

IN THE SUPREME COURT OF THE STATE OF NEVADA

KIM BLANDINO,

Appellant,

vs.

THE STATE OF NEVADA,

Appellee.

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Elizabeth A. Brown
Clerk of Supreme Court

CASE NO: 84433

PETITION FOR REVIEW BY THE SUPREME COURT

COMES NOW Appellant KIM BLANDINO, by JOSEPH GERSTEN, ESQ., of THE GERSTEN LAW FIRM PLLC, and petitions pursuant to NRAP 40B(c), this Honorable Court for a review of the Order of Affirmance issued in this case on December 20, 2023.

This petition is based on the following memorandum of points and authorities and all papers and pleadings on file herein.

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DATED this 11th day of March 2024.

Joseph Z. Gersten

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MEMORANDUM OF POINTS AND AUTHORITIES

I. JURISDICTION

On December 20, 2023, The Nevada Court of Appeals in a 3 – 0 decision issued an Order of Affirmance regarding Petitioner’s appeal from a judgment of conviction pursuant to a jury verdict.¹ See Exhibit 1. Pursuant to NRAP 40B, a party aggrieved by a decision of the Court of Appeals may file a petition for review with the clerk of the Supreme Court within eighteen (18) days.² This Petition has been timely filed within that 18-day period.

II. QUESTIONS PRESENTED

1. Whether the District Court and subsequently the Court of Appeals erred when it denied Appellant the opportunity to represent himself?

¹ Originally this case was filed with the Nevada Supreme Court and on October 2, 2023, the Nevada Supreme Court issued an order transferring the case to the Nevada Court of Appeals.

² Per NRAP 40B(d), the Appellant has attached a copy of the Order of Affirmance.

2. Whether the District Court and subsequently the Court of Appeals erred when it denied Appellant the opportunity to use a jury instruction of his choosing?
3. Whether the District Court and subsequently the Court of Appeals erred when it denied Appellant's Motions to disqualify Leavitt, J. from hearing this matter?

III. REASONS FOR REVIEW

First, the Nevada Court of Appeals misapplied the law in Vanisi v. State, 117 Nev. 330 (2001), when it affirmed the District Court's revocation of Appellant's right to self-representation. See Vanisi v. State, 117 Nev. 330 (2001). While the District Court made findings that Appellant may have been difficult based on his beliefs during the run-up to the trial in this matter, the Appellant was not disruptive at any time in front of the jury. A criminal defendant has the right to self-representation. Faretta v. California, 422 US 806, 818 – 19 (1975). However, this right is not absolute because a defendant must be "able and willing to abide by the rules of procedure and courtroom protocol" to represent themselves. See McKaskle v. Wiggins, 465 US 168, 173 (1984). A court may deny a defendant's request for self-representation if the

defendant is disruptive. Vanisi v. State, 117 Nev. 330 (2001). Simply arguing with the Court regarding its regular operations and revoking Appellant's right of self-representation is a misapplication of the law and should be overturned.

Second, the Nevada Court of Appeals abused its discretion when denied Appellant the opportunity to have his version of the case heard by denying him the opportunity to use his proffered jury instruction on mistake. See Mathews v. State, 134 Nev. 512, 517 (2018). The Court's decision was arbitrary and capricious in violation of Crawford v. State, 121 Nev. 746, 751, 121 P.3d 582, 586 (2005), and should be overturned. See Crawford v. State, 121 Nev. 746, 751, 121 P.3d 582, 586 (2005)

Thirdly, the District Court repeatedly denied Appellant's motions to disqualify the District Court, in violation of Nevada Code of Judicial Conduct Rule 2.11(A). See Nevada Code of Judicial Conduct Rule 2.11(A). Where a judge's impartiality might reasonably be questioned, then that judge should be disqualified. Id. Appellant has cited *inter alia* issues of failure to allow Appellant to proceed *pro se*, failure to terminate forced counsel, and outright prejudice. As a result, the Court's decision was wrong and should be overturned.

IV. ARGUMENT

On July 12, 2019, Defendant was indicted on felony and gross misdemeanor charges. AA0295. Initial arraignment in Department XII was held on July 23, 2019. After various hearings, on August 29, 2019, Appellant was granted leave to represent himself, with appointed stand-by counsel. Subsequently, on September 17, 2019, Appellant was appointed Attorney Batemen as his stand-by counsel. The case was assigned to Judge Michelle Leavitt. Judge Leavitt referred Defendant for competency evaluation on September 17, 2019. Id.

On December 13, 2019, Defendant filed a Motion to Disqualify Judge Leavitt, Judge Linda Bell, and all judges of the Eighth Judicial District Court. Id. Judges Leavitt and Bell filed affidavits denying any bias or prejudice towards any party in this case. Id. The Motion was denied on January 23, 2020. Id. Defendant was found competent to proceed with adjudication on April 9, 2020. Id.

On May 7, 2020, Defendant filed another Motion to Disqualify Judges Leavitt, Bell, Silva, Marquis, Hardy, Villani, and all judges of the Eighth Judicial District Court. Id. No certificate of service was included

with the May 7, 2020, Motion. Id. On July 1, 2020, parties appeared before Senior Judge Barker for a Trial Readiness conference. Id. Following the Trial Readiness Conference, Defendant filed a Motion to Disqualify Senior Judge Barker on July 10, 2020. Id. Both the May 7, 2020, and July 10, 2020, Motions to Disqualify were denied by Chief Judge Linda Bell. Id. On August 11, 2020, Defendant filed an Emergency Motion to Disqualify Chief Judge Bell, and simultaneously filed a Motion for Reconsideration regarding Judge Bell's August 3, 2020, Decision and Order. Id. Both the Emergency Motion and the Motion for Reconsideration were denied by Judge Bell. Id.

On March 8, 2021, Defendant filed another Motion to Disqualify Judge Leavitt. Id. On March 15, 2021, Defendant filed another Motion to Disqualify Chief Judge Bell. Id. On April 14, 2021, Defendant filed another Motion to Disqualify Judges Leavitt and Judge Bell. On April 22, 2021, Defendant filed a Motion to Disqualify Judge Tierra D. Jones. Id. On May 6, 2021, Defendant filed a Motion to Disqualify Judge Nancy Allf. Id.

On August 8, 2021, an Order Denying Defendant's Motion to Disqualify Judge Leavitt was filed. Id.

On August 18 and 23, 2021, Defendant filed another Motion to Disqualify Judge Leavitt. Id. On August 20 and September 23, 2021, the Motions were denied by Judge Jones. Id. On September 29, 2021, Defendant filed Motions to Disqualify Judge Leavitt and Judge Jones. Id. Judge Jones filed an affidavit in response thereto on October 6, 2021. Id.

Appellant proceeded to trial on March 1, 2022. AA01006. During the course of the trial, Appellant was disallowed from representing himself; Attorney Bateman was appointed as counsel. AA0644 – 0647.

On March 9, 2022, Appellant was found guilty on all counts. AA0693.

Appellant was sentenced on July 7, 2022, and a judgment of conviction was filed on July 12, 2022. AA02053; AA0994. Appellant's Notice of Appeal was filed March 21, 2022. AA0893.

Appellant's appeal was denied by the Court of Appeals on December 20, 2023. Appellant then requested a rehearing by the Court of Appeals, which was denied on February 22, 2024. This Petition for Review follows.

1. The District Court and Subsequently the Court of Appeals Erred When It Denied Appellant the Opportunity to Represent Himself.

The District Court and subsequently the Court of Appeals erred

when it denied Appellant the opportunity to represent himself. The right to represent oneself is firmly embedded in our law as a fundamental aspect of the right to control one's own defense. Miles v. State, 500 P.3d 1263 (Nev. 2021). A criminal defendant may waive one's right to counsel and represent oneself. See generally Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975). The right to represent oneself, and to refuse appointed counsel of the State's choosing, stems from “that respect for the individual which is the lifeblood of the law.” Miles v. State, 500 P.3d 1263 (Nev. 2021); McCoy v. Louisiana, 584 U.S. , , 138 S. Ct. 1500, 1507, 200 L. Ed. 2d 821 (2018) (internal quotation marks omitted); see McKaskle v. Wiggins, 465 U.S. 168, 178, 104 S. Ct. 944, 79 L. Ed. 2d 122 (1984) (*recognizing* that the right to represent oneself “exists to affirm the accused's individual dignity and autonomy”).

Furthermore, the trial judge has a duty to “maintain, especially in a jury trial, that restraint which is essential to the dignity of the court and to the assurance of an atmosphere of impartiality.” United States v. Allen, 431 F.2d 712, 713 (9th Cir. 1970); see also Holderer v. Aetna Cas. & Sur. Co., 114 Nev. 845, 850, 963 P.2d 459, 463 (1998) (*finding* judicial misconduct where trial judge trivialized the proceedings with facetious

comments); Parodi v. Washoe Med. Ctr., Inc., 111 Nev. 365, 367, 892 P.2d 588, 589 (1995). The Nevada Code of Judicial Conduct specifically requires a judge to “be patient, dignified, and courteous to litigants,” and the canvass should adhere to this obligation. NCJC 2.8(B); *cf.* In re Disciplinary Proceeding Against Eiler, 169 Wn.2d 340, 236 P.3d 873, 878-79 (Wash. 2010) (*upholding* judicial suspension in part based on deriding pro se litigants’ intelligence).

In this case, Appellant was allowed to represent himself, albeit with stand-by counsel. However, on December 2, 2021, during a disagreement with Leavitt, J., she revoked Appellant’s ability to represent himself. See AA0644 – 0647. The revocation of Appellant’s ability to represent himself was in direct violation of Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975); Miles v. State, 500 P.3d 1263 (Nev. 2021); McCoy v. Louisiana, 584 U.S. , , 138 S. Ct. 1500, 1507, 200 L. Ed. 2d 821 (2018); and McKaskle v. Wiggins, 465 U.S. 168, 178, 104 S. Ct. 944, 79 L. Ed. 2d 122 (1984).

A court may deny a defendant’s request for self-representation if the defendant is disruptive. Vanisi v. State, 117 Nev. 330 (2001). However, simply arguing with the Court regarding its regular operations

and revoking Appellant's right of self-representation is a misapplication of the law and should be overturned.

As noted above, because Appellant's right to represent oneself is firmly embedded in our law as a fundamental aspect of the right to control one's own defense, Miles v. State, 500 P.3d 1263 (Nev. 2021), Appellant's right to self-representation was destroyed and he suffered irreparable harm in the defense of his case.

2. The District Court and Subsequently the Court of Appeals Erred When It Denied Appellant's Jury Instruction on Mistake of Fact.

The District Court and subsequently the Court of Appeals erred when it denied Appellant's jury instruction on mistake of fact. This Court has held that the defense has the right to have the jury instructed on its theory of the case [,] ... no matter how weak or incredible that evidence may be. Crawford v. State, 121 Nev. 746, 751, 121 P.3d 582, 586 (2005). And when a defendant requests "specific jury instructions that remind jurors that they may not convict the defendant if proof of a particular element is lacking," the district court must give those instructions. Id. at 753, 121 P.3d at 588.

In this case, Appellant's counsel specifically requested a mistake of

fact instruction be included in the instructions read to the jury. See AA1933, ln 24 – AA1934, ln 25.

That is the following request was made by Appellant's Counsel during the jury instruction conference:

MR. BATEMAN: Yes, Judge, I would ask that -- there was one, there's a sample one from the State. Judge, it, I believe it does also go to our theory of defense that Mr. Blandino was mistaken as to the fact that he was in a legitimate negotiation. That this was, in his mind, wrongfully so, the fact that this was not a negotiation that he could engage in. And I think that fact goes to the specific intent which would be required to -- that would be required to commit an act of extortion, when in his mind the fact of the matter is that he is engaged in a legitimate legal negotiation.

See Id.

Clearly Appellant's request contemplated his theory of defense. However, the District Court denied said request. See Id.

Thus, because the defense has the right to have the jury instructed on its theory of the case [,] ... no matter how weak or incredible that evidence may be. Crawford v. State, 121 Nev. 746, 751, 121 P.3d 582, 586 (2005), the District Court's denial of the requested jury instruction, and subsequently the Court of Appeals Affirmance of same, was in violation of Appellant's rights and the law of this State.

3. The District Court and Subsequently the Court of Appeals Erred When It Denied Appellant's Motions to Disqualify Leavitt, J. From Hearing This Matter.

The District Court and subsequently the Court of Appeals erred when it denied Appellant's motions to disqualify Leavitt, J. from hearing his matter. The Appellant has repeatedly attempted to disqualify Leavitt, J. from hearing Appellant's matter. See Decision and Order AA0295.

It is axiomatic that a judge has a general duty to sit, unless a judicial canon, statute, or rule requires the judge's disqualification. Canarelli v. Eighth Judicial Dist. Court of Nev., 506 P.3d 334 (Nev. 2022); Millen v. Eighth Judicial Dist. Court, 122 Nev. 1245, 1253, 148 P.3d 694, 700 (2006); see also NCJC Rule 2.7 ("A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law."). Id. Judges are presumed to be unbiased, Millen, 122 Nev. at 1254, 148 P.3d at 701, and a judge's decision not to recuse herself will not be overturned absent a clear abuse of discretion. Rivero v. Rivero, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009) (*overruled* in part on other grounds by Romano v. Romano, 138 Nev. Adv. Rep. 1, 501 P.3d 980 (2022); PETA v. Bobby Berosini, Ltd., 111 Nev. 431, 437,

894 P.2d 337, 341 (1995) (*overruled* on other grounds by Towbin Dodge, LLC v. Eighth Judicial Dist. Court, 121. Nev. 251, 260-61, 112 P.3d 1063, 1069-70 (2005)). However, Appellant notes that, NCJC Rule 2.11(A)(1) requires a judge to recuse herself “in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances: (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or has personal knowledge of facts that are in dispute in the proceeding. NCJC Rule 2.11(A)(1).

Furthermore, recusal is required when, objectively speaking, “the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.” Rippo v. Baker, 580 U.S. 285, 137 S. Ct. 905 (2017); Withrow v. Larkin, 421 U. S. 35, 47, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975); see Williams v. Pennsylvania, 579 U. S. 1, 8, 136 S. Ct. 1899, 195 L. Ed. 2d 132, 141 (2016) (“The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias” (internal quotation marks omitted)).

Again, in this case, Appellant has filed numerous motions to disqualify Leavitt, J. See AA0295. **Appellant has cited *inter alia* issues of failure to allow Appellant to proceed pro se, failure to terminate forced counsel, and outright prejudice.** See AA00362; AA0694; AA0783.

All of these reasons have given rise to questions of impartiality on the part of the District Court. NCJC Rule 2.11(A)(1) requires a judge to recuse herself in any proceeding in which the judge's impartiality might reasonably be questioned. Yet, time and time again, Appellant's motions to disqualify Leavitt, J. have been denied. As a result, Appellant's due process rights have been violated by Leavitt, J.'s failure to remove herself from this litigation as is required by Nevada law and Judicial Canon and Rule.

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V. CONCLUSION

WHEREFORE, the Appellant prays this Court grant his Petition for Review.

DATED this 11th day of March 2024.



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VI. CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Word 365, Century Schoolbook.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 40, 40A, and 40B because it is proportionately spaced, has a typeface of 14 points or more, and contains **2959** words.

DATED this 11th day of March 2024.



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VII. CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **PETITION FOR REVIEW BY THE SUPREME COURT** with the Clerk of the Court by using the electronic filing system on the 11TH day of March 2024.

The following participants in this case are registered electronic filing system users and will be served electronically:

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EXHIBIT 1

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KIM DENNIS BLANDINO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84433-COA

FILED

DEC 20 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Kim Dennis Blandino appeals from a judgment of conviction, pursuant to a jury verdict, of extortion and impersonation of an officer, Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

In August 2018, Michael Federico was sitting as a Judge Pro Tempore for the Las Vegas Municipal Court.¹ That day, Blandino was present in the courtroom as a defendant in a traffic matter. The matter was resolved at trial apparently on terms that Blandino did not agree with. After that day, Judge Pro Tempore Federico had no further contact with Blandino until April 2019.

In April 2019, Blandino appeared at Judge Pro Tempore Federico's private law office and asked to meet with him. When Blandino was told that Judge Pro Tempore Federico was unavailable, he remained in the reception area of the office and wrote Judge Pro Tempore Federico a letter. In this letter, Blandino provided his contact information and stated that he was "ready to begin filing my complaint against you [Judge Pro Tempore Federico] for your 'activities' on the bench in Courtroom 1C last year . . . I am required by my religious beliefs and practices, to give you an opportunity to negotiate a settlement . . . My last two complaints resulted in

¹We recount the facts only as necessary for our disposition.

letters of caution to the judges. Please don't take this matter lightly. I came to your office as a good faith gesture."

After receiving the letter, Judge Pro Tempore Federico contacted the police, who did not act at that time. On April 25, 2019, Judge Pro Tempore Federico was again serving as a pro tempore judge in municipal court when Blandino walked into the courtroom despite not having a matter in the courtroom that day. Once Judge Pro Tempore Federico saw Blandino, he ordered Blandino out of the courtroom. That afternoon, Blandino returned to Judge Pro Tempore Federico's private law office and dropped off another letter. In this letter, Blandino stated that he was "an unpaid volunteer investigator for the NCJD [Nevada Commission on Judicial Discipline]" and that he was present in the courtroom that morning in that capacity. Blandino also wrote that he specifically came to Judge Pro Tempore Federico's "publicly listed office to see if I could meet you man to man and see if we could resolve my complaint with you without having to use, scare, skittish, or resources and NCJD resources as I have attempted to do with other misbehaving judges."

The following week, the police came to meet with Judge Pro Tempore Federico and asked him to call Blandino and have a phone call with him on speaker phone while officers were present in the room. During the phone call Blandino agreed to send Judge Pro Tempore Federico an email with Blandino's terms for a settlement.

In May, Blandino sent Judge Pro Tempore Federico a proposed settlement agreement. In the settlement agreement, Blandino wrote that Judge Pro Tempore Federico would pay Blandino \$25; apologize in writing to Blandino; and complete a course in "ethics, fairness, and security in your courtroom and community" in person at the National Judicial College in Reno at his own expense or donate \$500 to the Clark County Law Library.

In exchange, Blandino would not file a complaint with the NCJD. In a follow up letter Blandino repeated his demands and stated that if they were met Blandino would not file a complaint with the NCJD, would not file a criminal complaint with the FBI, and would not send information about this alleged misconduct to the law firm that employed Judge Pro Tempore Federico.

In July 2019, Blandino was indicted and arrested on two counts—extortion and impersonation of an officer—for his claims that he was an unpaid volunteer investigator for the NCJD. Blandino appeared in district court and was supposed to be arraigned in August, but he slowed down the proceedings by repeatedly interrupting both the district court judge and the prosecutor and was never officially arraigned. At this time, Blandino was also granted two weeks to file a motion to disqualify Judge Leavitt, the presiding judge in the case. In this motion, which was filed in December, Blandino stated that the entire Eighth Judicial District Court would need to be disqualified. Blandino was not held in custody and was instead placed on electronic monitoring and house arrest. The district court held the arraignment two weeks later and because the motion to disqualify Judge Leavitt had not been filed, Judge Leavitt presided over the proceedings. During the arraignment, Blandino asserted that he wished to represent himself, and he also repeatedly interrupted the court. The court conducted a *Faretta*² canvass at that time and found that Blandino could represent himself but also appointed standby counsel. In September 2019, the State filed a motion to remand Blandino into custody for competency proceedings. Several days later, the district court filled out a request for a competency evaluation on Blandino's behalf because Blandino did not "appear to understand the charges or allegation[s.] understand the

²*Faretta v. California*, 422 U.S. 806 (1975).

adversarial nature of the legal process[.] display appropriate courtroom behavior[.] or] demonstrate [the] ability to provide relevant testimony.” In April 2020, Blandino, who had been remanded into State custody, was found to be competent, released from custody, and placed back on house arrest.

The next several hearings were held during the early months of the COVID-19 pandemic, so individuals were required by order of the chief judge to wear masks to enter the Regional Justice Center. If individuals could not wear a mask, they were able to participate in court appearances virtually using BlueJeans software. Blandino refused to wear a mask and refused to participate in court appearances using BlueJeans despite being offered the use of his standby counsel's office and computer software. Blandino began participating in hearings through BlueJeans only after the district court stated that it would revoke his self-representation at the next hearing if Blandino did not appear.

In November 2021, the State filed a motion to revoke Blandino's right of self-representation, arguing that Blandino's behavior was extremely disruptive and obstructionist.³ Eventually, the district court held a hearing on one of the State's motions and granted the motion. During the hearing, the court made oral findings and found that Blandino refused to accept the jurisdiction of the court; filed motions designed to obstruct, impede, and manipulate court procedures; refused to follow court rules for participating in proceedings during the early days of the COVID-19 pandemic; and demonstrated disruptive and manipulative conduct. The district court reiterated these findings in its written order and added that Blandino disrupted proceedings by interrupting “the Court and the decorum of the

³Apparently, this was not the first motion to revoke Blandino's self-representation, but it is the only motion in the record.

proceedings despite being admonished to desist." The district court also ordered that Blandino's standby counsel be appointed to represent Blandino.

In March 2022, a seven-day jury trial was held. During trial, several witnesses testified for the State, including Judge Pro Tempore Federico, the receptionist at Judge Pro Tempore Federico's private law office, two officers that investigated the incident, a supervisor for the Las Vegas Metropolitan Police Department's forensic lab, and the general counsel and executive director of the NJDC.

During trial, Judge Pro Tempore Federico testified about his threatening interactions with Blandino and the general counsel for the NJDC testified that it would never be appropriate for a private citizen to try and make a settlement with a judge on behalf of the NJDC and Blandino has never been an investigator for the NJDC. Blandino also testified in the narrative form in his own defense and was cross-examined by the State wherein he essentially admitted the acts constituting the offenses but explained that he was acting according to his religious beliefs, which he asserted made it impossible for him to have committed a crime.

Near the conclusion of trial, but before closing arguments, Blandino requested that the jury be given a mistake-of-fact instruction. Blandino's theory was that he made a mistake of fact that he could negotiate with Judge Pro Tempore Federico, which would negate the specific intent necessary to be found guilty of extortion. Despite requesting the instruction, Blandino did not bring the proposed instruction with him to present to the district court. Further, Blandino cited no legal authority as the basis of the instruction or even any general language as to the contents of the instruction. Finally, he did not request a continuance or any delay to obtain a copy of the of the proposed instruction. The district court summarily denied giving the mistake-of-fact instruction to the jury, although

instruction 13 included some language in that regard. The jury was instructed on Blandino's entrapment defense.

At the conclusion of the trial, the jury found Blandino guilty of both counts. Between the conclusion of the trial and Blandino's sentencing hearing, Blandino filed two motions pro se. One of these motions contained three parts and was described by Blandino as a motion for permission to file a motion for a new trial, a motion for a new trial, and a motion to disqualify Judge Leavitt. The other motion was a motion to discharge his appointed counsel. The district court did not consider the first motion since it was a fugitive motion and Blandino did not appeal this action. The record does not reveal how the district court handled Blandino's motion to discharge his appointed counsel, but the record does reveal that Blandino's motion was not granted because his appointed counsel represented him at sentencing. At the sentencing hearing, Blandino was sentenced to a minimum of 12 months and a maximum of 120 months in the Nevada Department of Corrections for the extortion charge and 364 days in the Clark County Detention Center to run concurrent with the sentence in count 1 for the impersonation of an officer charge. These sentences were suspended and Blandino was placed on probation for a fixed term of three years.

Throughout the proceedings Blandino filed approximately 20 motions to disqualify Judge Leavitt or every judge in the Eighth Judicial District. Each time a new judge was assigned to hear Blandino's disqualification motions, Blandino would file a new motion broadly stating that *all* judges on the Eighth Judicial District Court needed to be disqualified but specifically singled out each judge assigned to preside over Blandino's case or disqualification motion. One of these motions to disqualify was filed minutes after the previous one had been denied. Each

of these motions delayed the proceedings even though they were all eventually denied.

Blandino now appeals the judgement of conviction and argues that the district court (1) erred by revoking his self-representation because he was not disruptive or defiant during proceedings when he represented himself; (2) abused its discretion when it did not instruct the jury on mistake of fact; and (3) erred by denying Blandino's motions to disqualify Judge Leavitt from hearing this matter. We disagree with Blandino on all points. *The district court did not err by revoking Blandino's right of self-representation*

Blandino argues that the district court erred by revoking his ability to represent himself because he was not disruptive or defiant during proceedings when he represented himself. The State responds that the right of self-representation is not absolute and was properly revoked because Blandino continuously demonstrated his disregard for any decisions made by the court and was disruptive.

A criminal defendant has the right to self-representation. *See Faretta v. California*, 422 U.S. 806, 818-19 (1975); *Vanisi v. State*, 117 Nev. 330, 337, 22 P.3d 1164, 1169 (2001). However, this right is not absolute because a defendant must be "able and willing to abide by the rules of procedure and courtroom protocol" to represent themselves. *McKaskle v. Wiggins*, 465 U.S. 168, 173 (1984). A court may deny a defendant's request for self-representation if the defendant is disruptive. *Vanisi*, 117 Nev. at 338, 22 P.3d at 1170. Deprivation of the right to self-representation is a reversible error. *Id.* Additionally, this court reviews a district court's factual findings that a defendant is too disruptive or unable or unwilling to follow courtroom protocol for an abuse of discretion. *Id.* at 341, 22 P.3d at 1171. The district court abuses its discretion when its "decision is arbitrary or

capricious or if it exceeds the bounds of law or reason.” *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005) (internal quotation marks omitted)

A defendant may be denied their right of self-representation if they are unable or unwilling to abide by the court’s rules because the right of self-representation does not give a defendant the right to “engage in uncontrollable and disruptive behavior in the courtroom.” *Tanksley v. State*, 113 Nev. 997, 1001, 946 P.2d 148, 150 (1997) (internal quotation marks omitted). A defendant’s pretrial actions are relevant if they present a strong indication that the defendant will disrupt courtroom proceedings. *Id.* When reviewing a defendant’s behavior to determine if it was disruptive, “this court will not substitute its own evaluation for the district court’s personal observations.” “[s]ince the district court is in a better position to observe a defendant’s demeanor and conduct.” *Vanisi*, 117 Nev. at 340, 22 P.3d at 1171.

The State filed a motion to revoke Blandino’s right of self-representation asserting that Blandino’s behavior was extremely disruptive and obstructionist. Eventually, the district court held a hearing on one of the State’s motions, which it granted. During the hearing, the court made oral findings and found that Blandino refused to accept the court’s jurisdiction; filed motions designed to obstruct, impede, and manipulate court procedures; refused to follow court rules for participating in proceedings during the early days of the COVID-19 pandemic; and demonstrated disruptive and manipulative conduct. The district court reiterated these findings in its written order and added that Blandino disrupted proceedings by interrupting “the Court and the decorum of the proceedings despite being admonished to desist.”

The record supports the district court's findings. Numerous hearings were conducted on pretrial matters in this case. During a majority of these hearings, Blandino had to be redirected to focus on issues relevant to the hearing, cut off when he would not follow the district court's attempts to redirect and refocus him, or reprimanded for repeatedly interrupting the proceedings. During several of the hearings that took place after the COVID-19 pandemic began, Blandino refused to wear a mask, so he was not allowed inside the courtroom, and refused to participate in the hearings on BlueJeans, despite being given the opportunity to participate in the hearings in his standby counsel's office. Blandino only began participating in hearings through BlueJeans when the district court stated that it would revoke his self-representation at the next hearing if he did not appear. Further, Blandino filed approximately 20 motions to disqualify various judges.⁴ The district court's descriptions of these motions suggest that each motion was essentially the same, and that Blandino filed a new motion immediately after the previous motion was denied, or as soon as a new judge was assigned to the case. The district court found that these motions were filed "to tactically delay pretrial proceedings and trial in this case."

Accordingly, we conclude that the record supports the district court's factual findings that Blandino refused to accept the jurisdiction of the court; filed motions designed to obstruct, impede, and manipulate court procedures; refused to follow court rules for participating in proceedings during the early days of the COVID-19 pandemic; and demonstrated disruptive and manipulative conduct. Therefore, we conclude that the district court did not err by revoking Blandino's self-representation.

⁴We note that only one of these motions is contained in the record, but the district court order revoking Blandino's right of self-representation documents 20 motions.

The district court did not abuse its discretion by not instructing the jury on mistake of fact pursuant to Blandino's verbal request

Blandino argues that the district court erred when it denied Blandino's request to include a jury instruction on mistake of fact as to the charge of extortion. The State responds that a mistake-of-fact instruction was not proper because Blandino made a mistake of law, not mistake of fact, and a mistake of law is not a defense.

We review the decision to either give or not give a jury instruction for an abuse of discretion. *Mathews v. State*, 134 Nev. 512, 517, 424 P.3d 634, 639 (2018). A district court abuses its discretion when it makes a decision that is "arbitrary or capricious or if it exceeds the bounds of law or reason." *Crawford*, 121 Nev. at 748, 121 P.3d at 585 (internal quotation marks omitted). The district court must provide instructions on the defendant's theory of the case, but a defendant is not "entitled to instructions that are misleading, inaccurate, or duplicitous." *Id.* at 754, 121 P.3d at 589. A mistake of law is not a defense to a criminal action. *Whiterock v. State*, 112 Nev. 775, 782, 918 P.2d 1309, 1314 (1996).

"It is the appellant's responsibility to provide the material necessary for this court's review." *Jacobs v. State*, 91 Nev. 155, 158, 532 P.2d 1034, 1036 (1975); *see also Riggins v. State*, 107 Nev. 178, 182, 808 P.2d 535, 538 (1991) ("It is the responsibility of the objecting party to see that the record on appeal before the reviewing court contains the material to which they take exception. If such material is not contained in the record on appeal, the missing portions of the record are presumed to support the district court's decision, notwithstanding an appellant's bare allegations to the contrary."), *reversed on other grounds*, 504 U.S. 127 (1992); *United States v. Vasquez*, 985 F.2d 491, 494 (10th Cir. 1993) ("When the record on appeal fails to include copies of the documents necessary to decide an issue on

appeal, the Court of Appeals is unable to rule on that issue. This Court will decline to consider a claim in the absence of the appropriate documents in the record on appeal, since any discussion of such a claim would be speculation.” (citation omitted)). Additionally, the failure to proffer jury instructions to the district court can result in an affirmance of a judgment of conviction. *Watson v. State*, 951 S.W.2d 304, 305 (Ark. 1997).

Here, Blandino failed to provide his proposed jury instruction to the district court before or at trial and he failed to include a written copy of his proposed jury instruction in the record or any potential language for it. Accordingly, the district court had only a limited ability to review the proposed jury instruction from Blandino’s verbal request. Additionally, when Blandino realized that he did not have the written instruction with him he did not ask the district court to give him time to retrieve the instruction, he did not provide any legal argument for why the instruction should be given, and he did not ask the district court to assist in drafting a proposed instruction. Instead, he merely requested that a mistake-of-fact instruction be given because he believed it would negate specific intent. Therefore, we conclude that he could have provided this instruction for the record or at least made an oral record explaining the law and his request. Accordingly, we conclude that Blandino failed to make a proper record and conclude that the district court did not abuse its discretion.

Even if we consider the merits of Blandino’s argument, then Blandino requested a mistake-of-fact instruction because Blandino argued that he mistakenly believed he was participating in a legitimate negotiation. A person may not be punished if they “committed the act or made the omission charged under an ignorance or mistake of fact, which disproves any criminal intent, where a specific intent is required to constitute the offense.” NRS 194.010(5). Specific intent is required to commit extortion. *See* NRS

205.320. However, to be guilty of extortion one only needs to have the specific intent to "influence the actions of a public officer." NRS 205.320.⁵ Blandino's argument that he thought he was in a valid negotiation with Judge Pro Tempore Federico does not negate his intent to "influence the actions of a public officer." Blandino's letters indicate that he intended to influence the actions of Judge Pro Tempore Federico. Further, Blandino was able to present his mistake argument to the jury during closing and an instruction generally describing mistake of fact was given to the jury. Accordingly, we conclude that the district court did not abuse its discretion when it denied Blandino's verbal request to further instruct the jury on mistake of fact.

The district court did not err by not disqualifying Judge Leavitt

Blandino argues that the district court erred by denying his motions to disqualify Judge Leavitt and implies that Judge Leavitt should have recused herself.⁶ The State contends that there was no indication that the district court had any bias, it would be counter-productive for a defendant to be allowed to create a conflict by trying to force the district court to disqualify itself, and Blandino still fails to identify any actual bias or conflict. Blandino replied that Judge Leavitt was biased because she

⁵Instruction 13 stated in part that "extortion is a specific intent crime" and "[t]o establish specific intent, the State must prove that the defendant knowingly did the act which the law forbids." Instruction 13 goes on to state that "[a]n act is 'knowingly' done if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason."

⁶We note that at least twenty of the motions were filed and they were decided by various judges in the Eighth Judicial District Court. We also note that one motion was decided by Judge Wilson of the First Judicial District Court. Finally, we note that, on appeal, Blandino fails to identify which motions he believes were improperly denied.

signed a request for evaluation for competency on Blandino's behalf. Blandino argues that this shows that the district court "acted as an unsolicited 'advocate'" for him.⁷

Judges are presumed to be impartial, and a party asserting that a judge is biased has the burden of asserting "sufficient factual grounds to warrant disqualification." *Ybarra v. State*, 127 Nev. 47, 51, 247 P.3d 269, 272 (2011) (internal quotation marks omitted). If a "judge's impartiality might reasonably be questioned," then that judge should be disqualified. Nevada Code of Judicial Conduct Rule 2.11(A). "[A] speculative claim that is not supported by sufficient facts" does not warrant disqualification. *Ybarra*, 127 Nev. at 52, 247 P.3d at 272. Additionally, a judge's decision not to recuse themselves will not be overturned absent a clear abuse of discretion. *Canarelli v. Eighth Judicial Dist. Court*, 138 Nev. 104, 106-07, 506 P.3d 334, 337 (2022).

A careful review of Blandino's argument and the record reveals that it is not cogently argued, so we need not consider it. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority). And Blandino's claims are merely speculative and not supported by sufficient facts. Blandino merely disagrees

⁷We note that Blandino did not appear to take issue with this below and raised this issue for the first time in his reply brief. Regardless, the record does not reveal that the district court advocated on Blandino's behalf. Instead, it reveals that the district court was concerned about Blandino's competency and ability to represent himself based on his behavior in court. *See* NRS 178.400 (stating that an incompetent person cannot be tried or adjudged to punishment from a public offense); NRS 178.405 (stating that if there is a doubt that a defendant is competent the court shall suspend the proceedings). Accordingly, the district court took the necessary steps to ensure a fair and speedy resolution of the matter.

with the district court's ultimate conclusions and has not shown that "the judge formed an opinion based on the facts introduced during the proceedings and that this opinion displays a deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.* at 107, 506 P.3d at 337 (internal quotation marks omitted); *see also In re Petition to Recall Dunleavy*, 104 Nev. 784, 789-90, 769 P.2d 1271, 1275 (1988) (providing that ruling made during official judicial proceedings generally "do not establish legally cognizable grounds for disqualification"). Accordingly, disqualification is not warranted. *See Ybarra*, 127 Nev. at 52, 247 P.3d at 272. Therefore, we conclude that the district court did not err.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.⁸


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Michelle Leavitt, District Judge
The Gersten Law Firm PLLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁸In light of our disposition, we deny Blandino's two motions for a stay of probation pending this appeal.

Insofar as Blandino has raised arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.