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2 IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown  
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5  
6 DARWYN ROSS YOWELL,

7 Appellant,

8 vs.

CASE NO.83577

9 THE STATE OF NEVADA,

10 Respondent.

11 Appeal From The Fourth Judicial District Court  
Of The State of Nevada  
In And For The County Of Elko

12 **RESPONDENT'S ANSWERING BRIEF**

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## STATEMENT OF THE FACTS

The State first called as witnesses Mikala and Trey Green, residents of Jiggs, Nevada, who were heading home to the ranch on the evening of June 5, 2020, around 10 p.m., when they came upon a white vehicle stopped in the middle of the highway. JA Vol. 3 p. 389-391, 415-418, 421. When they approached the vehicle, they saw that the man was outside coming from the driver's side of the car and a woman stumbled out of the passenger side of the car onto all fours then got up and was unsteady on her feet and appeared unable to see where she was going. Id. The male, who turned out to be Yowell told the Greens that they had a wreck up the road and that they didn't need help. Id. at 394, 396-397, 418. Yowell appeared angry and looking for a fight, aggressive. Id. The Greens informed Yowell that they had called 911 at which point Yowell said to the woman who had gotten out of the car, "you fucking bitch, I am going to jail" and then immediately walked hurriedly away or left the scene towards the South. Id. at 395, 403, 407, 422. The woman at this point was walking towards the Green's vehicle saying, "help me, help me, help me." Id. at 396, 421. The Greens got a good look at Yowell and saw no injuries on him at all and especially none on Yowell's face or left arm or left side. Id. at 397, 402, 420, 433. The woman, later identified as the victim Jean Ortega, was

1 bleeding from her face or eyes and was very swollen. JA Vol. 3 p. 401,  
2 423-424.

3 Melva Jackson was the State's next witness, the mother of the victim  
4 Jean Ortega. Id. at 440-441. She described her daughter, born in 1977 and  
5 therefore in her 40's, and then went on to explain the difference in her  
6 daughter now after the events of June 5, 2020. Id. at 441. After her  
7 daughter's stay at the University of Utah hospital and then returning home  
8 and seeing her for the first time due to the Covid restrictions, she realized  
9 that her daughter was not the same person. Id. 442-443. She stated that her  
10 memory was hurt, she couldn't think and she understood it was because she  
11 had a blood clot in her head. Id. Ms. Jackson described her daughter's mind  
12 as "wandering off" and she does not respond and that these symptoms have  
13 occurred ever since being beaten up by Yowell. Id. at 444. Ms. Jackson  
14 further testified about her daughter's ability to recall or remember stating  
15 that it comes and goes and that sometimes she will talk to somebody who is  
16 not there. Id. at 444-445. She also described her daughter as having a hard  
17 time understanding things now. Id. She also disclosed that her daughter  
18 dealt with bipolar disorder even before the events of June 5, 2020. Id. at  
19 448. Finally, when asked at trial if her daughter had fully recovered from  
20

1 the injuries suffered on June 5, 2020, Ms. Jackson stated that she had not.  
2 JA Vol. 3 p. 452.

3 The State admitted the medical records of Jean Ortega, trial exhibits  
4 60 and 61, along with a stipulation of fact, trial exhibit 90, which showed  
5 that Ms. Ortega suffered extensive injuries, a subdural hematoma and a  
6 fracture of the nasal bones as well as facial lacerations and swelling as a  
7 result of the crime. JA Vol. 3 p. 448-450, 494; RA p. 3-4, 57, 76, 79, 83-  
8 84, 127, 128-129.

9 The victim, Jean Ortega, then testified about the events of June 5,  
10 2020. Throughout her examination by the State Ms. Ortega stated that she  
11 did not remember or could not recall facts of the case. JA Vol. 3 p. 463,  
12 464, 468, 470-473, 478-483, 485-487, 518. Of note, regarding the issue on  
13 appeal Ms. Ortega testified that she could not remember the motel or room  
14 number where she and Yowell had stayed before the incident. Id. at 463.  
15 She testified that there was no argument with Yowell that preceded the  
16 attack from him, and no argument about Yowell's ex-girlfriend before  
17 Yowell started hitting her in the car. Id. at 469. She testified about them  
18 heading towards or going to the "lower Colony" rather than the "old"  
19 Colony. Id. at 470. Ms. Ortega testified the reason the car came to a stop in  
20 the road out by Jiggs where the Greens found them was because Ms. Ortega

1 had “grabbed the gear shaft and put it in park and put it back into drive, and  
2 he went – and we stopped. And then I threw it in park, I took the keys out.”  
3 JA Vol. 3 p. 473. She further testified that after the car had stopped that she  
4 tried to get into the back seat to get a cigarette. Id. at 474-475. She testified  
5 that she had no memory whatever of her conversation with the officer at the  
6 hospital and reading his reports did not jog her memory of that conversation  
7 at all and she did not want to watch the video for fear of retraumatizing  
8 herself. Id. at 482-483, 480-481. Ms. Ortega, testifying a year later at the  
9 trial, did describe being struck many times by Yowell in an unprovoked  
10 attack and so much so that she suffered a brain bleed, could not see because  
11 both eyes had been swollen shut, that she suffers now from loss of memory,  
12 her speech is slurred, she can’t care for herself, she received stitches and  
13 spent several days in the hospital and is unsure whether she will ever fully  
14 heal. Id. at 466-470, 475-476, 478-481, 487.

15 The State next called several law enforcement officers. Andrew Neff  
16 is the person who arrested Yowell the next morning, June 6, 2020, at  
17 approximately 8:45 a.m., nearly 12 hours later, and did see some injuries on  
18 Yowell. JA Vol. 3 p. 526, 528.

19 Deputy Bear testified that he received Yowell into the jail upon his  
20 arrest and documented injuries on Yowell as part of the booking process



1 and he also took a written statement from Yowell. JA Vol. 3 p. 627-628;  
2 JA Vol 4 p. 675; RA p. 130-131. The injuries documented by Deputy Bear  
3 were shown to the witness Mikala Green at trial and she stated that none of  
4 the injuries depicted in the photos taken by Bear were on Yowell when she  
5 and her husband encountered Yowell the night before. JA Vol. 3 p. 402.

6 Deputy Cortez testified that she arrived on the scene on the Jiggs  
7 Highway as one of the first responding officers having been called out at  
8 9:20 p.m. and she took pictures of Ortega's condition as well as the vehicle  
9 where she found blood spatter in many places. Id. at 537, 543-548, 555.

10 Detective Stake testified about his duties in the case which included  
11 the search of the vehicle and the motel room where Yowell and Ortega had  
12 stayed previously as well as the injuries on Ms. Ortega after her release  
13 from the hospital on June 10<sup>th</sup> at the Elko County Sheriff's office. JA Vol. 3  
14 p. 564-563, 576-578, 585-586. Detective Stake did find many injuries on  
15 Ms. Ortega and among those found injury on Ms. Ortega's lower jaw area  
16 and mouth. Id. at 622-624. Detective Stake also met with Yowell on  
17 January 29, 2021 to allow Yowell the opportunity to look for evidence in  
18 the white car from the evening of June 5, 2020, that had been impounded  
19 and was at the Sheriff's office. JA Vol. 3 p. 574-575. Yowell informed the  
20 Detective that he had been watching a Mariah Carey video on his phone in

1 the car when he was attacked by Ms. Ortega in the upper body or head as  
2 well as in the crotch and thus the phone was knocked out of his hand and  
3 that the phone should have been on the passenger floorboard of the vehicle.  
4 JA Vol. 3 p. 576. The Detective had participated in the seizure and search  
5 of the vehicle previously and had not found any cell phone in the vehicle.  
6 Id. at 581. However, the Detective did find cell phones left in the motel  
7 room where Yowell and Ortega had stayed previously. Id. at 571-572, 576.

8 The State then called a jail Deputy, Douglas Holladay, who took a  
9 statement, both verbal and written, from Yowell nearly a year later, May  
10 14, 2021, wherein Yowell claimed new facts in the case, among those, that  
11 he had been bitten on his penis by Ms. Ortega on June 5, 2020. JA Vol. 4 p.  
12 677-679.

13 Finally, the State called its last witness Sgt. Williams, the lead officer  
14 on the case, and the one who interviewed Yowell on two occasions during  
15 which Yowell admitted to hitting Ms. Ortega. JA Vol. 4 p. 681, 683, 693,  
16 700-701. Sgt. Williams observed the alleged 'bitemark' as characterized by  
17 Yowell and while it looked like a wound Sgt. Williams did not see any teeth  
18 marks. Id. Sgt. Williams also interviewed Ortega in the hospital in Elko  
19 approximately 1 hour after meeting with her on the Jiggs Highway. Id. at  
20 681, 683, 693, 699, 967-970.

1        During the video from the hospital interview, Ms. Ortega is able to  
2 tell the officer the name of the motel - the American Inn, the room number  
3 - 28; that they had been arguing about Yowell's ex-girlfriend and that  
4 Yowell had told her she was being disrespectful; she also clearly states that  
5 she did not want to go to Lee; she describes their relationship as being on  
6 the verge of a marriage or a divorce; she states multiple times that she told  
7 Yowell to stop; she states that they were driving towards the "old" colony  
8 and she claims that Yowell was upset because she was not listening to him.  
9 JA Vol 4 p. 967-970. She further describes the stop out on the Jiggs  
10 highway as Yowell getting mad, slamming on the brakes and putting the car  
11 in park due to the fact that she was trying to get some cigarettes out of the  
12 back seat and Yowell thought that she was getting something to take him  
13 out with and she describes being told that she was being held hostage. JA  
14 Vol 4 p. 967-970. Ortega is clearly still feeling the effects of the injuries  
15 she sustained and at this point, as noted in the medical records, is suffering  
16 from the brain bleed and nasal fracture as she drifts in and out of the  
17 conversation. Id.

18        In the defense case, Yowell testified and stated that he was aware of  
19 the prior felony conviction, the stabbing incident, that Jean had stabbed her  
20 father 12 times, and that she was paroled and that he was familiar with the

1 terms of her parole. JA Vol. 4 p. 735-736, 739-742, 744-746. He also  
2 testified on multiple occasions of his knowledge of her mental health  
3 problems. Id. at 747-750, 780, 783, 787, 790, 802, 827, 831. Yowell  
4 claimed that Ortega hit him with no provocation at all 30 to 50 times and  
5 that he was starting to black out and his vision was dimming. Id. at 758-  
6 759. Yowell's version of the facts was considerably different than that  
7 presented by the State, but in the end the jury convicted him of Count 4,  
8 Domestic Battery Resulting in Substantial Bodily Harm. RA p. 134-135.

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1           3. Errors concerning hearsay and the confrontation clause of the 6<sup>th</sup>  
2 Amendment are subject to harmless error analysis. Yowell was not  
3 prejudiced by any limitation as he himself testified to the crime she  
4 committed and was clearly aware of it and the issue of her violent past  
5 incident was therefore clearly before the jury such that if any error occurred  
6 it was harmless. Likewise, the admission of the statement of the victim to  
7 the officer at the hospital given the weight of the case against Yowell in all  
8 other respects, if deemed an error, was harmless.

9                                   ARGUMENT

10          I.       The limitation of the cross examination regarding repetitive  
11                   questioning was appropriate.

12           The Defendant spent several questions using the exact same phrase  
13 during the cross-examination of the victim to exaggerate and emphasize the  
14 facts of her prior felony conviction. At the outset of the cross examination  
15 Yowell asked about her violent prior felony conviction. RA Vol. 3 p. 495.  
16 The testimony proceeded as follows:

17           Q. I wanted to talk to you more about the violent felony  
18 conviction you have...

19           A. Yes, sir.

20           Q. So you admitted to being a convicted felon. That was in  
federal court?

A. I believe so, yes.

1 Q. And that was within the last few years you were convicted of  
this violent offense?

2 A. Yes, sir.

3 Q. And that crime was for assault resulting in serious bodily  
4 injury?

5 A. Yes, sir.

6 Q. And your victim in that case was your father?

7 A. Yes, sir.

8 Q. And you attacked your father?

9 A. Yes.

10 Q. You attacked him with a knife?

11 A. Yes.

12 ...

13 Q. You attacked your father with a knife?

14 A. Yes. Like I said before, yes.

15 Q. And you stabbed him?

16 A. Yes.

17 Q. And you stabbed him more than once?

18 A. Yes.

19 Q. And you stabbed him multiple times?

20 A. Yes.

...

Q. You stabbed him over ten times?

A. Rough – yes.

Q. You stabbed him 15 times?

1 JA Vol. 3 p. 495-497. At this point the State objected and the district court  
2 sustained the objection based upon the repetitive nature of the questions.  
3 Id. at 498. Following this, Yowell continued with cross examination asking  
4 about Yowell's knowledge of this previous crime of hers, which the victim  
5 affirmed, and then there was lengthy questioning about her terms of parole  
6 or probation which included her mental health and how that was dealt with  
7 on probation or parole. Id. at 499-505. In short, Yowell was very much  
8 allowed to cross examine Ms. Ortega about her prior crime, which she  
9 admitted to and even admitted that Yowell was aware of it.

10 NRS 50.115 states that:

11 1. The judge shall exercise reasonable control over the mode and order of  
interrogating witnesses and presenting evidence:

12 (a) To make the interrogation and presentation effective for the  
13 ascertainment of the truth;

14 (b) To avoid needless consumption of time; and

15 (c) To protect witnesses from undue harassment or embarrassment.

16 The district court did exactly what it is required to do by statute. At no time  
17 did Ms. Ortega deny her felony conviction or the nature of it. To  
18 repetitively ask such questions was a waste of time, could result in  
19 confusion of the issue regarding who was on trial and was only  
20 implemented to badger or harass and embarrass Ms. Ortega. Thus, the State  
objected, and the court sustained the objection regarding the repetitive



1 nature of the multiple 'stabbing' questions. There was no instruction about  
2 what could not be further asked and in fact Yowell was allowed to ask  
3 about her punishment, going to prison, being on parole and her conditions  
4 thereof, and how this previous crime was attributed to a mental health  
5 episode relating to her bipolar disorder. JA Vol. 3 p. 499-505. Only the  
6 repetitive asking about stabbing her father multiple times drew the  
7 objection.

8       The evidence necessary for Yowell's defense was allowed before the  
9 jury and Yowell was not hampered in any way from arguing his self-  
10 defense claim as a result of knowing about her past history.

11       Yowell claims in his brief that if he had not been 'hampered' by the  
12 district court's ruling he "...could have shown that Ms. Ortega stabbed her  
13 father over ten times, over fifteen times, over twenty times, or more."  
14 Appellant's Opening Brief p. 15 lns. 13-14. However, there is no citation  
15 with this assertion, and it is belied by his own testimony. Yowell, when he  
16 testified, specifically stated that he was aware that Ms. Ortega had stabbed  
17 her father "12 times". JA Vol. 4 p. 739. The truth of the matter is that  
18 Yowell was allowed to prove that Ms. Ortega had stabbed her father over  
19 ten times as noted above and there was absolutely no basis in fact for asking  
20 about 15, 20 or more times as shown by his own testimony. Yowell was

1 able to prove exactly what happened and was not hampered in any way.  
2 True, Yowell was prevented from asking about the false allegations of 15,  
3 20 or more times, but this did not cause him any harm or prejudice since it  
4 was false. Yowell cites case law stating "...forcing a State's witness to  
5 undergo the full crucible of cross-examination is the best procedural  
6 guarantee of a jury hearing reliable evidence." Appellant's Opening Brief  
7 p. 12 lns. 2-4; citing Crawford v. Washington, 541 U.S. 36, 61, 124 S. Ct.  
8 1354 (2004). However, this principle should not give one license to ask  
9 questions one knows are false to a person who suffered such debilitating  
10 injuries as in this case and therefore plant in the minds of the jury the seed  
11 that they are possibly true and only misremembered by the witness who is  
12 struggling with her memory and will continue to do so likely for the rest of  
13 her life. There was no basis in fact for asking about exaggerated numbers  
14 as suggested by Yowell. This makes it irrelevant and inadmissible. NRS  
15 48.015-NRS 48.035.

16 The Nevada Supreme Court has held that regarding potential bias or  
17 motive cross examination, trial judges 'retain wide latitude' to restrict  
18 cross-examination regarding questioning when there are concerns about  
19 prejudice, confusion of the issues, the witness' safety, repetitive, irrelevant,  
20 vague, speculative or questions designed to merely harass, annoy, or

1 humiliate the witness or interrogation that is repetitive or only marginally  
2 relevant. Leonard v. State, 117 Nev. 53, 72 (2001) citing Delaware v. Van  
3 Arshall, 475 U.S. 673, 679, 106 S. Ct. 1431 (1986); Bushnell v. State, 95  
4 Nev. 570, 572-573 (1979).

5 Based upon the above statute and case law and the facts of this case  
6 the district court did not err in limiting the repetitive nature of the  
7 questioning. Yowell was able to elicit all the facts necessary for his  
8 defense. There was no error.

9 II. The hospital interview of Ms. Ortega by Sgt. Williams was  
10 admissible evidence properly before the jury.

11 As noted above in the factual statement, Ms. Ortega's trial testimony  
12 was not consistent with the statements that she made during the interview.  
13 Just reading her testimony and then watching the video makes that clear.  
14 Yowell's claim that "nothing said in it was inconsistent with her prior  
15 testimony" is merely a bald assertion without taking into consideration or  
16 arguing what she said in both instances. Appellant's Opening Brief p. 16 ln.  
17 10 – p. 17 ln. 1.

18 As an example, a clear inconsistency had to do with how the vehicle  
19 came to a stop on the Jiggs Highway. The two accounts are wildly  
20 different. Her trial testimony had Ms. Ortega causing the stopping of the

1 car by grabbing the gear shift and thrusting the car into another gear and  
2 thereafter taking the keys. JA Vol. 3 p. 473-475. This is contrasted against  
3 her video recorded statement that Yowell had slammed on the brakes to  
4 stop the vehicle because he wanted to stop Ms. Ortega from getting  
5 something out of the back seat, thinking that she was attempting to get a  
6 weapon to take him out with. JA Vol 4 p. 967-970. This is but one  
7 example, but such a significant one that the short video statement in its  
8 entirety warrants review to test the reliability of this person, who again had  
9 suffered a subdural hematoma at the time of the statement and was  
10 testifying while suffering still the aftereffects of the injuries a year later.

11 "We conclude that when a trial witness fails, for whatever reason, to  
12 remember a previous statement made by that witness, the failure of  
13 recollection constitutes a denial of the prior statement that makes it a prior  
14 inconsistent statement pursuant to NRS 51.035(2)(a). The previous  
15 statement is not hearsay and may be admitted both substantively and for  
16 impeachment." Crowley v. State, 120 Nev. 30, 35, 83 P.3d 282, 286 (2004).  
17 In this case the State did fulfill the requirements of Crowley. The State first  
18 asked Ms. Ortega about the event in question letting her testify from what  
19 she remembered at the time of trial. JA Vol. 3 p. 464, 469, 470, 473-475.  
20 As noted above, throughout her testimony she claimed she could not

1 remember or was unable to remember and that reviewing the officer's  
2 report, or the video would not refresh her memory. JA Vol. 3 p. 463, 464,  
3 468, 470-473, 478-483, 485-487, 518. The video clearly has statements that  
4 are inconsistent with what she testified to. JA Vo. 4 p. 967-970. Therefore,  
5 they are admissible under NRS 51.035(2)(a).

6 The video is further admissible evidence containing excited  
7 utterances or as a present sense impression. NRS 51.095; NRS 51.085.  
8 The statutes require that the statements be made while perceiving the event  
9 or immediately thereafter or while under the stress of excitement caused by  
10 the event. Id. In a 1984 Nevada Supreme Court case, the victim was  
11 interviewed by the police one and one-half hours later, however the  
12 statement was admissible as an excited utterance because the victim was  
13 "nervous and upset" at the time of the interview. Dearing v. State, 100 Nev.  
14 590, 592 (1984). Ms. Ortega's interview at the hospital seems to clearly fit  
15 the Dearing case for an excited utterance as she is still suffering from the  
16 effects of the incident.

17 While present sense impression does contain the words "...or  
18 immediately thereafter..." one should take into consideration that Ms.  
19 Ortega was currently suffering the brain bleed/subdural hematoma as  
20 diagnosed by the doctors during the brief interview with Sgt. Williams. RA

1 p. 3-4, 57, 76, 79, 83-84, 127, 128-129. Ms. Ortega was, at that moment,  
2 still suffering from the effects of the beating she received from Yowell.  
3 The interview in the hospital took place only one hour after Sgt. Williams'  
4 encounter with Ms. Ortega on the Jiggs Highway and is relatively short. JA  
5 Vol. 4 p. 699.

6 The State also argued that whatever statements that were consistent  
7 within the hospital interview, were offered for rehabilitation purposes to  
8 rebut a claim of recent fabrication. NRS 51.035(2)(b). As noted above Ms.  
9 Ortega testified many times that she did not remember a lot of what  
10 happened due to the lasting effects of the injuries she suffered. She was  
11 cross examined about her past and about her being on parole or probation  
12 both while testifying and at the time of the crime and the suggestion was  
13 made that she did not want to go back to prison and would do almost  
14 anything to avoid it. JA Vol. 3 p. 504-505. Yowell was obviously claiming  
15 that she is/was lying about who was at fault in the altercation, suggesting  
16 her motive for lying was to avoid going back to prison.

17 The State, to rebut this suggestion, wanted to show that she had to  
18 have been clear minded enough to be able to come up with such a lie, while  
19 in the hospital, suffering a brain bleed, going in and out of consciousness as  
20 seen on the video and therefore that it was unlikely that she had such a

1 motive or that it was at the forefront of her mind. Ms. Ortega's immediate  
2 health at the time of the statement must be a consideration in determining  
3 whether she actually had such a motive as claimed by Yowell. Thus, the  
4 State properly should have been allowed to rehabilitate the witness with her  
5 statements made in the hospital and therefore allow the jury to decide  
6 whether that person was operating with such a motive in mind.

7 Finally, in writing this appeal it occurs to the State that the video was  
8 excellent evidence of the substantial bodily harm element that had to be  
9 proved in relation to count 4. The video interview was well over an hour  
10 after the actual beating took place and she still was clearly suffering from  
11 the effects of it. While a subdural hematoma is not something that a juror  
12 may be able to see on the outside, watching a video of a person talking and  
13 interacting while suffering from such an injury is clearly helpful in  
14 determining whether substantial bodily harm was present. NRS 0.060. It  
15 would have been relevant to show the protracted loss or impairment of her  
16 speech and cognitive abilities that had been testified to. Id.; JA Vol. 3 p.  
17 444, 480, 599-600.

18 Under any of the above theories, the video recorded statement at the  
19 hospital was admissible. This court need not find that all theories apply.  
20 That solely one is applicable is enough because it is irrelevant that the

1 district court may have relied upon an inapplicable admissibility tenet, as  
2 long as the evidence is still admissible for any reason. Dearing at 592,  
3 citing Cunningham v. State, 100 Nev. 396 n. 1 (1984) (Hotel Rivera, Inc. v.  
4 Torres, 97 Nev. 399 (1981)(where lower court's decision was otherwise  
5 correct, error will not be found despite the fact that court gave wrong  
6 reasons in support of its decision.)). What is more, a trial court's evaluation  
7 of admissibility of evidence will not be reversed on appeal unless it is  
8 manifestly erroneous. Medina v. State, 122 Nev. 346, 353 (2006). The  
9 admission of the video was not a manifestly erroneous ruling given the facts  
10 around its admission as noted above. This would be at worst a close call.

11  
12 III. Errors concerning hearsay and the confrontation clause of the U.S.  
13 6th amendment are subject to harmless error analysis.

14 Both hearsay and confrontation clause errors are subject to harmless  
15 error analysis. NRS 51.035, NRS 51.065 and NRS 178.598; Franco v.  
16 State, 109 Nev. 1229, at 1237 (1993), cited, Browne v. State, 113 Nev. 305,  
17 at 313, (1997), Wood v. State, 115 Nev. 344, at 350, (1999). It must be  
18 determined beyond a reasonable doubt that the error was harmless.  
19 Chapman v. California, 386 U.S. 18, 24 (1967). Factors relevant in  
20 determining if the error was harmless include: (1) the importance of a



1 witness's testimony in the prosecution's case; (2) whether the testimony was  
2 cumulative; (3) the presence or absence of evidence corroborating or  
3 contradicting the testimony on material points; and (4) the overall strength  
4 of the prosecution's case. Medina v. State, 122 Nev. 346, 143 P.3d 471  
5 (2006), cited, Harkins v. State, 122 Nev. 974, at 986, 143 P.3d 706 (2006),  
6 Polk v. State, 126 Nev. 180, at 183, 233 P.3d 357 (2010), see also  
7 Hernandez v. State, 124 Nev. 639, at 653, 188 P.3d 1126 (2008).

8       In this case, both the focusing of the cross examination of the victim  
9 and the admissibility of the video interview were not in error. However, for  
10 the sake of argument, if deemed to be error, that error would have been  
11 harmless. Not allowing Yowell to ask about 15 and 20 or more times of  
12 stabbing when going over the victim's prior would have added nothing to  
13 the already admitted evidence that she had testified to already. Ms. Ortega  
14 had admitted that such a prior for stabbing her father existed and that she  
15 did so more than 10 times and in fact 12 times according to Yowell. It  
16 would have been cumulative and repetitive to go any further regarding the  
17 number of times and being able to go over and over it would not have made  
18 it any more important.


19       The video statement of Ms. Ortega could also be deemed as more of  
20 the same, or cumulative as she did in fact testify about what she

1 remembered. While the video showed the victim's condition, it is likely  
2 that Ms. Ortega's live and in person testimony was much more important.  
3 She did testify as did others about her condition, the inconsistencies are  
4 there, but the reality is that the jury was hearing from a woman who had  
5 been severely injured and anything that she said or was going say was going  
6 to be taken with a grain of salt because of her considering her injuries,  
7 whether she made inconsistencies or not. There was also video of her  
8 immediately at the scene that had already been admitted and shown to the  
9 jury as Jury Trial Exhibit 2. JA Vol. 4 p. 682-684, 690. Given the fact that  
10 the other video had already been played showing Sgt. Williams' interaction  
11 with Ms. Ortega out on the Jiggs Highway, to which Yowell did not object,  
12 it is hardly likely that the video from the hospital did much more than what  
13 had already been shown. Thus, again making any error, which the State  
14 does not concede, but if found, harmless beyond a reasonable doubt.

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If there was any error, which the State does not concede, it was harmless given the weight of the evidence against Yowell. Ms. Ortega was savagely battered by Yowell and will likely never be the same. The jury's verdict should be affirmed.

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By:   
Chad B. Thompson  
Deputy District Attorney  
State Bar Number: 10248

1                                    CERTIFICATE OF COMPLIANCE

2            I hereby certify that this Respondent's Answering Brief complies with  
3 the formatting requirements of NRAP 32(a)(4), the typeface requirements of  
4 NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6). This  
5 Respondent's Answering Brief has been prepared in a proportionally spaced  
6 typeface using Microsoft Office Word 2007, in size 14 point Times New  
7 Roman font.

8            I further certify that this brief complies with the page or type-volume  
9 limitations of NRAP 32(a)(7) because, excluding the parts of the  
10 Respondent's Answering Brief exempted by NRAP32(a)(7)(C), because it  
11 contains 5,148 words.

12           I hereby certify that I have read the Respondent's Answering Brief,  
13 and to the best of my knowledge, information, and belief, it is not frivolous  
14 or interposed for any improper purpose. I further certify that this brief  
15 complies with all applicable Nevada Rules of Appellate Procedure, in  
16 particular NRAP 28(e), which requires every assertion in the brief regarding  
17 matters in the record to be supported by appropriate references to the record  
18 on appeal.

19    ///

20    ///

1 I understand that I may be subject to sanctions in the event that the  
2 accompanying brief is not in conformity with the requirements of the  
3 Nevada Rules of Appellate Procedure.

4 DATED this 24 day of February, 2022.

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9 By:



10 Chad B. Thompson  
11 Deputy District Attorney  
12 State Bar Number: 10248  
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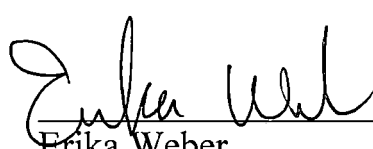
CERTIFICATE OF SERVICE

I certify that this document was filed electronically with the Nevada  
Supreme Court on the 24<sup>th</sup> day of February, 2022. Electronic Service of  
the Respondent's Answering Brief shall be made in accordance with the  
Master Service List as follows:

Honorable Aaron D. Ford  
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and

Matthew Pennell  
Attorney for Appellant

  
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DA#: AP-21-02501