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*Attorney for Defendant/Appellant*

Electronically Filed  
Apr 09 2021 11:33 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

THE STATE OF NEVADA,  
Plaintiff/Respondent

District Court Case No. CR9226

vs.

Department No. 2

COLE DUANE ENGELSON,  
Defendant/Appellant

**Supreme Court Case No: 82691**

**DOCKETING STATEMENT**  
**CRIMINAL APPEALS**

1. **Judicial District:** Fifth Judicial District      **County:** Nye County

**Judge:** Judge Robert Lane

**District Court Case No.:** CR9226

2. **If the defendant was given a sentence,**

a. **What is the sentence?**

First Degree Murder

Life imprisonment without the possibility of parole.

b. **Has the sentence been stayed pending appeal?**

No.

c. **Was the defendant admitted to bail pending appeal?**

No.

3. **Was counsel in the district court appointed or retained?** Appointed.

1       4. **Attorney filing this docketing statement:**

2           Attorney: Daniel E. Martinez, Esq., Bar No. 12035

Telephone: (702) 625-0610

3           Firm: Daniel Martinez Law, LLC

4           Address: 3199 E. Warm Springs Rd., Ste. 100

5           Client(s): Cole Duane Engelson

6       5. **Is appellate counsel appoint or retained?** Appointed (same as district court counsel).

7                       **If this is a joint statement by multiple appellants, add the names and addresses of**  
8                       **other counsel on an additional sheet accompanied by a certification that they**  
9                       **concur in the filing of this statement.** Not Applicable.  
10

11       6. **Attorney(s) representing respondent(s):**

12           Attorney: Nye County District Attorney, Chris R. Arabia, Esq. & Chief Criminal Deputy

13           District Attorney Kirk D. Vitto, Esq.

14           Telephone: (775) 751-7080

15           Firm: Nye County District Attorney

16           Address: 1520 E. Basin Avenue, Suite 107, Pahrump, Nevada 89060.

17           Client(s): State of Nevada

18       7. **Nature of disposition below:**

19           Judgment upon jury verdict

20       8. **Does this appeal raise issues concerning any of the following:**

21           Death Sentence? No

22           Life Sentence? Yes

23           Juvenile Offender? No

24           Pretrial Proceedings? No

25       9. **Expedited Appeals:** The court may decide to expedite the appellate process in the matter. Are  
26           you in favor of proceeding in such a manner? No.  
27  
28

10. **Pending and prior proceedings in this court.** List the case name and docketing number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal (e.g., separate appeals by co-defendants, appeal after post-conviction proceedings): None.

11. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts that are related to this appeal (e.g., habeas corpus proceedings in state or federal court, bifurcated proceedings against co-defendants): None.

12. **Nature of action.** Briefly describe the nature of this action and the result below.

Appellant Cole Duane Engelson was charged with Count I First Degree Murder. On November 16, 2020, a jury found Mr. Engelson guilty of the charge after an eight-day trial. Sentencing took place on February 1, 2021, and March 8, 2021. After hearing arguments from both sides and victim impact statements, Judge Lane sentenced Mr. Engelson to life in prison without the possibility of parole.

13. **Issues on appeal.** State specifically all issues in this appeal (attach separate sheets as necessary):

- The District Court committed reversible error in admitting a prior bad act relating to a previous injury the deceased suffered over the Appellant's objection.
- The District Court committed reversible error when it denied the Appellant's Motion to Suppress.
- The District Court committed reversible error when it denied the Appellant's Motion to Disqualify the Nye County District Attorney's Office.
- The District Court committed reversible error when it denied Appellant's Motion to Dismiss the Venire.

- The District Court committed reversible error when it denied Appellant's Motion to Limit autopsy photographs.
- The District Court committed reversible error in admitting a prior bad act relating to the Appellant discussing corporal punishment of the deceased over the Appellant's objection.
- The District Court committed reversible error in admitting jail phone calls in to evidence over the Appellant's objection.
- The District Court committed reversible error in admitting the deposition of Christopher Pullen at the time of trial, because Mr. Pullen was not an unavailable witness.
- The District Court committed reversible error in allowing letters from family members that were not present to be read into the record at sentencing.
- The District Court committed reversible error in allowing the uncle of the deceased to testify at sentencing over the Appellant's objection.
- There was insufficient evidence presented at trial to support a conviction of First Degree Murder.
- The sentence of life without the possibility of parole is a violation of the 8<sup>th</sup> Amendment, Cruel and Unusual Punishment, Clause of the Constitution.

14. **Constitutional issues:** If the State is not a party and if this appeal challenges the constitutionality of a statute or municipal ordinance, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

Not Applicable.

15. **Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls.

If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter should presumptively be retained by the Supreme Court under NRAP 17(b)(2), as it is an appeal from a judgement of conviction based on a jury verdict involving a conviction for an offense that is a category A felony, and it challenges more than the sentence imposed and the sufficiency of the evidence.

**16. Issues of first impression or of public interest.** Does this appeal present a substantial legal issue of first impression in this jurisdiction or one affecting an important public interest?

First impression: No.

Public interest: No.

**17. Length of trial.** If this actin proceeded to trial or evidentiary hearing in the district court, how many days did the trial or evidentiary hearing last?

Eight Day Jury Trial

**18. Oral argument.** Would you object to submission of this appeal for disposition without oral argument? No.

#### **TIMELINESS OF NOTICE OF APPEAL**

**19. Date district court announced decision, sentence or order appealed from:** March 8, 2021.

**20. Date of entry of written judgment or order appealed from:** March 12, 2021.

a. **If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:** Not applicable.

**21. If this appeal is from an order granting or denying a petition for a writ of habeas corpus, indicate the date written notice of entry of judgment:** Not applicable.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9<sup>th</sup> day of April, 2021, I, DANIEL E. MARTINEZ, ESQ., served the foregoing DOCKETING STATEMENT by depositing a copy in the U.S. Mail, first-class postage prepaid, addressed to the following person(s) at the following address(es):

**NYE COUNTY DISTRICT ATTORNEY**

Chris R. Arabia, Esq., District Attorney  
Kirk D. Vitto, Esq., Chief Deputy District Attorney  
1520 East Basin Avenue, Suite 107  
Pahrump, Nevada 89060

  
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DANIEL E. MARTINEZ, ESQ.