

IN THE SUPREME COURT OF THE STATE OF NEVADA

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THE STATE OF NEVADA, )  
)  
Petitioner, )  
vs. )  
THE EIGHTH JUDICIAL DISTRICT )  
COURT OF THE STATE OF NEVADA, )  
IN AND FOR THE COUNTY OF CLARK; )  
AND THE HONORABLE MONICA )  
TRUJILLO, DISTRICT JUDGE, )  
)  
Respondents, )  
and )  
BRANDON ALEXANDER MCGUIRE, )  
Real Party in Interest. )  
\_\_\_\_\_ )

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Case No. 83269  
Clerk of Supreme Court

**REAL PARTY IN INTEREST'S SUPPLEMENTAL APPENDIX TO**  
**ANSWER TO EMERGENCY PETITION FOR WRIT**

DARIN F. IMLAY  
Clark County Public Defender  
309 South Third Street  
Las Vegas, NV 89155-2610

STEVEN B. WOLFSON  
Clark County District Attorney  
200 South Third Street  
Las Vegas, NV 89155

Attorney for Real Party in Interest

AARON D. FORD  
Attorney General  
100 North Carson Street  
Carson City, NV 89701  
Counsel for Petitioner

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INDEX  
APPENDIX TO OPPOSITION  
(MCGUIRE)

PAGE NO.

TRANSCRIPTS

Recorder's Transcript of Hearing Re:  
State's Motion to Admit Evidence of Other  
Crimes, Wrongs or Acts Pursuant to NRS 48.045(3),  
NRS 48.061 And NRS 48.045(2) Calendar Call  
Date of Hrg: 07/19/21 ..... 45-61



1 RTRAN

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 THE STATE OF NEVADA,  
7 Plaintiff,

CASE#: C-16-319756-1

DEPT. III

8 vs.

9 BRANDON ALEXANDER MCGUIRE,  
10 Defendant.

11  
12 BEFORE THE HONORABLE MONICA TRUJILLO, DISTRICT COURT JUDGE  
13 MONDAY, JULY 19, 2021

14 **RECORDER'S TRANSCRIPT OF HEARING:**  
15 **STATE'S MOTION TO ADMIT EVIDENCE OF OTHER CRIMES,**  
16 **WRONGS OR ACTS PURSUANT**  
17 **TO NRS 48.045(3), NRS 48.061, AND NRS 48.045(2)**  
18 **CALENDAR CALL**

19 ALL APPEARANCES:

20 For the State:

LINDSEY D. MOORS, ESQ.  
Chief Deputy District Attorney

21  
22 For the Defendant:

KATHLEEN M. HAMERS, ESQ.  
SHANA S. BROUWERS, ESQ.  
Deputy Public Defenders

23  
24  
25 RECORDED BY: REBECA GOMEZ, COURT RECORDER

1 Las Vegas, Nevada, Monday, July 19, 2021

2  
3 [Case called at 9:12 a.m.]

4 THE COURT: Case number C-16-319756-1, State of Nevada  
5 versus Brandon Alexander McGuire.

6 Who's here on behalf of the State?

7 MS. MOORS: Good morning, Your Honor, Lindsey Moors on  
8 behalf of the State.

9 THE COURT: On behalf of defendant?

10 MS. HAMERS: Kathleen Hamers and Shana Brouwers.

11 THE COURT: Thank you.

12 Okay, this is time set for a calendar call as well as I have the  
13 State's Motion to Admit Evidence of other Crimes, Wrongs, or Acts  
14 Pursuant to NRS 48.045(3), 48.061, and 48.045(2).

15 I've reviewed that motion, as well as the defendant's  
16 opposition, and -- one second, before I let you argue -- Ms. Moors, if I  
17 did grant you a *Petrocelli* hearing, did you intend to call the detectives or  
18 the officers that testified before the grand jury because I've already  
19 reviewed that transcript?

20 MS. MOORS: It would essentially be the same witnesses. It  
21 would be the DNA analyst, the detective from the grand jury hearing as  
22 well as anyone that collected any samples. So, I mean, I think it would  
23 be somewhat similar to what was -- if you've already reviewed the grand  
24 jury transcript.

25 THE COURT: Okay.

1           So go ahead with your argument.

2           MS. MOORS: Thank you, Your Honor.

3           So as Your Honor indicated you've already read both of the  
4 motions, but the gist of the State's argument here is that the prior bad  
5 act evidence should be allowed for propensity purposes. And I  
6 understand on its face we're looking at a potentially prejudicial  
7 argument. But as pointed out, one of my favorite quotes ever is,  
8 evidence relevant to a defendant's motive is not rendered inadmissible  
9 because it is of a highly prejudicial nature that best evidence often is.

10           So, I'm not denying that it is not prejudicial, but its probative  
11 value substantially outweighs that. And the factors as enumerated in  
12 *Franks* that we need to look at with regards to whether or not it should  
13 be admitted is, first of all, is it relevant?

14           Well, we're dealing with a prior sexual assault, and I  
15 understand that defense's contention is that this could have been  
16 consensual. I would point out that it was presented to the grand jury.  
17 There is currently a sexual assault charge preceding that was not  
18 challenged via a writ. So it least met the standard of slight or marginal  
19 evidence for sexual assault at that point.

20           What I think is also interesting in looking at the *LeMay factors*,  
21 the first one being similarity, often times, I would submit that to you don't  
22 see damage to an individual's mouth as a result of a sexual assault, but  
23 strangely enough we do have that in our prior decedent. There's  
24 damage to her mouth, there's allegations of semen being near her  
25 mouth as is the same with our victim here.

1           So, we're not just dealing with sexual assault, we're dealing  
2 with oral sexual assault. And there is plenty of indicia that that occurred  
3 even though, unfortunately, we cannot call Annie to the stand with  
4 regards to that issue. But we have that. We also have the fact that she  
5 was located in a remote area with no underwear on. We have the fact  
6 that her skirt was pulled up above her waist, that there appeared to be  
7 footprints, barefoot footprints such that she was taken out there,  
8 presumably against her will.

9           I understand that it's circumstantial, but unfortunately because  
10 she's dead we don't have the ability to call her. And I think that's  
11 certainly needs to be taken into consideration while defendant is being  
12 charged with her murder, as well as sexual assault, there shouldn't be a  
13 benefit because we aren't able to call her to testify to these similarities.

14           Now, if you go further through the *LeMay factors*, if you look at  
15 closeness in time, in the *Franks* case that was a 12 year differential.  
16 We're dealing with six years here. So I would argue that that sways in  
17 favor of the State. It was deemed admissible in *Franks* with the 12 year  
18 delay.

19           With regards to frequency of prior acts, there is a -- this is sort  
20 of similar to closeness in time, but in terms of this type of act, these type  
21 of sexual crimes that we are now allowing to be admitted for propensity  
22 purposes, they often times occur behind closed doors.

23           So, two, I would submit, the State would submit, is a sufficient  
24 amount to show that there is a frequency of these events. Is there any  
25 presence or lack of intervening circumstances? I don't know if that's

1 super relevant in this analysis with regards to this case. But I think  
2 what's important is looking at the final one, which is the necessity of the  
3 evidence beyond the testimonies, offered.

4 It doesn't have to be absolutely necessary; it needs to be  
5 practically necessary or essentially virtually necessary based on what  
6 we're dealing with. And in this particular case the facts of our case are  
7 such that because defendant's DNA is present, there has to be an  
8 argument. I mean, I guess there doesn't have to be, but one would think  
9 that there would be an argument of consent. The fact the victim  
10 voluntarily got into this car, the fact that they are both seen going  
11 through the Wendy's drive-thru with regards to video, which is another  
12 issue that I need to bring up separately because we thought that we had  
13 lost the video. I was able to locate it on Friday. I just provided a copy to  
14 defense. But certainly that's going to be a defense, his consent. You  
15 know, why else would you get in a car with someone that you don't know  
16 if you were consenting to what was then going to happen later. And so,  
17 is it practically necessary, yes, it is, because we need further  
18 corroboration to bolster that.

19 And with regards to all of the factors, it's certainly relevant,  
20 there's no doubt that it is prejudicial, but it is not overly prejudicial.  
21 There's certainly ways that the Court can cure that with a limiting  
22 instruction with regards to, we're not trying to get into the facts of the  
23 death of the prior sexual assault victim. We're trying to talk about the  
24 prior sexual conduct; unfortunately, it just happened to be that this victim  
25 ended up dying. So, the State does believe that it's met its burden with

1 regards to that, submitting under 45.045(3) for propensity, the standard  
2 there being preponderance.

3 I would also point out that we mentioned, obviously, the other  
4 prior ways we would admit bad acts for motive, intent, lack of mistake, all  
5 of those other various ways. I do think that certainly motive would be  
6 relevant as well. Certainly, our biggest contention would be the  
7 propensity argument and that's what we're seeking based on all of the  
8 similarities.

9 I would also point out that where the decedent was found was  
10 in a remote area of town, and per the testimony of the victim in our case,  
11 ultimately she was kind of taken to a remote area and then brought back  
12 a little bit closer to society where she was ultimately dropped off by the  
13 defendant. But that would be another factor showing that they are  
14 similar in nature.

15 The State's -- I think that we've addressed everything that the  
16 defense mentioned in their opposition. I know there was some comment  
17 about potentially, if there was a hearing, if they would have to conflict off,  
18 and I don't know any of the facts with regards to that.

19 But I can state, Your Honor, that I believe according to the  
20 factors as enumerated in *LeMay*, that came out through the *Franks*  
21 case, that should be admissible because they're very, very, very similar,  
22 Your Honor, and all of the factors are there. It would be the State's  
23 contention that -- that it should be admitted in the -- the State's case in  
24 chief.

25



1 THE COURT: Okay, I know you're saying you wouldn't  
2 necessarily introduce it into evidence the stuff about the murder, but I'm  
3 not sure how you can separate it because part of your argument is that's  
4 nonconsensual, it was violent. So, how do you intend to --

5 MS. MOORS: Well, I think, --

6 THE COURT: -- show that?

7 MS. MOORS: Your Honor, I think that we find a way to  
8 structure. Obviously, we have to talk about gathering evidence because  
9 that's, you know, that we got it from the decedent. But we can say that  
10 she was swabbed for evidence. Like, I think that there's a way to get  
11 around it. I don't think that I have to ask any questions about her being  
12 dead. I mean, I guess, there could be potentially a jury question on  
13 whether or not she's, like why hasn't she testified and then that would be  
14 something that Your Honor would say, you know, this isn't proper; this  
15 isn't admissible. But I absolutely think that you can get in all of those  
16 circumstantial and -- evidence other than an eyewitness testimony of an  
17 actual victim without bringing up the fact that she's dead and that he's  
18 accused of her murder.

19 THE COURT: But what is the support for the nonconsensual  
20 aspect, which is --

21 MS. MOORS: The support is the damage to the mouth where  
22 she's located. I guess in terms of not saying that she's dead when they  
23 found her but you can say -- I mean, you can say located, that doesn't  
24 imply a dead body. That she was -- someone called for help on her  
25 behalf, which is how 911 was ultimately called with regards to that. And

1 the fact that she was unable to speak with -- I mean you can say that  
2 she was unable to speak with them, but that she was located with her --  
3 with no underwear, with the skirt up above her waist, and with damage  
4 to her mouth consistent to what could happen with a sexual assault of an  
5 oral nature.

6 THE COURT: Okay.

7 MS. MOORS: I mean, I understand, I totally understand what  
8 Your Honor's, saying. But like, you know, there are obviously inherent  
9 proof issues that you run into when you have a decedent, right? And,  
10 obviously, we wish that she were here to be able to tell her story, she's  
11 not. Defendant shouldn't certainly be entitled to a benefit when there --  
12 has already been found probable cause for that. So, there is sexual  
13 assault in that -- in that murder case. It's not like it was just -- went to  
14 the grand jury for the murder. It was charged with sexual assault and it  
15 was, you know, it's held to answer and it is in the District Court currently  
16 and it was not challenged on a writ.

17 So, I would submit that that's sort of a definitional argument  
18 that we've met the slight or marginal evidence. I understand that  
19 preponderance is higher than that, but I certainly think that no  
20 underwear, the skirt up around her waist, the damage to her face, the  
21 fact that she was located, I think all of that can be stated without alleging  
22 that she's dead and all of that is indicia of the fact that it was  
23 nonconsensual. Based on also the sperm being found on her skirt, as  
24 well as, you know, near her face, further corroborating the similarities  
25 between that case and our case.

1 THE COURT: Okay. Well, I don't -- certainly don't think you  
2 should be at an advantage, but I think a lot of that's speculative. I think  
3 based on other cases it's clear that people engage in all types of sexual  
4 activity, which include violence and they're still consensual. So, a lot of  
5 that's speculation.

6 That being said, Ms. Hamers or Ms. Brouwers, go ahead.

7 MS. HAMERS: Thank you, Judge.

8 I agree with the State that we're under a *Franks analysis* in  
9 this case where the State has to prove -- show three things, that the  
10 evidence is relevant, proof by a preponderance of the evidence, and not  
11 unfairly prejudicial. I think they fail on all three here. The evidence that  
12 we're talking about, you know if we get rid of a lot of speculation and  
13 argument, is that there was sperm faction DNA recovered from a  
14 deceased victim, that's the evidence.

15 That's also the only way to present that evidence to a jury.  
16 Because I will be then defending two sexual assaults and I cannot  
17 possibly talk about the sexual assault of the decedent without  
18 mentioning that, oh, by the way she didn't accuse him of sexual assault,  
19 she didn't say that he sexually assaulted her. Just as a practical matter,  
20 I think it is absolutely impossible.

21 It's the -- I can't think of a more prejudice than having a dead  
22 victim for bad act evidence, so, I think it's certainly unfairly prejudicial,  
23 and I think this is just a huge proof problem. And I -- it's, again, yeah, it's  
24 not a benefit to him. In fact, it could a benefit to him if she was allowed  
25 to say it was consensual and that he didn't kill her, who knows.

1 But we can't -- we can't admit it here, this is a trial that should  
2 fall on whether or not the State can prove this case. She'll testify, they'll  
3 either find proof beyond a reasonable doubt or they won't, and that's  
4 what we'd like to do, we'd like to proceed to trial with that.

5 THE COURT: Okay.

6 Anything further, Ms. Moors?

7 MS. MOORS: Nothing further from the State, Your Honor.

8 THE COURT: All right. So having reviewed the motion, as  
9 well as the opposition, I don't find that it falls under NRS 48.045(3).  
10 Obviously, I would have to make a finding that it -- that the prior behavior  
11 is relevant for propensity purposes. And while you may meet that, the  
12 problem is the preponderance of the evidence standard. I know your  
13 argument is charged in another case it meets slight evidence, but as you  
14 recognize preponderance is a different standard and a higher standard,  
15 it's more than 50 percent. So, I don't find that that would be -- you could  
16 establish that it was nonconsensual; the prior incident was not  
17 consensual by a preponderance of the evidence. I think it fails on that --  
18 in that regard.

19 As to the -- you did mention 48.061, but I didn't see an  
20 analysis on there, so was that in error, Ms. Moors?

21 MS. MOORS: Yes, Your Honor.

22 THE COURT: Okay. And then as to 48.045(2), I mean, I  
23 reviewed the grand jury transcript, and quite frankly, the parts that you  
24 cited I don't think that they say what -- what you said they stated. So, if  
25 your intent, which is why I asked you on the off-set, was to bring the

1 same people to testify as to the same things that I've already read, then I  
2 don't think it would meet the clear and convincing standard. And I  
3 definitely don't think we get past the more prejudicial than probative. So  
4 I don't even think you get a *Petrocelli* hearing on this matter.

5 So, I am going to deny the motion.

6 Ms. Hamers, please prepare an order consistent with your  
7 opposition and my findings today.

8 And as to Calendar Call.

9 MS. MOORS: Your Honor, I did mention that I was going to  
10 bring this up again. But if you look back at the history of this case, it's  
11 fairly long and sorted and I will need to go over it a couple of months  
12 ago.

13 But there was some discussion back and forth between  
14 defense counsel and the State looking for this video that I mentioned  
15 about Wendy's. When I was subpoenaing the case I went ahead and  
16 subpoenaed everyone from the murder case as well in case I needed  
17 them, depending on what Your Honor did with the motion it was my -- it  
18 was made aware to me on Friday by an investigator from that case that  
19 he knew where the video was, that it was actually stored under the  
20 homicide event number, not the SA event number. So, I was able to  
21 retrieve that.

22 I attempted to email it to Ms. Brouwers and Ms. Hamers. The  
23 issue was is that it was too large. I was able to get to Ms. Brouwers via  
24 a drop box on Friday. I did provide a disk of to Ms. Hamers today. And I  
25

1 just wanted to point that out just in full disclosure that it was not  
2 intentional, but I did happen to find it. I wanted to provide that.

3 Furthermore, I think right now we're set for trial next week.  
4 And I did want to address some issues with defense notices of expert, it  
5 was filed not timely, and the State will be objecting to that notice as not  
6 complying with the notice requirements under NRS.

7 THE COURT: Okay. How come you didn't file a written  
8 motion to strike?

9 MS. MOORS: Your Honor, I apologize, I didn't -- I didn't have  
10 a chance to, but I should have. I can certainly file one this afternoon.  
11 But it was filed on -- Court's indulgence. It was filed on the 6<sup>th</sup> and it was  
12 due on the 5<sup>th</sup>.

13 MS. HAMERS: I can address the timeliness, if the Court  
14 wants.

15 THE COURT: Okay. So aside from those issues, Ms. Moors,  
16 are you saying you'd be ready to go to trial?

17 MS. MOORS: Yes, Your Honor.

18 THE COURT: Ms. Hamers, go ahead.

19 MS. HAMERS: I don't have the rule in front of me, because I  
20 didn't know this was an issue today, but the Eighth Judicial District Court  
21 Rules state that if a motion or a pleading is due on a holiday and it's  
22 greater than, I think, ten days, the time limit et al, then you can file it on  
23 the next business day. The 5<sup>th</sup> was a holiday, that's when the 4<sup>th</sup> of July  
24 holiday was observed, and so we filed on the next business day or  
25 judicial day, I should say.

1 THE COURT: Okay. And as to the video?

2 MS. HAMERS: I received a disk today, I haven't seen it, so I  
3 don't have anything more to say about it, I guess, until I do see it. If  
4 there's anything we want to file, we will.

5 THE COURT: Okay. Well, you guys are first in line to go,  
6 other than that would you be ready to go?

7 MS. HAMERS: Yes.

8 THE COURT: So, I really would prefer you go look at it. I  
9 don't know how long the video is but.

10 MS. HAMERS: We're going to --

11 MS. MOORS: It's literally a minute.

12 MS. HAMERS: -- we're going to announce ready no matter  
13 what's in the video. If it raises any other issues we want to address,  
14 we'd file a motion.

15 THE COURT: Okay.

16 MS. HAMERS: A continue -- we won't be seeking a  
17 continuance based on the video.

18 THE COURT: Okay.

19 MS. MOORS: And I can tell Your Honor that it is under a  
20 minute. I don't know -- I think Ms. Brouwers had chance to look at it. It's  
21 under a minute and it shows everything that it was reported to show, so  
22 it doesn't have anything mind blowing.

23 THE COURT: Okay. And, anything further in response to her  
24 argument about the expert witness?

25 MS. MOORS: No, Your Honor.

1 THE COURT: All right. So I am going to allow that.  
2 So you're announcing ready, you're going to go to central --  
3 well, I would prefer to put this on in the morning because if you have any  
4 issues, I'm going to get in trouble for sending you to central trial --  
5 calendar call. So we're going to set this here, understanding that you're  
6 announcing ready now, we'll set this here at 8:30 on Wednesday. And  
7 then I'm going to also schedule you for central calendar call in front of  
8 Judge Jones and that will be at?

9 THE CLERK: 2 p.m. and that's in Lower Level.

10 MS. HAMERS: And just so the Court's aware, we're not going  
11 to put any, I mean, we're going to announce ready on Wednesday, the  
12 same that we are doing now. And I wouldn't bring up any issues at  
13 central calendar call. If there's anything we need to bring --

14 THE COURT: Well, I just want to make sure the video issue.  
15 I want to know that you've looked over it --

16 MS. HAMERS: Okay.

17 THE COURT: -- there's no issues, and that you don't, you  
18 know, because if something comes up then maybe you won't announce  
19 ready.

20 MS. MOORS: And, Your Honor, what's the -- I've heard sort  
21 of contradictory information on the procedure with regards to what's  
22 happening on Wednesday.

23 THE COURT: Uh-huh.

24 MS. MOORS: So, does -- if we go there, that means we're for  
25 sure going and she just tells us when we start? Is that --



1 THE COURT: Unless you -- you can plead there or she's  
2 going to set you for start of jury selection.

3 MS. MOORS: Okay. And then that will be back in front of  
4 Your Honor?

5 THE COURT: Yes.

6 MS. MOORS: And it's just a matter of what dates we start?

7 THE COURT: What date and time --

8 MS. MOORS: Okay.

9 THE COURT: -- be depending on the order of the other cases  
10 that they're setting.

11 MS. MOORS: Okay.

12 THE COURT: -- that they're setting

13 MS. HAMERS: And can I ask one question about timing? I  
14 know that central trial has to do some of that, but generally as far as trial  
15 days, do you know what we should plan on as far as start times so I can  
16 make sure I have everything set.

17 THE COURT: So I still have to do my criminal calendar. So  
18 Monday and Wednesday I anticipate about a 10:30, obviously  
19 depending on what happens and calendars start. Other than that, on  
20 civil days we should be able to start at -- right at either 8:30 or 9:00.

21 MS. HAMERS: Okay.

22 THE COURT: And that includes Thursday and Fridays too.

23 MS. HAMERS: Okay.

24 MS. MOORS: And I don't anticipate -- I would think that we  
25 would be done by Thursday, if started on Monday. Would you agree or?

1 MS. HAMERS: I think it'll definitely be done in a week.  
2 MS. MOORS: Okay.  
3 THE COURT: So, four to five days?  
4 MS. HAMERS: Yes.  
5 THE COURT: And how many witnesses?  
6 MS. MOORS: Your Honor, the State would most likely be  
7 calling eight to ten witnesses.  
8 MS. HAMERS: And if those are all called, we probably won't  
9 have anyone in additional.  
10 THE COURT: Okay. And then is anyone going to be  
11 assisting you?  
12 MS. MOORS: Oh, yes, Your Honor, I believe Nima Afshar will  
13 be my co-counsel.  
14 THE COURT: Okay. And then I'll send an email with all the  
15 other things that I'd like ahead of time, with information on the case.  
16 No other evidentiary or issues, right?  
17 MS. HAMERS: That's right.  
18 THE COURT: All right. Thank you.  
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MS. MOORS: Thank you.

MS. HAMERS: Thank you.

MS. BROUWERS: Thank you.

[Hearing concluded at 9:30 a.m.]

\*\*\*\*\*

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video recording in the above-entitled case to the best of my ability.



Rebecca Gomez  
Court Recorder/Transcriber

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

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THE STATE OF NEVADA,	)	
	)	
Petitioner,	)	Case No. 83269
vs.	)	
THE EIGHTH JUDICIAL DISTRICT	)	
COURT OF THE STATE OF NEVADA,	)	
IN AND FOR THE COUNTY OF CLARK;	)	
AND THE HONORABLE MONICA	)	
TRUJILLO, DISTRICT JUDGE,	)	
	)	
Respondents,	)	
and	)	
BRANDON ALEXANDER MCGUIRE,	)	
Real Party in Interest.	)	
	)	

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**REAL PARTY IN INTEREST'S SUPPLEMENTAL APPENDIX TO  
ANSWER TO EMERGENCY PETITION FOR WRIT**

DARIN F. IMLAY Clark County Public Defender 309 South Third Street Las Vegas, NV 89155-2610	STEVEN B. WOLFSON Clark County District Attorney 200 South Third Street Las Vegas, NV 89155
Attorney for Real Party in Interest	AARON D. FORD Attorney General 100 North Carson Street Carson City, NV 89701 Counsel for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 17<sup>th</sup> day of August, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD  
ALEXANDER CHEN

KATHLEEN M. HAMERS

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

MONICA TRUJILLO  
District Court, Department III  
200 Lewis Avenue  
Las Vegas, NV 89101

BY /s/ Carrie M. Connolly  
Employee, Clark County Public  
Defender's Office