

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

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Elizabeth A. Brown
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RODERICK SKINNER,

Petitioner,

vs.

**WARDEN FRANKLIN, NNCC,
STATE OF NEVADA ET AL,**

Respondents.

Sup. Ct. Case No. 86846, 86893

Case No. CR14-0644

Dept. 8

RECORD ON APPEAL

VOLUME 5 OF 16

DOCUMENTS

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1 EDWARD T. REED, ESQ.
2 EDWARD T. REED, PLLC
3 Nevada State Bar No. 1416
4 P.O. Box 34763
5 Reno, NV 89533-4763
6 (775) 996-0687

7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**

9 RODERICK SKINNER,

10 Petitioner,

Case No. CR14-0644

11 vs.

Dept. No. 8

12
13 ISIDRO BACA, WARDEN, NORTHERN
14 NEVADA CORRECTIONAL CENTER,

15 Respondent.
16 _____/

17 **PETITIONER’S HEARING MEMORANDUM FOR EVIDENTIARY**
18 **HEARING**

19 Petitioner Roderick Skinner, by and through his appointed counsel
20 Edward T. Reed, Esq., hereby files this Hearing Memorandum to cover the
21 pertinent legal and factual issues for the evidentiary hearing in this case and
22 to respond to matters in the State’s Bench Memorandum Regarding
23 Evidentiary Hearing.

24 One of the primary issues at the hearing will be the destruction of the
25 forensic evidence by Dennis Carry after receiving an “Evidence Release”
26 from the District Attorney’s Office. This evidence release will be submitted
27 to the Court pursuant to a stipulation of the parties. The evidence release is
28 also attached hereto as **Exhibit 1**. When the undersigned counsel first

1 contacted Chief Deputy District Attorney Terry McCarthy, Esq., in October,
2 2017, who was the State's attorney in this matter at the time, to arrange to
3 have the Petitioner's expert on forensic computer analysis, Tami Loehrs,
4 inspect and review the forensic evidence from Mr. Skinner's computers and
5 hard drive, Mr. McCarthy checked with Sgt. Dennis Carry of the Washoe
6 County Sheriff's Office about this matter. See Exhibit 2 to Supplemental
7 Petition. Mr. McCarthy told the undersigned counsel in an email dated
8 December 7, 2017, that "[h]e does not have the computer or any component
9 of the computer."

10 In a deposition approved by this Court, the transcript of which is
11 attached hereto as **Exhibit 2**, Sgt. Carry stated that upon receiving an
12 evidence release from the District Attorney's Office, that he had disposed of
13 this evidence. See page 8-12 of deposition transcript. The attorney for the
14 State, Deputy District Attorney Joe Plater, stated at the deposition that he
15 would provide a copy of this evidence release. See page 10 of **Exhibit 2**.
16 This release was subsequently emailed to the undersigned by Mr. Plater and
17 is attached as **Exhibit 1**. Because it could not be determined who had signed
18 the release because D.D.A. Mike Bolenbaker stated he did not sign it despite
19 his signature line being on the release, Mr. Plater agreed to stipulate simply
20 that a deputy district attorney had signed it, as did Ms. Noble, the current
21 attorney for the State.

22 In the State's Bench Memorandum Regarding Evidentiary Hearing,
23 it talks about the "alleged destruction" of the evidence. It should be clear
24 based on Mr. McCarthy's emails and Sgt. Carry's statements that this is not
25 "alleged" but is an actual destruction. If counsel for the State is alleging it
26 was not destroyed, she should bring the evidence into court on the day of the
27 hearing to allow the Petitioner's expert to examine it. However, the State is
28

1 estopped from claiming the evidence was not destroyed based on the above
2 statements, and the fact that the assertion that the evidence had been
3 destroyed was in the Supplemental Petition filed on or about January 12,
4 2018, and that nothing was filed thereafter opposing this statement or
5 claiming that this evidence still existed.

6 The State contends on page 13 of the bench memo that the
7 Supplemental Petition does not offer any authority that would require the
8 State to maintain evidence after a criminal defendant has plead guilty and
9 been sentenced. This issue may be one of first impression, and there may
10 not be any cases on it. However, there is nothing in the cases cited by the
11 Petitioner on pages 6 and 7 of the Supplemental Petition that limit these
12 holdings to trial cases and preclude habeas corpus cases.

13 Basic considerations of due process and fairness in the criminal justice
14 system should require that evidence be preserved if a criminal defendant still
15 has remedies available under the law. The State does not offer any
16 authority that the State is allowed to just destroy evidence after a criminal
17 conviction and before a defendant has had the opportunity to proceed with a
18 habeas corpus action. A habeas corpus action is one that a defendant has a
19 right to pursue under Nevada law in chapter 34 of the Nevada Revised
20 Statutes as well as under federal law. If a defendant alleges actual
21 innocence, then clearly he should have access to evidence to prove this.

22 The evidence pertaining to alleged child pornography and a file
23 sharing program on Mr. Skinner's computer is relevant to several of his
24 grounds for relief in his habeas corpus petition. He alleges he was misled
25 by his counsel Mr. Frey and that his counsel did not adequately review the
26 evidence. If the forensic evidence were still available and after an
27 examination by the Petitioner's expert it were demonstrated that Mr. Carry
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was inaccurate in his investigation and that there really was no child pornography or file sharing program on his computer, then that would prove the first ground in his habeas corpus petition, lack of a corpus delicti. It would also demonstrate and provide evidence that his counsel was ineffective in his investigation into this matter. However, whether or not it supported his habeas corpus petition, the destruction of the evidence is an affront to basic considerations of fairness and due process and totally hamstring Mr. Skinner in pursuing his habeas corpus rights to such an extent that it requires the dismissal of his conviction.

PETITIONER’S WITNESSES

- 1. Tami Loehrs, expert witness.
- 2. Roderick Skinner, Petitioner.
- 3. Dennis Carry.

Mr. Carry, who will be called first, has been subpoenaed and the subpoena has been filed with the court. After Mr. Carry was served with a subpoena in July of 2018 for the hearing set for January of 2019, when the hearing was continued to September 26, Mr. Carry was notified and agreed to the new date. See email attached to subpoena. He has further been notified by the undersigned counsel through his former captain, Russell Pedersen, that he is expected at the hearing on September 26 as well as through correspondence.

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Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Respectfully submitted this 25th day of September, 2019.

/s/ EDWARD T. REED, ESQ.
EDWARD T. REED, PLLC
Nevada State Bar No. 1416
P.O. Box 34763
Reno, NV 89533-4763
(775) 996-0687
Fax (775) 333-0201
ATTORNEY FOR PETITIONER

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Edward T. Reed, PLLC. who represents the Petitioner in this matter, and that on this date I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Jennifer Noble
Washoe County District Attorney's Office

DATED this 25th day of September, 2019.

/s/ Edward T. Reed
Edward T. Reed

EXHIBIT 1

EXHIBIT 1

WASHOE COUNTY DISTRICT ATTORNEY
EVIDENCE RELEASE

May 24, 2016

TO WASHOE COUNTY SHERIFFS OFFICE and SPARKS POLICE DEPARTMENT **EVIDENCE CUSTODIAN**

AGENCY CASE NUMBER: WC14-000485 and

DA #: 14-7319 / 13-175580

DEFENDANT: RODERICK STEPHEN SKINNER

COURT CASE NUMBER: CR14-0644; CR13-1601

YOU ARE HEREBY NOTIFIED THAT THIS OFFICE NO LONGER REQUIRES THE RETENTION OF THE FOLLOWING EVIDENCE WHICH MAY BE RELEASED PURSUANT TO YOUR AGENCY'S POLICY:

Complete Release **Photograph prior to release (NRS 52.385)**

Pursuant to NRS 52.385, the evidence may be released to the person listed below unless your agency has been advised of a competing claim of ownership:*

(please print name and address)

Please refer to attached list identifying owners and specific properties.

Partial Release **Photograph prior to release (NRS 52.385)**

Pursuant to NRS 52.385, the following items of evidence may be released to the person listed below unless your agency has been advised of a competing claim of ownership:*

(please print name and address)

Refer to Control # where possible. If money, state exact amount _____

Please refer to attached list identifying owners and specific properties. The remainder of the evidence is to be held until further disposition.

Owners(s) Unknown: Based upon insufficient information available to identify or locate an owner, you may dispose of the property in conformance with your agency's policy.

Narcotics Destruction: All narcotics and paraphernalia may be destroyed.

Weapons Disposition: Disposition may be made pursuant to NRS 202.340 and in conformance with your agency's policy.

Pawnbroker Notice:


Name and Address: _____

Notice is hereby given that the property listed herein will be released to the claimed owner identified above at the conclusion of 7 days from the date of this release unless you submit to us and we receive a claim to such property in writing prior to that date.

Dispose of all remaining evidence pursuant to your department policy.

Other _____

***In the event of competing claims, you should hold the property until you receive a court order or a release of claim. Please consult with counsel for your agency.**



MICHAEL BOENBAKER
DEPUTY DISTRICT ATTORNEY

EXHIBIT 2

EXHIBIT 2

In the Matter Of:

Skinner vs State

DENNIS CARRY

November 05, 2018

Job Number: 501219

1 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF
2 NEVADA IN AND FOR THE COUNTY OF WASHOE

3
4
5 RODERICK STEPHEN SKINNER,) Case No. CR14-0644
6)
6 Petitioner,) Dept No. 8
7)
7 vs.)
8)
8 ISIDRO BACA, WARDEN, NORTHERN)
9 NEVADA CORRECTIONAL CENTER.)
9 Respondent.)
10)

11

12 DEPOSITION OF DENNIS CARRY

13

Taken on Monday, November 5, 2018

14

15 At 1:30 p.m.

16

At Sunshine Litigation Services

17

18 151 Country Estates Circle

19

Reno, Nevada

20

21

22

23

24 REPORTED BY: NICOLE J. HANSEN, CCR NO. 446

25 JOB NO.: 501219

1 APPEARANCES:

2
3 For the Petitioner:

4 EDWARD T. REED, ESQ.
5 Edward T. Reed, PLLC
6 P.O. Box 34763
7 Reno, Nevada 89533-4763

8 For the Respondent:

9 JOSEPH PLATER, ESQ.
10 Washoe County District Attorney's Office
11 1 South Sierra Street #7
12 Reno, Nevada 89501

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1	I N D E X	Page 3
2	WITNESS:	Dennis Carry
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1 DENNIS CARRY,
2 having been first duly sworn, was
3 examined and testified as follows:
4

5 EXAMINATION

6 BY MR. REED:

7 Q Now, would you please state your full name
8 and spell it for the court reporter?

9 A Dennis Carry: D-E-N-N-I-S. C-A-R-R-Y.

10 Q What is your business, profession, or
11 occupation?

12 A I'm a sergeant with the Washoe County
13 Sheriff's Office.

14 Q How long have you been in that position?

15 A I've been with the sheriff's office for
16 nearly 23 years, and as a sergeant since December 2011.

17 Q What are your duties there?

18 A I supervise the Cyber Crime Unit, which is a
19 regional investigator unit that includes Internet Crimes
20 Against Children Task Force. And I also have other
21 responsibilities, as far as a being a supervisor of the
22 detective division also.

23 Q What specific training have you had to do the
24 type of work you do, which is in the cyber crimes unit?

25 A Over a thousand hours of training concerning

1 instant response, computer forensics, and over a thousand
2 hours of training, as far as child exploitation
3 investigations.

4 Q Are you ENCASE certified?

5 A ENCASE? No.

6 Q Do you have the CCFE certification?

7 A The certifications I have, I have a GCFE,
8 GCFA, GASF, and also CHFI.

9 Q Do you have the ACE?

10 A Those are the only certifications right
11 there.

12 Q Okay. Thank you. Now, when you received the
13 case involving Roderick Skinner, as far as the
14 examination of evidence, do you recall what evidence you
15 received?

16 A I do recall because we received whatever the
17 evidence was at the time -- I don't remember the
18 specifics -- but we received it from the Sparks Police
19 Department.

20 Q Do you recall examining a laptop computer?

21 A I do. It was a laptop, and I believe an
22 external hard drive, and probably a few other devices.

23 Q Now, do you recall if you examined more than
24 one device? Because there were several devices that were
25 obtained through the search warrant of Mr. Skinner's

1 apartment.

2 A For all of the devices we received, they all
3 would have been examined. When I say "examined," it's
4 more specifically what I would call previewed, because
5 there was never a full analysis ever completed. He pled
6 guilty before that happened. But there were multiple
7 devices. Every device that we were provided, we would
8 have previewed.

9 Q So, as far as you recall, all you did on any
10 of these devices was preview them?

11 A Preview them to an extent that we have a good
12 understanding of the facts of the case, what we were
13 investigating specifically, to determine whether or not
14 there is enough evidence for probable cause arrest, which
15 is what we did do. And then it was, I guess, shelved, is
16 the best way to explain it, until we would see what the
17 outcome of the case would be.

18 Q Now, this case, I'll represent you probably
19 remember that you did examine the Toshiba laptop
20 computer?

21 A Okay.

22 Q And when you searched the contents of this
23 laptop, what procedure did you follow?

24 A So when we conduct a forensic exam, one of
25 the first things is to document the condition of the

1 device itself. And then, if the device has a hard drive,
2 we remove the hard drive, perform what's called a
3 forensic image of the hard drive. And then our
4 examination, what we work with is off of that image, not
5 the actual original device at that point.

6 And then we would look -- or I did, at least,
7 look at the contents, look at ownership information,
8 determine if we have a device that we believe to be from
9 the person we're investigating and any relevant evidence.

10 **Q So you remove the hard drive, and then you**
11 **make, basically, a copy of it?**

12 A Essentially. It's called a forensic image,
13 but it's a copy.

14 **Q And so when you perform your examination or**
15 **preview, or whatever you call it, you look at the copy,**
16 **essentially?**

17 A Yes.

18 **Q And how many copies do you make?**

19 A Two copies, typically. Sometimes only one.

20 **Q Do you recall, in this case, if you made one**
21 **or two?**

22 A I don't remember. In this case, more than
23 likely, it would have, at the time, it would have more
24 than likely been one copy, and then we would have copied
25 that copy and stored it on a server.

1 **Q** **In any event, you make at least one copy of**
2 **everything?**

3 A Yes.

4 **Q** **What is the procedure as to how long you**
5 **maintain this computer forensic evidence?**

6 A We disposed of the evidence after receiving
7 an evidence disposition from the District Attorney's
8 Office.

9 **Q** **Oh, you did?**

10 A Yes.

11 **Q** **When did you receive that?**

12 A I don't remember, but I believe it was
13 sometime in 2016. I'm fairly positive it was sometime in
14 2016.

15 **Q** **Do you ever make that determination yourself,**
16 **or do you have to get someone from the District**
17 **Attorney's Office?**

18 A It depends on the case. We're a regional
19 unit. We work cases that are federal, we work cases that
20 are state, and also cases that end up in multiple other
21 state jurisdictions. They all have their own different
22 procedures and policies.

23 When we receive evidence, we hold onto it,
24 typically, for a minimum of two years. That's typically
25 what we would keep it. But it kind of depends. If we're

1 told we can destroy data or destroy evidence, and if the
2 case is either adjudicated or the person is not appealing
3 or anything, it will be usually within or just after ten
4 days of giving up their appellate rights. And that's
5 usually in a federal proceeding. If it is state, we wait
6 until we receive an evidence disposition.

7 **Q Do you recall who, in the District Attorney's**
8 **Office, would have signed that evidence disposition?**

9 A I do not. And this case was a little more
10 unique because it was a case that started with the Sparks
11 Police Department where their original seizure of
12 evidence and then transfer it to us and then actually
13 transfer it into our task force. But at some point,
14 regardless, I know we received an evidence disposition,
15 and I'm positive it was in 2016.

16 **Q When did you review the evidence disposition?**

17 A Huh?

18 **Q When did you last review that evidence**
19 **disposition?**

20 A Shortly after you contacted me.

21 **Q Me or my investigator, Mr. Grate?**

22 A No. You.

23 **Q When I contacted you?**

24 A Uh-huh.

25 **Q As far as serving you the notice of**

1 disposition or --

2 A Just to look into what the case was about and
3 saw the evidence disposition.

4 Q Okay. Can I ask you if you would provide a
5 copy of it to me?

6 A That one would have to come from the DA's
7 Office. It's their record.

8 MR. REED: Okay. Can I get a copy?

9 MR. PLATER: Sure.

10 Q (BY MR. REED:) Okay. So that was in 2016.
11 Do you ever make your own determination of just disposing
12 of forensic evidence?

13 A We do, depending upon the circumstances of
14 the case. For example, if it's a case that we had no
15 federal -- no desire to prosecute federally, then we may
16 dispose of the evidence, possibly after the statute of
17 limitations on the case, if it succeeded the statute of
18 limitations.

19 Our evidence is more unique than other
20 evidence, evidence that would typically be in like, say,
21 the sheriff's office or the police department in most
22 circumstances. Our evidence usually contains contraband
23 that we can't give it back anyway. It's illegal for it
24 to go back, so it will be destroyed. It's just the
25 timing all depends on the case circumstances.

1 There's no statute of limitations to
2 prosecute a case federally, so we do have some items that
3 we have a desire to prosecute the person still that we've
4 maintained.

5 **Q Do you ever recall telling my investigator,**
6 **Mr. Grate, who is here today, that you, when asked about**
7 **the destruction of the evidence, he just got rid of it**
8 **sort of in the course of periodically disposing of**
9 **evidence and that, along those lines?**

10 A Yes. We would have -- we hold onto evidence,
11 and every now and then, we do a, I guess, a cleaning of
12 our evidence room, and we look for evidence that we don't
13 need anymore. It's past the time we can get rid of it,
14 and then we do, more or less, quarterly or semi-annually
15 disposal.

16 **Q But if you told him that, then that seems to**
17 **contradict what you just told me about getting a**
18 **disposition from the District Attorney's Office.**

19 A No. We got a disposition. But just because
20 we get a disposition, we don't stop what we're doing and
21 go destroy the evidence.

22 We do it every now and then quarterly when we
23 need room in the evidence room, but we don't just get a
24 form, go in the room and go destroy it. It doesn't work
25 that way because we recycle -- we pull the hard drives,

1 but we recycle a lot of the electronics. And all of that
2 requires us to like schedule a truck to come or something
3 like that.

4 **Q Well, in this case, several pieces of**
5 **equipment that was recovered from Mr. Skinner, the laptop**
6 **and several hard drives, was all of that disposed of not**
7 **only, say, the laptop, but also the forensic images? It**
8 **was all disposed of?**

9 A The forensic images would have been disposed
10 of at different times. The original evidence is held
11 until we're told to dispose of it. The forensic images,
12 depending upon the storage location, they may be stored
13 longer.

14 As far as Mr. Skinner's case goes, his what
15 we would call the backup of the backup was stored on a
16 server array that we don't even have anymore. We've
17 replaced it twice since then. That would have been the
18 backup of the backup, but all of the other stuff would
19 have been gone sometime ago.

20 **Q Okay. So do you know if all of it would have**
21 **been destroyed at the same time?**

22 A No, it probably would not have been.

23 **Q But you've checked, and it's all been**
24 **destroyed?**

25 A Yes.

1 **Q And how is this destroyed? Is it just thrown**
2 **away in the garbage?**

3 A No. We rip hard drives out of -- if it's a
4 laptop, we take the hard drive out. We either obliterate
5 it or we wipe it. And if it's other items, say, like
6 something that's usable for an external USB drive that
7 might be usable for us, we'll destroy the data by wiping
8 it numerous times and then placing it into service.

9 **Q Were you ever made aware that there was**
10 **pending litigation in the case, that a habeas corpus**
11 **petition had been filed?**

12 A I knew at one point that there was something
13 happening, but that was prior to us receiving a notice to
14 get rid of the evidence. So after that, I have no idea
15 what the status was. We don't follow every case.

16 **Q But you saw no reason not to obey the notice**
17 **from the District Attorney's Office that you could**
18 **dispose of the evidence?**

19 A Correct. And it's more common than not in a
20 case where somebody pleads guilty that we will destroy
21 the evidence sooner after receiving a disposition than a
22 case that we know to be litigated. In a case -- if we
23 know a case to be under litigation, we'll usually hold
24 onto it longer. But there's no rhyme or reason, as far
25 as how long.

1 **Q** So when you got this notice or this
2 memorandum, whatever it was from the District Attorney's
3 Office, you saw no reason to question that you could go
4 ahead and dispose of the evidence?

5 A No, not in specifically a guilty-plea case,
6 but receiving a notice of evidence, sometimes it's a
7 process that just comes in where we just receive it. And
8 often, when we're just trying to clean out our evidence
9 section, we look at cases and contact the District
10 Attorney's Office to obtain evidence dispositions if it's
11 been a long time, for example.

12 **Q** But in this case, when you went to dispose of
13 the evidence, you'd already received this disposition
14 notice?

15 A The evidence would have been disposed just at
16 some point after receiving that. It just gets moved to a
17 -- when we know we can destroy something, it just gets
18 moved to an area that we know we can destroy it, and then
19 it just sits there until we do that.

20 **Q** So essentially, you would not have conferred
21 with anybody: Is it okay to throw this away? You
22 already had the notice?

23 A We already had the notice.

24 **Q** Under the certifications that you have, I
25 think you said you did have a CCFE certification?

1 A No. It's different. The certifications are
2 all -- some companies have some certifications. Some
3 companies have different certifications. They're all
4 generically the same thing.

5 **Q In your training or education when you**
6 **received any of these certifications, were you told you**
7 **were supposed to hang onto this while there was any**
8 **pending litigation?**

9 A That is up to -- any one of those times, that
10 is up to whatever the circumstance of the case were. We
11 got rid of it when we were told to get rid of it or that
12 we may.

13 **Q But at this point in time, you know it was**
14 **sometime in 2016 that it was disposed of?**

15 A 2016, when we received the disposition. I
16 don't know offhand when we got rid of it. We take in a
17 tremendous amount of evidence and dispose of a tremendous
18 amount of evidence, so I don't really remember the exact
19 time.

20 I just know we move it to a disposable area.
21 But there's no consistency, as far as when we call a
22 truck, when we take a day of not working cases to start
23 pulling hard drives and wiping devices.

24 **Q Now, do you keep a record of when this type**
25 **of evidence is disposed of?**

1 A At that time, we may or may not have had --
2 I would have to look. We may or may not have had a
3 system. I think we're on our third different evidence
4 tracking system, so I'm not sure what we would have.

5 **Q Would you mind checking?**

6 A I can check. Yes.

7 **Q But you know that you received a notice in**
8 **2016?**

9 A Yes, I'm fairly certain.

10 **Q Do you know approximately how long after that**
11 **that it would have been that you would have destroyed the**
12 **evidence?**

13 A No. No.

14 **Q Could have been a year or two years?**

15 A As far as the actual destruction, yes. It
16 could have been.

17 **Q Now, were you aware that the evidence on the**
18 **computer had been previously -- or that this particular**
19 **computer had been owned previously by another individual**
20 **named Mike?**

21 A I believe I did know that. Yes, sir.

22 **Q Do you have any personal knowledge that**
23 **Mr. Skinner knew about the downloaded files on the**
24 **computer?**

25 A Based on what I previewed, I had absolutely

1 no doubt whatsoever that Mr. Skinner was responsible for
2 the files, based on everything that I previewed, or I
3 would not have arrested him on the charges, whether he --
4 if he had chosen to not plead guilty, we would have not
5 analyzed the devices further.

6 But I still have no doubt in any mind, based
7 on my experience, the amount of cases I've worked, that
8 he was absolutely responsible for the files and the
9 activity.

10 **Q But this was just a -- did you call it an**
11 **initial preview?**

12 A Yes.

13 **Q And what further -- if you had to go and do a**
14 **further examination, what would you have done?**

15 A We would have looked at more of the dates
16 than we looked at. I would have looked at more of the
17 dates and what we call user attribution data, essentially
18 doing more work to put him behind the keyboard, as
19 needed. But certainly, my preview, I had no problem
20 being confident that he was responsible, based on the
21 dates and times.

22 **Q Now, when you say that, you mean that the**
23 **dates and times corresponded to when he was in the United**
24 **States or in Sparks?**

25 A There were dates and times from files -- if I

1 remember correctly for Mr. Skinner, he had files backed
2 up from other times also. He had a lot of personal
3 files, as you'd say, and the personal files were often
4 mixed with the child pornography files. But the dates
5 all varied.

6 If this was a case that had proceeded to
7 trial, that would have been laid out in far more detail.
8 Some of the more common things we would look at would be
9 the user attribution data, the dates and times for the
10 account information, and I guess you could say indicia
11 information, so information that would corroborate child
12 exploitation activity with personal activity. That could
13 be checking e-mail or other things like that.

14 **Q So, in other words, you would be able to**
15 **determine what dates and times he was, say, checking**
16 **e-mails?**

17 A Yes, potentially, depending upon what
18 activity is on there.

19 **Q And that would correspond to the times that**
20 **you saw these files being downloaded?**

21 A Well, files being downloaded, but that's also
22 only one component of it. We would look for times the
23 file is accessed and viewed.

24 There are many artifacts that are created on
25 a computer when you like view it in a media player, for

1 example, or when you double-click on something, or when
2 you delete something, many artifacts are created, and we
3 would look at those artifacts in more depth.

4 Q Would the fact that somebody else had
5 previously owned the computer, is it possible that he
6 didn't know about some of these downloaded files?

7 A In my experience and training, absolutely
8 not.

9 Q Do you have any personal knowledge of whether
10 these files were ever opened or viewed?

11 A What do you mean by "personal knowledge"?

12 Q Well, I mean -- well, okay. Let me rephrase
13 that. Is there any possibility he didn't know about that
14 some of these files had been downloaded?

15 A That's pretty subjective, so I don't really
16 know how I would answer that.

17 MR. PLATER: That's a really tough question
18 for him to ask him to speculate.

19 THE WITNESS: Yeah.

20 Q (BY MR. REED:) Do you have any knowledge or
21 what knowledge do you have that Mr. Skinner knew that
22 there was a file-sharing program running on his computer?

23 A If he knew?

24 Q Yes.

25 A Any user who -- any person who owns that

1 computer and uses it to engage in child pornography
2 activity would have known. It requires specific search
3 terms to be entered. It requires the execution of the
4 program to actually run on the computer.

5 And when it runs, it's in front of you and
6 requires a person to enter the search terms. It requires
7 a person to take an overt action and click download. It
8 doesn't come by accident. Nothing comes automatically or
9 accident. It takes a user action every time to click
10 something and make it happen.

11 So, in my investigation of child
12 pornographers, child exploitation individuals, every
13 single one of them that have engaged in peer activity
14 would have absolutely known what they were doing on the
15 computer.

16 Whether they know they're sharing or things
17 like that, or how the program works, that's all dependent
18 upon a knowledge that usually we look at through an
19 interview and then corroborate with the evidence. So in
20 this case, I didn't interview him.

21 **Q So you would have been able to see, for**
22 **example, when he might have clicked on a search term.**
23 **Would you be able to determine that?**

24 **A** When a specific search term was run in the
25 program?

1 Q Yes.

2 A No. No, not a specific search term. When he
3 double-clicked on a file to download, that's very easy to
4 determine those times.

5 Q And with regard to the files that you found
6 or that you allegedly found on his computer, are you able
7 to definitely determine the date that those were
8 downloaded?

9 A We would have been able or we were able to
10 determine the date and time that those were downloaded to
11 the computer through the creation times, the modified
12 times, but also the program settings. But that's only
13 one component of it.

14 Computer time can be manipulated, and it's
15 all based on what time you tell the computer it is. So
16 we look for artifacts that corroborate that the clock
17 hasn't been changed or is also set to the accurate time.
18 So dates and times are only one small component of a
19 computer investigation.

20 Q Could these files that you found on
21 Mr. Skinner's laptop have been recovered without forensic
22 tools?

23 A What do you --

24 Q I mean, let's say Mr. Skinner wanted to go in
25 and look at a file that allegedly had been on his laptop

1 prior to that time. What would it take for him to get
2 into that? Would he need some sort of a --

3 A Well, for anything that resides on a
4 computer, it's usually viewable in a user's account. You
5 can't necessarily view files in another person's account
6 on the computer unless there are permissions that are
7 granted.

8 In this one in particular, there were
9 multiple user accounts, including, I believe, the Mike
10 name that you mentioned. But there was a Rod one also,
11 and Sophie accounts. So you could look at what's on the
12 computer within your storage area.

13 As far as forensic tools to recover something
14 that has been deleted, there is software out there that
15 people can buy that's not technically forensic. And
16 there are file undeleters or file recoverers that they
17 can be bought online or at some stores.

18 MR. REED: I'm going to read you something
19 from -- it's contained in the declaration of our expert,
20 Tami Loehrs, and --

21 MR. PLATER: Hold on a minute. Is that
22 attached to your supplement?

23 MR. REED: Yes. It's --

24 MR. PLATER: Do you mind if I get there?

25 MR. REED: Sure.

1 MR. PLATER: Are you going to show the
2 witness this?

3 MR. REED: I was going to read it. I can
4 show it to him, certainly. It's paragraph 15 on page
5 five. I'm going to read you, starting with the fifth
6 line down starting with "Knowing." Let's see. I'll just
7 read it, I guess.

8 "Knowing receipt, possession, or distribution
9 can only be determined through an in-depth analysis of
10 the entire piece of media to determine 1: The original
11 source of the data; 2: The context in which it was
12 copied, saved, or downloaded; 3: The path the data took
13 through the system to arrive at its present location; 4:
14 Dates and times the data was created, modified, and
15 accessed. 4: Whether the data was ever opened or
16 viewed. Five: And who may have been at the keyboard
17 during the activity.

18 In order to make the determinations, the
19 defense examination and analysis includes, but is not
20 limited to 1: Recovery of deleted data, 2: Advanced
21 searching processes and a review of thousands of search
22 results; 3: Locating, reviewing, testing, and
23 understanding various installed software applications.
24 4: Locating, reviewing, testing, and understanding
25 various viruses, Trojans, and malware present.

1 Five: Locating, reviewing, testing, and
2 understanding Internet files and how they relate to
3 various users and Internet activities. 6: Extracting
4 and reviewing registry files, log files, HTM files,
5 etcetera."

6 Would you agree with most of that?

7 MR. PLATER: Hold on. I don't know if this
8 witness can answer that question, but let me lodge an
9 objection.

10 This statement is asking for a legal
11 conclusion about what constitutes knowing receipt,
12 possession, or distribution. That's not for this witness
13 to answer. And frankly, we think you ought to follow the
14 statutory definition and not the one that she wants to
15 make up as her expert wants to do.

16 But if you understand that, you can try to
17 answer it.

18 THE WITNESS: Well, I was going to say I
19 agree with that. And I disagree with what she wrote
20 here, which is very, very consistent with what I've seen
21 in her writings before anyway.

22 But no, that is not the only way this can be
23 determined. It's determined by many factors, including
24 interviews, including other corroborating evidence.

25 For a final analysis to prove something in

1 court, it also has a different burden than a
2 probable-cause standard. But no. Many of these items
3 that she's listing, some of them may be absolutely
4 relevant. Every one of them may be absolutely relevant.
5 But to go as far as going to knowing receipt, possession,
6 distribution, that's based on a multitude of factors to
7 include other items also.

8 Q With regard to what you found in your
9 preview -- and I don't know if you looked at your report,
10 which is many pages long. I've got it here if you want
11 to see the first few pages of it.

12 A It should actually -- it shouldn't be too
13 long because it wasn't a full analysis.

14 Q Actually, there's, you know, you have a
15 column for date and time.

16 A Uh-huh.

17 Q And then file name or number or whatever, and
18 then -- but with regard to that, is that basically what
19 you recovered, or did you actually see images on a
20 computer?

21 MR. PLATER: I don't understand your
22 question: Is that what you recovered? Are you referring
23 to what he listed in his report?

24 MR. REED: Well, the report that's got
25 several columns. Have you seen that one?

1 MR. PLATER: No. Maybe we have it, but I
2 don't have it in front of me now, I suppose.

3 MR. REED: Okay.

4 THE WITNESS: There was absolutely child
5 pornography on the computer because I described it in the
6 reports for the probable cause. And I described -- I
7 would have described what was depicted in the images or
8 videos.

9 Q (BY MR. REED:) Well, let me ask you this.
10 When you go into the computer and you find a
11 file number and maybe some, you know, or the date and
12 time of the download -- and then I guess there's also a
13 description of some kind. When you go in there, do you
14 find that file name and number only, or can you actually
15 see an image, or how does that work?

16 A Through the forensic process, it's found
17 multiple ways. One, often or sometimes by file name. If
18 it appears to be a video file, for example, the majority
19 of child pornography files that we find on individual's
20 computers engaging in peer-to-peer, they're very graphic,
21 very explicit file names, so we would see those. And
22 then we would play the video or open up the image to see
23 what it depicts.

24 But there are also processes where we would
25 search only for videos and images and display those and

1 then work backwards to determine where that picture or
2 video is residing on the computer and when it got there
3 and whose account it may be in and other information.

4 Q Okay. So you can go in there and actually
5 see the image or play a video?

6 A Yes.

7 Q I may have asked this before, and this is
8 actually my final question. How do you confirm that on
9 specific dates, file sharing was running with a child
10 porn file available for distribution?

11 A Multiple ways. One way is we actually
12 download it for Mr. Skinner. We downloaded files from
13 him so we know that the computer was up and running when
14 those files were downloaded.

15 But two, peer-to-peer programs are very good
16 at creating file dates. And the final dates -- and I
17 should say creating file dates and times and then the
18 final date and time, it shows us when the file was first
19 initiated to be downloaded and when the file was actually
20 finished being downloaded. And ultimately, it was now
21 fully residing on the computer.

22 So those dates and times of those files, as
23 long as they're a shareable file -- because just because
24 if somebody has child pornography, for example, on an
25 external USB drive doesn't make it a shareable file. We

1 look within the peer-to-peer program to see if it's a
2 shareable file, if it's in the shared directory, or if
3 it's marked as shareable or if we downloaded it.

4 **Q And that would be in the file-sharing**
5 **program, the dates and times that --**

6 A Those would be with the -- well, it depends
7 on the program, because it could reside in the program.
8 But they would typically be with the -- it would be the
9 metadata associated with that specific file. So the file
10 creation, modified, last written time, all dependent upon
11 what version of Windows they have and whether or not
12 their clock is accurately set.

13 **Q And that's what you used in this case to**
14 **determine the date and time that it was downloaded?**

15 A Yes. I always look for date and time of the
16 computer, whether it's correctly set, any evidence of
17 clock manipulation because that gives me a starting point
18 of the other files that reside on the computer if they're
19 accurate on their dates and times.

20 MR. REED: Can I have a five-minute break?

21 (Recess.)

22 **Q (BY MR. REED:) I just have one follow-up**
23 **question. Was there any way for you to determine, in**
24 **looking at the laptop, if this was the original hard**
25 **drive in that computer?**

1 A If it was the original hard drive in that
2 computer?

3 **Q Yes.**

4 A No, I would have no idea to say that right
5 now if it was or not. I don't recall the brand or model
6 or anything from it. And then even in that case, the
7 computer that ships, the manufacturer may keep track of
8 the hard drive, but you can swap out the same brand hard
9 drive and not know.

10 MR. REED: All right. Thank you. That's all
11 I have.

12 MR. PLATER: I don't have any questions.
13 Thank you.

14 (The deposition concluded at 2:18 p.m.)

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CERTIFICATE OF REPORTER

I, Nicole J. Hansen, Certified Court Reporter,
State of Nevada, do hereby certify:

That I reported the deposition of Dennis Carry,
commencing on Monday, November 5, 2018, at 1:30 p.m.

That prior to being deposed, the witness was
duly sworn by me to testify to the truth. That I
thereafter transcribed my said shorthand notes into
typewriting and that the typewritten transcript is a
complete, true and accurate transcription of my said
shorthand notes. That prior to the conclusion of the
proceedings, the reading and signing was requested by the
witness or a party.

I further certify that I am not a relative or
employee of counsel of any of the parties, nor a relative
or employee of the parties involved in said action, nor a
person financially interested in the action.

In witness whereof, I hereunto subscribe my
name at Reno, Nevada, this 12th day of November, 2018.

Nicole J. Hansen

NICOLE J. HANSEN, CCR NO. 446

1 ERRATA SHEET

2

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4

5 I declare under penalty of perjury that I have read the

6 foregoing _____ pages of my testimony, taken

7 on _____ (date) at

8 _____ (city), _____ (state),

9

10 and that the same is a true record of the testimony given

11 by me at the time and place herein

12 above set forth, with the following exceptions:

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1	ERRATA SHEET			
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Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. RODERICK STEPHEN SKINNER
(D8)

Document(s) Submitted:

Trial Statement - Plaintiff
- **Continuation
- **Continuation

Filed By:

Edward Torrance Reed

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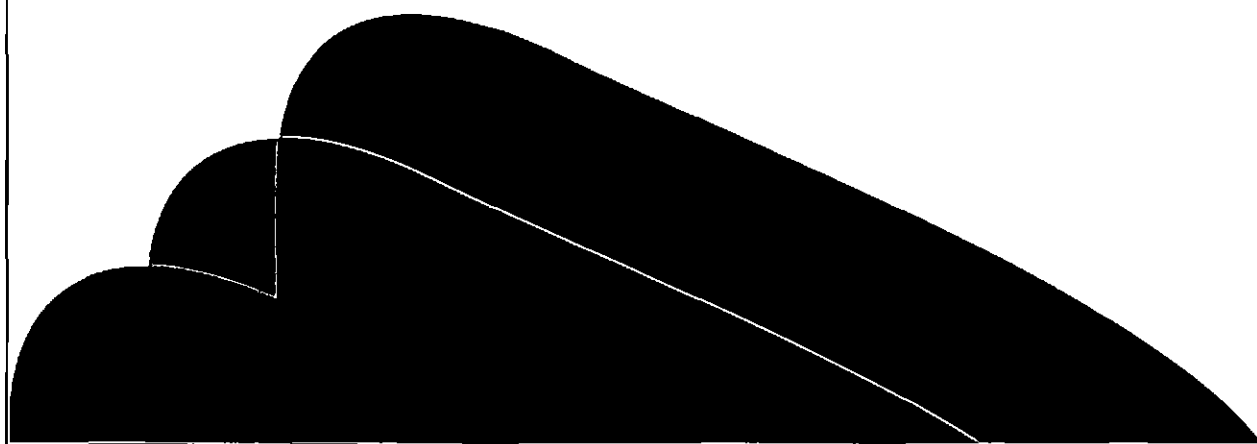
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Skinner vs State

DENNIS CARRY

November 05, 2018

Job Number: 501219



1 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF
2 NEVADA IN AND FOR THE COUNTY OF WASHOE

3
4

5 RODERICK STEPHEN SKINNER,) Case No. CR14-0644
6)
6 Petitioner,) Dept No. 8
7)
7 vs.)
8)
8 ISIDRO BACA, WARDEN, NORTHERN)
9 NEVADA CORRECTIONAL CENTER.)
9 Respondent.)
10)

11

12 DEPOSITION OF DENNIS CARRY

13

Taken on Monday, November 5, 2018

14

15

At 1:30 p.m.

16

At Sunshine Litigation Services

17

18

151 Country Estates Circle

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Reno, Nevada

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24 REPORTED BY: NICOLE J. HANSEN, CCR NO. 446

25 JOB NO.: 501219

1	I N D E X	Page 3
2	WITNESS:	Dennis Carry
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1 instant response, computer forensics, and over a thousand
2 hours of training, as far as child exploitation
3 investigations.

4 Q Are you ENCASE certified?

5 A ENCASE? No.

6 Q Do you have the CCFE certification?

7 A The certifications I have, I have a GCFE,
8 GCFA, GASF, and also CHFI.

9 Q Do you have the ACE?

10 A Those are the only certifications right
11 there.

12 Q Okay. Thank you. Now, when you received the
13 case involving Roderick Skinner, as far as the
14 examination of evidence, do you recall what evidence you
15 received?

16 A I do recall because we received whatever the
17 evidence was at the time -- I don't remember the
18 specifics -- but we received it from the Sparks Police
19 Department.

20 Q Do you recall examining a laptop computer?

21 A I do. It was a laptop, and I believe an
22 external hard drive, and probably a few other devices.

23 Q Now, do you recall if you examined more than
24 one device? Because there were several devices that were
25 obtained through the search warrant of Mr. Skinner's

1 device itself. And then, if the device has a hard drive,
2 we remove the hard drive, perform what's called a
3 forensic image of the hard drive. And then our
4 examination, what we work with is off of that image, not
5 the actual original device at that point.

6 And then we would look -- or I did, at least,
7 look at the contents, look at ownership information,
8 determine if we have a device that we believe to be from
9 the person we're investigating and any relevant evidence.

10 Q So you remove the hard drive, and then you
11 make, basically, a copy of it?

12 A Essentially. It's called a forensic image,
13 but it's a copy.

14 Q And so when you perform your examination or
15 preview, or whatever you call it, you look at the copy,
16 essentially?

17 A Yes.

18 Q And how many copies do you make?

19 A Two copies, typically. Sometimes only one.

20 Q Do you recall, in this case, if you made one
21 or two?

22 A I don't remember. In this case, more than
23 likely, it would have, at the time, it would have more
24 than likely been one copy, and then we would have copied
25 that copy and stored it on a server.

1 told we can destroy data or destroy evidence, and if the
2 case is either adjudicated or the person is not appealing
3 or anything, it will be usually within or just after ten
4 days of giving up their appellate rights. And that's
5 usually in a federal proceeding. If it is state, we wait
6 until we receive an evidence disposition.

7 Q Do you recall who, in the District Attorney's
8 Office, would have signed that evidence disposition?

9 A I do not. And this case was a little more
10 unique because it was a case that started with the Sparks
11 Police Department where their original seizure of
12 evidence and then transfer it to us and then actually
13 transfer it into our task force. But at some point,
14 regardless, I know we received an evidence disposition,
15 and I'm positive it was in 2016.

16 Q When did you review the evidence disposition?

17 A Huh?

18 Q When did you last review that evidence
19 disposition?

20 A Shortly after you contacted me.

21 Q Me or my investigator, Mr. Grate?

22 A No. You.

23 Q When I contacted you?

24 A Uh-huh.

25 Q As far as serving you the notice of

1 There's no statute of limitations to
2 prosecute a case federally, so we do have some items that
3 we have a desire to prosecute the person still that we've
4 maintained.

5 Q Do you ever recall telling my investigator,
6 Mr. Grate, who is here today, that you, when asked about
7 the destruction of the evidence, he just got rid of it
8 sort of in the course of periodically disposing of
9 evidence and that, along those lines?

10 A Yes. We would have -- we hold onto evidence,
11 and every now and then, we do a, I guess, a cleaning of
12 our evidence room, and we look for evidence that we don't
13 need anymore. It's past the time we can get rid of it,
14 and then we do, more or less, quarterly or semi-annually
15 disposal.

16 Q But if you told him that, then that seems to
17 contradict what you just told me about getting a
18 disposition from the District Attorney's Office.

19 A No. We got a disposition. But just because
20 we get a disposition, we don't stop what we're doing and
21 go destroy the evidence.

22 We do it every now and then quarterly when we
23 need room in the evidence room, but we don't just get a
24 form, go in the room and go destroy it. It doesn't work
25 that way because we recycle -- we pull the hard drives,

1 Q And how is this destroyed? Is it just thrown
2 away in the garbage?

3 A No. We rip hard drives out of -- if it's a
4 laptop, we take the hard drive out. We either obliterate
5 it or we wipe it. And if it's other items, say, like
6 something that's usable for an external USB drive that
7 might be usable for us, we'll destroy the data by wiping
8 it numerous times and then placing it into service.

9 Q Were you ever made aware that there was
10 pending litigation in the case, that a habeas corpus
11 petition had been filed?

12 A I knew at one point that there was something
13 happening, but that was prior to us receiving a notice to
14 get rid of the evidence. So after that, I have no idea
15 what the status was. We don't follow every case.

16 Q But you saw no reason not to obey the notice
17 from the District Attorney's Office that you could
18 dispose of the evidence?

19 A Correct. And it's more common than not in a
20 case where somebody pleads guilty that we will destroy
21 the evidence sooner after receiving a disposition than a
22 case that we know to be litigated. In a case -- if we
23 know a case to be under litigation, we'll usually hold
24 onto it longer. But there's no rhyme or reason, as far
25 as how long.

1 A No. It's different. The certifications are
2 all -- some companies have some certifications. Some
3 companies have different certifications. They're all
4 generically the same thing.

5 Q In your training or education when you
6 received any of these certifications, were you told you
7 were supposed to hang onto this while there was any
8 pending litigation?

9 A That is up to -- any one of those times, that
10 is up to whatever the circumstance of the case were. We
11 got rid of it when we were told to get rid of it or that
12 we may.

13 Q But at this point in time, you know it was
14 sometime in 2016 that it was disposed of?

15 A 2016, when we received the disposition. I
16 don't know offhand when we got rid of it. We take in a
17 tremendous amount of evidence and dispose of a tremendous
18 amount of evidence, so I don't really remember the exact
19 time.

20 I just know we move it to a disposable area.
21 But there's no consistency, as far as when we call a
22 truck, when we take a day of not working cases to start
23 pulling hard drives and wiping devices.

24 Q Now, do you keep a record of when this type
25 of evidence is disposed of?

1 no doubt whatsoever that Mr. Skinner was responsible for
2 the files, based on everything that I previewed, or I
3 would not have arrested him on the charges, whether he --
4 if he had chosen to not plead guilty, we would have not
5 analyzed the devices further.

6 But I still have no doubt in any mind, based
7 on my experience, the amount of cases I've worked, that
8 he was absolutely responsible for the files and the
9 activity.

10 Q But this was just a -- did you call it an
11 initial preview?

12 A Yes.

13 Q And what further -- if you had to go and do a
14 further examination, what would you have done?

15 A We would have looked at more of the dates
16 than we looked at. I would have looked at more of the
17 dates and what we call user attribution data, essentially
18 doing more work to put him behind the keyboard, as
19 needed. But certainly, my preview, I had no problem
20 being confident that he was responsible, based on the
21 dates and times.

22 Q Now, when you say that, you mean that the
23 dates and times corresponded to when he was in the United
24 States or in Sparks?

25 A There were dates and times from files -- if I

1 example, or when you double-click on something, or when
2 you delete something, many artifacts are created, and we
3 would look at those artifacts in more depth.

4 Q Would the fact that somebody else had
5 previously owned the computer, is it possible that he
6 didn't know about some of these downloaded files?

7 A In my experience and training, absolutely
8 not.

9 Q Do you have any personal knowledge of whether
10 these files were ever opened or viewed?

11 A What do you mean by "personal knowledge"?

12 Q Well, I mean -- well, okay. Let me rephrase
13 that. Is there any possibility he didn't know about that
14 some of these files had been downloaded?

15 A That's pretty subjective, so I don't really
16 know how I would answer that.

17 MR. PLATER: That's a really tough question
18 for him to ask him to speculate.

19 THE WITNESS: Yeah.

20 Q (BY MR. REED:) Do you have any knowledge or
21 what knowledge do you have that Mr. Skinner knew that
22 there was a file-sharing program running on his computer?

23 A If he knew?

24 Q Yes.

25 A Any user who -- any person who owns that

1 Q Yes.

2 A No. No, not a specific search term. When he
3 double-clicked on a file to download, that's very easy to
4 determine those times.

5 Q And with regard to the files that you found
6 or that you allegedly found on his computer, are you able
7 to definitely determine the date that those were
8 downloaded?

9 A We would have been able or we were able to
10 determine the date and time that those were downloaded to
11 the computer through the creation times, the modified
12 times, but also the program settings. But that's only
13 one component of it.

14 Computer time can be manipulated, and it's
15 all based on what time you tell the computer it is. So
16 we look for artifacts that corroborate that the clock
17 hasn't been changed or is also set to the accurate time.
18 So dates and times are only one small component of a
19 computer investigation.

20 Q Could these files that you found on
21 Mr. Skinner's laptop have been recovered without forensic
22 tools?

23 A What do you --

24 Q I mean, let's say Mr. Skinner wanted to go in
25 and look at a file that allegedly had been on his laptop

1 MR. PLATER: Are you going to show the
2 witness this?

3 MR. REED: I was going to read it. I can
4 show it to him, certainly. It's paragraph 15 on page
5 five. I'm going to read you, starting with the fifth
6 line down starting with "Knowing." Let's see. I'll just
7 read it, I guess.

8 "Knowing receipt, possession, or distribution
9 can only be determined through an in-depth analysis of
10 the entire piece of media to determine 1: The original
11 source of the data; 2: The context in which it was
12 copied, saved, or downloaded; 3: The path the data took
13 through the system to arrive at its present location; 4:
14 Dates and times the data was created, modified, and
15 accessed. 4: Whether the data was ever opened or
16 viewed. Five: And who may have been at the keyboard
17 during the activity.

18 In order to make the determinations, the
19 defense examination and analysis includes, but is not
20 limited to 1: Recovery of deleted data, 2: Advanced
21 searching processes and a review of thousands of search
22 results; 3: Locating, reviewing, testing, and
23 understanding various installed software applications.
24 4: Locating, reviewing, testing, and understanding
25 various viruses, Trojans, and malware present.

1 court, it also has a different burden than a
2 probable-cause standard. But no. Many of these items
3 that she's listing, some of them may be absolutely
4 relevant. Every one of them may be absolutely relevant.
5 But to go as far as going to knowing receipt, possession,
6 distribution, that's based on a multitude of factors to
7 include other items also.

8 Q With regard to what you found in your
9 preview -- and I don't know if you looked at your report,
10 which is many pages long. I've got it here if you want
11 to see the first few pages of it.

12 A It should actually -- it shouldn't be too
13 long because it wasn't a full analysis.

14 Q Actually, there's, you know, you have a
15 column for date and time.

16 A Uh-huh.

17 Q And then file name or number or whatever, and
18 then -- but with regard to that, is that basically what
19 you recovered, or did you actually see images on a
20 computer?

21 MR. PLATER: I don't understand your
22 question: Is that what you recovered? Are you referring
23 to what he listed in his report?

24 MR. REED: Well, the report that's got
25 several columns. Have you seen that one?

1 then work backwards to determine where that picture or
2 video is residing on the computer and when it got there
3 and whose account it may be in and other information.

4 Q Okay. So you can go in there and actually
5 see the image or play a video?

6 A Yes.

7 Q I may have asked this before, and this is
8 actually my final question. How do you confirm that on
9 specific dates, file sharing was running with a child
10 porn file available for distribution?

11 A Multiple ways. One way is we actually
12 download it for Mr. Skinner. We downloaded files from
13 him so we know that the computer was up and running when
14 those files were downloaded.

15 But two, peer-to-peer programs are very good
16 at creating file dates. And the final dates -- and I
17 should say creating file dates and times and then the
18 final date and time, it shows us when the file was first
19 initiated to be downloaded and when the file was actually
20 finished being downloaded. And ultimately, it was now
21 fully residing on the computer.

22 So those dates and times of those files, as
23 long as they're a shareable file -- because just because
24 if somebody has child pornography, for example, on an
25 external USB drive doesn't make it a shareable file. We

1 A If it was the original hard drive in that
2 computer?

3 Q Yes.

4 A No, I would have no idea to say that right
5 now if it was or not. I don't recall the brand or model
6 or anything from it. And then even in that case, the
7 computer that ships, the manufacturer may keep track of
8 the hard drive, but you can swap out the same brand hard
9 drive and not know.

10 MR. REED: All right. Thank you. That's all
11 I have.

12 MR. PLATER: I don't have any questions.
13 Thank you.

14 (The deposition concluded at 2:18 p.m.)

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1 ERRATA SHEET

2

3

4

5 I declare under penalty of perjury that I have read the

6 foregoing _____ pages of my testimony, taken

7 on _____ (date) at

8 _____ (city), _____ (state),

9

10 and that the same is a true record of the testimony given

11 by me at the time and place herein

12 above set forth, with the following exceptions:

13

14	Page	Line	Should read:	Reason for Change:
15				
16	---	---	_____	_____
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District Court 09/26/2019 10:30 AM
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In the Matter Of:

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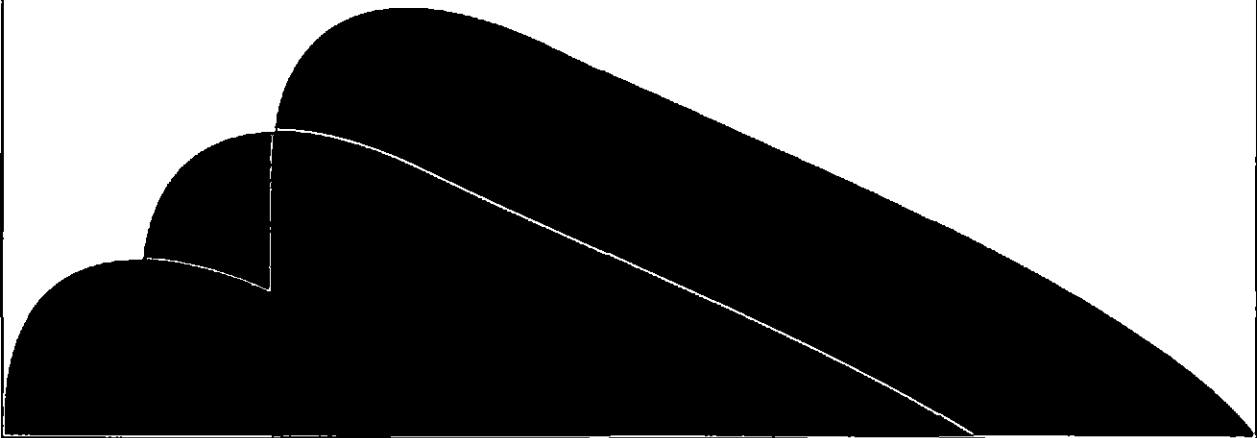
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Skinner vs State

DENNIS CARRY

November 05, 2018

Job Number: 501219



1 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF
2 NEVADA IN AND FOR THE COUNTY OF WASHOE

3
4

5 RODERICK STEPHEN SKINNER,) Case No. CR14-0644
6))
6) Petitioner,) Dept No. 8
7 vs.)
8 ISIDRO BACA, WARDEN, NORTHERN)
8 NEVADA CORRECTIONAL CENTER.)
9))
9) Respondent.)
10)

11

12 DEPOSITION OF DENNIS CARRY

13

14 Taken on Monday, November 5, 2018

15

16 At 1:30 p.m.

17

18 At Sunshine Litigation Services

19

20 151 Country Estates Circle

21

22 Reno, Nevada

23

24

25 REPORTED BY: NICOLE J. HANSEN, CCR NO. 446

26

27 JOB NO.: 501219

1 APPEARANCES:

2 For the Petitioner:

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7 For the Respondent:

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I N D E X

WITNESS: Dennis Carry

EXAMINATION PAGE
By Mr. Reed 4

1 DENNIS CARRY,
2 having been first duly sworn, was
3 examined and testified as follows:
4

5 EXAMINATION

6 BY MR. REED:

7 Q Now, would you please state your full name
8 and spell it for the court reporter?

9 A Dennis Carry: D-E-N-N-I-S. C-A-R-R-Y.

10 Q What is your business, profession, or
11 occupation?

12 A I'm a sergeant with the Washoe County
13 Sheriff's Office.

14 Q How long have you been in that position?

15 A I've been with the sheriff's office for
16 nearly 23 years, and as a sergeant since December 2011.

17 Q What are your duties there?

18 A I supervise the Cyber Crime Unit, which is a
19 regional investigator unit that includes Internet Crimes
20 Against Children Task Force. And I also have other
21 responsibilities, as far as a being a supervisor of the
22 detective division also.

23 Q What specific training have you had to do the
24 type of work you do, which is in the cyber crimes unit?

25 A Over a thousand hours of training concerning

1 instant response, computer forensics, and over a thousand
2 hours of training, as far as child exploitation
3 investigations.

4 Q Are you ENCASE certified?

5 A ENCASE? No.

6 Q Do you have the CCFE certification?

7 A The certifications I have, I have a GCFE,
8 GCFA, GASF, and also CHFI.

9 Q Do you have the ACE?

10 A Those are the only certifications right
11 there.

12 Q Okay. Thank you. Now, when you received the
13 case involving Roderick Skinner, as far as the
14 examination of evidence, do you recall what evidence you
15 received?

16 A I do recall because we received whatever the
17 evidence was at the time -- I don't remember the
18 specifics -- but we received it from the Sparks Police
19 Department.

20 Q Do you recall examining a laptop computer?

21 A I do. It was a laptop, and I believe an
22 external hard drive, and probably a few other devices.

23 Q Now, do you recall if you examined more than
24 one device? Because there were several devices that were
25 obtained through the search warrant of Mr. Skinner's

1 apartment.

2 A For all of the devices we received, they all
3 would have been examined. When I say "examined," it's
4 more specifically what I would call previewed, because
5 there was never a full analysis ever completed. He pled
6 guilty before that happened. But there were multiple
7 devices. Every device that we were provided, we would
8 have previewed.

9 Q So, as far as you recall, all you did on any
10 of these devices was preview them?

11 A Preview them to an extent that we have a good
12 understanding of the facts of the case, what we were
13 investigating specifically, to determine whether or not
14 there is enough evidence for probable cause arrest, which
15 is what we did do. And then it was, I guess, shelved, is
16 the best way to explain it, until we would see what the
17 outcome of the case would be.

18 Q Now, this case, I'll represent you probably
19 remember that you did examine the Toshiba laptop
20 computer?

21 A Okay.

22 Q And when you searched the contents of this
23 laptop, what procedure did you follow?

24 A So when we conduct a forensic exam, one of
25 the first things is to document the condition of the

1 device itself. And then, if the device has a hard drive,
2 we remove the hard drive, perform what's called a
3 forensic image of the hard drive. And then our
4 examination, what we work with is off of that image, not
5 the actual original device at that point.

6 And then we would look -- or I did, at least,
7 look at the contents, look at ownership information,
8 determine if we have a device that we believe to be from
9 the person we're investigating and any relevant evidence.

10 Q So you remove the hard drive, and then you
11 make, basically, a copy of it?

12 A Essentially. It's called a forensic image,
13 but it's a copy.

14 Q And so when you perform your examination or
15 preview, or whatever you call it, you look at the copy,
16 essentially?

17 A Yes.

18 Q And how many copies do you make?

19 A Two copies, typically. Sometimes only one.

20 Q Do you recall, in this case, if you made one
21 or two?

22 A I don't remember. In this case, more than
23 likely, it would have, at the time, it would have more
24 than likely been one copy, and then we would have copied
25 that copy and stored it on a server.

1 Q In any event, you make at least one copy of
2 everything?

3 A Yes.

4 Q What is the procedure as to how long you
5 maintain this computer forensic evidence?

6 A We disposed of the evidence after receiving
7 an evidence disposition from the District Attorney's
8 Office.

9 Q Oh, you did?

10 A Yes.

11 Q When did you receive that?

12 A I don't remember, but I believe it was
13 sometime in 2016. I'm fairly positive it was sometime in
14 2016.

15 Q Do you ever make that determination yourself,
16 or do you have to get someone from the District
17 Attorney's Office?

18 A It depends on the case. We're a regional
19 unit. We work cases that are federal, we work cases that
20 are state, and also cases that end up in multiple other
21 state jurisdictions. They all have their own different
22 procedures and policies.

23 When we receive evidence, we hold onto it,
24 typically, for a minimum of two years. That's typically
25 what we would keep it. But it kind of depends. If we're

1 told we can destroy data or destroy evidence, and if the
2 case is either adjudicated or the person is not appealing
3 or anything, it will be usually within or just after ten
4 days of giving up their appellate rights. And that's
5 usually in a federal proceeding. If it is state, we wait
6 until we receive an evidence disposition.

7 **Q Do you recall who, in the District Attorney's**
8 **Office, would have signed that evidence disposition?**

9 A I do not. And this case was a little more
10 unique because it was a case that started with the Sparks
11 Police Department where their original seizure of
12 evidence and then transfer it to us and then actually
13 transfer it into our task force. But at some point,
14 regardless, I know we received an evidence disposition,
15 and I'm positive it was in 2016.

16 **Q When did you review the evidence disposition?**

17 A Huh?

18 **Q When did you last review that evidence**
19 **disposition?**

20 A Shortly after you contacted me.

21 **Q Me or my investigator, Mr. Grate?**

22 A No. You.

23 **Q When I contacted you?**

24 A Uh-huh.

25 **Q As far as serving you the notice of**

1 disposition or --

2 A Just to look into what the case was about and
3 saw the evidence disposition.

4 Q Okay. Can I ask you if you would provide a
5 copy of it to me?

6 A That one would have to come from the DA's
7 Office. It's their record.

8 MR. REED: Okay. Can I get a copy?

9 MR. PLATER: Sure.

10 Q (BY MR. REED:) Okay. So that was in 2016.
11 Do you ever make your own determination of just disposing
12 of forensic evidence?

13 A We do, depending upon the circumstances of
14 the case. For example, if it's a case that we had no
15 federal -- no desire to prosecute federally, then we may
16 dispose of the evidence, possibly after the statute of
17 limitations on the case, if it succeeded the statute of
18 limitations.

19 Our evidence is more unique than other
20 evidence, evidence that would typically be in like, say,
21 the sheriff's office or the police department in most
22 circumstances. Our evidence usually contains contraband
23 that we can't give it back anyway. It's illegal for it
24 to go back, so it will be destroyed. It's just the
25 timing all depends on the case circumstances.

1 There's no statute of limitations to
2 prosecute a case federally, so we do have some items that
3 we have a desire to prosecute the person still that we've
4 maintained.

5 **Q Do you ever recall telling my investigator,**
6 **Mr. Grate, who is here today, that you, when asked about**
7 **the destruction of the evidence, he just got rid of it**
8 **sort of in the course of periodically disposing of**
9 **evidence and that, along those lines?**

10 A Yes. We would have -- we hold onto evidence,
11 and every now and then, we do a, I guess, a cleaning of
12 our evidence room, and we look for evidence that we don't
13 need anymore. It's past the time we can get rid of it,
14 and then we do, more or less, quarterly or semi-annually
15 disposal.

16 **Q But if you told him that, then that seems to**
17 **contradict what you just told me about getting a**
18 **disposition from the District Attorney's Office.**

19 A No. We got a disposition. But just because
20 we get a disposition, we don't stop what we're doing and
21 go destroy the evidence.

22 We do it every now and then quarterly when we
23 need room in the evidence room, but we don't just get a
24 form, go in the room and go destroy it. It doesn't work
25 that way because we recycle -- we pull the hard drives,

1 but we recycle a lot of the electronics. And all of that
2 requires us to like schedule a truck to come or something
3 like that.

4 Q Well, in this case, several pieces of
5 equipment that was recovered from Mr. Skinner, the laptop
6 and several hard drives, was all of that disposed of not
7 only, say, the laptop, but also the forensic images? It
8 was all disposed of?

9 A The forensic images would have been disposed
10 of at different times. The original evidence is held
11 until we're told to dispose of it. The forensic images,
12 depending upon the storage location, they may be stored
13 longer.

14 As far as Mr. Skinner's case goes, his what
15 we would call the backup of the backup was stored on a
16 server array that we don't even have anymore. We've
17 replaced it twice since then. That would have been the
18 backup of the backup, but all of the other stuff would
19 have been gone sometime ago.

20 Q Okay. So do you know if all of it would have
21 been destroyed at the same time?

22 A No, it probably would not have been.

23 Q But you've checked, and it's all been
24 destroyed?

25 A Yes.

1 **Q And how is this destroyed? Is it just thrown**
2 **away in the garbage?**

3 **A No. We rip hard drives out of -- if it's a**
4 **laptop, we take the hard drive out. We either obliterate**
5 **it or we wipe it. And if it's other items, say, like**
6 **something that's usable for an external USB drive that**
7 **might be usable for us, we'll destroy the data by wiping**
8 **it numerous times and then placing it into service.**

9 **Q Were you ever made aware that there was**
10 **pending litigation in the case, that a habeas corpus**
11 **petition had been filed?**

12 **A I knew at one point that there was something**
13 **happening, but that was prior to us receiving a notice to**
14 **get rid of the evidence. So after that, I have no idea**
15 **what the status was. We don't follow every case.**

16 **Q But you saw no reason not to obey the notice**
17 **from the District Attorney's Office that you could**
18 **dispose of the evidence?**

19 **A Correct. And it's more common than not in a**
20 **case where somebody pleads guilty that we will destroy**
21 **the evidence sooner after receiving a disposition than a**
22 **case that we know to be litigated. In a case -- if we**
23 **know a case to be under litigation, we'll usually hold**
24 **onto it longer. But there's no rhyme or reason, as far**
25 **as how long.**

1 Q So when you got this notice or this
2 memorandum, whatever it was from the District Attorney's
3 Office, you saw no reason to question that you could go
4 ahead and dispose of the evidence?

5 A No, not in specifically a guilty-plea case,
6 but receiving a notice of evidence, sometimes it's a
7 process that just comes in where we just receive it. And
8 often, when we're just trying to clean out our evidence
9 section, we look at cases and contact the District
10 Attorney's Office to obtain evidence dispositions if it's
11 been a long time, for example.

12 Q But in this case, when you went to dispose of
13 the evidence, you'd already received this disposition
14 notice?

15 A The evidence would have been disposed just at
16 some point after receiving that. It just gets moved to a
17 -- when we know we can destroy something, it just gets
18 moved to an area that we know we can destroy it, and then
19 it just sits there until we do that.

20 Q So essentially, you would not have conferred
21 with anybody: Is it okay to throw this away? You
22 already had the notice?

23 A We already had the notice.

24 Q Under the certifications that you have, I
25 think you said you did have a CCFE certification?

1 A No. It's different. The certifications are
2 all -- some companies have some certifications. Some
3 companies have different certifications. They're all
4 generically the same thing.

5 Q In your training or education when you
6 received any of these certifications, were you told you
7 were supposed to hang onto this while there was any
8 pending litigation?

9 A That is up to -- any one of those times, that
10 is up to whatever the circumstance of the case were. We
11 got rid of it when we were told to get rid of it or that
12 we may.

13 Q But at this point in time, you know it was
14 sometime in 2016 that it was disposed of?

15 A 2016, when we received the disposition. I
16 don't know offhand when we got rid of it. We take in a
17 tremendous amount of evidence and dispose of a tremendous
18 amount of evidence, so I don't really remember the exact
19 time.

20 I just know we move it to a disposable area.
21 But there's no consistency, as far as when we call a
22 truck, when we take a day of not working cases to start
23 pulling hard drives and wiping devices.

24 Q Now, do you keep a record of when this type
25 of evidence is disposed of?

1 A At that time, we may or may not have had --
2 I would have to look. We may or may not have had a
3 system. I think we're on our third different evidence
4 tracking system, so I'm not sure what we would have.

5 Q Would you mind checking?

6 A I can check. Yes.

7 Q But you know that you received a notice in
8 2016?

9 A Yes, I'm fairly certain.

10 Q Do you know approximately how long after that
11 that it would have been that you would have destroyed the
12 evidence?

13 A No. No.

14 Q Could have been a year or two years?

15 A As far as the actual destruction, yes. It
16 could have been.

17 Q Now, were you aware that the evidence on the
18 computer had been previously -- or that this particular
19 computer had been owned previously by another individual
20 named Mike?

21 A I believe I did know that. Yes, sir.

22 Q Do you have any personal knowledge that
23 Mr. Skinner knew about the downloaded files on the
24 computer?

25 A Based on what I previewed, I had absolutely

1 no doubt whatsoever that Mr. Skinner was responsible for
2 the files, based on everything that I previewed, or I
3 would not have arrested him on the charges, whether he --
4 if he had chosen to not plead guilty, we would have not
5 analyzed the devices further.

6 But I still have no doubt in any mind, based
7 on my experience, the amount of cases I've worked, that
8 he was absolutely responsible for the files and the
9 activity.

10 Q But this was just a -- did you call it an
11 initial preview?

12 A Yes.

13 Q And what further -- if you had to go and do a
14 further examination, what would you have done?

15 A We would have looked at more of the dates
16 than we looked at. I would have looked at more of the
17 dates and what we call user attribution data, essentially
18 doing more work to put him behind the keyboard, as
19 needed. But certainly, my preview, I had no problem
20 being confident that he was responsible, based on the
21 dates and times.

22 Q Now, when you say that, you mean that the
23 dates and times corresponded to when he was in the United
24 States or in Sparks?

25 A There were dates and times from files -- if I

1 remember correctly for Mr. Skinner, he had files backed
2 up from other times also. He had a lot of personal
3 files, as you'd say, and the personal files were often
4 mixed with the child pornography files. But the dates
5 all varied.

6 If this was a case that had proceeded to
7 trial, that would have been laid out in far more detail.
8 Some of the more common things we would look at would be
9 the user attribution data, the dates and times for the
10 account information, and I guess you could say indicia
11 information, so information that would corroborate child
12 exploitation activity with personal activity. That could
13 be checking e-mail or other things like that.

14 Q So, in other words, you would be able to
15 determine what dates and times he was, say, checking
16 e-mails?

17 A Yes, potentially, depending upon what
18 activity is on there.

19 Q And that would correspond to the times that
20 you saw these files being downloaded?

21 A Well, files being downloaded, but that's also
22 only one component of it. We would look for times the
23 file is accessed and viewed.

24 There are many artifacts that are created on
25 a computer when you like view it in a media player, for

1 example, or when you double-click on something, or when
2 you delete something, many artifacts are created, and we
3 would look at those artifacts in more depth.

4 Q Would the fact that somebody else had
5 previously owned the computer, is it possible that he
6 didn't know about some of these downloaded files?

7 A In my experience and training, absolutely
8 not.

9 Q Do you have any personal knowledge of whether
10 these files were ever opened or viewed?

11 A What do you mean by "personal knowledge"?

12 Q Well, I mean -- well, okay. Let me rephrase
13 that. Is there any possibility he didn't know about that
14 some of these files had been downloaded?

15 A That's pretty subjective, so I don't really
16 know how I would answer that.

17 MR. PLATER: That's a really tough question
18 for him to ask him to speculate.

19 THE WITNESS: Yeah.

20 Q (BY MR. REED:) Do you have any knowledge or
21 what knowledge do you have that Mr. Skinner knew that
22 there was a file-sharing program running on his computer?

23 A If he knew?

24 Q Yes.

25 A Any user who -- any person who owns that

1 computer and uses it to engage in child pornography
2 activity would have known. It requires specific search
3 terms to be entered. It requires the execution of the
4 program to actually run on the computer.

5 And when it runs, it's in front of you and
6 requires a person to enter the search terms. It requires
7 a person to take an overt action and click download. It
8 doesn't come by accident. Nothing comes automatically or
9 accident. It takes a user action every time to click
10 something and make it happen.

11 So, in my investigation of child
12 pornographers, child exploitation individuals, every
13 single one of them that have engaged in peer activity
14 would have absolutely known what they were doing on the
15 computer.

16 Whether they know they're sharing or things
17 like that, or how the program works, that's all dependent
18 upon a knowledge that usually we look at through an
19 interview and then corroborate with the evidence. So in
20 this case, I didn't interview him.

21 **Q So you would have been able to see, for**
22 **example, when he might have clicked on a search term.**
23 **Would you be able to determine that?**

24 **A When a specific search term was run in the**
25 **program?**

1 Q Yes.

2 A No. No, not a specific search term. When he
3 double-clicked on a file to download, that's very easy to
4 determine those times.

5 Q And with regard to the files that you found
6 or that you allegedly found on his computer, are you able
7 to definitely determine the date that those were
8 downloaded?

9 A We would have been able or we were able to
10 determine the date and time that those were downloaded to
11 the computer through the creation times, the modified
12 times, but also the program settings. But that's only
13 one component of it.

14 Computer time can be manipulated, and it's
15 all based on what time you tell the computer it is. So
16 we look for artifacts that corroborate that the clock
17 hasn't been changed or is also set to the accurate time.
18 So dates and times are only one small component of a
19 computer investigation.

20 Q Could these files that you found on
21 Mr. Skinner's laptop have been recovered without forensic
22 tools?

23 A What do you --

24 Q I mean, let's say Mr. Skinner wanted to go in
25 and look at a file that allegedly had been on his laptop

1 prior to that time. What would it take for him to get
2 into that? Would he need some sort of a --

3 A Well, for anything that resides on a
4 computer, it's usually viewable in a user's account. You
5 can't necessarily view files in another person's account
6 on the computer unless there are permissions that are
7 granted.

8 In this one in particular, there were
9 multiple user accounts, including, I believe, the Mike
10 name that you mentioned. But there was a Rod one also,
11 and Sophie accounts. So you could look at what's on the
12 computer within your storage area.

13 As far as forensic tools to recover something
14 that has been deleted, there is software out there that
15 people can buy that's not technically forensic. And
16 there are file undeleters or file recoverers that they
17 can be bought online or at some stores.

18 MR. REED: I'm going to read you something
19 from -- it's contained in the declaration of our expert,
20 Tami Loehrs, and --

21 MR. PLATER: Hold on a minute. Is that
22 attached to your supplement?

23 MR. REED: Yes. It's --

24 MR. PLATER: Do you mind if I get there?

25 MR. REED: Sure.

1 MR. PLATER: Are you going to show the
2 witness this?

3 MR. REED: I was going to read it. I can
4 show it to him, certainly. It's paragraph 15 on page
5 five. I'm going to read you, starting with the fifth
6 line down starting with "Knowing." Let's see. I'll just
7 read it, I guess.

8 "Knowing receipt, possession, or distribution
9 can only be determined through an in-depth analysis of
10 the entire piece of media to determine 1: The original
11 source of the data; 2: The context in which it was
12 copied, saved, or downloaded; 3: The path the data took
13 through the system to arrive at its present location; 4:
14 Dates and times the data was created, modified, and
15 accessed. 4: Whether the data was ever opened or
16 viewed. Five: And who may have been at the keyboard
17 during the activity.

18 In order to make the determinations, the
19 defense examination and analysis includes, but is not
20 limited to 1: Recovery of deleted data, 2: Advanced
21 searching processes and a review of thousands of search
22 results; 3: Locating, reviewing, testing, and
23 understanding various installed software applications.
24 4: Locating, reviewing, testing, and understanding
25 various viruses, Trojans, and malware present.

1 Five: Locating, reviewing, testing, and
2 understanding Internet files and how they relate to
3 various users and Internet activities. 6: Extracting
4 and reviewing registry files, log files, HTM files,
5 etcetera."

6 Would you agree with most of that?

7 MR. PLATER: Hold on. I don't know if this
8 witness can answer that question, but let me lodge an
9 objection.

10 This statement is asking for a legal
11 conclusion about what constitutes knowing receipt,
12 possession, or distribution. That's not for this witness
13 to answer. And frankly, we think you ought to follow the
14 statutory definition and not the one that she wants to
15 make up as her expert wants to do.

16 But if you understand that, you can try to
17 answer it.

18 THE WITNESS: Well, I was going to say I
19 agree with that. And I disagree with what she wrote
20 here, which is very, very consistent with what I've seen
21 in her writings before anyway.

22 But no, that is not the only way this can be
23 determined. It's determined by many factors, including
24 interviews, including other corroborating evidence.

25 For a final analysis to prove something in

1 court, it also has a different burden than a
2 probable-cause standard. But no. Many of these items
3 that she's listing, some of them may be absolutely
4 relevant. Every one of them may be absolutely relevant.
5 But to go as far as going to knowing receipt, possession,
6 distribution, that's based on a multitude of factors to
7 include other items also.

8 Q With regard to what you found in your
9 preview -- and I don't know if you looked at your report,
10 which is many pages long. I've got it here if you want
11 to see the first few pages of it.

12 A It should actually -- it shouldn't be too
13 long because it wasn't a full analysis.

14 Q Actually, there's, you know, you have a
15 column for date and time.

16 A Uh-huh.

17 Q And then file name or number or whatever, and
18 then -- but with regard to that, is that basically what
19 you recovered, or did you actually see images on a
20 computer?

21 MR. PLATER: I don't understand your
22 question: Is that what you recovered? Are you referring
23 to what he listed in his report?

24 MR. REED: Well, the report that's got
25 several columns. Have you seen that one?

1 MR. PLATER: No. Maybe we have it, but I
2 don't have it in front of me now, I suppose.

3 MR. REED: Okay.

4 THE WITNESS: There was absolutely child
5 pornography on the computer because I described it in the
6 reports for the probable cause. And I described -- I
7 would have described what was depicted in the images or
8 videos.

9 Q (BY MR. REED:) Well, let me ask you this.
10 When you go into the computer and you find a
11 file number and maybe some, you know, or the date and
12 time of the download -- and then I guess there's also a
13 description of some kind. When you go in there, do you
14 find that file name and number only, or can you actually
15 see an image, or how does that work?

16 A Through the forensic process, it's found
17 multiple ways. One, often or sometimes by file name. If
18 it appears to be a video file, for example, the majority
19 of child pornography files that we find on individual's
20 computers engaging in peer-to-peer, they're very graphic,
21 very explicit file names, so we would see those. And
22 then we would play the video or open up the image to see
23 what it depicts.

24 But there are also processes where we would
25 search only for videos and images and display those and

1 then work backwards to determine where that picture or
2 video is residing on the computer and when it got there
3 and whose account it may be in and other information.

4 Q Okay. So you can go in there and actually
5 see the image or play a video?

6 A Yes.

7 Q I may have asked this before, and this is
8 actually my final question. How do you confirm that on
9 specific dates, file sharing was running with a child
10 porn file available for distribution?

11 A Multiple ways. One way is we actually
12 download it for Mr. Skinner. We downloaded files from
13 him so we know that the computer was up and running when
14 those files were downloaded.

15 But two, peer-to-peer programs are very good
16 at creating file dates. And the final dates -- and I
17 should say creating file dates and times and then the
18 final date and time, it shows us when the file was first
19 initiated to be downloaded and when the file was actually
20 finished being downloaded. And ultimately, it was now
21 fully residing on the computer.

22 So those dates and times of those files, as
23 long as they're a shareable file -- because just because
24 if somebody has child pornography, for example, on an
25 external USB drive doesn't make it a shareable file. We

1 look within the peer-to-peer program to see if it's a
2 shareable file, if it's in the shared directory, or if
3 it's marked as shareable or if we downloaded it.

4 Q And that would be in the file-sharing
5 program, the dates and times that --

6 A Those would be with the -- well, it depends
7 on the program, because it could reside in the program.
8 But they would typically be with the -- it would be the
9 metadata associated with that specific file. So the file
10 creation, modified, last written time, all dependent upon
11 what version of Windows they have and whether or not
12 their clock is accurately set.

13 Q And that's what you used in this case to
14 determine the date and time that it was downloaded?

15 A Yes. I always look for date and time of the
16 computer, whether it's correctly set, any evidence of
17 clock manipulation because that gives me a starting point
18 of the other files that reside on the computer if they're
19 accurate on their dates and times.

20 MR. REED: Can I have a five-minute break?

21 (Recess.)

22 Q (BY MR. REED:) I just have one follow-up
23 question. Was there any way for you to determine, in
24 looking at the laptop, if this was the original hard
25 drive in that computer?

1 A If it was the original hard drive in that
2 computer?

3 Q Yes.

4 A No, I would have no idea to say that right
5 now if it was or not. I don't recall the brand or model
6 or anything from it. And then even in that case, the
7 computer that ships, the manufacturer may keep track of
8 the hard drive, but you can swap out the same brand hard
9 drive and not know.

10 MR. REED: All right. Thank you. That's all
11 I have.

12 MR. PLATER: I don't have any questions.
13 Thank you.

14 (The deposition concluded at 2:18 p.m.)

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CERTIFICATE OF REPORTER

I, Nicole J. Hansen, Certified Court Reporter,
State of Nevada, do hereby certify:

That I reported the deposition of Dennis Carry,
commencing on Monday, November 5, 2018, at 1:30 p.m.

That prior to being deposed, the witness was
duly sworn by me to testify to the truth. That I
thereafter transcribed my said shorthand notes into
typewriting and that the typewritten transcript is a
complete, true and accurate transcription of my said
shorthand notes. That prior to the conclusion of the
proceedings, the reading and signing was requested by the
witness or a party.

I further certify that I am not a relative or
employee of counsel of any of the parties, nor a relative
or employee of the parties involved in said action, nor a
person financially interested in the action.

In witness whereof, I hereunto subscribe my
name at Reno, Nevada, this 12th day of November, 2018.

Nicole J. Hansen

NICOLE J. HANSEN, CCR NO. 446

1 ERRATA SHEET

2

3

4

5 I declare under penalty of perjury that I have read the

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7 on _____ (date) at

8 _____ (city), _____ (state),

9

10 and that the same is a true record of the testimony given

11 by me at the time and place herein

12 above set forth, with the following exceptions:

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9
10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
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12 **IN AND FOR THE COUNTY OF WASHOE**

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RODERICK STEPHEN SKINNER,

Petitioner,

Case No. CR14-0644

vs.

Dept. No. 8

ISIDRO BACA, WARDEN, NORTHERN
NEVADA CORRECTIONAL CENTER.

Respondent.

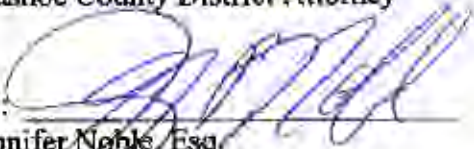
STIPULATION FOR ADMISSION OF EVIDENCE

Petitioner RODERICK STEPHEN SKINNER, by and through his court-appointed counsel Edward T. Reed, Esq., and the Respondent, by and through his counsel Jennifer Noble, Esq., Chief Appellate Deputy, Washoe County District Attorney's Office, hereby stipulate that the attached document labeled "Evidence Release" was signed by a Washoe County Deputy District Attorney directing the agency whom it was directed to release evidence in the above-entitled case involving Roderick Skinner pursuant to the agency's policies, and should be admitted into evidence as such at the evidentiary hearing in this matter.

Pursuant to NRS 239B.030, the undersigned do hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 23rd day of September, 2019.

Christopher Hicks
Washoe County District Attorney

By: 
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WASHOE COUNTY DISTRICT ATTORNEY
EVIDENCE RELEASE

May 24, 2016

TO WASHOE COUNTY SHERIFFS OFFICE and SPARKS POLICE DEPARTMENT EVIDENCE CUSTODIAN

AGENCY CASE NUMBER: WC14-000485 and

DA #: 14-7319 / 13-175580

DEFENDANT: RODERICK STEPHEN SKINNER

COURT CASE NUMBER: CR14-0644; CR13-1601

YOU ARE HEREBY NOTIFIED THAT THIS OFFICE NO LONGER REQUIRES THE RETENTION OF THE FOLLOWING EVIDENCE WHICH MAY BE RELEASED PURSUANT TO YOUR AGENCY'S POLICY:

Complete Release

Photograph prior to release (NRS 52.385)

Pursuant to NRS 52.385, the evidence may be released to the person listed below unless your agency has been advised of a competing claim of ownership.*

(please print name and address)

Please refer to attached list identifying owners and specific properties.

Partial Release

Photograph prior to release (NRS 52.385)

Pursuant to NRS 52.385, the following items of evidence may be released to the person listed below unless your agency has been advised of a competing claim of ownership.*

(please print name and address)

Refer to Control # where possible. If money, state exact amount

Please refer to attached list identifying owners and specific properties. The remainder of the evidence is to be held until further disposition.

Owners(s) Unknown: Based upon insufficient information available to identify or locate an owner, you may dispose of the property in conformance with your agency's policy.

Narcotics Destruction: All narcotics and paraphernalia may be destroyed.

Weapons Disposition: Disposition may be made pursuant to NRS 202.340 and in conformance with your agency's policy.

Pawnbroker Notice:

Name and Address:

Notice is hereby given that the property listed herein will be released to the claimed owner identified above at the conclusion of 7 days from the date of this release unless you submit to us and we receive a claim to such property in writing prior to that date.

Dispose of all remaining evidence pursuant to your department policy.

Other

**In the event of competing claims, you should hold the property until you receive a court order or a release of claim. Please consult with counsel for your agency.*


MICHAEL BOENBAKER
DEPUTY DISTRICT ATTORNEY

Return Of NEF

Recipients	
JENNIFER NOBLE, ESQ.	- Notification received on 2019-09-26 13:37:47.667.
JOHN PETTY, ESQ.	- Notification received on 2019-09-26 13:37:45.467.
DIV. OF PAROLE & PROBATION	- Notification received on 2019-09-26 13:37:44.453.
CHRISTOPHER FREY, ESQ.	- Notification received on 2019-09-26 13:37:43.798.
EDWARD REED, ESQ.	- Notification received on 2019-09-26 13:37:47.183.
CHRISTINE BRADY, ESQ.	- Notification received on 2019-09-26 13:37:46.84.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
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A filing has been submitted to the court RE: CR14-0644

Judge:

HONORABLE BARRY L. BRESLOW

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09-26-2019:13:36:44

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. RODERICK STEPHEN SKINNER
(D8)

Document(s) Submitted:

Stipulation

Filed By:

Court Clerk ADeGayne

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JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

CHRISTINE BRADY, ESQ. for RODERICK
STEPHEN SKINNER

JOHN REESE PETTY, ESQ. for RODERICK
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK
STEPHEN SKINNER

EDWARD TORRANCE REED, ESQ. for
RODERICK STEPHEN SKINNER

V5. 843

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

V5. 843

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

RODERICK STEPHAN SKINNER,

Petitioner,

Case No. CR14-0644

v.

Dept. No. 8

ISIDRO BACA, WARDEN OF NNCC,
AND NEVADA ATTORNEY GENERAL,

Respondents.

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

Before the Court is a *Petition for Writ of Habeas Corpus (Post-Conviction)*, timely filed October 7, 2016, by RODERICK STEPHAN SKINNER ("Skinner" or "Petitioner"), Defendant in this matter. Respondents, THE STATE OF NEVADA, opposed the request for habeas relief in its *Answer to Amended Petition for Writ of Habeas Corpus (Post-Conviction)*, filed November 22, 2016. A *Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)* was subsequently filed on January 12, 2018 by Petitioner's counsel Edward T. Reed, Esq. The State filed an *Answer to Supplemental Petition for Writ of Habeas Corpus* on February 26, 2018. Both parties subsequently submitted pre-hearing briefs in September 2019. The matter proceeded to an evidentiary hearing on September 26, 2019.

1 Having reviewed the Petition, the accompanying briefs, the arguments of counsel, and
2 being fully apprised of the issues therein, the Court **DENIES** the *Petition*. The Court sets forth
3 the following reasons for this denial.

4 BACKGROUND

5 Based on the testimony presented at the evidentiary hearing, the parties' pre-hearing
6 briefings, and other documentary evidence submitted, the Court is aware of the following facts:

7 According to the record, Skinner was charged with several offenses in two different
8 cases, stemming from the same event. In CR13-1601, Skinner was charged with Open and Gross
9 Lewdness arising out of an incident that took place in Skinner's apartment. It was alleged that
10 with other children present, Skinner was viewing pornography on his computer while
11 simultaneously masturbating with his two-year-old daughter on his lap. A search warrant for
12 Skinner's computer was subsequently authorized by Sparks Justice Court. An execution of the
13 warrant produced Skinner's computer, multiple hard drives, and disclosed child pornography.
14 See Exhibit 25, Police Report of Sgt. Carry, p. 2. Reno Justice Court subsequently authorized a
15 second search warrant in which Washoe County Sheriff's Office forensic analyst Dennis Carry
16 examined the computer. Sgt. Carry found, among other things, that there was file sharing and
17 encryption software on the computer as well as dates indicating that Skinner was the user of the
18 computer at the time the pornography was being viewed.

19 The findings of the forensic analysis resulted in Skinner being charged with twenty
20 felony counts of Promotion of a Sexual Performance of a Minor Age 13 or Younger and
21 Possession of Visual Pornography of a Person Under the Age of 16 Years.¹ Each Promotion
22 charge alone carried a sentence of life in prison with the possibility of parole in ten years and
23 each Possession charge carried a possible punishment of one to six years in prison.

24 Christopher Frey ("Frey") was appointed Skinner's counsel.² Pursuant to plea
25 negotiations with the State, Skinner agreed to plead guilty to one count of Promotion of a Sexual

26 ¹ More specifically, per the State's Brief, there were ten counts of *Promotion of a Sexual*
27 *Performance of a Minor*, and ten counts of *Possession of Visual Pornography*.

28 ² The Court notes that Mr. Frey, formerly a Washoe County Public Defender, is now a Federal
Public Defender.

1 Performance of a Minor over 14 in exchange for all other charges being dropped and the Open
2 and Gross Lewdness charge in CR13-1601 being dismissed. Skinner subsequently signed a
3 *Guilty Plea Memorandum* ("Memorandum"), fully acknowledging his plea. At that time, Skinner
4 was canvassed by presiding Judge David Hardy and placed under oath, acknowledging his guilty
5 plea, and was fully informed that he may or may not receive probation as Judge Hardy had the
6 discretion to choose whether to follow the plea agreement. Skinner also acknowledged the
7 accuracy of the *Memorandum* and Judge Hardy accepted Skinner's guilty plea as being knowing
8 and voluntary.

9 Weeks later, during a three-phase sentencing, Frey presented a lengthy Sentencing
10 Memorandum in mitigation, which was "400 pages." See *Sentencing Proceeding Transcript* p.
11 4. During the hearings, Mr. Frey presented three witnesses on behalf of Skinner, and in which the
12 Court was also apprised of additional evidence.³ This evidence included testimony from the
13 Division of Parole and Probation that Skinner's young daughter Sophie was diagnosed with
14 genital warts, allegedly obtained through sexual abuse. Furthermore, Queensland Police
15 Department had also investigated Skinner for his travel plans to Thailand for engaging in child-
16 sex tourism. In addition, Skinner purportedly had plans to have built a more secure computer for
17 the purpose of storing child pornography. See *State's Brief*, p.5. Moreover, Skinner was found to
18 meet the criteria for pedophilic sexual orientation and with unmonitored access to the internet, all
19 child pornography victims remained at risk. Upon conclusion of the sentencing hearings, Judge
20 Hardy sentenced Skinner to life with the possibility of parole after five years.

21 On direct appeal, Skinner was represented by Chief Deputy Public Defender for the
22 Appellate Division John Petty ("Petty"). Petty argued that Skinner's sentencing was an abuse of
23 discretion and he should have received probation. The direct appeal was denied and the Nevada
24 Court of Appeals affirmed the Judgment of Conviction on July 14, 2015.

25 Skinner now submits his *Petition for Writ of Habeas Corpus and Supplemental Petition*
26 alleging seventeen separate grounds for relief. In summary, Skinner's *Petition* asserts multiple

27 ³ The Court notes that Mr. Frey's representation also included procuring a witness to travel all
28 the way from Australia, as well as setting up a live feed with Skinner's oldest daughter in
Australia.

1 ineffective assistance of counsel claims on the part of Washoe County Public Defenders Frye and
2 Petty as well as destruction of evidence claims. The Court now addresses each of these claims in
3 turn and finds the following.

4 STANDARD OF REVIEW

5 I. Post-Conviction Petition for Writ of Habeas Corpus.

6 "Any person convicted of a crime and under sentence of death or imprisonment who
7 claims that the conviction was obtained, or that the sentence was imposed, in violation of the
8 Constitution of the United States or the Constitution or laws of this State . . ." may file a post-
9 conviction petition for writ of habeas corpus. NRS 34.724(1). A defendant seeking post-
10 conviction relief must support claims with specific factual allegations that if true would entitle
11 him to relief. *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (per curiam). In
12 cases where the conviction was obtained through a plea of guilty, a petition for writ of habeas
13 corpus is limited to claims that the plea was "involuntarily or unknowingly entered or that the
14 plea was entered without effective assistance of counsel." NRS 34.810(1)(a).

15 II. Ineffective Assistance of Trial and Appellate Counsel.

16 The Sixth Amendment guarantees individuals in criminal cases the right to counsel to
17 protect their fundamental right to a fair trial. This right includes the right to effective assistance
18 of counsel.

19 The district court reviews whether a person has received the effective assistance of
20 counsel under *Strickland v. Washington*. See *Strickland v. Washington*, 466 U.S. 668, 686-87
21 (1984); *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996). *Strickland* sets out a
22 two prong test for assessing whether there was effective assistance of counsel. First, the Court
23 must determine whether counsel's performance was deficient such that it fell below an objective
24 standard of reasonableness. *Kirksey*, 112 Nev. at 988, 923 P.2d at 1107 (citing *Dawson v. State*,
25 108 Nev. 112, 115, 825 P.2d 593, 595 (1992)). This prong takes into account the proper measure
26 of an attorney's performance under prevailing professional norms and the totality of the
27 circumstances. *Strickland*, 466 U.S. at 688; *Homick v. State* 112 Nev. 304, 310, 913 P.2d 1280,
28 1285 (1996). Second, the deficient performance must have prejudiced the defense. *Id.* Prejudice

1 is demonstrated when there is a reasonable probability that, but for counsel's errors, the result of
 2 the proceeding would have been different. *Kirksey*, 112 Nev. at 988, 923 P.2d at 1107. A
 3 reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id.*

4 Petitioner is required to prove disputed factual allegations underlying his ineffective
 5 assistance of counsel claim by a preponderance of the evidence. *Means v. State*, 120 Nev. 1001
 6 1013, 103 P.3d 25, 33 (2004) ("choosing consistency with federal authority, we now hold that a
 7 habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-
 8 assistance claim by a preponderance of evidence."). Whether this burden of proof has been
 9 shown is found by assessing whether both elements of *Strickland* have been met. *See Kirksey*,
 10 112 Nev. at 988, 923 P.2d at 1107 ("a court may consider the two elements in any order and need
 11 not consider both prongs if the defendant makes an insufficient showing on either one"). Where
 12 an insufficient showing on either element has been made, the claim must be denied. *Id.*

13 FINDINGS OF FACT AND CONCLUSIONS OF LAW

14 *1. Ground One: Failure of Counsel to Challenge Lack of Corpus Delicti.*

15 In *Ground One* for relief, Skinner alleges that the prosecutor knowingly lacked corpus
 16 delicti in indicting him.⁴ Petitioner claims, this "lack of corpus delicti" is exhibited by there
 17 being no evidence of "download by means of file sharing software" upon which Skinner could
 18 have been indicted. He contends that his counsel, Mr. Frey, was ineffective for failing to
 19 challenge the sufficiency of evidence upon this ground. Thus, Skinner maintains he was
 20 deprived of both his due process rights and his right to effective assistance of counsel as
 21 guaranteed by the Constitution.

22 The showing of a corpus delicti is a threshold question; one that the State has the burden
 23 of proving and that the State has met in this case. The standard for proving corpus delicti is the
 24 same standard required to bind a defendant for trial. *See Sheriff, Washoe County v. Middleton*,
 25 112 Nev. 956, 961, 921 P.2d 282, 286 (1996); *See also Frutiger v. State*, 111 Nev. 1385, 1389,
 26 907 P.2d 158, 160 (1995) (finding that "before a person can be held for trial, the grand jury must

27
 28 ⁴ The Court also now clarifies that contrary to Skinner's *Petition*, Petitioner was not indicted. Rather, an *Information* was filed by the State.

1 determine that there is probable cause to believe that an offense (otherwise known as corpus
2 delicti) has been committed, and the defendant has committed it"); *Middleton, supra*, 112 Nev. at
3 961, 921 P.2d at 286 ("we now clarify that at the preliminary hearing stage, the State's burden
4 with respect to the corpus delict is the same as its burden to show probable cause, [they] must
5 present evidence supporting a "reasonable inference"). Corpus delicti may be established by the
6 State solely with circumstantial evidence. *See generally West v. State*, 119 Nev. 410, 418, 75
7 P.3d 808, 813 (2003) (finding that for murder convictions, the State may establish corpus delicti
8 solely with circumstantial evidence, notwithstanding the lack of a body or actual cause of death).
9 Indeed, when it comes to the preliminary hearing stage, "probable cause to bind a defendant over
10 for trial may be based on slight, [or] even marginal evidence because it does not involve a
11 determination of guilt or innocence of the accused." *Middleton, supra*, 112 Nev. at 961, 921 P.2d
12 at 286 (quoting *Sheriff, Washoe County v. Hodex*, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980)).

13 First, the Court notes that Skinner's argument is filled with vague assertions, but no
14 specific contentions as to how the State failed to show corpus delicti or what exactly the failure
15 of proof was for the file sharing software. Second, to the extent the Court is able to comprehend
16 Skinner's argument, it is readily belied by the record. Petitioner originally faced multiple charges
17 in CR13-1601 and CR14-0644. CR13-1601 contained one charge. CR14-0644 had twenty
18 counts, and the Court refers to the Background above for the specific allegations.

19 Second, testimony presented at the Evidentiary Hearing produced considerable evidence
20 of guilt. Specifically, not only did the State's forensic expert, Sergeant Carry, find pornography
21 and evidence of file sharing software and encryption on Skinner's computer, but Petitioner's own
22 defense expert, Leon Mare, was able to corroborate the State's findings.⁵ The evidentiary
23 hearing also revealed that there were eyewitnesses to some of Skinner's charges.⁶ These facts
24 certainly weigh heavily in there being more than enough evidence for a probable cause finding.

25
26 ⁵ For example, Exhibit 25 of the *Petition* states that "child pornography has already been
27 recovered on the computer and evidence at this time indicates Skinner's use of the computer
during those time periods..."

28 ⁶ Notably, eyewitnesses are alleged to have seen pornography-related images on Skinner's own
laptop and per the search warrant transcripts, Skinner told the eyewitnesses what he was viewing.

1 Aside from that fact, pursuant to a plea deal reached by both parties, CR13-1601 was
2 dismissed and the State agreed it would pursue the single charge alleged in the *Information*. It
3 was further stipulated that the State would not file any additional charges resulting from the
4 arrest. Arraignment Proceedings Transcripts (APT) 4:9-14. During arraignment, Judge David
5 Hardy read the single account alleged in the indictment that included a statement that there were
6 "over 50 images or videos of underage children..." See APT 7:8-15; See also *Criminal*
7 *Information*. Both parties stipulated to a factual basis for the allegation alleged in the
8 *Information*, and after a plea canvas, Skinner pled guilty. There was never a point during
9 proceedings or otherwise that would have lent itself to Petitioner's theory that the State had a
10 lack of corpus delicti. If anything, the State had more than sufficient evidence to charge Skinner
11 with all twenty-one counts initially alleged. Thus, Petitioner's contention is unfounded.

12 The Court also determines that there is no basis to Skinner's contention that Mr. Frey was
13 ineffective in failing to challenge the sufficiency of the evidence on the charge. Rather, as
14 discussed above, Skinner had multiple charges pending against him at the time. Mr. Frey used
15 his experience as a Public Defender to negotiate Skinner's multiple life sentences down to a
16 single count, as noted above. Mr. Frey's conduct is the essence of effective assistance of counsel.
17 On this ground, there is very clearly no indication that Mr. Frey's representation came close to
18 falling below the "prevailing professional norms" or objective standards of reasonableness.
19 Moreover, this Court is not persuaded that on Ground One, but for counsel's errors the result of
20 the proceeding would have been different, as the Court is unable to glean any error in Mr. Frey's
21 representation.

22 Ultimately, with regard to *Ground One*, Skinner's *Petition* is both unsupported and belied
23 by the record and is accordingly **DENIED**.

24 **2. *Ground Two: Failure of Counsel to Challenge NRS 200.720.***

25 In the *Second Ground* for relief, Skinner avers that his counsel was ineffective for failing
26 to challenge a perceived misapplication of NRS 200.720, and this application was in direct
27 contravention of legislative intent. Skinner argues the statute is overbroad and the terms defined
28 therein are not applicable to him. More specifically, Petitioner contends the term promote means

1 procure under NRS 200.700 and he has "not procured anything." See *Petition*. It appears as
2 though the Petitioner is not challenging that he was charged, but rather, *which statute* he was
3 charged under. If anything, Skinner seemingly contends he should have been prosecuted under a
4 different statute.

5 First, the Court finds no merit to Skinner's contention that essentially, NRS 200.720 is
6 inapplicable to him. While Skinner is correct in his assessment that legislative intent is a factor in
7 statutory interpretation, the plain meaning rule prevails. See *State v. Lucero*, 127 Nev. 92, 95,
8 249 P.3d 1226, 1228 (2011) (citing *Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957,
9 959 (1983)). That is, it is well established that when "the language of a statute is plain and
10 unambiguous, and its meaning clear and unmistakable, there is no room for construction and the
11 courts are not permitted to search for its meaning beyond the statute itself." *Nelson v. Heer*, 123
12 Nev. 217, 224, 163 P.3d 420, 425 (2007) (quoting *State v. Jepsen*, 123 Nev. 217, 196, 209 P.501,
13 502 (1922)). It is only when the statute is capable of being understood in two or more senses by
14 reasonably informed persons or that the statute is ambiguous that the Court may then look
15 beyond the statute in determining legislative intent. *Lucero, supra*, 127 Nev. at 95-96, 249 P.3d
16 at 1228. Moreover, considering and giving effect to the statute's plain meaning is "the best
17 indicator" of the Legislature's intent. *Dezzani v. Kern & Assocs.*, 412 P.3d 56, 59 (Nev. 2018).

18 The Court finds that the statute is neither vague nor ambiguous and the plain meaning of
19 the statute must be applied. As a result, the State properly prosecuted Skinner under this statute.
20 Additionally, this Court is inclined to agree with the State, that Petitioner has provided no
21 argument as to *how* the statute is vague nor how it is *not* subject to the plain meaning rule.

22 Secondly, this Court notes that a district attorney is vested with considerable discretion in
23 deciding whether to prosecute a particular defendant and necessarily involves a degree of
24 selectivity. *Salaiscooper v. Eighth Judicial Dist. Court ex rel. County of Clark*, 117 Nev. 892,
25 903 34 P.3d 509 (2001); See also *State v. Barman*, 183 Wis.2d 180, 515 N.W.2d 493, 497
26 (Cl.App.1994) (reasoning that the prosecuting attorney has great latitude in determining *which of*
27 *several related crimes* to file against a defendant, thus this discretion involves a degree of
28

1 selectivity).⁷ The Supreme Court has likewise recognized that the prosecution is the one vested
2 with the authority to choose *which charge* to bring against a defendant. See *U.S. v. Armstrong*,
3 517 U.S. 456, 464 116 S. Ct. 1480, 1486, 134 L. Ed. 2d 687 (1996) (quoting *Bordenkircher v.*
4 *Hayes*, 434 U.S. 357, 364, 98 S.Ct. 663, 668, 54 L.Ed.2d 604 (1978)) (finding that “so long as
5 the prosecutor has probable cause to believe that the accused committed an offense defined by
6 statute, the decision whether or not to prosecute and what charge to file or bring before a grand
7 jury generally rests *entirely in his discretion*”). (Emphasis added). Thus, it is the prosecution
8 alone which has the ultimate decision which statute to prosecute a defendant under, not the
9 defendant.

10 Furthermore, there has been no evidence presented that, with respect to the ineffective
11 counsel argument, Mr. Frey acted ineffectively or in a way that prejudiced Skinner. Rather, Mr.
12 Frey’s choice not to challenge the charge was a strategic decision. See *Means*, *supra*, 120 Nev. at
13 1011, 103 P.3d at 33 (“the defendant must overcome the presumption that, under the
14 circumstances, the challenged action might be considered sound trial strategy”).

15 Thus, based on the aforementioned findings, this Court finds that *Ground Two* of the
16 Petition is **DENIED**.

17 3. *Ground Three: Disparate Treatment.*

18 In his third ground, Skinner contends that he was subject to disparate treatment.
19 Specifically, Skinner seemingly argues that other similarly situated defendants, i. e., other child
20 pornography offenders, have been prosecuted differently. That is, they were not prosecuted
21 under NRS 200.720 as Skinner was in the present case.

22 The Court finds no merit in Skinner’s contention. In particular, Petitioner fails to provide
23 concrete examples of other “similarly situated” pornography offenders who have been not been
24 subject to such prosecution. Rather, Skinner’s claims consists of merely “bare or “naked” claims,
25 unsupported by any *specific* factual allegations that if true would “entitle him to relief.”
26 *Hargrove*, *supra*, 100 Nev. at 502, 686 P.2d at 225 (1984). With an argument devoid of facts to
27 support such a contention, Petitioner’s argument cannot stand.

28 _____
⁷ This case is not cited for any binding effect, simply for explanation of its analysis.

1 Therefore, because Petitioner advances allegations lacking facts and arguments from
2 which the Court can glean a purpose, nor valid grounds for making such a claim, Petitioner's
3 claims have no basis. Thus, the Court **DENIES** Skinner's *Petition* on Ground Three.

4 ***4. Ground Four: Failure of Counsel to Challenge Validity of Search Warrant.***

5 In his Fourth Ground, Skinner alleges that the affidavit was deliberately false, contained
6 material misrepresentations, and was made in bad faith. In addition, the affidavit itself was not
7 sufficiently particular. Petitioner contends that that his counsel was ineffective because Mr. Frey
8 failed to challenge the validity of the search warrant on this basis. Moreover, Skinner opines that
9 Mr. Frey knew Skinner was under medical duress at the time of plea negotiations and also failed
10 to adequately investigate the case.

11 First and foremost, this Court recognizes that Skinner's argument is belied by both Mr.
12 Frey's testimony specifically, and the record as a whole. At the time of his representation, Mr.
13 Frey was a seasoned public defender with experience in filing motions to suppress based upon
14 the validity of search warrants. However, in Skinner's case, Mr. Frey reviewed the affidavits
15 supporting the search warrant, the search warrants themselves, and police reports. Evidentiary
16 Hearing Transcript (EHT) 155. In reviewing all pertinent information, Mr. Frey was "unable to
17 glean" any information that would raise a "meritorious" Fourth Amendment challenge. EHT
18 155:22-24. Hence this Court finds that Mr. Frey's decision to not challenge the validity of the
19 search warrant was a strategic one, not one that in any way supports an ineffectiveness claim. *See*
20 *Means, supra*, 120 Nev. at 1011, 103 P.3d at 33.

21 Moreover, this Court finds that Mr. Frey was acting in accordance with the rules of
22 professional responsibility governing all Nevada attorneys. Nevada Rules of Professional
23 Conduct provide in pertinent part that:

24 "a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein,
25 unless there is a basis in law and fact for doing so *that is not frivolous, which includes a*
26 *good faith argument* for an extension, modification or reversal of existing law. A lawyer
27 for the defendant in a criminal proceeding or the respondent in a proceeding that could
28 result in incarceration, may nevertheless so defend the proceeding as to require that every
element of the case be established."

1 See N.R.P.C. 3.1 (*emphasis added*). Mr. Frey testified that he found no “meritorious” Fourth
2 Amendment challenge. Were Mr. Frey to have filed such a Motion, knowing it was frivolous, it
3 could have placed him at risk of violating professional standards.

4 With respect to Skinner’s medical duress portion of this claim as well as his notion that
5 Mr. Frey failed to adequately investigate, the Court addresses it *infra*, as part of the voluntariness
6 of the plea agreement and Ground Eleven and thus incorporates those analyses into Ground Four.

7 Ultimately, there is nothing in the record to suggest that, as it pertains to Ground Four,
8 Mr. Frey’s representation was anything but effective in defending Skinner. Because Skinner’s
9 contention is belied by the record and is in direct contravention of Mr. Frey’s testimony, the
10 claim is **DENIED**.

11 **5. Ground Four (A): Search Warrant Timing.**

12 Petitioner also contends that his apartment was searched eight minutes before the time
13 reported in the search warrant affidavit. More specifically, Skinner contends that the search
14 warrant was authorized at 10:08 p.m.; however, the police commenced their search at about
15 10:00 p.m., eight minutes before the search warrant was authorized.

16 The Court finds that Skinner’s assertion is not a meritorious claim for relief. Pursuant to
17 NRS 34.720, a post-conviction petition for a writ of habeas corpus is available to address two
18 types of claims: (1) requests for relief from a judgment of conviction or sentence in a criminal
19 case and (2) challenges to the computation of time that the petitioner has served pursuant to a
20 judgment of conviction.” *McConnell v. State*, 125 Nev. 243, 247, 212 P.3d 307, 310 (2009)
21 (internal citations omitted). This means that the scope of a post-conviction habeas relief must
22 challenge the validity of the conviction or sentence. *See Id.*, 125 Nev. at 310, 212 P.3d at 310
23 (reasoning that “a claim that is cognizable in a post-conviction habeas petition must challenge
24 the validity of the conviction or sentence”). Petitioner is making a claim based upon neither of
25 these contentions as he is challenging the *timing* listed in a search warrant. If anything, this is a
26 pre-trial motion which, as this Court has previously addressed, Mr. Frey did not find any
27 “meritorious Fourth Amendment challenge.” Thus, this is not a proper basis for post-conviction
28 relief.

1 Therefore, the Court **DENIES** this claim.

2 **6. *Five: Petitioner's Length of Detention.***

3 Petitioner alleges that prior to having his apartment searched, he was detained longer than
4 sixty minutes before being arrested and was not permitted to re-enter the apartment in the
5 meantime.

6 Petitioner is not seemingly challenging either his sentencing or validity of conviction. *See*
7 *NRS 34.720*; *See also McConnell v. State*, 125 Nev. at 247, 212 P.3d at 311. Rather, Petitioner
8 argues what amounts to a pre-trial motion. This Court has previously addressed pre-trial issues
9 and refers to the abovementioned analysis.

10 Therefore, the Court **DENIES** the Petition as to Ground Five.

11 **7. *Ground Six: Additional Unlawful Detention Claim.***

12 In ground six of his Petition, Skinner reiterates the same claims as were addressed in
13 Ground Five. He additionally adds that counsel was ineffective in failing to challenge the search
14 warrant upon these grounds. The State contends that this argument is simply an extension of
15 Ground Five and is repeating the same arguments. The Court agrees with the State that these
16 arguments are already alleged in Ground Five.

17 Therefore, Ground Six of Skinner's Petition is **DENIED**.

18 **8. *Ground Seven: Failure of Counsel to Suppress Search Warrant.***

19 In his Seventh Ground for relief Petitioner argues that the warrant authorizing a search of
20 his computer was generalized. Skinner contends that since the search warrant was "unbounded"
21 it violates legal requirements on probable cause, namely that of the particularity requirement. In
22 addition, Petitioner opines that counsel was "clearly ineffective" for not filing a Motion to
23 Suppress the search warrant on these grounds.

24 The Court finds that Petitioner's allegations are belied by the record. First, a search
25 warrant is required to state with particularity the places to be searched or the persons or items to
26 be seized. *Keese v. State*, 110 Nev. 997, 1001, 879 P.2d 63, 66-67, *citing* the Fourth
27 Amendment and Nev. Const. art I, § 18. In this case, the *Search Warrant* stated exactly this.
28 There was specific evidence set forth that show probable cause for the allegations relating to

1 CR13-1601. Specifically, the search warrant very clearly states the places or things to be
2 searched: a Toshiba laptop, a black Hitachi External Hard drive, a blue Seagate External hard
3 drive, a Samsung hard drive, and two Buffalo hard drives all found at Petitioner's residence. *See*
4 Exhibit 21A of *Petition*, pp. 1-2. The evidence for which officers were looking to seize included
5 the following: evidence corroborating sexual abuse of the victim such as pornography disclosed
6 during the interview, internet searches and website visits involving child abuse, and indicia and
7 timeline event history revealing the suspect's activities. Thus, there is no merit to Skinner's
8 contention that the search warrant was generalized.

9 In addition, the search warrant was also supported by the affidavit of Detective Michel
10 Brown ("Brown"). The affidavit was both informative and described at length the basis for
11 which Det. Brown was requesting a search warrant of the computer and hard drives. First, as an
12 experience detective, Brown had training that computers maintain evidence of web site visits,
13 caches, internet files and search terms, all of which may reveal a user's activity on the internet
14 such as what they googled. *See Affidavit of Det. Brown*, p. 2. Second, the affidavit included
15 details of the initial investigation into Skinner after a child witness informed her mother, and
16 subsequently police, of the inappropriate conduct Skinner displayed while in the presence of the
17 child witness as well as another child and Skinner's own daughter. In pertinent part, it states that
18 Skinner was watching pornography on his computer and masturbating while in the same room as
19 the children. The affidavit further alleged that Skinner went so far as to show the child witness
20 the pornography images he was viewing on the computer in question.⁸ Moreover, Brown
21 described the amount of data that may be stored in the hard drives as "enormous." Thus, a search
22 warrant that is specifically looking into the computer and hard drive's contents along with other
23 pertinent information is corroborated by the record. Therefore, Skinner's allegation that there
24 was no probable cause is wholly without merit.

25 Additionally, Skinner's argument that counsel failed to suppress the search warrant is
26 unfounded. Since the Court has already discussed at length in *Ground Four* why Mr. Frey's

27
28 ⁸ More specifically, the child witness described the images that Skinner showed her on his
computer as "nasty videos."

1 actions were the epitome of effective assistance of counsel and neither fell below the objective
2 standards of reasonableness nor were any error that could have "prejudiced the defense" the
3 Court incorporates the abovementioned grounds into Ground Seven and declines to address it
4 again.

5 Therefore, the Court finds that Petitioner's claims are unsupported by the record and
6 **DENIES** the *Petition* as to Ground Seven.

7 **9. Ground Eight: Involuntary Guilty Plea and Failure of Counsel to Adequately Explain**
8 **the Charges.**

9 In his Ground Eight for relief, Skinner contends that his guilty plea was not entered
10 knowingly, voluntarily or intelligently because it was uninformed. He argues that Mr. Frey failed
11 to adequately explain the essential elements of the crime charged. Conversely, had Skinner been
12 explained the elements of his crimes, he would have insisted on going to trial and not taken a
13 plea agreement. Furthermore, Skinner contends that because he was a foreign national he was
14 especially unable to know the nature of the charges being levied against him.

15 "A defendant who pleads guilty upon the advice of counsel may attack the validity of the
16 guilty plea by showing that he received ineffective assistance of counsel under the Sixth
17 Amendment." *Molina v. State*, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004) *citing Hill v.*
18 *Lockart*, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985) (holding that *Strickland's* two-
19 part test applies to challenges of guilty pleas based on ineffective assistance of counsel).
20 However, guilty pleas are presumptively valid, especially when entered on advice of counsel,
21 and a defendant has a heavy burden to show the district court that he did not enter his plea
22 knowingly, intelligently or voluntarily. *Id.* In determining the validity of a guilty plea, the district
23 court must look to the totality of the circumstances. *State v. Freese*, 116 Nev. 1097, 1105, 13
24 P.3d 442, 48 (2000) (finding that "this court will not invalidate a plea as long as the totality of
25 the circumstances, as shown by the record, demonstrates that the plea was knowingly and
26 voluntarily made and that the defendant understood the nature of the offenses and the
27 consequences of the plea").
28

1 The Court finds that the Skinner's contention is wholly belied by the record for a myriad
2 of reasons.

3 **A. Petitioner Entered His Plea Knowingly and Voluntarily Because He Was A**
4 **Sophisticated Party.**

5 First, Skinner is not an unsophisticated party. Prior to his detour to the United States,
6 Skinner had previously served in law enforcement for eight years. More specifically, he was a
7 police officer for the Australian Federal Police for two and a half years and later, Queensland
8 State Police Officer for five and a half years. EHT 100:18-23. Skinner then served an additional
9 twelve months after his car accident and subsequently, two years as an academy driving
10 instructor for the same police department. Defendant further testified that his employment was
11 similar to that of the Nevada Highway Patrol in the form of traffic enforcement and safety,
12 including understanding how to identify drunk drivers.

13 Moreover, as a consequence of his profession, Skinner's job occasionally resulted in
14 contested arrests, meaning, he would have to appear in court. EHT 103:20-22. While Skinner
15 stated he had not been trained on *how* to testify, he admitted that he *had in fact* testified in court
16 "a couple of times." EHT 103:17-20. Petitioner had likely more dealings than the average
17 person to know the interworking of the criminal justice system, albeit an Australian one. It is
18 difficult for this Court to understand how Petitioner now claims he did not comprehend the
19 elements of the charges against him when he was at the very least familiar with criminal justice
20 matters in general. Therefore, Skinner's statements are contradicted by the record.

21 **B. Petitioner's Statements to His Counsel Show That The Guilty Plea Was**
22 **Entered Into Voluntarily.**

23 In Mr. Frey's lengthy evidentiary hearing testimony, he sated that Skinner did not
24 maintain his innocence throughout Mr. Frey's representation nor did Mr. Frey "drag him
25 [Skinner] kicking and screaming to the table and coerce him into a plea to the extent that is the
26 suggestion from Petitioner's counsel." EHT 165:15-17. To the contrary, Skinner made comments
27 to Mr. Frey suggesting that to some degree he knew he was guilty. See EHT 165:18-20. As Mr.
28 Frey puts it, this included "the evidence begin[ing] to compile... and it appeared as if Mr.
Skinner was able to process the fact that perhaps there was evidence here sufficient to convict

1 him. And his degree of acceptance of responsibility changed." EHT 165:3-9. Moreover, Mr.
2 Frey's assessment of Skinner before entering his plea of guilty was that:

3 "Mr. Skinner was completely lucid. He understood the terms and examines of the plea
4 agreement. He *understood the charge*. He *understood the elements*. He *understood the*
5 *facts*. I had no qualms about proceeding to an entry of plea with Mr. Skinner endorsing
6 that as the next step in the representation whatsoever. He did not protest. He did not
7 indicate a lack of understanding. He *endorsed the plea*. He took responsibility for the
8 conduct memorialized in the guilty-plea memorandum. There were no tears. There was
9 no hesitation much. There was no reluctance. There was no non-verbal cues that indicates
10 that he had second thoughts. This was a *joint decision* over the course of a number of
11 weeks....I had zero qualms about proceeding to the entry of plea in this case."

12 EHT 166-67 (*emphasis added*). Thus, this was not the case of a defendant being ill-informed by
13 his counsel, as Petitioner alleges. Rather, Skinner had a number of days in which to contemplate
14 the charge and was fully and thoroughly explained by counsel all pertinent details as it relates to
15 the plea agreement and charges alleged against him.

16 As a result, as to Petitioner's contention that counsel's conduct falls below the objective
17 standards of reasonableness, this suggestion is not supported. Moreover, Mr. Frey's conduct as it
18 relates to the voluntariness of the plea agreement did not prejudice Skinner. The Court finds that
19 Mr. Frey thoroughly and adequately explained to Skinner the elements of the charges and
20 repercussions a guilty plea brings with it. Therefore, as to the portion of Ground Seven alleging
21 Mr. Frey was ineffective, Skinner's Petition is **DENIED**.

22 **C. Petitioner's Own Words Indicate He Understood His Plea.**

23 While Skinner contends that he did not understand the charges against him, Petitioner's
24 own words tell a different story. In a statement to the Division of Parole and Probation, in
25 pertinent part, Skinner stated that he "betrayed the values of the community." EHT 127-128. In
26 addition, during sentencing, Petitioner told Judge David Hardy that he was "ripe for it." EHT
27 130-131.⁹ To the Court, these comments are a very clear indication that he understood the
28 elements of the charges against him. In addition, at one point in time Petitioner was actually

⁹ The Court acknowledges Skinner's contention at the evidentiary hearing that he did not mean "ripe" but rather "right" for the crime. In either case, the Court understands either of these two words to mean that he was knowledgeable of what he had done and the crimes with which he was being charged.

1 remorseful for his actions. Thus, all indications of Skinner's conduct show this Court that he *did*
2 know the charges entered against him and his plea was done knowingly, voluntarily and
3 intelligently.

4 **D. Petitioner's Guilty Plea Was Given After a Full Canvas.**

5 Skinner's own statements to the Court during the plea canvas are also telling. The Court
6 finds that Skinner's responses give a distinct picture as to the voluntariness of his guilty plea.
7 First, Judge Hardy placed Defendant under oath. Thus this Court can infer that any statements
8 Skinner made to the judge were accurate and truthful.¹⁰ Second, after swearing under oath to do
9 so, Skinner stated to the Court that the decision to plea was his, and his alone. *See Arraignment*
10 *Transcript (APT)*, p. 5. He was informed that no one could force him to plead guilty. He was
11 informed that he could go to trial and force the State to prove each element of the crime charged,
12 Defendant declined to do so. The State read Skinner the details of the charge against him. *Id.*, at
13 7. In response to the Court asking Skinner whether he understood the elements that Mr. Bogale
14 had just read, Skinner responded "Yes Your Honor." *Id.*, 7:22. When asked whether Skinner did
15 what he was accused of doing, Mr. Frey stated that they were stipulating to a factual basis of the
16 charge, to which Skinner told the court he understood and agreed and thus conceded that he was
17 guilty. *Id.*, 8:21-24. Judge Hardy subsequently found that Skinner understood both the nature of
18 the charge and its consequences. *Id.*, 9:16-17.

19 Furthermore, this Court finds that the Petitioner cannot, credibly, on one hand testify
20 *while under oath*, that he fully knew the charges against him, and was entering a knowingly,
21 voluntarily, and intelligent plea, yet on the other hand, claim that those statements are no longer
22 accurate and he never understood the elements of the charge.

23 Based on the abovementioned findings, the Court finds that there are no basis to
24 Petitioner's argument and the Court **DENIES** the Petition on Ground Eight.

25
26
27 ¹⁰ The Court notes that the alternative (which Skinner now seemingly alleges) namely that the
28 statements were involuntarily and not knowingly, would be evidence that Skinner perjured
himself when he told Judge Hardy he was going to tell the truth, the whole truth, and nothing but
the truth.

10. ***Ground Nine: Failure of Counsel In Engaging in Plea Negotiations While Under Medical Duress.***

2 In his ninth ground for relief, Petitioner opines that his plea was not entered into
3 knowingly, voluntarily, or intelligently as he was suffering from serious medical duress. As a
4 result, Skinner contends that his medical duress overbore his will to make decisions effecting his
5 freedom. More specifically, Skinner argues he suffers from debilitating phantom limb and nerve
6 pain, he has Chron's disease, neck cancer, and other material medical issues.¹¹ Thus, Skinner
7 argues that due to these issues, Petitioner was entitled to adequate medical care, and effective
8 treatment of his pain. Moreover, Skinner claims that Mr. Frey was constitutionally ineffective in
9 "failing to safeguard petitioner's best interest and not engaging in plea negotiations." See
10 *Petition, Ground Nine.*

11 The Court acknowledges that Skinner has a myriad of medical issues and gives that due
12 weight in its decision; however, the Court finds the following. First, Skinner's accident was in
13 the 1980s, nearly thirty years before the events occurring in the present case. EHT 102:10-11.
14 Second, while Skinner may have experienced ongoing medical problems during his stay with the
15 Washoe County Jail, the issues he presents this Court with were several months before he ever
16 entered his plea. Third, while at the Washoe County jail, Petitioner filed several claims with the
17 state. However, those claims never included one for medical duress. More specifically in the
18 evidentiary hearing, the Court notes the following:

19 Ms. Noble: "Did you ever file a grievance related to your claims of
20 mistreatment in the Washoe County Jail?"

21 Skinner: Well, all that had mistreatment and everything which led up to the
22 intentional rupture happened after about 30 days. And then, after I
23 have gone to the hospital and come back, I put in a couple of
24 grievances about *six months later*, about *unrelated things*.

25 Ms. Noble: So you put in grievances, but not about that?

26 Skinner: No."

27 ¹¹ Other material medical issues include: abnormal blood chemistry, liver issues, and
28 inflammation over numerous part of his body all of which he alleges he did not receive timely
treatment for.

1 Fourth this court notes Mr. Frey's testimony about the plea. In relevant part, Mr. Frey
2 stated that, as previously noted, Skinner was "completely lucid" he understood everything, he did
3 not have hesitation or reluctance in entering his plea, but rather, he "endorsed the plea." ¹² EHT
4 167. Additionally, when asked by Mrs. Noble whether Skinner had ever communicated to Mr.
5 Frey that he was only pleading guilty because he was afraid he was going to die in the Washoe
6 County Jail and was innocent, Mr. Frey answered with a resounding "no."

7 Moreover, when asked whether Skinner ever actually told Mr. Frey about his pain,
8 Skinner replied "he knew." But as this Court have previously found, even if Mr. Frey "knew," it
9 is clear from Mr. Frey's testimony and the record that this in no way impacted Skinner's ability
10 to enter a plea. Rather, there is a very clear indication to the court that Skinner was never under
11 so much medical duress that he was unable to make an informed, voluntary and intelligent
12 decision. EHT 168.

13 This Court also considers the action of the plea canvas itself. Skinner was asked multiple
14 questions about his plea. Judge Hardy ensured that Skinner was not just pleading because he was
15 told to, that he was making an informed decision, and that this was a decision that he agreed to.
16 No one forced him to make such a decision, and Petitioner indicated as much to the Court.

17 Therefore, based on the above-mentioned findings, as to Ground Nine of the Petition, the
18 Court **DENIES** Skinner's Petition.

19 ***11. Ground Ten: Skinner Himself Did Not Plead Guilty.***

20 In his tenth ground for relief, Petitioner states that he did not plead guilty in the plea
21 canvas, rather, it was Mr. Frey who pled for him. Specifically, Skinner contends that when asked
22 whether he was pleading guilty, Skinner states that he hesitated because he was not sure if he
23 was in fact guilty. At that point, Mr. Frey jumped in and pled guilty for him. Additionally,
24 Skinner opines that he was not "enthusiastic" about pleading guilty as was evidenced by "Judge
25 Hardy engaging in a series of conclusory questions." See Ground 10 of *Petition*.

26 It is evident from the record that the plea was given by Skinner. According to
27 Arraignment Transcripts, Skinner said that it was his decision to plead, his and his alone. APT 5.

28 ¹² The Court has already noted the specific statements of Mr. Frey in previous analysis.

1 He understood no one was forcing him to plea. Thereafter, the record clearly indicates that the
2 *Defendant, not his lawyer*, stated "I enter a plea of guilty Your Honor." APT 8:16. Thereafter,
3 Skinner was asked more than once if he was entering the plea, understood it, and agreed. APT 9.
4 No evidence before the Court suggests that Skinner faltered when giving the plea, asked to
5 change the plea he had just entered, or that his lawyer was giving the plea. Rather, it was only
6 *after* Defendant had stated that he was pleading guilty that Mr. Frey stated that they were
7 stipulating to a factual basis for the charge.

8 A reading of the record at no time evinces that Mr. Frey ever stated that he was entering a
9 plea of guilty on his client's behalf or as Petitioner puts it "stepped in and interjected we plead
10 guilty to the facts." Rather, as Mr. Frey testified, Skinner "accepted responsibility for the
11 conduct that was memorialized within the guilty plea memorandum," there was no hesitation or
12 reluctance, no "nonverbal cues indicating second thoughts." In addition, counsel testified that he
13 did not "coerce him into a plea." Therefore, Petitioner's claims are belied by the record.

14 This Court also notes that the "series of questions" Judge Hardy posed to Skinner, and
15 which Petitioner now contends are evidence of his assertions, are nothing more than a plea
16 canvas conducted regularly on any defendant entering a plea.

17 Therefore, the Court finds that as to Ground Ten, Skinner's Petition is **DENIED**.

18 ***12. Ground Eleven: Failure to Investigate, Interview, and Pursue Available Witnesses.***

19 Petitioner claims that his counsel's performance was below the range of competency
20 required of attorneys in criminal cases. In particular, he avers that Mr. Frey failed to: pursue
21 available defenses, interview witnesses, investigate witness tampering, and commission an
22 expert defense report. Additionally, Skinner claims that Mr. Frey also failed to impeach
23 witnesses during sentencing.

24 Petitioner's claims are noticeably belied by the record, and his argument fails on multiple
25 grounds. First, there was a very clear effort to investigate the case. During the evidentiary
26 hearing, Skinner placed the blame for pornography images on the fact that he had purchased his
27 computer from EBay, there were multiple users of the laptop, and the owner of the apartment he
28 was staying at, Joseph Chipetto had unfettered access to the apartment. The clear inference was

1 that Skinner was claiming it was not him who was viewing the pornography images, but rather
2 Mr. Chipetto. In his testimony, Mr. Frey stated that he did in fact interview Mr. Chipetto. Mr.
3 Frey went through "a number of things that [they] thought were pertinent to the case." However,
4 Mr. Frey found that "the interview did not impact the way that we defended the case."
5 Additionally, even though Mr. Frey may have been aware of Mr. Chipetto's unrestricted access
6 to the apartment, he "did not specifically recall that as a defense strategy that they had
7 entertained... if it was entertained, it was for a brief moment." EHT 160. Moreover, as Mr. Frey
8 pointed out, even though Mr. Chipetto owned the apartment, Frey had clear forensics from the
9 computer which "clearly indicated to [Mr. Frey]... and [his] assessment to a jury would have
10 been that it would have indicated that the user of the computer was Roderic Skinner." EHT
11 160:13:20.

12 This was not the only investigation that Mr. Frey did. Rather, Mr. Frey stated that just
13 some of his investigation included subpoenaing school records of the two young girls who made
14 the initial police report, serving subpoenas on the Washoe County Sherriff's Office, and
15 procuring their own defense expert, Leon Mare, to investigate the hard drive of the computer just
16 as the State's own expert had done. This included viewing multiple spreadsheets that built upon
17 each other, and this Court has previously noted, indicated that the findings corroborated the Sgt.
18 Carry's findings.

19 Moreover, Mr. Frey did extensive work on a sentencing memorandum. In fact, the
20 memorandum was so comprehensive that the State requested time to more fully review it as it
21 was nearly "400 pages" long. Aside from that, part of Mr. Frey's sentencing defense was to
22 arrange from multiple witnesses to be available to testify. This included coordinating for an out
23 of country witness to appear in person, a phone call for Courtney Skinner to testify from
24 Brisbane, as well as other witnesses. As Mr. Frey put it, "we fought our heart out for Mr.
25 Skinner."

26 As a result, on Ground Eleven, there is no evidence to suggest that his counsel's
27 performance was deficient or that Skinner was prejudiced.

28

1 Therefore, this Court finds that Mr. Frey's conduct did not fall below the objective
2 standard of reasonableness and Skinner's *Petition* is **DENIED**.

3 **13. Ground Twelve: Failure of Appellate Counsel to Federalize Claims.**

4 With regard to Skinner's claim that his appellate counsel was ineffective, the two-
5 pronged *Strickland* standard applies to appellate counsel, but with emphasis on the presumption
6 that counsel acted in the interest of best strategy. To state a claim of ineffective assistance of
7 appellate counsel, a petitioner must demonstrate that counsel's performance was (1) deficient in
8 that it fell below an objective standard of reasonableness, and (2) the resulting prejudice [was]
9 such that the omitted issue would have had a reasonable probability of success on appeal.

10 *Kirksey, supra*, 112 Nev. at 998, 923 P.2d at 1113-14.

11 Skinner contends that Mr. Petty failed to federalize claims and that Mr. Petty's abuse of
12 discretion argument was neither *the* claim to be raised nor the only claim to be raised on direct
13 appeal.¹³ However, appellate counsel is not required to raise every non-frivolous issue on appeal.
14 *McConnell v. State*, 125 Nev. 243, 253, 212 P.3d 307, 314 (2009) (citing *Jones v. Barnes*, 463
15 U.S. 745, 751, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983)). Rather, appellate counsel is "*most*
16 *effective* when every conceivable issue is *not* raised on appeal. See *McConnell, supra*, 125 Nev.
17 at 253, 212 P.3d at 314 (citing *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989))
18 (*emphasis added*).

19 Moreover, the Supreme Court recognizes that appellate practice bears "natural
20 limitations" which encourage certain forms of brevity or particularity. *Johnson v. State*, 133 Nev.
21 571, 575, 402 P.3d 1273, 1273 (citing *Knox v. United States*, 400 F.3d 519, 521 (7th Cir. 2005))
22 ("Lawyers must curtail the number of issues they present, not only because appellate briefs are
23 limited in length but also because the more issues a brief presents the less attention each
24 receives, and thin presentation may submerge or forfeit a point." (internal brackets omitted)).
25 Accordingly, appellate counsel is not *per se* ineffective for omitting a claim for the purposes of
26 promoting claims with a higher likelihood of success. *Id.* at 1274 (citing *Jones*, 463 U.S. at 751—

27 ¹³ See EHT 127:16-20, Skinner stating that "this abuse of discretion ground that he went with,
28 that the judge has abused his discretion in sentencing, was not even an issue really that should
have been raised on appeal, and other things should have been raised on appeal."

1 52 (1983) ("Experienced advocates since time beyond memory have emphasized the importance
2 of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or
3 at most on a few key issues.").

4 This Court first notes that Mr. Petty is a seasoned appellate attorney for the Washoe
5 County Public Defender's Officer with nearly forty years of experience and found his testimony
6 credible. Second, just as he testified, Mr. Petty drew upon his decades of experience and
7 hundreds of appellate briefs filed over the years to know which claims to raise in Petitioner's
8 case. EHT 143:12-13. In Skinner's case, Mr. Petty testified that because certain pre-trial motions
9 had not been reserved under statute, the appealable issues were limited to solely sentencing
10 issues. EHT 147. A reading of the record clearly evinced that there were no other appealable
11 issues, other than the abovementioned abuse of discretion issue. In addition, while Mr. Petty
12 acknowledged that Skinner had hoped more claims would be raised, namely that of effective
13 assistance of counsel claim, Skinner's suggested claim is prohibited from being raised on direct
14 appeal. Also, there was nothing else in Skinner's multiple letters to Mr. Petty that would be
15 permitted to raise upon direct appeal.

16 Moreover, Mr. Petty testified that "had there been something that was brought to [his]
17 attention that might have attraction on appeal, [he] would have used it." EHT 149:18-20. The
18 fact that Mr. Petty did not raise any other issues on direct appeal, suggests that "there was
19 nothing there" that would have been a proper basis for appeal. See EHT at 149:18-21.

20 Based on the abovementioned findings, Mr. Petty's conduct could not have prejudiced
21 Skinner. Mr. Petty did not "omit any issues" which would have had a reasonable probability of
22 success on appeal because there were none. Thus, this court finds that not only did Skinner not
23 suffer any prejudice based on Mr. Petty's conduct, his conduct was also not conduct that fell
24 below the "objective standards of reasonableness."

25 Thus, due to this Court finding no basis in a finding of deficient counsel or prejudicial
26 performance, as Skinner alleges, this Court **DENIES** Petitioner's claim.

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1 ***14. Ground Thirteen: Defense Counsel's Misleading Claims on Forensic Report.***

2 In his thirteenth ground for relief, petitioner alleges that Mr. Frey was ineffective because
3 he told Skinner that a defense forensic report of the computer in question existed when it did not.
4 More specifically, the report was alleged to have corroborated the State's allegations, and was in
5 part, one of the reasons compelling Petitioner to accept the plea deal. However, Skinner alleges
6 neither he, nor his Australian attorneys, were ever shown the report and was thus "kept in the
7 dark" as to the evidence brought against him. Thus, as a result of not being permitted to review
8 the report, his rights to such evidence were violated and Skinner was coerced by Mr. Frey into
9 taking the plea deal.

10 The Court has already noted above its findings that Skinner entered his plea knowingly,
11 voluntarily, and intelligently. As to this point, the Court refers to the analysis above, incorporates
12 it into the present ground, and declines to reiterate the same analysis again.

13 As to Petitioner's argument that he was misled as to the forensic report, the record belies
14 Skinner's contention. The Court notes Mr. Frey admitted there was no *written* forensic report of
15 the computer the State analyzed. However, Mr. Frey qualified his answer with reasons as to why.

16 As Mr. Frey testified, his own forensic analyst, Leon Mare, performed the exact same
17 tests as the State's analyst Sgt. Carry. This included Mr. Mare performing his own independent
18 examination of the forensic information, repeating the steps Sgt. Carry had done. EHT 162:17-
19 22. Mr. Mare verified and corroborated Sgt. Carry's findings that the evidence was not
20 exculpatory but inculpatory. EHT 164:4-6. Specifically, the reports were cumulative, building
21 off each other, and were all associated with child pornography. This means that the evidence was
22 not of such a nature as would have reflected favorably upon Petitioner, but rather negatively.
23 Moreover, as a result of such adverse findings, it was Mr. Mare's assessment that Skinner should
24 "jump on" the plea deal the State was offering. EHT 163:3-6.

25 Furthermore, Mr. Frey purposefully did not make a written forensic report. EHT 167:15-
26 16. In his testimony Mr. Frey indicated that this was because the "findings were adverse." His
27 statement was qualified with the following:

28

1 *if the findings were adverse, had they proceeded to trial, and used that expert, it [the
2 defense's report of adverse findings] could have been exposed in discovery, subjected to
3 damaging impeachment, and would have only I think, corroborated the State's case,
4 when obviously the job of defending a case is to do quite the opposite.

5 EHT 167:18-24. Thus, even though a written report was never prepared, a report of Mr. Mare's
6 findings was in fact *relayed* to Mr. Frey that it was not in the best interests of Skinner to have
7 such a written report made.

8 It is therefore, this Court's finding that Mr. Frey's failure to give Skinner a written report
9 was neither a failure nor an oversight in his representation of Petitioner. Rather, Mr. Frey did not
10 have a written report made so as to *protect* his client and ensure damaging information was not
11 brought to light by the defense's own experts. Mr. Frey's conduct as to the forensic report did
12 not fall below the objective standards of reasonableness. Nor did Mr. Frey make any errors that
13 would have prejudiced Mr. Skinner. The Court finds Mr. Frey acted as effective counsel and
14 there is no merit to Petitioner's claims.

15 Therefore, because Petitioner's arguments are belied by the record, the Court **DENIES**
16 Skinner's *Petition* as to Ground Thirteen.

17 **15. Ground Fourteen: Ineffective Counsel in CR13-1601.**

18 In his fourteenth ground for relief, Petitioner alleges errors were committed in another
19 matter, CR13-1601, and as a result, this affected the outcome off the current case. In particular,
20 Skinner claims that a child witness's testimony was manipulated and thus tainted. Had there not
21 been such taint, Skinner contends that there would not have been a search and seizure of his
22 computer containing pornographic images. Thus, since Mr. Frey did not seek to suppress this
23 testimony, Skinner was deprived of his due process rights and Mr. Frey's conduct constituted
24 ineffective assistance of counsel.

25 The Court is unclear what effect the proceedings in CR13-1601 have on the current case
26 as Petitioner's arguments add nothing to the Court's analysis. Petitioner's case in CR13-1601
27 was dismissed pursuant to a global resolution plea deal. It would be of no benefit for Petitioner to
28 litigate claims in an already dismissed case, especially considering the case dismissal was to
Skinner's benefit.

1 Additionally, the Court finds that Mr. Frey's conduct in CR13-1601 was neither
2 ineffective nor prejudicial to Petitioner. Petitioner had two different yet related cases. Both cases
3 carried serious consequences with them. Skinner was facing nearly twenty-one counts, nearly
4 half of which carried ten to life sentences, on each count. *See State's Brief*, p.3. Mr. Frey used his
5 expertise as a skilled negotiator to bargain the State down to charging Skinner with only a single
6 count of Lewdness with a Minor. As a result, this Court finds that Mr. Frey both acted in
7 Petitioner's best interests and made a strategic decision to negotiate a plea deal in both of
8 Skinner's cases.

9 Therefore, the Court finds that as to Ground Fourteen, there is no basis to Petitioner's
10 claims and **DENIES** the *Petition*.

11 ***16. Supplemental Petition: Ground One, Failure to Preserve Evidences***

12 In Ground One for his *Supplemental Petition*, Petitioner alleges that the State failed to
13 preserve evidence relating to the child pornography charges and file sharing information. He
14 contends that the Washoe County District Attorney's office destroyed said evidence contained on
15 the hard drive of Skinner's computer and thus now, on post-conviction writ, there is no evidence
16 from which Petitioner's current defense team and forensic expert, Tami Loehrs, can review and
17 prove Skinner's innocence.

18 Due process requires the state to preserve material evidence. *Steese v. State*, 114 Nev.
19 479, 491, 960 P.2d 321, 329 (1998) (citing *State v. Hall*, 105 Nev. 7, 9, 768 P.2d 349, 350
20 (1989)). However, the Supreme Court has held that unless the defendant can show that the state
21 acted in bad faith in failing to preserve potentially useful evidence, it does not constitute a denial
22 of due process of the law. *See Arizona v. Youngblood*, 488 U.S. 51, 57-58, 109 S. Ct. 333, 102 L
23 Ed. 2d 281(1988) (finding that a bad faith requirement both limits the extent of the police's
24 obligation to preserve evidence to reasonable grounds and confines it to that class of cases where
25 the interests of justice most clearly require it). The State admits that someone at the District
26 Attorney's office signed off on having the evidence in question destroyed. However, there is no
27 indication that the District attorney's office in any way acted in bad faith in allowing its
28 destruction.

1 Moreover, the destruction of evidence occurred *after* the Defendant was convicted. As
2 the State points out, the “mere failure to preserve evidence which could have been subjected to
3 tests which might have exonerated the defendant does not constitute a due process violation. *U.S.*
4 *v. Hernandez*, 109 F.3d 1450, 1455 (9th Cir. 1997). The case cited to by the State was a pre-trial
5 related issue. Petitioner is requesting post-conviction relief. Thus, since Skinner is requesting
6 relief for something that the Ninth Circuit has held is not warranted *even* in a pre-trial setting, the
7 Court finds it even more compelling that there is no due process violation in Petitioner’s case.

8 Moreover, it would be an undue burden to place on the state to keep every piece of
9 evidence from every person who may conceivably argue for post-conviction relief. There is no
10 authority from which the Court can glean that places a requirement on the State to preserve
11 evidence in post-conviction cases such as Skinner’s.

12 Therefore, this Court finds that the State was within its right to destroy the evidence.
13 Thus, Ground One of Petitioner’s *Supplemental Petition* is **DENIED**.

14 ***17. Supplemental Petition: Ground Two, Defense Counsel Promising Probation.***

15 In his *Supplemental Petition*, Skinner argues that Mr. Frey was ineffective because he
16 allegedly promised Skinner that he would only receive probation, and Skinner believed that
17 probation only was “pretty much a done deal.” EHT 92:17. This belief was in part, based on the
18 fact that Skinner was purportedly a first time offender with no criminal history. EHT 97:5-7.
19 This decision was also based on a report corroborating the police’s accounts and seemingly
20 solidifying the case against Petitioner. Thus, Skinner opines that, because of Mr. Frey’s factually
21 incorrect probation assertion, Skinner’s plea was involuntary as he was making a decision
22 without fully understanding the consequences of the plea. Moreover, this plea was entered
23 involuntary as a product of medical duress.

24 Skinner’s claims are patently belied by the record. *See Hargrove v. State*, 100 Nev. at
25 503, 686 P.2d at 225 (finding that a defendant is not even entitled to a post-conviction hearing
26 when the factual allegations are belied or repelled by the record)). In the evidentiary hearing,
27 Skinner admitted that while Mr. Frey may have been “pretty convincing,” Mr. Frey had never
28 actually *guaranteed* that Skinner would receive probation. EHT 116-117. In fact, this Court

1 counts multiple times in which Mr. Frey adamantly denied that he never promised Skinner
2 probation in his testimony. Mr. Frey had been worry about Judge Hardy's sentencing decision as
3 "Judge Hardy at that moment in time was cautious to remind everyone about his sentencing
4 discretion, so I (Mr. Frey) was in kind cautious about reminding my client that sentencing is
5 really up to the judge's discretion, *especially* in this courtroom." EHT 157:5-7 (*emphasis added*).
6 Mr. Frey testified that Skinner "absolutely" understood sentencing to be solely at the judge's
7 discretion. EHT 171:3-5. Further, Mr. Frey "absolutely did not" given an indication that Skinner
8 was assured to get probation as that was "not something he would have done." EHT 170:17-18,
9 185:11.¹⁴

10 Moreover, the argument for probation was undermined after Mr. Frey was notified by the
11 Division of Parole and Probation that Skinner's two year old daughter was found to have a
12 sexually transmitted disease possibly given to her by Skinner. EHT 170. Adding to this difficulty
13 were reports disclosed to Mr. Frey indicating that Skinner had been investigated by Australia's
14 federal authorities for sex tourism in Asia, a place Skinner visited. EHT 126: 21-24.

15 The sentencing court's own comments are also dispositive with Skinner's contentions
16 being belied by the plea canvas. At arraignment, the Court ensured Skinner that he was "looking
17 at *either* probation or life in prison with parole eligibility after five years." AT 9:21-22 (*emphasis*
18 *added*). The Court then asked Petitioner if "anybody had promised [him] anything, or threatened
19 [him] in any way to obtain [his] plea" to which Skinner responded "no." AT 8:18-20. The Court
20 told Skinner that, despite the State and Skinner coming to a plea agreement, the Court was in no
21 way bound by such an agreement, and the "sentencing decision is mine [the courts]" to which
22 Skinner responded "I understand." APT 7-8. Words do not get clearer than this. By so
23 answering, Skinner was both denying, under oath, that Mr. Frey had ever *promised* him
24 probation and he also understood he (Petitioner) may not even receive probation. Thus, Skinner's
25 contention that Mr. Frey had promised probation is unfounded.

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27
28 ¹⁴ Mr. Frey additionally testified that he "absolutely did not" ever suggest that it was almost a
hundred percent likely or extraordinarily likely that Skinner would receive probation. EHT
170:17-22.

1 The *Guilty Plea Memorandum*, filed on May 27, 2014, also provides additional support in
2 contravention of Skinner's contention. The *Memorandum* itself contained language placing
3 Skinner on notice of what he could be sentenced to. More specifically, the signed *Memorandum*
4 specifically denotes that "a consequence of his guilty plea are that [he] may be imprisoned for a
5 *period for life with 5* to the Parole Board... and that I am *not eligible for probation unless a*
6 *psychosexual evaluation is completed...* certifying that [he] does not represent a high risk to
7 reoffend..." See *Guilty Plea Memorandum*, p. 3 ¶ 6. Thus, even if Mr. Frey had somehow
8 promised probation, the *Memorandum* itself contains specific and certain language that Skinner
9 was unlikely to receive *solely* probation.

10 Since sentencing is ultimately at the Court's discretion, and Skinner was fully informed
11 of this, the *Memorandum* plainly contradicting Skinner's assertions, and this Court finds Mr.
12 Frey's contentions adamantly denying a promise of probation, this Court finds that Mr. Frey's
13 conduct neither fell below an objective standard of reasonableness nor prejudiced Skinner at any
14 time.

15 Additionally, to the extent that this ground claims Skinner's guilty plea was not entered
16 voluntary due to medical duress, this claim has already been addressed at length above, the Court
17 defers to this analysis and incorporates it therein. Thus, this portion of Ground One of the
18 *Supplemental Petition* will not be addressed again.

19 Therefore, on this claim, Skinner's *Petition* is **DENIED**.

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CONCLUSION

Based on the foregoing, the Court finds there is no factual or legal basis to any of Petitioner's claims. Additionally, the law requires that Petitioner show ineffective assistance of counsel by preponderance of the evidence. The burden has not been met on either prong of *Strickland*. Accordingly, Skinner's *Petition for Writ of Habeas Corpus* is **DENIED**. This Order resolves all claims raised in both *Petitions* and is considered final.

IT IS SO ORDERED.

DATED this 9th day of October, 2019.


BARRY L. BRESLOW
District Judge

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 9 day of October, 2019, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:



Judicial Assistant

Return Of NEF

Recipients	
JENNIFER NOBLE, ESQ.	- Notification received on 2019-10-09 14:34:55.925.
JOHN PETTY, ESQ.	- Notification received on 2019-10-09 14:34:55.566.
DIV. OF PAROLE & PROBATION	- Notification received on 2019-10-09 14:34:55.55.
CHRISTOPHER FREY, ESQ.	- Notification received on 2019-10-09 14:34:55.519.
EDWARD REED, ESQ.	- Notification received on 2019-10-09 14:34:55.628.
CHRISTINE BRADY, ESQ.	- Notification received on 2019-10-09 14:34:55.597.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

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A filing has been submitted to the court RE: CR14-0644

Judge:

HONORABLE BARRY L. BRESLOW

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10-09-2019:14:34:13

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. RODERICK STEPHEN SKINNER
(D8)

Document(s) Submitted:

Ord Denying

Filed By:

Judicial Asst. LWatts-Vial

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If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

EDWARD TORRANCE REED, ESQ. for
RODERICK STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK
STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK
STEPHEN SKINNER

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

V5. 877

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

V5. 877

CODE 2540

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

RODERICK STEPHAN SKINNER,

Plaintiff,

Case No: CR14-0644

vs.

Dept. No: 8

STATE OF NEVADA,

Defendant.

_____ /

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on October 9, 2019, the Court entered a decision or order in this matter, a true and correct copy of which is attached hereto.

You may appeal to the Supreme Court from the decision or Order of the Court. If you wish to appeal, you must file a Notice of Appeal with the Clerk of this Court within thirty-three (33) days after the date this notice is mailed to you.

Dated October 9, 2019.

JACQUELINE BRYANT

Clerk of the Court

/s/N. Mason

N. Mason-Deputy Clerk

CERTIFICATE OF SERVICE

Case No. CR14-0644

Pursuant to NRCP 5 (b), I certify that I am an employee of the Second Judicial District Court; that on October 9, 2019, I electronically filed the Notice of Entry of Order with the Court System which will send a notice of electronic filing to the following:

DIV. OF PAROLE & PROBATION

EDWARD TORRANCE REED, ESQ. for RODERICK STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK STEPHEN SKINNER

JOHN REESE PETTY, ESQ. for RODERICK STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK STEPHEN SKINNER

JENNIFER P. NOBLE, ESQ. for STATE OF NEVADA

I further certify that on October 9, 2019, I deposited in the Washoe County mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true copy of the attached document, addressed to:

Attorney General's Office
100 N. Carson Street
Carson City, NV 89701-4717

Roderick S. Skinner (#1126964)
NNCC
P. O. Box 7000
Carson City, NV 89702

The undersigned does hereby affirm that pursuant to NRS 239B.030 and NRS 603A.040, the preceding document does not contain the personal information of any person.

Dated October 9, 2019.

/s/N. Mason
N. Mason- Deputy Clerk

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

RODERICK STEPHAN SKINNER,

Petitioner,

Case No. CR14-0644

v.

Dept. No. 8

ISIDRO BACA, WARDEN OF NNCC,
AND NEVADA ATTORNEY GENERAL,

Respondents.

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

Before the Court is a *Petition for Writ of Habeas Corpus (Post-Conviction)*, timely filed October 7, 2016, by RODERICK STEPHAN SKINNER ("Skinner" or "Petitioner"), Defendant in this matter. Respondents, THE STATE OF NEVADA, opposed the request for habeas relief in its *Answer to Amended Petition for Writ of Habeas Corpus (Post-Conviction)*, filed November 22, 2016. A *Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)* was subsequently filed on January 12, 2018 by Petitioner's counsel Edward T. Reed, Esq. The State filed an *Answer to Supplemental Petition for Writ of Habeas Corpus* on February 26, 2018. Both parties subsequently submitted pre-hearing briefs in September 2019. The matter proceeded to an evidentiary hearing on September 26, 2019.

1 Having reviewed the Petition, the accompanying briefs, the arguments of counsel, and
2 being fully apprised of the issues therein, the Court **DENIES** the *Petition*. The Court sets forth
3 the following reasons for this denial.

4 BACKGROUND

5 Based on the testimony presented at the evidentiary hearing, the parties' pre-hearing
6 briefings, and other documentary evidence submitted, the Court is aware of the following facts:

7 According to the record, Skinner was charged with several offenses in two different
8 cases, stemming from the same event. In CR13-1601, Skinner was charged with Open and Gross
9 Lewdness arising out of an incident that took place in Skinner's apartment. It was alleged that
10 with other children present, Skinner was viewing pornography on his computer while
11 simultaneously masturbating with his two-year-old daughter on his lap. A search warrant for
12 Skinner's computer was subsequently authorized by Sparks Justice Court. An execution of the
13 warrant produced Skinner's computer, multiple hard drives, and disclosed child pornography.
14 See Exhibit 25, Police Report of Sgt. Carry, p. 2. Reno Justice Court subsequently authorized a
15 second search warrant in which Washoe County Sheriff's Office forensic analyst Dennis Carry
16 examined the computer. Sgt. Carry found, among other things, that there was file sharing and
17 encryption software on the computer as well as dates indicating that Skinner was the user of the
18 computer at the time the pornography was being viewed.

19 The findings of the forensic analysis resulted in Skinner being charged with twenty
20 felony counts of Promotion of a Sexual Performance of a Minor Age 13 or Younger and
21 Possession of Visual Pornography of a Person Under the Age of 16 Years.¹ Each Promotion
22 charge alone carried a sentence of life in prison with the possibility of parole in ten years and
23 each Possession charge carried a possible punishment of one to six years in prison.

24 Christopher Frey ("Frey") was appointed Skinner's counsel.² Pursuant to plea
25 negotiations with the State, Skinner agreed to plead guilty to one count of Promotion of a Sexual

26 ¹ More specifically, per the State's Brief, there were ten counts of *Promotion of a Sexual*
27 *Performance of a Minor*, and ten counts of *Possession of Visual Pornography*.

28 ² The Court notes that Mr. Frey, formerly a Washoe County Public Defender, is now a Federal
Public Defender.

1 Performance of a Minor over 14 in exchange for all other charges being dropped and the Open
2 and Gross Lewdness charge in CR13-1601 being dismissed. Skinner subsequently signed a
3 *Guilty Plea Memorandum* ("Memorandum"), fully acknowledging his plea. At that time, Skinner
4 was canvassed by presiding Judge David Hardy and placed under oath, acknowledging his guilty
5 plea, and was fully informed that he may or may not receive probation as Judge Hardy had the
6 discretion to choose whether to follow the plea agreement. Skinner also acknowledged the
7 accuracy of the *Memorandum* and Judge Hardy accepted Skinner's guilty plea as being knowing
8 and voluntary.

9 Weeks later, during a three-phase sentencing, Frey presented a lengthy Sentencing
10 Memorandum in mitigation, which was "400 pages." See *Sentencing Proceeding Transcript* p.
11 4. During the hearings, Mr. Frey presented three witnesses on behalf of Skinner, and in which the
12 Court was also apprised of additional evidence.³ This evidence included testimony from the
13 Division of Parole and Probation that Skinner's young daughter Sophie was diagnosed with
14 genital warts, allegedly obtained through sexual abuse. Furthermore, Queensland Police
15 Department had also investigated Skinner for his travel plans to Thailand for engaging in child-
16 sex tourism. In addition, Skinner purportedly had plans to have built a more secure computer for
17 the purpose of storing child pornography. See *State's Brief*, p.5. Moreover, Skinner was found to
18 meet the criteria for pedophilic sexual orientation and with unmonitored access to the internet, all
19 child pornography victims remained at risk. Upon conclusion of the sentencing hearings, Judge
20 Hardy sentenced Skinner to life with the possibility of parole after five years.

21 On direct appeal, Skinner was represented by Chief Deputy Public Defender for the
22 Appellate Division John Petty ("Petty"). Petty argued that Skinner's sentencing was an abuse of
23 discretion and he should have received probation. The direct appeal was denied and the Nevada
24 Court of Appeals affirmed the Judgment of Conviction on July 14, 2015.

25 Skinner now submits his *Petition for Writ of Habeas Corpus and Supplemental Petition*
26 alleging seventeen separate grounds for relief. In summary, Skinner's *Petition* asserts multiple

27 ³ The Court notes that Mr. Frey's representation also included procuring a witness to travel all
28 the way from Australia, as well as setting up a live feed with Skinner's oldest daughter in
Australia.

1 ineffective assistance of counsel claims on the part of Washoe County Public Defenders Frye and
2 Petty as well as destruction of evidence claims. The Court now addresses each of these claims in
3 turn and finds the following.

4 STANDARD OF REVIEW

5 I. Post-Conviction Petition for Writ of Habeas Corpus.

6 "Any person convicted of a crime and under sentence of death or imprisonment who
7 claims that the conviction was obtained, or that the sentence was imposed, in violation of the
8 Constitution of the United States or the Constitution or laws of this State . . ." may file a post-
9 conviction petition for writ of habeas corpus. NRS 34.724(1). A defendant seeking post-
10 conviction relief must support claims with specific factual allegations that if true would entitle
11 him to relief. *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (per curiam). In
12 cases where the conviction was obtained through a plea of guilty, a petition for writ of habeas
13 corpus is limited to claims that the plea was "involuntarily or unknowingly entered or that the
14 plea was entered without effective assistance of counsel." NRS 34.810(1)(a).

15 II. Ineffective Assistance of Trial and Appellate Counsel.

16 The Sixth Amendment guarantees individuals in criminal cases the right to counsel to
17 protect their fundamental right to a fair trial. This right includes the right to effective assistance
18 of counsel.

19 The district court reviews whether a person has received the effective assistance of
20 counsel under *Strickland v. Washington*. See *Strickland v. Washington*, 466 U.S. 668, 686-87
21 (1984); *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996). *Strickland* sets out a
22 two prong test for assessing whether there was effective assistance of counsel. First, the Court
23 must determine whether counsel's performance was deficient such that it fell below an objective
24 standard of reasonableness. *Kirksey*, 112 Nev. at 988, 923 P.2d at 1107 (citing *Dawson v. State*,
25 108 Nev. 112, 115, 825 P.2d 593, 595 (1992)). This prong takes into account the proper measure
26 of an attorney's performance under prevailing professional norms and the totality of the
27 circumstances. *Strickland*, 466 U.S. at 688; *Homick v. State* 112 Nev. 304, 310, 913 P.2d 1280,
28 1285 (1996). Second, the deficient performance must have prejudiced the defense. *Id.* Prejudice

1 is demonstrated when there is a reasonable probability that, but for counsel's errors, the result of
 2 the proceeding would have been different. *Kirksey*, 112 Nev. at 988, 923 P.2d at 1107. A
 3 reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id.*

4 Petitioner is required to prove disputed factual allegations underlying his ineffective
 5 assistance of counsel claim by a preponderance of the evidence. *Means v. State*, 120 Nev. 1001
 6 1013, 103 P.3d 25, 33 (2004) ("choosing consistency with federal authority, we now hold that a
 7 habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-
 8 assistance claim by a preponderance of evidence."). Whether this burden of proof has been
 9 shown is found by assessing whether both elements of *Strickland* have been met. *See Kirksey*,
 10 112 Nev. at 988, 923 P.2d at 1107 ("a court may consider the two elements in any order and need
 11 not consider both prongs if the defendant makes an insufficient showing on either one"). Where
 12 an insufficient showing on either element has been made, the claim must be denied. *Id.*

13 FINDINGS OF FACT AND CONCLUSIONS OF LAW

14 *1. Ground One: Failure of Counsel to Challenge Lack of Corpus Delicti.*

15 In *Ground One* for relief, Skinner alleges that the prosecutor knowingly lacked corpus
 16 delicti in indicting him.⁴ Petitioner claims, this "lack of corpus delicti" is exhibited by there
 17 being no evidence of "download by means of file sharing software" upon which Skinner could
 18 have been indicted. He contends that his counsel, Mr. Frey, was ineffective for failing to
 19 challenge the sufficiency of evidence upon this ground. Thus, Skinner maintains he was
 20 deprived of both his due process rights and his right to effective assistance of counsel as
 21 guaranteed by the Constitution.

22 The showing of a corpus delicti is a threshold question; one that the State has the burden
 23 of proving and that the State has met in this case. The standard for proving corpus delicti is the
 24 same standard required to bind a defendant for trial. *See Sheriff, Washoe County v. Middleton*,
 25 112 Nev. 956, 961, 921 P.2d 282, 286 (1996); *See also Frutiger v. State*, 111 Nev. 1385, 1389,
 26 907 P.2d 158, 160 (1995) (finding that "before a person can be held for trial, the grand jury must

27
 28 ⁴ The Court also now clarifies that contrary to Skinner's *Petition*, Petitioner was not indicted. Rather, an *Information* was filed by the State.

1 determine that there is probable cause to believe that an offense (otherwise known as corpus
2 delicti) has been committed, and the defendant has committed it"); *Middleton, supra*, 112 Nev. at
3 961, 921 P.2d at 286 ("we now clarify that at the preliminary hearing stage, the State's burden
4 with respect to the corpus delict is the same as its burden to show probable cause, [they] must
5 present evidence supporting a "reasonable inference"). Corpus delicti may be established by the
6 State solely with circumstantial evidence. *See generally West v. State*, 119 Nev. 410, 418, 75
7 P.3d 808, 813 (2003) (finding that for murder convictions, the State may establish corpus delicti
8 solely with circumstantial evidence, notwithstanding the lack of a body or actual cause of death).
9 Indeed, when it comes to the preliminary hearing stage, "probable cause to bind a defendant over
10 for trial may be based on slight, [or] even marginal evidence because it does not involve a
11 determination of guilt or innocence of the accused." *Middleton, supra*, 112 Nev. at 961, 921 P.2d
12 at 286 (quoting *Sheriff, Washoe County v. Hodex*, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980)).

13 First, the Court notes that Skinner's argument is filled with vague assertions, but no
14 specific contentions as to how the State failed to show corpus delicti or what exactly the failure
15 of proof was for the file sharing software. Second, to the extent the Court is able to comprehend
16 Skinner's argument, it is readily belied by the record. Petitioner originally faced multiple charges
17 in CR13-1601 and CR14-0644. CR13-1601 contained one charge. CR14-0644 had twenty
18 counts, and the Court refers to the Background above for the specific allegations.

19 Second, testimony presented at the Evidentiary Hearing produced considerable evidence
20 of guilt. Specifically, not only did the State's forensic expert, Sergeant Carry, find pornography
21 and evidence of file sharing software and encryption on Skinner's computer, but Petitioner's own
22 defense expert, Leon Mare, was able to corroborate the State's findings.⁵ The evidentiary
23 hearing also revealed that there were eyewitnesses to some of Skinner's charges.⁶ These facts
24 certainly weigh heavily in there being more than enough evidence for a probable cause finding.

25
26 ⁵ For example, Exhibit 25 of the *Petition* states that "child pornography has already been
27 recovered on the computer and evidence at this time indicates Skinner's use of the computer
during those time periods..."

28 ⁶ Notably, eyewitnesses are alleged to have seen pornography-related images on Skinner's own
laptop and per the search warrant transcripts, Skinner told the eyewitnesses what he was viewing.

1 Aside from that fact, pursuant to a plea deal reached by both parties, CR13-1601 was
2 dismissed and the State agreed it would pursue the single charge alleged in the *Information*. It
3 was further stipulated that the State would not file any additional charges resulting from the
4 arrest. Arraignment Proceedings Transcripts (APT) 4:9-14. During arraignment, Judge David
5 Hardy read the single account alleged in the indictment that included a statement that there were
6 "over 50 images or videos of underage children..." See APT 7:8-15; See also *Criminal*
7 *Information*. Both parties stipulated to a factual basis for the allegation alleged in the
8 *Information*, and after a plea canvas, Skinner pled guilty. There was never a point during
9 proceedings or otherwise that would have lent itself to Petitioner's theory that the State had a
10 lack of corpus delicti. If anything, the State had more than sufficient evidence to charge Skinner
11 with all twenty-one counts initially alleged. Thus, Petitioner's contention is unfounded.

12 The Court also determines that there is no basis to Skinner's contention that Mr. Frey was
13 ineffective in failing to challenge the sufficiency of the evidence on the charge. Rather, as
14 discussed above, Skinner had multiple charges pending against him at the time. Mr. Frey used
15 his experience as a Public Defender to negotiate Skinner's multiple life sentences down to a
16 single count, as noted above. Mr. Frey's conduct is the essence of effective assistance of counsel.
17 On this ground, there is very clearly no indication that Mr. Frey's representation came close to
18 falling below the "prevailing professional norms" or objective standards of reasonableness.
19 Moreover, this Court is not persuaded that on Ground One, but for counsel's errors the result of
20 the proceeding would have been different, as the Court is unable to glean any error in Mr. Frey's
21 representation.

22 Ultimately, with regard to *Ground One*, Skinner's *Petition* is both unsupported and belied
23 by the record and is accordingly **DENIED**.

24 **2. *Ground Two: Failure of Counsel to Challenge NRS 200.720.***

25 In the *Second Ground* for relief, Skinner avers that his counsel was ineffective for failing
26 to challenge a perceived misapplication of NRS 200.720, and this application was in direct
27 contravention of legislative intent. Skinner argues the statute is overbroad and the terms defined
28 therein are not applicable to him. More specifically, Petitioner contends the term promote means

1 procure under NRS 200.700 and he has "not procured anything." See *Petition*. It appears as
2 though the Petitioner is not challenging that he was charged, but rather, *which statute* he was
3 charged under. If anything, Skinner seemingly contends he should have been prosecuted under a
4 different statute.

5 First, the Court finds no merit to Skinner's contention that essentially, NRS 200.720 is
6 inapplicable to him. While Skinner is correct in his assessment that legislative intent is a factor in
7 statutory interpretation, the plain meaning rule prevails. See *State v. Lucero*, 127 Nev. 92, 95,
8 249 P.3d 1226, 1228 (2011) (citing *Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957,
9 959 (1983)). That is, it is well established that when "the language of a statute is plain and
10 unambiguous, and its meaning clear and unmistakable, there is no room for construction and the
11 courts are not permitted to search for its meaning beyond the statute itself." *Nelson v. Heer*, 123
12 Nev. 217, 224, 163 P.3d 420, 425 (2007) (quoting *State v. Jepsen*, 123 Nev. 217, 196, 209 P.501,
13 502 (1922)). It is only when the statute is capable of being understood in two or more senses by
14 reasonably informed persons or that the statute is ambiguous that the Court may then look
15 beyond the statute in determining legislative intent. *Lucero, supra*, 127 Nev. at 95-96, 249 P.3d
16 at 1228. Moreover, considering and giving effect to the statute's plain meaning is "the best
17 indicator" of the Legislature's intent. *Dezzani v. Kern & Assocs.*, 412 P.3d 56, 59 (Nev. 2018).

18 The Court finds that the statute is neither vague nor ambiguous and the plain meaning of
19 the statute must be applied. As a result, the State properly prosecuted Skinner under this statute.
20 Additionally, this Court is inclined to agree with the State, that Petitioner has provided no
21 argument as to *how* the statute is vague nor how it is *not* subject to the plain meaning rule.

22 Secondly, this Court notes that a district attorney is vested with considerable discretion in
23 deciding whether to prosecute a particular defendant and necessarily involves a degree of
24 selectivity. *Salaiscooper v. Eighth Judicial Dist. Court ex rel. County of Clark*, 117 Nev. 892,
25 903 34 P.3d 509 (2001); See also *State v. Barman*, 183 Wis.2d 180, 515 N.W.2d 493, 497
26 (Cl.App.1994) (reasoning that the prosecuting attorney has great latitude in determining *which of*
27 *several related crimes* to file against a defendant, thus this discretion involves a degree of
28

1 selectivity).⁷ The Supreme Court has likewise recognized that the prosecution is the one vested
 2 with the authority to choose *which charge* to bring against a defendant. See *U.S. v. Armstrong*,
 3 517 U.S. 456, 464 116 S. Ct. 1480, 1486, 134 L. Ed. 2d 687 (1996) (quoting *Bordenkircher v.*
 4 *Hayes*, 434 U.S. 357, 364, 98 S.Ct. 663, 668, 54 L.Ed.2d 604 (1978)) (finding that “so long as
 5 the prosecutor has probable cause to believe that the accused committed an offense defined by
 6 statute, the decision whether or not to prosecute and what charge to file or bring before a grand
 7 jury generally rests *entirely in his discretion*”). (*Emphasis added*). Thus, it is the prosecution
 8 alone which has the ultimate decision which statute to prosecute a defendant under, not the
 9 defendant.

10 Furthermore, there has been no evidence presented that, with respect to the ineffective
 11 counsel argument, Mr. Frey acted ineffectively or in a way that prejudiced Skinner. Rather, Mr.
 12 Frey’s choice not to challenge the charge was a strategic decision. See *Means, supra*, 120 Nev. at
 13 1011, 103 P.3d at 33 (“the defendant must overcome the presumption that, under the
 14 circumstances, the challenged action might be considered sound trial strategy”).

15 Thus, based on the aforementioned findings, this Court finds that *Ground Two* of the
 16 Petition is **DENIED**.

17 **3. Ground Three: Disparate Treatment.**

18 In his third ground, Skinner contends that he was subject to disparate treatment.
 19 Specifically, Skinner seemingly argues that other similarly situated defendants, i. e., other child
 20 pornography offenders, have been prosecuted differently. That is, they were not prosecuted
 21 under NRS 200.720 as Skinner was in the present case.

22 The Court finds no merit in Skinner’s contention. In particular, Petitioner fails to provide
 23 concrete examples of other “similarly situated” pornography offenders who have been not been
 24 subject to such prosecution. Rather, Skinner’s claims consists of merely “bare or “naked” claims,
 25 unsupported by any *specific* factual allegations that if true would “entitle him to relief.”
 26 *Hargrove, supra*, 100 Nev. at 502, 686 P.2d at 225 (1984). With an argument devoid of facts to
 27 support such a contention, Petitioner’s argument cannot stand.

28 _____
⁷ This case is not cited for any binding effect, simply for explanation of its analysis.

1 Therefore, because Petitioner advances allegations lacking facts and arguments from
2 which the Court can glean a purpose, nor valid grounds for making such a claim, Petitioner's
3 claims have no basis. Thus, the Court **DENIES** Skinner's *Petition* on Ground Three.

4 ***4. Ground Four: Failure of Counsel to Challenge Validity of Search Warrant.***

5 In his Fourth Ground, Skinner alleges that the affidavit was deliberately false, contained
6 material misrepresentations, and was made in bad faith. In addition, the affidavit itself was not
7 sufficiently particular. Petitioner contends that that his counsel was ineffective because Mr. Frey
8 failed to challenge the validity of the search warrant on this basis. Moreover, Skinner opines that
9 Mr. Frey knew Skinner was under medical duress at the time of plea negotiations and also failed
10 to adequately investigate the case.

11 First and foremost, this Court recognizes that Skinner's argument is belied by both Mr.
12 Frey's testimony specifically, and the record as a whole. At the time of his representation, Mr.
13 Frey was a seasoned public defender with experience in filing motions to suppress based upon
14 the validity of search warrants. However, in Skinner's case, Mr. Frey reviewed the affidavits
15 supporting the search warrant, the search warrants themselves, and police reports. Evidentiary
16 Hearing Transcript (EHT) 155. In reviewing all pertinent information, Mr. Frey was "unable to
17 glean" any information that would raise a "meritorious" Fourth Amendment challenge. EHT
18 155:22-24. Hence this Court finds that Mr. Frey's decision to not challenge the validity of the
19 search warrant was a strategic one, not one that in any way supports an ineffectiveness claim. *See*
20 *Means, supra*, 120 Nev. at 1011, 103 P.3d at 33.

21 Moreover, this Court finds that Mr. Frey was acting in accordance with the rules of
22 professional responsibility governing all Nevada attorneys. Nevada Rules of Professional
23 Conduct provide in pertinent part that:

24 "a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein,
25 unless there is a basis in law and fact for doing so *that is not frivolous, which includes a*
26 *good faith argument* for an extension, modification or reversal of existing law. A lawyer
27 for the defendant in a criminal proceeding or the respondent in a proceeding that could
28 result in incarceration, may nevertheless so defend the proceeding as to require that every
element of the case be established."

1 See N.R.P.C. 3.1 (*emphasis added*). Mr. Frey testified that he found no “meritorious” Fourth
2 Amendment challenge. Were Mr. Frey to have filed such a Motion, knowing it was frivolous, it
3 could have placed him at risk of violating professional standards.

4 With respect to Skinner’s medical duress portion of this claim as well as his notion that
5 Mr. Frey failed to adequately investigate, the Court addresses it *infra*, as part of the voluntariness
6 of the plea agreement and Ground Eleven and thus incorporates those analyses into Ground Four.

7 Ultimately, there is nothing in the record to suggest that, as it pertains to Ground Four,
8 Mr. Frey’s representation was anything but effective in defending Skinner. Because Skinner’s
9 contention is belied by the record and is in direct contravention of Mr. Frey’s testimony, the
10 claim is **DENIED**.

11 **5. Ground Four (A): Search Warrant Timing.**

12 Petitioner also contends that his apartment was searched eight minutes before the time
13 reported in the search warrant affidavit. More specifically, Skinner contends that the search
14 warrant was authorized at 10:08 p.m.; however, the police commenced their search at about
15 10:00 p.m., eight minutes before the search warrant was authorized.

16 The Court finds that Skinner’s assertion is not a meritorious claim for relief. Pursuant to
17 NRS 34.720, a post-conviction petition for a writ of habeas corpus is available to address two
18 types of claims: (1) requests for relief from a judgment of conviction or sentence in a criminal
19 case and (2) challenges to the computation of time that the petitioner has served pursuant to a
20 judgment of conviction.” *McConnell v. State*, 125 Nev. 243, 247, 212 P.3d 307, 310 (2009)
21 (internal citations omitted). This means that the scope of a post-conviction habeas relief must
22 challenge the validity of the conviction or sentence. *See Id.*, 125 Nev. at 310, 212 P.3d at 310
23 (reasoning that “a claim that is cognizable in a post-conviction habeas petition must challenge
24 the validity of the conviction or sentence”). Petitioner is making a claim based upon neither of
25 these contentions as he is challenging the *timing* listed in a search warrant. If anything, this is a
26 pre-trial motion which, as this Court has previously addressed, Mr. Frey did not find any
27 “meritorious Fourth Amendment challenge.” Thus, this is not a proper basis for post-conviction
28 relief.

1 Therefore, the Court **DENIES** this claim.

2 **6. *Five: Petitioner's Length of Detention.***

3 Petitioner alleges that prior to having his apartment searched, he was detained longer than
4 sixty minutes before being arrested and was not permitted to re-enter the apartment in the
5 meantime.

6 Petitioner is not seemingly challenging either his sentencing or validity of conviction. *See*
7 *NRS 34.720*; *See also McConnell v. State*, 125 Nev. at 247, 212 P.3d at 311. Rather, Petitioner
8 argues what amounts to a pre-trial motion. This Court has previously addressed pre-trial issues
9 and refers to the abovementioned analysis.

10 Therefore, the Court **DENIES** the Petition as to Ground Five.

11 **7. *Ground Six: Additional Unlawful Detention Claim.***

12 In ground six of his Petition, Skinner reiterates the same claims as were addressed in
13 Ground Five. He additionally adds that counsel was ineffective in failing to challenge the search
14 warrant upon these grounds. The State contends that this argument is simply an extension of
15 Ground Five and is repeating the same arguments. The Court agrees with the State that these
16 arguments are already alleged in Ground Five.

17 Therefore, Ground Six of Skinner's Petition is **DENIED**.

18 **8. *Ground Seven: Failure of Counsel to Suppress Search Warrant.***

19 In his Seventh Ground for relief Petitioner argues that the warrant authorizing a search of
20 his computer was generalized. Skinner contends that since the search warrant was "unbounded"
21 it violates legal requirements on probable cause, namely that of the particularity requirement. In
22 addition, Petitioner opines that counsel was "clearly ineffective" for not filing a Motion to
23 Suppress the search warrant on these grounds.

24 The Court finds that Petitioner's allegations are belied by the record. First, a search
25 warrant is required to state with particularity the places to be searched or the persons or items to
26 be seized. *Keesee v. State*, 110 Nev. 997, 1001, 879 P.2d 63, 66-67, *citing* the Fourth
27 Amendment and Nev. Const. art I, § 18. In this case, the *Search Warrant* stated exactly this.
28 There was specific evidence set forth that show probable cause for the allegations relating to

1 CR13-1601. Specifically, the search warrant very clearly states the places or things to be
2 searched: a Toshiba laptop, a black Hitachi External Hard drive, a blue Seagate External hard
3 drive, a Samsung hard drive, and two Buffalo hard drives all found at Petitioner's residence. *See*
4 Exhibit 21A of *Petition*, pp. 1-2. The evidence for which officers were looking to seize included
5 the following: evidence corroborating sexual abuse of the victim such as pornography disclosed
6 during the interview, internet searches and website visits involving child abuse, and indicia and
7 timeline event history revealing the suspect's activities. Thus, there is no merit to Skinner's
8 contention that the search warrant was generalized.

9 In addition, the search warrant was also supported by the affidavit of Detective Michel
10 Brown ("Brown"). The affidavit was both informative and described at length the basis for
11 which Det. Brown was requesting a search warrant of the computer and hard drives. First, as an
12 experience detective, Brown had training that computers maintain evidence of web site visits,
13 caches, internet files and search terms, all of which may reveal a user's activity on the internet
14 such as what they googled. *See Affidavit of Det. Brown*, p. 2. Second, the affidavit included
15 details of the initial investigation into Skinner after a child witness informed her mother, and
16 subsequently police, of the inappropriate conduct Skinner displayed while in the presence of the
17 child witness as well as another child and Skinner's own daughter. In pertinent part, it states that
18 Skinner was watching pornography on his computer and masturbating while in the same room as
19 the children. The affidavit further alleged that Skinner went so far as to show the child witness
20 the pornography images he was viewing on the computer in question.⁸ Moreover, Brown
21 described the amount of data that may be stored in the hard drives as "enormous." Thus, a search
22 warrant that is specifically looking into the computer and hard drive's contents along with other
23 pertinent information is corroborated by the record. Therefore, Skinner's allegation that there
24 was no probable cause is wholly without merit.

25 Additionally, Skinner's argument that counsel failed to suppress the search warrant is
26 unfounded. Since the Court has already discussed at length in *Ground Four* why Mr. Frey's
27

28 ⁸ More specifically, the child witness described the images that Skinner showed her on his
computer as "nasty videos."

1 actions were the epitome of effective assistance of counsel and neither fell below the objective
2 standards of reasonableness nor were any error that could have "prejudiced the defense" the
3 Court incorporates the abovementioned grounds into Ground Seven and declines to address it
4 again.

5 Therefore, the Court finds that Petitioner's claims are unsupported by the record and
6 **DENIES** the *Petition* as to Ground Seven.

7 **9. Ground Eight: Involuntary Guilty Plea and Failure of Counsel to Adequately Explain**
8 **the Charges.**

9 In his Ground Eight for relief, Skinner contends that his guilty plea was not entered
10 knowingly, voluntarily or intelligently because it was uninformed. He argues that Mr. Frey failed
11 to adequately explain the essential elements of the crime charged. Conversely, had Skinner been
12 explained the elements of his crimes, he would have insisted on going to trial and not taken a
13 plea agreement. Furthermore, Skinner contends that because he was a foreign national he was
14 especially unable to know the nature of the charges being levied against him.

15 "A defendant who pleads guilty upon the advice of counsel may attack the validity of the
16 guilty plea by showing that he received ineffective assistance of counsel under the Sixth
17 Amendment." *Molina v. State*, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004) *citing Hill v.*
18 *Lockart*, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985) (holding that *Strickland's* two-
19 part test applies to challenges of guilty pleas based on ineffective assistance of counsel).
20 However, guilty pleas are presumptively valid, especially when entered on advice of counsel,
21 and a defendant has a heavy burden to show the district court that he did not enter his plea
22 knowingly, intelligently or voluntarily. *Id.* In determining the validity of a guilty plea, the district
23 court must look to the totality of the circumstances. *State v. Freese*, 116 Nev. 1097, 1105, 13
24 P.3d 442, 48 (2000) (finding that "this court will not invalidate a plea as long as the totality of
25 the circumstances, as shown by the record, demonstrates that the plea was knowingly and
26 voluntarily made and that the defendant understood the nature of the offenses and the
27 consequences of the plea").
28

1 The Court finds that the Skinner's contention is wholly belied by the record for a myriad
2 of reasons.

3 **A. Petitioner Entered His Plea Knowingly and Voluntarily Because He Was A**
4 **Sophisticated Party.**

5 First, Skinner is not an unsophisticated party. Prior to his detour to the United States,
6 Skinner had previously served in law enforcement for eight years. More specifically, he was a
7 police officer for the Australian Federal Police for two and a half years and later, Queensland
8 State Police Officer for five and a half years. EHT 100:18-23. Skinner then served an additional
9 twelve months after his car accident and subsequently, two years as an academy driving
10 instructor for the same police department. Defendant further testified that his employment was
11 similar to that of the Nevada Highway Patrol in the form of traffic enforcement and safety,
12 including understanding how to identify drunk drivers.

13 Moreover, as a consequence of his profession, Skinner's job occasionally resulted in
14 contested arrests, meaning, he would have to appear in court. EHT 103:20-22. While Skinner
15 stated he had not been trained on *how* to testify, he admitted that he *had in fact* testified in court
16 "a couple of times." EHT 103:17-20. Petitioner had likely more dealings than the average
17 person to know the interworking of the criminal justice system, albeit an Australian one. It is
18 difficult for this Court to understand how Petitioner now claims he did not comprehend the
19 elements of the charges against him when he was at the very least familiar with criminal justice
20 matters in general. Therefore, Skinner's statements are contradicted by the record.

21 **B. Petitioner's Statements to His Counsel Show That The Guilty Plea Was**
22 **Entered Into Voluntarily.**

23 In Mr. Frey's lengthy evidentiary hearing testimony, he sated that Skinner did not
24 maintain his innocence throughout Mr. Frey's representation nor did Mr. Frey "drag him
25 [Skinner] kicking and screaming to the table and coerce him into a plea to the extent that is the
26 suggestion from Petitioner's counsel." EHT 165:15-17. To the contrary, Skinner made comments
27 to Mr. Frey suggesting that to some degree he knew he was guilty. See EHT 165:18-20. As Mr.
28 Frey puts it, this included "the evidence begin[ing] to compile... and it appeared as if Mr.
Skinner was able to process the fact that perhaps there was evidence here sufficient to convict

1 him. And his degree of acceptance of responsibility changed." EHT 165:3-9. Moreover, Mr.
2 Frey's assessment of Skinner before entering his plea of guilty was that:

3 "Mr. Skinner was completely lucid. He understood the terms and examines of the plea
4 agreement. He *understood the charge*. He *understood the elements*. He *understood the*
5 *facts*. I had no qualms about proceeding to an entry of plea with Mr. Skinner endorsing
6 that as the next step in the representation whatsoever. He did not protest. He did not
7 indicate a lack of understanding. He *endorsed the plea*. He took responsibility for the
8 conduct memorialized in the guilty-plea memorandum. There were no tears. There was
9 no hesitation much. There was no reluctance. There was no non-verbal cues that indicates
10 that he had second thoughts. This was a *joint decision* over the course of a number of
11 weeks....I had zero qualms about proceeding to the entry of plea in this case."

12 EHT 166-67 (*emphasis added*). Thus, this was not the case of a defendant being ill-informed by
13 his counsel, as Petitioner alleges. Rather, Skinner had a number of days in which to contemplate
14 the charge and was fully and thoroughly explained by counsel all pertinent details as it relates to
15 the plea agreement and charges alleged against him.

16 As a result, as to Petitioner's contention that counsel's conduct falls below the objective
17 standards of reasonableness, this suggestion is not supported. Moreover, Mr. Frey's conduct as it
18 relates to the voluntariness of the plea agreement did not prejudice Skinner. The Court finds that
19 Mr. Frey thoroughly and adequately explained to Skinner the elements of the charges and
20 repercussions a guilty plea brings with it. Therefore, as to the portion of Ground Seven alleging
21 Mr. Frey was ineffective, Skinner's Petition is **DENIED**.

22 **C. Petitioner's Own Words Indicate He Understood His Plea.**

23 While Skinner contends that he did not understand the charges against him, Petitioner's
24 own words tell a different story. In a statement to the Division of Parole and Probation, in
25 pertinent part, Skinner stated that he "betrayed the values of the community." EHT 127-128. In
26 addition, during sentencing, Petitioner told Judge David Hardy that he was "ripe for it." EHT
27 130-131.⁹ To the Court, these comments are a very clear indication that he understood the
28 elements of the charges against him. In addition, at one point in time Petitioner was actually

⁹ The Court acknowledges Skinner's contention at the evidentiary hearing that he did not mean "ripe" but rather "right" for the crime. In either case, the Court understands either of these two words to mean that he was knowledgeable of what he had done and the crimes with which he was being charged.

1 remorseful for his actions. Thus, all indications of Skinner's conduct show this Court that he *did*
2 know the charges entered against him and his plea was done knowingly, voluntarily and
3 intelligently.

4 **D. Petitioner's Guilty Plea Was Given After a Full Canvas.**

5 Skinner's own statements to the Court during the plea canvas are also telling. The Court
6 finds that Skinner's responses give a distinct picture as to the voluntariness of his guilty plea.
7 First, Judge Hardy placed Defendant under oath. Thus this Court can infer that any statements
8 Skinner made to the judge were accurate and truthful.¹⁰ Second, after swearing under oath to do
9 so, Skinner stated to the Court that the decision to plea was his, and his alone. *See Arraignment*
10 *Transcript (APT)*, p. 5. He was informed that no one could force him to plead guilty. He was
11 informed that he could go to trial and force the State to prove each element of the crime charged,
12 Defendant declined to do so. The State read Skinner the details of the charge against him. *Id.*, at
13 7. In response to the Court asking Skinner whether he understood the elements that Mr. Bogale
14 had just read, Skinner responded "Yes Your Honor." *Id.*, 7:22. When asked whether Skinner did
15 what he was accused of doing, Mr. Frey stated that they were stipulating to a factual basis of the
16 charge, to which Skinner told the court he understood and agreed and thus conceded that he was
17 guilty. *Id.*, 8:21-24. Judge Hardy subsequently found that Skinner understood both the nature of
18 the charge and its consequences. *Id.*, 9:16-17.

19 Furthermore, this Court finds that the Petitioner cannot, credibly, on one hand testify
20 *while under oath*, that he fully knew the charges against him, and was entering a knowingly,
21 voluntarily, and intelligent plea, yet on the other hand, claim that those statements are no longer
22 accurate and he never understood the elements of the charge.

23 Based on the abovementioned findings, the Court finds that there are no basis to
24 Petitioner's argument and the Court **DENIES** the Petition on Ground Eight.

25
26
27 ¹⁰ The Court notes that the alternative (which Skinner now seemingly alleges) namely that the
28 statements were involuntarily and not knowingly, would be evidence that Skinner perjured
himself when he told Judge Hardy he was going to tell the truth, the whole truth, and nothing but
the truth.

1 **10. Ground Nine: Failure of Counsel In Engaging in Plea Negotiations While Under**
 2 **Medical Duress.**

3 In his ninth ground for relief, Petitioner opines that his plea was not entered into
 4 knowingly, voluntarily, or intelligently as he was suffering from serious medical duress. As a
 5 result, Skinner contends that his medical duress overbore his will to make decisions effecting his
 6 freedom. More specifically, Skinner argues he suffers from debilitating phantom limb and nerve
 7 pain, he has Chron's disease, neck cancer, and other material medical issues.¹¹ Thus, Skinner
 8 argues that due to these issues, Petitioner was entitled to adequate medical care, and effective
 9 treatment of his pain. Moreover, Skinner claims that Mr. Frey was constitutionally ineffective in
 10 "failing to safeguard petitioner's best interest and not engaging in plea negotiations." See
 11 *Petition*, Ground Nine.

12 The Court acknowledges that Skinner has a myriad of medical issues and gives that due
 13 weight in its decision; however, the Court finds the following. First, Skinner's accident was in
 14 the 1980s, nearly thirty years before the events occurring in the present case. EHT 102:10-11.
 15 Second, while Skinner may have experienced ongoing medical problems during his stay with the
 16 Washoe County Jail, the issues he presents this Court with were several months before he ever
 17 entered his plea. Third, while at the Washoe County jail, Petitioner filed several claims with the
 18 state. However, those claims never included one for medical duress. More specifically in the
 19 evidentiary hearing, the Court notes the following:

20 Ms. Noble: "Did you ever file a grievance related to your claims of
 21 mistreatment in the Washoe County Jail?"

22 Skinner: Well, all that had mistreatment and everything which led up to the
 23 intentional rupture happened after about 30 days. And then, after I
 24 have gone to the hospital and come back, I put in a couple of
 25 grievances about *six months later*, about *unrelated things*.

26 Ms. Noble: So you put in grievances, but not about that?

27 Skinner: No."

28 ¹¹ Other material medical issues include: abnormal blood chemistry, liver issues, and
 inflammation over numerous part of his body all of which he alleges he did not receive timely
 treatment for.

1 Fourth this court notes Mr. Frey's testimony about the plea. In relevant part, Mr. Frey
2 stated that, as previously noted, Skinner was "completely lucid" he understood everything, he did
3 not have hesitation or reluctance in entering his plea, but rather, he "endorsed the plea." ¹² EHT
4 167. Additionally, when asked by Mrs. Noble whether Skinner had ever communicated to Mr.
5 Frey that he was only pleading guilty because he was afraid he was going to die in the Washoe
6 County Jail and was innocent, Mr. Frey answered with a resounding "no."

7 Moreover, when asked whether Skinner ever actually told Mr. Frey about his pain,
8 Skinner replied "he knew." But as this Court have previously found, even if Mr. Frey "knew," it
9 is clear from Mr. Frey's testimony and the record that this in no way impacted Skinner's ability
10 to enter a plea. Rather, there is a very clear indication to the court that Skinner was never under
11 so much medical duress that he was unable to make an informed, voluntary and intelligent
12 decision. EHT 168.

13 This Court also considers the action of the plea canvas itself. Skinner was asked multiple
14 questions about his plea. Judge Hardy ensured that Skinner was not just pleading because he was
15 told to, that he was making an informed decision, and that this was a decision that he agreed to.
16 No one forced him to make such a decision, and Petitioner indicated as much to the Court.

17 Therefore, based on the above-mentioned findings, as to Ground Nine of the Petition, the
18 Court **DENIES** Skinner's Petition.

19 ***11. Ground Ten: Skinner Himself Did Not Plead Guilty.***

20 In his tenth ground for relief, Petitioner states that he did not plead guilty in the plea
21 canvas, rather, it was Mr. Frey who pled for him. Specifically, Skinner contends that when asked
22 whether he was pleading guilty, Skinner states that he hesitated because he was not sure if he
23 was in fact guilty. At that point, Mr. Frey jumped in and pled guilty for him. Additionally,
24 Skinner opines that he was not "enthusiastic" about pleading guilty as was evidenced by "Judge
25 Hardy engaging in a series of conclusory questions." See Ground 10 of *Petition*.

26 It is evident from the record that the plea was given by Skinner. According to
27 Arraignment Transcripts, Skinner said that it was his decision to plead, his and his alone. APT 5.

28 ¹² The Court has already noted the specific statements of Mr. Frey in previous analysis.

1 He understood no one was forcing him to plea. Thereafter, the record clearly indicates that the
2 *Defendant, not his lawyer*, stated "I enter a plea of guilty Your Honor." APT 8:16. Thereafter,
3 Skinner was asked more than once if he was entering the plea, understood it, and agreed. APT 9.
4 No evidence before the Court suggests that Skinner faltered when giving the plea, asked to
5 change the plea he had just entered, or that his lawyer was giving the plea. Rather, it was only
6 *after* Defendant had stated that he was pleading guilty that Mr. Frey stated that they were
7 stipulating to a factual basis for the charge.

8 A reading of the record at no time evinces that Mr. Frey ever stated that he was entering a
9 plea of guilty on his client's behalf or as Petitioner puts it "stepped in and interjected we plead
10 guilty to the facts." Rather, as Mr. Frey testified, Skinner "accepted responsibility for the
11 conduct that was memorialized within the guilty plea memorandum," there was no hesitation or
12 reluctance, no "nonverbal cues indicating second thoughts." In addition, counsel testified that he
13 did not "coerce him into a plea." Therefore, Petitioner's claims are belied by the record.

14 This Court also notes that the "series of questions" Judge Hardy posed to Skinner, and
15 which Petitioner now contends are evidence of his assertions, are nothing more than a plea
16 canvas conducted regularly on any defendant entering a plea.

17 Therefore, the Court finds that as to Ground Ten, Skinner's Petition is **DENIED**.

18 ***12. Ground Eleven: Failure to Investigate, Interview, and Pursue Available Witnesses.***

19 Petitioner claims that his counsel's performance was below the range of competency
20 required of attorneys in criminal cases. In particular, he avers that Mr. Frey failed to: pursue
21 available defenses, interview witnesses, investigate witness tampering, and commission an
22 expert defense report. Additionally, Skinner claims that Mr. Frey also failed to impeach
23 witnesses during sentencing.

24 Petitioner's claims are noticeably belied by the record, and his argument fails on multiple
25 grounds. First, there was a very clear effort to investigate the case. During the evidentiary
26 hearing, Skinner placed the blame for pornography images on the fact that he had purchased his
27 computer from EBay, there were multiple users of the laptop, and the owner of the apartment he
28 was staying at, Joseph Chipetto had unfettered access to the apartment. The clear inference was

1 that Skinner was claiming it was not him who was viewing the pornography images, but rather
2 Mr. Chipetto. In his testimony, Mr. Frey stated that he did in fact interview Mr. Chipetto. Mr.
3 Frey went through "a number of things that [they] thought were pertinent to the case." However,
4 Mr. Frey found that "the interview did not impact the way that we defended the case."
5 Additionally, even though Mr. Frey may have been aware of Mr. Chipetto's unrestricted access
6 to the apartment, he "did not specifically recall that as a defense strategy that they had
7 entertained... if it was entertained, it was for a brief moment." EHT 160. Moreover, as Mr. Frey
8 pointed out, even though Mr. Chipetto owned the apartment, Frey had clear forensics from the
9 computer which "clearly indicated to [Mr. Frey]... and [his] assessment to a jury would have
10 been that it would have indicated that the user of the computer was Roderic Skinner." EHT
11 160:13:20.

12 This was not the only investigation that Mr. Frey did. Rather, Mr. Frey stated that just
13 some of his investigation included subpoenaing school records of the two young girls who made
14 the initial police report, serving subpoenas on the Washoe County Sherriff's Office, and
15 procuring their own defense expert, Leon Mare, to investigate the hard drive of the computer just
16 as the State's own expert had done. This included viewing multiple spreadsheets that built upon
17 each other, and this Court has previously noted, indicated that the findings corroborated the Sgt.
18 Carry's findings.

19 Moreover, Mr. Frey did extensive work on a sentencing memorandum. In fact, the
20 memorandum was so comprehensive that the State requested time to more fully review it as it
21 was nearly "400 pages" long. Aside from that, part of Mr. Frey's sentencing defense was to
22 arrange from multiple witnesses to be available to testify. This included coordinating for an out
23 of country witness to appear in person, a phone call for Courtney Skinner to testify from
24 Brisbane, as well as other witnesses. As Mr. Frey put it, "we fought our heart out for Mr.
25 Skinner."

26 As a result, on Ground Eleven, there is no evidence to suggest that his counsel's
27 performance was deficient or that Skinner was prejudiced.

28

1 Therefore, this Court finds that Mr. Frey's conduct did not fall below the objective
2 standard of reasonableness and Skinner's *Petition* is **DENIED**.

3 **13. Ground Twelve: Failure of Appellate Counsel to Federalize Claims.**

4 With regard to Skinner's claim that his appellate counsel was ineffective, the two-
5 pronged *Strickland* standard applies to appellate counsel, but with emphasis on the presumption
6 that counsel acted in the interest of best strategy. To state a claim of ineffective assistance of
7 appellate counsel, a petitioner must demonstrate that counsel's performance was (1) deficient in
8 that it fell below an objective standard of reasonableness, and (2) the resulting prejudice [was]
9 such that the omitted issue would have had a reasonable probability of success on appeal.

10 *Kirksey, supra*, 112 Nev. at 998, 923 P.2d at 1113-14.

11 Skinner contends that Mr. Petty failed to federalize claims and that Mr. Petty's abuse of
12 discretion argument was neither *the* claim to be raised nor the only claim to be raised on direct
13 appeal.¹³ However, appellate counsel is not required to raise every non-frivolous issue on appeal.
14 *McConnell v. State*, 125 Nev. 243, 253, 212 P.3d 307, 314 (2009) (citing *Jones v. Barnes*, 463
15 U.S. 745, 751, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983)). Rather, appellate counsel is "*most*
16 *effective* when every conceivable issue is *not* raised on appeal. See *McConnell, supra*, 125 Nev.
17 at 253, 212 P.3d at 314 (citing *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989))
18 (*emphasis added*).

19 Moreover, the Supreme Court recognizes that appellate practice bears "natural
20 limitations" which encourage certain forms of brevity or particularity. *Johnson v. State*, 133 Nev.
21 571, 575, 402 P.3d 1273, 1273 (citing *Knox v. United States*, 400 F.3d 519, 521 (7th Cir. 2005))
22 ("Lawyers must curtail the number of issues they present, not only because appellate briefs are
23 limited in length but also because the more issues a brief presents the less attention each
24 receives, and thin presentation may submerge or forfeit a point." (internal brackets omitted)).
25 Accordingly, appellate counsel is not *per se* ineffective for omitting a claim for the purposes of
26 promoting claims with a higher likelihood of success. *Id.* at 1274 (citing *Jones*, 463 U.S. at 751—

27 ¹³ See EHT 127:16-20, Skinner stating that "this abuse of discretion ground that he went with,
28 that the judge has abused his discretion in sentencing, was not even an issue really that should
have been raised on appeal, and other things should have been raised on appeal."

1 52 (1983) ("Experienced advocates since time beyond memory have emphasized the importance
2 of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or
3 at most on a few key issues.").

4 This Court first notes that Mr. Petty is a seasoned appellate attorney for the Washoe
5 County Public Defender's Office with nearly forty years of experience and found his testimony
6 credible. Second, just as he testified, Mr. Petty drew upon his decades of experience and
7 hundreds of appellate briefs filed over the years to know which claims to raise in Petitioner's
8 case. EHT 143:12-13. In Skinner's case, Mr. Petty testified that because certain pre-trial motions
9 had not been reserved under statute, the appealable issues were limited to solely sentencing
10 issues. EHT 147. A reading of the record clearly evinced that there were no other appealable
11 issues, other than the abovementioned abuse of discretion issue. In addition, while Mr. Petty
12 acknowledged that Skinner had hoped more claims would be raised, namely that of effective
13 assistance of counsel claim, Skinner's suggested claim is prohibited from being raised on direct
14 appeal. Also, there was nothing else in Skinner's multiple letters to Mr. Petty that would be
15 permitted to raise upon direct appeal.

16 Moreover, Mr. Petty testified that "had there been something that was brought to [his]
17 attention that might have attraction on appeal, [he] would have used it." EHT 149:18-20. The
18 fact that Mr. Petty did not raise any other issues on direct appeal, suggests that "there was
19 nothing there" that would have been a proper basis for appeal. See EHT at 149:18-21.

20 Based on the abovementioned findings, Mr. Petty's conduct could not have prejudiced
21 Skinner. Mr. Petty did not "omit any issues" which would have had a reasonable probability of
22 success on appeal because there were none. Thus, this court finds that not only did Skinner not
23 suffer any prejudice based on Mr. Petty's conduct, his conduct was also not conduct that fell
24 below the "objective standards of reasonableness."

25 Thus, due to this Court finding no basis in a finding of deficient counsel or prejudicial
26 performance, as Skinner alleges, this Court **DENIES** Petitioner's claim.

27 ///

28 ///

1 **14. Ground Thirteen: Defense Counsel's Misleading Claims on Forensic Report.**

2 In his thirteenth ground for relief, petitioner alleges that Mr. Frey was ineffective because
3 he told Skinner that a defense forensic report of the computer in question existed when it did not.
4 More specifically, the report was alleged to have corroborated the State's allegations, and was in
5 part, one of the reasons compelling Petitioner to accept the plea deal. However, Skinner alleges
6 neither he, nor his Australian attorneys, were ever shown the report and was thus "kept in the
7 dark" as to the evidence brought against him. Thus, as a result of not being permitted to review
8 the report, his rights to such evidence were violated and Skinner was coerced by Mr. Frey into
9 taking the plea deal.

10 The Court has already noted above its findings that Skinner entered his plea knowingly,
11 voluntarily, and intelligently. As to this point, the Court refers to the analysis above, incorporates
12 it into the present ground, and declines to reiterate the same analysis again.

13 As to Petitioner's argument that he was misled as to the forensic report, the record belies
14 Skinner's contention. The Court notes Mr. Frey admitted there was no *written* forensic report of
15 the computer the State analyzed. However, Mr. Frey qualified his answer with reasons as to why.

16 As Mr. Frey testified, his own forensic analyst, Leon Mare, performed the exact same
17 tests as the State's analyst Sgt. Carry. This included Mr. Mare performing his own independent
18 examination of the forensic information, repeating the steps Sgt. Carry had done, EHT 162:17-
19 22. Mr. Mare verified and corroborated Sgt. Carry's findings that the evidence was not
20 exculpatory but inculpatory. EHT 164:4-6. Specifically, the reports were cumulative, building
21 off each other, and were all associated with child pornography. This means that the evidence was
22 not of such a nature as would have reflected favorably upon Petitioner, but rather negatively.
23 Moreover, as a result of such adverse findings, it was Mr. Mare's assessment that Skinner should
24 "jump on" the plea deal the State was offering. EHT 163:3-6.

25 Furthermore, Mr. Frey purposefully did not make a written forensic report. EHT 167:15-
26 16. In his testimony Mr. Frey indicated that this was because the "findings were adverse." His
27 statement was qualified with the following:

28

1 *if the findings were adverse, had they proceeded to trial, and used that expert, it [the
2 defense's report of adverse findings] could have been exposed in discovery, subjected to
3 damaging impeachment, and would have only I think, corroborated the State's case,
4 when obviously the job of defending a case is to do quite the opposite.

5 EHT 167:18-24. Thus, even though a written report was never prepared, a report of Mr. Mare's
6 findings was in fact *relayed* to Mr. Frey that it was not in the best interests of Skinner to have
7 such a written report made.

8 It is therefore, this Court's finding that Mr. Frey's failure to give Skinner a written report
9 was neither a failure nor an oversight in his representation of Petitioner. Rather, Mr. Frey did not
10 have a written report made so as to *protect* his client and ensure damaging information was not
11 brought to light by the defense's own experts. Mr. Frey's conduct as to the forensic report did
12 not fall below the objective standards of reasonableness. Nor did Mr. Frey make any errors that
13 would have prejudiced Mr. Skinner. The Court finds Mr. Frey acted as effective counsel and
14 there is no merit to Petitioner's claims.

15 Therefore, because Petitioner's arguments are belied by the record, the Court **DENIES**
16 Skinner's *Petition* as to Ground Thirteen.

17 **15. *Ground Fourteen: Ineffective Counsel in CR13-1601.***

18 In his fourteenth ground for relief, Petitioner alleges errors were committed in another
19 matter, CR13-1601, and as a result, this affected the outcome off the current case. In particular,
20 Skinner claims that a child witness's testimony was manipulated and thus tainted. Had there not
21 been such taint, Skinner contends that there would not have been a search and seizure of his
22 computer containing pornographic images. Thus, since Mr. Frey did not seek to suppress this
23 testimony, Skinner was deprived of his due process rights and Mr. Frey's conduct constituted
24 ineffective assistance of counsel.

25 The Court is unclear what effect the proceedings in CR13-1601 have on the current case
26 as Petitioner's arguments add nothing to the Court's analysis. Petitioner's case in CR13-1601
27 was dismissed pursuant to a global resolution plea deal. It would be of no benefit for Petitioner to
28 litigate claims in an already dismissed case, especially considering the case dismissal was to
Skinner's benefit.

1 Additionally, the Court finds that Mr. Frey's conduct in CR13-1601 was neither
2 ineffective nor prejudicial to Petitioner. Petitioner had two different yet related cases. Both cases
3 carried serious consequences with them. Skinner was facing nearly twenty-one counts, nearly
4 half of which carried ten to life sentences, on each count. *See State's Brief*, p.3. Mr. Frey used his
5 expertise as a skilled negotiator to bargain the State down to charging Skinner with only a single
6 count of Lewdness with a Minor. As a result, this Court finds that Mr. Frey both acted in
7 Petitioner's best interests and made a strategic decision to negotiate a plea deal in both of
8 Skinner's cases.

9 Therefore, the Court finds that as to Ground Fourteen, there is no basis to Petitioner's
10 claims and **DENIES** the *Petition*.

11 ***16. Supplemental Petition: Ground One, Failure to Preserve Evidences***

12 In Ground One for his *Supplemental Petition*, Petitioner alleges that the State failed to
13 preserve evidence relating to the child pornography charges and file sharing information. He
14 contends that the Washoe County District Attorney's office destroyed said evidence contained on
15 the hard drive of Skinner's computer and thus now, on post-conviction writ, there is no evidence
16 from which Petitioner's current defense team and forensic expert, Tami Loehrs, can review and
17 prove Skinner's innocence.

18 Due process requires the state to preserve material evidence. *Steese v. State*, 114 Nev.
19 479, 491, 960 P.2d 321, 329 (1998) (citing *State v. Hall*, 105 Nev. 7, 9, 768 P.2d 349, 350
20 (1989)). However, the Supreme Court has held that unless the defendant can show that the state
21 acted in bad faith in failing to preserve potentially useful evidence, it does not constitute a denial
22 of due process of the law. *See Arizona v. Youngblood*, 488 U.S. 51, 57-58, 109 S. Ct. 333, 102 L
23 Ed. 2d 281(1988) (finding that a bad faith requirement both limits the extent of the police's
24 obligation to preserve evidence to reasonable grounds and confines it to that class of cases where
25 the interests of justice most clearly require it). The State admits that someone at the District
26 Attorney's office signed off on having the evidence in question destroyed. However, there is no
27 indication that the District attorney's office in any way acted in bad faith in allowing its
28 destruction.

1 Moreover, the destruction of evidence occurred *after* the Defendant was convicted. As
2 the State points out, the “mere failure to preserve evidence which could have been subjected to
3 tests which might have exonerated the defendant does not constitute a due process violation. *U.S.*
4 *v. Hernandez*, 109 F.3d 1450, 1455 (9th Cir. 1997). The case cited to by the State was a pre-trial
5 related issue. Petitioner is requesting post-conviction relief. Thus, since Skinner is requesting
6 relief for something that the Ninth Circuit has held is not warranted *even* in a pre-trial setting, the
7 Court finds it even more compelling that there is no due process violation in Petitioner’s case.

8 Moreover, it would be an undue burden to place on the state to keep every piece of
9 evidence from every person who may conceivably argue for post-conviction relief. There is no
10 authority from which the Court can glean that places a requirement on the State to preserve
11 evidence in post-conviction cases such as Skinner’s.

12 Therefore, this Court finds that the State was within its right to destroy the evidence.
13 Thus, Ground One of Petitioner’s *Supplemental Petition* is **DENIED**.

14 ***17. Supplemental Petition: Ground Two, Defense Counsel Promising Probation.***

15 In his *Supplemental Petition*, Skinner argues that Mr. Frey was ineffective because he
16 allegedly promised Skinner that he would only receive probation, and Skinner believed that
17 probation only was “pretty much a done deal.” EHT 92:17. This belief was in part, based on the
18 fact that Skinner was purportedly a first time offender with no criminal history. EHT 97:5-7.
19 This decision was also based on a report corroborating the police’s accounts and seemingly
20 solidifying the case against Petitioner. Thus, Skinner opines that, because of Mr. Frey’s factually
21 incorrect probation assertion, Skinner’s plea was involuntary as he was making a decision
22 without fully understanding the consequences of the plea. Moreover, this plea was entered
23 involuntary as a product of medical duress.

24 Skinner’s claims are patently belied by the record. *See Hargrove v. State*, 100 Nev. at
25 503, 686 P.2d at 225 (finding that a defendant is not even entitled to a post-conviction hearing
26 when the factual allegations are belied or repelled by the record)). In the evidentiary hearing,
27 Skinner admitted that while Mr. Frey may have been “pretty convincing,” Mr. Frey had never
28 actually *guaranteed* that Skinner would receive probation. EHT 116-117. In fact, this Court

1 counts multiple times in which Mr. Frey adamantly denied that he never promised Skinner
2 probation in his testimony. Mr. Frey had been worry about Judge Hardy's sentencing decision as
3 "Judge Hardy at that moment in time was cautious to remind everyone about his sentencing
4 discretion, so I (Mr. Frey) was in kind cautious about reminding my client that sentencing is
5 really up to the judge's discretion, *especially* in this courtroom." EHT 157:5-7 (*emphasis added*).
6 Mr. Frey testified that Skinner "absolutely" understood sentencing to be solely at the judge's
7 discretion. EHT 171:3-5. Further, Mr. Frey "absolutely did not" given an indication that Skinner
8 was assured to get probation as that was "not something he would have done." EHT 170:17-18,
9 185:11.¹⁴

10 Moreover, the argument for probation was undermined after Mr. Frey was notified by the
11 Division of Parole and Probation that Skinner's two year old daughter was found to have a
12 sexually transmitted disease possibly given to her by Skinner. EHT 170. Adding to this difficulty
13 were reports disclosed to Mr. Frey indicating that Skinner had been investigated by Australia's
14 federal authorities for sex tourism in Asia, a place Skinner visited. EHT 126: 21-24.

15 The sentencing court's own comments are also dispositive with Skinner's contentions
16 being belied by the plea canvas. At arraignment, the Court ensured Skinner that he was "looking
17 at *either* probation or life in prison with parole eligibility after five years." AT 9:21-22 (*emphasis*
18 *added*). The Court then asked Petitioner if "anybody had promised [him] anything, or threatened
19 [him] in any way to obtain [his] plea" to which Skinner responded "no." AT 8:18-20. The Court
20 told Skinner that, despite the State and Skinner coming to a plea agreement, the Court was in no
21 way bound by such an agreement, and the "sentencing decision is mine [the courts]" to which
22 Skinner responded "I understand." APT 7-8. Words do not get clearer than this. By so
23 answering, Skinner was both denying, under oath, that Mr. Frey had ever *promised* him
24 probation and he also understood he (Petitioner) may not even receive probation. Thus, Skinner's
25 contention that Mr. Frey had promised probation is unfounded.

26
27
28 ¹⁴ Mr. Frey additionally testified that he "absolutely did not" ever suggest that it was almost a
hundred percent likely or extraordinarily likely that Skinner would receive probation. EHT
170:17-22.

1 The *Guilty Plea Memorandum*, filed on May 27, 2014, also provides additional support in
2 contravention of Skinner's contention. The *Memorandum* itself contained language placing
3 Skinner on notice of what he could be sentenced to. More specifically, the signed *Memorandum*
4 specifically denotes that "a consequence of his guilty plea are that [he] may be imprisoned for a
5 *period for life with 5* to the Parole Board... and that I am *not eligible for probation unless a*
6 *psychosexual evaluation is completed...* certifying that [he] does not represent a high risk to
7 *reoffend...*" See *Guilty Plea Memorandum*, p. 3 ¶ 6. Thus, even if Mr. Frey had somehow
8 promised probation, the *Memorandum* itself contains specific and certain language that Skinner
9 was unlikely to receive *solely* probation.

10 Since sentencing is ultimately at the Court's discretion, and Skinner was fully informed
11 of this, the *Memorandum* plainly contradicting Skinner's assertions, and this Court finds Mr.
12 Frey's contentions adamantly denying a promise of probation, this Court finds that Mr. Frey's
13 conduct neither fell below an objective standard of reasonableness nor prejudiced Skinner at any
14 time.

15 Additionally, to the extent that this ground claims Skinner's guilty plea was not entered
16 voluntary due to medical duress, this claim has already been addressed at length above, the Court
17 defers to this analysis and incorporates it therein. Thus, this portion of Ground One of the
18 *Supplemental Petition* will not be addressed again.

19 Therefore, on this claim, Skinner's *Petition* is **DENIED**.

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CONCLUSION

Based on the foregoing, the Court finds there is no factual or legal basis to any of Petitioner's claims. Additionally, the law requires that Petitioner show ineffective assistance of counsel by preponderance of the evidence. The burden has not been met on either prong of *Strickland*. Accordingly, Skinner's *Petition for Writ of Habeas Corpus* is **DENIED**. This Order resolves all claims raised in both *Petitions* and is considered final.

IT IS SO ORDERED.

DATED this 9th day of October, 2019.


BARRY L. BRESLOW
District Judge

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 9 day of October, 2019, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:



Judicial Assistant

Return Of NEF

Recipients	
JENNIFER NOBLE, ESQ.	- Notification received on 2019-10-09 15:55:59.864.
JOHN PETTY, ESQ.	- Notification received on 2019-10-09 15:55:59.24.
DIV. OF PAROLE & PROBATION	- Notification received on 2019-10-09 15:55:59.209.
CHRISTOPHER FREY, ESQ.	- Notification received on 2019-10-09 15:55:59.178.
EDWARD REED, ESQ.	- Notification received on 2019-10-09 15:55:59.833.
CHRISTINE BRADY, ESQ.	- Notification received on 2019-10-09 15:55:59.537.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR14-0644

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

10-09-2019:15:54:48

Clerk Accepted:

10-09-2019:15:55:29

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. RODERICK STEPHEN SKINNER
(D8)

Document(s) Submitted:

Notice of Entry of Ord

Filed By:

Deputy Clerk NMason

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

EDWARD TORRANCE REED, ESQ. for
RODERICK STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK
STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK
STEPHEN SKINNER

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

V5. 913

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

V5. 913

Return Of NEF

Recipients	
JENNIFER NOBLE, ESQ.	- Notification received on 2019-10-21 11:43:26.335.
JOHN PETTY, ESQ.	- Notification received on 2019-10-21 11:43:24.01.
DIV. OF PAROLE & PROBATION	- Notification received on 2019-10-21 11:43:22.029.
CHRISTOPHER FREY, ESQ.	- Notification received on 2019-10-21 11:43:20.001.
EDWARD REED, ESQ.	- Notification received on 2019-10-21 11:43:26.303.
CHRISTINE BRADY, ESQ.	- Notification received on 2019-10-21 11:43:24.509.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR14-0644

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

10-21-2019:11:39:51

Clerk Accepted:

10-21-2019:11:42:20

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. RODERICK STEPHEN SKINNER
(D8)

Document(s) Submitted:

Ex-Parte Mtn

Filed By:

Edward Torrance Reed

You may review this filing by clicking on the following link to take you to your cases.

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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

EDWARD TORRANCE REED, ESQ. for
RODERICK STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK
STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK
STEPHEN SKINNER

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

V5. 916

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

V5. 916

CASE NO. CR14-0644

STATE VS. RODERICK STEPHEN SKINNER

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

09/26/2019
HONORABLE
BARRY L.
BRESLOW
DEPT. NO. 8
A. DeGayner
(Clerk)
I. Zihn
(Reporter)**PETITION FOR POST CONVICTION**

Petitioner was present, in custody, represented by Court Appointed Attorney Edward Torrance Reed.

Deputy District Attorney Jennifer Noble and Deputy District Attorney Kevin Naughton represented the Respondent.

10:32 a.m. – Court convened with Court, respective counsel and Petitioner present.

CAA Reed addressed the Court and submitted a Stipulation for Admission of Evidence with attached WCDA Evidence Release form to the Court for filing, executed by DDA Noble and CAA Reed. (Filed by the Court Clerk September 26, 2019).

CAA Reed advised the Court that witness Dennis Carry is not present today. CAA Reed advised the Court that Dennis Carry was served a subpoena in July of 2018 for the original hearing set for January 3, 2019 and Dennis Carry was subsequently notified of the hearing change to September 26, 2019 to which Dennis Carry replied that he was aware of the date and the date was acceptable. CAA Reed further advised the Court of attempts to contact Dennis Carry through his formal employer, the Washoe County Sheriff's Office, and further attempts through an investigator.

CAA Reed asked the Court to admit the November 5, 2018 deposition transcript of Dennis Carry in lieu of his appearance in Court.

DDA Noble stated no objection to publishing the deposition transcript of Dennis Carry and asked the Court to take note of the objections lodged by Joseph Plater, Esq. in the transcript.

COURT ORDERED: Request to publish the deposition transcript of Dennis Carry – GRANTED. The Court will consider the deposition and note the objections contained therein.

Deposition of Dennis Carry taken on November 05, 2018 – **OPENED AND PUBLISHED.**

CAA Reed provided the Court with a brief overview of what the Petitioner believes the evidence will show at this hearing.

DDA Noble provided the Court with a brief overview of what the State believes the evidence will show at this hearing.

CAA called **Tammy Loehrs** who was sworn and direct examined by CAA Reed; cross examination conducted by DDA Naughton; re-direct examination conducted by CAA Reed; re-cross examination conducted by DDA Naughton; witness thanked and excused. DDA Naughton **invoked** the rule of exclusion.

12:03 p.m. – Recess.

1:16 p.m. – Court reconvened with Court, respective counsel and Petitioner present.

CAA Reed called **Roderick Stephen Skinner** who was sworn and direct examined by CAA Reed; cross examination conducted by DDA Noble; re-direct examination conducted by CAA Reed; witness thanked and excused.

2:35 p.m. – Recess.

2:54 p.m. – Court reconvened with Court, respective counsel and Petitioner present.

CAA Reed advised the Court that he will not be calling any additional witnesses. CAA Reed advised the Court that the Petitioner will ask the Court to issue the writ and dismiss the charges against the Petitioner.

DDA Noble advised the Court of the effects if the Court grants the writ petition to include the judgment being set aside and the State's request for stay while appellate review is sought.

DDA Naughton called **John Petty, Esq.** who was sworn and direct examined by DDA Naughton; cross examination conducted by CAA Reed; witness thanked and excused.

DDA Noble called **Christopher Frey, Esq.** who was sworn, identified the Petitioner and direct examined by DDA Noble; cross examination conducted by CAA Reed; re-direct examination conducted by DDA Noble; witness thanked and excused.

3:51 p.m. – Recess.

3:58 p.m. – Court reconvened with Court, respective counsel and Petitioner present.

Counsel Reed argued in support of the Petition for Writ of Habeas Corpus to include that destruction of evidence warrants some kind of relief and this case should be dismissed. Counsel Reed argued that the habeas corpus should be granted, this matter should return to status prior to entry of plea and the conviction should be overturned.

Counsel Naughton argued that the Petition for Writ of Habeas Corpus and Supplemental Petition for Writ of Habeas Corpus should be denied in their entirety, due process was met in this case.

Counsel Reed argued further in support of granting the Petition.

COURT ORDERED: Petition for Writ of Habeas Corpus and Supplemental Petition for Writ of Habeas Corpus – UNDER SUBMISSION.

4:21 p.m. - Court stood in recess.

Petitioner remanded to the custody of NDOC.

Return Of NEF

Recipients	
JENNIFER NOBLE, ESQ.	- Notification received on 2019-10-21 14:28:16.127.
JOHN PETTY, ESQ.	- Notification received on 2019-10-21 14:28:15.519.
DIV. OF PAROLE & PROBATION	- Notification received on 2019-10-21 14:28:15.487.
CHRISTOPHER FREY, ESQ.	- Notification received on 2019-10-21 14:28:15.472.
EDWARD REED, ESQ.	- Notification received on 2019-10-21 14:28:15.971.
CHRISTINE BRADY, ESQ.	- Notification received on 2019-10-21 14:28:15.815.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR14-0644

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

10-21-2019:14:27:10

Clerk Accepted:

10-21-2019:14:27:44

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. RODERICK STEPHEN SKINNER
(D8)

Document(s) Submitted:

***Minutes

Filed By:

Court Clerk ADeGayne

You may review this filing by clicking on the following link to take you to your cases.

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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

EDWARD TORRANCE REED, ESQ. for
RODERICK STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK
STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK
STEPHEN SKINNER

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

V5. 921

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

V5. 921

1 EDWARD T. REED, ESQ.
2 EDWARD T. REED, PLLC
3 Nevada State Bar No. 1416
4 P.O. Box 34763
5 Reno, NV 89533-4763
6 (775) 996-0687
7 *ATTORNEY FOR PETITIONER*

8
9
10 **IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA**
11 **IN AND FOR THE COUNTY OF WASHOE**

12 RODERICK STEPHEN SKINNER,

13 Petitioner,

Case No. CR14-0644

14 vs.

Dept. No. 8

15 ISIDRO BACA, WARDEN, NORTHERN
16 NEVADA CORRECTIONAL CENTER.

17 Respondent.
18 _____ /

19 **NOTICE OF APPEAL**

20 NOTICE IS HEREBY GIVEN that Petitioner RODERICK STEPHEN
21 SKINNER hereby appeals to the Supreme Court of the State of Nevada from the Notice
22 of Entry of Order Denying Petition for Writ of Habeas Corpus, entered and served on
23 October 9, 2019.

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/ Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 4th day of November, 2019.

/s/Edward T. Reed
EDWARD T. REED, ESQ.
EDWARD T. REED, PLLC
Nevada State Bar No. 1416
P.O. Box 34763
Reno, NV 89533-4763
(775) 996-0687
Fax (775) 333-0201
ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

1 I hereby certify that I am an employee of Edward T. Reed, PLLC, counsel for
2 Petitioner, and that on this date I electronically filed the foregoing with the Clerk of
3 the Court by using the ECF system which will send a notice of electronic filing to the
4 following:

5
6 Jennifer Noble, Esq.
7 Washoe County District Attorney's Office

8 And that I mailed a true and correct copy via the USPS, first class postage pre-paid,

9 to:

10 Roderick Skinner #1126964
11 Northern Nevada Correctional Center
12 P.O. Box 7000
13 Carson City, NV 89702

14
15 DATED this 4th day of November, 2019.

16 /s/ Edward T. Reed
17 Edward T. Reed

1 EDWARD T. REED, ESQ.
2 EDWARD T. REED, PLLC
3 Nevada State Bar No. 1416
4 P.O. Box 34763
5 Reno, NV 89533-4763
6 (775) 996-0687
7 *ATTORNEY FOR PETITIONER*

8 **IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA**
9 **IN AND FOR THE COUNTY OF WASHOE**

10 RODERICK STEPHEN SKINNER,

11 Petitioner,

Case No. CR14-0644

12 vs.

Dept. No. 8

13
14 ISIDRO BACA, WARDEN, NORTHERN
15 NEVADA CORRECTIONAL CENTER.

16 Respondent.
17 _____/

18 **CASE APPEAL STATEMENT**

19 1. Name of appellant filing this case appeal statement: RODERICK STEPHEN
20 SKINNER, Petitioner/Appellant named above.

21 2. Identify the judge issuing the decision, judgment, or order appealed from: The
22 Honorable Barry Breslow, Second Judicial District Court, Washoe County, Department
23 8.

24 3. Identify each appellant and the name and address of counsel for each
25 appellant: RODERICK STEPHEN SKINNER, represented by Edward T. Reed, Esq.,
26 P.O. Box 34763, Reno, NV 89533-4763, (775) 996-0687.
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1 4. Identify each respondent and the name and address of appellant counsel, if
2 known, for each respondent. Respondent is ISIDRO BACA, WARDEN, NORTHERN
3 NEVADA CORRECTIONAL CENTER. Appellate counsel for Respondent is Jennifer
4 Noble, Washoe County District Attorney’s Office, Appellate Division, P.O. Box 11130,
5 Reno, NV 89520, (775) 328-3200.

6 5. Indicate whether any attorney identified above in response to question 3 or 4 is
7 not licensed to practice law in Nevada and, if so, whether the district court granted that
8 attorney permission to appear under SCR 42 (attach a copy of any district court order
9 granting such permission): None.

10 6. Indicate whether Petitioner/Appellant was represented by retained or appointed
11 counsel in the district court: Petitioner/Appellant was represented at the district court by
12 appointed counsel, Edward T. Reed, Esq.

13 7. Indicate whether Petitioner/Appellant is represented by retained or appointed
14 counsel on appeal: Petitioner/Appellant is currently represented on appeal by appointed
15 counsel, Edward T. Reed, Esq.

16 8. Indicate whether Petitioner/Appellant was granted leave to proceed in forma
17 pauperis, and the date of entry of the district court order granting such leave: The
18 Petitioner was granted leave to proceed in forma pauperis on July 15, 2016.

19 9. Indicate the date the proceedings commenced in the district court: The Petition
20 for Writ of Habeas Corpus was filed July 13, 2016. The Information in the underlying
21 case was originally filed May 2, 2014.

22 10. Provide a brief description of the nature of the action and result in the district
23 court, including the type of judgment or order being appealed and the relief granted by
24 the district court. The Petitioner entered a plea of guilty on May 27, 2014, to one count of
25 Promotion of a Sexual Performance of a Minor, Age 14 or Older, in violation of NRS
26 200.720 and NRS 200.750, a **Category A felony**, and was sentenced before the
27
28

1 Honorable David Hardy in Department 15, to a sentence of life, with the possibility of
2 parole after five years.

3 After a direct appeal in which the Court of Appeals affirmed the judgment of
4 conviction on July 14, 2015, in case number 66666, the Petitioner filed a petition for writ
5 of habeas corpus on July 13, 2016. On October 9, 2019, the district court entered an
6 order denying the petition for writ of habeas corpus.

7 11. Indicate whether the case has previously been the subject of an appeal to or
8 original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court
9 docket number of the prior proceeding: The Petitioner did appeal his conviction to the
10 Nevada Supreme Court, and the Nevada Court of Appeals issued an order on July 14,
11 2015, dismissing Petitioner’s appeal in Supreme Court docket numbers 66666, with the
12 case entitled: Roderick Skinner, Appellant, v. The State of Nevada, Respondent.

13 12. Indicate whether this appeal involves child custody or visitation: This case
14 does not involve child custody or visitation.

15 13. If this is a civil case, indicate whether this appeal involves the possibility of
16 settlement: N/A.

17 **Pursuant to NRS 239B.030**, the undersigned does hereby affirm that the
18 preceding document does not contain the social security number of any person.

19 DATED this 4th day of November, 2019.

21 /s/ Edward T. Reed
22 EDWARD T. REED, ESQ.
23 EDWARD T. REED, PLLC
24 Nevada State Bar No. 1416
25 P.O. Box 34763
26 Reno, NV 89533-4763
27 (775) 996-0687
28 Fax (775) 333-0201
Attorney for Petitioner/Appellant
RODERICK STEPHEN SKINNER

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Edward T. Reed, PLLC., appointed counsel for the above-named Petitioner/Appellant, and that on this date I electronically filed the foregoing with the Clerk of the Court using the ECF system which will send a notice of electronic filing to the following:

Jennifer Noble, Esq.
Washoe County District Attorney’s Office
Appellate Division

DATED this 4th day of November, 2019.

/s/ Edward T. Reed
Edward T. Reed

Return Of NEF

Recipients	
JENNIFER NOBLE, ESQ.	- Notification received on 2019-11-04 09:41:34.237.
JOHN PETTY, ESQ.	- Notification received on 2019-11-04 09:41:34.143.
DIV. OF PAROLE & PROBATION	- Notification received on 2019-11-04 09:41:34.127.
CHRISTOPHER FREY, ESQ.	- Notification received on 2019-11-04 09:41:34.096.
EDWARD REED, ESQ.	- Notification received on 2019-11-04 09:41:34.205.
CHRISTINE BRADY, ESQ.	- Notification received on 2019-11-04 09:41:34.174.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR14-0644

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

11-04-2019:09:40:33

Clerk Accepted:

11-04-2019:09:41:00

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. RODERICK STEPHEN SKINNER
(D8)

Document(s) Submitted:

Case Appeal Statement

Filed By:

Edward Torrance Reed

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

EDWARD TORRANCE REED, ESQ. for
RODERICK STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK
STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK
STEPHEN SKINNER

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

V5. 931

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

V5. 931

Return Of NEF

Recipients	
JENNIFER NOBLE, ESQ.	- Notification received on 2019-11-04 09:44:03.03.
JOHN PETTY, ESQ.	- Notification received on 2019-11-04 09:44:02.968.
DIV. OF PAROLE & PROBATION	- Notification received on 2019-11-04 09:44:02.952.
CHRISTOPHER FREY, ESQ.	- Notification received on 2019-11-04 09:44:02.921.
EDWARD REED, ESQ.	- Notification received on 2019-11-04 09:44:03.015.
CHRISTINE BRADY, ESQ.	- Notification received on 2019-11-04 09:44:02.999.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR14-0644

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

11-04-2019:09:38:09

Clerk Accepted:

11-04-2019:09:43:32

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. RODERICK STEPHEN SKINNER
(D8)

Document(s) Submitted:

Notice/Appeal Supreme Court

Filed By:

Edward Torrance Reed

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

EDWARD TORRANCE REED, ESQ. for
RODERICK STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK
STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK
STEPHEN SKINNER

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

V5. 934

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

V5. 934

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Code 1350

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

RODERICK STEPHAN SKINNER,

Case No. CR14-0644

Petitioner,

Dept. No. 8

vs.

ISIDRO BACA, WARDEN OF NNCC,
AND NEVADA ATTORNEY GENERAL,

Respondents.

/

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 4th day of November, 2019, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 4th day of November, 2019

Jacqueline Bryant
Clerk of the Court

By /s/ YViloria
YViloria
Deputy Clerk

Return Of NEF

Recipients	
JENNIFER NOBLE, ESQ.	- Notification received on 2019-11-04 10:21:17.995.
JOHN PETTY, ESQ.	- Notification received on 2019-11-04 10:21:17.933.
DIV. OF PAROLE & PROBATION	- Notification received on 2019-11-04 10:21:17.917.
CHRISTOPHER FREY, ESQ.	- Notification received on 2019-11-04 10:21:17.73.
EDWARD REED, ESQ.	- Notification received on 2019-11-04 10:21:17.98.
CHRISTINE BRADY, ESQ.	- Notification received on 2019-11-04 10:21:17.964.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR14-0644

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

11-04-2019:10:20:08

Clerk Accepted:

11-04-2019:10:20:48

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. RODERICK STEPHEN SKINNER
(D8)

Document(s) Submitted:

Certificate of Clerk

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

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The following people were served electronically:

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RODERICK STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK
STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK
STEPHEN SKINNER

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

V5. 938

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

V5. 938

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

RODERICK STEPHEN SKINNER,
Appellant,
vs.
ISIDRO BACA, WARDEN OF NNCC,
Respondent.

Supreme Court No. 79981
District Court Case No. CR140644

08

RECEIPT FOR DOCUMENTS

TO: Edward T. Reed
Washoe County District Attorney \ Jennifer P. Noble
Jacqueline Bryant, Washoe District Court Clerk

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

- 11/08/2019 Appeal Filing Fee waived. Criminal. (SC)
- 11/08/2019 Filed Notice of Appeal. Appeal docketed in the Supreme Court this day. (Docketing statement mailed to counsel for appellant.) (SC)

DATE: November 08, 2019

Elizabeth A. Brown, Clerk of Court
df

Return Of NEF

Recipients	
JENNIFER NOBLE, ESQ.	- Notification received on 2019-11-12 15:34:54.868.
JOHN PETTY, ESQ.	- Notification received on 2019-11-12 15:34:50.001.
DIV. OF PAROLE & PROBATION	- Notification received on 2019-11-12 15:34:48.222.
CHRISTOPHER FREY, ESQ.	- Notification received on 2019-11-12 15:34:45.726.
EDWARD REED, ESQ.	- Notification received on 2019-11-12 15:34:51.639.
CHRISTINE BRADY, ESQ.	- Notification received on 2019-11-12 15:34:50.812.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR14-0644

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

11-12-2019:15:32:10

Clerk Accepted:

11-12-2019:15:33:25

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. RODERICK STEPHEN SKINNER
(D8)

Document(s) Submitted:

Supreme Court Receipt for Doc

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

EDWARD TORRANCE REED, ESQ. for
RODERICK STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK
STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK
STEPHEN SKINNER

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

V5. 942

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

V5. 942

Return Of NEF

Recipients	
JENNIFER NOBLE, ESQ.	- Notification received on 2019-11-14 08:09:36.813.
JOHN PETTY, ESQ.	- Notification received on 2019-11-14 08:09:36.704.
DIV. OF PAROLE & PROBATION	- Notification received on 2019-11-14 08:09:36.673.
CHRISTOPHER FREY, ESQ.	- Notification received on 2019-11-14 08:09:36.642.
EDWARD REED, ESQ.	- Notification received on 2019-11-14 08:09:36.782.
CHRISTINE BRADY, ESQ.	- Notification received on 2019-11-14 08:09:36.751.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR14-0644

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

11-13-2019:17:35:05

Clerk Accepted:

11-14-2019:08:09:00

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. RODERICK STEPHEN SKINNER
(D8)

Document(s) Submitted:

Ex-Parte Mtn

Filed By:

Edward Torrance Reed

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

EDWARD TORRANCE REED, ESQ. for
RODERICK STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK
STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK
STEPHEN SKINNER

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

V5. 945

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

V5. 945

1 EDWARD T. REED, ESQ.
2 EDWARD T. REED, PLLC
3 Nevada State Bar No. 1416
4 P.O. Box 34763
5 Reno, NV 89533-4763
6 (775) 996-0687

7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**

9 RODERICK SKINNER,

10 Petitioner,

Case No. CR14-0644

11 vs.

Dept. No. 8

12 THE STATE OF NEVADA,

13 Respondent.
14 _____ /

15 **REQUEST FOR TRANSCRIPT**

16
17 To: Isolde Zihn, Court reporter, Department 8

18 COMES NOW Petitioner RODERICK SKINNER, by and through his attorney
19 Edward T. Reed, Esq., and hereby requests a copy of the following transcript in this
20 case:

21 The transcript of the post conviction evidentiary hearing held on September
22 26, 2019.

23
24 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the
25 preceding document does not contain the social security number of any person.

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CERTIFICATE OF SERVICE

I hereby certify that I represent the Petitioner in this matter and that on this date I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Appellate Division
Washoe County District Attorney’s Office

And via email to:

zihn@sbcglobal.net
Isolde Zihn, court reporter
c/o Dept. 8
Washoe County District Court
75 Court St.
Reno, NV 89501

DATED this 14th day of November, 2019.

/s/ Edward T. Reed
EDWARD T. REED

Return Of NEF

Recipients	
JENNIFER NOBLE, ESQ.	- Notification received on 2019-11-14 10:48:00.02.
JOHN PETTY, ESQ.	- Notification received on 2019-11-14 10:47:59.957.
DIV. OF PAROLE & PROBATION	- Notification received on 2019-11-14 10:47:59.942.
CHRISTOPHER FREY, ESQ.	- Notification received on 2019-11-14 10:47:59.926.
EDWARD REED, ESQ.	- Notification received on 2019-11-14 10:48:00.004.
CHRISTINE BRADY, ESQ.	- Notification received on 2019-11-14 10:47:59.988.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR14-0644

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

11-14-2019:10:47:01

Clerk Accepted:

11-14-2019:10:47:29

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. RODERICK STEPHEN SKINNER
(D8)

Document(s) Submitted:

Req to Crt Rptr - Rough Draft

Filed By:

Edward Torrance Reed

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

EDWARD TORRANCE REED, ESQ. for
RODERICK STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK
STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK
STEPHEN SKINNER

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

V5. 951

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

V5. 951

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CODE 2777

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

RODERICK SKINNER,
Petitioner,

vs.

Case No. CR14-0644

THE STATE OF NEVADA,
Respondent.

Dept. No. 8

-----/

**RECOMMENDATION AND ORDER FOR PAYMENT OF
INTERIM ATTORNEY FEES – POST CONVICTION**

The Administrator, having reviewed the request for compensation and declaration of counsel submitted by Edward T. Reed, for representation of Petitioner Roderick Skinner, who was previously declared indigent, and the Court having previously entered an Order finding this case appropriate for waiver of the \$750 statutory cap, pursuant to NRS 7.125(4),

The Administrator recommends that the Chief Judge of the Second Judicial District Court finds that the time expended was both necessary and reasonable to handle the recent issues in this matter and represent Petitioner’s interests.

///

1 The Administrator, having reviewed Mr. Reed's Motion and knowing that Petitioner is
2 indigent, recommends that the Chief Judge of the Second Judicial District Court approves the
3 payment of interim fees in the amount of \$5,032.80, made payable to Edward T. Reed, to be
4 paid by the State of Nevada Public Defender's Office.

5 Dated this 11th day of November, 2019.

6 

7
8 KRISTA MEIER, ESQ.
9 APPOINTED COUNSEL ADMINISTRATOR

10
11 **ORDER**

12 Pursuant to the Nevada Supreme Court Order in ADKT 411 and the Second Judicial
13 District Court's Model Plan to address ADKT 411, good cause appearing and in the interests of
14 justice,

15 IT IS HEREBY ORDERED that the recommendations of the Administrator are hereby
16 confirmed, approved and adopted as to the amount of \$ 5,032⁸⁰. This amount may not be
17 the same as the Administrator's recommendation. Counsel is notified that he may request a
18 prove-up hearing for any non-approved amounts before the Chief Judge of the District.

19 Counsel, Edward T. Reed, shall be reimbursed by the State of Nevada Public
20 Defender's Office his attorney fees in the amount of \$ 5032⁸⁰.

21 DATED this ~~11th~~^{3rd} day of December 2019.

22 

23
24 CHIEF DISTRICT JUDGE

Return Of NEF

Recipients	
JENNIFER NOBLE, ESQ.	- Notification received on 2019-12-03 13:48:44.09.
JOHN PETTY, ESQ.	- Notification received on 2019-12-03 13:48:44.012.
DIV. OF PAROLE & PROBATION	- Notification received on 2019-12-03 13:48:43.996.
CHRISTOPHER FREY, ESQ.	- Notification received on 2019-12-03 13:48:43.965.
EDWARD REED, ESQ.	- Notification received on 2019-12-03 13:48:44.059.
CHRISTINE BRADY, ESQ.	- Notification received on 2019-12-03 13:48:44.043.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR14-0644

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

12-03-2019:13:47:34

Clerk Accepted:

12-03-2019:13:48:11

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. RODERICK STEPHEN SKINNER
(D8)

Document(s) Submitted:

Ord Approving

Filed By:

Judicial Asst. BWard

You may review this filing by clicking on the following link to take you to your cases.

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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

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STEPHEN SKINNER

DIV. OF PAROLE & PROBATION

JOHN REESE PETTY, ESQ. for RODERICK
STEPHEN SKINNER

CHRISTOPHER FREY, ESQ. for RODERICK
STEPHEN SKINNER

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

V5. 956

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

V5. 956