IN THE SUPREME COURT IN THE STATE OF NEVADA

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Elizabeth A. Brown
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VANESHIA OLIVER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Case No.: 83276

District Court No.: C351676

APPELLANT'S OPENING BRIEF

Appeal from Judgment of Conviction Jury Trial

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JURISDICTIONAL STATEMENT

This is an appeal from a judgment of conviction following a jury verdict. The Judgment of Conviction was filed on June 28, 2021. AA 144. This Court has jurisdiction pursuant to NRS 177.015(3). Notice of Appeal was filed on July 21, 2021. AA 152.

ROUTING STATEMENT

Appellant's case is not presumptively assigned to the Court of Appeals because it is a direct appeal from a judgment of conviction based on a jury verdict for category B, C and D felonies. NRAP 17(b)(1).

ISSUES PRESENTED FOR REVIEW

I. **MS. OLIVER'S RIGHT TO DUE PROCESS WAS VIOLATED WHEN HER PLEA WAS REJECTED DUE TO THE ACTIONS OF HER CO-DEFENDANT AND HIS COUNSEL**

II. **THE DISTRICT COURT ERRED IN DENYING MS. OLIVER'S MOTION FOR SEVERANCE AND MISTRIAL**

III. **MS. OLIVER'S SENTENCE IS CRUEL AND UNUSUAL AND THEREBY IS UNCONSTITUTIONAL**

IV. **THE COURT IMPROPERLY CALCULATED THE AGGREGATE SENTENCE FOR MS. OLIVER AND ANNOUNCED AND ILLEGAL SENTENCE ON COUNT 25**

V. **CUMULATIVE ERROR DURING THE PROCEEDINGS DENIED MS. OLIVER A FUNDAMENTALLY FAIR TRIAL**

STATEMENT OF THE CASE

On October 22, 2020, Vaneshia Oliver, ("Oliver") was charged by way of indictment with 5 counts of Conspiracy to Commit Larceny, 5 counts of Conspiracy to Commit Burglary, 5 counts of Residential Burglary, 5 counts of Invasion of the Home, 5 counts of Theft, 3 counts of Burglary of a Business, 2 counts of Fraudulent Use of Credit or Debit Card, 1 count of Attempt Fraudulent Use of a Credit or Debit Card, 1 count of Robbery, 1 count of Coercion, 2 counts of Possession of Document or Personal Identifying Information, 1 count of Possession of Credit or Debit Card Without Cardholder's Consent and 1 count of Possession of Burglary Tools. AA 1-17.

At trial, the jury considered 37 charges listed in the Second Amended Superseding Indictment filed April 13, 2021. AA 58-78, 465 On April 20, 2021, the jury found Oliver guilty of all 37 charges. AA 1472-76. The court sentenced Oliver to the following: count 3 - a maximum of one hundred twenty (120) months with a minimum parole eligibility of twenty-four (24) months; count 4 - a maximum of one hundred twenty (120) months with a minimum parole eligibility of twenty-four (24) months, concurrent with count 3; count 5 - a maximum of forty-eight (48) months with a minimum parole eligibility of twelve (12) months, consecutive to count 4; count 6 – a maximum of forty-eight (48) months with a minimum parole eligibility of twelve (12) months, consecutive to count 5; count 7

- a maximum of forty-eight (48) months with a minimum parole eligibility of twelve (12) months, concurrent with count 6; count 8 - a maximum of forty-eight (48) months with a minimum parole eligibility of twelve (12) months, concurrent with count 6; count 11 - a maximum of one hundred twenty (120) months with a minimum parole eligibility of twenty-four (24) months, consecutive to count 8; count 12 - a maximum of one hundred twenty (120) months with a minimum parole eligibility of twenty-four (24) months, concurrent with count 11; count 13 – a maximum of forty-eight (48) months with a minimum parole eligibility of twelve (12) months, concurrent with count 12; count 14 - a maximum of forty-eight (48) months with a minimum parole eligibility of twelve (12) months, consecutive to count 13; count 15 - a maximum of forty-eight (48) months with a minimum parole eligibility of twelve (12) months, concurrent with count 14; count 16 - a maximum of forty-eight (48) months with a minimum parole eligibility of twelve (12) months, concurrent with count 15; count 17 - a maximum of forty-eight (48) months with a minimum parole eligibility of twelve (12) months, concurrent with count 16; count 18 – a maximum of forty-eight (48) months with a minimum parole eligibility of twelve (12) months, concurrent with count 17; count 21 - a maximum of one hundred twenty (120) months with a minimum parole eligibility of twenty-four (24) months, consecutive to count 18; count 22 - a maximum of one hundred twenty (120) months with a minimum parole eligibility of twenty-

four (24) months, concurrent with count 21; count 23 - a maximum of forty-eight (48) months with a minimum parole eligibility of twelve (12) months, concurrent with count 22; count 24 - a maximum of one hundred twenty (120) months with a minimum parole eligibility of twenty-four (24) months, consecutive to count 22; count 25 – a maximum of one hundred twenty (120) months with a minimum parole eligibility of forty-eight (48) months, concurrent with count 24; count 28 - a maximum of one hundred twenty (120) months with a minimum parole eligibility of twenty-four (24) months, consecutive to count 24; count 29 - a maximum of one hundred twenty (120) months with a minimum parole eligibility of twenty-four (24) months, concurrent with count 28; count 30 - a maximum of forty-eight (48) months with a minimum parole eligibility of twelve (12) months, concurrent with count 29; count 33 - a maximum of one hundred twenty (120) months with a minimum parole eligibility of twenty-four (24) months, consecutive to count 30; count 34 – a maximum of one hundred twenty (120) months with a minimum parole eligibility of twenty-four (24) months, concurrent with count 23; count 35 - a maximum of forty-eight (48) months with a minimum parole eligibility of twelve (12) months, concurrent with count 24; count 36 - a maximum of forty-eight (48) months with a minimum parole eligibility of twelve (12) months, concurrent with count 25; counts 1, 2, 9, 10, 19, 20, 26, 27, 31, 32 and 37 – sentenced to three hundred thirty four (364) days in Clark County Detention Center

(CCDC), run concurrent with each other and count 35; with two hundred ninety-three (293) days credit for time served. AA 144-151. On June 17. 2021 a hearing was held to determine the aggregate sentence. The court and the State believed the aggregate total to be 180 to 986 months or 15 to 72 years while the defense calculated the total to be 132 to 720 months or 13 to 60 years. The hearing was continued for clarification. AA 1520-21. The court computed the aggregate as 180 to 864 months. AA 1527. The judgment of conviction was filed on June 28, 2021. AA 144. The Notice of Appeal was filed July 21, 2021. AA 152.

STATEMENT OF THE FACTS

Ms. Oliver was charged along with Darrell Clark for a series of room burglaries and related crimes that occurred at Harrah's and The Paris casinos between June 15, 2020 and August 27, 2020. AA 63-78. Oliver was charged with events on six different days. Id. The first event occurred June 15, 2020 at Harrah's when Esther Chae returned to her room during a burglary and had her cell phone taken from her person along with other items from the room. Oliver was charged with Conspiracy to Commit Grand Larceny, Conspiracy to Commit Burglary, Residential Burglary, Invasion of the Home, Theft, Robbery and Coercion. AA 70-73. Oliver was also charged with Conspiracy to Commit Grand Larceny, Conspiracy to Commit Burglary, Residential Burglary, Invasion of the Home and Theft for an August 2, 2020 incident involving Harrah's room 10060. The third

event occurred on August 16, 202 at Paris Casino. Room 2198P was burglarized and shortly after credit cards from the room were used at Sbarro and 7-Eleven. For that incident Oliver was charged with Conspiracy to Commit Grand Larceny, Conspiracy to Commit Burglary, Residential Burglary, Invasion of the Home, two counts of Burglary of a Business and two counts of Fraudulent Use of a Credit Card. AA 64 -67. The fourth date in charged was for August 21, 2020 in which Paris room 2186 was burglarized and credit cards from room were attempted to be used shortly thereafter. Oliver was charged with Conspiracy Commit Grand Larceny, Conspiracy to Commit Burglary, Residential Burglary, Invasion of the Home, Burglary of a Business and four counts of Attempt Fraudulent Use of a Credit Card. AA 67-70. On August 23, 2020, Harrah's room 15058 was burglarized and Oliver was charged with Conspiracy to Commit Grand Larceny, Conspiracy to Commit Burglary, Residential Burglary, Invasion of the Home and Theft. AA 75 -77. Additionally, Oliver was charged with Possession of a Credit Card Without Cardholder's Consent for a card belong to Esther Chae and Possession of Burglary Tools for a screwdriver and/or glass breaking tool she had when she was arrested August 27, 2020.

On January 7, 2021 a settlement conference was held and Ms. Oliver plead guilty to two counts of burglary of a business, one count of residential burglary and one count of home invasion with a stipulated aggregate sentence of 36 to 90

months on prison. AA 447, 454, 467. Unfortunately, the negotiation was contingent on co-defendant Clark entering the same negotiation. During the canvas, Clark stated that his plea was not freely and voluntarily given. AA 457. Clark's attorney, Carl Arnold, then stated that it was his opinion that Clark was taking the deal for Oliver to get her deal and that he had advised Clark to say that he wasn't going through with the deal. AA 458. Judge Thompson then determined that the plea was not voluntary so the signed plea agreements were returned. AA 458. On February 2, 2021, a hearing for entry of plea was held and Mr. Arnold confirmed that Clark was rejecting the negotiations thereby negating Oliver's ability to enter into the negotiation. AA 461.

At trial, counsel for Oliver forced to request a mistrial and severance when attorney Arnold began to ask questions that would open the door to uncharged acts and again during closing argument when Arnold pointed the finger at Oliver. AA 1197-1229, 1415-19. At trial, the state called lead detective, David Mann who had been admonished "ad nauseam" not to mention other events on the strip in which Oliver and Clark were suspects but not charged. AA 1211. During cross examination of Mann, attorney Arnold asked about events at Harrah's, "There were a whole bunch room entries between June and August . . . it was more than just the three that happened or are being charged in this case?" AA 1197. The State asked to approach and a lengthy conference outside the presence of the jury was

held. AA 1197- 1229. It became obvious that Mr. Arnold's strategy would have opened the door to other bad act evidence damaging to Oliver so counsel requested a mistrial and severance. AA 1203. The State argued that Arnold's questions would open the door to another August 6 burglary at Harrah's involving a room rented by Emely Armenta. AA 1208. Arnold asserted his belief that there was no evidence linking his client to this or other Harrah's burglaries. AA 1225. When Mann was asked by the court if the defendants were suspects in any of the other events that Mr. Arnold was discussing he replied, "Absolutely". AA 1216-17.

Counsel for Oliver again reserved a motion for mistrial during closing argument by Arnold when he repeatedly argued that guilt was on the female, not Clark. AA 1416. Counsel was forced to object later in closing when Arnold addressed counts that his client wasn't even charged with and pointed the finger at Oliver. AA 1419. After Mr. Arnold's closing statement was completed, a motion for severance and a mistrial was made and denied. AA 1431-33.

SUMMARY OF THE ARGUMENT

Oliver was wrongfully denied the acceptance of her negotiation due to the acts of her co-defendant and his counsel. Oliver was then denied her right to due process and a fair trial as counsel for her co-defendant threw blame on her though out the trial. The trial court erred in denying Oliver's motion for a mistrial. Finally, Oliver received a sentence five times as severe as the negotiation she entered and

then had ripped away. This amounts to cruel and unusual punishment. The trial court also erred giving an illegal sentence on count 25 and in computing the aggregate sentence.

ARGUMENT

I. MS. OLIVER'S RIGHT TO DUE PROCESS WAS VIOLATED WHEN HER PLEA WAS REJECTED DUE TO THE ACTIONS OF HER CO-DEFENDANT AND HIS COUNSEL

Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process. Missouri v. Frye, 132 S. Ct 1399 (2012). The Court also noted defendants do not have a right to receive a plea deal. Id. at 1408. That same year, the Supreme Court has also recognized "the reality is that criminal justice today is for the most part a system of pleas, not a system of trials." Lafler v. Cooper, 132 S. Ct. 1376, 1381 (2012). This Court acknowledged in State v. Harnisch, 114 Nev. 225, 954 P.2d 1180 (1998) that, "it is elementary that States are free to provide greater protections in their criminal justice system than the Federal Constitution requires." Id. at 1182. While it is acknowledged that a prosecutor it not required to offer a plea, in the instant case Oliver completed the canvass but the negotiations fell apart due to no fault of her own. AA 455. A review of the transcript shows that Ms. Oliver's opportunity to enter her plea was sabotaged by the actions of counsel for Clark.

> THE COURT: All right. What is your plea to Count 1, conspiracy to commit robbery; guilty or not guilty?

DEFENDANT CLARK: Guilty.

THE COURT: I'm sorry, sir, I didn't hear you.

DEFENDANT CLARK: Guilty.

THE COURT: What is your plea to Count 2, invasion of the home; guilty or not guilty?

DEFENDANT CLARK: Guilty.

THE COURT: Count 3, residential burglary; guilty or not guilty?

DEFENDANT CLARK: Guilty.

THE COURT: And Count 4, ownership or possession of a firearm by a prohibited person; guilty or not guilty?

DEFENDANT CLARK: Guilty.

THE COURT: Are your pleas of guilty freely and voluntarily given?

DEFENDANT CLARK: No.

THE COURT: Well, if they're not voluntarily given, sir, I'm not going to accept them. I see some hesitancy and reservation about your accepting these.

MR. ARNOLD: And, Your Honor, if I could make a record, it's under my opinion in seeing what's occurring inside the room with the co-defendant crying his hesitancy in taking the deal; I want to make it very clear that I believe my client is taking his deal so the co-defendant can have her deal. I have advised him repeatedly that you cannot take a deal under those circumstances because that is not freely and voluntarily. And I have advised him since 12 o'clock to say--

DEFENDANT CLARK: *Guilty*.

MR. ARNOLD: -- that he wasn't going forward with the plea.

DEFENDANT CLARK: *Guilty*.
I don't -- I don't have no one fighting on my side anyway so.

MR. ARNOLD: You've got more than a fight; however, it's-- whether you're going to take the plea or not, sir.

THE COURT: I don't find this to be a voluntary plea.

MS. DUNN: No, if he's--

MR. ARNOLD: I agree, Your Honor.

AA 457-58 emphasis added. It is clear from the transcript that Mr. Clark did not have the best relationship with Mr. Arnold. As Mr. Clark was attempting to complete the canvass, Mr. Arnold convinced the court to reject the plea. Ms. Oliver was denied her opportunity at negotiations due the actions of her co-defendant and the interjection of counsel for her co-defendant during the canvas. As noted above, the Nevada State Constitution can greater protections than those provided by the U.S. Constitution.

II: THE DISTRICT COURT ERRED IN DENYING MS. OLIVER'S MOTION FOR SEVERANCE AND MISTRIAL

Under Nev. Rev. Stat. § 174.165, a defendant is entitled to have his trial severed from that of another person if it appears that he will be prejudiced by being tried simultaneously. The burden lies on the defendant to show that the district court abused its discretion in denying his motion for severance. Rowland v. State, 118 Nev. 31, 44, 39 P.3d 114, 122 (2002), quoting Amen v. State, 106 Nev. 749, 756, 801 P.2d 1354, 1359 (1990). The court must consider both the prejudice to be

suffered by the defendants, if they are tried together, and by the State of Nevada, if the trials are to be severed. Id., quoting Lisle v. State, 113 Nev. 679, 688 - 89, 941 P.2d 459, 466 (1997). However, "The decisive factor in any severance analysis remains prejudice to the defendant." Marshall v. State, 118 Nev. 642, 646, 56 P.3d 376, 378 (2002). Despite the concern for efficiency and consistency, the district court has "a continuing duty at all stages of the trial to grant a severance if prejudice does appear. Id.

United States v. Tootick, 952 F.2d 1078 (9th Cir. 1991) addressed prejudicial joinder. In do so the court noted, "Prejudice cannot be understood in a vacuum . . . Defendants who accuse each other bring the effect of a second prosecutor into the case with respect to their co-defendant . . . The existence of this extra prosecutor is particularly troublesome because the defense counsel are not always held to the limitations and standards imposed on the government prosecutor." Id at 1082

Throughout the trial, the questioning by Mr. Arnold and his closing argument was unduly prejudicial to Ms. Oliver and denied her a fair trial.

In addressing count 5 Arnold stated:

> Count 5 is the burglary of the business. That's using the credit card at Sbarro's. Absolutely, no footage of my client using the card at Sbarro's.
>
> More so, if you believe that it was Ms. Oliver in the videos that used the cards at other times, guess what? It was always Ms. Oliver. Look at the video immediately after the 7-Eleven video. . . Same argument, you could use at Sbarro's, it's the same argument for the 7-Eleven. Count 7, fraudulent use of the credit card or debit card, same argument. The only person that was using the credit card was whoever that female was in the video. My client

did not use the credit card, nor did he suggest what credit card to use. That's completely wrong what the State said about, well, he benefitted from it. Again, he did not know what card she was going to use. . . There is nothing in that video that suggests that he knew what form of payment that she was going to use. AA 1414 -16

In the middle of the argument, Oliver reserved the right to make a motion for mistrial. AA 1415. In spite of notice of the request to make a motion for mistrial, Mr. Arnold continued to act as a second prosecutor and Oliver was forced to object to closing by co-defendant.

14, my client is not charged in that. That's burglary of a business. That's Ms. Oliver going into a Target and using the credit cards.

The only thing I want to mention about this is, my client wasn't around. This was Ms. Oliver, or whoever it was, going into the business and doing this all on her own. This is a person with free independent will, committing a crime, that only is she committing a crime, it's like I told you, the DA can't even sit here and charge her, charge my client with that crime, because he was nowhere around.

In no form and no fashion did he aid or abet in the commission of her using that card.

MR. HART: Your Honor, I'm going to object. This does not relate to his client. AA 1419.

The court overruled the objection and Mr. Arnold continued to address counts for which his client was not even charged.

Count 36, not guilty, because that's not my client and he wasn't in possession of a Victoria's Secret card.

Count 37, possession of burglary tools. Never, because my client, he didn't burglarize any establishment, and he didn't have any tools, nor is his fingerprints or DNA anywhere on those doors, around the doors, on that same floor, nothing. AA 1428-29.

This argument is the exact type of prejudice warned of by the court in Tootick and resulted in the denial of Ms. Oliver's right to a fair trial.

III: MS. OLIVER'S SENTENCE IS CRUEL AND UNUSUAL AND THEREBY IS UNCONSTITUTIONAL.

Article 1, §6 of the Nevada Constitution states in pertinent part:

> Excessive bail shall not be required nor excessive fines imposed, nor shall cruel or unusual punishment be inflicted, nor shall witnesses be unreasonably detained.

The Nevada Supreme Court has noted a statute enacted by the state legislature is presumed valid; however, a sentence is unconstitutional "if it is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends the fundamental notions of human dignity . . ." Schmidt v. State, 94 Nev. 665, 668, 584 P.2d 695, 697 (1978). While the trial judge has wide discretion in imposing a prison term, if that discretion is abused, then the Supreme Court is free to disturb the sentence. State v. Sala, 63 Nev. 270, 169 P.2d 524 (1946).

What cruel and unusual punishment means is not spelled out in either the state of federal constitution. The United States Supreme Court in Thompson v. Oklahoma noted that the authors of the Eighth Amendment drafted a categorical prohibition against the infliction of cruel and unusual punishment, but they made no attempt to define the contours of that category. 487 U.S. 815, 108 S.Ct. 2687, 2691, 101 L.Ed.2d 702 (1988). They delegated that task to the future generation of judges who have been guided by the "evolving standards of decency that mark the

progress of a maturing society." Trop v. Dolis, 356 U.S. 86, 101, 78 S.Ct. 590, 598, 2 L.Ed.2d 630 (1958) (plurality opinion). The Nevada Supreme Court in Naovarath v. State, 105 Nev. 525, 779 P.2d 944 (1989) cited former United States Supreme Court Justice, Frank Murphy, in an unpublished draft opinion as follows:

> More than any other provision in the constitution, the prohibition of cruel and unusual punishment depends largely, if not entirely, upon the humanitarian instincts of the judiciary. We have nothing to guide us in defining what is cruel and unusual apart from our conscience. A punishment which is considered fair today may be considered cruel tomorrow. And so we are not dealing here with a set of absolutes. Our decision must necessarily spring from the mosaic of our beliefs, our backgrounds and the degree of our faith and the dignity of the human personality.

As the Ninth Circuit explained, "It is well settled that an accused may not be subjected to more severe punishment simply because he exercised his right to stand trial." United States v. Medina-Cervantes, 690 F.2d 715, 716 (9th Cir. 1982). This Court has also agreed that imposition of a trial tax is inappropriate, and that the remedy is resentencing. State v. Eighth Judicial Dist. Ct., 132 Nev. 600, 605, 376 P.3d 798, 802 (2016). In the instant case, Ms. Oliver was forced to go to trial which was even acknowledged by the State at sentencing. "With regards to the co-Defendant, Judge, I will just say this. She's also a felon, however from the get go she wanted to take responsibility and plea in this case and we obviously didn't let her do that because Mr. Clark wanted to fight it and we went to trial". AA 1504.

Even with this acknowledgement by the State, Ms. Oliver was given an unconscionable sentence or fifteen to seventy-two years in prison which if properly

calculated is thirteen to sixty years. This basically five times the sentence envisioned in the plea agreement. It is important to note that the plea agreement was the result of a settlement conference which would have made the sentencing binding on the count.

IV. THE COURT IMPOPERLY CALCLULATED MS. OLIVER'S AGGREGATE SENTENCE AND ANNOUNCED AN ILLEGAL SENTENCE ON COUNT 25

The court chose to structure the sentences in a different order than listed on the indictment in an effort to group the counts with the respective incidents and placed all the gross misdemeanor counts at the end concurrent with each other and count 35. AA 144-150. The court stated with counts 3 and 4, August 17, 2020, burglary and home invasion at Paris and sentenced her to concurrent sentences of twenty-four (24) to one hundred twenty (120) months. Count 5, business burglary at Sbarro was twelve (12) to forty-eight (48) months consecutive to 3 and 4.

Count 6, business burglary at 7-11 was twelve (12) to forty-eight (48) months consecutive to count 5. Counts 7 and 8 were use of a credit cards, twelve (12) to forty-eight (48) months concurrent to each other and count 6. At this point, the total sentence is forty-eight (48) to two-hundred and sixteen months (216) or four (4) to eighteen (18) years.

Counts 11, 12 and 13 were for the August 21, 2020 incident at Paris. They were run concurrent to each other but consecutive to count 8. Counts 11 and 12

were burglary and home invasion, twenty-four (24) to one hundred twenty (120) months. Count 13 was theft, twelve (12) to forty-eight (48) months.

Counts 14, 15, 16, 17 and 18 were all twelve (12) to forty-eight (48) months concurrent to each other but consecutive to count 13 which was twelve (12) to forty-eight (48) months. Therefore, the aggregate total of counts 13 and 14 is twenty-four (24) to ninety-six (96) months or two (2) to eight (8) years.

Counts 21, 22, 23, 24, 25, and 36 all involved the same incident involving Esther Chae at Harrah's on June 15, 2020. Counts 21, 22 and 23 were to run concurrent to each other but consecutive to count 18. Counts 21 and 22 were burglary and home invasion, twenty-four (24) to one hundred twenty (120) months and count 23 was theft, twelve (12) to forty-eight (48) months. AA 71-2, 1516. Counts 24 and 25 were robbery and coercion involving Ms. Chae. On count 24, robbery, the sentence was twenty-four (24) to one hundred twenty (120) months consecutive to count 22. On count 25, coercion, the court stated forty-eight (48) to one hundred twenty (120) months concurrent to count 24. Count 36, use of Ms. Chae's credit was twelve (12) to forty-eight (48) months concurrent with count 25. AA 72-78, 1516. The sentence on count 25 is clearly in error as pursuant to NRS 207.190 the sentencing range for coercion is one to six years. Therefore, the total sentence for the June 15, 2020 incident should be forty-eight (48) to two hundred forty (240) months or four (4) to twenty (20) years. This makes the total aggregate

sentence so far one hundred twenty (120) months to five hundred fifty-two (552) months or ten (10) to forty-six (46) years.

Counts 28, 29 and 30 occurred August 6, 2020 at Harrah's and were run concurrent to each other but consecutive to count 24. Counts 28 and 29 were twenty-four (24) to one hundred twenty (120) months and count 30 was twelve (12) to forty-eight (48) months. Counts 33, 34 and 35 occurred August 23, 2020 at Harrah's and were run concurrent to each other but consecutive to count 30 which it must be noted was a sentence of twelve (12) to forty-eight (48) months. Counts 33 and 34 were twenty-four (24) to one hundred twenty (120) months and count 35 was twelve (12) to forty-eight (48) months. Taken together, the aggregate for counts 28, 29, 30, 33, 34 and 35 is thirty-six (36) to one hundred and sixty-eight (168) months or three (3) to fourteen (14) years.

Combining the one hundred twenty (120) months to five hundred fifty-two (552) months or ten (10) to forty-six (46) years after count 24 with the thirty-six (36) to one hundred and sixty-eight (168) months or three (3) to fourteen (14) years in counts 28 through 35 results in the aggregate total of one hundred fifty-six (156) to seven hundred twenty (720) months or thirteen (13) to sixty (60) years. The court's calculation of one-hundred-eighty (180) to eight-hundred-sixty-four (864) months aggregate total is in error. AA 1527. The effect of this calculation error adds an additional two (2) to twelve (12) years to Ms. Oliver's sentence.

V. CUMULATIVE ERROR DURING THE PROCEEDINGS DENIED MS. OLIVER A FUNDAMENTALLY FAIR TRIAL

Cumulative error has been long recognized as a viable basis for reversal of convictions. In Sipsas v. State, 102 Nev. 119, 716 P.2d 231 (1986), the Court was confronted with a situation where neither one of two specified instances of error alone was sufficient to justify reversal; however, the Court recognized that together, the errors warranted reversal, stating:

> The accumulation of error is more serious than either isolated breach, and resulted in the denial of a fair trial. Moreover, we note that the evidence against Sipsas was less than overwhelming on the question of whether Sipsas harbored the requisite intent to be convicted of first degree murder...In reviewing the record it is apparent that because of cumulative error, Sipsas was denied his constitutional right to a fair trial. Id.

In the instant case, the denial of her ability to enter a plea bargain was exasperated as the process moved along.

CONCLUSION

Accordingly, Ms. Oliver's conviction should be reversed and for whatever other relief this Court deems just and proper.

DATED this 11th day of February, 2022.

Respectfully submitted,
/s/ Martin Hart
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Attorney for Appellant

CERTIFICATE OF COMPLIANCE

I hereby certify that this appellate 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 Times New Roman using Microsoft Word 2021.

I further certify that this appellate brief complies with the page or type-volume limitations of NRAP 3C(h)(2) because it is proportionally spaced, has a typeface of 14 points or more, and contains approximately 5582 words.

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 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 11th day of February, 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY AND AFFIRM that this document was filed electronically with the Nevada Supreme Court on February 11, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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