1	IN THE SUPREME COURT	OF THE STATE OF NEVADA		
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4	GUILLERMO RENTERIO-NOVOA			
5	Appellant,) Dec 09 2013 02:25 p.m.) Tracie K. Lindeman		
6		Clerk of Supreme Court		
7	vs.)		
8	THE STATE OF NEVADA,)		
9	Respondent.)		
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11	APPELLANT'S REPLY BRIEF			
12	ATTEDERIVI	S REI LI DIGILI		
13	(Appeal from Judgment of Conviction)			
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6	Appellant,)
7	vs.)
8)
9	THE STATE OF NEVADA,)
10	Respondent.	
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1 IN THE SUPREME COURT OF THE STATE OF NEVADA 2 3 NO. 61865 GUILLERMO RENTERIO-NOVOA, 4 Appellant, 5 6 VS. 7 THE STATE OF NEVADA, 8 Respondent. 9 10 APPELLANT'S REPLY BRIEF 11 12 **ARGUMENT** 13 ALLEGE INFORMATION FAILED TO I. 14 SPECIFICITY THE ACTS CONSTITUTING 15 CRIMES. THEREBY VIOLATING GUILLERMO'S CONSTITUTIONAL AND **STATUTORY** 16 RIGHTS. 17 Respondent claims that the Information properly articulated the dates on 18 19 which certain of the charged crimes occurred as the prosecutor "noted with 20 meticulous detain in its opening argument each period of time within which 21 22 the alleged acts occurred"; Roxana "herself testified to specific occurrences at 23 each apartment she lived in..."; and "the State reiterated those times and 24 dates on [sic] closing argument." Answer, p. 23-24. But it is not the trial 25 26 presentation that must notify a defendant of the charged misconduct. The 27

Information must do that. "The indictment or the information must be a

plain, concise and definite written statement of the essential facts constituting the offense charged." NRS 173.075 (emphasis added). Accordingly, this Court has rejected the idea of 'notice-by-opening statement/evidence/closing argument':

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

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

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

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

II. THE TRIAL COURT VIOLATED GUILLERMO'S FEDERAL AND STATE CONSTITUTIONAL RIGHTS BY REFUSING TO ALLOW HIM TO PRRESENT EVIDENCE CRITICAL TO HIS DEFENSE.

Respondent defends the trial court's refusal to admit evidence of Roxana's pregnancy, claiming the evidence fell within the purview of Nevada's Rape Shield law (NRS 50.090), which excludes "any previous sexual conduct of a [sexual assault] victim to challenge the victim's credibility." Answer, p. 24. NRS 50.090 prohibits the admission of a sexual assault complainant's prior sexual conduct to show, in essence, that the complainant consented to the sexual encounter alleged in the charged crime. Guillermo did not seek to admit the pregnancy evidence to show that Roxana was unchaste and, accordingly, consented to the sexual encounters alleged here. Rather, Guillermo wanted to elicit the pregnancy evidence to explain why Roxana would suddenly accuse Guillermo of abusing her. NRS 50.090 did not prohibit this.

Again, Guillermo's defense theory was that Roxana disclosed the abuse contemporaneous with revealing her pregnancy. As defense counsel argued:

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

[&]quot;If she tells her mom that she's pregnant, she's going to get in trouble. But if she says at the same time, oh, and I've been sexually abused by your ex boyfriend for years, that's going to minimize any amount of trouble she would have gotten in for being pregnant in the first place." III 426-28.

	[]
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	GUILLERMO RENTERIA-NOVOA respectfully requests that this
8	Honorable Court reverse his convictions entered below.
9	Respectfully submitted,
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11	PHILIP J. KOHN CLARK COUNTY PUBLIC DEFENDER
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16	Deputy Public Defender
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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Times New Roman in 14 size font.

2. I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

Proportionately spaced, has a typeface of 14 points or more and does not exceed 15 pages.

3. 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 and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the

1	accompanying brief is not in conformity with the requirements of the Nevada
2	
3	Rules of Appellate Procedure.
4	DATED this 6 th day of December, 2013.
5	PHILIP J. KOHN
6	CLARK COUNTY PUBLIC DEFENDER
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1 **CERTIFICATE OF SERVICE** I hereby certify that this document was filed electronically with 2 the Nevada Supreme Court on the 6th day of December, 2013. Electronic 3 4 Service of the foregoing document shall be made in accordance with the 5 Master Service List as follows: 6 CATHERINE CORTEZ MASTO NANCY L. LEMCKE 7 STEVEN S. OWENS **HOWARD S. BROOKS** I further certify that I served a copy of this document by mailing 8 9 a true and correct copy thereof, postage pre-paid, addressed to: 10 GUILLERMO RENTERIO-NOVOA 11 NDOC No. 1092343 c/o High Desert State Prison 12 P.O. Box 650 13 Indian Springs, NV 89018 14 15 16 BY /s/ Carrie M. Connolly Employee, Clark County Public 17 Defender's Office 18 19 20 21 22 23 24 25 26 27 28