IN THE SUPREME COURT OF THE STATE OF NEVADA

ADAM ANTHONY BERNARD,

Appellant,

vs.

Supreme Court Case No. 83323

THE STATE OF NEVADA,

Respondent.

RESPONDENT'S ANSWERING BRIEF

On Appeal from the Ninth Judicial District Court
County of Douglas, State of Nevada
Case No. 18-CR-0104

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Statement of the Issues

1. After the defendant plead guilty pursuant to *Alford*[1] to one count of Voluntary Manslaughter, and failed to raise any objections at sentencing, were any issues preserved for appellate review?
2. Did the district court commit plain error at the defendant's sentencing hearing?

Statement of the Case

On July 9, 2017, the defendant got in to a physical altercation with his victim Brian Cook. Video evidence obtained from a nearby home security camera showed the defendant repeatedly hitting and kicking Brian in the head as Brian lay motionless in the street. Brian was transported to Renown hospital where, on July 31, 2017, he died from his injuries.

On March 13, 2018, the defendant was charged by criminal complaint with one count of Open Murder, in violation of NRS 200.010 through NRS 200.090, a category A felony.

On June 29, 2018, a preliminary hearing was conducted in the East Fork Justice Court, after which, the defendant was bound over to the Ninth Judicial District Court, Department II, to stand trial.

On July 16, 2018, the defendant was arraigned and entered a plea of Not Guilty and a jury trial was scheduled.

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[1] *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160 (1970).

On May 4, 2021, an amended information was filed charging the defendant with one count of Voluntary Manslaughter, a violation of NRS 200.040, NRS 200.050 and NRS 200.080, a category B felony.

On May 5, 2021, a guilty plea agreement was filed in which the defendant agreed to plead guilty pursuant to *Alford* to the reduced charge of Voluntary Manslaughter. The parties were free to argue for any lawful sentence and they further agreed to request the defendant remain at liberty pending his sentencing date.

On July 1, 2021, the defendant was sentenced to a maximum term of 120 months in prison with a minimum parole eligibility of 48 months, and a fine of $10,000, mandatory fees and assessments totaling $178, and $500 for reimbursement of costs for appointed counsel. The judgment of conviction was filed the following day on July 2, 2021.

Statement of Facts

On July 9, 2017, deputies with the Douglas County Sheriff's Office (DCSO) were dispatched to a residence regarding two people dragging a lifeless body out of the street. Joint Appendix (JA) Vol. II, 296. One of the two people was the defendant, Adam Bernard. JA Vol. II, 296. The victim was Brian Cook. JA Vol. II, 259, 282. When deputies arrived, Brian was unconscious, had blood on his lip and right nostril and a large amount of blood on his forehead running back into

his hair. JA. Vol. II, 296. Brian was transported via Care Flight to Renown Regional Medical Center where he died on July 31, 2017. *Id*. The defendant and victim knew each other and were co-workers. *Id*. On July 9, 2017, Brian and the defendant got into a fight after arguing earlier in the day. *Id*. The defendant initially stated that Brian had threatened him and grabbed his neck and that he punched Brian one time and Brian fell to the ground. *Id*.

On October 10, 2017, the defendant was interviewed by a DCSO investigator after additional information was discovered about the fight. JA Vol. II, 296-297. The defendant again discussed the threats Brian made but this time stated that he punched Brian two times, that Brian fell to the ground, that the two wrestled, and he punched Brian a third time, knocking Brian unconscious. JA Vol. II, 297. Later, the DCSO investigator obtained video surveillance from a nearby house and his report stated that the video showed Brian arriving at the residence where the defendant was staying; the defendant then approached Brian; the two began to fight and wrestle with each other; the defendant punched Brian knocking him to the ground; then the defendant knelt down and punched Brian in the head, face, and upper torso area approximately 23 times during which Brian appears to be unconscious and not fighting back; then the defendant kicked Brian in the face/head/upper torso area before being pulled back by a friend. JA Vol. II, 296, 297. A few seconds later, the defendant walked back to Brian and kicked him

one more time in the head. JA Vol. II, 297.

Having obtained video of the incident, on November 3, 2017, the defendant was interviewed a third time and again changed his story. JA Vol. II, 297. He stated that Brian was on top of him when they were on the ground, that he never punched Brian while they were standing, that he never kicked Brian, that he just nudged him with his foot. *Id*. When confronted with the video, the defendant stated, "it's like a blacked-out moment then." *Id*. at 298.

The defendant eventually entered into a plea agreement wherein he plead guilty pursuant to *Alford* to Voluntary Manslaughter and both parties were free to argue for any lawful sentence. JA Vol. II, 267-292. Consistent with Nevada law, the plea agreement included the right of the State to call victims to make impact statements at sentencing. JA Vol. II, 262. The defendant further acknowledged that he could be punished by up to ten years in prison, a fine of up to $10,000, and ordered to pay restitution. JA Vol. II, 262.

A sentencing hearing took place on July 1, 2021. JA Vol. III, 374. The Court received the defendant's sentencing memorandum and supporting documents without objection and explicitly stated it would consider those documents when sentencing the defendant. JA Vol. III, 381. Defense counsel then began her sentencing argument by directly engaging the family and friends of Brian, apologizing for what they were about to hear and stating that, "those of you

who truly knew Brian already knew most of the things that I'm going to share." JA Vol. III, 393. Defense counsel went on to paint Brian in a negative light, not just for his actions on the day the defendant beat him as he lay unconscious, but for prior behavior as well. JA Vol. III, 393-395. Based on statements made in police reports, defense counsel spoke to the Court about what Brian's family thought and felt about Brian. JA Vol. III, 394-395. Defense counsel further opined that based on her reading of interviews she felt that she knew what Brian would have wanted the Court to do at sentencing. JA Vol. III, 396. Later, defense counsel offered the testimony of a psychologist and told the Court that the testimony was, "important to offer an explanation to the family and friends of both Brian and Adam that can bring them peace and healing." JA Vol. III, 401-402. With respect to letters submitted to the Court by Brian's family, defense counsel then stated that, "I know that much of the desire to have Adam sentenced to the maximum allowed is based on misunderstanding." JA Vol. III, 402. Defense counsel also expressed her opinion as to what medical information she felt Brian's family needed to know. JA Vol. III, 455. Defense counsel continued to engage Brian's family and friends by presenting Brian's medical information and informing the court that she was offering the information, "because I think it's absolutely necessary for Brian's family, for his friends, for Adam's friends and family, for all of the people who got bits and pieces out of the newspaper about what happened that night and what

caused Brian's death." JA Vol. III, 455-458.

The State argued for a maximum sentence based on the defendant's failure to ever really accept responsibility or acknowledge wrongdoing, the defendant's false and misleading statements to law enforcement, and the brutality of the attack. JA Vol. III 464-473. The State presented a chronology of the defendant's lies and false statements. JA Vol. III, 464-471. The State played video of the incident for the Court and demonstrated how many of the defendant's statements of the incident were contradicted by the video evidence. JA Vol. III, 464-471. The State also played the video of the incident to demonstrate in a way words cannot, how brutal the defendant's beating of Brian was. JA Vol. III, 472. The State argued that the video showed the defendant inflicting a series of 29 brutal punches to Brian's head, seven brutal kicks to Brian's head, nine additional punches and one more kick to Brian's head, all while Brian lay unconscious. JA Vol. III, 472. The beating did not cease until a third individual intervened. JA Vol. III, 472. And, finally, the video showed that, after a break where the defendant walked away from Brian's motionless body, the defendant returned for one more kick to Brian's head with enough force that it caused Brian's body to heave from the force. JA Vol. III, 473. Finally, the State argued that many of the factual assertions contained within the defendant's sentencing memorandum failed to reference any testimony, reports, or evidence and thus, should be given little to no weight as they were merely

argument. JA Vol. III, 473-474.

The State called six witnesses to make impact statements. JA Vol. III, 375, lines 6-11. Brittney Martinez, Brian's sister, provided the Court with a victim impact statement. JA Vol. III, 499. Ms. Martinez, clearly not referring to the defendant's looks, but rather to his behavior, called him ugly:

> So ugly is a word defined as unpleasant or repulsive or morally repugnant. You, Adam, to me are the true definition of ugly. You are a truly ugly individual that not only took the life of another human being but also made the inhuman decision to coward out of taking responsibility for your own actions in which you demonstrated the ugliest kind of behavior humanly possible.

JA Vol. III, 499. Then, after recounting her understanding of the beating the defendant gave to her unconscious brother, Ms. Martinez further stated, "Only a despicable human being would do such things. Only a coward would do such things. And you, Adam Bernard, you did things." JA Vol. III, 499.

Thomas Nobriga, Brian's stepfather, provided the Court with a victim impact statement. JA Vol. III, 512. Mr. Nobriga informed the Court that he would read a written statement and then address some of the things he heard in the course of the sentencing hearing. JA Vol. III, 513. Mr. Nobriga then went on to address the comments he had heard defense counsel make in argument:

> …let me start out by saying this, Ms. Pence, I did not give you the right nor will I ever to address my family on what Brian would want. You did not know him. You represent a murderer. Your defense is not your life. It's our life. It is your job, You go home and do a, put one in a win column or a lose column. We go home to a life without our

loved one.

JA Vol. III, 517.

Again, directly addressing the comments made regarding Brian's family in argument, Mr. Nobriga continued:

> Ms. Pence addressed my family before she started her speaking about the case and said she knew it was going to hurt but it had to be heard, and she hoped that it would help ease the pain and understand in so many words why our son was dead. You didn't make it better. You made it worse for him.

JA Vol. III, 519.

Mr. Nobriga further described his anger at hearing a defense argument that seemed to blame Brian's death on his health issues but that omitted what he considered to be pertinent facts, such as the cause of death listed on Brian's death certificate. JA Vol. III, 519-520.

The defense raised no objections during the sentencing hearing.

Standard of Review

1. When a defendant fails to preserve claims for appeal by failing to make an appropriate objection, appellate review is generally precluded. *Leonard v. State*, 117 Nev. 53, 63 (2001). This Court retains discretion to review unpreserved claims, but only if there is plain error affecting the defendant's substantial rights. *Id*.

Summary of Argument

1. The defendant failed to raise any objections at sentencing and has therefore failed to preserve any issues for appeal. Further, the defendant's claims are rooted in speculation and/or are belied by the record. As a result, the defendant's conviction must be affirmed.

2. The district court did not commit plain error at sentencing because the court committed no error at all. The court properly considered and weighed all the evidence presented and received proper victim impact testimony.

Argument

1. The Defendant Failed To Preserve Any Issues For Appeal.

At the sentencing hearing, the defendant did not raise a single objection. "Generally, failure to object will preclude appellate review of an issue." *Leonard v. State*, 117 Nev. 53, 63, (2001). Because the defendant failed to raise any objections at his sentencing hearing, he did not preserve any issues for appeal. "This court does, however, have discretion to address issues not preserved for appeal where there is plain error affecting the defendant's substantial rights." *Id*.

In this case, the Court should not exercise its discretion to review the claims for plain error. As documented in the defendant's opening brief, the failure to object at sentencing was not inadvertent, but an intentional tactical decision made by counsel. "Counsel believed that objections to the court's failure to have

competently reviewed sentencing materials or to maintain decorum immediately prior to the pronouncement of Adam's sentence was against his best interest." Appellant's Opening Brief (AOB) pages 58-59. Plain error should not be considered when the failure to object is attributable to tactical choices of trial counsel. *See for example*: *Tabish v. State*, 119 Nev. 293, 326 (2003) (Maupin d*issenting opinion*, Leavitt *agreeing*); *Getz v. Palmer*, 11 F. Supp. 3d 1008 (D. Nev. 2014) (no error for state court to reject defendant's *Miranda* claim based on a finding that his decision to not raise the issue at trial was a tactical one, which forecloses a conclusion that admission of the statements at issue constituted plain error) (*reversed on other grounds*); *Berge v. Antrim*, 2011 WL 1212229 (D. Alaska March 30, 2011) (*unreported decision* cited pursuant to FRCP 32.1) (no plain error because the record did not rule out the possibility that attorney made a tactical decision to allow the jury to hear the disputed evidence and to allow defendant to be cross-examined regarding the statements); *State v. Winward*, 941 P.2d 627 (Utah Ct. App. 1997) ("the tactical decision not to object, thereby foregoing a ruling or instruction that may cure an error, constitutes knowing waiver, and we will decline to consider the claim of plain error in such instances"); *Moreno v. State*, 341 P.3d 1134, 1136 (Alaska 2015) ("Trial errors to which the parties did not object are reviewed for plain error… we held that plain error is "an error that (1) was not the result of intelligent waiver or a tactical decision not to object…");

State v. Gomez, 239 741 S.W.3d 733 (Tenn. 2007) (tactical decision not to object does not entitle defendant to relief under the plain error doctrine); *Wright v. State*, 980 A.2d 1020, 1023 (Del. 2009) ("…this Court has consistently held that a conscious decision to refrain from objecting at trial as a tactical matter is a waiver that will negate plain error appellate review."); *State v. Leroux*, 965 A.2d 495, 500 (Vt. 2008) ("We will not find plain error based on a deliberate tactical decision by counsel."); *State v. Perry*, 245 P.3d 961, 980 (Id. 2010) (before plain error doctrine applies, defendant bears the burden of persuading appellate court that failure to object was not a tactical decision).

The defendant failed to raise any objections at his sentencing hearing. Defense counsel intentionally raised no objections based on a tactical decision that this was in the defendant's best interest. Therefore, the claimed issues were not preserved for appellate review for either abuse of discretion or plain error. Therefore, the defendant's conviction should be affirmed.

2. There Was No Error At The Defendant's Sentencing Hearing.

The defendant raised no objections at his sentencing hearing. As a result, review for abuse of discretion is unavailable. *Leonard, supra*. Further, as argued above, plain error review is unavailable since the defendant's failure to object was the result of an intentional, tactical decision. Even if this Court applies plain error review to the defendant's sentencing hearing, the defendant is not entitled to relief

because there was no error.

The defendant spent much of his brief arguing his theories of self-defense and lack of causation for the death of his victim. Once the defendant entered his guilty plea, he waived any such claims. JA Vol. 2, 264:25-25, JA Vol. 2, 267:22-268:8, *Hubbard v. State*, 110 Nev. 671 (1994). The defendant further spent considerable time at sentencing and in his opening brief discussing testimony of Dr. McEllistrem that purported to explain in psychological terms why the defendant acted in the manner he did when he killed Brian Cook. However, as stated, the defendant waived any potential legal defenses and the testimony merely serves to help explain why the State was willing to enter in to a plea agreement for the lesser charge of voluntary manslaughter. It was not error for the court to give little or no weight to arguments that are contrary to the convicted offense.

The defendant cites to several cases for the proposition that, despite a failure to object, a judge's conduct may nevertheless be so prejudicial as to constitute plain error. While the concept is accurate, the factual setting of these cases is readily distinguishable from the facts herein. In *Parodi v. Washoe Medical Center, Inc*., 111 Nev. 365 (1995), the court made inappropriate comments to the jury venire that may have influenced the venire's perceptions of the significance of the trial. *Id*. at 367. In finding plain error, this Court noted how innocuous behavior in some circumstances may be prejudicial in a trial setting and how remarks by a

judge may have an effect on the average juror, who is a layman. *Id*. at 367-68. Similarly, in *Agee v. Lofton*, 287 F.2d 709 (8th Cir. 1961), the court was concerned about judicial comments that may have prejudiced one party in the minds of the jurors. *Id*. at 710. Finally, in *Oade v. State*, 115 Nev. 619 (1998), the judge repeatedly expressed his impatience with counsel in front of the jury, volunteered his opinion on evidence, and made other inappropriate comments to the jury. *Id*. at 623-24. This Court found that the trial judge's impatience with counsel may have adversely affected the jury's acceptance of Oade's defense. *Id*. at 623. In the instant case, however, there was no jury. The defendant has failed to show how the judge improperly influenced himself by any improper comments. The defendant was not prejudiced by any comments the judge made during the sentencing hearing.

A. The defendant has failed to meet his burden of showing error at his sentencing hearing. The district court properly considered all evidence and was properly within its discretion in sentencing the defendant.

The defendant's claim that the district court failed to consider mitigating evidence is belied by the record and unsupported by the facts and the law. The defendant's entire argument on this issue is based on a formal fallacy. It can be summarized as follows: 1) I presented mitigating evidence to the judge, 2) the judge sentenced me to a maximum sentence, 3) therefore, the judge did not consider my mitigating evidence. The argument fails to recognize that aggravating

evidence was also presented, that the judge was free to give whatever weight he felt appropriate to the evidence on both sides, and that aggravating evidence can be powerful enough such that even with mitigating evidence a defendant may properly receive a maximum sentence. In *Allred v. State*, 120 Nev. 410 (2004), this Court stated:

> Despite its harshness, "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.' " Additionally, we afford the district court wide discretion in its sentencing decision. We will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."

Id. at 420. In *Allred*, the defendant was convicted by a jury of battery with substantial bodily harm. *Id*. at 413. In closing arguments, the prosecutor argued the various different accounts of the offense that the defendant provided. *Id*. at 415. The court sentenced Allred to the maximum sentence because Allred had previous drug and alcohol abuse problems, prior arrests, and he severely injured the victim. *Id*. at 415. The Department of Parole and Probation recommended a lesser sentence but the court declined to follow it. *Id*. at 421. This Court stated, "[b]ecause Allred's sentence was within the statutory guidelines and does not shock the conscience, Allred's sentence does not constitute cruel and unusual punishment." *Id*. at 421. In the instant case, the defendant also had alcohol abuse

problems in that he was convicted of a DUI in 2014 and was acknowledged to have a BAC of .18 at the time he committed this offense. JA Vol. II, 296, 398. The defendant also had a prior arrest, for his DUI. JA Vol. II, 296. The defendant also severely injured his victim, he killed Brian Cook. Though *Allred* dealt with the Eighth Amendment Cruel and Unusual Punishment clause, it is instructive here to demonstrate that the sentence imposed in this case, similarly does not shock the conscience.

Defendant claims that the court "failed to consider and properly weigh the voluminous mitigating information presented." AOB 42. Defendant fails to appreciate the distinction between the quantity of evidence and the quality of evidence.

> Our system of justice rests on the general assumption that the truth is not to be determined merely by the number of witnesses on each side of a controversy. In gauging the truth of conflicting evidence, a jury has no simple formulation of weights and measures upon which to rely. The touchstone is always credibility; the ultimate measure of testimonial worth is quality and not quantity. Triers of fact in our fact-finding tribunals are, with rare exceptions, free in the exercise of their honest judgment, to prefer the testimony of a single witness to that of many.

Weiler v. United States, 323 U.S. 606, 608, 65 S. Ct. 548, 549–50 (1945). While both parties argued the evidence in a manner favorable to their positions, it was ultimately up to the judge to weigh the evidence and sentence the defendant consistent with his best judgment.

The defendant alleges, without a shred of evidence, that the judge failed to consider the eight character letters that were submitted on his behalf, the victim's conduct, the defendant's conduct while on pre-release conditions, the injuries inflicted by the defendant on the victim, as well as other factors. The defendant accuses the judge of basing his sentence solely on the video of the incident. Again, not a shred of evidence supports these accusations. In fact, the claims are belied by the law and the record. A judge is presumed to be unbiased. *Rivero v. Rivero*, 125 Nev. 410, 439 (2009) (*overruled on other grounds Romano v. Romano*,138 Adv. Op. 1, 501 P.3d 980 (2022)). "Trial judges are presumed to know the law and to apply it in making their decisions." *Walton v. Arizona*, 497 U.S. 639, 653, 110 S. Ct. 3047, 3057 (1990) (*overruled on other grounds Ring v. Arizona*, 536 U.S. 584, 122 S. Ct. 2428 (2002)). "[W]e presume that the sentencing judges understood and met their responsibilities." *Colwell v. State*, 118 Nev. 807, 814 (2002).

In addition to the legal presumptions of regularity, the record itself belies the defendant's claims. "The Court has received the sentencing memorandum and documentation in support. The Court has considered –has reviewed it and now will consider it when the Court sentences Mr. Bernard." JA Vol. III, 381. With respect to the letters in support of the defendant the court stated, "[t]he Court has received those letters in support. I've reviewed them. I will consider them for purposes of sentencing Mr. Bernard." JA Vol. III, 382. While the court, in

imposing sentence, mentioned only the video evidence, it is again a fallacy to conclude that it therefore did not consider any other evidence, both that presented by the defendant and that presented by the State. Of course, even a single piece of aggravating evidence may be sufficiently weighty to merit a maximum sentence despite numerous pieces of mitigating evidence. In this case, the video of the beating inflicted by the defendant presented just such a piece of evidence[2]. The court's pronouncement of sentence was concise, comprising just 2 pages of a 150 page sentencing transcript. JA Vol. III, 522-523. The court cannot, and need not, address every, or even any piece of evidence or argument that is presented when it pronounces judgment. *Campbell v. Eighth Jud. Dist. Ct. In & For Cty. of Clark*, 114 Nev. 410, 414 (1998) ("*Brown* suggests, but does not require, that the district court state its reasons in imposing sentence. We decline to impose such a requirement in this state; this action is best left to the legislature. Therefore, we reject this contention").

The defendant further accuses the sentencing judge of failing to remain neutral and objective. AOB 47. As noted above, a judge is presumed to be unbiased. Defendant fails in any meaningful way to rebut this presumption. The

[2] A motion to transmit the video exhibit was granted on May 12, 2022. Due the size of the digital video file, when viewing the video, it will play more smoothly if it is first transferred to a computer hard drive and then played from the hard drive. JA Vol. I, 203-204.

defendant merely speculates that the judge did not consider evidence or remain neutral and bases that speculation on the fact that the judge did not give him a sentence that he considers fair. Certainly, more should be required for a claimant to accuse a judge of bias and neglect of duty. Again, the defendant fails to consider the more obvious conclusion, that the court simply did not weigh the evidence in a manner that the defendant desired.

The defendant also complains about the presentation of an enhanced video of the crime that was played during the sentencing hearing. In his opening brief, the defendant himself acknowledges the relevance and importance of the enhanced video noting that in the original video viewed on scene, "Adam and Brian are lost to darkness in the video." AOB 18. The defendant raised no objection at the sentencing hearing to the presentation of the enhanced video. Further, the defendant failed to preserve any issues related to his objection to the video at the pre-trial motions hearing. Once the defendant entered his guilty plea, he waived any such issues. *Kirksey v. State*, 112 Nev. 980, 999 (1996) ("[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea."). In this case, the admissibility of the video

was the subject of a pre-trial motion. After a hearing on the issue, the district court found that there was no genuine issue as to the video's authenticity and granted the State's motion to admit the video at trial. JA. Vol. II, 256-258. Further, the standard for admissibility at a sentencing hearing is significantly less than that for a trial. "So long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence, this court will refrain from interfering with the sentence imposed." *Silks v. State*, 92 Nev. 91, 94, (1976).

Finally, the defendant claims that the court offended the Legislature's creation of a sentencing range. Defendant cites no authority for a claim of offending the Legislature, and neither is the State aware of any. In determining sufficiency of the evidence claims, this Court does not reweigh the evidence or evaluate the credibility of witnesses because that is the responsibility of the trier of fact. *Clancy v. State*, 129 Nev. 840, 848 (2013). If this is true for guilt phase decisions where jurors are bound to apply the facts to the law, then it must apply even more so to the discretionary decisions of sentencing judges in non-capital cases. In addition, both his guilty plea agreement and at his plea canvass the defendant acknowledged that he could receive the maximum sentence that he, in fact, received in this case. JA Vol. II, 262, 280.

The defendant's entire argument accusing the sentencing judge of bias, AOB 47, 48, 54, neglect of duty, AOB 47, 51, 54, incompetence and lack of diligence, AOB 53, is entirely based on speculation and is, not only unsupported by the record, but also actually belied by the record. Since the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence, this court should refrain from interfering with the sentence imposed. *Silks*, *supra* at 91. The defendant's sentence in this case should be affirmed.

B. The defendant has failed to meet his burden of showing error at his sentencing hearing. The district court properly conducted the sentencing hearing, and received and considered victim impact testimony.

i. <u>The record does not reflect inappropriate comments from the gallery.</u>

The defendant claims members (plural) of the audience made audible, inappropriate comments to defense counsel's argument. The defendant made no contemporaneous objection, comment or statement of any kind to the court. The transcript does not reveal any such occurrence. The defendant made no offer of proof in the district court. The defendant has provided no audio or video from the in-court recording system to support this claim. In fact, it appears that the alleged comments were not loud or disruptive, as "counsel assumed that the court had not heard them." AOB at 55. The defendant has failed to show how any such comments prejudiced his sentence since the judge, apparently, did not hear them.

The defendant has deprived the district court and this Court of the ability to determine whether any statements were made, who made them, what those statements were, whether any statements were appropriate, inappropriate, prejudicial, or non-prejudicial. "[I]f the defendant wished to make a record for later appellate review, an offer of proof was required." *Foreman v. Ver Brugghen*, 81 Nev. 86 (1965) (*quoting Charleston Hill Nat. Mines, Inc. v. Clough*, 79 Nev. 182 (1963)). Accordingly, it is impossible for this Court to review the defendant's claim and determine whether there was any error at all.

Defense counsel claims she brought the alleged comments to the attention of the court, but the context bears some scrutiny. The State called Mr. James Sonstag as a witness. JA Vol. III, 488. Mr. Sonstag was the godfather and uncle of Brian. JA Vol. III, 489, 490. Thus, Mr. Sonstag's testimony was provided not pursuant to NRS 176.015(3), but pursuant to NRS 176.015(6). JA Vol. III, 489-491. Defense counsel was asked, "Ms. Pence, do you have any sense of what this witness is going to say?" JA Vol. III, 491. Defense counsel answered in response, "[y]our Honor, I don't. I did hear some of the comments he made during the proceedings so far so I can imagine. But, I do want this Court to know I don't object to having him provide testimony. This is a time that everyone should be heard." JA Vol. III, 491. Again, there was no offer of proof of what was said, when it was said, how it was determined this witness made any statements from the gallery, or that they

were inappropriate or prejudicial in any way. Defense counsel's statement can in no way be characterized as a plea to the court to take any type of action. The context was solely to determine whether or not the witness would be allowed to provide testimony. The defendant claims that the court "failed to require dignified, courteous behavior from the persons sitting behind the bar in the courtroom, once aware of said misconduct." AOB 56. The defendant failed to make any adequate record for review or preserve any issue for appeal regarding gallery behavior prior to defense counsel's statement quoted above regarding the testimony of Mr. Sonstag. The defendant alleges that later, some unnamed individual(s) in the gallery commented, "you're damn right you won't." AOB 36. Defendant cites to nothing in the record in support of this claim and raises it for the first time in his opening brief. The record is devoid of any such statement or conduct for this Court to review. The defendant has utterly failed to preserve this issue for appeal.

ii. <u>The court received an appropriate victim impact statement responding to comments directed toward the victims by defense counsel.</u>

Next, the defendant claims the court failed to control witnesses during their victim impact statements. The defendant claims, without citing to any authority, that it was improper for Brian's father, Thomas Nobriga, to address defense counsel directly in his victim impact statement. Again, the defendant waived all issues pertaining to these claims when counsel made a tactical decision to raise no objection. In any case, the claims are without merit. Further, Article 1, section

8A(1)(h) of the Constitution Of The State Of Nevada guarantees the right of a victim to be reasonably heard at any sentencing hearing. NRS 176.015 requires a sentencing court to afford a victim an opportunity to appear personally, by counsel or by personal representative; reasonably express any views concerning the crime, the person responsible, the impact of the crime on the victim and the need for restitution.

In her sentencing argument, defense counsel repeatedly, directly addressed the victim's family, opined on what the family knew and felt, touted her knowledge of the victim she never met and what the victim would have wanted, provided her opinion to the friends and family of Brian what she thought was important for them to hear in order to bring them peace and healing, expressed her opinion as to what medical information Brian's friends and family needed to know, and tried to delegitimize the family's desire for a maximum sentence by telling them that their opinions were based on a misunderstanding.

Counsel's comments were a direct assault on the thoughts and feelings of the victims. For example, stating, "those of you who truly knew Brian already knew most of the things that I'm going to share," tells the victims that if they disagree with counsel's characterizations then they do not truly know their beloved family member. JA Vol. III, 393. Defense counsel further opined that based on her reading of interviews she felt that she knew what Brian would have wanted the

Court to do at sentencing, suggesting that she knows better than Brian's family what Brian would have wanted. JA Vol. III, 396. Defense counsel offered the testimony of a psychologist and told the Court that the testimony was, "important to offer an explanation to the family and friends of both Brian and Adam that can bring them peace and healing," suggesting that she knows better than the family members do, what they need to address the grief they are feeling. JA Vol. III, 401-402. With respect to the letters submitted to the Court by Brian's family, defense counsel stated that, "I know that much of the desire to have Adam sentenced to the maximum allowed is based on misunderstanding," asserting that she knows better than the family members their own thought processes and desires regarding sentencing the man that beat their loved one to death. JA Vol. III, 402.

The impact of a homicide on family and friends of a victim does not end with the last beat of the heart. It continues forever. The impact can include the loss of not having a loved one present for birthdays, graduations, weddings, not having them present to hold or grow old with, and much more. One of the direct impacts on surviving victims of a charged homicide is the judicial proceedings that follow. The impact on the victims includes the emotional trauma of having to endure the entire criminal justice process from notification of death, through investigation, initial appearance, preliminary hearing, evidentiary hearings and sentencing. Every bit of this affects a victim. And, in this case, as shown above,

defense counsel's comments could reasonably have caused increased trauma to the victims from the crime.

Brian's step-father, Thomas Nobriga properly expressed the impact of sitting in a sentencing hearing and listening to defense counsel speak for him, his family, and his deceased son and further lecture them on what they needed to hear, for example: "those of you who truly knew Brian already knew most of the things that I'm going to share." JA Vol. III, 393; "[h]is drinking changed him, but I don't believe for a minute that if Brian was here he would want Adam to go to prison," JA Vol. III, 396; "[t]hat same information, Your Honor, is important to offer an explanation to the family and friends of both Brian and Adam that can bring them peace and healing," JA Vol. III 401-402; "I know that much of the desire to have Adam sentenced to the maximum allowed is based on misunderstanding." JA Vol. III, 402; "and one of the things that I think the family and friends of both of these young men need to know were the information that came out of the hospital records because they help explain Brian's death, and I think that they will help everyone process their own loss," JA Vol. III, 455. Defense counsel continued to engage Brian's family and friends by presenting Brian's medical information and stating, "I offer this information because I think it's absolutely necessary for Brian's family, for his friends, for Adam's friends and family, for all of the people who got bits and pieces out of the newspaper about what happened that night and

what caused Brian's death." JA Vol. III, 458.

Though not even addressed in his argument, in his factual recitation the defendant further claimed several witnesses in their victim impact statements improperly called him names, "ugly, a despicable human being, a coward, and a murderer." AOB 37. These comments were proper comments about the crime and the person responsible. NRS 176.015. For example, Brian's sister, Brittney Martinez testified:

> So ugly is a word defined as unpleasant or repulsive or morally repugnant. You, Adam, to me are the true definition of ugly. You are a truly ugly individual that not only took the life of another human being but also made the inhuman decision to coward out of taking responsibility for your own actions in which you demonstrated the ugliest kind of behavior humanly possible.

JA Vol. III, 499. Clearly, Brittney was speaking of the defendant's conduct, not his looks. In *Dieudonne v. State*, 127 Nev. 1 (2011), cited by the defendant, the victims provided unsworn impact testimony that contained profanity, threats, and the use of a racially based disparaging term directed at the defendant. *Id*. at 3-4. This Court held it was error to receive unsworn victim impact testimony but that the error was not prejudicial and did not affect the defendant's substantial rights. *Id*. at 9. This Court stated, "[w]hile we agree that the victim impact statements contained instances of harsh and inappropriate language, we conclude that this language does not render the proceeding fundamentally unfair." *Id*. at 10. By contrast, this case did not involve profanity, threats, and the use of racially based

disparaging terms. Rather, in this case the victims appropriately used strong language describing the defendant based on his *conduct* in this case. As a result, there was no error.

Conclusion

The defendant failed to raise a single objection at his sentencing hearing. Therefore, the issues raised may not be reviewed for abuse of discretion. Further, the defendant's decision not to raise any objections at his sentencing hearing was a tactical one. Therefore, the issues raised should not be reviewed for plain error. Nevertheless, the defendant has failed to meet his burden of showing any error at all.

The defendant's claims that the sentencing judge did not consider his mitigating evidence are speculative and are belied by the record. The defendant fails to consider that even a single piece of aggravating evidence may be sufficiently weighty to merit a maximum sentence despite numerous pieces of mitigating evidence. This case presented just such a circumstance. The only thing the sentencing judge failed to do was to weigh the evidence in the manner the defendant wished him to do. Further, the defendant spent much of his brief arguing his theories of self-defense and lack of causation for the death of his victim. Once the defendant entered his guilty plea, he waived any such claims. This Court should decline the defendant's request that the Court now entertain

these arguments to re-weigh the evidence and disturb the sentencing court's judgment in this matter.

The defendant's claim that the court below failed to maintain decorum at the sentencing hearing is belied by the record. There are no facts in the record to support this claim. Defense counsel made the decision to directly address and make argument to the victims in this case. The defendant cannot now complain when those victims express at sentencing the impact to them of these comments. Defense counsel's naked allegations are insufficient to grant relief as there is nothing in the record to suggest that any alleged statements that might have been made in the gallery were heard by the judge, prejudiced the defendant, or affected any substantial rights.

For the above reasons, the defendant's sentence in this matter should be affirmed.

DATED this 25th day of May, 2022.

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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 proportionately spaced typeface using Microsoft Word 2016 in 14 point Times New Roman.

I further certify this brief complies 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:

[ ] Proportionately spaced, has a typeface of 14 points or more, and contains _____ words; or

[X] Does not exceed 30 pages.

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 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 25th day of May 2022.

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ADDENDUM

Relevant Parts of Statutes Relied Upon

Nevada Revised Statutes

NRS 176.015 Prompt hearing; court may commit defendant or continue or alter bail before hearing; statement by defendant; presentation of mitigating evidence; rights of victim; notice of hearing.

1. Sentence must be imposed without unreasonable delay. Pending sentence, the court may commit the defendant or continue or alter the bail.

2. Before imposing sentence, the court shall:

(a) Afford counsel an opportunity to speak on behalf of the defendant; and

(b) Address the defendant personally and ask the defendant if:

(1) The defendant wishes to make a statement in his or her own behalf and to present any information in mitigation of punishment; and

(2) The defendant is a veteran or a member of the military. If the defendant meets the qualifications of subsection 1 of NRS 176A.280, the court may, if appropriate, assign the defendant to:

(I) A program of treatment established pursuant to NRS 176A.280; or

(II) If a program of treatment established pursuant to NRS 176A.280 is not available for the defendant, a program of treatment established pursuant to NRS 176A.230 or 176A.250.

3. After hearing any statements presented pursuant to subsection 2 and before imposing sentence, the court shall afford the victim an opportunity to:

(a) Appear personally, by counsel or by personal representative; and

(b) Reasonably express any views concerning the crime, the person responsible, the impact of the crime on the victim and the need for restitution.

4. The prosecutor shall give reasonable notice of the hearing to impose sentence to:

(a) The person against whom the crime was committed;

(b) A person who was injured as a direct result of the commission of the crime;

(c) The surviving spouse, parents or children of a person who was killed as a direct result of the commission of the crime; and

(d) Any other relative or victim who requests in writing to be notified of the hearing.

Ê Any defect in notice or failure of such persons to appear are not grounds for an appeal or the granting of a writ of habeas corpus. All personal information, including, but not limited to, a current or former address, which pertains to a victim or relative and which is received by the prosecutor pursuant to this subsection is confidential.

5. For the purposes of this section:

(a) "Member of the military" has the meaning ascribed to it in NRS 176A.043.

(b) "Relative" of a person includes:

(1) A spouse, parent, grandparent or stepparent;

(2) A natural born child, stepchild or adopted child;

(3) A grandchild, brother, sister, half brother or half sister; or

(4) A parent of a spouse.

(c) "Veteran" has the meaning ascribed to it in NRS 176A.090.

(d) "Victim" includes:

(1) A person, including a governmental entity, against whom a crime has been committed;

(2) A person who has been injured or killed as a direct result of the commission of a crime; and

(3) A relative of a person described in subparagraph (1) or (2).

6. This section does not restrict the authority of the court to consider any reliable and relevant evidence at the time of sentencing.

(Added to NRS by 1967, 1432; A 1989, 1425; 1991, 90; 1995, 371; 1997, 3236; 2001, 889; 2009, 100; 2017, 3018; 2019, 4380)

NRS 200.010 "Murder" defined. Murder is the unlawful killing of a human being:

1. With malice aforethought, either express or implied;

2. Caused by a controlled substance which was sold, given, traded or otherwise made available to a person in violation of chapter 453 of NRS; or

3. Caused by a violation of NRS 453.3325.

Ê The unlawful killing may be effected by any of the various means by which death may be occasioned.

[1911 C&P § 119; RL § 6384; NCL § 10066]—(NRS A 1983, 512; 1985, 1598; 1989, 589; 2005, 1059)

NRS 200.020 Malice: Express and implied defined.

1. Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof.

2. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

[1911 C&P § 120; A 1915, 67; 1919 RL § 6385; NCL § 10067]

NRS 200.030 Degrees of murder; penalties.

1. Murder of the first degree is murder which is:

(a) Perpetrated by means of poison, lying in wait or torture, or by any other kind of willful, deliberate and premeditated killing;

(b) Committed in the perpetration or attempted perpetration of sexual assault, kidnapping, arson, robbery, burglary, invasion of the home, sexual abuse of a child, sexual molestation of a child under the age of 14 years, child abuse or abuse of an older person or vulnerable person pursuant to NRS 200.5099;

(c) Committed to avoid or prevent the lawful arrest of any person by a peace officer or to effect the escape of any person from legal custody;

(d) Committed on the property of a public or private school, at an activity sponsored by a public or private school or on a school bus while the bus was engaged in its official duties by a person who intended to create a great risk of death or substantial bodily harm to more than one person by means of a weapon, device or course of action that would normally be hazardous to the lives of more than one person; or

(e) Committed in the perpetration or attempted perpetration of an act of terrorism.

2. Murder of the second degree is all other kinds of murder.

3. The jury before whom any person indicted for murder is tried shall, if they find the person guilty thereof, designate by their verdict whether the person is guilty of murder of the first or second degree.

4. A person convicted of murder of the first degree is guilty of a category A felony and shall be punished:

(a) By death, only if one or more aggravating circumstances are found and any mitigating circumstance or circumstances which are found do not outweigh the aggravating circumstance or circumstances, unless a court has made a finding pursuant to NRS 174.098 that the defendant is a person with an intellectual disability and has stricken the notice of intent to seek the death penalty; or

(b) By imprisonment in the state prison:

(1) For life without the possibility of parole;

(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 20 years has been served; or

(3) For a definite term of 50 years, with eligibility for parole beginning when a minimum of 20 years has been served.

Ê A determination of whether aggravating circumstances exist is not necessary to fix the penalty at imprisonment for life with or without the possibility of parole.

5. A person convicted of murder of the second degree is guilty of a category A felony and shall be punished by imprisonment in the state prison:

(a) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or

(b) For a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served.

6. As used in this section:

(a) "Act of terrorism" has the meaning ascribed to it in NRS 202.4415;

(b) "Child abuse" means physical injury of a nonaccidental nature to a child under the age of 18 years;

(c) "School bus" has the meaning ascribed to it in NRS 483.160;

(d) "Sexual abuse of a child" means any of the acts described in NRS 432B.100; and

(e) "Sexual molestation" means any willful and lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desires of the perpetrator or of the child.

[1911 C&P § 121; A 1915, 67; 1919, 468; 1947, 302; 1943 NCL § 10068]—(NRS A 1957, 330; 1959, 781; 1960, 399; 1961, 235, 486; 1967, 467, 1470; 1973, 1803; 1975, 1580; 1977, 864, 1541, 1627; 1989, 865, 1451; 1995, 257, 1181; 1999, 1335; 2003, 770, 2944; 2007, 74; 2013, 689)

NRS 200.033 Circumstances aggravating first degree murder. The only circumstances by which murder of the first degree may be aggravated are:

1. The murder was committed by a person under sentence of imprisonment.

2. The murder was committed by a person who, at any time before a penalty hearing is conducted for the murder pursuant to NRS 175.552, is or has been convicted of:

(a) Another murder and the provisions of subsection 12 do not otherwise apply to that other murder; or

(b) A felony involving the use or threat of violence to the person of another and the provisions of subsection 4 do not otherwise apply to that felony.

Ê For the purposes of this subsection, a person shall be deemed to have been convicted at the time the jury verdict of guilt is rendered or upon pronouncement of guilt by a judge or judges sitting without a jury.

3. The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a weapon, device or course of action which would normally be hazardous to the lives of more than one person.

4. The murder was committed while the person was engaged, alone or with others, in the commission of, or an attempt to commit or flight after committing or attempting to commit, any robbery, arson in the first degree, burglary, invasion of the home or kidnapping in the first degree, and the person charged:

(a) Killed or attempted to kill the person murdered; or

(b) Knew or had reason to know that life would be taken or lethal force used.

5. The murder was committed to avoid or prevent a lawful arrest or to effect an escape from custody.

6. The murder was committed by a person, for himself or herself or another, to receive money or any other thing of monetary value.

7. The murder was committed upon a peace officer or firefighter who was killed while engaged in the performance of his or her official duty or because of an act performed in his or her official capacity, and the defendant knew or reasonably should have known that the victim was a peace officer or firefighter. For the purposes of this subsection, "peace officer" means:

(a) An employee of the Department of Corrections who does not exercise general control over offenders imprisoned within the institutions and facilities of the Department, but whose normal duties require the employee to come into contact with those offenders when carrying out the duties prescribed by the Director of the Department.

(b) Any person upon whom some or all of the powers of a peace officer are conferred pursuant to NRS 289.150 to 289.360, inclusive, when carrying out those powers.

8. The murder involved torture or the mutilation of the victim.

9. The murder was committed upon one or more persons at random and without apparent motive.

10. The murder was committed upon a person less than 14 years of age.

11. The murder was committed upon a person because of the actual or perceived race, color, religion, national origin, physical or mental disability, sexual orientation or gender identity or expression of that person.

12. The defendant has, in the immediate proceeding, been convicted of more than one offense of murder in the first or second degree. For the purposes of this subsection, a person shall be deemed to have been convicted of a murder at the time the jury verdict of guilt is rendered or upon pronouncement of guilt by a judge or judges sitting without a jury.

13. The person, alone or with others, subjected or attempted to subject the victim of the murder to nonconsensual sexual penetration immediately before, during or immediately after the commission of the murder. For the purposes of this subsection:

(a) "Nonconsensual" means against the victim's will or under conditions in which the person knows or reasonably should know that the victim is mentally or physically incapable of resisting, consenting or understanding the nature of his or her conduct, including, but not limited to, conditions in which the person knows or reasonably should know that the victim is dead.

(b) "Sexual penetration" means cunnilingus, fellatio or any intrusion, however slight, of any part of the victim's body or any object manipulated or inserted by a person, alone or with others, into the genital or anal openings of the body of the victim, whether or not the victim is alive. The term includes, but is not limited to, anal intercourse and sexual intercourse in what would be its ordinary meaning.

14. The murder was committed on the property of a public or private school, at an activity sponsored by a public or private school or on a school bus while the bus was engaged in its official duties by a person who intended to create a great risk of death or substantial bodily harm to more than one person by means of a weapon, device or course of action that would normally be hazardous to the lives of more than one person. For the purposes of this subsection, "school bus" has the meaning ascribed to it in NRS 483.160.

15. The murder was committed with the intent to commit, cause, aid, further or conceal an act of terrorism. For the purposes of this subsection, "act of terrorism" has the meaning ascribed to it in NRS 202.4415.

(Added to NRS by 1977, 1542; A 1981, 521, 2011; 1983, 286; 1985, 1979; 1989, 1451; 1993, 76; 1995, 2, 138, 1490, 2705; 1997, 1293; 1999, 1336; 2001 Special Session, 229; 2003, 2945; 2005, 317; 2017, 1065)

NRS 200.035 Circumstances mitigating first degree murder. Murder of the first degree may be mitigated by any of the following circumstances, even though the mitigating circumstance is not sufficient to constitute a defense or reduce the degree of the crime:

1. The defendant has no significant history of prior criminal activity.
2. The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance.
3. The victim was a participant in the defendant's criminal conduct or consented to the act.
4. The defendant was an accomplice in a murder committed by another person and the defendant's participation in the murder was relatively minor.
5. The defendant acted under duress or under the domination of another person.
6. The youth of the defendant at the time of the crime.
7. Any other mitigating circumstance.

(Added to NRS by 1977, 1543)

NRS 200.040 "Manslaughter" defined.

1. Manslaughter is the unlawful killing of a human being, without malice express or implied, and without any mixture of deliberation.
2. Manslaughter must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible, or involuntary, in the commission of an unlawful act, or a lawful act without due caution or circumspection.
3. Manslaughter does not include vehicular manslaughter as described in NRS 484B.657.

[1911 C&P § 122; RL § 6387; NCL § 10069]—(NRS A 1983, 1014; 1995, 1725; 2005, 79)

NRS 200.050 "Voluntary manslaughter" defined.

1. In cases of voluntary manslaughter, there must be a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing.

2. Voluntary manslaughter does not include vehicular manslaughter as described in NRS 484B.657.

[1911 C&P § 123; RL § 6388; NCL § 10070]—(NRS A 2005, 79)

NRS 200.060 When killing punished as murder. The killing must be the result of that sudden, violent impulse of passion supposed to be irresistible; for, if there should appear to have been an interval between the assault or provocation given and the killing, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge and punished as murder.

[1911 C&P § 124; RL § 6389; NCL § 10071]

NRS 200.070 "Involuntary manslaughter" defined.

1. Except under the circumstances provided in NRS 484B.550 and 484B.653, involuntary manslaughter is the killing of a human being, without any intent to do so, in the commission of an unlawful act, or a lawful act which probably might produce such a consequence in an unlawful manner, but where the involuntary killing occurs in the commission of an unlawful act, which, in its consequences, naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offense is murder.

2. Involuntary manslaughter does not include vehicular manslaughter as described in NRS 484B.657.

[1911 C&P § 125; RL § 6390; NCL § 10072]—(NRS A 1981, 867; 1983, 1014; 1995, 1726; 2005, 79)

NRS 200.080 Punishment for voluntary manslaughter. A person convicted of the crime of voluntary manslaughter is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and may be further punished by a fine of not more than $10,000.

[1911 C&P § 126; A 1937, 103; 1931 NCL § 10073]—(NRS A 1979, 1424; 1995, 1182)

NRS 200.090 Punishment for involuntary manslaughter. A person convicted of involuntary manslaughter is guilty of a category D felony and shall be punished as provided in NRS 193.130.

[1911 C&P § 126 1/2; added 1937, 103; 1931 NCL § 10073.01]—(NRS A 1967, 468; 1995, 1182)

CERTIFICATE OF SERVICE

I hereby certify that this document, **RESPONDENT'S ANSWERING BRIEF**, was filed electronically with the Nevada Supreme Court on the 25th day of May, 2022. Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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