

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

---

**No. 82886**

Electronically Filed  
Nov 18 2021 03:29 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

---

**JOSHUA BACHARACH**

Appellant,

v.

**THE STATE OF NEVADA**

Respondent.

---

Appeal from a Denial of Petition for Writ of Habeas Corpus (Post-Conviction)  
Eighth Judicial District Court, Clark County  
The Honorable Cristina D. Silva, District Court Judge  
District Court Case No. C-14-299425-1

---

**APPELLANT'S REPLY BRIEF**

---

James A. Oronoz, Esq.  
Nevada Bar No. 6769  
Oronoz & Ericsson, LLC  
1050 Indigo, Suite 120  
Las Vegas, Nevada 89145  
Telephone: (702) 878-2889  
Facsimile: (702) 522-1542  
jim@oronozlawyers.com  
*Attorney for Appellant*

1                                   **I.     N.R.A.P. 26.1 DISCLOSURE**

2           The undersigned counsel of record certifies that the following are persons  
3 and entities as described in N.R.A.P. 26.1 and must be disclosed. These  
4 representations are made in order that the judges of this Court may evaluate  
5 possible disqualifications or recusal.  
6

7                                   **NONE**

8           Attorney of Record for Joshua Bacharach:

9                                   /s/ James A. Oronoz\_\_\_\_\_

**II. TABLE OF CONTENTS**

<b>I. N.R.A.P. 26.1 DISCLOSURE .....</b>	<b>ii</b>
<b>II. TABLE OF CONTENTS .....</b>	<b>iii</b>
<b>III. TABLE OF AUTHORITIES .....</b>	<b>iv</b>
<b>IV. ARGUMENT.....</b>	<b>1</b>
<b>V. CONCLUSION .....</b>	<b>5</b>
<b>VI. CERTIFICATE OF COMPLIANCE .....</b>	<b>6</b>
<b>VII. CERTIFICATE OF SERVICE.....</b>	<b>7</b>

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

## Cases

## Rules

N.R.A.P. 26.1 .....	ii, iii
N.R.A.P. 28 .....	6
N.R.A.P. 32 .....	6

#### IV. ARGUMENT

##### 1. THE DISTRICT COURT IMPROPERLY FOUND THAT TRIAL COUNSEL WAS EFFECTIVE WHEN HE FAILED TO OBJECT TO THE TRIAL JUDGE THREATENING A KEY STATE’S WITNESS WITH INCARCERATION AND HAVING HER CHILD TAKEN AWAY BY SOCIAL SERVICES

The State contends that the threats and intimidation that clearly emanated from Judge Smith in this case, towards a key State’s witness, are somehow distinguishable from the abusive and intimidating behavior that was the basis of the United States Supreme Court’s reversal in *Webb v. Texas*, 409 U.S. 95, 93 S. Ct. 351, 34 L. Ed. 2d 330 (1972). The fact of the matter is that former Judge Smith’s behavior was worse.

*Webb*, 409 U.S. 95, is the leading authority dealing with a trial court’s discretion to admonish a witness. In *Webb*, 409 U.S. 95, the trial court admonished the defense witness outside the presence of the jury and made explicit threats of prosecution if the witness lied under oath. *Id.* Specifically, the trial court in *Webb*, 409 U.S. 95, made threats to “personally see that your case goes to the grand jury and you will be indicted for perjury and the likelihood (sic) is that you would get convicted of perjury and that it would be stacked onto what you have already got...” *Id.* The United States Supreme Court reversed the conviction. The *Webb* Court found that the trial court’s threats deprived the defendant of due process of law under the Fourteenth Amendment by exerting “Such duress on the witness’

1 mind as to preclude him from making a free and voluntary choice whether or not  
2 to testify.” *Webb*, 409 U.S. at 98 (emphasis added).

3 Here, Judge Smith explicitly threatened Ms. Nazaroff.

4 BY THE COURT:

5 Q: You’re going to be called to testify today about the incident. You  
6 weren’t there for the incident.

8 A: No.

9 Q: You’re not to talk about any gang affiliation, any moniker, or  
10 nickname. They’re going to lead you through along, you wouldn’t come in pretrial  
11 with them and so they couldn’t tell you all this stuff. But I can tell you I’ve had  
12 people violate my order and if you do you’ll go to jail today and I’ll have to get  
13 somebody to come get your child.

15 A: Okay.

16 Q: So you’re to answer their questions.

17 A: Okay.

18 Q: You’re not say anything - - well, it’s my understanding you’re going  
19 to testify that the car was yours.

21 A: Yes.

22 Q: That you saw Mr. Bacharach come get the car, he had a bullet-proof  
23 vest on, and you seen him - -

1 A: No. He didn't have no bullet vest – bullet – he didn't have no bullet  
2 vest on.

3 Q: Did you tell somebody that he did?

4 A: No. I said I - - he came and got my car, he had my keys. He did. But  
5 he never had a bullet vest on.  
6

7 MS. THOMSON: That's fine.

8 THE COURT: All right.

9 MR. FATTIG: And - -

10 MS. THOMSON: We've got the statement, so.

11 THE COURT: We're going to have them lead her through. But if she blurts  
12 it out, I got no alternative but to put you in custody, you understand?  
13

14 THE WITNESS: What are you talking about?

15 THE COURT: If you blurt out something about trying to get him off, say  
16 something you're not supposed to say - -

17 THE WITNESS: No.

18 THE COURT: Tell them –

19 MR. FATTIG: In other words, about gang affiliation.  
20

21 THE COURT: Gang affiliation.

22 MS. NGUYEN: I --

23 MR. FATTIG: Or drug use.  
24

1 THE COURT: Drug use.

2 MS. NGUYEN: Probation.

3 MR. FATTIG: Drug possession.

4 MS NGUYEN: Parole.

5 THE COURT: Smoke and dope or anything.

6 MR. FATTIG: Or the Defendant was on probation or supervision.

7 THE COURT: Or parole or probation. You're not to say that. She's going  
8 to lead you through a lot of that stuff to keep you away from it. But don't blurt  
9 anything out, you understand?  
10

11 THE WITNESS: Okay.

12 AA II 252-53.

13  
14 By threatening to have the witness's child taken away, *as well as* threatening  
15 her with incarceration, Judge Smith managed to create a situation *even more*  
16 egregious than the one in *Webb*, 409 U.S. 95. Few, if any, things strike more terror  
17 into the heart of a parent than being involuntarily separated from their child. For  
18 this fundamental reason, this Court should find that Judge Smith's conduct in this  
19 case was so egregious as to create a serious doubt as to whether Ms. Narazoff's  
20 testimony was affected by his threats and therefore impermissibly biased in favor  
21 of the State.  
22  
23  
24



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

Respectfully submitted this 18<sup>th</sup> day of November 2021.

**JAMES A. ORONOV, ESQ.**  
Nevada Bar No. 6769  
1050 Indigo Drive, Suite 120  
Las Vegas, Nevada 89145  
Telephone: (702) 878-2889  
*Attorney for Appellant*

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

I further certify that this brief complies with the type volume limitations of N.R.A.P. 32(a)(7) because it is proportionately spaced, has a typeface of 14 points or more and contains 824 words. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Respectfully submitted,

6

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**VII. CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on November 18, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD  
Nevada Attorney General

STEVEN B. WOLFSON  
Clark County District Attorney

By /s/ Jan Ellison  
Oronoz & Ericsson, LLC