IN THE SUPREME COURT OF THE STATE OF NEVADA

SHELBE RIVERA,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No. 82918

RESPONDENT'S ANSWERING BRIEF

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

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ROUTING STATEMENT

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

STATEMENT OF THE ISSUES

1. Whether there was sufficient evidence to convict Appellant.
2. Whether the State committed prosecutorial misconduct warranting reversal.
3. Whether there was cumulative error.

STATEMENT OF THE CASE

On August 24, 2018, the district court filed an Order of Commitment. I AA 2. On June 7, 2019, the district court filed a Findings of Incompetency and Order Recommitting Defendant. I AA 5. On January 17, 2020, the district court filed an

Order of Competence finding that Shelbe Rivera (hereinafter "Appellant") was competent. I AA 17.

On May 21, 2020, the State filed an Information charging Appellant with Murder with Use of a Deadly Weapon (Category A Felony – NRS 200.010, 200.030, 193.165). I AA 14. On May 21, 2020, Appellant pled not guilty by reason of insanity. I AA 17

On March 1, 2021, Appellant's jury trial commenced. I AA 19. On March 5, 2021, the jury returned a verdict finding Appellant Guilty but Mentally Ill of 2nd Degree Murder with Use of a Deadly Weapon. III AA 553.

On May 11, 2021, the district court filed the Judgment of Conviction. III AA 597. The district court sentenced Appellant to the Nevada Department of Correction for ten (10) to twenty-five (25) years plus a consecutive term of five (5) to fifteen (15) years. III AA 597-98.

On May 12, 2021, Appellant filed a Notice of Appeal. III AA 600.

STATEMENT OF THE FACTS

On July 1, 2018, Appellant and Juan Rincon (hereinafter "Juan") met for the first time. II AA 310. After meeting, Appellant and Juan ended up smoking marijuana together. II AA 312-13. While smoking, Juan asked to look at Appellant's knife. According to Appellant, Juan gave him a "funny look" leading Appellant to believe Juan was "scheming." II AA 313. Appellant pulled his knife out then

proceeded to stab and cut Juan forty-two times. II AA 313, 360. At no point did Juan fight back. II AA 314. Juan died due multiple sharp force injuries. II AA 360. After killing Juan, Appellant threw away his bloodied shirt, hid the knife in a dumpster and left the scene. II AA 269, 311, 318, 401, 484.

That same day, officers with the Las Vegas Metropolitan Police Department responded to a call regarding the murder. II AA 291. Juan's body was found at 418 W. Mesquite Ave., Las Vegas, Nevada. II AA 294. At the scene, officers found suitcases, a couple of buckets, and pink backpack with paperwork belonging to Appellant. II AA 295. Upon processing the scene, Officer Eric Ravelo (hereinafter "Officer Ravelo") found the knife Appellant used to murder Juan. II AA 284, 294.

On July 2, 2018, Officer Christina Martinez (hereinafter "Officer Martinez") responded to a call regarding a disturbance at the Best Buy located on 10950 W. Charleston. I AA 246. Upon arriving, she found Appellant outside the store shirtless. I AA 246. Officer Martinez noticed blood on his pants and asked Appellant about it. I AA 249. Appellant stated the blood was from a fight but did not mention stabbing Juan. II AA 251. Appellant later said he hid this information because he did not want to get in trouble. II AA 318. Officer Martinez was unaware Appellant was a suspect in a homicide investigation. I AA 248. She testified that ended her interaction with him by taking him to a Burger King so he could eat and may have dropped him off at a shelter. II AA 252.

On July 10, 2018, officers found Appellant at a homeless youth center. II AA 305. Appellant was arrested and read his Miranda rights. II AA 305. Officer Ravelo spoke with Appellant about his involvement in the murder. II AA 309. During the conversation, Appellant admitted to stabbing Juan. II AA 313.

At trial, the State called Dr. Herbert F. Coard III (hereinafter "Dr. Coard") to testify about whether Appellant was criminally insane. II AA 388. Dr. Coard's qualifications consist of the following: (1) doctoral degree from the University of Missouri in St. Louis; (2) a post-doctoral specialization as a clinical psychologist; and (3) working as a forensic psychologist for approximately twenty years. AA II 389. As part of analyzing Appellant's mental state, Dr. Coard interviewed Appellant and reviewed numerous records, including the defense expert's report. II AA 390.

During Dr. Coard's interview with Appellant, Dr. Coard asked several questions about the killing. II AA 399. Appellant indicated the following: (1) Juan did not have a weapon; (2) Juan was not threatening beyond looking at him funny; (3) Appellant did not believe Juan would kill him; (4) Appellant could have escaped the situation; and (5) other people have looked at Appellant in similar ways and he did not harm them. II AA 399 Additionally, Appellant stated that he knew killing Juan was wrong as well as unlawful and apologized for it. II AA 400; III AA 507.

While Dr. Coard believed Appellant was in a delusional state, Dr. Coard first concluded that he understood the nature and capacity of his actions. II AA 394, 401.

He arrived at this conclusion based upon Appellant's behavior after killing Juan. Appellant fleeing the scene, hiding the knife, and taking off his shirt all factored into his conclusion. II AA 401. Dr. Coard also concluded that Appellant appreciated the wrongfulness of his conduct. His conclusion relied on Appellant's apology and attempts to avoid detection from police. II AA 401.

Appellant called clinical and forensic psychologist Dr. Mark Chambers (hereinafter "Dr. Chambers") to testify. II AA 449. Dr. Chambers agreed with Dr. Coard's conclusions that Appellant was delusional, but that he understood the nature of his acts. II AA 474-75. However, Dr. Chambers believed Appellant did not appreciate the wrongfulness of his conduct largely focusing on his lack of motive. II AA 475-76, 488.

SUMMARY OF THE ARGUMENT

First, there was substantial evidence to support the jury's verdict. Appellant admits that he stabbed Juan to death with a knife. The only contention is whether the jury could conclude that Appellant understood the wrongfulness of his actions. The State presented an expert witness that testified Appellant understand the wrongfulness of his actions. The expert witness explained how he came to this conclusion. The jury was left to determine the credibility of the State's expert witness against the credibility of Appellant's expert witness. When doing this, they

concluded that Appellant failed to meet his burden to establish an insanity defense. As such, there was sufficient evidence to convict Appellant.

Second, the State did not commit prosecutorial misconduct warranting reversal. Appellant alleges that multiple statements constituted prosecutorial misconduct. Appellant is unable to demonstrate that these statements constituted errors or that they would have had a substantial effect on the jury' verdict. As such, he is unable to establish prosecutorial misconduct.

Third, there was no cumulative error. Appellant is unable to demonstrate that there were multiple errors to cumulate. However, even if he could, the errors were minor in nature and do not warrant reversal. As such, he is unable to demonstrate that the cumulative effect of the errors deprived him of a fair trial.

As such, this Court should affirm the Judgment of Conviction.

ARGUMENT

I. THERE WAS SUFFICIENT EVIDENCE TO CONVICT APPELLANT

Appellant argues he provided sufficient evidence to establish an insanity defense. The standard of review for sufficiency of the evidence upon appeal is whether the jury, acting reasonably, could have been convinced of the defendant's guilt beyond a reasonable doubt. Edwards v. State, 90 Nev. 255, 258-259, 524 P.2d 328, 331 (1974). In reviewing a claim of insufficient evidence, the relevant inquiry is "whether, after reviewing the evidence in the light most favorable to the

prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Origel-Candid v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998), (quoting Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984)); See also Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979). "Where there is substantial evidence to support a jury verdict, it [the verdict] will not be disturbed on appeal." Smith v. State, 112 Nev. 1269, 927 P.2d 14, 20 (1996); Kazalyn v. State, 108 Nev. 67, 71, 825 P.2d 578, 581 (1992); Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Moreover, "it is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of the witnesses." Origel-Candido, 114 Nev. at 381, 956 P.2d at 1380 (quoting McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992)); see also Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221 (1979) (the Court held it is the function of the jury to weigh the credibility of the identifying witnesses); Azbill v. Stet, 88 Nev. 240, 252, 495 P.2d 1064, 1072 (1972) cert. denied, 429 U.S. 895, 97 S. Ct. 257 (1976) (In all criminal proceedings, the weight and sufficiency of the evidence are questions for the jury; its verdict will not be disturbed if there is evidence to support it and the evidence will not be weighed by an Appellate Court),. This does not require this Court to decide whether "it believes that the evidence at the trial established guilt beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. at 319-20, 99 S. Ct. at 2789 (quoting Woodby v. INS,

385 U.S. 895, 87 S. Ct. 483, 486 (1966)). This standard thus preserves the fact finder's role and responsibility "[to fairly] resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." Id. at 319, 99 S. Ct. at 2789.

A jury is free to rely on both direct and circumstantial evidence in returning its verdict. Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980). This Court has consistently held that circumstantial evidence alone may sustain a conviction. Deveroux v. State, 96 Nev. 388, 391, 610 P.2d 722, 724 (1980) (*citing* Crawford v. State, 92 Nev. 456, 552 P.2d 1378 (1976); see also Mulder v. State, 116 Nev. 1, 15, 992 P.2d 845, 853 (2000) ("The trier of fact determines the weight and credibility to give conflicting testimony.").

The Nevada Supreme Court has explicitly adopted a clarified "M'Naghten rule," noting that "[i]n determining what constitutes legal insanity, Nevada courts appl[y] the M'Naghten rule" and "procedurally consider[] insanity to be an affirmative defense." Finger v. State, 117 Nev. at 562, 576–77, 27 P.3d at 76, 84–86 (2001) (*citing* M'Naghten's Case, 8 Eng. Rep. 718, 10 Cl. & Fin. 200, 209 (1843)). M'Naghten "created a very strict guideline for determining insanity. The fact that a person had mental health problems did not necessarily mean that he or she could meet the M'Naghten test for insanity." Id. at 556, 27 P.3d at 72.

In re-approving Nevada's historical adoption of the M'Naghten rule, the Finger Court noted that in addition to using the M'Naghten rule to determine insanity, Nevada has "also adopted the M'Naghten guideline for evaluating delusional states as they relate to the concept of legal insanity." Id. at 563, 27 P.3d at 76. The Court explained:

> if a jury believes [the defendant] was suffering from a delusional state, and if the facts as he believed them to be in his delusional state would justify his actions, he is insane and entitled to acquittal. If, however, the delusional facts would not amount to a legal defense, then he is not insane. Persons suffering from a delusion that someone is shooting at them, so they shot back in self-defense are insane under M'Naghten. Persons who are paranoid and believe that the victim is going to get them some time in the future, so they hunt down the victim first, are not.

Id. at 576, 27 P.3d at 85.

"In order to be considered legally insane under M'Naghten, a defendant must labor under a delusion so great that he is incapable of appreciating his surroundings." Id. The Court gave two examples in explaining such delusions, which "must do one of two things: (1) rob the defendant of the ability to understand what he is doing"—for example, a defendant who thinks he is shooting at a human-shaped target rather than a person—"or (2) deprive the defendant of the ability to appreciate that his action is wrong, that is, not authorized by law"—for example, a defendant who thinks he is shooting at enemy combatants in battle. Id. at 556–57, 27 P.3d at 72. The Court expanded on this second example:

> An individual who labors under the *total delusion that they are a soldier in a war and are shooting at enemy soldiers* is not capable of forming the intent to kill with malice aforethought. His delusional state prohibits him from forming the requisite *mens reas*, because he *believes that his killing is authorized by law*. He is legally insane under M'Naghten.

Id. at 574–75, 27 P.3d at 84 (emphases added).

"It is the jury's province to determine whether a defendant is legally insane." Hudson v. State, 108 Nev. 716, 720, 837 P.2d 1361, 1364 (1992). In Hudson, the defendant was charged with attempted murder. Id. at 716, 837 P.2d at 1362. At trial, the defendant called a psychiatrist to assist in establishing an insanity defense. Id. at 719-20, 837 P.2d at 1363-64. The State did not call an expert witness to testify that the defendant was sane. Id. at 721, 837 P.2d at 1364. The jury convicted the defendant and he appealed claiming the only reasonable verdict was not guilty by reason of insanity. Id. at 720, 837 P.2d at 1364. The Nevada Supreme Court held that jury ultimately determines the validity of an insanity defense, and they are entitled to discount expert testimony. Id. at 720-21, 837 P.2d at 1364.

There is no disagreement that there was sufficient evidence to establish that Appellant killed Juan. The State proved Appellant committed the offense beyond a reasonable doubt. Appellant only argues that the jury should not have rejected his insanity defense. At trial, both Dr. Coard and Dr. Chambers testified regarding Appellant's mental state. The testimony consisted of two expert witness who arrived

at different conclusions. Both experts agreed that Appellant was delusional but understood the nature and capacity of his actions. The only disagreement was whether he could understand the wrongfulness of his conduct.

Dr. Coard testified in detail about his interview with Appellant and how he arrived at his conclusion. Throughout the interview, Appellant made it clear that "he did not believe that Juan was going to kill him" and that "he did know it was wrong" to kill him. II AA 399-400. Additionally, Appellant's attempts to avoid getting caught, such as throwing away the knife and shirt, led him to conclude that he could appreciate the wrongfulness of his actions. II AA 401. Meanwhile, Dr. Chambers focused his analysis on his belief that Appellant lacked a clear motive. II AA 476.

This is precisely the type of credibility determination that a jury is in the best position to determine. See Hudson, 108 Nev. at 720-21, 837 P.2d 1364. Both the State and Appellant provided the jury with different explanations of Appellant's mental state. When left to make that decision, the jury decided that Appellant failed to meet his burden and establish that he did not understand the wrongfulness of his actions. Based on the evidence at trial, reasonable juror could arrive at this outcome. As such, Appellant fails to establish there was insufficient evidence to convict him. Accordingly, this Court should affirm Appellant's conviction

II. THE STATE DID NOT COMMIT PROSECUTORIAL MISCONDUCT WARRANTING REVERSAL

Appellant argues that the State committed prosecutorial misconduct. This Court reviews claims of prosecutorial misconduct for improper conduct and then determines whether reversal is warranted. Valdez v. State, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). It reviews improper conduct claims for harmless error. Id. Where no objection was made at trial, the standard of review for prosecutorial misconduct rests upon defendant showing "that the remarks made by the prosecutor were 'patently prejudicial.'" Riker v. State, 111 Nev. 1316, 1328, 905 P.2d 706, 713 (1995) (*citing* Libby v. State, 109 Nev. 905, 911, 859 P.2d 1050, 1054 (1993)). The relevant inquiry is whether the prosecutor's statements so contaminated the proceedings with unfairness as to make the result a denial of due process. Darden v. Wainwright, 477 U.S. 168, 181, 106 S. Ct. 2464, 2471 (1986). Defendant must show that the statements violated a clear and unequivocal rule of law, he was denied a substantial right, and as a result, he was materially prejudiced. Libby, 109 Nev. at 911, 859 P.2d at 1054.

In resolving claims of prosecutorial misconduct, this Court undertakes a two-step analysis: determining whether the comments were improper; and deciding whether the comments were sufficient to deny the defendant a fair trial. Valdez, 124 Nev. at 1188, 196 P.3d at 476. The standard of review for prosecutorial misconduct rests upon a defendant showing "that the remarks made by the prosecutor were 'patently prejudicial.'" Riker, 111 Nev. at 1328, 905 P.2d at 713; Libby, 109 Nev.

at 911, 859 P.2d at 1054. This is based on a defendant's right to have a fair trial, not necessarily a perfect one. Ross v. State, 106 Nev. 924, 927, 803 P.2d 1104, 1105 (1990).

With respect to the second step, this Court will not reverse if the misconduct was harmless error. Valdez, 124 Nev. at 1188, 196 P.3d at 476. The proper standard of harmless-error review depends on whether the prosecutorial misconduct is of a constitutional dimension. Id. at 1188-89, 196 P.3d at 476. Misconduct may be constitutional if a prosecutor comments on the exercise of a constitutional right, or the misconduct "so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id. 124 Nev. at 1189, 196 P.3d 476-77 (quoting Darden, 477 U.S. at 181, 106 S. Ct. at 2471). When the misconduct is of constitutional dimension, this Court will reverse unless the State demonstrates that the error did not contribute to the verdict. Id. When the misconduct is not of constitutional dimension, this Court "will reverse only if the error substantially affects the jury's verdict." Id.

A. Prosecutorial Misconduct Did Not Occur When the State Referred to the Killing as "Murder"

Appellant argues that it is prosecutorial misconduct for the State to refer to him killing Juan as "murder" during trial. The State is entitled to pursue its theory of the case. Here, the theory was that Appellant committed murder by stabbing and cutting Juan forty-two times. There is no illusion that the State's position is anything

but this. Both at the start of trial and in the jury instructions, the Court informs the jury that the State charges the defendant with murder. I AA 27; III AA 558. It is consistent with this that the State be able to refer to Appellant's actions as murder. As such, Appellant is unable to establish prosecutorial misconduct.

Regardless, any error was not of a constitutional dimension and did not substantially affect the jury's verdict. Throughout trial, there was no contention that Appellant killed Juan. He admitted as much in opening statement and even referred to it as murder:

> I'm going to be brief. I do agree with the State, we will disagree on many things, but I do believe that we would submit to you fine folks that this is a very simple, straightforward case even though it is very serious, it is a **murder**.
> …
> He left calling cards, ladies and gentlemen. Yes, he got rid of the knife, they will show that. It was in the Dumpster, they will show you a picture of that.

I AA 213, 216 (emphases added). Additionally, Appellant is only able to illustrate four instances where the State refers to it as "murder." There is no reason to believe that these references would have any effect on the jury's verdict. Accordingly, this Court should affirm Appellant's conviction.

B. The State's Comment Regarding a Lack of Rational Motivation Does Not Warrant Reversal

During closing argument, the prosecutor began to relay her experience as a prosecutor. III AA 546. Defense counsel quickly objected, and the objection was

sustained. III AA 546. "A prosecutor's comments should be considered in context, and 'a criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone." Leonard v. State, 117 Nev. 53, 81, 17 P.3d 397, 414 (2001) (quoting United States v. Young, 470 U.S. 1, 11, 105 S.Ct 1038 (1985)). Notably, "statements by a prosecutor, in argument … made as a deduction or conclusion from the evidence introduced in the trial are permissible and unobjectionable." Parker v. State, 109 Nev. 383, 392, 849 P.2d 1062, 1068 (1993) (quoting Collins v. State, 87 Nev. 436, 439, 488 P.2d 544, 545 (1971)). Further, the State may respond to defense theories and arguments. Williams v. State, 113 Nev. 1008, 1018-19, 945 P.2d 438, 444-445 (1997), receded from on other grounds, Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000).

Appellant relies on Collier v. State. 101 Nev. 473, 705 P.2d 1126 (1985) to argue that reversal is warranted. However, the facts of Collier are easily distinguishable from this case. In Collier, the prosecutor, on multiple occasions, inflamed the jury by making uniquely improper statements. Id. at 478-80, 705 P.2d at 1129-30. These included: (1) referencing the heinous actions of a different death row inmate; (2) inflaming the jury by telling them that the death penalty is the only "moral" choice; and (3) turning to the defendant and telling him "You deserve to die." Id. According to the Supreme Court of Nevada, these statements only may have been grounds for reversal. Id. at 481, 705 P.2d at 1131 ("In a particular case, any of

them alone might be a ground for reversal. In the instant case, we need not so hold, but need only consider whether their cumulative impact . . . warrants the granting of a new penalty hearing.").

Here, the statement would not have substantially affected the jury's verdict. Unlike the statements in Collier designed to inflame the jury, the prosecutor's statement only attempted to explain that individuals can act without a clear motive. This statement alone is proper argument. The expression of her personal experience played a minor role in the argument. This combined with the district court limiting further discussion of the issue prevented it from effecting the jury's verdict. As such, any error does not warrant reversal.

Appellant then argues that the comment violates the Confrontation Clause as it amounted to testimony. The Confrontation Clause "applies to 'witnesses' against the accused–in other words, those who 'bear testimony." Crawford v. Washington, 541 U.S. 36, 51, 124 S.Ct 1354, 1364 (2004). Statements by counsel during closing argument constitute neither testimony nor evidence. The purpose of closing argument is for counsel to refresh the jury's memory on the evidence as well as illustrate the application of the facts to the law. Accordingly, any statement made by counsel would not implicate the Confrontation Clause as they are not a witness. Therefore, this argument is meritless and should be denied.

Appellant also claims the statement is improper because it said a lack of motivation is not part of the analysis for an insanity defense. However, Dr. Coard testified that conducting an evaluation does not necessarily examine motivation:

> Q [Mr. Marchese]: And based on your investigation and reading of the reports, were you ever able to discern a motive for the incident
>
> A [Dr. Coard]: My job in conducting a not-guilty-by-reason-of-insanity evaluation does not examine motivation.

II AA 430. The State's comment is nothing more than a reiteration of Dr. Coard's statement that motivation is not necessary factor for an insanity evaluation. The State further elaborates on the comment on this after the objection is sustained:

> There is no standard whatsoever that you have to establish a rational basis for this killing. That's not based in law, that's not based in science, that's purely Dr. Chambers' opinion. But it's not part of your standard.

III AA 546. Contrary to Appellant's argument, the State's comments do not improperly characterize the law when considered in the proper context. As such, Appellant is unable to demonstrate they were improper.

C. The State's Comments Regarding the Insanity Defense Were Proper

Appellant claims that the State's argument constituted prosecutorial misconduct because it conflated both self-defense and an insanity defense. At no point did the State mislead the jury regarding the defenses. The State's argument was that appellant's delusional beliefs did not amount to a legal defense which would

mean he is not insane. This is proper statement of law and a relies on Jury Instruction No. Twenty-One:

> If a defendant was suffering from a delusional state and if the facts as he believed them, while in that delusional state, would have justified his action, he is insane and entitled to an acquittal. **If, however, the delusional facts would not amount to a legal defense, then he is not insane.**

III AA 576 (emphases added). The State supported its argument by referring to Appellant's statements and how his delusion involved a future event. These comments do not conflate an insanity defense with self-defense, but rather say there was no underlying justification even according to Appellant's delusional beliefs.

Additionally, the State clarifies this right after the statement Appellant quotes:

> The reason for this is because when we have a not guilty by reason of insanity, that delusion that the defendant was under must justify his actions. And the only way that those conceptually could be justified is if it were self-defense. That's why I'm explaining it in this manner.

III AA 547. As such, the State's argument is a proper statement of law and application of facts to the law and thus and could not mislead the jury. Therefore, Appellant fails to establish prosecutorial misconduct.

D. Appellant's Arguments for Prosecutorial Misconduct Do Not Involve a Constitutional Dimension

Any misconduct following Appellant's arguments would not be of a constitutional dimension. None of these statements constitute a comment on "the exercise of a constitutional right" or a denial of due process. Id. 124 Nev. at 1189,

196 P.3d 476-77 (quoting Darden, 477 U.S. at 181, 106 S. Ct. at 2471). As such, the analysis need only focus on whether the error substantially affected the jury's verdict. However, even under a harmless error analysis, the following comments were so minor in mature as to not affect the verdict. Accordingly, this Court should affirm the Judgment of conviction regardless of whether any error was of a constitutional dimension.

III. THERE WAS NO CUMULATIVE ERROR

Finally, Appellant alleges that the cumulative effect of error deprived him of his right to a fair trial This Court considers the following factors in addressing a claim of cumulative error: (1) whether the issue of guilt is close; (2) the quantity and character of the error; and (3) the gravity of the crime charged. Mulder v. State, 116 Nev. 1, 17 (2000). Appellant must present all three elements to be successful on appeal. Id. Moreover, a defendant "is not entitled to a perfect trial, but only a fair trial." Ennis v. State, 91 Nev. 530, 533 (1975) (*citing* Michigan v. Tucker, 417 U.S. 433 (1974).

First, Appellant is unable to demonstrate that there are multiple errors to cumulate. United States v. Rivera, 900 F.2d 1462, 1471 (10th Cir. 1990) ("…cumulative-error analysis should evaluate only the effect of matters determined to be error, *not the cumulative effect of non-errors*") (emphasis added). Even if multiple errors existed, they were minor in nature having no effect on the jury's

decision. The only errors Appellant claims could cumulate relate to the State's comments. A conviction will not be "lightly overturned on the basis of a prosecutor's comments standing alone." Leonard, 117 Nev. at 81, 17 P.3d at 414. Thus, the character of the error weighs against a finding of cumulative error.

Second, the issue of guilt was not close. As discussed supra, Section I, there was sufficient evidence to convict Appellant. There was no disagreement that Appellant killed Juan and a reasonable jury could conclude that Appellant failed to establish an insanity defense. As such, the issue of guilt was not close and weighs against a finding of cumulative error.

Finally, the only factor that weights in Appellant's favor is that he was convicted of a grave crime. However, given the substantial weight supporting the first two factors, Appellant's claim of cumulative error has no merit. Thus, this Court should affirm Appellant's convictions.

CONCLUSION

Based on the foregoing the State respectfully requests that this Court affirm the Judgment of Conviction.

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Dated this 8th day of December, 2021.

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 4,767 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 8th day of December, 2021.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on December 8, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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