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Dec 09 2013 02:25 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

Appellant,

VS.

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Respondent.

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(Appeal from Judgment of Conviction)

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GUILLERMO RENTERIO-NOVOA, ) NO. 61865  
)  
Appellant, )  
)  
vs. )  
)  
THE STATE OF NEVADA, )  
)  
Respondent. )  
)

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1 plain, concise and definite *written statement* of the essential facts constituting  
2 the offense charged.” **NRS 173.075** (emphasis added). Accordingly, this  
3 Court has rejected the idea of ‘notice-by-opening statement/evidence/closing  
4 argument’:  
5

6  
7 ... [S]ince **NRS 173.075(1)** entitles an accused to a  
8 ‘definite written statement of the essential facts’ that statute in  
9 particular repels the idea that we may countenance an indefinite  
10 indictment whenever we feel a defendant might glean the  
11 prosecutor’s theory of means from whatever evidence he  
12 presented to show probable cause. Moreover, some theory or  
13 theories of means will almost always be suggested by such  
14 evidence; therefore, if that justifies noncompliance with NRS  
15 173.075 and 179.370, those statutes have no real force at all...

16 **Simpson v. District Court**, 88 Nev. 654, 660 (1972).

17 Respondent cannot point to a single aspect of the Information that  
18 provided the notice necessary to meet constitutional muster. Instead,  
19 Respondent directs this Court’s attention to the government’s opening  
20 statement, evidentiary presentation, and closing argument as providing the  
21 required notice of the charged crimes. Respondent’s reliance on the trial  
22 presentation rather than the language of the Information as evidence that  
23 prosecutors provided Guillermo with proper notice of the charged crimes  
24 only reinforces Guillermo’s claim that the Information failed to allege with  
25 adequate specificity the charged misconduct. By pleading a five-year time  
26 frame with multiple identical charges, prosecutors reduced Guillermo’s  
27  
28

1 defense to little more than guesswork. Under the authority set forth herein  
2 and in Guillermo's Opening Brief, this violated his Federal and State  
3 constitutional rights, as well as Nevada law. U.S.C.A. VI, XIV; Nev. Const.  
4 Art. 1, Sect. 8; NRS 173.175.  
5

6  
7 **II. THE TRIAL COURT VIOLATED GUILLERMO'S**  
8 **FEDERAL AND STATE CONSTITUTIONAL RIGHTS BY**  
9 **REFUSING TO ALLOW HIM TO PRESENT EVIDENCE**  
10 **CRITICAL TO HIS DEFENSE.**

11 Respondent defends the trial court's refusal to admit evidence of Roxana's  
12 pregnancy, claiming the evidence fell within the purview of Nevada's Rape  
13 Shield law (NRS 50.090), which excludes "any previous sexual conduct of a  
14 [sexual assault] victim to challenge the victim's credibility." Answer, p. 24.  
15 NRS 50.090 prohibits the admission of a sexual assault complainant's prior  
16 sexual conduct to show, in essence, that the complainant consented to the  
17 sexual encounter alleged in the charged crime. Guillermo did not seek to  
18 admit the pregnancy evidence to show that Roxana was unchaste and,  
19 accordingly, consented to the sexual encounters alleged here. Rather,  
20 Guillermo wanted to elicit the pregnancy evidence to explain why Roxana  
21 would suddenly accuse Guillermo of abusing her.<sup>1</sup> NRS 50.090 did not  
22 prohibit this.  
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28 <sup>1</sup> Again, Guillermo's defense theory was that Roxana disclosed the abuse  
contemporaneous with revealing her pregnancy. As defense counsel argued:

1       Alternatively, Respondent contends that the trial court properly excluded  
2       the pregnancy evidence based upon defense counsel's failure to "present the  
3       [defense theory] before the *first day of trial*." Answer, p. 28 (emphasis in  
4       original). Even if covered by NRS 50.090, complete exclusion of the  
5       pregnancy evidence based upon defense counsel's failure to file a pre-trial  
6       motion on the issue amounted to an extreme remedy disproportionate to the  
7       purposes served by applicable evidentiary rules. See Fowler v. Sacramento  
8       Co. Sheriff's Dept., 421 F.3d 1027 (9<sup>th</sup> Cir. 2005) (where evidence of prior  
9       sexual assault allegations by complainant "might reasonably have influenced  
10      the jury's assessment of [the complainant's] reliability or credibility, absent  
11      sufficient countervailing interests, the jurors were entitled to have the benefit  
12      of the defense theory before them so that they could make an informed  
13      judgment as to the weight to place on [the complainant's] testimony...");  
14      Holley v. Yarborough, 569 F.3d 1091, 1099 (9<sup>th</sup> Cir. 2009) (exclusion  
15      young sexual assault complainant's comments about prior sexual encounter  
16      "unreasonable and disproportionate to the purposes served by the evidentiary  
17      rules invoked by [trial] court," as encounter evidence "clearly relevant to  
18      impeach [the complainant] and thus to allow the jury to evaluate the  
19      

---

20      "If she tells her mom that she's pregnant, she's going to get in trouble. But if  
21      she says at the same time, oh, and I've been sexually abused by your ex  
22      boyfriend for years, that's going to minimize any amount of trouble she  
23      would have gotten in for being pregnant in the first place." III 426-28.  
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1 credibility of her allegations.”). Thus, the trial court erred by excluding the  
2 pregnancy evidence.  
3

4 **CONCLUSION**

5 For the reasons set forth above and in his Opening Brief, Appellant  
6 GUILLERMO RENTERIA-NOVOA respectfully requests that this  
7 Honorable Court reverse his convictions entered below.  
8

9 Respectfully submitted,  
10

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1 accompanying brief is not in conformity with the requirements of the Nevada  
2 Rules of Appellate Procedure.  
3

4 DATED this 6<sup>th</sup> day of December, 2013.

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