IN THE SUPREME COURT OF THE STATE OF NEVADA

BENNETT GRIMES, Appellant, v. THE STATE OF NEVADA, Respondent.	CASE NO: 62835

FAST TRACK RESPONSE

1. Name of party filing this fast track response: The State of Nevada

2. Name, law firm, address, and telephone number of attorney submitting this fast track response:

Steven S. Owens
Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2750

3. Name, law firm, address, and telephone number of appellate counsel if different from trial counsel:

Same as (2) above.

4. Proceedings raising same issues. List the case name and docket number of all appeals or original proceedings presently pending before this court, of which you are aware, which raise the same issues raised in this appeal: None

/ / /

/ / /

5. Procedural history.

On October 15, 2012, a jury found Appellant guilty of: Count 1-Attempt Murder with Use of Deadly Weapon in Violation of Temporary Protective Order ("TPO"); Count 2-Burglary while in Possession of Deadly Weapon in Violation of TPO; and Count 3-Battery with Use of Deadly Weapon Constituting Domestic Violence Resulting in Substantial Bodily Harm in Violation of TPO. 1 AA 173-175,211-212.

February 12, 2013, Appellant was sentenced to the Nevada Department of Corrections as follows-Count 1: 8-20 years, plus a consecutive term of 5-15 years, for use of deadly weapon; Counts 2 & 3: for each count, Appellant was sentenced under the small habitual criminal statute to 8-20 years, Count 2 to run concurrent to Count 1, and Count 3 to run consecutive to Counts 1 and 2. The Judgment of Conviction was filed on February 21, 2013. 1 AA 224-225.

On March 18, 2013, Appellant filed a Notice of Appeal. 1 AA 226-229. Appellant's Fast Track Statement ("FTS") was filed on August 19, 2013. On September 9, 2013, Respondent filed a Motion to Extend Time, which was granted by this Honorable Court, extending Respondent's time to file its Fast Track Response to October 9, 2013.

/ / /

/ / /

6. Statement of Facts.

On July 22, 2011, Aneka Grimes ("Aneka") and her mother Stephanie Newman ("Stephanie") returned to Aneka's apartment at 9325 West Desert Inn Road. 3 AA 655-57. After they entered the apartment, Appellant appeared from nowhere and pushed his way through the front door, while Aneka and Stephanie attempted to keep him out. 3 AA 660,713. Although Aneka and Appellant were married at the time, Aneka had a TPO in place prohibiting Appellant from being near her or her apartment. 3 AA 654,657. After forcing his way in, Aneka and Stephanie told Appellant to leave, but he did not listen. 3 AA 660-63,695. Neither Aneka nor Stephanie could leave because Appellant was blocking the doorway. 3 AA 697,718. Aneka then dialed 911. 3 AA 663,716.

Officer Tavarez ("Tavarez") of the Las Vegas Metropolitan Police Department ("LVMPD") was the first officer to arrive. 5 AA 602-607. Shortly thereafter, Tavarez was joined by Officer Hoffman ("Hoffman") and Officer Gallup ("Gallup"). 3 AA 569,607-08. The officers made contact with Stephanie who was standing Aneka's balcony. 3 AA 572-73,610-11. Then they heard a "bloody murder" scream. Id.

Inside the apartment, Appellant had approached Aneka near the kitchen counter, reached over the bar and grabbed a knife that was placed near the sink; pulled her toward the front door and began stabbing her. 3 AA 669,689,692.

Aneka attempted to defend herself by using her left arm to block the remainder of her body. 3 AA 670,676,698. Hoffman made entry into the apartment through the patio door. 3 AA 573. Upon entry, Hoffman observed Appellant hunched over Aneka; it appeared to him that Appellant was punching Aneka over and over but as he approached, Hoffman realized that Appellant was holding a knife in his hand, which he had just extracted from Aneka's body. 3 AA 575-6. As Appellant's hand was in an upward motion to stab Aneka again, Hoffman rushed toward him, grabbed his wrist, instructed him to "drop the knife," and simultaneously knocked Appellant to the ground. 3 AA 576,578,672. Hoffman's command was heard by Tavarez from the other side of the front door. 3 AA 612.

Shortly after Hoffman's entry, Gallup entered the apartment, followed by Tavarez. 3 AA 578,612. Upon entry, Tavarez observed Hoffman and Gallup attempting to subdue Appellant so she assisted in securing him. 3 AA 615-16. After Appellant was secure, Tavarez retrieved a towel and instructed Stephanie to maintain pressure on Aneka's wounds until paramedics arrived. 3 AA 617-18,728. During the interaction between Aneka and Appellant, Aneka was not behaving in an aggressive manner; rather, she was merely trying to defend herself and to get away from Appellant's violent wrath. 3 AA 580,731.

After taking Appellant into custody, Hoffman noticed that Appellant had a cut on his right index finger; the same hand he used to stab Aneka. 3 AA 582.

Hoffman then called for an ambulance. 3 AA 595-96. Aneka was ultimately treated for 21 stab wounds to her upper extremities, upper chest, neck and scalp. 3 AA 630,635.

7. Issue(s) on appeal.

I. The court did not err in failing to issue a self-defense instruction.

II. The court did not err by failing to notify the parties of a jury question during deliberation regarding the formation of burglarious intent.

III. The State presented sufficient evidence to sustain a burglary conviction.

IV. The district court proceeding is not subject to reversal for cumulative error.

8. Legal Argument, including authorities:

I. THE COURT DID NOT ERR IN FAILING TO ISSUE A SELF-DEFENSE INSTRUCTION

Appellant contends that his Constitutional rights were violated because he was prevented from presenting his theory of the case. The State will address each of Appellant's arguments in turn.

A. Self-Defense Instruction

In the instant case, Appellant requested that the jury be instructed on self-defense. 5 AA 932,957-958. The court ruled such an instruction was improper because there was no evidence that Aneka was the initial aggressor or that she used

deadly force against Appellant. 5 AA 932-950. Appellant contends that the court's decision was erroneous.

This Court reviews the district court's decision regarding jury instructions for judicial error or abuse of discretion. Funderburk v. State, 125 Nev. 260, 263, 212 P.3d 337, 339 (2009). Here, the district court did not abuse its discretion in failing to instruct the jury on self-defense.

If a defendant presents evidence to support a theory, "no matter how weak or incredible that evidence may be," the district court may not refuse to give an instruction on that theory. McCraney v. State, 110 Nev. 250, 254, 871 P.2d 922, 925 (1994). However, a self-defense "instruction should not be given if there is no supportive evidence" tending to prove defendant's actions occurred in circumstances amounting to self-defense. Williams v. State, 91 Nev. 533, 535, 539 P.2d 461, 462 (1975) (citation omitted), see Mirin v. State, 93 Nev. 57, 59, 560 P.2d 145, 146 (1977). One element of self-defense is that the person relying on the claim had a reasonable apprehension of great bodily harm. See Riddle v. State, 96 Nev. 589, 613 P.2d 1031 (1980).

As recognized in Defendant's proposed Jury Instruction, "[i]f a person attempts to kill another in self-defense, it must appear that: (1) The danger was so urgent and pressing that, ***in order to save the person's own life, or to prevent the person from receiving great bodily harm, the attempt killing of the other was***

absolutely necessary; and (2) ***The person attempted to be killed was the assailant***, or that the non-assailant…endeavored to decline any further struggle before the mortal blow was given. 5 AA 1057, NRS 200.200, see also Runion v. State, 116 Nev. 1041, 1051-52, 13 P.3d 52, 59 (2000). Thus, in order to warrant a jury instruction on self-defense, there must have been some evidence that Aneka was the initial aggressor and that Appellant acted under the actual and reasonable belief that the use of force was necessary to avoid death or great bodily injury.

Here, the record establishes that Appellant, not Aneka, was the aggressor. 3 AA 580,669,689. Additionally, there is absolutely no evidence of any threats made by Aneka, nor any evidence that she made a violent advancement toward Appellant. Appellant alleges that Aneka's threatening behavior can be inferred because she was yelling at him to leave and because she admitted she wanted him to be gone. FTS at 11-12. Such words do not warrant an instruction on self-defense, especially when Appellant was violating a TPO by his presence in Aneka's apartment.

Appellant had the opportunity to cross-examine the State's witnesses and was unable to elicit any evidence that Aneka was the initial aggressor or that Appellant was ever in fear of suffering death or great bodily harm. Furthermore, not only does Appellant fail to point to any evidence that he acted out of fear of death or great bodily injury, Appellant never even alleges that this was the case.

Accordingly, the district court properly refused to instruct on self-defense. See Mirin, 93 Nev. at 59, Williams v. State, 91 Nev. at 535. However, even if the district court erred in failing to instruct on self-defense, the error was harmless as the jury would have found Appellant guilty on all counts even with this instruction.

B. Presentation of Evidence

Appellant alleges that the trial court's ruling was based on an erroneous belief that a defendant cannot obtain a self-defense instruction unless he testifies or introduces evidence of a prior statement made to police. Appellant misconstrues the record. All statements made by the trial court and cited in Appellant's FTS were made after the State closed its case-in-chief. A full review of the record reveals that the court's decision was not based on Appellant's failure to testify. 5 AA 932-951. Rather, the court simply informed Appellant that there was insufficient evidence following the State's case-in-chief, to warrant a self-defense instruction. 5 AA 932,934-35,938,949-950. As such, the trial court instructed Appellant that he needed to assert *some* evidence in support of his theory. See 5 AA 949-951. As Appellant had no other evidence, the trial court informed him that he would not be entitled to a self-defense instruction unless he testified. Id.

Accordingly, the trial court's statements should not be construed as an assertion that a self-defense instruction cannot be warranted absent a defendant's testimony. The court simply acknowledged the obvious difficulty of otherwise

establishing sufficient evidence of self-defense. This acknowledgement does not amount to error. See State v. Walker, 164 Wash. App. 724, n.5, 265 P.3d 191 (2011) (A defendant's request for a self-defense instruction may be denied if there is insufficient evidence to support it, and sometimes defendant's testimony is the only source for such evidence). As Appellant falsely alleges that the trial court refused to instruct on self-defense due to Appellant's failure to testify, the trial court did not err on this basis.

C. Fifth and Sixth Amendment Rights

Appellant alleges that the trial court forced him to choose between his Sixth Amendment right to present a defense and his Fifth Amendment right not to testify. Appellant cites to Williams v. State, 1996 OK CR 16, 915 P.2d 371, in support of his argument. FTS at 15. In Williams, the defendant's constitutional right not to testify was violated when the trial court ruled that ***no*** evidence could be presented on self-defense unless the defendant testified; the defendant was not even allowed to elicit testimony on cross-examination regarding the theory. 915 P.2d at 375-377.

Williams is unlike the present case. As noted above, in this case, the court never indicated that Appellant needed to testify in order to warrant a self-defense instruction. The court merely recognized that there was insufficient evidence to warrant a self-defense instruction unless Appellant ultimately decided to take the

stand. And that was only because the State's case-in-chief had closed and there would be no more cross-examination through which he could elicit positive evidence that Aneka was the aggressor. Unlike the trial court in Williams, the trial court in this case did not prevent Appellant from presenting evidence in support of self-defense. Accordingly, Appellant was not forced to choose between two constitutional rights and Appellant's conviction cannot be reversed on this ground.

D. Appellant's Theory of the Case

For the first time on appeal, Appellant argues that he was precluded from arguing self-defense at trial. However, Appellant does cite to anywhere in the record where such a ruling was rendered. In fact, a review of the record reveals that appellant was not precluded from arguing self-defense. Specifically, during closing, Appellant argued many of the points addressed in his FTS statement which he contends support the theory of self-defense. 5 AA 987-993. Also, Appellant explicitly stated that although Aneka's "wounds may be consistent with what the State has alleged, they may just as well be consistent with two people struggling over a weapon." Id. Although, the court informed Appellant's counsel that they could not "argue to the jury what [Appellant] may have said had he taken the stand," 5 AA 947, the court was simply prohibiting Appellant from arguing facts not in evidence. This cannot be equated to prohibiting Appellant from presenting a self-defense argument.

Furthermore, even if Appellant was precluded from arguing self-defense in closing, such a ruling would have been justified. While "[c]ounsel is allowed to argue any reasonable inferences from the evidence," Jain v. McFarland, 109 Nev. 465, 476, 851 P.2d 450, 457 (1993), it is fundamental that neither the prosecution nor the defense "'premise arguments on evidence which has not been admitted.'" Glover v. Dist. Ct., 125 Nev. 691, 705, 220 P.3d 684, 694 (2009) (citation omitted). As noted above, there was insufficient evidence to warrant a self-defense instruction. Therefore, it would have been improper to allow counsel to present a theory of self-defense because doing so would have amounted to allowing argument not supported by the evidence.

Accordingly, the trial court did not violate Appellant's due process rights, his fundamental right to assistance of counsel or his right to present a defense.

E. Expert Testimony

Appellant contends that the court erred in allowing State's witness, Louise Renhard (Crime Scene Analyst for LVMPD) to testify regarding the injury Appellant received to his right hand. In reference to photographs taken by Renhard of Appellant's hand, the following testimony was elicited by the State:

> Q. Now, Ms. Renhard…in your experience of photographing, seeing self-inflicted wounds, how would you describe that wound to the right index finger on that hand?
>
> A. I would describe it as [an] incise wound.

> Q. Okay. And do those types of wounds sometimes happen when a knife slips in a person's hand?
>
> A. Yes.
>
> Q. And [is] that photograph consistent with that happening?
>
> A. Yes, it is.

4 AA 799.

In anticipation of the above-testimony, Appellant's counsel objected on the basis that Renhard was not qualified to make such a determination; the objection was overruled. 4 AA 798. Subsequent to the above testimony, the State attempted to elicit testimony from Renhard regarding defensive wounds.[1] 5 AA 799. Prior to any answer being given, Appellant's counsel objected as to lack proper notice, i.e., defense counsel was not informed that Renhard would be testifying as to the nature of wounds; and because Renhard's CV was not provided in advance. 5 AA 801-813. The trial court sustained counsel's objection for lack of notice. 5 AA 816.

Trial counsel then asked for "an instruction to disregard any testimony [Renhard] gave as to her opinion of how [the] particular wounds were caused." 4 AA 818. The court did not render this instruction and instead instructed the jury to "disregard the last question and any testimony given in response...." 5 AA 821.

[1] Referencing a photograph of Aneka's injuries, the State asked "[d]o you notice anything in particular based on the placement…of this cut that indicate[s] something to you?" 5 AA 801

Here, Appellant contends that the above testimony violated Appellant's due process and confrontation clause rights. This argument is not properly before the Court because Appellant did not object at the trial level on either basis. See Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (A defendant's failure to object to an issue at trial generally precludes appellate review of that issue unless there is plain error).

However, in the event this Court does determine that the constitutional arguments were properly preserved, the testimony does not warrant reversal as any error was harmless. First, Renhard never gave an opinion as to how Appellant's wound was caused; she merely indicated that Appellant's wound was consistent with a knife slipping in his hand. Second, during closing, the State told the jury they did not need anyone else's opinion, not an "expert witness" nor "a lawyer" to conclude that Appellant's injury was inflicted when he stabbed Aneka 21 times. 5 AA 977-78. Thus, there is no evidence that the jury relied on Renhard's testimony or that any potential reliance affected the jury's verdict.

II. THE COURT DID NOT ERR BY FAILING TO NOTIFY THE PARTIES OF A JURY QUESTION DURING DELIBERATION REGARDING THE FORMATION OF BURGLARIOUS INTENT

A "trial judge has wide discretion in the manner and extent he answers jury's questions during deliberation…[i]f he is of the opinion instructions already given are adequate, correctly state the law, and fully advise jury on procedures they are

to follow in their deliberation, his refusal to answer a question already answered in the instructions is not error." Scott v. State, 92 Nev. 552, 554, P.2d 735 (1976) (quoting Tellis v. State, 84 Nev. 587, 591, 445 P.2d 938, 941 (1968)).

This court reviews a district court's actions in responding to questions from the jury for an abuse of discretion. See Scott, 92 Nev. at 555. Additionally, errors pertaining to communications between the judge and jury are reviewed for harmlessness. See Daniel v. State, 119 Nev. 498, 511, 78 P.3d 890, 899 (2003).

In Scott, this Court held that it was not abuse of discretion for the trial court to fail to give further instruction on the issue of premeditation following a request by the jury. In Scott, a defendant was convicted of first-degree murder and attempted murder. 92 Nev. at 554. During deliberation, the jury foreman suggested to the judge it would be helpful to have another instruction regarding premeditation. Id. The judge informed the jury that he would render an additional instruction if he felt it was necessary to do so. Id. The judge did not render an additional instruction and there was no further communication between the judge and the jury on this matter. Id. In reaching its decision that the trial court did not err in failing to reinstruct the jury regarding premeditation, this Court recognized that the jury had already been properly and fully instructed. Id.

In this case, following the reading of the verdict, the judge informed the parties that she received a note from the jury during deliberation. Specifically, the trial judge stated as follows:

> The Court did receive a note from the jury panel. I did not respond to the note because my only response would have been read the jury instructions…And the note was: Does criminal intent have to be established before entering structure or can intent change during the chain of events for the charge of burglary? I didn't respond to it because my only response would have been continue to deliberate and look at the instructions.

5 AA 1008. Trial counsel for Appellant then stated: "I think that would have been a correct response." Id. At the time the jury question was brought to the attention of the parties, there were no objections to the judge's failure to respond to the question, or for failing to notify the parties when the question was raised. Id.

Appellant now asserts that his Constitutional rights were violated as he was not notified of the jury note prior to the judge's determination not to respond. Specifically, Appellant contends he was denied counsel at a critical stage in the proceedings. FTS at 21. Appellant relies primarily on U.S. v. Barragan-Devis, 133 F.3d 1287 (9th Cir. 1998) (holding that the court's failure to notify defense counsel of a jury note was harmless error where the court did not respond), and Musladin v. Lamarque, 555 F.3d 830 (9th Cir. 2009).

Contrary to Barragan, wherein the harmless error standard was applied, Appellant contends that Musladin requires automatic reversal in the instant case.

FTS at 20-21. In Musladin, the appellant argued that the trial court's failure to consult with defense counsel before responding to a jury note, deprived him of his Sixth Amendment right to counsel. 555 F.3d 835. In upholding the state court's decision that the defendant was ***not denied counsel at a critical stage*** of the proceedings, the Ninth Circuit noted that U.S. Supreme Court case law, does not require automatic reversal based on the trial judge's decision to refer the jurors back to the jury instructions. Id. at 842-43. The Ninth Circuit recognized that when "the judge simply directs the jury to his previous instructions, the potential impact of defense counsel's inability to participate is significantly lessened, because defense counsel played a role in the formulation of those instructions." Id. at 843.

As afforded in Scott, the trial judge in this case used her discretion in deciding not to respond to the jury's question. As she noted on the record, a response simply would have referred the jurors back to the instructions already provided. 5 AA 1008.

Here, Appellant's trial counsel was involved in the formation of the jury instructions and at no time did he object to the instructions that were admitted, nor did he proffer any additional instructions regarding intent. 5 AA 953. Furthermore, Appellant's argument that he was denied counsel at a critical stage is circular. Here, the trial judge decided not to respond to the jury question. 5 AA

1008. Accordingly, there was no proceeding at which Appellant's trial counsel could have appeared. For these reasons, Appellant was not denied counsel at a critical stage of the proceedings. See United States v. Widgery, 778 F.2d 325, 329 (7th Cir. 1985) ("A judge's failure to show jurors' notes to counsel and allow them to comment before responding [does not violate] the Constitution"). Accordingly, the trial court did not err in failing to notify the parties of the jury's note.

However, if this Court does determine that the trial court erred, reversal is not warranted because the error, if any, was harmless. As noted above, the jury in this case was fully and properly instructed on the issue of intent. 1 AA 194,196-198. Furthermore, when the judge brought the jury question to the attention of the parties, Appellant's trial counsel did not object to the lack of notification and affirmatively indicated that the trial judge would have been correct in referring the jurors to the jury instructions. 5 AA 1008. This response makes clear the harmlessness of the court's actions. Although Appellant contends that defense counsel could have convinced the judge to respond to the jury's question if given the opportunity, it is extremely unlikely, based on counsel's response that he would have done so. Further, even if he had convinced the judge to send a response, the response would have referred the jurors to the instructions already provided, resulting in the same outcome as no response. Accordingly, any error was clearly harmless and this court should not find reversible error.

III. THE STATE PRESENTED SUFFICIENT EVIDENCE TO SUSTAIN A BURGLARY CONVICTION

In reviewing a claim of insufficient evidence, the relevant inquiry is "whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998). "Where there is substantial evidence to support a jury verdict, it will not be disturbed on appeal." Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 21 (1981).

Here, there was sufficient evidence to convict Appellant of burglary. When reading the evidence in the light most favorable to the prosecution, a reasonable trier of fact could have found beyond a reasonable doubt that Appellant entered Aneka's home with the intent to commit an assault or battery or another felony therein. See NRS 205.060(1). With respect to the intent required for burglary, the jury was instructed, pursuant to NRS 205.065 that: "[e]very person who unlawfully [enters any structure] may reasonably be inferred to have [entered it] with intent to commit…assault or battery on any person or a felony therein, unless the [unlawful entry] is explained by evidence satisfactory to the jury to have been made without criminal intent." 1 AA 197.

Appellant claims "the only reasonable inference that can be drawn from the evidence is that [Appellant] intended to try to win his wife back when he barged into her apartment..." FTS at 25-26. Whether an alternate explanation for unlawful entry is sufficient to overcome the inference of burglarious intent is a decision of fact for the jury to make. Fritz v. State, 86 Nev. 655, 474 P.2d 377 (1970) (In burglary prosecution, jury had right to reject explanation that defendant was inside building looking for a job, and to conclude that his entry was with intent to commit a felony), Boyle v. State, 86 Nev. 30, 32 464 P.2d 493, 494 (1970) (The jury is not compelled to accept a defendant's denial of intent but can perform its duty to evaluate the facts surrounding the incident.).

Here, the jury was presented with the following evidence regarding Appellant's intent. Appellant forced his way into Aneka's apartment without permission. 3 AA 660,713-14. Appellant was waiting outside Aneka's apartment for her to return home but did not announce his presence or try to discuss matters with her until she was already inside, ensuring that any interaction between them would be in private. See 3 AA 695,713. Aneka had a TPO in place but despite the TPO and despite Aneka's pleading, Appellant would not leave. 3 AA 657,660-63,695. Furthermore, Appellant placed his body in front of the front door, so neither Aneka nor her mother could exit the apartment. 3 AA 697,718.

The fact that Appellant unlawfully entered Aneka's apartment is sufficient evidence for the jury to infer that he did so with felonious intent. Appellant contends he could not have maintained the requisite intent to commit burglary when he entered the apartment because he did not have a weapon with him when he entered and because he spent "five minutes begging and pleading with Aneka" to take him back. FTS at 26. Notably, the jury heard all of this evidence, including the 911 tapes with Appellant's voice in the background. Despite this evidence, the jury rejected Appellant's theory that he did not have burglarious intent upon entry into Aneka's apartment. This determination was fully within the jury's province. See Fritz and Boyle, supra. Also, as the State argued in closing, a conditional intent to batter or commit a felony formed prior to entry is sufficient, i.e., Appellant's hope "that [Aneka] might [take] him back…doesn't mean he didn't commit a burglary because he had the intent to commit violence" if Aneka did not take him back. 5 AA 983-84, see People v. Fond, 71 Cal.App.4th 127, 83 Cal.Rptr.2d 660 (Cal. Ct. App. 1999).

Simply because Appellant proffered an alternate explanation does not mean that Appellant's explanation was satisfactory to the jury; nor does the jury's rejection of Appellant's explanation require reversal. After reviewing the evidence in the light most favorable to the prosecution, it is clear that *any* rational trier of

fact could have found the essential elements of burglary beyond a reasonable doubt. Therefore, this conviction should not be overturned.

IV. THE DISTRICT COURT PROCEEDING IS NOT SUBJECT TO REVERSAL FOR CUMULATIVE ERROR

Under the doctrine of cumulative error, "although individual errors may be harmless, the cumulative effect of multiple errors may deprive a defendant of the constitutional right to a fair trial." Pertgen v. State, 110 Nev. 554, 566, 875 P.2d 361, 368 (1994) (citations omitted). Evidence against the defendant must therefore be "substantial enough to convict him in an otherwise fair trial" and it must be said "that the verdict would have been the same in the absence of the error." Witherow v. State, 104 Nev. 721, 724, 765 P.2d 1153, 1156 (1988).

Insofar as Appellant failed to establish any error that would entitle him to relief, there is no cumulative error worthy of reversal. However, assuming arguendo that this Court determines any errors did occur, such errors were harmless as the evidence in Appellant's case was substantial enough to convict him absent any errors.

9. Preservation of the Issue.

The above issues were properly preserved for appeal.

VERIFICATION

1. I hereby certify that this fast track response 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 fast track response has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14 point and Times New Roman style.
2. I further certify that this fast track response complies with the page or type-volume limitations of NRAP 3C(h)(2) because it is proportionately spaced, has a typeface of 14 points or more and contains 4,630 words.
3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing a timely fast track response and the Supreme Court of Nevada may sanction an attorney for failing to file a timely fast track response, or failing to cooperate fully with appellate counsel during the course of an appeal. I therefore certify that the information provided in this fast track response is true and complete to the best of my knowledge, information and belief.

Dated this 9th day of October, 2013.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney

BY */s/ Steven S. Owens*

STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
P O Box 552212
Las Vegas, NV 89155-2212
(702) 671-2750

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on October 9, 2013. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ MASTO
Nevada Attorney General

DEBORAH L. WESTBROOK
Deputy Public Defender

STEVEN S. OWENS
Chief Deputy District Attorney

BY */s/ j. garcia*
Employee,
Clark County District Attorney's Office

SSO/Rachel O'Halloran/jg