

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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ANTHONY CASTANEDA,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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Electronically Filed  
Apr 28 2015 09:35 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

CASE NO: 64515

**RESPONDENT'S SUPPLEMENTAL POINTS AND AUTHORITIES**

**STATEMENT OF THE CASE**

On April 7, 2015, this Court heard oral argument in the above captioned case. The Honorable Justice Pickering posed a question regarding the applicability of Perez v. State, 129 Nev.Adv.Op. \_\_, \_\_, 313 P.3d 862, 870 (2013), to the instant matter. In response, Appellant Anthony Castaneda filed a Supplemental Points and Authorities and Correction of the Record on April 17, 2015, arguing that this Court's holding in Perez regarding the adequacy of the State's expert witness notice was not controlling for three reasons: 1) the arguments and request for relief are different; 2) the instant matter deals with whether it was district court error to exclude an unendorsed expert witness in rebuttal instead of whether it was district court error to admit the testimony of the State's expert; and 3) unlike Perez, there was substantial prejudice from the district court's decision. The State hereby responds as follows.

**ARGUMENT**  
**I**  
**PEREZ IS CONTROLLING AUTHORITY**

Admittedly, there are several factual distinctions between Perez and the instant matter. Perez dealt with the admissibility of expert testimony related to sex offender grooming behavior and the effect that behavior had on a child victim. Id. at \_\_\_, 313 P.3d at 864. Specifically, Perez addressed four issues: 1) whether the expert's academic and professional experience were sufficient to qualify him to testify; 2) whether the expert's testimony was beneficial to the jury; 3) whether the expert's testimony did not improperly vouch for the victim; and 4) whether the State's notice of expert testimony was adequate. Id. at \_\_\_, 313 P.3d at 866-870. Essentially, Perez addressed whether the district court did not err in admitting the testimony of the State's expert. Here, the issue is whether the district court did not err in denying Castaneda's attempt to untimely call an unendorsed witness during the middle of trial. Nonetheless, inasmuch as Perez held that the State's notice of expert witness testimony was adequate, it is controlling authority.

Indeed, it is controlling authority because Castaneda has insisted throughout the proceedings (during trial, on appeal, and during oral arguments) that the State provided inadequate notice of the testimony of Detective Ehlers and thus he was surprised as to the answers Detective Ehlers gave during trial. Accordingly, Castaneda argues that because of the State's purported failure to provide adequate

notice, he was entitled to call an unendorsed expert rebuttal witness. Thus, the crux of Castaneda's argument deals with the sufficiency of the State's notice of expert witnesses and Perez is directly on point to the extent it discusses the adequacy of the State's notice.

In Perez, this Court noted, in determining the State's notice was adequate, that the State filed its notice of witnesses over one month before the start of trial and that the State's notice indicated that the expert would testify as to grooming techniques used upon children. Id. at \_\_\_, 313 P.3d at 870. Moreover, the Perez court noted the State submitted the expert's curriculum vitae which indicated his experience. Id. Although the Perez court noted that the appellant's brief did not allege that his substantial rights were prejudiced because the notice did not include a more detailed description of the expert's testimony, it was merely one of the factors this Court considered. Id. Indeed, "under [all of] the circumstances," the Perez court discerned no abuse of discretion in allowing the expert to testify because the State provided adequate notice. Id.

In the instant matter, the State noticed Detective Ehlers as an expert on November 2, 2012, and indicated that he would be testifying as "an expert as to the forensic examination of computers and/or electronic devices for the presen[c]e of child pornography." 1 AA 116-17. This notice was sent out eight months before the start of Castaneda's trial. 3 AA 510. Moreover, Detective Ehlers testified at the

preliminary hearing and, as noted during oral arguments, the State disclosed the reports (or computer) in which Detective Ehlers' based his opinions off of. 1 AA 68. Nonetheless, Castaneda insists the State failed to provide adequate notice of the detective's "testimony" because Detective Ehlers answered questions during cross-examination in a manner in which negatively affected his defense and was not written verbatim in his report. Accordingly, because Castaneda's argument relies on the purported inadequacy of the State's notice, a published decision from this Court directly addressing the sufficiency of the State's notice of expert witness is controlling and relevant.

## **II THE STATE AGREES WITH APPELLANT'S CURRENT FACTUAL REPRESENTATIONS TO THE EXTENT IT CORRECTS AN ERRONEOUS ASSERTION THAT DETECTIVE ELHERS DID NOT TESTIFY AT THE PRELIMINARY HEARING**

Castaneda asserted in his opening brief and during oral arguments that Detective Ehlers did not testify at the preliminary hearing. To the extent Castaneda corrects that factual misrepresentation, the State agrees. Inasmuch as Castaneda attempts to argue Detective Ehlers' preliminary hearing testimony did not provide adequate notice, the State notes this is outside of the scope of the order granting Castaneda's motion for leave to file supplemental points and authorities addressing the application of Perez and this Court should disregard it.

In any event, to the extent this Court considers Castaneda's arguments, the State refers this Court to section 1 of its answering brief. Detective Elhers' testimony on direct was centered on installation dates, 6 AA 1096-1097, "linkage" between the mediums, 6 AA 1100, digital fingerprints, 6 AA 1101, file structures, 6 AA 1103, transfer dates, 6 AA 1103-1106, and anti-virus software, 6 AA 1106. Castaneda cannot now claim he was surprised by testimony he opened the door to and in which he didn't like the response to. During cross-examination, Detective Ehlers testified that in his opinion, and based upon his forensic examination of the items in question, he believed that a person had worked with and deleted some of the pornographic images. Castaneda simply does not like the answer that Detective Ehlers, who was noticed as an expert, gave. This does not provide an adequate reason to ignore the requirement that he provide adequate notice to call an expert witness. Fairness during trial is not one-sided—it applies both to the defendant and the State.

Dated this 27<sup>th</sup> day of April, 2015.

Respectfully submitted,

STEVEN B. WOLFSON  
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BY */s/ Steven S. Owens*

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## **CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 27<sup>th</sup> day of April, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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