

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed  
Feb 22 2023 11:05 AM  
Elizabeth A. Brown  
Clerk of Supreme Court

DUSTIN JAMES BARRAL,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No. 85706

**RESPONDENT'S ANSWERING BRIEF**

**Appeal From Order Denying Motion to Correct Illegal Sentence  
Eighth Judicial District Court, Clark County**

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f (“*Nevada Revised Statutes* in typewritten form was submitted to the 48<sup>th</sup> Session of the Legislature in the form of a bill providing for its enactment as law of the State of Nevada. This bill, Senate Bill No. 2 . . . was passed without amendment or dissenting vote, and on January 25, 1957, was approved by Governor Charles H. Russell.”

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

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DUSTIN JAMES BARRAL,

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v.

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Case No. 85706

**RESPONDENT'S ANSWERING BRIEF**

**Appeal from Order Denying Motion to Correct Illegal Sentence**

**ROUTING STATEMENT**

Assignment of this case is at this Court's discretion. Pursuant to NRAP 17, this matter is neither presumptively assigned to the Court of Appeals, nor is it presumptively retained by the Supreme Court.

**STATEMENT OF THE ISSUE**

Whether the district court erred by denying Appellant's Motion to Correct Illegal Sentence.

**STATEMENT OF THE CASE**

On November 29, 2010, the State filed an Information charging Appellant Dustin Barral with two counts of Sexual Assault With a Minor Under Fourteen Years

of Age (Felony - NRS 200.364, 200.366). Record on Appeal (“ROA”) Vol. I 24-26. The case proceeded to trial, and on May 31, 2013, the jury rendered guilty verdicts as to both counts. I ROA 128-29. On September 18, 2013, Appellant was sentenced to the Nevada Department of Corrections as follows: Count 1 – life with a minimum parole eligibility of 420 months; Count 2 – life with a minimum parole eligibility of 420 months, imposed concurrently to Count 1. VII ROA 1480. The Judgment of Conviction was filed on September 23, 2013. I ROA 175-76.

Appellant filed a Notice of Appeal on September 27, 2013. I ROA 178-84. On July 23, 2015, this Court reversed Appellant’s convictions, finding the district court committed structural error in failing to administer an oath to the jury panel. V ROA 964-71.

On May 22, 2017, pursuant to negotiations, the State filed a Second Amended Information, charging Appellant as follows: Count 1 – Attempt Sexual Assault With a Minor Under Fourteen Years of Age (Category B felony – NRS 200.364, 200.366, 193.330); Count 2 – Child Abuse, Neglect, or Endangerment (Category B Felony – NRS 200.508(1)). V ROA 1028-29. Appellant pleaded guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), and a signed Guilty Plea Agreement was filed in open court. V ROA 1018-27; VII ROA 1490. Per the negotiations, the State retained the right to argue at rendition of sentence, including for consecutive counts. V ROA 1018.

On September 18, 2017, Appellant was sentenced to the Nevada Department of Corrections as follows: Count 1 – a maximum of 240 months with a minimum parole eligibility of 96 months; Count 2 – a maximum of 72 months with a minimum parole eligibility of 28 months, imposed consecutively to Count 1. V ROA 1089-90. VII ROA 1492. The Judgment of Conviction was filed on September 29, 2017. V ROA 1089-90. Appellant filed a Notice of Appeal on October 13, 2017. V ROA 1091. On September 26, 2018, the Nevada Court of Appeals affirmed Appellant’s convictions. V ROA 1122.

On October 13, 2022, Appellant filed a Notice of Motion to Correct Sentence, a Motion to Correct Illegal Sentence, a Memorandum in Support of Motion to Correct Illegal Sentence, and Exhibits in Support of Motion to Correct Illegal Sentence. V ROA 1173-1201; VI ROA 1202-1375. On November 3, 2022, Appellant filed a Supplemental Brief. VI ROA 1384-89. On November 4, 2022, the State filed an Opposition addressing all of these motions in one pleading. VI 1390-98. On November 7, 2022, the district court denied the Motions. VII ROA 1497. The Order denying the Motions was filed on December 5, 2022. VI ROA 1436-38. On November 15, 2022, Appellant filed a Notice of Appeal. On January 25, 2023, Appellant filed his Opening Brief.

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## STATEMENT OF FACTS

On Saturday, July 10, 2010, then four-year-old J.C. stayed the night at the home of her Aunt and Uncle (Appellant) because J.C.'s mother had been admitted to the hospital. III ROA 534. That night, J.C. went to bed on a futon in the same bedroom as her six-month-old cousin who slept in a crib next to the futon. III ROA 512. At one point during the night, J.C. was trying to fall asleep when Appellant came into the room, sat next to J.C. on the futon, and "dug" in her privates and in her butt. III ROA 513, 524. After Appellant dug in J.C.'s privates and butt with his fingers, J.C. saw him walk to the bathroom across the hallway and wash his hands. III ROA 514-15. Appellant then returned to the bedroom and woke up his wife to tell her that he had "accidentally sat" on J.C. because "he forgot she was there." III ROA 630.

On Sunday morning, Appellant and J.C.'s aunt relayed Appellant's story to J.C. with something along the lines of, "Wasn't it funny that Uncle Dustin accidentally sat on you last night; do you remember that?" III ROA 631. She explained that J.C.'s response was to look at her as though J.C. had no idea what she was talking about. III ROA 631. The story of Uncle Dustin accidentally sitting on J.C. was repeated at church that Sunday in front of J.C.'s grandmother, and again J.C.'s reaction was confusion and like she did not know what had happened. III ROA 539-40, 634. After church, J.C.'s grandmother, aunt, and great aunt took J.C. and her



two-year-old sister to the hospital to visit J.C.'s mother. III ROA 541. J.C. stayed at the Appellant's house again on Sunday night, but this time J.C. slept on the floor with two of her cousins in a different room. III ROA 634.

As per their usual routine, J.C. and her sister stayed overnight on Monday at their father's house. III ROA 636-37. J.C. finally returned home (J.C.'s mother and her two girls were living with the maternal grandparents at that time) late in the day on Tuesday. II ROA 447. Upon arriving home, there was a family dinner with J.C., her sister, her mother, her aunt (Appellant's wife), her two cousins, and her grandparents. II ROA 447. After dinner, J.C.'s aunt left with her two boys and J.C.'s mother took her two daughters upstairs for a bath. II ROA 447. When they got upstairs, J.C. told her mother that she needed to talk to her, so they went into her mother's bedroom, sat down on the bed, and J.C. told her mom that Uncle Dustin had touched and dug into her privates. II ROA 448; III ROA 516.

Shocked by what J.C. had just said, J.C.'s mother went downstairs to her parents, leaving J.C. and her sister upstairs. II ROA 449. J.C.'s mother told them what J.C. had just said, and while J.C.'s mother tried to collect herself, J.C.'s grandmother went upstairs to take care of the girls. II ROA 450. J.C. then revealed to her grandmother that Uncle Dustin had dug in her privates. III ROA 516, 545. J.C.'s grandmother did not ask any follow-up questions. III ROA 545-46. Meanwhile, J.C.'s grandfather called J.C.'s aunt and told her to come right back to

the house. II ROA 450. When she got back to the house, her parents told her what Appellant had done to J.C. III ROA 547. Needing to hear for herself, J.C.'s aunt sat J.C. down on her lap and, in the presence of J.C.'s mother and grandparents, J.C. told her that Uncle Dustin had touched her and hurt her. II ROA 452; III ROA 548.

Later that night, J.C.'s mother called 3-1-1 and was provided contact information in order to follow up with a detective on the following day. II ROA 452-53. Accordingly, on Wednesday, J.C.'s mother spoke with Las Vegas Metropolitan Police Department Detective Timothy Hatchett, and at his direction, took J.C. to Sunrise Pediatric Hospital for a SCAN exam. II ROA 453. The SCAN exam yielded one non-specific finding that J.C. had vaginitis. III ROA 481. The following day, she took J.C. to the Southern Nevada Children's Assessment Center (CAC) where Detective Hatchett conducted an audio/video-recorded forensic interview of J.C. II ROA 455; IV ROA 755.

Detective Hatchett testified that, when he asked J.C. to describe what digging was and to try and describe it on the anatomical chart,

[J.C.] actually began to making [sic] mannerisms to her vaginal area and indicated that he went underneath her clothing and used her fingers to describe him placing them in side [sic] of her vaginal area. And she used the work – she basically said, you know, was digging and also sinking. . . .

**SUMMARY OF THE ARGUMENT**

The district court properly denied Appellant’s Motion to Correct Illegal Sentence. The only cognizable grounds in such a motion are those of facial illegality, meaning the sentence exceeded the statutory maximum or the sentencing court acted without jurisdiction. Appellant’s claim that the Nevada Revised Statutes are invalid due to the lack of an enactment clause does not address facial illegality. Nor did Appellant demonstrate that the district court lacked jurisdiction to sentence him. The Statutes of Nevada contain the laws with the enacting clauses required by the constitution. The Nevada Revised Statutes are the official codified version of the Statutes of Nevada; they have merely been classified, codified, and annotated by the Legislative Counsel. Accordingly, the district court had the authority to sentence him pursuant to statutes contained in the Nevada Revised Statutes. Appellant raises several other allegations of error that were not raised below and are inadequately briefed. Therefore, Appellant is not entitled to relief.

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<sup>1</sup>The anatomical chart used during Detective Hatchett’s interview of J.C. was admitted as State’s Exhibit 3 at trial. IV ROA 775. At the beginning of the interview, Detective Hatchett used the chart in the context of taking a bath to ask J.C. to identify human anatomy to learn the language J.C. uses to describe body parts. IV AA 759.

## ARGUMENT

### **I. THE DISTRICT COURT DID NOT ERR IN DENYING THE MOTION TO CORRECT ILLEGAL SENTENCE BECAUSE APPELLANT DID NOT DEMONSTRATE HIS SENTENCE WAS FACIALLY ILLEGAL OR THAT THE COURT LACKED JURISDICTION**

The district court did not err by denying Appellant’s Motion to Correct Illegal Sentence, as Appellant failed to demonstrate his sentence was illegal. Appellant’s claim that the Nevada Revised Statutes are unconstitutional is outside the narrow scope of claims permissible in a motion to correct an illegal sentence. See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). To the extent he alleges his claim concerning the Nevada Revised Statutes deprived the district court of jurisdiction to sentence him or preside over the case, this claim does not implicate the jurisdiction of the district court. See Nev. Const. art. 6, § 6; NRS 171.010; Landreth v. Malik, 127 Nev. 175, 183 251 P.3 163, 168 (2011) (“[s]ubject matter jurisdiction is the court’s authority to render a judgment in a particular category of case”) (internal quotation marks omitted).

#### **A. Appellant’s Claim Regarding the Nevada Revised Statutes Falls Outside the Scope of a Motion to Correct Illegal Sentence**

Appellant claimed his sentence was illegal because the Nevada Revised Statutes are unconstitutional, due to being implemented without a constitutionally required enacting clause. This claim was properly denied because it does not address

the facial validity of Appellant’s sentence and Appellant failed to demonstrate that the district court lacked jurisdiction.

NRS 176.555 states that “[t]he court may correct an illegal sentence at any time.” See also Passanisi v. State, 108 Nev. 318, 321, 831 P.2d 1371, 1372 (1992). However, the grounds to correct an illegal sentence are interpreted narrowly under a limited scope. See Edwards, 112 Nev. at 708, 918 P.2d at 324; see also Haney v. State, 124 Nev. 408, 411, 185 P.3d 350, 352 (2008). “A motion to correct an illegal sentence is an appropriate vehicle for raising the claim that a sentence is facially illegal at any time; such a motion cannot be used as a vehicle for challenging the validity of a judgment of conviction or sentence based on alleged errors occurring at trial or sentencing.” Edwards, 112 Nev. at 708, 918 P.2d at 324.

“Motions to correct illegal sentences address only the facial legality of a sentence.” Id. Motions to correct illegal sentences must allege that the sentence imposed is “at variance with the controlling statute, or illegal in the sense that the court goes beyond its authority by acting without jurisdiction or imposing a sentence in excess of the statutory maximum provided.” Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)). Importantly, “[a] motion to correct an illegal sentence ‘presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of

sentence.” Edwards, 112 Nev. at 708, 918 P.2d at 324 (quoting Allen, 495 A.2d at 1149).

Appellant failed to allege facial illegality, because he did not claim that the sentence imposed on him was at variance with the controlling sentencing statutes. Nor could he so demonstrate, as he was sentenced within the permissible statutory range for both offenses. See NRS 200.508(1); NRS 200.366, NRS 193.330.<sup>2</sup>

Instead, Appellant alleged that the entire Nevada Revised Statutes are invalid. This claim does not address the facial illegality of his sentence. In fact, such a claim challenges the validity of his conviction and the entire proceedings against him. Such a claim is not cognizable in a motion to correct an illegal sentence. A motion to correct an illegal sentence “*presupposes a valid conviction* and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence.” Edwards, 112 Nev. at 708, 918 P.2d at 324 (internal quotation marks omitted) (emphasis added). As Appellant challenges the validity of the entire criminal proceedings against him, by claiming he was unconstitutionally prosecuted under invalid statutes, his claim exceeds the limited scope of a motion to correct an

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<sup>2</sup>For Count 1 (Attempt Sexual Assault With a Minor Under Fourteen Years of Age), Appellant received a sentence of 8 to 20 years. V ROA 1090. This is within the statutory range for an attempt to commit an A felony. See NRS 200.366, 193.153(1)(a)(1) (substituted in revision for NRS 193.330). For Count 2 (Child Abuse, Neglect, or Endangerment), Appellant received a sentence of 28 months to 72 months. V ROA 1090. This is within the statutory range for violations of NRS 200.508(1)(b)(1).

illegal sentence. Therefore, the district court did not err in denying this claim, and Appellant is not entitled to appellate relief.

**B. Even if His Claim Were Cognizable, He Would Still Not be Entitled to Relief Because the Nevada Revised Statutes are Valid as the Official, Codified Version of the Laws Passed by the Legislature**

Even assuming for the sake of argument that his challenge to the constitutionality of the Nevada Revised Statutes could be raised in a motion to correct illegal sentence, this claim still fails. The Statutes of Nevada contain the laws with the enacting clauses required by the Nevada Constitution. In other words, the actual laws of Nevada, and their enactment clauses, are contained in the Statutes of Nevada. The Nevada Revised Statutes merely “*constitute the official codified version of Statutes of Nevada and may be cited as prima facie evidence of the law.*” NRS 220.170(3) (emphasis added). The Nevada Revised Statutes consist of enacted laws that have been classified, codified, and annotated by the Legislative Counsel. See NRS 220.120. Thus, the fact that the Nevada Revised Statutes do not contain separate enacting clauses does not render these statutes unconstitutional.

Appellant wrongly contends that the district court lacked jurisdiction to sentence him because NRS 171.010 does not contain an enacting clause. However, the Nevada Revised Statutes were properly passed by the 48th Legislature and approved by the governor. See Legislative Counsel’s Preface, 2, available at: <http://www.leg.state.nv.us/Division/Research/Library/Documents/HistDocs/Prefac>

e.pdf (“*Nevada Revised Statutes* in typewritten form was submitted to the 48<sup>th</sup> Session of the Legislature in the form of a bill providing for its enactment as law of the State of Nevada. This bill, Senate Bill No. 2 . . . was passed without amendment or dissenting vote, and on January 25, 1957, was approved by Governor Charles H. Russell.” (emphasis in original)).

The Nevada Revised Statutes do not require a separate enacting clause. The Nevada Constitution provides that, “[t]he enacting clause of every law shall be as follows: ‘The People of the State of Nevada, represented in Senate and Assembly, do enact as follows,’ and no law shall be enacted except by bill.” Nev. Const. art. 4, § 23. The Nevada Supreme Court has interpreted this provision to mean an enacting clause must be included in every law created by the Legislature and the law must express on its face “the authority by which they were enacted.” State v. Rogers, 10 Nev. 250, 260 (1875). This does not undermine the validity of the Nevada Revised Statutes, which are simply the codified versions of the laws passed by the Legislature—laws which already contain an enacting clause.

Appellant’s repeated assertions are nothing more than bare, naked claims belied by the existence of the Nevada Revised Statutes. Essentially, Appellant seeks to have the State prove that Senate Bill No. 2, and the statutes arising therefrom, are constitutional. Yet Appellant misunderstands the respective burdens of the movant and the State. “Statutes are presumed to be valid, and the *challenger* bears the burden



of showing that a statute is unconstitutional.” Halverson v. Secretary of State, 124 Nev. 484, 487, 186 P.3d 893, 896 (2008) (emphasis added); see also Nevadans for Nevada v. Beers, 122 Nev. 930, 939, 142 P.3d 339, 345 (2006).

Moreover, the existence of Senate Bill No. 2 and the Nevada Revised Statutes are *prima facie* evidence of their own constitutionality—as illustrated *supra*, nothing can become a law that has not first passed through the steps outlined in the Nevada Constitution, and bills may originate in either the senate or assembly. Appellant offers no evidence that Senate Bill No. 2 and the Nevada Revised Statutes are unconstitutional, and their very existence belies his claim that they are not. See generally Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984). Accordingly, Appellant’s claim is without merit and he is not entitled to relief.

The Nevada Revised Statutes consist of *previously enacted laws* which have been classified, codified, and annotated by the Legislative Counsel. See NRS 220.120. Thus, the reason the Nevada Revised Statutes are referenced in criminal proceedings is because they “constitute the official codified version of the Statutes of Nevada and may be cited as *prima facie* evidence of the law.” NRS 220.170(3) (emphasis added). Further, the content requirements for the Nevada Revised Statutes, as laid out in NRS 220.110, do not require the enacting clause to be republished in them. See NRS 221.110. Therefore, the lack of an enacting clause in the Nevada Revised Statutes does not render them unconstitutional.

Furthermore, Appellant did not demonstrate that the district court lacked jurisdiction. He cannot, as the district courts possess explicitly-granted statutory jurisdiction over criminal matters pursuant to NRS 171.010, which states:

Every person, whether an inhabitant of this state, or any other state, or of a territory or district of the United States, is liable to punishment by the laws of this state for a public offense committed therein, except where it is by law cognizable exclusively in the courts of the United States.

Accordingly, Appellant's claim that the Nevada Revised Statutes are invalid for lack of an enactment clause should be denied. He failed to demonstrate his sentence is facially illegal, or that the district court lacked jurisdiction to sentence him in this case. Accordingly, the district court did not err in denying his claim and Appellant is not entitled to appellate relief.

## **II. APPELLANT'S REMAINING CLAIMS OF JUDICIAL MISCONDUCT, MISCONDUCT BY THE STATE, AND CUMULATIVE ERROR ARE UNPRESERVED AND WITHOUT LEGAL SUPPORT**

Appellant contends he is entitled to reversal because the district court failed to file the documents he submitted in a timely manner or consider all of his duplicitous pleadings prior to denying his Motion, and that the State committed misconduct by filing an untimely Opposition. He also alleges cumulative error.

As a preliminary matter, all of these claims are raised for the first time on appeal, and thus this Court should decline to rule upon these issues in the first instance. Generally, issues not raised before the district court are deemed waived for

appellate review. See Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). The failure to preserve an error, even an error that has been deemed structural, forfeits the right to assert it on appeal. United States v. Olano, 507 U.S. 725, 731, 113 S.Ct. 1770 (1993) (“No procedural principle is more familiar to this Court than that a constitutional right, or a right of any other sort, may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right....” (internal quotation marks omitted)).

Additionally, Appellant fails to support his contention that these allegations, even if true, would entitle him to reversal of the district court’s denial of his Motion to Correct Illegal Sentence. Accordingly, this Court should decline to review these issues. See Edwards v. Emperor’s Garden Rest., 122 Nev. 317, 330, n. 38, 130 P.3d 1280, n. 38 (2006) (court need not consider claims unsupported by relevant authority); State, Dept. of Motor Vehicles and Public Safety v. Rowland, 107 Nev. 475, 479, 814 P.2d 80, 83 (1991) (unsupported arguments are summarily rejected on appeal); Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (“It is appellant’s responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.”).

Unsurprisingly, as none exists, Appellant has failed to cite a single authority to support his baseless claim that by not filing an Opposition within a certain time period, the district court was obligated to grant his Motion to Correct Illegal

Sentence. The district court could not have granted the Motion even in the absence of an opposition by the State; as discussed above, Appellant's claims were meritless and fell well outside the scope of permissible claims. Similarly, Appellant provides no support for his contention that he is entitled to relief due to the district court allegedly not filing his duplicitous pleadings in a timely manner or denying his Motion to Correct Illegal Sentence prior to reviewing his later filings.

Further, his claim that the district court did not consider all of his relevant pleadings is belied by the record. On November 7, 2022, the district court indicated it had considered all of the pleadings related to the Motion to Correct Illegal Sentence. VII ROA 1497. Thus, the Court considered Appellant's Motion to Correct Illegal Sentence, a Memorandum in Support of Motion to Correct Illegal Sentence, and Exhibits in Support of Motion to Correct Illegal Sentence. V ROA 1173-1201; VI ROA 1202-1375. Appellant also submitted a Motion for Continuance to the district court that was received on October 31, 2022, and filed on November 7, 2022. VI ROA 1399. This Motion was denied as moot on November 28, 2022. VII ROA 1498. Appellant presents no cogent argument demonstrating that this denial was error, or that the district court was required to rule upon the Motion for Continuance prior to ruling upon his Motion to Correct Illegal Sentence. See Maresca, 103 Nev. at 673, 748 P.2d at 6.

Appellant also submitted a Motion for Default Judgment to the court on November 7, 2022, which was filed on November 10, 2022. VI ROA 1426. This Motion was denied as moot on December 5, 2022. VII ROA 1499. Again, Appellant fails to provide any cogent argument or legal support for his claim that denial of this Motion was error, or that it should have been ruled upon prior to denial of his Motion to Correct Illegal Sentence. Furthermore, any motion for a default judgment in a defendant's favor is clearly meritless in the postconviction context. See Means v. State, 120 Nev. 1001, 1019, 103 P.3d 25, 37 (2004).

Finally, Appellant alleges he is entitled to reversal on the basis of cumulative error. This Court has never found that the doctrine of cumulative error applies in the consideration of a motion to correct illegal sentence. It is the State's position that a cumulative error claim makes little sense in this context. A sentence is either facially illegal or it is not; such an analysis is incompatible with the accumulation of minor errors. Regardless, this claim is clearly without merit, as Appellant has failed to demonstrate the existence of a single error by the district court. See United States v. Rivera, 900 F.2d 1462, 1471 (10th Cir. 1990) (“[A] cumulative-error analysis should evaluate only the effect of matters determined to be error, not the cumulative effect of non-errors.”). Accordingly, there is no error to cumulate.

### **CONCLUSION**

The district court properly denied Appellant's Motion to Correct Illegal

Sentence because Appellant failed to demonstrate that his sentence was facially illegal or that the district court lacked jurisdiction. Accordingly, the State respectfully requests that the district court's denial of Appellant's Motion to Correct Illegal Sentence be affirmed.

Dated this 22<sup>nd</sup> day of February, 2023.

Respectfully submitted,

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BY */s/ Karen Mishler*

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## CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14 point font of the Times New Roman style.
2. **I further certify** that 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, contains 4,067 words and 18 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 22<sup>nd</sup> day of February, 2023.

Respectfully submitted

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**CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 22<sup>nd</sup> day of February, 2023. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD  
Nevada Attorney General

KAREN MISHLER  
Chief Deputy District Attorney

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

DUSTIN BARRAL #1108615  
LCC  
1200 Prison Rd.  
Lovelock, Nevada 89419

*/s/ J. Hall*

\_\_\_\_\_  
Employee, Clark County  
District Attorney's Office

KM//jh