IN THE SUPREME COURT OF THE STATE OF NEVADA

SARAH ELIZABETH GRAVELLE,

Appellant,

CASE NO. 83781

vs.

THE STATE OF NEVADA,

Respondent.

FAST TRACK RESPONSE

1. Name of party filing this fast track response:

The State of Nevada.

2. Name, law firm, address, and telephone number of attorney submitting this fast track response:

Walter F. Fick

Deputy District Attorney

Elko County District Attorney's Office

540 Court Street, 2nd Floor

Elko, Nevada 89801

(775) 738-3101

At trial, the State was represented by former Deputy District Attorney Daniel Roche.

3. Name, address, and phone number of appellate counsel if different from trial counsel:

ROGER H. STEWART, Public Defender's Office

4. Proceedings raising same issues:

None.

5. Statement of Facts:

A. <u>The traffic stop, investigation, and arrest.</u>

Appellant Sarah Gravelle ("Gravelle") was stopped by Elko Police Department ("EPD") Officer Joshua Taylor on August 22, 2018, for driving without an operative license plate light. Joint Appendix ("JA"), vol. I, 15-17. Officer Taylor was a trained "K-9" officer, who had his narcotic detection dog, "Kyng," with him at the time. JA, vol. I, 15-16, 42. Upon approaching Gravelle's car, Officer Taylor immediately observed the passenger, Nicholas Done, "kind of move around, look around," and then put his left hand "down by the seat." JA, vol. I, 18, 130. Knowing that Done was a convicted felon with violent tendencies, and fearing that Done might have been reaching for a weapon, Officer Taylor

decided to wait for backup before proceeding further. JA, vol. I, 18-19, 34.

After officers removed Done from the car and ensured that he was unarmed, Officer Taylor went to speak with Gravelle. JA, vol. I, 34. Gravelle admitted that she was a methamphetamine user and had smoked methamphetamine five days before. JA, vol. I, 22, 43, 130. Done was also a known methamphetamine user. *Id*. Gravelle further stated "she had just cleaned out her car after making a trip to California, and she knew she wanted to clean it out so she didn't get in trouble for anything in there, and trouble meaning … any type of law enforcement actions." *Id*. Officer Taylor then asked Gravelle for permission to search her vehicle. JA, vol. I, 43-44, 130. Gravelle initially said yes, but then became "real nervous, like knee started bouncing, stuttered a couple of times," and she asked what would happen if she said no. *Id*. Officer Taylor explained that he would respect her decision, but that he would continue his investigation regardless. *Id*. Gravelle then withdrew her consent. *Id*.

Officer Taylor repeatedly instructed Gravelle to exit her vehicle, which she delayed complying with. JA, vol. I, 23, 130. Officer Taylor then informed Gravelle that he was going to perform a *Terry* pat for weapons, and asked for consent to search her pockets. *Id*. Gravelle consented to the pockets search, where Officer Taylor found a white plastic cap from one end of a hypodermic needle. *Id*. During this time, Gravelle "was shaking, [and] didn't want to stop the

conversation, which is a typical tactic [Officer Taylor had observed] with people who want to occupy [him] with conversation rather than allowing [him] to continue an investigation." JA, vol. I, 44. Gravelle repeatedly delayed Officer Taylor's investigation by calling him back to her to tell him more information. *Id*.

At some point during the initial contact with Gravelle, and before she exited her vehicle, Officer Taylor asked her for her license. Officer Taylor testified that he could not "recall if she had a specific license or if she just verbally gave [him] her information." JA, vol. I, 32-33. Officer Taylor said that he also would always ask for registration and insurance documents, but he could not recall specifically asking Gravelle for them. *Id*.

Approximately ten minutes into the traffic stop, Officer Taylor deployed Kyng, who alerted to the presence of narcotics in the vehicle. JA, vol. I, 19-22. Officers Taylor and Dean Pinkham then proceeded to search the car. Officer Pinkham located a backpack in the back seat, which contained an orange cap from the other end of a hypodermic device,[1] receipts in Gravelle's name, a marijuana pipe that Gravelle admitted ownership of, and the subject methamphetamine. JA,

[1] Officer Taylor's testimony implied that the hypodermic device would have had a white cap (located in Gravelle's pocket) on one end and an orange one (located in the backpack) on the other end. JA, vol. 1, 24.

vol. I, 24-25. Gravelle was then arrested and charged with one count of possession of a controlled substance, a category E felony. JA, vol. I, 1-5.

B. <u>EPD's body camera program.</u>

NRS 289.830 was amended in 2017 to include an unfunded mandate that peace officers be equipped with and wear a "portable event recording device," more commonly known (and henceforth referred to) as a "body camera," by July 1, 2018. *See* SB 176, 79th Legislative Session (2017). Although SB 176 authorized use of E911 surcharges to pay for body cameras, Elko County was already using those funds to upgrade from basic 911 service. JA, vol. I, 148. Additionally, by the time the unfunded mandate was enacted, the City of Elko had already set its 2017/2018 budget. *Id*. Accordingly, local funding was not available until the 2018/2019 budget cycle. *Id*.

EPD obtained an initial quote for body cameras on January 29, 2018, and proceeded with a public forum, various trials/testing, and other due diligence throughout the spring of 2018. *Id*. EPD's preferred vendor, AXON, did not join a statewide procurement contract until June 6, 2018. *Id*. On June 26, 2018, the Elko City Council approved joining said contract at a cost of $224,041.20 over five years. JA, vol. I, 148, 151. EPD then worked with AXON to obtain, program, and otherwise set up the body camera system (including "CAD integration, RMS integration, retention categories/times, and population of data fields," as well as

physical docking stations to connect the cameras to AXON's "Evidence.com" system). JA, vol. I, 148. Due to the time necessary to complete this setup, as well as train officers on how to use the body cameras, EPD was unable to equip officers until October 23 or 24, 2018. *Id*.

C. <u>The exhibit list at trial.</u>

When the jury began deliberations on February 20, 2019, the court clerk accidentally provided them with the exhibit list kept throughout trial, which referenced both the admitted and unadmitted exhibits.[2] JA vol. I, 214-15; vol. II, 296-97. The court was alerted to the issue when the jury submitted a question: "why was Exhibit Number 8 not presented in court?" *Id*. The exhibit list was immediately removed from the jury room, and the parties' counsel met with the court in chambers to discuss how to proceed. *Id*. During those off-the-record discussions, the jury informed the bailiff that they had reached a verdict. *Id*. At no time was the jury exposed to the actual unadmitted exhibits. Gravelle then elected to go ahead with taking the verdict, and did not ask for the jury to receive

[2] The unadmitted exhibit descriptions were: 8 – "Photo (DSCN3307) items from eyeglass case);" 12 – "Photo (DSCN3311) container with purple bottom;" 13 – "Certified JOC for case CR-FP-11-0469;" 14 – "Certified JOC for case 3:15-CR-00055-MMD-VPC;" 15 – "Officer Joshua Taylor's initial report;" 16 – "Officer Joshua Taylor's K9 sniff report;" 17 – "Washoe County Crime Lab forensic report;" and A – "Declaration of Probable Cause for Nicholas Done." JA, vol. I, 219.

a curative instruction and then continue deliberating in light thereof. *Id*. Gravelle subsequently filed a (first) written motion to declare a mistrial.[3] JA, vol. I, 181-86.

The court then held a hearing, where it asked eleven of the twelve jurors a set of pre-arranged questions, which were drafted in consultation with the parties to determine what the jurors understood regarding the exhibit list and the associated abbreviations. JA, vol. I, 216-17. "None of the jurors knew what a 'JOC' is or what those letters stand for. None of the jurors knew what 'CR' was in reference to the case numbers. Only one of the jurors considered the case to be a close call." *Id*. The district court, accordingly, denied Gravelle's motion. JA, vol. I, 214-20.

6. Issues on Appeal:

I. Did the district court commit reversible error by denying Gravelle's motion to suppress evidence?

II. Did the district court commit reversible error by denying Gravelle's motion to dismiss?

III. Did the district court commit reversible error by denying Gravelle's first motion to declare a mistrial?

[3] Gravelle filed a second motion to declare a mistrial, which is not argued in this appeal. *See* JA, vol. I, 202-05.

7. Legal Argument:

I. <u>The district court did not err by denying Gravelle's motion to suppress evidence.</u>

Gravelle misportrays the issue as whether "Officer Taylor had reasonable suspicion to ***prolong*** the stop and run the drug dog."[4] In both of two cases relied upon by Gravelle,[5] the officers ***completed*** the initial traffic enforcement stop and then ***prolonged*** the detention by keeping the driver detained until a dog sniff could occur. In *Beckman*: "The highway patrol officer verified Beckman's license and registration, told him 'everything checks good,' and issued a warning. As Beckman began to leave, the officer ordered him to remain until a drug-sniffing dog and handler team could arrive."[6] Similarly, in *Rodriguez*, the officer issued a written warning to the defendant, gave the defendant and his passenger back their documents, but ordered the defendant out of the vehicle, in order to wait for a second officer and a dog sniff.[7]

Here, the initial traffic stop was still ***ongoing*** when Officer Taylor conducted the dog sniff with Kyng, and thus never prolonged. There is no

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[4] Appellant's Fast Track Statement at 12 (emphasis added).
[5] *State v. Beckman*, 129 Nev. 481, 305 P.3d 912 (2013); and *Rodriguez v. United States*, 575 U.S. 348 (2015).
[6] *Beckman*, 129 Nev. at 483, 305 P.3d at 914.
[7] *Rodriguez*, 575 U.S. at 352.

evidence that Officer Taylor's detention of Gravelle ever crossed the line "beyond the time required to process the traffic offense."[8] The initial traffic stop in *Rodriguez* took approximately twenty-one or twenty-two minutes, while the stop in *Beckman* took approximately nine minutes.[9] Officer Taylor deployed Kyng around ten minutes into the stop, which is completely reasonable when remembering that he initially had to wait for backup because of Nicholas Done's suspicious movements and dangerous history.[10] Hence, the stop was never prolonged, and no further analysis is needed to affirm the district court's decision.[11]

Even if the stop was prolonged, however, any of the three legal justifications—consent, a "de minimis" extension, or "reasonable articulable suspicion of criminal activity"[12]—would protect Officer Taylor's actions. First, Gravelle contributed to, and thereby consented to, some of the delays. Gravelle initially consented to the search, but then withdrew her consent. She also

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[8] *See Beckman*, 129 Nev. at 484, 305 P.3d at 915.
[9] *See id*.; *Rodriguez*, 575 U.S. at 351-52.
[10] Gravelle complains that Officer Taylor did not focus on the reason for the initial stop, but she ignores (1) that Officer Taylor obtained Gravelle's information, (2) that his initial primary focus was on Done, and (3) that the situation was rapidly evolving. *See* JA, vol. I, 22-24, 32-35, 42-43. These circumstances further demonstrate the reasonableness of the ten-minute stop.
[11] *Cf. Illinois v. Caballes*, 543 U.S. 405, 406-09 (2005).
[12] *Beckman*, 129 Nev. at 484, 305 P.3d at 915.

intentionally delayed Officer Taylor's investigation, by delaying exiting her vehicle, trying to prolong the conversation, and then calling Officer Taylor back over to her.[13] But for these delays, Officer Taylor would have been able to complete the sniff in less time than it took the officer in *Beckman* to issue a simple oral warning.

Second, any delay was de minimis. In both *Beckman* and *Rodriguez*, officers had to wait approximately five to ten minutes after completing the traffic stop to conduct the dog sniff.[14] Here, there was absolutely no downtime in deploying Kyng. Even if Gravelle wants to argue that the stop should only have taken nine minutes (like in *Beckman*, despite the substantial factual differences), the approximate one-minute delay in deploying Kyng was as de minimis as can be, and less than that deemed de minimis by other jurisdictions.[15]

Finally, Officer Taylor developed substantial reasonable suspicion of narcotics activity associated with Gravelle's vehicle. "The concept of reasonable

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[13] JA, vol. I, 23, 43-45.

[14] *See Beckman*, 129 Nev. at 484-85, 305 P.3d at 915 (the trooper issued the verbal warning at approximately 7:19 and the dog arrived at 7:29); *Rodriguez*, 575 U.S. at 352 (the officer issued the written warning at approximately 12:27 or 12:28 and the dog arrived at 12:33).

[15] *See, e.g.*, *United States v. McBride*, 635 F.3d 879, 883 (7th Cir. 2011) (two-minute delay); *United States v. Chaney*, 584 F.3d 20, 26 (1st Cir. 2009) (two-minute delay); *United States v. Alexander*, 448 F.3d 1014, 1017 (8th Cir. 2006) (four-minute delay).

suspicion is 'not readily, or even usefully, reduced to a neat set of legal rules.'"[16] However, it "must be determined with an objective eye in light of the totality of the circumstances."[17] Here, Officer Taylor knew Done to be a methamphetamine user, Gravelle admitted to the same, Gravelle admitted to smoking methamphetamine five days before, Gravelle said that she had recently cleaned out her car to avoid getting in trouble with police, Gravelle was acting extremely nervously and tried to delay the investigation, and Gravelle had a cap to a hypodermic device in her pocket.[18] Taken together, the totality of these clues created articulable, reasonable suspicion of criminal activity, and Officer Taylor was legally justified in detaining Gravelle long enough to conduct the dog sniff. Hence, the district court's order denying Gravelle's motion to suppress should be affirmed.

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[16] *United States v. Woods*, 829 F.3d 675, 679 (8th Cir. 2016) (quoting *Illinois v. Gates*, 462 U.S. 213, 232 (1983)).

[17] *State v. Lisenbee*, 116 Nev. 1124, 1128, 13 P.3d 947, 950 (2000).

[18] Gravelle erroneously attempts to portray her denying consent as the true basis for Officer Taylor's decision to deploy Kyng. *See* Appellant's Fast Track Statement at 18. In reality, Officer Taylor had ample reasonable suspicion, he simply chose to give Gravelle the opportunity to consent. When she said no, he merely proceeded with his planned investigation.

II. The district court did not err by denying Gravelle's motion to dismiss.

Gravelle argues that, for all practical purposes, every single EPD case from July 1 to October 23, 2018, must be automatically dismissed as a matter of law because the City of Elko experienced delays in implementing its body camera program pursuant to NRS 289.830. This is an absurd and legally baseless position, which seeks to replace the rule of law with literal anarchy,[19] not only in the City of Elko, but also in every other Nevada community that experienced similar delays.[20] Nevada law affirmatively requires peace officers to enforce the laws, keep the peace, and make certain arrests.[21] According to Gravelle, however, all of these laws are trumped, and all other criminal laws must go unenforced, where a police department failed to equip officers with body cameras before July

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[19] A "total lack of police power is the definition of anarchy, of chaos." *See Brayton v. City of New Brighton*, 519 N.W.2d 243, 248 (Minn. Ct. App. 1994).

[20] For example, both the North Las Vegas and Henderson police departments failed to meet the July 1, 2018, deadline. *See North Las Vegas police yet to deploy state-required body cameras*, LAS VEGAS REV. J. (Mar. 14, 2019, 8:12pm) https://www.reviewjournal.com/crime/north-las-vegas-police-yet-to-deploy-state-required-body-cameras-1618524/.

[21] *See, e.g.*, NRS 171.1231 (a detained suspect "shall be arrested if probable cause for an arrest appears"); NRS 171.137 (requiring arrest for domestic battery); NRS 199.270 (refusal to make an arrest may constitute a misdemeanor); NRS 268.310 (requiring city police to keep the peace); NRS 248.090 (requiring sheriffs to "keep and preserve the peace in their respective counties, and quiet and suppress all affrays, riots and insurrections").

1, 2018. This ludicrous argument must be rejected, lest all the laws but NRS 289.830 go unexecuted, the government itself go to pieces, and chaos overwhelm the judicial system as thousands of similar cases are dismissed or overturned.[22]

Gravelle couches her argument as an alleged failure to collect evidence, but the district court correctly held that she was not entitled to a dismissal under the *Daniels* test.[23] "[P]olice officers generally have no duty to collect all potential evidence from a crime scene."[24] To obtain a dismissal, a defendant must meet both parts of the *Daniels* test. "The first part requires the defense to show that the evidence was 'material,' meaning that there is a reasonable probability that, had the evidence been available to the defense, the result of the proceedings would have been different."[25] Second, the defense must show that "the failure to gather evidence was the result of … a bad faith attempt to prejudice the defendant's case."[26] Even where a trial court finds bad faith, dismissal is a discretionary, not

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[22] *Cf.* Abraham Lincoln, July 4th Message to Congress (July 4, 1861), *available at*: https://millercenter.org/the-presidency/presidential-speeches/july-4-1861-july-4th-message-congress.

[23] *See Daniels v. State*, 114 Nev. 261, 956 P.2d 111 (1998) (adopting two-part test from *State v. Ware*, 881 P.2d 679 (N.M. 1994)).

[24] *Daniels*, 114 Nev. at 257, 956 P.2d at 115 (quoting *Ware*, 881 P.2d at 684).

[25] *Id*. (citing *Ware*, 881 P.2d at 685).

[26] *Id*. (citing *Ware*, 881 P.2d at 685-86). Note that other lesser remedies are available in the case of gross negligence, but Gravelle has never asked or argued for these.

mandatory, remedy.[27] Here, Gravelle cannot meet either part of the *Daniels* test, and the district court's denial of her motion to dismiss should be affirmed.

First and foremost, Gravelle has failed to show that the body camera footage is material. Gravelle's only argument is the conclusory statement that the footage "would be material to … which party in the vehicle had dominion and control of the contraband … or to whether both did, plus whether reasonable suspicion was developed."[28] Gravelle fails to elaborate further, or to articulate "how the result of the proceedings would have been different" with the body camera footage.[29] Gravelle's bare conclusory statement could not suffice to create an issue of material fact in a civil case, much less meet her burden "to show that the evidence was 'material.'"[30] Accordingly, this Court need not proceed with further analysis and should affirm the district court's decision.

Delving into the specific facts, however, further illustrates the speciousness of Gravelle's argument. Gravelle never states what she believes the body cameras would have shown, and any such statement would amount to speculation. At best, one would expect the body cameras to have provided cumulative evidence,

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[27] *See id*.
[28] Appellant's Fast Track Statement at 20.
[29] *See Daniels*, 114 Nev. at 267, 956 P.2d at 115.
[30] *See id*.; *Michaels v. Sudeck*, 107 Nev. 332, 334, 810 P.2d 1212, 1213 (1991).

duplicative of Officer Taylor's testimony.[31] Officer Taylor's testimony regarding Done's movements in the car were uncontested at trial. The body camera showing what Officer Taylor saw would have added nothing. Likewise, Officer Taylor testified extensively about the basis for his reasonable suspicion, and his actions during the initial approximately ten-minute traffic stop.[32] At most the body camera would have shown the exact time that Officer Taylor deployed Kyng, but as discussed *supra*, the exact minute or second is not dispositive. Accordingly, it is impossible for Gravelle to show that the body camera footage would have resulted in a different outcome.

Gravelle has likewise failed to show that Officers Taylor or Pinkham acted in "a bad faith attempt to prejudice [her] case."[33] Gravelle's argument relies exclusively upon the conclusory statement that "[i]t seems ludicrous to suggest that an officer's willful violation of a statute can amount to anything other than bad faith," but Gravelle never even attempts to distinguish bad faith from ordinary negligence or gross negligence.[34] Generally speaking, ***the violation of a statute only constitutes negligence*** **per se**.[35] Bad faith requires far more, such as

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[31] The cameras are typically located on officers' chests, therefore they would likely have captured less than what he could observe higher up with his eyes.
[32] *See*, *e.g.*, JA, vol. I, 21-24, 31-38.
[33] *See Daniels*, 114 Nev. at 267, 956 P.2d at 115.
[34] *See* Appellant's Fast Track Statement at 21.
[35] *See, e.g.*, *Barnes v. Delta Lines*, 99 Nev. 688, 690, 669 P.2d 709, 710 (1983).

evidence of "official animus," "a conscious effort to suppress exculpatory evidence," or "malicious intent."[36]

There is absolutely no evidence in the record of any animus, malice, or intent to harm Gravelle. First, Officers Taylor and Pinkham were reliant upon EPD to equip them with body cameras. Their failure to wear cameras they did not possess cannot be considered "bad faith" and was certainly not "willful." Second, even if analyzed at the department level,[37] EPD's delays in implementing its body camera program at most constituted mere negligence. Gravelle continuously describes the officers' or EPD's conduct as "willful," but the uncontested evidence (*see* JA, vol. I, 148) shows that EPD engaged in extensive due diligence and reasonable efforts to implement the unfunded body camera mandate. The State believes these efforts were reasonable and did not rise to the level of negligence, but even if they were negligent that is still a far cry from bad faith. Hence, Gravelle has failed to show either part of the *Daniels* test, and the district court's order denying her motion to dismiss should be affirmed.[38]

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[36] *See California v. Trombetta*, 467 U.S. 479, 488 (1984); *United States v. Estrada*, 453 F.3d 1208, 1213 (9th Cir. 2006).

[37] Which seems suspect, and which Gravelle does not appear to advocate.

[38] The order could also be affirmed on the grounds that the Legislature did not enact any remedy for violations of NRS 289.830, nor did the statute create a new individual right for defendants. The statute was enacted to improve police transparency and accountability, especially in relation to police use of force, not

III. The district court did not err by denying Gravelle's first motion to declare a mistrial.

Gravelle complains that she was entitled to a mistrial after the court clerk accidentally provided the jury with the list of all exhibits. Although the jury was never exposed to any evidence that was not admitted at trial (only the exhibit list), the district court analyzed the prejudice under the *Winiarz* criteria: "[1] whether the issue [of] innocence or guilt is close, [2] the quantity and character of the error, and [3] the gravity of the crime charged."[39] The district court correctly determined that all three factors demonstrate that Gravelle suffered no prejudice from the clerk's error.

First, the issue of innocence or guilt was not close. Of the eleven jurors questioned by the court, ***only one*** thought that it was a "close call."[40] The methamphetamine was found in a backpack in Gravelle's car, which also contained receipts in Gravelle's name, a marijuana pipe that Gravelle admitted ownership of, and an orange cap for a hypodermic device matching the other end of the cap found in Gravelle's pocket.[41] Furthermore, Gravelle admitted to being

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to gather more evidence on behalf of criminal defendants. That evidence may be collected by body cameras is merely a side effect of their primary purpose.

[39] *Winiarz v. State*, 107 Nev. 812, 820 P.2d 1317, 1318 (1991) (quoting *Rowbottom v. State*, 105 Nev. 472, 486, 779 P.2d 934, 943 (1989)).

[40] JA, vol. I, 217.

[41] JA, vol. I, 24-25.

a methamphetamine user and to smoking methamphetamine only five days prior. Gravelle tries to make light of the possibility that the methamphetamine also belonged to Done, but the jury was properly instructed on the theory of joint constructive possession.[42] Likewise, although Officer Taylor observed Done reach next to his seat, there was no evidence that he reached backwards in the direction of the backpack where the methamphetamine was located.[43] There was also no other evidence tying Done to the backpack. Accordingly, it is unreasonable and unrealistic to characterize this as a "close" case.

Second, the character of the error was minimal. Gravelle tries to compare this to the error in *Winiarz*, but that involved the jury receiving "the clerk's notes from the first trial, containing the original verdict of first degree murder with use of a deadly weapon and the sentence of life in prison without the possibility of parole."[44] By contrast, the exhibit list here contained nothing even remotely prejudicial. Gravelle complains about the list mentioning the weight of the methamphetamine, but her only objection at trial was that the weight did not have "any relevance" because "it doesn't make any fact more likely than not."[45] Gravelle cannot now switch tacks to complain that the weight is somehow

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[42] *See* JA, vol. II, 289-290 (instruction number 11).
[43] *See, e.g.*, JA, vol. II, 236, 277.
[44] *Winiarz*, 820 P.3d at 1318.
[45] JA, vol. II, 282.

prejudicial. Similarly, Gravelle complains about the reference to "JOCs," based only upon wild speculation that the eleven jurors perjured themselves when they testified that they had no idea what a "JOC" was or what those exhibit descriptions referred to.[46]

Third, the crime charged is a category E felony, which is the second lowest level of crime triable in district court (after gross misdemeanors). This is instantly distinguishable from the other cases, like *Winiarz*, which dealt with the most serious category A felonies.

Finally, Gravelle repeatedly complains that she was never given "an opportunity [for] a curative instruction,"[47] but she waived this issue by never asking for one.[48] "Failure to object to or request a jury instruction precludes appellate review, unless the error is patently prejudicial and requires the court to act sua sponte to protect the defendant's right to a fair trial."[49] This is clearly not such a case, and Gravelle fails to even articulate what curative instruction she wishes had been given. Hence, the district court correctly denied Gravelle's first motion to declare a mistrial.

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[46] *See* JA, vol. I, 217.
[47] Appellant's Fast Track Statement at 25-26.
[48] *See* JA, vol. II, 297.
[49] *McKenna v. State*, 114 Nev. 1044, 1052, 968 P.2d 739, 745 (1998).

8. Preservation of issues:

The State concurs that Gravelle has preserved the issues raised in this fast track appeal, with the exception of her failure to request a curative jury instruction after the jury received the wrong exhibit list.

RESPECTFULLY SUBMITTED this 28th day of February 2022.

TYLER J. INGRAM
Elko County District Attorney

By: _____
Walter F. Fick
Deputy District Attorney
State Bar Number: 14193

VERIFICATION

1. I hereby certify that this fast track response 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 fast track response has been prepared in a proportionally spaced typeface using Times New Roman in size 14 font.

2. I further certify that this fast track response 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 4,244 words.

3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing a timely fast track response and that the Supreme Court of Nevada may sanction an attorney for failing to file a timely fast track response, or failing to cooperate fully with appellate counsel during the course of an appeal. I therefore certify that the information provided in this fast track response is true and complete to the best of my knowledge, information, and belief.

DATED this this 28th day of February 2022.

TYLER J. INGRAM
Elko County District Attorney

By: 

Walter F. Fick
Deputy District Attorney
State Bar Number: 14193
540 Court Street, 2nd Floor
Elko, Nevada 89801
(775) 738-3101

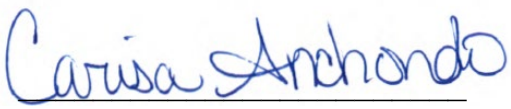
CERTIFICATE OF SERVICE

I certify that this document was filed electronically with the Nevada Supreme Court on the 28th day of February, 2022. Electronic Service of the Fast Track Response shall be made in accordance with the Master Service List as follows:

Honorable Aaron D. Ford
Nevada Attorney General

And

ROGER H. STEWART
Attorney for Appellant



CARISA ANCHONDO
CASEWORKER

DA#: AP-21-02861