IN THE SUPREME COURT OF THE STATE OF NEVADA

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GUILLERMO RENTERIA-NOVOA,

Appellant,

vs.

RENEE BAKER, WARDEN,
Lovelock Correctional Center

Supreme Court Case No.: 84656

District Court Case No.: C268285-1

APPELLANT'S REPLY BRIEF

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IN THE SUPREME COURT OF THE STATE OF NEVADA

GUILLERMO RENTERIA-NOVOA, Appellant, vs. RENEE BAKER, WARDEN, Lovelock Correctional Center	Supreme Court Case No.: 84656 District Court Case No.: C268285-1

ARGUMENT

The State's arguments do not deviate from its Response to Appellant's Supplement filed in district court or the Findings and Order penned by the State and then signed by the district court. Therefore, Appellant has already addressed the State's arguments in his opening brief. However, Appellant would like to correct some material misrepresentations that have been asserted by the State. Additionally, the State never argued harmless error for any issues raised by Appellant in his Opening Brief.

I. THE STATE MISREPRESENTED JUROR NO. 35'S STATEMENTS AND THE ORDER IN WHICH THEY WERE MADE

The State only focuses on the initial statements made by Prospective Juror No. 35. State's Answering Brief ("SA") 13-14. The was the State's argument reads, it appears as though the juror said she would hold the State to its burden, mentioned what amounts to a minor opinion about women not lying about sexual assault (SA 14), and that when Appellant's defense attorney "followed up" with this juror, she stated Appellant was not guilty as he stood there and that "she could listen and be fair." (SA 17). **This is not what Juror No. 35 said nor did Appellant's defense attorney follow up with her.**

Initially, Juror No. 35 stated that she understood the presumption of innocence. **She never stated that she "could listen and be fair."**

Then, Juror No. 35 expressed a caveat to her understanding of the presumption of innocence—she did not think the victim would lie about being sexually assaulted. This was not a brief passing opinion. Juror No. 35 expressed the following fixed opinion:

It is a very heinous crime in my eyes. *I don't see why anybody*

> *would lie about something like that*, especially if it happened so long ago, for her to, you know, bring those feelings back and just talk about that, it's just really hard to know that she's lying about something like that. I just….
>
> But I believe she's 19 years old now, so for her to just revisit that and bring that all to light and want to go through all of this is just hard to, you know, really tell that she's—*wouldn't lie about that.*

3 AA 469-71.

These statements were made in response to being asked if she could be fair. Id. Juror No. 35 never said she could listen and be fair. She ever said that she could put her opinion aside. Defense counsel never followed up with her after her statements. A juror cannot come to the conclusion that the State did not meet its burden without bias *if the juror cannot fathom how the victim would lie.*

Juror No. 35 had a fixed opinion that biased her against Appellant. Patton v. Yount, 467 U.S. 1025, 1035, 104 S.Ct. 2885, 2891 (1984). Her presence as a single biased juror cannot be harmless and Appellant is entitled to a new trial without a showing of actual prejudice." Dyer v. Calderon, 151 F.3d 970, 973, n. 2 (9th Cir.1998); *see also* United States v. Martinez-Salazar, --- U.S. ---, ---

, 120 S.Ct. 774, 782, 145 L.Ed.2d 792 (2000); United States v. Eubanks, 591 F.2d 513, 517 (9th Cir.1979); United States v, Gonzales, 214 F.3d 1109 (9th Cir.2000). "**Doubts regarding bias must be resolved against the juror**." Id., at 1114. Therefore, Juror No. 35 was biased against him, counsel was ineffective for failing to move to exclude her from the jury, Appellant was prejudiced by counsel's ineffectiveness and is entitled to a new trial. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984); Dyer, *supra*; Gonzales, *supra*; *see also* Martinez-Salazar, *supra*.

II. THE STATE FAILS TO EXPLAIN WHY THE PROFFERED SANITIZATION WAS NOT ACCEPTABLE

The State's response to Appellant's argument that defense counsel was ineffective for failing to sanitize R.P.'s pregnancy is two-fold:

1. There is no possible way to sanitize the pregnancy without violating NRS 500.090; SA 18-20.
2. Counsel thoroughly pointed out the inconsistencies in R.P.'s testimony. SA 21.

During post-conviction litigation Appellant offered a possible sanitization of R.P. having done something that would have caused her to get in serious trouble with her parents and because of this, lied about Appellant

so as to focus the attention on someone else. This would have supported the "better him than me" defense. Appellant offered fifteen (15) possible non-sexual transgressions a teenage girl was commit in response to the State's 1950s argument that the only thing a teenage girl could possibly get in that much trouble for is pregnancy. Now on appeal, The State is still digging in its heels and refusing to acknowledge that there are other things besides pregnancy that a teenage girl can get in trouble with her parents for. The State offers no cogent argument for why a juror would only think the transgression would be pregnancy and why the proffered sanitization would violate NRS 50.090.

Moreover, trial counsel did not fail to sanitize the pregnancy when the district court gave him the opportunity to do so because he thought that none of the possibilities would comport with NRS 50.090. He chose not to sanitize because he thought doing so would waive a strong appellate issue. 7 AA 1400; 8 AA 1401. The issue was a weak appellate issue and it was clear this Court was not going to rule in favor of Appellant on direct appeal. The State concurs with this as stated in its Answering Brief on appeal:

> "To the extent Appellant argues the denial of admission of this evidence "gutted" his defense, this Court should not be moved by this argument, as any alleged fault lies squarely on Appellant's trial counsel for attempting to base a defense theory around obviously inadmissible evidence."
>
> 8 AA 1474.

With respect to the inconsistencies in R.P.'s testimony and statements, yes, defense counsel tried to bring those out but as the State argued in its Answering Brief on appeal, this was not done well.

> '"[…] Appellant's trial counsel struggled with the cross-examination, and numerous objections and bench conferences occurred during the course of cross. As the trial court specifically noted, by the time the State conducted redirect examination on Roxana, **the record was "horrible" because "no one [knew] what [Appellant's trial counsel was] talking about." [**4 AA 739-44]
>
> 8 AA 1476 (emphasis added).

R.P,'s pregnancy cut to the heard of Appellant's defense. The district court agreed and offered to allow counsel to sanitize the pregnancy. Counsel's failure to do so falls below an objective standard of reasonableness, this prejudiced Appellant and he is entitled to a new trial. Strickland, 466 U.S. at

694, 104 S.Ct. 2052.

III. THE STATE FAILED TO ALLEGE HARMLESS ERROR

The State failed to allege harmless error with respect to Appellants argument that the district court erred in denying his claim of ineffective assistance of counsel. The State also failed to argue that Appellant was not prejudiced by each of the instances where his attorney failed to act in an objectively reasonable manner. Therefore, if this Court finds that Appellant's counsel failed to act in an objectively reasonable manner in representing Appellant or that the district court erred in denying any issue in Appellant's Petition, the State concedes that the error was prejudicial. [1] Polk v. State, 126 Nev. Adv. Op. 19, ___, 233 P.3d 357, 361 (2010); see also NRS 49.005(3).

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[1] *See* Bates v. Chronister, 100 Nev. 675, 681–82, 691 P.2d 865, 870 (1984) (treating the respondent's failure to respond to the appellant's argument as a confession of error); *see also* A Minor v. Mineral Co. Juv. Dep't, 95 Nev. 248, 249, 592 P.2d 172, 173 (1979) (determining that the answering brief was silent on the issue in question, resulting in a confession of error); *see also* Moore v. State, 93 Nev. 645, 647, 572 P.2d 216, 217 (1977) (concluding that even though the State acknowledged the issue on appeal, it failed to supply any analysis, legal or otherwise, to support its position and "effect[ively] filed no brief at all," which constituted confession of error), overruled on other grounds by Miller v. State, 121 Nev. 92, 95–96, 110 P.3d 53, 56 (2005).

CONCLUSION

Based upon the arguments herein, *supra*, the denial of GUILLERMO RENTERIA-NOVOA'S Petition for Writ of Habeas Corpus (Post-Conviction) should be REVERSED.

Dated this 19th day of December, 2022.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. 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 Microsoft Word 2010 Edition in Palatino Linotype 14 point font; or

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2. This brief exceeds the with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

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[ ] Does not exceed 30 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where 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 19th day of December, 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY AND AFFIRM that this document was filed electronically with the Nevada Supreme Court on the 19th of December, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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Chief Deputy District Attorney

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

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