken his kids to the park to play at the river that afternoon/evening and interacted with Mr. Trask, Max, and Fletcher shortly before Mr. Trask was murdered. 4 AA 725-727, 742-743. While Mr. Preciado was changing his shoes in the parking lot, he heard a loud pop. *Id.* at 730, 731. Within a second, Mr. Preciado looked in the direction of the noise and observed that the man he interacted with moments before, Mr. Trask, was "stumbling, walking kind of funny, trying to talk and reaching his arm in a weird way kind of behind him...." *Id.* at 730, 731, 732. Then Mr. Trask "hit the ground pretty hard" and Mr. Preciado ran toward him. *Id.* at 731. Mr. Preciado explained that he could not see Fletcher or the boy when he first heard the pop because they were blocked from his view by Mr. Trask's body. 4 AA 733-734. After Mr. Trask fell, Mr. Preciado observed Fletcher "messing around with something" on her arm or side and then she grabbed Max and left the platform. *Id.* at 734; 6 AA 1117. Max was "crying and wailing... my dad got shot, my dad got shot, over and over." 6 AA 1117.

Mr. Preciado passed Max and Fletcher on a path leading to the dock. 6 AA 1117-1118; 4 AA 735-736. Fletcher had a white bag or purse dangling from her arm at the time. 4 AA 742-743, 744. Mr. Preciado made it to Mr. Trask in a matter of seconds, but then Mr. Preciado became concerned about his own children, so he returned to his truck and observed Fletcher in her Dodge Neon in the parking lot. *Id.* at 733, 737, 742-743.

Mr. Preciado approached her vehicle and opened her door. *Id.* at 733, 742-743. He asked what happened, and "she looked scared and shocked and didn't have anything to say." *Id.* Mr. Preciado observed that Max was in the back of the car "crying frantically" and saying, "don't leave my daddy." *Id.* at 738. Mr. Preciado quickly returned to Mr. Trask's body and called 911. *Id.* at 738-740, 742-743. Fletcher's vehicle left the area around 7:36 p.m. and police arrived just minutes later at 7:40 p.m. *Id.* at 739-740, 742-743; 5 AA 997-998. When officers arrived on scene only Mr. Preciado's vehicle and Mr. Trask's vehicle were in the parking lot. 4 AA 706-708.

Officer Scott Smith was the first on scene and administered aid before the ambulance arrived. 4 AA 697-699. Mr. Trask was lifeless when Officer Smith encountered him, but was officially pronounced dead at the hospital at 8:02 p.m. 4 AA 710, 715. Testimony from the medical examiner, Dr. Laura Knight, confirmed that Mr. Trask was shot in the back. 7 AA 1304-

1305. The bullet entered between two ribs and pierced Mr. Trask's heart and a major blood vessel. *Id.* at 1307. Dr. Knight testified that severe bleeding would result from such an injury and that "a person with an injury like this could perhaps take a few steps, but would very likely be quickly incapacitated" and die quickly. *Id.* at 1307-1308. The trajectory of the bullet was slightly upward and also slightly from his right to his left. *Id.* at 1308.

Fletcher made a few stops after she fled with Max from the park. 6 AA 1119-1120. At one point, Fletcher got out of the car and spoke to someone on the phone, but did not call the police. *Id.* at 1117-1118, 1120; 4 AA 738-740, 742-743. After a few stops, Fletcher purchased gas and then drove Max to her parents' house on War Paint Circle in Golden Valley. 6 AA 1120; 5 AA 933-934. They arrived around 8:30 p.m. 5 AA 933-934. Max was crying and told his grandmother that his father had been shot. *Id.* at 934-935. Fletcher also said that Max's father "Rob", also known as Robert Trask, had been shot at the park. *Id.* at 935-936.

Fletcher's name came up as a possible suspect through a police department records search of cases involving Mr. Trask, so at approximately 9:00 p.m. officers responded to Fletcher's known residence, the house on War Paint Circle, to conduct surveillance. 4 AA 708; 5 AA

801. Neighbors identified Fletcher's dark blue Dodge Neon in front of the house. 5 AA 801-802. The shades in the front window were open, so an officer was able to observe Fletcher pacing back and forth in a nervous manner. *Id.* at 803-804, 810; *see also id.* at 941 (Fletcher's mother said she was nervous, pacing and did not want to talk about what happened). Fletcher was in in a two-piece bathing suit at the time. *Id.* at 804, 955.

Around 11:00 p.m. Fletcher and her mother were in the living room again watching the 11:00 news, when a breaking news story about the crime came on and "Fletcher appeared panicked" and began "pointing to her mom at the story on the TV…." *Id.* at 805, 811. The two talked and "they both seemed panic and pointing at the TV in a panicked manner" and then Fletcher left the residence in her Dodge Neon. *Id.* at 805; *see also id.* at 937-938 (Fletcher's mother described her as a "nervous wreck" and claimed that she left to go get cigarettes).

The undercover detectives conducted a traffic stop on Fletcher's vehicle. *Id.* at 806, 821. During Fletcher's initial interaction with police, she told them that she was going to the market to get cigarettes and then she was going to call the police. *Id.* at 822. Fletcher also made a spontaneous "utterance that her and her mom had watched the news and they don't believe its him, but would not elaborate any further on what

news she was watching or who him was." *Id.* at 824. During a subsequent interview at the police station, Fletcher had various outbursts and changes of demeanor when she was asked about the shooting, but not when she spoke to her mother or was alone in the room. 6 AA 1216-1217, 1220-1221, 1223-1224. Fletcher ultimately did not admit to the murder during her interview.[3] *Id.* at 1222-1223, 1225.

The police investigation continued and revealed additional forensic evidence tying Fletcher to Mr. Trask's murder. A single shell casing was recovered from the platform where Mr. Trask was standing near the railing at the time of the murder, which was a Hornady brand nine-millimeter caliber and was a plus P load, meaning it had extra firepower. 4 AA 705; 5 AA 876, 883-884, 923; 7 AA 1280-1283. The location of the casing was significant to investigators because it indicated that the shooter was relatively close to Mr. Trask, not in the water or shrubs.[4] 5 AA 886-887.

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[3] Fletcher later admitted in a handwritten letter that she shot Mr. Trask, but suggested it was an accidental discharge, and that she hid the gun and her purse in the back of her friend's truck after the shooting. 6 AA 1081-1083. The admission of these statements is the second issue raised on appeal and will be addressed more completely in the argument section of this brief.

[4] During the car ride and later that evening, Fletcher attempted to convince Max that someone was in the bushes that day and shot his dad. 6 AA 1120-1121, 1124. However, the physical evidence and the recollection of the two witnesses indicated otherwise.

This was consistent with Max's and Mr. Preciado's testimony that they would have heard someone in the bushes and that no one else was in the park that day. 6 AA 1118-1120, 1123, 1135; 4 AA 732, 737, 748-749. The bullet recovered from Mr. Trask's body was a Hornady 9-millimeter hollow point plus P load, which matched the casing found on the dock. 7 AA 1280-1283; *see also* 4 AA 705; 5 AA 876, 883-884, 923.

The investigation also revealed that Fletcher had animosity toward Mr. Trask and had been target shooting about three to four weeks prior to the murder. 6 AA 1138-1139. Around the same time, Fletcher was notified that she lost an appeal concerning custody. 6 AA 1157-1160; 5 AA 846-848, 850-852, 856-857. Then, just about ten days prior to Mr. Trask's shooting, Fletcher purchased a 9-millimeter semi-automatic handgun at a gun show. 5 AA 966-967. Fletcher's mother told her not to keep the gun in the house, so Fletcher said she would keep it in her car. 5 AA 951-952. After the shooting, Fletcher's father found a box of Hornady bullets in his desk which did not belong to him. *Id.* at 968-969.

A search of Fletcher's room was conducted the day following Mr. Trask's murder pursuant to a warrant. During the search, officers recovered a blouse, skirt, pink two-piece bathing suit, which was still damp, as well as a gun safety rules pamphlet, and a cell phone. 5 AA 808-809,

813-815. Gunshot residue testing was performed on various items collected from Fletcher's room and on her vehicle. A high level of gunshot residue was found on the bikini, blouse, and skirt recovered from Fletcher's room. 7 AA 1257-1259, 1266. Gunshot residue was also recovered from Fletcher's car. *Id.* at 1254, 1260. The gunshot residue recovered on Fletcher's clothing had a similar profile of particles to the Hornady shell casing recovered from the crime scene. *Id.* at 1263-1265. The amount of gunshot residue recovered from Fletcher's blouse was consistent with someone holding a gun and firing a round. *Id.* at 1265.

Based on this evidence, the jury found Fletcher guilty of first-degree murder with the use of a deadly weapon. 8 AA 1317-1318.

V. SUMMARY OF ARGUMENT

In Fletcher's first assignment of error, she contends that her motion to recuse Judge Walker should have been granted due to Judge Walker's comments in this case and knowledge of Fletcher from prior proceedings. Fletcher does not point to a single case to support her theory that due process requires a judge to recuse himself when he makes findings or comments that litigant disagrees with or when the judge presided over a prior case involving the same party. In fact, authority on point suggests quite the opposite. As such, Judge Sattler, the independent judicial officer

who reviewed the motion, did not err by denying Fletcher's motion to recuse Judge Walker.

Fletcher next contends that the district court erred by admitting statements she made during pretrial interviews with Dr. Piasecki. Fletcher did not object to the evidence on the ground that she raises in this appeal; thus, her claim is either waived or must be reviewed only for plain error. Fletcher participated in Dr. Piasecki's interviews voluntarily, even after Dr. Piasecki told Fletcher that their discussions were not covered by the doctor/patient privilege. The interview was not conducted pursuant to court order. Thus, the statements were not confidential, and their admission did not violate Fletcher's Fifth Amendment right against self-incrimination. To the extent that this Court disagrees and finds that the district court plainly erred in admitting the statements, the judgment of conviction should still be affirmed because Fletcher failed to show that the admission affected her substantial rights.

VI. ARGUMENT

A. Judge Sattler did not err by denying Fletcher's motion to recuse Judge Walker.

1. Additional Facts.

On July 30, 2018, Fletcher filed a motion to recuse Judge Egan Walker from presiding over this matter. 1 AA 84-100. The crux of

Fletcher's motion was that prior to being appointed to the general jurisdiction bench in December of 2017, Judge Walker had served as a judge in family court and presided over a guardianship case involving Fletcher. *Id.* at 84-85. Fletcher claimed that certain comments Judge Walker made during pretrial hearings in this case had tainted Judge Walker's outlook on the murder case. *Id.* at 86-87. Fletcher contended that in a recent *Young*[5] hearing, Judge Walker used information from the other case that was confidential in nature to determine the outcome of an issue in the criminal matter. *Id.* at 87. Fletcher also suggested that Judge Walker's bias was evident because he said he took "umbrage" with her allegations concerning her previous attorneys. *Id.* Finally, Fletcher argued that in her guardianship case, Judge Walker issued an order suggesting that he had determined she was guilty of the murder when such matter had not come before a jury. *Id.* at 88.

On August 2, 2018, Judge Walker filed a detailed response with several supporting exhibits, and then an addendum the same day. *Id.* at

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[5] *Young v. State*, 120 Nev. 963, 102 P.3d 572 (2004). The motion was granted and the Alternate Public Defender appeared on Fletcher's behalf on July 6, 2018, which was shortly before Fletcher filed her motion to recuse Judge Walker. *See* 1 AA 67 (during the July 6, 2018 status hearing, Marc Picker, the Washoe County Alternate Public Defender accepted appointment).

101-103, 104-132. On August 8, 2018, Fletcher filed her reply. *Id.* at 133-142. On August 9, 2018, the Chief Judge of the Second Judicial District Court issued an order referring the disqualification issue to another judicial department. *Id.* at 141-142. The Honorable Elliot Sattler heard argument on the motion on September 11, 2018. *Id.* at 143-150; 2 AA 151-194.

On September 21, 2018, Judge Sattler issued an order denying the motion. 2 AA 195-207. Judge Sattler addressed each of Fletcher's four contentions for recusal in his order. *Id.* at 202-206. Judge Sattler concluded that Fletcher failed to carry her burden to demonstrate that recusal was appropriate. *Id.* at 205. Specifically, Judge Sattler found that the identified areas of bias were "not even remotely close to the 'extreme' facts implicating the Due Process Clause." *Id.* Under Nevada jurisprudence, Judge Sattler similarly found that Judge Walker did not exhibit any bias in the proceedings that would necessitate his recusal. *Id.* Judge Sattler further found that "Judge Walker has not done or said anything in these proceedings which would lead a reasonable person to question his impartiality toward [Fletcher]." *Id.*

2. Standard of Review.

Judges have a "duty to preside…in the absence of some statute, rule of court, ethical standard, or other compelling reason to the contrary."

Goldman v. Bryan, 104 Nev. 644, 649, 764 P.2d 1296, 1299 (1988) (internal quotation marks omitted), disavowed on other grounds by *Halverson v. Hardcastle*, 123 Nev. 245, 266, 163 P.3d 428, 443 (2007). A judge is presumed to be impartial; thus, "the burden is on the party asserting the challenge to establish sufficient factual grounds warranting disqualification." *Ybarra v. State*, 127 Nev. 47, 51, 247 P.3d 269, 272 (2011) (citations omitted); *see also Rippo v. State*, 113 Nev. 1239, 1248, 946 P.2d 1017 (1997). A district court's bias or impartiality is reviewed de novo based on uncontested facts. *Ybarra*, 127 Nev. at 51, 247 P.3d at 272 ("The test for whether a judge's impartiality might reasonably be questioned is objective, and presents a question of law such that this Court will exercise its independent judgment of the undisputed facts") (cleaned up).[6]

3. Argument.

a. Judge Sattler did not err by denying Fletcher's due process challenge to Judge Walker presiding in this case.

Initially, it is important to note that Fletcher apparently only assigns error to Judge Sattler's decision on Fourteenth Amendment and due process grounds. *See* Opening Brief ("OB"), pgs. 15-18. Fletcher does not argue that Judge Sattler erred by denying her motion under the

[6] "Cleaned up" is used to indicate that internal quotation marks, alterations, and citations have been omitted. *See e.g., Redlin v. United States*, 921 F.3d 850, 860 (9th Cir. 2019).

reasonableness standard adopted by the Nevada Code of Judicial Conduct or as set forth in *Ybarra*, 127 Nev. at 51, 247 P.3d at 272. *See* OB, pgs. 15-18.[7] Fletcher appears to contend that Judge Sattler misapplied the Due Process standard because the risk of bias in this case was too high to be constitutionally tolerable. Fletcher misapprehends the applicable standard for a due process bias claim. Fletcher's argument also is premised on speculation and not founded in facts. Thus, Fletcher has not carried her burden to demonstrate error.

A Due Process bias claim is concerned with actual bias. *See Ybarra*, 127 Nev. at 51, 247 P.3d at 272 (*citing Suh v. Pierce*, 630 F.3d 685, 691-692 (7th Cir. 2011), for the proposition that "due process requires fair trial in fair tribunal but that most judicial disqualification matters do not rise to constitutional level and that United States Supreme Court has never held that due process requires recusal based solely on appearance of bias");

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[7] Any such argument raised in Fletcher's Reply should be deemed waived. *See LaChance v. State*, 130 Nev. 263, 277, n. 7, 321 P.3d 919, 929, n. 7 (2014) (noting that the Nevada Rules of Appellate Procedure do not allow litigants to raise new issues for the first time in a reply brief and declining to consider such an argument); *Edwards v. Emperor's Garden Restaurant*, 122 Nev. 317, 330, n. 38, 130 P.3d 1280, 1288, n. 38 (2006) (declining to consider claims where the appellant "neglected his responsibility to cogently argue, and present relevant authority, in support of his appellate concerns"); *Browning v. State*, 120 Nev. 347, 354, 91 P.3d 39, 45 (2004) ("an appellant must present relevant authority and cogent argument; issues not so presented need not be addressed by this court") (cleaned up).

Williams v. Pennsylvania, 579 U.S. 1, 8 (2016) ("[d]ue process guarantees an absence of actual bias on the part of a judge.") (cleaned up). Fletcher focuses on the manner the inquiry is conducted to suggest that simple comments or observations from Judge Walker meet the stringent standard. *See* OB, pgs. 15-18. Fletcher is mistaken.

The Supreme Court of the United States created an objective test to address actual bias rising to the constitutional level, which avoids courts having to determine if actual bias is present. The court must ask "whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias." *Williams*, 579 U.S. at 8 (cleaned up). The Court explained, "the objective risk of bias is reflected in the due process maxim that no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome." *Id.* However, not every circumstance with a potential for bias meets this standard. *Id.* at 13 (recognizing that statutes and professional codes of conduct provide more protection than due process requires and that "due process demarks only the outer boundaries of judicial disqualifications"). Due process requires recusal only when a judge "has a direct, personal, substantial, pecuniary interest in a case" or when there are "circumstances in which experience teaches that the

[objective] probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable." *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 876-877 (2009) (cleaned up).

Generally, "what a judge learns in his official capacity does not result in disqualification." *Kirksey v. State*, 112 Nev. 980, 1007, 923 P.2d 1102, 1119 (1996). The Supreme Court of the United States has instructed that "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. U.S.*, 510 U.S. 540, 555 (1994) (citation omitted). In such context, support for a bias or recusal motion can only be found when an opinion develops in the course of the current proceedings, or prior proceedings, which displays "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.*; *see also Kirksey*, 112 Nev. at 1007, 923 P.2d at 1119 (quoting *Liteky*, *supra*, for the same proposition).

Fletcher did not allege here that Judge Walker had a "direct, personal, substantial, pecuniary interest" in the case. *See Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. at 876-877. Nor has Fletcher asserted that this case is akin to a situation where the "circumstances in which experience teaches that the [objective] probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable." *See id.*

Fletcher's failure to tie her allegations of bias to these areas of concern should alone be fatal to her argument on appeal. Further, as discussed below, Fletcher's claims involve comments or rulings Judge Walker made in his official capacity. Fletcher has not shown that Judge Walker exhibited a deep-seated antagonism that required his recusal in this case. *See Liteky v. U.S.*, 510 U.S. at 555; *Kirksey*, 112 Nev. at 1007, 923 P.2d at 1119.

b. Fletcher did not meet her burden on her first asserted claim of bias.

Fletcher's first claim of bias involved Judge Walker's comments during a *Young*, *supra*, hearing. Fletcher pointed to a few specific comments to support her bias assertion, such as when he noted that he took "umbrage" with Fletcher's attacks on her prior counsel. Fletcher also contended that Judge Walker's admonishments and lectures during the course of the proceedings revealed that his view of Fletcher was skewed. However, remarks, even critical remarks, almost never support a bias finding. *See Liteky*, 510 U.S. at 555 ("judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge…" unless they "reveal such a high degree of favoritism or antagonism as to make fair judgment impossible"); *see also Cameron v. State*, 114 Nev. 1281, 1283, 968 P.3d 1169, 1171 (1998) ("remarks of a judge

made in the context of a court proceeding are not considered indicative of improper bias or prejudice unless they show that the judge has closed his or her mind to the presentation of all the evidence."). Here, Fletcher takes specifical remarks out of context, but she has not articulated how any of remarks rise to the level of deep-seated antagonism, nor does the record support such a conclusion.

Further, Fletcher only provided excerpts of the *Young*, *supra*, hearing to support her claim. Judge Sattler reviewed the entirety of the transcript before he rejected Fletcher's contentions. 2 AA 203. Judge Sattler found that Judge Walker's questions and comments were appropriate given the inquiries at issue and in context. *Id.* Additionally, Judge Sattler found that Judge Walker gave Fletcher wide latitude to discuss her concerns about her counsel and only limited her when she veered into areas of privilege or self-incrimination. *Id.* This Court should presume that the missing portions of the *Young*, *supra*, hearing support Judge Sattler's findings and reject Fletcher's bare allegations to the contrary. *See e.g., Prabhu v. Levine*, 112 Nev. 1538, 930 P.2d 103 (1996) (explaining that it is the appellant's responsibility to ensure the record on appeal contains the material to which exception is taken and that "the missing portions of the record are presumed to support the district court's decision....").

c. Fletcher failed to meet her burden her other three bias claims.

The thrust of Fletcher's three other allegations of bias concern Judge Walker's previous assignment as a family court judge, where he presided over Fletcher's guardianship case. Fletcher contended that Judge Walker's prior experience with her skewed his outlook regarding her and the criminal case. Fletcher claimed that he had special knowledge from that case which was not available to the parties in the criminal case and improperly used that knowledge when he referenced her possible mental health issues during a pretrial proceeding. Fletcher also asserted that Judge Walker made findings suggesting he predetermined her guilt in the family court proceeding. These claims are without merit.

In *Liteky*, the Supreme Court of the United States rejected a similar argument. 510 U.S. at 551-552. The Court held that litigants cannot claim bias or prejudice based on "opinions held by judges as a result of what they learned in earlier proceedings." *Id.* at 551. The Court reasoned, "[i]t has long been regarded as normal and proper for a judge to sit in the same case upon its remand, and to sit in successive trials involving the same defendant." *Id.* at 551.

As Judge Sattler noted, there are three districts in Nevada where there is only one judge to preside over all matters and that judges are

frequently called on to disregard a matter in coming to a decision in a separate case. *See* 2 AA at 203-204. This is consistent with the Court's observations in *Liteky*. *See* 510 U.S. at 551-552. In other words, contrary to Fletcher's assertion, Judge Walker's work in the guardianship case did not per se create a basis for his recusal.

In addition, Judge Walker's comments concerning Fletcher's competence did not present a basis for recusal. Judge Sattler found that NRS 178.405(1) permits a court to raise a competency issue and that Judge Walker acted respectfully in informing Fletcher of his observations concerning her mental health issues. *Id.* at 204. In fact, the Nevada Court of Appeals recently held that a trial court must *sua sponte* order a competency hearing any time there is substantial evidence that the defendant may be mentally incompetent to stand trial. *Goad v. State*, 137 Nev. Adv. Op. 17, 488 P.3d 646, 655 (2021). Thus, Judge Walker's comments and inquiry to alleviate any of his competency concerns did not demonstrate a basis for Judge Walker's recusal, particularly when competency evaluations had been already ordered in this case by the prior judge.[8]

[8] The case was originally presided over by the Honorable Patrick Flanagan until his untimely death in October of 2017. In August of 2017, Judge Flanagan entered an order for a competency evaluation. 1 AA 18-19. Judge

Fletcher's final asserted basis for recusal concerned an order that Judge Walker issued while he was presiding over her guardianship case. Fletcher claimed that Judge Walker had essentially predetermined Fletcher's guilt. Yet, as Judge Sattler specifically noted in his order denying Fletcher's recusal motion, Judge Walker used terms in the order such as "allegedly" when he referred to the criminal allegations and referenced Fletcher only as a "suspect" in the murder. *Id.* at 205. Judge Sattler declined Fletcher's invitation to "read between the lines" of those statements. *See* 2 AA 205. This Court should similarly reject Fletcher's invitation to "read between the lines" of Judge Walker's order to find bias, when his words plainly did not evidence a deep-seated antagonism against Fletcher. *See Liteky v. U.S.*, 510 U.S. at 555.

d. Fletcher's newly asserted allegations of bias do not support relief.

Fletcher attempts to bolster her bias claim on appeal by pointing to comments that Judge Walker made after Judge Sattler denied her motion. *See* OB, pgs. 17-18. Fletcher did not raise these alleged additional claims of

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Walker began presiding over the case when those competency evaluations were returned, and Fletcher's counsel chose not to traverse the findings that she was competent. 1 AA 49-50, *see also id.* at 38-45 (Judge Walker's first appearance as the presiding judge was in January of 2018 when he granted Fletcher's request to continue the hearing regarding the competency results).

bias below and, therefore, these claims should not be considered in this appeal. *See e.g. Diamond Enterprises, Inc. v. Lau*, 113 Nev. 1376, 1379, 951 P.2d 73, 74 (1997) ("[i]t is well established that arguments raised for the first time on appeal need not be considered by this court."). To the extent the Court reviews these alleged instances of bias, they can easily be dispensed with because they all arise from comments made by Judge Walker in the course of the proceedings below.

As discussed above, remarks of a judicial officer in the context of a proceeding almost never can form the basis for recusal. Fletcher has taken Judge Walker's comments out of context, when they are ground in the facts and the procedural history of the case. These comments are not evidence of bias or indications that recusal was necessary. In context, Judge Walker's observations do not show deep seated antagonism, or that Judge Walker closed his mind to the evidence or issues presented in this case. *See Liteky*, 510 U.S. at 555 ("judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge…" unless they "reveal such a high degree of favoritism or antagonism as to make fair judgment impossible"); *see also Cameron*, 114 Nev. at 1283, 968 P.3d at 1171 ("remarks of a judge made in the context of a court proceeding are not

considered indicative of improper bias or prejudice unless they show that the judge has closed his or her mind to the presentation of all the evidence.").

Fletcher's choice to use selected quotes out of context to support her bias motion is not consistent with the authority on point and, as one would expect, her claim of bias is undermined by other portions of those very discussions and other parts of the record. For example, during one of Judge Walker's dialogs with Fletcher about whether the court or the jury would sentence her, he offered several observations and then said:

> Finally, I'll leave you with this, Ms. Fletcher. I have, of course, been very direct with you at times. I am sure you must feel that at times I don't care for you or I don't agree for your position or otherwise and let me assure you nothing could be further from the truth.
>
> I take my job very seriously. If I am called upon, notice how I said that, if I am called upon to impose a sentence in this case, I take my job very seriously. I can assure you any sentence I would impose would not be because of passion, prejudice, sympathy, revenge or otherwise.

6 AA 1056-1057.

Similar examples can be found throughout the record, which is why select remarks that Fletcher points too cannot be determinative. When Judge Walker's remarks are considered in the appropriate context, it is evident that he did not have a deep-seated antagonism against Fletcher.

In conclusion, Fletcher only raises a due process challenge on appeal concerning Judge Walker's alleged bias. Fletcher had a high burden to demonstrate that recusal was necessary, and she failed to do so here. Fletcher did not cite a single analogous case to support her assertions of bias. Nor has she shown that Judge Walker had a "direct, personal, substantial, pecuniary interest in a case" or that this case presented a "circumstances in which experience teaches that the [objective] probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable." *Caperton*, 556 U.S. at 876-877.

Fletcher's due process right was not implicated here because Judge Walker's comments were not extreme and did not stem from extrajudicial sources. *See* 2 AA 205 (Judge Sattler found that the identified areas of bias were "not even remotely close to the 'extreme' facts implicating the Due Process Clause"); *see also Williams*, 579 U.S. at 9, 11-12 (finding that due process required that a former prosecutor who authorized the decision to seek the death penalty could not sit in judgment on the same case because he had made a critical decision in the case and his presiding over the case years later presented an unconstitutional risk of bias); *Caperton*, 556 U.S. at 884 (finding that due process required disqualification of a judge where one of the parties' campaign contributions to that judge totaled $3 million

dollars, "eclipsed" the total amount spent by other supporters, and exceeded the amount spent by the campaign committee by 300 percent). As such, Judge Sattler did not err by denying Fletcher's motion for recusal.

B. The district court did not commit plain error when it admitted Fletcher's written statement and verbal statements to Dr. Piasecki and, even if there was error, the error does not require reversal here because of the substantial other evidence of Fletcher's guilt.

1. Additional Facts.

On February 1, 2019, Fletcher filed a Notice of Defense, asserting that she would pursue a not guilty by reason of insanity ("NGRI") plea pursuant to NRS 174.035(6) and during a hearing on February 13, 2019, Fletcher entered an additional plea of NGRI.[9] 2 AA 227-228, 232-233. Various litigation occurred after the NGRI plea was entered concerning discovery and a court ordered psychiatric evaluation. *See* 2 AA 288-291, 339, 342-345, 431. On September 19, 2019, and September 23, 2019, Fletcher filed a notice of expert witness and addendum, respectively, which identified Dr. Piasecki as a witness and included her report concerning the NGRI defense.

[9] This was filed by Fletcher when she was represented by the Alternate Public Defender's Office. The Alternate Public Defender's Office was subsequently relieved as counsel due to a conflict the district court discovered. 3 AA 443-444, 452-453. Scott Edwards, was appointed to represent Fletcher on October 29, 2019. *Id.* at 471-472. He represented Fletcher during the trial and sentencing in this case.

On January 8, 2020, Fletcher withdrew her NGRI plea and decided to proceed only on her original not guilty plea.[10] 3 AA 481-482.

On January 17, 2020, the State filed a motion regarding Fletcher's statements to Dr. Piasecki. *Id.* at 485. Thereby, the State argued that several statements Fletcher made to Dr. Piasecki were admissions and should be admitted at trial. *Id.* at 485-495. On January 22, 2020, Fletcher filed an opposition to the State's motion arguing that the statements were no longer relevant because she withdrew her NGRI defense. *Id.* at 496-497. On January 23, 2020, the State filed a reply in support of its motion. *Id.* at 498-502. On January 24, 2020, the district court held a hearing on this matter. *Id.* at 501-515.

On January 27, 2020, the district court entered an order granting the State's motion. *Id.* at 537-541. The district court found that Fletcher's statements to Dr. Piasecki were admissible and not protected by: 1) attorney-client privilege; 2) the work product doctrine; 3) any statute; or 4) constitutional protections such as the due process clause or the privilege against self-incrimination. *Id.* at 539-541. The court further found that

[10] After Mr. Edwards was appointed to represent Fletcher, she indicated that she wished to withdraw her NGRI plea. *Id.* at 471-472.

Fletcher's change in litigation tactic—i.e., the decision to withdraw the NGRI defense—did not shield the statements from use by the State. *Id.*

At the end of the second day of trial, the State indicated it would be calling Dr. Piasecki the following morning and provided the district court and Fletcher's counsel with a proposed redacted version, as well as an unredacted version, of the written statement from Fletcher that were obtained from Dr. Piasecki's file. 5 AA 1010-1012. Before Dr. Piasecki testified, Fletcher's counsel indicated Fletcher would generally not make an objection to the introduction of her written statements, but there was a dispute about few specific areas of proposed redaction. 6 AA 1021, 1023-1025.

The State called Dr. Piasecki on the afternoon of the third day of trial. Dr. Piasecki testified that she had two interviews with Fletcher, which were not covered by the doctor/patient privilege, and that she informed Fletcher of this fact. *Id.* at 1062-1063, 1093-1094. Fletcher agreed to continue with the interviews and engaged in the discussion about her written statement. *Id.* at 1063. Trial Exhibit 53 was the statement written by Fletcher, which was a narrative of the day of Mr. Trask's murder and admitted without further objection by Fletcher's counsel. *Id.* at 1065-1067. Trial Exhibit 54 was the same document, but with notations Dr. Piasecki made of Fletcher's

statements to her during the interviews about the murder. *Id.* at 1071, 1076, 1077, 1083, 1093-1094.

In Fletcher's written narrative, she claimed that an angel of the lord told her to take her gun with her that day in her purse. *Id.* at 1067-1072. Fletcher suggested that she shot Mr. Trask by accident and claimed that after the shooting she discovered that her eyeliner was through the trigger area of her gun. *Id.* at 1082-1083. Fletcher admitted she did not call 911 because she did not have custody of Max and did not want police to take him away. *Id.* at 1081. Fletcher further admitted that she made stops on the way to her parents, used her phone to call her "sissy" and a friend, and stashed her purse and gun in the back of her friend Jesse's truck. *Id.* at 1081-1083. Fletcher also recounted the alleged voices and memories she was having during her interview with detectives "to show[] how badly I repressed traumatic memory…." *Id.* at 1091-1093.

2. Standard of Review.

Generally, appellate courts review a district court's decision to admit or exclude evidence for an abuse of discretion. *See e.g., McLellan v. State*, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008). However, the failure to object on the grounds raised on appeal precludes appellate review of the matter unless it rises to the level of plain error. *Id.*; *see also Green v. State*, 119

Nev. 542, 545, 80 P.3d 93, 94-95 (2003) (failure to object on the ground appellant now asserts on appeal generally precludes review unless appellant demonstrates plain error); *see Kaczmarek v. State*, 120 Nev. 314, 327-328, 91 P.3d 16, 26 (2004) (applying plain error review to an assertion that a defendant's Fifth Amendment right against self-incrimination was violated). "In conducting plain error review, [the appellate court] must examine whether there was error, whether the error was plain or clear, and whether the error affected the defendant's substantial rights." *Green*, 119 Nev. at 545, 80 P.3d at 95 (cleaned up). "Additionally, the burden is on the defendant to show actual prejudice or a miscarriage of justice." *Id.* (citation omitted).

3. Argument.

a. Fletcher has not shown error or that the error was plain or clear in this case.

Below, Fletcher challenged the admission of Dr. Piasecki's statements by claiming that they were no longer relevant to the case because she withdrew her not guilty by reason of insanity defense. 3 AA 496-497. On appeal, Fletcher focuses her assignment of error on a new contention that the admission of her statements and handwritten notes violated her right against self-incrimination and she is entitled to a new trial as a result. To

the extent that this Court considers Fletcher's claim, Fletcher has failed to show plain error.

Initially, Fletcher asserts without any supporting analysis or argument that her statements were confidential under *McKenna v. State*, 98 Nev. 38, 39, 639 P.2d 557, 558 (1982). In *McKenna*, the Nevada Supreme Court held that due process and fair play preclude trial courts from appointing a psychiatrist to examine an accused and then using the confidential contents of that interview to obtain a conviction. *Id.* However, this case is distinguishable from *McKenna*. Here, Dr. Piasecki interviewed Fletcher in February of 2019 and received her written statement which was the subject of the interview sometime before then. 6 AA 1062-1063, 1064. The letter and the conversations predated the district court's order. *See* 2 AA 267-268 (the district court entered its order on May 24, 2019). In addition, Dr. Piasecki spoke with Fletcher at her request and with her voluntary participation. In other words, Fletcher's letter and the statements she made to Dr. Piasecki were completely independent from the district court's order for an examination by the State's expert. Therefore, the holding in *McKenna* is inapplicable here.

Moreover, Dr. Piasecki specifically advised Fletcher that their conversations were not covered by privilege and Fletcher agreed to speak

with her anyway. 6 AA 1063 (Dr. Piasecki testified "[t]his conversation was not protected [by privilege], because it was not a doctor/patient conversation" and Fletcher was made aware of that fact, but nonetheless continued the discussion). Dr. Piasecki's testimony on this point was consistent with Nevada law because the communications between Fletcher and Dr. Piasecki were intended to be disclosed to third parties when they were made. *See* NRS 49.207 (defining a "confidential" communication as one "not intended to be disclosed to third persons" unless those persons are necessary to the transmission of the communication or persons participating in the diagnosis or treatment at the direction of the psychologist).[11] Further, as Dr. Piasecki's testified, Fletcher was not her

[11] Fletcher's written statement was provided originally to counsel and then provided to Dr. Piasecki. Fletcher does not claim attorney-client privilege applied here, nor would such a claim be successful because her written statement was disclosed either voluntarily or with her consent, and she discussed the contents of that disclosure with Dr. Piasecki after being informed that their discussion was not privileged. *See e.g.*, NRS 49.3859(1) ("[a] person upon whom these rules confer a privilege against disclosure of a confidential matter waives the privilege if the person voluntarily discloses or consents to disclosure of any significant part of the matter"); *see also Lisle v. State*, 113 Nev. 679, 701, 941 P.2d 459, 473 (1997) ("If a client voluntarily reveals portions of the communications with the attorney, those revelations amount to a waiver of the attorney client privilege as to the remainder of the conversation or communication about the same subject matter") (cleaned up and overruled on other grounds by *Middleton v. State*, 114 Nev. 1089, 968 P.2d 296 (1998)). Any argument raised in this regard in Fletcher's Reply should be summarily rejected. *See* Footnote 7, *supra*.

patient during these discussions. *See* NRS 49.209 ("[a] *patient* has the privilege to refuse to disclose and prevent any other person from disclosing confidential communications between the patient and the patient's psychologist."). Thus, Fletcher's letter and statements to Dr. Piasecki were akin to any other defendant's admissions to a third party, and were admissible. *See* NRS 51.035(3)(a) (a party's statement offered by the opponent is not hearsay); *see also* NRS 51.115 (statements made for the purposes of medical diagnosis are not inadmissible under the hearsay rule so long as they were reasonably pertinent to a diagnosis).[12]

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[12] On Appeal Fletcher generally asserts that Dr. Piasecki's notes became "irrelevant, unduly prejudicial, and likely privileged" when Fletcher no longer placed her mental capacity at issue. Fletcher does not present cogent argument to support these claims and they should be summarily rejected. *Rhyne v. State*, 118 Nev. 1, 13, 38 P.3d 163, 171 (2002)("[c]ontentions unsupported by specific argument or authority should be summarily rejected on appeal") (cleaned up). Even if these arguments are considered, they can easily be dispensed with. Fletcher's admissions and narrative of her actions before and after the murder were relevant because they had a tendency to make facts of consequence, as recounted by other witnesses, more probable. *See* NRS 48.015. Relevant evidence is generally admissible. NRS 48.025. Even balancing test contemplated in NRS 48.035 for excluding unduly prejudicial evidence favors admissibility. *Homes v. State*, 129 Nev. 567, 575, 306 P.3d 415, 420 (2013). Fletcher does not explain how the admission of her statements encouraged the jury to convict her on an improper basis. *See id.* (recognizing that all evidence offered by the State is prejudicial, but that "[e]vidence is unfairly prejudicial if it encourages the jury to convict the defendant on an improper basis") (cleaned up).

Fletcher also mistakenly contends that the introduction of her letter and statements to Dr. Piasecki violated her Fifth Amendment privilege against self-incrimination. Fletcher relies on *Estelle v. Smith*, 451 U.S. 454 (1981), to support her argument. However, the Fifth Amendment right against self-incrimination only offers protection where a person is "*compelled* in any criminal case to be a witness against himself." U.S. Const. amend. V (*emphasis added*). In *Estelle*, the Supreme Court of the United States discussed the "inherently compelling pressures" of custodial interrogation and concluded that the same considerations applied to a court ordered pretrial psychiatric examination. 451 U.S. at 466-467. Critical to the Court's analysis were its findings that the defendant was in custody and ordered by the court to participate in the examination. *Id.* at 467-469. Under those circumstances, the Court concluded that the defendant's statements were not "given freely and voluntarily without any compelling influences" and improperly introduced because the defendant was not apprised of his right to remain silent and the possible use of his statements later before the court ordered examination occurred. *Id.* at 469.

As already discussed above, Fletcher was not *compelled* by the State or the district court to participate in the discussions with Dr. Piasecki. Fletcher participated voluntarily in hopes of developing a defense, even

after she was explicitly told by Dr. Piasecki that their conversations were not protected by privilege. Fletcher's handwritten letter and statements to Dr. Piasecki do not implicate the Fifth Amendment because they were voluntarily made. *See Estelle*, 451 U.S. at 469 ("Volunteered statements… are not barred by the Fifth Amendment…."). As a result, the facts of this case and the current state of the law do not support a finding of plain error. *See e.g.*, *Flowers v. State*, 136 Nev. 1, 456 P.3d 1037 (2020) (explaining it is the appellants burden to demonstrate error and that for an error to be plain it must be "clear under current law from a casual inspection of the record").

b. Fletcher failed to show that reversal is required here.

To the extent this Court finds that the district court erred in its admission of Fletcher's statements, and that the error was plain, it still should not reverse the judgment of conviction in this case. Fletcher has not demonstrated the requisite prejudice requiring reversal because the other evidence of Fletcher's guilt in this case was extensive and the jury's verdict would have been the same even if Fletcher's statements to Dr. Piasecki were not admitted. *See Green*, 119 Nev. at 548, 80 P.3d at 97 (finding that the appellant failed to show prejudice in a plain error analysis because the result of the trial would not have been different if the jury was properly instructed and, therefore, that the error did not affect the defendant's

substantial rights); *Kaczmarek*, 120 Nev. at 331-332, 91 P.3d at 28 (applying the same analysis to a Fifth Amendment claim).

Fletcher certainly had motive to kill Mr. Trask. They were involved in a custody dispute, where Fletcher was only entitled to visitation with her son for one hour a week, and about a month before the murder she learned that she lost her appeal in her custody case. 5 AA 846-848, 850-852, 856-857; 6 AA 1108, 1110, 1153-1155, 1157-1160. Indeed, in a phone call after the murder Fletcher chillingly told her mother that she was "just glad [Max will] be somewhere else." 7 AA 1299-1300.

Fletcher's behavior before the murder was also telling. She went target shooting and bought a 9-millimeter semi-automatic handgun between the time her appeal was denied in the custody case and the murder. 5 AA 966-967; 6 AA 1138-1139. Just before Mr. Trask was shot, Fletcher's demeanor suggested she was upset or unhappy. *See* 4 AA 727. She even said something to the effect of "people die when they play this game, people die" twice during Mr. Preciado's interaction with her on the dock. *Id.* at 727-730.

In addition, Fletcher's behavior following the shooting suggested she had a guilty mind. She did not call 911 after the murder, even though Max recalled her talking on the phone after they fled from the park. 6 AA 1117-

1118, 1120; 4 AA 739-740, 742-743. Fletcher tried to convince her son several times that someone shot his dad from the bushes, even though he knew no one else was there. 6 AA 1123-1124, 1135. After seeing the news about the murder, Fletcher was nervous, even by her mother's account, and immediately fled from her parents' home. 5 AA 801-805, 810-811, 937-938, 941. When Fletcher was stopped by officers, she claimed she was going to get cigarettes and then call the police. *Id.* at 822. She also claimed she could not find her phone. *Id.* at 935-937. Yet, Fletcher used her phone after she fled from the park, and never request to use her mother's phone when she arrived home. 5 AA 943-944; 6 AA 1120.

Further, Fletcher showed calculated demeanor changes during her interview with police, but did not exhibit the same behavior when she was with her mother or alone in the interview room. 6 AA 1216-1217, 1220-1221, 1223-1224. She made a similar calculated outburst during trial in an effort to disrupt the proceedings immediately after jurors saw her video interview and heard a call where her mother told her to "play the crazy card." *See* 6 AA 1240-1245 (the district court found "[t]hat's exactly what Ms. Fletcher just did in my view" when it discussed her outburst). Put simply, Fletcher's demeanor before and after the murder, as well as during trial, suggested her guilt.

More importantly, though, the eyewitness testimony and forensic evidence was also abundant and strong in this case. While Max and Mr. Preciado did not see Fletcher shoot Mr. Trask, both of their observations directly before and after the shot pointed to Fletcher as the only possible killer. Max and Mr. Preciado were certain that no one else was in the park or bushes at the time. 4 AA 737, 748-750; 6 AA 1119, 1123, 1135. The entry wound was to Mr. Trask back and the bullet traveled slightly up and from right to left (7 AA 1308), which was consistent with where Max reported his mother was standing shortly before he heard the shot. 6 AA 1115. Similarly, Mr. Preciado reported that Fletcher was behind Mr. Trask and blocked from Mr. Preciado's view at the time of the shot, but when Mr. Trask fell Mr. Preciado observed Fletcher manipulate something to her side or on her arm before she grabbed Max's hand and fled. 4 AA 732- 734. No gun was found at the scene or the surrounding area. However, when Mr. Preciado passed Fletcher on the path, she had a purse which a reasonable juror could have concluded was what Fletcher manipulated after the shot and was where the gun was hidden as they passed each other on the path. *See* 4 AA 742-744.

Moreover, the evidence revealed Fletcher's 9-millimeter semi-automatic handgun was purchased ten days before the murder, and the

bullet that killed Mr. Trask was of the same caliber. 6 AA 1138-1139; 7 AA 1280-1283. Fletcher's father also discovered Hornady brand bullets in his desk, which were not his. 5 AA 968-969. The Hornady brand of bullets recovered from Fletcher's home were the same brand as the shell casing found at the scene, as well as the bullet recovered from Mr. Trask's chest. 7 AA 1280-1283. Forensic evidence also revealed that there was gunshot powder residue on the clothing Fletcher was wearing that day and that the amount and type of residue recovered from her clothing was consistent with someone who fired the bullet which ultimately killed Mr. Trask. 7 AA 1257-1259, 1263-1266.

As the district court judge observed during sentencing in this case, the evidence against Fletcher was "overwhelming." 8 AA 1468. Indeed, the district court reflected, "I have perhaps not seen a stronger case in my career of guilt." *Id.* at 1468. These observations ring true in light of the evidence in this case. Fletcher's written statement and statements to Dr. Piasecki largely corroborated other evidence offered about the murder. There were two areas where Fletcher's statement differed or offered direct insight into what occurred, but those differences did not lead to Fletcher's conviction in this case.

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First, Fletcher's statement included an explanation for why her gun and the purse she used that day were not recovered as evidence. Fletcher contends that the admission of this information was not harmless beyond a reasonable doubt and requires reversal.[13] However, the fact of Mr. Trask's death by a gunshot was uncontroverted. A 9-millimeter bullet was recovered from his chest and a matching spent shell casing was recovered nearby. Fletcher's ownership of a firearm of the same caliber, the discovery of the same brand of bullets at her home, the gunshot residue evidence on her clothing, and eyewitness testimony all pointed to Fletcher's use of an unrecovered firearm to murder Mr. Trask. While Fletcher's statement confirmed why the firearm was not recovered, her explanation is of little to no consequence to the question of her guilt.

Next, Fletcher's statement was written to suggest that the gun went off in her purse by accident and she only realized what happened after leaving the park. However, the jury obviously disagreed with the unlikely

[13] In *Kaczmarek*, the Court analyzed a Fifth Amendment claim under the plain error standard, but also observed that the error would have been harmless beyond a reasonable doubt even if the appellant had objected on Fifth Amendment grounds. 120 Nev. at 332, 91 P.3d at 28. The State submits the same is true here. The district court made the finding that the evidence was overwhelming at sentencing. The evidence as set forth in this brief supports the same finding from this Court, even if it conducts the harmless beyond a reasonable doubt analysis called for by Fletcher.

scenario described by Fletcher because they found her guilty of premeditated and deliberate murder, after being properly instructed on the meaning of those terms. *See* 8 AA 1400-1402. Thus, it is evident that the ultimate verdict in this case was based on evidence other than Fletcher's written statement and statements to Dr. Piasecki. In other words, Fletcher failed to demonstrate that any error in the admission of her statements affected her substantial rights because the result would have been the same if Dr. Piasecki's testimony had been excluded (since the jury appeared to disregard Fletcher's version of the shooting).[14] The other evidence to support Fletcher's guilt was extensive and powerful. As such, reversal is not appropriate here. *See Green*, 119 Nev. at 548, 80 P.3d at 97; *Kaczmarek*, 120 Nev. at 331-332, 91 P.3d at 28 (finding that even if the defendant's challenged statement was admitted in violation of the Fifth Amendment,

[14] Fletcher also suggests that her statements impacted the jury's decision on her credibility without her taking the stand. These arguments should summarily be rejected on appeal because they are not supported by cogent authority or argument. *See* Footnote 7, *supra*. Moreover, there is no requirement that the State wait until a defendant takes the stand to offer statements against a defendant's interest or that may be prejudicial to the defendant. The jury was instructed that they could not draw any inference from Fletcher's decision not to testify in this case. 8 AA 1406. Jurors are presumed to follow their instructions. *See Summers v. State,* 122 Nev. 1326, 1333, 148 P.3d 778 (2006). As such, Fletcher's suggestion that the admission somehow affected her substantial rights is without merit.

there was "other powerful evidence of his guilt" and, therefore, any error did not constitute reversible error under a plain error analysis).

VII. CONCLUSION

Based on the foregoing, the State respectfully request that this Court affirm Fletcher's judgment of conviction.

DATED: February 3, 2022.

CHRISTOPHER J. HICKS
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By: MARILEE CATE
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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 Georgia 14.

2. I further certify that this brief complies with the page limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it does not exceed 14,000 words. It contains 9,846 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

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the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: February 3, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on February 3, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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