

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 SEAN RODNEY ORTH,

3 Appellant,

4 vs.

5 THE STATE OF NEVADA,

6 Respondent.

Docket No. 85229

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Elizabeth A. Brown
Clerk of Supreme Court

7 (Appeal from a Final Judgment of Conviction of the Eighth Judicial District Court,
8 in and for the County of Clark, State of Nevada)

9 **APPELLANT'S OPENING BRIEF**

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16 Nevada Bar No. 7902

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JURISDICTIONAL STATEMENT

A. Statute which grants jurisdiction to review the judgment: **NRS 177.015**

B. Timeliness: Judgment of Conviction filed **August 8, 2022**; Notice of Appeal filed **August 22, 2022**

C. This appeal is from a final judgment of a district court issued on August, 2022

ROUTING STATEMENT

This case is presumptively assigned to the Court of Appeals because it is an appeal from a judgment of conviction based on a plea of guilty. NRAP 17(b)(1).

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II. Whether the justice court and district court abused their discretion and violated Mr. Orth's due process rights when a continuance of the preliminary hearing was granted to the State over Mr. Orth's objection and when the State failed to demonstrate good cause under Nevada precedent.

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On October 29, 2020, Mr. Orth entered a plea of no contest to the charge of Resisting Public Officer in Henderson Municipal Court case number 20CR007366. See Henderson Mun. Ct. Tr. of Prelim. Hr'g (Oct. 29, 2020), **I AA000001-3**. The court accepted his no contest plea and adjudicated him guilty of the crime. See **I AA000004**. In arguing for jail time, Deputy Henderson City Attorney Elaine Mather recited the following as the facts of the crime:

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1 vehicle and had gone missing as well. When police
2 arrived, they observed the vehicle and several units in
3 marked Henderson Police vehicles began following that
4 vehicle and initiated a stop by activating their emergency
5 lights and sirens, but the driver who was the suspect in
6 the vehicle failed to yield and continued to the end of the
7 apartment complex towards the exit. An additional HPD
8 unit arrived and was outside the exit gate, which was
9 closed. The suspect opened the driver side door and
10 jumped out and immediately ran. The suspect vehicle
11 continued to drive forward, unoccupied, crashing into the
12 exit gate of the apartment complex. The suspect was
13 carrying a tan duffle bag as he fled and he threw it over
14 the property wall before he climbed over the same wall.
15 Officers initiated a foot pursuit issuing commands to stop,
16 but he continued to run. Leaving the duffle bag behind
17 because he struggled to pick it up, pick it back up to [sic]
18 quickly. He ran across Whitney Ranch Drive attempting
19 to evade officers but they were able to overtake him and
20 place him in custody after a short struggle.

11 **I AA000005-6.**

12 The Amended Information in the instant case set forth the facts of the
13 offense thus:

14 . . . SEAN RODNEY ORTH, the Defendant(s)
15 above named, . . . committed the crimes of **STOP**
16 **REQUIRED ON SIGNAL OF POLICE OFFICER**
17 **(Category B Felony – NRS 484B.550.3b – NOC 53833)**,
18 on or about the 3rd day of November, 2020¹, within the
19 County of Clark, State of Nevada, contrary to the form,
20 force and effect of statutes in such cases made and
21 provided, and against the peace and dignity of the State

20 ¹ The date set forth in the Amended Information is incorrect. The events
21 constituting the crime alleged actually occurred on October 28, 2020.

1 of Nevada, did while driving a motor vehicle in the area
2 of 981 Whitney Ranch, Clark County, Nevada, willfully,
3 unlawfully, and feloniously fail or refuse to bring said
4 vehicle to a stop, or otherwise flee or attempt to elude a
5 peace officer in a readily identifiable vehicle of any
6 police department or regulatory agency, specifically HPD
7 Officers P. Duffy and/or B. Brink and/or J. Hehn, after
8 being given a signal to bring the vehicle to a stop, and did
9 operate said motor vehicle in a manner which endangered,
10 or was likely to endanger any person other than
11 himself/herself or the property of any person other than
12 himself.

13 **VIII AA001223-1224.**

14 Mr. Orth moved to dismiss the instant case at the preliminary hearing stage
15 when the State violated Bustos by moving for a continuance of the hearing without
16 good cause. Mr. Orth also moved to dismiss the case for violation of constitutional
17 double jeopardy principles. Mr. Orth eventually entered a plea deal in this case,
18 although he moved to withdraw his plea after the trial court informed him that he
19 waived his right to appeal under the plea agreement.

20 **SUMMARY OF THE ARGUMENT**

21 Mr. Orth's conviction for Stop Required Upon Signal of Peace Officer,
pursuant to NRS 484B.550, is unconstitutional because it violated his Fifth
Amendment and Nevada constitutional protections from double jeopardy. Mr.
Orth had already been convicted of the lesser included offense of Resisting a
Public Officer pursuant to NRS 199.280 and the conviction in the instant case was
based upon the precise same facts. Furthermore, Mr. Orth's case should have

1 never proceeded to the district court because the justice court abused its discretion
2 by granting the State a continuance in violation of Nevada case law.

3 **ARGUMENT**

4 **I. MR. ORTH'S CONVICTION IN THE INSTANT CASE** 5 **VIOLATED THE DOUBLE JEAPORDY CLAUSES OF THE** 6 **FIFTH AMENDMENT TO THE UNITED STATES** 7 **CONSTITUTION AND ARTICLE I, SECTION 8(1) OF THE** 8 **CONSTITUTION OF THE STATE OF NEVADA.**

9 **A. Standard of Review**

10 “Whether a defendant's double jeopardy rights have been violated is a
11 question of law reviewed de novo. United States v. McClain, 133 F.3d 1191, 1193
12 (9th Cir. 1998).” United States v. Kimbrew, 406 F.3d 1149, 1151 (9th Cir. 2005).

13 “Generally, [the Supreme Court of Nevada] reviews a claim that a conviction
14 violates the Double Jeopardy Clause de novo. Davidson v. State, 124 Nev. 892,
15 896, 192 P.3d 1185, 1189 (2008). De novo review applies to both the
16 constitutional issues and statutory interpretation involved. Jackson v. State, 128
17 Nev. 598, 128 Nev. Adv. Rep. 55, 291 P.3d 1274, 1277 (2012).” Kelley v. State,
18 132 Nev. 348, 350, 371 P.3d 1052, 1053 (2016).

19 **B. Argument**

20 **1. Introduction**

21 The Fifth Amendment to the United States Constitution commands, in
relevant part, “nor shall any person be subject for the same offense to be twice put

1 in jeopardy of life or limb” The Fifth Amendment has been incorporated and
2 made applicable to the states through the Fourteenth Amendment to the United
3 States Constitution. See, e.g., Brown v. Ohio, 432 U.S. 161, 164, 97 S. Ct. 2221,
4 2225 (1977). Similarly, Nevada’s constitution states “[n]o person shall be subject
5 to be twice put in jeopardy for the same offense . . .” Nev. Const. art. I, § 8(1).

6 The right not to be placed in jeopardy more than once for
7 the same offense is a vital safeguard in our society, one
8 that was dearly won and one that should continue to be
9 highly valued. If such great constitutional protections are
10 given a narrow, grudging application they are deprived of
11 much of their significance.

12 Green v. United States, 355 U.S. 184, 198, 78 S. Ct. 221, 229 (1957).

13 In order for the same act to be punishable under more than one statute, as
14 separate offenses, it is necessary that each statute contain elements that the other
15 does not. The United States Supreme Court has held:

16 The applicable rule is that where the same act or
17 transaction constitutes a violation of two distinct
18 statutory provisions, the test to be applied to determine
19 whether there are two offenses or only one, is whether
20 each provision requires proof of a fact which the other
21 does not. Gavieres v. United States, 220 U.S. 338, 342
(1911), and authorities cited. In that case this court
quoted from and adopted the language of the Supreme
Court of Massachusetts in Morey v. Commonwealth, 108
Mass. 433 (1871): “A single act may be an offense
against two statutes; and if each statute requires proof of
an additional fact which the other does not, an acquittal
or conviction under either statute does not exempt the
defendant from prosecution and punishment under the
other.”

1 Blockburger v. United States, 284 U.S. 299, 304, 52 S. Ct. 180, 182 (1932).

2 Following Blockburger, this Court has held “(‘A lesser offense is included in
3 a greater offense when all of the elements of the lesser offense are included in the
4 elements of the greater offense.’ (internal quotation omitted)). Accordingly, the
5 convictions for both violate double jeopardy.” LaChance v. State, 130 Nev. 263,
6 274, 321 P.3d 919, 926 (2014) (quoting Rosas v. State, 122 Nev. 1258, 1263, 147
7 P.3d 1101, 1105 (2006)).

8 “The Double Jeopardy Clause ‘protects against a second prosecution for the
9 same offense after acquittal. It protects against a second prosecution for the same
10 offense after conviction. And it protects against multiple punishments for the same
11 offense.’ North Carolina v. Pearce, 395 U.S. 711, 717 (1969) (footnotes omitted).”
12 Brown v. Ohio, 432 U.S. 161, 165, 97 S. Ct. 2221, 2225 (1977). Where the
13 conduct prohibited in a statute is completely subsumed within the conduct
14 prohibited in a different statute, the first statute is a lesser included offense of the
15 second. Prosecution under either statute precludes prosecution under the other for
16 the same conduct, regardless of which prosecution occurs first. See Brown, 432
17 U.S. at 168-69, 97 S. Ct. at 2227.

18 For purposes of the Double Jeopardy clause, the United States Supreme
19 Court has made it clear that state and city governments are not separate sovereign
20 entities:
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1 “Political subdivisions of States – counties, cities, or
2 whatever – never were and never have been considered
3 as sovereign entities. Rather, they have been
4 traditionally regarded as subordinate governmental
instrumentalities created by the State to assist in the
carrying out of state governmental functions.” Reynolds
v. Sims, 377 U.S. 533, 575 (1964).

5 Waller v. Florida, 397 U.S. 387, 392, 90 S. Ct. 1184, 1187 (1970). For this reason,
6 where a defendant is tried, acquitted or convicted of an offense in a municipal
7 court, the same defendant cannot be tried in a county or state court for the same
8 acts if the municipal charges were included offenses of the state charge. See
9 Waller, 397 U.S. at 390, 90 S. Ct. at 1186.

10 Where the State is precluded by the United States
11 Constitution from haling a defendant into court on a
12 charge, federal law requires that a conviction on that
charge be set aside even if the conviction was entered
pursuant to a counseled plea of guilty. Blackledge v.
Perry, 417 U.S. 21, 30 (1974).

13 Menna v. New York, 423 U.S. 61, 62, 96 S. Ct. 241, 242 (1975).

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15 **2. The Charge of Stop Required On Signal of Police**
Officer Was Precluded by Mr. Orth’s Prior
Conviction for Resisting Public Officer Because the
Latter Charge is a Lesser Included Offense of the
Former and Both Charges Were Predicated on the
Identical Facts.

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18 Mr. Orth was charged in Henderson Municipal Court with the crime of
19 “Resisting Public Officer” under NRS 199.280. He entered a “no contest” plea to
20 that charge on October 29, 2020, was adjudicated guilty, and was sentenced to 30
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1 days in jail. See **I AA 000001-7**. On or about November 4, 2020, Mr. Orth was
2 charged by way of Criminal Complaint in the Justice Court of Henderson
3 Township with “Ownership or Possession of Firearm by Prohibited Person.” See
4 Crim. Compl., **I AA 000012-15**. On or about November 12, 2020, an amended
5 complaint was filed adding the charge of “Stop Required on Signal of Police
6 Officer.” **I AA 000023-24**.

7 Mr. Orth objected to the additional charge on double jeopardy grounds at a
8 hearing on November 17, 2020. See Rep.’s Tr. of Continuation of Prelim. Hr’g
9 (Nov. 17, 2020), **I AA 000032**. At a later hearing the justice court determined that
10 it would allow the preliminary hearing to proceed, but would take up the double
11 jeopardy issue after the hearing and allowing the parties to brief the issue. See
12 Rep.’s Tr. of Prelim. Hr’g (Dec. 9, 2020), **I AA 000106-107**. After the
13 presentation of evidence Mr. Orth argued that the Failure to Stop charge should be
14 dismissed because it arose from the exact same acts as the prior Resisting charge
15 he had already been convicted of in municipal court. **I AA 000217-218**. The
16 justice court ruled that “I’m going to find that there’s essentially a break when you
17 [Mr. Orth] stopped the vehicle and then decided to flee on foot and they are two
18 separate and distinct crimes.” **I AA 000218**. This finding was directly contrary to
19 United States Supreme Court precedent. See Brown v. Ohio, 432 U.S. 161, 169,
20 97 S. Ct. 2221, 2227 (1977) (“The Double Jeopardy Clause is not such a fragile
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1 guarantee that prosecutors can avoid its limitations by the simple expedient of
2 dividing a single crime into a series of temporal or spatial units. Cf. Braverman v.
3 United States, 317 U.S. 49, 52 (1942).”).

4 At the district court level, Mr. Orth raised the double jeopardy issue on
5 multiple occasions. (See Def.’s Am. Writ of Habeas Corpus (Feb. 3, 2021), **II AA**
6 **000362-417**; Pet. for Writ of Habeas Corpus (Apr. 20, 2021), **III AA 000476-579**;
7 Mot. to Dismiss Charges (Sep. 21, 2021), **V AA 000849-870**; Pet. for Writ of
8 Habeas Corpus (Sep. 21, 2021), **V AA 000871-914**; Mot. to Withdraw Guilty Plea
9 (Mar. 9, 2022), **VIII AA 001778-1838**; Mot. to Dismiss Charges (Jun. 1, 2022), **IX**
10 **AA 001900-1915**). The district court’s repeated rejection of Mr. Orth’s arguments
11 regarding double jeopardy was legally erroneous. This Court, however, need not
12 concern itself with the district court’s error because this Court reviews double
13 jeopardy claims de novo.

14 a. **NRS 199.280 (Resisting Public Officer) is a**
15 **Lesser Included Offense of NRS 484B.550 (Stop**
Required Upon Signal of Peace Officer).

16 When determining whether a criminal statute sets forth a lesser included
17 offense of a separate criminal statute, this Court looks to the elements required to
18 be proven in each statute. See, e.g., LaChance, at 274, 321 P.3d at 926. This
19 analysis requires an examination of the elements of the two statutes to determine if
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all of the elements of one are contained within the other. The statutes in question read, verbatim:

NRS 199.280 Resisting public officer. A person who, in any case or under any circumstances not otherwise specially provided for, willfully resists, delays or obstructs a public officer in discharging or attempting to discharge any legal duty of his or her office shall be punished:

1. Where a firearm is used in the course of such resistance, obstruction or delay, or the person intentionally removes, takes or attempts to remove or take a firearm from the person of, or the immediate presence of, the public officer in the course of such resistance, obstruction or delay, for a category C felony as provided in NRS 193.130.

2. Where a dangerous weapon, other than a firearm, is used in the course of such resistance, obstruction or delay, or the person intentionally removes, takes or attempts to remove or take a weapon, other than a firearm, from the person of, or the immediate presence of, the public officer in the course of such resistance, obstruction or delay, for a category D felony as provided in NRS 193.130.

3. Where no dangerous weapon is used in the course of such resistance, obstruction or delay, for a misdemeanor.

[1911 C&P § 97; RL § 6362; NCL § 10046]—
(NRS A 1967, 466; 1979, 1422; 1995, 1176; 2009, 163)

NRS 484B.550 Stop required upon signal of peace officer; manner in which signal must be given; penalties.

1. Except as otherwise provided in this section, the driver of a motor vehicle on a highway or premises to which the public has access who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude a peace officer in a readily identifiable vehicle of any police department or regulatory agency,

1 when given a signal to bring the vehicle to a stop is guilty
2 of a misdemeanor.

3 2. The signal by the peace officer described in
4 subsection 1 must be by flashing red lamp and siren.

5 3. Unless the provisions of NRS
6 484B.653 apply if, while violating the provisions of
7 subsection 1, the driver of the motor vehicle:

8 (a) Is the proximate cause of damage to
9 the property of any other person; or

10 (b) Operates the motor vehicle in a
11 manner which endangers or is likely to endanger
12 any other person or the property of any other
13 person,

14 the driver is guilty of a category B felony and shall be
15 punished by imprisonment in the state prison for a
16 minimum term of not less than 1 year and a maximum
17 term of not more than 6 years, or by a fine of not more
18 than \$5,000, or by both fine and imprisonment.

19 4. If, while violating the provisions of
20 subsection 1, the driver of the motor vehicle is the
21 proximate cause of the death of or bodily harm to any
other person, the driver 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 2 years and a
maximum term of not more than 20 years, or by a fine of
not more than \$50,000, or by both fine and imprisonment.

5. If the driver of the motor vehicle is
convicted of a violation of NRS
484C.110 or 484C.120 arising out of the same act or
transaction as a violation of subsection 1, the driver is
guilty of a category D felony and shall be punished as
provided in NRS 193.130 for the violation of subsection
1.

(Added to NRS by 1975, 320; A 1979, 1805; 1981,
533; 1983, 1014; 1985, 26; 1989, 1194; 1993, 524; 1995,
1297, 1725; 1997, 547; 2003, 487; 2007, 2728; 2009,
1866; 2019, 2653)—(Substituted in revision for NRS
484.348)

1 The elements for a violation of NRS 199.280 are: (1) willfulness; and (2)
2 resisting, delaying or obstructing a public officer in discharging or attempting to
3 discharge any legal duty of his or her office. The elements for a violation of NRS
4 484B.550 are: (1) driving a motor vehicle on a highway or premises to which the
5 public has access; (2) willfulness; and (3) failing or refusing to bring the vehicle to
6 a stop, or otherwise fleeing or attempting to elude a peace officer in a readily
7 identifiable vehicle of any police department or regulatory agency, when given a
8 signal to bring the vehicle to a stop. A violation of NRS 484B.550 necessarily
9 entails a violation of NRS 199.280. There are no elements of NRS 199.280 that
10 are additional to, or different from, the elements of NRS 484B.550. Double
11 jeopardy applies under these circumstances. See Brown, 432 U.S. at 168-69, 97 S.
12 Ct. at 2227.

13 This Court considered a similar situation to that presented in the instant case
14 in Kelley v. State. In Kelley a defendant was convicted of a misdemeanor reckless
15 driving charge under NRS 484B.653(1)(a) after pleading no contest in a city court.
16 Kelley, at 349, 371 P.3d at 1053. The defendant was also charged with felony
17 eluding a police officer, pursuant to NRS 484B.550(3)(b), arising from the same
18 incident. Id. The defendant moved to dismiss the felony charge on the basis of
19 double jeopardy, but pleaded guilty to the felony offense after the motion was
20 denied. Id. This Court determined that because all the elements of reckless
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1 driving were included in the felony offense of eluding the defendant could not be
2 punished for both crimes. Id. at 351, 371 P.3d at 1054.

3 In a footnote in its opinion, this Court discussed the State's argument that
4 double jeopardy did not apply because the two crimes were alleged to have
5 occurred in different locations. This Court rejected the State's argument:

6 We note that the State also argues that the two
7 offenses in this case were directed at different acts.
8 According to the State, Kelley's acts constituting reckless
9 driving occurred on Moor Avenue and Shoshone Avenue.
10 In contrast, Kelley's acts constituting felony eluding
11 occurred on Shoshone Avenue and four other streets.
12 Thus, although the reckless driving offense originated
13 from the same event as the felony eluding offense, the
14 City only charged a small part of the entire incident. We
15 conclude that this contention lacks merit because the acts
16 underlying both offenses are based on the same conduct.
17 Further, the acts occurring on Moor Avenue and
18 Shoshone Avenue are subsumed within the acts occurring
19 on Shoshone Avenue and the additional four streets.

20 Kelley, at 351, fn. 2, 371 P.3d at 1054, fn. 2. (emphasis added).

21 C. Conclusion

Mr. Orth's prosecution in the instant case violated the state and federal
constitutional guarantees against double jeopardy. His conviction in Henderson
Municipal Court for resisting a police officer precluded the State from charging
him with the felony charge of evading a police officer. Although he pleaded guilty
to the felony charge, that fact does not preclude this appeal under controlling
United States Supreme Court precedent. When reviewing this issue de novo this

1 Court must find that the resisting charge is a lesser included offense to the evading
2 charge and reverse Mr. Orth's conviction.

3 **II. THE JUSTICE COURT AND THE TRIAL COURT ABUSED**
4 **THEIR DISCRETION BY DENYING MR. ORTH'S MOTIONS**
5 **TO DISMISS BASED UPON THE STATE'S IMPROPER**
6 **REQUEST FOR A CONTINUANCE OF THE PRELIMINARY**
7 **HEARING IN VIOLATION OF PRECEDENT OF THIS**
8 **COURT.**

9 **A. Standard of Review**

10 The granting of a continuance of a preliminary hearing is within the
11 discretion of the justice court and must be reviewed for an abuse of discretion.

12 State v. Nelson, 118 Nev. 399, 405, 46 P.3d 1232, 1235-36 (2002).

13 **B. Argument**

14 **1. Introduction**

15 This Court has long recognized that the justice courts may not allow the
16 State to continue preliminary hearings without good cause and the presentment of
17 certain facts:

18 In [Hill v. Sheriff, 85 Nev. 234, 452 P.2d 918 (1969)] we
19 ruled that the "reasons underlying DCR 21 are equally
20 appropriate to the continuance of a criminal proceeding
21 in the justices' court" and that statutory "good cause" for
continuance [NRS 171.196(2)] contemplates that the
party seeking a continuance of a preliminary examination
upon the ground of the absence of witnesses must prepare
and submit to the magistrate an affidavit stating the
names of the absent witnesses and their present
residences if known, the diligence used to procure their
attendance, a brief summary of their expected testimony

1 and whether the same facts can be proven by other
2 witnesses, when it was first learned that the attendance of
3 the witnesses could not be obtained, and that the
4 continuance was sought in good faith and not for delay.

5 The intendment of Hill, supra, has since been
6 applied to related situations wherein there was a willful
7 failure of the prosecution to comply with important
8 procedural rules, Maes v. Sheriff, 86 Nev. 317, 468 P.2d
9 332 (1970), and where the prosecutor had exhibited a
10 conscious indifference to rules of procedure affecting the
11 defendant's rights, State v. Austin, 87 Nev. 81, 482 P.2d
12 284 (1971).

13 Bustos v. Sheriff, 87 Nev. 622, 623, 491 P.2d 1279, 1280 (1971). A justice court
14 abuses its discretion if it grants a continuance to the State if the requirements of
15 Bustos are not met.

16 **2. The Justice Court Abused its Discretion by Granting**
17 **the State's Continuance of the Preliminary Hearing**
18 **and Denying Mr. Orth's Motion to Dismiss.**

19 The State made a motion to continue the preliminary hearing in the justice
20 court on the day of the hearing. See Rep.'s Tr. of Prelim. Hr'g (Nov. 17, 2020), I
21 AA 000025-42. Mr. Orth opposed the State's motion on the bases that it was made
at the last second and that it did not set forth good cause for the State's alleged
inability to secure the presence of its witnesses. Mr. Orth moved to dismiss the
criminal complaint based on the procedural impropriety. The justice court denied
Mr. Orth's motion to dismiss and granted the State's motion to continue. I AA
000038.

The justice court's granting of the continuance over defense objection was an abuse of discretion. The State failed to state good cause for its failure to secure its witnesses. The primary reason the State set forth was that one of the detectives would be starting vacation. Mr. Orth correctly argued that this was not sufficient good cause for a continuance. Mr. Orth also raised this argument multiple times in the district court. (See, e.g., Def.'s Am. Pet. for Writ of Habeas Corpus (Feb. 3, 2021), **II AA000362-417**).

CONCLUSION

Mr. Orth's conviction in this case must be vacated and the case must be dismissed. The prosecution of the charge for which Mr. Orth was convicted violated the double jeopardy clauses of the United States and Nevada constitutions. Additionally, the case should have been dismissed at the preliminary hearing stage

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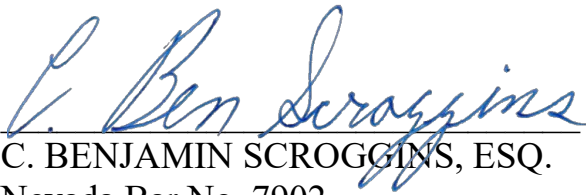
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V / /

1 because the justice court abused its discretion by granting the State a continuance
2 in violation of Nevada law.

3 DATED this 15th day of August, 2023.

4 **THE LAW FIRM OF**
5 **C. BENJAMIN SCROGGINS, CHTD.**

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14 ///

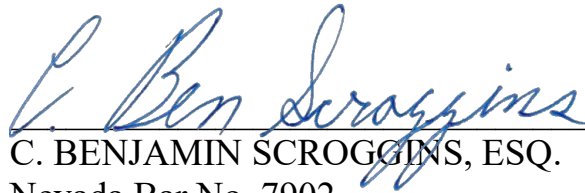
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1 **VERIFICATION**

2 I declare under penalty of perjury that I have read this Opening Brief, that
3 the information provided in this Brief is true and complete to the best of my
4 knowledge, information and belief, and that I have attached all required documents
5 in the Appendix filed with the Brief.

6 MADE this 15th day of August, 2023.

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16 **CERTIFICATE OF COMPLIANCE**

17 1. I hereby certify that this Brief complies with the formatting
18 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and
19 the type style requirements of NRAP 32(a)(6) because:

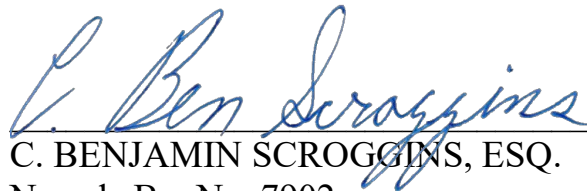
20 This Brief has been prepared in a proportionally spaced typeface using
21 Microsoft Word for Office 365 MSO in 14-point Times New Roman font.

1 2. I further certify that this Brief complies with the page or type-volume
2 limitations of NRAP 32(a)(7)(A)(ii) because:

3 It is 4,125 words in length, exclusive of those portions excluded from the
4 computation by NRAP 32(a)(7)(C).

5 DATED this 15th day of August, 2023.

6 **THE LAW FIRM OF**
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1 **PROOF OF SERVICE**

2 Pursuant to NRAP 25(c)(1)(E) I certify that I served the foregoing
3 Appellant's Opening Brief by causing it to be served by electronic means to the
4 registered users of the Court's electronic filing system consistent with NEFCR 9 to
5 the following:

6 Alexander Chen
7 Aaron Ford

8 CERTIFIED this 15th day of August, 2023.

9
10 By:



KELLY JARVI, Legal Assistant to
THE LAW FIRM OF
C. BENJAMIN SCROGGINS, CHTD.