IN THE SUPREME COURT OF THE STATE OF NEVADA

TULY LEPOLO, aka TAUTAMUA LEPOLO, aka TUTAUMUA LEPOLO, Petitioner, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; THE HONORABLE MICHAEL VILLANI, DISTRICT JUDGE; AND THE HONORABLE DAVID BARKER, SENIOR DISTRICT COURT JUDGE, Respondents, STATE OF NEVADA, Real Party in Interest.	Electronically Filed Feb 08 2022 10:15 a.m. Elizabeth A. Brown Clerk of Supreme Court CASE NO: 83755

ANSWER TO PETITION FOR WRIT OF MANDAMUS

COMES NOW, the State of Nevada, Real Party in Interest, by STEVEN B. WOLFSON, District Attorney, through his Deputy, JOHN AFSHAR, on behalf of the above-named respondents and submits this Answer to Petition for Writ of Mandamus in obedience to this Court's order filed December 23, 2021, in the above-captioned case. This Answer is based on the following memorandum and all papers and pleadings on file herein.

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Dated this 8th day of February, 2022.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar # 001565

BY *<u>/s/ John Afshar</u>*
JOHN AFSHAR
Deputy District Attorney
Nevada Bar #014408
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POINTS AND AUTHORITIES

ROUTING STATEMENT

This matter is not presumptively assigned to the Court of Appeals under NRAP 17.

STATEMENT OF THE CASE

On August 5, 2019, Tuly Lepolo (hereinafter "Lepolo") was charged via Criminal Complaint with Murder with the Use of a Deadly Weapon (Category A felony – NRS 200.010, 200.030, 193.165) for the shooting death of Raquel Stapinski. Respondent's Appendix ("RA") at 9. The theory of murder was willful and premeditated and/or pursuant to a challenge to fight. RA at 9. A "no bail" arrest warrant issued that day. RA at 14. On October 28, 2019, Lepolo made his initial appearance and the Special Public Defender was appointed to represent him. RA at 13.

The Criminal Complaint was amended in open court on January 6, 2020, to add Assault with a Deadly Weapon (Category B felony – NRS 200.471) for pointing a gun at Flora Marie Taylor. RA at 10. Lepolo unconditionally waived his right to a preliminary hearing and was held without bail. RA at 12. Lepolo was charged via Information on January 8, 2020, with these same two counts. Appellant's Appendix ("AA") at 1-2.

On January 21, 2020, Lepolo was arraigned and pled not guilty. AA at 84. He waived his right to a speedy trial. AA at 85. Lepolo's attorney noted "Tuly" is a nickname for Tutaumua and that he would attempt to correct the record. AA at 84. Defense counsel stated he would file a motion to address bail. AA at 84.

On January 27, 2020, Lepolo filed a Motion for Defendant Lepolo's Release on House Arrest or, in the Alternative, Motion to Set Reasonable Bail Pending Trial. AA at 4-15. The State responded on January 29, 2020. AA at 16-30.

The Honorable Michael Villani conducted a hearing on July 14, 2020. AA at 31-40. Defense counsel argued the State's witnesses were biased as they were part of the fight. AA at 36. The State pointed out Lepolo's story changed, in that he originally denied even being in Las Vegas during the fight until his DNA was found at the scene. AA at 35. The State highlighted the facts of the case involved a family dispute and that Lepolo fired into a crowded apartment, uncaring who among the numerous people present was killed. AA at 35. The victim was not engaging in fight with Lepolo, and Lepolo menaced another innocent person while fleeing. AA at 35. Finally, the State reiterated that using a weapon during a "challenge to fight" is per se first degree murder. AA at 36.

Judge Villani denied bail "based on the facts of this case, and also that the potential harm to numerous people." AA at 37. The Order denying bail was filed on November 9, 2021. AA at 81-82. In the Order, the court found that "no combination

of monetary condition would be sufficient to reasonably ensure the Defendant's appearance and safety to the community." AA at 82.

On April 1, 2021, Lepolo filed a Second Motion for Defendant Lepolo's Release on House Arrest, or in the Alternative, Motion to Set Reasonable Bail Pending Trial Due to Changed Circumstances. AA at 41-52. The Motion urged the Court to reconsider bail in light of the Valdez-Jimenez case. AA at 50. The State filed its Opposition on April 6, 2021. AA at 54-69.

The Honorable David Barker conducted a hearing on April 16, 2021. AA at 70-77. Defense counsel argued that Judge Villani's ruling preceded the Valdez-Jimenez case which announced new rules. AA at 71. Referring to the crime as "a family dispute that got out of hand," counsel said Lepolo's good behavior during the three years he evaded arrest showed he could avoid being "a danger to the community." AA at 72, 74. The State rebutted by pointing to first degree murder as an exception under NRS 178.484. AA at 74. The State demonstrated Lepolo had few ties to Nevada and had a significant criminal history. AA at 75.

Judge Barker, as Judge Villani had done before, concluded:

> [N]o combination of monetary condition would be sufficient to reasonably ensure the Defendant's appearance and safety to the community. I believe a no bail warrant is appropriate, in part based upon the minimum contacts the Defendant has with this community and the significant, and as stated, complex criminal history of the Defendant I believe, that offers great concern of his – for the safety of the community.

AA at 77. The Order denying bail was filed on October 1, 2021. AA at 78-79.

On July 29, 2021, Lepolo filed a Petition for Writ of Mandamus in Docket No. 83291. The Nevada Supreme Court denied the writ, stating Lepolo failed to satisfy his burden to demonstrate extraordinary relief was warranted. See Order Denying Petition for Writ of Mandamus, Docket No. 83291, filed August 12, 2021, at 1.

Lepolo filed the Instant Petition for Writ of Mandamus on November 10, 2021 (hereinafter "Writ"). The argument in this Petition is identical to that in the previous one. The Appendix filed with the instant petition is nearly identical to the one filed in Docket No. 83291, though Lepolo has added the lower court's Orders Denying Bail.

STATEMENT OF FACTS

Since Lepolo waived his right to a preliminary hearing, the following facts are gleaned from the police report. RA at 1-8. On April 3, 2016, shortly before nine p.m., Las Vegas police responded to a shooting that occurred at an apartment complex. RA at 1. Police located the body of Raquel Stapinski between buildings 25 and 26. RA at 1. Ms. Stapinski had been killed by crossfire between a party in building 25, hosted by Dana Foreman, and another in building 26, hosted by Elaine Lepolo. RA at 5.

During the parties, Dana Foreman's son, Dwayne "Wayne Wayne" Armstrong, wanted to fight a subject from Lepolo's party. RA at 1. Several people

associated with the two parties began to argue and fight in the parking lot north of the two buildings. RA at 1. Dana Foreman's brother Henry "T-Loc" Taylor fired a single shot from a 9mm semi-automatic handgun in the parking lot. RA at 1. The fight broke up and people made their way to their respective apartments. RA at 1.

A witness telephoned 9-1-1 when she heard the single gunshot. RA at 2. She observed Lepolo grab a semi-automatic firearm from a white Chevrolet Suburban with California license plates and fire approximately nine (9) times at the people standing in the hallway in front of Taylor's apartment. RA at 2. Raquel Stapinski, a guest of the Taylor party, was struck and killed. RA at 5.

After the shooting, Lepolo fled on foot toward Torrey Pines, dripping blood as he did so. RA at 5. As Lepolo ran away, he pointed his gun at Flora Marie Taylor, a guest of the Foreman party, and threatened her. AA at 55.

Lepolo has at least four prior felony convictions related to his membership in a California gang, where he goes by the nickname "Trigger." RA at 7. Lepolo matches the physical characteristics of the shooter according to witnesses. RA at 2, 4. Members of the Foreman and Lepolo parties knew each other prior to the night of the shooting incident, as Henry Taylor's brother has a child in common with a member of the Lepolo family. RA at 6. Lepolo's fingerprints were found on the exterior door of the Suburban, on a drink can inside the vehicle, and on the hood. RA at 7. Lepolo's DNA was found on the can inside the Suburban, on the vehicle's

steering wheel, and in the spots of blood left behind by the fleeing shooter. RA at 7. Three witnesses will identify Lepolo as the shooter who killed Ms. Stapinski. AA at 35-36.

ISSUE PRESENTED

Whether the District Court did not abuse its discretion in denying Petitioner bail for his Open Murder charge.

ARGUMENT

A writ of mandamus is an appropriate vehicle for this Court to evaluate a claim of manifest abuse of discretion in bail matters. Here, the District Court did not abuse its discretion when it denied bail to an out-of-state offender accused of first degree murder. There is no entitlement to bail for persons accused of first degree murder.

I. WRIT OF MANDAMUS IS APPROPRIATE VEHICLE

This Court asked the State, as real party in interest, to address the propriety of a writ of mandamus in the instant case. See Order Directing Answer, Docket No. 83755, filed December 23, 2021, at 1.

A Nevada appellate court may issue a writ of mandamus to "compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or to control a manifest abuse of discretion." State v. District Ct. (Armstrong), 127 Nev. 927, 931, 267 P.3d 777, 779 (2011). "An arbitrary or capricious exercise of discretion is one founded on prejudice or preference rather

than on reason, or contrary to the evidence or established rules of law." Id., 267 P.3d at 780. Whether to consider the writ lies within the discretion of the Nevada Supreme Court. Id. A writ of mandamus is reserved for "cases where there is not a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170.

As the denial of bail is not a final, appealable decision, a writ of mandamus may be an appropriate vehicle for addressing whether the district court manifestly abused its discretion in denying bail. The Valdez-Jimenez decision itself arose following petitions for the writ of mandamus. 136 Nev. at 161, 460 P.3d at 983 ("we conclude that a writ of mandamus is the appropriate vehicle for raising these issues, as petitioners have no other adequate remedy."). In Cameron v. Eighth Jud. Dist. Ct. in & for Cty. of Clark, 135 Nev. 214, 445 P.3d 843 (2019), this Court entertained a writ of mandamus filed by a defendant whose bail had been increased. "We exercise our discretion to consider this writ petition because [Defendant] has no other remedy at law, and 'judicial economy and sound judicial administration' weigh in favor of its consideration." Id. at 216, 445 P.3d at 844 (internal citations omitted).

Lepolo has already had a petition for writ of mandamus denied by the Nevada Supreme Court. Although a petition for writ of mandamus may have been the correct vehicle initially, Lepolo is not entitled to refile an identical petition after a denial. He has sought, and been denied, relief. To reconsider the issue is a waste of judicial resources.

Further, if this Court chooses to reconsider this issue in the instant second Petition, this Court should deny the writ on its merits.

II. THE DISTRICT COURT CORRECTLY DENIED BAIL

Lepolo complains his pre-trial confinement is unlawful. Writ at 2. He accuses the lower court of ignoring the plethora of evidence against Lepolo and focusing only on the Valdez-Jimenez factors. Writ at 2. Because Judge Barker, one of two judges who denied Lepolo bail, was reversed in Sewall v. Eighth Judicial Dist. Court, 481 P.3d 1249 (2021), Lepolo would like to have him reversed in the instant case as well. Writ at 13.

a. Standard of review

Lower courts are given broad discretion to make bail determinations which should not be easily disturbed. Valdez-Jimenez, 136 Nev. at 161, 460 P.3d at 984. This Court will examine a denial of bail for an abuse of discretion. In re Wheeler, 81 Nev. 495, 500, 406 P.2d 713, 716 (1965). When considering bail, the State has a great interest in preventing flight risk and harm to the community. Valdez-Jimenez, 136 Nev. at 162, 460 P.3d at 984. The Court must consider the safety of the victim and family. Nev. Const. art. 1, Section 8A(1)(c).

b. Nevada does not guarantee bail for first degree murder

All defendants in Nevada are entitled to bail before conviction, with the exception of those accused of first degree murder when the "proof is evident or the presumption great." Nev. Const. art. I, § 7.

NRS 178.484 authorizes the denial of bail in first degree murder cases. NRS 178.484(1) states "a person arrested for an offense other than murder of the first degree must be admitted to bail." NRS 178.484(4) states "a person arrested for murder of the first degree may be admitted to bail unless the proof is evident or the presumption great by any competent court or magistrate authorized by law to do so in the exercise of discretion, giving due weight to the evidence and to the nature and circumstances of the offense." People arrested for first degree murder are excluded from the group who "must" be admitted to bail, though they "may" be admitted to bail if the proof is not evident or the presumption great.

Valdez-Jimenez expressly reaffirmed that people charged with first-degree murder do not have an automatic right to bail. Id. at 161, 460 P.3d at 984. The provision in Valdez-Jimenez that a first degree murder charge may be reason enough to deny bail is not mere surplusage. "Thus, under our constitution, individuals such as petitioners, ***who are accused of committing noncapital, non-first-degree-murder offenses***, have a right to bail in a reasonable amount." Id. at 161, 460 P.3d at 984. (emphasis added).

c. Quantum of evidence

The quantum of evidence needed to show the "proof is evident or the presumption great" is greater than probable cause. Sewall v. Eighth Jud. Dist. Ct. in & for Cty. of Clark, 137 Nev. Adv. Op. 9, 481 P.3d 1249, 1251 (2021). However, the standard is not beyond a reasonable doubt. Wheeler, 81 Nev. at 500, 406 P.2d at 716. "How much evidence is 'enough evidence' must of necessity be resolved on a case by case basis." Id.

The "proof is evident or the presumption is great" standard of proof has been generally reviewed as "clear, strong evidence, which leads to a dispassionate conclusion that the offense has been committed as charged, and that a jury would find the accused guilty of [first-degree] murder." *See* Corpus Juris Secundum (Bail; Release and Detention Pending Proceedings), 8 C.J.S. Bail § 36**.** In Howard v. Sheriff of Clark County, 83 Nev. 48, 422 P.2d 538 (1967), the Court held only "evidence tending to show the elements of first degree murder will allow the trial court to deny a bail application."

In Wheeler, the Supreme Court addressed the quantum of proof needed to establish proof evident, presumption great. 81 Nev. at 498, 406 P.2d at 715. This Court upheld the decision to deny bail because there was sufficient evidence of a first-degree murder charge where a police officer testified the deceased spoke to him before he died. Id. The court also considered information relevant to the purposes of

bail. Id. at 502, 406 P.2d at 717. Conversely, in Sewall, this Court reversed the denial of bail after the defendant successfully suppressed his confession. 137 Nev. Adv. Op. 9, 481 P.3d at 1250. The remaining evidence of the defendant's culpability of murder consisted only of his semen on the victim and "his previous ownership of a firearm that could have fired the round." Id.

d. Ample evidence exists, creating a strong presumption Lepolo committed first degree murder

The State avers Lepolo committed first degree murder under one of two theories: either willful and premeditated and/or pursuant to a challenge to fight. RA at 9. The Justice Court found probable cause to bind Lepolo over to District Court on the charges. Lepolo waived his preliminary hearing, choosing not to test the charges against him. The first step in evaluating bail for a person arrested for first degree murder is to weigh "the ability of the State to prove the elements of first degree murder." Writ at 10.

Unlike the defendants in Valdez-Jimenez, Lepolo falls outside the category of defendants who are required to have reasonable bail set. Because he was arrested for first degree murder, the State must show by clear and convincing evidence that the presumption against him is great. The State has met this burden. Lepolo had two individualized bail hearings, on July 14, 2020 and on April 16, 2021, where the

charge of first degree murder was demonstrated by clear and convincing evidence. See AA at 35-39, 74-76.

Lepolo claims the State only showed Lepolo's DNA was at the scene, three witnesses could identify the shooter, and Lepolo is a danger to the community. Writ at 12. The facts that Lepolo bled where the shooter bled and that witnesses identified him as the shooter are more than sufficient to show a great presumption that Lepolo was the shooter. Additionally, an eyewitness not involved in the fracas observed Lepolo enter a vehicle to retrieve a weapon, then open fire on unarmed individuals in the next apartment building. Whether the jury determines Lepolo brought a gun to a fistfight or willfully committed murder, the end result is the same: first degree murder.

This is not a case where the shooter's identity is in serious doubt. Three witnesses well-acquainted with Lepolo identified him as the shooter. Witnesses unfamiliar with Lepolo gave descriptions of the shooter that match Lepolo's appearance. Fingerprint evidence tied Lepolo to the vehicle where the weapon was retrieved. DNA evidence tied Lepolo to the drops of blood along the path of the fleeing shooter. Lepolo's fellow gang members call him "Trigger." The evidence against Lepolo that was presented to the District Court provide a great presumption that he is the murderer of an innocent party-goer. These facts show Lepolo was not entitled to bail.

e. Lepolo claims the State and the court conflate the standards

Lepolo asserts the State conflates two separate bail processes, the process for evaluating whether the proof is evident/presumption great and the process for determining the amount of bail to be set. Writ at 12. He points to the State's response brief to claim the State argues both great presumption AND danger to the community. Writ at 12.

The citation is part of the State's response brief. A response brief is written in response to an opening brief. In his opening brief, Lepolo repeatedly asserts he is not a danger to the community. AA at 8-10 (delineating factors to be considered at a bail hearing if a defendant is entitled to bail). The only attack on the sufficiency of the evidence Lepolo makes is that two of the witnesses are associated with the person Lepolo wanted to fight. AA at 8. Other than arguing a potential bias a jury will need to assess, Lepolo makes no effort to show the presumption against him is not great. Since the opening brief advocates under the wrong standard, it is not unexpected that the State addressed both the correct standard and Lepolo's assertions. See NRAP 31(d); Polk v. State, 126 Nev. 180, 184, 233 P.3d 357, 359 (2010).

Lepolo next argues the court "conflated the schema" as well. Writ at 13. In fact, however, the court very clearly stated it considered the motions filed prior to its decision. AA at 76-77. Although Lepolo used the wrong "schema" in his brief, the State outlined the substantial evidence against Lepolo. AA at 54-68. The court

considered this evidence when it found great presumption of Lepolo having committed first degree murder.

f. The first bail hearing

Lepolo's counsel opened the first bail hearing by asserting his client had been rated only a moderate risk to reoffend. AA at 32. Counsel urged that Lepolo's previous and extensive felonious history should not count against him. AA at 32-33.

The State had to reply to defense counsel's assertions that Lepolo would be a great candidate for bail, even though the arguments were misplaced as Lepolo was not eligible for bail. In addition to the evidence indicating Lepolo committed first degree murder, the State asserted he is *also* a danger to the community. AA at 35. The State mentioned that his family connections to Las Vegas led to the gunfight in the first place, and that Lepolo dodged justice for three years by denying he was in Las Vegas at the time. AA at 35. Even if Lepolo were eligible for bail, the State pointed out he would not be a good candidate for it.

Lepolo's demand for bail was considered from every angle. The merits of the charges against Lepolo were discussed at length. Defense counsel argued that three of the State's witnesses were allied with the victim. AA at 35-36. The State emphasized this was a challenge to fight case, the other combatant had also been charged with murder, and the witness who called 9-1-1 was not affiliated with either faction. AA at 36.

The District Court did not deny Lepolo bail because he was a danger to the community; it denied bail based on the facts of the case which show evident proof that Lepolo committed first degree murder. AA at 37. "You know, based upon the facts of this case, and also the potential harm to numerous people, I'm going to deny the [bail] motion on this particular matter." AA at 37. The court clearly stated the denial was based on BOTH the evidence in the case AND Lepolo's danger to the community. The court held that weighing the evidence was reserved for "argument at jury trial." AA at 39. The lower court did not base its decision on inferences, and the charged crime is not conjectural. Howard, 83 Nev. at 51-52, 422 P.2d. at 539-40. Rather, the evidence clearly and convincingly showed Lepolo committed first degree murder by shooting an unarmed woman and was therefore ineligible for bail.

g. The second bail hearing

Defense counsel again conflated the bail determinations in its brief before the second bail hearing, arguing Lepolo was entitled to a Valdez-Jimenez hearing. AA at 50. As defense counsel recognized, though, a Valdez-Jimenez hearing would only apply if the State failed to show a great presumption that Lepolo committed first degree murder. AA at 50-51. In its response brief, the State showed the proof is evident and the presumption great that Lepolo committed first degree murder. AA at 67. The State then continued, "Moreover, Defendant is a clear and present danger

to the community." AA at 67. The sufficiency of the case against Lepolo was addressed first, and the Valdez-Jimenez factors addressed next.

At the hearing itself, defense counsel continued to conflate the two types of bail determinations. Counsel asserted Lepolo was entitled to a new hearing in light of the Valdez-Jimenez and Sewall cases. AA at 71-72 ("So, I am somewhat taken aback, if you will, by the State's position in their opposition that nothing had changed.") Defense counsel ignored the fact his client was not entitled to bail and only emphasized that his client "is not a danger to the community and that there is no danger whatsoever of there being any type of problems or trouble." AA at 74.

Because the Valdez-Jimenez and Sewall cases did not change the Nevada constitution, Nevada statutes, or Nevada case law regarding the entitlement of a defendant arrested for first degree murder to bail, Lepolo was never entitled to a second bail hearing.

Since defense counsel continued to assert an entitlement to consideration of the Valdez-Jimenez factors at the hearing, the State had no choice but to argue both the correct standard and the defense standard. First, the State returned the court's attention to the correct standard, that proof evident and presumption great existed in this case. AA at 74-75. Then, to address defense counsel's attempt to focus the court on the Valdez-Jimenez factors, the State pointed out the danger Lepolo posed as a flight risk and to the community. AA at 75.

In rebuttal, defense counsel said the case is not open-and-shut. AA at 75-76. An "open-and-shut case" is not the standard for release on bail when a defendant is arrested on first degree murder charges. The State, as well as the defendant, has a right to present its evidence to a jury who will decide the merits. The issue of bail is based on a much lower standard, that of whether there is a great presumption the defendant committed first degree murder.

The district court made its decision to deny bail after "having listened to arguments of counsel and reviewed the written motions." AA at 76. The State's written motion outlined the extensive evidence against Lepolo. The court determined, as had the previous judge, that Lepolo was not entitled to bail. The court was not required to recite a talismanic incantation to invoke the Nevada Constitution. In the Order Denying Defendant's Motion for Bail, filed on November 9, 2021, the court stated "A no bail warrant is appropriate, based on the facts of the case and the potential harm to numerous people." AA at 82 (emphasis added). That defense counsel wanted to bypass the constitutional provisions and focus only on his client's asset to the community does not change the fact that ample evidence of first degree murder has been shown. Despite Lepolo's efforts to focus on Valdez-Jimenez, the State demonstrated that it is highly probable Lepolo committed first degree murder and was therefore not entitled to bail.

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h. Valdez-Jimenez does not apply to Lepolo

Lepolo reads Valdez-Jimenez to hold that the State must show by clear and convincing evidence that bail is necessary and that no less restrictive means exists. Writ at 11. A district court that denies an individual bail based on the strength of first degree murder evidence need not consider the individual circumstances of the accused. Valdez-Jimenez only applies to persons arrested in non-first degree murder cases, as those persons have a constitutional right to bail. Despite the clear language of the Nevada constitution, Lepolo claims a right to "the same due process protections that are afforded to those accused of any other crime." Writ at 12. He demands "heightened due process requirements" beyond those currently embodied in Nevada's jurisprudence. Writ at 10-11.

In this writ, Lepolo again conflates the two standards. Writ at 13-14. According to Lepolo, Valdez-Jimenez holds the Court must apply the same standards in weighing the quantum of evidence as it does to the bail factors. Writ at 13-14. Actually, Valdez-Jimenez does not apply where, as here, a defendant is simply not eligible for bail. Only after the court decides the defendant is even eligible for bail does it need to apply the Valdez-Jimenez factors. It is Lepolo, not the court or the State, who insists on conflating these two separate bail frameworks.

Because a satisfactory quantum of evidence indicates Lepolo committed first degree murder, he does not have a right to bail and the State need not prove the

unavailability of a less-restrictive method of ensuring his attendance and the community's safety. Where the presumption of bail is inapplicable, the State need only show the proof is evident and the presumption is strong that the defendant committed first degree murder. The requirement that the State "prove by clear and convincing evidence that there were no less restrictive means to bail that could minimize a person's flight risk or danger to the community" does not apply to persons who are not entitled to bail. Writ at 11.

The District Court did not manifestly abuse its discretion in either of Lepolo's bail hearings. Rather, the deciding court held two hearings, entertained arguments from counsel, and made rational decisions supported by the facts and evidence. Given the evident proof of Lepolo's guilt, this case was properly decided within the realm of cases where a defendant is not guaranteed bail under Nevada's constitution and laws. The district court reviewed the motions in this case and then examined the evidence of the first-degree murder charge. Upon its findings that the proof was evident and the presumption was great, the district court exercised its discretion in finding that bail would not be appropriate in this case. A review of the record supports the District Court. This decision is consistent with the Nevada Constitution and the Valdez-Jimenez holding.

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i. Lepolo is not entitled to a third hearing

Lepolo concludes by requesting a third evidentiary hearing on bail "in accordance with Article 1 Section 7 of the Nevada Constitution and Valdez-Jimenez, as the hearing held conflated the standard and proof of those two distinct aspects of bail determination when the accused faces a first-degree murder charge." Writ at 18. Lepolo is not entitled to yet another hearing before his trial. He is not entitled to anything "in accordance with" Valdez-Jimenez, as he is not entitled to bail. Lepolo again conflates these two bail procedures while accusing the State of improperly conflating them.

CONCLUSION

For the foregoing reasons, the State respectfully requests this Petition for Writ of Mandamus be denied.

Dated this 8th day of February, 2022.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ John Afshar*
JOHN AFSHAR
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AFFIDAVIT

I certify that the information provided in this mandamus petition is true and complete to the best of my knowledge, information and belief.

Dated this 8th day of February, 2022.

BY */s/ John Afshar*

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this Answer to Mandamus Writ 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 type-volume limitations of NRAP 21(d) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points and contains 4,745 words and 382 lines of text.
3. **Finally, I hereby certify** that I have read this Answer to Mandamus Writ, 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 February, 2022.

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 February 8, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
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I, further certify that on February 8, 2022, a copy was sent via email to:

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BY */s/ J. Hall*
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