

COMMISSION ON JUDICIAL SELECTION APPLICATION

EIGHTH JUDICIAL DISTRICT
DEPARTMENT VII

By

Danielle Chio



Personal Information

1.	Full Name	Danielle Chio
2.	Have you ever used or been known by any other legal name (including a maiden name)? If so, state name and reason for the name change and years used.	Yes, my maiden name is Danielle Pieper. After marrying in 2017, I changed my name to Danielle Chio. Recently, I used the name Danielle "Pieper" Chio in an election.
3.	How long have you been a continuous resident of Nevada?	I have been a continuous resident of Nevada for 19 years.
4.	City and county of residence	Las Vegas, Clark County
5.	Age	I am 50 years old.

Employment History

6. Please start with your current employment or most recent employment, self-employment, and periods of unemployment for the last 20 years preceding the filing of this Application.

Current or Last Employer	Clark County District Attorney's Office
Phone	702-671-0969
Physical Address & Website	200 Lewis Avenue, 3rd Floor, Las Vegas, Nevada 89155 https://www.clarkcountynv.gov/government/departments/district_attorney/index.php
Date(s) of Employment	Although my assignments changed over time. I have worked at the Clark County District Attorney's Office for 18 years. My individual assignments, in their respective capacities, are detailed below.
Supervisor's Name and Title	Pamela Weckerly, Chief Deputy District Attorney, 2012- present Sonia Jimenez, Chief Deputy District Attorney, October 2010- October 2012
Your Title	Chief Deputy District Attorney
Describe Your Key Duties	On January 9, 2023, I transferred from the Gangs Unit to the Homicide Unit at the District Attorney's Office. I am one of eight attorneys on the homicide unit. I spend a significant time on motions practice, speaking with victim's family members and witnesses. I am in court three to four days a week. I work with law enforcement approving and denying search warrants, applications for pen registers and wiretap (T-3) applications. My case load is expected to be between forty-five and fifty cases. I have tried 22 cases, between 2010-2022. The homicide unit prosecutes cases on a vertical prosecution scale, meaning once a person is arrested, the case is then screened and assigned to one prosecutor.

The Major Violator's Unit (MVU) encompasses the homicide, gun, and gang teams. As part of the Major Violator's Unit, I am one of seventeen attorneys responsible for responding to officer involved shootings (OIS). I conduct an OIS assessment, prepare a report with my findings, and present them at the Public Fact-Finding Review at the Government Center.

For Officer Involved Shootings, I review the case file including all crime scene, ballistic, DNA, fingerprint reports, body worn camera footage, and any videos associated with the event. I review witnesses and officer statements as well as autopsy reports. I then make an assessment which includes determining whether there is any criminality on the part of the officer(s). If the determination is made of no criminality on the part of the officer(s), I prepare a report and present the findings to the public.

In October of 2012, I was promoted to be the Team Chief of the Gang Unit. I was the longest serving team chief of this unit. As the Chief, I reviewed new cases to determine whether the charges were accurate and sufficient. If determined to be inappropriate, an amended charging document was prepared and filed. As Chief, I also served as the District Attorney's Office, Gang Unit liaison between the Las Vegas Metropolitan Police Department's (LVMPD) Gang Unit and any other State or Federal agencies who work on gang cases. I attended weekly meetings with LVMPD and our community partners, including the Department of Parole and Probation, juvenile and adult division, the DEA, FBI, all the area commands within the valley to include North Las Vegas Police Department and Henderson Police Department. I also assisted with legal issues and discussed best practices with law enforcement.

The Gang Unit prosecutes cases on a vertical prosecution scale. This specific prosecutor stays with the case during multiple procedural stages. As the dedicated Gang Unit prosecutor, I handled matters from preliminary hearing through sentencing, and argued any appeals raised after trial. On a typical year, I handled between 100-150 cases. Along with my own full caseload, I also supervised the other attorneys on the unit. Part of this supervisory position required me to allocate all Gang Unit cases to ensure a commensurate workload was kept amongst the team.

For the cases I worked as the assigned prosecutor, I prepared for preliminary hearing or grand jury by issuing subpoenas. At the preliminary hearing, witnesses are called to testify. My burden during a preliminary hearing was to prove, by slight or marginal evidence, that

	<p>the defendant committed the crimes in the charging document. If the burden was met, the case continued to District Court and was for jury trial. To prepare for trial, I reviewed the file and requested all forensic testing be completed. I also ensured I have all reports and photos, issued subpoenas, interviewed witnesses, filed any notice of witnesses and/or experts, and responded to, or filed, pre-trial motions.</p> <p>In October of 2010, I was transferred from the District Attorney's Office, Special Victim's Unit to the Gang Unit. During that time, from 2010 to 2012, I was supervised by Chief Deputy District Attorney Sonia Jimenez (who departed our office to join the Department of Justice in Washington D.C).</p>
Reason for Leaving	N/A

Previous Employer	Clark County District Attorney's Office
Phone	702-671-0969
Address & Website	200 Lewis Avenue Las Vegas, NV 89155 https://www.clarkcountynv.gov/government/departments/district_attorney/index.php
Date(s) of Employment	January 2009-October 2010
Supervisor's Name and Title	James Sweetin, Chief Deputy District Attorney
Your Title	Chief Deputy District Attorney
Describe Your Key Duties	As a member of the District Attorney's Office, Special Victims Unit (SVU), from January 2009 until October 2010, we prosecuted most sex crimes that occurred in Clark County, including cases involving children. My caseload involved physical and sexual abuse of adults and minors, to lewdness of a minor under the age of 14, and child pornography. SVU also prosecutes cases on a vertical scale, meaning once a person is arrested and the case is screened, it is assigned to one prosecutor. Vertical prosecution is key in these types of cases because the victims are some of the most vulnerable people in our community. Thus, it is important for the victims to have consistency and continuity within the criminal justice system. As the dedicated prosecutor, I handled the matter from preliminary hearing to sentencing, including all of the pre-trial motion work. I also argued any appeals the Nevada Appellate Courts. I tried 5 cases to verdict.
Reason for Leaving	N/A

Previous Employer	Clark County District Attorney's Office
Phone	702-671-0969
Address & Website	200 Lewis Avenue Las Vegas, Nevada 89155 https://www.clarkcountynv.gov/government/departments/district_attorney/index.php
Date(s) of Employment	January 2008-January 2009
Supervisor's Name and Title	Roy Nelson, Chief Deputy District Attorney
Your Title	Deputy District Attorney
Describe Your Key Duties	As a member of the General Litigation Team, I prosecuted felony crimes such as burglary, robbery, grand larceny, murder, and sexual assaults in District Court, and all misdemeanors in Las Vegas Justice Court. This team also handled matters in the outlying Justice Court jurisdictions, including Henderson, North Las Vegas, Moapa, Moapa Valley, Mesquite, Bunkerville, Laughlin, and Good Springs. This provided an excellent opportunity to work with victims, witnesses, and officers from all over the county. I presented evidence in the preliminary hearings, issued subpoenas, and negotiated cases with defense attorneys. If the case was bound over to District Court, I handled the trial. I also handled District Court calendars, where I argued sentencings and pre-trial motions on behalf of the State of Nevada. During this time, I tried 5 cases to verdict.
Reason for Leaving	N/A

Previous Employer	Clark County District Attorney's Office
Phone	702-671-0969
Address & Website	200 Lewis Avenue Las Vegas, Nevada 89155 https://www.clarkcountynv.gov/government/departments/district_attorney/index.php
Date(s) of Employment	January 2005-January 2008
Supervisor's Name and Title	James Sweetin, Chief Deputy District Attorney, 2007-2008 Lynn Robinson, Chief Deputy District Attorney, 2006-2007 Craig Hendricks, Chief Deputy District Attorney, 2005-2006
Your Title	Deputy District Attorney
Describe Your Key Duties	While assigned to the General Litigation Team, I handled all felonies not covered by the specialty units, such as attempt murders, robbery, grand larceny, burglary, theft related offenses, and cases involving deadly weapons. Additionally, I handled all misdemeanors within a particular Justice Court.

	There I obtained, prepared and presented courtroom evidence; issued subpoenas for witnesses; and negotiated pleas. Between 2005-2007, I tried 19 cases.
Reason for Leaving	N/A

Previous Employer	Las Vegas City Attorney's Office
Phone	702-229-6229 https://www.lasvegasnevada.gov/Government/Departments/City-Attorney
Address & Website	495 S. Main Street Las Vegas, Nevada 89101
Date(s) of Employment	January 2005-November 2003
Supervisor's Name and Title	Edward Poleski, Chief Deputy City Attorney
Your Title	Deputy City Attorney
Describe your key Duties	I prosecuted all misdemeanor crimes within jurisdiction of the City of Las Vegas. I tried battery domestic violence, driving under the influence, petit larceny, solicitation, and traffic cases. During this time period, I tried at least a hundred bench trials, including numerous traffic trials.
Reason for Leaving	I was hired by the Clark County District Attorney's Office.

Educational Background

7. List names and addresses of high schools, colleges and graduate schools (other than law school) attended; dates of attendance; certificates or degrees awarded; reason for leaving.

St. Andrew's Priory High School (1986-1990)
224 Queen Emma Square
Honolulu, Hawaii 96813
High School Diploma
Left upon graduation

Whittier College (1990-1994)
13406 East Philadelphia Street
Whittier, California 90602
Bachelor of Arts- English
Left upon graduation

8. Describe significant high school and college activities including extracurricular activities, positions of leadership, special projects that contributed to the learning experience.

St. Andrew's Priory Activities

- Japanese Club – Member (1987-1990)
- Latin Club- Member (1989-1990)
- Hui Hau'oli (Hawaiian Club)- Member (1986-1987), Vice President (1988-1989), President (1989-1990)
- Choir -Member (1986-1989) Executive Committee (1989-1990)
- Song leader (1987-1990)
- Volleyball Team- Player (1986-1989)

Whittier College Activities

- Hawaiian Club- all four years of undergraduate
 - As a fundraiser for the Hawaiian Club, I produced a show which included several performances of hula dancing, comedic skits, and musical performances, which showcased the Hawaiian culture. Producing the show included teaching performers hula dances, writing skits, organizing the ticket sales and making costumes. The show became a tradition at the college. It was produced yearly from 1992 until 2015.

9. List names and addresses of law schools attended; degree and date awarded; your rank in your graduating class; if more than one law school attended, explain reason for change.

McGeorge School of Law (2000-2003)
32 5th Avenue
Sacramento, California 95817
Juris Doctorate 2003
Rank: 81/169

10. Indicate whether you were employed during law school, whether the employment was full-time or part-time, the nature of your employment, the name(s) of your employer(s), and dates of employment.

During law school, I interned at the Clark County District Attorney's Office, the Sacramento District Attorney's Office, and the California District Attorney's Association.

After my first year of law school, (summer of 2001), I interned in the appellate division of the Clark County District Attorney's Office. While there, I wrote appellate briefs to the Nevada Supreme Court, Opening and Answering Briefs, and Fast Track Statement/Responses. I also responded to motion for post-conviction relief, including post-conviction writs of habeas corpus and motions to correct illegal sentences.

During my second year in law school, (fall 2001), I interned at the California District Attorney's Association as an associate Editor for the Publications Department. I wrote case briefs for publication in a bi-weekly case reporter. I also conducted legislative research and prepared memorandums on criminal justice issues. Also, during my 2L (spring 2002), I interned at the Sacramento District Attorney's Office. There, I negotiated plea agreements with defense attorneys in the Driving Under the Influence (DUI) Court. I also researched and wrote misdemeanor appeals on DUI cases. The following summer (2002), I interned at the Clark County District Attorney's Office on a general litigation team where I wrote oppositions to motions, assisted trial attorneys in preparation for trial and observed grand jury and criminal trial proceedings.

During my 3L year, (fall of 2002-spring of 2003), I continued my internship with the Sacramento District Attorney's Office. I continued work in the DUI Court and wrote misdemeanor appeals on DUI cases.

11. Describe significant law school activities including offices held, other leadership positions, clinics participated in, and extracurricular activities.

- *Asian Pacific American Law School Association (APALSA)* (2000-2003). I was a Member of the Association from 2000 to 2002, until I was elected and served as Vice President of the organization from 2002 - 2003. During that time, I was provided opportunities to observe and learn from practicing attorneys and judges. These were valuable lessons I incorporated into my practice of law. APALSA was an academic, community service and social group which helped foster a community between Asian students at McGeorge and the Asian Bar associations in Sacramento. The attorneys in the Asian Bar became mentors to APALSA students, offering advice on jobs, balancing career and home life, as well as answering basic question about the practice of law.
- *Sacramento District Attorney's Office, Intern* (Spring and Fall 2002). During this internship I had the opportunity to work with Deputy District Attorneys to assist in preparing misdemeanor cases, presenting offers in court, negotiating plea bargains, taking pleas on the record, and sentencing defendants.
- *California District Attorneys' Association, Intern* (Fall 2001). After having completed one year of law school, I wrote summaries of case appeals by the California Appellate Courts and the California Supreme Court which were published in a journal for all California District Attorney Offices.

Law Practice

12. State the year you were admitted to the Nevada Bar.

I was admitted to the Nevada Bar in October of 2003.

13. Name states (other than Nevada) where you are or were admitted to practice law and your year of admission.

Not applicable.

14. Have you ever been suspended, disbarred, or voluntarily resigned from the practice of law in Nevada or any other state? If so, describe the circumstance, dates, and locations.

No

15. Estimate what percentage of your work over the last five years has involved litigation matters, distinguishing between trial and appellate courts. For judges, answer questions 16-20 for the five years directly preceding your appointment or election to the bench.

100% of my work in the last five years has been devoted to trial litigation.

16. Estimate percentage of time spent on:

Legal Discipline	Percentage of Practice
Domestic/family	0%
Juvenile matters	0%
Trial court civil	0%
Appellate civil	0%
Trial court criminal	98%
Appellate criminal	2%
Administrative litigation	0%
Other: Please describe	

17. In the past five years, what percentage of your litigation matters involved cases set for jury trials vs. non-jury trials?

In the past five years, approximately 100% of my cases were set for jury trials. However, between ninety to ninety-five percent of these cases negotiated prior to trial.

18. Give the approximate number of jury cases tried to a conclusion during the past five years with you as lead counsel. Give the approximate number of non-jury cases tried to a decision in the same period.

Due to my supervisory capacity, in the past five years, I have tried three jury cases to conclusion. In 2019, I tried a two-co-Defendant case, which lasted eleven days. The charges ranged from Invasion of the Home (4 counts), First Degree Kidnapping with Use of a Deadly Weapon Victim 60 Years of Age or Older (2 counts), First Degree Kidnapping with Use of a Deadly Weapon (5 counts), Robbery with Use of a Deadly Weapon Victim 60 Years of Age or Older (2 counts), Robbery with Use of a Deadly

Weapon (4 counts), Battery with Intent To Commit Sexual Assault Victim 60 Years of Age or Older, Sexual Assault (1 count). We called thirty-two witnesses.

In 2021, I tried a three day trial, the charges were Attempt Murder with Use of a Deadly Weapon (4x) and Discharging a Firearm At or Into Structure, Vehicle or Watercraft (2x). The trial lasted three days, and we called six witnesses. This was one of the first trials conducted during COVID, in the COVID courtroom.

In 2022, I tried a bench trial, which lasted nine days and presented direct examination of twenty-five witnesses. The charges were Murder with Use of a Deadly Weapon, First Degree Kidnapping, Robbery with Use of a Deadly Weapon Attempt Murder with Use of a Deadly Weapon, and Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm.

19. List courts and counties in any state where you have practiced in the past five years.

In the past five years, I have practiced in Clark County, Nevada, appearing in the Nevada Supreme Court, the Eighth Judicial District Court, and the Las Vegas Justice Courts, including Henderson and North Las Vegas.

20. List by case name and date the five cases of most significance to you (not including cases pending in which you have been involved), complete the following tables:

Case 1
Case name and date: <i>State of Nevada v. Gary B. Brooks</i> ; (07C237823) Tried: May 19, 2008 - May 22, 2008
Court and presiding judge and all counsel: Eighth Judicial District Court, Department III, Honorable Douglas Herndon. Co-counsel: Deputy District Attorney Summer Clark. Opposing Counsel: Stanley Walton, Esq.
Importance of the case to you and the case's impact on you: This case is significant due to the nature of the crimes. While this was not my first sexual assault trial, the facts are difficult to forget. The victim was sexually abused by her biological father, from the time she was five years old until she was fifteen years old. This case is important to me because it showed the depravity that existed and how children are truly vulnerable. Showing the victim that we as prosecutors believed her and were willing to fight for her to receive justice was both impactful and rewarding. On August 28, 2007, Detective Benjamins worked in an undercover capacity for the Las Vegas Metropolitan Police Department. On that day, she posed as a prostitute at the corner of Atlantic and Fremont. As she stood on the corner a white Dodge Magnum passed by several times. As the car passed by a third time, the passenger side window rolled down and the car stopped in front of Detective Benjamins. Seated in the passenger seat was a fifteen-year-old juvenile

female. The male driver, Gary Brooks engaged Detective Benjamins in conversation. Gary Brooks told Detective Benjamins he was looking for a female for himself and the juvenile female in the passenger seat to engage in sexual relations. Gary Brooks asked Detective Benjamins if she could teach the juvenile female different sexual acts, to which Detective Benjamins agreed. Gary Brooks then slid his hand under the juvenile female's skirt and lifted it exposing the juvenile's naked private body part to Detective Benjamins. Gary Brooks and Detective Benjamins settled on a price for sexual intercourse and Gary Brooks was directed to park in a nearby parking lot.

Once at the parking lot, Gary Brooks was asked to get out of the vehicle, as was the juvenile female. Gary Brooks and the juvenile female were separated, and Gary Brooks was arrested for solicitation of a prostitute. The juvenile female started to cry and explained to police she was Gary Brook's fifteen-year-old daughter. She explained he had sexually abused her since the age of five. She further explained that morning started with Gary Brooks, smoking methamphetamine with a prostitute. He then made her watch him as he had sex with that prostitute. Later in the day, Gary Brooks took the juvenile female to the Green Door, a swinger's club. The Green door has an age policy, a person must be 25 years of age or older to enter their premises. Because she did not have identification which showed she was 25 years of age, they were refused entry. After they left the Green Door, Gary Brooks decided to go to Atlantic and Fremont to pick up a prostitute. Gary Brooks was arrested for Lewdness with a Child Under 14 Years of Age, Sexual Assault with a Minor Under the 14 Years of Age, Sexual Assault of a Minor Under 16 years of Age, Child Abuse and Neglect and Possession of a Dangerous Drug. During the trial, I conducted the direct examination of witnesses and handled the first closing argument. There were nine witnesses called and the case took three days to try.

Your role in the case: I was one of two lead prosecutors.

Case 2

Case name and date: *State of Nevada v. Richard Haberstroh*, (86C076013)

Tried: April 29, 2013 - May 16, 2013

Court and presiding judge and all counsel: Eighth Judicial District Court, Department VI, Honorable Elissa Cadish. Co-Counsel: Chief Deputy District Attorney Giancarlo Pesci
Opposing Counsel: Randall Pike, Esq., and Scott Bindrup, Esq.

Importance of the case to you and the case's impact on you:

This case was difficult to retry, due to several factors including, the age of the case, the ability to find and locate witnesses and then explaining to witnesses they would have to testify about something which happened 27 years prior. We worked diligently to overcome these obstacles and called fourteen witnesses to the stand to testify. This case was significant to me because of the capital litigation involved and surrounding circumstances were incredibly complex. Furthermore, the case was impactful because of the sheer number of victims and sexual violence they were subjected to. Finding justice for them, even after so many years, meant so much to those impacted by the crime.

In 1986, Richard Haberstroh was charged with the murder, kidnapping sexual assault and robbery of DK. He was also charged with the kidnapping, sexual assault, attempted murder, and attempted robbery of SY. In 1987, the jury convicted him of the murder, kidnapping, sexual assault and robbery of DK. The jury sentenced Richard Haberstroh to death. In 2008, the Ninth Circuit Court of Appeals, reversed the penalty portion of his sentence.

On May 26, 1986, SY, went to Albertson's on Lake Mead and Nellis to buy groceries. As she walked back to her car, she felt a gun at her neck. Richard Haberstroh told her to get into her vehicle and go on the floor. She complied with his demand. He got into the driver's side of her vehicle and started to drive away. SY felt the road beneath her changed from a paved road to a dirt road. Once the car stopped, Richard Haberstroh told her to get onto the seat of her vehicle and take her clothes off. She complied and he started to touch her body. He made her lay on the seat and raped her. While he raped her, he told her not to look at his face. After he was finished, he started to strangle her, she fought back and kicked him in the groin. Richard Haberstroh told her to put her clothes back on, he explained to her he was not trying to kill her only scare her. He was going to put her in the trunk of his car; however she talked him out of it and convinced him to let her sit on the floor of the vehicle. He returned her to the Albertson's on Lake Mead and Nellis and left her in her car. SY was able to give a description of Richard Haberstroh, picked him out of photo lineup and directed police to the area she was raped.

On July 21, 1986, DK went to the Albertsons on Lake Mead and Nellis to buy ingredients to make cookies for her young son. On July 24, 1986, an airman with the United States Air Force was in the desert target shooting. He came upon the unconscious naked body of DK and called 911. DK's body was found two miles from where SY had shown police she had been raped by Richard Haberstroh. DK died two days later; an autopsy determined she died of strangulation by ligature. A rape kit was completed, and the presence of sperms was detected and collected.

As police investigated, they learned on June 18, 1986, GS had gone to the Albertson's on Lake Mead and Nellis for groceries. As she walked to her car, a car pulled up and a male, later identified as Richard Haberstroh put a gun to her head. He forced her into her car, drove her to a secluded area and told her to get out of the car. He then told her to take off her clothes, she did, and he started to kiss and fondle her. He told her he was going to rape her, she started to talk to him and he stopped. He started to cry, apologized and drove her back to the Albertsons. She never reported the incident to police, because she was fearful of how her family might react. Two days later, Richard Haberstroh showed up at her house and apologized. He also asked her if she had heard about the female who went missing from the Albertson's parking lot at Lake Mead and Nelis on July 21, 1986. On July 25, 1986, she returned home and found two boxes, taped up and addressed to C. Haberstroh with a New Jersey address. She called police and told them about the incident between herself and Richard Haberstroh on June 18, 1986.

In August of 1986, Richard Haberstroh left Las Vegas and went to New Jersey. While in New Jersey, he committed several crimes and was indicted in September of 1986 for Sexual Assault Kidnapping, Aggravated Assault, Robbery and Terroristic Tactics. Richard Haberstroh was then extradited back to Las Vegas. In 1987, Richard Haberstroh stood trial for the crimes against DK

and SY. Richard Haberstroh's criminal history consisted of convictions for the Dyer Act, Stealing a Vehicle and Escape.

Your role in the case: I was one of two lead prosecutors on the case.

Case 3

Case name and date: *State of Nevada vs. Juan Gomez Bustamante*, (C-19-337264)

Case Negotiated: July 16, 2019

Court and presiding judge and all counsel: Eighth Judicial Court, Department XVII

Honorable Michael Villani

Opposing Counsel: Jamie Resch, Esq

Importance of the case to you and the case's impact on you:

Hope for Second Chances is a pretrial program the District Attorney's Office started with Hope for Prisoner's. Hope for Second Chances relies on wraparound services, including substance abuse, job training and mentoring services to rehabilitate participants.

In December of 2021, Hope for Second Chances invited both defense attorneys and prosecutors to a presentation of their most successful participants. I attended the presentation because I had referred several defendants to this program. One of their success stories was Juan Bustamante. He had successfully completed the program and had been honorably discharged from probation. He left the 18th street gang, was gainfully employed and now was a mentor in the program. Over my 19-year career, I have had few success stories like this one. It was a standout moment in my career because I was able to see a former gang member make a positive change in his life.

Juan Bustamante was an 18th street gang member, who sold methamphetamine to a confidential informant on four separate occasions. The total weight for all four transactions was 309 grams of methamphetamine. While Juan Bustamante had minimal criminal history, he was a high-ranking member of the 18th street gang. Based on his minimal criminal record, the crime committed and his desire to change his life, I made the decision to negotiate this case to probation, with the condition, Juan Bustamante complete Hope for Second Chances. After pleading guilty and being sentenced on this case, I never thought I would see Juan Bustamante again. I was happy for him when I learned he successfully changed his life.

Your role in the case: I was the prosecutor on this case.

Case 4

Case name and date: *State of Nevada v. Donald Zackery, Qiwon Whittaker, Lee Owen, John Ferrell, Earnest Ruff* (C-20-351624-1, 2, 3, 7, 11)

Case filed in District Court: October 21, 2020

Court and presiding judge and all counsel: Eighth Judicial District Court, Department IX, Honorable Cristina D. Silva
Co-Counsel: Chief Deputy District Attorney Michael Dickerson
Opposing Counsel: Daniel Winder, Deanna Keane, Jess Matsuda, William Terry, Michael Miceli

Importance of the case to you and the case's impact on you:

This case was important to me because it dealt with violence on the strip. Millions of people come to our city to tour and enjoy it every year. We cannot have this level of recklessness without consequences when it can impact the very individuals that help sustain our economy. I was shocked at the reckless behavior of shooting into a crowd of people, near the Las Vegas strip which has thousands of cameras recording. This shooting endangered the lives of many people both from out of town and locals who work on the strip.

On September 26, 2020, Las Vegas Metropolitan Police Department's dispatch received multiple calls about a shooting near Flamingo and the Las Vegas Boulevard. Gang detectives were called out to the scene and started their investigation. Through the course of the investigation, detectives learned there was a verbal argument which escalated into a physical altercation in the parking lot of the Stage Door casino. Detectives also learned three people were shot. Two of the victims were tourists who came to Las Vegas for a car show. The other victim was an Army veteran, who was shot as he played poker in a casino. Detectives recovered thousands of hours of video footage from various casinos, including the Stage Door, Harrah's, and the Flamingo Hotel. After looking through the videos and speaking with witnesses on scene, detectives pieced together a timeline of events.

In front of the Stage Door casino, two males got into a verbal argument which escalated to a physical altercation. Security from the Stage Door broke up the physical altercation and separated the males. Male number one who was involved in the physical altercation, got on his scooter, and headed toward Draï's hotel. Instead of going on the sidewalk, male number one on the scooter went through the parking lot attached to Draï's. A couple of minutes later, a male who looked similar to male number one on the scooter, emerged from the parking lot with other males and walked from the Draï's parking lot toward the Stage Door casino.

Male number two in the physical altercation, along with his fifteen to twenty associates began looking for male number one on his scooter. Some of these fifteen to twenty associates, including John Ferrell and Earnest Ruff, went to the top floor of the parking lot near the Draï's to get a better vantage point to locate male number one on the scooter. Others, including Lee Owens and Qiwon Whittaker, got into cars and started driving around the block and parking lot of Draï's, to find male number one on the scooter. Mistaking the male who walked from the parking lot near Draï's toward the Stage Door casino, for male number one on the scooter, a car driven by Donald Zackery, pulled up next to this male and shot eighteen separate times toward this male. All five of these individuals were convicted felons for varying crimes and came from Fresno, California.

Donald Zackery, Qiwon Whittaker, Lee Owens, John Ferrell and Earnest Ruff were charged with 58 felony charges including eight counts of Attempt Murder with Use of a Deadly Weapon, three counts of Discharging a Firearm At or Into a Vehicle, Building or Watercraft and eighteen counts of Discharging a Firearm From or Within a Structure or Vehicle.

Your role in the case: One of two lead prosecutors.

Case 5

Case name and date: *State of Nevada vs. Josiyah Meno, Vianca Alcon Serrano, George Mendoza, Steven Silulu, Michael Souza, Albert Vargas, Stephanie Martin, Ronald Mulitauopele, Calvin Smith, John Dalisay, Christopher Weygant, Nukul Hearing, Bernard Serrano, Christopher Cyr, Christopher Cellery, Belljohn Fulgencio, Jose Felix and Tony Nivongso, (C-20-346161-1-18)*

Court and presiding judge and all counsel: Eighth Judicial District Court, Department XX, Honorable Eric Johnson

Co-Counsel: Chief Deputy District Attorney Nicole Cannizzaro

Opposing Counsel: Ryan Helmick, Clark Patrick, Brian Rutledge, Steve Altig, Monti Levy, Garrett Ogata, Daniel Hill, Augustus Claus, Leslie Park, Kenneth Frizzell, Mace Yampolsky, Spencer Judd, Owaldo Fumo, David Schieck, Roy Nelson, Patricia Erickson, Andrew Leavitt, E. Brent Bryson

Importance of the case to you and the case's impact on you:

In my nearly 20 years as a litigator, I had never worked on a case so complex and voluminous. It was important to me because of the breadth of prosecution; including both low- and high-ranking members of the United Samoan Organization (USO) criminal organization. This case was also important because it sent a message to all members of criminal organizations, that in Clark County, they will be prosecuted to the full extent of the law.

The case utilized the racketeering statute to prosecute, eighteen members of USO. The USO members were indicted on 156 charges, ranging from Attempt Murder with Use of a Deadly Weapon, First Degree Kidnapping, Robbery with Use of a Deadly Weapon, Extortion, Conspiracy to Commit Murder, Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm. There were over 33 separate events involved. Both Federal and State law enforcement worked on this case, due to the jurisdiction of the case as well as the legal complexities. The grand jury presentation spanned five full days of testimony and over thirty witnesses testified.

Your role in the case: One of two lead prosecutors.

21. Do you now serve, or have you previously served as a mediator, an arbitrator, a part-time or full-time judicial officer, or a quasi-judicial officer? To the extent possible, explain each experience.

No

22. Describe any pro bono or public interest work as an attorney.

For the past nineteen years, I have dedicated my career to serving the public as a Chief Deputy District Attorney. Unfortunately, as an attorney working within this office, ethical rules preclude us from doing what is termed pro bono work.

23. List all bar associations and professional societies of which you are or have been a member. Give titles and dates of offices held. List chairs or committees in such groups you believe to be of significance. Exclude information regarding your political affiliation.

State Bar of Nevada Association (member, 2003-present)
Southern Nevada Association of Women Attorneys (member 2021)
Asian Bar Association (member 2021)
Clark County Prosecutor's Association (member 2008-present)
Asian Chamber of Commerce (member 2021-present)
Latin Chamber of Commerce (member 2021- present)
Clark County Black Caucus (member 2022)
National Association for the Advancement of Colored People (member 2022)
Leadership Las Vegas (member 2015)

24. List all courses, seminars, or institutes you have attended relating to continuing legal education during the past five years. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge?

Yes, I am in compliance with my continuing legal requirements applicable as a lawyer. The following are the list of courses and seminars I have completed in the last 5 years:

2022

11/30-2022- Ethics for Prosecutors
6/29/2022- Introduction to At Ease

2021

12/10/2021- Hope for Second Chances Panel
09/15/2021- Nevada Council for Prosecuting Attorney's 2021 Prosecutor's Conference
08/26/2021- Qualified & Prosecutorial Immunity
08/19/2021- 2021 Legislative Update
06/23/2021- Implicit Bias Part II

2020

07/23/2020- Pharmacology, Symptoms & Complications of Commonly Abused Substance
06/18/2020- Legislative Changes Going Into Effect (7/1/2020)
05/7/2020- PAGV (Prosecutors Against Gun Violence): Prosecutors Respond to COVID-19
03/12/2020- Updates from CCDC House Arrest & Electronic Monitoring
02/26/2020- Prison Math
01/09/2020- Mental Health Programs in the Eighth Judicial District Court

2019

10/04/2019- Mind of a Mass Shooter Panel
10/04/2019- Combatting White Supremacy Panel
10/04/2019- Internet Safety in an Unregulated Cyberspace Panel
10/04/2019- Dealing with Threats of Mass Shootings Panel
10/04/2019- Case Study- 1 October Panel
10/04/2019- Role of a Prosecutor's Office Following a Mass Shooting
10/04/2019- Rebuilding After a Mass Shooting
10/04/2019- Emerging Legislative & Policy Issues
10/04/2019- The Voice of the Next Generation
09/11- 9/13/2019- Nevada Advisory Council for Prosecuting Attorneys 2019 Conference
08/15/2019- Legislative Update 2019
07/18/2019- The Future of Crime-What Every Prosecutor Should Know
07/17/2019- Las Vegas Metropolitan Police Department DNA Lab Updates and How to Explain DNA to a Jury
07/11/2019- Top 10 Things Defense Attorneys Wish We Understood
04/11/2019- Child Abuse- Injuries, Mechanisms & Defenses
03/03/2019- Discrimination, Harassment & Bullying Awareness
01/03/2019- Project Safe Neighborhood

2018

10/02/2018- Introduction to the Hope for Prisoner's Program
09/05/2018- How to Effectively Work with the Las Vegas Metropolitan Police Forensic Lab
08/16/2018- Domestic Violence Gun Dispossession Update
08/09/2018- Mental Health and the Courts
07/31/2018- 1 October, Presented by LVMPD Undersheriff, Kevin McMahill
07/18/2018- Metro's Central Information HUB- A Tour of Fusion Watch
07/12/2018- Facial Recognition Technology Used at the Las Vegas Metropolitan Police Department
07/10/2018- Jail Calls, Recorded Social Media Visits & More- How to Use Information Collected
06/28/2018- Vicarious Trauma
06/27/2018- Discovery Training
05/30/2018- Wiretap Law Training II
05/11/2018- Wiretap Law Training I
02/01/2018- The Anatomy of the Demarlo Berry Case

2017

11/16/2017- Las Vegas Metropolitan Police Department's Use of Force Investigations

05/11/2017- Compassion Fatigue

03/09/2017- Search Warrant Duty & Other Interactions with Law Enforcement & Pros

25. Do you have Professional Liability Insurance, or do you work for a governmental agency?

No, I work for a governmental agency.

Business & Occupational Experience

26. Have you ever been engaged in any occupation, business, or profession other than a judicial officer or the practice of law? If yes, please list, including the dates of your involvement with the occupation, business, or profession.

No, since graduation from law school, I have not engaged in any other occupation, business, or profession other than the practice of law.

27. Do you currently serve or have you in the past served as a manager, officer, or director of any business enterprise, including a law practice? If so, please provide details as to:

- a. the nature of the business
- b. the nature of your duties
- c. the extent of your involvement in the administration or management of the business
- d. the terms of your service
- e. the percentage of your ownership

No, I have never served as a manager, officer, or director of any business enterprise.

28. List experience as an executor, trustee, or in any other fiduciary capacity. Give name, address, position title, nature of your duties, terms of service and, if any, the percentage of your ownership.

No, I have never been an executor, trustee or held any position in a fiduciary capacity.

Civic Professional & Community Involvement

29. Have you ever held an elective or appointive public office in this or any other state?

No

Have you been a candidate for such an office?

Yes

If so, give details, including the offices involved, whether initially appointed or elected, and the length of service. Exclude political affiliation.

In 2022, I was a candidate for Las Vegas Justice of the Peace, Department 9, however I was unsuccessful in the election.

30. State significant activities in which you have taken part, giving dates and offices or leadership positions.

I am a graduate of Leadership Las Vegas, Class of 2015. After graduating from Leadership Las Vegas, I was invited to join the Criminal Justice Day planning committee. From 2016 until 2019, I served on the committee which planned and organized presentations for Criminal Justice Day. Between 2020 and 2023, I co-chaired Leadership Las Vegas's Criminal Justice Day with District Court Judge Tierra Jones and Chief Deputy District Attorney Alex Chen.

I was the secretary for the Clark County Prosecutor's Association from 2018-2021. As the secretary I kept records of the proceedings, including votes held by the membership. I kept records of correspondences including contracts and negotiation information and responded to all correspondences between other entities and the Clark County Prosecutor's Association. I resigned in 2022 to campaign for political office.

31. Describe any courses taught at law schools or continuing education programs. Describe any lectures delivered at bar association conferences.

In April of 2017, I taught a two hour course for the Clark County District Attorney's Office on the intricacies of prosecuting gang cases, including pleading multiple theories of liability in a criminal complaint pursuant to *Barren vs. State*, 669 P.2d 725 (1983); how to handle recanting and/or uncooperative witnesses using standards from *Crowley vs. State*, 120 Nev,30 (Nev. 2004); meeting the essential elements of aiding and abetting under *Sharma v. State*, 118 Nev. 648, 56 P.3d 868 and *Bolden v. State*, 624 P.2d 20 (1981); and navigating the gang enhancement as discussed in *Somee vs. State*, 381 P.3d, 664 (Nev. 2012). During that same training, I presented on appellate issues, to include preventing and preserving error in the trial court, and the importance of stating the facts in the record with precision and accuracy.

In the fall of 2017, the Gang Unit at the Las Vegas Metropolitan Police Department was reformed. As the team chief of the Gang Unit, it was my responsibility to ensure detectives and patrol officers understood the law regarding car frisks, search and seizure, probable cause and issues related to suppression motions. After the reformation of the Gang Unit at the Las Vegas Metropolitan Police Department in 2017, all cases submitted and screened by the Clark County District Attorney's Officer that were denied, I received and reviewed. Based on those screening denials, in early 2018, I taught the new Gang Unit a course which focused on search and seizure, car frisks, probable cause and suppression issues.

The District Attorney's Office, Major Violator's Unit is comprised of the gang unit, the gun crimes unit and the homicide unit. The Major Violator's Unit also handles Police Fatality Public Fact-Finding Reviews. A fact-finding review is held when a police-involved death occurs, and the District Attorney's Office preliminarily determines that no criminal prosecution of the officer(s) involved is appropriate. Presiding officers and an

ombudsmen are selected by the Clark County Manager, the ombudsmen represent the public and the deceased's family during the review. During the review, a representative from the District Attorney's Office presents witnesses and makes a presentation of the essential facts surrounding the police-involved death. After this presentation, the presiding officer and ombudsman are also able to questions witnesses. Members of the public observing may also submit questions to the presiding officer. At the end of the review, no formal determination about the manner or cause of death is rendered. After the presentation, a report is compiled and released to the public. I have presented and reported on five cases. The following reports can be found on the Clark County website. (<https://www.clarkcountynv.gov/>)

Police Fatality Public Fact-Finding Review Surrounding the Death of Francis Spivey, October 12, 2015.

Police Fatality Public Fact-Finding Review Surrounding the Death of Francis Smith, November 4, 2016.

Police Fatality Public Fact-Finding Review Surrounding the Death of Justin Charland, June 12, 2020.

Police Fatality Public Fact-Finding Review Surrounding the Death of Maurice Parker, July 12, 2021.

Police Fatality Public Fact-Finding Review Surrounding the Death of Reiner Sommer, November 12, 2022.

32. List educational, military service, service to your country, charitable, fraternal and church activities you deem significant. Indicate leadership positions.

Between 2005-2008, I volunteered to assist local defense attorneys who were teaching trial advocacy to students attending the William S. Boyd School of Law. The process taught law students not only about opening statement and closing arguments, but also lets them learn more about the roles of district attorneys and public defenders. I was tasked with attending the practice sessions and providing feedback for improvements, then critiquing their final performance at the trial.

My husband and I participated in the Central Christian Church's school drive. The campaign gathers and distribute backpacks and school supplies to children in need of assistance. Additionally, we also joined the fight against food insecurity by volunteering to help Three Square provide food to hungry people in our community.

33. List honors, prizes, awards, or other forms of recognition.

The Las Vegas Metropolitan Police Department's Gang Unit recognized me for prosecution of the 18th Street Gang, in 2018 and the United Samoan Organization (USO) in 2020.

In 2022, I spoke at the Hope for Prisoner's Tuesday Roundup focusing the obstacles I overcame and on my career.

34. Have you at any time in the last 12 months belonged to, or do you currently belong to, any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, creed, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices, and whether you intend to continue as a member if you are selected for this vacancy.

No

35. List books, articles, speeches and public statements published, or examples of opinions rendered, with citations and dates.

The reports for the Police Fact-Finding Reviews are public reports and can be found on the Clark County website (<https://www.clarkcountynv.gov/>). *See supra*, Question 31.

36. During the past ten years, have you been registered to vote?

Yes

Have you voted in the general elections held in those years?

Yes

37. List avocational interests and hobbies.

I am a stepmother to two young women and am actively involved in their life and activities. My sixteen-year-old step-daughter is an elite gymnast, and our family attends her competitions. My nineteen-year-old step-daughter is a sophomore at University of Nevada, Reno. I was actively involved in her high school activities at Faith Lutheran High School and her search for a college. As a way to spend more time with my mother, we started working out together and enjoy regularly practicing Pilates. My husband has a busy career with the Las Vegas Metropolitan Police Department, we try to spend as much family time on the weekends whenever possible. However, we both love to travel and plan a family vacation every summer. Last year we went to Roatan, Honduras and took up scuba diving, which has become my new passion.

Conduct

38. Have you read the Nevada Code of Judicial Conduct and are you able to comply if appointed?
Yes

39. Have you ever been convicted of or formally found to be in violation of federal, state or local law, ordinance or regulation? Provide details of circumstances, charges, and dispositions.
No

40. Have you ever been sanctioned, disciplined, reprimanded, found to have breached an ethics rule or to have acted unprofessionally by any judicial or bar association discipline commission, other professional organization or administrative body or military tribunal? If yes, explain. If the disciplinary action is confidential, please respond to the corresponding question in the confidential section.
No

41. Have you ever been dropped, suspended, disqualified, expelled, dismissed from, or placed on probation at any college, university, professional school or law school for any reason including scholastic, criminal, or moral? If yes, explain.
No

42. Have you ever been refused admission to or been released from any of the armed services for reasons other than honorable discharge? If yes, explain.
No

43. Has a lien ever been asserted against you or any property of yours that was not discharged within 30 days? If yes, explain.
No

44. Has any Bankruptcy Court in a case where you are or were the debtor, entered an order providing a creditor automatic relief from the bankruptcy stay (providing in rem relief) in any present or future bankruptcy case, related to property in which you have an interest?
No

45. Are you aware of anything that may require you to recuse or disqualify yourself from hearing a case if you are appointed to serve as a member of the judiciary? If so, please describe the circumstances where you may be required to recuse or disqualify yourself.

I will have to recuse from any case in which I have previously prosecuted the defendant. I would conflict off any case where my husband might be called as a witness. I would follow the Nevada Judicial Code of Conduct in evaluating any potential conflicts.

Other

46. If you have previously submitted a questionnaire or Application to this or any other judicial nominating commission, please provide the name of the commission, the approximate date(s) of submission, and the result.

I previously submitted a questionnaire/application before the Clark County Nominating Committee for Justice of the Peace, Department 10 in June of 2021. I was not appointed by the Clark County Nominating Committee for Justice of the Peace Department 10.

47. In no more than three pages (double spaced) attached to this Application, provide a statement describing what you believe sets you apart from your peers, and explains what education, experience, personality or character traits you possess, or have acquired, that you feel qualify you as a supreme court justice. In so doing, address appellate, civil (including family law matters), and criminal processes (including criminal sentencing).

See Attachment for Question 47.

48. Detail any further information relative to your judicial candidacy that you desire to call to the attention of the members of the Commission on Judicial Selection.

My interest in law started when I attended the Council on Legal Education Opportunities (CLEO) program in 1996. I was sent to Valparaiso University for a six-week boot camp and fell in love with the idea of law. However, attending law school at that time did not work out.

Between 1996 and the end of 1997. I worked in the Los Angeles Unified School District in a first-grade classroom and volunteered at the Child Abuse Services Team (CAST) and also was rape crisis counselor during this time.

In 1998, I moved back to Honolulu, Hawaii and became a nanny/personal assistant for a professional couple who were commercial developers. For two years, I traveled the world helping them in their business but also helping to raise their three children. Even though I enjoyed that job, I felt as if something was missing. My boss at the time, Mona Abadir, encouraged me to follow my dreams and attend law school.

In August of 2000, I started my legal career at the University of Pacific, McGeorge School of Law. Law school was difficult for me. I started law school when I was 28 years old, most of my peers were several years younger than me. I struggled to understand the language of law but enjoyed the challenges of the Socratic method. At the same time that I attended law school, my mother, Jill Hiatt, also attended law school at the William S. Boyd School of Law. It was my close relationship with my mother that brought me to Las Vegas.

In 2003, I graduated from law school and moved to Las Vegas to study for the bar. In October of 2003, I passed the bar and started my career as a litigator at the City of Las Vegas. My first trial was a bench trial for a speeding ticket. While there was no jury or media, and the facts were not sexy or complex, it was exhilarating. While honing my practice as a city prosecutor, I met Steve Wolfson. Mr. Wolfson and I had a case together when he was a defense attorney. The case ended up negotiating. When it concluded, he suggested I apply to the Clark County District Attorney's Office. I had been at the City of Las Vegas for less than a year and was concerned about handling felony cases, the thought both frightened and excited me. I applied and received an offer in December of 2004.

I started my career at the District Attorney's Office in January of 2005. Not only did I mature as a person but I also grew as a trial attorney. I have handled over 50 felony trials and negotiated thousands of cases. I have supervised over ten people during my time as team chief of the gang unit and have the distinction of being the longest serving team chief of that unit. I have participated in studies to reduce gang violence with both the University of Cincinnati and the University of Nevada, Las Vegas. I have worked with programs such as Hope for Second Chances, referring multiple people to their program within the two years of the program's existence. I have work diligently and have accomplished all the goals, I have set for myself in that office.

I believe the time is right for me to move onto a different career. As a District Court judge, I want to handle both civil and criminal matters. I am ready for the challenge of learning civil law. While I have never practiced in this area, I will work hard and believe my significant trial work will be an asset to the bench. I know that my work ethic, drive, and determination will assist me in learning a new area of law. Having dealt with criminal matters, I know they move at a faster pace than civil matters. Criminal matters are not always briefed, and litigators must be prepared to argue spontaneously. I feel comfortable in a trial setting and am ready to make the next step. I am also ready to dive headfirst into learning the civil practice.

Lastly, in the last several years we have seen a huge diversification of the bench. When I started my legal career, that was not common. Now, when school children come to the courthouse to observe they see judges of both genders, differing faces, ethnicities, and sexual preferences. As of now, there is not a single judge of Hawaiian descent in the civil/criminal general jurisdiction and only four of Asian American descent. Being that my heritage is so important to me and had such an impact on my life's decision. I would be humbled and grateful to take on that role.

49. Attach a sample of no more than ten pages of your original writing in the form of a decision, "points and authorities," or appellate brief generated within the past five years, which demonstrates your ability to write in a logical, cohesive, concise, organized, and persuasive fashion.

See Attachment for Question 49.

Attachment for Question 47.

In no more than three pages (double spaced) attached to this Application, provide a statement describing what you believe sets you apart from your peers, and explains what education, experience, personality or character traits you possess, or have acquired, that you feel qualify you as a supreme court justice. In so doing, address appellate, civil (including family law matters), and criminal processes (including criminal sentencing).

Whenever I saw my grandparents, they regularly reminded me of the importance of education. My grandparents were Nisei, first generation Japanese Americans born in Hawaii. My grandfather was the second oldest of thirteen, and my grandmother was the oldest of six children. Both grandparents were forced to leave grade school to support their respective families. They met on the pineapple plantation where both families worked and lived. Later, my grandfather worked in the commissary on the military base. My grandmother as a maid. After December 7, 1941, they quickly came to understand the real value of education. My grandparents observed educated Japanese Americans who received better paying jobs and opportunities, while uneducated Japanese Americans received only menial jobs. Through the years, my grandmother shared with me many stories about the prejudices they faced, but as she recounted these stories, her voice never showed anger or bitterness. Instead, she showed resilience and resolve.

My grandparents had four children, my mother being the youngest of the four. She had just finished her second year in college when I was born. My father was Hawaiian and German. My parent's marriage was an unlikely pairing that did not last. My father loved to surf and, candidly, was immature. He was incapable of taking on the responsibilities of a child. He was a violent drunk who rarely worked, in part because he was illiterate. My childhood memories contain scattered moments of happiness that were eclipsed by my parents' fighting. My father had no coping skills and he raged against everything. At eight years of age, I witnessed my parents' marriage crumble. My mother divorced my father because she did not want me to grow up believing the way he treated her was acceptable. After the divorce was finalized, we moved back in with my mom's parents who, for obvious reasons, had always disapproved of the marriage. The divorce, and my mother's subsequent decision to return home, were considered failures in their eyes.

Now solely responsible for my future, my mother worked two jobs to send me to a private school. Yet despite her best efforts, I struggled to find my way. I underperformed in school, rebelled against her authority, and pushed every boundary in high school. Desperate to reach me, my mother encouraged me to study Hawaiian hula. Through hula, I learned discipline and respect for myself. Hula gave me the

structure and discipline I needed. It also gave me an understanding of my heritage and taught me the ways of my ancestors. After high school graduation, I moved to the “mainland” to attend Whittier College in California. While at Whittier, I pioneered a showcase where members of the Hawaiian Islanders Club performed hula and musical acts to raise money for the club. The showcase lasted until 2015. For non-Hawaiians, hula may just be entertainment. For me, it is part of who I am and gave me my strength.

After graduation from college, I gained some self-discipline, but had no direction or vision for my future. That was the case, until I volunteered with the Child Abuse Services Team (CAST) in Orange, California. CAST is a multidisciplinary team of social workers, therapists, medical professionals, law enforcement, and volunteers who worked with children that are abused. If a child reports sexual abuse, the child is sent to the CAST facility. Once there, a detective conducts a forensic interview of the child. Sometimes, a Deputy District Attorney from the Orange County District Attorney’s Office watched the forensic interview and discussed the legal issues with the detective. I saw firsthand how the “CAST team” worked together to help a child in need and how each member functioned within the criminal justice system. As I watched this process, I became fascinated by the job of the Deputy District Attorney, which in turn, changed my life and trajectory of my career.

I realized through my time at CAST, there are children in our community who needed a voice. However, entering this profession meant I had to confront insecurities that I long held. I had struggled academically in high school and college, so the thought of attending law school was overwhelming. Candidly, unimpressive LSAT scores, college transcripts, and my academic insecurities haunted me; until I learned of the Council on Legal Education Opportunities program (CLEO). CLEO is a pre-law school boot camp for minority students. I was accepted by CLEO and completed the six-week pre-law summer institute program in Valparaiso, Indiana. This opportunity helped me overcome self-doubt and gave me confidence to attend law school.

Law school was a challenge, but I stayed focused on knowing a law degree would allow me to achieve my goal of helping others. The education I earned at McGeorge Law School gave me the training

needed to hone my craft. I not only gained a valuable education, but I saw how my education, life experiences, and sense of service could best be put to use. To this day, I have overcome numerous obstacles when honing my skills, maintaining my commitment to incorporate my life lessons into my profession and creating a brighter future for our community. I am proud of my ability to rise above, and I work to show my step-daughters their own inner strength. I also applied those life lessons to my work as a prosecutor.

Over the past nineteen years, I have had various assignments in the District Attorney's Office. Being on the Sexual Assault Unit and Gang Unit put me face-to-face with victims who are skeptical of the criminal justice process and how it will treat them. They are reluctant to participate for fear of how the system would expose them to criticism and backlash. In a way, the struggles, and insecurities of the victims I have worked with are similar to my own. I feel my personal experiences in volatile and unpredictable situations helped me communicate with victims more effectively. This allowed me, as a prosecutor, to share insights with the victims I engaged with, giving them a sense of empowerment in a system that traditionally afforded minimal power and nearly no control.

As I reflect on the decisions I made earlier in my life, I regret wasting so many opportunities that had been presented to me. My immaturity and stubbornness almost derailed me completely. This reflection reminds me that a person is not necessarily the sum of their youthful indiscretions. I am aware that the decisions I make daily can influence the options that are available to people, and so I take this responsibility very seriously. If fortunate enough to be appointed, I would take my role as a district court judge just as seriously.

I am a firm believer, and living proof, a person can change their path in life through hard work, determination, and the right opportunities. As a judge, it would be my mission to balance the safety of the community and the needs of crime victims with holding those who violated the law accountable in a manner that promotes responsible behavior.

Attachment for Question 49.

Attach a sample of no more than ten pages of your original writing in the form of a decision, "points and authorities," or appellate brief generated within the past five years, which demonstrates your ability to write in a logical, cohesive, concise, organized, and persuasive fashion.

1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 DANIELLE PIEPER
6 Chief Deputy District Attorney
7 Nevada Bar #8610
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

13 Defendant.

CASE NO:

DEPT NO: X

14
15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR SEVERANCE OF**
16 **DEFENDANTS**

17 **STATEMENT OF THE FACTS**

18 Statement of facts were omitted.

19 **POINTS AND AUTHORITIES**

20 **ARGUMENT**

21 NRS §173.135 allows for two or more defendants to be charged under the same indictment or
22 information if they participated in the same criminal conduct. Persons who have been jointly indicted
23 should be tried jointly, absent compelling reasons to the contrary. Jones v. State, 111 Nev. 848, 853,
24 899 P.2d 544 (1995).

25 NRS §174.165, however, provides that “[i]f it appears that a defendant or the State of Nevada
26 is prejudiced by a joinder of offenses or of defendants in an indictment or information . . . the court
27 may . . . grant a severance of defendants or provide what other relief justice requires.” To obtain a
28 severance, a defendant must demonstrate that substantial prejudice would result from a joint trial.

1 The decision to sever is left to the discretion of the trial court and such decision will not be
2 reversed absent an abuse of discretion. Amen v. State, 106 Nev. 749, 801 P.2d 1354 (1990). Broad
3 allegations of prejudice are not enough to require a trial court to grant severance. United States v.
4 Baker, 10 F.3d 1374, 1389 (9th Cir. 1993), cert. denied, 513 U.S. 934, 115 S. Ct. 330 (1994), overruled
5 on other grounds by United States v. Nordby, 225 F.3d 1053 (9th Cir. 2000). Finally, even if prejudice
6 is shown, the trial court is not required to sever; rather, it must grant relief tailored to alleviate the
7 prejudice. See, e.g., Zafiro v. United States, 506 U.S. 534, 540-41, 113 S. Ct. 933 (1993).

8 Within the federal system, and specifically the Ninth Circuit, the presumption is heavily in
9 favor of joint trials. “[C]o-defendants jointly charged, are, prima facie, to be jointly tried.” United
10 States v. Gay, 567 F.2d 916, 919 (9th Cir.), cert. denied, 435 U.S. 999, 98 S. Ct. 1655 (1978); United
11 States v. Silla, 555 F.2d 703, 707 (9th Cir. 1977) (“compelling circumstances” are generally necessary
12 to show need for separate trials). The trial court has the broad discretion to join or sever trials and
13 severance is not required unless a joint trial would be manifestly prejudicial. See Gay, 567 F.2d at
14 919. Federal appellate courts review a denial of a motion to sever for abuse of discretion and “[t]o
15 satisfy this heavy burden; an appellant must show that the joint trial was so prejudicial as to require
16 the exercise of the district judge’s discretion in only one way: by ordering a separate trial.” United
17 States v. Ford, 632 F.2d 1354, 1373 (9th Cir. 1980), cert. denied, 450 U.S. 934, 101 S. Ct. 1399 (1981),
18 overruled on other grounds by United States v. DeBright, 730 F.2d 1263 (9th Cir. 1984).

19 In both the state and federal system, the general rule favoring joinder has evolved for a specific
20 reason—there is a substantial public interest in joint trials of persons charged together because of
21 judicial economy. Jones, 111 Nev. at 854, 899 P.2d at 547. Joint trials of persons charged with
22 committing the same offenses expedites the administration of justice, relieves trial docket congestion,
23 conserves judicial time, lessens the burden on citizens called to sacrifice time and money while serving
24 as jurors, and avoids the necessity of calling witnesses more than one time. Id. at 853-54, 899 P.2d at
25 547, see also United States v. Brady, 579 F.2d 1121 (9th Cir. 1978), cert. denied, 439 U.S. 1074, 99
26 S. Ct. 849 (1979). Therefore, the legal presumption is in favor of a joint trial among co-defendants.

27 Defendant Wilder has raised several issues related to severance. Defendant Wilder first assert
28 he is entitled to severance based on antagonistic defenses. However, the arguments Defendant Wilder

1 asserts are mere claims of “anticipated” antagonistic defenses or “anticipated” mutually exclusive
2 defenses. There is no legal basis to sever, thus the court should deny Defendant Wilder’s Motion to
3 Sever. Defendant Wilder cannot demonstrate that the acceptance of his defense is so irreconcilable
4 with any of his co-defendants’ defenses that it would preclude his acquittal.

5 Severance is not warranted or justified simply because each defendant seeks to blame the other
6 for the crime. Marshall v. State, 118 Nev. 642, 56 P.3d 376 (2002). In Marshall, co-defendants
7 Marshall and Currington were tried and convicted together of first-degree murder, robbery, and
8 conspiracy to commit robbery. At trial, Marshall’s strategy was to exclusively blame Currington;
9 Currington’s strategy was to blame Marshall. Id. at 644-45, 56 P.3d at 377-78.

10 On appeal, Marshall claimed that the district court erred in not severing his trial from
11 Currington’s. Id. at 645, 56 P.3d at 378. He maintained that he and Currington had “antagonistic
12 defenses” in that each argued that the other was responsible for the murder. Id., 56 P.3d at 378.
13 Marshall relied on the standard the Nevada Supreme Court articulated in Rowland v. State, 118 Nev.
14 31, 39 P.3d 114 (2002). In Rowland, the Nevada Supreme Court stated that “defenses must be
15 antagonistic to the point that they are ‘mutually exclusive’ before they are to be considered
16 prejudicial,” and necessitate severance. Id. at 45, 39 P.3d at 122. The court further noted in Rowland
17 that defenses are mutually exclusive when the core of the co-defendant’s defense is so irreconcilable
18 with the core of the defendant’s own defense that the acceptance of the co-defendant’s theory by the
19 jury precludes acquittal of the defendant. Id. at 45, 39 P.3d at 123.

20 In Marshall, the Nevada Supreme Court expressed concern that the Rowland decision implied
21 severance was justified in too broad of circumstances. The court explained the Rowland holding and
22 limited the circumstances in which severance is appropriate. It stated:

23 To the extent that this language suggests that prejudice requiring severance
24 is presumed whenever acceptance of one defendant’s defense theory
25 logically compels rejection of another defendant’s theory, it is too broadly
26 stated. As we have explained elsewhere, where there are situations in which
27 inconsistent defenses may support a motion for severance, the doctrine is a
28 very limited one. A defendant seeking severance must show that the
codefendants have conflicting and irreconcilable defenses and that there is a
danger that the jury will unjustifiably infer that this conflict alone
demonstrates that both are guilty. We take this opportunity to further clarify
this issue.

1 Id. at 646, 56 P.3d at 378.

2 The Court then explained the standard for severance:

3 The decisive factor in any severance analysis remains prejudice to the
4 defendant. NRS 174.165(1) provides in relevant part: “If it appears that a
5 defendant . . . is prejudiced by a joinder . . . of defendants . . . for trial
6 together, the court may order an election or separate trials of counts, grant
7 a severance of defendants or provide whatever other relief justice
8 requires.” Nevertheless, prejudice to the defendant is not the only relevant
9 factor: a court must consider not only the possible prejudice to the
10 defendant but also the possible prejudice to the State resulting from
11 expensive, duplicative trials. Joinder promotes judicial economy and
12 efficiency as well as consistent verdicts and is preferred as long as it does
13 not compromise a defendant’s right to a fair trial. Despite the concern for
14 efficiency and consistency, the district court has a continuing duty at all
15 stages of the trial to grant a severance if prejudice does appear. Joinder of
16 defendants is within the discretion of the district court, and its decision will
17 not be reversed absent an abuse of discretion. To establish that joinder was
18 prejudicial requires more than simply showing that severance made
19 acquittal more likely; misjoinder requires reversal only if it has a
20 substantial and injurious effect on the verdict.

21 Marshall, 118 Nev. at 646-47, 56 P.3d at 378-79 (citations omitted).

22 Significantly, the Nevada Supreme Court specifically held that antagonistic defenses are a
23 factor, but not, in themselves, sufficient grounds upon which to grant severance of defendants. Indeed,
24 in Marshall, even though the defenses offered by Marshall and co-defendant Currington were
25 antagonistic, the Nevada Supreme Court held that the joinder of the defendants at trial was proper. Id.
26 at 648, 56 P.3d at 378. Finding Marshall’s assertion unpersuasive, the court explained that to prevail
27 on the ground that severance was warranted, Marshall had to show that the “joint trial compromised a
28 specific trial right or prevented the jury from making a reliable judgment about guilt or innocence.”
Id. at 648, 56 P.3d at 380. The court also noted that the State’s case was not dependent on either
defendant’s testimony or that the State did not use joinder to unfairly bolster a marginal case. Id., 56
P.3d at 380. Moreover, the State argued both defendants were guilty and presented evidence to
establish their separate guilt. Id., 56 P.3d at 380. The court affirmed Marshall’s conviction.

Here, Defendant Wilder uses the words, antagonistic defenses, or mutually exclusive defenses
without a showing of what those antagonistic or mutually exclusive defenses are. Defendant Wilder
cites to Robinson v. State, 429 P.3d 649 (2018), to show that this case should be severed.

1 In Robinson, the State charged co-Defendants’ Eric Robinson and Mario Camacho with
2 Murder with Use of a Deadly Weapon, Conspiracy to Commit Kidnapping, First Degree Kidnapping
3 with Use of a Deadly Weapon, Coercion with Use of a Deadly Weapon, First Degree Kidnapping with
4 Use of a Deadly Weapon Resulting in Substantial Bodily Harm, and Attempted Murder with Use of a
5 Deadly Weapon. Id at 1. Both Defendant were charged under three theories of liability, first degree
6 murder, aiding and abetting and conspiracy. Id. Robinson assisted Camacho in kidnapping three
7 individuals to interrogate those individuals about the missing money. Id. Camacho shot and murdered
8 one of the victims and shot and severely injured a second victim. Id. Robinson was present for the
9 shootings and fled with the weapons. Id. Robinson and Camacho confessed to police, were arrested,
10 and tried together. Id.

11 Robinson appealed on two grounds, the first was Batson and the other was that the district
12 court abused its discretion in denying two motions to sever by Robinson. Id at 2. Robinson’s motion
13 contended severance was necessary to ensure his right to fair trial because 1) he and his co-defendant’s
14 defenses were antagonistic and 2) his co-defendant elicited a prejudicial statement from a victim-
15 witness that would have been admissible in a trial solely against him. Id at 2.

16 In affirming the District Court’s decision which denied both of Robinson’s motions to sever,
17 the Nevada Supreme Court stated, “joint criminal trials inherently carry some level of prejudice
18 between codefendants...” Id at 2. For a defendant to prevail on a denial of a severance motion, under
19 an abuse of discretion standard, the defendant must show that the joint trial “prevented the jury from
20 making a reliable judgement regarding guilt or innocence. Marshall, 118 Nev. At 647, 56 P.3d at 379;
21 see also NRS 174.165(1). A finding of prejudicial misjoinder, “require more than simply showing
22 that severance made acquittal more likely; misjoinder requires reversal **ONLY IF** (emphasis added)
23 it has a substantial and injurious effect on the verdict. Defenses are mutually antagonistic or
24 irreconcilable when there is a danger that the jury will unjustifiably infer that this conflict alone
25 demonstrates that both are guilty.” Marshall, 118 Nev at 647, 56 P.3d at 378.

26 Moreover, the Court stated, “Robinson argues that the defenses became irreconcilable when
27 Camacho denied having pulled the trigger. Neither Camacho nor the State accused Robinson of
28 having pulled the trigger, thus making the defenses reconcilable.” Id at 2.

1 Here, Defendant Wilder argues that Charde Ford is inconsistent because in her initial statement
2 to police she said Branche-Jones poured the gasoline on her and the other victims after he came into
3 Jimenez home. While at her deposition she said the guy in the “dread locks” was the one who poured
4 the gasoline on herself and all the other victims. However, how does this fact create mutually
5 antagonistic defense or an irreconcilable defense. There is no danger that the jury will unjustifiably
6 infer that this conflict alone demonstrates all Defendants are guilty. In fact, all three Defendants’ can
7 argue that Charde Ford’s inconsistency makes her an unreliable witness and therefore she has no
8 credibility. There is no trial right which is being abridged here.

9 Defendant Wilder then goes on to argue that “completeness issues” and Bruton, are reasons
10 for severing his case, primarily based on the statements of Alisha Perez. However, Defendant Wilder
11 is misapprehending the rule of the “completeness doctrine.” The Nevada Supreme Court stated in
12 Torres-Banuelos v. State, 403 P.3d 1270 (2017), “... exculpatory statements do not qualify under
13 any exception or exemption to the hearsay rule and thus, are inadmissible regardless of the rule of
14 completeness.” See NRS 51.035.

15 In Torres-Banuelos, the State charged him with Attempt Murder with Use of a Deadly
16 Weapon, Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm, four counts of
17 Assault with Use of a Deadly Weapon and Discharging a Firearm Into a Vehicle for an incident on
18 July 2, 2015. Id. at 1.

19 Torres-Banuelos discharged a firearm at an occupied vehicle, was arrested and later
20 interrogated by police. Id. In his interrogation, he initially denied being the shooter, then requested to
21 start the interrogation over and ultimately confessed to the crime. Id. On the third day of trial, the State
22 introduced portions of Torres-Banuelos’s taped confession, the defense objected under the
23 “completeness doctrine” and moved to include those exculpatory portions of Torres-Banuelos’s
24 confession. Id. The district court denied Torres-Banuelos’s request to admit the taped portions of his
25 interrogation where Torres-Banuelos’s denied being the shooter. Id. After he was convicted, Torres-
26 Banuelos appealed, challenging 1) the district court’s decision to exclude the initial portions of his
27 taped interrogations, where he denied being the shooter; and 2) that the sentence imposed was cruel
28 and unusual punishment. Id.

1 The Court upheld the ruling of the district court and stated, “NRS 47.120 (1) provides that
2 “[w]hen any part of a writing or recorded statement is introduced by a party, the party may be required
3 at any time to introduce any other part of it which is relevant to the part introduced, and any party may
4 introduce any other relevant parts.” The Court went on to note, that NRS 47.120 was modeled after
5 Federal Rule of Evidence 106. Id at 1.

6 FRE 106 codified the rule of completeness found in common law. Id. at 2. The rule of
7 completeness exists to avert misunderstanding or distortion caused by the introduction of only part of
8 any document. Id. The Court went on to state, “FRE 106 does not compel admission of otherwise
9 inadmissible hearsay evidence. Thus, it noted, Torre’s exculpatory statements do not qualify under
10 any exception or exemption to the hearsay rule and thus are inadmissible regardless of the
11 completeness rule.” Id.

12 Here, Defendant Wilder’s theory is that the State will elicit inculpatory statements Branche-
13 Jones made to Ms. Perez after the crimes were committed. Defendant Wilder then asserts, Defendant
14 Branche-Jones may want to elicit testimony by Ms. Perez which either minimizes Branche-Jones’s
15 involvement in the crimes or gives mitigating reasons why Branche-Jones committed certain acts.;
16 such as Branche-Jones was in fear of Defendant Wilder because Defendant Wilder had previously
17 killed a friend. However, these statements are hearsay and there is no exception or exemption for their
18 admission. The rule of completeness does not cure the hearsay.

19 Defendant Wilder next asserts severance is warranted based on Bruton. The confrontation clause in
20 the Sixth Amendment of the United States Constitution guarantees the right of a criminal defendant
21 to be confronted with the witnesses against him. In Bruton v. United States, 391 U.S. 123, 88 S.Ct.
22 1620 (1968), the United States Supreme Court held that since there is a substantial risk that a jury will
23 use a facially incriminating confession of a non- testifying defendant as evidence of the guilt of his
24 co-defendant, the admission of the confession in a joint trial violates the confrontation clause. Id. 391
25 U.S. at 126, 88 S.Ct. at 1622. After this decision, several Circuit Courts of Appeal started to redact
26 references to the non-testifying Defendant and employ neutral pronouns instead. For example, the
27 Ninth Circuit Court of Appeals approved the use of a counterfeiter's confession when redacted to
28 include that he and "some others" robbed a savings and loan association. United States v. Sears, 663

1 F.2d 896, 902 (9th Cir. 1981), cert. denied, 455 U.S. 1027, 102 S.Ct. 1731 (1982). See also United
2 States v. Gonzales, 749 F.2d 1329, 1344 (9th Cir. 1984) (substitution of "the other man" for
3 defendant's name to non-violate Bruton). Other Circuits adopted this same procedure. See, United
4 States v. Weinrich, 586 F.2d 481 (5th Cir. 1978) (reference to co-defendant excised and replaced with
5 pronoun "someone"); United States v. Stewart, 579 F.2d 356 (5th Cir. 1978) (admission by non-
6 testifying co-defendant that "him and some of his buddies hit a bank" was proper); United States v.
7 Holleman, 575 F.2d 139 (7th Cir. 1978) (non-testifying co-defendant's redacted statement which made
8 it clear that he was assisted by two others in a robbery was proper where the accomplices were not
9 identified by race, age, size, or any means except sex).

10 Later, the United States Supreme Court clarified its holding in Bruton in the case of Richardson
11 v. Marsh, 481 U.S. 200, 107 S.Ct. 1702 (1987). Initially, the Court explained that Bruton is only
12 implicated when the non-testifying co-defendant's statements "expressly implicate" the defendant or
13 are "powerfully incriminating". Id. 481 U.S. at 28, 107 S.Ct. at 1707. Additionally, the Court
14 observed that:

15
16 One might say, of course, that a certain way of assuring compliance
17 would be to try defendants separately whenever an incriminating
18 statement of one of them is sought to be used. That is not as facile or
19 as just a remedy as might seem. Joint trials play a vital role in the
20 criminal justice system, counting for almost one third of federal
21 criminal trials in the past five years . . .

22 It would impair both the efficiency and the fairness of the criminal
23 justice system to require on all of these cases of joint crimes where
24 incriminating statements exist, that prosecutors bring separate
25 proceedings, presenting the same evidence again and again, requiring
26 victims and witnesses to repeat the inconvenience (and sometimes
27 trauma) of testifying, and randomly favoring the last - tried defendants
28 who have the advantage of knowing the prosecution's case before hand. Joint trials generally serve the interest of justice by avoiding inconsistent verdicts and enabling more accurate assessment of relative culpability - advantages which sometimes operate to the defendant's benefit. Even apart from these tactical considerations, joint trials generally serve the interest of justice by avoiding the scandal and equity of inconsistent verdicts. The other way of assuring compliance with an expansive Bruton rule would be to forego use of co- defendant's confessions. That price also is too high, since confessions are more than merely 'desirable'; they are essential to society's compelling interest in finding, convicting, and punishing those who violate the law.

1
2 (Citations omitted). *Id.*

3 Consequently, the United States Supreme Court approved of the procedure redacting co-
4 defendants' confessions by stating that:

5 We hold that the confrontation clause is not violated by the admission
6 of a non-testifying co-defendant's confession with a proper limiting
7 instruction, when, as here, the confession is redacted to eliminate not
8 only the defendant's name, but any reference to her existence.

9 391 U.S. at 211, 107 S.Ct. at 1709. The Court also "express[ed] no opinion on the admissibility of a
10 confession in which the defendant's name has been replaced with a symbol or neutral pronoun." *Id.*

11 Thereafter, the Eleventh Circuit in *U.S. v. Vasquez*, 874 F.2d 1515, 1518 (11th Cir. 1989),
12 cert. denied 493 U.S. 1046, 110 S.Ct. 845 (1990), held that a co-defendant's confession that was
13 redacted to eliminate references to the defendant's name and substituted the word "individual" did not
14 violate *Bruton*. Likewise, the Ninth Circuit held that the redaction of a non-testifying co- defendant's
15 statement and inserting the word "individuals" as a substitution for the co-defendant's names did not
16 violate *Bruton*.

17 An argument common to confessing co-defendants is that the redacted confessions, once
18 considered along with other evidence, clearly identifies them as the unnamed persons referred to in
19 the confessions. This "contextual inculcation" argument has been rejected, as an unwarranted
20 extension of *Bruton*. See, *United States v. Daddy*, 536 F.2d 675 (6th Cir. 1976) (inference that if one
21 defendant is guilty the co-defendants must also have been guilty based not on the redacted confession
22 but on the other independent evidence); *United States vs. Trudo*, 449 F.2d 649 (2nd Cir.), cert. denied,
23 405 U.S. 926, 92 S.Ct. 1975 (1970) (inference of defendant's guilt arose from source independent of
24 co-defendant's redacted statement).

25 *United States v. Fullette*, 430 F.2d 1055 (2nd Cir. 1970) typifies the attitude towards contextual
26 inculcation. In *Fullette*, two defendants, Biggins and Nelson, were tried jointly for bank robbery. *Id.*
27 at 1055. Biggins confessed giving a description of "Oliver" and stating that he and "Oliver" were at
28 a certain bar just prior to the robbery. *Id.* Other evidence in trial established a close resemblance
between Nelson and "Oliver" and that Nelson and Biggins were often seen together at the bar named
in the confession. *Id.* at 1056. The court nevertheless felt there was no violation of *Bruton* because

1 “[i]n short, Biggins’ statements were not clearly inculpatory because they alone did not serve to
2 connect Nelson with the crime Biggins’ statements were not the type of powerfully incriminating
3 statements to which the court had reference in Bruton.” Id. at 1058.

4 In the instant case, none of the Defendants gave statements in this case. As such, no statement
5 is so “powerfully incriminating” as to warrant severance in the instant case.

6 **CONCLUSION**

7 Based on the foregoing, the State respectfully asks this Court to deny the Defendant Wilder’s
8 Motion to Sever.

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