

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

NORMAN K. FLOWERS
Appellant,

vs.

THE STATE OF NEVADA
Respondent.

Docket No. 53159/55759

Direct Appeal From A Judgment of Conviction,
Amended Judgment of Conviction and Order Denying Motion for New Trial
Eighth Judicial District Court
The Honorable Kathy Hardcastle, District Judge
The Honorable Linda Bell
District Court No. C228755

APPELLANT'S SUPPLEMENTAL AUTHORITIES

JoNell Thomas
State Bar #4771
Special Public Defender
330 South 3rd Street
Las Vegas, NV 89155
(702) 455-6265
Attorney for Norman Flowers

TABLE OF CONTENTS

I.	Introduction	1
II.	Supplemental Authorities.....	1
A.	The district court violated Flowers’ constitutional rights by allowing the State to introduce unrelated prior bad act testimony	1
B.	The district court violated Flowers’ constitutional rights by allowing testimony to be introduced in violation of <u>Crawford v. Washington</u> and <u>Commonwealth v. Melendez-Diaz</u>	2
C.	The district court violated Flowers’ constitutional rights by admitting as evidence a statement given by Flowers to detectives following invocation of his right to remain silent and right to counsel	3
D.	The district court violated Flowers’ constitutional rights by admitting gruesome photographs from the autopsy.....	4
E.	The district court violated Flowers’ constitutional right to present evidence by precluding Kinsey from testifying that the victim told him she was seeing someone named “Keith.”.....	4
F.	The prosecutor committed misconduct by commenting on Flowers’ right to remain silent.....	5
G.	There is insufficient evidence to support the conviction	5
H.	The judgment should be vacated based upon cumulative error.....	5
I.	The district court erred by denying Flowers’ motion for a new trial	6
III.	Conclusion	6

Certificate of Compliance	7
Certificate of Mailing.....	8

TABLE OF AUTHORITIES
Case Authority

<u>Brant v. State,</u> 340 P.3d 576 (Nev. 2014)	1
<u>Bullcoming v. New Mexico</u> 564 U.S. 647 (2011).....	2
<u>Coleman v. State,</u> 321 P.3d 901 (2014).....	5
<u>Harris v. State,</u> 432 P.3d 207 (2018).....	4
<u>Hubbard v. State,</u> 42 P.3d 1260 (Nev. 2018)	1
<u>Jeremias v. State,</u> 412 P.3d 43 (Nev. 2018)	2
<u>McCarty v. State,</u> 371 P.3d 1002 (Nev. 2016)	4
<u>Salinas v. Texas,</u> 570. U.S. 178 (2013)	5
<u>Stuart v. Alabama,</u> 139 S.Ct. 36 (2018)	3
<u>United States v. Gomez,</u> 763 F.3d 845 (7 th Cir. 2014).....	1
<u>Vega v. State,</u> 126 Nev. 332, 236 P.3d 632 (2011).....	2

Williams v. Illinois,
562 U.S. 50 (2012)..... 3

I. Introduction

On February 8, 2019, this Court ordered supplemental authorities, without argument, in support of the original briefs in this matter, which were filed almost a decade ago. This Supplemental Authorities is filed in accord with this Court's order.

II. Supplemental Authorities

A. The district court violated Flowers' constitutional rights by allowing the State to introduce unrelated prior bad act testimony

Appellant Flowers contends that the district court violated his rights to due process of law and a fair trial by allowing the State to introduce prior bad act evidence of another murder which was not relevant and which was highly prejudicial. OB at 18. The State argues that the district court was not manifestly wrong in its reasoning when it admitted this evidence. AB at 11.

Additional authority relevant to this issue includes Hubbard v. State, 422 P.3d 1260, 1265-69 (Nev. 2018), concerning the admission of evidence of other crimes, wrongs, or acts to prove intent for a specific intent crime and prejudice from improper admission of prior act testimony. (Citing United States v. Gomez, 763 F.3d 845, 858-59 (7th Cir. 2014)).

Additional authority relevant to dissimilarities in the two incidents at issue includes Brant v. State, 340 P.3d 576, 582 n.5 (Nev. 2014).

B. The district court violated Flowers' constitutional rights by allowing testimony to be introduced in violation of Crawford v. Washington and Commonwealth v. Melendez-Diaz

Appellant Flowers contended in his Opening Brief that his state and federal constitutional rights to due process, confrontation, and cross-examination were violated because the district court allowed the State introduce testimonial hearsay evidence about autopsies and DNA testing. OB at 21. The State argued in response that Flowers' confrontation rights were not violated. AB at 18.

Supplemental authority concerning this issue includes Jeremias v. State, 412 P.3d 43, 51 (Nev. 2018), on the issue of what testimony is admissible from a substitute medical examiner about an autopsy performed by someone else. See also Vega v. State, 126 Nev. 332, 240, 236 P.3d 632, 638 (2010) (finding that a district court erroneously permitted a doctor to testify regarding the contents of another person's sexual examination report because the report was testimonial and the defendant was not afforded the opportunity to cross-examine the author of the report, but testimony from the doctor in which she offered her independent opinion as an expert witness did not violate the Confrontation Clause). The United States Supreme Court has also provided additional authority on the Confrontation Clause issue in Bullcoming v. New Mexico, 564 U.S. 647, 657-58 (2011) (admission of a laboratory report from a substitute analyst violated the defendant's right of confrontation).

Additional authority concerning the admissibility of DNA testing by an expert who did not personally conduct testimony includes a fractured opinion by the United States Supreme Court in Williams v. Illinois, 567 U.S. 50 (2012). See Stuart v. Alabama, 139 S.Ct. 36, 36-37 (2018) (Gorsuch, J. and Sotomayor, J. dissenting from the denial of certiorari and explaining the various opinions in Williams “have sown confusion in courts across the county.”),

C. The district court violated Flowers’ constitutional rights by admitting as evidence a statement given by Flowers to detectives following invocation of his right to remain silent and right to counsel.

Appellant Flowers contends that his state and federal constitutional rights to due process, a fair trial, remain silent, and his rights to counsel were violated because the district court allowed the State to admit evidence of statements made by Mr. Flowers, at a time when he was represented by counsel and had invoked his right to remain silent, in a case for which the conviction here serves as an aggravating circumstances. His rights were also violated because the district court prohibited him from introducing his whole statement to the police after the State introduced a portion of his statement. OB at 24. The State argues in response that the statements made were for an unrelated case, he waived his Miranda rights, and the statements were therefore admissible. AB at 27.

Additional authority relative to this issue includes McCarty v. State, 371 P.3d 1002, 1005-06 (Nev. 2016) (finding that the right to counsel had attached, but the defendant waived that right).

D. The district court violated Flowers’ constitutional rights by admitting gruesome photographs from the autopsy.

Appellant Flowers contends his state and federal constitutional rights to due process and a fair trial were violated because the district court allowed the State to introduce gruesome photographs of body parts dissected by the medical examiner during the autopsy. OB at 29. The State argues in response that the district court did not abuse its discretion in admitting this evidence. AB at 30.

Additional authority relevant to this issue includes Harris v. State, 432 P.3d 207 (Nev. 2018) (finding an abuse of discretion based upon admission of unnecessarily graphic photographs which were unfairly prejudicial).

E. The district court violated Flowers’ constitutional right to present evidence by precluding Kinsey from testifying that the victim told him she was seeing someone named “Keith.”

Appellant Flowers contends his state and federal constitutional rights because the district court prohibited his counsel from introducing evidence that Sheila’s boyfriend knew of her relationship with Flowers. OB at 31. The State argues in opposition that this evidence was properly excluded. AB at 31.

Additional authority relevant to this issue includes Coleman v. State, 321 P.3d 901, 906-11 (Nev. 2014) (finding that the district court abused its discretion by refusing to allow testimony relevant to the defense and finding that the exclusion of the evidence was not harmless).

F. The prosecutor committed misconduct by commenting on Flowers' right to remain silent

Appellant Flowers contends that his state and federal constitutional rights were violated because of prosecutorial misconduct based upon comments on his right to remain silent. OB at 33. The State argues in response that there was no prosecutorial misconduct. AB at 34.

Additional authority relevant to this issue is Salinas v. Texas, 570 U.S. 178, 183 (2013).

G. There is insufficient evidence to support the conviction

Appellant Flowers contends there is insufficient evidence to support his convictions for sexual assault and murder. OB at 36. The State argues that sufficient evidence was presented to the jury. AB at 36. No additional authority is provided as to this issue.

H. The judgment should be vacated based upon cumulative error

Appellant Flowers contends the judgment should be vacated based upon

cumulative error. OB at 37. The State argues that there is no cumulative error. AB at 37. No additional authority is provided as to this issue.

I. The district court erred by denying Flowers’ motion for a new trial

Appellant Flowers contends that the district court erred in denying his motion for a new trial after new evidence was discovered concerning a murder conviction for the alternate suspect, George Brass. OB (55759) at 5. The State argues that the district court did not abuse its discretion in denying the motion for a new trial. AB (55759) at 9. No additional authority is provided as to this issue.

III. Conclusion

For the reasons set forth in the previously filed briefs, and the supplemental authority cited above, the judgment of conviction should be reversed. In the alternative, Appellant Flowers should be granted a new trial.

DATED this 19th day of February, 2019.

Respectfully submitted,

/s/ JONELL THOMAS

By: _____
JONELL THOMAS
State Bar No. 4771

CERTIFICATE OF COMPLIANCE

1. I hereby certify this brief does comply with the formatting requirements of NRAP 32(a)(4).
2. I hereby certify that this brief does comply with the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word Perfect Office 11 in 14 point font of the Times New Roman style.
3. I hereby certify that this brief does comply with the word limitation requirement of NRAP 32(a)(7)(A)(ii). The relevant portions of the brief are 1943 words.
4. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular, NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanction

in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 19th day of January, 2019.

/s/ JONELL THOMAS

JONELL THOMAS
Nevada Bar No. 4771
Clark County Special Public Defender's Office
330 S. Third Street Ste. 800
Las Vegas NV 89155

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 19th day of February, 2019, a copy of the foregoing Appellant's Supplemental Authorities was served as follows:

BY ELECTRONIC FILING TO

District Attorney's Office
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155

Nevada Attorney General
100 N. Carson St.
Carson City NV 89701

/s/ JONELL THOMAS

JONELL THOMAS