

IN THE SUPREME COURT OF THE STATE OF NEVADA

AARON MEDINA,
Appellant,
v.
THE STATE OF NEVADA,
Respondent.

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Case No. 83532

RESPONDENT'S ANSWERING BRIEF

**Appeal From Judgment of Conviction (Guilty Plea)
Eighth Judicial District Court, Clark County**

MICHAEL SANFT, ESQ.
Nevada Bar #008245
Sanft Law
411 East Bonneville Avenue, Suite 330
Las Vegas, Nevada 89101
(702) 497-8008

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500
State of Nevada

AARON D. FORD
Nevada Attorney General
Nevada Bar #007704
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1265

Counsel for Appellant

Counsel for Respondent

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**Appeal from A Judgment of Conviction (Guilty Plea)
Eighth Judicial District Court, Clark County**

ROUTING STATEMENT

This appeal is presumptively retained by the Supreme Court because it relates to a conviction for a Category B felony based on Appellant’s plea of guilty. NRAP 17(b)(1).

STATEMENT OF THE ISSUE

1. Whether the district court abused its discretion by denying Appellant’s Motion to Withdraw Guilty Plea.

STATEMENT OF THE CASE

On July 17, 2020, the State charged Aaron Mario Medina (“Appellant”) by way of Grand Jury Indictment with the following: Counts 1, 2 & 4 – Lewdness with a Child Under Fourteen Years of Age (Category A Felony - NRS 201.230 - NOC 50975); Counts 3 & 5 – Sexual Assault with a Minor Under Fourteen Years of Age

(Category A Felony - NRS 200.364, 200.366 - NOC 50105). Appellant's Appendix ("AA") 002-005.

On July 30, 2020, Appellant was arraigned and pled not guilty. Respondent's Appendix ("RA") 080. On September 8, 2020, the State filed a Notice of Motion and Motion to Admit Evidence of Other Crimes, Wrongs or Acts. RA 081-166. On September 22, 2020, the Court granted the State's Motion to Admit Evidence of Other Crimes, Wrongs or Acts. RA 167-168. Appellant's jury trial was scheduled to begin on November 30, 2020. RA 1679-170. On October 6, 2020, the parties participated in a settlement conference with Judge Barker wherein a settlement was reached, and the guilty plea was to be entered with Judge Hardy. AA 018-019.

Appellant entered a plea of guilty pursuant to Alford to one count of Lewdness with a Child Under Fourteen Years of Age (Category A Felony - NRS 201.230 - NOC 50975); and one count of Sexual Assault with a Minor Under Fourteen Years of Age (Category A Felony - NRS 200.364, 200.366 - NOC 50105) and signed his Guilty Plea Agreement ("GPA"). AA 008-016. Appellant was also thoroughly canvassed by the district court. AA 017-027. After which, the State filed an Amended Indictment charging Appellant with one count of Lewdness with a Child Under Fourteen Years of Age (Category A Felony - NRS 201.230 - NOC 50975); and one count of Sexual Assault with a Minor Under Fourteen Years of Age (Category A Felony - NRS 200.364, 200.366 - NOC 50105). AA 006-007.

On November 19, 2020, at the time set for sentencing, Appellant indicated that he wished to withdraw his guilty plea and to have Ms. Radosta removed as his counsel of record. AA 029-030. The Court granted the request for appointment of counsel to review Appellant’s request to withdraw his guilty plea. AA 031.

On December 8, 2020, Michael Sanft, Esq., confirmed as counsel for Defendant. RA 175. On April 27, 2021, Appellant filed a Motion to Withdraw Guilty Plea (“Motion”). AA 033-039. The State filed its Opposition on July 6, 2021. RA 176-188. On July 8, 2021, the district court held a hearing on Appellant’s Motion to Withdraw Guilty Plea. RA 189-194. Appellant addressed the court with his argument. RA 192-193. Following the hearing, the district court filed an Order denying Appellant’s Motion to Withdraw Guilty Plea on the same day. AA 046-047.

On August 17, 2021, the district court sentenced Appellant to a minimum of ten (10) years and a maximum of twenty-five (25) years in the Nevada Department of Corrections, with five hundred seventeen (517) days credit for time served. AA 049-057. The Judgment of Conviction was filed on August 23, 2021. AA 058-059. On September 16, 2021, Appellant filed a Notice of Appeal. AA 061-062. The instant Opening Brief (“AOB”) was filed on April 4, 2022.

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STATEMENT OF THE FACTS

The State held a Grand Jury Hearing on July 8, 2020 and July 15, 2020. RA 001-079. During the Grand Jury hearing, the victim and Detective on the case testified. Id.

J.W.'s Testimony

J.W. testified that he no longer went by the name J.W. and went by the name J.M. now. RA 008. J.W. testified that he was 12 years of age and his birthday is October 10, 2007. Id. J.W. testified that he lived in Las Vegas, with a foster mom. Id. at 009. J.W. had been living with a foster mom for two months. Id. J.W. has two siblings, an older sister Jesenia (aka, JoJo) and a younger sister, Janiyah. Id. J.W. testified that his younger sister lives with him in foster care. Id. at 009-010. Before living in foster care, J.W. was living with aunt in Mesquite. Id. at 010.

J.W. testified that he has contact with his mom through Facetime and prior to living with his aunt, he lived with his mom and two sisters, in Overton, Clark County, Nevada. Id. at 011 J.W. testified that he knew Appellant and that he met Appellant at his grandparent's house, in Logandale. Id. at 012. J.W. testified that he was ten years of age when Appellant began living in Logandale. Id. at 013. J.W. identified a photograph of Appellant, who is also J.W.'s uncle. Id. at 014. J.W. testified that when he first met Appellant everything was going good, but Appellant started doing everything bad within weeks or a month. Id. J.W. testified that there are place on his

body that nobody is supposed to touch and he identified those places as his penis and his butt. Id. at 015.

J.W. testified that Appellant began touching him in private areas. Id. J.W. was ten years old the first time something happened, and he was living with his mom in Overton. Id. J.W. had been at his grandmother's house in Logandale, along with his two sisters, his grandparents, and Defendant. Id. at 016. J.W. and the others went outside to play hide and seek. Id. J.W. testified that while they were playing hide and seek Appellant began kissing him in a garage they were hiding in. Id. J.W. testified that Appellant was kissing him on the lips until his sisters came in and Appellant stopped. Id. at 18. Appellant told J.W. not to tell anybody and J.W. didn't at first, but two days later he told his older sister, who said she was going to tell their mom. Id. J.W. testified that his sister JoJo did tell their mother, but their mother never called the police. Id. at 020.

J.W. recalled an incident that occurred at his house, while he was in the living room watching T.V., and everyone else was outside. Id. at 021. Appellant came inside and began touching J.W.'s butt. Id. J.W. was ten years old at the time and the incident occurred a couple weeks after the garage incident. Id. at 022. J.W. testified that during the incident in the living room, he had been laying on the floor and Appellant came in and got behind him and tried to pull down J.W.'s pants. Id. at 023. J.W. tried to pull his pants back up and get away, but Appellant would not let

J.W. leave. Id. While J.W. was struggling with Appellant, J.W.'s mom came inside causing Appellant to get up really quick and take a dish to the kitchen. Id. at 024. J.W. testified that when Appellant touched his butt that day, he kissed it with his mouth. Id. J.W. testified that Appellant kissed his butt before pulling down J.W.'s pants. Id.

J.W. testified that there was another incident that occurred when J.W.'s mother told Appellant to go to the store for some groceries. Id. at 025. Appellant asked J.W. if he wanted to go and J.W. said no, as did J.W.'s mother. Id. Appellant kept trying to convince J.W.'s mom to let him come along and she finally agreed. Id. at 025-026. J.W. and Appellant went to the store and afterwards, Appellant took J.W. to railroad tracks and Appellant told J.W. to touch Appellant's part. Id. at 026. J.W. was 10 or 11 years old when the incident occurred. Id. J.W. testified that he was sitting in the passenger seat of the car when they were at the railroad tracks, near his house. Id. at 027-028. Appellant pulled his pants down and made J.W. touch Appellant's penis with his hand. Id. at 028. J.W. believed the incident occurred in 2018. Id. at 029. J.W. believed the incident happened before his eleventh birthday. Id. at 030.

J.W. testified that the last time something happened with Appellant was during Christmas or New Year's, 2019 turning 2020. Id. at 030. J.W. was at his grandparent's house in Logandale, along with his sisters, Appellant, and

grandparents. Id. at 031. J.W. testified that he was wearing a Billy Eilish shirt that day. Id. At bedtime, after J.W. fell asleep, he woke to Appellant coming into his room. Id. at 032. Appellant knelt beside J.W.'s bed and pulled down his pants and underwear. Id. at 033-034. Appellant put his mouth on J.W.'s penis. Id. at 035. J.W. heard his grandmother coming down the hall and Appellant hid behind J.W.'s door. J.W.'s grandmother opened the bedroom door and noticed that J.W. was awake and she also caught Appellant behind J.W.'s door. Id. at 035-036.

J.W. testified that there was a time that Appellant used his hand to touch J.W.'s penis, but he couldn't remember it all that well. Id. at 038-039. J.W. testified that he eventually told a counselor at school and the police were called. Id.

Detective Huth's Testimony

Detective Denise Huth testified that she was employed with the Las Vegas Metropolitan Police Department, assigned to the juvenile sexual assault division, for approximately five years. Id. at 064. In January 2020, Detective Huth was assigned to investigate this case. Id. Detective Huth testified that she interviewed J.W., and he was hesitant to disclose. Id. at 065. J.W. told Detective Huth that the first incident that occurred with Appellant happened at his grandmother's house in Logandale. Id. at 066. J.W. stated that they had been playing hide and seek with his sister and he and Appellant went to hide in a shed, at which time Appellant wrapped his arms

around J.W. and kissed him more than two times. Id. J.W. told Detective Huth that Appellant's mouth touched his lips. Id.

J.W. also described an incident that happened in the living room of his house while he was watching T.V. Id. at 067. J.W. described that he had been laying on his left side and Appellant laid down on his left side behind J.W. Id. Appellant had J.W. lie on his back and put his hand on J.W.'s penis, before placing his mouth on J.W. penis and moving it up and down. Id. Detective Huth testified that she asked J.W. if anyone had ever touched his butt and J.W. told her that no one had touched his butt or buttocks. Id. at 069. Detective Huth testified that J.W. told her that Appellant had had inappropriately touched him on ten occasions. Id.

SUMMARY OF THE ARGUMENT

This Court should affirm Appellant's Judgment of Conviction as the district court did not abuse its discretion by denying Appellant's Motion to Withdraw Guilty Plea. First, Appellant failed to support his claim with specific citations to the record or cogent argument demonstrating a fair and just reason for withdrawing his plea. Second, Appellant's claims were belied by the record as Appellant represented to the court several times that his counsel prepared him prior to the settlement conference, he was aware of the charges against him, and he was aware of the State's evidence against him. Therefore, this Court should affirm Appellant's Judgment of

Conviction as the district court did not abuse its discretion by denying Appellant's Motion to Withdraw Guilty Plea.

ARGUMENT

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY DENYING APPELLATE'S MOTION

Appellant claims that the district court district court abused its discretion by denying his presentence motion to withdraw his guilty plea. AOB at 6.

Pursuant to NRS 176.165, a defendant may move to withdraw a guilty plea prior to sentencing. “[A] district court may grant a defendant’s motion to withdraw his guilty plea before sentencing for any reason where permitting withdrawal would be fair and just.” Stevenson v. State, 131 Nev. 598, 604, 354 P.3d 1277, 1281 (2015). On review of a district court’s decision regarding such a motion, this Court gives deference to the findings of the district court provided they are supported by the record. Id. at 604, 354 P.3d at 1281.

To determine whether allowing a defendant to withdraw a guilty plea before sentencing would be fair and just, the district court must consider the totality of the circumstances. Id. at 598, 603, 354 P.3d 1277, 1281 (2015). Whether or not a guilty plea was freely and voluntarily entered is still a relevant factor, but it is not to be the district court’s “exclusive focus” when considering such a motion. Id. Furthermore, permitting a defendant to withdraw a guilty plea without would “allow the solemn entry of a guilty plea to ‘become a mere gesture, a temporary and meaningless

formality reversible at the defendant's whim.” 131 Nev. at 605, 354 P.3d at 1282 (quoting United States v. Barker, 514 F.2d 208, 222 (D.C. Cir. 1975)).

The standard described above also applies to Alford pleas. North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160 (1970). A plea of guilty pursuant to Alford dictates that courts may constitutionally accept guilty pleas from defendants who simultaneously protest their innocence when the defendant “intelligently concludes that his interests require entry of a guilty plea and the record before the judge contains strong evidence of actual guilt.” Id. at 37, 91 S. Ct. at 167. A guilty plea pursuant to Alford is still, by definition, a plea of guilty and has been deemed constitutionally valid when entered into to avoid, for example, a harsher penalty. Tiger v. State, 98 Nev. 555, 654 P.2d 1031 (1982); Gomes v. State, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

Here, Appellant alleges that the Covid-19 pandemic and his “inability to communicate” caused him to enter into a Guilty Plea he believed was not in his best interest. AOB 6. However, Appellant’s claim is meritless as it is devoid of any factual support and belied by the record.

As an initial matter, Appellant failed to support his claim with specific citations to the record or cogent argument demonstrating how the district court abused its discretion or a fair and just reason for withdrawing his plea. Appellant devotes only three sentences to his argument. AOB 6. Appellant fails to explain how

the pandemic affected the plea process, or what he means by his “inability to communicate”. AOB 6. Appellant simply states that he “eventually believed” his plea was “not in his best interest”. Id. However, this does not amount to a fair and just reason for withdrawing his plea, rather is nothing more than buyer’s remorse. Therefore, this claim is without merit because Appellant fails to demonstrate a fair and just reason for the district court to have granted his Motion to Withdraw Guilty Plea.

Next, the district court did not abuse its discretion in denying Appellant’s Motion to Withdraw his guilty plea as his claims were belied by the record. First, Appellant represented to the court several times that his counsel prepared him prior to his settlement conference. By Appellant’s own admissions contained within his Motion to Withdraw his Guilty Plea, Appellant’s counsel, Ms. Radosta, met with Appellant various times to discuss discovery, defenses, legal issues, and possible resolution including trial or negotiations. AA 034-035. Appellant also acknowledged Ms. Radosta reached out to his parents, per Appellant’s request, to interview them. Id. at 035. Appellant acknowledged that Ms. Radosta also requested additional discovery from the State. Id. In addition, Appellant’s Guilty Plea Agreement states that Appellant discussed with his attorney any possible defenses, defense strategies and circumstances which might be in his favor and that all of the foregoing elements,

consequences, rights and waiver of rights have been thoroughly explained to him by his attorney. AA 013-014.

Further, at the time of the settlement conference, Appellant was fully aware of the case against him and was not rushed into the agreement. Appellant understood the agreement and the consequences of his plea as Appellant participated, along with his counsel, in a robust settlement conference with the State. The result of the settlement conference was such that Appellant, by virtue of the plea negotiations, was permitted to enter an Alford Plea to one count of Attempt Sexual Assault with a Minor Under Fourteen Years of Age and one count of Attempt Lewdness with a Child Under the age of 14, to avoid spending the rest of his life in prison. AA 018-019. The State made the following statement regarding the settlement conference prior to the court's ruling on Appellant's Motion to Withdraw.

MS. DiGIACOMO: No, Your Honor. I would just put that this was a long settlement conference, and -- it was Judge Barker, and we went back and forth and back and forth, and they got me down from -- my offer was 16 to 40 years or 110 to life, and I thought this was a good resolution for him, as well as both parties, and they got me to agree to an Alford, so. I understand what he is saying, but I don't think that there's any basis in reality for the Defendant's beliefs regarding how the settlement conference went, and how these negotiations came about. He was not rushed, and I think he's just looking for anyway to get out of the plea because it is buyer's remorse, and with that, I'll submit it.

RA 191-192.

Moreover, the transcript of the entry of plea further belied Appellant's claim that he did not enter into his plea freely and voluntarily, and with a complete understanding of what he was doing.

THE COURT: Do you have any sort of learning disability?

MR. MEDINA: No, sir.

THE COURT: Do you read, write and understand the English language?

MR. MEDINA: Yes.

THE COURT: Have you been treated recently for any mental illness or addiction of any kind?

MR. MEDINA: No, sir.

THE COURT: Has anyone ever suggested that you should be treated for a mental health or emotional condition?

MR. MEDINA: No, sir.

THE COURT: Are you currently under the influence of any drug, medication, or alcoholic beverage?

MR. MEDINA: No, sir.

THE COURT: Have you been on any medication during your time at the Jail?

MR. MEDINA: No, sir.

THE COURT: Prior to being in custody, did you take any mental health medications?

MR. MEDINA: No, sir.

THE COURT: Do you understand what's happening this afternoon?

MR. MEDINA: Yes, sir, I do.

THE COURT: Ms. Rodosta, have you observed any cognitive difficulties with Mr. Medina?

MS. RADOSTA: No, Your Honor.

THE COURT: Thank you. Do you understand the charges contained in the Amended Indictment?

MR. MEDINA: I do.

THE COURT: Have you discussed this case with your attorney?

MR. MEDINA: I did.

THE COURT: Based on the totality of the circumstances, are you satisfied with the representation and advice given to you by your attorney?

MR. MEDINA: Yes, sir.

THE COURT: As to the charges contained in the Amended Indictment, how do you plead guilty or not guilty?

MR. MEDINA: I enter a Plea by Alford.

THE COURT: Oh, thank you, I apologize for not stating that, thank you. Are you making this plea both freely and voluntarily?

MR. MEDINA: Yes, sir.

THE COURT: Has anyone forced or threatened you, or anyone close to you, to get you to enter this plea?

MR. MEDINA: No, sir.

THE COURT: Has anyone made you promises, other than what's in the Guilty Plea Agreement, to get you to enter this plea?

MR. MEDINA: No, sir.

THE COURT: I have before me a written Guilty Plea Agreement. Did you authorize your Attorney to sign it on your behalf?

MR. MEDINA: Yes, sir, I did.

THE COURT: Before you authorize her to sign it on your behalf, did she read it to you and discuss it with you?

MR. MEDINA: She discussed it with me, yes.

THE COURT: Do you understand everything contained in the Guilty Plea Agreement?

MR. MEDINA: I understand.

...

THE COURT: And you have made a determination that it is in your best interest to accept the plea negotiations and enter this type of guilty plea, is that right?

MR. MEDINA: I believe so, yes.

THE COURT: And one of the reasons you decided to do this is to avoid the possible harsher penalty if you were convicted of the original charges at trial, correct?

MR. MEDINA: I'm sorry, one more time.

THE COURT: Oh sure, no problem. One of the reasons you decided to do this is to avoid the possible harsher penalty if you were convicted of the original charges at trial, correct?

MR. MEDINA: Okay. That's correct.

AA 019-025.

As Appellant's claims were belied by the record, there was no legal basis for Appellant's Motion to be granted and the district court denied Appellant's Motion.

AA 046-047. Thus, the district court did not abuse its discretion by denying Appellant's Motion.

Lastly, on appeal Appellant alleges he was unable to communicate. AOB 6. To the extent that Appellant alleges he was unable to communicate with the court, this claim is belied by the record as Appellant made a statement during the hearing was held on July 8, 2021 to review Appellant's Motion to Withdraw his guilty plea. During the hearing Appellant represented to the court that he "was pressured because "we kept going back and forth with no agreement", alleging he "felt like I had to

take the case into [his] hands with any – without any legal assistance”. RA 192-193. Further, Appellant’s claims were belied by the record as he had not only made several representations that he had been properly prepared for the settlement conference, but also affixed his signature to a Settlement Conference Acknowledgement, representing that Appellant was informed prior to the settlement conference that it was voluntary, and he could stop participating in the settlement at any time. RA 171-174.

Additionally, Appellant alleges on appeal that he “eventually believed” his plea was “not in his best interest”. AOB 6. To the extent that Appellant is alleging that he did not enter his guilty plea believing it was in his best interest, this claim is also belied by the record. First, Appellant pled guilty pursuant to the Alford decision, acknowledging the State had sufficient evidence against him and as such, this plea was in his best interest. AA 008-013.

CONSEQUENCES OF THE PLEA

By pleading guilty pursuant to the Alford decision, it is my desire to avoid the possibility of being convicted of more offenses or of a greater offense if I were to proceed to trial on the original charge(s) and of also receiving a greater penalty. I understand that my decision to plead guilty by way of the Alford decision does not require me to admit guilt, but is based upon my belief that the State would present sufficient evidence at trial that a jury would return a verdict of guilty of a greater offense or of more offenses than that to which I am pleading guilty. I understand that by pleading guilty I admit the facts which support all the elements of the offense(s) to which I now plead as set forth in Exhibit "I".

AA 009.

Further, it should be noted that the State's Motion to Admit Evidence of Other Crimes, Wrongs or Acts was granted prior to Appellant entering into his Guilty Plea and Appellant was aware of this fact. RA 081-168. The court granted the State's motion, which permitted the State to admit evidence of Appellant's prior sexual offense upon a minor at trial. Id. As such, Appellant clearly entered into his guilty plea believing it was in his best interest. While he may have felt differently after pleading guilty, this would amount to nothing more than buyer's remorse.

Appellant has failed to demonstrate a fair and just reason for the district court to have granted his Motion to Withdraw Guilty Plea. Appellant's claims were belied by the record and his further claim on appeal are also belied by the record. Rather, Appellant negotiated with the State, weighed the factors and decided to accept the State's offer freely and voluntarily.

Therefore, the district court properly found that Appellant entered his Guilty Plea freely and voluntarily. Thus, this claim is without merit.

CONCLUSION

Wherefore, the State respectfully requests that Appellant's Judgment of Conviction be AFFIRMED.

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Dated this 2nd day of May, 2022.

Respectfully submitted,

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

BY */s/ Karen Mishler*

KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #013730
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500

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 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page and type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points, contains 4,023 words and 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 2nd day of May, 2022.

Respectfully submitted,

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

BY */s/ Karen Mishler*

KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #013730
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on May 2, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

MICHAEL SANFT, ESQ.
Counsel for Appellant

KAREN MISHLER
Chief Deputy District Attorney

/s/ E. Davis

Employee, Clark County
District Attorney's Office

KM/Elizabeth Turner/ed