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IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jul 21 2021 11:57 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

EFREN AGUIRRE JR.,

Appellant,

vs.

CASE NO.82445

ELKO COUNTY SHERIFF'S
OFFICE,

Respondent.

Appeal From The Fourth Judicial District Court
Of The State of Nevada
In And For The County Of Elko

RESPONDENT'S ANSWERING BRIEF

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STANDARD OF REVIEW ON APPEAL

The question of whether the real property is protected by the Homestead Act and whether the forfeiture of the real property violates the Eighth Amendment are questions of law the court reviews de novo.¹ However, the court should give “deference to the district court’s factual findings and application of the standards to the facts.”²

STATEMENT OF FACTS

Real property located at 743 Devon Dr, Spring Creek, NV 89815,(real property) was conveyed to Appellant on May 12, 2016. 2 JA. 465-466. On October 19, 2017, police officers executed a search warrant on Appellant to search real property. 1 JA. 142:24-28; 1 JA. 143:1-2. Police officers in searching the home on the real property and found a total of 80.82 grams in heroin. 1 JA. 143:6-10. On October 19, 2017, Appellant was arrested for trafficking in controlled substances. 2 JA. 320:10-15; 1 JA. 161. Appellant has resided in the Elko County Jail or in the custody of NDOC since October 19, 2017. 1 JA. 320:10-15. Appellant was charged with Trafficking in a Schedule I Controlled Substance, a Category A Felony as defined by NRS 453.3385(1)(c), and Trafficking in a Schedule I Controlled Substance,

¹ *Lioce v. Cohen*, 124 Nev. 1, 20, 174 P.3d 970 (2008).

² *Id.*

1 a Category B Felony as defined by NRS 453.3385(1)(a). *1 JA. 161:20-*
2 *162:6.* The penalty under NRS 453.3385(1)(c) in 2017, the time the
3 Forfeiture was filed, was life with the possibility of parole, with eligibility
4 for parole beginning when a minimum of 10 years has been served; or a
5 definite term of 25 years, with parole after a minimum of 10 years and a fine
6 of not more than \$500,000.00. Appellant was also charged with possession
7 of a controlled substance. *1 JA. 162-163.*

8 On November 2, 2017, Sheriff filed a Complaint for Forfeiture. *1 JA.*
9 *1-5.* On November 21, 2017, Appellant filed a Declaration of Homestead. *2*
10 *JA. 467-468.* The Declaration did not comply with the requirements under
11 NRS 115.020 as determined in the Court Order Denying Motions for
12 Summary Judgment filed on July 20, 2020. *2 JA. 253:23-254:15.*

13 On August 10, 2018, an Amended Criminal Information was filed
14 pursuant to a plea agreement. *1 JA. 169:8-11.* The Criminal Information
15 charged Appellant with Trafficking in a Schedule I Controlled Substance, a
16 Category B Felony as defined by NRS 453.3385(1)(b). *1 JA. 169:19-27.*
17 The penalty under NRS 453.3385(1)(b) in 2017, the time the Forfeiture
18 proceeding was filed, was 2 to 15 years and a fine of not more than
19 \$100,000.00. Parole and Probation recommended that Appellant be
20 sentenced to 36 months to 120 months with a fine of \$2,000. *2 JA. 292: 25-*

1 293:1. On October 16, 2018, a Judgment of Conviction was entered against
2 Appellant. Appellant was sentenced to 48 months and a maximum 120
3 months for the trafficking charge. 2 JA. 492:14-16. Claimant also received a
4 nominal fine for \$100.00. 2 JA. 492:17.

5 On December 15, 2018, the real property was leased to Reyann
6 Winters (Winters) on a week to week lease agreement. 2 JA. 495-496. The
7 agreement specifically mentions that the property is intended to be the
8 homestead property, and that Appellant intends to occupy the property after
9 his release from prison. 2 JA. 495. This agreement was prepared by the same
10 attorneys representing Appellant in the Forfeiture Proceedings and after the
11 Declaration of Homestead was filed. 2 JA. 311:20-312:1. All of Appellant's
12 personal property was removed from the real property to allow for the
13 rental. 2 JA. 311:15-19. Winters has occupied the property from December
14 15, 2018, to the time of the bench trial. 2 JA. 303:5-10. Winters pays
15 \$1200.00 a month to rent the property. 2 JA. 303:11-13. Appellant uses the
16 funds to pay real property taxes, other fees, and makes a profit on the rent of
17 the real property. 2 JA. 305:10-14. Appellant's brother maintains the
18 property as a rental on behalf of Appellant. J JA. 302:13-19; 2 JA. 311:8-14.
19 Appellant also insured the property against loss of rents, premises liability,
20 and personal property. 3 JA. 505-506. Appellant's family, including a

1 dependent child, do not reside on the property. 2 *JA*. 309:9-13; 2 *JA*. 310:3-
2 6; 2 *JA*. 318:11-24; 2 *JA*. 320:8-16. Appellant testified that he intends to
3 return to the real property after his release from NDOC custody. 2 *JA*.
4 319:4-6. The suggested listing price for the real property is assessed at
5 approximately \$298,000. 2 *JA*. 330:15-18; 3 *JA*. 511-519. On May 5, 2020,
6 Claimant filed an Amended Declaration of Homestead. 3 *JA*. 497. On July,
7 20, 2020, the Court denied the Motions for Summary Judgment. 2 *JA*.
8 255:24-256:1-2.

9 SUMMARY OF ARGUMENT

10 Appellant's real property is not protected by a homestead. Nevada law
11 requires that the Declarant of a homestead be a bona fide resident. Appellant
12 did not reside on the property when Appellant filed the Declaration of
13 Homestead or Amended Declaration of Homestead. Also, Appellant
14 abandoned the homestead when Appellant rented the entire property to a
15 tenant. Appellant's absence from the property is not temporary because there
16 is no evidence that Appellant will return to the property after incarceration.
17 Also, Nevada public policy is against protecting property used for criminal
18 activity.

19 Forfeiture of Appellant property does not violate the Eighth
20 Amendment. Court indicates that a forfeiture may be at 15 to 17 times more

1 than the maximum statutory fine without being excessive. The forfeiture of
2 real property is only three times greater than the maximum fine. The Court
3 should not determine that the fine is excessive based on parole and
4 probation's recordation of \$2,000 fine, the Court's nominal fine of \$100, or
5 the fine of \$20,000 based on a legislative change after the adjudication of the
6 offense.

7 ARGUMENT

8 **A. APPELLANT HOME IS NOT PROTECTED BY A** 9 **HOMESTEAD**

10 ***1. Appellant's Declarations of Homestead Are Not*** 11 ***Valid***

12 Under Article 4, Section 30 of the Nevada Constitution, "A
13 Homestead as provided by law, shall be exempt from forced sale under
14 any process of law" Under NRS 115.020(2)(a), "When made by a
15 married person or persons, that they or either of them are married, or if
16 not married, that he or she is a householder." "While the statutory
17 provisions should be liberally construed, this liberal interpretation 'can
18 be applied only where there is a substantial compliance with [the
19 homestead] provisions.'"³

20 ³ *In re Nilsson*, 129 Nev. 946, 952-53, 315 P.3d 966 (2013)(Quoting
McGill v. Lewis, 61 Nev. 34, 40, 116 P.2d 581, 583 (1941).

1 Appellant filed Appellant’s first Declaration of Homestead
2 (Declaration) on November 22, 2017. 2 JA. 467-68. However, the
3 Declaration was defective because the Declaration failed to indicate
4 that Appellant was “married” or a “householder” as required under
5 NRS 115.020(2).⁴ Because the Declaration did not comply with the
6 requirements of NRS 115.020(2), the Declaration is not valid.

7 Appellant filed an Amended Declaration of Homestead
8 (Amended Declaration) on May 18, 2020. 2 JA. 497. At the time the
9 Amended Declaration was filed, Appellant was renting the whole
10 property to a tenant and was not using the property for any homestead
11 purpose. 2 JA. 495-496; 3 JA. 505-506; 2 JA. 309-313. NRS
12 115.020(2)(c) requires the property be used as the residence of the
13 Declarant to have valid homestead exemption.⁵ Because Appellant
14 rented the whole real property to a tenant and is not being used for any
15

17 ⁴ *In re Nilsson*, 129 Nev. 946, 952-53, 315 P.3d 966 (2013); (*See also*
18 2 JA. 254 where District Court concluded Declaration did not comply
with NRS 115.020(2)(a).

19 ⁵ *In re Nilsson*, 129 Nev. 946, 952-53, 315 P.3d 966 (2013); *Jackman*
20 *v. Nance*, 109 Nev. 716, 720, 857 P.2d 7 (1993); *In re Sullivan*, 200
B.R. 682, 685 (Bankr. D. Nev. 1996), *aff’d*, 163 F.3d 607 (9th Cir.
1998).

1 homestead purpose, the Amended Declaration is invalid and does not
2 protect the Appellant's property.

3 Because Appellant's Declaration and Amended Declaration are
4 not valid, Appellants real property is not protected by a homestead.

5 ***2. Appellant's Residency is Constructive***

6 Under NRS 115.020(2)(c), "When made by any claimant under
7 this section, that it is their or his or her intention to use and claim the
8 property as a homestead." "In Nevada, '[i]t is axiomatic there can not
9 be a homestead absent residence[,] . . . when a declaration of
10 homestead is filed the declarant must be residing on the premises with
11 the intent to use and claim the property as a homestead.'"⁶ "A
12 homestead declaration must concern the claimant's 'bona fide
13 residence.'"⁷ "We therefore conclude that debtor must actually reside
14 on real property in order to properly claim a homestead exemption for
15 that property."⁸ The requirement of residency applies to householders.⁹

17 ⁶ *In re Nilsson*, 129 Nev. 946, 952-53, 315 P.3d 966 (2013)(Quoting *In*
18 *re Sullivan*, 200 B.R. 682, 685 (Bankr. D. Nev. 1996), *aff'd*, 163 F.3d
607 (9th Cir. 1998); *McGill v. Lewis*, 61 Nev. 34, 37-40, 116 P.2d 581
(1941); *In re Ellis*, 2019 Bankr. Lexis 3694, 2019 WL 11590521.

19 ⁷ *Id.*

20 ⁸ *Id.*

⁹ *In re Nilsson*, 129 Nev. 946, 952-53, 315 P.3d 966 (2013).

1 **b. Appellant is not a Resident under any Provision**
2 **of Law**

3 Appellant argues that Art. 2, Sec. 2 of the Nevada Constitution
4 shows that his residency has not changed. However, Art. 2, Sec. 2 is
5 applicable for the purpose of voting and does not indicate that
6 residency remains for the purpose of a homestead. Appellant also cites
7 NRS 11.180, which indicates that an incarcerated person has the right
8 to defend real property. However, nothing in NRS 11.180 indicates that
9 the real property is the incarcerated person's residence for any purpose.

10 Also, Appellant argues that federal law determines incarceration
11 does not change the residency of an incarcerated person. However,
12 Appellant references Federal case law that is inapplicable to determine
13 whether a person is a resident for the purposes of a homestead.¹³
14 Because Art. 2, Sec. 2 does not establish residency for a homestead,
15 because NRS 11.180 does not establish residency for a homestead, and
16 because the cited federal law is inapplicable in determining residency
17 for a homestead, Appellant is not a resident for the purpose of a
18 homestead.

19 ¹³ *Cohen v. United States*, 297 F.2d 760, 773 (9th Cir. 1962)(Finding
20 that residency had not changed for the purpose of providing notice to
the defendant); *Stifel v. Hopkins*, 477 F.2d 1116 (6th Cir.
1973)(Addressing residency for the purpose of diversity jurisdiction).

1 **c. Homestead Cannot be Filed While a Person is**
2 **Incarcerated under Nevada Law**

3 Appellant cites cases from several jurisdictions arguing that a
4 homestead could be filed while a person is incarcerated. However,
5 homestead statutory and constitutional requirements are unique in each
6 jurisdiction. “Homestead law was unknown to the common law . . .
7 [a]ccordingly, the homestead exemption can only be extended or
8 limited by the statute or constitutional provisions that created it.”¹⁴ The
9 cases cited by Appellant are cases from other jurisdictions examining
10 that jurisdiction’s unique homestead acts.¹⁵ Appellant cites no Nevada
11 or Federal case law showing that Nevada recognizes any constructive
12 occupancy under any circumstances. While incarceration has not been
13 directly addressed by the Nevada Courts, a Federal Court examined
14 Nevada precedent and concluded that Nevada does not recognize
15 constructive occupancy, even if a person is incarcerated.¹⁶ Because
16 Appellant cites to jurisdictions with unique constitutional and statutory
17 provisions and because there is no Federal or Nevada case law that
18 recognizes any type of constructive occupancy for the purposes of the

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¹⁴ *Savage v. Pierson*, 123 Nev. 86, 90, 157 P.3d 697 (2007).

20 ¹⁵ See Appellants Opening Brief filed June 22, 2021, Page 17 and 18.

¹⁶ *In re Ellis*, 2019 Bankr. Lexis 3694, 2019 WL 11590521.

1 homestead, Appellant is not a resident for the purpose of the
2 homestead.

3 Appellant argues that this case is distinguishable from *In Re*
4 *Ellis* and Nevada Supreme Court cases hold Declarations filed during
5 constructive occupancy invalid. However, the differences between this
6 case and *In Re Ellis* and other Nevada cases is insignificant. In *Nilsson*,
7 the Court considered the following certified question, “[D]oes the
8 debtor have to actually reside on the property that is the subject of a
9 claimed homestead exemption.”¹⁷ The court concluded “that a debtor
10 must actually reside on real property in order to properly claim a
11 homestead exemption for that property.”¹⁸ Here, Appellant cannot
12 show that Appellant resided on the property at the time any of the
13 Declarations were filed. 2 JA. 320:8-16. Because Appellant cannot
14 show that Appellant resided on the property at the time the Declarations
15 were filed, the Appellant is not a resident for the purposes of a
16 homestead.

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20 ¹⁷ *In re Nilsson*, 129 Nev. 946, 947, 315 P.3d 966 (2013).

¹⁸ *Id.* at 952-53.

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d. Final Process is Complete

Appellant argues that he will be living at the residence before final process is complete. NRS 115.010 (1) indicates, “The homestead is not subject to forced sale on execution or any final process from any court.” “Final process’ is defined as ‘process issued at the conclusion of a judicial proceeding.”¹⁹ “In a judicial forfeiture proceeding, the forfeiture is complete after process is issued at the end of the proceeding” where there is an involuntary transfer of property.²⁰

Here, final process has already occurred. NRS 179.1173(8), indicates that “[i]f the court determines that the property is subject to forfeiture, the court shall so decree.” The District Court awarded Sheriff a Judgment of Forfeiture. 2 JA 447:7-8. Thus, because final process is complete at the end of the forfeiture proceedings, and because the District Court entered a Judgment of Forfeiture, the final process is complete.

¹⁹ *Nielsen v. 2003 Honda Accord*, 845 N.W. 2d 754, 757 (Minn. 2013)(Citing *Black’s Law Dictionary*, 1325 (9th ed. 2009)).

²⁰ *Id.*

1 the process is final, Appellant is not a resident for the purposes of the
2 homestead.

3 **3. Appellant's Absence is not Temporary**

4 **a. Appellant's Homestead is Considered Abandoned**

5 Appellant argues that because his absence from the property is
6 temporary, Appellant's homestead is valid. However, Nevada and
7 Federal courts interpret Nevada's Homestead Act to require that the
8 declarant reside on the premises and continue to be the bona fide
9 residence of the family [householder].²² When a Declarant ceases to use
10 the property as a bona fide residence, the homestead is abandoned.²³

11
12 Here, Appellant's property currently is rented to a tenant. 2 JA.
13 495-496; 3 JA. 505-506; 2 JA. 309-313. Also, there is no indication in
14 the record that Appellant continues to reside on the property or that any
15 portion of the property is used by the Appellant as his residence or by
16 Appellant's family. 2 JA. 495-496; 3 JA. 505-506; 2 JA. 309-313.
17 Because Appellant rents the property and because there is no portion of

18 _____
19 ²² *Jackman v. Nance*, 109 Nev. 716, 720, 857 P.2d 7 (1993); *In re*
20 *Sullivan*, 200 B.R. 682, 685 (Bankr. D. Nev. 1996), *aff'd*, 163 F.3d 607
(9th Cir. 1998).

²³ *Id.*

1 the property used by Appellant as his bona fide residence, the
2 homestead is now abandoned.

3 **b. Appellant's Absence is not Temporary**

4 Appellant argues that the record shows that he intends to return
5 to the property and therefore his absence is temporary. In determining
6 whether an absence from the property is temporary, an Appellant must
7 demonstrate, rather than merely claim, the intent to return.²⁴ Also,
8 courts generally evaluate facts such as whether the Declarant continues
9 to use the property during the absence by visiting the property, storing
10 personal belongings on the property, or family continue to use the
11 property as a residence.²⁵ Courts have held that rented property does
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16 ²⁴ *In Re Burton*, 167 B.R. 923, 925 (1994)(Citing *Ellsworth v.*
17 *Marchall*, 196 C.A. 2d 471, 474, 16 Cal. Rptr. 5989, 590, (1961).

18 ²⁵ *In Re Burton*, 167 B.R. 923, 925 (1994)(Citing *Ellsworth v.*
19 *Marchall*, 196 C.A. 2d 471, 474, 16 Cal. Rptr. 5989, 590, (1961);
20 *Driver v. Conley*, 320 S.W. 3d. 516, 519 (*Tex.App.2010*); *Schaf v.*
Corey, 50 N.D. 432, 196 N.W. 502,503 (N.D. 1923); *In re Sullivan*,
200 B.R. 682, 684 (1996); *In re Nilsson*, 129 Nev. 946, 315 P.3d 966
(2013); *McGill v. Lewis*, 61 Nev. 34, 116 P.2d 581 (1941).

1 not keep its homestead character and shows that the absence is not
2 temporary.²⁶

3 Here, Appellant testified that he intends to return to the property.
4 2 JA. 319: 6-9. Also, the lease indicates that Appellant intends to return
5 to the property after he is released from prison. 2 JA. 495-496.
6 However, these are mere statements of the Appellant's intent to return
7 to the property and do not demonstrate an actual intent to return.
8 Appellant currently rents the property. 2 JA. 309-313; 2 JA. 495-496; 3
9 JA. 505-506. Also, the Appellant insures the property as a rental and
10 has it serviced and maintained by his brother for the renter. 3 JA. 505-
11 506; 2 JA. 311:8-19. Appellant makes a profit off the property as a
12 rental. 2 JA. 309: 19-24; 2 JA. 314:3-4. Appellant does not store any
13 personal property on the real property. 2 JA. 311:15-19. Appellant
14 does not use the property as his residence and no family of the
15 Appellant resides on the property. 2 JA. 309:9-13; 2 JA. 310:3-6; 2 JA.
16 318:11-24; 2 JA. 320:8-16. Because Appellant rents the property,
17 because the Appellant does not store any personal property on the

18
19 ²⁶ *In re Holt*, 357 B.R. 917, 923-24 (Bankr. M.D. Ga. 2006); *In re*
20 *Radtke*, 344 B.R. 690, 693 (Bankr. S.D. Fla. 2006); *In re Bornstein*,
335 B.R. 462, 465 (Bankr. S.D. Fla. 2005). *In re Haynes*, 2018 U.S.
Dist. Lexis 3153, 2018 WL 317808.

1 property, because Appellant's family does not use the property as a
2 bona fide residence, Appellant's absence from the property is not
3 temporary.

4 **c. Conclusion**

5 Because Appellant abandoned the homestead and because
6 Appellant's absence is not temporary, the real property is not protected
7 by a valid homestead.

9 **4. Public Policy Mandates Homestead be Set Aside**

10 There is a division among jurisdictions regarding whether a
11 homestead protects against forfeiture of property used for a criminal
12 activity.²⁷ Florida, Illinois, Iowa, Kansas, and Oklahoma have all held
13 that homesteads are protected from forfeitures based on a criminal
14 offense.²⁸ Arizona, Colorado, Washington and Texas have held that the
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17 ²⁷ *Lot 39 v. State*, 85 S. W. 3d 429, 431-32 (Tex. Ct. App. 2002).

18 ²⁸ *Lot 39 v. State*, 85 S. W. 3d 429, 431-32 (Tex. Ct. App. 2002.) (Citing
19 *Tramel v. Stewart*, 697 So. 2d 821 (Fla.1997); *Butterworth v.*
20 *Caggiano*, 605 So. 2d 56 (Fla.1992); *People v. One Residence Located*
at 1403 East Parham Street, 251 Ill. App. 3d 198, 621 N.E.2d 1026,
190 Ill. Dec. 573 (1993); *In re Bly*, 456 N.W.2d 195 (Iowa 1990);

1 homestead does not protect against forfeiture of property used to
2 conduct criminal activity.²⁹ Nevada case law supports the public policy
3 that a homestead is not designed to protect real property used for
4 criminal activity from forfeiture.³⁰

5 The Nevada Supreme Court held, “the purpose of the homestead
6 exception is to preserve the family home despite financial distress,
7 insolvency or calamitous circumstances and to strengthen the family
8 security and stability for the benefit of the family, its individual
9 members, and the community and state in which the family resides.”³¹

12 *State ex rel. Braun v. A Tract of Land in the Northwest Quarter of*
13 *Section Four, Township Eleven South, Range Nineteen West of the 6th*
14 *p.m., Ellis County, Kansas, 251 Kan. 685, 840 P.2d 453 (1992); State*
ex rel. Means v. Ten (10) Acres of Land, 1994 Okla. 71, 877 P.2d 597
(Okla.1994)).

15 ²⁹ *Lot 39 v. State, 85 S. W. 3d 429, 431-32 (Tex. Ct. App. 2002)(Citing*
16 *In re Parcel of Real Property Known as 1632 N. Santa Rita, Tucson,*
17 *166 Ariz. 197, 801 P.2d 432 (Ariz. Ct. App. 1990, review den'd);*
People v. Allen, 767 P.2d 798 (Colo. Ct. App. 1988); Tellevik v. Real
Property Known as 6717 100th Street S.W., Located in Pierce County,
18 *83 Wn. App. 366, 921 P.2d 1088 (1996), review den'd).*

19 ³⁰ *Jackman v. Nance, 109 Nev. 716, 717, 857 P.2d 7 (1993); Breedlove*
20 *v. Breedlove, 100 Nev. 606, 608-10, 691 P.2d 426 (1984); Maki v.*
Chong, 119 Nev. 390, 75 P.3d 376 (2003).

1 While the Nevada homestead statute is liberally construed to protect the
2 homestead, exceptions to the statute have been established by the
3 Nevada Supreme Court when public policy mandates the homestead be
4 set aside or providing protection through the homestead would lead to
5 an absurd result.³² The Nevada Supreme Court has held under this
6 policy that the homestead exception does not protect against claims of
7 child support or where the funds are directly related to fraud or other
8 tortious conduct.³³

9 Public policy also mandates that the homestead exception be set
10 aside when the property is used for criminal activity because criminal
11 activity is contrary to the purpose of the homestead. The purpose of the
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15 ³¹ *Jackman v. Nance*, 109 Nev. 716, 717, 857 P.2d 7 (1993)(Citing
Matter of Estate of Dodge, 685 P.2d 260, 263 (Colo. Ct. App. 1984);
Maki v. Chong, 119 Nev. 390, 75 P.3d 376 (2003).

16 ³² *Maki v. Chong*, 119 Nev. 390, 75 P.3d 376 (2003); *Breedlove v.*
17 *Breedlove*, 100 Nev. 606, 608-10, 691 P.2d 426 (1984); *Jackman v.*
Nance, 109 Nev. 716, 717, 857 P.2d 7 (1993).

18 ³³ *Maki v. Chong*, 119 Nev. 390, 75 P.3d 376 (2003); *Breedlove v.*
Breedlove, 100 Nev. 606, 608-10, 691 P.2d 426 (1984).

1 homestead is to create stability for the family and the community.³⁴
2 Criminal activity, especially that involving illegal substances, degrades
3 and erodes both the stability of the family and the community. Also, it
4 cannot be said that a person that declares the property as a homestead
5 and then uses the property to commit crimes, or then files a homestead
6 to protect the property from forfeiture for crimes committed in the
7 community, makes the declaration of homestead in good faith.³⁵
8 Because criminal activity is inapposite of the purpose of the homestead,
9 and because declaring a homestead for property used in criminal
10 activities from forfeiture is not made in good faith, public policy
11 requires that a homestead be set aside.

12 Also, protection against forfeiture for criminal activity is not the
13 “type of debtor whom the legislature sought to protect.”³⁶ “Homestead
14 laws in this country were designed for the purpose of protecting
15 families and making families secure in their homes from creditors”³⁷
16 “The purpose of the homestead exception is to preserve the family
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18 ³⁴ *Jackman v. Nance*, 109 Nev. 716, 717, 857 P.2d 7 (1993)(Citing
Matter of Estate of Dodge, 685 P.2d 260, 263 (Colo. Ct. App. 1984);

19 ³⁵ *Maki v. Chong*, 119 Nev. 390, 394, 75 P.3d 376 (2003).

20 ³⁶ *Maki v. Chong*, 119 Nev. 390, 75 P.3d 376 (2003)(Quoting *Breedlove*
v. Breedlove, 100 Nev. 606, 608-10, 691 P.2d 426 (1984)).

³⁷ *Id.*

1 home despite financial distress, insolvency or calamitous circumstances
2 . . .”³⁸ Thus, the homestead is designed to protect the family from a
3 forced sale to satisfy the debts of the owner.³⁹ Forfeiture, on the other
4 hand, “is not predicated upon the debts incurred by the owner but rather
5 is based on the illegal uses to which the property was put.”⁴⁰ Because
6 the homestead is designed to protect the family from forced sale to
7 satisfy debts, and because forfeiture is not predicated upon debt
8 incurred, the homestead was not designed to protect against forfeiture
9 for criminal acts.

10 Public policy that a homestead is not designed to protect against
11 forfeiture is manifest in the homestead statute. Under NRS 115.010(5),
12 “Establishment of allodial title does not exempt the property from
13 forfeiture” While an allodial title is a unique protection for real
14 property, the homestead protections extend into the allodial title.⁴¹
15 Also, allodial title provides a greater protection against creditors.⁴² If
16 forfeiture is permitted for real property that has greater protection than
17 the homestead and in which the homestead protection is incorporated, it

18 ³⁸ *Maki v. Chong*, 119 Nev. 390, 394, 75 P.3d 376 (2003).

19 ³⁹ *In re 1632 N. Santa Rita*, 166 Ariz. 197, 202 (1990).

20 ⁴⁰ *Id.*

⁴¹ NRS 115.010(2) and(4).

⁴² *Id.*

1 follows that forfeiture of a real property with only homestead
2 protection is also permitted. Because an allodial title is not exempt
3 from forfeiture, because allodial title benefits from the same protections
4 as the homestead and because allodial title guarantees greater
5 protections than the homestead, it follows that statute supports the
6 public policy that homesteads are subject to forfeiture.

7 Also, allowing for forfeiture of allodial title and not for property
8 protected by a homesteads leads to an absurd result. Allodial title
9 includes all the same protections as homestead.⁴³ Also, allodial title
10 provides for greater protections against creditors and even taxes.⁴⁴
11 Because the homestead provides less protection than the allodial title,
12 and because the allodial title includes all the homestead protections,
13 allowing for forfeiture of the greater allodial title, while providing
14 protection to the homestead leads to an absurd result.

15 **5. Conclusion**

16 Because Appellant's Declarations are invalid, because
17 Appellant's residency is constructive, because Appellant's absence is
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20 ⁴³ NRS 115.010(2) and (4).

⁴⁴ NRS 115.010(4) and (4).

1 not temporary, because public policy dictates that a homestead does not
2 protect from forfeiture, Appellant’s property is not protected by a
3 homestead and is subject to forfeiture.

4 **B. FORFEITURE OF APPELLANT HOME DOES**
5 **NOT VIOLATE THE EIGHTH AMENDMENT**

6 Under the Eighth Amendment, “Excessive bail shall not be required, nor
7 excessive fines imposed, nor cruel and unusual punishment inflicted.”⁴⁵ The
8 Excessive Fines clause applies to in rem civil forfeitures proceedings.⁴⁶ A
9 forfeiture is excessive if the forfeiture is grossly disproportionate to the
10 gravity of the offense.⁴⁷ In determining whether a forfeiture is excessive, the
11 Court must “look at the specific facts of each case, and the culpability of the
12 offender must be examined specifically, rather than examining the gravity of
13 the crime in the abstract.”⁴⁸ Factors to be considered in determining an
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16 ⁴⁵ U.S. Const., Amdt. 8.

17 ⁴⁶ *Levingston v. Washoe County by & Through the Sheriff of Washoe*
County, 112 Nev. 479, 488, 916 P.2d 163 (1996); *Timbs v. Indiana*,
203 L. Ed. 2d 11 (2019).

18 ⁴⁷ *United States v. Bajakajian*, 524 U.S. 321, 336-37 (1998).

19 ⁴⁸ *United States v. Bajakajian*, 524 U.S. 321, 336-37 (1998); *United*
States v. 314 NW Thruman St, Portland, Oreg., a Tract of Real
Property, 164 F.3d 1191, 1197 (9th Cir. 1999); *United States v. Riedl*,
20 164 F. Supp. 2d. 1196, 1198-1202 (2001).

1 individual’s culpability include the nature and extent of criminal activity, its
2 relation to other crimes, its penalties, and the harm it caused.⁴⁹

3 ***1. Penalties***

4 **a. Sentencing Maximum Guidelines**

5 “In considering an offense’s gravity, the other penalties that the
6 legislature has authorized are relevant evidence, as are the maximum
7 penalties that could have been imposed under Sentencing Guidelines
8 [statutory guidelines].”⁵⁰ If the value of forfeited property is within the
9 range of fines prescribed by Congress, a strong presumption arises that the
10 forfeiture is constitutional.”⁵¹

11 Here, Appellant’s original Criminal Information charged Appellant
12 with Trafficking in a Schedule I Controlled Substance, a category A Felony,
13 under NRS 453.3385(1)(c)(Effective until July 2020). *1 JA. 161-165*. This

15 ⁴⁹ *United States v. 314 NW Thruman St, Portland, Oreg., a Tract of*
16 *Real Property*, 164 F.3d 1191, 1197 (9th Cir. 1999); *United States v.*
Ahmad, 213 F.3d 805, 817 (4th Cir. 2000).

17 ⁵⁰ *United States v. Riedl*, 164 F. Supp. 2d. 1196, 1198-1202 (2001);
18 *United States v. 314 NW Thruman St, Portland, Oreg., a Tract of Real*
Property, 164 F.3d 1191, 1197 (9th Cir. 1999); *United States v.*
Bajakajian, 524 U.S. 321, 336-37 (1998).

19 ⁵¹ *United States v. Riedl*, 164 F. Supp. 2d. 1196, 1198-1202
20 (2001)(Citing *Drive, Wilton Manors, Fla.*, 175 F.3d 1304, 1309 (11th
Cir. 1999).

1 offense carried with it a \$500,000 maximum fine at the time.⁵² Appellant's
2 estimated value of the respondent property is \$298,000, well within the
3 confines of the maximum fine for the offense. Thus, the forfeiture is not
4 grossly disproportionate.

5 However, even using the fine for the offense to which Appellant
6 plead, the amount of the forfeiture would still not be grossly
7 disproportionate. Courts have held that a fine can be 17 to 20 times greater
8 than the maximum of the sentencing guidelines without being excessive.⁵³

9 Here, Appellant plead to Trafficking in a Schedule I Controlled
10 Substance, a Category B Felony as defined by NRS 453.3385(1)(b). *1 JA.*
11 *154-156.* The maximum fine under that offense at the time was \$100,000.⁵⁴
12 Here, the forfeiture is only three times the maximum fine.⁵⁵ This is well
13 within the guidelines and would not be considered an excessive fine. Thus,
14 the forfeiture is not grossly disproportionate.

15 ⁵² NRS 453.3385(1)(C).

16 ⁵³ *United States v. Riedl*, 164 F. Supp. 2d. 1196, 1198-1202 (2001);
17 *United States v. 314 NW Thruman St, Portland, Oreg., a Tract of Real*
18 *Property*, 164 F.3d 1191, 1197 (9th Cir. 1999); *United States v. Ahmad*
19 *213 F.3d 805, 817 (4th Cir. 2000)*; See also *United States v. Bajakajian*,
20 *524 U.S. 321, 336-37 (1998)*(Holding fine was excessive because it
was 72 times the maximum fine).

⁵⁴ NRS 453.3385(1)(b)(Effective until July 2020).

⁵⁵ \$100,000 x 3 = \$300,000.

1 Appellant argues that the District Court erred by improperly
2 comparing the maximum statutory fine to the federal sentencing guidelines.
3 However, the District Court did not compare the federal sentencing
4 guidelines to the statutory maximum. The District Court used federal case
5 law to determine how many times a forfeiture may exceed the maximum
6 fine before the forfeiture is excessive. 2 JA. 445:25-446:18. The court
7 pointed to several cases that indicated that a forfeiture could be 12 to 13
8 times greater than the maximum fine and concluded that that forfeiture was
9 not excessive when viewed with other factors. 2 JA. 446:16-18. Because the
10 District Court only used federal law to determine how many times a
11 forfeiture may exceed the maximum fine before the forfeiture is excessive,
12 there is no error and the forfeiture is not grossly disproportionate.

13 **b. The \$2,000.00**

14 Appellant argues that the \$2,000 fine recommended by Nevada
15 Division of Parole and Probation (Parole and Probation) is a more
16 particularized number based on the specific culpability of the offender,
17 and should be used to determine if the fine is excessive. Appellant
18 attempts to compare the Sentencing Recommendations Selection Scale
19 used by Parole and Probation to the Federal Sentencing Guidelines
20 manual. Federal Courts use the Federal Sentencing Guidelines manual

1 to determine the appropriate fine or sentence for a particular crime.⁵⁶ In
2 forfeiture proceedings, Federal Courts give the sentencing guidelines
3 “greater weight than the statutory maximum because the guidelines
4 take into account specific culpability of the offender.”⁵⁷ However,
5 Nevada has no equivalent to the sentencing guidelines manual and
6 Nevada Statutes are used by Nevada courts to determine sentencing.⁵⁸

7 Also, the scale used by Parole and Probation is to determine the
8 Probation Success Probability.⁵⁹ The scale does not include any
9 reference to fines and is not used to determine the recommended fine at
10 sentencing.⁶⁰ Parole and Probation does not have any statutory or
11 regulatory guidelines to determine the amount of a fine. It should be
12 noted that the scale is no longer used by Parole and Probation, and
13 Parole and Probation no longer provide sentencing recommendations in
14 a PSI.⁶¹ Because the scale used by Parole and Probation is for the
15 purpose of determining the eligibility of an offender for probation, and

16 ⁵⁶ *United States v. Bajakajian*, 524 U.S. 321, 338 (1998).

17 ⁵⁷ *United States v. \$100,348 in United State Currency*, 354 F.3d 1110,
1122 (9th Cir. 2004).

18 ⁵⁸ NRS 193.130.

19 ⁵⁹ *Blankenship v. State*, 132 Nev. 500, 507-08, 375 P.3d 407 (2016);
NRS 213.10988(1); NAC 213.590(Repealed)

20 ⁶⁰ *Id.*

⁶¹ NRS 176.145

1 not to determine the appropriate fine and sentence, and because the
2 Federal Sentencing Guidelines provide specific sentencing guidelines
3 for a specific offense, the two are not comparable and the Court should
4 not use the \$2,000 as the maximum fine to determine if the forfeiture is
5 excessive.

6 Also, Appellant did not provide any scale or uniform scoring
7 system that indicates the appropriate fine in this case based on criteria
8 set forth by Parole and Probation, statute, or regulation. Appellant
9 provides no evidence showing how Parole and Probation determined
10 the fine in this case. Because there is no evidence of a scale that
11 indicates the appropriate fine, and because there is no evidence
12 showing how Parole and Probation determined the fine in this case, the
13 Court should not use the \$2,000 as the maximum fine to determine if
14 the forfeiture is excessive.

15 Because the scale used by Parole and Probation is not
16 comparable to the Federal Sentencing Guidelines, and because
17 Appellant has not shown how Parole and Probation calculated the fine,
18 the Court should not use the \$2,000 as the maximum fine to determine
19 whether the fine is grossly disproportionate.
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c. The \$20,000

Appellant argues that the Court should use a \$20,000 fine because that is the maximum fine Appellant would face under the statutes that went into effect in July 2020. However, Appellant was not convicted under the statutes that went into effect in July 2020. Appellant plead guilty in 2018 and was convicted of trafficking under the statutes that were in effect at that time. The fine under that offense was \$100,000. Because the Appellant was not convicted under the statutes effective July 2020, and because the fine for the offense was \$100,000 at the time of conviction, the Court should not use the \$20,000 fine as the maximum fine in this case.

d. The Forfeiture is not Grossly Disproportionate

Appellant argues that *Bajakajian* and *\$100,348.00 in United States Currency* show that the forfeiture in this case is grossly disproportionate. However, facts in *Bajakajian* and *\$100,348.00 in United States Currency* are distinguishable from this case. In both those cases, the courts concluded that the culpability of the defendants was low based on all the factors.⁶²

1 Both courts similarly reasoned that culpability was low because the crime
2 was a mere failure to report.⁶³ Also, the money seized was for or from
3 legitimate and noncriminal transactions and not criminal actions such as
4 drug trafficking.⁶⁴ The *Bajakajian* Court reasoned, “[h]ad his crime gone
5 undetected, the government, would have been deprived only of the
6 information that \$357,144 had left the country.”⁶⁵

7 In contrast, here, Appellant plead guilty to Trafficking under
8 NRS 453.3385(b). *1 JA. 154-156*. The offense had a maximum fine of
9 \$100,000 and a 2 to 15 years sentence in prison.⁶⁶ Also, approximately
10 80.82 grams of heroin were located on the real property, which amount
11 qualified Respondent for the higher offense under NRS 453.3385(c) (In
12 effect prior to July 2020). *1 JA. 143:8-12*. That offense had a maximum
13 fine of \$500,000 and a life sentence, or definite sentence of 25 years
14 with eligibility of parole after 10 years.⁶⁷ Also, the real property was
15 being used to traffic controlled substances, law enforcement expended

17 ⁶² *United States v. Bajakajian*, 524 U.S. 321, 337-41 (1998); *United*
18 *States v. \$100,348 in United States Currency*, 354 F.3d 1110, 1121-24
(9th Cir. 2004).

18 ⁶³ *Id.*

19 ⁶⁴ *Id.*

19 ⁶⁵ *Id.*

20 ⁶⁶ NRS 453.3385(b)(In effect before July 2020).

20 ⁶⁷ NRS 453.3385(c)(In Effect before July 2020).

1 resources to apprehend Appellant, and there was no aspect of the
2 offense that was lawful. *1 JA. 139-140; 1 JA. 142-144.* Appellant
3 admitted that the controlled substances were his possessions. *1 JA*
4 *143:3-5.* The District Court considering all these factors concluded that
5 the fine was not excessive. *2 JA. 459:1-6.* Thus, unlike *Bajakajian* and
6 *\$100,348.00 in United States Currency*, here the factors show that
7 Appellant's culpability is high. Because Appellant's culpability is high
8 and forfeiture is only three times the maximum fine, the forfeiture of
9 the real property is not grossly disproportionate.

10 **e. Conclusion**

11 Because the forfeiture is within the guidelines set forth by federal
12 courts regarding excessive fines, because the excessiveness should not
13 be evaluated based on Parole and Probation's assessment, because
14 Appellant was convicted in 2018 when the fine was \$100,000, and
15 because the forfeiture is not grossly disproportionate, the fine does not
16 violate the Eighth Amendment.

17 **2. Nature and Extent of Criminal Activity**

18 Here, Appellant sold controlled substances from his home. The
19 amount of heroin located in the home was 80.82 grams. *1 JA. 143:8-12.*
20

1 Also, the controlled substances of Methamphetamine, Marijuana, and
2 Hydrocodone pills were located at the property. *1 JA. 143:13-25*. In
3 addition, Appellant had several firearms and ammunition. *1 JA. 146-147*.
4 There is no knowing exactly how long Appellant sold controlled substances.
5 However, the property was acquired by Appellant in May 2016, and the
6 arrest occurred over a year later in October 2017. *2 JA. 465-466*. Appellant
7 also admitted that the controlled substances found on the property were “all
8 mine.” *1 JA. 143:3-5*. Also, Appellant plead guilty to Trafficking in a
9 Schedule I Controlled Substance, a Category B Felony under NRS
10 453.3385(1)(b). *2 JA. 486-489; 2 JA. 491-493*. Thus, because significant
11 amounts of heroin were located on the real property, because other drugs
12 were also found on the real property, because there were firearms located on
13 the real property, and because Appellant admitted to being in possession of
14 the controlled substances and plead to trafficking charges, the nature and
15 extent of the crime are significant. Because the nature and the extent of the
16 crime are significant, the Appellant’s culpability is high.

17 Appellant argues that Appellant’s culpability is low in this case
18 because Appellant received a \$100 fine and was sentenced to 48 to 120
19 months in prison. However, Appellant’s expert witness testified that courts
20 generally do not impose high fines when a person is sentenced to prison. 2

1 JA. 354:12-22. Also, the expert witness indicated that there is “the practical
2 matter, how are they going to pay the fine.” Appellant was sentenced to a
3 maximum of 10 years in prison, which is just 5 years short of the maximum
4 prison sentence a judge can give for the offense.⁶⁸ 2 JA. 491-492. Appellant
5 admitted to possessing the controlled substances found in the home. 1 JA.
6 143:3-5. Also, Appellant’s sentence was reduced by a plea deal and if
7 Appellant had been convicted of the actual offense committed at the time,
8 Appellant could have been sentenced to a prison sentence of 25 years with
9 parole after 10 years.⁶⁹ 1 JA. 161-165; 2 JA. 486 486-487; 2 JA. 481-483.
10 Because courts generally do not give a high fine when a defendant is
11 sentenced to prison, because Appellant was only 5 years short of the
12 maximum sentence, because Appellant admitted to possessing the drugs,
13 and because Appellant’s actual crime was much more severe, Appellant’s
14 culpability was high.

15 **3. Relation to Other Crimes**

16 The only related crime was possession of a firearm by a prohibited
17 person. Although the crime is not directly related to trafficking controlled
18 substances, firearms are often used in committing of crimes related to

19 _____
20 ⁶⁸ NRS 453.3385(b)(In effect until June 30, 2020).

⁶⁹ NRS 453.3385(c)(In effect until June 30, 2021.)

1 controlled substances and are used against law enforcement in law
2 enforcement's legitimate attempts to enforce the law.

3 **4. Harm of the Offense**

4 The harm of the offense is great. Heroin is an opioid. The United
5 States Human and Health services declared a public health emergency in
6 2017.⁷⁰ 2 JA. 391:23-24. According to that organization, 32,656 deaths
7 occurred in the United States due to opioid overdose in 2019.⁷¹ 2 JA. 391:
8 24-25. In 2019, 15,349 deaths were attributed to heroin alone.⁷² 2 JA. 392:1.
9 In 2018, 808,000 people used heroin.⁷³ 2 JA. 392:1-2. Thus, the impact on
10 the community is significant and terrible.

11 Also, in terms of law enforcement, Respondent expends significant
12 resources stopping persons, like Appellant, from trafficking controlled
13 substances in the community. 2 JA. 392:2-4. Also, Elko County expends
14 resources in the treatment of persons that overdose on the controlled
15 substance by way of ambulances, as well as other County personnel. 2 JA.
16 392:4-6. Elko County and the State expend significant resources in other
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18 ⁷⁰ <https://www.hhs.gov/opioids/about-the-epidemic/index.html>

19 ⁷¹ *Id.*

20 ⁷² *Id.*

⁷³ *Id.*

1 programs, such as treatment courts, to try to help persons suffering from
2 addiction and to help the community be a safer place. 2 JA. 392:6-9. Thus,
3 because thousands use heroin, because thousands die every year from the
4 use of heroin, and because significant resources are used to attempt to stop
5 the flow of heroin into the community and help those that have
6 unfortunately become addicted to heroin, the harm is great. Because the
7 harm is great, the forfeiture does not violate the Eighth Amendment.

8 Also, under NRS 179.1187, the money gained by forfeiture goes to
9 help law enforcement continue to combat the controlled substance epidemic.
10 Thus, forfeiture should be favored and is not in violation of the Eighth
11 Amendment.

12 5. *Conclusion*

13 Thus, because the Other Penalties show that the forfeiture is not
14 grossly disproportionate, because Nature and Extent of the Crime shows that
15 the forfeiture is not grossly disproportionate, because the Harm of the
16 Offense shows that the forfeiture is not grossly disproportionate, the
17 forfeiture does not violate the Eighth Amendment of the United States
18 Constitution.

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C. PARTIAL FORFEITURE

1. Nevada Law Requires Forfeiture, Except the Protected Interest

Even if the Court determined that the forfeiture of Appellant’s entire interest in the property would violate the Eight Amendment, the Court should remand the case to the District Court to determine the unprotected interest that is not in violation of the Eighth Amendment. Nevada forfeiture statutes indicate that “[i]f the court determines that the property is subject to forfeiture . . . [t]he property . . . must be forfeited to the plaintiff, subject to the right of any claimant who established a protected interest.”⁷⁴ “‘Protected interest’ means the enforceable interest of an Appellant in property, which is shown not to be subject to forfeiture.”⁷⁵ Where there is a protected interest, the Appellant must be compensated for the protected interest upon the sale or retention of the property by the Respondent.⁷⁶ Thus, under NRS 179.1173(8), if the Court finds that the forfeiture is excessive under the

⁷⁴ NRS 179.1173(8).
⁷⁵ NRS 179.1163; See also *United States v. \$100,348.00 in United States Currency*, 354 F.3d 1110, 1116 (9th Cir. 2004) (Upholding a district court’s reduction of a forfeiture from \$100,348.00 to \$10,000.00 after determining full forfeiture would violate the Eighth Amendment).
⁷⁶ NRS 179.1173(8).

1 Eighth Amendment, the Court should remand the case to District Court
2 for further proceedings to determine what interest of the home is not
3 protected.

4 ***2. Public Policy Favors Partial Forfeitures***

5 Public policy favors partial forfeiture or forfeiting the interest
6 that is not protected. Forfeiture proceeds are used to fund law
7 enforcement for the purpose of continuing to enforce NRS Chapter
8 453.⁷⁷ Also, forfeiture funds remaining in the forfeiture account at the
9 end of the year exceeding \$100,000 must be distributed to schools.⁷⁸
10 Also, partial forfeiture prohibits property from continuing to be used
11 for illegal purposes. Partial forfeiture protects Appellant because
12 Appellant must be compensated for any protected interest.⁷⁹ Thus,
13 because the funds are used to compensate for law enforcement related
14 to NRS Chapter 453 and may be used for community schools, because
15 partial forfeiture prohibits the continual use of the property for illegal
16 purposes, and because Appellant is compensated for the protected
17 interest, public policy favors the use of partial forfeitures.

18 ⁷⁷ NRS 179.1187(b).

19 ⁷⁸ NRS 179.1187(d).

20 ⁷⁹ NRS 179.1173(8).

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3. Conclusion

Thus, because Nevada Statute mandates forfeiture, except for the protected interest, because public policy favors partial forfeiture, and because the culpability of the Appellant is high, if the Court finds a full forfeiture violates the Eighth Amendment, the Court should remand the case to the District Court to determine what interest of the property is not a protected interest.


CONCLUSION

Thus, because Appellant’s real property is not protected by a homestead and because forfeiture of the real property does not violate the Eighth Amendment, the Court should deny Appellant’s request to reverse the District Court Findings of Fact, Conclusions of Law, and Judgment for Forfeiture. In the alternative, if the Court finds the forfeiture excessive, Respondent respectfully requests that the Court remand the case to District Court for further determination of the appropriate amount for forfeiture.

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RESPECTFULLY SUBMITTED this 21st day of July, 2021.

TYLER J. INGRAM
Elko County District Attorney

By: 
RAND J. GREENBURG
Deputy District Attorney
State Bar Number: 13881

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CERTIFICATE OF COMPLIANCE

I hereby certify that this Respondent's Answering 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). This Respondent's Answering Brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2007, in size 14 point Times New Roman font.

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 Respondent's Answering Brief exempted by NRAP32(a)(7)(C), because it contains 7697 words.

I hereby certify that I have read the Respondent's Answering 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), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal.

1 I understand that I may be subject to sanctions in the event that the
2 accompanying brief is not in conformity with the requirements of the
3 Nevada Rules of Appellate Procedure.

4 DATED this 21st day of July, 2021.

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6 Elko County District Attorney
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9 By:



10 RAND J. GREENBURG
11 Deputy District Attorney
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CERTIFICATE OF SERVICE

I certify that this document was filed electronically with the Nevada Supreme Court on the 21st day of July, 2021. Electronic Service of the Respondent's Answering Brief shall be made in accordance with the Master Service List as follows:

Gerber Law
Zachary Gerber
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Attorney for Appellant


SHAUNA L. PLUNKETT
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DA#: AP-21-00313